

**In-Custody Death of Juan Calderon  
Long Beach Police Department**

**Officer Jason Kirk, #6051**

**Officer Tonya Kirk, #6245**

**Officer Francisco Vasquez, #6125**

**Officer Sergio Ruvalcaba, #6220**

**J.S.I.D. File #07-0532**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**December 12, 2019**

## MEMORANDUM

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

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

SUBJECT: In-Custody Death of Juan Calderon  
J.S.I.D. File #07-0532  
L.B.P.D. File #07-60350

DATE: December 12, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 16, 2007, in-custody death of Juan Calderon. It is the conclusion of this office that Long Beach Police Department (LBPD) Officers Jason Kirk, Tonya Kirk, Francisco Vasquez, and Sergio Ruvalcaba are not criminally liable for Calderon's death.

The District Attorney's Command Center was notified of this in-custody death on August 23, 2007. The Long Beach Police Department presented the case to the District Attorney's Office on September 29, 2019.

The following analysis is based on police reports, the autopsy report, witness interviews, and photographs submitted to this office by the Long Beach Police Department.

### **FACTUAL ANALYSIS**

#### **The 9-1-1 Call**

On August 3, 2007, at approximately 7:10 p.m., Juan Calderon's brother, Armando C., called 9-1-1 and reported that Calderon was possibly under the influence of drugs or alcohol, was making "weird noises," and was "throwing things" and yelling at people.

#### **The Police Response**

Nine minutes later, before officers could respond to the original 9-1-1 call, Calderon's sister-in-law saw LPBD Officers J. Kirk and Vasquez conducting an unrelated traffic stop. Ramona C. approached them frantically and reported that her brother-in-law, 33-year-old Juan Calderon, who had a history of drug and alcohol abuse and mental illness, was behaving erratically and was a threat to his elderly father. J. Kirk and Vasquez followed Ramona C. to Calderon's residence and arrived at 7:19 p.m.

### **Statement of Officer Francisco Vasquez**

Vasquez was with his partner, J. Kirk, when they were approached by Calderon's sister-in-law Ramona C., who said that Calderon was behaving erratically. She pleaded with Vasquez and J. Kirk to come to her nearby residence and evaluate Calderon. They proceeded immediately to the residence with Ramona C.

They arrived and could hear a man yelling something unintelligible from inside the residence. Calderon's brother, Armando C., approached and said Calderon was inside the residence, was behaving erratically, and was a threat to Calderon's elderly father, who was also in the residence. While the officers were speaking with Armando C., Calderon suddenly tumbled out of the front door of the residence and fell to the cement walkway. Calderon was sweating profusely, speaking unintelligibly, and appeared to be under the influence of drugs.

Vasquez and J. Kirk decided to detain Calderon and walk him out to the street, away from the residence. Calderon yelled repeatedly, "Don't shoot me!" and "struggled" with Vasquez and J. Kirk as they led him toward the street. During the struggle, J. Kirk applied a carotid hold to Calderon.<sup>1</sup>

### **Statement of Officer J. Kirk**

J. Kirk was with Vasquez on a traffic stop when Ramona C. approached them. Ramona C. was frantic and scared and asked the officers for help. She said she called the police approximately ten minutes prior but they had not arrived yet. Ramona C. said that five days prior she called the police on Calderon because Calderon was "acting violent," appeared to be under the influence of drugs, and had been fighting with her father-in-law, Agustin C.

Ramona C. now feared for Agustin C.'s safety because Calderon was inside the residence with him. J. Kirk and Vasquez followed Ramona C. to her residence.

They arrived and heard a man screaming from inside the residence. As J. Kirk was asking Ramona C. if Augustin C. wanted Calderon removed from the residence, Calderon stumbled out of the front door and fell down. Augustin C. was standing in the doorway. Calderon yelled at Augustin C. and it appeared they were arguing about Calderon being "kicked out" of the house. J. Kirk believed Calderon was going to attack Augustin C. Calderon was spitting, clenching his fists, and flexing his arms. J. Kirk and Vasquez walked toward Calderon to detain him before he could attack Augustin C.

J. Kirk grabbed Calderon's left arm, Vasquez grabbed Calderon's right arm, and they assisted Calderon to his feet. They escorted Calderon away from the front door and out to the adjacent

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<sup>1</sup> The carotid restraint is authorized per LBPD Policy 7.1.2.5 and Training Bulletin 167. Per Training Bulletin 167, "The Carotid Restraint is authorized to subdue violent suspects who cannot be controlled by a lower level of force, but where the use of lethal force is not justified or authorized." Further, "The Carotid Restraint shall be used only after other Weaponless Control Techniques have been determined ineffective or inappropriate for use by the involved officer[s]." Properly applied, the carotid restraint constricts blood flow through the carotid arteries, which supply oxygenated blood to the brain. Unconsciousness occurs typically within 3-15 seconds, but breathing continues uninterrupted. Consciousness is typically regained in 20-30 seconds.

public street. As they did so, Calderon continued to flex his arms and spit. They attempted to handcuff Calderon and restrain him because it would be safer for the officers and Calderon, and they intended to get him medical attention.

