



**MARLON OLIVER ACEVEDO
OFFICER-INVOLVED DEATH
PUBLIC REPORT**

CPRC Case No. 08-047

RPD Case No. P08157587

Approved
December 14, 2011

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Appendix 8

Date of Incident: October 31, 2008 2145 Hours
Location: 7857 Cypress Avenue, Riverside
Decedent: Marlon Oliver Acevedo
Involved Officers: Dan Koehler, Police Officer
 Jeff Ratkovich, Police Officer
 James Heiting, Police Officer

I. Preamble:

The finding of the Community Police Review Commission (“Commission”) as stated in this report is based solely on the information presented to the Commission by the Riverside Police Department (“RPD”) criminal investigation case files, and follow-up investigate report submitted by CPRC Independent Investigator, Mike Bumcrot of “Mike Bumcrot Consulting,” Norco, California, and Investigator Gurney Warnberg, “The Baker Street Group,” San Diego, California. Mike Bumcrot Consulting and The Baker Street Group are not associated or affiliated with one another.

The Commission reserves the ability to render a separate, modified, or additional finding based on its review of the Internal Affairs Administrative Investigation. Because the Administrative Investigation contains peace officer personnel information, it is confidential under State law. Any additional finding made by the Commission that is based on the administrative investigation would also be confidential, and therefore could not be made public.

II. Finding:

On August 24, 2011, by a vote of 5 to 0 (2 absent), the Commission found that the officer’s use of deadly force was consistent with policy (RPD Policy 4.30 – Use of Force Policy), based on the objective facts and circumstances determined through the Commission’s review and investigation.

Rotker	VACANT	Johnson	Brandriff	VACANT	Jackson	Roberts	Santore	Adams
✓		✓	A		✓	A	✓	✓

III. Standard of Proof for Finding:

In coming to a finding, the Commission applies a standard of proof of “Preponderance of Evidence.” Preponderance generally means “more likely than not,” or may be considered as just the amount necessary to tip a scale. This means also that the Commission need not have certainty in their findings, or that the Commission need not reach a finding beyond a reasonable doubt.

The Preponderance of Evidence standard of proof is the same standard applied in most civil court proceedings.

IV. Incident Summary:

On January 17, 2009, at approximately 2145 hours, Officers Koehler and Ratkovich were dispatched to the area of 7850 Cypress Avenue reference a male adult subject in the roadway screaming at passing vehicles. RPD Dispatch had received multiple calls from citizens in the area stating the subject was drunk or mentally disturbed. When the officers heard the call come out on the police radio, they suspected it was a subject they had passed by earlier in the evening in that same area around 1700 hours. At that time, they saw a male subject, later identified as Acevedo, standing in the street and yelling at passing vehicles. The officers made brief contact with Acevedo at that time. Acevedo told the officers to go out and keep the streets safe. The officers then left and continued with their work assignment.

As the officers arrived on scene pursuant to the 911 calls, they approached the area west on Cypress Avenue and saw a male subject, later identified as Marlon Oliver Acevedo, standing in the roadway. Officer Ratkovich parked the marked police unit in the middle of Cypress Avenue. Both officers, dressed in their Riverside PD marked uniforms, exited the police unit and walked up to Acevedo. Officer Koehler began the initial dialogue with Acevedo.

Upon initial contact with Acevedo, he refused to comply with any directions given by the two officers. Instead, he began to grunt and growl at the officers, raised his clenched fists in a "fighter's stance" and took a punch at Officer Koehler, but missed him. Due to Acevedo's physical aggression, Officer Koehler and Officer Ratkovich removed their expandable batons, extended them, and instructed Acevedo to get down on the ground. Acevedo did not comply and continued with his aggressive behavior. Both officers struck Acevedo with their expandable batons. Officer Ratkovich struck Acevedo twice near the right knee, both of which had no effect on him. Officer Koehler struck Acevedo several times in the left thigh, none of which had any effect.

Acevedo continued to swing his fist at Officer Koehler, striking him in the face and knocking his glasses off. Officer Koehler then grabbed Acevedo to gain control of him. The two struggled for several moments and fell to the ground. While Koehler and Acevedo were struggling on the ground, Officer Ratkovich fired his department issued X26 Taser at Acevedo. The darts of the X26 Taser struck Acevedo in his abdomen. The Taser cycled through its charge, but did not incapacitate Acevedo. It appeared to have no effect on him. Officer Koehler continued to struggle with Acevedo, while at the same time commanding him to give up his hands. Acevedo did not comply with the commands and continued to struggle with Koehler.

Officer Ratkovich stated that Acevedo appeared to be rolling back and forth on the ground as if he was trying to break free from the Taser darts. Since the first charge had no effect, Officer Ratkovich depressed the trigger of his X26 Taser four (4) to five (5) more times in an on-going attempt to incapacitate Acevedo. None of the Taser charges from the darts had any effect on Acevedo. Ratkovich thought perhaps the darts were not making the necessary contact for Acevedo to receive the charges and elected to use the other option of deployment, which is direct contact from the Taser onto the body. While Koehler and Acevedo were still rolling around on the ground in a physical struggle, Ratkovich made a direct contact charge to Acevedo's upper back. This direct charge incapacitated Acevedo and gave the officers the opportunity to place him into handcuffs in order to control him. Medical aid was summoned and AMR and RFD responded to the scene.

While waiting for the arrival of medical aid, Acevedo began to kick at the officers while still in handcuffs. The officers requested further assistance from RPD so that they could use a Hobble

restraint to control Acevedo's kicking. This would be necessary in order for paramedics to render aid without injury. Officer Heiting arrived on scene and assisted by applying the hobble to the suspect's feet. The hobble restraint device was then attached to the handcuffs in order to prevent Acevedo from kicking the officers or arriving medical aid. Acevedo was then secured in the TARP position as medical personnel arrived on scene. Acevedo was rolled onto his side while restrained. Medical personnel made contact with Acevedo while he was lying on his side. As they began to assess and treat Acevedo, they noticed that he was in medical distress, so the handcuffs and hobble restraint device were removed so that proper emergency medical treatment could be applied.

Acevedo was placed onto an emergency medical aid gurney in preparation to transport him to the hospital. Medical personnel continued to apply emergency treatment to Acevedo as he was placed into an AMR ambulance and during transportation to the hospital. Acevedo was taken to Parkview Hospital in Riverside where he was pronounced deceased by hospital staff after his arrival.

V. CPRC Follow-Up:

The Commission requested a review of the Criminal Casebook by an independent investigative firm known as "The Baker Street Group." This firm is located in San Diego, California. The assigned investigator, Gurney Warnberg, submitted two reports. One report was submitted on October 14, 2010, and the other on November 29, 2010. After Mr. Warnberg submitted the first report, he believed that a few other interviews of certain witnesses might offer additional insight. The second report he prepared included a couple of these interviews. Other potential witnesses could not be located and / or would not cooperate with Mr. Warnberg for a follow-up interview.

The Commission requested a cover-to-cover review of the Criminal Casebook by CPRC Independent Investigator Mike Bumcrot of Bumcrot Consulting, located in Norco, California. Mr. Bumcrot is a nationally recognized expert in homicide and officer-involved death cases. The purpose of this review was for Mr. Bumcrot to provide the Commission with his findings based upon his experience and expertise. Mr. Bumcrot felt that the investigation conducted by the Riverside Police Department was thorough in content and that any additional interviews would not change what or how the death of Mr. Acevedo occurred.

Commission members received training in the subject matter of Excited Delirium. The training sessions were provided by Dr. John G. Peters, Institute for the Prevention of In Custody Deaths, Henderson, Nevada. On Wednesday, June 15, 2011, Dr. Peters gave a 2-hour presentation on Excited Delirium at a special training meeting for the CPRC. All commissioners were present except for Robert Slawsby and Rogelio Morales. Also present during this presentation were Sgt. Pat McCarthy and Officer Erik Lindgren of RPD, who provide Excited Delirium and other mental health training to all members of the Riverside Police Department.

On June 16 and 17, 2011, Commissioners Robin Jackson, Dale Roberts, Art Santore, Jon Johnson, and Robert Slawsby attended a 16-hour "Instructor's Course" by Dr. Peters at the Riverside County Sheriff's training facility at Ben Clark Training Facility.

VI. Evidence:

The relevant evidence in this case evaluation consisted primarily of testimony, including that of three civilian witnesses, three of the officers who were involved in the altercation with Acevedo, emergency medical personnel, hospital staff and a Deputy Coroner. Other evidence included police reports and photographs, involved weapons, forensic examination results and reports by independent CPRC investigators.

VII. Applicable RPD Policies:

All policies are from the RPD Policy & Procedures Manual.

- Use of Force Policy, Section 4.30.
- Less Lethal Weapons Systems & Deployment, Section 4.49
- Total Appendage Restraint Methods/Equipment, Section 4.31-7
- Excited Delirium, Section 4.60

The United States Supreme Court has ruled on one (1) case that has particular relevance to the use of force in this incident. All decisions by the United States Supreme Court are law throughout the United States. The case is incorporated into the Use of Force Policy of the RPD.

Graham v. Connor, 490 U.S. 396 (1989), considered the reasonableness of a police officer's use of force, and instructed that the reasonableness must be judged from the perspective of a reasonable officer on scene.

VIII. Rationale for Finding:

The question that this Commission was to answer in the review of this case is whether or not the force used by the officers was reasonable under the circumstances, and conducted in conformance with the established policies and procedures of the Riverside Police Department. After reviewing the criminal casebook, the RPD Use of Force Policy, training, and Commission discussion, it is the opinion of the Community Police Review Commission that the use of force and defensive tools utilized by Officers Koehler and Ratkovich in taking Mr. Acevedo into custody were both reasonable and consistent with the RPD Use of Force Policy, Section 4.30, and Searching, Handcuffing and Prisoner Transportation, Section 4.31.

The RPD Use of Force Policy, 4.30, which governs the force an officer may use, is consistent with California State Law that authorizes peace officers to use force to overcome resistance. California Penal Code, Section 835(a), basically states that *officers can use reasonable force to affect an arrest, prevent escape, or overcome resistance, when they believe someone has committed a public offense. Officers do not need to retreat from their efforts when a suspect resists arrest, and the officers have a right to self-defense.*

The autopsy conducted on Mr. Acevedo by the Riverside County Sheriff-Coroner's Office determined that he (Acevedo) had ingested Phencyclidine (PCP), Cannabinoids (Marijuana), and Atropine. The cause of death is listed in the autopsy report as "Acute Phencyclidine Intoxication."

The Commissioners discussed the drug Atropine since it is not as commonly heard on the street as is PCP and Marijuana. One Commissioner researched Atropine via the internet through

Wikipedia and WebMD. Although the Commissioners were aware that the cause of Acevedo's death was listed as Acute Phencyclidine Intoxication, the Commission asked whether Atropine could have been a contributing factor in his death.

What was learned through this research is that Atropine is derived from the belladonna and jimsonweed plants, which are poisonous and can cause death. Although Atropine has prescribed medicinal uses, it should not be used without a doctor's supervision. Toxic doses of Atropine can lead to palpitations, restlessness, excitement, hallucinations, delirium, and coma. In severe cases, depression and circulatory collapse can occur, leading to a drop in blood pressure and respiratory failure.¹ According to the investigative reports, Acevedo's behavior included restlessness, excitement, hallucinations, and delirium.

The Coroner also indicated that Mr. Acevedo had Hypertrophic Cardiomyopathy, a genetic disease in which the heart muscle becomes abnormally thick and makes it hard for the heart to pump blood. In some cases, this condition causes abnormal heart rhythms and can cause sudden cardiac death.

Officers Koehler and Ratkovich were uniformed patrol officers working a two-man team in a marked RPD police unit. The uniforms and marked police unit should have made it clear to a reasonable person that these were police officials.

On October 31, 2008, at approximately 2145 hours, the RPD emergency communications center began receiving calls from residents in the 7800 block of Cypress Avenue reporting that a male Hispanic, later identified as Marlon Acevedo, was in the middle of the street yelling, throwing things at cars, threatening motorists, and impeding the flow of traffic.

Most of the callers said they believed the subject was under the influence of drugs or alcohol, or suffering from a mental disorder. The callers also informed Dispatch that a female subject, later identified as Acevedo's girlfriend, was trying to get him out of the street, but he was yelling and fighting with her. She subsequently became one of the callers who phoned police asking for assistance.

Officers Koehler and Ratkovich arrived on scene at 2150 hours and found Acevedo in the middle of the street making grunting and growling sounds. They described him as having a "crazed look on his face," and appearing very angry and agitated. Based upon the call information and observations of Acevedo upon arrival, the officers had a duty to detain Acevedo in order to determine if he could care for his safety or the safety of others, and if criminal activity was afoot. Police officers can detain a person based upon "reasonable suspicion" that a crime may be occurring. At this point in the series of events, it is the belief of this Commission that sufficient information existed for the contact and temporary detention of Acevedo pending further investigation.

The officers responded appropriately upon arrival by first illuminating Acevedo with police car lighting. Doing so created an awareness of caution for motorists and served to gain Acevedo's attention. The officers acted appropriately when they initiated verbal contact with Acevedo in asking him to get out of the street, a reasonable direction to remove him from the street for both his personal safety and that of passing motorists.

¹ Atropine information gathered from Wikipedia and WebMD

When Acevedo was unresponsive to the verbal directions given by the officers, Officer Koehler approached Acevedo. Koehler had a duty to inquire about Acevedo's unusual behavior and a duty to attempt to remove him from a dangerous place in the roadway. When Officer Koehler approached Acevedo, he (Acevedo) raised his fists and took a "fighter's stance." It would be reasonable to conclude that, at a minimum, Acevedo did not want to be approached and that he intended to engage the officers in a fight. In response to Acevedo's actions, Officers Koehler and Ratkovich retrieved their expandable batons.

When Acevedo advanced upon Koehler, he struck Koehler in the face with a closed fist, causing Koehler's mouth to bleed and his glasses to fly off. Koehler and Ratkovich acted properly in defending themselves and / or others with baton strikes against Acevedo. Both officers used their batons against Acevedo's legs and avoided body areas that potentially could cause serious injury (as defined in RPD policy). NOTE: The law does not require that an officer actually be battered before taking defensive action and officers are trained to defend themselves upon aggressive action by another.

When the batons were ineffective and the officers wound up on the ground fighting with Acevedo, their next option to use their fists was appropriate. RPD Policy allows fists to be used as intermediary weapons and, under the circumstances in this physical fight with Acevedo, the officers had limited options available to them. Batons had already failed, pepper spray in close contact fighting would likely incapacitate the officers, and no other less-lethal weapons were immediately available. Officer Koehler said he considered use of the carotid control hold, but was unable to get into a position to do so.

Mr. Acevedo was successful in preventing any physical controls by officers and continued to punch and kick. It did not appear that Acevedo felt any pain. Koehler asked Ratkovich to deploy the Taser in a further effort to gain control and compliance from Acevedo.

This Commission believes that, under the circumstances, the use of the Taser was appropriate since it was the last immediate less-lethal weapon available to the officers since nothing else was working. Acevedo's resistance to the officers' efforts was violent and physical.

Officer Ratkovich's discharge of the Taser for five (5) second cycles was reasonable. There was still no effect. For a physically violent person, it could require several cycles to gain compliance. Officer Ratkovich knew the Taser darts struck Acevedo, but he noticed that the darts were close to one another which limited their effectiveness. Ratkovich exercised reasonable judgment by removing the dart cartridge and directing a contact stun to Acevedo's body. Officers are trained that the contact stun may be more effective than poorly located darts in close-quarter fighting.

The direct contact stun worked to the extent that it allowed the officers to place handcuffs onto Acevedo. Nonetheless, Acevedo continued to kick his feet at the officers, striking Officer Ratkovich several times. A hobble restraint device was placed onto Acevedo in order to control his attempts to kick and possibly injure others. The handcuffs and hobble restraint devices were used appropriately to maintain control of Acevedo. Acevedo was initially on his stomach with the restraints on him and he was rolled onto his side within approximately 30 seconds.

The officers acted properly by promptly informing medical aid responders about the events leading to Acevedo's handcuffing and hobbling. Further, the officers acted properly and without delay, to remove all restraints once medical personnel identified that Acevedo was in medical distress.

This Commission does not believe the officers' actions were the proximate cause of Mr. Acevedo's death. As noted earlier, Officers Koehler and Ratkovich used reasonable force in gaining control and restraint of Acevedo, who was violently combative. Acevedo had a preexisting health condition that, together with the ingestion of PCP, Marijuana, and Atropine, of his own free will, combined with the physical exertion of violently fighting with the officers, may have contributed to his deteriorating condition and subsequent death.

IX. Recommendations:

At the time of this incident, RPD did not have a policy on Excited Delirium. On September 10, 2010, RPD implemented a policy referred to as Excited Delirium. The Commission felt that this was a positive step for the Department to address a potential Excited Delirium incident.

X. Closing:

The Commission offers its empathy to the community members, police officers, and City employees who were impacted by the outcome of this incident, as any loss of life is tragic, regardless of the circumstances.

APPENDIX

RPD Press Release / Press-Enterprise Articles	Section A
Fact Sheet	Section B
Questions & Answers / Information Requested	Section C
CPRC Independent Investigator Reports: Mr. Gurney Warnberg, Baker Street Group Mr. Mike Bumcrot, Bumcrot Consulting	Section D
RPD Policy 4.8 (Rev. 5, 10/20/08): Investigations of Officer Involved Shootings and Incidents Where Death or Serious Likelihood of Death Results	Section E
RPD Policy 4.30 (Rev. 7, 11/1/04): Use of Force Policy	Section F
RPD Policy 4.31 F (Rev. 1, 1/8/96): Searching, Handcuffing and Prisoner Transportation: Total Appendage Restraint Methods and Equipment	Section G

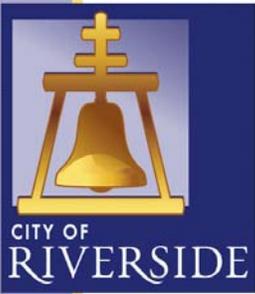
Section A

RPD Press Release

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Press-Enterprise  
Articles





# ***PRESS RELEASE***

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Riverside Police Department • 4102 Orange Street • Riverside, CA 92501  
Phone (951) 826-5147 • Fax (951) 826-2593

## **FOR IMMEDIATE RELEASE**

**Date: Friday, October 31, 2008**  
**Contact: Sergeant Mark Rossi**  
**Phone: (951) 353-7106**  
**P08157587**

### **Combative Subject Dies at Local Hospital**

Riverside, CA -- On Friday October 31<sup>st</sup>, 2008 , at approximately 9:45 pm, Riverside Police Officers responded to the 7800 block of Cypress Avenue in Riverside reference several phone calls to the Riverside Police Department's Dispatch Center of an adult male subject standing in the roadway screaming at passing motorists creating a traffic hazard.

Officers arrived on scene and contacted the subject standing in the roadway. The subject became agitated with the officers and refused to comply with their orders. The subject became physically combative and assaulted one of the officers. The adult subject was taken into custody. Riverside Fire Department and American Medical Response personnel responded to the scene to provide medical aid for the adult subject. The adult subject was transported to a nearby hospital where he was pronounced deceased a short time later.

Name of the subject will be released by the Coroner's Office pending notification to next of kin. Anyone with information about this incident is asked to call Detective Ron Sanfilippo at (951) 353-7105.

###P08157587







## Riverside police to discuss death of man in custody with review commission

BY SONJA BJELLAND  
THE PRESS-ENTERPRISE

Reach Sonja Bjelland at 951-368-9642 or [sbjelland@PE.com](mailto:sbjelland@PE.com)

A Riverside Police Department captain will give a public briefing tonight about the circumstances surrounding the death of a man in police custody.

The Community Police Review Commission investigates officer-involved deaths. The briefing will take place at the commission meeting at 5:30 p.m. at City Hall, 3900 Main St. in Riverside.

On Halloween at 9:45 p.m., Marlon Oliver Acevedo stood in Cypress Avenue, screaming at motorists and creating a traffic hazard, according to a Riverside police news release. He became agitated with officers and did not comply with their orders, the release stated.

Acevedo then assaulted one of the officers, police said.

Acevedo was then taken into custody. The Riverside Fire Department and American Medical Response treated Acevedo for an undisclosed illness before he was taken to a hospital, where he was pronounced dead, police said.

