

## **Washington County Critical Incident Task Force Investigation of the Death of Brian Cardall**

### **Investigative Summary**

On June 9, 2009, Brian Cardall died following the deployment of a Taser by Hurricane City Police Officer Ken Thompson. Pursuant to the protocol of the Washington County Critical Incident Task Force (the "Task Force"), the Task Force was activated to investigate the circumstances of Brian Cardall's death. On Friday, November 6, 2009, the Task Force submitted its completed investigation to the Washington County Attorney's Office.

This is a summary of evidence gathered by the Washington County Critical Incident Task Force and prepared by the Washington County Attorney's Office.

#### **Officer Ken Thompson's Background**

On June 9, 2009, Officer Ken Thompson had been a police officer for six years and was working for the Hurricane City Police Department as a school resource officer.

Among the equipment issued to Officer Thompson by the Department were a duty pistol, Oleoresin Capsicum spray (pepper spray), and an X26 Taser, serial number X00-157996.

The Hurricane City Police Department's use of force policy provides the following about the use of the Taser:

*The ADVANCED TASER is a Conducted Energy Weapon; an electronic incapacitation device. It is a defensive weapon which is listed in the force continuum at the same level as O.C. spray; after soft empty hands....*

*The decision to use the ADVANCED TASER is based on the same criteria an officer uses when selecting to deploy O.C. spray, or a baton. The decision must be made dependant on the action of the subject(s) or threat facing the officer(s), and the totality of the circumstances surrounding the incident in any event; the use of the ADVANCED TASER must be reasonable and necessary.*

*The ADVANCED TASER is not meant to be used in deadly force situations. The ADVANCED TASER should not be used without a firearm backup in those situations where there is a substantial threat toward the officer(s) or others present.*

*The ADVANCED TASER provides a force option in which the officer does not have to get dangerously close to a threat before deploying the tool. Using the ADVANCED TASER may greatly reduce the need for other types of physical force*

*by the officer(s) resulting in serious or potential deadly injury to the offender, officer or others present.*

Hurricane City's policy regarding the use of Oleoresin Capsicum (OC) spray provides:

*This substance is intended for use in situations which do not require use of deadly force. Using this substance may greatly reduce the need for other types of physical force by the officer resulting in serious or potential deadly injury to the offender, officer, or others present.*

*The use of OC falls between soft empty hands and impact weapons in the Use of Force Continuum.*

...

*Use of OC is intended to prevent injury to the subject involved, the officer, and other persons present. The governing factor in the use of the aerosol is whether its use is REASONABLE AND NECESSARY.*

*Use of OC may prevent the use of more severe physical force and may be used when:*

- A. An officer is threatened with physical force and other means of controlling the offender are unreasonable or could cause injury to the offender, the officer or others present.*
- B. An officer is threatened by a dangerous animal.*
- C. In cases where the size or demeanor of an offender indicates that the officer or the offender would be endangered by the use of other physical force.*

Officer Thompson told investigators that he had received his initial Taser certification in 2003, underwent annual re-certifications, and had last re-certified in February 2009. Before June 9, 2009, Officer Thompson had not previously fired a Taser at a subject.

#### *The X26 Taser*

The X26 Taser is a type of weapon known as an electronic control device manufactured by Taser International, Inc. It is designed to be worn in a holster on the officer's belt. According to the manufacturer:

*TASER devices utilize compressed nitrogen to project two small probes up to various ranges of 15, 21, 25 or 35 feet (only 15 foot cartridges are sold to citizens) at a speed of over 160 feet per second. These probes are connected to*

*the TASER device by insulated wire. An electrical signal is transmitted through the wires to where the probes make contact with the body or clothing, resulting in an immediate loss of the person's neuromuscular control and the ability to perform coordinated action for the duration of the impulse.*<sup>1</sup>

A study conducted on the spread rates of the TASER probes “found that probes separated at a rate of approximately 2 inches for every foot of distance between the TASER and the suspect. At this drop rate, the maximum feasible distance for the TASER becomes 15 feet as any distance beyond that, even though the probes are capable of traveling further, results in too great of a spread.”<sup>2</sup> The optimum deployment range would be “7 to 15 feet from the target for probe spread, officer safety, and accuracy.”<sup>3</sup> TASER estimates that the probe spread for a target five feet away would be nine inches and that for a target ten feet away would be 18 inches.<sup>4</sup>

