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COUNTY OF SAN MATEO

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February 28, 2019

Sheriff Carlos Bolanos
San Mateo County Sheriff's Office
400 County Center, 3rd Floor
Redwood City, CA 94063

Re: Death of Chinedu Okobi

Dear Sheriff Bolanos:

The San Mateo County District Attorney's Office has concluded the investigation and review of the facts surrounding the death of Mr. Chinedu Okobi on October 3, 2018, which occurred after a physical struggle with five deputies from the San Mateo County Sheriff's Office on the 1400 block of El Camino Real in Millbrae. The five deputies involved in the struggle were Deputies Joshua Wang, Alyssa Lorenzatti, John DeMartini, Bryan Watt and Sergeant David Weidner. It is my conclusion that the use of force by the deputies under the circumstances encountered by them on that date was lawful pursuant to the provisions of California Penal Code Section 196.

The investigation conducted by the District Attorney's Office included:

- interviews of the involved deputies as well as numerous civilian witnesses;
- review of audio and video recordings by law enforcement and civilian witnesses, including dispatch recordings, in-car camera video and cellphone video;
- review of the San Mateo County Coroner's report;
- review of the report of use of force expert Mr. Jeffrey Martin.

Factual Summary

On October 3, 2018, at approximately 1:00 p.m., Deputy Joshua Wang was on patrol in a marked Sheriff's vehicle.¹ He was travelling southbound on El Camino Real approaching Millwood Drive in Millbrae when he observed Mr. Chinedu Okobi walking across El Camino Real while the light was green for southbound traffic and while not in a cross walk (a violation of Vehicle Code section 21955). Deputy Wang activated his emergency lighting equipment, made a U-turn and pulled alongside Mr. Okobi as he moved onto the east sidewalk. Deputy Wang asked him to "hold up a

¹ At the time of the incident, Deputy Wang had been employed with the Sheriff's Office for eight months; prior to that he had been a San Francisco Police Officer.

minute.” Mr. Okobi changed his direction of travel, walking behind the patrol vehicle toward the west sidewalk, north in the southbound lanes of traffic, and then to the west sidewalk. He then moved east across El Camino Real before walking southbound in the northbound left turn lane of El Camino Real. Mr. Okobi then turned west, stepped into the number one northbound lane and looked at Deputy Wang, who was still in his patrol vehicle. Mr. Okobi continued north and then west across El Camino Real, before running northbound in the southbound lane, causing motorists to maneuver to avoid hitting him. Mr. Okobi returned to the east side of El Camino Real, and walked northbound in the southbound left turn lane. As Mr. Okobi continued north, Deputy Wang, increasingly concerned for the safety of Mr. Okobi and nearby motorists, used his radio to summon assistance and spoke to Mr. Okobi again, saying “Let’s go over here and talk on the sidewalk.” Mr. Okobi continued to ignore the deputy. As Deputy Wang began a U-turn southbound on El Camino Real, he observed Deputy Lorenzatti arrive and approach Mr. Okobi on foot as he walked southbound, now on the west sidewalk. Deputy Lorenzatti was soon joined by Deputy DeMartini. Deputy Wang ran to Mr. Okobi and grabbed his right hand in an attempt at a control hold, but was immediately aware that Mr. Okobi was much stronger and that he would be unable to control him by himself. Deputy Wang believed handcuffing Mr. Okobi was necessary given his unpredictable behavior, large stature and efforts to evade the deputies. The Coroner’s Report described Mr. Okobi as 6’2” tall and weighing 333 pounds.

Deputy Wang backed away to create distance and drew his Taser. Wang was “getting a little scared” given the disparity in size and strength and believed that physical control would not be a viable option in arresting Mr. Okobi. Deputy Wang warned Mr. Okobi that he would be Tased if he did not comply. When Mr. Okobi, continuing to ignore instructions, moved toward Deputy Wang, Deputy Wang deployed the Taser, which he believed was effective as he observed Mr. Okobi tense up and fall. While other deputies tried to detain Mr. Okobi, Deputy Wang observed him kicking at the other deputies and continuing to struggle. He attempted a second activation of the Taser but did not believe this had any effect on Mr. Okobi. Deputy Wang was unsure if the probes were still attached. He activated his Taser a third time because Mr. Okobi continued to resist and appeared “agitated, speaking incoherently, excited” and refused to comply with orders. As he observed Mr. Okobi pull away from Deputy Wang, Deputy Wang believed he activated his Taser a fourth time, but determined that the Taser appeared “totally ineffective.” Deputy Wang recalled activating the Taser one more time and heard a clicking sound, which indicated that the Taser was not delivering a charge.²

