

## Statement of Facts

San Jose Police Department Case #23-224-0940  
District Attorney's Office Bureau of Investigations (BOI) Case #B2308-14316  
Victim: W. Doe (DOB 12/24/2021)  
Suspect(s): Phillip Michael Ortega (DOB 06/04/1992, PFN: DWW589)  
Paige Margaret Vitale (DOB 03/25/1992, PFN: EFA598)

I, Sheena Woodland #4K137, an investigator for the District Attorney's Office Bureau of Investigations (BOI), offer the following synopsis of police reports, witness statements, documents, interviews, and continuing investigation of the above listed San Jose Police Department and BOI case numbers.

In summary, Phillip Ortega and Paige Vitale facilitated repeated narcotics usage (by both themselves and the victim's parents) that exposed the victim in this case - W. Doe - to lethal concentrations of narcotics. For example, Phillip Ortega left drugs for Kelly Richardson, W. Doe's mother, in accessible areas of the house and sold drugs to Kelly Richardson even though he knew she was acting recklessly around W. Doe with them. Phillip Ortega and Paige Vitale also assumed roles as W. Doe's caretakers yet failed to act despite clear awareness that the narcotic activities occurring in their house were dangerous to W. Doe's life. Paige Vitale and Phillip Ortega knew that fentanyl and methamphetamine were dangerous to human life, as evidenced by their statements and past experiences. Despite this knowledge, they affirmatively took actions which would naturally and probably result in W. Doe's exposure to fentanyl and methamphetamine. That exposure resulted in the death of W. Doe, an 18-month-old toddler.

The specific facts and circumstances supporting probable cause are detailed below:

### Initial Investigation and Arrest of Kelly Richardson and Derek Rayo

On August 12, 2023, at approximately 11:07 PM, Derek Rayo called 9-1-1 to report his approximately eighteen-month-old daughter was unconscious and not breathing on his bed. He told dispatch he did not know what happened, and he and his girlfriend (Kelly Richardson) were alone in the residence with their daughter.

San Jose Fire and EMS responded to the residence, 1550 Huddersfield Court, San Jose, and located Victim W. Doe laying on a bed in the primary bedroom, covered with a rug. They pronounced Victim W. Doe deceased at 11:17 PM and observed her to be displaying signs of full rigor mortis, lividity, fixed/dilated pupils, and blue lips. The EMS workers opined that victim W. Doe had been dead for approximately twelve hours.

Derek Rayo and Kelly Richardson were both interviewed about W. Doe's death on August 13, 2023.

During his interview, Derek Rayo admitted to being a heavy narcotics user in the past, to include methamphetamine, heroin, and fentanyl. On the morning of Victim W. Doe's death, Kelly Richardson took W. Doe to bed between 2:00 and 3:00 AM. After Kelly Richardson took

Victim W. Doe to bed, Derek stayed in the garage with one of his roommates, Phillip Ortega (DOB 06/04/1992 and hereinafter referred to as Suspect Ortega) until approximately 4:00 to 5:00 AM, at which time Derek joined W. Doe and Kelly Richardson in bed. He stated Winter had been fussy most of the night and needed to be held by himself, Kelly Richardson, and Suspect Ortega prior to going to bed. Derek Rayo believed Suspect Ortega and his girlfriend, Paige Vitale (DOB 03/25/1992 and hereinafter referred to as Suspect Vitale) left the residence sometime after he went to bed. Derek Rayo woke up and saw that the victim was not conscious or breathing. Derek Rayo stated they did not immediately call police and/or medical because he knew he had warrants and because he wanted to grieve with Kelly Richardson but knew that he and Kelly Richardson would be separated once police arrived. Derek Rayo believed he had fallen asleep on top of Victim W. Doe or possibly rolled over onto her during the night.

