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District Attorney

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NEWS RELEASE

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District Attorney's Office Declines to File Criminal Charges Against Former California Highway Patrol Officer

The Los Angeles County District Attorney's Office (LADA) today announced that criminal charges will not be filed against the former California Highway Patrol (CHP) officer who encountered a transient mentally ill woman on Interstate 10 on July 1, 2014.

"Based upon the facts presented, there was a lawful necessity for (Officer Daniel) Andrew to use force to prevent (Marlene) Pinnock from entering the lanes of traffic and there is insufficient evidence to prove beyond a reasonable doubt that the force he used was unreasonable or excessive," according to the 30-page Charge Evaluation Worksheet, dated Dec. 3, 2015. The document is attached.

This incident drew attention when a 42-second video of the nine-minute encounter between the officer and Ms. Pinnock on the freeway went viral. While the images contained in the video may have been unsettling to watch, the recording does not capture the series of events leading up to Pinnock's detention and represents just one piece of evidence collected and reviewed in the LADA's extensive and independent investigation.

LADA prosecutors and investigators also relied on medical records, eyewitness accounts, recordings of 911 calls and multiple patrol car dash camera videos of the incident. The incident began at 7:11 p.m. with the first 911 call of a pedestrian walking on or adjacent to the freeway to Ms. Pinnock's admission to Los Angeles County Medical Center at approximately 9:30 that night. Summaries of that evidence are included in the attached document.

"When looking at all of the evidence, and especially the medical reports and eyewitness accounts, it becomes exceedingly clear that the officer, who was alone and struggling with Ms. Pinnock precariously close to evening freeway traffic, acted within the law," District Attorney Jackie Lacey said.

"In our analysis, his use of force was legal and necessary to protect not only his own life but also that of Ms. Pinnock," District Attorney Lacey said.

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The District Attorney pointed out that the officer also had a sworn duty to protect commuters from a potentially dangerous situation had Ms. Pinnock gotten away from him and walked onto the freeway.

"Under these circumstances, his use of force was proportionate with the threat he encountered and the training he received from CHP," she said.

"Fortunately, neither the officer nor Ms. Pinnock were seriously injured," District Attorney Lacey said. "As this matter comes to a close, it is my hope that Ms. Pinnock is finally able to get the long-term care she needs."

As part of the investigation, several civilian eyewitnesses were interviewed. Four of them contacted or attempted to contact authorities on their own after seeing the 42-second video to defend the officer's actions. Three eyewitnesses said they saw Ms. Pinnock strike the officer; four of them said they thought the officer was trying to save Ms. Pinnock from wandering into freeway traffic and being killed or injured.

LADA hired an independent use of force expert, who found that the officer "reasonably acted according to CHP policy, CHP training, and the law during this difficult encounter with Ms. Pinnock."

The LADA Charge Evaluation Worksheet noted that in viewing the 42-second video in slow motion, "(m)ost of the strikes appear to contact (Ms.) Pinnock's right shoulder or upper body area," a conclusion that "is supported by medical records." That conclusion also is supported by the independent use of force expert retained by LADA.

Medical records, dated the same day as the incident, indicated that Ms. Pinnock had no abrasions, lacerations or bleeding underneath the skin. A week later, a CT scan noted no evidence of fracture or facial swelling.

The independent use of force expert found that "the absence of injury to Ms. Pinnock's head and face ... indicates that if any of the strikes hit her head, they were glancing, ineffective blows."

The LADA document concludes: "Given the rapidly evolving and challenging situation, the lack of additional officers on scene, (Ms.) Pinnock's failure to comply with Andrew's verbal commands, and (Ms.) Pinnock's physical resistance to Andrew's attempt to stop and detain her, there is insufficient evidence to prove beyond a reasonable doubt that the force he used was unreasonable or excessive."

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About the Los Angeles County District Attorney's Office

Los Angeles County District Attorney Jackie Lacey leads the largest local prosecutorial office in the nation. Her staff of nearly 1,000 attorneys, 300 investigators and 800 support staff members is dedicated to seeking justice for victims of crime and enhancing public safety. Last year, the [Los Angeles County District Attorney's Office](#) prosecuted more than 71,000 felony defendants and nearly 112,000 misdemeanor defendants.

Charge Evaluation Worksheet
California Highway Patrol Officer Daniel Andrew
J.S.I.D. File #14-0453R



JACKIE LACEY
District Attorney

JUSTICE SYSTEM INTEGRITY DIVISION

December 3, 2015

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the allegation that California Highway Patrol (CHP) Officer Daniel Andrew, serial #20470, committed the crime of assault under color of authority in violation of Penal Code section 149. For the reasons set forth below, this office declines to initiate criminal proceedings in this matter.

The following analysis is based on reports, audio recordings, MVARs (Mobile Video/Audio Recording System, i.e. a dash camera) recordings from both Andrew's patrol vehicle and the responding officers' patrol vehicle, video recordings, CHP training material, and three CHP use of force reports submitted to this office by the CHP. This analysis also took into consideration the interviews of additional witnesses, including Marlene Pinnock, made by members of the District Attorney's Office, medical records received pursuant to search warrants, and the independent use of force analysis conducted by retired Los Angeles Police Department Captain Greg Meyer, a well-recognized use of force expert. The voluntary statement of Officer Daniel Andrew was considered for the purpose of this analysis.

INTRODUCTION

On July 1, 2014, CHP Officer Daniel Andrew attempted to stop Marlene Pinnock as she was walking on the Interstate 10 (hereinafter I-10) freeway near the northbound La Brea Boulevard on-ramp.¹ While taking Pinnock into custody, Andrew used force, including but not limited to, delivering several closed fist strikes to Pinnock. Ardavan D., the driver of another car present at that location, recorded approximately 42 seconds of this incident on his personal cell phone.

The 42 second recording documents a portion of the event. However, this incident lasted approximately nine minutes.² Further, this office examined evidence beginning at the time of the first 9-1-1 call, at approximately 7:11 p.m., until Pinnock was admitted to Los Angeles County Medical Center, at approximately 9:30 p.m.

FACTUAL ANALYSIS

On July 1, 2014, at approximately 7:11 p.m., CHP Los Angeles Regional Traffic Management Center (LARTMC) received a 9-1-1 call reporting a female pedestrian, later identified as Pinnock, walking on the eastbound I-10 freeway shoulder, east of the Fairfax Boulevard on-ramp. The 9-1-1 caller told the operator, "There's a woman walking on the freeway going into the freeway just walking barefooted." The caller indicated that the pedestrian was a "black female...wearing a pink dress with a black purse and is bare-footed."

¹ Daniel Andrew was employed as a peace officer for the CHP. Andrew entered the CHP Academy on April 26, 2012, graduated on October 26, 2012, and was assigned to the Central Los Angeles Area. Andrew was 33 years old, weighed 187 pounds and stood 6'2" tall. Marlene Pinnock was 51 years old, transient, and suffering from mental illness. Pinnock stood 5'9" tall and weighed 205 pounds.

² Andrew first saw Pinnock walking on the I-10 freeway at 7:44 p.m. Pinnock was placed into his patrol vehicle and the door was closed at 7:53 p.m., approximately nine minutes after spotting Pinnock on the freeway.

Between 7:11 p.m. and 7:44 p.m., a total of nine individuals called 9-1-1 to report seeing Pinnock walking on or adjacent to the freeway. Most of the callers described Pinnock as travelling on the shoulder of the freeway between the Fairfax Boulevard and La Brea Boulevard exits. Several callers described Pinnock as African-American, wearing a pink dress, carrying a purse or bag, and not wearing shoes. One caller indicated that Pinnock was trying to cross against traffic lanes and another voiced concern that "she would walk out into the freeway in front of me." Others volunteered that Pinnock looked "drunk," "loaded," or did not "look to be doing too good."

At 7:14 p.m., LARTMC broadcast "pedestrian eastbound 10 east of Fairfax, also getting it westbound at Crenshaw...looks like a pedestrian westbound of Crenshaw. Barefoot female. Also getting this same female eastbound east of Fairfax." Officers Fabio Ibarra and Kristopher Moreno responded to the call. Further information was provided identifying the I-10 eastbound west of La Brea Boulevard as a possible location. Ibarra and Moreno attempted to locate Pinnock, but were unsuccessful.

At 7:42 p.m., LARTMC again broadcast the call of a pedestrian on the I-10, saying, "We have another call just now eastbound at La Brea Avenue, where this party is trying to cross into the lanes of traffic." Officers Ibarra and Moreno were assisting a motorist with a disabled vehicle and not available to handle the call. Ibarra and Moreno acknowledged the call and indicated that they would respond as soon as they were clear. At approximately 7:44 p.m., Andrew located Pinnock walking on the right shoulder of eastbound I-10 at the La Brea Avenue exit.³ Andrew broadcast, "'97 with the ped at La Brea, right shoulder. It's a black female white purse; will make contact."⁴

Initial stop

Andrew stopped his patrol vehicle facing eastbound, just west of Pinnock as she walked eastbound along the right shoulder.⁵ Andrew used the public address system to instruct Pinnock to stop walking. Pinnock stopped and looked back towards Andrew as he began to exit his vehicle. As Andrew walked along the rear of his patrol vehicle, Pinnock resumed walking eastbound. Andrew got back into his car, followed Pinnock for an estimated 100 feet in his patrol vehicle along the shoulder, and over his public address system, ordered Pinnock to stop walking several times. After approximately 35 seconds, Pinnock stopped walking and stood at the gore point area between I-10 and the La Brea Avenue on-ramp, facing eastbound. Andrew exited his vehicle, walked eastbound past Pinnock, and turned westbound to face her.

³ Andrew was assigned as a single man unit working roving patrol. He was in uniform and driving a marked black and white patrol vehicle.

⁴ Pinnock was wearing a white or light pink dress with a torn pink or red sweater, black knee high socks, and no shoes. She was carrying a white purse.

⁵ Andrew's patrol vehicle was equipped with an MVARs which captured the portion of the incident that occurred in front of his patrol vehicle.

