

SAN JOAQUIN COUNTY DISTRICT ATTORNEY
MEMORANDUM OF
OFFICER-INVOLVED CRITICAL INCIDENT
OF AUGUST 2, 2014
AT ONETO ROAD, STOCKTON, CA



TORI VERBER SALAZAR, DISTRICT ATTORNEY
OFFICER INVOLVED CRITICAL INCIDENT UNIT

OCTOBER 17, 2019



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MEMORANDUM

TO: CAPTAIN SHANN SETTER, COMMANDER
CALIFORNIA HIGHWAY PATROL, STOCKTON OFFICE

FROM: SAN JOAQUIN COUNTY DISTRICT ATTORNEY

DATE: OCTOBER 17, 2019

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF
STEVE DOLL (CHP DR # 14-201-04)

Pursuant to the provisions of the San Joaquin County Officer-Involved Critical Incident Protocol, effective August 1, 1994, the responsibility of the Office of the District Attorney is to review the facts and determine what, if any, criminal charges should be filed whenever there is an officer-involved fatality or life threatening incident.

This memorandum reviews the officer-involved shooting of Steve Doll on August 2, 2014. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Bureau of Investigations, the California Highway Patrol, the San Joaquin County Sheriff's Department and its Coroner Division, and the California Department of Justice.

INVESTIGATION SUMMARY

On August 2, 2014, shortly after 3 p.m., California Highway Patrol (CHP) Officers responded to a report of a possible vehicle collision. As officers drove to the area of Oneto Road, CHP Officer Benjamin Schiesser broadcasted, "Man down, victim of a gunshot wound." When CHP Officer Angel Arceo arrived on scene he observed a grey utility truck that had collided with a tree. In addition, he saw Officer Schiesser with his duty weapon drawn and a person on the ground, later identified as Steve Doll (DOB 04/29/1974).

Officer Schiesser had requested medical assistance over his radio. He and Officer Arceo began life-saving measures until paramedics arrived. At 3:24 p.m., Mr. Doll was pronounced dead at the scene.

As provided by the Memorandum of Understanding for the San Joaquin County Officer-Involved Critical Incident Protocol (hereinafter referred to as “Protocol”), the California Highway Patrol invoked the Protocol. A multi-agency task force was created that included San Joaquin County District Attorney’s Office’s Bureau of Investigations (hereinafter “BOI”), the California Highway Patrol (hereinafter “CHP”) and their Multidisciplinary Accident Investigation Team (hereinafter “MAIT”), the San Joaquin County Sheriff’s Department (hereinafter “SJSO”) and their Coroner Division, and the California Department of Justice (hereinafter “DOJ”).

FACTUAL SUMMARY

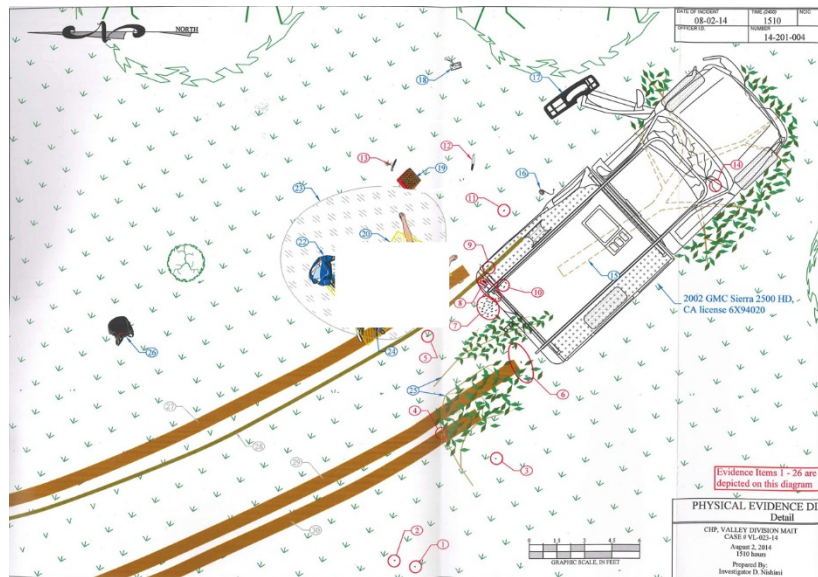
On August 2, 2014, at 2:47 p.m., the California Highway Patrol was dispatched to a report of a driver, later identified as Steve Doll, driving at high speeds, out of control, and, with blown out tires, near East State Route 99. CHP Officer Benjamin Schiesser responded to the area. There, he was informed by Witness #3 – who had made the original 9-1-1 call – that the vehicle he was looking for was further down the road and that the vehicle had been driven into an orchard and crashed into a tree. As he drove there, Witness #1 flagged down Officer Schiesser and told him where the vehicle was and that it might be on fire.



