OFFICER-INVOLVED FATAL INCIDENT REPORT

Employer Agency: Sonoma County Sheriff's Department

Lead Agency: Santa Rosa Police Department

Decedent: Donald Miller
Date of Incident: August 15, 2020

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

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I. INTRODUCTION

On August 15, 2020, Donald Miller and Jane Doe were camping at Duncans Mills along with Jane Doe's mother, [redacted] Doe. Donald was having a psychotic break so Jane Doe decided to drive Donald to the VA hospital. As Jane Doe was driving she became more concerned about Donald's behavior so she stopped their truck and exited the vehicle. Donald also exited, grabbed Jane Doe from behind and forced her into the business located at 15650 River Road. Jane Doe yelled for someone to call 911.

Reporting party, John Doe, called 911 to report hearing a female screaming. When Sonoma County Deputy Jensen arrived, Donald Miller and his wife, Jane Doe were exiting the business located at 15650 River Road. Donald had Jane Doe in a bear hug from behind. Jane Doe immediately asked Deputy Jensen to get Donald off of her. Deputy Matelli arrived soon thereafter as Deputy Jensen was struggling to gain control of Donald. Both Matelli and Jensen were eventually able to separate Donald from Jane Doe and took him to the ground. Donald did not comply with their orders to stop resisting. A taser was deployed numerous times, but Donald continued to physically resist. During the struggle, Donald became unresponsive and emergency medical assistance was requested by the deputies.

While awaiting the arrival of medical assistance the deputies performed CPR. Ultimately, life saving measures were unsuccessful and Donald died at the scene.

Following Mr. Miller's death, Sonoma County Sheriff's Department invoked the Sonoma County LawEnforcement Employee-Involved Fatal Incident Protocol ("protocol"). The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol an outside law enforcement agency is designated to investigate officer-involved fatalities.

In this case members of the Santa Rosa Police Department assumed responsibility for the investigation of the incident. Members of the Sonoma County District Attorney's Office participated in the investigation in a supporting role, in accordance with the protocol. Under the protocol the role of the Sonoma County District Attorney's Office is to review the investigation to determine if there exists any criminal liability on the part of involved parties, including the law enforcement employee(s); to provide assistance to the investigating agency regarding legal issues;to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the law.

Once the investigation is complete the District Attorney is required by the protocol to complete athorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is to be submitted to the foreperson of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding the death of Donald Miller, a statement of the applicable law, legal analysis and conclusions. This report does not and cannot include all

of the information contained in the hundreds of pages of reports, video and audio tapes, transcripts,photographs and diagrams reviewed in its preparation. However, every effort has been made to include in this report a summary of all of the relevant, material evidence gathered by the Santa Rosa Police Department over the course of its extensive investigation of this death.

II. SCOPE OF REVIEW

The purpose of the District Attorney's investigation and review of any critical incident is to establish the presence or absence of criminal liability on the part of any involved party, includinglaw enforcement employee(s).

The specific question to be resolved in this case is to establish the presence or absence of any criminal liability on the part of any involved parties, including law enforcement personnel. A summary of the applicable law is included here to assist the reader in understanding this report and its conclusions.

The District Attorney does not examine issues such as compliance with the policies and procedure of any law enforcement agency, police training, or issues involving civil liability. This report should not be interpreted as expressing an opinion on those matters.

III. STANDARD OF REVIEW

The District Attorney is the chief law enforcement official of Sonoma County. The District Attorney is responsible for deciding what cases to prosecute and has the responsibility to review and approve the filing of all criminal cases in the county. The District Attorney's discretion in thisregard is well defined. *The California Rules of Professional Conduct, Rule 5-110*, provides that prosecutors shall not institute criminal charges when the prosecutor knows or should know that the charges are not supported by probable cause. Additional restraint on the charging authority is found in the *Uniform Crime Charging Standards*[1] a publication of the California District AttorneysAssociation. These standards provide the following guidelines:

> The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of suchconvincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

In criminal cases the District Attorney has the burden of proving guilt "beyond a reasonable doubt[2]," the highest burden of proof found in the law. A jury of twelve must vote unanimously forguilt before a conviction may be entered. When determining whether criminal charges are appropriate the District Attorney must consider all of the evidence, including evidence that

[1] California District Attorneys Association, *Uniform Crime Charging Standards* (1996) p. 12.
[2] Judicial Council of California Criminal Jury Instructions (2017) (CALCRIM) No. 103. supports an affirmative defense, such as a claim of "self-defense" or "defense of others."

