



OFFICE OF THE  
DISTRICT ATTORNEY

Stanislaus County

832 12<sup>th</sup> Street, Suite 300  
Modesto, CA 95354

Mailing: P. O. Box 442, Modesto, CA 95353  
Phone: (209) 525-5550 Fax: (209) 525-5545

**Birgit Fladager**  
District Attorney

Carol Shipley  
Assistant District Attorney

Chief Deputy District  
Attorneys

Jerry Begen  
Alan Cassidy  
Dave Harris

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October 5, 2009

Sheriff Adam Christianson  
250 E. Hackett Rd.  
Modesto, CA 95358

Re: In custody death of Craig Prescott

Dear Sheriff Christianson:

This office, pursuant to State law, was notified by your department and asked by you to investigate the in custody death of Craig Edward Prescott (DOB 4/7/1971) that occurred on April 13, 2009 in the City of Modesto after he was incarcerated at the downtown jail. Based on a review of the reports, medical records, witness statements, autopsy report, death certificate and this office's own independent investigation, I must conclude that no "criminal agency" occurred. In this case, the pathologist has determined that the cause of death was "hypertensive heart disease." The coroner has determined that death was accidental, based on the finding in the pathologist's report that a contributing cause was "moderate cardiovascular strain from heightened physical activity." From a layman's point-of-view, the decedent over-exerted himself and had a heart attack. This office understands that the decedent's family has conducted a second autopsy. We have requested the report from their attorney, but it has not been provided. Therefore, since the only evidence establishes that Mr. Prescott died of natural causes, this matter will be closed (as explained below).

**HISTORY**

The investigation established that the following events took place:



Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #3

Craig Prescott was employed as a Stanislaus County Sheriff's Correctional Deputy until around February 19, 2006 when he was arrested for a violation of Penal Code §4573.6. On April 18, 2006, Prescott was charged in case #1107373 with one count of violating the above section and, according to the arrest warrant, Prescott admitted that he had agreed to bring contraband into the jail for at least one inmate. Prescott lost his job as a jail deputy. After Prescott was terminated (or resigned) the criminal case was dismissed, however there is no indication that the two were connected. According to an affidavit filed by the Modesto Police Department in April of 2009, Prescott had not had a steady job since losing his job as a deputy.

In January 2009, Prescott was committed to Doctors Behavioral Health Center (DBHC) for an unknown reason. While he was there, police reports indicate that he became so violent and "out of control" that the police had to be called to DBHC. During this episode, Prescott was able to rip his bed from the floor, despite the fact that the bed was bolted to the floor. The report notes that a doctor stated that they had never had a patient able to "rip the bed from the steel bracket and steel ground bolts from the floor before." Prescott made statements that he was "God's right hand man and in his army to take his wife and children home with him." The police had to use a Taser and a bean bag gun to get him under control<sup>1</sup>.

During February and March of 2009, Prescott's wife, Rachel Prescott

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<sup>1</sup> During the incident at DBHC, an officer shot Prescott in the abdomen with a Taser. A Taser is an electrical device used and shaped much like a handgun (but which is classified as a less-than-lethal weapon) which can fire darts that are connected to the device by wires or used in direct contact mode. The device transmits an electrical shock that is designed to incapacitate an individual. When the officer shot Prescott, the device was used in the projectile mode and allowed the officer to stand at a distance while delivering a five-second electrical charge. Prescott resisted and tried to pull the Taser dart out. A second officer then had to shoot Prescott with a second Taser. Prescott fell to the ground, but still resisted the officers and refused to comply with any commands. Both officers again used their Tasers, administering one to two additional five-second charges. Prescott still refused to comply and even attempted to stand up, at which point he was shot with the bean bag gun. Only after being shot with a bean bag round were the officers able to handcuff Prescott.

