

# **Chinedu Okobi Arrest-Related Death Analysis**

**Report of Jeffrey A. Martin, J.D.**

**Provided upon request of the San Mateo County District Attorney's Office**

## **IDENTIFICATION AND QUALIFICATIONS**

My full name is Jeffrey Alan Martin. I am a retired police sergeant from the San Jose, California Police Department. I currently divide my time between providing consulting and expert witness services and teaching. I am a former labor relations attorney, having represented public safety personnel in administrative matters. I also worked as an author of "Daily Training Bulletins" for Lexipol, LLC, regarding various practices including the use of force.

During my tenure at the San Jose Police Department, I was promoted to sergeant in 1995 and worked in the Patrol Division, Airport Division, the Administrative Unit of the Bureau of Field Operations as the Training Coordinator, and as a supervisor in the Training Division. As a patrol supervisor, I investigated and documented several uses of force by officers.

Prior to that I was a police officer and my assignments included Patrol, the Parks Enforcement Unit, Field Training Officer Program, and as an investigator in the Narcotics/Covert Investigations (NCI) Unit. I served in the NCI Unit from 1989 to 1992 where I investigated drug and narcotic-related investigations, processed asset forfeitures, and investigated stolen property cases.

Prior to being hired at the San Jose Police Department, I was an officer with the San Francisco Bay Area Rapid Transit (BART) District Police Department from October 1981 through December 1984. While there, I worked in both uniformed and plainclothes patrol assignments and developed and delivered the training on the side-handle baton.

My training and experience in regard to the proper reporting, response, investigation and documentation of police force responses includes the following:

- ▶ I am currently an instructor in the California Commission on Peace Officer Standards and Training (POST) Institute for Criminal Investigations (ICI) course on Officer-involved Shooting Investigations;
- ▶ I have taught use-of-force investigation and documentation in the POST Supervisor School for the South Bay Regional Public Safety Training Consortium and in the San Jose Police Department Night Detective Academy; and
- ▶ I have personally responded to several force-response incidents and investigated them as a patrol supervisor.

My training and experience in the evaluation of force responses by law enforcement officers and related human factors, includes the following:

- ▶ I have used various tools and techniques in order to control subjects in field situations. This has included the use of batons, chemical agents (both CS and OC sprays), the TASER, extended-range impact munitions, various weaponless measures including takedowns and neck restraints, as well as de-escalation approaches;
- ▶ For the POST ICI Officer-involved Shooting Investigations course, I was recruited to develop and instruct a block of instruction on "Lawful Force." During this block of instruction, I teach the legal framework required for the use of force by police to meet both state statutory and federal constitutional standards;
- ▶ For the same course, I was recruited to develop and deliver a three-hour block of instruction on "Human Factors." This includes how sensory and cognitive factors form the *perspective* of the reasonable officer. This includes basic vision, attention, perception, memory, reaction time, officer-subject interactions, pattern (gestalt) v. detailed (feature-intensive) processing, time-to-stop shooting responses, human memory compared to video cameras, fatigue, and stress reactions;
- ▶ I am a POST-certified Force-options Simulator (FOS) Instructor and I served as an instructor for the South Bay Regional Public Safety Training Consortium. The FOS program focuses on the state and constitutional laws regarding the use of force by peace officers, as well as the decision-making involved in using various types of force;
- ▶ As a supervisor in the Training Division at the San Jose Police Department (2005-2009), I supervised the POST FOS program, which was implemented in 1999 in order to fulfill POST "perishable skills" requirements. In this program, my staff and I delivered this training to the sworn members of the San Jose Police Department, as well as other peace officers within Santa Clara County. Additionally, our facility was designated as a "regional skills training center" and we also provided instructor training to others throughout the State of California;
- ▶ I hold instructor-level certifications in multiple defensive-tactics/arrest-and-control programs, and I served as a defensive tactics instructor in the basic academy provided by the South Bay Regional Public Safety Training Consortium;
- ▶ While in the SJPD Training Unit, I supervised and taught classes in defensive tactics and officer safety;
- ▶ I also served as the lead instructor and instructor-trainer for the TASER program at the San Jose Police Department and Basic Academy;
- ▶ I have previously held "Master Instructor" certifications from TASER® International; and
- ▶ I served as a subject-matter expert in developing and appearing in a POST training video, "Use of Force," which was published in 2017.

My training and experience in interacting with and assisting consumers of mental health services include the following:

- ▶ I served as an informal liaison between the San Jose Police Department and Sharon Roth of the Santa Clara County Chapter of the National Alliance on Mental Illness;
- ▶ I served on the San Jose Police Department Critical Incident Team (CIT) Implementation Task Force;
- ▶ I was a fully trained member of the CIT;
- ▶ I have taught a section on Non-lethal Weapons in the San Jose Police Department CIT Academy;
- ▶ I have integrated crisis-intervention approaches into arrest-and-control training courses I have taught;
- ▶ I have presented “Dealing with the Mentally Ill,” focusing on the role of the subject-control instructor in incorporating crisis-intervention approaches; and
- ▶ I have authored an article, “Dealing with the Mentally Ill: The Importance of the Subject Control Instructor.”

My training in the investigation and evaluation of arrest-related death incidents include the following courses at the Institute for The Prevention of In-Custody Deaths (IPICD):

- ▶ In-Custody Death Prevention Instructor;
- ▶ Excited Delirium, Sudden In-Custody Deaths Forensic Analyst;
- ▶ Attended the “Legal, Medical, and Scientific Constraints on Human Restraints Symposium; and
- ▶ I have designed and co-delivered a 16-hour class on “In-Custody Death Investigations,” with one presentation to date.

My training and experience in the examination, preparation, and interpretation of video evidence includes the following:

- ▶ I have received personalized instruction from Mr. Michael Schott for a total of 14 hours;
- ▶ I have completed a 16-hour course on “Video Evidence for Investigators,” provided by the Law Enforcement & Emergency Services Video Association;
- ▶ I have completed a 16-hour course on “Video Examinations for the Police Investigator,” provided by Forensic Video Solutions;
- ▶ I have testified as to the importance of properly analyzing video evidence in one administrative hearing in Wisconsin and two in California; and
- ▶ I have testified about demonstrative video evidence I prepared in two California Superior Court cases.

I hold a Juris Doctor Degree from Northwestern California University and I am a member of the State Bar of California. I also hold a Bachelor’s Degree in Psychology from California State University at Hayward (now “East Bay”) and a Graduate Certificate in Human Factors Psychology from Grand Canyon University.

My expertise and qualifications to review and analyze police-force responses flows from

the following:

1. My education, personal experiences, and training;
2. The scope of my expertise is limited to these areas as they relate to how reasonable law enforcement officers are trained to use force within constitutional and policy limitations; the applicable human factors, including perceptions and memories, including basic vision and attentional factors; and the proper examination, preparation and interpretation of video evidence;
3. My analysis is similar to that of other experts in the field and has a factual foundation based on widely accepted methods of analyzing the objective reasonableness of police conduct based on peace officers' training on the clearly established law;
4. My understanding of the facts of this case;
5. My recognition that there will be factors or evidence that may either support, not support, or have a neutral effect upon my opinion; and
6. The fact I have drawn conclusions based on certain assumptions and I attempted to designate when I relied on disputed evidence.

My curriculum vitae is attached and incorporated into the body of this report by this reference. My professional experiences and activities are more fully set forth in my vitae, along with my publications. It also contains a list of other cases I have reviewed for other prosecutors, or provided testimony in trials, administrative hearings, or depositions as an expert witness.

A considerable portion of my professional life involves the study and analysis of the conduct of peace officers and law enforcement agencies and their practices, including liability issues and human-performance factors. I have also rendered opinions as to police practices, as is more fully set forth in my vitae.

My agreed-to fee for performing the work and producing this report for the San Mateo County District Attorney's Office is \$275.00 per hour with a maximum of \$14,025.00, including travel expenses and a one-time filing fee. The total amount billed will be available approximately one week after this report is submitted.

#### **DATA AND OTHER INFORMATION CONSIDERED WHEN FORMING OPINION**

In forming my opinions in this case, I reviewed, studied, and considered materials that are specific to this case as well as materials of general circulation. I have also drawn on the totality of the materials I have read, studied, and examined, as well as the experiences and instruction I have had and/or provided to law enforcement personnel over the entire course of my career. The materials listed herein are the type, quality, and quantity upon which I and others in my profession rely in examining the events surrounding a police practice and in forming opinions and conclusions regarding the matters addressed herein.

All statements and opinions herein are to a reasonable, or higher, degree of professional

certainty and/or probability. All time, measurement, and frame-number references are approximations.

I reserve the option to modify, amend, and change any opinion expressed in this document should additional information be provided affecting my understanding of the fact pattern in this case. I also reserve the right to illustrate the points made in this report with demonstrations and/or audio-visual aids.

The specific case materials I have reviewed to date are:

Contents of USB Drive received 12/20/18:

1. Daly City Police Department (DCPD) Information Report #18007134 by B. Scholes, dated 10/3/18;
2. DCPD Report Supplement 1 by J. McQuade, dated 10/4/18;
3. Menlo Park Police Department (MPPD) General Case Report #18-2659 by J. Ordene, dated 10/3/18;
4. MPPD Report Supplement 1 by J. Russell, dated 10/16/18;
5. MPPD Report Supplement 2 by J. Russell, dated 11/1/18;
6. San Mateo County Sheriff's Office (SMCSO) Felony Report #18-09733 by D. Weidner, dated 10/3/18;
7. SMCSO Report Narrative by J. Sebring, dated 10/24/18;
8. SMSCO Report Supplement 1 by P. Olivares, dated 10/4/18;
9. SMSCO Report Supplement 2 by J. Carroll, dated 10/5/18;
10. SMSCO Report Supplement 3 by J. Barrett, dated 10/9/18;
11. SMSCO Report Supplement 4 by J. Sebring, dated 10/10/18;
12. SMSCO Report Supplement 5 by J. Acosta, dated 10/12/18;
13. SMSCO Report Supplement 6 by I. Zaidi, dated 10/22/18;
14. SMSCO Report Supplement 7 by P. Miqueo, dated 10/23/18;
15. San Mateo County District Attorney's Office (SMCDA) Master Summary Report by J. Draper, n.d.;
16. SMCDA Informational Report #18-1003-02 by J. Draper, dated 10/3/18;
17. SMCDA Report Supplement 1 by J. Draper, dated 10/23/18;
18. SMCDA Report Supplement 2 by B. Massey, dated 10/5/18;
19. SMCDA Report Supplement 3 by B. Massey, dated 10/5/18;
20. SMCDA Report Supplement 4 by B. Massey, dated 10/5/18;
21. SMCDA Report Supplement 5 by E. Suzuki, dated 10/9/18;
22. SMCDA Report Supplement 6 by E. Suzuki, dated 10/9/18;
23. SMCDA Report Supplement 7 by E. Suzuki, dated 10/9/18;
24. SMCDA Report Supplement 8 by B. Massey, dated 10/11/18;
25. SMCDA Report Supplement 9 by J. Draper, dated 10/12/18;
26. SMCDA Report Supplement 10 by J. Draper, dated 10/12/18;

27. SMCDA Report Supplement 11 by J. Draper, dated 10/12/18;
28. SMCDA Report Supplement 12 by R. Decker, dated 10/12/18;
29. SMCDA Report Supplement 13 by R. Maher, dated 10/12/18;
30. SMCDA Report Supplement 14 by B. Massey, dated 1/16/18;
31. SMCDA Report Supplement 15 by B. Massey, dated 10/16/18;
32. SMCDA Report Supplement 16 by M. Broad, dated 10/18/18;
33. SMCDA Report Supplement 17 by B. Massey, dated 10/20/18;
34. SMCDA Report Supplement 18 by B. Massey, dated 10/22/18;
35. SMCDA Report Supplement 19 by J. Boyd, dated 10/26/18;
36. SMCDA Report Supplement 20 by R. Decker, dated 10/26/18;
37. SMCDA Report Supplement 21 by B. Massey, dated 10/30/18;
38. SMCDA Report Supplement 22 by B. Massey, dated 10/30/18;
39. SMCDA Report Supplement 23 by B. Massey, dated 11/6/18;
40. SMCDA Report Supplement 24 by B. Massey, dated 11/8/18;
41. SMCDA Report Supplement 25 by B. Massey, dated 11/8/18;
42. SMCDA Report Supplement 26 by B. Massey, dated 11/9/18;
43. SMCDA Report Supplement 27 by K. Raffaelli, dated 11/13/18;
44. SMCDA Report Supplement 28 by J. Haggarty, dated 11/13/18;
45. SMCDA Report Supplement 29 by R. Decker, dated 11/13/18;
46. SMCDA Report Supplement 30 by G. Giguiere, dated 11/14/18;
47. SMCDA Report Supplement 31 by G. Giguiere, dated 11/14/18;
48. SMCDA Report Supplement 32 by G. Giguiere, dated 11/14/18;
49. SMCDA Report Supplement 33 by J. Draper, dated 11/27/18;
50. Estimated Incident Timeline (Elapsed Times/Time Between TASER Activations);
51. San Mateo SO Report.pdf;
52. Audio Files of CAD 911 Radio Traffic:
  - a. \$CCF1800005459 100318 1304 hours Capuchino Dr and El Camino Real, MLB Radio Command 21 Real Time.wav
  - b. \$CCF1800005459 100318 1304 hours Capuchino Dr and El Camino Real, MLB Radio Control 2 Real Time.wav
  - c. \$EMS18044200 100318 1304 hours Capuchino Dr and El Camino Real, MLB Radio Real Time.wav
  - d. \$SOS1809733 100318 1301 hours El Camino Real and Millwood Dr, MLB 911 Call #1.wav
  - e. \$SOS1809733 100318 1301 hours El Camino Real and Millwood Dr, MLB 911 Call #2.wav
  - f. \$SOS1809733 100318 1301 hours El Camino Real and Millwood Dr, MLB Radio Traffic Real Time.wav (Hereinafter referred to as "SMCSO Dispatch Audio")
53. EMS CAD.pdf;
54. Fire CAD.pdf, and
55. SO CAD.pdf.

