

INVESTIGATIVE REPORT
Subject to California Penal Code Section 832.7

Client: City of Alameda

Subject: Administrative Investigation
In Custody Death
Consolidated Report

Investigator: Renne Public Law Group

Date: May 3, 2022



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I. INTRODUCTION

On April 19, 2021, at 10:37 a.m., in response to 911 calls, the Alameda Police Department (APD) dispatched officers to the vicinity of 800 Oak Street in the City of Alameda. There, near Scout Park, the officers contacted Mario Gonzalez Arenales (“Gonzalez”). Near to Gonzalez were two *Walgreens* baskets containing bottles of liquor with security caps still attached or broken, and some of the alcohol apparently consumed. After speaking with Gonzalez for about nine minutes, the officers determined that Gonzalez was publicly intoxicated and unable to exercise care for his own safety or the safety of others, a potential violation of Penal Code section 647(f).

As officers attempted to handcuff Gonzalez to effectuate an arrest, he resisted and after about three minutes, Gonzalez and the officers fell to the ground. On the ground, the officers struggled to handcuff Gonzalez, which they were able to do. After the officers and Gonzalez were on the ground for about five minutes, Gonzalez became unresponsive. The officers on scene began lifesaving measures, before such efforts were taken over by the Alameda Fire Department. After being unable to resuscitate Gonzalez on scene, Alameda Fire Department transported him to Alameda Hospital, where he was pronounced dead at 11:45 am.

The City of Alameda retained the Renne Public Law Group to conduct a confidential Administrative Investigation relating to the detention of Mario Gonzalez on April 19, 2021 by police officers employed by the City of Alameda. The investigation was conducted pursuant to Penal Code Sections 832.5, 832.7, Government Code Section 3303 *et. seq.* and Alameda Police Department Policies.

In conducting this investigation, we are cognizant of the importance to the public, the family of the deceased and the involved personnel in a thorough and independent analysis. This report describes the scope of the investigation, provides a summary of the relevant facts and policies and addresses conformity with those policies. This report addresses whether Department personnel violated any Alameda Police Department policies as they existed at the time of the incident. Additional investigations have occurred, including those conducted by the Alameda County District Attorney’s Office and the Alameda County Sherriff’s Office. This report does not address issues relating to potential criminal or civil liability or discuss potential changes to Police Department policies.

II. FORMAT OF REPORT

Recommendations. As provided by Alameda Police Department (APD) Policies, Section 340.6, investigative reports are to make one of the following recommendations:

Unfounded: The investigation indicates that the act or acts complained of did not occur or failed to involve police personnel.

Exonerated: Acts did occur but were justified, lawful and proper.

Not Sustained: Investigation fails to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint.

Sustained: The investigation disclosed sufficient evidence to clearly prove the allegations made in the complaint.

Not Involved: Investigation established that the individual indicated in the allegation was not involved in the alleged incident.

Section 1020.6.4 articulates the recommendations to be made in a similar, but slightly different manner.

Unfounded: When the investigation discloses that the alleged acts did not occur or did not involve [department/office] members.

Exonerated: When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained: When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained: A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or [department/office] policy.

Report Format. Under APD Policy Section 1020.6.5, the body of the report must include a summary of the facts giving rise to the investigation, a chronological account of the investigative steps taken, observations from evidence and comprehensive summaries from all interviews. For every subject employee, the report must address each allegation separately by assigning an appropriate disposition based on the investigation and evidence. The report must summarize all evidence relevant to the allegation in support of the disposition.

III. SUMMARY OF RECOMMENDATIONS

This report makes the following recommendations.

Subject Officer: Eric McKinley

In connection with the field interview of Gonzalez, Officer McKinley acted in conformity with Department policy. Recommendation: Exonerated.

In connection with the decision to arrest Gonzalez, Officer McKinley acted in conformity with Department policy. Recommendation: Exonerated.

In connection with the use of force that occurred initially to effect the arrest of Gonzalez, Officer McKinley acted in conformity with Department policy. Recommendation: Exonerated.

In connection with the use of force that occurred after the officers and Gonzalez were on the ground, there is evidence that Officer McKinley acted in conformity with Department policy, but due to the limits of the body camera footage certain information could not be completely confirmed. Recommendation: Not sustained.

Subject Officer: James Fisher

In connection with the initial field interview of Gonzalez, Officer Fisher was not present. Recommendation: Not involved.

In connection with the decision to arrest Gonzalez, Officer Fisher acted in conformity with Department policy. Recommendation: Exonerated.

In connection with the use of force that occurred initially to effect the arrest of Gonzalez, Officer Fisher acted in conformity with Department policy. Recommendation: Exonerated.

In connection with the use of force that occurred after the officers and Gonzalez were on the ground, there is evidence that Officer Fisher acted in conformity with Department policy, but due to the limits of the body camera footage certain information could not be completely confirmed. Recommendation: Not sustained.

Subject Officer: Cameron Leahy

In connection with the field interview of Gonzalez, Officer Leahy was not present. Recommendation: Not Involved.

In connection with the decision to arrest Gonzalez, Officer Leahy was not present. Recommendation: Not involved.

In connection with the use of force that occurred initially to effect the arrest of Gonzalez, Officer Leahy was not present. Recommendation: Not involved.

In connection with the use of force that occurred after the officers and Gonzalez were on the ground, there is evidence that Officer Leahy acted in conformity with Department policy, but due to the limits of the body camera footage certain information could not be completely confirmed. Recommendation: Not sustained.

Subject Employee: Parking Technician Charles Clemmons

In connection with the field interview of Gonzalez, Clemmons was not present.
Recommendation: Not Involved.

In connection with the decision to arrest Gonzalez, Clemmons was not present.
Recommendation: Not involved.

In connection with the use of force that occurred initially to effect the arrest, Clemmons was not present. Recommendation: Not involved.

In connection with the use of force that occurred after the officers and Gonzalez were on the ground, Clemmons was acting in emergency circumstances at the request of a police officer in securing Gonzalez's legs for a short period of time. Recommendation: Exonerated.

IV. METHODOLOGY

A. Witnesses

The following identifies each witness interviewed, in alphabetical order, including their job titles and interview dates. Witnesses were interviewed at City of Alameda offices. Their interviews were digitally recorded and transcribed. The subject officers and employee were represented by counsel during the interviews, who also recorded the interviews. Prior to being interviewed, the subject officers and employee had reviewed the body camera footage from the incident. The footage had been shown to them during their interviews with the Alameda Sheriff's Office and by their counsel.

Witness	Position	Date of Interview
Charles Clemmons [Subject Employee]	Parking Technician, Alameda Police Department	September 20, 2021
Bradley Eckelhoff	EMT-Paramedic, Alameda Fire Department	May 24, 2021
Randy Fenn	Former Interim Chief of Police, Alameda Police Department	June 4, 2021
James Fisher [Subject Officer]	Officer, Alameda Police Department	September 20, 2021
Francisco Guerra	Officer, Alameda Police Department	June 14, 2021
Tyler Headrick	EMT, Alameda Fire Department	May 24, 2021
George Koutsoubos	Officer, Alameda Police Department	June 14, 2021

Witness	Position	Date of Interview
Cameron Leahy [Subject Officer]	Officer, Alameda Police Department	August 19, 2021, April 14, 2022
Daniel Martin	EMT-Paramedic (Lead), Alameda Fire Department	May 24, 2021
Eric McKinley [Subject Officer]	Officer, Alameda Police Department	August 25, 2021, April 14, 2022
Emilia Mrak	Sergeant (Supervisor), Alameda Police Department	June 14, 2021
Frank Petersen	Officer, Alameda Police Department	June 14, 2021
Russell Wise	Officer, Alameda Police Department	June 14, 2021

B. Documents

The key documents are exhibits to the report. A list of all exhibits is included at the end of the report. The following are listed as exhibits.

Original documents. The investigation reviewed audio and video recordings from police officer body cameras, police reports and Department policies.

Transcriptions. The investigation transcribed the body camera footage of police officers at the scene and the interviews conducted of the subject police officers and other witnesses. Witness interviews were summarized. In the event of any questions, the original recordings should be consulted.

The attorney for the subject officers, Alison Berry Wilkinson, had recorded the subject interviews previously done by the Alameda County Sheriff's Office and provided Renne Public Law Group with transcripts.

Sheriff's Office investigative file. The investigation reviewed this file, which was provided to Renne Public Law Group by the Alameda Police Department.

Coroner Investigator's Report and Autopsy. The investigation reviewed these reports, which were publicly released on Friday, December 10, 2021.

Video analysis. The investigation had an expert in video analysis review and time stamp the body camera videos in an attempt to determine the times at which various events occurred. All times are best estimates as to when events occurred. We caution that the video analysis provides partial views of the situation, because the cameras are mounted on the officers' bodies and show

only the subject matter in the direction the camera was aimed at the time. Some footage is obscured by close contact with others on the scene or blurry due to motion. Officer Fisher's camera apparently was knocked off balance by the encounter with Gonzalez and therefore is not as informative.

C. Evidentiary Standard

In determining whether allegations are Sustained, Department Policy section 340.6 requires that the investigation disclose "sufficient evidence to clearly prove the allegations made in the complaint" and in determining whether allegations are Not Sustained, it requires a finding that the investigation "fails to discover evidence to clearly prove or disprove the allegations."

Department Policy section 1020.6.4 states these standards slightly differently. For Sustained, it states that "the actions of an officer were found to violate law or [department/office] policy." For Not Sustained, it states: "When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member."

Because Section 1020.6.4 can be read require a preponderance of the evidence to sustain a complaint, which is the usual civil standard, we used the preponderance of the evidence standard in this report.

V. APPLICABLE RULES/POLICIES

The Alameda Police Department issues a Policy Manual that contains various policies and standards relevant to our investigation and analysis. The policies are listed below. The text of the policies is set forth in Exhibits 1-5 attached to this report.

A. USE OF FORCE (SECTION 300).

300.1 PURPOSE AND SCOPE

300.1.1 DEFINITIONS

300.2 POLICY

300.2.1 DUTY TO INTERCEDE

300.2.2 FAIR AND UNBIASED USE OF FORCE

300.2.3 DUTY TO REPORT EXCESSIVE FORCE

300.3 USE OF FORCE

300.3.1 USE OF FORCE TO EFFECT AN ARREST

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

300.3.5 ALTERNATIVE TACTICS - DE-ESCALATION

300.6 MEDICAL CONSIDERATIONS

B. HANDCUFFING AND RESTRAINTS (SECTION 306).

306.1 PURPOSE AND SCOPE.

306.2 POLICY

306.3 USE OF RESTRAINTS

306.3.1 RESTRAINT OF DETAINEES

306.4 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

306.7 APPLICATION OF LEG RESTRAINT DEVICES

306.7.1 GUIDELINES FOR USE OF LEG RESTRAINTS

C. STANDARDS OF CONDUCT (SECTION 340).

340.5 CAUSES FOR DISCIPLINE

340.5.1 LAWS, RULES AND ORDERS

D. CITE AND RELEASE POLICY (SECTION 420).

420.1 PURPOSE AND SCOPE

420.2 POLICY.

420.3 RELEASE BY CITATION

420.3.1 FIELD CITATIONS

420.3.2 RELEASE AFTER BOOKING

420.4 NON-RELEASE

420.4.1 DISQUALIFYING OFFENSES

420.4.2 REASONS FOR NON-RELEASE

E. CONTACTS AND TEMPORARY DETENTION (SECTION 440).

440.1 PURPOSE AND SCOPE

440.1.1 DEFINITIONS

440.3 FIELD INTERVIEWS

440.3.3 INITIATING A FIELD INTERVIEW

440.4 PAT DOWN SEARCHES

F. PORTABLE AUDIO/VIDEO RECORDER

450.6 ACTIVATION OF THE PORTABLE RECORDER

VI. SUMMARY TIMELINE FROM BODY CAMERA VIDEOS

The investigation retained a video analyst to determine the times of the events that occurred during the incident. The times are best approximations. The analysis used Officer McKinley’s video footage as a starting point, because he was the first officer on the scene. The analysis then created a synched view of the cameras of Officers McKinley, Fisher and Leahy. The summary timeline below is taken from the video analysis report. It shows that the entire incident lasted approximately 17 minutes. Other more detailed information from the analysis is included in the body of the report.

