

CONFIDENTIAL AND PRIVILEGED RECORD – DO NOT SHARE

JOSE LUIS LOPEZ (COMPLAINT #2020-5): INDEPENDENT INVESTIGATION REPORT

Investigative Officer (“IO”) Jerry Threet

8/10/2021

Subject Officers

- Officer Ferraro
- Officer Parker
- Officer Ricchiuto
- Officer Frevele

Potential Misconduct Investigated/Analyzed

- Unreasonable or excessive force (Officer-Involved Death) in Custody

Summary of Investigation

The Investigative Officer’s investigation is based on a review of the following records:

- RPD Incident Report Case# 2020- 00002984
- CAD print-out of call for service response, Event #200317141
- AVR Video footage from RPD Officer D. Campos
- AVR Video footage from RPD Officer L. Caston
- AVR Video footage from RPD Officer K. Ferraro
- AVR Video footage from RPD Officer D. Frevele
- AVR Video footage from RPD Officer D. Gault
- AVR Video footage from RPD Officer T. Parker
- AVR Video footage from RPD Officer S. Purcell
- AVR Video footage from RPD Officer M. Ricchiuto
- AVR Video footage from RPD Officer C. Santana
- AVR Video footage from RPD Sergeant V. Thomas
- AVR Video footage from RPD Sergeant C. Dean
- Digital Recording of LEII Investigative Interview of Witness [REDACTED]
- Digital Recording of LEII Investigative Interview of Witness [REDACTED]
- Digital Recording of LEII Investigative Interview of Officer C. Santana
- Digital Recording of LEII Investigative Interview of Officer K. Ferraro
- Digital Recording of LEII Investigative Interview of Officer T. Parker
- Digital Recording of LEII Investigative Interview of Officer S. Purcell
- Digital Recording of LEII Investigative Interview of Officer M. Ricchiuto
- Digital Recording of LEII Investigative Interview of Officer D. Frevele
- Digital Recording of LEII Investigative Interview of Officer C. Dean
- Digital Recording of LEII Investigative Interview of Officer C. Tagorda
- Digital Recording of LEII Investigative Interview of Officer L. Caston
- Digital Recording of LEII Investigative Interview of Officer D. Campos

- Written Summary of LEII Investigative Interview of Sergeant V. Thomas
- Digital Recording of LEII Investigative Interview of Richmond Fire Captain Woodards
- Digital Recording of LEII Investigative Interview of Richmond Firefighter Jessica Wraa
- Digital Recording of LEII Investigative Interview of Richmond Fire Engineer Daniel James
- Digital Recording of LEII Investigative Interview of American Medical Response (AMR) Paramedic Supervisor Teymour Ansari
- Digital Recording of LEII Investigative Interview of AMR Paramedic Rob Hirsch
- Digital Recording of Radio Dispatch traffic from March 19, 2020, related to the incident
- Text of Richmond Community Police Commission Ordinance

Procedural Summary of RCPRC Investigation

On March 19, 2020, Richmond Police Department (RPD) Office of Public Accountability Director Eddie Aubrey notified the Commission that there had been an officer involved death that day, which involved uses of force by RPD officers.

On February 5, 2021, the Investigative Officer contacted Aubrey and requested all records in the custody and control of RPD related to this incident.

On February 10, 2021, the Investigative Officer contacted Aubrey and requested to view the AVR footage related to this incident.

On February 18, 2021, the IO viewed the AVR video related to this incident at OPA offices.

On February 22, 2021, Mr. Aubrey provided to the IO the requested records related to the incident.

On February 25, 2021, the IO again contacted Aubrey and requested information about evidence referred to in the incident reports but not included in the records provided, including an autopsy report and photographs. Sgt. Joshua Clark responded that he would seek the photographs and that the autopsy report had not been released by the Contra Costa Sheriff-Coroner.

On May 5, 2021, the IO followed up with Sgt. Clark to determine the status of the previous request. Sgt. Clark responded that he still had not received the photographs but would again request them, and that the autopsy report would not be released until after a Coroner's Inquest was held, which had not yet been scheduled by the CoCo Sheriff.

On July 8, 2021, the IO was given approval for remote online access to AVR video. That same day, the IO requested access to the video from OPA Director Eddie Aubrey. On July 12, Mr. Aubrey sent the IO a link that allowed remote viewing of the AVR for this incident. On July 19, 2021, the IO requested that his access to the AVR video be extended to allow additional review of the AVR video. It was granted that same day

On August 8, 2021, the IO completed this Investigation Report.

Summary of Investigative Issues

This Investigation Report involves the death of Jose Luis Lopez on April 19, 2020, while in officer custody and after the multiple uses of force by RPD officers. RPD received a call for service involving a potential domestic violence incident at a residence occupied by Lopez, his partner, and others. When officers arrived, Lopez came into the hall and officers immediately restrained him. Officer Ferraro threw Lopez forcefully to the floor with no warning, with he and Officer Parker falling on top of Lopez. Lopez began to resist significantly, and at one point had his hand on an officer's gun in its holster. Force was used against Lopez multiple times by multiple officers during the struggle to restrain, cuff, and put Lopez in a Wrap restraint device. Lopez was choked, hit with significant strikes by a baton, shocked by a Taser device, and was placed on his stomach with several officers placing their weight on his neck while he was being cuffed. Lopez ultimately was cuffed and placed in a Wrap with a spit hood over his head.

Once Lopez was subdued, cuffed, and put in the Wrap, an EMT administered a sedative to Lopez at the suggestion of an RPD officer. Within a minute, Lopez was unconscious and stopped resisting. He was moved to an ambulance gurney and taken to the ambulance. Once in the ambulance, Lopez was discovered to be in medical distress, with his heart and breathing stopped. The paramedics were unable to revive Lopez and he was transported to the hospital, where his breathing and heartbeat were restored after about 15 minutes of emergency attempts. Lopez was declared brain dead and taken off life support later that morning.

While an autopsy was performed on April 20, 2020, and CSI Katie Cubit was present for it, the autopsy report has not yet been released by the Contra Costa County Coroner's Office, more than one year later. Therefore, the IO is unable to analyze the causes of death and what role the actions of RPD officers may have played in causing Lopez's death, if any.

The primary investigative issue is whether the uses of force against Lopez by multiple officers were reasonable under the totality of the circumstances involved.

Summary of Recommended Findings

The Investigative Officer ("IO") thoroughly reviewed this chaotic incident and the uses of force involved, including multiple reviews of associated AVR video footage at normal and slowed speeds. While many, or perhaps most, uses of force by officers during the incident appeared to be reasonable under the circumstance, there were instances where the level or type of force used was questionable. The question is whether, in those instances, there is clear and convincing evidence that the force used was unreasonable under the totality of the circumstances. The IO concluded that several of these uses of force were unreasonable.

The IO recommends that the Commission find Officer Ferraro's initial take down and subsequent chokehold of Lopez were unreasonable under the totality of the circumstances. Also, the IO recommends that the Commission find Officer Ricchiuto's baton strikes and Taser applications to Lopez were unreasonable under the totality of the circumstances.¹ The IO

¹ While the IO believes that Ricchiuto's recommendation to AMR personnel that they administer a sedative to Lopez at the conclusion of the struggle was inappropriate and dangerously reckless, the IO also has concluded that this

further recommends that the Commission find that the actions of Officer Frevele in placing his weight on Lopez's neck area while he was restrained facedown also was unreasonable under the circumstances. Finally, the IO recommends that the Commission make a finding of sustained regarding the failures of Parker, Ricchiuto, and Frevele to intercede in clearly unreasonable force that they observed.

Summary of the Facts as Revealed by the Investigation

On March 17, 2020, RPD received a call from a young female reporting party that her mother and her mother's partner were fighting and that he was taking off her clothes without her consent, while her mother was screaming. The RP further reported that the suspect, Jose Luis Lopez, was high on crack cocaine and paranoid, but had no weapons and was not harming her mother.

Dispatch sent out information to officers in the field that this was a potential domestic violence call, that there were no weapons, and that the suspect was removing the clothing of the victim. The facts as reported also raised the possibility of imminent sexual assault. While dispatch indicated in the initial CAD transmission to officers that the suspect was hitting the victim, this error was corrected within a minute of the initial transmission.

Several officers responded to the call, with Ferraro and Santana first on scene and entering the residence. Parker and Ricchiuto followed quickly behind, in that order. Ferraro had formulated a plan to immediately arrest and cuff the suspect, based in part on his incorrect understanding that there was no information about whether a weapon was present.

As Ferraro approached the residence with Santana behind him, he saw the RP standing in the front yard and asked her what was going on. She responded that her mom was in the house. Ferraro asked the RP if her mom was OK and she responded, "Yes." As he approached the door, Ferraro several times announced, "Police department." Upon entering the residence, Ferraro again announced, "Police department. Come here." As they advanced into the home, Ferraro and Santana saw the victim sitting alone on a bed in a room to the right of a narrow hall. Lopez immediately exited a room to the left of the hall, possibly the bathroom.

As soon as Lopez stepped into the hall, Ferraro took him by both arms from behind and pushed him against the hall wall. Ferraro at first had Lopez's arms above his head, and then began to bring them behind his back. Ferraro managed to cuff one hand and began to bring it back to meet his other hand to cuff them together. Santana was speaking to Lopez in Spanish. Lopez was responding in Spanish, and they seemed to be arguing somewhat. Parker was standing behind Ferraro and Lopez at that point.

At that moment, as Ferraro was attempting to cuff Lopez and Lopez was facing the wall with his head turned toward Santana to talk to her, Ferraro suddenly took down Lopez with a leg sweep. At that moment, there did not appear to be any active, physical resistance or fighting from Lopez. He was simply verbally disputing something with Santana.

action is not within the purview of the CPRC and thus makes no recommendation in this area. However, Ricchiuto's actions in this regard likely exposed the City to the risk of liability in this matter.

Both Ferraro and Parker fell on top of Lopez in the narrow hall, with Lopez face down on the floor and Ferraro's weight pressing down on him. As Ferraro stated, he outweighed Lopez by about 50 pounds. Lopez's hands were under him, and he began to try to push up to keep from being compressed on the floor from the weight of the deputies. Ferraro continually screamed for Lopez to put his hands behind his back. Lopez continually screamed, "You are killing me!" He also repeatedly screamed, "Listen to me!" and "I do not beat my wife."

From the moment that Ferraro took down Lopez with the leg sweep, officers continued to escalate their use of force against Lopez. Officers described Lopez as reacting in anger to their efforts to restrain him. The video showed Lopez screaming in apparent pain and attempting to stop the officers from inflicting additional pain on him. Lopez was in an altered state from cocaine and alcohol. Given the progression of actions by officers, it was not unreasonable for Lopez to expect that they would continue to hurt him unless he tried to stop them. Officers also never provided Lopez any assurance that the force would stop if he complied.

Over the course of about 5 minutes, officers steadily escalated force against Lopez, using his resistance to their efforts as justification for the continued escalation. The force began with the leg sweep and take down. It progressed to Ferraro and Parker pulling Lopez's arms above his head while compressing his body with their weight through their knees. Ferraro hit Lopez, twisted his head forcefully sideways, twisted his arms behind him, pulled on the loose cuff to pull Lopez's hand back and cutting into his wrist, and employed a choke hold across his windpipe during this period of time. Parker mostly assisted Ferraro in his efforts to restrain Lopez.

Ricchiuto struck Lopez very forcefully multiple times in the legs with his baton, swinging it back like a baseball bat before striking him. He also used the end of the baton to jab forcefully into Lopez side near to and possibly under his ribs. Ricchiuto also applied the Taser to Lopez with the Taser wires. When that did not gain compliance, Ricchiuto applied the Taser directly to Lopez in his groin area at least five times. Lopez continued to scream in what appeared to be pain, and also yelled in Spanish, "Stop hitting me." Officers interpreted Lopez's actions as indicating that he did not feel pain and was angry, despite the obvious conclusion that his screams and attempts to escape the blows and shocks showed that Lopez felt significant pain.

Frevele also assisted Ferraro in the struggle with Lopez during this five-minute interval. Frevele torqued Lopez's feet in a "control hold." He also banged Lopez's head on the floor and the wall, and elbowed Lopez on the back and side and near his head.

Lopez began attempting to bite the hands of officers as their hands got near his head. It is unclear whether this happened as a result of the officers escalating force to include twisting and banging Lopez's head, or whether the officers escalated force in response to the biting attempts. In any event, officers had escalated force when Lopez began trying to bite their hands. Also, when Ricchiuto was applying the Taser repeatedly to Lopez, he put his hand on Ferraro's gun and the safety snap came off until Parker took Lopez hand off the gun and resecured the safety snap. At some point during this struggle, Ferraro's hip snapped out of socket, and he was injured.

At this point in the incident, following Ferraro's earlier call to bring in a police canine, Frevele requested a canine unit over the radio. Officer Gault brought a canine into the hall and officers cleared the hall to adjoining rooms. Gault stood in the hallway with the dog on leash barking, directing Lopez to put his hands above his head and give up. Lopez did put his hands up and appeared he might be giving up. However, Lopez did not follow Gault's order to crawl to him.

At that time, Sgt. Dean came into the hall, grabbed Lopez by his cuffs, and dragged him by the cuffs down the hall into the front living room. Officers poured out of the rooms surrounding the hallway and piled on Lopez, who was again placed on his stomach.

For several minutes, multiple officers were involved in restraining Lopez while he was face down on the floor. Two officers put Lopez's feet and legs crossed forward, put their weight on them, and at times torqued his feet to cause pain. Other officers pressed down with their weight through their fists on Lopez's upper back. Another officer kept his weight on Lopez neck area through his knee. And another officer kept pushing down on the rear of Lopez's head, pushing his face into the floor. As these actions continued, Lopez continued screaming, but his voice appeared to get weaker and more labored.

Eventually, Officer Santana went outside and got a Wrap device and brought it to Sgt. Dean, who brought it back into the residence. Officers picked up Lopez and moved him over to the middle of the floor so that they could put him in the Wrap restraint. First, they secured the portion of the Wrap that goes around the legs and tightened the straps. This kept Lopez's legs constrained together and extended and made it difficult for him to try to push himself up. The officers then recuffed Lopez with his hands behind his back. They then put the Wrap harness on Lopez's torso. While they were doing this, Lopez appeared to try biting an officer, and Ricchiuto placed a spit mask over Lopez's head. The officers then secured the Wrap harness on Lopez and connected it with a strap to the leg Wrap so that Lopez was forced into a position of a 45-degree angle. Once this was completed, Lopez was placed on his side.

While Ricchiuto was outside getting a spit mask for Lopez, he told AMR paramedic Hirsch that Lopez was on drugs, was very resistant and combative, and that they probably should use a sedative on him before transporting him in the ambulance. When AMR personnel came into the house, Ricchiuto again suggested that they administer a sedative to Lopez. Sgt. Thomas told Hirsch that Lopez was under the influence of a drug. Hirsch went back outside, obtained his medical bag, came back in the residence and injected Lopez with 5 mg dose of Versed, a sedative.² Within a minute, Lopez stopped struggling in his restraint and became unconscious.

² The medication administered through injection to Lopez was Midazolam (brand name Versed), a sedative that comes with the following manufacturer's warning: "Intravenous midazolam has been associated with respiratory depression and respiratory arrest, especially when used for sedation in noncritical care settings. In some cases, where this was not recognized promptly and treated effectively, death or hypoxic encephalopathy has resulted. Intravenous midazolam should be used only in hospital or ambulatory care settings, including physicians' and dental offices, that provide for continuous monitoring of respiratory and cardiac function, i.e., pulse oximetry. Immediate availability of resuscitative drugs and age- and size-appropriate equipment for bag/valve/mask ventilation and intubation, and personnel trained in their use and skilled in airway management should be assured (see WARNINGS). For deeply sedated pediatric patients, a dedicated individual, other than the practitioner performing the procedure, should monitor the patient throughout the procedures. The initial intravenous dose for sedation in adult patients may be as little as 1 mg, but should not exceed 2.5 mg in a normal healthy adult. Lower doses are necessary for older (over 60 years) or debilitated patients and in patients receiving concomitant narcotics or other central nervous system (CNS)

The emergency medical personnel then put Lopez on a tarp and lifted him so that he could be placed on the gurney and in the ambulance. There is conflicting evidence about whether Lopez was moving and breathing during the transport on the gurney. The gurney was then placed in the rear of the ambulance. Once there, the AMR personnel checked Lopez's vital signs and discovered that his heart had stopped, and he was no longer breathing. Lopez was placed on a CPR machine and taken to the hospital, where medical personnel continued trying to revive him. While Lopez did regain a heartbeat at the hospital, he did not survive and was pronounced dead.

Because no autopsy report is available for review, it is not possible to analyze the cause of death or who may be primarily responsible.

Investigative Interviews³

Victim [REDACTED] LEII Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Mauricio Canelo and Contra Costa County DA Investigator Souza, on March 17, 2020, [REDACTED] made the following statements:

At approximately 1950 hours, [Contra Costa] DA Investigator Souza and I interviewed the victim, identified as [REDACTED]. The interview was recorded on my AVR, the interview with [REDACTED] was in Spanish.

I explained to [REDACTED] that she was being interviewed regarding the incident that occurred at her residence located at [REDACTED] on 03/17 /20. [REDACTED] explained that the suspect was her fiancé and identified him as Jose Luis LOPEZ (dob: 03/16/80), and stated that they have been living together for approximately 8 months, and have been at [REDACTED] since January of 2020. [REDACTED] stated that she and LOPEZ rented 2 rooms at the residence. One room was for LOPEZ and herself, and the other room was for her daughter [REDACTED] and her son [REDACTED]. [REDACTED] was not at the residence at the time of the incident.

[REDACTED] stated that the other people who live at the residence are [REDACTED], her husband [REDACTED], their two children [REDACTED], and a relative of theirs named [REDACTED].

depressants. The initial dose and all subsequent doses should always be titrated slowly; administer over at least 2 minutes and allow an additional 2 or more minutes to fully evaluate the sedative effect. The dilution of the 5 mg/mL formulation is recommended to facilitate slower injection.”
https://www.accessdata.fda.gov/drugsatfda_docs/label/2017/208878Orig1s0001bl.pdf

³ These investigative interviews were conducted by Contra Costa District Attorney investigators partnered with RPD detectives. The interviews were summarized in the RPD Incident Report 2020-00002984 and its supplemental reports. Those summaries are used in this report, generally. The individual interviews are also recorded and available for listening (with one exception). The IO has supplemented the summaries of the interviews in several ways following a careful review of the recordings. This supplemental material is noted in brackets and with strike-through markings where the IO has concluded that the interview summary is not accurate in some way.

According to [REDACTED], the people present during the incident were [REDACTED] (child), [REDACTED], and a friend of their name [REDACTED].

[REDACTED] explained that she has known LOPEZ since 2014, and that they dated in 2014 for several months, but that she ended the relationship because she found out that LOPEZ had another woman. They re-connected and got back together approximately 8 months ago.

I asked [REDACTED] why the police were called to her residence and she stated that her daughter ([REDACTED]) called the police because [REDACTED] was screaming. [REDACTED] stated that she was screaming because she became nervous stating that LOPEZ was under the influence of drugs. [REDACTED] stated that LOPEZ had been using "crack" (cocaine base), and he was drinking beer as well. I asked [REDACTED] how much cocaine base LOPEZ smoked, and [REDACTED] stated that LOPEZ started smoking since Saturday and has not stopped smoking cocaine base since. [REDACTED] stated that LOPEZ smoked cocaine base today, and that LOPEZ has not had anything to eat these past few days and has not slept since Saturday.

[REDACTED] explained that LOPEZ goes out and buys small amounts of cocaine base on the streets, and once he has consumed it, he goes and buys some more. [REDACTED] also stated that LOPEZ drinks up to 6 large beers a day, and has been consuming a large amount of beer these last few days.

[REDACTED] stated that LOPEZ will go out and buy \$20 worth of cocaine base, and once he has smoked it up, he goes and buys more. [REDACTED] stated she believes LOPEZ has probably smoked cocaine base 20 times since Saturday. [REDACTED] stated that LOPEZ also uses cocaine and marijuana, and sometimes combines the cocaine base with the marijuana to ingest the drugs. [REDACTED] explained that LOPEZ also at times just smokes the cocaine base in a pipe by itself. [REDACTED] believes that LOPEZ smoked marijuana on Saturday as well as the cocaine base, but since Saturday, LOPEZ has smoked nothing but cocaine base. [REDACTED] stated that she has seen LOPEZ smoked cocaine base on several occasions, because he sometimes smokes it in their bedroom.

[REDACTED] explained that the incident began because she told LOPEZ that she wanted to separate from him at approximately 1200 hours on today's date. [REDACTED] stated that she is tired of having a toxic relationship with LOPEZ, because both of them have a strong character and are very jealous. [REDACTED] explained that every time LOPEZ is under the influence of drugs, he becomes a different person and gets extremely paranoid and follows her around everywhere.

[REDACTED] explained that she has told LOPEZ in the past that she was going to leave him because of his drug problem, but that she has not left because LOPEZ has been able to convince her to stay with him, and because she loves him and believes he was going to change. [REDACTED] stated that LOPEZ'S drug habit has had major effect on her emotional

well-being and deteriorated her health, and that she has high blood pressure because of the stress this relationship had put her through.

████████ explained that on today's date at approximately 1200 hours, she stepped into her room with LOPEZ after telling him she was going to leave him. ██████████ stated that she started to pray for LOPEZ and that he did not like that and became angry and aggressive with her like he had a "demon" in him.

████████ stated that LOPEZ did not try to hit her, but that he started to tell her that he was going to "unmask" her, believing that ██████████ was cheating on him. ██████████ explained that LOPEZ started to take off all her clothes, and smelled her clothes including her underwear. ██████████ stated that LOPEZ then started to examine her breasts looking for "hickies" marks on her body. ██████████ stated she was sitting on the floor at first when LOPEZ started taking off her clothes, and then somehow it migrated to the bed, where LOPEZ continued to hold her down on the bed as he took off her clothes.

████████ stated that she let LOPEZ take off her clothes because of nerves because she was afraid and she thought LOPEZ was going to do something more to her.

I asked ██████████ what LOPEZ was saying to her during this time and LOPEZ just kept telling her that he was going to "unmask" her because LOPEZ believed ██████████ was seeing another man.

████████ explained that she was sitting on the bed as LOPEZ was holding on to her with his arms wrapped around her, and using his body weight to hold her down as he took off her clothes and would not let her go. ██████████ stated that she was trying to leave, but could not because he held her down.

I asked ██████████ what made her afraid, and she could not explain to me what exactly, but that it was the situation that made her afraid; but that she was afraid, and that's why she started screaming, and screamed a lot.

████████ explained that these past few days, she has not had much communication with LOPEZ, and hasn't even wanted to talk to him, much less to be touched by him.

████████ stated that as LOPEZ was holding her and taking her clothes off, she was telling LOPEZ to let her go, and stop taking off her clothes, but LOPEZ would not stop, and did not stop until her daughter ██████████ entered the room, and saw her naked. ██████████ stated that when ██████████ saw what was happening, ██████████ stated out loud that she was going to call the police, to which LOPEZ responded by asking them not to call the police. ██████████ stated that prior to ██████████ saying that she was going to call the police, ██████████ had already yelled at ██████████ to call the police.

████████ stated that after ██████████ called the police and prior to police arrival, LOPEZ had already backed off her and was asking her for forgiveness. ██████████ stated that she

stayed in her room wrapped up in a blanket because she was naked, and that LOPEZ stepped out of the bedroom into the hallway and that soon after, the police arrived.

