



**ADMINISTRATIVE REVIEW  
AUDIT**

<b>Case Details</b>	
Decedent's Name	Donald Miller
Case Number	20-AR-0006
Type of Investigation	SCSO Administrative Review Pursuant to Critical Incident Protocol 93-1 – In-Custody Death
Incident Date	August 15, 2020
Date/Origin of Complaint	Self-Initiated Administrative Review: Assigned March 3, 2021
Date IA Sent to IOLERO	October 10, 2022
Date Preliminary Audit Returned to SCSO	November 23, 2022
Date Audit Becomes Final if SCSO Provides No Response	December 14, 2022

## TABLE OF CONTENTS

<b>SUMMARY</b> .....	<b>1</b>
<b>MATERIALS REVIEWED</b> .....	<b>1</b>
<b>FACTUAL BACKGROUND</b> .....	<b>2</b>
I.    MR. MILLER'S [REDACTED] CONDITION .....	2
II.   DEPUTIES' DETAINMENT OF MR. MILLER.....	2
A.  Deputies' Initial Contact .....	2
B.  Deputies' Initial Attempts to Detain Mr. Miller.....	3
C.  Deputies' Take-Down and Use of Taser .....	3
III.  DEPUTIES' RESUSCITATIVE EFFORTS .....	5
IV.  SCSO PRESS RELEASE .....	5
V.   SCSO REPORT OF DEATH TO CALIFORNIA DOJ.....	5
<b>THE CRIMINAL INVESTIGATION</b> .....	<b>6</b>
<b>THE AR INVESTIGATION</b> .....	<b>7</b>
I.    SCOPE AND PURPOSE OF ADMINISTRATIVE INVESTIGATION.....	7
II.   THE INVESTIGATIVE RECORD .....	7
III.  INVESTIGATOR'S CONCLUSIONS.....	9
A.  Use of Force (Policy 300) .....	9
B.  Taser (Policy 304) .....	9
C.  Other Policies .....	9
<b>DISCUSSION AND CONCLUSIONS</b> .....	<b>10</b>
I.    USE OF FORCE REVIEW UNDER SCSO POLICY 300 .....	10
II.   REVIEW OF TASER POLICY 304.....	11
A.  Initial Deployment of Taser .....	11
B.  Subsequent Taser Applications .....	12
III.  REVIEW OF REMAINING POLICIES .....	16
<b>APPENDIX A</b> .....	<b>19</b>

## SUMMARY

On August 15, 2020, decedent Donald Miller died after being detained by Deputy Bryan Jensen and Deputy Michael Matelli during a domestic disturbance call. The incident was criminally investigated by the Santa Rosa Police Department and the Sonoma County District Attorney cleared the deputies of criminal wrongdoing on December 2, 2021.

The Sonoma County Sheriff's Office ("SCSO") conducted an internal Administrative Review of the incident to review SCSO Policies and determine whether the deputies violated any policy, procedure or rule. SCSO concluded there were no violations.

This Audit addresses SCSO's Administrative Review. As discussed below:

1. We **AGREE** that the investigative record supports the Investigator's conclusion of **NO VIOLATIONS NOTED** concerning SCSO Policy 300 Use of Force when the deputies restrained Mr. Miller using a physical take-down, a knee strike, and multiple Taser applications. However, we **NOTE** that the investigative report did not analyze specific factors set out in Policy 300 and that the criminal investigation into the incident is not an appropriate substitute for an independent analysis of SCSO policy, procedures, rules and training as they relate to the incident.

2. We **AGREE** that the investigative record supports the Investigator's conclusion of **NO VIOLATIONS NOTED** concerning SCSO Policy 304 Taser deployment when the deputies restrained Mr. Miller.

3. We **AGREE** that the investigative record supports the Investigator's conclusion of **NO VIOLATIONS NOTED** concerning SCSO Policies 302 (handcuffing), 305 and the Critical Incident Protocol 93-1 (procedures for addressing in-custody deaths), 324 (Media Relations), 329 (Major Incident Notifications), 338 (Critical Incident Debriefing/Defusing), 400 (Patrol Functions) and 435 (Medical Aid and Response).<sup>1</sup>

## MATERIALS REVIEWED

We reviewed all materials provided by SCSO in the AIM system in connection with the Administrative Review. We also reviewed the Body Worn Camera (BWC) video for the two involved deputies which were separately provided by SCSO. A full list of these materials is attached as **APPENDIX A**.

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<sup>1</sup> The investigation also listed Policy 425 (Body Worn Cameras) ("BWC") and Policy 403 (Crime Scene Integrity) as applicable to the incident, but did not specifically analyze them. The record provides no suggestion of violations of either policy. Both deputies activated their BWCs when arriving on scene and they remained activated through the incident. The record also provides no indication that the scene was not properly secured.

## FACTUAL BACKGROUND

### I. MR. MILLER'S ██████████ CONDITION

On the morning of August 15, 2020, Mr. Miller and ██████████, along with ██████████, were staying at the Duncan Mill's Camping Club near Guerneville.<sup>2</sup>

Mr. Miller had a ██████████. ██████████ and was showing a lack of focus and confusion but no violence. Concerned about his health, ██████████ decided that morning to take Mr. Miller to a VA hospital in Sacramento.

As ██████████ and Mr. Miller were driving on River Road, Mr. Miller began acting erratically, turning up the radio and talking about God. When ██████████ pulled over to call 9-1-1, Mr. Miller grabbed at her phone and he got out saying he was going to take their dogs. When he got back in, Mr. Miller told ██████████ to drive back to the camp facility.

As ██████████ was driving back, Mr. Miller continued playing the radio at high volume and speaking to God. ██████████ pulled over intending to ask someone to call 9-1-1 and to run away. Mr. Miller caught her in the road, wrapped his arm around her and pulled her into an unlocked business. ██████████ yelled for help and an occupant in the store told them to leave. Mr. Miller guided ██████████ out the door where an SCSO deputy had arrived. ██████████ later explained to Santa Rosa Police Department detectives that she had never seen Mr. Miller act this way and she was scared.

### II. DEPUTIES' DETENTION OF MR. MILLER

#### A. Deputies' Initial Contact

Dep. Jensen and Dep. Matelli were dispatched on a domestic disturbance call involving Mr. Miller's actions. Both activated their Body Worn Cameras (BWC) which recorded throughout the incident.<sup>3</sup>

Dep. Jensen arrived first (having been flagged down by a pedestrian), knocked on the front of the business and announced "Sheriff's office." (Jensen BWC 0:45-0:48).<sup>4</sup> The store occupant opened the door and ██████████ walked out followed by Mr. Miller who had his left arm curled around ██████████'s left arm and was holding a clear plastic bag with medicine in his left hand. A number of things then quickly occurred.

As she came out, ██████████ stated to Dep. Jensen in a distressed voice "Thank you. Please help me. Please help me. Please help me. Get him off of me." At the same time, Dep. Jensen asked "what happened?" and the store occupant stated that ██████████ wanted him to call 9-1-1. (Jensen BWC 0:53-0:59). Mr. Miller was still behind ██████████ holding on to her left arm, and ██████████ stated "Get him off of me please." (Jensen BWC 1:00-1:02).