Event	Elapsed time, from McKinley Body Camera
Officer McKinley initiates conversation with Mario Gonzalez	1:04
Officer Fisher arrives, begins conversation with Gonzalez	8:02
Officers initiate physical contact with Gonzalez to effect arrest by handcuffing. Gonzalez does not comply	10:08
Officers McKinley and Fisher and Gonzalez all fall to the ground and officers continue attempt to handcuff	12:56
Charles Clemmons attempts to control Gonzalez’s legs	
Officer Leahy arrives and takes over from Clemmons	16:07
Officers struggle with Gonzalez	
Officer states that Gonzalez is unresponsive	18:03

VII. FACTUAL BACKGROUND

This factual background is based on 911 transcripts, officer body camera footage and transcriptions, interviews of the subject officers and other witnesses, police reports and other documents. Transcripts and longer interview summaries are attached as Exhibits.

A. 911 Calls

On April 19, 2021, two residents near the 800 block of Oak Street in Alameda called 911 to report a man in Scout Park. One described him as Hispanic, with dark hair, wearing a black cap, brown hoodie with the arms cut off, black shirt and black shorts. The caller said that the man was near the resident's front yard, talking to himself, not making any sense, seemed to be "tweaking," but not doing anything wrong. The other caller described the man as Hispanic or Indian, about 5'6", 250 pounds, jacket with blue sleeves and tan around the vest, black hat and gray shorts. This caller reported that the man had two *Walgreens* baskets with alcohol bottles and looked like he was breaking off the security tags. This caller also reported hearing glass smash on a stump next to which the man was standing. (Exhs. 6, 7 [911 call transcripts])

At 10:37 am, following these two 911 calls, the Alameda Police Department dispatched officers to the area of 802 Oak Street in the City of Alameda.

B. Officer Dispatch and Arrival

Officer Eric McKinley, Badge #63 ("Officer McKinley"), has been a Patrol Officer with the APD for over three years. (EM Tr. p. 3)¹

On April 19, 2021, Officer McKinley was working the 7 am to 5 pm shift. At 10:42 am, Officer McKinley was the first officer to arrive on scene. At the time he was dispatched, Officer McKinley recalls hearing on the radio that there was a resident call to report a Hispanic male wearing a tan vest and black shorts, in the park area at the end of the south end of Oak Street, talking to himself and possibly drinking from open containers. (EM Tr. p. 10.)

Initial observation. When Officer McKinley first arrived, Mario Gonzalez (Gonzalez) was facing away from him. McKinley observed Gonzalez pacing around and seemingly talking to himself. He had a comb in one hand and was trying to comb his hair even though he was wearing a hat. Next to Gonzalez were two shopping baskets on the ground. (EM Tr. p. 17.)

Officer McKinley observed two bottles in the shopping basket. One bottle was approximately one liter of clear liquor that he believed was vodka. It was open and had about two cups missing. The other was a brown liquor with a store security cap still attached to it. Gonzalez had a handful of plastic bits in one hand that McKinley believed were the broken security cap for the clear liquor bottle. The baskets said *Walgreens* on the side. McKinley thought it was possible that

¹ Citation to transcripts of interviews for this investigation are designated by the initials of the officer or employee. For example, the Eric McKinley interview is "EM Tr. ___", the James Fisher interview is "JF Tr. ___", the Cameron Leahy interview is "CL Tr. ___", and the Charles Clemmons interview is "CC Tr. ___." The supplemental interview with Eric McKinley is "EM Supp. Tr. ___" and the supplemental interview with Cameron Leahy is "CL Supp. Tr. ___." Citation to the interviews by the Alameda County Sheriff's Office is designated as "ACSO Tr. ___."

Gonzalez had taken the bottles without paying for them because the security caps were still attached. (EM Tr. p. 20.)

This description of the *Walgreens* shopping baskets and contents is consistent with the photographs and written police reports contained in the police department's investigative file of the incident.

Officer James Fisher, Badge #49 ("Officer Fisher"), has been with the Alameda Police Department since November 2001. On April 19, 2021, he was working the day shift from 7 am to 5 pm. That morning, Officer Fisher received a call over the radio to report to 802 Oak Street as a cover unit. The call stated there was a suspicious person who was possibly intoxicated, or words to that effect. The description was a Hispanic male approximately 5' 5", 250 pounds. (JF Tr. p. 9.)

While Fisher was on the way, Officer McKinley broadcast over the radio for Fisher to check *Walgreens* for a possible "walkout" or possible theft. (JF Tr. p. 10.) At *Walgreens*, Fisher spoke with two employees at the front of the store, one male, one female. The male employee told him that no one matching the description given by Fisher had stolen anything. Based on this response, Fisher broadcast over the radio, "negative for the walkout," but, according to Fisher, he had not yet concluded that a theft had not occurred. (JF Tr. p. 11.) Officer McKinley's body camera recorded "41 to 31, negative." (McKinley Body Cam Tr. p. 5.)

There is another *Walgreens*, on Webster Street, but not close to the park location. According to Fisher, he did not check that location, because he was aware that McKinley had been with Gonzalez for some time and wanted to get to him as soon as possible. (JF Tr. p. 11.)

With Officer Fisher that day was Charles Clemmons, a parking technician with the Department. He was riding along with Fisher. Charles or "Charly" Clemmons, Badge # 500, works part time for the City of Alameda Police Department as a Parking Technician. He has worked in that position for eight years. He previously worked for ten years in the City Jail, with responsibility for administrative work, taking care of prisoners and delivering them to court, among other tasks. (CC Tr. pp. 4-5.) For his position at the City Jail, Clemmons received defensive tactics and other training. (CC Tr. p. 6.) Clemmons is not a peace officer.

Clemmons often has coffee in the morning with APD officers. (CC Tr. pp 7-8.) On April 19, 2021, Clemmons met Officer Fisher for coffee. But before they could get coffee, Officer Fisher told Clemmons that he had a call. Clemmons rode along on the call. (CC Tr. pp. 8-9.)

Approach to Gonzalez. After making his initial observations, McKinley approached Gonzalez, introduced himself, and explained why he was there. Officer McKinley's body camera recorded the following:

OM: Hey, bud. How's it going?

MG: Hey.

OM: Just coming to check on you. Make sure you're okay. Somebody called and said you were, uh, maybe not feeling so great.

MG: Uh, well I'm feeling all right, I guess.

MG: Yeah, I'm feeling good, like, all right, Like, uh something happened over there at
—

OM: At where?

MG: Okay. So yeah.

OM: Something happened where?

MG: Sounds like something's going on around and everything, like walking around like [indiscernible] you know, today's my, uh something happened.

(McKinley Body Cam Tr. p. 1.)

McKinley continued to engage Gonzalez in conversation, asking for his name multiple times and whether he wanted to harm himself. As McKinley explained, his initial goal was to contact Gonzalez, determine if it was safe for him to be on his own, and if he was, to leave him there.

(EM Tr. p. 17.)

OM: Okay. But what's your name?

MG: Something Mario. That's it.

OM: Something Mario. Can you keep your hands out of your pockets for me?

MG: I'm good. Well I guess that's it.

OM: Hold on. So we're going to talk because I'm, I'm concerned about this open container and, and everything so just leave that there.

MG: Right.

(McKinley Body Cam Tr. p. 6, 7.)

According to McKinley's body camera video, over the course of approximately nine minutes, Officer McKinley attempted to engage Gonzalez in conversation. In that time, Gonzalez was having trouble responding in a coherent manner. (EM Tr. p. 22; McKinley Body Cam Tr. p 1-9.) Gonzalez was unable to say how he had gotten to the park, where he lived, how he had obtained the alcohol or give his last name. (McKinley Body Cam Tr. pp. 7-9.) For example, when asked how he was doing, Gonzalez said he was doing something "More bigger, I guess. Something blue,"

Gonzalez referred to “Like something. Like babies,” and he stated that “So, uh, so I stole my, you know, something happened and everything and like I’ve been trying to get calls and they went to try to take me to, to, you don’t have no Facebook.” (McKinley Body Cam Tr. pp. 2, 3.)

C. Decision to Arrest Mario Gonzalez

About eight minutes into the interaction, Officer McKinley stated:

OM: Okay. Here is the plan. Okay. I got to identify you so I know who I’m talking to. Make sure you don’t have any warrants or anything like that. Okay?

MG: Oh shoot.

OM: You come up with a plan.

MG: [Indiscernible]

OM: Let me know that you’re not going to be drinking in our parks over here.

MG: Like, you know, stuff like that, yeah.

OF: And then we can be on our merry way, okay?

MG: Merry way?

OF: You have, you have ID on you?

MG: Sure, like yesterday?

OF: You have, you have an ID on you?

MG: Merry go round?

(McKinley Body Cam Tr. p. 8; Fisher Body Cam Tr. pp. 1-2.)

Gonzalez did not produce any identification.

Officer Fisher arrived around this time. Officer Fisher approached Gonzalez and began to speak with him in a low calm voice, trying to obtain information from him, but Gonzalez did not answer coherently. Gonzalez began milling around more in the area, trying to put his hands in his pockets. (EM Tr. p. 22; McKinley Body Cam Tr. p. 9; Fisher Body Cam Tr. p. 2.)

Based on the amount of alcohol in the baskets and Gonzalez’s behavior, Fisher concluded that Gonzalez was intoxicated. Gonzalez’s speech was incoherent, he was unsteady on his feet, at points he would brace himself against objects, he was unable to answer simple questions and would revert to off topic mumbling. (JF Tr. pp. 15-16; McKinley Body Cam Tr. pp. 7-9.)

Officer McKinley made a determination that Gonzalez was in violation of PC 647(f), public intoxication. (EM Tr. p. 23.) Officer Fisher independently came to the same conclusion -- that Gonzalez was so intoxicated that he could not care for himself. Fisher also thought there may have been probable cause to arrest for theft, but public intoxication was the primary reason, and he had not had time to do any further investigation on the theft. (JF Tr. pp. 16, 22.)

Officer McKinley gave Officer Fisher a hand sign indicating they should place Gonzalez under arrest in handcuffs. Officer Fisher gave him a nod in return. (EM Tr. p. 26.) At this point, Gonzalez had stepped up onto one of the small tree stumps in the park, maybe a foot tall. McKinley approached on Gonzalez's left, taking his left arm, and Fisher approached on the right and took hold of Gonzalez's wrists and arms, and attempted to bring his hands behind his back. (EM Tr. 26; McKinley Body Cam Tr. p. 9; Fisher Body Cam Tr. pp. 4-5.)

In their respective interviews, both officers explained that in cases of public intoxication, officers have the discretion whether to make an arrest depending on the facts and circumstances. They may decide not to take someone into custody if there is someone to take care of them or drive them home, or if there is a medical condition that warrants calling Alameda Fire. But if there are no alternatives, "the safest solution is to take them to -- take them into custody for the public intoxication and get them into a safe environment . . ." (JF Tr. p. 17.) Because Alameda does not have a sobering facility, a separate place for those publicly intoxicated, the APD takes public intoxicants to Santa Rita Jail. (EM Tr. p. 25.)

APD policies do not require a referral to a mental health crisis unit if an individual is experiencing a mental health episode. According to Officer McKinley there is an Alameda County Mobile Crisis Unit that serves the City of Alameda, but he did not think they were available at that time. Both McKinley and Fisher stated that often Mobile Crisis Unit team members were not available. However, McKinley also stated that he concluded Gonzalez was too intoxicated to be able to interact with the crisis team staff or voluntarily elect to accept their services. For all of these reasons, he did not seek their assistance. (EM Tr. p. 14-15; JF Tr. p. 21.)²

Body Camera Video. The analysis of the officers' body camera footage shows that Officer McKinley initiated conversation with Gonzalez about one minute after his body camera began recording (at 1:04), Officer Fisher arrived about eight minutes later (at 8:02), and the officers began to attempt to arrest Gonzalez about two minutes later (at 10:08). Thus, according to the

² Officer McKinley described himself as a proponent of the Crisis Response Team, indicated that he has a good relationship with the team that serves Alameda, and has the team's number saved in his phone. (EM Tr. p. 14.)

analysis, the officers spoke with Gonzalez for approximately 9 minutes before attempting to arrest him. (Exh. 19, p. 1.)³

D. Use of Force To Effect Arrest

1. While Standing

Initially, the officers attempted to obtain Gonzalez's cooperation. At approximately 10 minutes into the encounter, Officer McKinley's body camera footage shows the following:

OF: Hey, come over here. Come over here. We don't want you to fall down. Okay? All right?

