San Jose Police officers lawfully used tear gas to try to arrest a reportedly armed domestic violence suspect who was barricaded in a crawl space beneath his home, the Santa Clara County DA’s Office has determined.

Mark Spencer, who threatened to kill his girlfriend with a sawed-off shotgun, refused to surrender to police during a lengthy standoff. The Santa Clara County Medical Examiner determined that the 51-year-old’s accidental death in late 2018 was due to tear gas exposure within a confined space complicated by recent methamphetamine intoxication and an enlarged heart.

The officer in charge of calculating the amount of gas and how long to use it mistakenly thought the hidden crawl space was larger. However, the mistake was not criminal because the officer performed a lawful act in a lawful way; acted with ordinary caution; and did not act with unlawful intent, the DA’s office determined.

Prosecutor Jonathan Beardsley, who wrote the report, concluded: “When law enforcement has reason to believe that a person barricaded in a home has committed a violent crime, has a history of violence, and is known to possess firearms, they have a sworn duty to protect the public. In this case, Officer (Eric) Bucholz was part of an extensive law enforcement effort during an over eight-hour standoff to peacefully bring into custody a wanted felon with a violent criminal history who was considered armed and dangerous.”

The District Attorney’s Office investigates all fatal law enforcement encounters to determine if the lethal force was legal. By law, officers may use reasonable force when trying to arrest suspects.

On November 14, 2018, at approximately 9:15 p.m., Spencer’s girlfriend called 911 saying Spencer was “being violent and abusive.” Officers eventually set up a perimeter around the Elwood Road home and repeatedly broadcast commands to surrender. During this time, the victim safely escaped.

Officers deployed tear gas into the home, without response. Officers then determined that Spencer was hiding in a secret crawlspace underneath his home. They deployed tear gas into the space, using an amount based on a formula determined by the chemical agent officer assigned to the department’s special operations tactical team. After three minutes, they ventilated the crawlspace, but Spencer did not come out. After 15 minutes, officers cut a hole in the wall and found Spencer unconscious. They immediately tried to revive him. He was later declared dead. # # #