

**Internal Affairs Unit**  
**I A Case Number: I2015-0145**  
**Complainant: Ms. [REDACTED]**  
**Subject: Officer Yee #4342**  
**Investigator: Sergeant Gustavo Perez #3281**

**SYNOPSIS:**

On May 6, 2015, Ms. [REDACTED] contacted the Independent Police Auditor and filed a complaint against a known officer. On May 2, 2015, Mr. Barrios, Ms. [REDACTED]' 23 year-old [REDACTED] was a passenger in a vehicle whose driver was drunk and led officers in a police pursuit. Ms. [REDACTED], who was not present and did not have all the details, stated an officer arrested Mr. Barrios and used unnecessary force to take him into custody. [REDACTED] stated he lost consciousness while being taken into custody.

**INVESTIGATION:**

05/02/2015 Date of incident  
05/06/2015 Officer Huynh #3840 assigned case  
Officer Huynh interviewed complainant  
05/08/2015 Officer Huynh obtained CAD and GO for event #15-122-0155  
05/12/2015 Officer Huynh interviewed Witness [REDACTED]  
Officer Huynh obtained signed medical waiver form for [REDACTED]  
[REDACTED] provided Officer Huynh copies of medical paperwork form O'Connor Hospital  
09/15/2015 Officer Hernandez #3746 assigned case  
Officer Hernandez obtained digital evidence from DCS  
10/09/2015 Officer Hernandez faxed medical release to O'Connor Hospital  
Officer Hernandez emailed medical release to Main Jail  
10/16/2015 Officer Hernandez obtained medical information from Main Jail  
10/28/2015 Officer Hernandez dropped off medical release at O'Connor Hospital medical records  
11/09/2015 Officer Hernandez received medical records from O'Connor Hospital  
11/16/2015 Sergeant Perez #3281 assigned case  
12/21/2015 Sergeant Perez interviewed [REDACTED]  
12/21/2015 Sergeant Perez interviewed [REDACTED]  
01/13/2016 Sergeant Perez interviewed Officer Yee

**STATEMENTS:**

Statement of Complainant Ms. [REDACTED]:

The following is a synopsis of the complainant's recorded statement made to Officer Huynh #3840 on 05/06/2015. For the full statement refer to the audio file linked in IAPro.

Ms. [REDACTED] had a copy of a booking sheet and read information off the sheet. Ms. [REDACTED] provided the case number (15-122-0155) and badge number (4323) of the subject officer. Upon further inquiry, Ms. [REDACTED] (with the aid of her [REDACTED]) provided the name of the subject officer ([REDACTED] Ms. [REDACTED] stated her [REDACTED] (later identified as Tomas Sanchez Barrios, Jr) is twenty three years old but is "slow, like younger than twenty three. He's got a disable problem." Ms. [REDACTED] stated her [REDACTED] (Mr. Barrios) was with a couple of friends in a vehicle whose driver was drunk. Ms. [REDACTED] stated a female jumped out of the vehicle. Ms. [REDACTED] admitted she did not know exactly what occurred but stated her



[REDACTED] complied with [REDACTED] commands. Ms. [REDACTED] stated [REDACTED] placed *"his whole knee on his back and then his [REDACTED] was [REDACTED]...and (he) had a big bump on the back of his head..."* Mr. Barrios was subsequently arrested for resisting arrest and booked into jail. Ms. [REDACTED] stated her [REDACTED] had not been arrested previously and was 'slow' for his age.

Ms. [REDACTED] was not present during the incident she was complaining of. She learned of the incident from her [REDACTED] when he called her from jail. Ms. [REDACTED] stated Mr. Barrios [REDACTED] picked him up. Upon doing so Mr. Barrios *"came off really hurt, really bad and stuff."* Ms. [REDACTED] stated she took Mr. Barrios to O'Connor hospital to be examined for his injuries. According to the medical report, Mr. Barrios sustained a mild concussion. Officer Huynh attempted to clarify Ms. [REDACTED]'s statement that her [REDACTED] was "slow". Ms. [REDACTED] stated her [REDACTED] was diagnosed with a learning disability and had cognitive skills of a fifteen year-old. Officer Huynh further questioned Ms. [REDACTED] about her [REDACTED] learning disability. Ms. [REDACTED] stated her [REDACTED] is able to recognize an officer's uniform and would be compliant.

The following is a synopsis of the complainant's recorded statement made to Officer Huynh #3840 on 05/12/2015. For the full statement refer to the audio file linked in IAPro.

Ms. [REDACTED] provided Officer Huynh copies of hospital paperwork. In addition, Officer Huynh presented Ms. [REDACTED] and Mr. Barrios copies of the medical release form. Both parties reviewed the form and signed the form. In addition, Ms. [REDACTED] provided photograph copies of her [REDACTED] injuries. Ms. [REDACTED] indicated the photographs were taken shortly after her [REDACTED] was released from custody (within 24hrs). Ms. [REDACTED] stated her [REDACTED] sustained injuries from the handcuffs because *"they were really tight. Real tight."* Other injuries included [REDACTED] to the [REDACTED] and [REDACTED] at the [REDACTED].

Statement of Witness [REDACTED]:

The following is a synopsis of the witness's recorded statement made to Officer Huynh #3840 on 05/12/2015. For the full statement refer to the audio file linked in IAPro.

Upon initial contact in the Internal Affairs Unit, [REDACTED] was advised of his Miranda rights by Officer Huynh and asked to provide a verbal answer. [REDACTED] acknowledged his rights by answering "Yes" to the four questions. [REDACTED] waived his rights by agreeing to provide a statement about this incident.

[REDACTED] stated *"we got pulled over on Tully (Rd)."* His friend, the driver, was drunk and did not notice there was an officer driving in the opposite direction. [REDACTED] told the driver about the officer and stated *"he [the driver] didn't care. And I was like I didn't know what else to do from there."* The driver (determined to be Dontia Moore) started driving faster and [REDACTED] told Mr. Moore to pull over. [REDACTED] stated *"he (Mr. Moore) didn't listen (and) kept going, kept going"* and finally yielded to the officers at the Wells Fargo bank near Eastridge Mall. Mr. Moore exited the vehicle and *"took off running. So I got off (i.e. exited the vehicle) and that was when I got on the floor. I got on the floor..."* [REDACTED] stated no officer approached him while he was on the floor. The officers pursued Mr. Moore. [REDACTED] stated there were no officers at the scene (where he was). A female passenger attempted to leave but [REDACTED] prevented her from doing so in order for her to not get into further trouble. Officers then *"pulled us over right there and that's when I got on the floor, got down..."* An



officer “got on top” of [REDACTED] and he told the officer he was not resisting. The officer told him to stop resisting and *“that’s all I remember. I just remember waking up in the cop car. And when I woke up I was in handcuffs and I was sitting next to the girl. That’s all I remember from there.”*

Officer Huynh asked [REDACTED] for clarification. [REDACTED] stated the traffic stop first initiated over *“by the Chuck E. Cheese...that’s where they first blurred us. They put on the sirens”* and where he told Mr. Moore to pull over. Upon further inquiry, it was apparent [REDACTED] was aware that the vehicle he was riding in was being subjected to a traffic enforcement stop by the police. [REDACTED] stated he was seated in the front passenger seat with Mr. Moore in the driver’s seat. Mr. Moore’s [REDACTED] ([REDACTED]) was in the back seat along with her friend ([REDACTED]). After [REDACTED] noticed that officers were attempting to pull the vehicle he was in over, he repeatedly told Mr. Moore to pull over. Mr. Moore finally stopped the vehicle at the Wells Fargo Bank parking lot. Mr. Moore exited the vehicle and ran from the vehicle. One girl ([REDACTED]) exited the vehicle and attempted to leave the scene but [REDACTED] told her not to because she would be in bigger trouble. [REDACTED] walked towards her and when he neared her a police vehicle drove up and contacted them. [REDACTED] stated he *“got down and when I got down, I looked up and that’s when the cop got behind me and started like telling me to chill. I wasn’t resisting or nothing...”* It was right after this that [REDACTED] indicated he passed out.

Upon further inquiry by Officer Huynh, [REDACTED] stated Ms. [REDACTED] was seated behind him with Ms. [REDACTED] sitting behind Mr. Moore. [REDACTED] was not sure what occurred with Ms. [REDACTED] by stating that she *“got out of the car, but she was out of the car before we got pulled over. It was weird...”* [REDACTED] did not know how Ms. [REDACTED] got out of the vehicle. Officer Huynh asked [REDACTED] how he got on the ground. [REDACTED] stated he laid down flat on the ground, face down with his chin on the ground and arms extended out to his sides like an airplane. When the officer got on top of him, [REDACTED] yelled out “ow” and then the officer placed [REDACTED] hands behind his back. [REDACTED] did not recall what happened next. Upon further inquiry from Officer Huynh, [REDACTED] stated he expressed pain because the officer placed a knee on [REDACTED] back. [REDACTED] did not recall how many officers assisted in placing him into handcuffs.

Officer Huynh asked [REDACTED] about his physical injuries. [REDACTED] stated his back hurt because of the knee that was placed on his back (unknown which knee). [REDACTED] stated this area was still (on 05/12/2015) sore. [REDACTED] stated that he blacked out as he was placed in handcuffs. Officer Huynh asked [REDACTED] why he blacked out and he replied he did not know. On the date of the incident, [REDACTED] stated he was wearing blue Levi’s (‘skater pants’), a black short sleeve t-shirt and a hat. [REDACTED] stated that he had no weapons on his person and that his wallet was in his back pocket. [REDACTED] stated he was placed in the “drunk tank” at the jail but did not know why. [REDACTED] claimed that he had not been drinking that night but was just tired. [REDACTED] stated that when he regained consciousness, he felt the handcuffs were too tight. [REDACTED] asked the officer to loosen the cuffs and the officer complied by loosening the handcuffs. The loosening of the cuffs provided [REDACTED] with relief. [REDACTED] did not recall the name of the officer but indicated the officer had a passenger.

Statement of Witness [REDACTED]:

On December 21, 2015 at approximately 0711 hrs, I interviewed [REDACTED] at the Internal Affairs Unit. I read [REDACTED] the Witness Admonition, which he acknowledged and signed. The statement was digitally recorded with his knowledge. [REDACTED] reviewed his report in preparation for this interview. [REDACTED] did not speak to anyone in preparation for this interview. The



following is a summary of the interview. For a full statement refer to the audio recording linked in IAPro.

[REDACTED] has been a San Jose Police Officer for approximately two years. On May 2, 2015 at approximately 0222 hrs [REDACTED] was working patrol during the midnight shift. [REDACTED] was working with Officer Yee. Both officers were working in full uniform and were in a marked police vehicle.

[REDACTED] and Officer Yee were traveling southbound on Alvin Ave. Both officers saw a black older Mercedes turn northbound onto Alvin Av from Fontaine Rd at a high rate of speed causing the vehicle's rear end to pitch out to the side (fish tail) uncontrollably.

[REDACTED] stated that the occupants of the vehicle saw Officer Yee and [REDACTED] since they drove right past them. [REDACTED] stated that all the occupants were like "deer in the headlights" when they were looking at [REDACTED]

[REDACTED] stated that he and Officer Yee went after the Mercedes to make an enforcement stop. They caught up to the Mercedes just before it turned onto Tully Rd and they turned on their lights and siren to pull over the Mercedes.

The Mercedes did not stop and continued traveling eastbound on Tully Rd at approximately 25 mph. [REDACTED] was trying to determine whether the driver of the Mercedes was attempting to evade them or just trying to find a spot to pull over.

The Mercedes kept traveling eastbound on Tully Rd and eventually turned southbound onto Brahms Av, bypassing several places where the Mercedes could have safely pulled over. The Mercedes finally pulled over at the corner of Brahms Av @ Edgestone Cir.

[REDACTED] and Officer Yee approached the Mercedes on foot. As they were within two to three feet of the Mercedes the Mercedes fled and made an immediate u-turn at a high rate of speed causing the rear end to fish tail. The Mercedes drove straight towards Officer Yee and [REDACTED] stated that he feared the Mercedes was going to strike him and Officer Yee so they both ran up onto the sidewalk.

The Mercedes made a hard turn to the right and passed them. [REDACTED] looked back and saw [REDACTED] approaching their location in his police vehicle and the Mercedes headed straight towards [REDACTED] stated that he saw [REDACTED] face and described [REDACTED] as having a shocked look on his face. [REDACTED] saw [REDACTED] crank the steering wheel on his patrol vehicle, accelerate and hop onto a curb in an attempt to avoid being struck by the Mercedes. Regardless of [REDACTED] attempts the Mercedes struck [REDACTED] patrol vehicle and continued driving away.

