

**In-Custody Death of Arturo Suazo
Culver City Police Department**

**Officer Beau Railsback, #1176
Officer Jason Salazar, #1079
Officer John Ogden, #1107
Officer Charles Olsen, #1207**

J.S.I.D. File #21-0021



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

December 27, 2023

MEMORANDUM

TO: CHIEF JASON SIMS
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4040 Duquesne Avenue
Culver City, California 90232

CAPTAIN ANDREW D. MEYER
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: In Custody Death of Arturo Suazo
J.S.I.D. File #21-0021
LASD File #021-00005-3199-499

DATE: December 27, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 13, 2021, in-custody use of force and subsequent January 16, 2021, death of Arturo Suazo. We have concluded that Culver City Police Department (CCPD) officers Jason Salazar, Beau Railsback, John Ogden and Charles Olsen applied lawful force in detaining Suazo and that they are not criminally liable for Suazo's death.

The District Attorney's Command Center was notified of this incident on January 19, 2021, at approximately 3:08 p.m. The District Attorney Response Team did not respond to the location because the incident occurred on January 13, 2021, and Suazo was pronounced deceased on January 16, 2021, at Ronald Reagan UCLA Medical Center.

The following analysis is based on reports and body worn camera video (BWV) submitted to our office on January 27, 2021, by the Los Angeles Sheriff's Department (LASD) and CCPD as well as third party video. The officers' voluntary statements were considered in this analysis.

FACTUAL SUMMARY

On January 13, 2021, at approximately 2:28 a.m., Railsback and Salazar were working uniformed patrol when they received a call from Culver City dispatch regarding a subject, later identified as Suazo, screaming for help. Railsback and Salazar were driving a black and white police vehicle. Approximately forty-five seconds later the call was updated that Suazo was now

walking on Playa Street towards Jefferson Boulevard. At approximately 2:34 a.m., dispatch received a 9-1-1 call from the clerk at a gas station on Slauson Avenue, stating that a man, later identified as Suazo, was bleeding from his stomach, yelling for help, banging on the front door of the gas station and yelling that someone had a gun. Surveillance video from the gas station shows Suazo, wearing only boxer shorts and shoes, approaching the doors of the gas station in a highly agitated state, flailing his arms wildly, pulling on the locked gas station doors, attempting to open doors of cars parked at the gas station, and shouting.¹

At approximately 2:36 a.m., Los Angeles County Sheriff's Deputy Ernesto Gomez arrived at the gas station driving his police vehicle. Approximately thirty seconds later Railsback and Salazar arrived in their police vehicle. Both vehicles stopped near the sidewalk in front of the gas station. Suazo ran from the front doors of the gas station towards the police vehicles. Gomez exited his vehicle, Railsback and Salazar exited their vehicle, and Railsback and Salazar made contact with Suazo while Gomez stood a short distance away.

As Railsback and Salazar approached Suazo at the curb they observed that Suazo was covered in blood and had several lacerations on his upper torso. Suazo remained highly agitated, waving his arms. Although there is no audio in this portion of Railsback's BWV, it appears as though Suazo is ordered to the ground.² Suazo got down on his hands and knees on the sidewalk. Railsback asked Suazo, "Where are you bleeding from?" Suazo rolled on the ground. Suazo stated, "They're trying to kill me!" Suazo continued to roll on the ground in an agitated state and looked around wildly. Railsback asked Suazo, "What's your name?" Suazo yelled out unintelligible words, and then screamed, "Gun!" Railsback and Salazar each grabbed one of Suazo's arms and put them behind his (Suazo's) back. Railsback placed Suazo's hands in handcuffs and stated, "You're going to be okay." Suazo repeatedly yelled, "Look behind you!" Railsback stated, "I need you to chill, buddy" and "Buddy, we're trying to help you." Salazar rolled Suazo into a seated position, and both Railsback and Salazar moved Suazo to a seated position on the curb. CCPD Officer and acting sergeant supervisor Eric Shimabukuro walked up to the scene and radioed for the Culver City Fire Department (CCFD). Suazo continued to thrash and roll his body on the ground and yelled, "Look behind you!" Suazo flailed his body again and rolled onto the ground face down.

