

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA

JANUARY 5, 2009

REPORT ON THE MAY 15, 2007
PURSUIT AND ARREST
OF REYMUNDO GUERRERO
BY OFFICERS OF THE
SIMI VALLEY POLICE DEPARTMENT

GREGORY D. TOTTEN
DISTRICT ATTORNEY

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STATEMENT OF FACTS.....	2
A.	GUERRERO’S ERRATIC DRIVING	2
B.	PURSUIT.....	5
C.	BACKYARD AT 897 CHELSEA COURT	6
1.	USE OF TASER	7
2.	REMOVING GUERRERO FROM HIS TRUCK	7
3.	RESTRAINING GUERRERO.....	8
4.	MEDICAL AID	9
D.	ADDITIONAL POLICE RESPONSE AND INVESTIGATION	10
E.	WITNESS STATEMENTS	10
1.	STEVE BROWN	11
2.	MELANIE THOMAS.....	11
3.	OFFICER TROY THOMAS - LAPD.....	12
a.	Interview	12
b.	911 Calls	14
4.	BRIAN KANE	14
a.	Interview	14
b.	911 Call.....	15
5.	GRAYSON GILLILAND.....	15
6.	DEREK FREEMAN	17
7.	OFFICER ROBERT TRULIK - LAPD	17
8.	SENIOR OFFICER BUTCH HALE.....	18
9.	SENIOR OFFICER BRIAN MURRAY	22
a.	Interview	22
b.	Recording of Incident	27
i.	Initial Excerpted Recording	28
ii.	Additional Recorded Material	29
10.	SENIOR OFFICER RICH LAMB.....	30
11.	SENIOR OFFICER JAMES BUCKLEY	33
12.	OFFICER CHRIS JOHNSON	35
13.	SERGEANT ALAN THOMPSON.....	38
14.	OFFICER FRANK MIKA	39
15.	OFFICER DANIEL SWANSON.....	42
16.	OFFICER HEATHER TALLENT.....	43
17.	OFFICER ALAN McCORD.....	44
18.	FIREFIGHTER-PARAMEDIC DANIEL ARNOLD - VCFD.....	45
19.	FIRE CAPTAIN ED HO.....	46
20.	FIREFIGHTER-PARAMEDIC IAN HENRICH	47
21.	PARAMEDIC ANTHONY SANCHEZ (AMR)	48

22.	RONALD HOVET.....	49
	a. May 15, 2007.....	49
	b. June 1, 2007.....	49
	c. June 16, 2007.....	50
	d. August 8, 2007.....	51
23.	JEFFREY REESE.....	52
	a. May 15, 2007.....	52
	b. May 16, 2007.....	52
	c. June 5, 2007.....	53
	d. August 8, 2007.....	53
24.	JASON CUMMINGS.....	54
	a. May 15, 2007.....	54
	b. May 16, 2007.....	54
	c. June 18, 2007.....	54
	d. August 8, 2007.....	55
25.	CARRIE HOVET.....	55
	a. May 15, 2007.....	55
	b. May 16, 2007.....	56
	c. June 16, 2007.....	56
	d. August 8, 2007.....	57
26.	ALJANDRA GUERRERO.....	58
	a. May 16, 2007.....	58
	b. May 22, 2007.....	58
27.	GREG BRIDGES.....	59
28.	KEVIN SORENSON.....	60
29.	SARAH CHO.....	60
30.	RICHARD FREITAS.....	61
31.	JEFF QUALLS.....	62
F.	PRIOR CRIMINAL HISTORY.....	62
III.	PHYSICAL EVIDENCE.....	63
	A. CRIME SCENE.....	63
	B. HOSPITAL.....	64
	C. CAUSE OF DEATH.....	64
	1. CORONER'S REPORT.....	64
	2. INTERVIEW WITH DR. RONALD O'HALLORAN.....	65
IV.	LEGAL PRINCIPLES.....	67
	A. CRIMINAL VIOLATIONS COMMITTED BY REYMUNDO GUERRERO.....	67
	B. LAW OF HOMICIDE AND REASONABLE FORCE TO DETAIN AND ARREST.....	68
	C. CAUSE OF DEATH.....	69
	D. SIMI VALLEY POLICE DEPARTMENT TASER USE POLICY.....	69

V.	ANALYSIS	70
A.	CAUSE OF DEATH.....	70
B.	USE OF FORCE.....	72
VI.	CONCLUSION	74
VII.	APPENDIX	75

I. INTRODUCTION

On May 15, 2007, Reymundo Guerrero¹ set into motion a series of events that directly led to his confrontation with Officers from the Simi Valley Police Department and to his death. At some point that evening, he ingested a significant amount of cocaine. At approximately 9:30 p.m., he was noticed driving erratically through the neighborhoods bordering Fitzgerald Road and Sequoia Avenue in Simi Valley. His bizarre driving scared numerous people, some of whom called the police. Shortly after the police responded, he led officers on an odd pursuit that included his making tight circles in the streets and, eventually, driving into a backyard where he was forcibly pulled from his truck while trying to drive through a fence into another backyard.

The District Attorney's Office received reports concerning this incident from the Simi Valley Police Department in December 2007. The District Attorney's investigation and review was conducted by Senior Attorney Christopher S. Harman and Senior Investigator Matt Harvill. The District Attorney's review included examination of the following: approximately 850 pages of reports and supporting documents, including reports from the Simi Valley Police Department, the Ventura County Sheriff's Crime Laboratory, and the Ventura County Medical Examiner's Office, an audio recording of the incident as it occurred, over 150 recordings of interviews with witnesses, 911 and dispatch traffic recordings, interviews with specific witnesses and more than 270 photographs.

The purpose of the District Attorney's investigation was to determine whether the force used to subdue and arrest Reymundo Guerrero caused his death, whether the force used to subdue and arrest Reymundo Guerrero was justified, and, if not, whether criminal charges should be filed.

Based on the information available for review, the District Attorney's investigation, and the applicable legal authorities, it is the opinion of the District Attorney that there is insufficient evidence to prove beyond a reasonable doubt that the actions of any Simi Valley Police Officer caused the death of Reymundo Guerrero. Further, the force used to subdue and arrest Reymundo Guerrero was justified, was not excessive and did not constitute a criminal act.

¹/ Reymundo Guerrero's Social Security Card identifies him as Reymundo Guerrero Garcia. According to his family, his father's last name is Guerrero and his mother's maiden name was Garcia, and he was always referred to as Reymundo Guerrero.

The vehicle pursuit that Guerrero initiated in this case posed a substantial and immediate risk of serious physical injury to others.” *Scott v. Harris* (2007) 550 U.S. 372 [127 S.Ct. 1769]. The actions of Guerrero in recklessly driving through neighborhoods, through a backyard fence and into a backyard, then continuing to attempt to flee by driving through another fence into other backyards, posed a substantial risk of harm to civilians as well as the lives of the officers responding to the call, and would most likely have justified a use of deadly force to subdue Guerrero. The responding officers did not use deadly force, but instead used the minimal force necessary to subdue Guerrero, who continued to resist even after he had been forcibly pulled from his truck and handcuffed. The less than lethal force used by the officers in subduing Guerrero was justified.

II. STATEMENT OF FACTS

A. GUERRERO’S ERRATIC DRIVING

At approximately 9:38 p.m. on May 15, 2007,² Simi Valley Police Department received their first call regarding a pickup truck that was driving erratically in the area of Fitzgerald Road and Sequoia Avenue in Simi Valley.³ The call came from Brian Kane and concerned a truck driven by Reymundo Guerrero. However, Guerrero’s aggressive driving was observed well before that first call.

Between 9:00 p.m. and 10:00 p.m. on May 15, Steve Brown was driving home on Fitzgerald Road. Guerrero’s Ford F-150 truck turned into Brown’s lane without stopping. Brown swerved to avoid colliding with Guerrero. Guerrero pulled into the lane next to Brown and revved his engine as though he wanted to race with Brown. Brown looked at Guerrero and thought he looked “out of it.”

Guerrero continued to drive aggressively, forcing another car to back up in order to avoid a collision with him. Guerrero also pulled into Brown’s lane and began repeatedly braking while driving in front of Brown. Guerrero turned onto Watson Avenue without stopping for the stop

²/ Except where otherwise noted, times are based on Simi Valley Police Department dispatch logs.

³/ An aerial photograph depicting the general area where the erratic driving, pursuit and arrest occurred is included in the Appendix as Exhibit A.

sign, and Brown drove home. Brown did not call the police to report Guerrero's aggressive driving but later heard screeching tires and sirens from the police pursuit of Guerrero.⁴

Guerrero's next reported encounter was with Melanie Thomas. She was driving home on Pine View Drive when she heard tires squealing. She saw Guerrero's truck at the intersection of Sequoia Avenue and Pine View Drive. He was rapidly driving in reverse up Pine View Drive on the wrong side of the street. As she neared her home, Guerrero drove past her and stopped suddenly. He backed his truck towards her very rapidly, missing her car by about five feet.

Thomas continued driving home and parked on the street outside her house. As she was about to get out of her car, Guerrero drove toward her again. She had opened her car door but closed it to avoid Guerrero hitting her car door with his truck. Thomas felt that Guerrero's truck came close enough that it would have hit her if she had stepped out of her car. Guerrero then shifted his truck into reverse and backed down the street at a high rate of speed. Thomas ran into her house and told her father, Troy Thomas, what had happened.

At 9:38 p.m., Brian Kane, a neighbor of Thomas, called 911 to report Guerrero erratically driving on Pine View Drive. He saw Guerrero's truck accelerating hard and immediately braking hard six or eight times. Guerrero's truck would move less than ten feet each time, but the tires broke traction each time.

Guerrero continued driving down Pine View Drive, accelerating and stopping hard and continuously shifting between forward and reverse. Kane felt Guerrero was an "extreme hazard," so he called 911. As Kane spoke to the police dispatcher, Guerrero turned left on Sequoia and drove away.

Troy Thomas had been hearing the sounds of a vehicle racing around his neighborhood when his daughter Melanie walked into their home and told him that Guerrero had tried to force her car off the road and tried to run her down as she was leaving her car. Thomas went outside, where he saw Guerrero's truck revving its engine and racing down Pine View Drive toward Sequoia

⁴/ Except for a few police officers who had responded to Guerrero's residence on prior occasions, no witnesses knew Guerrero or were aware of any connection with Guerrero prior to the events of May 15, 2007.

Avenue. He retrieved his keys, got in his car and drove after Guerrero, eventually spotting the truck driving at approximately 40 to 50 mph on Cinnabar Place, a double cul-de-sac.

Grayson Gilliland was standing in the street on Cinnabar Place, waiting as his friend Ryan Rubin drove up. Guerrero's truck sped past Gilliland and came to a sudden stop in front of Rubin's car, blocking him. Guerrero and Rubin's vehicles were "head to head" approximately ten feet apart. Rubin tried to move past Guerrero's truck, and Guerrero would block him with his truck.

Gilliland's neighbor, Derek Freeman, had heard Guerrero's truck loudly revving its engine and squealing its tires. He came out of his house to see the encounter between Guerrero and Rubin's vehicles. He described Guerrero's truck as doing "donuts" – driving in tight circles – as well as blocking Rubin's car. Freeman yelled at Guerrero, who suddenly pulled into Freeman's driveway. Rubin pulled his car into Gilliland's driveway and the two of them ran inside Gilliland's home.

Guerrero got out of his truck, leaving the door open and engine running. He approached Freeman, holding several CD cases and loudly cursing at Freeman, saying things such as "Don't mess with me again." Guerrero's speech was slow and incoherent, his eyes were glassy, his movements were exaggerated and he staggered as he walked. Freeman called 911 as Guerrero came within a couple of feet of him. Guerrero removed a CD from one of the cases and threw it at Freeman, stating "Don't come in my house again." Then Guerrero walked back to his truck, "peeled out" and sped away. Freeman had never seen Guerrero before that incident.

Off-duty LAPD Officer Robert Trulik was on his way home from work when his wife called him and told him about Guerrero's truck driving recklessly through the area. Officer Trulik decided to look for the truck but could not find him. He stopped his car at the curb of northbound Sequoia Avenue, just north of Fitzgerald Road. While stopped, a Simi Valley police car driven by Officer Hale pulled up next to him, stopping in the closest northbound lane. PSA Slavin had also responded to the area and stopped his car behind Officer Hale.

As Officer Hale spoke with Officer Trulik, Guerrero appeared south of their position and sped toward them, driving north in the southbound lanes. Guerrero did a "power slide" past Hale,

stopping parallel with PSA Slavin. Guerrero did a couple of donuts – 360 degree turns – then floored the accelerator and peeled out as he drove away north on Sequoia. Hale and Murray activated their overhead lights and began driving after Guerrero.

B. PURSUIT

Guerrero headed south on Sequoia Avenue, with Officers Murray and Hale following. Guerrero turned and headed north, then made a wide, hard left turn onto Manorgate Place, with his truck's engine revving loudly. Guerrero's truck slammed against the curb, but Guerrero's truck kept moving back and forth with its engine revving. Officer Hale noticed that although the engine was revving loudly, Guerrero was "looking straight ahead with a death grip on the steering wheel" and was not driving away. Hale drove his police car into the driver's door of Guerrero's truck in order to pin the truck. Guerrero responded by backing up, turning right and heading southbound on Sequoia Avenue back toward High Point Drive.

Guerrero continued past Fitzgerald Road, made a left-turn and then a couple of "donuts" before once again heading north on Sequoia Avenue. Guerrero then made a second hard left, turning west onto Manorgate Place. Murray continued to pursue Guerrero and Hale backed up to watch the intersection of Beachnut Avenue and Fitzgerald Road – the only other exit from Manorgate.

Guerrero drove from Manorgate Place onto southbound Chelsea Court. Chelsea Court is a two sided cul-de sac and the only exit is back down Manorgate. When Guerrero reached the southern end of Chelsea Court, he turned around and stopped with his truck's front end pressed against the curb. Guerrero's truck's engine was revving very loudly. Officer Murray turned off his siren, stepped out of his car, drew his handgun and yelled at Guerrero "Hold up! Stop your car! Stop the car, man!"⁵

Guerrero's truck moved forward and backward before backing up away from the curb and driving over the sidewalk. Guerrero did not look at Officer Murray, but stared straight ahead

⁵ / Officer Murray inadvertently recorded the entire incident on a portable audio recorder. An excerpted version was made available early in the investigation. By comparison with the police logs, the excerpted recording appears to start at 9:42:16 p.m. Officer Murray is heard yelling "Stop the Car!" at approximately 11:36 on the recording, which was approximately 9:53 p.m. No one was aware of the existence of the recording until May 20, 2007, when Officer Murray reported for work and found his recorder's memory was full. The recorder clearly captured the entire pursuit and arrest of Guerrero.

with his hands clenched around the steering wheel. Officer Hale arrived at the location and rammed Guerrero's truck to try and pin it. He drove the front bumper of his police vehicle into the left front tire of the truck. Guerrero's truck moved forward, grinding against Officer Hale's car and drove northbound on Chelsea Court toward the other cul-de-sac.

Officers Murray and Hale followed Guerrero. At the northern end of Chelsea Court, Guerrero made a left turn onto the front lawn of 897 Chelsea Court without braking. Guerrero drove through the side yard and through a wooden gate, then turned left into the backyard of the residence. He continued through the backyard, smashing into the southern fence where the truck's forward progress was stopped by a tree on the other side of the fence.⁶

C. BACKYARD AT 897 CHELSEA COURT

Guerrero's truck had become jammed between the southern fence and a cinderblock wall lining the western side of the property. Guerrero was loudly revving his truck's engine and was rocking the truck between forward and reverse as its tires spun. To the officers at the scene, it appeared as though Guerrero was trying to regain traction and continue fleeing in his truck.

Officer Murray parked his car against the back bumper of Guerrero's truck, got out and drew his handgun. He approached Guerrero and yelled "Hey, hey, do you want me to fucking shoot you? Do you want to get shot? Get your hands off the steering wheel! Stop the fucking . . .!"⁷ Guerrero did not respond. Instead he maintained a "death grip" on the steering wheel and stared straight ahead. Guerrero continued loudly revving the engine and switching between drive and reverse, causing the tires to rapidly spin.

Officer Murray holstered his handgun and drew his Taser.⁸ Officer Hale started trying to break open the driver's side window. Other officers began arriving at the scene, including Senior

⁶ / At the time of the incident, none of the responding officers were aware that a tree on the other side of the fence was preventing Guerrero from continuing into the next yard.

⁷ / 12:45 on the excerpted Murray recording, approximately 9:55 p.m.

⁸ / The Simi Valley Police Department has authorized its officers to carry the Taser X-26 as a less than lethal weapon. The Taser works by firing electrodes into a subject and delivering an electric current which immobilizes the subject by overloading the central nervous system. Officer Murray had passed the Simi Valley police training on the use of a Taser and was authorized to carry a Taser.

Officer Rich Lamb, who climbed into the bed of the truck. Guerrero continued rocking his truck between drive and reverse and continued “flooring” the accelerator.

1. USE OF TASER

Once Officer Hale broke the driver’s window, Officer Murray fired his Taser at Guerrero and gave him a five second shock. The shock had no apparent effect on Guerrero.⁹ Guerrero continued to rev his truck’s engine and his hands never came off the steering wheel. Based on Guerrero’s reaction, Murray thought the Taser probes had missed Guerrero. He gave him a second five second shock about nine seconds later.

During the second shock, Guerrero moaned, rocked back in his seat, and released his grip on the steering wheel. As soon as the shock ended, Guerrero resumed trying to drive his truck out of the yard.

Murray delivered a total of eleven Taser shocks to Guerrero over an approximate one and one-half minute period. Each shock was five seconds in duration. During all but the first shock, Guerrero would respond by groaning, letting his foot off the accelerator and rocking back in his seat. However, each time the shock ceased, he would resume his attempt to escape. Guerrero never looked at Officer Murray while the Taser was being used.

2. REMOVING GUERRERO FROM HIS TRUCK

While Officer Murray was administering Taser shocks in his attempt to subdue Guerrero, Officer Lamb smashed the truck’s passenger side window with his flashlight, opened the passenger door and climbed into the truck. Guerrero had his foot depressed on the accelerator and was gripping the steering wheel. Lamb yelled “Hit it!” at Officer Murray, indicating Murray should administer another Taser shock to Guerrero. Lamb reached toward the steering wheel and Guerrero tried to hit his hand away. Lamb shifted the truck into park, took the key out of the ignition and threw it out of the truck.

⁹ / Officer Murray’s Taser discharge information showed eleven discharges beginning at 9:48 p.m. (21:48:25) and 9:50 p.m. (21:49:56). However, according to Officer Murray’s recording of the incident correlated with the SVPD dispatch logs, the actual Taser discharges occurred between 9:55 p.m. and 9:57 p.m. Officer Murray’s Taser’s internal clock was checked against the dispatch clock at the time the information was downloaded on May 25, 2007, and both reflected the same time, 17:10 (5:10 p.m.). At present, there is no explanation for the time discrepancy between the Taser clock and the police dispatch logs from May 15.

Officer Lamb grabbed Guerrero's right hand and managed to get a handcuff around the wrist. Officer Hale managed to grab Guerrero's left hand through the broken driver's window, but Guerrero kept struggling with him. Officer Johnson punched Guerrero's face and head several times in order to distract him. Officer Hale kept control over Guerrero's left hand as other Simi officers pulled Guerrero through the driver's window. Officer Johnson took control of Guerrero's right hand from Officer Lamb. Officer Lamb then grabbed Guerrero's legs and pushed him out of the truck.

