

INTEROFFICE MEMORANDUM

DATE: August 17, 2015 **PHONE:** (760) 243-8600



FROM: Shannon Faherty
Deputy District Attorney
Desert Division - Victorville

TO: Mary Ashley
Assistant District Attorney

Clark Hansen III
Chief Deputy District Attorney

SUBJECT: OFFICER-INVOLVED DEATH

Involved Officers: Sergeant Robbie Ciolli
Detective William Badger
Detective Dana Weinberg
Deputy John Gice
Deputy Scott Hamilton
Deputy David Romero
San Bernardino County Sheriff Department
Victor Valley Station

Deceased: Steve Emery, DOB 11/17/1970

Incident: January 7, 2012
26315 Corona Dr., Helendale, California

Investigator: Sergeant Robert Warrick
San Bernardino County Sheriff Department
Homicide Division

Agency Report: DR071200116
H#2012-1

STAR: 2014-00-0055762

SUMMARY

Source of Information

The Summary provided in this matter is based on the investigation and submitted reports of the San Bernardino County Sheriff Department Homicide Team assigned to the matter. Those reports include statements of all involved law enforcement personnel including Sergeant Robbie Ciolli, Detective William Badger, Detective Dana Weinberg, Deputy John Gice, Deputy Scott Hamilton, Deputy David Romero, civilian eyewitnesses, belt recordings, photographs, and call logs.

January 7, 2012 Incident

On January 7, 2012, the Victor Valley Sheriff Station received a call at 2032 hours from Steve Emery from his residence at 2---- Corona Dr. in Helendale, California. Emery conveyed that he may have shot one of five juveniles that he believed were at his residence to kill him.

When Deputies arrived at Emery's residence, Dispatch called Emery and asked him to step out of the residence. Deputy Romero handcuffed¹ Emery and placed him in the rear of a patrol unit. Deputy Romero stayed with Emery while other deputies cleared the residence. Deputies found no shooting victims and no evidence of juveniles at the residence. They did discover that Emery had fired several rounds inside the home. The firearm was located in the residence and secured.

Deputy Romero contacted neighbors to ensure there were no shooting victims, then returned to the patrol unit to speak with Emery. Deputy Romero observed rapid eyelid tremors and rapid speech and questioned Emery about methamphetamine use. Emery denied using methamphetamine and claimed he had never been treated for psychological issues. Deputy Romero then contacted his partners to inform them of his concerns about Emery.

While Deputy Romero was in the residence with the other Deputies, Emery became agitated in the rear of the patrol unit. Deputy Romero exited the residence and observed that the windows to the unit were fogged. Deputy Romero opened the passenger rear door to check on Emery who was thrashing violently, complained that his handcuffs were too tight and repeatedly yelled that he was a member of the SWAT team. Deputy Romero observed that Emery was sweating profusely despite the mild temperature in the vehicle and had spat all over the interior. Deputy Romero advised Emery that if he did not calm down and comply he would be tazed². Sergeant Ciolli directed the Deputies to adjust Emery's handcuffs. Deputy Hamilton opened the driver's side rear door³ and Emery attempted to escape from the patrol unit.

Deputies Dana Weinberg and Romero assisted Deputy Hamilton in attempting to calm Emery. Emery was kicking with such force that he was able to kick Deputy Romero⁴ off of him. At

¹ Emery is 6' and approximately 275 lbs. Due to Emery's size, Deputy Romero used two sets of handcuffs linked together.

² Sergeant Ciolli incorrectly advised dispatch that Emery had been tazed. Deputy Romero's tazer was never deployed.

³ Deputy Hamilton also observed that Emery was sweating profusely and grunting.

⁴ Deputy Romero is 6' and 235 lbs.

Sergeant Ciolli's direction, Deputies added a third set of handcuffs and placed a hobble cord on Emery's feet. During this process, Deputy Weinberg heard Emery say he couldn't breathe. All Deputies then immediately stopped trying to restrain Emery. Deputy Weinberg rolled Emery over and saw that he appeared purple in color and was not breathing⁵. Sergeant Ciolli checked for a pulse on Emery but could not find one. Deputy Weinberg immediately removed the handcuffs and hobble. Deputy Weinberg and Deputy Hamilton administered CPR until the fire department arrived. San Bernardino County Fire personnel did CPR for approximately 15 minutes before American Medical Response paramedics arrived. Emery was transported by ambulance to Victor Valley Hospital where he was pronounced dead at 2247 hours, approximately one hour after he initially went into distress.

San Bernardino County Homicide Detectives took over the investigation. A Search Warrant of Emery's residence located a .357 revolver, 4 fired cartridge casings, medical paperwork, 3 bottles of prescription medication (Risperidone⁶ and Lisinopril⁷), and miscellaneous pills.

An autopsy was performed by Dr. Mark A. Fajardo of the Riverside County Sheriff-Coroner's Office.

