



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN KAMLOOPS, BRITISH COLUMBIA
ON FEBRUARY 5, 2021**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2021-030
<u>Date of Release:</u>	<u>September 20, 2022</u>

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INTRODUCTION

In the late evening of February 5, 2021, RCMP members responded to a call expressing concerns about the Affected Person ('AP'), who was said to be experiencing a psychotic episode. When officers located AP, he was seen to act in an assaultive manner, and was uncooperative with police. AP ran at the Subject Officer ('SO') and another officer discharged a Conducted Energy Weapon ('CEW' or 'Taser') at AP. AP retreated, but the CEW was not effective in immobilizing him. SO then fired his own CEW at AP, who fell backwards onto the ground and struck his head, suffering a serious head injury. The Independent Investigations Office ('IIO') was notified and commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of two civilian witnesses, four first responders and eight witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- video/audio recordings from police vehicle Watchguard dash camera systems;
- scene photographs;
- data downloads from two police CEW's.
- medical evidence, including photographs of AP's injuries and an injury to one officer, and Emergency Health Services ('EHS') records.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO has not provided any account to the IIO.

NARRATIVE

AP's encounter with police officers occurred shortly after 11:00 p.m. on February 5, 2021. The temperature was below freezing and there was snow and ice on the ground, but AP was dressed only in a shirt, jeans and boots. The information that had initially brought him to the attention of police was that he was suffering from a psychotic episode after going three days without sleep. He was said to be walking around the streets shouting at people about "Satan". He had thrown a rock at a passing vehicle and a snowball at an ambulance, and SO had observed him attempting to pull a fast-food delivery driver from his car.

SO arrived on the scene on foot, together with Witness Officer 1 ('WO1'). Shortly afterwards, WO2 arrived in his police vehicle, and his Watchguard dash camera captured most of the material interaction between AP and the involved officers. WO3 was riding with WO2. Pulling in behind them was WO4, and the sixth involved officer was WO5. The witness officers gave various versions of the incident, and some were re-interviewed subsequently by IIO investigators to clarify their accounts. SO has not given an account.

Watchguard Video

The actions of AP as he was approached by the officers, through to the moment he was knocked to the ground and seriously injured as a result of the firing of SO's CEW, were video-recorded. That recording must be considered the most reliable evidence with respect to justification for the use of force by SO.

The Watchguard recording of the CEW deployment was taken from WO2's police vehicle, with WO3 riding as passenger. On the audio track, as the officers approached the scene, a voice on the radio (apparently either SO or WO1) broadcasts, "...a really agitated male". One of the officers in WO2's vehicle can then be heard to say, "Tase the fucking guy".

As WO2 pulls up, his headlights illuminate AP, who is out in the street, walking slowly backwards from SO and WO1. AP is dressed in what appears to be a white dress shirt with rolled-up sleeves, and jeans. He appears tall and slender in stature. When WO2's vehicle stops, it turns slightly so that SO is off-screen slightly to the right. As WO2 and WO3 exit their vehicle, officers are shouting, "Get on the ground". AP does not do this, but instead takes several large steps in the direction of SO. WO1 can be seen fumbling with his equipment belt, WO2 is watching, standing by the left driver's side of his police vehicle, and then there is the sound of a CEW deployment (this is from WO3 who, like SO and now AP also, is off-screen to the right).

AP is then seen walking quickly backwards. He shouts twice and makes swiping or pulling motions with his hands, apparently at a CEW wire or wires attached to the front of his shirt. As he does this, WO2 backs away to the left and WO1 advances, holding something in his hands (later seen to be OC spray, also known as pepper spray). AP is still stepping backwards when SO, who is following him, deploys his CEW. AP goes completely rigid, his hands at his chest, and falls backwards onto the roadway. WO1 comes forward and can be seen spraying OC spray down onto AP as he lies on the pavement, gasping.