3. RESTRAINING GUERRERO

Guerrero was pulled through the window and placed face down on the patio with most of his body on the lawn. Guerrero struggled as he was being pulled from the truck and continued to struggle as he was laid on the ground. He began grunting and screaming incoherently. Once the officers had gotten Guerrero onto the ground, they tried to control him and one of the officers told the others "take a break for a second."¹⁰

Officer Murray was no longer administering Taser shocks to Guerrero. Guerrero continued struggling against the officers trying to restrain him. Approximately four to six officers had their hands on Guerrero trying to restrain him while he was on the ground. Officer Mika was trying to control Guerrero's left hand, Officer Buckley was trying to control his legs, Officer LeBlanc was near Guerrero's left shoulder, Officer Young used one hand to hold down Guerrero's waist, and had his Taser out for use as a "drive stun" if necessary.¹¹ Officer Hale noticed Officer Buckley near Guerrero's feet, rising up and down every time Guerrero struggled.

It took about a minute to get Guerrero handcuffed, and he was struggling and groaning the entire time. Officer Hale asked for a Hobble – a leg restraint used by law enforcement.¹² The Hobble was wrapped around Guerrero's legs but was never connected to his handcuffs.

¹⁰ / 16:13 on the excerpted Murray recording, 9:58 p.m.

¹¹ The Taser X-26 allows the weapon to inflict a painful charge when the cartridge is removed. Such a charge is referred to as a "drive stun." Unlike a charge delivered through the electrodes, a "drive stun" does not affect the central nervous system but merely inflicts pain and induces compliance through pain avoidance. No drive stuns were delivered to Guerrero that evening.

¹² / A Hobble is a device to restrict leg movements of a detained subject by strapping the legs together and, if necessary, connecting the leg restraints to handcuffs.

4. MEDICAL AID

Based on the use of a Taser and Guerrero's erratic behavior, Officer Hale requested Officer Tallent to call for paramedics.¹³ At 9:59 p.m., Officer Tallent requested dispatch to send an ambulance to the Chelsea Court location.

Guerrero continued to struggle and groan until about 10 p.m., when he quieted down.¹⁴ At about 10:02 p.m., Officer Hale asked other officers to check Guerrero's breathing.¹⁵ Officer Buckley confirmed that Guerrero was still breathing and had a pulse.¹⁶ Officer Hale mentioned that they should get a mask for CPR, "just in case."¹⁷

At approximately 10:03, Officer Buckley again checked Guerrero's pulse, but this time could not find a pulse. He shouted out that Guerrero did not have a pulse and added "I need a mask, now!"¹⁸

Guerrero's handcuffs were removed and he was rolled onto his back. Officer Buckley is a certified First Aid/CPR Instructor and he began administering CPR to Guerrero. Guerrero was moved completely onto the concrete patio and Officer Lew, who is a certified EMT and certified CPR Instructor, joined Officer Buckley in providing CPR to Guerrero.

Ventura County Fire Department Paramedics arrived on scene at approximately 10:06 p.m. and took over the administering of First Aid. Paramedics from American Medical Response arrived shortly thereafter and assisted the fire personnel. When they arrived, Guerrero did not have a pulse. After a short while, his heart began beating again. He did not resume breathing on his own, so paramedics continued manually providing respiration.

Guerrero was transported to the Simi Valley Hospital. He never resumed breathing on his own. On May 21, 2007, Doctor Peter Kim, a neurologist, declared him to be brain dead at 9:55 a.m.

¹³ / SVPD General Order 0504 governs the use of Tasers by SVPD officers and recommends that medical personnel should be summoned whenever a Taser is used.

¹⁴ / The last audible sound from Guerrero is heard at about 10:00:30 on the excerpted Murray recording, 10:00:46 p.m.

¹⁵ / 10:02:07 on the excerpted Murray recording, 10:02:07 p.m.

¹⁶ / 10:02:56 on the excerpted Murray recording, 10:02:56 p.m.

¹⁷ / 10:03:01 on the excerpted Murray recording, 10:03:01 p.m.

¹⁸ / 10:03:49 on the excerpted Murray recording, 10:03:49 p.m.

Dr. Laurence Weekes, a surgeon, also declared him brain dead at 11:00 a.m. that same day. Guerrero remained on a respirator to allow his family time to visit and to seek an alternate medical opinion. On May 23, 2007, Guerrero was removed from a ventilator and was declared dead at 7:42 p.m.¹⁹

D. ADDITIONAL POLICE RESPONSE AND INVESTIGATION

Based on the nature of the incident, personnel from the SVPD Detective Unit were summoned to the scene on May 15, 2007. They searched the area around 897 Chelsea Court and began interviewing witnesses to the pursuit and backyard encounter. They took photographs of the locations and vehicles, Guerrero in the hospital, and most of the officers involved in his arrest. Officers searched the backyard for items of evidence and took photographs and measurements, and a diagram was later created drawn from those measurements.

Detective Sergeant Anzilotti arrived at Simi Valley Hospital at approximately 12:05 a.m. on May 16. Due to Guerrero's condition, he was unable to interview Guerrero or take photographs of him. Anzilotti did cause a blood sample to be drawn from Guerrero at 12:35 a.m. on May 16, 2007.

Detectives then began interviewing witnesses and canvassing the neighborhoods located near the pursuit and the backyard at 897 Chelsea Court. Photographs were later taken on May 16 and May 17, depicting Guerrero's physical condition.

E. WITNESS STATEMENTS

Over 180 individuals were interviewed, including all police officers involved in the incident. Based on the advice of counsel, Officer Matt Brill, Sergeant Robert Brill, Officer Brian Young, Officer Chris Hahesy and Officer Carl LeBlanc all declined to make voluntary statements about the incident.²⁰

¹⁹ / Guerrero's death certificate reports the time of death as 11:00 a.m. on May 21, 2007 – the time of the second "brain death" pronouncement.

²⁰ / The officers did make compelled statements to the personnel involved in the administrative investigation by Simi Valley Police Department. However, such statements are deemed compelled statements and were not released to the District Attorney's Office.

1. STEVE BROWN

On May 15, 2007, Brown was driving home from a golf tournament trip when he stopped at a stop sign at the intersection of Fitzgerald Road and Erringer Road. A gray and maroon two-tone late model Ford or Chevrolet truck driven by a Hispanic male with a shaved head, in his late twenties to early thirties, approached northbound on Erringer Road. The truck turned onto Fitzgerald in front of Brown after a "California stop" (rolling through the stop sign) and Brown had to swerve to avoid being struck by the truck.

The truck drove next to Brown and the driver raced the engine as if he wanted to race. The driver appeared to be "out of it," so Brown ignored him. The driver rolled through the next stop sign at Crosby Avenue, cutting off another driver who had to brake and back up to avoid colliding with the truck.

The truck stopped at the intersection of Fitzgerald and Sycamore Drive, and appeared to be waiting for Brown. Once Brown reached the stop sign, the driver revved his engine. They drove into the intersection at the same time and the truck cut Brown off by driving into Brown's lane. The truck continued driving on Fitzgerald Road and Brown stayed behind the truck.

The truck then began braking multiple times in front of Brown, as if to annoy him. The truck eventually reached the intersection of Fitzgerald Road and Watson Avenue, and made a rolling stop onto northbound Watson. Brown continued home without encountering the truck again.

Brown believed that he arrived home between 9:45 p.m. and 10:30 p.m. Brown heard the sound of tires burning out ten to fifteen minutes after he arrived home. A few minutes later, he heard sirens and the sounds of a collision, then more sirens and what sounded like a chase. He figured the police were chasing the truck he had encountered.

2. MELANIE THOMAS

On May 15, 2007, Melanie Thomas was stopped at the intersection of Coastal Oaks and Sequoia Avenue when she heard tires squealing. She drove a little further and saw a newer maroon pickup truck with a tan stripe at the intersection of Sequoia Avenue and Pine View Drive. The truck was facing the wrong direction and backing up in the southbound lane of Sequoia Avenue.

Thomas turned onto Corto Street just as the truck passed her. The truck stopped suddenly with its tires squealing as it stopped. The truck then began backing up rapidly, missing her car by about five feet. Ms. Thomas continued driving home on Corto Street.

Thomas parked her car outside her house on Pine View Drive. She started to get out of her car when she saw the same truck driving eastbound on Pine View. The truck sped by her parked car. She had just opened her car door but closed it to avoid the truck hitting it. She believes the truck would have hit her if she had already gotten out of her car.

The truck stopped suddenly, approximately fifteen feet away from her. It then began backing rapidly back down the street and out of sight. She felt that the truck was driving too fast for a residential area.

Thomas went inside her house and told her father, witness Troy Thomas, what had just happened. Troy Thomas called 911 and went in search of the truck. While in her house, Thomas heard what she assumed was the truck driving very fast on Pine View Drive a couple of times, then reverse back down the street. She did not see the truck again.

3. OFFICER TROY THOMAS - LAPD

a. Interview

Troy Thomas is a peace officer employed by the Los Angeles Police Department. On May 15, 2007, he was off-duty and at home when he heard the sound of an unknown vehicle racing up and down Sequoia Avenue. At approximately 9:15 to 9:20 p.m., his seventeen-year-old daughter, Melanie Thomas, came home from work. She appeared “frantic” and “unnerved” and told him someone had tried to run her off the road and tried to run her down as she was getting out of her car.

Officer Thomas went outside and saw what appeared to him to be an older model Chevy truck, maroon over silver in color, at the end of the cul-de-sac of Pine View Drive. The truck revved its engine and sped back down Pine View Drive toward Sequoia Avenue.

Officer Thomas went back inside and grabbed his cell phone and car keys. He got into his car and drove after the truck in order to obtain its license plate number.

Officer Thomas next saw the truck driving on Cinnabar Place, crossing High Point Place.²¹ He estimated the truck to be traveling at 40-50 mph. The truck reached the northern cul-de-sac and began screeching tires and rocking between reverse and forward. The truck then sped off toward the southern end of Cinnabar Place and drove past Officer Thomas at a high rate of speed.

Officer Thomas lost sight of the truck but heard its tires squealing around the southern cul-de-sac. The truck then returned to the northern cul-de-sac. The truck began tailgating a car and it appeared as though the truck was going to hit the other car. The car's driver got out and ran from his car to avoid the truck.

The truck eventually left the cul-de-sac, turned on High Point, then turned left and headed south on Sequoia toward a dead end. The truck made a U-turn at the end of Sequoia Avenue, revving its engine, and began driving rapidly toward Simi Valley Police Officers who had arrived at Sequoia. Officer Thomas was on the phone with the dispatch and told the dispatcher "Tell your guys to be careful 'cause this guy's driving crazy, he's driving very erratically."

The truck ran the stop sign at High Point and Sequoia at a speed Officer Thomas approximated to be 60 mph. He feared the truck was going to collide with a police car that was stopped there, but the truck passed the police car, drove over the center median, made a U-turn, drove over the median again, and headed back south on Sequoia. Officer Thomas thought that the truck hit one of the police cars as it turned.

The truck made a right turn onto Manorgate Place and the officers followed it. Officer Thomas then went home and had no further involvement until he was contacted by Simi Valley Police.

²¹ / Cinnabar Place is a double cul-de-sac that runs north and south across High Point Place.

b. 911 Calls

Officer Thomas made two calls to SVPD on May 15, 2007. During the first call, he told the dispatcher that the truck that had been on Sequoia Avenue and Pine View Drive had moved to High Point Place.

During the second call, Thomas told the dispatcher that the driver was trying to run people off the road, and was at Cinnabar Place and High Point Place. He described the truck as trying to “run folks down.”

Officer Thomas then reported the truck as heading southbound on Sequoia Avenue and stated “I don’t think this guy knows his way around.” As he spoke with the dispatcher, Officer Thomas related that police had arrived at the area of Fitzgerald Road and Sequoia Avenue. He then narrated as the truck turned around and came back up Sequoia Avenue “driving right at ‘em,” referring to the police cars. He then reported that the truck went around the officers and that the officers had begun following the truck. The dispatcher ended the call to deal with the ongoing pursuit.

4. BRIAN KANE

a. Interview

At approximately 9:30 p.m., on May 15, 2007, Brian Kane was in his house on Pine View Drive when he heard a loud vehicle noise in front of his house. Kane went outside and saw a pickup truck at the east end of his cul-de-sac that was “behaving very erratically . . . beyond anything I’ve seen in my neighborhood.” He described the truck as a Ford F-150 with a distinctive two-tone paint job. Kane never got a good look at the driver.

The truck was repeatedly squealing its tires in acceleration and jamming on its brakes. Kane saw the truck accelerate and brake at least six to eight times, and the truck never moved more than ten feet any one time. The truck then turned around and drove toward him at a high rate of speed. Kane ran because he was afraid that the truck was going to run him down.

The truck continued down Pine View Drive toward Sequoia Avenue. The driver stopped the truck and resumed its “bizarre” accelerating and braking. Kane felt that the truck was an

extreme hazard. He began walking toward the truck while he was speaking to a police dispatcher in order to obtain its license plate number.

The truck turned left on Sequoia Avenue from Pine View Drive and headed south on Sequoia. Kane asked the dispatcher to send someone to the area of Sequoia and Fitzgerald.

Kane did not see the truck again but heard “the squealing sound of continued . . . the same operation” from what he believed was the area of High Point Place. One of Kane’s neighbors had walked down to Sequoia Avenue to see what was happening. Kane told her to move away from Sequoia because he “feared for anyone who might be in the path.”

Later, he heard tires squealing and a big thud that sounded like the truck had hit something. He saw at least 10 to 12 police cars eventually respond to the scene.

b. 911 Call

Kane called to report a silver and black “two-toned Ford flatbed pickup truck” squealing its tires in his neighborhood. He described the truck as “kind of parking” on the corner of Sequoia Avenue and Pine View drive. He stated that he could not see who was in the truck, then described the truck as turning southbound onto Sequoia. He was placed on hold for a short while, then told the dispatcher that he did not see the truck, and added that Fitzgerald Road was the only other way out of the area.

5. GRAYSON GILLILAND

On May 15, 2007, at approximately 9:40 p.m., Grayson Gilliland was standing in his front yard waiting for his friend, Ryan Rubin, to arrive. As Rubin’s car pulled onto Cinnabar Place, Gilliland’s cul-de-sac, Gilliland saw a red over black Ford F-150 truck speeding toward Rubin. The truck was driven by a male Hispanic with a “beer belly” who was wearing a blue shirt.

The truck braked rapidly and came to a sudden stop in front of Rubin’s car. Gilliland noticed what he thought was an undercover police car pull up a short distance away, turn off its

emergency lights, and then back up and park at the intersection of Cinnabar Place and High Point Place.²²

The truck and Rubin's car faced each other and were approximately ten feet apart. Every time Rubin moved his car, the truck would move to block Rubin from moving any further forward. The truck then pulled into the driveway of Derek and Pamela Freeman's house, and Rubin quickly drove into Gilliland's driveway.

The truck driver got out and approached Derek Freeman, who was in his front yard. The driver threw something at Freeman. Gilliland later heard from Freeman that the truck driver threw a CD at him.

The driver went back to his truck and Freeman followed him. They were both yelling. The driver "peeled out" as he drove away and turned right onto High Point Place. Gilliland and Rubin ran into Gilliland's backyard and looked over a block wall onto Sequoia Avenue.

On Sequoia, Gilliland saw a parking enforcement truck, a white truck, and a marked black and white police car, which were all stopped on Sequoia. The truck turned on Sequoia and headed directly toward the stopped vehicles. The truck slammed on its brakes as it passed the marked patrol car and began doing "donuts" in the street. The truck then drove south on Sequoia. Another marked police car appeared on the scene. Both police cars activated their emergency lights and pursued the truck.

The truck returned north on Sequoia, still pursued by the police cars. The truck resumed doing "donuts" near the street north of Fitzgerald Road. One of the pursuing police cars pushed the truck along the curb, but the truck revved its engine and drove away. Gilliland last saw the truck turn off of Sequoia Avenue on one of the streets north of Fitzgerald Road.

²² / Most likely, witness Troy Thomas.

6. DEREK FREEMAN

On the evening of May 15, 2007, Derek Freeman was watching television with his family when he heard a car doing “burnouts” in his cul-de-sac. The sound went on for two to three minutes, so Freeman went outside. Derek Freeman saw a man in an early 2000 Ford F150 truck.

The truck was silver in color with two doors and an extra cab. The truck appeared to be trying to block another car from “negotiating” the cul-de-sac. He first thought it was a bunch of kids messing around, so he yelled “what the hell are you guys doing?” He caught the attention of the truck driver, who backed up and slammed to a halt in front of Freeman’s house. The driver of the other car pulled into a neighbor’s driveway and ran into that house.

The truck driver got out of his truck and approached Freeman. The driver was a “Mexican looking guy” in his 30’s who was about 5’9” with short dark hair, a stocky build and a thick Hispanic accent. The driver wore a light color Polo type shirt and light color jeans. He held several CD cases in his hand and began cursing at Freeman.

The driver told Freeman “Don’t mess with me again.” The driver acted as though he was drunk or under the influence of drugs. He had a dazed appearance, his speech was slow and incoherent, his eyes were glassy, his movements were exaggerated and he staggered as he walked.

Freeman’s wife and daughter had come outside and Derek Freeman told his wife to get the telephone. The driver came within a couple of feet of them and Freeman dialed 911. The driver took a CD from one of the cases and threw it at Freeman, telling him “Don’t come in my house again.” Derek Freeman had never seen the truck or the driver before, so he did not understand what he meant. Pamela Freeman then told the driver to get off their property. Freeman heard sirens approaching and the driver walked back to his truck and sped away. Freeman later heard a collision and then did not hear anything else.

7. OFFICER ROBERT TRULIK - LAPD

At the time of the incident, Robert Trulik was a peace officer employed by the Los Angeles Police Department. On May 15, 2007, Officer Trulik was on his way home from work when his wife called and told him about a “nutjob” who was driving crazy in their neighborhood. He

drove to the area of Sequoia Avenue and looked around for a while but did not see anything. He pulled next to a curb on Sequoia Avenue and a few moments later a police officer in a marked patrol car pulled up next to him.

As Officer Trulik spoke to the officer, a vehicle came up from behind him at a high rate of speed. The vehicle was driving north, crossed into the southbound lanes and did a two-wheeled skid, almost hitting the police car. The driver looked at Officer Trulik, began driving in circles in the middle of the street, and then took off north. The police car followed.

The vehicle made a left turn and hit the curb while trying to turn around. Two police cars tried to pin the car at the curb but the car backed into one of the police cars and drove away. Once the driver got away from the police, Officer Trulik headed home.

8. SENIOR OFFICER BUTCH HALE

On May 15, 2007, at approximately 9:38 p.m., Senior Officer Hale was in the area of Sycamore Drive and Royal Avenue when he responded to a radio call of a reckless driver on Cinnabar Place. Senior Officer Murray also called in to respond to the call.

At Sequoia Avenue, Officer Hale encountered a white pickup truck driven by an off-duty LAPD Officer.²³ That officer described the suspect vehicle as a red pickup truck. While they were speaking, the suspect truck appeared heading north in the southbound lane of Sequoia Avenue. The truck made a “power slide” past Officer Hale, then spun around with its engine revving loudly. The off-duty officer told Officer Hale “that’s him.” Officer Hale activated his emergency lights and began driving after the truck.

