

**In-Custody Death of Gilbert McDonald
Los Angeles County Sheriff's Department**

**Deputy Audrey Malicek, #606648
Deputy Elizabeth Tarin, #623003**

J.S.I.D. File #21-0064



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

May 21, 2024

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: In-Custody Death of Gilbert McDonald
J.S.I.D. File #21-0064
L.A.S.D. File #021-01790-0562-499

DATE: May 21, 2024

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 12, 2021, in-custody death of Gilbert McDonald. We have concluded that the force used by Los Angeles County Sheriff's Department (LASD) Deputies Audrey Malicek and Elizabeth Tarin in detaining McDonald was reasonable and their actions likely did not cause McDonald's death.

The District Attorney's Command Center was notified of this incident on February 12, 2021, at approximately 2:05 p.m. The District Attorney Response Team (DART) responded to the scene. They were given a briefing and walk-through of the scene by LASD personnel.

The following analysis is based on investigative reports, recorded interviews, surveillance footage, photographs, coroner's report, and Los Angeles Fire Department (LAFD) records submitted to this office by LASD Homicide Bureau on November 18, 2022, and November 9, 2023.

FACTUAL ANALYSIS

On February 12, 2021, at approximately 11:46 a.m., LASD Deputies Audrey Malicek and Elizabeth Tarin responded to a shopping complex in South El Monte for a call for service regarding a mentally ill person armed with a knife. They saw an individual who matched the description, later identified as McDonald, at the Dunkin Donuts in the shopping complex. He was holding a stick with a corkscrew attached at one end and a barbeque lighter. Malicek and Tarin detained McDonald, and he repeatedly asked, "Are you taking me to jail?"

Malicek observed objective signs and symptoms of being under the influence of a stimulant, such as rapid speech, vigorous arm movements, and an inability to follow simple directions. Malicek also recognized McDonald from the previous day, when he had been arrested for being under the influence of a controlled substance. He had admitted to using methamphetamine daily.

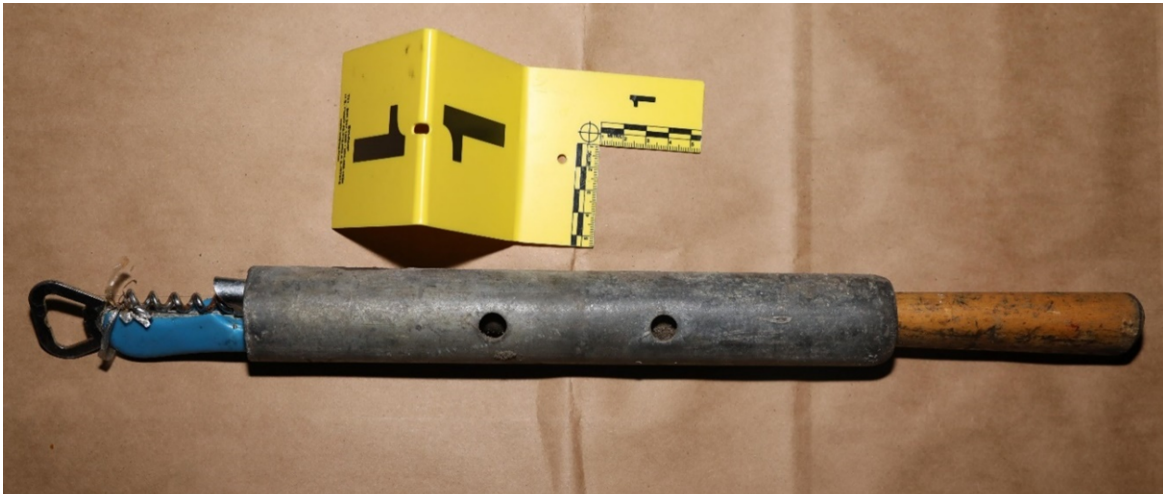


Figure 1: Photograph of the corkscrew attached to a stick that McDonald was holding.

Malicek and Tarin handcuffed McDonald and conducted a search of his person for any weapons. Deputies located a glass smoking device in McDonald's pants pocket. During the search, McDonald turned and spat on Malicek's face, saying, "I'm not going to jail." They placed him in the back seat of Malicek's patrol vehicle. While Malicek returned to the Dunkin Donuts to review surveillance footage, Tarin stayed with McDonald near the patrol vehicles.



