



BUTTE COUNTY DISTRICT ATTORNEY



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April 13, 2017

Chief Michael O'Brien
Chico Police Department
1460 Humboldt Road
Chico, CA

RE: Chico Police Officers Jeremy Gagnebin and Alex Fliehr and the March 17, 2017 shooting of Desmond Phillips (DOB: 01/01/1992) – CPD #17-1876

Dear Chief O'Brien,

After an extensive and careful review of the evidence gathered by the Butte County Officer Involved Shooting/Critical Incident Protocol Team related to the above shooting incident, it is this office's determination the weight of credible evidence shows no criminal liability on the part of your officers **Jeremy Gagnebin** and **Alex Fliehr**. The evidence in this case tends strongly towards showing the officers' actions to be justified under both Penal Code Sections 196 and 197, as well as the general principles of the law of self-defense and defense of others.

As you know, the objective of the team's investigation is not an administrative investigation to determine whether there was a violation of your departmental policy nor is it a critique of any involved officer's tactics. Its purpose is to determine whether there is any criminal liability on the part of any involved officer. The investigation, as was done here, is to be accomplished by uninvolved, professional investigators from separate agencies to supply a complete, unbiased and uncompromised investigation to be reviewed by my office. A finding of criminal liability can only be found if we would be able to find beyond a reasonable doubt your officers did not act in reasonable self-defense. We would not be able to sustain such a burden in this case.

The events leading to the tragic shooting of 25-year-old **Desmond Phillips** began with a 911 call at 7:13 p.m. from David Phillips to the Chico Fire/Police Dispatch center. David Phillips told the dispatcher he needed an ambulance at 725 W 4th Avenue, Apt. 3, as his son was getting ready to have a "mental episode" and was going to have a seizure. He told the dispatcher emergency personnel had been to the address before. The dispatcher asked if law enforcement assistance was needed and David Phillips replied "just medical at this point" was needed. The dispatcher acknowledged David Phillips' request, but invited him to call back if anything changed to where law enforcement was necessary. David Phillips said he would "definitely do that."

Chico Fire Engine 2 with a four-person crew and a Butte County EMS ambulance with a two-person crew were dispatched to the Knoll Manor Apartments at 725 W 4th Avenue. Both crews arrived at Apartment 3 at approximately 7:18 p.m. and entered the apartment to find Desmond

Phillips, age 25, approximately 6'1" and 165 pounds, standing in the living room, excessively sweating and "dancing" in a trance-like state with headphones on his ears, sunglasses on his eyes and a game controller in his hands. (And no game on the television) David Phillips told medics Desmond had been in "this state" for approximately two hours. He said Desmond had a history of brain trauma from a "physical assault" in June 2016 and had recently been diagnosed with PTSD.

The medics attempted to make contact with Desmond by using his name and telling him who they were and what they were doing by removing his headphones and sunglasses. His eyes were shut. They again attempted contact with Desmond by saying his name and telling him "we are here to help you." When they touched him on the arm, Desmond motions suddenly became animated with punches and swings of his arms and hands.

Medics and fire personnel backed away but remained in the living room and spoke more with David Phillips who told them Desmond had become violent in the past during "bouts" similar to his state then. Desmond was then described as sweeping items off a kitchen counter with his hands and arms, causing fire and medical personnel to begin to leave the apartment. As they began to leave, they saw Desmond pick up a large ceramic lamp.

Fire personnel closed the apartment's metal screen security door behind them as they left and called for a rapid (Code 2 Priority) police response at approximately 7:24 p.m. Fire and medics remained just outside of the apartment's front door. A "doubled-up" police unit, consisting of Officers Jarrod Cumber (#53) and Jeremy Gagnebin (#88), was nearby and arrived almost immediately after the fire call was relayed out by the dispatch center. (This was one of Chico Police Department's "special event days" – St. Patrick's Day – which had more officers deployed in more areas of town and doubled up as partners in normally single police vehicles.)

The officers were briefed by the fire and medics as to what was going on in the apartment. The officers could at that time see inside the apartment through the metal security screen as the main wooden door was open. Officers saw Desmond pacing inside the living room with the large ceramic lamp in his hand. Officer Gagnebin came close to the door and saw Desmond go into the kitchen and heard a drawer open and metal objects rattle in the drawer. He saw Desmond come out of the kitchen holding a kitchen/steak knife and come into the living room. Shortly thereafter both Officer Gagnebin and Cumber saw Desmond with a kitchen/steak knife in each hand pacing back and forth in the small living room. (They were at the door at different times from each other and at times together.)