Over the next approximately four minutes, Railsback and Salazar, and later Ogden and Olsen, attempted to control Suazo as Suazo rolled and thrashed his body on the ground, kicked his legs, and yelled. Below is a detailed timeline of the incident:

- 2:38:25 a.m. – Salazar places his left hand on Suazo's left arm and his right hand grips Suazo's neck. Suazo is face down on the sidewalk, with his upper body on the curb and lower body in the street. Railsback grips Suazo's left arm with his (Railsback's) right hand.
- 2:38:30 a.m. – Salazar removes his hand from Suazo's neck, briefly places it in the middle of Suazo's back, then grips Suazo's right shoulder. Salazar's left hand remains gripping Suazo's left arm.

¹ The gas station surveillance video does not have audio, however it is clear Suazo is shouting as he pulls on the doors and flails his arms.

² Salazar's BWV does not activate until later in the incident.

- 2:38:48 a.m. – Railsback asks Suazo, “What’s your name, dude?” Railsback’s right hand remains gripping Suazo’s left arm. Salazar’s right hand steadies Suazo’s right shoulder.
- 2:39:01 a.m. – Suazo appears to yell, “Let me recover!”
- 2:39:07 a.m. – Suazo repeatedly yells, “Get me up!”
- 2:39:11 a.m. – Salazar places his hand on Suazo’s neck and grips it.
- 2:39:13 a.m. – Salazar removes his hand from Suazo’s neck. Suazo thrashes his body and yells, “Get me up!”
- 2:39:14 a.m. – Railsback places his hand on Suazo’s back and almost immediately removes his hand.
- 2:39:16 a.m. – Salazar places his hand on Suazo’s neck and upper back. Suazo yells, “Help me!”
- 2:39:19 a.m. – Railsback places his left hand on Suazo’s back and immediately removes it. Salazar places his right hand on Suazo’s upper back.
- 2:39:29 a.m. – Suazo screams unintelligibly. Railsback asks, “You good?” Salazar’s hand remains on Suazo’s upper back and Railsback’s hand remains gripping Suazo’s left arm.
- 2:39:50 a.m. – Suazo yells, “Help me.”
- 2:39:55 a.m. – CCFD paramedics and fire personnel arrive at the scene.
- 2:40:02 a.m. – Suazo thrashes his body and Railsback places his right fist into Suazo’s lower middle back. Salazar grips Suazo’s right hand with his (Salazar’s) hand.
- 2:40:13 a.m. – Salazar grabs Suazo’s right wrist with his left hand and grip’s Suazo’s neck with his right hand.
- 2:40:32 a.m. – Salazar removes his hand from Suazo’s neck and places it on Suazo’s upper back. Salazar’s left hand remains gripping Suazo’s right hand. Suazo states, “Let me go.”
- 2:40:39 a.m. – Salazar grips Suazo’s neck with his right hand.
- 2:40:43 a.m. – Suazo violently thrashes his body and both of Salazar’s hands slip off Suazo’s body. Railsback places his fist into Suazo’s back.
- 2:40:45 a.m. – Salazar grips Suazo’s neck with his right hand. Railsback places his left hand on Suazo’s left shoulder and places his right fist on Suazo’s upper left arm. Railsback states, “Relax, we’re done.” Suazo states, “OK, OK.” Railsback appears to be applying force with his right fist onto Suazo’s left arm while Railsback’s left hand steadies Suazo’s back.
- 2:40:49 a.m. – Ogden and Olsen arrive and begin to apply a “hobble” device to Suazo’s legs. Suazo continues to thrash his body and kick his legs.³
- 2:41:00 a.m. – Salazar removes his hand from Suazo’s neck and places his right knee into Suazo’s back. Ogden and Olsen continue to apply the “hobble” device to Suazo’s legs.
- 2:41:17 a.m. – Salazar removes his knee from Suazo’s back.
- 2:41:20 a.m. – Railsback removes his hand from Suazo’s back. Suazo is placed in the TARP position with his hands and feet connected by the TARP strap. Suazo’s body becomes limp.⁴

³ A hobble restraint allows a subject’s legs to immobilized in a similar fashion to handcuffs.