Ancillary Information

Witness #1

An interview conducted with Witness #1, mother of the deceased, revealed Steve Emery had a history of mental health and controlled substance issues. She related that Steve Emery has been an alcoholic since the age of 14. In June 2011, Steve Emery told his mother he was suffering from insomnia and was seeing and hearing things. This resulted in his admission to a psychiatric ward at Citrus Valley Hospital for three to four days.

The day prior to his death, Steve Emery called his mother and told her he had taken a "psych pill" and advised her it may cause hallucinations. He further explained that he believed that neighbors were watching him and talking about him possibly doing "speed."⁸

Witness #2

At 4:30 am on January 7, Emery called his neighbor Witness #2 and told him there were "kids running around his house" and asked if Witness #2 was standing in front of his residence. Witness #2 advised that he was not at Emery's residence and had not been anytime recently. Witness #2 told Detective Badger that it sounded as if Emery "had either lost his mind or was on something."

Between 7:30 and 8:00pm that night, Witness #2 and his girlfriend Witness #3 saw Emery coming out of his house at the direction of Deputies. Witness #2 described Emery as calm while he was placed in the back of the patrol vehicle. A few minutes later Emery began screaming profanities from the patrol unit and gesturing to people who were not there. A Deputy [Hamilton]

⁵ Deputy Romero estimated it was 15 seconds between placement of the hobble and a realization that Emery was not breathing.

⁶ According to the National Institutes of Health, Risperidone is used to treat the symptoms of schizophrenia and mania.

⁷ According to the National Institutes of Health, Lisinopril is used to treat high blood pressure and heart failure.

⁸ The San Bernardino County Sheriff Department responded to Emery's residence on January 6th and found these claims to be unfounded.

went to the unit and attempted to calm Emery down but Emery began thrashing around inside the vehicle. Three additional Deputies had to assist in removing Emery from the vehicle. It took four deputies to hold Emery down and stop him from thrashing.

Witness #2 specifically stated that he did not believe the Deputies did anything excessive and that after Emery let out a gasp for air, they started “working on him” performing CPR for 30-40 minutes.

Witness #3

Witness #3 is Emery’s neighbor. She received a phone call from Emery at approximately 11:00 pm the night prior to his death. Emery told her that “there’s people running around” and breaking into a neighbor’s house.

Emery called her again around midnight, telling her that there were people “in the tree across the street.” At this point Witness #3 said she became very concerned about Emery. Emery told her he was “stressed and tired” but everything was ok.

During the January 7th incident, Witness #3 heard Emery “screaming and yelling and kicking” from the back of the patrol vehicle. She then saw a Deputy remove Emery from the vehicle and said it required several Deputies to hold him down because he was rolling and flinging his feet. At that point Emery’s grandmother came out of the residence and Witness #3 escorted her back in and she did not see the rest of the incident.

Autopsy Results

The autopsy of Steve Emery was performed on January 12, 2012 by Dr. Mark A. Fajardo M.D., a Forensic Pathologist for the Riverside County Sheriff-Coroner’s Office.

External abrasions to the knees and face were noted, but are consistent with the physical struggle described by law enforcement. Abrasions noted at the wrists were consistent with handcuffs.

Dr. Fajardo observed an enlarged heart.

All other physical observations were normal.

Very low levels of cannabinoids were detected in toxicology reports.

The **cause of death** is **hypertensive cardiovascular disease** with other noted significant conditions of schizophrenia, obesity, physical and emotional distress while being taken into custody.

Coroner Panel Review

On June 11, 2012 a Coroner Panel Review was conducted to discuss the manner of death of Steve Emery. The Board consisted of Deputy Director Edward E. Harter, Lead Supervising Deputy Coroner Investigator Robert Shaw, Deputy Medical Examiner and Forensic Pathologist Dr. Chanikarn Changsri, Supervising Deputy Coroner Investigator Tony Campisi and San Bernardino County Homicide Sergeant Don Lupear.

After a complete review of the case, the Board unanimously determined that the **manner of death** was **natural**.

APPLICABLE LEGAL STANDARDS

Penal Code section 834a: Duty to Refrain From Resisting Arrest

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

Penal Code section 835: Restraint Limited to Necessity

. . . . The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

Penal Code section 835a: Use of Reasonable Force to Effect Arrest

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of 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 to overcome resistance.

Penal Code section 836(a): Peace Officer's Authority to Arrest

A peace officer may arrest a person in obedience to a warrant, or . . . without a warrant, may arrest a person whenever any of the following circumstances occur: (1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence. (2) The person arrested has committed a felony, although not in the officer's presence. (3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

Police Power to Detain Individual:

An officer has the right to temporarily detain a person when the officer has a reasonable suspicion of that person's involvement in criminal activity. Reasonable suspicion demands some minimum level of objective justification, but considerably less than is required for probable cause to arrest. (*United States v. Sokolow* (1989) 490 U.S. 1, 7; *Terry v. Ohio* (1968) 392 U.S. 1, 22.)

