

EMPLOYEE-INVOLVED FATAL INCIDENT REPORT



Employer Agency: Santa Rosa Police Department
Lead Agency: Sonoma County Sheriff's Department
Decedent: Wayne Allan Ceballos Hoffman
Date of Incident: April 6, 2014

PUBLIC VERSION

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

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I. INTRODUCTION

On April 6, 2014, Mr. Wayne Allan Ceballos Hoffman (hereafter referred to as Hoffman), while under the influence of a high level of methamphetamine, died as a result of cardiopulmonary arrest during a struggle with police attempting to take him into custody. The excited delirium death occurred on Nordyke Avenue in Santa Rosa, California.

The Santa Rosa Police Department invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol (“protocol”), once resuscitation efforts failed and Hoffman was declared dead. 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 with Detective Jeff Toney (hereafter Toney) being the lead investigator. 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 foreman of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding the death of Hoffman, 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 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 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 doubt²," 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.

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

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

IV. SUMMARY OF FACTS

A. DECEDENT'S BACKGROUND

Hoffman was born October 14, 1966 and was 47 years old at the time of his death. He lived as a transient and was known to reside at various low rate motels in Santa Rosa. He was survived by his mother, Jane Doe #1 and his estranged father living in Texas. According to his mother, Hoffman's health was poor. He suffered from HIV and Hepatitis-C. During his autopsy he was found to have an enlarged heart, enlarged liver, and cirrhosis of the liver. He was also found to have had a significant amount of methamphetamine in his blood (1100 ng/ml).

Hoffman was a chronic intravenous user of methamphetamine. In fact, his 20 page criminal record is replete with arrests for drug (methamphetamine) possession, drug possession for sale, possession of drug paraphernalia, possession of syringes, and being under the influence of a controlled substance beginning in 1997. At the time of his death he had another possession of methamphetamine case pending in Sonoma County (SCR-646590). He was scheduled to be in court on May 6, 2014. In fact, the people that knew him well all confirmed that Hoffman usually carried methamphetamine on his person. He would usually place it near his genitals so police would not easily find it and he could easily get rid of it by dropping it down a pant leg if need be. According to those same associates, Hoffman was also regularly involved in the sales of methamphetamine and was reported to have been set to meet someone for a transaction the night of his death.

B. EVENTS OF APRIL 6, 2014³

On April 6, 2014 at approximately 1:00 am, Officer Garrison Swartz (hereafter Swartz) of the Santa Rosa Police Department was on duty, in his marked police car, dressed in his standard, blue, marked police officer uniform. He was driving westbound on Steele Lane at Administration Drive in Santa Rosa when his attention was drawn to a bicyclist on the roadway. The male rider, who was subsequently identified as Hoffman, was traveling eastbound in the westbound lane near the onramp for US 101 in violation of California Vehicle Code section 21650.1. Hoffman then crossed the intersection diagonally towards the south curb of eastbound Steele Lane, in front of Swartz in violation of California Vehicle Code section 21200. Swartz made the decision to stop Hoffman for the vehicle code violations, thus notifying dispatch that he was making a "bike stop."

Swartz had turned on his red and blue overhead light bar and made a u-turn to stop Hoffman. He also turned on his spotlight and illuminated Hoffman as they traveled eastbound on Steele Lane. As they approached Illinois Street Hoffman turned his head back toward the officer's police car but failed to stop, despite the officer yelling at him to stop. When he reached Illinois Street Hoffman turned right and travelled southbound in the northbound lane, which was separated by a

3. The following information is taken from reports of recorded interviews conducted by the Sonoma County Sheriff's department of Officers Garrison Swartz, Eric Rhodes, Tim Doherty, Jeremy Jucutan, Joe Richards, Mathew Meloche, and Jesus Avina.

concrete medium. Swartz accelerated ahead and stopped. He exited his car ahead of Hoffman and told him to stop. Hoffman ignored those orders and rode around the police car. Swartz got back into the police car and pursued Hoffman. Hoffman turned eastbound onto Sucher Lane. Swartz got within 20 feet of Hoffman and continued yelling for him to stop but Hoffman kept riding.

