Report of Investigation
In-Custody Death

Date of Incident: 2/3/2015
Location: Fairfax County Adult Detention Center
Decedent: Natasha J.C. McKenna

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Purpose

The purpose of this office's investigation was to determine whether any person bears criminal responsibility in connection with the death of Natasha J.C. McKenna. On February 3, 2015, Ms. McKenna, an inmate in the Fairfax County Adult Detention Center, was involved in a protracted struggle with Sheriff's deputies who sought to transport her to another facility. The struggle included physical restraint and use of a Conducted Energy Device (CED). [1] After deputies had secured Ms. McKenna in a restraint chair and transported her to the sally port, a nurse, assigned to monitor Ms. McKenna, discovered she was not breathing. Ms. McKenna was taken by ambulance to Fairfax Hospital. Doctors declared Ms. McKenna brain dead on February 7, 2015. Critical care interventions were terminated the following day and cardiac standstill ensued.

Background

At autopsy, Ms. Natasha J.C. McKenna (DOB: 1/9/78) was a 5'4, 181 pound, 37 year old female with a well-documented history of major mental illness.[2] Her first psychiatric hospitalization occurred when she was 14 years old.[3] In the ensuing years she accrued numerous psychiatric diagnoses including: schizophrenia, bipolar disorder and depression.[4]

[1] The Conducted Energy Device (CED) is also referred to as a Taser; Electrical Control Device (ECD); Electronic control Weapon (ECW) and Conducted Energy Weapon (CEW)
[2] Report of Autopsy N072-15
[3] Psychological Evaluation, HCA Dominion Hospital (May 2, 1992)
[4] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/23/2015 12:52 p.m., p.1)

Recent Relevant Medical and Mental Health Background

On January 7, 2015, Ms. McKenna was transported by ambulance to INOVA Alexandria Hospital after she reported that her car was rear ended by another vehicle. Alexandria police reported that there was no damage to Ms. McKenna's rear bumper. She complained of chest, back and neck pain as well as painful breathing. In addition, Ms. McKenna told hospital staff that the police were following and harassing her. She also believed that her phone calls were being monitored. Ms. McKenna was described as agitated and paranoid but denied suicidal or homicidal ideation. She was released and referred for a voluntary psychiatric evaluation. [5]

Later that afternoon, Ms. McKenna appeared at the INOVA Springfield HealthPlex where she complained of chest pain and painful breathing due to the odor of poison gas in her apartment. She reported that she had been in a car accident and had x-rays taken at INOVA Alexandria Hospital. Ms. McKenna repeated her claim that the police were following and harassing her. Staff advised Ms. McKenna to talk to a psychiatric liaison but she refused, stating "they will just give me psych meds and discharge me anyway." Ms. McKenna left before the liaison arrived. [6]

The next day, January 8, 2015, Fairfax County police officers were dispatched to a fight in progress. Upon arrival, officers discovered that Ms. McKenna had entered a stranger's car and refused to get out. The car owner stated that Ms. McKenna refused to exit his car and appeared to be attempting to strangle herself with the seatbelt. Ms. McKenna refused police commands to come out of the vehicle. A struggle ensued during which Ms. McKenna was combative and kicked an officer twice in the chest. The officers were able to remove her from the car and place

[5] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/25/2015 pp. 78-92)
[6] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/25/2015 pp. 55-63)

her in handcuffs. During this incident Ms. McKenna did not respond verbally to officers other than to make growling noises.

Officers summoned an ambulance for Ms. McKenna as they suspected that she was either on drugs or suffering from mental illness. The police officers consulted with Woodburn Mental Health and determined that there was probable cause to believe Ms. McKenna was a danger to herself or others. An Emergency Custody Order was issued for Ms. McKenna.[7] No charges were filed given Ms. McKenna's apparent mental illness.

Ms. McKenna was admitted to INOVA Mount Vernon Hospital on January 8, 2015. Emergency room staff sedated her intravenously and placed her in restraints.[8] Hospital records describe Ms. McKenna as agitated, aggressive and combative. She was diagnosed as suffering from delirium, lactic acidosis, rhabdomyolysis, leukocytosis, delusions, bipolar disorder and cellulitis of the right leg.[9] Ms. McKenna's toxicology screening for narcotics was negative. [10] She was released four days later, on January 12, 2015.

The emergency room physician made the following notes to the file on 1/8/2015:

> ***Labs with significant leukocytosis, lactic acidosis and elevated CK. Unsure if underlying infection or related to drug use or physical fighting with multiple police officer.*** *Mobile crisis responded and will place in TD for psych admission if necessary. Will admit for medical clearance given lab abnormalities...*[11]
> (emphasis supplied)

On January 14, 2015, Ms. McKenna self- reported to INOVA Springfield HealthPlex. Medical records indicate Ms. McKenna was nervous, anxious and paranoid. She said that she was not taking her medication. The records also reflect Ms. McKenna's history of depression,

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[7] 1/8/2015 Report of Officer Pantalena
[8] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/23/2015 p. 25)
[9] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/23/2015 pp. 1-2)
[10] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/23/2015 p. 43)
[11] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/23/2015 p.8)

bi-polar disorder, and psychotic episodes requiring hospitalization. Hospital staff called the police because they wanted a police officer to obtain a Temporary Custody Order for Ms. McKenna. [12]

Officer Curcio responded to the HealthPlex and spoke with Ms. McKenna. Ms. McKenna told the officer that she was in a dispute with her landlord because the landlord had made structural changes to her apartment without her consent. Ms. McKenna repeatedly refused medical treatment and stated that she wanted to leave. As Ms. McKenna and the officer walked past the nurse's station, the charge nurse yelled out that Ms. McKenna was "not free to leave!" The officer asked why not. The treating physician, Dr. Haile, then explained that Ms. McKenna had "abnormal vital signs." Among these abnormal signs was an elevated heart rate and respirations. The officer asked if this would be considered life threatening. Dr. Lydia Haile replied, "It could be. I need to check her out." Based on his observations, as well as the lack of any suicidal or homicidal statements by Ms. McKenna, the officer explained to hospital staff that he could not lawfully detain her. The officer gave hospital staff the phone number for the magistrate's office so that they could try to secure an Emergency Custody Order. [13]

Dr. Haile called the magistrate's office in an attempt to obtain an Emergency Custody Order. However, by this time Ms. McKenna had walked out of the hospital. The magistrate advised Dr. Haile that he could not issue an Emergency Custody Order if Ms. McKenna's location was unknown and suggested Dr. Haile call Mobile Crisis. Dr. Haile did so, and Mobile Crisis suggested she call the police again.

At that point, Dr. Haile had the charge nurse call the police to reiterate her concern that Ms. McKenna was at risk and needed help. Lieutenant Jocuns informed the nurse that the officer

[12] 1/14/2015 INOVA ED Record (Generated 3/23/2015 pp. 85-88)
[13] 1/14/2015 Report of Officer Curcio

followed Ms. McKenna home and spoke with her. He related that the officer believed Ms. McKenna was safe in her home. The Lieutenant concurred with the patrol officer that there was insufficient probable cause to obtain an Emergency Custody Order.

Now that Ms. McKenna was located, Dr. Haile, believing that Ms. McKenna was quite ill, called the magistrate's office again. This time she got a different magistrate on the phone. Dr. Haile explained to the magistrate that in her medical opinion, Ms. McKenna did not have the capacity to consent and that **it was unclear to her whether Ms. McKenna's altered mental status was caused by her psychiatric condition and/or a continuation /progression of the delirium she was diagnosed with while hospitalized at INOVA Mount Vernon Hospital.** Dr. Haile requested the magistrate to issue an Emergency Custody Order for Ms. McKenna. The magistrate declined to issue the Order and explained that, based upon her conversation with the Lieutenant, the criteria for an Emergency Custody Order was not met. [14]

As Dr. Haile explained in her Emergency Department Provider Notes, among her concerns was that medical Records from INOVA Mount Vernon Hospital on January 8, 2015 indicated that Ms. McKenna "was found to be febrile, confused and was admitted to the medical unit with several diagnoses of delirium, rhabdomyolysis, cellulitis (given abx) and based on a prior diagnosis of herpes, was treated with acyclovir…On 1/12 she still had leukocytosis and her CK was 11,000 plus."[15]

The next day, January 15, 2015, shortly before 7:00 p.m., the manager of a rental car agency in the City of Alexandria called the police to report that Ms. McKenna was causing a disturbance at the business. According to the manager Ms. McKenna was acting strangely, yelling at customers and accusing the staff of trying to kill her. Officer Hurley of the Alexandria

[14] 1/14/2015 INOVA ED Record (Generated 3/23/2015 pp. 85-95)
[15] 1/14/2015 INOVA ED Record (Generated 3/23/2015 p. 93)

Police Department was the first officer on the scene. As she exited her cruiser and began walking towards the business, Ms. McKenna approached her and began making irrational statements. Officer Johnson arrived on the scene. Officer Hurley entered the rental agency and interviewed the manager regarding Ms. McKenna's earlier behavior. Officer Johnson attempted to keep Ms. McKenna in view as she walked away from the area but lost sight of her. Based upon her own interactions with Ms. McKenna and the information provided by the manager, Officer Hurley determined that she had probable cause to take custody of Ms. McKenna for purposes of a Mental Health Evaluation.

A short while later Officer Hurley located Ms. McKenna as she walked near a Home Depot store. Officer Hurley stopped Ms. McKenna who stated that "they were trying to kill her." Officer Hurley explained that she was concerned about Ms. McKenna's welfare. By this time Officer Johnson was also present. Ms. McKenna asked if she was going to be arrested and began to walk away. Officer Hurley took Ms. McKenna's left arm and told her she was not free to leave. Officer Johnson had hold of Ms. McKenna's right arm. Ms. McKenna began to fight with the officers. Officer Johnson attempted an arm bar on Ms. McKenna and employed closed fist strikes to the back of Ms. McKenna's thigh in an effort to have Ms. McKenna sit down. Despite Officer Hurley's request that she stop resisting, Ms. McKenna continued to fight. Officer Johnson deployed OC (pepper spray) but it had no effect on Ms. McKenna. Ms. McKenna then punched Officer Johnson in the face and spun away coming out of her shirt in the process. She then ran out into traffic while naked from the waist up.[16]

Officers pursuing in their cruisers followed her to the back of the Home Depot. By this time two additional officers arrived and assisted in trying to control Ms. McKenna. When Officer Gordon arrived she saw officers trying to hold Ms. McKenna down on the ground.

[16] Narrative of Officer Hurley (Generated 2/18/2015, pp. 1-3)

Officer Gordon heard Officer Powers asking Ms. McKenna to stop resisting. Ms. McKenna was attempting to pull her hands out of her handcuffs. Officer Powers had a hold of Ms. McKenna's ankles and Officer Gordon placed a hobble around them. Officer Gernatt arrived and assisted in trying to control Ms. McKenna. Due to Ms. McKenna's continuing struggle to escape from the handcuffs, Officer Gordon put a second set of handcuffs on Ms. McKenna above the first set. Officer Riley also assisted in trying to subdue Ms. McKenna.

