IN THE MATTER OF A DEATH OF A MALE WHILE BEING ARRESTED INVOLVING OFFICERS OF THE CALGARY POLICE SERVICE ON MAY 1, 2019

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

Executive Director: Michael Ewenson
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Introduction

On May 1, 2019, pursuant to section 46.1 of the Police Act, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate the circumstances surrounding the death of a male individual, hereinafter referred to as the affected person (AP) while being arrested by officers of the Calgary Police Service (CPS).

As with other decisions involving ASIRT, the focus is to determine whether grounds exist to lay a Criminal Code charge. Questions such as whether the death of the affected person could have been prevented through changes in policy, training, resourcing, or the like, are not within ASIRT’s mandate, and are issues commonly examined through another external process, such as a Fatality Inquiry.

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. ASIRT interviewed all relevant civilian and police witnesses, obtained and reviewed all available relevant video evidence and considered the findings of the medical examiner.

Overview of the Circumstances Surrounding the Death of the Affected Person

On May 1, 2019, at approximately 3:37 A.M., CPS officers responded to a reported hit and run injury collision involving a pedestrian and a Ford Fusion. It was reported that the driver of the Ford intentionally struck the pedestrian. Investigations subsequently determined that the driver of the Ford, was AP, and that the pedestrian and AP were roommates.

Immediately after the collision, AP drove eastbound and then stopped the vehicle. A civilian witness (CW1) came across the Ford with its lights out. CW1 stopped his vehicle beside the car and AP exited the vehicle, pointed at CW1 and called him the “devil”. CW1 felt that AP was “out of it” and on some type of drug. AP started to approach CW1, so he drove his truck at him, which caused AP to move away.

About this time, CW2 also stopped at this location as he believed the stopped Ford was involved in the hit and run. AP was already outside of his vehicle. CW2 exited his vehicle and confronted AP. AP came towards CW2 with both hands raised, yelling “Fuck you. I’m the devil, I’m the devil. I’ll kill you.” CW2 retreated to his vehicle and locked it. AP tried to open the door and banged on his windows. CW2 reversed his vehicle and then drove towards AP in an attempt to scare him to stop his aggressiveness towards him.
AP returned to his car and started to drive. CW2 followed AP and called the CPS, providing their location and direction of travel. He followed AP until he stopped, and CW2 parked next to the Ford to prevent its escape.

CPS officers started to arrive almost immediately after CW2 stopped his vehicle. The first police vehicle contained subject officers #1 and #2 (SO1 and SO2). Shortly thereafter subject officers #3 and #4 (SO3 and SO4) arrived on scene. All four subject officers began to try and arrest AP. AP was inside the vehicle which was locked and still running. AP refused to unlock the door. Windows of the vehicle were smashed by police using their batons. AP yelled, “I’m the devil, I will rape you.” The officers began to try and remove AP from the driver’s seat to arrest him. AP who was very large at approximately 6 feet 4 inches tall and weighing over 300 pounds, resisted their efforts. Officers used physical force, batons and conductive energy weapons (CEW’s) in an attempt to get him out of the vehicle and into custody. These efforts continued for a lengthy period of time but failed, so subject officer #5 (SO5), who was a canine officer utilized his canine. The canine took a hold of AP and with the assistance of officers, AP was finally pulled/pushed out of the vehicle. A sergeant then arrived on scene, subject officer #6 (SO6) and she assisted in handcuffing of AP. Once handcuffed, officers realized that AP had stopped breathing.

AP was administered a dose of Narcan (Naloxone) by an officer and CPR was started on him. EMS was requested and multiple people subsequently arrived. CPR and other life-saving treatment continued on AP for a lengthy period of time before he was transported to hospital by ambulance. AP was pronounced deceased at the hospital.

An autopsy was conducted on AP, and the medical examiner determined the immediate cause of death to be complications of cocaine use involving struggle during police altercation/restraint.

Between 2006 and prior to this interaction and his death, AP had 14 reports to CPS about his erratic behaviour. Most of these incidents were similar in nature in that AP had consumed drugs (often cocaine), and was then being aggressive in public, often saying something about the “devil”.

