May 5, 2016

Chief Sean Whent
455 7th Street
Oakland, CA 94607

Dear Chief Whent:

Enclosed is the Alameda County District Attorney’s Office Critical Incident Report on Hernan Jaramillo, which occurred July 8, 2013.

This matter was initially reviewed by the Assistant District Attorney Paul Hora, Head of the Wiley Manuel Courthouse Branch on April 28, 2014. A more formalized review was conducted this past month by an assembled Alameda County District Attorney’s Office Critical Incident Team. This team reviewed all Oakland Police Department reports, audio and video recordings, and associated Coroner’s reports and concludes that the evidence does not justify criminal charges against the Oakland Police Officers involved.

As indicated in the report, no further action will be taken in this case.

A copy of the report will be available to the public no earlier than five working days after your Department’s review.

Very truly yours,

Nancy E. O’Malley
District Attorney

Enclosure
ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE

CRITICAL INCIDENT REPORT

OF

MR. HERNAN JARAMILLO

By: Amilcar Ford
   Deputy District Attorney

Approved By: Nancy E. O'Malley
             District Attorney

Dated: May 5, 2016
INVESTIGATION OF THE DEATH OF
HERNAN JARAMILLO

INTRODUCTION:

The Alameda County District Attorney’s Office assembled a Critical Incident Team to review the Oakland Police Department investigation of the in custody death of Hernan Jaramillo which occurred on July 8, 2013. The purpose of the review was to determine whether charges should be filed against any of the Oakland Police officers present during this incident. The assembled District Attorney Critical Incident Team included Chief Assistant District Attorney Kevin Dunleavy, Chief of Inspectors Robert Chenault, Assistant District Attorney David Stein, Deputy District Attorney Amilcar Ford, Lt. Inspector Dan Lee, and Inspector II Brian Medeiros.

The case was originally reviewed by Assistant District Attorney Paul Hora on April 28, 2014. ADA Hora then determined that no “conduct on the part of any involved Officer warrants the filing of criminal charges for any offense.”

INVESTIGATIVE STEPS:

The Critical Incident Team reviewed all Oakland Police Department reports under OPD RD 13-034570 regarding the death of Hernan Jaramillo (DOB: 9/27/62) and associated Coroner’s reports including the Autopsy Protocol.

The following police and civilian witnesses were identified:

**Involved Officers:**
- Officer Carlos Navarro #9074 (PDRD equipped)
- Officer Ira Anderson #8704
- Officer David Stout #9081
- Officer James Hammonds #8414 (PDRD equipped)
- Officer Chris Saunders #8254 (PDRD equipped)
- Sgt. Ross Tisdell #8039 (PDRD equipped)

**Civilians:**
- Ana Biocini
- Abel Medina
- Maria Medina

The following documents and evidence was reviewed:

1. 911 Audio Recording
2. PDRD of Officer Chris Saunders
3. PDRD of Officer James Hammonds
4. PDRD of Officer Chris Saunders
5. PDRD of Sgt. Ross Tisdell
6. PDRD of Officer Ryan Jensen*
7. PDRD of Officer Hector Chavez*
8. Autopsy Protocol 2013-02084 Conducted by Dr. Thomas Rogers
9. Coroner’s Bureau Investigative Narrative: Case Number 2013-02084
10. Coroner Investigative Report
11. Coroner’s Bureau Histological Examination Report
12. Central Valley Toxicology Report: CVT-13-8701
13. OPD Investigative Action Report 13-034570/INC 0061
14. OPD Officer Ryan Jensen’s Supplement
15. OPD Sgt. Diane Jim’s Supplement
16. OPD Sgt. Terrance West’s Supplement
17. OPD Officer Hector Chavez’s Supplement
18. OPD Officer Curtis Kingman’s Supplement
19. OPD Officer Luis Espinoza’s Supplement
20. OPD Statement Form of Abel Medina
21. OPD Statement Form of Ana Biocini
22. OPD Statement Form of Maria Medina
23. OPD Statement Form of Sabrina Seadrooks
24. OPD Statement Form of Donald Eskridge
25. OPD Statement Form of Janet Lee