At this point, Mr. Miller reached around ██████████ with his right hand and tried to take her phone from her right hand. (Jensen BWC 1:00-1:02). Dep. Jensen asked ██████████ what

<sup>2</sup> We refer to ██████████ herein as "█████████" instead of as "█████████" solely to avoid confusing reference to Mr. Miller.

<sup>3</sup> Several witnesses heard ██████████ yelling for help before entering the store (described by some as "bloodcurdling" and "alarming") and an ambulance driver observed ██████████ in the parked vehicle looking like she was in distress. The ambulance driver and at least one witness called 9-1-1.

<sup>4</sup> Body camera video is cited by deputy name and the time (minutes : seconds) reflected in each video for the referenced event.

was going on and she responded that Mr. Miller was having a “psychotic break”. (Jensen BWC 1:02–1:04). Dep. Jensen was trying to remove Mr. Miller’s right hand from ██████’s phone, and as ██████ turned to her right, Dep. Jensen tried to remove Mr. Miller’s left hand from ██████’s left arm. (Jensen BWC 1:04–1:06).

**B. Deputies’ Initial Attempts to Detain Mr. Miller**

Dep. Jensen then held onto Mr. Miller’s left wrist and directed him to put his hands behind his back. Mr. Miller was holding onto ██████’s phone which she still held in her right hand, and he would not comply with Dep. Jensen’s efforts to bend his left arm behind his back. (Jensen BWC 1:06–1:10).

Dep. Matelli made contact with the parties at this point. (Matelli BWC 0:30). Dep. Matelli held onto Mr. Miller’s right shoulder and upper arm and repeated to Mr. Miller “hands behind your back.” (Matelli BWC 0:31–0:33). Up to this point, each deputy’s directives were firm but calm.

Mr. Miller did not comply; instead, he turned to his right and leaned his body and left hand (still clutching the plastic bag) onto the hood of a parked vehicle. (Matelli BWC 0:33–0:36). At this point Dep. Jensen placed his left arm around Mr. Miller’s chest/neck and pulled him back from the vehicle. (Matelli BWC 0:36–0:38). Dep. Jensen’s BWC was pressed against Mr. Miller’s back and was then dislodged, and the next events were captured by Dep. Matelli’s BWC.

**C. Deputies’ Take-Down and Use of Taser**

Dep. Jensen had his arms around Mr. Miller’s upper chest/lower neck and pulled Mr. Miller backward. Mr. Miller twisted to his left and fell to the ground with Dep. Jensen, landing on his left side next to Dep. Jensen. As Mr. Miller was starting to get up, Dep. Matelli (without prior announcement) discharged his Taser striking Mr. Miller. (Matelli BWC 0:38–0:42). When hit, Mr. Miller stopped rising, turned to his left onto his hands and knees, and then continued to try to stand. (Matelli BWC 0:41–0:44). Dep. Jensen got on his feet and started to reach for Mr. Miller’s left arm when Dep. Matelli stated “I’m going to do it again” referring to firing another Taser round. At the same time Dep. Jensen radioed “Code 20” requesting additional deputies. (Matelli BWC 0:44-0:45).

Dep. Matelli fired the second set of Taser probes and in reaction Mr. Miller slowly fell to the ground onto his chest and then rolled over to his left until he was again lying face down with his right side slightly elevated from the ground. (Matelli BWC 0:45–0:50). At this point Dep. Matelli radioed “Taser deployed” and the second Taser cycling stopped. (Matelli BWC 0:50–0:51).

When the second cycle ceased, Mr. Miller immediately began moving to his right. The deputies twice directed Mr. Miller “hands behind your back” and the third Taser cycling started. Mr. Miller was again immobilized and he laid face down on the ground with both hands under his chest. (Matelli BWC 0:50–0:53). Dep. Matelli approached Mr. Miller, knelt to his right side and tried to pull Mr. Miller’s right arm out from under him by grabbing his elbow. At this point the third Taser cycling ceased. (Matelli BWC 0:53–0:58).

Dep. Matelli told Mr. Miller to put his hands behind his back or he would get hit with the Taser again. Dep. Jensen at the same was trying to pull Mr. Miller’s left arm out from underneath his body. Mr. Miller remained lying face down and was clearly preventing the deputies from pulling his hands out from under him, but he was not physically attacking or threatening the deputies. Mr. Miller then stated “in the name of Jesus Christ I command

you” at which point Dep. Matelli placed his Taser directly on Mr. Miller’s exposed lower back while Dep. Jensen pinned Mr. Miller’s upper left arm to the ground with the deputy’s left knee. Mr. Miller again stated “In the name of Jesus Christ I command you to stop.” (Matelli BWC 0:58–1:07).

Mr. Miller then attempted to rise from the ground. Dep. Matelli still had the Taser against Mr. Miller’s exposed lower back and the cycling started for a fourth time. While the Taser was cycling Mr. Miller was ordered to get on his belly. Mr. Miller continued to try to rise off the ground stating “in the name of Jesus, in the name of Jesus Christ”. Deputy Matelli continued to order Mr. Miller to place his hands behind his back, and Mr. Miller stated what appears to be “A 21 30, A 21 32, A 21 33”. (Matelli BWC 0:58–1:27). As before Mr. Miller was refusing to comply with the deputies’ commands to lay on his belly and put his hands behind his back, but he was not physically attacking or threatening the deputies.

Dep. Matelli then told Mr. Miller that he was going to get Tased again. Mr. Miller responded “that’s alright” and Dep. Jensen said “do it.” Dep. Matelli cycled the Taser a fifth time telling Mr. Miller to place his hands behind his back, to which Mr. Miller said “No” and the Taser cycle ceased. Mr. Miller remained lying face down on the ground with his hands and forearms under him while Dep. Jensen tried to pull his left arm out. (Matelli BWC 1:27–1:40)

Dep. Jensen then placed his right knee on Mr. Miller’s left calf and tried pulling his left arm out from under him. At this point, Dep. Matelli started a sixth Taser cycle and he attempted to grab onto Mr. Miller’s right hand which was still under him clutching the plastic bag. Dep. Matelli’s foot became entangled in a Taser wire and the cycling stopped. (Matelli BWC 1:40–1:48).

During this last Taser cycle, Dep. Jensen was able to place handcuffs on Mr. Miller’s left wrist and was kneeling on the ground at Mr. Miller left side. (Matelli BWC 1:46). When the Taser cycle stopped, Dep. Matelli moved to Mr. Miller’s legs. Dep. Jensen told Dep. Matelli “Hold on a second, hold on a second. Stop. No more deployments” and Dep. Matelli responded “I know, I know.” Mr. Miller was still lying on his belly leaning slightly to his right side.