MG: They're getting whipped.

OM: We're just going to put your hands behind your back.

MG: I got to, I got to.

OM: What? You got what?

MG: No. wait, wait wait. Is, is wait. What in the heck.

OF: Hey Mario, walk with me.

(McKinley Body Cam Tr., pp. 9-10; Fisher Body Cam Tr. pp. 3-4.)

For the next few minutes, the officers continued to ask Gonzalez to cooperate, asking him to "please do not resist us," "please put your hand behind your back" and "can you please put your hand behind your back and stop resisting us." (McKinley Body Cam Tr. pp. 10-13; Fisher Body Cam Tr. pp. 4-6.) But Gonzalez did not cooperate.

McKinley was on Gonzalez's left. Fisher was on his right.

According to Officer McKinley, because of Gonzalez's size and bulky clothing, it was difficult for McKinley to gain control of his wrists. Also, Gonzalez was stronger than expected and because of his size, was able to move around while still maintaining his footing. (EM Tr. p. 27-28.)

According to Officer Fisher, he had his handcuffs out, but lost them when Gonzalez began twisting and resisting, and then he lost his grip on Gonzalez. (JF Tr. p. 24.)

³ We repeat here the caution that body camera footage shows only where the cameras are aimed and thus may not provide a complete picture of the situation.

Gonzalez was moving around as they tried to handcuff him. The goal, according to Officer Fisher, was to keep Gonzalez standing, place him in handcuffs, and escort him to the patrol vehicle. (JF Tr. p. 23.) But ultimately, the officers decided they had to take Gonzalez to the ground to be able to handcuff him.⁴ Gonzalez, however, was able to step over them and they had to attempt three or four times. They were unsuccessful, and the officers and Gonzalez all stumbled forward together, and all fell to the ground. (EM Tr. p. 29; JF Tr. pp. 24-25.)

Body Camera Video. The analysis of the body camera footage shows that Officer Fisher initiated contact with Gonzalez at 10:08 minutes into the interaction and the officers and Gonzalez fell to the ground at 12:56 into the interaction. The officers struggled with Gonzalez to handcuff him for 2 minutes 47.7 seconds before they all fell to the ground.

2. On The Ground.

Gonzalez landed facing forward on the ground. The officers and Clemmons gave the following description of their positions while on the ground.

McKinley. On the ground, Officer McKinley was on the left side of Gonzalez. According to McKinley, Gonzalez's left arm was underneath Gonzalez's body and McKinley had to struggle to get it out from underneath him. McKinley straddled Gonzalez to keep Gonzalez's hips pinned to the ground so he would not be able to roll free while they attempted to place the handcuffs on him. McKinley thinks he was on top of Gonzalez for 30 or 40 seconds. As soon as he placed the handcuffs on Gonzalez, McKinley removed himself from that position and was to the left of Gonzalez and on his knees. (EM Tr. p. 30.)

According to McKinley, after the handcuffs were applied, he was keeping Gonzalez's left elbow on the ground to keep him from rolling over. (EM Supp. Tr. p. 8.) He felt Gonzalez's torso moving around, his hips lifting off the ground and his torso moving laterally. (EM Supp. Tr. p. 8.) McKinley did not view Gonzalez as attempting to assault the officers, but he did perceive Gonzalez as continuing to resist the officers, attempting to break free, and possibly going to escape their control. (EM Supp. Tr. at p. 10-11.)

Fisher. Fisher was on Gonzalez's right side. According to Fisher, when he fell to the ground, he fell onto his right shoulder, right hip and right side. After the fall, Fisher swung his left leg over Gonzalez's lower back, with just the weight of his leg and no pressure on the back. Fisher did this to assist him in scooting his hip to the right and get some distance from Gonzalez. According

⁴ Once efforts were underway to place Gonzalez in handcuffs, Officer McKinley recalled a prior instance in which he assisted another officer's efforts to place Gonzalez in handcuffs and he resisted. McKinley's recollection of that prior resistance led him to the conclusion that Gonzalez would continue to resist and needed to be taken to the ground to resolve the situation as quickly and safely as possible. (EM Tr. p. 28.)

to Fisher, his chest was in contact with Gonzalez's back, but Fisher had dropped to his knees and most of his weight was on his knees. (JF Tr. pp. 28-30.)

Also, according to Fisher, bearing his weight on his knees, he was able to do an arm sweep and come up to his feet in a squatting position. He had a point of contact with his right knee on Gonzalez's right shoulder, but with his body weight on the balls of his toes. (JF Tr. pp 28-30.) He was trying to keep control of Gonzalez's arms and was resting his forearm along the right side of Gonzalez's back. (JF Tr. p. 30.).

Clemmons. According to Clemmons, he observed the officers attempting to handcuff Gonzalez, Gonzalez resisting, and the three falling to the ground. Clemmons exited the vehicle to assist. (CC Tr. p. 14.) Officer McKinley asked Clemmons "can you get his legs." Clemmons laid across Gonzalez's legs. (CC Tr. p. 15.) Clemmons saw the officers' knees on the ground, not on Gonzalez's body. Clemmons used the area from his neck to his legs to lay on Gonzalez's legs. Gonzalez was not yet handcuffed. Clemmons looked back once and heard Officer Fisher say, "he's lifting me." (Clemmons Tr. pp. 16-17; see Fisher Body Cam Tr. p. 10. ["He's lifting my whole body weight up."])

The two officers were able to place handcuffs on Gonzalez, but not Fisher's handcuffs which had been lost. (JF Tr. p. 32.)

The officers discussed "wrapping" Gonzalez, using a full body WRAP, referenced in APD policies, which may be used to secure an individual who is resisting.

OM: What are we going to do: Just keep him pinned down until we get the wrapper?

OF: Yeah. All right. Watch out. Hey Mario.

(McKinley Body Cam Tr. p. 16; Fisher Body Cam Tr. p. 10.)

Body Camera Video. A visual review of the body camera footage provides only a partial picture of the officers' positions at this time, because of the camera closeness and angle, but it is not inconsistent with the officers' descriptions. Most of the discernable footage comes from Officer McKinley's body camera, and some from Officer Leahy's because Officer Fisher's camera apparently was knocked askew.

The video footage shows Gonzalez on the ground facing down in various positions. The footage shows little of McKinley except he appears to be on Gonzalez's left side, knees or feet appear to be on the ground, and using his arms to control Gonzalez. The footage of Fisher shows him initially over Gonzalez's back, placing a knee briefly on his back, and trying to get Gonzalez's arm out from under his body to handcuff him. Fisher then swings over to Gonzalez's right side and the video suggests that he was mostly supporting himself on his knees or feet at that time, but it is not clear. The video shows Fisher leaning over Gonzalez's back to secure his arms. He

then places a knee on Gonzalez's right shoulder, but the video does not provide a complete picture of the position of Fisher's legs.

The video analysis concludes that Officer Fisher's knee was initially on Gonzalez's back from 13:01 to 13:06, 5.2 seconds.

The video analysis concludes that the officers handcuffed Gonzalez at 14:21 minutes into the incident, about 2 minutes after the officers and Gonzalez fell to the ground. (Exh. 19, p. 4.) The conversation about the WRAP occurred at about 15 minutes into the incident.

The video analysis concludes that Fisher's knee was on Gonzalez's right shoulder from 15:09 to 18:01, 2 minutes, 52 seconds. (Exh. 19, p. 4.)

E. Gonzalez Condition On Ground

Dialogue with Gonzalez. After Gonzalez was on the ground and handcuffed, Officer McKinley kept up a dialogue with him. For example:

OM: It's okay, Mario.

MG: Oh my gosh.

OM: We're going to take care of you. Okay?

MG: Stop.

OM: We're going to take care of you.

MG: I.

OM: Ok.

MG: There, there, thank you. Hey. I got it. Thank you. Thank you.

(McKinley Body Cam Tr. p.16.)

At one point, Officer McKinley asked Gonzalez his last name, to which Gonzalez responded "Alberto." Then Officer McKinley asked Gonzalez his date of birth, to which Gonzalez replied first 1984, and then 1995. Officer McKinley said, "I think, I think you just had too much to drink today. That's all." (McKinley Body Cam Tr. pp. 18-19; Fisher Body Cam Tr. -pp. 12-13.) According to Officer McKinley, he felt that he had exhausted his verbal attempts to obtain compliance, and therefore was asking questions to distract Gonzalez and to prepare for being able to identify him in an arrest report. (EM Supp. Tr. p. 16.)

Officer Leahy arrives. Approximately 16 minutes after Officer McKinley first contacted Gonzalez, and about three minutes after Gonzalez and the officers fell to the ground, Officer

Cameron Leahy arrived. Officer Leahy is Badge # 77. He became an officer with the Department in February 2018. When he arrived, the two officers were on the ground, attempting to control Gonzalez, McKinley on the left, Fisher on the right, and Clemmons on Gonzalez's legs. Leahy says that he observed the *Walgreens* baskets with the liquor bottles.

Leahy took over from Clemmons, securing Gonzalez's legs. Leahy says that he began to smell an odor of alcohol coming from Gonzalez. Upon arrival, Leahy called in a Code 3 for additional assistance. (CL Tr. pp. 17, 19.)

Based on all the circumstances, Leahy concluded that there were possible violations of Penal Code sections 647(f) (public intoxication), 484 (petty theft), 148 (obstructing a police officer) and 243(b) (battery on a police officer). (CL Tr. p. 19-20.)

When Officer Leahy arrived on the scene, he saw signs of struggle. An officer's name tag had been ripped off, Officer Fisher's camera was dislodged from his shoulder, an officer's patrol hat was on the ground, as were a cellphone and some keys. (CL Tr. p. 17.) There was still an active struggle, the officers appeared fatigued and their uniforms disheveled. Leahy perceived Gonzalez to be resisting the officers. (CL Tr. p. 17, 19.)

Leahy Takes Control Of Gonzalez's Legs. Officer Leahy stated that, when he took over from Charles Clemmons, Gonzalez was "actively trying to kick upwards with his legs, kind of bending at the knees, moving his heels violently upwards." When Gonzalez tried to kick his legs upwards and "buck," Leahy was "actually being lifted off the ground." (ACSO Tr. p.16; see also CL Supp. Tr. p. 13.) According to Leahy, Gonzalez thrust his legs upwards approximately 20 times and tried to bend his knees downward to prop himself up about five or six times. (CL Supp. Tr. p. 14.)

Leahy's main focus was controlling Gonzalez's legs. Leahy said he was concerned that Gonzalez was going to kick one of them and that he "would be able to stand up." Leahy explained that: "He was, you know, a rather large individual, a robust individual; and you know the ability to – for him to gain some sort of control" and "escalate the physical altercation" (ACSO Tr. p. 49, see also CL Supp. Tr. p. 11 [re Gonzalez's size as a factor].) Leahy says that Gonzalez was handcuffed, "but despite that, the handcuffs being you know, applied and behind his back, he was still very combative." (ACSO Tr. p. 17.)

Leahy explained: "I didn't want him to be able to buck up at the hips because that's an easy way to break free of – In fact, that's kind of part of our training too. If somebody's ever on top of us, if you can kind of bend or quickly thrust up at the hips, its an easy way to stand up and regain control, so I didn't want that to happen." (CL Tr. p. 22.)

Leahy clarified that when he used the term "kick" in his ACSO interview, he did not mean a "frontal kick" but "any sort of manipulation with his legs that would have resulted in one of being hit or struck with any portion of his leg below the hip" (Leahy Tr. p. 22.)