Officer Murray was also on Sequoia Avenue, a little south of Officer Hale. As Officer Hale began pursuing the truck, he noticed Officer Murray activate his emergency lights and follow the truck. The truck made a hard left turn with its engine revving loudly and slid against the east curb of Sequoia. The truck then headed north and Officer Murray and Officer Hale pursued it.²⁴

²³ / Witness LAPD Officer Trulik.

²⁴ / A diagram drawn by Senior Officer Hale of the route Guerrero followed during the pursuit is included in the Appendix as Exhibit B.

The truck made a wide, hard left turn onto Manorgate Place, with its engine revving loudly. The truck's engine was loud enough that Officer Hale could hear it over Officer Murray's car's siren. The truck continued turning until it hit the south-west curb of the intersection of Manorgate Place and Sequoia Avenue. The truck began moving forward and backward with its engine constantly revving. The truck driver never looked at Officer Hale, even though Officer Hale was only twenty feet away with his emergency lights activated and his spotlight illuminating the driver. Instead, the driver stared at a block wall in front of him and maintained a "death grip on the steering wheel" and, in Officer Hale's opinion, looked "totally crazy."

The truck engine continued to rev loudly, and the truck was still rocking back and forth. Officer Hale was concerned about the risk the truck driver was posing to others by his bizarre behavior. He was also concerned that the driver might be trying to force a confrontation with the police since he did not appear to be trying to flee the area.

Officer Hale attempted to ram the left front wheel of the truck with his patrol car and pin the truck against the curb. As he drove toward the truck, the truck surged forward and the front of Officer Hale's car hit the truck's driver's door. The truck then backed up and fled south on Sequoia Avenue.

The truck drove past Fitzgerald Road and made another hard turn, striking the curb. The truck headed north on Sequoia Avenue and again turned left at Manorgate Place.

Officer Murray followed the truck in his patrol car. Officer Hale turned off his siren and backed up to try and watch the intersection of Beachnut Avenue and Fitzgerald Road, the only other exit from Manorgate. When the truck did not appear after a few seconds, Officer Hale drove onto Manorgate. He heard Officer Murray on the radio announcing the truck was stopped on Chelsea Court, a two sided cul-de-sac.²⁵

Officer Hale turned left on Chelsea Court, toward the southern cul-de-sac. He saw the truck stopped and facing northeast as though it had hit the curb while trying to turn around. Officer Murray was out of his car and yelling at the driver. The truck's engine was revving very loudly

²⁵ / An aerial photograph of the area around Chelsea Court is included in the Appendix as Exhibit C.

and the truck moved forward and backward. The driver was looking straight ahead with his hands clenched around the steering wheel.

The truck began backing up onto the sidewalk and Officer Hale again rammed the truck to pin it in. Guerrero's truck drove against Officer Hale's car and managed to escape, then drove north on Chelsea Court.

Officer Murray followed the truck to the northern end of Chelsea Court. At the end of the cul-de-sac, the truck turned left onto a grassy area between the residence at 897 Chelsea Court and a metal fence lining the northern edge of the cul-de-sac. Officer Hale saw car lights in the backyard of 897 Chelsea, so he stopped his car and ran into the backyard.

The truck had driven through a fence on the northern side of 897 Chelsea Court, made a hard left and had crashed into a fence on the southern border of the backyard. A cinder block wall was on the passenger's side and Officer Murray's police car was directly behind the truck.²⁶

When Officer Hale entered the backyard, the truck was loudly revving its engine, as if the driver had the accelerator floored. The truck was rocking between forward and reverse and the tires were spinning. Officer Murray was on the driver's side of the truck shouting for the driver to turn off the car.

Officer Hale unsuccessfully tried to open the driver's door, and then broke the driver's side window after several tries. Officer Hale then noticed that Senior Officer Lamb had climbed into the bed of the truck. Officer Hale was concerned that Lamb would be crushed between the truck and the cinder block wall. Officer Hale yelled at Murray: "Tase him! Tase him!"

Officer Hale heard the clicking sounds from the Taser, but did not see any effect on the driver other than groaning. Officer Hale was shocked by the driver's lack of reaction to the Taser since Officer Hale had personally experienced the effects of a Taser as part of his qualification training to carry a Taser.

²⁶ / A diagram of the backyard at 897 Chelsea Court is included in the Appendix as Exhibit D. Photographs of the truck in the backyard are included in the Appendix as Exhibit E.

Once the Taser shock stopped, the driver seemed more agitated and resumed flooring the accelerator. The truck engine stopped a couple of times, and each time the driver would restart it. Officer Murray continued to deliver Taser shocks while Officers Murray and Hale both shouted at the driver to stop the truck.

Officer Hale heard the clicks from the Taser and each time it was applied, it would cause the driver to freeze and groan. As soon as the clicks stopped, the driver would resume revving the engine and spinning the truck tires. Officer Hale remembers hearing the Taser applied at least three different times.

Officer Lamb managed to get at least partially into the truck cab and Officer Hale became concerned for his safety. Officer Hale yelled at Officer Murray to use the Taser again. Eventually, Officer Lamb yelled that he had a handcuff on the driver. Officer Hale grabbed the suspect's left hand with both of his hands and tried to pull his hand out of the window but was unable to get him out.

As Officer Hale was trying to pull the driver from the truck, four to five other police officers appeared next to him. They helped to pull the driver out of the vehicle through the driver's window. The driver was then placed on his stomach on the patio.

Once the driver was on the ground, Senior Officer Buckley was near the driver's feet, rising up and down as the driver struggled against the officers. Officer LeBlanc was near the driver's left shoulder and Officer Chris Johnson was also in the area around the driver.

Officer Hale requested a Hobble restraint, which was placed around the driver's legs but not connected. He also asked Officer Tallent to call for an ambulance based on the driver's erratic behavior and his having been shocked by a Taser.

At some point, Officer Hale noticed the driver was not moving and he told someone to see if he was breathing. Officer Buckley said "I need a mask and gloves now!" Officer Hale ran to get gloves and a mask and when he returned Officer Buckley was providing first aid to the driver.

Several officers were administering some form of first aid but Officer Hale never saw CPR being performed. Officer Hale also saw someone holding a “gigantic baggie of something” that he understood had been recovered from either the driver or his truck.

Hale concluded the interview by stating:

I've been doing this almost thirty years and this is the only guy I've ever had who stayed and tried to keep this going right with us at that intersection. I thought that he wanted to hurt somebody really bad. Usually everybody runs from you, they want to get away. And the other thing that shocked the heck out of me is, having experienced the Taser, it didn't do anything to him the first time. He kept working his way through that with no problem whatsoever. And he was angry.

9. SENIOR OFFICER MURRAY

a. Interview

On May 15, 2007, Senior Officer Brian Murray was in the area of Sequoia Avenue and Royal Avenue when he heard a call regarding a disturbing vehicle in the area of Sequoia and Fitzgerald Road that may have been involved in an altercation with an area resident, and that the vehicle was heading north on Sequoia.

As he approached the area of Sequoia Avenue just north of Manorgate Place, he observed Senior Officer Hale's police car stopped near another vehicle. Officer Murray stopped in the southbound lane near the center island. A few moments later he heard screeching tires and observed a pickup truck with smoke coming from its tires “barreling” in from his right and driving in between his and Officer Hale's patrol cars, then continuing onto the west curb of Sequoia.

Murray's initial impression was that it “was some sort of a road rage incident and that this guy was about to get out and start chewing somebody out because there was . . . no other explanation why somebody would drive to an area where there's two patrol cars in such a way.”

The truck then either turned around or backed out between the police vehicles “power sliding” in the same erratic manner. The truck turned around and began driving southbound on Sequoia

Avenue. The truck drove a short distance before turning around again. Murray was “extremely confused and wondering what this guy was about, what he was doing, what his intentions were. ‘Cause it was different than anything I’d ever seen before as far as . . . is he evading? Is he trying to hurt somebody? Is he trying to run somebody over? ‘Cause the way he was driving, it was a matter of time before somebody got hurt.”

The truck turned around again in the street and drove onto the curb where several pedestrians and occupied parked vehicles were present. At some point, the truck drove onto a sidewalk and Officer Hale tried to pin the vehicle with his police vehicle. The truck driver “lit” the tires up and drove away southbound on Sequoia. Murray broadcast that they were in pursuit.

The truck drove half way to the southern end of Sequoia Avenue – a dead end – then turned around and headed north again. The truck drove at a high rate of speed and began to make a sharp left turn at Fitzgerald Road. The truck then made “one or two loop-de-loos” (360 degree turns) in the street and proceeded northbound on Sequoia Avenue. The truck then turned left onto Manorgate Place, and drove at approximately 60 mph up Manorgate, a residential street. An unknown female on the corner of the intersection jumped into some bushes to avoid being struck by the truck as it passed.

The truck turned left onto Chelsea Court, a two headed cul-de-sac that runs north and south. The truck slowed down at the southern end of the cul-de-sac, made a U-turn, drove onto the sidewalk and came to a stop. Officer Murray got out of his car, turned off his siren, drew his handgun, and yelled “Hold up! Stop your car! Stop the car man! Stop the car!” The truck continued loudly revving its engine and the driver did not respond.

The truck revved its engine again and began driving on the sidewalk. Officer Hale tried to ram the truck again. He hit the driver’s door at approximately 15 to 20 mph. The truck seemed to stop, and then the truck’s tires began squealing again. The truck rocked back and forth several times, eventually broke free and drove north on Chelsea Court.

The truck reached the north end of Chelsea Court and Officer Murray was two to three car lengths behind it. The truck made a left turn without braking. Officer Murray followed the truck

and saw it turn left into the backyard of a residence. The truck made the turn “like it was nothing,” so Officer Murray followed it.

Officer Murray drove slowly into the backyard and saw the truck was half-way through a fence at the southern end of the yard. The truck was actively accelerating as though trying to continue into the adjoining yard. Murray placed the front of his patrol car against the truck’s back bumper so it could not back out.

Officer Murray got out of his car, drew his handgun and shouted “Do you want to get shot?” He ordered the driver to stop the truck and take his hands off the steering wheel. The driver did not look at Officer Murray, but kept staring straight ahead with a “death grip” on the steering wheel. The truck was “pedal to the metal” and the tires were spinning. The driver was rocking the truck between forward and reverse. The tires had lost traction and were just digging up the ground.

Officer Hale appeared next to Officer Murray. Murray felt that the truck driver was “an extreme danger just based on his previous driving action. He was well outside the box for any other pursuit I’ve ever been involved in or heard about where usually suspect’s trying to escape. This guy never tried to get out of his car.” Murray felt that the driver now intended to drive from yard to yard and felt that “somebody’s going to get hurt if this is allowed to go on.” It crossed his mind that they may have to shoot the driver to stop him.

The truck continued rocking, by switching between forward and reverse “like a see-saw” with the accelerator floored. Officer Murray’s car prevented the truck from backing up and it was not moving very far in a forward direction either. Officer Murray holstered his handgun and drew his Taser. He told Officer Hale that he was going to “tase” the driver.

Officer Murray moved into position and, after several tries, Officer Hale broke the driver’s window open. Officer Murray aimed his Taser at the driver’s upper torso and fired. He gave the driver a five second shock, which “had zero visual effect on him.” The driver continued to floor the truck’s accelerator during the initial Taser charge, his hands never came off the steering wheel and he never made any sort of physical declaration. Officer Murray initially thought he had missed when he fired the Taser based on the driver’s reaction.

He gave the driver another five second shock. This time the driver rocked back in his seat, moaned, released the steering wheel and took his foot off the accelerator. However, when the shock ended the driver resumed trying to drive through the fence.

Officer Murray and other officers kept demanding the driver to stop the truck. Officer Murray “tased” him several more times. Each time the shock would cause the driver to cease trying to drive until the shock ended, when he would resume trying to drive away. Officer Murray estimated he gave the driver a total of six to ten shocks from his Taser.

At one point, he noticed Senior Officer Lamb jump into the bed of the truck and smash out the passenger window. He gave another Taser charge to distract the driver and prevent Officer Lamb being pinned between the cinder block wall and the truck. Officer Lamb was able to get into the truck cab on the passenger’s side and eventually got a handcuff on one of the driver’s arms.

Officer Lamb got the handcuffed driver’s arm to a group of three to four officers who pulled the driver through the truck window. The driver was fighting the officers’ attempts to remove him from the truck, and was screaming and growling. Officer Murray stopped giving Taser bursts once the officers put their hands on the driver to avoid shocking the officers. He stood back holding the Taser while they struggled with the driver.

The officers managed to get the driver out of the truck and onto the ground. The driver continued to scream and struggle against the officers. Officer Murray noticed that some of the officers trying to control the driver were being lifted up by the driver’s struggles.

Approximately six to seven officers were involved in trying to restrain the driver, but no one was directly on top of the driver. The officers that Officer Murray recalled being involved in restraining the driver were Officers Matt Brill, James Buckley, Chris Johnson, Carl LeBlanc, Frank Mika, and Brian Young. Officer Murray did not notice anyone exerting any pressure on

the suspect's back or chest. He did recall that the driver's legs were put into a "Figure-Four"²⁷ control hold.

The officers eventually got both of the driver's arms handcuffed. It appeared that the driver calmed down once the handcuffs were secured. The driver continued making noise but it seemed to Officer Murray that he was "giving up." Once it was decided the Taser was no longer needed, Officer Murray disconnected the cartridge from his Taser and Sergeant Brill snapped the wires.

A short while later Senior Officer Hale requested that someone check the driver's breathing because the driver had gotten very quiet. Senior Officer Buckley checked the driver's pulse and listened for breaths. He said there was a pulse but asked for a mask and gloves "just in case."

A few moments later, the handcuffs were removed from the driver and he was rolled onto his back. Senior Officer Buckley began giving CPR to the driver. Officer Lew then began assisting Officer Buckley. Officers Buckley and Lew continued providing CPR until AMR personnel arrived approximately a minute after the driver had stopped breathing.

Officer Murray saw Senior Officer Lamb remove a large package of what he thought was narcotics from the driver while he was on the ground. He later heard from an unknown source that the package was removed from the suspect's pocket. He described the package as a cellophane "ball" with a light colored substance in it. Officer Murray believed the package was given to Officer Tallent who was gathering evidence. Officer Murray gave Officer Tallent his Taser cartridge. Sergeant Muehler later took custody of Officer Murray's Taser weapon at the police station.

Officer Murray had activated his digital recorder during a call he handled approximately forty-five minutes before the disturbing vehicle call and forgot to turn it off. He did not realize he had recorded the incident until May 20, 2007, when he discovered his recorder's nine hour memory

²⁷ A "Figure Four" hold is a Simi Valley Police Department-approved control hold in which a suspect's legs are restrained by crossing one leg over the other while a suspect is laying face-down. The other leg is then bent up toward the buttocks, trapping the bent leg, and preventing the suspect from kicking or using either leg in an assaultive manner or as a means to escape.

was full. The recorder captured the incident and continued to record “well after” he arrived at the station.

Officer Murray concluded by stating “I’ve dealt with crazy people, I’ve dealt with people that were high on drugs, but never that out of control, never that far gone. He was by far the, the most insane person I’ve ever dealt with as far as his actions.”

b. Recording of Incident

Officer Murray had activated his Department-issued digital recorder during a radio call he handled prior to the pursuit and did not turn it off. The recorder captured the initial contact with Guerrero, the pursuit, taking him into custody and the first aid response. The recorder also captured conversations after the incident between involved officers, the officers and their attorneys, and between Officer Murray and his wife. Some of those conversations are legally privileged.

Officer Murray’s attorney agreed to transfer the recorder to the physical custody of the Simi Valley Police Department with an agreement that only the portion of the recording that directly related to the incident would be listened to, so as not to taint the investigation by listening to privileged conversations. That initial excerpted recording is fifty-seven minutes and fifty-two seconds in length.

The District Attorney’s Office desired to listen to all unprivileged portions of the recording and sought to reach an agreement with the Officers’ attorneys, but could not reach an agreement that would not risk waiving the privileged nature of the other conversations.

On July 22, 2008, Investigator Harvill obtained a search warrant and seized a digital copy of the entire recording from the Simi Valley Police Department pursuant to that warrant. With the assistance of a special master, he caused the copy to be brought before the Ventura County Superior Court in accord with Penal Code section 1524(c).²⁸

²⁸ / The special master proceedings were conducted under Ventura County Superior Court No. MA-016-08. At the close of the hearing, the seized copy of the recording was returned to the Officers’ attorneys with instructions to return it to the Simi Valley Police Department. The original recording always remained in evidence at the Simi Valley Police Department.

On August 25, 2008, after a contested hearing, the court determined that the District Attorney was entitled to listen to certain portions of the recording and ordered the Officers' attorneys to provide a redacted copy to this Office. On November 6, 2008, the Officers' attorneys delivered digitally enhanced copies of the relevant portions of the Murray recording to the District Attorney's Office.

i. Initial Excerpted Recording

At approximately 3:04 on the recording, a dispatcher is heard over the radio stating "Tom 5, the vehicle is now on High Point."²⁹ At 8:40, dispatch informs Officer Hale that the suspect was "southbound Sequoia from High Point."

At 9:13, dispatch advises that the vehicle is "coming back towards you guys, on Sequoia." At 9:25, Officer Murray reports that "we got a red and gray truck doing donuts in the middle of Sequoia" and a siren is audible on the recording. The tape then contains the radio traffic during the pursuit.

At 11:36, Murray's siren shuts off and Officer Murray can be then heard yelling: "Hold up! Stop your car! Stop the car man! Stop the car!" Tires can then be heard screeching in the background and the pursuit resumes. At 12:15, Officer Hale reports that they "are on the move again" northbound on Chelsea Court. Officer Hale reports at 12:22 that the truck pulled into a driveway at the end of the cul-de-sac, and then adds "he drove into the backyard."³⁰

At 12:45, Officer Murray can be heard shouting "Hey, hey, do you want me to fucking shoot you? Do you want to get shot? Get your hands off the steering wheel." Officers Hale and Murray can be heard talking about getting the door open and there is the sound of something hitting glass. At about 13:41, groans can be heard that sound as though they are from Guerrero. A few moments later, Officer Murray yells to "get a light on him" and another person repeatedly yells "Do it again."

²⁹ / "Tom 5" was the call sign for Officer Hale that night. The dispatch logs show that dispatch call was broadcast at 9:45 p.m. (21:45:20).

³⁰ / Dispatch logs show that report was broadcast at 21:54:54 (9:54:54 p.m.).

Officers keep shouting to “put your hands up” and other commands, and every few seconds a groaning sound can be heard. Officer Murray can be heard stating that he will keep shocking him and then says in Spanish “Manos arriba.” (Put your hands up.) At 14:23, it sounds like the groaning voice says a few words in Spanish.³¹

The police continue shouting commands, and at 15:12 an officer can be heard saying “I’ve got his arm, I’ve got his left arm.” The sounds of Guerrero being removed groaning and screaming from the truck can be heard, along with the sounds of various officers, until 16:13, when an officer states “Okay, everybody take a break for a second . . . hold onto those legs.” At 17:21, Murray states: “This guy was out of control man. I’m surprised he didn’t kill somebody.” At 17:48 someone is heard saying: “he’s still fighting.”