Ms. McKenna continued kicking and violently struggling to break free of the restraints. In order to avoid the possibility of positional asphyxiation, as well as to get Ms. McKenna's exposed body off of the cold ground, the officers moved Ms. McKenna to a seated position against a fence. The officers then retrieved a blanket and covered Ms. McKenna. While Officers Leach and Johnson attempted to stop Ms. McKenna from struggling against the handcuffs she resumed kicking her legs. Then, using her toes for leverage, Ms. McKenna slumped down and pushed herself away from the fence and scooted across the ground causing her pants to come down past her thighs. Officer Stowe replaced the blanket over Ms. McKenna but the officers were unable to stop her from moving and inching across the ground. Officer Stowe observed Officer Gordon struggling to prevent Ms. McKenna from banging her head on the ground. He then joined in the efforts to control Ms. McKenna. The officers could hold the blanket on her for approximately a minute before she would push herself further along the ground and out from under the blanket. During this portion of the struggle Ms. McKenna kept attempting to bite the blanket. The officers told Ms. McKenna that a medic was on the way to wash the pepper spray off but she remained uncooperative.[17]

[17] Supplemental Narrative Officer Gordon (Generated 2/18/2015 p. 7)

The officers decided to carry Ms. McKenna to a cruiser to wait for the ambulance. As the officers carried Ms. McKenna she attempted to bite Officer Bing.[18] She also made a sound consistent with the gathering of saliva in her mouth. The officers placed a spit sock over Ms. McKenna's head to prevent her from biting and spitting.[19] Ms. McKenna began chewing on the spit sock and attempted to kick the officers. At that point, given Ms. McKenna's level of resistance, the officers determined that they could not get her safely into the cruiser. Since they could now hear the ambulance coming, the officers set Ms. McKenna down on the ground with the blanket over her. Officer Gordon then spoke to Ms. McKenna in a quiet voice. She told Ms. McKenna that they were trying to help her and that she needed to stop struggling so she would not hurt herself. Ms. McKenna began screaming that the police were raping her. She continued to struggle and would not stay still.

When the ambulance arrived the officers explained to the medics the difficulties they had in controlling Ms. McKenna. The officers worked with the medics to come up with a solution as to how to transport Ms. McKenna safely to the hospital. One of the medics called the hospital and obtained permission to inject Ms. McKenna with a sedative to calm her down.[20] The medic advised that it would take a while for the medicine to take effect.

The officers lifted Ms. McKenna on to a stretcher and Officer Gordon tied the strap from the hobble around the stretcher. Medics placed a sheet over Ms. McKenna and strapped her down. Officer Young volunteered to ride in the ambulance to protect the medics and Ms. McKenna was transported. Officer Gordon followed the ambulance to the hospital. When they arrived at the emergency room Ms. McKenna was still trying to bite through the spit sock. She

[18] Supplemental Narrative Officer Gordon (Generated 2/18/2015 p. 8)
[19] Supplemental Narrative Officer Stowe (Generated 2/18/2015 p. 18)
[20] Supplemental Narrative Officer Riley (Generated 2/18/2015 p. 16)

pushed her entire upper torso off of the stretcher and to the side. She continued to struggle and push herself off of the stretcher by wriggling under the straps.

Medics and officers pushed the stretcher to a room and positioned it next to a bed. During the transport Ms. McKenna struggled and repeatedly grabbed hold of Officer Riley's fingers. The Officers then met with hospital staff to discuss the best way to get Ms. McKenna into the hospital bed. An emergency room technician cut Ms. McKenna's pants off from around her ankles. He then put hard restraints on Ms. McKenna's ankles. The Officers and technicians then lifted Ms. McKenna using the hobble and hard restraints to keep her from kicking. They repeated the process with her arms and the technician attached the restraints to the bed frame.

Officer Gordon, with the assistance of Officer Riley, was able to get both sets of handcuffs off of Ms. McKenna. However, fearing that the hospital restraints might not be enough to hold Ms. McKenna, the nurse asked the officers to put the handcuffs back on her. The Officers then handcuffed Ms. McKenna to the bed frame on each side. Throughout this process Ms. McKenna continued to struggle, scream and whip her head around.

Dr. Herrington came in and attempted to speak to Ms. McKenna regarding her condition. Ms. McKenna continued screaming and trying to yank her hands out of the restraints. She would sit up suddenly and struggle against the restraints. Each time the nurse came in to provide medical assistance Officers Gordon and Young had to hold Ms. McKenna's arms down to prevent her from hurting herself or the nurse. At one point, after Ms. McKenna continued screaming and resisting a nurse's efforts to take a urine sample, it took four officers, Hurley, Johnson, Young and Gordon to hold her down despite the restraints and handcuffs. Ms. McKenna repeatedly shook off the blanket covering her body.

Later, nurses came in to take a chest x-ray and Ms. McKenna attempted to turn the bed over by rocking it back and forth from rail to rail. She was able to move the bed several feet before officers could secure the brake on the bed. They again held her down while a nurse took a blood sample and put an IV into Ms. McKenna's arm. The nurse subsequently wrapped up the IV to prevent Ms. McKenna from pulling it out. Alexandria Hospital records describe Ms. McKenna's behavior as " forcefully fighting against all people in the room; very strong use of all extremities; attempting to bite people who are near; says she will be killed; actually answers some questions while fighting; persistent, deliberate attempts to get untied x 15 min until given IM Haldol."[21]

From time to time Ms. McKenna would alternate between quietly lying in the bed to sitting up and moaning. At approximately 11:30 p.m., Officer Gordon, observing this behavior, asked Ms. McKenna if she was okay. When Ms. McKenna responded by saying she was more comfortable sitting up, Officer Gordon removed the handcuffs and with the assistance of a nurse adjusted the restraints to make Ms. McKenna more comfortable. Ms. McKenna allowed them to cover her body with a gown. Eventually Ms. McKenna fell asleep.[22]

Shortly before midnight, Dr. Herrington advised Officer Gordon that she had successfully obtained an Emergency Custody Order from the Magistrate. Dr. Herrington further advised that in light of some of the lab results, they were concerned about a medical issue in addition to the psychosis Ms. McKenna was experiencing.[23]

[21] Consults by Always, David W, MD at 01/16/15, Alexandria Hospital (Generated on 3/25/2015 p. 173)
[22] Supplemental Narrative of Officer Gordon (Generated February 18, 2015 pp. 6-11)
[23] Supplemental Narrative of Officer Gordon (Generated February 18, 2015 pp. 11)

Ms. McKenna's Hospitalization 1/15/2015-1/25/2015

Ms. McKenna was admitted to INOVA Alexandria Hospital on January 15, 2015, following the above described lengthy combative interaction with police and hospital staff. On the medical unit, Ms. McKenna was diagnosed with altered mental status, rhabdomyolysis, leukocytosis and acute renal failure. In addition she suffered from schizophrenia, depressed bi-polar disorder and herpes simplex.[24] Ms. McKenna's lab work also reflected results "remarkable for elevated creatine kinase [CK] and WBC [white blood cell count] on admission."[25]

On January, 17, 2015 an Alexandria police officer picked up the Emergency Custody Order and served it on Ms. McKenna. He then transported her from INOVA Alexandria Hospital to the psychiatric unit at Mount Vernon Hospital.[26]

On January 18, 2015, Dr. Radha Agepati authored a psychiatric admission note which included a reference to Ms. McKenna's status. He included a section titled Past Medical History. Under that section he wrote that Ms. McKenna's past medical history was "[s]ignificant for status post rhabdomyolysis, leukocytosis, which is resolving and acute kidney injury which is also resolving and patient has abrasions and swollen hands, which is also coming down significantly. History of herpes simplex in the past."

On January 20, 2015, a nurse noted that Ms. McKenna's minor friction wounds on her wrists which she incurred while in restraints at the hospital were aggravated. Ms. McKenna admitted to scrubbing her wounds with a toothbrush. According to the nurse this probably caused further superficial damage. Healing ointment was prescribed. [27]

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[24] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/23/2015 pp. 169-170)
[25] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/23/2015 pp. 170-171)
[26] Supplemental Narrative of Officer Mikhin (Generated February 18, 2015 p.11)
[27] Inpatient Record INOVA Mount Vernon Hospital (Generated 3/23/2015 p. 189)

On the morning of January 21, 2015, Ms. McKenna was "extremely paranoid." She became uncooperative and began fighting with staff. She kicked, bit, scratched and spat upon male staff members. She also urinated on the bed declaring "I have herpes and I don't want you'll to get it, but I'm not afraid to give it to you." A "Code Strong" was called. Nurses summoned hospital security. Security staff arrived and strapped Ms. McKenna to a "transfer board" and placed her in a "quiet room."[28]

Later in the afternoon, Ms. McKenna informed medical staff that her finger was slammed in a door. Ms. McKenna stated "it wasn't an accident too!" She was reluctant to let medical staff examine her finger. Dr. Sadia Hamid examined her after she declared she "wanted a piece of her finger sutured back on." Dr. Hamid noted a "crush type injury to the distal phalanx of L[ef]t index finger." Dr. Hamid also noted dried blood on Ms. McKenna's hands.[29] Ms. McKenna subsequently admitted that she caught her finger in the door.[30]

Mount Vernon Hospital discharged Ms. McKenna on January 25, 2015 at 12:30 p.m. Staff called for a taxi, gave Ms. McKenna a cab voucher, and escorted her to the taxicab.[31] Later that evening, at approximately, 10:00 p.m., Ms. McKenna arrived by ambulance at INOVA Fairfax Hospital after she reported a sexual assault. According to Ms. McKenna, she had been attacked by an Hispanic male who struck her in the head and eye causing her to lose consciousness.[32] She complained of pain to the left side of her head as well as rectal and vaginal pain. She refused a physical exam and a CAT scan. Ms. McKenna first requested a SANE exam

[28] Progress Notes by Ross, Cardina RN at 01/21/15, Mount Vernon Hospital (Generated 3/23/2015 p. 192)
[29] Progress Notes by Hamid, Sadia, MD at 01/21/15, Mount Vernon Hospital (Generated 3/23/2015 p. 193)
[30] Progress Notes by Waitt, Rebecca C, RN at 01/23/15, Mount Vernon Hospital (Generated 3/23/2015 p.212)
[31] Progress Notes by Odeyale, Rasidat, RN at 01/25/15, Mount Vernon Hospital (Generated 3/23/2015 p.215)
[32] 1/25/15 Report of Officer Duffy

but then refused it.[33] Police reviewed the security video from the commercial establishment where Ms. McKenna claimed to have been accosted. The video did not support her claims.[34]

Incarceration at the Fairfax County Adult Detention Center 1/26/2015 - 2/3/2015

Fairfax Hospital cleared Ms. McKenna for release and officers arrested her on an outstanding warrant from Alexandria City charging felonious assault on an Alexandria police officer arising from the January 15, 2015, incident. [35] This warrant was issued by an Alexandria magistrate on January 20, 2015. Fairfax County police brought Ms. McKenna to the Fairfax County Adult Detention Center where she was taken before a magistrate and held on no bond. She was transferred to the custody of sheriff's deputies.[36]

On January 27, 2015 Ms. McKenna covered her cell window with wet toilet paper. She also blocked her food slot with a blanket and sheet. She refused deputies' requests to remove the items. Eventually, the deputies pulled the blanket and sheet out of the food slot. Deputies requested forensic staff to check on Ms. McKenna. At first Ms. McKenna claimed the deputies had injured her finger while pulling the sheet from her food slot. She later admitted that it was an older injury that had reopened. She refused medical treatment. Dr. Martin decided to place Ms. McKenna on RI ["Restricted Issue"] and she was issued a suicide prevention smock and a suicide prevention blanket.[37]

