



**IN THE MATTER OF THE DEATH OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN WHISTLER, BRITISH COLUMBIA
ON MARCH 8, 2020**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2020-052
<u>Date of Release:</u>	<u>October 15, 2021</u>

INTRODUCTION

On the morning of March 8, 2020, police were called to a restaurant/bar in Whistler, B.C., because of concerns about the behaviour of the Affected Person ('AP'), who was reported by staff as being intoxicated and causing a disturbance. The first three officers to attend initially conversed with AP in a calm manner, but at one point AP snatched his ID from the hand of an officer and a physical altercation started. Unable to gain control of AP, one of the officers deployed a Conducted Energy Weapon ('CEW' or 'Taser') against AP.

There followed a standoff between AP and the officers, until a fourth officer arrived. At that point, there were further CEW deployments against AP and OC (pepper) spray was used against him. The four officers were then able to gain control over AP and place him in handcuffs. Shortly after this, officers noticed that AP had become unresponsive, and CPR was quickly initiated while medical assistance was summoned. Fire and medical personnel arrived within minutes and attempted resuscitation of AP, without success. He was transported to hospital, where he was later pronounced deceased.

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 32 civilian witnesses, six first responders and four witness officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of police radio transmissions;
- video recordings from restaurant Closed-Circuit Television ('CCTV') cameras and from the cell phone of one civilian witness;
- scene examination, examination of officers' duty equipment and data analysis from two CEW's;
- RCMP policies;
- training records of involved officers;
- records from BC Emergency Health Services and Whistler Fire Department;
- autopsy report; and
- toxicology report.

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

NARRATIVE

IIO investigators were told by civilian witnesses that AP arrived at the restaurant between 10:00 and 10:15 a.m. on March 8, 2020. He ordered food and a drink and sat at the bar. The witnesses described AP's behaviour as abnormal and erratic. He was said to be talking to himself, striking the bar, uttering threats to no one in particular, and at one point going outside to yell at passersby. Staff and customers became concerned, and a member of the staff told AP to quieten down, or he would "have to go".

There were two CCTV cameras, one at either end of the bar, and they recorded AP's movements as he sat eating, though there was no audio recorded. The video recordings corroborate eyewitness descriptions of AP's behaviour. He appears agitated, and at various points he is gesticulating and apparently shouting or talking aloud to no one in particular. Eventually, restaurant staff became sufficiently concerned for the safety of both staff and patrons, and the decision was made to call the police.

Shortly after 11:00 a.m., Witness Officers 1 and 2 ('WO1' and 'WO2') and SO arrived at the restaurant. The video shows that at about 11:10 a.m., the three officers approached AP, who was still seated at the counter. Based on video and eyewitness evidence, the initial interaction between AP and the officers, in particular with SO, was calm and unremarkable, although it is clear that police passed on to AP the desire expressed by restaurant staff that he leave the premises, which he was reluctant to do. The video shows that SO took a piece of ID from AP, examined it and placed it in his own pocket. IIO investigators were told that officers then requested that AP accompany them outside, and he refused, asking what he had done wrong.

Because quite a large number of civilians were in the restaurant initially, IIO investigators were able to obtain a wide variety of civilian eyewitness accounts of the incident up to this point. Most civilians left the premises when the encounter became physical, however, so evidence of what followed comes to a significant extent from the video recordings, with some additional explanatory evidence from involved police officers.

Approximately two minutes after SO first started talking with AP, he retrieved AP's ID from his pocket, and it can be seen on the video recording that AP almost immediately snatched it from SO's hand. In response, SO extends his right arm, in what appears to be an attempt to grab at the left side of AP's face or neck. AP takes hold of SO's arm and a fight immediately ensues.

Speaking with IIO investigators about this part of the incident, WO1 recalled that AP had snatched his ID back from SO and was shouting, "Fuck you, you're not the real cops!" WO1 said that SO had told AP he was under arrest, and said that the fight had started after AP had "cock[ed] his arm back". For his part, WO2 said that he had interpreted SO's

action in extending his right arm beside AP's head as unsuccessfully attempting a head lock manoeuvre.