At 18:09, Officer Murray states: “I tased him about ten times.” At 18:45, someone states “The hobble’s not going to work” and Officer McAlister’s voice is heard saying: “We’ll figure out some other way ‘cause as soon as we let go of his feet, he’s fighting.” At 19:54, an officer asks if Guerrero is breathing and at 20:40 someone states that the suspect is breathing. At 21:33, Senior Officer Buckley states: “I got no pulse, I need gloves and a mask now!” At 24:45 an unknown firefighter asks for a brief statement of what happened and two officers describe the encounter. The rest of the recording contains sporadic conversation about the incident until the recording ends at 57:52.

ii. Additional Recorded Material

The copies provided to this Office included a digitally enhanced version of the incident recording broken into 3 “segments.”³² They also contain an additional 32 digitally enhanced “segments” of conversation recorded after the incident. The additional material mainly contains officers’ statements as they unwind from a stressful incident and wait at the station for a prolonged period while waiting for the investigation to begin. Most of their statements can be classed as concern for Guerrero’s condition, statements about how out of control Guerrero appeared, and jokes

³¹ / The words are very hard to understand, but Guerrero may be saying “No, no me brinque” (“No, don’t jump me”) in response to the officers telling him they are going to shock him. They are the only discernible words heard from Guerrero on the recording.

³² / The digital enhancement did not alter the recordings, but instead appear to have filtered background noise which allows the voices to be heard much clearer.

consistent with recovering from such a stressful occurrence. None of the statements contradicted previous statements obtained from the officers.

10. SENIOR OFFICER RICH LAMB

At approximately 9:38 p.m., Senior Officer Rich Lamb was in the area of Sequoia Avenue near Cochran Street on an unrelated call. He heard a call relating to a vehicle on Sequoia Avenue, then later heard radio traffic from Officer Hale about cars being hit and it being “totally dangerous.” Officer Hale sounded distressed. Officer Lamb left his radio call before completing it and drove toward Sequoia Avenue because he felt Officer Hale’s call sounded urgent.

Officer Lamb stopped at the intersection of Chicory Leaf Place and Sequoia Avenue. He began deploying spike strips in case the vehicle came his way, assisted by Officer Alan McCord. Officer Lamb then heard that the vehicle was moving away from Officer Lamb’s location. He put away the spike strips and headed south on Sequoia Avenue.

As he drove south, he heard that the suspect had driven into a backyard. He did not know exactly what street they were on, but was familiar with the general area. He turned onto Manorgate Place and saw numerous residents on both sides of the street pointing west. He saw two police cars in front of a house at the end of Chelsea Court. He parked and went into the backyard where he saw a reddish/silver pickup truck and a police car directly behind it.

The truck was pinned between the south wall and the west wall at an angle. The engine was revving very loudly and at least one of the rear tires was spinning. Senior Officers Hale and Murray, and possibly Officer Chris Johnson, were standing a distance from the driver’s door of the truck. Officers Murray and Hale were screaming at the driver to stop the truck. Officer Lamb saw Taser wires going into the truck but did not hear a Taser being used.

The tires were spinning and the truck was “bouncing.” The officers were giving orders and the driver was not complying and appeared to be trying to “get out of there.” Officer Lamb did not recall any time that the driver let up on the accelerator. He felt that the other officers would be in danger if the truck broke loose. Officer Lamb climbed into the bed of the truck and reached around with his flashlight and broke the passenger side window.

When he looked inside the truck, he saw the driver's right leg was straight and extended as he pushed down on the accelerator while holding the steering wheel and leaning back. It looked like he was trying to fight through the Taser effects. Officer Lamb has personally felt the effects of the Taser and he could not believe the driver was able to fight through the effects of the Taser.

Officer Lamb reached through the window and unlocked the passenger door. He then thought: "This is gonna go one of two ways. I'm either going to be able to get this key out or I'm going to have to do something life-threatening to this guy because he's going to hurt somebody." He was concerned about the truck breaking free and hitting an officer, and he contemplated how to use lethal force without harming the other officers in the backyard.

Officer Lamb opened the passenger door and climbed into the truck. The driver was still "punching the gas" when Officer Lamb climbed into the truck. Officer Lamb yelled "Hit it! Hit it!" to request another use of the Taser against the driver to distract him. Officer Lamb tried to reach for the shift lever and the driver tried to hit at Officer Lamb's hand. Officer Lamb eventually shifted the truck into park, removed the key from the ignition and threw it. He does not know what happened to the key.

Officer Lamb grabbed the driver's right hand and the driver continued to resist. He "cranked" the driver's arm and was going to break it if he had to. Officer Lamb was eventually able to put a handcuff around the driver's wrist and then shouted "I've got a cuff, I've got a cuff."

Someone from outside the truck managed to get a hold of the driver's left arm and started to pull him through the window. Officer Lamb handed someone the unfastened cuff. The driver's leg was stuck under the steering wheel. Lamb pulled the driver's legs from under the steering wheel, held them so the driver would not kick him, and then pushed the driver's legs out through the window as the other officers pulled him out.

Officer Lamb tried to open the driver's door but it would not open. He got out through the passenger door. The driver had been struggling when he was pulled from the truck, and was still struggling on the ground. When Officer Lamb came around the vehicle, the driver was face-

down on the grass south of the patio and was already handcuffed. Senior Officer Buckley had a control hold on the driver's legs. Officers Mika and Young may have been among the group of officers holding the suspect. Someone asked for a Hobble restraint and Officer Lamb helped Officer Buckley put the Hobble around the driver's feet. He is not sure if the other end of the Hobble was ever attached to the handcuffs.

After the driver was handcuffed, Officer Lamb saw a small package in the driver's left hand. The driver had a "death grip" on the package. His hand had to be pried open to retrieve the package. The package contained what appeared to Officer Lamb to be an ounce of cocaine.³³

One of the officers suggested someone speak to the suspect in Spanish. Officer Lamb got down next to the suspect's face and told him: "Calma te, calma te" ("calm down") and may have also said: "No te muevas" ("don't move").³⁴ The suspect was still "bouncing around a little bit" and approximately four officers were holding the suspect down. The officers were alongside the driver holding him down and it did not appear any pressure was being put on the driver's back.

The driver had calmed down and someone said to check his breathing. The Hobble was removed and the driver was rolled onto his side to check. Somebody said that the driver had stopped breathing and Officer Buckley got a mask and started to give breaths to the driver. They removed the handcuffs and moved the driver to the concrete patio. Officer Lamb did not assist with CPR.

Officer Lamb only heard the driver grunt and never heard the driver say any words during the incident. The driver never acknowledged him when Officer Lamb spoke Spanish to him. Officer Lamb stayed around until he reported to a supervisor he had been involved in the incident, and he was told to report back to the station.

³³ / Officer Lamb was assigned to the Simi Valley Police Department Narcotics Units for over seven years as a Narcotics Detective.

³⁴ / Officer Lamb is certified by the Simi Valley Police Department as a Spanish translator.

11. SENIOR OFFICER JAMES BUCKLEY

On May 15, 2007, Senior Officer Buckley was on patrol when he began monitoring the radio traffic regarding a “415 vehicle.”³⁵ He headed in the direction of the call in case backup was needed and continued to monitor the radio traffic. He heard Officer Murray request backups and heard the sound of the suspect vehicle doing “donuts” over Murray’s radio microphone. Officer Murray sounded very stressed. Officer Buckley advised that he was responding as backup.

By the time he arrived, he heard that the suspect was in a backyard at Chelsea Court. He stopped on Fitzgerald Road near the southern end of Chelsea Court to maintain a perimeter because he thought the suspect was on foot. He heard over the radio that the suspect was still fighting and the officers were not responding to radio calls, so he parked his car and ran from Fitzgerald Road to the northern end of Chelsea Court.

When he arrived, he saw parked two patrol cars with no officer around. He continued into the backyard, where he saw another patrol car and a reddish-maroon colored Ford truck with the engine still running. The truck was facing south and jammed against a cinder block wall on the west side of the yard. It had partially knocked down a fence at the south end of the yard. Officer Buckley did not understand how the driver had been able to drive the truck to that location. He also saw two to three officers pull the suspect out of the truck’s driver’s side window.

The driver was yelling a lot but Officer Buckley could not remember any specific words. The suspect was actively flailing his arms and kicking and trying to pull away from the officers, who were struggling to control him.

The officers maintained continuous contact with the suspect and placed him on the ground. Once on the ground, the suspect kept trying to get up and would partially lift up an officer who was holding his legs each time he tried to rise. Officer Buckley saw Officer Young near the suspect’s legs but he does not know if Young was the officer holding them.

³⁵ / “415” refers to Penal Code section 415, which prohibits anyone from “maliciously and willfully disturb[ing] another person by loud and unreasonable noise.”

The suspect continued to kick and Officer Buckley struggled to place the suspect's legs in a "Figure Four" control hold, using his legs to control the suspect's legs. Officer Young was near Officer Buckley and he asked Officer Young to be ready to deliver a "drive stun." Another officer had his shin on the suspect's left shoulder area holding the upper torso down and a different officer was near the suspect's head telling him to calm down. Somebody requested a Spanish speaker and Officer Lamb spoke Spanish to the suspect.

Buckley saw the suspect clenching a brownish colored plastic bag in one of his hands and an officer had to forcibly remove it. Buckley believed the bag was retrieved just before the handcuffs were applied.

The suspect was eventually handcuffed, with the handcuffs behind his back. The suspect continuously yelled unintelligibly and kept trying to push his legs up. Officer Buckley continued to use his body weight to control the suspect's legs. Someone brought a Hobble restraint but Buckley thought it was more dangerous to try to use it while the suspect was actively struggling. Officers Buckley, Young and Lamb eventually placed a Hobble near the suspect's ankles. Officer Buckley did not recall the Hobble ever being attached to the handcuffs and he kept the suspect's legs in the "Figure Four" position.

The suspect started to calm down at about the time the Hobble was applied. Officer Buckley noticed the suspect's breathing had slowed down and he was no longer struggling. The suspect took a couple of deep breaths and "the fight wasn't in him." Officer Buckley rolled the suspect onto his side and noticed he was "fairly limp." He rolled him onto his back and did not see or hear any signs of breathing or pulse.³⁶

Buckley requested a CPR mask. The suspect was rolled onto his stomach so his handcuffs could be removed. There was blood around the suspect's mouth and the suspect's head was sweaty, but Officer Buckley did not recall anything remarkable about the suspect's body temperature. Once Officer Buckley obtained a mask, he performed one cycle of CPR, then the suspect was moved onto the concrete.

³⁶ / Senior Officer Buckley is a certified CPR Instructor.

Buckley administered a second cycle of CPR and Officer Lew assisted with chest compressions. Officers Buckley and Lew continued providing CPR until they were relieved by either VCFD or AMR Paramedics. Officer Buckley believes he and Officer Lew provided 5 CPR cycles before they were relieved.

12. OFFICER CHRIS JOHNSON

On May 15, 2007, Officer Johnson was on an unrelated call with Senior Officer Lamb and Officer Giuliani when he heard Senior Officer Hale responding over the radio to a call about a vehicle on Sequoia Avenue. As time passed, he heard radio traffic about the call and then heard Senior Officer Murray state: "We need more officers here code three!"³⁷

Officer Johnson abandoned the call he was on and drove toward Officer Murray's location. He passed Officer Lamb, who appeared to be getting spike strips from his car. He also heard officers on the radio relaying street names as the pursuit continued.

Officer Johnson stopped at the intersection of Sequoia Avenue and Manorgate Place, where he saw several people pointing as though the pursuit had headed down that way. He waited a few moments to see if any vehicles emerged from the neighborhood. After the pursuit was no longer being reported over the radio, he drove in the direction the people were pointing.

He saw lights from a police car at the north end of Chelsea Court and parked in front of the driveway of 897 Chelsea Court. He entered the backyard and saw flashing blue and red lights. He also saw a truck up against the south fence, which had been pushed over. Senior Officers Hale and Murray were both on the driver's side of the truck. Officer Hale unsuccessfully tried to break open the driver's window with his flashlight then used one or two flowerpots to break it open.

The truck's engine was revving but Officer Johnson did not remember whether the tires were spinning. He described it as "he was revving it and I was under the impression that he was still

³⁷ / Code Three is used by emergency personnel to signify an emergency response justifying the use of lights and siren.

trying to move the car. The suspect was still trying to move the car. That was the loudest rev I'd heard. It was very loud.”

Officer Hale told Officer Murray to Tase the suspect and Officer Murray fired his Taser weapon through the driver's side window. Officer Murray delivered an initial Taser charge and Officer Johnson thought Officer Murray had missed the driver because it did not appear the driver was affected. The driver was rolling the steering wheel as though he was trying to get his truck unstuck and Officer Johnson did not think the driver would have been able to move his arm in a circle if he had been hit by a Taser.

Officer Murray continued to administer charges through the Taser. Each time the driver would seize up and press against the back of the driver's seat, and did not seem to be able to control his hands. He does not remember whether the driver was still pressing the accelerator each time he received a Taser charge. The driver was sweating and unresponsively staring straight ahead while seated in the driver's seat.

Officer Johnson ran to the front of the home to get an address to provide to dispatch. Senior Officer Lamb was standing in the bed of the truck when he left the backyard. When he returned to the backyard, Officer Lamb was inside the cab of the truck to the right of the driver. Officer Murray was standing forward of the cab, still holding his Taser, and the Taser probes appeared to be still connected to the driver.

Officer Johnson moved toward the front driver's door and saw Officer Lamb struggling to get a handcuff on the driver's right hand. He could not see the driver's left hand, so he threw a few punches to the driver's face, head and groin area as “distraction strikes.” The driver brought his left hand up in defense and it was grabbed by another officer. Other officers, including Officer LeBlanc, began pulling the driver out of the truck window. Officer Lamb handed Officer Johnson an empty handcuff which was attached to the handcuff around the driver's right wrist.

The driver was pulled from the truck and placed face down on the ground. He was pulled out in one smooth motion and placed onto the ground, and was not “slammed” to the ground. The driver

struggled as he was pulled from the truck and placed on the ground and sounded like “weightlifters if they’re pulling against something.”

Once the driver was on the ground, Officer Johnson held the right handcuff near the driver’s buttocks. Officer Buckley requested Officer Johnson to move so that Officer Buckley could get control over the driver’s legs.

Officer Johnson saw a baggie in the driver’s left hand that was “bigger than a golf ball, smaller than a baseball.” Officers Johnson and Mika pried the driver’s fingers off the baggie to free it. The baggie appeared to Officer Johnson to be cocaine. Either Officer Mika or Officer Johnson removed the bag and then handed it to another officer.

At some point, someone requested a Hobble. Officer Johnson heard the driver’s continued grunting, which indicated to him that the driver was still breathing. Someone requested the Fire Department to stage. Sergeant Brill expressed concern as to whether the driver was still breathing. While the driver was still breathing, someone requested a CPR mask to prepare for the possibility the driver might stop breathing. Officer Johnson went to his patrol car and retrieved his mask and brought it back.

Senior Officer Buckley took charge of providing CPR when it was discovered the driver had stopped breathing. The handcuffs were removed and Senior Officer Buckley provided breaths while Officer Lew provided chest compressions. Officers Buckley and Lew were eventually relieved by Fire Department personnel.

Officer Johnson said his primary concern was getting the driver out of the vehicle because the driver posed a risk of harm to anyone around the truck while he was still operating the truck, and he was afraid for the public if the truck got out of the backyard.

He added that “I’ve been in situations where suspects didn’t care about my safety . . . I didn’t believe that he was concerned about his own. And that was kinda scary to me too because I’ve never seen somebody that was - seemed to be so bent on not giving up that he didn’t care what happened to him.” He reiterated that “I really felt like - there was, there was no threat to get this

guy to comply. He didn't care about his own safety, he didn't, and he certainly didn't care about our safety. That was, that was something that I'd never experienced before."

13. SERGEANT ALAN THOMPSON

On May 15, 2007, Sergeant Alan Thompson heard radio traffic about citizens complaining about a truck. He monitored the broadcasts which eventually described a pursuit of that truck by Officer Hale. Sergeant Thompson heard that the truck was on Sequoia Avenue south of Fitzgerald Road making "U-turn after U-turn" and acting crazy. He later heard Officer Hale on the radio stating he was going to ram the vehicle because the truck was out of control and was going to hurt someone.

Sergeant Thompson began driving toward the area of the pursuit. He heard over the radio that the suspect had driven into a backyard on Chelsea Court. Dispatch confirmed that the last location of Officers Hale and Murray was on Chelsea Court. Sergeant Thompson drove to the location.

When he arrived, he saw at least three police cars were already there. In the backyard, he saw the suspect's vehicle and Officer Murray's police car directly behind it. The officers in the backyard when he arrived were Officer Buckley, Officer Mika, Officer Murray, Officer Matt Brill and Officer Chris Johnson. Officers who arrived at the same time he did included Officer Timbol, Officer Gonzales, Officer Lew, Officer Tallent, Officer Young, Officer McAlister, Officer Hodgson, and Officer Prchal.

When Sergeant Thompson entered the backyard he saw the suspect handcuffed and laying on his stomach with his head positioned toward the house and his feet pointed toward the vehicle. He was struggling and attempting to push himself up. Officers Brill, Mika, Buckley, and Johnson were next to the subject and Officer Murray was standing near the subject holding a Taser with leads still attached to it.

Officer Buckley was controlling the suspect's feet and someone requested a Hobble. Someone ran and got the Hobble so it could be placed on the suspect. Officers Buckley, Mika, Brill and,

possibly, Johnson were holding down the suspect's upper body. Other officers may have assisted but no one was "actively kneeling on him."

The suspect was handcuffed, continued to struggle, and had to be restrained. Officer Buckley continued to hold the suspect's feet in place to prevent him from kicking, and his upper body was being held down. One officer had his knee on the suspect's back in "a regular prone control position." The suspect was making a lot of incoherent grunting noise like he was "exerting with all his might." Even though his movements were being restrained, the suspect appeared to be trying to struggle.

Officers began to put the Hobble in place. Sergeant Thompson shined his flashlight in the suspect's face and told him to calm down. The suspect seemed to respond by stopping his grunting and groaning and the officers began to let up and get the weight off of him. The suspect seemed like he was still breathing and then, within ten to fifteen seconds, it appeared as though the suspect was no longer breathing. The suspect seemed to "completely relax" and was rolled over. Officer Young checked for a pulse and could not find one.

Officer Buckley began giving chest compressions and someone yelled for a CPR mask. The suspect had been handcuffed and the handcuffs were removed. Fire Department personnel arrived and took over treating the subject. AMR personnel then arrived and transported the subject to the hospital.

Sergeant Thompson was told by other officers that when they got to the backyard, the rear tires of the suspect's vehicle were still spinning as if he were trying to drive into the next yard. The suspect was still in the vehicle when he was "tased" and then was pulled out of the car through the open driver's window. He was told that the passenger window had been broken so the car could be turned off. He was also told there were three activations of the Taser which did not appear to be successful in immobilizing the suspect.

14. OFFICER FRANK MIKA

At approximately 2138 hours, Officer Mika was in the Simi Valley Police Station when he heard the initial dispatch regarding a disturbing vehicle. He heard the radio traffic updating the call,

including Senior Officer Murray advising that the suspect vehicle was doing "donuts" in the middle of the street right in front of him. He then ran to his car and headed toward Officer Murray's location.