Figure 2: Photograph of the glass smoking device found on McDonald's person.

McDonald continued to yell while seated inside the vehicle, and then began to kick the door. Tarin opened the door and told him to stop kicking, but he continued to kick. Tarin sprayed McDonald with Oleoresin Capsicum (OC) through the safety cage in the patrol vehicle. Tarin requested the fire department respond to the location to treat McDonald for the OC spray. McDonald continued to push his feet against the window, screaming that he be released, and hitting the window with the handcuffs on his wrists.

LASD Sergeant Ruben Loera also arrived on the scene and directed Malicek to put McDonald's legs in a Ripp Hobble Restraint.¹ EMT responded to the scene at 12:05 p.m. and Los Angeles County Fire (LAFD) Engine Number 90 arrived at 12:08 p.m. Responding firefighters washed McDonald's eyes and described McDonald as being alert and oriented. They asked him if his eyes hurt, and he responded, "No." McDonald was medically cleared for booking, and everyone left the scene around 12:13 p.m.

McDonald was driven to the LASD Temple Station by Malicek. During the drive McDonald asked for air, and Malicek responded that the air conditioning was on and the windows were open. Malicek saw McDonald moving around and he did not appear to have any respiratory distress. The exact length of time it took to drive from Dunkin Donuts to the station is unknown. Once at the station, he was placed in a wheelchair and wheeled into an intoxication cell at the station. His feet remained in a hobble.

In the cell, McDonald was moved to the ground. His eyes were open but appeared to have a blank stare. Custody Assistant Jessica Cooke checked McDonald for a pulse but could not find one. Deputies removed the restraints and began CPR on McDonald. Deputies administered two doses of Narcan and used the Automatic External Defibrillator (AED) on McDonald, but he did not regain consciousness. McDonald was pronounced dead in the cell at 1:14 p.m.

An autopsy determined that McDonald died of a "methamphetamine-induced delirium." Toxicology testing found marijuana in his blood and methamphetamine in his urine. Abrasions on McDonald's wrists and lower extremities were observed. There was no evidence of fatal trauma or significant natural disease.

Surveillance Videos

Surveillance video footage from cameras located at the Dunkin Donuts and the AT&T store, located in the same shopping complex, captured portions of the initial contact and arrest of McDonald. Surveillance cameras at the Temple Station also captured a portion of McDonald being wheeled into the intoxication cell.

Surveillance videos show Malicek and Tarin's patrol vehicles arrive around 11:43 and 11:46 a.m. The two deputies exit their respective patrol vehicles and walk toward the outdoor patio area next to the Dunkin Donuts. There, they interact with McDonald, who is holding a barbecue lighter in his right hand. He walks toward them and appears to be animated while talking to the deputies, making gestures with his hands. This is not audio recorded, but McDonald does not appear to be physically threatening or aggressive toward the deputies.

¹ A Ripp Hobble Restraint is a long polypropylene strap which allows a person's feet/legs to be tied together at one end of the strap. There is a clip at the other end of the strap which allows the person's feet/legs to be secured to a location or an object.



Figure 3: Video still of Malicek and Tarin walking toward Dunkin Donuts.



Figures 4, 5: Video stills of Malicek and Tarin speaking with McDonald, who is holding a barbecue lighter in his hand.

Due to gaps in the surveillance footage, how McDonald was placed in handcuffs or brought down to the ground was not captured. Malicek conducts a quick pat down of McDonald's waist area while Tarin holds a Taser at McDonald. McDonald does not appear to resist aggressively or be combative, but several times he turns his head toward the deputies as if he is speaking to them.



Figure 6: Video still of Malicek patting down McDonald, who is laying on the ground in handcuffs. Tarin holds a Taser to McDonald.²

The deputies walk McDonald to the patrol vehicles. McDonald does not resist but he also does not appear to be fully cooperative, sometimes dragging his feet and turning his head over his shoulder to speak to the deputies. McDonald is bent over the hood of Malicek's patrol vehicle, and the deputies appear to conduct a more thorough pat-down. McDonald is then placed in the back seat of Malicek's patrol vehicle.

Although the angle of the surveillance cameras fail to capture what exactly occurs in the back seat of the vehicle, McDonald's white shirt is sometimes visible through the rear windshield. It shows McDonald moving around in the backseat.