At this point, Deputy Wang began to wonder how they were going to be able to detain Mr. Okobi given his size and strength. Mr. Okobi “never gave a window of opportunity for CIT training or dialogue...never acknowledged who we were or that he was open to trying to work this out verbally.” Deputy Wang then discarded his Taser and expanded his collapsible baton as the struggle with Mr. Okobi moved eastbound across El Camino Real. Deputy Wang attempted to strike Mr. Okobi on the lower leg with the baton but was unable. He used the baton because the use of the Taser had been ineffective, Mr. Okobi’s level of resistance was escalating and Deputy Wang felt that he needed to transition to another level of force. Deputy Wang then felt Mr. Okobi grab him and pull him to the ground, at which point he felt a “hot stinging pain to the left side” of

² As will be discussed below, Deputy Wang activated the Taser a total of seven times. The first three activations were for five seconds each, the second delivered a one second charge and the remaining three did not deliver a charge.

his face. Although, Deputy Wang was unsure how he had been struck, the video evidence demonstrated Mr. Okobi punching Deputy Wang in the face, resulting in a seven centimeter laceration requiring five sutures to the left side of his face. Deputy Wang was also diagnosed at the hospital with a lateral cervical strain and a right wrist sprain. Deputy Wang then felt Mr. Okobi pulling on his duty belt as Deputy Wang tried to stand up and defend himself. Deputy Wang tried to punch Mr. Okobi but did not remember ever feeling anything come into contact with his fist. Deputy Wang then tried to spray Mr. Okobi with pepper spray but believed he missed when he heard the other deputies scream in pain.

Deputy Alyssa Lorenzatti³ responded from the station to Deputy Wang's request for urgent assistance. Stopping her patrol vehicle northbound in the southbound lanes, she quickly approached Mr. Okobi who was walking with two large bags in his hands. She asked him to stop and put the bags down, but Mr. Okobi responded that he had not done anything as he continued walking toward her. The look in his eyes told her "he wasn't quite all there," possibly under the influence of a drug, as he left her the impression that he would run over her if she did not get out of his way. She sidestepped Mr. Okobi and attempted to grab his left arm to detain him but was unsuccessful as he moved past her. She tried a second time but he flung his arm in the air and away from her. She then attempted a leg sweep which also proved unsuccessful, as Mr. Okobi waved his arms wildly in the air and swung his fists. Deputy Lorenzatti was afraid for her safety due to Mr. Okobi's large stature and felt that someone was "really going to get hurt." After Deputy Wang Tased Mr. Okobi, she tried to grab his arm to roll him onto his stomach but was unable to do so. She observed Mr. Okobi get back up, fall again after being Tased, and then get up again and run away. She observed Deputy Wang try to use his baton but was not sure how many times he swung it or if he struck Mr. Okobi. Eventually, another deputy tackled Mr. Okobi. Deputy Lorenzatti got on top of Mr. Okobi as he continued to fight and kick, all the while continuing to instruct him to stop resisting. Deputy Lorenzatti never used her baton because Mr. Okobi was too strong and would likely have taken it away from her. She recalled punching at the lower half of his body but saw that the blows were ineffective. During the struggle, she was hit in the face with pepper spray, which temporarily blinded her. Deputy Lorenzatti suffered minor scrapes on her wrist and forearm during the struggle.

Sergeant David Weidner⁴ responded to Deputy Wang's call for assistance and approached Mr. Okobi as other deputies were contacting him. He ran up to assist in detaining Mr. Okobi after he was Tased by Deputy Wang and had fallen to the ground. He believed from Mr. Okobi's response that he was probably under the influence of something as the Taser appeared to have little effect; he said Mr. Okobi pulled away from him "like I wasn't even there." He saw Mr. Okobi fall after Deputy Wang's second activation of the Taser but Mr. Okobi was still "way too strong" for the deputies to stop him. At that point, he saw that one of the Taser wires had broken and knew that further activations would not be effective. As the struggle continued eastbound across El Camino Real, he observed Deputy Wang attempt to strike Mr. Okobi with the baton, and Mr. Okobi lower his center of gravity and "basically linebacker tackle" Deputy Wang. He then observed Mr. Okobi use both hands to grab toward Deputy Wang's legs and put his shoulder into Deputy Wang's waist,

³ At the time of the incident, Deputy Lorenzatti had two years of experience as a deputy sheriff preceded by three years as a CHP officer.

⁴ Sgt. Weidner had 16 years of experience as a deputy sheriff at the time of this incident, with the most recent two as a sergeant. He is a certified instructor for the Sheriff's Office for firearms, Tasers and OC spray.

as he grasped the top edge of Deputy Wang's holster and the exposed portion of his firearm. He saw Mr. Okobi go to the ground again but was not sure what had caused this. He instructed the other deputies to get on top of Mr. Okobi so as to gain control of him. One of the deputies deployed pepper spray, which got into his eyes and also struck Deputies Lorenzatti and Watt in the face. Sergeant Weidner was able to get Mr. Okobi's arm out from under him and someone was able to place a handcuff on it. Because of Mr. Okobi's large stature, two sets of handcuffs were linked so that he could be handcuffed without hurting his arms or shoulders. As soon as Mr. Okobi was cuffed, Sergeant Weidner immediately became concerned with the risk of positional asphyxia as they had been on top of Mr. Okobi; he directed the deputies to roll him on his side and ultimately had them move him to a seated position. Sgt. Weidner checked Mr. Okobi for a pulse and described him as initially being not responsive but then began actively looking around as Sgt. Weidner instructed the nearby firefighters, who had arrived and were waiting nearby, to render assistance.

