STANDARDIZED FIELD SOBRIETY TESTS (SFST'S):

All SFST's were explained and demonstrated in English. The subject acknowledged he understood each test before he performed them. All times were accounted for by using my wristwatch. All SFST's were conducted on State Route 110 northbound (Arroyo Seco Parkway) north of Avenue 52 over crossing. This location is a relatively flat, slightly inclined roadway. The area was lit with ambient lighting and my flashlight. For this investigation, I utilized the three scientifically validated SFST's validated through the National Highway Traffic Safety Administration (NHTSA) along with a Non-Validated FST.

HORIZONTAL GAZE NYSTAGMUS (HGN):

Prior to starting the test, I advised the subject to stand with his feet together and hands along his sides. The subject appeared to have trouble standing as directed. I asked him if he had allergies or was fatigued due to his eyes being red/watery. He related he did not have allergies and was not fatigued. I asked the subject to follow the stimulus with his eyes only and leave his head in a forward fixed position. I asked the subject if he wore contacts or lenses. He related no. While administering the test, I advised the subject multiple times to keep his head straight. The subject displayed lack of smooth pursuit in both eyes and distinct and sustained nystagmus at maximum deviation in both eyes. While attempting to complete the test, the subject was advised to keep following the stimulus with his eyes. The subject stated, "We're still doing this?" The subject began to blink multiple times which did not allow me to administer the test properly. I advised the subject that we would terminate the testing. The subject displayed equal tracking and pupil size. I observed a minimum of 4 of the 6 scientifically validated clues which indicated a 88% accuracy that the subject had a BAC of .08% or greater.

WALK AND TURN (WAT):

During the instructional portion, the subject was unable to maintain his fixed position prior to conducting the test. The subject was re-advised on how to stand prior to conducting the test. The subject began the test prior to being advised to. During the subject's first series of steps, he missed heel-to-toe contact on step 3, stepped off the line and to his left and used his arms for balance. On step 5, the subject briefly lost his balance and stepped to his left with his right foot. The subject missed heel-to-toe contact on step 7, 8, 9. On the subject's ninth step, he continued walking and counted in the following manner, five, four, six, eight, nine, ten. On the subject's recount of steps, five, four, six and eight, he missed heel-to-toe contact on each step. On the turning portion, the subject did not leave his front foot on the line and turned around by lifting both feet and turning to his left. On the second series of steps, the subject missed heel-to-toe contact on step 2. During step 2, the subject briefly raised his arms away from his sides in a "T" manner to and placed them back down. On steps 3 and 4, the subject missed heel-to-toe contact. On step 6, the subject lost his balance, stepped off the line and to his right with his left foot and stated, "Sorry."

STANDARDIZED FIELD SOBRIETY TESTS (SFST'S) (CONTINUED):

The subject continued and counted step 8, missing step number 7. On his count of step 8, he missed heel-to-toe contact. The subject took another step forward without counting his step and missed heel-to-toe contact. The subject missed heel-to-toe contact on his count of 9 and 10. The subject continued walking and took two additional steps forward without counting out loud. After completing the test, I asked the subject if he felt comfortable with the outcome of the test and he shrugged his shoulders. I asked the subject if he would like to move on to the next test or redo the same test, and he related he wanted to move on to the next one. I observed a minimum of 6 of the 8 scientifically validated clues which indicated a 79% accuracy that the subject had a BAC of .08% or greater.

BASED ON ORIGINAL RESEARCH, COMBINING FOUR OR MORE CLUES OF HGN ALONG WITH TWO OR MORE CLUES OF WAT, SUBJECTS CAN BE CLASSIFIED AS ABOVE .10% BAC, 80% OF THE TIME.