**Proactive recognition of AP’s health risk by CPS**

Given the numerous interactions, and the often aggressive/violent behaviour involved, some time prior to the final incident with AP, CPS prepared a report on AP that stated in part, “Calgary Police Service members have now had six significant events of remarkable similarity with [AP]. The two most recent events have demonstrated that
[AP] is a chronic Crack Cocaine user and when using the drug enters into a state of altered cognition typified by bursts of unpredictable and violent behaviour. [AP’s] symptoms while in this state are clearly indicative of Excited Delirium, a medical emergency which if left untreated, can progress quickly to death. [AP] has been listed as a ‘high risk’ Excited Delirium subject. I will be meeting with the Calgary EMS patient advocate to determine what proactive steps, if any, can be taken to reduce the risk of [AP] dying in the care of Police or EMS members. Currently, CPS has taken significant steps, vis-à-vis this report completed by [name of author] as well as the POVI and CPIC notifications. All District analysts have been provided a copy of the BOLF with respect to the risk [AP] represents to public and police safety”.

**Interviews**

Civilian Witnesses

*CW1 was interviewed and provided the following information*

He was working the night of the incident. He did not see the hit and run collision, but came across a vehicle about a half mile from the collision scene that was stopped and had its lights out. He stopped his truck beside this car, and then a large heavyset male exited the car. CW1 said he could immediately tell that the male was “wired on something”. This male, [AP], was totally out of it pointing at CW1 and calling him the devil. CW1 remained in his truck, and at one point yelled at AP. AP then moved towards his truck so he drove his truck forward and AP then moved back. About this time, a Cadillac drove up behind the car. CW1 then started to drive east on McKnight Blvd. CW1 then noticed that the Cadillac was following the car that AP had come out of when he first stopped. Shortly thereafter, some police cars passed him on McKnight Blvd, and he then followed the police vehicles. Ultimately, AP’s vehicle stopped westbound on 32nd Avenue. There was a police car in front of and at the rear of AP’s car. There were two police officers on each side of the car. He drove past the scene and then turned around and parked at the scene facing eastbound across from the now parked car.

He observed that the driver of the Cadillac, [CW2] was in the middle of the road recording the incident with a cell phone. CW1 observed as the officers were trying to get the driver out of the car. The police were “wrenching” him one way and then the other, but the male was holding onto the steering wheel and was not going anywhere. CW1 could not recall what the officers were saying. He could see Taser wires. The struggle to
get AP out of the vehicle went on for minutes. AP appeared to be resisting and he would not come out on his own.

The police finally got him out of the car and that is when things got “hard”. AP was on the cement resisting, and there were four large male officers, an officer with a dog and a female officer for a total of 6 officers. CW1 said he described things as “hard” because AP’s face was on the cement for a long time while the police dog had his hand. The other officers had their knees on his back and neck. One officer was right on top of him.

They were on the ground with AP for a few minutes and then suddenly were doing CPR on him. The police continued to do CPR as they waited for the ambulance to arrive.

CW1 got out of his truck and spoke with the female officer, asking her why there were six police officers needed to get the male out of the vehicle, as he was not armed. This officer did not like his questioning and she told him that she could not debate this with him.

CW1 then left the scene where he saw more police vehicles stopped. He stopped and had a conversation with another female officer there. This officer talked about factors such as Tasers not working with people on meth. CW1 said he then realized there were many factors to look at. This officer took a statement from him.

**CW2 was interviewed and provided the following information**

On the night of the incident, he came across the hit and run scene involving a pedestrian. He stopped his car and spoke with a male on his phone. This male said that the car that hit the pedestrian had fled the scene. CW2 noted that there was a vehicle matching the description of the vehicle that had fled (this information had been provided by others who had also stopped) stopped further east on McKnight Blvd. A fire truck arrived, so he decided to drive to this stopped vehicle.

CW2 noted that there was a large truck parked in the middle of the street near the stopped vehicle. A male, [AP], who he believed to be the driver of the stopped vehicle was standing outside of it. He noted that he was a big man. CW2 exited his vehicle and told AP that he had hit someone with his car and asked why he was running away. AP responded saying, “Fuck you” and he came towards CW2 with both hands raised. AP shouted, “I’m the devil, I’m the devil, I’ll kill you!” CW2 retreated back and into his car and locked the doors. AP tried to open the driver’s door and then banged on the window with his fist. CW2 said that AP was “crazy” or under the influence of drugs. He backed up his vehicle and then drove towards AP to scare him.
AP then got back into his vehicle and drove away eastbound on McKnight Blvd. CW2 followed AP, and noted that a tire on his vehicle was smoking, and he believed that was as a result of the previous collision he had. CW2 called the police and advised he was following the offending vehicle. He was told by the officer to stop following the vehicle. CW2 said he felt he had to continue following the vehicle as he was concerned that AP would kill someone. AP turned onto 32nd Avenue SW, and shortly thereafter the left front tire blew off. AP’s vehicle then stopped further west on 32nd Avenue. CW2 drove his vehicle up beside AP’s vehicle so he could not get out.