On the morning of January 31, 2015, Deputies Thompson, Hedrick and Viola went to Ms. McKenna's cell to remove a mattress that she had used to cover her window. One deputy opened the cell door while the other two attempted to pull the mattress out into the hall. Ms. McKenna

[33] Field Notes of Detective Flanagan dated 04-03-15 p. 156
[34] 1/25/15 Report of Officer Griffin
[35] Va. Code § 19.2-72 requires police officers to execute outstanding warrants.
[36] 1/25/15 Report of Officer Duffy
[37] FCSO Incident Report of Pfc. Xu 1/27/15 pp. 1-2

grabbed hold of the mattress and held on firmly. As Ms. McKenna's body broke the plane of the door, deputies tried to force her back into the cell by pushing her. Ms. McKenna "resisted immediately with all her force. Her body went to the ground with her lying on her back outside of her cell where she violently attempted to bite, claw and kick us [the deputies] in an enraged out of control state of mind."[38] According to Deputy Hedrick, "I could not keep her from biting by pushing on her head so I applied an open hand strike to her forehead area; it did not stop her attempts to bite us." Ms. McKenna scratched Deputy Hedrick in the face and on the forearms as he was trying to restrain her from biting." The three deputies were unable to get Ms. McKenna back into her cell and called for help over the radio. Numerous other deputies arrived, including Holmes, Guevarez, Timothy, Shifflett, Delaney and Steinbach. When Guevarez arrived he observed Deputies Viola, Thompson and Hedrick on top of Ms. McKenna. She was fighting vigorously trying to kick and punch. [39] A protracted struggle ensued before deputies were able to move her to a chair. Deputy Guevarez stated, "I can honestly say that she is one of the strongest females I have ever encountered in my 11 ½ years."[40] Deputies put the rip hobble on her knees and used a towel to control her head. They handcuffed Ms. McKenna behind her back. When they finally got her in the restraint chair they placed a spit mask on her because she was trying to spit. She then urinated on herself. [41] Nurse Kassaye, came in and checked the straps. She told the deputies to loosen them and they did. Deputy Guevarez wheeled the restraint chair from Post 27 to Post 4. By the time they arrived there, she had almost succeeded in getting her hand out of the restraint. They retightened the restraint. [42] Deputies continued to have issues

[38] FCSO Incident Report of Deputy Hedrick 1/31/2015 p.1
[39] Tr. 2/18/2015 Guevarez, pp.6-7
[40] Tr. 2/18/2015 Guevarez, p. 7
[41] Id. p. 8
[42] Id p. 9

with the restraints and could not fix them. Deputy Reeves saw Ms. McKenna attempting to gnaw through the shoulder restraints. [43]

At that point SERT was activated. Sergeant Timothy was the SERT leader. Additional SERT members present were Deputies Meeks, Shifflett, Barb, Kim and Reeves. Deputy Kim looked in the cell window and observed that Ms. McKenna had worked her arm free of the restraint and was waving it. [44] Deputy Kim entered the cell for the purpose of re-securing her arm. He encountered great resistance from Ms. McKenna. In describing his attempt to secure Ms. McKenna's arm Deputy Kim stated, "...It might sound easy but... when you are trying not to hurt that person it gets hard." [45] Ms. McKenna was able to work her arm loose a second time and SERT members decided to move her to a new chair. They wheeled her to a bigger cell where they would have more room to deal with her. It took five deputies forty minutes to transfer Ms. McKenna to the second chair because she fought them. She would thrust her hips up to prevent being strapped and she was spitting and biting at deputies.[46] At one point Ms. McKenna suddenly appeared to "nod off" or "pass out" very briefly. Her eyes closed and she dropped for a second. She then recovered and seemed to be unaware of what had happened. Deputies were unsure of whether she was faking this or not. [47] She remained in the chair for several hours. She was offered food and water. Nurses and deputies checked her regularly. Later she was removed from the chair and medically cleared [48]

The deputies involved in this January 31, 2015, incident attested to Ms. McKenna's extraordinary strength and endurance. Unusual strength is a characteristic of excited delirium

[43] Tr. 2/19/2015 Reeves, p. 7
[44] Tr. 2/18/2015 Kim, p. 5
[45] Tr. 2/18/2015 Kim, pp. 6
[46] 7/7/2015 Report of Detective Griffith p.69
[47] ID. p.69; Tr. 2/18/2015 Timothy, p. 30
[48] FCSO Incident Report of Deputy Lynn Hedrick dated 1/31/2015 pp. 1-2

syndrome. [49] Sergeant Timothy said, "For me it's probably the most difficult inmate I've ever had to deal with in that capacity, male or female… And I've dealt with… men on PCP fighting… it's like she didn't feel pain…" [50] Deputy Guevarez said, "…I remember it was … a struggle. I mean…I'm not a weak guy but she, she was wearing me out; she was wearing us all out."[51] Deputy Holmes said, "…in my 19 years, that was the worst inmate…I have ever dealt with. I'll be honest with you…she was the real deal. Seriously, she was the worst… the hardest inmate…I've dealt with big guys, I've dealt with other females, smaller guys, guys in gang[s]. She was the toughest person that… I have ever dealt with to get her in that chair and with a struggle." [52] Deputy Viola said, "[Ms. McKenna was] probably one of the most aggressive inmates I've ever had to deal with …in my experience."[53] Deputy Barb recalled that, "…She was pushing with the most force I've seen in the… six years I've worked there…I had never seen anybody push like this…"[54]

Deputy Shifflett said, " [I]t lasted so long that… all my latex gloves split…which concerned me after I later learned she had MERSA (sic) and other things…I hate to describe it like this, like a demonic possession because she was growling the whole time…She would growl and bite if someone didn't hold…her head… to keep her from biting…[the] spit net was doing no good, she was chewing holes and biting through the spit net…She's strong I mean actively resisting. It. was a good forty to forty-five minutes to take her out of one chair and put her in another chair…my SERT uniform I got soaking wet with sweat again just from the active

[49] White Paper Report on Excited Delirium Syndrome, ACEP Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009 p. 7-8 ("superhuman strength")
[50] Tr. 2/18/2015 Timothy, p. 12
[51] Tr. 2/18/2015 Guevarez, p. 8
[52] Tr. 2/18/2015 Holmes, p. 7
[53] Tr. 2/13/2015 Viola, p. 4
[54] Tr. 2/18/2015 Barb, p. 5

resisting." [55] Deputy Reeves said that Ms. McKenna was, "[v]ery difficult…she continued to fight…her strength was amazing…I had never encountered anybody like that who wasn't on PCP before…just a surprising amount of strength for her size and build and just constantly fighting; she never seemed to tire."[56]

On February 3, 2015, Mr. Tueimer of the Alexandria Community Services Board called Ms. Bartlett LCP, CSAC, QMACM of the Fairfax Falls Church Community Services Board to say that the Alexandria Adult Detention Center had alerted him that Ms. McKenna was possibly in need of mental health intervention. Ms. Bartlett advised Mr. Tueimer that Ms. McKenna was "currently psychotic, aggressive and easily agitated and she was exhibiting biohazard type behaviors like smearing feces and drinking her urine." Mr. Tueimer agreed that once Ms. McKenna arrived at the Alexandria Adult Detention Center she would likely be hospitalized.[57]

The SERT team

SERT stands for Sherriff's Emergency Response Team (hereinafter SERT). Its members are highly trained in tactical response for high risk or emergency situations. SERT is a support unit whose function is to safely, quickly and effectively assist agency operations in the maintenance or restoration of order. [58] SERT membership is competitive and applicants are screened by a selection panel consisting of the SERT Commander and at least two SERT members. Applicants must also be full time deputy sheriffs with at least two years of correctional, law enforcement or military experience. One year of the requisite experience must have been attained in the Fairfax County Adult Detention Center. In addition, the candidates

[55] Tr. 2/18/2015 Shifflett, pp. 5-6, 8, 13
[56] Tr. 2/19/2015 Reeves, p. 5
[57] Progress Note by Ms. Bartlett, Fairfax Falls Church CSB
[58] Fairfax County Sheriff's Office, SOP Number:522 p.1

must hold the rank of Master Deputy Sherif or below; possess a class "A" physical exam status; have no formal disciplinary action within the last two years and have no record of excessive use of force.[59]

Except in cases of sudden emergency, the use of a SERT response requires approval by a Deputy Sheriff Captain or above. The SERT may be utilized for events including: riots; disorders and disturbances; high risk transportation; cell extractions and suicidal inmates.[60] Training for all SERT members is ongoing and occurs on a monthly basis.[61]

Sheriff's Office Standard Operating Procedures Regarding Use of Force

The purpose of the Sheriff's Use of Force Procedures is to provide guidelines for deputies in the use of force.[62] The policies of the Sheriff's Office permit force to be used only when reasonably necessary to defend oneself or another. Force may also be used to control a person during a detention. Reasonable force is defined as the use of any force, deadly or not, that is reasonable in the light of the facts and circumstances confronting the deputy without regard to the deputy's underlying intent or motivation. Deadly force is described as any level of force that is likely to cause death or serious injury to a human or animal. Non-deadly force is force which is not intended to cause death or serious bodily injury. The use of any instrument or technique to employ non -deadly force may constitute deadly force pending upon the totality of the circumstances. Less lethal force is defined as force created by kinetic energy impact projectiles, which may cause death or serious injury but when used properly, significantly reduce the

[59] Fairfax County Sheriff's Office, SOP Number: 522 p. 2-3
[60] Fairfax County Sheriff's Office, SOP Number: 522 p. 3-5
[61] SERT Training Rosters from January 2014 through December 2014
[62] Fairfax County Sheriff's Office, SOP Number: 032 p.1

probability of such outcomes. Excessive force is force which is determined to be not reasonably necessary. [63]

The Sheriff's Office use of force procedures recognize that individuals may present as cooperative, resistant or as assailants. A low risk assailant is a subject who presents a risk of only minor injury. A high risk assailant is one whose actions will probably cause serious physical injury, with or without a weapon. Deputies have up to five levels of control in dealing with assailants. First is social control, identification of authority or show of force. Next is verbal control or issuing orders which require obedience to the rules of the institution. Then weaponless physical control is recommended, for example, holds and low pressure striking. After that are control options with weapons. This refers to the deployment of ECD's, OC and Chemical agents or implementation of tactical cell entry team which is what occurred in the instant case. The final option is deadly force which is defined as any type of force in which the deputy could reasonably predict an outcome of death or serious bodily injury. [64]

The procedures governing non-deadly use of force require, "when possible, only that level of non-deadly force reasonably necessary (e.g., physical control techniques, striking with a baton or other instrument, discharging OC, an ECD, Pepper Ball System or… etc.) to establish control and gain compliance shall be used in response to opposing force." Enforcing compliance (with orders, laws, institution rules, and regulations) is considered to be a situation where non-deadly force may be effectively used. [65]

[63] Fairfax County Sheriff's Office, SOP Number: 032 p.1
[64] Fairfax County Sheriff's Office, SOP Number: 032 p.2
[65] Fairfax County Sheriff's Office, SOP Number: 032 p.2

Sheriff's Office Standard Operating Procedure Regarding Use of ECD

ECD is an acronym used by the Fairfax County Sherriff's Department to refer to an Electronic Control Device.[66] The Medical Examiner, in her report, refers to the same device as a **CED** or Conducted Energy Device. [67] The United States Department of Justice (USDOJ) and the Police Executive Research Forum (PERF) in a joint publication, *2011 Electronic Weapon Guidelines*, use the term ECW or Electronic Control Weapon. Others, including some deputies, use the brand name of "**Taser**" when referencing the device. Fairfax County police use the term **CEW** which stands for Conducted Energy Weapon. In each instance, all references are to the same apparatus; the Taser Model X26.