Officer Mika stopped at Fitzgerald Road west of Sequoia Avenue, where he was in position to set up a perimeter. He got out of his patrol car and heard Officer Murray report that officers were fighting with the suspect in the backyard. He followed Senior Officer Buckley and ran from the south end of Chelsea Court where it abutted Fitzgerald Road to the north end of the Chelsea Court.

When he reached the residence, Officer Mika saw a wood gate that had "exploded" as if some vehicle had driven through it. There was a police car in the backyard and a couple of other police cars in front of the house.

As he entered the backyard, Officer Mika saw several officers around a suspect who appeared to have been just laid on his stomach on the grass, with some of the officers still moving down with the suspect. The only officers he specifically recalls in the backyard at that time were Senior Officers Buckley and Lamb.

The suspect was "thrashing about" and screaming, grunting, and groaning loudly. He was also trying to pull away from the officers by moving back and forth on the ground in a twisting motion and was also kicking out at them.

Officer Mika went to the suspect's truck and saw Officer Lamb's head coming out of the driver's side of the window. The truck was a maroon Chevy Silverado with an extra cab or crew cab with its headlights on. He did not recall if the engine was running.

Officer Buckley had the suspect in a leg control hold. Officer Lamb was on the suspect's right side and was assisting with cuffing the suspect's right arm. Officer Mika went down to his knees and took hold of the suspect's left forearm and pulled it behind his back. The suspect forcefully resisted Officer Mika's movements and it was not easy for Officer Mika to get the suspect's arm behind his back. Officer Mika was not the officer who fastened the handcuff onto his left arm.

Officers were on both sides of the suspect. Officers were near the suspect's head but Officer Mika did not see anyone holding down the suspect's head or back.

The suspect continued to resist after he was handcuffed. Officer Mika saw an object in the suspect's hand and he had to pry the suspect's fingers open to remove the item, which he found to be a plastic baggie. The baggie looked to contain cocaine. Officer Mika held the bag for a couple of seconds and then handed it to an unidentified officer standing behind him.

Officer Mika did not see any other types of force used on the suspect. He saw Taser wires but did not see who actually fired the Taser. Officer Mika had removed his Taser weapon as he initially approached the suspect, but someone told him that suspect was "already hooked up," so he put his Taser away.

At some point, Officer Buckley placed a Hobble loosely around the suspect's ankles. The Hobble was never "cinched up" and the suspect's legs were pulled up closer to his buttocks. The other end of the Hobble was never attached to anything. The suspect continued to struggle for approximately ten seconds after the handcuffs and Hobble had been applied.

The suspect seemed to calm down but was still grunting and groaning. Someone told the suspect to calm down but he continued to make noise. Someone made the statement to check the suspect's breathing. Officer Mika looked at the suspect's chest from the back and did not see it rising or falling. Officer Mika estimated less than 90 seconds had passed from the time the suspect was handcuffed to the time Officer Mika noticed he was not breathing.

Officer Mika immediately broke the Taser wires close to the suspect's body and the suspect was rolled onto his right side. Officer Mika checked for a carotid pulse and could not feel a pulse. Officer Buckley began chest compressions and a breathing mask was requested. Senior Officer Buckley requested Officer Lew to help him.

Officer Buckley did the first set of chest compressions while the suspect was lying on the grass and the suspect was then carried onto the concrete patio. Officer Mika stepped back from the scene to allow officers with more medical training to assist the suspect.

Officers Buckley and Lew were eventually relieved from performing CPR by AMR paramedics. Officer Mika went to the front of the residence and was eventually directed by Sergeant Thompson to respond to the station.

15. OFFICER DANIEL SWANSON

On May 15, 2007, Officer Swanson was attending briefing when he heard that a call relating to a disturbing vehicle on Sequoia Avenue had become a pursuit. He left the station to assist as needed. He first went to Shenandoah Avenue to set a perimeter. He heard on the radio that the suspect had driven into a backyard on Chelsea Court and drove to Sequoia Avenue and Pineview Drive to set a closer perimeter. He then drove to 897 Chelsea Court.

When he arrived, he saw that a wooden fence on the north side of the residence had been broken down. A patrol car was parked on the north side yard, just past where the fence had been. In the backyard he saw a patrol car parked just behind a pickup truck, which was facing the south fence and was almost perfectly parallel to the back fence.

Several officers, including Officer Buckley, Officer Lamb and Sergeant Brill, were struggling with a suspect on the concrete patio area between the pickup truck's driver's door and the residence's back door. Several individuals were visible inside the residence.

The suspect appeared to be struggling hard against the officers who were trying to control his movements. Several officers shouted out warnings to other officers to watch the suspect's hands and feet and to be careful about his positioning.

Several times, officers, including Officer Buckley, Officer Lamb and Sergeant Brill, yelled out to other officers to watch the suspect's breathing and to make sure his airway was open. All the while they were also trying to control the fighting suspect. Several of the officers who were in contact with the suspect were out of breath and slightly disheveled as though they had been struggling for some length of time or with some significant effort.

Officer Hale and Officer Swanson moved items away from the patio area to allow better access to the suspect. Several of the officers in the group that had been trying to control the suspect called out that it appeared the suspect was not breathing and they needed a CPR mask.

Officer Swanson went out to the street and attempted to find a CPR mask. He also called out to other officers that they needed a CPR mask. Within moments, Fire Department personnel and AMR personnel arrived at the scene and headed into the backyard. Officer Swanson did not return to the backyard.

Officer Swanson remained on scene until 10:09, when he headed back to the police station to load his patrol car and begin responding to other calls.

16. OFFICER HEATHER TALLENT

On May 15, 2007, Officer Tallent was at the Simi Valley Police Station with Officer Young when they heard about the pursuit. They drove with their lights and siren activated to Fitzgerald Road where it abuts the southern end of Chelsea Court. They parked and ran to the residence at the northern end of Chelsea Court.

When Officer Tallent reached the residence at 897 Chelsea Court, she saw where the car had crashed through the fence. The suspect was already out of the car and on the ground, and officers were attempting to restrain him. The suspect was screaming and appeared out of control. It appeared to her there were enough officers, so she did not get physically involved. The officers appeared to be kneeling around the suspect.

Somebody threw a large bag of "dope" on a table and she picked it up and held onto it. Senior Officer Hale asked her to request AMR to respond to the scene. Officer Tallent went to the side yard to send out the request. Some time later, Officer Swanson came out of the backyard and requested a breathing mask. AMR arrived at the same time and they took over the medical situation. Officer Tallent gave the bag of "dope" to Officer Young and later interviewed the people inside the residence.

17. OFFICER ALAN McCORD

On May 15, 2007, Officer McCord was in the police station when he heard radio traffic relating to a call of a disturbing vehicle in the area of Sequoia Avenue and Fitzgerald Road. As more persons were identified as reporting the incident, he decided to respond to the area in case he was needed. He continued to listen to the radio traffic as the first units encountered the suspect vehicle and then requested emergency assistance.

Officer McCord drove to the area on his police motorcycle, and stopped at the intersection of Sequoia Avenue and the first street south of Royal Avenue. He stopped to assist another officer in deploying spike strips. When they heard over the radio that the suspect had crashed into a backyard on Chelsea Court, the other officer picked up the spike strips and they both headed to the area of Chelsea Court.

Officer McCord drove to Fletcher Street, the street immediately to the west of Chelsea Court. Several residents were standing outside and pointing toward the home at 897 Chelsea Court. Officer McCord saw emergency lights in the backyard and unsuccessfully tried enter the scene through the backyard of a house diagonally southwest to 897 Chelsea Court. He heard officers in the Chelsea Court backyard calling for a Hobble restraint, which indicated the suspect was no longer a flight risk, so he drove to the north end of Chelsea Court.

There were at least six police cars in the cul-de-sac when he arrived. Officer McCord entered the backyard and saw the suspect face down on the patio, still struggling against the officers. Several officers were holding the suspect down.

The suspect's face was turned to the left and McCord saw some blood near his mouth. The suspect was breathing heavily and his eyes were open "really wide, . . . just like he was really pumped." The suspect was not saying anything but he kept moving, trying to get up, kicking his legs and struggling. There were four or five officers holding the suspect down and they kept moving as the suspect continued to struggle. One officer was on the suspect's right shoulder area but Officer McCord did not see who the officers were or how the suspect was being restrained.

Officer McCord heard AMR requested over the radio by an unknown officer. McCord was able to observe the suspect for about ten seconds, then began to deal with the items blocking access to medical personnel.

Officer McCord returned to the backyard approximately five minutes later and saw the suspect was lying on his back. An officer was doing chest compressions on the suspect and another officer was near the suspect's face. After approximately 5 to 10 seconds, Officer McCord returned to the front of the residence to make sure the medical personnel got to the right place and let them know CPR was in progress. He never returned to the backyard.

Officer McCord later saw Officer Hale in front of the residence and Officer McCord asked him if any crashes had occurred. Officer Hale told him that he did not think any collisions had occurred, but that he had intentionally rammed the suspect's vehicle during the pursuit. Officers McCord and Hale retraced the route of end of the pursuit looking for any damage from any traffic collision. There was no collision damage, but there were numerous skid marks in areas where the suspect had been accelerating and braking his vehicle. Officer McCord was eventually cleared to leave the scene by Sergeant Thompson.

18. FIREFIGHTER-PARAMEDIC DANIEL ARNOLD - VCFD

On May 15, 2007, Daniel Arnold was on duty as a Firefighter-Paramedic with Ventura County Fire Department. He and Ian Henrich were assigned to Squad 41 (Paramedic Unit). They were dispatched to 897 Chelsea Court to assist the Simi Valley Police Department with an unknown problem, and Engine Company 41 responded as well. Firefighter Arnold was aware that the call was related to the end of a police pursuit.

They arrived on the scene and staged briefly before being escorted into the cul-de-sac by a police officer on foot. An unknown officer told them that the suspect was in full cardiac arrest in the backyard. The officer led them into the backyard. In the backyard, Arnold observed a pickup truck against the wall and about twelve officers. The suspect was lying on his back on the concrete patio. An unknown officer had a mask and was breathing for the suspect. He did not see any chest compressions being performed but was told they had been performed. Fire personnel took over providing CPR as soon as they entered the backyard.

In the backyard, they were given a brief synopsis of what had occurred. They were told that the person who was not breathing had fled from the police and rammed a police vehicle; the person led officers on a pursuit and ended up in the rear yard of the residence; the person was combative and would not listen to the officer's commands. One officer used his Taser on the suspect approximately six times and officers pulled the suspect out of the driver's seat of the truck. After he was "tased," he stopped breathing. The suspect had a bag of a white substance and that led Firefighter-Paramedic Arnold to assume the suspect had "taken drugs prior to" the incident.

Firefighter-Paramedic Arnold was the lead paramedic and his job was to provide oxygen to the suspect. He instructed other Fire personnel to remove the suspect's clothing and they completed a full head to toe assessment. He saw a bruise on the suspect's right cheek and no other evidence of trauma. The Fire Department maintained control of the suspect and he was subsequently transported to the Simi Valley Hospital by an AMR ambulance.

19. FIRE CAPTAIN ED HO

On May 15, 2007, Captain Ho and his firefighters responded to a "medical aid" call that was the result of a police pursuit. His vehicle, Engine 41, responded along with paramedics in Truck 41.

When they arrived he saw "a lot of police vehicles." From the call, he had been anticipating a traffic collision. Instead, police officers guided them into the backyard of a residence.

In the backyard, he saw officers attempting to resuscitate a subject who was lying on his back on the patio. There were a lot of "individuals" in the backyard. Firefighter-Paramedic Arnold was the first firefighter to reach the subject and took over providing CPR from the officers. Captain Ho heard from an unknown person that the subject was tased six times and at some point saw Taser wires leading to the subject.

AMR paramedics arrived shortly after the Fire personnel and began assisting the firefighter-paramedics. The subject was stripped down and fitted with a cervical collar. Initially, the subject was not breathing and had no pulse. After three or four minutes of resuscitation efforts, they noted a "rhythm" on their heart rate monitor and felt a pulse on the subject. At that point,

they only provided ventilation for the subject, as he was still not breathing on his own. The subject was then transported to Simi Valley Hospital.

Captain Ho was amazed at how the pursuit had managed to reach the backyard. He heard from an unknown officer at the scene that the subject had been combative when they approached him. The officer indicated that “‘we don’t know what he’s on, but he was really combative,’ indicating he was, he was altered.”

20. FIREFIGHTER-PARAMEDIC IAN HENRICH

On May 15, 2007, Firefighter Henrich was working at Ventura County Fire Station 41 in Simi Valley when they responded to a police call regarding an injured subject on Chelsea Court. Firefighter Henrich was assigned to drive a paramedic truck with his partner, Paramedic-Firefighter Dan Arnold. Engine 41 was also dispatched with Captain Ed Ho, Firefighter Garrett Prater, and Engineer Lance Austin.

When they arrived, officers approached them and told them that someone may not be breathing and was injured. Firefighter-Paramedic Henrich responded down the north side of the house where he saw tire tracks. In the backyard, he saw a full-size, extra cab truck, dark in color, in the rear yard against the south fence. The engine was not running but the headlights were on. There were approximately six police officers in the backyard, two of whom appeared to be providing aid to the patient.

The patient was lying on his back with his head toward the house and his feet toward the truck. Paramedic-Firefighter Henrich noticed some slight abrasions/redness around the patient’s face. One officer was providing rescue breathing with a mask and another was performing chest compressions. One firefighter took over providing CPR from the police officers.

Firefighter-Paramedic Henrich began readying supplies for assisting the patient. He assisted with rolling the patient onto a backboard with some other Fire personnel. They attached the patient to a “Life Pack 12” monitor but they did not use it as a defibrillator. The audio recorder of the monitor activated automatically when it was powered on. The patient had a slow heart rhythm when the monitor was attached, so CPR was continued. When he regained a steady

pulse, the patient was placed on a gurney and transported to Simi Valley Hospital by the AMR ambulance.

The patient was transported to the hospital approximately eight to ten minutes from when Firefighter-Paramedic Henrich entered the backyard. Someone from AMR started an "I.V." but he did not know what type of medication was dispensed. Paramedics kept breathing for the patient, as he never resumed breathing on his own.

The patient had an abrasion on his face. Firefighter-Paramedic Arnold asked the officers what had happened to the patient's face and an unknown officer replied that "there were hand strikes." An unidentified officer stated that there had been a pursuit after the vehicle was seen driving recklessly through the neighborhood and it ended up in the backyard. The officers also described the patient as very combative. Firefighter-Paramedic Arnold asked how many times the patient had been "tased" and the only response he remembers was that the patient had been "tased" multiple times.

21. PARAMEDIC ANTHONY SANCHEZ (AMR)

On May 15, 2007, Paramedic Sanchez responded to a call at 897 Chelsea Court in Simi Valley for "unknown medical" assistance to the Simi Valley Police. He was accompanied by Paramedic Robert Sebree and Paramedic-Trainee James Hubbard.

When they arrived on scene, there were approximately ten police vehicles on Chelsea Court and officers were directing him with their flashlights. The officers told them that the patient was in the backyard and was possibly not breathing.

There were about twelve officers scattered through the backyard, some of whom were moving patio furniture for them and providing lighting. Two officers were providing CPR when he first entered the backyard. Fire personnel were already on scene. Two paramedics and three to five firefighters were around the patient, and they relieved the police officers from providing respirations.

The patient was lying on his back on the cement patio at the back of the house. One of the Fire personnel placed the patient's head in a protective collar and another firefighter began using a manual respirator on the patient.

The patient had no pulse when Paramedic Sanchez arrived on scene. They worked on the patient for approximately ten to fifteen minutes before transporting him. The patient was given Epinephrine by one of the other paramedics at the scene. The patient had reestablished a pulse before he was transported. He was placed onto a gurney and Paramedic Sanchez drove him to the Simi Valley Hospital. The pulse had been established about three minutes before he was placed on the gurney and the patient still had a pulse upon arrival at Simi Valley Hospital. Paramedic Sanchez did not know if the patient had resumed breathing on his own.

Paramedic Sanchez saw some "oral trauma" around the patient's mouth at the scene. He did not note any other trauma to the patient. He was told by an unidentified officer at the scene that the patient may have been under the influence of drugs, that he had been driving erratically, ran into some police cars, had been combative, had been forcibly pulled out of the truck window, and that he had been "tased" six times. Sanchez never saw any force used on the patient by anyone at the scene.

22. RONALD HOVET

a. May 15, 2007

Ronald Hovet was interviewed by Officer Young at the scene on the night of May 15, 2007. Hovet stated that he was upstairs in his bedroom at 897 Chelsea Court when he heard a crashing noise coming from the side of his house. He looked outside from an upstairs window and saw a truck stopped in his backyard with a police car behind it. He went downstairs and got his family into the garage to be safe. A short while later, he left the garage and looked into the backyard through the rear sliding glass door. He saw a subject on the ground, with handcuffs behind his back and stated that: "It must have been hard controlling him. He sounded like a wild bull."

b. June 1, 2007

Ronald Hovet was next interviewed by Detective DeMarto on June 1, 2007. The interview was conducted by telephone. Hovet said that he was upstairs and watched what was going on for

about thirty seconds, then came downstairs and joined his family in the garage. While upstairs, he saw the truck's wheels were smoking and an officer was standing near the truck, the officer's gun was drawn and he was screaming for the driver to get out of the truck. The driver did not get out and "just kept smoking the tires."

He went downstairs and looked outside again. The truck windows were rolled up and the driver was gripping the steering wheel and "just gunning the motor." He grabbed the family dog and went to the garage. He stayed in the garage until it sounded like things were "calming down," then went to the living room and looked outside.

He saw the suspect handcuffed on the ground. The suspect was lying on his stomach and was still struggling. There were about five police officers around him. One of the officers controlled the suspect's legs and another officer had his knee on the suspect's back or neck. The officers were keeping the suspect down and the suspect was still struggling. Hovet then went back into the garage and told his family it was safe to come out. He heard officers talk about a Taser but was not sure what they were talking about and did not see any use of a Taser.

The family left the garage and Hovet looked out again. The suspect was on his back and two EMT's were doing CPR. He added that the "guy was bent on getting away" and the officers were "doing what they needed to do."

c. June 16, 2007

On June 16, 2007, Ron and Carrie Hovet were interviewed at their home by Deputy Medical Examiner Baroni.³⁸ Ron Hovet told him that he was upstairs at the time of the crash and looked outside when he heard the sound of the crash. He saw a truck crashed near the edge of the backyard with its tires spinning and "burning rubber." A police officer had his gun drawn and was yelling commands at the driver. The driver kept spinning the tires. Hovet went downstairs, briefly looked out the sliding glass door, and then joined his family in the garage.

³⁸ / Deputy Medical Examiner Baroni did not record his interviews, so the narratives of his interviews are drawn from his Death Investigation Report.

Hovet came out of the garage a few minutes later and saw the driver face down with his upper torso on the cement patio and the rest of his body on the grass. The driver was still struggling and there appeared to be blood on the driver's nose. One officer had his knee on the driver's left shoulder or neck. Another officer was controlling the driver's feet. Both officers appeared to be having a hard time keeping the driver down.

Hovet also noticed another officer would occasionally try and hold the driver's middle torso down by pressing against the driver's back or shoulder area, then remove his hands and stand back up.

Hovet returned to the garage. When he returned to the rear of the house, the driver was on his back and officers were performing CPR on him. Then an EMT arrived and took over CPR.

d. August 8, 2007

On August 8, 2007, the Hovet family was interviewed by District Attorney Investigator Harvill and Senior Deputy District Attorney Harman. Ron Hovet related that on the night of the incident, he was upstairs watching television when he heard a "big bang" in the side yard. He looked outside and saw a truck in his backyard.

