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September 27, 2019

Today, the San Joaquin County District Attorney's Office (SJCDA) released its findings in the March 7, 2016 officer-involved use of force that resulted in the death of Abelino Cuevas-Cordova. It is the decision of the SJCDA that no criminal charges are warranted against either Stockton Police Officer involved in the arrest of Mr. Cuevas-Cordova.

This decision was made after SJCDA Office's Officer-Involved Critical Incident Review Committee reviewed the investigations by the San Joaquin County District Attorney's Bureau of Investigations, the Stockton Police Department, and the San Joaquin County Sheriff-Coroner's Office.

The findings and conclusion of this investigation was completed on September 4, 2019 and has been memorialized in a report. On that date, this Office notified the Stockton Police Department of the findings.

In addition, family members of Mr. Cuevas-Cordova were also notified of a decision through their legal representatives. A copy of the report was provided to them prior to this announcement.

The memorandum detailing the SJCDA's findings and conclusion follow below.

SAN JOAQUIN COUNTY DISTRICT ATTORNEY
MEMORANDUM OF
OFFICER-INVOLVED CRITICAL INCIDENT
OF MARCH 7, 2016
AT DR. MARTIN LUTHER KING JR. BOULEVARD/CHARTER WAY
AND EL DORADO STREET

[SPD DR # 16-9062]



TORI VERBER SALAZAR, DISTRICT ATTORNEY
OFFICER-INVOLVED CRITICAL INCIDENT UNIT

SEPTEMBER 4, 2019



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MEMORANDUM

TO: ERIC JONES, CHIEF
STOCKTON POLICE DEPARTMENT

FROM: SAN JOAQUIN COUNTY DISTRICT ATTORNEY'S OFFICE

DATE: SEPTEMBER 4, 2019

SUBJECT: INVESTIGATION OF THE USE OF FORCE ON ABELINO
CORDOVA-CUEVAS (SPD DR # 16-9062)

Pursuant to the provisions of the San Joaquin County Officer-Involved Critical Incident Protocol, effective August 1, 1994, the responsibility of the Office of the District Attorney is to review the facts and determine what, if any, criminal charges should be filed whenever there is an officer-involved fatality or life-threatening incident.

This memorandum reviews the officer-involved critical incident and death of Abelino Cordova-Cuevas on March 7, 2016. Investigators from the San Joaquin County District Attorney's Bureau of Investigations, the Stockton Police Department, and the San Joaquin County Sheriff-Coroner's Office jointly conducted the investigation.

INVESTIGATION SUMMARY

On March 7, 2016, at approximately 9:08 p.m., Stockton Police Department officers responded to the area of El Dorado and Clay Streets after failed attempts to reach Sgt. Matthew Garlick on his radio. Responding officers found Sgt. Garlick and Officer Lucas Woodward in the northeast parking lot of Dr. Martin Luther King Jr. Boulevard/Charter Way Avenue (MLK Blvd.) and El Dorado Street attempting to restrain an individual later identified as Abelino Cuevas-Cordova (DOB 12/31/1987).

Mr. Cuevas-Cordova was handcuffed and when he was turned over, he was unconscious. Emergency medical personnel were dispatched and officers began

performing life-saving measures on Mr. Cuevas-Cordova including cardiopulmonary resuscitation (CPR).

Emergency medical personnel arrived and took over. At approximately 9:29 p.m., Mr. Cuevas-Cordova was transported by ambulance to the San Joaquin County General Hospital where he was later pronounced dead at 9:47 p.m..

As provided by the Memorandum of Understanding for the San Joaquin County Officer-Involved Critical Incident Protocol (hereinafter referred to as "Protocol"), the Stockton Police Department invoked the Protocol. A multi-agency task force was created that consisted of the San Joaquin County District Attorney's Office's Bureau of Investigations (hereinafter "BOI"), the Stockton Police Department (hereinafter "SPD"), and the San Joaquin County Sheriff-Coroner's Office.

FACTUAL SUMMARY

On March 7, 2016, the Stockton Police Department was conducting a "Traffic Mission" that was designed to decrease reckless driving and look for impaired drivers since there had been a recent increase in traffic fatalities. Sergeant (Sgt.) Matthew Garlick was working patrol in a marked Ford sports utility vehicle (SUV), and wearing a standard issued Stockton Police Department uniform.

At approximately 9:00 p.m., Sgt. Garlick was driving southbound on Center Street when he saw a dark grey Nissan Armada SUV driven by Mr. Cordova-Cuevas traveling eastbound on MLK Blvd. at a high rate of speed. Sgt. Garlick thought that Mr. Cordova-Cuevas might not stop for the red light and brought his patrol unit to a stop. Mr. Cordova-Cuevas slammed on his brakes coming to a stop partially in the intersection through the crosswalk.

As Sgt. Garlick proceeded slowly through the intersection, Mr. Cordova-Cuevas accelerated quickly against traffic northbound on Center Street; Center Street is restricted to traffic going in a southbound direction. Sgt. Garlick pursued Mr. Cordova-Cuevas, eventually driving northbound on El Dorado Street where he saw Mr. Cordova-Cuevas driving eastbound on Clay Street at a high rate of speed. Mr. Cordova-Cuevas continued through the intersection, failing to heed the stop sign.

Sgt. Garlick turned on his overhead emergency lights and siren and came up to Clay Street where he turned eastbound and saw the vehicle stopped in the middle of the road with the driver's door open. Mr. Cordova-Cuevas was leaving his vehicle and walking away. Sgt. Garlick pulled up to the vehicle and immediately

exited his patrol unit. Sgt. Garlick called out to Mr. Cordova-Cuevas to come back and talk to him.

Mr. Cordova-Cuevas continued to walk away, ignoring the verbal commands and began waving his hands in the air and acting strangely. Sgt. Garlick checked Mr. Cordova-Cuevas's SUV and kept calling to Mr. Cordova-Cuevas to come back. Mr. Cordova-Cuevas continued to ignore the commands and walked toward a home on the south side of the street.