* = Reviewed with the assistance of Insp. Eddie Bermudez who is fluent in Spanish.
26. OPD Statement Form of Lida Cook
27. OPD Statement Form of Barbara McElhaney
28. OPD Statement Form of Koy Saephan
29. OPD Crime Scene Security Log
30. ADA Paul Hora’s T1 Report
31. Oakland City Attorney’s Response to Plaintiffs’ Motion

FACTUAL SUMMARY

On July 8, 2013, at approximately 1:43 am, OPD received a 911 call out to 2365 E. 21st Street. The caller, Ana Biocini, was very afraid and stated that there were “people trying to kill us” and that there were “people inside my house killing my brother.” Ms. Biocini stays on the line with dispatch and at 1:49 a.m., describes “two voices” inside her residence and hearing her brother screaming. She also locks herself in her bedroom due to her fear. She later confirms this to responding officers and her distress is captured on PDRD. It should be noted that this information is being relayed to responding officers.

OPD Officer Carlos Navarro, call sign 3L19 for purposes of CAD/Purge review, arrives at 1:49 a.m. and is the first officer on scene. The residence is a duplex and this information was not communicated to dispatch. As a result, Officer Navarro has difficulty determining which of the units made the call. This is reflected at 1:53 a.m. of the radio purge. OPD Officer Ira Anderson, call sign 3L17, arrives at 1:53 a.m. per the radio purge. He contacts Officer Navarro and then makes his way to the east side of the building and contacts Ms. Biocini through her window. She again stated that there was an intruder in her house. At 1:55 a.m., Officer Anderson radios that Ms. Biocini is handing her keys through her bedroom window and giving officers permission to enter her residence. This is witnessed by the occupant of the second duplex unit, Maria Medina. Ms. Medina’s statement is reported by OPD Officer H. Chavez and captured on PDRD. Officer Chavez’ PDRD was reviewed and is accurately reflected in the police report.

Both Officer Navarro and Officer Anderson use the keys provided by Ms. Biocini to make entrance into the residence and announce their presence. After entering the residence, Ms. Biocini opens her bedroom door and still appears frightened and is crying. The Officers are then directed by Ms. Biocini to another door next to her bedroom. This is confirmed by both Officer Navarro and Officer Anderson during separate interviews. This is also confirmed on scene by Ms. Biocini in a statement taken by OPD Officer L. Espinoza at approximately 2:25 a.m. and captured on OPD Officer Jensen’s PDRD. Ms. Biocini’s statement was reviewed and is accurately reflected in the police report.
Officer Navarro states that he then knocked on the door and a male voice stated, “Give me a minute, let me clean up.” Ms. Biocini confirmed in her statement that the officers announced “Oakland Police” as they knocked. A male, later identified at Hernan Jaramillo, then opens the door slightly and peeked out. It is undisputed that Mr. Jaramillo had not been identified to this point. The officers order Mr. Jaramillo out of the room. Mr. Jaramillo does not comply immediately and for officer safety, both Officers report grabbing Mr. Jaramillo in order to remove him from the room. As they grab Mr. Jaramillo’s arm, he “tensed his body” and started to “pull away.”

Officer David Stout, call sign 3L21, arrives on scene at 1:58 a.m. and makes entry into the house to assist. As he enters the residence, he sees Ms. Biocini outside of her bedroom and Officer Anderson asks Mr. Jaramillo to exit the room he is in. As Mr. Jaramillo is escorted towards the front of the residence, Officer Navarro is on his left and Officer Anderson is on his right. Mr. Jaramillo is then handcuffed in order for the officers to determine what was going on. Ms. Biocini does not identify Mr. Jaramillo as her brother, despite stating that she observed the officers walking her brother out of the residence and believing him to be handcuffed. After being handcuffed in the residence and being escorted out of the residence, no additional force is used during this time and Mr. Jaramillo doesn’t fall or injure himself. He does resist being escorted by “leaning backwards” or “pushing his body weight backwards” making it more difficult for the officers to escort him out.

