



IN THE MATTER OF A USE OF FORCE INVOLVING WHITEHORSE RCMP ON  
JULY 6, 2020

DECISION OF THE ASSISTANT EXECUTIVE DIRECTOR OF THE ALBERTA  
SERIOUS INCIDENT RESPONSE TEAM

Assistant Executive Director:

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## **Introduction**

On July 10, 2020, pursuant to the agreement between the Alberta Serious Incident Response Team (ASIRT) and the Yukon government, ASIRT was directed to investigate a use of force during an arrest in Whitehorse on July 6, 2020. ASIRT designated three Royal Canadian Mounted Police (RCMP) officer as subject officers, with notice to each. ASIRT's investigation is now complete.

## **ASIRT's Investigation**

ASIRT's investigation was comprehensive and thorough, conducted using current investigative protocols, and in accordance with the principles of major case management. Investigators interviewed all relevant police and civilian witnesses, and secured and analyzed all available video.

Two of the three subject officers provided statements to ASIRT. One of these subject officers read a written statement and answered questions afterward. One subject officer was interviewed while referring to a written report.

ASIRT investigators arrived in Whitehorse on July 14.

## **Circumstances Surrounding the Incident**

On July 6, 2020 just after 11 a.m., the affected person (AP) was walking in the Rotary Peace Park in Whitehorse and carrying a full-size axe. This axe was approximately three-feet long.



Figure 1 – Axe that the AP was carrying.

Three RCMP officers, subject officer #1 (SO1), subject officer #2 (SO2), and subject officer #3 (SO3) arrived at the park. They exited their vehicles and began to follow the AP through the park. The witness officer (WO) arrived in his unmarked police SUV. He drove into the park with his emergency lights activated, and parked on a path along the river. The subject officers began to catch up to the AP.

Shortly after walking past a gazebo, the AP dropped the axe to the ground. The officers then brought the AP to the ground and handcuffed him. A short time later, the officers lifted him up and brought him to a police vehicle.

This incident happened in a public park in the middle of the day and, as a result, there were many witnesses. The details about what happened, as reported by the various witnesses, are as follows.

### *Civilian Witnesses #1-7*

Civilian witnesses #1-7 (CW1-CW7) were meeting in Rotary Peace Park that day. Based on the description provided by witnesses, ASIRT investigators were able to determine that this meeting took place approximately 100 metres away from where the arrest occurred.

Before ASIRT investigators spoke to these witnesses, many of them attended a meeting and shared what they saw. It was not clear exactly which witnesses were at the meeting, other than that CW5 was there and CW7 was not.

CW3 and CW4 noticed the AP first, as he came from the parking lot. CW3 saw him jump over the barricade into the park. He was carrying a large, black object in his hands, which CW4 recognized as an axe with a sheath on it. CW3 was concerned and thought it was a weapon, while CW4 was not concerned because there are axe-throwing contests in Whitehorse. CW4 said he then removed the sheath from the axe.

CW3 and CW4 then observed the AP throw the axe at the ground. CW3 said the AP did not throw the axe at anyone, but it did land close to the group. CW4 was watching the AP because she thought he may be intoxicated or coming down off something, and he was throwing an axe. He picked up the axe, put the sheath back on, and started walking across the park. According to CW3, he also hit the ground with it.

At this point, police vehicles arriving in the parking lot with their emergency lights on drew the attention of the rest of the witnesses at the meeting. Officers got out of the vehicles and started to run across the park in the direction of the AP. CW2 said that one officer had his gun drawn. CW5 turned to observe the AP for the first time, and saw that the AP was about 30 metres away from them. The AP was stumbling a bit and appeared to be in some sort of distress, and was carrying an axe.

An unmarked police vehicle, with its emergency lights on, then drove into the park and stopped on the path near the river. The officers were saying something to the AP, but the witnesses could not hear what it was. The AP dropped the axe and raised his hands. The officers continued to approach, and the AP continued to walk away.

