

EMPLOYEE-INVOLVED FATAL INCIDENT REPORT



Employer Agency: Santa Rosa Police Department
Lead Agency: Sonoma County Sheriff's Department
Decedent: Christopher Eric Augustin
Date of Incident: October 16, 2013

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

RELEASED TO GENERAL PUBLIC

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I. INTRODUCTION

On October 16, 2013, Mr. Christopher Augustin, while under the influence of a high level of methamphetamine, died as a result of cardiopulmonary arrest during a struggle with officers from the Santa Rosa Police Department who were attempting to take him into custody. The death was found to be due to “excited delirium” and occurred at a residence located in Santa Rosa, California.

Immediately after all resuscitation efforts failed to revive Mr. Augustin, the Santa Rosa Police 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 fatalities.

In this case members of the Sonoma County Sheriff’s 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 was submitted to the foreman of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding the death of Christopher Augustin, 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, photographs and diagrams 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 Sonoma County Sheriff’s Office over the course of its extensive investigation of this death.

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 the Officers’ use of force was not reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose. 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 5-110*, provides that prosecutors shall not institute criminal charges when the prosecutor knows or should know that the charges are not supported by probable cause. Additional restraint on the charging authority is found in the *Uniform Crime Charging Standards*¹ a publication of the California District Attorneys Association. These standards provide the following guidelines:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

In criminal cases the District Attorney has the burden of proving guilt "beyond a reasonable doubt"², the highest burden of proof found in the law. 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 the 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 jury fact finder after hearing all the admissible evidence, including evidence of such an affirmative defense.

IV. SUMMARY OF FACTS

A. DECEDENT'S BACKGROUND

Christopher Eric Augustin was 38 years old at the time of his death and struggled with addiction for a long period. It was reported that Mr. Augustin used both Methamphetamine and steroids, and that in 2000, during a period of heavy use, Mr. Augustin became violent with his wife, Jane Doe #1, so they divorced in 2002. Mr. Augustin had no known criminal history prior to 2002, when he suffered a conviction for Driving under the Influence. He was arrested in July of 2006 for possession of methamphetamine, cultivation of marijuana and possession of drug

¹ California District Attorneys Association, *Uniform Crime Charging Standards* (1996) p. 12.

²Judicial Council of California Criminal Jury Instructions (2008) (CALCRIM) No. 103.

paraphernalia, but those charges were dismissed. In October 2009, Mr. Augustin was arrested for auto theft, possession of stolen property, and warrants for driving on a suspended license and Driving Under the Influence (DUI.) In July of 2010 he suffered a second conviction for DUI and two convictions for misdemeanor driving with a suspended license. In November, 2010, Mr. Augustin was convicted of misdemeanor possession of a controlled substance, and he was convicted of possessing an identification card with the intent to defraud and in a different case, of petty theft, all misdemeanors. In 2012, Mr. Augustin was arrested for resisting or obstructing a peace officer, but there was no conviction in that case. In 2013, the decedent was convicted of possession of a controlled substance, this time a felony, and granted three years of probation. He was arrested for disorderly conduct for being under the influence and trespassing, in 2013.

At the time of his death, Mr. Augustin was in what was characterized as a tumultuous relationship with John Doe #1, aged sixty-two. John Doe #1 reported the relationship had been ongoing for sixteen months, starting in July of 2012, and that the pair were cohabitating in Palm Springs. Mr. Augustin was not working during the entire pendency of this relationship and it is reported that during that time, Mr. Augustin dabbled in both methamphetamine and steroids.

Within Mr. Augustin and John Doe #1's circle of friends was John Doe #2, a psychiatrist, working in Sonoma County but who spent weekends in Palm Springs. John Doe #1 told John Doe #2 that Mr. Augustin had been violent in the relationship on numerous occasions, to the point that John Doe #1 contemplated getting a restraining order. At the time he was living with John Doe #1, Mr. Augustin was on probation for drugs and attending classes; his drug use had gone down to just a few times per week. Mr. Augustin apparently became very paranoid while using drugs, accusing those around him of lying. John Doe #1 stated that the symptoms of his use had become worse in recent months, to the point where he described Mr. Augustin's behavior as that of being in a "drug induced psychosis." John Doe #1 went on to describe episodes where Mr. Augustin had heightened levels of paranoia, couldn't understand what he was being told, that he "couldn't connect the dots," had to be "talked down," and that he had become aggressive and assaultive. John Doe #1 went on to say that he had Augustin examined by his friend John Doe #2, who had then prescribed an anti-psychotic medication that Augustin took from time to time.

John Doe #2, a licensed psychiatrist, reported that he had seen Mr. Augustin under the influence of, what he believed was, methamphetamine on two occasions. On both those occasions, John Doe #2 reported that Mr. Augustin became instantly paranoid, and on one occasion he was psychotic. On another occasion, John Doe #2 stated Mr. Augustin's paranoia surfaced and he began asking questions suggesting that people were out to get him. John Doe #2 classified the episodes that he witnessed as drug induced psychoses.

Jane Doe #1 stated that about six months prior to his death, Mr. Augustin called her, and was acting bizarre and paranoid, reporting that he had seen an alien standing in his bedroom and that there were people coming in and out of his house. Jane Doe #1 suspected that Mr. Augustin was using methamphetamines at the time of this call. As time progressed toward the date of his death, John Doe #1 also reported that Mr. Augustin's behavior had gotten worse.

B. SUMMARY OF EVENTS LEADING TO OCTOBER 16, 2013³

Christopher Augustin's relationship with John Doe #1 had been strained for a period of time. John Doe #2, a psychiatrist, was transitioning to work in Santa Rosa from Palm Springs. During this transition, John Doe #2 was spending the week in Santa Rosa and weekends in Palm Springs. John Doe #2 wanted to move personal items to his new apartment and enlisted John Doe #3, a formerly homeless young man that John Doe #2 met and hired a short time prior to the incident. John Doe #3 had assisted John Doe #2 for a few weeks, moving items, driving between Santa Rosa and Palm Springs, and performing various other requested tasks.

The weekend of October 12, 2013, John Doe #2 went to Palm Springs. On leaving for his return trip to Santa Rosa, with John Doe #3 as his driver, John Doe #2 learned that John Doe #1 and Mr. Augustin had been having issues in their relationship. Mr. Augustin decided to join John Doe #2 and John Doe #3 on the trip up to Santa Rosa. The three men, John Doe #2, Mr. Augustin, and John Doe #3 travelled to Santa Rosa in John Doe #2's vehicle, towing a trailer filled with John Doe #2's personal items. They travelled Sunday evening, October 13th, into Monday morning, October 14th, arriving in Santa Rosa at approximately 6:00 am on Monday morning.