The Fairfax County Sherriff's Office has a policy of utilizing non-lethal control devices when practical. The use of an ECD is recommended when appropriate to use and where it might reduce the risk of injury or death to those involved.[68] Authorized users of ECD's include only those deputies who have completed the user or instructor training course, and are currently certified. Trained SERT members on assignment are also authorized to use the ECD.[69] Deputies are authorized to use the ECD to control a violent or potentially violent subject when the deputy reasonably believes that deadly force does not appear to be reasonably necessary, and attempts to gain compliance of the subject by verbal commands or physical control have been, or will likely be, ineffective in the situation. [70] The deputy must consider the potential injury to suspects who are running, travelling at high speeds (bikes, mopeds, skateboards etc.) or situated in elevated places. Age and known physical handicaps should also be taken into consideration. [71] Each

[66] Fairfax County Sheriff's Office, SOP Number: 525 p.1
[67] Report of Autopsy N072-15 p.4
[68] Fairfax County Sheriff's Office, SOP Number: 525 p.1
[69] Id. p. 2
[70] Id. p. 2
[71] Id. p. 2

discharge of an ECD is investigated and documented and a report prepared. [72] It is recommended that when deploying the X26 ECD, deputies deliver the full 5 seconds of electrical current as programmed into the device in order to gain maximum effectiveness. [73] Whenever possible, a verbal warning that force will be used if compliance is not obtained. [74] The use of the ECD must be reasonable based upon the totality of circumstances known to the deputy. [75] The policy on deployment of the ECD recognizes that there are times where after the initial impact of the probes that a follow up charge will have to be deployed in order to gain compliance and safely control the subject. The policy warns deputies not to remove the probes until the subject is in full restraints. [76] Medical attention must be given to any subject who has been stunned as soon as possible and when safe to do so.[77] Deputies must perform a spark test upon receipt of the ECD to ensure that it is in proper working order. [78]

Activation of the SERT

On Tuesday February 3, 2015, squad supervisor, Lt. Charles Taggart, aware that Ms. McKenna had injured a deputy during a violent encounter over the weekend and that she was creating a bio hazard that morning by throwing urine under her door and into the hallway, informed Lt. Lucas Salzman that they were going to transport Ms. McKenna to Alexandria. He told Lt. Salzman that deputies had to use force to control Ms. McKenna over the weekend.

Lt. Perkins activated the SERT team based upon several factors; Ms. McKenna had created a bio-hazard; she was noncompliant with deputies; she had to be placed in a restraint

[72] Id. p. 2
[73] Id. p. 3
[74] Id. p. 3
[75] Id. p. 3
[76] Fairfax County Sheriff's Office, SOP Number: 525 p. 3
[77] Id. p. 3
[78] Fairfax County Sheriff's Office, SOP Number: 525 p. 4

chair; she fought violently with deputies a few days before. Between 9:00 a.m. and 9:15 a.m. Lt. Salzman, a SERT member since 2006, alerted Lt. Paul Miller that SERT would be activated between 10:00 and 10:30 to remove Ms. McKenna to Alexandria. [79] SERT member, Deputy Adam Henry, received a message from fellow SERT member Deputy Jonathan Perryman alerting him that a cell extraction was planned for Ms. McKenna. Deputy Perryman also alerted SERT members Deputy Patrick McPartlin and Deputy Kenneth Krstulovic of the extraction.

Lt. Salzman visits Ms. McKenna's cell

Upon learning that he was to lead a cell extraction team for Ms. McKenna, Lt. Salzman went to her cell to assess the situation. He noted that there was urine in the hallway outside her cell with a blanket positioned on the floor to prevent the urine from spreading. He approached the window of the cell and spoke face to face with Ms. McKenna. He told her that they were going to bring her to Alexandria. She replied that her boyfriend told her not to leave the jail. In Lt. Salzman's experience and based upon Ms. McKenna's irritated demeanor and statements, he did not believe she would voluntarily comply with the transportation process. However, he was cognizant of the fact that she would have another opportunity to cooperate with deputies before the cell extraction began.[80]

[79] Tr. 2/6/2015 Salzman, p.2
[80] Tr. 2/6/2015 Salzman, pp. 16-20

The Briefing

Lt. Salzman held a meeting with the SERT team at approximately 10:30 a.m.to prepare for the potential extraction. Using a dry erase board and in conformance with his training at the Fairfax Criminal Justice Academy, he explained extraction assignments for each member of the team. Ideally, the SERT training calls for a five man stack with each member assigned particular duties as well as an identifying number.[81] Lt. Salzman assigned Deputy Perryman as number one (1) meaning he would carry the shield and be first in line. His job was to go in first, protect the rest of the team and pin the prisoner in place. Deputy Henry was number two (2) and second in line. His task was to restrain Ms. McKenna's hands. Deputy McPartlin was three (3) and Deputy Krstulovic was four (4). They were tasked with controlling Ms. McKenna's legs and feet. Lt. Salzman designated himself as number five (5). His role was to be fifth and carry the Taser in case it became necessary to deploy it. [82] Lt. Salzman is experienced in the use of Taser having first completed certification in 2006. Since then he has re-qualified every year and is currently an instructor in the use of the ECD or Taser. [83]

Lt. Salzman briefed the team on Ms. McKenna's mental illness, combativeness, history of assault on law enforcement officers and Adult Detention Center deputies as well as recent biohazards including fecal matter in her cell and possibly in her hair and the fact that she had thrown urine under her cell door. [84] The SERT team donned stab proof vests, gloves, extraction helmets and white Tyvek suits. They also wore gas masks as Ms. McKenna was a known spitter.[85]

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[81] Lesson Plan Cover Sheet and Supplemental Pages (Revised January 8, 2009) Fairfax Criminal Justice Academy *[pages not numbered]
[82] Tr. 2/6/2015 Salzman, pp. 21-23
[83] Tr. 2/11/2015 Salzman, p. 2
[84] 3/16/2015 Report of Detective Farrell; Tr. 2/6/2015 Salzman, p. 25
[85] 3/16/2015 Report of Detective Farrell

Lt. Salzman asked Lt. Miller to act as the door operator. The door operator has the responsibility to attempt to gain voluntary compliance from the prisoner if possible and thus avoid a forcible extraction. Lt. Miller wore his regular garb including a black sheriff's shirt and black slacks. He did not wear a mask or other covering. His duties included locating the inmate within the cell, verifying that she was not armed, giving commands to the prisoner and verifying whether she was complying with the commands. Lt. Taggart, who was not a SERT team member, was tasked with operating a camera and filming the events.

The Video and the timing of certain events

Lt. Taggart captured the incident on Camcorder. Due to the narrow hallway and the number of personnel participating, parts of the ensuing struggle are obscured by the bodies of SERT members. Where appropriate below, the writer will make reference to the elapsed time on the video in reporting the events in question.

SERT came into physical contact with Ms. McKenna for the first time at the two minute four second (2:04 video) mark on the video. Deputies were able to secure her into the restraint chair approximately twenty-one minutes and five seconds (21:05 video) into the video. Ms. McKenna struggled with deputies for a period of approximately nineteen minutes and one second before deputies were able to sit her back in the restraint chair to the point where she could be transported safely.

It appears from the video that CEW was used drive stun mode at approximately seventeen minutes and twenty seconds (17:20 video), probe mode at approximately eighteen minutes and one second (18:01 video), drive stun and probe mode at approximately nineteen minutes fifteen seconds (19:15 video), and drive stun and probe mode at approximately twenty

minutes (20:00 video). A period of approximately two minutes and thirty seven seconds elapsed from the first use of the CEW to the last. Ms. McKenna is still actively moving her legs at twenty three minutes and thirty seconds (23:30 video). She is still conscious and moving her legs three minutes and thirty seconds after the last deployment of the CEW.[86]

Nurses began evaluating Ms. McKenna at approximately twenty three minutes and seven seconds (23:07 video). Nurse Lamin resumed her evaluation of Ms. McKenna in the sally port at approximately thirty one minutes and twenty five seconds (31:25 video). Lt. Miller requested rescue at thirty four minutes and forty one seconds (34:41 video) (duration of approximately eleven minutes and thirty four seconds from the first medical staff evaluation to the call for rescue). The transport from the hallway outside cell FR-2 to the sally port took staff three minutes and fifty one seconds. Rescue arrives on scene at approximately forty one minutes and five seconds (duration of approximately six minutes and twenty four seconds from Lieutenant Miller's request for rescue).

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[86] Di Maio, Vincent J.M., *Excited Delirium Syndrome Cause of Death and Prevention* (CRC Press, 2006) at. p. 42 (" If death is due to ventricular fibrillation or asystole produced by the TASER pulse, then the individual would lose consciousness immediately (3 to 4 seconds up to a maximum of 10 to 15 seconds)"); see also Bozeman, William P. et al.' "Safety and Injury Profile of Conducted Electrical Weapons Used by Law Enforcement Officers Against Criminal Suspects" *Annals of Emergency Medicine* 53: 480-489 (April 2009) A rapidly evolving body of literature has examined a range of physiologic and cardiovascular effects of conducted electrical weapon exposure in human volunteers. These studies, which include articles and published preliminary reports in abstract form, demonstrate no evidence of dangerous respiratory or metabolic effects using standard (5-second), prolonged (15-second), and extended (up to 45-second) conducted electrical weapon discharges. Other studies of conducted electrical weapon exposure in combination with exercise designed to simulate the physiologic effects of fleeing from or struggling with police demonstrate changes in pH, lactate, and other markers comparable to that induced by exercise of the same duration. No study has demonstrated a pathophysiologic mechanism or effect that would account for delayed deaths minutes to hours after conducted electrical weapon exposure. Findings from independent investigations have been concordant with those performed with industry support. Collectively, these data are broadly reassuring and constitute the current best understanding of the human physiologic effects of conducted electrical weapons.

The Extraction

In some cases, the presence of the SERT team dressed in all black or Tyvek can scare an individual. So, in an effort to keep Ms. McKenna calm, Lt. Miller approached the cell by himself at first.[87] Lt. Miller stood at Ms. McKenna's cell door (FR-2) and explained that deputies were there to move her out of her cell and take her to Alexandria. The cell Ms. McKenna occupied was unfurnished and the only items inside were a suicide smock and a blanket. At that moment Ms. McKenna appeared to Lt. Miller to be rational. He asked her if she would cooperate and she said, "Fine." It was Lt. Miller's goal to obtain Ms. McKenna's voluntary compliance with the process and avoid the use of force. Based upon her response, he believed she would be compliant. He asked her to put her arms out of the food slot so that he could hand cuff her. She said "okay" and complied. Lt. Miller handcuffed her and applied the rip hobble to the handcuffs so that Ms. McKenna could not withdraw her hands. However, Ms. McKenna pulled her hands back into the cell causing Lt. Miller to tug the rip hobble outwards to avoid his fingers going through the slot into the cell with Ms. McKenna. Lt. Miller then gave the rip hobble to Deputy Davila so that he could summon the SERT team. He then radioed Lt. Salzman and the SERT team arrived soon after.[88]

When the SERT team came down the hallway to Ms. McKenna's cell, Lt. Miller said, "I'm going to open the door" and asked, "Is there a shield, just in case she… (*inaudible*)." He then asked, "Do we have a Medic ready?"(1:27 video). Lt. Salzman relayed this request and stated, "Can we get someone to get a nurse here to post four here to check her when we get her out?" An unknown male voice replied, "Yes." The shield was passed to Deputy Perryman. Lt. Miller took the rip hobble from Davila and unlocked the cell door (2:02 video). As he opened the

[87] 3/16/2015 Report of Detective Farrell (quoting Deputy Henry)
[88] Tr. 2/6/2015 Salzman, p.28; Tr. 2/6/2015 Henry, p. 14

door, Lt. Miller held on to the rip hobble. Ms. McKenna then came out of the cell, began moving away, and stated, "You promised me you wouldn't kill me. I didn't do anything" (2:04 video). Deputy Perryman used the shield to pin Ms. McKenna against the cell door (2:06 video). The use of the shield in this manner was consistent with SERT Training. [89] Lt. Miller instructed SERT to secure Ms. McKenna's legs.