The officers then took the AP to the ground, which witnesses described in various ways.

CW1 said that officers in front of and behind the AP suddenly jumped into the air. One grabbed the AP's neck and brought his head to the ground while the other tackled him from behind. All four pinned the AP to the ground, and one officer stood up and began kicking him. He kicked him four times, paused, and then started to kick him again.

CW2 said that the officers took the AP down hard. One officer got up and delivered hard kicks to the AP's side. CW1 then started to walk toward them and record the incident on her cellphone, and CW2 walked with her.

CW3, CW5, and CW7 said the officers took the AP to the ground forcefully, and then kned him repeatedly. CW5 and CW7 specified that there were four knee strikes, then a pause, and then two more.

CW4 and CW6 had a similar recollection, except they stated that the officer kicked the AP about four times.

CW1 heard the man ask why the officers were arresting him. The officers' responses included "you were drunk, you were carrying an axe with intent, and you were disturbing the peace." The man's replies included "intent of what? It isn't unlawful to carry a wood axe."

All of the meeting witnesses viewed the officers' actions negatively. CW1 thought that the takedown was very violent. CW2 was disturbed by what she saw. CW3 thought she had witnessed police violence. CW4 thought the officers were unnecessarily violent. CW5 found the incident unsettling, and thought the knee strikes were excessive force. CW6 was shocked at the excessive use of force. CW7 thought the use of force was excessive and uncalled for.

#### *Civilian Witness #1's Video*

ASIRT obtained CW1's cellphone video, which showed the latter part of the incident. This video begins with the officers and the AP already on the ground, and CW1 some distance away.



Figure 2 – Screenshot from the beginning of CW1’s video, with a white circle added to show the AP and the subject officers.

ASIRT investigators measured 55 metres as the approximate distance from the AP and the officers to where CW1 started recording. As shown in Figure 2, her view was mostly clear, with some minor obstructions.

In the video, CW1 is walking toward the AP and the officers. Motion can be seen where the AP and the officers are, but the video is not clear enough to determine what is happening. For the first approximately five seconds, it is not possible to tell if the officers are kneeling, crouched, or standing. After that, it is clear that the officers are not standing, and are in crouched or kneeling positions. At approximately 11 seconds in, SO2 gets up and starts to walk generally in CW1’s direction. At 15 seconds, CW1 reaches the gazebo. At 22 seconds, SO2 picks up a full-size axe from the grass near the gazebo. At approximately 35 seconds, CW1 is now close to the AP and the officers. One officer is looking through a bag while two officers are holding the AP down. The AP is mostly on his right side. The AP is not visibly resisting, and the only visible movement is him

breathing heavily. At approximately 2:10, the officers lift the AP up and walk him to the nearby police vehicle.

#### *Civilian Witness #8*

Civilian witness #8 (CW8) was driving on a road adjacent to the park. He noticed officers approaching the AP near the sand volleyball courts. The AP had his hands up, and was walking away from the officers. One officer jumped and tackled the AP, and the other three officers piled on top of the AP. CW8 found this to be excessive.

CW8 did not see an axe, or any strikes by the officers.

#### *Civilian Witnesses #9 and #10*

Civilian witnesses #9 (CW9) and #10 (CW10) were walking southbound on a trail next to the river. They first observed the AP at the train display at the MacBride Museum, which is approximately 1 kilometer north of where the AP's arrest occurred. The AP picked up an axe, and they heard a loud bang that they thought was the AP hitting the display with the axe. CW9 saw the AP was swinging the axe around, and CW10 noticed a cracked window on the display above the AP. They were frightened of the AP, and CW10 warned a woman with a baby stroller.

The AP then walked south on Front Street while CW9 and CW10 walked south on the trail. They lost sight of the AP during this time, but saw him again approximately 200 metres south of the MacBride Museum at the firefighter statue at the Old Fire Hall. The AP was holding the axe and looking at the statue or plaque. CW9 thought he looked angry, and CW10 thought he "wasn't all there."