C. SUMMARY OF INFORMATION TO OFFICERS THROUGH DISPATCH

The initial 9-1-1 call came into Santa Rosa Police Department Dispatch and an event was created on October 16, 2013, at 2:54:44 am. The dispatcher reported "Psych Doctor held in a room by a subject...Chris Augustin."⁴ Dispatch then relayed that the "RP has been held for several hours, there and got out, it appears the doctor is possibly out of the apartment now as well." At 2:56:48 am, dispatch relayed, "no weapons known, subject is delusional, he would be out of it yelling then apologizing and then yelling again." At 2:57:21, "RP⁵ in the parking lot with U-Haul, the doctor went back inside the house." 2:58:07, "doctor helping Augustin leave a DV⁶ situation where he was suspect." At 2:59:02 "RP drives for the doctor and is his personal assistance." At 2:59:33 "First driveway all the way to the back. Vehicle we will see is RP outside with two little dogs, RP wearing white shorts and blue tennis shoes." At 3:00:18 "Dr. asked RP to call 911 and then went back inside.

Officers arrived on scene between 3:00:11 am and 3:00:15 am. Max restraints were requested at 3:07:40 a.m. The ambulance was requested at 3:07:56. At 3:09:29, Medical was on scene and staging. At 3:14:36, Medical was cleared to enter. At 3:14:45, a code blue called on Mr. Augustin. CPR was started at 3:16:11. At 3:43:49, Mr. Augustin was declared dead.

D. SEARCH WARRANT

Detective James Percy, a member of the Sonoma County Sheriff's Department Property Crimes Investigation team, was called in on October 16, 2013 to assist in the investigation and prepare a search warrant for the apartment. Officers seized items included a syringe from the bathroom

³. The following information is taken from transcripts of recorded interviews conducted by the Sonoma County Sheriff's department of John Doe #1, John Doe #2, John Doe #3 and Jane Doe #2.

⁴ Direct quotes when noted by quotations, spelling and grammar not corrected as to form when in direct quotes.

⁵ Reporting Party

⁶ Domestic Violence

garbage can, a plastic baggie containing a white powdery substance from the arm rest of the couch in the living room, three syringes from the kitchen garbage can, and miscellaneous pills in the bedroom.

E. INVOLVED PARTIES STATEMENTS OF OCTOBER 15-16, 2013

1. Summary Of Statement Of John Doe #2⁷

John Doe #2 went to work the morning of Tuesday, October 15, 2013 and finished at about three o'clock in the afternoon. When he returned home, both John Doe #3 and Augustin were in the one-bedroom apartment. John Doe #3 and Mr. Augustin had been bickering but appeared fine. At about five o'clock, John Doe #2 went to sleep, and woke up between seven and eight pm, to an empty apartment. Mr. Augustin and John Doe #3 returned with Halloween decorations. Upset with the state of the apartment, John Doe #2, John Doe #3 and Augustin started to pick up the place. At about nine-thirty that same night, John Doe #2 went back to bed. John Doe #2 reported that at approximately 2 am, the morning of October 16, Mr. Augustin burst into his bedroom, locked the door behind him and said, speaking of John Doe #3, "That guy's gonna get me," "you gotta do something, he's crazy." John Doe #2 said that at the same time, John Doe #3 was outside John Doe #2's bedroom window in his underwear, saying, "Get that guy away from me....he's crazy and he's gonna kill me."

Mr. Augustin remained in John Doe #2's bedroom, acting bizarre and he tried to reassure Mr. Augustin. John Doe #2's reassurances were ineffective. Eventually Mr. Augustin escalated, and began destroying property and throwing things. Augustin picked up a new shirt in a wrapper, became suspicious of it, and eventually ripped the entire package and the shirt apart, convinced that something else was in the package. Augustin then threw shoe boxes at John Doe #2, hitting John Doe #2 one time, saying, "I thought you were my friend, you're plotting against me." John Doe #2 stated Mr. Augustin was psychotic, and his behavior was accelerating and getting more out of control, so reluctantly, after between 20-25 minutes of attempting to handle it alone, John Doe #2 told John Doe #3 to call 911.

The police arrived quickly, and when they arrived, Mr. Augustin was standing naked in the corner of the bedroom, with his fists in a defensive posture, convinced everyone was out to get him. John Doe #2 left the room but heard police try to both subdue and reassure Mr. Augustin. John Doe #2 heard police announce their presence, "Santa Rosa Police, we're here to help." "If you can just calm down, we just need to have you put your hands on top of your head. John Doe #2 described the police contact as "very much by the book of what you would see in a movie of police at their best."

Instead of complying or calming down, even though John Doe #2 believed the contact with police was appropriate, Mr. Augustin began escalating and was uncooperative. He heard the officers become more commanding, and heard them saying things like, "you put your hands behind your back now," and "Come on, just put your hand back here..." John Doe #2 heard Mr. Augustin grow combative despite the officers' attempts and eventually heard Mr. Augustin scream, "Help, help they're trying to kill me, they're killing me." Additional officers arrived, but John Doe #2

⁷ The following information is derived from the transcribed interview conducted by Sonoma County Sheriff's Detectives of John Doe #2. Any statements in quotation marks are direct quotations from the transcript.

heard Mr. Augustin continuing to scream and carry on. After a period of time, John Doe #2 heard officers saying, "Wake up, wake up," and after that medical aid arrived.

2. Summary Of Statement Of John Doe #3⁸

During the day, Tuesday October 15, 2013, John Doe #3 and Mr. Augustin were together in the apartment, bickering all day. After John Doe #2 arrived home, Mr. Augustin and John Doe #3 left in John Doe #2's vehicle and John Doe #3 allowed Mr. Augustin to drive around. Augustin took John Doe #3 to a residential neighborhood where he reportedly wanted to smoke marijuana, but John Doe #3 refused. The two left the neighborhood and stopped at a pharmacy, where Mr. Augustin bought a few items. The pair returned to the apartment together.

After returning to the apartment, John Doe #2 was awake, and they moved some furniture at John Doe #2's request. Frustrated because Mr. Augustin wasn't helping, John Doe #3 left again, this time by himself, and bought cigarettes. When John Doe #3 got back to the apartment, Mr. Augustin left in John Doe #2's vehicle and returned two hours later, with tacos and Halloween makeup and accessories. Mr. Augustin went into the bathroom, where he remained for about ten minutes with "rigs," hypodermic needles loaded with a controlled substance. John Doe #3 went on to state that Augustin was trying to inject himself, but was having trouble with the syringes. Mr. Augustin asked John Doe #3 for help, and offered him some of the drugs. Mr. Augustin became angry when John Doe #3 refused to help Mr. Augustin with ingesting the drugs and also refused to get high with him. Mr. Augustin then went back into the bathroom with the loaded syringes and when he came out he was acting like a completely different person.

When Mr. Augustin came out of the bathroom, he snapped and told John Doe #3 to take off his clothes and get on the couch, saying things like, "you're not going anywhere." Mr. Augustin told John Doe #3 he has to be naked so he can't run anywhere. John Doe #3 tried to get away when Mr. Augustin grabbed him. John Doe #3 chose to get on the couch at that point, and attempted to get John Doe #2's attention but John Doe #2 had taken a sleep aid and was not responsive.