Ms. McKenna began to resist by pulling away and refused to get on her knees. Ms. McKenna remained on her feet flailing her legs. Lt. Miller instructed SERT members to secure Ms. McKenna's legs. Deputy McPartlin pulled her legs out from under her and took her to the ground. Deputy Perryman then pinned her upper body against the open cell door with his shield (2:34 video). Deputy Henry observed Ms. McKenna attempting to bite and claw the shield. One team member held Ms. McKenna's head. Deputy McPartlin put his weight on her calf and this enabled him to attach a leg restraint despite her continued resistance. Lt. Miller told Ms. McKenna to stop resisting twice. Others on the SERT team repeated the command and added "hold still Ma'am" and "lay there and obey all my commands" (2:51 video). Ms. McKenna grunted and said, "*inaudible* money" (3:08 video). Lt. Miller then said, "We're going to have to put her on her belly." SERT Training requires inmates under the circumstance here to be placed "face down on the floor."[90]

SERT members managed to get Ms. McKenna onto her stomach (4:06 video). The shield was removed (4:10 video). While on the ground, Ms. McKenna continued to kick at SERT members as they struggled to unclip the rip hobble from her handcuffs. The hobble was still attached to the door and Ms. McKenna was using it to try to hoist herself back onto her feet, even though it was cutting into her wrists. Deputy Henry tried to get Ms. McKenna to release her

[89] Lesson Plan Cover Sheet and Supplemental Pages (Revised January 8, 2009) Fairfax Criminal Justice Academy *[pages not numbered]
[90] Id

grip on the rip hobble, and applied three closed fist strikes to her knuckles before she let go. Once Ms. McKenna released the rip hobble, Deputy Henry was able to unclip the hobble from the handcuffs. This action allowed Ms. McKenna's arms to drop and for SERT members to pin them under the shield. Deputies' McPartlin and Krstulovic used their body weight to control her legs. They then secured her ankles with the rip hobble. She continued struggling against the deputies.

Lt. Miller told Ms. McKenna, in a calm voice, "Ma'am, Ms. McKenna, listen to me. We're going to take you to Alexandria. Relax and let us put these handcuffs beside you and we're going. Okay. Do you understand what I'm telling you?" She replied, "Yeah." Lt. Miller responded by saying, "Well then quit combating with us okay?" He further stated, "We just need to put these restraints away from… and have medical look at them. Please. Cooperate. Okay?" (7:44 video).

At one point during the struggle, Lt. Salzman saw that the team needed more assistance in holding Ms. McKenna's arms. He stepped in and placed his knee on Ms. McKenna's upper left arm and placed his left hand on her arm as well. She began grabbing his fingers but could not get a solid grip. He could feel her lifting his body up and down as he tried to keep his knee on her arm. [91] Lt. Miller told Ms. McKenna, "Stop resisting. Cooperate. We are your friends. We are here to help you" (10:46 video).

Lt. Salzman and others continued to urge Ms. McKenna to cooperate and stop resisting but she continued to struggle. Lt. Salzman warned Ms. McKenna that, "If you continue to resist we are going to use the TASER on you. Do you understand what that means?" (11:31 video). Another team member stated, "Ma'am do you understand if you keep resisting you are going to be tased?" Deputies continued to struggle for some time to get Ms. McKenna properly restrained.

[91] Tr. 2/6/2015 Salzman, pp.53-54

Lt. Salzman, then repeated, "Ma'am, stop resisting" (12:01 video). Ms. McKenna then made a grunting sound and said, "Oh look at this *inaudible* is up my ass." Lt. Salzman said, "Stop resisting." A few seconds later, Lt. Salzman said, "Ma'am If you continue to resist we are going to have to tase you" (12:03 video). She continued to grunt and strain as Lt. Miller and SERT attempted to secure her properly. Lt. Miller announced that nurses had arrived (14:04 video).

The SERT team attempted to remove Ms. McKenna's handcuffs in order secure her hands to the transport belt. However, after doing so, they discovered that the transport belt gave Ms. McKenna too much room to move her arms. She was able to position herself in a "push-up" position and lift her body off of the floor. They then re-secured her wrists in the handcuffs but behind her back this time. Lt. Salzman placed a spit mask over Ms. McKenna's head but did not tie the strings on it (14:48 video).

The SERT team had intended originally to transport Ms. McKenna in a medic chair (sometimes called an inmate wheel chair). The SERT team lifted Ms. McKenna to place her onto the medic chair but she continued kicking, contorting, tensing her body and locking her legs. This resistance prevented Deputies' McPartlin and Krstulovic, each of whom had one of Ms. McKenna's legs, from securing her (15:24 video). SERT team members were able to control Ms. McKenna's head to prevent her from injuring herself but could not get control of her legs.

Lt. Miller asked Ms. McKenna to stop resisting and Lt. Salzman repeated the same command (15:28 video). Lt. Salzman warned SERT members to watch out for Ms. McKenna's hands and mouth (15:31 video). Realizing that they were not going to be able to secure Ms. McKenna to the medic chair, Lt. Miller then said, "Where's the restraint chair. This is not going to work. This is not going to work. Get the restraint chair." The team then put Ms. McKenna

back on the floor (15:50 video). Lt. Miller leaned over Ms. McKenna and said, "How are you doing Ma'am? Ms. McKenna, relax. How are you doing?"

Deputies rolled the restraint chair into position (16:34 video). SERT members begin to move Ms. McKenna to the restraint chair (16:48 video). Lt. Miller took control of Ms. McKenna's head and stated, "Watch her head. I got her head. I got her head." As she was placed on the chair, Ms. McKenna thrashed her body and extends her legs outward (16:49 video). Lt. Salzman said to Ms. McKenna, "Sit in the chair Ma'am." Ms. McKenna continued to strain, grunt and resist efforts to secure her. At this point, Lt. Salzman warned Ms. McKenna that if she did not sit in the restraint chair she would be tased (17:14 video). She continued to resist. Lt. Salzman stated" I'm going to drive stun her if she keeps moving" (17:19 video). Lt. Salzman removed the cartridge from the Taser and placed the Taser on her right upper leg and pulled the trigger in drive stun mode one time holding it in place for five seconds. He deployed the Taser in drive stun as a method of obtaining pain compliance in order to get her legs secured into the chair.[92]

In response to this first drive stun Ms. McKenna sat back but relaxed only momentarily. Deputy Henry was able to attach the waist belt by clipping it in. However, Ms. McKenna continued struggling and pushing upwards preventing Deputy Henry from cinching the waist belt tight.[93]

After the first deployment of the Taser, Lt. Salzman allowed Ms. McKenna time to recover and comply with deputies. He said to Ms. McKenna, "Ma'am slide to the back of the chair. Stop kicking your feet." Lt. Miller added, "Stop resisting. Don't kick. Don't kick. Trust

[92] Tr. 2/6/2015 Salzman, pp. 52-53; Report of Autopsy N07-15 at p. 2 ("Two patterned square abrasions each measuring 3/16" x 1/8" and separated by 1 1/2" of intact skin over the right superior anterior thigh without underlying subcutaneous hemorrhage." See also Body Diagram.
[93] 3/16/2015 Report of Detective Farrell

me. Don't kick. It's for your own good" (17:50 video). However, she continued twisting, fighting, kicking and tensing her legs.

Lt. Salzman told Ms. McKenna, "slide to the back" (17:57 video). Lt. Miller implored Ms. McKenna, "Let us put you in the chair please." She continued resisting. In light of the ineffectiveness of the first Taser deployment, Lt. Salzman decided to re-deploy the Taser, this time using the darts along with the drive stun. He intended to put both darts in her right leg and press the Taser elsewhere on her body in order to get a greater spread and gain compliance. Lt. Salzman announced, "Taser" (18:02 video). He fired the darts into her leg at close quarters resulting in a very small spread between the two prongs.[94] At that point, the Taser began cycling (administering current). The Taser cycles for five seconds with each deployment. As the countdown from five to zero began, Lt. Salzman realized that because of all the movement and struggling, he would be unable to touch the Taser to Ms. McKenna for the full five seconds. This meant that if he pressed the Taser against her body she would only have received the full effect for a couple of seconds at most. Lt. Salzman did not want to administer Ms. McKenna an arbitrary and unnecessary stun drive so he let the Taser cycle down without touching it to her body.[95] The darts are visible in Ms. McKenna's right thigh after the camera angle changes (18:20 video). After Lt. Salzman fired the Taser darts into Ms. McKenna's thigh, Deputy Henry was able to cinch the waist belt tight.[96] But once again Ms. McKenna continued to resist, twisting her body and kicking out her legs (18:45 video).

Lt. Salzman then reassessed the situation. Again, he gave Ms. McKenna time to stop resisting and recover. He also allowed deputies the opportunity to try to gain compliance now

[94] Report of Autopsy N072-15, p. 2 ("...2 1/16" puncture wounds separated by 7/8" of intact skin...") See also Body Diagram (showing location of possible Taser dart site on upper right thigh)
[95] Tr. 2/6/2015 Salzman, pp. 56-59
[96] 3/16/2015 Report of Detective Farrell; Tr. 2/6/2015 Henry, pp. 19-20

that she had been tased a second time. Lt. Salzman attributed the relative ineffectiveness of the second deployment of the Taser to the fact that, due to the continuing struggle, he was prevented from touching the front of the Taser to a location on Ms. McKenna's body that was removed from the darts. This resulted in the current going to the same spot with the same (small) spread as the first drive stun deployment.[97]

Ms. McKenna continued to lock her legs, kick and struggle. Notwithstanding the fact that Deputies McPartlin and Krstulovic had applied a rip hobble around her legs, Ms. McKenna was still attempting to kick them. They remained unable to secure her legs to the restraint chair straps. [98]

After waiting long enough to determine that Ms. McKenna remained noncompliant and giving her sufficient time to recover, Lt. Salzman decided to drive stun Ms. McKenna in the middle of her outside right bicep. He chose this location because it was a large muscle with a good spread from where the darts were lodged in her thigh and wouldn't cross her heart. Lt. Salzman planned to press the Taser on Ms. McKenna's right bicep first. Then, after it was set, he would pull the trigger and deliver the full five second cycle in the hope that it would deliver a full body lock up and allow an opportunity for the deputies to secure Ms. McKenna.[99]

Lt. Salzman placed the Taser against Ms. McKenna's outside right bicep and pulled the trigger one time, letting it cycle for five seconds as he counted aloud from five to zero (19:18 video). When the Taser finished cycling, Lt. Salzman saw Ms. McKenna' body relax momentarily.[100] Deputy Henry noticed her leg loosen a little bit and he was able to get a leg strap

[97] Tr. 2/6/2015 Salzman, p. 59
[98] 3/16/2015 Report of Detective Farrell; Tr. 2/6/2015 Henry, p. 20
[99] Tr. 2/6/2015 Salzman, p. 60
[100] Tr. 2/6/2015 Salzman, p. 61

around but remained unable to cinch it tight before she again resumed resisting. [101] Lt. Salzman stated," "Ma'am if you continue to resist you will be tased again" (19:26 video). The warning had no effect on Ms. McKenna and she fought on. Ms. McKenna resumed resisting, kicking, twisting, turning, contorting and locking her legs. The team was unable to secure Ms. McKenna's legs to the chair.