At about this time, at approximately 7:29 p.m., David Phillips made his second call of the day to Chico fire/police 911 dispatch center and asked the dispatcher to "tell the police to step it up here, because my son is mental and he has a knife and is walking around..." Officer Cumber at the same time, seeing Desmond armed with the knives, asked for additional backup ("a third unit"). Officers Alex Fliehr (#30) and David Martin (#32), in a double-unit and nearby, responded quickly and arrived shortly thereafter as did K9 Officer Derek Ament (#79). Chico dispatch told David Phillips the police were already there and he hung up after the 45-second call.

At approximately 7:30 p.m., the officers at scene discussed what to do about containing the armed subject inside Apartment 3. Officers Ament and Martin began to work their way around to the back of Apartment 3. Officers Cumber, Gagnebin and Fliehr were in front of the apartment. Officer Fliehr then saw Desmond pacing with the knives and so informed his dispatch center. A responding police Sergeant, Sgt. Todd Lefkowitz (#S20) inquired if any of the officers there had a Taser. During this time, the officers remaining out in front of the apartment talked through the

metal security screen to Desmond in the apartment asking him (in non-threatening tones) to put down the knives, calling him by name and telling him they are there to help him. [Officers Gagnebin and Fliehr were on a previous mental health (Welfare and Institutions Code section 5150) call on December 30, 2016 (see below history) at the same apartment.] Some of those pleas by the officers to Desmond were captured on their open microphones in calls to the dispatch center.

A few moments later at approximately 7:31 p.m., right after Officers Ament and Martin radio that they were at the rear of the apartment, the officers in front saw Desmond close the front wooden door to the apartment blocking their view of what he is doing.

Radio traffic between the officers at that point consisted of attempting to arrange “less lethal” or Taser weapons to the front and rear of the apartment. The officers in the front of the apartment (Officers Cumber, Gagnebin and Fliehr) moved fire and medic personnel back and asked if the dispatch center could call into David Phillips to see if he could safely exit.

Shortly afterwards, before dispatchers could call him, at approximately 7:32 p.m., David Phillips called 911 from inside the apartment himself. In excited tones, David Phillips told the dispatcher that Desmond had just tried to stab him, that Desmond had locked the front door; that he (David) was locked in a room and couldn’t get out. David further said his two grandchildren, who he said were 14 and 11, were in the other room and also couldn’t get out. During his conversation with the dispatcher David could be heard exclaiming “Stop it Desmond! The police are coming!”

The dispatch center relayed this new information to the officers outside that there were grandchildren inside.

During this call David Phillips told the dispatcher to tell the officers that “they can come to the door, ‘cause he won’t let me open the door to get him some help.” Almost immediately banging and loud thudding sounds could be heard on David Phillips’ line as he shouted “Stop, Desmond, please! I’m going to have to shoot you!” The thudding noise continued as David told the 911 dispatcher “He’s trying to kick the door in! He trying to kick my bedroom door in! He’s trying to stab me now! Come through the window!”

Officers at both the front and rear of the apartment could hear the banging inside the apartment at that point and could also see the windows of the apartment flex from heavy blows from inside. At this point the dispatcher informed the officers over the radio that she was on the phone with the dad and “the subject is trying to kick the door where he is with the grandkids. Stating he is trying to stab him.”

At this moment, Officers Cumber, Gagnebin and Fliehr, reported they “stacked” in front of the apartment door with the intent to force entry into the apartment as they felt they had to act quickly to rescue David Phillips and the grandchildren inside. The officers later reported they felt the lives of those inside were in immediate danger of death or great bodily injury at the hands of Desmond Phillips who had been seen with knives in each hand and heard attacking his father.

Officers Ament and Martin, in the rear of the apartment, had been delayed in getting to the back sliding door of Apartment #3 by an aggressive dog that they had to pepper spray. They then found their view into the back of the apartment partially blocked by curtains and a washer/dryer machine.

Officer Cumber, who had a Taser, assigned himself the duty of the “less lethal” point man with Officers Gagnebin and Fliehr as his “lethal” backup with their semi-automatic pistols. Officer Fliehr was assigned to pull open the metal screen security door and kick open the locked front

wooden door. The officers' plan was to shoot the Taser at Desmond should he present himself near the door, which if it worked, would incapacitate Desmond by its debilitating electrical charge, "locking" his muscles and rendering him incapable of aggressive movement.