For the next few hours, according to John Doe #2, Mr. Augustin was in the living room with John Doe #3, behaving erratically. Augustin was described as spitting at John Doe #3, blowing snot at him, and taking items from around the house and throwing them. Mr. Augustin said things like, "Why'd you treat me like that, why did you do that to me, why are you doing this to me?" Mr. Augustin yelled at John Doe #3 and threw objects at him. John Doe #3 stated that he didn't understand why Mr. Augustin was behaving that way, and told Mr. Augustin things like, "I'm not doing anything to you." During this time, John Doe #3 remained on the couch, naked, until Mr. Augustin threw an object at him and hit John Doe #3 in the teeth. After hitting John Doe #3, Mr. Augustin left him to knock on John Doe #2's door.

When Mr. Augustin left the room, John Doe #3 got up, grabbed some shorts, and went out the sliding glass door to the balcony. By jumping over the low railing John Doe #3 was able to access John Doe #2's bedroom window, where he saw Mr. Augustin talking to John Doe #2. John Doe #3 feared Mr. Augustin was attempting to blame John Doe #3 for the now messy state of the apartment and the ensuing altercation. John Doe #3 attempted to redirect John Doe #2 through the

⁸ The following information is derived from the transcribed interview conducted by Sonoma County Sheriff's Detectives of John Doe #3. Any statements in quotation marks are direct quotations from the transcript.

window, denying the allegations by Mr. Augustin. John Doe #3 heard things crashing and John Doe #2 yelling, “Stop,” he then saw John Doe #2 leave the bedroom for a short period, then return to the bedroom. John Doe #3 continued to watch through the window, and at some point yelled that he was going to call 911. John Doe #3 then went back into the apartment, leashed up the dogs and stepped outside to call 911. He remained outside as the events unfolded inside the apartment.

3. Summary Of Statement Of Jane Doe #2⁹

Jane Doe #2 lived at the apartment complex for a few years. Jane Doe #2 only knew her downstairs neighbor by his first name (John Doe #2) and knew that he was a psychiatrist. Jane Doe #2 reported that John Doe #2 had been living there for about four months, though he was gone frequently. She reported that she had seen John Doe #3 in and around the apartment for the last two weeks, but had only seen “Chris” (Augustin) for the last two days and her initial impression of Mr. Augustin was that he didn’t look quite right, as though he’d been “doing something.” John Doe #3 told her that “Chris” would be staying for a few days, to help with moving things from Palm Springs.

The evening of the incident, Jane Doe #2 was asleep in her bedroom when she first heard yelling, things hitting walls as though being thrown, and doors slamming. The noise continued from about 1 am until about two-thirty am when the noise started to escalate. She decided that she would call police, but as she stepped outside, intending to go down to the apartment, she saw John Doe #3, wearing shorts and a small jacket, and he indicated that he had already called 911. Jane Doe #2 heard John Doe #3 on the phone with 911, describing what had been happening inside, and recalled that John Doe #3 was talking quickly and seemed upset. Jane Doe #2 could also hear John Doe #3 when he was talking to police, describing his interaction with Mr. Augustin throughout the evening. After the police arrived, Jane Doe #2 said she heard Mr. Augustin screaming, and while she didn’t hear what he said, she believed it was sounded like he was “in pain or something.”

F. SUMMARY OF LAW ENFORCEMENT STATEMENTS¹⁰

Officer Jason Brandt has been employed with the Santa Rosa Police Department as a sworn peace officer for thirteen years. Officer Ferrigno worked as a police officer for the Santa Rosa Police Department for approximately ten months. Sergeant Celli had been employed as a sworn peace officer with the Santa Rosa Police Department for 22 years and 11 months, and was assigned as a Patrol Supervisor, a position he had held for seven years. At the time of the incident, Officer Garrett Berg had been employed as a sworn peace officer with Santa Rosa Police Department for four months was participating in the Field Training Officer program. Officer Berg’s assigned Field Training Officer¹¹ was Officer Jeff Woods who had been employed as a sworn peace officer with Santa Rosa Police Department for 7 years, 11 months.

Officer Brandt, Sgt. Celli, and Officer Ferrigno all arrived at the same time, but once at the apartment complex, took different routes to the exact location of the apartment. As they arrived at the apartment, Officer Brandt was informed that the reporting party (hereinafter RP) was able

⁹ The following information is derived from the transcribed interview conducted by Sonoma County Sheriff’s Detectives of Jane Doe #2. Any statements in quotation marks are direct quotations from the transcript.

¹⁰ All statements in this section are derived from the transcript of the Officer’s interviews with the Sonoma County Sheriff’s Department detectives.

¹¹ Hereinafter FTO

to exit the apartment, and had reported that there was another male adult inside, described as a psychological doctor, and that this doctor was with a third male. Upon arrival, the officers had Officer Brandt had incomplete pieces of information, but knew there was a disturbance in the apartment. Sgt. Celli spoke with the RP, who was outside with two dogs on a leash, was very animated, and appeared to be under the influence of a controlled substance. While Sgt. Celli was speaking with the RP, Officer Brandt asked him how many people were in the house, to which the RP replied, "He's acting or he's going crazy in there." Officer Brandt then asked if there were any weapons in the home, and the RP replied that "he wasn't sure, but he is-didn't assume there were, other than kitchen knives and things of that nature."

Officer Brandt and Officer Ferrigno then approached the apartment where they found the door slightly ajar. The officers still knocked and announced their presence, stating "Santa Rosa Police Department." Not hearing any response, they pushed the door open and saw a male (later identified as John Doe #2) come out of the bedroom and told the officers that there was a second male (later identified as Christopher Augustin) in the bedroom out of control, yelling, and throwing things. Officer Brandt went to the bedroom while Officer Ferrigno had John Doe #2 take a seat on a chair in the living room. Officer Brandt entered the hallway and looked through the half-open door into the bedroom. Officer Brandt could see dressers stacked in a rectangular shape, and a male adult, later identified as Mr. Augustin, crouched behind them. Officer Brandt again announced, "Santa Rosa Police Department," and heard Augustin say, "Come on in, Come in, Come into the room."

Officer Brandt noted the conflict between the behavior of Mr. Augustin being barricaded behind furniture and his statement welcoming the Officer inside, and drew his handgun based on his now heightened suspicion and concern for his safety. Officer Brandt remained in the hallway and engaged Mr. Augustin in a conversation, while keeping an eye on him, noting that Augustin was bare chested, moving rapidly up and down like he was looking for something. Officer Brandt explained that he wanted to talk to Mr. Augustin, but that he needed to see his hands, and requested that Mr. Augustin put his hands in the air. Mr. Augustin put his hands in the air, but kept moving them around and lowering them, causing Officer Brandt to repeat his request that Mr. Augustin keep his hands in the air. Officer Brandt also told Mr. Augustin, "I'll come in and talk," and that he needed to "make sure you don't have anything on you."