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #4

(hereafter Rachel to avoid confusion), became concerned over her husband's behavior to the point that she obtained a restraining order against him. Rachel moved herself and her children to a "safe house." She also took her kids out of school because she feared that Prescott would go to the school and "take them to heaven." On March 30, 2009, according to the paperwork later given to the Modesto Police Department by Rachel, Prescott was ordered to undergo a psychological evaluation.

On April 3, 2009, Rachel went to the lobby of the Modesto Police Department seeking help and reporting that Prescott had violated the restraining order. Rachel told the officer that she had separated from Prescott due to his mental state. She said that Prescott had "many different personalities talking in different languages and accents" that she could not understand. Rachel felt that Prescott's "mind is not there and thought he might be thinking of harming her or her children." Rachel also reported that Prescott was a third degree black belt and karate instructor. Rachel reported that Prescott would send her nonsensical text messages that led her to believe that Prescott was going to kill her and her daughters on his birthday. She formed this belief from text messages Prescott sent where he claimed to be God's right hand man, that he was going to Heaven and his daughters were going to Heaven with him.

On April 6<sup>th</sup> or 7<sup>th</sup>, 2009 (there is some confusion as to the correct date if based solely on the police report), Rachel returned to the Modesto Police Department to again make a complaint regarding Prescott. This time Rachel indicated that she believed that Prescott was going to "kill them" that night. [This report by Rachel indicated that she believed that Prescott was going to act that day instead of on his birthday which was April 7<sup>th</sup>, which implies the report occurred on April 6<sup>th</sup>.] With Rachel's help, officers determined Prescott's location. Eight police officers responded to take him into custody for several threats and violations of the restraining order that Rachel had obtained. When Officer "A" went to the door, Prescott refused to open the door. "A" wrote in his report:

"I asked Craig to come out and talk with me. I told him I had a want for him and needed him to open the door. Craig became quiet and after a few moments I could hear sounds of moaning or if someone was vomiting. It was

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #5

a deep growling sound. Rachel had warned me Craig was a third degree black belt in Karate and an instructor. She said he is very violent. I again asked Craig to come to the door. I felt after hearing him groan he might possibly be hurt.”

Prescott then told the officers he was in the shower. After about five minutes, Prescott opened the door and invited the officers inside. Officer “A” and the other officers were able to enter and arrest Prescott. As he was being arrested, Prescott began speaking in a “British accent.” Officer “A” noted in his report that it took three pairs of **handcuffs strung together** to restrain Prescott due to his size.

Officer “A” filed a request for a bail increase after Prescott was booked. In the request, “A” stated that Prescott is “over 300 lbs and he is very determined, Rachel takes these threats very serious.” Further he said, “Rachel believes Craig is determined to kill her and the kids.” “A” also wrote:

“I have read these text messages and heard his voice mails. He talks about being in gods army and it will soon be time to go home. When I arrested Craig, he talked about praying and hearing from god and doing gods work.”

According to jail records, Prescott was brought to the jail by the Modesto Police Department at 2201 hours on April 6<sup>th</sup>. “A”’s request for an increase in bail was granted by Judge Freeland and received at the jail on April 7<sup>th</sup> at 0107 hours. A criminal complaint was filed against Prescott on April 8, 2009 charging him with a felony count of stalking in violation of Penal Code §646.9(b) and a felony count of criminal threats in violation of Penal Code §422. Prescott’s bail remained at the amount of \$250,000.00 as requested by Officer “A”.

Notes by medical staff in the jail records indicate that, at the time he was brought into the jail, Prescott appeared to be under the influence of drugs or alcohol. The records also indicate that Prescott was uncooperative and refused to answer medical questions. Prescott was seen by the jail doctor on April 9, 2009 for a mental health assessment, at which point Prescott refused any medication.

**On April 11<sup>th</sup>, Sgt. “B”** was working in the jail when he was called over to

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #6

cell D13. Sgt. "B", as he got closer, was able to tell that it was Prescott calling him to the cell. Prescott began to say things and make noise. Sgt. "B" described it as "speaking in tongues." Sgt. "B" reported the behavior to the medical staff and a mental health referral for Prescott to be seen by someone was scheduled.

