

County of Santa Clara
Office of the Sheriff




55 West Younger Avenue
San Jose, California 95110-1721
(408) 808-4900

Laurie Smith
Sheriff

MEMORANDUM

TO: Undersheriff Kenneth Binder #1682

FROM: Sergeant Brett Moore #1908 
Internal Affairs Unit

DATE: 12/15/2021

SUBJECT: Statement of Findings
Internal Affairs
Case Number: FN2021-00180

Involved Parties:

Employee: Correctional Deputy Leuadeth Paphanthong #10622

Complainant: Sheriff's Office Administration

Witnesses: Correctional Deputy Julius Valdez #11248

Allegations Pertaining to Deputy Paphanthong:

- I. **Violation of Santa Clara County Merit System Rule A25-301(a)(1):** *“Violation of the county charter, merit system rules and regulations and written and published departmental rules and policies which do not conflict with this article.”*
- II. **Violation of Santa Clara County Merit System Rule A25-301(a)(2):** *“Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned task or failure to discharge duties in a prompt, competent and responsible manner.”*
- III. **Violation of Santa Clara County Merit System Rule A25-301(b)(1):** *“Guilty of gross misconduct, or conduct unbecoming a county officer or employee which tends to discredit the county or county service.”*
- IV. **Violation of Department of Correction Policy 3.31.IV.J.15.a.:** *“Employees shall, at all times, be courteous and discreet to all persons, maintain decorum and command of temper, and avoid the use of violent, insolent or obscene language.”*
- V. **Violation of Department of Correction Policy 9.01.I.:** *“When force must be used, sworn staff shall only use that amount of force that is objectively reasonable and minimally necessary to control the situation or stop the threat, and the force must be in the service of a legitimate correctional objective.”*
- VI. **Violation of Department of Correction Policy 9.01.VI.A.1.a.:** *“Staff shall not threaten, intimidate, mistreat, or physically, verbally, or mentally abuse an inmate in retaliation for an inmate’s conduct, speech, or expression of ideas.”*
- VII. **Violation of Department of Correction Policy 9.01.X.C.3.:** *“The use of force requires frequent reevaluation. If the amount of resistance decreases and the incident de-escalates, the force must be reduced and/or terminated as soon as possible, consistent with maintaining control of the situation. However, if the resistance increases, the level of force may also increase.”*
- VIII. **Violation of Department of Correction Policy 9.01.X.G.4.:** *“Once an inmate is controlled, they should be placed in a recovery position (on their side, to allow the mouth to drain, and with limbs bent to prevent the inmate from rolling onto their stomach) to minimize breathing problems and the risk of medical distress. Inmates placed on a gurney or stretcher should be placed in the recovery position or, as soon as practical, in the sitting position.”*
- IX. **Violation of Department of Correction Policy 9.01.XIV.A.10.:** *“Staff shall not strike, use chemical agents, or use force against an inmate who is restrained unless the inmate is assaultive and there is an immediate threat of serious injury to themselves, other staff, or other inmates and there are no other reasonable means to control the inmate.”*

Basis of Allegations Pertaining to Deputy Paphanthong:

It is alleged that on January 5, 2021, Deputy Paphanthong used unnecessary and unreasonable force against Inmate . It is further alleged that during the incident, Deputy Paphanthong threatened Inmate

Investigation:

On September 15, 2021, at approximately 0700 hours, I was assigned this investigation by Internal Affairs Lieutenant Kelvin Mah #2055. I located and reviewed the Blue Team reports and Supervisor's Summary associated to IR #21-104776.

Deputy Paphanthong's Blue Team Report (Record ID #26196):

On January 6, 2021, at 0040 hours, Deputy Leuadeth Paphanthong #10622 drafted a Sheriff's Office Use of Force Custody Category 1 Blue Team Report and routed it to Main Jail Correctional Sergeant Dennis Gillotte #10475.

Investigator's Note: The following information consists of the Incident Summary portion of the report. The content remains unchanged except for italicization, font, and the addition of quotation marks. For the best record, please refer to the case file and the document in its entirety.

"This incident was audio / video recorded using my department issued body worn camera (BWC). The following is a synopsis of that incident. For complete details, please refer to the recorded file.

On 01/05/2021, I was working as a uniformed Sheriff's Deputy at Main Jail Complex assigned to Module 5C.

At approximately 2050 Hours, I was conducting pill call in Module 5C through module entrance door paper pass, while the bottom group was out for program (recreational/ out of cell time). Deputy Valdez #11248 opened Inmate cell door for him to come downstairs for pill call. Inmate did not walk towards the pill call nurse. Inmate made a detour to the sun deck area and started to put breadcrumbs in between the metal mesh barrier and was talking nonsense.

I tried to speak to and encourage Inmate to go get his pills from the nurse. Once Inmate was done with the breadcrumbs, he walked out of the sun deck area and did not go towards the nurse. Inmate proceeded to walk towards the officer station, turned around and throw a cup of an unknown liquid substance towards my direction.

Inmate then grabbed the television remote control from the officer's station and proceeded to walk upstairs. Deputy Valdez directed Inmate to stop. Inmate did not comply and continued to walk towards his cell.

Deputy Valdez and I tried to apprehend Inmate as he was going upstairs. Inmate resisted by pulling away from my grip. Once Deputy Valdez and I had a grip on Inmate

we placed him on the ground on the 2nd level tier. While on the ground Inmate resisted by thrashing his body but Deputy Valdez was able to secure him in handcuffs.

Once secured, I had my left knee on his back near the buttock area and my right knee on his head while controlling Inmate right hand. I told Deputy Valdez to go lock down the dorm. Once the inmates out for program were locked down, Deputy Valdez and I escorted Inmate out Module 5C and placed him in Interview Room #3 at the F5 core area. At approximately 2055 hours, Nurse medically cleared Inmate of no injuries.

At approximately 2149 hours, Sgt. Gillotte #10475 and Sgt. Hickinbothan #2149 arrived on scene.

At approximately 2155 hours, Mental Health cleared Inmate ”

Deputy Valdez' Blue Team Report (Record ID #26197):

On January 6, 2021, at 0043 hours, Correctional Deputy Julius Valdez #11248 drafted a Sheriff's Office Use of Force Custody Category 1 Blue Team Report and routed it to Sergeant Gillotte.

Investigator's Note: The following information consists of the Incident Summary portion of the report. The content remains unchanged except for italicization, font, and the addition of quotation marks. For the best record, please refer to the case file and the document in its entirety.

“The incident was audio/video recorded using my department issued Body Worn Camera. The following is a synopsis of this incident.

On 01/05/2021, I was working as a uniformed Deputy assigned to Module 5C at the Main Jail facility.

At approximately 2050 hours, I was conducting program and pill call. Inmate was let out of his cell to get his medication. Inmate demanded an inmate request form and a work order. I told Inmate to get his medication and that I would get him the forms later. Inmate became upset when his demands were not going to be met immediately. I told Inmate to get in line to receive his medication. Inmate refused to get his medication. I told Inmate that if he was not going to get his medication he needed to return to his cell. Inmate began walking, then turned and threw a cup of water towards myself and my partner, Deputy Paphanthong #10622. Inmate then reached over the officer station to grab the television remote. I told Inmate to stop and he did not comply. Inmate ran to evade me, but was apprehended at the top of the stairs near Cell #44. I grabbed Inmate left arm to gain his compliance. Inmate became resistive and was taken to the ground, without pain compliance. Deputy Paphanthong and I placed Inmate in handcuffs.

At approximately 2051 hours, I went back down the stairs to make sure the rest of the module had locked down and was secured.

At approximately 2053 hours, I escorted Inmate [redacted] to the 5th Floor Core Area. I secured Inmate [redacted] in Interview Room #3 to await assessment. I notified Sergeant Gillotte #10475, of the incident via telephone.

At approximately 2055 hours, Nurse [redacted] arrived to assess Inmate [redacted]. Nurse [redacted] medically cleared Inmate [redacted] of any injuries.

At approximately 2100 hours, Deputy Valenzuela #11113 arrived and took photographs of Inmate [redacted].

At approximately 2112 hours, I referred Inmate [redacted] to Mental Health Clinician [redacted] by telephone.

At approximately 2152 hours, Jail Crimes Unit (JCU) Sergeant Hikinbotham #2087, arrived to interview Inmate [redacted].

At approximately 2159 hours, Mental Health Clinician [redacted] arrived to speak with Inmate [redacted].

I had not further contact with Inmate [redacted] regarding this incident.

End of Report”

Sergeant Gillotte’s Supervisor’s Summary:

On January 5, 2021, Sergeant Gillotte drafted a Supervisor’s Summary related to IR #21-104776. The document was addressed to Main Jail Division Commander, Captain Kirkland.

Investigator’s Note: The following document consists of two screen shots that capture the Supervisor’s Summary in its entirety.

County of Santa Clara
Office of the Sheriff



Custody Bureau
Main Jail Division

Laurie Smith
Sheriff

Supervisor's Summary

To: Captain Kirkland -Main Jail Division Date: 1-5-2021
From: Sergeant Gillotte #10475 *G. Gillotte* Subject: Use of Force Incident - I/M [redacted]

IR# 21-104776

On 01-05-2021, I was working as the 5th floor Sergeant at the Main Jail facility. At approximately 2100 hours, I received a phone call notifying me of a use of force incident that had just occurred in Module 5C. Deputy Valdez #11248 stated that Inmate [redacted] was in the dayroom and became hostile by throwing the television remote control. Deputy Valdez and Deputy Paphanthong #10672 caught up to Inmate [redacted] on the stairwell and took hold of each arm. The deputies ordered him to stop, but he refused. Deputy Valdez stated they took Inmate [redacted] to the ground and secured him in handcuffs. The deputies escorted him to a 5th floor interview room pending medical and mental health assessments.

I asked Deputy Valdez if he or Deputy Paphanthong were injured. Deputy Valdez stated they were not injured. Inmate [redacted] had been assessed by medical staff and was also not injured. I instructed Deputy Valdez to have another deputy from Module 5A respond to the interview room and take photographs of Inmate [redacted]. I instructed Deputy Valdez to contact the Jail Crimes Unit and notify them of the incident.

I reviewed the overhead camera footage and the Body Worn Cameras (BWC) for this incident. After reviewing the camera footage, I discovered three issues with this incident.

Issue #1:
Although this incident happened quickly, the deputies did not use their hand held radios to notify Main Jail control of the incident. There was time to broadcast over the radio for assistance before the use of force occurred. Deputies could also have used their radio to notify control that force was used, the inmate was secured in handcuffs, and requested a supervisor to respond.

Issue #2:
Inmate [redacted] threw a liquid substance at both deputies after they ordered him to return to his cell. Inmate [redacted] immediately ran away from the deputies and up the stairs. Both deputies gave chase and caught up to him at mid stairway level. There was a brief struggle with Inmate [redacted] not relinquishing his right arm. Deputy Paphanthong placed his left knee on Inmate [redacted] lower back and his right knee on Inmate [redacted] right side neck area for approximately 1 minute and 20 seconds. Inmate [redacted] repeatedly stated he was "sorry" and did not appear to be resisting once he was in handcuffs. Deputy Paphanthong should have been aware of Positional Asphyxia, and rolled him onto his side to wait for his partner to assist in escorting him off of the floor. Policy 9.01-7 G3

specifically states, "Staff shall avoid, to the extent possible under the circumstances, placing their weight on an inmate's upper back or in a way that compresses the chest and/or impairs the inmate's breathing."

Issue #3:

Inmate [REDACTED] stated multiple times while he was on the ground that he was sorry. Deputy Paphanthong made a statement, "I'll break your fuckin' arm!" while Inmate [REDACTED] was on the ground in handcuffs. Policy 3.31-11 15a specifically states, "Employees shall, at all times, be courteous and discreet to all persons, maintain decorum and command of temper, and avoid the use of violent, insolent or obscene language."

Upon completion of the incident, the involved deputies wrote Blue Team reports regarding their involvement and observations. Medical and Mental Health staff cleared Inmate [REDACTED] to return to his housing unit. Inmate [REDACTED] complained of pain to his hands. Nurse [REDACTED] assessed Inmate [REDACTED] and stated he was cleared with no injuries. Jail Crimes Unit Sergeant Hickinbotham attempted to read Inmate [REDACTED] his Miranda rights. Inmate [REDACTED] was not cooperative after several attempts. Sergeant Hickinbotham was not able to obtain a statement from Inmate [REDACTED]

Based upon a review of video footage and my review of the reports submitted by the involved deputies, I am forwarding this report via chain of command for further review.

End of summary.