████████ stated she saw when the police arrived as LOPEZ stood in the hallway. ██████████ stated that when the police arrived, LOPEZ became angry and furious. ██████████ stated that when the police tried to handcuff LOPEZ, he became furious, resisted, and would not let himself get handcuffed by the police. ██████████ stated that she remained in the bedroom, and was only able to see that after LOPEZ resisted being handcuffed, he was somehow taken to the ground, and that one of the police officers was hitting LOPEZ with his “stick” (baton). LOPEZ stated that as one of the officers was hitting LOPEZ with the baton, he was screaming, and that she saw one of the officers kick LOPEZ. ██████████ stated that the altercation with the police started in the hallway, continued past the kitchen and subsequently into the living room. Because the altercation moved from the hallway to the living room, ██████████ was not able to see everything that happened between LOPEZ and the police. ██████████ also stated that during this time, she was also approached by a male and then female officer to check on her and get information from her as to what happened.

████████ stated that she could hear the police telling LOPEZ in English to stop resisting, and she also heard one male officer and the female officer that was talking to her, tell LOPEZ in Spanish to stop resisting, but he would not stop.

I asked ██████████ why LOPEZ resisted the police and she said it was because LOPEZ was afraid because he has had an arrest warrant in the past for domestic violence against another person. ██████████ stated that she knew LOPEZ was accused of domestic violence by another woman approximately 2 years ago, and had been arrested for domestic violence. She believed that he was going through some kind of program related to the domestic violence, and has already completed everything required of the program, but was possibly on probation for domestic violence. ██████████ stated that she had already told LOPEZ in the past what could happen to him if he ever hit her. ██████████ reiterated that LOPEZ has never hit, pushed, or threatened her, but has stated in the past that he would hurt himself. ██████████ stated that LOPEZ did not try to sexual assault her.

████████ explained that she felt that LOPEZ did wrong in resisting, but that she did not believe the police responded correctly. ██████████ stated that she knows LOPEZ resisted because he was under the influence, but with so many officers, she does not believe it was handled correctly.

████████ stated that during the altercation with the police, LOPEZ was screaming and asking her and ██████████ for help to talk to the police so that police would not arrest, and also praying that the police would not arrest him.

████████ stated she feels very bad with what happened, and she believes that LOPEZ “crossed the line”; because he should have never acted that way he did with her. ██████████ believes she should not have screamed as much, but stated that she screamed because she was afraid.

████████ stated that the police were called to her house on a prior occasion. ██████████ stated that her son (████████) called the police in early February because she and LOPEZ were arguing and her son thought that LOPEZ was assaulting her, but that it was just an argument. ██████████ stated that she talked with the police and told them about LOPEZ'S drug problem, but that the police told her that they could not do anything about his drug problem. ██████████ stated that no one was arrested during that early February incident.

████████ finished her statement by saying that she felt bad for what happened, and did not want LOPEZ to have to go to prison, because LOPEZ did not hit, nor threatened her, or assault her.

Witness ██████████ LElI Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Mauricio Canelo and Contra Costa County DA Investigator Souza, on March 17, 2020, ██████████ made the following statements:

████████ said Lopez was her mother's (████████) boyfriend. ██████████ said Lopez had been "high" for the past three days and had not had any sleep. ██████████ said Lopez smokes cocaine base and marijuana. ██████████ said on today's date, Lopez and her mother were in their room arguing. ██████████ said she was in her room when she heard screaming. ██████████ said she didn't think much of it but then it got worse. ██████████ said she walked into her mother's room and saw Lopez trying to take her mother's shirt off while she was seated on the bed. ██████████ said she told Lopez that she was going to phone the police and Lopez told her not to. ██████████ said she then walked back into her room.

████████ said the screaming got worse, so she walked back into her mother's room a second time. ██████████ said when she walked in, she saw her mother sitting on the floor naked. ██████████ said Lopez was standing in the room accusing her mother of cheating on him. ██████████ said she told them that she was going to phone the police and then she went back to her room.

████████ said she could still hear her mother screaming and saying, "Call the cops". ██████████ said so she walked back into her mother's room a third time. ██████████ said when she walked in, her mother was still on the floor naked and Lopez was still accusing her of cheating on him. ██████████ said she then phoned the police. ██████████ said she walked outside to wait for the police to arrive. ██████████ said the police arrived and then walked inside the residence. ██████████ said Lopez walked out of the room and the police contacted him in the hallway. ██████████ said once in the hallway the police took Lopez to the ground and they began fighting. ██████████ said there was at least 5 police officers trying to take Lopez into custody. ██████████ said Lopez was on the floor telling the police that they were not going to arrest him, as he was trying to keep his arms from them. ██████████ said the police were gathered around him trying to hold him down and one officer hit him with a "stick". ██████████ said one officer then told her to go to the garage where the other residents in the house were waiting.

██████ was then asked if she had ever seen Lopez use cocaine base. ██████ said she has gone into his room and the room will smell like marijuana, but he mixes the marijuana with cocaine base. ██████ said Lopez gets high and starts "tweaking out". ██████ said Lopez will get paranoid like on today's date. ██████ said Lopez thought ██████ brought another man to their residence. ██████ said Lopez was looking in the bathroom for the person. ██████ said this incident was the second time that the police were called to their residence because of Lopez arguing with her mother.

RPD Officer C. Santana LEI Investigation Interview Statement, March 18, 2020

In an interview conducted by RPD Detective Michael Sagan and Contra Costa County DA Investigator Erikson, on March 18, 2020, Santana made the following statements:

On 3-18-20 at 0013 hours, I interviewed Officer Santana regarding this incident. Contra Costa DA Investigator Erikson and Jonathon Murphy with Rains Lucia and Stern (Officer Santana's legal representation) were also present during my interview of Officer Santana. The interview was recorded in its entirety on my department issued audio recording device.

Prior to interviewing Officer Santana, I advised her that she was not under arrest, that she did not have to answer any of my questions, and she was free to leave at any point during the interview. Officer Santana verbally acknowledged that she understood.

I started my interview with Officer Santana by asking her some background questions regarding her employment, work schedule, prior work assignments, training, and uniform she was dressed in during this incident. Officer Santana told me the following in summary regarding the aforementioned information:

Officer Santana has been a sworn peace officer with the Richmond Police Department for (6) years, and is currently assigned as School Resource Officer and assigned to the Greenwood Academy. Officer Santana's work schedule is Monday through Thursday from 0700-1700 hours. Due to department re-deployment due to the Corona Virus, Officer Santana is temporarily assigned to patrol. On 3-17-20, Officer Santana was assigned to patrol dayshift and working 0630-1630 hours.

Officer Santana attends annual EVOG, firearms, and defensive tactics training. On 3-17-20, Officer Santana was dressed in a full RPD patrol uniform consisting of an external vest with a RPD badge affixed to her left chest area. There are RPO patches affixed to either shoulder of her uniform. During the incident Officer Santana's AVR was activated and recorded the incident both visually and audibly.

I asked Officer Santana if she could tell me what had transpired at ██████. Officer Santana told me the following in summary:

On 3-17-20, Officer Santana was dispatched to a domestic disturbance at [REDACTED]. RPD Dispatch advised of an 18-year-old female calling and stating that she was on viewing her father hitting her mother. The subject also advised the male was "High".

Officer Santana stated she and Officer Ferraro responded immediately due to being close to the location. Officer Santana advised she and Officer Ferraro were the first units on scene. Upon Officer Santana's arrival on scene, she saw the reporting party standing in the front yard with a blanket wrapped around her body and she pointed toward the home. Officer Santana and Officer Ferraro entered the location at this time.

As Officer Santana and Officer Ferraro entered the location they announced, "Richmond Police Department" multiple times. Officer Santana stated she also made this announcement in Spanish.

Officer Santana stated as she entered the home she looked down the home's hallway and could see the suspect stick his head out of an open bedroom door. Officer Santana stated she and Officer Ferraro attempted to detain the suspect at this time in handcuffs [by pushing him up against the wall].

Officer Santana stated as they were attempting to detain the suspect he began to resist by pulling away from she and Officer Ferraro. Officer Santana stated at one point Officer Ferraro and the suspect fell to the ground. As Officer Ferraro and the suspect fell to the ground, she observed the victim in the adjacent bedroom. Officer Santana noted there were pieces of clothing strewn on the ground and on the bed. Officer Santana stated the victim only had a blanket wrapped around her [naked] body.

As Officer Santana entered the bedroom, the victim was moving toward the bedroom door and attempted to enter the hallway. Officer Santana kept the victim in the bedroom and out of the way of officers attempting to detain the suspect.

Officer Santana stated as she was keeping the victim in the bedroom she could hear the suspect yelling as officers were still attempting to detain the suspect. [Santana stated that the victim could hear the suspect yelling and said she did not want to press any charges and that he did not do anything to her. Santana then heard a Taser deployment She looked out and saw the Taser along the floor and several other officers. The victim mentioned that the suspect was high on "meth". Santa looked out and saw Ricchiuto with a baton strike the legs of the suspect.] At [that] point Officer Santana heard an officer say, "He's got my gun". {The officers still were struggling to take him into custody.]

Shortly after hearing the officer yell she heard K9 Officer Gault arrive at the location.

Officer Santana then was told to retrieve the wrap restraint device from Sergeant Dean's patrol vehicle. Officer Santana stated she ran out of the location to retrieve the device and then returned to the home.

Upon Officer Santana returning to the home she noted that officers were still struggling to detain the suspect. Officer Santana stated the suspect was “very strong” and kept pulling away from officers.

Officer Santana stated while they were putting the wrap restraint on the suspect he bit Officer Caston on the hand. Officer Santana stated officers were ultimately able to place the suspect in the wrap device.

I asked Officer Santana if she heard officers giving the suspect commands. Officer Santana stated officers were continually giving the suspects commands[, but she only heard them in English].

I asked Officer Santana what type of resistance the suspect was giving to the officers. Officer Santana stated the suspect was pulling away, kicking, moving his arms, and attempting to head butt officers.

I asked Officer Santana how many officers it took to ultimately detain the suspect. Officer Santana stated it took 6-7 officers to detain the suspect.

I asked Officer Santana if she had ever been to the location or dealt with the suspect before. Officer Santana said, “No “•

I asked Officer Santana to describe the suspect’s build. Officer Santana stated the suspect was approximately 5’7”-5’9” tall, weighed approximately 180 pounds, and had a stalky build.

DA Investigator Erikson asked Officer Santana when the officers were giving the suspects command, did he respond. Officer Santana stated the suspect was yelling, grunting, and saying no.

DA Investigator Erikson asked Officer Santana if the suspect ever stopped resisting. Officer Santana said, “No he was fighting the entire time. When [she] put the spit mask on him, he was still resisting.”

[Santana said the force she used was controlling his head and putting body weight on his legs.]

The interview concluded at 0025 hours.

RPD Officer Ken Ferraro LEII Investigation Interview Statement, March 18, 2020

In an interview conducted by RPD Detective Aaron Mandell and Contra Costa County DA Investigator Conaty, on March 17, 2020. Ferraro made the following statements:

Ferraro began by explaining that at the time of the incident he was operating a fully marked and operational Richmond Police Vehicle and wearing his, “Class C” uniform,

which included a silver star over his left breast and Richmond Police Patches on each shoulder. Ferraro was carrying all his assigned protective gear and equipment. Ferraro was wearing his AVR, which was activated.

He went on to say he initially observed the call, prior to being detailed, on his mobile data computer. The incident was labeled as a felony domestic violence (Penal Code 273.5). Shortly thereafter, Officer L. Caston was dispatched as the primary officer and Ferraro was the cover. The call was updated to say [the caller's mother was being struck by her boyfriend and] the suspect was removing the victim's clothing, leading Ferraro to believe that some type of sexual assault could also be occurring. Ferraro arrived on scene along with several other officers, at about the same time.

As Ferraro approached the front yard he could hear yelling from inside the residence. There was also a young lady in the front yard who told Ferraro the involved parties were inside. Ferraro knocked loudly on the front door and announced himself as the police several times. Ferraro entered the residence, followed by Officer C. Santana. Ferraro walked through the living room and toward the narrow hallway at the back of the residence.

Once there, Ferraro could see a woman sitting on a bed in a bedroom to his right. The woman was crying hysterically and had a blanket draped over her shoulders; and she was naked from the waste up and her breasts were exposed. Simultaneously a male, later identified as LOPEZ exited a door on the left side of the hallway. Ferraro immediately noticed LOPEZ was sweating profusely, had wide open eyes, and appeared extremely agitated. Ferraro had every intention of cuffing LOPEZ based on the call [being a potential rape in progress], and that intention was strengthened once he saw him sweating and agitated.

Ferraro quickly grabbed his hands to put them onto his head, while also giving him instructions in Spanish [to put his hands on top of his head]. Ferraro was able to put LOPEZ's hands on top of his head, remove his handcuffs, and get one handcuff onto LOPEZ's right wrist. While LOPEZ somewhat complied, Ferraro noticed LOPEZ began to tense up and pull his arms into his chest. Ferraro attempted to move LOPEZ's hands into the small of his back so that his left wrist could be handcuffed. At that point, LOPEZ immediately spun away from Ferraro, tensed up even more, and began [**not**] to rotate away from him [but to tense up "aggressively"]. Ferraro's first thought was that LOPEZ was getting ready to strike him. ~~Ferraro said that LOPEZ having an open cuff attached to him made it a potentially dangerous weapon that could be used against officers.~~

Ferraro subsequently grabbed LOPEZ's shoulders and took him to the ground in the narrow hallway. He fell face down on the floor with Ferraro's belly on LOPEZ's back. Ferraro continued to try to get his hands behind his back to cuff him. LOPEZ continued to struggle and resist being detained. At that point, Ferraro continued to try and handcuff LOPEZ's left wrist; however, he kept fighting and tucking his hands underneath his body. Ferraro ~~became even more concerned because LOPEZ had not been searched and he wasn't sure if LOPEZ had any weapons on his person. Ferraro also pointed out~~

~~that because only LOPEZ's right wrist had been handcuffed, it left the other handcuff open, without the ratchet being closed, making it a possible weapon.~~

Ferraro continued to struggle with LOPEZ, who was actively fighting and tensing his body up. Ferraro was assisted by Officer T. Parker, [who came to his right-hand side]. Ferraro was able to wrap his arms around LOPEZ'S upper body and head, in an attempt to keep control of him and restrict his movements. LOPEZ continued to struggle, despite being given multiple orders to show his hands. Several other officers arrived and were trying to assist with gaining control of LOPEZ. They continued to struggle with LOPEZ and try to gain control of his hands. [He heard Ricchiuto behind him.]

At one point, LOPEZ grabbed a hold of Ferraro's duty weapon, which was in its holster. Ferraro heard the very distinct sound of the primary safety on the holster (the hood) being disengaged and could feel his leg holster being twisted out of its position due to LOPEZ's grip on the firearm. Ferraro yelled out something similar to, "He's got my gun," or, "He's going for my gun."

Ferraro noticed one of the officers remove LOPEZ's grip on the firearm and put the holster safety back into its correct position, ensuring the firearm could not be removed.

The struggle continued with LOPEZ and their positions continued to shift. Ferraro felt LOPEZ bite him in the stomach, near his waistline. Ferraro quickly disengaged and struck LOPEZ several times near his face to get him to stop biting him. According to Ferraro, nothing that he nor any of the officers were doing seemed to affect him. It only seemed to make him fight harder.

During the altercation, Ferraro heard an officer yell, "Taser!" Ferraro took this to mean a Taser was going to be deployed. Ferraro again grabbed LOPEZ around the head and shoulders [and rolled him over] to expose LOPEZ's torso, which provided a more effective target area for the Taser. The Taser was deployed, [appeared to make contact,] and had absolutely no effect on LOPEZ. Ferraro was aware that a K9 Unit was dispatched to the incident, so Ferraro yelled, "Get the dog." He hoped that the K9 could assist in gaining control of LOPEZ.

Because other officers were then assisting and he knew the K9 unit was *en route*, Ferraro decided to disengage and attempted to stand up. As he did, Ferraro heard his hip make a "pop" sound and felt a sharp stabbing pain, causing Ferraro to collapse to the ground. Due to the apparent injury, Ferraro knew he could not assist any longer and crawled to a nearby bedroom, closed the door, and fell to the ground.

Other officers came into the room, likely because the dog was deployed. Ferraro stayed for a few minutes, checked to see if hall was clear. Ferraro made his way out to his patrol vehicle and sat in the seat.

Ferraro added that he was also aware that at some point during the struggle Ricchiuto struck LOPEZ with his baton. During one of those strikes, due to the close quarters

within the hallway, Ricchiuto accidentally struck Ferraro on the right thigh. This occurred sometime in the middle of the fight and even though Ferraro knew LOPEZ was struck with the baton, it did not appear to have any effect on him.

Ferraro concluded from his experience that LOPEZ was resistant that way due to him being on stimulant drugs or a mental health issue.

[Upon prompting by Inspector Conaty, Ferraro stated that a cuff locked to one hand on a suspect is extremely dangerous because it could be used as a weapon.]

[Ferraro was laying stomach down on Lopez's back while Lopez was prone for a good deal of the time. He attempted to impose pain compliance by using his forearm across the bridge of Lopez's nose.]

[Ferraro claimed It was a complete unknown going into the call whether there were any weapons whatsoever.(This conflicts with the dispatch record.)]

Ferraro concluded by saying that during the struggle with LOPEZ his AVR was forcibly removed from its bracket, causing it to fall to the ground. He had the most heavy-duty bracket securing the AVR, so it took a violent jarring to knock it off.

RPD Officer T Parker LEI Investigation Interview Statement, March 18, 2020

In an interview conducted by RPD Detective Christopher Decious and Contra Costa County DA Investigator Ritchie, on March 18, 2020, Ricchiuto made the following statements:

Officer T. Parker has been a police officer for about five months, and he is currently assigned to Officer Purcell in the field training program. Prior to becoming a police officer, Officer T. Parker served in the USAF for six years as an aircraft electrician. Officer T. Parker studied MMA (mixed martial arts) for three months in 2015, and he works out in a gym to stay in shape. Officer T. Parker is assigned to patrol team one, which works Monday through Thursday from 0630 hours to 1630 hours. His call sign was 2L2.

Officer T. Parker was wearing the RPO class B uniform to include Richmond Police patches on his shoulders and a silver star on his left chest. He was wearing a duty belt that included two pair handcuffs, keys, handgun, pepper spray, police radio, flashlight, Taser, and magazines. He was wearing an AVR which was activated during the incident. Officer T. Parker was handing a different call on the phone when this call was broadcast on the radio. Officer T. Parker described the radio broadcast as a domestic violence incident in progress. Officer Purcell told dispatch they would go to the call. Officer T. Parker parked a safe distance from the residence and saw a couple of officers running towards it. Officer T. Parker got out of his car and heard yelling that he described as an officer giving commands.

Once he got to the front door of the house, Officer T. Parker saw Officer Ferraro standing with the suspect in the back hallway. It looked like Officer Ferraro was trying to place the suspect in handcuffs, but the suspect was resisting. During the resistance, Officer Ferraro and the suspect ended up on the hallway floor. Officer T. Parker could not describe how that happened. Officer T. Parker went to assist and saw only the suspect's left wrist was handcuffed.

Officer Ferraro told Officer T. Parker they needed to get the suspect handcuffed. Officer T. Parker was on the right side of the suspect and was going to try to place the suspect's right wrist in the handcuffs.

The suspect continued to resist. Officers Ferraro and T. Parker tried to get the suspect's hands behind his back multiple times, but the suspect kept putting his hands under his body. The officers even tried to handcuff the suspect's hands above his head just to try to gain control of him but that did not work either. At some point during the suspect's resistance, Officer Ferraro ended up on his back with the suspect lying on top of, but facing away from him.

Officer Ferraro was trying to control the suspect's upper body while the other officers tried to place the suspect in handcuffs. They could not control the suspect.

Officer Ricchiuto announced to the officers to "watch out." He was holding his baton. Officer Ricchiuto struck the suspect with the baton an unknown number of times, but the officers were still unable to place him in handcuffs. Officer T. Parker believed the strikes would have been below the knees of the suspect. The baton struck Officer Parker several times, although he was uninjured. The officers tried to position the suspect in a way that would make it easier for them to control him. Officer Frevele was also assisting at this point with trying to control the suspect's lower body.

During the struggle the officers tried to shift the suspect into a seated position. While the officers were doing this, Officer T. Parker heard Officer Ferraro say he was being bitten by the suspect. Officer Ferraro backed off because of the bite. Officer Ricchiuto used his Taser on the suspect, but the suspect removed the darts and continued to resist by turning over and trying to move away from the officers. The officers were still unable to place the suspect in handcuffs.

At some point during the struggle, the officers were able to get the second handcuff on the suspect. The handcuffs were in front of the suspect which was not ideal. Just prior to handcuffing the second hand of the suspect, Officer T. Parker heard Officer Ferraro say that the suspect was grabbing at his gun. Officer T. Parker heard the snapping sound of the holster. Officer T. Parker pulled Officer Ferraro's gun towards him where he could see the hood on the holster had been slid forward, but the gun was still in the holster. Officer T. Parker pushed the holster hood back into position.

The suspect's hands were both in handcuffs in front of the suspect, but the cuffs were not yet double locked. The suspect was still able to grab things with his hands. Officer

Gault had come into the house with his K9 in an attempt to control the situation. When Officers Ferraro, Frevele, and T. Parker heard the K9 announcement, they went into a rear bedroom and closed the door.

Once in the rear bedroom, Officer Ferraro disclosed that he was in pain and he did not feel well. He laid on the floor. Officer T. Parker could still hear the dog barking in the front part of the house. After a short time, Officer T. Parker opened the bedroom door to see what was happening. Sergeant Dean had come into the house and was telling the officers to move the suspect to a bigger room in the house.

With the assistance of additional officers, they were able to place the suspect on his stomach. Officers Caston and Campos held bent the suspect's knees and held his heels against his buttocks to keep him from kicking. Officer T. Parker was on his right side holding him down. Sergeant Dean was also assisting. The suspect continued to try to twist and get up. At some point, Sergeant Dean asked one of the officers to get the Wrap out of his vehicle. The suspect continued to resist. On three occasions while waiting for the Wrap, Officer T. Parker told the suspect to stop resisting and delivered a knee strike at sixty percent force to the suspect's ribs in an attempt to get the suspect the lie back down. This was necessary to maintain what control the officers had established. On two occasions, Officer T. Parker gave the same command to stop resisting or stop because the suspect was trying to roll towards him. Once on each occasion, Officer T. Parker used a fifty to sixty percent force elbow strike to the suspect's ribs to get him to lie back down flat on the floor.

Sergeant Dean went to set up the Wrap. Officer Ricchiuto took Sergeant's Dean spot with the suspect. The officers came up with a plan to place the suspect in the Wrap. When the officers started to move the suspect to the Wrap he continued to resist. The officers were able to strap the suspect's legs in the Wrap and place him in a seated position.

The suspect's hands were still handcuffed in front of him. The officers were able to remove the handcuffs and then put them back on the suspect behind his back without much resistance. The suspect appeared to be fatiguing. The officer tried to sit him up in order to attach the shoulder strap. He resisted it again. Officer T. Parker used the back of the suspect's head to push him forward so the harness could be applied correctly.

After the Wrap was safely applied, Officer T. Parker had no more contact with the suspect.

I asked Officer T. Parker if he remembered anything the suspect said during the incident. "They're gonna kill me." Something about "You have the wrong guy." There were also numerous time Officers Ricchiuto and Ferraro gave commands to the suspect for him to give them his hands and to stop resisting and/or resisting. All of the conversation was in English. The suspect spoke and understood English. Officer T. Parker used no force on the suspect other than the three knee and two elbow strikes.

Officer T. Parker was unaware of any other force tools used other than Officer Ricchiuto's use of the baton and Taser.

Officer T. Parker described the suspect's behavior and resistance as "inhuman." The suspect had more energy than Officer T. Parker had ever seen in a person. Officer T. Parker could not believe how long the suspect was able to sustain the resistance. Based on his training and experience, Officer T. Parker believed the suspect was "on something" (a drug) based on his level of strength and stamina.