² According to the taser records, the device was not activated during the incident.



Figure 7: Video still of McDonald turning over his shoulder to speak to Malicek and Tarin as they walk him toward their patrol vehicles.

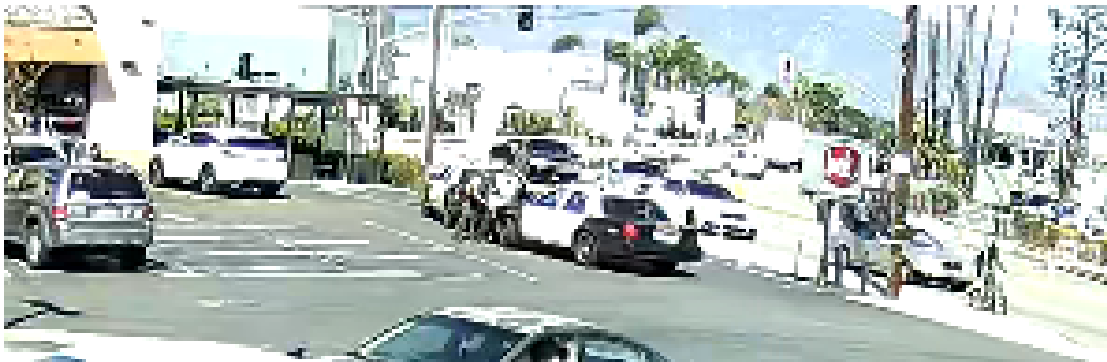


Figure 8: Video still of McDonald being patted down against the hood of the patrol vehicle.

Malicek walks back to the Dunkin Donuts while Tarin stands by the patrol vehicle. Tarin opens the driver's side door and leans into the vehicle. Due to the position of the camera, what Tarin does while leaning into the vehicle is not captured. Malicek walks back to the patrol vehicles, and Tarin opens the driver's side door and leans into the patrol vehicle two more times.

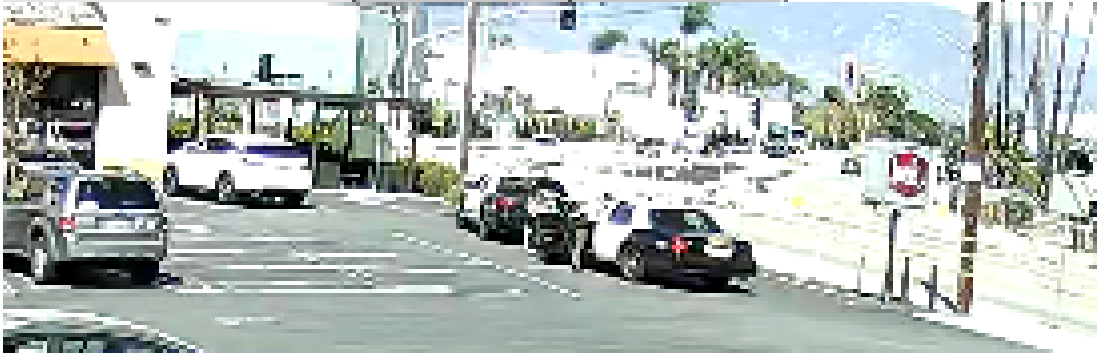


Figure 9: Video still of Tarin leaning into the patrol vehicle through the driver's side door.

An ambulance arrives at the location at 12:05 p.m., followed by a fire engine. Due to the position of the camera, the actions taken by the firefighters and EMT are not clearly captured. By 12:13 p.m., everyone, including Malicek's patrol vehicle, drives out of the parking lot.

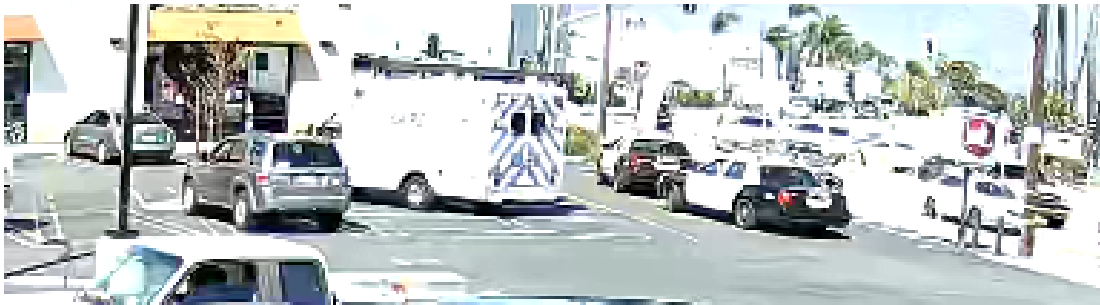


Figure 10: Video still of an ambulance arriving at the scene.