Deputy Brian Watt⁵ arrived at the scene in his patrol vehicle, observed several deputies around Mr. Okobi, who at that point had been Tased and was on the ground. Mr. Okobi was not complying with commands and was becoming increasingly agitated. Deputy Watt warned him that he would be Tased again if he did not comply and tried unsuccessfully to grab his hand, but Mr. Okobi kept pulling away. He observed Mr. Okobi fall after the second activation of the Taser but within seconds he got back up. Deputy Watt expanded his baton but did not strike Mr. Okobi. The struggle continued eastbound across El Camino Real, and Deputy Watt observed Mr. Okobi grab Deputy Wang around the waist area and later punch at Wang's face, but he was not certain whether the punches connected. Deputy Watt said Deputy DeMartini tackled Mr. Okobi and saw him flailing on the ground as deputies tried to handcuff him. Mr. Okobi turned nearly onto his back and was trying to get up when a deputy deployed pepper spray, which struck Deputy Watt in the eyes, diminishing his ability to further assist in handcuffing Mr. Okobi.

Deputy John DeMartini⁶ arrived at the scene in response to the call for assistance and approached Mr. Okobi along with Deputy Lorenzatti. Mr. Okobi dropped the bags he was carrying and pulled away when Lorenzatti tried to grab him. Deputy DeMartini grabbed onto Mr. Okobi's wrist but ended up holding Mr. Okobi's sweater as he pulled away from Deputy DeMartini and out of his sweater. A second attempt to grab Mr. Okobi was also unsuccessful, but this was followed by Deputy Wang's use of the Taser, which brought Mr. Okobi to the ground. Mr. Okobi attempted to remove the Taser probes as he kicked his legs out at Deputy DeMartini and the other deputies. Deputy DeMartini noted that the Taser was apparently ineffective as Mr. Okobi got back on his feet and moved east. Mr. Okobi fell after Deputy Wang's second activation of the Taser but got back up and continued moving away from the deputies. Deputy DeMartini believed Mr. Okobi weighed over 300 pounds, and observing his eyes, he became concerned Mr. Okobi was suffering from mental illness or was under the influence. Concerned that Mr. Okobi's size and strength would allow him to take Deputy Wang's baton away, DeMartini tackled Mr. Okobi, causing the three of them to fall to the ground. DeMartini's attempt to control Mr. Okobi's legs was unsuccessful, as Mr. Okobi continued to kick. After the pepper spray was deployed, Deputy DeMartini was able to get one of Mr. Okobi's arms behind his back and handcuffed him with two sets of cuffs. Once secured, he and other deputies moved Mr. Okobi onto his back and then into an upright seated position.

⁵ Deputy Watt had 18 years of experience as a deputy sheriff at the time of this incident.

⁶ Deputy DeMartini had 22 years of experience as a deputy sheriff at the time of this incident.

Emergency personnel arrived at the scene within minutes and initially staged at a nearby intersection until cleared to approach. Fire Captain Thomas Donnelly of Engine 37 was one of the first emergency responders to assist Mr. Okobi. He first observed Mr. Okobi in a seated, upright position with his back supported by the legs of a deputy sheriff. He assigned a paramedic to attend to Mr. Okobi and others to assist the deputies who had been exposed to pepper spray or injured.

Firefighter-paramedic David Novelli of Engine 37 assessed Mr. Okobi, who was sitting with his legs in front of him and leaning back against the legs of two deputies. He was joined by Paramedic Michael Paulin from the Central County Fire Department and American Medical Response (AMR) Emergency Medical Technician Forrest Uhland. When he first saw Mr. Okobi, Uhland noted that Mr. Okobi was moving. Novelli noted that Mr. Okobi's face was down, and he did not appear to respond, so Novelli checked for a carotid pulse. As he felt the pulse, he noted that Mr. Okobi shook his head back and forth twice. As the paramedics prepared to move Mr. Okobi to the ambulance, they noted a change in Mr. Okobi's appearance and could no longer detect a pulse. They immediately initiated life-saving measures (CPR). Mr. Okobi had gone into full cardiac arrest. Life saving measures were continued, including placing Mr. Okobi on a monitor, providing ventilation and administering intravenously several doses of epinephrine.