Instead of complying with Officer Brandt's requests, Mr. Augustin continued to move around and made statements such as, "I don't know if you're really a police officer. How do I know you're really the police?" Officer Brandt responded, "I am the police department. I'll let you be able to see me here in a moment, but I need you to stand up and put your hands up in the air so I can at least see if you don't have any weapons or anything like that." The conversation continued and eventually Officer Brandt could see that Mr. Augustin was standing up completely. Mr. Augustin told Officer Brandt that he was naked, but didn't explain, nor did Officer Brandt ask why. Mr. Augustin continued inviting the officer into the room by stating, "Come in the room. Let me see you. I don't believe you're the police."

Officer Brandt entered the room with his weapon at the low ready position (i.e., his gun was out of the holster, held in both hands, pointed at the ground) but Mr. Augustin still didn't believe he was the police and stated "You're not really the police." Officer Brandt responded, "I am the police. Take a second, look at me. Look at the patches on my arms. Look, look at my badge. Look at my uniform. Look at my duty belt, I'm a police officer." Officer Brandt was purposely

speaking slowly to Mr. Augustin, but he refused to believe, stating, “Nope, you’re not really the police.” Officer Brandt believed at this time that Mr. Augustin may have a mental health issue, based on the irrational behavior and statements, a belief which continued throughout their encounter. As Officer Brandt continued to try and convince Mr. Augustin that he was, in fact, a police officer, Officer Ferrigno arrived behind him, and Brandt noted that the red beam of Ferrigno’s Taser light was on Mr. Augustin’s chest.

While staying with John Doe #2, Officer Ferrigno heard louder noises coming from the male, Mr. Augustin, in the bedroom. Officer Ferrigno went to the bedroom to see if Officer Brandt needed assistance. As he entered the bedroom, Officer Ferrigno noticed Officer Brandt had his duty weapon drawn and pointed at Mr. Augustin. Mr. Augustin was located in the back left corner of the bedroom, barricaded behind a small dresser. Officer Ferrigno described Mr. Augustin as a white male adult, between 5’9” and 5’10 inches tall, over two hundred pounds, completely nude. Mr. Augustin was exhibiting high energy, was constantly moving in the small area, yelling consistently, and based on Officer Ferrigno’s training and experience, he believed Mr. Augustin was under the influence of a large amount of a stimulant. The area Mr. Augustin was moving in was barricaded from the ground to knee level with a piece of furniture, concealing the floor. Based on the configuration, it was unclear if there was anything dangerous behind the barricade on the floor. Officer Ferrigno stated he couldn’t make out exactly what Mr. Augustin was yelling, but that it had to do with being raped, that he didn’t do anything wrong and he didn’t want any trouble.

Since Officer Brandt didn’t see any immediate threat he holstered his firearm. While trying to continue a casual conversation, Officer Brandt slowly made his way toward the dressers, telling Mr. Augustin to put his hands behind his head and to interlace his fingers, but Mr. Augustin wouldn’t comply and kept moving his arms from side to side. Officer Ferrigno asked Mr. Augustin to turn away from him and Officer Brandt, so that they would have a position of advantage while approaching Mr. Augustin. Mr. Augustin continued yelling and screaming and would start to comply with their requests, but then stop. The Officers made continuous, multiple requests, “stop moving, keep your hands in place,” “put your hands in the small of your back,” all in an attempt to gain Mr. Augustin’s compliance.

As Officer Brandt got within touching distance of Mr. Augustin, he noted that Mr. Augustin would stare aimlessly around the room and that he seemed very nervous and extremely paranoid. Officer Brandt put his left hand near Mr. Augustin’s bicep, and his right hand near Mr. Augustin’s right wrist, grabbing it in what he described as a “soft touch.” Officer Brandt stated that he was hoping that he could get Mr. Augustin to come around the dressers voluntarily, but Mr. Augustin clinched up immediately, flailed his arms and yelled that the officers were trying to kill him and that he was being raped. Officer Brandt was able to secure Mr. Augustin’s right hand, and Officer Ferrigno approached and secured his left hand, but Mr. Augustin was difficult to hold on to because he was sweaty, and his arms and wrists would continually slip out of the officers’ grasps.

Officer Brandt reported that they continued to struggle until he and Mr. Augustin fell forward onto the bed. Once on the bed, Officer Brandt focused on Mr. Augustin’s arms, while Officer Ferrigno attempted to gain control of Mr. Augustin’s legs. Officer Brandt was trying to pin Mr. Augustin’s hand down while Mr. Augustin was bucking and twisting. Mr. Augustin kicked at Officer Ferrigno multiple times with significant force. Mr. Augustin was able to kick Officer Ferrigno off his legs, even though he had placed his knees on Mr. Augustin’s hamstrings and was using his hands to

control Mr. Augustin's ankles. Mr. Augustin continued yelling and saying things about being raped, that the officers were there to hurt him, and that he didn't want to die. Officer Ferrigno and Officer Brandt tried to reassure Mr. Augustin, telling him to relax, that they weren't there to hurt him, to stop resisting, and to stop kicking. Since both Officers Brandt and Ferrigno had difficulty subduing Mr. Augustin, despite their relative size, and were unable to get Mr. Augustin to communicate rationally, Officer Brandt called for another unit and said, "I have a combative subject. I need another unit."

Sgt. Celli responded and arrived very quickly. Sgt. Celli approached as Mr. Augustin was still on the bed, flailing and screaming that people were trying to kill him and that he was being raped. Officer Ferrigno continued struggling with Mr. Augustin's legs to get them in a crisscross hold. But Mr. Augustin kept kicking. Sgt. Celli attempted to assist Officers Brandt and Ferrigno by putting a knee on Mr. Augustin's shoulder, using the knee to roll him further on to his chest to grab his arm and get him cuffed. Officer Brandt was unable to get Mr. Augustin handcuffed on his own, and at one point was physically pulled onto Mr. Augustin's body by just one arm. During this time, Sgt. Celli saw Mr. Augustin grabbing at the officers and continuing to kick and flail, pushing up off the bed and attempting to get to his hands and knees. While still trying to get him cuffed, Mr. Augustin reached up and grabbed his own hair, pulling out what turned out to be well attached hair extensions, which then got wrapped up in the cuffs. Mr. Augustin continued to fight as Officer Ferrigno was attempting to control his legs. Sgt. Celli called out for additional units.

Mr. Augustin was yelling that he would either kick the officers' asses or kill them, that he was being raped, and Sgt. Celli told both Officers Ferrigno and Brandt to get a recording started. Officer Brandt, while struggling with Mr. Augustin, told him that the police were there to help him, that it would be okay, and to stop resisting. Sgt. Celli struck Mr. Augustin one time in the shoulder blade, in an attempt to stop Mr. Augustin from grabbing his hands and biting. Mr. Augustin let go of Sgt. Celli's hand and he was able to change his grip on Mr. Augustin. Together, Sgt. Celli and Officer Brandt were able to get one set of handcuffs on each wrist, and eventually to connect the two sets of cuffs behind Mr. Augustin's back.

