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February 4, 2016

Chief Gregory Suhr
Office of the Chief of Police
San Francisco Police Department
850 Bryant Street, Room 525
San Francisco, CA 94103

Re: In Custody Death, Contact Date November 15, 2012 (Report No. 120927520)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of an incident that occurred on November 15, 2012, during which Brandon Carrillo engaged in a struggle with multiple members of the San Francisco Police Department who were trying to detain him. We have concluded that (1) the officers involved did not cause Carrillo's death, and (2) criminal charges are not warranted in relation to force that the officers did use. Our review did not examine such issues as compliance with the policies and procedures of the law enforcement agency, ways to improve training or tactics, or any issues related to civil liability; accordingly, our review should not be interpreted as expressing an opinion on these matters.

FACTUAL SUMMARY

According to the investigation, on November 15, 2012 at 11:23 pm, Officer Travis Pitcher (Star # 1906) was on patrol in full uniform in a marked patrol car when he noticed a van parked at 42nd Avenue and Fulton. Brandon Carrillo was sitting in the front seat with the door open and his feet on the sidewalk. His girlfriend, Rebecca Gallaway, was standing on the sidewalk talking to Carrillo. Thinking they were camping illegally, Officer Pitcher approached. Unbeknownst to Officer Pitcher, Carrillo and Gallaway had ingested a drug that they believed was something like MDMA or an experimental version of ecstasy. We now believe that Carrillo and Gallaway had ingested bath salts.

Officer Pitcher noticed that Carrillo and Gallaway had a "deer in the headlights look" and dilated pupils. They started backing away from him. Officer Pitcher asked if they were on drugs. After initially not answering the question, Gallaway responded that she thought someone "got us." Officer Pitcher believed this meant that the couple had been given a tainted dose of a narcotic. When Carrillo continued to back away, Officer Pitcher ordered him to stay put. Carrillo said something to the effect of, "I don't like this," and then he ran. Officer Pitcher radioed that he was in a foot pursuit and began running after Carrillo. Officer Pitcher suspected that Carrillo had ingested some type of illegal, tainted narcotic, and needed medical attention.

Officer Pitcher ran behind Carrillo for several blocks down Fulton Street. Both Carrillo and Officer Pitcher were running at full sprint speed. Carrillo was barefoot. At one point, Carrillo

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stopped running, and Officer Pitcher was able to catch up. Carrillo was not being violent. Trying to calm Carrillo, Officer Pitcher approached and said, "I just want to help you." When Officer Pitcher tried to put Carrillo's hands behind his back, Carrillo flailed his arms and ran. Officer Pitcher continued to run after Carrillo, following him down Fulton Street.

Officers Declan Flannery (Star # 891) and John Stephens (Star # 2375) responded to the call from Officer Pitcher, who had reported that he was engaged in a foot pursuit. They saw Carrillo running from Officer Pitcher. Officers Flannery and Stephens were in uniform in a marked car with its sirens on. They pulled over in an area ahead of Carrillo, and Officer Flannery got out. Carrillo continued to run away from Officer Pitcher, and towards Officer Flannery and his patrol car. Officer Flannery yelled for Carrillo to stop. Carrillo kept running toward Officer Flannery, and then made a move to run around him. Officer Flannery tackled Carrillo to the ground. On the ground, Carrillo struggled with Officer Flannery. Officers Stephens and Pitcher attempted to help Flannery get control of Carrillo. While the three officers were struggling with Carrillo on the ground, Officers Darius Jones (Star # 931) and Ryan Mariano (Star # 2191) arrived. All five officers struggled to restrain Carrillo using a combination of holds and body weight.

During the struggle, Carrillo was yelling incoherently. Throughout the struggle, the officers were telling Carrillo to stop struggling. He kept trying to put his arms under his body. Despite the fact that he was much smaller than all but one of the officers, they had a very difficult time controlling him. At one point, Carrillo was actually able to stand up, despite having five officers trying to keep him on the ground. At different points, Officers Mariano and Jones both punched Carrillo hoping that the blows would distract Carrillo and give the officers an opportunity to control Carrillo's hands. Eventually, the five officers got Carrillo handcuffed. Carrillo continued kicking, so they hobbled his legs. Carrillo then stopped resisting, and the officers turned him on his side. He continued mumbling incoherently. The officers remember Carrillo saying, "I love you guys." The officers could see that Carrillo had abrasions and a laceration on his head. Officer Mariano called an ambulance because of these injuries as well as a concern that Carrillo was in an altered mental state.