⁴ TARP stands for Total Appendage Restraint Procedure. When a person is placed in this position, a nylon strap is used to connect a person’s handcuffed hands to their “hobbled” feet and then tightened, familiarly known as “hog tying.”

- 2:41:59 a.m. – Railsback attempts to rouse Suazo, and states, “Hey buddy.” Railsback shakes Suazo’s arm.
- 2:42:06 a.m. – Suazo is rolled onto his side and lifted onto a gurney. Suazo is wheeled on the gurney to an awaiting ambulance.
- 2:43:03 a.m. – The TARP strap is removed from Suazo while he is in the ambulance.

Once in the ambulance, medical personnel began cardiopulmonary resuscitation (CPR) and administered a dose of Narcan.⁵ Medical personnel subsequently administered two separate doses of cardiac epinephrine.⁶ Suazo was transported to Ronald Reagan UCLA Medical Center in Westwood, California. Suazo’s family placed Suazo on a “Do Not Resuscitate” status and Suazo was pronounced deceased on January 16, 2021, at 11:49 p.m.

Investigators located Suazo’s vehicle, a Chevy Silverado truck, parked in a business parking lot approximately ½ mile away from the gas station. The rear window of the camper shell attached to the back of the truck was shattered and a large amount of glass was on the ground below. Surveillance footage of the parking lot shows that shortly before the incident the rear window of the camper shell is opened and a human figure climbs out of the open window. Due to the poor quality of the video it is not clear if this person is Suazo.

CORONER’S EXAMINATION

Dr. Kevin Young of the Los Angeles Department of Medical Examiner-Coroner conducted an autopsy on January 26, 2021. Dr. Young ascribed the manner of death to be accident and the cause of death to be methamphetamine toxicity. Dr. Young found no autopsy evidence that law enforcement contributed to death. Dr. Young noted minimal non-fatal trauma consisting of small, scabbed abrasions to the left knee and a dry, scabbed abrasion over the left cheekbone. An examination of Suazo’s neck showed no fingernail marks, contusions nor abrasions. No petechial hemorrhages were noted. Dr. Young noted the absence of any lacerations to Suazo’s extremities. Toxicology performed on blood samples taken from Suazo showed the presence of methamphetamine and amphetamine.

OFFICER STATEMENTS⁷

Officer Beau Railsback

Railsback stated that on January 13, 2021, he and his partner Salazar were on duty and driving a marked police vehicle. Railsback received a radio call regarding a person yelling for help near the intersection of Sawtelle Boulevard and Rudman Drive in Culver City, California. Railsback and Salazar proceeded to the location and heard radio calls that gave an updated location of a gas station near Sepulveda Boulevard and Slauson Avenue. Railsback stated that as he arrived at the

⁵ Narcan is a brand name for the drug naloxone, which can rapidly restore normal breathing to a person suffering from an opioid overdose.

⁶ Cardiac epinephrine is commonly administered during cardiopulmonary resuscitation to reverse cardiac arrest.

⁷ All of the statements made by the officers were provided voluntarily and recorded.

gas station he observed an LASD police vehicle pulling into the gas station parking lot. Railsback stated he pulled his vehicle behind the LASD vehicle and observed Suazo wearing only boxer shorts. Suazo walked towards the LASD deputy who had exited his vehicle. Railsback stated Salazar exited their vehicle and drew his (Salazar's) taser. Railsback stated that Suazo was yelling incoherently, flailing his arms, and yelling about a man with a gun.

Railsback stated that Salazar told Suazo to lie on the ground. Suazo complied and laid down approximately 15 feet from Railsback and Salazar. Railsback stated that Suazo was exhibiting extremely paranoid behavior, sweating profusely, and exhibited dilated pupils, leading Railsback to believe that Suazo was under the influence of a controlled substance. Railsback and Salazar placed handcuffs on Suazo. Railsback and Salazar walked Suazo to the curb and had Suazo sit down on the curb. Railsback stated that Suazo continued to scream regarding a man with a gun and that he (Railsback) was continually scanning the area for any person with a gun. Railsback stated that Shimabukuro arrived at the scene. Railsback stated that Suazo tried to stand up and that to prevent Suazo from standing Railsback and Salazar flipped Suazo onto his stomach. Railsback stated that the fire department had arrived at the scene and that Shimabukuro requested additional officers and a "hobble" restraint.