Acevedo, 35, was pronounced dead at 10:37 p.m. at Parkview Community Hospital, according to the Riverside County coroner's office. Police have not released more details.

The commission previously requested more timely briefings from the Police Department after a man died after being handcuffed. The police did not provide the typical briefing, and City Attorney Greg Priamos told commissioners they would violate the City Charter if they investigated because the case did not involve officer conduct but Priamos would not explain why.

The commission voted to begin a preliminary investigation to determine whether the death was related to officer conduct. The coroner's office ruled that Martin Gasbar Pablo died from natural causes. That created a rift between the city and the commission that led to a directive to withhold money from the commission for investigations until law enforcement investigations are complete.

That directive has meant the commission has not begun investigations into two fatal officer-involved shootings that occurred last month.





## Riverside police give version of man's death in custody

10:00 PM PST on Wednesday, November 5, 2008

By SONJA BJELLAND  
The Press-Enterprise

A man who died in police custody last week had been beaten with batons and shocked.

Riverside police Capt. Mark Boyer addressed the Community Police Review Commission on Wednesday night, providing the first public details of the incident.

The commission cannot investigate the death until law enforcement investigations conclude, which could take several months.

Marlon Oliver Acevedo, 35, was screaming and standing in stopped traffic on Cypress Avenue in Riverside about 9:45 p.m. Friday, Boyer said.

Police do not know why Acevedo was screaming at traffic. An autopsy report will not be complete for about eight weeks.

When police approached, Acevedo raised his fists and walked toward the officers. Officers Koehler and Ratkovitch struck Acevedo in the knees and legs with retractable batons, Boyer said. The officers' first names were not provided.

Acevedo punched Koehler in the right eye and Ratkovitch shocked Acevedo with a Taser, Boyer said.

The officers then handcuffed Acevedo and called for medical aid, the captain stated.

While waiting for paramedics, Acevedo began kicking and the officers requested another officer, Boyer said.

Officer Heiting arrived and assisted in restraining Acevedo with a device called a "hobble" that controls the legs.

Boyer said Acevedo was on his side after he was restrained.

When paramedics arrived, the handcuffs and hobble were removed once they realized there was a medical emergency, he said.

Boyer said he would have to assume that Acevedo was collapsed or unconscious and no longer resisting.

Acevedo was taken by ambulance to Parkview Community Hospital Medical Center where he was pronounced dead at 10:37 p.m. Friday.

Acevedo's family has hired attorney Samer Habbas to begin investigating if excessive force was used.

Habbas said the preliminary report from the Riverside County coroner's office showed Acevedo had been shocked twice and suffered multiple scratches and cuts on the head and face and multiple bruises and cuts to the arms and legs.

He called the incident tragic, saying that most of it happened in front of Acevedo's girlfriend and mother and that he had a 2-year-old and 4-year-old.

*Reach Sonja Bjelland at 951-368-9642 or [sbjelland@PE.com](mailto:sbjelland@PE.com)*



## Family of Riverside man who died in custody speaks out

07:01 AM PST on Wednesday, November 12, 2008

By SONJA BJELLAND  
The Press-Enterprise

The family of a man who died in Riverside police custody disputes the department's account of how he was handled during his detainment and says their trust in law enforcement is shattered.

A photo of Marlon Oliver Acevedo, 35, with his two children sits in the living room next to lit devotional candles and flowers at his home in Riverside. He died Halloween night after a struggle with police.

Now the family recalls the man who loved music, air guitar and making his children laugh. Every month he sent money to his three sisters in Nicaragua, said his mother, Martha Garay.

Elizabeth Lomeli, 23, Acevedo's girlfriend of five years, was back home on Cypress Avenue with their children, 2 and 4 years old, after trick or treating. She looked outside and saw police wrestling with Acevedo.

Riverside police Capt. Mark Boyer told the Community Police Review Commission that Acevedo was in the street yelling at cars when officers arrived. He raised his fists and walked toward the officers, who struck him with retractable batons.

Lomeli said she and Garay ran outside. One officer had a knee in the back of Acevedo's neck and another was putting on handcuffs.

They put on a leg restraint and then used a stun gun to shock him, Lomeli said.

"He was moving a little bit and they Tased him," she said.

Lomeli said Acevedo was kept on his stomach until he was rolled onto a gurney and put into an ambulance.

"When he wasn't moving no more we knew something had happened," Lomeli said.

Boyer said Acevedo was kept on his side after he was restrained.

Lomeli called local hospitals and figured out that he might be at Parkview Community Hospital Medical Clinic. She wanted to leave the home but was told she could not because she was part of the investigation.

Lomeli said she wasn't allowed to go to the hospital for an hour and a half, and it was another two hours before anyone at the hospital was allowed to tell her anything.

The preliminary report from the coroner's office showed multiple abrasions to Acevedo's head and face, said the family's attorney, Samer Habbas.

The coroner has not yet determined the cause of death.

Habbas said the family would not comment on whether Acevedo was intoxicated or had a mental illness.

"They didn't need to do all that," Lomeli said. "They could have handled the situation in a different way."

*Reach Sonja Bjelland at 951-368-9642 or [sbjelland@PE.com](mailto:sbjelland@PE.com)*

# Section B

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## Fact Sheet



Acevedo OID Fact Sheet  
CPRC Meeting Date November 10, 2010  
Version 1.0

1. On Friday evening, October 31, 2008, RPD Officer Dan Koehler ("Koehler") was on duty assigned to uniformed patrol during the "C" watch (1500-0100) with partner Officer Jeff Ratkovich ("Ratkovich"), who was driving.<sup>1</sup>
2. Koehler and Ratkovich said that at about 5:00 p.m., they were driving on Cypress between Harold and Montgomery when they saw a man, later identified as Marlon Oliver Acevedo ("Acevedo"), who raised his hands over his head and called something out.<sup>2</sup>
3. Koehler and Ratkovich said the officers made a u-turn, pulled alongside the man, and asked, "What's up?" and Acevedo replied, "We gotta keep the streets safe man. Keep the streets safe."<sup>3</sup>
4. Koehler said the officers replied that they would keep the streets safe then drove away.<sup>4</sup>
5. At 9:46 p.m., RPD Dispatch received the first of several calls advising of a man, screaming in the middle of the street in at 7850 Cypress.<sup>5</sup>
6. The area was lit by a street light, which was on the south side of Cypress Avenue, across from 7875.<sup>6</sup>
7. Witness Elizabeth Lomeli ("Lomeli") said that Acevedo is the father of her child.<sup>7</sup>
8. Lomeli said that she came back from trick-or treating and saw Acevedo standing in the street, "acting all weird."<sup>8</sup>
9. Lomeli said Acevedo was saying "kill me," and that he pushed her away when she tried to pull him from the middle of the street.<sup>9</sup>
10. Lomeli went into her home and called the police.<sup>10</sup>
11. When Lomeli went back outside, she saw Acevedo fighting with police officers.<sup>11</sup>
12. Lomeli said officers hit Acevedo with batons, then tased him.<sup>12</sup>
13. Lomeli said Acevedo was calming down, but the officers kept tasing him.<sup>13</sup>
14. Witness Justin Rescorl ("Rescorl") said at about 9:40, he was coming home from trick or treating with his wife Sarah and his 2 children when he saw Acevedo standing in the street screaming in front of 7850 Cypress.<sup>14</sup>
15. Rescorl thought Acevedo either "was drunk or some crazy."<sup>15</sup>
16. Rescorl saw Acevedo throw a square object, possibly a suitcase, at a parked car.<sup>16</sup>
17. Rescorl said Acevedo was yelling, "kill me."<sup>17</sup>
18. Rescorl said Acevedo walked into the street and almost got hit by a car, so Rescorl called the police at 9:44.<sup>18</sup>
19. Rescorl saw a woman approach Acevedo and try to pull him from the street, but he did not comply, and she then left the street.<sup>19</sup>
20. Rescorl saw a black & white police car arrive and illuminate a spotlight onto Acevedo.<sup>20</sup>

Acevedo OID Fact Sheet  
CPRC Meeting Date November 10, 2010  
Version 1.0

21. Rescorl said 2 uniformed police officers exited the car and approached Acevedo, and he tensed up and moved like he was going to swing.<sup>21</sup>
22. Rescorl said one of the officers responded by striking Acevedo in the leg, and Acevedo then did take a swing at the officer.<sup>22</sup>
23. Rescorl said a second police officer struck Acevedo in the side, then took him down, and hit him several times.<sup>23</sup>
24. Rescorl described Acevedo as “pretty big,” about 6 feet tall and 220 pounds.<sup>24</sup>
25. Rescorl said as the officers were on the ground, he heard them say, “Stop struggling,” to Acevedo, and he replied, “Get the fuck off me.”<sup>25</sup>
26. Rescorl saw that one officer got off of Acevedo, pointed a taser at him, said “stand back,” then discharged the taser, which Rescorl described as “click, click, click.”<sup>26</sup>
27. Rescorl saw that Acevedo was still “bucking” after that.<sup>27</sup>
28. Rescorl said after a few minutes of struggling, Acevedo calmed down then the ambulance arrived.<sup>28</sup>
29. Rescorl said he saw Acevedo with his hands behind his back, but did not see the handcuffing.<sup>29</sup>
30. Rescorl said he was standing about 100 feet from the struggle, and he had a very clear view.<sup>30</sup>
31. Witness Sarah Rescorl (“Sarah”) said she was standing in front of her residence at 7850 Cypress, and she saw Acevedo standing in the middle street yelling “kill me” and “fuck you” to passing traffic.<sup>31</sup>
32. Sarah said Acevedo threw a suitcase or briefcase at a parked car, and struck the car.<sup>32</sup>
33. Sarah said Acevedo was “going in front of” cars, and she was surprised he was not struck by any cars.<sup>33</sup>
34. Sarah said her husband called police because they feared Acevedo was going to get struck.<sup>34</sup>
35. Sarah said a woman went to Acevedo and tried to get him out of the road, but he wouldn’t go.<sup>35</sup>
36. Sarah said 2 uniformed police officers arrived in a black and white car.<sup>36</sup>
37. Sarah said when the 2 officers approached Acevedo, he started swinging at them.<sup>37</sup>
38. Sarah saw both officers respond by striking Acevedo on his legs with their “sticks.”<sup>38</sup>
39. Sarah then saw both officers and Acevedo went to the ground.<sup>39</sup>
40. Sarah said Acevedo continued to struggle, and the officers hit Acevedo “a couple more times,” then tased him.<sup>40</sup>
41. Sarah described the taser as having the sound of a “machine thing” and then “clicking.”<sup>41</sup>

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42. Sarah said Acevedo continued to struggle, and the officers held his feet down and then Acevedo stopped moving.<sup>42</sup>
43. Sarah saw that Acevedo was down on his stomach, and appeared to be handcuffed, with his legs bent and an officer holding his legs.<sup>43</sup>
44. Sarah said the ambulance arrived within 5 minutes, or “really fast,” and subsequently placed Acevedo on the gurney on his back.<sup>44</sup>
45. Sarah described Acevedo as “pretty big” 5’8” to 5’9”, about 280 pounds.<sup>45</sup>
46. Witness Germain Gabaldon (“Gabaldon”) said at about 9:40 p.m., he was inside his apartment at 7850 Cypress when he heard a scream and a noise in the street that sounded like someone punching a car.<sup>46</sup>
47. Gabaldon went outside and saw Acevedo in the street screaming and holding traffic, and almost twice was struck by passing traffic.<sup>47</sup>
48. Gabaldon saw 2 uniformed police officers arrive in a black and white Riverside police car.<sup>48</sup>
49. Gabaldon said the 2 officers approached Acevedo, and he began swinging his fists at them.<sup>49</sup>
50. Gabaldon said that 1 officer then used a baton on Acevedo, “in self defense.”<sup>50</sup>
51. Gabaldon said Acevedo was a “big guy,” 5’8” to 5’9”, around 300 pounds.<sup>51</sup>
52. Gabaldon said Acevedo and the 2 officers ended up on the ground.<sup>52</sup>
53. Gabaldon said the officers were trying to restrain Acevedo, but he wouldn’t listen and he kept trying to get up.<sup>53</sup>
54. Gabaldon said he then heard a taser twice, which he described as a “zapping” followed by a “sss” sound.<sup>54</sup>
55. Gabaldon said afterwards, it looked like Acevedo was vomiting.<sup>55</sup>
56. Witness Sidney Zamora (“Zamora”) said he was on his balcony at 7851 Cypress and he saw Acevedo in the street with his hands up, holding up traffic.<sup>56</sup>
57. Zamora heard Acevedo say, “I don’t care if you kill me.”<sup>57</sup>
58. Zamora said he called the police.<sup>58</sup>
59. Zamora said 3 or 4 minutes before the police arrived, a woman tried to pull Acevedo from the street, but he pushed her away.<sup>59</sup>
60. Zamora saw that 2 uniformed police officers approached Acevedo, and he heard the officers tell Acevedo to lie down, but he did not comply.<sup>60</sup>
61. Zamora said Acevedo moved so that from his balcony, Zamora could then only see the police officers, but could no longer see Acevedo.<sup>61</sup>

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62. Ofcr. Koehler said that at about 9:45, he and partner Ratkovich took a dispatched call of a possible 5150 in the roadway screaming at cars.<sup>62</sup>
63. "5150" refers to California Health & Safety Code section 5150, which allow a peace officer to take into custody for mental evaluation any person who is believed to be a danger to self or others due to a mental disorder.<sup>63</sup>
64. Koehler said when they arrived on Cypress, they found traffic backed up in both directions due to a man standing in the street.<sup>64</sup>
65. Koehler said as soon as he saw Acevedo, he recognized him as the man they had contacted on Cypress earlier in the shift.<sup>65</sup>
66. Koehler said as he approached, he saw that Acevedo had his head down and was making grunting sounds.<sup>66</sup>
67. Koehler said he told Acevedo several times to get out of the street, and Acevedo looked at him but did not respond.<sup>67</sup>
68. Koehler said that when he approached to within a few feet, Acevedo suddenly jumped into a fighting stance with his hands up, and Acevedo barked or growled.<sup>68</sup>
69. Koehler said he jumped back and pulled his expandable ASP baton, and Acevedo advanced toward him.<sup>69</sup>
70. Koehler said he used a two-handed strike to Acevedo's left thigh, which had no visible effect.<sup>70</sup>
71. Koehler said he then delivered a 2<sup>nd</sup> baton strike to Acevedo's leg, again with no effect, and Acevedo continued to advance.<sup>71</sup>
72. Koehler later viewed Coban video of the fight, and noted that he actually delivered approximately 5 baton strikes to Acevedo's legs.<sup>72</sup>
73. Koehler said he intended to deliver another strike to the legs, but his baton collapsed, and Acevedo then punched Koehler in the face, knocking off his glasses.<sup>73</sup>
74. Koehler said he abandoned his baton and delivered a punch to Acevedo, who then tackled Koehler and tried to take him to the ground.<sup>74</sup>
75. Koehler said Acevedo ended up on his knees, with Koehler on top of him, and Koehler could feel Acevedo attempting to move his face in to bite Koehler on the thigh.<sup>75</sup>
76. Koehler said he grabbed Acevedo's head and turned it, then punched Acevedo in the face several times, forcing Acevedo to go to the ground on his back.<sup>76</sup>
77. Koehler said he was trying to grab Acevedo's arms, and yelled at him to roll over, but Acevedo kept turning and fighting, and prevented control of his arms.<sup>77</sup>
78. Koehler said Acevedo was strong, and the fight was hard, so he yelled to Ratkovich to use the taser.<sup>78</sup>
79. Koehler said he heard the rattling discharge of the taser, but Acevedo was not immobilized, and appeared to be trying to roll over onto the taser wires.<sup>79</sup>

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80. Koehler said he was on his knees trying to control Acevedo, who was rolling away toward Ratkovich, so Koehler yelled to tase Acevedo again.<sup>80</sup>
81. Koehler was able to climb onto Acevedo's shoulders, and grab one arm, but Acevedo kept lifting Koehler off the ground, despite Koehler's weight of 265 pounds, and despite Koehler punching Acevedo in the back.<sup>81</sup>
82. Koehler told Ratkovich to contact tase Acevedo, who yelled out at the contact but did not stop fighting and struggling.<sup>82</sup>
83. Koehler said he and Ratkovich were able to get control of first one arm for handcuffing, then after more struggling they cuffed the other arm, but Acevedo continued to fight and struggle even as the officers lied on top of him, and Acevedo was "out of control."<sup>83</sup>
84. Koehler later viewed Coban video, and noted that after Acevedo was handcuffed, he rolled into position to bite Koehler's left inner leg, and when Koehler felt Acevedo's teeth starting to close, Koehler punched Acevedo.<sup>84</sup>
85. Koehler was able to get on the radio and requested a hobble to restrain Acevedo's feet.<sup>85</sup>
86. Koehler said Officer Lim ("Lim") arrived and provided the hobble, and helped to control Acevedo's legs, and that finally Acevedo became compliant.<sup>86</sup>
87. Koehler said he rolled Acevedo onto his side, and at the same time RFD and AMR were pulling up, so Koehler explained to paramedics that the officers had just tased and fought Acevedo.<sup>87</sup>
88. Koehler said a paramedic said, "He's not breathing," and told Koehler to take off the handcuffs, which Koehler did.<sup>88</sup>
89. Koehler said as the result of the fight, he suffered an injured (and subsequently swollen) left knee, injured right collarbone (complaint of pain), and injured lip (swollen and bleeding).<sup>89</sup>
90. Ofcr. Ratkovich said Dispatch put out a call of a 5150 on Cypress in the middle of the street, and Ratkovich thought it might be the same man he had contacted earlier.<sup>90</sup>
91. Ratkovich also noted that his unit was closer than he assigned police units, so he took the call.<sup>91</sup>
92. Ratkovich said when they arrived, he saw that the RPD helicopter had illuminated Acevedo standing in the middle of the street, with multiple cars stopped in the roadway, and several pedestrians nearby on the sidewalks.<sup>92</sup>
93. Ratkovich turned on the overhead bright "takedown" lights to illuminate Acevedo and to slow traffic.<sup>93</sup>
94. Ratkovich said Koehler was first to speak with Acevedo, and told him to get out of the road, and Acevedo immediately "keyed in on" Koehler.<sup>94</sup>
95. Ratkovich said Acevedo immediately raised his hands and took a fighting stance toward Koehler, so both Ratkovich and Koehler deployed their ASP expandable batons.<sup>95</sup>
96. Ratkovich said Acevedo took a swing at Koehler, and although Ratkovich did not see contact, he thought Acevedo had struck Koehler.<sup>96</sup>

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97. Ratkovich said he then began delivering baton strikes to Acevedo's right knee, and ordered him to the ground, but Acevedo responded to neither the force nor the commands.<sup>97</sup>
98. Ratkovich said Acevedo was "fairly big," and he and Koehler were on opposite sides facing Acevedo, who remained focused on Koehler.<sup>98</sup>
99. Ratkovich said Acevedo had a "crazed" or "wild" look on his face, and did not appear to be registering what was going on.<sup>99</sup>
100. Ratkovich said he didn't recall exactly how, but Koehler and Acevedo ended up on the ground, and Ratkovich could not find a safe place to deliver any more baton strikes.<sup>100</sup>
101. Ratkovich said he discarded his baton, and tried to grab Acevedo's arms, but Acevedo was "incredibly strong" and was fighting back, and punching Koehler.<sup>101</sup>
102. Ratkovich said Acevedo was on his back, punching and kicking, and the officers could not get Acevedo onto his stomach, despite Ratkovich weighing about 220 pounds.<sup>102</sup>
103. Ratkovich said Koehler told him to use the taser, so Ratkovich kept hold of Acevedo with his left hand, while backing up his upper body 2-3 feet, and fired the taser with his right hand.<sup>103</sup>
104. Ratkovich said he saw the darts make contact with Acevedo, so he discharged a first 5-second burst, but the tasing had no visible affect on Acevedo.<sup>104</sup>
105. Ratkovich said Acevedo continued fighting Koehler, and Acevedo also starting rolling, apparently to roll over the taser wires and break their connection with the taser.<sup>105</sup>
106. Ratkovich said he discharged (cycled) the taser several more times, but Acevedo continued to fight and did not respond to the tasing.<sup>106</sup>
107. Ratkovich said at one point, he felt the taser charge, and realized the wires were getting wrapped around his hand, so he disconnected the dart cartridge so he or Koehler would be protected from taser charge.<sup>107</sup>
108. Ratkovich then delivered a drive stun (contact tase) directly between Acevedo's shoulder blades, as Acevedo was on his side facing away from Ratkovich, still fighting Koehler.<sup>108</sup>
109. Ratkovich said Koehler was finally able to cuff Acevedo's left arm, and Ratkovich then controlled the right arm, and they were able to handcuff Acevedo, who still continued to struggle and kick.<sup>109</sup>
110. Ratkovich said Acevedo was down on his stomach, and Ratkovich was trying to hold Acevedo's legs, but he was able to kick Ratkovich at least 3 times, so Ratkovich removed Acevedo's shoes as other officers began to arrive for assistance.<sup>110</sup>
111. Ratkovich said with the assistance of Ofcrs. Lim and Heiting, they were able to get a hobble onto Acevedo's ankles, and finally secure Acevedo's feet and legs.<sup>111</sup>
112. Ratkovich said that he then noticed that a crowd had formed, so he got up, collected the discarded batons, notified Dispatch that Fire could roll in, and began to contact persons who appeared to be possible family members.<sup>112</sup>
113. Ratkovich said Fire arrived, so he advised them that Acevedo had received baton strikes and taser, and Fire personnel began providing medical attention.<sup>113</sup>