During her interview, Kelly Richardson stated, the evening before Victim W. Doe's death, she went to work around 5:00 PM and left Victim W. Doe in the care of Derek. Their roommates, Suspect Ortega and Suspect Vitale were also at the residence. When she got home from work, W. Doe was awake. Suspect Ortega and Suspect Vitale were still at the residence but borrowed her vehicle and left to stay the night at a hotel. Kelly Richardson took Victim W. Doe to bed between 1:00 and 2:00 AM, and Victim W. Doe fell asleep around 2:00 AM. She explained Victim W. Doe was extra fussy and did not want to go to sleep. Kelly Richardson woke up around 10:30 AM and went out to see if Suspect Vitale had returned her car. She did not notice anything wrong with Victim W. Doe at that time and fell back to sleep. She woke up again between 11:00 AM and 12:00 PM and noticed Derek Rayo on top of the victim, though he was not on her head. Kelly Richardson nudged Derek Rayo so he could get off the victim. She then tried to wake the victim and noticed the victim's lips were blue. Kelly Richardson stated Derek Rayo attempted to do CPR, but she did not think it was effective. Kelly Richardson stated Derek thought he had a warrant and was scared because he did not want to be arrested. Upon realizing Victim W. Doe had died, Derek Rayo and Kelly Richardson did not call the police for approximately twelve hours.

During a search of the residence at 1550 Huddersfield Court, Crime Scene Unit Investigators located a white chunky powder on the nightstand of the bedroom used by Derek, Kelly, and W. Doe, a scraping tool with residue on the desk, and another scraping tool with residue on a rug located underneath the victim's body. The white powder and both scraping tools later tested positive for fentanyl. Additional narcotics paraphernalia were in the same bedroom and garage.

On August 21, 2023, San Jose Police Department detectives were informed by the Santa Clara County Medical Examiner-Coroner's Office that a urine toxicology test of the victim was presumptively positive for fentanyl, methamphetamine, and amphetamine. On November 2, 2023, San Jose Police Department detectives were further informed by the Santa Clara County Medical Examiner-Coroner's Office that the blood toxicology report revealed a lethal fentanyl blood concentration of 74 ng/ml in the victim's blood. The coroner relayed that 3 ng/ml of fentanyl blood concentration is potentially lethal. On December 6, 2023, San Jose Police Department detectives and the Santa Clara County District Attorney's Office was informed by the Santa Clara County Medical Examiner-Coroner's Office that the testing of the victim's gastric fluid was confirmed to contain Methamphetamine, Norfentanyl, Acetyl Fentanyl, and 13,000 ng/mL of Fentanyl.

Throughout the course of the investigation, detectives seized multiple electronic devices belonging to Derek Rayo and Kelly Richardson. They located numerous text messages, social media messages, photographs, and videos showing both Derek Rayo and Kelly Richardson recklessly using narcotics, while holding the victim or otherwise in her immediate presence. Photographs also showed that Derek Rayo and Kelly Richardson endangered the victim by regularly and knowingly keeping illegal and dangerous narcotics and drug paraphernalia in the residence, within reach and accessible to the victim. Messages were located (including messages to Suspects Ortega and Vitale) showing evidence of both Derek Rayo and Kelly Richardson regularly being under the influence of narcotics while caring for the victim. Furthermore, Derek Rayo and Kelly Richardson communicated via text messages with their roommates (Suspect Ortega and Suspect Vitale) asking Ortega to provide and leave dangerous narcotics in open and unsecure locations in the house, accessible to the victim. On several occasions, Derek Rayo and Kelly Richardson communicated via text messages their concern about leaving dangerous narcotics within the reach of 18-month-old Victim W. Doe. Narcan dispensers were located in the residence (common area accessible to Suspects Vitale and Ortega) and in one of the vehicles used to transport the victim. Narcan is a nasal spray designed to treat a narcotic overdose in an emergency situation.

Around November 17, 2023, arrest warrants were issued for the arrests of Derek Rayo and Kelly Richardson for violation of California Penal Code section 187 (Murder). These charges are currently pending in docket C2315415.