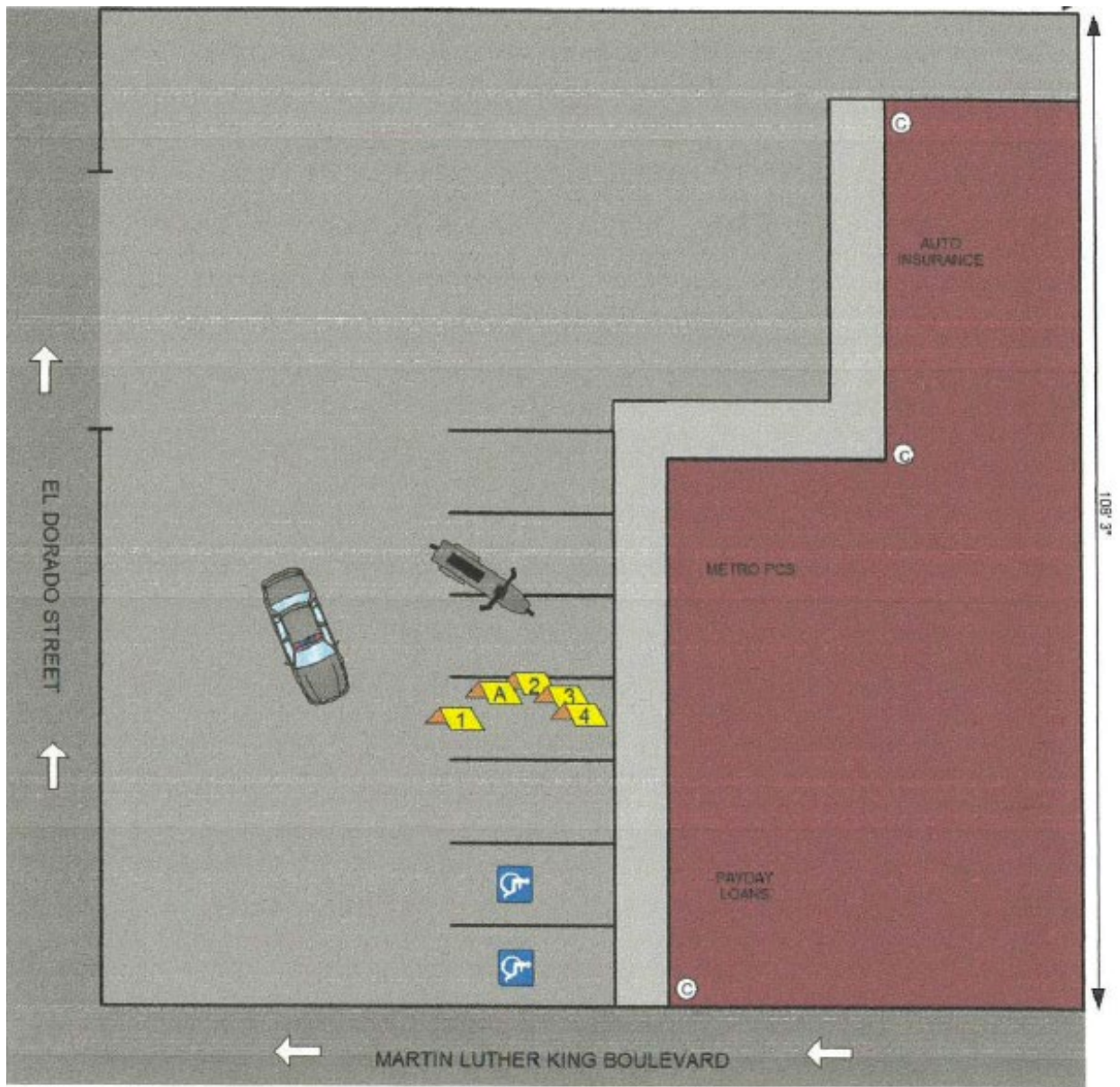
As Sgt. Garlick began walking toward Mr. Cordova-Cuevas, SPD Officer Lucas Woodward arrived on scene. Officer Woodward was riding his Stockton Police Department motorcycle, wearing a standard Stockton Police Department uniform, and wearing his helmet. As Officer Woodward arrived, Sgt. Garlick told Mr. Cordova-Cuevas not to run. Officer Woodward unholstered his TASER - Mr. Cordova-Cuevas was 5' 9" and 218 pounds. Mr. Cordova-Cuevas looked toward Officer Woodward and took off running.

Both Officers gave chase as Mr. Cordova-Cuevas was running westbound on Clay Street, and then southbound on El Dorado Street, toward MLK Blvd. While on foot pursuit, Sgt. Garlick dropped his radio and had to stop to pick it up. Officer Woodward passed him and caught up to Mr. Cordova-Cuevas in a parking lot on the northeast corner of El Dorado Street and MLK Blvd. When he caught up Mr. Cordova-Cuevas, he placed him in a hold similar to a bear hug.

Mr. Cordova-Cuevas kept resisting and Officer Woodward brought him to the ground. Mr. Cordova-Cuevas was on his back and fighting with Officer Woodward when Sgt. Garlick arrived and grabbed for Mr. Cordova-Cuevas's hand in attempt to roll him over and place his hands behind his back.

Sgt. Garlick was on one side and Officer Woodward was on the other side of Mr. Cordova-Cuevas, and after approximately ten to fifteen seconds of not being able to roll him over to his stomach, Officer Woodward took out his TASER. Officer Woodward used the contact feature of the TASER on the stomach area of Mr. Cordova-Cuevas. Mr. Cordova-Cuevas immediately let out a yell and threw both of the officers off of him.

Mr. Cordova-Cuevas was now back on his feet. Sgt. Garlick grabbed him and took him to the ground again but this time onto his stomach. Sgt. Garlick was on top of Mr. Cordova-Cuevas and attempting to grab his arm from underneath him. As Mr. Cordova-Cuevas was attempting to stand up again, Officer Woodward used his TASER again. Mr. Cordova-Cuevas let out a yell when the TASER was engaged, but again it had no effect on him. At this point, Officer Woodward had used the TASER on Mr. Cordova-Cuevas four times but it did not have the usual incapacitating effect except to agitate Mr. Cordova-Cuevas.



LEGEND			
	TASER		SPD Vehicle CA LIC 1461053
	TASER BARBS		SPD motorcycle CA LIC 3006313
	CELL PHONE		
	HANDCUFFS		
	RED STAIN		
	CAMERAS		

Scene sketch by SPD

Officer Woodward broadcast a request for additional units to respond over his radio. Sgt. Garlick and Officer Woodward had now been struggling with Mr. Cordova-Cuevas for nearly a minute and still had no control over him. Sgt. Garlick

was on top of Mr. Cordova-Cuevas with his arm underneath his neck, attempting a carotid restraint, and was still attempting to get Mr. Cordova-Cuevas's left arm out from underneath him. At the same time, Officer Woodward was attempting to control the right arm. Mr. Cordova-Cuevas was still resisting as SPD Officers Kyle Amant and Christian Barreto arrived on scene. Both officers ran over to assist Sgt. Garlick and Officer Woodward and were finally able to handcuff Mr. Cordova-Cuevas.

Once the additional officers arrived and were able to get Mr. Cordova-Cuevas handcuffed, Officer Amant noticed Mr. Cordova-Cuevas appeared unconscious and attended to him; he felt no pulse.¹ Newly arrived Officer John Cox, who had prior experience as an emergency medical technician, began performing CPR on Mr. Cuevas-Cordova while other officers assisted. The officers were able to revive Mr. Cordova-Cuevas using artificial respiration. Emergency medical personnel arrived at 9:16 p.m. and took over. At approximately, 9:29 p.m., Mr. Cuevas-Cordova was transported by ambulance to the San Joaquin County General Hospital where he was later pronounced dead at 9:47 p.m.

WITNESS STATEMENTS

Investigators from the San Joaquin County District Attorney's Office and Stockton Police Department detectives jointly interviewed the involved officers, medical personnel, and civilian witnesses. Whenever possible, these interviews were recorded. The investigators also conducted a neighborhood canvas of residences in the area. If no person was home, an attempt was made to make later contact. Not every witness interviewed is summarized here. The individual witness synopses below are to assist the reader in supplementing the above Factual Summary. Civilian witnesses are identified in this memorandum as "Witness #" to protect their privacy rights. See, "Confidential Page APPENDIX A: Civilian Witness Information."