Dep. Jensen then tried to calm Mr. Miller telling him “it’s ok” and Mr. Miller responded “It’s not ok. Lord, help me. Strike down. In the name of Jesus. No. No. No. No. In the name of Jesus. Stop. [REDACTED] command you to help me. [REDACTED].” While Mr. Miller was speaking, Dep. Jensen had placed his right knee on the left side of Mr. Miller’s lower back but he did not forcibly strike him. Dep. Matelli continued trying to move Mr. Miller’s right arm behind his back and was eventually able to do so. (Matelli BWC 1:48–2:28).

A bystander told Mr. Miller to relax as the deputies tried to complete handcuffing. Mr. Miller stated “I will not let go. I will not let go.” The bystander told Mr. Miller that if he did not relax he would be making it worse, to which Mr. Miller responded “I don’t care”. The deputies were finally able to complete handcuffing using two sets. (Matelli BWC 2:28–2:38).

Mr. Miller remained face down on the ground. After trying unsuccessfully to place Mr. Miller’s legs into a “figure four” position, Dep. Matelli placed his right knee on Mr. Miller’s calves to hold him to the ground but he did not strike Mr. Miller with any force. Mr. Miller stated “no”. (Matelli BWC 2:38–3:22).

At this point Dep. Jensen reattached his BWC and asked [REDACTED] about Mr. Miller's condition. [REDACTED] stated that [REDACTED] [REDACTED] e had some sort of a break. While [REDACTED] was stating this Mr. Miller's fingers on his right hand were moving but they then stopped. No other body movements were clearly visible on the BWCs. (Matelli BWC 3:22–3:39; Jensen BWC 4:02–4:25).

Dep. Jensen told [REDACTED] they were there to help her and Mr. Miller and they would stay with him while she moved back. (Matelli BWC 3:39–4:04; Jensen BWC 4:25–4:40). During this time Dep. Jensen had his knee on Mr. Miller's buttock area and Dep. Matelli had his knee on his lower legs holding Mr. Miller on the ground, but no striking force was applied by either deputy.

When Dep. Jensen finished speaking with [REDACTED] he asked Mr. Miller if he was ok and immediately said "ah shit" and began turning him into a side recovery position. (Matelli BWC 4:04–4:10; Jensen BWC 4:40–4:46). Dep. Jensen again asked Mr. Miller if he was ok, called Mr. Miller by name as they rolled him onto his left side, and called for Code 3 medical response. (Matelli BWC 4:10–4:20; Jensen BWC 4:46–4:57).

### **III. DEPUTIES' RESUSCITATIVE EFFORTS**

Dep. Jensen and Dep. Matelli each searched for a pulse and Dep. Matelli started chest compressions. Dep. Jensen radioed that CPR had been started. (Matelli BWC 4:20–4:31; Jensen BWC 4:57–5:07).

For the next 3 minutes and 20 seconds Dep. Matelli provided continuous chest compressions while Dep. Jensen checked for pulse. When medical arrived Dep. Jensen immediately informed them that "He's still handcuffed. Numerous Taser deployment. There, what sounded like a psychotic episode. They started [REDACTED]. When we detained him he was still fighting and then he stopped. We put into a recovery. He's double handcuffed in the back." (Jensen BWC 5:08–8:28).

EMS personnel then took over resuscitative efforts which were ultimately unsuccessful.

### **IV. SCSO PRESS RELEASE**

At 1:41 p.m. on the day of the incident SCSO issued a Press Release. Without disclosing names the Press Release stated that [REDACTED] had asked for help, that deputies separated Mr. Miller from [REDACTED], and a "physical altercation ensued." A second deputy "used his taser to gain compliance and to stop the man from fighting them" and the man "continued physically resisting the deputies." After being placed in handcuffs Mr. Miller has a "medical emergency", deputies began lifesaving measures, and Mr. Miller was later pronounced deceased at the scene. The Press Release stated that the Critical Incident Protocol was invoked, the Santa Rosa Police Department would conduct the criminal investigation, and the Marin County Coroner would conduct the autopsy.

### **V. SCSO REPORT OF DEATH TO CALIFORNIA DOJ**

SCSO reported Mr. Miller's death to the California Department of Justice stating that the death occurred during the process of arrest for domestic violence at the arrest scene, and identified the "manner of death" as "homicide justified (law enforcement staff)".

## THE CRIMINAL INVESTIGATION

Because Mr. Miller died while in the deputies' custody SCSO invoked the "Sonoma County Chief's Association Policy 93-1: Employee Involved Critical Incident Protocol" ("Protocol"). See SCSO Policy 305 (identifying use of Critical Incident Protocol).

Pursuant to the Protocol the Santa Rosa Police Department conducted a criminal investigation into Mr. Miller's death and the Marin County Coroner conducted the autopsy. The Santa Rosa Police Department interviewed Dep. Matelli, Dep. Jensen, [REDACTED] and several witnesses.

On December 2, 2021 the Sonoma County District Attorney ("DA") publicly issued an "Officer-Involved Fatal Incident Report" ("DA Report") based on the Santa Rosa Police Department's criminal investigation.<sup>5</sup>

"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)." (DA Report at 4). The DA Report made clear that its review was limited to criminal liability—it "[did] not examine issues such as compliance with the policies and procedures of any law enforcement agency, police training, or issues involving civil liability" and the DA Report "should not be interpreted as expressing an opinion on those matters." (DA Report at 4).

Based on the Coroner's report, the DA concluded that the deputies' use of force contributed to Mr. Miller's death along with his pre-existing physical conditions.<sup>6</sup>

However, based on review of the Santa Rosa Police Department investigation, the DA further concluded that the deputies' force was lawful and justified. The DA stated that after arriving the deputies recognized that the domestic situation had "escalated to a violent stage"; there was "extreme resistance" to the deputies from Mr. Miller from the beginning; Mr. Miller exhibited "enormous strength" and Dep. Jensen "took him to the ground in [an] attempt to gain control" of him; while on the ground Mr. Miller "still strongly resisted"; Mr. Miller stopped resisting only when the "taser was engaged"; the deputies were dealing with an individual "acting unpredictably, failing to comply with verbal commands, and exhibiting extraordinary strength" putting deputies, [REDACTED] and Mr. Miller at risk; and when the deputies "realized they were not going to gain compliance by using the taser" they stopped its use and decided to "hold [Mr. Miller] down until more assistance arrived."

Applying the standard set by *Graham v. Connor*, 490 U.S. 386 (1989) and California Penal Code § 835a, the DA concluded that the deputies' use of force to take Mr. Miller to the ground and the subsequent use of the Taser were "reasonably necessary in order to effectuate a

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<sup>5</sup> The DA's "critical incident" reports, including the report on Mr. Miller's death, are publicly available at <https://da.sonomacounty.ca.gov/incident-reports>.

<sup>6</sup> The Coroner identified the cause of death as "cardiopulmonary arrest", "noncompliance during physical confrontation with police officers", and "schizoaffective disorder with agitation and threatening behavior", with various additional conditions including "marked cardiac dilatation".



lawful arrest” and that Mr. Miller’s “non-compliance furthered the need for the deputies to engage physically in order to gain his compliance”.<sup>7</sup>

## **THE AR INVESTIGATION**

### **I. SCOPE AND PURPOSE OF ADMINISTRATIVE INVESTIGATION**

On March 3, 2021, SCSO opened an internal Administrative Review of the incident.

