

**OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF VENTURA  
DECEMBER 17, 2010**

**REPORT ON THE JULY 17, 2009  
ARREST AND DETENTION  
OF CHARLES TORRENCE  
BY OFFICERS OF THE  
SIMI VALLEY POLICE DEPARTMENT**

**GREGORY D. TOTTON  
District Attorney**

**INTRODUCTION**.....1

**STATEMENT OF FACTS** .....4

    Statement of Officer Jim Wismar .....4

    Statement of Sr. Officer Steve Shorts .....8

    Statement of Detective Kathy Shatz .....10

    Statement of Detective Frank Ahlvers .....12

    Statement of Charlotte Beard.....13

    Statement of John Beard .....15

    Statement of Theresa Wheeler .....17

    Statement of William “Bill” Chandler.....18

    Statement Fatima Hammou.....20

    Other information.....23

**PHYSICAL EVIDENCE** .....25

**LEGAL PRINCIPLES** .....28

**ANALYSIS** .....32

**CONCLUSION** .....37

## INTRODUCTION

On July 17, 2009, Simi Valley officers responded to 2293 Parker Court after receiving a 911 call reporting a domestic assault between Charles Torrence and his girlfriend, Fatima Hammou. The caller was Torrence's mother who could hear Hammou screaming that she could not breathe. When the first officer (James Wismar) arrived on the scene, he saw three people emerge from the residence at 2285 Parker Court. A large male was struggling with a male and female as they made their way down the sidewalk. The officer contacted the group and discovered the male and female were residents of 2285 Parker Court and the subject they were fighting with was their neighbor, Charles Torrence. He had entered their house, without permission and without provocation and began assaulting Theresa Wheeler. As Torrence began dragging Wheeler out of the house, she yelled for her live-in boyfriend, William Chandler to help her. A struggle ensued between the three of them as Chandler attempted to free Wheeler from Torrence's grip.

Officer Wismar confronted Torrence and tried to detain him. He pulled his Taser and held Torrence at bay awaiting the arrival of backup officers. Wismar believed Torrence, who was sweating and fidgeting, was possibly under the influence of drugs. Without warning, Torrence stood up and took a few steps towards Wismar. Wismar fired his Taser but Torrence did not react; rather, he started running towards his residence as Wismar pursued him. Once he was in front of his residence, Torrence turned and faced the officer with his fists clenched. Still alone and concerned for the safety of the residents and himself, Wismar used the "drive-stun" mode of his Taser in an attempt to control Torrence, who was flailing his arms and striking the officer. Officer Charles Shorts arrived and the two wrestled Torrence to the ground. The officers placed

Torrence face down on the ground and he continued to resist by kicking and flailing his arms. The officers ultimately handcuffed Torrence who refused to stand or walk. With the help of other officers, Torrence was carried face down toward a police vehicle. He continued to resist, and because of his resistive behavior and size (6', 240 lbs), Officers did not believe that they could successfully place him inside a vehicle. They set him on the ground again face down and requested paramedics respond to their location. While waiting for the ambulance to arrive from down the block where they were staging, Torrence stopped breathing. Paramedics performed CPR and Torrence was ultimately transported to Simi Valley Hospital. He died several hours later.

The Simi Valley Police Department conducted a detailed investigation of the detention and arrest of Charles Torrence which included interviewing witnesses, collecting physical evidence, photographing the area of the detention, and conducting a detailed interview of the incident with the percipient officers. Simi Valley Police Department's investigation reports were then submitted to the District Attorney's Office for a determination whether the force used to subdue and arrest Charles Torrence caused his death, whether the force used to subdue and arrest Charles Torrence was justified, and, if not, whether criminal charges should be filed.

The District Attorney's investigation and review was conducted by Senior Attorney Stacy Ratner. The District Attorney's review included examination of approximately 500 pages of reports and supporting documents, including reports from the Simi Valley Police Department, the Ventura County Medical Examiners Office, the Ventura County Crime Laboratory, medical records from Simi Valley Hospital, audio recordings of witness statements, 911 and dispatch traffic recordings, interviews with specific witnesses, and photographs.

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 Charles Torrance. Further, the force used to subdue and arrest Charles Torrance was justified, was not excessive, and did not constitute a criminal act.

## **STATEMENT OF FACTS**

### Statement of Officer Jim Wismar

On July 17, 2009, at 11:46 a.m., Officer Wismar received a radio call to respond to a domestic disturbance at 2293 Parker Court. The parties were supposed to be inside a garage and the report was that a female was heard saying she could not breathe. Wismar was assigned as the primary officer and Senior Officer Shorts was assigned to assist. Wismar arrived first and parked his unit approximately four to five houses from the residence in question. Wismar stayed at his unit waiting for his back-up officer to arrive. Suddenly he noticed a man with tan pants and no shirt emerge from the house directly next door to Torrence's residence. The man, who was later identified as Charles Torrence, hereinafter referred to as Torrence, was approximately 6' tall and 240 lbs. He saw that Torrence was involved in a struggle with a male and a female. He did not know at that point who these individuals were or the nature of their conflict.

Wismar exited his vehicle and approached the three people. He radioed for back up and requested that they arrive code-3 (with lights and siren). Wismar noticed that Torrence seemed to be the aggressor and that he was sweating profusely. This seemed unusual to him because the man and woman with him were not sweating at all. Wismar pulled out his Taser and pointed it directly at Torrence and ordered all of them to the ground. All three complied. Torrence told Wismar not to use the Taser on him because he had been Tasered before and it was painful. Wismar noticed that Torrence was constantly fidgeting and he suspected that he was under the influence of drugs. Wismar tried to engage Torrence in conversation to buy time until his back-up arrived.