*Circumstantial evidence shows that Phillip Ortega provided the drugs that killed W. Doe*

In addition to other misdemeanor and felony convictions, Suspect Ortega has a known history of drug-related crimes in Santa Clara County, including recent convictions for violations of Health and Safety Code section 11550(a) and 11364.1 in 2015 (F1451228); section 11377(a) in 2015 (F1553994); section 11550(a) in 2016 (F1659079); section 11350(a) in 2018 (F1767028).

Significant evidence supports Suspect Ortega's practice of selling drugs in 2023, the year W. Doe was found deceased due to Methamphetamine and Fentanyl toxicity. On March 23, Suspect Ortega was arrested with fentanyl (40 grams), methamphetamine (3 grams) and other evidence of sales such as \$1,500 cash, empty plastic baggies, a scale with residue, and a second cell phone. This is charged in Santa Clara County docket C2314084. On June 9, Suspect Ortega was arrested while unconscious - "nodded out" - in a vehicle which was facing the wrong way on a public street. He was arrested with fentanyl (33 grams), methamphetamine (20 grams), and heroin (less than 1 gram). On September 2, Suspect Ortega and Suspect Vitale loaded a shopping cart with items and set it at the front of the garden section at Home Depot. Home Depot employees recovered the cart, finding a thermos cup containing fentanyl (107.06 grams) and methamphetamine (59.86 grams). On December 1, 2023, Suspect Ortega was arrested with fentanyl (76 grams) packaged in plastic baggies, methamphetamine (3 grams), Xanax, and a scale. Police also located fentanyl (4.9 grams) in his storage unit. These three incidents are charged in Santa Clara County docket C2316198.

Based on the amount of drugs in each instance and the other indicia of sales involved in these cases, it is my opinion based on my background and experience that Phillip Ortega was engaged in the regular sale of narcotics.

Messages show that Suspect Ortega consistently supplied Derek Rayo and Kelly Richardson with fentanyl between November 2022 and the death of Victim W. Doe. These conversations include (but are not limited to) the following examples:

- Kelly Richardson to Suspect Ortega on December 6, 2022: hey, paige reminded me how much of a fucking burnout i am, that I completely forgot to pay her / you last time i picked up! ... i am sooo sorry, I'm so NOT that person usually, so \$30 for the gram of fent [i.e. fentanyl] that she gave me, & how much for the clear [i.e. methamphetamine]
- Suspect Ortega to Kelly Richardson on February 5, 2023: Hey I'm going to re up in a bit you guys need anything I can do a half for 180 or a full for 320 (Kelly Richardson responded: okay cool i have the cash ready once you've picked up)
- Kelly Richardson to Suspect Ortega on April 7, 2023: would you be able to leave me a little fent before you go ? not with derek
- Suspect Ortega to Kelly Richardson on May 8 - 9, 2023: ... I left something stashed at the house in case you guys needed any cause you had left to work and we left before you got back
- Kelly Richardson to Suspect Ortega on June 16, 2023: prior to leaving for work, Kelly Richardson asked Suspect Ortega if he had and "clear" [i.e. methamphetamine]. He replied that he left some "rails" [i.e. line of drugs] for them on the table.
- Suspect Ortega to Kelly Richardson on June 29, 2023: Hey kelly ... I'm going to re-up. I was wondering if you guys needed anything (Kelly Richardson responded: yeah fosure i feel it, i can send you \$\$\$ to pick up with ...)
- Suspect Ortega to Kelly Richardson on August 1, 2023: Hey just left but I left some day (i.e. methamphetamine) and fet (i.e. fentanyl) on the washer for you guys
- Kelly Richardson to Suspect Ortega on August 9, 2023: Is it cool if we smoke some of what was left of the washing machine?

Based on my review of all of the messages, Suspect Ortega consistently facilitated Kelly Richardson and Derek Rayo's use of methamphetamine and fentanyl from November 2022 until August 2023. Suspect Ortega often fronted Kelly Richardson drugs until she had money to pay him, and Kelly Richardson sometimes provided Suspect Ortega money so he could "re-up."