The trigger activates a five-second electrical current cycle, which can be stopped by placing the safety lever in the safe position, or can be repeated by re-pressing the trigger after the completion of the first cycle. Holding the trigger down continuously can extend a cycle.<sup>5</sup>

According to the manufacturer, users should “avoid extended or repeated TASER device applications where practicable.” The company’s training materials provide the following bullet points:<sup>6</sup>

- *The application of the TASER device is a physically stressful event.*
- *Especially when dealing with persons in a health crisis such as excited delirium, it is advisable to minimize the physical and psychological stress to the subject to the degree possible.*
- *Officers should only apply the number of cycles reasonably necessary to allow them to safely restrain the subject.*
- *Current human studies have concluded that TASER applications directly across the chest do not impair normal breathing patterns.*
- *If circumstances require extended duration or repeated discharges, the operator should take care to observe the subject and provide breaks in the TASER stimulation when practicable.*

The X26 Taser contains a dataport that records the time, date, duration, temperature and battery status of each firing.<sup>7</sup>

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<sup>1</sup> Taser International, Inc., <http://www.taser.com/research/Pages/FAQGeneral.aspx>; FAQ: “How does a TASER work?”

<sup>2</sup> Charlie Mesloh; Mark Henych; Ross Wolf, *Less Lethal Weapon Effectiveness, Use of Force, and Suspect and Officer Injuries, A Five Year Analysis* (2008).

<sup>3</sup> User Certification Course Taser X26 and TASER M26 Electronic Control Devices, Version 14.0.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

At the time of Brian Cardall's death, the manufacturer's training materials directed users to aim at "center of mass or legs." However, on October 12, 2009, the manufacturer issued a "Training Bulletin" that "lowered the recommended point of aim from center of mass to lower-center of mass for front shots."<sup>8</sup> Despite changing its recommended target area, the manufacturer maintained that "the risk of an adverse cardiac event related to TASER ECD discharge is deemed to be extremely low."<sup>9</sup>

The manufacturer's website states that "TASER devices have been proven statistically to dramatically reduce injury rates to suspects and officers and increase officer safety and community security compared to any other use of force option."<sup>10</sup>

### *The Events of June 9, 2009*

On June 9, 2009, Brian and Anna Cardall along with their two-year old daughter were traveling on State Route 59 in Utah toward their home in Flagstaff, Arizona. State Route 59 is a two-lane highway with traffic in both directions. The posted speed limit is 65 miles per hour.

Anna told investigators that as the family was traveling south of Hurricane, Brian became very agitated and started speaking irrationally. Anna said she was familiar with those actions because they had happened in the past. As Brian became more agitated, Anna began to fear for their safety and pulled off on the right side of the road to give him his medication. Brian took his medicine, but got out of the car and refused to get back in. Brian began yelling at Anna and running around the roadway, in and out of traffic. Anna called 911.

### *Anna's 911 Call*

The 911 Center received Anna's call at 1:04:48 p.m.

During the call - which lasted 12 minutes and 58 seconds – an emotionally distraught Anna can be heard trying to simultaneously communicate with the 911 operator, protect her two-year old daughter, and calm Brian down. The sound of frantic voices, cross-talk, and high-speed traffic in the background make some portions of the call difficult to understand.

Anna told the operator that "my husband is in the middle of the road having a serious psychosis," that "he's running in the street" and "he is just freaking out – I'm afraid he's going to jump in front of a car."

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<sup>7</sup> *Id.*

<sup>8</sup> Taser International, Inc., Training Bulletin 15.0 Medical Research Update and Revised Warnings, October 12, 2009.

<sup>9</sup> *Id.*

<sup>10</sup> Taser International, Inc., <http://www.taser.com/research/Pages/FAQGeneral.aspx>; FAQ: "Why use a TASER device?"

Anna told the operator that Brian had been diagnosed as bi-polar and that he'd taken his medicine fifteen minutes earlier, but it takes about an hour to take effect.

Anna told the operator that she was afraid for her two year-old daughter in the car. Anna can be heard yelling at Brian "don't touch me – Brian don't touch me." She told the operator "I'm trying to keep a safe distance."

Anna told the operator that Brian was throwing things, that he was "chasing after cars who pulled over to help" and that "he's going to freak out on one of them."