Criminal charges are warranted only when the District Attorney determines that the evidence of guilt is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective jury fact finder after hearing all the admissible evidence, including evidence of such an affirmative defense.

IV. SUMMARY OF FACTS

A. Decedent's Background

Donald Timothy Miller was born on [redacted]. He had three adult children and was married to Jane Doe. The three adult children were from a previous marriage. Donald Miller did not have any prior criminal history.

B. Summary of Information Provided to Dispatch and Deputies

On Saturday August 15, 2020, at approximately 8:12 a.m, Sonoma County Sheriff's Dispatch received a call about a possible fight between two people inside of a vehicle, east of the Hacienda Bridge. This was reported by an ambulance driver who was transporting a patient in the area.

C. Involved Parties' Statements

Summary of Statement of Carol Doe

[redacted] is mother to Jane Doe and mother in-law to Donald Miller. Ms. [redacted] stated that on August 15, 2020, she was camping with Donald and Jane Doe at Duncans Mills Camping Club. They had been at Duncans Mills since August 12, 2020. Jane Doe and Donald Miller lived together in Sacramento. The night prior to the incident under review, [redacted] said Donald Miller was acting as if he could not focus. She added that after they went to bed, she could hear Donald Miller getting up from bed, then back in bed. [redacted] asked Jane Doe if Donald Miller was okay, and Jane Doe stated they needed to leave as soon as there was daylight. [redacted] said that she and Jane Doe discussed what to do with Donald Miller. Jane Doe and Donald Miller left at approximately 7:45 that morning. [redacted] said the plan was for Jane Doe to take Donald to the VA hospital in Rancho Cordova to get him stabilized. [redacted] said she had never seen Donald Miller behave in such a manner and added Donald is normally, considerate to everyone. [redacted] was aware that Donald had recently switched medications, and knew the medications were for mental health issues. [redacted] provided Donald's medications to law enforcement.

Summary of Statement of Jane Doe

Jane Doe and Donald Miller are from Rancho Cordova and have been married since 2017, and had been together as a couple, for eleven years. According to Jane Doe, Donald Miller has been diagnosed as bipolar with schizoaffective disorder. Jane Doe added that Donald has experienced extreme highs and lows and also focused on conspiracy theories. Donald Miller took Norco for back pain, and Percocet to help him sleep due to the back pain. Donald Miller was also taking a number of antidepressants, mood stabilizers, anti-psychotic and muscle relaxers. Additionally,

Donald Miller had a disorder that caused him to blink continuously. This condition led him to not drive anymore because he did not feel safe driving with this blinking condition. He also consumed caffeine pills and 5-Hour Energy shots to counterbalance the sluggishness from all the medications he consumed.

On August 15, 2020, Donald and Jane Doe were out at Duncans Mills for a camping trip, along with Jane Doe's mother. The night prior to this incident, Jane Doe noticed that Donald Miller was having a psychotic break. Both Jane Doe and Donald Miller were exhausted from the day's activities. They were working on the trailer, fixing some leaks and performing other maintenance. At one point during the night, after Donald Miller had fallen asleep, he jumped off the bed as if he were attacked, ripped off his C-PAP mask and was acting strange. Jane Doe asked what was wrong, and Donald Miller said he had to use the bathroom. After about five minutes, he was still in the bathroom so Jane Doe checked on him and he was standing, leaving against the wall in the bathroom within their trailer. He then returned to bed, and still appeared to be confused. Early in the morning at around 6:00, Donald Miller got up again to use the bathroom and Jane Doe had to do the same; she checked on him and got him to come back to bed. Jane Doe noted that the day prior Donald Miller mentioned after a walk with the dogs, that people were putting a geopod where they were camping.

After some discussion with her mother, Jane Doe decided to take Donald Miller to the hospital because she felt he was not acting right. He did not resist this plan, but had difficulty dressing himself and picking out clothes, so Jane Doe had to assist him. When they entered the truck, Donald Miller consumed a 5-hour energy drink, and they drove off. While driving Jane Doe began crying because she was exhausted due to a lack of sleep and she was worried about her husband. He comforted her and provided her with a tissue to wipe her eyes.