In the entirety of the messages there are only three occasions where Kelly Richardson and Derek Rayo obtained drugs from other individuals. In December 2022, Kelly Richardson and Derek Rayo picked up methamphetamine in San Francisco while they were visiting. On May 8, 2023, Kelly Richardson had a conversation with Suspect Ortega telling him that she wished he told her he was leaving town because she had to find someone else to get drugs from. Finally, on August 5, 2023, Derek Rayo and Kelly Richardson obtained "clear" from Derek Rayo's cousin because they could not get ahold of Suspect Ortega. Kelly Richardson later gave Derek Rayo's cousin Suspect Ortega's contact information so that he could buy additional drugs from Suspect Ortega. These three incidents appear to be an "exception to the rule," showing that the regular practice was for Derek Rayo and Kelly Richardson to get drugs from Suspect Ortega.

Phillip Ortega was also actively engaged in drug sales activity between August 11 and August 12, 2023, the approximate time of W. Doe's death. Messages show that Suspect Ortega "re-upped" on August 7, 2023. On the evening of Friday, August 11, 2023, Suspect Ortega communicated with a client about the sales of fentanyl. At about 9:21 PM, the client sent messages stating, "Yo. Are you home. I needa pick up." Suspect Ortega replied, "Yo what's good what you need." They went back and forth, and at 11:22 P.M., Suspect Ortega told a client he could sell him a quarter of "regular fent [i.e. fentanyl]" for \$220. On Saturday, August 12, 2023, between 12:25 A.M. and 3:43 AM, the client sent three messages in attempts to get ahold of Suspect Ortega. One of the messages stated, "U home" and the other two were multiple questions marks as if the client was waiting for Suspect Ortega's reply so he could pick up the narcotics from Suspect Ortega at home. Suspect Ortega finally replied to the client's messages at 3:46 A.M. and stated, "I'm at extended stay on Brokaw."

Derek Rayo and Kelly Richardson were tested for narcotics on August 13, 2023. Phillip Ortega and Paige Vitale were tested on August 21, 2023. Blood from each of the four individuals was positive for methamphetamine.

Messages show that Suspects Ortega and Vitale moved in with Derek Rayo and Kelly Richardson in March 2023, and lived there through August 2023 when W. Doe died. Suspect Ortega's history of drug dealing; his current charges for four incidents involving drug dealing in 2023; his sales of drugs at or near the time of W. Doe's death; the informal way in which Suspect Ortega fronted Derek Rayo and Kelly Richardson drugs; and the lack of any evidence of an additional significant supplier all show circumstantially that the drugs which killed W. Doe came from Phillip Ortega.

*Suspect Vitale aided and abetted Suspect Ortega's drug dealing activities*

Suspect Vitale was Suspect Ortega's girlfriend in 2023, but she also played a significant role in distributing illegal narcotics to Kelly Richardson and Derek Rayo. For example, on November 28, 2022, Kelly Richardson asks suspect Vitale the price of illegal narcotics. Suspect Vitale advised Kelly Richardson that it would be "275 for 21 [grams]" and said, "Phil has to go to work, so he is leaving it with me." On December 6, 2022, Paige asks for "30 for fent" [i.e. fentanyl] from Suspect Richardson. Kelly Richardson speaks with Phillip Ortega around the same time and says "whatever Fent [i.e. fentanyl] you got that's between you two [i.e. her and Suspect Vitale]. On May 11, 2023, Kelly Richardson texted Suspect Vitale "are you up? just wondering if there's anything that we can smoke until phil is up so that we can buy a proper sack from him." And, on June 10, 2023, the day after Suspect Ortega was contacted by police while unconscious - "nodded out" - in his vehicle which was facing the wrong way on a public street, Suspect Vitale told Kelly Richardson she was going to San Francisco to pick up narcotics from Suspect Ortega's "plug" [i.e. narcotics supplier] and asked Kelly Richardson if she could contribute money so they could purchase more at one time. Suspect Vitale was present on scene when the police contacted Suspect Ortega in his vehicle. In a message sent to Kelly, Suspect Vitale stated, "So either we go up tonight with 300 and we can get two zips of regular or some of both or we can go tomorrow with more like hopefully 800." Kelly asked, "how much clean could we get if we wanted some of both?" and Suspect Vitale told her "Guy sells clean for about 30 a gram." They went back-and-forth on whether they were going to drive to the city that night or the following morning, then Kelly stated, "actually fuck it if we can go tonight literally just