Anna told the operator that Brian "keeps running across the road. He's going to get hit. He's full blown lost it."

During the call, Anna can be heard attempting to calm Brian down by gently pleading with him as well as by forcefully yelling at him to avoid danger and stop certain behaviors. The recording captures audio of Brian's erratic behavior.

### Eye Witnesses

Several people traveling on State Route 59 saw Anna and Brian by the side of the road. At least three people pulled over to help.

Eric Bishop gave investigators a written statement:

*Seeing a man in boxer shorts, a car pulled off the road and a woman on a cell phone, I pulled over wondering if we could help. Getting out of my vehicle I walked toward the car, man, and woman, when the man yelled something about 'the end of the world' and acted VERY Agitated. Some others who were in our party had stopped their vehicles. I told them to get in their cars as the man seemed crazy.*

*I was about to pull out and decided to get out of my vehicle and ask the woman if she was okay. Upon doing so, the man sprinted at me. Scared, I jumped back in my truck expecting the man to start beating on my vehicle. Instead he ran past me wildly into the road waving at traffic. We left and called 911.*

Deborah Crowe gave a written statement:

*...[A] man w no shirt on & tan shorts jumped in front of my car (literally 3 or 4 feet) flagging me to pull over. At first I thought someone was hurt and pulled right next to his 'bluish' car. But he failed to say he needed something and walked towards his wife or girl friend – that's when I saw her standing between her car door (passenger). And her face was very red/purple and she was crying and yelling (I could not hear her though). She looked terrified to me. She was on the phone. He began flailing his arms and pointing at her derogatorily like and like he was horribly enraged. I was afraid for her and didn't want to leave her.*

*So I pulled forward and parked my car and was waiting to see if she would run towards my car. He was walking harshly back and forth between our bumpers (20 feet) or maybe slightly more and by this time I knew she was probably not safe. He suddenly began throwing things at my car. One was a black smashed item I liken to a smashed tall soda can and a few other items. He wasn't making any sense to me. She was scared to leave her car and I was afraid he may pull her over the side of the cliff or jump himself so I stayed. He was totally enraged. Then he stormed towards his trunk and pulled it open. I was afraid that he may have a shot gun or something. He was very deliberate in his actions. Being afraid of being trapped by an oncoming row of traffic I pulled out, but I slowed to look in my rearview mirror and he was pulling on her arm. I likened it to him trying to pull her into traffic.*

Clarence Russell Good gave a written statement:

*I was traveling from Apple Valley UT to Hurricane UT when a car was pulled off to the side of the road. A man was running on to the Hyway. I stop and the woman told me to go on, go on. The man ran after down the Hyway. I stop about ½ mile down the Hyway to call 911.*

### Dispatch Response

While the 911 operator was talking to Anna, he was simultaneously entering information into a computer which dispatch used to assign officers and medical personnel to respond to the incident. Another 911 caller had identified the incident as occurring at mile-marker 18. Mile marker 18 is within Hurricane City limits. Based upon that information, the dispatcher identified the closest available officers.

At about 1:09:41 p.m., Hurricane Police Officer Ken Thompson received the following broadcast from the dispatch center that covers Washington County's eastside:

Dispatch: 4x15 – Control.<sup>11</sup>  
Thompson: Copy.  
Dispatch: Psychiatric on SR 59.  
Thompson: Go ahead.  
Dispatch: State Route 59, mile post 18. A male – “10-96” – bi-polar in the road. Keeps trying to jump in front of cars. Advise he also keeps taking clothes off. We have his wife on the line. Advise he's bipolar and medicine hasn't kicked in yet.

Officer Thompson began driving toward State Route 59. Hurricane Officer Jeff Adams was also dispatched to the scene. Hurricane City Police Chief Lynn Excell overheard the radio traffic and realized that he was closer than Officer Adams, so Chief Excell began driving toward the scene. An ambulance with emergency medical personnel was also dispatched to the scene.

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<sup>11</sup> “4x15” is Officer Thompson's radio call-sign.

Neither Officer Thompson nor Chief Excell had dash-cams in their cars. Officer Adams' car was equipped with a dash-cam, but he arrived too late to record the incident. In addition, the car was positioned in a way that did not capture the scene.

However, Officer Thompson carried a digital audio recorder that captured an audio recording of the events beginning shortly after he received his assignment to respond to the incident.