Stockton Police Sergeant Matthew Garlick

Sgt. Matthew Garlick was interviewed on March 8, 2016 at 2:06 a.m., by investigators at the Stockton Police Department, and stated the following:

Stockton Police Department Sergeant Matthew Garlick was a sixteen-year veteran of the Stockton Police Department. On the date of the incident, Sgt. Garlick was wearing a standard department-issued uniform and driving a marked

¹ *Officer Amant first used a sternum rub on Cordova-Cuevas. A sternum rub is the application of a stimulus to cause pain with the knuckles of closed fist to the center chest of a person who is unresponsive; the pain is designed to arouse the person. The sternum rub is the most common painful stimulus practiced in the field by emergency medical technicians and paramedics.*

patrol unit. His assignment at the time was traffic patrol, and on the evening of March 7, 2016, was part of a traffic safety mission.

Sgt. Garlick was working speed enforcement in the area of El Dorado and Church Street, in the City of Stockton. Sgt. Garlick was southbound on Center St., approaching El Dorado, when he looked to his right and observed an SUV, driven by Mr. Cordova-Cuevas, at a high rate of speed that was not going to be able to stop before entering the intersection. Sgt. Garlick came to a stop and observed the SUV slam on its brakes and come to a stop past the crosswalk and into the intersection. Sgt. Garlick slowly drove through and then observed the SUV accelerate at a high rate of speed northbound on Center St., against traffic.

Sgt. Garlick, upon seeing Mr. Cordova-Cuevas driving the wrong way against traffic, immediately accelerated southbound to First Street, made an eastbound turn on First Street, and accelerated toward El Dorado Street. While travelling northbound on El Dorado Street, Sgt. Garlick observed Mr. Cordova-Cuevas run the stop sign at eastbound Clay Street, crossing over El Dorado Street. Sgt. Garlick activated his lights and siren and made an eastbound turn at Clay Street.

Sgt. Garlick observed Mr. Cordova-Cuevas's SUV stopped in the middle of the road with its driver's door opened. Sgt. Garlick pulled up near the vehicle and immediately exited his patrol unit. Sgt. Garlick saw Mr. Cordova-Cuevas walking away and he called to him, telling him to come over toward him so they could talk. Mr. Cordova-Cuevas began waving his hands in the air and it appeared to Sgt. Garlick that Mr. Cordova-Cuevas was under the influence of something.

Mr. Cordova-Cuevas began walking away from Sgt. Garlick, in front of the SUV, toward a home on the southside of the street where a group of people were standing. Sgt. Garlick continued to tell Mr. Cordova-Cuevas to stop, and come back toward him so they could talk. Mr. Cordova-Cuevas continued to ignore the verbal commands and was standing near the sidewalk waving his hands up and down.

Sgt. Garlick cleared the SUV to make sure there was no one else in the car, and then continued to talk to Mr. Cordova-Cuevas who would not respond to him. Sgt. Garlick asked one of the neighbors if they knew who Mr. Cordova-Cuevas might be, and one of them responded that he works in "the store". It was at this time Officer Lucas Woodward arrived on the scene.

Sgt. Garlick began to approach Mr. Cordova-Cuevas, while telling him to come over and talk to him. Mr. Cordova-Cuevas began backpedaling away from Sgt. Garlick, while looking in all directions and waving his hands around. As Officer Woodward also began to approach, Sgt. Garlick told Mr. Cordova-Cuevas not to run, he did not want to chase him, and he might get "Tased." Mr. Cordova-Cuevas looked toward Officer Woodward and took off running.

Mr. Cordova-Cuevas began running westbound on Clay Street, southbound on El Dorado Street, to MLK Blvd. Sgt. Garlick began running after him with Officer Woodward behind. At some point, Sgt. Garlick dropped his radio and Officer Woodward took the lead in the foot pursuit. By the time Sgt. Garlick caught up, Officer Woodward had his hands on Mr. Cordova-Cuevas, took him to the ground, and was struggling with him on the ground in a parking lot on the northeast corner of El Dorado Street and MLK Blvd.

Sgt. Garlick ran up, grabbed Mr. Cordova-Cuevas by his right hand, and attempted to twist him so they could turn him onto his stomach. Mr. Cordova-Cuevas was too strong and Sgt. Garlick and Officer Woodward were unable to get him rolled over to his stomach. Sgt. Garlick was telling him to stop resisting and to put his hands behind his back but he did not comply with the orders.

Mr. Cordova-Cuevas continued to refuse to comply with orders to stop resisting, and was attempting to get off the ground. After ten to fifteen seconds of struggling with him, Sgt. Garlick told Officer Woodward to “contact Tase” Mr. Cordova-Cuevas. Officer Woodward pulled out his TASER, placed it against the abdomen of Mr. Cordova-Cuevas, and shocked him. Mr. Cordova-Cuevas immediately let out a scream and then threw both Sgt. Garlick and Officer Woodward off of him, and stood back up.

Sgt. Garlick immediately grabbed onto Mr. Cordova-Cuevas and forced him to the ground again, this time on his stomach. At this point, Mr. Cordova-Cuevas is “really fighting” with them. With Sgt. Garlick on Mr. Cordova-Cuevas’s back at this point, he attempted to pull Mr. Cordova-Cuevas’s arms from underneath his body to place them behind his back. Failing to do so, Officer Woodward fired the TASER. The prongs engaged Mr. Cordova-Cuevas who let out another scream, but the TASER had little to no effect upon him as he continued to fight. Officer Woodward activated the TASER a third time with no effect. Sgt. Garlick instructed Officer Woodward not to use the TASER anymore since it appeared to only agitate Mr. Cordova-Cuevas. Sgt. Garlick noticed his hands were bleeding and cut (mostly like from being scraped on the parking lot ground)² as was Mr. Cordova-Cuevas’s face. With the TASER being ineffective and being unable to physically restrain Mr. Cordova-Cuevas, Sgt. Garlick, feeling that he was out of options, attempted to place a carotid restraint on Mr. Cordova-Cuevas hoping it would cause Mr. Cordova-Cuevas to cease fighting.

While the carotid restraint was being applied, Mr. Cordova-Cuevas was still resisting and Sgt. Garlick and Officer Woodward were still unable to get his hands from underneath him, behind his back to cuff him. It was not until two additional officers arrived that all four of them were able to grab Mr. Cordova-Cuevas’s hands

² *These injuries to Officer Garlick’s hands and similar scrapes to his arms were documented and photographed.*

and get his hands cuffed. Sgt. Garlick immediately stood up once the hands were cuffed, found his body camera on the ground, and put it back on his uniform. The body camera had remained on during the entire incident but had fallen off during the struggle.

Officer Kyle Amant reached down to Mr. Cordova-Cuevas and used a sternum rub. Mr. Cordova-Cuevas made some kind of breathing noise, but Officer Amant said he could not detect a pulse. Sgt. Garlick observed patrol officers begin CPR, and he remained at the scene. Sgt. Garlick began cleaning his hands, which were covered in blood from cuts and scrapes from fighting with Mr. Cordova-Cuevas against the cement. Sgt. Garlick was then transported to the Stockton Police Department where he remained until his statement was taken.

Stockton Police Officer Lucas Woodward

Officer Lucas Woodward was interviewed on March 8, 2016, at 3:00 a.m., by investigators at the Stockton Police Department, and stated the following:

Stockton Police Department Officer Woodward was a ten-year veteran of the Stockton Police Department. At the time of the incident, Officer Woodward was assigned to the traffic division and on patrol on a marked motorcycle, wearing a standard department-issued uniform and helmet. Officer Woodward normally works during the day shift, but was working a traffic enforcement mission on the date of the incident.