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114. Ratkovich said Koehler was still on the ground with Acevedo, who was grunting, and Lim and Heiting were still assisting Koehler.<sup>114</sup>
115. Ratkovich said he saw that medical personnel appeared concerned, and said something about Acevedo being unresponsive, and then Koehler began removing the handcuffs.<sup>115</sup>
116. Officer James Heiting (“Heiting”) said he responded to a call for assistance, and when he arrived, he saw Koehler and Ratkovich trying to control Acevedo, who was kicking and moving around.<sup>116</sup>
117. Heiting saw Koehler on Acevedo’s upper body, and Ratkovich at Acevedo’s feet.<sup>117</sup>
118. Heiting said he assisted by providing a tarp device to secure Acevedo’s legs, and Acevedo continued to struggle the entire time.<sup>118</sup>
119. Heiting saw RFD arrive within 30 seconds of him assisting in the struggle to control Acevedo.<sup>119</sup>
120. Heiting said as medical personnel approached, he rolled Acevedo onto his side, and saw as an AMR paramedic reached down for what he perceived as the “standard” task of checking pulse.<sup>120</sup>
121. Ofcr. Lim responded to the 5150 radio call, and when he arrived he saw Ofcrs. Koehler and Ratkovich on top of Acevedo, using their weight to keep him down.<sup>121</sup>
122. Lim said he assisted by first holding down Acevedo’s legs, then going to his car to get a hobble for leg restraint.<sup>122</sup>
123. AMR Paramedic Susan Brien (“Brien”) said she was on duty when her unit received a call that RPD had a 5150 in need of medical attention in the 7800 block of Cypress.<sup>123</sup>
124. Brien said on arrival, she saw Acevedo lying with his stomach on the ground, handcuffed, and his face to the left.<sup>124</sup>
125. Brien said an RPD officer advised that Acevedo had been combative and had been tased.<sup>125</sup>
126. Brien said it was about 30 seconds from the time she arrived, exited her ambulance, received the preliminary information, and contacted Acevedo.<sup>126</sup>
127. Brien said she could see drool coming from Acevedo’s mouth, so she suggested to an officer that Acevedo should be rolled over, and the officer complied.<sup>127</sup>
128. Brien said after Acevedo was rolled onto his side, she reached down to check for a pulse and saw Acevedo take “one last breath.”<sup>128</sup>
129. Brien said she told her partner to grab a backboard, and an RPD officer began removing all restraints from Acevedo.<sup>129</sup>
130. Brien said as soon as Acevedo was on the backboard, she began CPR, and CPR continued from that time until after his arrival at Parkview Hospital.<sup>130</sup>

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131. RFD Fire Captain Robert Abbruzzese (“Abbruzzese”) said he was on duty at RFD Station No. 7, at 10191 Cypress, when he received a call of RPD needing assistance with a 5150 in custody in the 7800 block of Cypress.<sup>131</sup>
132. Abbruzzese said when he arrived, he saw numerous police cars, and a male “hog-tied” (feet together, tied to handcuffs), lying flat on his stomach with his face to the side, on the ground.<sup>132</sup>
133. Abbruzzese said the officers told him that Acevedo appeared to possibly be under the influence of something, due to his erratic behavior.<sup>133</sup>
134. Abbruzzese said Firefighter Bradley Fike attended to Acevedo, so Abbruzzese checked with a police officer who had blood on his mouth, and had his name tag dangling down, indicating that he had been in a fight.<sup>134</sup>
135. Abbruzzese said he asked the officer if he needed help, but the officer asked Abbruzzese to help Acevedo.<sup>135</sup>
136. Abbruzzese said he then assisted other medical aid personnel attending to Acevedo, and Abbruzzese found that Acevedo was not breathing and had no pulse.<sup>136</sup>
137. Abbruzzese said he then told officers that he needed the handcuffs removed immediately from Acevedo.<sup>137</sup>
138. Abbruzzese said he then went into the ambulance, and prepared a breathing tube, which he intubated into Acevedo when he was loaded into the ambulance, lying on his back on a backboard.<sup>138</sup>
139. RFD Firefighter-Paramedic Bradley Fike (“Fike”) said he was on duty at RFD Station No. 7, at 10191 Cypress, when he received a call of RPD needing assistance with a 5150 in custody in the 7800 block of Cypress.<sup>139</sup>
140. Fike said when he arrived, he saw several RPD officers and Acevedo handcuffed lying chest down in the street, slightly tilted on his left shoulder, with his face turned to the right.<sup>140</sup>
141. Fike said when he asked the officers what was going on, they told him Acevedo was agitated and appeared to be under the influence and “5150” (possible need of mental evaluation).<sup>141</sup>
142. Fike said at about the same time, a female AMR responder arrived and approached Acevedo, and said, “Hey, I don’t think he’s breathing.”<sup>142</sup>
143. Fike said he turned from the officer, and immediately began to assist with Acevedo, including directing an officer to immediately remove the handcuffs and hobble.<sup>143</sup>
144. Fike said he then assisted getting Acevedo onto a backboard, beginning CPR, moving Acevedo to the ambulance, and transported to Parkview.<sup>144</sup>
145. CAD data showed that Koehler and Ratkovich were on scene on Cypress at 2149 hours, and RPD “Air 1” was on scene at 2150.<sup>145</sup>
146. CAD data showed a dispatch at 2152 by Air 1 that, the “subj[ect] is subdued.”<sup>146</sup>

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147. Post mortem examination of Acevedo identified bruising on both legs about the knee and thigh, a possible impact mark on the left rib cage, an abrasion to the inside of the lower lip, 2 taser markings to the stomach area (with one dart still imbedded), and 2 taser marks on the right ribcage, possibly from a contact tase.<sup>147</sup>
148. Download of data from Ofcr. Ratkovich's taser showed six (6), five-second burst deployments on October 31, beginning at 21:43:23, and ending at 21:44:22 (note: taser internal clock not calibrated with CAD clock).<sup>148</sup>

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<sup>1</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 2-3, 87-101; & Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 3, 110-129.

<sup>2</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 184-189; & pg. 8, 303-305; & Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 4, 157-175.

<sup>3</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 4, 189-194; pg. 8, 318-320; & Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 4, 157-175.

<sup>4</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 4, 194-197.

<sup>5</sup> CAD printout, tab 41 a, pg. 1, 2146 entry.

<sup>6</sup> Det Cobb, supp. report, tab 19, pg. 2.

<sup>7</sup> Ofcr Franco interview of E. Lomeli, tab 17, pg. 1, 19.

<sup>8</sup> Ofcr Franco interview of E. Lomeli, tab 17, pg. 2, 55-81.

<sup>9</sup> Ofcr Franco interview of E. Lomeli, tab 17, pg. 3, 94-96; & pg. 7, 304-315.

<sup>10</sup> Ofcr Franco interview of E. Lomeli, tab 17, pg. 2, 89; & pg. 4, 164-170.

<sup>11</sup> Ofcr Franco interview of E. Lomeli, tab 17, pg. 4, 172-180; & pg. 9, 363-365.

<sup>12</sup> Ofcr Franco interview of E. Lomeli, tab 17, pg. 5, 182-188.

<sup>13</sup> Ofcr Franco interview of E. Lomeli, tab 17, pg. 5, 187-188.

<sup>14</sup> Det Rowe interview of J. Rescorl, tab 20, pg.1, 74-75; & pg. 3, 93-100; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 2-3, 86-104.

<sup>15</sup> Det Rowe interview of J. Rescorl, tab 20, pg.1, 76; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 2, 68-70.

<sup>16</sup> Det Rowe interview of J. Rescorl, tab 20, pg. 2, 78; & pg.3, 123-134; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 3, 101-110.

<sup>17</sup> Det Rowe interview of J. Rescorl, tab 20, pg.4, 143-166; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 2, 68-69.

<sup>18</sup> Det Rowe interview of J. Rescorl, tab 20, pg.1, 78-82; & pg. 3, 99-100; & pg. 4, 175-176; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 1, 36.

<sup>19</sup> Det Rowe interview of J. Rescorl, tab 20, pg. 6, 233-255; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 3, 112-122.

<sup>20</sup> Det Rowe interview of J. Rescorl, tab 20, pg. 10, 505-519.

<sup>21</sup> Det Rowe interview of J. Rescorl, tab 20, pg.2, 84-85; & pg. 6, 260-268; & pg. 7, 270-306; & pg. 12, 502-538; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 3-4, 131-159.

<sup>22</sup> Det Rowe interview of J. Rescorl, tab 20, pg.2, 85-87 & pg. 7, 310-313; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 4, 163-165.

<sup>23</sup> Det Rowe interview of J. Rescorl, tab 20, pg.1, 87-88; & pg. 9, 366-371; & pg. 9, 393-404; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 4, 165-174.

<sup>24</sup> Det Rowe interview of J. Rescorl, tab 20, pg.9, 374-391; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 5, 201.

<sup>25</sup> Det Rowe interview of J. Rescorl, tab 20, pg.8, 320-336.

<sup>26</sup> Det Rowe interview of J. Rescorl, tab 20, pg.1, 74-75; & pg 10, 405-414; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 4, 174-179.

<sup>27</sup> Det Rowe interview of J. Rescorl, tab 20, pg.2, 89; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 5, 187-188.

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- <sup>28</sup> Det Rowe interview of J. Rescorl, tab 20, pg.3, 90-91; & pg. 10, 422-430; Ofcr. Heiting interview of J. Rescorl, tab 24, pg. 5, 223-224.
- <sup>29</sup> Det Rowe interview of J. Rescorl, tab 20, pg.10, 429- 432.
- <sup>30</sup> Det Rowe interview of J. Rescorl, tab 20, pg.8, 349-359.
- <sup>31</sup> Ofcr DeGruy interview of S. Rescorl, tab 10, pg. 1, 12-33; Det Brandt interview of S. Rescorl, tab 22, pg. 5, 196.
- <sup>32</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 4, 166-171.
- <sup>33</sup> Ofcr DeGruy interview of S. Rescorl, tab 10, pg. 1, 35-43; Det Brandt interview of S. Rescorl, tab 22, pg. 1, 89-90; & pg. 2, 96.
- <sup>34</sup> Ofcr DeGruy interview of S. Rescorl, tab 10, pg. 2, 47-48.
- <sup>35</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 3, 102-104; & pg. 14, 590-602.
- <sup>36</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 6, 228-265.
- <sup>37</sup> Ofcr DeGruy interview of S. Rescorl, tab 10, pg. 2-3, 86-96; Det Brandt interview of S. Rescorl, tab 22, pg. 3, 104; & pg. 7, 296-314.
- <sup>38</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 8, 315-369.
- <sup>39</sup> Ofcr DeGruy interview of S. Rescorl, tab 10, pg. 1, pg 3, 100-122; Det Brandt interview of S. Rescorl, tab 22, pg. 3, 105; & pg. 9, 368-382.
- <sup>40</sup> Ofcr DeGruy interview of S. Rescorl, tab 10, pg. 1, pg 3, 122-128; Det Brandt interview of S. Rescorl, tab 22, pg. 9, 381-403.
- <sup>41</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 9, 393-395.
- <sup>42</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 9, 383-388.
- <sup>43</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 10-11, 417-460.
- <sup>44</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 11-12, 462-511.
- <sup>45</sup> Det Brandt interview of S. Rescorl, tab 22, pg. 12-13, 537-552.
- <sup>46</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 3, 94-96; & pg. 7, 308-310.
- <sup>47</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 3, 94-106; & Ofcr Bonome, supp. report, tab 9, pg. 2.
- <sup>48</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 13-14, 567-608.
- <sup>49</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 4, 145-147, & 167-175; & pg. 9, 395-403; & pg. 13, 547.
- <sup>50</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 13, 548-553; & pg. 17, 754-755.
- <sup>51</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 14-15, 621-631.
- <sup>52</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 9, 380-393.
- <sup>53</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 11, 463-469.
- <sup>54</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 10, 426-440; & pg. 11, 469; & pg. 12, 527-537.
- <sup>55</sup> Det Brandt interview of G. Gabaldon, tab 22, pg. 12, 495.
- <sup>56</sup> Det Rowe interview of S. Zamora, tab 21, pg. 1-2.
- <sup>57</sup> Det Rowe interview of S. Zamora, tab 21, pg. 4-5, 175-183.
- <sup>58</sup> Det Rowe interview of S. Zamora, tab 21, pg. 2, 79; & pg. 5 187-188.
- <sup>59</sup> Det Rowe interview of S. Zamora, tab 21, pg. 7, 274-302.
- <sup>60</sup> Det Rowe interview of S. Zamora, tab 21, pg. 3, 104-122; & pg. 12, 495-501.
- <sup>61</sup> Det Rowe interview of S. Zamora, tab 21, pg. 5, 225-226.
- <sup>62</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 201-204; & transcript of radio traffic, tab 42, pg. 1.
- <sup>63</sup> California Health & Safety Code, section 5150 (2008).
- <sup>64</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 204-206; & pg. 9, 373-380.
- <sup>65</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 208-209.
- <sup>66</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 209-211; & pg. 8, 358-359.
- <sup>67</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 211-213; & pg. 9, 391-396.
- <sup>68</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 213-216; & pg. 9, 395-404; & transcript of radio traffic, tab 42, pg. 2.
- <sup>69</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 216-218.
- <sup>70</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 218-221.
- <sup>71</sup> Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 221-222: & pg. 11, 461-476.

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- 72 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26a, transcript pg. 2, para. 3.
- 73 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 5, 222-224; & pg. 11, 478-487.
- 74 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 225-227.
- 75 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 227-229; & pg. 121, 493-508.
- 76 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 229-235.
- 77 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 232-237.
- 78 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 233-238.
- 79 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 238-240.
- 80 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 240-242.
- 81 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 244-249; 259; & pg. 22, 951-968.
- 82 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 249-253; & pg. 15, 636-644.
- 83 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 256-261.
- 84 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26a, transcript pg. 2-5.
- 85 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 6, 266-269.
- 86 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 7, 275-283.
- 87 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 7, 283-287; & pg. 18, 801-803.
- 88 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 7, 288-290.
- 89 Det Sanfilippo interview of Ofcr. D. Koehler, tab 26, pg. 4, 135-155; & Det Rowe, supp report, tab 32, pg. 2.
- 90 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 5, 199-209.
- 91 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 5, 208-214.
- 92 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 5, 218-222.
- 93 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 17, 723-739.
- 94 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 5-6, 223-225.
- 95 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 6, 226-230.
- 96 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 6, 230-232; & pg. 14, 601-613.
- 97 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 6, 236-255.
- 98 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 6-7, 254-276.
- 99 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 7, 280-289.
- 100 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 8, 342-346.
- 101 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 8, 348-358.
- 102 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 9, 362-373; & pg. 18, 782-783.
- 103 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 9, 373-378.
- 104 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 9, 378-380.
- 105 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 9, 380-384.
- 106 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 9, 385-386; & pg. 14-15, 622-649.
- 107 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 9, 393-397.
- 108 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 9, 397-399; & pg. 15, 657-669.
- 109 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 9-10, 399-414.
- 110 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 10, 414-424; & pg. 16, 671-674.
- 111 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 10, 424-434.
- 112 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 11, 459-467; & pg. 16, 688-708; & transcript of radio traffic, tab 42, pg. 3; & pg. 5.
- 113 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 11, 475-487.
- 114 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 12-13, 504-576.
- 115 Det. Sanfilippo interview of Ofcr. J. Ratkovich, tab 27, pg. 13, 569-581.
- 116 Det Sanfilippo interview of J. Heiting, tab 28, pg. 8, 337-360.
- 117 Det Sanfilippo interview of J. Heiting, tab 28, pg. 10, 423-425.
- 118 Det Sanfilippo interview of J. Heiting, tab 28, pg. 12, 511-533.
- 119 Det Sanfilippo interview of J. Heiting, tab 28, pg. 9, 367-369.
- 120 Det Sanfilippo interview of J. Heiting, tab 28, pg. 9, 371-376.
- 121 Ofcr Lim, supp report, tab 8, pg. 1.
- 122 Ofcr Lim, supp report, tab 8, pg. 1.

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- <sup>123</sup> Det Sanfilippo interview of S. Brien, tab 25, pg. 1-2, 36-72.
- <sup>124</sup> Det Sanfilippo interview of S. Brien, tab 25, pg. 2-3, 77-104.
- <sup>125</sup> Det Sanfilippo interview of S. Brien, tab 25, pg. 3, 109-112.
- <sup>126</sup> Det Sanfilippo interview of S. Brien, tab 25, pg. 6-7, 254-275.
- <sup>127</sup> Det Sanfilippo interview of S. Brien, tab 25, pg. 3-4, 116-145.
- <sup>128</sup> Det Sanfilippo interview of S. Brien, tab 25, pg. 4, 140-149.
- <sup>129</sup> Det Sanfilippo interview of S. Brien, tab 25, pg. 4, 157-179.
- <sup>130</sup> Det Sanfilippo interview of S. Brien, tab 25, pg. 5, 205-224.
- <sup>131</sup> Det Sanfilippo interview of R. Abbruzzese, tab 25, pg. 1-2, 12-59.
- <sup>132</sup> Det Sanfilippo interview of R. Abbruzzese, tab 25, pg. 2, 69-90; & pg. 8, 353-354.
- <sup>133</sup> Det Sanfilippo interview of R. Abbruzzese, tab 25, pg. 6, 238-255.
- <sup>134</sup> Det Sanfilippo interview of R. Abbruzzese, tab 25, pg. 3, 107-135.
- <sup>135</sup> Det Sanfilippo interview of R. Abbruzzese, tab 25, pg. 4, 139-142.
- <sup>136</sup> Det Sanfilippo interview of R. Abbruzzese, tab 25, pg. 4, 150-158.
- <sup>137</sup> Det Sanfilippo interview of R. Abbruzzese, tab 25, pg. 4, 170-178.
- <sup>138</sup> Det Sanfilippo interview of R. Abbruzzese, tab 25, pg. 5, 193-207.
- <sup>139</sup> Det Sanfilippo interview of B. Fike, tab 25, pg. 1, 12-40.
- <sup>140</sup> Det Sanfilippo interview of B. Fike, tab 25, pg. 2, 54-63; & pg. 5, 218; & pg. 6, 227-255.
- <sup>141</sup> Det Sanfilippo interview of B. Fike, tab 25, pg. 2, 64-79.
- <sup>142</sup> Det Sanfilippo interview of B. Fike, tab 25, pg. 3, 88-90.
- <sup>143</sup> Det Sanfilippo interview of B. Fike, tab 25, pg. 3, 94-122.
- <sup>144</sup> Det Sanfilippo interview of B. Fike, tab 25, pg. 3-4, 126-136; & pg. 9-10, 391-420.
- <sup>145</sup> CAD, tab 41a, pg. 1; & transcript of radio traffic, tab 42, pg. 2.
- <sup>146</sup> CAD, tab 41a, pg. 2; & transcript of radio traffic, tab 42, pg. 3.
- <sup>147</sup> Det Cobb, supp. report, tab 37, pg. 2.
- <sup>148</sup> Sgt. Rossi, supp. report, tab 28, pg. 5-6, sequence nos. 0099-0104.