CW9 and CW10 continued into Rotary Peace Park, passing a number of children, and sat down on a park bench. ASIRT investigators determined that this bench was approximately 70 metres away from where the AP's arrest occurred. CW9 saw the AP waving the axe around in the park, and a number of police vehicles arrived at that time. CW10 began to record the incident on her cellphone at this point.

CW9 heard the officers say something about needing to talk to the AP. The AP dropped the axe and continued, described by CW9 as running and CW10 as walking. CW9 heard the officers tell the AP to get on the ground, which he did not. CW10 did not see the

takedown well, but CW9 described it as an officer physically directing him to the ground. CW10 saw an officer knee the AP a couple times when he was on the ground.

CW9 felt that the police actions were justified, and that there was no police brutality. CW10 was a little surprised by the kneeling, but felt that the actions were justified for a man with an axe in a park with children.

#### *Civilian Witness #10's Video*

ASIRT obtained a cellphone video of part of the incident taken by CW10. This video begins with the AP and the subject officers near the gazebo.



Figure 3 – Screenshot from the beginning of CW10's video, with a white circle added to show the AP and a blue circle added to show the subject officers.



When the video begins, the AP has his arms extended out from his sides. It is unclear if he is holding the axe at this time. The AP then walks away from the subject officers and the subject officers follow him, also walking. An unmarked police vehicle arrives and circles around to park near the river.



Figure 4 – Screenshot from CW10's video at 16 seconds, with a white circle added to show the AP and a blue circle added to show the officers.

CW10 changes position, obstructing the camera view. The video is then shaky and partially obstructed for a short time. However, it appears to show two officers converge on the AP and take him to the ground at 20 seconds in.



Figure 5 – Screenshot from CW10's video showing the takedown, with a white circle added to show the AP and two officers.

The video quality is insufficient to determine if the officers jumped on the AP. The takedown lasts at most a few seconds. At approximately 25 seconds in, the video zooms in. At this point, the AP and all four officers are on the ground.



Figure 6 – Screenshot from CW10's video at 27 seconds.

As shown in Figure 6, the officers are spread out. The officer on the right appears to be trying to control the AP's legs. This officer then moves closer to the other officers in a crouching stance.



Figure 7 – Screenshot from CW10's video at 39 seconds.

As shown in Figure 7, this officer then clearly draws back his leg and appears to deliver a knee strike. While the video quality is poor at this point, it appears that he delivered more than one knee strike at this time.

The AP appears to be struggling. His legs lift up in the air in a flailing motion and there is considerable movement by the officers and the AP. The struggle continues until 1:24 into the video when the camera angle shifts away from the AP and the officers. At 1:45, the view briefly shifts back to the AP and it appears that the struggle has ended. At 1:51, CW1 walks up to the officers while recording on her cellphone.

### *Civilian Witnesses #11 and #12*

Civilian witnesses #11 (CW11) and #12 (CW12) were at the spray park in Rotary Peace Park with children. CW11 saw the AP in the park, swinging an axe at the grass. She did not think much of it, and did not think he presented much danger to her or the children.

Police officers and a police vehicle then came into the park. Near the gazebo, CW11 saw the AP drop the axe. CW11 said that one officer took the AP down in a sort of bear hug, and the other officers joined in then. She saw one officer deliver two knee strikes to the AP. CW12 thought that two officers took him down, and saw no strikes. CW12 never saw an axe.

Neither CW11 nor CW12 thought the police used excessive force.

### *Civilian Witness #13*

Civilian witness #13 was walking along the trail toward Rotary Peace Park with his wife and young child, who was in a stroller. Near the MacBride Museum train display, he noticed the AP, carrying a three-foot axe. A short time later, the AP walked from a parking lot into the park, and near a group of people in a meeting. He threw the axe in a manner that CW13 characterized as “showboating.” The axe landed approximately ten to 15 feet away from the group. The AP then picked up the axe and continued walking.

