



# Sacramento County District Attorney's Office

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June 24, 2019

Chief Daniel Hahn  
Sacramento Police Department  
5770 Freeport Boulevard, Suite 100  
Sacramento, CA 95822

Re: In-Custody Death – Erik Mencarini (DOB 12/12/79)  
SPD Report No. 2017-256898  
Date of Incident: September 6, 2017

Dear Chief Hahn:

The District Attorney's Office has completed an independent review of the above-referenced in-custody death. Issues of civil liability, tactics, and departmental policies and procedures were not considered. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the death of Erik Mencarini. For the reasons set forth, we find no evidence of criminal misconduct.

The District Attorney's Office received and reviewed written reports and other items, including: Sacramento Police Department report number 2017-256898 and related dispatch recordings; witness interview recordings; 9-1-1 audio recordings; in-car camera and body-worn camera video recordings; photographs; diagrams; UC Davis Medical Center records; Sacramento County District Attorney Laboratory of Forensic Services Toxicology and Blood Alcohol reports; and the Sacramento County Coroner's Final Report of Investigation.

## **FACTUAL SUMMARY:**

On September 6, 2017, at approximately 3:38 p.m., law enforcement dispatchers received multiple 9-1-1 calls from witnesses in the College Greens neighborhood. Apartment residents observed Erik Mencarini attempting to steal a vacuum from their patio. When Mencarini fled, they followed and located him hiding in a nearby dumpster. Mencarini became confrontational with the residents by yelling, cursing, and throwing rocks at them and nearby vehicles. One rock struck a resident in the cheek and other rocks broke windows of two parked, vacant vehicles. Mencarini continued to flee and other witnesses followed. They were concerned Mencarini would commit additional assaults and acts of vandalism.

At approximately 3:44 p.m., dispatchers received an updated 9-1-1 call from a witness stating Mencarini was hiding in the backyard of a residence on Great Falls Way. Mencarini had kicked in a wooden fence to enter the yard. Witnesses warned the occupants of this home to lock their doors and windows. When witnesses approached Mencarini in the backyard, he threw a rock at one of them, striking this person in the leg. This witness then grabbed a broom to defend himself and struck Mencarini. Mencarini ran and exited the backyard.

While running away from this home and the pursuing witnesses, Mencarini threw a rock at a man driving his car, causing damage to his window. He threw a rock at a moving vehicle driven by a woman with a twelve-year-old girl sitting in the front passenger seat. Mencarini also swung a rock in his hand as if to strike the witnesses. Eventually, Mencarini was tackled to the ground. He told the witnesses, "I give up man! I give up man!" As they released Mencarini, he suddenly ran down the street again. Mencarini tripped and fell on the front lawn of a home near Great Falls Way and Denison Court.

An older man attempted to hold Mencarini down on the ground. Mencarini was struggling and fighting to get up. A younger man had been pursuing Mencarini, and he observed the older man becoming tired during the struggle and was concerned that Mencarini would escape. The younger man placed his arm around Mencarini's neck. Mencarini continued to struggle. A woman assisted by holding Mencarini's legs.

At approximately 4:02 p.m., Sacramento Police Officer Patrick O'Malley arrived at the intersection of Occidental Drive and Great Falls Way. A witness informed Officer O'Malley that Mencarini ran northbound on Great Falls Way. Officer O'Malley then drove his patrol vehicle in that direction. When he arrived at the intersection of Great Falls Way and Denison Court, he observed approximately three people on the front lawn of a residence and numerous citizens standing nearby. Officer O'Malley communicated his location to dispatchers, and then he exited his vehicle and ran towards the group.

Officer O'Malley observed Mencarini face down and being held by two or three people. One person was leaning on Mencarini's left side. Another person was laying on top of Mencarini's right side, but Officer O'Malley could not see that person's hands. A third person was holding Mencarini's legs down. Officer O'Malley heard Mencarini grunting and making noises. The people holding Mencarini told Officer O'Malley that Mencarini was the subject of the 9-1-1 calls, and he "was crazy or on drugs." Mencarini continued to resist and tried to pull away.

Officer O'Malley attempted to handcuff Mencarini by kneeling and placing his left knee on Mencarini's upper back. A witness assisted Officer O'Malley by pulling Mencarini's left hand behind his back. Mencarini was still grunting and trying to get up on his knees. Officer O'Malley placed a handcuff on Mencarini's left wrist. Officer O'Malley directed Mencarini to put his right hand behind his back, but he continued to push up and resist. Officer O'Malley twisted Mencarini's arm slowly, while another witness pulled Mencarini's right arm out from under his body. Once Mencarini's right arm was behind his back, Officer O'Malley placed the handcuff on the right wrist. At approximately 4:06 p.m., Officer O'Malley communicated to dispatchers that Mencarini was detained.

Officer O'Malley then observed Mencarini become very calm. Officer O'Malley proceeded to ask witnesses if anyone was injured. They responded there were no injuries. Officer O'Malley immediately requested medical assistance and other officers. Officer O'Malley believed Mencarini was having a medical issue based on his abrupt change in behavior.

Officers Ryan Davis and Dalbinder Dulai arrived at approximately 4:13 p.m. Officer O'Malley's knee and hand were still on Mencarini's back. The officers briefly discussed the incident. Officer Davis began to search Mencarini's pockets. He observed Mencarini's face was blue. The officers turned Mencarini from his stomach to his back and discovered Mencarini was not breathing. Officer Davis began administering chest compressions. Officer O'Malley updated dispatchers about Mencarini's condition at 4:16 p.m.