# Section C

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Questions & Answers

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Information Requested

Excited Delirium

Excited Delirium / Hypothermia

ExcitedDelirium.org
(website only)

ANN PRICE et al., Plaintiffs,
v.
COUNTY OF SAN DIEGO et al.,
Defendants

January 11, 2011

Commission Member Art Santore asked staff to provide information on the following two terms: "Excited Delirium" and "Hyperthermia." An e-mail response was requested.

According to RPD policy section 4.60 (see attached General Order and RPD Policy Section 4.60), Excited Delirium is defined as a state of extreme mental and physiological excitement, usually associated with chronic illicit drug use, characterized by exceptional agitation and hyperactivity, hyperthermia, hostility, exceptional strength, aggression, acute paranoia, and endurance without apparent fatigue.

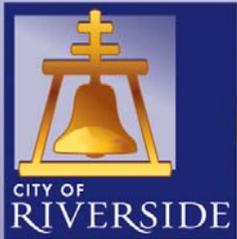
The web links below provide further discussion on the term Excited Delirium, its symptoms, and medical status:

<http://www.exciteddelirium.org/indexForLawEnforcement.html>

<http://www.policeone.com/columnists/chris-lawrence/articles/121675/>

<http://www.policeone.com/columnists/chris-lawrence/articles/126389/>

Hypothermia is a medical term that refers to having a core body temperature of less than 35 C or 95 F. (Source: MedicineNet.com) It is one of the conditions associated with Excited Delirium.



GENERAL ORDER

Police Department

SERGIO G. DIAZ
Chief of Police

NO.: 2010- 006

DATE: SEPTEMBER 24, 2010
TO: ALL PERSONNEL
FROM: SERGIO G. DIAZ
CHIEF OF POLICE *Sergio G. Diaz*
RE: SECTION 4.60 EXCITED DELIRIUM

POLICY AND PROCEDURES MANUAL - REVISIONS, DELETIONS AND ADDITIONS:

Section 4.60 Excited Delirium Policy has been added to the Riverside Police Department Policy and Procedures Manual.

Refer to the attached policy for further instructions and implementation.

The attached policy is adopted and effective immediately.

SD/mjb

Distribution: RPD Email

Approval:



Sergio G. Diaz
Chief of Police

4.60 **EXCITED DELIRIUM:**

A. POLICY:

Excited Delirium (ED) is a life-threatening medical emergency, disguised as a police problem. Once officers encounter a person displaying symptoms of excited delirium (err on the side of caution if unsure), steps must be taken to ensure appropriate medical intervention as soon as possible. A person in the throes of this acute excited state should be considered in extreme medical crisis, and may die, despite all reasonable precautions taken by officers and other emergency responders to help and protect the subject.

In addition to whatever law enforcement response may be required, the incident shall be managed as a medical emergency. As there can be no medical intervention without custody, officers will take reasonable and necessary action, consistent with provided training and this directive, to ensure that the person receives a police response which is appropriate to the subject's needs, while protecting the safety of all concerned.

B. DEFINITION:

Excited Delirium – A state of extreme mental and physiological excitement, usually associated with chronic illicit drug use, characterized by exceptional agitation and hyperactivity, hyperthermia, hostility, exceptional strength, aggression, acute paranoia, and endurance without apparent fatigue.

Excited Delirium presents as a cluster of physiological and behavioral symptoms, which may include:

- | | |
|------------------------------------|--|
| a. Bizarre and/or violent behavior | i. Shedding of clothes or nudity |
| b. Confusion or disorientation | j. Hallucinations |
| c. Incoherent/nonsensical speech | k. Attraction to glass (smashing glass common) |
| d. Hyperactivity | l. Drooling/Foaming at the mouth |
| e. Acute paranoia | m. Fear and panic |
| f. Aggression | n. Exceptional physical strength |
| g. Profuse sweating | o. Endurance without apparent fatigue |
| h. Hyperthermia | p. Ability to effectively resist multiple officers |

C. PROCEDURE:

1. Communications Bureau Responsibilities

- a. Upon receipt of a call for service that may lead the dispatcher to believe a person is exhibiting signs of Excited Delirium, as described above, a minimum of one (1) supervisor and four (4) officers will be dispatched, if practical, and the Watch Commander will be notified.
- b. Emergency medical services consistent with a response to a subject experiencing an extreme medical crisis will also be dispatched to respond when the original nature of the call dictates, or when requested by officers on the scene. EMS personnel shall be advised to stage at a location a safe distance from the scene until notified by officers that the scene is secured.

2. Responding Patrol Officers(s) Responsibilities

- a.** Responding officers shall assess the situation to determine if the person is suffering from ED. The determination must necessarily be based on a rapid assessment of the overall scenario and behavior of the subject. If ED is suspected, (err on the side of caution if unsure), immediately request EMS and the Watch Commander if they have not been initially dispatched.
- b.** If the ED subject is armed and/or combative or otherwise poses a threat that requires immediate intervention, officers shall employ reasonable and necessary force to protect themselves and others and take the person into custody.
- c.** If the ED subject is unarmed and presents no immediate threat to self or others, officers shall, if practical, contain the subject while maintaining a safe distance and remove others who might be harmed.

Officers shall formulate a custody plan prior to making physical contact with the subject, if possible. There can be no medical intervention without custody. The object of the plan is to de-escalate the situation, calm the individual and gain control of the person so that he may be medically cared for. If practical, attempt to gain the ED subject's voluntary compliance with these tactics:

- (1)** Preferably, only one officer should attempt to engage the subject in conversation. Remain calm, speak in a conversational, non-confrontational manner, and reassure the subject that you are trying to help.
 - (2)** Attempt to have the individual sit down, which may have a calming effect. Also, refrain from making constant eye contact, which may be interpreted as threatening.
 - (3)** Because of the subject's mental state, statements and questions may need to be repeated several times. The subject may be extremely fearful and confused, so be patient and reassuring, as it may take some time for him to calm down.
- d.** Once sufficient officers are present and if the determination is made that physical force is necessary, the custody plan must be implemented quickly, and with overwhelming force, to minimize the intensity and duration of any resistance and to avoid a prolonged struggle, which may increase the risk of sudden death. If possible, officers should ensure medical personnel are staged nearby prior to implementing the custody plan.
 - e.** Officers shall take into consideration all available force options and control techniques, with the realization that ED subjects often demonstrate unusual strength, resistance to pain, as well as instinctive resistance to the use of force. Primary consideration should be given to proper application of the TASER, which has proven effective as it temporarily causes neuromuscular incapacitation, providing officers with a window of opportunity to safely control and restrain the subject. Immediately upon TASER application, a multi-officer take-down team, using a coordinated group tactic, should swarm the subject, gain physical control and handcuff the subject while he or she is incapacitated by the TASER.

- f. When needed, the objective of using a restraining device is to secure the feet and legs of a suspect to control kicking, fighting and standing. Restraining is also used to control a subject's feet to prevent injury to officers and/or the subject.
- g. Approved restraining devices that may be used during an ED incident are:
 - (1) The Department's approved hobble and/or handcuffs.
 - (2) AMR and RFD personnel carry four point soft restraints that are also acceptable to restrain a subject experiencing excited delirium incidents.

Officers who restrain a subject are reminded that **immediately** following restraint of the subject; he or she must be rolled onto their side, thereby relieving pressure from the chest and abdomen, allowing the subject to breathe easier.

- h. Once the subject is in custody and the scene is secured, immediately summon EMS personnel. Until primary responsibility for the care of the subject is transferred to EMS personnel, officers must keep the restrained subject under constant observation. Place the individual in a supine position or on his side and continually monitor and assess vital signs. Be especially vigilant if he suddenly stops resisting and becomes tranquil. Initiate CPR as indicated.
- i. Officers shall coordinate with on-scene EMS personnel and transfer custody of the subject to them, assisting in any way, to avoid delay in the transportation of the individual to a medical facility. An officer shall be assigned to accompany EMS personnel during the ambulance transport.
- j. Upon arrival at the emergency room, ensure that the subject's core body temperature is recorded.

3. Supervisor Responsibilities

- a. A supervisor shall respond to and assume command of all ED calls.
- b. The supervisor shall ensure that all necessary police and administrative forms and reports are completed as required, to include as much of the following information as possible:
 - (1) Description and duration of subject's behavior prior to and after police contact, to include subject utterances and actions, i.e., running, shouting, pacing furiously, etc.
 - (2) Type and duration of resistance.
 - (3) Number and identity of officers involved.
 - (4) Method of subject transport, to include time transport begins and ends.
 - (5) Struggle against restraints during transport.
 - (6) Presence or absence of sweating by subject.

- (7)** Air Temperature/Humidity at scene of incident.
- (8)** Describe resuscitation efforts, if applicable, number of times attempt was made, and by whom.
- (9)** Note subject's body temperature at scene, if available, at arrival at medical facility and, if applicable, upon death.



1 of 3 DOCUMENTS

ANN PRICE et al., Plaintiffs, v. COUNTY OF SAN DIEGO et al., Defendants.

CIVIL NO. 94-1917-R (AJB)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

990 F. Supp. 1230; 1998 U.S. Dist. LEXIS 9397

January 8, 1998, Decided
January 9, 1998, Filed**DISPOSITION:** [**1] Judgment granted for Defendants.**COUNSEL:** For ANN PRICE, an individual, ANN PRICE, as Guardian ad Litem of Benjamin Price, UNBORN BABY PRICE, ROBERT PRICE, MARGARET PRICE, DANIEL L ESTATE OF DANIEL L. PRICE, plaintiffs: Charles R Woods, Trost Street Woods and Messina, San Diego, CA.

For COUNTY OF SAN DIEGO, JOHN GROFF, STEVEN CLAUSE, MARK TALLEY, JIM ROACHE, SAM SHEPARD, defendants: John J Sansone, Dep County Counsel, Office of County Counsel, Ricky R Sanchez, County of San Diego, Office of County Counsel, San Diego, CA.

JUDGES: John S. Rhoades, Sr., United States District Judge.**OPINION BY:** John S. Rhoades, Sr.**OPINION**

[*1234] FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Overview

Daniel Price died after San Diego Country Sheriff's Department deputies forcibly restrained him. His family and estate then sued the deputies, then-Sheriff Jim Roache, and the county of San Diego. Plaintiffs allege

causes of action for wrongful death, assault, battery, negligence, and violation of Price's civil rights.

The Court held a bench trial. After a lengthy trial and a careful review of the evidence, the Court hereby issues its findings of fact and conclusions of law in narrative form.¹

1 The Court has elected to issue its findings and conclusions in narrative form because a narrative format more fully explicates the reasons behind the Court's conclusions, which facilitates appellate review and provides the parties with more satisfying explanations.

However, *Federal Rule of Civil Procedure 52(a)* requires the Court to "find the facts separately and state separately its conclusions of law . . ." *Fed. R. Civ. P. 52(a)*. Nevertheless, it is "sufficient if the findings of fact and conclusions of law . . . appear in an opinion . . . filed by the court." *Id.* Accordingly, the Court has included an Appendix at the end of this Opinion that states separately its findings and conclusions. The Court incorporates the Appendix into this Opinion by reference.

[**2] **II. Background**

On June 28, 1994 Daniel Price inspected a house that was for sale. Price, who had a history of chronic methamphetamine abuse, wore only shoes, socks, and shorts. Price did not seem to be intoxicated, but he was very animated, extremely demonstrative in his gestures, and spoke loudly. After touring the house, Price attempted to give his wallet to the occupant, Timothy Malone.

Price then hugged Malone and departed. As Price walked away from the house, Malone saw him throw his appointment book and checkbook into some bushes.

Price then walked to a gate that led to the backyard of a nearby house, in which Christine Arrigo was sunbathing. After attempting to open the gate, Price made several unintelligible comments and departed.

Ms. Arrigo called 911, claiming that a man had thrown rocks at her windows. San Diego County Sheriff's Department deputies John Groff and Steven Clause arrived at the scene and contacted Price. Price told the deputies that he was fixing his truck and that he intended to go to a nearby house. The deputies allowed him to leave. Price then got into his truck and drove away -- past the house to which he had told the deputies he was going. [**3] Although Price did not drive faster than thirty-five miles per hour, the deputies became suspicious and decided to contact him again.

The deputies stopped Price and asked him to exit his truck. Price did not comply and a violent scuffle, more properly characterized as a brawl, ensued. Witness Sandy Bias testified that Price was "resisting totally" and shouting at the deputies as they tried to calm him. Ms. Bias described Price as a man "going crazy," as if under the influence of drugs. Price knocked Deputy Groff's eyeglasses from his face, and the deputies believed [*1235] that Price was trying to grab their guns.

The deputies sprayed Price with small amounts of pepper spray and wrestled him to the ground. The deputies placed Price face-down and handcuffed him with his hands behind his back. Price continued to resist, struggle, yell, and kick at the deputies.

Deputies Sam Sheppard and Steven Tally then arrived. Because Price was kicking, Deputy Tally bound Price's legs together with leg shackles. Nevertheless, Price continued to kick at the deputies with both legs at once.

To control Price, the deputies held him down with their body weight and connected the leg shackles to the handcuffs [**4] with a second set of handcuffs. In other words, they bound his hands and legs together behind his back as he lay prone. This four-point restraint, or "hog-tie," immobilized him.

The parties agree, and Plaintiffs' police-procedures expert confirmed, that the deputies used reasonable force up to the moment of the hog-tie, and that it was proper to subdue Price with body weight. The parties also agree that applying the hog-tie, in and of itself, was reasonable. Thus, the actions of the deputies up to the moment the hog-tie was accomplished are not at issue, nor is their decision to use the hog-tie restraint.

The issues in this case revolve around what happened next. As the deputies hog-tied Price, they necessarily applied some pressure to his torso. A deputy knelt next to Price and placed one knee on his back. The deputy also placed his hand on Price's shoulder. After the deputy completed the hog-tie, he may have maintained pressure for a short time as he paused before rising from the ground.

Deputy Tally then knelt next to Price and placed one knee on his back. Deputy Tally rested most of his weight on his heels. Deputy Tally maintained contact in an effort to calm Price and as a means of [**5] communicating his presence. Deputy Tally did not apply significant pressure to Price's torso.

At some point, Price began to smash his face into the ground repeatedly. In an effort to prevent Price from injuring himself, a deputy placed his foot on the back of Price's head and a kleenex box was placed underneath his face. Because of the blood on Price's face, the deputies called for medical assistance.

The deputies left Price lying shirtless on the hot asphalt for several minutes, despite a nearby shaded area. The asphalt temperature was approximately 133.9 degrees Fahrenheit. Although Deputy Tally was near Price after the hog-tie was complete, the deputies did not monitor Price closely as he lay hog-tied.

At some point, Price began turning blue, which suggests that he could not breathe properly.² As might be expected with such a dynamic and traumatic event, there is considerable variance in the testimony about when Price began to turn blue and how much time elapsed before the medics arrived.

2 Not all witnesses testified that Price turned blue. For example, one of the medics who responded did not see and did not note in his report that Price was blue. Another medic testified that Price was blue.

[**6] Nevertheless, it appears that before the medics arrived, the deputies noticed Price turning blue.³ However, they did not release him from the hog-tie immediately, nor did they administer cardiopulmonary resuscitation ("CPR"), despite the fact that each of them had CPR training.⁴

3 Although some evidence indicates that the deputies called for medics because of the change of color, the stronger evidence suggests that the deputies called for medical assistance because of the blood on Price's face.

4 Testimony was not completely consistent about whether Price was still hog-tied when the medics arrived. It appears that Deputy Tally was

preparing to release Price and administer CPR when the medics arrived.

The medics arrived within minutes, but by that time Price had no pulse and had stopped breathing. The medics administered CPR but to no avail. They then loaded Price into an ambulance and took him to the hospital. While in transit, the medics managed to restore Price's vital signs by administering "shots [**7] to the heart" and anti-narcotic medication. However, he did not regain consciousness.

[*1236] On June 30, 1994 Price died. A county medical examiner, John W. Eisele, M.D., conducted the autopsy. Dr. Eisele found low levels of methamphetamine in Price's system. He also found petichiae (pinpoint) hemorrhaging in Price's left eye, which suggests that Price's torso had been compressed.⁵ Dr. Eisele listed the cause of death as "hypoxic encephalopathy due to restrictive asphyxia with cardiopulmonary arrest due to maximum restraint in a prone position by law enforcement." (Pls.' Ex. 12 at 1.) Dr. Eisele listed a contributing cause of death as "acute methamphetamine abuse." (*Id.*)⁶

5 One of Defendants' expert witnesses, Thomas Neuman, M.D., testified that numerous other factors can cause petichiae hemorrhaging, including problems that Mr. Price experienced while in the hospital. In addition, Dr. Eisele testified that heart failure, which Mr. Price experienced, can cause petichiae hemorrhaging.

6 Dr. Eisele testified at trial that the pepper spray did not contribute to Price's death. (Eisele Excerpt of Trial Tr. at 27.)

[**8] Plaintiffs then sued the deputies, then-Sheriff Jim Roache, and the county of San Diego. Plaintiffs allege a cause of action against the deputies under 42 U.S.C. § 1983, for allegedly violating Price's *Fourth* and *Fourteenth Amendment* right to be free from excessive force.⁷ Plaintiffs also allege state-law causes of action against the deputies for wrongful death, assault, battery, and negligence.

7 *Section 1983* provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

Plaintiffs have sued Defendant Roache under § 1983 for the actions of the deputies. Plaintiffs also have sued

Defendant Roache under § 1983 for being deliberately indifferent [**9] to Price's civil rights. Additionally, Plaintiffs assert a negligence cause of action against Defendant Roache.

Plaintiffs next allege a cause of action under § 1983 against the county, relying on the theory of municipal liability articulated in *Monell v. New York City Department of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). Plaintiffs also seek to hold the county liable under the doctrine of respondeat superior.⁸

8 Plaintiffs also sought to hold Defendant Roache liable under a respondeat superior theory. In addition, Plaintiffs alleged a cause of action under *California Civil Code section 52.1*. The Court granted summary judgment for Defendants on these claims on November 6, 1996.

The Court will discuss each cause of action in turn.

III. Discussion

A. The Claims Against The Deputies

1. The § 1983 Claim

Plaintiffs have sued the deputies under § 1983, arguing that the deputies used excessive force on Price, in violation of the *Fourth* and *Fourteenth Amendments*. [**10] Plaintiffs allege that the hog-tie, as applied in the unique circumstances of this case, constituted excessive force. Plaintiffs also allege that a deputy used unreasonable force when he placed his foot behind Price's head. Plaintiffs further claim that the deputies used excessive force by leaving Price prone on hot asphalt. Lastly, Plaintiffs argue that the failure to render CPR constituted excessive force.

The *Fourth Amendment* governs the use of force. The *Fourth Amendment* requires peace officers to use only an amount of force that is objectively reasonable in light of all the surrounding circumstances. *Graham v. Connor*, 490 U.S. 386, 397, 104 L. Ed. 2d 443, 109 S. Ct. 1865 (1989). Assessing the level of permissible force "requires a careful balancing of the nature and quality of the intrusion on the individual's *Fourth Amendment* interests and the countervailing governmental interests at stake." *Id.* (internal quotation marks and citations omitted); see also *Mendoza v. Block*, 27 F.3d 1357, 1362 (9th Cir. 1994). Courts must give due regard to the fact that officers frequently make split-second judgment about the amount of force to use without the benefit of hindsight. [**11] *Graham*, 490 U.S. at 396-97.

[*1237] With these principles in mind, the Court must determine whether the deputies acted reasonably

with respect to each of the actions that Plaintiffs claim they took.

a. The Hogtie Restraint

Plaintiffs argue that the hog-tie restraint constituted excessive force because it is potentially lethal. Plaintiffs claim that the hog-tie restraint can cause "positional asphyxia." Asphyxia is a decrease in blood oxygen levels or an increase in blood carbon dioxide levels -- either of which can kill. (Eisele Excerpt of Trial Tr. at 16.) Positional asphyxia is asphyxia that results from body position.

Plaintiffs argue that positional asphyxia can occur when a hog-tied person lies prone with pressure on his back. Plaintiffs claim that hog-tying poses an especially great danger to large-bellied persons, such as Price. Plaintiffs claim that if the deputies had closely monitored Price and/or placed him on his side, then the hog-tie's dangers would have been reduced or eliminated.

