

**IN THE MATTER OF THE THOMAS R. BRAIDWOOD, Q.C.,
COMMISSIONS OF INQUIRY UNDER THE *PUBLIC INQUIRY ACT*,
SBC 2007, c. 9**

Room 801
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

March 4, 2009

PROCEEDINGS AT
HEARING (DAY 27)

COPY

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1
Cst. Kwesi Millington
Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 Vancouver, B.C.
2 March 4, 2009
3

4 THE REGISTRAR: The hearing is now resumed.
5 THE COMMISSIONER: Good morning, all.
6

7 CST. KWESI MILLINGTON, a
8 witness, recalled, warned.
9

10 THE REGISTRAR: Witness, may I remind you you're still
11 under oath.

12 A Yes.

13 THE REGISTRAR: Mr. Vertlieb, you asked me to mark the
14 CEW document?

15 MR. VERTLIEB: Yes, the PowerPoint, please, I referred
16 to.

17 THE REGISTRAR: The PowerPoint document entitled
18 "Policies and Protocol" will be marked as Exhibit
19 number 62.

20 THE COMMISSIONER: Yes, that's right.
21

22 EXHIBIT 62: PowerPoint document CEW User
23 Course "Policies and Protocol"
24

25 THE REGISTRAR: Counsel.

26 THE COMMISSIONER: Yes, good morning.

27 MR. ROSENBLOOM: Thank you, Mr. Commissioner.
28

29 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE
30 GOVERNMENT OF POLAND, continuing:
31

32 Q Good morning, Officer. I want to backtrack
33 slightly in terms of where I was at when I was
34 cross-examining you late in the day yesterday.
35 And you will recall in an earlier period of my
36 cross-examination I was inviting you to focus on
37 the period of first contact with Mr. Dziekanski
38 and the encounter that took place around the
39 luggage.

40 A Yes.

41 Q Yes. And in that regard there was testimony given
42 in these proceedings by Constable Rundel that he
43 observed Mr. Dziekanski moving towards his
44 luggage, a slight motion towards his luggage. And
45 I'm not using his exact words. And that there had
46 been a command by, I believe, Corporal Robinson,
47 "No. No, no." Do you recollect anything like

1 that happening during your observations?
2 A No.
3 Q Okay. Well, that has been given as testimony
4 under oath that that happened. And last night I
5 started trying to piece this whole history
6 together and I want to put to you a scenario. You
7 testified yesterday that you did request Mr.
8 Dziekanski's passport and identification, correct?
9 A Yes, I used those words.
10 Q And I'm further of the belief that either there's
11 already been testimony, or it's anticipated that
12 the passport and identification documents were in
13 his luggage?
14 A Sorry, what are you asking, sir?
15 Q I'm asking are you aware whether the passport and
16 identification documents were eventually found in
17 his luggage?
18 A I don't know where they got them from.
19 Q Well, let's assume for a moment they were. I'm
20 led to believe that there is to be testimony in
21 that regard, that one officer obtained those
22 documents. Mr. Chapin, the Border Services
23 Officer, I believe, has testimony -- testified in
24 these proceedings that that's where he found them,
25 all right?
26 A Okay.
27 Q Now, your testimony --
28 MR. HIRA: His -- his evidence is that -- that that's
29 with respect to another point in time. If my
30 friend's question is "assume that they were found
31 in the luggage", that's fine.
32 THE COMMISSIONER: I think that's what you're trying to
33 say.
34 MR. ROSENBLUM: Of course.
35 Q Now, assuming that, you testified yesterday you
36 requested the passport and identification.
37 A Yes.
38 Q We then, according to Constable Bentley, have Mr.
39 Dziekanski making the initial movement towards the
40 luggage. You don't recall that?
41 A No.
42 Q Then we have the command, "No." You don't
43 remember that?
44 A No.
45 Q Then it would appear from the video that indeed
46 Mr. Dziekanski moves away from the luggage,
47 correct?

Cst. Kwesi Millington

Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 A Sorry, say that again?
2 Q Well, that the next thing we see in the video is
3 Mr. Dziekanski moving away from the luggage, and
4 as we've -- as you've described it, the arms in a
5 shrugged position with the hands outright.
6 A He was moving away from us.
7 Q Yes.
8 A I wouldn't say moving away from the luggage.
9 Q Yes.
10 A I saw it as moving away from us.
11 Q I see. You never considered that maybe he was
12 moving away from the luggage?
13 A No.
14 Q And you never considered that he might be moving
15 away from the luggage because of a command that
16 might have been given to him?
17 A No.
18 Q So all you know is you asked for a passport and
19 identification. You didn't get it. Mr.
20 Dziekanski moves away to the counter, correct?
21 A Yes.
22 Q Now, I'd like to move back to where I was at the
23 point of yesterday afternoon, late afternoon
24 adjournment until today. We were at the point we
25 were discussing the period from your tasing of
26 the subject on the first occasion until he was
27 handcuffed. You remember that?
28 A Yes.
29 Q And I was asking you, having already reviewed what
30 you informed the IHIT investigators, what really
31 happened that night. Now, with another witness
32 there was evidence given about the download times
33 of the Taser, and we established that, for
34 example, your first deployment was a six-second
35 deployment, correct?
36 A Yes.
37 Q I want to go into this matter of the discretion
38 you exercised in deploying the Taser on the second
39 occasion. Now, you've already testified that you
40 were of the belief, or at least you're of the
41 belief today -- no. That you were of the belief
42 at the time that when you pulled the trigger on
43 the second deployment the man was still standing?
44 A Yes.
45 Q And you appreciate from evidence before us we are
46 talking about in fact a seven-second lapse between
47 first deployment and second?

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 A Yes.

2 Q Can you tell me this: When you're deploying the
3 Taser the second time, you don't even have to
4 concern yourself with aiming the weapon. You
5 don't have to use the laser sighting. You don't
6 need to use the other form of sighting. You could
7 in fact have the instrument by your side or
8 pointed up in the ceiling, it doesn't matter.
9 You're throwing the second 50,000 volt current
10 through the probes that are already attached to
11 the subject?

12 A Yes. It doesn't matter where the CEW is pointed.

13 Q Right. So after the first deployment, you didn't
14 have to occupy yourself with any concern about
15 getting the weapon ready and aiming it to make
16 sure that you hit bull's eye on the second
17 deployment?

18 A No.

19 Q No. And so after the first deployment you
20 presumably brought the instrument to your side and
21 you're watching carefully what's going on to
22 assess what you should do as your next move?

23 A I don't know where I brought the CEW to.

24 Q All right. But you certainly weren't preoccupied
25 with the sights of the instrument?

26 A No.

27 Q So appreciating that fact, that that wasn't a
28 factor in your assessment during those precious
29 seven seconds, how do you explain to us the error
30 in judgment -- excuse me, the error of having
31 assumed that Mr. Dziekanski was still on his
32 legs/feet?

33 A Like I've said before, it was a fast-moving
34 situation and my belief at the time was that he
35 was still standing. He was moving away at the --
36 during the first deployment and, yes, he was
37 feeling some of the effects. But my belief, like
38 I said before, is that he was still standing.

39 Q Well, when you say he was still standing, I'm
40 interested in this. Are you suggesting at any
41 point in the lapse of those six seconds you
42 imagined that this subject was not going down,
43 based upon that first deployment?

44 A Like I said, from my training, the effect of
45 deploying the Taser is that they are supposed to
46 be immobilized immediately, fall to the ground -
47 from my training - and that's what I thought since

1 he didn't fall to the ground that he was not going
2 to the ground.

3 Q That he was not...?

4 A Going to the ground.

5 Q But you were observing what was transpiring. The
6 man had clearly lost all voluntary control of his
7 musculature, didn't he?

8 A I didn't know that he had lost all control, no.

9 Q Well, you surely saw him staggering to the fall,
10 did you not?

11 A I saw that he had moved back, but I did not know
12 if that was staggering at the time.

13 Q It was really your belief in witnessing those
14 seven -- seven seconds that this man was maybe
15 acting normally and could just walk away from it?

16 A I didn't say acting normally, but I did not see
17 that he was going to fall to the ground. I did
18 not know that at the time.

19 Q He's screaming.

20 A Yes, he was -- he was yelling, yes.

21 Q Did that not convey to you some sense that the
22 instrument in question was clearly having a
23 significant effect on him, that it was inflicting
24 pain on him?

25 A Like I said before, yes, I could tell that some
26 effects were being felt, but I did not know if he
27 was going to fall to the ground.

28 Q Now, you said both yesterday and you repeated it
29 today that according to your training you would
30 have expected him to just drop; is that correct?

31 A Yes.

32 Q Okay. The goal of the exercise in deploying the
33 Taser is to get the man to the ground, isn't it?

34 A It's to -- yeah, immobilization and get them to
35 the ground, yes.

36 Q Yes. And in terms of that goal, did it really
37 matter to you whether you achieve that goal as you
38 expected it from training, that he just wilt
39 before you, or that it would take a second or two
40 or three for him to fall to the ground? Was that
41 really important to you?

42 A Like I said, he was still standing and for a
43 period of time he still had the stapler in his
44 hand. I did not know he was going to fall, so I
45 did not feel that the desired effects were taking
46 place.

47 Q Well, I guess we shouldn't spend all day on this.

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 At the end of the day it's the Commissioner that
2 looks at that video and makes his decision. But I
3 suggest to you, sir, any reasonable person
4 observing the video - and I welcome you to look at
5 it again if you choose - couldn't possibly arrive
6 at any conclusion but that the Taser was having
7 its effect and that the man was on his way down.
8 You deny that that's a reasonable interpretation
9 of the video?
10 MR. HIRA: The question to be asked otherwise to obtain
11 the answer that is desired, if the question were
12 worded without a reference to the reasonable
13 person at the beginning of the question, it may be
14 reasonable.
15 THE COMMISSIONER: The question is fair.
16 A Sorry, can you repeat that?
17 MR. ROSENBLOOM:
18 Q I invite you to agree with me, sir, that any
19 reasonable observer of the video of those seven
20 seconds would conclude that clearly this man was
21 on his way down.
22 A I don't know what a reasonable person would say.
23 I just know what my perception of the events were.
24 Q Thank you. Now, when you choose to make a second
25 deployment, and you've testified about that,
26 you've acknowledged that the man is already down.
27 A Yes.
28 Q And but you say you didn't know it at the time.
29 A No.
30 Q And on your second deployment, if my memory's
31 right, it's a five-second cycle, isn't it?
32 A Yes.
33 Q Yes. What interests me is during those five
34 seconds of the second deployment, are you of the
35 belief or were you of the belief that night that
36 the man was still standing throughout that five-
37 second cycle?
38 A I don't recall what I was thinking that night in
39 that particular moment. It was a fast-moving
40 situation and I don't know what I was thinking
41 exactly those seconds.
42 Q Well, you constantly speak of the fast-moving
43 situation, and I appreciate that indeed it was,
44 but you're trained as an officer to deal with
45 fast-moving events, aren't you?
46 A Yes.
47 Q In fact, back at Depot, and I don't have the

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 benefit of my friend here, Mr. Kosteckyj, having
2 been to it, but surely there is a great deal of
3 training to prepare you for fast-moving events and
4 to make the appropriate -- exercise the
5 appropriate discretion in that situation.
- 6 A Yes, there's training on that.
- 7 Q Yes. Now, appreciating that, I'm focusing you on
8 the second cycle of five seconds. I asked you
9 whether you were of the belief at that time that
10 as you cycled that five seconds, Mr. Dziekanski
11 was still standing throughout the five seconds.
12 And your answer is...?
- 13 A What are you asking?
- 14 Q I'm asking whether at the time as you deployed
15 this Taser the second time, and as you observed
16 the five-second cycle, did you believe Mr.
17 Dziekanski was still standing throughout?
- 18 A I don't know if I thought he was standing
19 throughout. I definitely thought he was standing
20 at the beginning of it, so for some portion of it
21 I would assume that I believe he was still
22 standing. I don't know for the full five, or part
23 of it.
- 24 Q Well, Officer, had you observed during that second
25 deployment that he wasn't still standing, there
26 was a way for you to terminate the cycle, wasn't
27 there? There was a way for you to throw the
28 safety switch and to terminate the electrical
29 voltage, correct?
- 30 A If -- you can do that during the cycle, yes.
- 31 Q That's what I mean. And so during that second
32 cycle, had you observed Mr. Dziekanski's down, I
33 needn't use this -- this weapon at this moment,
34 you could have at least terminated the cycle short
35 of the five seconds?
- 36 A I could have turned it off during the cycle, but
37 like I said before, I don't know what part of that
38 second cycle I believed he was on the ground.
- 39 Q No, I know that. I'm speaking, though,
40 hypothetically that had you observed him to the
41 ground at some point during that second cycle, you
42 could have turned the Taser off.
- 43 A If he was -- so you're saying if he was on the
44 ground during the cycle you're asking if I could
45 have turned it off?
- 46 Q Yes.
- 47 A Yes, the answer's yes.