At around 1315 hours, Sgt. "B" was on the tier again and near cell D13. Sgt. "B" observed that Prescott had tied a sheet around the bars of his cell, tying the cell door closed. Sgt. "B" asked Prescott to take the sheet down. Prescott responded, "No! Fuck you 'B!' I am not taking it off!" Sgt. "B" moved to the front of the cell, at which point Prescott threw a liquid substance on Sgt. "B". **This is also known as "gassing," a violation of Penal Code §243.9.** Sgt. "B" called for the assistance of other deputies. At this point, Prescott was in violation of several jail rules and had committed a felony offense.

After the other deputies arrived, Sgt. "B" planned how they would return to the cell and remove the sheet. The team carried out the plan, and in the process, Sgt. "B", Deputy "C" and Deputy "D" were splashed with a liquid by Prescott. Sgt. "B" then spoke with the Classification Deputy and it was decided to move Prescott to another cell that had a solid door to prevent further "gassing" attacks on the staff. Sgt. "B" asked/ordered Prescott to come to the door and "cuff up" so that he (Prescott) could be moved. Prescott refused.

At about 1345 hours, a cell extraction was commenced by jail staff. A cell extraction is conducted by jail staff in a group to overcome resistance and to minimize the risk of harm to both staff and inmates. The cell extraction team consisted of Sgt. "B," Deputies "C," "D," "E," "F," "H," "I," and "J." When the team arrived, **Prescott continued to refuse to listen and barricaded himself behind his mattress while on the bed cursing at the deputies.**

At this point, Prescott was tased by Deputy "J" in the left leg. Prescott continued to hold the mattress in front of him attempting to use it as a shield. The deputies gave Prescott orders to put the mattress down and lay on the ground. He failed to comply and, instead, Prescott attempted to remove the Taser probes by shifting the mattress in a downward movement against his leg. When Prescott did this, it exposed his right leg. Deputy "E" fired a pepperball gun at Prescott's

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #7

exposed leg; Prescott was hit several times in the leg and hand. Prescott then moved the mattress to his right to block the pepperball rounds. This move exposed Prescott's body from behind the mattress for Deputy "D" to fire his Taser. Prescott threw his mattress toward the Taser wires thereby exposing his upper body again. Sgt. "B" then deployed his Taser, which struck Prescott's chest. Prescott had an immediate reaction and dropped to his knees on the floor.

Prescott was still able to position himself against the bed with his hands tucked under his upper body. Prescott was repeatedly ordered to place his hands behind his back. Prescott would not comply with any of the deputies' orders. The cell door was then opened and staff entered the cell to place Prescott into restraints. Prescott continued to resist. Due to his size and strength, staff had difficulty trying to handcuff him. Prescott continued to resist and pulled his arms from staff's control. Once in restraints, Prescott was carried out of the cell and placed on the floor.

Pursuant to policy, medical staff assessed and treated Prescott for his pepperball wounds and also removed the Taser probes.

Prescott was still defiant and struggling with staff. Due to Prescott's bizarre behavior, it was decided that Prescott needed to go to a safety cell for continued observation. It was very difficult to carry Prescott because of his size, so Prescott was placed on a mattress to slide him to the safety cell. Near the safety cell, the team stopped so that the medical staff could administer a shot of Ativan to Prescott to calm him down. An inter-muscular dose was administered by a nurse at the jail doctor's direction. After allowing a few minutes for the shot to take effect, Prescott was moved into a safety cell.

Prescott was slid into the safety cell. This cell has a video camera (without sound) and the video was later gathered as evidence. The video is grainy, of poor quality, jerky and most of the events are obscured by the fact that as many as eight deputies are in the cell with Prescott once he was slid into the cell. According to the deputies, Prescott continued to kick and pull away from them. Prescott's boxers were cut off and he was placed into the corner of the cell.