While all three subjects were seated on the ground, a young woman approached them. The woman was later identified as Torrence's girlfriend, Fatima Hammou. Torrence was yelling that he was thirsty and he became animated upon seeing Hammou. He stood up and started to approach Wismar. Wismar was concerned for his safety and for the safety of the others seated there so he discharged his Taser at Torrence. Wismar was not sure that the Taser probes actually struck Torrence because he saw no physical reaction from him even as he could hear the sound of the electrical charge. Torrence started running, screaming and flailing his arms as he ran towards his residence. Wismar pursued him and when Torrence got closer to his house, he turned and confronted Wismar with his fists clenched.

Torrence did not say anything to the officer. Wismar was approximately five to seven feet from Torrence when he discarded the cartridge from his Taser. It was now rendered in the "drive-stun" mode, which requires that the Taser itself contact the skin in order for the electrical charge to impact the individual. Wismar thought that the Taser was the best tool to use on Torrence due to his size, behavior and actions. Torrence started swinging his fists at Wismar and Wismar activated the "drive-stun" feature and attempted to strike him in the chest area.

Torrence continued to flail his arms and fists at Wismar. Wismar initially tried but failed to hit Torrence with the Taser. As the two of them fought, Wismar believed that he was successful with one contact to Torrence's chest because he heard Torrence scream and bend over. Torrence immediately stood up and continued swinging his arms toward the officer. Wismar attempted to stun him again; however, he did not believe that he was successful. Wismar did not use his O.C.

spray because he thought that due to Torrence's level of intoxication it wouldn't work and there were civilians and other officers in the vicinity he did not want affected by the spray.

Senior Officer Shorts arrived and approached with a baton in his hand. Wismar heard Shorts order Torrence to the ground; however, Torrence failed to comply. Shorts holstered his baton and grabbed Torrence's left arm while Wismar grabbed the right arm. The officers wrestled him to the ground face down. They were on top of him as Torrence continued to resist by refusing to place his hands behind his back. After struggling about 30 seconds, the officers were finally able to force his hands behind his back and handcuff him. Torrence never complied and the officers had to use physical strength to gain control. Wismar never heard Torrence say anything during the struggle. Torrence continued to kick and struggle with the officers. He managed to kick Shorts twice and grab him with one of his handcuffed hands.

While Wismar and Shorts were struggling with Torrence, Wismar saw Hammou try to approach Torrence with a cup of unknown fluid in her hand. Wismar did not know what was in the cup and he ordered her to step back. She did not comply and continued to approach Torrence. Wismar knocked the cup out of her hand and ultimately took her to the ground and handcuffed her. Wismar escorted her to a patrol car while Shorts and other officers continued to struggle with Torrence. Wismar saw that four to five additional officers arrived at the scene. Officer Shorts was injured in the struggle and he limped away from Torrence. Wismar rejoined the officers in trying to get Torrence under control. Two additional officers were able to put an ankle restraint called a hobble on Torrence.

The officers became concerned about officer safety issues due to the fact that Torrence's family was standing outside of their house and the officers were unsure whether there were additional individuals inside the house who might try to interfere with the arrest and detention of Torrence. The officers decided to move Torrence away from the front of his house into a police unit that was approximately 20 to 30 feet away. Wismar grabbed his right side, an unknown officer grabbed his left side, and two other officers grabbed Torrence's legs. They had already put his legs into a hobble, but he continued to buck and fight. The officers lifted Torrence into a horizontal position approximately two feet off of the ground and carried him towards the police car. Torrence continued to struggle and fight the officers. Torrence forced his head downward and tried to strike the ground several times. Sgt. Adamczyk grabbed Torrence's left upper torso to prevent him from hitting the ground. Torrence curled his body towards Adamczyk and began to thrust away from the officers. When they got within 10 feet of the patrol car, the officers decided that it would be too difficult to get him into the backseat of the car due to his size and resistive movements. The officers decided to move him to a more accessible area where paramedics could place him on a gurney. The officers placed Torrence onto the ground face down. Torrence had his head to one side and he was still moving. Wismar noticed that Torrence had blood on his face due to him lunging towards the ground while he was being carried.

Within 15 seconds of being placed on the ground, the paramedics arrived and approached the scene. Wismar noticed that Torrence's breathing was becoming shallow. His skin tone turned blue and he appeared to stop breathing. The officers rolled Torrence over and removed his handcuffs. The paramedics began CPR immediately and then loaded Torrence into the ambulance. Wismar accompanied them to the hospital and the paramedics performed CPR

throughout the trip. Torrence never regained consciousness. He was declared brain dead at approximately 7:00 p.m. on July 17, 2009, and he was pronounced dead at 5:45 a.m. on July 18, 2009.

Wismar indicated that he did not see any officer using physical force on Torrence while he was on the ground. He saw two officers pinning his legs to the ground while Torrence was kicking at the officers. Wismar sustained abrasions and bruises to both knees, which occurred while he struggled with the suspect on the ground.

#### Statement of Senior Officer Steve Shorts

On July 17, 2009, at approximately 11:46 a.m., Senior Officer Shorts received a radio call to assist Officer Wismar on a domestic disturbance at 2293 Parker Court. At 11:54 a.m., he was approximately two miles away when he heard Wismar request emergency assistance. Once he arrived, he could see Wismar at the north end of the cul-de-sac engaged in a struggle with a male subject. He pulled his baton out as he approached them. Shorts ordered the subject, later identified as Torrence, to the ground, which he failed to do. Shorts holstered his baton and grabbed Torrence's left shoulder/arm while Wismar attempted to grab him from the right. He and Wismar were able to force Torrence to the ground face down. Torrence was flailing his arms and kicking his feet. He was grunting as Shorts was ordering him to comply and place his hands behind his back.

Torrence refused to submit to the officers. While Torrence was on the ground, Shorts placed his leg on his back as he attempted to handcuff him. After struggling for approximately one to two

minutes, he and Wismar were able to force his hands behind his back and handcuff him. Torrence continued to resist by moving his body and kicking. Shorts pleaded with the suspect to comply, but Torrence ignored him and continued grunting while he resisted. Torrence grabbed Shorts' hand while he was handcuffed but Shorts was able to break free. At approximately 11:58 a.m. during the struggle, Shorts used his radio to request that paramedics stage in the area. He said that because they were fighting with Torrence, he felt it would be helpful to have an ambulance available to evaluate him once they got him into custody.