Witness officer accounts, set out below, are not entirely consistent with this objective video evidence.

Witness Officer 1

WO1 told investigators that AP was “trying to dash towards [SO] a few times ... lunging and backing up, lunging and backing up ... I don’t recall how many attempts he made [to lunge towards SO]”. Later in the interview, WO1 said, “I saw him single out and target [SO] and charge him a couple of times at least, and lunge towards him several times”.

WO1 said that at one point, AP committed to “a full-on run towards [SO]”, and WO1 put his hand on his OC spray to draw it, but heard a CEW being deployed, though it was not successful. He said the firing of the CEW (by WO3) made AP stop “for a split second”, but AP then “charged again directly at [SO]”, who successfully deployed his CEW, causing AP to “lock up and fall backwards onto the ground”. Later in the same interview, WO1 used different language in describing AP’s actions after the first CEW deployment: “he seemed to recover himself really quick, and went to charge again, it looked like he’d charge again”.

Re-interviewed later, and after being shown the Watchguard video, WO1 indicated that he had not seen anything in the video that caused him concern about his previous statements: “That was my perception at the time. I don’t want to contradict what I’ve already said”. He confirmed his evidence that AP had “kept trying to lunge”, and said that “a few” of those “lunges” had occurred before the video started.

Asked about other options available to the group of arresting officers, WO1 responded,

I suppose we could risk going in and risking rolling around on the floor with a guy I perceived as having excited delirium, so very strong. We intended to arrest him, and no way he was going to walk away. It would only have got worse.

Witness Officer 2

While WO2’s dash camera produced what is clearly the most reliable objective evidence of the incident, WO2’s subjective appreciation of it appears to have been incomplete. In his account, there was only one CEW deployment:

There was a number of us surrounding the subject of complaint ... [AP] moved towards one of the officers in an aggressive manner [demonstrated as arms out and forward in a tackling pose]. At that point I was checking behind me, and then I heard what sounded like a Taser being deployed. At that point, everybody appeared to be a good twenty feet from the subject. He moved in a backwards stepping motion, and

then hit the ground in what I'd call a stiff board pose, which is flat. When he hit the ground you could hear his head hit the ground.

Witness Officer 3

WO3 said that his unsuccessful CEW shot

sparks a reaction from [AP] there, which is further agitation there, where he just begins to scream and shout even more. It's like I'd just awoken the beast there. He was even more agitated than when I'd showed up there. He's screaming and yelling, he goes back into the fists clenched, he's going back into the lunge and the bladed stance ... and in the middle of the screaming and shouting and all that with the bladed fists, [SO's] CEW deployment is very clearly effective.

At his re-interview, after watching the video, WO3 said, "I know it looks like he was backing away, but that's something I don't want to comment on".

WO3 also said, "Excited delirium is something that's talked about a lot in training, and this looked like that. He had to be taken into custody for his own good".

Witness Officer 4

WO4 said that his view of the CEW deployments was from the left side of WO2's police vehicle, so his viewpoint was similar to that of the Watchguard video. Despite that, his description of AP's actions differed significantly from what the video shows. He told investigators that between the two CEW firings, he saw AP

take, lunge motion towards members, I don't know who they were at the time, I just saw him kinda make a lunge, and that was the... and then I heard the second deployment at that point, but I didn't see, unfortunately I couldn't see from my angle where that deployment came from what officer.

Witness Officer 5

WO5 told IIO investigators that after the first (unsuccessful) CEW deployment, AP "closed the distance" towards an officer on his left (apparently SO). When that happened, said WO5, the officer fired his CEW and it was effective. Confirming this version of events, WO5 stated that AP "started, maybe not lunging, but definitely rapidly closing the distance in that squared stance".

Re-interviewed later, WO5 said that, having watched the video,

I may have even understated how aggressive [AP] was. He is definitely moving within that pocket, whether he's moving back and forth as I said or not, maybe not an overt closing the distance, but he's definitely moving in an aggressive manner.

