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**SPOKANE POLICE DEPARTMENT
ADDITIONAL REPORT****DATE/TIME:** 5/31/06**CASE NO.:** 06-79962**CHARGE/INCIDENT:** Officer Involved Fatality**FORWARDED TO PROSECUTORS:** DET. TERRY FERGUSON 153**INVESTIGATIVE REPORT FOR 6/1/06:**

Otto C. Zehm, 36 years of age, suffered from a [REDACTED] disorder, and was diagnosed as such when he was in his teens. Subsequently, he was treated by [REDACTED] for several years which included a medication regimen and at least two [REDACTED]. One of the [REDACTED] and was caused at least in part by Otto Zehm choosing to discontinue his medications. Records from [REDACTED] when he was not taking his medications. He was referred to the [REDACTED] in 2003 when he was no longer financially eligible for services through the [REDACTED]. At the time of his discharge from [REDACTED] Zehm was functioning acceptably on [REDACTED] daily. He still had [REDACTED] such as [REDACTED] however he maintained employment and independent living.

Otto Zehm was employed by the Skills'Kin Center (formerly Pre-Vocational Center) as a janitor for approximately five years until his death. He was dependable, friendly, well liked and performed his job well. Zehm's supervisors were probably the most familiar with his behaviors and activities as they were around him the most consistently. Zehm was taking [REDACTED] during his employment, reportedly with good results. When his behavior did vary to unacceptable levels (hallucinations, lack of focus) he responded positively to verbal directions. Otto Zehm, according to his employers, neighbors and acquaintances, was habitual in terms of task performance and personal activities. Zip Trip clerks from the Illinois/Perry store reported that Zehm stopped by every evening for a Pepsi and dinner. As stated, he lived independently and required no supervision for daily living skills.

Zehm did not have any remarkable medical problems. He was concerned with his weight and smoked cigarettes but otherwise was in apparent good health. He underwent [REDACTED] the only notable result. Zehm fluctuated his [REDACTED] intake in hopes of curbing his appetite and quitting smoking. He reported to CHAS staff that he cut the [REDACTED] medication by [REDACTED] in an effort to wean himself from it. As a result, a consultation with Julie Leffler, ARNP, occurred on 2/13/06 for evaluation and treatment of his [REDACTED]. Leffler's remarks indicate that Zehm continued to have [REDACTED] Zehm

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acknowledged that the [REDACTED] helped him control the [REDACTED] but he felt "too medicated." Additionally, Zehm talked of some of the [REDACTED] and making him paranoid. Leffler also questioned cognitive impairment in addition to [REDACTED] symptoms based on her impressions during that consultation.

Although Zehm reported he had been stable on the [REDACTED] since 2000, he wanted to discontinue it. Leffler procured an agreement from him to consistently take [REDACTED] and monitor his symptoms. Her report expressed concern that further tampering would exacerbate symptoms and provide less [REDACTED]

On 3/13/06, CHAS records show a call was placed to Otto Zehm as he missed a [REDACTED] appointment. He did not answer the phone and a message was left for him. This was their last contact reference Zehm. CHAS' primary interaction with Zehm was [REDACTED]. The reports from the clinic alternately list the Zyprexa prescription for [REDACTED] and [REDACTED] so it is difficult to determine when the [REDACTED] was initially prescribed and/or whether or not the milligrams were increased to [REDACTED] within the [REDACTED] time frame.

In mid February 2006, Skils'Kin supervisors observed unusually disturbing behavior from Otto Zehm. Their records mention increased confusion, distraction, disorientation, poor work performance, need for increased work supervision, nonsensical responses and verbal aggression. On 3/2/06 staff investigated an involuntary placement for him in [REDACTED] however he reportedly did not meet mental health criteria. Staff knew of the [REDACTED] reduction and persuaded Zehm to call CHAS for an evaluation appointment, although [REDACTED]. On 3/7/06 the decision was made by the Skils'Kin director for Zehm not to report to work until the CHAS appointment. Zehm was informed of the decision but arrived at work the next day anyway, with no apparent recollection of the temporary discharge. The staff was very concerned for his welfare due to his high level of confusion and therefore tried to maintain contact with him. This included contacts with [REDACTED] who also reported that Otto was behaving very differently and she was concerned.

On 3/16/06, staff spoke to [REDACTED] and learned she had not spoken to Otto since 3/10/06. This was very unusual. Mrs. Zehm later advised detectives that Otto called her every night, but did not do so about the last two weeks prior to

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his death. Despite efforts, the Skills'Kin staff did not have contact with Otto Zehm after 3/7/06. His last paycheck was mailed to him on or about 3/10/06.