Despite Ms. McKenna's continued resistance, Lt. Salzman realized that this last Taser deployment had been somewhat effective insofar as it caused Ms. McKenna's body to relax for a moment. He believed that if he could get her in that situation again, the team might be able to hook her legs to the chair and end the lengthy struggle.[102]

Once more, Lt. Salzman gave Ms. McKenna time to recover and comply. Lt. Salzman again applied the Taser Ms. McKenna's to upper outer right arm (20:00 video). Ms. McKenna stated, "Ah I was going to fight back" (20:01 video)." Lt. Salzman counted aloud as the Taser cycled down from five seconds so that the team would be ready to attempt to secure her when he finished. As Lt. Salzman reached the count of zero, Ms. McKenna's body relaxed as expected. For the first time the deputies were able to push her feet down and secure them. [103]

Once Ms. McKenna was secured in the restraint chair, the SERT team's next goal was to secure the waist belt down as it was up over her belly. The waist belt is supposed to be around the hips. Ms. McKenna continued to resist using her feet, arching her back and pushing out with her chest against the restraints. Deputies were able to lean Ms. McKenna forward and slide her back in the seat. Lt. Salzman pulled down the waist restraint enough to allow her to be safely transported.[104] Nurses were standing by in the hallway for the purpose of checking on Ms.

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[101] Tr. 2/6/2015 Henry, pp. 20-21
[102] Tr. 2/6/2015 Salzman, p. 61
[103] Tr. 2/6/2015 Salzman, p. 61-62
[104] Tr. 2/6/2015 Salzman, p. 61-62

McKenna's welfare. Lt. Miller asked Nurse Abebe if she was ready to check on Ms. McKenna. She replied, "Yes." Lt. Miller advised Nurse Abebe that Ms. McKenna had been tased four times. Lt. Salzman showed the nurse each place on Ms. McKenna's body where he had applied the Taser (21:48 video). Ms. McKenna continued to struggle and grunt. Nurse Abebe checked Ms. McKenna's restraints. Nurse Abebe asked for help controlling Ms. McKenna. A SERT member held Ms. McKenna with one hand on her neck/upper back area (21:50 video). Lt. Miller asked Nurse Abebe if she wanted to take Ms. McKenna's vital signs. Nurse Abebe indicated she would be unable to take Ms. McKenna's vital signs because she was struggling still. Lt. Miller advised the nurse that they were going to move Ms. McKenna and questioned her as to when she would take the vitals if not now. Ms. McKenna was moving her head and opening and closing her legs at this time (22:23 video). Lt. Miller said, "Come on we're not stopping you." Nurse Abebe conferred with someone off camera and Nurse Lamin wheeled the Welch Allyn machine to the side of the restraint chair (22:57 video). Nurse Abebe placed the blood pressure cuff on Ms. McKenna's right arm (23:25 video). Ms. McKenna's legs continued opening and closing (23:20 video). Lt. Miller stated, "Ms. McKenna how you doing? How you doing?" There was no audible response (22:32 video). Nurse Abebe appeared to press buttons on the Welch Allyn machine which emitted two short beeps. As this occurred, Nurse Lamin was adjusting the blood pressure cuff (23:47 video). Nurse Abebe asked Lt. Miller for a smock to cover Ms. McKenna (24:21 video). The nurses cover Ms. McKenna with a suicide smock provided by deputies (22:52 video). The Welch Allyn machine sounded two long beeps. The nurses then adjusted the blood pressure cuff and Nurse Abebe pressed a button on the machine (25:03 video).

At this point Lt. Miller asked the nurses, "Everything cool? Or do we…?" A female voice said, "No." Ms. Abebe continued to adjust the blood pressure cuff as Lt. Salzman spoke with Lt.

Perkins about how to best restrain Ms. McKenna during the transport (25:10 video). Lt. Salzman stated, "We're going to do some adjustment of the restraints downstairs so we'll get the um her all suited up with the smock and everything when we get down there" (25:29 of the video).

Lt. Perkins asked the nurses, "Which one of you is going to follow them on down?" Nurse Lamin replied, "I'll follow"(25:38 video). Lt. Miller stated to the nurses, "Not getting anything?" Lt. Miller then asked Ms. McKenna, "How you doing. How you doing Ms. McKenna?" Ms. McKenna's then lifted her head and rested it on the back of the chair and turned towards Lt. Miller (26:10 video). At that point the Welch Allyn machine sounded two long beeps. Ms. McKenna was quiet at this point. (26:04 video) Ms. Lamin stated, "We cannot get the *inaudible*." Lt. Perkins asked, "Are we good to go?" Nurse Abebe responded, "Yeah" (26:21 video). Deputies then wheeled Ms. McKenna to the elevator (26:48 video).

Ms. McKenna was taken directly from the elevator to the sally port. Once in the sally port, Lt. Salzman removed the probes (also referred to as darts) from Ms. McKenna's legs and asked the nurse if she could now check Ms. Mckenna's vitals (31:19 video). Nurse Lamin stepped in and began to try to attach the cuff from the Welch Allen machine to Ms. McKenna's right arm (31:26 video). She was unable to do so and moved to Ms. McKenna's left arm (32:08 video). She got the cuff attached to Ms. McKenna's left arm (32:32 video). Nurse Lamin then spent the next two minutes and approximately ten seconds looking at the machine, adjusting the cuff and feeling for Ms. McKenna's pulse with her fingers while looking at her watch. She then said, "It's not taking" (34:11 video). The deputies called Ms. McKenna's name and lifted the spit mask (34:16 video). A deputy stated, "Check her pulse" (34:21 video). Lt. Miller asked, "Do you have anything?" (34:23 video). Nurse Lamin replied, "No." Nurse Lamin then reached down by Ms. McKenna's left side with her right hand. Lt. Miller asked her, "What do you

want?" (34:25 video). Nurse Lamin placed her right hand near Ms. McKenna's left and then right clavicle (34:27 video). Nurse Lamin then reached for the Welch Allyn machine with her right hand and pressed a button. The machine made two short beeps (34:33 video). Lt. Miller asked the nurse, "What do you got?" (34:36 video). Nurse Lamin's reply was inaudible (34:37 video). Lt. Miller then said, "Do you want us to call rescue?" She responded "all right." Lt. Miller then stated, "Call rescue." A female voice can be heard on the video repeating, "Call rescue." Nurse Lamin placed her left hand on Ms. McKenna's upper chest and began performing compressions. She then moved her hand to Ms. McKenna's mouth (35:24 video). Then she returned to performing one handed compressions on Ms. McKenna's chest (35:31 video). Deputies removed the restraints and lifted Ms. McKenna out of the chair to the floor (36:02 video). A male deputy announced, "We're starting CPR right now." Sgt. Mason applied the first of two AED pads to Ms. McKenna's upper right chest (36:41 video). The nurse began performing two handed CPR on Ms. McKenna's abdomen area (36:46 video). Sgt. Masson applied the second AED pad to Ms. McKenna's left chest (36:51 video). The AED was employed and no shock was advised (37:00 video). Nurse Lamin resumed two handed compressions on Ms. McKenna's abdomen (37:20 video). Pfc. David Trader took over chest compressions from Ms. McKenna's left side (37:29 video). Pfc. Trader administered rescue breathing to Ms. McKenna (38:08 video). He then alternated between doing chest compressions and giving rescue breaths (38:18 – 39:15 video). Once again the AED was employed but no shock was advised (39:27 video). Sgt. Mason then relieved Pfc. Trader and began chest compressions himself (39:43 video). Lt. Miller began administering rescue breaths (40:04 video). Pfc. Trader resumed chest compressions, relieving Sgt. Mason (40:09 video). Rescue arrived (40:40 video). A member of rescue asked, "Are any exposures here that we got to worry

about?" Lt. Salzman replied that Ms. McKenna was bleeding from the wrist. The rescue squad member asked about the need for Tyvek suits and respirators by the deputies. Lt. Salzman can be heard to respond, "Not that we know of." Lt. Salzman gave rescue the information that Ms. McKenna was fighting with deputies for fifteen or twenty minutes and was tased four times during the incident (41:29 - 42:17 video). The AED was deployed again but no shock was advised and Sgt. Mason resumed chest compressions (41:50-42:06 video). Rescue then attached an automated CPR machine to Ms. McKenna and took over from deputies. Rescue placed Ms. McKenna into the ambulance and exited the sally port (43:05-46:10 video). Lt. Taggart stopped recording the events (46:25 video).

Deputies involved in this struggle with Ms. McKenna were struck by the strength and endurance demonstrated by Ms. McKenna. Again, extreme even "super human" strength is a well-documented symptom of excited delirium syndrome. [105] Lt. Miller said, "... She was literally pushing the guys around. I mean there was one guy to each leg and they were not succeeding in getting the restraint... Very strong and she wouldn't cooperate." [106] In describing Ms. McKenna's incredible strength, Deputy Henry said, "...she was...pushing us up almost like doing a pushup and she was actually pressing four of us up off the ground which was astonishing." [107] Deputy McPartlin recalled, "...she was fighting us which was a hell of a fight even though she had leg restraints..." [108] Lt. Taggart, the cameraman, stated, "She put up a...bigger fight than I've seen a lot of men do...fighting back against the SERT guys...I mean...some of those guys are not little guys...but they were having trouble getting her under

[105] White Paper Report on Excited Delirium Syndrome, ACEP Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009 pp. 7-8 ("super human strength")
[106] Tr. 2/6/2015 Miller, p. 25
[107] Tr. 2/6/2015 Henry, p. 17
[108] Tr. 2/6/2015 McPartlin, p.12

control."[109] Deputy Krstulovic stated, "We struggled with her for a long, long time. I don't think I've ever struggled with anyone that long before...and I've been doing this for a long, long time and that was one of the hardest cell extractions I've ever come across." [110]

Ms. McKenna's Hospitalization 2/3/2015 – 2/8/2015

Ms. McKenna arrived at INOVA Fairfax Hospital unconscious, unresponsive, intubated and ventilated.[111] She was admitted to the hospital in PEA arrest with lactic acidosis and hyperthermia. Staff resuscitated her after one hour of CPR. Her hospital course was complicated by anoxic brain injury, acute hypoxic respiratory failure, acute kidney injury, rhabdomyolysis, shock liver and diabetes insipidus [112] Dr. Andrew Forgash III treated Ms. McKenna in the emergency room. His differential diagnosis was "excited delirium, sudden cardiac death."[113]

Physicians and staff at Fairfax Hospital performed numerous medical procedures in an attempt save Ms. McKenna's life. However, on February 7, 2015, Doctors Busse and Putnam declared Ms. McKenna brain dead.[114] The following day, Ms. McKenna was taken off critical care interventions. Cardiac standstill followed and Ms. McKenna's body was transferred to the Morgue for follow up by the Medical Examiner. [115]

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[109] Tr. 2/7/2015 Taggart, pp. 47-48
[110] Tr. 2/6/2015 Krstulovic, p. 32
[111] ED Notes INOVA Fairfax Hospital 2/3/15 (Generated on 3/23/2015 p. 339)
[112] Report of Autopsy N072-15
[113] ED Notes INOVA Fairfax Hospital 2/3/15 (Generated on 3/23/2015 p. 341); Report of Autopsy N072-15
[114] Inpatient Record INOVA Fairfax Hospital 2/7/15 (Generated on 3/23/2015 p. 552)
[115] Inpatient Record INOVA Fairfax Hospital 2/08/15 (Generated on 3/23/2015 p. 558-559)

Operation, Function and Deployment of the ECW

For the purpose of understanding the nature and effect of each deployment of the ECW in this matter, some explanation regarding the operation and function of the ECW (TASER X26) is necessary. A single pull and release of the trigger on the TASER X26 used in this case discharges an electrical charge for a 5-second cycle. Holding the trigger continuously beyond the 5-second cycle will continue the electrical discharge until the trigger is released. The discharge will cease once the trigger is released after the 5-second cycle. It is important to note that the mere fact that the ECW is activated and discharges for the full 5 second cycle does not mean that the electrical discharge is necessarily fully delivered into the subject's body.