I asked [REDACTED] if [REDACTED] and the Mercedes were driving head on towards each other. [REDACTED] explained that [REDACTED] was driving southbound (on Brahms Av) when the Mercedes was in the middle of its u-turn. I asked [REDACTED] if the Mercedes slowed down as it approached [REDACTED] and he replied, "Absolutely not." I asked [REDACTED] if he saw the



Mercedes brake as it approached [REDACTED] and he replied, "No." I asked [REDACTED] if he saw or heard the Mercedes accelerate as it approached [REDACTED] and he replied, "Yes I did."

I asked [REDACTED] what he believed the driver of the Mercedes intent was as he drove towards [REDACTED]. [REDACTED] explained that he believed that the driver of the Mercedes intent was to hit officers, hurt officers and do whatever he had to do to get away. I asked [REDACTED] what was going through his mind when the Mercedes drove towards him and [REDACTED]. [REDACTED] explained that was concerned about his safety, [REDACTED] safety and the safety of citizens who were on the road. [REDACTED] added that he did not want his partners or him to get hurt since the driver of the Mercedes had a "blatant disregard" for his safety, other officers' safety, the public's safety and the safety of the passengers in the Mercedes. [REDACTED] stated, "I was scared for my life."

[REDACTED] stated that the driver of the Mercedes intentionally struck [REDACTED] vehicle since the driver did not attempt to steer away, brake or stop. The Mercedes went straight towards [REDACTED] striking [REDACTED] vehicle.

After striking [REDACTED] vehicle the driver of the Mercedes did not stop and instead continued northbound on Brahms Av and made an immediate right turn onto Tully Rd. [REDACTED] and Officer Yee jumped back into their police vehicle to go after the Mercedes.

When [REDACTED] and Officer Yee turned onto Tully Rd they saw that the Mercedes had struck the center concrete median and the whole rear end of the Mercedes flew two to three feet in the air. [REDACTED] saw the rear of the Mercedes emit sparks and a lot of smoke. When the Mercedes landed back onto the street [REDACTED] heard the sound of the motor revving in an attempt to flee.

As [REDACTED] and Officer Yee approached the vehicle they saw a couple of passengers run from the vehicle. The unidentified passengers ran into Welch Park and got away. Another female passenger that was sitting in the rear driver side passenger seat was hanging out the open door. [REDACTED] stated that this female passenger appeared lifeless since she was not moving. Officer Yee got out of to attend to this passenger.

[REDACTED] stated that the crash of the Mercedes into the center median was so violent that one tire (could not recall which one) was completely "severed" from the Mercedes. [REDACTED] stated that another tire was either flat or also "severed" from the Mercedes.

I asked [REDACTED] if the driver of the Mercedes surrendered after this crash and he replied, "No." [REDACTED] stated that the driver of the Mercedes was attempting to drive off since he had the gas pedal all the way down to the ground. [REDACTED] knew this since he could hear the engine revving loudly and the wheels to the Mercedes spinning. The Mercedes could not drive off right of way since it did not have traction. After a few seconds the Mercedes finally caught traction and drove off at approximately five miles per hour fish tailing since it was missing wheels. [REDACTED] began chasing after the Mercedes on foot.

I asked [REDACTED] where the Mercedes came to its final stop. [REDACTED] stated that he was not with the Mercedes when it came to its final stop. [REDACTED] heard, via the radio, that the Mercedes came to a stop in the bank parking lot at Eastridge Mall.



Officer Yee picked up [REDACTED] and they drove towards the final stop of the Mercedes. [REDACTED] heard Sgt Prescott advising, via the radio, that passengers were running. [REDACTED] determined that two passengers were running through a grass field and the driver was running northbound towards Tully Rd.

When [REDACTED] and Officer Yee arrived on scene [REDACTED] saw two people running through the field in a north east direction. [REDACTED] clarified that the two passengers were in a "full sprint" and running away from the Mercedes.

[REDACTED] and Officer Yee pulled past the two that were running and attempted to stop them. [REDACTED] stated that he got out and yelled out, "Stop! San Jose Police, get on the ground!" [REDACTED] stated that he dealt with the female that was the closest to them and Officer Yee dealt with the male (Mr. Barrios).

[REDACTED] stated that the female was verbally combative and did not want to comply with any commands. [REDACTED] noticed that the female was pregnant and determined that he was not going to take her to the prone position. [REDACTED] placed the female into a control hold and placed her into handcuffs and walked her over to their patrol vehicle.

I asked [REDACTED] if he saw Officer Yee take Mr. Barrios into custody and he explained that he did not since he was dealing with the female. I asked [REDACTED] if he saw Officer Yee use any force on Mr. Barrios and he replied, "No, I did not."

I asked [REDACTED] if he heard Officer Yee dealing with the male. [REDACTED] explained that he did hear Officer Yee since Officer Yee was approximately ten to fifteen feet away. [REDACTED] believes he heard Officer Yee say, "Stop! San Jose Police, get on the ground!" [REDACTED] stated that he heard Officer Yee's voice change when he again yelled out, "Get on the ground!" [REDACTED] stated that Officer Yee's voice really changed when he heard him yelling, "Give me your hands! Let me see your hands!" [REDACTED] explained that he has worked with Officer Yee for a while. As a result [REDACTED] knows that when Officer Yee changes his voice like that, he knows that Officer Yee is in stressful situation and something is not right. [REDACTED] heard Officer Yee yell out, "Let me see your hand! Give me your hands!" quite a few times then it went silent.

I showed [REDACTED] a Google Map aerial view that depicts the Wells Fargo Bank parking lot and a large field east of the Wells Fargo Bank. The Wells Fargo Bank and field are located next to Eastridge Mall. I asked [REDACTED] to mark on the map (blue ink) where Mr. Barrios was taken into custody. I also asked [REDACTED] to mark on the map (black ink) the final resting spot of the Mercedes. This marked map is linked to IAPro.

[REDACTED] could not recall if Mr. Barrios told him that his handcuffs were hurting him. [REDACTED] was dealing with the pregnant female that was being attended by an ambulance crew.

Statement of Witness [REDACTED]:

On December 21, 2015 at approximately 0800 hrs, I interviewed [REDACTED] at the Internal Affairs Unit. I read [REDACTED] the Witness Admonition, which he acknowledged and signed.



The statement was digitally recorded with his knowledge. [REDACTED] reviewed his report in preparation for this interview. [REDACTED] did not speak to anyone in preparation for this interview. The following is a summary of the interview. For a full statement refer to the audio recording linked in IAPro.

On May 2, 2015 [REDACTED] was working midnight patrol in full uniform and driving a marked police vehicle. [REDACTED] drove to the area of Brahms Av near Tully Rd to assist Officer Yee and [REDACTED] on an enforcement stop.

When [REDACTED] arrived he saw a black vehicle pulled over with a marked police vehicle behind it. The police vehicle had its red and blue emergency lights on and had its spot lights on the black vehicle.

[REDACTED] was driving to the stop with the intention of pulling in behind the marked police vehicle when the black vehicle suddenly took off. [REDACTED] heard the tires squeal and the vehicle did a quick u-turn. The vehicle began driving head on towards [REDACTED] police vehicle.

[REDACTED] was on the right hand side of the road driving southbound on Brahms Av. The vehicle was driving northbound on Brahms Av and instead of driving in its lane it drove into [REDACTED] lane headed straight for him. [REDACTED] feared that the vehicle was going to strike him so he drove onto the left side of the road and up onto the sidewalk in an attempt to avoid being struck. [REDACTED] was able to get the front two tires of his police vehicle onto the sidewalk. The vehicle then turned its direction once again toward [REDACTED] patrol vehicle striking it on the rear passenger side.

[REDACTED] stated that the vehicle did not slow down as it approached him and on the contrary was speeding up as it approached him. [REDACTED] estimated the vehicle's speed as approximately twenty to thirty miles per hour. [REDACTED] stated that he believed the vehicle hit him in order to get away. [REDACTED] stated that he was scared and added that a vehicle is a dangerous weapon that can kill you.

[REDACTED] stated that the vehicle did not stop at the scene after striking him and continued to flee. The vehicle turned eastbound onto Tully Rd and [REDACTED] began to drive after the vehicle. When [REDACTED] turned onto Tully Rd he saw that the vehicle had crashed into the center median and was stuck. The vehicle's tires were spinning but the vehicle was not moving. Sparks were being emitted from the vehicle and the vehicle was missing a tire.

A rear driver side female passenger got out of the vehicle as the vehicle was rocking back and forth. As the female was getting out of the vehicle, the vehicle finally got traction and took off. The vehicle took off and struck the female passenger knocking her onto the ground.

The vehicle continued to flee and [REDACTED] continued to pursue it. The vehicle could not drive fast since it was missing a tire and was damaged from the crash. The vehicle ended up spinning out at a bank parking lot near Eastridge Mall. The driver lost control of his vehicle in the bank parking lot, spun out and [REDACTED] blocked it in with his patrol vehicle. This stopped the pursuit and prevented the driver from driving further.



The driver of the vehicle immediately got out and began running towards Tully Rd. [REDACTED] chased after the driver and took him into custody on Tully Rd.

[REDACTED] was not present when Mr. Barrios was taken into custody and therefore did not see any force used on Mr. Barrios.

Statement of Subject Officer Yee #4342:

On January 13, 2016 at approximately 1010 hrs, I interviewed Officer Yee at the Internal Affairs Unit. Present in the office was his POA Representative Officer Moutzouridis #3268. Also present was Ms. Nurre from the Office of the Independent Police Auditor. I read Officer Yee the Grant of Immunity Admonition, which he acknowledged and signed. The statement was digitally recorded with his knowledge. Officer Moutzouridis made an independent recording of the interview. The following is a summary of the interview. For a full statement refer to the audio recording linked in IAPro.

Officer Yee has been a San Jose Police Officer for approximately two years. Officer Yee reviewed his report in preparation for this interview. Officer Yee did not speak to anyone other than his POA Representative in preparation for this interview.

On May 2, 2015 Officer Yee was working patrol in full uniform and driving a marked police vehicle. Officer Yee was working together with [REDACTED] and Officer Yee was the driver.

Officer Yee and [REDACTED] were in the area of Alvin Av and Fontaine Rd. Officer Yee saw a vehicle peeling out and losing traction as it turned northbound onto Alvin Av.

Officer Yee attempted to make an enforcement stop on this vehicle but it did not stop. The vehicle was driving slowly and finally came to a stop at Brahms Av and Edgestone Cir. Officer Yee and [REDACTED] got out and approached the vehicle. The vehicle took off, immediately made a u-turn at a high rate of speed and peeled out.

Officer Yee got back into his car to try and catch up to the vehicle. Officer Yee then heard a large bang and realized later that the fleeing vehicle had struck [REDACTED] patrol vehicle.

Officer Yee stated that [REDACTED] turned to the left to avoid being struck by the fleeing vehicle but the vehicle struck [REDACTED] vehicle on the right hand side. Officer Yee stated that the vehicle drove straight towards [REDACTED] vehicle in what would have been a head on collision.

Officer Yee stated that as the vehicle was headed straight towards [REDACTED] vehicle it did not brake and instead accelerated. I asked Officer Yee if he believed the vehicle struck [REDACTED] vehicle intentionally or on accident. Officer Yee replied that he believed it was intentional because the driver of the vehicle had approximately twenty yards distance before he struck [REDACTED] police vehicle. During this distance the driver did not slow down and did not attempt to move around [REDACTED] Officer Yee explained that the driver could have gone over a curb to avoid striking [REDACTED] vehicle. Officer Yee believed that the driver of the vehicle committed the crime of assault with a deadly weapon on a peace officer.



The vehicle did not stop and continued to flee by turning eastbound onto Tully Rd. Officer Yee began pursuing the vehicle due to the nature of the crime (assault with a deadly weapon on a peace officer) the driver had just committed. The vehicle attempted to cross Tully Rd by driving across all the lanes but crashed into the center median. As a result of the crash a female passenger fell out of the vehicle and Officer Yee stopped to assist her and determined that she was not injured. During the crash the vehicle also lost its rear left wheel and was peeling out on its rim causing sparks to fly.

The driver of the vehicle did not surrender and continued to try and flee. Officer Yee stated that the driver was "petal to the medal" since he could hear the engine revving and the tires spinning trying to gain traction.