Hoffman turned left, northbound on Nordyke Avenue. Once again Swartz accelerated his police car ahead of Hoffman and exited his car to contact him. Once again Hoffman didn't stop and went around the police car. This time Swartz returned to his car and accelerated to a point right alongside Hoffman. He yelled for Hoffman to stop. Hoffman said, "I can't. I don't have brakes." (Subsequent examination revealed this to be true) Swartz responded that he should stop pedaling. Hoffman continued to ride away and Swartz accelerated. The bicycle was observed to be weaving from side to side. As the police car passed Hoffman, the bicycle made minor contact with the rear side of the police car. This did not hinder the bicycle's direction of travel. Swartz once again drove ahead of Hoffman and stopped. He then saw the bicycle veer to the left and strike the curb. As a result, Hoffman fell off the bicycle and on to the sidewalk. The bicycle landed in a yard of a residence at that location.

Hoffman began getting up onto his knees and Swartz tackled him to the ground. Hoffman began flailing his left hand while holding his right hand underneath his body. Swartz gave many commands for him to place his hands behind his back but Hoffman ignored those directives. He continued to resist Swartz's attempts to handcuff him. Swartz attempted to use two hands to get control of Hoffman's left arm but he was unsuccessful. In fact, Hoffman began to overpower Swartz and was trying to get to his feet, so Swartz radioed "Code 20", meaning he needed help immediately. In attempt to gain compliance, Swartz struck Hoffman in his left rib area 2-3 blows on 5-6 occasions. It did not work as Hoffman continued to resist.

By 1:04 a.m. Officer Eric Rhodes (hereafter Rhodes) of the Santa Rosa Police Department arrived to assist. He saw Swartz struggling with Hoffman. Rhodes observed Hoffman to be attempting to roll onto his right side and "buck" Swartz off of him. Rhodes delivered 4-5 knee strikes to Hoffman's shoulder area to try and obtain compliance. Again, it did not work as Hoffman continued to resist. Rhodes grabbed Hoffman's right bicep to remove it from beneath Hoffman's body. Hoffman tensed up and the effort to remove the right hand was again unsuccessful. Rhodes then delivered 5-6 "bottom fist" blows to Hoffman's head, which was covered by Hoffman's jacket, in order to distract Hoffman in an effort to gain control of the right arm. That didn't work either as Hoffman rolled to his right side and pull into his body. Rhodes was concerned that Hoffman had a weapon. Swartz and Rhodes were able to push him back on to his stomach but were unsuccessful in gaining control of both hands to handcuff him. This was despite further Rhodes striking Hoffman's shoulder 5-6 more times with his knee.

Officer Tim Doherty (hereafter Doherty) of the Santa Rosa Police Department arrived on the scene of the struggle and took a position at Hoffman's left shoulder. He administered moderate pressure with his left knee to Hoffman's shoulder to control him. Officer Jeremy Jucutan (hereafter referred to as Jucutan) of the Santa Rosa Junior College Police Department also arrived and assisted by placing Hoffman's legs into a "figure four" leg restraint hold because when he arrived Hoffman was actively resisting the officers and kicking at them. They still had

not been able to control Hoffman and place him in handcuffs. Hoffman was repeatedly told to give them his hands and to put his hands behind his back which he didn't and wouldn't do.

Hoffman yelled that he couldn't breathe but he was observed to be taking full, unlabored, deep breaths. He yelled some other things unintelligibly as two officers were able to place his left hand into the handcuffs. Santa Rosa Junior College Police Officer Joe Richards (hereafter Richards) had arrived on scene and attempted to secure Hoffman's right hand and was able to do that with the assistance of Rhodes. Hoffman was found to have been clutching a cell phone in that right hand.

Doherty observed that the suspect had then stopped yelling so he pulled back the hood of Hoffman's jacket and turned him on his side where he observed a small pool of blood on the sidewalk beneath Hoffman's face and the left eye was swollen. Hoffman's eyes were open but pupils were fixed. He attempted a sternum rub on Hoffman but got no response. Doherty felt that there may be a medical emergency so the handcuffs were removed and CPR was begun. Efforts were made by Santa Rosa Police Officers as well as Santa Rosa Fire Department personnel for at least 19 minutes to revive Hoffman who was in cardiac arrest. Hoffman was transported to Santa Rosa Sutter Hospital where he was declared dead at 1:40 a.m. by Dr. Michaela Sheppard.

C. HOFFMAN'S MOTHER AND HIS ASSOCIATES

1. Jane Doe #1

In order to understand Hoffman's background and possible motivation for running from and resisting the officers, members of the Sonoma County Sheriff's Department interviewed a number of people who knew Hoffman well.

They made contact with and interviewed Hoffman's mother, Jane Doe #1 on April 6, 2014. They notified her of her son's death and spoke to her about him. Although she had last spoken with her son on her birthday (April 4, 2014) by phone, she had not seen him in a year. They did speak regularly by phone.