At approximately two minutes after the beginning of David Phillips' 911 call for help, Officer Fliehr yanked open the apartment's metal security door and kicked open its locked wooden door. Officers were surprised to see Desmond immediately at the door's threshold just to the inside right. Desmond swung his body into the threshold of the door. Depending on their vantage point, the officers outside near the door reported they saw one knife in each hand or one knife in one hand. Officer Cumber aimed and shot the Taser at Desmond's midsection.

The Taser initially had the desired effect as the officers saw Desmond's body tense, "lock up", and fall over between the end of a couch and the west wall of the apartment near the front door.

Officer Fliehr, followed by Officer Gagnebin, then entered the apartment through the breached front door with the intent to go "hands on" and handcuff Desmond. However very shortly after the officers entered the small room, as they were attempting to quickly access what was still in his hands, Desmond "unlocked" and got quickly up. This greatly surprised the officers who were now in a very narrow passage way between the back of a couch and the furniture on the north wall of the apartment. This passage way was only approximately two and a half feet in width.

Desmond rapidly and aggressively advanced on Officers Gagnebin and Fliehr swinging his arms in a windmill fashion as he ran towards them. Officer Fliehr saw what he believed to be a knife in each of Desmond's hands as Desmond advanced on him. Officer Gagnebin who had seen Desmond get up and then rapidly reach down to the floor and pick up "something", concentrated on that "something" in Desmond's right hand, and saw it to be a sharpened stick with a shiny metal point, with which Desmond was stabbing at the officer.

Officer Cumber continued to hold the Taser in his hand and pulled the trigger several times in an effort to continue the electricity in the device as it didn't appear to be working. Officer Cumber recognized the device was not working as he saw Desmond was up and running with a knife in his hand towards the other officers. Officer Cumber began to change out the cartridge when he heard gunfire begin in front of him inside the apartment.

The sound of the Officer Cumber's Taser discharging its gas propelled probes could be heard on the open microphone of David Phillips' phone. A scream consistent with a successful Taser "hit" on a subject was heard and eight seconds later Officer Gagnebin's and Fliehr's gun shots could be heard.

Desmond had closed to within an arm's length (or less) of the officers as they retreated east in the narrow passageway. Officers Gagnebin and Fliehr opened fire with their semi-automatic 9mm handguns. The actions in that confined space were dynamic and chaotic to say the least.

Each officer fired multiple rounds at Desmond in the confined passageway. The combined total of the shots was 16. Officer Gagnebin fired 7 times and Officer Fliehr fired 9 times. These numbers were confirmed by California Department of Justice criminalists by both counting the number of rounds left in each officer's pistol magazine (each magazine held 17 rounds) and the number of empty casings found at the scene as compared to each officer's pistol.

The officers' volley of shots overlapped each other and were over within 4 seconds as heard on David Phillips' open phone line.

Officers Gagnebin and Fliehr in subsequent interviews stated they were in fear for their lives as well as for the others in the apartment when they fired. They stated they each continued to fire

their pistols as long as Desmond Phillips remained upright, coming at them and a continuing threat to them. Desmond came forward at the officers some 10-15 feet before he fell over near the kitchen counter, mortally wounded.

Other officers, including Officer Martin, a former military medic, were directed to enter the apartment to render it safe and begin treatment upon Desmond Phillips. Officer Martin found Desmond lying on his right side and immediately handcuffed his hands to the front for officer safety. He found clutched in Desmond's right hand an object he first thought was a knife but was a pointed broken piece of the front door jamb with a metal deadbolt faceplate attached to a tapered end. He took the object from Desmond's hand and placed it on the floor as medics entered into the apartment and immediately loaded Desmond onto a gurney and left.

Desmond was taken to the waiting ambulance and transported to Enloe Hospital as medics and fire personnel rendered CPR on the ride. At Enloe he was taken to a trauma room where doctors instituted emergency trauma care and surgery but soon ceased efforts and declared Desmond Phillips dead.

At a subsequent autopsy performed by the Butte County Coroner's Office, it was determined Desmond was shot a total of 10 times. Gunshot wounds to his face, lower neck, chest and abdomen were documented. The two wounds to the face, one through the left cheek into the mouth, one grazing the nose and upper lip, did not penetrate into the brain. (The brain was examined and no gross evidence of a prior traumatic brain injury was found.) One shot did penetrate the heart. A total of nine projectiles and associated shrapnel consistent with 9 mm bullets were found in Desmond's body at the subsequent autopsy. A tenth projectile, with evidence of blood and tissue and believed to have fallen from his mouth during transport, was found just outside the front door during the scene examination by the DOJ criminalists. Subsequent blood laboratory tests showed only a trace amount of a chemical component of a seizure medicine Desmond had been prescribed.