As the officers travelled, they received the following dispatch broadcasts:

Dispatch at 1:12:51 pm:

*The male is trying to get back inside the vehicle and the female does not want him back in the vehicle because there is a two year old. Advising he is out of control and talking about meeting with the President.*

Dispatch at 1:13:07, pm:

*RP [reporting party] advising now he keeps running across the road thinking that he's directing traffic.*

As the officers passed mile marker 18 and did not find the Cardalls, there was a radio discussion between Chief Excell and Officer Thompson regarding whether they were in the right place. Just as the dispatch operator was explaining that one of the reporting parties "gave us milepost 18," Officer Thompson crested a blind hill heading south-bound near milepost 16.

At 1:17:43 pm., Officer Thompson radioed dispatch.

Thompson: *4x15. I'm 23 [on scene], it's going to be about [milepost] 16.*

Dispatch: *Copy. Milepost 16 at 1317 [hours].*

At that point, Officer Thompson drove past Brian Cardall standing in a turn-off area next to the right-hand side of the road. At about the same time, Anna Cardall ended her 911 call, telling the operator "they're here – they're here."

### *The Officers' Arrival on the Scene*

Officer Thompson pulled into the turn-off and parked east of where Brian was standing on the edge of the roadway. Chief Excell pulled over before getting to Brian and parked to the west of where Brian was standing. The Cardall's grey Toyota Matrix was between the two police cars but further from the edge of the road. Diagrams drawn by the officers show that the two officers and the Matrix formed a triangle with Brian positioned in the middle.

Officer Thompson and Chief Excell left their cars at about the same time and immediately began issuing commands to Brian.

### The Digital Audio Recording

Ken Thompson's pocket digital audio recorder captured sounds of the incident. Portions of the recording are difficult to hear clearly because of background noises and cross-talk between different voices originating from different distances. Noise from what sounds like multiple vehicles speeding by drowns out portions of the audio.

Within a few seconds of getting out of his car, Officer Thompson yelled: "Come here" followed by "Get down on the ground." Chief Excell can be heard yelling in the background: "Get down on the ground." Anna Cardall also can be heard telling Brian to "get down."

Officer Thompson yelled at Brian to "get down on the ground," or "get down" approximately thirteen times. During that same time frame, Chief Lynn Excell also repeatedly commanded Brian to "get down on the ground."

Brian can be heard yelling unintelligibly. At one point he can be heard yelling something like "this is a standoff- don't shoot us" and "this is a standoff, don't shoot me man."

Officer Thompson then yelled: "Police officers. Get down on the ground. Down. Get down on the ground."

At that point – about 42 seconds after Officer Thompson's first command to Brian – the audio captures the popping sound of a Taser being fired.<sup>12</sup> Thompson then said into his radio: "4x15 – Taser deployed." The recording captured the clicking sound of the Taser as it went through its 5-second cycle.

After the first cycle finished, Thompson yelled "Stay on the ground" and the clicking sound of a second Taser cycle can be heard. As the second cycle clicked through, Thompson again yelled "Stay on the ground." Chief Excell yelled "stay down - stay down" and "put your hands behind your back." Thompson then again radioed dispatch: "Taser deployed."

The audio captured the officers telling Brian to "roll over" and "put your hand behind your back – put your hand behind your back." Anna said, "Brian just do it." The audio captured the sound of handcuffs being placed. At that point – which was about 94 seconds into the incident – Officer Thompson radioed dispatch "10-82 – medical is clear to enter."<sup>13</sup>

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<sup>12</sup> Thompson Digital Audio Recording, at approximately minute 18:47 of the audio recording.

<sup>13</sup> *Id.*, at approximately minute 19:37.

The arrival of the medical personnel and other law enforcement officers is captured on the recording. In addition to the medical efforts, the recorder picked-up the following conversations.

