

County of Santa Clara

Office of the Sheriff

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

RESERVE COPY

NAME TIMMY TRI

DATE/TIME 8/4/15 16:10 hrs

LOCATION MJS Adm. Conf. room

Cpt. K. Healy #10001



Laurie Smith
Sheriff

HAND DELIVERED

July 17, 2015

Correctional Deputy Timmy Tri #10701

SUBJECT: Final Disciplinary Action: TERMINATION
Re: Internal Affairs Case #2013-033

Dear Deputy Tri:

This letter is to inform you that you are hereby **TERMINATED** from your position as a Correctional Deputy with the Santa Clara County Department of Correction/Office of the Sheriff - Custody Bureau **effective August 16, 2015**.

In a letter dated March 11, 2015, Sheriff Laurie Smith issued a Recommended Disciplinary Action Letter advising you of her intent to terminate you from your position as a Correctional Deputy with the County of Santa Clara Office of the Sheriff.

The March 11, 2015, letter reads, in relevant part, as follows:

This action is based on, but not limited to, the following sustained charges:

- 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)(4): "Brutality in the performance of duties."

- 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 Santa Clara County Merit System Rule A25-301 (b)(2): "Guilty of immoral conduct or criminal act."
- V. Violation of D.O.C. Policy 3.31.ILB: Employee Relationships with Inmates: "Brutality Will not be tolerated and is cause for dismissal and possible criminal charges."
- VI. Violation of D.O.C. Policy 3.31.IV.J.1.a: Employee Conduct/Conformance to Law: "Employees are expected to adhere to Department Policies and Procedures, County Personnel Regulations, County Administrative Procedures, Executive Orders, County Merit System Rules, and all laws applicable to the general public."
- VII. Violation of D.O.C. Policy 3.31.IV.J.3.a: Employee Conduct/Use of Force: "Employees shall only use force in accordance with the law and the Department Policy 9.01, Use of Force and Restraints."
- VIII. Violation of D.O.C. Policy 3.31.IV.J.9.a: Employee Conduct/Conduct Unbecoming: "An employee shall not commit any act which constitutes conduct unbecoming a Department employee. Conduct unbecoming an employee includes, but is not limited to, any criminal or dishonest act or an act of moral turpitude."
- IX. Violation of D.O.C. Policy 3.31.IV.J.14.a: Employee Conduct/Untruthful Statements: "Employees shall not make less than truthful statements, either verbal or written."
- X. Violation of D.O.C. Policy 9.01.I.A.1: Use of Force: "In the performance of their duties, badge staff is authorized to use that level of force, which is necessary and objectively reasonable, under the circumstances."
- XI. Violation of D.O.C. Policy 9.27.I.B.1: Reporting of Incidents: "All staff involved in a reportable incident shall submit a written Incident Report describing the event in detail to the supervisor."

The facts, which are the basis for these charges:

On October 3, 2013, you were assigned to the Main Jail Complex, fifth floor, inmate housing unit module 5C. Deputy Bragg was assigned to the fifth floor module 5A. Deputy Bragg was in the process of receiving and housing Inmate [redacted]. As Deputy Bragg was searching Inmate [redacted] property, Inmate [redacted] became argumentative and became assaultive. Deputy Bragg used his radio and put out a call for assistance. You responded and were the first assisting officer on the scene. When you arrived, Deputy Bragg had Inmate [redacted] on the floor face-down attempting to control him. You responded to the situation by repeatedly kicking and punching Inmate [redacted] in the head and upper torso area. You stated the reason that you kicked and punched Inmate [redacted] was because he grabbed your leg and was attempting to pull it towards him and you feared for your safety. After the incident, it was alleged you made false

statements when reporting the incident in an attempt to, initially conceal and then ultimately justify the unnecessary and excessive force you used on Inmate

Inquiry/Investigation:

On October 9, 2013, Captain Hoyt requested Internal Affairs conduct a formal investigation of your actions when you assisted Deputy Bragg subdue Inmate . The memorandum alleged you used excessive force, omitted facts, and documented events that did not occur.

This investigation was assigned to Sergeant Bice on October 11, 2013, and originally tracked under PII 2013-38. Sergeant Bice presented the preliminary evidence to command staff. Due to the nature and seriousness of the allegations, you were investigated both criminally and administratively.

Sergeant Bice received and reviewed copies of the Watch Commander's Summary, Supervisor Summary Report, 10 Employee's Reports (IR#13-51267) , Crime Report #13-277-0001J, media and inmate interviews, generated by Main Jail staff.

The following are summaries of these documents and interviews for an exact record please refer to the originals.

Watch Commander's Summary Report- Lieutenant E. Borgzinner #10031:

On October 3, 2013, a Deputy involved disturbance occurred in housing module 5A of the Main Jail. Inmate attacked Deputy Bragg. During the ensuing fight, the two fell to the ground with Deputy Bragg landing on the back of was face down, resisting Deputy Bragg's efforts to grab his arms by hiding his right hand underneath his stomach.

You, the first responding staff member on scene, kicked and punched in the face and head. The situation was not a dire emergency, in which a Deputy was being injured or beaten, and did not warrant that level of force. Absent exigent circumstances, Level III pain compliance would have been the appropriate force used.

Sergeant Jensen, your immediate supervisor, informed Lieutenant Borgzinner that the first few employee reports you submitted never mentioned you kicked or struck in the head or body. It was not until you were told other deputies reported you struck did you include these facts in your report. These omissions raised questions as to the accuracy and integrity of your recollection and reporting of the incident.

Due to the inconsistencies in your reporting of the incident, the witnesses' statements, and the contradicting reports from the other deputies involved, it appears you may have used excessive force and been less than truthful in your reporting of this incident.

Supervisor Summary Report- Sergeant J. Jensen #1756:

Sergeant Jensen was assigned to supervise Main Jail North floors four through six. At approximately 2303 hours, he heard radio traffic announcing Deputy Bragg, set off his emergency radio pack set alarm. Deputy Bragg was assigned to module 5A.

At approximately 2305 hours, Sergeant Jensen and Sergeant Bracket arrived on scene. Sergeant Jensen noticed several Correctional Deputies escorting Inmate [redacted] out of module 5A. Sergeant Jensen saw that [redacted] was bleeding profusely from his head, and there was a trail of blood from inside the housing unit to the 5th floor core area. Officer Cortes #2599 and Officer Durand #2828 grabbed towels and placed them on [redacted] head. Sergeant Jensen saw Deputy Bragg #10463, Deputy Murillo #10738 and you walking behind

Deputy Bragg appeared disheveled and out of breath. His left hand had a minor cut and he complained of pain to his right hand. Deputy Murillo's clothing was disheveled. He was sweating, and complained of pain to his right knee. You were breathing rapidly, and complained of pain to your right hand and right knee. Sergeant Duran #10439 arrived on scene and assisted Sergeant Jensen with the employee injury paperwork.

Sergeant Brackett # 10112, video recorded Officer Cortes and Officer Durand escorting [redacted] to the 2nd floor medical clinic until Emergency Medical Services (EMS) arrived to transport [redacted] to Valley Medical Center (VMC).

Sergeant Jensen made contact with Inmate [redacted] on the 2nd floor to get his statement.

Statement of Inmate

[redacted] admitted to being verbose and argumentative with Deputy Bragg but when Deputy Bragg took him to the ground he stopped resisting. [redacted] said he was 'just talking shit,' not fighting and an unknown Deputy kicked his face into the wall causing the lacerations.

Sergeant Jensen completed his interview with [redacted] and returned to the 5th floor. Sergeant Jensen spoke with Deputy Bragg, Deputy Murillo and you to gather information about the incident. Sergeant Jensen instructed several staff members involved with inmate [redacted] to document their role on an Employee's Report. Deputy Bragg, Deputy Murillo and you stated you could write your employee reports prior to seeking medical attention for your minor injuries. Deputy Lozada #10713 was assigned to interview the inmates housed in 5A, for any witnesses.

Sergeant Jensen reviewed the final employee reports received from Deputy Bragg, Deputy Murillo and you, and the inmate witness statements reported by Deputy Lozada. Sergeant Jensen determined you used excessive force and made less than truthful statements. Sergeant Jensen also determined the force used by the other deputies involved in the incident, was reasonable and necessary to prevent [redacted] from assaulting staff and causing further disturbance.

According to [redacted] M.D., [redacted] sustained a laceration to his upper right forehead requiring ten sutures, a laceration to his right eyebrow requiring three sutures, and a broken (right) sinus cavity.

Employee Report - Deputy K. Bragg #10463:

Inmate _____ was transfer from Special Housing to the 5A housing unit earlier in the evening. At approximately 2256 hours, Deputy Bragg completed the search of _____ property bag and opened _____ cell door so he could retrieve his property.

_____ approached Deputy Bragg at the officer's station and said in an aggressive tone 'so this is how you are going to do my stuff.' Deputy Bragg told _____ to take his stuff but continued his aggressive tone, saying 'you do this because you can, you mother fucker' and then took a combative stance. Deputy Bragg told _____ to lockdown but he refused.

Fearing for his safety, Deputy Bragg pressed his radio pack set alarm and pushed backwards. _____ came toward Deputy Bragg with his arms flailing. Deputy Bragg used an arm bar maneuver to take _____ to the ground. _____ fell face down and may have hit his head on the sundeck door or ground. Deputy Bragg landed on top of _____ back. _____ attempted to push up off the ground. Deputy Bragg struck _____ several times in his right rib/back area to gain compliance, while giving _____ verbal commands to stop resisting. _____ continued to kick and tense up until you and Deputy Murillo #10738 arrived on scene.

Deputy Bragg was on _____ left side and you and Deputy Murillo were on _____ right side. Additional officers arrived and _____ was handcuffed and escorted out of the unit.

During the incident, Deputy Bragg suffered a swollen right hand with a cut on his middle left finger and a tear to his uniform. _____ was transferred to VMC via ambulance using its emergency lights and siren. Sergeant Jensen approved the hazardous material clean up from the incident.

Your Employee Report:

You reported you heard Main Jail North Control announce a pack set alarm in 5A. You immediately responded from module 5C. As you entered 5A, you saw Deputy Bragg sitting on inmate _____ back while trying to overcome his resistance.

The following is an exact narrative of your final report, which was called into question after Sergeant Jensen reviewed information from inmate witnesses and the employee's reports.

"As I approached the struggle, I attempted to grab inmate _____ right arm to prevent him from injuring Deputy Bragg. I was unable to secure his right arm. Inmate _____ then grabbed onto my left leg with his right arm. I shouted, stop resisting, let go of my leg multiple times but inmate _____ continued to try and pull me down by my left leg. I feared for my safety so I delivered 2-3 kicks with my right foot striking inmate _____ in the head and facial area. Despite my efforts, I lost my balance and inmate _____ was able to pull me to the ground by my left leg. After falling to the ground landing on my knees, inmate _____ maintained his grasp on my left leg and repeatedly yelled 'fuck you, fuck you' multiple times. I feared inmate _____ was preparing to bite me as he pulled my left leg towards his head. At that time, I delivered 4-5 closed fist strikes with my right hand to his head and facial area to prevent inmate _____ from

biting my left leg. I wrestled my leg away from inmate [redacted] grasp. When I was tapped out by responding Deputies, inmate [redacted] was still unsecured. "

You closed your report stating you had no further contact with [redacted] and felt pain to your right hand and right knee.

Employee Report - Deputy Murillo #10738:

Deputy Murillo was in module 5B when he heard North Control announce Deputy Bragg's pack set alarm was activated. He immediately responded and followed you into module 5A. Deputy Murillo saw Deputy Bragg in front of the sundeck door, struggling to secure [redacted]. [redacted] was face down on the ground, parallel to the sundeck, with his head facing toward the main core area. Deputy Bragg was kneeling to the left side of [redacted] attempting to secure [redacted] left arm. [redacted] right arm was tucked under his chest. Deputy Bragg was ordering [redacted] to give him his hands, and stop resisting. [redacted] continued pulling his left arm upward toward Deputy Bragg, attempting to get out of Deputy Bragg's grasp.

You positioned yourself on [redacted] right side near his head. Deputy Murillo saw you kick [redacted] approximately two times in the face/head. You then placed your left knee on [redacted] right shoulder, using your right fist, punched [redacted] in the face four to five times.

Deputy Murillo positioned himself on [redacted] right side. [redacted] right arm was unsecured and remained tucked under his chest. Deputy Murillo grabbed [redacted] right inner elbow area in an attempt to pull [redacted] right arm from underneath his body. Deputy Murillo ordered [redacted] to stop resisting but [redacted] refused to give up his right hand.

Deputy Murillo used three to four knee strikes to [redacted] right arm, hoping the pain compliance would cause [redacted] to give up his arm. Between each knee strike, Deputy Murillo gave [redacted] verbal commands "stop resisting" as he attempted to pull [redacted] right arm from underneath him. [redacted] kept moving his body from side to side as, Deputy Murillo and Deputy Bragg struggled to secure him. Deputy Murillo was unable to secure [redacted] right arm. Responding officers overpowered [redacted] resistance and handcuffed him. [redacted] was removed from the unit and escorted to the medical floor.

Deputy Murillo sustained bruising, redness and swelling to his right knee.

Employee Report - Deputy Lozada #10713:

Deputy Lozada responded to 5A from the 7th floor. He was instructed by Sergeant Jensen to interview all inmates housed in module 5A, to determine if they witnessed the altercation between Inmate [redacted] and Deputy Bragg. Sergeant Jensen provided a digital voice recorder to Deputy Lozada. Deputy Lozada asked each inmate if he witnessed the incident. Four inmates came forward as witnesses and Deputy Lozada interviewed them separately in the 5A Module multipurpose room.

Statement of Inmate

stated Inmate was face down on the ground, in front of the multipurpose room. There were two officers on each side of holding him down. had his arms behind his back but couldn't tell if was handcuffed. said was not resisting because he was already subdued. There were one or two officers at the top of head. One of the officers kicked head three or four times. head began to bleed profusely and the officer ran out the door. With the exception of Deputy Bragg, was unable to identify the other officers involved. said Deputy Bragg was on left side holding him down. Once there was blood on the ground, the officers dragged who was limp and unresponsive, out of the unit.

Statement of Inmate

saw Deputy Bragg on top of arms were behind his back. said, you were the first to respond. You stomped and kicked on the head for no reason until blood came out. Other officers responded and pulled out.

Statement of Inmate

said and Deputy Bragg had an argument. was yelling at Deputy Bragg while at the same time pacing back and forth in an agitated manner. said it looked like was going to do something to Deputy Bragg. Deputy Bragg pushed from the officer's station toward the door. At that point, view was obstructed and he saw nothing further.

Statement of Inmate

said he saw get into an argument with Deputy Bragg over his property. resisted Deputy Bragg's effort to handcuff him. Deputy Bragg took hold of and they fell to the ground. Deputy Bragg placed in handcuffs. Other officers came in and started beating was kicked in the head by you and the other officers did not step in to stop you.

After concluding the interviews, Deputy Lozada approached the inmates housed in 5A module for a second time. No additional inmate witnesses came forward.

Employee Report- Officer Cortes #2599:

Officer Cortes heard the call for assistance and responded to module 5A. He saw Deputy Bragg, Deputy Murillo and you wrestling on the ground attempting to gain control of inmate Officer Cortes placed his right knee on upper back. Officer Cortes noticed arms and feet were unsecured. body was parallel to the sundeck entrance. was thrashing his body side to side. Officer Cortes used his body weight to stop from getting up, while Deputy Bragg secured him with handcuffs. Officer Cortes focused his effort on keeping pinned to the ground. He couldn't recall the positioning of the other deputies.

Officer Cortes assisted to his feet and escorted him out of the housing unit. was bleeding profusely from the top of his head. Officer Cortes used a handful of paper towels and applied pressure to injury. Officer Durand assisted Officer Cortes with applying continual pressure to head injury, as they escorted him to the 2nd floor.

Employee Report - Officer P. Tempra #2752:

Officer Tempra was working Main Jail North, module 4B when he heard North Control announce a pack set alarm in module 5A, he responded immediately. Officer Tempra saw [redacted] on the ground. Deputy Bragg, Deputy Murillo and you were trying to secure his arms with handcuffs.

[redacted] body was a few feet away from the Sundeck entrance, parallel to the Sundeck door. [redacted] was thrashing his body side to side. [redacted] right arm, with his right hand balled into a fist, was swinging outward. Officer Tempra grabbed [redacted] right arm and placed it behind his back. Deputy Bragg secured [redacted] arms with handcuffs. Officer Tempra couldn't recall the position of any officer or Deputy listed in his report.

Employee Report - Officer Durand #2818:

Officer Durand was assigned to Men's Booking. He responded from the basement when he heard the radio call for assistance. Officer Durand saw officers on the ground with inmate [redacted] was restrained and being lifted up off the ground. Officer Durand noticed [redacted] was bleeding profusely from the top of his head and grabbed a towel to apply pressure. Officer Durand and Officer Cortes escorted [redacted] to the 2nd floor medical clinic and had no further contact.

Employee Report- Deputy Caldwell #10693:

Deputy Caldwell responded from 3rd East when North Control announced the pack set alarm in 5A. Sergeant Stream #2039 advised Deputy Caldwell, he and Deputy Crawford would transport [redacted] to VMC. At approximately 2330 hours, emergency medical technicians brought [redacted] to the Main Jail North Ramp and placed him inside the ambulance. Deputy Crawford drove the transportation van, while Deputy Caldwell rode with [redacted] in the ambulance.

VMC staff provided Deputy Caldwell with a summary of [redacted] injuries and associated treatment: 10 sutures to the three centimeter laceration on [redacted]'s right upper forehead; three sutures to the one centimeter laceration on his right eyebrow; a broken right sinus cavity; very mild anterior conformity compression of the vertebrae, unlikely caused by the incident.

Summary of Video:

Sergeant Brackett video recorded inmate [redacted] while he was being escorted from the 5th floor until he left in the ambulance for VMC. Sergeant Brackett requested a code 3 ambulance. He directed Officer Duran and Officer Cortes to escort [redacted] down to 2nd floor medical area.

Sergeant Bice watched the video and noticed blood on [redacted] pants and t-shirt and his t-shirt was torn around the collar. As Officer Cortes and Officer Duran entered the elevator, a bloody towel remained pressed against [redacted] forehead, his face was not visible. [redacted] was grunting and he complained of pain to his right wrist. Sergeant Brackett advised the restraints would be adjusted once they got downstairs.