The CCTV video records the violent struggle that continued, with all three officers trying to maintain control of AP by holding his arms, but finding themselves unable to do so. AP is shown throwing the officers off of him, and various furniture went flying. The struggle went to the floor, and WO1, who said he had felt his shoulder dislocate, momentarily disengaged to draw his CEW. WO1 can be seen standing and briefly stepping away, holding his right shoulder. He then quickly turns back, the CEW in his hand. He told investigators that he tried to gain control of the AP using the CEW, but it was not effective. The CEW deployment, though, had apparently caused the other two officers to release their grip on AP, who was at that moment face down on the floor between them.

All three police officers then stepped back from AP, who rose to his feet and stood with his back against the wall opposite the middle of the bar, gesticulating and pulling at what appear on the video to be CEW wires attached to his body. WO1 said that AP was refusing orders to get down on the ground, repeating that the officers were "not the real police". SO and WO1 took up a position at one end of the bar, with WO2 at the other end.

Part of this interaction was video- and audio-recorded on the cell phone of a civilian witness. WO1, who was pointing his CEW at AP, was telling him he did not want to "tase" AP, and saying, "You, gotta lay down". AP can be heard to respond, "I can't, it'll kill me". AP holds his arms out in front of himself and gestures towards the exit, saying, "Hold me like this. I will walk". WO1 later told IIO investigators, though, that he was not prepared to engage physically with AP again, as it had not gone well previously and he was now suffering from an injured and weakened shoulder. WO1 said that AP was acting too unpredictably for officers to conclude that he was now lucid and reasonable. A few seconds later, in fact, AP can be heard to say, "You're my son!" and responds, apparently to the officers, "No you're not, you're a woman".

Shortly after this, AP can be seen on CCTV video to walk towards SO and WO1, and WO1 deploys his CEW for a second time, again evidently without effect. Continuing towards the officers, AP can be seen to forcefully overturn a table and chairs in their direction. At about the same time, WO3 appeared in the doorway behind WO2, in response to a radio call for backup. WO3 later told IIO investigators that as soon as he saw AP he recognized him. WO3 said he had not previously had any personal dealings with AP, but was aware of AP's history and was familiar with his file photograph. WO3 said that AP had "a history of assaulting police officers and being tasered and taking multiple members to subdue him".

Just as WO3 arrived, the video shows WO2 discharging OC spray at AP, who can be seen wiping at his face with his hands. Civilian eyewitnesses told the IIO that from this

point on it was WO3 who appeared to take over communications with AP, telling him to get on the ground on his stomach and to stop resisting. AP responded a number of times that if he got down on the ground he would die. Very shortly after his arrival, WO3 discharged his CEW at AP, and although WO3 later said he felt the CEW had not been effective, the video shows AP stiffening and then slumping to the floor, ending up in a seated position against the wall. He can be seen to react physically again when WO3 cycled the CEW a second time.

AP then started wriggling across the floor towards SO and WO1, and WO1 again attempts to incapacitate him with his CEW, again without success. WO3 also tried activating his CEW for another five-second cycle, but there was no noticeable change in AP's behaviour. At this point he was still on the floor, and was overturning a table and some of the bar chairs. When he paused and leaned back against the bar, SO discharged more OC spray at him. Neither CEWs nor OC spray appear to have had much continuing effect on AP, as he can be seen on the video to be disentangling himself from CEW wires, balling them up and throwing them in the direction of WO2 and WO3.

WO3 told the IIO that, seeing that AP was now talking to himself distractedly, he decided to try to gain physical control of AP. WO3 moved in and took hold of AP's right arm; WO1 similarly stepped forward to control AP's left side. Although initially passive, AP quickly started fighting again, and WO3 can be seen to deliver several blows to AP. Within about fifteen seconds, the officers had managed to roll AP over onto his front. WO3 told IIO investigators that as the struggle continued, AP twice reached for and grabbed items of cutlery—in one case a dinner knife and in another a fork—that were wrested from him. During that period, it is difficult to see what is happening because the view of the CCTV was partially blocked by the bar, but it can be seen that SO delivers punches to AP's torso and WO2 strikes repeatedly with a baton towards AP's legs. It is not possible to confirm from the video the allegation by officers that AP grabbed a knife and a fork during the struggle, but one civilian eyewitness told the IIO that he heard an officer shout a warning along the lines of "He's holding a knife!"