CW2 told police communications where they were, and police vehicles arrived almost immediately. He moved his vehicle to be in front of AP’s vehicle as police officers approached on foot. AP would not open the door and gave the police the finger and started to yell at them. Other police officers arrived on scene. The officers broke out all four windows of the vehicle AP was in. CW2 stood outside his vehicle and started recording what was happening on his cell phone.

Another police vehicle showed up, so there were then five to six police officers on scene. The officers continued to try and pull AP from the vehicle. However, they were having difficulty as he would not cooperate and exit willingly. He heard AP yell at the police, “I’m the devil, I will rape you.”

A canine unit arrived and the dog was brought to the driver’s door and it grabbed a hold of AP. They canine officer was trying to use the dog to pull AP out of the vehicle, but he was having difficulty too. CW2 heard the officers using a Taser three or four times, and he saw the wires. The police were being aggressive, but AP was not listening, and he felt that he was dangerous. The police were yelling at AP to get out of the vehicle, but AP refused to do so. He believes they may have struck AP with their batons, but he was not sure.

The officers eventually got AP out of the car and put him on the ground where they handcuffed him. They then flipped AP onto his back. At that point, CW2 thought AP was dead. Police officers started CPR on him. After that he told an officer he had to go to work. The officer got his identification and contact information. An ambulance arrived at the scene just before he left it.

CW2 stated during his interview that he did not think the police did anything wrong. He said he thought AP deserved it. He knew he was dead, but what he did previous to this made him dangerous to the public. Maybe the police were a little bit aggressive, but they made the right choice.
Comment

ASIRT investigators spoke with another civilian witness that was near where this event occurred. While they did observe/hear certain aspects of the interaction between the officers and AP, there was nothing in their statement that added to the investigation. This is the same for the paramedics that arrived to assist. They only assisted with resuscitation efforts and the transport of AP to hospital. As such, a summary of all of these statements are not reported here, as to do so would unnecessarily lengthen this report, without adding any value to it. This said, all of this information is in ASIRT’s investigative file.

Subject Officers

As is their right, none of the subject officers chose to provide a statement to ASIRT.

Event Chronology

As part of the receiving and dispatching of calls for service, an event chronology is created for each matter that contains the information received from any person calling in to report something to police. It also contains information received from any responding officers, and can contain information that others find relevant to the call. This often comes from evaluators and similar staff doing checks on the people, places, vehicle(s) known or suspected to be involved in the matter.

In this incident there were two notations added to the call that would be considered relevant. The first was at 3:46:56 and said: ***PLS VOICE*** FROM 2008 CAUTION FLAG IN SENTRY - KNOWN EXCITED DELIRIUM OFFENDER – HAD TO BE TASERED ON MULTIPLE OCCASIONS AND [internal CPS code] ALSO HAD TO BE USED TO ASSIST DURING AN ARREST

The second entry was at 3:50:24 and read: “SENTRY ("AP") ***CAUTION***, MENTALLY DISORDERED... HISTORY OF COCAINE CONSUMPTION, TAKES PSYCHOSIS MEDS, EXTREMELY VIOLENT, KNOWN TO HARM HIMSELF WITH WPNS, PARANOID DELUSIONS, HIGH RISK OF IN-CUSTODY DEATH... HAS BEEN TASERED AND K9 INVOLVED”.

Video Evidence

Body worn cameras (BWC) were worn by some of the officers involved in this event. ASIRT received and reviewed BWC from three of the subject officers.

