

**LAW ENFORCEMENT EMPLOYEE-INVOLVED
CRITICAL INCIDENT REPORT**



Employer Agency: Sonoma County Sheriff's Office

Lead Agency: Petaluma Police Department

Injured Party: Rigoberta Cabrera

Date of Incident: July 31, 2019

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

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I. INTRODUCTION

On July 31, 2019, Rigoberta Cabrera (hereinafter Mr. Cabrera) suffered a catastrophic health event while in the custody of Sonoma County Sheriff's Deputies Marcus Holton and his trainee Anthony Crivello. Deputies Holton and Crivello were dispatched to check the welfare of a man (Mr. Cabrera) who had been in and about the vehicle for approximately two days while parked in the driveway of 39 Sonoma Mountain Road. Upon contact, Mr. Cabrera notified Deputies that he had a warrant which resulted in his removal from the vehicle and handcuffed. Once out of the vehicle and after being handcuffed, Mr. Cabrera informed deputies that he was having trouble breathing. Within minutes, Mr. Cabrera stated he could no longer stand. Mr. Cabrera was helped to the ground where he lost consciousness. Deputies began life saving measures and called for medical assistance, but Mr. Cabrera could not be revived.

The Sheriff's Department invoked the Sonoma County Law Enforcement Employee- Involved Fatal Incident Protocol ("Protocol"). The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol an outside law enforcement agency is designated to investigate officer-involved critical incidents.

In this case, members of the Petaluma Police Department assumed responsibility for the investigation of the incident. Members of the Sonoma County District Attorney's Office participated in the investigation in a supporting role, in accordance with the protocol. Under the protocol the role of the Sonoma County District Attorney's Office is to review the investigation to determine if there exists any criminal liability on the part of involved parties, including the law enforcement employee(s); to provide assistance to the investigating agency regarding legal issues; to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the criminal law.

Once the investigation is complete the District Attorney is required by the protocol to complete a thorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is to be submitted to the foreperson of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding Mr. Cabrera's death, a statement of the applicable law, legal analysis and conclusions. This report cannot include all of the information contained in the hundreds of pages of reports, video

and audio tapes, transcripts, and photographs reviewed in its preparation. However, every effort has been made to include in this report a summary of all of the relevant, material evidence gathered by the Santa Rosa Police Department over the course of its extensive investigation of this incident.

II. SCOPE OF REVIEW

The purpose of the District Attorney's investigation and review of any critical incident is to establish the presence or absence of criminal liability on the part of any involved party, including law enforcement employee(s).

The specific question to be resolved in this case is whether Deputy Holton or Deputy Crivello committed an unlawful act or a lawful act recklessly and with criminal negligence that caused or was a substantial factor in Mr. Cabrera's death. A summary of the applicable law is included here to assist the reader in understanding this report and its conclusions.

The District Attorney does not examine issues such as compliance with the policies and procedures of any law enforcement agency, police training, or issues involving civil liability. This report should not be interpreted as expressing an opinion on those matters.

III. STANDARD OF REVIEW

The District Attorney is the chief law enforcement official of Sonoma County. The District Attorney is responsible for deciding what cases to prosecute and has the responsibility to review and approve the filing of all criminal cases in the county. The District Attorney's discretion in this regard is well defined. *The California Rules of Professional Conduct, Rule 3.8*, provides that prosecutors shall not institute criminal charges when the prosecutor knows or should know that the charges are not supported by probable cause.

In criminal cases, the District Attorney has the burden of proving guilt "beyond a reasonable doubt," the highest burden of proof found in the law. A complete definition of "reasonable doubt" can be found in the Judicial Council of California Criminal Jury Instructions Number 103. A jury of twelve must vote unanimously for guilt before a conviction may be entered. When determining whether criminal charges are appropriate the District Attorney must consider all of the evidence, including evidence that supports an affirmative defense, such as a claim of "self-defense" or "defense of others." Criminal charges are warranted only when the

District Attorney determines that the evidence of guilt is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the admissible evidence, including evidence of such an affirmative defense.

IV. SUMMARY OF FACTS

The following is a summary of facts intended to assist the reader in understanding this report and its conclusions. It is not a substitute for the volumes of reports, interviews, and other evidence from which it is derived. It is, however, an accurate summary of what the District Attorney believes the material facts in this case to be.

A. BACKGROUND INFORMATION

Mr. Cabrera was born July 23, 1984 and was 35 years old at the time of his death. Multiple attempts to learn his social history were made by Petaluma Police detectives, but without success.