ONE LEG STAND (OLS):

While placing the subject into position for the test, I advised him multiple times to have his feet touching and his hands along his sides. While advising the subject of the instructions for the test, he advised me he did not understand the instructions. I re-advised the subject of the instructions prior to beginning the test. The subject nodded his head when asked if he understood the instructions. I asked the subject if he had any question and he related no. The subject advised that he would raise his left foot for the test. On the subject's count of 1000-2 and 1000-5, he dropped his raised foot onto the roadway. The subject counted 1000-8, twice. The subject continued and counted 10 and 11. On 11, he placed his raised foot onto the roadway. I advised the subject to keep going and he stated, "More?" The subject continued and counted 11, dropped his raised foot onto the roadway and then counted 1000-11. The test was terminated at 30 seconds. I asked the subject if he felt comfortable with the outcome of the test and he related he just wanted to do more. I asked the subject if he wanted to move on to the next test and he related he just wanted to do more. I observed a minimum of 2 of the 4 scientifically validated clues which indicated a 83% accuracy that the subject had a BAC of .08% or greater.

MODIFIED ROMBERG BALANCE TEST:

At 55 seconds on my watch, the subject lifted his head up and stated, "30 seconds." I asked the subject how much time it was and he related 30 seconds had elapsed.

PRELIMINARY ALCOHOL SCREENING (PAS) TEST:

The subject was admonished regarding the PAS test at approximately 2134 hours. The subject related he did a "good FST" and declined to take the test.

ARREST – INVESTIGATION REPORT NARRATIVE (CONTINUED)

TRAFFIC COLLISION SUMMARY:

The subject was involved in a three vehicle traffic collision and was determined to be the driver of the involved vehicle (2022 Tesla Model S assigned a California license plate of [redacted]. The subject was identified by his valid California driver license as Gabriel Gaxiola [redacted]. The subject was determined to be the driver of the Tesla Model S at the time of the collision by the following: his statement and his admission to driving and being involved in a collision, he is the registered owner to his Tesla Model S, his passenger placing him as the driver of the Tesla, the other involved party observed the subject exiting the driver side door after the collision, and the subject being in possession of the keys to his Tesla. A DUI investigation was conducted, and it was determined that the subject was driving under the influence of alcohol. Refer to Central Los Angeles CHP traffic collision report number 9590-2022-02624.

FIRST OBSERVATIONS:

When I arrived on scene at approximately 2045 hours, I observed three vehicles located within the #3 lane of State Route 110 northbound (Arroyo Seco Parkway) north of Avenue 52 over crossing, with all parties involved standing outside of their respective vehicles.

OBSERVATIONS UPON CONTACT:

After my arrival, I contacted the subject, identified as Gabriel Gaxiola at approximately 2045 hours on scene. He related that there was a three vehicle traffic collision and that everyone appeared okay. I notified dispatch of my location and requested additional units to the scene to assist with scene management. I managed to make the scene safe by utilizing flares and my patrol vehicle, and began to investigate the traffic collision by checking on all parties involved and gathered information regarding the collision. While gathering information from the other involved parties, I did not observe any objective signs and symptoms of intoxication on scene.

As I spoke with Gaxiola regarding the traffic collision, I observed objective signs and symptoms of intoxication including red and watery eyes, an odor of an alcoholic beverage emitting from his breath and person, his unsteady gait while walking around the traffic collision scene and his slurred and delayed speech. While investigating the traffic collision, Officer K. Biedermann, ID 21040 arrived to assist. Officer Biedermann asked Gaxiola to produce a copy of his insurance. Gaxiola initially handed Officer Biedermann a debit/credit card.

OBSERVATIONS UPON CONTACT (CONTINUED):

Officer Biedermann advised Gaxiola that was not the insurance and requested to see proof of insurance. Gaxiola opened his cellular device and showed Officer Biedermann photographs that he took of the information of the other parties involved. Officer Biedermann again requested a copy of the Tesla's insurance. Gaxiola opened his cellular device and showed Officer Biedermann his phone. Officer Biedermann advised Gaxiola that there was no information on the phone and he had only opened his camera application.