Officer Woodward was finishing a traffic stop on El Dorado Street near Washington Street when he heard Sgt. Matthew Garlick on the radio saying he was conducting a traffic stop. This caught his attention because traffic officers normally do not air out routine traffic stops. Because Officer Woodward was only about a half mile from El Dorado and Clay Streets where Sgt. Garlick had aired his position, he began driving toward that location.

Officer Woodward approached the location and observed the lights from Sgt. Garlick's unit, and parked his motorcycle near the marked unit. As Officer Woodward was dismounting, he observed Mr. Cordova-Cuevas on the sidewalk, walking backwards and could hear Sgt. Garlick telling him not to walk away, and to come back and talk to him.

Officer Woodward saw Mr. Cordova-Cuevas looking at him as he was walking backwards away from him and Sgt. Garlick. Sgt. Garlick continued to tell him to stop, and that he did not want to have to run after him. Officer Woodward pulled out his TASER, turned it on, and activated it for use in a contact mode. At that point, Mr. Cordova-Cuevas looked at Officer Woodward, and took off running.

Officer Woodward re-holstered his TASER and gave chase. Officer Woodward was behind Sgt. Garlick but then Sgt. Garlick slowed, so he passed him and kept going until he caught up to Mr. Cordova-Cuevas in a parking lot on the northeast corner of El Dorado Street and MLK Blvd. When Officer Woodward caught up to Mr. Cordova-Cuevas, he grabbed him in a bear hug. Mr. Cordova-Cuevas immediately began to pull away. Officer Woodward pulled him backwards and took him to the ground. Officer Woodward rolled over and was straddling Mr. Cordova-Cuevas over his abdomen. Officer Woodward thought that he had restrained Mr. Cordova-Cuevas but as Sgt. Garlick arrived and grabbed the right arm of Mr. Cordova-Cuevas, Mr. Cordova-Cuevas began strenuously resisting; “the fight was just completely on.” Mr. Cordova-Cuevas lifted Officer Woodward, who was 195 pounds, completely off the ground.

Sgt. Garlick was hanging onto an arm as Officer Woodward was telling Mr. Cordova-Cuevas to give him his arm, but Mr. Cordova-Cuevas continued to resist. Officer Woodward pulled out his TASER, placed the prongs directly on Mr. Cordova-Cuevas’s side and activated the TASER. As soon as the TASER was activated, Mr. Cordova-Cuevas was able to push off the officers and stand up. Sgt. Garlick was still hanging onto Mr. Cordova-Cuevas but had no control over him; “[He was] holding on, like a rag doll.” Sgt. Garlick, however, was able to bring Mr. Cordova-Cuevas back down to the ground.

Officer Woodward decided to use his TASER by discharging the prongs. This required Officer Woodward to stand back up in order to get some distance between him and Mr. Cordova-Cuevas. When the TASER was discharged, Mr. Cordova-Cuevas immediately let out a yell, but he instantly pushed Sgt. Garlick off. From Officer Woodward’s perspective, his TASER was having the opposite effect it normally has in that it seemed to agitate Mr. Cordova-Cuevas, but did not physically allow them to gain any control over him.

Officer Woodward threw the TASER to the side so Mr. Cordova-Cuevas would not be able to grab it, grabbed Sgt. Garlick’s radio, and radioed for additional officers. As the struggle continued, Officer Kyle Amant arrived to assist but it was not until more officers arrived that they were able to secure Mr. Cordova-Cuevas’s hands behind his back and handcuff him.

Officer Woodward, exhausted and trying to catch his breath, took his helmet off, and realized another officer was performing a sternum rub on Mr. Cordova-Cuevas. Shortly after, officers were performing CPR. This confused Officer Woodward because fifteen seconds earlier, he could not control Mr. Cordova-Cuevas, and now Mr. Cordova-Cuevas was unresponsive.

Officer Woodward did not recall any specific type of restraint used by Sgt. Garlick. Officer Woodward was just holding on and thought Sgt. Garlick was doing the same, just on the other side.

Stockton Police Officer Kyle Amant

Officer Kyle Amant was interviewed on March 8, 2016, at 3:07 a.m., by investigators at the Stockton Police Department, and stated the following:

Stockton Police Department Officer Kyle Amant was an eight-year veteran of the Stockton Police Department. On the date of the incident, Officer Amant was working the Park District as a Field Training Officer with trainee/partner Officer Christian Barreto. Officer Amant was on duty in a marked patrol unit, wearing a standard department-issued uniform.

Officer Amant was driving back to the Stockton Police Department when he heard Sgt. Garlick on the radio, which was unusual. When there was no update of Sgt. Garlick's status, Officer Amant thought that Sgt. Garlick might have been chasing or fighting with someone, so he started driving toward his location.

Officer Amant, driving near El Dorado and Clay Streets, saw other units so he decided to keep driving and return to the station. Officer Amant then heard Officer Lucas Woodward requesting assistance. Officer Amant immediately drove back toward the location and entered the parking lot.

As soon as he arrived, Officer Amant saw Officer Woodward and Sgt. Garlick fighting with Mr. Cordova-Cuevas. It looked like a "dog pile" with Officer Woodward and Sgt. Garlick on top of Mr. Cordova-Cuevas attempting to hold him down. Sgt. Garlick was toward the upper body and Officer Woodward was toward the lower half.

Officer Amant exited his vehicle, ran over, and grabbed one of the hands of Mr. Cordova-Cuevas. Mr. Cordova-Cuevas was resisting, pulling his arm away from him and trying to pull his arm underneath his body. Officer Amant was able to twist the arm back behind Mr. Cordova-Cuevas' back. Officer Barreto was able to grab the left arm of Mr. Cordova-Cuevas behind his back and Officer Amant was able to get the handcuffs on.

Officer Woodward and Sgt. Garlick were out of breath and immediately stood up and stepped aside. Standing near Mr. Cordova-Cuevas, Officer Amant looked down, and saw that Mr. Cordova-Cuevas was unconscious. Officer Amant rolled Mr. Cordova-Cuevas over and applied a sternum rub to him. Mr. Cordova-Cuevas made a gasping noise but it looked like his eyes rolled back and knew something was wrong. Officer Amant checked Mr. Cordova-Cuevas for a pulse but was unable

to find one. Medical personnel were dispatched to the scene while Officer John Cox, who had just arrived, began CPR until medical personnel arrived and took over.

Stockton Police Officer Christian Barreto

Officer Christian Barreto was interviewed on March 8, 2016 at 4:05 a.m., by investigators at the Stockton Police Department, and stated the following:

Stockton Police Department Officer Christian Barreto was only working for two months on patrol at the time of the incident. Officer Barreto was working with his Field Training Officer, Officer Kyle Amant. This day, Officer Barreto was working patrol in a marked unit, wearing his department-issued uniform.

At approximately 9:00 p.m. Officer Amant and he were about to take their dinner break when they heard the radio as well as additional units heading toward Clay and El Dorado Streets. When they arrived at that location, he heard another location aired - El Dorado Street and MLK Blvd. They drove to that location which was a corner parking lot.

Officer Barreto saw two officers struggling with Mr. Cordova-Cuevas. Officer Barreto saw one officer holding onto one arm with Mr. Cordova-Cuevas's other arm underneath him. Sgt. Matthew Garlick was on top of Mr. Cordova-Cuevas toward the head area and appeared to be trying to hold him down.