Sgt. Celli made the call for leg restraints¹², as Officer Ferrigno was continually being bucked off Mr. Augustin's legs. The three officers moved Mr. Augustin onto the floor, into a safer, more controllable position in order to better apply the leg restraints. After Mr. Augustin was cuffed, Sgt. Celli called for additional backup. He remained by Mr. Augustin's back, holding the handcuffs, with his knee on Mr. Augustin's elbow. Officer Brandt was near Mr. Augustin's head, trying to control his shoulders by using his hands on Mr. Augustin's shoulder and arm, while Officer Ferrigno was still fighting with Mr. Augustin's legs. Officer Berg, who had also arrived, assisted Officer Ferrigno with the legs. Sgt. Celli saw Mr. Augustin trying to spit at Officer Brandt, so he told him to stop spitting.

An officer arrived with a maximum restraint cord, and the officers attempted to get the strap around Mr. Augustin's waist. Mr. Augustin continued to actively fight and yell. Officer Brandt continued the process of applying the restraints, while Officer Ferrigno held Mr. Augustin's legs bent at the knees and crossed at the ankles, pushing down on them to keep him from kicking. Mr. Augustin continued yelling, screaming, and trying to kick while the leg restraints were being applied. All the officers were breathing heavily and sweating from their efforts to get control of Mr. Augustin.

¹² Leg Restraints: Also known as maximum restraints

At some point during this time, and before medical was necessary, Sgt. Celli called for medical to stage outside, both in case of emergency and for purposes of transportation. Suddenly, Mr. Augustin went limp and started to look lethargic and dazed, so Officer Brandt commented, "Wow, you really stopped fighting," checked his pulse, and found a strong steady pulse in his neck.

The officers got the strap of the restraints around Mr. Augustin's waist and Sgt. Celli attempted to get it snug. Mr. Augustin suddenly began kicking again, trying to get Officer Ferrigno off his legs, and a second Officer, Officer Woods, stepped in to assist Officer Ferrigno with the legs, by placing his body weight on Mr. Augustin's legs. Mr. Augustin was still yelling, claiming one of his eyes was bulging out, so Sgt. Celli checked, but saw no bulge as claimed. Sgt. Celli recalled that the officers had specifically mentioned, and paid attention to making sure, that Mr. Augustin could breathe during the process of getting him restrained. He had Officer Brandt checked his pulse and Officer Brandt told Sgt. Celli that Mr. Augustin had a good pulse, and to roll Mr. Augustin to his side so they could get the restraint around Mr. Augustin's ankles. At that time, Sgt. Celli told Officer Woods to go ahead and have medical come into the apartment, so Officer Woods went outside and called for medical, who had been staging.

After his legs were restrained, Mr. Augustin's head was canted to the side, he was breathing heavily and he had stopped fighting. A short period of time passed and, unsure of whether Mr. Augustin was just resting or if something more serious were happening, Officer Brandt and Sgt. Celli rolled Mr. Augustin over to his right side and onto his back so that he was chest up. At that time, Officer Berg noticed a small amount of blood coming out of the left side of his mouth, and some blood on the carpet. Officer Brandt checked his pulse a second time and couldn't find one. Officer Brandt immediately informed Sgt. Celli, who said, "We're gonna start CPR, remove all the leg restraints." Sgt. Celli said that at that time he saw that Mr. Augustin's eyes were rolled up in his head. Sgt. Celli and Officer Brandt start applying the sternum rub¹³ to try and wake him up, yelling "wake up, wake up," but there was no response. Sgt. Celli radioed a Code Blue and ordered the group to remove the restraints and the handcuffs, a process which took about two minutes. Sgt. Celli said he also cautioned the officers to remain alert in case Mr. Augustin began fighting again.

The officers quickly removed the leg restraints, un-cuffed Mr. Augustin, and Sgt. Celli began CPR while the other officers stood by, as they were unsure if Mr. Augustin would be responsive to the CPR and resume fighting. Sgt. Celli continued CPR until medical arrived, declining to let anyone take over for him during the interim. Medical arrived after between three to five minutes, taking over for the officers. Sgt. Celli informed the medical team that he believed controlled substances were involved, that no Tasers were used, there was no use of the carotid hold¹⁴ and that there was no positional asphyxia.

After medical arrived, Sgt. Celli ordered his team to turn on all recorders and get recorded statements from witnesses, as well as to get photos taken. Officer Ferrigno remained in the bedroom, recording the medical efforts and making sure the scene was preserved. Officers Brandt and Ferrigno were told to return to SRPD, separately. After turning over the scene to the Sonoma

¹³ Sternum Rub

¹⁴ Carotid Hold: A method of restraint that restricts the carotid artery and induces unconsciousness if maintained for a period of time.

County Sheriff's department pursuant to the Officer Involved Critical Incident Protocol, Sgt. Celli also returned to SRPD.

Based on his training and experience and his observations of Mr. Augustin's demeanor and behavior, Sgt. Celli believed Mr. Augustin was suffering from a stimulant psychosis at the time of the incident. At no time did any officer strike, hit or kick Mr. Augustin.

G. SUMMARY OF STATEMENT OF PARAMEDIC

On October 16, 2013, John Doe #4 was a licensed Paramedic, and had been employed by American Medical Response¹⁵ in that capacity for seven years. Prior to being employed as a Paramedic, John Doe #4 was employed by AMR as an Emergency Medical Technician.¹⁶ Initially John Doe #4 and his team were dispatched to stage outside the building at the apartments, but they followed the call notes until they entered the apartment to render aid.

Upon entering the apartment, John Doe #4 saw Officer Wellington in the dining room area with another male. Two additional police officers followed John Doe #4 in the door. Once in the bedroom, John Doe #4 observed an individual lying supine on the floor with an officer performing chest compressions. The bedroom was in disarray, it looked like furniture had been moved around, and there were at least two officers in the room doing compressions. John Doe #4 moved the bed as much as he could to make more room around the patient. The officers continued compressions until the medical team could take over. Once the medical team took over compressions, John Doe #4 employed a bell mask to administer ventilations to the patient. A second Paramedic was at the patient's feet, and they prepared to use the defibrillator by adhering patches and monitoring the patient. John Doe #4 began to intubate the patient while his Captain attempted to run an IV.

The intubation was completed and John Doe #4 and his team went through checks of the patient's rhythm and pulse. Unable to establish an IV in his arm, John Doe #4 took over for his Captain and found a better vein in the patient's neck, where he was able to successfully insert an IV. At the time, the patient was in "asystolic rhythm", which John Doe #4 described as having zero electrical activity and being clinically dead. The team continued compressions while medications were delivered through the IV, including Narcan, in case the patient had taken any opiates. After a period of time administering lifesaving measures, John Doe #4 contacted Santa Rosa Memorial Hospital to inform them that they had a 35 year old male who had been found "asystolic", and had been down for so many minutes, and that he intended to pronounce the patient deceased. After speaking with the Hospital staff, John Doe #4 did pronounce the patient deceased and cleared the scene with his team.