Andrew informed Pinnock that it was not safe for her to be on the freeway.⁶ As he spoke to Pinnock, Andrew put on black gloves. Pinnock responded that she wanted to sign her citation and leave, called Andrew the “white devil,” and indicated that she had the right to “walk home from here.” Andrew told Pinnock that he was not going to issue her a citation but she needed to exit the freeway. Andrew told Pinnock that she could either walk off the freeway or he would give her a ride in his car. Pinnock turned away from Andrew, walked across the La Brea Boulevard on-ramp, and proceeded in a southwest direction on the right shoulder, as if exiting the freeway. Andrew followed on foot.⁷ At 7:46 p.m., Andrew requested a second unit respond to his location and indicated, “Code 4 but she is walking off the off-ramp. She’s agitated.”⁸

Andrew followed Pinnock until he believed that she was leaving the freeway. Andrew turned and began to walk towards his patrol vehicle. Pinnock looked back at Andrew, turned, and walked back up the ramp. Andrew approached Pinnock for the third time and told her that she needed to leave the freeway. Pinnock proceeded to walk around a red truck positioned on the on-ramp and then walked toward the traffic lanes of the eastbound I-10 as Andrew followed behind.⁹ Andrew repeatedly ordered Pinnock to stop walking and was concerned that she was going to walk into traffic.¹⁰

Use of force

Pinnock proceeded across the on-ramp and towards the collector road.¹¹ Just prior to entering the collector road, Andrew grabbed Pinnock’s right arm to prevent her from walking into the traffic lane. A struggle ensued. Pinnock turned to face Andrew and she extended her left arm toward Andrew, possibly grabbing or striking him at that time.¹² The struggle continued while both Andrew and Pinnock were standing for approximately four seconds. During this time

⁶ This description of the incident is taken from Andrew’s police report. The video from the MVARs corroborates Andrew’s account of the situation for the portion of the incident which the MVARs recorded. The audio portion of the MVARs was not successfully activated, although it is clear from the visual recording that Andrew did speak to Pinnock. The description of the dialogue is also taken from Andrew’s police report. When interviewed, Pinnock did not recall the initial contact with Andrew and could not clarify the conversation.

⁷ At this point, both Pinnock and Andrew walked out of view of the MVARs camera. Approximately 40 seconds passed between the time that Pinnock and Andrew left the view of the MVARs camera and Ardavan D. began recording the incident on his cell phone.

⁸ It appears from the video that Andrew exhibited a calm and professional demeanor during the initial encounter with Pinnock.

⁹ At approximately this time, Ardavan D. began recording this incident using his cell phone camera. Ardavan D. indicated in his statement that Pinnock had walked past his car initially as she was exiting the on-ramp.

¹⁰ Several witnesses to the incident overheard Andrew ordering Pinnock to “Stop!” Their statements are discussed in detail later in this memorandum.

¹¹ The collector road runs parallel to the I-10 freeway and connects traffic from the on and off ramps with the main arterial lanes of the freeway.

¹² Several witnesses indicated that Pinnock struck Andrew first. Their statements are discussed in detail later in this memorandum.

period, Andrew attempted to control Pinnock by grabbing her arms and body to move her away from the collector road while Pinnock eluded and resisted Andrew's efforts.

After approximately four seconds, both Andrew and Pinnock fell to the ground. In his report, Andrew indicated that he performed a leg sweep to take Pinnock to the ground. It is unclear from the recording whether Andrew took Pinnock to the ground, or she stumbled, or a combination of both. Once on the ground, Pinnock swung her left arm in a back handed motion, hitting Andrew in the face, and pulled her left knee, and possibly both knees, into Andrew's groin area.

Both Andrew and Pinnock struggled with each other while on the ground. Andrew straddled Pinnock and Pinnock moved her left knee in the area of Andrew's groin. Andrew attempted to control Pinnock's hands and body. Pinnock actively resisted Andrew's efforts to control her by grabbing at the collar area of his shirt, grabbing his right shoulder area, pulling him towards her, and generally struggling with him.

In an attempt to control the situation, Andrew delivered or attempted to deliver ten strikes with his right hand to Pinnock's arms, shoulders, and head area. During this time, Pinnock's leg was bent at the knee and positioned in Andrew's groin area. All strikes occurred in fewer than ten seconds, appear to have been with a closed fist, and were either hammer strikes or punches.¹³ At some point during these ten seconds, Pinnock grabbed Andrew's lapel microphone, causing it to dislodge from his uniform and become temporarily disabled.

Andrew's first three strikes were delivered within approximately one second. Andrew described strikes one through three in his interview by indicating that his intention was to use these strikes to hit Pinnock's upper body, right arm, or right shoulder area in order to cause Pinnock to free her grasp of him. Pinnock was holding onto Andrew's body during this time and moving her knee in the area of his groin. The recording does not conflict with this assertion.

The fourth, fifth, sixth, and seventh strikes were delivered within approximately one and a half seconds. Pinnock was holding onto Andrew's upper body with her right hand during the time period that strikes four through seven were issued. The strikes made contact with the same general area as the previous strikes and did not cause Pinnock to release her grip of Andrew.

After the seventh strike, Andrew transitioned by deescalating his use of force in attempting to manually remove Pinnock's right hand from his body. As he did so, Pinnock reached up to Andrew's collar area, gripped that area with her left hand, and pulled Andrew toward her. Andrew manually pried Pinnock's left hand, and then her right hand, from his body. As Andrew

¹³ CHP training teaches and authorizes both open-handed and closed fist strikes. California Highway Patrol Manual 70.6. Andrew believed that at least one of the strikes was open handed. The quality of the video is insufficient to determine if some of the strikes were completed with an open hand.

removed Pinnock's right hand, he moved it across her body towards her left side. Pinnock began to raise her left arm up.

At this time, Andrew delivered strikes eight, nine and ten to Pinnock. Strikes eight through ten were completed in fewer than two seconds from the time Andrew initiated the strikes. The eighth strike contacted Pinnock's head and left forearm, which was positioned in the area of her head. Andrew briefly looked over his left shoulder, immediately looked back at Pinnock, and delivered a ninth strike. That blow appeared to contact Pinnock's right shoulder, and possibly the right side of her face. The tenth and final strike came into contact with Pinnock's forearms or wrists, which were placed over her head. The strike additionally struck her head. At that time, Andrew pulled his arm back as if he were going to strike Pinnock again.

Andrew turned to look behind him, lifting his body off Pinnock briefly. Pinnock began to sit up and reached with one hand towards Andrew. Andrew turned back around. An individual dressed in civilian clothing, later identified as West Covina Police Department (WCPD) Officer Jose Pedraza, approached Andrew and Pinnock and identified himself as a police officer. Pedraza assisted Andrew in rolling Pinnock onto her stomach. Pinnock moved her hands so that they were underneath her body at chest level. After some effort, Andrew and Pedraza were able to handcuff Pinnock.¹⁴

Post arrest

At 7:48 p.m., after Pinnock was handcuffed, Ibarra and Moreno arrived on scene. They assisted Andrew in situating Pinnock in the back seat of Andrew's patrol vehicle. Ibarra and Moreno's MVARs was activated and captured them placing Pinnock in the car as she screamed incoherently. The MVARs recorded the officers asking Pinnock to put her feet in the car. Pinnock is heard in the background yelling "... Put me in the car! Leave me alone!" Ultimately, Pinnock placed her feet inside the vehicle and a seat belt was placed around her.

Ibarra and Moreno's MVARs also partially captured a conversation between all of the officers at the scene at that time. Pedraza commented to Andrew, "She's fucking strong." Andrew responded, "Oh dude, I'm glad you showed up. I was going to tase her...she grabbed my vest."¹⁵ Pedraza asked if Pinnock was walking on the freeway. Andrew responded, "Yeah, she started walking that way and I grabbed her and it just came on at that point."¹⁶ Pedraza responded, "She's strong. It took both my arms for me to bear my body into her." Shortly

¹⁴ Ardavan D's recording continues for approximately 12 seconds after Pedraza arrived at the location. During those twelve seconds, Andrew and Pedraza attempted to handcuff Pinnock. Pinnock was not secured in handcuffs at the time the recording ends.

¹⁵ When asked, Andrew identified his voice, but did not have an independent memory of telling Pedraza that he was going to "tase" Pinnock.

¹⁶ It is unclear whether Andrew said "it just came on..." or "it was game on..."

thereafter, Andrew said, "Oh dude, I was fucking wailing away dude. When she grabbed me (inaudible)..."

At 7:49 p.m., Ibarra and Moreno requested that a sergeant "roll" to their location. A sergeant did not respond. Instead, Andrew drove Pinnock to CHP headquarters, arriving at 8:21 p.m. Andrew briefed Sergeant Richard Matthews on his use of force, indicating that he used his personal weapons to take Pinnock into custody.¹⁷ Matthews contacted Pinnock in Andrew's car and observed her condition. Matthews did not see any injuries to Pinnock and Pinnock did not claim to be injured to Matthews. Photographs depicting minor injuries suffered by Andrew were taken. Those photos document slight abrasions to Andrew's right hand and knee.

At 8:35 p.m., Andrew drove Pinnock to Los Angeles County Medical Center (LCMC) for medical treatment and psychiatric evaluation. Ibarra and Moreno followed in a separate car. Both cars arrived at 8:47 p.m. Once there, Pinnock refused to exit Andrew's patrol vehicle. Ibarra retrieved a wheelchair to assist, but Pinnock eventually cooperated and walked into the building on her own. At 9:05 p.m., they entered the LCMC intake waiting room. Pinnock was seated in a chair and Moreno took digital photographs of her.

Pinnock was booked and released to the care of the hospital under Welfare and Institutions Code section 5150. According to Andrew's police report, Pinnock did not claim any injuries to the hospital staff and refused medical treatment. On July 2, 2014, Pinnock was transported to Augustus Hawkins Medical Ward where she was placed on a 14 day hold.