there n back real quick, i'm down. and i can throw a little more \$\$, & you can just owe me out of some of what you make tomorrow.”

Videos show that Suspect Vitale often used narcotics with Suspect Ortega. For example, in one video she is observed using a torch to smoke narcotics from a bong while inside a bedroom. Multiple photographs depicted narcotics paraphernalia laid out on their bed at the Huddersfield residence, and in one photograph, Suspect Vitale is “nodded out,” laying fully dressed, halfway on the bed. Other videos depict Suspect Vitale smoking from a bong in the passenger’s seat of a vehicle.

Suspect Vitale was with Suspect Ortega in September 2023, when they loaded a shopping cart with items and set it at the front of the garden section at Home Depot, later to be discovered they left behind a thermos cup containing fentanyl and methamphetamine); prior to his June 2023 arrest for drug sales (there on scene); and when Suspect Ortega was arrested for drug sales in December 2023 (there on the scene).

*Suspect Ortega and Suspect Vitale were reckless in their use of fentanyl and were both aware that Derek Rayo and Kelly Richardson used narcotics around W. Doe in a way that was dangerous to human life*

The following examples show Suspect Ortega and Suspect Vitale’s knowledge of Kelly Richardson and Derek Rayo’s recklessness with fentanyl around Victim W. Doe, as well as their own recklessness by regularly and knowingly keeping illegal and dangerous narcotics and drug paraphernalia in the residence:

On February 26, 2023, Suspect Ortega sent Kelly Richardson a message saying that he left his bong in a bag hanging on Victim W. Doe’s stroller. She replied advising the bag was there and she would return whatever he left. *From multiple messages and videos, I believe that all parties used a bong to smoke both methamphetamine and fentanyl.*

On March 5, 2023, in an apparent effort to obtain illegal narcotics from Suspect Ortega, Kelly Richardson complained about Derek Rayo’s inability to watch W. Doe due to his drug use and advised Suspect Ortega: “I almost always figure something out, & worst case we can wake him up with hot rails [i.e. lines of drugs] & he can come stay parked at my work with her so that i can run out & check on her if i have to ...”

On March 9, 2023, Suspect Ortega advised Kelly Richardson “I left some day [i.e. methamphetamine] and fet [i.e. fentanyl] on the washer for you guys.”

On March 17, 2023, Kelly Richardson had a discussion with Suspect Ortega wherein she described dropping a “sack” of narcotics, she had just purchased from him, while putting Victim W. Doe in her vehicle.

On May 5, 2023, Kelly Richardson sent a message to Suspect Vitale asking to borrow one of her bongs. Kelly Richardson explained that Victim W. Doe “got a hold of our bong that you gave us & broke it.” A couple days later, when Kelly Richardson asked Suspect Vitale again

to borrow one of her bong, Suspect Vitale replied, “You can use the one in the closet, but just use it in the garage please. Please don’t use the pink one or my new one.” She then explained, “I would be hella sad if [W. Doe] ended up breaking any of my favorites is all.” *I believe this to be extremely dangerous, not only because bong is often glass, but because I know from my training and experience that narcotics residue is often left in/on a smoking device after smoking narcotics. I know people who use narcotics can scrape the residue out and smoke it again. Based on the fact fentanyl is lethal in very small doses, even the residue inside a smoking device could cause harm.*

On May 11, 2023, Kelly Richardson texted Suspect Vitale “are you up? just wondering if there’s anything that we can smoke until phil is up so that we can buy a proper sack from him.”