Jane Doe #1 said that Hoffman had a girlfriend named Jane Doe #2 who wanted her son dead. Jane Doe #1 said that her son told her during their last conversation that he and Jane Doe #2 were living in a motel. Jane Doe #2 also only wanted him for the drugs and money. Jane Doe #1 also accused Jane Doe #2 of setting Hoffman up for arrests constantly.

Jane Doe #1 knew that Hoffman was a heavy user of methamphetamine (not heroin) and that he "fires it" intravenously. She knew that Hoffman got money from selling drugs. Jane Doe #1 also knew that he had been HIV positive for 28 years.

2. Jane Doe #2

Detective Jeff Toney interviewed Jane Doe #2 on April 8, 2014. In the detective's opinion, she was under the influence of a narcotic stimulant. Jane Doe #2 claimed that friends of hers (Jane

Doe #3) saw the whole incident involving Hoffman and the police (though they didn't know that it was Hoffman). Jane Doe #2 told Toney that she and Hoffman had been boyfriend and girlfriend but that they had not been together for a while. They had broken up because of domestic violence. She had a new partner. Jane Doe #2 claimed that she and Hoffman had a falling out but that she was all he had so she would help him get places to stay. She knew that he was HIV and Hepatitis-C positive.

She believed that Hoffman had been dumpster diving before the incident. She referred to the newspaper article about Hoffman's death. She told Toney that she knew why it would have happened (not stopping). She believed that Hoffman had drugs on his person because he always did. Further, that he probably had the methamphetamine in his underwear beneath his genitals since that is where he kept drugs. He probably threw the drugs. She also told Toney that Hoffman dealt drugs regularly and that he had previously gotten rid of the drugs to avoid being caught with them.

Jane Doe #2 claimed that Hoffman had been living at the Country Inn but Toney's contact with that motel did not support that claim.

3. Jane Doe #3

Jane Doe #3 was interviewed on January 4, 2016 by Toney. Toney wanted to know whether or not she had seen the incident as reported by Jane Doe #2. She said that she and a friend were walking on West Steele between 1 and 2 in the morning and they noticed a lot of police cars in the area. When they reached the corner of Steele Lane and County Center Drive suddenly the police cars stopped. She said that she didn't see any action, they just saw all the police cars driving by them but they couldn't figure out what was going on. "That's about it." She told Toney that she later found out it was Wayne. She didn't actually see what was going on with regard to the police. When Toney told her what Jane Doe #2 claimed about her seeing the incident she said, "I never saw", "Well it's hard to say, because I have one version and my heads telling me different so I don't know." She said that she saw a sheet over a body but added that it could have been a different situation.

4. John Doe #1

John Doe #1 was interviewed by Toney on April 10, 2014 when after John Doe #1 showed up at the Sonoma County Sheriff's Department to claim the bicycle that Hoffman had been riding the night he died. John Doe #1 said that he had been with Hoffman before the incident on Nordyke Avenue. He had been with Hoffman in Santa Rosa. Hoffman had previously lived at that residence with Jane Doe #4. John Doe #1 had been putting together a Polaris bicycle, which had been previously been dismantled by Hoffman.

After putting the Polaris together, Hoffman and John Doe #1 went to the Chevron station on Hopper Avenue to put air in the tire. Hoffman used water to wash the bike and they took off together riding separate bicycles on Cleveland Avenue. Hoffman said he was going to meet someone at the Shell Gas Station to sell a "sack." John Doe #1 knew that to be drugs. As they rode on, the bicycle that Hoffman was riding got a flat tire so John Doe #1 put a tire from the bike he was riding on to the Polaris as well as the bike lights so Hoffman would not get stopped.

John Doe #1 knew Hoffman to be HIV positive and to not look well at times. He looked fine the night of the incident. He knew Hoffman to be a user of drugs but that he didn't see him inject any that night. He did know that Hoffman possessed drugs. He estimated the amount to be about a quarter ounce and that Hoffman carried the drugs in his underwear beneath his genitals. The bag had almost dropped while they were working on the bike so Hoffman adjusted his boxers to hold it in place. He believed that Hoffman would have gotten rid of the drugs to avoid being caught with them by the police.

5. Jane Doe #4

On April 17, 2014, Toney interviewed Jane Doe #4. She told him that Hoffman lived with her between October and December 2013. She had to kick Hoffman out because he was sneaking people into her house and selling methamphetamine out of the window. Jane Doe #4 saw Hoffman the evening that he died. Hoffman had asked for a ride to her house to pick up his bicycle. She saw him and John Doe #1 working on the Polaris bicycle, which she planned on selling. She saw Hoffman and John Doe #1 ride off together.