56. Coroner Autopsy Photographs, "DSC\_0001.JPG through DSC\_0107.JPG;
57. Crime Scene Photographs by Forensic Lab, JPEG images "DSC\_0001.jpg" through "DSC\_0560.JPG."
58. Folder labeled, "Deputy Alyssa Lorenzatti," containing two video files of her interview by DAI Suzuki;
59. Folder labeled, "Deputy Bryan Watt," containing one video file of his interview by DAI Draper;
60. Folder labeled, "Deputy John DeMartini," containing one video file of his interview by DAI Jamie Draper;
61. Folder labeled, "Deputy Joshua Wang," containing two video files of his interview by DAI Decker; and
62. Folder labeled, "Sergeant David Weidner," containing two video files of his interview by DAI Draper.
63. Deputy Alyssa Lorenzatti Training Memo.pdf;
64. Deputy Bryan Watt Training Memo.pdf;
65. Deputy John DeMartini Training Memo.pdf;
66. Deputy Joshua Wang Training Memo.pdf; and
67. Sergeant Weidner Training Memo.pdf.
68. Lab reports M18-04432.pdf;
69. Folder labeled "Photos," containing:
  70. Folder labeled, "DeMartini, J," containing seven jpeg images;
  71. Folder labeled, "Lorenzatti, A," containing 10 jpeg images;
  72. Folder labeled, "Watt, B," containing eight jpeg images;
  73. Folder labeled, "Weidner, D," containing six jpeg images;
  74. Folder labeled, "DS DeMartini," containing 24 jpeg images;
  75. Folder labeled, "DS Lorenzatti," containing 35 jpeg images;
  76. Folder labeled, "DS Wang," containing 12 jpeg images;
  77. Folder labeled, "DS Wang Equipment Collection Photos," containing 10 jpeg images;
  78. Folder labeled, "DS Watt," containing, 35 jpeg images; and
  79. Folder labeled, "Sgt Weidner," containing 21 jpeg images.
80. Folder labeled, "SMSO Hospital Photos," containing:
  81. Folder labeled, "ER 2," containing 12 jpeg images; and
  82. Folder labeled, "ER 19," containing 14 jpeg images.
83. Folder labeled, "SMSO Scene Photos," containing 50 jpeg images.
84. Folder labeled, "Pulse Logs -Dep Wang Taser, containing:
  - a. Event Log.pdf
  - b. Pulse Graph 1.pdf
  - c. Pulse Graph 2.pdf
  - d. Pulse Graph 3.pdf
  - e. Pulse Graph 4.pdf
  - f. Pulse Graph 5.pdf

- g. Pulse Graph 6.pdf
  - h. Pulse Graph 7.pdf, and
  - i. Pulse Graph LAB TEST.pdf.
85. Folder labeled, “Taser Downloads and Info,” containing:
- a. Conducted\_Energy\_Device\_\_Taser\_ (dtd 06-29-18).pdf
  - b. Deputy Demartini's Taser Download.pdf
  - c. Deputy Lorenzatti's Taser Download.pdf
  - d. Deputy Wang's Taser Download.pdf
  - e. Deputy Watt's Taser Download.pdf
  - f. Sergeant Weidner's Taser Download.pdf, and
  - g. X26P User Course V20.ppt
86. Folder labeled, “Civilian Video,” containing:
- a. Folder labeled, “Amie Chan video from John Burris,” containing “Amie Chan-Burris released.mov”
  - b. Folder labeled “Brenda Landeros video,” containing “video000000.mp4”
  - c. Folder labeled, “Mayra Martinez videos,” containing:
    - i. IMG\_2089.MOV
    - ii. IMG\_2090.MOV, and
    - iii. IMG\_2091.MOV.
  - d. Folder labeled, “Robert Garrison iPhone videos,” containing:
    - i. IMG\_3665.mov
    - ii. IMG\_3666.mov
    - iii. IMG\_3667.mov
    - iv. IMG\_3668.mov
    - v. IMG\_3669.mov, and
    - vi. IMG\_3670.mov.
87. Folder labeled, “Mobile Audio Video Footage,” containing:
- a. Folder labeled, “Lorenzatti MAV,” containing frontal view from MAV “AlyssaLorenzatti\_201810031301\_MB8\_385420599.mp4.”
  - b. Folder labeled “MAV DeMartini,” containing, “Unknown\_201810031303\_SO16\_38751900.mp4.”
  - c. Folder labeled, “MAV Sgt Weidner,” containing frontal view from MAV “DanielGuiney\_201810031303\_MB1\_353129895.mp4”<sup>1</sup>
  - d. Folder labeled, “MAV Sgt. Zaidi,” containing, “IrfanZaidi\_201810031306\_T5\_349413961.mp4”
  - e. Folder labeled, “MAV Wang,” containing, “JoshuaWang\_201810031300\_MB10\_70575660.mp4,” and

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<sup>1</sup> The mp4 files in “Stream 0” and “Stream 1” folders: DanielGuiney\_201810031303\_MB1\_353129895.mp4 are duplicates.

- f. Folder labeled, "MAV WATT," containing,  
"BryanWatt\_201810031302\_SO37\_351523269.mp4.
- 88. Folder labeled, "Videos from businesses," containing:
  - a. Folder labeled, "Days Inn Video," containing,  
"20181003125953\_20181003130241\_2\_20181011140707.mp4"
  - b. Folder labeled, "Sun Trenz NEST cam," containing, "Nest Video.mp4," and
  - c. Folder labeled "Tri Counties Bank ATM," containing folder labeled, "ATM videos – Use VLC player," containing 11 "Embedded Net" mp4 files.

Received 12/31/18 via email from J. Draper:

- 89. San Mateo County Coroner's Office Pathology Report, Case No. 18-01739, by Thomas Rogers, M.D., dated 12/24/18; and
- 90. San Mateo County Coroner's Office Report of Investigation, Case No. 18-01739, by Heather Diaz, dated 12/18/18.

Received 1/25/19 via email from J. Draper:

- 91. List of substances screened by Central Valley Toxicology, retrieved from <http://www.centralvalleytoxicology.com/page-1377764> on 1/25/19;
- 92. Transcript of interview of Deputy J. Wang;
- 93. Transcript of interview of Deputy A. Lorenzatti;
- 94. Transcript of interview of Deputy J. DeMartini;
- 95. Transcript of interview of Deputy B. Watt;
- 96. Transcript of interview of Sgt. D. Weidner.

Contents of USB drive received 1/25/19:

- 97. Drone photographs JPG images DJI\_0014.JPG through DJI\_0033.JPG, and DJI\_0036.JPG through DJI\_0061.JPG; and
- 98. Drove video files DJI\_0034.MP4 and DJI\_0035.MP4.

Additional Exhibits Created for the Purposes of this Report:

- 1. Wang MAV Marked AFNs.mov – First 23:10 of video file time indexed and marked with absolute frame numbers (AFNs);
- 2. Wang MAV Cropped.mov – Cropped and enlarged, time indexed and marked with relative frame number (RFNs);
- 3. Lorenzatti MAV Cropped.mov – Cropped and enlarged, time indexed and marked with RFNs;
- 4. Weidner MAV Cropped.mov – Cropped and enlarged, time indexed and marked with RFNs; and
- 5. Garrison Videos Linked.mov – All six iPhone video files linked together into one file.

## **OVERVIEW OF INCIDENT**

**Notice: Due to the complexity of the incident, it will be reconstructed and analyzed in the following four stages:**

- Stage One: The initial attempts to detain Mr. Okobi;
- Stage Two: The initial efforts to physically arrest Mr. Okobi outside the Tri Counties Bank;
- Stage Three: The final efforts to subdue and restrain Mr. Okobi; and
- Stage Four: The post-arrest medical care of Mr. Okobi.

### **Stage One: The initial attempts to detain Mr. Okobi**

On 10/3/18 at approximately 1300 hours, Deputy Joshua Wang of the San Mateo County Sheriff's Office (SMCSO) was on duty, wearing a full patrol uniform and driving a fully marked patrol SUV. His radio identifier was 2B62. While driving south on El Camino Real (ECR) in the number one southbound lane and passing Santa Helena Avenue and the Tri Counties Bank, he noticed a man, subsequently identified as Mr. Chinedu Okobi, walking across ECR from the north side of Millwood Ave.<sup>2</sup> Furthermore, Deputy Wang could see that the signal for southbound ECR at Millwood Avenue was green, meaning the vehicular and pedestrian traffic from Millwood Avenue had a red signal. Due to the observed violations, Deputy Wang decided to stop Mr. Okobi. (Decker Report Supplement 12, p. 2; Wang MAV AFN Exhibit)

As Deputy Wang steered into the southbound number one lane of ECR at Millwood Drive, Mr. Okobi reached the curbed median. Deputy Wang reached the curbed median of ECR and briefly waited for the traffic signal to turn green. When the signal turned green, Deputy Wang turned on his emergency lights and made a U-turn to northbound ECR. (Decker Report Supplement 12, p. 2; Wang MAV, 00:54 – VLC Player). The event then evolved as follows:

- Upon completing the U-turn, Deputy Wang could see that Mr. Okobi was walking north along the east curb of ECR, and then onto the east sidewalk, approaching San Juan Avenue. Deputy Wang had rolled down the passenger-side window of his patrol SUV and said to Mr. Okobi, "Hey. Hold up a minute. Hold up a minute."<sup>3</sup> As Mr. Okobi did not stop, Deputy Wang accelerated across San Juan Avenue, stopped along the east curb, got out of his vehicle, and said, "Hey, stop," to Mr. Okobi. (Wang MAV Marked AFNs, 1:06; Decker Report Supplement 12)

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<sup>2</sup> This was significant as the marked and controlled crosswalk for pedestrians to cross ECR from Millwood Avenue was on the south sidewalk of Millwood Avenue, not at the north sidewalk.

<sup>3</sup> Mr. Okobi was wearing a small backpack on his back and carrying a duffle bag and paper bag in his right hand. His left hand was empty.

- Mr. Okobi changed his direction by walking behind Deputy Wang's SUV, back across ECR toward the west sidewalk, north in the southbound lanes of ECR, and then to the west sidewalk, toward Capuchino Avenue. At this point, Deputy Wang radioed the dispatcher:

County – Boy 62. Can you put me out on a ped stop at ECR and Capuchino and can you roll me one more unit, please? (Wang MAV Marked AFNs, 1:38; SMCSO Dispatch Audio, :24)

- Mr. Okobi moved east across ECR at Capuchino Avenue, and then started walking south in the northbound left-turn lane of ECR. This caused Deputy Wang to have to turn from northbound ECR to southbound, in order to safely follow Mr. Okobi. (Wang MAV Marked AFNs, 1:52) It was during this time Deputy Wang broadcast:

And if you can send them code 3; he's running on ECR into traffic.  
(Wang MAV Marked AFNs, 1:52; SMCSO Dispatch Audio, :35)

- From the northbound left-turn lane, Mr. Okobi suddenly turned west, stepped into northbound number one lane, stopped, then turned and looked back at Deputy Wang, who was still seated behind the wheel of his fully marked patrol SUV with the emergency lights still on (See Figure 1). (Wang MAV Marked AFNs, 1:58/AFN 3,501)



*Figure 1: Mr. Okobi, indicated by the red arrow, suddenly stops, turns and looks at Deputy Wang.*

- Deputy Wang, who was stopped in the southbound lanes of ECR, briefly opened his door. However, Mr. Okobi started moving north and then west – back across ECR – which caused Deputy Wang to make a 180-degree turn to his left to continue tracking Mr. Okobi.
- Upon completing the 180-degree turn, Mr. Okobi started running north in the southbound lanes of ECR from Capuchino Avenue. This caused the traffic traveling south in the southbound lanes of ECR to slow or stop.
- Mr. Okobi continued back to the east side of ECR and started moving north, toward Santa Helena Avenue. At this point, the radio dispatcher asked Deputy Wang if he was in pursuit. Deputy Wang responded:

He's on foot. I'm just paralleling him on ECR. He's a BMA about six feet tall about 220 pounds wearing a blue and black striped shirt. Still walking in traffic.(Wang MAV Marked AFNs, 2:29; SMCSO Dispatch Audio)

- Mr. Okobi next changed direction, causing Deputy Wang to make another 180-degree turn, at which time Mr. Okobi was walking north in the southbound left-turn lane of ECR. While making the turn, Deputy Wang radioed that Mr. Okobi was "...still northbound ECR. We're at Santa Helena. Still running in traffic." (Wang MAV Marked AFNs, 2:53; SMC Dispatch Audio, 1:35)
- As Deputy Wang followed Mr. Okobi, driving north and straddling the number two and three southbound lanes, Mr. Okobi turned and started walking north again. Deputy Wang stopped his SUV, opened the door, got out, and said to Mr. Okobi, "Let's go over here and talk on the sidewalk." (Wang MAV Marked AFNs, 3:15)
- However, Mr. Okobi did not comply, which caused Deputy Wang to drive north and make a U-turn at Park Boulevard in order to reposition his vehicle to continue following Mr. Okobi. Sergeant David Weidner, who was the on-duty patrol supervisor with the radio identifier of 2S60, asked for an update. In response, and as Deputy Wang drove toward Park Boulevard, he radioed:

Still walking in northbound traffic on ECR. (Wang MAV Marked AFNs, 3:32; SMCSO Dispatch Audio, 2:15)

- While waiting for traffic to clear to make the U-turn, Deputy Wang saw another marked SMCSO patrol car, driven by Deputy Alyssa Lorenzatti, driving to the area from the

south with the lights and siren on. Deputy Wang broadcast to that unit, “To the unit coming northbound on ECR, he’s on the median, ECR.” (Wang MAV Marked AFNs, 3:50; SMCSO Dispatch Audio, 2:33)

- After Deputy Wang made the U-turn and drove south on ECR, Deputy Lorenzatti arrived and parked her car north along the south curb of ECR, in front of the Tri Counties Bank. At this time, Mr. Okobi was walking toward her, south on the west sidewalk of ECR. Deputy John DeMartini also arrived with his emergency lights on, and stopped his fully marked patrol car facing northwest in the southbound lanes of ECR, in the driveway area of Tri Counties Bank. (Wang MAV Marked AFNs, 4:14)
- Deputy Lorenzatti was also wearing a full SMCSO uniform and driving a fully marked patrol sedan using the emergency lights. Deputy Lorenzatti got out of her sedan and approached Mr. Okobi, telling him to and gesturing for Mr. Okobi to stop. At this point in the event, Deputy Wang had spent well over three minutes trying to get Mr. Okobi to stop and talk to him about the observed infractions.<sup>4</sup> (Wang MAV Marked AFNs, 4:16/AFN 7,616; Lorenzatti MAV Cropped, 7.32/RFN 218)

### **Analysis and Conclusions for Stage 1 – Part A**

California peace officers are trained that they “must know the principles of traffic law...to carry out their responsibilities in traffic enforcement.”<sup>5</sup> They are further trained that traffic enforcement activities results in the reduction of the numbers of collisions, which saves lives.”<sup>6</sup>

One of the violations officers are trained to recognize is Vehicle Code section 21453(d), which provides that:

Pedestrians facing a steady circular red signal or red arrow are not permitted to enter the roadway unless otherwise directed by a pedestrian control signal.<sup>7</sup>

A trained and reasonable peace officer, while approaching the green signal light on southbound ECR at Millwood Drive, and who saw Mr. Okobi crossing ECR, apparently against the red signal for eastbound Millwood Drive, would have believed he possessed sufficient

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<sup>4</sup> Deputy Wang had been trying to get Mr. Okobi to comply for about 3 minutes and 20 seconds, according to the duration provided by the “Wang MAV Marked AFNs” exhibit.

<sup>5</sup> California Commission on Peace Officer Standards and Training, *Basic Course Workbook Series – Learning Domain 28: Traffic Enforcement*, Version 6.4 p. 1-1.

<sup>6</sup> *Ibid*, p. 1-3.

<sup>7</sup> *Ibid*, p. 3-6.

probable cause to believe that Mr. Okobi had violated section 21453(d).<sup>8</sup>

**Conclusion A:** Deputy Wang's decision to attempt to detain Mr. Okobi based on the observed violation(s) of crossing ECR at Millwood Drive and against the traffic signal was consistent with that of a trained and reasonable officer facing similar circumstances.<sup>9</sup>

### **Analysis and Conclusions for Stage 1 – Part B**

California peace officers are trained that "probable cause is required before an arrest is made and is based upon the totality of the circumstances."<sup>10</sup> In order to make an arrest, they must possess sufficient "probable cause" which is defined as:

...a set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong belief that the person to be arrested is guilty of a crime.<sup>11</sup>

California peace officers are also trained that they may make an arrest without a warrant "whenever they have probable cause to believe the person to be arrested has committed a public offense (felony or misdemeanor) in their presence."<sup>12</sup> And while California peace officers are also trained that California Penal Code section 841 requires them to inform someone they are arresting of the "intent," "cause," and "authority" for making the arrest, the exceptions to this are when the person to be arrested is "actually committing the offense," or "attempting to escape."<sup>13</sup>

California peace officers are also trained that, in addition to their training and experience, they may rely on information from other officers, as they are deemed to be reliable sources of information.<sup>14,15</sup> And finally, California peace officers are trained that a violation of Penal Code section 148(a)(1) occurs when any person:

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<sup>8</sup> A trained and reasonable officer could also reasonably conclude that Mr. Okobi had crossed against the pedestrian signal at the east end of the south crosswalk of Millwood Drive, in violation of Vehicle Code section 21456(b), "Pedestrians shall not start to cross the roadway if a pedestrian signal light indicates 'Don't Walk,' 'Wait,' or shows an upraised hand" (See *Learning Domain 28*, p. 3-7).