All three of the BWC videos provide different views of the incident. They all provide views of the attempts to pull AP from the vehicle, along with verbal commands of the officers to AP to stop resisting and to get out of the vehicle. Sounds that are consistent
with a CEW being deployed can also be heard. This occurs a few times during the incident. They also capture AP’s comments about being the “devil” and that he will “rape” them. One BWC captures one of the subject officers who has already deployed his CEW, using the CEW to strike AP in the face/head. One BWC shows that even with the canine holding onto an arm of AP and pulling, the AP is not coming out of the vehicle. While this is occurring, other officers are inside AP’s vehicle pushing on him to try and get him out. After about a minute of this, the officers are finally able to extract AP from his vehicle. AP is taken to the ground on his stomach. Several officers then converge on and over AP in an attempt to place handcuffs on him. Given AP’s large size, multiple sets of handcuffs were needed to chain together to actually secure both arms. Once finally secured, an officer notes that AP is no longer breathing. AP is flipped to be on his back and CPR is begun. A decision is made to place AP on his side and check his status. There is no change in his responsiveness, and there is discussion amongst the officers present about giving AP a dose of Naloxone. After this is administered and there is no change in condition, AP is once again placed on his back and CPR recommences. This continues until EMS arrives. At one point you can hear an officer receive information over the radio that says the AP has a “tremendous history of excited delirium” and the officer responds with “yeah, he’s dealing with that right now.” The officer then tells the other officers on scene that AP “has a history of excited delirium”. CPR continues for many more minutes.

Cell phone video from CW2 was obtained. Given that CW2 was across the street from the interaction at AP’s vehicle, it provides the best view of the interaction of the officers once AP is removed from his vehicle.

CW2’s video also shows the efforts of multiple officers in trying to remove AP from his vehicle. It also captures the verbal interactions between the officers and AP, and also the canine pulling on AP with other officers assisting in the pulling and pushing of him. One officer appears to be pulling on AP’s head/hair while the canine is also pulling on his arm. Once AP is finally pulled from the vehicle he is laying on his left side. It is tough to tell if AP is moving his legs on his own, or if they are pushed by an officer to get AP to be flat on the ground on his stomach. At this point, one officer is standing at AP’s feet, while the canine officer maintains a hold of his dog. The dog is still holding onto the left arm of AP and moves such that the arm is in a better position for another officer to take a hold of it to assist in trying to handcuff AP. While this is occurring, four other officers are also trying to assist in handcuffing AP. One female officer is near AP’s legs and appears to have her legs on top of AP’s legs. Another female officer is to the right side of AP and appears to have her left leg on AP’s left side while she holds his right arm. A male officer who initially was kneeling beside AP on his left side, moves and then lays on top of AP.
It appears that his torso is directly on the back and head area of AP. He remains laying this way on AP for around 20 seconds before he crawls off of him and then repositions himself such that his left knee appears to be on the right shoulder or possibly AP’s head. A different male officer who had been at AP’s feet kneeling on them with his legs moves over to AP’s left side once the dog lets go of AP’s arm. This officer appears to take control of AP’s left arm. All throughout this, it appears that the two female officers are trying to handcuff AP. CW2’s video ends while the four officers are still trying to handcuff AP.

In-Car Digital Video (ICDV)

Four police vehicles at the scene had ICDV. ASIRT obtained and reviewed all of these videos. They reflect what the previous videos largely contained, AP was being pulled and pushed by officers. They did show some things that were not as easily seen in the other videos though. A CEW was utilized on him multiple times (both in probe and stun mode). Also, that AP was apparently struck by SO4 while holding a CEW in his hand.

Other Evidence

ASIRT’s investigation determined that two CEWs were deployed during this incident. It should be noted that the device recording it was deployed, does not necessarily mean that the CEW was successful or if it even made contact with AP. One CEW was deployed by SO3 and the data showed it was cycled for 33 seconds. Another CEW was deployed by SO4 eight times. The cycle times ranged with the shortest being one second and the longest being 18 seconds.

Autopsy Report

As previously noted, an autopsy was conducted on AP, and the medical examiner determined the immediate cause of death to be Excited Delirium Syndrome, due to or as a consequence of cocaine use. Struggle during police altercation/restraint was listed as a significant condition contributing to death but not causally related. Since the issuance of the autopsy report, Excited Delirium as a stand alone cause of death has been questioned by some in the medical field. The medical examiner who conducted this autopsy was subsequently consulted about his report, and he advised that his findings during the autopsy remain the same, but he would now describe the immediate cause of death to be complications of cocaine use involving struggle during police altercation/restraint.