She did not see Hoffman with any drugs that night but knew him always to have drugs on him. She had seen him drop a bag of drugs the day before. Hoffman had a reputation for dropping drugs.

D. AUTOPSY AND CAUSE OF DEATH

Dr. Arnold R. Josselson, M.D., conducted the autopsy of Hoffman on April 7, 2014.

Dr. Josselson conducted an external and internal examination and made findings of multiple cutaneous abrasions, multiple scalp contusions, marked hemorrhage of each temporal muscle, left ventricular cardiac hypertrophy (hardening and thickening), cirrhosis of liver, generalized lymphadenopathy (enlargement of lymph glands), pleural adhesions, abdominal adhesions, and pulmonary congestion. He noted that although there was bruising to the left side of the face, eye, and scalp there was no evidence of subdural, epidural, or subarachnoid hemorrhage.

He noted that both the heart, lymph glands and liver were enlarged. Further, that the right 4th through 6th lateral ribs were broken due to CPR.

Based upon that examination and without toxicology results Dr. Josselson could not determine the cause of death and stated the case was "pending toxicology."

A blood sample had been taken from Hoffman's femoral artery and tested by NMS labs. The toxicology report, issued April 18, 2014 reported that Hoffman had Amphetamine and Methamphetamine in his blood at the time of his death. *The level of Methamphetamine present was extremely high, at 1100 ng/ml*, compared to the Amphetamine at 80 ng/ml. 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 CNS⁴-stimulant...when used in therapy, initial doses should be small and increased gradually...following a single oral dose of 10mg amphetamine sulphate, a reported peak blood concentration of 40ng/ml was reached at 2hr. Following a single 30mg dose to adults, an average peak in plasma level of 100ng/ml was reported at 2.5 hr. A steady state blood level of 2000-3000 ng/ml was reported in an addict who consumed approximately 1000 mg daily. 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. Chemically, there are two forms (isomers) of methamphetamine: l- and d-methamphetamine. The l-isomer is used in non-prescription inhalers as a decongestant and has weak CNS-stimulatory activity. The d-isomer has been used therapeutically as an anorexigenic agent in the treatment of obesity and has potent CNS-, cardiac-, and circulatory-stimulatory activity...d-methamphetamine is an abused substance because of its stimulatory effects and is also addictive. A peak blood concentration of methamphetamine of 20ng/ml have been 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, Hoffman’s blood level indicted that the level of *Methamphetamine in his blood was extremely high, at 1100 ng/ml.*

After receiving the toxicology results, Dr. Josselson concluded in his final report in July, 2014 that the cause of Hoffman’s death was **“Cardiopulmonary arrest during struggle with police officers while under the influence of methamphetamine...”** He further commented:

“After a police pursuit while riding a bicycle the decedent engaged in a violent struggle with police attempting to handcuff him. During the struggle he received several blunt force head injuries from fists and pressure was applied to his shoulders. He was placed in handcuffs and within 2-3 seconds became unresponsive. He has of multiple cutaneous abrasions, scalp contusions, and temporal muscle hemorrhage, blunt force injuries as a result of the struggle. His blood has a high level of methamphetamine (1100 ng/ml). His natural diseases found are enlarged heart, cirrhosis, and enlarged lymph nodes, probably due to HIV positive. The death

⁴ CNS: Central Nervous System

probably is due to the **excited delirium syndrome due to methamphetamine intoxication.**” Emphasis added.

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.⁵ As will be discussed below, it is not necessary to determine whether in this case officers were “engaged in making a lawful arrest” of Hoffman 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. California Vehicle Code Sections 21650.1, 21200, and California Penal Code Section 148(a)(1)

Any discussion about the laws that apply to an analysis of the events of April 6, 2014 must begin by setting forth the California Vehicle Code and Penal Code sections implicated by Hoffman’s conduct that night.

California Vehicle Code section 21650.1 states:

“A bicycle operated on a roadway, or the shoulder of a highway, shall be operated in the same direction as vehicles are required to be driven upon the roadway.”
[Infraction]

California Vehicle Code section 21200 states:

“A person riding a bicycle...upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division, including, but not limited to, provisions concerning driving under the influence...”

California Penal Code section 148(a)(1) states:

“Every person who willfully resists, delays, or obstructs any peace officer...in the discharge or attempt to discharge any duty of his or her office...shall be punished by a fine not exceeding one thousand dollars or by imprisonment in a county jail not to exceed one year, or both...”

