

**In-Custody Death of Stephen Cherry**

**Long Beach Police Department**

**Officer Jake Armstrong #10833  
Officer Steve Baranowsky #10846  
Officer Gordon Sojanovski #11013  
Officer Richard Gonzales #10938  
Officer Christopher Castillo #10908**

**J.S.I.D. File #18-0388**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**April 23, 2019**

## MEMORANDUM

TO: CHIEF ROBERT LUNA  
Long Beach Police Department  
400 West Broadway  
Long Beach, California 90802

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

SUBJECT: In-Custody Death of Stephen Cherry  
J.S.I.D. File #18-0388  
L.B.P.D. DR #18-55063

DATE: April 23, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 17, 2018, in-custody death of Stephen Cherry. We have determined that Long Beach Police Department (LBPB) Officers Jake Armstrong, Steve Baranowsky, Gordon Stojanovski, Richard Gonzales and Christopher Castillo used legally justified force in subduing Cherry. We have further determined that their use of force was not a proximate cause of Cherry's death. For the reasons set forth below, this office declines to initiate criminal proceedings.

The District Attorney's Command Center was notified of the in-custody death at approximately 4:14 a.m., on September 17, 2018. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the in-custody death and a walk-through of the scene.

The following analysis is based on reports, audio and video recordings, photographs, medical records and the autopsy report, submitted to this office by the LBPB. No compelled statements were considered in this analysis.

### **FACTUAL ANALYSIS**

On September 17, 2018, at approximately 1:24 a.m., LBPB Officer Richard Gonzales was dispatched to ■ Santa Ana Avenue in the City of Long Beach to respond to a suspicious person call. The information initially provided to Gonzales was that there was suspicious activity in the alley to the rear of the location and the caller heard a male voice and glass being broken. A second caller then reported there were possibly three suspects arguing and yelling. The caller heard one voice say, "Hold him!" and another say, "I'm going to kill you if you don't put that down." The caller indicated it might be one person speaking to himself and the man yelling was possibly mentally ill. The updated

information indicated he was heard yelling, “The power of Christ compels you!” while breaking objects including glass. The last update also changed the location to [REDACTED] Santa Ana Avenue.

Upon arrival, Gonzales drove his police vehicle northbound in the alley to the rear of [REDACTED] Santa Ana Avenue. He heard a male voice yelling from the northeast side of the property. As he approached the pedestrian walkway, he observed Shawn J. standing on the apartment’s stairway. Shawn advised Gonzales that the man yelling was his neighbor “Steve.” Gonzales identified himself as a police officer and began calling out “Steve!” to the man, later identified as Stephen Cherry.

Gonzales approached a shattered glass window and saw pieces of glass on the ground as well as blood around the window frame and blinds. He stood approximately four feet east of the window and attempted to contact Cherry.<sup>1</sup>



Shattered glass window with blood around the frame and blinds

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<sup>1</sup> Surveillance video of the alley captured all the activity which took place at this location. The video does not have sound, and it is only when officers’ flashlights are used that the window area can be seen clearly. Cell phone video clips also captured portions of the interaction. The cell phone video also has sound.



Shattered glass and blood on the ground below the window

Gonzales observed Cherry's feet hanging from the ledge of the window frame. Cherry's feet were bleeding. Gonzales used his radio to request paramedics to the location, and asked them to stage nearby until the location was made safe.

Cherry continued to yell, and threw things around the inside of the bedroom on the other side of the window. Gonzales could not make out much of what Cherry was yelling, but clearly heard him shout, "The power of Christ compels you!" Gonzales continued to try to engage Cherry in conversation, but Cherry did not acknowledge his presence or reply to his questions or comments. Gonzales formed the opinion Cherry was under the influence of alcohol or a narcotic substance. Gonzales could not see everything inside the bedroom due to the window blinds partially obstructing his view.

Officer Gordon Stojanovski arrived at the location to assist Gonzales. He saw Gonzales standing outside the window talking to Cherry and approached his location. Cherry began punching the window, causing the blinds to swing outside the window. Both Gonzales and Stojanovski heard unknown items being thrown and loud banging inside the bedroom. Stojanovski also heard Cherry screaming, and could hear Cherry speaking about angels and demons. Stojanovski attempted to speak with Cherry, asking him to calm down and exit the apartment so paramedics could treat his injuries.