This is documented later in Officer Navarro’s PDRD which was activated after Mr. Jaramillo was outside the residence. It is clear that Mr. Jaramillo was directed to the back of a patrol vehicle and asked to “sit down for a second.” Mr. Jaramillo responds, “I can’t do that.” The Officers then inform Mr. Jaramillo that he is “not under arrest.” At approximately 00:25 seconds [For ease of reference, all 00:00 times refer to the TIMESTAMP when played using a computer program, NOT the PDRD timestamp], of the PDRD, Mr. Jaramillo is complaining that his hands hurt and an officer (appears to be Officer Anderson) explains that it’s “because your trying to force against us.”

Officer Navarro’s PDRD reflects that the officers are extremely polite in response. Officer Anderson can be heard stating, “Sir, have a seat inside the car.” At 00:30 of the PDRD, Officer Navarro then tells Mr. Jaramillo, “Take a seat. We’ll get all this straightened out.” Mr. Jaramillo asks, “Are you placing me under arrest?” Officer Navarro again tells Mr. Jaramillo “You’re not under arrest. We’re trying to find out what’s going on.”

At 00:55, an Officer can be heard saying that Ms. Biocini has identified Mr. Jaramillo as her brother. Per Witness Abel Medina’s statement, he informed the officers that Mr. Jaramillo is the brother of Ana Biocini.
At **01:05**, an Officer asks Mr. Jaramillo, “Why was she that worried?” Mr. Jaramillo responds, “Just because I hit myself in the head and then boom.” A few moments later, Mr. Jaramillo again states, “because I hit my head.”

At **01:40,** an Officer tells Mr. Jaramillo, “All we’re doing is trying to finish our investigation.” It should be noted that throughout this interaction, Mr. Jaramillo is repeatedly asked to sit in the back seat of the patrol vehicle and refuses to comply. No force is observed on the PDRD.

At **02:10** of the PDRD, both Officers can be heard telling Mr. Jaramillo that he can leave his feet out of the vehicle and “We’re not gonna close the door.” Mr. Jaramillo still does not comply. The Officers then inform Mr. Jaramillo that he can “even keep your feet out,” in a further attempt to calm him. Mr. Jaramillo refuses to comply.

At about **02:20,** Mr. Jaramillo states, “I just had a few drinks, that’s all. I’m not driving.” Officer Navarro responds “I understand you’re not driving.”

At this point, it appears that Officer Anderson suggests turning Mr. Jaramillo’s back to the patrol vehicle, presumably to assist in getting Mr. Jaramillo to sit down. The PDRD reflects Officer Navarro on Mr. Jaramillo’s right side in close proximity to the PDRD.

At **02:38,** Mr. Jaramillo’s right arm appears to come up in a backwards motion as he begins to resist and the PDRD turns off as it appears the two men come into contact. It should be noted that the PDRD timestamp shows 9:03 a.m. *(Oakland PDRDs are on Greenwich Mean Time [GMT] and are 7-8 hours ahead of Pacific Standard Time depending on Daylight Savings)*

*The next 2 minutes are described by various civilian and officer witnesses but are all consistent.*

**Ana Biocini (Decedent’s Sister):**

She describes her brother Mr. Jaramillo as refusing to get into the police car and “pushing away” from the officers. There were 3-4 officers trying to get her brother into the car but they were unable. Her brother is then “put” on the ground by the officers. In a second interview, Ms. Biocini describes seeing the officers “push” her brother to the ground. He then begins yelling for help and that he was having difficulty breathing. In her second interview, she describes her brother yelling that the officers were “trying to kill” him and stating that he couldn’t breathe. She recalled one officer placing a knee on her brother’s back during this time.

**Abel Medina (Decedent’s Neighbor):**

He describes Mr. Jaramillo as refusing to sit in the back of the patrol car by “standing up and was pushing the officers.” He believed that this went on for approximately 5 minutes. He states that “Hernan was resisting the officers and yelling for me to help him.” Mr. Medina then says the officers “wrestled” Mr. Jaramillo to the ground and “handcuffed him.” In his second interview, Mr. Medina confirms that he did not see the officers use any force on Mr. Jaramillo except trying
to get him into the patrol car. Mr. Medina then observed that Mr. Jaramillo only had a handcuff on his left wrist. Mr. Medina was approximately 6 feet away from Mr. Jaramillo and the officers at this time. Mr. Medina then told Mr. Jaramillo to listen to the officers. Mr. Medina believed he saw an officer place a knee on Mr. Jaramillo back and another Officer place a knee on his legs. Mr. Jaramillo continued to resist the officers who then wrestled him to the ground.