<sup>9</sup> The additional traffic-related violations committed by Mr. Okobi while he was evading Deputy Wang for the first three minutes would obviously provide additional probable cause to believe Mr. Okobi had violated the related laws. However, listing them here would be cumulative.

<sup>10</sup> California Commission on Peace Officer Standards and Training, *Basic Course Workbook Series – Learning Domain 15: Laws of Arrest*, Version 4.10, p. 4-4.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, p. 4-8.

<sup>13</sup> *Ibid.*, p. 4-9 and 4-10.

<sup>14</sup> *Supra* at note 25 (LD 15, p. 4-4).

<sup>15</sup> California Department of Justice – Office of the Attorney General, *California Peace Officers Legal Sourcebook*, Chapter IV: Arrests, Electronic Version, Revision 197.

- willfully resist[s], delay[s], or obstruct[s]
- any peace officer
- in the discharge or attempted discharge
- any duty of that officer's office or employment.<sup>16</sup>

When Mr. Okobi repeatedly refused to stop for Deputy Wang, who was in full uniform and driving a fully marked patrol vehicle with its emergency lights flashing, a reasonable officer facing those circumstances would believe that he had sufficient probable cause to arrest Mr. Okobi for violating California Penal Code section 148(a)(1).

When Deputies Alyssa Lorenzatti, John DeMartini, Bryan Watt, and Sgt. David Weidner responded to the area to assist Deputy Wang, they were entitled to rely upon the information provided by Deputy Wang in determining that they possessed sufficient probable cause to arrest Mr. Okobi for willfully resisting, obstructing, and delaying their efforts. They were all also in full SMCSO uniforms and driving fully marked patrol vehicles with the emergency lights flashing. This would also cause a trained and reasonable officer to reasonably believe that Mr. Okobi knew, or should have known, that they were peace officers attempting to perform their duties.

It should also be noted that Mr. Okobi's actions of repeatedly failing to stop for Deputy Wang and the other deputies was an in-progress crime – during which Mr. Okobi was trying to escape – which exempted them from having to fully explain their intent, cause, and authority to arrest him, pursuant to Penal Code section 841.

And finally, there was nothing about Mr. Okobi's demeanor or affect that would have clearly indicated to a trained and reasonable officer *why* Mr. Okobi was failing to cooperate and actively evading them. Peace officers are not required to speculate as to why someone is violating the law and a trained and reasonable officer could have suspected that Mr. Okobi was actively evading the deputies because he had outstanding arrest warrants, was in possession of contraband, because he was under the influence of controlled substances, or because he was suffering from mental illness. It is important to also remember that even trained Crisis Intervention Team (CIT) members are not trained or expected to make field diagnoses, especially when a subject is evading the officers and preventing them from simply talking to subjects.

**Conclusion B:** All of the deputies' and Sgt. Weidner's actions in attempting to place Mr. Okobi under physical arrest were consistent with those of trained and reasonable officers who believed they possessed sufficient probable cause to arrest Mr. Okobi for resisting, obstructing, and delaying them in the performance of their duties, a violation of California Penal Code section

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<sup>16</sup> California Commission on Peace Officer Standards and Training, *Basic Course Workbook Series – Learning Domain 39: Crimes Against the Justice System*, Version 5.5, p. 2-3.

148(a)(1).

### **Stage Two: The initial efforts to physically arrest Mr. Okobi outside the Tri Counties Bank**

Deputy Lorenzatti had heard Deputy Wang's previous radio traffic and was the first deputy to answer his call for help. As she parked her patrol car facing north in the southbound lanes of the bank, she could see Deputy Wang's car to the north. She saw Mr. Okobi, who she initially estimated to be over six-feet tall and weighing 300 pounds, approaching her from the north as she approached him from the south on the west sidewalk of ECR. She recalled that he was carrying two large black bags and that she told him to stop and put the bags down. Mr. Okobi replied with something to the effect of, "I didn't do nothing," or, "I didn't do anything." (Suzuki Report Supplement 7, pp. 1-3; Lorenzatti MAV)

Deputy Lorenzatti again told Mr. Okobi to stop, but Mr. Okobi stared at her and continued walking straight towards her. This caused Deputy Lorenzatti to fear that Mr. Okobi "...was just going to run [her] over if [she] didn't get out of his way; he was going to walk right through [her] and barrel [her] over." (Suzuki Report Supplement 7, p. 2) Deputy Lorenzatti also recalled:

He had this look in his eyes, that he wasn't quite all there. He seemed like he might have been under the influence of something.  
I wasn't sure. (Suzuki Report Supplement 7, p. 2)

In response to Mr. Okobi's continuing failure to comply with her orders to stop, Deputy Lorenzatti stepped to Mr. Okobi's left side and attempted to apply a control hold to Mr. Okobi's left arm with her left hand. (Wang MAV Cropped, RFN 161; Suzuki Report Supplement 7, p. 2) However, Mr. Okobi reacted by pulling his arm away from Deputy Lorenzatti as he continued walking past her. As Mr. Okobi continued forward, he raised his left arm up and over Deputy Lorenzatti's head, to which Deputy Lorenzatti responded by reaching for the arm with her right hand. (Suzuki Report Supplement 7, p. 2; Wang MAV Cropped, RFNs 154-186; Lorenzatti MAV Cropped, RFNs 239-291; Weidner MAV Cropped at RFNs, 17-45 at Time Index 00:01.481)

As this situation evolved, Deputies DeMartini and Wang started moving toward Deputy Lorenzatti and Mr. Okobi to assist in physically arresting him. The event next evolved as follows:

- Deputy Lorenzatti next tried to take a hold of Mr. Okobi's right arm from behind him; as she did so, Deputy DeMartini approached and attempted to apply a control hold to Mr. Okobi's right arm. Mr. Okobi dropped the backpack, duffle, and paper bag (which he had apparently moved to his right hand) and raised his hands and arm up into the air and

out of the deputies' reach. (Lorenzatti MAV Cropped, RFN 357; Wang MAV Cropped, RFN 261; Decker Report Supplement 12, p.3; Draper Supplement 9, p. 4)

- Sergeant Weidner had arrived and parked his marked patrol SUV to the rear of and offset to the right of Deputy Lorenzatti's patrol sedan. He did so with the express intent of best positioning the Mobile Audio Video (MAV) camera to record as much of the interaction as possible. However, he did not have a clear line of sight with this initial action. (Weidner MAV Cropped, RFN 74; Draper Supplement 9, p. 4)
- Deputy DeMartini was able to reach up and over Mr. Okobi's left upper arm and pull it downward, which resulted in Mr. Okobi turning counter clockwise and toward Deputy DeMartini. Mr. Okobi continued turning counter clockwise as he held his right arm up in the air. During this time, Deputy Lorenzatti appeared to have grabbed Mr. Okobi's left torso at the side and pushed him backward, resulting in him colliding with the nearby wooden traffic signpost. (Lorenzatti MAV Cropped, RFNs 384-426)
- Deputy DeMartini was able to get a hold of the lower left sleeve of the long-sleeved shirt (or sweater) worn by Mr. Okobi and hang onto it as Mr. Okobi continued to back away from the deputies. As he did so, he continued to hold his right arm up as Deputy Lorenzatti maintained her position at Mr. Okobi's left side. Perceiving that Mr. Okobi was too big for them to take down to the ground, she used her right leg and attempted to apply a leg-sweep to the back of Mr. Okobi's left knee. However, this did not improve their situation. (Lorenzatti MAV Cropped, RFN 472-524; Suzuki Report Supplement 7, p. 2; Draper Report Supplement 11, p. 3)
- By this time, Mr. Okobi had stopped on the sidewalk and was facing the street, to where Deputy Wang had moved. From his lower position in the gutter, Deputy Wang stepped up onto the sidewalk, reached with his right hand and attempted to grab Mr. Okobi's right wrist, which Mr. Okobi was still holding up in the air. As Deputy Wang did this, he told Mr. Okobi, "You're going to get tased. Get on the ground, now." (Wang MAV Cropped, RFN 466; Lorenzatti MAV Cropped, RFN 553)
- In response, Mr. Okobi pulled his right arm down and away from Deputy Wang and turned clockwise, although he was impeded by Deputy DeMartini's hold on the left sleeve of his shirt. During this time, Deputy Lorenzatti again unsuccessfully tried to apply a control hold to Mr. Okobi's right arm. Deputy Wang also stepped toward Mr. Okobi and placed his right hand or arm over Mr. Okobi's right upper arm, which was being pulled behind his back by Deputy DeMartini's hold on the shirt sleeve.

Unfortunately, Mr. Okobi suddenly rotated counterclockwise and moved from the sidewalk onto the street.<sup>17</sup> (Lorenzatti MAV Cropped, RFN 594-621)

- Once Mr. Okobi stepped into the street, Deputy DeMartini maintained a hold on Mr. Okobi's shirt sleeve. As Mr. Okobi stepped back with his left foot, his left arm came out of the shirt sleeve. Mr. Okobi next reached up with his left hand and pushed the shirt up and over his head and down his right arm. As Deputy DeMartini still held onto the left sleeve, Mr. Okobi continued to move away from Deputy DeMartini, with the right sleeve of the shirt finally coming off of Mr. Okobi's right arm. During this time, Deputy Lorenzatti drew her TASER and followed Mr. Okobi. (Lorenzatti MAV Cropped, RFNs 621-281; Wang MAV Cropped, RFNs 541-682)
- Mr. Okobi then took about two strides away from the deputies, north along the west curb of ECR. However, he turned and faced the deputies. During this time, Deputy Wang had drawn his TASER and pursued Mr. Okobi with Deputy Lorenzatti to his left and Sgt. Weidner approaching them from behind with his TASER drawn. (Lorenzatti MAV Cropped, RFNs 650-708; Wang MAV Cropped, RFNs 564-605)
- Although Mr. Okobi had a clear path of escape away from the deputies, he shuffle-stepped to Deputy Wang's right and then started running towards Deputy Wang with his arms up. During this time, Deputy Lorenzatti was pointing her TASER at Mr. Okobi but did not discharge it. As Mr. Okobi ran by Deputy Lorenzatti, he appeared to have used his raised right hand to swipe downward, apparently between the front of her TASER and himself.<sup>18</sup> (Lorenzatti MAV Cropped, RFNs 707-741; Weidner MAV Cropped, RFNs 470-495; Wang MAV Cropped, RFNs 606-640)
- As Mr. Okobi continued charging toward Deputy Wang's right, Deputy Wang continued to pivot away from him and track him with his TASER. Deputy Wang discharged his TASER (**First Cycle**) as Mr. Okobi was continuing forward and raising his right arm up to and across his chest.<sup>19</sup> (Lorenzatti MAV Cropped, RFN 741-746; Weidner MAV Cropped, RFN 501-502; Wang MAV Cropped, RFN 645; TASER Data Download)

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<sup>17</sup> It appears that a piece of equipment, possibly a tourniquet, was dislodged from Deputy Wang's person and fell onto the street (See Lorenzatti MAV Cropped, RFN 631).

<sup>18</sup> It is not uncommon for suspects at which officers are preparing to fire, or actually fire their TASERs, to take such countermeasures to prevent the probes from striking their bodies.

<sup>19</sup> In Lorenzatti MAV Cropped RFN 746, Mr. Okobi's posture is consistent with the TASER probe that remained in Mr. Okobi's right chest, with the other probe landing on the back of his right hand (as visible in Lorenzatti MAV Cropped RFN 798 and per Deputy DeMartini – See Draper Report Supplement 11, p. 4). One of the blast doors from the dart cartridge can also be seen passing Mr. Okobi in the next four frames. It also appears the TASER was discharged just prior to RFN 646 in Wang MAV Cropped.

- At this point, Mr. Okobi reacted to the TASER discharge as he brought his bent right arm downward toward his torso, grimaced, and reached for his right pectoral area. However, he appeared to have kept his eyes on Deputy Wang and/or Sgt. Weidner, and then lunged toward their directions. Both Deputy Wang and Sgt. Weidner moved away from Mr. Okobi in response (See Figure 2). (Lorenzatti MAV Cropped, RFNs 741-771)



Figure 2. Mr. Okobi lunging toward Deputy Wang and Sgt. Weidner just after Deputy Wang discharged his TASER.

- After Mr. Okobi lunged toward Sgt. Weidner and Deputy Wang, he suddenly changed direction and took two running strides away from the deputies and fell forward to the pavement, catching his fall with his extended left hand and then onto his right forearm, which was across his chest. (Lorenzatti MAV Cropped, RFNs 782-812; Weidner MAV Cropped, RFNs 532-569; Wang MAV Cropped, RFNs 682-715)
- After being struck with the TASER probes and landing on the pavement, Mr. Okobi immediately rolled onto his left side and into a supine position as the deputies tracked him. (Weidner MAV Cropped, RFNs 569-613) During this time, Deputy Wang, pursuant to SMCSO policy, radioed, “Give me Code 33. We have a TASER deployment.” (Wang MAV Cropped, RFN 884; SMCSO Dispatch Audio, 3:25)
- As Sgt. Weidner approached Mr. Okobi with his TASER drawn, he had already told Mr. Okobi to “get on the ground,” and to “roll over.” As Sgt. Weidner approached, however, and before the first five-second TASER cycle ended, Mr. Okobi extended his left leg toward Sgt. Weidner (See Figure 3). (Weidner MAV Cropped, RFN 616-648)



Figure 3. Mr. Okobi extends his leg toward Sgt. Weidner while his right arm is still affected by the first TASER cycle.