About two-and-a-half minutes after Officer Thompson deployed the Taser, the recorder captured this exchange:<sup>14</sup>

Male: *Did he come after you?*  
Thompson: *Huh?*  
Male: *Did he come after you?*  
Thompson: *Um huh. He was already pale. He was like that jaundiced when we got here.*

About four-and-a-half minutes after the Taser was deployed, the audio tape captures this exchange:<sup>15</sup>

Male: *He went right at Ken.*  
Thompson: *What's that?*  
2<sup>nd</sup> Male: *He went right at you?*  
Thompson: *Yeah.*

Approximately nine minutes after the Taser was deployed, the audio tape captured this exchange:<sup>16</sup>

Male: *What time was the taser deployed? Do you guys have that on your computer?*  
Thompson: *Dispatch should have it.*  
Male: *Okay.*  
Thompson: *'Bout 30 seconds. It'd be about 30 seconds before you got here.*  
Male: *Okay. Let me try and find it.*  
2<sup>nd</sup> Male: *So when he went down did he stay down?*  
Thompson: *He went down and tried to get up. And I told him to stay down. And I tased him again and then after the second time - that's -*  
Male: *Okay.*

### *The Witnesses' Recollections*

Investigators conducted interviews and gathered statements from six people who witnessed the deployment of the taser.<sup>17</sup> Other people were identified who witnessed events both before and after the Taser deployment.<sup>18</sup>

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<sup>14</sup> *Id.*, at approximately minute 21:19.

<sup>15</sup> *Id.*, at approximately minute 23:11.

<sup>16</sup> *Id.*, at approximately minute 27:40.

<sup>17</sup> A person appeared anonymously on television, but declined to be identified or interviewed by Task Force investigators.

The primary witnesses were Anna Cardall, Ken Thompson and Chief Lynn Excell. Each gave video-recorded interviews to investigators on June 9, 2009. Hurricane Officer Jeff Adams – who arrived on the scene too late to witness the deployment – was also interviewed. Civilian Lorry Stratton and Emergency Medical Technicians Ryan Carter and Robert Spendlove also witnessed the taser deployment. They also provided written or recorded statements to investigators.

Officer Ken Thompson

Investigators interviewed Officer Thompson on June 9, 2009. During that interview, Officer Thompson told investigators the following:<sup>19</sup>

*When we were going up there, it was me in the front and the Chief right behind me. We came around - it's kind of on a blind corner – so I was going probably 70 or 75 – and I actually went past where they were at. And came around the corner and saw he was standing there naked on the side of the road.*

*I came to a stop and then backed up a little bit closer and the Chief was able to stop before he passed him. So it was kind of me, the guy, and the Chief there.*

*I told him to get on the ground and – you know - tried to get him to comply so we could take him into custody and figure out what was going on and he just wouldn't comply.*

*He kept - he'd kind of take a couple of steps toward the Chief, take a couple of steps back off the road towards the car and his wife and then a couple of steps towards me.*

*He told me at one point, “this is a hostage situation – don't shoot him.” And he was looking at the Chief like I was going to shoot the Chief.*

Q: *He said that to you?*

Thompson: *Yeah, he said, “this is a hostage situation don't shoot him” – or “a standoff” - or something.*

*And he wouldn't comply, and wouldn't comply, and wouldn't comply - and came at me – and so I tased him. Deployed the taser.*

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<sup>18</sup> These witnesses include civilians who observed Brian's behavior before police arrived and who called 911 or contacted the Task Force to provide statements. Additional statements were provided by the Cardall family and by Peter Stirba, attorney for Hurricane City.

<sup>19</sup> Officer Ken Thompson Interview June 9, 2009, beginning at minute 03:03 of the video recording.

*And he went down kind of went off to my left away from the road.  
And then he tried to get back up and so I tased him again. ...*

...

Q:<sup>20</sup> *The second deployment. You said he was starting to get up?*

Thompson: *Um huh.*

Q: *Did you give him verbal commands to stay down?*

Thompson: *I don't remember.*

Q: *Okay. He started to get up after the five seconds?*

Thompson: *He was – I think he was sitting on his butt with his hands on the ground and was coming up and I pulled the trigger again.*

...

Q:<sup>21</sup> *When you got there did the wife talk to you at all?*

Thompson: *No.*

Q: *Did she make any statements or comments or anything?*

Thompson: *She was saying something to him – you know – “get down on the ground” or “do what they say” or something. But it was – I mean – as soon as we got there he was right out on the edge of the road – then he was just back and forth between the Chief and I and his wife. It was just chaos. I don't know any other way to describe it.*

...

Q:<sup>22</sup> *Can you remember any comments that he was making - any statements?*

Thompson: *Other than “this was a hostage” or “a standoff” or whatever and “don't shoot him.” That's all I really recall him saying.*

Q: *Okay.*

Thompson: *He would go – you know – we were trying to get him down on the ground telling him get down on the ground, get down on the ground, and you know he'd – it's just crazy – it was so fast – he'd go down on his knees and then he'd be back up and be down on his*

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<sup>20</sup> *Id.*, beginning at minute 8:34.