Mr. Cabrera's criminal history began in 2003 and involved for the most part narcotics offenses. At the time of his detention, Mr. Cabrera had outstanding warrants for violation of probation in in cases involving the possession of a billy club as well as narcotics and disobeying court orders.

B. EVENTS OF JULY 31, 2019

On Wednesday, July 31, 2019, at approximately 1841 hours, John Doe A called the Sonoma County Sheriff's Office to report on behalf of his neighbor, John Doe B, that a male in a vehicle in the driveway of a residence on Sonoma Mountain Road needed a welfare check. The Sheriff's department contacted John Doe B for further information and learned that the vehicle had been in the driveway for approximately two days and that it had a flat rear tire and a dead battery. John Doe B reported that he contacted the occupant, Mr. Cabrera, who stated that he was waiting for a relative of the homeowner where he was parked. At 1910 hours Deputies Holton and Crivello were dispatched to the scene and arrived at 1936 hours. The area of the incident on Sonoma Mountain road can be characterized as countryside that is outside Petaluma city limits.

Deputy Marcus Holton is a twenty four-year police veteran and has been employed

as a Sonoma County Deputy Sheriff for sixteen years. During his tenure as a police officer Deputy Holton has held assignments that require specialized training; such as the SWAT team, firearms instructor, school for detecting when a person is under the influence of a controlled substance, active shooter instructor, drone team and field training officer.

Deputy Anthony Crivello was a deputy-trainee at the time of the incident, and was in his eighth week of training. Prior to becoming a Deputy trainee, Deputy Crivello attended the Windsor Police Academy and spent three years working as a correctional deputy in the Sonoma County Jail.

Deputies arrived on the scene on Sonoma Mountain Road just after 1934 hours, at which time each body camera was activated. A green sport utility vehicle was stopped in the driveway with the driver's door open, but the occupant was not visible from behind the vehicle. Deputy Crivello exited the driver's side of the patrol vehicle and approached the driver's side of the suspect vehicle while Deputy Holton approached on the passenger side. The windows on the suspect vehicle were up. Deputy Holton observed the driver in the driver's seat, with his pants down to the middle of his thighs, and could hear that Deputy Crivello was speaking to the occupant, though he could not discern what was being said. Deputy Holton walked to the front of the vehicle and was able to hear Mr. Cabrera tell Deputy Crivello that he had a warrant. While speaking with Mr. Cabrera, Deputy Crivello noted sores and physical indications of needle use on his arms, which may indicate drug use. Deputy Holton instructed Deputy Crivello to order Mr. Cabrera to exit the vehicle. Mr. Cabrera got out of the vehicle slowly, under his own power, and Deputy Holton saw a hypodermic needle cap on the seat of the vehicle.

The presence of the needle cap alerted Deputy Holton to the danger of hypodermic needles in the car and thus he instructed Deputy Crivello to move Mr. Cabrera away from the open door of the vehicle. Mr. Cabrera, when he heard Deputy Holton mention needles admitted that there were, in fact, needles in the vehicle. Deputy Crivello began handcuffing Mr. Cabrera, who started to complain about his lungs and stated that he suffered from a medical condition. At 1937 hours, Deputy Crivello finished handcuffing Mr. Cabrera, who was cooperative. Deputy Holton instructed Deputy Crivello to move Mr. Cabrera to the back of the vehicle, and informed Deputy Crivello that there were additional needles in the vehicle. Mr. Cabrera started walking slowly, still under his own power, to the back of the vehicle and again mentioned his difficulty walking and breathing. The only restraint on Mr. Cabrera was handcuffs, and no other restraints or control holds had been performed. Since Mr. Cabrera had, prior to contact with police, defecated on himself, Deputy Holton, who only had one glove in his pocket, retrieved additional gloves from the back of his patrol car. Once he had gloves on, Deputy Holton held on to Mr. Cabrera

at the shoulder while Deputy Crivello also put gloves on.

Mr. Cabrera continued to state that he couldn't breathe and that he was going to pass out but was still continuing to speak. Deputy Holton was unsure if this was a mere delaying tactic, as no pressure or other restraints had been used on Mr. Cabrera, Mr. Cabrera was continuing to speak, and in his experience, persons with warrants will often attempt to delay or stall the arrest process. Deputy Holton requested Mr. Cabrera spell his name, which he did. However, Mr. Cabrera stated he wanted to sit down and started to slide to the ground, so the deputies helped him down to a sitting position, where ultimately Mr. Cabrera lost consciousness at 1941 hours, four minutes after being handcuffed. Emergency medical assistance was dispatched at 1942 hours.