Police then arrived, and officers exited their vehicles and began running after the AP. One had a gun or Taser drawn, and pointed at the ground. He could hear the officers saying something to the AP, but could not hear what it was. The AP raised his hands, but continued to walk away from the officers. The officer who had drawn a weapon then holstered it. One officer grabbed the AP’s head or neck and pulled him to the ground, and another officer tackled him at the legs. One officer then kned the AP three times as they struggled on the ground. CW13 initially thought this was excessive.

CW13 moved closer to the AP and the officers, and realized that the AP was struggling. He then felt that the use of force was appropriate under the circumstances.

### *Police Vehicle Video*

The three police vehicles that were on scene during this incident had video cameras in them that faced forward from the vehicle, and cameras that showed the back seat. They also recorded audio.

The front-facing cameras of the vehicles did not capture the incident since they were not facing it.

The rear-facing camera in one police vehicle showed the AP once he was placed in the vehicle. It also captured some of the conversation between him and the officers. Part of this conversation was:

05:16 – AP stated, “You don’t have a lawful reason to arrest me, officers.”

05:20 – Officer stated, “You are under arrest for possession of a weapon for a dangerous purpose.”

05:25 – AP stated, “What dangerous purpose?”

05:28 – Officer stated, “You’re drunk and you are carrying an axe in public, hitting trees. I would say that meets the threshold.”

#### *Affected Person*

The AP initially did not want to make a statement to ASIRT investigators. On January 13, 2021, just over six months after the incident, the AP changed his mind and provided a statement to ASIRT. At the time of his statement, the AP had read the disclosure from his related charges.

The AP was walking in the park with an axe. He did not intend to use it as a weapon. He was carrying it to the woods and had no transportation. Three or four officers were suddenly running toward him and telling him to drop the weapon. One officer had a Taser and one had a gun drawn. He dropped the axe right away, and walked away with his hands raised. He was unsure if the officers told him to stop. One officer then grabbed him by the neck and pulled him down while another jumped him from behind. His jacket was pulled over his head, which caused him breathing issues and limited his movement. He was unsure if an officer told him to put his hands behind his back, but it was difficult to do so with the jacket pulled up. He was not resisting.

The AP said that an officer kicked him, and an officer kneed him six or seven times.

The AP reported that his arm was injured and he received a black eye. He did not seek medical attention.

The AP is 6’2”.

### *Witness Officer*

The WO was the driver of the unmarked police vehicle that drove into the park.

The WO heard the complaint come in as an angry young man swinging an axe on Second Avenue. He went to the area and was advised by SO3 that the man was in Rotary Peace Park. He went there and saw the subject officers and the AP all walking toward the river. He drove his police vehicle into the park and stopped along the trail to stop the AP from fleeing or jumping into the river.

The WO then exited his vehicle. The AP was already on the ground, and was tucking his arms under his body. The subject officers were telling the AP to give them his hands for handcuffing, and to stop resisting. The WO told the AP that he was under arrest and to provide his hands. The AP continued to bring his arms underneath him. Eventually, they gained control of him and handcuffed him. The WO noted that the AP's shirt was over his face, and pulled it down.

The WO did not see the axe, or any officers strike the AP.

### *Subject Officer #1*

SO1 provided a statement to ASIRT on September 28, 2020. This statement consisted of SO1 reading a prepared written statement and then answering some questions afterward. SO1 answered the questions he was asked.

SO1 was dispatched at 11:17 a.m. for a call of "an angry, agitated male walking down 2<sup>nd</sup> Avenue swinging an axe and hitting trees." He was told that the male, who was the AP, was now in the parking lot next to the Rotary Peace Park. He went there with lights and sirens on, and arrived just after another police vehicle that contained SO2 and SO3.

Upon arrival, SO1 saw the AP in the park approximately 100 metres away "swinging an axe around in an aggressive manner" and thought, "[h]e appeared agitated and was walking with a purpose." The three subject officers exited their vehicles and ran toward the AP. SO1 drew his firearm and saw SO3 draw his conducted energy weapon (CEW).