Upon arrival on the 2nd floor, Sergeant Brackett advised medical staff a Code 3 ambulance was called, and [redacted] sustained a laceration to his head. The officers transitioned [redacted] from handcuffs to waist chains and shackles and sat him on a gurney.

When the nurses removed the towels, Sergeant Bice could see a large laceration on forehead. Blood was smeared on the top and right side of his head and face. Nurse Janice stated [redacted] had cuts to both eyebrows and a cut on his upper forehead. Medical staff covered [redacted] head in a gauze type bandage.

Sergeant Jensen is seen taking photos of [redacted]. He asked [redacted] questions about the incident. The noise from medical staff made it difficult to hear [redacted] answers. The following excerpts of [redacted] statement were discernible.

[redacted] said he was talking shit to Deputy Bragg for the way he treated his property. Deputy Bragg said, 'what are you going to do about it?' [redacted] said "you're a punk bitch for doing stuff like this." Deputy Bragg then took [redacted] to the ground, by the yard door, and landed on [redacted] back. [redacted] said, "He half-assed cooperated" by giving Deputy Bragg his arms. [redacted] said, he wasn't fighting, just wiggling, but quickly gave up his hands to Deputy Bragg. [redacted] said, he was under control with his hands behind his back, just "talking shit" when another officer kned his head into the wall for no reason. [redacted] said, he was lying next to the wall with his head turned toward Deputy Bragg (left), so he didn't see which officer struck him in the head.

San Jose Fire and Emergency Medical Services (EMS) arrived to transport [redacted] to VMC. [redacted] told EMS he almost lost consciousness when kned in the head, but his major complaint was blurred vision and pain to his left elbow. While EMS was rolling the gurney off the 2nd floor, Sergeant Bice heard [redacted] laughing. He said, "real hard Deputy, you fucking nigger." [redacted] laughed again and said, "you're a hard dude."

Summary of Crime Report# 13-277-0001J (

On October 9, 2013, Deputy Bragg submitted Incident Report #13-277-0001J charging inmate [redacted] with felony 148.10 PC: Resisting Peace Officer resulting in injury. The report listed inmate witnesses identified in Deputy Lozada's report. Deputy Bragg's narrative was the same as his employee's report written October 3, 2013, with the exception of your actions.

Deputy Bragg wrote in his crime report; "Deputy Tri was standing at the head area of SOI [redacted], I saw Deputy Tri deliver two knee strikes to [redacted] upper body head area." Sergeant Jensen identified Deputy Bragg's reporting and recollection of the incident was inconsistent with Deputy Tri and reported it to Lieutenant Borgzinner.

On October 10, 2013, Deputy Murillo submitted a supplemental incident report. The narrative of events and actions matched his employee report.

On October 17, 2013, you submitted a supplemental incident report. The narrative of events and actions matched your employee report.

Summary of Photos Crime Report #13-277-0001J:

Deputy Bragg: face/torso, cut left finger, possible bruising on the right hand, torn uniform shirt at the right cuff area with a visible blood smear.

Deputy Murillo: face/torso and right pant leg.

Your Photo: face/torso, right hand knuckle area had redness and pinky finger appeared bruised, no visible redness or marks on the left hand. You were wearing glasses.

lying on the gurney head wrapped with gauze, his t-shirt and hands covered with blood.

5A Housing unit:

Floor area next to the sundeck door contained a large pool of blood, random in shape that covered the length of one and a third floor tiles (approximately 15 inches) with a width ranging from approximately three to eight inches. Several blood droplets leading out of the unit appear to be smeared.

Core area and surrounding cells

Officers Station with property spread out on the floor.

5th Floor Core Area: Several blood droplets leading out of 5A housing to the floor station interview room.

Investigation Continued:

On October 21, 2013, Sheriff's Office Investigations Captain Rodriguez contacted Sergeant Brown to investigate the incident at the Main Jail between Inmate (later identified as and a group of Correctional Deputies. During a review of the original incident reports, the Investigation Unit concluded one of the deputies used excessive force against inmate

On February 11, 2014, your attorney of the firm advised Sergeant Brown that you would not be making a statement in the criminal investigation. Thereafter, Sergeant Brown completed his investigation and submitted his report to the District Attorney's Office for review of possible charges of California Penal Code section 149, Assault under Color of Authority

On April 10, 2014, Sergeant Bice requested and received copies of Sergeant Brown's criminal investigation report #14-008-0118J, Deputy Sammy Tarazi #2029 supplemental report, photographs, housing unit floor diagrams. Sergeant Bice also received copies of interviews, and medical reports for Deputy Bragg, you and Deputy Murillo.

A summary of the criminal investigation is included in your Internal Affairs Investigation and the details of the criminal investigation are set forth in Incident Report #I 4-00800118J.

Investigation Continued:

Sergeant Bice printed and reviewed your training history, which included self-instructional courses you had taken from May 2009 thru April 2013. Examples of these courses are listed below:

Course	Hours	Training Dates
ACA -Working with Manipulative Inmates	24	4/16/2013
ACA- Managing Stress: Performing Under Pressure	40	4/16/2013
Jail Crimes Investigation s/Crowd Control for Custody	8	11/8/2012
S/O Incident Report Writing System	2	3/5/2012
Inmate Management Documentation Review	2	2/4/2012
Officer Safety and Liability	2	12/7/2011
Report Writing Review & Arrest and Control Techniques	8	9/27/2011
Emergency Response Team Review	2	12/23/2010
Title 15 Arrest Control Review	8	9/27/2010
First Responder/Ethics & Professional Conduct	12	12/3/2009
PC 832 Laws of Arrest - Academy #43	40	5/29/2009
Chemical Agents -Academy #43	40	5/29/2009

As indicated above, you received extensive training specific to dealing with use of force, ethical dilemmas, manipulative inmates, officer liability and report writing requirements.

The following are summaries of the interviews conducted and are not verbatim translations or transcriptions of the interviews.

Interview with Inmate

On October 18, 2013, at approximately 1053 hours, Sergeant Sepulveda and Sergeant Bice interviewed inmate _____ in the Main Jail North, 4th floor interview room.

_____ said, after program time shut down, Deputy Bragg opened his cell door to get his property. _____ was upset because Deputy Bragg held his property for four hours, and denied him access to his blanket and hygiene kit. Deputy Bragg dumped _____ property on the floor to search it, and then told _____ to get his stuff. _____ confronted Deputy Bragg by saying "is this how you get down" Deputy Bragg replied, 'yeah what do you want to do about it.' _____ replied, "you're an asshole." Deputy Bragg ordered _____ to get on the ground. _____ said he complied, put his hands behind his back, then responding staff came in and "beat the hell out of me."

_____ said he felt it was a set up because of Deputy Bragg's posturing and how quickly the other officer's responded. _____ said he's a drop out Aryan Brother Gang member. He's been in and out of jail for 38 years, and never charged with assault on an officer. Because of his prior gang status, _____ wanted to verbally challenge Deputy Bragg for "putting him on blast in

front of the dorm" and disrespecting his property. [redacted] said, he jumped away from Deputy Bragg and went face down to the ground in a "push up position." He gave up his hands to avoid a physical altercation. Deputy Bragg straddled [redacted] lower back area, and took control of his hands, but wasn't cuffed when the other officers arrived. [redacted] denied taking a combative stance or tucking his arms underneath his body.

[redacted] said, his body was next to the sundeck door, feet facing the housing unit entrance. [redacted] head was turned toward Deputy Bragg, (left side up) when the first officer slammed his knee and full body weight into [redacted] head, causing it to hit the wall. [redacted] said he briefly saw the officer who delivered the blow and thought he was Caucasian.

After the second blow to the head, [redacted] thought he lost consciousness for a moment. [redacted] thought three to four officers came in. He heard a lot of grunting, feet shuffling and "Mother Fucker" coming from the officers. [redacted] thought the incident lasted for a minute and a half.

[redacted] denied grabbing any officers at any time, and restated he'd given up his hands to Deputy Bragg.

Sergeant Bice showed [redacted] a numbered photo line-up without descriptors of the Main Jail D-Team officers. [redacted] said, it was difficult to tell, but thought it might be [redacted] (Deputy John Luporini), but younger looking. Your photo was [redacted] In comparing the one inch square photos of you and Deputy Luporini, both are light skinned, and could be considered Caucasian at a glance.

[redacted] stated he sustained a forehead cut requiring 10 sutures, cuts on both eyebrows, the right requiring sutures. [redacted] also had a broken right sinus cavity, bruised ribs, bruised ears, two black eyes, possible broken right cheek bone underneath the eye, a sprained left elbow and blurred vision.

[redacted] was in the process of securing an attorney to file a lawsuit for the injuries he sustained. The Sheriff's Office had since received a legal request to preserve all evidence.

Sergeant Bice took four photos of [redacted] face and head. The red slashes of scars on forehead and eyebrows were recognizable. The area around both eyes appeared blue gray, as if bruises were fading.

Interview with Inmate

On October 18, 2013, at approximately 1435 hours, Sergeant Sepulveda and Sergeant Bice interviewed [redacted] in the Main Jail North, 5th floor interview room. [redacted] was housed in 5A, [redacted] at the time of the incident.

Sergeant Bice showed [redacted] a photo line-up that included six photos without descriptors. [redacted] immediately selected [redacted] Sergeant Bice showed [redacted] a numbered photo line-up without descriptors of Main Jail D-Team and asked if he recognized the officers involved. None of the photos looked familiar to [redacted] He remembered the first officer who

did all the kicking wore glasses. said the other inmates in the unit called the officer "Tri", but didn't know him.

heard inmates banging and yelling "stop it" and "get off him." He looked out his cell window and saw Deputy Bragg and an inmate struggling on the ground next to the sundeck door. Deputy Bragg was sitting on back, was face down and moving his head back and forth as if trying to find a position on the floor. thought was hand cuffed.

About a minute later, saw the first officer (you) run in and slide into head, as if sliding into a base. You got up, stood over and kicked head 3-4 times with the tip of your boot. saw blood dripping off the officer's right boot.

turned to his cellmate and said, "This guy is getting hurt." thought it was going to stop but the officer kept kicking him. said, he's been to prison, and this was the worse assault he's seen in a while. said, was bleeding and trying to move his head to protect himself, but was getting hit on his side by another officer (Deputy Murillo).

said never grabbed any officer; he couldn't because he was secured, and unresponsive. When additional officers arrived, you were standing to the side. The other officers kept telling to quit struggling, but he wasn't moving. The officers lifted up off the floor, and dragged him out of the unit, while they yelled at him to get up. thought was dead from too many kicks to the head.

said, his cellmate didn't want to give a statement because he was going to be released in a few days, and was fearful his testimony would impact his release. said, a lot of the inmates wanted to say something, but they were afraid of you.

came forward because he saw something that didn't look right. He hoped if something like that happened to him someone would speak up. recognized from going to court the same day but denied knowing him on the street.

Sergeant Bice took photographs from inside and determined had an unobstructed view of the dayroom, and hallway area next to the sundeck door, where the incident took place.

Interview with Inmate

On October 18, 2013, at approximately 1402 hours, Sergeant Sepulveda and Sergeant Bice interviewed in the Main Jail North, 5th floor interview room. was housed in 5A, at the time of the incident.

Sergeant Bice showed a photo line-up that included six photos without descriptors. said the photos all looked alike. couldn't see the inmates face because the officers had him pinned down, and when they picked him up, his head lulled to the side and all the officers were around him. didn't know how long the inmate was in the housing unit because he keeps to himself, and doesn't know any of the inmates.

Sergeant Bice showed [redacted] a numbered photo line-up without descriptors of Main Jail D-Team, and asked if he recognized the officers involved. [redacted] said, he wasn't really looking at the officers, and only knew Deputy Bragg. [redacted] said, the officer that kicked [redacted] was wearing glasses and had short hair. The officer had his back to [redacted] so he only got a quick glimpse of the officer's face before he ran out. [redacted] later learned from other inmates the officer's name was "Tri." The other inmates said, 'he's got priors for doing that to inmates.'

[redacted] said he was on his bunk reading and heard inmates yelling "Get off him" while hitting their doors. [redacted] didn't get up at first, but when the yelling and banging continued, he looked out his cell window and saw approximately six officers. Two officers each were on [redacted] left side, right side and at his head. [redacted] was pinned to the floor with their knees. One deputy had his knee on [redacted] neck; another deputy was hitting [redacted] on his side. [redacted] body was next to the sundeck door head facing toward the cells. [redacted] hands were behind his back and cuffed, he wasn't responding. You were at the top of [redacted] head and kicked him at least three times, maybe four. A big pool of blood came pouring out of [redacted] head. [redacted] said, you saw the blood and ran out of the unit, and he didn't see you again. [redacted] said Deputy Bragg was on [redacted] s left side, over the top of him, against the wall.

[redacted] said [redacted] wasn't responding, and his body was limp. The officers picked up off the floor, and dragged him out of the unit. Due to the loud banging and yelling by the inmates, [redacted] didn't hear the officer's give [redacted] any verbal commands, and thought the incident lasted about three minutes.

[redacted] said he came forward because at CDC the inmates are encouraged to report abuse and misconduct from staff. He's trying to do the right thing in life, and be the person who now picks up the phone and calls the police when something happens.

[redacted] said all the inmates were locked down at the time of the incident. He denied talking to other inmates before being interviewed by Deputy Lozada.

Sergeant Bice took photographs from inside [redacted] and determined [redacted] had an unobstructed view of the dayroom and hallway area next to the sundeck door, where the incident took place.

Interview with Inmate

On October 18, 2013, at approximately 1340 hours, Sergeant Sepulveda and Sergeant Bice interviewed [redacted] in the Main Jail North 5th floor interview room. [redacted] was housed in 5A on the top tier, [redacted] at the time of the incident.

Sergeant Bice showed [redacted] a photo line-up that included six photos without descriptors. [redacted] said he didn't get a good look at the inmate because he ([redacted] just arrived in the unit. [redacted] knew [redacted] was housed in [redacted] and as soon as he got there, got into it with Deputy Bragg. [redacted] recalled the inmate was an older white guy with salt and pepper hair, not bald, like the booking photo.

Sergeant Bice showed a numbered photo line-up without descriptors of Main Jail D-Team, and asked if he recognized the officers involved. You had been dorm officer in the past and he remembered you well. said, you joked around and "chopped it up with the inmates, he seemed like a cool dude, I didn't expect that kind of behavior from him." also identified Deputy Bragg and Deputy Murillo from working the 5A unit. None of the other responding officers looked familiar.

said he was resting on his bunk and heard scuffling noises for two to three seconds, no voices. got up and looked out his cell window, and saw Deputy Bragg on top of by the sundeck door. said, "Bragg had pinned face down to the floor with his arms behind him."

didn't hear Bragg give verbal commands until he was on top of him. Deputy Bragg told "don't move." said he had a good view of upper body. couldn't tell if was struggling to get Deputy Bragg off his back, but it looked like was handcuffed with orange or red cuffs when you came in.

said you were the first to arrive. You jogged in, and landed your knee on face/head. You got up, positioned yourself by putting your hand on the wall, and started stomping head for maybe 10 seconds, or less, before the next officer arrived. A big puddle of blood was on the floor, and a group of officers came rushing in. Some of the officers walked around the unit, checking cell doors, while the others dragged out of the unit.

Two officers returned later and approached all the inmates. The officer interviewed the inmates who were willing to talk about what they witnessed.

was adamant never grabbed your leg. said, " was handcuffed and pinned to the floor. There was no way for to defend himself, because Deputy Bragg is a 250 pound man, and he was on top." said he felt sorry for the guy, and the only reason he's coming forward is because that could've been him. No one coerced or threatened on what to say.

Sergeant Bice took photographs from inside and determined had an unobstructed view of the dayroom and partial view of the hallway, across from the sundeck door.

Interview with Inmate

On October 18, 2013, at approximately 1417 hours, Sergeant Sepulveda and Sergeant Bice interviewed in the Main Jail North, 5th floor interview room. was housed in 5A, at the time of the incident.

Sergeant Bice showed a photo line-up that included six photos without descriptors. immediately identified

came forward because Deputy Bragg is religious, gives the inmates program time. didn't want Deputy Bragg to get in trouble, as started the fight.

said, after program he was watching television. He noticed Deputy Bragg searching property, and then allowed to come out and get his stuff.

appeared agitated. His back was stiff, and he paced back and forth. couldn't hear the verbal interaction. He saw Deputy Bragg talking to before he pushed toward the multi-purpose room door. said he only saw the beginning of the incident, but heard thumping and the other inmates yelling.

When was removed from his cell to be interviewed by Deputy Lozada, he saw the large amount of blood on the floor. said he became scared and confused, about how the incident escalated. was unsure about the right and wrong of those involved, but was positive started it.

Sergeant Bice took photographs from inside of Sergeant Brown's findings; the inmate witnesses housed in Sergeant Bice confirmed had a clear view of the incident from their cell windows.

Interview with Officer Richard Durand:

On February 27, 2014, at 1908 hours, Sergeant Sepulveda and Sergeant Bice interviewed Officer Durand in the Sheriff's Headquarter s Internal Affairs interview room. Officer Durand was notified he was being interviewed as a witness to the incident that occurred in 5A on October 3, 2013.

Officer Durand recalled this incident, and responded from the basement. Upon entering the dorm, he saw a puddle of blood on the ground, and noticed was secure. Officer Durand assisted by checking the cell doors to ensure they were secure.

Officer Durand couldn't identify the many officers that responded, but recalled you leaving the 5A unit, as he was entering. Officer Durand did not "tap out" any officer, as was secured by the time he arrived.

Officer Durand heard the command "stop resisting" and said, even though was secure, he was resisting. Although he couldn't identify the officer's, he thought about five officers were crouched down, trying to control Officer Durand said was handcuffed behind his back when he arrived. As the officers stood upright, he started cussing at them. Officer Durand never saw unconscious. As they escorted out of the unit, his head continued to bleed profusely, so Officer Durand grabbed a towel and placed it on head. Officer Durand and Officer Cortes escorted to 2nd floor medical.