- Once the first TASER cycle ended (Weidner MAV Cropped, RFN 650) Sgt. Weidner continued to give Mr. Okobi clear and repeated directions to roll over. As Deputy Lorenzatti moved toward and tried to apply a control hold to Mr. Okobi's right arm, Mr. Okobi extended all of his limbs outward, apparently in an effort to keep the deputies away from him. (Weidner MAV Cropped RFN 652-731; TASER Download)
- As Sgt. Weidner continued issuing directions to Mr. Okobi to "roll over," Deputy Lorenzatti, moved to Mr. Okobi's left arm. Once there, she grabbed his wrist area in an over-and-under handed two-handed hold and tried to take the arm across the front of Mr. Okobi's body. Deputy Lorenzatti also used her left lower leg and put it against the back of Mr. Okobi's left shoulder to add additional support in rolling him over into a prone position for handcuffing. As she did so, she also gave Mr. Okobi verbal directions to roll over (See Figure 4). (Weidner MAV Cropped, RFNs 773-844)
- Mr. Okobi further defeated this effort, by flailing his arms and kicking at Sgt. Weidner and Deputy DeMartini as they tried to start controlling his legs. Deputy Wang also continued to tell Mr. Okobi to roll over onto his stomach (See Figure 5). (Weidner MAV Cropped, RFNs 900-936; Wang MAV Cropped, RFNs 956)

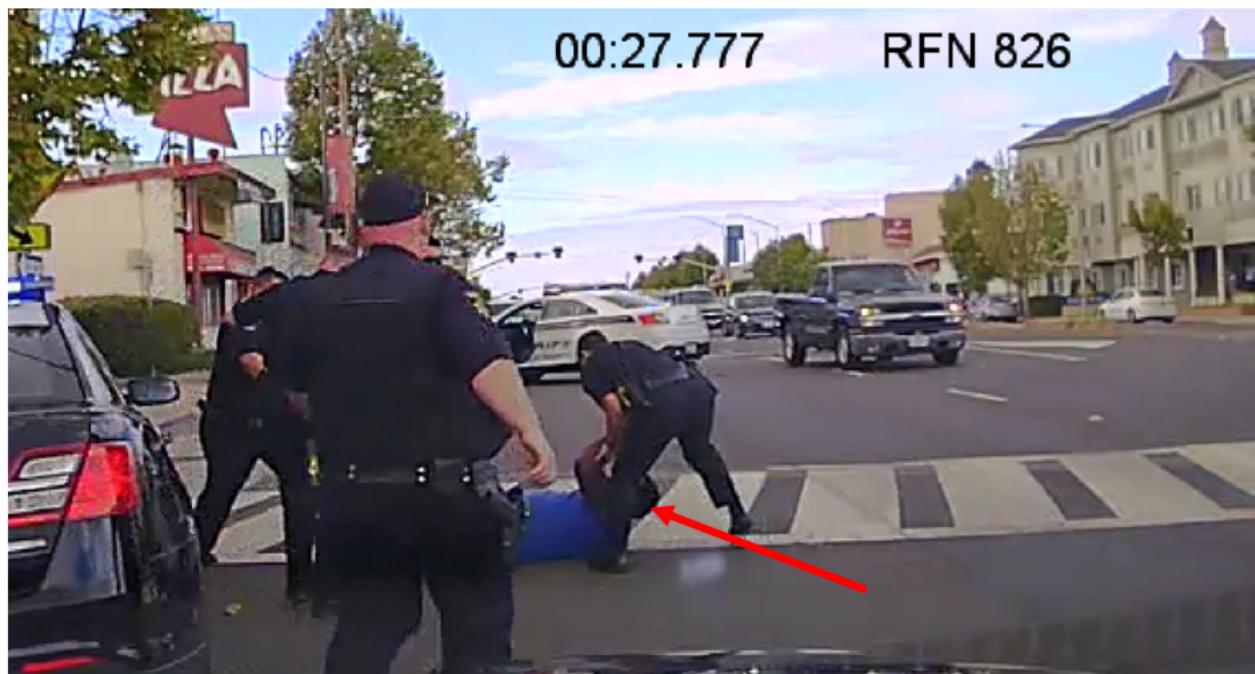


Figure 4. The red arrow highlights were Deputy Lorenzatti has a hold of Mr. Okobi's left arm and is using her left lower leg to roll Mr. Okobi into a prone position so they can handcuff Mr. Okobi.



Figure 5. Mr. Okobi kicks his legs and flails his arms, defeating Deputy Lorenzatti's effort to roll Mr. Okobi into a prone position for handcuffing.

- About nine seconds after the first TASER cycle ended, and in apparent response to Mr. Okobi's kicking at Sgt. Weidner and Deputy DeMartini, Deputy Wang activated his TASER again (**Second Cycle**), delivering another five-second cycle and advising the dispatcher that there had been a second TASER activation. (Weidner MAV Cropped RFN 918; Wang MAV Cropped RFN 1,254; SMCSO Dispatch Audio, 3:54; TASER Data Download) Mr. Okobi again reacted by bringing his right arm across his chest. Despite feeling the effects of TASER and the deputies' additional commands to roll over, Mr. Okobi continued to kick as he held his arms folded across his chest until the cycle ended, at which time Mr. Okobi stopped yelling and his arms moved freely. It should also be noted that, during this second cycle, Sgt. Weidner moved toward Mr. Okobi's legs. However, Mr. Okobi raised his legs as if he were preparing to kick at Sgt. Weidner and tracked Sgt. Weidner as he moved to the right. (See Figure 6). (Weidner MAV Cropped RFN 924-1,080)

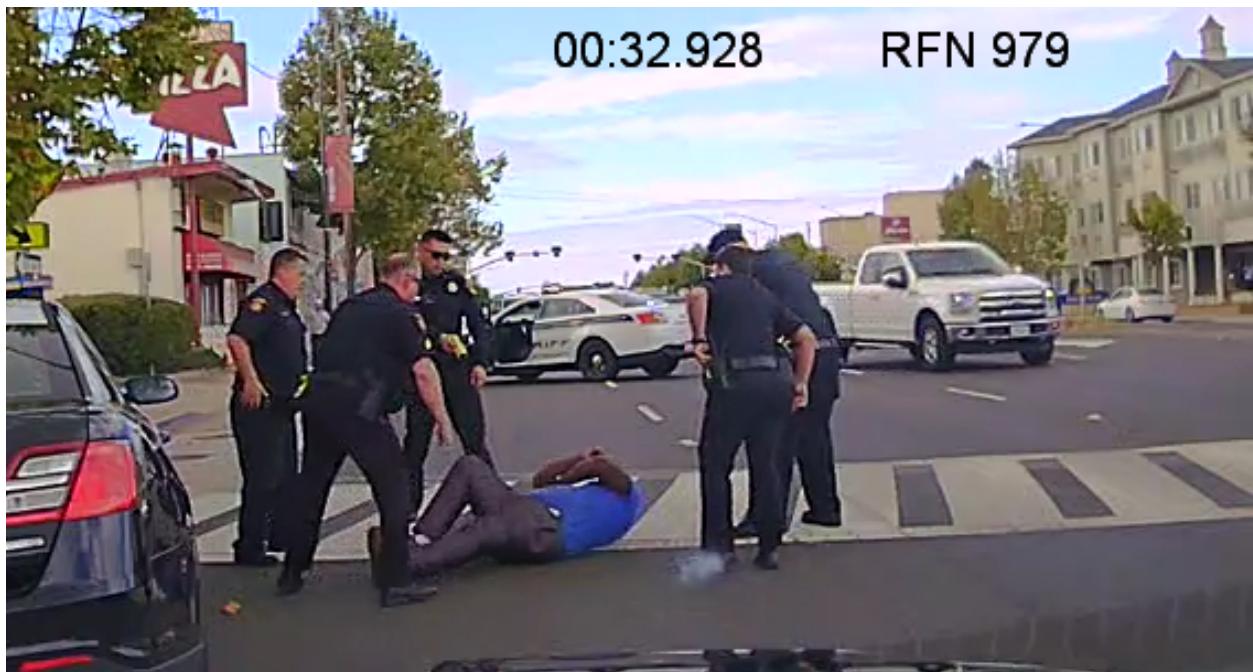


Figure 6. Mr. Okobi moving his legs and keeping Sgt. Weidner from approaching, even as the TASER is cycling.

- Once the TASER cycle ended, Mr. Okobi kept his arms extended toward the deputies and his knees raised, and asked something to the effect of, "What I'd do?" Sergeant Weidner interrupted Deputy Wang when Deputy Wang started to give another command and took the opportunity to try to calmly communicate with Mr. Okobi by saying, "On your stomach. Sir, on your stomach. On your stomach." (Weidner MAV Cropped RFN 1207-1270)
- About when Sgt. Weidner finished his sentence, Deputy Wang told Mr. Okobi, "I'm going to tase you again if you don't roll over on your stomach." (Weidner MAV

Cropped, RFN 1,334). Upon finishing that direction, Deputy Wang again activated the TASER for another five-second cycle (**Third Cycle**). During this cycle, Mr. Okobi again brought his arms across his chest, yelled, “Get ‘em off me,” and kicked with his legs. During this time, Sgt. Weidner again told Mr. Okobi, “On your stomach. On your stomach, sir.” (Weidner MAV Cropped, RFN 1,334-1,490)

- Just prior to the start of the third five-second cycle, Mr. Okobi appeared to have been starting to get back up to his feet;
- When the third five-second cycle ended, Sgt. Weidner replied to Mr. Okobi’s demand to get the probes off of him by saying, “OK. Get on your stomach.” During this time, Sgt. Weidner bent down and tried to get control of Mr. Okobi’s left arm, while Deputy Wang bent over and tried to use his left hand to get control of Mr. Okobi’s right arm. Deputy DeMartini tried to control Mr. Okobi’s left leg. Deputy Watt also attempted to get a hold of Mr. Okobi’s right hand, but he was unable to due to Mr. Okobi’s movements.
- During this time, Sgt. Weidner attempted to persuade Mr. Okobi to cooperate with them by offering to remove the TASER probes in exchange for rolling over onto his stomach (See Figure 7). These efforts lasted for about 20 seconds with the dialogue going as follows:
  - Sgt. Weidner: Relax, relax.
  - Mr. Okobi: Unintelligible.
  - Sgt. Weidner: Relax.
  - Mr. Okobi: Unintelligible.
  - Sgt. Weidner: OK, OK, OK, alright. We’ll do that.
  - Mr. Okobi: Unintelligible.
  - Sgt. Weidner: We’ll do that. Roll on your stomach.
  - Mr. Okobi: Unintelligible.
  - Sgt. Weidner: I’ll take these out. I’ll take these out.
  - Mr. Okobi: Unintelligible.
  - Sgt. Weidner: OK. Alright. On your stomach.
  - Mr. Okobi: Get ‘em off me.
  - Sgt. Weidner: OK.
  - Mr. Okobi: Get ‘em off me.
  - Mr. Okobi: Get ‘em off me.
  - Sgt. Weidner: OK. I’m trying to get them off you. (2,271)
  - Mr. Okobi: Unintelligible. (Weidner MAV Cropped, RFNs 1,700-2,300)

- It should be noted that during this time, Sgt. Weidner continued to hold onto Mr. Okobi's left hand, as he quietly told Deputy Lorenzatti to get her handcuffs ready. It should also be noted that Mr. Okobi rotated his body about 90 degrees during this time. (Weidner MAV Cropped, RFNs 1,606-2,226)



**Figure 7. Sgt. Weidner calmly attempts to persuade Mr. Okobi to roll over in exchange for removing the TASER probes.**

- At this point, as Sgt. Weidner attempted to keep control of Mr. Okobi's left hand, Mr. Okobi used his right hand to push himself up and to his feet. (Weidner MAV Cropped, RFN 2,300). Mr. Okobi then suddenly shifted his weight to his left hand and arm, then back over to his right hand, pushing himself up off of the ground, and then to his feet. It should be noted that just prior to this, Deputy Lorenzatti had her handcuffs ready to apply in her left hand. It also appeared that she was looking for an opportunity to apply the handcuffs. However, Mr. Okobi's movements made this impossible. Deputy DeMartini also tried to catch one of Mr. Okobi's hands during this period (See Figure 8). (Weidner MAV Cropped RFN 2,319-2,411)



Figure 8. Deputy Lorenzatti still holding her handcuffs as Mr. Okobi quickly works his way back to his feet.

- As Mr. Okobi was working his way from the pavement back to his feet, Deputy Wang activated his TASER for a fourth time (**Fourth Cycle**) (Weidner MAV Cropped, RFNs 2,315; TASER Data Download). However, During the previous five-second cycle, Mr. Okobi was kicking his legs while they were between himself and Deputy Wang. In particular, the movements of his right leg could be seen moving the wires coming from the TASER (See Figure 9). (Weidner MAV Cropped, RFNs 1,509-1,564)



Figure 9. The TASER wires can be seen running from Deputy Wang's TASER down toward the area of Mr. Okobi's right foot. (Weidner MAV Cropped, RNF 1509)

- When Deputy Wang discharged his TASER for the fourth time (commencing at approximately 1:17.909/RFN 2,315 of Weidner MAV Cropped; TASER Data Download), Mr. Okobi did not appear to have been appreciably affected by the current until approximately two to three (2.8) seconds after it started (at approximately 1:20.678/RFN 2,397 of Weidner MAV Cropped). It was at this point that, as Mr. Okobi finished standing up, he again grimaced, followed by his right arm being bent and brought across his chest, and his right leg stiffening, resulting in his falling forward back to the pavement. A careful examination of the Weidner MAV Cropped video shows a TASER wire running from Mr. Okobi's right hand, down toward his right foot. (RFN 2,434) This is significant because, if that TASER wire formed enough of a connection at or near his right foot, the probe spread (or circuit) could have changed from his right wrist to his right foot. It should also be noted that, as Mr. Okobi fell to the pavement, he was able to use both of his hands to break his fall, which would not support that he was experiencing any electrical current or muscular impairment in his arms (See Figure 10).<sup>20</sup> (Weidner MAV Cropped, RFNs 2,428-2,462)



Figure 10. Mr. Okobi falls during the fourth TASER cycle with his right leg stiffened. TASER wire appears to run from the TASER down to around his right foot area, indicated by the red arrows. (Weidner MAV Cropped, RFN 2,434)

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<sup>20</sup> In Weidner MAV Cropped in RFN 2,465, the probe appears to still be lodged in Mr. Okobi's right hand. However, there does not appear to be any wires attached to it. The wire may have pulled out of the probe during the last few seconds.

- After the fourth cycle ended (Weidner MAV Cropped at RFN 2,464; TASER Data Download), Mr. Okobi fell in a face-down orientation, then again, immediately transitioned to a supine position and then a seated position. Mr. Okobi oriented his feet toward Deputies Watt and Lorenzatti, looked to his right, raised his right hand into the air as he looked to his right and yelled, “Somebody help me.” (Weidner MAV Cropped, RFNs 2,464-2,577)
- Deputy Wang radioed for an emergency medical response as he applied the fourth five-second TASER cycle. (SMCSO Dispatch Audio at 4:38; Wang MAV Cropped at RFN 3,028; Weidner MAV Cropped at RFN 2,879). However, the dispatcher had broadcast that she was sending fire department paramedics and an ambulance about 42 seconds earlier, just after the third five-second cycle.<sup>21</sup> Deputy Wang did not, apparently, hear that update.
- Once Mr. Okobi was in the seated position and supporting himself with his hands, Deputy Watt had drawn and expanded his collapsible baton and issued a command. (Weidner MAV Cropped, RFN 2,568) As Mr. Okobi was getting up, Deputy Wang again activated his TASER, and starting another five-second cycle. (Weidner MAV Cropped, RFN 2,672) However, the only apparent reaction to this cycle was Mr. Okobi, looking back toward Deputy Wang and then falling back down. He did not appear to scream and there appeared to be no other physical reactions. In fact, he again went to a seated position on the pavement and scooted away from Deputies Wang and DeMartini.<sup>22,23</sup>
- As the deputies maintained a circle around Mr. Okobi, he again backed up and yelled, “Somebody help me.” Mr. Okobi, now facing the west curb of ECR, sat straight up, grunted or yelled, then turned to his right, placed his hands onto the pavement and got back to his feet. (Weidner MAV Cropped, RFNs 2,813-2,875)
- As Mr. Okobi finished standing, Sgt. Weidner motioned and told the deputies to “Back up. Back up.” As he finished doing so, Mr. Okobi started walking toward the east side of ECR. The group of deputies followed Mr. Okobi. (Weidner MAV Cropped, RFNs 2,875-3,064)

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<sup>21</sup> In his interview, Deputy Wang indicated that it was the policy of the SMCSO to send fire and paramedics when a TASER has been used (See Decker Report Supplement 12, page 3).

<sup>22</sup> In Weidner MAV Cropped RFN 2,719, one or two TASER wires appear to be stretching from the TASER to Mr. Okobi’s right leg.

<sup>23</sup> It should be noted that Deputy Wang will activate the TASER two more times, the sixth at about 10 seconds after the start of the fifth, and the seventh at about 11 seconds after the start of the sixth. The start of the last three TASER activations apparently occurred in approximately 21 seconds, which suggests that Deputy Wang may have been repeatedly trying to get the TASER to work in keeping Mr. Okobi on the pavement. However, due to the apparent break in the connection, Mr. Okobi was not receiving any electrical current.

- The four deputies and Sgt. Weidner had attempted to use control holds, the TASER, and de-escalation/dialogue to subdue and handcuff Mr. Okobi for approximately 1 minute and 40 seconds.

