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Report of the Law Enforcement Involved Fatal Incident In-Custody Death of
Michael Sanchez Hernandez on October 30, 2018

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Privacy Statement

This report includes redactions of the names and other identifying information of victims, witnesses, neighbors, and Mr. Hernandez's family members. Specific addresses are also not provided in this report. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as the readability of this report, the victims and witnesses will be indexed as follows:

- Victim 1 (V-1), the girlfriend of Hernandez
- Victim 2 (V-2), the daughter of Hernandez
- Witness 1 (W-1), Hernandez's neighbor
- Witness 2 (W-2), Hernandez's neighbor
- Witness 3 (W-3), Hernandez's neighbor
- Witness 4 (W-4), Hernandez's neighbor
- Location #1, Hernandez residence and location of the initial calls for service

EXECUTIVE SUMMARY

On October 30, 2018, at approximately 3:25 a.m.¹, Contra Costa County Sheriff's Office (CCCSO) Dispatch Center began receiving calls about a female, later identified as V-1, screaming for help and a naked man, later identified as Michael Sanchez Hernandez, at Location #1 on Wells Road in Oakley, California. According to the callers, Hernandez was running down the street and around the area holding a toddler in a threatening manner. The child was later identified as V-2, Hernandez's three-month-old daughter. Additional callers indicated there was a male subject that was completely naked and banging on neighbor's doors. At the time of the incident, Hernandez lived at Location #1 with V-1 and V-2.

Prior to the incident, Hernandez and V-1 were inside of Location #1 using cocaine and had engaged in sexual intercourse. V-1 went to sleep in her bedroom and V-2 was asleep in her crib in the same room. V-1 was awoken by Hernandez who was standing in their bedroom naked and holding V-2. V-1 described Hernandez as acting weird and using words she did not understand. Hernandez said V-2 had the devil inside of her and he needed to get it out of her. Hernandez was holding V-2 upside down by one of her arms, in what V-1 described as an unsafe manner. He refused to give V-2 back to V-1 and he walked outside onto the landing. V-1 was concerned for the safety of V-2 as Hernandez was put his fingers in the mouth of V-2, causing her to cough, gag, and vomit. Hernandez stated he was trying to "remove the demon inside of her."

V-1 grabbed a knife from her knife block in the kitchen and followed Hernandez outside onto the landing. Hernandez refused to stop and V-1 stabbed Hernandez in the back twice with the kitchen knife. A neighbor, W-1, heard V-1 screaming. W-1 then heard someone ring her doorbell as well as someone pounding on her front door. W-1 looked out of the peep hole and observed Hernandez completely naked and holding V-2 by her arm. W-1 heard V-1 screaming, "Help me, help me! He's gonna kill me!" One of Hernandez's neighbors, W-2, heard a woman screaming. He got dressed, grabbed a baseball bat, and ran outside.

W-1 opened her front door and Hernandez gave V-2 to W-1. Hernandez said, "Take my baby. Take my baby. Here, just take my baby." V-1 was screaming, "Please help me, help me!" W-1 retrieved V-2, closed the front door, and then called the police. W-1 continued to look outside through her peep hole. As Hernandez held V-1 in a bear hug, W-2 believed Hernandez was trying to throw V-1 over the balcony. W-2 ran up the stairs while holding the baseball bat in his right hand and pushed Hernandez against a wall. V-1 was able to break free and run down the stairs.

V-1 returned to her apartment, hid the knife in her bedroom and called Hernandez's parents. A third neighbor, W-3, ran up the stairs and onto the landing to assist W-2. They were able take Hernandez to the floor. A fourth neighbor² arrived and assisted W-2 and W-3. Hernandez

¹ All times and distances listed in this report are approximations.

² This neighbor left the area as the Contra Costa County Sheriff's Office Deputies were arriving. He was never identified, but witnesses described him as a black male adult, 6 feet tall, and weighing between 240 and 260 pounds.

continued to resist and began foaming from the mouth and speaking in “tongue” according to the witnesses.

At approximately 3:38 a.m., Deputy Erik Vawter, CCCSO, arrived on the scene and was directed to the above listed individuals by bystanders. Deputy Vawter said he observed the above listed individuals holding down Hernandez, who was prone on his stomach, on the landing of Location #1. Deputy Vawter stated he squatted down and placed handcuffs on Hernandez. Shortly thereafter, Deputy Brian McDevitt, CCCSO, arrived and they rolled Hernandez over and observed him foaming from his mouth. Hernandez was unresponsive and Deputy McDevitt performed a sternum rub and there was no response. Additionally, they were unable to locate a pulse. They removed the handcuffs and rendered emergency medical aid.

At 5:51 a.m., Chief Inspector Paul Mulligan, Contra Costa County District Attorney’s Office (CCDAO) was notified of the incident. The CCDAO sent Deputy District Attorney Barry Grove along with a group of three senior inspectors to investigate the incident on behalf of the office.

Hernandez was transported to Sutter Delta Hospital where attempts to save his life were unsuccessful. Hernandez was unable to breathe on his own and taken off life support. He was pronounced dead on October 31, 2018, at 1:00 p.m. by Dr. Hsie-Wen Shu.

No officers were injured during this incident. No obvious injuries were observed on V-2. Bruising was observed on V-1’s left cheek and her legs. V-1 stated some of the bruises on her legs were old injuries and could not recall when the other bruises on her legs had occurred.

On November 2, 2018, the Contra Costa County Sheriff’s Coroner’s Office conducted an autopsy on Hernandez’s remains. The forensic pathologist determined the cause of death to be complications of acute cocaine toxicity.

The Contra Costa County Sheriff’s Office Coroner’s Inquest was held on Tuesday, September 24, 2019. The jury returned a verdict of death caused by accident.

INTRODUCTION

This report is the final step in the CCCDAO investigation of the Contra Costa County Sheriff's Office (CCCSO) in-custody death of Michael Sanchez Hernandez on October 31, 2018, in Oakley, California.

The CCCDAO and every law enforcement agency in Contra Costa County follow the Law Enforcement Involved Fatal Incident Protocol ("the Protocol")³ to investigate incidents when officers or civilians are shot, killed, or die during an encounter with law enforcement. Under the Protocol, the CCCDAO investigates all in-custody deaths in Contra Costa County for the purpose of making an independent determination of criminal liability. The sole purpose of the District Attorney investigation is to determine if there is proof beyond a reasonable doubt that an individual involved in the law enforcement involved fatality committed a crime.

Pursuant to the Protocol, immediately after an in-custody death, the involved law enforcement agency is required to notify the appropriate district attorney personnel. Once notified, trained and experienced members of the District Attorney's Office respond to the scene and begin the criminal investigation. In addition, criminal investigators from the law enforcement agency involved in the incident and from the jurisdiction where the incident occurred, if different, respond to the scene as well. It is important to note that although these investigations happen simultaneously, each agency conducts its own independent investigation.

As part of the criminal investigation, law enforcement officers and civilians who witnessed the incident may be interviewed, evidence is collected at the scene and may be submitted to the county crime lab for testing and analysis, in addition to any other relevant investigative work necessary to complete the investigation. The Contra Costa County Sheriff's Office Crime Lab responds to every incident and is responsible for evidence collection of all in-custody deaths.

During the course of the criminal investigation, an officer or deputy has the right to be represented by an attorney. They may voluntarily choose to provide a statement, physical evidence, or other relevant information during the criminal and administrative investigations. Under the law, neither an officer nor civilian can be compelled to give a statement as part of a law enforcement agency administrative investigation only. (See, Public Safety Officers Procedural Bill of Rights Act, Government Code sections 3300 et seq.). In accordance with the law, the CCCDAO does not participate in compelled administrative investigation interviews and does not review them as part of the independent criminal investigation. There are very narrow circumstances where an exception to this rule is allowed.

Independent of the CCCDAO and in accordance with the Protocol, the Coroner's Division of the Contra Costa County Sheriff's Office (CCCSO) conducts a Coroner's Inquest following most deaths

³ Contra Costa County was one of the first counties in the country to adopt a fatal incident protocol between the District Attorney and the law enforcement agencies within the county. The complete LEIFI Protocol document can be located on the Contra Costa County District Attorney's Office website.

that involve law enforcement personnel or law enforcement operations or activities within Contra Costa County.

The Coroner's Inquest is open to the public, conducted by a hearing officer (a private attorney hired by the Coroner's Division) and is held in front of a jury of citizens randomly selected from the Contra Costa County Superior Court jury pool. During the Inquest, the hearing officer questions witnesses, and additional evidence may be presented. After hearing all of the evidence, the role of the jury is to decide whether the death was by (1) natural causes, (2) suicide, (3) accident, or (4) at the hands of another person other than by accident (i.e. homicide). The jury's decision has no legal bearing on the civil or criminal investigations or liability of any person(s) involved in the Incident.

*Note – This report contains sensitive information, photos, and or descriptions of an in-custody death that resulted in the death of a person. The information contained herein is sensitive and the reader of this report may find some of this information to be objectionable.

INVESTIGATION

Overview

On October 30, 2018, at approximately 5:51 a.m., Paul Mulligan, CCCDAO Chief of Inspectors, received a call from the CCCSO Dispatch Center stating that an in-custody death had occurred in the city of Oakley, California. Chief Mulligan made the decision to have Deputy District Attorney (DDA) Barry Grove and three District Attorney Senior Inspectors respond to the scene to conduct the criminal investigation on behalf of the CCCDAO.