When J. Kirk and Vasquez reached the street, the officers asked Calderon to lay down on the grass. Calderon refused to lay down and flexed his arms even more. Calderon yelled, "I see the light!" and "Don't shoot me!" J. Kirk asked Calderon again to lay down on the grass but Calderon "became more violent." He started kicking his feet and "flinging" his arms around. Calderon was foaming at the mouth "like a dog with rabies." Calderon then bent over at the waist, almost faced J. Kirk, and put his mouth by the left side of J. Kirk's body. J. Kirk believed that Calderon was going to bite him.

To defend himself, J. Kirk placed his left arm on Calderon's throat and applied a carotid restraint hold. Calderon continued to resist handcuffing. Ruvalcaba arrived to assist and J. Kirk asked him to pick up Calderon's feet so they could put him on the ground. Ruvalcaba lifted both of Calderon's feet and they lowered him to the grass, on his stomach. Calderon continued to "fight." J. Kirk continued to apply a carotid restraint hold and Calderon lost consciousness. T. Kirk then assisted in handcuffing Calderon. J. Kirk rolled Calderon onto his side and confirmed he was breathing, as required by LBPDP policy after applying a carotid restraint hold. Calderon regained consciousness. J. Kirk sat Calderon up, checked his pulse, placed him in the backseat of the patrol car, and asked the fire department to respond to evaluate Calderon.

At 7:25 p.m., the officers requested a supervisor to come to the scene because of the use of force. Sergeant Michael Beckman arrived at 7:39 p.m., 20 minutes after the incident began.

The fire department transported Calderon to the hospital where he was released from police custody and treated for being under the influence of drugs.

### **Armando C.'s Statement**

Armando C. said that Calderon had a methamphetamine addiction, was behaving erratically, and had been getting more violent. Calderon was a threat to Armando C.'s wife, children, and parents. He saw Calderon fall down the stairs and land on his knees. The officers approached, took Calderon by the arms, and helped him to his feet. They walked him out to the street and placed him face down on the grass. Two more officers arrived to assist. Calderon was resisting handcuffing by "flailing" his arms around and was foaming at the mouth. He heard the officers tell Calderon, "Don't resist!" Armando C. also told Calderon not to resist. Approximately 90 seconds elapsed from the time the officers put Calderon on ground and when they were able to handcuff him. Calderon was breathing and appeared to be fine. The officers helped Calderon to his feet and put him in a police car. One of the officers said he was calling the paramedics as a precaution. The paramedics arrived a few minutes later, treated Calderon, and walked him from the police car into the back of the ambulance.

Two days later, Armando C. saw Calderon at the hospital and he was sedated, but able to respond to Armando C.

The next day, three days after Calderon was originally detained by the police, the doctor said Calderon had cocaine and ecstasy in his system and his liver had failed, which was causing his other organs to “shut down.” Calderon fell into a coma and died several days later.

### **Agustin C.’s Statement**

Agustin C. said that Calderon was acting “delusional.” He tried to keep Calderon inside the house but he got out and fell down. After Calderon fell down, Agustin C. went back into the house and closed the door and did not see the police arrest Calderon.

### **Eduardo M.’s Statement**

Eduardo M. was Calderon’s neighbor. He stated that Calderon “struggled” with the officers and would not let himself be handcuffed. Calderon struggled so hard that it took four officers to handcuff him.

### **Ramona C.’s Statement**

Ramona C. said Calderon had been getting more violent and she believed Calderon had been using cocaine. The officers arrived and Calderon exited the residence and fell down. Two officers approached Calderon and tried to speak with him, but he did not respond. The officers grabbed Calderon’s arms, lifted him to his feet, put his hands behind his back, and walked him toward the street. Calderon’s feet were dragging. The officers put Calderon on his stomach on the grass and two more officers arrived to assist. The female officer had her knee on one of Calderon’s shoulders. Calderon was trying to “get loose” by flailing his arms. The officers were trying to calm Calderon down and were not speaking to him in an aggressive manner. Ramona C. did not see the officers choke or strike Calderon. Once the officers handcuffed Calderon, the officers assisted Calderon to his feet and put him in a police car. Calderon did not struggle at that time, and she never saw Calderon lose consciousness. She believed Calderon remained conscious throughout the incident. She commented that the officers were professional, treated Calderon well, and did not use excessive force.

### **The Fire Department Response**

The fire department received the alarm at 7:38 p.m. and arrived at 7:46 p.m. The paramedics observed that Calderon was in the back of a patrol car and was conscious and breathing. Calderon did not appear to be injured. The paramedics transported Calderon to the hospital and they arrived at 7:55 p.m. A photograph of Calderon being treated at the hospital is shown below:



*Figure 1- Photo of Calderon in the Hospital*

Thirteen days later, Calderon developed respiratory failure, a blood disorder, and kidney complications, and died at the hospital, while not in police custody.

