



**IN THE MATTER OF THE DEATH OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
IN BURNABY, BRITISH COLUMBIA  
ON DECEMBER 16, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-340

Date of Release:

October 31, 2023

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## **INTRODUCTION**

On the morning of December 16, 2022, Burnaby RCMP members were dispatched to a Starbucks restaurant to assist with the Affected Person ('AP'), who was said to be overdosing. After interactions during which an officer deployed a Conducted Energy Weapon ('CEW' or 'Taser'), AP became unresponsive. Despite life-saving intervention attempts by firefighters and paramedics, AP was declared deceased at the scene. 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 five civilian witnesses, six first responders and nine witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 and radio calls;
- security camera video recordings from the Starbucks premises;
- scene examination and evidence recovery;
- CEW examination and analysis;
- Emergency Health Services and Burnaby Fire Rescue records; and
- autopsy report, including pathologist's report and toxicology results.

## **NARRATIVE**

Civilian Witness 1 ('CW1'), an employee at a Burnaby Starbucks outlet, told the IIO that at about 5:30 a.m. on December 16, 2022, AP came into the restaurant and sat at a table. The incident that followed was later described to IIO investigators by witnesses, and was captured on CCTV from several locations within the premises.

CW1 said that AP had sweat running down his face and a bit of dried blood coming from his nose. He asked her to call the police, but she thought he was overdosing and needed medical attention, so she went and called for an ambulance.

When she came back, AP suddenly grabbed her hand and held it, saying repeatedly that he was “so scared”. Shortly afterwards, Burnaby Fire Department members arrived. They recognized AP, having dealt with him on previous occasions, mostly for drug overdoses. It was difficult for them to assess AP, who appeared scared and paranoid, saying he did not believe they were real firefighters. CW1 continued to let AP hold her hand, trying to calm him down. He was still requesting police, as he thought someone was following him and trying to kill him. Concerned that AP might become aggressive, the firefighters asked their dispatcher to request police attendance.

While officers were *en route*, the police dispatcher called CW1 and spoke with AP, who was still gripping CW1’s hand. AP said he was scared for his life, and appeared to be paranoid and delusional. When police officers arrived, this presentation continued, as he told the officers that he did not believe they were police despite having been dealt with by one of them (‘Officer 1’) about two weeks earlier. A request was made for paramedics to attend, as officers intended to apprehend AP under the *Mental Health Act* and there was a possibility that he might require sedation. A police supervisor was also summoned to the scene.

At 6:18 a.m., AP caused an escalation in the situation by standing up and starting to pull CW1 towards the exit door, saying he wanted to leave. Officer 1 drew her CEW and warned AP, “I’ll Tase you if you don’t let her go”. AP was now yelling and walking around, pulling CW1 between himself and the police. He then released his grip on CW1, who was told by the officers to go to the back room, where the rest of the staff were sheltering. Officer 1 deployed the CEW at AP, but it was unsuccessful because one of the two probes failed to make contact.

Despite attempts by the three officers to take hold of him, AP walked away from them and into a hallway leading to the back room where the employees had gone for safety. In response, CW1 pulled a refrigerator unit out to block his path. The refrigerator blocked the view of the CCTV camera in that area, so what happened next was not captured on video.

Witness accounts were that AP went down on one knee and then lay down on his right side. His right arm was trapped under him, and the officers were working to free it so AP could be handcuffed. They were heard trying to reassure AP as they did this. AP was resisting being handcuffed, but none of the officers later alleged that he kicked or struck at them. One of the firefighters told IIO investigators that the interaction did not sound aggressive on either side. He said AP was asking the officers what they were doing to

him, and why, but was speaking in a calm voice. CW1 told AP to let the police put handcuffs on, and told him she would not leave him.

Officer 1 stated that she had concluded AP was apprehendable under section 28 of the *Mental Health Act*, as a person “acting in a manner likely to endanger that person’s own safety or the safety of others” and who “is apparently a person with a mental disorder”. None of the witnesses to AP’s apprehension described any improper actions or use of excessive force by any of the involved officers, who were described in various ways as trying to de-escalate the situation, to calm and reassure AP and to get him under control as he resisted them.