When the CCCDAO investigative team arrived at Wells Road, the crime scene was being physically guarded by CCCSO personnel and the entire surrounding area was being marked off with crime scene tape to aid the preservation of any physical evidence. Our team also observed the location of key items of evidence, paying particular attention to the area where the incident took place. After CCCDAO investigators reviewed the scene, the CCCSO Forensics Division (Crime Lab) was notified and arrived on scene to document their findings and collect evidence.

After walking through the crime scene and reviewing the associated evidence, the CCCDAO investigative team joined the CCCSO Detectives at the Delta Station in Oakley, CA. A joint briefing with both agencies was held to give an overview of the incident to ensure everyone with an active role in the investigation had the same information before any further steps were taken in the investigation.

After the briefing, DDA Grove assigned each of the three CCCDAO senior inspectors different investigative tasks. The investigative assignments were as follows:

- Senior Inspector Aaron Ross – Interview the CCCSO Deputies who were categorized as actors
- Senior Inspector Mike Morley – Interview neighbors and witnesses
- Senior Inspector Eric Solzman – Interview fire and medical personnel

Consistent with the Protocol, each senior inspector was accompanied by a CCCSO Detective when performing the assigned investigative tasks. The deputies involved in the incident were interviewed separately and were represented by an attorney after having been sequestered⁴.

The CCCSO deputies do not wear body worn video cameras; therefore, the CCCDAO personnel were not able to view video footage of the incident prior to interviewing the deputies who were categorized as actors.

Once the scene was processed and all the interviews were completed, the next steps in the investigation were to await the formal autopsy results, the completion of the crime lab testing, and the Coroner's Inquest hearing.

⁴ The process where the involved officer(s) are physically separated and isolated from other immediately following a use of force incident and are ordered to not discuss the incident with anyone, except their attorney.

Overall, the CCCDAO investigation of the in-custody death investigation of Hernandez was comprehensive, thorough, objective, and independent. In all, three CCCSO deputies, three firefighter/emergency medical personnel, and eight civilian witnesses were interviewed; along with two crime scenes being processed for evidence (Location #1 and the landing next door to Location #1). This report represents hundreds of hours of investigation conducted by the CCCDAO and the CCCSO.

Evidence Reviewed

- The crime scenes, Location #1 on Wells Road and the landing next door to Location #1, Oakley, California
- Dispatch records and logs of the incident
- 9-1-1 audio recordings
- California Department of Justice criminal history information involving Hernandez
- Prior police reports involving Hernandez
- Interviews of all the deputies categorized as actors (2), and witnesses (1)
- Interviews of all civilian witnesses associated with this incident (8)
- Interviews of the responding support personnel
- Autopsy of Hernandez, by CCC Sheriff's Coroner's Office (Report Number 2018-5075)
- CCC Forensics Services Division Report, 18-4200-1, 18-4200-2, 18-4200-3, 18-4200-4
- CCCSO Coroner's Inquest testimony and findings, 2018-5075

Crime Scene Description

There are two crime scenes associated with this incident: (1) Location #1, an apartment on Wells Road, Oakley, CA; and (2) the landing of a neighbor's residence on Wells Road, Oakley, CA.

The housing development is in the Town of Bethel Island, however the respective addresses to these homes share an "Oakley" address. The development consists of condominiums and most are situated within a gated portion of the housing track. Wells Road runs in a northwest to southeast direction and runs parallel with a channel of waterway that bridges the "Dutch Slough" and "Sand Mound Slough" together. Each building consists of multiple condominiums. The building where the incident occurred has approximately sixteen (16) condominiums that each share a common wall. The condominiums are on the second level of every building and for every pair of condominiums, there is a set of stairs leading up to a common landing that is shared between the two condominiums. Every condominium has their own front porch area off to the side of the landing. Each individual condominium is two-story with a narrow rear balcony, similar too a catwalk area, that joins each section of condominiums with the next-door neighbor. Each building has several sections of ground level parking underneath for the tenants to park.

The condominium located on Wells Road is where the initial set of events took place and where Hernandez, V-1, and V-2 lived. The building is described as a second story condominium. The color of the building is cream with light blue trim and a brown composite roof. The numbers of the residence are metal and affixed to a concrete pillar.



Photograph depicting the front porch area and door to Witness #1 Condominium

Crime Scene Evidence Recovery

The evidence at the crime scene located inside of the apartment was processed by criminalists from the CCCSO Crime Lab. Evidence recovery, scene documentation, and photographs were completed by the lab. Damage to the front screen door, front door, and master bedroom door at Location #1 was documented.

A California Driver's License photograph in the name of Hernandez was located inside Hernandez's wallet on the fireplace mantel. Next to Hernandez's California Driver's License was a

clear plastic baggy containing a green leafy substance, which was later confirmed to be marijuana. A \$20.00 dollar bill was found in a container, on top of a vanity, on the right side of the upstairs bedroom. The \$20.00 dollar bill was loosely rolled and appeared to have a white powdery residue⁵ on the inside of the roll. A kitchen knife, reportedly used by V-1 to cut Hernandez, was collected from the drawer of the nightstand in the master bedroom.

Numerous stains were tested for the presence of blood. Blood was indicated based on a positive o-tolidine presumptive test result from the exterior screen door and adjacent wall of W-1's residence. The remaining tested stains were negative for the presence of blood. The apparent blood stains were collected. A baseball bat was collected from the landing area of W-1's residence.



Photograph depicting W-2's metal baseball bat and the location it was recovered

Michael Sanchez Hernandez – Relevant Prior incidents

A review of Hernandez's criminal history record revealed that he does not have any relevant prior contacts with the CCCSO. However, Hernandez does have prior arrests for battery and drug related offenses.

On July 15, 2003, Hernandez was convicted of a misdemeanor in the Superior Court in Fremont, California for violating Penal Code (PC) section 242, Battery on Person, and was convicted of a misdemeanor and sentenced to three years of formal probation, five days in county jail, and a fine.

⁵ The lab results later confirmed that this white powdery residue was cocaine residue

On March 8, 2007, Hernandez was convicted of a misdemeanor in the Superior Court in Fremont, California for violating Penal Code (PC) section 415(1), Fight/Challenge Fight Public Place. He received three years formal probation, ten days in county jail, and a fine.

On June 17, 2016, a warrant was issued in Oakland, California via the Alameda County Superior Court for Hernandez's arrest for violation of PC 243(E)(1), Spousal Battery. Hernandez was arrested for the above listed warrant in February of 2018, but the charges were dismissed in the interest of justice. The address where this incident took place is a prior address of record for Hernandez and V-1.

FACTUAL SUMMARY

On October 29, 2018, at approximately 11:00 p.m., Hernandez and V-1 were using cocaine and engaging in sexual intercourse inside of Location #1 while their daughter, V-2, was present. V-1 fell asleep.

The following information is meant to give the reader a detailed understanding of how the events unfolded. The remainder of this summary will be relayed according to a chronological timeline of when the events occurred⁶.

On October 30, 2018, just prior to 3:25 a.m., Hernandez went into the bathroom to use cocaine. V-1 was awoken by Hernandez and he was naked, standing in their bedroom, V-2. Hernandez was acting strange, sweating profusely, and using words with no apparent meaning. V-1 believed Hernandez appeared to be suffering from an overdose of cocaine. Hernandez said the devil was inside of V-2 and he was going to get the devil out of V-2. Hernandez walked downstairs with V-2 and he was acting psychotic. He was using words that appeared to be from another language or unintelligible. Hernandez was holding V-2 upside down, by one of V-2's arms, and he was placing his fingers down V-2's throat. V-2 was coughing, gagging, and vomiting. V-1 told Hernandez to stop as he was moving through their kitchen and onto the landing outside Location #1.

V-1 grabbed a knife from a knife block on the kitchen counter and followed Hernandez onto the landing. Hernandez was yelling he was going to kill their daughter and break her legs. V-1 was screaming for Hernandez to let their daughter go. V-1 stabbed Hernandez twice in his back attempting to get her daughter.

At approximately 3:26 a.m., the CCCSO Dispatch Center began receiving calls regarding a female screaming, "Help me, help me, somebody help me!"

At approximately 3:27 a.m., Deputies Brian McDevitt (call sign 1Z33) and Erik Vawter (call sign 1Z31) were dispatched to Location #1.

At approximately 3:28 a.m., another caller reported a naked male was running off with a baby. An additional caller stated they could not see anything, but they could hear a female screaming.

⁶ The times, distance, and information provided is a summary of what occurred, for more detailed information see the CAD printouts and interviews with the referenced personnel.

At approximately 3:29 a.m., another caller reported a naked white male adult was running around with an infant. The caller stated they believed it was the husband/father at Location #1. They also stated they could still hear the female screaming.

W-1 heard screaming and yelling at her front door. Someone was pounding on the door and a female was screaming for help. W-1 opened the front door and she observed Hernandez holding V-2 by the arm with his right hand. Hernandez was simultaneously struggling with V-1 with his other hand. V-1 was screaming, "Help me, help me, he's trying to kill me! Help me!" Hernandez said, "Take my Baby. Take my Baby. Here, just take my baby." Hernandez gave V-2 to W-1 and she closed the front door. V-1 said to W-1, "Please keep her. Please keep her." V-1 had both her hands on W-1's screen door and then V-1 tried to run away from Hernandez. Hernandez snatched V-1 with one hand and dragged her back. V-1 observed W-2 run up the stairs holding a baseball bat.