Shorts became concerned about officer safety because they were out in the street and struggling with Torrence with their backs to his house. They did not know if there were other subjects around who would attempt to assist Torrence. Shorts noticed a female, later identified as Torrence's girlfriend, Fatima Hammou, who came outside and tried to approach Torrence while they were trying to control him. She refused to follow orders to stay back, and ultimately she was taken into custody by Wismar. Two more officers arrived to back them up. Torrence continued to resist by bucking and attempting to grab the officers' hands. He was grunting while he was doing this. Officer Vigil assisted by placing her knee on his back and Shorts then slid down to his legs, crossed them, and placed his body over Torrence's legs in an attempt to prevent further assault. Torrence was able to kick at Shorts several times, and once he kicked him so hard that Shorts' ankle was forced into the curb. Shorts then relinquished his position because he was in pain. A short time later he saw several officers, possibly six, carrying Torrence approximately two feet off the ground. He saw Torrence struggling with the officers while they carried him, and he repeatedly tried to strike his own head on the ground.

When Shorts walked away from the struggle, he was approached by fire department personnel who asked him to take off his shoe to examine his ankle injury. While he was being examined by emergency personnel, Shorts did not watch what was happening with Torrence. Approximately two minutes later, he looked back and he saw Torrence on the ground and paramedics administering CPR on him. He did not see the officers place him on the ground, nor did he see what Torrence's position was. Shorts said that during the entire struggle, Torrence never complied or followed the officers' orders. The only way he was controlled was through physical strength applied by the officers. Shorts did not see Wismar use the Taser or any other weapon on Torrence. During the struggle, Torrence never said anything, but he continued to grunt at the officers. As a result of the assault by Torrence, Shorts sustained a strained ankle, and he was treated at Simi Valley Hospital after the incident.

#### Statement of Detective Kathy Shatz

Detective Shatz was in the Simi Valley Police Department underground parking lot with Detective Frank Ahlvers when she saw Officer Kathy Vigil leave the parking lot with her emergency lights and sirens activated. Shatz and Ahlvers got into an unmarked police car and responded to Parker Court to back up other officers on scene. When Shatz arrived at the scene, she saw Torrence lying in the street face down and handcuffed behind his back. She saw that he was struggling back and forth with the officers and they were trying to hold him down. Shatz noticed that the officers were acting very calm with the suspect, and they were telling him to calm down and stop fighting. Torrence did not comply with their orders and continued to struggle.

Shatz saw that Senior Officer Shorts was holding Torrence's feet down when she suddenly heard Shorts cry out in pain. He had apparently been kicked in the leg by Torrence. She saw Shorts stumble and walk away from Torrence. Shatz knelt down on Torrence's back in the area between his shoulder blades in order to hold him down. She saw Detective Ahlvers take over for Officer Shorts who was injured. Shatz and Ahlvers then applied a restraint strap called a hobble to Torrence's ankles to keep him from kicking. Once the hobble was applied, she heard an officer suggest that they move Torrence out of the street towards a police unit.

Shatz took Torrence's left arm and Officer Vigil took his right arm. Additional officers grabbed Torrence's legs. Torrence was fidgeting and contorting his body to try to get away from the officers. Shatz saw that Torrence was bending his body and almost striking his head on the pavement as they were moving him. She was not sure if he actually hit his head on the ground but he came very close. They moved Torrence close to a patrol car and placed him on the ground near the car. The officers determined that they would not be able to place him into the patrol car. Then they picked Torrence up again and moved him away from the patrol car so that he could be placed in an ambulance that had been staging up the street. Once they got Torrence to the next location, three officers were holding him down because he was still struggling. Shatz volunteered to assist in holding Torrence down, but the three officers said that they did not need any help. Shatz said the officers were kneeling on or near Torrence while they held him for the ambulance. Shatz was then called away to do a pat down search on Torrence's mother who was seated on the front steps of her house.

When Shatz looked back towards Torrence, she saw that the paramedics were performing CPR on him. She was surprised because she had just walked away from him and he was struggling and clearly conscious as he was talking and saying “please” and “no.” Shatz never saw any officer using any weapons on Torrence, nor did she see any excessive force being used in order to control him.

#### Statement of Detective Frank Ahlvers

Detective Ahlvers was with Detective Shatz in the parking garage when he saw Officer Vigil leave the station with lights and siren on. He and Shatz followed to provide backup to officers at the scene. They did not have their radio on so they did not know the reason for the request for backup. Once he got to the scene he saw three to four officers holding onto Torrence to control him. Ahlvers went to the residence to provide additional help if it was necessary there. Ahlvers was directed by Sergeant Thompson to go back and assist the other officers in securing Torrence. When he got back to Torrence, he saw that he was “thrashing around” and trying to throw the officers off of him even though he had his hands cuffed behind his back. The officers were trying to put a leg restraint on Torrence, and Ahlvers assisted in getting it around his ankles. The restraint was not attached to the handcuffs that were on Torrence. Ahlvers and the other officers told Torrence to calm down but he ignored them.

Ahlvers assisted in picking Torrence up and moving him towards the patrol car. He identified the other officers who were assisting as Detective Shatz, Sergeant Adamczayk and Officer Vigil. They lifted Torrence up and moved him towards a patrol car. During this move, Torrence was struggling. He kept bending his body in the middle and then straightening out as if to throw the

officers off of him. Ahlvers described that it was “very difficult to hold onto him, we were having trouble controlling him because he’s a pretty good sized guy.” The officers put him down, and then Sergeant Adamczyk suggested that they place him into an ambulance instead. They picked him up again and went around the police unit and ended up putting him down on the ground again. Torrence was still jerking around and trying to get away from them. He was yelling something unintelligible. Ahlvers grabbed both of his feet and bent his legs at the knees to stop him from kicking.