At one point during the drive, Donald Miller's odd behavior increased. He increased the volume on the stereo to a level that upset the dogs and his wife. He was talking nonsensical about what God demands, while rubbing hand sanitizer on his hands, arms and on his head and tried to rub the sanitizer on Jane Doe. At this time, Jane Doe pulled the truck over. Donald Miller exited the vehicle and said he was going to take the dogs with him and walk. Jane Doe told him that if he was going to take the dogs, he was going to have to knock her out. Donald Miller tried to open the back door, but his wife locked the doors, hoping to separate herself from him. The front passenger door was still open, so then Donald Miller re-entered the vehicle and sat in the front passenger seat. He yelled and commanded to be taken back to Duncans Mills and nowhere else. Jane Doe was concerned about driving, considering she was crying and upset. While in the truck she told him she was going to call 911 and he said "go ahead." He then tried to grab the phone and the phone fell in the struggle. She pulled into the Ace Hardware parking lot, in hopes someone could call 911 for her, as she had dropped her phone in the truck and could not retrieve it. Donald Miller did not want her to park in front of the store. Jane Doe then decided to just stop the truck, and run out. When she stopped the truck Donald Miller got out and ran after her. Donald then put his arms around his wife and dragged her from the middle of River Road, into the store.

While in the store a male appeared from inside the store and told them they needed to leave. Jane Doe asked him to call 911 and Donald Miller told him not to do so. The male said he was going

to call 911 so they walked out of the store, and the deputies had just arrived as they stepped outside. At that point Jane Doe asked the deputies to get Donald Miller off of her, which they were able to do. Jane Doe said the deputies tried to get her husband to calm down, and he fought back, despite being tased a few times. She added that after Donald Miller was on the ground he resisted the deputies despite being tased, as the deputies tried to apply the handcuffs.

Summary of Statement of Jane Doe-2

Jane Doe-2 is the ex-wife of Donald Miller. [redacted] stated when she was married to Donald Miller, he was extremely abusive, both physically and verbally. [redacted] also added that Mr. Miller was diagnosed as bipolar with having a borderline personality disorder. She added that for a long time, Mr. Miller refused to take his prescribed medicine. Along with the abuse towards her, [redacted] described physical and sexual abuse of her children she shared with Mr. Miller.

Summary of Statement of John Doe-2

John Doe-2 lives across the True Value Hardware store on River Road. John Doe-2 stated at the time of the incident, the windows and doors were open to his residence to allow air to circulate. While sitting outside his residence, he heard a "blood curdling scream" of "Help me, Help me." John Doe-2 and his wife got up from the seats to go investigate. John Doe-2 did not see anything, but heard a male voice say, "Get on your belly and put your hands behind your back." When John Doe-2 ran out further to assist, he noticed the sheriff deputies were present, so figured they could handle it. According to John Doe-2, his wife heard a voice say, "Let her go."

Summary of Statement of John Doe-3

John Doe-3 was working at 15627 River Road when he heard a scream. John Doe-3 then ran across the street towards the scream and saw a male with his arms around a female. The male was shuffling the female into an upholstery shop. John Doe-3 ran up to the door of the business and knocked on the door. Next, John Doe-3 saw an employee of the store, who flagged down a Sheriff's deputy. The deputy contacted John Doe-3 and John Doe-3 described what he had observed.

The deputy then knocked on the door of the store, and there was no response. John Doe-3 said, then the door to the store opened and the same male he saw earlier, walked out with his arm around the female and the female was crying hysterically. At that time a second deputy arrived.

Both deputies were able to separate the male from the female and then focused on trying to subdue the male. John Doe-3 said the male was tased at least four times, but it did not seem to stop the male from fighting with both deputies. At one point during the struggle John Doe-3 told the male to relax because the deputies were trying to help him. The male responded, "I don't care." John Doe-3 then told the male, the more he struggled the worse it was going to be for him. The male again said, "I don't care." The male placed his head down to the side and continued to struggle with the deputies. Within a minute after that last exchange with the male, the male convulsed, stiffened up, and went slack.
Next, according to John Doe-3, the deputies rolled the male over and checked for a pulse. Once

they detected no pulse, they began, "pumping on him."

After the initial interview with John Doe-3, John Doe-3 called Detective Andrews to provide additional information. John Doe-3 added that it was clear to him, the deputies were, "tore up," immediately following the incident with Mr. Miller. By "tore up," John Doe-3 meant the deputies appeared to be angry, frustrated, shocked and sad. Also, that the deputies looked physically drained.

Summary of Statement of John Doe-4

John Doe-4 was staying at [redacted], when he was awakened by a woman screaming. John Doe-4' dog started to bark so he figured someone may be inside the store. John Doe-4 then got out of bed to investigate and saw Donald and Jane Doe enter the door to the store. Jane Doe was yelling at him to call 911. John Doe-4 told them he was going to call 911 and before he could do so, he saw the deputies arrived outside. Next, Donald and Jane Doe left the store.