Witness statements

Several individuals who witnessed the incident were located by the CHP or independently contacted law enforcement to provide a statement regarding what they observed.

Sonya T.

Sonya T. witnessed a portion of the initial encounter between Pinnock and Andrew. Sonya T. later saw news reports regarding this incident and watched the iPhone recording that had been posted on Facebook. After viewing the recording, Sonya T. attempted to phone the CHP several times to explain that the officer did not "just grab [Pinnock] and throw her on the ground and start beating the crap out of her." The CHP offices were closed at the time Sonya T. attempted to contact them, but CHP investigators were able to locate Sonya T. shortly after the incident using her license plate information.

Sonya T. was driving a blue Volvo and positioned behind a red truck on the La Brea Boulevard on-ramp to the eastbound I-10 freeway. While stopped, Sonya T. saw Pinnock walking in the traffic lane heading towards Sonya T.'s car and noticed a CHP officer near Pinnock. Sonya T.

¹⁷ Personal weapons are parts of the body which may be used for self-defense, counter-attack, and as a method of distraction. Examples of personal weapons include, but are not limited to, the forearm, elbow, knee, heel of the hand, closed fist, open hand, and foot. CHP Highway Patrol Manual 70.6.

believed that the CHP officer was trying to help Pinnock while Pinnock “continually” walked around the red car, attempting to “dodge” the officer. Sonya T. was concerned that Pinnock may have a gun and might attempt to enter her car.

Pinnock proceeded around the back of the red truck and began to walk into on-coming traffic on the main portion of the freeway. Sonya T. believed that Pinnock might be attempting to commit suicide. The officer grabbed Pinnock’s arm as she walked. Pinnock “wiggled” away from the officer and the officer tried to grab Pinnock again. Each time that the officer grabbed Pinnock, she would flail her arms and attempt to break free. The officer wrestled Pinnock to the ground.

At this time, Sonya T. began to drive onto the freeway. When she looked back, Sonya T. saw the officer straddling Pinnock. Sonya T. did not see the officer hit Pinnock that day, but later saw the video of the incident.

Sonya T. believed that Pinnock may have been trying to commit suicide. She described Pinnock as “calm, but defiant” during the incident. Sonya T. believed that the officer remained “calm” and grabbed Pinnock to keep “her safe.” From Sonya T.’s perspective, the officer was not “overly aggressive,” was trying to “keep the situation calm,” and was concerned with their safety due to vehicular traffic.

Camille C.

Camille C. was contacted by CHP investigators shortly after the incident. Investigators were able to locate Camille C. by using her license plate information. Camille C. had viewed the iPhone recording broadcast on the news prior to speaking with investigators.

Camille C. was stopped on the on-ramp from northbound La Brea Boulevard to the eastbound I-10 freeway. Camille C. was driving a 2006 Nissan sedan. Her car was positioned behind Sonya T.’s car.

As Camille C. was waiting to enter the freeway, she noticed Pinnock walking up the on-ramp with an officer following her. Pinnock walked around the red truck one time and began to walk towards the freeway. The officer followed Pinnock. At this time, the red truck proceeded onto the freeway. Camille C. followed. When she last saw Pinnock, Pinnock was walking towards the freeway and the officer was following her.

Jane Doe

Doe witnessed a portion of this incident while travelling on the collector road and later saw the news broadcasts regarding this incident. On July 7, 2014, after viewing the video, Doe contacted the CHP and indicated that she wanted to give a statement as to what she witnessed. Doe requested that her identity remain anonymous.

Doe was driving on the I-10 collector road proceeding eastbound approaching the northbound La Brea Boulevard on-ramp travelling at approximately 55 miles per hour. Doe heard a CHP officer

yell, "Stop!" Initially, Doe did not know if the officer was speaking to her or to Pinnock, who was walking on the freeway ahead of Doe. Doe heard the officer tell Pinnock to stop and not go any further. Pinnock did not stop and continued to the main portion of the freeway.

Doe slammed on her breaks to avoid hitting Pinnock, who was directly in front of Doe. The officer grabbed Pinnock's shoulder and Pinnock either socked or slapped the officer while holding a "pink thing" in her hand. Doe believed that Pinnock punched the officer because he was trying to stop her from walking into the lanes of traffic. Doe saw the officer and Pinnock go down to the ground. Doe passed them as they went to the ground and did not see the rest of the incident until she saw the iPhone recording of the incident at some point later.

Doe described Pinnock as looking "psycho." Doe heard Pinnock yelling while walking towards the cars and had "this crazy expression" on her face. Doe rolled up her windows and locked her doors during the incident because she was afraid of Pinnock.

Doe said, "...the officer did put his life at risk because he did, you know, go in the freeway..." Doe believed that Andrew "actually saved her from going to the other lanes..." Doe added, "Because I mean if it wouldn't happened they would have run her over, he would of still been in trouble, right?"

Marisol B.

Marisol B. saw the incident on the I-10 freeway, but did not call the police immediately. Rather, after seeing the news coverage, Marisol B. contacted the police indicating that she wanted to help the officer because he tried to help Pinnock.

Marisol B. was eastbound on the I-10 freeway collector road approaching the La Brea Boulevard exit. Marisol B.'s husband, Jorge M., was driving their car and Marisol B. was seated in the right front passenger seat.

As they were travelling, Marisol B. saw Pinnock running on the freeway east of Marisol B.'s location. An officer followed Pinnock and grabbed her, preventing Pinnock from running into the traffic lane. Pinnock slapped the officer and hit him several times. The officer tried to control Pinnock and hit her in response and to subdue her. Marisol B. believed Pinnock probably would have run into the traffic lane if the officer had not prevented her from doing so.

Marisol B. estimated their initial speed as 10-15 miles per hour, but indicated that they came to a stop due to the incident. There were approximately 5-6 cars ahead of her car in the lane at the time she witnessed the event.

Jorge M.

Jorge M. did not initially report this incident, but did witness the media coverage. The coverage of this incident upset Jorge M. because he believed that the officer was trying to save Pinnock's life. As a result, he contacted the police and asked to give a statement as to what he witnessed.

Jorge M. was driving his car eastbound on the collector road of the I-10 freeway near either the Fairfax or La Brea Boulevard exit. Jorge M. was driving the car and his wife was seated next to him in the front passenger's seat. He initially was travelling at approximately 30 miles per hour, but ultimately stopped as traffic was brought to a standstill due to the incident.

As Jorge M. was driving, he saw Pinnock and the officer standing on the on-ramp. Pinnock was hitting the officer and then ran in the direction of Jorge M.'s car. The officer ran after Pinnock and grabbed her as she was entering the traffic lane. Pinnock again started hitting the officer and began to break free from his grasp. The officer was able to dominate Pinnock and took her to the ground. While they were on the ground, an SUV stopped and a man exited the SUV to help the officer. When the man arrived at the officer's and Pinnock's location, the officer had gained control of Pinnock.

Ardavan D.

Ardavan D. was driving on the I-10 freeway La Brea Boulevard eastbound ramp and saw Pinnock, walking on the on-ramp on Ardavan D.'s right hand side. Ardavan D. described Pinnock by saying, "[A]nyone who sees her is going to think she's homeless. She's intoxicated. She's mentally challenged...Someone engaging in this type of behavior is not mentally sound."

Ardavan D. saw Pinnock near the rear of a red truck. Andrew was positioned near the front of the truck on the opposite side of the ramp. Ardavan D. initially believed that Pinnock was exiting the freeway. Andrew said something to Pinnock and Pinnock turned around and responded to Andrew. As the truck began to drive away, Ardavan D. began to record the incident on his iPhone 5S.

Ardavan D. described the initial, unrecorded portion of their encounter to investigators. Ardavan D. said, "...they're kind of like doing this little dance around [the truck] and...the cop's trying to catch her, and she's trying to like walk away from it..." During this time, Ardavan D. heard Andrew tell Pinnock to "Stop!" and "Freeze!" As the truck drove away, Pinnock headed toward the gore point and Andrew followed, ordering Pinnock to "Stop!" and "Freeze!" as he moved toward her.

When Pinnock reached the gravel area, "...he then grabs her and then takes her down, gets on top of her...before he—she falls on the floor, he kind of—she kind of like, you know, tries to like not—be a little evasive...[H]e then—the officer grabs her. Goes on the floor...[T]hat's when he gets on top of her. She, she's kind of grabbing him, so he throws a punch and then he's kind of punching away. And then she grabs, she grabs his shirt. He then pulls it away. And then he starts doing lots of punches."

An undercover officer approached Andrew and Pinnock, and assisted Andrew. At that time, Ardavan D. drove away and stopped recording the incident. Ultimately, Ardavan D. uploaded the recording to YouTube.

Ardavan D. believed that there was “definitely a possibility” that Pinnock was going to walk into traffic at the time that Andrew grabbed her. “...[A]t a point I agreed with what the cop did...[Y]ou know, he had to get her. He had to apprehend her. He had to throw her on the floor. The part where it gets deceptive is when he starts punching. That’s when it felt like that it was unnecessary...[A]fter the first two, it was, it was, he should have stopped.”

Ardavan D. told the investigators that he did not offer his help to the officer because, “I’m not a physical guy. I’ve never put my hands on anyone in my life. I don’t think I’d be of any help...and he was completely in control, and there’s nothing for me to do.”

Detective Jose Pedraza, West Covina Police Department¹⁸

Detective Pedraza was driving eastbound on the I-10 freeway in his undercover vehicle when he saw “a physical altercation between the CHP officer and the person he was on top of.” Pedraza, who was west of the location, initially saw Andrew from behind straddling Pinnock, but did not have a clear view of Pinnock. Andrew’s body rocked from side to side and front to back, which led Pedraza to believe that a struggle was occurring. Pedraza saw Andrew make approximately three punching motions, but could not see where the punches landed. Concerned because “they were on the freeway with other vehicular traffic,” Pedraza stopped his vehicle, exited, and yelled “Police!” as he approached Andrew and Pinnock.