The Court first will discuss whether the hog-tie restraint, in and of itself, constituted excessive force. The Court then will discuss whether the hog-tie restraint constituted excessive force [**12] in light of Price's girth and the pressure on his torso.

i. Whether The Hogtie Restraint Itself Constituted Excessive Force

Plaintiffs primarily rely on the testimony of Donald T. Reay, M.D., who first hypothesized the concept of positional asphyxia.⁹ Dr. Reay conducted experiments and concluded that after exercise (such as a violent struggle with deputies) blood oxygen levels decrease. Dr. Reay found that the hog-tie restraint prevent these oxygen levels from rising again because the hog-tie restraint impairs the mechanical process of inhaling and exhaling. See Donald T. Reay et al., *Effects of Positional Restraint on Oxygen Saturation and Heart Rate Following Exercise*, 9 Am. J. Forensic Med. Pathology 16 (1988); Donald T. Reay et al., *Positional Asphyxia During Law Enforcement Transport*, 13 Am. J. Forensic Med. Pathology 90 (1992).¹⁰

⁹ Dr. Reay is the chief medical examiner for King County, Washington. He is board certified in anatomic, forensic, and clinical pathology.

¹⁰ Following Dr. Reay's studies, other scientists examined the subject of positional asphyxia. See, e.g., C.S. Hirsh, *Restraint Asphyxiation*, 15 Am. J. Forensic Med. Pathology 266 (1994). These scientists generally agreed with Dr. Reay's hypothesis. Based on this storehouse of scientific theory, several law enforcement agencies, including the San Diego Police Department, either have banned hog-tying or have trained their deputies to

take precautions when applying the restraint. However, the vast majority of law enforcement agencies have not done likewise, nor has the California Commission on Peace Officers Standards and Training promulgated any training guidelines for using the hog-tie restraint.

[**13] Plaintiffs also rely on the testimony of Dr. Eisele. Dr. Eisele testified that Price experienced lactic acidosis. Lactic acidosis is a natural bodily reaction to exercise in which the body produces lactic acid. To compensate for the increased acidity of the blood, the body then produces extra carbon dioxide.

Dr. Eisele testified that because the hog-tie restraint impairs the mechanical process of exhaling, it prevents the body from "blowing off" excess carbon dioxide. In other words, Dr. Eisele opined that Price suffered from asphyxia (an increase in carbon dioxide levels) that, because of the hog-tie, Price's body could not correct.

Dr. Eisele based his opinions largely on Dr. Reay's work. In fact, it appears that every scientist who has sanctioned the idea that hog-tying causes asphyxia has relied to some degree on Dr. Reay's studies. However, it appears that no scientist had ever critically examined Dr. Reay's methodology and logic -- until recently.

After Price's death, at the request of defense counsel, Thomas Neuman, M.D., of the University of California at San Diego Medical Center ("UCSD") conducted a sophisticated study of positional asphyxia and the hog-tie restraint.¹¹ [**14] Dr. Neuman found, contrary to Dr. Reay's findings, that blood oxygen levels do not decrease after exercise. Dr. Neuman also found that although the hog-tie restraint impairs the mechanical process [1238] of inhaling and exhaling to an extent, the hog-tie does not affect blood oxygen or carbon dioxide levels. In other words, the impairment is so minor that it does not lead to asphyxia, and in fact has no practical significance. Dr. Neuman explained the disparity between his findings and those of Dr. Reay by describing methodological flaws in Dr. Reay's experiments and logical flaws in Dr. Reay's reasoning.

¹¹ Dr. Neuman is a professor of medicine and surgery at UCSD. He is board certified in internal medicine, pulmonary disease, emergency medicine, and occupational medicine. He recently published his study. See Tom Neuman et al., *Restraint Position and Positional Asphyxia*, 30 Annals of Emergency Med. 578 (1997).

The UCSD study, which Dr. Reay concedes rests on exemplary methodology, eviscerates Dr. Reay's conclusions. [**15] The UCSD study refutes Dr. Reay's underlying premise -- that blood oxygen levels decrease after exercise. Thus, the UCSD study refutes Dr. Reay's

ultimate conclusion -- that the hog-tie restraint prevents the lungs from replenishing the blood's oxygen supply; according to the UCSD study, the blood needs no replenishment after exercise because it already has adequate oxygen.

The UCSD study also refutes Dr. Eisele's opinion that the hog-tie prevents the lungs from "blowing off" excess carbon dioxide. The UCSD study found no difference in carbon dioxide levels between subjects who had exercised and been hog-tied, and subjects who had exercised and not been hog-tied. Thus, as Dr. Neuman testified and Dr. Reay now concedes, the hog-tie restraint is "physiologically neutral." (Reay Excerpt of Trial Tr. at 47.)¹²

12 The Court is aware that the UCSD study did not replicate the circumstances of Price's death perfectly. Numerous dissimilarities existed. For example, Dr. Neuman's subjects did not have methamphetamine in their systems, nor did they lie on hot asphalt. Plaintiffs argue that these differences mean that the UCSD study does not apply to Price.

This argument does not help Plaintiffs for several reasons. First, despite the differences, the UCSD study simply demonstrated basic physical principles -- that the hog-tie restraint, although it impairs breathing, does not affect blood gas levels. Second, the UCSD study at least has more applicability to Price than Dr. Reay's studies, which, by all accounts, are wholly flawed. Third, *no one knows* what effect factors such as methamphetamine would have on a hog-tied person. Dr. Reay and Dr. Neuman merely testified that further study is needed. In light of this uncertainty, Plaintiffs have not established that factors such as methamphetamine made the hog-tie particularly dangerous to Price.

[**16] After Dr. Reay's retraction, little evidence is left that suggests that the hog-tie restraint can cause asphyxia. All of the scientists who have sanctioned the concept of positional asphyxia have relied to some degree on Dr. Reay's work. The UCSD study has proven Dr. Reay's work to be faulty, which impugns the scientific articles that followed it. Like a house of cards, the evidence for positional asphyxia has fallen completely.

In light of the UCSD study, the hog-tie restraint in and of itself does not constitute excessive force -- when a violent individual has resisted less severe restraint techniques, applying a physiologically neutral restraint that will immobilize him is not excessive force. *See Mayard v. Hopwood*, 105 F.3d 1226, 1227-28 (8th Cir. 1997) (holding that placing a person wearing handcuffs and leg

restraints in a prone position was reasonable as a matter of law where the person had violently resisted arrest).¹³

13 Plaintiffs' argument that the deputies should have taken precautions because of the dangers of hog-tying obviously fails. The UCSD study has shown the dangers to be fictitious, which obviates the need for precautions.

[**17] **ii. Whether Price's Girth Made The Hog-tie Particularly Dangerous For Him**

Plaintiffs press, however, that the hog-tie *as applied to Price* posed a grave danger. Plaintiffs note that even the UCSD study found that hog-tying impairs the mechanical process of breathing to a small extent. Plaintiffs argue that this impairment, combined with Price's girth, caused him to asphyxiate.

Plaintiffs have failed to prove this alleged fact. Plaintiffs have adduced no reliable evidence that suggests that Price's girth impaired his breathing. Dr. Reay opined that as Price lay prone, his belly may have applied pressure to his lungs, which could have impaired his breathing. However, Dr. Reay admitted that he has no empirical evidence that suggests that lying prone with a large belly can impair breathing to a significant extent. Thus, his testimony was wholly speculative.

[*1239] Moreover, Dr. Neuman studied individuals of Price's general size, shape, morphology, and body mass index. Dr. Neuman's study included persons with a body mass index of thirty, which is greater than Price's body mass index at the time of the struggle.¹⁴ Dr. Neuman testified that although his study has limited applicability [**18] to extremely obese individuals, Price was merely somewhat overweight. As Dr. Neuman testified, it is wild speculation to say that a person lying prone with a potbelly will asphyxiate to death while a slightly smaller person will have no physiological reaction whatsoever. Thus, the Court finds that Plaintiffs have not established that Price's girth made the hog-tie especially dangerous for him.

14 Plaintiffs note that Dr. Eisele calculated Price's body mass index as 30.001, which is outside the parameters of Dr. Neuman's study. This contention does not help Plaintiffs for two reasons. First, the difference is negligible. Second, Dr. Eisele calculated this body mass index during the autopsy, which was after Price took in fluids at the hospital. While in the hospital, Price took in approximately ten more liters of fluid than his body expelled. Because a liter of fluid weighs approximately 2.2 pounds, Price gained approximately 22 pounds while in the hospital, which dramatically increased his body mass index.

Thus, when the deputies applied the hog-tie, Price's body mass index was squarely within the parameters of the UCSD study.

[19] iii. Whether The Pressure The Deputies Applied To Price's Back Made The Hogtie Particularly Dangerous**

Plaintiffs next argue that pressure on Price's back impaired his breathing. Plaintiffs argue that this pressure, combined with the breathing impairment caused by the hog-tie, led to Price's death.¹⁵

15 Relying on Dr. Reay's studies, Plaintiffs initially argued that the hog-tie alone caused Price's death. After the UCSD study came out, however, Plaintiffs began to argue that pressure on Price's back led to his death. Dr. Reay and Dr. Eisele both testified that pressure could have caused the death.

Plaintiffs have failed to establish this alleged fact. Plaintiffs' witnesses produced wildly different accounts of the deputies' actions. Some witnesses claimed that the deputies "sat on" Price. Other witnesses did not recall seeing the deputies apply any pressure at all. Even those witnesses who testified that the deputies applied pressure provided different accounts about whether the deputies applied pressure [**20] before or after they applied the hog-tie restraint.

The Court doubts that a deputy sat on Price, for three reasons. First, sitting on a hog-tied person (whose hands and feet are necessarily above his torso) would be awkward indeed. Second, the deputies simply had no reason to sit on Price -- the hog-tie had immobilized him. It seems unlikely that a deputy would have sat in an awkward position for no reason. Third, Plaintiffs themselves have relentlessly claimed throughout this lawsuit that the deputies stood far away from Price after they hog-tied him.

The deputies admit, however, that they applied minor pressure to Price's back. As they handcuffed and hog-tied him, they necessarily had to control him from thrashing around, so a deputy placed a knee in Price's back and a hand on his shoulder. The Court finds that this action was reasonable. *See Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 593 (7th Cir. 1997) (holding on similar facts that "the officers' response was reasonable [inasmuch as the officers] placed just enough weight on [the arrestee] to keep him from rolling over and kicking"). A deputy testified that he may have maintained this pressure for a few seconds [**21] after he completed the hog-tie as he got up from the ground. The Court holds that this innocent, brief action was reasonable.

In addition, Deputy Tally testified that he knelt next to Price, placing most of his weight on his heels. However, he placed a knee in Price's back. Deputy Tally did this to calm Price (and thus keep him from smashing his face into the ground) and to convey a sense of control in a tense, confused situation. Notably, Deputy Tally did not apply significant pressure to Price. The Court finds that Deputy Tally's actions were reasonable. *See id.*

Plaintiffs have not established that the deputies applied any more than the above-described pressure. Even if the deputies applied more pressure, Plaintiffs have not shown that the pressure impaired Price's breathing to a significant degree. Plaintiffs have not offered any evidence that indicates the *amount* of the pressure, nor have they [*1240] established what amount of pressure can impair breathing.¹⁶

16 Each of the deputies weighed over two hundred pounds. Plaintiffs argue that this weight was more than sufficient to impair Price's breathing. However, this argument assumes that a deputy applied his full weight to Price. It seems entirely likely that as the deputy knelt next to Price and placed a knee in his back, he brought the bulk of his weight to bear on the knee that was on the ground, and applied only minor pressure to Price. Moreover, when Deputy Tally applied pressure to Price, he rested most of his weight on his heels.

[**22] Thus, Plaintiffs have failed to establish that any pressure that Price may have experienced impaired his breathing or affected his blood gas levels. In short, plaintiffs have not proven that the hog-tie as applied posed any danger to Price, or that it led to his death. Accordingly, the Court concludes that the deputies used reasonable force when they placed Price face-down and hog-tied him, with incidental pressure applied to his torso. Insofar as the hog-tie and pressure are concerned, Plaintiffs' excessive force claim fails.¹⁷

17 The Court emphasizes the limited nature of its holding. The Court merely holds that on the particular facts of this case, the hog-tie restraint did not constitute excessive force. Given the limitations of the UCSD study noted above, the Court intimates no view on whether the hog-tie restraint might constitute unreasonable force if used on other individuals in other circumstances.

The obvious question remains, however: What *did* cause Price's death? The Court finds that, as several [**23] expert witnesses testified, he most likely died from a cardiac arrest that occurred during his encounter with the deputies.¹⁸ Numerous factors indicate that methamphetamine-induced toxic delirium caused this cardiac arrest.¹⁹ First, Price had methamphetamine in his

system when Dr. Eisele conducted the autopsy, which means that he had recently used it.²⁰ Second, methamphetamine irritates the heart and makes it more prone to a cardiac arrest. (Eisele Excerpt of Trial Tr. at 25, 27.) Third, Price had "internal derangements" within his heart that chronic methamphetamine abuse could have caused. (*Id.*) Fourth, methamphetamine can cause the body to release catecholamines (adrenaline) which also can irritate the heart. Dr. Eisele found catecholamines in Price's body. Fifth, Price had been acting in a bizarre fashion, which indicates that he was suffering from a methamphetamine-induced psychosis. (Neuman Excerpt of Trial Tr. at 34-35.) Sixth, Price developed a high fever at the hospital, which methamphetamine-induced toxic delirium frequently causes. (*Id.* at 36.) Seventh, while in the hospital, Price developed rhabdomyolysis, which is a breakdown of muscle cells. This is also [**24] a symptom of methamphetamine-induced toxic delirium.

18 Expert witnesses testified that Price also experienced a pulmonary arrest. Although some experts expressed doubt about which type of arrest came first, Dr. Eisele and Dr. Neuman opined that the cardiac arrest came first. In fact, Dr. Eisele, who testified for Plaintiffs, specifically stated that the cardiac arrest led to the pulmonary arrest. (Eisele Excerpt of Trial Tr. at 47-48.) Both of these doctors testified that they have no evidence that the hog-tie restraint leads to cardiac arrests. This further indicates that the hog-tie did not cause Price's death.

19 Dr. Neuman described toxic delirium as "a syndrome, [a] whole constellation of signs and symptoms seen in people who use methamphetamine. One aspect of the syndrome is delirium." (Neuman Excerpt of Trial Tr. at 35.)

20 Plaintiffs note that Dr. Eisele only discovered low levels of methamphetamine in Price's system. Plaintiffs argue that this means that methamphetamine did not kill Price. The Court rejects this argument for two reasons. First, the body metabolizes methamphetamine, so Price necessarily had more methamphetamine in his system at the time of the cardiac arrest than he did at the time of his death. Second, Dr. Neuman, who has had extensive experience with methamphetamine users, testified that "there is a very poor relationship between the blood levels of methamphetamine and whether or not you get into medical trouble from them." (Neuman Excerpt of Trial Tr. at 38.)

[**25] Dr. Neuman perfectly captured the cause of death when he made the following statement:

We have clear data that there is no respiratory component to the hog-tie posi-

tion. We also have clear data that Price was a chronic methamphetamine abuser. He had essentially all of the signs and symptoms of methamphetamine use, and he died a death that was completely consistent with toxic delirium secondary to methamphetamine use. To suppose anything [*1241] else placed a significant role in his death is speculation.

(*Id.* at 43.)

Moreover, Defendants' expert on methamphetamine abuse, Joseph Shannon, M.D., stated: "The only factor that can explain his death in and of itself was acute methamphetamine intoxication or excited delirium This is a highly lethal illness which may well have caused his death regardless of where he was, the restraints used or the struggle involved." (Shannon Excerpt of Trial Tr. at 7.)²¹

21 Dr. Shannon is a senior psychiatrist at a seven hundred patient drug rehabilitation center. The largest group of these patients have suffered from methamphetamine-induced psychoses. Dr. Shannon has also been a full-time faculty member at the University of California at Los Angeles School of Medicine, where he taught students about drugs and drug addiction.

[**26] Thus, in the words of Dr. Neuman which the Court hereby adopts, "Mr. Price did not asphyxiate due to the hog-tie position. Rather, the most obvious cause of death is toxic delirium secondary to methamphetamine abuse, which in turn caused Mr. Price to experience a cardiac arrest." (Neuman Decl. at 13.)

b. The Foot On Price's Head

Plaintiffs next assert that a deputy used excessive force by placing his foot against the back of Price's head. Plaintiffs asserted during closing argument that the deputy did so for a malicious purpose.

Plaintiffs have offered no evidence to back up their assertion of maliciousness; indeed, all evidence points to the contrary. Price had been smashing his face into the asphalt repeatedly. The deputy testified that he placed his foot against Price's head in order to stop him from doing so. In fact, a deputy placed a kleenex box underneath Price's face in order to protect him further.

The Court has no reason to doubt this testimony. The Court finds that the deputy placed his foot against Price's head for a patently reasonable, benevolent purpose. Thus, Plaintiffs' excessive force claim fails with respect to the foot on the back of Price's head.

[**27] **c. Leaving Price On Hot Asphalt**

Plaintiffs next argue that the deputies used excessive force by leaving Price on the hot asphalt. The asphalt temperature was approximately 133.9 degrees Fahrenheit.

Although the Court does not suggest that leaving him lying on hot asphalt was ideal, the Court cannot find that this action was unreasonable. The struggle with Price had tired the deputies, which would have made it somewhat difficult to move a hefty, belligerent person. Moreover, the deputies had to perform other tasks, such as calling for medical assistance, controlling onlookers, and sundry other tasks that law enforcement work involves. The fact that the deputies did not move Price immediately is therefore understandable.

In addition, despite the high asphalt temperature, Price did not suffer any burns. Of course, the primary danger of leaving someone lying on hot asphalt is that the person might sustain burns. The fact that Price did not suffer burns indicates that the asphalt temperature was not so high that it was unreasonable to leave him lying on it for the short time that he did. Similarly, Plaintiffs have not established that the hot asphalt caused Price's death.

Thus, [**28] Plaintiffs' excessive force claim fails with respect to leaving Price on the asphalt.

d. Failure To Administer CPR

Plaintiffs next argue that the deputies used excessive force by failing to give Price CPR after they noticed him turning blue.²²

²² It is somewhat awkward to conceptualize a failure to give medical aid as excessive force. See *Estate of Phillips*, 123 F.3d at 595. "The duty to render medical aid is more often thought of as one arising under the Due Process Clause [of the Fourteenth Amendment]" *Id.*; see also *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 200, 103 L. Ed. 2d 249, 109 S. Ct. 998 (1989) (stating that "when the State . . . so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs -- e.g., . . . medical care, . . . it transgresses the substantive limits . . . set by the Due Process Clause"). Nevertheless, the Supreme Court recently has held that "all claims that law enforcement officers have used excessive force . . . in the course of an arrest . . . should be analyzed under the *Fourth Amendment* and its 'reasonableness' standard, rather than under a 'substantive due process' approach." *Graham*, 490 U.S. at 395.

Because "the *Fourth Amendment* requires that seizures be reasonable under all the circumstances, . . . it would be objectively unreasonable in certain circumstances to deny needed medical attention to an individual placed in custody who cannot help himself." *Estate of Phillips*, 123 F.3d at 596.

It appears that a due process analysis applies after the initial "seizure" has ended but the individual remains in custody. See *id.* It is not always easy to determine when the seizure has ended. See generally Mitchell W. Karsch, Note, *Excessive Force and the Fourteenth Amendment: When Does Seizure End?*, 58 *Fordham L. Rev.* 823 (1990). In the present case, however, the seizure clearly had not ended. See *Graham*, 490 U.S. at 389-90 (using a *Fourth Amendment* analysis on similar facts); *Estate of Phillips*, 123 F.3d at 595-96 (same).

[**29] [*1242] Before the Court can reach the merits of this claim, the Court must determine whether the deputies are entitled to qualified immunity.²³ Qualified immunity protects government officials from lawsuits based on their conduct in situations in which they exercise discretion, insofar as their conduct does not violate clearly established rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982). Qualified immunity protects peace officers so that they "should not err always on the side of caution because they fear being sued." *Hunter v. Bryant*, 502 U.S. 224, 229, 116 L. Ed. 2d 589, 112 S. Ct. 534 (1991) (internal quotation marks and citation omitted).

²³ In its Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment, the Court held that the deputies were not entitled to qualified immunity from Plaintiffs' excessive force claim. However, this holding rested on the possibility that the deputies may have acted unreasonably by applying the hog-tie, applying pressure to Price's back, etc. The Court did not hold that the deputies were not entitled to qualified immunity with respect to the CPR issue alone.