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 Q Yes. And you didn't.
2 A I didn't, no.
3 Q You informed the IHIT investigators that he was
4 wrestled to the ground, correct?
5 A Yes.
6 Q What is your memory of that event? Who was
7 wrestling him to the ground?
8 A AT the time I gave the statement I thought the
9 other three members had to move in and wrestle him
10 to the ground.
11 Q Were you surprised to learn that that didn't ever
12 happen?
13 A Yes.
14 Q And you only learned that it didn't happen a month
15 before these proceedings when you consulted with
16 legal counsel?
17 A Yes. That's when I saw the video.
18 Q That's the first time you learned that there had
19 never been an incident of the three officers
20 wrestling the man to the ground?
21 A Yes.
22 Q Were you surprised?
23 A Yes.
24 Q Do you have a clear memory of that wrestling
25 having taken place and the three officers jumping
26 on him and taking him to the ground?
27 A I -- that's what I remembered at the time. I
28 don't remember specifics. I remember that that's
29 what I believed at the time, that they had moved
30 in.
31 Q Well, if you had that memory at the time, do you
32 still have that memory?
33 A Well, seeing the video has kind of distorted that,
34 because it's what really happened is that he fell
35 from the Taser.
36 Q No, let's put aside the video. Let's assume for a
37 moment you'd never seen the video up until this
38 moment. What's your memory of what happened?
39 A Like I said, the moving in and wrestling him to
40 the ground.
41 Q That's a pretty significant moment for you as you
42 observe the events of the evening, weren't they?
43 A It was one of the many significant events.
44 Q Yes. And -- but it was one of the significant
45 events because it would concern you about the
46 safety of the officers, right, if they're in a
47 wrestling match?

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 A Sorry, can you say that again?
- 2 Q I'm suggesting to you that your observation of the
3 officers wrestling this subject to the ground was
4 something that would be significant in your mind
5 because your fellow officers were maybe
6 endangered?
- 7 A Yes, okay. I think so.
- 8 Q And that being the case, you have a clear memory
9 that that happened?
- 10 A That's what I remember at the time, yes.
- 11 Q Do you remember whether all three of your fellow
12 officers were involved?
- 13 A I don't recall, no.
- 14 Q Do you remember whether you were about to join
15 into the fray?
- 16 A I don't remember.
- 17 Q Do you remember how long it took for them to
18 wrestle him to the ground?
- 19 A No.
- 20 Q You testified yesterday in response to my
21 questioning that you did inform the IHIT
22 investigators after that the whole incident took
23 less than ten minutes, correct?
- 24 A Yes.
- 25 Q And I asked you to narrow that down, and you said,
26 well, that could be anything less than ten
27 minutes. If it had been, in your mind, just a
28 minute or two, you don't tell an investigating
29 officer less than ten, do you?
- 30 A I could still say less than ten.
- 31 Q Really?
- 32 A Yeah.
- 33 Q Where you believe it be, if you did, and I'm not
34 suggesting you did, but if you believe an incident
35 to be around two minutes, and an IHIT investigator
36 asks you how long it takes, you're just going to
37 say under ten?
- 38 A If I believe it to be two minutes, I would say two
39 minutes.
- 40 Q Yes. And if you believe it to be five minutes, or
41 around five minutes, you don't say under ten, do
42 you?
- 43 A If I said it was -- if I thought it was five
44 minutes, then I would say five minutes.
- 45 Q Yes. In terms of the information you gave the
46 IHIT investigators that the incident took under
47 ten minutes, did you imagine at that time that

- 1 this wrestling you're talking about took a long
2 time?
- 3 A A long time as in...
- 4 Q A matter of a minute or two?
- 5 A No, I would say it would be shorter. I don't know
6 how long it was that I thought, but...
- 7 Q Now, I want to focus on the third, fourth and
8 fifth attempted deployment. You've testified that
9 the third deployment was not successful, in your
10 mind.
- 11 A No.
- 12 Q And that's when you removed the cartridge and
13 decided to go the push stun mode?
- 14 A Yes.
- 15 Q Was there, in your opinion, in that period from
16 when you attempted the third deployment until you
17 completed -- until you commenced the fifth
18 deployment, was there ever a moment in your mind
19 that you believed that Mr. Dziekanski, down on the
20 ground, three of your fellow officers on top of
21 him, that there was ever a risk that he would
22 overpower them?
- 23 A You said commencement of fifth deployment. You
24 meant commencement of fourth deployment?
- 25 Q I apologize. You don't remember the fifth. That
26 wasn't a trick question. You don't remember the
27 fifth deployment, do you?
- 28 A No.
- 29 Q I'll make the question a lot simpler. From the
30 point of your third deployment until handcuffing,
31 was there ever a moment where you believed that
32 Mr. Dziekanski might overpower these three
33 officers that were on him?
- 34 A Yes, from the point that I tried to move in to
35 help before the third deployment. Like I said, he
36 was still kicking and fighting and struggling, and
37 the members were having no success in getting his
38 arms behind his back and he was pushing them up.
39 So I don't believe that they would have gotten
40 control of him had I not gone to the push stun,
41 no.
- 42 Q You say didn't get his hands in handcuffing, but
43 you will agree with me throughout that struggle
44 Mr. Dziekanski was on his stomach, correct?
- 45 A He was actually on his stomach and turning on his
46 side, as well, at the same time.
- 47 Q But he was not overpowering them. They had

1 control of the situation, albeit they hadn't
2 gotten his arms in handcuffs, do you agree?
3 A No, they didn't have control of the situation.
4 Q I see. Why is that?
5 A He was still kicking and struggling. You could
6 see he's pushing them up and they were not having
7 success pulling his arms out behind his back.
8 Q Why didn't --
9 A There was no control.
10 Q Yes. Why didn't you join in?
11 A Before the third deployment I did join in at the
12 leg area, and tried to attempt to gain control of
13 him.
14 Q You said before the fifth deployment?
15 A The third deployment.
16 Q Third deployment. Why didn't you carry on and
17 join in?
18 A I could see that the efforts to gain control of
19 him wasn't working, and that was the point when
20 Corporal Robinson advised me to -- to cycle it
21 again.
22 Q Well, Officer, once Mr. Dziekanski went to the
23 ground, fell to the ground, he no longer had the
24 stapler, did he?
25 A No.
26 Q So the -- the big issue of the stapler being a
27 threat to your safety and that of your fellow
28 officers, that was no longer an element was it?
29 A Not the stapler, as far as I could see, I didn't
30 see it, no, so...
31 Q Yes. And so that had to enter into the equation,
32 didn't it, in terms of assessing the situation?
33 A Yes.
34 Q No longer being armed with the stapler, with three
35 officers already on him, you still felt there was
36 a concern of Mr. Dziekanski over --overpowering
37 them, is that right?
38 A Yes. He -- the officers were not on him. They
39 were attempting to gain control of him. He was
40 still fighting and still not putting his arms
41 behind his back, so I still describe that as
42 combative. And so that's why we do what we did.
43 Q You can look at this video after I ask you this
44 question if you choose. I'm going to suggest to
45 you, Officer, as you observe the video once Mr.
46 Dziekanski goes down, that there is what I will
47 describe as a diminished exertion by Mr.

- 1 Dziekanski incrementally as the period lapses
2 until the handcuffs come on. Do you understand my
3 question?
- 4 A That he puts up less struggle as things go on?
- 5 Q Yes, exactly. Would you agree with me that there
6 is clearly a diminished struggle or exertion by
7 Mr. Dziekanski second-by-second leading to the
8 handcuffing?
- 9 A I still saw him as the same kicking, fighting
10 person throughout the whole time.
- 11 Q I see. So you did not see any diminishment in his
12 resistance, for want of a better word, until the
13 moment of handcuffing?
- 14 A In his combative nature, no.
- 15 Q All right. Well, we'll leave this to the
16 Commission to review in its own time.
- 17 I now want to focus on the period from
18 handcuffing until the EHS arrives, and the EHS you
19 and I understand to be the ambulance service?
- 20 A Yes.
- 21 Q Yes. First of all, like I've done with you in the
22 previous areas of my cross-examination, I want to
23 go over what you reported to the IHIT
24 investigators and what in fact was in your
25 notebook. First of all, you said in your IHIT
26 statements that he got handcuffed, he was
27 unconscious but he was breathing. And again
28 correct me at any point or stop where you want me
29 to reference the statements. You reported to IHIT
30 that Constable Bentley reported that his ears were
31 turning blue, and you stated in those statements
32 that this comment from your fellow Officer Bentley
33 came right after handcuffing. You reported to
34 IHIT that Corporal Robinson --
- 35 A I'll just correct you. I said a couple of minutes
36 after handcuffing, not right after.
- 37 Q Well, you may at one point, but do you not agree
38 that you also said at another point in the
39 statement "right after handcuffing"?
- 40 A I may have said it. If you want to show me the
41 page, I probably -- I may have.
- 42 Q Yes. I'm referring to your statement of October
43 the 14th, but it is your -- yeah, your second
44 statement of -- oh, no, one second. Yes, your
45 second statement of October 14th.
- 46 MR. HIRA: There is only one statement...
- 47 MR. ROSENBLOOM: No, sorry, I apologize. It is your

13

Cst. Kwesi Millington

Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 statement of October 14th, and it is page --

2 THE COMMISSIONER: It's Exhibit 55.

3 MR. ROSENBLOOM: And it is page 22.

4 THE COMMISSIONER: No, that's the wrong one.

5 MR. HIRA: That's Exhibit 56.

6 MR. ROSENBLOOM: I'm sorry. So it is the statement you
7 gave of the 15th, I apologize, Officer. The
8 statement of October 15th, I think it's Exhibit
9 56.

10 THE COMMISSIONER: Splendid.

11 A Okay. Yeah, I see it at the bottom of the page
12 there.

13 MR. ROSENBLOOM:

14 Q And down at page 22, and I'll go over this with
15 you. Again Corporal Brassington questioning you.
16 In fairness to you, let's go fairly far up the
17 page. Corporal Brassington, this is the fourth
18 entry:

19
20 That was about the time that he wasn't moving
21 anymore.

22

23 Yeah.

24 BRASSINGTON: Okay. Um, ah, so not immediately,
25 upon him being handcuffed.

26

27 You said:

28

29 No, no I'd say it's a couple of minutes after
30 that.

31 BRASSINGTON: About a couple minutes after? Okay.

32 MILLINGTON: Well, yeah, maybe about a minute or,
33 or so.

34 BRASSINGTON: Okay. Okay. Um, and I'm not ah,
35 trying to commit you to any time estimates
36 here. I'm just trying to get a grasp of it
37 was right upon handcuffing or well after
38 handcuffing. Or just ...

39

40 You say:

41

42 It was just -

43 BRASSINGTON: A rough time line.

44

45 Something's indecipherable.

46

47 BRASSINGTON: Okay.

1 You said:

2

3

 Right after handcuffing.

4

5

 Do you see that?

6

A Yes, I see that.

7

Q And you said it?

8

A Yes.

9

Q Okay. Just going on with my summary of what was
your representations to IHIT after the event.

10

11

 You then said that Corporal Robinson checked

12

his pulse and breathing and he seemed to be

13

breathing fine. You said, so we checked it

14

periodically. You said that you did not do it,

15

that you were not the one that checked the pulse,

16

but that you kept asking does he have a pulse.

17

You said that Robinson kept checking the pulse

18

every couple of minutes, and that's in your

19

notebook. And then you said in terms of the

20

arrival of first response, which is Richmond

21

Rescue, that the Fire asked if handcuffs could be

22

taken off and you informed the IHIT investigators,

23

and I quote: "And then, uh, we took them off",

24

unquote.

25

 Is that all a fair representation of your

26

statements to IHIT?

27

A Yes.

28

Q Thank you. I now want to explore, as I have in

29

the other areas of my examination, what really

30

happened that evening, sir, and I'm going to

31

invite you to retract much of the material facts

32

that you provided to the IHIT investigators.

33

First of all, Officer, in joining the airport

34

detail, and I believe you joined them a year --

35

approximately a year prior to this incident?

36

A Yes.

37

Q Maybe July of '06?

38

A Yes, it was.

39

Q Yes. And on joining the airport detail, were you

40

given some sort of orientation program about the

41

airport facility, about its services?

42

A Yes, it's a broader training program where you

43

meet the partners and different agencies that are

44

at the airport.

45

Q Right. And do you recall whether one of those

46

partners was the ERS, the Emergency Response team

47

that's at the airport?