Pedraza arrived at their location and ordered Pinnock, who was now face down, to place her hands behind her back. Pinnock did not respond to Pedraza verbally, but moved her left arm under her body. Pedraza held her head down and attempted to pull Pinnock’s arm from under her body. It took Pedraza several attempts before he was able to pull Pinnock’s arm from under her. Pedraza believed that Pinnock was resisting him, and did not stop resisting him, until he had successfully placed her hand behind her back. Ultimately, Andrew was able to handcuff Pinnock with Pedraza’s assistance.

After the incident, Andrew and Pedraza had a brief conversation. Andrew told Pedraza that he was “just trying to get [Pinnock] off the freeway.” Andrew thanked Pedraza, indicating that he may have needed to use more force if Pedraza had not assisted. Andrew was calm after the incident and did not appear to be angry or upset. Pedraza did not see any injuries to Pinnock after the incident. Pedraza suffered scrapes on the back of his hands as a result.

Pedraza told investigators, “I was surprised by her strength. And, in fact, you know, initially when I tried to put her arm behind her back, I thought that I would have enough power to do that, but she obviously overpowered me. So she was stronger than what I had believed her to be initially based on her size.”

¹⁸ Pedraza has worked as a police officer for WCPD for six years. Prior to working for WCPD, Pedraza was a law enforcement officer for Irwindale Police Department for six years.

Based upon his experience with Pinnock, Pedraza did not believe that Andrew used more force than necessary "especially based on their location and the amount of force that she was using to resist me..." When asked, Pedraza speculated that Andrew would have had to use a baton, taser, or deadly force if Pedraza had not assisted. Pedraza believed that either one or both of them could have been hit by passing traffic if the struggle travelled or if a motorist veered out of the lane. Pedraza believed that the incident could have resulted in serious bodily injury or death if it had continued.

CHP Officers Kristopher Moreno and Fabio Ibarra

On July 1, 2014, Officers Moreno and Ibarra were working in a marked black and white patrol vehicle and were dressed in CHP uniform. Ibarra was acting as field training officer and Moreno was his trainee. Moreno and Ibarra were the unit originally assigned to locate and assist Pinnock. They drove to the location indicated, but were unable to find her.

At 7:42 p.m., LARTMC again broadcast information regarding a pedestrian on the freeway. At that time, Moreno and Ibarra were assisting a disabled vehicle and did not immediately respond. A short time later, Ibarra heard Andrew broadcast that Pinnock was "agitated." Moreno and Ibarra decided to respond to Andrew's location.

When they arrived, they parked their patrol vehicle behind Pedraza's Dodge Durango and approached Andrew's location on foot. They saw Pinnock, already handcuffed, laying on her side. Ibarra recalled that Pinnock was "shouting things...something about...the devil or something like that" and "saying odd things, kind of struggling with us."¹⁹ They assisted Andrew in placing Pinnock in his vehicle. Moreno described Pinnock as "uncooperative," saying, "She wouldn't stand up. She...wouldn't straighten out her legs, I think. She would just keep them like out, but she wouldn't stand up on her own." Andrew was out of breath and briefly explained his contact to Moreno and Ibarra. Andrew told them that Pinnock began to exit the freeway, but then returned. Pinnock tried to run into the lanes of traffic, so Andrew grabbed her and she grabbed him. During the struggle, Pinnock grabbed his vest and pulled off his microphone, and Andrew hit her.

Ibarra contacted a sergeant, who requested that they bring Pinnock to the station. While at the station, Moreno took photographs of Andrew's injuries. Andrew had a small cut on his hand and on his knee.

They drove in two cars to LCMC. When they arrived, Pinnock refused to exit Andrew's car. After several minutes, Ibarra retrieved a wheelchair because it appeared that Pinnock would not walk into LCMC. Pinnock ultimately got out of the car and sat in the wheelchair. Almost immediately, Pinnock stood up and the officers escorted her into LCMC on foot.

¹⁹ In the MVARs video and audio recording taken from Moreno and Ibarra's patrol vehicle, Pinnock can be heard screaming as she is placed in Andrew's vehicle.

Moreno took photographs of Pinnock while in the waiting area of LCMC. Moreno did not see any injuries on Pinnock at that time, but noticed a minor scratch on her back approximately 30 minutes later. The scratch was similar in size to a paper clip. Ibarra did not believe that Pinnock was injured.

Ibarra searched Pinnock's purse. The purse contained lotions, makeup, a pair of shoes, and miscellaneous cards. It did not contain any identification.

Moreno explained that they tried to speak with Pinnock to get her information. Pinnock looked "zoned out," never made eye contact with the officers, and did not respond to their attempts to speak with her. At times, she mumbled to herself, but the officers were not able to understand what she was saying.

Ibarra described Pinnock as "definitely mentally unstable." Her appearance led him to believe that she had been homeless for some time and indicated that she had a "very strong body odor."

Marlene Pinnock

Investigators from the CHP attempted to interview Pinnock while she was housed at the Augustus Hawkins Medical Center. Pinnock's physician would not authorize the interview and investigators were denied contact with Pinnock while she was at the facility.

On October 9, 2014, members of the District Attorney's Office conducted an interview of Pinnock at attorney Caree Harper's office.²⁰ DAI David Wolf, DAI Chris Oppenborn, DDA Amy Pentz, Caree Harper, and Brenda Hall-Woods, Pinnock's aunt, were present during the interview of Pinnock. The interview was audio recorded.

When asked if she was suffering from a medical condition, Pinnock indicated that she had bipolar disorder.

Pinnock stated that on July 1, 2014, she was homeless. She was walking to Denny's Restaurant and intended to stay near Denny's for the night. This evening was the first time that she was going to this particular Denny's Restaurant. Pinnock indicated that no bus ran that way and she believed that it was "easier to go that way and get off on the freeway ramp..." Pinnock generally travelled on the shoulder of the freeway, but "when the traffic slowed down, I went into the lane of traffic." Pinnock recalled that she had been on the freeway for 5-10 minutes before the incident.

Pinnock said she heard Andrew approach and yell "Pinnock!" As Pinnock was coming to a halt, but before she could stop, Andrew grabbed her. Pinnock initially was fearful of Andrew because other officers told her that he was not a part of the precinct. "I overheard them talking. I thought I heard them say he was from a different precinct and I shouldn't be getting in the car with him.

²⁰ Harper had requested that the interview be conducted at her office.

Anyway, he knew me by name from that incident...²¹ Pinnock walked toward traffic because "I was asking someone to call, call the police, cause I heard, I believe I overheard the officer, 'He's from a different precinct and I shouldn't be riding with him.'" Pinnock denied ever walking into the road and indicated that she was not going to walk into the traffic lane.

Pinnock explained that Andrew grabbed Pinnock "from behind and threw me down and just started beating me and beating me. I felt like...he was trying to kill me. Like he was gonna beat me to death." Pinnock said, "he could of let me walk off the freeway, or given me a ticket, drove me off the freeway. I guess anything, but throw me down and beat me."

Pinnock recalled that Andrew struck her on her temples, both sides of her face, her nostrils, and her arms. Pinnock attempted to protect herself by covering her face with her arms. Andrew moved Pinnock's "arms back so he can give me blow after blow." Pinnock did not recall grabbing Andrew.

Pinnock initially believed that Pedraza was running up to help her. Instead, Pedraza put "his knee in me with the other officer and they handcuffed me." Pinnock said she allowed them to handcuff her and did not struggle with them during this time. Pinnock did attempt to pull her dress down so that she was not exposed.

Pinnock recalled telling Andrew that she did not want to ride in his car. Andrew told Pinnock that she was riding with him. Pinnock indicated Andrew "threw" her into the car and said, "Well, you're riding with me!" Pinnock denied yelling or screaming at the officer.

Pinnock stated that they drove to an unknown location and stayed there for 30-45 minutes. They then drove to a hospital. Andrew and Pinnock did not speak to each other during the transportation. Pinnock exited the police vehicle without incident and entered the hospital. When she arrived, the nurse gave her a shot that knocked her out. She woke about an hour later with the rest of the patients.

Pinnock said she was injured from this incident. She said she suffered a sharp pain through her temple, an injury to her nose, two black eyes, a bloody nose, lumps in both of her arms, and scarring from gravel digging in her back. Pinnock's aunt recalled visiting her days later and seeing that she had ice packs on her eyes. Pinnock indicated that the bone in her nose is still not healed, and she has a hematoma on her upper right arm. Pinnock indicated that no one asked her about her physical injuries while she was in the hospital. During the interview at Harper's office, Pinnock allowed investigators to view a hematoma on her upper arm that she attributed to the incident.

When shown the MVARs video of the initial encounter, Pinnock did not recall this portion of the event and did not remember what Andrew was saying during this time period. Pinnock

²¹ Pinnock was unclear as to whether officers told her that Andrew was from a different precinct on the date in question or on an earlier date.

stated she did not call Andrew a "white devil" or tell Andrew she had the right to be there. Pinnock did not recall walking off the freeway. After watching the MVARs video, Pinnock stated, "That seem [sic] like he just came up to me and talked to me. And, uh, we started walking off like we was, um, don't remember that part...I don't remember walking off with him like that." Pinnock indicated that she knew it was illegal to walk along the freeway, but "thought I would of got a ticket or he would of just drove me off and told me to get off the freeway and don't ride the freeway no more. Would have been satisfactory to me." Pinnock stated that Andrew did not ask her to leave the roadway or indicate that he would drive her off the roadway.

Medical records

Photographs taken by Officer Moreno at LCMC do not show any injury to Pinnock. Pinnock would not consent to a release of her medical records.

On July 4, 2014, CHP investigators went to Augustus Hawkins Medical Center and spoke with Dr. Victoria Marroquin. Marroquin informed investigators that Pinnock was placed on an extended 14 day psychiatric hold. Marroquin indicated that Pinnock was being treated only for psychiatric problems, did not have any visible injuries, and was not hurt.