Evidence of six missed shots were found at the scene by DOJ criminalists.

Two shots went through the south wall of Apartment #3 into Apartment #4. One 9mm bullet with no evidence of blood or tissue was recovered from an appliance in Apartment # 4. A probable gunshot hole in the south wall of Apartment #4 was examined but no bullet was recovered as it had most likely fallen inside to the bottom of the wall, which would have required extensive damage to the wall to recover.

Four shots went into the west area (front) of Apartment #3 – into a west wall window frame, west wall, tool box on the west wall and the apartment's metal security screen door. Three bullets were recovered, including a bullet which went out the metal screen security door into the yard in front of Apartment #3. No blood or tissue was discovered on any of the recovered bullets in the west area. The probable bullet inside the west wall was not recovered as it had most likely fallen into the bottom of the wall, which would have required extensive damage to the wall to recover.

An examination of the Taser probes recovered from Desmond's clothing at the hospital revealed only one of the probes had "seated" completely – into Desmond's chest.

Microscopic examination under the stainless steel barb of this probable chest probe found white fibers consistent with the white t-shirt Desmond was wearing at the time of the incident – along with blood and tissue. Further close examination of the clothing by the DOJ criminalists showed a probe puncture mark in the fabric of the chest area of the t-shirt consistent with a probe mark in the skin of Desmond's chest.

Microscopic examination under the other probe's barb found white, black and gray fibers, and no blood or tissue. The fibers were consistent with the white t-shirt worn by Desmond, with a black pair of athletic shorts and a gray pair of underwear also worn by Desmond at the time of the incident. The DOJ criminalists were able to line up probe puncture marks in the t-shirt, gym shorts and underwear with a small red mark on Desmond's skin at his waist. Of note was that the probe puncture mark in the gym shorts was through its heavily pleated and elasticized waist band and similarly the probe puncture mark in the underwear was in its elastic waist band.

These findings lead to the conclusion the Taser probes had initially penetrated Desmond's clothing to his skin and established enough initial connectivity to have the Taser process work as designed and immobilize Desmond's muscles causing him to "lock up" and fall over. However since the probe in the waist band area had not seated past the barb and was in a thick area of clothing, the probe lost sufficient contact with his skin when he fell and he was able to regain mobility. This was consistent with the involved officers' observations of Desmond's reaction to the Taser deployment.

Additionally Officer Cumber's Taser had an on-board computer which registered an initial eight-second continuous activation. Normally this model Taser is designed to deliver only a five-second cycle of charge with one pull of the trigger. This duration can be extended by the operator by pulling on the trigger continuously or repeatedly. This computer record corroborated Officer Cumber's recollection of the events that after he saw Desmond go down from the initial Taser shot and then rebound, that he (Officer Cumber) began pressing the Taser trigger for more charge as he felt the Taser was not working properly. It also corroborates Officers Gagnebin and Fliehr observations that after initially working, the Taser ceased being effective as Desmond came at them swinging his knife or knives.

Officer Gagnebin's gun was found to have high velocity blood spatter on the barrel area consistent with a phenomenon known as "blow back." This occurs when blood splashes back from a wound inflicted at close range. This was further corroboration of the officers' statements that they were involved in a chaotic and dynamic close quarters knife/gun fight. This is also consistent with the missed shots during a frenzied encounter.

Two steak or kitchen knives, one with a 4 ½ " blade and the other with a 6" blade, were found by DOJ crime scene investigators. The shorter knife was found where Desmond was first felled by the Taser between the west end of the living room couch and the west wall. The longer knife was found in the narrow passageway traversed by Desmond and the officers behind the couch and the north wall. The pointed broken piece of the front door jamb with the attached metal deadbolt faceplate was found where Officer Martin had placed it near where Desmond fell after being shot.

Naturally a significant portion of the evidence involved in this investigation comes from the involved officers inside the Phillips' apartment. David Phillips has chosen on two occasions to decline to answer any questions for this investigation. Whether from understandable emotion and grief over the loss of his son, or as he indicated on one occasion – "on advice of counsel", his view from the bedroom has not been officially recorded by investigators. However, on several occasions in public meetings, David Phillips has said that from his point of view the officers had just "tased" Desmond then shot him as he was falling forward to his final resting place below the kitchen counter onto an air compressor and oxygen machine.