Investigation Continued:

On September 16, 2021, at approximately 0600 hours, Internal Affairs Sergeant Marichalar #10631 provided me with a digital file titled "1-5-2021 UOF 5C" which consisted of Main Jail video footage from the incident, (9) digital photographs of Inmate [REDACTED] a Mugshot Profile of him and a PDF document titled "Administration Incident Review."

The Administration Incident Review document appeared incomplete as it was digitally signed by Correctional Sergeant Boles on the bottom of the first page, while on the second page the Watch Commander, Division Admin and OSIU portions were not completed.

Investigator's Note: The following document consists of two screen shots that capture the incomplete Administration Incident Review document in its entirety.

Administration Incident Review

This form is required to be attached to the front of ALL Use of Force Incidents. Each incident will be subject for review by the Use of Force Review Committee.

*****Do not use this form for: Off-Duty Incidents, IA Referrals, Captain's Directed Reports or Allegations Against Staff*****

Incident Report Number: 21-104776		Associated Crime Report Number: 21-005-0348J	
Inmate's Name:		PFN:	Booking:
Facility: MJ	Location: Module 5C	Team: C	Date: 1/5/21 Time: 2053
Injuries to Staff (Y/N): N		Injuries to Inmate from Force Used (Y/N): N	
Sergeant: D. Gilotte		Watch Commander: Lt. Staden	
Behavior Management Plan (Y/N): N		Use of Force as a result from a Mental Health Evaluation (Y/N): N	
Restraint Chair Used (Y/N): N		Copy of Restraint Chair Log Included (Y/N): N	
<p>Describe Incident (brief synopsis): On 01/05/2021 at approximately 2053 hours, Inmate _____ was out for routine pill call _____ threw a cup of water towards Deputy Valdez and Deputy Paphanthong. Inmate _____ ran upstairs near Cell #4s and was taken to the ground and secured into handcuffs. Inmate _____ was escorted out of Module 5C and secured into Interview Room #3 on the 5th floor core area. Inmate _____ was medically assessed and cleared by Nurse _____ Mental Health Clinician _____ cleared Inmate _____ to return to his housing unit. JCU Sergeant Hickinbotham was notified and documented this incident on event #21-005-0348J</p>			
<input type="checkbox"/> Planned Use of Force		<input checked="" type="checkbox"/> Reactive Use of Force	
PLEO's	Report (Y/N)	Type of Report / Note	BWC <small>(Note Tagged Y/N)</small>
Deputy Paphanthong #10622	Y	Blue Team-Category 1	Y
Deputy Valdez #11248	Y	Blue Team-Category 1	Y
Sergeant Signature: Carlos Boles		<small>Digitally signed by Carlos Boles Date: 2021.02.14 21:31:20 -0800</small>	Date: 1/6/21

Sergeant

Rev 07/15/2020

[Click Here to Email Report to Watch Commander](#)

Administration Incident Review

Incident Report Number: 21-104776	Associated Crime Report Number: 21-005-0348J
Inmate's Name: _____	PFN: _____ Booking: _____

<i>Watch Commander</i>	Type of Force: ▼
	Comments/ Recommendations/ Corrective Action Taken:
	Policy Concerns/Violations: NO <input type="checkbox"/> YES <input type="checkbox"/> BWC/Overhead Cameras Reviewed: NO <input type="checkbox"/> YES <input type="checkbox"/>
	Watch Commander Signature: Date:

[Click Here to Email Report to Division Administration](#)

<i>Division Admin</i>	Recommended Action (if any): 		
	ADC Signature: 	Date: 	<input type="checkbox"/> Reviewed <input type="checkbox"/> Forward to IAU/UFRC
	Division Captain Signature: 	Date: 	<input type="checkbox"/> Reviewed <input type="checkbox"/> Forward to IAU/UFRC

[Click Here to Email Report to UFRC](#)

<i>OSIU</i>	Notes: 	
	OSIU Staff Name: 	Date of Receipt from Division:
	IAU Clearance Date: 	Cleared by Use of Force Review Committee (Y/N) (Date/ Time/ Notes):

Rev 07/15/2020

Investigation Continued:

On September 16, 2021, at 1424 hours, I sent Main Jail Lieutenant Antonio Fernandes #10720 an email, requesting the entirety of the Administration Incident Review paperwork and associated documents to event #21-104776.

On September 16, 2021, at 1431 hours, Lieutenant Fernandes sent me an email that included an additional Administration Incident Review form signed by Sergeant Gillotte, Lieutenant Staden

and Lieutenant Fernandes, Sergeant Gillotte's Supervisor's Summary, and a Memorandum from Captain Kirkland to Assistant Sheriff Timothy Davis.

Administration Incident Review Form Signed by Sergeant Gillotte, Lieutenant Staden and Lieutenant Fernandes:

Investigator's Note: The following document consists of two screen shots that capture the Administration Incident Review document in its entirety.

Administration Incident Review

This form is required to be attached to the front of ALL Use of Force Incidents. Each incident will be subject for review by the Use of Force Review Committee.

****Do not use this form for: Off-Duty Incidents, LA Referrals, Captain's Directed Reports or Allegations Against Staff****

Incident Report Number: 21-104776		Associated Crime Report Number: 21-005-0348J		
Inmate's Name:		PFN:	Booking:	
Facility: MJ	Location: Module 5C	Team: C	Date: 1/5/21	Time: 2053
Injuries to Staff (Y/N): N		Injuries to Inmate from Force Used (Y/N): N		
Sergeant: D. Gillotte		Watch Commander: Lt. Staden		
Behavior Management Plan (Y/N): N		Use of Force as a result from a Mental Health Evaluation (Y/N): N		
Restraint Chair Used (Y/N): N		Copy of Restraint Chair Log Included (Y/N): N		
<p>Describe Incident (brief synopsis): On 01/05/2021 at approximately 2053 hours Inmate _____ was out for routine pill call. Inmate _____ threw a cup of water towards Deputy Valdez and Deputy Paphanthong. Inmate _____ ran upstairs near Cell #43 and was taken to the ground and secured into handcuffs. Inmate _____ was escorted out of Module 5C and secured into Interview Room #3 on the 5th floor core area. Inmate _____ was medically assessed and cleared by Nurse Mental Health Clinician _____ cleared Inmate _____ to return to his housing unit. JCU Sergeant Hickinbotham was notified and documented this incident on event #21-005-0348J.</p>				
<input type="checkbox"/> Planned Use of Force		<input checked="" type="checkbox"/> Reactive Use of Force		
Sergeant	PLEO's	Report (Y/N)	Type of Report / Note	BWC (Must Tagged) (Y/N)
	Deputy Paphanthong #10672	Y	Blue Team - Category 1	Y
	Deputy Valdez #11248	Y	Blue Team - Category 1	Y
Sergeant Signature: Dennis Gillotte		Digitally signed by Dennis Gillotte Date: 2021.01.05 02:10:27 -0800		Date:

Rev 07/15/2020

[Click Here to Email Report to Watch Commander](#)

Administration Incident Review

Incident Report Number: <u>21-104776</u>	Associated Crime Report Number: <u>21-005-0348J</u>
Inmate's Name: _____	PFN: _____ Booking: _____

Watch Commander	Type of Force: Cat I - Reportable Force/ No Injury	
	Comments/ Recommendations/ Corrective Action Taken: Deputy Paphanthong placed his knee on Inmate _____ neck for about one minute and 20 seconds. Deputy Paphanthong used profanity and made threat to Inmate _____ during the incident. Both deputies involved did not utilized their radio to request assistance or notify a supervisor.	
	Policy Concerns/Violations: NO <input type="checkbox"/> YES <input checked="" type="checkbox"/> BWC/Overhead Cameras Reviewed: NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>	
	Watch Commander Signature: Lt. Kattia Staden <small>Digitally signed by Lt. Kattia Staden Date: 2021.01.06 04:08:11 -0900</small>	Date: _____

[Click Here to Email Report to Division Administration](#)

Division Admin	Recommended Action (if any): During the incident, Deputy Paphanthong struck Inmate _____ in the head with his right knee. Type of Force should be, CATIII-Strike(s) to an inmate's head, throat, spine or groin. This incident will be forwarded to Internal Affairs Unit for investigation.	
	ADC Signature: Lt. Fernandes #10720 <small>Digitally signed by Lt. Fernandes #10720 Date: 2021.01.07 08:17:31 -0900</small>	Date: 1/7/21
	Division Captain Signature: [Signature]	Date: _____
	<input type="checkbox"/> Reviewed <input checked="" type="checkbox"/> Forward to IAU/UFRC <input type="checkbox"/> Reviewed <input type="checkbox"/> Forward to IAU/UFRC	

[Click Here to Email Report to UFRC](#)

OSIU	Notes: _____ _____	
	OSIU Staff Name: [Signature]	Date of Receipt from Division: _____
	IAU Clearance Date: _____	Cleared by Use of Force Review Committee (Y/N) (Date/ Time/ Notes): _____

Rev 07/15/2020

Memorandum From Captain Kirkland to Assistant Sheriff Davis:

Investigator's Note: The following document consists of a screen shot that captured the Memorandum in its entirety.

County of Santa Clara
Office of the Sheriff

Main Jail Administration
150 W. Hedding Street
San Jose, California 95110

PH: (408) 808-2800
Fax: (408) 971-3358



Laurie Smith
Sheriff

MEMORANDUM

To: Assistant Sheriff Timothy Davis
From: Captain J. Kirkland, Main Jail Commander
Date: January 6, 2021
Subject: Internal Affairs Referral – UOF Violation
Incident Report #21-104776

On 1/5/21 at approximately 2050 hours, a Use of Force occurred in Module 5C at the Main Jail. During the incident, Deputies Paphanthong #10672 and Valdez #11248 took Inmate [redacted] to the ground after he threw a cup of water towards the deputies and refused to comply with deputies' instructions. While struggling on the ground to get Inmate [redacted] secured in handcuffs, Deputy Paphanthong strikes Inmate [redacted] twice with his right knee. Both times his knee makes contact with Inmate [redacted] right shoulder and head. Deputy Paphanthong kept his knee on Inmate [redacted] shoulder and head for approximately 1 minute and 20 seconds. During the incident, Deputy Paphanthong also threatened Inmate [redacted] by stating, "I'll break your fuckin' arm!" while he's trying to secure him.

During the incident, neither deputy utilized their radio to notify control or a supervisor of the incident.

No injuries to staff or inmate during this incident.

Inmate's security level was increased but maintained current housing.

This event was captured on BOSCH and the involved staff's Body Worn Cameras.

This memorandum is to request an IAU number for formal investigation.

Investigation Continued:

On September 17, 2021, at approximately 1018 hours, Internal Affairs Sergeant Ryan McGuire #1910 provided me with a copy of Sheriff's Office Incident Report #21-005-0384J.

Investigator's Note: The following is a summary of the Incident Report. For complete details, please refer to the case file and a printed copy of the report in its entirety.

Sheriff's Office Incident Report #21-005-0384J:

Sergeant Elza Hickinbotham #2087 drafted the Incident Report on January 6, 2021, at 0526 hours. The report type was categorized as PC 148(a)(1) [M] Resisting, Delaying, Obstructing a Peace Officer and PC 241 (c) [M] Assault on a Peace Officer. The victim was listed as the State of California and the suspect was Inmate

In the Synopsis portion of the report, Sergeant Hickinbotham wrote: *"S01 walked out of pill call line. S01 refused orders to get back in line. S01 threw water at the deputies and ran from them. The deputies took S01 to the ground. The deputies declined to press charges. Nurse medically assessed S01 and cleared him of any injuries. I am submitting this report for DA review."*

In the Narrative portion of the report under the heading *"Attachments"* Sergeant Hickinbotham included a compact disc with Bosch CCTV footage and digital photographs of Inmate

Under the heading *"Investigation"* Sergeant Hickinbotham wrote that on January 5, 2021 he was working as a Detective Sergeant assigned to the Jail Crimes Unit. At approximately 2104 hours, he was dispatched to Module 5C of the Main Jail for a report of an inmate who threw water on a deputy.

Upon his arrival at approximately 2126 hours, Sergeant Hickinbotham spoke with Deputy Paphanthong. Deputy Paphanthong told Sergeant Hickinbotham that on January 5, 2021 at approximately 2104 hours, while assisting with pill call, he opened Inmate cell and let him out to see the nurse. Instead of getting in line for his medication, Inmate wandered around the module. Inmate refused to obey Deputy Paphanthong's order to return to the pill call line and instead approached the Deputy Work Station.

Deputy Paphanthong walked towards Inmate who was holding a cup of water. After Deputy Paphanthong ordered Inmate to return to the pill call line a second time, Inmate grabbed the television remote control and threw it across the Deputy work station before he ran towards the stairs.