Officer Barreto ran over, grabbed Mr. Cordova-Cuevas' arm, and was trying to pull it out from under him. Officer Barreto yelled at Mr. Cordova-Cuevas to give him his arm but he was not complying. Officer Barreto was able to pull the arm out, straighten it and bring it back behind his back where he and Officer Amant were able to get Mr. Cordova-Cuevas hand cuffed.

Officer Barreto and another officer then rolled Mr. Cordova-Cuevas onto his side and he could hear him breathing. He then heard an officer say, "Hey, wake up." It sounded like Mr. Cordova-Cuevas was breathing but he heard someone said they could not detect a pulse and CPR was started until medical personnel arrived and took over.

Witness # 1

Witness # 1 was identified as a witness and interviewed by investigators on March 8, 2016, at 2:23 a.m., at the Stockton Police Department, and stated the following:

At the time of the incident, Witness #1 was in a three to four-month dating relationship with Mr. Cordova-Cuevas. The SUV Mr. Cordova-Cuevas had been driving was hers.

On the previous day, Mr. Cordova-Cuevas had been out and had come to her home late in the evening. When they awoke the next morning, March 7th, Witness #1 found Mr. Cordova-Cuevas acting strange and paranoid. Mr. Cordova-Cuevas was twitching, moving his jaw around, and grinding his teeth. He accused her of hiring someone to come after him.

Witness #1 had never seen him on drugs before but Mr. Cordova-Cuevas admitted that he had snorted methamphetamine the previous evening with a friend saying, "I don't know why I did it. I did too much." At times Mr. Cordova-Cuevas was hiding in the restroom and staying out of sight because he thought she had hired someone to kill him. At other times he would look out the window and ask Witness #1 who was standing outside. Mr. Cordova-Cuevas thought he saw people in the trees. Mr. Cordova-Cuevas accused the older son of Witness #1 of asking someone to "get him." Witness #1 did not want Mr. Cordova-Cuevas around her children and told him she was going to take him over to the Motel 6 on MLK Blvd.

Later in the early morning, Witness #1 drove Mr. Cordova-Cuevas to the Charter Way West Motel 6. Witness #1 paid for the room under his name and walked him to the room. As they walked in, Mr. Cordova-Cuevas told her that there were people outside taking things outside of their car. Witness #1 told him it was just a couple with small kids. Mr. Cordova-Cuevas then told her they were there to get him and they were going to throw him in the trunk, and kill him.

Witness #1 told him to go to sleep and that she was leaving. Mr. Cordova-Cuevas told Witness #1 she was not going anywhere, grabbed her by the hair, and threw her on the bed, yelling, "Who the fuck are you trying to get to kill me?" [During the interview, investigators noticed a scratch on Witness #1's neck and photographed it.] Mr. Cordova-Cuevas then grabbed her car keys from her pocket and left the room. Mr. Cordova-Cuevas entered her Nissan Armada SUV and sped off.

Witness #1 had her sister pick her up and take her home. Witness #1 borrowed her mother's car to look for her Nissan Armada. Her search eventually led her to the scene where she contacted on-scene officers.

Witness #2

Witness #2 was identified as a witness and interviewed by investigators on March 31, 2016, mid-morning, at the witness's home, and stated the following:

On the date of the incident, Witness #2 was at home watching television when he saw the patrol car's red and blue lights. Witness #2 opened his door and saw Mr. Cordova-Cuevas who he knows from the butcher shop. Witness #2 described Mr. Cordova-Cuevas as real nervous and told Witness #2 he was in trouble.

Witness #2 saw an officer and told Mr. Cordova-Cuevas, "Do what the officers say to you, you have any problem, they could call an ambulance, you know the paramedics they can help you." Mr. Cordova-Cuevas ignored him turning his attention to the officer. Witness #2 described the officer as nice, not angry, and was talking "nice" to Mr. Cordova-Cuevas. Mr. Cordova-Cuevas called out that he had no weapons. The officer told Mr. Cordova-Cuevas to come over to him, instead, Mr. Cordova-Cuevas began walking away. Witness #2 told Mr. Cordova-Cuevas not to walk away but to do what the officer wants him to do. Mr. Cordova-Cuevas did not want to listen to him, and when a second officer began approaching, he took off running.

Witness #2 heard what sounded like a "shock gun" and believes he heard it three times. He also heard what he believed was Mr. Cordova-Cuevas yelling, "Ay Ay Ay!" but from his vantage point, he could not see anything. Not wanting to go outside, he returned inside to watch television until he fell asleep.

Witness #3

Witness # 3 was identified as a witness and interviewed by investigators on March 8, 2016, at 3:06 a.m., at the Stockton Police Department, and stated the following:

Witness #3 is a transient who was sleeping by the Metro PCS store in the parking lot where the incident occurred. When he arrived at that location, Witness #4 was already there sleeping. The two did not speak.

Witness #3 was asleep when he heard, "Stop! You're gonna be Tased. I'm gonna Tase you. Stop! Stop! Stop!" Witness #3 then heard what sounded like electricity and then a yell. Witness #3 moved from his spot and peered around the corner to go see what was happening and saw uniformed officers struggling with someone. They were telling the man to stay down and stop resisting. It appeared they were trying to handcuff him. As the struggle continued, a motorcycle officer drove up and Witness #3 returned to his spot and went back to sleep. He briefly told Witness #4 that police were arresting someone.

Witness #4

Witness # 4 was identified as a witness at the scene. During the investigation, it was discovered that Witness #4 was listed as a missing person from a care home and had medical issues related to a recent seizure. During the interview, Witness #4 expressed doubts about his memory. Witness #4 was interviewed by investigators on March 8, 2016, at 3:24 a.m., at the Stockton Police Department, and stated the following:

Witness #4 is a transient who had been in a shelter but lost his bed. He was unsure where he had been sleeping that night. He recalled police and sirens but it was unclear if he was referring to this incident or others. Witness #4 could not maintain clear thoughts and the interview was terminated.

Earlier, Witness #4 was contacted at the scene and said that did not see anything because he kept his head covered by a blanket.

SUBSEQUENT INVESTIGATION

Video Documentation

Sergeant Matthew Garlick's Body Worn Camera (BWC)

The body worn camera of Sgt. Garlick was obtained and reviewed. The recording shows the following:

Sgt. Garlick activated his body camera at 9:06 p.m. as he was approaching Mr. Cordova-Cuevas, who was standing near a home with the resident present. Sgt. Garlick asks the resident if he knew Mr. Cordova-Cuevas, and if he knows what is wrong with him, "What's his problem, why is he driving so crazy?"

Sgt. Garlick asks Mr. Cordova-Cuevas to come toward him and not to run. Mr. Cordova-Cuevas has his hands up and as he is backing away, he says he does not have a weapon. Sgt. Garlick tells Mr. Cordova-Cuevas not to run. Officer Woodward's TASER can be heard as he tests it. Sgt. Garlick warns Mr. Cordova-Cuevas that Officer Woodward is going to "Tase" him. Mr. Cordova-Cuevas turns and runs, running out of the light.

The BWC shows very little from the time Mr. Cordova-Cuevas begins running due to the lack of lighting in the area and the motion of Sgt. Garlick running after him.

Sgt. Garlick catches up to Mr. Cordova-Cuevas in the parking lot. It appears that Officer Woodward is engaged with him. Several orders are given to Mr.

Cordova-Cuevas to give them his hands. Mr. Cordova-Cuevas is on his back with Sgt. Garlick trying to get him to comply:

Cordova-Cuevas : "Hold on. Hold on"

Garlick: "Turn your hands around, dude."

