

# OFFICER-INVOLVED FATAL INCIDENT REPORT



## FOR PUBLIC RELEASE

Employer Agency: Santa Rosa Police Department

Lead Agency: Petaluma Police Department

Decedent: Nathaniel Hankton

Date of Incident: September 6, 2017

Report Prepared by:

SONOMA COUNTY DISTRICT ATTORNEY

# Table of Contents

<b>I. INTRODUCTION</b> .....	<b>1</b>
<b>II. SCOPE OF REVIEW</b> .....	<b>1</b>
<b>III. STANDARD OF REVIEW</b> .....	<b>2</b>
<b>IV. SUMMARY OF FACTS</b> .....	<b>3</b>
A. DECEDENT’S BACKGROUND.....	3
B. HANKTON’S CRIMINAL HISTORY .....	3
C. SUMMARY OF INFORMATION TO DISPATCH AND OFFICERS ON SEPTEMBER 2017.....	3
D. INVOLVED PARTIES’ STATEMENTS OF SEPTEMBER 7, 2017.....	3
Summary of Statement of John Doe #1 .....	3
Summary of Statement of John Doe #2 .....	4
Summary of Statement of John Doe #3 .....	4
Summary of Statement of Traci Vandeventer .....	4
E. SUMMARY OF LAW ENFORCEMENT STATEMENTS .....	5
Summary Of Statement Of Officer Christopher O’Neil .....	5
Summary Of Statement Of Officer Steve Dineen.....	7
F. SUMMARY OF FIRE AND MEDICAL PERSONNEL STATEMENTS .....	9
Summary Of Statement Of Captain Mike Siegel, Firefighter.....	9
Summary Of Statement Of Paul Lowenthal, Firefighter .....	9
Summary Of Statement Of Deborah Rath, AMR-Sonoma Life Support Paramedic .....	10
Summary Of Statement Of Erik Melligan, AMR Emergency Medical Technician (EMT).....	10
Summary Of Statement Of Mark Pedroia, Retired Firefighter .....	11
I. AUTOPSY AND CAUSE OF DEATH .....	11
<b>V. STATEMENT OF THE LAW</b> .....	<b>12</b>
A. THE RIGHTS AND DUTIES OF A PEACE OFFICER WHEN EFFECTING A DETENTION OR AN ARREST.....	12
B. DISCUSSION OF THE LAW AND OF THE EVIDENCE .....	14
<b>VI. CONCLUSION</b> .....	<b>15</b>

## **I. INTRODUCTION**

On September 6, 2017, Nathaniel Hankton, 54, became unresponsive while sitting in the patrol vehicle of Santa Rosa Police Officer Christopher O’Neil, soon after being taken into custody for a suspected commercial burglary. Mr. Hankton was cooperative with law enforcement when initially contacted and continued to cooperate upon being taken into custody and being placed in the back seat of the patrol vehicle. Mr. Hankton was taken to Santa Rosa Memorial where he died. The cause of death was autonomic hyperarousal state and the mechanism of death is cardiac arrhythmia and/or hypothermia. Mr. Hankton was taken into custody at 555 South E Street, in Santa Rosa.

Following Mr. Hankton’s death, Santa Rosa Police Department invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol (“protocol”). The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol an outside law enforcement agency is designated to investigate officer-involved fatalities.

In this case members of the Petaluma Police Department assumed responsibility for the investigation of the incident. Members of the Sonoma County District Attorney’s Office participated in the investigation in a supporting role, in accordance with the protocol. Under the protocol the role of the Sonoma County District Attorney’s Office is to review the investigation to determine if there exists any criminal liability on the part of involved parties, including the law enforcement employee(s); to provide assistance to the investigating agency regarding legal issues; to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the law.

Once the investigation is complete the District Attorney is required by the protocol to complete a thorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is to be submitted to the foreperson of the Sonoma County Grand Jury.

This report includes a summary of facts surrounding the death of Nathaniel Hankton, a statement of the applicable law, legal analysis and conclusions. This report does not and cannot include all of the information contained in the hundreds of pages of reports, video and audio tapes, transcripts, photographs and diagrams reviewed in its preparation. However, every effort has been made to include in this report a summary of all of the relevant, material evidence gathered by the Petaluma Police Department over the course of its extensive investigation of this death.

## **II. SCOPE OF REVIEW**

The purpose of the District Attorney's investigation and review of any critical incident is to establish the presence or absence of criminal liability on the part of any involved party, including law enforcement employee(s).

The specific question to be resolved in this case is to establish the presence or absence of any criminal liability on the part of any involved parties, including law enforcement personnel. A summary of the applicable law is included here to assist the reader in understanding this report and its conclusions.

The District Attorney does not examine issues such as compliance with the policies and procedures of any law enforcement agency, police training, or issues involving civil liability. This report should not be interpreted as expressing an opinion on those matters.