The Administrative Review is not based on a complaint or allegation of misconduct against any deputy, and it is not intended to assess criminal liability. Rather, the Administrative Review is intended to assess “the overall performance of the Sonoma County Sheriff’s Office . . . (and based on policies and procedures) to determine if there were any particular areas where the Department did or did not perform in a reasonable manner.” (AR Report at 10; Protocol at 18, § III.B).

The Investigator assigned by SCSO identified the following policies to be reviewed:

- Use of Force (300)
- Handcuffing and Restraints (302)
- Taser Use (304)
- Officer-Involved Shootings and Deaths (305)
- Media Relations (324)
- Major Incident Notifications (329)
- Critical Incident Debriefing/Defusing (338)
- Patrol Functions (400)
- Crime and Disaster Scene Integrity (403)
- Body Worn Cameras and Audio Recorders (425)
- Medical Aid and Response (435)
- Critical Incident Protocol 93-1

(AR Report at 10).

### **II. THE INVESTIGATIVE RECORD**

In conducting the Administrative Review the Investigator relied on the Santa Rosa Police Department’s investigative report (No. 20-9334) and the Marin County Coroner’s Report (No. CR20-230), the Event Chronology, logs for each deputy’s Taser, and the deputies’ BWC video. (AR Report at 11).

The Investigator also reviewed audio recordings of Interviews conducted by the Santa Rosa Police Department with Dep. Jensen, Dep. Matelli, [REDACTED], and various witnesses

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<sup>7</sup> It is not clear that Mr. Miller was in the process of being “arrested” rather than being “detained” for purposes of the deputies’ investigation into the 9-1-1 call. Although the DA Report uses the term “arrest” at various points, the DA Report expressly concluded that the officers’ use of force did not violate criminal law regardless of whether Mr. Miller was being “detained” or was being placed under arrest.

at or near the scene. The Investigator further reviewed the SCSO Press Release and the DA's Report.<sup>8</sup>

[REDACTED], he had been acting strangely but not violently [REDACTED], he was [REDACTED] that morning, and [REDACTED] had cried out for help as Mr. Miller pulled her into the store resulting in a 9-1-1 calls about a domestic disturbance.

The Investigator did not separately interview the deputies or the witnesses as part of the Administrative Review but instead relied on interviews conducted by the Santa Rosa Police Department. SCSO provided those interview recordings to IOLERO as part of this Audit. The Investigator's summary of these interviews in the AR Report is consistent with our review of the audio of those interviews. The deputies' interview statements are also consistent with the BWC videos.

Portions of the deputies' interviews with particular relevance to this review are outlined below.

- **Deputy Jensen.** Dep. Jensen emphasized multiple times that Mr. Miller demonstrated significant strength and that Dep. Jensen could not match that strength. He believed the best way to handle Mr. Miller's resistance and strength was to get him onto ground so he could be handcuffed and therefore he placed Mr. Miller in a "bear hug" and pulled him to the ground. Dep. Jensen then called for Code 20 backup and believed he was running out of options to control Mr. Miller.

The Taser would cause Mr. Miller to stiffen but when Taser cycling ceased Mr. Miller immediately resumed his resistance. Dep. Jensen emphasized that throughout the encounter Mr. Miller's strength never lessened and the level of his strength was "scary." After several Taser applications Mr. Miller was continuing to resist and Dep. Jensen told Dep. Matelli to stop further Taser applications.

- **Deputy Matelli.** When the deputy tried to place Mr. Miller's arms behind his back Mr. Miller held his arms close to his body. While Mr. Miller was leaning against the car, Dep. Matelli could feel his significant strength and concluded at that point that he would have to use the Taser to gain control of Mr. Miller. Dep. Matelli then disengaged with Mr. Miller and retrieved his Taser. Dep. Matelli believed he warned Mr. Miller before initially deploying the Taser. (BWC video shows the warnings came later on subsequent deployments).

Because of Mr. Miller's strength Dep. Matelli applied multiple Taser cycles and the only thing that appeared to control Mr. Miller was the Taser. Dep. Matelli could not recall the number of times he deployed the Taser.

Dep. Matelli stated that when Mr. Miller ended up next to a parked car he began to "posture up" as if he was going to stand and Dep. Matelli used one or two knee strikes to Mr. Miller's right rib cage with no effect.

After handcuffs were applied, Dep. Matelli unsuccessfully tried to put Mr. Miller's legs into a "Figure Four" restraint and ultimately had to hold his legs down using his body weight.

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<sup>8</sup> The additional witnesses were [REDACTED] ([REDACTED]), [REDACTED] (present inside the store at time of incident), [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

### **III. INVESTIGATOR'S CONCLUSIONS**

Based on his review the Investigator concluded that “all of the Sonoma County Sheriff's Office employees performed their responsibilities within policy.” (AR Report at 34).

#### **A. Use of Force (Policy 300)**

The Investigator stated (without analysis) that the deputies “used reasonable and necessary force while attempting to place [Mr. Miller] in handcuffs” and that the DA's Report “corroborated my determination.” Accordingly the Investigator concluded “no violation found”. (AR Report at 35).

#### **B. Taser (Policy 304)**

The Investigator concluded that in using the Taser the deputies were “in fact attempting to control a potentially violent individual who was physically resisting”, that verbal warnings were provided before deployment, and the Taser was targeted at Mr. Miller's back away from sensitive areas. (AR Report at 36).

The Investigator described Mr. Miller's refusal to obey orders to place his hands behind his back following each of the six Taser cycles. The Investigator further described the deputies' statements that Mr. Miller showed “overwhelming strength”, they could not control him, and they were concerned he could hurt others or himself if he got away.

Based on these observations, the Investigator concluded that the multiple Taser applications “only appeared to have minimal effect on [Mr. Miller]” but they “were the only reason Deputy Jensen and Deputy Matelli were able to control [Mr. Miller] and eventually place him in handcuffs. The multiple applications of the Taser, during this particular incident, were reasonable and necessary in order to control [Mr. Miller] and the need to control [Mr. Miller] outweighed the potential risk of multiple deployments.” (AR Report at 37).

#### **C. Other Policies**

The Investigator concluded (i) Policy 302 (Handcuffing and Restraints) permitted use of two handcuffs and failure to double-lock them to prevent tightening was excused by the circumstances; (ii) appropriate SCSO personnel were notified of the incident in compliance with Policy 329 (Major Incident Notification); (iii) the deputies were in full uniform and responded to the call as part of their duties as deputies in accordance with Policy 400 (Patrol Function); (iv) the deputies called for Code 3 medical response, placed Mr. Miller into a recovery position and performed CPR in accordance with Policy 435 (Medical Aid and Response); (v) the information provided in the Press Release complied with Policy 324 (Media Relations); and (vi) the Critical Incident Protocol 93-1 was properly invoked and followed under Policy 305 (Officer-Involved Shootings and Deaths).