Cordova-Cuevas: "Nah. It's ok man."

Garlick: "No it's not ok."

Sgt. Garlick tells Officer Woodward to use the TASER. Officer Woodward uses the TASER in contact mode and Mr. Cordova-Cuevas yells out.

The BWC is in close proximity to the bodies involved in the struggle and therefore the video portion of the footage is limited. The TASER is issued three times more. During the struggle, Sgt. Garlick's BWC is knocked off and is laying on the ground. The officers tell Mr. Cordova-Cuevas to give them his hands several more times. Officer Woodward issues their location over the radio. Within seconds, two other officers arrive and Sgt. Garlick tells them to grab his arms.

After Mr. Cordova-Cuevas is handcuffed, Sgt. Garlick and Officer Woodward are heard breathing heavily and attempting to catch their breath for the next minute.

The length of the video is 4 minutes and 43 seconds. The BWC time stamp is only in hours and minutes and starts at 21:06 hours, that is, 9:06 p.m.. The timeline as follows is set at 00:00 minutes and seconds in order to gauge the time between each relevant events:

00:00: Sgt. Garlick makes contact with Witness #1 and asks, "What's his problem?" referring to Mr. Cordova-Cuevas.

00:55: The sound of Officer Woodward's TASER being activated is heard. Sgt. Garlick tells Mr. Cordova-Cuevas, "He's gonna Tase you." Mr. Cordova-Cuevas immediately turns and runs. (The TASER logs this use at 9:07:08 p.m. which corresponds with the BWC.)

01:14: Officer Woodward appears to have hands on Mr. Cordova-Cuevas in parking lot

01:20: Sgt. Garlick catches up and appears to get hands on Mr. Cordova-Cuevas.

01:29: Mr. Cordova-Cuevas is on his back and Sgt. Garlick tells him, "Turn your hands around, dude."

01:44: Officer Woodward places his TASER on Mr. Cordova-Cuevas and activates his TASER. (The TASER logs this first use at 9:07:56 p.m. which corresponds with the BWC.)

01:46: It appears that Sgt. Garlick's BWC is knocked off his body and the visual recording is obscured although the audio is clear.

01:56: Officer Woodward tells Mr. Cordova-Cuevas, "Hey! Calm down. I'm going to do it again," and activates his TASER. (The TASER logs this second use at 9:08:04 p.m. which corresponds with the BWC.)

2:04: Officer Woodward activates his TASER. (The TASER logs this third use at 9:08:16 p.m. which corresponds with the BWC.) After the TASER is used, Officer Garlick says, "That's my arm."

02:22: Officer Woodward tells Mr. Cordova-Cuevas, "I'm going to light you up again, dude. Give up your hands."

02:33: Officers Garlick and Woodward say, "Put your hands behind your back." Officer Woodward activates his TASER. (The TASER logs this fourth use at 9:08:47 p.m. which corresponds with the BWC.)

02:45: Sgt. Garlick tells Officer Woodward, "Let them know where we're at."

02:50: Officer Woodward asks "Sgt. Garlick, "Where's your radio at?" Sgt. Garlick responds, "I don't know."

03:09: Sgt. Garlick says, "Put his hands behind his back."

03:25: Officer Woodward radios their location initially giving the wrong location.

04:08: Another officer's voice is heard.

04:14: The sound of handcuffs being secured is heard.

SPD Officer Lucas Woodward's Body Worn Camera (BWC)

The body worn camera of Officer Woodward was obtained and reviewed. The recording shows the following:

Officer Woodward did not activate his camera until after he had already chased after Mr. Cordova-Cuevas, and caught up to him in the parking lot. The lighting is bad and because of the struggle, the camera shows very little. The microphone is on and working properly.

The exchange between Sgt. Garlick and Mr. Cordova-Cuevas above is recorded here as well. From this perspective, Mr. Cordova-Cuevas is on his back and Sgt. Garlick is trying to gain control of Mr. Cordova-Cuevas's right hand. As the officers try to gain control of him, Mr. Cordova-Cuevas is kicking his feet into the air.

As Sgt. Garlick and Officer Woodward are continuing to struggle on the ground the TASER is heard used four separate times. After each discharge, Mr. Cordova-Cuevas can be heard to yell out. Throughout, the officers are giving commands to Mr. Cordova-Cuevas to give them his hands. After the last discharge, Sgt. Garlick and Officer Woodward have the following exchange:

Garlick: [breathing heavily] "Hey air it and let them know where we are at."

Woodward: "Where is your radio?"

Garlick: "I don't know."

Garlick: "Put his hand behind his back. Put his hands behind his back. Get his hand."

Officer Woodward, in the background, is telling dispatch their location. Officer Woodward appears disoriented as he originally gives the wrong location. Approximately seventeen seconds later, other officers arrive and are able to grab Mr. Cordova-Cuevas's hands and place the handcuffs on him.

Officer Woodward is breathing heavily as Officer Kyle Amant is heard asking Mr. Cordova-Cuevas, "Hey you awake?" Shortly after, Sgt. Garlick requests dispatch to send medical personnel.

The length of the video is 4 minutes and 49 seconds. The BWC time stamp is only in hours and minutes and starts at 21:07 hours, that is, 9:07 p.m.. The timeline as follows is set at 00:00 minutes and seconds in order to gauge the time between each relevant events:

00:00: Officer Woodward orders Mr. Cordova-Cuevas, "Let me see your hands!" Sgt. Garlick orders, "Turn your hands around, dude."

00:25: Officer Woodward activates his TASER. (The TASER logs this first use at 9:07:56 p.m.)

00:33: Officer Woodward tells Mr. Cordova-Cuevas, "Hey! Calm down. I'm going to do it again," and activates his TASER. (The TASER logs this second use at 9:08:04 p.m. which corresponds with the BWC.)

00:40 Sgt. Garlick is struggling with Mr. Cordova-Cuevas. It appears Mr. Cordova-Cuevas is on his back and Sgt. Garlick has a hold of Mr. Cordova-Cuevas's right

wrist with his right hand.

00:46: Officer Woodward activates his TASER. (The TASER logs this third use at 9:08:16 p.m. which corresponds with the BWC.) After the TASER is used, Officer Garlick says, "That's my arm."

01:04 The back of Sgt. Garlick's head is visible as is the TASER wire which is entangled around Officer Garlick's upper back. Officer Woodward tells Mr. Cordova-Cuevas, "I'm going to light you up again, dude. Give up your hands"

01:16 Officers Garlick and Woodward say, "Put your hands behind your back." Officer Woodward activates his TASER. (The TASER logs this fourth use at 9:08:47 p.m. which corresponds with the BWC.)

01:22 Officer Woodward's BWC is knocked to ground.

01:27: Sgt. Garlick tells Officer Woodward, "Let them know where we're at."

01:33: Officer Woodward asks "Sgt. Garlick, "Where's your radio at?" Sgt. Garlick responds, "I don't know."

01:51: Sgt. Garlick says, "Put his hands behind his back."

02:07: Officer Woodward radios their location initially giving the wrong location.

02:34: A door being shut is heard signaling the arrival of other officers. Sgt, Garlick requests, "Help us get his hands behind his back."

03:16: Another officer's voice is heard saying, "Hey, Hey. Are you awake."