### **Analysis and Conclusions for Stage 2**

California peace officers are trained in the lawful use of force in their official capacities, and that “[t]he goal for the use of force by a peace officer in any enforcement situation is to gain **control** [*emphasis in the original*] of the situation or individual(s) encountered, when reasonable.”<sup>24</sup> They are specifically trained that their statutory authorization to use force is provided by California Penal Code section 835a, which reads:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. 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 the aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.<sup>25</sup>

California Peace Officers are also trained that the “objective reasonableness” of their force responses must be “fact specific, based on the totality of the circumstances confronting the officer[s] at the time that the force was used.” The determination of reasonableness must:

- allow for the fact that peace officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving;
- be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight; and
- [be] based on the facts and circumstances confronting the officer without regard to the officer’s underlying intent or motivation.<sup>26</sup>

California peace officers are also trained that the following major factors, as determined by *Graham v. Connor*, 490 U.S. 386 (1989), will be used to determine whether an officer’s use

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<sup>24</sup> California Commission on Peace Officer Standards and Training, *Basic Course Workbook Series – Learning Domain 20: Use of Force*, Version 4.2 p. 1-3.

<sup>25</sup> *Ibid.*, p. 1-8.

<sup>26</sup> *Ibid.*, p. 1-4.

of force is objectively reasonable:

1. Whether the suspect posed an immediate threat to the safety of the officers or others;
2. The severity of the crime at issue;
3. Whether the suspect was actively resisting arrest; and
4. Whether the suspect was attempting to evade arrest by flight.<sup>27</sup>

A “reasonable officer” standard is also taught to California peace officers. This standard asks, “would another officer, facing the same or similar circumstances, act in the same way or use similar judgment?”<sup>28</sup>

California peace officers are also trained that their force options fall into the following three categories, listed in the table below, each requiring generalized circumstances of resistance by suspects:<sup>29,30</sup>

Force Option Category	Examples	Objectively Reasonable Under the TOC <sup>31</sup>
Non-Deadly Force: Force which creates a minimal risk of injury.	Verbal direction, soft-empty hand control (holds, grabs), TASER in drive-stun mode.	835a PC.
Non-Deadly Intermediate Force: Force which has a significant risk of injury.	OC spray, TASER in probe mode, batons, neck restraints, canine, takedowns.	835a – Active Resistance with a threat of harm.
Deadly Force: Force which has a substantial risk of serious bodily injury or death.	Firearms	835a – Active resistance with a threat of serious bodily injury or death or dangerous fleeing felon.

Table. Categories of force options, examples, and general circumstances where appropriate.

#### Analysis of Deputy Lorenzatti’s Force Responses During Stage 2:

Deputy Lorenzatti had responded from the sheriff’s substation upon hearing Deputy Wang ask for emergency assistance due to someone running in the traffic lanes of ECR. While

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, p. 1-6.

<sup>29</sup> *Ibid.*, p. 2-9.

<sup>30</sup> California Commission on Peace Officer Standards and Training, “Use of Force: Totality of the Circumstances,” Training Video, 2017.

<sup>31</sup> “Totality of the circumstances” abbreviated as “TOC.”

she was en route, Deputy Wang broadcast a description of Mr. Okobi as a black male adult, about six-feet tall, weighing about 220 pounds, wearing a blue and black striped shirt, and still walking in traffic. (Suzuki Report Supplement 7, p. 1; SCMSO Dispatch Audio)

Upon approaching the area on ECR at Santa Helena, she could see Mr. Okobi who fit the description and walking south on the west sidewalk of ECR. As she approached Mr. Okobi, she estimated him to be over six feet tall and weigh over 300 pounds. She told him and gestured for him to put his bags on the ground and to stop.

When Deputy Lorenzatti next tried to apply a control hold to Mr. Okobi's left hand, she was aware of the following additional information:

- Mr. Okobi was a very large individual;
- He ignored her multiple commands to stop;
- He stared at her and continued walking toward her;
- She perceived that, if she did not get out of his way, Mr. Okobi was going to "walk right through [her] and barrel [her] over;" and
- Mr. Okobi "had this look in his eyes, that he wasn't quite all there," i.e., he appeared to possibly be under the influence of "something."

Deputy Lorenzatti reached for Mr. Okobi's left hand. However, he pulled it away and up over her head as she passed by him. When she turned around and tried to apply a control hold to Mr. Okobi's left hand or arm from behind him, he raised his arms straight up in the air. Due to his size, raising his arms, and continuing to walk, Mr. Okobi successfully thwarted her efforts to gain physical control of him. She again attempted to get a hold onto Mr. Okobi's left arm from behind him, yet was unsuccessful again due to Mr. Okobi's size and despite the fact that Deputy DeMartini was also trying to get control of one of Mr. Okobi's arms.

At the time Deputy Lorenzatti attempted to perform the leg sweep on Mr. Okobi's left leg, Deputy DeMartini had a hold of Mr. Okobi's left sleeve. Even though it was entirely ineffective, she tried it, she faced the following additional circumstances:

- Mr. Okobi's size and weight, combined with his efforts, were preventing her and Deputy DeMartini from successfully applying the low force options that she and Deputy DeMartini had just attempted;
- Mr. Okobi was of much larger and heavier than Deputy Lorenzatti, Deputy DeMartini, or Deputy Wang; and
- There was no reason for her to believe that the continued use of low-force options would be effective.

After Mr. Okobi pulled away from her and moved off the sidewalk into the street, she drew her TASER and pointed it at him. However, she holstered her TASER after Deputy Wang

had warned Mr. Okobi that he would be TASED if he did not comply. When Deputy Wang Discharged his TASER and Mr. Okobi fell to the ground, Deputy Lorenzatti moved toward him with the intention of handcuffing him. However, Deputy Lorenzatti made one to two attempts to apply low-force control holds to Mr. Okobi's hands/arms and even readied her handcuffs and was prepared to move to apply them while Sgt. Weidner was attempting to use de-escalation methods to persuade Mr. Okobi to comply.

Conclusion regarding Deputy Lorenzatti's force responses during Stage 2:

Deputy Lorenzatti's force responses were consistent with those of a trained and reasonable officer facing the same set of circumstances in order to overcome Mr. Okobi's resistance and effect his arrest. She attempted to apply mostly low-level force options which had a low-risk of injury to Mr. Okobi. And while the leg-sweep takedown she attempted carries with it – in many cases – a significant risk of injury, it was reasonable to conclude, under the totality of the circumstances, that the other low-force options would not be practical or effective, especially given the size disparities.

Furthermore, Mr. Okobi's resistance was active, with the danger of harm potentially resulting in becoming injured while struggling with someone of Mr. Okobi's size and apparent strength.

Analysis of Deputy DeMartini's Force Responses During Stage 2:

Deputy DeMartini had also heard Deputy Wang's call for emergency assistance and the description of the suspect as being "a black male with bag." When he got to where Deputy Lorenzatti was attempting to stop Mr. Okobi, he attempted to apply a control hold to Mr. Okobi's left arm but was only able to get a good grip on Mr. Okobi's sleeve. He tried to hold onto the sleeve and use it to limit Mr. Okobi's movements, then tried moving his grip up Mr. Okobi's lower arm. However, Mr. Okobi violently twisted one way, then the other, breaking free of the holds attempted by Deputies Lorenzatti and DeMartini. Mr. Okobi next pulled his sweater off and ran north, away from the deputies.

While Deputy Wang operated the TASER and gave Mr. Okobi commands, and also while Sgt. Weidner attempted to calmly communicate with Mr. Okobi, Deputy DeMartini tried to grab Mr. Okobi's right lower leg, but Mr. Okobi pulled it away.

When Mr. Okobi started getting to his feet just before the fourth TASER cycle, Deputy DeMartini again tried to grab Mr. Okobi.

Conclusion regarding Deputy DeMartini's force responses during Stage 2:

Deputy DeMartini's force responses were consistent with those of a trained and reasonable officer facing the same set of circumstances and working to effect the arrest and overcome the resistance by Mr. Okobi. He was unable to apply low-force control holds due to

Mr. Okobi's continuing active resistance, and he was unable to keep Mr. Okobi from getting up off the ground, despite the fact that Mr. Okobi had been subjected to three, five-second TASER cycles, albeit with limited effect.

Analysis of Deputy Wang's Force Responses During Stage 2 (Four TASER Discharges):

At the time Deputy Wang **first** discharged his TASER at Mr. Okobi, he was facing the following circumstances:

- Mr. Okobi had been evading him for the previous three minutes;
- It appeared to him that during the previous three minutes, that Mr. Okobi "had no regard for his own safety or the safety of the people that were (driving) in the roadway,"
- He witnessed Mr. Okobi pull away from Deputies Lorenzatti and DeMartini's attempts to stop him by applying control holds;
- Deputy Wang had unsuccessfully attempted to reach up and grab Mr. Okobi's right forearm as Mr. Okobi held it up into the air. However, Mr. Okobi pulled his arm down and away from Deputy Wang;
- Prior to starting that attempted control hold, Deputy Wang warned Mr. Okobi, "You're going to get tased. Get on the ground, now," which was roughly seven seconds before he actually discharged the TASER.
- Deputies Lorenzatti and DeMartini's attempts to physically control Mr. Okobi, in combination with Deputy Wang's attempt to hold Mr. Okobi from the front, had failed;
- Mr. Okobi was much larger and heavier than the deputies, and he appeared to easily defeat their low-force responses while maintaining his ability to move, i.e., he was very fast and agile;
- Once Mr. Okobi pulled completely free of his sweater – with Deputy DeMartini holding the other end, Mr. Okobi ran south;
- Deputy Wang pursued him;
- Mr. Okobi then suddenly stopped, turned, and faced Deputy Wang (and possibly the others);
- Mr. Okobi then ran north, and as he ran past Deputy Lorenzatti who had her TASER pointed at him, he appeared to have swatted downward with his right hand as if he was prepared to block the TASER probes if she discharged the TASER at him;
- Mr. Okobi continued running north toward Deputy Wang's "outside," which would have provided him an opportunity to avoid being shot with the TASER yet attack Deputy Wang from that side or flee;
- Mr. Okobi could have escaped to the north, yet he stopped and confronted the deputies;
- As Mr. Okobi ran towards Deputy Wang and Sgt. Weidner, they both stepped back and

away to avoid him; and

- Just before Deputy Wang discharged his TASER at Mr. Okobi, he yelled, “Get on the ground.”

It should also be noted that, even though Mr. Okobi had been struck in the back of his right wrist and in his right pectoral area by the TASER probes, he initially reacted by bringing his arms across his chest and making another lunging step toward Deputy Wang and Sgt. Weidner, as shown in Figure 2, above.

Conclusion Regarding Deputy Wang’s First TASER Application: Mr. Okobi’s actions of defeating the three deputies’ initial attempts at using low-level control holds to stop and arrest him, combined with the fact that Mr. Okobi charged in Deputy Wang’s direction, would cause a trained and reasonable officer facing the same circumstances to believe that he needed to use the intermediate-level force option of the TASER to defend himself, to prevent Mr. Okobi’s escape, and to overcome his resistance.

At the time Deputy Wang activated his TASER the second time, which was approximately nine seconds after the first cycle ended, he was facing the following additional circumstances:

- Immediately after falling to the pavement in response to the first TASER discharge, Mr. Okobi rolled into a supine position;
- When Deputy Wang, Deputy Lorenzatti and Sgt. Weidner reached him, he had extended his legs and arms, keeping the deputies away from him;
- Deputy Wang had been continuously directing Mr. Okobi to roll over onto his stomach, which, like every other request or arrest command, he ignored;
- The first five-second TASER cycle only appeared to immobilize Mr. Okobi’s arms, which allowed for him to keep moving his legs in a manner that made it difficult for the deputies to gain control of him;
- When Deputy Lorenzatti attempted to apply the control hold to Mr. Okobi’s left arm and roll him over as Deputy DeMartini attempted to control Mr. Okobi’s left leg, Mr. Okobi violently thrust-kicked his right leg at Deputy DeMartini; Mr. Okobi’s arm movements also defeated Deputy Lorenzatti’s arm-and-shoulder control maneuver.

Conclusion Regarding Deputy Wang’s Second TASER Activation: A trained and reasonable officer facing this set of circumstances would reasonably believe that the application of the second five-second TASER cycle would be reasonable to stop Mr. Okobi from kicking at or otherwise harming his fellow deputies, to overcome his active resistance, and to hopefully persuade Mr. Okobi to surrender to them.

At the time Deputy Wang discharged his TASER at Mr. Okobi the **third** time, he was facing the following additional circumstances:

- Once the second five-second cycle ended, Deputy Wang continued to tell Mr. Okobi to roll over onto his stomach;
- During this time, Sgt. Weidner also clearly told Mr. Okobi to roll over onto his stomach;
- During this approximately nine-second interval, Mr. Okobi assumed a supine position, with his feet on the pavement, knees bent, his upper back flat on the pavement, and his hands up;
- Deputy Wang again warned Mr. Okobi, “I’m going to tase you again if you don’t roll over on your stomach;”
- As Deputy Wang was finishing that warning, Mr. Okobi brought his hands down to his sides, dropped his left leg, placed the backs of his upper arms down to the pavement, and lifted his upper back off the pavement; (See Garrison IMG\_3665, AFNs 648-664; Weidner MAV Cropped, RFNs 1,303-1,323) and
- There did not appear any other intermediate-level force options that any of the deputies or Sgt. Weidner were trained to or otherwise prepared to attempt.

Conclusion Regarding Deputy Wang’s Third TASER Activation: Mr. Okobi’s movements at this time constituted a pattern of movement that a trained and reasonable officer, facing the same set of circumstances, could reasonably perceive as being an attempt by Mr. Okobi to again get to his feet and attempt to escape. While there was no appreciable period of time between the end of Deputy Wang’s warning that he would be tased again if Mr. Okobi did not roll onto his stomach, Mr. Okobi started moving as if he were starting to get up **before** the warning was finished (See Figures 11, 12, 13 and 14).

At this point in the evolution of the incident, Mr. Okobi had clearly defeated and/or overpowered the deputies’ collective and individual efforts to use low- and intermediate-level force options. An officer in Deputy Wang’s position would also be reasonable in believing that he had a legitimate law enforcement objective in not allowing Mr. Okobi to get up and resume running in and about the traffic on ECR, a major thoroughfare.

At the time Deputy Wang discharged his TASER at Mr. Okobi the **fourth** time, he was facing the following additional circumstances:

- The third five-second cycle had finished approximately 28 seconds earlier;
- During that 28 seconds, Sgt. Weidner attempted to engage in a meaningful dialogue with Mr. Okobi and persuade him to roll over in exchange for removing the TASER probes;



Figures 11 and 12. Mr. Okobi appearing to get up just before Deputy Wang's third TASER activation. (Garrison IMG\_3665 AFNs 657 and 664)



Figures 13 and 14. Mr. Okobi appearing to get up just before Deputy Wang's third TASER activation. (Weidner MAV Cropped, RFNs 1,303 and 1,323)

- Deputy DeMartini again tried to get a hold of Mr. Okobi's left leg, but Mr. Okobi pulled it free;
- Mr. Okobi rotated clockwise, orienting his feet toward Deputy Wang;
- Deputy Watt tried three or four times to gain control of Mr. Okobi's right hand, but Mr. Okobi pulled his hand away each time;
- Sgt. Weidner quietly told Deputy Lorenzatti to ready her handcuffs;
- As Deputy Lorenzatti readied her handcuffs and moved toward Mr. Okobi's left arm as Sgt. Weidner finished his sentence, "I'm trying to get them (TASER probes) off you," Mr. Okobi used his right hand to push himself up off of the pavement;
- Mr. Okobi quickly turned his torso to the left and planted his left forearm on the pavement;
- Mr. Okobi suddenly, as he continued sitting forward, turned to his right and planted his right hand on the pavement;
- Deputy DeMartini attempted but failed to catch Mr. Okobi's left hand;
- Mr. Okobi continuously ignored Sgt. Weidner's multiple commands; and

- Mr. Okobi got to his hands and knees, and then to his feet, and started to flee.