Leahy explained that even in handcuffs, if someone is able to stand up and break free, there is a safety risk to the person. (CL Supp. Tr. pp. 5, 10.) Also, Leahy was “concerned that if he did break free of what control we had, that that would necessitate the need for a higher level of force, which we all wanted to avoid . . .” (CL Tr. p. 22.) Moreover, Leahy did not believe that Gonzalez had been searched and was concerned he may have a concealed weapon. (CL Tr. p. 64.) i

Leahy described Gonzalez as having “unnatural strength” despite being in the prone position and already having been in a physical altercation for a few minutes before Leahy arrived. (CL Tr. p. 22.) According to Leahy, Leahy sustained “scrapes and bruises on my shins” from contact with the cement driveway as Gonzalez lifted him up and he was slammed back down. (ACSO Tr. p. 56-57; CL Supp. Tr. p. 6.)

Officer Leahy wanted to get Gonzalez’s ankles crossed, making it easier to control him, which was also the position for applying the WRAP. According to Leahy, he was able, over a length of time, to get Gonzalez’s legs in that position, but “never gained full control, never gained full control of his lower, lower body.” According to Leahy, “at no point was I putting 100% of my body weight on Mr. Gonzalez’s legs.” Rather, he was supporting the majority of his weight on the balls of his feet. (CL Tr. pp 21-22.)

Body Cam Video. The body cam videos were pointing away from Officer Leahy so they do not provide a visual of his position.

Figure Four. Soon after Officer Leahy took over control of Gonzalez’s legs, Officer Fisher asked, “Can you put him in a figure 4?” According to Officer Leahy, a figure 4 is a control technique that immobilizes someone from the hip down. It involves “bending both of the knees and trapping one ankle . . . behind the knee of the other leg . . . and the subject can’t push back on you.” (CL Tr. p. 24.)

Leahy responded to Fisher, “I don’t want to lose what I’ve got.” (Leahy Body Cam. Tr. p. 1.) According to Leahy, “because of the amount of strength and resistance that Mr. Gonzalez was exhibiting or providing from his hip down, I did not feel confident that I was going to be able to effectively manipulate his legs in a fashion that would allow me to properly and safely apply that technique.” (CL Tr. p. 24). Leahy was concerned that if he lost control of Gonzalez’s legs, that would require a higher level of force, such as a baton, TASER or pepper spray. He explained, “I didn’t want the potential for Mr. Gonzalez to be injured. I didn’t want the potential for one of use to be injured.” (CL Tr. p. 24; see also. CL Supp. Tr. p. 7) According to Leahy, Gonzalez did not assault the officers, but Gonzalez continued to resist and Leahy felt there was the potential for assault should Gonzalez break free. (CL Supp. Tr. p. 8, 10.)

Body Cam Video. As stated above, the video analysis puts this exchange at 16:21 minutes into the incident.

Roll on side. At 17:35 minutes, Officer Fisher asked whether they should roll Gonzalez on his side:

OF: Mario, calm down, please.

OL: Stop kicking.

MG: Ah. Ah.

OF: Think we can roll him on his side?

OL: Uh, I don't want to lose what I got, man.

OF: Okay.

OL: Can you grab the wrap out of 111?

(McKinley Body Cam Tr. p. 19; Fisher Body Cam Tr. p. 13, Leahy Body Cam Tr. p. 2.)

According to Officer Fisher, his intent was to “roll him onto the side” in an attempt to “avoid positional asphyxia,” to make sure he had a “clear airway and he can breathe ...” (JF Tr. p. 30.) Officer Fisher stated that his statement was not based on any physical observation that Gonzalez was in distress, but that “it’s policy because you don’t want somebody prone for an extended period of time.” (JF Tr. p. 31.) According to Officer Fisher, “You want to get them into a recovery position, but it has to be safe to do so.” (JF Tr. p. 32.)

Based on Leahy’s statement, Officer Fisher thought that “there’s still some sort of active resisting, kicking, attempting to bring his knees up to his waistline and attempt to get up or something going on So, I felt that there was possibly an officer safety issue, some sort of safety issue as to the reason why he replied in that way. And I have to trust his judgment.” (JF Tr. p. 31.)⁵

According to McKinley, during this time, Gonzalez was still talking and breathing, whether his face was toward the ground or turned to the side toward McKinley. (EM Tr. p. 38.) And “based on Mr. Gonzalez’s continued resistance and struggle, I didn’t believe we were at a point where we had enough control to maintain that position safely. The recovery position.” (EM Tr. p. 39.)

Leahy explained that at this time, “Mr. Gonzalez was still very much resisting, was still rocking and rolling and bucking upwards at the hip.” (CL. Tr. p. 25.) Again, he was concerned that if he lost control, he would have to use a higher level of force to regain it. He also could hear the

⁵ According to Fisher, if he had observed that Gonzalez was in any type of distress, it wouldn’t have mattered what anyone said, and he would have immediately rolled him over into the recovery position. (Fisher Tr. p. 38.)

sirens, from his Code 3 call, and knew that a unit with the WRAP was not far away. (CL Tr. pp. 24-25.)

Officer Leahy explained that: “We’re all aware of the concerns of having people in a prone position, particularly for, you know, an extended period of time, and so my interpretation of Officer Fisher’s question was, ‘Hey, it’s just a safer position to have him on his side.’” (CL Tr. p. 27.) Leahy clarified that he wanted to be careful about the term “recovery position” because at that time, he did not observe Gonzalez experiencing some sort of emergency. (CL Tr. p. 26-27.)

Body Cam Video. As stated above, the video analysis places this event at 17:35 minutes into the incident. The video analysis does not show Gonzalez’s lower body, but did pick up Leahy’s statement to Gonzalez to “stop kicking.” (McKinley Body Cam Tr. p. 19; Fisher Body Cam Tr. p. 13; Leahy Body Cam Tr. p. 2.)

No weight. While handcuffed, according to the officers, Gonzalez continued to struggle. At 17:55, Officer Fisher said “We have no weight on his chest.” Officer McKinley apparently misunderstood and placed his knee on Gonzalez’s lower left rib cage. But as soon as Officer Fisher noticed this, Fisher said to McKinley not to put any weight on Gonzalez, and McKinley immediately removed his knee and placed it back on the ground. (EM Tr. p. 33-34; JF Tr. p. 34; CL Tr. pp. 46-48.)

According to McKinley’s body camera footage:

OF: Mario, just please stop fighting us.

O? It’s all right.

OF: We have no weight on his chest.

OL: Can you go around ma’am? [apparently to bystander]

OL: Yeah, please. Thank you.

OF: No, no. No, no. No weight. No weight.

(McKinley Body Cam Tr. p 19; Fisher Body Cam Tr. p. 13; Leahy Body Cam Tr. pp. 2-3.)

According to Officer McKinley, he did not place his knee on any other part of Gonzalez’s body. He did not put pressure on Gonzalez’s neck or shoulders. (EM Tr. p. 34.)

Body Cam Video. The analysis of the body camera video shows that McKinley had his weight on Gonzalez’s back from 17:55 to 17.56, 1.1 seconds.

To recap, the video analysis concluded that Fisher had his knee on Gonzalez’s back for 5.2 seconds, Fisher later had his knee on Gonzalez’s shoulder for 2 minutes, 52 seconds and as stated above, McKinley had his knee on Gonzalez’s back for 1.1 seconds. (Exh. 19, pp. 17-19.)

A visual observation of the body camera footage does not show any of the officers placing pressure on Gonzalez's neck. The analysis of the body camera videos concluded "not observed" in response to the inquiry whether the officers placed any pressure on Gonzalez's neck. (Exh. 19, p. 15 of narrative.)

F. The WRAP

The body camera footage shows that officers discussed keeping Gonzalez "pinned down" until they could deploy the WRAP to secure him. (McKinley Body Cam Tr. p. 16; Fisher Body Cam Tr. p. 10) After Leahy took over from Clemmons, Fisher asked Clemmons to get the WRAP. (McKinley Body Cam Tr. p. 17.) And once Sergeant Mrak arrived, Leahy asked her to get the WRAP. (EM Tr. p. 52.)

Officer Fisher believed the WRAP was appropriate based on Gonzalez's level of resistance and his strength. (JF. Tr. p. 39.)

According to Fisher, the WRAP can be deployed quickly, and once you get the leg strap on and the shoulder harness over the shoulders, you immediately put the person in a seated position. "So, it happens very fast. And I would say that process could be done within 10 to 15 seconds." (JF Tr. p. 40.)

According to Leahy, to deploy the WRAP, three people control the subject and a fourth prepares the WRAP. (CL Tr. p. 55.)

Again, according to Leahy, he believed the WRAP would arrive within a very short period of time because he could hear sirens of responding officers. Every patrol car has a WRAP in the trunk of the vehicle. (CL Supp. Tr. p. 4; see also EM Supp. Tr. p. 6 [believed WRAP about to arrive quickly.]

According to Leahy, while Sergeant Mrak was retrieving the WRAP, Gonzalez was "still attempting to push me off, roll me off, bend at the knees, buck upwards at the hips." (CL Tr. p. 57.)

G. Officer Statements Regarding Gonzalez Condition While On Ground

In their interviews, the three officers stated that they did not observe any signs that Gonzalez was in distress while on the ground until he became unresponsive. Their statements are included here, as required by report protocols, and set forth in more detail in the transcripts of their interviews.

1. Officer McKinley

According to Officer McKinley, he did not believe that Gonzalez was in any type of distress. McKinley was able to kneel next to Gonzalez and look him in the face. He could see that Gonzalez was talking. His eyes were open. Gonzalez was grunting and groaning but McKinley

associated those noises with Gonzalez's efforts to roll over, to lift up the officers, to struggle. (EM Tr. p. 35; EM Supp. Tr. pp. 11, 14.)

Officer McKinley was trained regarding the dangers of positional asphyxia, most recently in October or November of 2020. In the six months before the incident, there was a refresher which included the importance of monitoring the subject. (EM Tr. p. 36.) According to McKinley, he was trained that "it's one of the requirements of an officer to monitor the potential impacts of any use of force on the subject while the force is being applied." (EM Tr. p. 37.)

McKinley estimates that Gonzalez was on the ground for two to three minutes. When asked if he was concerned during that time about positional asphyxia or Gonzalez's ability to breathe, McKinley responded that "beyond the normal concern of prioritizing that, being able to monitor that and making sure that we weren't applying any unnecessary pressure to his back or neck, no, because I was able to observe that he was talking, breathing, normally, you know given the circumstances of his mental state without issue." (EM Tr. p. 37.)

When asked if there was any time that Gonzalez needed to be in the recovery position, on his side, McKinley responded, "it's my goal whenever we have somebody in, in the prone position to, to get them to the recovery position if not sitting up or standing. However, based on Mr. Gonzalez's continued resistance and struggle, I didn't believe we were at a point where we had enough control to maintain that position safely. The recovery position." (EM Tr. p. 39.)

Officer McKinley stated that he was familiar with excited delirium which was a physical state with signs and symptoms such as delirium, hyperthermia, strength, and which unaddressed can lead to major medical events and possible death. However, when McKinley initially contacted Gonzalez and up through trying to handcuff him, McKinley had no indication that excited delirium was an issue. (EM Tr. p. 39.)

2. Officer Fisher

According to Officer Fisher, he did not observe that Gonzalez was in any distress, "because it seemed like the whole time, he was talking." (JF Tr. p. 32.) Officer Fisher had been asking Gonzalez "Can you please stop fighting us." (JF Tr. p. 33.)

According to Officer Fisher, during the time he was on the ground, Gonzalez was moving around a lot, sometimes on his left side, sometimes on his right side, and one would need to review the video to determine how long Gonzalez was in a flat or prone position. For the approximate five minutes he was on the ground, Gonzalez was not completely flat or prone. (JF Tr. pp. 37-38.)

Officer Fisher responded "no" when asked if he had any reason to believe that Gonzalez was in distress or had problems with his breathing. He stated: "No. It just sounded like he kept – he was just moving. His body was moving. And then, usually, when you're moving, you're not trying to talk, but nothing, no." (JF Tr. p. 38.)

At one point, Fisher heard Officer McKinley ask Gonzalez his name or date of birth, and Gonzalez said “Mario” and gave his last name, and possibly a birth date. (JF Tr. p. 40.)