American Medical Response Emergency Medical Technicians Suzanne Holman and Ferdinand Retanubun assisted in the efforts to resuscitate Mr. Okobi and accompanied him in the ambulance; life saving measures were provided to Mr. Okobi throughout the entire drive to Mills Peninsula Hospital, including additional doses of epinephrine. Additional efforts to revive Mr. Okobi were made at the hospital but Mr. Okobi was pronounced deceased by Dr. Bryant at 2:17 p.m.

Firefighter-paramedic Mark Mazza of Engine 37 rendered first aid to Deputy Wang, who was dazed and had several lacerations with swelling to the left side of his face.

Civilian Witnesses

A number of witnesses observed portions of this event. Mr. Robert Garrison was standing in the Tri Counties Bank located at 1551 El Camino Real. He observed the deputies' interaction with Mr. Okobi, whom he described as looking "really crazy" and "was just going around like he was going to fight somebody." He said it appeared that Mr. Okobi was running away from the officers and had removed his sweater as if "he was getting ready to fight or flee." As the struggle continued, he observed Mr. Okobi swing at one of the deputies, knocking off that deputy's glasses. He observed the deputies Tase Mr. Okobi which caused him to fall to the ground. Mr. Garrison moved his position to gain a better view and observed Mr. Okobi appear to rip out the probes, get back up and run from the deputies. Mr. Garrison saw a deputy strike Mr. Okobi once with a baton but it appeared to Garrison that Mr. Okobi did not feel the blow. Mr. Garrison used his cellphone to capture six video clips of portions of the struggle. He described a portion that he did not video-record in which Mr. Okobi dragged a deputy to the ground and was "resisting and assaulting the officer." He observed Okobi punch the "Asian" officer in the face and then saw the group of deputies take Mr. Okobi to the ground and subdue him. Before leaving the area, Mr. Garrison noted that Mr. Okobi was conscious, handcuffed and in a seated position.

Ms. Gia Ferrer was located at a dental office at 1490 El Camino Real. She observed what she believed to be six deputies attempt to contact Mr. Okobi, who was resisting arrest and wandering in and out of traffic. She noted several vehicles having to stop as the struggle occurred and saw one deputy strike Mr. Okobi once with his baton. This had no apparent effect on Mr. Okobi. It was apparent to her that the deputies were having a hard time trying to detain Mr. Okobi. She noted hearing the deputies yell “stop” approximately twelve times and could hear Mr. Okobi saying “no” repeatedly throughout the incident.

Mr. Dennis Barboza observed portions of this incident from his place of business, 1486 El Camino Real. He described Mr. Okobi as a “big guy” who was walking toward two smaller deputies as if he was going to move the two deputies out of his way. He observed Mr. Okobi being Tased and heard the deputies telling him several times to get on his stomach. He observed Mr. Okobi continue to resist, get up and move across the center median toward his business. Mr. Okobi’s expression led Mr. Barboza to believe he was either “high” or mentally impaired. Mr. Barboza observed the group of deputies trying to subdue Mr. Okobi and one deputy spraying mace. He observed that one deputy had been struck and injured, suffering a cut near his eye.

Mr. Kirankumar Patel was standing in front of the Days Inn at 1550 El Camino Real when he observed a deputy trying to detain Mr. Okobi, who was crossing El Camino Real. It appeared that the deputy was trying to stop Mr. Okobi from entering the roadway and that the deputy alone was unable to handle Mr. Okobi, who appeared to him as in a mood to fight as he waved his hands. He recalled hearing the deputies repeatedly tell Mr. Okobi to stop and Mr. Okobi repeatedly saying “no.”

Ms. Nicole Basurto was driving northbound on El Camino Real approaching Capuchino Drive when she observed five to six deputies approach Mr. Okobi. She described Mr. Okobi as appearing “a little scared” and she knew he “wasn’t totally there.” The deputies were trying to calm him down and it appeared that Mr. Okobi did not want to be touched. She heard the deputies order Mr. Okobi to stop and to get on his stomach. She believed he might be on drugs. As the struggle continued, the group was approaching her car. Fearing that Mr. Okobi might try to get in, she made a left turn onto Capuchino Drive. From her rearview mirror, she observed a deputy strike Mr. Okobi with a baton and Mr. Okobi swing back at the deputy. She described Mr. Okobi as being “aggressive and violent and attacking one of the officers.” She observed a deputy hitting Mr. Okobi three or four times with a fist when he was down.