The vehicle fled northbound on the next street. [REDACTED] continued pursuing the vehicle. The pursuit was now headed towards Eastridge mall. [REDACTED] had chased the vehicle on foot and Officer Yee drove to his location to pick him up. Officer Yee and [REDACTED] then drove to catch up to the pursuit.

The vehicle finally came to a stop at the Wells Fargo Bank parking lot located near Eastridge Mall. The vehicle was cut off by an officer preventing it from driving further. The driver and the passengers then fled the vehicle.

Officer Yee did not see the driver and passenger flee from the vehicle since he still was not on scene. Officer Yee heard, via the radio, that the driver and passengers were fleeing. Officer Yee stated that he believed that Sgt Prescott broadcast over the radio that a male and female fled the vehicle and were running across a field.

When Officer Yee arrived at the location that Sgt Prescott was describing Officer Yee saw a male (Mr. Barrios) and a female running eastbound through the field. The area where Officer Yee saw Mr. Barrios running is approximately one hundred to two hundred yards away from the vehicle's final resting spot.

Officer Yee and [REDACTED] got out and confronted Mr. Barrios and the female. [REDACTED] dealt with the female and Officer Yee dealt with Mr. Barrios. Officer Yee stated that he gave Mr. Barrios commands of "Get down on the ground, Get down on the ground!"

Officer Yee stated that the female and Mr. Barrios separated and started going into different directions. The female headed toward officers and Mr. Barrios went a different direction. Officer Yee cut off Mr. Barrios. Officer Yee stated that Mr. Barrios did not comply with his order to "get down on the ground" and instead just stood there. Officer Yee stated that he walked up to Mr. Barrios and believed that Mr. Barrios was going to flee again. Officer Yee based this upon the fact that the vehicle (that Mr. Barrios was in) fled from the original stop, fled after it had crashed and fled after it struck [REDACTED] vehicle.

To prevent Mr. Barrios from fleeing Officer Yee took hold of Mr. Barrios' left arm and pulled him into the prone position. When Mr. Barrios landed on the ground he put both his hands into his waist band area. Officer Yee stated that based upon his training and experience he knows that suspects often keep weapons in their waistband area and knew this was a threat to him. Officer Yee stated that he needed to get Mr. Barrios' hands behind his back to effect his arrest. Officer Yee stated that Mr. Barrios was



showing resistance by not pulling his hands out. Officer Yee struck Mr. Barrios in the back of his head twice with his elbow.

I asked Officer Yee if Mr. Barrios surrendered when he was taken to the ground and Officer Yee replied, "No." Officer Yee explained that Mr. Barrios was not complying with any of the commands that he gave him. These commands included "Get down on the ground!", "Pull your hands out from under you!" and "Get your hands out, get your hands out!" Officer Yee stated that instead of complying with his orders Mr. Barrios kept his hands underneath his body and kept squirming instead of submitting.

I asked Officer Yee if he had any concerns since he could not see Mr. Barrios' hands and he replied, "Yah I'm concerned for my safety and my partners."

I asked Officer Yee why he struck Mr. Barrios on his head and he explained that he did it to distract Mr. Barrios in an effort to get him to show his hands and so that Mr. Barrios would not focus on his possible objectives with his hands (weapons). I asked Officer Yee why the striking area was Mr. Barrios' head. Officer Yee explained that based upon his and Mr. Barrios' position Mr. Barrios' head was the part of his body that was exposed. Officer Yee explained that in order to strike another body part Officer Yee would have had to remove himself from Mr. Barrios giving up his position of advantage. Officer Yee also knows that strikes to the head are more distracting than other parts of the body.

An ambulance was called to the scene for Mr. Barrios and he was medically evaluated by the ambulance paramedics.

I asked Officer Yee if Mr. Barrios ever complained about tight handcuffs. Officer Yee explained that Mr. Barrios did complain about tight handcuffs and in response he loosened the handcuffs. Officer Yee stated that he checked and did not see any injuries on Mr. Barrios consistent with tight handcuffs.

I asked Officer Yee if Mr. Barrios laid down flat on the ground as he approached him and Officer Yee replied, "No he didn't." I asked Officer Yee if Mr. Barrios put his face down on the ground with his chin on the ground and Officer Yee replied, "No." I asked Officer Yee if Mr. Barrios laid down on the ground with his arms extended on the side like an airplane and Officer Yee replied, "No."

I asked Officer Yee if Mr. Barrios was taken into custody directly next to the vehicle that he pursued and Officer Yee replied, "No he wasn't."

I showed Officer Yee a Google Map aerial view that depicts the Wells Fargo Bank parking lot and a large field east of the Wells Fargo Bank. The Wells Fargo Bank and field are located next to Eastridge Mall. I asked [REDACTED] to mark on the map (blue ink) where Mr. Barrios was taken into custody. I also asked [REDACTED] to mark on the map (black ink) the final resting spot of the Mercedes. This marked map is linked to IAPro.

Officer Moutzouridis asked Officer Yee if Mr. Barrios was actively resisting him and Officer Yee replied, "Yes." Officer Yee explained that Mr. Barrios was pulling away as he was on the ground.

Ms. Nurre had the following clarifying questions.



I asked Officer Yee if during the pursuit he was able to determine if the driver was a male or a female and he replied, "Male, yes."

I asked Officer Yee if he knew whether the person he took into custody was the driver or the passenger and he replied, "I had thought that it was the driver, it was not."

I asked Officer Yee if he could tell what Mr. Barrios was wearing when he approached him in the field and Officer Yee replied, "Yes. A black hooded sweatshirt and dark pants. I can't remember if it was sweats or jeans." I asked Officer Yee if Mr. Barrios' clothing was covering his waistband area and Officer Yee replied, "It was really oversized so it was covering more than his waistband, it was covering down to below his buttocks."

I asked Officer Yee if he recalled if Mr. Barrios was able to break his fall when he took Mr. Barrios to the ground and Officer Yee replied, "I don't remember."

I asked Officer Yee if he recalled Mr. Barrios' head position when he was in the prone position and Officer Yee replied, "It was kind of hunched like this (Officer Yee demonstrated by tucking his chin into his chest) with his, it was a little bit to the side but it wasn't you know where I could see his profile." Officer Yee described Mr. Barrios' head position as down and slightly to the side.

I asked Officer Yee where on the back of the head he struck Mr. Barrios and Officer Yee replied, "Directly on the back of the head (while pointing directly to the back of his head)."

I asked Officer Yee if the two head strikes on Mr. Barrios were together or separated by time and Officer Yee replied, "They were together."

I asked Officer Yee if he recalled how long Mr. Barrios was unconscious and Officer Yee replied, "Between thirty seconds and a minute."

## **ACTION TAKEN:**

### **Summary of Investigative Actions:**

Officer Hernandez obtained a CAD printout and a copy of SJPD General Offense report #15-122-0155. A review of the document provided the following information:

#### **CAD**

- 0229 hours,
  - 7C81 [REDACTED] and Yee #4342 conducted a vehicle stop in the area of Tully Rd, just east of King Rd on license plate # [REDACTED]
  - 71C3 [REDACTED] was dispatched and enroute
  - 7C81 updated the location to Tully Rd and Kenesta Way
- 0230 hours,
  - 7C81 updated the direction of travel to eastbound Tully Rd and crashed in the westbound lane
  - 7C10 Sgt. Prescott #3624 was dispatched and enroute
  - 7C81 updated the direction of travel to northbound Kenesta and stated 'subjects ran through parking lot towards Hillview Park



- 72C1 Officers Barajas #4329 and Sloniker #4343 was dispatched and enroute Code 3
- 0231 hours,
  - 5098 Lt. Lombardo #3439 was dispatched and enroute
  - 72C2 Officers Barrera #4336 and Bowman #4340 were dispatched and enroute
  - 72C1 updated the direction of travel to eastbound Tully Rd and Quimby Rd with the vehicle pulling to a parking lot
  - 71C4 Officer Gach #4338 was dispatched
  - 7C10 advised he observed three subjects running northbound through Eastridge
- 0232 hours,
  - 7C81 stated they had one subject going east while they had two subjects at gunpoint
  - 7C10 advised one subject was in custody, and two more were being detained and in process of being in custody
  - 7C81 advised subjects were in the field just east of Wells Fargo Bank
- 0233 hours,
  - 7C81 requested EMS for a twenty five year-old male who was not conscious but breathing
  - 7C10 updated the location of the scene
- 0235 hours,
  - EMS was enroute
  - 7C81 advised the suspects were wanted for CVC 2800 and PC 148
  - 7C81 advised they were flagging down EMS
- 0236 hours,
  - 7C81 advised male was now conscious, breathing and talking
- 0237 hours, 72C2 conducted a records check on [REDACTED]
- 0238 hours,
  - 7C81 conducted a records check on Barrios, Tomas 11/20/1991
  - 7C81 conducted a registration check on [REDACTED]
- 0241 hours, 7C81 conducted a records check on [REDACTED]
- 0242 hours, 5098 arrived on scene
- 0250 hours, 71C3 conducted a records check on Moore, Dontia 11/05/1994
- 0256 hours, 72C1 requested a tow for impound
- 0312 hours, 71C1 cleared the event with a disposition of "N"
- 0350 hours, 72C2 cleared the event with a disposition of "N"
- 0401 hours,
  - 5098 cleared the event with a disposition of "N"
  - 71C3 began transport of a subject to AIB
  - 71C3 requested a blood tech to AIB
- 0421 hours, 7C81 began transport of subject to Main Jail
- 0430 hours, 7C81 completed transport of subject to Main Jail
- 0509 hours, 71C3 began transport of subject to Main Jail
- 0512 hours, 71C3 completed transport of subject to Main Jail
- 0558 hours, 7C10 cleared the event with a disposition of "O"
- 0559 hours, 72C1 cleared the event with a disposition of "N"
- 0608 hours, 7C81 cleared the event with a disposition of "A"
- 0611 hours,
  - 71C3 cleared the event with a disposition of "A"



- Event closed
- 1348 hours, Communications noted a message was sent to 5055 Lt. Sims #2859 and 5065 Lt. Spagnoli #2924 to call O'Connor ER nurse [REDACTED] who advised Tomas Barrios was in the ER

#### General Offense Report

- Reported On: 05/02/2015 @ 0229 hours
- Occurred On: 05/02/2015 @ 0229 hours
- Location: Tully Rd and S King Rd
- Offense Type: PC 245, 148, CVC 23152b, 12500, 2800.2
- Submitted by: Officer Yee #4342
- Synopsis: On 5/2/15, at 0229 hours the crimes of assault with a deadly weapon on a police officer, felony reckless evading, resisting arrest, driving under the influence of alcohol/narcotics, possession of Xanax and driving without a license occurred in the area of Tully Rd/Kenesta Wy. Two suspects were arrested and booked into Santa Clara County Main Jail.
- Narrative: On 5/2/15, at approximately 0228 hours, [REDACTED] and Officer Yee #4342 were in full uniform working in a marked patrol vehicle as a 2-man patrol vehicle in the area of Tully Rd/Alvin Ave. [REDACTED] noted that as they turned southbound onto Alvin Ave from Tully Rd he observed a black older Mercedes turn northbound onto Alvin Ave from Fontaine Rd. As the Mercedes turned northbound onto Alvin Ave the driver accelerated the vehicle causing the rear tires to break traction and "peel out". A small plume of smoke (tire smoke) began billowing out behind the vehicle as it continued to travel north onto Alvin Ave with its tires still breaking traction (rear end of the vehicle swinging laterally). The driver willfully disregarded the safety of its passengers as well as the general public.
- [REDACTED] noted they made a u-turn just north of Fontaine Rd and positioned the patrol vehicle directly behind the Mercedes ([REDACTED]). The vehicle turned eastbound onto Tully Rd at a high rate of speed causing the rear end of the vehicle to break traction, "get sideways" and nearly striking the center median of Tully Rd with its back left rear tire.
- The officers initiated a vehicle stop using the vehicle's emergency lights and siren on Tully Rd just east of King Rd. The vehicle continued to travel eastbound onto Tully Rd at approximately 20-25mph in the #3 lane.
- [REDACTED] noted he utilized the PA system and commanded the vehicle to pull over, by stating, "San Jose Police, stop your vehicle." The vehicle turned south onto Brahms Ave and stopped at the corner of Brahms Ave and Edgestone Cir. As [REDACTED] and Yee exited their patrol vehicle the suspect vehicle accelerated forward and performed a u-turn at the intersection causing the vehicle to get sideways and the tires break traction (swinging laterally without traction). The vehicle continued north onto Brahms Ave striking [REDACTED] patrol vehicle.
- Both officers returned to their patrol vehicle, made a u-turn at Brahms Ave and Edgestone Cir and followed the suspect vehicle. [REDACTED] noted he witnessed the suspect vehicle travel northeast across Tully Rd, strike the center median, spin out, and stop in the #2 lane of westbound Tully Rd with major damage to the passenger rear wheel (tire separated from the rim). Once stopped, one occupant (passenger side) exited the vehicle and began running northbound through a shopping center and into Welch Park (he was not pursued). The occupant was described as a Hispanic male (mid 20's) wearing a white t-shirt.