A detailed computerized reconstruction of the interior of Apartment #3 aided by sophisticated 3D laser scanning technology employed the night of the shooting has somewhat validated David Phillips' point of view but not his conclusion of "murder." On the 911 tape from David Phillips'

last call, it does sound as if David Phillips, upon hearing the police enter his apartment, began to come out of his locked bedroom door located down the hallway from the apartment's living room. David Phillips in this scenario would have seen his son, already grievously wounded, begin to come into view at the entrance of the hallway as he fell forward. He would have also most likely seen Officer Fliehr, who had been forced to retreat to that same entrance to the hallway, fire his gun at the then falling Desmond.

The sight of the officer shooting at an already falling Desmond would have naturally inflamed and upset the father. However shots which are continued to be fired in those first few portions of a second after a threat has been stopped demonstrate a well-known phenomenon in brain science known by various names (including the OODA loop, which refers to the decision cycle of *observe, orient, decide, and act.*) Simply put, once the brain has decided on a course of action and instituted that action, it takes time for the brain to reverse that course of action and signal its new decision "down line" to the arms and hands. In other words, once Officer Fliehr had decided to start shooting his gun to stop the threat of Desmond attacking him with a knife, it took an appreciable "reaction" time for his brain to observe the end of the threat, orient itself to the new set of parameters, decide to act and then act to stop shooting. This reaction shutdown time can normally be around ½ second, during which time a rapidly firing officer will continue to fire up to two to three rounds downrange.

The weight of the evidence produced in this investigation points to the conclusion the involved officers performed consistent with their training and experience when faced with lethal force. Their voluntary statements about the events of that night appear credible. They took appropriate and justifiable action to end the unfortunate knife attack by a mentally or medically ill person. It was an act preceded by a well-documented attack upon his father in the same apartment. When the father called out for rescue from inside the residence where he and his grandchildren were – an immediate response was necessary and the officers used the best tools and tactics they had available. Unfortunately the result was not what the family of Desmond Phillips wanted or expected – nor did the officers wish the same.

As always I thank the Butte County Officer Involved Shooting/Critical Incident Protocol Team for their excellent, professional and unbiased investigation into this case.

Very truly yours,

Michael L. Ramsey
District Attorney

Cc: Butte County Officer Involved Shooting/Critical Incident Protocol Team

Addendum: Prior Police, Fire, Medical, Behavioral Health Contacts with Desmond Phillips

PRIOR POLICE, FIRE, MEDICAL, BEHAVIORAL HEALTH CONTACTS

Sacramento Arrest – June 3, 2016

On June 3, 2016, citizens called the Sacramento Police Department to report a young male subject laying across the railroad tracks near Auburn Blvd. and Marconi Ave. Sacramento Police officers responded approximately 11:26 a.m. and found the person, later to be identified as Desmond Phillips, kneeling between the tracks with his feet on one track and his forehead on the other. He refused to respond to the officers to show them his hands, give his name or get up from the tracks. When officers reached down to pick him up from the tracks, Desmond began to loudly protest and struggle against the officers who picked him up by the arms. The struggle continued as the two officers moved him to the side of the tracks, causing one officer to trip and fall, bringing both the officer and Desmond to the ground. Desmond continued to resist the officers' attempts to handcuff him but he was eventually handcuffed. The officers stood him up but he fell down in a heap which necessitated the officers along with a sergeant to carry Desmond to a nearby police vehicle where he was placed in the back with difficulty. Desmond cursed the officers and then began kicking the rear door of the vehicle forcefully, which caused the officers to "hobble" his legs with a restraint.

Desmond was taken to the Sacramento County Jail with the intent to obtain a portable fingerprint device to identify Desmond, who was not responding to requests to identify himself. Officers then intended to take him to the Sutter Medical Center on a mental health hold. Once in the basement sally-port area of the jail, the officers were told no mobile device was available and they needed to bring Desmond inside the jail to be fingerprinted and identified. The transporting Sacramento Police officer opened his rear door to get Desmond out and was surprised to see Desmond had removed his hobble restraint.

Desmond then exited the back seat and stood in the vehicle doorway telling officers he was not going in the jail. When the transporting officer reached for Desmond's arm, Desmond brought his hands from behind his back, revealing he had slipped one of his hands from the handcuffs. Desmond then attacked the officer, attempting to strangle the officer and gouge his eye out with his thumb. Other nearby officers were summoned and Desmond was taken to the floor and re-handcuffed. Officers then intended to arrest Desmond for a felony Forcible Resistance charge (Penal Code section 69), but a jail nurse was summoned to his side and after taking his vitals declared he was then unfit for incarceration and needed to be first medically cleared. (Hospital records later noted a temperature of 101.1 degrees.)