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 A I don't recall if they were at the training, but
2 we were aware of their existence, yes.
- 3 Q Yes. And you were aware of the services that they
4 provided to YVR?
- 5 A Yes.
- 6 Q And you were aware that those services included
7 obviously emergency response about fire and
8 serious aviation accidents at the airport?
- 9 A Yes.
- 10 Q And you were aware that they also had
11 responsibility to attend to emergencies within the
12 terminal buildings?
- 13 A Yes.
- 14 Q And you were aware that they offered, as part of
15 their know-how, first aid and first response
16 service?
- 17 A Yes.
- 18 Q And you were aware that within their team at any
19 time there would be fairly sophisticated first aid
20 equipment?
- 21 A Yes.
- 22 Q And you were aware, sir, that they would have
23 oxygen, for example?
- 24 A Yes.
- 25 Q And you were aware that they would presumably have
26 a defibrillator?
- 27 A Yes.
- 28 Q And you were aware that they would be trained to
29 know how to use a defibrillator?
- 30 A Yes.
- 31 Q Had you had any experience with the ERS at any
32 point leading up to this incident?
- 33 A I'd seen them in the airport before, and -- or,
34 sorry, ERS, are they just the regular emergency
35 health services pretty much?
- 36 Q No, I'm sorry, maybe I'm using the wrong term, and
37 I'll be corrected certainly if I am not giving it
38 correctly to you. I'm speaking of the Airport
39 Rescue Team that are stationed out in the airport
40 property.
- 41 A Okay. Well, my experience with ambulance
42 attendants is we had seen some on bikes that are
43 from the Airport ERS.
- 44 Q I see.
- 45 A And they -- I don't know if that's a higher level
46 response of just the people that show up to any
47 kind of call that we may go to, for instance, of

- 1 someone having chest pains or something like that.
2 So if you're talking about a different unit, I
3 don't know. But the unit I dealt with is just a
4 regular EHS for the airport.
- 5 Q For the airport.
- 6 A Yeah.
- 7 Q Did you believe these people were part of the fire
8 hall at the airport?
- 9 A No, no, they're -- like I said, they're EHS for
10 the airport. That's how I refer to them as. I
11 don't know if I have the right term or not.
- 12 Q Well, I again may be the only person in this room
13 not knowing about this. This is the first I've
14 heard of it. You're suggesting to me that there
15 is a fire department at the airport, correct?
- 16 A I mentioned EHS ambulance attendants at the
17 airport.
- 18 Q Okay. Well, I want to come to that for a moment,
19 but this is new to me. I just want to understand
20 it. Firstly, you were aware on the evening in
21 question that there is a fire hall at the airport?
- 22 A Yes.
- 23 Q And you are aware that at the fire hall there are
24 firemen that have first aid, first response
25 medical training?
- 26 A Yes.
- 27 Q And are you speaking now that there is another
28 group at the airport that are, as you described
29 it, ambulance responders?
- 30 A Like I said, I don't know where they came from,
31 but they are first aid trained personnel that are
32 in the airport area, as well.
- 33 Q And they bicycle around sometimes?
- 34 A I've seen them on bikes, yes.
- 35 Q In uniform?
- 36 A In ambulance, or -- I don't know what the uniform
37 is but it's some type of first responder uniform.
- 38 Q Certainly not firemen's outfits?
- 39 A Not that I know, no.
- 40 Q And again I'm sorry if I take up time of the
41 Commission, everybody knows about this, I don't.
42 You don't know where their office is located at
43 the airport?
- 44 A I think they were in the International building, I
45 think so, but I don't know exactly.
- 46 Q And you believe them to be skilled in first
47 response medical care?

Cst. Kwesi Millington

Cross-exam by Mr. Rosenbloom (for Government of Poland)

(cont'd)

- 1 A Yes.
- 2 Q And did you know how to contact them in the event
3 of an emergency?
- 4 A My experience is just that we call on the
5 radio for EHS.
- 6 Q You call your dispatcher.
- 7 A Yeah.
- 8 Q And you call for what again?
- 9 A EHS is the term I would use.
- 10 Q Yes. But am I not right that normally your
11 dispatcher would call out the EHS based in the
12 Richmond city and not out of the airport?
- 13 A I'm not sure.
- 14 THE COMMISSIONER: Mr. Rosenbloom, some of the things
15 you're suggesting are -- we've had quite a bit of
16 evidence on.
- 17 MR. ROSENBLROOM: I'm sorry.
- 18 MR. STEWART: Commission counsel has just asked if I
19 can clarify this.
- 20 MR. ROSENBLROOM: I'd appreciate it.
- 21 MR. STEWART: There is two member of the BC Ambulance
22 Service that are regularly at -- they are at the
23 airport every day, they're there from 5:30 in the
24 morning till 6:30 at night. So there may be some
25 confusion. There is a BC Ambulance presence at
26 the airport. They have a kiosk quite close to the
27 RCMP, I believe, in the International building, so
28 they're on a bike patrol. That's during those
29 regular shifts.
- 30 MR. ROSENBLROOM: Right.
- 31 MR. STEWART: At night the only coverage at the airport
32 is through YVR ERS and they are dispatched on a
33 Code 3. Richmond Fire is the agency that is
34 statutorily mandated to respond to every Code 3 at
35 the airport, they must come.
- 36 MR. ROSENBLROOM: Thank you.
- 37 MR. STEWART: But during the day there is BC Ambulance,
38 and so that may be the confusion. During the day
39 YVR ERS would not regularly be in the airport.
- 40 MR. ROSENBLROOM: Thank you. I very much appreciate
41 that and that speeds things up --
- 42 MR. STEWART: Okay.
- 43 MR. ROSENBLROOM: -- between the two of us.
- 44 Q We were talking about your orientation when you
45 went to the airport and you've told us about the
46 emergency services that you were aware of at the
47 airport from that orientation program. Did the

- 1 orientation program inform you of the location of
2 the defibrillators?
- 3 A Not to my knowledge, no.
- 4 Q Were you aware in October of '07 that there were
5 defibrillators located all over the terminal
6 buildings?
- 7 A I was aware that they are in the airport, and I
8 don't remember being told that, but that would be
9 an assumption that I would have, being an
10 international airport.
- 11 Q Were you informed during orientation or at any
12 time leading up to this incident where one might
13 obtain a bag and mask?
- 14 A I don't recall where exactly, but I know that it's
15 probably available, like, something that would be
16 available.
- 17 Q Okay. Now, you have informed us you passed your
18 Level 1 first aid?
- 19 A Yes.
- 20 Q You never took anything above that first level?
- 21 A I believe first Level 1 is what we're required
22 for, for the RCMP. Whatever we're required for is
23 what I have.
- 24 Q Fair enough. And you recall in that course that
25 they taught you the ABCs of rescue?
- 26 A Yes.
- 27 Q And you recall "A" for airways, "B" for breathing
28 and "C" for circulation?
- 29 A Yes.
- 30 Q I'm going to go back to that in a moment. You
31 were aware that Officer Bentley had called Code 3
32 the night in question?
- 33 A Yes.
- 34 Q And what did that conjure up in your mind that
35 your fellow officer was calling Code 3? What did
36 that mean to you?
- 37 A Well, he did it in response to Mr. Dziekanski's
38 ears turning blue, so that is an emergency call to
39 make to speed up the process. So he wanted EHS to
40 get to the airport or get to the scene a little
41 bit faster, not routine.
- 42 Q Now, you overheard the constable indicate that he
43 observed the ears turning blue. Did you make an
44 effort to also observe whether Mr. Dziekanski was
45 discoloured?
- 46 A I don't recall if I looked, no. I don't know.
- 47 Q Constable Bentley testifies that not only his ears

- 1 were blue, but that his facial skin was blue. You
2 don't recollect observing that?
- 3 A No.
- 4 Q What was, in your opinion, the significance of
5 learning that Mr. Dziekanski's ears were turning
6 blue. Why was that a bad sign for you?
- 7 A I interpreted that to mean there was some type of
8 circulation issue.
- 9 Q Yes.
- 10 A To his -- to his head, so that's what I thought
11 about it and that's why I suggested to put him
12 into the recovery position.
- 13 Q And from your first aid training, the problem was,
14 was it not, that there was a lack of oxygen in the
15 blood leading to the blue discolouration?
- 16 A It would not be a lack of oxygen in the blood, but
17 oxygenated blood getting to the head area, is what
18 I would -- I would suggest that meant.
- 19 Q We're saying the same thing, lack of oxygen to the
20 head area.
- 21 A In the blood, yes.
- 22 Q Yes. And from your training that triggered off a
23 concern about the ABCs of rescue: airways,
24 breathing, circulation?
- 25 A Mostly circulation, yes, but, yeah.
- 26 Q Well, I don't want to make this into a medical
27 inquiry, but in your training did you not believe
28 that breathing was an element in respect to the
29 lack of oxygen in the bloodstream to the head?
- 30 A Well, like I said, my primary concern was
31 circulation, but the recovery position addresses
32 all three, so...
- 33 Q Well, I'm going to suggest to you the recovery
34 position does not address all three, and I'll come
35 to that in just a moment. This blue
36 discolouration that was described to you by
37 Constable Bentley is, I believe, known as
38 cyanosis. Did you know that term?
- 39 A No, I'm not aware of the term.
- 40 Q Fair enough. You found him unconscious soon after
41 handcuffing.
- 42 A Yes.
- 43 Q And unconscious means without movement.
- 44 A Yes.
- 45 Q Some of your fellow officers have testified before
46 these proceedings under oath that there was
47 laboured breathing, that some described a snoring

Cst. Kwesi Millington

Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 sound. Did you hear any snoring?
2 A No.
3 Q One of your fellow officers described that he was
4 breathing heavily as if he had just finished a
5 marathon. Do you remember that?
6 A No.
7 Q So you didn't observe the discolouration
8 personally?
9 A No.
10 Q You didn't observe any laboured breathing?
11 A No.
12 Q You were right there.
13 A I was by the leg area, like I said.
14 Q Yes. So within five feet of the face of the
15 subject?
16 A Yes.
17 Q Did you consider that maybe it was your
18 responsibility to make your observations to assist
19 your team of fellow officers who were observing
20 this man?
21 A I felt that the observations that they made and
22 the steps they took was what needed to be done.
23 Q Well, you did conclude with the limited
24 information you had that Mr. Dziekanski was in
25 serious medical distress. Do you agree with me?
26 A Yes.
27 Q He was definitely medically compromised?
28 A Yes.
29 Q You said that you kept asking about his pulse; is
30 that correct?
31 A Yes.
32 Q And that's because you were anxious, weren't you?
33 A I wasn't anxious, I wanted to -- I wouldn't
34 describe it as anxious. EHS was called for and I
35 was periodically checking because I wanted to make
36 sure that he was okay.
37 Q You say you were periodically checking. How were
38 you periodically checking?
39 A By asking, sorry. I was asking, periodically
40 asking.
41 Q Now, you knew that EHS's response would likely
42 come out of Richmond city?
43 A Yes.
44 Q And so you knew that from Code 3 until the arrival
45 of the ambulance could easily be seven, eight, ten
46 minute spread?
47 A I don't -- didn't know how long it was going to

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 be.
- 2 Q Well, just talking out of common sense, assuming
3 the ambulance comes out of Richmond city, would
4 you agree with me that it is reasonable to expect
5 that the ambulance will not attend for eight to
6 ten minutes from call?
- 7 A Not necessarily. If they are in the north part of
8 the city, they can hop over the bridge and be
9 there in two minutes or less.
- 10 Q Thank you.
- 11 A Yeah.
- 12 Q So there's a range of time that one might expect
13 their arrival?
- 14 A Yes.
- 15 Q And during the time you were waiting for their
16 response and attendance that morning, you knew
17 that you would have to be the -- that Mr.
18 Dziekanski was on your watch and that of your
19 fellow officers throughout the period until their
20 arrival?
- 21 A He was on our watch?
- 22 Q On your watch, meaning that you and your fellow
23 officers were responsible for the delivery of
24 medical attention to this man up until the arrival
25 of the first responders?
- 26 A Yes.
- 27 Q And to that end, you testified that Corporal
28 Robinson took his pulse?
- 29 A And checked his breathing, yes.
- 30 Q Pardon me?
- 31 A And checked his breathing.
- 32 Q And checked his breathing. But you didn't see it
33 happen, did you?
- 34 A No.
- 35 Q In fact, you never saw any individual throughout
36 the time period from being handcuffed until the
37 first responders arrive ever check his pulse. Is
38 that your testimony?
- 39 A No.
- 40 Q I am correct?
- 41 A Yes, you're correct.
- 42 Q I'm going to suggest to you further, Officer, that
43 you were trained in first aid to check airways,
44 were you?
- 45 A Yes.
- 46 Q And would you agree with me, sir, that the only
47 manner in which airways can be checked is by

- 1 putting a man on his back and by placing his head
2 backwards with the jaw open to examine whether
3 there are any obstructions. Do you agree with
4 that, that being your training?
- 5 A You can check breathing -- if they're breathing
6 out, you can check it by just putting your hand in
7 front of the mouth, as well, chest elevation and
8 depression, that type of thing.
- 9 Q No, but I don't speak of breathing. I'm speaking
10 of the checking of airways, whether there are
11 obstructions or partial obstructions of the
12 airways.
- 13 A If you're checking for airways you can check it
14 that way, yes, but the fact that he's breathing
15 out would indicate that it's -- it would be clear.
- 16 Q So you were satisfied that he was breathing fine
17 so he didn't require the more extensive check of
18 airways by putting him on his back?
- 19 A Yes.
- 20 Q Having now heard the testimony given under oath by
21 your fellow officers over the last two weeks that
22 there was laboured breathing, and I described the
23 testimony that has already been given, had you
24 heard the laboured breathing that's been testified
25 to here, on that night, would you have wanted to
26 have the airways checked?
- 27 MR. HIRA: I object. The question is speculative.
- 28 MR. ROSENBLUM: Well, it's --
- 29 THE COMMISSIONER: No, it goes to an alleged duty. Go
30 ahead.
- 31 MR. ROSENBLUM: I'm sorry, Mr. Commissioner?
- 32 THE COMMISSIONER: I say it goes to an alleged duty.
- 33 MR. ROSENBLUM: Yes, thank you.
- 34 Q So my question is, faced with the observations,
35 that have been testified to in these proceedings,
36 of laboured breathing, had you made those
37 observations, would you have felt it necessary to
38 do a proper check of airways?
- 39 A I may have taken further steps, yes.
- 40 Q And what further steps might you have taken?
- 41 A I may have put him on his back, checked airways,
42 that type of thing, yeah.
- 43 Q And why don't you just demonstrate for me what you
44 would have done in terms of put him on his back
45 and then how would you have checked the throat
46 area?
- 47 A Well, actually you can do it on the side if you

