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COUNTY OF YOLO

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August 8, 2016

Chief Darren Pytel
Davis Police Department
2600 Fifth Street
Davis, CA 95618

Re: Officer Involved Death- Incident Date February 5, 2016, WSPD Report 16-705,
Yolo County Coroner's Report 16-100, Forensic Medical Group Report 16-107

Dear Chief Pytel:

The Yolo County District Attorney's Office, as an independent agency, has completed its investigation and review of the above referenced officer involved use of force. We address only whether or not there is sufficient evidence to support the filing of criminal charges in connection with the use of force by Officers Kayla Woods, John Renger, Derek Carlson and Corporal Eric Labbe.

For the reasons set forth below, we conclude that the use of force in this case does not warrant the filing of criminal charges against any of the officers involved. In reaching this conclusion, we reviewed West Sacramento Police Department reports, Davis Police Department CAD logs, transcripts of recorded interviews conducted by Davis Police Officers as well as West Sacramento Detectives, and the Yolo County Coroner's report. In an effort to provide as objective an analysis as possible, any criminal record of the deceased was not considered. Any references to specific documents or places in documents are not meant to be an exhaustive list of evidence relied upon.

The review by Yolo County District Attorney's Office does not involve an evaluation of administrative, civil or Internal Affairs liability for the participants, and it does not involve a review of whether policies and procedures were appropriately followed. In addition, our review does not encompass recommendations concerning how policies and procedures might be altered to minimize potential future risks.

The scope of the District Attorney's review is solely an evaluation of whether the filing of criminal charges is warranted by the events of February 5, 2016. The Uniform Crime Charging Standards require prosecutors to critically analyze and evaluate all of the available information to ensure a case has been fully investigated and that there is legally sufficient, admissible evidence to establish that a crime has been committed. In addition, prosecutors are required to ensure that there is legally sufficient, admissible evidence of the identity of the perpetrator. Finally, the prosecutor must be personally satisfied that the accused is guilty of the crime and, considering the most plausible and

reasonably foreseeable defense(s), whether there is legally sufficient evidence to convince a jury of the accused's guilt beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves one with an abiding conviction that the charge is true.

On the morning of February 5, 2016, Davis Police Officers were called out to the scene of the Pacifico Cooperative Apartments located at 1752 Drew Circle in Davis, CA. According to the CAD logs, officers arriving on scene were told that the nature of the call was a subject, James Dugger, possibly under the influence of narcotics (CAD Logs Entries 1-4). According to interviews with all officers involved, the nature of the call was Mr. Dugger running naked through the parking lot. (WSPD 16-705, Duggins Lines 62-63; 671-673; 904-907). Officers Woods, Carlson, and Renger were first on scene, while Corporal Labbe arrived a short to later (WSPD 16-705, Duggins Lines 563-565).

Prior to contacting Mr. Dugger, officers developed a plan as to which officer was to perform certain roles during any physical confrontation that may occur (Duggins Lines 1182-1183). Prior to approaching Mr. Dugger, officers took steps to have EMS personnel nearby if necessary (Duggins Lines 567-569; 1180-1182). Officers observed Mr. Dugger emerge from behind a vehicle in the parking lot. When Mr. Dugger emerged, he was naked, walking in a stiff manner, and generally acting consistent with an individual under the influence of a central nervous system stimulant (Duggins Lines 78-86; 415; 572-574; 837-840; 924-926; 1192-1195). It should be noted that it was less than 40 Degrees Farenheit at the time.

Prior to making contact with Mr. Dugger, officers noted that he had sustained some injuries, the cause of which is unclear. Upon making visual contact with officers, Officer Woods removed, but never used, her Taser (Duggins Lines 925-928). Officers then moved to secure Mr. Dugger and place him in handcuffs (Duggins Lines 580-583). Upon being handcuffed, Mr. Dugger began to struggle against the restraints (Duggins Lines 93-94; 1201-1203). Officers took steps to seat Mr. Dugger down, avoiding him laying down on his stomach (Duggins 106-109; 942-47; 1207). Upon sitting Mr. Dugger down, he began to thrash about, not listening to commands to settle down (Duggins 121-124; 1208 – 1210).