He was taken by ambulance to the **Sutter Medical Center** in Sacramento where he continued to be combative and belligerent. He was placed in four point restraints in the Emergency Room and his medical treatment began which lead to a four day stay at the hospital. (Sacramento P.D. sent a CSI to obtain his prints and identify him during this time.)

Sutter Medical Center records revealed Desmond came to the emergency room with an "altered level of consciousness" noting "acute psychosis" with symptoms of confusion, agitation and hyperactivity. The hospital's first panel of lab tests showed various blood chemistry or enzyme imbalances tending to suggest a condition known as rhabdomyolysis which could lead to acute liver and kidney failure. Doctors also suspected a severe internal infection. He was sedated and the hospital began a battery of other laboratory tests and other medical tests including a CT scan of his brain, which showed no abnormalities. (Doctors had noted a bruise and abrasion to Desmond's right cheek which came from the fall during the railroad incident.)

He was admitted to the Intensive Care Unit and various treatment modalities were instituted including antibiotics and intravenous hydration. Rhabdomyolysis was eliminated as was any concern about his kidneys or liver. No infection was found but a laboratory test did reveal evidence of marijuana intake by Desmond. This was of particular note when a Sacramento Police detective came to the hospital on June 6, 2016 and interviewed Desmond in his hospital room after taking a Miranda waiver. Desmond told the detective on the day of the railroad track incident he had purchased marijuana from a male subject outside a liquor store and smoked that marijuana. However the marijuana caused him to be “out of my mind.” The detective asked if Desmond was suicidal when he got on the railroad tracks. Desmond said he didn’t have any reason to be suicidal and believed “it was from what I smoked.” He recalled fighting with the officers when they began to remove him from the tracks and into the police vehicle. He recalled “kind of going crazy, kicking the (vehicle) window.” When asked why he acted like that in the car, Desmond replied “I was really tripping from whatever I smoked.” Asked about his behavior at the jail, Desmond recalled that when the officer touched him, “I kind of lost it. I just started grabbing, trying to fight my way out pretty much.” He remembered “bits and pieces” of grabbing the officer by the face and apologized to the officer he assaulted and for his actions at the tracks.

Doctors also noted in Desmond’s file that his admission to the hospital and his apparent mental and medical problems could have come from “street synthetic drugs (which) may not show up on a traditional urine screen.”

Desmond was discharged from the hospital “in stable condition” on June 7, 2017 with instructions to drink 1-2 liters of bottled water a day for the next seven days. He was taken and booked into Sacramento County Jail on the Penal Code section 69 charge.

Court records indicate Desmond bailed from the jail within a week of his first arraignment on June 7 and made many appearances on his felony charge in Sacramento County Superior Court. His last court appearance was to be April 10, 2017 for a preliminary hearing after he failed to appear on March 1, 2017. (See below.)

Chico Enloe Hospital – October 20, 2016

A second episode of either medical or mental distress appears in Desmond Phillips files when he came to the Enloe Hospital emergency room complaining of pain all over his body including a headache. He told medical staff he had previously been assaulted but was unable to specify where, when or how. His father came and informed staff that Desmond had had a previous altercation with police in Sacramento and since that time he had complaints of headaches and body pain. Desmond then told doctors he was currently having some hallucinations, but more like music than voices. He became withdrawn during his time in the emergency room and his heart rate and blood pressure were elevated. Motrin was ordered as well as his records from Sutter Medical Center were retrieved. The medical staff noted his physical symptoms started to resolve and spoke with him and his father about concerns about issues of “acute psychosis” and how to follow up with primary care and psychiatric services provided by Enloe social services. Desmond was then discharged into the care of his father after approximately seven hours at the hospital.

Chico 5150 Incidents – December 30, 2016

On December 30, 2016, at approximately 9:49 p.m., Desmond Phillips’ family called Chico

Police/Fire Dispatch and asked for medical aid for Desmond who was having a “mental episode” and was not being responsive to the family. Chico fire engine #2 with three firefighters responded to 725 W 4th Avenue, Apt. 3 and made contact with Desmond at the family residence. The firefighters reported they could not get Desmond to calm down, sit down and talk with them. The family reported Desmond had been watching television and started getting agitated and upset. The father, David Phillips, reportedly told the firefighters, who had called for Chico Police help, that he didn’t want their help or the police. Firefighters told David Phillips they would leave and let him try to calm his son down. Police were cancelled before they could arrive on scene. The fire engine left at 10:03 p.m.