As this was happening, Deputy Wang had just finished broadcasting that Mr. Okobi was still resisting after a third TASER application. Deputy Wang also struggled to draw his collapsible baton. While he did not provide another warning to Mr. Okobi that he would be tased, the fact that he was using the radio when Mr. Okobi suddenly worked his way back to his feet most likely made it impractical to do so due to his divided attention.

It should also be reemphasized that, it did not appear that Mr. Okobi was subjected to the entire five-second cycle. This is due to the apparent intermittent connection with Mr. Okobi's foot; it only appears that his right leg was subjected to the desired neuromuscular incapacitation (NMI) because the wire from the probe in Mr. Okobi's right wrist became entangled with and connected to his lower leg or foot. This would have resulted in the NMI effecting from that point on his leg or foot, up to the probe in Mr. Okobi's right pectoral. However, once that wire became clear of Mr. Okobi's leg, there would no longer be a completed circuit, and Mr. Okobi would no longer feel any appreciable electrical sensations or loss of muscle control.

The firing data download indicates that Deputy Wang pressed the trigger the fifth, sixth, and seventh times within about 20 seconds, which could indicate that he was either trying to get the TASER to stop Mr. Okobi, and/or, they could have been unintentional trigger pulls. This is because, during that period of time, he had drawn his baton, pursued Mr. Okobi on ECR, and attempted to strike Mr. Okobi, making repeated, unintentional trigger pulls more likely.

Conclusion: Given the totality of the circumstances, including the fact that Mr. Okobi again got to his feet, defeating all the collective efforts of all of the deputies present, a trained and reasonable officer facing the same set of circumstances, whose attention was divided while using the radio when Mr. Okobi suddenly got back up to his feet, would cause a trained and reasonable officer to believe that it would be objectively reasonable to apply a fourth TASER activation. It should also be noted that there appeared to be nothing to indicate to any of the deputies that Mr. Okobi was not physically able to comply with their commands, and Mr. Okobi had plenty of time to comply with the commands, as this stage had lasted approximately 1 minute and 40 seconds.

#### Analysis of Sergeant Weidner's and Deputy Watt's Force Responses During Stage 2:

Sgt. Weidner's and Deputy Watt's force responses were limited to giving verbal directions to Mr. Okobi and attempting to apply low-level control holds, none of which were sufficient to overcome Mr. Okobi's resistance. Trained and reasonable officers facing the same set of circumstances would reasonably believe that such low-level force attempts would be objectively reasonable under the totality of the circumstances.

### **Stage Three: The final efforts to subdue and restrain Mr. Okobi**

As Mr. Okobi moved toward the east side of ECR, he turned, faced the deputies and backed away. As he did so, Deputy Wang yelled, “Hey. Come here.” (Wang MAV Cropped, RFN 3,166). Once in the northbound lanes of ECR, Mr. Okobi then led the deputies south in the northbound lanes. (Wang MAV Cropped, RFNs 3,100-3,852)

Once Mr. Okobi reached the area just to the front of and to the left of Community Service Officer (CSO) Gonzales’ marked pickup truck, he turned and faced Deputy Wang. Deputy Wang had drawn and extended his collapsible baton with his right hand, while he still held his TASER in the other. (Garrison Video IMG\_3666, AFN 1552) The event then appears to have evolved as follows:

- As Mr. Okobi faced the deputies and backed away from them, Deputy Wang used his baton and swung low, aiming for Mr. Okobi’s knees.<sup>32</sup> (Wang Interview Transcript, 18:790-792; Garrison IMG\_3666 at AFN 1664<sup>33,34</sup>)
- Mr. Okobi jumped backward while blocking the baton downward with both hands. (Garrison IMG\_3666 at AFN 1665)
- As Deputy Wang swung the baton, his upper body weight took him too far forward and off balance. Apparently during this time, Mr. Okobi struck at Deputy Wang with his left hand. Deputy Wang reacted by jumping upward and turning his face leftward (his perspective).<sup>35</sup> (Garrison IMG\_3666 at AFN 1691)
- Deputy Wang then turned rightward and away from Mr. Okobi, and possibly (given the limited depth of the video images) had his momentum going backward, making it difficult to maneuver or apply defensive countermeasures. (Garrison IMG\_3666 at AFN 1731)

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<sup>32</sup> Teaching officers to target subjects’ legs while both are facing each other is a tactic taught in older and current, traditional training programs.

<sup>33</sup> Absolute frame number (AFN) as read when viewing the video files in Apple QuickTime Player 7.

<sup>34</sup> Mr. Garrison did not continuously record the incident from inside Tri Counties Bank in order to keep the file sizes manageable (See Suzuki Report Supplement 6, pp. 2-3). The metadata, checked via MediaInfo, did not appear to represent accurate times or intervals between the six video files. Therefore, I am unable to determine the exact coverage-gap intervals.

<sup>35</sup> During his interview, Deputy Wang recalled perceiving that after he swung at and missed Mr. Okobi’s knees, he felt Mr. Okobi tackle him. He did not realize that this perception may have been generated by Deputy DeMartini’s shoulder-check tackle into Mr. Okobi, causing Mr. Okobi to collide with Deputy Wang, occurring contemporaneously with the punch to the right side of Deputy Wang’s face.

- Next, Mr. Okobi apparently continued to aggress toward Deputy Wang as he retreated toward the store fronts on the east side of ECR. Mr. Okobi can be seen in the video delivering what appears to be a right overhead punch, downward to the left side of Deputy Wang's face. This may have been the strike that caused the laceration on the right side of Deputy Wang's face (See Figure 15).<sup>36</sup> (Garrison IMG\_3666 AFNs 1731-1785; Suzuki Report Supplement 6, p. 2)



Figure 15. Mr. Okobi apparently aggressing and throwing the right overhead punch that struck Deputy Wang. (IMG\_3666, AFN 1758)

- Contemporaneously with Mr. Okobi punching Deputy Wang, Deputy DeMartini performed a “shoulder-check” tackle on Mr. Okobi, causing him to fall to the ground. Deputy DeMartini believes that the tackle might have caused Mr. Okobi to collide with Deputy Wang, causing both Deputy Wang and Mr. Okobi to fall to the ground together.<sup>37</sup> (Draper Report Supplement 11, p. 4; Suzuki Report Supplement 7, p. 3; Draper Report Supplement 9, p. 5; Garrison IMG\_3668.mov at :02<sup>38</sup>)
- At this point, the group was behind CSO Gonzales’ pickup truck, where Deputy DeMartini went to control Mr. Okobi’s legs. However, Mr. Okobi kept kicking. During

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<sup>36</sup> In his interview, Sgt. Weidner saw Deputy Wang’s TASER flying through the air while Mr. Okobi was aggressing Deputy Wang, which caused him to draw the inference that Mr. Okobi struck Deputy Wang (Draper Report Supplement 9, p. 5).

<sup>37</sup> During his interview, Deputy Wang remembered that he felt Mr. Okobi tackle him, i.e., “He grabbed onto me and pulled me to the ground...I saw something out of the corner of my eye and felt a hot stinging pain on the left side of my face” (See Decker Report Supplement 12, p. 4). However, the video and Deputy DeMartini’s recollection supports that Mr. Okobi struck Deputy Wang just before DeMartini performed the shoulder-check.

<sup>38</sup> While Mr. Garrison did not record Deputy DeMartini’s tackle, Mr. Garrison stated that Mr. Okobi, “...got tackled” in the first portion of video file IMG\_3668 mov.

this time, Mr. Okobi was also flailing his arms. Deputy Wang moved to or near Mr. Okobi's right upper quadrant; Deputy Lorenzatti was near Mr. Okobi's left-rear waist area; Deputy Watt was standing somewhat to the left of Mr. Okobi's head; and Sgt. Weidner had to motion for southbound traffic to back away from the scene after requesting additional emergency assistance. Deputy Watt also closed and stowed his collapsible baton. (Garrison IMG\_3666, AFNs 1,820-2,025; Draper Report Supplement 11, p. 4; Weidner MAV – Original at 2:33)

- Deputy Wang recalled that he could feel Mr. Okobi pulling on his duty belt, which made him fear that Mr. Okobi may have been trying to obtain his handgun. (Decker Report Supplement 12, p. 4) Sgt. Weidner specifically recalled seeing Mr. Okobi grab Deputy Wang's handgun, which caused him to believe that one or more of the officers might have to shoot Mr. Okobi.<sup>39</sup> (Draper Report Supplement 9, p. 5)
- Deputy Wang recalled being afraid that "he couldn't stop [Mr. Okobi]. Therefore, Deputy Wang stood up and used one of his fists to swing at Mr. Okobi's head. However, he did not feel his fist connect with anything."<sup>40</sup> (Wang Interview Transcript, 19:807-20:816)
- Deputy Wang then started pulling on Mr. Okobi's arms in order to get his hands behind his back. He also perceived that the other deputies were doing the same. (Wang Interview Transcript, 19:816-819)
- Fearing that Mr. Okobi might again grab onto his duty belt, Deputy Wang drew his OC spray, saw what he thought was a clear view of Mr. Okobi's face, and sprayed a one-second stream. (Wang Interview Transcript, 19:824-826)
- As soon as Deputy Wang sprayed the aerosol at Mr. Okobi, he immediately "heard other deputies scream in pain," causing him to conclude that he missed and unintentionally sprayed his fellow deputies. At this point, Deputy Wang holstered his OC spray. Deputies Watt, Lorenzatti, and to a lesser degree, Sgt. Weidner, were adversely affected by the OC spray. However, Deputy Wang did not perceive any indication that the OC spray had an appreciable effect on reducing Mr. Okobi's resistance.<sup>41,42</sup> (Decker Report Supplement

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<sup>39</sup> Deputy Wang could not be sure if it was Mr. Okobi who was pulling on his duty belt (See Wang Interview Transcript, 40:2146-2151).

<sup>40</sup> It is important to remember that Deputy Wang probably took a considerable blow to the head when Mr. Okobi punched him.

<sup>41</sup> At the time of his interview on 10/4/18, Deputy Wang's memory of what occurred after he used the OC spray was limited to looking or standing up and seeing that Mr. Okobi was in handcuffs. He also didn't remember who handcuffed Mr. Okobi, only that his handcuffs were not used (See Wang Interview Transcript, 19:829-830).

<sup>42</sup> Deputy Wang also stated in his interview that, after hearing someone say, "Stay on him," that he needed to help keep Mr. Okobi from getting up. Therefore, he knelt and held Mr. Okobi's left arm down (See Wang Interview Transcript, 19:834-836)

12, p. 4; Suzuki Report Supplement 7, p. 3; Draper Report Supplement 10, p. 4; Draper Report Supplement 11, p. 4; Draper Report Supplement 9, p. 9; Wang Interview Transcript, 19:824-826)

- While continuing try to subdue Mr. Okobi, Deputy DeMartini was still on Mr. Okobi's legs and Deputy Lorenzatti was to his left, crouched over Mr. Okobi's waist area with her feet on the pavement, her left knee possibly on Mr. Okobi and her right leg back. (Garrison IMG\_3666, AFN 2094) Deputy Lorenzatti delivered one strike with her right closed fist to the lower half of Mr. Okobi's body. However, the strike had no effect on Mr. Okobi's resistance. During this strike, Deputy Lorenzatti's had her right leg extended backward for support and leverage. (Garrison IMG\_3666, AFNs 2124-2141; Suzuki Supplement 7, p. 3)
- As this event evolved, CSO Gonzales assisted by applying some of his weight to the shoulder area of Mr. Okobi. Deputy Watt was standing with both of his feet on the ground to the left of the activity; CSO Gonzales (in the light-blue uniform shirt) joined in to assist by applying weight to Mr. Okobi's shoulder area; Deputy Lorenzatti was to the left of CSO Gonzales, still applied weight to Mr. Okobi's waist area; Deputy DeMartini continued to lie across Mr. Okobi's lower body and legs; Sgt. Weidner moved to the right side of Mr. Okobi. (Garrison IMG\_3667, AFN 0)
- Deputy Watt bent downward and assisted by using his hands to apply downward pressure on Mr. Okobi's shoulders, while Mr. Okobi remained on his left side with his head up off the ground. CSO Gonzales kept both of his feet on the pavement while applying weight with his knees and shins. (Garrison IMG\_3667, AFN 260)
- As Deputy Watt remained bent over, CSO Gonzales moved into a bent-over position, with both of his feet on the ground. Deputy Lorenzatti positioned her right leg straight back with her right foot on the pavement and with her left knee or lower leg on or about Mr. Okobi's waist area. During this time, Mr. Okobi could be seen positioned wholly or partially on his left side. Deputy DeMartini maintained his position on Mr. Okobi's legs (See Figure 16). (Garrison IMG\_3667, AFN 361)
- CSO Gonzales stepped away and to the left. Deputy Lorenzatti kept her right leg back and apparently continued to apply forward and/or downward pressure onto Mr. Okobi's middle back. Deputy DeMartini, while controlling Mr. Okobi's legs and lower body, drew his TASER but did not discharge it. (Garrison IMG\_3667, AFN 405)
- In response to the being sprayed, Deputy Lorenzatti, after yelling expletives, turned her head to the right and brought her right hand to her eyes. During this time, she kept her

right leg back with her right foot on the pavement and apparently transferred additional weight to her right foot. Deputy Watt briefly held his bent over position before visibly reacting to the OC spray. Mr. Okobi's head appeared to be up off of the pavement, and was possibly still on his left side – yet possibly more toward a prone posture. (Garrison IMG\_3667, AFNs 455-485)



Figure 16. The deputies', CSO Gonzales' and Sgt. Weidner's relative positions shortly before Deputy Wang used his OC spray. (Garrison IMG\_3667, AFN 353)

- As Deputy Lorenzatti maintained her posture and Deputy Watt reacted to being sprayed by bringing his left hand up toward his face. Deputy Wang appeared to be in front of Mr. Okobi's head area, as Sgt. Weidner bent down and appeared to reach down with his left hand. (Garrison IMG\_3667, AFNs 485-560)
- Deputy Watt stood up due to the effects of the OC spray, while Deputies Lorenzatti and DeMartini maintained their positions. Sgt. Weidner, to the right of Deputy Wang (video perspective and not visible), continued to work to get Mr. Okobi handcuffed (Garrison IMG\_3667, AFN 679)

- Deputy Watt then moved to the back of the pickup truck as he dealt with the effects of the pepper spray. Deputy Wang appeared to have moved to where his knees were on the pavement, just in front of Mr. Okobi's head, which appeared to still be off the pavement. Deputy Wang placed his left hand on Mr. Okobi's right shoulder and his right hand down toward his right leg. Deputy Lorenzatti's and Deputy DeMartini's postures and locations had not appreciably changed and CSO Gonzales left the activity (See Figure 17).  
(Garrison IMG\_3667, AFN 734)



Figure 17. New positions after the OC spray. Note that Mr. Okobi does not appear to be flat on the pavement.