<sup>21</sup> *Id.* beginning at minute 10:10.

<sup>22</sup> *Id.*, beginning at minute 13:35.

*knees and back up. He did that several times and then – you know – walking back and forth between all of us.*

Q: *So you finally decided to tase him?*

Thompson: *Um huh.*

Q: *Because?*

Thompson: *He was coming right at me. And not – like the other times he was going back of forth between us he'd take one or two steps – but you know – right before I tased him he went from you know – 10, 15, or 20 feet to five feet just like that.*

Q: *So he was within about 5 feet when you tased him?*

Thompson: *Um huh. Something like that.*

Officer Thompson told investigators that when he first arrived at the scene, Brian was completely naked. However, Officer Thompson said that Brian may have been holding an article of clothing when the Taser was fired.

When questioned during a follow up interview,<sup>23</sup> Officer Thompson told investigators he does not know how long he had been on the scene before he actually pulled out his Taser, but that “it did not come out of my holster until after I had seen him and he wasn’t going to be controllable just by verbal commands.” He said “I know I told him to get down on the ground a couple of times before I pulled it out, but as far as the exact time I have no idea.” Officer Thompson told investigators that he understood the taser to be a “less than lethal” weapon that could “help me bring an uncontrollable person under control, without, you know, without killing them.”

#### Chief Lynn Excell

Investigators interviewed Chief Lynn Excell on the afternoon of June 9, 2009. Here are excerpts of Chief Excell’s interview:<sup>24</sup>

*Halfway up the hill we go around the first corner and here’s a car on the side of the road - naked guy standing right at the edge of the asphalt. Ken went past him and pulled over. I pulled over below him. I understand we’re approximately milepost 17 – right around there – 16 ½ or 17.*

*We both exit our cars I believe about the same time. I exited mine and walked up. Started giving him commands to get down.*

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<sup>23</sup> Telephone Interview with Ken Thompson and Peter Stirba, August 10, 2009.

<sup>24</sup> Chief Lynn Excell Interview June 9, 2009, beginning at minute 05:25 of the video recording.

*[I] did not have any weapons drawn whatsoever. I was ready – I had my hand on my gun, but I didn't have anything drawn.*

*Gave him commands. He dropped down to his knees. Popped right back up. Headed to the street. Take a couple of steps toward me. Turn and head towards his wife.*

*His wife was ... Looking at the scene - you're on the hillside. The parking area they're pulled off on was on the right side. There was the road – I'd say its about 20 - 15 - 20 feet – maybe; the car; then she was about 20-25 feet on the other side of the car.*

*He'd head towards her – stop, turn – take a couple of steps toward Officer Thompson. Stop, turn look at the road – turn around – look back at me – take a couple of steps.*

*I believe and I'm going to assume - I'm pretty well knowledgeable that Ken was giving him commands, too – Officer Thompson.*

*I kept giving him commands – “Police officer: Get on the ground. Police officer: Get on the ground.”*

*When he'd go to his knees, I'd say “level out” – you know – “get flat down on your stomach.” I told him that at least 2 or 3 times. He'd pop right back up and do the same thing again.*

*And I was probably – I bet I was 20 feet away from him or so – giving commands. Ken was approximately the same distance.*

*Then he whirled and head toward where his wife was again – and whirled and headed right towards Ken – and just kept going. Kept going. He got within what I would assume is four or five feet of Officer Thompson.*

*And – at which time – Officer Thompson deployed his Taser.*

*The guy instantly went right to the ground – kind of hunched up [gesturing] kind of tensed up if you will – went to the ground – and popped right back up again. As soon as the Taser stopped he came right back up again.*

*Ken then – what appeared to me – because I heard the clicking – deployed again. The guy went down on the ground flat out – as soon as I knew that it'd had stopped I proceeded over to him.*

*[I] got down put my – I had my hand and stuff in his back. And I was leaning on him – his right arm was out to the right side and his left arm was underneath him. I took his right arm brought it back. Ken says, “Do you have handcuffs” and I said “No.” He handed me his and I grabbed his handcuffs. He still had his taser. I clicked it onto his right hand. Then I held onto it and lifted him up –his left shoulder – grabbed his left arm from underneath him brought it around and put the handcuff on it.*

*At which time – I seen at that point - Officer Adams walk towards me with a blanket – he had a white blanket. He comes down – lays it on top of him.*

*I looked down and was a little concerned. Reached down and tried to check for – I couldn’t see him breathing so I looked down and I checked for pulse and I couldn’t get anything....*

...