Railsback stated that Suazo was thrashing his body. Railsback held on to the left side of Suazo's body and had his knee on Suazo's lower leg area and his arm on Suazo's bicep. Railsback stated he used his fist in the center of Suazo's back. Salazar held down Suazo's left side. Railsback stated that Suazo was flailing his legs.

Railsback stated that Ogden and Olsen placed a hobble restraint around Suazo's feet and then used the TARP restraint to connect Suazo's hobbled legs to his handcuffed arms. Railsback stated that the fire department was next to them with a gurney deployed to transport Suazo to the hospital. Railsback noticed that Suazo had become unresponsive and Salazar, Ogden, and Olsen placed Suazo onto the gurney.

Railsback wrote a report regarding the incident. Railsback's report is consistent with both his verbal statement and the BWV.

Officer Jason Salazar

Salazar stated that he was on duty the night of January 13, 2021, and working with his partner Railsback. Salazar received a radio call regarding a man screaming for help in the area of Rudman Drive in Culver City, California. Salazar stated that as he was en route to the scene he received an updated radio call regarding a shirtless man screaming for help in the area of Sepulveda Boulevard and Jefferson Boulevard. Salazar stated that while still en route he received a third radio call regarding a shirtless man, bleeding from his body and banging on the doors of a gas station. Salazar arrived at the scene and observed an LASD patrol vehicle pulling into the gas station parking lot with its red and blue emergency overhead lights activated.

Salazar stated that he observed an LASD deputy exit the police vehicle. Salazar observed Suazo covered in blood and advance towards the deputy. Salazar stated he observed Suazo sweating

profusely despite the temperature being in the low 50s, and suspected that Suazo may be under the influence of a narcotic. Salazar unholstered his taser, pointed it at Suazo, and ordered Suazo to get on the ground. Salazar stated that Suazo was yelling but Salazar could not understand what Suazo was saying. Suazo complied and got down on his hands and knees, still yelling incoherent statements. Salazar re-holstered his taser and handcuffed Suazo. Salazar stated that after Suazo was handcuffed, he (Salazar) and Railsback rolled Suazo into a seated recovery position.

Salazar stated he placed his (Salazar's) left hand on Suazo's left arm and placed his right arm on Suazo's back. Suazo thrashed his body around and continued to yell incoherent statements. Shimabukuro arrived at the scene and requested paramedics. Salazar stated that Suazo rolled to the right and that he (Salazar) and Railsback used Suazo's momentum to roll Suazo onto his stomach. Salazar observed lacerations to Suazo's arm and blood all over Suazo's body. Salazar stated that Suazo was sweating profusely.

Salazar stated that once Suazo was prone on his stomach that Suazo continued to thrash his body side to side, making it hard to control him. Suazo's upper body was on top of the curb and Suazo's lower body was off the curb into the street. Salazar placed his hands on Suazo's upper back and lower neck to prevent Suazo from striking his (Suazo's) head on the pavement. Salazar stated that in placing his (Salazar's) hands on Suazo's upper back and neck he (Salazar) was not attempting to cut off Suazo's circulation or restrict his breathing but rather gain control so that Suazo would not strike his (Suazo's) head on the concrete. Suazo moved his head back and forth in quick, jerking movements. Salazar stated that Suazo moved his body from side to side and knocked both himself (Salazar) and Railsback off-balance. Salazar asked Suazo if he was ok and that Suazo said that he was.

Salazar stated that Ogden and Olsen arrived and attempted to apply a "hobble" device to Suazo's legs. Suazo violently kicked in the direction of Ogden and Olsen. Salazar stated that based on how difficult Suazo was to control, and in fear that Suazo would kick Ogden or Olsen, he (Salazar) placed his right knee on Suazo's mid to lower back area. Salazar applied minimum pressure with his knee, maintaining his (Salazar's) weight while using his knee as a controlling tactic. Salazar estimated he placed his knee on Suazo's back for approximately 17 to 18 seconds. Olsen was able to apply the "hobble" device. Ogden and Olsen applied a TARP device on Suazo, attaching Suazo's hobbled feet to his handcuffed arms. Salazar felt Suazo's body become limp. Suazo was placed on a gurney and taken to an ambulance.