SO3 yelled at the AP to drop the axe, and he did. The AP continued to walk away from the subject officers, and SO3 told him that he was under arrest for possession of a weapon for a dangerous purpose. The AP turned to face them but continued to walk away. His hands were still raised slightly in what SO1 took as "more a gesture of defiance than

submission.” SO3 then told the AP to get on the ground. The AP turned around and continued to walk away.

SO1 reflected on his training that taught him to assume that if “an offender” has one weapon, they will have another. He kept his firearm drawn and pointed at the ground.

SO1 then saw SO3 holster his CEW and approach the AP with SO2. The two of them took the AP to the ground with a “nose to toes” technique, which involves pulling his head toward his feet. They brought the AP to the ground in the sand area.

SO1 was standing back and saw SO2 and SO3 trying to control the AP. SO1 characterized the AP as a “large, strong individual.” The AP was resisting the officers and they were having “great difficulty” controlling him. The WO had arrived by this time and was telling the AP to stop resisting. SO1 holstered his firearm and assisted by trying to control the AP’s legs. He heard SO3 tell the AP to put his arms behind his back and stop resisting.

The WO was now assisting with controlling the AP, but they were still unable to get the AP under control. Other officers yelled at the AP to stop putting his hands inside his coat and SO1 saw him “reaching underneath his body for something inside his coat.” He was concerned he was reaching for a weapon and delivered three to four knee strikes to the AP’s upper thigh and buttocks area. SO1 said he did this to gain compliance and distract him from whatever he was reaching for.

The other officers were then able to remove his hand from under him and handcuff him behind his back. The AP did not say anything to the officers throughout this exchange until they handcuffed him.

#### *Subject Officer #2*

ASIRT investigators interviewed SO2 on September 28, 2020. During this interview, he referred to a report and notes. During his interview, SO2 said, “everyone at the office kinda spoke about this” and that “the whole watch spoke with each other.” He said this was not a discussion of details.

SO2 was in a police vehicle with SO3 that day. They received a call of “a male swinging an axe on 2<sup>nd</sup> Ave and hitting trees at the government building.” This male was described as “big and angry.” SO2 thought that the male “would likely be arrestable for mischief and possibly causing a disturbance and possession of a weapon for a dangerous purpose depending on the circumstances.”

They drove to the area and noticed the AP swinging an axe in “an uncoordinated fashion” in the park. He was hitting the ground with the axe. The two officers exited their vehicle and discussed that one officer would have a CEW drawn and another would have a firearm drawn. They then approached, and SO3 had his CEW drawn.

SO2 was 5’6” and about 155 pounds. SO2 thought that the AP was significantly taller and larger than he was.

Both SO2 and SO3 yelled to the AP that he was under arrest for mischief and causing a disturbance. They told him to drop the axe, and he did. The AP did not stop moving despite officers telling him to, and again telling him that he was under arrest.

SO2 then went around the AP and grabbed him from the shoulder or neck area while SO3 pushed the AP from behind in the area of his backpack. The AP fell to the ground, landing with his face in the sand and partially landing on SO2. SO2 then noticed SO1 and the WO arriving. One officer had a firearm drawn. The AP refused to give his hands to police, and instead tucked them underneath him. Officers told the AP multiple times to stop resisting. SO2 then saw SO1 knee the AP on two occasions. The AP then gave up his hands and the officers handcuffed him.

SO2 said he was concerned that the AP may go after people or jump in the river, as he knew suicidal people in Whitehorse had done in the past. He was concerned that the AP may have mental health issue.

### *Subject Officer #3*

SO3 declined to provide a statement, report, or notes to ASIRT. Subject officers, as the subjects of criminal investigations, have the same rights as any other person and therefore are not required to provide anything to ASIRT.