Officer Durand confirmed the Sergeants arrived on scene quickly and immediately started the video recorder. Officer Durand confirmed was not combative during the escort, but made verbal statements, 'Why did you guys have to do that, I didn't do anything wrong.

Interview with Officer Miguel Cortes:

On February 27, 2014, at 19SO hours, Sergeant Sepulveda and Sergeant Bice interviewed Officer Cortes in the Sheriff's Headquarters Internal Affairs interview room. Officer Cortes was notified he was being interviewed as a witness to the incident that occurred in SA on October 3, 2013.

Officer Cortes said, he responded from the 4th floor. As he exited the elevator on the 5th floor, he could see through the large window of the 5A housing unit. Officer Cortes noticed bodies piled together, moving around on the ground, in front of the sundeck door.

 was leaning on his right side, with Deputy Bragg "spooning" trying to control the left arm. Officer Cortes placed his knee on left shoulder, and pinned him to the ground, so he couldn't get up. Officer Cortes didn't recall any dialog from the officer's or They quickly positioned 's arms behind his back, allowing Deputy Bragg to handcuff him.

Officer Cortes recalled Deputy Bragg, Deputy Murillo and you being on scene when he arrived with Officer Temptra. Officer Cortes couldn't recall what each was doing, as his focus was getting left shoulder down, and securing him.

Sergeant Bice asked Officer Cortes if he "tapped you out." Officer Cortes said, "Deputy Tri was standing, kind of in the way, so I pushed him aside." Officer Cortes said he didn't consider his action as tapping out.

Officer Cortes didn't notice the blood until he assisted up off the floor. Officer Cortes confirmed was conscious and made a couple comments to the officers as they exited the 5A unit.

Sergeant Bracket arrived on-scene and gave Officer Cortes paper towels to place on top of head. He and Officer Duran immediately escorted to 2nd floor medical for treatment. Officer Cortes had no further contact with him.

Interview with Deputy Candelar Murillo:

On February 27, 2014, at 1808 hours, Sergeant Sepulveda and Sergeant Bice interviewed Deputy Murillo in the Sheriff's Headquarters Internal Affairs interview room. Deputy Murillo was notified he was being interviewed as a witness to the incident that occurred in 5A on October 3, 2013. Deputy Murillo was not familiar with the Internal Affairs investigation process, and brought Because Deputy Murillo was being interviewed as a witness he was not entitled to representation. However, as a courtesy, Sergeant Sepulveda and Sergeant Bice made a one-time-only exception and allowed to sit in on the interview.

Deputy Murillo said he was assigned to 5B unit. Around 2300 hours, he heard the emergency request for assistance in 5A. He immediately locked down the inmate workers and responded. As Deputy Murillo was running towards 5A, he saw you running into the unit. You arrived just a few seconds ahead of Deputy Murillo.

Upon entering 5A, Deputy Murillo saw [redacted] face down on the floor, struggling with Deputy Bragg. Deputy Bragg was giving [redacted] verbal commands, and trying to handcuff him. Deputy Murillo's first thought was securing the scene, by bringing the inmate under control.

Deputy Murillo said, the incident happened very quickly, but stated he had a vivid recollection of the events. Deputy Murillo said, you ran in first and positioned yourself on the right side of [redacted] head area. Deputy Bragg was positioned on [redacted] left side and Deputy Murillo on [redacted] right side.

[redacted] was tussling, sort of jolting back, as if he was trying to elbow Deputy Bragg. Deputy Murillo attempted to grab [redacted] right arm, but it was under [redacted] body. Deputy Murillo said [redacted] right elbow was sticking out enough for him to put his hand tough, and start tugging on the elbow.

Deputy Murillo told [redacted] "stop resisting, give me your arm" and said it loud enough for [redacted] to hear. Deputy Murillo said, [redacted] was very strong, and resisted Deputy Murillo's efforts to secure the right arm. In an attempt to get [redacted] to comply, Deputy Murillo delivered three to four knee strikes to [redacted] right tricep area, while issuing verbal commands. As Deputy Murillo delivered the knee strike, he made contact with [redacted] right elbow, which caused the injury to his knee.

Deputy Murillo stated he saw you kick [redacted] in the head two to three times. You then placed your left knee on [redacted] right shoulder. Using a closed fist, you struck [redacted] a couple times in the face/head area. Deputy Murillo couldn't recall if you were giving [redacted] verbal commands.

Deputy Murillo stated the struggle lasted about 10-15 seconds before additional officers arrived. Deputy Murillo remembered he was still struggling with [redacted] right arm when they arrived, and couldn't recall who took over for him. Deputy Murillo didn't know which officer "tapped you out." Deputy Murillo recalled the responding officers pushed you guys aside, and took over. Deputy Murillo said, at the point, he was just tired and let them take over.

Deputy Murillo couldn't recall [redacted] making any statements other than when the officers told him to stand up. [redacted] said, "It's slippery, I can't." Deputy Murillo looked down, and noticed the blood on the floor. Deputy Murillo confirmed [redacted] was not unconscious.

Deputy Murillo stated the Sergeants were on scene when they escorted [redacted] out of the 5A unit. Deputy Murillo recalled Sergeant Jensen directing the officers to write a very descriptive report of what happened. Deputy Murillo said, Sergeant Jensen told them "to document as much information as they remember, what each officer did, what you did, and give as much detail as possible."

Sergeant Jensen addressed Deputy Murillo's knee injury, and confirmed with Deputy Murillo that he was physically okay to write his report before seeking medical attention. Deputy Murillo stated he was off work for a few days, but had no lingering problems from the injury.

On April 24, 2014, at 1913 hours, Sergeant Bice met with Deputy Murillo at the Main Jail Administrative conference room. Sergeant Bice advised Deputy Murillo she had some follow up questions pertaining to the October 3, 2013, SA incident involving inmate

Deputy Murillo said he was not aware of the totality of injuries, but thought the injuries could be a result of the punches or kicks delivered by you. Deputy Murillo also thought could have sustained some injuries when taken to the ground by Deputy Bragg.

Sergeant Bice asked Deputy Murillo to clarify if he saw you "kick" or "stomp" Deputy Murillo said, it was a short kick, and described you bringing your foot back about 12 inches, and motioned his foot forward. Deputy Murillo said, "It definitely was not a stomp."

Deputy Murillo confirmed after the incident was over he asked Deputy Bragg what caused the altercation. Deputy Murillo had no further discussions with Deputy Bragg. Deputy Murillo stated you, Deputy Bragg and he were placed on separate floors to write your ER's. Deputy Murillo recalled he was in constant contact with Sergeant Jensen, but denied ever calling or meeting with Deputy Bragg. Deputy Murillo never told Deputy Bragg what he wrote on his ER.

Deputy Murillo stated, he has been with the department for a couple years, and prior to the custody academy, he went through the Enforcement academy. Deputy Murillo said he is very aware of the department's use of force policy 9.01, and described the five levels of force, as defined in the policy.

Sergeant Bice asked Deputy Murillo, in this incident what other force options were available to you, to gain control of Deputy Murillo responded, "If you're asking me what I would have done in his (Tri) position, if one officer is attempting to control the left arm, and the other officer is attempting to control the right arm, I would control his (head and prevent him from getting up. Deputy Murillo added, if you control the head, you control the body. Maybe put your weight on his head, such that he is able to breathe, by turning it to the side and press the back of the head, not the neck, to the floor. I'd place my body weight to the back of his (shoulders. There's a lot of things you can do."

Sergeant Bice asked Deputy Murillo, in this incident what exigent circumstances existed, with Deputy Bragg having pinned face down on the ground. Deputy Murillo said going into a situation with an unsecured combative inmate is difficult to assess. With an inmate who is not secure, there is a threat or risk because of the uncertainty of knowing if weapons were involved. Weapons were Deputy Murillo's concern, when he noticed arm underneath his body.

Deputy Murillo said, he did not see any weapons, but it could have been possible with right arm tucked under his body. Deputy Murillo felt he used the appropriate force to gain control of right arm.

Sergeant Bice read to Deputy Murillo Policy 9.01, the definition of Objectively Reasonable Force which states: *"That level of force, which is appropriate when analyzed from the perspective of a reasonable Correctional Officer in the same situation and possessing the same information as the officer who actually used the force. Objectively Reasonable Force is not*

evaluated in hindsight, and will consider, where appropriate, that officers make rapid decisions regarding the amount of force to use in tense, uncertain and rapidly evolving situations."

Sergeant Bice asked Deputy Murillo if he felt the force used by you was reasonable and necessary. Deputy Murillo replied, "That's a very good question, I don't know when he came in what he saw, it's difficult for me to sort of, Monday night quarterback him on what he did. If you ask me would I have, based on the knowledge I have, I would have chosen something different."

Sergeant Bice asked Deputy Murillo if the department ever trained him, either in the academy or during STC, to kick an inmate as a tactic to gain control. Deputy Murillo replied, "No."

Sergeant Bice later made telephone contact with Deputy Murillo, to clarify if he ever saw grab your left leg, causing him to fall to the ground. Deputy Murillo said, "No, never grab Tri's left leg, if he had tried, I would have been able to grab his right arm."

Interview with Officer Pablo Tempra:

On April 24, 2014, at 1821 hours, Sergeant Bice interviewed Officer Tempra in the Main Jail Administrative Conference room. Sergeant Bice advised Officer Tempra he was being interviewed as a witness to the incident that occurred in 5A, on October 3, 2013.

Officer Tempra said, he recalled responding to the incident. Sergeant Bice asked Officer Tempra to clarify what Deputy Bragg, you and Deputy Murillo were doing to gain control of inmate

Officer Tempra said they were all on the ground trying to secure him. Officer Tempra said, he couldn't recall what position they were in but saw hands free, so he zoned in, to grab a hand.

Officer Tempra said he didn't notice what you were doing, all he saw was an inmate on the ground, with a hand free. Officer Tempra said he was focused on controlling right arm.

Officer Tempra recalled taking over for Deputy Murillo. Officer Tempra said was swinging his right hand. Officer Tempra used two hands to grab because it was slippery from the blood. Officer Tempra placed right hand behind his back, and Deputy Bragg handcuffed him. Officer Tempra did not notice the blood on the floor when he ran into the unit.

We discussed injuries. Officer Tempra thought may have sustained the injuries when he was taken down to the ground by Deputy Bragg. Officer Tempra didn't know if the injuries were a result of being kicked or punched. Officer Tempra did not see you kick, stomp, or punch Officer Tempra did not see grab your leg.

Officer Tempra said he's currently a member of the Main Jail Emergency Response Team (ERT) and confirmed he understood the department's Use of Force Policy 9.01. Officer Tempra explained the five levels of force options.

Keeping the Use of Force policy in mind, Sergeant Bice asked Officer Tempra in this particular incident, what other force options were available to you. Officer Tempra said, "He could've used an Arm Bar." If Officer Tempra was in your situation, he'd keep down, and control his arm. Officer Tempra would put his Imee and weight on try to grab whatever is free, and put him in cuffs.

Sergeant Bice asked Officer Tempra if he felt the level-IV use of force you used was necessary and reasonable. Officer Tempra replied, "No." Officer Tempra said he never felt was a threat when he arrived to this incident.

Sergeant Bice offered Officer Tempra a copy of his employee's report. Sergeant Bice asked Officer Tempra why he wrote the sentence "I do not recall the position of any officer or Deputy listed in this report" at the end of his ER. Sergeant Bice asked Officer Tempra to clarify the statement, as it contradicted what he wrote at the beginning of his report.

Officer Tempra said, "I knew they (Bragg, you, Murillo) were there, but I don't recall where they were positioned." Officer Tempra said he wasn't really sure if it was Deputy Murillo he took over for when he went in. Officer Tempra said, "I kind of had tunnel vision when we came in. I just went for the loose arm."

Sergeant Bice asked Officer Tempra if he recalled documenting, he experienced "tunnel vision" in any other use of force reports. Officer Tempra said he couldn't recall documenting he had tunnel vision, but confirmed he had experienced tunnel vision during other force incidents. Officer Tempra described his tunnel vision as "concentrating on what's in front of him, not looking at the big picture."

Sergeant Bice asked Officer Tempra when he is experiencing tunnel vision; how does he determine his partner s are safe, or the situation is under control. Officer Tempra said, "I don't, I just try not to be too, to have just the tunnel vision, instead of assessing the whole situation."

Officer Tempra said he understood how the sentence seemed odd, given the nature of this situation, but had nothing further to add. Officer Tempra said he documented the events in his ER as he saw them.

Interview with Deputy Sean Lozada:

On July 29, 2014, at 1814 hours, Sergeant Bice met with Deputy Lozada at the Main Jail Administrative Conference room. Deputy Lozada was notified he was being interviewed as a witness to the incident that occurred in SA, on October 3, 2013. Sergeant Bice provided Deputy Lozada with a copy of his employee's report if he needed to refresh his memory.

Deputy Lozada recalled there was an officer involved fight that occurred in module SA. He responded after the incident had ended. Sergeant Jensen instructed Deputy Lozada to speak with all the inmates housed in SA, to see if there were any witnesses to what occurred.

Deputy Lozada printed a SA housing report listing the inmates. Deputy Lozada used Sergeant Jensen's digital voice recorder and placed it in his pocket. With the digital recorder turned to the

"on" position, Deputy Lozada approached each cell starting with the bottom tier inmates. Deputy Lozada asked each inmate what their account was of the incident.

Deputy Lozada stated Sergeant Jensen had provided him with a series of questions to ask; namely, PFN, if they had seen the altercation. For the inmates who said they witnessed the incident, Deputy Lozada marked the housing list. Deputy Lozada interviewed the witness inmate individually and privately in the 5A Multi-Purpose room.

Deputy Lozada recalled four inmates who witnessed the altercation and were willing to come forward to provide him with statements. Deputy Lozada confirmed he did not provide the inmates with any information related to the incident, or asked leading questions.

Deputy Lozada said, his ER reflected the statements of what the inmates witnessed. After Deputy Lozada completed the four individual interviews, he went back around the SA unit one more time. Deputy Lozada asked the inmates a second time, if they had seen anything. No additional inmates came forward.

Deputy Lozada documented the witness statements in an employee's report. He returned the digital recorder to Sergeant Jensen, who downloaded the recordings onto a disc. Sergeant Bice asked Deputy Lozada when he submitted his ER to Sergeant Jensen, did he read it in your presence. Deputy Lozada replied, "Yes." Sergeant Bice asked Deputy Lozada if Sergeant Jensen made any comments about the witness statements. Deputy Lozada said, "No, he did not." Deputy Lozada returned to his assignment on the 7th floor and had no further discussions with Sergeant Jensen.

Interview with Sergeant James Jensen:

On March 9, 2014, at 1648 hours, Sergeant Sepulveda and Sergeant Bice interviewed Sergeant Jensen in the Main Jail Administrative Conference room. Sergeant Jensen was advised he was being interviewed as a witness to the 5A incident, on October 3, 2013.

Sergeant Jensen recalled the incident and said he heard the radio traffic and the D-Team Sergeants immediately responded to the scene. When they arrived on the 5th floor, Sergeant Jensen noticed a lot of blood, and [redacted] being escorted out of the 5A unit. The escorting officers were holding paper towels on [redacted] head. He instructed the officers to escort [redacted] down to 2nd floor medical. Sergeant Brackett videotaped the events up to [redacted] leaving for VMC. Sergeant Jensen remained on scene to get information on what happened.

Deputy Bragg told Sergeant Jensen that inmate [redacted] was upset with him searching his property. [redacted] became argumentative and the altercation ensued. Deputy Bragg said, you were the first Deputy in and Deputy Murillo ran in right after you.

Sergeant Jensen briefly spoke with [redacted] but couldn't recall the specifics to the conversation. Sergeant Jensen recalled [redacted] saying, "he got in a fight and then they started beating my ass." Sergeant Jensen interpreted [redacted] statement as meaning he agreed with what Deputy Bragg did, but didn't agree with what the other deputies did.

Sergeant Jensen completed his interview with _____ and returned to the 5th floor. He learned Deputy Bragg had hurt his hand and Deputy Murillo had some knee pain. You weren't on deck at the time. Sergeant Jensen later learned you had gone for a walk. You returned to speak with Sergeant Jensen a few minutes later.

Sergeant Jensen learned you hurt your finger and knee. Deputy Bragg, Deputy Murillo and you said they were okay to write your employee reports. Sergeant Jensen separated all of you on different decks to complete your reports as quickly as possible and leave to get medical attention.

Sergeant Jensen said he instructed Deputy Lozada to interview the inmates. He provided Deputy Lozada with his department issued recorder.

Sergeant Bice asked Sergeant Jensen when he first noticed any discrepancies from what he was told in person, or what was documented in the employee reports. Sergeant Jensen replied, "When I saw _____ injuries." Sergeant Jensen explained _____ had a significant injury on top of his head, and sensed something was wrong right away. Sergeant Jensen said when he received Bragg, Murillo and your initial briefings of the incident, no one mentioned the kicking. Trying to figure out _____ injury, Sergeant Jensen asked them if _____ was hit into the wall. They all stated 'No. _____ did not hit the wall.'

Sergeant Jensen couldn't recall if he determined the inconsistencies with the reports after Deputy Lozada's inmate interviews, or after reading Deputy Murillo's report. Sergeant Jensen noticed Deputy Bragg and you had not documented the kicking in your first ER submission.

Sergeant Jensen stated he spoke with each of you individually. Sergeant Jensen advised Deputy Bragg and you that he noticed some inconsistency in your reports. Sergeant Jensen did not tell you both what the inconsistency was, but reminded both of you, "If you lie, you're going to lose your job and nobody is going to pay for your mortgage."

Sergeant Jensen said the first ER submissions from Deputy Bragg, Deputy Murillo and you lacked the positioning and location of _____ and their positioning during this incident. Due to the nature of _____ injuries, he instructed the deputies to include these details.

When speaking with you, Sergeant Jensen told you "your report is inconsistent with everybody else's reports." You asked how your report was different. Sergeant Jensen said, "There is some use of force issues that were inconsistent." Sergeant Jensen asked you to write everything you did and everything you saw. No other Deputy is going to pay your mortgage. You replied, 'okay Sarge, okay Sarge.'