### **III. STANDARD OF REVIEW**

The District Attorney is the chief law enforcement official of Sonoma County. The District Attorney is responsible for deciding what cases to prosecute and has the responsibility to review and approve the filing of all criminal cases in the county. The District Attorney's discretion in this regard is well defined. *The California Rules of Professional Conduct, Rule 5-110*, provides that prosecutors shall not institute criminal charges when the prosecutor knows or should know that the charges are not supported by probable cause. Additional restraint on the charging authority is found in the *Uniform Crime Charging Standards*<sup>1</sup> a publication of the California District Attorneys Association. These standards provide the following guidelines:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

In criminal cases the District Attorney has the burden of proving guilt "beyond a reasonable doubt<sup>2</sup>," the highest burden of proof found in the law. A jury of twelve must vote unanimously for guilt before a conviction may be entered. When determining whether criminal charges are appropriate the District Attorney must consider the all of the evidence, including evidence that supports an affirmative defense, such as a claim of "self-defense" or "defense of others." Criminal charges are warranted only when the District Attorney determines that the evidence of guilt is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective jury fact finder after hearing all the admissible evidence, including evidence of such an affirmative defense.

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<sup>1</sup> California District Attorneys Association, *Uniform Crime Charging Standards* (1996) p. 12.

<sup>2</sup>Judicial Council of California Criminal Jury Instructions (2017) (CALCRIM) No. 103.

## **IV. SUMMARY OF FACTS**

### **A. DECEDENT'S BACKGROUND**

Nathaniel Felipe Hankton was born on November 8, 1962 in Long Beach, CA. He had two adult children, a sister and a brother. Mr. Hankton had never been married. Mr. Hankton was transient at the time of his death and stayed in the Santa Rosa area.

### **B. HANKTON'S CRIMINAL HISTORY**

Mr. Hankton's criminal history dated back to June of 1993 and had been booked into the Sonoma County Jail a total of 101 times. Since August of 1997, Mr. Hankton had been required to register as a sexual offender pursuant to *California Penal Code* section 290, as a result of a misdemeanor conviction of *Penal Code* section 243.4(a)(sexual battery). Mr. Hankton had been convicted of violating PC290, for failing to register as a sex offender on nine occasions, three of which were felony convictions. As a result of those convictions, Mr. Hankton was sentenced to state prison in 2002, 2009 and 2014.

In addition, Mr. Hankton had five theft convictions and had been arrested for public intoxication on nine separate incidents and arrested for possession of drug paraphernalia on one occasion. In September of 2016, Mr. Hankton was convicted of Penal Code section 245(c)(assault upon a police officer).

At the time of his death, Mr. Hankton was on state parole and required to wear a G.P.S. monitor on his ankle.

### **C. SUMMARY OF INFORMATION TO DISPATCH AND OFFICERS ON SEPTEMBER 2017.**

On Thursday, September 6, 2017, at approximately 14:58, the Santa Rosa Police Department received a call about a male subject who was punching the glass door of a building, located at the intersection of South E Street and Maple Avenue, in Santa Rosa. The address of the building is 555 South E Street, and occupied by the Santa Rosa Fire Department's Union as their union hall.

### **D. INVOLVED PARTIES' STATEMENTS OF SEPTEMBER 7, 2017**

#### **Summary of Statement of John Doe #1**

John Doe #1 stated on September 6, 2017 at 1455 hours, he was driving on South E Street and was stopped at the intersection of Maple Avenue waiting for the traffic light to change. He noticed a subject standing on the property of 555 South E street and ultimately walk up the steps of the building located at that address. He noticed the subject pacing back and forth at times and staring at vehicles and their drivers as they passed the location.

John Doe #1 described the subject as being male, with a dark complexion, who was possibly Native American or Hispanic. John Doe #1 also stated the subject had dark colored hair, and possibly slicked back into pony tail. The subject wore blue jean and a white colored tee shirt. John Doe #1 said the subject looked disheveled, appeared homeless, and had an angry demeanor. John Doe #1 saw the subject punch the glass window with his hand several times and kick the front glass door to the business, but did not see the window break. After the light turned green, John Doe #1 proceeded down the street, pulled over and called 911 to report what he observed.

### **Summary of Statement of John Doe #2**

John Doe #2 stated on September 6, 2017, at 1530 hours, he was driving on South E Street approaching Maple Avenue when he saw a subject standing in front of the property at 555 South E Street. This subject appeared to be under the influence of drugs or alcohol, based on the fact he was stumbling and appeared to have difficulty maintaining his balance. The subject appeared to be talking to himself and at some point was holding a long stick in his hand. Also the subject had what appeared to be a beer bottle in his hand.

John Doe #2 saw this subject take a running start and kick one of the glass windows of the building, but did not see the subject break the window. He then saw the glass door to the building was broken and mini blinds that looked bent and twisted hanging out.