After Deputy Paphanthong ordered Inmate to stop, Inmate threw the cup of water at the deputies and ran up the stairs to the second tier. Deputy Paphanthong and Deputy Valdez ran after Inmate and took him to the ground.

"S01 became resistive and would not give the deputies his hands to be handcuffed. Eventually, Deputy Valdez and Deputy Paphanthong were able to secure S01 hands, handcuffed him and escorted him out of the Module."

At approximately 2055 hours, Nurse medically assessed Inmate and determined he did not have any injuries.

Sergeant Hickinbotham attempted to interview Inmate [redacted] but as he read him his Miranda Rights, Inmate [redacted] told Sergeant Hickinbotham he was attacked by two men. He continued to state, *“A man in handcuffs have no rights”* before repeatedly requesting to speak with his father. Sergeant Hickinbotham concluded the interview.

Upon review of the Bosch CCTV footage, in particular Camera M559, Deputy Hickinbotham wrote the following:

“This camera angel [sic] picked up the incident from the top of the stairs.

On 01/05/2021, at approximately 20:50:47 hours, S01 [redacted] ran up the stairs to the second tier. As he reached the top of the staircase, Deputy Valdez grabbed S01 [redacted] left wrist and pulled his arm behind his back.

Deputy Paphanthong grabbed S01 [redacted] right wrist as they took him to the ground. S01 [redacted] rolled onto his stomach and tried to pull his right hand under his body.

At approximately 20:50:51 hours, Deputy Paphanthong placed his right knee on the side of S01 [redacted] right cheek in an attempt to restrain S01 [redacted] as he tried to retrieve his right hand. Deputy Valdez handcuffed S01 [redacted] and Deputy Paphanthong maintained a bent wrist control hold to secure S01 [redacted] as Deputy Valdez ordered the rest of the inmates to lock down.

At approximately 20:52:10 hours, Deputy Valdez returned, Deputy Paphanthong removed his knee and assisted Deputy Valdez as they lifted S01 [redacted] to his feet.”

Under the heading *“Evidence”* Sergeant Hickinbotham documented how he collected the Bosch CCTV video footage along with digital photographs of Inmate [redacted] that he received from Sergeant Gillotte as evidence.

Sergeant Hickinbotham made the determination that Inmate [redacted] violated PC 148(a)(1) when he ignored the deputies’ orders to return to the pill call line and ran to the top of the stairs, *“which prevented the deputies from managing the Module.”*

Additionally, Sergeant Hickinbotham determined Inmate [redacted] violated PC 241(c) *“based on S01 [redacted] throwing a cup of water at the deputies and missing them.”*

Sergeant Hickinbotham noted that Deputy Paphanthong and Deputy Valdez declined to press charges against Inmate [redacted] and concluded his report by indicating he was submitting the report for District Attorney review.

Incident Admin. Investigative Case Notes:

On September 17, 2021, at 1018 hours, Sergeant McGuire cut and pasted Sergeant Hickinbotham’s Investigative Case Notes from the Incident Admin database onto a Word Document. The notes read as follows:

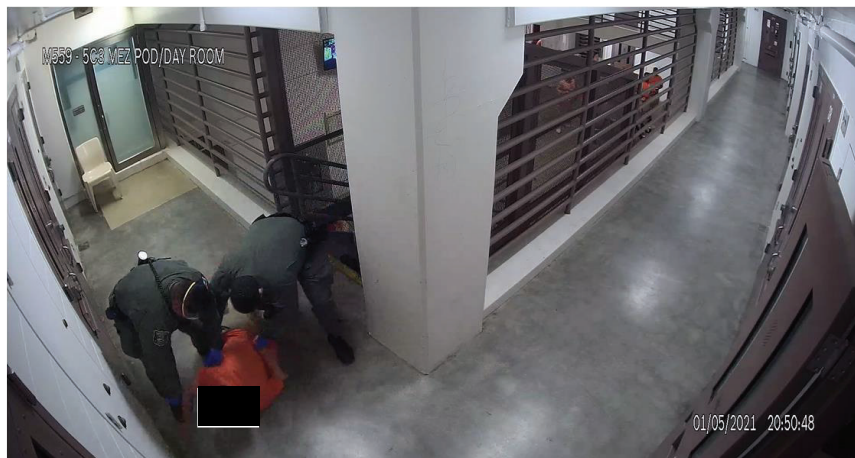
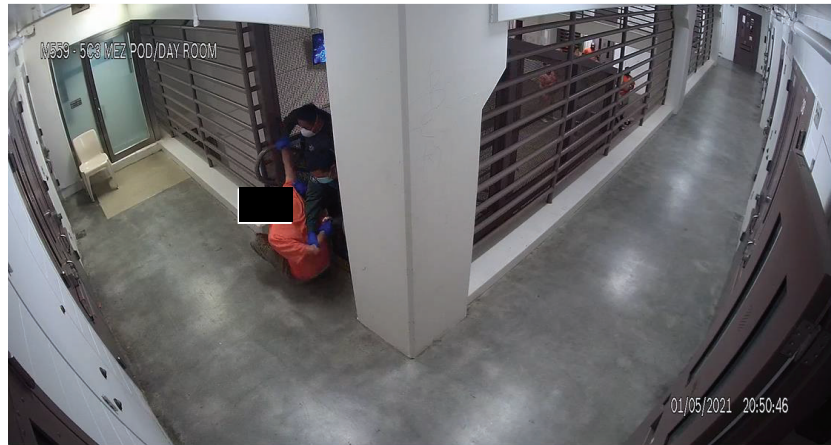
DO NOT DESTROY ANYTHING FOR 10 YEARS PER LT. OMORICased closed, hold evidence for 10 years, 01/12/2021 H2087//

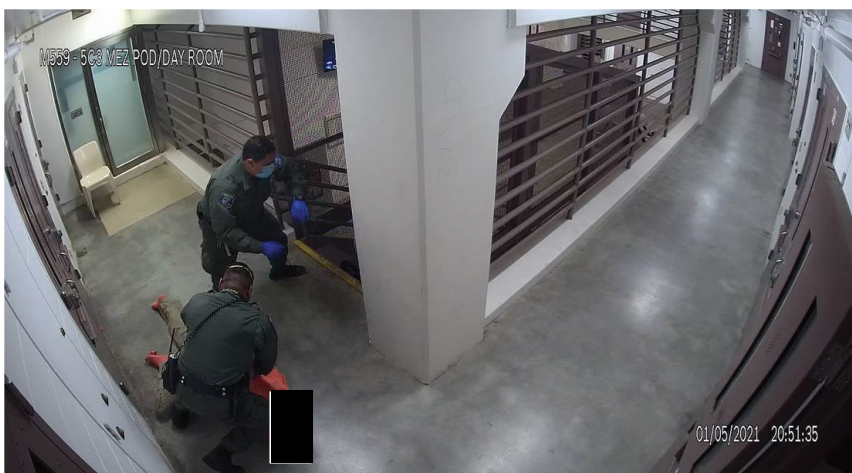
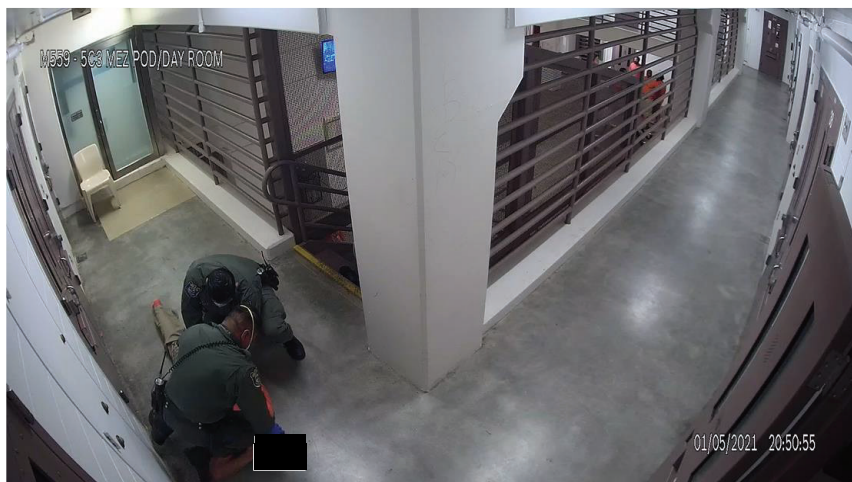
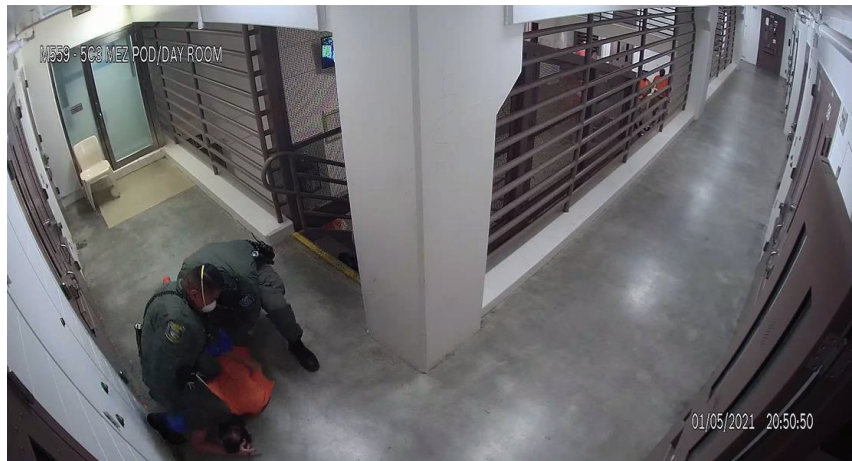
Investigation Continued:

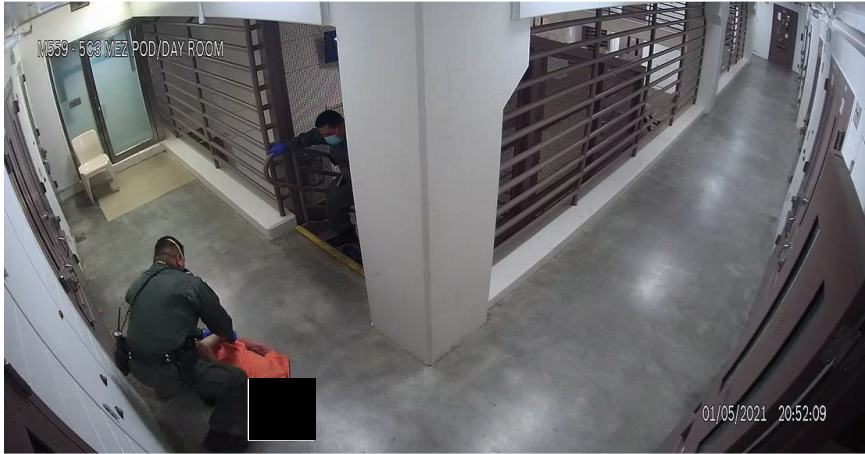
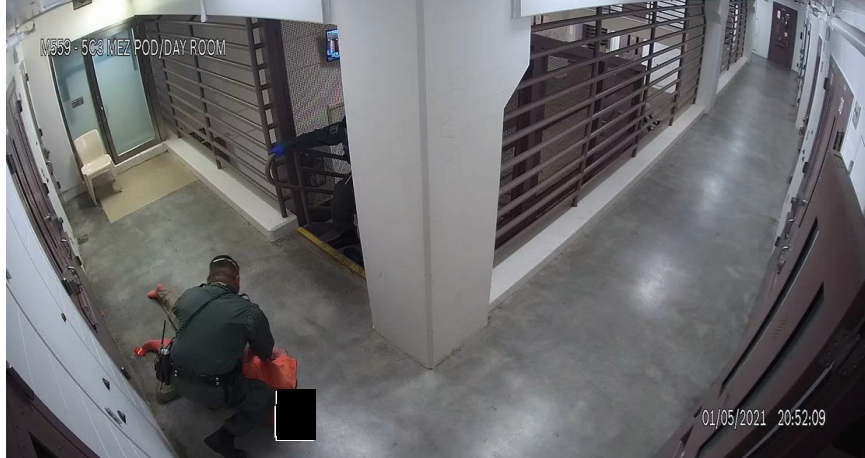
On September 17, 2021, I downloaded the associated Body Worn Camera (BWC) footage, including (2) files from Deputy Valdez' BWC, (1) file from Deputy Paphanthong's BWC and (1) file from Sergeant Hickinbotham's BWC.

On September 21, 2021, I took (7) screen shots from the footage recorded by the Bosch Main Jail Camera system (Camera M559). The below screen shots display the progression of the interaction between Deputy Paphanthong, Deputy Valdez and Inmate [REDACTED] on the second floor of Module 5C during the incident.