Sergeant Jensen said, you may have submitted two ER's before the use of force was included. He was absolutely sure the first submission did not include the kicks and punches you delivered to

Sergeant Bice asked Sergeant Jensen when he received your final ER submission that explained why you kicked _____ were there any questions that came to mind. Sergeant Jensen said, "Yes, a lot." Sergeant Jensen added, you had been in many use of force incidents as a Deputy for 13 years, "He's never kicked somebody in the head." You were the first Deputy to arrive in the

5A unit, Deputy Bragg had [redacted] left arm, we're trained the next Deputy on scene gets the other arm.

Sergeant Jensen said, after reading your report all kinds of "red flags" went up. You documented you kicked [redacted] while your left leg was being held by [redacted]. Sergeant Jensen said he started drawing pictures, trying to ascertain how [redacted] could grab your left leg with his right arm. Sergeant Jensen's analysis of your action was, "why not pull your leg away, there's more muscle mass in Deputy Tri's legs, than in [redacted] hand."

Sergeant Jensen said when he read Deputy Murillo's report describing his efforts to remove [redacted] right arm from underneath his body, he concluded you were lying in your report. Sergeant Jensen never shared his conclusions with you, to ensure he did not violate your POBAR rights (Public Safety Officers Procedural Bill of Rights Act). Sergeant Jensen stated, "With regards to the POBAR stuff, I'm very fortunate to have a wife who's a [redacted] so I'm up on POBAR. I've been to Gordon Graham and Marty Meyer's class, so I understand the POBAR violations, not talking and stuff like that, and at no time were their POBAR rights violated."

We discussed the department's Use of Force Policy 9.01. Sergeant Bice asked Sergeant Jensen under what type circumstances would a level-IV use of force (kick) be used. Sergeant Jensen said, "A one on one situation if you're losing the fight and there's no way you can control the inmate." All the deputies who responded, reported in their ER's, [redacted] was face down on the ground, with Deputy Bragg sitting on top of [redacted] back to secure his hands.

Sergeant Bice asked Sergeant Jensen, as a reasonable law enforcement officer, under the exact situation, would you consider this incident as life threatening, or exigent circumstances. Sergeant Jensen replied, "Not at all."

Sergeant Bice asked Sergeant Jensen with his 13 years of training and experience as a Deputy and Sergeant, was he ever trained to kick an inmate as part of his defensive tactics training. Sergeant Jensen replied, "No ma'am."

Sergeant Bice asked Sergeant Jensen, with this incident in mind, did he feel a kick to the head was reasonable, necessary and justified. Sergeant Jensen said, "No ma'am."

Sergeant Bice asked Sergeant Jensen, as a reasonable officer performing the same duties, under the same circumstances as this incident, what force options would he use on [redacted]. Sergeant Jensen said, "As I stated earlier, I would have went for his arm right away, because you was the second Deputy in the room. You should have tried to get the arm then Deputy Murillo would have got his legs."

Sergeant Bice asked Sergeant Jensen as an enforcement Sergeant familiar with criminal investigations, did he think an "excessive force crime, PC 149 was committed by you. Sergeant Jensen replied, "Yes I do. I made that determination after reading the employee reports."

Sergeant Jensen said he advised Lieutenant Borgzinner of the discrepancy in your ER, and documented the 5A incident on a Supervisor Summary Report. At the time, Lieutenant

Borgzinner directed Sergeant Jensen to write a PC 148:10 crime report against _____ for the officer's injuries sustained during the incident.

Sergeant Jensen confirmed he never verbally counseled any of the deputies involved in this incident, on proper defensive tactics, or discussed the excessive force with you.

Sergeant Bice showed Sergeant Jensen a photograph of your right hand/pinky finger and asked if you received medical attention prior to writing your employee's report. Sergeant Jensen said, "Tri said he didn't need it, and was okay to write his ER."

Sergeant Jensen said you needed to submit several ER drafts to finally capture all the details, connect spelling and grammatical errors.

Sergeant Jensen confirmed you left the Main Jail on October 4, 2013, around 0400 hours, to seek medical attention. You submitted your final report, and Sergeant Jensen gave you the Worker's Comp paperwork.

Sergeant Bice asked Sergeant Jensen what your demeanor was, did you ever complain of any pain. Sergeant Jensen said, "No. He seemed jovial as always, he's a pretty jovial person." You weren't complaining of any pain and just said, "I'm ready to go Sarge."

Sergeant Jensen confirmed you were off work for about a week and returned to work, full duty with no restrictions.

Interview with Deputy Kala Bragg:

On April 16, 2014, at 1812 hours, Sergeant Sepulveda and Sergeant Bice interviewed Deputy Bragg in the Sheriff's Headquarters Internal Affairs interview room. Deputy Bragg was notified he was being interviewed as a subject and witness to the incident that occurred in 5A on October 3, 2013. Deputy Bragg's _____ was also present.

Sergeant Sepulveda asked Deputy Bragg if he was familiar with the department use of force policy 9.01. With some assistance, Deputy Bragg was able to describe some aspects of the five levels of force, as noted in the policy. Sergeant Sepulveda asked Deputy Bragg if he understood

"Objectively Reasonable Force." Deputy Bragg could not recall the definition, so Sergeant Sepulveda read it to him.

Sergeant Sepulveda asked Deputy Bragg if he was familiar with DOC policy 9.27 Reporting of Incidents. Deputy Bragg replied, "Um." Sergeant Sepulveda read the policy requirements. Deputy Bragg said he understood he was required to report and document any of the events listed in the policy, especially a use of force incident. The purpose of questioning Deputy Bragg on the policies was to confirm he had a frame of reference to answer additional questions related to both investigations.

Sergeant Sepulveda asked Deputy Bragg if he witnessed another employee had committed a policy violation, would he report it to a supervisor. Deputy Bragg replied, "Yes." Sergeant

Sepulveda asked Deputy Bragg if he considered excessive force to be a policy violation. Deputy Bragg said, "Yes."

Sergeant Sepulveda asked Deputy Bragg, if he witnessed a Deputy using excessive force would he report it. Deputy Bragg said, "Yes."

Sergeant Sepulveda asked Deputy Bragg if there ever was any reason, he wouldn't document an incident accurately. Deputy Bragg said, "No, whatever I saw, that's what I wrote."

Sergeant Bice asked Deputy Bragg, with his 12 years of experience and training, if he was ever trained to kick an inmate in head as part of the department's defensive tactics training. Deputy Bragg said, "Oh, not-not-not kick but, punch yeah. Um, it's been explained like if you have an incident would it's- it's to the point where it's your life or those persons -you have to do what you have to do, to get out of that situation."

Sergeant Sepulveda asked Deputy Bragg to provide his account of the events in 5A, October 3, 2013, involving inmate [redacted]. Deputy Bragg said [redacted] was upset over him checking his property. Deputy Bragg felt threatened and pressed his packset alarm, signaling he needed assistance. Deputy Bragg took [redacted] to the ground using an arm-bar maneuver. Deputy Bragg landed on [redacted] back and struggled to gain control of [redacted] left hand as the responding deputies arrived to help.

Deputy Bragg could not recall who arrived first, you or Deputy Murillo, but stated they arrived seconds apart. Sergeant Sepulveda asked Deputy Bragg what actions the first Deputy took. Deputy Bragg replied, "Well, if it was Tri, then he was at the top area." Sergeant Bice clarified, by [redacted] head. Deputy Bragg said, "Yes."

Sergeant Bice asked Deputy Bragg to describe what you were doing while at [redacted] head. Deputy Bragg said, "You know what, um, as I'm - as I'm tussling, you know trying to get his hand, his hand comes loose, so I'm able to look up and grab his hand, so that's again, and you know, that's when I saw Tri fall. Again, whether he slipped, he tripped or whatever, that's when he fell on his knees. I saw him do that twice, and then I'm back on this guy's arm. And that's just all I saw."

Sergeant Sepulveda asked Deputy Bragg, if at any time, he witnessed you kick [redacted] in the head. Deputy Bragg said, "No, I mean as -as far as uh foot being planted on his head no, uh to my vantage point, it was knees." Sergeant Bice asked Deputy Bragg to clarify what "knees" meant. Deputy Bragg said, "I saw him (Tri) fall to his knees, uh again, like I said earlier. Did he slip, did he fall, did he intentionally, I don't know."

Sergeant Bice asked Bragg if your knee struck [redacted] head. Deputy Bragg said, "I don't know. If it was like I said, it was the, from like, cause I'm on his ([redacted] back, so I'm up here, so it would be like from the shoulders here up." Deputy Bragg confirmed he was facing in the direction of [redacted] head. Deputy Bragg added, "but whether one knee hit, two knees hit, whether it hit the pavement, whether they hit, I- I can't tell you exactly where his (Tri) knees hit."

Sergeant Sepulveda asked Deputy Bragg if he saw you punch [redacted] in the face or head. Deputy Bragg said, "No, I didn't, no." When questioned further about the punches you documented on his report, Deputy Bragg said, "I don't, I don't remember. I don't remember seeing that."

Sergeant Sepulveda reminded Deputy Bragg, he wrote in his employee's report; you Kicked and punched inmate [redacted] in the head. Deputy Bragg said, "Uh huh. No, that's - yeah, that's what he (Tri) said. That's what he told. I, I put what I saw. Just like what Deputy Murillo did, they- they told me that. "Deputy Bragg was adamant he did not see you kick or punch [redacted]. The use of force information Deputy Bragg documented in his ER was what you and Deputy Murillo had told him, not what he witnessed.

Sergeant Bice asked Deputy Bragg if he saw [redacted] grab your leg. Deputy Bragg said, "Hmm, not that I -not that I can recall'

We questioned Deputy Bragg about the conflicting statements of what he witnessed and documented in his ER versus the Crime Report he wrote and submitted on October 9, 2013. Deputy Bragg wrote in his crime report; I saw Deputy Tri deliver two knee strikes to inmate [redacted]

Sergeant Sepulveda asked Deputy Bragg to clarify the two knee strikes written in the Crime Report. Deputy Bragg said, "again, I didn't have a chance to say what I thought, I, what I thought, what it appeared to me as was. Again, I can't assert whether it was intentional, unintentional, whatever. I, I can't- I don't know that. You'd have to ask Tri. The only thing I can asse11, uh to the best of my recollection, is that he (Tri) went down on his knees. Did he slip? Did he slip over his shoelace? I don't know. Nobody asked me to clarify that."

Sergeant Bice presented to Deputy Bragg, there's a possibility he may have to testify in court. His employee report and crime report were legal documents and could be called into question. Sergeant Bice asked Deputy Bragg, the District Attorney asked him, "What did you see during this incident" how will he respond? Deputy Bragg said, "Well, that, and again, that should go all the way back to, you know the beginning of the report. What, what are knee strikes, that's what he's going to say." Deputy Bragg's [redacted] interjected and said, that's not the Sergeant's question. Her concern is, your answers are hard to defend on cross examination. Deputy Bragg replied, "Yeah, but how is that any of my fault?" The [redacted] asked for a break.

The interview resumed and Sergeant Bice restated the scenario and asked Deputy Bragg to explain your knee strikes. Deputy Bragg stated, "That um, it was just you know, without getting all, you know super technical, it was him falling on his knees, or to his knees, and um uh, and that was where he made contact with the inmate, with his knees and, I'm sorry, can I take a break real quick, gather my thoughts."

Deputy Bragg and his [redacted] stepped out again. Approximately five minutes later, we resumed the interview and same question. Deputy Bragg said, "yeah um, in regards to that uh, I, I wrote up not a, I, I guess to some extent misleading, not, not intentionally but just based on what I, I what I gathered from him saying he struck, with him saying he struck, Deputy Tri saying he struck somebody, you know the, the [redacted] I, you know, just that I, I made a mistake in tying

that together with the knee strikes, when it was, I should have been more clear in my writing of the, of the incident. Instead of saying it was, you know, a strike I should have said more clearly what uh, what exactly it was."

Sergeant Bice asked Deputy Bragg was "it" knee strikes. Deputy Bragg said, "Um, using his knees, urn but urn, maybe gathering more understanding of, of exactly you know urn, what, what, what they were. Were they flops, or basically on, on my part being, getting more facts, um about what kind of knees they were. Instead of saying strikes, I should have been clear on what, what, what it actually was, and I didn't. It just appeared that, I mean, I know it was knees but to call it strikes, I should have gotten more clarity on that."

Sergeant Bice said to Deputy Bragg let's call it a "knee" and not a "strike." Sergeant Bice asked Deputy Bragg if your knee landed on head. Deputy Bragg said, "Yes."

Sergeant Bice confirmed you kneed two times, Deputy Bragg said, "From what I recall, I should have got more clarity, sorry about that." Sergeant Bice reminded Deputy Bragg, he documented in his crime report; I saw Deputy Tri's knee hit head, upper body area twice. Deputy Bragg said, "I'm so stuck on the knee strikes, the, the word strike."

Sergeant Bice told Deputy Bragg we needed to understand what he saw. Sergeant Bice asked Deputy Bragg if your knee made contact with upper body head, two times. Deputy Bragg said, "Uh yeah, torso, head."

Deputy Bragg said he saw you use his knee, which came straight down onto head/upper torso area, two times. Deputy Bragg said he never witnessed you kick

Sergeant Sepulveda asked Deputy Bragg if he was minimizing his recollection to keep you from getting in trouble. Deputy Bragg said, "Heck no. No. I, I understand where you're coming from, you're saying you can't fathom how you can't, no, I really was that focused. I, I really I did not see him kick or punch that guy. Deputy Bragg denied trying to protect you or cover for you.

Sergeant Bice asked Deputy Bragg under the same set of circumstances that occurred in this incident, would he ever kick an inmate in the head. Before Deputy Bragg could respond, his attorney stated, "The answer is no." Deputy Bragg answered "No, No."

Deputy Bragg had extreme difficulty comprehending a "hypothetical situation," placing himself in your situation, same circumstances and the force options available. Deputy Bragg's attorney explained to him, the Sergeants are asking your opinion as a California Peace Officer, does the situation call for a kick to the head. Deputy Bragg replied, "No."

Your Interview:

On April 30, 2014, at approximately 1031 hours, Sergeant Bice interviewed you at the Internal Affairs Interview Room. Also present for the interview were Sergeant Sepulveda and your representative, You were advised you were being interviewed as a subject and witness to the incident that occurred in 5A on October 3, 2013.

The interview was audio recorded for purposes of accuracy and to free Sergeant Bice from having to take hand-written notes. All parties present were aware that the interview was being recorded. An audio CD containing these recordings is included as an attachment to this investigation. The following is a synopsis of the interview. For an exact record, please refer to the original recording.

Sergeant Bice began the interview by reading you the Department of Correction policies, which specifies you are to answer Sergeant Bice's questions truthfully and that you are to obey all lawful orders from your supervisors. You acknowledged your understanding of these policies and of the fact by virtue of being the investigator for this Internal Affairs Investigation Sergeant Bice was acting as your superior officer.

Sergeant Bice read you your Miranda Rights in accordance with Department policy and the Public Safety Officers Procedural Bill of Rights Act. You acknowledged your understanding of your rights and invoked your right to refuse to speak with Sergeant Bice. Sergeant Bice then read you the Lybarger Admonishment, which clarified this is an administrative investigation only, and nothing you say could be used against you in any criminal proceeding. Sergeant Bice explained to you that your failure to answer all of her questions would be considered insubordination. You acknowledged your understanding of this point and agreed to cooperate.

Sergeant Bice confirmed with you her interview with you was being conducted during your normally scheduled work hours. You confirmed you were on duty (Paid Administrative Leave). Your schedule is Monday through Friday, 0800 hours to 1700 hours.

Sergeant Bice advised you, you could take a break at any time during the interview. If there was a need in the future to re-interview you, you had a right to a copy of the recording of this interview. You acknowledged your understanding of this point as well.

You have been employed with the County for approximately five years. You have only worked the Main Jail facility (North and South) and were currently assigned there. You stated you were part of the Emergency Response Team (ERT) at the beginning of your career, until you were bumped to nightshift. You said, although you didn't have seniority to join the nightshift (D-Team) ERT team, you trained with Sergeant Bungy and the team almost every evening. You attended several classes and received training related to: emergency response, arrest and control techniques, first responder, Ethics & Professional conduct and jail crimes investigation. You had no prior law-enforcement experience.

Sergeant Bice advised you, IA received complaints, which led to this investigation. Sergeant Bice asked you if you recalled the SA incident-involving inmate [redacted] on October 3, 2013. You said, you remembered the event and stated, "Um, you know, as I remember it was um, it was like, like almost lockdown. So urn, I, I was uh, I had my trustee out and uh, I, I heard a, a packset alarm from SA. So uh, I responded, and then as I entered to uh 5A urn, I saw Deputy uh Bragg on top of inmate [redacted] uh near the sundeck and uh, [redacted] was uh, laying on his stomach face down, kicking his uh feet. Urn [redacted] was lying, uh, parallel to the sundeck wall with his head near the sundeck."

Using a photograph from the scene, Sergeant Bice clarified [redacted] and Deputy Bragg's positions. Sergeant Bice asked you what you did next. You said, "So um, I responded um, I went in, um Deputy Bragg can, uh trying to hold him ([redacted] down over his resistance. When I got in uh, I was uh, trying to attempt to uh, grab uh inmate [redacted] right arm to prevent uh, hurting Deputy Bragg."

Sergeant Bice asked you how you grabbed [redacted] right arm. You said, "So I, I went in um it was just so quick, I went in and it was like, Bragg's on top of him but trying to um control him, so I went, I grabbed his, his, his right, right arm." Again, Sergeant Bice asked you how you grabbed [redacted] right arm You said, "with, with my uh my hands."

Sergeant Bice asked you, where [redacted] right arm was located, when you attempted to grab it. You said, "Um, it, it was uh out here. He was trying to uh, so I went in there, uh Bragg was on top of him, you know, but I didn't know, you know. I, I don't remember what he did, but I remember what I did."

Sergeant Bice asked you what you did to secure [redacted] right arm. You said, "Yeah. So uh, I tried to grab his uh, his, his arm um, right mm. Yeah and um, I told him um, but I, I couldn't get, because you know he, he was, he was struggling so and then, like uh you know moving back and forth so, I tried to grab him and he got on to my left leg. I told him uh, stop resisting and let go of my legs. And um, you know, at that time, uh, at that time, I, I you know, all I can think is let go of my leg, but if you don't let me go, it's just instantly, I start to kick him."