A few minutes later at approximately 10:16 p.m., another call came from 725 W 4th Avenue, Apt. 3, reporting Desmond was now being “violent.” Police, including Officers Gagnebin and Fliehr, arrived at the apartment at approximately 10:23 p.m. Officer Jeff Kozak reported as he walked up to the apartment door he saw the father David Phillips in the doorway with the front door open, but the metal security door closed. Officer Kozak heard a crash inside the apartment and rushed to the door, but the father said Desmond had just fallen and the father refused to open the door. He told the officer he did not want the police to help and he, the father, would “take care of things.” Officer Kozak noted he could see Desmond, clad only in boxer shorts, wandering aimlessly inside the apartment “like a zombie.” At times, Desmond would bang his arms against the wall in a downward chopping motion. He was rambling and unresponsive to his family members.

Officer Kozak talked with the father again who requested the officers leave and medics be summoned again. The officer walked out to the parking lot and requested medics/fire be sent “Code 3.” While in the parking lot, Officer Kozak continued to watch inside the apartment and saw father David Phillips grab Desmond from behind and try to restrain him. Desmond kept his arms up and began to deliver elbow strikes behind him at his father’s head.

Officer Kozak walked back up to the closed security door and asked if he wanted the police to intervene. Officer Kozak reported David Phillips opened the door and told the officers to “take him.” Desmond then walked around a corner into the apartment hallway as Officer Kozak and Fliehr stepped into the apartment to take Desmond into custody on a mental health hold (Welfare and Institutions Code section 5150) as a danger to himself or others.

Once inside the apartment, Officer Kozak peeked around the corner and saw Desmond standing at the end of the hallway with his eyes closed and a fist held up. The officer tried talking with Desmond and asked him to come out. Desmond did not respond. The officer talked with the father who told him Desmond had been “jumped” in Sacramento and got beat up. David Phillips told the officer since that incident Desmond was not the same. While talking with David Phillips, the officer saw Desmond go into the bathroom where a loud crash was heard.

The officer looked in the bathroom and saw Desmond had fallen into the bathtub, taking the curtain and curtain rod down with him. Desmond did not appear injured and the officer decided it would be a good time to handcuff Desmond to take him into custody. Along with Officer Fliehr, Officer Kozak tried to take Desmond’s arms but Desmond immediately tensed his arms and clasped his hands together in front of his body. Officer Gagnebin arrived about that time and the three officers were able with some difficulty to get his hands unclasped from under his body and get him handcuffed behind his back. The officers then carried Desmond out of the bathtub

and out of the apartment.

Officers noted Desmond tried to slip his handcuffs to the front of his body, getting his hands to the back of knees. The officers put Desmond down, at which point he began kicking out with his legs and feet. Other officers were summoned to the scene and Desmond was eventually put in a “Full Body Restraint System” also known as a “Wrap” at approximately 10:42 p.m. He was carried over to an ambulance at the scene and seated on a gurney. Officer Kozak and Fliehr rode in the back of the ambulance with Desmond as a security precaution and Desmond was delivered to the Enloe Hospital emergency room.

At the hospital, Officer Kozak filled out the necessary paperwork for a “5150 hold” and left Desmond, who was refusing to open his eyes so medical personnel could check his pupils.

Once at **Enloe Hospital**, Desmond was put in soft, four-point restraints, with medical staff noting he was confused and agitated and would not respond to staff with his muscles kept very tense. Family was quoted as claiming Desmond received head trauma in Sacramento in June of 2016. Blood chemistry numbers were elevated (similar to the Sacramento hospital numbers) again leading staff to consider (but later dismiss) rhabdomyolysis, sepsis and kidney damage. Because of the claim of earlier head trauma a CT scan and a MRI scan were done of his brain, which found no abnormalities. Desmond was admitted to the hospital with a diagnosis of “acute psychosis.”

A consult with the staff neurologist lead to an EEG with a diagnosis of possible “complex partial seizure” syndrome. The neurologist also noted Desmond’s condition could also be a possible psychiatric disorder or “acute intoxication with agents not readily identified” by the hospital’s lab toxicology screen. Desmond did test positive for marijuana.

While in the hospital the medical staff started Desmond on a seizure medicine, which was subsequently cut in half because it made him too sleepy.

On January 5, Desmond had recovered sufficiently that he was processed for discharge from the hospital with a prescription for the seizure medicine and a suggestion to do a follow up with a neurologist.