RPD Officer M. Ricchiuto LEII Investigation Interview Statement, March 18, 2020

In an interview conducted by RPD Detective Aaron Mandell and Contra Costa County DA Investigator Conaty, on March 18, 2020, Ricchiuto made the following statements:

Officer M. Ricchiuto began by explaining that at the time of the incident he was operating a fully marked and operational Richmond Police Vehicle and wearing his, "Class B" uniform, which included a silver star over his left breast and Richmond Police Patches on each shoulder. Officer M. Ricchiuto was carrying all his assigned protective gear and equipment. Officer M. Ricchiuto was wearing his AVR, which was activated. Officer M. Ricchiuto went on to say he heard the detail broadcast over the police radio.

The detail was in the [REDACTED] and that it was domestic violence related. *The communications center also went on to say the suspect was [Ricchiuto characterized the situation as the suspect "ripping the clothes off" the victim. [He did not say that dispatch communicated this detail to him.]* Officer M. Ricchiuto was not initially dispatched to the detail, but chose to go because he was only five or six blocks away. Officer M. Ricchiuto advised the communications center he was also responding to the incident. Officer M. Ricchiuto arrived on scene at about the same time as Officer K. Ferraro. Officer M. Ricchiuto noticed a Hispanic female juvenile in front of the residence who seemed, "Frantic" and, "Excited," and that Officer K. Ferraro, along with Officer T. Parker, entered the residence ahead of him.

As Officer M. Ricchiuto entered the residence through the open front door, he could see that Officer K. Ferraro and Officer T. Parker ["had grabbed a suspect and"] were already in the process of detaining a Hispanic male subject (LOPEZ) in the long hallway. Officer M. Ricchiuto added that Officer K. Ferraro and Officer T. Parker were giving LOPEZ commands ["to place his hands behind his back"] and trying to place him in handcuffs. LOPEZ began yelling and becoming more aggressive, at which time Officer K. Ferraro, "Leg swept" LOPEZ and they both fell to the ground. Officer M. Ricchiuto said that before LOPEZ was taken to the ground he was not actively fighting, but was actively resisting. LOPEZ seemed extremely agitated and appeared to have bladed his stance to put himself in a position of advantage and that is why Ferraro likely swept him down.

Officer M. Ricchiuto continued by saying LOPEZ, Officer K. Ferraro and Officer T. Parker seemed to fall to the ground at about the same time. Officer K. Ferraro and Officer T. Parker were giving LOPEZ instructions to place his hands behind his back, but LOPEZ was not complying. Officer M. Ricchiuto pointed out the hallway was very narrow and there

was not a lot of room, which was why he did not initially assist in getting LOPEZ into handcuffs. It was at that point the resistance displayed by LOPEZ turned into more of a "Fight." Officer M. Ricchiuto said LOPEZ was grabbing onto Officer K. Ferraro and Officer T. Parker, and they were, "Rolling around." LOPEZ was yelling in both English and Spanish something similar to, "Listen to me." When asked if the confrontation with LOPEZ was more of a struggle or a fight, Officer M. Ricchiuto replied, "It started as a struggle and turned into a fight very fast." Officer M. Ricchiuto clarified the struggle occurred at the initial contact as LOPEZ was trying to be handcuffed. Once they went to the ground it became a fight, with LOPEZ trying to get to his knees, grabbing the officers, and rolling around on the ground. The officers were doing a good job at trying to control LOPEZ, but he was clearly overpowering them.

Officer M. Ricchiuto was asked about when, or if, LOPEZ was placed in handcuffs. Initially, it looked to Officer M. Ricchiuto that officers were only able to get one handcuff on. Eventually, both wrists were placed in handcuffs and LOPEZ was put into a WRAP, but that occurred near the end of the struggle. In regard to LOPEZ initially only have one handcuff on his wrists, Officer M. Ricchiuto pointed out that with only one handcuff on, the second cuff essentially becomes a weapon. *[This answer came from prompting by Investigator Conaty and was not volunteered by Ricchiuto.]*

As the altercation continued, more officers began to arrive and assist. Even with more officers arriving, LOPEZ was able to overpower them, and the situation became more violent. Seeing that LOPEZ continued to fight and overpower the officers, Officer M. Ricchiuto removed his straight baton, gave LOPEZ several commands to stop resisting, and then delivered strikes to LOPEZ's lower legs, which seemed to have no effect on LOPEZ. It seemed to Officer M. Ricchiuto the baton strikes only made LOPEZ more angry and fight harder. Ricchiuto specifically noticed that after the baton strikes LOPEZ would just grit his teeth, open his eyes wider, and fight even harder. Because the initial baton strikes and no effect, Ricchiuto delivered a second volley of baton strikes (unknown how many), while continuing to command LOPEZ to lay on his stomach and submit to handcuffing. Ricchiuto felt all baton strikes were below LOPEZ's knees, except for one or two, which were delivered to LOPEZ's abdomen area, using the baton as a downward punching tool. Again, Officer M. Ricchiuto pointed out none of the strikes were effective.

At some point, Ricchiuto heard Ferraro say LOPEZ "has my gun". Ricchiuto said, "Oh really?" Ricchiuto subsequently removed his duty firearm in the event he had to address the possible threat of LOPEZ gaining control of Ferraro's firearm and using it against the officers. Ricchiuto removed his firearm and repositioned himself to the right for a better vantage point. When he did that, he noticed a hand on top of Ferraro's firearm. Ricchiuto knew it wasn't K. Ferraro's hand because Officer K. Ferraro had both arms wrapped around LOPEZ. Officer M. Ricchiuto observed a White hand, that he presumed to be an officer's, remove the Brownish hand from the top of the firearm. Once the hand on the firearm was removed, the officer's hand pushed the firearm back into the holster, causing a clicking noise, and moved the safety (hood) back into the proper position. Officer M. Ricchiuto felt the officer's hand appeared to be a "White"

hand and the hand that was being removed from the firearm had more of an “Hispanic” skin tone.

Officer M. Ricchiuto said once he noticed Ferraro’s firearm back safely in the holster, he removed his Taser.

At that point, Ferraro was struggling to maintain control of LOPEZ. Seeing this, Ricchiuto stepped back approximately three feet. Ricchiuto yelled, “Taser! Taser!” The officers trying to maintain control of LOPEZ adjusted themselves so that Ricchiuto had a larger target area. Ricchiuto deployed the Taser and the “darts” struck LOPEZ in the lower abdomen area. Ricchiuto felt the darts had a successful connection because he did not hear the “clacking” noise commonly heard when the connection is not successful. That being said, Ricchiuto explained the spread of the Taser darts were only about nine inches, rendering it less effective. Ricchiuto allowed the Taser to cycle once. Ricchiuto quickly realized the deployment of the Taser only seemed to enrage LOPEZ even more. Ricchiuto removed the cartridge from the Taser and “drive” stunned LOPEZ on the stomach over his clothes, just above his belt line. LOPEZ, with either one or two hands, reached for the area being contacted and tried to block the Taser. While this was happening, Ricchiuto continued giving LOPEZ loud commands. With the exception of trying to grasp the area that was being Tased, it did not seem to deter LOPEZ enough to stop fighting or listen to the commands that he was being given.

Officer M. Ricchiuto went on to say after the “drive” stuns and seeing that they had no effect, he holstered his Taser.

It was apparent to Ricchiuto that officers were becoming tired and began to clear an area for the K9, in the event it was needed. Ricchiuto did not feel he was able to use pepper spray because they were in a confined area and seeing LOPEZ’s behavior, it would have probably affected the officers more than it would have LOPEZ. Around that time Ricchiuto heard that Officer Galt was coming in with the K9. Ricchiuto went into an adjoining bedroom and shut the door to give the K9 more room. Ricchiuto opened the door slightly and noticed officers were able to get the second handcuff on LOPEZ; however, LOPEZ was handcuffed in the front. This concerned Ricchiuto because being handcuffed in the front is not effective.

Gault eventually brought the K9 inside the residence and began giving LOPEZ commands. Ricchiuto felt the K9 was brought inside the residence in an attempt to get LOPEZ to comply, just by using the K9’s mere presence. LOPEZ looked as though he was going to begin to cooperate, but he was not following the commands being given to him. Ricchiuto was uncertain whether commands at this point being given in English and Spanish. Ricchiuto pointed out that Campos was on scene and did remember him speaking to LOPEZ in Spanish at some point.

Sergeant C. Dean, who had also arrived on scene, took the opportunity to grab a hold of LOPEZ and pull him out of the hallway into the entry room, so that officers could have more room to try and control LOPEZ. They held him down, face-down. Because LOPEZ

was still handcuffed in front and struggling with officers, they formulated a plan so they could maintain control of LOPEZ, while moving the handcuffs into the proper position behind LOPEZ's back. While doing this, Ricchiuto remembered hearing officers say, "He is trying to bite me." Ricchiuto also pointed out that during the initial portion of the struggle, Ferraro said LOPEZ had just bit him.

Once LOPEZ was handcuffed behind his back, he was put into a WRAP to keep him restrained and under control. Ricchiuto pointed out that while putting LOPEZ into the WRAP he was continuously resisting, sweating profusely, and was very slippery. Ricchiuto added that he felt LOPEZ probably worked with his hands for a living due to his forearm, shoulder and arm strength, and that he was much stronger than the average person. Ricchiuto said officers were getting very tired, but LOPEZ seemed to be peaking in energy. At this point, Ricchiuto felt LOPEZ began to cooperate slightly, as he allowed officers to put his hands behind his back and cuff him. However, Ricchiuto went outside for a moment to check on Ferraro and when he returned, LOPEZ seemed to be fighting and struggling with officers once again. Officers were struggling to put him in the WRAP. Ricchiuto went to AMR to obtain a spit mask, which they provided and was later put on LOPEZ. After about a 5-6 minute struggle, they were able to put LOPEZ in the WRAP. ***Ricchiuto distinctly remembered suggesting to AMR that if they were going transport LOPEZ, they should give LOPEZ something to slow or calm him down. [He believed they did. He went outside to talk to AMR when he got the spit mask.] Ricchiuto explained to them how agitated and violent LOPEZ had been, in his opinion. [He also told him the force that he used, and he suggested they use a medicine he could not recall to calm down Lopez.]***

Ricchiuto was asked, based on his experience and training, what he felt was causing LOPEZ to display that type of behavior. Ricchiuto felt LOPEZ's behavior was caused by some type of stimulant, such as methamphetamine or cocaine. Ricchiuto based that on LOPEZ's high pain threshold, "super-human strength," the profuse sweating, high energy level and ability to work outside of what the normal body can physically endure.

Ricchiuto was asked about when the paramedics were requested. Ricchiuto felt that approximately six minutes before the struggle was actually over, he asked about the paramedics being called and was advised they had already been requested. Ricchiuto felt LOPEZ was administered some type of medication by AMR, possibly while he was still inside the residence, but he did not see it. Ricchiuto did not ever see LOPEZ not agitated.

Lastly, Ricchiuto was asked if he was familiar with LOPEZ from any previous encounters and he stated, "No." Ricchiuto also said he could not remember ever being dispatched to that particular residence.

RPD Officer Tagorda LEII Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Decious and Contra Costa County DA Investigator Ritchie, on March 17, 2020, Tagorda made the following statements:

Officer Tagorda advised he has been an officer with the City of Richmond for 12 years and was a Police Officer with the City of Berkeley for 1 year prior to being hired by the City of Richmond. Officer Tagorda said he was a Police Officer for the Federal Reserve for 5 years prior to working for the City of Berkeley. Officer Tagorda said he has been assigned to patrol since being hired.

Officer Tagorda stated he started his workday at 0630 hours on 3/17/2020. He was working Team J, beat 7 (Northern District), which works Monday through Thursday 0630 hours to 1630 hours. Officer Tagorda said he was dressed in a fully marked police uniform (class B) and was driving a fully marked police vehicle. Officer Tagorda also described the items-on his duty belt to include department issued handgun, taser, body worn camera handcuffs, flashlight. Officer Tagorda said he did not carry any type of baton or pepper spray.

Officer Tagorda stated he does not take any medication or prescribed medications that would inhibit his sobriety. Officer Tagorda stated he had no arrests or any type of confrontation calls prior to this incident.

Officer Tagorda stated he responded to the listed residence to assist on a domestic violence call for service. Officer was not initially dispatched to the call, he responded due to the nature of the call. Officer Tagorda said it took him approximately 3-4 minutes to arrive at the residence as he was responding from the 3300 block of Mac Donald Avenue. Officer Tagorda said as he arrived on scene, he observed Officer Ferrero limping away from the residence. Officer Tagorda stated he responded inside of the residence as he heard screaming coming from inside of the residence. Officer Tagorda said he observed Jose LOPEZ on the floor in the living room. Officer Tagorda said he observed several officers on top of Jose LOPEZ as he was being combative and was not following directions. Several officers were yelling at Jose LOPEZ to comply with their directions and stop resisting; however, Jose LOPEZ continued to resist. Officer Tagorda stated he attempted to assist in physically restraining Jose LOPEZ; however, as Officer Tagorda explained Jose LOPEZ appeared to be very strong. Officer Tagorda said he assisted in preparing the Wrap restraints on the floor near Jose LOPEZ. Officer Tagorda said he assisted in helping the other officers putting the restraint on Jose LOPEZ. Officer Tagorda said during the confrontation he warned the other officers to be careful as Jose LOPEZ attempted to bite Officer Tagorda's hands as he was trying to place the Wrap strap over Jose LOPEZ's torso. Officer Tagorda said Jose LOPEZ was actively resisting by kicking his legs at the other officers. Officer Tagorda stated Jose LOPEZ continued to attempt to resist while in the restraint.

I asked Officer Tagorda if he believed Jose LOPEZ was possibly under the influence of an unknown substance, Officer Tagorda answered "Absolutely!" Officer Tagorda described Jose LOPEZ as being very strong and combative during the altercation and did not appear to be responding to any directions that were given to him. Officer Tagorda described Jose LOPEZ's strength as "Superhuman!"

Officer Tagorda said he did not observe Jose LOPEZ being struck by any Officers, with any weapons to include batons or taser. Officer Tagorda was aware a taser had been deployed as he observed the taser projectiles lying on the floor.

Officer Tagorda said he observed Jose LOPEZ had been sedated by American Medical Response (AMR) personnel, while Jose LOPEZ was on the floor in the living room. Officer Tagorda said he escorted Jose LOPEZ and the ambulance crew to the back of the ambulance. Officer Tagorda said Jose LOPEZ lost consciousness as he was being placed into the ambulance and the medical staff began resuscitating Jose LOPEZ. Officer Tagorda stated he followed the ambulance to Kaiser Hospital where he observed the ambulance crew continue chest compressions on Jose LOPEZ. Officer Tagorda stated while he was at the hospital, he never observed Jose LOPEZ regain consciousness.

Officer Tagorda said he drove back to Richmond Police Department after leaving the hospital and he was then driven to the Hyatt Hotel, where he was sequestered.

RPD Officer Frevele LEII Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Mandell and Contra Costa County DA Investigator Conaty, on March 18, 2020, Frevele made the following statements:

Officer D. Frevele began by explaining that at the time of the incident he was operating a fully marked and operational Richmond Police Vehicle and wearing his, "Class D" uniform, which included a silver star over the left breast and Richmond Police Patches on each shoulder. Officer D. Frevele was carrying all his assigned protective gear and equipment. Officer D. Frevele was wearing his AVR, which was activated.

Officer D. Frevele began by saying the incident in question was originally brought to his attention when he noticed a domestic violence detail on his mobile data computer, which had not been dispatched yet. The caller on the detail reported something similar to, "My mom's boyfriend is hitting her and trying to take her clothes off." At about the same time, the communications center sent two units to the detail, one of which was Officer L. Caston. Officer D. Frevele and Officer L. Caston both worked within the Southern District of Richmond. Officer D. Frevele, hearing that Officer L. Caston and another officer were detailed to the address ([REDACTED]) he decided to respond as well.

According to Officer D. Frevele he did not advise the communications center because he wanted to give the original officers sent to the detail, who were probably closer, a clear radio channel. Officer D. Frevele added that in a detail like that, where somebody was possibly being raped, it was not always necessary to put his response on the, "Air" because so many officers are trying to get on the radio at the same time. Officer D. Frevele responded to S. 9th Street, "Code 3" and estimated that it took him approximately five minutes.

Upon arrival on S. 9th Street, Officer D. Frevele saw that several officers had already arrived on scene, based on seeing the police vehicles in the street. While Officer D. Frevele did notice police vehicles, he did not see any police officers, which concerned him. Officer D. Frevele explained that usually, if the detail were less serious or had already been handled, you would notice officers just hanging around outside because they were not really needed at the scene.

Officer D. Frevele parked and exited his patrol vehicle and began walking toward [REDACTED]. As he neared the residence, he could hear yelling from inside through the open front door. He could hear an officer yelling something similar to, "Get on your face, turn around." Officer D. Frevele was not sure which officer was giving the commands. Hearing the commands giving by the officer, Officer D. Frevele ran inside the residence.

Once inside the residence, the first thing Officer D. Frevele noticed was that it was fairly dark and there were three officers on the ground toward the back of the residence, in a dark narrow hallway. Officer D. Frevele removed his Taser from its holster and continued walking toward the officers. As he neared, Officer S. Purcell held his hand out and told Officer D. Frevele to stand back because Officer M. Ricchiuto was going to deliver baton strikes. At that point, Officer D. Frevele was able to see that Officer K. Ferraro and Officer T. Parker were struggling with a subject (LOPEZ) on the ground, and Officer M. Ricchiuto was standing closest to their feet, between Officer D. Frevele and the officers on the ground. Officer D. Frevele could hear a lot of yelling and could see the officers were just trying to hold on to LOPEZ. While it was dark in the hallway, he could see that LOPEZ was a Hispanic male and that he was clothed, and possibly wearing denim jeans.

Officer D. Frevele was asked about the struggle he saw on the ground. According to Officer D. Frevele, it looked as though Officer Ferrero and Officer T. Parker were trying to hold LOPEZ in place on the ground, and LOPEZ was struggling against them. Officer D. Frevele also could hear them giving LOPEZ commands similar to, "Stop, turn around, put your hands behind your back." Officer D. Frevele was not sure at that point if LOPEZ was in handcuffs or if the officers had even gained enough compliance to get him in handcuffs. Officer D. Frevele again pointed out that the hallway was narrow and didn't allow for many officers to assist at that point.

Officer D. Frevele continued by saying at about that time, Officer M. Ricchiuto delivered several baton strikes to LOPEZ'S lower legs, near his knee and shin area. Officer D. Frevele could only say that Officer M. Ricchiuto delivered, "Multiple" baton strikes, but he wasn't sure exactly how many. Officer D. Frevele felt the baton strikes did not have any effect on LOPEZ. Officer D. Frevele heard LOPEZ say something like, "Stop hitting me" in English and remembered him trying to block the strikes with his hands. Officer D. Frevele felt LOPEZ wasn't saying stop because it was, "Ouch, that hurt," but more, "Stop, this is annoying me." As this was happening LOPEZ continued yelling and did not have any real reaction to the baton strikes. Officer D. Frevele was asked if LOPEZ appeared angry or injured. Officer D. Frevele replied, "He appeared angry, but at no

point did I see him feel injured." [Conaty suggested Lopez was angry several times in his questioning until Frevele agreed.]

Officer D. Frevele went on to say the struggle lasted a lot longer than we would like it to. Officer D. Frevele said he did not end up using his Taser and subsequently re-holstered it. Officer D. Frevele explained that he did not use the Taser because he did not want to miss LOPEZ, partly due to only having one cartridge, and also because the hallway was extremely narrow, and he did not want to run the risk of hitting an officer. Again, Officer D. Frevele pointed out that the baton strikes were not having any effect and he decided to just try and overpower LOPEZ so they could get handcuffs on him. Officer D. Frevele said they tried several control holds, to include trying to, "Twist" LOPEZ'S feet up because he had already tried kicking Officer D. Frevele. Officer D. Frevele continued just trying to hold on to LOPEZ, but it was not working. Officer D. Frevele said LOPEZ just kept "wiggling and wiggling" and at some point, he noticed LOPEZ was getting away from Officer K. Ferraro. Ultimately, Officer D. Frevele decided that just trying to hold LOPEZ down to keep him from struggling was probably the best option, because nothing else seemed to be working.

Officer D. Frevele was not positive about the timeline of some of the events, because it was a continuous struggle and he was not paying complete attention to what each officer was doing. At some point, Officer D. Frevele remembered LOPEZ trying to bite Officer M. Ricchiuto and another officer say, "He's biting." Officer D. Frevele told us that every time he got his hand near LOPEZ'S face LOPEZ would try biting him and if Officer D. Frevele's hand was near LOPEZ'S hand, LOPEZ would try grabbing him. When they were struggling in the hallway, Officer D. Frevele remembered holding onto LOPEZ'S head so that he wouldn't bite and also so other officers could try and get handcuffs on him. While holding LOPEZ'S head approximately six inches off the floor, LOPEZ again tried to bite him. Officer D. Frevele responded by pushing LOPEZ's head to the ground, in hopes that it would stun him, but it had absolutely no effect. Also, while in the confines of the hallway, Officer D. Frevele remembered elbowing LOPEZ a couple times on the back and side, and once near his head, to get him under control and to comply with instructions. Officer D. Frevele estimated that from the time he got there until LOPEZ was in handcuffs, was **approximately ten minutes**. This did not include the time it took to get LOPEZ into the WRAP.

Officer D. Frevele was asked if he remembered anything about an officer's firearm being taken. Officer D. Frevele remembered at one point during the struggle in the hallway, he heard Officer K. Ferraro say something like, "He is grabbing my gun," or, "He has got my gun." Officer D. Frevele recalled Officer M. Ricchiuto respond something similar to, "Really?" as if he was surprised that LOPEZ was trying to do that. Officer D. Frevele was not certain, but felt Officer M. Ricchiuto, upon hearing Officer K. Ferraro say LOPEZ was trying to get his firearm, either drew his firearm all the way or just put his hand on it. Either way, it caused Officer D. Frevele to redirect his attention to LOPEZ and Officer K. Ferraro. It was at that time Officer D. Frevele noticed Officer K. Ferraro's firearm was still in its holster; however, the safety (hood) had been moved forward, which would allow the firearm to be removed with an additional slight

movement. Officer D. Frevele felt the second lock remained engaged. Officer D. Frevele remembered hearing the distinct sound of Officer T. Parker re-engaging the safety (Hood).

Officer D. Frevele pointed out the struggle with LOPEZ was so long, they almost had to take breaks, and each time try to reassess the situation. Again, Officer D. Frevele was not sure of the time frame, but he remembered Officer K. Ferraro turn LOPEZ so that his chest area was facing Officer M. Ricchiuto. While Officer K. Ferraro maintained his hold on LOPEZ, Officer M. Ricchiuto removed his Taser deployed the darts into LOPEZ'S torso. Officer D. Frevele felt that because the, "Spread" was not very far apart, they had little to no effect on LOPEZ. Officer D. Frevele was not sure, but felt the Taser darts were allowed to cycle one time. Seeing the initial laser deployment had no effect on LOPEZ, Officer M. Ricchiuto removed the cartridge and "Drive stunned" LOPEZ in the torso, once again with no effect. *[Actually, FREVELE said Ricchiuto used the drive stun at least once, but he did not know how many times.]* Officer D. Frevele felt LOPEZ may have yelled when he was struck with the Taser, but did not show any signs of complying.

Officer D. Frevele was asked if at any time during the extended struggle with LOPEZ, LOPEZ appeared to surrender and allow himself to be safely taken into custody. Officer D. Frevele told us even when the WRAP was being placed on LOPEZ he still continued to fight with the officers. Officer D. Frevele was asked about the use of a K9. Officer D. Frevele explained that he knew a K9 (Officer D. Gault) was on duty, but he had not initially arrived on scene. The K9 was formally requested by Officer D. Frevele after the Taser deployments and upon seeing the Taser had no effect on LOPEZ. According to Officer D. Frevele, he got on the police radio and requested the K9 come straight in to the scene. Officer D. Frevele said he made the request over the police radio because he wanted Officer D. Gault to know they were still struggling with LOPEZ.