- [REDACTED] noted that the suspect vehicle was stationary for approximately 3 seconds before attempting to flee again westbound Tully Rd. Ofc Yee had stopped their patrol vehicle in the #1 and #2 lanes of eastbound Tully Rd. [REDACTED] exited the vehicle and heard the suspect vehicle's engine red lining (pedal to the floorboard) with a large cloud of white smoke behind the vehicle. The suspect's vehicle began moving at a slow rate of speed because it was without a tire and riding on the rim.
- [REDACTED] began running towards the suspect vehicle and in doing so observed the driver's side rear door open up and a white female adult fall out onto the ground nearly getting ran over by the suspect vehicle. Officer Yee contacted the female.
- [REDACTED] continued to chase after the suspect's vehicle on foot as he drove approximately 5mph westbound on Tully Rd. While chasing the vehicle he observed [REDACTED] patrol vehicle strategically waiting for the suspect's vehicle in the intersection of Huran Dr and Tully Rd. The suspect vehicle then turned northbound on Huran Dr and [REDACTED] got behind the suspect vehicle and continued the pursuit.
- [REDACTED] noted he returned to his patrol vehicle while Officer Yee continued to lend assistance to the female which fell from the suspect's vehicle. Officer Yee noted he contacted the female, [REDACTED], who stated she was okay and did not need medical assistance. [REDACTED] claimed to not know the driver but the investigation determined the driver was her [REDACTED].
- Officer Yee noted since [REDACTED] was unharmed and [REDACTED] was still in pursuit of a suspect who assaulted an officer he instructed [REDACTED] stay at the scene and wait for additional officers.
- [REDACTED] noted that due to the damage to the suspect's vehicle and the low speeds of the pursuit he ran towards [REDACTED] and the suspect vehicle in an attempt to assist with the apprehension. While running, officers updated that the vehicle had spun out and several occupants fled the area on foot.
- Sgt. Prescott #3624 updated there were two subjects from the vehicle running in the open field which was just east of the suspect's vehicle (2170 Eastridge Loop).
- [REDACTED] noted he was picked up by Officer Yee and then headed east on Tully Rd to intercept the two subjects which ran from the vehicle. Approximately 100 yards west of the open field, he observed two subjects, both wearing black clothing running eastbound through the open field. The officers were able to catch up to the subjects in the field.
- [REDACTED] detained one party ([REDACTED]), while Officer Yee detained the second subject, identified as Tomas Barrios. Officer Yee noted the female complied while Barrios did not.
- Based on the observed behavior of the suspect vehicle and the fact that Suspect Barrios was fleeing the scene, Officer Yee approached him and pulled him to the ground by the arm into a prone position. Officer Yee noted he placed his knee into Barrios' back to gain control and prevent his escape. He noted Barrios' hands were tucked under his waistband and the officer could feel Barrios moving and fidgeting.
- Officer Yee noted he commanded Barrios to pull his hands out from under him, but he only continued to squirm. Based on his training and experience, Officer Yee noted he knew that suspects often times carry and conceal weapons around their waistband area. Based on this knowledge and observations of Barrio's behavior he struck the suspect twice in the back of the head with his right elbow to distract him while pulling his hands out from under his waistband. The blows to Barrios' head subsequently rendered him unconscious allowing Officer Yee to safely place him into handcuffs.



- [REDACTED] noted EMS arrived on scene and suspect Barrios was medically cleared and refused medical attention. Officer Yee noted Barrios was treated at the scene by paramedics and was cleared for transport to the jail. The female he detained identified as [REDACTED] was later released at the scene.
- [REDACTED] completed a supplemental regarding his observations and actions. He noted he attached to the event as a fill unit. [REDACTED] observed the suspect vehicle make a u-turn at a high rate of speed. [REDACTED] noted his patrol vehicle's emergency lights were activated as well as flood and spot lights.
- The suspect vehicle traveled head-on with [REDACTED] patrol vehicle at a high rate of speed. He noted he could hear the vehicle accelerating as it approached and it did not slow down. [REDACTED] feared for his safety and attempted to avoid a head-on collision but the vehicle struck the rear passenger side door of his patrol vehicle.
- [REDACTED] detailed his observations of the suspect vehicle's direction of travel and ultimately its final resting position. [REDACTED] noted he observed the driver of the vehicle exit and flee from the scene. He pursued the driver (later identified as Dontia Moore). Moore was taken into custody without incident. [REDACTED] obtained a digitally recorded Mirandized statement from Moore wherein Moore admitted to being "drugged" up and fleeing from officers.
- Sgt. Prescott #3624 responded to the scene and noted his observations of the suspect vehicle. Sgt. Prescott noted he observed [REDACTED] in foot pursuit of the driver of the vehicle (Moore) and Moore's subsequent arrest. Sgt. Prescott also documented his observations of two others (Barrios and [REDACTED]) fleeing from the vehicle.
- Sgt. Prescott noted he observed Officers Yee and [REDACTED] attempt to make contact with Barrios and [REDACTED]. He observed that Barrios and [REDACTED] were standing but had stopped. Sgt. Prescott observed what appeared to be the officers taking Barrios to the ground. Sgt. Prescott noted he alerted the officers to detain [REDACTED] because he knew she had been in the suspect vehicle.
- Sgt. Prescott noted he did not see any officers use force but it did appear that officers made physical contact with Barrios while Barrios was still standing. He later learned that force was used to take Barrios into custody. Sgt. Prescott interviewed Barrios for a use of force investigation. Sgt. Prescott advised Barrios of his Miranda rights and Barrios answered yes to all questions. Sgt. Prescott obtained the following digitally recorded statement from Barrios.
  - Barrios was the front passenger in the vehicle and there were five people in the car. Three males and two females. Barrios knew police were pulling the vehicle over and believed the driver was going to stop. Barrios stated the driver started to stop then suddenly made a quick u-turn and started driving back towards the officers. Barrios stated the driver was driving at the officers but was trying to swerve around them. Barrios stated the vehicle hit the middle island on Tully Rd and continued to drive. Barrios did not know at what time police began to pursue the vehicle. He stated that he knew they made a turning skid stop in the Wells Fargo parking lot at which time Barrios got out of the car and got onto the ground. Barrios stated a female from the car ([REDACTED]) began to walk away so he got up and followed her. Barrios and [REDACTED] were not running and only walking away across the field. Two officers contacted him and [REDACTED] and asked them to get on the ground. Barrios claimed they both did. Barrios stated that while he was lying on the ground an officer put a knee on the back of his neck causing him to lose consciousness. Barrios stated that he did not think the officers hit him intentionally.
- Both parties were transported back to the scene of the suspect's vehicle. Suspect Barrios was transported to the Main Jail.



Included in the General Offense Report was a *“Driving Under the Influence Arrest-Investigation Report”* that documented Dontia Moore’s arrest. Refer to report for additional information.

Officer Hernandez obtained a digital copy of Sgt. Prescott’s interview of Mr. Barrios and of the radio traffic. A review of the audio determined the sergeant’s written supplemental report was consistent with the audio.

Officer Hernandez obtained a digital copy of the Radio Traffic for the event. A review of the audio provided the following items of note:

- 01:28, 7C81 advised they were conducting a traffic stop in the area of Tully Rd east of King Rd
- 01:45,
  - 7C81 updated their location to Tully Rd and Kenesta Way
  - 7C81 requested a “Code 1 roll by”
  - 71C3 advised they were on scene
- 02:15,
  - 7C81 advised they had priority traffic
  - 7C81 advised they were now going *“eastbound Tully, check that. Just crashed in the westbound lanes...Standby, foot pursuit!”*
- 02:35, 7C10 attached to the call
- 02:49, 7C81 advised *“looks like they went northbound Kenesta Way...That’s the vehicle, the occupants that took off on foot ran to the parking lot towards Hillview Park.”*
- 03:25, Unidentified unit (likely 7C81) stated *“vehicle still going eastbound Tully and Quimby. Units behind it, pulling into the B of A parking lot.”*
- 04:02, 7C10 advised *“they’re running on, we got three parties running northbound through Eastridge.”*
- 04:30, 7C81 stated one subject was running eastbound and he was *“10-96 on two”*
- 04:44, 7C10 advised one subject was in custody and *“they’re taking the other two in custody now. Hey that X is related. The X is related...”*
- 04:57, 7C10 advised 7C81 that *“the X is related, she was running as well.”*
- 05:09, 7C81 advised they were in the *“big field just east of the Wells Fargo”* Bank. 7C81 requested EMS for a male who was unconscious but breathing.
- 08:20, 7C81 advised the male was now conscious, breathing and talking

[REDACTED] provided Officer Huynh copies of medical documents (four pages) from [REDACTED] Hospital. The paperwork was titled “Discharge Instructions” (three pages) and “Discharge Instructions Receipt” (one page). Officer Hernandez reviewed the documents and the following information was noteworthy: Special Instructions- *“you have a head injury and mild concussion”* and *“hematoma (large blood filled bruise) to your head”* (Page 1 of 3). It is noted that the document were prepared on 05/02/2015 at 1357 hours. Officer Hernandez attempted to authenticate the medical documents. On two occasions Officer Hernandez attempted to send a facsimile of the medical release to [REDACTED] Hospital without success. On 10/28/2015 Officer Hernandez delivered a copy of the release to the hospital’s medical records department.

Officer Hernandez obtained a copy of [REDACTED] medical documents from Adult Custody Health Services. On page two of the “Custody Medical Intake” form, it is noted that [REDACTED] has *“not trauma or injury noted or reported.”*



On 10/28/2015, Officer Hernandez responded to [REDACTED] Hospital and contacted Medical Records personnel. Officer Hernandez provided staff with a copy of a medical release signed by [REDACTED]. On 11/09/2015, Officer Hernandez received a copy of [REDACTED] medical records from [REDACTED]. A review of the documents provided the following information:

- Page 1/9:
  - Mr. Barrios was seen on 05/02/2015 at 1310 hours
  - “Mechanism of injury:....Vehicle Accident”
  - Notes:.... “States police came to the scene and hit him in the back of his head. He is unsure if he lost consciousness.”
- Page 3/9:
  - Triage Notes: “patient alleges that he was assaulted by a SJPd, has left parietal occipital contusion, and left temporal abrasion.”