Traffic Concerns on El Camino Real

Due to citizen complaints stemming from numerous pedestrian fatalities in recent years, the City of Millbrae, Caltrans and the Sheriff’s Office have worked to improve pedestrian safety through better engineering, signage and focused enforcement. In the weeks preceding this incident, Captain Paul Kunkel, Commander of the Millbrae Police Bureau, instructed deputies to make pedestrian safety on the El Camino Real corridor a primary focus of attention. Captain Kunkel cited the multiple special traffic enforcement details and his expectation that deputies under his command conduct increased traffic enforcement as two of the efforts being made to improve traffic safety in Millbrae. Additionally, Caltrans has installed High Intensity Activated Crosswalks at many of the crosswalks in Millbrae. Our research revealed that in the period from 2012 to the present, the 1.5

mile stretch of El Camino Real in Millbrae was the scene of 48 pedestrian accidents, of which 11 stemmed from jaywalking by pedestrians. An additional 28 accidents listed a primary collision factor related to drivers failing to yield to pedestrians in lawful crossing areas. 14 of the 48 total incidents occurred within 2000 feet of where Mr. Okobi was first observed.

Video Evidence

The patrol vehicles of the responding deputies were equipped with forward-facing video cameras. A review of that footage confirmed Deputy Wang's account of Mr. Okobi walking eastbound across El Camino Real, not within a crosswalk, and while the traffic signal for southbound traffic was green. Deputy Wang asked Mr. Okobi to "hold up a minute" as he reached the western sidewalk. The video captures Mr. Okobi moving south in the left turn lane for northbound traffic, as he looked toward Wang's patrol vehicle and continued toward the east sidewalk. Mr. Okobi is also seen moving northbound on El Camino Real, crossing southbound lanes of traffic and causing several motorists to stop to avoid colliding with him.

The video evidence shows the initial contact between Deputy Lorenzatti and Mr. Okobi. It captures Mr. Okobi walking past Lorenzatti as she reached to grab his hand. Instructions to stop resisting and warnings that he would be Tased can be heard. The video captures Mr. Okobi's efforts to escape the grasp of the deputies, as he pulls out of his sweater which is being held by Deputy DeMartini. Mr. Okobi is seen moving quickly away from the deputies, then moving toward Deputy Wang and swiping his arm in the direction of Deputy Wang's Taser, which is pointed at him. Deputy Wang is seen deploying his Taser. The probes make contact with Mr. Okobi's upper right chest area and the back of his right wrist, and Mr. Okobi falls to the pavement. Mr. Okobi can be seen turning onto his back despite clearly audible instructions to turn onto his stomach. As deputies surround him, Mr. Okobi breaks free of Deputy Lorenzatti's hold and kicks at Sgt. Weidner and Deputy DeMartini. Deputy Wang can be heard explaining to Mr. Okobi that he will be Tased if he does not roll over. The video captures Mr. Okobi kicking at Deputy Wang, followed by a third deployment of the Taser by Wang. Deputy Wang can be heard advising dispatch of the second and third deployments.

The video then shows Mr. Okobi getting back on his feet and moving away from the deputies. Mr. Okobi can be seen falling again, possibly as the result of a fourth activation of the Taser. Deputy Watt expands his baton but does not swing it as Mr. Okobi attempts to get up but falls again. As Deputy Wang is heard asking for medical personnel to respond, the video captures Mr. Okobi standing up and moving away eastbound across El Camino Real. The request for emergency medical response occurs after the fourth deployment, and is repeated by Sgt. Weidner two minutes later. The Taser can be heard clicking in a manner indicating it was not properly connected. As the struggle continues, Mr. Okobi can be seen punching Deputy Wang in the face with his right fist. The deputies are seen handcuffing Mr. Okobi and moving him to a seated position. Paramedics assess and provide first aid to Mr. Okobi within eight minutes of the fourth activation of the Taser. Mr. Okobi appears to go into cardiac arrest approximately 13 minutes after the fourth activation, and life saving measures are initiated.

Audio of the incident confirms efforts by the deputies to defuse the situation and to reassure Mr. Okobi. The tone of voice of the deputies is measured and the instructions provided are clear. The

deputies do not use inappropriate language. Sgt. Weidner assures Mr. Okobi that they will remove the probes if he turns over. Sgt. Weidner tries to calm Mr. Okobi by saying “okay, okay, okay” when Mr. Okobi says something to the effect of “spread the word of God.” When finally subdued, Sgt. Weidner immediately expresses concern for Mr. Okobi’s well-being, advising the deputies to watch for positional asphyxia and to watch his breathing. The deputies check for a pulse and medical assistance by paramedics is provided within minutes of Mr. Okobi being subdued.

Taser Evidence

The Tasers used by the deputies maintain event logs that can be downloaded to determine use. The Tasers assigned to each of the involved deputies were examined. The only Taser used was that assigned to Deputy Wang. Download records indicate the device was activated seven times, but only delivered a completed five-second charge on three occasions. The first three activations were each five seconds in duration and separated by a pause of nine seconds. The fourth activation occurred 28 seconds after the end of the third, and lasted five seconds. The next three activations occurred after pauses of seven, five and six seconds, respectively. However, a review of the pulse records associated with each activation established that only the first three activations delivered electricity sufficient to cause neuromuscular incapacitation. This indicates that the two probes were in contact with Mr. Okobi at the time of these three initial activations. The pulse logs for the remaining four activations established that activation number four was effective for one second, while the next three activations delivered no electric current.