John Doe-4 described Donald's pupils as tiny, and his eyes had no color. Additionally, John Doe-4 described how Donald fought with the deputies and was tased two times, but still did not comply. John Doe-4 said the deputies did everything they needed to do to protect themselves and tried to help Donald.

He described the deputies as telling Donald to relax and doing everything they could to calm the situation.

Summary of Statement of John Doe-5

Mr.John Doe-5 is a firefighter/paramedic who called dispatch to report a domestic disturbance he observed as he was driving the ambulance. At the time Mr.John Doe-5 was driving the ambulance, Jason Clopton was in the rear of the ambulance with a patient they were transporting from Guerneville to Sutter Hospital in Santa Rosa.

While driving on River Road, east of Guerneville, he noticed a large gray Dodge truck parked on the other side of the road on the northwest corner of River Road and River Drive. As they were driving by the truck, he heard the horn of the truck honk, for 4-5 seconds. He noticed inside the cab of the truck, a female in the front driver's seat, with her upper body twisted towards the center of the cab. He noted, despite being turned towards the center, the female's head turned toward the driver's side window and she was staring as he drove by. Though he did not see the female struggling or fighting with anybody, he felt she was trying to get his attention, so he radioed to his dispatch to send a police response to the truck.John Doe-5 added that he felt the female was in distress. He did not stay to see if law enforcement arrived.

Summary of Statement from John Doe-6

Mr. John Doe-6 is an employee of Dada's True Value Hardware store. He heard a woman screaming while he was in the lumber yard, which is located behind the store. After hearing the screaming, John Doe-6 ran to River Road and saw Jane Doe standing in front of the business at 15650 River Road, and watched as Donald Miller walked out of the front door of the store and pulled her back inside. Mr. John Doe-6 remained there, until a deputy drove by, and he summoned him to the front of the store. Next he saw the deputy look into the store, through the window, along with another deputy. Then he saw Donald and Jane Doe walk out of the store, with Donald Miller behind Jane Doe while holding her with his arm wrapped across her upper chest.

John Doe-6 said the deputies were able to pull Jane Doe from Donald Miller and then proceeded to try to place handcuffs on the man. John Doe-6 described Donald Miller as being uncooperative and refusing to follow the directions of the deputies. Next, he saw the deputies use the taser on him, but he still refused to cooperate. John Doe-6 added that the deputies were finally able to apply the handcuffs on Donald, who then calmed down and then "passed on."

D. SUMMARY OF LAW ENFORCEMENT STATEMENTS

Summary Of Statement Of Deputy Bryan Jensen

Sheriff's Deputy Bryan Jensen was interviewed by Santa Rosa Police Detectives Vaughn Andrews and James Vickers on August 17, 2020. Deputy Jensen has been a deputy with the Sonoma County Sheriff's Department since 2005. Prior to becoming a Sonoma County Sheriff Deputy, Deputy Jensen worked as a correctional deputy also with the Sonoma County Sheriff Department. At the time of this incident involving Donald Miller, Deputy Jensen was assigned to the dayshift out of the Guerneville substation. The dayshift starts at 7:00 A.M. and concludes at 5:00 P.M. Deputy Jensen has been assigned at this substation since 2016. On this date Jensen was using his normally assigned patrol vehicle and was dressed in his law enforcement uniform. Along with this uniform, Deputy Jensen was equipped with his badge, flashlight, body worn camera, firearm (department issued, 9mm Glock) taser, handcuffs, pepper spray, keys, and knife.

Deputy Jensen was dispatched to this call after a Russian River Fire Ambulance reported a female and male fighting in a pickup. Upon arriving at the reported location, Deputy Jensen was flagged down by numerous people who pointed him towards a purple residence. Deputy Jensen approached the building, pounded on the door and a male answered and said there was a man inside. Right behind this person were Jane Doe and Donald Miller, with Donald Miller's arm around Jane Doe.

Jane Doe said Donald Miller was having a psychotic episode and that she wanted him to let her go. Deputy Jensen noticed Donald's grip around Jane Doe's chest grew stronger, so he ordered Donald Miller to give him his hands, which he ignored. Instead, Donald Miller pulled his arm away, which allowed Jane Doe to escape his grip and move herself away from him. Deputy Matelli assisted Jane Doe in separating herself from the man. Matelli then turned his attention to Donald Miller and assisted Jensen in trying to gain control of him.