### **APPLICABLE AUTHORITIES:**

#### CALIFORNIA PENAL CODE

- 148 Resist a Peace Officer
- 245(C) Assault With a Deadly Weapon Upon a Peace Officer
- 835 Method of Arrest
- 835a Peace Officer Use of Force to Arrest

#### CALIFORNIA POLICE OFFICERS LEGAL SOURCEBOOK

- Arrests

#### CALIFORNIA VEHICLE CODE

- 23103 Reckless Driving
- 2800.2 Evading a Peace Officer: Reckless Driving (Felony)

#### SAN JOSE DUTY MANUAL

- L 2601 General Provisions
- L2602 Objectively Reasonable Force:
- L2603 Force Options Policy
- L 2604 General Responsibility When Force is Used
- L 2902 Procedures Immediately Following Arrest

### **ANALYSIS:**

The focus of this investigation is on the following issue:

1. Did Officer Yee violate Force during his arrest of Mr. Barrios?



## 2. Did Officer Yee violate Procedure while handcuffing Mr. Barrios?

*The following is a synopsis of the facts and statements that have been compiled during the course of this investigation that directly relate to the allegation by the complainant.*

### 1. Did Officer Yee violate Force during his arrest of Mr. Barrios?

The California Penal Code:

#### **148 Resist a Peace Officer**

*(a)(1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.*

#### **245(C) Assault with a Deadly Weapon upon a Peace Officer**

*Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.*

#### **835 Method of Arrest:**

*An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.*

#### **835a Peace Officer Use of Force to Arrest:**

*Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance*

The California Police Officer Legal Sourcebook:

#### **Arrests states in part:**

*You must either physically restrain or touch the suspect, or the suspect must submit to your authority. "There can be no arrest without either touching or submission." (Hodari D. (1991) 499 U.S. 621, 626-627.)*



*You may use reasonable force to effect the arrest, overcome resistance, or prevent escape. A suspect has a duty to submit and may not resist an arrest, even if the arrest is unlawful. However, if you use excessive force, the suspect may lawfully resist with enough force to resist the excessive force.*

*Note: What is "reasonable" is based on the totality of the circumstances. For example, ramming a fleeing motorist's car to terminate a high-speed chase that threatened the public was not "excessive force," even though the motorist could have been seriously injured or killed. (Scott v. Harris (2007) 550 U.S. 372.)*

*Normally, you must tell the arrestee (1) you intend to arrest him or her, (2) the reason for the arrest, and (3) your authority (i.e., that you are a peace officer). You are excused from giving any of these advisements if they are completely obvious from the circumstances (e.g., catching the suspect red-handed would make it unnecessary to say what the arrest is for; making the arrest in uniform would make it unnecessary to advise the arrestee of your authority). However, if the suspect asks you about any of these matters, you must provide an answer.*

The California Vehicle Code:

### **2800.2 Evading a Peace Officer- Reckless Driving:**

*(a) If a person flees or attempts to elude a pursuing peace officer in violation of Section [2800.1](#) and the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property, the person driving the vehicle, upon conviction, shall be punished by imprisonment in the state prison, or by confinement in the county jail for not less than six months nor more than one year. The court may also impose a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or may impose both that imprisonment or confinement and fine.*

*(b) For purposes of this section, a willful or wanton disregard for the safety of persons or property includes, but is not limited to, driving while fleeing or attempting to elude a pursuing peace officer during which time either three or more violations that are assigned a traffic violation point count under Section [12810](#) occur, or damage to property occurs.*

### **23103 Reckless Driving states in part:**

*(a) A person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.*

*(b) A person who drives a vehicle in an offstreet parking facility, as defined in subdivision (c) of Section [12500](#), in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.*

The San Jose Duty Manual:

### **L 2601 General Provisions:**

*Officers may use force to affect a detention, arrest, prevent an escape or overcome resistance, in self-defense or defense of others. The type and degree of force used will be objectively reasonable and based upon the facts and circumstances of the situation. In any event, the following specific procedures will be adhered to.*



## **L 2602 Objectively Reasonable Force:**

*Objectively reasonable force is that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force. Objectively reasonable force is not judged with hindsight, and will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain and rapidly evolving situations. Important factors to be considered when deciding how much force can be used to apprehend or subdue a subject include, but are not limited to, the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officers or others and whether the subject is actively resisting arrest or attempting to evade arrest by flight. This policy guideline applies to all uses of force, including deadly force.*

## **L 2603 Force Options Policy:**

*All officers have a number of force options available for use in those situations where force is reasonably necessary. Those situations can include but are not limited to:*

- Subduing or arresting a physically threatening or assaultive person.*
- Instances that threaten the safety of an officer or other person.*
- Stopping a person who is attempting to flee or escape a lawful detention/arrest.*
- When directing, controlling or escorting resistive or physically uncooperative persons.*

*There is no requirement that the person actually has to strike or attempt to strike an officer to be considered physically threatening or assaultive, so long as an objectively reasonable officer has sufficient information (verbal threats, verbal defiance, physical stance, etc.) to believe that a person is physically threatening and has the present ability to harm the officer.*

*The degree of force used by an officer is directly related to the facts and circumstances encountered by that officer. Force options currently available to officers include, but are not limited to:*

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• Voice Commands</li><li>• Physical Contact/Control Holds/Takedowns</li><li>• Taser or Electronic Restraint Transportation Belt</li><li>• Carotid Restraint</li><li>• Projectile Impact Weapons (if available)</li></ul> | <ul style="list-style-type: none"><li>Chemical Agents</li><li>Impact Weapons</li><li>Police Service Dogs</li><li>Police Vehicles</li><li>Deadly Force</li></ul> |
|--|---|

## **L 2604 General Responsibility When Force is Used:**

*Each situation is unique. The Department relies on the officer's judgment and discretion to employ an objectively reasonable level of force under each unique circumstance. Each incident in which force is used shall meet the conditions specified in this chapter.*

*Officers need not retreat or desist in the reasonable use of force. There is no requirement that officers use a lesser intrusive force option before progressing to a more intrusive one, as long as the force*



*option used is objectively reasonable under the circumstances at that time. When confronted by force or resistance, an officer may use an objectively reasonable higher level of force to overcome that resistance.*

*Officers will notify a supervisor, without unnecessary delay, when reportable force is used. This includes instances where department members take enforcement action while off-duty and a use of force occurs.*

In her complaint Ms. [REDACTED] alleged that an officer used unnecessary force to take her [REDACTED] Mr. Barrios into custody. Ms. [REDACTED] identified [REDACTED] as the arresting officer when in fact it was Officer Yee. Ms. [REDACTED] was not present the night her [REDACTED] Mr. Barrios was arrested and admitted that she did not know exactly what occurred. Mr. Barrios could not recall any force being used on him. Mr. Barrios stated that he recalls an officer telling him to “stop resisting” and then “waking up in the cop car.” Mr. Barrios also stated that when an officer put handcuffs on him he “blacked out” but could not recall why he “blacked out”.

Officer Yee and [REDACTED] were working together in full uniform and driving a marked police vehicle. Officer Yee observed a black Mercedes driving recklessly in the area of Fontaine Rd @ Alvin Av. Officer Yee attempted to make an enforcement stop but the driver of the Mercedes evaded the officers for approximately half a mile before finally stopping at Brahms Av @ Edgestone Cir.

Officer Yee and [REDACTED] approached the Mercedes on foot when it suddenly sped off, made an immediate u-turn and approached them at a high rate of speed. The officers feared they were going to be struck and ran to the sidewalk.

[REDACTED] arrived on scene and the Mercedes drove straight into [REDACTED] lane in an attempt to crash into him. [REDACTED] took evasive actions to avoid a collision but the Mercedes responded by changing its course towards [REDACTED] and intentionally crashed into him. The driver of the Mercedes had now committed the felony crime of assault with a deadly weapon on a peace officer.

The Mercedes turned onto Tully Rd and crashed into the center concrete median. The crash was so violent that the Mercedes lost its passenger side rear wheel and caused a female passenger to fall out onto the street.

The Mercedes, though badly damaged, continued to flee with officers in pursuit. The Mercedes made an evasive high speed maneuver in the Wells Fargo Bank where it lost control and was pinned in by a police vehicle, ending the pursuit. The driver, a female passenger and Mr. Barrios then fled from the vehicle. Mr. Barrios alleged that he surrendered to officers next to the Mercedes by laying down with his hands to the side like an airplane. Audio evidence of the police radio traffic disputes this and shows Mr. Barrios' allegation to be false. Audio evidence shows Sgt Prescott broadcasting, “We got three parties running northbound through Eastridge.” Another officer broadcasts, “Two eastbound, ten-nine-six on two.” Both [REDACTED] and Officer Yee were asked to mark on a map where they took Mr. Barrios into custody. Both officers marked the same approximate area that was nowhere near the final stop of the Mercedes.

When Officer Yee arrived in the area he saw Mr. Barrios running “approximately one hundred to two hundred yards away from the vehicle's final resting spot.” Officer Yee stated that he believed that Mr.



Barrios was the driver of the Mercedes. The same driver, who had evaded him, drove straight towards him while he was on foot, committed the act of assault with a deadly weapon on a peace officer in his presence, crashed into a center median ejecting a passenger and only stopped his vehicle once he was pinned by a police vehicle. Officer Yee believed that Mr. Barrios was the driver who was showing no signs of surrendering.

Officer Yee and [REDACTED] drove to the open field where Mr. Barrios and the female were running. Officer Yee gave Mr. Barrios several commands that included, *"Get down on the ground, Get down on the ground!"* Mr. Barrios failed to comply with Officer Yee's commands and continued to flee. Officer Yee had to *"cut off"* Mr. Barrios to get him to finally stop and again ordered Mr. Barrios to *"get down on the ground!"*

Mr. Barrios did not comply with Officer Yee and instead just stood there. Officer Yee stated that based upon all the events (evasion, pursuit, crashing into [REDACTED] crash ejecting a passenger, etc) he *"believed that Mr. Barrios was going to flee again."* To prevent Mr. Barrios from fleeing Officer Yee took hold of his arm and took Mr. Barrios to the prone position. When Mr. Barrios landed on the ground he put both his hands underneath his body near his waistband. Mr. Barrios was wearing oversized clothing that concealed his waistband area. It was also dark outside (0228 hrs) and the field where Officer Yee arrested Mr. Barrios did not have any lighting. Officer Yee feared that Mr. Barrios was reaching for a weapon and became concerned for his safety and [REDACTED] safety. Officer Yee ordered Mr. Barrios to *"Get your hands out, get your hands out!"* and *"Pull your hands out from under you!"*

Mr. Barrios failed to comply with Officer Yee's orders and actively resisted him by failing to show his hands, *"squirming"* and *"pulling away as he was on the ground."* Officer Yee struck Mr. Barrios in the back of his head twice with his elbow. These strikes rendered Mr. Barrios unconscious. Officer Yee stated that he struck Mr. Barrios on the head since it was the only part of his body that was exposed. Officer Yee explained that to strike another body part he would have had to remove himself from Mr. Barrios giving up his position of advantage.

Officer Yee stated that Mr. Barrios did not surrender by laying face down with his hands out to the side like an airplane. Mr. Barrios alleged that he surrendered next to the vehicle that he was in. This is a credibility issue since the audio evidence and supporting officer's reports (that match the audio evidence) do not support this allegation and on the contrary show it to be false.

When investigating an officer's use of force, the standard to which the officer is held is that of reasonableness. The possibility of alternative options for dealing with the situation should not be considered, only whether or not the specific actions or force used by the officer were reasonable when looked at from the perspective of an officer with similar training and experience. When considering the facts, audio evidence and statements, Officer Yee's use of body strikes to Mr. Barrios' head was objectively reasonable in this circumstance in order to overcome Mr. Barrios' resistance, in order to prevent Mr. Barrios' escape and to affect Mr. Barrios' arrest.

The act or acts, which provided the basis for the allegation occurred, however, the investigation revealed they were justified, lawful and proper.

## **2. Did Officer Yee violate Procedure while handcuffing Mr. Barrios?**



## The San Jose Duty Manual

### **L 2902 Procedures Immediately Following Arrest states in part:**

*- Handcuff the offender behind the back if there is a danger of escape or if the prisoner poses a danger to the officer's or others' safety. Handcuffs are used as a restraint in any situation where such action is considered warranted. The handcuffs are only to be tightened to the point that the hands do not slip through. And in all cases when the prisoner is to be transported in the vehicle or seated in a chair, the handcuffs are double locked so as to prevent the handcuffs tightening on the prisoners' wrists.*

Ms. [REDACTED] alleged that the handcuffs were tight on Mr. Barrios and as a result caused injuries to his wrist. Ms. [REDACTED] provided IA with photographs of Mr. Barrios' wrist as evidence. Mr. Barrios also alleged that the handcuffs were too tight.

I reviewed the photographs (in IAPro under "Pictures provided by Ms. [REDACTED]") of Mr. Barrios' wrist. The first photo shows the bottom of Mr. Barrios' wrist and you can see a distinct red line on the wrist to the left (non tattooed arm) consistent with the lines of a handcuff. The second photo shows the top of Mr. Barrios' wrist and you can see that there are no distinct red lines on the top of either wrist. A tight handcuff would cause a distinct red line (ring) all around the wrist. Red lines on one side of a wrist are common. This is generally caused when a prisoner applies weight to the handcuff (usually by leaning or laying on it) and as a result a self inflicted red line will form only one side of the wrist. The photographic evidence does not support Ms. [REDACTED]' allegation and on the contrary shows it to be false.

Mr. Barrios stated that he complained of tight handcuffs to an officer and that the officer responded by loosening the handcuffs. Officer Yee stated that Mr. Barrios did complain of tight handcuffs and in he was the officer that loosened them. Officer Yee also checked Mr. Barrios' wrist for injuries and Officer Yee did not see any visible injuries.

Officer Yee handcuffed Mr. Barrios after a vehicle pursuit, after Mr. Barrios had fled the vehicle, after a brief struggle and after force was used on Mr. Barrios knocking him unconscious. Once Mr. Barrios regained consciousness he complained about tight handcuffs and Officer Yee immediately loosened them. The photographic evidence that Ms. [REDACTED] provided proves that the handcuffs were not tight while Mr. Barrios was transported and booked into the jail. There is no basis to this complaint since Mr. Barrios admitted that once he complained of the tight handcuffs an officer immediately loosened them.