Torrence was lying face down while officers held him by his arms and ankles. Ahlvers told Torrence, “Stop, if you relax we’ll lighten up, stop, relax.” Ahlvers then noticed that Torrence had blood on his head. Ahlvers lifted his head in order to see where he was bleeding from but he could not tell. The paramedics arrived, and they brought a gurney from their rig. Torrence was making noises, was still thrashing around and then all of a sudden he went still. The officers turned him over and discovered he had stopped breathing. They took the handcuffs off of him and the paramedics began CPR immediately. Ahlvers said that Torrence did not stop or relax until the moment he stopped breathing. He described it as, “It was almost like a switch was turned off, and it was that quick.” He said that nothing in particular happened before he stopped breathing.

#### Statement of Charlotte Beard

Charlotte Beard (DOB 3/30/50), is Charles Torrence’s mother. She lives at 2293 Parker Court in Simi Valley. She told detectives that her son, Charles Torrence, was also living at her house along with her other son, John Beard, and a boarder named Justin Seyssel. Charlotte indicated

that Charles moved into her house in January 2009 and he was living in a converted room in her garage. Because of problems that she had with Charles in the past regarding his drug use and violent behavior, he was only allowed to enter the house to use the bathroom. Charlotte said since Torrence had divorced his wife, he had made life hell for her and the family. He was arrested for assault charges in January 2009 against an old girlfriend's father. Torrence had a current girlfriend named Fatima Hammou who was not supposed to be living in the garage with him but she spent most of her time there.

On July 17, 2009, Charlotte was woken up by her son John Beard. He told her that Charles and Fatima were having a fight. Charlotte could hear Fatima crying hysterically and saying something like "quit it." She also heard Fatima say repeatedly that she could not breathe. Beard called 911 to report that her son was hurting his girlfriend. Charlotte went upstairs with John because Torrance "scares" her and she believes that "he has the potential to hurt people."

While she was on the upstairs balcony, Charlotte saw Torrence in front of the neighbor's house next door. He was pulling the female neighbor by the wrist towards the sidewalk. She also saw her neighbor's boyfriend attempting to free her from Torrence's grasp. Charlotte and John went back downstairs and called 911 again. The operator told her that the police were already outside of her house.

Charlotte and John went outside and saw Torrence and the two neighbors seated on the sidewalk. Charlotte saw a police officer standing in front of them pointing what she thought was a gun at them. She could hear Torrence yelling repeatedly that he wanted water because he was thirsty.

She turned to go back into the house because she did not want to see what was going to happen. Charlotte said that the next thing she knew, Torrence and the officer were right outside of her house. Torrence was in a prone position on his abdomen and the officer was attempting to subdue him. John kept yelling at Torrence to “stay down” because he was resisting the officer.

Charlotte then saw Fatima run out of the house holding a cup of water. Fatima tried to give the cup to Torrence, but the officer would not let her. Charlotte saw Fatima get knocked to the ground. She could not tell if Fatima was cooperating with the police. She said that the police were swarming around both Torrence and Fatima. While Torrence was struggling with the officers, Charlotte went into the house. It was her opinion that Torrence was trying to get up from the ground while the officers were trying to hold him down. She did not see the officers place Torrence in handcuffs or carry him toward the ambulance.

Charlotte believed that Torrence had used drugs on this day. She said that he was acting irrational. Charlotte indicated that she had previously obtained paperwork in order to get a restraining order against Torrence, but she had not filled it out. She wanted to evict him from the house, but she was afraid of what he might do.

#### Statement of John Beard

John Beard (DOB 1/20/82), lived at 2293 Parker Court with his mother, Charlotte Beard, and his brother, Charles Torrence. John said that Torrence is not allowed in the main house because of the problems he has caused. He said that Torrence takes advantage of his mother. He described

Torrence as someone with a temper who breaks things when he gets upset. He was aware that Torrance uses drugs such as ecstasy, GHB and cocaine.

On July 17, 2009, John was in the front yard pulling weeds and raking. He heard Fatima and Torrance fighting. He could hear Fatima telling him to “stop it.” He went upstairs to tell his mother. When he and his mother came downstairs, he heard Fatima crying hysterically and saying that she could not breathe. He and his mother went upstairs and called 911. From the upstairs balcony, he saw Torrance running down the driveway attempting to put his pants on. He thought Torrance was chasing Fatima, but he did not see her.

John went downstairs with his mother and they called 911 again. He went outside and saw Torrance sitting on the sidewalk with the neighbors. He saw a police officer facing them, pointing his Taser at Torrance. He could hear Torrance yelling for water. He thought that Torrance was getting a “little twitchy” while he was sitting on the sidewalk. John saw Torrance get up and walk towards their house. He saw the officer coming behind Torrance telling him to stop. When Torrance and the officer got in front of their house, he saw Torrance stop and take a fighting stance towards the officer. He saw Torrance and the officer engage in a fight. He saw them wrestling to the ground. The officer kept telling Torrance to stop, and then he saw the officer use the Taser on Torrance. He saw a second officer arrive with a baton in his hand. At this point, his mother took him into the house.

John said that he did not see what had happened up the street before Torrance and the neighbors were seated on the sidewalk. He thought that during the confrontation with the officer, Torrance

was Tased a couple of times. He said that Torrence's only reaction to being Tased was that it seemed to scare him. He thought that Torrence was resisting, but then he was pulled away before he saw very much. He said, "My mom was crying and she didn't want me to see it, she didn't want to see it. She wanted me with her."

#### Statement of Theresa Wheeler

Theresa Wheeler lives at 2285 Parker Court with her boyfriend, William "Bill" Chandler. Her house is next door to Torrence's house. She was at home with her front door open talking to some friends when Torrence walked in her front door. He grabbed her arm and told her that he needed some water. She noticed that he did not have a shirt on and he had red splotches on his stomach. Torrence told her, "They got me with their laser, they got me with a laser, I can't stand any more of that." He also said, "They zapped me, they zapped me, don't let them zap me again, don't let them zap me again, please, please, don't let them zap me."