At approximately 3:30 a.m., W-1 called the CCCSO Dispatch Center and reported Hernandez had given her the baby and that there was a male outside with a bat.

W-2 approached Hernandez with the bat in his right hand and pushed him against the wall. V-1 was able to free herself from Hernandez's grasp and she ran down the stairs as W-3 was arriving to assist W-2. W-2 dropped his bat, and W-2 and W-3 were able to wrestle Hernandez to the ground. Another unknown black male adult arrived on the scene. A witness stated he weighed approximately 240 to 260 pounds. He pushed his way between W-2 and W-3, and they were all on top of Hernandez, who was lying prone on the ground. W-2 was holding one of Hernandez hands and his legs. The unknown black male adult was lying on Hernandez around his mid-section or waist area, and W-3 was around his shoulder area. Hernandez was continuing to struggle with the above listed individuals, and he was described as speaking in "tongue." They were unable to determine what he was saying and observed foam coming from his mouth.

V-1 returned to Location #1 and placed the knife in the master bedroom and flushed an unknown amount of cocaine down the toilet. V-1 called Hernandez's parents and told them that she had stabbed Hernandez and they should come to Location #1. V-1 left the keys outside the front door of Location #1 for Hernandez's parents. V-1 exited Location #1 via the back door and hid in the staircase because she was concerned she was going to be arrested by the police for stabbing Hernandez in the back.

At approximately 3:35 a.m., a caller reported there were four male subjects holding down a naked man. Deputy Vawter arrived in the area at this time.

At approximately 3:36 a.m., a caller reported the male tried to break the baby's legs and throw the baby in the delta, but someone was able to get the baby away.

At approximately 3:37 a.m., a caller reported seeing a male with a bat and then subsequently saw that same male holding down the naked male.

At approximately 3:38 a.m., Deputy Vawter arrived on scene and observed W-2, W-3, and the unknown black male adult holding Hernandez down. Deputy Vawter squatted down, and without putting any weight on Hernandez he placed him in handcuffs. Deputy Vawter told the above listed individuals to step back. They complied and subsequently left the landing and went down the staircase. The unknown black male adult left the area and was never identified or contacted by law enforcement.

At approximately 3:39 a.m., Deputy McDevitt arrived on scene and observed Hernandez handcuffed and lying prone on his stomach. Neither Deputy Vawter nor Deputy McDevitt was able to get a verbal response from Hernandez. They decided to roll Hernandez onto his side. At this point they could see foam coming from his mouth. Deputy McDevitt attempted a sternum rub on Hernandez and there was no response. Deputy McDevitt removed his gloves and unsuccessfully attempted to find a pulse.

At approximately 3:41 a.m., Deputy McDevitt advised CCCSO Dispatch to step up the medical response because Hernandez was unresponsive.

At approximately 3:44 a.m., Deputy Vawter advised they were starting CPR.

At approximately 3:45 a.m., AMR arrived on scene and took over life-saving efforts. They were able to obtain a pulse.

At approximately 4:17 a.m., Hernandez was transported to Sutter Delta Hospital by American Medical Response (AMR).

At approximately 4:33 a.m., Deputy Vawter contacted V-1 in front of Location #1.

At approximately 5:05 a.m., V-2 was transported to Sutter Delta Hospital for precautionary measures by American Medical Response (AMR).

At approximately 5:51 a.m., the CCCSO Dispatch Center notified Chief Mulligan (CCDAO) and the Contra Costa County Law Enforcement Involved Fatal Incident Protocol was invoked.

On October 31, 2018, at approximately 1:00 p.m., Hernandez succumbed to his injuries and was pronounced dead by Dr. Hsie-Wen Shu.

Cellular Telephone Video Footage

The cellular telephone video footage was captured by Hernandez's neighbor, W-4. Only some portions of this incident were captured on video because W-4 periodically stopped recording due to the fact that he was concerned for his safety. The video is of poor quality because the incident took place in the very early hours of the morning, the lighting was poor, and W-4 recorded the incident from a distance.

The relevant portions of the cellular telephone video footage depict the following information:

- Video #1 - In the background loud banging can be heard and you can hear a male voice (Hernandez) yelling "my fucking god, please!" A panicked female (V-1) can be heard saying, "you're hurting my....please, please help, Michael please, oh my god, please, please, please!" At this time, another male voice (bystander) can be heard saying, "Hey, hey, hey! One more chance bro, let her fucking go in the house.....Let her ass go in the house bro!" Loud banging continues and V-1 let out a blood curdling scream as she says, "Help me, ah, ah, oh my god, please!" At one point, a male voice can be heard saying "Call the fucking cops!" A bystander is heard in the background pleading with Hernandez to let V-1 go, while V-1 is begging to be let go and how Hernandez is hurting her. Hernandez replied, "I'm not doing it, I'm not, you're fucking lying. You're fucking lying Charlotte." A male subject can be seen in the grassy area, at ground level, holding a baseball bat saying, "Hey, hey, don't jump. You'll hurt yourself."
- Video #2 – You can hear V-1 saying, "I can't breathe. Please stop. Stop it. Stop it. Please stop it." A male voice can be heard saying, "Hey right here, they're right here." In the distance, you can observe two subjects run up the stairs onto the landing. They can be heard saying repeatedly, "Let her go! Let her go man!" You can hear a metal object (baseball bat) dropping onto the landing. Immediately after, you can see a female run down the stairwell. There is a male subject behind her, but he stops to look back at what is taking place on the landing. A struggle can be heard in the background, and a male can be heard saying, "Let me fucking go!" Another male can be heard saying, "Shut the fuck up, shut the fuck up!"
- Video #3 – In this short clip, you can see one Deputy performing chest compressions on Hernandez, another Deputy standing to the right of Hernandez, and a third Deputy is standing downstairs and appears to be taking a statement from someone.
- Video #4 – In this short clip, a Deputy can be seen continuing chest compressions on Hernandez, and in the background, someone can be heard providing an account of what they saw. Several people can be seen coming down the stairs, a combination of either law enforcement or paramedics.
- Video #5 – This video depicts two people, who appear to be paramedics, continuing the chest compressions on Hernandez.
- Video #6 – This short clip is the same content as video #5 and shows paramedics continuing to perform life-saving measures on Hernandez.

Interviews of Involved Officers

There were two CCCSO deputies and a sergeant who initially responded and were involved in this incident. Only two deputies are considered actors, meaning they were in a position where they could have used force on Hernandez⁷. This report will detail the interviews of the actors and those who witnessed a key portion of this incident and can help provide a more complete picture of what occurred⁸. The interviews will describe the incident from the perspective of the involved deputies. There may be information, statements, or recollections of events that are inaccurate or inconsistent with the facts of this incident as they are currently understood. The information is being listed in the manner in which it was relayed to the investigators during the interviews⁹.

During the course of the criminal investigation, an officer or deputy has the right to be represented by an attorney. They may choose to provide a statement, physical evidence, and other relevant information. It's important to note that, neither an officer or civilian can be compelled to provide a statement or other relevant information during an internal administrative investigation by the deputy's employer¹⁰. In this investigation, all the involved deputies provided voluntary statements to the CCCDAO and CCCSO with their attorney present. Each deputy was interviewed separately from others within hours of the incident and after being subject to sequestration.

Deputy Erik Vawter

Deputy Erik Vawter was interviewed on October 31, 2018, by Sr. Inspector Aaron Ross and CCCSO Detective Norris. His attorney, Jonathan Murphy, was present for the interview. The interviewers did not document the time the interview began or concluded.

The following is a summary of the relevant portions of Deputy Vawter's interview:

Deputy Vawter stated his full name and provided his employee number as 72326. He has been a deputy with the CCCSO for approximately 11 years. He worked as a Field Training Officer when he was assigned to the West County Detention Facility for approximately five years. He is currently assigned to the Patrol Unit and has been for the past six years. Deputy Vawter works swing shift and works from 2:30 p.m. to midnight. Deputy Vawter stated he is up to date on his first aid/CPR training in accordance with the Peace Officer Standards and Training (POST).

Deputy Vawter was wearing a full sheriff's office uniform consisting of sheriff's patches, his name tag, and a badge. He was driving a fully marked patrol vehicle with the appropriate emergency equipment, and sheriff's insignia displayed.

⁷ Actors – Law enforcement personnel whose conduct was actually or conceivably a factor in the fatality (CCC Protocol, pg.14).

⁸ The original records are retained by agencies involved in this incident. Copies can be obtained by contacting them directly.

⁹ The authors of this report did not participate in the interviews of the involved officers.

¹⁰ Public Safety Officers Procedural Bill of Rights Act, Government Code sections 3300 et seq.

Deputy Vawter stated his partner, Deputy Brian McDevitt, was dispatched to an unknown problem near Location #1. Deputy Vawter received this information via his computer and verbally from the dispatcher. Further details of the call for service indicated a naked white male adult was running around. Deputy Vawter assigned himself as a cover unit for Deputy McDevitt and the dispatcher continued to provide them with updates with additional information as they drove to the scene. Deputy Vawter said one of the updates stated there was “a naked white male running around with a baby,” and another stated there was “a naked white male with a baby and a white female and another male with a bat.” Deputy Vawter could not remember the exact address that was broadcasted, but he did remember the name of the street being Wells Road. He said responding units increased their response to “Code 3” when they heard a baby was involved in the incident, as well as the fact there were multiple subjects, and a baseball bat.