[**30] The inquiry of whether the deputies are entitled to qualified immunity "begins with the question of whether the 'right the [deputies are] alleged to have violated [was] clearly established.'" *Mendoza*, 27 F.3d at 1360 (citing *Anderson v. Creighton*, 483 U.S. 635, 640, 97 L. Ed. 2d 523, 107 S. Ct. 3034 (1987)). If the right was not clearly established, then the deputies are entitled to qualified immunity. See *Romero v. Kitsap County*, 931 F.2d 624, 629 (9th Cir. 1991). In *Mendoza*, the Ninth

Circuit provided guidance on how to determine whether a right is clearly established. The Ninth Circuit stated:

The plaintiff's legal right cannot be so general so as to allow a plaintiff to "convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging [a] violation of extremely abstract rights." *Anderson*, 483 U.S. at 639. . . . For example, the Supreme Court in *Anderson* suggested that although "the right to due process of law is quite clearly established . . . and thus there is a sense in which any action that violates [the Due Process Clause] (no matter how unclear it may be that the particular action is a violation) [**31] violates a clearly established right," such a general allegation is not enough to overcome a defendant's qualified immunity. *Id.*

For qualified immunity purposes, a right must [be] clearly established in a more particularized, and hence more relevant, sense

Mendoza, 27 F.3d at 1361 (internal quotation marks and citation omitted).

Thus, because Plaintiffs claim that the deputies violated Price's right to receive CPR from them, the issue becomes whether the deputies had a clearly established duty to administer CPR. *See Rich v. City of Mayfield Heights*, 955 F.2d 1092, 1097 (6th Cir. 1992) (inquiring, for qualified immunity purposes, whether the officer had a clearly established duty to render medical aid).

The cases that have addressed this issue indicate that no such duty exists. In *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 77 L. Ed. 2d 605, 103 S. Ct. 2979 (1982), a police officer shot a suspect. The police then summoned an ambulance, which took the suspect to a hospital. The Supreme Court held:

The Due Process Clause . . . require[s] the responsible government . . . agency to provide medical care to persons . . . who have [**32] been wounded while being apprehended by the police. . . . We need not define, in this case, [the city's] due process obligation to pretrial detainees or to other persons in its care who require medical attention. Whatever the standard may be, [the city] fulfilled its constitutional obligation by seeing that [the ar-

restee] was [*1243] taken promptly to a hospital that provided the treatment necessary for his injury.

Id. at 244-45 (citations and footnote omitted). Thus, the Supreme Court suggested that a peace officer has no duty to provide medical care personally; rather, the Court suggested that an officer merely must summon medical aid.

The Ninth Circuit addressed a similar case in *Maddox v. City of Los Angeles*, 792 F.2d 1408 (9th Cir. 1986). In *Maddox*, the defendant police officers placed an arrestee in a chokehold and then transported him to a hospital. When they arrived, they discovered that the subject did not have a pulse. Although each officer had CPR training, none administered CPR. Instead, they took the arrestee to the jail ward of the hospital where he received medical attention.

The trial court instructed the jury that "any failure by the officers themselves [**33] to render [CPR] is not a violation of the decedent's constitutional rights." *Id.* at 1414. Using a due process analysis, the Ninth Circuit upheld this instruction, stating that

the due process clause requires responsible governments and their agents to *secure* medical care for persons who have been injured while in police custody. We have found no authority suggesting that the due process clause establishes an affirmative duty on the part of police officers to render CPR in any and all circumstances. Due process requires that police officers seek the necessary medical attention for a detainee when he or she has been injured while being apprehended by either *promptly summoning the necessary medical help* or by taking the injured detainee to a hospital.

Id. at 1415 (emphasis added and citations omitted). Thus, the Ninth Circuit suggested that peace officers merely have a duty to summon medical aid, and need not personally administer CPR.²⁴

24 This holding is perhaps limited by the Ninth Circuit's use of the phrase "any and all circumstances." This phrase seems to leave open the possibility that a duty to give CPR could arise in some circumstances. However, "one ambiguous bit of dictum in a Ninth Circuit opinion cannot form the basis for a 'clearly established' and 'par-

ticularized' duty." *Wilson v. Meeks*, 52 F.3d 1547, 1555 (10th Cir. 1995) (analyzing *Maddox*).

[**34] The Tenth Circuit later considered *Maddox* in addressing a similar case. The Tenth Circuit construed *Maddox* as "holding there is no duty to give, as well as summon, medical assistance, even if the police officers are trained in CPR." *Wilson v. Meeks*, 52 F.3d 1547, 1555 (10th Cir. 1995). The Tenth Circuit followed *Maddox* and other cases to hold that "the Constitution does not empower [courts] to command police officers to show compassion for those they injure in the line of duty. . . . To do [so] would undermine the policies of the qualified immunity doctrine." *Id.* at 1556.

The Eighth Circuit has reached a similar conclusion. In *Tagstrom v. Enockson*, 857 F.2d 502 (8th Cir. 1988), the plaintiff led police officers on a motorcycle chase that ended when the plaintiff crashed into a tree, suffering severe injuries. The first officer to arrive on the scene immediately called an ambulance for the plaintiff but did not give him medical aid personally.

The Eighth Circuit stated:

[The plaintiff] asks us to find that [the defendant police officer] had an affirmative duty to render medical assistance himself, such as giving . . . CPR. However, [the plaintiff] [**35] points to no cases that clearly establish that [the officer] had such a duty. [Citing *Maddox*]. [The officer] properly performed his duty by immediately calling an ambulance. His decision not to give medical assistance . . . did not violate [the plaintiff's] right to prompt medical assistance.

Id. at 504. Based on this reasoning, the Eighth Circuit held that the officer was entitled to qualified immunity.

None of the above cases used a *Fourth Amendment* "reasonableness" analysis. Nevertheless, they strongly suggest that the constitution does not impose a duty on peace officers to administer CPR personally. Plaintiffs have not cited, nor has the Court's independent research revealed, any case that has imposed such a duty on peace officers under any analysis.²⁵ Given this legal landscape, [*1244] even if such a duty exists, it certainly is not clearly established. Thus, the deputies are entitled to qualified immunity on the CPR issue. *See Romero*, 931 F.2d 624 at 629 (holding that officers were entitled to qualified immunity because the right they allegedly violated was not clearly established).

25 Even Plaintiffs' police-procedures expert testified that peace officers do not have a legal duty to administer CPR.

[**36] 2. The State-Law Claims

a. The Assault And Battery Claims

Plaintiffs next allege state-law causes of action for assault and battery. Defendants claim that they have immunity from these claims as well.

California Government Code section 820.2 provides immunity to peace officers for their discretionary acts in arrest situations. *See Reynolds v. County of San Diego*, 858 F. Supp. 1064, 1074 (S.D. Cal. 1994), *aff'd in part and rev'd in part on other grounds*, 84 F.3d 1162 (9th Cir. 1996); *Martinez v. County of Los Angeles*, 47 Cal. App. 4th 334, 349 (1996).²⁶ It does not confer immunity, however, if an officer uses unreasonable force. *Scruggs v. Haynes*, 252 Cal. App. 2d 256, 266, 60 Cal. Rptr. 355 (1967).²⁷

26 *Section 820.2* provides: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." *Cal. Gov't Code § 820.2*.

27 In its Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment, the Court held that the deputies were not entitled to qualified immunity from suit because Plaintiffs had presented evidence that the deputies had used excessive force. The Court could not rule on whether the deputies had used excessive force at the summary judgment stage. Now that the trial has concluded, however, the Court has determined that the deputies did not use excessive force, and so can definitively determine whether the deputies are entitled to qualified immunity on Plaintiffs' state-law claims.

[**37] The Court already has found that the deputies used reasonable force by applying the hog-tie restraint, applying pressure to Price's torso, leaving him on the asphalt, and placing a foot against his head. Thus, *section 820.2* grants immunity to the deputies with respect to Plaintiffs' assault and battery claims, insofar as the claims derive from these actions.

However, the Court did not affirmatively find that the deputies acted reasonably when they failed to administer CPR. Rather, the Court merely found that they were entitled to qualified immunity. *Section 820.2* will not confer immunity from Plaintiffs' state-law claims if the

deputies' failure to provide CPR amounted to excessive force. *See Scruggs, 252 Cal. App. 2d at 266.*

Yet even assuming that the deputies' failure amounted to excessive force, any assault or battery claim that stems from their omission fails as a matter of law. A battery involves a touching. *See Restatement (Second) of Torts § 18* (1965). An assault involves an apprehension of a touching. *Id.* § 21. A failure to provide CPR obviously involves neither a touching nor an apprehension thereof. Thus, Plaintiffs' causes of action for assault and battery [**38] fail.

b. The Wrongful Death Claim

Plaintiffs also have alleged a cause of action for wrongful death against the deputies.

Section 820.2 grants the deputies qualified immunity on the wrongful death claim unless they used excessive force. *See Reynolds, 858 F. Supp. at 1074; Martinez, 47 Cal. App. 4th at 349; Scruggs, 252 Cal. App. 2d at 266.* Thus, the deputies enjoy qualified immunity from the wrongful death claim, except perhaps insofar as the claim stems from the failure to provide CPR.

However, even assuming that the deputies used unreasonable force by not administering CPR, Plaintiffs' wrongful death claim still fails. To establish a wrongful death claim, Plaintiffs must prove that the deputies' failure to provide CPR caused Price's death. *See Jacoves v. United Merchandising Corp., 9 Cal. App. 4th 88, 113 (1992).* Plaintiffs have not done so.

Plaintiffs presented the testimony of Janet Goldfarb, a registered nurse. Nurse Goldfarb testified that she has used CPR to revive patients and that she probably could have revived Price.

[*1245] The Court cannot give too much weight to this testimony for several reasons. First, even if Nurse Goldfarb could have revived [**39] Price, that does not mean that the deputies could have done so. The deputies necessarily had far less medical training and experience than Nurse Goldfarb. Second, Nurse Goldfarb testified that she never has revived a person in cardiac arrest, as Price was. Third, it is unclear whether Nurse Goldfarb has ever administered CPR in the field, as opposed to a more sophisticated hospital setting.

Fourth, Dr. Neuman, who has vast experience in emergency room medicine, testified that "people with toxic delirium are most frequently not resuscitated." (Neuman Excerpt of Trial Tr. at 50.) He also testified that "neurologically intact survival from cardiac arrest when CPR is given properly and promptly is in the neighborhood of a couple of percent." (*Id.* at 50-51.) This dismally low statistic strongly suggests that the failure to give CPR did not contribute to Price's death.²⁸

28 The medics managed to resuscitate Price after they loaded him into the ambulance. However, they did so using technologically advanced life-saving techniques, which are far different from the rudimentary CPR procedures the deputies could have used in the field. Thus, the fact that the medics managed to resuscitate Price does not mean that the deputies would have been able to do so.

[**40] Because Plaintiffs have not established that the deputies' failure to provide CPR caused Price's death, Plaintiffs' wrongful death claim fails.

c. The Negligence Claim

Plaintiffs additionally have alleged a negligence cause of action against the deputies.²⁹

29 Despite the qualified immunity conferred by *California Government Code section 820.2*, it appears that *section 820.4* creates an exception for negligent acts. *See Cal. Gov't Code § 820.4* (stating that "[a] public employee is not liable for his act or omission, exercising due care, in the execution of any law"); *Reynolds, 858 F. Supp. at 1075* (finding that because an officer had exercised due care, "his conduct does not fall into the *section 820.4* exception").

To prevail on their negligence claim, Plaintiffs must show that the deputies acted unreasonably and that the unreasonable behavior harmed Price. *See Jacoves, 9 Cal. App. 4th at 113.* Except for the CPR issue, the Court already has found that the deputies acted reasonably. Thus, [**41] the negligence claim fails.

Insofar as the negligence claim stems from the failure to provide CPR, the claim fails on causation grounds for the reasons stated above.

B. The Claims Against Defendant Roache

Plaintiffs also have asserted three causes of action against Defendant Roache. First, Plaintiffs have sued him under § 1983 for the actions of the deputies. Second, Plaintiffs have sued Defendant Roache under § 1983 for his alleged failure to train his deputies adequately. Third, Plaintiffs have sued him for negligence. The Court will discuss each of these claims in turn.

1. The § 1983 Claim Based On The Actions Of The Deputies

To hold Defendant Roache liable for the constitutional violations of his subordinates, Plaintiffs must show that he either participated in or directed violations, or that he knew of violations and failed to act to prevent

them. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

With respect to the CPR issue, even assuming that the failure to provide CPR amounted to a constitutional violation, Defendant Roache obviously did not participate in or direct the violation. Plaintiffs also have not proven that similar violations had occurred [**42] in the past, or that Defendant Roache knew about them and failed to prevent further violations.

With respect to the other actions of the deputies, the Court already has found that no constitutional violation occurred, so Plaintiffs cannot hold Defendant Roache liable for the actions of the deputies.

2. The § 1983 Action For Failure To Train

Plaintiffs next invoke the principle that "a governmental officer may be held liable for damages for constitutional wrongs engendered by his failure to adequately supervise or train his subordinates." *Ting v. United States*, 927 F.2d 1504, 1512 (9th Cir. 1990). Insufficient training can form a basis [*1246] for liability under § 1983 if the failure to train amounts to deliberate indifference to the rights of people with whom peace officers may come into contact. *Id.*

Plaintiffs note that Defendant Roache had a substantial amount of information prior to Price's death that indicated that hog-tying poses grave dangers. Plaintiffs argue that by not acting on this information, Defendant Roache failed to train his deputies properly and that this failure amounted to deliberate indifference to the rights of Price.

This argument fails. Because [**43] the hog-tie restraint did not inflict a constitutional injury on Price, § 1983 liability cannot attach. Moreover, Defendant Roache did not inadequately train his deputies about the dangers of hog-tying; the UCSD study has shown these dangers to be fictitious. Defendant Roache cannot be liable for being deliberately indifferent to a nonexistent risk. Accordingly, Plaintiffs' § 1983 claim against Defendant Roache fails.

3. The Negligence Claim

Plaintiffs next have sued Defendant Roache for negligence based on his failure to train his deputies about the dangers of hog-tying. To establish a negligence claim, Plaintiffs must show that Defendant Roache acted unreasonably and that his unreasonable behavior caused Plaintiffs' harm. *Jacoves*, 9 Cal. App. 4th at 113.

Plaintiffs have not established either of these essential elements of a negligence claim. Defendant Roache did not act unreasonably by failing to alert his deputies to nonexistent dangers. Moreover, even if he acted unrea-

sonably, Plaintiffs have not established that the hog-tie caused Price's death. Plaintiffs' negligence claim therefore fails.

C. The Claims Against The County

Plaintiffs also have alleged a § [**44] 1983 action against the county, relying on the theory of municipal liability articulated in *Monell v. New York City Department of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). Plaintiffs also seek to hold the county liable under the doctrine of respondeat superior. The Court will address each of these claims in turn.

1. The *Monell* Claim

Under *Monell*, "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts [a constitutional] injury [then] the government as an entity is responsible under § 1983." *Id.* at 694. In order to establish municipal liability, Plaintiffs must show that the county had a policy that exhibited deliberate indifference to the constitutional rights of the people with whom the deputies could come into contact, and that the policy was the "moving force" behind the constitutional violation in question. *City of Canton v. Harris*, 489 U.S. 378, 389-91, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989); *Henry v. County of Shasta*, 132 F.3d 512, 1997 WL 784487, at *4 (9th Cir. 1997).

[**45] Plaintiffs claim that the Sheriff's Department's decision not to train its deputies in applying the hog-tie restraint constituted a governmental policy or custom that inflicted constitutional injury on Price. Plaintiffs also have suggested that the Sheriff's Department had a custom or policy not to train its deputies to administer CPR.

These arguments fail. The hog-tie restraint did not inflict a constitutional injury on Price, so *Monell* liability cannot attach. See *City of Los Angeles v. Heller*, 475 U.S. 796, 89 L. Ed. 2d 806, 106 S. Ct. 1571 (1986); *Quintanilla v. City of Downey*, 84 F.3d 353, 355-56 (9th Cir. 1996), cert. denied, 136 L. Ed. 2d 856, 117 S. Ct. 972 (1997). Moreover, the Sheriff's Department did not show "deliberate indifference" by not teaching its deputies about nonexistent dangers.

Additionally, even if failing to administer CPR was a constitutional violation, Plaintiffs have not adduced evidence that would suggest that the deputies' omission stemmed from an official custom or policy. To the contrary, Defendant Roache testified that he hoped that his deputies would administer CPR to people in the field.³⁰

³⁰ Plaintiffs argue that this testimony created a duty to administer CPR. This assertion does not

help Plaintiffs for two reasons. First, opinion testimony does not create duties; duties are imposed by law. Second, even if the sheriff's hopes or expectations could create a duty, they could not create a constitutional duty, and so would not affect Plaintiffs' § 1983 claim. At most, the duty would sound in tort, and so would apply only to Plaintiffs' state-law claims. The state-law claims that arise from the failure to provide CPR fell not on grounds of duty, but on grounds of causation.

[**46] [*1247] Plaintiffs thus have failed to establish *Monell* liability.

2. Respondeat Superior Liability

Because Plaintiffs can hold neither the deputies nor Defendant Roache liable, Plaintiffs cannot hold the county liable on a respondeat superior theory. *See Cal. Gov't Code § 815.2; Martinez, 47 Cal. App. 4th at 349.*

IV. Conclusion

The events of this case are undeniably tragic. They are tragic for Price's widow. They are tragic for his young children. They are tragic for his parents. Above all, they are tragic for Price himself.

The events of this case are also tragic for the deputies. Undoubtedly, the deputies did not expect or desire Price to come to any grave harm. The Court is well aware of the distress that deaths in the field daily cause peace officers.

Plaintiffs, who had the burden of proof, ably presented a strong case with strong facts. However, as in most cases, other evidence contradicted Plaintiffs' evidence. In the end, the weight of the evidence preponderated against Plaintiffs. Plaintiffs simply did not meet their burden of proof.

In many ways, this case is symptomatic of a larger problem that has swept the San Diego area in recent years. The [**47] scourge of methamphetamine daily ravages its victims. Quite apart from the medical cause of death, which the Court discussed at length above, methamphetamine abuse precipitated this entire case. If Price had not abused methamphetamine, he would not have acted in a bizarre fashion, the deputies never would have arrived, and none of the incidents of this case would have transpired. Methamphetamine has devoured another of its victims, and forever transformed the lives of his family members.

The Court's rulings today in no way seek to downplay the tragic events of this case. In the end, the Court simply could not conclude that Defendants were the ones to blame for the unfortunate events that transpired. Ac-

cordingly, the Court must grant judgment for Defendants.³¹

31 At the close of Plaintiffs' evidence, Defendants filed a Motion for Judgment on Partial Findings. That Motion is denied as moot.

IT IS SO ORDERED:

Date: 1/8/98

John S. Rhoades, Sr.

United States District Judge

Appendix

I. Findings [**48] of Fact

1. The Court hereby incorporates by reference each and every factual recitation made in Section II of the preceding opinion.

2. Asphyxia is a decrease in blood oxygen levels or an increase in blood carbon dioxide levels.

3. Exercise does not cause blood oxygen levels to decrease.

4. The hog-tie restraint impairs the mechanical process of inhaling and exhaling.

5. Despite the hog-tie restraint's impairment of breathing, the hog-tie restraint, in and of itself, does not affect blood oxygen or carbon dioxide levels.

6. The hog-tie restraint, in and of itself, does not cause asphyxia, i.e., the hog-tie restraint is inherently physiologically neutral.

7. Price's body mass index at the time of the struggle with the deputies was less than thirty. Price was not extremely obese.

8. Plaintiffs have not proven by a preponderance of the evidence that Price's girth impaired his breathing as he lay prone.

9. A deputy placed a knee in Price's back and a hand on Price's shoulder as Price was being hog-tied.

10. A deputy may have maintained pressure on Price's torso for a few seconds after the hog-tie was applied.

11. Deputy Tally knelt next [**49] to Price after the hog-tie was applied, bringing most of his weight to bear on his heels. Deputy Tally applied only minor pressure to Price for the sake of calming him and [*1248] conveying a sense of control in a tense, confused situation.

12. A deputy did not sit on Price.

13. Plaintiffs have not established that a deputy or deputies applied more than the above-described pressure to Price's torso.