Theresa told him that she would get him some water and then she yelled for Bill Chandler. Once she yelled for Bill, Torrence pulled Theresa quickly out of the house. Torrence pulled her down the street in the opposite direction of his house. Theresa tried to pull away from Torrence and in response, he grabbed her around the neck and continued to pull her down the street. Once she was pulled two houses away, Bill came out and demanded that Torrence let her go. A police officer arrived and pointed a Taser at Torrence. He responded by saying, "No, no more, no more, I don't want that please, please, please." Bill was standing with them at this point and the police officer demanded that all three of them sit down on the sidewalk. Theresa said that all of a sudden, Torrence got up and started running towards his house. He ran behind her and Bill and

she saw the officer pointing his Taser at Torrence. She and Bill ducked their heads as the officer fired the Taser at Torrence. Theresa thought that the officer fired the Taser at Torrence multiple times. She said that she thought that the officer was firing the Taser at Torrence as he ran towards his house because he kept screaming every time the Taser went off.

Theresa saw Torrence fall onto a car then onto some trash cans and finally onto the ground. Once he was on the ground, Theresa saw two police officers get onto him while he was facedown on the ground. She saw the officers swinging at Torrence while he was on the ground. She said that Torrence was fighting in the beginning and then he just laid there. She went into her house for what she thought was five minutes and then came back out. When she came out, she saw that Torrence was in the same position in the street and the same two officers were on him. She saw the officers place him on a gurney and then into the ambulance. When asked about Torrence's condition when he first came into her house, she said that she could tell that he was high. She said that the way he spoke was "gerbily, really fast and really high."

#### Statement of William "Bill" Chandler

Bill Chandler has lived with Theresa Wheeler at 2285 Parker Court for approximately 5 ½ years. He knew Torrence and described how Torrence would get "wound up and play music real loud" late at night. He said that Torrence had threatened to call the police on him in retaliation for his complaints about his music. Torrence had also threatened to beat him up several times for his complaints.

On July 17, 2009, he was inside his house when he heard Theresa calling him from the front room of the house. When he went out, he saw that Theresa was not there. A couple of Theresa's friends were standing in the entry way and told him that someone was choking her and dragging her down the street. When he asked who was doing this, the friend told him, "That guy Chuck." Bill went outside and saw Torrence dragging Theresa down the street by the neck. He saw that Torrence lost his grip on Theresa's neck and then he grabbed her with two hands around her neck. Bill thought that Torrence was choking Theresa and she was visibly in distress because she could not breathe. Bill was also concerned because Theresa had broken her back and had recently had surgery. Bill told Torrence to let her go because she was "delicate."

Bill saw a police officer come walking up the street. Torrence was still choking Theresa when the officer arrived. Bill pushed Torrence and grabbed onto Theresa to get him off of her. He believed that the officer was going to use his Taser on Torrence. He heard the officer tell Torrence that if he sat down he would not use the Taser on him. Bill said that Torrence would not sit down, and he kept complaining that he wanted water. Bill was able to pull Theresa away from him. The officer had all three of them sit down on the sidewalk. While they were sitting there, Torrence was acting erratic. Bill believed that Torrence was "strung out on something." He could tell the way Torrence was watching the officer and squirming around that Torrence was going to run or be aggressive with the officer. He saw Torrence get up and run behind him and Theresa towards his house. Bill saw the officer fire the Taser over their heads at Torrence. The officer then chased Torrence down the street towards Torrence's house.

Bill saw additional officers arrive and assist the first officer. He saw a couple of officers trying to get handcuffs on Torrence. They were giving him verbal commands but he was not obeying them. He said, "If Torrence had just done what he was told to do, everything would have been fine." Bill was asked if he had anything critical to say of the officer's handling of the incident. He said, "I don't think he used enough force. If he would have done what the officer said in my eyes I don't think (Torrence) would have had a scratch on him."

#### Statement of Fatima Hammou

Fatima Hammou (DOB 5/29/83), was the girlfriend of Charles Torrence in July 2009. She and Torrence had been dating for a while and she spent a lot of time at his house on Parker Court. Hammou told detectives that she and Torrence frequently used methamphetamine together and they had used methamphetamine on the morning of July 17, 2009, at a friend's house. She said that she and Torrence frequently "slam" (ingest via injection) but on this morning, they smoked the drug. She did not know how much Torrence used, but she said that she had approximately three hits off of the pipe.

On July 17, 2009, after they had used methamphetamine, Hammou and Torrence went out to get drinks. When they got home, they went out to the pool area where they hung out. They went back into the garage room that Torrence occupied and they got into an argument. She admitted that the argument got "a little physical" and he pushed her onto the bed and left the room. She admitted that Torrence was tense and angry that day. She said that their argument was "mostly verbal, and then, like he got more intense in his words."

Hammou went out to the front of the house to look for him and she could hear his voice down the street. She said that she never called 911 to report the domestic violence and she did not know who called the police. She walked down the street to find Torrence and she saw him seated on the sidewalk at 2277 Parker Court. When Torrence saw her, he started yelling, "Help me, I want some water, I'm having a hard time breathing." Hammou went back into Torrence's house and retrieved a cup of water for him. When she came out of the house, she saw Torrence running to the front of the house. She saw an officer pin him down. She saw wounds on him and she believed that he had been hit with a Taser. She also heard a sound like an "electric shaver" and she said that was the Taser the officer was firing.

Fatima saw two officers with Torrence, one had a baton in his hand and the other had a Taser in his hand. The officer with the baton did not use it, but she did see the officer with the Taser use it on Torrence twice in the back as he was chasing him. She saw him use it once on Torrence's chest as he was falling over some trash cans. She saw the officer use the Taser by touching it to Torrence's body. She heard the officer with the baton telling Torrence to "stop resisting." She heard him say that at least three times.