On June 4, 2023, Kelly Richardson texted Suspect Vitale: “i’m just hella anxious bc im at work & i couldn’t find any to watch the baby & derek is hella tired & im paranoid that he’s gonna pass out while watching her.”

On June 16, 2023, prior to leaving for work, Kelly Richardson asked Suspect Ortega if he had any “clear” [i.e. methamphetamine]. He replied that he left some “rails” for them on the table. When Kelly returned from work, she replied “omg where? Derek slept the whole time he was supposed to be watching [W. Doe] while i was at work. Are they still there?”

Multiple photographs and/or videos observed throughout the investigation showed Victim W. Doe had access to, and was often in, both the garage where the washer was located and the kitchen where the table was located. In some of the photographs and/or videos, Suspect Ortega and Suspect Vitale were present with the victim, showing they also knew the victim had access to those areas. In one video, captured on June 15, 2023, at approximately 5:41 AM, Derek Rayo was in the garage with Suspect Ortega and W. Doe; Rayo was holding a narcotics pipe and appeared to be under the influence while W. Doe walked around in the garage. Another video located on Suspect Ortega’s cellular device depicted W. Doe wearing latex gloves, standing in the garage which was very cluttered. The person taking the video was handing W. Doe items of garbage and praised her as she put items in a trash bag. One video showed Victim W. Doe had been left alone in the garage around 1 AM. Additionally, a neighbor living near the 1550 Huddersfield address stated that different people would come to the garage at all times, and there would be music playing and vehicles that show up and “hotbox.” Another neighbor stated that she would see W. Doe present during these gatherings.

Finally, Suspect Ortega and Suspect Vitale were present while Kelly Richardson and Derek Rayo smoked narcotics in close proximity to W. Doe. In a photograph located on one of Suspect Vitale’s devices, Derek is depicted smoking from a bong, standing next to Kelly. Suspect Ortega was standing in the same room, holding Victim W. Doe. In the photograph, Kelly Richardson appeared to be laughing, and Suspect Ortega was smiling while holding Victim W. Doe. Their behaviors in the photograph seemed to be lighthearted and did not depict any type of concern for the fact Victim W. Doe was in close proximity to the use of narcotics. Based on the facts the photograph came from one of Suspect Vitale’s devices, and was not a “selfie,” I believe Suspect Vitale was likely in the same room, taking the photograph.

In summary, both Suspects Ortega and Vitale knew Kelly Richardson and Derek Rayo were reckless with fentanyl around Victim W. Doe but continued to, not only supply them with fentanyl, but also left fentanyl and/or methamphetamine in open areas of the residence, accessible to Victim W. Doe.

*Evidence that Suspects Ortega and Vitale knew about the dangers of fentanyl*

The investigation provided examples showing that Suspect Ortega was aware of the danger of fentanyl. For example, in June 2023, Suspect Ortega was seen by paramedics while “nodded out” due to drug use in a vehicle that was facing the wrong direction on the road. On March 7, 2023, Suspect Ortega convinced an apparent drug buyer to use fentanyl by telling that buyer Suspect Ortega would be there if the buyer “nods out.” On March 23, 2023, Suspect Ortega warned someone he supplied to be careful because his fentanyl had already caused multiple people to “fall out.” On June 9, 2023, Suspect Ortega advised Kelly Richardson to not to panic and to use Narcan on someone who’d fallen out on her porch. He told her that, if the Narcan did not work, to tell Derek to start giving him CPR. He additionally advised not to call the “higher-ups” and he would be there approximately four minutes.

During an interview, Suspect Ortega stated that he was addicted to opiates, including heroin and fentanyl. He stated that he knew that secondhand smoke from the opiates was worse than cigarette smoke. He further stated that he chose to smoke in the garage to keep it away from the baby, W. Doe. Suspect Ortega stated that he sometimes heard a torch (for smoking narcotics) in Derek Rayo and Kelly Richardson’s room. He further stated that he believed Rayo and Richardson were in denial about their addictions and their parenting skills were “reckless.”