Cherry removed the window blinds and threw them on the floor inside the bedroom. Gonzales observed a four-inch laceration on Cherry's left forearm. Cherry also had

blood on his shoulders, chest, stomach, arms and legs. Cherry continued punching at the window, cutting himself on the glass that remained attached to the window.

Officers Christopher Castillo, Jake Armstrong and Steve Baranowsky arrived at the location. Castillo and Armstrong also attempted to speak to Cherry, but he ignored them, continuing to break what was left of the window. Cherry then began sweeping the edges of the window with his bare hands, cutting himself on the broken glass.<sup>2</sup> Baranowsky observed a large amount of blood inside the bedroom, as well as on Cherry's body. Baranowsky then saw Cherry lie on the bedroom floor under the window shouting, "The power of Christ compels you!" repeatedly while striking himself in the chest with an unknown object. Armstrong also observed the blood, and saw Cherry rubbing his blood all over the walls of the bedroom before rolling on the bedroom floor, standing up and attempting to rip a television from the wall where it was mounted.

Cherry then placed his head, chest and stomach outside the window, leaving his mid-section and feet inside the bedroom as he faced downward, hanging partially outside the window.



Surveillance video still of Cherry's upper body outside of the window

<sup>2</sup> These actions can be seen on the surveillance video and cell phone video clips.

Cherry rolled himself back inside the bedroom and began banging his body against the bedroom walls as he ran erratically inside the bedroom. Gonzales saw a large amount of blood on the bedroom walls and bed as he watched Cherry in the bedroom.



Blood on the walls of the bedroom and bed

Gonzales asked Shawn if there was anyone else inside the apartment. Shawn contacted Cherry's roommate, later identified as Brian S., and advised Gonzales that Cherry was the only person inside the residence. Shawn also advised Gonzales that Cherry was under the influence of methamphetamine.<sup>3</sup>

Gonzales and the other officers continued their attempt to converse with Cherry, asking him to step outside, whether there was anything they could do to help him, and whether or not he was hearing voices. Stojanovsky asked Cherry if something was bothering him and requested that Cherry simply talk to them. He also asked Cherry if he was hearing voices. Cherry never replied or acknowledged their statements.

Sergeant John McVay arrived at the location and began giving Cherry verbal commands to exit the room. Cherry did not respond or exit the room, but continued to ramble and yell inside the room.<sup>4</sup> McVay observed Cherry yelling and screaming while jumping on

<sup>3</sup> Gonzales did not inquire how Shawn knew Cherry was under the influence of methamphetamine at that time.

<sup>4</sup> The cell phone video clips capture some of Cherry's yelling and ranting. Much of it is incoherent, but phrases such as "disciple" and "the power of Christ compels you!" are audible. Cherry can also be heard

and off furniture. Cherry did not appear to be in any pain, despite multiple lacerations on his body.<sup>5</sup> McVay noted that Cherry appeared to be in an “altered state,” breathing heavily, sweating profusely, jerking and twitching his extremities and eyes while apparently unable to respond to verbal commands. McVay asked Cherry to exit the room repeatedly and told him they were there to help him. Cherry began shaking the television mounted on the wall and said, “They are in here! They are in here!”

Baranowsky heard McVay attempting to speak with Cherry without success. He then observed Cherry walking towards the kitchen area of the residence. Baranowsky saw Cherry attempting to open the kitchen door. Baranowsky, Armstrong, Stojanovski and Castillo responded to the area outside the kitchen door, while McVay stayed behind in case Cherry returned to the bedroom.

Gonzales had previously walked to the rear door of the residence. Shortly after he arrived, he heard officers yell that Cherry was walking to the rear door.<sup>6</sup> Gonzales observed Cherry open the wooden rear door inward as he yelled out random words.<sup>7</sup> Gonzales observed that Cherry was completely nude, with blood and lacerations all over his body. As Cherry began exiting the residence, Baranowsky and Armstrong arrived at the kitchen door area.