## **Analysis**

### *Contamination of Witnesses and the Passage of Time*

As noted above, there was a gap of four days before ASIRT was directed to investigate this incident, and a further gap of four days before ASIRT arrived in Whitehorse to investigate. This allowed many of the witnesses in this investigation to discuss what happened on July 6, 2020 with other witnesses. One other witness, the AP, did not speak



to ASIRT until over six months after the incident, and had viewed disclosure about the incident by then. All of these affect the quality of the evidence in this investigation.

Many of the civilian witnesses who were at the meeting in the park had a debrief meeting after the incident where they discussed what they had seen. The civilian witnesses, as civilians who were not aware of an investigation, cannot be faulted for discussing the matter. The evidence of these civilian witnesses, while similar on some points, was not identical to the point of suggesting collusion. There is no evidence of collusion by these witnesses.

SO2 said that there had been discussions about the incident at the detachment. It is not clear how much the subject officers discussed about the incident prior to their interviews with ASIRT. SO2 simply said that “everyone” had spoken about it, but not in detail. At this time, the subject officers could be expected to discuss it as part of their duties. Prior to learning of the ASIRT investigation, there was no issue with the subject officers discussing the incident. While it would be inappropriate to discuss it once they knew of the ASIRT investigation, there is no evidence of that. There is no evidence of collusion by the subject officers.

Even where there is no ill intent and no collusion, discussion by witnesses about what they saw can lead to innocent contamination. Simply through discussing matters with others and hearing their evidence, a witness can unwittingly adopt pieces of this evidence. The quality of the evidence is degraded where such discussions have occurred.

This also applies to the AP reviewing his disclosure prior to the ASIRT interview. There is no evidence that he changed his evidence after he saw his disclosure package, but innocent contamination can also occur in this way. Given that memories fade with time instead of improving, the delay of over six month before the AP’s interview does not help. The quality of the AP’s evidence is also degraded as a result.

#### *The Events of July 6, 2020*

While many of the witnesses differed on the details of that day, by viewing the evidence as a whole, many of the variations are explainable. For example, while many civilian witnesses said that an officer kicked the AP, the video provides clarity. SO1 was kneeling the AP, but he was drawing his leg back from a crouching position in a manner that could easily be misinterpreted as kicking. Instead of being an overstatement, the description of kicking is reasonable based on what actually happened, despite being incorrect.

Overall, there was significant agreement between all witnesses, from the civilian witnesses to the subject officers to the AP. This permits the formulation of the narrative below.

At around 11 a.m. on July 6, 2020, the AP was carrying a large wood axe near the MacBride Museum in Whitehorse. He used this axe to smash a window on the train display there before travelling along Front Street or Second Avenue in a southerly direction. He then went to the firefighter statue at the Old Fire Hall. He appeared to be angry.

The AP left that area and likely went to Second Avenue. According to the calls received by police, he appears to have been hitting trees with his axe near the government building. The AP continued through a parking lot and entered Rotary Peace Park.

Rotary Peace Park contained many people at this time, including children and a group holding a meeting. The AP walked near the group and threw his axe into the ground. He did not aim at anyone, but did throw it such that it landed only ten to 15 feet away from the group. He picked up the axe and continued walking toward the river. His actions during this time made some observers concerned that he may be intoxicated or experiencing mental health issues.

SO2 and SO3 then arrived in a marked police vehicle, and SO1 arrived in another marked police vehicle shortly after. The three of them ran toward the AP, with SO1 drawing his firearm and SO3 drawing his CEW. As they caught up to the AP, they slowed to a walk.

One or more of the subject officers told the AP to drop the axe. He did so immediately, and raised his hands. He briefly turned to face the subject officers, but continued to walk away from them. Around this time, the WO drove his unmarked police vehicle into the park, with emergency lights engaged. He parked it on the trail next to the river. One or more of the officers then told the AP that he was under arrest, and told him to get on the ground. He continued to walk away from them.