Investigator's Note: The date and time stamps appear in the lower right corner of each photo.







On September 24, 2021, at approximately 1337 hours, Internal Affairs Sergeant Richard Glennon #2120 and I interviewed Lieutenant Adam Valle #10466 at the Sheriff's Office Internal Affairs Interview Room,

Internal Affairs Interview of Lieutenant Adam Valle #10466:

Investigator's Note: The following is a summary of the interview and is not a verbatim translation or transcription. For the best record, please refer to the digital recording of the interview in its entirety.

Lieutenant Valle has worked for the Santa Clara County Sheriff's Office in combination with the former Department of Correction for approximately 20 years. He was currently assigned as the Administrative Division Commander for Support Services and worked Monday through Friday from 0700-1600 hours. His supervisor was Captain Thomas Duran.

As a collateral assignment, Lieutenant Valle was a Sheriff's Office Peace Officer Standards and Training (POST) certified Arrest Control and Tactics (ACT) Instructor. As part of his

certification, Lieutenant Valle attended numerous 40 and 80-hour POST certified instructor courses, and completed the Force Science Institute Course.

In addition to his employment through the Sheriff's Office, Lieutenant Valle has worked as a Reserve Police Officer with the San Jose Police Department for approximately 22 years. Prior to his promotion with the Sheriff's Office, Lieutenant Valle was assigned as an Internal Affairs Investigator for approximately 5 years. While assigned to the Internal Affairs Unit, Lieutenant Valle estimated that he investigated between 75 and 100 use of force incidents.

I provided Lieutenant Valle with a printed copy of the Custody Bureau Policy and Procedure Manual Use of Force Policy which was revised on August 29, 2017. He confirmed that policy was in effect in January 2021 and that staff received training during the implementation of that policy. As part of that training, all staff received lectures via Power Point as well as in-house ACT training that was mandated by Standards and Training for Corrections (STC) and POST.

Although he was not present at the time, Lieutenant Valle was aware of the incident that occurred on January 5, 2021, between Deputy Paphanthong, Deputy Valdez and Inmate . He did not know Deputy Paphanthong or Deputy Valdez well enough to describe their personalities or temperaments but was aware of Inmate and described him as someone who displayed erratic behavior throughout his "*extensive custody history.*" Lieutenant Valle believed Inmate was designated as "*somebody with an excludable diagnosis*" and noted that the module in which the incident occurred was used to house Special Management Inmates (SMI) that were diagnosed as mentally ill or required therapy and treatment.

I played the video file that was labeled as FN2021-00180 Deputy Valdez BWC Footage 1 of 2.mp4. After viewing the file, Lieutenant Valle replied, "*Okay. Well- I- I'd want to go back, to see the placement of uh, his right knee and the duration um, on the subject when we can.*" I advised Lieutenant Valle that the next video I intended to play was from the Bosch surveillance camera on the second floor of Module 5C that captured a clear view of the incident.

I then played video file FN2021-00180 Bosch.mov. Upon completion of that video, per Lieutenant Valle's request, I replayed both videos.

I then asked Lieutenant Valle, "*So, does this appear to you to be a uh, reactive in nature uh, use of force?*" He replied, "*Um, yeah.*"

When queried, Lieutenant Valle acknowledged hearing "*I'll break your fucking arm*" during the incident but was unsure who made the statement. I advised him that upon my review of the footage I believed it was Deputy Paphanthong.

I asked Lieutenant Valle, "*After viewing this incident and based on the totality of the circumstances as you understand them, um do you believe Deputy Paphanthong's actions were appropriate during the incident?*"

After a brief pause, Lieutenant Valle responded by saying, *“Um... for the most part I would say uh- yes. Um, the thing that’s concerning is the knee. Um, placed on the... I said the hea- the head area, not- not uh, the neck. ‘Cause it looks like the knee is pressed along his jaw-line. But it’s the extended amount of time um, because uh, it- at-at the point um, after he was handcuffed, it doesn’t look like he was actively resisting. Um, I- I- I’m looking at other- other issues. I can’t infer what he was thinking at the time, but knowing that it’s close to the stairs um, that’s a hazard. Him being up there by himself when his partner leaves. Um, I don’t know the reason why he stayed in that position. Um, I understand there’s a lot of things that-like you know, goes through somebodies uh, uh, mindset. Um, but uh, he’s not- from looking at it now, he’s not in the best position right now, as I’m looking at it. Um, being close to the wall. Um, you know, there’s a lot of determining factors of what may have set up his positioning of where he’s at. Um, either inmates being out, him being able to look down the stairs in case somebody’s coming back up. Um, other than his partner, that’s something that he would have- probably the answer to. Uh, that position of what he took and the extended amount of time that his knee was placed on the uh, jawline of um, Um, but as far as that, um, from looking at him positioning his knee and re-positioning, I believe that was his intent, to keep control of his head or his body. Um, because does move his head back and you see Deputy Paphanthong re-position his knee back on that jawline. So...it’s my belief that he used his posi- positioning there to keep control of his head.”*

I asked Lieutenant Valle if he had any concern regarding Deputy Paphanthong’s statement to Inmate that he was going to break his arm if he didn’t calm down. He replied, *“Yes. Uh, that conduct is not what we’re looking for in our deputies.”*

I asked Lieutenant Valle if the fact that Deputy Paphanthong’s statement was made while Inmate was handcuffed had any bearing on his opinion. He replied, *“Uh, well to me, person’s secured um, right? You don’t want to look like now it’s gonna be some- something uh, I don’t know, like retaliatory. You know, where you’re making that type of comment after the fact that somebody’s secured. And from what we’re seeing after the fact, yeah were looking at video cameras and everything but it doesn’t look like he’s actively resisting at all.”*

I read section VI.A.1.a of the Use of Force policy which stated, *“The use of force for discipline (corporal punishment) or retaliation is prohibited. Staff shall not retaliate against an inmate for any reason. For example, staff shall not: Threaten, intimidate, mistreat, or physically, verbally, or mentally abuse an inmate in retaliation for an inmate’s conduct, speech, or expression of ideas.”* I asked Lieutenant Valle if he believed that section applied to this investigation and he replied, *“Yes, with the verbal threat.”*

I then read section X.F.1.c of the Use of Force policy which stated, *“Except where deadly force is justified, the following use of force techniques are prohibited: Kneeing an individual in the head, face, neck, spine or groin unless there is an imminent threat of great bodily injury or death to staff or others, and there is no more reasonable means of control available.”* I asked

Lieutenant Valle if he believed that section applied to this investigation and he replied, “No, because I believe that section’s talking about personal body strikes.”

I asked Lieutenant Valle if he had any concerns regarding Deputy Paphanthong’s knee being on Inmate _____ jawline for approximately 1 minute and 20 seconds. He replied, “Yes” and explained, “Well, one, you- it’s- I think it’s excessive in nature to be around somebody’s head or jawline or even neck, carotid. Possibly you could slip if he does move. Um you got to think about positional asphyxiation from this uh, gentlemen too. Um, but there’s a lot of factors that can, you know um, constrict his breathing at this time. And at this- at this time we’re all aware of what happened with George Floyd and the... concerns with law enforcement about putting people’s knees around the head and neck area and everybody was pretty much... somewhat indirectly told to stay away, um, from that. But I do understand circumstances you know, with him being in a- in an incident. Um, the thought processes and some of those other things that restrict people. Um, but yeah, to me from watching it I think that it is a little excessive.”

Lieutenant Valle felt Deputy Paphanthong’s knee on Inmate _____ jawline may have been justifiable while Inmate _____ was actively resisting and “had _____ and locked by his ear” but once he was in handcuffs, Deputy Paphanthong had to “reassess the threat.”

Based on the way Deputy Paphanthong was squatted in a “catching position” during the incident, Lieutenant Valle was unable to determine how much pressure Deputy Paphanthong’s knee was placing on Inmate _____ jawline. He added, “However, _____ head was moving before um, and I would say most likely his knee is putting some pressure on his head.”

Lieutenant Valle agreed with Sergeant Gillotte’s assessment of the incident in his Supervisor’s Summary and that Deputy Paphanthong should have been aware of Policy 9.01-7 G3 which specifically states, “Staff shall avoid, to the extent possible under the circumstances, placing their weight on an inmate’s upper back or in a way that compresses the chest and/or impairs the inmate’s breathing.”

Lieutenant Valle also agreed with the portion of Sergeant Gillotte’s Supervisor Summary that indicated Deputy Paphanthong violated 3.31-11 15a “Employees shall, at all times, be courteous and discreet to all persons, maintain decorum and command of temper, and avoid the use of violent, insolent or obscene language” when he threatened to break Inmate _____ arm.

Lieutenant Valle believed Deputy Paphanthong and Deputy Valdez were within their lawful rights to engage Inmate _____ during the incident, because Inmate _____ actions of “gassing” Deputy Paphanthong and Deputy Valdez with an unknown liquid substance, constituted a crime. He believed Deputy Paphanthong and Deputy Valdez’ thought process was “probably just to grab him, um, detain him, pull him outside and go talk to him.”

I asked Lieutenant Valle if he believed there was a dominant aggressor during the incident. He replied, “Um, yeah as far as I would say it would be uh, Deputy Paphanthong here. From his actions, his knee placement, and the verbiage.”

Sergeant Glennon acknowledged Lieutenant Valle's earlier statement that he believed it was lawful for Deputy Paphanthong and Deputy Valdez to detain Inmate [redacted] during the incident and asked if he thought it was necessary to do so. He responded by indicating it was reasonable, before noting how Deputy Paphanthong and Deputy Valdez could have chosen other tactics, such as letting Inmate [redacted] continue up the stairs and likely to his cell to lock down, which could have afforded them time to conduct a threat assessment. In the same breadth, Lieutenant Valle mentioned that Deputy Paphanthong and Deputy Valdez did not know what Inmate [redacted] had access to within his room.

Sergeant Glennon then asked Lieutenant Valle if the deputies within the Main Jail received any written directives regarding knee placement, after the George Floyd incident. Lieutenant Valle believed such a directive was distributed among the deputies and was covered within the use of force policy, along with directives regarding Positional Asphyxia. He added, *"It's something that even in- through Defensive Tactics we're- it's one of the places that we tell them to try to avoid, because it can do damage."*

I asked Lieutenant Valle, *"Uh, in this exact circumstance, do you believe that um, the way Deputy Paphanthong's knee was placed that it could have resulted in um, compressing uh, Inmate uh, [redacted] chest or impairing his uh, breathing?"* Lieutenant Valle replied, *"Uh, his chest no. Breathing yes. If uh- It's pretty close to the neck area or carotid area where it doesn't take too much time, uh, certain amount of pressure to have somebody go out."*

I concluded the interview at 1421 hours.

Investigation Continued:

On October 5, 2021, at approximately 1636 hours, Sergeant Glennon and I interviewed Sergeant Dennis Gillotte at the Sheriff's Office Internal Affairs Interview Room,

Internal Affairs Interview of Sergeant Dennis Gillotte #10475:

Investigator's Note: The following is a summary of the interview and is not a verbatim translation or transcription. For the best record, please refer to the digital recording of the interview in its entirety.

Sergeant Gillotte has worked for the Santa Clara County Sheriff's Office in combination with the former Department of Correction for over 19 years. He was promoted to Sergeant on October 15, 2012 and was currently assigned to the Main Jail C-team, working Sunday, Monday, Tuesday, and every other Saturday from 1645-0500 hours. Sergeant Gillotte's current supervisor was Lieutenant Staden.

As a Sheriff's Sergeant assigned to the Main Jail, Sergeant Gillotte's duties included the supervision of deputies assigned to the various modules within the Main Jail as well as handling inmate grievances. His additional responsibilities included reviewing use of force incidents involving deputies assigned to his team.

Sergeant Gillotte estimated that he reviewed less than one hundred use of force incidents during his tenure as a Sheriff's Sergeant. He cited his previous assignment at the Elmwood Correctional Facility and the lesser number of incidents that occur at that location.

When queried, Sergeant Gillotte noted how he utilized the Use of Force Policy in combination with a review of the Bosch Surveillance and Body Worn Camera footage, to determine whether an application of force was acceptable. He recalled receiving a *"Use of Force Policy Review"* training day in approximately 2017, during the implementation of the new Use of Force Policy. The curriculum of that training was department wide and extended to both sergeants and deputies.