The truck was up against the fence and smoke was coming from the tires. A police officer was standing beside the truck with his gun drawn, yelling at the driver to get out of the truck. The driver was looking straight ahead, hands on the wheel. Hovet felt that the driver looked bent on driving the truck through the fence.

He watched for about twenty seconds and then ran down stairs. He looked through the living room sliding glass door blinds and saw that the driver was still in the truck, attempting to drive through the fence. He found his family in the kitchen/garage area.

They stayed in the garage for a few minutes. Hovet then returned and looked out the living room window. He saw the driver face down on the ground at the corner of the patio with his hands handcuffed behind his back. The driver was still struggling with the officers trying to restrain him.

One officer was in a crouched position on the driver's left side with his knee on the driver's shoulder or back. Another officer was holding the driver's feet and a different officer was bent over the driver's right side, holding the driver down. The driver was grunting and bucking, moving the officers that were attempting to restrain him. The grunting sounded like someone lifting weights. As the driver bucked, Hovet could see the driver's chest come off the ground. Hovet watched for about two minutes and the driver's resistance did not diminish.

Hovet walked away from window to get his family. When he returned to the window, the officers were performing CPR on the driver.

23. JEFFREY REESE

a. May 15, 2007

Jeffrey Reese was interviewed by Officer Tallent at the scene. He told her that he was seated at a computer workstation in the living room downstairs. He did not see any of the pursuit but heard what he thought was the fence "crash" when the vehicles drove through. His mother was seated on the couch in the same room. His older brother came downstairs and told them all to go into the garage (toward the front of the house), which they did.

b. May 16, 2007

Jeffrey Reese was next contacted by Detective DelMarto at about 12:13 a.m. on May 16, 2007. He showed Detective DelMarto three video clips he had captured on his cell phone.

He told Detective DelMarto that the first clip was dated May 15, 2007, at 10:02 p.m., and was shot when officers were on the patio performing CPR. Reese said that the second clip, dated May 15, 2007, at 10:18 p.m., also depicted emergency personnel treating the suspect. He added that the third clip, dated May 15, 2007, at 10:51 p.m., showed the suspect's vehicle in the backyard after the suspect had been transported to the hospital. The clips are 15 seconds, 8 seconds and 15 seconds in duration. All of them are dark and indiscernible.

Reese e-mailed the second clip to Detective DelMarto. He also gave his phone to Detective DelMarto so that he could download the other two clips.

c. June 5, 2007

Reese spoke with Detective DelMarto again on June 5, 2007. Reese said that at the time of the crash, he was using a computer in the living room of their home and his mother was on the couch in the same room watching television. He heard what sounded like a crash. His brother came downstairs and told everyone to get into the garage because someone was in the backyard. They went into the garage and his stepfather came into the garage a few moments later.

Inside the garage, they heard the sounds of the sirens and police. They eventually left the garage when it sounded like the immediate danger had passed.

Reese looked out the rear sliding glass window and saw a truck in their backyard. He did not see the driver in the truck but thinks that the driver was still in the truck at that time. He turned away for some reason and the next time he looked, the police were putting the suspect on the ground. There were a lot of police between the suspect and him. He shot the first video clip at that point.³⁹

A short while later, a female officer came into the house and spoke with him. She asked to see his ID and he went upstairs to get it. While upstairs, he shot the second video clip from the upstairs window. The suspect had an oxygen mask on but he does not believe any Fire personnel had arrived on scene at that time. He also saw them wheel the suspect out. He shot the third video clip when he went outside after the suspect had been taken away.

d. August 8, 2007

On August 8, 2007, Jeffrey Reese was interviewed at his home by District Attorney Investigator Harvill and Senior Deputy District Attorney Chris Harman. He related that on the night of the incident, he was downstairs playing computer games with headphones on. His mother, Carrie Hovet, was also in the room. His brother, Jason Cummings, ran into the room and told them to get out of the living room and they went into the garage. Reese had not heard any sounds of the crash due to the headphones he was wearing.

^{39/} This statement conflicts with his recollection on May 16, 2007, that the first video clip was shot after emergency personnel were already treating the subject. See II(E)(27(b) at p. 65. The time on the first clip, 10:18 p.m., is also consistent with when Guerrero was being treated by medical personnel.

He later went to the sliding glass door and saw police officers struggling with a man on the ground. The man was not handcuffed and officers were holding the man's arms, shoulders and legs. He was unable to remember the specifics of how the officers were holding the man.

24. JASON CUMMINGS

a. May 15, 2007

Jason Cummings was initially interviewed by Officer Tallent on the evening of May 15, 2007. He told her that at the time the truck drove into his backyard, he was upstairs in his bedroom. He had heard sirens and engine noise approaching his house. He looked out his bedroom window and saw a truck drive down his side yard. He heard a crash and then saw a police car drive down the side yard. He went downstairs and told his family to move into the garage.

He did not see any part of the encounter with the suspect until the officers had the suspect out of the truck and he felt safe. All he recalled seeing were officers struggling to restrain the suspect and did not see the suspect. He heard the suspect grunting but never heard him say any words.

b. May 16, 2007

Cummings spoke with Detective DelMarto at approximately 12:13 a.m. on May 16, 2007. Cummings told Detective DelMarto that he had taken some photographs of the truck in the backyard after everyone had left. He also told Detective DelMarto that his brother had taken some video footage with his cell phone.

c. June 18, 2007

On June 18, 2007, Jason Cummings was interviewed over the phone by Deputy Medical Examiner Baroni. Cummings related that he was upstairs when he heard sirens. He looked out his bedroom window and saw cars going down the side of the house. He ran downstairs and went into the garage with his brother and his mother. He heard police telling the driver to stop the truck.

After some time had passed, he returned to the rear of the house and looked out the sliding glass window. He saw them pulling the driver out of the truck and 4-6 officers wrestling him to the

ground. He never saw anyone using a Taser but saw officers trying to restrain the driver, who was grunting loudly as he struggled with the police. He heard the police telling the driver to calm down but did not watch the entire struggle. The next time he looked outside, the driver was on his back and people were performing CPR on him.

d. August 8, 2007

On August 8, 2007, Jason Cummings was interviewed at his home by District Attorney Investigator Harvill and Senior Deputy District Attorney Chris Harman. Cummings related that on the night of the incident, he was upstairs in his bedroom. He heard the sound of a police pursuit that sounded like it was getting closer to his home. He looked out his bedroom window and saw a truck drive through his side yard and crash into the fence.

Cummings ran down the stairs and ushered his mom and his brother (Jeffrey Reese) into the garage. He heard the sound of a revving truck engine and police officers yelling commands. After they heard the truck engine stop, they went back into the living room at the back of the house.

He looked out the window and saw five officers trying to subdue the driver, who was “violently” trying to get loose. Cummings saw an officer kneeling on the left side of the driver. The officer had a knee on Guerrero’s back or shoulder area. Cummings was unable to remember if Guerrero was struggling when he saw the officer kneeling on the left side of Guerrero.

25. CARRIE HOVET

a. May 15, 2007

Carrie Hovet was interviewed by Officer Tallent on the evening of May 15, 2007. She told Officer Tallent that at the time of the incident she had been downstairs seated on the couch near a corner window that faces the side yard and backyard. She heard sirens, followed by a “crash.” She saw lights and was scared. Her son Jason came downstairs and yelled for everybody to get in the garage and they ran into the garage.

She said they never opened anything to look outside because she “didn’t want to make it easy for the guy to come in.” All she heard was the driver revving his tires like he was trying to drive

through the fence. They came back out of the garage once they heard all the police yelling, but still did not look outside.

b. May 16, 2007

Detective DelMarto spoke with Carrie Hovet at about 12:30 a.m. on May 16, 2007. She told him that she had been downstairs in the living room watching the television show "House," which had almost ended, when she heard sirens that seemed close. She then heard a crash and then saw red lights from a police car shining through the back windows. She jumped up and her son, Jason, ran downstairs and told her and her other son (Jeffrey Reese) to get into the garage.

A few moments later, her husband joined the rest of the family in the garage. From the garage, she could hear a motor revving "like he was trying to go somewhere but it wasn't going." Once the "tires stopped revving," she also heard officers yelling at him to "get out, get down" numerous times.

They waited in the garage until they "heard the commotion was done," then walked back toward the rear of the house. She thought about two minutes had passed since hearing the crash. When she came back out, she looked out the rear sliding glass window and saw approximately eight police officers around a subject who was lying on his stomach on the patio with his hands behind his back. The subject was not yelling or doing anything.

She walked away from the window. A few minutes later, she looked outside again and saw that they had rolled the subject over and were performing CPR on him. She saw one of the officers pressing on the subject's chest and there was something over his mouth that someone was breathing into. A female police officer came into the house and interviewed Carrie and her family. Emergency personnel were still working on the suspect at that time. The suspect was eventually driven away by the ambulance.

c. June 16, 2007

On June 16, 2007, Ron and Carrie Hovet were interviewed at their home by Deputy Medical Examiner Baroni. She told him that she was downstairs in their home when the crash occurred.

Her son came downstairs and she heard the police telling the driver to get out of the car. She moved to the garage area.

She came out a short while later and saw the driver face down on the patio. His hands were behind his back and one officer appeared to have his knee on the driver's back. Another officer was holding the driver's legs, and three other officers were standing near the driver's right side. She stopped looking out the window, and the next time she looked outside, the driver was on his back.

d. August 8, 2007

On August 8, 2007, Carrie Hovet was interviewed at her home by District Attorney Investigator Harvill and Senior Deputy District Attorney Chris Harman. She related that on the night of the incident, at about 9:50 p.m., she was sitting in the living room watching television when she heard the sound of sirens and then a "bam" on the side of the house. She started to go investigate the noise but her son Jason ran down the stairs and told her and her other son to move into the kitchen. They were joined in the kitchen by her husband, Ronald Hovet.

Hovet heard the police officers repeatedly yelling "get out of the truck" and the sound of a "really loud" engine revving. After several minutes, they figured that things were under control and they returned to the living room. Hovet looked through the vertical blinds into the backyard and saw the driver lying face down on the patio with several police officers trying to subdue him.

The driver was struggling with the officers. One officer was on the driver's right side with his knee on the driver's lower back. The officer was in a crouched position and his full weight was not on the driver. Other officers were restraining Guerrero's legs, arms, and shoulders and trying to handcuff him. Only one officer had his knee on Guerrero's back, the other officers were standing or crouched down near Guerrero.

She walked away from the window and then returned about 40 seconds later. When she returned to the window, officers were performing CPR on Guerrero.

26. ALEJANDRA GUERRERO

a. May 16, 2007

Alejandra Guerrero was first contacted by Simi Valley Police Detectives Hostetler, Scannell and Shatz at approximately 3:55 a.m. on May 16, 2007. Her nephew, Alfredo Guzman, acted as interpreter.

The detectives informed Ms. Guerrero that her husband, Reymundo Guerrero, had been in a pursuit with Simi Valley Police and was in the hospital. Alejandra Guerrero told the detectives that her husband had left their home at about 8:00 p.m. to buy cigarettes. She told the detectives that he was drunk when he left their home. When he did not return home, she thought that he had gone drinking with friends.

b. May 22, 2007

Alejandra Guerrero was interviewed by Simi Valley Police Detective Sergeant Anthony Anzilotti on May 22, 2007, with the assistance of Senior Officer Samarin, a SVPD certified Spanish translator, and Guerrero's sister, Gabriela Guerrero. At the time of the interview, Reymundo Guerrero was still alive but she was aware that he had been declared brain dead and would soon be removed from life support.

Sergeant Anzilotti summarized his understanding of the circumstances surrounding her husband's pursuit and arrest. When he finished, she asked if the Taser had been used on Guerrero before or after he had been handcuffed. Sergeant Anzilotti replied that the Taser had been used before he was handcuffed. He also told her that the matter would be investigated by Simi Valley Police detectives, police administrators and then by the District Attorney's Office.

She related that their family moved from Chicago, Illinois to Simi Valley about one year before the incident. They had lived in Chicago for eight years. They moved to Simi Valley because Alejandra Guerrero wanted to be closer to her family.

To her knowledge, Guerrero had been using cocaine about one and a half years before his death, but she was not sure exactly when he began using cocaine. She initially stated that Guerrero had never been in trouble with the police, either in Chicago or Simi Valley. When she was reminded

that police had been called to their Simi Valley home for him attacking her, she responded that had been the first time he had ever been violent toward her and that he had been under the influence of cocaine. She added that he had not been angry lately.

Alejandro Guerrero did not know where Guerrero had been getting cocaine. She said that she worked 6 a.m. to 6 p.m. and did not know that much about his friends. His friends never came to the house. He worked construction, but she was not sure who his employer was. Alejandra Guerrero suspected that Guerrero went to go get cocaine whenever he made excuses like going to get cigarettes.

On May 15, 2007, she got home between 6:00 p.m. and 6:30 p.m. She did not see Guerrero drink any beer. At about 8:30 p.m., he left their house, telling her that he was going to a liquor store to buy beer and cigarettes. She offered to go with him but he said that he would go and would be back in a little while.

Guerrero had high blood pressure but at that time was not taking any medication for the condition. Prior to the incident, he did not have a local doctor, although at the time of the interview, his medical care was being supervised by Dr. Kim.

Alejandra stated that Reymundo had always used his father's last name of Guerrero, including when they lived in Chicago. She identified "Garcia" as his mother's last name.⁴⁰

27. GREG BRIDGES

Greg Bridges lives a few houses away from 897 Chelsea Court. On May 15, 2007, Bridges was home with his wife when he heard sirens on Chelsea Court. They had arrived home about fifteen minutes before they heard the sirens. They went out front and saw the lights from two police cars at the southern end of the street. He heard sounds of a collision and then saw a truck heading north with two police cars in pursuit. The driver's door of the truck looked a little caved in. The truck drove into a backyard and the police cars followed it.

⁴⁰ / Guerrero's social security card listed his name as "Reymundo Guerrero Garcia."

Bridges went into his own backyard and looked over his fence. He could not see into the backyard, but saw a headlight shining through the fence. He heard the sound of the truck engine revving, which he compared to a truck “stuck in mud.” He also heard the officers yelling at someone to get out of the truck, but nothing more specific than that. He was very impressed by how all the emergency personnel handled themselves.

28. KEVIN SORENSON

Kevin Sorenson was getting ready for bed on the evening of May 15, 2007, when he heard tires squealing in the street. He looked outside and saw a police car pinning a burgundy and silver truck against a cinder block wall on the southwest corner of the intersection of Manorgate Place and Sequoia Avenue. The truck was facing east and had been pushed up onto the curb against the wall. The front of the police car was pressed against the truck’s driver’s side door.

A police officer got out of his car and told the driver to get out of the truck. The truck accelerated and tried to back up, causing the tires to spin and leave a cloud of smoke from the burning rubber on the tires. The truck managed to pull around the police car and headed south on Sequoia Avenue and the police followed.

The truck drove to the end of Sequoia Avenue and turned around, heading back north on Sequoia, then abruptly turned onto Manorgate Place at a high rate of speed. Sorensen watched from his upstairs bedroom as the truck drove down Manorgate towards Chelsea Court. That was the last Sorensen saw of the truck.

29. SARAH CHO

Sarah Cho lives on Chelsea Court. On May 15, 2007, at around 10:00 p.m., she heard the sound of cars accelerating on her street. It sounded like they were headed south, then turned around and headed north.

Cho looked outside but only saw emergency lights. She heard the sound of multiple voices yelling “get out of the car,” “hands up,” and “get your seat belt off.” She heard the phrases shouted “many times.” She then heard a noise that she assumed was somebody hitting something with a stick, and then a popping sound and somebody yelling “do it again.” She also

heard the sound of an engine repeatedly accelerating coming from the same direction from which she heard the other noises.

30. RICHARD FREITAS

Richard Freitas lives at the corner of Devon Court and Manorgate Place. Freitas identified himself as a former police cadet and stated that he had spent almost 5,000 hours riding with police officers in northern California.

On May 15, 2007, he heard the sound of sirens. He went into his front yard and saw a truck leaving the intersection of Manorgate Place and Sequoia Avenue and head south on Sequoia pursued by police.

The truck turned around and headed back in his direction. He shouted for bystanders to get out of the way. The truck abruptly turned onto Manorgate and drove past him toward Chelsea Court at what he thought was 40 to 50 miles per hour, with the police still in pursuit. Freitas tried to help stop all non-police personnel from entering the neighborhood and directed emergency personnel to the proper area.

Freitas described the driving he witnessed by stating that: "The way he was driving, I think that uh, he wouldn't have stopped for anybody in the street, he would have just ran them over." He contrasted that with the pursuing police officers, who had their lights and sirens activated during the pursuit and used caution during the pursuit, constantly looking around to insure they would not hit anybody.

Freitas heard the sound of burning rubber everywhere and said that the suspect's driving scared him and made him afraid to go near the street. He added that the driver was driving so recklessly that he was surprised no one was run over, and that he felt the truck had been accelerated to the point that it was going as fast as it could. He also stated that he felt that the suspect wanted to get away so bad that he would not have stopped for anyone and must have been "high" on drugs.

31. JEFF QUALLS

Jeff Qualls lives on Chelsea Court. On the night of May 15, 2007, he was downstairs when heard the sound of sirens and screeching tires. He later thought the police must have been trying to pin the truck in. He went into his front yard and saw a maroon Ford F-150 truck traveling northbound past his home. The truck drove down the street and, without any hesitation, drove into his neighbor's backyard at the end of the street. He explained that he saw no brake lights from the truck as it went into the neighbor's yard.

From his position, Qualls could not see into the neighbor's backyard. He heard the truck's tires continuing to squeal and officers screaming over the engine noise for the driver to "put his hands up." It sounded like more than one officer was yelling at the driver and he heard officers shout for the driver to put his hands up at least twenty times.

At some point, he heard an officer run from the backyard and yell that he needed gloves and a mask. A couple of other officers ran to their police cars and removed what he thought was a medical kit. The officers then returned into the backyard. Approximately one minute later, officers began moving their cars to make room for an ambulance.

F. PRIOR CRIMINAL HISTORY

Reymundo Guerrero moved to Simi Valley from Illinois approximately one year before this incident. The Chicago Police Department reported that there was no record of contacts with Guerrero in their records system or in the record system for the State of Illinois.

Beginning in 2006, Guerrero had several contacts with Simi Valley Police. Dispatch reports show that officers were dispatched to his residence five times between 2006 and the time of this incident.

Guerrero was cited by Simi Valley Police personnel for speeding on three different occasions: May 31, 2006 (40 mph in a 25 mph zone); February 9, 2007 (54 mph in a 40 mph zone) and April 7, 2007 (70 mph in a 50 mph zone).