Officer Fisher explained that Department training emphasized to stay away from the spine and to place no weight on the back, and that if you have to control someone who is on the ground, any weight is on the shoulder. A state mandated training on AB 392 in October 2020 covered positional asphyxia. (JF Tr. p. 34.)

Officer Fisher also received training on excited delirium, which he described as manifesting itself with possible use of narcotics, a high internal core temperature and superhuman strength. (JF Tr. P. 42.) Fisher concluded that Gonzalez was under the influence of alcohol and did not see any sign that he also was under the influence of narcotics. He also did not see any signs of excited delirium. (JF Tr. p. 43.)

3. Officer Leahy

According to Officer Leahy, while he was controlling Gonzalez’s legs, Leahy did not see any indication that Gonzalez was in distress. He observed that Officer McKinley was still communicating with Gonzalez, asking Gonzalez his birthday and potentially his last name. Despite Gonzalez’s statements in return not being the most coherent, Leahy did not hear Gonzalez say any “red flag” triggers that would have indicated distress, such as I can’t breathe. (CL. Tr. p. 27.)

Leahy heard Gonzalez making “certain noises” but to Leahy, “they were directly correlated with the physical exertion he was displaying, so every time he would, you know, try to buck upwards at the hips or bend at the knees or rock his body side to side and break free of our control, he was making certain noises ...” (CL Tr. p. 28-29; CL Supp. Tr. pp. 10, 20.)

Officer Leahy stated that he has been trained on positional asphyxia, citing to the department training on use of force from October 2020. He stated that during this entire incident, he was aware of the concern of keeping someone in a prone position for a prolonged time. He says that the time Gonzalez was in a prone position while Leahy was on the scene was relatively short, close to two minutes, it took time to get Gonzalez under control, and the minute Gonzalez stopped resisting, the officers began rendering aid. Leahy said there is still a real risk even after someone is handcuffed. (CL Tr. pp. 31-32.)

Leahy said he also is aware of the risks of excited delirium and the need to obtain medical attention as soon as possible. He was frustrated and worries about how long it took paramedics to arrive to provide aid, especially with how close the fire station is in proximity to the incident. (CL Tr. p. 33.)

Leahy was concerned that Gonzalez may have been intoxicated beyond just alcohol, and may have been experiencing excited delirium. This was based on this “superhuman, unnatural

strength” exhibited by Gonzalez. (CL Tr. p. 37.) Leahy also considered whether Gonzalez was experiencing a mental health crisis. (CL Tr. pp. 37-38.) There was not one clear indication during the incident and Leahy was considering all of these possibilities. (CL Tr. p. 38-39.)

Body Cam Video. The analysis of the body camera footage shows that Gonzalez was on the ground from 12:57 to 18:01, a total of 5 minutes, 3 seconds.

During that time, the analysis of the body camera video footage shows that Gonzalez turned his head multiple times while on the ground, from 13:11 to 17:42, he was face down sometimes, and that Gonzalez was briefly on his side at approximately 15:10 minutes into the encounter. (Exh. 19, pp. 24, 26-40.)

H. Gonzalez Becomes Unresponsive

Approximately 17 minutes from Officer McKinley’s initial contact with Gonzalez, and about five minutes after the officers and Gonzalez went to the ground, Gonzalez became unresponsive. McKinley’s body camera shows the following:

OM: [radio communication] He’s going non-responsive. [radio communication]

O?: Let’s give him a form leg lock. Leg trap, if you can.

OM: Do you have AFD on the way?

OF: Yeah.

OM: 41. Can we get AFD [radio communication]

* * * *

O?: You got a pulse?

O?: All right. Start CPR. Let’s get him on there. Get him out of handcuffs.

OL: We’re checking for a pulse

OM: I can’t.

OL: We got a pulse?

OM: No.

(McKinley Body Cam Tr., pp. 19-20; Leahy Body Cam Tr. pp. 3-4.)

After the paramedics arrived, McKinley told them: “He went from combative to non-responsive almost immediately. We started compressions when we checked on pulse.” (McKinley Body Cam Tr., p. 26.)

1. Officer McKinley

According to Officer McKinley, he was kneeling next to Gonzalez, trying to calm him down, “and as he was talking, he just turned his, just, his face forward and stopped talking. And so, I basically, I saw when he stopped talking and immediately responded to that situation.” (EM Tr. p. 43.)

McKinley told Fisher that Gonzalez had gone unresponsive. They rolled him to his side and checked for a pulse, which McKinley could not find. McKinley ripped open Gonzalez’s heavy jacket and checked again, but could not find one. McKinley rolled Gonzalez on his back and began chest compressions. (EM Tr. p. 43.)

McKinley performed chest compressions for about a minute and then was relieved by Officer Guerra. The officers used a can of Narcan which did not appear to have an effect, and then a second can. (EM Tr. pp. 43-44.)

2. Officer Fisher

Officer McKinley was the officer communicating with Gonzalez. According to Officer Fisher, it “was almost instantaneous from the time McKinley said, ‘I think he went unconscious’ or, ‘He’s unconscious,’ to it was instantaneously, boom, roll, assess. And then we started lifesaving measures. It was very fast.” (JF Tr. p. 38.)

Officer McKinley checked for a pulse and Officer Fisher doublechecked. When Officer Fisher did not feel a pulse, he tried to establish an open airway and Officer McKinley immediately started CPR. Officer Fisher kept the airway open, while other officers administered CPR, until the Fire Department arrived and took over. (JF Tr. pp. 38-39.)

3. Officer Leahy

Sergeant Mrak went to retrieve the WRAP. According to Leahy, during this time, Gonzalez was “still attempting to push me off, roll me off, bend at the knees, buck upwards at the hips.” (CL Tr. p. 57.)

When Sergeant Mrak was walking back, Leahy noticed that Gonzalez had stopped talking and stopped providing resistance below the waist. Leahy asked, do we have a pulse or is he breathing, and stepped off of Gonzalez’s legs. Almost simultaneously, the other officers backed off, rolled Gonzalez on his side, and McKinley ripped off Gonzalez’s jacket. (CL Tr. p. 57.)

Officer McKinley began CPR and Fisher tilted Gonzalez’s head to be sure there was no obstruction in the airway. Officer Guerra provided Narcan and Leahy administered it. There was no change, so Leahy administered a second dose from a can provided by Officer McKinley. Leahy then took over the chest compressions. Officer Koutsoubos relieved him until the Fire Department arrived. (CL Tr. p. 58.)

Body Cam Video. The analysis of the body camera video footage shows that officers rolled Gonzalez on his side at 18:01 and Officer McKinley stated that Gonzalez was “going unresponsive” at 18:03.

The video analysis concluded that that Gonzalez’s last word (although not intelligible) is heard at 17:34 (26 seconds before rolled on side), Gonzalez’s last sound is heard at 17:45 (16 seconds before rolled on side), and Gonzalez’s last movements are seen at 17:49 (12 seconds before rolled on side). (Exh. 19, pp. 41-42.) We emphasize that the analysis may be approximate based on a best efforts review of the footage.

I. Information From Reporting Officers And First Responders

The summaries of interviews with the officers and paramedics who responded to the scene are attached as Exhibits 33-37.

Sergeant Emilia Mrak has been with the Department for 19 years and a supervisor for about a year. When Sergeant Mrak arrived at the scene she heard an officer asking for the WRAP restraint, she retrieved it, at which point Officer Wise arrived and took the WRAP to the officers detaining Gonzalez. Before they were able to use the WRAP, Officer McKinley said that Gonzalez was no longer responsive and the officers immediately began life-saving measures until the Alameda Fire Department arrived and took over. Sergeant Mrak then began to manage the scene and coordinate staff. Based on her training and experience, Sergeant stated that the life-saving measures by the officers were in compliance with their training.

Officer Russell Wise has been with the Department for over 19 years. When he arrived at the scene, he observed Sergeant Mrak running to a patrol car to retrieve a WRAP restraint device. Sergeant Mrak handed the WRAP device to Officer Wise. Before the officers could apply the WRAP restraint, they became aware that Gonzalez had lost consciousness. Officers could not locate a pulse and observed that Gonzalez was not breathing. At that point, Officer Wise directed the officers to start CPR, and requested for Alameda Fire Department to respond. The officers administered two doses of Narcan. Officer Wise is a use of force instructor at the Department. Officer Wise stated that, in his opinion, and based on his observations at the scene and of the video tapes, he concluded that Gonzalez’s condition was consistent with excited delirium, and that the officers’ actions in detaining Gonzalez were consistent with Department policy.

Officer Koutsoubos has been with the Department for over eight years. When he arrived at the scene, life-saving measures including CPR was being administered to Gonzalez. He assisted with chest compressions until the Fire Department arrived and took over life-saving measures.

Officer Francisco Guerra has been with the Department since July 2018. When he arrived at the scene, he observed Gonzalez laying down and an officer trying to wake him. He assisted in unzipping Gonzalez’s sweatshirt in case it was obstructing his ability to breathe. He then helped to administer CPR, moved Gonzalez’s tongue to the side to clear his airway, thought he observed

air from Gonzalez's mouth, turned Gonzalez on his side, but when Gonzalez's condition did not change, the officers resumed administering CPR. He also observed the officers administer two doses of Narcan.

Daniel Martin is a firefighter/paramedic with the Alameda City Fire Department. When he responded to the scene, he recognized Gonzalez because of prior calls for service. The paramedics treated Gonzalez for cardiac arrest for 13-14 minutes before transporting him to the hospital. According to Martin, based on Gonzalez's "high CO2 reading," and Martin's observations from the video of the scene, Gonzalez had been receiving good quality CPR from the time his heart stopped to the time of the reading. He does not think that Gonzalez remaining handcuffed while CPR was administered impacted the officers' ability to administer CPR effectively.

Tyler Headrick is a firefighter/EMT for the Alameda City Fire Department. He also recognized Gonzalez when he arrived on the scene, having interacted with him on prior calls for service. Based on his assessment at the scene and the video of the incident, Headrick also concluded that the officers had administered CPR effectively.

J. Coroner Investigator's Report and Autopsy

On December 20, 2021, the Alameda County Sheriff's Department released the Coroner Investigator's Report and the Autopsy. (See Exh. 63.) These documents reported the "Cause of Death" to be "Toxic effects of methamphetamine" with "Other Significant Conditions Contributing To Death" being "Physiologic stress of altercation and restraint; Morbid obesity; Alcoholism." Although the "Manner" of death was labelled a "Homicide," the Coroner Investigator's Report referenced the National Association of Medical Examiners "A Guide for Manner of Death Classification." Under the Guide, the classification of homicide is "neutral" and unrelated to any determination of legal culpability.

VIII. OFFICER PERSONNEL RECORDS

The Renne Public Law Group conducted an in person review of the personnel records of Officers Cameron Leahy, Richard Fisher and Eric McKinley. The records did not include any prior personnel actions relevant to this investigation.

IX. OFFICER TRAINING

The Renne Public Law Group reviewed training records associated with Officers Cameron Leahy, Richard Fisher and Eric McKinley spanning the course of their employment with the Alameda Police Department (APD). Training records are maintained electronically by the Department and denote the training date, subject, and length of training (number of hours).

A review of the records relevant to this investigation found that in 2020, each officer received training involving issues associated with the use of force, including a state-mandated training

(AB 392) discussing updates to California's use of force law. The training included information regarding asphyxiation (positional and compressional asphyxia). Each officer also received updated training involving Defensive Tactics - Use of Force and all officers were in compliance with First Aid/CPR/AED training requirements.

X. ANALYSIS OF ALLEGATIONS AND FINDINGS

As required by the APD policies regarding investigations, this report includes a description of the relevant policies, a discussion of the officer's conduct, and a conclusion as to whether the officer violated the policy. The policies summarized below, and attached as exhibits, were in effect as of the date of the incident.