During the October 9, 2014 meeting with Pinnock and her attorney, Caree Harper, DDA Pentz asked Pinnock, "We would like to get your medical records...Do you think you could sign a waiver...if we provide it to you to get your medical records?" Harper indicated that we should provide her with a waiver and that Harper would read Pinnock the document. When asked if Pinnock would sign the release in order to obtain Pinnock's medical records, Harper responded, "She's gonna get back with you."²² When Wolf initially asked about Pinnock's medical condition, Harper indicated, "I'm gonna say that the medical records are gonna speak for themselves. If and when you get those. Next question."

On November 18, 2014, Supervising DAI Lawrence Dimmick sent a letter to Harper providing her with the appropriate medical releases and indicating "please have your client read, complete, and sign the two enclosed forms regarding the release of her protected health information." Harper sent a copy of the letter back to this office. Handwritten on the letter adjacent to this sentence, was the twice underlined word, "NO."

Deputy District Attorney Amy Pentz called Harper. Harper was unavailable and Pentz left a message for Harper, requesting that she return the call. Harper has not returned Pentz' phone call as of this date.

The District Attorney's Office was able to secure Pinnock's medical records via a special master search warrant. On the date of the incident, the records indicate "no abrasions lacerations, no ecchymosis." The records further indicate, "no signs of distress noted." Medical reports made

²² Pinnock would not provide her address to this office. As such, all mail correspondence was through her attorney, Caree Harper.

less than a week after the incident document "patient denies pain/headache/dizziness, no obvious deformities to extremities...no facial swelling or bruising." On July 8, 2014, Pinnock had a CT scan. The results of the CT scan noted no evidence of fracture or facial swelling.

Officer Daniel Andrew²³

On July 29, 2014, Andrew gave a voluntary interview in this matter.²⁴

On July 1, 2014, Andrew was working routine patrol in a single man unit on the weekday night shift. Andrew was not assigned to any specific area of highway. Andrew was dressed in uniform and driving a marked CHP police vehicle. He responded to the call of a pedestrian near the eastbound I-10 freeway at La Brea Boulevard.²⁵

As Andrew drove eastbound in the collector road, he located Pinnock who was walking eastbound on the dirt area of the shoulder. Andrew did not recognize Pinnock and had never seen her prior to this incident. Andrew noted that Pinnock did not appear to be wearing shoes and that there was no disabled vehicle in sight.

Andrew stopped his car behind Pinnock on the shoulder and used his public address system to order Pinnock to "Stop!"²⁶ Pinnock continued walking, stopped briefly, and turned to look in Andrew's direction. Andrew relayed that he was "on scene" and began to exit his car. At this time, Pinnock resumed walking eastbound toward the gore point between the collector road and the on-ramp.²⁷ Andrew followed for approximately 100 feet in his car, stopped, and exited his vehicle. Pinnock came to a stop near the end of the gore point, just adjacent to the white line that separated the shoulder from the on-ramp. Andrew approached Pinnock from behind, stopped east of her, and turned to face her.

Andrew explained his behavior, "I thought, by my initial assessment of viewing her and her mannerisms by – looked like she was kind of talking to herself, that she's walking at an odd gate, that she was obviously walking on the freeway without shoes, there's probably something a little bit off about her. But I'm not a psychiatrist. I haven't had an evaluation of her. I just wanted to make sure I could get her to a place where she could be better off than on the freeway with all these cars moving around."

Andrew told Pinnock that he was here to help her, it was not safe to be on the freeway, and he would give her a ride off the freeway. Pinnock muttered to herself, would not look Andrew in the eyes, and did not appear to be completely "mentally there." Pinnock told Andrew that she wanted to sign her citation and leave and called Andrew the white devil. Andrew told Pinnock

²³ Andrew's personnel records do not document any prior use of force.

²⁴ Michael Schwartz, Andrew's attorney, was present at the time of the interview.

²⁵ Andrew was aware that the original responding officers were assisting a disabled vehicle at the time he responded to the call.

²⁶ Andrew pulled in behind Pinnock to protect her.

²⁷ The gore point is a triangular area where an on-ramp and main portion of freeway converge.

that he was not going to give her a citation, but that she needed to leave the freeway, either by walking or allowing Andrew to drive her. Pinnock did not give Andrew a clear response, but began to walk across the on-ramp.²⁸ Andrew radioed dispatch, indicating that Pinnock was walking off the freeway.

Andrew noted that the on-ramp activity had slowed down due to their presence. As such, he followed Pinnock across the on-ramp onto the right shoulder as she proceeded down the ramp. Andrew followed for a period, but then turned to walk back to his car. At that point, Pinnock began to walk toward the main portion of the freeway. Andrew stood near the front of a red truck that had stopped on the on-ramp, while Pinnock was near the rear of the truck.²⁹ Pinnock walked at a fast pace towards the freeway. Andrew was fearful because "traffic is moving at a pace where if she walked into traffic, she could potentially be killed, or cause another accident and hurt someone else." Andrew increased his speed to "stop her from walking in the lanes" and ordered her to "Stop!" multiple times.

Pinnock did not stop and continued to walk away from Andrew. Andrew, concerned that Pinnock was going to walk into the road, tried "to grab a part of her body to prevent her from walking into traffic lanes." As he did so, "she pulled me back into her body." Andrew attempted to pull Pinnock back in order to move her out of the roadway. Andrew felt Pinnock "reach back and grab onto some part of my body or my uniform."

As Andrew attempted to control Pinnock, he repeatedly ordered her to "Stop!" Andrew did not recall if Pinnock addressed him verbally, noting that the ambient noise was loud at the time due to passing vehicles. Andrew was able to get Pinnock to the ground. Andrew's primary focus was placing Pinnock in the easiest possible position to apply handcuffs. Andrew's concerns centered on the fact that "she's a pedestrian, that she may have mental issues and she may want to use force with force at that point."

Andrew recalled part of this struggle occurred on the paved portion of the shoulder and told investigators, "Once I hit the asphalt portion, I knew that's where vehicles travel. I knew that at that point, us versus a four or five thousand pound vehicle, we're going to lose that battle. And so I...had an imminent issue to get her off of that asphalt portion and back onto where she is safe and I am safe." Moreover, Andrew had his back to traffic, which he felt "is the worst thing a CHP officer can do." Andrew was afraid of being hit by a passing car, indicating that even a car that wanted to help could easily misjudge their location and collide with them. Andrew believed that a pedestrian, or a fight, on the freeway was a "distraction" that causes motorists to look at the pedestrian and take their eyes off the road. This distracting situation increases the likelihood

²⁸ While speaking with Pinnock, Andrew put on gloves. "I put gloves on because I don't know who she is. She looks like she's a little disheveled. If she has any kind of anything on her person that could poke or stick me, I don't want to be hurt or stuck with anything...I'm not sure if she's bathed or has lice or scabies or anything like that."

²⁹ Andrew believed at this time he radioed dispatch, indicating that Pinnock was "agitated" and requesting that another unit respond to his location. Andrew was not sure if his transmission "got out" and did not recall dispatch acknowledging this request.

of a collision on the roadway. Finally, Andrew described the passing cars in the traffic lanes as “moving” and was concerned that passing motorists would be “concentrating on [his] patrol vehicle” and would not see them.

As they struggled, Andrew believed that Pinnock was resisting him and “a threat to [him].” Pinnock was using her hands and her legs to attempt to escape him, and Andrew believed that he was not effectively controlling her. Andrew repeatedly ordered Pinnock to “Stop!” and “Stop resisting!” Pinnock did not cease her efforts. Andrew believed that the detention had turned into a fight adjacent to the freeway.

Andrew described Pinnock as “very strong” and of similar stature to himself. As Andrew was struggling while in a semi-mount position astride Pinnock’s body, Pinnock’s right leg was kicking in the area of his groin. Pinnock grabbed Andrew and pulled him toward her. Pinnock’s bag was in close proximity and Andrew was worried that Pinnock had a knife, gun, brick, needle, or other object concealed in it that could be used as a weapon. Moreover, Andrew was concerned that Pinnock would reach down to his Sam Browne belt and gain access to his weapons.

Andrew initially intended his first blows to come into contact with Pinnock’s arm or shoulder area. These “distraction blows” were an attempt to cause Pinnock to loosen her grip from his body. At the time of these initial blows, Andrew felt Pinnock’s knee near his “male area.” Andrew was concerned that if he was kneed in the groin, he would become incapacitated, allowing Pinnock access to his weapons.

During the first seven blows, Pinnock held onto Andrew. Andrew described most of the blows as closed fist, but believed at least one was an open-handed heel strike. During this struggle, Pinnock pulled Andrew’s lapel microphone off his shirt as she pulled Andrew towards her. Andrew believed that Pinnock was trying to win this battle and was worried because his blows thus far had been ineffective. As Pinnock pulled him toward her, Andrew thought Pinnock might spit at him, head butt him, hit his face in a way that might momentarily incapacitate him, or throw him off her, thus placing him in a precarious physical location.

These initial strikes did not cause Pinnock to loosen her grip on Andrew.³⁰ Andrew then attempted to remove Pinnock’s hands using his hands, as his blows had been ineffective in stopping her resistance. Andrew grabbed both of Pinnock’s hands or wrists with his hands, pushing himself away from her body and struggling to pull her hands off of his body. Andrew managed to free both of her hands from his body. Pinnock freed her left hand from Andrew’s grasp. As they struggled, Andrew believed that he needed to deliver a set of strikes in order to

³⁰ Andrew did not feel that disengaging was a safe, or possible, option at this time, indicating that the chances were “not very good” that standing up would cause Pinnock to loosen her grip.

end the struggle.³¹ Still grasping Pinnock's right hand or wrist, Andrew used his now-free right hand to deliver a hammer strike to Pinnock. This blow came into contact in the area of Pinnock's head. Andrew struck Pinnock twice more, landing each in the area of Pinnock's head. Andrew pulled his arm back to deliver another strike, registered that Pinnock had covered her head with her hands, and ceased.