Deputy Vawter stated he was the first to arrive on the scene and he parked on the south side of the complex (Mariner Road). He said that side was easier to access without a gate. He exited his patrol car and walked through a courtyard where he encountered a young black female. She was waving him down and directed him to the incident that was taking place on the back side of the complex by the levee.

Deputy Vawter arrived at the condominium and described it being raised with a set of stairs. The female bystander escorted him up the stairs and told him, “They’re on top of him holding him down.” Deputy Vawter reached the top of the stairs and he observed three males on top of a naked male. Deputy Vawter observed two of the bystanders near Hernandez’s feet and one was holding him by the hands. The three male bystanders were yelling at Deputy Vawter telling him the subject they were holding down, “tried to kill her, tried to kill the baby.” Deputy Vawter said his initial thought was to detain the naked male to stop the threat of anyone else getting hurt. He handcuffed the naked subject while the bystanders were still holding the subject down. Deputy Vawter stated the bystanders had the naked males’ hands behind his back, so Deputy Vawter was able to reach in and apply the handcuffs. Deputy Vawter did not remember if the subject was moving upon his arrival.

Deputy Vawter said everyone was loud and yelling so he was unaware in that moment whether the subject was saying anything. Deputy Vawter believed the naked male was moving when he first arrived on the scene. He stated the bystanders backed away from the naked male after he applied the handcuffs. At this time, Deputy McDevitt arrived on the scene and made his way onto the landing. As they began to assess Hernandez, Deputy Vawter recalled telling Deputy McDevitt that Hernandez was not saying anything. Deputy Vawter pointed to a large “gash” on Hernandez’s back. Deputies McDevitt and Vawter attempted to talk to Hernandez, but there was no response.

Deputy Vawter stated Hernandez was lying against the railing, so he and Deputy McDevitt pulled him away and rolled him over. They attempted to locate a pulse and they were unsuccessful. Deputy McDevitt attempted a sternum rub, but there was no response from Hernandez. Deputy Vawter observed saliva coming down Hernandez’s face and described his appearance as being “rabid” and the saliva as “frothy.”

Sergeant Jimenez arrived and asked if Hernandez had a pulse. Deputies Vawter and McDevitt stated they were unsuccessful in locating a pulse; therefore, Sgt. Jimenez attempted to locate one by checking Hernandez's neck (carotid). Deputy McDevitt removed the handcuffs because they were unable to locate a pulse. Deputy Vawter described the location of the gash as being on Hernandez's left shoulder blade and not bleeding at the time. He could not recall the size of the gash, but he did describe it as a "decent size." Deputy Vawter noted some dried blood on Hernandez's head, but he did not see any apparent swelling or anything inconsistent with what the bystanders said took place.

Detective McDevitt began chest compressions on Hernandez, and Deputy Vawter took over after Detective McDevitt was experiencing exhaustion. Deputy Vawter stated they transitioned one more time, but AMR arrived on the scene as Deputy McDevitt resumed compressions. Deputy McDevitt was unsure how long they provided compressions, but he stated it felt like four minutes. He said there was no response from Hernandez while using life-saving measures, but AMR and fire were able to obtain a pulse from Hernandez. Deputy Vawter stated Hernandez was later transported by AMR to the hospital.

Deputy Vawter said after he was relieved by AMR he learned the baby involved in the incident was located inside the condominium directly in front of where they were. Deputy Vawter knocked on the door and the homeowner opened the door holding the three-month-old baby girl. He said they checked the welfare of the baby and determined she was safe where she was with the neighbor. Therefore, they left her and continued to investigate. They later requested another AMR unit to check the baby for any injuries.

Deputy Vawter noticed the yellow baseball bat on the ground, and he did not see any other weapons. He said one of the bystanders stated the bat belonged to him. At one point the bystander tried to pick up the bat, but Deputy Vawter directed him to leave it where it was.

Deputy Vawter said the only "force" used on Hernandez was when he placed him in handcuffs. Deputy Vawter later clarified the position of the bystanders and described one as holding Hernandez's feet, but he wasn't exactly sure of his position. He said one bystander was closer to the middle of Hernandez's back holding his left hand, and the third bystander was near Hernandez's right shoulder restraining him with something like a wrist lock. Deputy Vawter stated no one was near Hernandez's head, which was straight down facing the ground. Deputy Vawter stated he did not know Hernandez and had no prior contacts with him. He was also unfamiliar with the three civilian bystanders. Deputy Vawter said Hernandez was warm to the touch while they were rendering aide, but he said he was wearing gloves and could not feel a body temperature.

Deputy Brian McDevitt

Deputy Brian McDevitt was interviewed on October 31, 2018, by Sr. Inspector Aaron Ross and CCCSO Detective Nellie Norris. His attorney, Jonathan Murphy, was present for the interview. The interviewers did not document the time the interview began or concluded.

The following is a summary of the relevant portions of Deputy McDevitt's interview:

Deputy McDevitt stated he has been employed with the CCCSO since 1998 and his employee number is 60625. He stated he has worked in various capacities, including being a K-9 handler. He also has been a Field Training Officer (FTO) for the past 14 years. Deputy McDevitt has taken various specialized training courses and he holds his POST Advanced Certificate. After completion of the Police Academy, Deputy McDevitt maintained his annual perishable skills training and is current on all required trainings.

Deputy McDevitt is currently assigned to the graveyard shift at the Delta Station, and he works Monday through Thursday from 9:30 p.m. until 7:00 a.m. He said he was working his normal shift when this incident occurred. He was wearing his sheriff's office class "C" uniform consisting of a black uniform shirt and black pants. He stated his shirt contains two patches, one on each shoulder, his badge, and his name tag. He was wearing his full duty belt with all his assigned equipment. He was driving a fully marked sheriff's patrol sports utility vehicle, consisting of the standard lighting equipment, and sheriff's office insignia.

Deputy McDevitt did not recall what time he was dispatched, but remembered he was getting gas in Oakley at the time he received the call. He was dispatched to a welfare check on a female screaming in the area of 1515 Mariner Road. He said he received further updates from the dispatcher as he was responding to the call. The callers indicated a naked male was running down the street with a baby and a female was screaming. There was also information about a man with a bat. Information was relayed that stated a naked man approached someone's house and gave the baby to an unknown lady. There was additional information stating one of the males ran away from the area and the mother of the baby was still there, but then she ran away on foot. He said it was very difficult for him to decipher the information.

Deputy McDevitt advised dispatch he was responding "Code 3" from Main Street and Live Oak Road, when he heard the details regarding a baby, a naked subject, and a male with a baseball bat. Deputy McDevitt heard Deputy Vawter state he was responding "Code 3" also. Deputy McDevitt knew Deputy Vawter was closer to the scene so when he arrived, he parked behind Deputy Vawter's patrol vehicle. Deputy McDevitt initially said it was difficult to locate Deputy Vawter, but a neighbor yelled at him and told him the direction the incident was taking place. A black female adult and a white female observed Deputy McDevitt in the parking structure and directed him to the landing. As Deputy McDevitt ran up the stairs, he could hear Deputy Vawter broadcast via the radio that he had one detained (Hernandez).

As he reached the top of the stairs, he noticed a couple of civilians standing around the landing. Deputy McDevitt negotiated his way between them and observed Deputy Vawter applying the last handcuff on a naked Hispanic male adult, who was lying on the ground of the second story landing. Deputy McDevitt stated the scene was still chaotic after Deputy Vawter handcuffed Hernandez. He noticed a baseball bat lying on the ground but was unsure of who everyone was or how they were involved.

Deputy McDevitt did not see Hernandez moving and he didn't hear him say anything. Deputy McDevitt didn't notice anything unusual regarding Hernandez, other than him being naked. He said he then looked down and noticed a red mark on his back. Deputy McDevitt said he recalled one bystander say, "I didn't hit him." Deputy McDevitt said as he looked closer, the red mark looked like a "slice" as though a knife, or something sharp, made a clean cut. He said the wound was not bleeding and it did not look deep.

Deputy McDevitt said they rolled the subject over and he observed "frothy saliva" around Hernandez's mouth. He said one of the bystanders said Hernandez was talking in "tongue," was acting weird, and was foaming at the mouth. Deputy McDevitt looked at Hernandez on the ground and he could visualize what the bystander was describing. Deputy McDevitt began asking Hernandez what his name was, and remembered Deputy Vawter stating "he hasn't said a word yet." They rolled Hernandez over and he noticed his body was "limp." At this point he said he knew something was wrong.

Deputy McDevitt performed a sternum rub on Hernandez. He said he was initially wearing his gloves, but quickly pulled them off and put on latex gloves so he could feel for a pulse. He checked Hernandez's wrist first, then he checked the brachial artery for a pulse. Deputy McDevitt said he was still breathing hard from running up the stairs and he was unsure if he was feeling his own pulse, or Hernandez's pulse. At this time, he decided to remove the handcuffs so they could lay Hernandez flat. He continued checking for a pulse and he could not locate one. Sgt. Jimenez and Deputy Vawter also attempted to locate a pulse with negative results. He could not see a rise and fall of Hernandez's chest. At this point, he told the dispatcher they were beginning life-saving efforts and they began chest compressions.