On 3/18/06 at approximately 1814 hours, 9-1-1 received a call from [REDACTED], who reported a suspicious male acting strangely at the Washington Trust Bank ATM machine (Baldwin/Ruby.) This male's actions intimidated the complainant, who thought he might be intending to rob her. The complainant drove away from the ATM without completing her transaction. As the police call continued, the complainant stated the male may have taken the money she was trying to secure from the ATM Machines, as he was "messing" with the machine as she drove away. Ms. [REDACTED] was sufficiently concerned in that she followed the subject and reported his changing locations to SPD radio until he entered the Zip Trip at Baldwin/Ruby.

Ofc. Steve Braun was initially dispatched to respond to the complaint. As more information was received from the complainant, including a description of the subject possibly being "high" per his behavior, Ofc. Karl Thompson also responded. Ofc. Thompson confirmed with SPD radio that the subject did take the complainant's money. He saw the subject enter the Zip Trip and quickly followed to detain him. Ofc. Thompson is familiar with the business and is aware of exits as well as items in the store that could be used as weapons. Ofc. Thompson withdrew his baton and held it in the presentation position as a sign of force when he confronted a possible robbery and/or theft suspect.

Otto Zehm held a two liter bottle of Pepsi with both hands in a horizontal position at chest level. He was wearing a heavy leather jacket capable of concealing a weapon. He looked directly at Ofc. Thompson, who was dressed in full uniform, and Zehm displayed a defiant, deliberate look that was not marred by confusion or submission. Ofc. Thompson's information reference the initial complaint required that he detain the subject for further investigation. The nature of this call and the subject's clothing made this a heightened risk contact for Ofc. Thompson, therefore when he saw Zehm with the pop bottle and the look of defiance on his face, the risk increased. Ofc. Thompson was aware that there was a clerk and customers in the store who could be endangered if Zehm escalated to assaultive behavior. Ofc. Thompson ordered Zehm to drop the bottle. Zehm responded with, "Why?" The order was given again and Zehm said, "No." Ofc. Thompson believed Zehm was going to strike him with the bottle and that if he succeeded, Ofc. Thompson would be injured, delayed and/or otherwise incapacitated; placing him at great risk to be further assaulted. Ofc.

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Thompson quickly considered his force options and decided to apply a baton strike to preempt an anticipated assault by Zehm. The strike was delivered to Zehm's left thigh with the expectation that it would disrupt an assaultive plan and Zehm would buckle to the ground and then be controlled with handcuffs.

Zehm did not buckle, but pivoted to the right. He still held the bottle and the threat to the officer remained. Ofc. Thompson grabbed Zehm's jacket collar and applied a second strike to the legs. Ofc. Thompson told Zehm again to drop the bottle and Zehm said, "No." More strikes to Zehm's lower extremities were delivered with the intention of getting the bottle released and the subject on the ground. Zehm eventually went down, still holding onto the Pepsi bottle in both hands, however he then dropped it. Zehm punched the officer in the chest a number of times with both fists. Ofc. Thompson applied his taser once as Zehm punched at him. One probe penetrated, but the second probe likely did not. Zehm did not react as expected and his assaultive behavior continued. Ofc. Thompson yelled at him to stop resisting, stop fighting, but only received growls in response. Zehm punched again at Ofc. Thompson when he again regained his footing. Ofc. Thompson applied more baton strikes to the torso, shoulders and arms as the muscle mass strikes were ineffective. He grabbed Zehm's hair to maintain some control as they moved down an aisle to the west door. Zehm did eventually go to the floor as Ofc. Thompson struck him in the legs.

Ofc. Steve Braun arrived shortly after Ofc. Thompson's radio request for urgent help. He immediately saw Zehm kicking and resisting Ofc. Thompson's efforts to control him. As Ofc. Thompson straddled Zehm, Ofc. Braun applied several power jabs, no strikes, with his baton to Zehm's torso area, with no apparent effect. Zehm continued to struggle. Ofc. Thompson said to use the taser and Ofc. Braun then fired his taser once at Zehm's torso, however the subject was very active and the probe hit was unknown. There was no change in Zehm's behavior. Ofc. Braun started to load a second cartridge because the first had been ineffective. Ofc. Braun saw Zehm cock his leg back in a kicking position and believed Zehm was about to kick him in the knee. Ofc. Braun dropped the unloaded cartridge in the split second he had to protect his knee against a direct kick. Zehm did make contact, however the force was diminished by Ofc. Braun's reaction. Ofc. Braun did not fire a second taser shot.