John Doe #2 described the subject as an adult male between the ages of 35 to 40, 5'8" to 5'10", with tattoos on his neck and upper chest. The subject appeared to be Native American.

### **Summary of Statement of John Doe #3**

John Doe #3 was a passenger in the vehicle of John Doe #2. John Doe #3 stated when they were traveling in the area of South E Street and Maple Avenue, he noticed a subject staggering and stumbling around near 555 South E Street. John Doe #3 said the subject was wearing a backpack and may have been holding a beer bottle. John Doe #3 also said it appeared the subject was carrying a stick or a pole. John Doe #3 described the subject as being a male, who was either Native American or Hispanic, with several tattoos on his neck and arms.

John Doe #3 saw the subject walk up to the window of the building at 555 South E Street, and kick the window, however this did not cause the window to break. The subject then walked to the side of the building on Maple Avenue and appeared to be staggering and stumbling. The subject had a blank stare and appeared to be under the influence. John Doe #3 saw broken glass from either a window or door, but did not see the subject break out the glass.

### **Summary of Statement of Traci Vandeventer**

Tracy Vandeventer is an employee of the City of Santa Rosa, as a Police Technician and had contact with Mr. Hankton on the morning and afternoon of September 6, 2017.

Vandeventer stated that Mr. Hankton entered the lobby of the Santa Rosa Police Department at approximately 1000 hours to complete his registration pursuant to *Penal Code* section 290. Mr. Hankton was also there to obtain his backpack which had been taken into custody when he was arrested on March 5, 2017. After completing the registration process, Mr. Hankton left the station at approximately 1200 hours.

Vandeventer stated Mr. Hankton did not appear to be under any distress and was acting normal. While waiting in the lobby, Mr. Hankton acted normal and did not attract any attention to himself. At the time he signed his registration documents, Vandeventer observed Mr. Hankton's signature to be shaky and that of an elderly person.

## **E. SUMMARY OF LAW ENFORCEMENT STATEMENTS**

### **Summary Of Statement Of Officer Christopher O'Neil**

Officer O'Neil was interviewed on September 8, 2017 at 11:35 a.m. by Detective Pat Gerke of the Petaluma Police Department. The interview was conducted at the Hilton Sonoma Wine Country Inn, located at 3555 Round Barn Boulevard in Santa Rosa. Also present during the interview was Officer O'Neil's legal counsel, attorney Vance Piggot. Officer O'Neil provided a voluntary statement about what occurred on September 6, 2017, involving the arrest of Nathaniel Hankton.

Officer O'Neil stated he has been a police officer with the Santa Rosa Police Department for ten years and his current assignment was patrol, with the Lincoln Team. His work hours are Monday through Thursday from 12:00 to 22:00 hours. On September 6, 2017, Officer O'Neil was wearing a standard police uniform and driving a marked patrol vehicle. Prior to the beginning of his shift, Officer O'Neil searched the back of his patrol vehicle for any items that may have been inadvertently left inside and did not locate any such items. He also stated that no one had been placed in his patrol vehicle prior to the arrest of Mr. Hankton.

Officer O'Neil stated on September 6, 2017, at approximately 1500 hours, he and Officer Steve Dineen were dispatched to the area of south E Street and Maple Street to investigate a person who was punching a glass windows of a building. The suspect was described as a Hispanic male adult who was wearing a black hooded sweatshirt. Officer O'Neil arrived to the location after Officer Dineen. While responding to the location, he heard Officer Dineen state, over the police radio, that he was out with the suspect, there was a window to the business broken out and the suspect was agitated. Officer Dineen requested two additional officers respond to his location.

Officer O'Neil entered the parking lot and parked on the west side of the building. Upon arriving, Officer O'Neil saw Officer Dineen standing on the sidewalk and Mr. Hankton sitting on the steps, which lead to the south door of the building at 555 South E Street. Next, Officer O'Neil walked up to Officer Dineen and Mr. Hankton and noticed the door behind Mr. Hankton had been damaged. The glass, which makes up the center of the door, had been broken, and there was glass in front of the door, near Mr. Hankton. Officer Dineen informed O'Neil that a stick was near Mr. Hankton, and could be used as a weapon. O'Neil waived to Mr. Hankton in order to get a sense of his demeanor, to which Hankton responded with a nod of his head. Officer O'Neil noticed Mr.

Hankton was chewing gum rapidly. After further questioning O'Neil believed Mr. Hankton was chewing gum, but could not be positive. Officer O'Neil did not notice any odor of alcohol coming from Mr. Hankton, but believed Mr. Hankton may be been under the influence of a controlled substance based on his chewing and display of aggression of breaking the windows.

Officer O'Neil indicated that after he arrived, he believed Mr. Hankton posed a threat to him. This belief was based on the initial call about someone punching windows which shows aggression in addition to Officer Dineen's request for two additional officers to assist.