Salazar wrote a report regarding the incident. Salazar's report is consistent with both his verbal statement and the BWV.

Officer John Ogden

Ogden stated that he was working patrol with his trainee, Olsen, on January 13, 2021. Ogden heard a radio call regarding a man screaming on a residential street in Culver City. Ogden stated that the call was assigned to another CCPD unit. Ogden heard a second radio call regarding a man matching the description of the first call and that the man was bleeding profusely and

banging on the doors of a gas station. Ogden and Olsen responded to the gas station. Ogden stated that when he arrived at the scene he observed Railsback and Salazar holding a man, later identified as Suazo, down on the ground. Suazo was flailing his legs on the ground and uncontrollably kicking his (Suazo's) legs. Railsback and Salazar were holding down Suazo's upper body. Ogden attempted to place a "hobble" device on Suazo's feet but it was difficult because Suazo was continuously kicking his feet. Ogden stated that he and Olsen were able to successfully attach the "hobble" device to Suazo's legs in approximately 20 seconds. Suazo continued to kick his legs after the "hobble" was applied. Ogden stated that Olsen placed Suazo into the TARP position and that almost immediately Suazo was rolled into a recovery position on his side. Once Suazo was placed in a recovery position Suazo's body went limp. Ogden grabbed Suazo's arm and helped place Suazo onto a gurney. Ogden stated he realized that Suazo was not breathing. Suazo was taken to an ambulance. Ogden ran alongside the gurney until Suazo was placed inside the ambulance.

Ogden wrote a report regarding the incident. Ogden's report is consistent with both his verbal statement and the BWV.

Officer Charles Olsen

Olsen stated that he was working at the Culver City Police Station on January 13, 2021. Olsen heard a radio call regarding a man on Slauson Avenue screaming and wearing no clothing. Olsen and his training officer, Ogden, left the station to respond as backup to the call. Olsen stated that while en route a second radio call stated that a man was banging on the doors of a gas station. Olsen stated that when he arrived at the gas station he observed Railsback and Salazar on the ground with Suazo. Suazo was flailing his body and kicking his legs. Olsen observed Suazo was handcuffed with his hands behind his back. Olsen observed Suazo to have his upper body on the sidewalk and his lower body in the street off the curb. Olsen stated that Suazo was screaming and moaning but he (Olsen) was unable to comprehend what Suazo was saying. Olsen stated that Shimabukuro had requested a "hobble" device. Olsen hooked the "hobble" onto one of Suazo's feet, squatted behind Suazo's ankles and attempted to place Suazo's other foot into the device. Olsen stated it was difficult because Suazo was kicking his feet up and down. Olsen stated that Ogden helped him cross Suazo's ankles and then he (Olsen) was able to successfully attach the "hobble." Olsen stated that after the "hobble" was attached to Suazo's ankles Suazo continued to kick his legs in a dolphin-like motion.

Olsen stated that he elected to place Suazo in the TARP position and clipped Suazo's hobbled ankles to his handcuffed wrists. Olsen stated he elected to place Suazo in the TARP position because he was afraid Suazo would kick him (Olsen) or another officer in the face. Olsen stated that after he placed Suazo in the TARP position, Railsback checked on Suazo's condition, and that Suazo was nonresponsive. Olsen stated that a gurney was wheeled nearby and Salazar stated, "Hey Olsen, let's go." Olsen, Salazar and Gutierrez picked Suazo up and rolled him onto his side, and then placed Suazo on the gurney.

Olsen wrote a report regarding the incident. Olsen's report is consistent with both his verbal statement and the BWV.