Both the downloaded data from the ECW, as well as the independent examination of the ECW by W D Forensics Inc. confirm that in each instance here, Lt. Salzman pulled and released the trigger thus activating the minimum, 5 second, electrical discharge.[116]

The TASER X26 may be operated in any of three ways; drive stun mode, probe mode or combination probe/drive stun mode. In the drive stun mode the operator places the ECW in direct contact with the subject and pulls the trigger. This may cause electric energy to enter the subject directly. Drive stun mode is frequently used as a non-incapacitating pain compliance technique. [117] The Drive stun mode is not a recommended manner of deployment, in most instances, because it does not result in effective neuromuscular incapacitation (NMI). The small spread between the fixed electrodes on the device results in only a localized electrical discharge. There must be a spread of at least 4" for some neuromuscular incapacitation. [118]

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[116] Forensic Analysis Report, WD Forensic Inc. p.1; Taser Information Downloaded by Phillip Bender FCSO
[117] 2011 Electronic Control Weapons Guidelines, by USDOJ and PERF at p. 42
[118] Ho J, Dawes D, Miner, J, Kunz S, Nelson R, Sweeney J. Conducted electrical weapon incapacitation during a goal-directed task as a function of probe spread. Forensic Sci Med Pathol. Apr 2012.

Lt. Salzman first employed the Taser in drive stun mode. Here the pattern injury, reflecting this drive stun to Ms. McKenna's thigh shows a spread of only 1 1/2" well short of the 4" necessary to achieve neuromuscular incapacitation. The primary function of the drive stun mode when not used to complete the circuit is to gain subject compliance through the administration of pain. In the case here, because the deployment of the ECW in drive stun mode was ineffective, Lt. Salzman attempted to re-deploy the Taser in combination drive stun/ probe mode. The drive stun mode may be used in conjunction with the probe mode so as to induce neuromuscular incapacitation.

In this mode, the drive stun is pressed against the subject once the probes have been deployed into another area of the body. This is done so as to create a sufficient spread and thus increase the effectiveness of the device. Here, Lt. Salzman deployed the probes into Ms. McKenna's leg but was unable to complete the circuit by touching the ECW to her arm before the device cycled down. The result was that the second deployment of the ECW was in probe mode only. The deployment of the TASER X26 in probe mode, where there is an inadequate or small spread between the probes in the skin is of limited effectiveness and fails to produce effective neuromuscular incapacitation. In the present case, the probe spread was only 7/8". Thus, the second deployment of the ECW was no more effective than the first.

On the third attempt, Lt. Salzman was able to employ the ECW in combination drive stun/probe mode by touching the ECW to Ms. McKenna's right arm and thereby completing the circuit with the probes in her leg. This was more effective and enabled deputies to secure a strap to Ms. McKenna's leg but they were still unable to secure her leg restraints to the chair. Upon observing this, Lt. Salzman decided to employ it again whereupon deputies were able to finally

secure Ms. McKenna's leg restraints to the chair and end the struggle. Notably, it was only during these last two deployments that the ECW had any reckonable effect on Ms. McKenna.

Examination of the ECD (Taser Model X26)

On February 3, 2015, at 14:55:25 hours, Deputy Phillip Bender downloaded the data from the Taser X26, serial # X00-717170, and generated a report. The report showed one 3 second long spark test of the Taser at 15:25:35 GMT (10:25:35 a.m.) and 4 more discharges of 5 seconds each as reflected in the chart below:

Seq	GMT Time	Local Time	Duration	Temp	Battery
0001		Incomplete Time Change Record			
0002	05/23/13 16:24:57	05/23/13 12:24:57	Old Time		
0003	05/23/13 16:24:57	05/23/13 12:24:57	New Time		
0004	06/18/13 11:01:13	06/18/13 07:01:13	Old Time		
0005	06/18/13 11:00:34	06/18/13 07:00:34	New Time		
0006	02/03/15 15:25:35	02/03/15 10:25:35	3	23	88
0007	02/03/15 16:16:11	02/03/15 11:16:11	5	37	88
0008	02/03/15 16:16:50	02/03/15 11:16:50	5	37	87
0009	02/03/15 16:18:04	02/03/15 11:18:04	5	39	87
0010	02/03/15 16:18:49	02/03/15 11:18:49	5	39	87
0011	02/03/15 19:58:56	02/03/15 14:58:56	Old Time		
0012	02/03/15 19:43:18	02/03/15 14:43:18	New Time		

Detectives, after consultation with the Commonwealth's Attorney, sent the Taser Model X26 serial # X00-71710 along with the expended Taser cartridge, serial # C21011C3H, and probes with attached wires to W D Forensic, Inc. of Seattle Washington for expert analysis. Forensic scientists at W.D. Forensics determined that the Taser in question "functioned properly as received with electrical output parameters within manufacturer's specifications."[119] In addition, "The Taser operated within Taser International specifications related to the parameters of main phase charge, peak loaded main phase voltage, pulse duration, and pulse rate."[120]

The forensic examiners further opined, "Based on review of the submitted documentation and forensic examination of the receive items, it was concluded that the evidence observe supports the 20 second duration retrieved from the firing data on the Taser device related to the incident date (February 3, 2015). [121] The chart below is taken from the forensic report and reflects the time and duration of each Taser discharge (adjusted for Seattle-Pacific time).

Seq #	Local Time [DD:MM:YYYY hh:mm:ss]	Event [Event Type]	Duration [Seconds]	Temp [Degrees Celsius]	Batt Remaining [%]
45	03 Feb 2015 07:25:35	Trigger	3	23	88
46	03 Feb 2015 08:16:11	Trigger	5	37	88
47	03 Feb 2015 08:16:50	Trigger	5	37	87
48	03 Feb 2015 08:18:04	Trigger	5	39	87
49	03 Feb 2015 08:18:49	Trigger	5	39	87

[119] Forensic Analysis Report, WD Forensic Inc. p.1
[120] Id p.3
[121] Id p.1

The lab analysis of the Taser X26 used in this event indicated that there were no significant defects, i.e., charring or pitting, on the cartridge terminals. This indicates that the majority of the electrical discharge occurred strictly at the probes in Ms. McKenna's thigh and little if any current passed from the probes embedded in her thigh to the cartridge terminals on her arm. [122] None of the four deployments of the ECW in this case would have likely resulted in full neuromuscular incapacitation. [123]

According to recommendations made in the *2011 Electronic Control Weapon Guidelines* produced by the United States Department of Justice in cooperation with the Police Executive Research Forum Guidelines Personnel should use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Personnel should consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Any subsequent applications should be independently justifiable and the risks weighed against other force options.

On its face, Lt. Salzman complied with this recommended guideline. He deployed the ECW in four separate instances for a duration of five seconds each. He re-evaluated the situation between each deployment and determined an independently justifiable basis for each use based upon Ms. McKenna's continued resistance among other factors. Given the close spreads on the first two ECW deployments of 1 ½" (drive stun mode) and 7/8" (probe mode), as well as the third and fourth combination drive stun/probe mode deployments, where little if any electrical discharge passed between the probes in Ms. McKenna's thigh and the cartridge on her arm, Ms.

[122] Forensic Analysis Report, WD Forensic Inc. p.1
[123] Consultation with R. T. Wyant M.S. W D Forensic, Inc.

McKenna was never subjected to even one full, effective neuromuscular incapacitating deployment of the ECW.

The Taser X26 Manual

The TASER X26 manual provides a number of safety warnings intended to minimize hazards associated with ECD employment. Among these warnings are the following:

	**Physiologic or Metabolic Effects** The ECD can produce physiologic or metabolic effects which include, but are not limited to, changes in: acidosis; adrenergic states; blood pressure; calcium, creatine kinase ("CK"); electrolytes (including potassium), heart rate and rhythm; lactic acid; myoglobin; pH; respiration; stress hormones or other biochemical neuromodulators (e.g., catecholamines). Reasonable effort should be made to minimize the number of ECD exposures and resulting physiologic and metabolic effects. In human studies of electrical discharge from a single ECD of up to 15 seconds, **these effects on acidosis, CK, electrolytes, stress hormones, and vital signs have been comparable to or less than changes expected from physical exertion similar to struggling, resistance, fighting, fleeing, or from the application of some other force tools or techniques. Adverse physiologic or metabolic effects may increase risk of death or serious injury. (Emphasis added)**
	**Higher Risk Populations** ECD Use on a pregnant, infirm, elderly, small child, or low body-mass index (BMI) person could increase the risk of death or serious injury. ECD Use has not been scientifically tested on these populations. The ECD should not be Used on members of these populations unless the situation justifies possible higher risk of death or serious injury.
	**Physiologically or Metabolically Compromised Persons** Law enforcement personnel are called upon to deal with individuals in crises that are often physiologically or metabolically compromised and may be susceptible to arrest-related death ("ARD"). The factors that may increase susceptibility for an ARD have not been fully characterized but may include; a hypersympathetic state, autonomic dysregulation, capture myopathy, hyperthermia, altered electrolytes, severe acidosis, cardiac arrest, drug or alcohol effects (toxic withdrawal, sensitization to arrhythmias, etc.), alterations in brain function (agitated or excited delirium), cardiac disease, pulmonary disease, sickle cell disease, and other pathologic conditions. **These risks may exist prior to, during, or after law enforcement intervention or ECD Use, and the subject may already be at risk of death or serious injury as a result of pre-existing conditions, individual susceptibility, or other factors. In a physiologically or metabolically compromised person any physiologic or metabolic change may cause or contribute to death or serious injury. Follow your agency's Guidance when dealing with physiologically or metabolically compromised persons. (Emphasis added)**

Excited Delirium Syndrome

In the seminal book, *Excited Delirium Syndrome, Cause of Death and Prevention,* authors Theresa G. Di Maio and Dr. Vincent J.M. Di Maio describe excited delirium syndrome as follows:

> **Excited delirium syndrome** involves the sudden death of an individual, during or following an episode of excited delirium, in which an autopsy fails to reveal evidence of sufficient trauma or natural disease to explain the death. In virtually all such cases, the episode of excited delirium is terminated by a struggle with police or medical personnel, and the use of physical restraint. Typically, within a few to several minutes following cessation of the struggle, the individual is noted to be in cardiopulmonary arrest. Attempts at resuscitation are usually unsuccessful. If resuscitation is "successful," the individual is found to have suffered irreversible hypoxic encephalopathy and death occurs in a matter of days. [124]