This is consistent with the statements of Officer Anderson and Officer Navarro that Mr. Jaramillo had slipped his right hand out of his handcuff.

Once on the ground, Mr. Jaramillo began yelling and said that he couldn’t breathe.

**Maria Medina (Decedent’s Neighbor):**

Ms. Medina describes seeing 4 officers trying to get Mr. Jaramillo into the patrol car. It did not appear that Mr. Jaramillo was handcuffed at this time. She describes Mr. Jaramillo as struggling with the officers and trying to “pull away” from the officers. The officers then “pushed” him down and held him on the ground. Mr. Jaramillo then began yelling out her husband Abel’s name and his sister Ana’s name, stating he could not breathe. In her second interview, Ms. Medina stated that Mr. Jaramillo was “screaming” and “pulling back” against the officers. She believed that Mr. Jaramillo may have struck his head on the patrol vehicle during this time. Mr. Jaramillo was then forced down onto the sidewalk. She believed an officer had a knee on Mr. Jaramillo’s back when he was being handcuffed on the ground.

The necessity to re-handcuff Mr. Jaramillo is consistent with the officer statements.

Mr. Jaramillo then began to scream that he was unable to breathe during this time. She further stated that he may have hit his head on the ground when he fell down.

**Officer Carlos Navarro:**

Officer Navarro describes attempting to lower Mr. Jaramillo’s head in an attempt to guide him into the patrol car. He describes Mr. Jaramillo was then falling back and slipped out of one handcuff. The Officers then stand Mr. Jaramillo up and place him against the patrol vehicle to secure him. Mr. Jaramillo is then able to pull away from the officers and Officer Navarro sees Mr. Jaramillo and Officer Anderson fall to the ground. The 3 officers then re-handcuff Mr. Jaramillo. Mr. Jaramillo continued to exert himself while on the ground despite repeatedly being told to calm down. Officer Navarro did not observe an officer kneeling on Mr. Jaramillo.

**Officer Ira Anderson:**

Officer Anderson stated that Mr. Jaramillo was resisting and refusing to sit in the back of the patrol vehicle. He stated that during this time, he stepped on one of Mr. Jaramillo’s bare feet to gain compliance and Mr. Jaramillo didn’t react at all. This is not observed by any other witness or on PDRD but is volunteered by Officer Anderson during his interview.
After realizing that Mr. Jaramillo has slipped one hand out of his handcuff, Officer Anderson utilizes a “leg sweep” to take him to the ground. This is also not described by any other witness. After Mr. Jaramillo is on the ground he continues to resist the officers. Officer Anderson stated “I got the legs” and crossed Mr. Jaramillo’s legs to prevent him from moving. Mr. Jaramillo is then re-handcuffed and repeatedly advised to “relax” and “calm down.” Mr. Jaramillo then begins to scream that he can’t breathe. Officer Anderson did not observe an officer place a knee on Mr. Jaramillo’s back.

**Officer David Stout:**

Officer Stout stated that as the other officers and Mr. Jaramillo approached the patrol vehicle, he heard the officers ask Mr. Jaramillo to sit in the patrol vehicle. At this point, he returned to Ms. Biocini and was advised that Mr. Jaramillo was her brother. He also made contact with Abel Medina who informed him that Mr. Jaramillo had a narcotics problem and was likely under the influence. Officer Stout then advised the other officers of Mr. Jaramillo’s relationship to Ms. Biocini. This is consistent with the statements of Ms. Biocini, Mr. Medina and Officers Navarro and Anderson. Before returning to Ms. Biocini, Officer Stout observed Mr. Jaramillo using his legs to resist being placed into the patrol car. He then noticed that Mr. Jaramillo had slipped out of one handcuff. He immediately attempted to assist in detaining Mr. Jaramillo. Officer Stout believed that during this time, the group of men may have collided with a parked truck and then fell to the ground. Officer Stout then placed his knee on Mr. Jaramillo’s left elbow. This can be seen in Officer Navarro’s PDRD. Officer Anderson was controlling Mr. Jaramillo’s legs and Officer Navarro gained control of Mr. Jaramillo’s right arm. He also recalled Officer Navarro’s hand being on the upper portion of Mr. Jaramillo’s back.