SPD Officer Kyle Amant and Officer Christian Barreto's Body Worn Camera (BWC)

The body cameras of both Officer Amant and Officer Barreto were obtained and reviewed. Neither officer had their BWCs turned on when they arrived on scene or were approaching Sgt. Garlick and Officer Woodward. The BWCs were not turned on until after Mr. Cordova-Cuevas had been handcuffed.

Surveillance Video

City Camera Number 84.

City camera was obtained and reviewed from time stamp 9:00:20 p.m. on. The accuracy of the time stamp was not determined. The recording shows the following:

From a far distance, the camera partially captures the initial pursuit of Mr. Cordova-Cuevas's vehicle.

At 9:07:07 p.m. as the camera pans and zooms in, the camera captures, Sgt. Matthew Garlick and Officer Lucas Woodward on the ground in the parking in an apparent struggle with Mr. Cordova-Cuevas. As the camera zooms in, Sgt. Garlick and Officer Woodward are on top of the suspect.

At 9:07:40 p.m. a marked SPD patrol SUV arrives in the parking lot just to the west of Sgt. Garlick and Officer Woodward. Ten seconds later, more officers begin to arrive at the parking lot. At 9:08:13 p.m., officers begin backing away from Mr. Cordova-Cuevas and he appears to be handcuffed on the ground.

Business Surveillance Video

Investigators spoke to Witness #5 and determined his business had recorded the incident. The footage was later obtained and reviewed from time stamp 9:06 p.m. on. *The accuracy of the time stamp was not determined.* The recording shows the following:

The camera vantage point is from north to south and shows the parking lot. It also captures the corner where Witnesses #3 and #4 were laying on the ground.

At the recording time stamp of 9:07:46 p.m., Mr. Cordova-Cuevas comes into view walking backwards. At 9:08:03 p.m., Sgt. Matthew Garlick and Officer Lucas Woodward are struggling with Mr. Cordova-Cuevas on the ground. Mr. Cordova-Cuevas is on his back and rolls quickly onto his right side knocking Officer Woodward off of him and to the ground. Sgt. Garlick is trying to hold onto the suspect and prevent him from getting up. Mr. Cordova-Cuevas raises up onto one knee with Sgt. Garlick on his back. Mr. Cordova-Cuevas gets up off the ground with Sgt. Garlick still on him and stands up. Sgt. Garlick takes the suspect back to the ground.

At 9:09:08 p.m., Witness #3 gets up and peers around the corner. Sgt. Garlick and Officer Woodward are still struggling with the suspect on the ground. At 9:10:22 p.m., a SPD patrol SUV arrives in the parking lot. The two officers get out of the SPD vehicle and go to where Sgt. Garlick, Officer Woodward, and Mr. Cordova-Cuevas are still struggling on the ground. At 9:10:36 p.m., a motorcycle patrol officer arrives as well as other officers.

For the next several minutes the video shows more officers arriving on scene, medical personnel arriving and leaving with the Mr. Cordova-Cuevas and officers securing the parking lot scene.

TASER Examination

Officer Lucas Woodward's TASER was examined and a log of its status was produced. The log indicated that Officer Woodward armed his TASER at 9:07:05 p.m. The TASER was deployed as follows:

9:07:08 p.m. for 1 second (test)
9:07:56 p.m. for 1 second.
9:08:04 p.m. for 5 seconds.
9:08:16 p.m. for 5 seconds.
9:08:47 p.m. for 8 seconds.

PATHOLOGY

On March 8, 2016, San Joaquin County Pathologist Bennet Omalu conducted an autopsy on Mr. Cordova-Cuevas. Dr. Omalu's autopsy revealed that Mr. Cordova-Cuevas suffered blunt force trauma to the head, face, and neck; contusions to the scalp, left eyebrow, cheek, and both sides of the nose.

Toxicology results showed "acute amphetamine toxicity". Brain concentrations of methamphetamine were at 2.5 ng/mg.

Dr. Omalu was able to review police reports in this matter as well as the available recordings. Dr. Omalu determined the cause of death was "Mechanical Asphyxiation due to Compression of the Neck, due to Blunt Force Trauma of the Head, Face, Neck and Trunk. Acute Amphetamine Toxicity is a contributory factor to his death."

On February 8, 2018 and again on September 24, 2018, Dr. Omalu was deposed in an excessive force civil lawsuit involving this incident. (*Pimentel et al v. City of Stockton et al*, EDCA Case # 2:17-CV-00931-WBS-AC; filed May 3, 2017.) The transcripts of those depositions were reviewed and the relevant testimony is as follows:

During the depositions, Dr. Omalu explained the findings in his autopsy report. His examination revealed a number of injuries that were consistent with a struggle on a flat hard surface and the application of sustained force to the neck.

The force applied was consistent with a “carotid chokehold” or “armbar” but not necessarily with a “carotid restraint”. The former applies force to the front of the neck while the latter applies force to the sides. The autopsy revealed evidence that a sustained pressure was applied on *both* sides of the neck but “essentially in front of the neck.”

The application of a carotid *restraint* “rarely “causes death. The application of this type of hold would require sustained pressure applied for a minimum of three to ten minutes for the brain to die. The application of a carotid *chokehold* can affect the vagus nerve, which in turn affects other nerves that can cause death through asphyxiation. (Asphyxiation is the lack of oxygen supplied to the brain.) The amount of time for the latter application of force to be fatal can be less than three minutes. In this case, Dr. Omalu, however, could not estimate the length of time any particular restraint was used.

The differential diagnosis in this case was consistent with sustained pressure being placed on the neck while Mr. Cordova-Cuevas continued to struggle. The struggle itself increased the likelihood of asphyxiation.

While the Acute Amphetamine Toxicity was a contributory factor to Mr. Cordova-Cuevas’s death, the use of the TASER was not a factor.

LEGAL ANALYSIS

Under Penal Code sections 197 and 198, homicide is justifiable and not unlawful when committed by a person who reasonably believed that he, or someone else, is in imminent danger of being killed, suffering great bodily injury, or to prevent a forcible and atrocious crime (*People v. Ceballos* (1974) 12 Cal.3d. 470, 478.) For a homicide to be self-defense, the person must actually and reasonably believe in the need to defend themselves with deadly force (*People v. Flannel* (1979) 25 3d. 668, 674.) If the belief both subjectively exists and is objectively reasonable, it constitutes a “perfect self-defense” and the homicide is considered legally justifiable. (*In re Christian S.* (1994) 7 Cal.4th 768, 783.)

Penal Code Section 197 states: “Homicide is justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or

tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.”

Homicide committed by a law enforcement officer is governed by Penal Code section 196. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333). Penal Code section 196 states: “Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either-

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with a felony, and who are fleeing from justice or resisting such arrest.”

The test whether a police officer may use deadly force to apprehend a fleeing felon was announced in *Tennessee v. Garner* (1985) 471 U.S. 1, 11-12: “Where the officer has probable cause to believe that the suspect poses a threat or serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

The test of reasonableness is judged by an objective standard of “a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance for the fact that police officers are often

forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation.” (*Graham v. Conner* (1989) 490 US 386, 396-397, see also, *Jeffers v. Gomez* (9th Cir. 2001) 267 F.3d 895, 909, “broad discretion ... must be afforded to police officers who face tense situations.”)

The essence of the *Graham* objective reasonableness analysis is: “[t]he force which was applied must be balanced against the *need* for that force: it is the need for force which is at the heart of the *Graham* factors.” (*Alexander v. City and County of San Francisco* (9th Cir.1994) 29 F.3d 1355, 1367.)