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #8

Pursuant to departmental safety policy, an inmate is not allowed to be left in a safety cell while restrained. Deputies "I" and "C" attempted to remove the leg restraints from Prescott, however, Prescott kept trying to kick free. Several of the deputies reported (in their written statements/reports) that Prescott tried to pull his arms away from them. At one point, Prescott was able to extend his legs all the way straight pushing Deputies "I" and "C".

Although not clearly visible on the video, Prescott was stunned with a Taser (in the non-projectile mode) on the buttocks by Deputy "J" to again gain compliance. Several of the deputies in concert were then able to place Prescott's **legs in a crossed position behind his buttocks to facilitate removal of the leg restraints.** During these events, deputies were telling Prescott to remain calm, comply with orders, and stop resisting. Once the leg restraints were removed, Deputy "D" removed the right handcuff from Prescott's right wrist. Deputy "H" placed Prescott's left arm in an arm bar. That is when Prescott's right arm went limp. Sgt. "B" directed one of the deputies to check to see if Prescott was breathing and to check for a pulse. Medical staff were called into D2 and Prescott was rolled over and was checked for a pulse. Nurses also checked for a pulse and breathing. At this point, Prescott had a weak pulse, but was not breathing. It was approximately 1355 hours.

Sgt. "B" immediately requested, by radio, an ambulance (AMR), the AED, and "ambu" bag (Hyperinflation Bag). CPR was started on Prescott by one of the nurses on scene, assisted by Deputies "G," "F," "I," and "K." Another nurse, Sgt. "B" and Deputy "D" maintained the ambu bag. Deputy "H" applied the AED. An IV was also started by one of the nurses.

At approximately 1402 hours, AMR arrived. AMR requested the Modesto Fire Department to also respond. At approximately 1407, Modesto Fire arrived on scene and started working with AMR. CPR was continued by jail staff until AMR and Fire took over. At approximately 1411, Prescott was taken to Doctors Medical Center by ambulance where his condition deteriorated and ultimately he was declared brain-dead.

Pursuant to Penal Code §5021, the District Attorney's Office as well as the

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #9

Modesto Police Department were notified of the events at the jail. The Sheriff's Department Investigations Division was called, pursuant to existing policies, to commence an investigation to determine what had happened. A District Attorney Investigator (DAI) was assigned and responded to the jail as well. [The assigned DAI had never worked for the Stanislaus County Sheriff's Department.]

As part of the process, all of the involved deputies completed police reports, and standard "Taser Use" forms were completed by those who had used a Taser. These forms were gathered as part of the investigation. The investigation team also documented the condition of Prescott's body, as did a coroner's investigator at a later point in time. Photographs were also taken of the cells involved, equipment used and injuries suffered by some of the Sheriff's deputies. The medical staff also completed required paperwork and one of the nurses noted that, during the events, Prescott appeared to be in a "psychotic condition." The nurse also said that Prescott, after being cuffed, was "yelling out, appears to be incoherent...."

The investigation team interviewed the deputies separately and also attempted to interview other inmates regarding the events. The DAI assisted in this task. Some of the deputies had known Prescott from his time as a jail deputy, while the rest did not know who he was. All of the deputies involved described Prescott's strange behavior and strength.

One of the inmates who cooperated with the investigators and agreed to talk was inmate "X". "X" was housed in the cell next to where Prescott had been during the extraction. "X" told the investigators that he believed Prescott was having mental problems. "X" said that Prescott had "gone off every day" since being incarcerated. "X" confirmed that Prescott "would give custodial staff and medical staff at the jail a bad time each time they walked down the tier."

"X" saw Prescott throw "some type of liquid out of" the cell towards the deputies. "X" specifically stated that the deputies "were just doing their job and trying to get Prescott to comply..." He further stated that the deputies did everything by the book. "X" explained that the deputies gave Prescott commands in "clear loud voices" on what to do and to surrender.