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 tilt the head back. You can look down the airway
2 if they're on their side, and legs still in the
3 recovery position, as well.
- 4 Q But ideal viewing of the airway passage is with
5 the body with the back to the ground, correct, on
6 his back?
- 7 A If you can, but it can still be done on the side.
- 8 Q Yeah. But it's not ideal, is it?
- 9 A As long as you can check the airways, it's good.
- 10 Q Officer, are you suggesting that to check the
11 airways it is as equally effective to do it when a
12 man is in a recovery position as opposed to being
13 on his back?
- 14 A If you can check it, yes. Yes.
- 15 Q If you can check it.
- 16 A Like, if you achieve the goal of seeing the
17 airways, then both are equally effective.
- 18 Q In any event, you never saw that being done, did
19 you?
- 20 A No.
- 21 Q In terms of the pulse being taken, you've
22 testified that you never saw Corporal Robinson
23 take his pulse, but you believed from the corporal
24 that he was taking the pulse, correct?
- 25 A Yes.
- 26 Q Now, from your first aid training, you would agree
27 with me one does not take the pulse with gloves,
28 leather gloves on, would you?
- 29 A It's probably ideal to have it barehanded, yes,
30 for sure.
- 31 Q Yeah, for sure.
- 32 A Yeah.
- 33 Q As you observed the unfolding of these events, did
34 you observe that Corporal Robinson had his leather
35 gloves on throughout the period of time we're
36 talking about?
- 37 A I don't recall looking at his hands.
- 38 MR. ROSENBLOOM: Now, I want to direct your attention
39 to the RCMP Operational Manual in respect to what
40 it directs an officer to do when a person is
41 medically compromised after tasing. And I want
42 to put to you, and this is not an exhibit yet, and
43 I invite it to become an exhibit.
- 44 Mr. McGowan, would the Commissioner already
45 have a copy?
- 46 THE COMMISSIONER: Mr. Rosenbloom, I want to make sure
47 that this relates to the period that Corporal

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 Millington was trained, and not something that was
2 done later.
3 MR. ROSENBLOOM: Of course, thank you. And to that end
4 I will expect Ms. Roberts to intervene if the
5 document in question is not to the date of --
6 MS. ROBERTS: I haven't seen the document. I have no
7 idea what he's presenting.
8 MR. ROSENBLOOM: Well, I'm sorry, just one moment,
9 please. We believe that it is a document that was
10 disclosed by Canada, it is Operational Manual
11 under "Conducted Energy Weapon".
12 MR. HIRA: I think the one bearing the date of May or
13 August -- sorry, May 7, 2008 or August 5, 2008.
14 MR. ROSENBLOOM: We believe that this was given to
15 us --
16 THE COMMISSIONER: Just a moment.
17 MR. ROSENBLOOM: -- as the training materials during
18 the weekend.
19 THE COMMISSIONER: Just a moment. Yes.
20 MR. ROSENBLOOM: Sorry.
21 MS. ROBERTS: The PowerPoint presentation that's been
22 marked as Exhibit 54B and/or possibly Exhibit 60,
23 contains within it the policy that was in effect
24 at the time of these officers' training. It's
25 dated 2007-08-08. So if that's the same one, then
26 that would be correct. It's already marked as
27 part of this exhibit, though.
28 MR. ROSENBLOOM: And so we refer to exhibit number...?
29 MS. ROBERTS: I believe it's 54B, but I'm also
30 wondering if it's also 60. But definitely it's
31 54B.
32 MR. ROSENBLOOM: Well, 54B and possibly 60. Officer,
33 I'm going to put this document in front of you and
34 I'm going to ask you to turn to a page that
35 doesn't appear to be numbered.
36 MS. ROBERTS: If it's of assistance, in Exhibit 54B
37 there is a chart at the beginning, then there are
38 pages numbered from 1 to 8 at the bottom right.
39 And then there are pages numbered from 1 to 5 on
40 the bottom right. Then there is a three-page
41 blank Usage Report and that is followed
42 immediately by the policy Mr. Rosenbloom is
43 looking for.
44 THE COMMISSIONER: Thank you very much.
45 MR. ROSENBLOOM: So, Mr. Hira, this is what I'm putting
46 to the witness. It is from the Operational Manual
47 under the CEW.

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 Q And if you turn to a section, Officer, under
2 "Deployment aftercare".

3 A Okay.

4 Q Okay? And that is heading number 5, chapter 5 of
5 provision 5, correct?

6 A Yes.

7 Q Do you see that? And I'm going to ask you to look
8 at 5.2 and you will see that it says, and I quote:

9

10 Ensure the individual receives medical
11 attention if any unusual reactions occur or
12 if you think that he or she is in distress.

13

14 Do you see that?

15 A Yes.

16 Q And I understand this to have been the policy in
17 effect with the Force at this time?

18 A Yes.

19 Q Do you believe you discharged -- you and your
20 fellow officers discharged the responsibilities
21 under that provision?

22 A Yes.

23 Q Well, I anticipated you'd give that answer. Are
24 you suggesting, sir, that during the timeframe
25 from handcuffing until the emergency first
26 response came, that you attentively took pulse of
27 this man?

28 A I did not, but like I said, I asked Corporal
29 Robinson if he was, and he said that he was.

30 Q All right. And in terms of airways, you said no
31 one checked the airways, as you observed it?

32 A Okay, besides the breathing? Yeah.

33 Q Yes.

34 A No, I didn't observe it.

35 Q And nobody else did that you saw?

36 A I didn't see it, no.

37 Q No. And you would agree that in respect to that,
38 clearly you fell short of the policy provision I'm
39 referring, 5.2?

40 A I wasn't aware of any obstructed or laboured
41 breathing, as you referred to, so I didn't feel
42 that that needed to be done.

43 Q I see.

44 A Now, during those precious moments after you heard
45 Constable Bentley call Code 3, after you heard of
46 the discolouration of the skin, you saw YVR
47 personnel around the area, did you not?

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 A I think they were -- yeah, they were in the area,
2 for sure.
- 3 Q Yes. Did it occur to you to call out for them to
4 get the defibrillator to the body, to the person?
- 5 A No, he had a pulse and was breathing, so a
6 defibrillator's not necessary in those
7 circumstances.
- 8 Q But, Officer, the man was under medical stress.
9 You conceded that.
- 10 A Yes.
- 11 Q You will concede to me, sir, that in making that
12 observation, you're observing what you could call
13 the precursors of a serious cardiac problem,
14 correct?
- 15 A I noticed his ears were turning blue. I didn't
16 look forward to what that might have led to.
- 17 Q You did what again?
- 18 A I didn't look forward to that leading to what you
19 said.
- 20 Q Well, isn't it your training to anticipate that
21 medical situations might turn for the worse?
- 22 A That could happen, and that's why EHS was called.
- 23 Q Yes. And while you're waiting for EHS, did it
24 cross your mind to call for the closest emergency
25 response that was possible, which meant the
26 Airport Fire personnel? Did that occur to you?
- 27 A No.
- 28 Q Did it occur to you to at least assemble the
29 necessary first aid equipment in terms of oxygen
30 and a defibrillator?
- 31 A No.
- 32 Q But you knew the defibrillators were at the
33 airport.
- 34 A I'm aware they were there.
- 35 Q You -- you were aware they were around the
36 terminal.
- 37 A They were in the airport, yes.
- 38 Q Did you think it prudent to wait until a person
39 might expire before calling for this equipment to
40 be retrieved from somewhere in the airport
41 building?
- 42 A My thought was not that he was going to expire, as
43 you say. He was breathing and had a pulse, so my
44 assumption was EHS was going to arrive and be able
45 to help him.
- 46 Q But did it occur to you -- I'm sorry, officer, but
47 did it occur to you that at the point where you

- 1 made these observations until EHS did eventually
2 arrive, that there might be a crisis in management
3 with Mr. Dziekanski?
- 4 A No. They arrived fairly quickly, so --
- 5 Q No, but you wouldn't have known that.
- 6 MR. HIRA: Perhaps he could finish his answer.
- 7 MR. ROSENBLOOM: I'm sorry, go ahead.
- 8 A I was just going to say they arrived quickly and
9 they were called for Code 3. My experience has
10 been they're always there very quickly, so I had
11 no reason to believe they were going to be longer
12 and anything worse was going to happen.
- 13 Q Well, you say they arrived quickly. I believe
14 from the evidence that the timeframe between the
15 first call to EHS and their arrival is -- was
16 approximately eight minutes.
- 17 A Was that the first call, you said?
- 18 Q Yeah, from the first call for the routine response
19 to their arrival was approximately eight minutes?
- 20 A I don't know the exact time, no.
- 21 Q Well, knowing now that it was approximately eight
22 minutes, during those eight minutes were you
23 imagining that possibly things could turn very
24 negative for Mr. Dziekanski's health?
- 25 A No.
- 26 Q Why is that? I don't understand. You have
27 conceded to me that you recognized that he was
28 under medical distress, that he was medically
29 compromised, correct?
- 30 A Yes.
- 31 Q Why were you so optimistic that this situation was
32 going to be favourable to him during the period
33 between calling for the ambulance and the first
34 responders arriving approximately eight minutes
35 later?
- 36 A You mentioned that there was an eight-minute
37 timeframe. The only time when I thought he was in
38 more distress is when he went -- when his ears
39 went blue, and I was told that and it was Code 3.
40 Up until that point there was less cause for
41 concern, and we had done what we could for him.
- 42 Q Oh, but, Officer, you have testified that he --
43 you heard Constable Bentley saw his ears turn
44 green (sic) and do Code 3 shortly after
45 handcuffing, correct?
- 46 A Yes, but I don't know the exact amount of time.
- 47 Q So let us say a minute after handcuffing, all

1 right, to suggest to you approximately?
2 A I don't know how long it was.
3 Q All right. Let's -- if it was a minute, there's
4 still seven minutes to explain in terms of your
5 medical care of this patient -- of this subject
6 until the EHS arrived, correct?
7 A Yes.
8 Q And I'm wanting to establish from you whether
9 during that seven-minute period, approximately,
10 you were concerned that there might be a downturn
11 in the status of this man?
12 A No, I did not think that was going to happen.
13 Q You did not...?
14 A Think there was going to be a downturn, no.
15 Q Why were you so confident that there might not be
16 a significant downturn in this man's medical
17 condition during those moments?
18 A I believed that we did everything we were trained
19 to do, to get him on his side, get the breathing,
20 he had the pulse and was breathing, and I did not
21 feel that anything else needed to be done.
22 Q But you knew that time was of the essence with a
23 person with these symptoms of medical distress.
24 A Yes.
25 Q You had been trained in CPR that there is a
26 limited opportunity to intervene and to carry out
27 defibrillation, to carry out CPR once a person
28 goes into cardiac arrest.
29 A If -- if they go into cardiac arrest, yes.
30 Q Yes. And you, I believe, even responded to your
31 own counsel in examination in chief that you
32 believed that the time period was -- or maybe it
33 was to Mr. Kosteckyj, that you believed that the
34 timeframe was approximately four or five minutes
35 from cardiac arrest till bringing a man to
36 recovery without brain damage or death?
37 A I don't remember saying that, but that sounds
38 right. Yeah.
39 Q So knowing you had this limited timeframe of four
40 or five minutes from the moment of cardiac arrest,
41 you recognized, did you not, Officer, that once
42 Code 3 was called there was a possibility that
43 this man would have cardiac arrest, experience
44 cardiac arrest?
45 A I did not think that was going to happen.
46 Q You did not think that was a possibility?
47 A I acknowledge it was -- it's a possibility, but

Cst. Kwesi Millington

Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 I'm telling you I didn't think it was going to
2 happen.

3 Q And I'm fascinated to hear why you didn't think it
4 would happen. Was it because there was continued
5 breathing?

6 A He was in a recovery position. He was breathing
7 and had a pulse. We had taken steps after his
8 ears had turned blue and EHS was called Code 3.

9 Q Right. And in terms of the foundation for your
10 confidence at that point in time, as for breathing
11 you never saw anyone check his breathing or his
12 airways?

13 A No.

14 Q As for his pulse, you never took his pulse?

15 A No.

16 Q You never saw Corporal Robinson take his pulse?

17 A No.

18 Q You never saw anybody else take his pulse?

19 A No.

20 Q But upon the foundation of belief you've just
21 described, you were confident that there wouldn't
22 be a downturn in his condition?

23 A Yes.

24 Q And you did not feel it necessary to call for the
25 YVR interveners to bring in the defibrillator or
26 to bring in oxygen?

27 A No.

28 Q And you did not feel it necessary to place the
29 subject on his back in preparation for the arrival
30 of the first responders?

31 A No.

32 Q Officer, I'm now taking you to the same document
33 that was just referred to, the Operational Manual,
34 and I'm going to ask you to refer to another
35 section, which is above where you were looking
36 before. Yes. And I'm referring you to this
37 paragraph down here, is the page before,
38 3.2.4.1.7. Do you have that in front of you?

39 A Yes.

40 Q I'm going to ask you whether you felt you were
41 complying with RCMP directive after reading this
42 section. This section reads, and I quote:

43

44 If no EMS is present at the scene and the
45 subject suddenly becomes quiet and stops
46 resisting, EMS should be summoned and
47 preparation be made for CPR...