During the course of the treatment, John Doe #4 and his team followed protocol and did not deviate in any manner. Mr. Stipanov did not notice anything unusual about the patient, except that he saw what he believed looked like burn marks in and around the patient's mouth. These marks, based on John Doe #4's experience, were consistent with burn marks that he had only seen on known meth users that employ a glass pipe to ingest the substance.

¹⁵ Hereinafter AMR

¹⁶ Hereinafter EMT

H. AUTOPSY AND CAUSE OF DEATH

Dr. Arnold R. Josselson, M.D., conducted the autopsy of Christopher Augustin on October 17, 2013. Dr. Josselson concluded the cause of death was “cardiopulmonary arrest during struggle with police while being arrested in an individual under the influence of methamphetamine (excited delirium), (minutes).”

Dr. Josselson conducted an external examination and made findings of multiple small abrasions on his face and body. Also, there was an area of abrasion on his right wrist consistent with the handcuff that was found on Mr. Augustin. A blood sample was taken and tested by NMS labs.

The toxicology report, issued October 31, 2013 reported that Mr. Augustin had the following substances in his blood at the time of his death: Caffeine, Naloxone, Amphetamine, Methamphetamine, and Hydroxyzine. *The level of Methamphetamine present was extremely high, at 2800 ng/ml, compared to the Amphetamine at 86 ng/ml, and Hydroxyzine at 30 ng/ml.* Per the report, Hydroxyzine is an antihistamine and Naloxone is a narcotic antagonist used to counter the effects of opioids. The report goes on to describe all the substances but specifically states regarding Amphetamine and Methamphetamine as follows:

“Amphetamine (Adderall, Dexedrine) is a Schedule II phenethylamine CNS¹⁷-stimulant... Overdose with amphetamine can produce restlessness, hyperthermia, convulsions, hallucinations, respiratory and/or cardiac failure. Reported blood concentrations in amphetamine related fatalities ranged from 500-41000ng/ml (mean 9000 ng/ml). Amphetamine is also a metabolite of methamphetamine, benzphetamine and selegiline.” (emphasis added).

“d-methamphetamine is a DEA schedule II stimulant drug capable of causing hallucinations, aggressive behavior and irrational reactions. d-methamphetamine is an abused substance because of its stimulatory effects and is also addictive. A peak blood concentration of methamphetamine of 20ng/ml was reported at 2.5hr after an oral dosage of 12.5mg. **Blood levels of 200-600ng/ml have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions.”** (emphasis added.)

Again, Mr. Augustin’s blood level indicated that the level of *Methamphetamine in his blood was extremely high, at 2800 ng/ml.*

V. STATEMENT OF THE LAW

Under the Fourth Amendment of the United States Constitution, persons have the right to be free from the use of excessive force by law enforcement officers. This right attaches even when an officer is engaged in making a lawful arrest.¹⁸ As will be discussed below, it is not necessary to

¹⁷ CNS: Central Nervous System

¹⁸ Graham v. Connor (1989) 490 U.S. 386. “All claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the

determine whether in this case officers were “engaged in making a lawful arrest” of Mr. Augustin at the time he suffered from cardiac arrest. Instead, the analysis is whether the force used to effectuate the detention and arrest was reasonable based on an evaluation of the totality of the circumstances. The evaluation of the totality of the circumstances is not based on the facts as they became known over time, but they are analyzed from the standpoint of the officers and what they knew at the time the detention and arrest were made.

A. THE RIGHTS AND DUTIES OF A PEACE OFFICER WHEN EFFECTING A DETENTION OR AN ARREST

1. Rights And Duties Of Officers During A Detention

A police officer has the right to stop and temporarily detain someone for investigation whenever the officer has a “reasonable suspicion” some criminal activity is afoot and that the person was, is, or is about to be, involved in that criminal activity.¹⁹ A detention is allowed so a peace officer may have a reasonable amount of time to investigate a person’s possible involvement in an actual or perceived criminal act, allowing the officer to make an informed decision whether to arrest, or to release, the subject. Even though a detention is meant to be a short contact to assist in determining if a crime has occurred, an officer is not deprived of his right to defend himself should it become necessary.

“(E)ven when a police officer is careful, he is still subject to attack. . . . (P)olice officers (are) entitled to protect themselves during a detention: ‘This is a rule of necessity to which a right even as basic as that of privacy must bow. To rule otherwise would be inhumanely to add another hazard to an already very dangerous occupation. Our zeal to fend off encroachments upon the right of privacy must be tempered by remembrance that ours is a government of laws, to preserve which we require law enforcement—live ones. Without becoming a police state, we may still protect the policeman’s status.’”²⁰

When Sgt. Celli and Officers Brandt and Ferrigno arrived on scene at the apartment complex, they had been provided information that would lead a reasonable officer to believe that a crime may have been committed. The Officers were told by dispatch that someone had been held against their will in the apartment and that the subject was delusional. Upon arrival, they were met with John Doe #3, who was in an excited state, and possibly under the influence of a stimulant. He told officers that there were additional male subjects in the apartment and that one of them was “acting or going crazy in there.”²¹ Officer Brandt left Sgt. Celli with Mr. John Doe #3, and responded to the apartment to check the welfare of the remaining occupants and begin an investigation into the incident if one was required. When Officer Brandt got to the apartment, he was met by John Doe #2, who said, “he’s in there,” and pointed in the direction of the sole bedroom in the apartment. When Officer Brandt made visual contact with Mr. Augustin, he could see that Mr. Augustin was naked at least from the waist up, was sweating, moving rapidly, and was not responding logically

Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process approach.’” Graham, 490 U.S., at 394.

¹⁹ *Terry v. Ohio* (1968) 392 U.S. 1; *People v. Walker* (2012) 210 Cal.App.4th 1372, 1381.

²⁰ *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1255.

²¹ Statement of Officer Brandt to Sonoma County Sheriff’s Detectives.

to Officer Brandt's questions and requests. All of this information would lead a reasonable officer to believe that multiple crimes may have been committed, including the crime of unlawful restraint, battery, and being under the influence of a controlled substance, any or all of which justify a detention to further investigate.

2. Rights And Duties During An Arrest

A peace officer may arrest a person without a warrant whenever the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence or that he has committed a felony.²² When a peace officer has reasonable cause to believe that a person to be arrested has committed a public offense, he or she may use reasonable force and reasonable restraint to effect the arrest, to prevent escape, or to overcome resistance.²³ If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.²⁴

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 the right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance.²⁵

The United States Supreme Court has stated:

“Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”²⁶ This “careful balancing” includes consideration of “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he (she) is actively resisting arrest or attempting to evade arrest by flight.”²⁷

The Ninth Circuit Court of Appeals has also noted: “All determinations of ‘unreasonable force must embody allowances 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.’”²⁸ Furthermore, the determination of reasonableness must be judged from the perspective of the reasonable officer on scene, rather than through hindsight.²⁹

²² Penal Code section 836 (in pertinent part).