Sergeant Bice asked you if you bent over to grab [redacted] right arm, or were you on your knees. You said, "No I went in, I'm just, just, just um like leaning over." Sergeant Bice confirmed you were standing, not kneeling, next to [redacted] right side.

You described [redacted] right arm as being out, and up toward his head. Sergeant Bice reminded you [redacted] was face down on the ground with a 260 pound Deputy Bragg sitting on his back, struggling to gain control of [redacted] left arm. Sergeant Bice asked you, how [redacted] grabbed your leg. You said, "He, he grabbed uh, he grabbed, like when he went down like that's, as I responded, when uh, and went up like this, so, I tried to grab him."

Sergeant Bice asked you to show her [redacted] right arm motion when [redacted] grabbed you. You made a sweeping motion from top down (swimmer's stroke outward and down) emulating [redacted] palm being face up, moving your arm in a downward motion toward the front part of your leg. You said, "So I tried to grab his, his, his arm and then he got onto my, my left leg. So at that time, I told him uh, stop resisting."

Sergeant Bice asked you what happened when [redacted] grabbed your left leg. You said, "I, you know, um he, he, I feared for my safety, and you know, and I, I kicked him."

Sergeant Bice asked you to confirm if [redacted] hand was coming from the front of your leg/ankle area, or from behind where his Achilles is located. You said, "No, no, it's uh in, in front. So I tried to grab him, he grabbed from uh, front of my, my, uh left leg, and tried to pull me down. I told him stop resisting, that's when I kicked him."

Sergeant Bice asked you if [redacted] arm was out, and semi controlled, because [redacted] had hold of your leg, why not use an arm bar (level-III use of force), instead of kicking him. You said, "you know at that time, at that time, I you know, that's, that's, that's the uh, you know that's all I can think of, it was, just happened so quick."

Sergeant Bice read the section from your employee report where you described kicking [redacted] two to three times in the head . Sergeant Bice asked you if [redacted] said anything. You said, "He, he was yelling and screaming you know. The second time I said, let go um, when I, that's, that's when I uh landed on the ground, both knees. Uh he, he keep um, um maintaining his uh, his grabs. Um, then he start cussing, say 'fuck you,' 'fuck you' and then at that time, you know, I thought he was gonna bite me, so I, I delivered um, with my, my fist, I, I hit him uh in the facial and head area."

Sergeant Bice asked you if [redacted] loosened his grip on your leg after you kicked [redacted] the first time. You said, "He, he, he just kept, he just got on, he still got control of my legs."

Sergeant Bice asked you, if the two to three kicks to [redacted] head, were stomps or kicks. You said kicks. Sergeant Bice asked you to demonstrate your interpretation of a kick and a stomp. You stood up and demonstrated the kicking motion you used during this incident. You said your kicks were, "not like a full motion kick, it, it's but I didn't no, I didn't stomp him."

Sergeant Bice asked you why you picked [redacted] head area to kick. You said, "Because that's, that's, that was right there." You confirmed [redacted] never looked at you. You said [redacted] head was turned to the left, toward Deputy Bragg.

Sergeant Bice confirmed with you, that you delivered two to three kicks to [redacted] head. Sergeant Bice asked you why you didn't kick [redacted] more than three times. You said, "Because he, he got him maintained, uh, my, my uh left leg, and I landed on, on, on the ground because I lost my balance."

Sergeant Bice asked you if you landed on your buttocks or on your knees. You said, "No I, I, I landed on my knee, like, you know it's, it's just uh, I kicked him you know, two or three times, that's all I can remember. Then I landed on the ground, my knees, both." Sergeant Bice confirmed you fell as a result of [redacted] pulling you to the ground, and not as a result of losing your balance from delivering the kicks to [redacted] head.

Sergeant Bice asked you if [redacted] ever bit you during the incident. You said, "No he didn't."

Due to the lack of information, and unclear answers being provided by you, Sergeant Bice read from your ER. Sergeant Bice asked you if [redacted] said, or did, anything between the kicks to the head. You said, "Um, I, I don't remember." Sergeant Bice asked you if [redacted] was it possible [redacted] put his right arm out in an effort to protect his head from his kicks. You said, "He's grabbed, if he's protecting his head he shouldn't have his, you know, No."

Sergeant Bice asked you how you succeeded in wrestling your leg away from [redacted] grasp. You said, "Um that's when I, um, I got tapped out by uh, 'cause I, I throwing a punch at him, uh, that's when I get tapped out by deputies." Sergeant Bice confirmed you were on your knees, at

the right side of [redacted] head area, at the time you delivered the four to five punches to head and face.

Sergeant Bice asked you, which Deputy tapped you out. You said, "I, I don't remember."

Sergeant Bice asked you if you recalled which additional officers responded after you and Deputy Murillo arrived in 5A. You said, "You know what at that time, I, I, all I know it was uh, Bragg and I." Sergeant Bice told you, the 5th floor surveillance video captured the time when Deputy Murillo exited his unit. Deputy Murillo testified, he saw you enter 5A, and was just a few seconds behind him. You said, "I don't remember."

Again, Sergeant Bice asked you how you accomplished removing your left leg away from [redacted] grasp. You said, "So when um, when I got, I remember, when I got tapped out. They kind of like pulled me over, and then that's when I, I wrestled my um, my legs away from him."

Your [redacted] stated to you, "I think she's asking, can you, or do you remember, how it was you were able to get out of the grasp of the inmate." You said, "Um, because he keep holding on, so I uh and uh, that's when I got tapped out, and um, that's when he was unsecure, so um, when I got tapped out um, Deputy um, jump in that's when I got out."

Again, failing to answer the question, Sergeant Sepulveda asked you if you were still on your knees when you were tapped out. You said, "Yes."

Sergeant Sepulveda reminded you that you stated earlier, [redacted] had a hold of the front part of your left leg, while you were standing to the right side of [redacted] Sergeant Sepulveda asked you why you didn't yank your leg upward to get out of [redacted] grasp.

You then demonstrated and said [redacted] used his right and in a scooping motion sweeping from the lower part of his body upward, a contradiction to the swimmer's top down motion you stated earlier.

Sergeant Sepulveda asked you, using the sweeping upward motion, if [redacted] had trapped your left foot and leg between his forearm and bicep, as if [redacted] had a chokehold on your lower leg. You said, "You know what, at the time I remember that he grabbed by his, his um, his right arm, to my left leg, like trying to pull it, that's when I, I landed, when I lost my balance, that's when I landed on the ground, that's when he still have my, my, my left leg, that's when I started throwing punches at him."

Sergeant Sepulveda asked you to explain how it was possible to kick [redacted] in the head using your right foot, while [redacted] held onto your left leg. You said, "You know what at the time it was so quick you know, I, you know it, it would just happen so quick you know, he tried to grab my um, left leg, and then I told him let go of my leg, and then you know it would just, it was just a reaction."

In an attempt to get a concise, intelligible answer from you, Sergeant Sepulveda and Sergeant Bice asked you to participate in a reenactment of the event. Sergeant Bice played the role of

inmate Sergeant Sepulveda played the role of Deputy Bragg and we had you walk us through, step by step, what did, and what your reactions were to each action.

We started the scenario from the point when you arrived in 5A. Sergeant Bice was face down on the ground, Sergeant Sepulveda on her left, and you on her right side. Sergeant Bice swept her right arm from the top of her head out to the right, in a downward swimming motion, with her palm face up. You confirmed this was the motion made when he grabbed your left leg.

Sergeant Bice then attempted to grab your left leg using this motion. Sergeant Bice asked you if this was the point you kicked two to three times in the head. You replied, "Right."

Sergeant Bice proceeded to try and pull your left leg toward her head. You quickly realized Sergeant Bice had very limited grasping power on your leg. Additionally, the angle of her motion would not allow her to pull your left leg toward her mouth, as if to bite you. The pulling motion and natural rotation of her arm, only allowed her to pull your leg toward the right side of her torso area, and stopped at her armpit. It was absolutely impossible for her to maintain her grip or bite you.

When you realized it was impossible for Sergeant Bice to bite you, you changed your story. You then said, motion came from the lower part of his body, in an upward motion, and that's when you fell to the ground on your knees. You said you started punching in the face; again, out of fear was going to bite you.

Sergeant Bice asked you how could use his light arm to grab you, when Deputy Murillo was fighting for control of the same arm. You could not remember seeing Deputy Murillo on right side. You said, "It's a tunnel vision. I, I did at that time, to be honest, I didn't even see, I know Murillo, I know Bragg's there, but I didn't, I didn't even see Murillo until he went out and told me he was involved."

Sergeant Bice revisited your ER. Sergeant Bice asked you to clarify how you wrestled your leg away from grasp, because you wrote a factual sentence that said; "I wrestled my leg away from inmate grasp." You also wrote; "when I was tapped out by responding deputies, inmate was still unsecure." Sergeant Bice explained to you, these were two separate actions that you documented. You said, "That's when I, you know, I, I don't remember, but then I got away from his, his, his arm."

Sergeant Bice asked you how could maintain a hold on your left leg, while you were kneeling to the right side of . You said, "Uh, he have my uh, my uh, my leg."

Sergeant Bice demonstrated to you, that when she falls to her knees, her feet go behind her. Based on the human anatomy, Sergeant Bice asked you to explain when you fell to your knees, how maintained a hold on your left leg. You did not answer the question.

Sergeant Bice asked you if you fell backwards onto your buttocks. You said, "No, no, I didn't fall backward. I landed, you know at that time, I landed, not trying to land at all on his head, because it was my left, my, my left, my landed on, on the ground." You confirmed you landed on both knees.

Sergeant Sepulveda and Sergeant Bice demonstrated the natural movement of the lower leg and foot when falling to your knees. Each time their lower leg moved behind them. Based on this demonstration, it was not possible for _____ to maintain a grip on your leg. Sergeant Bice asked you to offer them a possible alternative. You said, "He still has my, my, my, my legs, then pulled and won't let go. Due to his, his, at that time, you know, he was um, back and forth, back and forth, that's when, at that time, that's the only thing that's, I feared for my safety is, if he's going to bite me."

Again, Sergeant Bice asked you how you got out of _____ grasp. You said, "Um, it was you know, right now, it's uh six months, but at that time I, I, I remember, I remember I, I stood up."

Sergeant Bice asked you if you removed your leg after you delivered the first punch to face, or the fourth punch to his face. You said, "No, no, four or five punches, that's when I get up, and then remember they grabbed me by the shirt."

Sergeant Bice asked you if the deputies grabbed you by the shirt and pulled you off of _____ You said, "Yes."

Sergeant Bice asked you why you thought the deputies needed to pull you off of _____ said, "I'm sorry, I don't know if he can know exactly what's going through their heads." Sergeant Bice pointed out, Deputy Bragg had been in the fight the longest, and was probably the most tired, so why tap out a second responder, unless your actions were called into question. You replied, "I'm sorry, what was your question?"

Sergeant Bice asked you why the deputies tapped you out instead of Deputy Bragg. You said, "Because I was throwing punch at him."

Again, Sergeant Bice asked you to tell her how you got out of _____ grasp. You stated, "When I got pulled out uh, you know I just stood up, because I got pulled out."

Because you had provided three answers to the same question (I don't remember, I stood up, pulled out by responding deputies), Sergeant Bice asked you, as the deputies pulled you up and off of _____ your leg then became free of _____ grasp. You said, "Yes."

Sergeant Bice asked you if it would surprise you to learn both Deputy Bragg and Deputy Murillo said they never saw inmate _____ grab your leg. You said, "you know what how you gonna, um when you, he was struggling."

Sergeant Bice reminded you; Deputy Murillo came into 5A unit a few seconds behind you. Deputy Murillo witnessed you run to the right side of _____ head and immediately started kicking him. You replied, "Okay."

Sergeant Bice further explained, Deputy Murillo was positioned on _____ right side and noticed _____ right arm was tucked underneath his body, with his right elbow poking out. Out of concern, _____ may have had a weapon, Deputy Murillo attempted to remove _____ arm from under _____ body by placing his hand through the opening at the elbow. Deputy

Murillo delivered knee strikes, but was unsuccessful in pulling right arm out to secure it.

Sergeant Bice asked you how it was possible for to grab your left leg, when right arm was tucked underneath his body. You said, "Tucked in his body?" Sergeant Bice clarified was laying on his right arm. You said, "No it wasn't tucked under, he trying to grab my legs, that's when I kicked him."

Sergeant Bice reminded you, Deputy Murillo was on right side, facing you, and at no time did Deputy Murillo; ever see grab your leg. You said, "That's what he said, but look, how is he, how is he, he was struggling, how can he, how can he see me?" Sergeant Bice told you, Deputy Murillo was right next to you, observing your actions.

Sergeant Bice advised you; Not only Deputy Murillo, but Deputy Bragg, Officer Cortes, Officer Temptra and four inmate witnesses never saw grab your leg. You said, "You know what." interjected, "Tim, she's trying to understand how there can be this inconsistency; are you telling her what you recall happened and what you felt?" You said, "Yes. I don't know what he said, I, I don't know."

We discussed your years of service and your ERT training. Sergeant Bice asked you if you had a good understanding of the levels force as defined in policy 9.01. You said, "Yes I do. The previous year I was on the fourth floor, um, so I'm involved in a lot of um, um, 415 with the inmates."

Sergeant Bice asked you during the previous use of force incidents, had you ever kicked an inmate in the head. You said, "No. but it, it was just a, you know, a quick reaction I, I, I you know."

Sergeant Bice asked you to articulate the five levels of force. Sergeant Bice confirmed you understood what methods and tools existed for each level. You confirmed you had OC pepper spray, handcuffs and yawara/kubaton stick on your duty belt during this incident. You agreed the use of a yawara/kubaton stick could be used as level-III pressure point/pain compliance tool, in addition to being a level-IV striking device.

Sergeant Bice presented your personnel training record and discussed your academy training, STC training and CIP self-course work. Specifically; PC 832 Laws of Arrest, First Responder/Ethics & Professional Conduct, Arrest and Control Review and Emergency Response Team Review, Report writing review, Sheriff's Office Incident Report Writing System, Jail Crimes Investigations, Crowd Control for a Custody Facility, Managing Stress: Performing Under pressure and Working with Manipulative Inmates. asked you if you recalled those classes. You said, "Yeah, yeah."

Sergeant Bice asked you, with all the training, and the tools available to you on your duty belt, why kick You said, "because, you know, because um, Officer Bragg is a big man. You know at that time, I just think that you know, if a big man, you can't control the inmate, then you know, I went in there, you know, trying to grab his (arm and next thing, I, he trying to grab my left leg, that's when I, you know."

Sergeant Bice asked you why you didn't step on [redacted] arm, until he let go. You said, "It happened so quick."

Sergeant Bice reminded you of Deputy Bragg's height and weight, and by sitting on the back of 5'11" /160 pound [redacted] who was face down on the ground, Deputy Bragg had some control of him. You replied, "You know the incident happened so quick and that's what I, I responded, you know I don't know if he had, if he had some control, or he had full control, then why would he put a packset alarm, so at that time you know."

Sergeant Bice asked you, prior to this incident, if you ever responded to a packset alarm from your dorm. You said, "Yes."

Sergeant Sepulveda asked you, in the 45 to 60 seconds it took to arrive, would you agree the circumstances could change. You did not answer. [redacted] stated, "Is it fair to say Tim, something can change in a couple of seconds?" You replied, "Yeah."

Sergeant Sepulveda explained that from the time Deputy Bragg hit his packset alarm, to the time you and Deputy Murillo arrived, Deputy Bragg had taken [redacted] down to the ground, was sitting on [redacted] back, attempting to control [redacted] left arm. You said, "No, I didn't see."

Sergeant Sepulveda asked you what you were looking for when you entered the 5A unit to assist Deputy Bragg. You said, "Well, he's on top of him but you know he was on top of him but that's and trying to take control of his left hand, that's all I saw."

Sergeant Sepulveda reminded you that you have been trained to respond and evaluate a scene to determine what action to take. Sergeant Sepulveda asked you how you justified using a level-IV use of force under these circumstances. You said, "You know it happened so quick I mean, you know what, uh."

Sergeant Sepulveda pointed out there were three deputies on scene. Deputy Bragg was controlling the left side, Deputy Murillo went to the right side and you went to [redacted] head. You said, "You know what uh, No, but you know when I responded I was, saw Bragg, I didn't see, you know, my adrenalin."

Sergeant Bice asked you to explain the exigent circumstances that would justify a level-IV use of force. You said, "You know it happened quick, it just." Again, your answer trailed off into non-responsive verbiage. Sergeant Bice acknowledged events can occur quickly in the jail, and reminded you we are trained to handle such events.

Sergeant Bice advised you, she reviewed the Main Jail North elevator surveillance video, which depicted Officer Cortes and Officer Tempra responding from the 4th floor. They exited the 5th floor sally port, approximately 19 seconds from the time Sergeant Bice saw Deputy Murillo exiting his dorm.

Sergeant Bice reminded you the department does not train staff to kick inmates in the head. Sergeant Bice asked you, as a reasonable, objective officer, running into a situation where you've

acknowledged seeing Deputy Bragg sitting on [redacted] back trying to control the left arm. Why didn't you use your yawara stick, or drop your knee on [redacted] right arm. You said, "See, it, you know it happened so quick, you know, I, I, I did, so quick, you know, and like you know, going back in time right now, and yes I would do, you know, but it, at that time, it happened so quick, you know I."

Not receiving an intelligible answer, Sergeant Bice asked you one more time, to explain the circumstances that existed for you in this situation, to use a level-IV use of force. You said, "I'm sorry I, I, you know, he grabbed my leg, so you know I, I at the time, you know it happened so quick, right now I, I, you know, I mean it's, he trying to grab my."

Sergeant Bice asked you if you felt you used the proper level of force with [redacted]. You answered, "At that time, you know, yes." Sergeant Bice reconfirmed with you, as an objective, reasonable peace officer, you felt your use of force actions were correct.

Sergeant Bice read the use of force policy section, Objectively Reasonable Force, and asked you how you were in compliance with this policy. You said, "You know what, um you see the thing is like right now you know, we're talking, we're sitting, you know we, you know, but when you're involved in the incident it, it just, you know you don't remember everything."

Sergeant Bice reminded you that we're paid to remember the policies it's our responsibility, to understand the potential liability involved from such incidents. These aspects are reinforced over and over again in our training. You said, "That was my reaction."