At that moment, Andrew heard what he thought was a siren from west of his location and sensed that someone was approaching from behind him. Pinnock "wasn't trying to grab me anymore, but she really wasn't in a controlled, secure place." Andrew turned and saw a man, later identified as Jose Pedraza, dressed in civilian clothing emerge from an SUV. Andrew explained, "I don't know who he is. I'm not sure if he's a threat or help to me at this point." Pinnock sat up and attempted to grab Andrew again. As Pedraza approached, he identified himself as a police officer. Andrew turned and attempted to control Pinnock again.

Pedraza arrived and together they were able to roll Pinnock onto her stomach. Pinnock placed her hands under her body and struggled to keep them there. "...[S]he was trying to use her strength to try and – to try and keep her hands in a position where we could not get them behind her back." Andrew pried her right arm out from under her body, Pedraza pulled her left arm out, and they were able to handcuff Pinnock. Andrew estimated that it took approximately 15-20 seconds to handcuff Pinnock. Andrew was winded from the struggle.

Andrew believed that he acted in accordance with his training. Andrew noted that in order to overcome Pinnock's resistance, he had to use greater force than she was using. Some of his strikes missed because Pinnock was moving around. On at least one occasion, he made contact with the ground, causing abrasions to his knuckles. When asked if he was angry during the struggle, Andrew replied, "No, sir. I felt scared."

Moreno and Ibarra arrived soon thereafter. Andrew asked Ibarra to call for a sergeant because his radio had been disabled in the struggle. Pinnock was placed into Andrew's car and her purse was kept in the front seat of his vehicle. Pinnock was difficult to place in his car. Andrew drove himself and Pinnock back to the Central LA CHP office. En route, Andrew attempted to speak with Pinnock and inquired as to her name. Pinnock did not respond to Andrew. Pinnock rocked back and forth in the police car and muttered to herself.

While at the Central LA office, Andrew discussed the incident with his sergeant and had another officer photograph his injuries. Andrew looked at Pinnock using his flashlight and did not see any injury to her face. Andrew asked Pinnock if she had any injuries. Pinnock did not respond. Andrew then transported Pinnock to LCMC.

³¹ In his own words, "From...before the strikes happened, when she still had a hold of me, that's when I said I needed to deliver another set of strikes. That was all one decision to deliver those to her...They were not independent thoughts."

At LCMC, Andrew advised the nurse that he and Pinnock “got into a small fight on the side of the freeway.” The nurse told Andrew that they would look at her.

Andrew did not recall meeting Pinnock prior to this occasion.

Before July 1, 2014, Andrew had asked several pedestrians to exit the off-ramp of a freeway. On all occasions, the pedestrians complied. Andrew explained, “...other pedestrians that I’ve encountered, they’ve gone with the program and they’ve gotten in the car and I’ve taken them off.”

Andrew believed that the environment of a freeway is inherently dangerous for pedestrians and has responded to incidents involving pedestrian fatalities. Andrew explained that the proclivity of texting while driving increased the likelihood that a pedestrian would be hit by a passing motorist. Moreover, a pedestrian on a freeway is distracting to motorists, taking their attention away from the road. If a car stopped suddenly to avoid a pedestrian, that car could be rear ended by the vehicle travelling behind it, endangering all occupants. If traffic is slow, a pedestrian could attempt to enter a passing car.

Andrew received use of force training and training regarding mental illness in the CHP Academy, through the CHP’s solid realistic on-going verifiable training (SROVT), and additional trainings he chose to attend. In April 2014, Andrew attended crisis intervention training. During that class, Andrew was taught that a mentally ill individual is 5.5 times more likely to kill a police officer than a non-mentally ill person.³²

CHP’s Use of Force Analysis

Beginning in July 2014, this office requested a use of force analysis indicating whether the CHP believed that Andrew’s actions were within CHP’s use of force policy and were lawful.

December 30, 2014 report

On January 5, 2015, the CHP provided a two and a half page use of force analysis dated December 30, 2014 authored by Assistant Commissioner Jon Rodriguez.³³ This report was conclusory in nature and did not offer a comprehensive analysis of each strike. Rodriguez’ report concluded that “Officer Andrew was outside of departmental policy for strikes eight (8) through ten (10). The CHP found no policy that allows an officer to strike a suspect when the officer is not looking at the suspect nor encountering resistance. The CHP found no policy that allows striking a suspect who is in a defensive position and/or not resisting.” Assistant

³² A copy of the Crisis Intervention Training materials, including the power point presentation, were provided to the District Attorney’s Office. This material corroborates Andrew’s statement. The officers were trained that persons with mental illness kill police officers at a rate of 5.5 times greater than the general population. Although the District Attorney’s Office has not corroborated the accuracy of this statement, this information is relevant evidence as to Andrew’s state of mind and how he was trained.

³³ Rodriguez was relieved of duty due to circumstances unrelated to this incident and subsequently retired from the CHP.

Commissioner Rodriguez declined to offer an opinion as to whether the strikes were criminal, stating, "This policy review does not address whether the use of force was excessive."

Rodriguez has not previously qualified as an expert in court regarding use of force.

October 31, 2014 report

On January 14, 2015, the CHP provided an approximately three page use of force report dated October 31, 2014.³⁴ This report was authored by Captain Charles King in consultation with a team of "staff experts." Those experts are Lieutenant Kevin Martin, Sergeant Kenneth Roberts, and Sergeant Jeff Carlisle.³⁵ Chief Erik Kenneth Knudsen attached a memorandum to the use of force report, indicating, "I support the conclusions reached in the document, which are supported by the team's review and analysis of the available evidence." This use of force report concluded, "The Academy believes Officer Andrew's actions were within departmental policy."

Carlisle is a court-qualified expert in Los Angeles and Santa Barbara Counties regarding use of force. Roberts has not previously qualified in court as an expert in use of force, but has testified regarding use of force in approximately six depositions. King, Knudsen, and Martin have not previously qualified as experts in court regarding use of force.

October 6, 2014 report³⁶

A third use of force report was provided on March 12, 2015. That report was dated October 6, 2014, is approximately 35 pages in length, and appears to be the first report authored by members of the CHP. This report offered a comprehensive, detailed analysis of Andrew's and Pinnock's actions. This memorandum also discussed the CHP's use of force policy and statutory and case law that governs this subject.

The report discussed each of Andrew's strikes, described the type of strike and where it contacted Pinnock, and provided a description of Pinnock's actions at the time each strike occurred. The report indicated that there was an imminent threat to Andrew, who was actively attempting to overcome Pinnock's resistance, as they were positioned near the freeway with traffic on both sides of them. The report articulated Pinnock's resistance as walking away from Andrew, ignoring Andrew's commands, pulling away from Andrew's grasp, striking Andrew, "violently" pulling on Andrew's uniform and body armor vest, raising her legs and knees, and flailing her arms and hands to prevent Andrew from "gaining a control hold."

The report concluded that "Officer Andrew had a lawful presence when he contacted Ms. Pinnock and the use of force used by Officer Andrew throughout his contact with Ms. Pinnock

³⁴ This report appears to be a summary of a use of force report authored on October 6, 2014. The earlier report is also discussed in this memorandum.

³⁵ Martin was a Lieutenant assigned to the CHP Academy. Roberts was a physical training sergeant assigned to the CHP Academy. Carlisle was a sergeant assigned to the CHP Academy.

³⁶ This report was written by Martin, Roberts, Carlisle, and King.

was objectively reasonable...” The report noted, “it would be unreasonable to require police officers in the field to engage in the sort of complex calculus that would be necessary to determine the ‘best’ or most effective and least dangerous method of handling an immediate and dangerous situation, particularly when officers are forced to make split-second decisions under tense and perilous conditions.”

Independent Use of Force Analysis

This office requested that former Los Angeles Police Department Captain Greg Meyer conduct an independent assessment of the use of force involved in this incident. Meyer was a commanding officer at the Los Angeles Police Academy when he retired in 2006 and is credentialed as a Certified Force Analyst by the Force Science Institute. Meyer is also a member of the Faculty Advisory Committee of Americans for Effective Law Enforcement (AELE), a member of the review panel for AELE’s Monthly Law Journal, and has served on the AELE’s faculty as a use of force instructor for 10 years. Since 1989, Meyer has worked as a litigation expert on more than 245 civil, criminal, and administrative cases throughout the United States, giving opinions both in favor of and against law enforcement officers.

Meyer’s analysis noted that video evidence of a police use of force is “generally very valuable to an investigation.” However, Meyer cautioned that video evidence has several limitations, including: (1) videos are two dimensional; (2) videos do not capture the officer’s point of view; (3) videos do capture objects and events that the officer did not see; (4) videos do not capture objects or movements that are blocked from the camera lens; (5) videos may document very different lighting conditions than actually occurred; (6) bystander cell phone videos tend not to capture the entire incident; (7) bystander cell phone videos are not always pointed at the action; (8) video cameras are neutral, inanimate objects and do not experience the biomechanical, physiological and psychological aspects that the involved human being experiences under stress in terms of perception, fear, adrenalin-influenced physiological changes, interpretation of contextual cues, narrowly focused attention, time distortion, sound distortion, memory, and other human performance phenomena; (9) videos are not the ultimate truth, as investigators and adjudicators must determine what the officer perceived at the time and apply the totality of the circumstances along with policy, training and the law to determine whether or not the officer’s perceptions and actions were objectively reasonable.³⁷

Meyer’s analysis found that Andrew legitimately stopped Pinnock who was illegally walking on the freeway. Pinnock “began to leave the freeway when the officer verbally persuaded her to do so, but soon changed direction and stayed on the freeway.” Pinnock proceeded as if she was

³⁷ Similarly, Force Science Institute has published an article entitled “10 limitations of body cams you need to know for your protection.” The “10 limitations” are: 1. A camera doesn’t follow your eyes or see as they see; 2. Some important danger cues can’t be recorded; 3. Camera speed differs from the speed of life; 4. A camera may see better than you do in low light; 5. Your body may block the view; 6. A camera only records in 2-D; 7. The absence of sophisticated time-stamping may prove critical; 8. One camera may not be enough; 9. A camera encourages second-guessing; 10. A camera can never replace a thorough investigation.

about to enter traffic prior to Andrew "put[ting] any hands on her." Based upon these facts, Meyer concluded that "this was an emergency situation requiring the officer to act quickly to prevent Ms. Pinnock from being killed or seriously injured."