CIT Training and Bias Training

Each of the involved deputies had undergone substantial training in handling crisis situations, including among other trainings:

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|-------------------|--|---|
| Deputy Wang | Critical Incidents for Patrol Threat Assessment/De-escalation Strategies Crisis Intervention Training Bias Based Policing Training Electronic Weapons Training | 3/2/2014 - 2 hrs 4/22/2017 – 10 hrs 9/28/2017 – 40 hrs 3/23/2018 – 2 hrs 7/13/2018 – 6 hrs |
| Deputy Lorenzatti | Critical Incidents for Patrol Crisis Intervention Training Arrest and Control Tactics Arrest and Control Tactics Electronic Weapons Training Crisis Intervention Training | 5/10/2013 – 2 hrs 4/24/2014 – 8 hrs 10/22/2015 – 4 hrs 6/1/2017 – 4 hrs 10/19/2017 – 4 hrs 11/16/2017 – 40 hrs |
| Deputy De Martini | Art of Verbal Control Training Use of Force and Driving Simulator Cultural Diversity Training Racial Profiling Training Electronic Weapons Training Tactical Communication Training Racial Profiling Update Training | 4/17/2001 – 8 hrs 7/23/2002 – 8 hrs 8/20/2002 – 4 hrs 1/30/2003 – 5 hrs 7/14/2008 – 4 hrs 1/20/2010 – 2 hrs 1/20/2010 – 2 hrs |

| | | |
|--------------|---|--|
| | Arrest and Control Tactics Tactical Communication Training Arrest and Control Tactics Tactical Communication Training Arrest and Control Tactics Tactical Communication Training Arrest and Control Tactics Bias Based Policing Training Tactical Communication Training Crisis Intervention Training | 8/10/2010 – 8 hrs 10/26/2010 – 2 hrs 9/16/2014 – 8 hrs 12/15/2014 – 2 hrs 5/25/2016 – 4 hrs 12/23/2016 – 2 hrs 3/31/2017 – 4 hrs 3/31/2017 – 2hrs 2/23/2018 – 2 hrs 4/12/2018 – 38 hrs |
| Deputy Watt | Racial Profiling Training Electronic Weapons Training Crisis Intervention Training Crisis Intervention Training Tactical Communication Training Racial Profile Update Training Electronic Weapon Training Tactical Communication Training Arrest and Control Tactics Use of Force and Driving Simulator Tactical Communication Training Arrest and Control Tactics Bias Based Policing Tactical Communication Training Arrest and Control Tactics Tactical Communication Training Electronic Weapons Training | 1/30/2003 – 5 hrs 7/14/2008 – 4 hrs 11/12/2008 – 8 hrs 10/1/2009 – 38 hrs 12/16/2009 – 2 hrs 12/16/2009 – 2 hrs 12/13/2011 – 2 hrs 12/27/2012 – 2 hrs 9/20/2012 – 8 hrs 12/4/2013 – 8 hrs 1/10/2014 – 2 hrs 5/27/2014 – 4 hrs 4/24/2015 – 2 hrs 8/23/2015 – 2 hrs 4/18/2016 – 4 hrs 3/18/2017 – 4 hrs 10/20/2017 – 4 hrs |
| Sgt. Weidner | Cultural Diversity Training Racial Profiling Training Crisis Intervention Training Arrest Control Tactics Crisis Intervention Training Tactical Communication Training Racial Profiling Update Training Arrest Control Tactics Tactical Communication Training Force Options Simulator Tactical Communication Training Less Lethal Weapons Instructor Training Arrest Control Tactics Less Lethal Weapons Instructor Training Tactical Communication Training Use of Force and Driving Simulator | 7/15/2002 – 8 hrs 2/7/2003 – 5 hrs 11/1/2007 – 38 hrs 11/15/2007 – 8 hrs 10/23/2008 – 8 hrs 1/20/2010 – 2 hrs 1/20/2010 – 2 hrs 10/20/2010 – 4 hrs 2/21/2012 – 2 hrs 11/18/2013 – 4 hrs 12/15/2013 – 2 hrs 1/28/2014 – 16 hrs 2/24/2017 – 8 hrs 3/17/2017 – 24 hrs 11/7/2017 – 2 hrs 3/14/2018 – 8 hrs |

However, in order for de-escalation techniques to be effective, the opportunity for meaningful two-way communication must exist. Despite efforts to communicate with Mr. Okobi, it was apparent

to the involved deputies that nothing in their training would allow them to overcome Mr. Okobi's unwillingness, or inability, to enter into a meaningful conversation with them. This conclusion is shared by the use of force expert, Mr. Jeffrey Martin, following his review of the reports and video recordings of the incident.