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #10

Prescott was taken off of life-support by his family on April 13, 2009 and he died later that same day. An autopsy was performed on Prescott on April 14, 2009. The Pathologist was Dr. Eugene Carpenter. Dr. Carpenter was a visiting pathologist and filling in for the county (Dr. Carpenter is a Pathologist for Los Angeles County. Dr. Carpenter examined the body and noted that Prescott was “moderately to severely obese....” Dr. Carpenter carefully examined Prescott for any injuries.

Dr. Carpenter documented Taser marks and injuries “consistent with the history of nonlethal weaponry.” Dr. Carpenter noted several rib fractures but determined these to have been caused by the CPR process. His most notable findings were the lack of injury to the head, brain or neck that could have contributed to death. Dr. Carpenter did find that Prescott’s heart was enlarged and a microscopic examination determined that the heart had ‘hypertrophic nuclear changes and prominent patches of interstitial fibrosis.’ Dr. Carpenter found the cause of death to be “hypertensive heart disease, years.” He also listed contributing factors as, “psychotic behavior; moderate cardiovascular strain from heightened physical activity; chronic interstitial fibrosis of the heart; atherosclerotic coronary artery disease.” **Dr. Carpenter had Prescott’s blood tested for Ativan and remarked in his report that toxicology is “non-contributory” to the cause of death.**

Based on all of the evidence and the report by Dr. Carpenter, Prescott died of natural causes. There is no showing that the force used by anyone, the use of a Taser or the injection of Ativan, contributed to Prescott’s death. [As noted at the beginning, Prescott’s family had a pathologist from Glenoaks Pathology Medical Group, Inc., examine the remains, but the family and/or the attorney has refused to supply this office with that doctor’s findings. In a statement in the Modesto Bee,

“Rachel Prescott said the independent autopsy report cannot be completed until the family's attorney receives a detailed report of the incident and jail records.”]

## LAW

The District Attorney does not normally review matters of policy or procedure or that relate to civil issues. The District Attorney’s jurisdiction is related to the requirements of Penal Code § 5021, to investigate deaths that occur in an

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #11

institutional setting, primarily from the use of force. In this case, the pathologist has determined that there is no nexus between the deputies' conduct and Prescott's death. However, assuming there were a nexus (which there is no evidence of) between the death and the force, a review of the law and the application of the law to the facts would be required.

Peace officers have rights by virtue of their need to enforce the laws that differ from the ordinary citizen. Penal Code §835a states:

“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.”

In 1962 the California Supreme Court discussed the realities of custodial settings, stating:

“Of course, custodial officers may use reasonable force upon a prisoner to enforce proper prison regulations or ‘where necessary to prevent a prisoner from doing bodily harm to a prison official.’ (In re Ferguson, supra, 55 Cal.2d 663, 673.) The courts are and should be reluctant to interfere with or to hamper the discipline and control that must exist in a prison. Petitions containing such charges must be carefully scrutinized and the facts carefully weighed with the thought in mind that they are frequently filed by prisoners who are keen and ready, on the slightest pretext, or none at all, to harass and to annoy the prison officials and to weaken their power and control. The prisoners include many violent and unscrupulous men who are ever alert to set law and order at defiance within or without the prison walls. The burden of proof is, of course, on the petitioner for the writ.”

In re Riddle (1962) 57 Cal.2d 848, 852.

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #12

One could argue that 1962 was a long time ago, and much has changed with corrections and the use of force. However, modern cases still give great deference to correctional deputies. Another court said:

“We may assume that prisoners and jailers constitute distinct classes, as petitioner asserts, but there is a significant difference in the legal standards applicable to them. The sheriff is legally responsible for the operation of the jail (Gov. Code, § 26605) and his deputies, both as jailers and as peace officers, are charged with duties relating to the safekeeping and welfare of prisoners and the protection of county property. In the performance of those duties, they are sometimes required to use physical force, performing acts which would constitute the crime of battery if committed by other persons.”  
Robinson v. Superior Court (1978) 76 Cal.App.3d 968, 983.

