

**In-Custody Death of Reginald Thomas**

**Pasadena Police Department**

**Officer Thomas Butler, #0704**

**Officer Robert Griffith, #3136**

**Officer Michael Orosco, #6648**

**Officer Phillip Poirier, #7081**

**Officer Raphael Santiago, #7706**

**Officer Aaron Villicana, #9039**

**J.S.I.D. File #16-0500**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**April 3, 2018**

## **MEMORANDUM**

TO: CHIEF PHILLIP L. SANCHEZ  
Pasadena Police Department  
207 Garfield Avenue  
Pasadena, California 91101

CAPTAIN CHRISTOPHER BERGNER  
Los Angeles County Sheriff's Department  
Homicide Bureau  
1 Cupania Circle  
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: In-Custody Death of Reginald Thomas  
J.S.I.D. File #16-0500  
P.P.D. File #16013619  
L.A.S.D. File #016-00112-3199-055

DATE: April 3, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 30, 2016, in-custody death of Reginald Thomas. It is the conclusion of this office that Pasadena Police Department (PPD) Officers Thomas Butler, Raphael Santiago, Phillip Poirier, Michael Orosco, Aaron Villicana, and Robert Griffith used reasonable force in subduing Thomas.

The District Attorney's Command Center was notified of this in-custody death on September 30, 2016, at approximately 5:44 a.m. The District Attorney Response Team responded to the location and was given a walk-through of the scene.

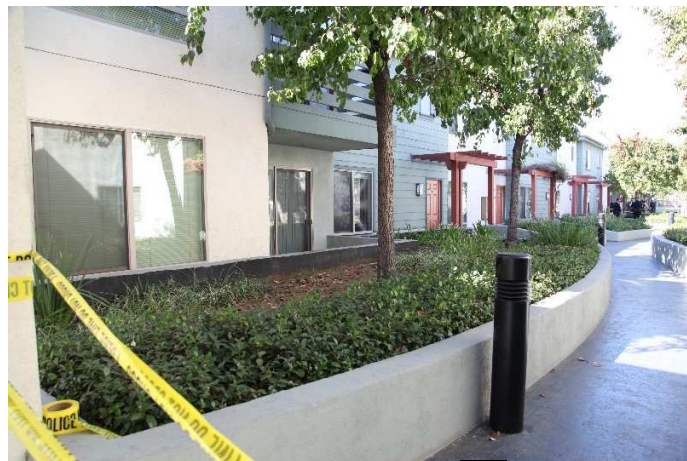
The following analysis is based on investigative reports, witness statements, and audio recordings submitted to this office by Los Angeles County Sheriff's Department (LASD) Homicide Bureau Sergeant Robert Gray and Detective Adam Kirste. The reports also include photographs, video, 9-1-1 recordings, and an autopsy report generated by the Los Angeles County Coroner. The compelled statements of Officers Thomas Butler, Raphael Santiago, Phillip Poirier, Michael Orosco, Aaron Villicana, and Robert Griffith were considered as part of this analysis.

## FACTUAL ANALYSIS

On September 30, 2016, at approximately 2:06 a.m., the PPD received a 9-1-1 call placed from the residence of Shainie L. at [REDACTED] East Orange Grove Avenue, Apartment [REDACTED], in the City of Pasadena. [REDACTED] East Orange Grove Avenue is a large multi-unit apartment complex. The apartment complex has a secured/gated front-door entry with a centrally located courtyard. A set of stairs to the west leads to the second floor of the complex.



[REDACTED] East Orange Grove Avenue, Courtyard and West Stairs Leading to 2nd Floor



2nd Floor Corridor Leading to Apartment [REDACTED] at Southwest Corner

Apartment [REDACTED] is a two-story apartment located on the second floor, in the southwest corner of the complex. The apartment occupies the second and third stories of the building. The front door faces north, swings inward, and opens directly into the living room.



Apartment [REDACTED]

The 9-1-1 caller failed to identify himself and failed to respond to the 9-1-1 dispatcher's questions, prompting the 9-1-1 dispatcher to trace the call to obtain subscriber information. It was later learned that Thomas placed the initial 9-1-1 call using Joseph K.'s cell phone.<sup>1</sup> Three subsequent similar 9-1-1 calls were placed following the first phone call.

In the 9-1-1 recordings, an argument is heard in the background. A woman, later identified as Shainie L., states "You better get on out with that." Thomas responds, "You stupid as fuck." Shortly thereafter, Shane L., Shainie L.'s fifteen-year old son, states "Stop playing. Stop playing." Shane L. is heard in subsequent 9-1-1 recordings repeatedly uttering the same phrase, "Stop playing." At one point, Shainie L. states, "Exactly, that's what I'm saying. He don't understand that. Go home."

In the fourth 9-1-1 recording at approximately 2:42 a.m., Shane L. states, "Stop playing. Be cool. Stop playing." Shainie L. adds, "Leave my baby alone." Shainie L. thereafter states, "Move. Get out. Let go. Let go." Shainie L. then states four separate times, "Get off me!" Towards the end of that fourth 9-1-1 call, Shane L. provides responses to the 9-1-1 dispatcher's questions. Shane L. gives a physical description of Thomas and states Thomas has a knife under his armpit. Shane L. further informs the 9-1-1 dispatcher that Thomas is at the front door, in the doorway, preventing his mother, Shainie L., from closing the front door. Shainie L. is overheard stating, "Tell them to send someone." When asked if Thomas is on drugs, Shane L. responds, "He's high. I can tell you that." In response to the question of whether Thomas has threatened anyone, Shane L.'s response is unintelligible. However, he subsequently adds, "Not yet." When asked, "Is he known to be violent towards you guys?" Shane L. responds with an "uh-hum." Lastly, in response to the question of whether he has done "this" in the past, Shane L. responds, "Yeah." Shane L. abruptly ends the call at about 2:44 a.m.