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

- 1 My question to you, Officer, is: was the subject
2 prepared for CPR?
- 3 A I believe so. He was ready, if needed to be -- he
4 had handcuffs on, but if needed to be he could
5 have been prepared right away.
- 6 Q Well, sorry, prepared right away, what does
7 "prepared right away" mean in the situation where
8 a man is on his stomach handcuffed? What has to
9 be done?
- 10 A He was on his side, actually, and handcuffed.
- 11 Q All right, recovery position. But the testimony
12 in these proceedings is otherwise when Fire
13 arrives, but let's put that aside. You say he was
14 in recovery position. He's handcuffed. What is
15 necessary before the man is put into a position
16 for CPR?
- 17 A He has to be on his back.
- 18 Q Pardon me?
- 19 A He would have to be on his back, yes.
- 20 Q On his back, but with his handcuffs removed,
21 right?
- 22 A Yes.
- 23 Q You don't carry out CPR with a man handcuffed
24 behind his back, do you?
- 25 A No.
- 26 Q No. That would be ridiculous, wouldn't it?
- 27 A It wouldn't be prudent, no.
- 28 Q No, fair enough. Now, I ask you, sir, having read
29 this direction from the manual, that where EMS is
30 not present, you are directed to prepare for CPR.
31 You're testifying here today that you prepped this
32 man up for CPR?
- 33 A Not in the way you're describing. There is a --
34 they are prepared that when EHS comes, if he needs
35 to be -- if CPR needs to be done, they are
36 prepared for that. That's why Corporal Robinson
37 was at his head area.
- 38 Q Sorry. So if EHS arrived, you as officers were
39 prepared for CPR. I don't understand. What did
40 you do in preparing this man for CPR?
- 41 A Like I said, he was in the recovery position and
42 his breathing and pulse was -- was being checked,
43 and so if CPR needed to be done, they were ready
44 for it, so...
- 45 Q No, no, no, I'm talking about preparation for CPR.
46 I'm not speaking about his pulse and his airways.
47 I want to know what affirmative steps you took to

Cst. Kwesi Millington

Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 prepare Mr. Dziekanski for CPR.
2 A I didn't take any steps.
3 Q Did you see anybody else take any steps?
4 A No.
5 Q And that's violation of policy, isn't it?
6 A He was actually in a recovery position, so he
7 could have been put for CPR very quickly.
8 Q Very quickly. You'd have to have the handcuffs
9 removed, yes?
10 A Yes.
11 Q Yes. And you'd have to turn him over on his back?
12 A Yes.
13 Q It all takes a matter of ten seconds, 15 seconds,
14 you agree?
15 A Not very long, no.
16 Q I see. But you didn't take any of the steps of
17 preparation in advance of first response arrival?
18 A No.
19 Q Now, let's make this situation even worse, I'm
20 going to suggest to you, Officer. I'm going to
21 suggest to you that you informed the IHIT
22 investigators that when Richmond Fire arrived the
23 handcuffs came off, correct?
24 A Yes.
25 Q Pardon me?
26 A Yes.
27 Q Yes. I'm going to suggest to you that when
28 Richmond Fire response arrived, they requested the
29 handcuffs to be removed and that you and your
30 fellow officers denied them that request. Do you
31 deny that?
32 A When Fire came, I was not part of that
33 conversation, so...
34 Q Where were you?
35 A I stopped back and let the -- well, Corporal
36 Robinson deal with the Fire.
37 Q I see. So is today the first time that you have
38 heard that Richmond Fire was denied the request to
39 have the handcuffs removed from Mr. Dziekanski?
40 A Yes.
41 Q It's the first time you've ever heard it?
42 A Yeah, I didn't hear it at the scene.
43 Q No, I know. And you're saying you have not
44 learned of this testimony until you and I are
45 speaking today?
46 A Yes.
47 Q Does it surprise you to learn that there is

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 evidence under oath that Richmond Fire was denied
2 that request?

3 A I didn't know what was spoken, so nothing would
4 surprise me, because I didn't know what took
5 place.

6 Q Well, we've gone over the manual pf the RCMP that
7 directs that an officer in circumstances such as
8 this should prepare somebody for CPR, correct?

9 A Yes.

10 Q Does it not surprise you to learn today that not
11 only did the officers not prepare the subject for
12 CPR before the arrival of the fire response team,
13 but that when the fire response team arrived they
14 requested the removal of the handcuffs and your
15 fellow officers refused to cooperate. Does that
16 surprise you today?

17 MR. HIRA: First, that's two questions rolled up into
18 one; second, it's argument, and third, what's the
19 relevance of whether this witness is surprised or
20 not?

21 THE COMMISSIONER: I think I agree with that objection.
22 I think it's time for the morning break.

23 MR. HIRA: Thank you.

24 THE REGISTRAR: The hearing will now recess for ten
25 minutes.

26
27 (WITNESS STOOD DOWN)

28
29 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
30 (PROCEEDINGS RECONVENED)

31
32 THE REGISTRAR: Order. The hearing is resumed.

33
34 CST. KWESI MILLINGTON, a
35 witness, recalled.

36
37 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF
38 GOVERNMENT OF POLAND, continuing:

39
40 Q Officer, before the break, you were testifying
41 that at the moment that Richmond Fire arrived, you
42 weren't part of the -- and did not witness their
43 arrival?

44 A I witnessed their arrival, but --

45 Q Did you witness the exchange of words that I was
46 speaking about previously?

47 A No.

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 Q Officer, in the statement that you gave to
2 Cpl. Millington --

3 A Brassington.

4 MR. HIRA: Brassington.

5 MR. ROSENBLROOM: Excuse me.

6 Q -- Cpl. Brassington on the 15th of October, if you
7 would turn to page 24 of that statement -- and if
8 you have that in front of you and if you would go
9 one-third of the way down, Cpl. Brassington said:

10

11 Okay. Um, when fire rescue arrives there, um,
12 and they start checking his vitals is ah, is
13 he still handcuffed?

14

15 Answer:

16

17 Ah, he was handcuffed right in the beginning,
18 and then they asked if we could take them
19 off. And then ah, we took them off.

20

21 Now, officer, if you did not observe this
22 happening, why were you giving this as part of
23 your statement?

24 A I said "we" took them off as in describing us as
25 officers. I know they came off, so I just said we
26 took them off, but I did not specifically -- I
27 wasn't asked and I wasn't taking them off.

28 Q Oh, I appreciate that. But clearly you are
29 reporting to the IHIT investigators here that when
30 Fire Rescue arrived, the handcuffs were taken off.
31 Why did you say that if you didn't know it?

32 A I know they took them off because I saw CPR being
33 done later, and so I told him that we took them
34 off.

35 Q I see. But in fact it was inaccurate to tell him
36 that they were taken off at the request of Fire
37 because you actually didn't see it.

38 A I didn't see them -- who asked what, but the cuffs
39 were taken off.

40 Q Well, they were taken off at a point where the
41 ambulance attendants arrived, correct?

42 A I don't know when they were taken off. I just
43 know that they were taken off.

44 Q Officer, you were one of the closest individuals
45 to the events in question. I'm going to ask you,
46 did you ever observe Cpl. Robinson with his knee
47 down on the neck of Mr. Dziekanski at the point

1 where he was being pinned down to the ground?
2 A During the event I did not see it. After watching
3 the video I can see it.
4 Q Yes. And what can you see when you look at the
5 video in that respect?
6 A I think his knee is on his back area when he's on
7 the ground.
8 Q No, I didn't say back area. I said on the neck
9 area.
10 A Well, I wasn't paying attention to what he was
11 doing. I was focusing on my own actions there --
12 Q Oh, of course.
13 A -- so --
14 Q No, no. But you were talking about now that you
15 have observed the video. You'd agree with me that
16 Cpl. Robinson's knee was pressed down on the back
17 of the neck of Mr. Dziekanski, correct?
18 A The back area, yes.
19 Q Well, no. Back area. I said the neck area. Do
20 you agree?
21 A Yes. I could probably look at the video again,
22 but yes.
23 Q And you'd agree with me further that that would be
24 contrary to your training, wouldn't it?
25 A To have his knee on the back area? I don't --
26 Q The back of the neck --
27 A The back of the neck.
28 Q -- area. Yes.
29 A Okay. I don't recall a specific section but -- of
30 training that it contravenes, no.
31 Q You don't? Would you believe it to be a prudent
32 thing to do?
33 A I don't know with regards to him, but myself, I
34 don't know that I would do that, no.
35 Q And you don't know if you'd do it because in fact
36 you wouldn't do it, would you?
37 A No.
38 Q No. And why is it that you wouldn't do it, being
39 the prudent person you are?
40 A I've gained control of people by not doing that
41 before so I don't think it would be necessary for
42 me to do it.
43 Q Yes. And you wouldn't do it because it can have
44 medical consequences, can't it?
45 A I would think so, yes.
46 Q Yes. And tell us what you believe might be the
47 medical consequences of doing just that, placing

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 the knee down on the back of the neck.
2 A If that was to happen, someone could have neck
3 injuries for sure.
4 Q Yes. And it could affect their breathing?
5 A It may.
6 Q Yes. But you didn't see that happening at the
7 time?
8 A No.
9 Q Mr. Enchelmaier. Do you know him?
10 A I believe he's the man in the black suit that's in
11 the video, yeah.
12 Q Yes.
13 A And I think I know him.
14 Q You think you --
15 A It's been a while since I've been at YVR, but the
16 name I know and I'm pretty sure I know him.
17 Q Right. And you know him as head of security for
18 YVR?
19 A Yes, I believe that's his job.
20 Q Through a contract with a private company,
21 Securiguard?
22 A Okay. I don't know those details, but --
23 Q All right.
24 A -- okay.
25 Q Right. And during your work out at the airport
26 detail for over a year, you had the opportunity of
27 socializing with Mr. Enchelmaier?
28 A I've spoken to him before.
29 Q Well, not just speaking to him. You've had
30 opportunities of socializing with him?
31 A What do you mean by socializing?
32 Q Okay, good point. Having lunch or supper with him
33 during shifts?
34 A I don't know if I ever had lunch with him.
35 Q Do you recall ever being with him in a social
36 situation?
37 A No.
38 Q Did you know him by his first name, Trevor?
39 A I don't know if I ever called him that or if I
40 just said hi in passing when we passed at the
41 airport, but -- I don't know if I greeted him by
42 his first name or not.
43 Q Can you tell us whether you know of Cpl.
44 Robinson's relationship with Mr. Enchelmaier?
45 A I would say it's the same as mine, just a
46 professional, but I don't know.
47 Q You did not know of Cpl. Robinson having any

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 closer relationship with Mr. Enchelmaier than you
2 have reported was your relationship with him?

3 A No.

4 Q In a situation where a person is in medical
5 distress as you described it, with Mr. Dziekanski
6 on that night, how often do you believe that it's
7 appropriate to have the pulse taken? How
8 frequently?

9 A I would say every -- every few seconds. Maybe 20
10 seconds, 30 seconds. Every few seconds.

11 Q Thank you. Officer, having concluded the main
12 area of my examination of you, having taken you
13 through the periods in question, the four time
14 periods that we have been discussing over the last
15 two days, I want to make some suggestions to you
16 and I'm going to invite you to agree with me.

17 Firstly, I want to summarize what I believe
18 is the evidence that you have recanted in terms of
19 some of the critical elements of the events of the
20 14th of October. And I believe these critical
21 events were events that you believe justified your
22 actions on the night in question in terms of the
23 application of the Taser.

24 I'm going to suggest to you, sir, that you
25 now recognize that Mr. Dziekanski was calm when
26 you had your conversations with him at the
27 luggage. You agree with that, don't you?

28 A No. I mentioned that he was agitated.

29 Q Yes. But you also mentioned that he was not
30 moving around in an erratic way. He was not
31 hyperactive?

32 A Not hyperactive, no.

33 Q Furthermore, you have now recognized that he was
34 ordered by Cpl. Robinson to head over to the
35 counter?

36 A He was pointed that way, through the video.

37 Q That's an order, isn't it?

38 A Yes.

39 Q You further recognize that at the point where you
40 deployed the Taser, that the closest officer was
41 at least six or eight feet away from him?

42 A Maybe less, but at least five or six feet.

43 Q You further now recognize that the Taser was never
44 swung in a wild fashion at any of your officers?

45 MR. HIRA: I would hope the Taser wasn't swung in a
46 wild fashion. The stapler is what my friend
47 means.

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 MR. ROSENBLROOM: Excuse me. It's getting --

2 A Yes.

3 Q I'm sorry. You -- let me say it again, please.

4 A Okay.

5 THE COMMISSIONER: You have to listen to what he means.

6 MR. HIRA: Thank you, Mr. Commissioner.

7 MR. ROSENBLROOM:

8 Q You would agree further that it's now your
9 testimony that the stapler was never swung in a
10 wild fashion?

11 A Yes.

12 Q You further concede, do you not, that the stapler
13 was never above his shoulders in a threatening
14 manner?

15 A He had it in a threatening manner, in my opinion,
16 but it was not above his shoulder, no.

17 Q You further have conceded that before the
18 completion of the first six-second cycle of
19 deployment that Mr. Dziekanski was already on the
20 ground?

21 A Yes.

22 Q You have further conceded that once on the ground,
23 Mr. Dziekanski was no longer in possession of the
24 stapler?

25 A No.

26 Q And you further have testified that once on the
27 ground that there were three officers on him at
28 that time, before you deployed the Taser a third,
29 fourth and fifth time?