Officers asked for a medical evaluation from the fire department who was on scene, but, due to Mr. Dugger's behavior, an evaluation proved impossible (Duggins Lines 113-116, 126-129; Davis Fire Report 2016-0456 Page 4 of 4). Officers on scene requested American Medical Response (AMR) to come to the scene for an evaluation, but were told that it would take approximately 20 minutes for ambulance to arrive (Duggins 133-135; 615-616). During the wait, officers took up supportive positions to keep Mr. Dugger from falling on to his stomach, careful to keep his airway unobstructed (Duggins 136-144; 1040-1043; 1058-1063). Specifically, officers took position near Mr. Dugger's shoulders in order to keep him upright (Duggins 137-140; 940-945). This appears to be the only force used by officers outside of the force necessary to detain Mr. Dugger in handcuffs. Officers did this in order to keep his airway clear, consistent with training they had recently received on how to handle individuals acting as Mr. Dugger was (Duggins 422-427; 1058-1062; 1237-1242).

Around the time AMR arrived on scene, Mr. Dugger's condition changed and offices became concerned about his well being (Duggins 166-169; 622-628; 949-952; 1255-1263; Fire Department 2016-456 page 4). Officers noted that Mr. Dugger's demeanor changed, observed him vomit a dark substance, and then noted that he appeared to not be breathing (Duggins 161-164; 624-628; 948-953; 1257-1265). Based on these observations by officers, medical personnel began CPR at 6:21 AM,

with medical personnel indicating a time of death at 7:21 AM (Fire Department 2016-456; Death Certificate).

Pursuant to an autopsy, there were superficial injuries noted on Mr. Dugger, consisting mostly of abrasions and lacerations (Forensic Medical Group YOL 16-107). These injuries were located all over Mr. Dugger's body and are consistent with the injuries observed by officers referenced above. (Forensic Medical Group YOL 16-107). The autopsy report notes that a "crumpled-up small plastic bindle surrounded by rubberbands" was located (YOL 16-107, 7). Further, the coroner described the bag as "torn" (*Id.*). While the pathologist did no further testing on the object, Yolo County District Attorney's Investigator David Marshall, a twenty year law enforcement veteran who has seen controlled substances hundreds of times, who was present at the autopsy, believed that the bindle contained methamphetamine. According to a report from NMS Labs, a sample of Mr. Dugger's blood contained approximately 4100 ng/mL of methamphetamine and 130 ng/mL of amphetamine (NMS Report, Page 2/4). Pursuant to the same report, levels of methamphetamine in the range of 200-600 ng/mL "...have been reported in methamphetamine abusers who exhibited...irrational behavior [and high doses...can elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions." (NMS 2/4).

Based on the above findings, the Coroner determined the cause of death to be sudden cardiac dysrhythmia complicating excited delirium. (Coroner's Report 2016-100). Further, the Coroner indicated this was due to "acute methamphetamine intoxication" (Coroner's Report 2016-100).

It should be noted that at least four independent witnesses, who knew Mr. Dugger prior to February 5, 2016, also noted his apparent use of some sort of a controlled substance. Witnesses described him as being "...being on something" (Duggins 2581), "...not in his right mind" (Duggins 1620-1621), and "...freaking out..." (Duggins 1975). A counselor who had treated Mr. Dugger indicated that he had been drug free for approximately 8 years, having passed random drug tests over the past two years. (WSPD 16-705, Luiz).

In examining the conduct of officers in this case, the initial question must be whether officers were justified in detaining Mr. Dugger. A temporary detention requires a reasonable suspicion the person detained may be involved in criminal activity. Reasonable cause demands some minimum level of objective justification, but considerably less than is required for probable cause to arrest. (*United States v. Sokolow* (1989) 490 U.S. 1, 7 (*Sokolow*); *Terry v. Ohio* (1968) 392 U.S. 1, 22 (*Terry*)). "[I]n order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity." (*In re Tony C.* (1978) 21 Cal.3d 888, 893; see also *People v. Turner* (2013) 219 Cal.App.4th 151, 160.) "The reasonableness of the officer's suspicion is determined by what he or she knows before any search occurs." (*People v. Turner, supra.*) Reasonable cause for a *Terry* stop must be supported by articulable facts rather than inchoate suspicion or hunch. (*Sokolow, supra*, 490 U.S. at p. 7.) In determining the validity of a detention, the court must consider the totality of the circumstances. (*Id.* at pp. 8-9; see also *United States v. Arvizu* (2002) 534 U.S. 266, 277-278.) It is immaterial that there might be a possible innocent explanation for the activity witnessed by the police officer. Even innocent behavior will frequently provide a showing of reasonable cause to detain. (*Sokolow, supra*, 490 U.S. at pp. 9-10.)