Ofc. Braun subsequently applied a number of drive stuns with the taser to Zehm's torso to try to subdue him. These did not alter Zehm's actions; he continued to kick and buck, refusing to comply with officers' orders. Ofc. Braun

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considered a vascular lateral neck restraint, but could not safely apply it. Neither officer, despite a number of control techniques, could get Zehm to unclench his fists or arms to get him cuffed. There was a point where they used only their weight to control him until additional officers arrived. It is noted that Zehm was lying on his back during most of the altercation with these officers.

Officers Jason Uberuaga, Zack Dahle, Erin Raleigh, Ron Voeller and Sgt. Dan Torok responded and successfully cuffed Zehm. His aggressive behavior continued, therefore leg restraints were applied. Zehm was rolled over onto his side, however, his constant movement resulted in his laying on his torso as well. Zehm pulled against and stretched the leg restraints which allowed him to kick and present even more of a threat to officers. The leg restraints were reapplied. Medics were called prior to the second restraint application for taser removal. One probe was removed from Zehm's sternum area. The SFD medics were not able to check Zehm's vital signs due to his violent thrashing about. Zehm was obviously breathing and his heart was beating.

Arrangements were made for an ambulance transport to a hospital for Zehm as officers recognized a need to have him checked due to the long exhausting fight. Officers monitored him as he lay prone; sometimes on his side, sometimes on his stomach. They noticed he was no longer breathing and immediately summoned the medics, who were still in close proximity. The leg restraints and cuffs were removed so that emergency care could be given.

A time line reconstructed from Zip Trip surveillance video shows a nearly 20 minute difference between the last power drive stun and recognition that Zehm was not breathing.

It is noted that the medics involved in this incident all reported their surprise that Zehm had "straight lined" so quickly after being so active. Zehm was transported to Deaconess Medical Center. ER staff there successfully [REDACTED] however he expired on 3/20/06 when life support was discontinued. Zehm's potassium level was very low upon admission, which is consistent with cardiac issues during an excited delirium episode.

The autopsy results were received from Medical Examiner Dr. Sally Aiken on 5/30/06. Of note is the discovery that Otto Zehm had [REDACTED]

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[REDACTED] It is unsubstantiated as to whether or not Zehm had any symptoms directly related to this disease.

Dr. Aiken's report clearly stated the baton usage caused bruising but no fractures and no lethal strikes were delivered. She stated that the taser applications, either probes or drive stuns, did not cause Zehm's death. The toxicology report revealed there were no illicit controlled substances or prescribed controlled substances in his system. Dr. Aiken attributed the cause of death to hypoxic encephalopathy due to cardiopulmonary arrest while restrained in a prone position for excited delirium.

Due to a standard jurisdictional practice as regards the manner of death and the definition of homicide as "death at the hands of another", the manner of death was ruled a homicide. In other jurisdictions, such deaths are ruled "undetermined" or "accidental."

This investigation has included contacts with direct witnesses, employers, mental health professionals, family, acquaintances and medical personnel. Additionally, verbal or written statements were obtained from officers. Video surveillance tapes as well as 9-1-1 and SPD radio transmissions were reviewed. Mental health, employment, medical and autopsy records were secured and incorporated into the investigation. Also SPD defense tactics and taser deployment policies were reviewed. Primary instructors for these tools were also consulted.

The results indicate that Otto Zehm's control and behavior deteriorated when he decreased his [REDACTED] dose approximately two months before his death. He continued to deteriorate when he stopped taking the [REDACTED] possibly three weeks before his death. His [REDACTED] symptoms were accentuated.

Otto Zehm responded to Ofc. Thompson's commands with refusal and non compliance. The totality of the circumstances then perceived by this officer with 20 plus years of law enforcement experience led him to believe an assault by Otto Zehm was imminent. Per training, policy and experience, Ofc. Thompson tried to prevent the assault with non lethal baton strikes to muscle mass. The altercation escalated and other uses of force were employed as the danger to the officers increased. All uses of force were ineffective. Only sheer numbers of

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officers gained control of Zehm, who exhibited exceptional strength. There is no evidence to support that excessive force was used, only force that was reasonable for the circumstances was employed. Although by all officers' accounts, supported by medical personnel, that this was an exhausting, very physical altercation, deadly force was not applied as it was not warranted.

Zehm was monitored after leg restraints were applied and a medical response was requested. When it was discovered that Zehm was not breathing, medics were re-summoned immediately and the restraints were removed. There is no evidence of criminal negligence reference responding to Zehm's medical needs.

In conclusion, there is no investigative finding of criminal activity on the part of the involved officers.

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