The PPD radio frequency recordings were obtained as part of this investigation. The recordings capture the 9-1-1 dispatcher transmitting to the responding PPD officers that there is a female on the line stating there is a male who has a knife, a struggle is being heard in the background, and

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<sup>1</sup> Joseph K. is Shainie L.'s sixteen-year-old cousin, who was at Shainie L.'s residence at the time of this incident.

the suspect, Thomas, is at the front door and is known to be violent. The dispatcher adds, “We were last advised he had it [the knife] under his arm.” Further, per the PPD Call for Service log records, the officers are also advised at 2:47:42 a.m. that Thomas is a “PDL member and has made threats to assault an officer.”<sup>2</sup>

Seconds later, an officer commands, “Reginald, come here and put down the knife.” Approximately 35 seconds after that initial command, a physical struggle is heard, followed by an officer’s announcement that “He barricaded himself.” About a minute later, an officer announces, “We’re gonna take him into custody. We’re in a full on fight.”<sup>3</sup>

Approximately two minutes later, the dispatcher announces “RA rolling.”<sup>4</sup> The officers also request an expedited rescue ambulance (RA) response.<sup>5</sup> About two minutes later, the officers state, “We took the hobble off.”<sup>6</sup> The officers begin chest compressions and shortly thereafter, the officers add, “Not breathing. Not conscious.”<sup>7</sup> Lastly, the “PFD has taken over CPR” entry appears at 2:57:55 a.m., per the PPD Call for Service Log records.

A review of the PPD Call for Service Log records, the PPD radio frequency recordings, and the available officers’ audio recordings, indicates the officers’ physical struggle with Thomas, from the time the officers first encountered Thomas to the time Thomas was taken into custody, lasted approximately two minutes and 53 seconds.<sup>8</sup>

Butler and Santiago arrived first on scene, but were immediately followed by Poirier, Orosco, Villicana and Griffith, who also responded to the scene. Upon the officers’ arrival, Thomas was standing outside the front door of the apartment unit armed with a knife and a dry chemical fire extinguisher. The officers gave Thomas repeated verbal commands to drop the knife and fire extinguisher. However, Thomas was uncooperative and did not comply. The officers deployed a Taser, which caused Thomas to drop the knife, but otherwise failed to subdue Thomas. A second Taser was deployed causing Thomas to eventually drop the fire extinguisher.<sup>9</sup>

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<sup>3</sup> This entry appears at 2:50:08 a.m., per the PPD Call for Service Log records. The entry “Taking 1 into custody” appears at 2:50:35 per the PPD Call for Service Log records.

<sup>4</sup> Per the PPD Call for Service Log records, the officers request an “RA roll in” at 2:52:00. At 2:52:07, the operator indicates “RA rolling in.”

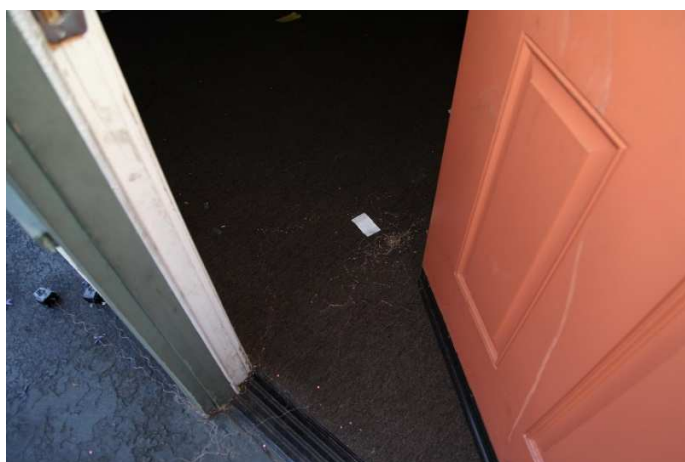
<sup>5</sup> This entry appears at 2:53:00 a.m., per the PPD Call for Service Log records.

<sup>6</sup> This entry appears at 02:53:58 a.m., per the PPD Call for Service Log records.

<sup>7</sup> The entry regarding chest compressions appears at 2:55:00, and the entry regarding Thomas not breathing appears at 2:56:33 a.m., per the PPD Call for Service Log records.

<sup>8</sup> A summary of the officers’ audio recordings, including approximate time of events, is contained later in this memorandum under “The PPD Officers’ Audio Recordings” heading.

<sup>9</sup> The six responding officers were each armed with a department issued X26P TASER. A subsequent examination of the officers’ Tasers revealed that only Butler, Orosco, and Poirier activated their Tasers during this incident. The Tasers’ internal data deployment logs indicate Butler and Orosco likely deployed their Tasers first, followed by Poirier. A detailed discussion of the Tasers’ data follows below in the Physical Evidence section of this memorandum.



Taser Wires Outside and Inside Front Door of Apt. [REDACTED]

The confrontation escalated when Thomas forcefully shut the front door on the officers. The officers then forced the front door open, and a physical struggle ensued between Thomas and the six police officers in the front living room of the apartment. During the physical struggle, the officers administered additional Taser applications on Thomas, [REDACTED]

[REDACTED] The struggle was brief, lasting almost three minutes, but it was intense due to Thomas' ongoing physical resistance, and the officers' attempts to control him and take him into custody.

Thomas was eventually brought to the ground where he was handcuffed and a Hobble Restraint Device was placed around his ankles and clipped to his handcuffs. Officers Matthew Griffin and Jeffrey Newlen arrived at the scene at this time. Upon Griffin's arrival, Thomas was on the ground "with a hobble looped around his ankles and clipped to his handcuffs."<sup>11</sup> Thomas then became unresponsive and stopped breathing. The officers removed the handcuffs and the Hobble Restraint Device, and began cardiopulmonary resuscitation (CPR).

Paramedics responded to the scene and continued resuscitation efforts on Thomas. Resuscitation efforts were unsuccessful, and death was pronounced via telephone at 3:26 a.m. by Dr. Lui at Huntington Memorial Hospital.

Butler, Poirier, and Orosco sustained minor abrasions to their arms as a result of the struggle with Thomas. Santiago and Villicana sustained injuries which required medical treatment at Huntington Memorial Hospital. Investigators subsequently obtained the records for Santiago and Villicana. [REDACTED]

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<sup>11</sup> Per their unit's MAV system's time stamp, Griffin and Newlen arrived on scene at approximately 2:50 a.m.

[REDACTED]

### Statement of Shainie L.

Shainie L. and Thomas had been dating for fifteen years and have four children. At the time of this incident, Shainie L. was pregnant with Thomas' fifth child. Shainie L. and Thomas maintained separate residences. Shainie L. and her children resided in Apartment [REDACTED], while Thomas resided in Los Angeles.