Officer O'Neil and Officer Dineen approached Mr. Hankton and placed handcuffs on him. While being handcuffed, Mr. Hankton tensed up when they first took control of him, but then allowed the handcuffs to be applied. Officer O'Neil stated he and Officer Dineen were able to control Mr. Hankton using defensive tactic control holds and only minor force was needed. Officer Dineen and Officer O'Neil walked Mr. Hankton to Officer O'Neil's patrol vehicle and placed him in the back seat. While walking with Mr. Hankton, Officer O'Neil asked him some questions about what occurred. Mr. Hankton said he had been chased and that is the reason he had broken the window to the door and that this person also went into the building.

Though Officer O'Neil did not believe Mr. Hankton's story, he searched the building to ensure there was nobody else present, while Officer Dineen remained with Mr. Hankton. During his investigation, Officer O'Neil located a Geiger Counter on the ground near the front door of the building; the same door with the broken window. The Geiger Counter was located on the same steps Hankton was sitting when first contact by Officer Dineen, between the door and Mr. Hankton. The Geiger Counter had a metal clasp that was open and it appeared someone had attempted to open the body of the counter. In addition to the Geiger Counter, Officer O'Neil found a watch outside the building, near where Mr. Hankton was contacted. After speaking with fire department personnel, Mark Pedroia and Paul Lowenthal, who responded to help secure the building, it was determined the Geiger Counter was valued at \$1000.00. According the Pedroia and Lowenthal, the watch came from inside the building. The cost to repair the door was estimated to be approximately \$450.

While Mr. Hankton was in the patrol vehicle, Officer O'Neil contacted dispatch to check whether Hankton had any warrants, was on parole, or was sex registrant. Officer O'Neil also determined Mr. Hankton's parole officer was Russel Gilbert and contacted Mr. Gilbert to advise him of the circumstances. A parole hold was placed on Mr. Hankton.

O'Neil contacted Mr. Hankton again and provided him with his Miranda advisement, to which Mr. Hankton indicated he understood. Mr. Hankton stated he broke the window with hands and his feet, but denied any drug use.

O'Neil than closed the door and continued with his investigation, but came back a few times within the next twenty to thirty minutes to fill out paper work while seated in the patrol vehicle. Half of the patrol vehicle was parked in the shade and it was eighty degrees outside. Officer O'Neil wore a long sleeve shirt during his shift. It is about after this twenty to thirty minutes when Officer O'Neil asked Mr. Hankton if he would like the air condition turned on, to which Hankton



responded in the affirmative. Officer O'Neil then turned the vehicle on and turned on the air conditioner.

Officer Dineen told Officer O'Neil that Mr. Hankton will need to be medically cleared prior to being taken to jail. At this time O'Neil checked on Mr. Hankton and observed that Mr. Hankton's mouth was pinched shut, similar to someone having a seizure, and closed really tight, and his eyes were open. Officer O'Neil asked the fire fighters on scene to look at Mr. Hankton. They asked that Mr. Hankton be removed from the vehicle.

When Officer O'Neil asked Mr. Hankton to exit the vehicle, he did not respond. O'Neil then grabbed Mr. Hankton's leg to assist him in exiting the vehicle and Mr. Hankton yelled, "Ow or Ouch." With the assistance of the fire personnel, O'Neil was able to pull Mr. Hankton out of the vehicle, but Mr. Hankton could not stand on his own, so he was placed in a seated position on the ground near the patrol vehicle.

The fire fighters evaluated Mr. Hankton and an ambulance with paramedics arrived shortly thereafter. Officer O'Neil advised the paramedics about Mr. Hankton's parole status and that he had just been arrested. Mr. Hankton was placed on the gurney and the handcuffs were replaced with soft restraints. Officer O'Neil finished his investigation and followed the ambulance code three to Santa Rosa Memorial. Upon arrival to the hospital, the paramedic informed Officer O'Neil that Mr. Hankton's heart rate was high. Mr. Hankton was treated at the hospital by medical personnel and ultimately passed away.

After Officer O'Neil arrived at the hospital he did not have any additional contact with Mr. Hankton while he was alive, but remained with him until he was relieved of his duties by Officer Alex Lund. Officer O'Neil then drove to the Santa Rosa Police Department where he was informed that the fatal incident protocol was being invoked.

### **Summary Of Statement Of Officer Steve Dineen**

On September 8, 2017, at approximately 1300 hours, Officer Steven Dineen was interviewed at the Hilton Sonoma Wine Country Inn in Santa Rosa. Also present during the interview was legal counsel for Officer Dineen, attorney Vance Piggot.

Officer Dineen has been a sworn peace officer for twenty-four years, with twelve of those years with the Santa Rosa Police Department. He is currently assigned to the Patrol Division, Lincoln Team, and works Monday through Thursday beginning at 1200 hours and ending at 2200 hours.