Deputy McDevitt estimated that they gave chest compressions from five to eight minutes. Deputy McDevitt said he heard some noise in Hernandez's airway and wasn't sure if it was fluid, so he rolled Hernandez on his side to see if anything would come out. Once he was on his back again, AMR personnel arrived and continued life-saving efforts.

Deputy McDevitt said he did not see Deputy Vawter use any of his weapons from his duty belt or apply any type of force other than handcuffing Hernandez. Deputy McDevitt said he did not deploy any of his own weapons nor did he apply any force to Hernandez. Deputy McDevitt said he observed Deputy Vawter squatting next to Hernandez, and neither one of them were ever on top of Hernandez.

Deputy McDevitt clarified that the civilians were behind them when they began life saving efforts, and he specifically remembered asking them to move back. He heard Deputy Vawter yell at the civilians who were at the bottom of the stairs to remain there. Deputy McDevitt said he did not see any of the civilians use any force on Hernandez. He also said the baseball bat was on the ground upon his arrival. One of the bystanders admitted to having the bat but said he did not hit Hernandez with it. Deputy McDevitt reiterated at one point the bystander went to pick the bat up, but Deputy McDevitt told him to leave it there. The bystander with the bat said he threw his

bat down when the other neighbors were able to help him “pounce” on Hernandez, get him down, and “dog pile” him to hold him down.

Deputy McDevitt said he has never had any contact with Hernandez in the past. He stated from the time he arrived on scene until the time they realized they might be experiencing a medical emergency was approximately two to four minutes. Deputy McDevitt stated performing chest compressions was extremely exhausting and exceptionally challenging, due to the severity of incident and the fact he had to run across the complex to make it to the scene.

Deputy McDevitt stated he interviewed V-1 after they located her in the stairwell behind the condominium. V-1 told Deputy McDevitt she stabbed her husband (Hernandez) while on the front porch of their residence because he wouldn't put down the baby. V-1 told Deputy McDevitt the knife was in her bedroom upstairs. Deputy McDevitt remembered seeing a knife block knocked over when deputies conducted a protective sweep of the condominium prior to locating V-1.

Sergeant Michael Jimenez

Sergeant Michael Jimenez was interviewed on October 31, 2018, by Sr. Inspector Aaron Ross and CCCSO Detective Nellie Norris. His attorney, Jonathan Murphy, was present for the interview. The interviewers did not document the time the interview began or concluded.

The following is a summary of the relevant portions of Sgt. Jimenez's interview:

Sgt. Jimenez said he has worked for the CCCSO as deputy for 19 years and he attended the sheriff's department police academy and has maintained his perishable skills training through the department's advanced officer training program. He stated this training includes First Aid and CPR. He stated he has worked several auxiliary assignments including being a Field Training Officer and has been assigned to the contract cities of Orinda and Danville, CA. Sgt. Jimenez said he was promoted to sergeant in 2007.

Sgt. Jimenez is currently assigned to work at the Delta Station in Oakley, California and his normal work shift is Monday through Thursday, from 9:00 p.m. to 7:00 a.m. On October 30, 2018, Sgt. Jimenez said he was the patrol supervisor and supervised three deputies. He was driving a marked patrol car, which was a black and white Ford Explorer with Sheriff's department markings. Sgt. Jimenez said he was wearing a full CCCSO uniform with badge and patches.

Sgt. Jimenez stated he responded to the incident “Code 3” after he heard his two deputies were responding “Code 3.” He said numerous callers were reporting the incident; therefore, he asked dispatch to have medical personnel respond and stage near the scene. Sgt. Jimenez said he arrived approximately one minute after he heard Deputy McDevitt say he was on scene. He parked his patrol vehicle near the other two patrol vehicles outside the gate. He said he ran through the apartment complex and a citizen pointed out where the two deputies were in the back of the complex. Sgt. Jimenez said the two deputies were upstairs and he ran up to assist.

Sgt. Jimenez said when he got to the top of the stairs, Deputies Vawter and McDevitt were standing near a naked subject who was lying face down. He said it appeared the two deputies had just got the subject handcuffed at the top of the stairwell. He said he did not see Deputy Vawter or Deputy McDevitt use any force in this incident other than applying handcuffs. As he arrived, Deputy McDevitt was standing near the subject's feet and Deputy Vawter was standing next to the subject's left side facing him. He said three other citizens were standing nearby. He said the naked subject was not moving and he heard someone ask if he was breathing. He told one of the deputies to pull the naked man on to his side into the "recovery position." He said the naked man was "foaming" around his mouth and Deputy McDevitt was verbally asking him, "Are you there?" Sgt. Jimenez said Deputy McDevitt performed a sternum rub and did not get a response.

Sgt. Jimenez removed his gloves and checked the subject's carotid artery for a pulse, but he did not feel a pulse. He checked the subject's wrist for a pulse but there was no pulse. Sgt. Jimenez said he directed Deputy McDevitt to remove the handcuffs and he observed the deputies begin life-saving efforts. Sgt. Jimenez ran back to his vehicle to obtain a CPR mask, and AMR personnel were cleared to come into the scene. When Sgt. Jimenez approached his patrol vehicle, AMR personnel was arriving on the scene. He directed the medics to the subject. He said Deputies Vawter and McDevitt were still doing chest compressions when they returned. AMR personnel took over life-saving efforts. They were able to find a pulse and made the decision to transport the subject to the hospital.

Sgt. Jimenez remembered a bat at the top of the staircase when he first arrived on the scene. He said the bat was left in place because it was a crime scene. He said they also confirmed the baby involved was safe inside the apartment next to where the incident occurred. He noticed the screen door to the front door of the apartment where the baby was located was torn.

Sgt. Jimenez said they located the mother of the baby and checked her welfare. They found her in a staircase to the rear of the apartment. They also conducted a security sweep of the apartment belonging to the subject, the mother, and the baby. There was no one inside the apartment. Sgt. Jimenez said the deputies began talking to witnesses to gather statements to determine what occurred, as there were several "Good Samaritans" that restrained the subject prior to the deputy's arrival. He said the "Good Samaritans" that restrained the subject prior to the deputies arriving stayed on scene and congregated near the base of the stairwell after the incident. Sgt. Jimenez stated he did not see any of the citizens using any force against the subject when he arrived.

He stated he did not see anyone use the baseball bat he observed on the ground. He remembered seeing a shallow stab wound on the subject's back that seemed minor and it was not bleeding.

Sgt. Jimenez stated he called Lt. Foley and advised him of the situation, which invoked the county's protocol process for officer involved fatal incidents.

Fire Department Personnel

Captain Jeremy Copple was interviewed on October 31, 2018, at 9:58 a.m., by Sr. Inspector Eric Solzman and CCCSO Detective Durrer.

The following is a summary of the relevant portions of Captain Jeremy Copple's interview:

Cpt. Copple said his employee number is 61051 and he responded on the tactical engine to the incident with Engineer Bill Scott, and Firefighter Dean Miller. He described the call coming in around 3:00 a.m. and he said they had kind of been up all night, or half asleep. They were responding to a domestic dispute with a female who was possibly unconscious, and they were being asked to stage near the scene. He also stated there was a report of a baseball bat being involved. He stated it took approximately 18 minutes for them to arrive on the scene. Cpt. Copple stated there was inconsistent information and they initially arrived on Mariner Road, but a citizen told them the incident was taking place on the other side of the complex. He thought it took about two to three minutes to find the deputies.

Cpt. Copple stated they arrived on the scene, walked to the location, went up the stairs, and immediately noticed AMR personnel doing CPR. He sent the engineer and firefighter to walk back to the engine to retrieve the engine and the ambulance. Capt. Copple said he began to do chest compressions on the subject. He relieved the EMT who was doing the chest compressions for him to start prepping all the necessary equipment. He believed he did chest compressions for approximately five to eight minutes. When they returned with the equipment, they transferred from manual compressions to the LUCAS¹¹, which does compressions on its own. Cpt. Copple said it was approximately 20 minutes before the subject was transported to the hospital. He said the subject was pulseless for approximately 20 minutes or so, but they did get a pulse back prior to transporting.

Cpt. Copple notified dispatch that they would be transporting the subject and they were en route to Sutter Delta Hospital. Cpt. Copple said they were a couple of minutes out, monitoring his pulse, lost the pulse, and started doing chest compressions with LUCAS again. He stated they gave the subject some more rounds of Epinephrine¹². When they arrived at the hospital the subject had a pulse again. They transferred care to the hospital staff and they stood by to retrieve their equipment. They received their equipment, cleaned it, and left the hospital.

Cpt. Copple said they did not see anything out of the ordinary throughout the incident.

¹¹ LUCAS – An impedance threshold device combined with an automated active compression decompression CPR device (LUCAS) improves the chances for survival in cardiac arrest.

¹² Epinephrine injection is used along with emergency medical treatment to treat life threatening allergic reactions caused by insect bites or stings, foods, medications, latex, and other causes.

CIVILIAN INTERVIEWS

The following civilian interviews were conducted by Sr. Inspectors from the Contra Costa District Attorney's Office and Detective's from the Contra Costa County Sheriff's office. The following voluntary civilian interviews were recorded by law enforcement personnel.