Surveillance video from the LASD station shows McDonald being wheeled into the building and down the hallway toward the cell. He is seated in a wheelchair, slightly slumped over, with his feet in a hobble.



Figures 11, 12: Video stills McDonald being wheeled into the intoxication cell at the LASD Temple Station.

There were no surveillance cameras inside the intoxication cell.

Voluntary Statements

Deputy Audrey Malicek

Malicek told investigators that she responded to a “mentally insane/person with a knife call.” She and Tarin arrived in their separate patrol vehicles and searched for the individual, eventually locating him squatting in the patio area of Dunkin Donuts. He, later identified as McDonald, was holding an object 12 inches long with a black handle and a shiny metal tip. She drew her weapon and attempted to detain him for investigation.

Malicek recognized McDonald from the previous day. She responded to a call and had seen McDonald in the middle of a residential street with his shirt off and displaying signs and symptoms of being under the influence of a central nervous system stimulant.

McDonald walked toward them and dropped the barbeque lighter in his hand to the ground. He repeatedly asked if he was going to jail. McDonald dropped to the ground and eventually laid on top of the lighter. Tarin held a Taser while Malicek handcuffed McDonald and conducted a quick waistband search for any weapons.

She and Tarin walked McDonald to the patrol car where she conducted a search of his person. During the search, McDonald continued to turn his upper body around toward Malicek and at one point spit on her right cheek. Tarin pushed the back of his arms forward to prevent him from turning around again, then they placed McDonald in the back seat of Malicek’s patrol vehicle.

Malicek walked back to the Dunkin Donuts to review surveillance footage and look for a knife described in the initial radio call. When she returned, Tarin reported having used OC spray on McDonald because he tried to kick out the patrol vehicle’s windows. McDonald moved around in the back seat, screaming and demanding to be released. He pushed his feet against the windows and kneeled on the seats to hit the windows with the handcuffs around his wrists.

An ambulance arrived, as did Sergeant Loera. Loera told Malicek to restrain McDonald’s legs together using the hobble. LAFD arrived and washed McDonald’s eyes. Malicek transported McDonald to the Temple Station, and Loera followed her. McDonald did not appear to have any respiratory distress during the ride, and she saw him moving around. He asked for air, and she told him that the air conditioning was on and the windows were open.

Once at the station, she went to the right rear door and told McDonald to exit the vehicle, but he did not respond. His eyes were closed and he was not moving, but he was smiling. She and Loera, who was at the left rear door, asked if McDonald could walk, but he did not respond. Tarin brought a wheelchair over, and she and Custody Assistant Cooke pulled McDonald out of the patrol vehicle. Cooke pushed McDonald in the wheelchair and Malicek held the hobble restraint. McDonald’s eyes were closed, and she saw him smiling on and off.

Once in the intoxication cell, Malicek and Cooke helped McDonald onto the ground. McDonald’s eyes were open and there was a blank stare on his face. Malicek checked McDonald’s pulse but could not find one. They removed McDonald’s handcuffs and hobble.

Cooke performed CPR on McDonald, and Malicek gave McDonald one dose of Narcan with no response. Malicek gave McDonald a second dose of Narcan, but it did not have any effect. She turned on the AED, placed the chest pads on McDonald, and pressed start but the AED instructed them that no shock was needed and to continue CPR. The fire department arrived, and they continued CPR.

Deputy Elizabeth Tarin

Tarin told investigators that she responded to a priority call of a mentally ill person with a knife call. Malicek was assigned to handle the call, and Tarin was assigned to assist. She drove to the parking lot of Dunkin Donuts and saw a person matching the description holding a long metal object aimlessly walking, sitting, and standing in the patio. Malicek told Tarin that she recognized the person, later identified as McDonald, as someone who was arrested for being under the influence of a controlled substance the day prior.

