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**FW: Request for Investigation by BPD // By: Victim | As to: Lance Goree // Re: 2/4/22 Battery Incident at YMCA (Berkeley) // BPD Report No. 22-5533**

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Michael Slater <mslater@theslaterlawfirmapc.com>

Fri, Feb 10, 2023 at 12:26 PM

To: "Wilson, Jennifer" <JWilson@berkeleyca.gov>

Cc: "Maldonado, Carlos" <CMaldonado@cityofberkeley.info>, "Futch, Kajahna" <KFutch@cityofberkeley.info>, Victim <victim@gmail.com>

Sgt. Wilson,

It remains unclear to me if your office has reviewed all /complete videos of the subject incident. Though I see that you provided me with a link (via Axon) for upload of video evidence. Thank you for the opportunity to do so. I have uploaded those materials for your office's review.

I believe the evidence and governing law support a charge against Mr. Goree for felony assault / battery, misdemeanor assault / battery, aggravated assault / battery (PC 245), or any other criminal charges the BPD determines are appropriate. While we do not disagree that Mr. Victim was the **first** to make physical contact with Mr. Goree, Mr. Goree does not have a self-defense right to use whatever force he wanted to against Mr. Victim in response. For Mr. Goree to have taken Mr. Victim to the ground and/or restrained his movement would have been one thing. That Mr. Goree took Mr. Victim to the ground and used carotid and airway chokeholds—**force that even the BPD would not have been permitted to employ against Mr. Victim**, and for nearly fifteen minutes—is something else entirely and exceeds permissible self defense.

The right to use force against another has long been limited by the condition that the force be no more than “ ‘that which reasonably appears necessary, in view of all the circumstances of the case, to prevent the impending injury.’ ” Vaughn v. Jonas (1948) 31 Cal.2d 586, 600; Boyer v. Waples (1962) 206 Cal.App.2d 725, 727. Mr. Goree's use of force was not reasonably necessary to prevent impending injury. Mr. Goree could have employed different means of restraining Mr. Victim, including arm restraints and other body-control methods, and not including the potentially lethal neck restraints Mr. Goree employed. Mr. Goree was much larger than Mr. Victim. Mr. Victim is much smaller than Mr. Goree and had not weapons on him. Once on the grounds, Mr. Victim was non-violent; his movements were to try to create enough space between his neck and Mr. Goree's stronghold so that he could breathe and stay alive. Mr. Goree was also completely surrounded by other YMCA employees—none of whom were acting with much urgency as the physical nature of the altercation abated just as quickly as it started.

One of the ways a person can commit aggravated assault is by using “force likely to produce great bodily injury.” (Pc,

§ 245, subd. (a)(4).) Great bodily injury is that “which is significant or substantial, not insignificant, trivial or moderate.” People v. Armstrong (1992) 8 Cal.App.4th 1060, 1066. **The use of hands or fists alone may constitute force likely to produce great bodily injury.** People v. Aguilar (1997) 16 Cal.4th 1023, 1028.

California law is replete with examples of cases in which people were criminally charged / convicted for employing a carotid chokehold without sufficient justification, including criminal charges for aggravated assault in violation of Penal Code section 245, subdivision (a)(4). See, e.g., People v. Gomes, 2023 WL 1193032, at \*17 (Cal. Ct. 2023), review filed (Jan. 31, 2023); and People v. Becerra, 2020 WL 6110985, at \*2 (Cal. Ct. App. Oct. 16, 2020).

In light of the foregoing, I am writing to request your office conduct an investigation into Mr. Goree's conduct in light of

all the facts, evidence and governing law. Thank you very much, and please advise at your earliest opportunity.

Respectfully,

Michael Slater, Esq.



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