On September 6, 2017 Officer Dineen began his shift at 1200, and was in a standard uniform and drove a marked patrol vehicle. At 14:58 hours Officer Dineen was dispatched to 555 South E Street for the report of a suspicious person who was hitting and kicking glass windows. Upon arriving at that location, Officer Dineen exited his vehicle and first searched the north and west side of the building and did not locate and damage or persons. As he arrived to the south side of the building, Officer Dineen located Mr. Hankton.

Officer Dineen noticed the door on the south side of the building was primarily made of glass, and the glass was broken out. Mr. Hankton was sitting in front of the door and broken glass was near him. Mr. Hankton was holding a piece of metal and was talking to himself. Officer Dineen asked Mr. Hankton if he was ok and he continued to talk to himself, but also stated someone had chased him. After observing the damage done to the door, that Mr. Hankton was holding a piece of metal and that he appeared agitated, Officer Dineen requested two additional officers to assist. Officer Dineen noticed that next to Mr. Hankton was a shiny yellow object, which was later determined to be a Geiger Counter. Also, Mr. Hankton had a sock covering his left hand. Officer Dineen stated he felt Mr. Hankton posed a threat based on the violent incident with the door, the pole near him, and that he was not responding to his initial questions.

Officer Dineen waited for Officer O'Neil to arrive before he approached Mr. Hankton. When Officer O'Neil arrived, both O'Neil and Officer Dineen approached Mr. Hankton. While approaching Mr. Hankton, Officer Dineen noticed a beer bottle between Mr. Hankton's legs. Officer Dineen then took control of Hankton's left hand and removed the sock that Mr. Hankton had over it. Officer O'Neil placed handcuffs on Mr. Hankton. After the handcuffs were placed on Mr. Hankton, he continued to talk to himself, with words that did not make any sense, but sounded like noise.

Officers Dineen and O'Neil walked Mr. Hankton to Officer O'Neil's patrol vehicle. While searching Mr. Hankton, Officer Dineen located pieces of broken glass inside of Mr. Hankton's shirt, that appeared to be from the door to 555 South E. Street. Officer O'Neil told Mr. Hankton to sit in the patrol vehicle and he was able to follow his instructions. Mr. Hankton was unsteady as he entered the vehicle, continued talking to himself and appeared to be intoxicated.

Officer O'Neil assumed the primary officer position to conduct the investigation. Officer Dineen informed O'Neil that there were no trespassing signs posted, he believed Hankton was trespassing, the door had been destroyed, and that a yellow Geiger counter, which he believed was from inside the building, was located near Mr. Hankton.

Officer O'Neil entered the building and Dineen remained outside, in a position that allowed him to see Mr. Hankton in the patrol vehicle, and the damaged door of the building. Officer Dineen was the cover officer and his role was to monitor Mr. Hankton while the primary officer conducted the investigation.

Officer Dineen said the temperature outside was hot, about 80 degrees so he stood in the shade while he maintained his position as the cover officer. The windows of Officer O'Neil's patrol vehicle were up and he remembers the engine being on, but was uncertain for how long. Officer Dineen added that when he opened the door to the patrol vehicle to talk to Mr. Hankton, he did not notice a lot of heat coming from inside the vehicle. He noticed it was cool inside the vehicle, but not cold.

Officer Dineen located a representative for the Santa Rosa Fire Department, but was told it would take forty-five minutes for them to respond. While waiting outside, Santa Rosa Fire Department Truck One arrived on scene and Dineen informed them about what was believed to have occurred. About fifteen to twenty minutes had passed since Mr. Hankton had been placed in the back of the

vehicle when Officer Dineen opened the door to the patrol vehicle to have the firefighters from Truck One observe Mr. Hankton. Upon opening the door, Dineen noticed Mr. Hankton may have been suffering a seizure and asked him if that was happening. Mr. Hankton may have responded no, but Dineen continued to ask him more questions and he did not answer. Based on these observations, Dineen asked the fire fighters to evaluate Mr. Hankton.

The fire fighters treated Mr. Hankton and asked that he be removed from the vehicle. Officer O'Neil then arrived back at the vehicle and assisted in removing Mr. Hankton from the vehicle. It was difficult for them to remove Mr. Hankton from the vehicle. Once out of the vehicle, Mr. Hankton was unable to stand on his own, so he was placed in a seated position on the ground where he was evaluated by the fire fighters. An ambulance was then requested and Mr. Hankton was then transferred to Santa Rosa Memorial.

## **F. SUMMARY OF FIRE AND MEDICAL PERSONNEL STATEMENTS**

### **Summary Of Statement Of Captain Mike Siegel, Firefighter**

Captain Siegel has worked for the Santa Rosa Fire Department for twenty-two years and is also a paramedic. Captain Siegel has been a paramedic for twenty-one years. On September 6, 2017, he was working and was notified that there was a report of a vandalism at their union hall. Siegel and his crew responded to assist in securing the facility. Upon arriving, Siegel saw that Santa Rosa Police officers were present as well as an off duty fire personnel and that someone was in the back seat of the patrol vehicle.