30 A They weren't on him. They were attempting to gain
31 control of him.

32 Q But they were above him?

33 A They were attempting to gain control of him.

34 Q Officer, faced with these acknowledgements that
35 you have provided to us, offered to us in your
36 testimony yesterday and today, will you now do the
37 right thing and acknowledge that you and your
38 fellow officers made some terrible and critical
39 mistakes that evening that fell far short of
40 prudent conduct in your handling of the incident?

41 MR. HIRA: My friend can ask the last part of the
42 question. The first part is argument. He can
43 ask, would you concede that you failed to do the
44 prudent thing. He should not be saying, would you
45 now do the right thing.

46 MR. ROSENBLROOM:

47 Q Will you now concede that you did not do the right

Cst. Kwesi Millington

Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 thing and did you not carry out your duties in a
2 prudent fashion?

3 A I believe we acted in according to our training
4 and we did act in a prudent fashion. Like I've
5 said before, I never intended the results.

6 Q But doesn't Mr. Dziekanski deserve a posthumous
7 apology from you in light of the new disclosures?

8 THE COMMISSIONER: I don't think that's an appropriate
9 question.

10 MR. ROSENBLROOM:

11 Q Finally, my last area of examination, officer. I
12 was wondering if you can help me out with
13 something that I find quite troubling. You are
14 trained to be observant and to record incidents
15 with care, correct?

16 A Yes.

17 Q A couple of nights ago I started to prepare a
18 chart for myself in preparation for final
19 submission before the Commission. Of the areas
20 where there are obvious misrepresentations made by
21 you and your fellow officers to the investigators
22 -- and you and I may disagree on a few of these
23 areas, but a lot of them, you will concede, were
24 misrepresentations about the wrestling and
25 bringing him down, about the tasing on the
26 second deployment when he was still up and so on.
27 I charted the areas that I will be arguing are
28 misrepresentations given to investigators by the
29 four officers. And what became evident in my
30 review of this was the consistency in the
31 reporting of these errors by all four of you
32 officers. Now, my question to you is this. I'm
33 curious. Having found these misrepresentations in
34 almost all four officers, in their notes, in their
35 statements to the IHIT investigators, I'm going to
36 tell you now that I intend to draw --

37 MR. HARRIS: I'm going to object. My friend needs to
38 be factually correct. I don't believe he can
39 point to anything in Cpl. Robinson's notes that's
40 similar to the errors that he's highlighted with
41 respect to the other officers' statements, and
42 it's wrong to group Cpl. Robinson's notes --

43 THE COMMISSIONER: I agree with you.

44 MR. HARRIS: Thank you.

45 MR. ROSENBLROOM:

46 Q Appreciating that there are a number of areas of
47 erroneous fact found in the notes and statements

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 of your fellow officers, my question to you is
2 this. Can you explain to me what is the
3 explanation why such a situation would arise with
4 four officers who are trained to be observant
5 about the events of any incident?

6 MR. HIRA: This type of question is impermissible.

7 THE COMMISSIONER: Well, I don't agree with you it's
8 impermissible in terms of what's attempting to be
9 done, but I do think that it isn't being done
10 right. I'm sorry to have to say that, Mr.
11 Rosenbloom.

12 MR. ROSENBLROOM:

13 Q Officer, can you explain to me why you and some of
14 your fellow officers made misrepresentations to
15 IHIT after this investigation, why these
16 misrepresentations were made by more than one of
17 you when in fact you're all trained to be
18 observant about events?

19 MR. HIRA: There are two questions there. The first
20 question, which hasn't been asked, is whether or
21 not these are misrepresentations. After that I
22 may have an objection, if he does ask that
23 question, to the manner in which he's worded the
24 second question.

25 MR. ROSENBLROOM:

26 Q Officer --

27 THE COMMISSIONER: Mr. Rosenbloom, aren't you trying to
28 say why is there a similarity in mistakes amongst
29 three of you?

30 MR. ROSENBLROOM: Why is there --

31 THE COMMISSIONER: -- similar mistakes made by three of
32 you.

33 MR. ROSENBLROOM: Yes, I am.

34 THE COMMISSIONER: All right.

35 MR. ROSENBLROOM: And I will put it in exactly that
36 fashion.

37 Q Why is there similar mistakes made by you and your
38 fellow officers in respect to this incident?

39 A I don't know. We dealt with the same incident but
40 I don't know why.

41 Q For example, when it comes to being wrestled to
42 the ground, can you explain why three of the
43 officers, you included, report that there was a
44 wrestling to the ground?

45 MR. HIRA: Mr. Commissioner, I hesitate to rise, but he
46 can testify as to why he says that and address
47 that. To ask the witness to testify as to why the

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Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

Cross-exam by Ms. Pastine (for B.C. Civil Liberties
Assn.)

1 other officers say that is, in my respectful
2 submission, impermissible. It's like asking, you
3 know --

4 THE COMMISSIONER: I know your point. Mr. Rosenbloom,
5 I think you could be more direct. Why don't you
6 ask what you mean? You're asking whether or not
7 they got together and faked it or something.

8 MR. ROSENBLROOM: I was --

9 THE COMMISSIONER: Why don't you come out and ask the
10 question?

11 MR. ROSENBLROOM:

12 Q Indeed, I was about to come to that but I first
13 was offering the officer an explanation as to what
14 -- how you explain it.

15 A I explain what I perceived at the time.

16 Q Well, I'm going to suggest to you, officer, that
17 one is forced to another conclusion. Contrary to
18 what you have told us, that you never discussed
19 this matter with any of your fellow officers from
20 the date of the incident until now, you and your
21 fellow officers collaborated to fabricate your
22 story in the expectation that it would justify
23 your conduct to your superiors. Do you deny that?

24 A Yes. We never did that.

25 Q I'm going to further suggest to you that you were
26 fast at work at the scene of the incident cooking
27 up your story and that you continued your
28 collaboration back at the detachment office. Do
29 you deny that?

30 A Yes. That never happened.

31 Q I'll be even less charitable with you, officer. I
32 am suggesting that you and your fellow officers
33 intentionally misled the IHIT investigators and
34 you continue to lie under oath at this Commission.
35 Do you deny that?

36 A Yes. That didn't happen.

37 MR. ROSENBLROOM: I have no further questions.

38 MR. HIRA: I have some re-examination. I guess I'm a
39 little early.

40 THE COMMISSIONER: Yes, come on forward.

41 MS. PASTINE: Constable, I'm Grace Pastine. I
42 represent the BC Civil Liberties Association.

43

44 CROSS-EXAMINATION BY MS. PASTINE ON BEHALF OF THE B.C.
45 CIVIL LIBERTIES ASSOCIATION:

46

47 Q I have two areas of questioning for you. The

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1 first area concerns your communication with Mr.
2 Dziekanski and the second area concerns your
3 training in excited delirium that you received
4 during your Taser training.

5 You've stated here at this inquiry that your
6 primary goal when you encountered Mr. Dziekanski
7 was to communicate with him.

8 A Yes.

9 Q And you agreed in response to questioning from
10 counsel that you're trained to use force as a last
11 resort.

12 A Yes.

13 Q You also agreed under questioning that persuasion
14 and warnings are preferable to using force.

15 A Yes.

16 Q And so I take it you'd also agree that when
17 possible an officer should try to communicate with
18 an individual before using force?

19 A Yes.

20 Q In fact, it's your duty to attempt to do that?

21 A Yes.

22 Q And when you approached the secure area at the
23 airport, you understood that Mr. Dziekanski didn't
24 speak English?

25 A Yes.

26 Q Based on your general experience as a police
27 officer, if a person doesn't speak English, does
28 it generally take longer to communicate with that
29 person?

30 A I've had some instances where it took longer but
31 by using simple words I've been able to
32 communicate very quickly as well.

33 Q But in general, would you say that if a person
34 didn't speak English, it would tend to take longer
35 to communicate with them than if they did speak
36 English?

37 A It may.

38 Q So you would go into a situation when you were
39 speaking, trying to communicate with a non-English
40 speaker, with the expectation that you might need
41 to take a bit more time?

42 A Like I said, I've dealt with some people that
43 didn't speak English very quickly, so I don't have
44 preconceived notions. I know that both ways are
45 possible.

46 Q Now, you've stated that you attempted to
47 communicate with Mr. Dziekanski.

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1 A Yes.

2 Q And you asked him for his passport and
3 identification.

4 A Yes.

5 Q And you used a simple gesture. You mimed a
6 gesture on your hand; is that correct?

7 A Yes.

8 Q So you asked him for his passport and ID and you
9 mimed a gesture on your hand. That was the extent
10 of your attempt to communicate with Mr.
11 Dziekanski?

12 A I also, like I said, when I got into the airport,
13 he appeared agitated so I put my hands up to get
14 him to calm down as well.

15 Q All right. So you asked for his passport and ID,
16 you mimed something on your hand, and you motioned
17 with your hands for him to calm down?

18 A Yes.

19 Q And those were the total of your attempts to
20 communicate with Mr. Dziekanski?

21 A Yes.

22 Q Constable, I'm going to ask you to watch a small
23 portion of the video and identify for the
24 Commissioner the parts of the video where you are
25 attempting to communicate with Mr. Dziekanski.

26 A Okay.

27 MS. PASTINE: So Mr. Lunn, if we could please have
28 video 2, and I think cue it to about three
29 minutes, 27 seconds or just before that.

30 MS. PASTINE:

31 Q So constable, we're at the point in the video just
32 before you enter beside Mr. Dziekanski. I'm going
33 to ask that we play the video and that when you
34 believe you are beginning to start communicating
35 with Mr. Dziekanski, that you ask that the video
36 be stopped.

37

38 (VIDEO BEING PLAYED)

39

40 A It's right here. Right after this I'm beginning
41 to communicate with him.

42 Q Right here or right after this?

43 A Maybe play it a second or two longer. Yeah, I
44 believe -- I can't hear the sound but I believe I
45 greeted him there. I --

46 Q Would it --

47 A -- just to say hello or something like that and

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1 then that's when I started the communication.

2 Q Would it assist you if we played the sound?

3 A No. I know that's the point.

4 Q This is the point?

5 A Yeah.

6 MS. PASTINE: Mr. Lunn, could you please tell the time
7 reading.

8 MR. LUNN: (Indiscernible)

9 THE COMMISSIONER: Louder.

10 MR. LUNN: 3:31.

11 MS. PASTINE:

12 Q Now, I'm going to ask that the video continue to
13 be played and ask that you have the video stopped
14 where you cease communicating with Mr. Dziekanski.
15 And if you want to run through it once and then we
16 can rewind and go through it again, that's fine.

17 A Okay. It's there, when he turns away, that we're
18 not communicating -- I'm not communicating with
19 him any more.

20 Q So is it at the moment when he starts to turn away
21 that you're no longer communicating with him?

22 A Yes.

23 MS. PASTINE: Could we please rewind the video to the
24 point where Mr. Dziekanski starts to turn away.
25 That's fine. And what's the time reading there,
26 please?

27 MR. LUNN: 3:41.

28 MS. PASTINE:

29 Q So the time reading there is 3:41.

30 A Yeah.

31 Q So it's your evidence that you started
32 communicating with him at 3:31 and you ceased
33 communicating with him at 3:41?

34 A Yes.

35 Q So you attempted to communicate with Mr.
36 Dziekanski for ten seconds?

37 A I would have attempted longer but he turned away
38 at that point.

39 Q But I'm asking what you actually did. And so you
40 attempted to communicate with Mr. Dziekanski for
41 ten seconds?

42 A Yes.

43 Q Now, when I've reviewed this video, I've noted
44 that you deployed the first of your five Taser
45 deployments at three minutes and 49 seconds. Do
46 you accept that or would you like to review the
47 video to see where that is?

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1 A It was 3:49 or 3:50, yeah. Yeah, that sounds
2 about right.

3 Q So then after communicating with Mr. Dziekanski
4 for ten seconds, nine seconds later you deployed
5 your Taser?

6 A Yes.

7 Q I've also noted in reviewing the video that
8 between the time you first arrived by Mr.
9 Dziekanski and the time of the first deployment of
10 your Taser was 22 seconds. Do you accept that?

11 A Yes.

12 Q So we see that there were 22 seconds from the time
13 of your arrival to the time of your first Taser
14 deployment and only ten of those seconds were
15 spent communicating with Mr. Dziekanski?

16 A Yes.

17

18 (VIDEO STOPPED)

19

20 MS. PASTINE:

21 Q Now, the second area I'd like to ask you about is
22 your training involving the use of a Taser and
23 excited delirium.

24 MS. PASTINE: And at the outset I think it makes sense
25 to straighten out whether this has been entered as
26 an exhibit, some of the training materials I
27 propose to the witness. And if they haven't,
28 perhaps they should be.

29 MR. VERTLIEB: Well, perhaps since counsel has
30 addressed it, there are some housekeeping issues
31 around the Operational Manual and we may as well
32 clarify them now.

33 THE COMMISSIONER: Yes.

34 MR. VERTLIEB: What the Commissioner has received
35 earlier is what I understand from Ms. Roberts to
36 be a full copy of the entire Operational Manual as
37 it would relate to all of the issues that have
38 been canvassed before you. And I've checked with
39 Mr. Giles and looked at it with Ms. Roberts, and
40 it would appear that what he has and what was made
41 available to you, Mr. Commissioner, would be a
42 copy of the full Operational Manual.