Andrew "verbally directed, and then physically attempted" to stop Pinnock by grabbing her arm to prevent her from walking into traffic. "During that time Ms. Pinnock struck the officer in the face as they struggled for four seconds while standing." At that point, the officer either took Pinnock to the ground, or she fell to the ground, or a combination of both. The struggle progressed on the ground for several seconds. During this time period, Pinnock was on her back and struggling with Andrew. Pinnock's left knee, or possibly both knees, were in Andrew's groin area.

Andrew straddled Pinnock and "they grabbed at each other, with the officer attempting to control her while Ms. Pinnock repeatedly engaged in assaultive behavior toward the officer by grabbing him in the shirt-collar area by the front of his neck, pulling him, and generally struggling with the officer." Over the next nine seconds, Andrew "delivered or attempted to deliver ten strikes with his right hand" towards Pinnock's arms, shoulders, and head area.

"In all, eighteen seconds elapsed from the time the officer first put his hands-on Ms. Pinnock until the end of the series of strikes, which occurred within a nine-second time frame....Of particular note...the final three strikes took a total of less than two seconds from the officer's decision to make them until they were completed."

Meyer wrote, "[j]ust before the final three strikes, Ms. Pinnock was grasping the officer's upper body by clutching the collar-area of his shirt. The officer had hold of her left hand or wrist with his right hand. He was attempting to pull her right hand off of his shirt near his neck. She raised her left arm up at him again, and he delivered a strike to her left forearm which was near her head as he turns briefly to look over his left shoulder...The next strike appears to hit her right shoulder. The final strike appears to simultaneously glance off her left and right wrist, and then may or may not have glanced off the right side of her head on the way to striking her right shoulder."

Meyer noted that it may appear that all of the blows were "directly to the head and face areas" when the cell phone is viewed in real time. However, a review in slow motion provides a more accurate view of the blows.

Meyer discussed Andrew's statement that some of the strikes were open handed. Meyer noted that this was not mentioned in Andrew's police report and concluded that this "may be the result of faulty memory of the stressful situation combined with conflation from training activities in which he participated; or wishful thinking; or deception." However, CHP policy permits the use of both open-handed and closed-fisted strikes in self-defense or to overcome resistance. This conflict did not change Meyer's ultimate assessment of this situation.

Meyer concluded that Andrew “reasonably acted according to CHP policy, CHP training, and the law during this difficult encounter with Ms. Pinnock.”

LEGAL ANALYSIS

The District Attorney’s Office Legal Policies Manual 2.01.01 provides that a deputy may file criminal charges only if “[t]he deputy has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime(s) charged by a reasonable and objective fact finder after hearing all the evidence available to the deputy at the time of charging and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution’s evidence.”

In order to prove the crime of assault under color of authority in violation of Penal Code section 149, the People must prove that: (1) Daniel Andrew was a public officer; (2) Daniel Andrew assaulted or beat Marlene Pinnock; (3) The assault took place while Daniel Andrew was engaged in the performance of his duties; and (4) The assault took place when there was no lawful necessity to use force, or the force used was unreasonable or excessive.

A peace officer is empowered to use force when making an arrest under certain circumstances. Penal Code section 835a permits any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense to use reasonable force to effect the arrest, to prevent escape, and to overcome resistance. Conversely, arrestees have a duty to refrain from resisting arrest. Penal Code section 834a provides that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he or she is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest. Furthermore, Penal Code section 148 makes it a crime to resist, obstruct, or delay a peace officer in the discharge, or attempt to discharge, any duty.

The “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. See Scott v. United States, 436 U.S. 128, 137-139 (1978). An officer’s evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer’s good intentions make an objectively unreasonable use of force constitutional. See Scott v. United States, supra, at 138, citing United States v. Robinson, 414 U.S. 218 (1973); Graham v. Connor (1989) 490 U.S. 386, 397.

“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...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,...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.” Graham v. Connor (1989) 490 U.S. 386, 396-397.

As such, the question becomes, "Was the officer's behavior objectively reasonable in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation?" In answering this question, the following non-exhaustive factors are to be considered: (1) the severity of the crime the person may have committed; (2) whether the person arrested posed an immediate threat to the safety of the officer or others; (3) whether the person was actively resisting arrest or attempting to evade arrest by flight. *Id.* at 396.

On duty officers retain their right to act in lawful self-defense or defense of another. Andrew is not guilty of assault under color of authority if he acted in lawful self-defense or defense of another. Andrew acted in self-defense or defense of another if: (1) Andrew reasonably believed that he or someone else was in imminent danger of suffering bodily injury; (2) Andrew reasonably believed that the immediate use of force was necessary to defend against that danger; and (3) Andrew used no more force than was reasonably necessary to defend against that danger. In determining whether Andrew's conduct and beliefs were reasonable, the finder of fact may consider evidence that Pinnock threatened or harmed Andrew or others in the past. CALCRIM No. 3470.

Possible defenses

The District Attorney's Office Legal Policies Manual 2.05 provides, "A deputy shall consider the probability of conviction by an objective fact finder after hearing the admissible evidence and *after considering the most plausible, reasonably foreseeable defense(s)* inherent in the prosecution." (emphasis added)

Impeachment and character evidence

In evaluating a witness' credibility, the trier of fact can consider evidence that a witness to a crime has engaged in conduct that reflects on his or her believability. CALCRIM No. 226. Moreover, if a witness has committed a crime or other misconduct, a jury may consider that fact in evaluating the credibility of the witness' testimony. CALCRIM No. 316. [REDACTED]

[REDACTED] At the time of this incident, she was on misdemeanor probation for violations of Penal Code section 602(k), trespassing, and 647(a), solicitation of lewd conduct, stemming from two different cases.³⁸ [REDACTED]
[REDACTED]
[REDACTED]

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³⁸ Pinnock's PC 602(k) conviction is a result of a theft incident at Albertson's. That case was originally filed to include three counts of Penal Code section 242, battery. Pinnock pled to one count of trespass on July 16, 2012.

³⁹ The information presented in this case also documents several instances where Pinnock has committed the crime of theft. Police reports documenting a 2008 theft from Macy's Department Store, a 2013 theft from Walmart, and a 2013 theft from Starbucks were presented to this office. Additionally, representatives from a local Albertson's grocery store contacted the CHP to inform them that Pinnock stole from Albertson's almost every day over a period of three years prior to July, 2014. This evidence is potentially admissible to impeach Pinnock's credibility

Additionally, in a criminal action, evidence of the character or trait of character of the victim of a crime for which the defendant is being prosecuted is admissible if the evidence is offered by the defendant to prove conduct of the victim in conformity with the character or trait of character. Evidence Code section 1103. Additionally, where there is a claim of self-defense or defense of others, CALCRIM No. 3470 provides, "If you find that the victim threatened or harmed the defendant *or others* in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable." (emphasis added)

There are several documented instances where Pinnock has exhibited violent behavior. As such, evidence that Pinnock engaged in violence in the past may be admissible pursuant to California law. Some of the information presented to this office documenting this character trait is discussed below.

On January 5, 2004, Pinnock pushed a woman down, kicked her in the stomach, got on top of her, and punched her several times in the face.

On July 22, 2004, Pinnock attempted to hit her neighbor and said that she wanted to hurt her. Pinnock continued to yell and scream when the police arrived.

On November 21, 2006, Pinnock's daughter called the police to her home because Pinnock was throwing items around the apartment. Officers responded to the location. Responding officers described Pinnock as "irritable" and "agitated."

On July 18, 2008, officers responded to a disturbance at a McDonald's restaurant. When they arrived, Pinnock was outside in the eating area and did not respond to the officers. As the officers attempted to take Pinnock into custody, she began to yell and kick at them, and become otherwise violent with them. Pinnock was placed into a hobble device by the officers and a spit mask was applied. Officers described Pinnock as "aggressive."

On June 15, 2012, Pinnock was at Albertson's grocery store. Pinnock asked another customer to buy her some food. When the customer refused, Pinnock grabbed his groin. When a loss prevention agent attempted to prevent Pinnock from stealing food, Pinnock punched him several times.

Attempts to enter traffic

Evidence Code section 1101(b) allows the "admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident,...) other than his or her disposition to commit such an act."

Pinnock has a total of 26 contacts with LAPD's Mental Evaluation Unit (MEU), beginning on February 1, 2004. Thirteen of the contacts involve Pinnock entering traffic or indicating that she

wanted to run into traffic.⁴⁰ This evidence could be offered to impeach her testimony should she deny that she was attempting to enter traffic, or to prove intent pursuant to Evidence Code section 1101(b). The most recent in time instances are discussed below.

On January 25, 2013, officers responded to a call of a mentally ill woman by the Los Angeles Fire Department. Upon arrival, the officers observed Pinnock walking in the street. When Pinnock saw the officers, she began to walk away from them. As the officers approached her, Pinnock ran into traffic without regard to her safety. Officers were able to stop Pinnock and "took her into custody without incident." Officers described Pinnock as "uncooperative."

On December 13, 2013, Pinnock walked into traffic lanes on La Brea Boulevard. A car travelling northbound on La Brea Boulevard swerved to avoid colliding with Pinnock. The driver of the car lost control of the car, which caused the car to roll over and collide with Pinnock. The driver was transported to the hospital for treatment. Pinnock was not injured in the collision.

On April 21, 2014, officers responded to a call of a mentally ill woman walking in traffic. When the officers arrived, they saw Pinnock walking in and out of oncoming traffic. While attempting to take Pinnock into custody, she became "extremely 415" with officers.⁴¹ The officers described her behavior as "agitated."