Once finished with the traffic collision investigation, I conducted a DMV records check of Gaxiola's driver license. The DMV returned revealed Gaxiola's driver license was valid with one prior DUI conviction on 01/25/17. I returned to Gaxiola and advised Gaxiola that I smelled the odor of an alcoholic beverage emitting from his breath and person and that I wanted to ask him questions pertaining to the alcohol. He immediately stated, "I'm good." I asked Gaxiola what time did he begin drinking and he related approximately two hours prior. I asked Gaxiola if he felt good enough to drive home and he stated, "I'm absolutely good." I asked Gaxiola if he felt like he would hurt anyone and he related no. I asked Gaxiola if he had children to which he replied, "Yes." I asked Gaxiola if he felt comfortable enough to drive his kids home in his condition and he stated, "Yes." I asked him if he was sure and he stated, "Yes." I began to ask Gaxiola a series of Pre-Field Sobriety Test (Pre-FST's) questions. I explained and demonstrated a series of Field Sobriety Tests, to which Gaxiola did not perform as explained and demonstrated.

Based upon Gaxiola's involvement in this collision, his objective signs and symptoms of intoxication, his admission to drinking alcoholic beverages prior to driving his Tesla, his performance on the Field Sobriety Tests, my training and experience, and the totality of the circumstances, I determined Gaxiola had been driving his Tesla while under the influence of alcohol and was unable to safely operate a motor vehicle.

ARREST AND BOOKING:

At approximately 2135 hours, I arrested Gabriel Gaxiola for 23153 (a) VC. I handcuffed the subject utilizing departmentally approved handcuffing techniques. I searched the subject incident to arrest and asked him if he had any weapons on him. The subject related he had a firearm in his waistband. I removed the firearm from his persons and transferred possession of it to Officer Biedermann. After completing a full-standing search, I placed the subject into the right front passenger seat of the p/v. The subject's vehicle was towed from the scene by Metro Tow under the authority of 22651(h) Vehicle Code. Prior to leaving the scene, I attempted to speak with the subject's passenger, identified as [redacted] to advise her of the situation. [redacted] stated, "You guys are all cops, he does so much for LAPD. He's gang unit. You would think, like...he didn't even, we only had..." I advised [redacted] I would not be speaking further about the incident and needed to transport her to a safer location. Once done on scene, I drove the subject to the Central Los Angeles CHP Office.

ARREST – INVESTIGATION REPORT NARRATIVE (CONTINUED)

ARREST AND BOOKING (CONTINUED):

Officer Anderson transported [redacted] to the Central Los Angeles CHP Office where she was released to a responsible party. Once at the office, I told the subject he was required to submit to a chemical test to determine his blood alcohol level/concentration. I offered him his choice of blood or breath and the subject refused to submit to either test. I asked Sergeant S. Nielsen, ID 19271 to assist me with advising the subject of the Department of Motor Vehicles (DMV) 367. At approximately 2300 hours, I advised the subject of the Department of Motor Vehicles (DMV) 367. The subject was asked if he would submit to either a breath or blood test and he stated, "No." I advised the subject that we would obtain a warrant to obtain a vial of blood from him. The subject became belligerent and began to yell at Sergeant Nielsen and myself about the arrest. The subject requested I activate my Personal Worn Body Camera (PWBC) and record within the office. With the subject's permission, I activated my PWBC and placed it on the table in front of the subject. While activated, the subject made various complaints. The subject asked multiple times what the probable cause to arrest him was. The subject stated, "You know what? You do an FST, prior to the FST, you have to have probable cause to arrest. What is your probable cause to arrest? I'm going to ask it one more time, so the video will have it. What is your probable cause to arrest me, Officer Hernandez?" Sergeant Nielsen asked the subject if he would like him to answer his question and the subject agreed. Sergeant Nielsen related he suspected it had to do with objective symptoms of intoxication, which he was able to observe. The subject stated, "I'm standing right in front of you. I have no symptoms of, of subjective, uhh, intoxication. The video is right in front of me. I have no symptoms." Sergeant Nielsen advised the subject of some objective signs and symptoms of intoxication. The subject stated, "I don't have slurred speech, I don't have watery eyes, and I don't have symptoms of, uh, intoxication. I don't, do not have any symptoms of intoxication. That is your opinion." The subject continued and asked why I believed he was intoxicated. He stated, "Give me your probable cause. Why did you believe I was intoxicated. Give me your probable cause, right now. You're not giving it to me. Speak, you're right in front of me, you're in front of your paperwork. I'm sorry Sergeant. I'm asking Sergeant Hernandez, in front of his video, to give me his probable cause, why he believed I was intoxicated, cause that's why he's taking my video." Sergeant Nielsen advised the subject that I would not be answering his questions and he would have time to ask them at a later date. Sergeant Nielsen advised the subject that he, the subject, has 25 years of experience, so he should know how it works. The subject stated, "It would actually be appropriate to fucking answer my questions." Sergeant Nielsen advised the subject he already answered his question and the subject related, "No, Hernandez, he's arresting me, you're not arresting me. Sir, you're not arresting me. Hernandez is arresting me. So he should, you need to, you know, stay your lane. Hernandez will address me. Sergeant, whoever you are, stay your lane. Let him address me and let him advise me of why he's arresting me." Sergeant Nielsen advised the subject that based on his training and experience that he could observe signs/symptoms of intoxication.