43 My sense is, because some of this material
44 has been coming in through the last number of
45 days, there might be some pieces of this that have
46 been put before you at different stages. So
47 perhaps the easiest thing to do would be to simply

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1 mark the entire Operational Manual that has been
2 referenced a number of times by different counsel
3 as a new exhibit, and it may make some of the
4 earlier markings redundant. So my suggestion
5 would be that Mr. Giles, who has a copy of the
6 entire material -- and I'm assured by Ms. Roberts
7 that that's what we're dealing with -- could now
8 be marked as the next exhibit and then Ms. Pastine
9 can refer to any portions of that.

10 THE COMMISSIONER: What are we at, Mr. Giles?

11 THE REGISTRAR: That would be Exhibit Number 63.

12 THE COMMISSIONER: Okay. It will be Exhibit 63.

13

14 EXHIBIT 63: Copy - Operational Manual

15

16 MS. PASTINE: Now, Mr. Vertlieb --

17 MR. VERTLIEB: Just before we proceed, Ms. Roberts,
18 have I clearly stated what we have accomplished in
19 our off-the-record discussion during the break?

20 MS. ROBERTS: Yes. In my attempt to assist earlier, I
21 ended up misleading everyone. It had not
22 previously been marked. What's being marked now
23 are the chapters from the Operational Manual that
24 relate to subjects that are in issue here as at
25 October 2007.

26 THE COMMISSIONER: All right. Thank you very much, Ms.
27 Roberts. I'm most obliged for that.

28 MS. PASTINE: In fact, the material that I was hoping
29 to refer to was material that I think may be
30 different than the Operational Manual. It was
31 material that was disclosed by Canada that was the
32 Taser training materials that were purported to
33 have been presented to the constables in 2007.

34 THE COMMISSIONER: Is that Exhibit 61?

35 MS. PASTINE: No. My understanding is that Exhibit 61
36 are the materials that Cst. Millington produced to
37 the Commission, but those materials, upon my
38 review, appear to be different than the materials
39 that Ms. Roberts disclosed to us earlier over the
40 weekend.

41 THE COMMISSIONER: Well, what have you got?

42 MS. PASTINE: I have a binder with six different tabs
43 and attachments that -- my understanding that that
44 was the material that was being used as training
45 material in 2007.

46 THE COMMISSIONER: Well, proceed. Do what you want to
47 do. Let us know. I don't know where you're at.

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1 MS. PASTINE: My question was just -- I think there is
2 a bit of confusion of whether that had already
3 been marked as an exhibit or not, but I take it
4 that it has not.
5 THE COMMISSIONER: I don't know of it.
6 MS. PASTINE: I'll proceed. Thank you.
7 Q Now, constable, you testified yesterday that
8 Tasers are an effective tool for -- or that you've
9 been trained that Tasers are an effective tool for
10 dealing with people that are exhibiting signs of
11 excited delirium.
12 A Yes.
13 Q And based on your training, you understand that an
14 individual that's exhibiting excited delirium
15 should be restrained -- they should be Tasered and
16 then they should be restrained. That's an
17 appropriate way to respond to the condition?
18 A They -- it says that before medical treatment can
19 be given, there has to be restraint. A Taser is
20 an option for that restraint.
21 Q Now, are you aware from your training that
22 restraining an individual that is exhibiting signs
23 of excited delirium is associated with a risk of
24 sudden and unexpected death of that individual?
25 A Say it again.
26 Q Did your training teach you that restraining an
27 individual that is exhibiting signs of excited
28 delirium puts that individual at risk of sudden
29 and unexpected death?
30 A I don't recall that but it might be in there.
31 I don't know.
32 Q Constable, I'm going to refer you to some
33 materials that were disclosed to us that I
34 understand were part of the Taser training
35 materials in 2007. I didn't see these materials
36 in the materials you disclosed to us earlier at
37 this inquiry.
38 A Okay.
39 Q But I'm going to show it to you and ask you if
40 it's familiar to you.
41 A Okay.
42 Q You'll see that the first slide of these materials
43 is entitled "Excited Delirium and Restraint" and
44 this is the title slide. It says "CEW User
45 Course." Do you see that, constable?
46 A I can see it, yeah.
47 Q Perhaps just take a moment to quickly review these

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1 and tell the Commission whether or not you recall
2 being presented with these materials during your
3 training.
4 A Some of the slides look familiar from my
5 materials, but I don't recall any materials -- any
6 slides that I don't see in my materials that were
7 here. So there are more slides here than there
8 were in my materials.
9 Q That's what I gathered also from reviewing your
10 materials.
11 A Okay.
12 Q So I'd just like then to direct your attention to
13 the second slide on the first page.
14 THE COMMISSIONER: Let's be clear now. I don't want to
15 get off track on this excited delirium problem.
16 It's important that the officer have some
17 knowledge of this, and he can really only speak to
18 what he is taught.
19 MS. PASTINE: Absolutely. And the purpose of my
20 questions, Mr. Commissioner, was just to identify
21 what he had or had not been taught.
22 THE COMMISSIONER: All right. Thank you.
23 MS. PASTINE:
24 Q You'll see, then, on the second slide here that it
25 notes that excited delirium followed by restraint
26 is associated with a risk of sudden unexpected
27 death. Do you see that?
28 A Where are you reading that from? Sorry.
29 THE COMMISSIONER: It's the second slide and the second
30 line in the second slide.
31 A Okay. It wasn't read exactly. Okay [as read]:
32
33 Sudden and unexpected death proximal to
34 restraint is not a rare occurrence.
35
36 Is that what you're referring to?
37 MS. PASTINE:
38 Q Yes.
39 A Okay.
40 Q Do you recall being trained in that?
41 A I don't recall that, no.
42 Q I'm going to ask that you turn to page 5 of those
43 materials, the second slide.
44 A Okay. "Death following ED state." I haven't seen
45 that slide before, no.
46 Q And do you recall being trained that death
47 following an excited delirium state usually occurs

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1 following struggle and restraint?

2 A No. As I said, I didn't see -- I haven't seen
3 this before.

4 Q You haven't seen this before and you don't recall
5 being trained that that was the case?

6 A No.

7 Q I'm just going to refer you to one other portion
8 of these materials at page 9, second slide. That
9 slide is titled "Excited Delirium" and the second
10 line reads [as read]:

11
12 Prolonged struggle represents increased
13 risks.

14
15 Do you recall being trained that a prolonged
16 struggle represents increased risks for the
17 individual?

18 A No.

19 Q You testified that in the night in question it
20 occurred to you that Mr. Dziekanski might be
21 exhibiting signs of excited delirium?

22 A Yes, when we first approached him.

23 Q And you observed that there was a struggle and
24 that struggle was followed by restraint?

25 A Yes.

26 Q At that time did you consider that Mr. Dziekanski
27 might be at an increased risk of death?

28 A I did not think that, no. I didn't think he was
29 going to die, no.

30 Q But did you think that the fact that he was
31 displaying signs of excited delirium, there was
32 struggle and restraint, might place Mr. Dziekanski
33 at an increased risk of death? Did that occur to
34 you?

35 A No. Not at the time, no.

36 Q Had you been aware that Mr. Dziekanski might be at
37 increased risk of death --

38 THE COMMISSIONER: No, no, counsel.

39 MS. PASTINE: All right.

40 Q So just to clarify, these are materials that you
41 do not recall being presented with?

42 A No.

43 MS. PASTINE: I would ask that these be marked as --

44 THE COMMISSIONER: No, I'm afraid not.

45 MS. PASTINE: Perhaps for identification. Would that
46 be appropriate?

47 THE COMMISSIONER: To what end?

Cst. Kwesi Millington

Cross-exam by Mr. Hira (for Cst. Millington)(cont'd)

1 MS. PASTINE: Well --

2 THE COMMISSIONER: It's not opinion evidence. The
3 officer doesn't know anything about it. What
4 point is it?

5 MS. PASTINE: I suppose perhaps the more appropriate
6 point to have these materials entered would be
7 when another witness comes and can testify to the
8 fact that these were materials that were at some
9 point given.

10 THE COMMISSIONER: All right. Thank you.

11 MS. PASTINE: Thank you.

12 MR. HIRA: Mr. Commissioner, I have some
13 re-examination. It's going to take a few minutes.
14 I note the time. I may be sharper and quicker if
15 we break early. But I'm happy to soldier on.

16 THE COMMISSIONER: I heard you say a few minutes, so
17 I'm sure we'd all be happy to sit a little while
18 into lunch.

19 MR. HIRA: I don't know whether my friend Mr. Vertlieb
20 has questions after that, because if he doesn't,
21 then I will be happy to do so. But if we're
22 looking at sitting into the afternoon for some
23 time -- I mean, I would like this witness finished
24 sooner rather than later.

25 THE COMMISSIONER: Yes.

26 MR. HIRA: If he doesn't have many questions --

27 THE COMMISSIONER: Any comment, Mr. Vertlieb?

28 MR. VERTLIEB: Mr. Hira said he's not going to be very
29 long. I have some re-exam but it won't be long,
30 and I think it would be better for all of us if we
31 can press on and see if we can finish.

32 THE COMMISSIONER: That's fine.

33 MR. HIRA: That's great. If that's the situation,
34 let's do it.

35

36 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CST. KWESI
37 MILLINGTON, continuing:

38

39 Q Now, you've given evidence as to what is in your
40 tool belt or what is an officer's tool belt,
41 correct?

42 A Yes.

43 Q And you were cross-examined by Mr. Rosenbloom
44 about whether or not Mr. Dziekanski was
45 overpowering the officers, the three officers,
46 while he was on the ground and they were
47 attempting to gain control of him. Do you recall

1 being cross-examined to that effect?

2 A Yes.

3 Q What training have you received regarding gaining
4 control of a suspect on the ground with officers
5 trying to gain control of him, wrestling with him?

6 A We're trained that any subject that needs to be
7 controlled should be done as quickly as possible
8 to make sure that we have control of the
9 situation.

10 Q Why is that?

11 A We want to gain control, minimize injury to the
12 officers and the subject that's being controlled.

13 Q Have you received any training or been involved in
14 any scenarios involved in gaining control of a
15 subject with reference to the tools that are on
16 the officer's tool belt and the subject being able
17 to gain some of those tools?

18 A The subject being able to gain tools?

19 Q Have you received any training or been involved in
20 any scenarios regarding gaining control of a
21 subject, an officer wrestling to gain control, and
22 the subject getting one or more of the tools in
23 the process?

24 A We've done training to that end when we were at
25 Depot, and it necessitates the need for a faster
26 gain of control than of the subject because if
27 they're reaching for one of our tools, our safety
28 is jeopardized even more so. So we want to gain
29 control even faster.

30 Q Were any of these matters operating in your mind
31 while Mr. Dziekanski was on the ground and the
32 officers were trying to gain control?

33 A We're always mindful of the fact that someone may
34 go for our tools. With regards to when he was on
35 the ground, he was still fighting and struggling
36 with us. So my goal was to try to get him under
37 control as quickly as possible involving, like I
38 said, the least amount of injury to the officers
39 or the -- the man.

40 Q Now, you were also cross-examined by Mr.
41 Rosenbloom regarding Exhibit 56, your October 15
42 statement, at page 22, regarding when he turned
43 blue in relationship to being handcuffed. Do you
44 recall being cross-examined to that effect?

45 A Yes.

46 Q I'd like you to turn to page 21 of your statement
47 and read to yourself the entirety of that page.

- 1 Don't read it into the record. Just read it to
2 yourself and take your time.
- 3 A Okay.
- 4 Q Is that your recollection of what happened at the
5 time of handcuffing?
- 6 A Yes.
- 7 Q And in terms of turning blue, how long after
8 handcuffing do you recall him turning blue?
- 9 A A couple of minutes after.
- 10 Q Thank you. Now, you were cross-examined by Mr.
11 Rosenbloom yesterday regarding not broadcasting by
12 the Richmond radio system that the Mr. Dziekanski
13 was turning blue, that is, not updating EHS. Do
14 you recall being cross-examined to that effect?
- 15 A That I didn't do it myself?
- 16 Q Yes.
- 17 A Yes.
- 18 Q The Richmond radio system, you said, connects
19 Richmond and the UBC detachments; is that correct?
- 20 A Yes.
- 21 Q So what happens when an officer makes a radio
22 call? Could you explain to the Commissioner?
- 23 A What happens is the button is depressed and as
24 long as that's the case, the officer speaking is
25 the only one that can use that entire broadcast
26 line, so if I'm speaking on the radio, no one else
27 can use it in the city, either Richmond or UBC
28 area.
- 29 Q So do you receive any training as to how often you
30 make radio calls or make updates of information?
- 31 A Just keep it short because someone else may need
32 to use it, especially if there's something else
33 going on in the city.
- 34 Q So why didn't you, when you noticed him turning
35 blue, radio that in to EHS?
- 36 A Bill -- sorry. Cst. Bentley had done that already
37 and I didn't want to tie up the lines saying the
38 same thing again.
- 39 Q Now, you were also cross-examined by Mr.
40 Rosenbloom late this morning, just before the
41 break, regarding policy 3.2.4.1.7. You were
42 cross-examined as to why you had failed to put him
43 into recovery position -- sorry -- why you had
44 failed to prepare him for CPR. Do you recall
45 being cross-examined on that?
- 46 A Yes.
- 47 Q Could you tell the Commissioner what section this

1 entire policy falls under?
2 A It's under the excited delirium section.
3 Q Thank you. And you were cross-examined about
4 getting a person under control and the CEW being
5 an effective tool to do so.
6 MR. KOSTECKYJ: With respect, I rise because I notice
7 that Mr. Hira is using a document and the witness
8 ought to be directed to an exhibit as opposed to a
9 document which may be highlighted or other way
10 draw attention to itself.
11 MR. HIRA: That's fine. I don't know whether this is
12 an exhibit or not because I've frankly lost --
13 THE REGISTRAR: Exhibit 63.
14 MR. HIRA: Great. Why don't we give him Exhibit 63 and
15 tell him to turn to section 3.2.
16 Q Could you read to the Commissioner item 3.2.3.
17 Sorry, 3.2.2 first.
18 A I don't know what page -- what page are we talking
19 about?
20 Q It's under the CEW section.
21 MR. HIRA: And I notice that the exhibit is actually
22 highlighted -- not by me, Mr. Kosteckyj.
23 A What section do you want me to read?
24 Q 3.2.2.
25 A
26 Individuals experiencing excited delirium
27 require medical treatment which first
28 requires that they be restrained.
29
30 Q And is that something that you were trained to do?
31 A Yes.
32 Q And the next policy --
33 THE COMMISSIONER: Counsel, I hesitate to interrupt.
34 But as I understand the evidence of this witness,
35 he was never thinking in terms of excited
36 delirium.
37 MR. HIRA: You're right, Mr. Commissioner.
38 THE COMMISSIONER: So --
39 MR. HIRA: That is a tangent that I won't explore
40 further.
41 Q Now, you were cross-examined by Ms. Pastine about
42 your attempts to communicate with Mr. Dziekanski.
43 Do you recall that in the last few moments?
44 A Yes.
45 Q Did you want to communicate longer?
46 A Yes, but at the time, like I said, he moved away
47 and ended the communication.