Officer D. Frevele backtracked and said during the struggle in the hallway, when Officer K. Ferraro had a hold of LOPEZ, he did remember seeing that LOPEZ had a handcuff on one of his wrists. He knew this, because he could see the other handcuff, unlatched, flying around in the air. Officer D. Frevele understood with the second handcuff unattached and with the ratchet open, it could possibly create a weapon for LOPEZ. ***[Actually, Frevele's point was that they still did not have Lopez under control. Conaty actually suggested the cuff could be used as a weapon after Frevele did not volunteer this.]***

In regard to the K9, Officer D. Frevele continued to say that at some point Officer D. Gault entered the residence with the K9. Officer D. Frevele was not sure if he yelled, "Dog" or if another officer did, but they responded by separating from LOPEZ and going into the bedrooms, leaving LOPEZ temporarily alone in the hallway. From Officer D. Frevele's position in the bedroom, he could hear Officer D. Gault giving LOPEZ commands and instructions that the K9 would be used if he did not comply. While in the bedroom, Officer D. Frevele requested two ambulances (Code 3), one for LOPEZ and one for Officer K. Ferraro. Officer D. Frevele briefly cracked the bedroom door and

could see LOPEZ in the hallway holding his hands up, as if he was going to "Give up." He could also hear Officer D. Gault continue with his commands. Believing LOPEZ was going to allow himself to be taken into custody, Officer D. Frevele closed the door. According to Officer D. Frevele, he shut himself back into the room because if the dog was going to be used, he did not want to be in the way.

Officer D. Frevele waited just a second and then opened the door again, to see that Sergeant C. Dean was dragging LOPEZ into the family room where there was more room to take LOPEZ into custody. Once in the family room LOPEZ again continued to fight and struggle with the officers. The officers responded by getting on top of LOPEZ and were trying to hold him down on the ground. At this time LOPEZ was handcuffed; however, he was handcuffed in front of his body. Sergeant C. Dean formulated a plan to move LOPEZ'S handcuffs to the proper position, behind LOPEZ'S back. To do this, it took between five and seven officers to hold LOPEZ down and maintain control of each arm/wrists as they moved them to LOPEZ'S back. Once LOPEZ was handcuffed behind his back, Sergeant C. Dean and the other officers put LOPEZ in the WRAP.

Officer D. Frevele again was asked about the arrival of fire/medical personnel. Officer D. Frevele said when officers were in the family room holding LOPEZ to the ground, he requested one ambulance crew inside to assist Officer K. Ferraro, because he appeared to be in a lot of pain. Officer D. Frevele advised the second ambulance crew to remain staged, until LOPEZ was completely under control. That being said, Officer D. Frevele knew they were close because they had already been requested to stage. After LOPEZ was safely placed in the WRAP, AMR personnel came inside the residence and carried him out to the gurney, at which time he was placed in the ambulance. ***Officer D. Frevele remembered ambulance personnel talking about giving LOPEZ some type of sedative so that he would calm down. [Actually, what he heard was someone instructing AMR to give Lopez a sedative, but could not remember who did so.]***

After LOPEZ was put into the ambulance, Officer D. Frevele got into his patrol vehicle and was going to follow the ambulance to the hospital. Officer D. Frevele drove around the block and parked behind the ambulance so he was in a position to follow it. Officer D. Frevele could see LOPEZ in the ambulance and that he was still in the WRAP. Officer D. Frevele got out of his vehicle to get closer to AMR personnel in the ambulance, in the event LOPEZ began fighting again with medical personnel, he would be in a position to assist. While there, he heard someone in the ambulance say, "He is coding." Officer D. Frevele took this statement to mean LOPEZ was possibly, "Dying." Upon hearing this, Officer D. Frevele requested a supervisor at his location. Officer D. Frevele reactivated his AVR and he, along with Officer C. Tagorda, began removing LOPEZ from the WRAP and handcuffs so medical personnel could continue treating him. Officer D. Frevele was asked if LOPEZ was conscious in the ambulance and he stated, "No." When asked about the removal of the WRAP, Officer D. Frevele said they initially removed the top half of the WRAP to get LOPEZ out of the seated position and then removed the leg restraints. Officer D. Frevele felt AMR personnel were able to get LOPEZ on some type of machine and begin CPR. The CPR continued for a short time and then the ambulance departed for Kaiser Hospital, Richmond. Officer D. Frevele told us Officer C. Tagorda followed the

ambulance to the hospital. Officer D. Frevele was asked if LOPEZ was conscious when he was removed from the residence and taken to the ambulance. Officer D. Frevele said that once LOPEZ was in the WRAP he was still wiggling around, but had calmed down. This led Officer D. Frevele to believe medical personnel may have given him some type of sedative at that point.

Officer D. Frevele concluded by saying his AVR was activated during the incident.

RPD Officer PURCELL LEII Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Sagan and Contra Costa County DA Inspector Erickson, on March 17, 2020, PURCELL made the following statements:

Officer Purcell began by explaining that he'd been a police officer for 19 years, including in gang unit and has been a field training officer for 15 years. Primarily, he has been a patrol officer. He also has a degree in Criminal Justice, and served as military police in Army.

Purcell was dispatched to an in-progress domestic violence call. He was with Timothy Parker as Field Training Officer. He and Parker were close by and went to the call. When they arrived, they saw Ricchiuto and another officer running toward the house. He and Parker followed. When he entered door, Parker could see officers challenging a suspect, ordering him to comply. The officers took him down to the ground, but did not see who it was. Purcell also saw someone in the kitchen to the right and turned toward them to stop them from going to hallway. He told the female to go into the garage. There were four others in garage, so Purcell focused on keeping them in the garage. Purcell said he heard commands repeatedly to get on ground and show his hands. He did not see what was happening much due to focus on people in garage.

Purcell and Parker were in standard duty uniforms and duty belt.

When Purcell came back out, he saw suspect in the family room in cuffs. He saw them put him in a wrap. Purcell then directed Parker to interview victim in the side bedroom. Campos came in to help with translation.

RPD Sergeant Dean LEII Investigation Interview Statement, March 18, 2020

In an interview conducted by RPD Detective Decious and Contra Costa County DA investigator Ritchie, on March 18, 2020, Dean made the following statements:

Sergeant Dean is a sergeant at the Richmond Police Department. He has worked at the police department for about ten years. Prior to working in Richmond, Sergeant Dean worked as a police officer in Vallejo, CA for about five years. Sergeant Dean is currently assigned as a patrol sergeant on team one. He works Monday through Thursday, from 0600 to 1600 hours. During this incident, his radio call sign was S51. Sergeant Dean is a

member of the RPD SWAT and Mobile Field Force teams. He is also an instructor for impact munitions and chemical agents (less lethal force options).

On 3/17/20, Sergeant Dean was dressed in a Class D type uniform consisting of black BOU style pants, a black shirt with an RPO patch on each shoulder, and a black external vest carrier. A silver star was affixed to the front of the vest carrier and a patch with the word "POLICE" in white letters was attached to the rear. His vest carrier consists of his AVR, handcuffs, pepper spray, small flashlight, police radio, extra magazines, and a baton. Sergeant Dean's duty belt consists of a holster with a firearm, a Taser, a key keeper, and a handcuff key. Sergeant Dean's AVR was activated during the incident.

On 3/17 /20, Sergeant Dean heard a dispatcher broadcast an in progress call of domestic violence. The daughter of a woman called to report her mother's boyfriend was ripping the clothes off of the mother and there was screaming in the background. Sergeant Dean and several other officers responded to the call code three (emergency lights and sirens activated). As he responded, Sergeant Dean heard what sounded like a struggle on the police radio. He heard clicking on the radio and broken radio transmissions from the officers who were on scene.

Once at the scene, Sergeant Dean heard an officer involved in the struggle request for K9 assistance. Sergeant Dean ran to the house. Officer Gault, a K9 officer, was running a short distance behind Sergeant Dean. As Sergeant Dean got to the front door, an officer in the house asked for K9 assistance again. Sergeant Dean saw several officers struggling with the suspect in the hallway in the house. Sergeant Dean yelled into the house to notify the officers the K9 was going to enter. Officer Gault entered the house with the K9 and gave the K9 announcement. Sergeant Dean walked into the house and stood behind Officer Gault. The officers who had been struggling with the suspect moved in response to the presence of the K9.

Sergeant Dean saw the suspect lying on the floor with his hands cuffed in front of him. Officer Gault did not deploy the K9 because the suspect was handcuffed. The suspect was sitting up so Sergeant Dean instructed the suspect to crawl towards him. The living room was a larger area than the back hallway so it would be easier to control him. The suspect did not come towards Sergeant Dean. Officer Gault gave commands in Spanish. Sergeant Dean assumed Officer Gault was telling the suspect to crawl into the living room, although Sergeant Dean does not speak Spanish. When it was clear the suspect was not going to move into the living room, Sergeant Dean told the other officers he was going drag the suspect into the living room. Sergeant Dean grabbed the suspect by one of his arms and dragged him into the living room. The other officers tried to grab the suspect to help control him but he kicked and pulled away, then flipped over onto his back. Sergeant Dean told the officers to roll the suspect back onto his stomach. While trying to turn the suspect over, the suspect grabbed Sergeant Dean's hands and he continued to struggle. An officer said the suspect was trying to bite one of the officers. Sergeant Dean felt the suspect's mouth near his hand so he pulled the suspect's arms further away to keep the suspect from-biting him. One of the officers put the suspect into a figure four leg control hold.

Sergeant Dean decided the WRAP was necessary. Officer Santana went to Sergeant Dean's car to retrieve the WRAP. The officers got the lower portion of the WRAP on the suspect's legs, but his hands were still cuffed in front. Sergeant Dean made a plan to take the handcuffs off one hand at a time in order to properly cuff the suspect to the rear. The officers were able to handcuff the suspect behind his back. The officers rolled the suspect to a seated position in order to put the upper portion of the WRAP on the suspect. The suspect immediately started to resist to keep the officers from applying the WRAP. Because of the suspect's resistance, the WRAP became twisted and looked like it started to strangle the suspect. Sergeant Dean saw the problem and immediately told Officer Caston to loosen the WRAP so it could be reapplied correctly, which she did. The officers also put a spit hood on the suspect to keep him from spitting.

The officers placed the suspect on his side and asked the paramedics to come inside to check on him. The suspect was still resisting. Sergeant Dean told the paramedics about the struggle and the suspect's attempt to bite officers. One of the paramedics said they were going to sedate the suspect. [***Dean was not asked about Ricchiuto telling the paramedics that they should administer a sedative to Lopez.***] Within a few minutes the suspect appeared to fall asleep. The paramedics and firemen used a blanket to carry the suspect to the ambulance, still in the WRAP. [***Dean said Lopez seemed to "fall asleep" within a minute or so of being given the sedative and remained that way while being placed on the gurney and put in the ambulance. He did not remember Lopez making any noises, but assumed based on medical personnel not taking any action that Lopez was Ok until he was in the ambulance. The investigator tried to lead Dean to saying that Lopez stirred while being placed on the gurney and he eventually did agree to that.***] Within a few minutes of the suspect being in the ambulance, Sergeant Dean heard a fire fighter say the suspect was going into cardiac arrest. Sergeant Dean notified Lieutenant E. Smith, the watch commander so proper notifications could be made.

Sergeant Dean did not remember anything specific the suspect said during the incident. He just remembered the suspect grunting. Sergeant Dean made sure the directions the officers gave were being done in both Spanish and English.

When Sergeant Dean arrived he saw Taser wires in the hallway so he knew a Taser had been deployed. He was sure physical force had been used prior to his arrival because of the radio traffic.

[Dean said that he was trained in the use of less lethal weapons. He said that impact munitions and chemical sprays were not appropriate to the situation due to the close quarters in the hallway. Dean also agreed, under leading questioning by the interviewer, that the only thing that would have worked with Lopez was hands on force. Dean was not asked anything about de-escalation by the interviewers.]

Sergeant Dean described the suspect's actions as "out of control." The suspect fought harder and for longer than Sergeant Dean had ever seen. Sergeant Dean believed the

suspect was on a stimulant because of his level of resistance. The suspect's body type did not match the level of fight he had in him.

RPD Sergeant Thomas LEII Investigation Interview Statement, March 18, 2020

In an interview conducted by RPD Detective Villalobos and Contra Costa County DA investigator Garcia, on March 17, 2020, Thomas made the following statements:

Sergeant Thomas related that he was assigned as a Street Sergeant partnered with Sergeant Dean as a Supervisor for Patrol Team 1. Sergeant Thomas responded to the scene because he heard officers struggling with Suspect Lopez. Sergeant Thomas took the less lethal shotgun from patrol unit 1120 and as he approached the residence, he met with Officer C. Santana who requested a WRAP restraint device be deployed.

He handed the WRAP to officer Santana who entered the residence. Sergeant Thomas followed Officer Santana into the residence and saw the suspect on the floor thrashing and resisting four officers as they attempted to restrain him.

Sergeant Dean was the supervisor on scene, with Officer Tagorda, Officer Caston and Officer Campos as they attempted to place Suspect Lopez into the WRAP restraint device. Sergeant Thomas saw the officers were having a very difficult time of placing Suspect Lopez into the WRAP device.

Suspect Lopez was cuffed to the front of his body, and was thrashing about so violently, that Sergeant Thomas moved Officer Caston back away from Suspect Lopez, and demonstrated to us how Sergeant Thomas placed more weight on Suspect Lopez in order to gain compliance. Sergeant Thomas placed his right hand on Suspect Lopez while kneeling down, in order to force Suspect Lopez to stay still.

By this time, AMR personnel were in the residence and Suspect Lopez was so combative, and continuing to fight and resist while in the WRAP, that AMR personnel gave Suspect Lopez an unknown sedative in Suspect Lopez's exposed buttocks. ***[This description is inaccurate. In fact, AMR personnel did not personally observe Lopez fighting or resisting, but were told that by RPD officers. In addition, Ricchiuto suggested to AMR personnel that they administer a sedative to Lopez due to his described behavior, and they did so.]***

A few minutes later Suspect Lopez became more placid. Suspect Lopez was moved onto a gurney and placed inside of the AMR ambulance. Sergeant Thomas confirmed Suspect Lopez was in no visual distress, and Suspect Lopez was acknowledging and responding to Officer Campos' words in Spanish, but not his commands.

Sergeant Thomas had nothing further to add and the interview was concluded.

Richmond Fire Department Captain Woodards LEII Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Macrenato and Contra Costa County DA Inspector Pamplona, on March 17, 2020, Woodards made the following statements:

Captain Woodards received a call but didn't have a lot of details about the call. His crew was told to stage near the scene. Upon arrival Captain Woodards saw a RPD uniformed officer sitting in his patrol vehicle and the officer was complaining of minor pain. Captain Woodards saw an AMR supervisor who was already on scene and who was in contact with the injured officer. The officer complained of hip pain but didn't need treatment. Captain Woodard and his crew waited in front of the home where the incident occurred and could see officers in the home and a K9 officer and his K9 at the front door.

Captain Woodards team was called to enter the home and they did so with AMR. Captain Woodards noticed about 6 RPD officers still inside the home. The patient was handcuffed and placed in a full WRAP but was still agitated and fighting with officers and he was aggressive. One of the RPD officers asked AMR to give something to the patient to calm the patient down. The medic left and returned with Versaid, a sedative. The AMR patient was given the shot on his right side. The patient was laying in the WRAP on his left side with a spit mask on. Within a minute the patient calmed down and wasn't aggressive. The patient was put on a tarp and then transferred to a gurney and taken out of the home. Captain Woodard saw the patient leaning forward on the gurney and he seemed lethargic.

The patient was placed in the ambulance without incident. Captain Woodards contacted his dispatch to tell his unit was clearing. His fire engine was blocked in and about a minute later, he heard the AMR medic say that the patient was coding, in cardiac arrest. Captain Woodards' paramedic went to the fire engine and retrieved their LUCAS device to start chest compressions. The patient was transported to the hospital.

Prior to the chest compressions being started, handcuffs and the Wrap was removed from the patient. One of Captain Woodards' firefighters went with the ambulance to the hospital while CPR was being performed. Captain Woodards did not physically participate in any life saving measures directly. Captain Woodards did not hear the patient make any statements, he was making grunting noises.

Captain Woodards heard from officers at the scene that the patient was tased and he heard that an officer was hit by another officer with a baton, and the officer also said "he" bit me. Captain Woodards assumed that the patient was the person who bit the officer.

RFD Firefighter Wraa LEII Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Macrenato and Contra Costa County DA Inspector Pamplona, on March 17, 2020, Wraa made the following statements:

Firefighter Wraa who is also a paramedic, was dispatched to the call from the station. Firefighter Wraa doesn't remember what the call was originally for. They got to the scene and staged for a short period. Firefighter Wraa described seeing a lot of police cars and an AMR supervisor. Firefighter Wraa spoke to a police officer who was in his car and complained of pain due to being bit in the stomach and the officer was also hit by a baton **[by another officer in the leg and that was hurting. The officer also said that someone had bit him in the stomach. The AMR supervisor took over with this officer from there They then were told to wait until they were eventually called inside. This took about 3 minutes. They did not hear anything from inside while waiting.]**

The firefighter crew and AMR were called into the home. Firefighter Wraa saw the patient in a full body harness, spit mask and he was in handcuffs, ~~seated~~ laying on his left side. **[There were lots of officers standing over him.]** The patient was still thrashing around. **[Two officers were still trying to hold him down.]** An officer was speaking Spanish to the patient, but the patient wasn't speaking.

An AMR medic gave the patient a sedative shot. About 30 seconds later, the patient calmed down and the patient was moved to a tarp **[by the AMR crew and fire crew]**, then the gurney, and then taken into the ambulance. The patient seemed to be sleeping **[while he was moved on the tarp to the gurney and to the ambulance. Wraa does not remember seeing a suspect given a sedative so quickly, right off the bat, before. Wraa said that it was normal for someone to fall get quiet quickly after receiving a sedative injection. But she also qualified it by saying she does not administer sedatives and does not see them frequently. It had been a long time since she had seen someone receive Versed. (It is noteworthy how hard the investigator worked to get Wraa to say that Lopez's reaction to the Versed was normal.) She said that it was like Lopez had finished his tantrum and was now going to sleep.]**

The firefighter crew was then waiting to leave and Firefighter Wraa heard that the patient was going into cardiac arrest. Firefighter Wraa then went to the fire engine, grabbed the LUCAS device**[, which does CPR,]** and went to assist in the ambulance. An officer was taking the restraints off the patient and then CPR was started utilizing the LUCAS device. They performed CPR for about two minutes and the decision was made to take the patient to Kaiser that is approximately a minute and a half away. **[The AMR crew were putting in an IV while Wraa did CPR.]**

Firefighter Wraa traveled with the patient in the back of the ambulance to the hospital continuing to assist with CPR. The patient was taken into the E/R and into a room and then nurses took over CPR duties. About 10 minutes later, Firefighter Wraa saw that the patient got his pulses back. The LUCAS device was removed and the

Firefighter crew left the hospital. Firefighter Wraa did not see any other obvious injuries to the patient, but she did not have a look at his whole body, she was focused on his face and assisted with his breathing.

**The LUCAS device is a device that does chest compressions for the medics.

RFD Engineer James LEll Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Macrenato and Contra Costa County DA Inspector Pamplona, on March 17, 2020, James made the following statements:

Engineer James does not remember specifically what the call was for, but he thinks it was an assault. [*James also is a paramedic.*] Engineer James drove and parked the engine near the scene. Engineer James saw an injured officer complaining of pain to his leg. [*He therefore thought it was an assault on a police officer when they arrived.*]

The fire crew and AMR were called into the home [*to assess person in restraints. He did not hear anything from inside the house.*]. Engineer James saw the patient in a full body restraint on laying on his side handcuffed with a spit mask. Engineer James described that the patient was still fighting with the officers but still restrained. [***When asked to describe what he meant by still fighting the officers, James explained that he was still moving and grunting.***] Officers were giving the patient directions to stop moving, but the patient was still struggling to get free. [*One officer had his hand on the suspect's leg to keep him from moving.*]

Engineer James stood at the doorway and an AMR medic sedated the patient. [*They injected him in the buttocks area.*] The patient struggled for a couple of minutes and then calmed down. [***He was really sedated.***] Engineer James saw the patient was breathing but not fighting. The patient was then moved to a tarp, then to a gurney. He was then taken to the ambulance and seemed to be sitting up on his own not fully leaning on the gurney. [*He was leaning forward instead of leaning fully on the gurney. (JT: **But, of course, the Wrap restraint straps prevented him from sitting fully back.**)*]

Engineer James then went to the fire engine and later heard that the patient was in cardiac arrest. Engineer James went to the back of the ambulance and saw that an officer was taking off the patient's restraints and CPR was started. Engineer James did not assist with CPR.

The ambulance left the scene and Engineer James drove the fire engine to the hospital to pick up Firefighter Wraa. Engineer James did not hear the patient say anything during the whole contact but heard him grunting. Engineer James did not have any further contact with the patient.

AMR Paramedic Supervisor Ansari LEII Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Macrenato and Contra Costa County DA Inspector Pamplona, on March 17, 2020, Ansari made the following statements:

Paramedic Ansari has been employed by American Medical Response for approximately 15-years and has been a paramedic for the last 6-years and has been a supervisor for one-year. Paramedic Supervisor Ansari stated he was present at the aforementioned incident located at [REDACTED], Paramedic Supervisor Ansari was driving a supervisor's AMR vehicle and was with Supervisor in Training Enrico Aguilar #20387988.

On 03/17/2020, at approximately 1450 hours, Ansari and Aguilar were in the area of [REDACTED] when Aguilar heard the call come out and that their services may be needed for multiple patients. Ansari did not have knowledge of the details concerning this call for service. Ansari and Aguilar arrived on scene shortly after RFD and officers.

Ansari noticed a Richmond Police Department officer limping out of the residence located at [REDACTED]. The officer limped to patrol vehicle #1220 which was parked on the street, The officer sat down on the rear seat of the patrol vehicle. Ansari instructed Aguilar to check in with officers inside the residence while he treated the officer limping. Ansari began an assessment of the officer, The officer grunted with pain when Ansari touched his left thigh. Ansari said the officers left hip appeared abnormal. The officer told Ansari he had suffered a dislocated hip in the past. Ansari was told by the officer that the suspect who was still inside of the residence had bit him on the left side of his abdomen. After inspecting the bite wound, Ansari did not see any break of the skin and described the injury as "rug burn." Ansari returned to his vehicle to retrieve sanitary hand wipes at the request of the officer.

[The firefighter crew was now on scene.] Moments later, Ansari observed the transporting ambulance (AMR Unit #69) on the south side of the street at which time he heard Aguilar direct them to enter from the north side of the street. Ansari advised the other paramedics of a [grossly] combative subject who was still inside the residence. [It is unclear from Ansari's statement how he knew Lopez's state, since he had not gone to the door at that point.] Ansari stated he never entered the residence and only reached the threshold of the front door. Ansari described the suspect as being in a "wrap" and wearing a spit mask. ~~The suspect appeared to be~~ [Ansari again described Lopez as "grossly combative" **after saying he never entered the residence but other paramedics did.**] ~~to Ansari~~ at which time based on treatment guidelines a 5 mg. dose of "Versed" was provided via inner muscular injection.

Shortly after the injection the suspect was incredibly calm. [Paramedics carried Lopez out of the house and put him on the] ~~The suspect was escorted out to a gurney by~~ transporting him on a plastic tarp where he was secured. The suspect was breathing

[but not very alert] as the staff began their assessment of the suspect. Initially, Ansari described the suspect as being "hog tied," but quickly corrected himself by describing the suspect in a "wrap" which is often utilized by the police to restrain a combative subject. **[Actually, it was the investigators who instigated this by explaining that a Wrap was not the same as being hogtied.]** Ansari described the suspect with his legs being flat and his upper body being at a 40 to 45 degree forward bend. The suspect was breathing and vital signs were relatively normal for the suspect's condition **[in a state of high agitation going to calm with the medication]**. Prior to the suspect being escorted to the ambulance, Ansari heard an agitated male voice from within the residence shouting "get off me don't touch me." Ansari was not inside the residence and only assumes the male voice was from the suspect who was in the wrap. After approximately 5-minutes inside of the ambulance, paramedic crews advised the suspect was no longer breathing at which time they immediately started CPR.