SO2 then came around the AP and grabbed him by the neck or shoulder area. As the AP was nine inches taller than SO2, this would have involved SO2 reaching up and possibly jumping. At the same time, SO3 pushed or tackled the AP from behind. The subject officers brought the AP to the ground forcefully, with his face going into the sand.

The subject officers and the WO then tried to get the AP under control. The AP was not compliant, and this may have partially been due to his jacket being over his head from the takedown. The subject officers thought that the AP could be reaching into his jacket

for another weapon. SO1 kned the AP in his side approximately four times. After a pause, he kned him two more times. The officers were then able to handcuff the AP.

The AP's arm was injured, and he had a black eye.

### *Section 25 Generally*

Under s. 25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary for execution of their duties. In order for the defence provided by s. 25 to apply to the actions of an officer, the officer must be required or authorized by law to perform the action in the administration or enforcement of the law, must have acted on reasonable grounds in performing the action, and must not have used unnecessary force.

All uses of force by police must also be proportionate, necessary, and reasonable. Proportionality requires balancing a use of force with the action to which it responds.

Necessity requires that there are not reasonable alternatives to the use of force that also accomplish the same goal. These alternatives can include no action at all. Analysis of police actions must recognize the dynamic situations in which officers often find themselves, and such analysis should not expect police officers at the moment to weigh alternatives in the same way they can later be scrutinized in a stress-free environment.

Reasonableness looks at the use of force and the situation as a whole from an objective viewpoint. Police actions are not to be judged on a standard of perfection, but on a standard of reasonableness.

### *Section 25 Applied*

The subject officers that day were responding to a call of an angry man hitting trees with an axe. When they located him, he was in a busy public park. They were required or authorized by law to do two things: enter into a mischief investigation for the damaged trees, and ensure that the AP was not a danger to the public.

The subject officers appear to have assumed that the AP was a serious threat very quickly. A person who is angry and damaging trees is troubling and worthy of inquiry, but there was no indication that the AP was planning to harm anyone. CW1 said that the AP said, "It isn't unlawful to carry a wood axe." He was correct. A wood axe, like many other

items such as kitchen knives, may be a weapon or not depending on context. A weapon is defined in the *Criminal Code*:<sup>1</sup>

weapon means any thing used, designed to be used or intended for use

(a) in causing death or injury to any person, or

(b) for the purpose of threatening or intimidating any person

In order for the axe to be a weapon under the *Criminal Code*, the AP would have had to use the axe on someone, or threaten someone with it. There was no such evidence available to the subject officers at the time, and none exists now.

The subject officers varied on what they arrested the AP for. SO1 said that SO3 told the AP that he was under arrest for possession of a weapon for a dangerous purpose. SO2 thought that the AP “would likely be arrestable for mischief and possibly causing a disturbance and possession of a weapon for a dangerous purpose depending on the circumstances,” but said that SO2 and SO3 yelled to the AP that he was under arrest for mischief and causing a disturbance. The police vehicle video also captures an officer telling the AP that he is under arrest for possession of a weapon for a dangerous purpose. To the extent that any arrest was for possession of a weapon for a dangerous purpose, it was improper since a required element of that offence is possession of a *weapon* and, as noted above, there was no evidence of this.

Causing a disturbance is:<sup>2</sup>

175 (1) Every one who

(a) not being in a dwelling-house, causes a disturbance in or near a public place,

(i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,

(ii) by being drunk, or

(iii) by impeding or molesting other persons,

...

is guilty of an offence punishable on summary conviction.

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<sup>1</sup> RSC, 1985, c C-46 at s 2.

<sup>2</sup> *Criminal Code*, RSC, 1985, c C-46 at s 175.

Causing a disturbance is a relatively rare offence in the *Criminal Code* because it is only punishable on summary conviction. Such offences, which are sometimes referred to as straight summary offences, are generally the least serious criminal offences. The *Criminal Code* treats straight summary offences differently in many ways, including arrest. A police officer can only arrest a person for a straight summary offence if the officer finds that person committing the offence. This is unlike most other offences, where an officer can arrest someone based on other evidence and reasonable grounds.