It might be said that California law does not really answer the question of what is or isn't excessive force. It is not necessary to examine that point, since the United States Supreme Court has given us guidance to answer the question definitively:

“Whenever prison officials stand accused of using excessive physical force constituting “the unnecessary and wanton infliction of pain” violative of the Cruel and Unusual Punishments Clause, the core judicial inquiry is that set out in Whitley v. Albers, 475 U.S. 312, 320-321: whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. Extending Whitley 's application of the

“unnecessary and wanton infliction of pain” standard to all allegations of force, whether the prison disturbance is a riot or a lesser disruption, works no innovation.  
Hudson v. McMillian (1992) 503 U.S. 1, 1-2.

## ANALYSIS

It is clear and undisputed that when the events of April 11<sup>th</sup> transpired Craig

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #13

Prescott had been, and continued to be, acting in an abnormal fashion. Without the benefit of a formal diagnosis it would inappropriate for us to proclaim Prescott as mentally ill, even if, circumstantially, he appeared to be. It is also undisputed that Prescott was in jail pending charges and subject to the jurisdiction and control of the Sheriff.

The jail had policies in place that required Prescott to comply with staff's orders to not tie his cell door closed, and the Penal Code prohibited him from committing a battery (gassing) on and against staff. Prescott was unable to follow the rules, either by choice or as a result of his mental condition. Even if Prescott's behavior and lack of compliance were due to a "mental condition," the jail staff still had a legal obligation to maintain control, safety and discipline. There is no evidence, from any source, that jail staff acted "maliciously and sadistically to cause harm" or that any use of force was undertaken in bad faith.

In reviewing this case, notwithstanding that Prescott died of natural causes, there are three distinctive segments that must be analyzed. The first is the cell extraction; the second is the time frame after the extraction until placement in the safety cell; and, last is the event in the safety cell itself.

Cell Extraction: There can be no doubt that the jail staff had to remove the tied sheet and ultimately move Prescott to a more secure cell. The extraction process was conducted pursuant to policy and industry practice. The use of a Taser or pepperball gun to gain compliance is legally authorized and not excessive under

these circumstances. Prescott was a large man, out of control, and highly trained in the Martial Arts. To ask an unarmed deputy to fight someone under these circumstances would only guarantee injuries to everyone involved.

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<sup>2</sup> The Federal courts have repeatedly ruled on this very point. The courts have rejected inmates' claims that Tasers could not be used against inmates or that jail officials must find other alternatives to gain compliance. In the Caldwell case, the court addressed an inmate's identical claim, saying:

"Nor are we willing to accept Caldwell's claim that numerous other alternatives were

Also, it is clear from all of the witness statements and medical reports that Prescott was not in distress after the extraction. This, circumstantially, establishes that Prescott suffered no ill effects from the extraction process. If, contrary to the facts and cause of death finding made by Dr. Carpenter, it is argued that Prescott died because of the force used by the deputies or from the Taser, the law exonerates the deputies. There are two Penal Code provisions that clearly cover this “arguable” possibility - Penal Code §195 and §196 and they are addressed below in reverse order.

Penal Code §196 states, in part :

“Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either-\*\*\*

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged **with a felony, and** who are fleeing from justice or resisting such arrest.”

The deputies were discharging a legal duty and using the force necessary to overcome resistance by Prescott. Lastly, §195 states, in part:

“Homicide is excusable in the following cases:

1. When committed by accident and misfortune, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.\*\*\*”

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available to the jail officials. Caldwell's proposed alternatives involve either allowing the inmates to determine what orders they will obey or forcing jail officials to enter the inmates' cells and physically subdue them without injuring themselves or the inmates. It is not unreasonable for the jail officials to conclude that the use of a stun gun is less dangerous for all involved than a hand to hand confrontation.

Caldwell v. Moore (1992) 968 F.2d 595, 602.

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #15

Once again, it is clear that all of the elements of §195 have been established. Therefore, for the sake of argument, even if Prescott's death were caused by the non-deadly use of force during the extraction process, the deputies would have been justified in their actions and/or the death would have been accidental pursuant to Penal Code §§195 and 196.