On June 11, 2006, police responded to Guerrero's residence and found him, sweating profusely, talking and breathing rapidly, and making small jerky movements. He also possessed a small baggie of cocaine and had forcibly inserted his finger into his wife's vagina looking for evidence she was cheating on him. He was arrested and felony charges were filed against him by the District Attorney's Office for Forcible Act of Sexual Penetration, Sexual Battery, and Possession of Cocaine. The case was pending at the time of his death.⁴¹

On January 8, 2007, police responded to the Guerrero residence and contacted Guerrero, who was very nervous, sweating profusely and speaking rapidly. He admitted using cocaine that day and said he used it to stay up at night to make sure his wife was not cheating on him. He also told police his wife was poisoning him.⁴² Police found two small bindles of cocaine in Guerrero's possession and he admitted that he used about \$40.00 of cocaine a day. He was arrested and a felony charge of possession of cocaine was filed against him by the District Attorney's Office. The case was pending at the time of his death.⁴³

III. PHYSICAL EVIDENCE

A. CRIME SCENE

Once Guerrero was removed from 897 Chelsea Court, the scene was secured. Simi Valley Police personnel searched Guerrero's truck and the surrounding area, and took numerous photographs and measurements.⁴⁴

Evidence recovered at the scene included a Taser cartridge, two Taser darts (one of which was removed from Guerrero's shirt), two baggies containing a total weight of 22.76 grams of cocaine, California and Illinois ID cards in the names of Reymundo Garcia, Reymundo Guerrero and Reymundo Ruerrero, and the keys to the truck.

⁴¹ / Ventura County Superior Court Case Number 2006022238. During this contact, Alejandra Guerrero told police that the behavior had happened before when they lived in Chicago and that they had moved in hopes that Guerrero would quit using cocaine.

⁴² / During his encounters with officers, Guerrero spoke in accented English and appeared fluent in English.

⁴³ / Ventura County Superior Court Case Number 2007000842.

⁴⁴ / A diagram of the backyard at 897 Chelsea Court based on those measurements was prepared and is attached to the Exhibit as Exhibit D.

B. HOSPITAL

Guerrero was admitted to the hospital on May 15, 2007. At approximately 10:46 p.m., the hospital drew blood from Guerrero for clinical purposes. The blood drawn did not have any type of preservative. One of the vials was tested by forensic scientists with the Ventura County Crime Lab which indicated a blood cocaine level of 500 ng/mL and a benzoylecgonine level of 6670 ng/mL.⁴⁵

Photographs of Guerrero in the hospital were taken on May 16 and May 17. Detective Sergeant Anzilotti obtained a blood sample from Guerrero at the hospital, which was drawn at 12:35 a.m. on May 16, 2007. The sample was mixed and stored with a preservative. The blood was analyzed by forensic scientists with the Ventura County Crime Lab and indicated a blood cocaine level of 1139 ng/mL cocaine at the time the blood was drawn, and a benzoylecgonine level of 6000 ng/mL.⁴⁶ The blood was also tested for alcohol and showed no alcohol in his system at the time of the test.

Guerrero never resumed breathing on his own. On May 21, 2007, Doctor Peter Kim, a neurologist, declared him to be brain dead at 9:55 a.m. Dr. Laurence Weekes, a surgeon, also declared him brain dead at 11:00 a.m. on the 21st. His body remained on a respirator to allow Guerrero's family time to visit the body and to seek an alternate medical opinion. On May 23, 2007, Guerrero was removed from a ventilator and was declared dead at 7:42 p.m.⁴⁷

C. CAUSE OF DEATH

1. CORONER'S REPORT

On December 10, 2007, Ventura County Medical Examiner Ronald O'Halloran released his report regarding the death of Reymundo Guerrero. His findings were that Guerrero's death was caused by "anoxic encephalopathy, due to probable restraint asphyxia, due to corporal

⁴⁵ / Benzoylecgonine is a metabolite of cocaine produced when cocaine is metabolized in the liver.

⁴⁶ / As a comparison, one study reported that subjects snorted just under a tenth of a gram of cocaine and reached peak blood cocaine levels of between 150 and 200 ng/ml within thirty minutes of ingestion. Chris-Ellyn Johanson and Charles R. Schuster *Cocaine in Psychopharmacology: The Fourth Generation of Progress*, (David J. Kupfer, F. E. Bloom, eds. 2002). However, death from cocaine is generally not dose related, and cocaine blood levels cannot be used to predict toxicity due, in part, to "drug tolerance and interindividual variability." See generally, Karch, Steven B. *Cocaine Cardiovascular Toxicity*. Southern Medical Journal, August 1, 2005.

⁴⁷ / Guerrero's death certificate reports the time of death as 11:00 a.m. on May 21, 2007, – the time of the second "brain death" pronouncement.

compression during prone restraint.” He ruled the death a homicide due to his opinion that Guerrero’s death was probably caused by his restraint.⁴⁸ Specifically, he explained that:

In my opinion, the probable cause of death in this case is asphyxia caused predominantly by compression of the chest while being held prone by police during attempts to control the subject and apply restraints. Thus, being a “death at the hands of others,” this is classified as a homicide.

The term “asphyxia” is used in the broad sense to include interference with the ability to breathe and interference with venous return of blood to the heart, limiting sufficient delivery of oxygen to vital organs. Aberrant driving behavior by the subject, probably caused by recent cocaine use, was the reason for the police responding in the first place, and cocaine use was the probable reason for the subject’s lack of cooperation with the police during the encounter. The struggle involved blunt blows and multiple Taser shocks, but they probably did not cause death. The endogenous catecholamine hormone stress from the struggle, shocks and restraining process may have contributed to death by making the heart more susceptible to a hypoxia-induced arrhythmia.

Incomplete information about details of the restraint process from police limits the degree of certainty about the cause of death. As in some other medical examiner death investigations, additional information about the circumstances of death could lead to a re-evaluation and amendment of the cause and/or manner of death.

2. INTERVIEW WITH DR. RONALD O’HALLORAN

On July 26, 2007, Dr. O’Halloran and his investigator, Chief Deputy Medical Examiner Baroni, met with Senior Deputy District Attorney Harman, District Attorney Investigator Harvill, and Simi Valley Police Detective Sergeant Anzilotti to discuss his findings.

⁴⁸ / Chief Deputy Medical Examiner James Baroni clarified in his Death Investigation Report that the autopsy did not “reveal an anatomic cause of death.” Death Investigation Report 00603-07 at 6.

Dr. O'Halloran began by relating his initial conclusions, that the cause of death was a "compressed chest with the associated factor of cocaine toxicity" and the manner of death was a homicide – a death at the hands of another. He based his opinion primarily on the Chief Deputy Medical Examiner's interview with one of the residents of 897 Chelsea Court and a statement by one of the Simi officers. He added that the high level of cocaine in the system would be sufficient to establish the cause of death absent evidence of restraint asphyxia.⁴⁹ He also added that he found restraint asphyxia to be the cause of death by a "preponderance of the evidence."

According to Chief Deputy Medical Examiner Baroni, the evidence of restraint asphyxia included a resident of 897 Chelsea Court who saw an officer kneeling in the area of Guerrero's right shoulder and a Simi Police Officer who related that he saw another officer with his shin on Guerrero's shoulder or neck. Dr. O'Halloran did not find any signs of physical injuries which indicated that pressure was applied to Guerrero's chest area during the restraint and arrest.

Dr. O'Halloran noted that in his experience, when a person dies while being restrained by police officers, chest compression often is a factor in the cause of death. He referred to restraint asphyxia as his "default cause of death" when someone dies while being restrained by police officers and there are no other obvious causes of death. He added that he did not believe in Excited Delirium Syndrome – a competing theory to Restraint Asphyxia for a cause of in-custody deaths – because he has not seen evidence of it occurring away from custodial situations where forcible restraint was involved. If such a syndrome actually existed, he would expect to see deaths from the syndrome in individuals who were not forcibly restrained.⁵⁰

Dr. O'Halloran was then asked about the physical manifestations of the cause of Guerrero's death. He noted that Guerrero had a normal heart that was free of apparent disease or defect, and that there was no direct evidence showing why the heart had stopped. He explained that there would be no physical evidence he could observe of a heart attack or arrhythmia unless the decedent had heart disease. He also explained that cocaine had been documented as causing arrhythmias at the dosage level in Guerrero's body at the time his heart stopped.

⁴⁹ / Dr. O'Halloran is a nationally recognized expert in restraint asphyxia and has published several peer-reviewed articles on the issue, including: Ronald O'Halloran, M.D. and Janice G. Frank, M.D., *Asphyxial Death During Prone Restraint Revisited: A Report Of 21 Cases*. Am J Forensic Med Pathol (March 2000), 21(1) 39-52.

⁵⁰ / Custodial situations include restraint by police, mental health or medical personnel.

Dr. O'Halloran then addressed the physical injuries to Guerrero's body. He noted one difficulty he had was that Guerrero's respirator had been disconnected on May 23, 2007 - eight days after his heart had stopped - and any injuries Guerrero had suffered on the night of May 15 would have been healing in the week prior to his death. Specifically, he found no evidence of an injury to Guerrero that indicated restraint which might have caused asphyxia. There was bruising to his heart and ribs, but that bruising was most likely the result of rescue personnel performing chest compressions during CPR.

Dr. O'Halloran found that Guerrero had abrasions on the front and back of the right side of his upper torso that were consistent with scraping against broken glass as he was pulled through the truck window. He also had a bruise and abrasion on his face that was consistent with struggling while his face was on concrete. He also had other abrasions on his wrists and elbow that were consistent with resisting being handcuffed.

The only injury that Dr. O'Halloran could not explain was a large bruise on the back of his head that might have indicated an application of blunt force, but no witness related any strike to Guerrero which would be consistent with the bruise.

IV. LEGAL PRINCIPLES

A. CRIMINAL VIOLATIONS COMMITTED BY REYMUNDO GUERRERO

Reymundo Guerrero engaged in felony and misdemeanor criminal conduct in the hour prior to his arrest. Had he survived, he could have been charged with the commission of the following crimes:

- Possession Of Cocaine For Sale in violation of Health & Safety Code section 11351
- Transportation Of Cocaine in violation of Health And Safety Code section 11352(a)
- Assault With A Deadly Weapon in violation of Penal Code section 245(a)(1)
- Assault On A Peace Officer in violation of Penal Code section 245(c)
- Evading A Peace Office With Willful And Wanton Regard For The Safety Of Others in violation of Vehicle Code section 2800.2(a)
- Resisting A Peace Officer in violation of Penal Code section 148(a)
- Vehicle Code §21460(A) - Driving on the wrong side of the road

- §23103 – Reckless driving
- §23109(c) - Exhibition of speed

B. LAW OF HOMICIDE AND REASONABLE FORCE TO DETAIN AND ARREST

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide encompasses murder and manslaughter, which are unlawful, and acts of excusable and justifiable homicide, which are lawful.

Homicide is justifiable when committed by any person “resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” Penal Code section 197(1). A killing by a peace officer is justifiable when it was “necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty;” or “when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.” Penal Code section 196.

Peace officers are authorized to subject arrestees “to such restraint as is reasonable for his arrest and detention.” Penal Code section 835. Under the Fourth Amendment, police are “not required to use the least intrusive degree of force possible” but may use only such force as is objectively reasonable under the circumstances. *Forrester v. City of San Diego*, 25 F.3d 804 (9th Cir. 1994) citing *Graham v. Connor*, 490 U.S. 386, 397 [104 L.Ed.2d 443, 109 S.Ct. 1865 (1989)]. An officer’s use of deadly force is reasonable only if “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” *Tennessee v. Garner*, 471 U.S. 1, 3, [85 L.Ed.2d 1, 105 S.Ct. 1694 (1985)].

“The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene. It is also highly deferential to the police officer’s need to protect himself and others.” *Martinez v. County of L.A.* (1996), 47 Cal.App.4th 334, 343 (quoting *Graham* 490 U.S. at 396-397). The reasonableness test requires careful attention to the facts and circumstances of each particular case, including: (1) “the severity of the crime at issue;” (2) “whether the suspect poses an immediate threat to the safety of the officers or others;” and (3) “whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396.

In *Scott v. Harris* (2007) 550 U.S. 372 [127 S.Ct. 1769], the United States Supreme Court held that “A police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.” *Id.* at 550 U.S. ___, [127 S.Ct. at 1779]. In *Scott*, the Court found that police officers had acted lawfully by ramming a suspect’s car and forcing it from the road to end a high speed pursuit despite the risk to the suspect. The court found that “in judging whether Scott’s actions were reasonable, we must consider the risk of bodily harm that Scott’s actions posed to [the suspect] in light of the threat to the public that Scott was trying to eliminate.” *Id.* at ___, [127 S.Ct. at 1778].

The *Scott* Court questioned how a court should balance “the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted.” *Id.* at ___, [127 S.Ct. at 1778].⁵¹

C. CAUSE OF DEATH

“An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. . . . There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.” CALCRIM 520

D. SIMI VALLEY POLICE DEPARTMENT TASER USE POLICY

Simi Valley Police Department’s General Order 0504 governs the use of the Taser X-26 by sworn officers. In order to carry and use an X-26, officers must have completed a department training course.

⁵¹ / See also *Acosta v. Hill* (9th Cir. 2007) 504 F.3d 1323, where the court upheld a jury verdict finding no excessive force in using a chokehold and leg restraints on a person resisting arrest and held that the standard in use of force cases, whether deadly force or excessive force, was whether the officer acted reasonably. *Acosta* at 1324.

Under General Order 0504, Officers are authorized to use the Taser to

- a. Overcome resistance from dangerous, violent, or potentially violent subjects, or
- b. To control, disable, or subdue violent or potentially violent persons intent on harming themselves or others, based on the facts reasonably available to the Officer at the scene at the time of the incident, or
- c. To disable a vicious animal who appears to present a danger to the Officer or public.

General Order 0504 advises that before an officer deploys a Taser, the officer should try to make an attempt to have the subject submit without the use of Taser “when practical.” Officers are also advised to warn the subject and other officers that a Taser will be deployed, but only if “it won’t put others at risk.” It also provides that officers should request medical personnel to respond to a scene where a Taser has been deployed to render first aid to the subject and that such subjects must be medically cleared before they are taken to jail.

General Order 0504 limits officers to a maximum of four Taser applications and prohibits its use on people operating machinery or motor vehicles. However, it also expressly allows applications in violation of those guidelines in exigent circumstances.

V. ANALYSIS

A. CAUSE OF DEATH

In this case, Dr. O’Halloran found the death was due to an arrhythmia that caused Guerrero’s heart to stop beating. Based on his training and experience, he reached an opinion that the probable cause of the arrhythmia was asphyxia that occurred as the officers restrained Guerrero as he resisted being taken into custody. Dr. O’Halloran is unable to articulate the specific actions by the police that led to the asphyxia, only that at some point their actions probably interfered with Guerrero’s ability to breathe or his ability to return venous blood to his heart, which probably caused the arrhythmia which stopped Guerrero’s heart.

Dr. O’Halloran used what he termed a “preponderance of the evidence” standard in forming his opinion, meaning that in his opinion Guerrero’s death was more likely than not caused by the

actions of the officers arresting Guerrero. However, in a criminal prosecution, the burden is on the prosecution to prove beyond a reasonable doubt that an injury was caused by those individuals charged with the crime.

Dr. O'Halloran also identified other possible causes for Guerrero death. Specifically, during the July 26, 2007, interview, Dr. O'Halloran stated that the high level of cocaine in Guerrero's system would be sufficient to establish the cause of death absent evidence of restraint asphyxia. His report also mentioned "endogenous catecholamine hormone stress from the struggle" as making Guerrero susceptible to a "hypoxia induced arrhythmia." In other words, Dr. O'Halloran felt that the adrenaline released into Guerrero's body during the chase and struggle with officers made him susceptible to an arrhythmia caused by lowered amounts of oxygen in his body.⁵²

Dr. O'Halloran stated during the July 26, 2007, interview that he did not "believe" in excited delirium as a cause of death. However, other reputable medical examiners do believe excited delirium can be a cause of death. One proponent of excited delirium, Dr. Vincent DiMaio, defines an excited delirium death as a death due to "an overdose of adrenaline."⁵³

In a criminal prosecution, if the trier of fact can "draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt," the trier of fact must accept the one that points to innocence. CALCRIM 224. In this case, there are several reasonable theories that explain how Guerrero's heart stopped, including an arrhythmia caused by his extreme cocaine intoxication. Moreover, when all of the witness statements are compared, there is insufficient evidence to prove beyond a reasonable doubt any specific action by any individual or individuals that could have produced "restraint asphyxia." Therefore, a prosecution would not be able to establish beyond a reasonable doubt that any action of any officer attempting to detain Guerrero was a substantial factor in causing his death.

⁵² / Catecholamine hormones released due to physical stress such as Guerrero's erratic driving and struggle with officers include epinephrine, also known as adrenaline.

⁵³ / See Julia Glick, "Excited Delirium" Is Cause In More Suspects' Deaths, Arizona Daily Star, September 26, 2006, at <http://www.azstarnet.com/sn/printDS/148275>. Dr. DiMaio is a former Medical Examiner for Bexar County in Texas and co-author of several books, including *Excited Delirium Syndrome: Cause of Death and Prevention*, Theresa G. DiMaio and Vincent J.M. DiMaio, M.D. (2006 CRC Press) and *Forensic Pathology, Second Edition*, Vincent J.M. DiMaio, M.D., Dominick DiMaio (2d Ed 2001 CRC Press). See also *Gregory v. County of Maui*, (9th Cir. 2008) 523 F.3d 1103, 1106.

B. USE OF FORCE

On the evening of May 15, 2007, Reymundo Guerrero began driving his Ford F-150 truck very erratically. The first reported contact was his aggressive driving focusing on Steve Brown. He then nearly hit Melanie Thomas after she parked her car, confronted Ryan Rubin in his car, and confronted the Freeman family in front of their home. Police were called and instead of submitting to their authority, he drove in circles around their stopped cars and led them on a pursuit. During that pursuit, he drove with no care or concern for others, including pedestrians and the police who were following him.

The dangerous nature of Guerrero's driving caused Senior Officer Hale to attempt and ram his truck twice and Senior Officer Murray to draw his firearm. The pursuit only ended when Guerrero drove into a backyard and became pinned by a tree on the other side of the fence he was trying to drive through.

Even then, Guerrero kept accelerating his truck and trying to rock it free so he could continue fleeing. He would not respond to numerous commands to stop his truck and would not even look at the officers who were unaware that the only thing preventing Guerrero from continuing to drive through backyards was a tree on the other side of the fence. The officers were now facing an unresponsive individual recklessly operating several tons of vehicle in an extremely tight space.

A peace officer is justified in using deadly force when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." *Garner*, 471 U.S. at 3. In this case, under *Garner* and *Scott v. Harris* 550 U.S. 372 [127 S. Ct. 1769], Guerrero's behavior and the threat he posed to civilians in the neighborhood and the officers in the backyard would have justified a use of deadly force. Instead, Murray resorted to less than lethal force and drew his Taser.

In accordance with General Order 0504, Officer Murray repeatedly tried to get Guerrero to submit to his authority, but Guerrero refused to respond to the officers and their commands. Guerrero would not even acknowledge the officers by looking at them, but just stared straight

ahead as he continuously revved the engine and rocked the truck between gears to regain traction. At that point, Senior Officer Hale broke the driver's window and Senior Officer Murray shot Guerrero with his Taser and administered a charge.

Within a time period of one and one-half minutes, Senior Officer Murray administered eleven five second bursts from his Taser. SVPD General Order 0504 prohibits administering more than four shocks, "except in exigent circumstances." Similarly, in cases alleging a use of excessive force, an officer's use of force is not excessive as long as those "actions are 'objectively reasonable' in light of the facts and circumstances confronting" the officers. *Graham v. Connor*, 490 U.S. 386, 397.