Most recently, on October 6, 2015, at approximately 2:30 a.m., CHP officers attempted to detain Pinnock while she was walking on the I-10 freeway near the La Brea Boulevard exit. Officers approached Pinnock, instructed her to stop walking, explained that it was not safe to continue to walk on the freeway, and told her they were going to drive her home. Pinnock ignored the instructions and continued walking. One officer grabbed Pinnock's arm. Pinnock struggled with the officer, broke free of his grasp, and ran into the lane. The officer was again able to grab her arm and pulled her back. A second officer assisted and together they were able to control Pinnock.

CONCLUSION

The analysis in this case turns on whether Andrew's strikes took place when there was no lawful necessity to use force, or the force used was unreasonable or excessive. Based upon the facts presented, there was a lawful necessity for Andrew to use force to prevent Pinnock from entering the lanes of traffic and there is insufficient evidence to prove beyond a reasonable doubt that the force he used was unreasonable or excessive.

⁴⁰ These contacts often describe Pinnock as agitated, irritable, uncooperative, and aggressive, and document that Pinnock appeared to see and hear things.

⁴¹ "415" is a reference to Penal Code section 415, which proscribes fighting or challenging another to fight in a public place, disturbing another by loud or unreasonable noise, and using offensive words in a public place which are likely to provoke an immediate violent reaction.

Andrew's stop or attempted stop of Pinnock and his verbal and physical attempts to prevent her from entering traffic were lawful. Andrew stopped his patrol vehicle to help Pinnock, who was walking in stockings along a busy stretch of freeway. Reasonably believing that this conduct endangered both Pinnock's life and the lives of passing motorists, Andrew ordered Pinnock to stop. Pinnock briefly stopped, but then turned and walked away from Andrew. Andrew followed in his patrol vehicle and Pinnock temporarily complied with Andrew's orders. Andrew approached Pinnock with a visibly calm demeanor, explained that she needed to leave the freeway, and offered her a ride. Pinnock turned, walked across the northbound La Brea Boulevard on-ramp, and proceeded as if exiting the freeway. Andrew followed briefly, turned, and walked back to his patrol vehicle. Immediately after, Pinnock walked back towards the freeway.

Andrew noted Pinnock had changed course, and, for the third time, Andrew ordered Pinnock to "Stop!" Pinnock did not stop and proceeded briskly toward the eastbound lanes of traffic. Andrew walked towards Pinnock and then increased his speed, as it appeared that Pinnock was going to walk onto the freeway. Several witnesses corroborate Andrew's stated belief that Pinnock was going to walk into the eastbound lanes. Andrew grabbed Pinnock, preventing her from walking into traffic. At this time, there was a lawful necessity to use force to prevent Pinnock from walking onto the freeway. Meyer correctly noted, "This was an emergency situation requiring the officer to act quickly to prevent Ms. Pinnock from being killed or seriously injured."⁴²

In response, Pinnock turned, attempted to get away, physically resisted Andrew's efforts to stop her, and reached toward Andrew, possibly striking him. A struggle occurred as Andrew attempted to control Pinnock and Pinnock resisted his efforts. Ultimately, Andrew took Pinnock to the ground, Pinnock fell to the ground, or a combination of both caused them to drop to the ground. Based upon these facts, Andrew's actions were objectively reasonable as Pinnock's behavior posed a threat to her life and to the lives of others. Pinnock actively resisted Andrew's lawful attempts to stop her and his use of force was commensurate with the threat posed by Pinnock's actions.

Once on the ground, Pinnock struck Andrew in the face. A ground struggle occurred adjacent to the freeway where both parties grabbed at each other. Ultimately, Andrew was positioned astride Pinnock with his back to traffic. Despite Andrew's reasonable and lawful orders to stop, Pinnock resisted Andrew's efforts to detain her by striking him, struggling with him, grabbing onto his shirt with her hand, and moving her knee in his groin area. At this time, Andrew began striking Pinnock's right shoulder area to cause her to release her grip of him.

⁴² The CHP's October 6, 2014 use of force analysis similarly found, "Rather than watch [Pinnock] walk into traffic or try and block her path, Officer Andrew chose to go "hands-on" and attempt to place her in a control hold... This action has a lawful necessity and is objectively reasonable."

When viewed in real-time, the recording of the incident appears to show that Andrew struck Pinnock multiple times in her head and face. However, a more accurate picture emerges when the recording is slowed down. Most of the strikes appear to contact Pinnock's right shoulder or upper body area. This is supported by the medical records. From this evidence, Meyer reasonably inferred, "The absence of injury to Ms. Pinnock's head and face... indicates that if any of the strikes hit her head, they were glancing, ineffective blows."

In all, Andrew struck Pinnock ten times. These strikes appear to be with a closed fist and occur within ten seconds. Andrew described Pinnock as "very strong" and told investigators that he was scared during this incident.⁴³ Andrew explained that his back was to traffic, his location was dangerous, and he was alone. Andrew's patrol vehicle posed a visual distraction to passing motorists and was out of position to shield him should a car veer out of its lane. Andrew was concerned that Pinnock herself was armed or that she could avail herself of his duty weapons. Pinnock was actively moving her arms, her knee was positioned at his groin, and she was able to pull Andrew towards her body. The reasonableness of Andrew's determination that Pinnock posed a possible threat that justified his use of force must also be viewed in light of Pinnock's past history involving physical violence and aggression. This past history, unknown to Andrew, is consistent with his perception of Pinnock as mentally unstable and physically aggressive. It arguably supports Andrew's decision to use personal weapon strikes in this situation and a determination that the strikes were reasonable.

Andrew initially struck Pinnock seven times. During all seven blows, Pinnock held Andrew's shirt near his collar or upper chest area. Andrew indicated his intent was to strike Pinnock's shoulder area to cause her to release her grip of his body. The recording of the incident does not conflict with that account. Pinnock did not release her grip of Andrew's body during the first seven blows. Andrew then tried to manually pry her hand from his person. This action is consistent with his statement that the strikes were an attempt to force Pinnock to release her grasp of him.

As Andrew attempted to manually remove Pinnock's right hand from his body, Pinnock reached with her left hand, grabbed onto his body, and pulled Andrew closer to her. Andrew struggled with Pinnock and was ultimately able to remove her left, and then right, hands from his body. Andrew stated that at this time, he believed that he needed to deliver another set of strikes to Pinnock in order to end her resistance. There is insufficient evidence presented to conclude that this decision was unreasonable under these stressful circumstances.⁴⁴

⁴³ Pedraza also articulated that Pinnock's strength surprised him.

⁴⁴ Although former Assistant Commissioner Rodriguez concluded that strikes eight, nine, and ten were outside of CHP policy, there is clearly a difference of opinion between members of the CHP. Two other reports authored by members of the CHP indicate that these strikes were not outside of CHP policy. Rodriguez' opinion was based on his conclusion that Pinnock was not resisting during strikes eight, nine, and ten. In concluding that Pinnock was not resisting, Rodriguez significantly understated the severity of the danger and "extreme challenge" posed by this situation.

Within two seconds, Andrew struck Pinnock three additional times. Compared to the first seven strikes, these appeared to contact, at least in part, Pinnock's head area. As Andrew began the eighth strike, Pinnock started to raise her left arm towards Andrew. Andrew struck Pinnock. The blow appeared to hit Pinnock's arm and head area. Andrew immediately turned briefly to look behind him, apparently sensing the approach of another individual, and then turned to look at Pinnock. Andrew hit Pinnock a ninth time. As Andrew's arm descended toward Pinnock, Pinnock used both arms to cover her head. This blow appeared to contact her shoulder and possibly the right side of her face and the pavement. As Pinnock continued to cover her head, Andrew struck Pinnock a final time. This strike came into contact with Pinnock's head, was somewhat blocked by Pinnock's forearms and wrists, and possibly continued to strike her shoulder area. Andrew pulled his arm back but did not issue another strike.

At this time, Andrew reasonably assessed that Pinnock had temporarily stopped resisting or fighting. Andrew rose slightly to see something behind him. In response, Pinnock reached toward Andrew with her right hand and began to get up. Andrew turned his attention back to Pinnock. Four seconds after the last strike, Pedraza arrived and assisted Andrew. They rolled Pinnock onto her stomach and attempted to place handcuffs on her. Pinnock placed her arms under her body to avoid being handcuffed, indicating that she had not ceased resisting the officers' commands. Approximately twelve seconds passed from the time Pedraza arrived at the location until the recording ends. During that twelve seconds, the officers were unable to secure Pinnock in handcuffs.

Andrew encountered Pinnock while she was walking on the freeway and was clearly in need of assistance. Once Pinnock began to behave as if she was going to enter the eastbound lanes of the freeway, Andrew made a split-second decision to prevent that course of conduct. At that time, Pinnock became resistant and assaultive, creating an emergency situation and justifying Andrew's decision to use force. This predicament required immediate and decisive action by Andrew, who was without the support of additional officers. Andrew exercised his peace officer power to use reasonable force to effect the arrest, to prevent escape, and to overcome resistance to prevent Pinnock from killing herself or another, or injuring herself or another. Pinnock's behavior also endangered Andrew's life, placing him precariously close to the freeway with his back to traffic.

Based upon a review of all the evidence in this case, a jury would be presented with a substantially different picture of what occurred compared to what is contained in the 42 second video recording. Andrew's use of force to prevent Pinnock from entering the lanes of traffic was reasonable under these circumstances. Meyer correctly noted that Pinnock's "resistance to the officer's lawful verbal directions and physical attempts to protect her from the dangers of the freeway traffic, and her physical resistance and assaultive behavior combined to present an extreme challenge for the officer to control her quickly." Given the rapidly evolving and challenging situation, the lack of additional officers on scene, Pinnock's failure to comply with Andrew's verbal commands, and Pinnock's physical resistance to Andrew's attempt to stop and

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detain her, there is insufficient evidence to prove beyond a reasonable doubt that the force he used was unreasonable or excessive.