Sergeant Gillotte was aware of the incident that occurred in Module 5C of the Main Jail on January 5, 2021, between Deputy Paphanthong, Deputy Valdez and Inmate [REDACTED]. He was not present during the incident and believed he was notified via a phone call from either Deputy Paphanthong or Deputy Valdez. After receiving notification of the incident, Sergeant Gillotte ensured Inmate [REDACTED] received medical treatment before he reviewed the camera footage, documented the incident, and notified Lieutenant Staden.

While describing what occurred during the incident, Sergeant Gillotte said the inmate was in the Dayroom and threw something at one of the deputies, before he ran up the stairs. He believed Deputy Paphanthong gave chase and once they reached the second floor of the module, a *"takedown"* must have occurred as they ended up on the ground.

Sergeant Gillotte believed Deputy Paphanthong had his knee on Inmate [REDACTED] back or neck while trying to subdue him. He recalled hearing *"bad language"* during the incident and noted the *"prolonged time"* in which Inmate [REDACTED] was on his stomach, which Sergeant Gillotte believed was *"a little unnecessary."*

I asked Sergeant Gillotte to describe his workplace experience with Deputy Paphanthong and Deputy Valdez and their personalities and temperaments. He described Deputy Paphanthong as a tenured deputy with several years of experience, mostly as a Transport Deputy. Deputy Paphanthong spent a short period of time on Sergeant Gillotte's team and frequently rotated assignments. Sergeant Gillotte did not notice anything unusual regarding Deputy Paphanthong's demeanor and noted that he did not have a *"chip on his shoulder."*

Sergeant Gillotte described Deputy Valdez as less tenured than Deputy Paphanthong, but with a similar, calm demeanor. He advised Sergeant Glennon and I that he had not witnessed Deputy Paphanthong or Deputy Valdez yell at inmates or act inappropriately.

Sergeant Gillotte was familiar with Inmate [REDACTED] and described his personality and temperament as *"quite the opposite"* of Deputy Paphanthong and Deputy Valdez. He said, *"I remember him from years ago. And he was always a Maximum-Security Inmate. He was always on the fourth floor. Um, always a problem and that was when I was in the Classification Unit, so I was responsible for his housing directly. Um, so I do remember him. More recently um, there's been some incidents with him in 5C, prior to that. I know we had to extract him. I think he was going to 8A. Uh, he refused so we had to go through the ERT extraction process with him. Um,*

and I want to say there was at least- and I can't remember exactly- but I think there was one or two other incidents since he's been in 5C and the reason why I remember that is because Classification has not been moving him. It's like all this stuff happens and he stays in there."

Inmate _____ was eventually re-housed, but Sergeant Gillotte did not know if it was due to the incident involving Deputy Paphanthong and Deputy Valdez.

Although Sergeant Gillotte was unsure of Inmate _____ specific classification level during the incident, he knew Inmate _____ was either a medium or medium-high SMI inmate due to his housing in 5C. Sergeant Gillotte understood the designation SMI referred to Special Management Inmates who suffered from a severe mental illness. He explained to Sergeant Glennon and I that Special Management Inmates require more observation and time to deal with. He said, *"Just because you tell them no, and they say no. 'Um, I'm not going to do something.' It's not necessarily them being defiant. It's just sometimes it takes them a little longer to process things. So, uh, we do try to convey that to the deputies working here. Have little more patience...uh, when dealing with these inmates in there."*

In addition to utilizing a slower, methodical approach when dealing with Special Management Inmates, Sergeant Gillotte noted how the deputies must remain vigilant as Special Management Inmates tend to be on *"the violent side"* and can assault them at any second.

I provided Sergeant Gillotte with a printed copy of his Supervisor's Summary, and he confirmed it was an accurate representation of his report. I advised Sergeant Gillotte that he could refer to it at any time during the interview, to refresh his recollection.

Sergeant Gillotte advised that he watched both the Bosch Surveillance footage as well as the deputies' Body Worn Camera footage while reviewing the incident.

I then played Deputy Valdez' Body Worn Camera footage of the incident (FN2021-00180 Deputy Valdez BWC Footage 1 of 2.mp4) followed by the Bosch Surveillance footage captured by camera M559, on the second floor of Module 5C (FN2021-00180 Bosch.mov).

Sergeant Gillotte noted that the Bosch Surveillance footage I played was the same he previously viewed while reviewing the incident. He said, *"I had some concerns uh, with it and I documented that as the issues on my summary here, as one, two and three. Um, and I'll go through them uh, just as I wrote, but these- these are the reasons why uh, I documented this. Um, if it woulda just been the takedown, flip him on his side, cuff him and take him out, uh, I don't think that this would be worthy of any kind of documentation on my part."*

Sergeant Gillotte highlighted the issues he previously listed on his Supervisor's Summary, including his belief that Deputy Paphanthong and Deputy Valdez had time to broadcast the incident over their hand pack radios. He stated, *"I know it was a phone call that w- uh, notified me. And that one, it kinda bugged me. After I reviewed the video. Because, ok, I get it, the guy threw something and you're chasing him. One, I don't know why they're chasing him- he ain't gonna go anywhere. But, where's he gonna go. He's gonna run up there and we can put it out on the radio."*

Deputy Paphanthong's knee placement during the incident and the amount of time Inmate was down on the floor concerned Sergeant Gillotte. He added, *"The inmate, once they subdued him- even during the- him trying to be cuffed- I didn't see much if any kind of resistance or struggling from the inmate. Uh, so, for the amount of time-see I think I even wrote it- it was approximately one minute, twenty seconds. That was...I mean, that was not necessary. That was- it was a serious issue and concern for me. Um, if the inmate's you know, flopping around and they're grabbing limbs and trying to subdue this guy, that might be one thing. But he even says he's sorry uh, which you know definitely is- that I had a serious issue uh, with that."*

Sergeant Gillotte transitioned to his concern regarding positional asphyxia and how as a team they have discussed several times the issues with leaving inmates handcuffed and on their stomachs. He said, *"We're constantly reminding teams, as a whole that hey, don't get focused and you know, so focused that you forget about that stuff because it's important. Right? Their- their heartrate's up because they're fighting and now you've got them on their stomachs for a long time. We don't want to run into a position like that where the guy- now we got to uncuff him and start doing lifesaving measures."*

Although Sergeant Gillotte was not positive that Deputy Paphanthong was present during the briefings in which positional asphyxia was discussed, he confirmed that it was included as part of section 9.01 of the Use of Force Policy implemented in 2017.

Sergeant Gillotte addressed his concern regarding the language Deputy Paphanthong used during the incident, which he called *"totally unnecessary."* He added, *"The guy, the inmate is sitting there saying he's sorry. Uh, but now we're telling him that we're going to break his arm uh, for I don't know what reason."*

I advised Sergeant Gillotte that while collecting written reports for the investigation, I was provided with two separate Administration Incident Review (AIR) documents. One of the documents was completed by Sergeant Gillotte and the other was completed by Sergeant Carlos Boles.

I provided Sergeant Gillotte with copies of the nearly identical documents and asked if he was aware of the reason behind the duplicate documentation. Sergeant Gillotte advised Sergeant Glennon and I that he had never seen the additional AIR form and was sure Sergeant Boles was not on scene during the incident because Deputy Paphanthong and Deputy Valdez never broadcasted it over their hand pack radios. He added, *"This would have been handled only by me."*

Investigator's Note: Upon further examination of Sergeant Boles' digital signature, Sergeant Gillotte was able to determine that Sergeant Boles electronically signed the document on February 14, 2021. Sergeant Gillotte completed his AIR form on January 6, 2021.

Sergeant Gillotte believed the force used during the incident was unnecessary and *"a little excessive"* because the remote control and cup containing a liquid substance Inmate threw did not hit Deputy Paphanthong or Deputy Valdez. He believed the deputies could have

ordered Inmate [redacted] to lock down and if he complied, they could have infracted him later. Conversely, if Inmate [redacted] failed to lock down, the deputies could have broadcasted his refusal and awaited the assistance of additional deputies.

I concluded the interview at 1718 hours.

Investigation Continued:

On October 5, 2021, at approximately 1755 hours, Sergeant Glennon and I interviewed Deputy Julius Valdez at the Sheriff's Office Internal Affairs Interview Room,

Internal Affairs Interview of Deputy Julius Valdez #11248:

Investigator's Note: The following is a summary of the interview and is not a verbatim translation or transcription. For the best record, please refer to the digital recording of the interview in its entirety.

Deputy Valdez has worked for the Santa Clara County Sheriff's Office since 2016. He began his career in the Enforcement Bureau and transitioned to the Custody Bureau in 2018. He is currently assigned to the Main Jail C-team, working Sunday, Monday, Tuesday, and every other Saturday from 1800 to 0600 hours.

Deputy Valdez was currently assigned to Module 5A and in January of 2021, he was assigned to Module 5C. Sergeant Gillotte was the supervisor assigned to the 5th floor.

Deputy Valdez recalled a prior incident that occurred in Module 5C, in which Inmate [redacted] "threw a cup" at Deputy Valdez and Deputy Paphanthong. The incident occurred during pill call, while Inmate [redacted] was in an argumentative state. After Inmate [redacted] threw the cup in their direction, Deputy Valdez ordered him to lock down. Inmate [redacted] "took off running" and Deputy Valdez and Deputy Paphanthong chased him up the stairs before they were able to handcuff him and escort him out of the Module.

Deputy Valdez was able to recall that incident because it was the only one of significance that occurred during that timeframe. I provided Deputy Valdez with a printed copy of the Blue Team report he previously drafted to refresh his recollection of the incident.

Investigator's Note: While in the process of providing Deputy Valdez with a copy of his own Blue Team report, I inadvertently provided him with a printed copy of Deputy Paphanthong's. Deputy Valdez quickly realized the report was not his and provided the document back to me. Sergeant Glennon briefly paused my audio recorder while I retrieved and provided Deputy Valdez with the printed copy of his report.

I asked Deputy Valdez to explain the totality of force he used while restraining Inmate [redacted] during the incident. Deputy Valdez described manipulating Inmate [redacted] left arm behind his back, so that he could place Inmate [redacted] in handcuffs. He said he only used the amount of force necessary to overcome Inmate [redacted] resistance.

I then played Deputy Valdez' Body Worn Camera footage (FN2021-00180 Deputy Valdez BWC Footage 1 of 2.mp4) and the Bosch surveillance footage of the incident (FN2021-00180 Bosch.mov). I asked Deputy Valdez, *"So... after watching these videos um, and seeing what occurred during the incident um, do you have any concerns regarding Deputy Paphanthong's use of force during that incident?"* Deputy Valdez replied, *"Mmm, no."*

Deputy Valdez said his decision to follow Inmate [redacted] up the stairs was reactionary and that he did so to prevent Inmate [redacted] from hurting anyone and to *"isolate any further incident that might have occurred from his actions."*

While the incident occurred Deputy Valdez did not notice the placement of Deputy Paphanthong's right knee. After viewing the footage, Deputy Valdez told Sergeant Glennon and I that he saw Deputy Paphanthong's knee *"near the inmate's head."* After I asked Deputy Valdez if Deputy Paphanthong's knee appeared to be on Inmate [redacted] head or nearby, he added, *"It looked nearby. Um...Can't say for sure if it was like, on his head."*

I then asked Deputy Valdez for his opinion regarding the appropriateness of Deputy Paphanthong's use of force if his knee was resting on Inmate [redacted] head or neck. While acknowledging that it was, *"not within policy to have your knee on someone's face or neck"* Deputy Valdez believed the specifics of the incident ultimately determined the appropriateness of Deputy Paphanthong's actions. As examples, Deputy Valdez indicated that if Inmate [redacted] was trying to bite or grab Deputy Paphanthong's leg during the incident, it may affect his opinion regarding the reasonableness of the use of force.

I advised Deputy Valdez that it, *"looked like it was making contact"* with Inmate [redacted] face and neck area for 1 minute and 20 seconds. I then asked him, *"Do you believe that uh, amount of time um, if the knee was to have been applying pressure of any- of any sort um, on him there, would that have been an acceptable amount of time based on- on the circumstances that you're aware of in this incident?"* Deputy Valdez replied, *"Um, based on the circumstances that I'm aware of, no. Again, I'm not Deputy Paphanthong. I don't know what Inmate [redacted] was trying to do. Of what would have warranted that."*

Once Inmate [redacted] was handcuffed, Deputy Valdez proceeded downstairs to ensure the other inmates were secured in their cells. I noted how Deputy Paphanthong's knee remained on Inmate [redacted] face/neck area the entirety of time it took Deputy Valdez to go downstairs, ensure the inmates were secured and return to the second floor of the module. I asked Deputy Valdez if he believed that amount of time was reasonable. While restating that it involved a totality of circumstances, Deputy Valdez said, *"I don't...I don't know what was transpiring up there while I was securing (unintelligible) inmates."*

While explaining his understanding of the Use of Force policy and how it applied to the placement of a knee on an inmate's neck, head or upper back area, Deputy Valdez mentioned the ability of an inmate to, *"be asphyxiated in that position."* He added that such a concern is the reason why deputies are instructed to sit the inmates up, *"to a position of rest."*

After Deputy Valdez admitted receiving training related to Positional Asphyxia, I asked him if he had concerns related to that condition after viewing the footage of the incident. He paused before stating, *“Knowing what I knew then- knowing that was going on, I might have tapped my partner out.”* Before reiterating that he did not know exactly what was going on, Deputy Valdez mentioned that in the video footage, Inmate [REDACTED] did not appear to have trouble breathing.