At this time, Deputy Jensen realized Donald Miller was exhibiting enormous strength. Deputy Jensen repeatedly told him to put his hands behind his back, but these commands were ignored. Realizing that he could not match Donald Miller's strength, Deputy Jensen knew he needed to gain control of him to prevent him from hurting himself or someone else. Jensen then was able to get behind Donald Miller and place him in a bear hug and wrestled him to the ground. During this sequence of events, Deputy Jensen continued to give commands for Donald Miller to comply and give him his hands. While on the ground, Deputy Jensen tried to gain control of Donald Miller's hands to place them behind his back. The taser was applied, but had no effect on him, as he kept fighting once the taser charge was disengaged.

Eventually, after much resistance by Donald Miller, Deputy Jensen and Deputy Matelli were able to double handcuff him. At this point, Jensen looked away at Jane Doe to let her know they were there to help Donald Miller. Donald Miller then stopped fighting. Deputies Jensen and Matelli realized Donald Miller was having a medical emergency, so they turned him onto his back and began chest compressions. The deputies performed chest compressions on him for about four minutes, until the firefighters and paramedics arrived.

Summary Of Statement Of Deputy Mike Matelli

Deputy Mike Matelli as interviewed by Santa Rosa Police Detectives James Vickers and Vaughn Andrews on August 17, 2020. Deputy Matelli has been employed with the Sonoma County Sheriff's Department since June of 2014. Prior to working with the Sheriff's Office, Deputy Matelli worked as a law enforcement officer with the Rohnert Park Public Safety Department, for two years. At the time of this incident, Deputy Matelli worked Sunday through Wednesday from 6:00 a.m. to 4:00 p.m. and was assigned to work out of the River Substation. He was using his normally assigned patrol vehicle and was dressed in his law enforcement uniform, with a body worn camera. Along with this uniform, Deputy Matelli was equipped with his badge, Glock 17 handgun, handcuffs, taser, tourniquet, glove pouch, spare magazines, a flashlight, and another set of handcuffs. Deputy Matelli also carried a handgun in the cargo pocket of his pants.

Deputy Matelli stated he and Deputy Jensen were dispatched to a domestic disturbance. Both were at the River substation when they received the call and Deputy Jensen left first and Matelli followed. Upon arrival to the location, Deputy Jensen signaled to Deputy Matelli via the radio that he had been flagged down by a female. Both Jensen and Matelli walked towards the building and Donald and Jane Doe exited as they approached. Deputy Jensen grabbed onto Donald Miller, who had his arm around Jane Doe. Matelli grabbed onto Donald Miller's left arm and Jensen grabbed his right arm. At this point, Matelli sensed this was going to be a struggle and noticed Donald Miller was exhibiting tremendous strength. Both deputies tried to get Donald Miller's arms behind his back but were unable to do so due to his enormous strength.

Deputy Matelli realized this was not going to be effective so he disengaged and decided to use his taser. At that point, Deputy Jensen had just taken Donald Miller to the ground and he was still resisting, so Matelli deployed the taser. Deputy Matelli noticed the taser did not have much effect on Donald Miller, so he struck him with a second cartridge from his taser. Once the taser

cycled through after the second deployment, Matelli noticed Donald Miller attempt to get up again.

Deputy Matelli delivered strikes using his knee, into Donald Miller's ribs, but these strikes seemed to have no effect. Next Matelli told Donald Miller he was going to tase him again and Donald Miller responded, "Do it!" The taser was deployed again, but became tangled as a result of the physical engagement with Donald Miller so that the taser shocked Deputy Matelli.

Deputy Matelli then stopped using his taser and instead worked to get Donald Miller's right arm behind his back. Matelli was able to move his right arm behind his back and used his handcuff to cuff onto Jensen's cuff which was on Donald Miller's left hand. During the entire encounter, Matelli said, Donald Miller was yelling and making nonsensical statements. Deputies Jensen and Matelli decided they were going to need to wait for help, so Matelli sat on Donald Miller's legs to prevent him from kicking. Quickly thereafter, they realized he was not resisting and immediately rolled him onto his side. Matelli checked his pulse and did not feel anything, so they rolled Donald Miller on his back and performed chest compressions until fire personnel arrived.