By 6:30 a.m., AP was handcuffed and in custody, using three sets of handcuffs in a chain as he was a very large man and officers wanted to reduce the strain on his shoulders and arms. He was placed in the recovery position, and after initially kicking and resisting, calmed down. He was then lifted into a seated position, resting against the wall, but the officers quickly became concerned because AP appeared to fall asleep. At 6:36 a.m., he was moved to the hallway entrance to make it easier for first responders to provide assistance as necessary.

Within minutes, it became clear that AP was in medical distress, and officers moved him farther into the restaurant area as paramedics arrived. As they began to check AP, they initially detected a pulse, but then noted it had stopped. The paramedics noted no visible injuries other than marks on AP’s wrists from the handcuffs, but he was now in cardiac arrest and was no longer breathing. The paramedics started CPR and called for an Advanced Life Support crew to attend. First responders continued life-saving efforts until 7:31 a.m., when after consultation with an on-call emergency physician, AP was declared deceased.

The autopsy report noted the presence of some bruising, but no external injury that could have caused or contributed to AP’s death. Toxicology testing revealed recent consumption of alcohol and cocaine. Cause of death was stated as:

*Complications of police altercation in the setting of excited delirium, cocaine use, alcohol use with cirrhosis, obesity, hypertensive and atherosclerotic cardiovascular disease and undefined psychosis.*

## LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete, they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director ('CCD') reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by officers, one of the aspects of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether officers' actions were lawful, or whether an officer may have committed the offence of assault.

All the involved officers were acting in lawful execution of their duty in responding to a call for assistance with AP, and in attempting to apprehend him so he could be assessed psychiatrically at hospital. He presented as paranoid, delusional and impulsive, and in fact appeared to realize at some level that he needed help. His actions in taking hold of CW1 and maintaining that hold for a significant time was in itself demonstrative that he posed a potential risk to others, and that he needed to be brought under control. In the circumstances, the attempted deployment of a CEW against him was justified, and it is unfortunate that it was not successful, as it might otherwise have brought him under control with significantly less stress and struggle.

As noted above, the autopsy report in this case alludes vaguely to a "setting of excited delirium". The expression 'excited delirium' has historically often formed a significant part of the medical diagnosis when a person died in a confrontation with police. In recent

years, though, many medical authorities have come to reject it as baseless<sup>12345</sup>. Accordingly, this office maintains a very healthy scepticism regarding any such diagnosis in a police-involved sudden death case.

Having said that, the medical evidence that is uncontroversial here is sufficient to establish that it was the stress of the incident, combined with AP's very significant pre-existing conditions, that led to his unfortunate death.

Apart from the CEW deployment, no other force options were used against AP by officers. There is no evidence that AP was struck in any manner by any officer. Likewise, there is no evidence that any officer used full body weight to hold AP down against the floor in a manner that risked causing injury or asphyxiation.

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.



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Martin Allen, General Counsel,  
for Ronald J. MacDonald, KC  
Chief Civilian Director

October 31, 2023  
Date of Release

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<sup>1</sup> <https://www.cbc.ca/news/health/coroners-excited-delirium-1.6811083>

<sup>2</sup> <https://www.cnn.com/2023/10/12/health/acep-rejects-excited-delirium-term/index.html>

<sup>3</sup> <https://www.scientificamerican.com/article/police-blame-excited-delirium-for-deaths-in-custody-but-its-not-a-real-medical-condition-experts-say/>

<sup>4</sup> <https://www.npr.org/2023/10/15/1206041620/california-bans-excited-delirium-term-as-a-cause-of-death>

<sup>5</sup> <https://www.latimes.com/science/story/2023-10-16/doctors-abandon-excited-delirium-diagnosis-used-to-justify-police-custody-deaths>