Q:<sup>25</sup> *When Ken deployed his Taser onto the subject, did he have that out before he got close? Or, was it, “he’s close – pull it deploy it – or did ...*

Excell: *I don’t know.*

Q: *... he have it at the ready?*

Excell: *I don’t know. I honestly – in my heart of hearts I assume it was up. I assume he had it out. Because I believe at one point I told him “get down or he’s going to tase you” so I believe it would have been up.*

Q: *Okay.*

Excell: *Yeah. I told him “Get down or you’re going to get tased, get down or you’re going to get tased.”*

### Anna Cardall

Anna Cardall was interviewed by the Task Force on June 9, 2009. She also gave an interview to a private investigator for the Cardall family on June 10, 2009. A report of the interview was provided to the Task Force.

The report provided by the Cardall family states in part:

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<sup>25</sup> *Id.*, beginning at minute 10:32.

*According to [Anna's] phone calls, the Police arrived about 13 minutes after she called. Two Officers arrived and parked in front of her vehicle, one on each side of Brian. Both officers approached Brian. They immediately started commanding him to get down on the ground. She said by then she was hysterical and also told Brian to lie down. Brian started standing up and then kneeling repeatedly. His hands were raised above his shoulders with the palms open flat. Brian acted very confused and fearful. She said at no time did Brian make a closed fist or in any way make an aggressive move toward the Officers. Brian had removed all of his clothes and was completely naked. He was saying something but the words were unintelligible to Anna. She said that approximately 20 seconds after the Officers arrived and confronted Brian, one of them shot his taser weapon into Brian's mid stomach area. Brian immediately dropped to the ground and was shaking violently and then stopped movement completely. The officers then seemed to be wrestling with Brian to place handcuffs on him but she could see that Brian was completely unconscious as they did so. They left Brian laying there with no first aid given or attempted. He was still naked and now scratched and cut from gravel where he fell. Anna said that she could tell at that time that Brian appeared lifeless.*

During her interview with the Task Force, Anna told investigators.<sup>26</sup>

Q: *Once the officers got there can you kind of explain –*

Anna: *He was naked. They told him to lay down but he wouldn't. And I was trying to tell him to lay down but he wasn't listening to me at all – I was nothing. And one officer had a taser the other did not. And they just kept asking him to lay down, and he went and approached the other officer and they tased him. And he – you know – “tased” –*

Q: *Okay.*

Anna: *You know what I mean? Like rolled around. But he still wasn't – he wouldn't pull his arms around ....*

Q: *So he was in a standing position and they tased him –*

Anna: *Yes.*

Q: *... and he fell down?*

Anna: *Yes. And he rolled a bit and –*

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<sup>26</sup> Anna Cardall Interview June 9, 2009, beginning at minute 40:41 of the video recording.

- Q: *Was he up on the road or was he –*
- Anna: *No he was up on the dirt part of the road.*
- Q: *Okay.*
- Anna: *And then he – I couldn't quite tell if he was – he wouldn't – he looked very unconscious to me. And I think they were having a hard time getting his arm around and then they put him in handcuffs. And at that time they checked his pulse.*
- Q: *I'm sorry. Just to go back a little bit. When he first got tased and he fell down – what – do you remember how long he was on the ground? Did he get back up?*
- Anna: *No, he never got back up.*
- Q: *Okay.*
- Anna: *He just went down.*
- Q: *Do you remember what the officers were saying after the Taser?*
- Anna: *No. I don't know if they were saying anything.*
- Q: *Okay. And then they approached him?*
- Anna: *Yeah. To put handcuffs on him. And at that point they realized he was unconscious.*

Anna Cardall recalls that Officer Thompson had drawn his Taser as soon as he came out of his car.

### Other Witnesses

The Task Force obtained written statements from three other witnesses.