Ansari said based on the belief that the suspect was going through an assumed drug overdose, the suspect may have started a hysteria induced cardiac arrest. The suspect was immediately administered an intravenous dose of sodium bicarbonate. Based on the suspect's condition, the suspect was immediately transported to the nearest hospital which was Kaiser Hospital located at 901 Nevin Avenue. Prior to transporting, the suspect had been placed in a Lucas CPR device that was functioning properly. Ansari drove his supervisor vehicle and followed AMR #69 to Kaiser Hospital. Once at the hospital, Ansari briefed the staff at which time they took over the medical treatment of the suspect.

[Later in the interview, Ansari clarified that he did not see Lopez being combative, but simply assumed that was what was happening inside the house, since he heard the suspect yelling and heard something thumping on the ground. Ansari also described Lopez as using slurred speech inside the house. Ansari also said that it was normal protocol to administer Versed when a patient is highly agitated. Ansari also clarified that he did not see Lopez's vital signs being read and was simply told that they were normal. Ansari further clarified that they administered sodium bicarbonate because they assumed Lopez was in cardiac arrest because of excited delirium from PCP, methamphetamine, or another stimulant. Ansari heard all of this from other paramedics who were in the house.]

AMR Paramedic Hirsch LEII Investigation Interview Statement, March 17, 2020

In an interview conducted by RPD Detective Macrenato and Contra Costa County DA Inspector Pamplona, on March 17, 2020, Hirsch made the following statements:

Hirsch advised that he has been a paramedic for the past 8-years and has been employed at AMR for the last 3 years. Prior to his current employment, Hirsch stated he has been employed at the following counties as a paramedic: 1-year for Fresno County, 2-years in Tulare County and 2-years in Kern County.

On 03/17/2020, at approximately 14:45 hours, Hirsch and his partner (AMR Unit #69) were dispatched to an unknown medical issue. Hirsch observed several Richmond Police officers responding code-3 towards the address he had been previously dispatched to at [REDACTED]. Hirsch was staged, as directed, at Richmond Fire Department Station# 67 located at 1131 Cutting Boulevard.

As soon as they were directed to enter the scene, Hirsch responded to the residence. Hirsch walked towards the residence and stood by on the sidewalk. While waiting on the sidewalk, an RPD officer walked outside and requested a "spit hood" which was provided at the time. *[The officer went in and placed it on the patient.]* Approximately 45 seconds later, Hirsch was directed to come inside the residence.

Once inside the residence, the suspect was on the floor in the body wrap, laying on his right lateral side, actively aggressive, agitated, bucking on the floor and attempted to spit at officers. ***[Actually, Hirsch said that Lopez had previously tried to spit at officers, not that he observed him do so upon entering.]*** Hirsch was advised that the suspect had bitten, spit and attempted to grab an officer's firearm. Hirsch was advised by Sergeant Thomas that the situation was a domestic type incident and that the suspect may be on PCP. *[Actually, Hirsch was told by Thomas that the suspect was "on something", and then other officers suggested that it may have been PCP or methamphetamine.]* Per AMR protocol, "Versed" was retrieved from the ambulance and brought into the residence.

Moments later, Hirsch quickly returned to the residence and injected a 5 mg dose of "Versed" into the suspect's buttock. After Hirsch secured the narcotics in the back of the ambulance, he returned into the residence and assisted in placing the suspect on a tarp commonly used to transport a patient onto a gurney. Hirsch observed the suspect breathing and moving. ***[Hirsch said Lopez was still conscious during transport on the gurney to the ambulance.]*** Hirsch estimated the sedative took approximately 1-minute to calm the suspect down.

Once in the back of the ambulance, the suspect was being checked for his vitals at which time Hirsch discovered the suspect had stopped breathing and had no signs of a heart beat. CPR was immediately started on the suspect and he was administered an intravenous dose of sodium bicarbonate. Based on the fact that Hirsch did not know if the suspect was in his condition due to cardiac or trauma issue, the suspect was transported to the nearest hospital which was Kaiser Richmond.

During the transport, Hirsch administered the suspect with a dose of epinephrine in an attempt to re-start the heart which produced negative results. Once they arrived at Kaiser Hospital, the suspect's condition did not change at which time the medical staff at Kaiser took custody of the suspect and continued medical treatment. After 10 to 15 minutes of treating the suspect, the staff at Kaiser was able to regain a steady rhythm from the suspect's heart and also his breathing.

Hirsch advised he had administered "Versed" approximately 15-times in the past and has not had a cardiac arrest for any of the previous patients. Hirsch described "Versed" as a safe drug and has assisted medical staff to medically treat violent patients after he/her has been sedated. Hirsch described initiating CPR approximately 10 seconds after he realized the suspect was not breathing with the assistance of officers and firefighters.

*[Hirsch said that prior to entering the home, he could not hear anything said because of the commotion of the K(barking and other noises. About 1 minute after the officer went in and put the spit hood on the patient, that officer came out and told them to come in. Hirsch remembered Lopez yelling but not what he said. **One officer was holding down the left shoulder of Lopez when they entered. This same officer helped Hirsch expose Lopez's buttock to administer the injection of Versed. Ferraro told Hirsch that Lopez had assaulted officers and tried to take Ferraro's gun.]***

[Hirsch also said it is a typical response to agitated suspect to administer Versed, and it usually sedates them with no complication such as a cardiac arrest.]

[While walking Lopez down the street on the gurney, Hirsch specifically asked one of the officers whether Lopez was still breathing, because it was hard to tell with the spit mask and the wrap on him and he was not moving. Hirsch was at Lopez's feet and had the view of him. An officer was walking with them to the ambulance. The officer said he was still breathing. Once they got him to the ambulance, Lopez was slumping over, and Hirsch realized when they put him in the ambulance that he was not breathing.]

AVR Footage Summary

The AVR footage⁴ from several RPD officers provides evidence regarding what happened during the incident involving Mr. Lopez.

Campos

The AVR began with Campos running into the home where the call for service originated. The front door was open, with a view as Campos entered of several officers crowded into a hallway where a man was lying face down, struggling against officers. Ricchiuto was standing at the feet of Lopez, with at least two other officers further up his body trying to restrain his arms. Ricchiuto took his long baton and swung it down with both hands to strike Lopez in the legs several times (at least 5), causing him to scream. Another officer stood back and to the right and several times appeared to aim a Taser device at Lopez, but he did not fire the Taser device.

Campos then went outside and requested the police dog from an officer, and returned to the house's interior. As Campos returned into the interior, Ricchiuto was jabbing the end of the

⁴ The IO viewed AVR in two different settings, first at the OPA officers and subsequently through a remote link to Evidence.com. The AVR footage was not consistently labeled with the same names between the first and second viewing. The IO has tried to use both names of the same video where possible so that Commissioners will be better able to identify relevant video for review. However, not all video was viewed twice.

baton forcefully into Lopez's upper body. The dog came in and the K9 officer ordered Lopez to put his hand up. Campos' camera did not show the scene because he went into a bathroom off the hall while the dog was held there as a threat. Sgt. Dean pulled Lopez down the hall by his hands. Officers put Lopez on his stomach, put his legs in a butterfly hold, and put knees on both his back and neck for an extended time. (21:46:30 – 21:50:30)

The officers then flipped Lopez over on his back, and rolled him so that he was face down again. They wrapped his feet, then his entire lower torso, and got his hands behind his back and cuffed, all while he lay face down. (21:50:45 - 21:53:50) The officers then flipped Lopez over and sat him up while they clicked the cuffs into the Wrap. Ricchiuto put the spit mask on Lopez at 21:56, and it stayed on him until he was taken away by the EMTs at 22:00.

Campos 2-4

The AVR included Campos questioning witnesses about the incident that led to a call for service and searching the house for drugs. The video was not probative on the issue of the reasonableness of force.

Caston

Caston arrived at the house while the incident was already ongoing. She went into the house and stayed in another room while the police dog was displayed. Caston then came out again once officers had pulled Lopez down the hall to the living room. Caston took a position on top of Lopez's feet and put them in butterfly hold. The AVR showed Caston twisting the feet of Lopez while he was in the hold. The positioning of Caston's arms repeatedly obscured the AVR camera during the hold. Other officers had their knees on the back and neck of Lopez. Lopez's breathing seemed labored at this point.

Caston got off Lopez's legs and another officer took over. Caston went to clear away some furniture so that officers could move Lopez over onto the Wrap. Officers got off Lopez's back, swung him over by his legs onto his back, and then immediately turned him over on his stomach again on the Wrap.

The AVR then ended.

Caston 1

The AVR footage was all black, as if obscured by something, with some audible sound of Lopez groaning. The AVR lasted 11 seconds.

Caston 2

The AVR footage was all black, with some audible sound of Lopez groaning. The AVR lasted 14 seconds.

Caston 3 (273)

The AVR was about 12 minutes in duration and began at about 21:51:30.

The AVR began with other officers handling Lopez in the Wrap. Caston and a second officer got the harness portion of the Wrap for the upper body ready. Once Lopez was rolled over on his

back, Caston put a strap harness on Lopez's torso that allowed the cuffs to be clipped in. Then Caston went outside. Afterward, Caston told another officer Lopez tried to bite her, but missed. During this video, when Caston was about to drive Ferraro to the hospital due to his injuries, Ferraro could be heard stating, "[Lopez] fought like a motherfucker." (22:01:03)

69 PC, UOF (Dean)

The AVR was about 19 minutes in duration and began at about 21:45:20.

Dean's video began with him standing in the living room beside Officer Gault, who had the police dog on a restraint, barking at Lopez, who was in the hall. Gault was ordering Lopez in Spanish to put up his hands and "come here." Lopez could be heard saying, "No, no." Dean said, "I'm going to go get him." Dean began to walk into the hall toward Lopez. His video showed Ricchiuto lean out of the bedroom door into the hall and say to Lopez, "Put your hands up." Dean then grabbed Lopez by his wrist and began to drag him down the hall on his stomach and into the living room, while yelling, "Get over here!". (21:46:20) Once Lopez was in the living room, several officers began to help restrain Lopez face down on the floor.

Dean directed officers to take control of parts of Lopez's body. Dean held Lopez's cuffed hands out in front of his body, while another officer pushed Lopez's face down into the floor with both hands on the back of his head. (21:46:50) Very quickly, Frevele put his knee on the back of Lopez's head and put his weight on it through the knee. (21:47:05) Lopez was yelling, but his voice was muffled from the compression of his face onto the floor. Another officer was pushing down with his hand on Lopez's neck, putting his weight on his hand while doing so. (21:47:15) While Frevele kept his knee on Lopez, the other officer sometimes took his hand off his neck and then would push down on his back. Dean got up and asked that an officer get an ambulance for the suspect. Dean then told Gault that the officers would get Lopez's legs secured and then switch his handcuffs to the back. Dean then repeated this to the officers restraining Lopez, mentioning that they would use the Wrap. Dean checked on the ambulance with Gault, who said it was coming. He then checked on the officers restraining Lopez, and a female officer said, "He's biting me." During the entire time, Lopez continued yelling in Spanish.

Dean then went out to get the Wrap. (21:49:48) As he walked out, Santana was coming up the sidewalk with the Wrap. They both went back into the living room. Dean unpacked the Wrap and got it ready for use. Dean then directed the officers to drag Lopez out to the center of the room, so they had some space to work. (21:50:25) They would then secure his legs. As the officers moved Lopez, he flipped over on his back again. An officer yelled, "Roll over! Roll him over!" The officers then flipped Lopez while they held him in the air by his limbs. (21:51:00)

Dean's video then showed Lopez restrained prone with his face down again. Officers were again using their knees to place weight on his upper body to keep him restrained, while Dean and others worked on securing his legs into the Wrap device. (21:51:10) Dean then directed the officers on moving the cuffs to get Lopez cuffed in the back. (21:52:20) Dean took Lopez's right hand as it was uncuffed and got it behind Lopez's back for recuffing. (21:53:15) Another officer got the left arm back and cuffed to the right arm. (21:53:27)

Officers then rolled Lopez over on his back to place a harness on his upper torso. Someone said, "He's bleeding." Officers then sat up Lopez so that they could fasten a strap between his legs and chest to keep him at a 45-degree angle. (21:55:05) At this point, it appeared that Lopez tried to bite an officer. At 21:55:45, Dean said, "It's too tight. She might be able to loosen hers a little bit." Dean then said, "Spit mask." Dean went to the front door and signaled to the AMR personnel to move the gurney to the house from the street where they were waiting.

As the AMR personnel came to the door, one of them said, "What's up, man? What's up?" Dean responded, "So, he's high and was trying to hurt his girlfriend. He's kicking, fighting." The AMR guy said, "Still fighting?" Dean responded, "Oh, yeah." Ricchiuto can be seen in the video saying to the entering AMR personnel, "You need the shot thing." While saying this, he also gestured with his hand like he was pushing down on a syringe. (21:56:47) Dean then said, "He's trying to bite us." One of the AMR personnel said, "We can give him a little (unintelligible)." Dean then said, "Roll him on his side if you have to. You may have to sit him up." (21:56:53) Dean said, "Let them get the narcs first. So, roll him on his side. Roll him on his side." (21:57:00) Santana and Caston then rolled Lopez on his side. At 21:58:10, the AMR guy came in with a syringe and approached Lopez while he lay on his side in the living room. Just before this, Lopez was groaning with a weakened voice. Dean's video did not actually show the injection. Dean then moved on to directing officers to clear the home of potential threats.

At 21:59:08, Dean deactivated the sound on his AVR, as he and others were standing in the living room while Lopez still lay on the floor. The sound remained deactivated as an officer brought Dean the AVR unit that was knocked off of Ferraro during the struggle with Lopez. Dean's AVR audio also was off while Lopez was lifted onto a tarp and moved to the gurney. Lopez did not appear to be moving of his own volition during this transport. (22:00:15) Dean followed them outside and continued talking to officers with the sound off as Lopez was put on the gurney and rolled to the ambulance. The AVR audio remained deactivated until 22:04:20, when the video ended.

Ferraro

The AVR duration was 20.5 min. The video began at 21:41.

Ferraro arrived at the residence and appeared to be the first responding officer. He approached a young woman who was the reporting party and asked what was going on. The RP said her mom was in the house. Ferraro asked if the mom was OK, and the girl said, "Yes." As he approached the front door, Ferraro twice loudly announced, "Police Department!" He then entered the house. As he entered the front room and advanced, Ferraro again yelled, "Police Department! Come here!" A woman's voice could be heard responding from somewhere in the house. Other officers were behind Ferraro as he approached and entered the residence with his gun drawn. As Ferraro advanced into the house through the front room, he turned to his right to look into the empty kitchen, where his AVR showed another officer's handgun pointing toward the kitchen. A man's voice was then heard yelling from somewhere in the house. As Ferraro advanced past the kitchen into the hallway, he looked into a bedroom on the right and saw a female on a bed. Lopez entered the hall. Ferraro said, "Stop, stop. I got it." Santana responded, "You got it?"

Immediately, Ferraro began restraining Lopez in the hall, attempting to put his hands above his head and then behind his back. Lopez at first seemed to be cooperating and was talking. Santana was to Lopez's right as Lopez faced the right wall in the hall. The sounds of cuffs could be heard clicking, and it appeared that Ferraro cuffed one wrist of Lopez. As Ferraro was cuffing Lopez, his AVR camera turned right and showed Santana immediately to his right, with two male officers behind her. Ferraro then reached forward and brought the right arm of Lopez behind his back, as Lopez was talking. (21:41:45) The AVR view then got very close to Lopez's back and was not helpful, as clicking sounds of cuffs could be heard. There was much camera movement at this point.

The AVR then went black for a while, but the sound continued. Lopez said at that point, "You are killing me. Excuse me. I don't beat my wife! No, Senior, no." Lopez said, "Stop. You abuse me. You abuse me." Lopez then screamed in what appeared to be pain. Ferraro shouted, "Give me your hand! Now!" (21:42:05) Lopez screamed very loudly in apparent pain. He may have yelled, "Help." Lopez continued screaming, and also yelling, "No!" Ferraro yelled, "Put your hands behind your back! Now!" (21:42:20) Lopez continued screaming, while Ferraro repeatedly yelled, "Give me your hands, now!" The general tenor of Lopez's screams did not appear to be angry, but rather to evidence pain and distress. Lopez said, "No, Senior." [*It could have meant stop hurting me, or I will not comply, it is unclear.*] An officer yelled, "Back up!" (21:43:10) Lopez said, "You're going to shoot me."

Another officer asked, "What do you want? What do you want?" It sounded like Ferraro said, "Get him cuffed." (21:42:40) There was more screaming from Lopez. He began yelling, "Why? Why?" (21:43:10) Officers yelled, "Get on the floor, now!" Lopez yelled, "You are killing me!" An officer said, "Taser." (21:43:33) The sound of the Taser could be heard discharging. An officer appeared to say, "It didn't work. Do you want more?" And officer yells, "Dog! Bring the dog!" (21:43:42) There was much yelling.

At 21:43:55, the AVR camera flipped over and showed a view of the ceiling, looking up from the floor, with an officer standing over the camera. There is another sound of a Taser discharging. Ferraro was heard stating, "He's got my gun." Ricchiuto responded, "Really?" (21:43:59) There was another sound of the Taser discharging. (21:44:07) Another officer's voice appeared to say, "Want to get it again?" Ricchiuto backed away from Lopez and puts his Taser back in his left holster. Lopez yelled, "You are killing me!" (21:44:16)

At 21:44:50 or so, someone yelled about the dog coming, and officers began clearing the hallway. At 21:45:09, Lopez sat up and put his hands up. At 21:46:02, an officer grabbed Lopez by the cuffs as he was sitting up, and dragged him down the hall toward the front room, out of camera view. After that, Officers came out of surrounding rooms, and Ricchiuto assisted Ferraro as he walked down the hall.

At 21:51:40, Ferraro put his camera back on. For most of that subsequent period, Ferraro had his hand over the camera, and sometimes the AVR camera went upside down. Ferraro was not involved in placing Lopez in the Wrap. The video ended at about 21:59.

Frevele 1

Frevele ran into the house, and his AVR showed Ricchiuto striking Lopez with his baton with great force in the hall, while other officers tried to restrain Lopez on the ground. Ricchiuto hit Lopez multiple times (at least 6 times) with full, two-handed swings of his baton. Officers turned Lopez over on his back sitting up, and Ricchiuto hit Lopez at least 3 times with the baton in that position. Ricchiuto then shot Lopez with a Taser. It looked like Frevele might shoot Lopez with a Taser, but the picture was not entirely clear. Ricchiuto then jabbed Lopez with the end of the baton in the torso several times. Frevele was in the hall standing over Lopez for a few seconds, then went into the back bedroom where two other officers were located and turned off his sound.

When Frevele and the other two officers came out and into the hall, Lopez was face down on his stomach in the living room. They went to the front room to help restrain Lopez. Frevele went to the top of Lopez's body, where another officer was pressing Lopez's face into the floor with both hands. Frevele puts his knee somewhere on the top of Lopez's body, but the camera did not show where. It appeared that Frevele was the officer with his knee on Lopez's neck, but his camera view made that inconclusive. *[However, other video footage confirmed that this was Frevele.]* Frevele also pushed Lopez's face into the floor at one point.

Officers then flipped Lopez over onto his back onto the Wrap, laid out flat on the floor. Officers then flipped Lopez back on his stomach. Frevele pushed Lopez's face into the floor with both hands. Frevele got up before Lopez was fully wrapped. Frevele then walked outside.

Frevele 2

The AVR was 7 minutes duration, starting at 21:55. Frevele came back into the house as officers were sitting Lopez up. They put a harness with a cuff clip on Lopez, then a spit hood over his face.

The camera audio was deactivated before other officers carried Lopez out of the house.

Frevele 3

The AVR was 6 minutes in duration. The AVR audio was off. Frevele was at the ambulance, and there appeared to be attempts to revive Lopez with some sort of automatic heart compression device.

Gault 1

The video was 30 minutes in duration. The footage began at 21:44.

The AVR began with Gault running to the home with his dog, talking about the "bad guy" (apparently to the dog). He ran into the house, told Lopez, "Stop fighting, put your hands up, or I will set my dog." All the other officers went into different rooms. Lopez continued sitting on the floor in the hall as Gault told him to come to him, but Lopez did not. Finally, Sgt. Dean walked into the hall and dragged Lopez by his cuffed hands down the hall into the living room, while Gault held back the barking dog. Gault's camera showed Frevele putting his knee on Lopez's neck to hold him face down in the living room. Gault pulled the dog back outside. The AVR showed nothing further that was probative on UOF issues.

Parker

The AVR video was 1 hour, 38 minutes in duration. The recording began at 21:41 hours on March 17, 2020.

The footage showed Parker running up to the house. As Parker entered the home, Ricchiuto stood with his baton out in the living room near the hallway. Lopez's daughter was standing in the living room and appeared to be pointing her phone at the hallway. As Parker passed Ricchiuto, the video showed Ferraro and Santana standing in the hallway grouped around Lopez. Lopez was facing the wall with his head turned toward the front door. Ferraro had Lopez pushed against the wall, and Lopez was arguing in Spanish with Santana, who was next to Ferraro.

Ferraro took his cuffs out of his right pocket with his right hand and put one on Lopez's left hand, which was above his head. Ferraro then brought Lopez's right hand behind his back to meet his left hand. Lopez was looking at Santana and talking to her. At 21:41:45, Ferraro suddenly picked up Lopez from behind and slammed him to the floor face down in the hall, with no apparent reason for the escalation of force on this video. *[Contrary to Ferraro's statement, it did not appear from this video that Lopez was pulling away or turning on Ferraro. He was simply standing and talking to Santana.]*

Parker went down on hands and knees along with Ferraro and Lopez, using his left hand to hold down Lopez's right hand on the floor. Lopez said, "You are killing me." He then said, "I don't beat my wife." Lopez twice said, "You are abusing me." Ferraro repeatedly yelled, "Give me your hand!" Lopez kept saying, "You are killing me," while screaming in apparent pain. Lopez struggled against the efforts of Ferraro to pull his right arm behind his back. Ferraro ordered Lopez to put his hands behind his back, with Lopez screaming, "No, no, no!" Ferraro pulled Lopez's cuffed hand back with the loose cuff, but Lopez resisted his efforts. (21:42:25)

Parker and Ferraro appeared to cuff Lopez's other hand at about 21:42:50. Lopez was saying, "No, no, no, Senor. You are going to kill me. I see the hate in you. Why?!?"

Parker got up and turned toward the entrance door. His AVR showed Ferraro get up while holding Lopez's hands by the cuffs and pulling him up by his arms. Lopez was then on his back. Parker's video then showed a view down the hall toward the door, where Ricchiuto was backlit by the sun. Ricchiuto appeared to be facing Parker and Ferraro in the hall, standing over Lopez's legs. Ricchiuto swung his baton up high with both hands like a baseball bat and brought it down to strike Lopez, apparently in the legs. (21:43:12) Ricchiuto then did it again. Ricchiuto twice yelled, "Roll over now!" Lopez repeatedly screamed, "You're killing me!"

Ricchiuto put away his baton, then said, "Taser, Taser." He took out his Taser device while Parker and Ferraro appeared to hold Lopez's arms back while exposing his chest to Ricchiuto. Ricchiuto deployed the Taser, and it appeared the wires made contact with Lopez's chest.