Mr. Doll’s truck in relation to Officer Schiesser’s patrol unit. (Photograph by MAIT).

At 3:10 p.m., Officer Schiesser located a 2002 GMC Pickup in a cherry orchard several hundred feet south of the south end of Oneto Road - the truck appeared to have run into a tree. Officer Schiesser exited his patrol vehicle and approached the truck. Officer Schiesser could see some loose ammunition on the rear bumper of the truck and immediately drew his service weapon. As the officer moved toward the back passenger side of the truck, he could see movement inside the cab. Officer Schiesser moved back to the rear driver side of the truck and yelled twice for the occupant to show him his hands.

The driver's side door of the truck quickly opened and Mr. Doll exited with his back toward the Officer. Mr. Doll then spun around with a six-inch fixed blade knife in his right hand. Officer Schiesser immediately began yelling for Mr. Doll to drop his knife. Mr. Doll shook his head side to side indicating he would not comply. Mr. Doll held his knife over his head and began moving toward Officer Schiesser. When Mr. Doll was within 20 feet from Officer Schiesser, fearing for his life, he fired his service weapon five times, striking Mr. Doll twice. Mr. Doll went to the ground and was held at gunpoint until CHP Officer Angel Arceo arrived.



MAIT diagram produced to scale.¹

Both officers began life-saving measures and continued until paramedics arrived and took over treatment. Paramedics consulted with a San Joaquin County General Hospital emergency room doctor and Mr. Doll was pronounced dead at 3:34 p.m.

¹ The two knives are located at Markers 12 and 13. The officer's expended shell casings are located at Markers 1-5. The depiction of Mr. Doll's body has been redacted.

WITNESS STATEMENTS

Investigators from the San Joaquin County District Attorney's Office, CHP, and SJSO jointly interviewed the involved officers, medical personnel, and civilian witnesses. Whenever possible, these interviews were audio and/or video recorded. The investigators also conducted a canvass of the area for additional witnesses. The relevant witness statements are summarized in this memorandum in pertinent parts. The individual witness synopses below are to assist the reader in supplementing the above Factual Summary. Civilian witnesses are identified in this memorandum as "Witness #" to protect their privacy rights. See, "Confidential Page APPENDIX A: Civilian Witness Information."

California Highway Patrol Officer Benjamin Schiesser

California Highway Patrol Officer Benjamin Schiesser spoke to investigators on August 2, 2014, at 9:12 p.m., in the conference room at the California Highway Patrol station, in San Joaquin County, and stated the following:

Officer Schiesser was a 7-year veteran with CHP. This day he was working patrol while wearing a standard issued CHP uniform, and driving a standard marked CHP patrol unit. Officer Schiesser was armed with his service weapon: a .40 caliber Smith & Wesson 4006 TSW.

At around 2:47 p.m., Officer Schiesser was advised of a reckless driver in the area of Foppiano Lane in San Joaquin County. On arriving in the area, he made a traffic stop on a vehicle resembling the description given, but quickly determined it was not the correct vehicle. During the traffic stop, Witness #3 approached and related he was the person who had called 911, and informed Officer Schiesser the driver was driving on flat tires and had driven south to the dead end of Oneto Road.

Officer Schiesser drove to Oneto Road and was approached by Witness #1 who told him the vehicle he was looking for had driven into the orchard and appeared to have crashed and was on fire. Officer Schiesser advised dispatch of a potential vehicle fire, and to dispatch fire and medical personnel. Officer Schiesser proceeded down Oneto Road and observed a grey truck, with a ladder rack, that appeared to have crashed into a tree. This location is approximately 4,000 feet due east of Highway 99.

Officer Schiesser stopped his patrol vehicle ten to fifteen feet to the west of the truck, exited his patrol car, and began to approach the truck from the rear passenger side. As Officer Schiesser walked closer to the truck, he could see some loose ammunition on the rear bumper of the truck. Officer Schiesser immediately drew his

service weapon and while on the passenger rear side of the truck, noticed movement by Mr. Doll within the cab.