The officer with the baton told her to stay back, but Fatima had a cup of water and she wanted to give it to Torrence because he was complaining about being thirsty. As she approached Torrence, the officer with the Taser pushed her back and ultimately arrested her and placed her in handcuffs in the back of the patrol car. She could still see Torrence from her vantage point in the patrol car. Additional police officers arrived and assisted in trying to take Torrence into custody. She heard Torrence yell, "Help." She saw two officers at Torrence's legs and two around his

torso on their knees trying to handcuff him. She said the officers were on their knees on Torrence's back. She saw the officers trying to put a thick purple band on his legs.

The officers tried to carry Torrence and put him into a police car, but he was "trying to get out of it." He was pulling his legs forward and bending forward in a rolling motion. She said that the officers were able to hold onto Torrence, but he still kept resisting. She saw the ambulance come, but she could not see him as they placed him into the ambulance.

Fatima was arrested for a violation of section 11550 of the Health and Safety Code for being under the influence of methamphetamine on July 17, 2009. The officers noted that she had scratches and bruises on her body and they photographed them. She did not explain how she received the injuries.



Pictures taken of Fatima Hammou on 7/17/09

### Other Information

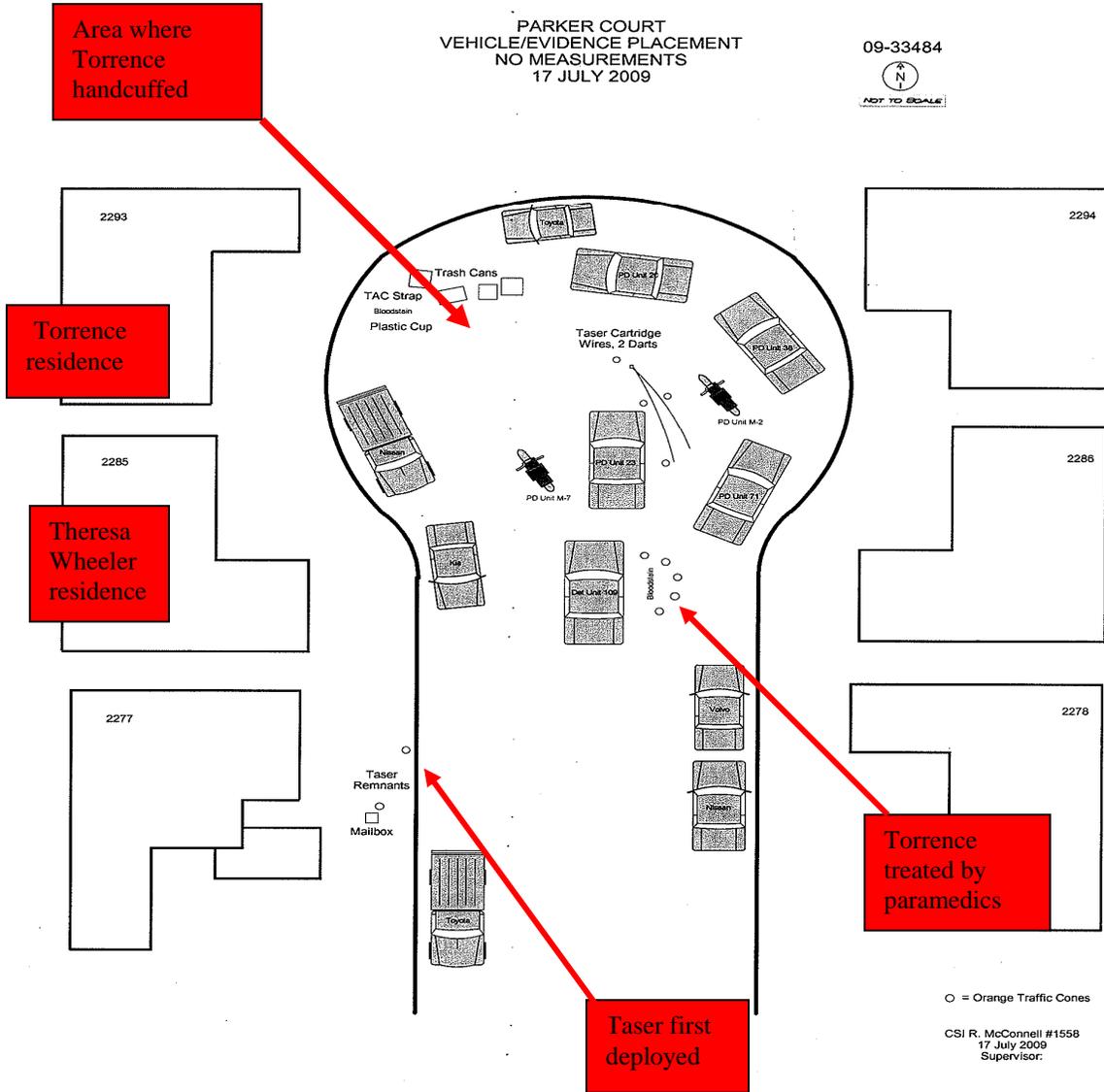
In the summer of 2007, Torrence met Whitney Lirones. He dated her until January 2008.

Whitney told detectives that she and Torrence used cocaine together. She described themselves as “druggies.” She said that when she and Torrence used cocaine, they used to get high to the point that they would have visual and audible hallucinations. She said that when Torrence would get extremely high, he would get “crazy.” She said that Torrence would talk about seeing

“flickers and stuff like that.” The detective explained to her that on July 17, 2009, Torrence was reported to have been yelling, “They’re trying to electrocute me, they’re trying to electrocute me.” Whitney confirmed that Torrence would talk like that when he was high. On January 16, 2008, Torrence was arrested for brandishing a firearm at Whitney Lirones’ father, as well as for terrorist threats and vandalism of his car. He was convicted of felony terrorist threats and misdemeanor vandalism.

He was on felony probation at the time of the instant incident.

**Physical Evidence**



**Search of Torrence's bedroom**

On July 17, 2009, at approximately 11:00 p.m., Simi Valley police officers executed a search warrant at the home of Charles Torrence. In his room they found two methamphetamine pipes, a

baggie containing .4 grams of methamphetamine, one plastic syringe with no needle, and paperwork in the name of Charles Torrence.