At approximately 4:17 p.m., the Sacramento Metropolitan Fire Department arrived and immediately rendered medical aid. Several minutes later, medic personnel arrived and transported Mencarini to the UC Davis Medical Center for treatment. Upon arrival, Mencarini was not breathing but had a faint pulse. He was intubated and placed on a ventilator. He did not regain consciousness and died on September 10, 2017.

Mencarini's blood sample was obtained at the hospital. The Sacramento County District Attorney's Office Laboratory of Forensic Services analyzed the sample which revealed the presence of methamphetamine, amphetamine, delta-9-THC, and 11-nor-9-carboxy-THC. Forensic Pathologist/Neuropathologist Keng-Chih Su, M.D., conducted an autopsy and determined Mencarini's hyoid bone was fractured on the left side of his neck. He concluded there was pressure on Mencarini's neck which was fatal because it caused asphyxia.

Officer O'Malley's initial contact with Mencarini was recorded on his body-worn camera. A subsequent review of the video depicts Officer O'Malley arriving at the scene. He uses his radio to update his location and then runs to the front lawn. One male adult is standing and observing the people laying on the lawn. Officer O'Malley approaches and the video depicts Mencarini on his stomach. An older man is on his knees but leaning on Mencarini's left back. A younger man is on Mencarini's right back and has his arm wrapped around Mencarini's neck. Mencarini is heard making wheezing sounds. As Officer O'Malley leans forward to secure Mencarini in handcuffs, his body-worn camera stops recording.<sup>1</sup>

Officer Davis's body-worn camera also captured the incident from the time of his arrival on scene. A review of this video depicts Officer O'Malley kneeling with his hand resting on Mencarini's shoulder area. Mencarini is not moving. Officer Davis searches Mencarini's pockets while discussing the incident with Officer O'Malley and witnesses standing next to him. Mencarini remains motionless. Officer Davis asks Officer O'Malley if Mencarini is still breathing. Officer O'Malley then says to Mencarini, "Wake up, wake up." Officer Davis informs Officer O'Malley that Mencarini's face is blue. Officer Davis turns Mencarini over onto his back, checks his pulse, and then begins chest compressions for approximately thirty seconds. Sacramento Metropolitan Fire Department personnel arrive and provide medical treatment.

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<sup>1</sup> The recording shows a shirt, belonging either to the younger man or Mencarini, coming closer to the camera until the camera stops recording. It appears that the body-worn camera was inadvertently turned off when Officer O'Malley bent down to attempt to handcuff Mencarini.

## **LEGAL ANALYSIS:**

The Office of the District Attorney reviews deaths that occur while in police custody to assess and apply the law relating to police use of force and to determine if the officers' acts fall within the state laws of criminal responsibility. This office conducted its review by applying the facts of this case to the controlling legal authority. The authority applicable here included California Penal Code sections 834, 834a, 835a, 843, 192(b) and state and federal published cases.

Under the circumstances, Officer O'Malley had probable cause to take Mencarini into custody. The apartment residents observed Mencarini attempting to steal the vacuum from their apartment patio. Witnesses also observed Mencarini throwing rocks at the resident and striking him in the face. Mencarini used rocks to vandalize two parked cars before fleeing. He then continued to strike another witness and vehicle with rocks. Officer O'Malley had sufficient reasonable articulable suspicion to detain Mencarini to further investigate the situation. When Officer O'Malley attempted to handcuff him, Mencarini did not cease resisting.

Because Officer O'Malley's efforts to take Mencarini into custody were lawful, and there is no evidence to support a finding that either Officer O'Malley or Officer Davis intentionally tried to harm him, we next analyze whether there is criminal liability under California Penal Code section 192(b), involuntary manslaughter. Involuntary manslaughter requires proof that a person acted in an aggravated, culpable, gross or reckless manner with disregard for human life or with indifference to the consequences of the act. (*Somers v. Superior Court* (1973) 32 Cal.App.3d 961, 968-969; *People v. Villalobos* (1962) 208 Cal.App.2d 321, 326-328; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 437-441.)

When Officer O'Malley initially observed Mencarini on the lawn, Mencarini was resisting detention by moving and struggling against the witnesses' efforts to maintain him on the ground. Mencarini was also wheezing. Officer O'Malley and the witnesses needed to physically move Mencarini's arms to handcuff his wrists. This behavior did not indicate to Officer O'Malley that Mencarini was in acute medical distress. There was no observable physical evidence of an assault on Mencarini that would have caused Officer O'Malley to further evaluate Mencarini's condition. After Officer O'Malley observed Mencarini being calm in stark contrast to his earlier behavior, Officer O'Malley immediately called for medical assistance.

Given the numerous witnesses immediately surrounding Officer O'Malley and his need to gather information about their conditions and what crimes occurred, it was reasonable that Officer O'Malley would not focus on Mencarini's face or be completely engaged with Mencarini's physical condition, before and after Officers Davis and Dulai arrived.

Officer Davis noticed Mencarini's deteriorating physical condition after he searched Mencarini's pockets. Officer Davis immediately asked Officer O'Malley if Mencarini was breathing and then observed Mencarini's blue face. Officer Davis acted swiftly to check Mencarini's pulse and began chest compressions.

It cannot be said that Officers O'Malley and Davis acted in an aggravated, culpable, gross, or reckless manner. They did not act without disregard for human life or an indifference to the

consequences of their actions. Therefore, their conduct on that day does not constitute a criminal act under any theory of liability.

## **CONCLUSION**

While this case presents a tragic situation, our decision must be based on what the evidence proves. Accordingly, there is no legal basis for any further action by our office.

cc: Sacramento Police Officer Patrick O'Malley  
Sacramento Police Officer Ryan Davis  
Sacramento Police Sergeant Shawn Ayers  
Francine Tournour, Officer of Public Safety Accountability  
Kimberly Gin, Sacramento County Coroner's Office