Deputy Valdez was familiar with Inmate [REDACTED] prior to the incident on January 5, 2021 and described him as volatile and unpredictable. He was aware that Module 5C predominantly housed Special Management Inmates, many of whom received Psychiatric mood stabilizers and suffered from mental health issues. Deputy Valdez described the need to *“talk a little nicer”* to certain Special Management Inmates and utilize patience while trying to get them to comply. Deputy Valdez did not receive training specific to working in Module 5C but he did receive Crisis Intervention Training (CIT) while in the academy.

Deputy Valdez noted that when the incident involving Inmate [REDACTED] occurred, it may have been the first- or second-week Deputy Paphanthong was assigned to Module 5C. Due to the fact Deputy Paphanthong was a gun-bearer, his assignments rotated between the facility and the hospital. Deputy Valdez had limited experience working with Deputy Paphanthong and had never witnessed him lose his temper.

I asked Deputy Valdez for his thoughts regarding Deputy Paphanthong’s statement to Inmate [REDACTED] during the incident that was similar to, *“Calm down. I’ll break your fucking arm.”* Deputy Valdez replied, *“It- it’s- sometimes uh, certain inmates only respond to that type of language. Um, other times I see how it can be seen as a little excessive, like... I think he was just trying to get him to comply.”*

Deputy Valdez believed the force used during the incident was justified and explained his concern regarding how Inmate [REDACTED] might have assaulted him, his partner or another inmate that he and Deputy Paphanthong were responsible for.

During the incident, Deputy Valdez, and Deputy Paphanthong did not broadcast the incident over the radio because they were, *“just trying to get him in handcuffs.”*

I asked Deputy Valdez about his prior Crisis Intervention Training and whether the techniques he learned in the class were applicable to this incident. In response, Deputy Valdez said he tried to provide Inmate [REDACTED] with clear directions while telling him to calm down and stop moving. Additionally, with Inmate [REDACTED] past behavior in mind, he and Deputy Paphanthong could have stopped him from wandering and ensured he was out of his cell by himself.

I concluded the interview at 1833 hours.

Investigation Continued:

On October 21, 2021, at approximately 1254 hours, Internal Affairs Sergeant Glennon and I interviewed Inmate [REDACTED] in Interview Room #2, on the fourth floor of the Main Jail.

Internal Affairs Interview of Inmate

Investigator's Note: The following is a summary of the interview and is not a verbatim translation or transcription. For the best record, please refer to the digital recording of the interview in its entirety.

Although Inmate _____ said he recalled the incident that occurred between himself, Deputy Paphanthong and Deputy Valdez in Module 5C, he described a circumstance in which Deputy Valdez and a female deputy grabbed his arm while he was in the process of feeding a bird.

I explained to Inmate _____ that the incident I was referring to happened in January, during pill call and after he threw a remote control. Inmate _____ said, *"It wasn't the cop's fault"* and began describing an unrelated incident that occurred between himself and another inmate named _____ who he described as a Black male adult with neck tattoos. Inmate _____ added, *"It was defense against him- the police, whatever they did ev- even though they assaulted me- they- they were just doing their job. But not an inmate. His name was uh, _____ I'd hate to see him on the street."*

After repeated attempts, I was unable to focus Inmate _____ on the incident involving Deputy Paphanthong and Deputy Valdez. Inmate _____ agreed to sign a Release of Records and Information form and I concluded the interview at 1315 hours.

Investigation Continued:

On October 22, 2021, at 0909 hours, I sent an email to Adult Custody Health Services employee _____ and requested a copy of Inmate _____ Medical and Mental Health records from January 2021 to present. On October 22, 2021, at 1627 hours, _____ replied to my email with an attachment that contained the requested records.

Investigator's Note: For complete details regarding Inmate _____ medical records, please refer to the case file and the printed copies of the documents in their entirety.

Upon reviewing the files, I noted the following assessment of Inmate _____ as performed by _____ on January 28, 2021, at 1345 hours:

Assessment:
Working Diagnosis:

Investigation Continued:

Additionally, I located acknowledgement forms Deputy Paphanthong signed related to the Department of Correction Standards of Performance and Code of Ethics.

On November 15, 2021, at approximately 0933 hours, Personnel Office Specialist sent me an email containing scanned copies of the requested Personnel Files.

Investigator's Note: For complete details regarding the aforementioned Personnel File documents, please refer to the case file and the printed copies of the documents in their entirety.

Investigation Continued:

On November 9, 2021, at approximately 1832 hours, Internal Affairs Sergeant Glennon and I interviewed Deputy Paphanthong at the Sheriff's Office Internal Affairs Interview Room, Deputy Paphanthong was represented by Attorney

Before beginning the interview, I provided Deputy Paphanthong and Attorney a copy of Deputy Paphanthong's Blue Team Category 1 Use of Force Report (Exhibit-A) and allowed them to view Deputy Paphanthong's Body Worn Camera and the Bosch video footage of the incident, while alone in the interview room per their request.

Internal Affairs Interview of Correctional Deputy Leuadeth Paphanthong #10622:

Investigator's Note: The following is a summary of the interview and is not a verbatim translation or transcription. For the best record, please refer to the digital recording of the interview in its entirety.

I explained to Deputy Paphanthong that the purpose of the interview was to discuss Internal Affairs Case Number FN2021-00180 and that he was being interviewed as the Subject Officer in the case. He was aware that the interview was being digitally recorded.

I read Deputy Paphanthong Department of Correction Policy 3.31.IV.J.2.a, which stated, *"Employees shall obey a lawful order from a supervisor"* and Department of Correction Policy 3.31.IV.J.14.a, which stated, *"Employees shall not make less than truthful statements, either verbal or written."*

I asked Deputy Paphanthong if he understood the above policies and he replied, *"Yes Sir."* He advised Sergeant Glennon and I that he was on-duty and understood that no overtime would be paid as a result of the interview.

I reminded Deputy Paphanthong that he was provided with a Statement of Allegations prior to the interview and was free to refer to it at any time. I told him, *"If you wish to suspend this interview at any time, to use the restroom, get a drink of water, consult with your attorney or representative or simply take a break, just say so and I will stop the recorder. The same recorder will be started when the interview resumes. If it becomes necessary to interview you again regarding the same matter you may request a copy of this recording or a transcription of it, prior to the second interview. Do you have any questions before beginning this interview?"*

Deputy Paphanthong replied, *“No Sir.”*

I advised Deputy Paphanthong that he was entitled to all the rights and privileges granted by the U.S. and California Constitutions, including the right not to be compelled to incriminate himself and the right to legal counsel. I then read Deputy Paphanthong his Miranda rights. He understood each of his rights and replied, *“Yes Sir”* to each advisement.

I asked Deputy Paphanthong, *“Keeping your rights in mind, do you wish to voluntarily answer my questions?”* He responded, *“No.”*

I provided Deputy Paphanthong with a Lybarger Admonishment and advised him that any administratively compelled statement, made under the threat of discipline cannot be used against him in any subsequent criminal investigation or criminal proceeding. I told him that administratively compelled statements shall be held confidential consistent with Penal Code section 832.7 and will not be divulged except as required by law.

I asked Deputy Paphanthong, *“Do you understand what I have explained to you?”* He replied, *“Yes Sir.”* He also understood that as investigators for the Internal Affairs Unit, Sergeant Glennon and I were currently acting as his superior officers and that failure to follow my direct order to answer our administrative questions would be deemed as insubordination and could lead to administrative discipline up to and including termination from the Sheriff’s Office.

I told Deputy Paphanthong, *“I am now giving you a direct order as your superior officer, to answer all of my questions truthfully, candidly and to the best of your ability. Do you understand my direct order?”* He replied, *“Yes Sir.”* I asked Deputy Paphanthong if he was going to comply with my direct order and answer my questions. He replied, *“Yes Sir”* before signing and dating the Lybarger Admonishment form.

Deputy Paphanthong has been employed by the Santa Clara County Sheriff’s Office in combination with the former Department of Correction for nearly 15 years. He graduated from South Bay Regional Corrections Academy #41 in July of 2007 and had no prior law enforcement experience. Toward the beginning of his career, Deputy Paphanthong worked as part of the Emergency Response Team (ERT). His previous assignments at the Main Jail included the Booking Unit as well as working various dorms within the facility.

Deputy Paphanthong was currently assigned as a Gun-bearer, responsible for transporting inmates between the Main Jail and the Valley Medical Center. He worked every other Saturday, Sunday, Monday and Tuesday from 1745-0600 hours and his direct supervisor was Sergeant Brent Nishijima #10889. In January of 2021, Deputy Paphanthong had the additional responsibility of acting as a Rover, responsible for covering vacant assignments within the Main Jail.

Deputy Paphanthong did not recall ever attending Crisis Intervention Training (CIT) and noted how he signed up to attend an upcoming class in December. Although Deputy Paphanthong did not recall learning de-escalation techniques in the academy, he understood the need for

correctional deputies to diffuse situations by speaking with inmates first and if unsuccessful, the sergeant should be notified and ERT should be requested to handle the situation.

Deputy Paphanthong defined Special Management Inmates as those who suffer from emotional problems, whether innate or due to a chemical imbalance. Although Deputy Paphanthong initially denied having experience working with Special Management Inmates, he admitted having contact with such inmates while transporting them to and from the hospital.

After I asked Deputy Paphanthong to explain his understanding of the purpose of the interview, he expressed his confusion regarding the process and said, *“Um, to be honest, you know I... did um- on the footage and um... kinda like um, don’t know why I’m here but, the only thing I can think of is that you know I- on the policy whe- I had my knee on his head. But you know, I never strike this guy, never knee or punched him. You know? I did the best I can. Uh yeah so, I’m still trying to figure out...”*

I provided Deputy Paphanthong with a printed copy of the Statement of Allegations that he was previously served with, labeled *“Exhibit-B.”* I advised him that he could refer to the document at any time. I asked Deputy Paphanthong if he read Custody Bureau Use of Force Policy and Procedure 9.01 which was revised in August of 2017 and he said he *“glimpsed”* at it. After I asked him if he had a complete understanding of the policy, he replied, *“Um, I think- I think have.”* He did not recall receiving training related to the implementation of that policy other than being provided a copy to read.

I then provided Deputy Paphanthong with a printed copy of his individual training activity for 2017. The document, which I labeled *“Exhibit-C”* indicated Deputy Paphanthong attended a Use of Force Policy Review 10-hour training block on November 16, 2017. Upon review of the document, Deputy Paphanthong agreed that he received training regarding the implementation of the policy in addition to having attended Force Options and Defensive Tactics training. He was unable to recall the names of the instructors of the aforementioned classes.

Deputy Paphanthong recalled that the incident occurred on the evening of January 5, 2021, in Module 5C of the Main Jail. After noting how I previously provided Deputy Paphanthong a copy of his Blue Team report as well as his Body Worn Camera and Bosch video footage of the incident, I asked him, *“Do you believe your recollection of this event uh, is refreshed, having been provided the opportunity to review that evidence along with your attorney?”* Deputy Paphanthong replied, *“Uh, yes Sir.”*

Although Deputy Paphanthong was aware of Inmate _____ prior to the incident on January 5, 2021, he said he did not know him well. He was unaware of Inmate _____ classification status, but knew Module 5C was a Special Housing Unit, which housed Mental Health Inmates.

On January 5, 2021, Deputy Paphanthong was assigned to assist Deputy Valdez in Module 5C. Several inmates were allowed to program within the module, while Deputy Paphanthong and Deputy Valdez conducted pill call. Deputy Paphanthong stood by with the nurse as Inmate _____ cell was opened and he walked downstairs toward the pill call.

Deputy Paphanthong instructed Inmate [REDACTED] to join the pill call but he walked toward the Sundeck instead. Deputy Paphanthong afforded Inmate [REDACTED] the opportunity to finish *“whatever he was doing”* before telling him to join the pill call a second time. Instead of complying, Inmate [REDACTED] walked toward the Officer’s Station, turned around and threw a liquid substance in the direction of Deputy Paphanthong. After doing so, Inmate [REDACTED] grabbed another item from the Officer’s Station (possibly the remote control) before he ran upstairs. Deputy Paphanthong and Deputy Valdez tried to stop Inmate [REDACTED] from walking up the stairs but they were unable to get a grip on him at that moment.