The Investigator noted that the deputies should have been offered a critical incident debriefing by SCSO under Policy 338 (Critical Incident Debriefing/Defusing) but the deputies did not recall it being offered. The Investigator noted no violation of policy but recommended that SCSO document when services had been offered to avoid the uncertainty of whether counseling had been offered.

## DISCUSSION AND CONCLUSIONS

### I. USE OF FORCE REVIEW UNDER SCSO POLICY 300

The AR Report noted that Policy 300 requires deputies to “use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the deputy at the time of the event to accomplish a legitimate law enforcement purpose”. (AR Report at 35 *quoting* § 300.3). The Investigator stated that his “investigation and review of this policy determined Deputies Jensen and Matelli used reasonable and necessary force while attempting to place [Mr. Miller] in handcuffs” and that this conclusion was “corroborated” by the DA’s criminal review. (*Id.*).

We **AGREE** the record supports the Investigator’s conclusion that there was **NO VIOLATION** of SCSO Policy 300. However, we **NOTE** that the AR Report should have, but did not, provide an analysis to explicitly explain this conclusion.<sup>9</sup>

Policy 300 generally requires that all use of force be objectively reasonable. Policy 300 then goes on to outline various factors to consider when assessing the reasonableness of force (*see* § 300.3.2). Based on the circumstances of this case, factors most directly relevant include (for example) the deputies’ and Mr. Miller’s size, relative strength, number of deputies and isolated nature of location (§ 300.3.2(c)), Mr. Miller’s apparent mental state (§ 300.3.2(f)) and potential of injury to deputies, bystanders and Mr. Miller (§ 300.3.2(m)).

On initial contact the deputies held onto Mr. Miller’s arms and tried to place them behind his back. The deputies did not strike Mr. Miller during this initial interaction. Based on the nature of the call and Rhonda’s plea to Dep. Jensen for help, the deputies had sufficient grounds to detain Mr. Miller in order to assess the situation. The deputies’ initial use of force to place Mr. Miller’s hands behind his back was minimal and facially reasonable under the circumstances.

When Mr. Miller resisted and leaned onto the vehicle, Dep. Jensen concluded that taking Mr. Miller to the ground was necessary to control him due to his superior strength. The BWC video shows Dep. Jensen held onto Mr. Miller as he pulled him to the ground and Dep. Jensen did not otherwise strike Mr. Miller during that process. Dep. Jensen’s decision to take Mr. Miller to the ground, and the manner in which he did so, are supported by § 300.3.2(c), § 300.3.2(f), and § 300.3.2(m), and appear to be objectively reasonable on this record.

After the take-down Mr. Miller started to stand up. Dep. Matelli stated that because of the strength Mr. Miller demonstrated when he resisted the deputies’ initial efforts to place his hands behind his back, he concluded the Taser was necessary to control Mr. Miller. Dep.

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<sup>9</sup> The DA’s criminal liability analysis is not a proper substitute for a separate analysis of SCSO policies. The DA’s Report is specifically limited to a review of use of force under Fourth Amendment and criminal standards, and it explicitly disclaimed any analysis of or opinion about SCSO’s policies or procedures.

Moreover, if SCSO interprets Policy 300 to require only compliance with the minimal constitutional/criminal standards for using force, then SCSO’s Administrative Review would be duplicative of the criminal investigation and will result in nothing more than a restatement of the DA’s criminal investigative findings. This is inconsistent with the stated purpose of the Administrative Review, which is to determine broadly whether SCSO policies, procedures and/or training were followed, were adequate to the needs of the incident, and whether they could be improved. *See* Critical Incident Protocol §§ I.B and III.B. (purpose of administrative investigation).

Matelli's decision is also supported by § 300.3.2(c), § 300.3.2(f), and § 300.3.2(m), and it was an objectively reasonable action under these specific circumstances. (As discussed in the following section, the record also shows the Taser deployment was consistent with SCSO's Taser-specific policy).

The deputies also kept Mr. Miller prone and face down after handcuffs were applied and while Mr. Miller continued to resist. Dep. Jensen placed his right leg on the left side of Mr. Miller's back and Dep. Matelli placed his leg across Mr. Miller's calves to hold Mr. Miller to the ground. Both deputies stated that they did not strike or apply appreciable pressure on Mr. Miller when doing this, which is consistent with what the BWC videos show. The force applied here was minimal and appeared to be objectively reasonable to ensure Mr. Miller remained under control. (See § 300.3.2(a) (use of force taking account a person's "ability to resist despite being restrained.")).

Dep. Matelli stated that he also applied one or two knee strikes to Mr. Miller's right rib cage at one point when Mr. Miller began to stand up and that the strikes had no effect. These knee strikes were not discernable on the BWC videos. Because of the strength exhibited by Mr. Miller, his continuous resistance when the Taser was not cycling, and the apparent need to keep him on the ground as reasonably perceived by the deputies, knee strikes as described by Dep. Matelli appear to be a limited and reasonable use of force to control Mr. Miller.

Finally, we note that Policy 300 recognizes that persons exhibiting "*extraordinary strength beyond their physical characteristics and imperviousness to pain* (sometimes called 'excited delirium'), or who require a *protracted physical encounter with multiple deputies to be brought under control*, may be at an *increased risk of sudden death*." (§ 300.6) (italics added). Calls involving such individuals "should be considered medical emergencies" and deputies "who reasonably suspect a medical emergency should request medical assistance as soon as practical." (§ 300.6).

The AR Report did not address this issue. Nevertheless, the record shows Dep. Jensen acted consistent with § 300.6. Dep. Jensen requested medical assistance immediately after Mr. Miller had been handcuffed. (Event Chronology at 8:23:03). Mr. Miller was still speaking at this point and did not display outward medical distress beyond the characteristics identified in § 300.6. After Mr. Miller stopped responding, Dep. Jensen again radioed to confirm the medical as a Code 3. (Event Chronology at 8:24:36).

Accordingly, we agree the record as a whole supports a finding that the deputies' use of force during the incident was consistent with Policy 300. However, the AR Report should provide an assessment and analysis of this issue under SCSO Policy, separate and independent of any analysis provided by the DA or other agency in the criminal investigation. We acknowledge that not all Policy 300 factors are presented in every use of force incident, and not every use of force incident requires extended analysis. Nevertheless, the specific factors outlined in Policy 300 that are *most directly relevant* to the facts of a specific incident should be identified and analyzed in order to permit subsequent review of the investigatory conclusions.

## **II. REVIEW OF TASER POLICY 304**

### **A. Initial Deployment of Taser**

Policy 304 governs Taser deployment and specifies that it is "intended to *control* a violent or potentially violent individual, while minimizing the risk of serious injury." (§

304.2) (*italics added*). A deputy “should” verbally warn of the intended use of a Taser beforehand unless doing so would endanger the safety of deputies or “when it is not practicable.” (§ 304.4).