On September 29, 2016, Thomas picked Shainie L. up from work at approximately 4:00 p.m. and they proceeded to run errands accompanied by their four children. Eventually, Shainie L. dropped off Thomas and the children at her apartment while she continued running errands. Shainie L. returned home at approximately 7:00 p.m. Shane L. and Joseph K. arrived home an hour later. Upon her arrival, Shainie L. could tell "something was wrong with Thomas." He appeared "out of it" as he was roaming around the apartment. Shainie L. believed Thomas was "high" on crystal methamphetamine and "sherm" (phencyclidine - PCP).

Shainie L. went upstairs to sleep, but was awakened by what she believed to be smoke inside the apartment. Shainie L. went downstairs and discovered that Thomas had sprayed a fire extinguisher inside the apartment. She went upstairs to ask Shane L. if he knew what was going on, but he did not know. When Shainie L. returned downstairs, Thomas was holding the fire extinguisher in one hand and a "little sword" under his armpit. Shainie L. asked Thomas what he was doing, but he did not answer. Thomas was sweaty, had a white crusty paste around his mouth, was mumbling, and appeared "discombobulated."

Shane L. advised Shainie L. that Thomas had walked upstairs into his bedroom and taken Joseph K.'s cell phone. Shainie L. asked Thomas to return the phone. However, it appeared Thomas was hallucinating and hearing voices, as he was talking and ordering people to go downstairs. Thomas directed Shainie L. to go "get them" as he pointed up the stairs, but Shainie L. told Thomas there was nobody there but her and the children. Although Thomas did not threaten her or the children with the knife, Shainie L. called Thomas' aunt and grandmother in an attempt to have them speak to Thomas to calm him down.

Thomas called 9-1-1 using Joseph K.'s cell phone. Shainie L. alerted Thomas to the fact that he was calling 9-1-1, but Thomas merely replied, "Yeah." Shainie L. was able to retrieve Joseph K.'s cell phone from Thomas and threw the phone to Shane L., who then used it to call 9-1-1. Thomas retrieved his own phone and tried to dial, but Shainie L. did not know who Thomas was calling. At this point, Shainie L. was standing at the foot of the interior staircase, which leads up to the second floor of the apartment and is near the front door of the apartment. Thomas was standing just outside the threshold of the open front door, still holding the knife under his armpit and the fire extinguisher in the other hand, when the first two PPD officers arrived.





Interior Stairs - Facing Front Door with Living Room Area to the Left

The officers ordered Thomas to “Drop the knife!” three separate times as they stood about three feet outside the front door. Thomas moved back and forth, in a “wobbling” motion, but failed to respond to the officers’ commands. When an officer yelled “Take the shot!” Shainie L. yelled “Don’t shoot him!” An officer then approached Thomas and tased him. Thomas began “hollering” and was ordered again by one of the officers to “Drop the knife!” The knife fell to the floor.

The officers yelled at Thomas to drop the fire extinguisher. Thomas was tased a second time, and finally released the fire extinguisher. Thomas fell to the ground, but managed to stand up and slam the front door shut on the officers. Approximately six or seven officers then entered the apartment, wrestled Thomas to the ground, and began hitting him. Thomas was face up on the ground as an officer was hitting Thomas with an expandable baton on Thomas’ chest, back and shoulder area, while another officer was kicking him on or near his head. At this point, Shainie L. could only see Thomas’ feet because the officers “piled on” Thomas. The officers were no longer giving Thomas any directions and Thomas was not fighting back.

The officers then secured Thomas’ feet together with a zip tie like device. Thomas was on his back while the officers were on top of him. At this time, Shainie L. had Shane L. take the younger kids out of the home and over to a neighbor’s apartment. The officers had Shainie L. exit the apartment as well.

Thomas had been using drugs since a young age. Although Shainie L. had seen Thomas under the influence of PCP in the past, he had not acted as he did during this incident. Thomas was “mentally disturbed.” Thomas had been diagnosed with schizophrenia and a bipolar disorder, and had been prescribed multiple medications.



### **Statement of Shane L.<sup>13</sup>**

Shane L. woke up to use the bathroom and observed Thomas walking around the house spraying a fire extinguisher inside the apartment. Thomas sprayed Shane L. in the face with the fire extinguisher. Shane L. became afraid and attempted to protect his face from the spray by covering his face with his arm and turning away.

Shainie L. woke up and they both then tried to calm Thomas down. Thomas was calling the police while also holding a “Ninja” type knife in his hands. Shainie L. retrieved the phone from Thomas and handed it to Shane L., who then used the phone to call the police.

When the police arrived, the officers ordered Thomas to drop the knife approximately two to three times. Thomas dropped the knife after he was tased. When the officers attempted to take Thomas into custody, Thomas attempted to go back inside the apartment and close the front door. Thomas began to physically resist, but Shane L. was not able to see what transpired thereafter because he left the apartment.

### **Statement of Joannah W.**

Joannah W. was awakened by her daughter, Tianna P., who stated she heard a woman yelling. Joannah W. also heard the yelling, so she went outside to see who it was. Once outside, Joannah W. observed her neighbor, Shainie L., standing outside her apartment yelling at officers, “Don’t shoot him! He’s sick! He has mental problems!” Joannah W. also heard officers yelling, “Put your hands up!” at least two separate times. Joannah W. heard at least two of the officers say, “Just tase him.” Subsequently, Joannah W. saw a physical struggle on the living room floor of Shainie L.’s apartment. Although she heard yelling, as if someone was in pain, Joannah W. was unable to see anything other than bodies that appeared to be struggling on the floor.

### **Compelled Statements of Officers Thomas Butler, Michael Orosco, Philip Poirier, Raphael Santiago, Aaron Villicana, Robert Griffith, and Matthew Griffin**

Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline, including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. Several officers were interviewed regarding their actions during this incident by Sergeants from the PPD. The interviews occurred on October 3 and 4, 2016. The PPD orders officers who are involved in an in-custody death incident to submit to questioning concerning the performance of their official duties, and ordered the involved PPD officers to do so in the present case.

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<sup>13</sup> Investigators were unable to interview Shane L. as part of this investigation. The following statement is derived from PPD Officer Zachary Sprague’s interview with Shane L. immediately following the incident and Sprague’s written report of this interview.