Autopsy

Dr. Thomas Rogers performed the autopsy of Mr. Okobi. Dr. Rogers noted that Mr. Okobi suffered from cardiovascular disease and had an enlarged heart. He had abrasions on his right hand and left elbow, and petechiae in his eyes, but did not appear to have any other external or internal injuries consistent with trauma. He had internal bruising to his wrists consistent with the application of handcuffs. Mr. Okobi's trachea, neck and airway did not show any of the typical signs of injury that appear when a carotid restraint has been applied. Rogers determined the cause of death to be "cardiac arrest following physical exertion, physical restraint, and recent electro-muscular disruption." He further found cardiomyopathy to be a significant condition contributing to but not related to the immediate cause of death. The toxicology report indicated no controlled substances, alcohol or prescription medicines in his system at the time of his death.

Use of Force and Human Factors Analysis

In the interest of conducting a thorough analysis of this incident, we engaged the services of an expert in the use of force by police. Mr. Jeffrey Martin is a retired California peace officer with over 30 years of law enforcement experience. He has extensive, long-term experience in a wide variety of topics relating to the use of force by police⁷, the escalation of force and more particularly dealing with "critical incidents" and with individuals suffering from mental illness. He is a POST-certified instructor, and has either written about or provided instruction in a number of topics relating to: human factors in use of force; defensive tactics and use of force; and the use of the non-lethal weapons including the Taser⁸. Additionally, he has significant experience and expertise in crisis-intervention and in dealing with the mentally ill. His experience includes instructing on the prevention, as well as the investigation, of in-custody deaths⁹.

Mr. Martin performed a thorough review of the entire investigation into the death of Mr. Okobi, including a review of all the Taser logs and all of the videos. He compiled a step-by-step reconstruction of the actions of Mr. Okobi and the responding deputies. He analyzed the incident in four phases and made the following findings and conclusions:

- Stage One: The initial attempts to detain Mr. Okobi. Mr. Martin noted that a trained and reasonable peace officer would be aware of the importance of traffic enforcement to reduce the number of collisions and thereby save lives. Deputy Wang observed several Vehicle Code violations in the minutes he spent trying to detain him. Mr. Okobi's refusal to stop

⁷ Mr. Martin holds instructor-level certifications in multiple defensive tactics /arrest and control programs and served as a defensive tactics instructor at the South Bay Regional academy.

⁸ Mr. Martin served as the lead instructor and instructor trainer for the Taser program at the San Jose Police Department and Basic Academy, and held Master Instructor certifications from Taser International.

⁹ Mr. Martin was an instructor on In-Custody Death Prevention at the Institute for The Prevention of In-Custody Deaths and he designed and co-delivered a 16-hour class on "In-Custody Death Investigations."

for Deputy Wang who was driving a fully marked patrol vehicle provided probable cause to arrest Mr. Okobi for violation of Penal Code section 148(a). Consequently, Mr. Martin concluded that Deputy Wang's attempt to detain Mr. Okobi was consistent with that of a trained and reasonable officer facing similar circumstances.

- Stage Two: The initial efforts to physically arrest Mr. Okobi outside the Tri Counties Bank. Mr. Martin provided a detailed analysis of the approximately 1 minute 40 seconds in which the deputies used control holds, de-escalation dialogue and the Taser in an attempt to handcuff Mr. Okobi. He noted that prior to the first Taser activation, Mr. Okobi lunged toward Deputy Wang, when a clear route of escape was available, as well as the repeated kicks and movements of Mr. Okobi's body which thwarted the deputies' efforts to place him under arrest. Mr. Martin concluded that the deputies used force responses consistent with those of a trained and reasonable officer facing the same circumstances. As to Deputy Wang's activation of the Taser, Martin noted that Mr. Okobi's ability to defeat the initial low-level force efforts of the deputies, combined with the fact that Mr. Okobi charged in Deputy Wang's direction after being warned, would cause a trained and reasonable officer to believe that he needed to use the Taser to defend himself and to overcome Mr. Okobi's resistance. Mr. Martin reached the same conclusion as to the later activations, noting that Mr. Okobi continued to struggle, including thrust kicking his leg at Deputy DeMartini, attempting to remove the probes, continuing to ignore commands and warnings, and returning to his feet. Mr. Okobi had clearly defeated and/or overpowered the deputies' collective and individual efforts to use low- and intermediate-level force options. He further noted that there appeared nothing to indicate that Mr. Okobi was unable to comply if he chose to do so.
- Stage Three: The final efforts to subdue and restrain Mr. Okobi. Mr. Martin noted that at the time Deputy Wang used his baton and later his OC spray, Mr. Okobi had been resisting actively and assaultively for over 1 minute 40 seconds, including striking Deputy Wang in the face. This would cause a trained and reasonable officer to believe that the attempted leg strike and use of OC spray would be objectively reasonable. Similarly, Deputy Lorenzatti's use of her body weight and punch to his lower body area, which apparently had no effect, were objectively reasonable non-deadly force options. Mr. Martin further opined that Deputy DeMartini's take-down and use of his body weight were objectively reasonable efforts to overcome the continuing resistance of Mr. Okobi.
- Stage Four: The post-arrest medical care of Mr. Okobi. Mr. Martin noted that 20 seconds after Mr. Okobi was handcuffed, Sgt. Weidner moved him to a seated position, sought an emergency medical response and cautioned the deputies to exercise care and watch for positional asphyxia. He noted that medical assistance had actually been requested by the deputies early in the encounter and prior to Mr. Okobi becoming medically distressed. These actions were consistent with those of trained and reasonable peace officers.