After calling for medical, the deputies laid Mr. Cabrera down on his left side. Mr. Cabrera was kept on his side in an attempt to keep his airway clear and prevent aspiration of saliva. After Mr. Cabrera was placed on his side Deputy Holton observed fluid draining from Mr. Cabrera's mouth. Unsure if the loss of consciousness was due to drug overdose, Deputy Holton instructed Deputy Crivello to get Narcan¹ from the patrol car. At 1944 hours Deputy Holton administered two doses of Narcan one minute apart but they were ineffective in assisting Mr. Cabrera to regain consciousness. Deputy Crivello attempted a sternum rub² in an additional attempt to revive Mr. Cabrera. While Mr. Cabrera's pulse was initially strong, it began to weaken while waiting for medical to arrive. Deputy Holton instructed Deputy Crivello to remove the handcuffs and Mr. Cabrera was rolled to his back to check for a pulse. Just prior to the arrival of emergency medical at 1948 hours, Mr. Cabrera's pulse stopped. Upon arrival the paramedics advised the deputies to start CPR. Once medical was staged at the scene they took over Mr. Cabrera's care. Mr. Cabrera was later pronounced deceased on scene and ultimately taken to the Marin County Coroner's office for an autopsy.

Mr. Cabrera's autopsy occurred on August 5, 2019 and was performed Joseph Cohen, M.D. Dr. Cohen determined that Mr. Cabrera's death was accidental, caused by acute multiple illicit drug intoxication and chronic substance abuse, and noted a history of intravenous drug use and pulmonary congestion and edema. There were no signs of external trauma on Mr. Cabrera. Mr. Cabrera's autopsy revealed the presence of multiple controlled substances, including Opiates, Amphetamines, Methamphetamines and Fentanyl.

¹ Narcan is a medication deployed as a nasal spray that is designed to rapidly reverse opioid overdose.

² A sternum rub is the application of a painful stimulus designed to return a patient to consciousness, performed with the knuckles of a closed fist to the center chest of a patient who is not alert or responsive.

V. STATEMENT OF THE LAW

The sole legal issue to be resolved is whether Deputy Holton and Deputy Crivello acted unlawfully during their interaction with Mr. Cabrera and are therefore criminally liable for Mr. Cabrera's death. The only use of force was the restrained detention using handcuffs. There is no evidence of any other restrained detention technique or use of force by the deputies, nor any combative or physically resistive conduct exhibited by Mr. Cabrera.

The United States Supreme Court has routinely recognized that a peace officer has the legal authority to detain an individual upon a reasonable suspicion that the person to be detained has engaged in criminal activity.³ A peace officer has the authority to make an arrest of an individual if the facts presented rise to the level of probable cause to believe a crime has been committed, and an individual has a duty to submit to such lawful arrest.⁴

Penal Code section 192, subdivision (b), defines the homicide crime of involuntary manslaughter. "Manslaughter is the unlawful killing of a human being without malice. It is of three kinds: . . . Involuntary—in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection."

To prove that a defendant is guilty of voluntary manslaughter, the People must prove that: 1. The defendant committed a crime or a lawful act in an unlawful manner; 2. The defendant committed the crime or act with criminal negligence; and 3. The defendant's acts caused the death of another person.

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when: 1. He or she acts in a reckless way that creates a high risk of death or great bodily injury; and 2. A reasonable person would have known that acting in that way would create such a risk.

In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation, that his or her act amounts to disregard for human life or indifference to the consequences. An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one a reasonable person knows is likely to happen if nothing unusual intervenes.

³ *United States v. Sokolow* (1989) 490 U.S. 1; *Terry v. Ohio* (1968) 392 U.S. 1.

⁴ The authority for the officer and duty of the arrestee can be found in Penal Code sections 834 and 834a

There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.

While review of a person's conduct after the fact is made calmly and deliberately in a process of 'careful balancing,' the courts have recognized that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving.⁵ When deciding whether an officer's beliefs were reasonable, one must consider all of the circumstances as they were known to and appeared to him at the time, and consider what a reasonable person in a similar situation with similar knowledge would have believed at the time, not with the benefit of 20/20 hindsight. If the officer's beliefs were reasonable, the danger does not need to have actually existed.⁶

VI. DISCUSSION

Mr. Cabrera was initially contacted as a result of being parked on private property for approximately two days, apparently living in a vehicle with a flat tire and a dead battery. Neighbors contacted police requesting that police look check his welfare. Deputies Holton and Crivello arrived on scene, made contact with Mr. Cabrera, learned he had warrants and proceeded through the contact consistent with their training and experience. Deputies Holton and Crivello initially had cause to detain Mr. Cabrera based on the warrants out for violating the terms and conditions of his court probation matters.