However, prior to his discharge from the hospital, a counselor from the Butte County Behavioral Health Department visited with Desmond and his mother per protocol to determine if the mental health hold placed by the Chico Police should be maintained. Desmond reported he had no memory of the incident which led to his hospitalization. His mother and he reported an “assault” (no further description) in June resulted in head trauma and memory lapses. Desmond denied any “lethality” and the Behavioral Health counselor opined that since Desmond had “no history of mental health disorder” that he was “not lethal due to mental illness and his symptoms most likely are due to a medical condition.” Of note, the “legal history” of Desmond (presumably from Desmond) in response to questions as to whether he had ever been arrested or had a history of violent behavior was marked “no.” The counselor then released the hold on Desmond with a “safety plan” in which Desmond agreed to follow up with a neurologist and utilize the Behavioral Health 24-hour crisis line as needed.

Chico Incidents – January 18, 2016

On January 17, 2017, Desmond and his father had an appointment with **Ampla Health Care** in

Chico for the purpose of getting establishing follow-up care and getting a refill prescription Desmond's seizure medication, which was done.

On January 18, 2017 at approximately 4:38 p.m. there was a 911 call for service from 725 W 4th Avenue Apt. 3 in which family expressed concern their son Desmond was being unresponsive and could have a seizure. A fire engine was dispatched to the residence and because of the previous December violent incident, police officers were also dispatched.

When fire and police arrived they found Desmond sitting on a couch in the living room with his arms clutching a Bible tightly to his chest, but not responsive to anyone. Fire personnel took his vital signs which were normal. The responding officer told Desmond's mother and father that unless Desmond would volunteer to go to the hospital there was little could be done as he was not then presenting as a threat to himself or others. The officer recorded that the family was concerned Desmond could become violent, but the officer repeated that little could be done at that junction and police and fire left after nearly 40 minutes at scene. (An officer at scene, having heard the family say Desmond was a victim of a crime in Sacramento, suggested they look into contacting victim services in Sacramento to help Desmond.)

Some hours later that same day, at approximately 7:53 p.m. the family called 911 back and requested medics please return. Fire, medics and police arrived and found Desmond in the same position as before. He was however was refusing to allow fire or medics to assess him and was non-responsive. Medics agreed that if the police could get Desmond on the gurney, they would take him to Enloe Hospital to be checked. Officers then picked him up and Desmond remained in a rigid seated position as he was put on the gurney and loaded into the ambulance without incident. Medics asked officers to ride to the hospital with them as security, which was done.

Desmond arrived at Enloe Hospital emergency room reportedly still clutching his Bible. Medical staff noted no seizure activity despite his report of not taking his previously prescribed seizure medicine. Staff commented on Desmond's poor cooperation with their attempts to exam him. He refused lab tests such as urinalysis. After a rehydration with saline and a valium, Desmond was discharged approximately five hours later to his home.

Later that day, on January 19, 2017, Desmond was seen at Ampla Health Care where he received a prescription for a different seizure medicine and there was discussion of a referral to a neurologist. On February 2, 2017, another visit to Ampla was charted with a refill prescription for seizure medicine and another discussion of a neurologist referral.

Behavioral Health – March 1, 2017

Desmond Phillips was seen in the Butte County Behavioral Health's Crisis Center offices in Chico on March 1, 2017 as a voluntary "walk-in" accompanied by his mother. Desmond talked with a Behavioral Health counselor and told the counselor he needed a letter sent to his lawyer in Sacramento to establish he was at the Chico Crisis Center on that date when he was supposed to be in court in Sacramento the same day. (Sacramento Superior Court records show that Desmond was to be in that court on March 1.)

Asked by the counselor why he was there, Desmond stated it was because "he was lost in thought; thinking about violence; worried about acting on it; feeling like I'm a threat to others, but also feel like others are a threat to me." Desmond also complained of being in a constant

state of hypervigilance since being in an incident where he sustained brain trauma and had had seizures since.”

The counselor opined Desmond may be suffering from PTSD (Post Traumatic Stress Disorder). The counselor did a crisis assessment on Desmond which included, among other things, a series of questions such as whether he had any ideation to harm others; a history of attempt harm to self; attempt harm to others; recent assaultive behaviors; or a history of violent behavior. The answers, presumably from Desmond, was no to all. Desmond did answer he did have an arrest within the last year, but there appeared to be no follow-up as to what that arrest was for.

The counselor ended the session with a “safety plan” for Desmond and his mother which included an agreement to go to outpatient screening the next week at Behavioral Health, followed by outpatient counseling and to use the Crisis Unit/ Line as needed.

Behavioral Health records do not reflect Desmond Phillips returned the next week or subsequently.