Cherry stepped outside the rear doorway toward Armstrong. Armstrong grabbed Cherry’s left arm. Cherry grabbed the door frame with his right hand. Gonzales walked up the steps to the rear doorway and placed both of his hands on Cherry’s right wrist to force Cherry to release his grip on the door frame. Stojanovski arrived as officers had Cherry’s hands. Gonzales pulled Cherry’s wrist towards him, causing Cherry to let go of the door frame. Once he released his grip, the momentum from Gonzales pulling his wrist caused Cherry to fall to the ground. Once on the ground, Cherry was able to pull his right wrist away from Gonzales. Gonzales placed his left hand onto Cherry’s right forearm to prevent Cherry from swinging his arm. Gonzales also placed his right hand on the back of Cherry’s head in an attempt to keep his forehead on the ground. The blood on Cherry’s body made it very difficult for officers to control him, as it made his skin slippery and hard to hold. Stojanovski saw Cherry kicking his legs and attempted to hold them down, while telling Cherry to calm down. Cherry was twisting and resisting officers’ efforts to restrain him. Cherry attempted to push off the ground in an apparent effort to stand up. Castillo used his Taser against Cherry’s back to drive-stun Cherry.<sup>8</sup> Cherry continued to move from side to side, attempting to escape.<sup>9</sup>

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referring to a priest, the devil, and asking someone to forgive him. Throughout the video clips it sounds as though Cherry is addressing multiple people inside the room, saying things such as, “Hurry up! Please don’t hesitate! The power of Christ compels you!” and “Everybody, everybody, out this way! Go! Go!” Later, Cherry says, “It’s over baby,” and “Everybody grab on!” and “Hurry up! Don’t listen to him!”

<sup>5</sup> Castillo also noted that Cherry did not seem to be bothered by his multiple injuries, despite having large lacerations and skin hanging off of his arms.

<sup>6</sup> Officers can be heard on the cell phone video shouting, “Back door! Back door!”

<sup>7</sup> There is no surveillance or cell phone video of the rear door area.

<sup>8</sup> Castillo had previously noted that Cherry seemed impervious to the pain from his wounds, potentially under the influence and likely to resist any effort to restrain him. Castillo had his Taser ready to deploy in the event Cherry was not easily detained. Castillo observed officers having difficulty subduing Cherry as

Gonzales lifted Cherry's right arm off the ground and Castillo got control of his left, allowing Armstrong and Baranowsky to handcuff Cherry. Once Cherry was handcuffed, paramedics were advised it was safe to enter the location and provide medical treatment to Cherry. While waiting for the paramedics to arrive, Gonzales noticed that Cherry was breathing heavily while mumbling under his breath. He then heard Cherry making gurgling sounds. Officers rolled Cherry onto his side and Castillo began performing a sternum rub. Paramedics arrived and took over treating Cherry, then transported him to St. Mary's Medical Center. Cherry was pronounced dead at the hospital at 2:35 a.m.

A canvass of the neighborhood was conducted. Multiple neighbors reported hearing Cherry banging and yelling, consistent with what can be heard on the cell phone video. Multiple neighbors heard Cherry making biblical references, and one neighbor heard him say "Go ahead and kill me!" Multiple witnesses described Cherry as a danger to himself. None of the neighbors who observed any part of the incident reported any officer striking Cherry in any fashion or using any force other than that required to restrain Cherry, including the use of the Taser. Multiple neighbors observed Cherry resisting officers and posing a danger to himself. Neighbors also reported hearing officers attempting to calm Cherry down at various times, saying "Steve, we are here to help," and asking him to come outside.

An autopsy was conducted on September 24, 2018 by the Los Angeles Department of the Medical Examiner-Coroner, Deputy Medical Examiner Doctor Matthew Miller. Dr. Miller observed multiple injuries consistent with Cherry having cut himself as described by witnesses. No other inflicted type of trauma was observed. Dr. Miller determined the cause of death was methamphetamine toxicity and sharp force injuries.<sup>10</sup> The manner of death was deemed accidental. Dr. Miller also noted that Cherry suffered from coronary artery atherosclerosis, with up to 40% stenosis of the left anterior descending coronary artery and at least 95% stenosis of the right coronary artery with possible acute plaque hemorrhage. Dr. Miller also observed aortic atherosclerosis, as well as pulmonary edema and congestion. Microscopic examination of the heart demonstrated remote myocardial infarction(s). Toxicology testing revealed methamphetamine and a significantly elevated concentration of Diphenhydramine, an antihistamine.