Sergeant Bice asked you, based on your reaction, please explain how your actions complied with our use of force policy and training. You stated, "You see now, you know, sitting here breaking it down, you know, right now, you know looking back six months yes, you know, you know I did a thing I shouldn't do but at that time you know it, it was just, it was uh, a fast uh pace, when you're in a fight you don't, you know, pretty much um, make sure you know, your partner okay, you know I, you know I, I love my job, you know my coworker is like my, you know, my brother." "So you know I, I at that time, if you're sitting, at that time, you know I did whatever, you know to help my partner, you know, not trying to hurt anybody but at that time, you know; now it's today."

Sergeant Bice asked you, looking back at this incident, was there anything you would do differently. You said, "Oh, I would do uh, make sure, you know um, if you know my partner got on the other side, but I would not overreact. Um sitting here, you know, you know I would do it differently."

Sergeant Bice asked you what you would do differently. You said, "You know, so I'm sorry, what was your question?"

Sergeant Bice repeated the question and you said, "Um, you know what I would um, you know come in, I would do something different like grab his leg and do a figure four on him." your answer segued to the next set of questions related to other use of force incidents you responded to in the past.

Sergeant Bice requested an audit report from Main Jail, listing all of the employee reports you had submitted since 2009. Focusing on the previous year, 9/1/2012 through this incident on 10/3/2013, you were involved in 11 Use of Force incidents. In reviewing these 11 Employee Reports, Sergeant Bice discovered you responded to an incident with very similar circumstances you faced when you responded to this incident under investigation. The similar use of force incident occurred on June 15, 2013. Sergeant Bice read your ER for this event, which stated the following:

"On June 14 (typo), 2013, I was working at the Main Jail assigned as the 6C officer. At approximately 2044 hours, I was conducting clothing exchange. I heard North Control inform via radio that there was a knock off alarm in 6A. I ordered all inmates in 6C to lock down and immediately responded to the incident in 6A. As I entered module 6A, I saw Deputy Benson in a physical struggle with inmate [redacted] on the 2nd tier, in front of [redacted]

Inmate [redacted] was prone, face down. Officer Benson was on top of inmate [redacted] and struggling to position inmate [redacted] arms behind his back in an effort to handcuff him. I heard Officer Benson yelling, "Stop resisting Stop resisting." I heard inmate [redacted] yell, "Fuck you."

I saw inmate [redacted] kicking Officer Benson with rear kicks as Officer Benson tried to restrain him. I attempted to stop inmate [redacted] from kicking Officer Benson by holding his legs down and performing a figure four. Throughout my attempt to restrain his legs, inmate [redacted] continued kicking backwards at Officer Benson and I was having a difficult time controlling inmate [redacted] legs due to his size and strength.

Additional officers arrived and assisted us in controlling and handcuffing inmate [redacted]. Officers then escorted inmate [redacted] out of module 6A. I had no further contact with inmate [redacted]."

Sergeant Bice remarked how the June 15, 2013, incident with Deputy Benson sounded very similar to the October 3, 2013, incident involving Deputy Bragg. Sergeant Bice asked you if you ever kicked inmate [redacted] you said, "No."

You agreed a "knock off phone" equated the same sense of urgency as a "packset alarm." Sergeant Bice continued referencing the June 15, 2013 ER line-by-line, identifying the similarities to your October 3, 2013 incident report. You seemed confused and Sergeant Bice gave you an opportunity to read your June 15, 2013 employee's report.

Sergeant Bice asked you if you thought the two incidents were similar. You said, "Yes."

Sergeant Bice asked you if you experienced "tunnel vision" in the June 15th incident. You replied, "See uh, you know, when I ran in, I remember, you know ...I just can't think. So you we're asking ... I'm sorry what were you asking me again?"

Sergeant Bice repeated the question by explaining the similar situations and asked you if you kicked inmate [redacted] in the head. You replied, "No, no, no I did not kick him."

Sergeant Bice pointed out you agreed to the same set of urgency on both calls for assistance and you replied, "I'm sorry, what, what, 'cause I was just trying to visualize um, from the"

Sergeant Bice asked you, did you feel there was a sense of urgency to aid Deputy Benson. You said, "Yes."

Sergeant Bice asked you how you knew what to do when you entered Deputy Benson's dorm. How did you figure out what actions you were going take? You said, "You know I remember that uh, yeah Benson was on top of him but um, think I remember, you know." interjected, and told you, "Her question is, how did you know what to do when you saw Benson on top of _____ You said, I'm sorry what, what?"

_____ continued, "She wants to know why you decided to grab the legs in this situation with Officer Benson." You answered, "Um, because at that time uh, you know, you know I remember, I remember at the time it was just um, maybe 'cause it was um kicking his leg back so I, I that's the only thing in my, I just jumped , and, and, and jumped his leg."

Sergeant Bice disclosed the injuries inmate _____ sustained from this incident. Sergeant Bice asked you if you heard _____ complain of any pain. You said, "He was yelling and, and you know screaming but um, no I, I didn't hear him complain of pain."

Sergeant Bice asked you if you would be surprised to learn, at one point, _____ thought he lost consciousness. You replied, "No, I'm sorry what'd you." _____ interjected again did you ever see him unconscious or anything? You said, "No."

Sergeant Bice showed you the scene photos depicting the large pool of blood on the floor and asked you when you first noticed _____ was bleeding. You said, "You know I, I didn't notice anything when, when he came out I saw it."

Sergeant Bice asked you if you were still in the housing unit when the deputies secured and lifted him off the floor. You said, "No, no I uh, I left."

Sergeant Bice pulled out several additional photos depicting the blood pooled on the floor of 5A, blood drops exiting 5A hallway and photos of _____ with bloodied clothing. Sergeant Bice asked you when you first noticed the blood pool in 5A. You said, "Um because the, the, um, the door was open, I was in uh the core area looking and I saw that."

Sergeant Bice confirmed with you, at no point after your kicks or punches to _____ head, did you notice any blood. Sergeant Bice asked you how _____ sustained his injuries. You said, "Um, kicking him, punching him."

Sergeant Bice told you, Sergeant Jensen had reported after he interviewed _____ on the 2nd floor he went back to speak with you but you weren't there. Sergeant Bice asked you where went. You said, "Um, I, I remember that uh I went to uh, uh South Control 'cause I just got into a, a 415 so I just need some fresh air."

Sergeant Bice asked you how long you remained at South Control. You said, "Um not that long because Sergeant, uh Jensen were, uh rushing me to write a report. You know, I don't remember but I was in the, in the locker room, yeah, not, not hang out South Control, no."

Sergeant Bice asked you if you went to the locker room to compose yourself. You said, "Maybe uh, uh I remember um, I only went there um, I was you know, I was exhausted and uh, went there and washed my hands, you know my face, 'cause it was uh, I was sweaty, you know, and then um and, you know, then I started to notice, you know, my hands you know, I went outside took um, you know catch a breath of fresh air."

Sergeant Sepulveda asked you what you noticed about your hands. You said, "It swelling up."

Sergeant Bice confirmed Sergeant Jensen was your supervisor. You couldn't remember if Sergeant Jensen spoke with you before he left the 5th floor to go to his locker. Sergeant Bice asked you what directives Sergeant Jensen gave you. You replied, "Well he, he told me uh, write down everything, a thorough report."

Sergeant Bice asked you if Sergeant Jensen talked to you about what happened. You said, "No, he never, he never talked to me what happened. But, he, he, he, uh told me to go uh, uh sixth floor."

Sergeant Bice asked if you if Sergeant Jensen asked you if you were injured. You said, "Yes."

Sergeant Bice asked if Sergeant Jensen took photographs of your injuries/hand. You replied, "I don't recall, uh, you know, I remember uh, yes."

Sergeant Bice asked you if Sergeant Jensen asked you if you were okay to write your employee's report. You said, "Um, I, you know, I don't remember. You know, it's, at that time it's, you know, I was tired, I was hurting and I tried to type and then I, you know, eventually it's, it got worse so I didn't type. So I asked, um, so I ask the, the officer to help me uh type for me."

Sergeant Bice asked you which officer helped you type your report. You said, "Um, Officer uh, uh Hussein 'cause 'cause my hands were hurting."

Sergeant Bice asked you if you typed your first report, the one that did not include the use of force. You said, "Yes."

Sergeant Bice asked you if Deputy Hussain took over typing your report at the second draft. You said, "Sarge, I, I, I, I don't remember. But he, he did help me, um type it up."

Sergeant Bice asked you if you discussed the incident with Deputy Hussain. You said, "Well when he, he, well when uh, when he type it, then I have to talk to him then, then you know my word and then I told him this, you know, yes I discussed with him."

Sergeant Bice asked you if Deputy Hussain gave you advice on how to write your report. You replied, "I, I'm sorry what, what's the, did he give me any advice, yes. I mean yes, you know"

sometime I have a short sentence or I didn't put it in there, he'd say well you need you know, be specific, what you did, yes."

Sergeant Sepulveda asked you what you told Deputy Hussain. You said, "Yeah, I tell him (Hussain) I kicked him (I hit him. Hussain asked me why um, then, then I, I told him what happened."

Sergeant Sepulveda asked you if you explained to Deputy Hussain why you kicked You said, "I told him because he, I went in there, and he try and grabs my legs, and that when I, I kicked him."

Sergeant Bice asked you why you excluded the use of force information in your first report submission to Sergeant Jensen. You said, "Because, I, you know, I was hurting you know, I was scared, I don't know."

Sergeant Bice told you she understood you being scared. Sergeant Bice postulated her theory you were scared because you made a mistake, and then needed to make up a story of grabbing your leg to help justify the mistake. Sergeant Bice recalled your facial expression changed while she shared her theory of what happened. Your jaw clenched, your eyes narrowed as you glared at her and then replied, "No." You never exhibited any outrage or adamant denial to her theory.

Sergeant Bice asked you if you ever notified Sergeant Jensen, you were hurting. You said, "Um, I, I um, I was kept to myself so I didn't."

Sergeant Bice asked you to clarify your answer. You said, "like, you know when, but I, I didn't um, I'm sorry what, what?"

Sergeant Bice asked you if Deputy Hussain took over the typing of your report due to the finger pain. You replied, "Yes." You attest the content of the ER were your words. Sergeant Bice confirmed the report contained your signature, and Deputy Hussain acted as a scribe only, by typing your words.

Your ER showed the report was completed at 0030 hours. Sergeant Bice asked you if you finished your ER at that time. You said, "No, no we didn't finish until like four o'clock in the morning."

Sergeant Bice asked you why the ER took so long to complete. You said, "I, but, I, uh because the Sergeant just kicked back the report, and uh he went up there and told me, you know, he never talked to me about the incident um, he just told me, keep changing, changing, changing."

Sergeant Bice asked you what was missing in your report. You said, "Um, misspelling or um, um, run on sentence, um you know."

Sergeant Bice asked you if Sergeant Jensen discussed the use of force with you. You said, "I'm sorry, what was that?"

Sergeant Bice asked you if you recalled Sergeant Jensen asking you to be very specific on the positioning of the inmate, positioning of the deputies, your actions and whatever force used. You replied, "Right. Yes. He, he keep ask, well he keep telling us to write down what see, and uh Murillo, I said, I, I didn't at that time. Yeah and then you know then um, I think he got mad at me because he keep telling me write down, no, no, I was like Sarge, how am I, how am I going to write when I don't see that somebody uh, you know um, like Deputy Murillo and Deputy Bragg. You know what, I know what I did and I'll write down, I have nothing to hide, but like you know, it was right in front of Lieutenant office, he keep asking me, write down what Murillo this and that and uh I remember um, I told him, Sarge I, you know I can't predict what they did. But I didn't, you know, at that time, or if I think it's not right when I think, you know, I was focused tunnel vision, I, you know, I described what I did."

Sergeant Bice asked you, of the 15 use of force incident reports you were involved in and wrote about, since the beginning of your career in 2009, how many of those incidents did you experience tunnel vision. You said, "I, I don't remember."

Sergeant Bice asked you if the tunnel vision occurred often. You said, "No, no, no, no you know some, some incidents is, uh different than others."

Again, Sergeant Bice asked you how often you experienced tunnel vision and could not observe what was happening around you. You said, "Not very often."

Sergeant Sepulveda asked you if you had difficulty documenting what occurred during any of the previous incidents. You said, "Uh no, no, I don't have any, you know if, I'm sorry."

Sergeant Sepulveda explained policy 9.27 reporting of incidents and policy 3.31, the section on making less than truthful statements. Sergeant Sepulveda again asked you if you ever had trouble reporting what you saw and what you did. You said, "Oh, gee the thing is when I, I, you know, I, I write it and you know, give it to Sergeant if the Sergeant say it's not enough information then I'll write, you know, then uh." Sergeant Sepulveda reminded you that you have been trained to include important details in your reports.

Sergeant Bice asked you if you agreed a kick was a level-IV use of force. You replied, "Yes."

Sergeant Bice asked you, when Sergeant Jensen directed you to write your report, did you advise Sergeant Jensen at that time that you used a level-IV use of force (kicks and punches) on inmate
You said, "I don't remember."

Sergeant Bice told you, Sergeant Jensen testified that your first employee's report submitted on this incident didn't include the use of force. Sergeant Bice asked you why you didn't include such significant information? You said, "You know what, at that time I was frustrated you know, but I yeah."

Again, Sergeant Bice asked you, why you would omit such a significant detail. You said, "Yeah but, but um, right now I remember, he never asked me, he just said write down what you did."

Sergeant Bice reminded you, your first ER did not include the force, nor were you forthcoming with Sergeant Jensen during your verbal interactions. In fact, it wasn't until Sergeant Jensen advised you that your account of the incident did not match Deputy Bragg's and Deputy Murillo's account of what happened. You said, "But you know, at, at I was hurting you know, you know I was hurting and you know uh, you know, he, he could have, you know I mean like, he could have least offered me, or drive me to the hospital or, or you know, I mean like at that time I was."

Sergeant Bice reminded you that you told Sergeant Jensen you were okay to write. You said, "Yes, but then later on, I can't, you know, but I didn't tell them." Sergeant Bice asked you, as an adult responsible for your own self-care, if you told the Sergeant your finger hurt, and you needed medical attention before writing the employees report. You said, "No."

Sergeant Bice again pointed out to you, your initial employee report submissions, did not include any information regarding your use of force on [redacted]. You said, "Yes, Uh, I think I turned in one but then, you know what was the time I was like, no that's not right, you know, I mean you're changing but the final will have Sergeant signature, you know."

With you admitting you excluded the use of force in your initial report, Sergeant Bice asked you why? You said, "Um, I was, I, you know, I don't remember."

Sergeant Bice asked you if you agreed the use of force was an important detail to include in any draft version of a report. You said, "Yes."

Sergeant Bice asked you, on the evening of this incident, if you had discussed your report with any of the other deputies involved in the incident. You said, "Uh, you know I don't remember that um, when I uh, my first draft, I, I gave to Bragg and say that's what I did. And um, I remember uh, that's when I came down to Sarge and say that's not enough information, I'm like okay."

Sergeant Bice reminded you that you confirmed your first draft did not include your use of force and asked if that was the report, you gave to Bragg. You said, "Yes."

Sergeant Bice asked you if you ever shared your second, third, or fourth ER draft with the deputies involved in the incident. You said, "Um. I, you know I don't remember the um, I don't remember giving Murillo or uh, but they, they (Bragg and Murillo) looked at my report but I, I don't remember. Deputy Murillo came to up to my floor, and then I said this is what I did, and then he went and fix, I, I, you know I, I remember, yes I, I did look at his report."

Sergeant Bice asked you what time in the evening did you see Deputy Murillo's report. You said, "I, I don't remember, but then Bragg, you know and then I looked at uh, his uh Bragg's report and he said I was kneeling him ([redacted] I'm like Bragg I didn't knee him, why you put it in there, he said, well that's what I saw."

Sergeant Bice pointed out to you the knee reference from Deputy Bragg came a week later when he documented that information in his crime report. Sergeant Bice confirmed you couldn't recall

having a conversation, on the evening of the incident, with Deputy Bragg or Deputy Murillo regarding their reports.

At 1245 hours, you requested a break and the digital recorder was stopped.

At approximately 1258 hours, the interview resumed and the digital recorder was started. Sergeant Bice and Sergeant Sepulveda revisited questions you failed to explain earlier.

acknowledged the inconsistencies in the facts reported and your lack of recollection, certainly about some issues with this case.

Sergeant Sepulveda asked you how grabbed your leg when Deputy Murillo was delivering knee strikes to right arm, in an attempt to remove it from underneath his body. You said, "I told you, this is what happened, so I wrote down everything and now Murillo is not here, he can say pretty much say but you know what that's what I did and I reported."

Sergeant Bice asked you if you were alleging Deputy Murillo made untruthful statements. You said, "No, no, I didn't say that, but I'm just saying like I did what I, I did, I admitted I kicked, yes."

Sergeant Bice told you that they were seeking the truth about how inmate grabbed your leg, when he wasn't in a position to do so. You said, "He grabbed my legs. That's when I fall."

Sergeant Bice continued questioning you to explain how it was possible for to grab your leg when Deputy Murillo was struggling to pull right arm from underneath his body. interjected, "He's gonna continue to tell you what he's told you for the last couple of hours."

Sergeant Bice advised you a criminal investigation was conducted against you for Felony 149 PC, Assault under Color of Authority. The criminal investigation was included in the allegations against you, along with the County Merit System Rules and Department Policy Brutality violations. Sergeant Bice told you there was evidence to support you committed a crime. You did not respond.

Sergeant Bice further advised you, On April 9, 2014, the Santa Clara County District Attorney Office decided not to file the criminal complaint against you. However this did not eliminate the possibility of filing at a later date, nor did it exclude you from being sued in civil court. You did not respond.

Sergeant Bice reviewed the tolling time frame with and you. Sergeant Bice advised you both when the criminal case and tolling started and when the tolling ended. We agreed in order to be in compliance with your POBAR rights, any discipline you received as a result of this investigation needed to be served by March 30, 2015. Sergeant Bice provided with a copy of the tolling letter. said she would make a copy for you and explain the situation.

Inclosing the interview, Sergeant Bice revisited the allegations and asked you what you thought should happen to a Deputy if they were found guilty of brutality. You replied, "I don't know. This, this is my first time and I don't know."