Cst. Kwesi Millington

Cross-exam by Mr. Hira (for Cst. Millington)(cont'd)

Re-exam by Mr. Vertlieb

1 Q You were also cross-examined by my friend Mr.
2 Rosenbloom with regards to the holding of a pen or
3 throwing of a pen from this position. Are you
4 able to throw a pen from the position that Mr.
5 Dziekanski had the stapler?

6 A Absolutely.

7 Q Do you want to demonstrate that?

8 THE COMMISSIONER: No, not particularly.

9 MR. HIRA: That's fine. Nor do I want him to
10 demonstrate the throwing of a stapler. I just
11 wanted to address a point in cross-examination.

12 Q Now, lastly, sir, can you tell us, tell the
13 Commissioner how the stapler could be used as a
14 weapon in the circumstances that confronted you
15 just before --

16 THE COMMISSIONER: I don't think this is re-
17 examination.

18 MR. HIRA: Very well. I think I've been shut down.

19 THE COMMISSIONER: All right.

20 MR. HIRA: Those are my questions and hopefully Mr.
21 Vertlieb can be just as brief.

22 MR. VERTLIEB: Mr. Giles, can you give the officer
23 Exhibit 54B.

24

25 RE-EXAMINATION BY MR. VERTLIEB:

26

27 Q While Mr. Giles is getting it, that is what we now
28 know to be the Form 3996 that Ms. Roberts for the
29 Government of Canada gave to all of us during the
30 time you were in the witness box. At some point
31 when I was questioning you with a different
32 looking form, there was a suggestion -- and I
33 can't recall who, perhaps from your own lawyer,
34 perhaps from someone else -- that in some way the
35 words there did not represent your own words. I
36 just want to make sure we are clear. 54B has been
37 put to you, and we're told by the Government of
38 Canada counsel that that is the actual Form 3996.
39 Do you agree, sir?

40 A Yes.

41 Q And the words there that are on that document
42 describing the event are your words?

43 A Yes.

44 Q Thank you. Now, second area. You were talking to
45 the Commissioner about using stuns in some way and
46 talking about empty hand control. Now, I just
47 want to be sure we're talking about Taser stuns

1 and not some other type of stun. Is it your
2 evidence that you are trained that a conducted
3 energy weapon, when used in the stun push mode, is
4 the same as an empty hand control device?
5 A Yes, it falls under the stuns under empty hand
6 control.
7 Q So you're saying the conducted energy weapon, when
8 used in the stun push mode, is no longer an
9 intermediate weapon?
10 A Yeah. It falls under stuns.
11 Q No, no, hold on. There's intermediate weapon.
12 We've talked about that and --
13 A Yeah.
14 Q -- others have gone through it with you -- baton,
15 pepper spray, et cetera.
16 A Yeah.
17 Q Empty hand stun, we understand what that means.
18 There's nothing in your hand?
19 A Yeah.
20 Q Are you saying that when you've got in your hand a
21 Taser and you're using it in push stun mode that
22 that's an empty hand use of force model?
23 A I'm saying that the stun falls under that for
24 training. But at the time, I've only understood
25 it to be the intermediate weapon.
26 Q Thank you. You're not suggesting for a moment,
27 are you, that Officer Gillis told you that a
28 Taser, CEW weapon, in push stun mode is the same
29 as empty hand?
30 A I don't recall that, no.
31 Q No, he didn't teach you that, did he?
32 A No, I don't think so.
33 Q No. Thank you. Now, the final area. I just
34 would like you to go to the notes that you brought
35 in while you were being questioned by my learned
36 friend Mr. Hira, and this was your own classroom
37 materials from your Taser training in the summer
38 of 2007. I think that's Exhibit 61. Do you have
39 that?
40 A I have my own --
41 Q Yes.
42 A -- documents.
43 Q That's what I want you to refer to. We were given
44 a copy, but you actually have the original.
45 A Yes.
46 Q And this is not to suggest any intent to in any
47 way be problematic. When I looked through the

1 original, there were portions of the original that
2 contained your own handwriting.
3 A Yes.
4 Q And some of that handwriting was on the back side
5 of the paper.
6 A Yes.
7 Q And I want just to have you go to one of the
8 entries you made in your own handwriting on the
9 subject of multiple deployments. It's in black
10 ink at --
11 A It's the same one that Mr. Kosteckyj referred to?
12 Q Sir, it's your own notes. You've got the
13 original. I don't have a copy.
14 A I have some notes in black on the back, yes.
15 Q Yes, that's what I'm getting at, sir. I want
16 you -- because I don't have your original. I only
17 was given a copy of the materials. But on the
18 material I had, there was no copy of the back
19 handwritten notes on the subject of multiple
20 deployments. Do you find that, sir?
21 A You're saying on the back of a page here?
22 Q Yes, sir.
23 A I have one page that has writing on the back.
24 Q Thank you. Just look at it. Don't read it out
25 loud yet. Does it appear to relate to multiple
26 deployments?
27 A No. I just wrote something about 15 second to 20
28 deployments.
29 Q All right. Here's what I want to come to. We
30 hadn't seen that when -- well, certainly I hadn't
31 seen it when I started because that original
32 document was in your possession. I questioned you
33 about the manual on multiple deployments. Do you
34 remember me doing that?
35 A Yes.
36 Q And I put to you what we now know is section
37 3.1.3. I'm going to read it again just to refresh
38 your memory. And this said as follows, sir:
39
40 Multiple deployment or continuous cycling of
41 the CEW may be hazardous to a subject.
42
43 Do you recall that, sir?
44 A Yes.
45 Q It continued:
46
47 Unless situational factors dictate otherwise

1 (see IM/IM), do not cycle the CEW repeatedly,
2 nor more than 15-20 seconds at a time against
3 a subject.
4
5 Do you remember that, sir?
6 A Yes.
7 Q That was the training manual, correct, sir?
8 A Yes.
9 Q But what emerged is not only were you cognizant of
10 that from the manual. Sometimes we recognize
11 people can lose track of things in a manual.
12 That's only human nature. But you, sir, actually
13 made a handwritten note on this subject, did you
14 not?
15 A Yes.
16 Q Would you read the handwritten note to the
17 Commissioner.
18 MR. HIRA: He's done that for Mr. Kosteckyj. He can do
19 it again. But this isn't proper re-examination.
20 MR. VERTLIEB: I don't believe the handwritten note has
21 been photocopied in the materials we saw, Mr.
22 Commissioner.
23 MR. HIRA: That's because the instructions were that we
24 would remove the handwritten notes. If my friend
25 wants the handwritten notes, he can have them all.
26 We're not trying to hide anything.
27 THE COMMISSIONER: There's no suggestion of that here.
28 MR. VERTLIEB: I just need this one passage read.
29 That's all. I don't need all the handwritten
30 notes.
31 A It says, "No more than 15 to 20 seconds
32 deployment."
33 Q So it's a topic that you were very mindful of?
34 A Yes.
35 MR. VERTLIEB: Thank you. Now, one last thing just
36 while the witness is still in the witness box. As
37 a housekeeping matter, I think we have an exhibit
38 wrongly numbered and Mr. Giles and I have
39 discussed this. I just want to deal with it for
40 the record. We have Exhibit 60 marked and it
41 should be what's known as the General Occurrence
42 Report, and it's a two-page typewritten document,
43 the second page being a synopsis of the events.
44 And our present number 60 is, as it presently sits
45 without correction, a repeat of an earlier
46 exhibit. So what I'm suggesting is that the
47 General Occurrence Report be Exhibit 60. We just

1 wrongly referred to it on the record at some
2 point, Mr. Commissioner.
3 THE REGISTRAR: So marked.

4
5 EXHIBIT 60: Copy - General Occurrence Report

6
7 MR. VERTLIEB: Thank you.

8
9 (WITNESS EXCUSED)

10
11 THE COMMISSIONER: That seems reasonable enough.

12 MR. VERTLIEB: One last minor housekeeping matter. I
13 was reflecting on Ms. Pastine's question, Mr.
14 Commissioner, and I totally, of course, respect
15 and understand your comment about the subject
16 area. But just in case it becomes a matter that
17 we need to look at in any way, she referred to
18 three little slides in this PowerPoint, and I'm
19 thinking on reflection that those three slides,
20 only for the purpose of identification, be marked
21 so we know what it was she was putting to the
22 witness, even though he didn't recall it from his
23 training. And I think that can easily be done as
24 a one-page exhibit for identification, to take
25 those three slides out and just mark them. It
26 might just be helpful in case there's ever any
27 need to refer to it later on.

28 THE COMMISSIONER: Well, I'm afraid I'm not very keen
29 about that. I think I'll leave that for another
30 moment.

31 MR. VERTLIEB: Fair enough. We know which slides were
32 referred to. Ms. Pastine has indicated them to
33 us.

34 Now, Mr. Commissioner --

35 THE COMMISSIONER: And I do this for very definite
36 reasons. That subject matter of excited delirium
37 is a very complicated, controversial subject. And
38 so I want to be very careful to separate training
39 from opinion evidence and all that type of thing.
40 We may meet there again.

41 MR. VERTLIEB: I understand. So Mr. Commissioner, that
42 takes us now to the end of the evidence that we
43 have. Now, I just want to state that we are
44 mindful of your desire to proceed with this
45 inquiry with as much expedition as possible. We
46 have in the course of the last number of weeks
47 covered tremendous ground.

1 THE COMMISSIONER: No doubt about that.

2 MR. VERTLIEB: We have had many witnesses. And I want
3 to say, though, before we take our break that all
4 counsel, all of the counsel appearing before you
5 have gone out of their way to be cooperative in
6 every respect and they have facilitated the smooth
7 flow. But we're now at the stage where,
8 particularly with Cpl. Robinson as the next
9 witness, at the request of his counsel, Mr.
10 Harris, and a request that your Commission counsel
11 agrees with, it would not be appropriate to start
12 his evidence and then break it. And so with that
13 in mind, we would therefore suggest we simply
14 adjourn now.

15 The plan is to come back after the next two
16 weeks and we'll start in with Cpl. Robinson. We
17 will then commence with more evidence of people
18 who were at the scene, including ambulance
19 attendants who came and some other witnesses with
20 some minor involvements perhaps, and then embark
21 on the next phase dealing with medical evidence
22 and other issues.

23 So as much as we would like to keep going
24 this afternoon and tomorrow, it's my request that
25 we simply adjourn and come back as scheduled
26 starting March 23.

27 THE COMMISSIONER: All right. That seems what's been
28 arranged. March the 23rd, then, at ten o'clock.
29 And by the way, thank you, counsel. You certainly
30 have been cooperative. Yes, sir.

31 MR. KOSTECKYJ: Mr. Commissioner, just one thing.
32 Speaking about that exhibit that Mr. Vertlieb was
33 referring to, which are the PowerPoint
34 presentation that this witness had, I had
35 suggested that it be marked only with the notes
36 that I had referred to. So that note, I had
37 actually asked that it be marked as part of the
38 exhibit. So I've asked --

39 THE COMMISSIONER: Well, we know what it is now.

40 MR. HIRA: If you want it photocopied, we'll get it.
41 You're welcome even to go through the rest of his
42 notes. If you want copies of that, you can have
43 them.

44 THE COMMISSIONER: On all those happy notes, have a
45 good break.

46 THE REGISTRAR: The hearing is now adjourned until
47 Monday, March 23rd, at 10:00 a.m.

59
Proceedings

(PROCEEDINGS ADJOURNED TO MARCH 23, 2009, AT
10:00 A.M.)

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