- As Deputy Wang repositioned himself, Mr. Okobi was still mostly on his left side with his head up off of the pavement. Sgt. Weidner continued working to get Mr. Okobi handcuffed from the right side of Mr. Okobi at his waist area. Deputy DeMartini continued to control Mr. Okobi's legs, as Deputy Lorenzatti continued to suffer the effects of the OC spray. (Garrison IMG\_3667, AFN 750)
- As Deputy Watt stayed by the white pickup truck due to being incapacitated by the OC spray, CSO Gonzales stood nearby him. Deputy Lorenzatti continued to apply weight to Mr. Okobi with her right leg back, and Deputy DeMartini apparently repositioned himself so that his body is more in line with Mr. Okobi's. A public works employee, Mr. Paul Neily, observed from the CSO pickup truck. (Garrison Video IMG\_3668, AFN 0; Suzuki Report Supplement, p. 1)
- Deputy Wang moved from the right side to the left side of Mr. Okobi, but was still at his head area, apparently with both of his knees and feet on the pavement. Deputy DeMartini repositioned himself by moving onto his knees while still straddling Mr. Okobi's legs, as

he drew his handcuffs with his left hand. Sgt. Weidner continued working on the right side of Mr. Okobi. (Garrison Video IMG\_3668, AFN 384)

- Deputy Lorenzatti drew her handcuffs from her right-rear handcuff holder. After she paused to again bring her right arm to her eyes, CSO Gonzales moved over to Sgt. Weidner's right. Deputy Wang continued to work from his position. (Garrison Video IMG\_3668, AFNs 462-618)
- Apparently, Sgt. Weidner held one set of handcuffs in a vertical orientation, as the bottom cuff appears to have been on one of Mr. Okobi's wrists. Sgt. Weidner next lifted up one of Mr. Okobi's hands (visible just to the right of Deputy Wang – video perspective). Deputy Wang apparently kept his feet and knees on the pavement as he assisted, and Deputy Lorenzatti also appeared to have her feet and knees on the pavement. (Garrison Video IMG\_3668, AFNs 647-902)
- Deputy Wang continued to work from Mr. Okobi's head and shoulder area, with his left knee on the pavement and his right knee apparently on or against Mr. Okobi's upper back or shoulder. Sgt. Weidner moved toward Mr. Okobi's head, and Deputies Lorenzatti and DeMartini continued working from their respective positions. (Garrison Video IMG\_3668, AFNs 1048-1212)
- Sergeant Weidner moved back toward Mr. Okobi's feet as Deputy Wang repositioned his right knee/lower leg to more securely hold Mr. Okobi's upper back or shoulder area. CSO Gonzales brought a towel to Deputy Wang for his bleeding face. Deputy Wang apparently used his right hand to radio dispatch, to again ask for medical personnel. As he did so, CSO Gonzales applied the towel to Deputy Wang's face. (Garrison Video IMG\_3668, AFNs 1237, 1295-1372)
- Once Sgt. Weidner, Deputy Wang, Deputy DeMartini, and Deputy Lorenzatti were finally able to get Mr. Okobi handcuffed and – which required using two, interlinked sets of handcuffs due to Mr. Okobi's size – they had been collectively working to do so for approximately **3 minutes and 30 seconds**.<sup>43</sup> (Weidner MAV – Original, 00:25-4:03)
- Even after finally being handcuffed, Mr. Okobi continued to move around and exhibited significant strength. One of the deputies checked Mr. Okobi's carotid pulse and said, “Yeah. He's still breathing. He's still fine.” (Wang Interview Transcript, 19:839-844)

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<sup>43</sup> At 3:54 in the audio from Sgt. Weidner's MAV video, Sgt. Weidner says, “bring that arm over...” Immediately after he finishes saying that, a sound consistent with the closing of a handcuff can be heard. Sgt. Weider next says, “Get it,” and then, “OK” at 4:02. Sergeant Weidner's MAV audio provided a consistent recording of most of the deputies' efforts to take Mr. Okobi into custody.

## **Analysis and Conclusions for Stage 3**

### **Analysis of Deputy Wang’s Force Responses During Stage 3:**

California peace officers are trained that the common uses of batons constitute non-deadly, intermediate force options. They are also trained that targeting a person’s head or neck with a baton could constitute deadly force.<sup>44</sup> Therefore, peace officers are trained to target other parts of the body that might result in pain or create a significant risk of injury, such as arms or legs.

At the time Deputy Wang swung his baton at Mr. Okobi – although it does not appear that he actually struck him – Mr. Okobi had successfully been defeating the deputies’ various attempts to use control holds, the TASER, and dialogue, for over 1 minute and 40 seconds. Mr. Okobi’s resistance had also been both active and assaultive during this time. This would cause a trained and reasonable officer facing the same and similar circumstances to believe it would be objectively reasonable to try to strike Mr. Okobi on the legs in order to prevent his escape and overcome his continuing resistance.<sup>45</sup>

It was after the attempted baton strike that Mr. Okobi was able to aggress and strike Deputy Wang on the left side of his face, causing pain and potential disorientation. Deputy Wang perceived that Mr. Okobi had “grabbed” him and pulled [him] to the ground. (Wang Interview Transcript, 18:793-794) However, he was unaware that Deputy DeMartini had just performed the tackle on Mr. Okobi, which might have caused both Mr. Okobi and Deputy Wang to go to the ground together.

Once on the ground, Deputy Wang felt someone pulling on his duty belt with enough force to move the lower half of his body.<sup>46</sup> This caused Deputy Wang to fear that Mr. Okobi might be in a position to try to disarm him. Deputy Wang recalled that, in response and to prevent this from happening, he swung at Mr. Okobi’s face and head area twice with one of his fists, but he did not perceive that he struck Mr. Okobi, i.e., he missed. (Wang Interview Transcript 18798-19:815)

Deputy Wang still perceived that Mr. Okobi was actively resisting the other deputies’ attempts to handcuff him. Therefore, Deputy Wang pulled on one or more of Mr. Okobi’s arms in order to get them behind his back. However, he was unable to do so. In response, Deputy Wang drew his aerosol OC and, when he thought he had a clear view of Mr. Okobi’s face, sprayed him with it.

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<sup>44</sup> California Commission on Peace Officer Standards and Training, *Basic Course Workbook Series – Learning Domain 33: Arrest and Control*, Version 4.1, p. 3-7.

<sup>45</sup> While it is still commonly trained, batons are difficult to use well. Combined with the light weight of Deputy Wang’s expandable baton, Deputy Wang’s size and strength, the fact that both Deputy Wang and Mr. Okobi were in motion at the time of the attempted strike, all militate against the baton being effective. However, it is still heavily engrained in many California peace officers to attempt to use them under such circumstances.

<sup>46</sup> Sgt. Weidner observed Mr. Okobi’s hand on Deputy Wang’s holstered handgun (See Weidner Interview Transcript, 13:550-552)

The attempted use of the baton, the attempted punches, and the OC spray are also considered to be non-deadly, intermediate-force options.

Conclusion: Given the totality of the circumstances Deputy Wang faced at the time, including the fact that the TASER did not give the deputies a clear window of opportunity to handcuff Mr. Okobi, and that Mr. Okobi had previously displayed assaultive resistance, a trained and reasonable officer facing the same circumstances would reasonably believe that the attempted use of the baton was objectively reasonable.

At the time Deputy Wang used his OC aerosol, he had been severely punched and perceived that Mr. Okobi had pulled him to the ground. Deputy Wang next perceived that Mr. Okobi was pulling on his duty belt and possibly attempting to remove his handgun from his holster. These circumstances would cause a trained and reasonable officer facing the same circumstances to believe it would be objectively reasonable to use intermediate force options of punches and OC spray in order to prevent the escape and effect the arrest of Mr. Okobi, as well as to defend himself.

During the rest of the incident, it appears that Deputy Wang's other force responses were limited to attempting to manually gain control of Mr. Okobi's arms and get him handcuffed.

#### Analysis of Deputy Lorenzatti's Force Responses During Stage 3:

Once Mr. Okobi was down on the pavement after Mr. Okobi and Deputy Wang had been knocked to the ground, Deputy Lorenzatti took a position on the left side of Mr. Okobi, who, for most of this part of the incident, appeared to be maintaining a position on his left side. While she was attempting to keep Mr. Okobi from getting up again, she applied her body weight to the general area of Mr. Okobi's waist. She did so by keeping, to one degree or another, one or both of her feet on the pavement while she applied weight with her lower leg(s) or knee(s). She also apparently assisted in getting a hold of and controlling one or more of Mr. Okobi's arms or hands in order to get him handcuffed.

Deputy Lorenzatti made it clear in her interview that once they were on the ground with Mr. Okobi, Mr. Okobi "was still kicking and fighting, and [they] didn't have control of his hands." Therefore, she believed that delivering a strike (punch) to "a soft spot" might cause Mr. Okobi "to jolt his arm out." (26:1100-1108) After punching Mr. Okobi "somewhere on his lower body," Deputy Lorenzatti realized that it was a futile measure as she saw no reaction at all by Mr. Okobi. Therefore, she did not attempt to strike him again. (Lorenzatti Interview Transcript, 47:2072-2093)

The remainder of Deputy Lorenzatti's efforts consisted of applying body weight to Mr. Okobi and assisting with getting him handcuffed.

California peace officers are currently trained that they may use "personal weapons," i.e., punches or kicks, in order to effect the arrest, overcome resistance, prevent escape, or defend

themselves and others.<sup>47</sup> This also applies during ground control measures.

Conclusion: Deputy Lorenzatti's force responses consisted of non-deadly intermediate and low-force options. Therefore, they were consistent with the actions of a trained and reasonable officer who was facing the same circumstances in overcoming Mr. Okobi's resistance and effecting his arrest. It should also be remembered that Deputy Lorenzatti fought the effects of having been sprayed with OC by Deputy Wang and kept her position, helping to successfully get Mr. Okobi handcuffed.

#### Analysis of Deputy DeMartini's Force Responses During Stage 3:

Deputy DeMartini's force responses during this stage of the incident included the "shoulder check" tackle, which he performed contemporaneously with Mr. Okobi's punch to Deputy Wang. Such tackles are considered "takedowns" and are considered to be non-deadly intermediate force options.

Deputy DeMartini did not see Mr. Okobi punch Deputy Wang, but he performed the shoulder-check tackle because he feared that, due to "the sheer size of the guy," Mr. Okobi would be able to take Deputy Wang's baton away from him. Deputy DeMartini's only other force responses during this stage appear to be his application of his body weight and control measures to Mr. Okobi's legs and/or lower body, as Mr. Okobi continued to kick his legs and fight the deputies' attempts to handcuff him. (DeMartini Interview Transcript, 13:556-577)

Conclusion: Deputy DeMartini's use of the intermediate level force option of the shoulder-check tackle, and the use of his body weight to control Mr. Okobi's lower body, were all consistent with the actions of a trained and reasonable officer who was facing the same circumstances in overcoming Mr. Okobi's resistance and effecting his arrest.

#### Analysis of Sergeant Weidner's and Deputy Watt's Force Responses During Stage 3:

Deputy Watt's involvement during this stage of the incident was limited to bending over and applying weight using his hands to Mr. Okobi's shoulder area, just prior to getting sprayed by Deputy Wang. After that, Deputy Watt was overcome by the effects and moved away from the activity.

Sgt. Weidner worked on the right side of Mr. Okobi, about his mid-body area. He attempted to use low-level control holds to get Mr. Okobi handcuffed. One of the factors that made this difficult was that Mr. Okobi had bled from the TASER probe wound to the back of his right wrist, making the hand slippery. (Weidner Interview Transcript, 13:561-567) Sergeant Weidner was finally able to pull one of Mr. Okobi's arms out from underneath him and hold onto it until a set of handcuffs was applied. After telling the others that he needed a second set of handcuffs, one of the other deputies handed him a set. (Weidner Interview Transcript, 13:581-14:587)

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<sup>47</sup> *Ibid.*, p. 1-13.

Conclusion: Deputy Watt's and Sgt. Weidner's uses of low-level control methods (i.e., hands) to get Mr. Okobi handcuffed were consistent with the actions of trained and reasonable officers facing the same circumstances. Their actions were taken to overcome Mr. Okobi's resistance and to effect his arrest.

#### **Stage Four: The post-arrest medical care of Mr. Okobi**

Approximately 20 seconds after getting Mr. Okobi handcuffed, Sgt. Weidner moved to Mr. Okobi's upper body and instructed his deputies to "be careful," and to "watch positional asphyxia."<sup>48</sup> Sergeant Weidner then assisted Deputies Wang and Watt in raising Mr. Okobi into a seated position. (Garrison IMG\_3669, AFNs 0-145; Weidner MAV audio at 4:23) Immediately after that, Sgt. Weider radioed the dispatcher that they "need[ed] medics, Code-3" (See Figure 19). (Weidner MAV audio at 4:34; Garrison IMG\_3669, AFNs 145-290)



Figure 18. Deputy Watt and Sgt. Weider raising Mr. Okobi into a seated recovery position.

It should be remembered that the sheriff's radio dispatcher first indicated on the radio that she had initiated a call for an emergency medical services (EMS) response immediately after Deputy Wang broadcast that Mr. Okobi was still resisting and that there had been a third TASER deployment. (SMCSO Radio Audio at 3:57) It appears that once Deputy Wang first broadcast that the TASER had been used at 13:04:33 hours, the fire communications personnel received the call at 13:04:50 and the American Medical Response (AMR) ambulance communications personnel received the call at 13:04:53 hours. Therefore, the first call for an EMS response was made ***approximately three minutes prior to the time*** the deputies finally got Mr. Okobi handcuffed.

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<sup>48</sup> "Positional asphyxia" will be addressed later in this report.

Furthermore, Deputy Wang radioed for an EMS response about 42 seconds after the dispatcher had already initiated one. This was pursuant to SMCSO policy and Deputy Wang suspected that Mr. Okobi might have been injured from the TASER discharge. (SMCSO Dispatch Audio at 4:38; Wang MAV Cropped at RFN 3,028; Weidner MAV Cropped at RFN 2,879; Wang Interview Transcript, 18:740-741) Sgt. Weidner again requested an EMS response after they placed Mr. Okobi into the seated position at about 2 minutes and 30 seconds after that.

The remainder of the post-arrest medical care of Mr. Okobi at the scene evolved as follows:

- Deputies Watt and Wang kept Mr. Okobi in an upright, seated position by placing their lower legs against his back. Deputy Watt was behind and to Mr. Okobi's left, while Deputy Wang was behind and to Mr. Okobi's right. (Garrison IMG\_3669, AFNs 268-1,584);
- Sergeant Weidner checked for and found that Mr. Okobi had a pulse. He also noticed that initially, Mr. Okobi was unresponsive but suddenly woke up and looked around. (Weidner Interview Transcript, 14: 59-594)
- Deputy Acosta arrived, escorted Deputy Wang to the rear of the CSO truck, then took his place along with Deputy Lorenzatti in supporting Mr. Okobi.<sup>49</sup> (SMCSO Report Supplement 5 by J. Acosta, pp. 1-2)
- Firefighter-Paramedic David Novelli (Engine 37) arrived, followed shortly thereafter by Paramedic Forrest Uhland (AMR 37). They checked for a carotid pulse, and Firefighter-Paramedic Novelli said, "Yup. We've got a pulse." (DCPD McQuade Report Supplement 1, pp. 11-13, 20-21)
- Firefighter-Paramedic Novelli noticed that as he checked Mr. Okobi's pulse, that Mr. Okobi shook his head back and forth twice. (DCPD McQuade Report Supplement 1, p. 11)
- A short time later, the EMS personnel noticed that Mr. Okobi's condition visibly changed, which caused them to again check for his pulse. However, they could not find one, and they immediately started lifesaving measures. (DCPD McQuade Report Supplement 1, pp. 11-13, 20-21)

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<sup>49</sup> Deputy Acosta's car partner, Deputy Miqueo, stated that due to traffic on ECR being so backed up, Deputy Acosta got out of their car about half a block away and ran the rest of the way to the scene (See SMCSO Supplement 7, p. 1).

- Mr. Okobi was subsequently transported to Mills Peninsula Hospital, where, despite the lifesaving efforts by the emergency room staff, Mr. Okobi was pronounced at 1417 hours. (SMCSO Report Supplement 5 by J. Acosta, pp. 1-2)

#### **Analysis and Conclusions for Stage 4**

Once the deputies were finally able to get Mr. Okobi handcuffed, Sgt. Weidner immediately directed and personally assisted with getting Mr. Okobi into a seated position so that his breathing would not be impaired. Sgt. Weidner next performed an assessment of Mr. Okobi's condition by checking for a pulse, finding one, and noticing that Mr. Okobi actively looked around after briefly appearing to be unresponsive. Mr. Okobi's condition was monitored and he was determined to be breathing and his heart beating through the time Firefighter-Paramedic Novelli and AMR Paramedic Forrest Uhland arrived and first assessed Mr. Okobi. Their initial assessment was that Mr. Okobi's heart was beating at the time. It was shortly thereafter when they determined that Mr. Okobi's condition had changed, requiring lifesaving measures.