WO3 said that after taking the fork from AP he was able to get AP's left arm behind his back and SO gained control of the right arm. At that point, WO3 can be seen on the video applying handcuffs to AP's wrists.

WO3 told the IIO that although initially he could feel AP's hands squeezing his, they then "went limp". He said he asked the other members if AP was breathing, and was told he was "good", but said he was concerned because AP appeared unresponsive. WO3 can then be seen bending over AP and rolling him into the recovery position. WO3 said he checked AP's pulse and airway, immediately called for EHS 'Code 3' (using emergency lights and siren) and started CPR.

CPR by police members continued until Fire Services and then paramedics arrived and took over. AP was transported to hospital but was subsequently declared deceased.

The autopsy report noted multiple contusions and abrasions, and a haemorrhage under the scalp. There were rib fractures said to be consistent with CPR, but no other fractures. AP's heart was enlarged, with dilated left and right ventricles (dilated cardiomyopathy). The lungs were congested and contained fluid (pulmonary congestion and edema). AP's liver was found to be enlarged and fatty. Toxicology testing revealed the presence of cocaine, methamphetamine, THC metabolite and naloxone.

The pathologist stated that the cause of death was the combined effect of cocaine and methamphetamine toxicity, dilated cardiomyopathy, and struggle during physical restraint.

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 issue to be considered in this case is whether any officer may have committed a criminal offence through the use of unauthorized, unnecessary or excessive force against AP in the course of the incident.

The evidence indicates that AP appeared to be intoxicated, and was clearly disturbing the peace in the restaurant. The officers were acting lawfully, in execution of their duty, when they responded to restaurant staff who told them that AP had been warned to "quieten down" or he would have to leave. Upon arrival the officers were asked to get AP to leave, and doing so was a legitimate exercise of their authority. The evidence demonstrates further that AP was resistant to calm requests, principally from SO, to accompany police outside, and that his attitude towards the officers became obstructive and belligerent. By this time, AP was arrestable for causing a disturbance and obstructing a police officer.

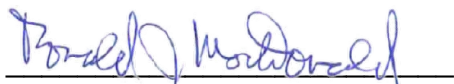
It appears, though, that it was the specific act on AP's part of snatching his ID from SO's hand that immediately turned the incident from a non-physical standoff into a violent physical fight. While SO has not given an explanation for his act in extending his right arm in a sudden movement towards AP, the most logical interpretation based on the imperfect video capture of the gesture is that he was reaching to grab AP, either by the clothing or behind the neck, to place him physically under arrest. It is clear that AP reacted by taking hold of SO, and the struggle between the two was very quickly joined by WO1 and WO2, quite properly coming to SO's assistance. The ensuing fight and the various deployments of force that followed are set out in some detail above.

While it is true that at one point AP appears to have been offering to go peacefully if police would just handcuff him in front and lead him out, it would not be reasonable for officers to rely on his brief moments of apparent lucidity to risk re-engaging physically before backup arrived. AP was a big man, and strong, and had already demonstrated how difficult it was for even three police officers to overpower and control him. It also has to be borne in mind that within seconds of appearing calm and rational, he was then heard saying apparently nonsensical things, clearly no longer connected to the reality of the situation.

Similarly, while AP said several times that if he lay down as requested by police he would die, it cannot be said, in the circumstances, that these pronouncements should reasonably have caused the officers to abandon their attempts to arrest and handcuff him. While significant force was used against AP during the arrest, in the form of CEW deployments, OC spray and blows, the need for that level of force was created by AP's own violent resistance, and there is no suggestion that any of those uses of force caused or contributed to AP's death—or indeed caused any significant injury. In that sense, the officers used necessary force designed to control AP, without using excessive force that could cause more significant harm.

AP was suffering from numerous serious health conditions and was further still at risk because of his consumption of narcotics, but the officers tasked with resolving the situation and placing him under arrest could not be expected to foresee that the struggle to achieve that would end in his death. The fact that it did cannot be laid at the feet of the arresting officers.

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



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

October 15, 2021

Date of Release