E. SUMMARY OF FIRE AND MEDICAL PERSONNEL STATEMENTS

Summary of Statement by John Doe-7

John Doe-7, along with Ryan Lantz and Tim Roher are firefighters and who responded to the medical call for Donald Miller. Upon their arrival, Deputies Matelli and Jensen were already on scene, with one of them conducting CPR on Miller. After receiving information on the situation, they immediately performed CPR and continued for approximately 15 minutes, until the ambulance arrived. After the ambulance arrived, resuscitative efforts continued for another 30 minutes until Mr. Miller was declared deceased. In addition to administering CPR, the firefighters used the AED (Automated External Defibrillator) on Mr. Miller. The AED completed four to five cycles. After each cycle, the AED advised not to shock Mr. Miller due to his heart being in an asystole state. During the entire time the firefighters were present, Mr. Miller was unconscious and unresponsive.

F. EXAMINATION OF TASERS

On August 18, 2020, Santa Rosa Police Detective James Page examined the taser used in this incident. Detective Page is a certified instructor in the use of conducted energy weapons (CEW), and has been so certified since February 2020. Detective Page conducted a spark test and confirmed the weapon functioned correctly. Additionally, Detective Page downloaded the event log of the weapon which revealed, cartridge bay one was deployed for a duration of five seconds at 8:19:28; cartridge bay two was deployed at 8:19:33 for a duration of five seconds; at 8:19:39, cartridge bay two was deployed for a duration of six seconds; at 8:19:56 cartridge bay two was deployed for a duration of nine seconds; at 8:20:20 cartridge bay two was deployed for a duration of five seconds. The CEW was armed for a total of 60 seconds and then placed in safe at 8:20:27. The CEW was armed at 8:20:28 and then the cartridge bay one was deployed for five seconds.

No other CEW had been deployed or activated during the incident with Mr. Miller.

G. AUTOPSY AND CAUSE OF DEATH

On August 15, 2020, the Marin County Sheriff's Office Coroner Division was contacted and requested to assume jurisdiction, and complete a death scene investigation in addition to a forensic examination of Mr. Miller. The forensic post mortem examination was performed on August 19, 2020, at Monte's Chapel of the Hills, located at 330 Red Hill Avenue, San Anselmo. Forensic Pathologist Joseph Cohen performed the autopsy. A report by Dr. Cohen was written with details regarding the cause of death of Donald Miller. A copy of the autopsy report was provided to Santa Rosa Police Detective Vaughn Andrews.

The post mortem examination revealed Mr. Miller suffered a 1-inch contusion on his left arm, several abrasions over a two inch area on top of his right shoulder, small ½ inch contusions on the mid and mid-lower aspects of the right side of his chest and upper abdomen. On Mr. Miller's right lower back and mid lumbar back, he had the probes from the taser. Small superficial abrasions were located over the right side of Mr. Miller's forehead and left temporal scalp. Additional abrasions were located lateral to his left eye, on the left side of his chin. The internal examination revealed non-displaced to slightly displaced anterior fractures of left two ribs consistent with resuscitative efforts. Dr. Cohen determined the cause of death was to be Cardiopulmonary Arrest due to non-compliance with police officers, due to schizoaffective disorder with agitation and threatening behavior. Additionally, Dr. Cohen, indicated other contributing factors to the death of Donald Miller included obesity, marked cardiac dilation, severe obstructive sleep apnea, marked steatosis of the liver, and prerenal azotemia consistent with dehydration. Toxicology reports indicate Donald Miller had hydrocodone which was prescribed for pain, as well as Citalopram, buspirone which were prescribed to treat his mental health condition. Additionally, Mr. Miller consumed a 5-Hour Energy drink, prior to his contact with law enforcement. However, there is no information on how these medications or substances affected his behavior on the day of the incident.

V. STATEMENT OF THE LAW

Under the Fourth Amendment of the United States Constitution, persons have the right to be free from the use of excessive force by law enforcement officers. This right, attaches even when an officer is engaged in making a lawful arrest.[12] As will be discussed below, it is not necessary to determine whether in this case officers were "engaged in making a lawful arrest" of Donald Miller at the time he died, while being taken into police custody. Instead, the analysis is whether the force used to effectuate the detention and arrest was reasonable based on an evaluation of the totality of the circumstances. The evaluation of the totality of the circumstances is not based on the facts as they became known over time, but are analyzed from the standpoint of the officers and what they knew at the time the detention and arrest were made.

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[12] Graham v. Connor (1989) 490 U.S. 386. "All claims that law enforcement officers have used excessive force– deadly or not–in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process approach." Graham, 490 U.S., at 394.