A. Contacts and Temporary Detention

1. Policies

Under Department policy, "the decision to temporarily detain a person and complete a field interview (FI), pat-down search, or field photograph shall be left to the officer based on the totality of the circumstances, officer safety considerations, and constitutional safeguards." (Section 440.2[Policy])

"Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate a stop of a person, and conduct an FI, when there is articulable, reasonable suspicion to do so." (Section 440.3 [Field Interviews])

"When initiating the stop, the officer should be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the stop." Such facts include but are not limited to actions "suggesting that he/she is engaged in a criminal activity," and "carrying of suspicious objects or items." (Section 440.3.1 [Initiating a Field Interview])

2. Analysis and Finding

Officer McKinley

Officer McKinley had an "articulable, reasonable suspicion" to conduct a field interview of Gonzalez.

Officer McKinley received a radio dispatch that residents reported a man wearing a tan vest and black shorts in the park at the south end of Oak Street, talking to himself and possibly drinking from open containers.

When he arrived at the park, Officer McKinley observed Gonzalez pacing, seemingly talking to himself and trying to comb his hair even though he was wearing a hat. Next to Gonzalez on the ground were two *Walgreens* shopping baskets containing bottles of liquor, one clear and one brown. One bottle had about two cups missing, the other had a store security cap still attached.

Over the course of the approximate next nine minutes, McKinley attempted to engage Gonzalez in conversation. As described in the factual background, Gonzalez was not coherent, not responding to simple questions, and having trouble connecting and finishing sentences

Officer McKinley was justified in conducting a field interview with Gonzalez based on the radio reports of Gonzalez's activities in the park, evidence that Gonzalez was publicly intoxicated, and evidence that Gonzalez may have committed a theft of liquor. Officer McKinley approached and spoke with Gonzalez in a respectful and conversational manner to determine if Gonzalez needed assistance and whether Gonzalez was in fact engaged in criminal activity.

The potential criminal activity included public intoxication, a violation of Penal Code 647(f), and theft of property, a violation of Penal Code sections 484-490.2.

RECOMMENDED FINDING: The evidence shows that Officer McKinley's actions were consistent with Department policies. Accordingly, this report recommends a finding that Officer McKinley be exonerated from any potential complaint based on his conduct of a field interview.

Officer Fisher

Officer Fisher was not substantially involved in the initial field interview with Gonzalez.

RECOMMENDED FINDING: Not Involved.

Officer Leahy

Officer Leahy was not involved in the initial field interview with Gonzalez. **RECOMMENDED FINDING:** Not Involved.

Charles Clemmons

Charles Clemmons was not involved in the initial field interview with Gonzalez.

RECOMMENDED FINDING: Not Involved.

B. Decision to Arrest and Take into Custody

1. Policies

Probable Cause. Officers are required to conduct themselves "in accordance with the United States and California Constitutions and all applicable laws." (Section 340.4 [General Standards], 340.5.1 [Laws, rules and Orders]) Under state and federal law, officers must have probable cause to effect an arrest.

Cite and Release. "Except in cases where a reason for non-release as described below exists, adults arrested for a misdemeanor offense, including a private persons arrest, shall be released from custody on a citation (Penal Code 853.6)." (Section 420.3 [Release by Citation])

"Reasons for non-release include (Penal Code 853.6(i):

The person arrested is so intoxicated that she/she could be a danger to him/herself or to others. Release may occur as soon as this conditions no longer exists. . . .

There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested.”

(Section 420.4.2 [Reasons for Non-Release], subsections a, h.)

Handcuffs. When deciding to use any restraint, including handcuffs, “officers should carefully balance officer safety concerns with factors that include but are not limited to”: the circumstances or crime leading to the arrest, the demeanor and behavior of the arrested person, the age and health of the person, any apparent disability. (Section 306.3 [Use of Restraints]) “Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person’s hands to ensure officer safety.” (Section 306.4 [Application of Handcuffs or Plastic Cuffs])

“Although recommended for most arrest situations, handcuffing is discretionary and not an absolute requirement of the [Department/Office]. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that in order to avoid risk every person should be handcuffed, regardless of the circumstances.” (Section 306.4 [Application of Handcuffs or Plastic Cuffs])

2. Analysis and Findings

a. Officer McKinley

Officer McKinley had probable cause to arrest Gonzalez and acted reasonably in handcuffing him to take him into physical custody. And Officer McKinley was not required to cite and release Gonzalez.

Based on officers’ training and experience, and consistent with the body camera video, there was probable cause that Gonzalez was publicly intoxicated, and could not care for himself, which is a violation of Penal Code section 647(f), and a misdemeanor. There also was some evidence that Gonzalez committed theft of the liquor bottles in the *Walgreens* baskets (the security caps were still on or broken off), but the officers did not have time to complete that investigation.

There was evidence that Gonzalez had been drinking alcohol. As stated above, Officer McKinley observed that Gonzalez was in possession of two *Walgreens* baskets, with two bottles of hard liquor, one of them open with about two cups missing. Gonzalez had a handful of plastic bits in one hand that appeared to be a broken security cap.

There was evidence that Gonzalez was severely intoxicated. Officer McKinley, first on the scene, engaged Gonzalez in conversation, joined subsequently by Officer Fisher. Over

approximately nine minutes, Officers McKinley and Fisher spoke to Gonzalez in low and conversational tones, asking him to produce identification and to represent that he would not be drinking in the public park. Despite these attempts, Gonzalez did not produce any identification and was not answering simple questions. He responded to the officers in a rambling and incoherent manner. Gonzalez was unsteady on his feet, milling about the area, and putting his hands in his pockets. Gonzalez did not show signs of anger or aggression towards the officers. However, the officers concluded that Gonzalez was not able to care for himself.

Gonzalez stepped onto one of the small tree stumps in the park, the officers approached him from either side and they attempted to bring Gonzalez's hands behind his back.

The officers were not required to cite and release Gonzalez. Gonzalez was "so intoxicated that he/she could be a danger to him/herself or to others." Because he was "so intoxicated," there was a "reasonable likelihood" that he would continue to drink and be publicly intoxicated and that his own safety, or that of others, would be endangered. (See Section 420.4.2 [Reasons for Non-Release], subsections a, h, supra.)

The officers used reasonable judgment in handcuffing Gonzalez. Gonzalez weighed approximately 250 pounds. He was not able to respond to or cooperate with the officers, he was stumbling, and he stood on a tree stump. It was reasonable to conclude that the officers could not take Gonzalez into custody safely without handcuffing him.

The City of Alameda does not have a sobering facility. Therefore APD takes public intoxicants who are arrested to Santa Rita Jail. We note here that the City's Steering Committee On Police Reform and Racial Equity, as one of its recommendations, recommends that mental health crises be shifted to mental health professionals. However, currently it is within an officer's discretion whether to utilize the existing crisis response unit, McKinley determined that they were not reasonably available, and most importantly, he determined that Gonzalez was too intoxicated to cooperate.

RECOMMENDED FINDING: The evidence shows that Officer McKinley's actions were consistent with Department policies. Accordingly, this report recommends a finding that Officer McKinley be exonerated from any potential complaint based on the decision to arrest Gonzalez.

b. Officer Fisher

Officer Fisher had probable cause to arrest Gonzalez, and acted reasonably in handcuffing to take him into physical custody. Officer Fisher was not required to cite and release Gonzalez.

As stated above, there was probable cause that Gonzalez was publicly intoxicated, and could not care for himself, a violation of Penal Code 647(f), and potentially probable cause to arrest him for theft.

Officer Fisher arrived on the scene approximately 8 minutes after Officer McKinley. Officer Fisher also observed the two *Walgreens* baskets, the liquor bottles, the alcohol missing from one bottle and the black security cap on the other. Officer Fisher participated with Officer McKinley in attempting to obtain identification or other information from Gonzalez. Officer Fisher also observed Gonzalez's inability to respond to simple questions, his rambling and incoherent speech, and his unsteadiness on his feet. Officer Fisher reasonably concluded that Gonzalez was intoxicated and unable to care for himself.

Officer Fisher was not required to cite and release Gonzalez. Like Officer McKinley, Officer Fisher reasonably concluded that it was necessary to handcuff Gonzalez in order to make the arrest.

RECOMMENDED FINDING: The evidence shows that Officer Fisher's actions were consistent with Department policies. Accordingly, this report recommends a finding that Officer Fisher be exonerated from any potential complaint based on the decision to arrest Gonzalez.

c. Officer Leahy

Officer Leahy was not present for the initial decision to arrest Gonzalez. RECOMMENDED FINDING: Not Involved.

d. Charles Clemmons

Charles Clemmons, who is a parking traffic technician, was not present for the initial decision to arrest Gonzalez. RECOMMENDED FINDING: Not Involved.

C. Use of Force to Effect Arrest

1. Policies.

Below are excerpts or a summary of applicable policies. The entire text is included in Exhibit 1, and should be referred to in the event of any need for clarification.

General Policy. "Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a). The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving. . . ." (Section 300.3 [Use of Force])

To Effect Arrest. "Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an

arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).” (Section 300.3.1 [Use of Force To Effect An Arrest])

Factors. Factors to be considered in evaluating whether an officer has used reasonable force include:

The apparent immediacy and severity of the threat to officers;

The conduct of the individual being confronted as reasonably perceived by the officer at the time;

Officer/subject factors such as age, size, relative strength and other factors;

The effects of suspected drugs or alcohol;

The individual’s apparent mental state or capacity;

The individual’s apparent ability to understand and comply with officer commands;

The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained;

The availability of other reasonable and feasible options;

Seriousness of the suspected offense;

Potential for injury to officers, suspects and others;

Whether the person appears to be resisting;

The risk and reasonably foreseeable consequences of escape, among others.

(Section 300.3.2 [Factors Used To Determine Reasonableness of Force], citing Penal Code 835(a) factors).

Alternatives. Alternatives to use of force may include, “as time and circumstances permit and when community and officer safety would not be compromised”: summoning additional resources, formulating a plan before entering an unstable situation that does not require immediate intervention, employing other tactics, attempts to de-escalate a situation, use of crisis intervention techniques by properly trained personnel. (Section 300.3.5 [Alternative tactics – De-escalation])

WRAP. In determining whether to use the leg restraint (the WRAP is the only approved device for leg restraint), APD policies advise that officers should consider:

“(a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.

(b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., hitting his/her head against the interior of the patrol unit, running away from the arresting officer while handcuffed, kicking at objects or officers).

(c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).” (Section 306.7 [Application of Leg Restraint Devices])

The Department does not have specific policies regarding use of the prone position except under “Guidelines for Use of Leg Restraints.” Under that section, APD policies advise, among other things:

“Limit the number of officers on top of the subject while in the prone position. Officers should position themselves on the shoulder blades and legs and avoid pressure to the spine.”

“Once secured, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person’s ability to breath.”

“The restrained person should be continually monitored by an officer while in the leg restraint. The officer should ensure that the person does not roll onto and remain on his/her stomach.”

“The officer should look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.”

(Section 306.7.1, subsections b, d, e, f [Guidelines For Use of Leg Restraints].)

Excited Delirium. Under “Medical Consideration” APD policies advise that “Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called ‘excited delirium’), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death.” (Section 300.6 [Medical Consideration])

2. Analysis and Findings

a. All Officers

General Policy. Officers McKinley and Fisher had a “legitimate law enforcement purpose” in arresting Gonzalez, probable cause that Gonzalez was in violation of Penal Code 647(f), public intoxication and unable to care for himself. (Section 300.3.) Officers McKinley, Fisher and Leahy were not obligated to “retreat or desist” from their efforts to arrest because of Gonzalez’s resistance (Section 300.3.1) The question is whether the officers’ use of force was reasonable “judged from the perspective of a reasonable officer on the scene at the time of the incident,” recognizing that officers must make “split second decisions” with “limited information and in circumstances that are tense, uncertain and rapidly evolving.” (Section 300.3)

Application of Factors. Application of the factors “to be considered in whether use of force was reasonable” shows the following: (Section 300.3.2)

Initially, Gonzalez did not pose an immediate or severe threat to the officers. Gonzalez was alone in the park, apparently drinking alcohol, and when questioned by McKinley and Fisher, did not act in an aggressive manner. The offense, public intoxication, was a misdemeanor, not a serious offense.