The deputies attempted to detain the suspect, and Tarin said she had her Taser in case less lethal force was necessary. She did not, however, ever deploy the Taser on McDonald. At first McDonald did not comply with Malicek's verbal commands, but he eventually dropped the item in his hands and was handcuffed without incident. As they walked McDonald to the patrol car, he kept yelling, "I'm not going to jail." At one point, he turned around and spat on Malicek's face.

After they seated him in the back of Malicek's patrol vehicle, McDonald continued to yell. McDonald kicked the door of the patrol vehicle. Tarin opened the door and told him multiple times to stop kicking. McDonald continued to kick, so Tarin sprayed OC spray at his face through the safety cage, and he stopped kicking. Tarin requested a field supervisor respond to their location and the fire department to treat McDonald. The fire department arrived and washed McDonald's eyes before Malicek drove him to the station.

When Tarin arrived at the station, Malicek, Loera, and another deputy were talking to McDonald in the back seat of the patrol vehicle. Tarin saw McDonald moving his body around in the vehicle. McDonald was helped out of the patrol vehicle and onto a wheelchair without incident. Tarin walked in front of the wheelchair and saw McDonald moving his body right to left and was uncooperative as he entered the jail.

Cooke said McDonald's eyes looked blank when they got into the cell, and they placed him in a recovery position. Tarin checked McDonald's pulse and it was very faint. Cooke suggested they begin CPR, so Tarin began chest compressions. Someone relieved her from doing chest compressions before they tried to use the AED on McDonald. However, the AED instructed them that no shock was needed, so Tarin continued chest compressions until the fire department arrived and relieved her.

Witness Statements

Civilian witnesses at the Dunkin Donuts who observed McDonald's behavior prior to the deputies responding were interviewed. None observed any use of force by the deputies.

Investigators also spoke with McDonald's family. His [REDACTED], [REDACTED], told investigators that McDonald had some mental illness and used methamphetamine and marijuana. She did not know if he was formally diagnosed with a mental illness.

Loera told investigators that he spoke with Tarin on the phone, who told him that she had used OC spray on McDonald. When he arrived at the scene, he saw McDonald laying down in the backseat of one of the patrol vehicles kicking the door. He told Malicek to secure McDonald's feet together. While the fire department flushed McDonald's eyes out, McDonald was moving around but not saying anything. On the way to the station, he saw McDonald seated upright and moving around the back seat of Malicek's patrol vehicle. However, when they arrived at the station, Loera saw McDonald slumped over to the left. Loera told McDonald to come out of the vehicle. Although McDonald was moving and conscious, he did not respond and appeared "out of it." When McDonald was wheeled into the cell, his eyes looked different. Loera checked for a pulse but could not find one.

Cooke told investigators that she helped pull McDonald out of the patrol vehicle and onto the wheelchair. He looked in her direction, but he had a blank stare. She pushed the wheelchair into the station, but she could not see his face. When they placed him onto the floor of the cell, McDonald's eyelids fell back, and he had a blank stare. Cooke checked for eye movement but did not see any and could not find a pulse on his neck. They removed his restraints and did not see his chest moving while he was laying on his back. She retrieved Narcan and gave it to Malicek. She placed the AED chest patches on McDonald's chest but when they tried to activate it, there was an audible message not to shock the person and to start chest compressions.

Deputy Jose Acero told investigators that he was at the station jail when he heard a commotion in one of the cells. Malicek ran by looking for Narcan, which he gave her. She instructed him to bring the AED from the hallway. In the cell, he saw McDonald laying supine on the floor and a female deputy doing chest compressions on him. Acero saw McDonald gasp out air after the deputy gave him a chest compression.

Deputy Gustavo Vega told investigators that he had arrested McDonald the previous day. He and Malicek had responded to a call for service about a shirtless male dancing in the middle of the street. When he saw McDonald, McDonald displayed signs and symptoms of being under the influence of a central nervous system stimulant. McDonald told Vega that he uses methamphetamine daily. When Vega transported McDonald to the station to be booked, McDonald began to "freak out" and was "thrashing" in the backseat of the patrol vehicle, kicking the vehicle door. However, when Vega explained to McDonald he would be at the station and released with a citation when his drug high went away, McDonald calmed down.