The investigation conclusively proved either that the act or acts complained of did not occur.

### **FINDINGS:**

1. As to the complaint of **Force** against Officer Yee, I find the complaint **Exonerated**.
2. As to the complaint of **Procedure** against Officer Yee, I find the complaint **Unfounded**.

Sergeant Gustavo Perez #3281  
Office of the Chief of Police  
Internal Affairs Unit  
February 10, 2016





## CITY OF SAN JOSÉ, CALIFORNIA

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201 W. MISSION STREET  
P.O. BOX 270  
SAN JOSE, CA 95103-0270  
(408) 277-4212

CHIEF OF POLICE  
LARRY ESQUIVEL

Dear ,

The San Jose Police Department's Internal Affairs Unit is currently conducting an investigation in which you are a complainant.

This is only a reminder to inform you that the case is currently open and the investigator is continuing the investigation.

If you have a change of address or phone number, please contact the assigned investigator, «Investigator», at (408) 277-4094.

Sincerely,

LARRY ESQUIVEL  
Chief of Police

Internal Affairs Unit

LE:

I.A. #



## **CLOSE WITH CONCERNS**

**To: Lt. Schriefer, Internal Affairs**  
**Fr: Walter Katz, Independent Police Auditor**

**Case: I2015-0104**

**Complainant:** [REDACTED]

**Involved Party: Tomas Barrios**

**Date of Incident: 5/2/15**

**Date received: 5/6/15**

**365-day date: 5/5/16**

We will *close with concerns* complaint #I2015-0104 [REDACTED]. The subject officer is Officer Yee #4342. The IA investigator is Sgt. Perez. This memo addresses our concerns

### **Complaint:**

On May 6, 2015, Ms. [REDACTED] contacted the Office of the IPA and filed a complaint regarding the May 2, 2015 arrest of her 23-year old [REDACTED] Tomas Barrios. Ms. [REDACTED] was not at the incident scene; her knowledge is limited to those facts related to her by her [REDACTED]. Apparently Ms. Barrios was a passenger in a vehicle whose driver allegedly was drunk and evaded officers resulting in a police pursuit. An officer arrested Mr. Barrios and used unnecessary force to take him into custody. Allegedly Mr. Barrios lost consciousness during the arrest. Ms. [REDACTED] provided photographs she that she asserted she took of Mr. Barrios' injuries within 24 hours of the incident. She stated that he had [REDACTED] on his [REDACTED] near the [REDACTED] and [REDACTED] at the [REDACTED] of his [REDACTED]. She also stated that Mr. Barrios sustained wrist injuries because the handcuffs were very tight.

The allegation is Force and rocedure (tight cuffing causing injury)

### **The Investigation:**

- **Documents:** IA obtained CAD, the incident report and medical records from [REDACTED] Hospital and Main Jail medical.
- **Interview of witness [REDACTED]:** On May 12, 2015, IA interviewed [REDACTED]. He acknowledged that on the incident date he was in a car driven by his friend Dontia Moore. Mr. Moore was drunk and didn't notice the officers and the sirens. When Ms. Barrios told him about the officers, Mr. Moore replied that he *didn't care* and started driving faster. He ignored [REDACTED] repeated pleas to pull over. Eventually Mr. Moore pulled over near Eastridge Mall. Mr. Moore got out of the car *and took off running*. [REDACTED] stayed near the car. A police car drove up. He told another passenger [REDACTED] not to leave because they would get in trouble. He stated that he *got down and when I got down, I looked up and that's when the cop got behind me and*



*started like telling me to chill. I wasn't resisting or nothing..."* [REDACTED] stated at this point he *passed out*. Upon further questioning, [REDACTED] stated that, after he got out of the car, he *laid down flat on the ground, face down with his chin on the ground and arms extended out to his sides like an airplane*. An officer *got on top of him* and placed his hands behind his back. He did not recall what happened next. He recalled that he *expressed pain* because the officer put a knee on his back. He did not know how many officers assisted in handcuffing him.

[REDACTED] stated that he blacked out as he was placed in handcuffs but he didn't know why he blacked out. He stated that his back hurt because of the officer's placement of his knee on his back. After his arrest, he was placed in the drunk tank at the jail but he didn't know why he was placed there.

- **Interview of Witness** [REDACTED] On December 21, 2015, IA interviewed witness [REDACTED]. During the midnight shift, he and Officer Yee saw an older black Mercedes speeding at such a rate that the rear of the car started to pitch-out uncontrollably. The officers attempted to make an enforcement stop using lights and siren. The car traveled a significant distance before pulling over. As the officers approached, the Mercedes fled and made an immediate U-turn at a high rate of speed and began traveling directly toward Officer McCollough's car. The Mercedes struck Officer McCollough's car and drove away. [REDACTED] and Yee returned to their patrol car and followed the Mercedes.

They saw that the Mercedes had struck the center concrete median and was sparking and smoking. The officers approached. Surprising the Mercedes was still operable and its driver moved the car off the median and down the road. [REDACTED] began chasing after the Mercedes on foot. He heard, via the radio, that the Mercedes had come to a stop in the bank parking lot at Eastridge Mall.

[REDACTED] heard Sgt. Prescott advising, via the radio, that occupants were running. [REDACTED] determined that two passengers were running through a grass field and the driver was running northbound towards Tully Rd. When [REDACTED] and Officer Yee arrived on scene [REDACTED] saw two people running through the field in a north east direction. [REDACTED] clarified that the two passengers were in a "full sprint" and running away from the Mercedes.

[REDACTED] and Officer Yee pulled past the two that were running and attempted to stop them. [REDACTED] stated that he got out and yelled out, "Stop! San Jose Police, get on the ground!" [REDACTED] stated that he dealt with the female that was the closest to them and Officer Yee dealt with the male (Mr. Barrios).

[REDACTED] stated that the female was verbally combative and did not want to comply with any commands. [REDACTED] placed the female into a control hold, handcuffed her and walked her over to their patrol vehicle.



██████████ did not see Officer Yee take Mr. Barrios into custody because his attention was focused on the female suspect.

- **Interview of Subject Officer Yee:** On January 13, 2016, IA interviewed witness Officer Yee (#4343). His description of the vehicle pursuit was substantially the same as that of ██████████. The Mercedes came to a stop at the Wells Fargo Bank parking lot near Eastridge Mall. Sgt. Prescott broadcast over the radio that a male and female fled the vehicle and were running across a field. Upon arrival, Officer Yee the Mercedes and, approximately 100 or 200 yards away, a male (Mr. Barrios) and a female running through the field. He and ██████████ chased the two, ordered them to get down on the ground.

The female and Mr. Barrios separated and started going into different directions. Officer Yee cut off Mr. Barrios. Officer Yee stated that Mr. Barrios did not comply with his order to *get down on the ground* and instead just stood there. Officer Yee stated that he walked up to Mr. Barrios and believed that Mr. Barrios was going to flee again. Officer Yee based this upon the fact that the vehicle (that Mr. Barrios was in) fled from the original stop, fled after it had crashed and fled after it struck Officer McCollough's vehicle.

To prevent Mr. Barrios from fleeing Officer Yee took hold of Mr. Barrios' left arm and pulled him into the prone position. When Mr. Barrios landed on the ground he put both his hands into his waist band area and Officer Yee was concerned that he may have concealed weapons. Additionally Officer Yee wanted to get Mr. Barrios' hands behind his back to effect his arrest. Mr. Barrios resisted and kept his hands underneath his body and kept squirming. Officer Yee struck Mr. Barrios in the back of his head twice with his elbow. The force rendered Mr. Barrios unconscious allowing Officer Yee to apply handcuffs.

Officer Yee explained that he struck Mr. Barrios in the head in an effort to get him to show his hands and to distract his focus from possible objectives with his hands (weapons). *Based upon his and Mr. Barrios' position Mr. Barrios' head was the part of his body that was exposed. Officer Yee explained that in order to strike another body part Officer Yee would have had to remove himself from Mr. Barrios giving up his position of advantage. Officer Yee also knows that strikes to the head are more distracting than other parts of the body.*

Officer Yee stated that Mr. Barrios did not lie flat upon the ground as he approached nor did he lie on the ground with his arms extended like an airplane.

Officer Yee estimated that Mr. Barrios was unconscious *between thirty seconds and a minute*. When he resumed consciousness, Mr. Barrios complained about tight handcuffs and the officer loosened the cuffs. An ambulance was called to the scene for Mr. Barrios and he was medically evaluated by the ambulance paramedics.



### **IA Analysis:**

The allegation of force was exonerated. The pursuing officers were not certain whether the male they were chasing in the field was the driver of the Mercedes or a passenger. The actions of all car occupants showed a propensity to evasion. Mr. Barrios failed to comply with officer commands and actively resisted Officer Yee's efforts to control and handcuff him. He failed to supply his hands and Officer Yee's belief that he may be armed was reasonable. The investigation concluded, *when considering the facts, audio evidence and statements, Officer Yee's use of body strikes to Mr. Barrios' head was objectively reasonable in this circumstance in order to overcome Mr. Barrios' resistance, in order to prevent Mr. Barrios' escape and to affect Mr. Barrios' arrest.*

The allegation of procedure (tight handcuffs causing injury) was unfounded. The officer applied the cuffs and loosened them upon request. The photographs provided by the complainant failed to show an injury caused by the application of tight cuffs relative to general redness that commonly occurs.

### **IPA Concerns:**

1. The IPA noted that there were substantial issues with Mr. Barrios' credibility. Nevertheless, there is no dispute that Mr. Barrios lost consciousness for 30 seconds to one minute when Officer Yee elbowed Mr. Barrios in the back of the head. This suggests that the level of force use was significant and it appears that the analysis did not take sufficient account the proportionality of the force used against the the level of resistance. The totality of the evidence suggests that Mr. Barrios was struck in such a manner that the impact to the back of his head caused the front of his head to strike the ground. However, because it appears that the San Jose Police Department, unlike other agencies in California, does not restrict impacts to the head of this nature to when deadly force is warranted we are closing this matter concerns.<sup>1</sup>

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<sup>1</sup> For example, the Los Angeles County Sheriff states "The following uses of force are prohibited unless circumstances justify the use of deadly force . . . Deliberately or recklessly striking an individual's head against a hard, fixed object (e.g., roadway, driveway, concrete floor, wall, jail bars, etc.)." LASD Use of Force Manual, section 3-10/030.00 Unreasonable Force. The Oakland Police Department restricts strikes to the head in a similar manner: "Any force that poses a substantial risk of causing death or serious bodily injury *is considered lethal force*. This includes the use of the carotid restraint, an intentional strike to the head with an impact weapon or an impromptu impact weapon. Lethal force, regardless of the weapon used, is justified only in lifethreatening situations where a member has reasonable cause to believe that a person poses an immediate threat of death or serious bodily harm to the member or to another person. Lethal force is prohibited when its sole purpose is to affect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury (emphasis added)." Department General Order, Use of Force Policy, 16 Oct 14.



2. We also have concerns about the documentation of the force. The Sherriff's Office Custody Bureau Agency Advisory Form for Mr. Barrios is contained within the Jail medical records. The very first question listed is whether there was a loss of consciousness prior to or during the arrest. The answer provided is ***NO***. Clearly the question should have been marked ***YES***. The failure to properly document this response is problematic as it could mean that medical staff were not aware of the head injury or any side effects that might have resulted from such a head injury.
3. The IPA is additionally concerned that the investigation failed to examine whether the officers should have split-up during the foot pursuit in the field. Partner splitting creates unnecessary safety risks for officers which includes the perceived necessity to resort to higher levels of force when a suspect is apprehended. Again, this may be a matter of SJPD policy not addressing or prohibiting partner splitting during foot pursuits.

As noted above, the IPA will close this case *with concerns*.





































































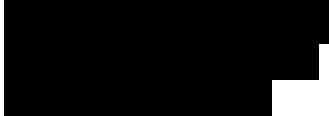
## CITY OF SAN JOSÉ, CALIFORNIA

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201 W. MISSION STREET  
P.O. BOX 270  
SAN JOSE, CA 95103-0270  
(408) 277-4212

CHIEF OF POLICE  
LARRY ESQUIVEL

October 9, 2015



Dear Ms. [REDACTED]

The San Jose Police Department's Internal Affairs Unit is currently conducting an investigation in which you are a complainant.

This is only a reminder to inform you that the case is currently *open* and the investigator is continuing the investigation.