The officers, like any individual, possess a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against themselves. *Uniformed Sanitation v. City of New York, supra*, at 284-285. Because the PPD ordered them to answer questions which might expose them to criminal liability, the PPD compelled the officers to participate in the interviews. The effect of this legal compulsion is that the officers' statements cannot be used against them in a criminal proceeding, nor can any material derived from the compelled interviews be used against them. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4<sup>th</sup> 704, 715. Further, because these compelled statements are part of the officers' police personnel files, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

**Statement of Officer Thomas Butler**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

**Statement of Officer Raphael Santiago**

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**Statement of Officer Philip Poirier**

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**Statement of Officer Michael Orosco**

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**Statement of Aaron Villicana**

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**Statement of Robert Griffith**

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[REDACTED]

### **Statement of Matthew Griffin<sup>31</sup>**

Griffin and his partner, Newlen, responded to the scene to assist other officers on a radio broadcast of a family disturbance at the location. While en route, Griffin heard Butler on the radio order someone to drop a knife. Butler also stated that a Taser had been deployed. Shortly thereafter, an officer broadcast that they were in a “full on fight” with the suspect.

Just prior to his and Newlen’s entry into the unit, an officer broadcast that the suspect was in custody. As Griffin neared the apartment unit, Orosco was just outside the front door breathing heavily with his hands at his hips. Griffin inquired where the knife was, and Orosco indicated it was in the grass. Butler was also breathing heavily while holding a red fire extinguisher.

Upon entering the apartment unit, Griffin saw Thomas. Griffin observed that “a hobble was looped around his [Thomas] ankles and was clipped to his handcuffs.”<sup>32</sup> The struggle appeared to be over, but there were several officers surrounding Thomas. An officer stated that an ambulance was needed, while another officer stated he could not find Thomas’ pulse. Newlen then entered the apartment and ordered that Thomas’ handcuffs be removed. Griffin ordered the officers to remove the hobble around Thomas’ feet. Griffin reached down to Thomas’ neck and attempted to find a pulse, but was unable to find one.

Griffin walked out to the front of the complex in order to guide the paramedics into the apartment unit. Just prior to seeing the paramedics enter the courtyard, Griffin heard a radio broadcast that Thomas was not breathing and CPR was being started. Griffin relayed this information to the paramedics. When Griffin entered the apartment, with the paramedics behind him, he observed Newlen doing chest compressions on Thomas. The paramedics then entered the apartment and began emergency medical assistance.

### **Statement of Paramedic Adriana Alvarado**

Alvarado and her partner, Kevin Adair, were the first paramedics to enter the apartment. Upon entry, Alvarado observed six PPD officers performing CPR on Thomas. There were three officers on each side of Thomas’ body doing “quality CPR.”

Some PPD officers advised Alvarado that Thomas may have been under the influence of a controlled substance. Alvarado observed multiple Taser wires on Thomas’ body, but did not observe any trauma to Thomas’ body. Alvarado noted a handcuff secured to Thomas’ right wrist, but Thomas’ hands and arms were not restrained as Thomas’ arms were out to the side. Alvarado did not observe any restraints on Thomas’ feet or legs.

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<sup>31</sup> Griffin provided a compelled statement and prepared a written three-page incident report which summarized his role and observations at the scene. The following statement is derived from Griffin’s three-page incident report, unless otherwise noted.

<sup>32</sup> In his compelled statement, Griffin added [REDACTED]

## Physical Evidence

Apartment [REDACTED] is a two story unit with a living room, kitchen, and bathroom downstairs and three bedrooms and a bathroom upstairs. The front door faces north. There is one window on the ground floor facing north, but this window was obscured by partially-closed vertical blinds and a heavy brown interior curtain at the time of this incident.

A surveillance camera was located across the courtyard facing the front door of the unit. Investigators subsequently obtained video footage of the incident captured by this surveillance camera. The video footage is a little over four minutes long, is in black and white, has no audio, and is of very poor quality, grainy and lacking in detail. Thomas is seen walking outside heading into the unit, prior to the first two officers arriving at scene. (It does not appear that Thomas is holding anything in his hands at this time.)



Thomas Walking Back to Apartment [REDACTED]

Shortly thereafter, two officers are seen approaching the unit, holding flashlights and pointing them towards Thomas who is standing at the threshold of the front door. Approximately thirty seconds later, Thomas is seen shutting the front door closed on the officers, just as a third officer is approaching the location. A fourth officer is seen approaching the location, followed by a fifth and sixth officer who arrive within a few seconds of each other. The officers appear to push the door open at approximately two minutes into the video, after which an apparent struggle takes place at or near the threshold of the front door which appears to flow into the inside of the unit. Due to the lighting (the officers' flashlights produce a glare in the area where Thomas is standing) and poor video quality, the physical struggle taking place between Thomas and the officers cannot be clearly seen. Although it is apparent that there is some type of struggle taking place, nothing more can be discerned.





Surveillance Video Footage Showing Officers at the Front Door of Apartment [REDACTED]

At approximately four minutes and six seconds into the video recording, paramedics are seen arriving at the scene.<sup>33</sup>

A few feet outside the front door of the unit, there is a support column with a stainless steel fire extinguisher box mounted on the south-facing side. This side is a few feet directly across from, and facing, the front door of the apartment. The door to this box was ajar, and the fire extinguisher was missing.<sup>34</sup>



Empty Fire Extinguisher Box

<sup>33</sup> There is no date nor time stamp on the video. The elapsed time indicated is based on the video running time.

A single Taser cartridge door was in a raised dirt planter just west of the front door of the unit.<sup>35</sup> A second cartridge door and Anti-Felon Identification (AFID) tags were also a few feet outside the front door to the unit.<sup>36</sup> Two expended plastic Taser cartridges were found on the ground just outside the front doorway to the unit, and the wires from the cartridges extended inside the location. It appeared as if the cartridges had been fired from outside the location to the inside through the front door, then removed from the front of the device and left outside.

Inside the unit, a multi-colored rug had been pushed from the center of the floor toward the east wall, along with a glass coffee table and a brown leather couch.

Many items in the living room, including the downstairs furniture, carpets, and stairway were covered with a white powdery substance that appeared to be the dry chemical agent discharged from a fire extinguisher.