A. THE RIGHTS AND DUTIES OF A PEACE OFFICER WHEN EFFECTING A DETENTION OR AN ARREST

1. Rights And Duties Of Officers During A Detention

A police officer has the right to stop and temporarily detain someone for investigation whenever the officer has a "reasonable suspicion" some criminal activity is afoot and that the person was, is, or is about to be involved in that criminal activity.[2] A detention is allowed so a peace officer may have a reasonable amount of time to investigate a person's possible involvement in an actual or perceived criminal act, allowing the officer to make an informed decision whether to arrest, or to release, the subject. "An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time."[3] However, even though a detention is meant to be a short contact to assist in determining if a crime has occurred, an officer is not deprived of his right to defend himself should it become necessary.

> "(E)ven when a police officer is careful, he is still subject to attack. (P)olice officers (are) entitled to protect themselves during a detention: 'This is a rule of necessity to which a right even as basic as that of privacy must bow. To rule otherwise would be inhumanely to add another hazard to an already very dangerous occupation. Our zeal to fend off encroachments upon the right of privacy must be tempered by remembrance that ours is a government of laws to preserve which we require law enforcement—live ones. Without becoming a police state, we may still protect the policeman's status.'"[4]

[2] Terry v. Ohio (1968) 392 U.S. 1; ***People v. Walker*** (2012) 210 Cal.App.4th 1372, 1381.
[3] In re Antonio B. (2008) 166 Cal.App.4th 435, 440.
[4] In re Richard G. (2009) 173 Cal.App.4th 1252, 1255.

2. Rights And Duties During An Arrest

A peace officer may arrest a person without a warrant whenever the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence or that he has committed a felony.[5] When a peace officer has reasonable cause to believe that a person to be arrested has committed a public offense, he or she may use reasonable force and reasonable restraint to effect the arrest, to prevent escape, or to overcome resistance. [6] If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest."[7]

"A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance."[8] 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 United States Supreme Court has stated, "Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake."[9] This "careful balancing" includes consideration of "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he (she) is actively resisting arrest or attempting to evade arrest by flight."[10]

The Ninth Circuit Court of Appeals has also noted: "All determinations of 'unreasonable force must embody allowances 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.'"[11] Furthermore, the determination of reasonableness must be judged from the perspective of the reasonable officer on scene, rather than through hindsight.[12]

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[5] Penal Code section 836 (in pertinent part).
[6] Penal Code section 835, 835a
[7] Penal Code section 834a.
[8] Penal Code section 835a
[9] Graham, 490 U.S., at 396
[10] Id.
[11] Scott v. Henrich (9th Cir. 1994) 39 F.3d 912.
[12] Graham, 490 U.S., at 396-7

Officers are not required to use the least intrusive methods, but instead, the appropriate inquiry is whether the officers acted reasonably.[13] Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment in the heat of battle with lives potentially in the balance, and imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.[14] The determination of whether the amount of force used was "reasonable" is not limited to a discussion of the nature and amount of force actually used or whether the force used resulted in death. The "reasonableness" inquiry requires a careful consideration of all of the facts and circumstances surrounding the event.

B. DISCUSSION OF THE LAW AND OF THE EVIDENCE

When law enforcement officers are called out to a continuously unfolding event, and during detention or arrest, the subject dies, the analysis is conducted from the position of what an objectively reasonable officer, knowing and seeing what the particular officer(s) in question knows and sees at the time of the use of force. The use of force must be reasonable in that light. Law enforcement officers have no obligation to use the least amount of force to effectuate a detention or arrest, nor any obligation to retreat or desist in using force in the face of resistance.

On August 15, 2020, when Deputies Jensen and Matelli responded to 15600 River Road, they had received a call about a fight between a male and a female. Very soon after arriving at the location, Donald and Jane Doe exited the building. Donald Miller had his arm around Jane Doe, and Jane Doe asked for help. Thus immediately, the deputies realized they were dealing with a domestic violence situation that had escalated to a very dangerous stage. Considering Mr. Miller was holding Jane Doe with one arm around her upper chest, the deputies needed to act fast, to separate Jane Doe from Mr. Miller. The deputies recognized that this domestic disturbance had escalated to a violent stage, and Jane Doe's safety was at stake.

From the beginning of their contact with Mr. Miller, there was extreme resistance. Mr. Miller was given multiple orders to comply, but these were ignored. Deputies Jensen and Matelli had to physically separate Jane Doe from the grasp of Mr. Miller. As Deputy Jensen took Donald Miller's arm, he realized he was exhibiting such enormous strength; Deputy Jensen took him to the ground in attempt to gain control of Mr. Miller. Still, while on the ground, Mr. Miller ignored the commands of Deputies Jensen and Mattelli.