One function of a temporary detention is to resolve any ambiguity in the situation to find out whether the activity was in fact legal or illegal. (*People v. Souza* (1994) 9 Cal.4th 224, 242.) A detention is intended " 'to permit a speedy, focused investigation to confirm or dispel [the] individualized suspicion of criminal activity' " justifying it. (*People v. Soun* (1995) 34 Cal.App.4th 1499, 1516.)

Probable Cause to Arrest

An arrest is reasonable under the Fourth Amendment when an officer has probable cause to believe the person arrested has committed a criminal offense. (*People v. Kraft* (2000) 23 Cal.4th 978, 1037; *People v. Moore* (1975) 51 Cal.App.3d 610, 616.) The probable cause standard applies to all offenses, from felonies to very minor criminal offenses punishable only by a fine.

(*Atwater v. City of Lago Vista* (2001) 532 U.S. 318, 323, 340, 353; *People v. McKay* (2002) 27 Cal.4th 601, 605, 618.)

Probable cause to arrest exists when the facts and circumstances within the officers' knowledge would lead an officer of ordinary care and prudence to entertain an honest and strong suspicion that the person arrested is guilty of a crime. (*Beck v. Ohio* (1964) 379 U.S. 89, 91; *People v. Kraft, supra*, 23 Cal.4th at p. 1037.)

Probable cause is a practical, nontechnical concept to be determined upon the facts and circumstances of each case. (*Maryland v. Pringle* (2003) 540 U.S. 366, 370-371.) It requires only the probability of criminal activity, not a prima facie showing. (*Illinois v. Gates* (1983) 462 U.S. 213, 235; *People v. Lewis* (1980) 109 Cal.App.3d 599, 608.)

CALCRIM 2670 (Excerpts): LAWFUL AND UNLAWFUL PERFORMANCE OF DUTY BY PEACE OFFICER

A peace officer is not lawfully performing his duties if he is unlawfully arresting or detaining someone or using unreasonable or excessive force when making or attempting to make an otherwise lawful arrest or detention.

A peace officer may legally detain someone if:

1. Specific facts known or apparent to the officer lead him to suspect that the person to be detained has been, is, or is about to be involved in activity relating to crime; AND
 2. A reasonable officer who knew the same facts would have the same suspicion.
- Any other detention is unlawful.

In deciding whether the detention was lawful, consider evidence of the officer's training and experience and all the circumstances known by the officer when he detained the person.

A peace officer may legally arrest someone if he has probable cause to make the arrest. Any other arrest is unlawful.

Probable cause exists when the facts known to the arresting officer at the time of the arrest would persuade someone of reasonable caution that the person to be arrested has committed a crime. In deciding whether the arrest was lawful, consider evidence of the officer's training and experience and all the circumstances known by the officer when he or she arrested the person.

Special rules control the use of force.

A peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense.

If a person knows, or reasonably should know, that a peace officer is arresting or detaining him, the person must not use force or any weapon to resist an officer's use of reasonable force. However, you may not find the defendant guilty of resisting arrest if the arrest was unlawful, even if the defendant knew or reasonably should have known that the officer was arresting him.

If a peace officer uses unreasonable or excessive force while arresting or attempting to arrest or detaining or attempting to detain a person, that person may lawfully use reasonable force to defend himself.

A person being arrested uses reasonable force when he: (1) uses that degree of force that he actually believes is reasonably necessary to protect himself from the officer's use of unreasonable or excessive force; and (2) uses no more force than a reasonable person in the same situation would believe is necessary for his protection.

ANALYSIS AND CONCLUSION

The actions of the Deputies involved in this incident were appropriate and justified. Upon arrival at the home, they lawfully detained Steve Emery while they cleared the house, searched for potential victims and checked on the safety of neighbors. After determining Emery had been negligently discharging a firearm within his residence, an arrest would have been permissible.

When Emery began thrashing about and yelling in the vehicle, Deputies immediately checked on him. Sergeant Ciolli ordered that a third pair of handcuffs be added to make Emery more comfortable. When Emery launched himself out of the vehicle and onto the ground, Deputies responded with appropriate action to attempt to calm and hobble him. Deputies did not strike, taze, or harm Emery in any way, using only their body weight to control him.

As soon as it was discovered that Emery had stopped breathing, he was immediately unhobbled and unhandcuffed and Deputies started CPR until fire personnel arrived to take over life-saving measures.

The autopsy findings coupled with the Coroner Panel's decision that the death was **natural**, lead to the only possible conclusion that **the actions of law enforcement were appropriate and that no criminal negligence attaches to the conduct of any officer.**

Respectfully Submitted,

MICHAEL A. RAMOS
District Attorney

SHANNON L. FAHERTY
Reviewing Deputy District Attorney

Date

CLARK HANSEN III
Chief Deputy District Attorney

Date

MARY ASHLEY
Assistant District Attorney

Date