Powdery Substance on Stairs

Evidence in the living room indicated that more than one Taser cartridge had been deployed in Thomas' area. There were wires underneath Thomas' legs that ran approximately five feet north of where he lay and connected to a Taser dart that was on the ground. Another bundle of Taser wires with one dart still attached was found on the living room carpet. These Taser wires extended from the living room floor, through the front doorway and attached to two Taser cartridges lying on the concrete pathway just outside the front door. Two Taser cartridge doors and two of their respective cartridge door retention clips were also found on the living room carpet. One other Taser cartridge door and one cartridge door retention clip were also found in another area of the living room carpet. An additional Taser cartridge door was found on the living room floor rug at the conclusion of the investigation. It appeared this Taser cartridge door had most likely been pushed aside when the living room rug and coffee table were moved toward the wall to allow more room for paramedics to treat Thomas at the scene. Investigators found this Taser cartridge door when the furniture items were returned to their original position.

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<sup>35</sup> The cartridge door separates from the front of a Taser cartridge when the device is fired.

<sup>36</sup> AFID tags are identification tags, also known as "confetti" tags, imprinted with the particular cartridge's serial number. Every time a Taser cartridge is deployed, approximately 20-30 small confetti-like AFID tags are ejected.

The knife was subsequently processed for latent prints,



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Thomas was found lying on the carpeted living room floor on his back, with his arms extended out to his sides. Thomas was dressed in a sleeveless grey athletic shirt, black shorts, blue underwear, white socks, and grey athletic shoes. Three Taser darts were attached to Thomas' shirt, one each on the right and left sides, and a third attached to the front chest portion on Thomas' right side. One Taser dart was also attached to the back of Thomas' blue underwear. A dried yellow substance was caked on his lips.

At the scene, the coroner investigator noted an apparent abrasion to Thomas' right upper cheek and to Thomas' left elbow. Thomas' left eye also appeared to be swollen. Abrasions appearing consistent with CPR were observed to the middle of Thomas' chest. Two circular possible puncture marks were noted on Thomas' right flank, while one circular possible puncture mark was noted to his left flank. A similar puncture mark was noted to his left upper arm.

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In close proximity to Thomas, on the brown carpeted living room floor, there were loose off-white crystals resembling methamphetamine and a piece of plastic apparently used as packaging.



Off-White Substance and Piece of Plastic On Floor

A large loose piece of an off-white crystal substance, also resembling methamphetamine, was recovered from Thomas' left shorts pocket, and a small knotted piece of plastic bag, also containing a similar substance, was found in Thomas' right shorts pocket. One of the three substances recovered from the scene was subsequently analyzed and determined to be methamphetamine.<sup>39</sup>



Loose Off-White Substance Recovered from Thomas' Left Short's Pocket

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<sup>39</sup> The lab report does not specify which of the three substances recovered was actually tested.





Piece of Plastic Recovered from Thomas' Right Shorts Pocket

### **The PPD Officers' Audio Recordings**

The PPD Officers' vehicles were equipped with dash/video cameras and portable audio microphones (Mobile Audio Video - MAV systems). The units can be manually or automatically activated if the forward facing red light on the police vehicle is activated. The review of the MAV system for Unit 15 (Santiago and Butler), Unit 22 (Poirier), Unit 27 (Villicana and Griffith), Unit 26 (Orosco), and Unit 28 (Newlen and Griffin) revealed that Santiago and Butler were the first to arrive at scene at approximately 2:44 a.m., followed by Poirier, and Orosco, who arrived at the same time at approximately 2:46 a.m. Villicana and Griffith arrived a minute later.

Investigators were able to obtain the MAV audio for Griffin and Newlen. The audio begins when the officers activated their emergency response and captured about 20 minutes of audio. The officers arrive at scene at approximately 2:50 a.m.<sup>40</sup> Within a minute, the officers approach the apartment unit. Shainie L. states, "He don't live here. He came. That's my kid's father." This is followed by brief unintelligible discussion. An officer asks, "Where's the knife?" An officer directs Thomas not to fight anymore. An officer states, "If you fight again, you're gonna get hurt." There is an instruction to roll Thomas onto his side. A request is made to turn on the lights. A second request is made to shine the light on Thomas. An officer checks for a pulse and checks for breathing.<sup>41</sup> When it is reported that Thomas is unresponsive, an officer directs other officers to "unhook" Thomas (remove Thomas' restraints) and asks for a defibrillator. It is then reported that Thomas has no pulse, he is un-cuffed, and an officer begins CPR. The request is made to have the paramedics come inside. The officers continue performing CPR on Thomas until the paramedics take over. The officers inform the paramedics that Thomas fought with

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<sup>40</sup> MAV data reflects 2:07 a.m., but this is inaccurate based on the PPD Call for Service Log records and the officers' compelled statements. [REDACTED]

<sup>41</sup> Per the MAV audio recording, within two minutes of Griffin and Newlen's arrival, a request is made by an officer to put Thomas in an upright position, followed a few seconds later by a request to "Check his pulse," which is followed seconds later by an officers' inquiry, "Is he breathing?"

them and that there were multiple Taser deployments, but they do not know how many deployments were successful. The audio stops shortly thereafter.

Investigators learned that all of the PPD officers were given personal audio recorders by their union. However, the recorders are considered to be personally owned. Investigators subsequently obtained the personal audio recordings pertaining to this incident from Santiago, Butler, Griffin, and Newlen.<sup>42</sup>

Santiago's audio file is approximately four minutes long. The recording appears to capture the entire event up until the time Thomas is taken into custody. The recording begins with an officer ordering, "Hey Reginald, put down the knife, Bro!" The officers yell orders to Thomas to "Put down the knife!" three separate times, before the Taser is deployed. After the first Taser deployment, another order to "Put down the knife!" is heard, followed by additional orders to "Get on the ground! Don't move! Back up! Back up! On your stomach!" This is followed by at least four additional orders to "Put it down!" and two orders to "Put the fire extinguisher down!" The officers warn Thomas, "We will tase you one more time if..." but this is followed by orders to "Back away from the fire extinguisher! Back away from the fire extinguisher! Back away now!" before an officer orders, "Tase him again!" The sound of a Taser is then heard, followed by an officer stating, "He dropped the knife" and "Drop it! Drop it!" An audible physical struggle is then heard, followed by an officer stating, "Taser! Taser!" Thomas is continually heard bellowing in the background, as officers are heard ordering, "Hands behind your back!" and stating, "I got a hand. I got a hand. Push him forward." Thomas continues bellowing as officers order him to "Stop kicking! Stop kicking!"<sup>43</sup> Shortly thereafter, an officer is heard calling for a hobble. An officer responds he has a hobble. Mention is then made of "both legs."<sup>44</sup> The recording ends shortly thereafter.