Ferraro then yelled, "The dog! Get the dog!" Ferraro was then on top of Lopez with Lopez on his back. Lopez again yelled, "You're killing me." Ricchiuto came up beside Ferraro and then applied his Taser device directly to Lopez at least twice, in "drive stun" mode. (21:44:00) Ferraro then

yelled, "He's got my gun!" Ricchiuto replied, "Really?" Ricchiuto appeared to continue applying the Taser directly to Lopez.

Ricchiuto then jabbed Lopez with the end of his baton in the side of his abdomen as Lopez was on his back. (21:44:15) Lopez was repeatedly screaming, "No, No, they're killing me." Parker and Ferraro turned Lopez back on his stomach and continued struggling with him. Ferraro pressed Lopez's head down while it was facing the floor.

Someone yelled, "Dog, dog!" Officers began clearing the hallway. (21:44:55) The dog came in, and Parker went into the back room with Ferraro and Frevele. Audible on the AVR was the K9 officer and dog in the hall, as well as Lopez yelling. When Parker came out of the back room, Lopez was being pulled by the cuffs into the living room. (21:46:04) Parker moved to the front room to assist with Lopez. Parker helped push down Lopez's upper back while he was being restrained. Another male officer was pushing down on Lopez's cuffed hands and pushing his face into the floor. (21:46:08) That same officer requested another officer come to assist with Lopez's left arm. When Frevele came forward to assist, he at first held the left arm, but then shifted to pushing Lopez's face and neck down forcefully into the floor. (21:46:25) At this point, two officers were pushing down on Lopez's head face-first into the floor, while a third officer was pushing down on this back. (21:46:31) Lopez was yelling, but the sound was muffled due to his head being forced into the floor.

While Lopez was face down on his stomach, Frevele put his knee on the neck/head of Lopez, while Parker continued pushing down on his back with his hands. (21:46:45) Lopez continued to yell in a muffled voice, "You're killing me." This continued with Lopez appearing to run out of voice as he yelled and began labored breathing. Frevele took his knee off at around 21:48:23, but replaced it with two fists pushing down on Lopez's upper back near his neck, while saying, "Stop moving." He then put his hand on the back of Lopez's neck and pushed down. Frevele immediately replaced his hand with his knee again, while Parker pushed down on Lopez's back with two hands. Parker's AVR view then shifted so that it did not show much of Frevele, but Frevele did not appear to move. This continued for some time, until other officers came near to help put Lopez in the Wrap. (21:50:10)

At this point, Parker got up off of Lopez and stood up. (21:50:23) He then went to Lopez's feet and, along with another officer, pulled him out away from the wall. As they did so, Lopez rolled over on his back. An officer yelled, "Roll over!" (21:50:40) Parker and other officers used Lopez's legs and arms to roll him over, and then they began to put a strap around his ankles and tighten it. (21:50:50-21:51:10) The AVR then showed other officers putting the Wrap around Lopez's legs while he was on his stomach. (21:51:10-21:51:55) Parker got up near the end of this process.

Parker then moved to Lopez's upper torso and helped keep him pushed down on the floor. Officers discussed recuffing Lopez with his hands behind his back. They pulled Lopez's hands from in front of him, bent his arms backward at the elbow, and put his hands behind his head. They then began to uncuff his hands in order to recuff them in a different position. An officer gave multiple commands in Spanish to Lopez while he yelled, "No." They uncuffed his hands

while they were in front of him on the floor, and an officer said, "Let's get his arms back."
(21:52:40)

At 21:52:57, they got him uncuffed and began to pull his arms behind his back to recuff them. They recuffed him at 21:53:20. At 21:53:55, they rolled him over to his back and sat him up. The officers then bent Lopez far forward, and Parker bent Lopez's head down so that his chin touched his chest. They then put a harness on his upper torso and tightened it with a strap around his chest. While this was happening, an officer said, "He's falling over." (21:54:19) Lopez tried to sit up straight, and officers pushed him forward into a very compressed C-shape with his chest collapsed inward. Lopez made strangled sounds as this was happening. It appeared at that point that Lopez tried to bite an officer. At 21:55:10, a strap was being pulled by an officer across Lopez's neck, causing Dean to twice state, "Let go of that." When Santana was tightening the harness chest straps, an officer stated, "Get it tight." She did.

Parker moved around to the back of Lopez, and it was apparent that Lopez now had a spit mask over his head. The video showed that Lopez's hands were cuffed and bracketed to a strap that pulled them way up high on his back.(21:56:00) They rolled him on his side, and Parker pulled the chest strap of the harness tight. (21:56:50) Parker then walked away from Lopez. Most of the officers at this point were standing around in the front living room, and then some began to walk out the front door.

At this point, Parker went to interview the reporting party.

A witness interview and house search then happened on the AVR, all with sound deactivated. None of this video was probative of the use of force issues in this incident.

Ricchiuto

The AVR was 23.5 minutes in duration and began at 21:40.

It appeared from his video that Ricchiuto was the third officer entering the house at the incident, before any force was used. When Ricchiuto entered, the footage showed the reporting party wrapped in a pink blanket standing in the living room. Ricchiuto took out his baton as he walked into the house. As Ricchiuto turned to the hallway, the AVR showed two officers, Ferraro and Santana, put hands on Lopez, move Lopez's hands to the top of his head, and push him against the hall wall. (21:41:35) Parker walked past Ricchiuto and joined Santana and Ferraro in the hallway. Ricchiuto's AVR was obscured for a moment by his hand, but when his hand came down, the AVR showed Ferraro body slam Lopez to the floor for no apparent reason. (21:41:45) Ferraro fell on top of Lopez, who was on his stomach, face down. Parker was next to Ferraro on his right, assisting with restraining Lopez's hands. Lopez twice said, "You are killing me." Lopez then said, "I don't beat my wife."

Frevele began to enter the hallway to Ricchiuto's right. Ricchiuto told the male officer to back up while taking the officer by his left arm and restraining him from going further. The AVR then showed Lopez on his back trying to sit up, with Parker and Ferraro trying to control him. Lopez yelled, "You are abusing me!" Parker and Ferraro got Lopez back on the ground. Ricchiuto then said, "Back up. Back up." (21:42:02) Ricchiuto then started swinging his baton and hitting Lopez

with it. He kept yelling, "Put your hands behind your back now." Ricchiuto also said, "Or you're going to get hit again." Lopez was screaming in apparent pain, "You're killing me." Ricchiuto asked several times, "Kenny, what do you want?" Ferraro said, "Get that handcuffed."

Another officer went past Ricchiuto and started twisting Lopez's leg. It was chaotic. Ricchiuto kept asking Ferraro what he wanted, but Ferraro did not answer. Lopez sat up again, and Ricchiuto started hitting him in the legs, screaming, "Roll over now!" Lopez was screaming and trying to get his legs away from the baton. (21:43:20) Lopez kept screaming, "You are killing me!" Ferraro then put Lopez into a chokehold from behind, with his arm across Lopez's windpipe.

Ricchiuto then said, "Taser, Taser, Taser." (21:23:36) Ferraro took his arm from around Lopez's neck so that he and Parker could pull Lopez's arms away from the front of his exposed chest. Ricchiuto then shot Lopez in the chest with the Taser. (21:43:39) Ferraro then screamed, "Dog, get the dog!" Ricchiuto then gave Lopez 'drive stun' applications of Taser shocks several more times (5 or more) in the area of his upper legs and crotch. Lopez screamed, "No, no." Ferraro then said, "He's got my gun!" Ricchiuto responded, "Really?" Ricchiuto continued to apply direct Taser shocks to Lopez. Another officer then delivered several strikes with his elbow to the left front side of Lopez near the bottom of his ribs. (21:44:07) Ricchiuto then jabbed Lopez in the same place in his side with the end of his baton several times. (21:44:16) Lopez continued screaming, "You're killing me!"

The officers got Lopez back on his stomach. Ricchiuto then helped push Lopez down to the floor by pressing his hand on Lopez's upper back. Another officer then slammed Lopez's head sideways into the wall. (21:44:45) The officers pushed Lopez's face down into the floor.

All the officers suddenly fled the hall as the dog came in. Ricchiuto then came out and said to Lopez, "Put your hands up now." Lopez was sitting on the floor, leaning on his cuffed hands. (21:46:00) Before Lopez could respond, another officer grabbed Lopez by the cuffs and dragged him down the hall by his handcuffs to the living room.

Ricchiuto then checked on Ferraro in the back bedroom to see if he was OK or needed help. Ricchiuto made his way to the front living room and stood watching for a while until his assistance was requested.

Ricchiuto then helped push Lopez's face down into the floor while an officer went to get the Wrap. (21:47:40) Ricchiuto requested that someone get an ambulance for Lopez and Ferraro. The video showed Frevele with his knee pushing down on Lopez near his neck area, beside Ricchiuto. Lopez was talking in a very strained voice in Spanish. (21:47:56) This went on until about 21:50:00. Sgt. Dean then directed other officers to help drag Lopez into the middle of the living room to put him in the Wrap.

Ricchiuto stood by while other officers moved Lopez and tried to put the leg straps from the Wrap device on him. Once the straps were on his legs, Dean then directed the recuffing of Lopez, beginning at 21:52:09. Dean directed them to recuff the left hand first and then move to the right hand. Ricchiuto unlocked the existing cuffs while another officer replaced them with

other cuffs as they put Lopez's hands behind his back. Ricchiuto again got up and walked around the living room. He then went to check on Ferraro. (21:53:30)

Around that same time, Ricchiuto deactivated the sound on his AVR. The video showed Ricchiuto going out to a squad car and talking to Ferraro, then coming back into the house's living room and talking to Sgt. Thomas, still with no sound. Ricchiuto stayed in the living room talking to other officers with the sound deactivated, while Lopez was placed in the Wrap until about 21:55:05, when he went back outside.

At 21:55:23, Ricchiuto talked to a Contra Costa EMT. Ricchiuto obtained a spit mask from the EMT, brought it into the living room, and placed it on Lopez's head, all with the sound still off on his AVR. (21:55:45) Ricchiuto then stood in the living room while the other officers sat up Lopez and secured the Wrap. At 21:57:58, Ricchiuto reactivated the sound on his AVR. Lopez could still be heard moaning and saying, "No." However, his voice was very weak and slow and much less audible.

Ricchiuto then went through the house, apparently to satisfy himself that it was clear of threats. While in the back bedroom with Frevele, Ricchiuto said to Frevele, "You want a 'blue'?"⁵ Frevele responded, "No, man." (21:58:45) Ricchiuto then deactivated the sound on his AVR again.

With the sound still off, Ricchiuto went back to the front living room, where EMTs were preparing to lift Lopez onto a gurney. Ricchiuto exited the front door, where a gurney was visible on the driveway. A female RPD employee took a photograph of Ricchiuto. Ricchiuto then continued out to a squad car and gave Ferraro a small black pouch. The female RPD employee continued photographing Ricchiuto while Ferraro was driven away in the squad car. Ricchiuto then returned to the driveway, where Lopez was on the gurney outside the house.

There was no other video on the AVR that was of probative value to the use of force issues.

Thomas (AXON Body 2 Video 2020-03-17 1454)

The AVR footage was 5:06 minutes in duration and began at 21:54.

It appeared from his video that Thomas was in the front living room when officers were completing putting Lopez in the Wrap restraint device. Officers were discussing what drug Lopez was under the influence of. Ricchiuto said it was methamphetamine. (21:54:15) Five officers were completing the Wrap while Ricchiuto and Thomas were watching. Officers buckled the clip that kept Lopez in a sitting position by affixing his chest strap to his leg straps. An officer said, "Watch the mouth! Watch the mouth!" (21:54:57) This suggested Lopez was trying to bite officers at this time. Ricchiuto left and came back into the living room and put a spit mask on Lopez. (21:55:40) An officer asked if they had an ambulance, and another officer replied, "Yes. They are out here waiting for you." Officers tightened the straps and affixed the strap from the chest to the legs to keep Lopez in a 45-degree position at 21:56:25. The EMTs came into the room. Someone unseen suggested, "He may need a shot to calm him down." The voice sounded like Ricchiuto. (21:56:35) The officers put Lopez on his side in the Wrap.

⁵ "Blue" is a street slang term for a 30 mg oxycodone pill, a pain reliever.

Thomas then went into the garage and checked on the resident there. He came back into the living room. Lopez could still be heard moaning in a lesser voice in the living room. At 21:59:16, Thomas deactivated his AVR.

Incident Photos

Photos of Lopez on Gurney

There are several photographs taken of Lopez while he was on the gurney being transported. These photographs show that Lopez was restrained in a position that did not allow him to rest his back on the gurney, but kept him leaning forward, due to the straps joining his chest to his legs. See *K3H20046.JPG; *K3H20047.JPG; *K3H20048.JPG.

In addition, there are photographs of some of Lopez's injuries to his legs, likely from the baton strikes. See *K3H20099.JPG; *K3H20100.JPG; *K3H20101.JPG. No photographs were taken of Lopez's other injuries, as Lopez was transported to Kaiser and medical personnel were working on him when the photographer visited. In addition, the autopsy photographs are not available to the IO.

Scene Photos

There are multiple photographs of the home, showing the hallway and living room where the uses of force took place.

Officer injuries, etc

There are numerous photographs of officers and their mostly minor injuries and scuffs to their uniforms.

Dispatch Recording 20-2984

The call began with the dispatcher asking for information on location and phone number. The RP stated that her mom was fighting with her boyfriend and he was high on crack and he was trying to get her naked. The dispatcher asked if they were physically fighting and the RP responded that he was trying to get her naked and she was screaming for him to stop and he won't stop. The dispatcher asks for his name, and the RP said Jose Luis. He obtained more identifying information. A woman's voice can be heard screaming in the background. The dispatcher asked if he had any weapons, and the RP said, "No, he doesn't have any weapons. But he is high right now, like, on cocaine." She then repeated this. The dispatcher asked if he was trying to rape her. The RP responded, "No, he's not trying to rape her, but he thinks that my mom had sex with somebody else, so he's getting her naked to see if it's true." There is audible in the background the sound of a man yelling and a woman screaming, "No, no." The dispatcher asked if there are weapons inside the house, and the RP responded, "No, there's no weapons." The dispatcher then got identifying information about the victim. And he got location information for them. He asked if the victim needed an ambulance and the RP responded that she does not know, but her mom is screaming for help because Lopez would not stop bothering her and the victim is

completely naked right now because he took off her clothes. The dispatcher told the RP that officers were on the way and asked her to stay on the phone with him while waiting. After a minute or so, the officers arrived, and the call ended.

CAD Narrative # 200317141

The CAD Narrative from April 24, 2020, indicated that officers received information that the suspect was intoxicated on crack cocaine, was hitting the domestic partner and trying to take off her clothing. The CAD includes the following entries:

C. Brown #1308 INITIAL NARRATIVE: moms b/f jose luis .. ,40 yro hma 14:37:25
... high on crack ... blk sht...jeans ... no weapons .. .is hitting the pr's
mother and trying to get her naked

C. Brown #1308 created Event #200317141 14:37:25
AGENCY TYPE: Police CALL FOR SERVICE: 273.5-SPOUSAL BATTERY (IN
PROGRESS) DISTRICT: RICHMOND
EVENT ORIGIN: Phone FIRED-AREA: RFD LDC: [REDACTED] POLICE
AGENCY: Richmond Police Department
POLICED-AREA: RPO PRIORITY: PRIORITY 1 ZONE: 2.0

C. Brown #1308: **just trying to strip her clothes off** 14:37:46

V. Rocha #1613 assigned 2L13 as primary 14:37:56
V. Rocha #1613 assigned 2L13, 2L16 as backup 14:37:56

C. Brown #1308: MOTHER IS [REDACTED] ... 38 YRO HFA 14:38:16

C. Brown #1308: THEY'RE IN THEIR ROOM 14:38:24

V. Rocha #1613 assigned 2L17, 2L6 as backup 14:38:39

C, Brown #1308: VERY VERBAL IN THE BACKGROUND ... MOTHER HAS 14:38:53
NO CLOTHES ON NOW

C. Brown #1308 edited event 14:39:20
C. Brown #1308 edited Reporting Person 14:39:20
[REDACTED]

V. Rocha #1613 assigned 2L2 as backup 14:39:28

C. Brown #1308: PR IS 18 YRO ... CAN HEAR THE VICT CRYING IN THE 14:39:36
BACKGROUND

V. Rocha #1613 assigned S51 as backup 14:39:44
V. Rocha #1613 assigned 2L3 as backup 14:39:49
V. Rocha #1613 assigned 2K5 as backup 14:40:00
V. Rocha #1613 set 2L16 status to OS 14:40:26
V. Rocha #1613 set ZLZ status to OS 14:40:26
V. Rocha #1613 set 2L6 status to OS 14:40:26

C. Brown #1308: HOUSE IS A BLU ONE STORY HOUSE 14:40:28

V. Rocha #1613 assigned 2L2 as primary 14:40:50

C. Brown #1308: THERE IS A GRY VOLVO PARKED IFO 14:40:56

C. Brown #1308: PR SEES OFFICERS NOW 14:41:03

V. Rocha #1613 assigned 2L4 as backup 14:42:28

V. Rocha #1613: stage for pd - unk medical 14:42:53

V. Rocha #1613: 32 b 3 14:42:58

V. Rocha #1613: amr adv 14:43:06
C. Brown #1308: PER 2L3 NEED ANOTHER UNIT ER TO STAGE 14:46:14
V. Rocha #1613 assigned S71 as backup 14:48:13
V. Rocha #1613: enter off of ohio 14:50:10
V. Rocha #1613: amr adv 14:50:11
V. Rocha #1613 assigned 2L7 as backup 14:51:52
V. Rocha #1613 assigned W114 as backup 14:54:17
V. Rocha #1613 changed location of 2L3 to KAISER 15:00:42
D. Koyl #1284 set S71 status to ER 15:02:19
D. Koyl #1284 changed location of S71 to KAISER 15:02:19
C. Brown #1308 assigned F42 as backup 15:07:34
C. Brown #1308: <Tow Rotation: Accepted> Olivers Towing/ FOR F42 ... 15:08:48
TIRE CHANGE ON CAR #1220 ... GOOD SPARE
D. Koyl #1284: amr 67 - FIRE 69 15:11:02
D. Koyl #1284: following amr to richmond kaiser-217 15:13:19
D. Koyl #1284 assigned 2L1 as backup 15:21:00
D. Koyl #1284 set 2L1 status to OS 15:21:03
D. Koyl #1284 generated Case# RPD2020-00002984 15:21:10
D. Koyl #1284 changed location of 2L6 to KAISER 15:22:21
D. Koyl #1284 changed location of 2L13 to KAISER 15:22:21
D. Koyl #1284 set 2L6 status to OS 15:22:23
D. Koyl #1284 set 2L13 status to OS 15:22:23
V. Rocha #1613 released W114 15:44:49
V. Rocha #1613 changed location of 2K5 to RPD 16:02:44
V. Rocha #1613 released S51 16:05:44
D. Koyl #1284 set 2L4 status to ER 16:17:53
D. Koyl #1284 changed location of 2L4 to RPD 16:17:53
C. Brown #1308 assigned W114 as backup 16:20:44
V. Rocha #1613 assigned 2L18 as backup 16:36:28
V. Rocha #1613 changed location of 2L18 to KAISER 16:36:35
V. Rocha #1613 assigned 2L9 as backup 16:37:34
V. Rocha #1613 changed location of 2L9 to KAISER 16:37:34
V. Rocha #1613 released 2L3 16:54:58
V. Rocha #1613 released 2L7 16:54:58
C. Brown #1308: BAT TECH NOW ER TO THE JAIL 17:04:07
V. Rocha #1613 changed location of 2L2 to RPD 17:09:57
V. Rocha #1613 changed location of 2L17 to RPD 17:11:38
V. Rocha #1613 assigned 3L1 as backup 17:28:57
L. Robles #1750 changed location of 3L1 to RPD/ W/2-IX 17:38:50
L. Robles #1750 set 3L1 status to DS 17:44:09
L. Robles #1750 assigned 13A7 as backup 17:54:10
L. Robles #1750 changed location of ZL9 to RPD 17:54:40
L. Robles#1 750 changed location of ZL16 to RPD 18:00:26

Relevant Authorities

The following policies and laws are relevant to this analysis.

RICHMOND MUNICIPAL CODE, SECTION 3.54.080

The CPRC Ordinance provides that the standard of proof required to sustain a complaint alleging racially abusive treatment be by “**clear and convincing evidence**.” CPRC Ordinance, Section 3.54.080(b)(12). Recommended findings in this investigation report therefore will be measured against that standard.

CALIFORNIA CIVIL JURY INSTRUCTIONS (CACI) (2017), No. 201. Highly Probable—Clear and Convincing Proof: “Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is **highly probable** that the fact is true.”

CHRISTIAN RESEARCH INSTITUTE V. ALNOR (2007) 148 CAL.APP.4TH 71, 84:

“[The clear and convincing evidence] requirement presents a heavy burden, far in excess of the preponderance sufficient for most civil litigation. The burden of proof by clear and convincing evidence ‘requires a finding of **high probability**. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.’ [internal citations omitted]

RICHMOND POLICE DEPARTMENT POLICY 300 USE OF FORCE (excerpts)

300.2.1 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE

Officers shall use **only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.** The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such

circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While ***the ultimate objective of every law enforcement encounter is to avoid or minimize injury***, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use reasonable force to effect an 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/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835).

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) ***Immediacy and severity of the threat to officers or others.***
- (b) ***The conduct of the individual being confronted***, as reasonably perceived by the officer at the time.
- (c) ***Officer/subject factors*** (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) ***The effects of drugs or alcohol.***
- (e) ***Subject's mental state or capacity.***
- (f) Proximity of weapons or dangerous improvised devices.
- (g) ***The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.***
- (h) ***The availability of other options and their possible effectiveness.***
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) ***Potential for injury to officers, suspects and others.***
- (l) ***Whether the person appears to be resisting***, attempting to evade arrest by flight or is attacking the officer.
- (m) ***The risk and reasonably foreseeable consequences of escape.***
- (n) ***The apparent need for immediate control of the subject or a prompt resolution of the situation.***
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

POLICY 306: HANDCUFFING AND RESTRAINTS

306.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

306.2 POLICY

The Richmond Police Department authorizes the use of restraint devices *in accordance with this policy, the Use of Force Policy and department training*. Restraint devices shall not be used to punish, to display authority or as a show of force.

306.3 USE OF RESTRAINTS

Only members who have successfully completed Richmond Police Department-approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include, but are not limited to:

- *The circumstances or crime leading to the arrest.*
- *The demeanor and behavior of the arrested person.*
- *The age and health of the person.*
- Whether the person is known to be pregnant.
- Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes.
- Whether the person has any other apparent disability.

306.3.1 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of officers and others.

When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

306.3.4 NOTIFICATIONS

Whenever an officer transports a person with the use of restraints other than handcuffs, the officer shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other *circumstances the officer reasonably believes would be potential safety concerns or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during transportation to the jail.*

306.4 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is discretionary and not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that in order to avoid risk every person should be handcuffed, regardless of the circumstances.

In most situations, handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, officers should consider alternatives, such as using an additional set of handcuffs or multiple plastic cuffs.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

306.5 APPLICATION OF SPIT HOODS/MASKS/SOCKS

Spit hoods/masks/socks are temporary protective devices designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others.

Spit hoods may be placed upon persons in custody when the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods should ensure that the spit hood is fastened properly to allow for adequate ventilation and that the restrained person can breathe normally. Officers should provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. Officers should avoid comingling individuals wearing spit hoods with other detainees.

Spit hoods should not be used in situations where the restrained person is bleeding profusely from the area around the mouth or nose, or if there are indications that the person has a medical condition, such as difficulty breathing or vomiting. In such cases, prompt medical care should be obtained. If the person vomits while wearing a spit hood, the spit hood should be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

306.6 APPLICATION OF AUXILIARY RESTRAINT DEVICES

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and ***other similar devices***. Auxiliary restraint devices are intended for use during long-

term restraint or transportation. They **provide additional security and safety without impeding breathing**, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. **Any person in auxiliary restraints should be monitored as reasonably appears necessary.**

306.7 APPLICATION OF LEG RESTRAINT DEVICES

Leg restraints may be used to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Only restraint devices approved by the Department shall be used.