Siegel looked inside the patrol vehicle and noticed Mr. Hankton may have been having a seizure, so he told one of the officers standing by the vehicle. Mr. Hankton was then removed from the vehicle and Siegel began evaluating Mr. Hankton. Mr. Hankton felt hot and the jacket he was wearing was removed. Siegel said it did not appear Mr. Hankton was suffering from a typical seizure and it was difficult to determine exactly what was wrong, though he did have a rapid heart rate and was overheated. Siegel at that point believed Mr. Hankton may have been under the influence of a stimulant.

After removing Mr. Hankton from the vehicle and onto the ground, they moved him into the shade to determine his blood pressure and pulse rate. Siegel remained with Mr. Hankton until the ambulance personnel arrived and they loaded him onto the ambulance. Siegel did not notice any physical injuries.

### **Summary Of Statement Of Paul Lowenthal, Firefighter**

Paul Lowenthal is employed as an Assistant Fire Marshall and the department's Press Information Officer. Lowenthal received an email on September 6, 2107, at 1555 hours asking if he could respond to 555 South E Street due to a break-in at their Union Hall. Lowenthall said it took him about seven minutes to arrive at the location.

Upon arriving at 555 South E Street, Officers O’Neil and Dineen were present. Also present were the fire department crew on Ladder truck number 1 and a subject named Mark Pedroia, who is a retired firefighter with Santa Rosa, but still actively involved in union negotiations.

Lowenthal said the Geiger Counter device belonged to the Santa Rosa Fire Department and had been stored inside the building. Lowenthal assisted Pedroia with installing boards on the damaged door.

Lowenthal observed Captain Mike Siegel (from Ladder Truck 1) and the other fire crew members tending to Mr. Hankton. He saw both police officers and the fire fighters helping get Mr. Hankton out the back seat and onto the ground. Lowenthal saw fire personnel hook up Mr. Hankton to the heart monitor and begin working on him and nothing looked out of the ordinary. Lowenthal thought Mr. Hankton may have been fabricating a medical condition.

Lowenthal then went back to boarding up the broken window and when he returned outside, he saw the ambulance had arrived and Mr. Hankton was being placed onto a gurney. Lowenthal then returned inside the building.

#### **Summary Of Statement Of Deborah Rath, AMR-Sonoma Life Support Paramedic**

Ms. Rath has been a paramedic for eighteen years. On September 6, 2017, she was working her shift with EMT Erik Melligan. They were dispatched, code two, to 555 South E Street in Santa Rosa to assist a man who was down. Upon arrival, she noticed firefighters and police officers were on scene.

Rath walked up to the officers and Mr. Hankton who was sitting on the ground near the rear passenger door of the patrol vehicle, on the driver’s side. She noticed Mr. Hankton was slumped over, his hands were handcuffed and he was breathing. Rath was advised by officers of what occurred and that they believed he may have had a seizure.

Rath called out to Mr. Hankton, but he did not respond. Mr. Hankton was warm to the touch. Rath asked that the handcuffs be removed and that Mr. Hankton be placed in restraints. Mr. Hankton was placed in the ambulance and Rath began attending to Hankton by connecting him to a heart monitor. Mr. Hankton was unresponsive the entire time Rath interacted with him. Rath noticed that Mr. Hankton’s heart rate was high and that he was extremely hot, but not perspiring, so she started an I.V. and provided Narcan. Hankton’s pupils were equal. There were no noticeable injuries on Mr. Hankton observed by Rath.

They responded code three to the hospital and, Mr. Hankton did not respond to the treatment provided.

#### **Summary Of Statement Of Erik Melligan, AMR Emergency Medical Technician (EMT)**

Mr. Melligan has worked for AMR-Sonoma Life Support for nine years. On September 6, 2017, Mr. Melligan was working with paramedic Deborah Rath.

Mr. Melligan had similar observations as stated above by Ms. Rath.

### **Summary Of Statement Of Mark Pedroia, Retired Firefighter**

Mark Pedroia has been retired from the Santa Rosa Fire Department since 2014, but still volunteers for the Santa Rosa Fire Department's Union Association. On September 6, 2017, at 1605 hours, Pedroia received a phone call from Tim Aboudara, who is the president of the union. Mr. Aboudara advised Pedroia that a burglary had occurred at the union building on 555 South E Street, and that the police were asking for a representative to respond to the scene.

Pedroia responded to the scene. He saw the damage to the door and noticed the Geiger Counter was missing from the display case.

Pedroia focused on repairing the damage done to the building, but walked by Mr. Hankton, the police officers and fire department personnel multiple times as he went between the building and his truck to retrieve tools. At no time did Pedroia see Mr. Hankton actively seizing and heard those present talking to Mr. Hankton. Mr. Hankton was able to follow their commands and did not appear to be suffering any major medical emergency.