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he flailed his arms and rotated his upper body in an attempt to break free. While assisting other officers in taking Cherry to the ground, Castillo fell to his knees. Upon standing up, he observed that officers were still struggling to subdue Cherry, who was now also flailing his legs. Castillo saw that Cherry seemed very strong, and feared he would be able to overpower the officers. Castillo used his Taser to stun Cherry in stun-drive mode in hopes of avoiding the use of deadly force should Cherry overpower the officers. Castillo performed three to six drive stuns, but did not hear any arcing or see any result with several of the drives, as if the machine had not made contact or was malfunctioning. The Taser itself recorded three trigger pulls.

<sup>9</sup> Multiple officers noted in their reports that the use of the Taser did not seem to have an effect on Cherry. Armstrong noted in his report that the repeated stuns seemed to cause Cherry to pull his hands out from under his body.

<sup>10</sup> Dr. Miller indicated no overtly fatal trauma was identified.

Dr. Miller explained in his report:

“Coronary artery atherosclerosis results in reduced blood supply to the heart muscle, which can result in an arrhythmia (abnormal cardiac electrical conduction and contraction) or a myocardial infarction (death of heart muscle due to insufficient blood flow), and Mr. Cherry’s heart demonstrated prior, remote myocardial infarctions.<sup>11</sup> Methamphetamine is a stimulant drug, and it can increase the heart rate and blood pressure, thus increasing the work done, and oxygen needed, by the heart. This can result in myocardial ischemia due to the oxygenated blood need outstripping the supply, especially in the case of a preexisting [*sic*] lesion which would limit blood flow, such as the significant atherosclerosis involving Mr. Cherry’s right coronary artery.”

Dr. Miller further opined:

“In this case, the combination of severe stenosis of the right coronary artery and methamphetamine likely resulted in myocardial ischemia and a myocardial infarction and/or fatal cardiac arrhythmia...The blood loss from the sharp force injuries may have contributed to some degree, but this is felt to be a minor factor.”

## LEGAL ANALYSIS

“An officer may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance.” *Munoz v. City of Union City* (2004) 120 Cal.App.4<sup>th</sup> 1077, 1102. “Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Id.* (citations and internal quotations omitted).

“The question is whether a peace officer’s actions were objectively reasonable based on the facts and circumstances confronting the peace officer.” *Id.*, at 1102.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. *CALCRIM No. 505, 3470*.

The use of a TASER constitutes an intermediate, significant level of force that must be justified by the government interest involved. *Bryan v. MacPherson* (2010) 630 F.3d 805. Use of a TASER is subject to the same reasonableness test as the use of force generally. *See, Hinton v. City of Elwood* (10<sup>th</sup> Cir. 1993) 997 F.2d 774, 777 (not excessive for officers to use an “electric 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

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<sup>11</sup> A myocardial infarction is commonly referred to as a heart attack.

TASER falls within the category of non-lethal force. *Bryan*, supra, 630 F.3d at 825; See also, *Lewis v. Downey* (11<sup>th</sup> Cir. 2004) 581 F.3d 467, 475.

An act causes death if the death is the direct, natural and probable consequence of the act and the death would not have happened without the act. *CALCRIM No. 582*

In the instant matter, all witness accounts and audio/video recordings consistently show Cherry was under the influence, acting erratically and a danger to himself due to his self-injurious behavior. Officers attempted to reason with him and get him to exit the residence peacefully, but Cherry appeared not to hear or understand them. When Cherry exited the residence via the kitchen door, officers were attempting to subdue and restrain him for his own safety. Due to his strength and the blood covering his naked body, officers were unable to detain him. The force they used in attempting to take him into custody was warranted given his physical and mental state and the potential for him to injure himself further. The use of the Taser was also justified, as it was applied in an effort to accomplish the same detention when multiple officers were unable to control Cherry.

Further, there is no indication that the use of force or the use of the Taser were a factor contributing to Cherry's death.

## **CONCLUSION**

The evidence examined in this investigation shows that Officers Armstrong, Baranowski, Stojanovski, Gonzales and Castillo were justified in their use of force in subduing Cherry. Further, their use of force was not a proximate cause of Cherry's death. We are closing our file and will take no further action in this matter.