²³ Penal Code section 835, 835a

²⁴ Penal Code section 834a.

²⁵ Penal Code section 835a

²⁶ Graham, 490 U.S., at 396

²⁷ Id.

²⁸ Scott v. Henrich (9th Cir. 1994) 39 F.3d 912.

²⁹ Graham, 490 U.S., at 396-7

Officers are not required to use the least intrusive methods, but instead, the appropriate inquiry is whether the officers acted reasonably.³⁰ Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment in the heat of battle with lives potentially in the balance, and imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.³¹ The determination of whether the amount of force used was “reasonable” is not limited to a discussion of the nature and amount of force actually used or whether the force used resulted in death. The “reasonableness” inquiry requires a careful consideration of all of the facts and circumstances surrounding the event, including the possibility of a subject being under the influence and at risk for Excited Delirium Syndrome.

As described above, Officers Brandt and Ferrigno had probable cause to arrest Mr. Augustin for resisting, obstructing, or delaying an officer in the performance of their duties. Based on their training and experience, and observations of Mr. Augustin, Officers Brandt and Ferrigno also had reasonable cause to believe Mr. Augustin was under the influence of a stimulant and that he had committed crimes against John Doe #2. When the Officers attempted to detain him to further investigate both his stimulant use and his interaction with John Doe #2, Mr. Augustin was uncooperative, and then became combative. Officer Brandt attempted to gain Mr. Augustin’s compliance with verbal cues, requests, and commands, and only when Mr. Augustin failed to comply, did Officer Brandt attempt to physically control him by placing his hand on Mr. Augustin’s arm. Once touched, Mr. Augustin became combative, pulling away and flailing his arms. When Officer Ferrigno made physical contact to assist Officer Brandt, Mr. Augustin continued to struggle and fight, pulling his arms from Officer Brandt and kicking and bucking the Officer Ferrigno off his body. It was only after the two Officers and Sgt. Celli were unable to calm Mr. Augustin and gain control using just their own strength, did Sgt. Celli then call for the additional measure of the maximum restraint cord. At each step of the detention and arrest, the officers first attempted the least restrictive means of control before moving on to the next level of force. Given that three officers were unable to control Mr. Augustin, and that he continued to fight and attempt to kick the officers during the contact, their use of force was reasonable.

B. REASONABLE FORCE IN CONJUNCTION WITH EXCITED DELIRIUM

Excited Delirium is a unique syndrome that can be identified by the presence of a distinctive group of clinical and behavioral characteristics. A review of literature around Excited Delirium revealed that more than 95% of published fatal cases are males with an average age of 36, they are hyper-aggressive with bizarre behavior, are impervious to pain, combative, hyperthermic, and tachycardic. Symptoms frequently express themselves through a high pain tolerance, sweating, agitation, noncompliance, lack of tiring, unusual strength, and inappropriate clothing.³²

³⁰ See, e.g., Illinois v. Lafayette, 462 U.S. 640, 647, 77 L. Ed. 2d 65, 103 S. Ct. 2605 (1983); United States v. Martinez-Fuerte, 428 U.S. 543, 556-57 n.12, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976).

³¹ Henrich (9th Cir. 1994) at 915.

³² White Paper to the Council and Board of Directors, Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009.

“Given the irrational and potentially violent, dangerous, and lethal behavior of an ExDS³³ subject, any LEO³⁴ interaction with a person in this situation risks significant injury or death to either the LEO or the ExDS subject who has a potentially lethal medical syndrome. This already challenging situation has the potential for intense public scrutiny coupled with the expectation of a perfect outcome. Anything less creates a situation of potential public outrage. Unfortunately, this dangerous medical situation makes perfect outcomes difficult in many circumstances.³⁵”

Christopher Augustin exhibited hyper-aggressive behaviors with John Doe #3, John Doe #2, and the officers who responded to the call for assistance. When the officers arrived, they noted Mr. Augustin to be constantly moving, excited, sweaty, naked, and making illogical statements. Mr. Augustin was non-responsive to the logical statements that Officer Brandt made regarding to being a police officer, and made incoherent statements about being raped and killed. When Mr. Augustin was combative, the officers noted in their statements that Mr. Augustin exhibited unusual strength, in that he was able to pull away, buck, and throw them, despite the officers’ number, relative size and combined physical strength.

The use of force analysis, when made in conjunction with a case that an officer believes may involve a subject under the influence of a central nervous system stimulant, must take into consideration the specific observations made by the officers of the arrestee, and the early tactics employed to gain compliance. That a subject may be under the influence, and may be suffering some form of excited delirium are just two of the factors to consider in the totality. While the possibility of excited delirium is certainly a factor, the analysis continues to be a weighing of the totality of the circumstances and the reasonableness of the force. The pertinent factors remain the same, including whether the person was alleged to have committed a crime, was a danger to himself or others, offered resistance to detention or arrest, or was armed.³⁶ The possibility of Excited Delirium is a factor for the officers to consider when confronting an individual, and while best practices may be to: stage medical earlier than they might otherwise; attempt to use the least force possible; and delay physical contact until absolutely necessary, there is no requirement under criminal law that they do so.

However, in this situation, Officers Brandt and Ferrigno and Sgt. Celli did use the least amount of force possible at each stage, and delayed physical contact with Mr. Augustin until absolutely necessary, despite the fact that there was no requirement that they do so. Additionally, Sgt. Celli had medical staged outside before they were needed, further bolstering the reasonableness of law enforcement’s conduct in this situation.

C. DISCUSSION OF THE LAW AND OF THE EVIDENCE

When law enforcement officers are called out to a continuously unfolding event, and during detention or arrest, the subject dies, the analysis is conducted from the position of what an

³³ Excited Delirium Syndrome

³⁴ Law Enforcement Officer

³⁵ White Paper to the Council and Board of Directors, Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009.

³⁶ See Gregory v. County of Maui, 523 F.3d 1103, Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 921 (9th Cir. 2001), . Drummond v. City of Anaheim, 343 F.3d 1052, 1056 (9th Cir. 2003).

objectively reasonable officer, knowing and seeing what the particular officer(s) in question knows and sees at the time of the use of force that resulted in death. The use of force must be reasonable in that light. Officers have no obligation to use the least amount of force to effectuate a detention or arrest, nor any obligation to retreat or desist in using force in the face of resistance.

At the time Sgt. Celli, Officer Brandt, and Officer Ferrigno arrived on scene, they knew they had a potential hostage situation, the possibility of a weapon, an irrational subject, and spotty information about earlier violent conduct toward John Doe #2. Sgt. Celli remained outside to gather more information from John Doe #3. Officers Brandt and Ferrigno entered the apartment to contact the occupants and John Doe #3 told the officers, before they went in, that Mr. Augustin was out of control. The officers knew that there were statements that were disseminated through dispatch that John Doe #2 had been held in the bedroom against his will and that Mr. Augustin was delusional and making irrational statements.³⁷ Thus, the officers were aware that a volatile and potentially dangerous subject was present and out of control. Additionally, while outside speaking with Mr. John Doe #3, Sgt. Celli noted that Mr. John Doe #3 was likely under the influence of a stimulant.