A San Francisco Fire Department ambulance arrived with a paramedic, Jennifer Ishikawa, and an EMT, Thomas Ro. The ambulance appears to have arrived about six to seven minutes after it was called. By the time the ambulance arrived, other SFPD personnel had also arrived on the scene. Carrillo was disoriented, mumbling incoherently, and had dilated pupils. The SFPD personnel notified the medical responders that Carrillo had been combative. EMTs Ishikawa and Ro got a board and soft restraints and instructed the officers to remove Carrillo's restraints so that he could be tied to the board. As officers started to remove Carrillo's handcuffs and hobbles, he began to struggle again. It took the work of EMTs Ishikawa and Ro, as well as Officers Pitcher, Jones and Mariano, and Sergeants Chris Breen (Star # 463), Albert Lee (Star # 2171) and Steven Haskell (Star # 1236) to get Carrillo secured to the board. Essentially, they worked to secure his limbs to the restraints one-by-one until Carrillo was fully secured to the board. They controlled Carrillo by applying weight to his limbs, hips, and shoulders. Either right after Carrillo was attached to the board, or during the effort to get him restrained, Carrillo became calm.

As he was being transferred to the ambulance, several officers and the ambulance crew noticed that Carrillo's face was blue or purple in color. Carrillo was loaded into the ambulance and EMTs Ro and Ishikawa determined that Carrillo had stopped breathing. Officer Jones administered CPR. Carrillo's heart started beating again, and he was transported to St. Mary's Medical Center.

Gallaway was located a few hours later and taken to UCSF Medical Center for treatment. She told Emergency Room personnel that she and her boyfriend took "an experimental new drug which is similar to bath salts."

According to the National Institutes of Health, the term "bath salts" is commonly used to refer to drugs that contain one or more synthetic chemicals related to cathinone, a stimulant found in the khat plant. Synthetic cathinones are marketed as cheap substitutes for other stimulants such as methamphetamine and cocaine, and products sold as MDMA often contain synthetic cathinones instead. Synthetic cathinones can cause paranoia, hallucinations and panic attacks, among other symptoms. Intoxication from synthetic cathinones has been known to result in death.

Carrillo never regained consciousness. He died about two weeks later, on November 30, 2012. According to the discharge summary from St. Mary's Medical Center, the "chief complaint" was cardiac arrest caused by intoxication from designer drugs.

The Medical Examiner's report was finalized on October 8, 2014. The report concluded that Carrillo's death resulted from complications of acute drug intoxication, and that the manner of death was accidental. These conclusions were based, in part, on the clinical history presented, which included the information provided by Gallaway regarding the drugs she and Carrillo ingested, and the descriptions provided by the police regarding Carrillo's behavior. They were also based on the autopsy findings, including hyperthermia, rhabdomyolysis caused by acute kidney failure, sudden pulseless electrical activity, cardiac arrest and cerebral edema, which are all associated with death caused by acute drug intoxication. Other findings noted in the report included a neck injury and abrasions to Carrillo's extremities and forehead. The Medical Examiner concluded that the neck injury was caused by a physician trying to introduce a vein line, and the abrasions were caused by Carrillo's struggle with the police officers.

The toxicology analysis performed for the Medical Examiner's Office was essentially negative for narcotics that contributed to Carrillo's death. The analysis included liver and urine specimens taken during the autopsy on December 3, 2012. The toxicology report revealed only the presence of a medication that was probably administered at the hospital to relax Carrillo, and THC (marijuana). According to the Medical Examiner's Office, it would have been unlikely that any other narcotics Carrillo ingested would still be present in his system two weeks later, when the specimens were taken.

After receipt of the Medical Examiner's report, the District Attorney's Office learned that spinal fluid, plasma, and urine specimens for Carrillo were collected at St. Mary's, and a urine specimen for Gallaway was collected at UCSF, but that none of these specimens were accounted for in the Medical Examiner's report. The toxicology analysis of Gallaway's urine which had been completed by the Medical Examiner's Office was located, revealing that she had ingested bath salts, as suspected. However, Carrillo's samples had not been tested by the Medical Examiner's Office, and testing by St. Mary's on a urine sample taken from Carrillo the day he was admitted was limited to looking for certain types of drugs which did not include bath salts. Based on this information, the Medical Examiner agreed to reopen its case in April 2015 for additional toxicological testing. In September of 2015, we discussed the results of the new testing with the Medical Examiner's Office. Although the new results did not reveal the presence of bath salts in the specimens, they did not change the findings of the Medical Examiner as to cause and manner of Carrillo's death. According to the Medical Examiner's Officer, any evidence of bath salts present in the specimens would likely have decayed between the time Carrillo ingested the drug in 2012 and the time the specimens were analyzed in 2015.

In sum, according to the Medical Examiner, the officers involved did not cause Carrillo's death, and they did not conclusively cause any of his serious injuries.