LAFD Report

The LAFD Prehospital Care Report shows that Engine 90, under the supervision of Captain Brian Murphy was dispatched to the scene. In addition to Captain Murphy, a paramedic, another paramedic and an EMT responded to the location. The report shows that McDonald was "alert and oriented x3," and that he responded "no" when asked if his eyes hurt. It further states that he

did not have any complaints on scene, and after his face was rinsed with saline, McDonald left in the custody of LASD.

Autopsy

An autopsy of McDonald was conducted by J. Jun Guan, Associate Deputy Medical Examiner, on February 15, 2021. He found that McDonald died of a “methamphetamine induced excited delirium.”³ He also documented several abrasions on his wrists and right arm, as well as contusions on his lower extremities.

Doctor Guan found that the “mechanism of death in excited delirium is postulated to be neurally-mediated cardiac arrest. Criteria for this diagnosis fulfilled in this case include aggression toward others, brief quiet period before collapse, non-shockable cardiac rhythm, history of stimulant abuse and mental illness, damage to the rear door and window of the patrol vehicle, and injuries sustained from fighting against restraints.”

Cho Lwin, a forensic neuropathology consultant, examined McDonald’s brain and complete cranial dura matter. Dr. Lwin’s found no evidence of recent or remote fatal trauma.

LEGAL ANALYSIS

When supported by probable cause, an officer may arrest a person for a misdemeanor offense not committed in the officer’s presence if the offense is reported to the officer by a citizen in whose presence the offense was committed. (Penal Code sections 836, 837; *People v. Johnson* (1981) 123 Cal.App.3d, 495, 499.)

A peace officer may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Penal Code section 835a(b). The decision by a peace officer to use force “shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgements about using force.” (Penal Code section 835a(a)4.)

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

Application

The deputies lawfully placed McDonald into custody. They received a call for service and observed him matching the description of the subject of the call. They observed McDonald displaying signs and symptoms of being under the influence of a controlled substance and in possession of a stick with a corkscrew attached at the end. When they walked him to the patrol

³ Effective January 1, 2024, “Excited delirium shall not be recognized as a valid medical diagnosis or cause of death.” (Health and Safety Code section 24401, subdivision (a).)

vehicle, he turned and spit in Malicek's face. While detained in the back of the patrol vehicle, he repeatedly tried to kick out the windows and the doors of the vehicle.

There is no evidence that deputies used unreasonable force when they detained McDonald. When they initially detained him, Malicek pulled out her service weapon and Tarin drew her Taser, but neither actually used the weapons. No use of force appears to have been used beyond that which was necessary to place McDonald in handcuffs.

Once in custody, McDonald became increasingly uncooperative, spitting in Malicek's face, and then kicking the window and door of the patrol vehicle. Tarin verbally instructed him to stop kicking the windows, but he did not stop. Tarin used her OC spray on McDonald, only after her verbal commands did not work. She did not spray McDonald more than once and called the fire department to respond and provide medical attention to McDonald for the OC spray. Medical personnel arrived and provided medical treatment and McDonald was alert and oriented after the OC spray.

The ankle hobble was used on McDonald, and he was transported to the station. McDonald was conscious and alert on the way to the station, speaking with Malicek and moving around in the back seat of the vehicle. No other force was used on McDonald.

There appears to be no evidence that the deputies' actions caused McDonald's death. There is no evidence that the use of the OC spray or the restraints used contributed to McDonald's death. He did not have any adverse cardiac or respiratory reaction to the OC spray and was treated by medical professionals for the OC spray. The ankle hobble was not attached to his handcuffs, and there were no other restraints used on McDonald that could have impeded his ability to breathe on the way to the station. The totality of the evidence thus shows that McDonald's death was not a "direct, natural, and probable consequence" of the deputies' acts, or that McDonald's death would not have happened without their acts.

CONCLUSION

Notwithstanding the prohibited cause of death conclusion by the coroner, we find that Deputy Tarin, in spraying OC spray on McDonald, did not use more force than reasonably necessary while detaining McDonald, and there is no evidence that her actions caused McDonald's death.

Similarly, we find that Deputy Malicek, in hobbling McDonald's ankles to prevent McDonald from continuing to kick and struggle, likewise did not use more force than reasonably necessary while detaining McDonald, and there is no evidence that her actions caused McDonald's death.