Victim #1 (V-1)

V-1 was interviewed on October 31, 2018, at 9:18 a.m., by Sr. Inspector Mike Morley and CCCSO Detective Christopher Ellis. V-1 is a victim in this incident, but also a witness to the crimes committed against V-2 by Hernandez.

The following is a summary of the relevant portions of V-1's interview:

V1 stated that she has known her fiancé, Michael Sanchez Hernandez, since they were 12 years old. V-1 stated they dated during high school for four or five years, and then they got back together about two and a half years ago. They moved to Location #1 approximately six months ago. They have a three-month-old daughter together (V-2), and V-1 has two other children (ages six and eight) from another relationship. Those two children were at their biological father's house during this incident.

V-1 stated she put her daughter to sleep in her upstairs bedroom at approximately 8:00 p.m. on October 29, 2018. V-1 said Hernandez was still watching television downstairs when she went to sleep in her bedroom between 9:00 p.m. and 10:00 p.m. V-1 said Hernandez smokes marijuana daily, but she has never seen him use other drugs. She stated she did not observe him smoke marijuana the evening of this incident, but she assumed he did because he smokes marijuana daily. V-1 stated that Hernandez was not acting differently or arguing before she went to bed. V-1 stated it is normal for Hernandez to stay up late to watch television after she goes to sleep.

V-1 stated that she was awoken by Hernandez in the middle of the night after he turned on the lights in her bedroom. V-1 stated Hernandez was standing naked in the bedroom holding their daughter (V-2) in his arms. Hernandez appeared to be "talking in tongue" or in some unknown language. He was yelling that V-1 was the devil, and the devil was inside the baby. V-1 said she has never seen Hernandez act this way before.

Hernandez walked into the bathroom holding V-2, while chanting that V-2 was the devil. V-1 followed Hernandez into the bathroom and said, "What the hell is wrong with you? Give me the baby." Hernandez walked downstairs and out the front door, while holding V-2. Hernandez began shoving his thumb down the baby's throat gagging her, and the baby began to cry. V-1 went to the kitchen and grabbed a knife, which she described as a curved knife without an edge, from the knife block on the kitchen counter.

V-1 walked back outside to the front porch area and told Hernandez that she would stab him if he hurt V-2. Hernandez was screaming and yelling unintelligibly while holding V-2 upside down in his arms, and V-1 thought he was going to throw V-2 off the porch. V-1 struck Hernandez twice in the back with the knife, which caused two lacerations approximately three inches long. V-1 said she

was not trying to hurt him, but she just wanted Hernandez to leave the baby alone. Hernandez began screaming, "She is trying to kill me" and Hernandez ran down the stairs of the porch, holding V-2, and he was still naked. V-1 said she dropped the knife on her porch and followed Hernandez around the complex until he ran up the stairs to their neighbor's door.

Hernandez banged on the neighbor's door and asked them to call the police. The neighbor answered the door and Hernandez handed her the baby. The neighbor said she was going to call the police and she closed the door. Hernandez hugged V-1 from behind with one of his arms around her neck. He said he was going to get the devil out of her. Hernandez began to bang on the neighbor's door again, stating that he wanted his baby back.

V-1 said an unknown male neighbor arrived on the landing carrying a baseball bat. She was able to break away from Hernandez and V-1 ran down the stairs. V-1 observed two other unknown males at the bottom of the stairs, and she continued to run towards her house. V-1 could hear Hernandez talking aggressively to the other unknown males near the porch area. Hernandez said, "That's my wife." V-1 never saw Hernandez again this evening. V-1 never knew Hernandez was seriously injured, other than the minor injuries caused by the knife she used to strike him in the back.

V-1 went back inside her residence and she hid the knife in her bedroom. V-1 called Hernandez's mother and told her to come to the residence because she stabbed Hernandez and she was going to jail. V-1 believed she was going to be arrested for stabbing Hernandez; therefore, she decided to hide in the stairwell of the building. V-1 later re-appeared after the police arrived and she told them she stabbed Hernandez because she thought Hernandez was going to harm the baby.

V-1 said Hernandez has never assaulted or threatened her in the past. V-1 said Hernandez is not taking any medication. She stated she has never seen him act this way in the past.

Witness #1 (W-1)

W-1 was interviewed on November 1, 2018, at 8:53 a.m., by Sr. Inspector Mike Morley and CCCSO Detective Christopher Ellis. W-1 is a witness to this incident.

The following is a summary of the relevant portions of W-1's interview:

On October 30, 2018, at or around 3:00 a.m., W-1 was awoken by a female screaming, "Help me, help me, he is going to kill me!" W-1 looked out the window and she did not see anything. At this point she said the screaming had stopped. W-1 laid back down, but seconds later W-1 could hear the woman screaming again. She looked out her back patio door, which faces the parking lot, and could hear the woman screaming for help. W-1 could not see the woman at this time. Seconds later, W-1 heard someone ringing her doorbell and banging on her front door.

W-1 approached her front door and could hear a female yelling, "Help, please help me, he is trying to kill me!" W-1 looked out the peephole and observed a naked male pinning a woman with his left arm against the corner of the deck, while dangling a baby by the armpit with his right hand. The male's eyes were wide open, his teeth clenched, and he was sweating profusely.

W-1 then observed an unknown male, holding a baseball bat, arrive on the deck. The unknown male said, "Who is he (referring to the naked male) to you?" The naked male moved behind the female and said, "He (referring to the male with the baseball bat) is the devil." The unknown male said, "No, I am not." W-1 told the unknown male with the bat to leave because she had called the police. However, she said at this point she had yet to call the police. W-1 opened the front door and left her screen door closed. The naked male grabbed the baby with both hands and said, "Take my baby, take my baby." W-1 opened her screen door, grabbed the baby, and then locked the screen door. The female put both hands on the screen door and said, "Please keep her, please keep her!" At this point she said the male with the bat left.

W-1 observed the female try to run away but the naked male snatched her with one hand by the neck and pushed her against the wall. The naked male pounded on W-1's door and said, "I just want to know if my baby is ok." W-1 believes this is when her screen door was damaged. W-1 dialed 9-1-1. W-1 then yelled the baby was fine and she looked out the peephole to see the naked male with both hands around the female's neck. W-1 believed the female was going to jump off the balcony, but the naked male slammed her to the ground. He sat on the ground, held her from behind, and said, "I've got you now baby, you are ok now, relax."

The female stood up and was able to run away. W-1 then observed three unknown males open the gate to the deck. W-1 said the unknown male with the baseball bat was one of these individuals. The naked male tried to grab the female, but the three unknown males wrestled him to the ground. W-1 heard one male say, "Relax, relax, stop fighting it, just relax." W-1 said she did not see any of the above listed males do anything to the naked male, other than lay on top of him. W-1 did not know any of the above listed individuals and she had never seen them before.

Shortly thereafter, the police arrived on the scene. W-1 stopped looking out the peephole. When she looked out the peephole again, the naked male was in handcuffs and lying face down on the deck. The police officer was standing above him and she did not see the other three unknown males. The police officer was asking the naked male, "Do you understand me sir, are you ok, can you answer me?"

W-1 stated the police officer turned over the naked male and another police officer arrived. At that point, the first officer told the second officer that the naked male was unresponsive and they both began to perform CPR. She did not know if they took off the handcuffs. The officers continued CPR until the paramedics arrived.

Witness #2 (W-2)

W-2 was interviewed on October 30, 2018, at 10:13 a.m., by Sr. Inspector Mike Morley and CCCSO Detective Christopher Ellis. W-2 is a neighbor of Hernandez and he was a witness to this incident.

The following is a summary of the relevant portions of W-2's interview:

W-2 said on October 30, 2018, at approximately 1:00 a.m., he was sleeping and awoke to the sound of a woman screaming. She was screaming, "Help Me! He's got my baby!" W-2 went into his living room and his wife told him there is a naked man holding a baby by the arm outside. She said there was a woman trying to take the baby from the naked man. She urged W-2 to help the woman.

W-2 grabbed a "T-ball" (baseball bat) and went downstairs to look for the naked man, the woman, and the baby. W-2 could not see them, but he could hear the woman screaming. He shouted out to the woman to tell me where you are.

W-2 followed the screams to Location #1 where he saw the naked man holding the baby "very aggressively," while fighting with the woman. W-2 believed the baby could fall from the 2nd floor balcony and he believed the baby was in great danger. W-2 said the naked man holding the baby and the woman were standing very close to the railing of the balcony. W-2 said the naked man was "tossing the baby back and forth..... like rag dolling it." W-2 said they backed away from the railing and he ran up the stairs to help the woman and the baby. W-2 put his hand on the naked man's chest and told him to let go of the baby. The naked man shouted, "You're the devil! You're an evil spirit!" W-2 said this distracted the naked man and the woman was able to take the baby from him.

W-2 said the woman handed the baby to the lady that lived at the address. He said the lady already had her door open when he arrived at the top of the stairs. The lady took the baby and closed the door. W-2 then backed away because the baby was safe inside the house.

The naked man and the woman continued to struggle with each other afterward. The woman was pleading with W-2 to help her, as the naked man kept throwing her on the ground. He was saying, "You're the devil!" The naked man bent the woman over the railing and W-2 thought he was going to throw the woman off the balcony. The naked man grabbed the woman by the neck and W-2 ran to assist her. W-2 dropped the T-ball bat on the ground, and he pushed the naked man against the corner of the balcony. The woman was able to escape.