The Taser may be used:

- (A) when the person is “violent or is physically resisting” *and* the circumstances “indicate” that Taser use is “reasonably necessary to *control*” the person, or
- (B) when the person has demonstrated by “words or action” an *intention* to be “violent or to physically resist, *and* (i) reasonably appears to present “potential to harm deputies, him/herself or others” *and* (ii) Taser use is “reasonably necessary to *control*” the person.

(§ 304.5.1) (*italics added*). In either scenario, a deputy must take “reasonable efforts” to target away from the “head, neck, chest and groin.” (§ 304.5.3).

The AR Report concluded that when the Taser was initially deployed, Mr. Miller was “potentially violent” and was “physically resisting the deputies”. (AR Report at 36). The BWC video confirms that Mr. Miller resisted both deputies’ initial efforts to handcuff him, Dep. Jensen had pulled Mr. Miller to the ground, and Mr. Miller was beginning to stand when the Taser was deployed. We agree that Dep. Matelli could reasonably conclude that Mr. Miller was “physically resisting” and that Mr. Miller could reasonably be viewed by Dep. Matelli in that moment as “potentially violent”.

The record further shows that the circumstances “perceived” by Dep. Matelli at that point—*e.g.*, Mr. Miller refusing to comply with deputies’ orders, his apparent strength, and his being in the process of standing up while Dep. Jensen remained on the ground—indicate that the Taser was reasonably necessary to control Mr. Miller at that moment. The record also shows that Dep. Matelli targeted the Taser away from the head, neck, chest and groin.

The AR Report stated that Dep. Matelli “provided verbal warnings” before deploying the Taser. We disagree. The record shows that Dep. Matelli did *not* provide a warning before his *initial* deployment; warnings came later regarding subsequent deployments. Accordingly, to the extent the AR Report suggests Dep. Matelli provided an initial warning, the record does not support that statement. Because the criminal investigative interviews were not focused on compliance with Sheriff Office policy, this issue was understandably not clarified in the criminal investigative interviews.

However, the record suggests that the rapid sequence of events, Mr. Miller’s physical proximity to Dep. Jensen, and Mr. Miller being actively in the process of standing up after refusing to comply with the deputies’ directives, rendered it “not practical” for Dep. Matelli to issue a warning prior to the initial deployment. Rather than leaving the record underdeveloped in this way, the Internal Affairs investigator should have interviewed Dep. Matelli about why he failed to provide a warning at the outset, whether he considered giving a warning, and what his justification was (if any) to not provide those warnings.

Accordingly, we **AGREE** that the investigative record shows that Dep. Matelli’s initial deployment of the Taser was consistent with Policy 304 and supports the Investigator’s conclusion of **NO VIOLATION NOTED**.

#### **B. Subsequent Taser Applications**

Policy 304 informs deputies that the Taser has “limitations and restrictions” that should be considered before use and that it may not achieve the intended results. (§ 304.5).

Taser deployment on “certain individuals” should “generally be avoided” unless the deputy “reasonably believes” that the need to control the person “outweighs the risk” of using the device. (§ 304.5.2). These “individuals” include (but are not limited to) persons known to be pregnant, the elderly or obviously juvenile persons, those with low body mass, handcuffed or restrained persons, those who have been sprayed with a flammable chemical agent, and those who may suffer collateral harm such as falling from a height. (§ 304.5.2). The Taser should generally be used in its “drive-stun” mode only to supplement the probes in completing a circuit rather than as a pain compliance technique. (§ 304.5.2). Deployment should also avoid the head, neck, chest and groin. (§ 304.5.3).<sup>10</sup>

Policy 304 further specifies that “[m]ultiple applications of the Taser device” against a person “are generally not recommended and should be avoided unless the deputy reasonably believes that the need to *control* the individual outweighs the potentially increased risk posed by multiple applications.” (§ 304.5.4) (italics added).

In determining whether multiple applications are needed to control a person, deputies should “evaluate the situation” after the first Taser deployment and “before applying any subsequent cycles.” (§ 304.5.4). If the first Taser application “appears to be ineffective in gaining control of an individual”, the deputy should consider “certain factors” before additional applications are made, including whether the person has the ability and has been given the opportunity to comply, and whether verbal commands or “other options or tactics may be more effective”. (§ 304.5.4).

Policy 304 does not specifically identify the “risks” to be balanced by a deputy when considering multiple Taser deployments. Axon’s Taser training materials state that in addition to a general increased risk of a single Taser application on persons experiencing “excited delirium” or exhaustion from physical struggle, “repeated, prolonged, or continuous” Taser applications may contribute to “cumulative exhaustion” and other physical effects which “could increase the risk of death or serious injury” and admonishes that repeated Taser applications should be “[m]inimized”. (Axon Instructor and User: Warnings, Risks & Release Agreement (for use with any TASER CEW Training and TASER CEW Exposure)) (Dec. 20, 2018).

The Investigator did not interview Dep. Matelli as part of the Administrative Review, and the criminal investigative interview of Dep. Matelli by the Santa Rosa Police Department did not specifically address Dep. Matelli’s compliance with SCSO Policy concerning multiple Taser deployments. Rather than leaving the record underdeveloped in this way, the Internal Affairs investigator should have interviewed Dep. Matelli specifically about his decision to deploy multiple Taser cycles under the specific parameters set out in Policy 304.

The Investigator stated that based on his review of the BWC video, the multiple Taser applications (while having only a “minimal effect” on Mr. Miller) were “the only reason” the deputies were able to “control” Mr. Miller, and the need to control Mr. Miller outweighed the risk of multiple Taser applications. (AR Report at 37).

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<sup>10</sup> According to Axon (the Taser manufacturer), effects from a single Taser cycle of up to 15 seconds are similar to effects from general struggling, physical resistance and other force tools. However, adverse physical effects may be increased in certain persons, including those identified in Policy 304.5.2 and those experiencing “excited delirium” or over-exertion from physical struggle. (See Axon Instructor and User: Warnings, Risks & Release Agreement (for use with any TASER CEW Training and TASER CEW Exposure)) (Dec. 20, 2018).

As set out below, we **AGREE** that the investigative record supports the conclusion, in the specific and limited context of this incident, of **NO VIOLATION NOTED**.

- **Second Deployment.** The AR Report stated that after the first Taser deployment Dep. Matelli did not observe the desired “neuromuscular incapacitation” in Mr. Miller. (AR Report at 36). If by this Dep. Matelli meant the Taser did not fully incapacitate Mr. Miller, the BWC video confirms it. Dep. Matelli’s BWC video shows that the initial Taser deployment clearly prevented Mr. Miller from standing up but he remained on his hands and knees and continued attempts to stand. (Matelli BWC 0:41–0:46).

Under these circumstances (with Mr. Miller having the ability but refusing to comply, his apparent strength, rapidity of events, proximity to busy road, presence of bystanders), the reasonableness of Dep. Matelli’s *belief* at that moment that a second Taser deployment to physically control Mr. Miller outweighed the potential risk of a second deployment is supported by the record. Mr. Miller was not in a category of persons against whom Taser use should generally be avoided (based on what the deputies could visually observe at that moment), he did not exhibit outward physical distress, he was not in a position that increased risk of collateral injury, Dep. Matelli was reasonably able to target the second probes away from sensitive areas, and no alternative options or tactics appeared available. Accordingly, we agree that the record supports the Investigator’s conclusion that Dep. Matelli’s second Taser deployment was consistent with Policy 304.