### **Summary of Statement of Dr. Christina Kopriva**

Dr. Kopriva stated that when Mr. Hankton arrived, he displayed agonal respirations and had a temperature of 108 degrees. The medical staff performed CPR for approximately twenty-five minutes. This included the use of a defibrillator. Dr. Kopriva pronounced Hankton's time of death at 1722 hours. The initial toxicology screen revealed Hankton had methamphetamine and marijuana in his system and an elevated potassium level.

## **I. AUTOPSY AND CAUSE OF DEATH**

On September 6, 2017, at 2128 hours, Sonoma County Sheriff's Office Coroner Deputies Kidder and Roundtree arrived at the hospital to take control of Mr. Hankton's body. They processed him for removal and took photographs. Mr. Hankton's body was placed in a removal body bag and secured with a security lock for transport to the coroner's office for an autopsy.

The autopsy was performed by Dr. Kimi Verilhac on September 7, 2017. Dr. Verilhac provided preliminary findings but needed the toxicology report before determining cause of death. Dr. Verilhac's preliminary findings were that there was no evidence Mr. Hankton suffered any life threatening injuries that would have resulted in death.

After receiving the toxicology report, Dr. Verilhac determined Mr. Hankton's cause of death to be from Autonomic Hyperarousal State. The toxicology results revealed Mr. Hankton had tested positive for Amphetamine, Naloxone, Mirtazapine, Cyclobenzapirne, caffeine and Acetone. Other contributing factors to cause of death were chronic alcoholism, hypertensive and atherosclerotic cardiovascular disease. The manner of death was determined to be an accident.

## V. STATEMENT OF THE LAW

Under the Fourth Amendment of the United States Constitution, persons have the right to be free from the use of excessive force by law enforcement officers. This right attaches even when an officer is engaged in making a lawful arrest.<sup>1</sup> As will be discussed below, it is not necessary to determine whether in this case officers were “engaged in making a lawful arrest” of Nathaniel Hankton at the time he began to show signs of a possible seizure. Instead, the analysis is whether the force used to effectuate the detention and arrest was reasonable based on an evaluation of the totality of the circumstances. The evaluation of the totality of the circumstances is not based on the facts as they became known over time, but are analyzed from the standpoint of the officers and what they knew at the time the detention and arrest were made.

### A. THE RIGHTS AND DUTIES OF A PEACE OFFICER WHEN EFFECTING A DETENTION OR AN ARREST

#### a. Rights And Duties Of Officers During A Detention

A police officer has the right to stop and temporarily detain someone for investigation whenever the officer has a “reasonable suspicion” some criminal activity is afoot and that the person was, is, or is about to be involved in that criminal activity.<sup>2</sup> A detention is allowed so a peace officer may have a reasonable amount of time to investigate a person’s possible involvement in an actual or perceived criminal act, allowing the officer to make an informed decision whether to arrest, or to release, the subject. “An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.”<sup>3</sup> However, even though a detention is meant to be a short contact to assist in determining if a crime has occurred, an officer is not deprived of his right to defend himself should it become necessary.

“(E)ven when a police officer is careful, he is still subject to attack. . . . (P)olice officers (are) entitled to protect themselves during a detention: ‘This is a rule of necessity to which a right even as basic as that of privacy must bow. To rule otherwise would be inhumanely to add another hazard to an already very dangerous occupation. Our zeal to fend off encroachments upon the right of privacy must be tempered by remembrance that ours is a government of laws to preserve which we require law enforcement—live ones. Without becoming a police state, we may still protect the policeman’s status.’”<sup>4</sup>

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<sup>1</sup> Graham v. Connor (1989) 490 U.S. 386. “All claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process approach.’” Graham, 490 U.S., at 394.

<sup>2</sup> Terry v. Ohio (1968) 392 U.S. 1; People v. Walker (2012) 210 Cal.App.4th 1372, 1381.

<sup>3</sup> In re Antonio B. (2008) 166 Cal.App.4th 435, 440.

<sup>4</sup> In re Richard G. (2009) 173 Cal.App.4th 1252, 1255.