Graham looked to three factors in justifying an officer's use of force: (1) the severity of the suspect's crime; (2) the suspect posing an immediate threat to safety of others; and (3) the suspect actively resisting arrest or attempting to flee. In this case, all of the *Graham* factors justify Officer Murray's use of force.

Guerrero drove into a backyard without braking or sounding any warning to those who might have been in his path, and without any apparent concern for people who may have been on the other side of the fence he drove through. He did not comply with officers repeated commands to surrender, and kept fully revving his truck's engine in an attempt to flee from those officers despite their commands and multiple Taser shocks. Officer Murray acted reasonably under the circumstances in administering eleven Taser charges in an attempt to subdue Guerrero.

However, Guerrero was not subdued by those Taser shocks. He was only stopped when Senior Officer Lamb, at great risk to himself, climbed into the truck and pulled the keys from the truck's ignition while trading blows with Guerrero. Officer Lamb managed to secure a handcuff on one of Guerrero's wrists and then other officers pulled Guerrero out of the truck and laid him on the ground. Guerrero fought with Officer Lamb, fought being pulled from his truck, and continued to struggle once he was on the ground.

The officers did not throw him to the ground nor did they not pile on top of him. Instead, they used restrained force to attempt to gain his compliance. Officer Buckley had Guerrero's legs in a

“Figure Four” control hold and other officers struggled to control his arms and torso. An officer may have crouched down and laid his shin or knee on Guerrero’s upper torso, but Guerrero continued struggling bucking against the officers’ efforts to restrain him until shortly after he was handcuffed. It was Guerrero who continued resisting the lawful attempts to arrest him, despite repeated requests in English and Spanish to calm down, and it was Guerrero who dictated that the officers continue their efforts to restrain him.

Guerrero posed a serious risk of harm to the officers in the backyard and to any bystanders if he would have been able to regain traction and escape the backyard. Guerrero continued to try and flee and resist all efforts of the officers to end the situation. Nothing the officers did appears excessive or unreasonable in attempting to restrain Guerrero, and they were fully justified in using the limited amount of force they did to eliminate the threat Guerrero posed to others and eventually subdue him.

VI. CONCLUSION

It is the conclusion of the District Attorney that:

1. There is insufficient evidence to prove beyond a reasonable doubt that any action of the involved officers was a substantial factor in the death of Reymundo Guerrero.
2. There is insufficient evidence to prove beyond a reasonable doubt that any of the involved officers used anything but reasonable force in their attempt to subdue and arrest Reymundo Guerrero on May 15, 2007.
3. The involved officers were fully justified in the amount of force they used in preventing Guerrero from driving from the backyard.
4. The involved officers were fully justified in the amount of force they used in subduing and arresting Guerrero.

VII. APPENDIX

- Exhibit A An aerial photograph depicting the general area where the erratic driving, pursuit and arrest occurred
- Exhibit B A diagram drawn by Senior Officer Hale of the route Guerrero followed during the pursuit
- Exhibit C An aerial photograph of the area around Chelsea Court
- Exhibit D A diagram of the backyard at 897 Chelsea Court
- Exhibit E Photographs of the truck in the backyard of 897 Chelsea Court

EXHIBIT A

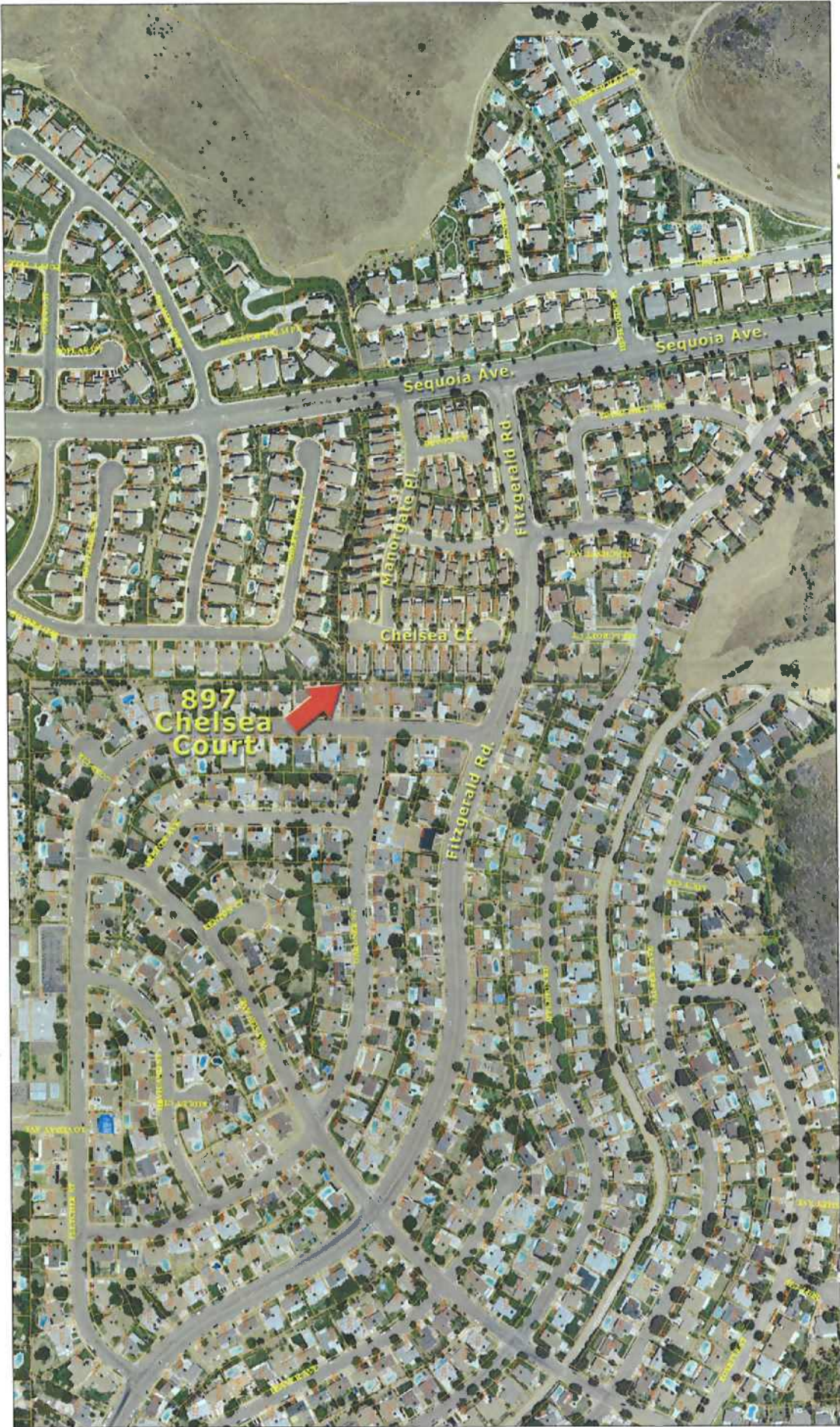
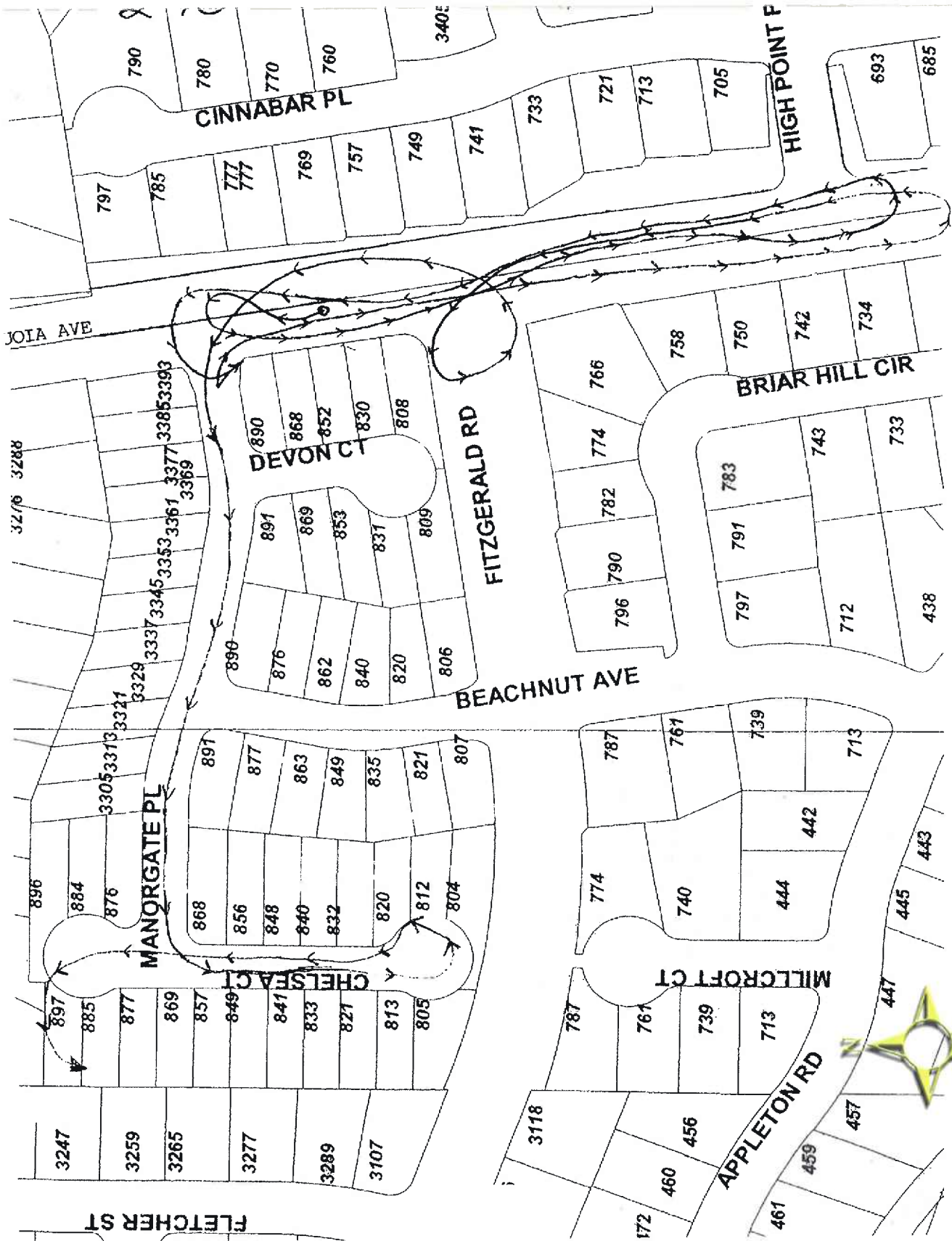


EXHIBIT B

Diagram of Pursuit Route Made by Senior Officer Hale



.9 MILE

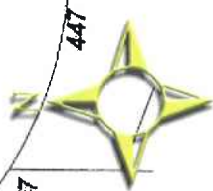
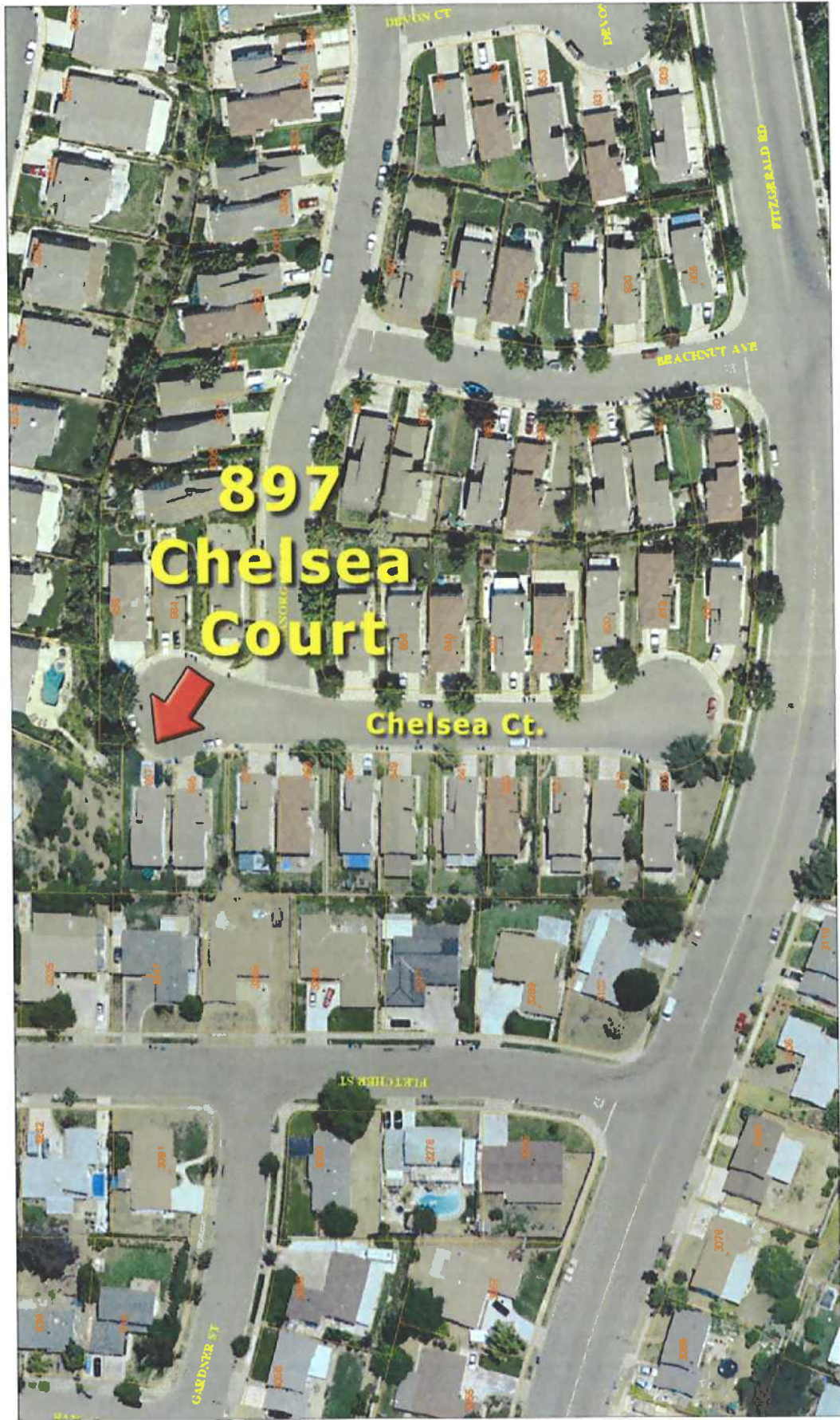


EXHIBIT C



**897
Chelsea
Court**



Chelsea Ct.



EXHIBIT D

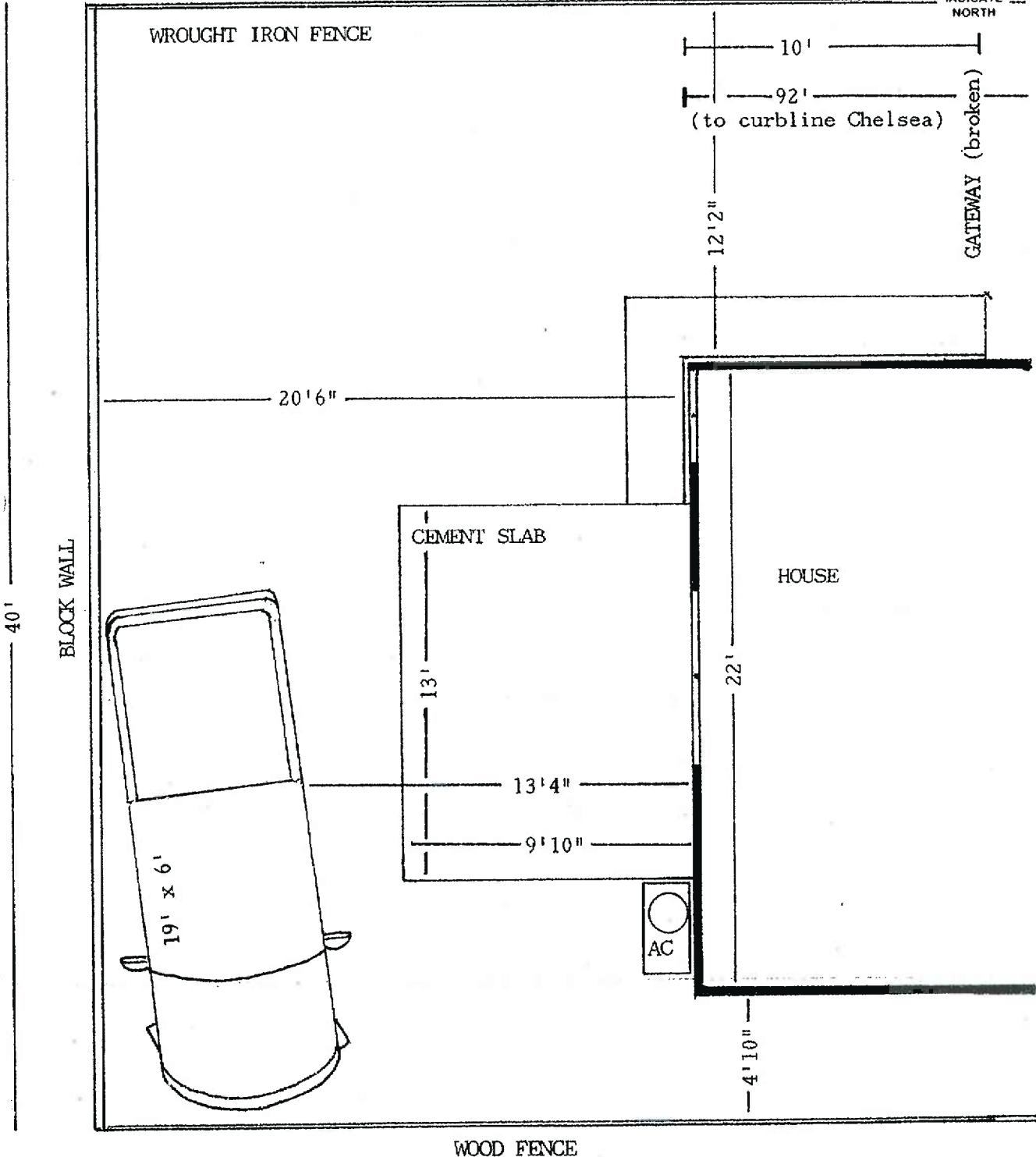
E 15 May 2007	TIME (2400) 2330	NCIC #	OFFICER I.D.	NUMBER 07-24147
------------------	---------------------	--------	--------------	--------------------

ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE =)

897 CHELSEA COURT - REAR YARD



INDICATE NORTH



PREPARED BY R. McConnell <i>R. McConnell</i>	I.D. NUMBER 1558	MO. DAY YEAR 05-20-07	REVIEWER'S NAME <i>efas</i>	MO. DAY YEAR 6/14/07
---	---------------------	--------------------------	--------------------------------	-------------------------

EXHIBIT E



897 Chelsea Court from street



897 Chelsea Court from sidewalk



Looking west into backyard of 897 Chelsea Court



Close up of gate



Gate in backyard



Backyard from gate



East from backyard



Truck tire marks in backyard (after patrol car removed)



Looking southwest



Looking west



Rear view of Guerrero's truck



Side view of Guerrero's truck



Guerrero's truck's driver's side window



Guerrero's truck's driver's side door



Guerrero's truck's driver's side



Cocaine seized from Guerrero