In order to arrest the AP for causing a disturbance, the subject officers therefore were required to find the AP doing one of the enumerated activities in s. 175(1)(a), namely fighting, screaming, shouting, swearing, singing, using insulting or obscene language, being drunk, or impeding or molesting other persons. None of the subject officers gave such evidence. The AP was not arrestable for causing a disturbance.

The final offence mentioned as a reason for the AP's arrest was mischief. Based on what SO1 and SO2 said to ASIRT investigators, they had some evidence that the AP had been hitting trees in downtown Whitehorse. Those trees are city or territorial property and there were likely reasonable grounds to believe the AP was damaging them, so the AP was likely arrestable for mischief under s. 430(1)(a) of the *Criminal Code*. Mischief is a relatively minor offence, but it is not a straight summary offence so the subject officers were entitled to arrest the AP for this offence without witnessing it.

While there are problems with the subject officers referring to possession of a weapon for a dangerous purpose and causing a disturbance as grounds for arrest, it does appear that the AP was arrested for mischief as well. This was authorized by law.

When the AP was in possession of the axe or could have been in possession of it quickly, the officers were entitled to take safety precautions since the AP could use the axe as a weapon. These precautions include telling the AP to drop the axe. After the AP had dropped the axe and moved away from it, the threat he presented had changed considerably.

While their reasoning is not entirely clear, it appears that the subject officers continued to believe that the AP was a risk due to his earlier possession of the axe. The quick and forceful takedown of the AP is not consistent with an arrest for mischief. It is consistent with arresting someone with a serious weapon.

The uses of force by the subject officers must be proportionate, necessary, and reasonable.

The subject officers appear to have thought they were dealing with an angry man with an axe who could attack other users of the park. A call of an angry man swinging an axe in a busy area is a serious call and should be responded to with haste. Had the AP been intending to use the axe as a weapon, no one would be concerned about the nature of the subject officers' response, and the AP's intent was unknown at first. While it would have been preferable for the subject officers to slow down and re-assess the situation as it evolved, police officers' actions are not to be held to a standard of perfection. From this perspective, their use of force can be viewed as proportionate.

The necessity of the subject officers' uses of force are also connected to their initial framing of the incident and failure to slow the interaction down. While the AP was validly under arrest and acting illegally when he continued to walk away, that does not mean that force was immediately necessary. It was open to the subject officers to continue to talk to the AP or use less force such as grabbing his arms. However, the law recognizes that police officers operate in dynamic situations. The best solution in hindsight cannot be expected of officers in the moment. Bearing that in mind, the subject officers' use of force was necessary.

It would have been more reasonable for the subject officers to slow this incident down and reflect on how the circumstances were changing. Once the AP dropped the axe and was separated from it, the axe was no longer a safety issue. At this point, there was nothing indicating that the AP ever intended to use the axe as a weapon. Instead, his actions were consistent with someone carrying a tool. However, as noted above, the benefit of hindsight can open up insights that are not available to an officer in a dynamic situation. On this basis, the subject officers' actions were reasonable.

The law recognizes that officers' actions are not to be held to a standard of perfection. There are issues with the subject officers' actions on that day, but they do not rise to the level of criminal liability. For this reason, the defence available to the subject officers under s. 25 is likely to apply.

Any conduct and training issues are the domain of the RCMP.

## **Conclusion**

On July 6, 2020, the AP was walking through Whitehorse and then into Rotary Peace Park with an axe. His demeanor and use of the axe concerned many people, and some of them called the police.

The subject officers responded to this call. They quickly approached the AP and told him to drop the axe. He did, and the subject officers forcefully took down and arrested the AP.

While there are issues with the uses of force by the subject officers, their actions do not rise to the level of criminal liability. There are no reasonable grounds to believe an offence was committed.

*Original signed*

**Matthew Block**

**Assistant Executive Director**

**March 24, 2023**

**Date of Release**