Both deputies were armed with numerous items typically carried by law enforcement, including a taser and a firearm. Mr. Miller was on the ground and still strongly resisting, so Deputy Matelli elected to use his taser on Mr. Miller, in order to gain compliance. The taser was cycled through four times, and despite this, Mr. Miller continued to resist. When the taser was engaged, this was the only time Mr. Miller would stop resisting; he continued to physically

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[13] See, e.g., Illinois v. Lafayette, 462 U.S. 640, 647, 77 L. Ed. 2d 65, 103 S. Ct. 2605 (1983); United States v. Martinez-Fuerte, 428 U.S. 543, 556-57 n.12, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976).

[14] Henrich (9th Cir. 1994) at 915.

resist when the taser was not being activated. The deputies and a citizen nearby also encouraged Mr. Miller to comply, but these requests were ignored. Additionally, the deputies knew that they needed more assistance to control Mr. Miller, but additional deputies arriving would take another twenty minutes. Knowing Mr. Miller was not going to comply, the deputies' only choice was to hold Mr. Miller on the ground until more assistance arrived to gain control of Mr. Miller. Based on the enormous strength exhibited by Mr. Miller, the deputies were concerned that Mr. Miller would harm himself, Jane Doe, the deputies or other citizens in close vicinity, if he was able to break free.

The use of force by Deputies Jensen and Matelli appears to have been reasonably necessary to ensure the safety of the deputies as well as the citizens who were nearby. Deputy Jensen's decision to take Mr. Miller to the ground was the safest way to gain control of Mr. Miller. By taking Mr. Miller to the ground, Deputy Jensen placed himself in a position to gain control of Mr. Miller in a safer manner for all involved. The force used by Deputy Jensen to secure Mr. Miller did not exceed what was necessary to ensure the safety of Jane Doe, the bystanders and the deputies. After multiple attempts to persuade Mr. Miller to comply with a taser, the deputies decided, they would just hold Mr. Miller down, until more deputies arrived to assist. At no time during this incident did Mr. Miller ever give any indication he would comply with the deputies.

The decision by Deputy Matelli to deploy his taser was force reasonably necessary to gain control of Mr. Miller. In the moments following Deputy Matelli's deployment of his taser, Mr. Miller continued to exhibit tremendous strength and demonstrated he was not willing to comply with the commands of the deputies. Mr. Miller would not place his hands behind his back as requested, and kept them in front of his body, as he laid down on his stomach. When the deputies realized they were not going to gain compliance by using the taser, Deputy Matelli stopped using the taser. At this point the deputies decided to hold the defendant down until more assistance arrived. The force used to do so was reasonable, considering the aggression demonstrated by Mr. Miller and his lack of cooperation.

Mr. Miller died following the above described interactions between himself and Deputies Matelli and Jensen. During their interactions on August 15, 2020, the deputies attempted to resolve the situation with nonlethal force. The deputies involved appear to have been mindful of their options and the potential outcomes as the events with Mr. Miller unfolded. Both Deputies Jensen and Matelli, individually, as well collectively, appear to have engaged in reasonable actions and reasonable uses of force when confronted with the volatile and quickly evolving encounter with Mr. Miller. They were dealing with an individual who was acting unpredictably, failing to comply with verbal commands, and exhibiting extraordinary strength putting the deputies, Jane Doe, and Mr. Miller himself at risk for harm.

VI. CONCLUSION

Although the deputies were attempting to detain Donald Miller at the time of his death, neither lethal force, nor unreasonable force was used to effectuate his detention and arrest. At no time did either deputy draw his firearm. Lethal force is that which creates a substantial risk of death or great bodily injury.[15] In this case, the force used by the deputies was reasonable, lawful and

[15] Smith v. City of Hemet, (2005) 394 F.3d 689.

necessary in order to effectuate a lawful arrest. Mr. Miller's non-compliance furthered the need for the deputies to engage physically in order to gain his compliance. The lawful force used by the deputies in their attempts to gain control of Mr. Miller along with Mr. Miller's non-compliance and overall physical condition contributed to the death of Mr. Miller.

Based on the law and circumstances discussed above, Deputies Bryan Jensen and Mike Matelli were legally justified in detaining and arresting Donald Miller. The force used to detain and arrest Mr. Miller was necessary, as he was extremely uncooperative and difficult to control.

December 2, 2021

Jill R. Ravitch, District Attorney