### **Autopsy**

Deputy Medical Examiner Steven Scholtz, M.D. performed an autopsy of Calderon's remains and concluded that Calderon died from "complications of multiple drug intoxication." The medical examiner also noted that Calderon had coronary atherosclerosis, symptoms of cocaine intoxication, and had a "small fracture to the right thyroid," which is evidence of neck compression. An examination of his brain showed "grossly normal" results. The medical examiner could not determine if the officers' restraint measures had an adverse effect on Calderon and found that the manner of death was "could not be determined." A toxicology analysis was performed and showed the presence of cocaine in Calderon's bloodstream.

### **LEGAL ANALYSIS**

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. In evaluating whether a police officer's use of

deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. “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... 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.

Evidence presented in this investigation shows that Calderon was under the influence of drugs and had a history of drug and alcohol abuse and mental illness, which caused him to act violently toward his family. He resisted the officers who were attempting to detain him and J. Kirk’s decision to use a carotid restraint was reasonable, under the circumstances, in order to protect himself and the other officers. A carotid restraint is permitted by LBPD policy. It is also well-settled that the use of a neck-hold to restrain a suspect who is actively resisting officers is not unreasonable. *Gregory v. County of Maui* (2008) 523 F.3d 1103. See, *Carleton v. Superior Court* (1985) 170 Cal.App.3d 1182, 1190-1191 (not excessive for officers to apply a carotid restraint on a suspect who was aggressively resisting police efforts to control him). See also, *Tatum v. City and County of San Francisco* (2006) 441 F.3d 1090, 1097 (objectively reasonable for an officer to use a control hold to secure a suspect's arm long enough to place him into handcuffs, where suspect was potentially violent, behaving erratically and resisting arrest).

The officers’ use of force was reasonable and appropriate under the circumstances to overcome Calderon’s resistance, and in an attempt to prevent him from further harming himself or others.

### **Cause of Death**

The medical examiner could not conclude that the use of force was a factor in Calderon’s death. “For liability to be found, the cause of the harm not only must be direct, but also not so remote as to fail to constitute the natural and probable consequence of the defendant's act.” *People v. Roberts* (1992) 2 Cal. 4<sup>th</sup> 271.

The evidence in this case shows that the carotid restraint T. Kirk applied was forceful enough to injure Calderon’s right thyroid and render him unconscious. However, it cannot be proven beyond a reasonable doubt that the officers’ use of force was the direct cause of Calderon’s death, for the following reasons:

1. Calderon’s unconsciousness appears to have been momentary, based on statements from Ramona C. and Armando C., who did not notice Calderon lose consciousness at all;
2. Calderon lost consciousness at the scene but regained consciousness before he left the scene, indicating that he was not deprived of oxygen long enough to cause brain damage and death;
3. Calderon was conscious when the fire department arrived at 7:46 p.m. and upon arrival at the hospital at 7:55 p.m.;
4. Two days later, Calderon was sedated but able to respond to his brother;

5. The autopsy determined that Calderon's brain was normal, indicating that he was not deprived of oxygen long enough to cause brain damage;
6. Calderon did not die until thirteen days after the incident and was conscious at the beginning of his hospitalization, indicating that there were intervening factors, other than the officers' use of force, that caused Calderon's death;
7. The medical examiner concluded that the cause of death was symptoms of "multiple drug intoxication" and the totality of the medical evidence indicates that Calderon died from multiple organ failure related to his drug abuse.

### **The Statute of Limitations**

Pursuant to Penal Code section 802(a), prosecution for an offense not punishable by death or imprisonment in the state prison or pursuant to subdivision (h) of Section 1170 (misdemeanors) shall be commenced within one year after commission of the offense. Prosecution for an offense punishable in the state prison (most felonies) shall be commenced within three years of the commission of the offense. Prosecution for offenses punishable for eight years or more in state prison shall be commenced within six years after the commission of the offense. Prosecution under these sections, assuming proof beyond a reasonable doubt that a crime was committed, is otherwise time barred by the statute of limitations. This case was presented to the Los Angeles County District Attorney's Office on September 24, 2019, after the expiration of all relevant statutes of limitation.

### **CONCLUSION**

The force used by Officers J. Kirk (applied carotid restraint), T. Kirk (assisted in handcuffing Calderon when he was on the ground), Vasquez (held Calderon while J. Kirk applied the carotid restraint), and Ruvalcaba (lifted Calderon's legs while J. Kirk applied the carotid restraint), was reasonable under the circumstances and it cannot be proven beyond a reasonable doubt that the officers caused Calderon's death. Therefore, no criminal liability attaches. We are closing our file and will take no further action in this matter.