Sergeant Bice asked you what should happen if an employee made less than truthful statements. You said, "I, I don't know."

asked you, "Tim, do you agree that honesty is important in law enforcement?" You said, "Yes."

Sergeant Bice asked you if you recalled Sergeant Jensen referencing policy 3.31, and telling you to be honest in your report. You said, "Yes."

Sergeant Bice asked you why you were able to recall details on how grabbed your left leg, and yet cannot recall all the other details in our questioning. You said, "You know, this is what he did to me so you know, it's like yeah I remember like the, the, the main important thing."

Sergeant Bice asked you if kicking wasn't important? You said, "No, no, no I mean, it's like, like what happened, you know, I mean it's, you know at that time, I you know, I did what I had to, you know, from prevent from the officer safety, uh you know."

Sergeant Sepulveda showed you a photograph of the blood pool at the scene. He asked you, when the supervisors responded to the scene what were the things they wanted to know? You said, "Why is there blood there." Sergeant Sepulveda replied, "Exactly, and they want to know how it happened. So in this incident Deputy Tri, how did that happen?" You said, "I kicked him, I punched him."

Sergeant Sepulveda asked you, so by you kicking and punching inmate he incurred the injuries that caused him to bleed. You said, "Yes."

Sergeant Bice asked you if this investigation concluded you used excessive force and made less than truthful statements, should you be allowed to continue working in the jails. You replied, "I'm sorry what was, what was, what is your question."

interjected again, "Tim doesn't know what should happen if there is such a finding."

Sergeant Bice told you she was still unclear how it was physically possible for inmate to grab your leg. You said, "Uh, he grabbed my legs."

interjected, "He, we demonstrated it, he's not, you're not going to have a Perry Mason moment here, Sarge. I mean he's not going to tell you something different."

Sergeant Bice told you, your testimony is a contradiction to all of the witness testimony. Your peers have been truthful and forthcoming about what actions they took, and what they witnessed. Sergeant Bice told you, you are less than forthcoming in your ability to recall anything, but the aspects that serve you. You replied, "Sarge, you just keep doing it uh going back and forth and back and forth."

Sergeant Sepulveda told you, if we go with your story, then Deputy Bragg, Deputy Murillo, Officer Cortes and Officer Temptra's stories become inaccurate and we can't overlook the large discrepancy in your story.

interjected again, "He told you he () got injured from the kicks and the punches, so he's not saying he doesn't know how the injury happened. He knows there are inconsistencies between his report and other peoples. I don't know how much further you can, you know brow beat him, he's not going to confess to you right now Sergeant you're asking him to confess."

Sergeant Sepulveda replied, "I'm pressing him to explain the inconsistencies." Sergeant Bice commented to , that she keeps answering for you.

continued her statement, "You're asking him to confess to something, that's what you, that's the only way that you, it seems like you will think he picks up what you're putting down. He knows there's inconsistencies, but you also know that eyewitnesses, to a similar, to the same event have different perceptions, different recollections in any number of circumstance, that's human nature. So he can't ascribe a certain level of fault to anybody else. He can just tell you what he recalls happening, what he did. You're asking him to do more than that and ascribe some kind of blame or fault or understanding is more than he can do at this point. I feel like we've trodden this area and the opinions and impression and the inconsistencies."

In closing, Sergeant Bice asked you, looking back on this incident is there anything you would have done differently. You said, "Uh, look at the same incident like that." Sergeant Bice repeated the question, you replied, "Of going in and observe and maybe uh control his uh his legs um, until maybe pepper spray him."

Sergeant Bice asked you if there was anything else you wanted to say. You replied, "No."

Sergeant Bice admonished you not to discuss this investigation with anyone other than your attorney. Sergeant Bice conveyed her duty to conduct a fair and impartial investigation and the only way to achieve that was through confidentiality.

The interview ended at 1400 hours.

Investigation Continued:

Based on information you provided in you interview Sergeant Bice continued the investigation.

Summary of Main Jail North Video Surveillance:

You stated you were in pain from your finger injury. You said the injury affected your ability to type your report, and impacted your ability to be forthcoming in reporting your use of force in this incident. Sergeant Bice reviewed and copied the Main Jail North elevator surveillance video from October 3, 2013, at approximately 2300 hours, through October 4, 2013 0418 hours.

The following is a summary of your opportunities to notify a Sergeant you were in pain and couldn't write your report.

October 3, 2013:

2302 Hours: Sergeant Jensen, Sergeant Brackett and Sergeant Stream arrive on the 5th floor.

2312 Hours: Sergeant Jensen leaves the 5th floor and arrives at 2nd floor medical to interview

2317 Hours: You leave the 5th floor to Main Jail South for 14 minutes.

2336 Hours: You are seen at the Main Jail North 5th floor Sergeants office and receive paperwork (Worker's comp) from Sergeant Duran.

2338 Hours: Sergeant Jensen arrived at the 1st floor Sergeants Office.

2343 Hours: Sergeant Jensen and you ride together on elevator 4 and appear to be discussing something. Both exit the 6th floor together. ***You wrote your ER at the 6th Floor Officer's Station.***

2346 Hours: Sergeant Jensen leaves the 6th floor.

October 4, 2013:

0034 Hours: Sergeant Jensen arrives on the 6th floor.

0154 Hours: Sergeant Jensen again arrives on the 6th floor.

0308 Hours: You leave the 6th floor to the 1st floor Sergeant's office with paperwork in hand.

0315 Hours: You leave the 1st floor Sergeant's office and exit the elevator at the basement.

0325 Hours: You enter the elevator from the basement and exit the 5th floor.

0326 Hours: You enter the elevator from the 5th floor with food in hand, exit on the 6th floor.

0354 Hours: You enter the elevator from the 6th floor and are seen interacting with Officer Albert Lee and an unidentified officer. You appear to be smiling with no indication of pain. You used your injured right hand to signal the floor you wanted. You exited the elevator on the 1st floor and walked to the Sergeant's office.

0359 Hours: You are seen leaving the 1st floor Sergeant's office, holding paperwork in your right hand with no indication of pain. You exited the elevator on the 6th floor.

0404 Hours: You leave the 6th floor with paperwork to the 1st floor Sergeant's office.

0413 Hours: You leave the 5th floor Sergeant's office. Video showed you holding a dish in your injured right hand. You had no indication of pain as you held the dish until you exited on the 5th floor.

0415 Hours: You leave the 5th floor and exit the elevator at the basement. This is approximately the same time you said you went off duty to seek medical attention.

Sergeant Bice also utilized the elevator video surveillance to provide a timeline of the responding officers. The surveillance video for Main Jail North floors two through eight the camera view and recording is pointed toward housing unit B on each floor. The video did not capture you exiting your housing unit 5C and running into 5A housing unit. The video did not capture 4C Officer Cortes until he arrived at the 4th floor elevator sally port.

2301:15 Hours: Officer Tempra is seen exiting unit 4B, running toward the elevators.

2301:20 Hours: Deputy Murillo is seen exiting unit 5B, running toward unit 5A. Based on Deputy Murillo's testimony of watching you enter the 5A housing unit a few seconds before he entered. Sergeant Bice timed the running stride of Deputy Murillo. The calculation approximated Deputy Murillo arriving in the 5A housing unit within five seconds, 2301:25 hours.

2301:44 Hours: Officer Cortes and Officer Tempra exit the 5th floor elevator sally port area.

Based on the video time stamps, it appears you, Deputy Murillo and Deputy Bragg were fighting with inmate 19-23 seconds before Officer Cortes and Officer Tempra arrived to assist.

2302:02 Hours: Basement and Main Jail South Officers exit the elevator on the 5th floor.

2302:53 Hours: Sergeant Jensen, Sergeant Brackett and Sergeant Stream arrive on scene.
2303:00 Hours: You are seen at the 5th floor officer's station area.

2304:04 Hours: Officer Cortes, Officer Durand and Sergeant Brackett escort onto the 5th floor elevator.

2304:47 Hours: and staff exit the elevator on 2nd floor medical.

Interview with Deputy Saiyad Hussain:

On June 18, 2014, at 1832 hours, Sergeant Bice met with Deputy Hussain at the Elmwood Administrative Conference room. Deputy Hussain was notified he was being interviewed as a witness regarding the incident that occurred in 5A on October 3, 2013. Sergeant Bice explained that although he was not a participant in the incident, you named him as being involved with writing your employee report.

Sergeant Bice showed Deputy Hussain a copy of the Main Jail D-Team schedule Deputy Hussain confirmed he was on duty and assigned to the 6th floor.

Deputy Hussain recalled you writing your report on the 6th floor. Sergeant Bice provided a copy of your report so she could determine what parts of the report Deputy Hussain assisted you with.

Sergeant Bice asked Deputy Hussain if he helped you with your report. Hussain replied, "I helped him with some words, but not helping him write it and all that stuff, no." Deputy Hussain said, he recalled reading over your report and said, "This would sound better, this word would sound better."

Sergeant Bice asked Deputy Hussain, if at any time he physically sat at the keyboard and typed the report for you. Deputy Hussain said, "No, I did not type the report, I was sitting there and maybe I, like spelling or something like that, maybe I typed in but that's about it." Deputy Hussain confirmed you were sitting at the 6th floor workstation typing your report. Deputy Hussain said, he proofread the report and made minor edits.

Sergeant Bice asked Deputy Hussain, if you ever asked him to take over the typing of his ER because of the pain from his finger injury. Deputy Hussain replied, "No." Deputy Hussain confirmed you told him your hand and leg were hurting but couldn't recall what time the comment was made. Deputy Hussain couldn't recall your demeanor or any indications of duress.

Deputy Hussain re-confirmed, he never typed your report at any time, for any reason.

Investigative Conclusion:

On October 9, 2013, Main Jail Administration submitted a preliminary investigation to Internal Affairs requesting a formal investigation be conducted on you. The complaint alleged that you used excessive force during an October 3, 2013, inmate versus staff altercation. Additionally, you failed to properly document your involvement and made untruthful statements while reporting the incident to your supervisor.

An Administrative Investigation was conducted and the following facts were determined.

Inmate [redacted] was a member of the Aryan Brotherhood (AB) prison gang, was booked into custody on July 10, 2013, for two felony assault charges, and was released from jail on December 21, 2013.

[redacted] had been housed on the medical floor until October 3, 2013, when he was transferred into the 5A housing unit. Inmate [redacted] became argumentative with Deputy Bragg, and appeared as if he was going to assault Deputy Bragg. Fearing for his own safety, Deputy Bragg activated his radio alarm to request assistance.

You responded from 5C unit and were the first officer on scene to assist Deputy Bragg. Deputy Murillo responded from 5B unit, saw you enter 5A, and followed closely behind you. Officer Cortes and Officer Tempra responded from the 4th floor and arrived at the scene together, which was approximately 19-23 seconds after Deputy Murillo arrived.

During the course of the criminal and Internal Affairs investigations, inmates [redacted] and [redacted] were interviewed. All three inmates had an unobstructed view of the incident. Inmates [redacted] and [redacted] did not know you, but provided an accurate description of you as

the first Deputy on scene, and the sole Deputy who delivered the kicks to [redacted] head. Inmate [redacted] remembered you very well, as you had been [redacted] dorm officer in the past. Inmate [redacted] also confined you were the first to enter 5A and immediately kick inmate [redacted]. All three inmate-statements are consistent; [redacted] was pinned face down to the ground by Deputy Bragg. Inmate [redacted] never grabbed or held your legs. You kicked and punched inmate [redacted] in the head without justification, as there was no immediate threat or danger to staff. Inmate [redacted] injuries were a direct result of your actions. Sergeant Bice read the Classification files of inmates [redacted] and [redacted]. None of the inmates had negative write-ups or issues with you, nor had they made any frivolous allegations against staff. No questions or concerns arose about their motives or credibility.

Deputy Murillo responded to 5A a few seconds behind you. Deputy Murillo's employee report and his interviews with Criminal investigators and Internal Affairs were very consistent and determined to be the most accurate and credible account of your actions. Deputy Murillo's version of the events was also consistent with the inmate witness statements; [redacted] was pinned face down to the ground by Deputy Bragg. Inmate [redacted] never grabbed or held your legs. You kicked and punched inmate [redacted] in the head for no apparent reason.

Officer Cortes and Officer Tempra arrived at the scene approximately 19-23 seconds after Deputy Murillo and did not witness you kick or punch inmate [redacted]. Officer Cortes stated you were standing next to [redacted] when he stepped in to take over for you. Officer Tempra took control of inmate [redacted] right arm from Deputy Murillo and assisted Deputy Bragg with handcuffing inmate [redacted]. Officer Tempra did not witness you punching inmate [redacted] and never "tapped you out."

Enforcement Sergeant Jensen reviewed the evidence available and determined inmate [redacted] injuries were the direct result of an excessive force crime committed by you. Sergeant Jensen stated he'd been in many use of force incidents during his 13-year career and never had to kick somebody in the head. Sergeant Jensen immediately advised Lieutenant Borgzinner of his concerns, as well as the numerous discrepancies in your employee reports. Sergeant Jensen confirmed you never complained of any pain and that your demeanor when you left to get medical attention was jovial as always.

Deputy Bragg's initial statement of the altercation with inmate [redacted] was corroborated by Deputy Murillo and inmate witness testimony; you kicked inmate [redacted]. Deputy Bragg's use of force to take [redacted] down to the ground was necessary, reasonable and justified.

Deputy Lozada recorded each inmate witness privately to ensure confidentiality and accuracy of their statements. Sergeant Bice confirmed Deputy Lozada never coached any of the inmate witnesses, or offered them any type of information to assist them with their statements.

Deputy Hussain confirmed he did not type your employee report. Either as a result of the pain from the finger injury you sustained during the incident, or any other reason. Deputy Hussain proofread your report and offered grammatical and spelling corrections. Deputy Hussain denied contributing to the content of your report.

Although you admitted to kicking and punching inmate [redacted] in the head and face, throughout the interview process, you lacked memory recall when your answer could prove unfavorable. Otherwise, your memory recall was impeccable.

You admitted you used level-IV use of force in an incident that should not have exceeded level-III force; pepper spray, pain compliance control holds, etc. Law-enforcement staff who were involved in this incident, as objective, reasonable, officers under the same situation and processing the same information, could not justify your using level-IV force.

You admitted you did not include details of your use of force in the first report you submitted to Sergeant Jensen. You justified your negligence by stating that the pain from your finger injury was the reason you were not forthcoming in reporting the level-IV force to Sergeant Jensen.

During the Internal Affairs interview and reenactment demonstration of how inmate [redacted] grabbed your leg, you changed your story repeatedly when you realized there was no way for [redacted] to maintain a grasp on your leg and pull the leg upward to bite you.

You documented and testified that inmate [redacted] grabbed your left leg. You, fearing inmate [redacted] was going to bite, kicked inmate [redacted] in the head. You stated you were "tapped out" by responding officers and your leg was then freed from [redacted] grasp. You also denied Sergeant Jensen spoke to you, following the incident, to ascertain how [redacted] sustained his injuries. Witness reports and testimony support you made less than truthful statements.

Sergeant Owens and Sergeant Brown presented both criminal cases ([redacted] #13-277-000IJ and Tri 14-008-0118J) to the District Attorney's Office. The DA decided not to file the criminal complaint against [redacted] because of your use of force and the inconsistencies surrounding your actions.

The evidence indicates you committed brutality against an inmate, falsified information, failed to be forthcoming and obstructed an investigation. Your conduct has brought discredit to the County of Santa Clara, to the Sheriff's Office and to the law-enforcement profession.

You purposefully violated County Merit System Rules and Departmental Policies. You are fully aware that your inappropriate actions could result in liability to yourself, liability to the Sheriff's Office, and to the County.

The Basis for the Recommendation:

On October 3, 2013, you were assigned to the fifth floor, inmate housing unit module 5C. Deputy Bragg was assigned to the fifth floor module 5A. Inmate [redacted] was being processed for housing in 5A by Deputy Bragg. As Deputy Bragg was searching Inmate [redacted] property, Inmate [redacted] became upset, argumentative and assaultive towards Deputy Bragg. Deputy Bragg used his radio and put out a call for assistance. You responded and were the first officer on the scene. When you arrived, Inmate [redacted] was on the floor, face-down, with Deputy Bragg on top of him. Deputy Bragg was struggling as was he attempting to control Inmate [redacted]. You responded by repeatedly kicking and punching inmate [redacted] in the head. The injuries that Inmate [redacted] received were a direct result of your actions. You reported the

reason that you punched and kicked Inmate _____ in the head was because Inmate _____ had grabbed your leg and was attempting to pull it towards him.

The administrative investigation established that it would have been virtually impossible for Inmate _____ to grab your legs as you reported, therefore, rendering your written and verbal account of the incident untrue. Although evidence supports that force was necessary to control Inmate _____ the level of force you used was excessive and unnecessary. In your post incident verbal and written account of the incident, you were untruthful and not forthcoming when reporting the circumstances and your actions during the incident, as department policy requires. During your administrative investigative interview, you were untruthful, evasive, and you repeatedly changed your account of the incident and your reasons for taking such actions.

When hired, you swore an oath in which you stated you would our safely discharge their duties without purpose of evasion. Your actions have failed to support that oath. You have purposely omitted, lied and concealed important information while reporting the incident and your actions that the department had a right to know. Your actions obstructed and compromised a criminal investigation. Your actions violated the public trust, your responsibilities as a Correctional Deputy, County Merit System Rules and Department of Correction policies. Your decisions and actions have significantly compromised, beyond repair, your character and question your ability to honestly and ethically execute the duties of a Correctional Deputy.

From the time that the Department became aware of your actions to present, you have shown no remorse or accepted responsibility for your actions.

The administrative investigation established clear and convincing evidence that you used excessive and unnecessary force against an inmate, intentionally falsified information, failed to be forthcoming and obstructed an investigation. Based on your training, knowledge and experience you should have known that the actions you took against Inmate _____ were unlawful and violated Department and County policy. It is reasonable to believe that your actions and untruthfulness were self-serving and meant to mask and/or mitigate your accountability and any possible administrative discipline for your criminal act and violations of department and County policy. Your conduct and untruthfulness with regards to accurately reporting the incident was dishonest, unethical and violated your oath as a law-enforcement officer, department and County policy and has brought discredit to the County of Santa Clara, the Sheriff's Office and to the law-enforcement profession.