Penal Code section 835a also states that, “[a] peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” As stated above, “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious harm, deadly force may be used if necessary.” (*Garner, supra* 471 U.S. at 11-12.)

The test for determining whether a homicide was justified under Penal Code section 196 is whether the circumstances “reasonably created a fear of death or serious bodily harm to the officer or another.” (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334). Reasonableness must be considered in the context of the “dangerous and complex world” police officers face every day, because “what constitutes ‘reasonable’ action might seem quite different to someone facing a possible assailant than to analyzing the question at leisure.” (*Martinez v. County of Los Angeles, supra* 47 Cal.App.4th at 343, quoting *Smith v. Freeland* (6th Cir.1992) 954 F.2d 343, 347). Numerous cases have established that peace officers may use deadly force when confronted with an individual “whose actions indicate an intent to attack.” (*Reynolds v. County of San Diego* (S.D. Cal 1994) 858 F.Supp. 1064, 1072.)

In *Knapps v. City of Oakland* (N.D. Cal 2009) 647 F.Supp.2d 1129, 1143, the Court discussed the issue of carotid holds and the fact that if a victim loses consciousness, but continues to breathe, there is very little case law to evaluate the quality of the force exerted from a carotid hold. The Court relied upon *Elkins v. Washington County* (2007 WL 1342155 at *10). In *Elkins*, the Court observed that a carotid restraint hold can result in great bodily injury if the hold is in place long enough (“If oxygenated blood flow to the brain is cut off 4-6 minutes, irreparable

brain damage may occur.”) *Id.* As a result, the Court in *Elkins* found that a carotid hold held **over four minutes** is a sufficiently serious intrusion upon liberty, and it must be justified by a commensurately serious governmental interest. *Id.*

Application of Law

In analyzing the reasonableness by Sgt. Garlick’s and Officer Woodward’s use of force, the totality of the circumstances, including the information that the individual officer possessed at the time of his decision, is examined. The “reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (*Graham*, supra, 490 U.S. at 396.)

In the instant case, the following set of facts have been sufficiently established:

- 1) Sgt. Garlick was acting with reasonable suspicion when he followed Mr. Cordova-Cuevas and then, when he encountered him and asked Mr. Cordova-Cuevas to come and talk to him. Although Sgt. Garlick was unaware that Mr. Cordova-Cuevas had committed a domestic violence battery earlier and robbed Witness #1 of her car, Mr. Cordova-Cuevas’s driving conduct was sufficient cause to stop and detain him. (*Whren v. United States* (1996); 517 U.S. 806; *Pennsylvania v. Mimms* (1977) 434 U.S. 106; *Terry v Ohio* (1968) 392 US 1.)
- 2) Sgt. Garlick was acting with equal reasonable suspicion when pursuing Mr. Cordova-Cuevas after he ran from him and did not respond to Sgt. Garlick’s commands to stop running.
- 3) Officer Woodward was acting with reasonable suspicion when pursuing Mr. Cordova-Cuevas based on Mr. Cordova-Cuevas’s willful resistance and obstruction of Sgt. Garlick’s attempted detention.
- 4) Officer Woodward’s initial use of force by grabbing Mr. Cordova-Cuevas was a use of reasonable force to “effect the arrest, to prevent escape or to overcome resistance.” (Penal Code §835a; *Atwater v. Lago Vista* (2001) 532 U.S. 318.)
- 5) Similarly, Sgt. Garlick’s seizure and initial use of force by grabbing Mr. Cordova-Cuevas was a use of reasonable force to “effect the arrest, to prevent escape or to overcome resistance.” (Penal Code §835a.)

6) Officer Woodward's use of force by employing the non-lethal force of the TASER was reasonable under the circumstances given Mr. Cordova-Cuevas's violent resistance to verbal commands and initial use of force. (*Graham*, supra, 490 U.S. at 396-97.)

7) Sgt. Garlick's attempted use or use of a carotid restraint was a use of reasonable force under the *Graham* factors to "effect the arrest, to prevent escape or to overcome resistance." (Penal Code §835a.)

a) Mr. Cordova-Cuevas's driving conduct and subsequent struggle with officers "posed an immediate threat to the officers' or public's safety." (*Graham*, supra, 490 U.S. at 396.)

b) Mr. Cordova-Cuevas was actively "resisting arrest [and] attempting to escape. (*Id.*)

c) Both officers used "less intrusive alternatives" prior to the attempting to use a carotid restraint. (*Bryan v. MacPherson* (9th Cir.2010) 630 F.3d 805, 826-831.) These alternatives included, multiple commands to stop, multiple commands to stop resisting, multiple warnings of the imminent use of the TASER, the physical use of hands, the attempt to handcuff, and the actual use of the TASER. None of these alternatives were effective.

d) The use of a carotid restraint or chokehold hold ceased immediately upon the arrival of additional officers.

e) The use of a carotid restraint is not, in itself, use of deadly force. (*Scott v. Harris* (2007) 550 U.S. 372.) The Stockton Police Department policy manual authorizes the use of a carotid restraint. The use of a "Bar Arm" restraint is prohibited. (General Order Q-01; Q-011.)

f) A review of the footage collected from the various sources does not pinpoint when Sgt. Garlick attempted to use a carotid restraint, or when and if, either a carotid restraint or a chokehold was used or for how long each may have been applied.

g) In constructing a timeline and reviewing the recordings, it appears that the earliest that Mr. Cordova-Cuevas would have been on his stomach and susceptible to either restraint would have been 2 minutes and 22 seconds after Sgt. Garlick was heard asking a resident of Mr. Cordova-Cuevas, "What's his problem?" Sgt. Garlick told investigators that he employed a carotid restraint after the deployment of the TASER for the last time - approximately 12 seconds after Mr. Cordova-Cuevas

would have been on his stomach. Therefore, the length of time that sustained compression after Sgt. Garlick attempted to employ a carotid restraint would have been applied is between 78 and 100 seconds.

h) Based on Dr. Omlau's opinion and finding of injuries of the sides of the neck (indicating the application of a carotid restraint) and the front of the neck (indicating the application of a carotid chokehold or "armbar" restraint), it is likely that during the struggle, Sgt. Garlick attempted to employ a carotid restraint. However, because Mr. Cordova-Cuevas continued to struggle, it is possible that Mr. Cordova-Cuevas was also subjected to a carotid chokehold for a medically significant period of time; that is, for as little as "30 seconds" (*Deposition of Dr. Omalu, September 24, 2018.*)

In other words, it is possible that when Sgt. Garlick attempted to place Mr. Cordova-Cuevas in carotid restraint, for a time, his forearm was positioned in such a way to create pressure on the front Mr. Cordova-Cuevas's neck as Mr. Cordova-Cuevas continued to struggle.

i) Balancing the force used with the force needed, the attempted use of a carotid restraint for the limited time needed to restrain Mr. Cordova-Cuevas was reasonable under the totality of the circumstances. (*Bryan, supra, 630 F.3d at 805; Franklin v. Foxworth (9th Cir. 1994) 31 F.3d 873, 876.*)

CONCLUSION

In light of the evidence obtained and reviewed, and viewing the totality of circumstances of the entire incident, there is insufficient evidence to establish beyond a reasonable doubt that the use of force used by Sergeant Matthew Garlick and Officer Lucas Woodward in this incident was criminally unlawful, and therefore the evidence does not warrant the filing of charges.

CONFIDENTIAL APPENDIX SECTION
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