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

⁵ 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 Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process approach.’” Graham, 490 U.S., at 394.

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.⁶ 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.’”⁷

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.⁸ 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.⁹ 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.”¹⁰

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.¹¹

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

⁶ *Terry v. Ohio* (1968) 392 U.S. 1; *People v. Walker* (2012) 210 Cal.App.4th 1372, 1381.

⁷ *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1255.

⁸ Penal Code section 836 (in pertinent part).

⁹ Penal Code section 835, 835a

¹⁰ Penal Code section 834a.

¹¹ Penal Code section 835a

the countervailing governmental interests at stake.”¹² 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.”¹³

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.’”¹⁴ Furthermore, the determination of reasonableness must be judged from the perspective of the reasonable officer on scene, rather than through hindsight.¹⁵

Officers are not required to use the least intrusive methods, but instead, the appropriate inquiry is whether the officers acted reasonably.¹⁶ 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.¹⁷ 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, Officer Swartz not only had the right to detain and cite Hoffman for the vehicle code violations he had observed, but he and the officers also had probable cause to arrest Hoffman for resisting, obstructing, or delaying an officer in the performance of their duties per Penal Code section 148(a)(1). 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 at least four officers were unable to control Hoffman, and that he continued to physically resist 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,

¹² Graham, 490 U.S., at 396

¹³ Id.

¹⁴ Scott v. Henrich (9th Cir. 1994) 39 F.3d 912.

¹⁵ Graham, 490 U.S., at 396-7

¹⁶ 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).

¹⁷ Henrich (9th Cir. 1994) at 915.

and tachycardic. Symptoms frequently express themselves through a high pain tolerance, sweating, agitation, noncompliance, lack of tiring, unusual strength, and inappropriate clothing.¹⁸

“Given the irrational and potentially violent, dangerous, and lethal behavior of an ExDS¹⁹ subject, any LEO²⁰ 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.²¹”

Hoffman’s ability to resist the officers’ attempts to handcuff him as well as Dr. Josselson’s observations and opinion suggest that Hoffman, in fact, was exhibiting excited delirium. That a subject may be suffering some form of excited delirium is just one factor to consider regarding the use of force. 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 that was used by the officers. 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.²² In this case, Hoffman had committed a crime and violently resisted the officers’ attempts to detain and arrest him.

C. DISCUSSION OF THE LAW AND OF THE EVIDENCE

When law enforcement officers attempt to handcuff an individual during detention or arrest and the subject dies, the analysis is conducted from the position of what an 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.

On April 6, 2014 at just after 1:00 a.m. Officer Swartz observed Hoffman violate the vehicle code as he rode the Polaris bicycle on Steele Lane. Swartz was in a marked police car (and uniform) and activated his overhead red/blue light bar to stop Hoffman. Hoffman saw the officer behind him but failed to yield. The officer repeatedly yelled at him to stop but Hoffman continued to ignore the officer’s instructions. The officer tried stopping and exiting his police car ahead of Hoffman on two occasions but, again, Hoffman would not yield. The third time that Swartz did that, Hoffman crashed the bicycle. When he tried to get up he was tackled by Swartz. Swartz tried to handcuff Hoffman but could not control his arms.

¹⁸ White Paper to the Council and Board of Directors, Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009.

¹⁹ Excited Delirium Syndrome

²⁰ Law Enforcement Officer

²¹ White Paper to the Council and Board of Directors, Excited Delirium Task Force, American College of Emergency Physicians, September 10, 2009.

²² 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).

Swartz radioed for help which quickly arrived. Even after four officers joined in the effort to secure Hoffman, he continued to resist, including kicking out with his legs. This is despite force being applied in the form of strikes to various parts of his body by the officers. The officers repeatedly asked him to put his hands behind his back and show them his hands. The officers were concerned that he could access a weapon with his right hand, which Hoffman had secured under his body despite their efforts. The officers were ultimately able to determine that Hoffman had been holding a cell phone in that right hand.

Under the circumstances the officers had the right to use the force they applied in trying to handcuff and arrest Hoffman. Additionally, Hoffman had a duty to refrain from resisting his arrest.

VI. CONCLUSION

Although Hoffman 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 him. Lethal force is that which creates a substantial risk of death or great bodily injury.²³ 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. It is also possible that the many health issues that he suffered from could have contributed to his death.

Based on the law and circumstances discussed above, the actions of Officers Swartz, Doherty, Rhodes, Jucutan, and Richards were legally justified in their actions including 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

²³ Smith v. City of Hemet, (2005) 394 F.3d 689.