ANALYSIS AND CONCLUSION

Under California law, a peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense. CALCRIM 2670; *People v. Johnson*, (1991) 231 Cal.App.3d 1, 9-13; *People v. Mayfield*, (1997) 14 Cal.4th 668, 777; *Munoz v. City of Union City*, 120 Cal.App.4th (2004) 1077, 1107. An officer who has probable cause to believe that a person is a danger to himself or others due to a mental health disorder may detain that person. Welfare & Institutions Code § 5150; *People v. Triplett* (1983) 144 Cal.App.3d 283.

In this case, we are unaware of any authority that establishes that the officers involved in this incident unambiguously used unreasonable force. Officer Pitcher had reasonable cause to detain Carrillo, to determine whether Carrillo was a danger to himself or others, and to obtain medical attention for him. He therefore was authorized to use reasonable force to detain Carrillo.

Moreover, under the "collective knowledge" doctrine, the other officers also were authorized to detain Carrillo because Officer Pitcher, who had specific and articulable facts supporting the detention, asked for assistance in making it. *People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1553-58 (It is "well settled" under California law that "officers can make arrests based on information and probable cause furnished by other officers," and the arresting officer need not know the "precise basis of his fellow officer's conclusion [that] probable cause existed at the time of arrest."); *United States v. Ramirez* (9th Cir. 2007) 473 F.3d 1026, 1037 (Where one officer knows facts constituting reasonable suspicion or probable cause and he communicates an appropriate order or request, another officer may conduct a warrantless stop, search, or arrest without violating the Fourth Amendment.).

When Carrillo fled, no weapons were used to bring him to the ground. Once Carrillo was brought to the ground, holds and body weight were used to restrain him. Neither of these techniques can be said to have been clearly excessive under the circumstances presented. See *People v. Johnson*, *supra*, 231 Cal.App.3d at pp. 9-12 (where officers attempted to make an investigatory stop but suspect refused to comply with directives and instead ran, officers were justified in chasing the suspect, tackling him, and engaging in a "five-minute wrestling match"); *Luchtel v. Hagemann* (9th Cir. 2010) 623 F.3d 975, 982 (where police officers had probable cause to believe that the suspect, who was much smaller than them, was on crack cocaine and could be danger to herself and others, no excessive force where four officers pinned her to the ground, struggled with her to handcuff her, and then held her to the ground until she could be removed from the scene on a stretcher with restraints). It is not excessive to use holds and restraints on an individual who poses a danger to himself due to a suspected mental health disorder or emotional disturbance, including one that may be drug induced. *Gregory v. County of Maui* (9th Cir. 2008) 523 F.3d 1103, 1106; *Gibson v. County of Washoe* (9th Cir. 2002) 290 F.3d 1175, 1198-99.

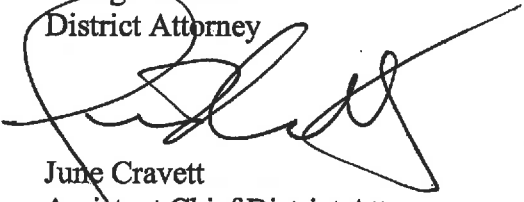
In addition to holds and the application of weight, two officers punched Carrillo during the struggle. However, the punches or strikes were used only after Carrillo continued successfully to struggle against multiple police officers. See *Blankenhorn v. City of Orange* (9th Cir. 2007) 485 F.3d 463, 477 ("Neither tackling nor punching a suspect to make an arrest necessarily constitutes excessive force."); *People v. Lopez* (1963) 222 Cal.App.2d 682, 685 ("Although the defendant was struck by the officer, such force was justified in view of defendant's attempt to resist arrest."). When less forceful attempts at restraint fail, "authorities must be allowed to graduate their

response to the demands of any particular situation.” *United States v. Montoya de Hernandez* (1985) 473 U.S. 531, 542.

The evidence indicates that the officers involved in this incident did not cause Carrillo’s death, nor were they clearly the cause of his other serious injuries. With regard to the reasonableness of the force used by the officers, we cannot say that the officers used force that was so obviously unreasonable that criminal conduct could be proven beyond a reasonable doubt. It is, therefore, our conclusion that a criminal prosecution is not warranted in this case.

Very truly yours,

~~George Gascón~~
District Attorney



June Cravett
Assistant Chief District Attorney

- cc: Lieutenant Toney Chaplin
- Officer Travis Pitcher
- Officer Declan Flannery
- Officer John Stevens
- Officer Darius Jones
- Officer Ryan Mariano
- Sergeant Chris Breen
- Sergeant Albert Lee
- Sergeant Steven Haskell