The autopsy report also contained the following information:
• There were multiple abrasions, contusions and lacerations found on the head, face, torso and extremities. The abrasions to the face/head were patterned. The injuries to the left forearm/wrist could be consistent as having been caused by the canine unit.
• Four discrete injuries related to CEW’s were identified. The linear bruise to the wrist could be consistent with the use of handcuffs.
• Neuropathological examination of the brain and spinal cord did not show any injuries.
• There were multiple fractures to the ribs near the sternum and towards the back of the rib cage and a fracture of the breastbone. Additional injuries were found to the liver, as well as bleeding between the soft tissues between the ribs towards the back. The fractures near the sternum and the breastbone were atypical of resuscitation-related injuries and may be because of the force applied to [AP’s] back during restraint. The use of CPR would have resulted in bleeding in these sites even if [AP] was already deceased at the time of the injuries.
• There was enlargement of the heart with thickening of the main pumping chamber of the heart. There was mild to moderated narrowing of the blood vessels (atherosclerotic coronary artery disease).
• Toxicology testing on [AP] detected cocaine in the blood, as were metabolites of cocaine. This indicated that [AP] used cocaine prior to death. No alcohol was present. Also present were low levels of phenacetin (a pain medication), olanzapine (a psychiatric medication that [AP] was prescribed) and naloxone (administered during first aid by CPS).
• The struggle with police, including the use of CEW’s, would have furthered the metabolic derangements experienced by [AP] and is, therefore, considered as significantly contributing to the death.
• The possibility of an asphyxia (inability for the body to breath air into the lungs) component to the death was considered. There were injuries present to the back, however, some of the injuries may have occurred during the preceding altercation with police, or have occurred during the perimortem period (at or around the time of death) or immediately post-mortem (after death). The resuscitative efforts provided by police and EMS could have resulted in bleeding to injuries at these sites even if they occurred shortly after death. There were no injuries to the neck other than those from the CEW’s. Petechial changes normally seen in asphyxia related deaths were not identified in or around the mouth or eyes. Therefore, asphyxia is not felt to have been directly causative or contributory to the death.
Analysis

The Use of Force

Under s. 25 of the Criminal Code, a police officer, is justified in doing what he or she is authorized to do and to use as much force as is reasonably necessary where he or she has reasonable grounds to do so. Force intended to cause death or grievous bodily harm is justified if the officer believes, on reasonable grounds, that the force was necessary to prevent the death or grievous bodily harm of the officer and/or any other person.

Reasonably Necessary

In this case, the subject officers were lawfully placed and acting in the execution of their duties. They were all at the scene where an individual, AP, had stopped his vehicle after having previously been involved in a serious injury hit and run collision. The subject officers were attempting in various ways to take AP into custody. AP who was a very large man was actively resisting all such efforts. After prolonged efforts, the use of CEW’s and a canine the officers were finally able to get AP removed from his vehicle. The videos, as previously discussed set out the actions of the officers in ultimately getting AP handcuffed, and noticing that he was then in medical distress. Medical efforts were then made by officers, prior to EMS attendance, to resuscitate AP. Notwithstanding these efforts, AP died.

The evidence strongly supports the following conclusions:

- The subject officers were lawfully placed and in the lawful execution of their duties.
- The force used was reasonably necessary and proportionate.
- At the time of being dealt with, AP had apparently already intentionally run into a person with his vehicle, he was talking strangely about “raping” the officers and being the “devil”. Such a person could not be ignored by police, but needed to be taken into custody for the protection of others and for the welfare of AP himself.
- Emergency medical attention was commenced as soon as it was noticed the AP was in distress.

Conclusion

ASIRT was directed to investigate the death of the AP as it occurred in circumstances involving him being in the custody of the CPS, at the time he went into medical distress, and ultimately passed away.
After a thorough, independent and objective investigation into the conduct of all involved officers, it is my opinion that they were clearly lawfully placed and acting properly in the execution of their duties. There is no evidence to support any inference that police engaged in any unlawful or unreasonable conduct that would give rise to a criminal offence. The force used was necessary, reasonable and proportionate in all the circumstances, notwithstanding the tragic outcome. As previously noted, a Fatality Inquiry may very well be ordered, but that is for the appropriate agency to decide.

Original signed
Michael Ewenson
Executive Director

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