Based upon the foregoing, I am recommending that you be TERMINATED from your position as a Correctional Deputy with the Santa Clara County Department of Correction/Office of the Sheriff- Custody Bureau effective March 11, 2015.

The above-mentioned discipline is a recommendation. Therefore, the TERMINATION date listed is tentative. Any actual discipline to be served will be listed on a Final Disciplinary Action Letter that will be served on you.

History/Past Discipline:

None

This concludes the relevant portion of Sheriff Smith's March 11, 2015 Recommended Disciplinary Action Letter.

Administrative Hearing:

On April 14, 2015 at 9:00 a.m., you appeared for your administrative hearing with your [redacted]. I conducted the hearing at the Sheriff's Office Headquarters Facility located at 55 West Younger Avenue in San Jose. I served as the hearing officer and Captain Kevin Heilman was present.

[redacted] began by speaking on your behalf stating that you took this situation to be extremely serious, that you have worked for the department for five years and have been a dedicated employee that has never received a write up during that time. She explained that you realize the charges of excessive force and dishonesty are very serious allegations.

[redacted] stated that she believed the department committed several POBOR violations associated with your case. She began by expressing her concern that she had not received all investigative materials. The Skelly packet that was originally provided contained documents, in her opinion, that were excessively redacted. She was concerned that the actions of the investigating officers and county counsel may have been intentional to hide exculpatory and/or mitigating information, which diminished your ability to adequately defend yourself against the charges. She was specifically concerned about the redacted testimony of a second involved party that she believed provided exculpatory information, which would exonerate you of the charges.

She acknowledged that when she contacted the department with her concerns, she was provided a revised set of documents but was not confident that she was in possession of all required information. She also acknowledged that the perceived missing information may be contained in other documents within the Skelly packet but could not be sure.

[redacted] stated that she understood the confidentiality issues associated with another individual's internal affairs investigation and report, but believed county counsel's "dumbing down" of the situation may have been purposeful.

According to [redacted] Sergeant Bice intentionally left out exculpatory evidence in her statement of finding report. She said that Deputy Bragg stated in his I/A interview that you saved his life. He also stated that both you and Deputy Murillo were his knights in shining armor. Deputy Bragg stated that he was thankful for the responding deputies and he did not believe your actions were excessive.

[redacted] stated that the team sergeant violated your POBOR rights as he processed the incident and managed the incident reports. She said that during the internal affairs investigation Sergeant James Jensen admitted to confronting you and the other two deputies involved in the incident regarding what he believed to be inconsistencies in both your report and their reports. Sgt. Jensen advised each of you that if you were found lying, you could lose your jobs and no one else would pay your mortgages. She stated that she believed Sgt. Jensen had determined that the reports were untrue and could result in discipline. She stated that Sgt. Jensen violated your rights by compelling your statement, both verbal and written without providing you with

representation after he had concluded you had violated department policy. Such action by a supervisor is a violation of POBOR and any information gained by such acts were not admissible.

stated that the investigative methods used in this case were highly inappropriate. She said that she believed that Sergeant Bice had an agenda entering into the interview, that she did not approach the interviews from a fact-finding approach, but instead she used an aggressive adversarial approach. stated that Sergeant Bice used deceptive tactics during all the interviews including witness interviews. She also believed that both Sergeant Bice and Sergeant Sepulveda badgered and browbeat both subject deputies and witnesses.

stated that the reenactments and the hypothetical use of force questions were poorly designed and were not a realistic representation of the actual event. She said the use of force situations used in Deputy Murillo's interview did not mirror the circumstances present with Inmate incident. Sgt. Bice asked Deputy Murillo if he would have kicked the inmate under those circumstances. She then used his response, "I probably would not have done that," to demonstrate that the force used by Deputy Tri was unnecessary and excessive.

stated that the length of time before Internal Affairs interviewed you was seven months and that was excessive in light of the fact that significant emphasis was placed on your inability to precisely recall details related to the incident.

stated I/A investigators used Deputy Bragg to establish that you lied regarding the incident. stated that Deputy Bragg was also accused of lying, which resulted in a sustained allegation for this incident. stated she believed I (the Undersheriff) had set aside Deputy Bragg's discipline because of problems with the case.

stated that although you are very intelligent, English is your second language and as a result, you had problems understanding and responding to the investigative questions, this was exacerbated by the investigators aggressive and accusatory interview techniques. She believed your lack of communication skills might have been perceived as deception by the investigators.

stated the reliability of the incident reports was questionable since Sergeant Jensen kicked back the involved deputy reports numerous times for corrections and modifications. She stated that for all intent and purpose, Sgt. Jensen assisted in creating the reports he later viewed as fraudulent. stated that Deputy Bragg texted you after the incident and in one text he stated that he (Bragg) wrote his report the way the Sergeant told him too. In addition, you and other deputies completed reports under duress since you and the others were held to complete the reports prior to being allowed to seek medical care for injuries.

stated that it was the department's practice to allow deputies to consult with each other and freely use the information gained in each other's reports. She believed this was supported by Deputy Bragg's testimony during his internal affair investigation when asked, "why the deputies compare reports with other deputies?" He replied that's the way we do it, how we were trained. stated that you can't be held accountable for what someone else writes in their report.

She stated the incident you and the other deputies were involved in was serious fight. When you arrived on scene, you observed Deputy Bragg struggling with an inmate but he was not winning the fight. When you engaged to assist Deputy Bragg, the inmate grabbed your leg and you feared that you could be seriously injured and as a reflex, you kicked the inmate in an attempt to gain release of your leg. Your kicks were inconsequential and the inmate continued to fight with the deputies. You and the other two deputies involved in the fight were all injured.

stated that Inmate was still fighting as you arrived on scene; proof that the fight was still going on, which only supports her opinion that the staff accounts of the incident are the only accounts that can be trusted, and those testimonies support your account.

stated that Inmate while face down on the floor reached up towards your face while he was standing. Bragg could not see you so he cannot testify to what happened. I/A investigators browbeat Bragg, trying to get him to change his story and incriminate you.

pointed out that Deputy Murillo testified that at some point during the struggle he lost control of inmate arm but did not see Inmate grab you. However, Deputy Murillo did see you kick inmate in the head area multiple times.

stated that although Correctional deputies receive academy and skill retention training, they are not street cops and do not assess risk on a daily basis like street enforcement officers. stated the alarm came out from Bragg's housing module. Your concern heightened because Deputy Bragg is a big man and can handle himself. When you entered the module, the situation was out of control and you responded in a manner consistent with the reasonable officer standard. This was supported by Deputy Bragg's statement made during his administrative investigation interview, when he states he would do the same thing again to resolve the incident.

According to you were trained in the use of force with the understanding that deputies don't lose and don't fight fair, that a deputy repels and defeats force by using more force than the adversary, not the same force. Therefore, since Level 3 force was not working and O/C spray, a Kubaton, or Yawara Stick was not practical under the circumstances, Level 4 force was reasonable and other options were not. She said that you had a split second to make a decision with limited information and made a reasonable decision under the circumstances. In her opinion, the incident should have been at most a learning issue resolved through remedial training.

then addressed the issue of dishonesty stating that your initial report contained no discrepancies and you never changed your account of the incident. This was supported by witness accounts. She said there is no evidence that you were dishonest, no video and no credible witness to prove you were dishonest. She stated that the department did not establish the inmate witnesses as credible and failed to properly address discrepancies in their accounts of the incident, i.e., the inmate was in handcuffs at the time you kicked him. She said that if the inmates' accounts of the incident were true then each involved deputy should be fired and not just you.

stated, in general, studies have established that all witnesses see the same incident differently for various reasons; tunnel vision, stress from a traumatic event, the mind cannot

focus, spatial perception varies from person to person, and fear. All three deputies reported tunnel vision, which could account for their varied recollection and not dishonesty.

You stated that you have worked hard for the department; you have good attendance, a good work ethic and love doing a job that serves the public. You said your job has had a positive impact on your life. You shared that your mother is ill, your brother is disabled and since you are the oldest sibling, it is your responsibility to financially support the family.

To demonstrate your dedication to the department you stated that on the night of the incident, you actually were on vacation, but you had just broke up with your girlfriend so when you got the call to come into work on overtime you agreed thinking that work would take your mind off of her.

You stated that when the alarm went out and you realized that it was Deputy Bragg that needed help, you realized it was unusual, and must be important for Bragg to sound an alarm and you were terrified. You said that the inmate grabbed you before you could do anything and you kicked the inmate because you feared for your safety. You kicked the inmate to protect yourself; it was reactive not done intentionally to injure the inmate.

You stated that the Sergeant yelled at you and belittled you after the incident. Since the incident, you have had many sleepless nights crying and wondering why you are being punished for helping other deputies.

strongly recommended that I read the transcripts and listen to all of the interviews to understand all of the exculpatory information she believed was left out of the investigation.

stated the Department cannot prove dishonesty and the department's case against you will not withstand scrutiny because of the manner the case was investigated and the procedural violations. She requested that the sustained violations and the recommended discipline be set aside.

Lastly, stated that she would reserve any further objections regarding these issues until a later time based on the department's final decision.

I asked you to recall your use of force training concerning strikes to the head. You responded, whatever is necessary at the time. I asked if you remembered anything about avoiding strikes to the head. You responded, "No."

Administrative Hearing Officer's Decision:

With regards to concerns about POBOR violations, Sergeant Jensen never stated, nor did provide any substantiating facts, that he determined you had violated policy triggering his administrative investigation. Furthermore, there are no facts to substantiate the allegation that Sergeant Jensen chose to become the surreptitious architect of your report, when he told you to rewrite it. Instead, Sergeant Jensen was acting as a conscientious supervisor, with an attention to detail, when he proofread your report.

stated, your account of this incident never wavered or changed in the basic content of the information you provided from the initial reporting, I/A interview to the Skelly Hearing. The information you gave during your I/A interview was lawfully obtained and may be used in my deliberations. Based on [redacted] statement, the original report accurately represented your account of the incident.

[redacted] raised concerns with how the I/A investigation was conducted. I have reviewed the materials and I believe the investigators conducted themselves appropriately. The investigators were tasked with a difficult case involving multiple deputies and allegations of excessive force and dishonesty. Based on the circumstances the investigators conducted the investigation within acceptable perimeters and did not violate your POBOR rights.

You have admitted during the IA interview and Skelly Hearing that you kicked and punched Inmate [redacted] in the head multiple times. I have to consider whether such use of force was justified. Your reasoning for using this force is paramount in establishing justification for your actions. To determine whether your use of force was excessive or unnecessary, careful consideration must be applied to your reasoning and comparison to the actual circumstances present. You were required to evaluate those circumstances and apply only the level of force necessary to overcome the resistance and control the subject.

When you arrived on scene, Deputy Bragg was on top of Inmate [redacted]. Deputy Bragg is significantly larger than Inmate [redacted]. Inmate [redacted] was positioned face down and struggling on the floor. Deputy Bragg was in control of [redacted] left arm. Deputy Murillo had just arrived on scene at approximately the same time as you and attempted to secure Inmate [redacted] right arm. You chose to engage by positioning yourself in front of [redacted] head, which was the area of least amount of threat. You should have attempted to restrict [redacted] ability to struggle by controlling his ankles and/or feet.

Based on the facts established by the investigation, when you arrived on the scene the situation required the control and restraint of a struggling inmate that had no clear advantage over the involved deputy or any of the responding deputies; this was a standard scene that deputies are trained to recognize and resolve on a routine basis. It is important to emphasize that a reasonable officer would have determined the inmate was already partially controlled and at a disadvantage. Moreover, there have been similar use of force situations that have occurred in which staff did not kick or punch the inmate in the head in order to gain control. Instead of providing assistance to control the inmate, you chose to focus on a part of the inmate's body that posed the least threat. Additionally, you kicked the inmate in the head striking him with your boot multiple times and then punched him in the head with a closed fist, under the premise that you feared for your safety.

This was not a "fight" situation in which the inmate was uncontrolled and in a position to significantly injure deputies or others. At the time you arrived on the scene, although unsecured, it was not reasonable to believe that the inmate posed the same threat as an inmate who was engaged in an active battle with the ability to inflict harm on you or others to the level that would require you to use Level 4 force. Based on the statements you made justifying your actions your conclusions demonstrated poor judgment on your part. In light of officer response time, officer training, and other use of force options that were available to you but not utilized, striking the

inmate in the head (Level 4 force) was not justified and excessive under the circumstances. The inmate sustained injuries that required medical treatment. Although Inmate [redacted] thought his head injury occurred when he hit his head on the doorframe and [redacted] pointed out that Deputy Bragg thought Inmate [redacted] injuries were the result of Deputy Bragg taking Inmate [redacted] down and hitting his head on the door jam or floor, Inmate [redacted] injuries were in fact consistent with your conduct and the force you used against this inmate.. Notwithstanding Deputy Bragg's belief that you and Deputy Murillo rescued him, you have to justify your actions and you alone are responsible for the level of force you used and whether it was appropriate in this instance.

During the Skelly hearing [redacted] argued that you were not dishonest and she explained that Inmate [redacted] assault on Deputy Bragg was a traumatic experience for several of the deputies which may have contributed to the tension during their I/A interview. I recognize that when fighting an inmate, people focus on different areas of the struggle and the struggle and threat from the inmate may affect deputies differently. Based on my review of the documents/reports and the statements made to I/A, I agree with [redacted] that your recollection of the incident was consistent with the recollections of the other involved deputies. As such, I am changing the finding for: Merit System Rule A25-301(b)(2), D.O.C. Policy 3.31.IV.J.9.a, D.O.C. Policy 3.31.IV.J.14.a, and D.O.C. Policy 9.27.I.B.1, from sustained to **NOT-SUSTAINED**. I have factored this change into my final decision below.

I believe the preponderance of the evidence established that your account of the incident and your reasons for kicking and punching Inmate [redacted] in the head was not within the Department's policies. Your actions resulted in excessive and unnecessary force used on an inmate under your supervision, custody and control. Therefore, I am upholding the recommendation of your **TERMINATION** from your position as a Correctional Deputy with the Santa Clara County Department of Correction / Office of the Sheriff – Custody Bureau **effective August 16, 2015**.

As a reminder, the Santa Clara County's Employee Assistance Program (EAP) offers a wide variety of personal assistance. All employees are encouraged to take advantage of this free benefit. You can reach them at (408) 241-7772.

- 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) (4): "Brutality in the performance of duties." 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 Santa Clara County Merit System Rule A25-301 (b) (2): "Guilty of immoral conduct or criminal act." NOT SUSTAINED
- V. Violation of D.O.C. Policy 3.31.ILB: Employee Relationships with Inmates: "Brutality will not be tolerated and is cause for dismissal and possible criminal charges." SUSTAINED
- VI. Violation of D.O.C. Policy 3.31.IV.J.1.a: Employee Conduct/Conformance to Law: "Employees are expected to adhere to Department Policies and Procedures, County Personnel Regulations, County Administrative Procedures, Executive Orders, County Merit System Rules, and all laws applicable to the general public." SUSTAINED
- VII. Violation of D.O.C. Policy 3.31.IV.J.3.a: Employee Conduct/Use of Force: "Employees shall only use force in accordance with the law and the Department Policy 9.01, Use of Force and Restraints." SUSTAINED
- VIII. Violation of D.O.C. Policy 3.31.IV.J.9.a: Employee Conduct/Conduct Unbecoming: "An employee shall not commit any act which constitutes conduct unbecoming a Department employee. Conduct unbecoming an employee includes, but is not limited to, any criminal or dishonest act or an act of moral turpitude." NOT SUSTAINED
- IX. Violation of D.O.C. Policy 3.31.IV.J.14.a: Employee Conduct/Untruthful Statements: "Employees shall not make less than truthful statements, either verbal or written." NOT SUSTAINED
- X. Violation of D.O.C. Policy 9.01.I.A.I: Use of Force: "In the performance of their duties, badge staff is authorized to use that level of force, which is necessary and objectively reasonable, under the circumstances." SUSTAINED
- XI. Violation of D.O.C. Policy 9.27.I.B.I: Reporting of Incidents: "All staff involved in a reportable incident shall submit a written Incident Report describing the event in detail to the supervisor." NOT SUSTAINED

Right to Appeal:

Should you be dissatisfied with the final action, the County of Santa Clara Charter, Section 708(c) gives you the right to appeal the decision. You may appeal the final action within ten (10) working days of receipt of the final action to the Personnel Board pursuant to County of Santa Clara Charter, Section 708 (c):

"The employee shall have ten working days from receipt of such written notice within which to file an answer to the statement of charges should the employee desire to do so, and the filing of such an answer shall be deemed to be an automatic request for a hearing unless such employee otherwise indicates. The answer to such charges shall be filed with the Personnel Board."

Should you choose to appeal the decision you must send a written notice to:

William Anderson, Personnel Board
c/o Clerk of the Board
70 West Hedding Street, 10th Floor East Wing
San Jose, CA 95110

Alternatively, should you voluntarily waive your right to appeal any disciplinary action to the Personnel Board, by filing for arbitration of your appeal pursuant to Section 24 Grievance Procedure, of the Memorandum of Understanding between the County of Santa Clara and the Santa Clara County Correctional Peace Officers' Association, Inc. to appeal the disciplinary action to arbitration by submitting a request in writing to the Office of Labor Relations within fifteen (15) working days from receipt of the Final Notice (Skelly Decision) of disciplinary action. Should you choose to do so, you must send the written request to:

Mitchell Buellesbach
Employee Services Agency, Labor Relations
70 West Hedding Street, 8th Floor East Wing
San Jose, CA 95110

You may seek either a hearing before the Personnel Board or an arbitration hearing, but not both.

Filing a request for an arbitration hearing, under Section 24 shall be deemed an automatic waiver of the employee's right to appeal to Personnel Board.

You have the right to be represented in your appeal by your union or another representative of your choice. You can contact your Union at::

Santa Clara County Correctional Peace Officers' Association (CPOA)
1930 O'Toole Way
San Jose, CA 95131
(408) 526-0606

Sincerely,



John Hirokawa, Undersheriff
Administrative Hearing Officer

c: Laurie Smith, Sheriff
Captain Michael Doty, Personnel Unit
Mitchell Buellesbach, Labor Relations Representative
Personnel, ESA