Once they reached the second floor of the module, Deputy Paphanthong and Deputy Valdez took Inmate [REDACTED] to the floor. They attempted to grab his hands to secure him, but they were unable to do so while Inmate [REDACTED] moved. Deputy Paphanthong said, *“I placed my knee on his head, my other knee on the back and then still tried to grab it and then uh, once he was secured I-inmates was still out and I told my uh, partner, ‘Hey, go close down the uh- lockdown the inmates.’”*

Deputy Valdez waited a moment before going downstairs and ensuring the inmates were locked down. Once Deputy Valdez returned, he and Deputy Paphanthong escorted Inmate [REDACTED] to an interview room outside the module. When they arrived at the interview room, a nurse was present, so Deputy Paphanthong and Deputy Valdez asked the nurse to assess Inmate [REDACTED]. Deputy Paphanthong told the deputy working at the Floor Station to notify the sergeant. The Mental Health Unit was also notified of the incident.

I asked Deputy Paphanthong why he made the decision to pursue and apprehend Inmate [REDACTED] at that moment and whether there was a need for his immediate apprehension. Deputy Paphanthong reiterated how Module 5C was a Mental Health Unit and explained how the inmates in that unit attempt to swallow items or cut themselves. Deputy Paphanthong said he reacted by trying to stop Inmate [REDACTED] and that if he didn’t do so, he was not doing his job. He added, *“If I let him go and go in his cell, he could break that remote control. Slice himself and also swallow the batteries.”*

It was Deputy Paphanthong’s belief that Inmate [REDACTED] was still in possession of the remote control or another object when he ran up the stairs and fled from the deputies. The incident occurred so quickly that Deputy Paphanthong was unaware if he notified Control of the circumstances as they were occurring.

I asked Deputy Paphanthong to describe how he positioned his body in relation to Inmate [REDACTED] after Inmate [REDACTED] was brought to the ground. Deputy Paphanthong indicated that he was near Inmate [REDACTED] head and back, while Deputy Valdez was by Inmate [REDACTED] leg. When I asked Deputy Paphanthong to describe the force he used against Inmate [REDACTED] during the incident, he replied, *“Reasonable force to hold him down, to hold him down sir.”* After I asked Deputy Paphanthong if he recalled placing his knee on Inmate [REDACTED] head, Deputy Paphanthong admitted placing his right knee on the right side of Inmate [REDACTED] head, near his cheekbone and ear. He said he did so to maintain control of Inmate [REDACTED].

I then referenced Deputy Paphanthong’s Blue Team report, directing him to the portion in which

he indicated that after Inmate [redacted] was released from his cell for pill call, instead of visiting the nurse, Inmate [redacted] began placing breadcrumbs in between a metal mesh barrier, while talking nonsense. I asked Deputy Paphanthong if that behavior caused him concern and he replied, *“Um...yeah. Um, I...didn’t know what to expect when he...was, you know, coming out, when he’s done. Um, I was making sure that...my partners...uh...um, is awa- it’s a safety, and my safety ‘cause, again, these um, these inmates, um, special needs that, they can explode at any time. I do not know. Um, and I thought it was just a ordinary pill call – have him come down and get his pill call.”*

I focused Deputy Paphanthong on the portion of his Blue Team report in which he described how Deputy Valdez was able to secure Inmate [redacted] in handcuffs. In that particular passage, Deputy Paphanthong wrote, *“Once secured, I had my left knee on his back near the buttock area, and my right knee on his head, while controlling Inmate [redacted] right hand.”* I asked Deputy Paphanthong, *“So...to clarify for the record, um, maybe it’s a writing style, um, but I don’t want to speak for you. Um, do you believe now after watching the footage that your knee was on his head before and after Inmate [redacted] was handcuffed?”* He replied, *“Yes. Yes Sir.”*

Although he was not sure of the exact duration, Deputy Paphanthong estimated that he had his knee on Inmate [redacted] neck for a minute or two. I advised him that I counted 1 minute and 20 seconds based on the video footage. I then asked Deputy Paphanthong, *“On a scale of 1 to 10, with one being the lowest and ten being the highest, do you recall how much pressure you placed on Inmate [redacted] head, with your right knee during the incident?”* He answered, *“I would say about, about four or five. Yeah, I did not even put my whole weight on him at all.”*

Deputy Paphanthong advised Sergeant Glennon and I that the second floor of Module 5C is made of polished cement. Although he said he did not know if his knee placement on Inmate [redacted] head was painful to him, he understood that it *“possibly”* could have been. I asked Deputy Paphanthong if he thought having his knee on Inmate [redacted] head may have instinctually caused Inmate [redacted] to pull his hand up toward his head while they were trying to secure his hand in handcuffs. Deputy Paphanthong said he did not know because he was focused on securing Inmate [redacted] in handcuffs.

I then asked Deputy Paphanthong *“At any point, while you had your right knee on Inmate [redacted] head, did he cease his resistance?”* He replied, *“I...I know he was talking. Um, resisting-wise, he...I, I don’t, I don’t think, when I saw the video I, I didn’t...I didn’t...see that he resisted since uh, since we got control of his, his, his hand, and it’s secured.”*

The following dialogue then ensued:

Sergeant Moore: So, when you were able to get him into handcuffs...

Deputy Paphanthong: Yeah.

Sergeant Moore: Do you think he, he ceased uh, resisting there, at that moment?

Deputy Paphanthong: At that moment, uh no 'cause I was still maint- try to maintain control. He- he's a, a strong guy.

Sergeant Moore: When do you think he did?

Deputy Paphanthong: Uh, when my um...when my partner, came back up, making sure that it w- the um, door was secured, and that's when I...we both grab, uh, pick him up and then, escort him to the, the nurse there.

Sergeant Moore: Okay, so for, for record's sake...um, in your opinion, you don't think he stopped resisting at all, until you're partner came or do you think he stopped resisting, before your partner came up?

Deputy Paphanthong: I think, I think he...I think um...

Sergeant Moore: The stairs.

Deputy Paphanthong: Yeah I think before he, before he came upstairs, I was still trying to hold him, just making sure because I, I don't know. Um, he didn't...he- he didn't move but he was still unchained, he's...I mean, un- unshackled. So, I wanted to make sure that, he is...uh, controlled on the ground before my partner comes up.

Sergeant Moore: Yeah I understand your concern, um, but...very specifically, um, do you think – or at least, is it possible that he stopped resisting...from the time of when, he was handcuffed - and then your partner went back downstairs, and your partner came back up...and then, you guys stood him up, but do you think it was possible that he stopped resisting actively, meaning he's not trying to push pull away from you, um, while you were in that position, with your knee on his head?

Deputy Paphanthong: Yeah it's, it's- yeah, it's possible. Um, like I said, I'm- I'm not on their head so I (unintelligible) any of the uh...uh...you know, the uh...the custody inmates that's in there, I want to make sure that, you know, I held him down. Um...as much less force as I can – I didn't use a bunch of my weight on him, made sure that once he's, my partner's here, I feel safe and secure that we could pick him up, and then escort him down.

I then played Bosch Surveillance footage that was labeled "0-2021-01-0520-50-31-257."

I stopped the footage at the time stamp of 20:52:33 seconds and asked Deputy Paphanthong, "So, watching this footage of the Bosch Surveillance footage, at any point now, do you believe that he stopped, Inmate stopped resisting? During the encounter?" He replied, "Yeah. And, he- like I said it, it happened so quickly, um, my mind is running, you know, a thousand miles an hour. If- if I'd...watching it, and it's like yeah, I coulda...you know, let go. Or, or stand up, or, held him (unintelligible). But at that time, it- it you know, everything happened so fast."

I asked Deputy Paphanthong if he made any attempt to re-assess the need to keep his knee on Inmate head after he was secured in handcuffs and Deputy Valdez went downstairs to lockdown the other inmates. Deputy Paphanthong responded, *“You know, I- I did not sir. Uh, again, watching that video, I could have said, okay I, I could have re-assessed. Again, at that time, um...everything happened so quick, um....you know- my focus wasn't...you know my focus was on my partner, myself, make sure everything was...secured. Um...yeah, I- you know again, I mean – if I could have done it, watching it, I would have done differently.”*

I followed up by asking Deputy Paphanthong, *“Do you believe now after having had the opportunity to view this incident again, that you should have removed your knee from Inmate head earlier than when you did?”* He replied, *“Yes Sir.”*

Attorney mentioned how video footage could appear differently than how things appeared to Deputy Paphanthong and that he may have felt his safety dictated a different way than what would appear better on video. Deputy Paphanthong agreed with Attorney assessment.

Deputy Paphanthong explained how during the incident his train of thought was to maintain control of Inmate and make sure he did not move until Deputy Valdez returned. He added, *“That was my concern – my concern is for um...you know, I was by myself up there, and my partner went down...make sure everybody's locked down, and ...and once he's up, and then...trying to maintain...escort him to a...”*

I asked Deputy Paphanthong questions related to Positional Asphyxia and the following dialogue ensued:

Sergeant Moore: Did you receive training through the Sheriff's Office regarding Positional Asphyxia?

Deputy Paphanthong: I- I- I think so Sir.

Sergeant Moore: What do you recall from that training?

Deputy Paphanthong: Um, that...I think...they could not breathe, if the whole or...bunch of the officers on top of him, or um, on his uh, neck area.

Sergeant Moore: As part of that training, regarding Positional Asphyxia...um, were you informed uh, to avoid placing weight on a subject's back, or in a way that compresses the chest or impairs breathing?

Deputy Paphanthong: I think it was the, the back or i- i- i- if it impairs breathing.

Sergeant Moore: Back or impairs breathing?

Deputy Paphanthong: Yeah. Um...because I have my knee on his, his back, but not his – I don't know how far from his back.

Sergeant Moore: Yeah um, do you believe the way you held Inmate down with your knee on his head, could have had the effect of impairing his breathing?

Deputy Paphanthong: No, because he was um, he was still talking to- he was still talking to me. He was still saying stuff. If I know that he was um, can't breathe or anything, I would have, immediately got up.

Sergeant Moore: Do you think it's possible, without having your knee on somebody's back, but still, anywhere in the area of their head, that you could- it could still lead to issues with people breathing... that could impede their breathing?

Deputy Paphanthong: It, it depends on um, the amount of weight you put in, I- like I said I didn't put a lot of weight on...on holding him down. Just enough to contain him.

Sergeant Moore: Um, during your Body Worn Camera footage of the incident, um, it was about three minutes into, into the footage – um, when you were speaking to the nurse who was assessing uh, Inmate You advised the nurse assessing Inmate you said, "Check his head, check his hands." Why did you ask the nurse to check those areas of Inmate in particular?

Deputy Paphanthong: Oh, because I had my, my knee on his head. Uh, I have to get medical attentions to him. If I then, that's all, also on me.

Sergeant Moore: So...

Deputy Paphanthong: And his hand is - I still hold his hand. Um, but I didn't hold it enough to, to be in pain. It was... (trails off)

Sergeant Moore: Um, were you concerned that Inmate may have been injured as a result of the force you used?

Deputy Paphanthong: Uh...no because I didn't use, I didn't use uh, excessive force on him. I thought I used enough force to uh, control and maintain him.

I asked Deputy Paphanthong what he said to Inmate after he had control of Inmate hands during the incident. Deputy Paphanthong replied, "Like I said, it, it happened so quick, I – you know, that was just a verbal command, telling him, 'hey, you know...don't move or, don't resist or I'll break your fucking hand.'"

After I replayed that portion of the Bosch video footage, Deputy Paphanthong clarified that he told Inmate "I'll...break your fucking arm." While he described his verbiage as a tactic he "just happened to use" to make sure Inmate calmed down and did not resist, Deputy Paphanthong admitted it was inappropriate, the "wrong choice of words" and that the General Orders (DOC Policy) prohibited using explicit words or threatening tones towards inmates.