14. Plaintiffs have not established what amount of pressure on a person's torso is sufficient to impair breathing or affect blood gas levels.

15. Plaintiffs have not established that pressure on Price's torso impaired his breathing, affected his blood gas levels, or in any way contributed to Price's death.

16. Price had methamphetamine in his system at the time of the autopsy.

17. Methamphetamine can irritate the heart.

18. Price had "internal derangements" in his heart that methamphetamine may have caused.

19. Price had catecholamines (adrenalin) in his system at the time of the autopsy.

20. Catecholamines can irritate the heart.

21. Price had been acting in a bizarre fashion shortly before his contact with the deputies.

22. Price developed [**50] a high fever while in the hospital, which methamphetamine abuse could have caused.

23. Price developed rhabdomyolysis in the hospital, which could have been caused by methamphetamine abuse.

24. Price most likely had a cardiac arrest during his encounter with the deputies. This preceded his pulmonary arrest. Hog-tying does not lead to cardiac arrests.

25. Methamphetamine abuse was a cause of Mr. Price's death.

26. After being restrained by the deputies, Price repeatedly smashed his face into the ground.

27. A deputy placed his foot against Price's head for the purpose of preventing Price from smashing his face into the ground.

28. A deputy placed a kleenex box under Price's face in order to protect him from self-inflicted injuries.

29. The asphalt temperature on the day, time and place in question was approximately 133.9 degrees Fahrenheit.

30. Price did not suffer burns from lying on the asphalt.

31. Some of the deputies were tired on account of the struggle with Price.

32. A failure to render CPR does not involve a touching or an apprehension of a touching.

33. People suffering from a cardiac arrest due to methamphetamine-induced [**51] toxic delirium usually are not resuscitated.

34. When CPR is administered properly and promptly, neurologically intact survival from cardiac arrest is approximately two percent.

35. The failure to render CPR did not contribute to Price's death.

36. Defendant Roache did not direct, participate in, or know of any constitutional injury that may have been inflicted on Price by the deputies. Similarly, Plaintiffs have not established that Defendant Roache knew of previous constitutional violations that were similar to any violation that may have occurred in this case.

37. Prior to Price's death, Defendant Roache had information that suggested that hog-tying is dangerous. Defendant Roache did not provide training to his deputies based on this information.

II. Conclusions of Law

1. All claims that law enforcement officers have used excessive force in the course of an arrest must be analyzed under the *Fourth Amendment* and its "reasonableness" standard.

2. Under the *Fourth Amendment*, peace officers must use only an amount of force that is reasonable in light of all the surrounding circumstances.

3. In assessing the level of permissible force, courts [**52] must give due regard to the fact that peace officers frequently make [*1249] split-second judgments about the amount of force to use, without the benefit of hindsight.

4. The deputies did not use excessive force prior to the moment of the hog-tie.

5. Applying the hog-tie restraint to an individual who is violently resisting arrest is not, in and of itself, excessive force.

6. The deputies did not use excessive force by hog-tying Price in a prone position.

7. The deputies did not use excessive force by placing a knee in Price's back and a hand on his shoulder as Price was being hog-tied.

8. The deputies did not use excessive force by applying incidental pressure to Price's torso after the hog-tie restraint was applied.

10. Deputy Tally did not use excessive force by kneeling next to Price and applying minor pressure to his torso.

11. The deputies did not use excessive force by placing a foot against Price's head.

12. The deputies did not use excessive force by leaving Price lying on the asphalt.

13. Aside from the failure to provide CPR, all the actions of the deputies, taken together, did not constitute excessive force.

14. In order for the deputies [**53] to be stripped of qualified immunity with respect to Plaintiffs' excessive force claim that they should have administered CPR, there must have been a clearly established constitutional duty to administer CPR.

15. If a constitutional duty exists that would require peace officers to administer CPR, that duty is not clearly established.

16. With respect to Plaintiffs' *Fourth Amendment* claim that the deputies should have administered CPR, the deputies are entitled to qualified immunity.

17. *California Government Code section 820.2* provides immunity to the deputies from Plaintiffs' assault, battery and wrongful death claims, insofar as those claims do not stem from a failure to administer CPR.

18. A battery involves a touching.

19. An assault involves an apprehension of a touching.

20. In order to establish their wrongful death claim, Plaintiffs must prove that an action of the deputies caused Price's death.

21. To hold Defendant Roache liable for the constitutional wrongs of his subordinates, Plaintiffs must prove that Defendant Roache either participated in or directed violations, or knew of violations and failed to act to prevent them.

22. A governmental [**54] officer may be held liable for damages for constitutional wrongs engendered by

his failure to supervise or train his subordinates adequately. Insufficient training can form the basis for liability under *42 U.S.C. § 1983* only if the failure to train amounts to deliberate indifference to the rights of people with whom peace officers may come into contact.

23. Absent a constitutional injury, Plaintiffs cannot hold Defendant Roache liable under *42 U.S.C. § 1983*.

24. Defendant Roache did not fail to train his deputies adequately regarding the dangers of hog-tying, inasmuch as the dangers are largely fictitious.

25. Defendant Roache cannot be held liable for being deliberately indifferent to a fictitious risk.

26. To establish a negligence claim against Defendant Roache, Plaintiffs must prove that he acted unreasonably and that his unreasonable behavior caused Plaintiffs' harm.

27. Defendant Roache did not act unreasonably by failing to train his deputies about the alleged dangers of hog-tying, inasmuch as the dangers are largely fictitious.

28. To hold the county liable for constitutional wrongs inflicted by its deputies, Plaintiffs must prove that the county [**55] had a policy or custom that exhibited deliberate indifference to the rights of people with whom the deputies could come into contact, and that the policy was the moving force behind the constitutional violation in question.

[*1250] 29. Absent a constitutional injury, Plaintiffs cannot hold the county liable under *42 U.S.C. § 1983*.

30. The county did not show deliberate indifference to Price's rights by not teaching its deputies about the dangers of hog-tying, inasmuch as the dangers are largely fictitious.

29. The county did not have a custom or policy that would tend to cause its deputies not to administer CPR.

30. If Plaintiffs cannot hold the county's agents liable, it cannot hold the county liable under the doctrine of respondeat superior.

Positional Asphyxia

Positional Asphyxia: Wikipedia

"The Positional Asphyxia Hypothesis,
Part One:
Fact or Fiction?"
by Gary W. DeLand

"Positional Asphyxia"
Best Practices -
NYPD Tactics & Procedures
by The Training Bureau
(video via web)

Positional asphyxia

From Wikipedia, the free encyclopedia
Jump to: [navigation](#), [search](#)

Positional asphyxia, is also known as **postural asphyxia**, is a form of [asphyxia](#) which occurs when someone's [position](#) prevents them from [breathing](#) adequately. A small but significant number of people die suddenly and without apparent reason during restraint by [police](#), [prison](#) (corrections) officers and [health care](#) staff.^[1] Positional asphyxia may be a factor in some of these deaths.

- Positional asphyxia is a potential danger of some physical restraint techniques,
- People may die from positional asphyxia by simply getting themselves into a breathing-restricted position they cannot get out of, either through carelessness or as a consequence of another [accident](#).

Research has suggested that restraining a person in a face down position is likely to cause greater restriction of breathing than restraining a person face up.^[2] Many law enforcement and health personnel are now taught to avoid restraining people face down or to do so only for a very short period of time.^[1] Risk factors which may increase the chance of death include obesity, prior cardiac or respiratory problems, and the use of illicit drugs such as cocaine.^[3] Almost all subjects who have died during restraint have engaged in extreme levels of physical resistance against the restraint for a prolonged period of time.^[3] Other issues in the way the subject is restrained can also increase the risk of death, for example kneeling or otherwise placing weight on the subject and particularly any type of restraint hold around the subject's neck. Research measuring the effect of restraint positions on lung function suggests that restraint which involves bending the restrained person or placing body weight on them, has more effect on their breathing than face down positioning alone ^[4]

There is a degree of controversy amongst researchers regarding the extent to which restraint positions restrict breathing. Some researchers report that when they conducted laboratory studies of the effects of restraint on breathing and oxygen levels, the effect was limited.^[5] Other researchers point out that deaths in real life situations occur after [prolonged, violent resistance](#) which has not been studied in laboratory simulations.^[6]

Positional asphyxia may also occur as a result of accident or illness. Olympic track athlete [Florence Griffith-Joyner](#)^[7] and ex-Major League Baseball player [John Marzano](#)^[8] both died due to positional asphyxia, the former following an epileptic seizure and the latter following a fall down a flight of stairs.

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- <http://www.fbi.gov/publications/leb/1996/may966.txt>
- <http://www.cpsc.gov/businfo/frnotices/fr01/bedrail.html>
- <http://www.cdc.gov/niosh/face/in-house/full8723.html>

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The Positional Asphyxia Hypothesis, Part One: Fact or Fiction?

By Gary W. DeLand

Background

When unexpected death occurs and there is no obvious cause, leaps of faith not supported by adequate research may occur. For example, in the 1970s climate experts were warning of a new ice age. Chicken Little was on overdrive. Now a few decades later, the same experts are warning of global warming and the approaching disaster. I will leave it to history to determine which – if either – theory ultimately turns out to have some degree of merit.

In the criminal justice world, we are not immune from well-meaning, seemingly logical theories being concocted by experts, gaining acceptance from other experts, and eventually becoming incontrovertible truths. Positional asphyxia is an example of a theory being developed by a respected state pathologist who then published his conclusions in a professional journal.¹ A flood of other pathologists conducting post-mortem examinations who had read his persuasive theory suddenly had a convenient cause of death when a person suddenly died while being restrained and there was no other obvious cause of death.

What is positional asphyxia? "Asphyxia" is defined as an inadequate oxygen level in the blood and/or an excessive increase of carbon dioxide in the blood causing unconsciousness or death. "Positional asphyxia" is described as asphyxia brought on by the subject being placed in a body position which does not allow the subject to breathe freely and replace the spent oxygen in sufficient time to prevent death. Positional asphyxia during the late 1980s and through the 1990s become a widely accepted theory of wrongful death alleged by plaintiffs in litigation in cases involving death when substantial exertion was immediately

followed by application of restraints or compression on the subject's thorax.

One such example occurred in a California jail when a physically powerful prisoner (about 6'5" and well over 200 lbs.) violently resisted efforts to search him during the admission process. The prisoner described as being built like Karl Malone was able to physically withstand the combined efforts of four jail deputies to control him. One witness stated the prisoner was "tossing officers around like rag dolls." It required the addition of two more husky jail officers to join in and use their combined strength and weight to force the prisoner to the floor.

After an exhausting effort and with the subject face down officers handcuffed the prisoner. The prisoner's breathing became labored and he suffered cardiac arrest. Despite the fact the autopsy showed that the prisoner had a seriously enlarged heart and was high on both cocaine and alcohol, Plaintiffs sued claiming the cause of death was caused by positional asphyxia resulting from the deputies' pressure on the prisoner's torso.

In many of the so-called positional asphyxia deaths, there are many factors that likely caused or contributed to the prisoner's death. Cocaine and alcohol consumption can place such persons at risk of heart arrhythmia, an even greater risk for persons with heart problems. Risks of cardiac arrest increase following heavy physical exertion. But, in such cases, making positional asphyxia claims is an attempt to shift the blame to the officers with whom the prisoner chose to engage in physical combat, rather than the prisoner's own actions (i.e., use of drugs and/or alcohol and violent exertion) and/or medical issues (i.e., preexisting cardiac or other health problems).

The Positional Asphyxia Hypothesis

The theory of positional asphyxia suffered a head-on collision with objective scientific research during the Price

¹Dr. Donald T Reay, M.D., "Effects of Positional Restraint on Oxygen Saturation and Heart Rate Following Exercise," 9 *Am. J. Forensic Med. Pathology* 16 (1988); Reay et al., "Positional Asphyxia During Law Enforcement Transport," 13 *Am. J. Forensic Med. Pathology* 90 (1992).

Legal Affairs *(continued)*

v. County of San Diego² trial – a battle between experts who had conducted research on the effects of physically restraining prisoners during or immediately after vigorous exertion. The plaintiffs' expert, Dr. Donald T Reay, M.D., (chief medical examiner for King County, Washington) is credited by the court as being the first person to hypothesize the theory of positional asphyxia. The Defendants relied on expert Dr. Thomas Newman, University of San Diego Medical Center, who had been part of a team of medical experts who conducted extensive research on the positional asphyxia theory that refuted Dr. Reay's findings.

Factual Review of Incident

Daniel Price, a chronic abuser of methamphetamine, after refusing San Diego County deputy sheriffs' demands that he exit his vehicle, aggressively resisted efforts to control and restrain him. After getting Price face down on the road, deputies handcuffed Price's wrists behind his back and shackled his ankles. He continued to kick at the deputies, so they used a second pair of handcuffs to secure the handcuffs securing his wrists to the shackles on his ankles. This method of restraint is often referred to as hogtying. During the effort to apply the restraints, deputies applied pressure to Price's torso, holding him down with a knee on his back to "communicate [the deputy's] presence." Price appeared to be experiencing trouble breathing so deputies called an ambulance. Medics responded quickly, but Price had no pulse when they arrived. Price's vital signs were briefly restored en route to the hospital, but he failed to regain consciousness.

Dr. John W. Eisele, a medical examiner for San Diego County, conducted the autopsy, concluding that the cause of death was "due to restrictive asphyxia with cardiopulmonary arrest due to maximum restraint in a prone position. . . ."³ Dr. Eisele testified that the manner in which Price was restrained prevented him from "blowing off" excess carbon dioxide. In concluding the death was the result of positional asphyxia, Dr. Eisele relied largely on the research of Dr. Reay, who was subsequently retained as an expert witness by Plaintiffs in the Price litigation.

Dr. Reay had conducted experiments that led him to believe that after physical exercise oxygen levels in the blood significantly decrease. He further concluded that restraints such as hogtying prevented the body from recovering to adequate oxygen levels by impairing the process of inhaling

and exhaling.⁴ Since no serious researcher had ever challenged or critically evaluated Dr. Reay's methodology or conclusions, it appeared that the positional asphyxia finding would not be easily refuted; however, the San Diego County Counsel's office asked Dr. Neuman to conduct a study of positional asphyxia and the hogtie method of restraint. The study which the court characterized as "sophisticated," attacked the two pillars on which Dr. Reay's conclusions were supported, that:

(1) blood oxygen levels decrease after exertion; and

(2) hogtying so impairs a subject's ability to inhale and exhale that the body cannot replenish the oxygen and "blow off" the carbon dioxide.

U.S. District Court Evaluates the Research

Dr. Neuman was able to refute Dr. Reay's conclusions, finding that blood oxygen levels do not decrease significantly after exercise. Neuman's research⁵ also found that hogtie restraint does not significantly affect blood levels of either oxygen or carbon dioxide. Plaintiffs' expert Dr. Reay conceded Dr. Newman's research "rests on exemplary methodology." The court found that, "the impairment is so minor that it does not lead to asphyxia, and in fact has no practical significance." Further, the Neuman study concluded the blood needed no replenishment of oxygen because it was already adequately supplied. Dr. Neuman compared the blood carbon dioxide levels of two groups of subjects: those who had exercised and then been hogtied and those who had exercised and not been hogtied. No difference in carbon dioxide levels was observed.

Dr. Neuman's research was persuasive to both the court and even to Dr. Reay, the plaintiffs' expert and leading proponent of the positional-asphyxia theory. The court said, "Thus, as Dr. Neuman testified and **Dr. Reay now concedes**, the hogtie restraint is 'physiologically neutral.'" The Court concluded, Dr. Neuman's study "eviscerates" Dr. Reay's conclusions. The **Price** court then turned its attention to the other research that supported the positional asphyxia hypothesis.

After Dr. Reay's retraction, little evidence is left that suggests the hogtie restraint can cause asphyxia. All of the

⁴ See Reay et al., "Effects of Positional Restraint on Oxygen Saturation and Heart Rate Following Exercise," 9 *Am. J. Forensic Med. Pathology* 16 (1988); Reay et al., "Positional Asphyxia During Law Enforcement Transport," 13 *Am. J. Forensic Med. Pathology* 90 (1992).

⁵ The Neuman research was published as "Restraint Position and Positional Asphyxia," 30 *Annals of Emergency Medicine* 578 (1997).

² 1990 F.Supp. 1230 (S.D. Cal. 1998).

³ Dr. Eisele found "acute methamphetamine abuse" as a contributing factor in Price's death.

Legal Affairs (continued)

other scientists who have sanctioned the concept of positional asphyxia have relied to some degree on Dr. Reay's work. The [Neuman] study has proven Dr. Reay's work to be faulty, which impugns the scientific articles that followed it. **Like a house of cards, the evidence for positional asphyxia has fallen completely.** (emphasis added).

After the positional asphyxia claim was dismantled, the court concluded that hogtie restraint in and of itself does not constitute excessive force when used to immobilize a violent individual who has resisted less severe restraint techniques. The court cited for support **Mayard v. Hopkins**,⁶ holding that placing a person in handcuffs and leg restraints in a prone position was reasonable as a matter of law where the person had violently resisted arrest.

The Price Court also shot down the Plaintiffs' claim that the Defendant deputies should have taken special precautions when using the hogtie technique. "Plaintiffs' argument that the deputies should have taken precautions because of the dangers of hogtying obviously fails. The [Neuman] study has shown the dangers to be fictitious, which obviates the need for precautions." The Plaintiffs' next argument was that even if positional asphyxia does not occur with persons, generally, with obese subjects such physical restraints pose a grave danger. The court found, however, "Plaintiffs have adduced no reliable evidence that suggests that Price's girth impaired his breathing." While Dr. Reay testified that hogtying a subject with a large abdomen "could have impaired his breathing," the court noted that **Dr. Reay admitted that he had no empirical evidence to support that opinion.** It is important to note that while Dr. Neuman's study included over-weight persons, he cautioned that his study would have limited applicability to extremely obese individuals.

Regarding Plaintiffs' claim that the pressure applied to Price's back by deputies impaired his breathing and caused his death. The deputies testified that in the process of handcuffing and hogtying Price, it was necessary for a deputy to apply pressure with a knee in Price's back "to control him from thrashing around." The judge compared the subduing of Price to the facts and findings in **Estate of Phillips v. City of Milwaukee**,⁷ where the Court ruled it was reasonable for officers to apply enough weight to keep the arrestee from rolling over and kicking while he was hogtied. The Court in **Phillips** had also found it reasonable that the deputy continued the pressure on the back for a few seconds after he had been secured. In **Price** the court found it reasonable that a deputy continued to main-

6 ⁶105 F.3d 1226, 1227-28 (CA8 1997).

7 ⁷123 F.3d 586, 593 (CA7 1997).

tain some pressure with a knee on Price's back even after he had been hogtied. The deputy testified that he did so "to convey a sense of control in a tense, confused situation" and to prevent Price from hurting himself. Regarding the more-or-less constant pressure to Price's back, the Court ruled, "Plaintiffs have not proven that the hogtie as applied posed any danger to Price, or that it lead to his death. Accordingly, the Court concludes that the deputies used reasonable force when they placed Price fade-down and hogtied him, with incidental pressure to his torso."

Price is a very important decision in responding to positional asphyxia claims. However, it is not the final punctuation on the issue. Part two, "The Positional Asphyxia Hypothesis: Lessons Learned and Precautions," will follow. ✪



BI Incorporated Selected to Operate Day Reporting Centers in Pennsylvania and Louisiana

BOULDER, Colo. – August 11, 2010 – Luzerne County, Pennsylvania and the Louisiana Department of Corrections (DOC) and have both selected BI Incorporated to operate intensive Day Reporting Centers (DRC) to reduce recidivism and promote successful offender reentry to local communities.

The Luzerne County, Pa. DRC, located in Wilkes-Barre, will provide cognitive behavioral treatment and training services aiming to alleviate jail overcrowding while reducing chronic recidivism. Services will be provided for approximately 150 clients. The center opened on July 19.

A DRC located in Shreveport, La. will supplement supervision efforts of the Probation and Parole Division to manage higher risk parolees and probationers living in the community who are non-compliant with supervision requirements and are on the cusp of being sent back to jail. The program began operation on August 9.

BI Day Reporting Centers provide intensive cognitive behavioral treatment and training geared to change criminal behavior including: substance abuse treatment, adult basic education and GED prep, anger management, employment skills building, linkage to community services, and much more.