Officer Schiesser began moving back toward the driver side rear of the truck and twice yelled to Mr. Doll to show his hands. The door of the truck suddenly flew open and Mr. Doll exited the truck with his back toward Officer Schiesser. Officer Schiesser could tell that Mr. Doll had something in his hand. Mr. Doll then spun around holding a six-inch fixed blade knife in his right hand.

Officer Schiesser began yelling for Mr. Doll to drop the knife. In response, Mr. Doll shook his head side to side, indicating he would not comply. Mr. Doll then raised his knife above his shoulder, and began moving toward Officer Schiesser. When Mr. Doll reached 15-20 feet of Officer Schiesser, believing his life was in danger, he fired his service weapon. Officer Schiesser believed the rounds struck Mr. Doll in the midsection, and Mr. Doll went to the ground. Officer Schiesser immediately radioed that shots had been fired and requested an ambulance.

Officer Schiesser continued to hold Mr. Doll at gunpoint until an additional CHP unit arrived. Once Officer Arceo arrived, they immediately began life saving measures until the paramedics arrived two to three minutes later, and took over treatment. Officer Schiesser said that during the entire incident, Mr. Doll never said a word.

California Highway Patrol Officer Angel Arceo

Officer Angel Arceo spoke to investigators on August 2, 2014, at 10:00 p.m., in the conference room of the California Highway Patrol, in San Joaquin County.

Officer Angel Arceo was an 8-year veteran with CHP. On this date, Officer Arceo was wearing a standard CHP uniform, and driving a standard CHP marked vehicle, on regular patrol.

At approximately 2:47 p.m., Officer Arceo heard a report of a reckless driver on the radio, but did not initially respond until Officer Schiesser reported a possible accident. Officer Arceo was at the CHP Office and began to respond to Officer Schiesser's location as he was primarily responsible for accident reports that day and decided to respond to assist in the report.

While driving toward Officer Schiesser's location, Officer Arceo heard Officer Schiesser announce over the radio that shots had been fired. Officer Arceo arrived on scene shortly after and saw Officer Schiesser with his service weapon drawn and Mr.

Doll on the ground. Officer Schiesser told him the scene was not secure and to grab his medical bag. Officer Arceo grabbed his medical bag and as he walked toward Mr. Doll, he observed two knives on the ground. Officer Arceo and Officer Schiesser then took turns performing CPR on Mr. Doll until paramedics arrived and took over treatment. Officer Arceo never fired his service weapon, and did not see Officer Schiesser fire his service weapon.

Witness # 1

Witness # 1 was identified as a witness and was interviewed on August 4, 2014, by investigators, at the CHP Office in San Joaquin County, and stated the following:

On this day, Witness # 1 received a phone call from a friend who said he thought one of his employees must be going crazy because he was driving one of his work trucks through the orchard and speeding up and down Foppiano Lane. The friend then called back and told him the driver he had observed earlier had crashed the truck in the orchard and into a tree.

Witness # 1 drove to the location and found the truck in the orchard and could see Mr. Doll in the cab. Witness # 1 drove north onto Oneto Road, and flagged down Officer Schiesser. Witness # 1 told Officer Schiesser about the collision, and told Officer Schiesser to be careful because he believed the driver was on something.

Witness # 1 observed Officer Schiesser pull up, so he drove over toward the patrol vehicle, and parked behind the marked unit. Officer Schiesser exited his patrol car, and drew his service weapon. Witness # 1 drove his vehicle further back, causing his view to be partially blocked by a tree. Witness # 1 heard Officer Schiesser yelling something but could not make out the exact words. From Witness # 1's vantage point, the driver door appeared to fly open and he could see Mr. Doll step out of the truck. Witness # 1 saw Mr. Doll's hand come up and saw Mr. Doll moving toward Officer Schiesser. Witness # 1 heard several gunshots, and Mr. Doll went to the ground.

Witness # 1 estimated he heard four or five shots. Prior to the shooting, he said he reached behind him to grab his shotgun because Officer Schiesser was all alone, and felt he may have to help him. Witness # 1 stated, "I think the Officer did his job."

Subsequently, Witness # 1 assessed the damage done to his trees and harvest, by Mr. Doll driving recklessly on his property, to be approximately \$12,000.