Outside of the Cell: There is no evidence that anything happened during the transfer of Prescott once he was removed from his D13 cell until he reached the safety cell. In fact, the opposite is true - Prescott, once restrained, was examined, treated and then cleared by medical staff. There was no sign that he was in distress or that he had a medical issue. Prescott was yelling and incoherent; this implies was not cooperative with the medical staff. The treatment Prescott received was from the appropriate officials/professionals and medically directed.

There is nothing, even circumstantially, to suggest that any event during this time period had an effect on Prescott's health or ultimately related to his death. The only significant event was the administration of the Ativan, but Dr. Carpenter has ruled that out by finding it to be "non-contributory."

Safety Cell: At the point that Prescott was brought into the safety cell, the events were captured on tape. There was no assault, no beating, no evidence that jail staff acted "maliciously and sadistically to cause harm" or that any use of force was undertaken in bad faith. When Prescott was brought into the safety cell he was in arm and leg restraints. The jail's policy is that the restraints must be removed - to prevent the inmate from being trapped face down and possibly developing medical problems. Prescott was combative from the moment he was brought into the cell. There were eight deputies and it took all of them to move and control Prescott. Additionally, the cell was very small. When deputies tried to remove the leg restraints, Prescott flexed his legs to the point that two deputies reported being pushed across the cell. When Prescott pushed the deputies with his legs, another deputy "dry" tased Prescott in an attempt to get him to stop resisting. Shortly thereafter, another deputy started to remove the handcuffs and at this point Prescott went limp.

As the analysis above showed, relating to the cell extraction, there is no

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #16

evidence to connect Prescott's death to the jail staff's actions. Therefore, the conclusion must be the same - jail staff are not responsible for his death. Once again, assuming there were some connection, the same Penal Code sections would apply and exonerate the deputies.

The only possible finding made by Dr. Carpenter that even remotely can be connected to the deputies' conduct relates to the finding of "moderate cardiovascular strain from heightened physical activity" listed as a condition contributing to Prescott's death. However, from a legal viewpoint - Prescott had a duty not to resist the deputies' efforts<sup>3</sup>; so, from a causal point of view, he (Prescott) would be responsible for the results. The deputies did not cause Prescott to resist their lawful actions and their response was not excessive so as to allow Prescott the need or excuse that he was resisting "excessive force." There is no causal showing whereby the deputies can be held legally responsible for Prescott's death.

## CONCLUSION

Based on the intent of Penal Code §5021, this Office has undertaken an investigation into the events of April 11, 2009 relating to the incident involving inmate Craig Prescott. The Pathologist's medical determination means that Prescott died of natural causes and not at the "hands of another" which is a required element of any homicide related criminal offense. Even assuming that the deputies' use of

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<sup>3</sup> The deputies' commands in the jail to an inmate are the same type of restraint of movement that a peace officer exercises over someone when the officer makes an arrest. The law mandates that a person subject to such a restraint of their liberty, i.e., arrest, submit to the arrest. The law states:

"If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest." Penal Code § 834a.

Letter to Sheriff Christianson  
Re: In custody death of Craig Prescott  
October 5, 2009  
Page #17

physical strength to restrain Prescott, the use of the Taser or even the use of the restraints themselves caused Prescott to engage in heightened physical activity, the deputies were acting in a lawful manner and in a lawful way (the manner of death has been listed as accidental and such a determination must infer that the deputies' involvement with Prescott somehow resulted in his exertion). The only evidence establishes that Mr. Prescott died without criminal agency and, by law, this matter will be closed. [As stated before, this office is aware that the decedent's family conducted a second autopsy, which has not been provided to us.] If any evidence were to arise that the deputies, as a group or individually, committed an unlawful act, then this matter would be re-opened.

Very truly yours,

BIRGIT FLADAGER  
District Attorney

David P. Harris  
Chief Deputy District Attorney



BF:DPH/kds