This is confirmed in Officer Navarro’s PDRD which comes back on at 9:05 per the PDRD date/time stamp.

**NOTE:**

Officer Anderson did not have a functional PDRD. He had attempted to correct the “malfunction” at the Police Administration Building (PAB) prior to departing but was unable.

Officer Stout did not have a PDRD. It had been turned in for repair earlier in the week and he had advised his supervisor via email.

Officer Chris Saunders arrived after Mr. Jaramillo was on the ground and this is reflected in his PDRD.

Officer J. Hammonds arrived after Mr. Jaramillo was on the ground and this is reflected in his PDRD.

Sgt. Tisdell arrived after Mr. Jaramillo was on the ground and this is reflected in his PDRD.
After Mr. Jaramillo is on the ground:

Officer Navarro’s PDRD comes back on at 09:05 a.m. and Mr. Jaramillo is on the ground. (This report will refer to this recording as Officer Navarro’s 2nd PDRD recording.)

Officer Navarro’s second PDRD recording reflects that the officers are extremely professional in speaking with Mr. Jaramillo and repeatedly ask Mr. Jaramillo to calm down. All the officers appear very calm and not out of breath. At no point in time do any of the Officers curse or appear to get angry. In fact, throughout the PDRDs, the Officers either refer to Mr. Jaramillo as “Sir” or “Hernan.” At one point in the PDRD, you can see Officer Navarro patting Mr. Jaramillo’s back and asking him to calm down. Mr. Jaramillo can be heard yelling “Latina, they’re killing me” repeatedly. He also states that he is “losing his air” and “can’t breathe.” Despite these complaints, Mr. Jaramillo is able to vehemently deny ingesting any narcotics when asked by Officers. The three officers in his immediate vicinity are Officer Navarro, Officer Anderson and Officer Stout.

Officer Chris Saunders’ PDRD reflects that Ms. Ana Biocini and Mr. Abel Medina are 10-15 feet from Mr. Jaramillo and appear calm as well. Ms. Biocini is noticeably concerned for her brother and can be heard speaking in Spanish to Mr. Jaramillo. This appears to be an attempt to calm him. Mr. Medina, who is fluent in English, continues to relay information to the officers about Mr. Jaramillo and at one point advised the officers to search Mr. Jaramillo’s room for narcotics.

At 01:00 of Officer Navarro’s 2nd PDRD recording, Mr. Jaramillo is asked “What are you under the influence of?”

At 01:15, Abel Medina is speaking calmly as he tells the officers Mr. Jaramillo first name is “Hernan.”

At 01:48, an officer is heard requesting a “Code 2 with straps” response. A “Code 2” is a request for an ambulance in a non-emergency situation. It should be noted that Mr. Jaramillo is communicative and responsive at this time.

At 02:05, Mr. Jaramillo is asked what narcotics he had taken and responds “Nada.” This coincides with Officer Saunders’ PDRD time stamp of CS 00:50. This is important because Officer Saunders’ PDRD reflects that at CS 00:29, Officer Saunders requests “Code 2 Medical” and states “5150.” (For clarification, Officer Saunders’ PDRD time stamp will be referred to as CS 00:00 and will be indented. There is approximately a 1:15 difference between the two times when referencing the computer playback times.)

At this point, the officers were detaining Mr. Jaramillo for his own safety given Ms. Biocini’s account of what happened in the house, Mr. Jaramillo’s physical presentation and resistance and finally, Mr. Jaramillo’s statements that he injured himself.
At CS 01:08, OPD Dispatch can be heard asking “Code 3?”

At CS 01:17, Officer Saunders states to OPD Dispatch “Code 2 with straps.”

At 02:29, On Officer can be heard stating in a calm voice, “Calm down bud. Just relax. Stop tensing up. We’re not killing you.” Mr. Jaramillo continues to yell “He’s killing me right now” repeatedly. The PDRD reflects that the officers are not exerting any force, breathing hard or excited during this time.

At 03:33, the following exchange takes place:

Officer: “Hernan?”

Mr. Jaramillo: “Yeah.

Officer: “Listen. The only reason you’re on the ground still is because you’re not calming down bud. If you start to relax, we’ll start to relax. It’s a give and take.”