### **Taser information**

On July 22, 2009, Detective Randy Foushee retrieved Officer Wismar's department-issued Taser, which had been booked into evidence on July 17, 2009. Sergeant Jim Buckley conducted the test to download the activations for the Taser usage on July 17, 2009. There were three activations shown on the record. Each activation lasted five seconds and they were approximately nine seconds apart.

### **Autopsy of Charles Torrence**

Dr. Ronald O'Halloran, Ventura County Chief Medical Examiner, conducted the autopsy on Charles Torrence on July 18, 2009. He found that Torrence had multiple abrasions and contusions on the face, trunk, and extremities. He also had multiple bilateral upper thoracic anteriolateral rib fractures. The abrasions and contusions were fresh and caused by Torrence struggling and striking his head on the ground while the officers were trying to take him into custody. The rib fractures were likely caused by CPR conducted by the paramedics at the scene and in the ambulance on the way to Simi Valley Hospital. There was no physical evidence on Torrence's body to suggest that the Taser probes ever entered his skin. Toxicology testing of two hospital blood samples and one hospital serum sample detected a high level of methamphetamine at 1.7, 1.8 and 6.7 micrograms per milliliter. According to Dr. O'Halloran, the level of methamphetamine in Torrence's blood is a toxic/lethal level. Torrence arrived at Simi Valley Hospital at 12:22 p.m. on July 17, 2009. Upon his arrival, his temperature was 104.2 degrees.

This temperature is indicative of hyperthermia which occurs as a result of very high levels of methamphetamine in the system and can lead to cardiac arrest. The temperature dropped to a low of 100 degrees by 9:00 p.m. and then climbed to 106 degrees at 1:00 a.m. on July 18, 2009. He remained in a deep coma the entire time at the hospital. By 5:00 p.m. on July 17, 2009, he was declared brain dead. He was acidotic, his potassium was high and he developed kidney failure. He was pronounced dead on July 18, 2009, at 5:45 a.m.

Dr. O'Halloran found that the history and findings in regards to Torrence's death are consistent with two reasonable underlying causes of death.

1. Methamphetamine intoxication causing a cardiac arrhythmia or a seizure perhaps precipitated by hyperthermia.
2. Asphyxia by chest compression during restraint.

Dr. O'Halloran concluded that Torrence's behavior prior to arrest, the toxicology finding of toxic/lethal levels of methamphetamine in his blood and the hyperthermia measured at the emergency room are all consistent with and suggestive of methamphetamine intoxication as the cause of death.

He also indicated that asphyxia by chest compression can also be considered a possible cause of death based on the circumstances of Torrence losing vital signs while being held down prone without the use of his restrained arms and legs to relieve excessive pressure on his chest. He opined that it is unclear whether Torrence died from asphyxia.

Based upon this information, he ruled the cause of death to be undetermined. He also concluded that since deaths by drug intoxication without suicidal intent are generally ruled to be accidents, and deaths at the hands of others, regardless of intent to cause harm, are generally ruled to be homicides, the manner of death in this case could not be determined.

## **LEGAL PRINCIPLES**

### **A. CRIMINAL VIOLATIONS COMMITTED BY CHARLES TORRANCE**

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

- Domestic Violence in violation of Penal Code section 243(e) upon Fatima Hammou.
- Battery in violation of Penal Code section 242 upon Theresa Wheeler.
- Battery on a Peace Officer in violation of Penal Code section 243(c)(2) upon Officer Wismar.
- Battery Causing Serious Bodily Injury in Violation of Penal Code section 243(d) Upon Officer Shorts.
- Resisting a Peace Officer in violation of Penal Code section 148(a) against Officers Wismar, Shorts, Ahlvers and Shatz.
- Possession of Methamphetamine in violation of Health and Safety Code section 11377.
- Under the Influence of a Controlled Substance in violation of Health and Safety Code section 11550.

## **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 homicides, 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*, (1989) 490 U.S. 386, 397. 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*, (1985) 471 U.S. 1, 3.

“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, 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.” 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.”

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.” *Scott, Id.* 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.

### **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 5.04 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.

Under General Order 5.04, 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 5.04 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 a 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 5.04 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.

### **ANALYSIS**

In the instant case, Officer Wismar responded to a call of domestic violence at the home of Charles Torrence. The initial call indicated that the suspect was inside of his house and injuring his girlfriend. When Wismar arrived at the scene, he waited for backup to arrive. While he was in his patrol car, he saw Torrence outside of a house next door to his residence. He noticed that Torrence was shirtless and wearing a pair of pants. Torrence was holding a female by the neck and attempting to drag her down the street. Wismar also saw that another male was trying to pull the female away from Torrence. Wismar approached the three individuals and ordered them to sit down on the sidewalk. They all complied with his order. Wismar pulled his Taser out because he could see that Torrence was acting violently and appeared to be under the influence of a controlled substance. He noticed that Torrence was sweating profusely and yelling that he was thirsty. A young female, who was later identified as Torrence's girlfriend, came walking from the direction of Torrence's house. Suddenly, Torrence stood up and advanced towards Wismar. Wismar was concerned for his safety and for the safety of the two civilians at the scene so he deployed his Taser at Torrence. Torrence did not react to the Taser and started running

northbound towards his residence. An examination of Torrence's body by Dr. O'Halloran at the autopsy revealed no evidence that the Taser probes ever entered Torrence's skin.

When Torrence was running towards his house, Wismar became concerned that he was going to harm others inside his house or escape after assaulting his neighbor. Wismar chased Torrence into the street and discarded the Taser Cartridge to so that he could use the Taser in the "drive-stun" mode. Torrence stopped in front of his house and took a fighting stance towards Wismar with his fists clenched. At this point, Wismar was trying to detain and arrest Torrence for the violent assault on the female neighbor, as well as resisting and delaying a peace officer, and possibly being under the influence of a controlled substance. Torrence swung at Wismar several times and Wismar was able to stun Torrence who fell to the ground. He immediately got up and resumed fighting with Wismar. Senior Officer Shorts arrived at the scene and approached with his baton in his hand. Wismar was still fighting with Torrence in an attempt to take him into custody. Wismar was able to use the Taser again on Torrence but it did not disable him. Shorts grabbed a hold of Torrence's arm and Wismar was able to grab his other arm and take him down to the ground. While Torrence was on the ground, he continued to struggle and fight with the officers. It is clear from Torrence's actions that he did not want to be taken into custody and that he was intent on harming the officers.