If you have a change of address or phone number, please contact the assigned investigator, **Hernandez #3746** at (408) 277-4094.

Sincerely,

LARRY ESQUIVEL  
Chief of Police

Officer Francisco Hernandez  
Internal Affairs Unit

LE:FH

I.A. #I2015-0145





**SAN JOSE POLICE DEPARTMENT**  
**INTERNAL AFFAIRS UNIT**  
777 N. 1<sup>ST</sup> Street, Suite 666  
SAN JOSE, CA 95112  
PH. (408) 277-4094 FAX (408) 277-3920

2/18/08

**REQUEST FOR RELEASE OF MEDICAL RECORD INFORMATION**

COPIED  
DATE 10/17/18

**I hereby authorize:**

**to disclose to:**

Adult Custody Health Services Main Jail  
150 W. Hedding Street  
San Jose CA 95110  
408-299-8737 ph  
408-808-5236 fax

San Jose Police Department  
Internal Affairs Unit  
777 N. 1<sup>ST</sup> Street, Suite 666  
San Jose CA 95112

**Patient Identification**

Printed Name:	Tomas Sanchez Barrios Jr.	Date of Birth:	11/20/1991
Any other name used:	Jr.	Medical Record number:	11/8/91
Address:		City:	
State:		Zip Code:	
Phone number:		PFN:	

I HEREBY REQUEST THE ABOVE HOSPITAL OR PHYSICIAN TO RELEASE MEDICAL INFORMATION TO THE **Internal Affairs Unit** of the **San Jose Police Department, City of San Jose, CA.** FOR THE PURPOSE OF conducting an **Internal Affairs investigation.** SJPD case number #

Treatment dates at above facility: -

**Please check type of information to be released:**

<input type="checkbox"/> Discharge Summary	<input type="checkbox"/> Emergency Room record
<input type="checkbox"/> History and physical exam	<input type="checkbox"/> Progress notes
<input type="checkbox"/> Laboratory test results	<input type="checkbox"/> X-ray films / images
<input type="checkbox"/> Consultation reports	<input type="checkbox"/> X-ray reports
<input type="checkbox"/> EKG	<input type="checkbox"/> Psychiatric/Drug/Alcohol treatment**
<input type="checkbox"/> Other (specify)	<input checked="" type="checkbox"/> All of the above

\*\* See next page for additional verification of release request

☒ Phone when ready for pick up (408)-277-4094  
☒ Please mail: San Jose Police Department Internal Affairs Unit  
777 N. 1<sup>ST</sup> Street, Suite 666 San Jose CA 95112  
Attention: Officer



**Time Limit & Right to Revoke Authorization**

Except to the extent that action has already been taken in reliance on this authorization, at any time I can revoke this authorization by submitting a notice in writing to the above stated hospital or physician. Unless revoked, this authorization will expire one year from the date of signature or a different date specified here (date).

**Re-disclosure**

I understand that the recipient may not lawfully further use or disclose the health information unless another authorization is obtained from me or unless such use or disclosure is specifically required or permitted by law.

**Drug and/or Alcohol Abuse, and/or Psychiatric, and/or HIV/AIDS Records Release**

I understand if my medical or billing record contains information in reference to drug and/or alcohol abuse, psychiatric care, sexually transmitted disease, Hepatitis B or C testing, and/or other sensitive information, I agree to its release.

Signature Tomas Barrios Date 5-12-15

I understand if my medical or billing record contains information in reference to HIV/AIDS (Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome) testing and/or treatment I agree to its release.

Signature Tomas Barrios Date 5-12-15

I understand I have a right to receive a copy of this authorization and any medical records Internal Affairs receives.

**Signature of Patient or Personal Representative Who May Request Disclosure**

Signature: Tomas Barrios Date: 5-12-15

Authority to Sign if not patient: Beatrice Gungles Relation to patient: Mother

If translated: note language: \_\_\_\_\_

Name and ID of translator: \_\_\_\_\_

Phone number: ( ) \_\_\_\_\_



54 170

**SANTA CLARA COUNTY  
SHERIFF'S OFFICE CUSTODY BUREAU  
AGENCY ADVISORY FORM**

ARRESTEES NAME: BARZOS, Tomas BOOKING #: 21150685  
DATE: 5-2-15 TIME: 0441

This form must be completed by the arresting agency prior to the arrestee being received by the Santa Clara County Jail.

1. Do you have any information or observations which would indicate that the arrestee has/had any of the following symptoms/problems prior to or during the contact that resulted in his/her arrest?

	YES	NO
a. Loss of Consciousness?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Seizure?	<input type="checkbox"/>	<input type="checkbox"/>
c. Respiratory Problem/Difficulty?	<input type="checkbox"/>	<input type="checkbox"/>
d. Heart Problem?	<input type="checkbox"/>	<input type="checkbox"/>
e. Hypertension (High Blood Pressure)?	<input type="checkbox"/>	<input type="checkbox"/>
f. Diabetes?	<input type="checkbox"/>	<input type="checkbox"/>
g. Alcohol or Drug Intoxication?	<input type="checkbox"/>	<input type="checkbox"/>
h. Bizarre or Aggressive Behavior?	<input type="checkbox"/>	<input type="checkbox"/>
i. Psychiatric/Mental Health History/Developmentally Disabled?	<input type="checkbox"/>	<input type="checkbox"/>
j. Is the arrestee suicidal?	<input type="checkbox"/>	<input type="checkbox"/>
k. Known or reported injury/illness?	<input type="checkbox"/>	<input type="checkbox"/>
l. Any physical trauma or visible signs of injury?	<input type="checkbox"/>	<input type="checkbox"/>
m. Involved in a traffic collision?	<input type="checkbox"/>	<input type="checkbox"/>
n. Hearing impaired?	<input type="checkbox"/>	<input type="checkbox"/>
o. Any physical disabilities?	<input type="checkbox"/>	<input type="checkbox"/>
p. Any contagious disease, e.g. Tuberculosis?	<input type="checkbox"/>	<input type="checkbox"/>

Other: \_\_\_\_\_

2. Were any of the following used on the arrestee prior to or during the arrest?

a.* Chemical agents (O.C., Mace, etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b.* T.A.R.P. (Total Appendage Restraint Procedure)	<input type="checkbox"/>	<input type="checkbox"/>
c.* Carotid Restraint	<input type="checkbox"/>	<input type="checkbox"/>
d.* Taser/Any electric control/stun device	<input type="checkbox"/>	<input type="checkbox"/>
e. Baton	<input type="checkbox"/>	<input type="checkbox"/>
f. Prone during handcuffing, approximate duration <u>5 min</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

\*These conditions must be evaluated as indicated on the reverse side of this form.

3. Was there any physical resistance by the arrestee prior to or during the arrest? APPROXIMATE DURATION 2 sec. (MINUTES) ☒ ☐

4. Is the arrestee on any type of Mental Health Hold (5150, W&I, etc.)? ☐ ☒

5. Did the arrestee ingest any unknown substance or object during arrest? ☐ ☒

6. How long the arrestee had been held prior to the arrival at the Jail? 2 hrs

A. Y. G. S. FARRAR 4342/4323 SJPD  
ARRESTING OFFICER BADGE # AGENCY

Reviewed by Receiving Officer: \_\_\_\_\_ Badge #: \_\_\_\_\_

Any affirmative answers will be referred to a nurse for clearance prior to acceptance.

Reviewed by Medical/Mental Health: \_\_\_\_\_

Disposition: Original to Administrative Booking File Yellow copy to Classification Pink copy to Medical

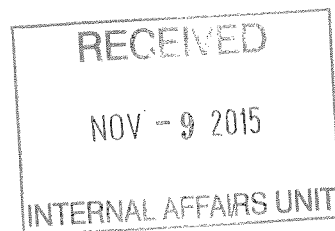


\*\*\*\*\*AUTO\*\*MIXED ADC 300  
624 3 MB 1.218  
SAN JOSE POLICE DEPARTMENT  
INTERNAL AFFAIRS UNIT  
777 N 1ST ST STE 666

000624

SAN JOSE, CA 95112-6341

14pgs



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## ATTENTION

Confidential Information enclosed.  
To be viewed by authorized persons only.

If you have questions regarding any information you have requested,  
please call the phone number on the enclosed invoice.

Health information is reproduced by HealthPort, a health information management outsourcing service. Your healthcare provider contracts with HealthPort to process authorized requests for copies of health records.

Reproductions are made from the medical facility's original records. The confidentiality of these records is protected by federal and state laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA).

If you requested items that are not maintained in the medical record, your request for those items was forwarded to the appropriate department and will be sent under separate cover. Likewise, information that you asked to have delivered to another address is sent separately.

This package may or may not contain medical records, depending on what was requested and how it was processed.

You may not make any disclosure or use of these records without the permission of the individual who is the subject of the records.

This information *may or may not* contain records regarding drug and/or alcohol use or treatment. If this record contains any such information, it has been disclosed to you from records whose confidentiality is protected by federal regulation 42 CFR Part 2, which prohibits you from making any further disclosure of it without the *specific* written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of health or other information is not sufficient for this purpose. Federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

If the enclosed record pertains to HIV/AIDS, it has been disclosed to you from records whose confidentiality is protected by federal and, perhaps, state law, which prohibits you from making any further disclosure of such information without the *specific* consent of the person to whom such information pertains or as otherwise permitted by state law. A general authorization for this release of health or other information is not sufficient for this purpose.

This is confidential and privileged information. If it contains mental health information, it is for professional use only.





# Memorandum

TO: Police Officer Alan Kiyoshi Yee #4342

FROM: Lt. Loyd Kinsworthy #2789  
Internal Affairs Unit

**SUBJECT:** 120 Day Notice

**DATE:** 8/19/2020

---

Approved

Date

---

The Memorandum of Agreement (MOA) between the City of San Jose and the San Jose Peace Officers' Association states that an officer who has an active complaint under investigation at the Internal Affairs Unit shall be notified of the status of that case.

In accordance with the MOA, the following case is currently under investigation:

Complainant:



I.A. Case Number: I2015-0145 (SJPD 15-122-0155)

Date of Complaint: May 6, 2015

Allegation(s): (F) Force:

Assigned Investigator: Officer Francisco Hernandez #3746

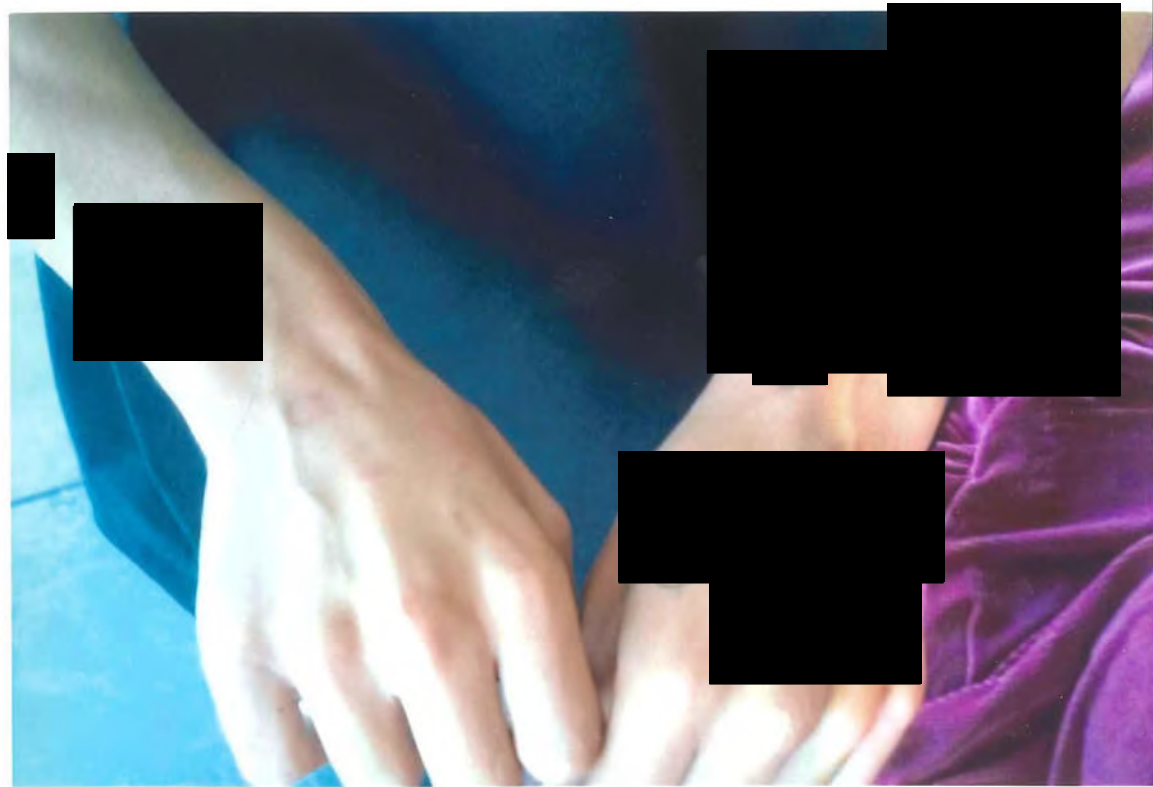
Status: A complaint against you has been registered at the Internal Affairs Unit and a preliminary investigation into the circumstances of the allegations has begun. The outcome of the preliminary investigation will determine if your statement is necessary. If your statement becomes necessary your case will be assigned to a supervisor and you will be notified by that supervisor as to the date and time of your interview.