In determining whether to use the leg restraint, officers should consider:

- (a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.
- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., hitting his/her head against the interior of the patrol unit, running away from the arresting officer while handcuffed, kicking at objects or officers).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).

306.7.1 GUIDELINES FOR USE OF LEG RESTRAINTS

When applying leg restraints the following guidelines should be followed:

- (a) If practicable, officers should notify a supervisor of the intent to apply the leg restraint device. In all cases, a supervisor shall be notified as soon as practicable after the application of the leg restraint device.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) **Once secured, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.**
- (d) The restrained person should be continually monitored by an officer while in the leg restraint. **The officer should ensure that the person does not roll onto and remain on his/her stomach.**
- (e) **The officer should look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.**
- (f) When transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

POLICY 308: CONTROL DEVICES AND TECHNIQUES

308.1 PURPOSE AND SCOPE

This policy provides guidelines for the use and maintenance of control devices that are described in this policy.

308.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Richmond Police Department authorizes officers to use control devices in accordance with the guidelines in this policy and the Use of Force Policy.

308.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police or the authorized designee. Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device.

All sworn personnel the rank of sergeant and below, whose primary duty assignment involves wearing a police uniform and frequent contact with the public are required to carry both an approved baton and OC spray when in service.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

308.5 BATON GUIDELINES

The need to immediately control a suspect must be weighed against the risk of causing serious injury. ***The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.***

POLICY 309: CONDUCTED ENERGY DEVICE

309.1 PURPOSE AND SCOPE

This policy provides guidelines for the issuance and use of Conducted Energy Devices(CED).

309.2 POLICY

The Conducted Energy Device is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to officers and suspects.

309.4 VERBAL AND VISUAL WARNINGS

A verbal warning of the intended use of the CED should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

The purpose of the warning is to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that the CED may be deployed.

If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and feasible under the circumstances, the officer may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the CED. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the CED in the related report.

309.5 USE OF THE CED

The CED has limitations and restrictions requiring consideration before its use. The CED should only be used when its operator can safely approach the subject within the operational range of the device. Although the CED is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

309.5.1 APPLICATION OF THE CED

The CED may be used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:

(a) The subject is violent or is physically resisting.

(b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the CED to apprehend an individual.

309.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS

CEDs shall only be used against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others.

(a) An CED shall not be used against a passive suspect.

(b) No more than one officer shall activate an CED against a person at a time.

(c) When activating an CED, an officer shall use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If a subsequent cycle is necessary, officers shall restrict the duration of that cycle to the minimum activation necessary to place the subject in custody.

(d) CED deployment against a subject is limited to three successful contacts and cycles.

If after the third successful contact and standard cycle the subject does not submit to verbal commands and/or arrest, an officer must use other force options based on the "Reasonableness Test".

(e) Training protocols have emphasized that multiple activations and continuous cycling of an CED appear to increase the risk of death or serious injury and should be avoided whenever possible.

- (f) A fleeing subject shall not be the sole justification for use of an CED. Severity of offense and other circumstances must be considered before officers use an CED on a fleeing subject.
- (g) CEDs shall not be used against obviously pregnant women, elderly persons, children, and visibly frail persons unless exigent circumstances exist that present a high level of danger to the officer or others.
- (h) CEDs shall not be used to facilitate the forced withdrawal of blood evidence from DUI violators.
- (i) CEDs shall not be used on children who appear to be under the age of 12 years.
- (j) ***CEDs shall not be used on handcuffed persons.***
- (k) Caution shall be used in utilizing an CED when a subject is in a location where a fall might cause substantial injury or death.
- (l) CEDs shall not be used against a suspect in physical control of a vehicle in motion, or a vehicle that might be placed in motion, including automobiles, trucks, motorcycles, ATVs, bicycles, and scooters.
- (m) CEDs shall not be used in the presence of known combustible vapors and liquids, or other flammable substances, including, but not limited to, alcohol-based Oleoresin Capsicum (O.C.) spray carriers.
- (n) When a subject is armed with an CED and attacks or threatens to attack a police officer, the officer may defend him or herself to avoid becoming incapacitated and risking the possibility that the subject could gain control of their firearm. When possible, officers shall attempt to move outside the device's range (approximately 21 feet) and seek cover, as well as request backup officers to mitigate the danger.
- (o) It shall be mandatory for all trained uniformed officers at the rank of Sergeant and below to carry an CED while on street duty.

309.5.3 TARGETING CONSIDERATIONS

Officers shall avoid firing probes at a subject's head, neck or genitalia. While manufacturers have generally recommended that reasonable efforts be made to target lower center mass and ***avoid intentionally targeting the head, neck, groin and chest,*** it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the CED to a precise target area. As such, ***officers should take prompt and ongoing care to monitor the condition of the subject if one or more darts strikes the head, neck, chest or groin.***

ANALYSIS:

This analysis will address one main issue that is raised by multiple uses of force during this incident: whether the officers' uses of force were reasonable under the totality of the circumstances. Given the complexity of the incident, with multiple officers responding simultaneously to a quickly changing dynamic, the actions of individual officers will be analyzed separately, and the larger context noted in that analysis. Under the ordinance, the standard of proof to sustain a finding of unreasonable force is by "clear and convincing evidence." Therefore, the available investigative evidence must convince commissioners that it is highly probable that the force used by an RPD officer was unreasonable under the totality of the circumstances present during the incident that day.

General Policy/Legal Analysis

The overall question to be answered is whether there is clear and convincing evidence that the various uses of force against Lopez were unreasonable under the circumstances. Under the applicable standard, to reach a finding of sustained, the facts must make it **highly likely** that the force used was not reasonable under the circumstances.

The RPD policy in effect at the time of the incident provided that "[o]fficers shall use **only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.**" Initially, given the facts known, it was reasonable and lawful for officers to detain Lopez for questioning and possibly to arrest him. Therefore, they had a lawful purpose at the time force initially was employed against Lopez. Once Lopez continued resisting, additional force was justified to overcome that resistance and arrest Lopez. The question is whether the force used by officers was reasonable in light of those purposes under the totality of the circumstances.

The reasonableness of force is measured with reference to the factors set out in RPD Policy Section 300.3.2. This analysis will apply those factors to the factual situation during the incident to aid this analysis. These criteria will be analyzed in the order they are laid out in the policy.

Immediacy and severity of the threat to officers or others. Given the dispatch information indicating no weapons present at the residence, it was not objectively reasonable to believe that Lopez was armed with a weapon, nor did evidence develop during the incident that would have provided a factual basis for that conclusion. When Ferraro began to detain Lopez, he also had no evidence to suggest that Lopez was so strong as to present a threat to multiple officers responding. Officers did have facts suggesting before entry that a sexual assault might be imminent. However, once they arrived, Ferraro was told by the reporting party that the victim was in the house and was OK; and when they entered the residence, it was clear no threat to others was occurring. While the officers were told that the suspect was high on crack cocaine, which suggested caution upon entering, it did not by itself weigh in favor of initiating force. In addition, while dispatch initially sent CAD information indicating that Lopez was hitting his girlfriend, they corrected this information within a minute to clarify that he was only removing her clothing. Therefore, this factor weighed against the use of force at the time of Ferraro's entry into the residence.

The conduct of the individual being confronted, as reasonably perceived by the Officer at the time. As the officers entered the residence, Lopez appeared to call out in response to officers yelling into the house. Lopez then immediately came out of a room along the hall and began engaging with the officers, explaining his perspective that he did not do anything wrong. Rather than engage Lopez and attempt to calm him and explain the situation, Ferraro immediately began to bark orders for Lopez to put his hands behind his back. Ferraro pushed Lopez against the wall and pulled his hands above his head, and then began to pull his hands behind his back to cuff him. Lopez continued to engage Santana in Spanish, arguing that he did not harm his wife and did nothing wrong. Lopez did not appear to offer any active resistance of any kind, and little to no visible passive resistance, at this time. Lopez simply turned toward Santana to engage her

and then immediately was slammed to the floor by Ferraro, initiating a series of escalations of force by Ferraro and other officers.

While Lopez later became very actively resistant to further force being used against him, this may have been a natural consequence of the pain inflicted upon him by force used by officers. The AVR video suggested that the officers escalated violence, and Lopez responded by increasing resistance. In general, this factor did not justify Ferraro and other officers' initial use and subsequent escalation of force.

Officer/subject factors. Ferraro was, by his estimate, at least 50 pounds heavier than Lopez, and multiple officers far outnumbered Lopez as the incident progressed. Nevertheless, Lopez reportedly also was very strong for his size, with powerful hands and forearms. Given the number of officers present for the incident and the unlikelihood that Lopez would escape detention at any point, this factor generally did not justify the escalation of force. During the incident

The effects of drugs or alcohol. This was the primary issue counterbalancing other factors. Lopez was intoxicated on beer and high on crack cocaine and had been for more than 24 hours. The effect of the drugs and alcohol in his system appears to have made Lopez able to withstand considerable pain and continue to struggle against force that ordinarily would have debilitated a person of his stature. This factor also cuts both ways. Officers understood going into this incident that Lopez was high on crack cocaine and that this could cause him to be stronger than expected and less susceptible to pain. Given this knowledge, they had extra incentive to de-escalate the situation, but chose instead to continuously escalate the level of violence employed. On the other hand, given his intoxication, Lopez likely was more reactive than he would have been if not high. On balance, this factor appears relatively neutral under the circumstances.

Subject's mental state or capacity. This factor is closely related to Lopez's intoxicated state, as he was reportedly paranoid at the time of the incident, a state of mind that is consistent with the extended use of cocaine. The reporting party informed RPD of this, and the officers knew this information going into the incident. Given this, it was not unexpected that Lopez would react to the escalating force against him by believing officers wanted to kill him. Lopez repeated over and over during the incident statements such as, "You're killing me!" He also stated to Ferraro, "I can see the hate in your eyes!" Given this belief, which officers never addressed, Lopez understandably began and continued to resist as officers escalated their use of violence against him. While this factor, too, cuts both ways, officers initiated sudden force by slamming him to the ground, beat his head against the floor and wall, elbowed his head, punched his face, twisted his limbs, hit him with a baton like a baseball bat, Tasered his groin area, and knelt on his neck, all while Lopez believed they were going to kill him. It is difficult to call his belief irrational in light of the officers' escalating acts of violence. Lopez's state of mind also likely made it near impossible for him to convince himself that he should stop resisting, as it is harder to escape a flight or fight response while high on stimulants. On balance, this factor supports some of the uses of force but not others.

Proximity of weapons or dangerous improvised devices. There is no evidence of any weapons or improvised devices in Lopez's possession during this encounter. This criterion is irrelevant to the amount of force used in this incident.

The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained. Lopez was able to continue his resistance throughout the incident until he was restrained in the Wrap device. This factor supported the uses of force, generally.

The availability of other options and their possible effectiveness. While the Use of Force policy in effect at the time of the incident did not specifically require an effort to de-escalate where reasonable, it nevertheless was an option available to Ferraro and others that they never attempted. And the policy did require considering other reasonable options. While Lopez may not have responded positively to de-escalation efforts due to his mental state, he seemed eager to discuss the situation when first encountered, and that was cut short by Ferraro's sudden use of significant force. At no time was the force paused by any officer. Instead, officers escalated force at every juncture. Given the number of officers available at the incident, officers could have used time and space to try to gain Lopez's eventual compliance. They made no real effort to explain the situation to Lopez and lay out different options and consequences. Nor did any officer ever explain to Lopez that violence against him would stop if he stopped resisting and began cooperating. Instead, it appeared that officers mainly communicated to Lopez a demand that he stop fighting while also escalating their own violence, leaving his expressed belief that they wanted to kill him without a response. This factor weighs against the initiation of force and the ongoing escalation of force against Lopez.

Seriousness of the suspected offense or reason for contact with the individual. Lopez was suspected of possible domestic violence and possible sexual assault, both serious crimes. However, on balance, the evidence communicated to officers left unclear whether such offenses had taken place, suggesting that more investigation was warranted. This factor weighed in favor of some use of force, if necessary, to detain Lopez and investigate further.

Training and experience of the Officer. In general, the officers involved in the use of force against Lopez were relatively experienced and had significant training in force options and defensive tactics.

Potential for injury to officers, suspects and others. Given the information that the suspect was high on crack cocaine and paranoid, the situation presented a potential for injury to officers, the victim, bystanders, and the victim when officers were approaching the residence. That calculus changed somewhat when officers arrived, and the RP communicated that the victim was in the house and OK. It decreased again when Lopez and the victim responded to approaching officers from within the residence, and Lopez came out to the hall to engage officers. Nevertheless, once officers attacked Lopez and continued escalating force against him, Lopez responded with resistance that increased the potential for injury to the officers. While this factor generally supported force, the way the incident unfolded suggested that the potential for injury may have been avoided by handling it more slowly and calmly, rather than escalating it. On balance, this factor weighs slightly against the use of force.

Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the Officer. Lopez did not appear to be resisting or fighting when Ferraro first used significant force against him. After being slammed on the floor and hurt, Lopez began resisting officers' further efforts to escalate force against him. Lopez, from that point on, resisted the efforts of officers to arrest him. This factor weighs in favor of using some level of force, but cannot justify the level of force eventually used against Lopez.

The risk and reasonably foreseeable consequences of escape. There is no evidence available to suggest that the prospect of Lopez escaping presented any significant risk to officers or that harm to officers or the victim was reasonably foreseeable if Lopez escaped. This factor weighs against the uses of force on Lopez.

The apparent need for immediate control of the subject or a prompt resolution of the situation. It was the officers' uses of force that appeared to create resistance from Lopez, so that resistance cannot justify an immediate need to control Lopez to stop his resistance.

Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the Officer or others. Lopez's behavior appeared to pose an increasing threat to officers, as time went on and he resisted more. This factor favors later uses of force by the officers.

Prior contacts with the subject or awareness of any propensity for violence. There was no evidence that the officers who used force had any previous contacts with Lopez. However, the call for service did suggest that Lopez may have been engaged in violence against the victim, so that possibility was present and justified caution going into the incident. As the incident unfolded, it was clear that Lopez would use some violence to resist, such as trying to bite officers. This factor weighs in favor of some level of force being used in the situation.

Given the totality of the circumstances evident from the investigative evidence, the situation may have justified some level of force used at particular junctures of the unfolding events. However, the sudden initiation of force by Ferraro and specific escalations of force by specific officers do not appear to have been reasonable under an analysis of the factors used to gauge such actions.

Officer Ferraro

Factual Findings

Officer Ferraro was the first officer on the scene and the first to initiate force against Lopez. Initially, it is noteworthy that Ferraro appeared to misunderstand the facts reported to him by dispatch upon reaching the reporting party's home. Ferraro stated that there was no information available about whether there was a weapon at the scene that Lopez could use against officers or others. In fact, dispatch informed officers that the reporting party said there were no weapons at the residence. It was also unclear to what extent a domestic violence situation was occurring, as dispatch quickly corrected a mistaken message suggesting that Lopez was hitting the victim. However, Lopez was taking off the victim's clothing against her will, and she was

highly distressed by the situation. Under these circumstances, it also would be reasonable for an officer arriving at the scene to suspect that a sexual assault was imminent.

Once Ferraro arrived at the home, he asked the young woman who called in the incident about her mother, and she responded that her mother was in the house and that she was "OK." This information, along with dispatch information about the lack of a weapon, suggested that there was no imminent threat of harm to those present when Ferraro entered the home. Nevertheless, Ferraro followed his predetermined plan to immediately place Lopez under arrest, based on his purported belief that there might be a weapon.

Ferraro entered the home with Santana following behind him. Ferraro announced that he was the police in a loud voice several times. A woman responded from inside, as did a male voice. As Ferraro and Santana entered the hall, Lopez came voluntarily out of a room into the hall. Ferraro told Santana, "I have this," and took control of the situation. Ferraro immediately took Lopez by his arms and put him against the wall, facing the wall, with his arms above his head. Santana and Lopez were conversing in Spanish. Ferraro put one of Lopez's hands behind his back and put a cuff on his hand. Ferraro took Lopez's other hand behind his back to cuff it, as Lopez turned slightly toward Santana to respond to her.

At that moment, Ferraro very suddenly initiated a leg sweep and took down Lopez very forcefully. Lopez landed face down with Ferraro falling on top of his back. There did not appear to be any action by Lopez that would justify the leg sweep. While Ferraro stated that Lopez began to stiffen at that point, and Ricchiuto stated that Lopez took a bladed stance, Lopez appeared in the video to be turning slightly toward Santana to respond to her. In any event, a slight stiffening and slight turn by Lopez would not justify a disproportionate escalation of force, such as slamming him on the floor and landing with his full weight on top of him.

Once that happened, Lopez understandably reacted to the violence and resulting pain by trying to get away from Ferraro and Parker. Both officers were on top of Lopez in the narrow hall, trying to pull his arms behind his back to cuff them while pressing their considerable weight down on the smaller man. Because he was high on cocaine and drunk, Lopez likely was more reactive and went quickly into a fight or flight reaction. Ferraro never communicated to Lopez why he was being detained or why it would be better for him if he cooperated. Instead, Ferraro continued to scream at Lopez to put his hands behind his back and stop resisting. Yet, Lopez appeared in the video to be reacting to pain and trying to avoid it. He repeatedly screamed in apparent pain. It also was evident by his screams that Lopez believed that the officers intended to kill him, a belief that no officer ever addressed. Instead, they continued to escalate force, which had the effect of confirming Lopez's belief.

During this period of about 5 minutes, Ferraro and Parker pulling Lopez's arms above his head while compressing his body with their weight through their knees. Ferraro hit Lopez, twisted his head forcefully sideways, twisted his arms behind him, used the loose cuff to pull Lopez's hand back, thereby appearing to cut into his wrist, and employed a chokehold across Lopez's windpipe. Parker mainly assisted Ferraro in his efforts to restrain Lopez.

Specific Policy/Legal Analysis

Given these factual findings, the question is whether there is clear and convincing evidence that Ferraro's various uses of force were unreasonable under the circumstances. The RPD policy in effect at the time of the incident provided that "[o]fficers shall use **only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.**" Initially, given the facts known to Ferraro as he encountered Lopez, it was reasonable and lawful for him to detain Lopez for questioning and possibly to arrest him. Therefore, Ferraro had a lawful purpose at the time he employed force against Lopez. The question is whether the force he employed for that purpose was reasonable.

- **Initial Take-down of Lopez by Ferraro**

Given the dispatch information indicating no weapons present at the residence, it was not objectively reasonable for Ferraro to believe that Lopez was armed with a weapon when he entered the home. When Ferraro began to detain Lopez, he also had no evidence to suggest that Lopez was so strong as to present a threat to multiple officers responding. Once he arrived, Ferraro was told by the reporting party that the victim was in the house and was OK, and when he entered the residence, it was clear no threat to others was occurring. While the officers were told that the suspect was high on crack cocaine, which suggested caution upon entering, it did not by itself weigh in favor of initiating force.

As Ferraro entered the residence, Lopez appeared to call out in response to Ferraro yelling to ask where they were located. Lopez then immediately came out of a room along the hall and began engaging with the officers, explaining his perspective that he did not do anything wrong. Rather than engage Lopez and attempt to calm him and explain the situation, Ferraro immediately began to bark orders for Lopez to put his hands behind his back. Ferraro pushed Lopez against the wall and pulled his hands above his head, and then began to pull them behind his back to cuff him. Lopez continued to engage Santana in Spanish, arguing that he did not harm his wife and did nothing wrong. Lopez did not appear to offer any active resistance of any kind, and little to no visible passive resistance, at this time. Lopez simply turned toward Santana to engage her and then immediately was slammed to the floor by Ferraro, initiating a series of escalations of force by Ferraro and other officers. **From the totality of the circumstances, the IO has concluded that the initial takedown of Lopez by Ferraro was highly unlikely to have been reasonable under the circumstances. The IO therefore recommends a finding of SUSTAINED for these uses of force by Ferraro being unreasonable.**

- **Control Holds and Strikes by Ferraro**

Ferraro and Parker faced a suspect who struggled significantly against their efforts to subdue him and put him in restraints after the takedown. While this resistance may have been understandable, given the sudden violence inflicted upon Lopez and its continuance by Ferraro and Parker, Ferraro nevertheless was justified under the policy to use some amount of force to attempt to subdue Lopez and get him arrested. For these reasons, the IO has concluded that there is no clear and convincing evidence that Ferraro's uses of control holds and strikes to gain

compliance by Lopez after the takedown were unreasonable under the circumstances. Nevertheless, the IO also cannot say there were reasonable. Ferraro and Parker could have tried to move Lopez out of the hall into the living room where more officers could assist, providing more time and space to gain compliance without escalating force. ***Given the totality of the circumstances, the IO recommends that the Commission make a finding of NOT SUSTAINED with regard to these uses of force by Ferraro being unreasonable.***

- ***Chokehold by Ferraro***

Before Ricchiuto used the Taser on Lopez, Ferraro turned Lopez over on his back while Ferraro stayed behind Lopez with his arm around his neck. It is apparent from the video that Ferraro was compressing Lopez's windpipe with his forearm, which constitutes a dangerous chokehold. While Ferraro might have been attempting a carotid control hold, which is less dangerous than a chokehold when applied appropriately, the RPD use of force policy in effect at this time explicitly prohibited officers from using a carotid control hold. See UOF Policy 300.3.4. ***Given the totality of the circumstances, the IO recommends that the Commission make a finding of SUSTAINED with regard to this use of force by Ferraro being unreasonable.***

Officer Parker

Factual Findings

Officer Parker was the fourth officer on the scene. He stood by Ferraro and Santana while they initially engaged Lopez in the hallway. When Ferraro took down Lopez, Parker immediately joined Ferraro in restraining Lopez on the floor while Santana went into the bedroom to speak with the victim. Parker took direction from Ferraro and assisted him in controlling Lopez. Parker was on the right side of Lopez trying to get his hands cuffed, but Lopez kept putting his hands under his body. Parker, at one point, heard Ferraro say that Lopez was trying to get his gun, so Parker pulled Ferraro's gun holster toward him, took Lopez's hand off it, and refastened the safety snap on the holster. Parker did not use force during this part of the incident beyond control holds on Lopez. However, Parker was present for and observed all of the uses of force employed by Ferraro and Ricchiuto against Lopez in the hallway.

After the hallway cleared due to the police dog entering the house, and Sgt. Dean pulled Lopez into the front living room, Parker came back out to assist others with restraining Lopez. Parker was on the right side of Lopez, who was face down. Parker held Lopez down by pushing his weight through his fists on Lopez's upper back, while other officers pushed down Lopez's head and put their knee on Lopez's neck. The suspect continued to try to twist and get up.

At some point, Sgt. Dean asked one of the officers to get the Wrap out of his vehicle. The suspect continued to resist. On three occasions while waiting for the Wrap, Parker delivered a knee strike to Lopez's ribs in an attempt to get the suspect to lie back down. On two other occasions, Parker used an elbow strike to the suspect's ribs to get him to lie back down flat on the floor. Lopez's hands were still handcuffed in front of him. The officers removed the handcuffs and recuffed Lopez's hands behind his back without much resistance. The suspect appeared to be fatiguing. When officers tried to sit Lopez up to attach the shoulder strap, he resisted. Parker

used the back of Lopez's head to push him forward so that his chin was pressed against his chest. Parker said he did this so the harness could be applied correctly.

After the Wrap was safely applied, Parker had no further contact with the suspect. Parker did not object to any of the force being applied to Lopez during the incident.

Specific Policy/Legal Analysis

Given these factual findings, the question is whether there is clear and convincing evidence that Parker's various uses of force were unreasonable under the circumstances. The RPD policy in effect at the time of the incident provided that "[o]fficers shall use **only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.**" As set out above, it was reasonable and lawful for officers to detain Lopez for questioning, and possibly to arrest him. Therefore, Parker had a lawful purpose at the time he employed force against Lopez. The question is whether the force he employed for that purpose was reasonable.