Wismar and Shorts were able to place Torrence in hand cuffs behind his back but he continued to kick and fight with the officers. Officer Shorts was injured by Torrence who kicked him in the ankle causing a severe sprain. Additional back up officers arrived on the scene and helped by getting Torrence's legs bound together with a hobble restraint. Two members of Torrence's

family came outside and were standing on the driveway while the struggle was going on. In addition, Torrence's girlfriend had approached the officers and tried to hand Torrence a cup with an unknown fluid in it. Officers had to take her into custody to keep her from interfering with their arrest of Torrence. While Torrence was in both handcuffs and the hobble restraint the officers decided to move him away from the front of his house. They did not know if the residents of the house were hostile to them and would try to interfere with the arrest of Torrence so they decided to move him into a patrol car.

Four officers lifted Torrence off the ground by holding onto his arms and legs. They carried him towards the closest patrol car with the intent of placing him into the back seat. Torrence continued to struggle by bucking his body so violently that he struck his head on the ground several times.

The officers determined that because of Torrence's size, 6'0" 240 lbs, and his constant struggling that it would not be feasible to place him into the back of the patrol car. Ambulance and Fire had been notified by Officer Shorts during the struggle so they were staging down the street. The officers decided to move Torrence further into the cul-de-sac so that he could be placed onto a gurney by the paramedics. Several officers told Torrence to calm down once he had been handcuffed but he did not pay attention to them. The officers placed Torrence face down on the ground while waiting for the gurney. A couple of officers held his arms and legs down to keep him from struggling. At least one officer had his knee on Torrence's back in an attempt to control him. The ambulance arrived approximately one minute after Torrence was placed on the ground. When the ambulance arrived the officers noticed that Torrence had stopped breathing.

The officers rolled him over and took off his handcuffs while the paramedics performed CPR on him. Torrence was placed into the ambulance and transported to Simi Valley Hospital. He never regained consciousness and died the next day.

### **USE OF THE TASER WAS REASONABLE UNDER THE CIRCUMSTANCES**

Officer Wismar activated his Taser three times during his contact with Torrence. The first activation did not result in Torrence receiving any electric shock because the probes did not attach to his skin. It is clear that Torrence did not feel the probes because he started running and did not react. Wismar utilized the Taser in the “drive-stun” mode two times during his struggle with Torrence. Wismar was not aware of whether he actually made contact with Torrence both times but other witnesses saw that Torrence reacted to being touched by the Taser. On both occasions that Torrence received the electrical charge of the Taser he fell down but then got right back up and continued to fight with Wismar. Wismar decided to use the less lethal Taser in the hopes that he could control Torrence. He chose not to use his O.C. spray because he was unsure that it would be effective in this setting and there were other officers and civilians in close proximity that could have been adversely affected by the O.C. spray.

Wismar was in compliance with Simi Valley Police Department standards in using the Taser. There were only three activations and it appears that only two of them impacted Torrence. Because Torrence posed a danger to his girlfriend, his neighbors and the officers it was incumbent upon Wismar to take him into custody. Wismar was unable to control Torrence without the assistance of the Taser. As a result, his use of the Taser was reasonable under the circumstances.

**THE OFFICERS USED A REASONABLE AMOUNT OF FORCE TO DETAIN TORRENCE**

There is no evidence that any of the officers used excessive force on Torrence during the struggle to arrest and detain him. Torrence fought continuously with the officers and tried desperately to avoid being taken into custody. Even though the officers tried to calm him down, he was extremely agitated once he was handcuffed. It was necessary for several officers to intervene to control Torrence because of his size and his violent behavior.

Even though Torrence fell down when he was stunned, he got right back up immediately and continued to fight with Officer Wismar. Officer Shorts had his baton in his hand when he initially approached Torrence but he holstered it immediately and grabbed Torrence by the arm. Torrence was never hit by the baton or any other object during the struggle.

As noted above, Officers Wismar and Shorts had a duty to take Torrence into custody given his violent behavior and the risk he posed to others. They only used the amount of force that was necessary to secure his custody. Once he was in handcuffs two other officers assisted in placing him in the hobble restraint and then they merely held him down and did not exert any additional force on him. He continued to struggle and make noises until he suddenly stopped breathing. It is clear from Torrence's erratic behavior and verbalizations that he was hallucinating when he entered Theresa Wheeler's house. He was violent and out of control due to the toxic/lethal levels of methamphetamine in his system. He continued to resist and fight the officers even after being placed in restraints. While the officers waited for the ambulance to arrive they used a minimal

amount of force to hold him on the ground. While being held on the ground he continued to move around and make grunting noises indicating that he was still conscious.

Detective Ahlvers described the moment when Torrence stopped breathing, “It was almost like a switch was turned off, and it was that quick”. Dr. O’Halloran could not determine the exact cause or manner of death in this case. The way that Torrence suddenly stopped breathing is consistent with him suffering sudden cardiac arrest as a result of a methamphetamine overdose. Although Torrence was laying face down with his hands and feet restrained and at least one officer putting pressure on his upper back, there is simply not enough evidence to conclude beyond a reasonable doubt that the pressure exerted on him lead to his death.

## **CONCLUSION**

Based upon a review of all of the evidence 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 Charles Torrance.
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 Charles Torrance on July 17, 2009.
3. The involved officers were fully justified in the amount of force they used in preventing Torrance from re-entering his residence and/or harming others.
4. The involved officers were fully justified in the amount of force they used in subduing and arresting Torrance.