Given the situation, McKinley began the encounter in an appropriate manner, engaging in de-escalation tactics. He spoke in a calm and friendly tone, attempting to resolve the situation without force. He attempted to engage Gonzalez in dialogue, asking him if he was okay, to produce identification and to confirm that he would not be drinking in the parks. He waited to assess the situation, for approximately 9 minutes, before taking any action. When Officer Fisher arrived, he also spoke in a calm and friendly tone, asking Gonzalez whether he had any identification.

Soon though, based on Gonzalez’s conduct, McKinley and Fisher reasonably concluded that Gonzalez could potentially come to some harm, or harm another, based on his level of intoxication. Gonzalez was not able to respond to simple questions, spoke incoherently and was unsteady on his feet. Due to his size (approximately 250 pounds), Gonzalez was potentially difficult to control. He showed signs of serious alcohol or other intoxication, his mental state was questionable given his incoherent speech, and he had difficulty understanding and complying with officer commands.

Officers McKinley and Fisher had limited choices under the circumstances. McKinley did not believe that the Alameda Crisis Team was available, and he determined that Gonzalez was too intoxicated to cooperate with them.

The officers were not able to effectively restrain Gonzalez without use of force. After McKinley and Fisher made the decision to arrest Gonzalez for Penal Code 647(f), they continued to attempt

to speak with Gonzalez in a nonconfrontational manner to obtain his cooperation. However, Gonzalez did not cooperate and struggled with the officers. Due to his size and resistance, the officers determined that they would not be able to handcuff him while standing, and attempted to take him to the ground. After about three minutes, when Gonzalez continued to resist, he caused all three to fall to the ground.

Prone position. Department policy does not prohibit use of the prone position in effecting an arrest. Department policy does not specifically address the prone position, except under the policy that governs use of leg restraints, which is the WRAP.

In connection with use of the WRAP, Department policy advises to “limit the number of officers on top of the subject while in the prone position,” to “position themselves on the shoulder blades and legs and avoid pressure to the spine,” “once secure” to avoid placing a person “on his/her stomach for an extended period, as this could reduce the person’s ability to breath,” and to “look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.” (Section 306.7.1, subsections b, d, e, f [Guidelines For Use of Leg Restraints].)

Here, the WRAP was never deployed, but these factors are helpful in assessing the evidence of use of force. The evidence shows the following:

Number of officers. There were three officers involved, but they took different positions during the incident. McKinley was mostly on the left of Gonzalez, Fisher was mostly on the right of Gonzalez, and Leahy (relieving Clemmons) was on his legs.

Positions of officers. The video footage from the body cameras does not show a complete picture of everyone’s positions and therefore is not conclusive on the officers’ positions at all points in time. However, the evidence reasonably supports the conclusion that the officers were attempting to avoid pressure on Gonzalez’s spine or neck.

The analysis of the body camera video did not observe that the officers placed any pressure on Gonzalez’s neck. The absence of pressure to the neck is consistent with the Autopsy Report, which concluded that Gonzalez’s cause of death was “Toxic effects of methamphetamine,” with other significant contributions to death being “Physiologic stress of altercation and restraint; Morbid obesity, Alcoholism”. The Autopsy Report did not show any injuries to Gonzalez’s neck.

The testimony and video analysis supports the conclusion that the officers had pressure on Gonzalez’s back for only short periods. McKinley initially straddled Gonzalez (he says for 30 to 40 seconds), but then moved to the left, had his weight on his own knees and legs, and attempted to secure Gonzalez with his hands and arms. After that, he only momentarily (1.1 second) had his knee on Gonzalez’s back, and removed it immediately when advised by Fisher. Fisher was initially over Gonzalez’s back, but then moved to Gonzalez’s right, and appeared to have his weight mostly on his own knees and legs. Fisher had his arms and hands across Gonzalez’s back,

controlling Gonzalez's arms and hands. Fisher placed his right knee on Gonzalez's right shoulder for 2 minutes, 52 seconds. Leahy was controlling Gonzalez's legs.

As stated above, Department policy does not prohibit placing an individual in the prone position to effect an arrest. Although the policy is articulated in connection with the WRAP, Department policy does not prohibit officers from placing pressure on an individual's shoulder, and Department policy does not prohibit placing pressure on an individual's legs. As stated above, Department policy states that officers are to "position themselves on the shoulder blades and legs and avoid pressure to the spine,"

Monitoring. The evidence shows that McKinley was monitoring Gonzalez while he was on the ground. McKinley kept his face near to Gonzalez and engaged him in a dialogue, asking him to stop resisting, asking him his name and date of birth, and telling him the officers were going to take care of him. Consistent with his approach from the beginning, McKinley continued to speak to Gonzalez in a calm, friendly manner, in an effort to attempt to obtain compliance. For example, McKinley said, "It's okay, Mario. We're going to take care of you," and "I think you just had too much to drink today." Gonzalez was answering until close to the time he became unresponsive. Officer Fisher was to Gonzalez's other side, but was aware that McKinley was in dialogue with Gonzalez, as was Officer Leahy.

Period of time on ground. Again, the Leg Restraint policies are helpful in analyzing the use of force. Using these policies, we analyze below whether after the officers secured Gonzalez, the officers placed Gonzalez on his stomach for an extended period and failed to recognize whether he was in physical distress.

Department policies do not define what is considered an "extended period." Here, the video analysis shows that, before he became unresponsive, Gonzalez was on the ground for approximately 5 minutes in total, and for about 3 and a half minutes after being handcuffed, although the exact time of handcuffing cannot be clearly seen from the video. This time estimate is based on the time of clicking noises, presumably from the handcuffs being closed.

The communication among the officers, picked up in the body camera footage, shows that they were mindful of the policy to avoid keeping someone on his or her stomach for an extended period. Officer Fisher asked, "Think we can roll him on his side?" to which Officer Leahy responded, "I don't want to lose what I got." Officer Fisher also advised that "No weight" be placed on Gonzalez's chest, to which Officer McKinley complied. The officers intended to use the WRAP which they believed would be quickly deployed. All the officers had been trained in the dangers of positional asphyxia and excited delirium.

According to all the officers, they believed that, even after being handcuffed, Gonzalez was still resisting and they did not have him secured. Also, they did not believe that Gonzalez was in distress because Gonzalez was communicating and resisting up to the point he became nonresponsive. They interpreted the noises he was making as signs of exertion in resisting.

Continuing resistance. Officer Leahy describes Gonzalez as attempting to kick his legs upward and bucking, with the effect of lifting up Leahy's body. He states that he feared Gonzalez would break free, creating an officer safety issue, potentially endangering Gonzalez himself, and requiring the officers to use a higher level of force to detain him. The other officers also stated that Gonzalez continued to resist. Regarding continuing resistance by Gonzalez, the body camera footage shows the following. Gonzalez was continuously moving during the time he was on the ground. He was turning his head from side to side and lifting it up at times. Because of the angle of the cameras, they do not show much of Gonzalez's lower torso or legs. But soon after Gonzalez was handcuffed, Officer Fisher's body camera records Fisher saying, "He's lifting my whole body weight up." At around 17 minutes (17:19) into the incident, Officer McKinley's body camera records Fisher as saying, "Mario, calm down please," and Officer Leahy saying "Stop kicking, Mario. Stop, stop kicking." Soon after, Officer McKinley states, "Mario, just please stop fighting us." These last two recordings occurred less than a minute before Officer McKinley stated that Gonzalez had gone non-responsive. (18:03).

Distress. Regarding whether Gonzalez was in distress, the Body Cam footage shows the following: As stated above, McKinley kept up a dialogue with Gonzalez while Gonzalez was on the ground and Gonzalez was responding. When McKinley told Gonzalez they were going to take care of him, Gonzalez replied "There there. Thank you. Hey. I got it. Thank you. Thank you." When McKinley asked Gonzalez his birthday, Gonzalez replied (at 16:31) "1984" and then "No. '95, 1995, I said." According to the video analysis, Gonzalez's last words are heard at 17:34, last sounds are heard at 17:45, and last movements seen at 17:49. These times are best estimates, which occurred less than a minute before Officer McKinley stated that Gonzalez had gone non-responsive. The body camera video does not show Gonzalez saying he could not breathe or making any other physical complaint. Observation of the video, however, also shows that, to the extent Gonzalez was resisting, that could be interpreted as a sign of distress, and Gonzalez making grunting noises also could be interpreted as expressions of distress.

b. Officer McKinley

The investigation found that Officer McKinley was cooperative, forthright and credible. His testimony was supported by the body camera footage and other evidence to the extent it existed. There is evidence that Officer McKinley acted in conformity with Department policy in use of force. However, due to the limits of the body camera footage, certain information could not be completely confirmed.

McKinley initially attempted to de-escalate the situation by engaging in a dialogue and continued that dialogue even after Gonzalez was on the ground. The evidence supports the conclusion that McKinley attempted to keep his body weight off of Gonzalez's back, mostly restraining him from the right and using his hands. He initially straddled Gonzalez and momentarily placed a knee on Gonzalez's back and then immediately removed it when advised by Fisher to do so. Otherwise, McKinley appears to have been mostly bearing his own weight and did not have his

weight on Gonzalez. Gonzalez was on the ground for five minutes and handcuffed for about 3 and a half minutes. McKinley was monitoring Gonzalez, and during most of that time, Gonzalez was responding physically and verbally. As soon as he became unresponsive, McKinley began life saving activities. McKinley states that he did not believe Gonzalez was in any distress because Gonzalez continued to resist and to talk with McKinley.

Given the short period of time involved, and the quickly unfolding circumstances, we cannot conclude that Officer McKinley was unreasonable in his statements that Gonzalez was continuing to resist, the officers did not have him under control, and he did not show signs of distress. However, the video footage is not conclusive on the issue of continued resistance, given that it does not show Gonzalez's lower body. And Gonzalez's verbal expressions, as shown on the video footage, could be interpreted as signs of distress.

RECOMMENDED FINDING: Based on a totality of the circumstances, and the limits of the evidence, this report recommends that any potential complaint against Officer McKinley for excessive use of force be designated as "Not Sustained."

c. Officer Fisher

The investigation found that Officer Fisher was cooperative, forthright and credible. His testimony was supported by the body camera footage and other evidence to the extent it existed. There is evidence that Officer Fisher acted in conformity with Department policy in use of force. However, due to the limits of the body camera footage, certain information could not be completely confirmed.

Fisher initially attempted to de-escalate the situation by engaging in a dialogue with Gonzalez, asking for identification, and then continued that dialogue to obtain Gonzalez's compliance to being handcuffed. When Gonzalez resisted, and the officers and Gonzalez fell to the ground, the evidence supports the conclusion that Fisher attempted to keep his body weight off of Gonzalez's back. Fisher was initially over Gonzalez's back to handcuff Gonzalez, but then moved to Gonzalez's right, and appeared to have his weight mostly on his own knees and legs. Fisher had his arms and hands across Gonzalez's back, controlling Gonzalez's arms and hands. Fisher placed his right knee on Gonzalez's right shoulder for 2 minutes, 52 seconds, but Department policy does not prohibit pressure on the shoulder blade. Fisher was mindful of not keeping Gonzalez on his stomach for an extended period and of not placing weight on his chest.

Soon after Officer Leahy took control of Gonzalez's legs, Officer Fisher asked him "Can you put him in a figure 4?" – which is a leg control hold. Officer Leahy responded, "I don't want to lose what I've got." About a minute later, Fisher asked Leahy, "Think we can roll him on his side?" to which Leahy responded, "I don't want to lose what I've got." According to Officer Fisher, he did not ask the question because he observed that Gonzalez was in any distress, but because it was Department policy to turn someone onto their side as soon as it was safe to do so. Based on Officer Leahy's statement, Fisher concluded that Gonzalez was still actively resisting, or

attempting to get up and there was possibly an officer safety issue. Leahy also did not understand Fisher to be communicating that Gonzalez was in distress, but only, based on Department policy, whether Gonzalez was sufficiently secured to turn him on his side.

About a minute later, Officer Fisher stated, "We have no weight on his chest" which, according to Fisher was intended to document that the officers had no weight on Gonzalez's chest. Officer McKinley misunderstood this comment and briefly placed his leg on the side of Gonzalez's back, but Fisher said, "No, no. No weight. No weight" and McKinley removed his leg.