WO5 characterized SO's actions as justified, based on AP's behaviour, both as previously reported and as observed by police.

Injuries to AP

Evidence from attending first responders was that police reported a "prolonged fight" with AP who, they asserted, had "superhuman strength". Paramedics found AP lying on the ground in handcuffs, his legs being restrained by an officer. They said AP was in cardiac arrest, not breathing and with no pulse, his face cyanotic. There was bleeding from the back of his head. Police were instructed to remove the handcuffs and CPR was administered for about thirty minutes before a pulse was restored, at first intermittent and then stable.

Once he was stabilised, AP was transported to hospital. He was found to have injuries to the back of his head and to his left hand. He was subsequently diagnosed with renal failure and an anoxic brain injury secondary to the cardiac arrest, which was prolonged. He now has permanent brain damage, which causes tremors in both hands.

LEGAL ISSUES AND CONCLUSION

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death.

More specifically, the issues to be considered in this case are:

- whether SO may have committed an offence in the nature of an assault by using unnecessary or excessive force against AP; and
- whether any officer(s) may have committed an obstruction offence by wilfully providing inaccurate evidence in an attempt to provide justification for SO's actions.

Use of Force

As set out above, while the witness officers, in various ways, described AP as moving in an aggressive manner against officers at the time SO fired his CEW, the video of the incident demonstrates that was not so.

Nevertheless, it is clear that AP had been acting irrationally and aggressively for an extended time, and still was. It is possible, of course, that he might have become more calm and cooperative after realizing that officers had deployed a weapon against him and would again if necessary. There was little in his immediate response to suggest that, though, other than the fact that he had retreated by several paces from WO3's deployment of the first CEW.

Officers, in other words, had significant reasons to be concerned (a) about how to subdue AP and take him into custody; and (b) about the potential risks to the public and to himself if they were unable to do so. They could not simply permit him to walk away, and going 'hands on' in the circumstances involved a degree of risk to the officers.

The CEW does not generally cause serious harm (though it obviously has the potential to do so). The injuries to AP in this case, while extremely unfortunate, were not injuries that SO could reasonably have foreseen when he activated his CEW. Whether or not AP's apprehension was handled in the best possible way, it cannot be said that SO's use of force was excessive or unreasonable in the totality of the circumstances.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe that SO may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges against that officer.

Inaccurate Accounts Provided by Witness Officers

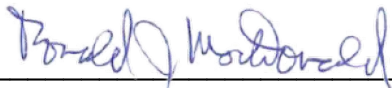
As set out in some detail above, each of the Witness Officers other than WO2, in one way or another, described AP's actions, at a time when the video shows he had backed up and appeared to be trying to pull the CEW wire out of his shirt, as "lunging", "charging", "blading" or "closing the distance" towards SO.

These inaccuracies are concerning, particularly because they all tend in one direction: that is, to augment the justifications available to SO for his use of the CEW against AP. It is also worth noting that when re-interviewed, officers generally seemed unwilling to acknowledge the obvious discrepancies and to revise their accounts.

It is not unusual for eyewitnesses to a dynamic incident, whether civilian or police, to remember events differently from each other, and not unusual for witness accounts to differ from objective evidence such as video recordings. Significant leeway has to be given to a witness, therefore, before concluding that the witness is being untruthful rather than mistaken. There is an even higher threshold to overcome before considering that an inaccurate or untruthful account has been presented deliberately for an illegitimate purpose, such as the obstruction of a peace officer such as an IIO investigator, or indeed the obstruction of justice generally.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that the evidence rises to a level where it provides reasonable grounds to believe that any of the Witness Officers may have committed an obstruction offence, and therefore the matter will not be referred to Crown counsel for consideration of charges against any officer.

The matter will, however, be formally referred to the RCMP for a Professional Standards review.



Ronald J. MacDonald, Q.C.
Chief Civilian Director

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