If you have any questions in regards to this memo, please contact Internal Affairs at 277-4094.

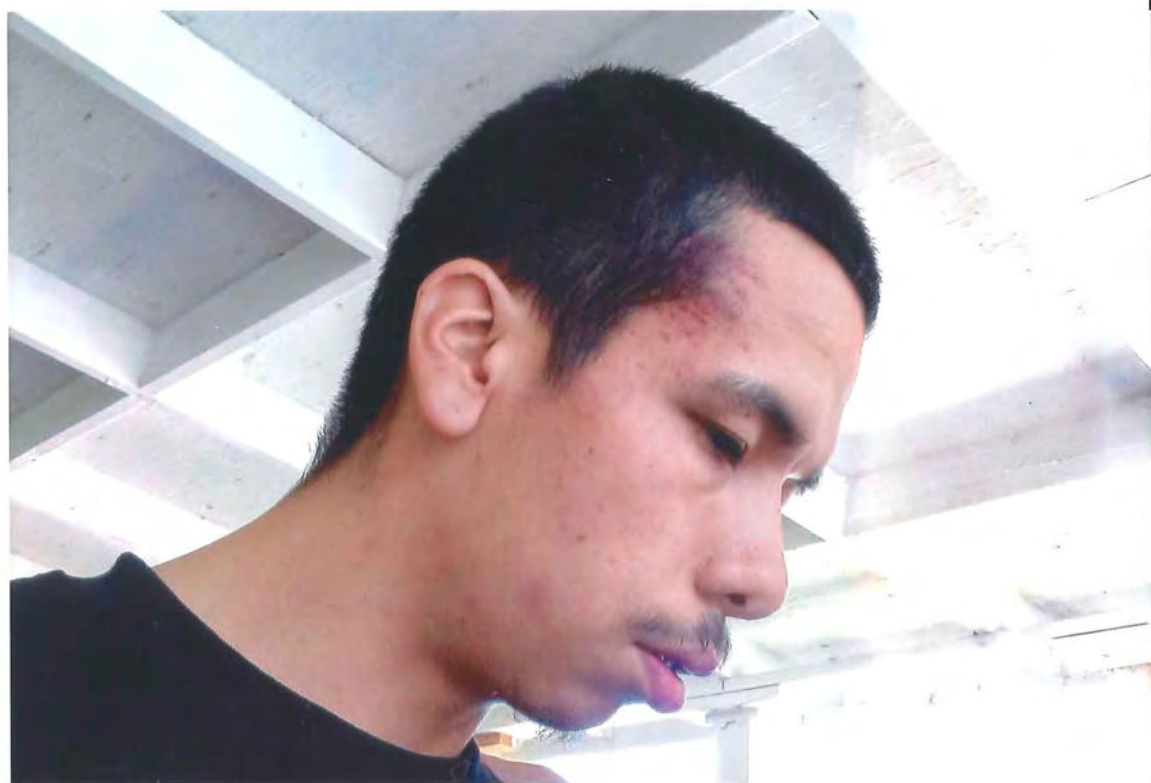
Lt. Loyd Kinsworthy #2789  
Office of the Chief  
Internal Affairs Unit

LK:FH



















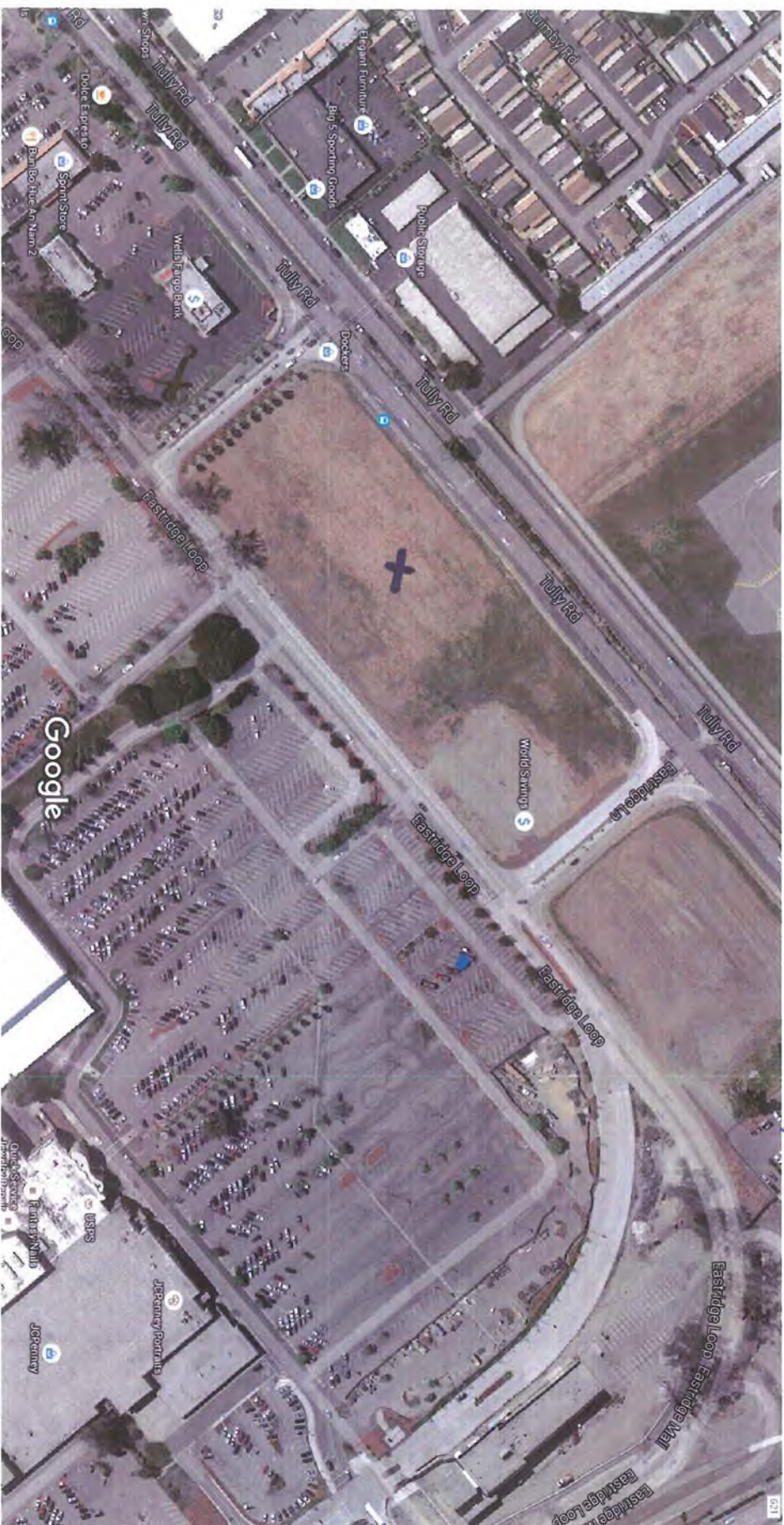


100 ft

1 = ARREST LOCATION OF MR. GARRIOS

VEHICLE





# AREST LOCATION OF MR. BACHAS

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*San José Police Department*

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May 17, 2016

[REDACTED]

RE: Notification of Disposition of Complaint - CPC 832.7(e)

CPC 832.7(e) refers to the California Penal Code Section requiring Law Enforcement agencies to provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

Dear Ms. [REDACTED]:

The investigation into your complaint regarding the conduct of San Jose Police Officers has been completed. After reviewing all of the available evidence, a disposition of Unfounded has been reached on your allegation of **Procedure**. The San Jose Police Department defines the disposition of Unfounded to mean the investigation conclusively proved that the act or acts complained of did not occur.

The investigation into your complaint regarding the conduct of San Jose Police Officers has been completed. After reviewing all of the available evidence, a disposition of Exonerated has been reached on your allegation of **Force**. The disposition of Exonerated means the acts which provided the basis for the complaint or allegation occurred, however, the investigation revealed that they were justified, lawful and proper.

Because the California Penal Code classifies personnel investigations pertaining to peace officers as confidential, I am unable to disclose the type of discipline imposed in this matter or the details of the investigation; however, I can tell you that all allegations of misconduct are treated very seriously no matter what the final disposition may turn out to be. As such, I would like to share with you other processes that result from citizens registering a complaint.

All citizen complaints are maintained by the Internal Affairs Unit for six years after they are received. Should an officer receive three or more citizen complaints in a twelve-month period, he or she will automatically receive counseling by a Deputy Chief and the Internal Affairs Unit Commander. This counseling takes place even if the officer was exonerated for any or all of the complaints. Officers receiving five or more procedural and/or informal complaints in a twelve-month period will also receive Intervention Counseling.

Prior to a promotion to a higher rank or prior to an assignment to a specialized unit, all officers wishing to compete for such an assignment must pass a review of their Internal Affairs Unit file.



Should an applicant officer have sustained complaints or a series of complaints with other dispositions, very careful consideration is given as to the officer's suitability for the job prior to any reassignment.

The San Jose Police Department has instituted several programs to train officers on how to serve the Community more effectively. These programs include cultural diversity sensitivity training, peer counseling, Crisis Intervention Stress Debriefing, and Community Oriented Policing.

Thank you for taking the time to bring this matter to our attention. If you would like to schedule an appointment to discuss the finding in your complaint, please contact me at (408) 277-4094. After contacting our office to discuss your case, you may also contact the Independent Police Auditor's office within 30 days regarding a review of this matter. The Auditor is responsible for reviewing the Internal Affairs Unit investigative process and for receiving citizen complaints. You may contact him Monday - Friday, 9:00 a.m. - 5:00 p.m., at (408) 794-6226.

Sincerely,

EDGARDO GARCIA  
Chief of Police

Lt. Randy Schriefer #3540  
Commander  
Internal Affairs Unit

EG:RS:ra

Case #I2015-0145





# Memorandum

**TO:** Ofc. Alan Yee #4342  
Bureau of Field Operations

**FROM:** Lt. Randy Schriefer #3540  
Internal Affairs Unit

**SUBJECT: NOTICE OF COMPLETED  
CASE #I2015-0145**

**DATE:** May 17, 2016

Approved:

Date:

The Internal Affairs Unit has completed the investigation of a Formal Misconduct Complaint against you. Listed below are the results of the investigation.

## ALLEGATION

## FINDING

Force	Exonerated
Procedure	Unfounded

You are encouraged to contact the investigator, Sergeant Gustavo Perez, or me at extension [REDACTED] to discuss the results of the investigation.

Lt. Randy Schriefer #3540  
Commander  
Internal Affairs Unit

RS:ra







# Memorandum

**TO:** Sgt. Prescott #3624  
Bureau of Field Operations

**FROM:** Lt. Randy Schriefer #3540  
Internal Affairs Unit

**SUBJECT: NOTICE OF COMPLETED  
CASE #I2015-0145**

**DATE:** May 17, 2016

Approved:

Date:

The Internal Affairs Unit has completed the investigation of a Formal Misconduct complaint against Ofc. Alan Yee #4342. Listed below are the Allegations against the officer and the results of the investigation.

**ALLEGATION**

**FINDING**

Force	Exonerated
Procedure	Unfounded

In view of the fact that the officer is currently under your command, and in the interest of keeping you informed of citizens' complaints lodged against officers supervised by you, complaint number I2015-0145 is completed and is on file at the Internal Affairs Unit.

You are encouraged to contact the investigator, Sergeant Gustavo Perez, or me at extension [REDACTED] should you desire a verbal explanation of the circumstances surrounding this incident.

Lt. Randy Schriefer #3540  
Commander  
Internal Affairs Unit

RS:ra