- **Third Deployment.** The AR Report stated that after the second deployment Mr. Miller “rolled and immediately tried to get up.” (AR Report at 36).

Dep. Matelli’s BWC shows that when Mr. Miller was struck by the second set of Taser probes he collapsed to the ground and rolled over coming to rest on his stomach with his right side lifted slightly off the ground. (Matelli BWC 0:46–0:51). The BWC video indicates that Mr. Miller’s rolling movements is likely due to the Taser’s effects rather than deliberative actions by Mr. Miller. However, the BWC video also confirms that as soon as cycling stopped, Mr. Miller immediately regained his ability to move and he reached to his right with his right arm and began to move his body in that direction. Dep. Matelli immediately cycled the Taser a third time and Mr. Miller became immobile with his hands and forearms under his body. (Matelli BWC 0:52–0:58).

Under these circumstances, the reasonableness of Dep. Matelli’s *belief* at that moment that a third Taser deployment to control Mr. Miller and prevent him from standing and/or physically escaping outweighed the potential risk of a third deployment is supported by the record. Accordingly, we agree that the record supports the Investigator’s conclusion that Dep. Matelli’s third Taser deployment was consistent with Policy 304.

- **Fourth Deployment.** The AR Report stated that Dep. Matelli warned Mr. Miller he would be Tased again following the third deployment.

The BWC video confirms that after the third cycling stopped the deputies continued issuing instructions to put hands behind the back and Dep. Matelli warned Mr. Miller that he would be Tased again. (Matelli BWC 0:58–1:09). Based on our review of the BWC, Dep. Matelli does not appear to cycle the Taser because Mr. Miller was refusing to place his hands behind his back. Rather, the BWC video shows Dep. Matelli deployed the fourth cycle to physically control Mr. Miller only when Mr. Miller again made movements to stand up. (Matelli BWC 1:08).



Under these circumstances, the reasonableness of Dep. Matelli's *belief* at that moment that a fourth Taser deployment to control Mr. Miller and to prevent him from standing or physically escaping outweighed the potential risk of a fourth deployment is supported by the record. Accordingly, we agree that the record supports the Investigator's conclusion that Dep. Matelli's fourth Taser deployment was consistent with Policy 304.

- **Fifth Deployment**

The AR Report stated that deputies continued to give Mr. Miller commands to place his hands behind his back and Dep. Matelli warned that the Taser could be used again. (AR Report at 37).

The BWC video shows that the fourth cycling did not have the same disabling effect on Mr. Miller as prior cycles. Earlier cycles caused Mr. Miller to lay on the ground. The fourth cycle also immobilized Mr. Miller but this time he kept his upper body propped up from the ground by leaning on his forearms. (Matelli BWC 1:08–1:18). When the fourth cycling stopped, the deputies continued commands to Mr. Miller to place hands behind the back and to get on his belly which Mr. Miller refused to do, and Dep. Matelli warned Mr. Miller he would deploy the Taser to which Mr. Miller said "that's alright".

Mr. Miller in this instance does not visibly appear on BWC video to be trying to stand but instead remains propped on his forearms. Nevertheless, Mr. Miller is clearly refusing to permit the deputies to handcuff him. Moreover, the BWC video does not reveal what Mr. Miller was doing with his legs and lower body. Dep. Matelli had his hand on Mr. Miller's right shoulder and Dep. Jensen had one hand behind Mr. Miller's head and another one on his left arm, and the deputies would have been able to measure the level of tension and resistance in Mr. Miller's muscles through touch that the BWC does not capture. The deputies stated that they felt Mr. Miller's strength to be "enormous" and there is nothing in the record to contradict this.

Thus, although the threat posed by Mr. Miller's resistance is not as *visually* obvious from the BWC videos, the reasonableness of Dep. Matelli's *belief* at that moment that a fifth Taser deployment to physically control Mr. Miller and to permit application of handcuffs to secure him outweighed the potential risk of a fifth deployment is supported by the record. Accordingly, we agree that the record supports the Investigator's conclusion that Dep. Matelli's fifth Taser deployment was consistent with Policy 304.

- **Sixth Deployment.**

The AR Report stated that during the fifth deployment Dep. Jensen was able to handcuff Mr. Miller's left hand while he was "incapacitated". (AR Report at 37).

The BWC video confirms that in response to the fifth cycle Mr. Miller relaxed his arms and leaned towards the ground and Dep. Jensen was able to place handcuffs on Mr. Miller's left wrist. The BWC video further shows that deputies again directed Mr. Miller to place his hands behind his back and Mr. Miller responded "no". When the fifth cycle stopped Mr. Miller again tried to rise off the ground and was able to get onto his knees. At this point Dep. Matelli applied the sixth cycle. (Matelli BWC 1:32–1:41).

Under these circumstances, the reasonableness of Dep. Matelli's *belief* at that moment that a sixth Taser deployment to control Mr. Miller by preventing him from standing outweighed the potential risk of a sixth deployment is supported by the record. Accordingly, we agree that the record supports the Investigator's conclusion that Dep. Matelli's sixth Taser deployment was consistent with Policy 304.

The BWC shows that the sixth deployment prevented Mr. Miller from standing and when the cycling stopped, Mr. Miller continued to resist having his arms pulled behind his back but he did not try to stand up. Dep. Jensen was able to place his right leg on Mr. Miller's lower back to hold him down and he told Dep. Matelli to stop the deployments. (Jensen BWC 1:41–1:49; Matelli BWC 1:51).

- **Time Considerations**

As outlined above, Policy 304 requires deputies to assess the effectiveness of the Taser and the availability of other options following *each* deployment. Our review has broken down each application separately in this regard.

We note that the degree to which a deputy may reasonably calculate and weigh the various risks against the need to control the person is affected by the time available to the deputy to do so, a factor that is unique to each situation.

The record shows that the time afforded to Dep. Matelli between each cycle was minimal. The elapsed time between the initial Taser deployment and the end of the sixth cycle was 65 seconds, during which time both deputies were physically engaged with Mr. Miller. (Matelli BWC 0:41–1:46). A reasonable deputy presented with the same circumstances as Dep. Matelli could objectively and reasonably conclude, in the time actually available to Dep. Matelli, that subsequent Taser deployments were reasonably necessary to control Mr. Miller and that they outweighed the risk of multiple applications.

### **III. REVIEW OF REMAINING POLICIES**

We **AGREE** that the record supports the AR Report's conclusion of **NO VIOLATIONS NOTED** with respect to the remaining SCSO Policies identified in the investigation.