To learn more about BI Incorporated, visit www.bi.com or call 800.701.5171

Phencyclidine (PCP)

Acute Phencyclidine Intoxication
and related drug information
(www.drugabuse.org)

Therapeutic use; Treatment;
PCP rehab
(www.ecstasy.com.ua)

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SEARCH

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PCP/Phencyclidine

Brief Description: PCP is a synthetic drug sold as tablets, capsules, or white or colored powder. It can be snorted, smoked, or eaten. Developed in the 1950s as an IV anesthetic, PCP was never approved for human use because of problems during clinical studies, including intensely negative psychological effects.

Street Names: Angel dust, ozone, wack, rocket fuel

Effects: PCP is a "dissociative" drug, distorting perceptions of sight and sound and producing feelings of detachment. Users can experience several unpleasant psychological effects, with symptoms mimicking schizophrenia (delusions, hallucinations, disordered thinking, extreme anxiety).

Statistics and Trends: In 2009, 122,000 Americans age 12 and older had abused PCP at least once in the year prior to being surveyed. *Source: National Survey on Drug Use and Health (Substance Abuse and Mental Health Administration Web Site)*. The NIDA-funded 2010 Monitoring the Future Study showed that 1.0% of 12th graders had abused PCP at least once in the year prior to being surveyed. *Source: Monitoring the Future (University of Michigan Web Site)*

NIDA's Featured Publications



[NIDA InfoFacts: PCP/Phencyclidine](#). Brief description of the health hazards and extent of use of PCP. For a general audience. (Fact sheet).
[En Español](#)



[NIDA Research Report: Hallucinogens and Dissociative Drugs](#). Detailed look at current research findings on PCP, LSD, Ketamine, and others. For a general audience. (Report).
[En Español](#)

Publications:

- [Mind Over Matter](#) - An eight-part series designed to encourage young people in grades five through nine to learn about the effects of drug abuse on the body and the brain.
- [Additional Publications](#)

Research Monographs (Archives):

NEED A TREATMENT REFERRAL?
1-800-662-HELP
findtreatment.samhsa.gov

See Also:

Other Recommended Reading

- [Drugs, Brains, and Behavior - The Science of Addiction](#)
- [Preventing Drug Use Among Children and Adolescents: A Research-Based Guide for Parents, Educators, & Community Leaders, 2nd edition](#)

NIDA's Publication Series

- [Research Reports](#)
- [InfoFacts](#) (fact sheets)
- [NIDA Notes](#) (newsletter)
- [Addiction Science & Clinical Practice](#) (journal for researchers & health care providers)
- [Mind Over Matter: Drug info for grades 5-9](#)
- [Topics in Brief](#)

Other Web Sites

- [NIDA for Teens](#)
- [MEDLINEplus Health Information on Substance Abuse](#) - National Library of Medicine, NIH
- www.abovetheinfluence.com - Office of National Drug Control Policy

- [Monograph 133: Sigma, PCP, and NMDA Receptors](#)
- [Monograph 64: Phencyclidine: An Update](#)
- [Monograph 21: Phencyclidine \(PCP\) Abuse: An Appraisal](#)
- [Additional Research Monographs](#)

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Controlled Substances

<http://ecstasy.com.ua/pcp-phencyclidine>

PCP (Phencyclidine): Therapeutic use, Treatment. PCP rehab.

Last modified: Saturday, 20. June 2009 - 2:44 pm

Official names: [Phencyclidine](#), PCP, phencyclidine hydrochloride, phenyl cyclohexyl piperidine, Sernylan, Sernyl

Street names: AD, amoeba, angel, angel dust, angel hair, angel mist, angel poke, animal crackers, animal trunk, animal tranquilizer, aurora borealis, bad pizza, belladonna, blud madman, boat, busy bee, butt naked, Cadillac, cheap [cocaine](#), cristal, cliffhanger, Columbo, cozmo's, crazy coke, crazy Eddie, crazy edge, crystal, crystalT, cycline, cyclones, Detroit pink, devil's dust, dipper, do it Jack, drink, dummy dust, dummy mist, dust, dust of angels, dusted parsley, elephant, elephant tranquilizer, embalming fluid, energizer, erth, fake STP, flakes, fresh, good, goon, goon dust, gorilla tab, gorilla biscuits, green leaves, green tea, greens, guerilla, HCP, heaven and hell, herms, Hinkley, hog, horse tracks, horse tranquilizer, illy, jet, jet fuel, K, kaps, K-blast, killer, kools, krystal, KW, LBJ, leaky bolla, leaky leak, lemon 714, lethal weapon, little ones, live ones, log, loveboat, madman, mad dog, magic, magic dust, mauve, mean green, milk, mint leaf, mintweed, monkey dust, monkey tranquilizer, more, mumm dust, new acid, new magic, niebla, OPP, orange crystal, ozone, paz, peace pill, PeaCe pill, peep, Peter Pan, pig killer, pit, puffy, purple, purple rain, rocket fuel, scaf-fle, scuffle, sheets, Shermans, sherms, smoking, snorts, soma, special LA coke, spores, squeeze, STP, super, superacid, super kools, surfer, synthetic cocaine, synthetic THT, taking a cruise, TCP, t-buzz, tac, tic tac, tic, tish, titch, trunk, t-tabs, TTi, TT2, TT3, wet, white horizon, wobble weed, wolf, worm, yellow fever

Drug classifications: Schedule II, [hallucinogen](#)

Key terms

AFTERSHOCK: Similar to a flashback with LSD, this is the reoccurrence of symptoms associated with taking PCP days, weeks, or months after taking the drug. This happens because PCP is stored in fatty cells in the body.

BUMMER TRIP: Another term for a bad trip, this refers to negative experiences while taking a drug.

DEPERSONALIZATION: A feeling of detachment from one's own mind and body. People experiencing deper-sonalization might feel they are watching themselves from a distance.

DISSOCIATIVE: A drug action that makes people feel cut off from themselves, their bodies, and reality.

DUSTED: Being intoxicated on PCP.

DUSTER: Someone who regularly takes PCP.

DUSTING: Adding PCP to another drug.

PCP ORGANIC MENTAL DISORDER: A condition similar to schizophrenia that can occur as a result of taking PCP and last for weeks, months, or even a year. It is characterized by confusion, disordered thinking, paranoia, and speech problems.

SCHIZOPHRENIA: A medical condition that falls under the category of psychotic disorders. People with schizophrenia suffer from a variety of symptoms, including confusion, disordered thinking, paranoia, [hallucinations](#), emotional numbness, and speech problems.

Overview

Phencyclidine, commonly known as PCP, is a difficult drug to categorize. The United States Drug Enforcement Administration (DEA) categorizes it as a hallucinogen, like LSD, because it can make people see, hear, or sense things that are not there. Scientists categorized PCP as a dissociative anesthetic because it has a profound numbing effect and makes people feel like they are somehow separated from their bodies.

In fact, PCP was first developed as an anesthetic for use during surgical procedures, but side effects led to its falling out of favor for this purpose in the 1960s. It was used as an animal anesthetic in veterinary medicine for a few years, but as people on the street began to abuse the drug more and more, all legal manufacture of PCP stopped in 1978. The effects of taking PCP are unique. At lower doses, the drug causes stimulation; while at higher doses, it tends to have a depressant effect. Most people find a PCP high to be disturbing because of the sense of separation from the body it produces. In fact, taking PCP results in the same type of experiences that sensory deprivation does, such as altered awareness of the boundaries of the body and dissociation from body parts. This strange sensation makes many people panic. Such people have been known to seriously harm themselves and others.

People on PCP have impaired judgment similar to that which is produced by drinking too much [alcohol](#). The drug can also numb the body so much that people are virtually impervious to pain. The resulting combination can be deadly. People on PCP may do crazy things, like jump into frigid water or set themselves on fire, and not feel the pain that it produces until severe injury or death results.

A PCP high can be so unpleasant that many people will not knowingly take the drug more than once. However, PCP is quite easy and cheap to produce. As a result, PCP is very often sold on the street disguised as another drug, from [marijuana](#) to LSD to [mescaline](#).

PCP acts on several chemicals in the brain, called neurotransmitters, including dopamine, norepinephrine, serotonin, NMDA, and GABA. Recently, studies in animals have suggested that taking PCP results in brain changes that are associated with the mental disorder schizophrenia. People with schizophrenia have many of the same symptoms as people taking PCP, including paranoia, hallucinations, delusions, disordered thinking, and disrupted speech.

PCP is very similar to another drug that was also initially developed as an anesthetic, [ketamine](#). Both these drugs have experienced a recent increase in their popularity as drugs of abuse, particularly among those who attend clubs and all-night dance parties called raves.

PCP is a completely artificial substance. That is, it is not derived from anything in nature; it is made purely from industrial chemicals. In fact, police are often tipped off to the presence of an illegal PCP laboratory when neighbors complain of terrible chemical smells or when careless criminals create chemical fires and explosions. In its pure form, PCP is a white crystalline powder that easily dissolves in water to produce a clear liquid. Often, street PCP is contaminated with chemical impurities, which can change a white powder or clear liquid to tan or brown and change the consistency from powder to sludge. Purity of street PCP can range from 5% to 100%, but 100% pure PCP is considered to be extremely rare on the street. A common contaminant in PCP is a chemically related drug called PCC, which releases cyanide when burned. It does not produce enough cyanide to cause symptoms with one use, but use over time can lead to brain cell and nerve damage.

Street PCP is often contaminated with other chemicals because its easy and cheap manufacture makes it attractive to drug producers without a chemical background. These amateur drug makers do not know how to purify their final product or perform proper experiments to test for purity.

PCP is easy and cheap to manufacture but not very popular, so it is often sold as another drug. Most often, it is sold on the street as THC, the active ingredient in marijuana. In fact, real THC is almost impossible to obtain on the street. PCP might also be sprayed or sprinkled on oregano, parsley, or another herb and sold as marijuana. Alternatively, lower quality marijuana might be laced with PCP to make it seem more potent. Other drugs that PCP is sold as include LSD, cannabidiol, mescaline, [psilocybin](#), amphetamine, [methamphetamine](#), peyote, cocaine, Hawaiian woodrose, and other psychedelics. In one study, only 3% of analyzed street drugs containing PCP were sold as PCP.

PCP is very often mixed with other drugs to produce special highs. PCP mixed with crack is known as wack, space base, beam me up Scottie, clicker, dusty roads, DOA, missile basing, mist, space cadet, space dust, tragic magic, and wickey. PCP mixed with marijuana is known as supergrass, killer weed, super weed, dusters, crystal supergrass, killer joints, ace, bohnd, chips, frios, lovelies, peace weed, stick, yerba mala, and zoom. PCP combined with [heroin](#) is known as oil or polvo.

Other combinations include PCP with LSD, (black acid), cocaine, [methamphetamine](#), amphetamine, and [MDMA \(ecstasy\)](#). PCP may also be combined with more than one drug at a time.

There are several drugs that are chemically similar to PCP, which are often sold on the street as PCP or other drugs. These include PCPy, TCP, and PCE. Given the makeshift ways in which illegal PCP is manufactured, probably many people who think they are producing and selling PCP are actually producing one of these similar drugs. They are classified as Schedule I [hallucinogens](#) by the DEA, which is the same category as LSD.

RPD Policy 4.31F

(Rev. 1, 1/8/96)

Searching, Handcuffing and
Prisoner Transportation:

Total Appendage Restraint
Methods and Equipment

Rev. 1 of this policy was in
effect at the time of this incident.

Rev. 2 went into effect on
March 3, 2011

F. TOTAL APPENDAGE RESTRAINT METHODS AND EQUIPMENT:

1. PURPOSE:

The purpose of this policy is to provide police officers with guidelines in the use of total appendage restraining methods. Total appendage restraining methods are designed to be used in various situations that require the restraint of a violent or uncooperative suspect, preventing or limiting injury to officers and/or the suspect and/or damage to property.

2. DEFINITIONS:

- a. **HOBBLE** - A restraining device used primarily to secure the legs and ankles of a subject.
- b. **“RIPP” HOBBLE** - A restraining device made of one-inch wide polypropylene webbed belting with a tested strength of 700 pounds, equipped with a one-inch wide steel, alligator-jawed, friction-locking clip, and bronze swivel.
- c. **“TARP” - Total Appendage Restraint Position** - The method employed by officers to restrain handcuffed suspects in a seated position, using RIPP or similar type equipment.

3. POLICY:

- a. Officers shall only use department approved restraining methods, when such use appears warranted under the circumstances. Currently, only restraining hobbles that are of the “RIPP” design or similar are approved. This does not preclude officers from using other restraining devices if the “RIPP” or similar type hobbles are not immediately available. However, the use of other devices or systems is discouraged, unless absolutely necessary.
- b. Officers shall not restrain or transport suspects in a “Hog-Tied” position. For the purpose of this policy, Hog-Tied refers to the method of restraining the hands and feet together behind the suspects back while the suspect is lying in a face down position. The T.A.R.P. is not a hog-tie position. If it is necessary to control and restrain a suspect by the use of two or more officers transferring their body weight onto the suspect while the suspect is positioned face down on the ground, officers shall immediately, upon restraining the suspect, reposition the suspect into a sitting or face-up position. Officers shall continually monitor the suspect for signs of Cocaine Psychosis (Cocaine Overdose) or Excited Delirium (“Other” Drugs Overdose). If in doubt, officers should arrange to have the suspect transported to the hospital prior to booking. (Refer to training bulletin 96-02.)

4. APPROVED USES OF THE RIPP HOBBLE:

- a. To secure the feet and legs of a suspect to control running, kicking, and fighting.
- b. To prevent a suspect from standing.
- c. To secure a violent and/or uncooperative suspect in a total appendage restraint (T.A.R.P.) position.
- d. To secure a suspect’s feet in the police unit to prevent self injury, injury to

officers, and/or damage to police units.

- e. As approved by a supervisory officer.

5. **PROCEDURE:**

When the hobble is used on a suspect who meets the listed criteria for use, the following procedures will be employed as they apply:

- a. When transporting a suspect in the rear of the unit with the suspect's ankles secured with the hobble, officers will attempt to seat suspect in an upright position in the passenger side, back seat. After seat belting the suspect, the loose end of the hobble will be secured to the front seat area in a manner which prevents the suspect from kicking. In no circumstances will the loose end of the hobble be left outside of the back or front door.
- b. A suspect who is continually combative and/or uncooperative may be restrained in the T.A.R.P. position. **A suspect restrained in this position shall not be transported face down on their chest.** The suspect can be placed on his/her side and his/her feet secured as above. When a suspect is transported in this position, the transporting unit will consist of two officers. The second officer will continuously monitor the suspect's condition. Medical attention shall be sought if the suspect appears to be having difficulties in breathing, lapse in consciousness, or other medical problems.
- c. A suspect may be kept in the T.A.R.P. position for as long as it appears necessary under the circumstances of each particular situation. The suspect should be released from the feet to handcuff (T.A.R.P.) position when it reasonably appears that the suspect is cooperative and non-combative.
- d. The use of the "RIPP" or other approved hobble devices shall be fully documented in the arrest reports. This documentation shall include the observable symptoms and specific actions of the suspect which required the use of a restraint device.
- e. Officers who use the hobble restraint on a suspect, shall immediately notify a supervisory officer when the hobble restraint device is used in incidents as outlined in the Use of Force Guidelines, Section 4.30 (I).

RPD Policy 4.50

(5150 WIC)

Custody and Detention
of
Mental Patients

4.50 CUSTODY AND DETENTION OF MENTAL PATIENTS:

A. AUTHORITY:

1. Section 5150 of the Welfare and Institutions Code states, in part, "When any person, as the result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer . . . may, upon probable cause, take the person into custody and place him or her in a facility designed by the County for the purpose of 72-hour evaluations and treatment . . ."
2. Riverside County General Hospital is such a facility.

B. POLICY:

1. Riverside Police Department officers shall abide by and adhere to the provisions set forth in the Welfare and Institutions Code pertaining to the custody and detention of persons falling within the definitions described in Section 5150 of the Welfare and Institutions Code.
 - a. When responding to, or initiating investigations into criminal activities, officers will label the investigation as to the type of criminal activity involved regardless of whether or not the suspect appears to meet the requirements of 5150 WIC.
 - b. If the suspect is in such an obvious mental state that the jail would not accept that person, then the suspect should be lodged at County Hospital with criminal charges pending.
 - c. Reports carried as 5150 WIC will be only those that are non-criminal in nature.
2. Officers shall obtain supervisory approval for any 5150 detention.
3. **Violent Patients:** If possible, violent subjects should be transported by ambulance.
4. **Use of Force:** Officers shall act in accordance with law and Department procedure when using force to affect a detention for 5150 WIC.
5. **Unconscious Person:** In all cases, unconscious persons shall be first evaluated by emergency medical personnel and then transported by ambulance to a hospital.
6. **Application for 72 Hour Detention for Evaluation and Treatment:**

Officers shall complete the applications for 72-hour detention.

 - a. Officers must remain with 5150 subjects until released by hospital authorities.
 - b. If an officer should experience an unreasonable delay at the hospital, a supervisor should be notified, so that he/she may attempt to expedite the process.

7. Weapons in the Possession of 5150 Subjects:

- a. In accordance with Section 8102 WIC, officers shall confiscate and retain custody of any firearm or other deadly weapon which is owned, in the possession, or under the control of any person who has been detained or apprehended for examination of his/her mental condition, or who is a mental patient in any hospital or institution, or who is on leave of absence from such hospital.
 - b. "Deadly weapon" means any weapon, the possession or concealed carrying of, which is prohibited by Section 12020 of the Penal Code. (WIC 8100, Stats. 1985)
 - c. If the 5150 subject has been assessed and admitted to Riverside General Hospital or other County mental health facility for evaluation and treatment because that person is a danger to himself/herself or to others, Section 8103 WIC prohibits that individual from possessing the confiscated firearm or other deadly weapon for a period of five years. The firearm or other deadly weapon shall not be released "except upon an order of the Superior Court based upon a finding that the person may possess the firearm or other deadly weapon without endangering others." (WIC 8103(f)(4))
 - d. Alternatively, if the 5150 subject is detained for the purpose of a mental health evaluation but is not admitted to the facility following the initial assessment, the firearm or other deadly weapon must be returned to the subject unless the City Attorney initiates a petition in the Superior Court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others within 30 days of the subject's release. (WIC 8102) For further direction, please refer to Section 4.47 regarding the seizure of firearms or deadly weapons from mentally disturbed persons.
8. In all cases, officers shall complete a report when persons are detained for a 5150 WIC evaluation.

9. Handling 72-Hour Mental Health Evaluation (5150) calls at Riverside General Hospital:

Uniformed officers are occasionally summoned to Riverside General Hospital (RGH) in order to execute the necessary application for a 72-hour mental health evaluation pursuant to Welfare and Institutions Code, Section 5150.

Officers should be aware that completing an application for 72-hour evaluation on a subject effectively transfers probable cause and any potential liability for the detention from the hospital to the Riverside Police Department.

Members of the attending staff at RGH are authorized by Section 5150 to take an individual into custody for the purpose of a 72-hour mental health evaluation. Therefore, it is recommended that officers refuse to participate in the mental health detention of individuals who have not been taken into their custody. This will eliminate potential civil liability surrounding the detention.

Other Questions and Answers

Commissioner Slawsby's

Question Regarding

Involved Officers'

Mental Health Issues Training

Response to Question Posed by Commissioner Slawsby regarding the Acevedo OID

- 1. Commissioner Slawsby asked about the training that the officers involved in the Acevedo OID had prior to the event.**

This information was requested from RPD. We learned that each officer received training in dealing with people who suffer from mental illness. The training block includes a portion on "exciting delirium." One officer had the training on June 5, 2007, and the other on July 18, 2007. The Acevedo incident occurred on October 31, 2008.

Section D

CPRC Independent
Investigator Reports:

Mr. Gurney Warnberg
Baker Street Group

Mr. Mike Bumcrot
Bumcrot Consulting

Section E

RPD Policy & Procedure 4.8
(Rev. 5, 10/20/08)

Investigations of
Officer Involved Shootings
and Incidents Where Death or
Serious Likelihood of Death
Results

Section F

RPD Policy & Procedure 4.30
(Rev. 7, 11/1/04)

Use of Force Policy

Section G

RPD Policy & Procedure
4.31 F
(Rev. 1, 1/8/96)

Searching, Handcuffing,
and
Prisoner Transportation