The radio dispatcher and the deputies requested EMS responses at the following times (SMCSO Dispatch Audio using the QuickTime 7 player timer):

- The radio dispatcher took it upon herself to call for an EMS response at 3:57;
- Deputy Wang requested an EMS response while they were still trying to take Mr. Okobi into custody in front of the Tri Counties Bank at 4:38, to which the dispatcher confirmed that EMS personnel were in route;
- The radio dispatcher asked Deputy Wang to identify the best location for the EMS personnel to stage. However, Deputy Wang did not respond, likely because he was attending to the task of getting Mr. Okobi into custody;
- Sergeant Weidner requested the EMS response just after getting Mr. Okobi handcuffed at 7:10; and
- Deputy Wang, becoming “frustrated” that the EMS personnel were taking too long to get there, requested them again at 9:00.

This supports that the dispatcher, Deputy Wang, and Sgt. Weidner all made their best efforts to ensure that Mr. Okobi had proper medical attention well before it became apparent to anyone that Mr. Okobi had become medically distressed. It does raise the question as to why, after these requests, that it took so long for the EMS personnel to get to Mr. Okobi's side.

It is common practice for law enforcement personnel to, as an anticipatory precaution, request EMS personnel to respond, but “stage” at a nearby location until the law enforcement personnel inform them that the actual scene is safe for them to enter.

The radio traffic and the CAD (Computer-Aided Dispatch) printouts for the sheriff's, fire, and AMR personnel indicate the following:

- The sheriff's dispatcher initiated the EMS notification due to the TASER deployment at 13:04:33 hours – 3:57 in the dispatch audio;
- Due to the three CAD systems being synchronized and interlinked, fire dispatcher was notified at 13:04:53, and the AMR dispatcher was notified at 13:04:53;
- The sheriff's dispatcher entered that the EMS personnel were to stage at ECR and Santa Helena Avenue at 13:07:37;
- County Fire Engine 37 indicated that they were at ECR and Santa Helena at 13:08:48;
- However, County Fire Engine 37 Captain Donnelly recalled that they had difficulty in getting to that location due to the backed-up traffic, and subsequently parked at ECR and Millwood Drive; (DCPD McQuade Supplement 1, p. 8)
- County Fire Engine 37, if this interpretation of the Fire CAD is correct, was notified that the scene was secure at either 13:11:18, or 13:13:19; and
- Once Captain Donnelly received the confirmation that the scene was secure, they drove forward and parked on ECR at Capuchino Drive.

It is common practice for fire paramedics or AMR paramedics to complete "Patient Care Reports" that document the times they were dispatched, the times they arrived, and sometimes, the times they actually get to the patients' sides. Those reports were not provided, however a more detailed after-action study might be useful.<sup>50</sup> It does not appear that the sheriff's personnel were to blame, given the task demands and other circumstances they were experiencing.

Conclusion: In addition to ensuring that EMS had been summoned prior to Mr. Okobi becoming medically distressed, each of the sheriff's personnel who assisted in getting Mr. Okobi into the seated position and monitored his condition acted consistently with the actions of trained and reasonable peace officers and met the standard of care.

## ADDITIONAL INFORMATION

### **TASER Use and Physical Restraint by Law Enforcement**

The TASER primarily works by discharging two dart-like probes into a subject and delivering an extremely low-amperage current at a reduced voltage level via an electrical

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<sup>50</sup> Upon requesting the patient care reports, District Attorney Inspector Jamie Draper informed me that the coroner's office was not releasing them due to new privacy laws.

connection between the two probes.<sup>51</sup> This electrical flow is designed to produce what is referred to as “neuro-muscular incapacitation” (NMI). The challenge when using TASERs in field situations is landing the probes onto a large enough area of the body so that a sufficient amount of musculature is affected to effectively incapacitate the subject.<sup>52</sup> For example, if two probes are fired into only a person’s lower leg, only that area will be subjected to the NMI effect, leaving the subject the ability to move the rest of his body.

In this case, one probe landed in the back of Mr. Okobi’s right wrist and the other to the lateral area of his right pectoral muscle. This is why, when Mr. Okobi was experiencing the first three, five-second cycles, he involuntarily moved his right arm across his chest, indicating there was an NMI effect between those two points. However, this left him with the abilities of moving his upper torso and his lower legs, which allowed him to quickly roll into the supine position and extend his legs. This, combined with his very large size (6 feet 2 inches and 333 pounds), made approaching and trying to handcuff him very difficult. Additionally, as soon as the cycles ended, Mr. Okobi fully extended his arms and would move them whenever the deputies attempted to apply control holds.

Legally, the courts have identified the use of TASERs – using the probes – as “an intermediate, if nonlethal, level of force,” and as “non-deadly force.”<sup>53,54</sup>

In 2009, TASER, International issued TASER Training Bulletin 15.0 explaining why the “preferred target zone” for TASER usage had changed. Due to medical research that suggested there was a slight chance of inducing cardiac arrhythmias in humans if the TASER probes would become too close (measured in millimeters) to the heart. As a precautionary result, as well as recognizing that narrow probe spreads on the chest area tended to be less effective, TASER recommended not intentionally targeting the chest area.<sup>55</sup> However, this has not resulted in the use of the TASER, even when directed at the chest, to be deemed “deadly force.” It also does not mean that, given the totality of the dynamic circumstances under which Deputy Wang used the TASER, he violated the training standards.

It should also be noted that, even with the medical professionals who have cited a very few case studies where they believe TASERs induced cardiac arrhythmias and resulting in deaths, those subjects lost consciousness at the end of the TASER cycle(s), or immediately upon the start of the TASER cycle. In this case, Mr. Okobi did not lose consciousness for several minutes after the fourth TASER activation, and after a few more minutes of heavy physical exertion. Furthermore, the placement of the probe to the area lateral to Mr. Okobi’s right pectoral muscle, likely placed it far outside of the “dart-to-heart” distance that would incur a risk of

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<sup>51</sup> While the manufacturer identifies the voltage produced by the TASER as being 50,000, this is the voltage at the device when the current is arcing between the front contacts. Once the probes make a connection in a body, that voltage drops to approximately 800 to 1,400.

<sup>52</sup> Axon, TASER Training: In-House Instructor Course PowerPoint, Version 20.2.

<sup>53</sup> *Bryan v. MacPherson*, 630 F.3d 805, 810-11, (9<sup>th</sup> Cir. 2010).

<sup>54</sup> *Sandberg v. City of Torrance*, No. 10-55608, 2001 WL 5154229, at \*2, (9<sup>th</sup> Cir. Nov. 1, 2011).

<sup>55</sup> TASER, International, “Training Bulletin 15.0 Medical Research Update and Revised Warnings, Version 2.0, October 12, 2009.

causing Mr. Okobi to experience a cardiac arrhythmia.

The San Mateo County Coroner's Office identified "Cardiac arrest following physical exertion, physical restraint, and recent electro-muscular disruption" as the cause of death, with "cardiomyopathy" as a "contributing but not related to the immediate cause of death." This is consistent with research that places the NMI effects under the umbrella of exertional physiological-stress responses when compared to other non-deadly force options. One study concluded:

In general, the stress of receiving CED discharge(s) should be considered to be of a magnitude that is comparable to the stress of other components of subdual. All aspects of an altercation, (including verbal altercation, physical struggle or physical restraint) constitute stress that may heighten the risk of sudden death in individuals who have pre-existing cardiac or other significant disease.<sup>56</sup>

Another study concluded that the physiological stress induced by a five-second TASER discharge was less than or equal to that of running a 20-meter sprint.<sup>57</sup> This supports the concept that there is little or no difference between the physiological exertional effects of the physical exertion displayed by Mr. Okobi, the physical exertion during his resistance to being physically restrained, and the exertion effects of the TASER.

Regarding the coroner's observation of Mr. Okobi's cardiomyopathy, additional context might be helpful to the public. This is important, because 366,807 people in the United States died from sudden cardiac arrest in 2015.<sup>58</sup> Sudden cardiac arrest occurs in both older and younger athletes, frequently attributed to undiagnosed heart conditions, and that "vigorous exertion may act as a trigger of...sudden cardiac death in susceptible individuals."<sup>59</sup> And finally, those with mental illnesses, such as schizophrenia, tend to have significantly higher mortality

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<sup>56</sup> U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice *Study of Deaths following Electro Muscular Disruption*. Washington, DC, 2011, p. ix.

<sup>57</sup> Ho, Jeffrey D., Donald M. Dawes, Paul C. Nystrom, Donald P. Collins, Rebecca S. Nelson, Johanna C. Moore, and James R. Miner. "Markers of Acidosis and Stress in a Sprint versus a Conducted Electrical Weapon." *Forensic Science International* 233, no. 1-3 (2013): 84-89. doi:10.1016/j.forsciint.2013.08.022.

<sup>58</sup> Benjamin, Emelia J., Salim S. Virani, Clifton W. Callaway, Alanna M. Chamberlain, Alexander R. Chang, Susan Cheng, Stephanie E. Chiuve, Mary Cushman, Francesca N. Delling, Rajat Deo, Sarah D. De Ferranti, and Jane F. Ferguson. "Heart Disease and Stroke Statistics—2018 Update: A Report from the American Heart Association." *Circulation* 137, no. 12 (2018). doi:10.1161/cir.0000000000000558.

<sup>59</sup> Corrado, Domenico, Federico Migliore, Cristina Bassi, and Gaetano Thiene. "Exercise and the Risk of Sudden Cardiac Death." *Herz Kardiovaskuläre Erkrankungen* 31, no. 6 (2006): 553-58. Accessed January 29, 2019. doi:10.1007/s00059-006-2885-8.

rates from cardiovascular disease due to lifestyle and other factors.<sup>60,61</sup>

This information, in support of the coroner's findings, combined with the totality of the circumstances under which the deputies acted, indicates that there is currently no evidence to suggest that any of the deputies, either individually or collectively, took any actions that would, with reasonable foreseeability, cause the death of Mr. Okobi. All of their force responses constituted non-deadly, intermediate force, or less.

### **Crisis Intervention Team Training (CIT) and De-escalation**

The following involved personnel had attended CIT or training specific to de-escalation strategies:

- Deputy Wang: CIT and De-escalation during his previous tenure at the San Francisco Police Department;
- Deputy Lorenzatti: CIT and Tactical Communications;
- Deputy DeMartini: CIT and Tactical Communications;
- Deputy Watt: Tactical Communications; and
- Sergeant Weidner: CIT and Tactical Communications.

In order to successfully apply de-escalation methods, the circumstances must allow for the following three things to occur:

- (1) Establish contact, i.e., the person with which an officer is attempting to communicate with must be able to engage in a meaningful conversation with the officer;
- (2) Establish rapport; and
- (3) Use persuasion to get the other party to accept that it is in his or her best interest to cooperate with the officer.

It was very apparent that Mr. Okobi was either not willing or able to stop and listen to Deputy Wang and have a meaningful conversation about the issue of his crossing ECR against the traffic signals. Without meaningful communication, the other two steps, especially persuasion, are unlikely to be completed. It should be noted that Sgt. Weidner attempted to try to persuade Mr. Okobi to submit to being arrested, i.e., to roll over onto into a prone position in exchange for removing the TASER probes, during the 20-second period. It is also very important to remember that, just because an officer attempts to apply de-escalation approaches, they will not work every

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<sup>60</sup> Ringen, Petter Andreas, John A. Engh, Astrid B. Birkenaes, Ingrid Dieset, and Ole A. Andreassen. "Increased Mortality in Schizophrenia Due to Cardiovascular Disease – A Non-Systematic Review of Epidemiology, Possible Causes, and Interventions." *Frontiers in Psychiatry* 5 (2014). Accessed January 26, 2019. doi:10.3389/fpsyg.2014.00137.

<sup>61</sup> Mr. Okobi had a prior diagnosis of bi-polar disorder and schizophrenia and had one or more delusions that someone was trying to kill him (See Haggarty Report Supplement 28, p. 7).

time.

## **Accountability Measures**

In order to ensure impartiality and accountability, the San Mateo Police Chief's and Sheriff Association has implemented an Officer-Involved Critical Incident Protocol. Like other county-wide protocols, it pre-determines which law enforcement agencies take the lead in conducting such investigations, and what roles the involved agencies will play.

The San Mateo County protocol provides that the District Attorney's Office and the agency which has jurisdiction over the location of the incidents will have joint investigative responsibility. However, like other county-wide-protocol investigations I have reviewed, it is clear that the San Mateo County District Attorney's Office actually assumes the leading role and provides the primary investigation and documentation, with the other agencies playing support roles.

The involved SMCSO personnel all had operational mobile-audio video (MAV) equipment in their patrol vehicles, which provided a large portion of the data used in this analysis. Each deputy normally attaches the microphone for the MAV equipment in their vehicle to their uniforms, which allows for fairly remote audio recording capabilities, even when away from the immediate vicinities of their vehicles.

The only exceptions to this were that Deputy Watt's MAV microphone was missing from his patrol vehicle when he started his shift earlier that morning; Deputy DeMartini's MAV microphone was missing from the patrol vehicle he used that day, which was not his normal vehicle. While this did not result in an appreciable loss of information about the incident, the SMCSO should take steps to ensure such occurrences are minimized.

## **Organizational and System Factors**

Whenever unpopular and undesirable outcomes occur, especially in law enforcement, much of the scrutiny is focused upon the individuals.<sup>62</sup> Therefore, it is vital that law enforcement agencies constantly look for contemporary training methods intended to meet certain objectives.

In this case, the objective was to apprehend and restrain Mr. Okobi as soon as possible using objectively reasonable force under the totality of the circumstances. This is because, the longer such incidents last, the chances of serious injuries occurring – to both officers and subjects – increase. And while Mr. Okobi's size, strength, and agility would pose a tremendous challenge to restrain regardless of approach, the multiple attempts at chasing Mr. Okobi's hands and feet were clearly ineffective. Instead, the contemporary approaches train officers to control entire limbs or sections of bodies, using most of the officers' bodies.

Another reason is, certain people are more likely to die from the effects of the sudden and prolonged exertion due to their resistance. This is especially true with those who are at higher

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<sup>62</sup> Schwartz, Joanna C. "Systems Failures in Policing." *Suffolk University Law Review* 51, no. 4 (May 2018): 535-63.

risk of sudden cardiac death or in states of excited delirium. Therefore, the objective is to apprehend, restrain, and turn such persons over to EMS personnel as soon as possible.

Therefore, the SMCSO might want to explore more in-depth scenario-based training with their TASERS. Just as importantly, the SMCSO should also explore adopting multiple-officer takedown and control methods, such as P.E.P., created by Lieutenant John Domingo of the Huntington Beach, California Police Department.<sup>63,64</sup>

The efforts to apprehend and restrain Mr. Okobi would have presented tremendous challenges to virtually any group of law enforcement officers. However, despite the tragic outcome of this incident, it appears the deputies and Sgt. Weidner did the best they could with the tools, training, and experience they possessed at the time.

Respectfully Submitted,

JEFFREY A. MARTIN



Date: \_\_\_\_\_

San Carlos, California

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<sup>63</sup> "Adding P.E.P. to Your Use of Force Training." Police and Security News. January 18, 2017. Accessed January 31, 2019. <https://policeandsecuritynews.com/2017/01/18/adding-p-e-p-to-your-use-of-force-training/>.

<sup>64</sup> The P.E.P. method is also featured in the 2017, California Commission on POST training video, "Use of Force."