Butler's audio file is a little under four minutes long. The actual incident with Thomas is not captured in this recording. This recording captures a post-incident interview of Shainie L. by Butler. Butler asks Shainie L. whether Thomas was threatening the family with the knife. Shainie L. denies Thomas was threatening anyone and states that, "He just had it under his arm." Butler continues, "Our dispatcher said he was known to be violent? Why did he say that?" to which Shainie L. responds, "I don't know. Nobody said he was known to be violent." Shainie L. then states that although Thomas "normally uses sherm," she thinks "he's on crystal meth because he is hallucinating." Shainie L. adds, "He's 5150. He's been at Glen Helen, at the

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<sup>42</sup> These are the only audio recorders, obtained as part of this investigation, that captured this incident. [REDACTED]

<sup>43</sup> Thomas is ordered to "Stop kicking!" at two minutes and fifty-six seconds into the recording. At this time, Thomas is still heard bellowing in the background. However, Thomas does not utter any specific, intelligible words.

<sup>44</sup> This discussion regarding the hobble on "both legs" takes place at approximately three minutes and thirty-eight seconds into the recording. At this time, Thomas is no longer heard bellowing in the background.

facility. They can't keep him." Butler asks, "Did you hear me tell him several times to drop the knife?" to which Shainie L. responds, "Yeah, I heard everybody. He's not comprehending because he's under the influence of something."

Newlen's audio file contained related witness interviews, but did not capture the incident with Thomas.

Griffin's audio file contained six related witness interview files, and one that captured the incident immediately after Thomas was taken into custody and it was discovered he was in medical distress. This audio file is approximately eight minutes long. An officer is heard ordering officers to remove the Hobble Restraint Device, followed by another officer stating, "Hobble's off." A few seconds later, an officer states "We're starting chest compressions because I don't think he's breathing. He doesn't appear to be breathing." Within two minutes of Griffin's arrival at the location, the paramedics arrive at the location. An officer then states, "We'll keep compressions 'til you guys are ready." In response to a brief inquiry by the paramedics, Griffin tells the paramedics that approximately six officers were wrestling with Thomas and that there was a Taser deployment. Several officers are heard stating there were "multiple" Taser deployments. The paramedics inquire what the officers mean by "multiple" Taser deployments, an answer is heard of "two, three" while other officers' voices trail off. An officer states, "He was fighting us the entire time." The audio ends shortly thereafter.

## **Taser Data**

The X26P Tasers assigned to Butler, Orosco, Poirier, Santiago, Griffith, Villicana, Griffin, and Newlen were downloaded and examined by their manufacturer for proper operation. The Tasers record information into an Event Log which is a recording of the date, time, and details of each event that occurs with the Taser, including every time the trigger is pulled and the duration of the event (in seconds). Activations are sequentially stored and timed to Pacific Daylight Time (PDT). All the Tasers were found to be functioning within electrical specifications and properly recording data. The Taser examinations revealed the following pertaining to their activation for the date of September 30, 2016:

Butler's Taser was trigger activated six times for a total of 26 seconds.<sup>45</sup> Of the six trigger activations, only two appeared to have the "potential for limited effectiveness."<sup>46</sup> The two potentially limited effective activations were the first two of the six activations. Of the two potentially limited effective activations, one was active for five seconds and the other was active

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<sup>45</sup> When the trigger on the X26P Taser is pulled, it will activate the high voltage pulses, remaining active for five seconds.

<sup>46</sup> The Taser is designed to cause an uncontrollable contraction of the muscle tissue, allowing the device to physically debilitate a target. Per Brian Chiles, Technical Compliance Manager for the Taser devices' manufacturer, "limited effectiveness" means the activation had a limited potential for causing the muscle contraction. However, per Mr. Chiles, whether the activation was ultimately effective or not would depend on the individual subject's physical condition, where the dart probes were on the subject's body, and other variables.



for 4.75 seconds. The remaining activations were ineffective because they failed to make an electrical connection.

Orosco's Taser was trigger activated six times for a total of 31 seconds. Of the six trigger activations, four had the potential for limited effectiveness. The four potentially effective activations were the second, third, fourth, and sixth activations. Of the four potentially effective activations, the second activation was active for five seconds, but only 4.5 seconds of activation had the potential to be effective. The third activation was active for five seconds, but only the first three seconds of activation had the potential to be effective. The fourth activation was active for five seconds, but only the last two seconds had the potential to be effective. The sixth activation was active for five seconds, but only the last three seconds had the potential to be effective.

Poirier's Taser was trigger activated two times for a total of 11 seconds. The two activations were active for five seconds, and both had the potential for limited effectiveness.

The Tasers for Officers Santiago, Griffith, Villicana, Griffin, and Newlen were each functioning within electrical specifications and properly recording data. None of these Tasers were trigger activated on the date in question

### **Baton DNA Evidence**

The batons assigned to Villicana, Griffith, Santiago, and Orosco were swabbed and analyzed for possible DNA evidence. A partial DNA profile, which was a mixture of contributors, was developed from Villicana and Griffiths' baton shafts. However, no conclusions could be drawn regarding the mixture profiles due to their complexity. A partial DNA profile, which was also a mixture of contributors, was also developed from Santiago's baton shaft. However, Thomas was excluded as a major contributor to this mixture. A partial DNA profile, which was a mixture consistent with at least two contributors, was developed from Orosco's baton shaft and Thomas was included as a possible contributor to this mixture.

### **Postmortem Examination**

On October 2, 2016, Deputy Medical Examiner Ajay J. Panchal performed a postmortem examination of Thomas' remains. Thomas was 5'10" tall and weighed 220 pounds. Thomas had swelling on the left side of his face, below the left eye. Petechial hemorrhage was also present on the outer surface of his left eye, as well as on the inside of his left lower eyelid. Petechiae and a laceration was also present on Thomas' right inner mouth area. However, there was no hemorrhage of the right eye and no hemorrhage was present in the optic nerves.

Three minor abrasions were present on Thomas' chest area. These minor abrasions were on Thomas' left chest area, right chest area, and left anterior chest area. Thomas also sustained a minor abrasion on the middle finger of his right hand.

Five punctate wounds, consistent with Taser dart applications, were present on Thomas' body. These punctate wounds were located on Thomas' right rear inner arm, left outer upper arm, right flank, right side of chest, and left lower side.