I asked Deputy Paphanthong for his opinion about how the public would feel about the force he

used on Inmate [redacted] during the incident. He replied, *“Um, you know what, I...yeah, I, I don’t know. If- if that was excessive use of force, then...um, they could...I don’t know, take it either way that...that, they have, you know, their opinion to watch, I mean. In my opinion...at that time, I thought that I did the best that I can, to control the situation. Um, I never... punch him, kick him. Uh... block his airway-breathing. Um, yeah, I, I don’t know what, what they would say, I don’t...you know.”*

I asked Deputy Paphanthong for his opinion regarding how the public would feel about his threat to break Inmate [redacted] arm. He said, *“I should be better.”* I then asked him, *“In line with that, the last sentence [redacted] t said – I, I should be better...Um, if you were able to go back, and do things differently, regarding this situation with Inmate [redacted] what would you change regarding your actions that day?”* Deputy Paphanthong said, *“I would not, once he’s secured I would...probably just...either stood him up, or wait, or...but not put uh, my knees on his, his lower back and his head. Um, I would somehow try to control him on the ground differently, I...you know?”*

Deputy Paphanthong said he was not attempting to hurt Inmate [redacted] while kneeling on his head and that he did so in order to control him on the ground. He believed his actions were necessary to keep Inmate [redacted] on the ground and agreed with Attorney [redacted] that Inmate [redacted] size (about 6’2”) was a factor during the incident, as well as the additional unsecured inmates on the first level of the module.

I asked Deputy Paphanthong if there was anything he wanted to add regarding the investigation. He replied, *“Um...well...after watching this, you know. Uh...I could have done better. Um...and I, I can’t change what I did at that time, and again it happened so quick. My intentions were to never hurt this person, because...almost fifteen years, never have I used excessive use of force and then now, and uh...I’m, again trying to fight for my name here, so.”*

Before concluding the interview, Sergeant Glennon asked Deputy Paphanthong if he was able to do things differently, if he would consider requesting assistance from other deputies during the incident. Deputy Paphanthong reiterated how quickly the event transpired and how he figured his partner would call for assistance. He added, *“and again, my mistake for not calling. But then, you know I, immediately after we took him out...let the floor station know, ‘hey, call the sergeant, let him know right away what happened.’ Yeah.”*

I concluded the interview at 1945 hours.

Conclusions:

Investigator’s Note: The following conclusions are based on the information collected throughout my investigation, including but not limited to: investigative reports, interviews, witness accounts and my interpretation of the nature and substance of the allegations.

On the evening of January 5, 2021, in Module 5C of the Main Jail, Inmate [redacted] refusal to participate during pill call, coupled with his irrational behavior when ordered to do so by the deputies, was the catalyst of the use of force incident that spurred this investigation.

Evaluation of Deputy Paphanthong's Decision to Pursue/Detain Inmate

Based on Inmate [REDACTED] assaultive actions of throwing a remote control and a cup containing a liquid substance [REDACTED] the deputies before he fled up the module's stairs, I believe Deputy Paphanthong and Deputy Valdez were within their policy to pursue and detain Inmate [REDACTED] pending a criminal investigation.

When Deputy Paphanthong and Deputy Valdez made the decision to pursue him, it was likely reactionary and without the benefit of forethought. Thankfully, while doing so they did not force Inmate [REDACTED] to the ground while on the stairway, which would have likely resulted in significant injuries to him. Instead, they appropriately brought Inmate [REDACTED] to the ground on the second floor of the module.

Analysis of the Force Used by Deputy Paphanthong During the Incident:

The Department of Correction Use of Force Policy section 9.01.I. states, *"When force must be used, sworn staff shall only use that amount of force that is objectively reasonable and minimally necessary to control the situation or stop the threat, and the force must be in the service of a legitimate correctional objective."*

While I believe Deputy Paphanthong's actions of pursuing Inmate [REDACTED] and detaining him pursuant to a criminal investigation were within the service of a legitimate correctional objective, I do not believe the manner in which Deputy Paphanthong pinned Inmate [REDACTED] head down during the incident was objectively reasonable or the minimum amount of force necessary to control Inmate [REDACTED] or stop the threat he posed.

After Deputy Paphanthong and Deputy Valdez brought Inmate [REDACTED] to the ground on the second floor of the module, the evidence in this case including the video footage and statements of the deputies, indicate Inmate [REDACTED] resistance at that moment consisted of him moving his body around and pulling his arms away from the deputies. Inmate [REDACTED] did not attempt to bite, head-strike or otherwise assault the deputies at that moment. Without such an articulated threat involving Inmate [REDACTED] head, I believe it was unreasonable for Deputy Paphanthong to pin Inmate [REDACTED] head down in mere anticipation of such behavior.

Based on his statements during his Internal Affairs interview, I believe Deputy Paphanthong's intent was to maintain control of Inmate [REDACTED] and not to harm or brutalize him. However, even without such malice, I believe Deputy Paphanthong's decision to place his knee and any amount of body weight on Inmate [REDACTED] head during the incident constituted negligence in the performance of his duties and resulted in Deputy Paphanthong's failure to discharge his duties in a responsible manner, in violation of Santa Clara County Merit System Rule A25-301(a)(2).

Even with the consideration that he did not intentionally strike Inmate [REDACTED] with his knee or place his entire body weight on him, Deputy Paphanthong was aware that the second floor was made of polished concrete and should have been cognizant of the inherent pain involved in utilizing such a tactic.

The video footage, in combination with Deputy Paphanthong's own admittance, indicates that Inmate [redacted] resistance ceased once he was secured in handcuffs. When I asked Deputy Paphanthong, *"At any point, while you had your right knee on Inmate [redacted] head, did he cease his resistance?"* He replied, *"Um...I...I know he was talking. Um, resisting-wise, he...I, I don't, I don't think, when I saw the video I, I didn't...I didn't...see that he resisted since uh, since we got control of his, his, his hand, and it's secured."*

Despite Inmate [redacted] ceased resistance after he was handcuffed, Deputy Paphanthong continued to kneel on his head. While doing so, Deputy Paphanthong used force against an inmate who was no longer assaultive and was not an immediate threat to himself, Deputy Valdez, or other inmates. Therefore, I believe Deputy Paphanthong violated Department of Correction Policy section 9.01.XIV.A.10. which states, *"Staff shall not strike, use chemical agents, or use force against an inmate who is restrained unless the inmate is assaultive and there is an immediate threat of serious injury to themselves, other staff, or other inmates and there are no other reasonable means to control the inmate."*

Department of Correction Use of Force Policy section 9.01.X.C.3. states, *"The use of force requires frequent reevaluation. If the amount of resistance decreases and the incident de-escalates, the force must be reduced and/or terminated as soon as possible, consistent with maintaining control of the situation. However, if the resistance increases, the level of force may also increase."* Instead of utilizing the required frequent reevaluation, and/or termination of the use of force as soon as possible as required per policy; Deputy Paphanthong maintained his use of force, in particular his right knee on the side of Inmate [redacted] head, for nearly one minute after Inmate [redacted] was secured in handcuffs. Based on this fact, I believe he violated Department of Correction Use of Force Policy section 9.01.X.C.3.

I believe that Inmate [redacted] pleads to Deputy Paphanthong after he was handcuffed (*"You're hurting me. Please stop hurting me"*) should have prompted Deputy Paphanthong to not only reevaluate his need to continue using force but to consider the impact such force was having upon Inmate [redacted]. Although Deputy Paphanthong had no reasonable way of knowing what caused Inmate [redacted] agitated and excited state during the incident, he should have exercised due caution by [redacted] Inmate [redacted] onto his side once he was secured in handcuffs. The necessity to do so is specifically required by Department of Correction Use of Force Policy section 9.01.X.G.4. which states, *"Once an inmate is controlled, they should be placed in a recovery position (on their side, to allow the mouth to drain, and with limbs bent to prevent the inmate from rolling onto their stomach) to minimize breathing problems and the risk of medical distress. Inmates placed on a gurney or stretcher should be placed in the recovery position or, as soon as practical, in the sitting position."*

The video evidence in this investigation clearly shows that Deputy Paphanthong not only failed to place Inmate [redacted] in a recovery position once he was controlled, he continued to pin Inmate [redacted] down on his stomach in violation of the aforementioned policy. After Deputy Valdez was provided the opportunity to view the video footage of the incident, I asked him if he had concerns related to positional asphyxia. He paused before stating, *"Knowing what I knew then-knowing that was going on, I might have tapped my partner out."*

Evaluation of Deputy Paphanthong's Statement to Inmate**During the Incident:**

Deputy Paphanthong described his threat of breaking Inmate _____ arm during the incident as a tactic he used to make sure Inmate _____ calmed down and did not resist. He admitted it was the, "*wrong choice of words*" and that department policy prohibited using explicit words or threatening tones towards inmates. When I asked him for his opinion regarding how the public would feel about his threat to break Inmate _____ arm, Deputy Paphanthong said, "*I should be better.*"

I believe Deputy Paphanthong's profane statement to Inmate _____ threatening to break his arm was especially egregious considering Inmate _____ was already secured in handcuffs at that moment and did not display resistive behavior. Although Deputy Paphanthong claimed his statement was a tactic to calm Inmate _____ down, I believe it could have easily escalated an already volatile situation involving a Special Management Inmate. As a result, I believe Deputy Paphanthong's statement was in violation of Department of Correction Use of Force Policy section 3.31.IV.J.15.a. which states, "*Employees shall, at all times, be courteous and discreet to all persons, maintain decorum and command of temper, and avoid the use of violent, insolent or obscene language.*"

While I believe Deputy Paphanthong's statement to Inmate _____ was highly inappropriate, I do not believe a preponderance of the evidence in this case proves that Deputy Paphanthong made the threatening statement to Inmate _____ with the intent of retaliating against him based on his conduct, as prohibited in Department of Correction Use of Force Policy section 9.01.VI.A.1.a. which states, "*Staff shall not threaten, intimidate, mistreat, or physically, verbally, or mentally abuse an inmate in retaliation for an inmate's conduct, speech, or expression of ideas.*"

Lastly, it is my opinion that Deputy Paphanthong's continuance of unwarranted force upon Inmate _____ constituted conduct unbecoming a county officer or employee which tends to discredit the county or county service in violation of Santa Clara County Merit System Rule A25-301(b)(1).

While Deputy Paphanthong was not sure how the public would react if they were aware of the force he used during the incident, I am confident that the public would agree with Lieutenant Valle's assessment that Deputy Paphanthong's conduct during the incident was, "*not what we're looking for in our deputies.*"

Based on the preponderance of the evidence in this investigation, I recommend the following findings:

Findings Pertaining to Deputy Paphanthong:

- I. **Violation of Santa Clara County Merit System Rule A25-301(a)(1):** "*Violation of the county charter, merit system rules and regulations and written and published departmental rules and policies which do not conflict with this article.*"

-Sustained

- II. **Violation of Santa Clara County Merit System Rule A25-301(a)(2):** *“Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned task or failure to discharge duties in a prompt, competent and responsible manner.”*
-Sustained
- III. **Violation of Santa Clara County Merit System Rule A25-301(b)(1):** *“Guilty of gross misconduct, or conduct unbecoming a county officer or employee which tends to discredit the county or county service.”*
-Sustained
- IV. **Violation of Department of Correction Policy 3.31.IV.J.15.a.:** *“Employees shall, at all times, be courteous and discreet to all persons, maintain decorum and command of temper, and avoid the use of violent, insolent or obscene language.”*
-Sustained
- V. **Violation of Department of Correction Policy 9.01.I.:** *“When force must be used, sworn staff shall only use that amount of force that is objectively reasonable and minimally necessary to control the situation or stop the threat, and the force must be in the service of a legitimate correctional objective.”*
-Sustained
- VI. **Violation of Department of Correction Policy 9.01.VI.A.1.a.:** *“Staff shall not threaten, intimidate, mistreat, or physically, verbally, or mentally abuse an inmate in retaliation for an inmate’s conduct, speech, or expression of ideas.”*
-Not Sustained
- VII. **Violation of Department of Correction Policy 9.01.X.C.3.:** *“The use of force requires frequent reevaluation. If the amount of resistance decreases and the incident de-escalates, the force must be reduced and/or terminated as soon as possible, consistent with maintaining control of the situation. However, if the resistance increases, the level of force may also increase.”*
-Sustained
- VIII. **Violation of Department of Correction Policy 9.01.X.G.4.:** *“Once an inmate is controlled, they should be placed in a recovery position (on their side, to allow the mouth to drain, and with limbs bent to prevent the inmate from rolling onto their stomach) to minimize breathing problems and the risk of medical distress. Inmates placed on a gurney or stretcher should be placed in the recovery position or, as soon as practical, in the sitting position.”*
-Sustained

- IX. Violation of Department of Correction Policy 9.01.XIV.A.10.:** *“Staff shall not strike, use chemical agents, or use force against an inmate who is restrained unless the inmate is assaultive and there is an immediate threat of serious injury to themselves, other staff, or other inmates and there are no other reasonable means to control the inmate.”*
-Sustained

DocuSigned by:
Brett Moore 12/16/2021
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Sergeant B. Moore #1908