- ***Control Holds by Parker During Initial Struggle***

Ferraro and Parker faced a suspect who significantly struggled against their efforts to subdue him and put him in restraints after the takedown. While this resistance may have been understandable, given the sudden violence inflicted upon Lopez and its continuance by Ferraro and Parker, Parker nevertheless was justified under the policy to use some amount of force to attempt to subdue Lopez and get him arrested. For these reasons, the IO has concluded that there is no clear and convincing evidence that Ferraro's uses of control holds and strikes to gain compliance by Lopez after the takedown were unreasonable under the circumstances. Nevertheless, the IO also cannot say there were reasonable. Ferraro and Parker could have tried to move Lopez out of the hall into the living room where more officers could assist, providing more time and space to gain compliance without escalating force. ***Given the totality of the circumstances, the IO recommends that the Commission make a finding of NOT SUSTAINED with regard to these uses of force by Parker being unreasonable.***

- ***Duty to Intercede in Unreasonable Force***

As explained above, the IO has concluded that Ferraro's initial takedown of Lopez was not reasonable under the circumstances. Further, that finding depends on the existence of clear and convincing evidence, which the IO has concluded exists in this case. In addition, as will be further explained below, the IO also has concluded that there is clear and convincing evidence that Officer Ricchiuto's uses of the Taser and baton against Lopez were unreasonable under the circumstances. Also, the IO has concluded that there is clear and convincing evidence that Frevele's kneeling on Lopez's neck while restraining him in the living room was unreasonable under the circumstances. Parker's AVR clearly shows all of these instances unfolding before him, and Parker references them in his interview statements.⁶

⁶ While Parker also was present and near Ferraro when he used a chokehold on Lopez, it is not clear that Parker observed this happening, as it took place quickly and during a quickly unfolding series of other intense events. The IO therefore cannot say that Parker observed this use of force.

RPD UOF Policy 300.2.1 provides that "[a]ny officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force." Given the factual findings recommended by the IO, ***the IO has concluded from the totality of the circumstances that Parker had an obligation to intercede in these uses of force that were clearly not objectively reasonable. The IO therefore recommends a finding of SUSTAINED for Parker's violation of UOF Policy 300.2.1.***

- ***Parker's Uses of Force Against Lopez While in the Living Room***

Parker used force in several ways in the living room while officers sought to restrain Lopez. Parker put his weight through his fists on Lopez's back, compressing his chest to the ground. He struck Lopez in the ribs with his knee and his elbow. And Parker pushed Lopez's head far forward while the Wrap was being secured, bending his head down so that Lopez's chin touched his chest. All of these uses of force are questionable under the circumstances and require further analysis.

While Parker putting his weight on Lopez's back, in isolation, would be reasonable in response to Lopez's efforts to get up off the floor, it did not happen in isolation. At the same time that Parker was compressing Lopez's chest, Frevele was putting his weight through his knee on Lopez's neck, and Dean and Ricchiuto were pushing Lopez's head down into the floor. All the officers had information that Lopez was under the influence of alcohol and methamphetamine, which put him at higher risk of positional asphyxia or other reactions that could be fatal. Nevertheless, the evidence is not "clear and convincing" that Parker's use of this force was unreasonable. ***Therefore, the IO recommends a finding of NOT SUSTAINED for this use of force being unreasonable.***

Regarding Parker's strikes to Lopez's ribs, the situation was different. 5-6 officers were restraining Lopez at this point, and it is very unlikely he could have successfully escaped restraint or even lifted himself off the floor for more than a second or so. Without Parker's strikes, Lopez would have remained restrained until the Wrap was obtained, and he was secured. Therefore, the strikes were not reasonably necessary for a lawful purpose, as is required under the use of force policy. Instead, it appears that the strikes were a product of Parker's frustration that Lopez was not following orders to stop resisting. Using force to punish a failure to follow orders is not allowed by either the Fourth Amendment case law⁷ or the RPD policy on use of force. ***Therefore, the IO recommends a finding of SUSTAINED for this use of force being unreasonable.***

Regarding Parker pushing Lopez's head so far forward that his chin touched his chest, Parker explained that he did this so that the shoulder strap could be attached to the leg straps as part of the Wrap restraint. However, this explanation is unsatisfactory to justify this action. It was clear from the video that this use of force was highly uncomfortable and perhaps very painful to Lopez, who was trying to scream while it was happening. His voice during these scream efforts appeared muffled by the collapsed positioning of his chest and neck created by the force Parker used. Given the positioning of the straps and carabiner-type metal loops, Parker didn't need to

⁷ "[A] detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." (*Bell v. Wolfish* (1970) 441 U.S. 520. 535.)

push Lopez's head forward in the manner that he did. It likely would have been more effective to push Lopez's upper torso forward by pushing on his back to shorten the distance between his chest and legs and allow the strap to be fastened.

Again, in light of the facts, Parker's choice to push Lopez's head forward in an extreme position appears more likely to have been to impose pain on him for failing to comply with orders to stop resisting. Therefore, the force was not reasonably necessary to secure Lopez's restraint, but more likely was intended to punish Lopez. Nevertheless, there is a possibility that Lopez was so resisting being pushed forward that Parker reasonably believed that a pain compliance approach was necessary to get him to stop resisting. Given this possibility, the IO cannot say that it was highly likely this use of force was unreasonable. ***The IO therefore recommends a finding of NOT SUSTAINED for this use of force being unreasonable.***

Officer Ricchiuto

Factual Findings

Officer Ricchiuto was the third officer on the scene. He stood by Ferraro and Santana while they initially engaged Lopez in the hallway. When Ferraro took down Lopez, Parker immediately joined Ferraro in restraining Lopez on the floor while Santana went into the bedroom to speak with the victim. Ricchiuto stated that Lopez did not actively fight or resist until he was taken down to the ground forcefully. He also said that Lopez kept saying in Spanish, "Listen to me!" AVR also revealed Lopez repeatedly screaming, "You're killing me." Ricchiuto observed all of this before using force.

Ricchiuto stood back for a while, repeatedly asking Ferraro what he needed from him. As Ferraro and Parker continued to struggle to subdue Lopez, Ricchiuto stepped forward, took out his baton, and began yelling at Lopez to stop resisting. Ricchiuto took his baton back over his head with two hands like a baseball bat and swung it down with considerable force at Lopez's legs. He struck them repeatedly while Lopez screamed in apparent pain and tried to get away from the strikes. While striking Lopez, Ricchiuto kept yelling, "Roll over now!" It is unclear why he was issuing this command. Ricchiuto also struck the officers several times while swinging at Lopez. Lopez was screaming, "Stop hitting me!" He sounded like he was in pain and distress. Ricchiuto then shifted to using the end of his baton as a weapon against Lopez, using both hands to jab it down into the area of Lopez's abdomen and side, near the edge of his ribs. While he did so, Ferraro had Lopez pinned and restrained while he tried to escape the blows.

Ferraro then turned Lopez over to expose his chest to Ricchiuto while Ricchiuto yelled, "Taser! Taser!" Ricchiuto fired the Taser wires at Lopez's chest, and they made contact and appeared to cause Lopez significant pain. Lopez grabbed at the wires while screaming and seemed to dislodge them. When that did not gain Lopez's compliance with demands that he stop resisting, Ricchiuto applied the Taser directly to Lopez's groin area in "drive stun" mode at least five times. Again, Lopez reacted by screaming and trying to escape the pain. While this was happening, Ferraro yelled that Lopez was trying to get his gun, and Parker resecured it in Ferraro's harness. Then, someone announced that the K9 was entering, and Ricchiuto fled into a side room.

When Ricchiuto opened the door to check on whether Lopez had surrendered, he saw Lopez kneeling in the hallway and yelled for him to put up his hands. Before he could do so, Sgt. Dean grabbed Lopez by the wrist and dragged him into the living room. After checking on Ferraro, Ricchiuto returned to the living room where officers were trying to restrain and then place Lopez in a Wrap device. When an officer said Lopez tried to bite her, Ricchiuto went out to the AMR personnel, obtained a spit mask, returned to the living room, and put it over Lopez's head. This occurred just before Parker pushed Lopez's head far forward while the straps were secured to keep Lopez at a 45-degree angle.

While talking to the AMR personnel about the spit mask, Ricchiuto mentioned that he advised them to administer a sedative to Lopez. When Sgt. Dean called the AMR personnel into the house, Ricchiuto was audible on video stating that they should give Lopez a sedative.

Ricchiuto was not involved in any further actions that could constitute force.

Specific Policy/Legal Analysis

Given these factual findings, the question is whether there is clear and convincing evidence that Ricchiuto's various uses of force were unreasonable under the circumstances. The RPD policy in effect at the time of the incident provided that "[o]fficers shall use **only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.**" The question is whether the force he employed for that purpose was reasonable.

- ***Baton Use by Ricchiuto Against Lopez During Initial Struggle***

Following Ferraro's takedown of Lopez, officers faced a suspect who significantly struggled against their efforts to subdue him and put him in restraints. While this resistance may have been understandable, given the sudden violence inflicted upon Lopez and its continuance by Ferraro and Parker, officers nevertheless were justified under the policy to use some amount of force to attempt to subdue Lopez and get him arrested. The question, however, is whether the level of force reflected in Ricchiuto's use of his baton was reasonable for this purpose. RPD Policy 300.3.6 provides that a baton "is authorized for use when, based upon the circumstances perceived by the officer, **lesser force would not reasonably appear to result in the safe control of the suspect.**" Policy 304.5 further provides:

The need to immediately control a suspect must be **weighed against the risk of causing serious injury.** The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

What is clear from these policy provisions is that, given the risk of significant injury, the baton should not be used when lesser force alternatives are feasible. And when the baton is used, officers should use it in a way that seeks to avoid causing significant injury, unless unavoidable due to imminent risk of death or serious bodily injury. As previously discussed, officers could have tried to move Lopez out of the hall into the living room where more officers could assist,

providing more time and space to gain compliance without escalating force. In addition, Ricchiuto's use of the baton appeared relatively reckless and included very significant force. He swung the baton with extreme force and then jabbed its tip into Lopez's soft side, endangering Lopez's internal organs. There is clear and convincing evidence that officers had other options realistically available to them that did not reach the level of force and risk of injury attendant to Ricchiuto's use of his baton. ***Given the totality of the circumstances, the IO recommends that the Commission make a finding of SUSTAINED with regard to these uses of force by Ricchiuto being unreasonable.***

- ***Taser Use by Ricchiuto Against Lopez During Initial Struggle***

Similar to the analysis of Ricchiuto's baton use, the question with his Taser use is whether the level of force was reasonable for the lawful purpose of restraining and arresting Lopez. RPD Policy 305.5.1 provides that:

The [Taser device] may be used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:

- (a) The subject is violent or is physically resisting.
- (b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

This provision clarifies that it was within policy for Ricchiuto to use his Taser device to subdue Lopez, who was physically resisting his detention and arrest when Ricchiuto employed the Taser.

However, the further question is whether the manner in which Ricchiuto used the Taser was reasonable. Policy 305.5.2 provides additional guidance on ensuring that the manner of Taser use remains reasonable during its deployment. Among those provisions are the following requirements relevant to this incident:

- (c) When activating an CED, an officer shall use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If a subsequent cycle is necessary, officers shall restrict the duration of that cycle to the minimum activation necessary to place the subject in custody.
- (d) CED deployment against a subject is limited to three successful contacts and cycles. If after the third successful contact and standard cycle the subject does not submit to verbal commands and/or arrest, an officer must use other force options based on the "Reasonableness Test".
- (e) Training protocols have emphasized that multiple activations and continuous cycling of an CED appear to increase the risk of death or serious injury and should be avoided whenever possible.

In addition, Policy 305.5.3 provides that:

Officers shall avoid firing probes at a subject's head, neck or genitalia. While manufacturers have generally recommended that reasonable efforts be made to target lower center mass and avoid intentionally targeting the head, neck, groin and chest, it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the CED to a precise

target area. As such, officers should take prompt and ongoing care to monitor the condition of the subject if one or more darts strikes the head, neck, chest or groin. The investigative evidence shows that Ricchiuto first attempted to use the Taser device in its standard mode, but its application did not subdue Lopez so that he complied. Ricchiuto then used the Taser in "drive stun" mode, directly applying the Taser device to Lopez's groin area repeatedly, more than 5 times in a row, as fast as the Taser device would allow. It certainly was working, as evidenced by Lopez's continued screams and Ferraro's statement that it shocked him while it was being used. Neither Ricchiuto nor the other officers appeared to take "ongoing care to monitor the condition" of Lopez after this Taser use. There is clear and convincing evidence that officers had other options realistically available to them that did not reach the level of force and risk of injury attendant to Ricchiuto's use of his Taser.⁸ ***Given the totality of the circumstances, the IO recommends that the Commission make a finding of SUSTAINED with regard to these uses of force by Ricchiuto being unreasonable.***

In addition, while Ricchiuto did not himself give Lopez an injection of Versed after he was restrained in the Wrap, Ricchiuto did actively seek to have AMR personnel do so. Ricchiuto knew going into the incident that Lopez was intoxicated on crack cocaine and alcohol. He observed Ferraro employ a chokehold on Lopez. Ricchiuto Tasered Lopez repeatedly beyond policy limits with the knowledge that such actions could result in adverse health reactions to Lopez. He observed multiple officers compress Lopez's chest area with their full weight and watched Frevele put his weight through his knee on Lopez's neck. He observed Lopez's body being compressed into the Wrap device, which itself comes with manufacturer's warnings about the potential for respiratory issues if the device is not used correctly.⁹

⁸ While not addressed by the RPD policy on use of a Taser, the use of such a device in "drive stun" mode is generally cautioned against in model policies. For example, the 2011 Electronic Control Weapons Guidelines issued jointly by the Police Executive Research Forum (PERF) and the U.S. DOJ COPS Program, contained the following guidance:

The most commonly used ECWs can be used in two modes: probe and drive stun. Many police managers and officers erroneously believe that applications of drive stun are as effective as applications with probes, but that is not correct. The drive stun mode can be used to complete the circuit in the event that one of the probes is ineffective or becomes dislodged. The drive stun mode can also be used in close quarters for the purpose of protecting the officer or creating a safe distance between the officer and subject. Absent these circumstances, using the ECW in drive stun mode is of questionable value. The primary function of the drive stun mode, when not used to complete the circuit, is to gain subject compliance through the administration of pain. Using the ECW to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation by inducing rage in the subject. For these reasons, agencies should carefully consider policy and training regarding when and how personnel use the drive stun mode, and should discourage its use as a pain compliance tactic. Drive stun has an applicable but limited purpose that should be taught, explained, and monitored during ECW training and field use.

⁹ The Wrap Basic Application Manual(July 2010) includes the following admonitions:

Applied properly, the harness does not restrict the subject's ability to breathe. To minimize respiratory issues, personnel need to work quickly so that the subject is secured in one of the positions of recovery. Remember that a restrained subject must be monitored.

If a restrained subject complains of, or exhibits any medical concerns, seek immediate medical attention. Some examples are:

- _Respiratory Distress (i.e. Coughing, gasping, gagging, shortness of breath)
- _Sudden quiet or inactivity (especially after a violent struggle)
- _Chest pains, shooting pains down the arm
- _Change in facial color
- _Elevated body temperature (I'm burning up!)

Because the Taser policy provisions specifically require that an officer using the Taser device on the groin area of suspect continue to monitor the health condition of the suspect on an ongoing basis, and because Ricchiuto observed other actions which also potentially negatively impacted Lopez's health condition by making respiratory distress more likely, Ricchiuto had an even greater obligation to use care in monitoring. Encouraging the AMR personnel to administer a sedative to Lopez under the totality of the circumstances known to Ricchiuto at the time was entirely inconsistent with his obligation under RPD Policy 305.5.3. ***Given the totality of the circumstances, the IO recommends that the Commission make a finding of SUSTAINED with regard to Ricchiuto violating this part of Policy 305.5.3.***

- ***Duty to Intercede in Unreasonable Force***

As explained above, the IO has concluded that Ferraro's initial takedown of Lopez was not reasonable under the circumstances. Further, that finding depends on the existence of clear and convincing evidence, which the IO has concluded exists in this case. In addition, the IO also has concluded that there is clear and convincing evidence that Officer Ferraro's chokehold of Lopez was unreasonable under the circumstances. Also, the IO has concluded that there is clear and convincing evidence that Frevele's kneeling on Lopez's neck while restraining him in the living room was unreasonable under the circumstances. Ricchiuto's AVR shows these instances unfolding in front of him.¹⁰

RPD UOF Policy 300.2.1 provides that “[a]ny officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force.” Given the factual findings recommended by the IO, ***the IO has concluded from the totality of the circumstances that Ricchiuto had an obligation to intercede in these uses of force that were clearly not objectively reasonable. Instead, Ricchiuto ignored them, and himself further escalated force against Lopez. The IO therefore recommends a finding of SUSTAINED for Ricchiuto's violation of UOF Policy 300.2.1***

Officer Frevele

Factual Findings

Officer Frevele was the fourth officer on the scene. He walked by Ricchiuto standing near the hall and approached Ferraro and Parker as they struggled on the floor with Lopez. Frevele

-
- _Vomiting
 - _Suspected drug behavior
 - _Sweating profusely

The shoulder harness system should not be tightened to the point that it may interfere with the subject's ability to breathe.

[. . .]

You must minimize the time subject is restrained face down to reduce the risks associated with respiratory fatigue.

¹⁰ While Parker also was present and near Ferraro when he used a chokehold on Lopez, it is not clear that Parker observed this happening, as it took place quickly and during a quickly unfolding series of other intense events. The IO therefore can not say that Parker clearly observed this use of force.

removed his Taser from its holster and continued walking toward the officers. As he neared, Officer Purcell held his hand out and told Frevele to stand back because Ricchiuto was going to deliver baton strikes. Frevele did not use the Taser because he did not want to miss Lopez and risk hitting an officer in the narrow, crowded hall. Frevele said Ricchiuto delivered "multiple" baton strikes, but he wasn't sure exactly how many. Frevele heard Lopez say something like, "Stop hitting me" in English and remembered him trying to block the strikes with his hands. Frevele then observed Ricchiuto using his Taser multiple times on Lopez, but could not say how many times.

Frevele assisted Ferraro in the struggle with Lopez during the five-minute interval when Lopez was on the floor in the hallway. During this struggle, Frevele twisted Lopez's feet in an attempt at pain compliance. Frevele also banged Lopez's head on the floor and the wall, and elbowed Lopez on the back and side and near his head.

Frevele then called over the radio for Gault to bring in a canine. Once the K9 came into the house, Frevele cleared out of the hall and joined Ferraro in the back bedroom. From his position in the bedroom, Frevele could hear Gault giving Lopez commands and instructions that the K9 would be used if he did not comply. Frevele briefly cracked the bedroom door and could see Lopez in the hallway holding his hands up, as if he was going to "give up." He could also hear Gault continue with his commands. Believing Lopez was going to allow himself to be taken into custody, Frevele closed the door. Frevele waited just a second and opened the door again to see that Dean was dragging Lopez into the family room.

After Sgt. Dean dragged Lopez into the living room, Frevele was one of the officers helping restrain Lopez to put him into a Wrap restraint device. Very quickly, Frevele put his weight on the back of Lopez's neck and head through the knee. Lopez was yelling, but his voice was muffled from the compression of his face onto the floor. Another officer was pushing down with his hand on Lopez's neck, putting his weight on his hand while doing so. While Frevele kept his knee on Lopez, the other officer sometimes took his hand off his neck and then would push down on his back. Frevele also used one hand to push down Lopez's face into the ground at one point. After officers moved Lopez onto the Wrap, Frevele again pushed Lopez's face down into the floor, this time with both hands.

Frevele advised the second ambulance crew to remain staged until Lopez was completely restrained. After Lopez was placed in the WRAP, AMR personnel came inside the residence and carried him out to the gurney, at which time he was placed in the ambulance. Frevele heard Ricchiuto instructing AMR to give Lopez a sedative, but he could not remember who did so when he gave his interview statement.

Specific Policy/Legal Analysis

Given these factual findings, the question is whether there is clear and convincing evidence that Frevele's various uses of force were unreasonable under the circumstances. The RPD policy in effect at the time of the incident provided that "[o]fficers shall use **only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer**

at the time of the event to accomplish a legitimate law enforcement purpose." The question is whether the force he employed for that purpose was reasonable.

- **Force by Frevele Against Lopez During Initial Struggle**

Frevele entered the hallway after the struggle to restrain Lopez was already underway. He did not observe what happened before the takedown by Ferraro or what preceded Ricchiuto's uses of force. After watching Ricchiuto's multiple baton strikes and Taser applications to Lopez, Frevele joined Ferraro and Parker to struggle with Lopez on the floor. Frevele twisted Lopez's feet in an attempt at pain compliance. Frevele also banged Lopez's head on the floor and the wall, and elbowed Lopez on the back and side and near his head. These were significant uses of force that ordinarily would not be justified for the purpose of arresting a suspect, without more. However, from the reasonable perspective of Frevele, Lopez appeared to be fighting mightily with officers and was near to overcoming them in the struggle. Given these facts, the IO cannot say Frevele's force was clearly unreasonable. **Given the totality of the circumstances, the IO recommends that the Commission make a finding of NOT SUSTAINED with regard to these uses of force by Frevele being unreasonable.**

- **Duty to Intercede in Unreasonable Force**

As explained above, the IO also has concluded that there is clear and convincing evidence that Ricchiuto's uses of the Taser and baton against Lopez were unreasonable under the circumstances. Further, that finding depends on the existence of clear and convincing evidence, which the IO has concluded exists in this case. These uses of force unfolded in front of Frevele.¹¹

RPD UOF Policy 300.2.1 provides that "[a]ny officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force." Given the factual findings recommended by the IO, **the IO has concluded from the totality of the circumstances that Frevele had an obligation to intercede in these uses of force that were clearly not objectively reasonable. The IO therefore recommends a finding of SUSTAINED for Parker's violation of UOF Policy 300.2.1.**

- **Frevele's Uses of Force Against Lopez While in the Living Room**

Frevele used force in several ways in the living room while officers sought to restrain Lopez. Frevele put his weight through his fists on Lopez's back, pushing him down while he was facedown. Frevele put his weight through his knee on the back of Lopez's neck/head, pushing his face into the floor and compressing his trachea. All of these uses of force are questionable under the circumstances and require further analysis.

While Frevele putting his weight on Lopez's back, in isolation, would be reasonable in response to Lopez's efforts to get up off the floor, it did not happen in isolation. At the same time that

¹¹ While Frevele also was present and near Ferraro when he used a chokehold on Lopez, it is not clear from the evidence that Frevele observed this happening, as it took place quickly and during a chaotic series of events. The IO therefore cannot say that Frevele clearly observed this use of force.

Frevele was compressing Lopez's chest, other officers were pushing Lopez's head down into the floor. Frevele's action in placing his knee on the back of Lopez's neck/head would not ordinarily be reasonable, even apart from other circumstances, but those were also present. The officers were simply trying to restrain Lopez while the WRAP was obtained from a car to use on Lopez. All the officers had information that Lopez was under the influence of alcohol and methamphetamine, which put him at higher risk of positional asphyxia or other reactions that could be fatal. Given the totality of the circumstances, the IOL has concluded that the evidence is "clear and convincing" that Frevele's uses of force here were unreasonable. ***Therefore, the IO recommends a finding of SUSTAINED for these uses of force being unreasonable.***

Other Officers

While other officers involved in this incident also used force against Lopez, all of those officers' uses of force were relatively minor in relation to the lawful purpose of detaining/arresting Lopez. In the interest of efficiency, the IO has not separately analyzed those other uses of force in detail, but has concluded there is not clear and convincing evidence that they were unreasonable. For the sake of efficiency, no separate analysis of those instances is provided in this report.