The investigation additionally provided examples showing that Suspect Vitale was aware of the danger of fentanyl. She told detectives she smoked fentanyl but never in the house; she stated that all four of the adults in the residence used fentanyl. She did not smoke fentanyl in the house because she understood the dangers of fentanyl and made a point never smoke it around her dog or around the victim. She told them she kept Narcan available in case her dog was to be exposed. Suspect Vitale stated she felt Derek Rayo and Kelly Richardson were reckless in their parenting of the victim, and discussed practices that concerned her such as smoking narcotics around W. Doe or failing to wash hands around W. Doe after using narcotics. She stated, “that’s terrifying and some dangerous shit.” Suspect Vitale even stated that she had brought up her concerns about Derek Rayo and Kelly Richardson’s drug use.

*Statements by Suspects Ortega and Vitale show assumption of care, awareness of the danger of drug use, and inconsistencies related to the events around W. Doe’s death*

On August 21, 2023, Suspect Ortega and Suspect Vitale were contacted by San Jose Police Department detectives in the area of 1550 Huddersfield Court, and both provided statements regarding the events around the victim’s death.

During his interview, Suspect Ortega told detectives he and Suspect Vitale were supposed to babysit Victim W. Doe Friday, August 11, 2023, when Kelly Richardson was working, but Derek Rayo ended up watching her. He stated Victim W. Doe was awake after

Kelly Richardson returned home from work. Suspect Ortega said he borrowed Kelly Richardson's car, and he and Suspect Vitale drove to a hotel because a friend of theirs had booked a room they were unable to occupy. They arrived at the hotel at around 3:30 AM. On August 12, 2023, around 2:30 PM, he and Suspect Vitale received several missed calls from Derek Rayo and Kelly Richardson. He initially stated they returned to the house but were unaware of Victim W. Doe's death, but later admitted they were told about the death prior to leaving the house a second time. Suspect Ortega stated he last saw the victim alive on Friday night (August 11, 2023) / Saturday morning (August 12, 2023), and he watched Kelly Richardson go to their room to take Victim W. Doe to bed.

Suspect Vitale was also interviewed on August 21, 2023. She stated she and Suspect Ortega were home Friday night (August 11, 2023), and she was packing because they were going to stay the night in a hotel. While she was packing, Derek Rayo knocked on their bedroom door, while holding Victim W. Doe because the victim was fussy and needed Suspect Ortega's "magic touch." Suspect Vitale stated Suspect Ortega did not hold Victim W. Doe at any time during the night. She and Suspect Ortega left the house around 2:00 AM to 3:00 AM and went to a hotel. When they woke up around 1:00 or 2:00 PM (on August 12, 2023), they had a bunch of missed calls from Kelly Richardson and Derek Rayo. They called Derek Rayo, and he told them to return to the residence and meet him in the garage. When they returned to 1550 Huddersfield Court, they met Derek Rayo in the garage, and Derek Rayo told them the victim was dead.

During an interview on October 19, 2023, Suspect Vitale admitted that she knew that the "boys" and Kelly Richardson would smoke fentanyl and sometimes methamphetamine in the garage. Suspect Vitale admitted that sometimes Suspect Ortega and Derek Rayo would ask each other if they had "dope" to smoke. When asked if Suspect Ortega would share drugs Suspect Vitale stated, "I guess yeah, they would share."