Mr. Martin summarized recent scholarly and legal analyses of the use of the Taser. He noted federal court opinions identifying the Taser as an "intermediate" and "non-deadly force" option. He further discussed the connection between Taser use and cardiac arrhythmias, noting that published studies of Taser-related deaths involved individuals who lost consciousness immediately

or at the end of the Taser cycle, and not situations like the present one, in which the subject lost consciousness minutes later and after additional heavy physical exertion. He cited a study which grouped Taser use with other aspects of an altercation, including verbal, physical struggle and restraint, which induce stress that may heighten the cardiac risks in those with significant pre-existing conditions. Mr. Martin opined from a review of these studies that a five second activation is roughly equivalent to the stress associated with running a 20-meter sprint. He noted that individuals with cardiomyopathy, as noted in the autopsy of Mr. Okobi, are at increased risk of sudden death after vigorous exertion.

In sum, Mr. Martin concluded “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.”¹⁰

Law relating to Use of Force

Well-established California law allows a peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense to use reasonable force to effect the arrest. “A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or overcome resistance.” California Penal Code section 835a. A person who in the exercise of reasonable care should have knowledge that he is being arrested by a peace officer has the duty “to refrain from using force or any weapon to resist such arrest.” California Penal Code section 834a.

In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court held “that all claims that law enforcement officers have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other “seizure” of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a “substantive due process” approach.” *Id.* at 395. The Court noted that the long-recognized “right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. [Citation.]” *Id.* at 396. Reviewing courts consider the totality of the circumstances facing the officers, including “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Ibid.*

The court made clear that the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: “Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,” [citation] violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation. *Id.* at 396-7. An objective standard is applied: “the question

¹⁰ Report of Mr. Jeffrey Martin, page 53.

is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Ibid.*

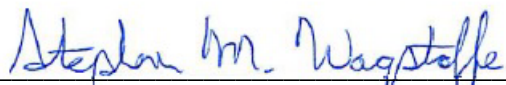
Conclusion

In conclusion, it bears noting that Deputy Wang was acting lawfully and with proper motivation to enhance the safety of pedestrians and motorists on El Camino Real when he became concerned at seeing Mr. Okobi cross against the red light and while not in a crosswalk, in violation of Vehicle Code section 21955. Mr. Okobi's actions in evading the officer and repeatedly walking into a busy roadway only served to heighten the concern of Deputy Wang and the other responding deputies. As Mr. Martin noted, restraining a resistive individual of Mr. Okobi's size and strength "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."¹¹ They did not employ deadly force, could not have foreseen that their use of non-lethal force would lead to Mr. Okobi's death, and mindful of the potential risks, they immediately sought to provide Mr. Okobi with medical attention even before he was fully restrained. In short, applying the legal standards set forth above and despite the tragic outcome, the conduct of the deputies, collectively and individually, was objectively reasonable and, therefore, lawful.

It bears noting that the role of the District Attorney is not to evaluate the efficacy of departmental tactics or training for effecting arrests, or to consider issues of civil liability. Such analyses are conducted by other professional bodies or governmental agencies with the goal of identifying areas for improvement in future similar encounters; they take advantage of the benefit of hindsight or of information not known to the involved peace officers, such as particularized information about the subject's physical or mental health. The role of the District Attorney in evaluating the use of force by officers is to judge the conduct and actions from the perspective of a reasonable officer on the scene at the time of the incident with the information available in a rapidly evolving high stress encounter. Consequently, having found that the involved deputies acted lawfully here, we have concluded our investigation and will take no further action.

As is the practice of the District Attorney's Office, our complete investigative report, other than materials which are legally protected and not subject to disclosure, will be made available to the public after you have received this letter. Such protected material includes personal identifying information of all witnesses as well as any criminal history information. Additionally, at the request of the attorney for the Okobi family, we will not immediately release the complete autopsy report. If you have any questions regarding our investigation or our conclusions, please do not hesitate to call us.

Very truly yours,


STEPHEN M. WAGSTAFFE, DISTRICT ATTORNEY

¹¹ Report of Mr. Jeffrey Martin, page 55.