W-2 said "a couple of the other neighbors" came up and assisted him in taking the naked man down to the ground. W-2 said he secured his legs with his legs, while grabbing one of his wrists and bending it backward. He said the naked man was lying on his stomach and the neighbors were sitting on his back. They were preventing him from getting up and they restrained him in this manner until the deputies arrived in one minute.

W-2 said the first deputy on scene was Deputy Vawter and he handcuffed him. The naked man was lying on the ground handcuffed for a few seconds before he began "foaming at the mouth and kinda convulsing." W-2 observed Deputy Vawter check the naked man for a pulse, remove the handcuffs, and begin CPR.

W-2 said the male did not have on any clothes during the entire incident and was "foaming at the mouth." He spoke in "like complete nonsense.... like speaking in tongues or something." W-2 said at no point did he see anyone choke or strike the naked male. They only restrained him from

getting up. He said the naked male was unusually strong and it took everyone's strength to subdue him. W-2 believed the naked man may have been under the influence of drugs. He said the naked man never made any statements indicating he could not breathe.

Witness #3 (W-3)

W-3 was interviewed on November 9, 2018, at 4:16 p.m., by Sr. Inspector Mike Morley and CCCSO Detective's Matt Ingersol and Charlene Jacques. The interview took place inside W-3's residence. W-3 is a neighbor of Hernandez and he was a witness in this incident. W-3 stated that his wife does not want his 17-year-old stepson to give a statement. W-3 did not believe that he was involved in restraining the suspect at any time.

The following is a summary of the relevant portions of W-3's interview:

W-3 stated on the night of the incident, he was at home and sleeping in his bedroom. He heard a woman screaming, "Help, Help," but he said he was still half-asleep and in a daze. W-3 stated his stepson knocked on his bedroom door to ask W-3 if he heard screams. W-3 put on his clothes and ran outside along with his stepson. W-3 could hear the woman screaming and thought that someone was raping a woman. He also heard a baby crying as well. As W-3 ran up the stairs of the balcony he was two or three feet from the man and a female. W-3 could see the man had his left arm around the mid-section of a female. He couldn't tell if the male was naked at this point because he was standing behind the female. It appeared he was trying to throw the female, who was screaming for help, over the balcony. The male appeared to be talking in "tongues" because he did not recognize the language he was speaking. W-3 described the language as sounding Satanic. He was unable to see the baby at this point. The male (naked male) then started saying, "Police or Officer." W-3 believes that his stepson ran towards the entrance of the complex to assist the police in getting access through the gate.

W-3 observed the man did not have a weapon. W-3 ran toward them and pried the male's arm from the female, which allowed her to run down the stairs. He observed another male on the balcony, who was in possession of a small metal baseball bat in his right hand. W-3 said the unknown male never used the bat to strike anyone. It was at this point he noticed the male was naked. He was foaming from the mouth and was still speaking in what sounded like a Satanic language.

W-3 and the male, who had the baseball bat, were able to take the naked male down to the ground. He was lying on his stomach and W-3 noticed a deep gash on the middle of his upper back; however, it was not bleeding. W-3 and the unknown male were side by side on top of the naked male, who was continuing to fight them. Seconds later another unknown male arrived on the balcony. W-3 described the unknown African American male as follows: dark skinned, 5-11, 245 to 260 pounds, with a beard, afro hairstyle, and wearing a blue shirt. The unknown African American male positioned himself between W-3 and the other male (W-2) on top of the suspect to help restrain him.

W-3 stated he got off the suspect after he was not resisting quite as much. W-3 said he was only on top of the suspect for approximately five or ten seconds, but he said it could have been a couple of minutes. W-3 heard the police arriving on the scene and at that point told the other males to let go of the suspect. The other two males continued to restrain the suspect, who was still fighting.

The police arrived on the scene and the African American male stood up, but the other male (W-2) continued to hold the suspect. The other male (W-2) was bending over the suspect at that at this point and he assisted the officer in handcuffing the naked male. The second police officer arrived shortly after the first officer arrived. W-3 realized that the African American male had left the area. W-3 said the naked male was still making noise and resisting while the officers handcuffed the naked male. The officers thanked them for helping and they descended the stairs and waited on the grassy area below the balcony. W-3 realized the naked male needed medical attention when the paramedics arrived.

W-3 stated he did not try to restrain the naked male around his neck at any time, nor did he see anyone else choke the naked male while they restrained him. W-3 said he had never seen the other males before and he has not seen the African American male since the incident.

Witness #4 (W-4)

W-4 was interviewed on November 5, 2018, at 4:26 p.m., by Sr. Inspector Morley and Detective's Morris and Jacquez. W-4 is a neighbor of Hernandez and he was a witness in this incident.

The following is a summary of the relevant portions of W-4's interview:

W-4 confirmed he is a neighbor of Hernandez and he was at home on the night of the incident. W-4 stated he has lived alone at this location for approximately one year. W-4 stated he was home studying on his computer the night of the incident when he began hearing a male voice yelling loudly. He could also hear a female voice screaming and telling the male to "leave" and "get away from her." W-4 described the incident as "violent sounding." He clarified by saying "exemplifying craziness in an animalistic way."

W-4 walked outside and determined the incident was taking place four to five condominiums down from his. W-4 began recording the incident via his cellular telephone. W-4 said it appeared the male subject was completely naked. W-4 observed two other individuals outside, one of which was in possession of a baseball bat. He described the bat as being metal with a rubber grip, but he couldn't make out what color it was due to darkness. The two subjects were exchanging words and it sounded disrespectful. The subjects could be heard telling the naked male to let the female go back inside the house, but the naked male would not let her go inside.

W-4 stated eventually the police were called and the naked man was "taken down," but he wasn't sure exactly what happened. He stated there were two guys downstairs on the grass looking up during the incident. The subject with the baseball bat was trying to tell the naked male to back off or to leave. W-4 said the naked male was sounding and acting crazy, and he believed

the other two males were scared because they wouldn't approach the naked male. He said they continued to keep their distance. He said the male with the baseball bat was just carrying it around, but he didn't use it to protect the female.

W-4 said when the deputies arrived on scene they went upstairs and handled the situation. He observed the deputies performing CPR. W-4 did not know where the naked male and the female lived, but he assumed it was the residence where the incident took place. W-4 said he never saw the female during the incident, but he could hear her. He said she sounded very distressed and very upset. He said she sounded like her life was in danger and that she was really scared for her life.

W-4 said he never saw the two males go upstairs, and he didn't know how the naked male was taken to the ground. He assumed the police did it, because the two male subjects were scared. He said they weren't doing anything and then the police arrived. They were telling the naked male to quiet down and "do this and do that" but the naked male was not complying at all. W-4 said the naked male had been going "off the rails" and it seemed like the guy was on drugs. W-4 said the next thing he saw was the naked male on the floor once the police came. W-4 said he went in and out of his residence, so he did not observe the entire incident. He said the lapses of time during the cell video footage are due to him turning the camera off when he went inside his residence and turning it on when he went back outside.

Social Services Interview

On November 11, 2018, a social worker for the Department of Social Services, State of California Health and Welfare Agency, went to V-1's residence to speak with her regarding the detailed events that took place on the night of October 29, 2018, and the morning of October 30, 2018, at Location #1. V-1 stated the following:

Hernandez had a psychotic episode due to using cocaine, suffered a cardiac arrest while in police handcuffs, and passed away the following day in the hospital. V-1 stated she did all she could the night of the incident to protect the baby. V-1 stated she was not arrested, and the baby was not injured.

On the night of the incident, at approximately 11:00 p.m., V-1 stated she decided to use cocaine recreationally with Hernandez inside of Location #1. They started to have sex, which was the reason Hernandez was naked during the incident. V-1 said she did not use as much cocaine as Hernandez. During sex, Hernandez went out of the room to do another line of cocaine in the bathroom. Upon his return, Hernandez picked up the baby from her crib where she was sleeping. V-1 said, "What are you doing? Put her down or you'll wake her up." Hernandez stated he needed to get the devil out of the baby and told V-1 not to worry. V-1 got out of the bed and walked over to Hernandez to get the baby from him, but Hernandez started to move away from V-1. V-1 stated she was pleading and arguing with Hernandez that he wasn't thinking straight.

Hernandez went outside with the baby and V-1 warned him that he was naked and not wearing any clothes, but he didn't care. Hernandez placed two of his fingers in the baby's mouth on two

occasions. He said he was getting the devil out. V-1 said some neighbors heard the commotion and came outside. V-1 said she retrieved a knife from the kitchen and stabbed Hernandez in the back one time, which didn't break his skin too deep. She said she scraped him in the back with the knife another time. V-1 said this was a form of self-defense and an attempt to get the baby.

Hernandez ran down the steps of their house and went up the stairs to the neighbor's house. V-1 banged on the neighbor's door and was able to grab the baby and upon the neighbor opening the door, V-1 handed her the baby. The neighbor immediately closed the door. She said Hernandez ran down the street and V-1 went back into her house. V-1 called the paternal grandparents and told them briefly what took place. V-1 believes the neighbors called the police. V-1 said she was scared of the police and flushed the cocaine down the toilet. V-1 went outside to calm down until the police arrived. V-1 said she did not know Hernandez was hurt and she did not witness what happened to him.