Significantly, no other evidence of trauma was identified. There was no autopsy evidence of skull fractures nor trauma to the brain. A CT scan of Thomas' entire body revealed no visible skeletal fracture nor evidence of other skeletal trauma. There were no visible cervical spine fractures. The skeletal structures were all normal. Dr. Donald C. Boger, radiology consultant, summarized the CT scan findings as follows, "There is no CT radiographic evidence of abusive or inflicted skeletal trauma and no evidence of intracranial bleeding. There is no evidence of significant congenital or developmental skeletal anomaly."

Further, neither the hyoid bone, the larynx nor the thyroid cartilage were fractured. This is significant because it indicates that Thomas did not die from manual strangulation nor from prolonged compressions or force being applied on his neck area.

No epidural, subdural, or subarachnoid hemorrhage was identified. Although the left side of Thomas' neck showed two red regions, no gross evidence of hemorrhage was identified in the adjacent throat organs and neck muscles. Hence, because the two red regions on the left side of Thomas' neck were isolated, that is, not accompanied by any other signs of trauma, Dr. Panchal did not draw any conclusions from them, other than to note their appearance.

A microscopic examination of the five Taser punctate wounds on Thomas' body found no microscopic evidence of electrical effect or injury. Dr. Panchal opined that if microscopic evidence *was* present, this would be definitive proof that the electrical circuit was successfully deployed on the body. The lack of microscopic evidence is consistent with the Taser activation being ineffective, but the possibility that the activations were effective cannot be ruled out with absolute certainty.

The toxicological examination showed Thomas had marijuana, phencyclidine (PCP) and a significant level of methamphetamine in his body. The toxicology result for methamphetamine was 1.2 ug/mL (microgram per milliliter).<sup>47</sup> The toxicology result for PCP was 9.0 ng/mL (nanograms per milliliter), and the toxicology result for marijuana was 35 ng/mL. Although Dr. Panchal concluded that Thomas' heart was "technically within the normal range," Dr. Panchal noted that it is a well-known fact that the combination of methamphetamine and PCP puts a strain on the heart causing an increased heart rate. Dr. Panchal noted that Thomas' physical struggle with the officers likely exacerbated this situation, thereby contributing to his death.

Ultimately, Dr. Panchal attributed the cause of death to "the effects of methamphetamine/phencyclidine use with bizarre behavior needing multimodal restraint/conducted energy device use." Dr. Panchal noted that it appeared that the conducted

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<sup>47</sup> Per analyst Oscar Pleitez, the methamphetamine result is significant because it is on the high end of the calibration scale. The maximum level on the calibration scale is 2.0 ug/mL.

energy device (the Taser) use preceded the apprehension of Thomas. However, Dr. Panchal's review of the officers' audio recordings of Thomas' arrest, the apartment complex surveillance video, and other items of evidence led him to conclude that he could not exclude "the possibility that asphyxial mechanisms played a role" in Thomas' death.<sup>48</sup> When telephonically contacted by the District Attorney's Office and asked to elaborate on the term "asphyxial mechanisms" in the context of Thomas' autopsy report, Dr. Panchal indicated an example would be body compressions applied on Thomas' back with sufficient force so as to have prevented him from breathing.

Dr. Panchal opined that the manner of death could not be determined.<sup>49</sup>

## LEGAL ANALYSIS

To prove the crime of involuntary manslaughter in violation of Penal Code section 192(b), the People must prove that: (1) The officers committed a crime that posed a high risk of death or great bodily injury because of the way in which it was committed or a lawful act performed with criminal negligence; and (2) The officers' acts caused the death of Reginald Thomas. CALCRIM No. 581.

To prove the first element of Penal Code section 192(b), the People must prove that the officers committed a violation of Penal Code section 149, assault under color of authority, in a manner that posed a high risk of death, or acted with criminal negligence. To prove assault under color of authority, the People must present evidence to show: (1) The officers were peace officers; (2) The officers assaulted or beat Thomas; (3) The assault took place while the officers were engaged in the performance of their duties; and (4) The force used was not lawfully necessary. Penal Code section 149. Force which is excessive or unnecessary is unlawful.

In California, the evaluation of the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard. *People v. Mehserle* (2012) 206 Cal.App.4<sup>th</sup> 1125, 1146 (holding that California law "follows the objective 'reasonable person' standard-the trier of fact is required to evaluate the conduct of a reasonable person in the defendant's position [citations omitted] ... the jury should consider all relevant circumstances surrounding the defendant's conduct. This enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation-but this is not the same as following a special 'reasonable police officer' standard."

In the absence of a criminal violation, the People must show that the officers committed a lawful act in a criminally negligent manner. Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when: (1) he acts in a reckless way that creates a high risk of death or great bodily injury; and (2) a reasonable person would have known that acting in that way would create such a risk. A person acts with criminal negligence when the way he acts is so different from the way an ordinarily

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<sup>48</sup> Asphyxia is a condition of severely deficient supply of oxygen to the body that arises from abnormal breathing.

<sup>49</sup> In preparing Thomas' autopsy report, Dr. Panchal was not privy to the officers' compelled statements.

careful person would act in the same situation that his act amounts to disregard for human life or indifference to the consequences of that act. CALCRIM No. 581.

A peace officer may legally arrest someone if he has probable cause to make the arrest. Penal Code section 836a; CALCRIM No. 2670.

A peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense. Penal Code section 835a; CALCRIM No. 2670.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect an arrest or to prevent escape or to overcome resistance. Penal Code section 835a.

Exigent circumstances justifying a warrantless entry into a home exist when there is a compelling need for official action and no time to secure a warrant. *Michigan v. Tyler* (1978) 436 U.S. 499, 509. Exigent circumstances have been defined to include situations where there is a need to protect or preserve life or avoid serious injury, where a life threatening emergency exists, or where there is a threat of physical harm to police officers or other innocent individuals. *Commonwealth v. Revere* (2005) 585 Pa. 262.

In *Graham v. Connor* (1989) 490 U.S. 386, 396-397, the Court held that use of force cases are to be reviewed using an objective standard of the reasonable officer or a reasonable person functioning as a police officer:

“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. [Citation] . . . With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,’ [Citation] violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.”