Both Suspects Ortega and Vitale admitted to babysitting W. Doe, which was corroborated by text messages and videos from times where this occurred. For example, both Suspect Vitale and Suspect Ortega had significant numbers of photos of them holding / taking care of W. Doe in various stages of their life. Multiple messages between both suspects and Kelly Richardson, ranging between February 2023 and August 2023, discussed them caring for W. Doe while Kelly was at work. In one of the messages, Kelly told them, "[W. Doe's] milk baba is on the washing machine," which was one of the locations the parties often left narcotics for each other. This investigation also includes a video from the evening of Friday, August 11, 2023, from Suspect Ortega's phone which shows Suspect Vitale playing with W. Doe in their room at the Huddersfield residence. W. Doe was playing on their bed. This video contradicted Suspect Ortega's statement that he and Suspect Vitale did not watch W. Doe the night in questions. *It should additionally be noted that multiple other photographs and videos observed throughout the investigation depicted narcotics use /or narcotics paraphernalia on/and around the same bed W. Doe was playing on. Some of which Suspect Vitale was depicted "nodded out," halfway laying on the bed.*

Suspect Ortega and Suspect Vitale's statements, as well as the original statements of Derek Rayo and Kelly Richardson, differed regarding the timeline of events on Friday, August 11, 2023, and Saturday, August 12, 2023. Additionally, Kelly Richardson and Suspect Ortega both told police Suspects Ortega and Vitale borrowed her Kelly Richardson's car to drive to the

hotel on Saturday, August 12, 2023. Kelly stated, when she initially woke up, prior to noticing Victim W. Doe was not conscious, she went outside to see if Suspect Vitale had returned her car. Contradicting those statements, the investigation revealed an Uber receipt in Suspect Ortega's email account which showed an Uber ride on Saturday, August 12, 2023, for a trip that began at 3:06 A.M. from a corner near the Huddersfield address, and ended at 3:16 AM at 55 E Brokaw Road, in San Jose (Extended Stay America).

In the context of the other evidence in this investigation, the statements show the following:

- Suspects Vitale and Ortega assumed a duty of care by assuming the role of babysitting W. Doe, including during a period of time close to W. Doe's death;
- Suspects Vitale and Ortega were both independently aware of the extreme dangers of fentanyl use and the fact that Derek Rayo and Kelly Richardson were using fentanyl in the residence;
- Coupled with the inconsistent statements from Kelly Richardson and Derek Rayo, as well as the delay in reporting the death, these statements show consciousness of guilt.

*Conclusion: There is probable cause to issue arrest warrants for Suspects Ortega and Vitale for implied malice murder*

Suspect Ortega and Suspect Vitale committed the following acts that endangered the victim, W. Doe:

- Regularly and knowingly keeping illegal and dangerous narcotics and drug paraphernalia in the residence, within reach and accessible to the victim;
- Condoning drug activity by taking pictures / being present when others were recklessly smoking narcotics while holding and in the immediate presence of the victim;
- Using drugs in the residence themselves knowing the victim lived there and had access;
- Supplying the drugs that ultimately led to the victim's death;
- Dealing narcotics generally from the residence; and
- Continuing to supply Derek Rayo and Kelly Richardson with fentanyl despite their knowledge of Derek Rayo and Kelly Richardson's reckless behavior regarding the use of fentanyl while parenting the victim.

Suspect Ortega and Suspect Vitale assumed duties of care as W. Doe's babysitters and roommates. They were aware that W. Doe was regularly exposed to narcotics. Yet, they did nothing to prevent W. Doe's exposure to dangerous drugs and instead condoned it through the acts detailed above.

Both Suspect Ortega and Suspect Vitale knew the natural and probable consequences of keeping and using dangerous narcotics around Victim W. Doe were dangerous to her life. Furthermore, in continuing the acts described above and in failing to mitigate the dangerous conditions of the house - despite understanding the risk of fentanyl exposure - they deliberately engaged in multiple dangerous acts and/or failures to act demonstrating conscious disregard for

Victim W. Doe's life. Therefore, I believe there is probable cause to charge Suspect Ortega and Suspect Vitale with a violation of Penal Code section 187 (murder) against Victim W. Doe.

Signed in San Jose, California, on the 9<sup>th</sup> of April 2024, under penalty of perjury.

DocuSigned by:

*Sheena Woodland*

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Investigator Sheena Woodland, 4K137  
Santa Clara County DA's Office BOI  
Homicide Unit