Mr. Cabrera was asked to exit his vehicle for a number of reasons once he admitted having warrants for his arrest. First, the vehicle was full of materials blocking a clear view of the interior, such that the deputies could not determine if there were weapons in the vehicle known to Mr. Cabrera but unknown to them. The possibility of weapons created a safety concern for the deputies. Second, persons with warrants will often attempt to flee apprehension and detention is a method to prevent such flight. Once Mr. Cabrera was engaged in the process of exiting his vehicle, Deputy Holton saw a needle cap on the seat of the vehicle. Deputy Holton, based on his training and experience, was aware that needle caps more often than not indicate the presence of needles, and that needles can be used as weapons. Needles are also frequently indicative of the presence of narcotics.

⁵ See *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912.

⁶ *Terry v Ohio* (1968) 392 U.S. 1, 20-22; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-83.

Deputy Holton shined his flashlight into the vehicle and observed needles in multiple locations in the vehicle. Handcuffing a person suspected of having warrants to prevent flight and to prevent them from accessing potential weapons is a lawful act and consistent with Deputy Holton's training and experience. Furthermore, the presence of paraphernalia gives rise to probable cause that narcotics may be in the vehicle, which was further lawful cause to detain Mr. Cabrera. Once Mr. Cabrera was handcuffed, he was asked to move to the rear of the vehicle away from the vehicle doors and for further investigation of his warrant status.

Mr. Cabrera died in law enforcement custody after being lawfully detained by Deputies Holton and Crivello. Thus, the analysis turns to whether Deputies Holton and/or Crivello are criminally culpable for his death. There is no evidence to suggest that either Deputy committed an act to deliberately cause Mr. Cabrera's death, nor is there any evidence of an unlawful or excessive use of force. The only applicable legal standard to examine based on the circumstances is the law of an involuntary homicide offense. The evidence is clear that neither deputy committed a crime, nor did they commit a lawful act in an unlawful manner, nor did they act with criminal negligence that caused Mr. Cabrera's death.

Mr. Cabrera was contacted, detained, and handcuffed in accordance with the law and Deputy Holton's training. These acts were lawful and not committed with criminal negligence. The threshold for criminal negligence is that a person must act so recklessly that it creates a high risk of death or great bodily injury. Merely detaining and handcuffing Mr. Cabrera does not meet that threshold. Once Mr. Cabrera slid to the ground and lost consciousness, Deputies Holton and Crivello did everything that could be expected of a non-medical professional to save his life. Deputy Holton made sure that Mr. Cabrera was placed in a rescue position on his left side, in an attempt to keep his airway clear and prevent choking. This appeared to have had the intended effect, as fluid immediately began draining from Mr. Cabrera's mouth. Deputy Holton notified dispatch and called for an emergency medical response within one minute of Mr. Cabrera's collapse. When Mr. Cabrera did not regain consciousness, Deputy Holton administered two doses of Narcan and Deputy Crivello performed a sternum rub. When Mr. Cabrera still did not regain consciousness, the deputies began CPR at medical direction and his care was turned over to medical upon their arrival. Unfortunately, Mr. Cabrera did not revive, but his death was not caused by any act amounting to criminal culpability on the part of the deputies involved.

Mr. Cabrera's death was judged accidental, caused by acute multiple illicit drug intoxication and chronic substance abuse, with a noted a history of intravenous drug

use and pulmonary congestion and edema. Mr. Cabrera's blood draw at the autopsy revealed the presence of multiple controlled substances, including Opiates, Amphetamines, Methamphetamines and Fentanyl.

VII. CONCLUSION

Based on the legal principles and facts discussed above, Sonoma County Sheriff's Deputies Marcus Holton and Anthony Crivello are not criminally culpable for Mr. Cabrera's death. Neither deputy committed a lawful act in an unlawful manner, nor did they act with criminal negligence. Neither deputy caused Mr. Cabrera's death. Accordingly, this office finds that criminal charges are neither warranted nor supported by the evidence.

Signature redacted for Security reasons.

Jill R. Ravitch, District Attorney

Oct. 16, 2020

Date