Here, officers observed Mr. Dugger walking, naked, through a parking lot in 40 degree weather. Mr. Dugger was not responding to verbal commands and appeared to be "zombie like". Based on this,

there was reasonable suspicion to detain the defendant for violations of Health and Safety Code § 11550, Use or Under the Influence of a Controlled Substance. In order to be in violation of this statute, an individual needs to use and/or be under the influence of a controlled substance (CALCRIM 2400). For these purposes, "under the influence" means that the substance has "...appreciably affected the person's nervous system, brain or muscles or has created in the person a detectable abnormal physical or mental condition" (*Id.*). Given Mr. Dugger's behavior, including the observations of the officers and people who had known him prior to this incident, the elements are met to a reasonable suspicion or probable cause standard necessary for detention or arrest.

Further, given the injuries to Mr. Dugger, his nudity, the cold temperatures, and his inability to respond to simple commands, officers were also justified in detaining him to investigate a violation of Penal Code § 647(f), commonly referred to as drunk in public. In order to be in violation of this statute, an individual must be "under the influence of a...drug or a controlled substance...in a public place...[and be] unable to exercise care for his own safety..." (CALCRIM 2966). Applying the same standards and evidence cited above, there was reasonable suspicion and probable cause to detain and arrest Mr. Dugger.

In further examining this case, it appears as if officers attempted to have Mr. Dugger medically evaluated as soon as possible. However, that proved impossible given Mr. Dugger's inability to follow commands as well as the delay in AMR arriving on scene. What little force was used by officers appears to be limited to handcuffing Mr. Dugger, sitting him down, and using force to keep him upright. This was done in order to keep his airway free from obstructions. Looking at the force used by the officers, it does not appear to be unreasonable given the facts before them.

Finally, in examining the conduct of the officers in this case, there appears to be little to no connection between the officers' conduct and Mr. Dugger's death. Given the lack of injuries directly attributed to the officers' conduct, the lack of any noticeable serious injuries during the autopsy, the bundle of what appears to be methamphetamine found in Mr. Dugger's stomach, the levels of methamphetamine in his blood, and the cause of death as listed by the Coroner, there is not a causal connection between the officers' conduct and Mr. Dugger's death.

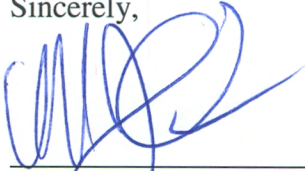
In summary, officers were dispatched to 1752 Drew Circle for an individual acting strangely. Upon arrival, officers noted Mr. Dugger, naked, having suffered various injuries, walking through an outdoor parking lot in 40 degree weather. Based on their individual training and experiences, officers believed Mr. Dugger to be under the influence of a controlled substance. Officers moved into detain Mr. Dugger by placing him in handcuffs. Mr. Dugger resisted efforts to be placed in handcuffs and sit still afterwards. In response, officers used minimal force to keep him upright in order to maintain his airway. Fire personnel on scene could not evaluate Mr. Dugger due to his level of agitation, so AMR was called. While waiting for AMR to arrive on scene, Mr. Dugger's condition took a turn for the worse, to the point that he appeared to not be breathing when AMR arrived on scene. An autopsy of Mr. Dugger did not locate any significant injuries that can be attributed in any way to the officers on scene, determined Mr. Dugger to have recently used methamphetamine, with a bundle of suspected methamphetamine found in his stomach. Cause of death was attributed to cardiac dysrhythmia caused by methamphetamine intoxication.

The officers involved were justified in detaining Mr. Dugger. The officers used minimal and reasonable force after detaining Mr. Dugger, and such force was used solely for the purpose of keeping his airway unobstructed consistent with training the officers had received. As soon as Mr. Dugger was secured, officers took steps to have Mr. Dugger immediately medically evaluated to see

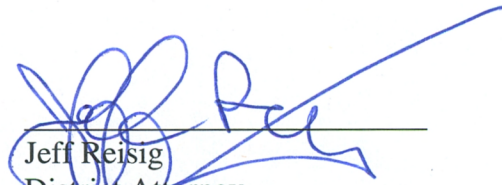
if he needed further care. Mr. Dugger's cause of death was related to methamphetamine use that occurred before officers arrived on scene. Because of this, the only conclusion supported by the evidence is that Officers Kayla Woods, Derek Carlson and John Renger as well as Corporal Eric Labbe acted reasonably and there is insufficient evidence to support the filing of criminal charges against any of the officers involved.

Thank you for your cooperation.

Sincerely,



Michael Vroman
Deputy District Attorney



Jeff Reising
District Attorney