Officer Rico Gutierrez

Gutierrez stated that he was working patrol with his partner, CCPD Officer Christopher Lopez, on January 13, 2021. Gutierrez stated he responded to a radio call regarding a male yelling in a residential neighborhood. Gutierrez received a second radio call regarding the male yelling in a residential neighborhood. Gutierrez received a third radio call regarding a man banging on the windows of a gas station, covered in blood with a gunshot wound in the stomach. Gutierrez and Lopez were initially assigned the call at the gas station but ultimately responded as backup when it was determined that all three radio calls were regarding the same person. Gutierrez stated that he arrived at the scene and observed officers attempting to restrain Suazo who was handcuffed and kicking his legs. Gutierrez stated that Railsback and Salazar were attempting to place a “hobble” restraint onto Suazo’s legs. Gutierrez stated that Olsen was attempting to place Suazo in the TARP position and that when the TARP was applied Suazo’s body went limp. Gutierrez stated that officers realized that Suazo was not breathing and they placed Suazo on a gurney in the care of paramedics and wheeled him to an ambulance. Gutierrez removed the handcuffs from Suazo and handcuffed Suazo’s right arm to the gurney. Gutierrez stated that the paramedics began CPR on Suazo with a machine.

Officer Christopher Lopez

Lopez stated that he and his partner Gutierrez were working patrol and finishing a traffic stop investigation when he heard a radio call regarding a man screaming in the street and asking for help. Gutierrez finished the traffic stop and heard a second radio call, again regarding a man screaming for help. Gutierrez stated that while responding to this radio call he heard a third radio call regarding a man banging on a gas station window and screaming for help, covered in blood and clothed only in underwear. Gutierrez stated that when he arrived at the scene he observed Suazo being restrained by Railsback, Salazar and Ogden, and observed Olsen attempting to apply a “hobble” device and place Suazo in the TARP position. Suazo was thrashing his legs. Gutierrez stated that after Ogden placed Suazo in the TARP position that Suazo became unresponsive. Suazo was removed from the TARP position and placed onto a gurney. Suazo was wheeled to nearby ambulance and CPR was administered to Suazo.

Officer Eric Shimabukuro

Shimabukuro stated he was working as acting supervisor on January 13, 2021. Shimabukuro stated that on that date he received multiple radio calls regarding a man clothed only in underwear and yelling for help. Shimabukuro stated when he arrived at the scene he observed Railsback, Salazar, and another officer restraining Suazo, who was in handcuffs. Shimabukuro stated that Suazo was speaking but that Shimabukuro could not understand what Suazo was saying. Shimabukuro stated Suazo appeared extremely agitated and looked like he was trying to get away from someone. Shimabukuro notified the fire department to respond to the scene. Shimabukuro stated that initially Suazo was in a seated position on the curb but that Suazo rolled over to his stomach on his own accord. Suazo’s upper body was on the curb and his lower body was in the street.

Shimabukuro observed Salazar and Railsback restraining Suazo with their hands on Suazo's upper back. Shimabukuro stated Lopez, Ogden, Olsen arrived at the scene, and he directed a "hobble" restraint be placed on Suazo due to the difficulty Railsback and Salazar were having in keeping Suazo restrained. Suazo was moving his body from side to side and kicking his legs from side to side.

Shimabukuro stated Ogden and Olsen attempted to apply a "hobble" restraint to Suazo's legs but had difficulty because Suazo was kicking his (Suazo's) legs. The "hobble" was applied and that Suazo was placed in the TARP position by Olsen. After being placed in the TARP position Suazo stopped moving. Railsback, Salazar, Ogden and Olsen placed Suazo onto a gurney and Suazo was wheeled to a nearby ambulance. Shimabukuro yelled towards Gutierrez to remove the TARP restraint. Shimabukuro stated the "hobble" device was applied to Suazo so that the fire department could safely render aid to Suazo.

Deputy Ernesto Gomez

Gomez stated he was working as a deputy sheriff for the LASD on January 13, 2021. Gomez was patrolling in the area of Sepulveda Boulevard and Slauson Avenue when he heard yelling. Gomez drove his patrol vehicle in the direction of the yelling and saw a male wearing only boxer-brief underwear and yelling. Gomez observed the man, later identified as Suazo, banging on the doors of a gas station and trying to ram his body through the doors. Gomez parked his vehicle and a CCPD patrol vehicle arrived. Suazo turned and began to walk towards the officers. Gomez stated he heard the CCPD officers order Suazo to get onto the ground, and Suazo complied. Gomez walked to the entrance of the gas station to check for discarded weapons. Gomez walked back to his patrol vehicle and observed Suazo was now handcuffed. Gomez stated that Suazo was erratic and the CCPD officers were attempting to calm him down. Gomez asked the CCPD officers if they wanted him to call the fire department but was told the fire department was already responding. Gomez stated he asked the CCPD officers if they needed additional assistance. When they responded that they did not, he left the scene.