ARREST AND BOOKING (CONTINUED):

The subject stated, "So you're arresting me from your probable cause? Just from looking at me right now? This video is on right now. And this video is, if this video is like, if anyone is looking at this video, oh, okay, he is under the influence. That's what you're doing. You're addressing this video and you're saying anyone that looks at this video is saying I'm under the influence. That's what your training and experience is like...So you're telling me I'm under the influence just by looking at me, for your training and experience. And you have 15 years on, I have 25 years on, I've seen way more DUI's than you have." Sergeant Nielsen advised the subject that he was being arrested for felony DUI due to his passenger being injured. The subject stated, "Hernandez, was she transported? Hernandez? Was the person in my passenger seat transported, for injuries? So she was not transported for injuries? So she was not injured? So there is not felony injury? So what the Sergeant is saying is false." The subject continued and stated, "She was not transported by a DUI, for a DUI, felony injury, to a hospital, and she was just transported here, for transport reasons. Why is there an allegation of felony DUI hit-and-run?" The subject stood up, and grabbed my PWBC that was placed on the table and turned it toward my direction. I immediately stood up and faced the PWBC back towards his direction and advised the subject that I had been more than cooperative and compliant with him and he needed to calm down and not stand up. The subject stated, "Why is there allegations of a DUI TC hit-and-run, with injuries?" I advised the subject I do not have to answer at that moment. The subject stated, "Yeah you do! Actually, you do. Yes sir, you do. Boss, you do have to answer it. You have to answer why your alleging a hit-and-run DUI TC?" Sergeant Nielsen advised the subject that his passenger had complained of injuries. The subject asked if his passenger was transported and Sergeant Nielsen advised the subject that his passenger could have complaints of pain and not be transported from the scene. The subject asked Sergeant Nielsen if he could assist and find out where his passenger was at. The subject stated, "I'm being alleged of actual big allegations. I would appreciate, if you would facilitate as a Sergeant, to figure out what's going on here." Sergeant Nielsen advised him that he already advised him of what was going on and the subject replied, " No you didn't. You said she was, she alleged injury. Well, find out where she's at. Did she get transported? Well then find out. Talk to her. Where is she? Get her number. Find out. Did you get injured from the injury? Or were you already injured? What's going on here?" The subject continued and asked, "Hernandez, did you fail to request an RA on scene, when someone told you they were injured? Hernandez! You're standing right in front of me! You failed to request an RA right in front of me while someone said they were injured? Are you kidding me?" Sergeant Nielsen attempted to calm the subject and advised him that his behavior was not benefiting him. Sergeant Nielsen asked the subject, "Do you think you behaving like this on a video benefits you in any way?" The subject replied, "Yeah, absolutely. You know what? When my command looks at it, I'm going to tell, no, no, no, they are not. They are going to say, look, a guy that's demanding his rights, look I'm not being disrespectful to you." The subject began to ask why I did not conduct FST's on the other involved parties on scene if he saw signs of intoxication on them.