Hurricane Fire & Rescue EMT Ryan Carter:

*We found the incident and pulled ahead of the officers vehicles due to space. As we passed the pt, we noticed an officer had his taser pointed at the naked patient. The pt was moving towards the officer and the officer deployed the taser. I started to see the pt fall, and then my view was obstructed by a vehicle.*

Hurricane Fire & Rescue EMT Robert Spendlove:

*We were called to 25B psyc pt and were told to stage at mm 18 SR59. Scene was at MM16. And we were behind Hurricane Police Dept who pulled over on a blind turn and were out with subject, who was naked, as we drove by. I noticed that the*

*subject was running toward a Hurricane Police Officer, who was armed with what looked like a gun or tazer. I was driving about 15 MPH and about 25 feet from scene when I noticed the pt or subject went down and then I had to look up and pull over to stage. We staged for about 1 min then police summoned us to scene where we found pt lying on ground face down with handcuffs behind back.*

Lorry Stratton:<sup>27</sup>

*While going to Apple Valley to deliver propane I was passed by Chief Ecell and Officer Ken Thompson. They had lights on. When I got up to upper passing lane, I observed Chief Excell to the northwest in front of his car and behind victim's car. Officer Thompson had his Taser out and pointed at the victim. The victim was standing to the north east of his car. Officer Thompson was 10 to 12 feet east of victim. The victim was naked and had his clothes in his arms. He took one step towards Off. Thompson, at which point he was tasered and dropped immediately and Chief Excell run up to the victim pointing finger or gun? I was then past.*

### Medical Treatment

Medical personnel waiting on scene arrived and began providing treatment. A heart monitor indicated that Brian was suffering ventricular fibrillation. The EMTs administered a defibrillator and CPR.

### Evidence from the Taser used in this Incident

According to the dataport in Officer Thompson's Taser, there was a two-second break between the completion of the first cycle and the beginning of the second cycle.

An FBI analysis of the Taser concluded that the weapon performed within the manufacturer's specifications.

The taser probes struck Brian on the upper-left shoulder and on the left chest just below the nipple. Although no measurement of the distance between the probes was obtained, the distance was not great and crossed directly over the heart.

In light of the estimated probe-spread rate, the distance between the probe wounds on Brian's chest suggests that Brian was between five to ten feet from Officer Thompson at the time the Taser was fired. That estimate is also consistent with witness observations.

Emergency medical personnel removed the probes from Brian's chest. Officer Thompson recovered the probes and placed them back in the Taser's expended cartridge. Task Force investigators recovered the cartridge and the probes and logged them into evidence.

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<sup>27</sup> Mr. Stratton's interview was also audio-recorded. The Cardall family also provided a report of an interview conducted with Mr. Stratton by their investigator.

*The Medical Examiner's Report*

On November 6, 2009, Assistant Utah State Medical Examiner Erik D. Christensen, M.D., issued his Report of Examination of Brian Cardall.

Dr. Christensen concluded that Brian's cause of death was "ventricular fibrillation following conducted energy weapon (CEW) deployment during a manic episode with psychotic features."

Dr. Christensen found:

*Two major factors are at play in this case, each of which could represent a possible primary or contributory cause of death. It is possible that CEW deployment is a primary or contributory cause of death in this case. While it is generally acknowledged that CEW use is safe and represents an extremely low risk of death due to the electrical activity of the weapon, the circumstances in this case represent a combination of factors that are believed to increase the risk of potential electrical death. These include the placement of barbs over the cardiac axis, the penetration of the barbs deeply into a thin chest wall directly over the heart, absence of intervening clothing and more than one cycle of electrical stimulation. Additionally, the cardiac rhythm of ventricular fibrillation is consistent with findings seen in cases of electrocution. Forensic testing revealed that the CEW in this case was functioning within the specifications of the manufacturer.*

*It is clear that Mr. Cardall was in a state of both mental confusion and physiologic excitement. This episode was similar to, but somewhat more severe than, other episodes witnessed previously by family members. He was confused about the events going on around him and appeared to be responding to internal stimuli. He also showed physiologic manifestations of an underlying autonomic dysregulation with rapid heart beat and respirations, sweating and agitation. This heightened level of arousal would also put him at risk for sudden cardiac death from ventricular rhythm disturbance, independent of the deployment of the CEW, and could also represent a possible primary or contributory cause of death.*

...

*As the underlying cause of the ventricular fibrillation is of more than one potential and unusual origin, one natural and one not, the manner of death remains undetermined.*