At CS 02:40, Officer Saunders is obtaining a statement from Ana Biocini that is consistent with Ms. Biocini’s 911 call.

At 04:00, an Officer is heard telling Mr. Jaramillo to stay calm. It should be noted that Mr. Jaramillo is no longer yelling and appears to have calmed down.

At 04:25, an Officer informs Mr. Jaramillo that the paramedics have been called and again asks, “What kind of drugs did you use tonight.” Mr. Jaramillo does not respond but can be heard breathing on the PDRD. Ms. Biocini can be heard speaking to Mr. Jaramillo in the background. Around this time, Mr. Jaramillo can be heard apparently mumbling something.

At 05:50, an Officer can be heard asking Mr. Jaramillo “want to have a seat in the car while you wait?” The PDRD does not reflect an audible response from Mr. Jaramillo.

At CS 06:05, Officer Saunders’ PDRD pans to Mr. Jaramillo and the officers. The Officers appear calm and are standing or kneeling near Mr. Jaramillo.

At 07:15, Ms. Biocini is heard asking “when is the ambulance coming?”

At CS 06:05, Officer Saunders asks what the “ETA on the Code 2” is.

At 07:45, it appears on the PDRD that you can hear breathing noises coming from Mr. Jaramillo.

At CS 06:10, Officer Saunders again pans towards Mr. Jaramillo and the officers appear calm and no force is being used.
At 07:55, Mr. Medina can be heard telling the officers that “She (Ms. Biocini) didn’t even know it was him (Mr. Jaramillo).”

This interaction is reflected on Officer Saunders’ PDRD at CS 06:40.

At 08:10, the following exchange takes place:

Ms. Biocini:  Is he fine?
Officer:  Yeah, he’s fine.
Ms. Biocini:  Is he breathing?
Officer:  Yeah, he’s breathing.

At approximately CS 09:01 Officer Saunders appears to bend down and take Mr. Jaramillo’s pulse after asking if Mr. Jaramillo is breathing.

The ambulance arrives at 10:10 of the PDRD. The paramedics can be seen walking up to the scene and asking “What’s going on?” At 11:10, they ask the officers “He’s (Mr. Jaramillo) not going to lose it?” An Officer responds “No, I don’t think so.” It should be noted that no one on scene ever expresses a sense of urgency, including the paramedics. Ms. Biocini and Mr. Medina are in close proximity to Mr. Jaramillo and never exhibit panic or concern beyond Ms. Biocini’s questions stated above. The officers repeatedly ask Mr. Jaramillo to calm down and then he appears to do so. The paramedics don’t exhibit a sense of urgency until approximately 12:36 of the PDRD and someone states “Start Fire Code 3.” “Code 3” is the emergency response code.

At CS 10:27 an officer can be heard asking “is he breathing?” A second officer responds “I asked and they said yes.” An Officer then can be heard expressing concern saying, “I’m keeping my fingers crossed right now.”

At 14:50 of the PDRD, paramedics can be heard stating “Start Compressions.” Ms. Biocini is heard in the background stating that her brother was “screaming and throwing everything on the floor.”

Mr. Jaramillo is transported to ACH and pronounced dead by medical staff at 2:46 a.m.

**AUTOPSY FINDINGS:**

1. Pulmonary Congestion and Edema
2. Visceral Organ Congestion
3. Coronary Atherosclerosis
4. Blood Ethyl Alcohol 0.02 Grams %

11
5. Blood Cocaine 0.74 MG/L
6. Blood Benzoylecgonine 1.8 MG/L
7. Blood Egonine Methyl Ester – Present
8. Blood Cocacethylene – Present

CAUSE OF DEATH:

MULTIPLE DRUG INTOXICATION ASSOCIATED WITH PHYSICAL EXERTION

RELEVANT STATUTORY PROVISIONS

• Penal Code Section 187 states that murder is the unlawful killing of a human being with malice aforethought;

• Penal Code Section 192 states that manslaughter is the unlawful killing of a human being without malice aforethought;

• Penal Code Section 197 states that homicide is justifiable and not unlawful when committed by a person when resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.