**Handcuffs.** Policy 302 allows restraining a person prior to arrest with handcuffs when “reasonably necessary to ensure the safety of deputies and others”. (§ 302.3.1). More than one set of handcuffs may be used if necessary and when “feasible” handcuffs should be “double-locked” to prevent tightening around the wrists. (§ 302.4). The AR Report concluded that double handcuffs were appropriately applied and that failure to double-lock them was excused under the circumstances. We **AGREE** that the record supports the Investigator's conclusion of **NO VIOLATION NOTED**.

**Medical Aid and Response:** Policy 435 provides that when “practicable” a deputy should provide “initial medical aid” which may include CPR in accordance with their training, and should request medical assistance prior to providing aid if appropriate. (§ 435.3). Policy 304 separately provides that a person “exposed to multiple or prolonged” Taser applications “shall” be transported to a medical facility prior to booking. (§ 304.7). A deputy shall also inform medical personnel that a person has been Tased. (§ 304.7).

The record shows Dep. Jensen called for medical response after Mr. Miller was handcuffed and before Mr. Miller was in evident medical distress (*see* discussion in Section I above regarding excited delirium). When Dep. Jensen noted Mr. Miller in medical distress he and Dep. Matelli immediately moved Mr. Miller into a recovery position (on his side), Dep. Jensen confirmed a Code 3 medical response with dispatch, and Dep. Matelli immediately began chest compressions which he continued uninterrupted for several minutes. When medical arrived, Dep. Jensen immediately informed them of multiple Taser deployments and CPR efforts.

We **AGREE** that this record supports the Investigator's conclusion of **NO VIOLATION NOTED**.

**Patrol Function:** Policy 400 identifies the function of a patrol deputy, among other things, as responding to “calls for assistance and reports of criminal activity” and providing “support and assistance to the community” and responding to “emergencies.”

The record shows Dep. Jensen and Dep. Matelli promptly responded to a 9-1-1 call regarding a possible domestic dispute in full uniform, marked patrol vehicles and Dep. Jensen clearly announced “Sheriff’s Office” upon arrival. ██████ asked Dep. Jensen to help her and to separate Mr. Miller, and Dep. Jensen and Dep. Matelli had objectively reasonable bases to detain Mr. Miller to determine what was happening, consistent with their patrol duties set out in Policy 400.

We **AGREE** that this record supports the Investigator’s conclusion of **NO VIOLATION NOTED**.

**Critical Incident Protocol 93-1 and Major Incident Notification:** Policy 329 requires “certain incidents”, including in-custody deaths, be brought to the “attention of supervisors and other specified personnel” to coordinate activities and address media and public inquiries. (§§ 329.2, 329.3). Policy 305 further provides that SCSO will follow Critical Incident Protocol 93-1 which in turn applies when (among other circumstances) a person dies while in SCSO’s custody. (Critical Incident Protocol § I.H.7).

The record shows that SCSO invoked the Protocol approximately 37 minutes after Mr. Miller had been handcuffed. (Event Chronology 9:00:58). Pursuant to the Protocol the criminal investigation was conducted by the Santa Rosa Police Department and the medical examination was conducted by the Marin County Coroner.

We **AGREE** that this record supports the Investigator’s conclusion of **NO VIOLATION NOTED**.

**Media Relations:** Policy 324 governs the general release of information concerning, among other things, “criminal investigations”. However, if the Critical Incident Protocol has been invoked, media releases must be conducted in accordance with the Protocol’s specific guidelines. (§ 324.4.1). The Protocol, in turn, allows the “employer agency” to prepare an “initial press release” confined to an initial statement of what occurred, that a SCSO deputy was involved, that the Protocol was invoked, identification of the lead agency investigating the incident, and the deputy’s employment status. (Protocol § IV.C.2). The Protocol further generally prohibits “intentionally misleading, erroneous, or false statements” or statements that would “jeopardize the integrity of the criminal investigation”. (Protocol § IV.A.1).

The record shows that SCSO issued an initial press release on August 15, 2020 describing the incident in general terms, noting that an in-custody death occurred, noting the Protocol had been invoked and identifying the investigating agency. The information in the press release is objectively accurate and is consistent with the Protocol’s requirements concerning initial press releases.

We **AGREE** that this record supports the Investigator’s conclusion of **NO VIOLATION NOTED**.

**Critical Incident Debriefing/Defusing:** Policy 338 provides that SCSO will make peer counseling available to deputies involved in a critical incident (which included in-custody deaths) following an incident (prior to being interviewed by the criminal investigators), and to later debrief if needed. (§ 338.1 and § 338.2).

The record shows that while on scene a sergeant asked both deputies about their condition. When asked 18 months after the incident, Dep. Jensen stated that he believed someone

from SCSO reached out to him but did not recall anything specific or having attended debriefing. Dep. Matelli could not recall whether or not he was offered peer support prior to his interview with the criminal investigators, or whether he was offered a debriefing, but he noted (as did Dep. Jensen) that the west county fires started the day after the incident.


Policy 338 requires peer services to be offered, and there is some basis in the record to believe services were offered, even if the debriefing never actually occurred. Accordingly we **AGREE** that this record supports the Investigator's conclusion of **NO VIOLATION NOTED**.

We also agree with the Investigator that SCSO should implement record keeping to document when defusing and debriefing has been offered, rather than having to rely on deputies' recollections 1½ years after the fact.

Date: November 23, 2022

Respectfully Submitted:

BY:

  
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Matthew Chavez, Esq.  
Law Enforcement Auditor III

## APPENDIX A

### MATERIALS REVIEWED

- SCSO Incident Press Release (Nixle) (Aug. 15, 2020).
- Sonoma County District Attorney's Office "Officer-Involved Fatal Incident Report" (Dec. 2, 2021)
- Supplement Report re Taser Logs (No. X30001A42) (Aug. 26, 2020)
- State of California "Death In Custody Reporting Form" (BCIA 713 re. 11/05).
- Email dated Jan. 14, 2022 from Dep. Michael Matelli to Brent Kidder in response to Jan. 11, 2022 email.
- Email dated Jan. 20, 2022 from Dep. Bryan Jensen to Brent Kidder in response to Jan. 11, 2022 email.
- Body Worn Camera Video of Dep. Michael Matelli (Aug. 15, 2020)
- Body Worn Camera Video of Dep. Bryan Jensen (Aug. 15, 2020)
- Audio of Interview of Dep. Michael Matelli by Santa Rosa Police Department
- Audio of Interview of Dep. Bryan Jensen by Santa Rosa Police Department
- Audio of Interview of [REDACTED] by Santa Rosa Police Department
- Audio of Interview of [REDACTED] by Santa Rosa Police Department
- Audio of Interview of [REDACTED] by Santa Rosa Police Department
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- Audio of Interview of [REDACTED] by Santa Rosa Police Department
- Audio of Interview of [REDACTED] by Santa Rosa Police Department
- Transcript of Interview with [REDACTED] (Case No. 20-9334)
- Event Chronology (SD 202280042, 415 Disturbance; SD 202280045, 1055 Coroner's Case) (Aug. 15, 2020)
- SCSO Administrative Review, Internal Investigation Summary (20-AR-0006)
- Marin County Coroner "Amended Death certificate (Cause of Death) Form" dated Feb. 12, 2021.