According to Ninth Circuit precedent, placing a person wearing handcuffs and leg restraints in a prone position is reasonable where the person has violently resisted arrest. See, *Mayard v. Hopwood* (8<sup>th</sup> Cir. 1997) 105 F.3d 1226; see also, *Price v. County of San Diego* (1998) 990 F.Supp. 1230, 1238 (citing *Mayard*).<sup>50</sup>

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<sup>50</sup> A split of authority exists between the federal circuits on this issue. Some federal courts have held that connecting the leg restraint (hobble) to handcuffs is not an unreasonable use of force. See, *Simpson v. Thompson* (2010) 2010 U.S. Dist. LEXIS 114941; *Turner v. Toledo* (N.D. Ohio) 2012 U.S. Dist. LEXIS 66908. Other courts have concluded that a similar restraint amounted to a “hog-tie” restraint, and potentially an unlawful use of force. See, *Cruz v. City of Laramie* (10<sup>th</sup> Cir. 2001) 239 F.3d 1183 (declining to hold that hog-tie restraints constitute a constitutional violation *per se*.)

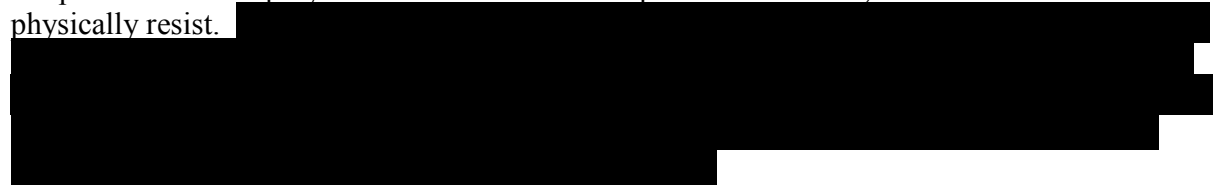
The use of a Taser constitutes an intermediate, significant level of force that must be justified by the governmental interest involved. *Bryan v. McPherson* (2010) 630 F.3d. 805, 826.<sup>51</sup> Use of a Taser is subject to the same reasonableness test as the use of force generally. See, *Hinton v. City of Elwood* (1993) 997 F.2d 774, 777 (not excessive for officers to use an “electrical stun gun” on a man after grabbing him and wrestling him to the ground, because of his active resistance to arrest). The use of a Taser falls within the category of non-lethal force. *Bryan*, supra, 630 F.3d at 825; See also, *Lewis v. Downey* (2004) 581 F.3d 467, 475. When feasible, officers must normally provide a warning and the failure to give such a warning is a factor to consider. *Bryan*, supra, at 831.

The evidence establishes that Thomas, while under the combined influence of PCP, methamphetamine, and marijuana, armed himself with a knife and a fire extinguisher, and refused Shainie L.’s orders to leave her residence. Although Thomas initially dialed 9-1-1, Shane L. later got on the phone and requested police assistance to eject Thomas from the apartment.

When Officers Butler, Santiago, Poirier, Orosco, Villicana and Griffith arrived at the location, Thomas, armed with a knife and fire extinguisher, confronted the officers at the front door of the apartment and refused to obey the officers’ repeated orders to drop the knife and fire extinguisher. When the officers attempted to investigate the situation, Thomas slammed the door shut preventing the officers from entering.

The repeated 9-1-1 calls for assistance coming from within the location, coupled with the fact that Thomas was armed with a knife, provided exigent circumstances for the officers to make a lawful warrantless entry into the home. When they attempted to do so, Thomas physically and violently resisted. The evidence shows that the officers repeatedly ordered Thomas to drop the knife and fire extinguisher before deploying a Taser. Despite the initial Taser activation, Thomas failed to comply, prompting additional orders to “Put down the knife!” and “Put down the fire extinguisher!” as well as additional Taser activations.<sup>52</sup> Given the apparent exigency and Thomas’ resistance, the Taser activations were reasonable under the circumstances.<sup>53</sup>

Despite the Taser deployments and the officers’ repeated commands, Thomas continued to physically resist.



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<sup>51</sup> In *Bryan*, supra, the officer used a Taser in dart-mode. The cases cited by *Bryan* do not distinguish between dart and drive-stun modes.

<sup>52</sup> Santiago’s audio file captured the officers ordering Thomas three separate times to drop the knife before deploying the Taser.

<sup>53</sup> While the Taser data reflects fourteen Taser activations, only five punctate wounds were discovered on Thomas’ body. This suggests that many of the Taser deployments were ineffective. Further, no microscopic electrical effects were noted in any of the punctate wounds, also suggesting that the Taser activations were ineffective.

Thomas continued to physically resist the officers even after they entered the living room.

Further, the post-mortem examination disclosed only three minor abrasions on Thomas' chest area, and one on his middle finger. Such minor physical injuries are consistent with a proportional and reasonable use of force.

[REDACTED]

[REDACTED]

An officer is entitled to use reasonable force to overcome resistance.

The audio files indicate Thomas was rolled onto his side almost immediately after he was successfully hobbled and had

[REDACTED]

<sup>55</sup> Thomas' post-mortem head scan yielded no evidence of any skull fracture, external hemorrhage or trauma to his brain.

<sup>56</sup> Santiago's audio file captured the officers ordering Thomas to "Stop kicking! Stop kicking!"

stopped kicking. Further, as soon as the officers realized that Thomas was in medical distress, they removed the restraints and began CPR. Given Thomas' persistent physical resistance, the use of a TARP was not unreasonable.

The evidence examined in this investigation shows that the officers began by simply asking Thomas to drop his weapons and allow them to enter the residence. Thomas refused and began actively and physically resisting the officers' lawful efforts. The officers resorted to more forcible measures only after other means, including the Taser, proved ineffective. Their escalation of force was in direct response to Thomas' escalating combative resistance. Further, the Taser deployments [REDACTED] and restraint methods were a reasonable response to Thomas' escalating and continued resistance.

Finally, while the post-mortem examination of Thomas concluded the manner of death was undetermined, all the force used by the officers appears to have been reasonable under the circumstances. Thus, even if the officers use of force contributed to Thomas' death, their use of force was not unlawful.

## **CONCLUSION**

Based upon the foregoing analysis, we decline to initiate criminal proceedings against Officers Aaron Villicana, Michael Orosco, Thomas Butler, Phillip Poirier, Raphael Santiago, and Robert Griffith. We are closing our file and will take no further action in this matter.