APPLICABLE JURY INSTRUCTIONS

• Cal Crim 505

Homicide is justifiable and not unlawful when committed by a person who:

1. Reasonably believed he or someone else was in imminent danger of being killed or suffering great bodily harm;

2. Reasonably believed that the immediate use of deadly force was necessary to defend against the danger; AND

3. Used no more force than was reasonably necessary to defend against the danger.

• Cal Crim 507

Homicide by a peace officer is justifiable and not unlawful when:

1. The officer had probable cause to believe that someone posed a threat of serious harm to himself or others;
2. Probable cause exists when the facts known by the officer would persuade someone of reasonable caution that someone is going to cause serious physical harm to another;

3. The People have the burden of proving beyond a reasonable doubt that the killing is not justified. If the People fail to meet this burden, the jury must find the officer not guilty.

- Cal Crim 240

An act causes injury/death if the injury/death is the direct, natural and probably consequence of the act and the death/injury would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.

CONCLUSION:

Based on the review of the reports and evidence discussed above, it is the conclusion of the Critical Incident Team that there was no criminal wrongdoing on the part of the officers present during the unfortunate death of Hernan Jaramillo. Of particular note is the viewing of the PDRDS which capture the demeanor and statements of the officers and civilian witnesses. They are consistent with the fact that the officers are trying to calm down Mr. Jaramillo while he is under stress. In addition, the demeanor of Ms. Biocini, the decedent’s sister, is reflective of the overall tone of this encounter. While she is concerned about her brother, her concern never rises to the level one might expect if she thought her brother was in danger. She repeatedly attempts to calm him. In addition, Mr. Medina also never expresses any concern for Mr. Jaramillo’s welfare.

The accounts of all the Officers and Witnesses during the approximate 2 minutes that Officer Navarro’s PDRD is deactivated are all consistent. After Mr. Jaramillo is on the ground, he can be heard yelling and screaming “they are killing me” and “I can’t breathe.” There can be no dispute that he makes these statements repeatedly. However, everyone else in the area is completely calm. The Officers repeatedly ask Mr. Jaramillo to calm down.

Mr. Jaramillo also never complains about being assaulted by the Officers. He is clearly responsive and aware of his surroundings. Mr. Jaramillo’s repeated yelling appears inconsistent with someone who is having respiratory complications. In fact, his ability to respond to the questions posed by the officers is in direct contrast to the claim that he can’t breathe. As noted above, the PDRDs reflect that Mr. Jaramillo stopped yelling on at least 2 occasions and responded appropriately when questioned by the Officers.
At approximately 04:00 minutes of Officer Navarro’s PDRD, Mr. Jaramillo appears to calm down and can be heard breathing. Neither Ms. Biocini nor Mr. Medina complains about Mr. Jaramillo being assaulted or the Officers using excessive force.

It might be argued that the Officers could have requested a “Code 3” response but nothing in the PDRDs suggest that was necessary. Obviously, hindsight being 20/20, it could have been done. However, the paramedics who respond also don’t seem rushed or respond as if this is an emergency. To all parties present, it appeared that Mr. Jaramillo had calmed down.

A review of the relevant PDRD time, and reviewing the timestamps noted above, it appears that Mr. Jaramillo can be heard breathing at approximately 09:13 GMT. The paramedics arrive at approximately 09:16 GMT.

The Autopsy is also consistent with the PDRDs and the description of witnesses. All of the involved Officers and Civilian witnesses report that Mr. Jaramillo was never struck by an officer in any way. Mr. Jaramillo did not suffer any blunt force trauma, broken bones, or internal organ damage consistent with “excessive force.” The statements of Ms. Biocini and Mr. Medina regarding Mr. Jaramillo’s drug abuse combined with his exertion of force, even after being handcuffed, is consistent with the Cause of Death: Multiple Drug Intoxication associated with Physical Exertion.

The review of Mr. Jaramillo’s death was done in light of all the evidence and in consideration of the laws regarding homicide, causation and the doctrine of natural and probable consequences. After careful consideration, this appears to be an extremely unfortunate incident and the loss of Mr. Jaramillo’s life, while tragic, is not criminal.

By: Amilcar Ford
Deputy District Attorney

Approved By: Nancy E. O’Malley
District Attorney

Dated: May 5, 2016