LEGAL ANALYSIS

Assault Under Color of Authority – PC 149

Unlawful use of excessive force, in violation of Penal Code Section 149, occurs when an officer uses more force than is necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, *People v. Lewelling* (2017) 16 Cal.App.5th 276. This is an objective test based on a reasonable officer.

"An officer may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102. "Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their

duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Ibid.* (citations and internal quotations omitted). When protecting the public peace, a police officer “is entitled to the even greater use of force than might be in the same circumstances required for self-defense.” *Id.* “The question is whether a peace officer’s actions were objectively reasonable based on the facts and circumstances confronting the peace officer.” *Id.*, at 1102. “The test is highly deferential to the police officer’s need to protect himself and others.” *Ibid.*

California Welfare & Institutions Code section 5150 authorizes a peace officer to detain and transport a person who, as a result of a mental health disorder, is a danger to themselves or others.

Railsback, Salazar, Ogden and Olsen all used force upon Suazo. Railsback and Salazar held Suazo down at various points on his body, Salazar squeezed Suazo’s neck, Olsen placed Suazo’s feet in a “hobble” restraint, and both Ogden and Olsen attached Suazo’s feet to his hands with a TARP restraint. Officers were confronted with an extremely agitated man who was the subject of three separate radio calls, and moments before had been banging on the door at a gas station. Suazo was covered in blood and clad only in his underwear. Suazo was making numerous delusional and paranoid statements regarding a gun and screaming for officers to “look behind” them. For Suazo’s own safety as well as their own, Railsback and Salazar placed Suazo in handcuffs and seated him on the curb. Suazo rolled onto his stomach and into a prone position on his own and began to violently thrash his body and kick his legs, jeopardizing the officers’ safety. Suazo was unable to respond to basic questions when asked his name, where he was coming from, or anything else, and instead continued to scream about a gun and screamed for the officers to look behind them. BWV clearly shows Railsback and Salazar’s difficulty in controlling Suazo. Salazar grips Suazo’s neck on multiple occasions, however, the force was proportional and limited. Salazar grips Suazo’s neck approximately four times for durations of two, five, 19, and 15 seconds.

Salazar also used force when he applied his knee into Suazo’s back. Salazar placed his knee into the center of Suazo’s back for approximately 17 seconds during which time Suazo was violently thrashing his body and kicking his legs. This force was used as Ogden and Olsen were attempting to place a “hobble” restraint onto Suazo’s legs to prevent Suazo from kicking the surrounding officers or injuring himself on the concrete roadway.

Under the totality of circumstances presented, Railsback, Salazar, Ogden and Olsen used force that was reasonable and necessary, and therefore are not criminally liable for a violation of PC 149.

Penal Code §192 (b) – Involuntary Manslaughter: Lawful Act in an Unlawful Manner

To prove a violation of Penal Code section 192(b) under this theory of involuntary manslaughter, the People must prove:

1. The defendant committed a crime or lawful act in an unlawful manner;

2. The defendant committed the crime or act with criminal negligence; and
3. The defendant's acts caused the death of another person. *Penal Code §192 (b); CALCRIM No. 582.*

Criminal negligence involves more than ordinary carelessness, inattention or mistake in judgment. A person acts with criminal negligence when:

1. He or she acts in a reckless way that creates a high risk of death or great bodily injury;
AND
2. A reasonable person would have known that acting that way would create such a risk.
CALCRIM No. 582.