Relying on symptomology long observed in the medical community, Dr. Di Maio opined, "Death occurring from excited delirium syndrome, whether due to intrinsic mental disease or use of stimulants, is characterized by:

- Acute onset of symptoms (minutes to hours)
- Delirium with acute, transient disturbance in consciousness or cognition; disorientation; disorganized and inconsistent thought processes; inability to distinguish realty from hallucinations; disturbances in speech; disorientation to time and place; misidentification of individuals
- Combative and/or violent behavior
- Use of physical restraint
- Sudden cardiac death within minutes to hours after development of symptoms
- Lack of response to cardiopulmonary resuscitation (CPR)
- A history of either stimulant abuse or endogenous mental disease" [125]

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[124] Di Maio Theresa G. and Di Maio, Vincent J.M., *Excited Delirium Syndrome Cause of Death and Prevention* (CRC Press 2006) p. 1

[125] Di Maio Theresa G. and Di Maio, Vincent J.M., *Excited Delirium Syndrome Cause of Death and Prevention* (CRC Press 2006) p. 18 citing Bell, L. V., On a form of disease resembling some advanced stages of mania and fever. *Am. J. Insanity* 6: 97-127, 1849

In 2008, the American College of Emergency Physicians (ACEP) formally adopted Amended Resolution 21(08) which created a task force and instituted a formal study into the existence, or not, of excited delirium syndrome. One year later, on September 10, 2009, the Excited Delirium Task Force published a White Paper recognizing excited delirium as a "unique syndrome which may be identified by a distinct group of clinical and behavioral characteristics that can be recognize in the per-mortem state..." [126]

Most persons suffering from excited delirium are hyper-aggressive, impervious to pain, and demonstrate unusual, "superhuman," strength. They engage in a lengthy period of struggle, followed by a period of quiet and sudden death. [127] "Severe Acidosis appears to play a prominent role in lethal [excited delirium] ExDS associated cardiovascular collapse." [128]

The ACEP Task Force concluded that, "it is the consensus of the Task Force that ExDs [excited delirium syndrome] is a real syndrome of uncertain etiology. It is characterized by delirium, agitation, and hyper-adrenergic dysfunction, typically in the setting of acute or chronic drug abuse or serious mental illness." [129] The report went on to note that, "There are well-documented cases of ExDS deaths with minimal restraint such as handcuffs without ECD (Electrical Conductive Device) use. This underscores that this is a potentially fatal syndrome in and of itself..." [130]

In *Excited Delirium Syndrome Cause of Death and Prevention*, the authors concluded that "death in the excited delirium syndrome results from a fatal cardiac arrhythmia due to a hyper-adrenergic state caused by:

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[126] White Paper Report on Excited Delirium Syndrome, ACEP Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009 p. 1
[127] White Paper Report on Excited Delirium Syndrome, ACEP Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009 pp. 3, 7-8,
[128] Id. p. 13
[129] Id. p. 15
[130] Id. p. 15

1. The excited delirium, which in itself triggers release of catecholamine

2. Additional release of catecholamines due to the struggle

3. A rapid and steep drop in blood potassium concentrations following cessation of the struggle in association with increasing levels of catecholamines. [131]

The Autopsy

On February 9, 2015, Dr. Jocelyn Posthumus, M.D., a forensic pathologist with the Office of the Chief Medical Examiner performed an autopsy upon the body of Natasha J.C. McKenna. It reads in pertinent part as follows:

> ***CASE SUMMARY:***
>
> *According to investigators and medical records, this was a 37-year-old African American female with a past medical history of schizophrenia and bipolar disorder who went unresponsive after an approximately 45 minute extraction from her jail cell. Review of the police video and reports show that the decedent was combative requiring the use of physical restraint, leg restraints, handcuffs, rip hobble and spit hood while they attempted to place her into a restraint chair. She continued to resist and a conducted energy device (CED) was deployed four times in a span of approximately 2 minutes using the drive stun three times (once into the right thigh and twice into the right upper arm) and the cartridge once (right thigh). After the fourth CED deployment, the decedent stopped resisting and she was transported from her cell to the Sally port area secured to the restraint chair by a waist belt and leg restraint still wearing the spit hood with her hands secured in handcuffs behind her back. Once in the Sally port area the decedent was found unresponsive and asystolic. She was admitted to the hospital in PEA arrest with lactic acidosis (pH of 6.68) and hyperthermia (100°F) and was resuscitated after one hour of CPR. Her hospital course was complicated by anoxic brain injury, acute hypoxic respiratory failure, acute kidney injury, rhabdomyolysis, shock liver and diabetes insipidus.*
>
> *Gross and microscopic examinations showed puncture wounds consistent with the use of CED darts over the right anterior thigh. There were scattered superficial and deep blunt force injuries to the extremities and torso consistent with the history of physical restraint. There was no evidence of underlying cardiovascular or neurologic disease. Toxicological analysis of hospital serum was positive for a non-toxic level of aripiprazole (49 ng/mL).*

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[131] Di Maio Theresa G. and Di Maio, Vincent J.M., *Excited Delirium Syndrome Cause of Death and Prevention* (CRC Press 2006) p. 72

The decedent had two recent hospital admissions on 01/08/2015 and 01/15/2015 for altered mental status with aggressive behavior and was diagnosed with lactic acidosis, leukocytosis and rhabdomyolysis with a negative urine drug screen. On both admissions she was brought to the hospital by police with documented use of restraint and pepper spray on the latter occasion.
The decedent was in a state of profound agitation/psychosis during the extraction and ***the use of physical restraint with or without CED use is associated with sudden death.*** *Excited delirium occurs in the setting of stimulant drug abuse, psychiatric disease, psychiatric drug withdrawal and metabolic disorders and is characterized by psychosis and agitation and is often associated with combativeness and elevated body temperature. (Emphasis added)*

CAUSE OF DEATH:
Excited delirium associated with physical restraint including use of conducted energy device

CONTRIBUTING:
Schizophrenia and bipolar disorder

MANNER OF DEATH:
Accident

PATHOLOGIST:
Jocelyn Posthumus. M.D.

DECEDENT:
Natasha JC McKenna [132]

Conclusion

My legal analysis as to whether the actions of the involved deputies could constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. To be lawful, a deputy's use of force must be objectively reasonable in light of all of the facts and circumstances confronting the deputy. Whether such actions were reasonable is evaluated from the perspective of a reasonable deputy at the scene rather than the 20/20 vision of hindsight. As the United States Supreme Court has explained, "[T] he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second

[132] Report of Autopsy N072-15 p. 4

judgments-in circumstances that are tense, uncertain, and rapidly evolving- about the amount of force that is necessary in a particular situation." Graham v. Connor, 490 U.S 386 (1989).

On the evidence here, I conclude that SERT members and deputies acted lawfully and reasonably under the circumstances in attempting to restrain and control Ms. McKenna. The deputies were tasked with a cell extraction involving a severely mentally ill woman with a history of recent violence and resistance towards police officers, deputies and medical personnel. Ms. McKenna's recent combative behavior included biting, scratching, spitting, kicking and punching. Everyone who dealt with her in these instances, medical personnel as well as police and deputies, described her as being exceptionally strong, irrationally combative and seemingly indefatigable. Further complicating the task confronting these deputies was Ms. McKenna's creation of a bio hazard with her feces and urine as well as her positive status for herpes[133] and MRSA[134] both highly contagious diseases.

These deputies found themselves in a protracted and violent struggle with Ms. McKenna. There is no evidence that any of the deputies acted maliciously, sadistically or with the intent to punish or cause harm to Ms. McKenna at any point in the struggle. To the contrary, they did their best, under very difficult circumstances, to restrain, control and prevent Ms. McKenna from injuring herself or others.

The Medical Examiner's Report of Autopsy concludes that the manner of Ms. McKenna's death was accidental and was caused by excited delirium associated with physical restraint including use of conducted energy device, along with the additional contributing factors of schizophrenia and bipolar disorder.

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[133] Forensic Intake Interview on 1/27/2015 Fairfax Fall Church CSB, p.2.
[134] ED Provider Notes; INOVA Fairfax Hospital Encounter Notes on 02/06/2015 (Generated on 3/23/2015) p. 498; It is not clear whether the MRSA came before or during Ms. McKenna's final hospitalization.

As the Medical Examiner explained in her report, "Excited delirium occurs in the setting of ...psychiatric disease ... and metabolic disorders and is characterized by psychosis and agitation and is often associated with combativeness and elevated body temperature..." In situations involving individuals suffering from excited delirium syndrome, "the use of physical restraint with or without CED use is associated with sudden death." [135]

There is no question but that Ms. McKenna suffered from serious psychiatric disease and that she exhibited all of the classic symptoms of excited delirium syndrome. The attestations of numerous witnesses to the events of February 3, 2015, as well as the video of the extraction, demonstrate that Ms. McKenna was agitated and combative with deputies for a lengthy period. The restraining methods used by deputies in an effort to protect Ms. McKenna and themselves were appropriate based on the facts as the deputies perceived them. Furthermore, Ms. McKenna's death cannot be attributed to any particular single restraint tactic employed that day, including deployment of the Conductive Energy Device (CED). Tragically, it was Ms. McKenna's metabolically unsustainable and protracted resistance to any restraint due to her mental illness and the ensuing excited delirium syndrome that actually caused her death. As noted by Dr. Di Maio, "If death is due to ventricular fibrillation or asystole produced by the Taser pulse, then the individual would lose consciousness immediately (3 to 4 seconds up to a maximum of 10 to 15 seconds)." Ms. McKenna was conscious for several minutes after the last deployment of the Taser. This is wholly inconsistent with cardiac pulmonary arrest due to a Taser shock but entirely consistent with cardio pulmonary arrest resulting from excited delirium where, " [t]ypically, within a few to several minutes following cessation of the struggle, the

[135] Report of Autopsy N072-15 p. 4

individual is noted to be in cardio pulmonary arrest." [136] This is precisely what happened in this case.

Moreover, the medical records from Ms. McKenna's final hospitalization confirm that Ms. McKenna suffered from the potentially lethal abnormal body chemistry associated with death caused by excited delirium. She was admitted to the hospital in PEA arrest with lactic acidosis and hyperthermia. She suffered from anoxic brain injury, acute hypoxic respiratory failure and rhabdomyolysis. The treating physician, Dr. Forgash, arrived at a differential diagnosis of "excited delirium, sudden cardiac death." [137] His diagnosis of excited delirium was confirmed by the Medical Examiner who performed the autopsy on Ms. McKenna's body. In the end, it was Ms. McKenna's severe mental illness, coupled with the tremendous physical exertion she put forth over an extended period of time struggling with deputies that resulted in a cascade of lethal chemical reactions inside of her body.

Ms. McKenna's death was a tragic accident. It is my legal opinion that there is not probable cause, much less proof beyond a reasonable doubt, that anyone involved in this case committed a crime.

Date: 9/8/2015

Raymond F. Morrogh
Commonwealth's Attorney

[136] Di Maio Theresa G. and Di Maio, Vincent J.M., *Excited Delirium Syndrome Cause of Death and Prevention* (CRC Press 2006) p. 1
[137] ED Notes INOVA Fairfax Hospital 2/3/15 (Generated on 3/23/2015 p. 341); Report of Autopsy N072-15