Fisher states that he did not believe Gonzalez was in any distress during this time because Gonzalez continued to resist and continued to talk with McKinley.

Given the short period of time involved, the quickly unfolding circumstances, we cannot conclude that Officer Fisher was unreasonable in his statements that Gonzalez was continuing to resist, the officers did not have him under control, and he did not show signs of distress. However, the video footage is not conclusive on the issue of continued resistance, given that it does not show Gonzalez's lower body. And Gonzalez's verbal expressions, as shown on the video footage, could be interpreted as signs of distress.

RECOMMENDED FINDING: Based on a totality of the circumstances, and the limits of the evidence, this report recommends that any potential complaint against Officer Fisher for excessive use of force be designated as "Not Sustained."⁶

d. Officer Leahy

The investigation found that Officer Leahy was cooperative, forthright and credible. His testimony was supported by the body camera footage and other evidence to the extent it existed. There is evidence that Officer Leahy acted in conformity with Department policy in use of force. However, due to the limits of the body camera footage, certain information could not be completely confirmed.

Officer Leahy did not become involved in the incident until about 16 minutes from the time Officer McKinley first began communication with Gonzalez, and until about 3 minutes after Gonzalez and the officers fell to the ground. When Leahy arrived, he saw signs of a struggle between Gonzalez and the officers. Gonzalez was on the ground with Officer McKinley on

⁶ When Officer Fisher responded to the call regarding Gonzalez, he was accompanied by parking technician Charles Clemmons. Although not relevant to our findings regarding excessive use of force, as a technical matter, we did not find evidence that Clemmons had the permission of the Watch Commander to participate in the equivalent of a ride along with Officer Fisher on this occasion. However, we also found that Clemmons acted in conformity with Department policy because he acted in an emergency situation at the direction of police officer.

Gonzalez's left, Officer Fisher on Gonzalez's right and Clemmons on Gonzalez's legs. Leahy relieved Clemmons from his position on Gonzalez's legs.

In his interview, Leahy stated that he had his hands controlling Gonzalez's legs and was still bearing his own body weight. The body camera video shows a hand position consistent with Officer Leahy's account, but due to the direction of the camera, it does not show the rest of Officer Leahy's body. Leahy was on the scene for a short time, controlling Gonzalez's legs for only about 2 minutes before Gonzalez became unresponsive.

Soon after Officer Leahy took control of Gonzalez's legs, Officer Fisher asked him "Can you put him in a figure 4?"—a leg control hold. Officer Leahy responded, "I don't want to lose what I've got." According to Leahy, he feared that if he tried to use a figure 4 control technique, he would lose control of Gonzalez's legs. About a minute later, Fisher asked Leahy, "Think we can roll him on his side?" to which Leahy responded, "I don't want to lose what I've got." According to Officer Leahy, he did not interpret Officer Fisher's question as a sign that Gonzalez was in distress, but that it would be a safer position to have him on his side. Officer Leahy further explained that he did not have complete control of Gonzalez's legs and was afraid that if he lost control, he would need to use a higher level of force to regain it, such as a TASER or baton.

Officer Leahy also claimed that he did not think Gonzalez was in distress because he heard McKinley communicating with Gonzalez, asking him his date of birth, and potentially his last name, and that Gonzalez was responding. He heard Gonzalez making noises but to Leahy, they were correlated with the physical exertion that Gonzalez was displaying. He described Gonzalez as trying to buck at the hips, bend at the knees, and kick his heels into the to break free of control. If Gonzalez were to break free, he may have been able to stand and, even if handcuffed, present a threat to himself and the officers.

Given the short period of time involved, the quickly unfolding circumstances, we cannot conclude that Officer Leahy was unreasonable in his statements that Gonzalez was continuing to resist, the officers did not have him under control, and he did not show signs of distress. However, the video footage is not conclusive on the issue of continued resistance, given that it does not show Gonzalez's lower body. And Gonzalez's verbal expressions, as shown on the video footage, could be interpreted as signs of distress.

RECOMMENDED FINDING: Based on a totality of the circumstances, and the limits of the evidence, this report recommends that any potential complaint against Officer McKinley for excessive use of force be designated as "Not Sustained."

e. Charles Clemmons

Charles Clemmons is a part time parking technician with the Department. He is not a peace officer, but previously worked in the City Jail. On April 19, 2021, Clemmons was meeting Officer Fisher for coffee when Officer Fisher received the call to act as back up to Officer

McKinley. When Officer Fisher arrived at the scene, Clemmons stayed in the patrol car. But when the two officers and Gonzalez fell to the ground, Clemmons exited the patrol car. At the request of Officer McKinley to control Gonzalez's legs, he laid across Gonzalez's legs for approximately 3 minutes until relieved by Officer Leahy. One of the officers asked Clemmons to get the WRAP restraint device, which apparently Clemmons did not hear.

Parking technicians are "non-sworn" members of the Department. The Alameda Police Department Policy Manual states that "a non-sworn police employee is subject to all Department rules and regulations in the same manner as are officers and other employees of the Department." (APD Policy Manual Section 200.3 [Non-Sworn Police Employees].)

At the time of the incident, Clemmons was off duty in a civilian capacity. According to Clemmons, it was not a common occurrence for him to accompany an officer on a call. Department policies do not address this specific circumstance, which appears to be an informal arrangement that resulted in Clemmons being in the patrol car.

However, Department policies do address "Peace officer Ride-Alongs" (Section 410.2.3), which anticipate that an off-duty member of the Department may be present during police operations. They state that:

"Off-duty members of this department or any other law enforcement agency will not be permitted to ride-along with on-duty officers without the express consent of the Watch Commander. In the event that such a ride-along is permitted, the off-duty employee shall not be considered on duty and shall not represent themselves as a peace officer or participate in any law enforcement activity except as emergency circumstances may require." (Sec. 410.2.3 [Peace Officer Ride-Alongs].)

"The assigned employee shall maintain control over the ride-along at all times and instruct him/her in the conditions that necessarily limit their participation. These instructions shall include:

- (a) The ride-along will follow the directions of the officer.
- (b) The ride-along will not become involved in any investigation, handling of evidence, discussions with victims or suspects, or handling any police equipment.
- (c) The ride-along may terminate the ride at any time and the officer may return the observer to their home or to the station if the ride-along interferes with the performance of the officer's duties.
- (d) Ride-alongs may be allowed to continue during the transportation and booking process provided this does not jeopardize their safety.

(e) Officers will not allow any ride-alongs to be present in any residences or situations that would jeopardize their safety or cause undue stress or embarrassment to a victim or any other citizen.

(f) Under no circumstance shall a civilian ride along be permitted to enter a private residence with an officer without the expressed consent of the resident or other authorized person.

(Section 410.4 [Control of Ride-Alongs].

Here, Clemmons participated in the equivalent to a ride-along with Fisher – responding to a call for service.⁷

In connection with use of force, Clemmons did not represent himself as a peace officer, and participated in a law enforcement activity based on an “emergency circumstance” – Officers McKinley and Fisher being pulled to the ground with Gonzalez. During that encounter, Clemmons was following the directions of Officer McKinley, who asked Clemmons to secure Gonzalez’s legs. Clemmons did not use any other force and he secured Gonzalez’s legs for only a few minutes before being relieved by Officer Leahy.

It is a legitimate question whether, under APD policies, the existence of “emergency circumstances” can justify a ride-along being involved in a situation “that would jeopardize their safety” (Policy 4.10.4 (e)), such as controlling an arrested individual. But because Department policies are not clear on this issue, we cannot make a finding of a violation on this basis.

RECOMMENDED FINDING. In connection with use of force, Clemmons acted in conformity with Department policy in that he acted on an “emergency” basis and reasonably followed the directions of the officers in charge of the scene. This report recommends that he be exonerated from any potential complaint for excessive use of force.

XI. EXHIBITS

Ex.	Exhibit Description
1	Alameda Police Department Policy 300 — “Use of Force”
2	Alameda Police Department Policy 306 — “Handcuffs and Restraints”

⁷ To the extent this Department policy applies, there is no evidence that that Clemmons had the “express consent of the Watch Commander” to accompany Fisher. But apparently, it was well known that Clemmons sometimes rode with officers. And this is a technical matter that is not relevant to our investigation into use of force.

Ex.	Exhibit Description
3	Alameda Police Department Policy 340 — “Standards of Conduct”
4	Alameda Police Department Policy 420 — “Cite and Release Policy”
5	Alameda Police Department Policy 440 — “Contracts and Temporary Detentions
5A	Alameda Police Department Policy 1020 – “Personnel Complaints”
6	911 Call Transcript
7	911 Call Transcript
8	Officer James Fisher Body Worn Camera Transcript
9	Officer George Koutsoubos Body Worn Camera Transcript
10	Officer Cameron Leahy Body Worn Camera Transcript
11	Officer Eric McKinley Body Worn Camera Transcript
12	Officer Frank Petersen Body Worn Camera Transcript
13	Officer Russell Wise Body Worn Camera Transcript
14	Sergeant Emilia Mrak Body Worn Camera Transcript
15	Transcript of Dash Camera Video from Otis Drive during Mario Gonzalez incident provided by civilian
16	Transcript of Body Worn Camera Post-Incident Interview with Witness
17	Transcript of Body Worn Camera Post-Incident Interview with Witness (Neighborhood Canvas)
18	Transcript of Body Worn Camera Post-Incident Interview with Witness
19	Body Cam Video Analysis Report by Video Analysis Expert (Including supplemental chronological report)
20	Transcript of Officer Eric McKinley Interview
21	Transcript of Officer Cameron Leahy Interview

Ex.	Exhibit Description
22	Transcript of Officer James Fisher Interview
23	Transcript of Technician Charly Clemmons Interview
24	Transcript of Officer Russell Wise Interview
25	Transcript of Sergeant Emilia Mrak Interview
26	Transcript of Officer Francisco Guerra Interview
27	Transcript of Officer George Koutsoubos Interview
28	Transcript of Sergeant Frank Peterson Interview
29	Transcript of Interim Chief of Police Randy Fenn Interview
30	Transcript of Firefighter/Paramedic Daniel Martin Interview
31	Transcript of Firefighter/Paramedic Tyler Headrick Interview
32	Transcript of Acting Fire Captain Bradley Eckelhoff Interview
33	Summary of Interview with Subject Officer Eric McKinley
34	Summary of Interview with Subject Officer James Fisher
35	Summary of Interview with Subject Officer Cameron Leahy
36	Summary of Interview with Subject Technician Charly Clemmons
37	Summaries of Non-Subject Interviews
38	911 Call Recording
39	911 Call Recording
40	Officer James Fisher Body Worn Camera Footage
41	Officer George Koutsoubos Body Worn Camera Footage
42	Officer Cameron Leahy Body Worn Camera Footage
43	Officer Eric McKinley Body Worn Camera Footage

Ex.	Exhibit Description
44	Officer Frank Petersen Body Worn Camera Footage
45	Officer Russell Wise Body Worn Camera Footage
46	Sergeant Emilia Mrak Body Worn Camera Footage
47	Recording of Officer Eric McKinley Interview
48	Recording of Officer Cameron Leahy Interview
49	Recording of Officer James Fisher Interview
50	Recording of Technician Charly Clemmons Interview
51	Recording of Officer Russell Wise Interview
52	Recording of Sergeant Emilia Mrak Interview
53	Recording of Officer Francisco Guerra Interview
54	Recording of Officer George Koutsoubos Interview
55	Recording of Sergeant Frank Peterson Interview
56	Recording of Interim Chief of Police Randy Fenn Interview
57	Recording of Firefighter/Paramedic Daniel Martin Interview
58	Recording of Firefighter/Paramedic Tyler Headrick Interview
59	Recording of Acting Fire Captain Bradley Eckelhoff Interview
60	Officer McKinley Training Record
61	Officer Fisher Training Record
62	Officer Leahy Training Record
63	Alameda County Coroner Investigator's Report
64	Recording of Officer McKinley Second Interview
65	Recording of Officer Leahy Second Interview

Ex.	Exhibit Description
66	Transcript of Officer McKinley Second Interview
67	Transcript of Officer Leahy Second Interview