When the officers entered the apartment, they were first met by John Doe #2, who remained in the living area with Officer Ferrigno. Officer Brandt went to check the bedroom for Mr. Augustin. Once there, Officer Brandt stayed outside the partially closed bedroom door and could see Mr. Augustin barricaded behind furniture, in a state of undress, and that he was continually moving. Officer Brandt identified himself as law enforcement and attempted to engage Mr. Augustin in conversation, but Mr. Augustin was irrational, failed to believe that Officer Brandt was a peace officer, and would not comply with Officer Brandt's multiple requests to keep his hands visible. Upon entering the room, Officer Brandt attempted to reason with Mr. Augustin, drawing special attention to the badge, his duty belt, and all the details on his uniform that a reasonable person would understand indicates an official police presence. Mr. Augustin remained unconvinced, but continued to invite Officer Brandt to enter the room. The irrationality between Mr. Augustin's statements and his behavior raised the officer's suspicions, and thus he drew his firearm to a low ready position before he entered the room. After entry, Officer Brandt remained back from Mr. Augustin, kept his gun low, and continued to verbally attempt to gain Mr. Augustin's compliance, using what he described as a conversational tone. Once Officer Ferrigno entered the bedroom, Officer Brandt holstered his firearm and continued to talk to Mr. Augustin.

Instead of quickly entering the bedroom and physically engaging Mr. Augustin, Officer Brandt took time to assess the situation and attempted to engage Mr. Augustin in conversation, to present as non-threatening, to calm him down, and to address his fears and concerns. After many attempts to verbally gain his compliance, Officer Brandt slowly approached Mr. Augustin behind the furniture and employed what he called a "soft touch," to gain control of Mr. Augustin's hands. However, once Mr. Augustin's wrist was controlled, he yelled that he was being raped, flailed his arms and struggled against Officer Brandt. Officer Brandt used the least intrusive means available to try and gain control of the situation and of Mr. Augustin, by trying to get Mr. Augustin to voluntarily come into custody. However, when these methods were unsuccessful and met by a continued failure to comply, and irrational statements and behavior, Officer Brandt then attempted to use physical means to gain control of Mr. Augustin.

³⁷ See dispatch log.

Both Officers Brandt and Ferrigno attempted to subdue Mr. Augustin and were unsuccessful. The struggle ended up on the bed, where Officer Ferrigno attempted to control Mr. Augustin's feet and Officer Brandt attempted to gain control of his hands and arms. Both Officers noted how sweaty Mr. Augustin was, the apparent excessive strength he was exhibiting, and the difficulty that added to their attempts to contain him, as he was able to slip out of their grasp, kick Officer Ferrigno off his legs and pull his arms back under his stomach. The Officers called for assistance and Sgt. Celli, who was close by, was able to come to their aid very quickly. Sgt. Celli took over one side of Mr. Augustin's upper body, and tried to get him handcuffed in conjunction with Officer Berg. All officers as well as John Doe #2, who was listening from the other room reported that they were continually telling Mr. Augustin to stop resisting, that he would be "okay" and that they were trying to help him. The room showed signs of a struggle as well, as furniture had been moved and the mattress was slid partially off of the box spring.

Mr. Augustin was continually able to kick at Officer Ferrigno, and kick the officer off his legs, and was refusing to comply with any orders, so Sgt. Celli made the decision that full restraints were required both for the Officers' safety and the safety of Mr. Augustin. Sgt. Celli specifically noted that he was aware of the potential for positional asphyxia, kept a look out for it himself, and warned the other officers to do so as well. During the attempt to apply the maximum restraints, all officers reported that Mr. Augustin was continuing to yell and to physically resist, but that he would stop for a moment, appear to catch his breath, and then start again. Officer Brandt particularly took note, and watched Mr. Augustin for signs of distress. When Mr. Augustin stopped screaming and fighting, Officer Brandt purposely checked for breathing and a pulse, which were both present. However, when the pulse was gone moments later, the officers removed the restraints as quickly as possible and began lifesaving attempts.

The officers' attempts to detain Mr. Augustin for his own and others' safety, and to investigate the crimes alleged against him by Mr. John Doe #3 were objectively reasonable in light of all the information they had at the time of the contact. Officer Brandt, even though not required to use the path of least resistance, made multiple attempts to calm Mr. Augustin and gain his cooperation instead of using force. Sgt. Celli and Officer Ferrigno, recognizing that Mr. Augustin was likely under the influence of a stimulant and failing to rationally understand his circumstances, still attempted to gain compliance using the least amount of force necessary. The first physical contact was slow and contained, and only employed the use of hands attempting to control his arm and hand. It was only after Mr. Augustin began physically fighting that the use of force escalated in response. John Doe #2 corroborates the officer's statements, when he stated that he believed the contact with police was appropriate, but that Mr. Augustin began escalating and was uncooperative. John Doe #2, while listening from the other room, heard officers become more commanding, and heard Augustin grow combative despite the officer's attempts to gain his compliance.

Sgt. Celli only called for the use of maximum restraints after attempting to assist Officers Brandt and Ferrigno in the detention. It was only after the three officers were unable to keep Mr. Augustin from kicking and bucking off Officer Ferrigno that the restraints were employed. Mr. Augustin appeared unable to listen to reason or logic, and was not able to control his behavior. Mr. Augustin's physical condition and exhibition of extra-human strength made it impossible for the officers to control him without the use of restraints. Even when Mr. Augustin was actively fighting, kicking, and screaming, no officer used a Taser, Baton, flashlight, or any other weapon, and only

one blow was struck against Mr. Augustin, to his shoulder blade, by hand, to get him to release an officer's hand and stop biting, during the attempt to handcuff him. The physical evidence from the autopsy corroborates the officers' statements in this regard, in that there were only superficial bruises and scrapes found on his body, consistent with the struggle. The Officers' initial attempts to avoid force, followed by their restrained use of force was objectively reasonable throughout their contact with Mr. Augustin.

VI. CONCLUSION

Although Mr. Augustin was being taken into custody by officers at the time of his death, neither lethal force, nor unreasonable force was used to effectuate the detention and arrest of Mr. Augustin. Lethal force is that which creates a substantial risk of death or great bodily injury.³⁸ In this case, no conduct on the part of the officers created a substantial risk of death or great bodily injury. Instead, the effects of the drugs on his system, combined with his physical exertion while fighting against the reasonable response from officers, induced cardiac arrest at the time of his arrest.

Based on the law and circumstances discussed above, the actions Officers Brandt, Ferrigno, and Sgt. Celli were legally justified in using force in this instance. All of the officers acted lawfully and the force used was reasonable under the totality of the circumstances. Accordingly, this office finds that no criminal charges are warranted.



Jill R. Ravitch
District Attorney, County of Sonoma

³⁸ Smith v. City of Hemet, (2005) 394 F.3d 689.