Criminal negligence is defined as “so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.” *CALCRIM No. 582.*

As stated above, neither Railsback, Salazar, Ogden nor Olsen committed a crime. Nor did the officers in this incident commit a lawful act, the detention and use of force upon Suazo, in an unlawful manner. Suazo was handcuffed for both his own and officers' safety and seated on the curb. Suazo rolled on his own volition into the prone position. The uses of force by Railsback and Salazar were limited in duration and necessary to prevent Suazo from kicking surrounding officers and to prevent injury to Suazo himself.

Prone restraint of a person can result in what is known as positional asphyxia. Positional asphyxia refers to situations where the positioning of a person's body limits respiration. Weight or pressure on the person can further mechanically limit the person's respiration. Additional restraint of a person's legs can exacerbate the risk of positional asphyxia. While Suazo rolled into the prone position on his own volition while handcuffed, Railsback and Salazar used force to keep him in that position, and, at times, applied weight and pressure to Suazo's neck and back. Ogden and Olsen further restrained Suazo's legs by applying both a “hobble device” and placing Suazo in the TARP position.

These uses of force, however, were not carried out with criminal negligence. The pressure on Suazo's back applied by Railsback and Salazar was brief and limited in duration. Further, the uses of force were necessary to prevent injury to surrounding officers and to Suazo himself due to Suazo's violent thrashing of his body and kicking of his legs. Similarly, Ogden and Olsen's use of the “hobble” and TARP position were reasonable and necessary due to Suazo's violent thrashing of his body and kicking of his legs. When Railsback noticed that Suazo had become nonresponsive, Suazo was immediately rolled onto his side, placed onto a gurney and wheeled to an ambulance for medical attention.

Railsback, Salazar, Ogden and Olsen are therefore not criminally liable for PC 192(b) under a theory of committing a lawful act in an unlawful manner.

Penal Code §192 (b) – Involuntary Manslaughter: Failure to Perform a Legal Duty

1. The defendant had a legal duty to the decedent;
2. The defendant failed to perform that legal duty;
3. The defendant’s failure was criminally negligent; AND
4. The defendant’s failure caused the death of the decedent. *Penal Code §192 (b); CALCRIM No. 582.*

A legal duty to render aid is imposed when a special relationship exists between the decedent and the defendant. *People v. Oliver* (1989) 210 Cal.App.3d 138, *People v. Montecino* (1944) 66 Cal.App.2d 85. Such a special relationship exists, and a duty is imposed, when a jailer takes custody of a suspect. *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231. This duty is codified in Government Code section 845.6.

Criminal negligence involves more than ordinary carelessness, inattention or mistake in judgment. A person acts with criminal negligence when:

1. He or she acts in a reckless way that creates a high risk of death or great bodily injury; AND
2. A reasonable person would have known that acting that way would create such a risk. *CALCRIM No. 582.*

Criminal negligence is defined as “so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.” *CALCRIM No. 582.*

“An officer may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance.” *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102. “Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Ibid.* (citations and internal quotations omitted). When protecting the public peace, a police officer “is entitled to the even greater use of force than might be in the same circumstances required for self-defense.” *Id.* “The question is whether a peace officer’s actions were objectively reasonable based on the facts and circumstances confronting the peace officer.” *Id.*, at 1102. “The test is highly deferential to the police officer’s need to protect himself and others.” *Ibid.*

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.*

Railsback, Salazar, Ogden and Olsen, had a legal duty of care to Suazo. The officers had Suazo handcuffed, hobbled, and placed in a TARP restraint.

However, Railsback, Salazar, Ogden and Olsen did not breach their duty of care to Suazo. The officers noticed that Suazo had become nonresponsive approximately 46 seconds after Suazo's body became limp. Suazo was immediately rolled into a recovery position onto his side, lifted onto a gurney, and wheeled to an ambulance for medical attention. These actions do not constitute criminal negligence. On the contrary, they show a swift and decisive reaction to an emergency medical situation. Railsback, Salazar, Ogden and Olsen are thus not criminally liable for violating PC 192(b) under a theory of breaching a legal duty of care.

CONCLUSION

The evidence examined in this investigation shows that Officer Railsback, Salazar, Ogden and Olsen used reasonable force in their efforts to detain Arturo Suazo. The officers did not detain Suazo in an unlawful manner, nor did their actions breach the duty of care they had to Suazo.