V-1 said she was placed into protective custody until Hernandez was transported to the hospital. V-1 said she was transported to the police station where she gave a statement and then went to the hospital to see Hernandez. Upon V-1's arrival, Hernandez was on life support in the intensive care unit. The baby was brought to the hospital and returned to V-1's care.

AUTOPSY

Hernandez was pronounced dead on October 31, 2018, at 1:00 p.m., by Dr. Hsie-Wen Shu at Sutter Delta Hospital, Antioch, California.

Dr. Ikechi Ogan (Forensic Pathologist) performed an autopsy on November 2, 2018, at the CCC Sheriff's Coroner's Office. In Summary, the autopsy findings are as follows:

Dr. Ogan noted Hernandez had suffered a broken left 4th and 5th rib, along with a broken sternum. Dr. Ogan stated Hernandez had a neck hemorrhage, which was evidence of pressure around his neck, along with bleeding of his internal organs. Hernandez had multiple superficial soft tissue injuries (abrasions, contusions, abraded contusions, and shallow incised wounds) on head, torso, and extremities. There were layer-by-layer neck dissection reveals hemorrhages into the strap muscles of the neck. Extensive intraluminal hemorrhages into GI tract (stomach, ileum, and colon) and into the lungs, adrenal glands and liver indicating acute disseminated intravascular coagulation (coagulopathy). Markedly elevated blood Benzoylcegonine (indicating recent massive cocaine intoxication). Mild cardiomegaly (400 grams), without significant atherosclerotic disease or myocardial ischemia. Anascara, (pleural effusions and ascites), and diffuse hepatic steatosis (fatty liver). Clinical anoxic brain injury (coma), gastro-intestinal and visceral bleeding (coagulopathy), metabolic acidosis and "shock" and electrolyte derangements.

There were two patterns of injury present consisting of blunt force and evidence of mechanical obstruction of respiration.

External injuries

The left side of the forehead shows three abraded contusions measuring ½ -inch, 1-inch, and 1-1/2 inches respectively. The medial canthus of each eye shows a ¼-inch abrasion. The lower face is hyperemic (nose and mouth) with dark reddish-brown discoloration around the nose and mouth. The inner lips show lacerations (one-eighth to one-fourth inch). The nostrils oozed dark brown liquid. The lower left chest shows a 3-inch x ¼ inch, abrasion, and the left hip shows a 3-inch contusion. There are abrasions, contusions, and abraded contusions on the backs of both arms, the elbows, the forearms, and the hands. These injuries range from one-eighth inch to 1 and a half inches respectively in largest dimension. They are most prominent on the back of the right arm.

Both knees are covered by abrasions and contusions with the right knee showing two ½-inch contusions, the left knee showing two ½-inch abrasions and contusions, and the right chin showing a 1-inch x ¼ -inch abrasion.

The left side of the back shows a vertical shallow incised wound measuring 3 inches long and vertically oriented. The right side of the back also shows a similar but shallower 4-inch wound of the back.

No other external injuries are identified.

Internal injuries

The scalp was intact. A layer-by-layer neck dissection shows a large contusion extending from the root of the neck to just above the nipples bilaterally and measuring 8 inches x 6 inches. Layer-by-layer dissection shows that this hemorrhage and contusions involve the sterno-cleido-mastoid muscles. The hemorrhages extend through the platysma to the superficial surface of the thyroid gland. They appear consistent with blunt force being applied to the root of the neck.

Opening the torso reveals fractures of the left fourth and fifth ribs and a fractured sternum. The right ribs appear intact.

No other significant internal injuries are identified.

Dr. Ogan documented the cause of death as complications of acute cocaine toxicity. He also stated other significant conditions were blunt force injuries, evident mechanical obstruction of respiration, and drug induced psychosis. Hernandez had a high level of cocaine metabolites—actually not of the cocaine itself—but of the breakdown product of the cocaine indicating that he had been using cocaine all day long for a long period of time.

Toxicology – The blood toxicology was positive for the presence of cocaine.

CAUSE OF DEATH: Complications of acute cocaine toxicity.

FINDINGS

- On October 29, 2018, at approximately 11:00 p.m., Hernandez and V-1 chose to use an unknown amount of cocaine. Hernandez had used a significant amount of cocaine in the past.
- In the early morning hours of October 30, 2018, while having some kind of hallucination, Hernandez attempted to harm his infant daughter.
- While still hallucinating, Hernandez assaulted V-1 and attempted to throw her over the balcony.
- Three male neighbors intervened and used a moderate level of force to free V-1, and to detain Hernandez until the CCCSO deputies arrived.
- There is no evidence the deputies used any physical force beyond handcuffing.
- Hernandez was pronounced dead on October 31, 2018 at 1:00 pm.
- According to the Coroner, the cause of death was acute cocaine intoxication.
- The Coroner's Inquest determined the manner/mode of death to be accidental.

APPLICABLE LEGAL STANDARDS

The sole question to be decided by the CCCDAO is whether Deputies Vawter or McDevitt violated any criminal laws. Whether an officer is criminally liable depends on the facts of the case and whether those facts constitute a crime under the applicable laws.

The California District Attorneys Association Uniform Crime Charging Standards Manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, believes there is evidence that proves beyond a reasonable doubt, that the accused is guilty of the crime to be charged. Additionally, the charging standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

The applicable California Penal Code Sections are as follows:

Section 187: Murder is the unlawful killing of a human being or fetus with malice aforethought.

Section 188: Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately done with knowledge of the danger to and with conscious disregard for human life.

Section 192: Manslaughter is the unlawful killing of a human being without malice.

Section 196: Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either –

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

Section 197: Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends or endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or
4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Section 199: The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Any killing of a human being at the hands of another is a homicide. A homicide may be criminal or justifiable depending upon the circumstances. It is justifiable if done while resisting a violent felony or in self-defense or in defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he or she actually and reasonably believed that he or she or another was in imminent danger of great bodily injury or death. (See *People v. Williams* (1977) 75 Cal. App. 3rd 731.) In protecting oneself or another, a person may use all force which he or she believes reasonably necessary, and which would appear to a reasonable person, in similar circumstances, to be necessary to prevent the injury, which appears imminent. (See California Criminal Jury Instruction [CALCRIM] 505.) In order to justify killing another person in self-defense or in the defense of another, actual danger of death or

great bodily injury is not necessary. (CALCRIM 505.)

Pursuant to CALCRIM 505:

A homicide is justifiable and not unlawful when committed by a person who:

1. Reasonably believed he or she or someone else was in imminent danger of being killed or suffering great bodily injury,
2. Reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
3. Used no more force than was reasonably necessary to defend against that danger.

Pursuant to CALCRIM 507:

A homicide by a peace officer is justifiable and not unlawful when:

1. The killing was committed while overcoming actual resistance to some legal process or while performing any other legal duty
2. The killing was necessary to accomplish one of those legal purposes; and
3. The officer had probable cause to believe that someone posed a threat of death or serious bodily harm, either to the officer or to others.

Probable cause exists to believe that someone poses a threat of death or serious bodily harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or serious bodily harm to another. (CALCRIM 507.)

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. (CALCRIM 505 and 507.) It is not a criminal defendant's burden to prove that force was necessary or reasonable. The People must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others. Absent direct evidence that an officer did not actually or reasonably believe in the need for force, circumstantial evidence must be used. If two reasonable conclusions can be drawn from circumstantial evidence, however, and one of those reasonable conclusions points to innocence, jurors are instructed that they must accept the one that points to innocence. (CALCRIM 224.)

The United States Supreme Court has held that a police officer's use of force should be analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. The Supreme Court stated, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . the calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 US 386, 396-397.

If the killing was not justifiable as outlined above, or excusable as in an accidental killing, only then would it be criminal. Moreover, if an act is committed by reason of a mistake of fact which disproves any criminal intent, it is not a crime. Therefore, a person is not guilty of a crime if he or she commits an act under an actual belief in the existence of certain facts and circumstances which, if true, would make the act lawful. (See CALCRIM 3406.)

LEGAL ANALYSIS & CONCLUSION

To establish criminal liability, the evidence must show beyond a reasonable doubt that Deputy Vawter and/or Deputy McDevitt were responsible for Hernandez's death.

In the present case, the forensic pathologist determined the cause of death for Hernandez was complications of acute cocaine toxicity.

There is no evidence that Deputy Vawter or Deputy McDevitt used force against Hernandez. When Deputy Vawter arrived on the scene he observed three civilians holding Hernandez down. In light of everything Deputy Vawter knew prior to his arrival, most notably that the incident was elevated to a Code 3 due to its seriousness, he made the decision to place Hernandez in handcuffs. There was no additional physical contact with Hernandez before the handcuffs were placed on him. Once the handcuffs were on Hernandez the deputies began trying to communicate with Hernandez without a response. They subsequently noticed he was foaming at the mouth and was not breathing. At this point they immediately began performing life saving measures until the medical professionals arrived at the scene.

There are no facts in this investigation that show Deputy Vawter or Deputy McDevitt used force against Hernandez. Additionally, neither deputy engaged in any conduct that contributed to his death. Accordingly, in applying the applicable law and the California District Attorney's Uniform Crime Charging Standards to the present case, there is no evidence to support a criminal prosecution against Deputy Vawter or Deputy McDevitt. As such, no further action will be taken in this case.