ARREST AND BOOKING (CONTINUED):

At approximately 2245 hours, I obtained a search warrant signed by Judge Steven D. Blades to obtain a sample of blood from the subject. At approximately 2318 hours, I advised the subject of his Miranda Rights. The subject declined by stating, "No." The subject continued to ask questions and asked if I had failed to request an RA for a person that stated they were injured. Th subject stated, "Officer Hernandez, so did you fail to do an FST on all parties? Party one, party two and party three? You failed to do an FST on party one that obviously was intoxicated, bloodshot eyes, unsteady gait, was unbalanced from my observations from when I arrived on scene prior to you. Prior to you, I arrived on scene, probably 20 minutes prior to you and completely investigated the situation. I obtained information from party 1. I obtained the information from party 2, and I completely observed from my investigation from 25 years of law enforcement that they were intoxicated and I informed you that they possibly might have been intoxicated."

At an unknown time, Gaxiola's Lieutenant from Los Angeles Police Department (LAPD) Newton Division arrived at the Central Los Angeles CHP Office. Sergeant Sanchez, ID 20291 arrived to assist with watching the subject. While Sergeant Sanchez was in the room with the subject, the subject asked what the purpose of the PWBC was. Sergeant Sanchez related that he was not going to answer his questions and the subject related that he did not want the PWBC on him while he was sitting in the office. The subject asked me if I had asked him on scene if he was on DUI probation. He related that he was not on probation and did not know where I retrieved that information. He related that information might have led me to conduct a DUI investigation on the subject. The subject related that he wanted me to put in the report that I misidentified the fact that he was on DUI probation, that I failed to conduct a DUI investigation on Party 1 and Party 2 which he identified as being under the influence from his history. Later in the evening, Captain Humprey from LAPD Newton Division arrived on scene.

At approximately 0122 hours, I observed Phlebotomist, [redacted] CPT 1, draw one blood vial from the subject's right arm after having cleaned the area with Hydrogen Peroxide. [redacted] CPT 1, handed me the blood vial where I retained possession of it and shook the vial vigorously. With the approval of Sergeant S. Nielsen, ID 19271, Gaxiola was issued a CHP 215 (Notice to Appear) and released to Captain Humprey. I relinquished possession of the blood packet to Officer R. Cazares, ID 22673 who booked the blood at LAPD 77th Street Jail.

EVIDENCE:

This incident may or may not have been captured on Wireless Mobile Video Audio Recording (WMVARS) system. This incident was also captured on a Personal Worn Body Camera (PWBC) disc #12 and #13. Due to an internal error with the PWBC, the times and date indicated on disc #13 recordings do not reflect the actual times and date with this incident.

ARREST – INVESTIGATION REPORT NARRATIVE (CONTINUED)

ANALYSIS AND OPINIONS:

Based on my investigations, the following charges can be established against Gabriel Gaxiola:

-23153(a) Vehicle Code-*It is unlawful for a person, while under the influence of any alcoholic beverage, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.*

This was established by my observation of Gaxiola's objective signs and symptoms of intoxication, his performance on the FST's, his admittance to consuming alcohol prior to driving and my training and experience. Gaxiola was involved in traffic collision which resulted in his passenger, [redacted] becoming injured as a result of the collision.

23153 (b) Vehicle Code-*It is unlawful for a person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.*

This will be established by Gaxiola's blood test revealing his blood alcohol content (BAC) at the time was above .08%. (pending blood results).

RECOMMENDATIONS:

I recommend a copy of this report be forwarded to the Los Angeles District Attorney's Office for review and Gabriel Gaxiola be charged with the following:

-23153(a) V.C- Driving under the influence of alcohol (DUI)

-23153 (b) V.C.-DUI with a BAC of .08% or greater (Pending blood).

Upon successful conviction, I recommend the following enhancement charges:

-23578 VC-DUI with BAC over .15% (pending blood).

-23540 (a) VC-2nd DUI within 10 years

-23560 VC-DUI resulting in injuries within 10 years of prior DUI

-23577 (a)(2) VC- Refusal to submit to a chemical test