When Officer Steve Dineen and Officer Chris O’Neil arrived at 555 South E Street, they had been advised that a subject was punching the glass windows of a building. Officer Dineen, who arrived first, noticed damage done to the building and observed Mr. Hankton sitting on the steps outside the door that had broken glass. Mr. Hankton was talking to himself and had glass near him, while holding a piece of metal. A yellow Geiger Counter was located on the ground near where Mr. Hankton was sitting. Mr. Hankton matched the description provided by dispatch. Officer O’Neil arrived soon thereafter and made the same observations.

b. Rights And Duties During An Arrest

A peace officer may arrest a person without a warrant whenever the officer has probable cause to believe that the person to be arrested has committed a public offense in the officer’s presence or that he has committed a felony.<sup>5</sup> When a peace officer has reasonable cause to believe that a person to be arrested has committed a public offense, he or she may use reasonable force and reasonable restraint to effect the arrest, to prevent escape, or to overcome resistance.<sup>6</sup> If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.”<sup>7</sup>

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance.<sup>8</sup> The United States Supreme Court has stated, “Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”<sup>9</sup> This “careful balancing” includes consideration of “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he (she) is actively resisting arrest or attempting to evade arrest by flight.”<sup>10</sup> The Ninth Circuit Court of Appeals has also noted: “All determinations of ‘unreasonable force must embody allowances for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving...about the amount of force that is necessary in a particular situation.’”<sup>11</sup> Furthermore, the determination of reasonableness must be judged from the perspective of the reasonable officer on scene, rather than through hindsight.<sup>12</sup>

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<sup>5</sup> Penal Code section 836 (in pertinent part).

<sup>6</sup> Penal Code section 835, 835a

<sup>7</sup> Penal Code section 834a.

<sup>8</sup> Penal Code section 835a

<sup>9</sup> Graham, 490 U.S., at 396

<sup>10</sup> Id.

<sup>11</sup> Scott v. Henrich (9<sup>th</sup> Cir. 1994) 39 F.3d 912.

<sup>12</sup> Graham, 490 U.S., at 396-7

Officers are not required to use the least intrusive methods, but instead, the appropriate inquiry is whether the officers acted reasonably.<sup>13</sup> Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment in the heat of battle with lives potentially in the balance, and imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.<sup>14</sup> The determination of whether the amount of force used was “reasonable” is not limited to a discussion of the nature and amount of force actually used or whether the force used resulted in death. The “reasonableness” inquiry requires a careful consideration of all of the facts and circumstances surrounding the event.

After being provided with the information over dispatch and upon arraignment at the scene, Officers Dineen and O’Neil observed the damage done to the building. They also saw Mr. Hankton seated near the broken glass, thus, it was reasonable for the officers to detain and place handcuffs on Mr. Hankton. Both officers reasonably believed Mr. Hankton may have been a threat to their safety due to the metal pole that was within his reach, the fact Mr. Hankton was not responding to their questions, and that he was believed to have broken the windows. Both officers escorted Mr. Hankton to the patrol vehicle without incident and there was no unreasonable force used to affect the arrest. Mr. Hankton was cooperative throughout contact with law enforcement.

## **B. DISCUSSION OF THE LAW AND OF THE EVIDENCE**

When law enforcement officers are called out to a continuously unfolding event, and during detention or arrest, the subject dies, the analysis is conducted from the position of what an objectively reasonable officer, knowing and seeing what the particular officer(s) in question knows and sees at the time of the use of force. The use of force must be reasonable in that light. Officers have no obligation to use the least amount of force to effectuate a detention or arrest, nor any obligation to retreat or desist in using force in the face of resistance.

On September 6, 2017, when officers responded to the 555 South E Street, there was no resistance by Mr. Hankton. Mr. Hankton, while being escorted by two officers was able to walk with assistance to the patrol vehicle. Thus a minimal amount of force was used to effect the arrest and there was no physical struggle.

To conduct their investigation, the officers placed Mr. Hankton in the rear seat of the patrol vehicle, and had him in handcuffs. The length of time Mr. Hankton was in the patrol vehicle before his medical emergency was noticed was between twenty to thirty minutes, which is not an unreasonable amount of time to detain an arrestee while an investigation is conducted. The officers had to assess the damage that was done to the building and make notification to the occupants of the building about what had occurred.

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<sup>13</sup> See, e.g., Illinois v. Lafayette, 462 U.S. 640, 647, 77 L. Ed. 2d 65, 103 S. Ct. 2605 (1983); United States v. Martinez-Fuerte, 428 U.S. 543, 556-57 n.12, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976).

<sup>14</sup> Henrich (9<sup>th</sup> Cir. 1994) at 915.



## VI. CONCLUSION

Although Mr. Hankton was in custody at the time of his death, neither lethal force, nor unreasonable force was used to effectuate his detention and arrest. At no time did any police officer draw their firearm. Lethal force is that which creates a substantial risk of death or great bodily injury.<sup>15</sup> In this case, no conduct on the part of the officers created a substantial risk of death or great bodily injury. Instead, the effects of drugs and Mr. Hankton's overall health contributed to his death. There is no evidence that any force used on Mr. Hankton contributed to his death.

Based on the law and circumstances discussed above, Officers Chris O'Neil and Steve Dineen, were legally justified in detaining and arresting Mr. Hankton. The force used to detain and arrest Mr. Hankton was minimal as he was cooperative with the officers.

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<sup>15</sup> Smith v. City of Hemet, (2005) 394 F.3d 689.