Witness # 2

Witness # 2, Mr. Doll's wife of eighteen years, provided a brief statement to investigators during the notification by the Coroner's Office. The statement was taken on August 2, 2014, at approximately 11:30 p.m., at her residence, and Witness #2 stated the following:

The prior Sunday, Witness # 2 had separated from Mr. Doll and moved in with her mother, taking the children with her. She had no contact with him the day of this incident.

Earlier that morning, neighbors called her telling her they thought Mr. Doll was setting off fireworks at the home, and saw him speeding off and driving down Foppiano Road. She had attempted to contact Mr. Doll by phone but had been unsuccessful.

Witness # 2 said that Mr. Doll had mental health issues and had stopped taking his medication. She was unsure of the exact diagnosis but believed he had symptoms similar to a bipolar disorder and manic depression. Witness # 2 believed Mr. Doll was possibly psychotic and paranoid. Mr. Doll believed people were trying to kill him, and if he did not kill himself, then his wife and kids would be killed.

In 2012, Mr. Doll received a mental health evaluation and was placed on a "[Welfare and Institutions Code section] 5150 hold," – a temporary hold after a determination that a person is a danger to himself or others. For the past 15 months, Mr. Doll had been seeing a private psychiatrist. She felt that he was doing well with the prescriptions of Clorazepate, Seroquel, and, Adderall. In June, however, she believed he stopped taking his medication. These past two weeks, Mr. Doll became paranoid and delusional and this is what caused her to leave.

In addition to his mental health issues, Mr. Doll previously had an 8-year methamphetamine addiction. In the past 2-½ years, however, he had been "clean and sober."

SUBSEQUENT INVESTIGATION

Video Documentation

Officer Schiesser was not equipped with a body-worn camera. Officer Schiesser's patrol vehicle was equipped with a Mobile Video Audio Recording System (MVARs) similar to a dash cam.

The shooting was not captured on video because the incident took place out of

the MVARs's field of view. The body-worn microphone used with the MVARs was on and the audio portion recorded Officer Schiesser ordering Mr. Doll, "Show me your hands!" and "Drop the knife!" several times before five shots are heard.

Firearm Examination

Officer Benjamin Schiesser's Firearm

Officer Schiesser's service pistol was a .40 caliber Smith & Wesson 4006 TSW. The firearm was examined and found to be loaded with 7 cartridges. The pistol at capacity will hold 12 cartridges. The magazine's capacity and the five expended shell casings located at the scene is consistent with 5 rounds being fired from Officer Schiesser's pistol.

All five shell casings came from Officer Schiesser's firearm.

Scene Evidence

The scene was taped off and secured. Members of BOI, DOJ, and CHP investigated the scene. Evidence found had placards placed next to the items and were photographed. Items of significance found were five expended casings from a .40 caliber Smith and Wesson, the service weapon of Officer Schiesser. Also found and documented were two knives that were located near Mr. Doll and on the ground near where he fell.

One knife was a black folding knife – the blade was 3 ¼ inches. The knife was in the open position. The black knife, at marker 13, was 2 feet from Mr. Doll's right hand.

The second knife was an MTech fixed blade - the blade was 6 ½ inches. The MTech fixed blade, at evidence marker 12, was 4.5 feet from Mr. Doll's right hand.



Mr. Doll's folding black knife at Marker 13. (Photograph by MAIT).



Mr. Doll's fixed blade at evidence Marker 12. (Photograph by MAIT).

Pathologist's Report

On August 4, 2014, Pathologist Robert D. Lawrence, M.D., conducted an autopsy upon Mr. Doll. Dr. Lawrence's autopsy revealed that Mr. Doll suffered two gunshot wounds (GSW):²¹ a fatal penetrating wound of the upper abdomen that pierced the left branch of the celiac artery; and, 2) a non-fatal perforating wound of the right buttock.

Toxicology results from Mr. Doll showed a blood alcohol level of .20, and

² The order of the wounds here or in the autopsy report do not reflect the order in which Mr. Doll was shot or struck. This normally is not possible to do and it was not done in this case.

positive levels of Acetaminophen, Diphenhydramine (a/k/a Benadryl), Naproxen, Nordiazepam, and Oxazepam in his system. Acetaminophen and Naproxen are common pain relievers. Nordiazepam and Oxazepam are often used to treat anxiety.

Dr. Lawrence's determined the cause of death to be a "Penetrating GSW of abdomen."

Legal Analysis

Under Penal Code sections 197 and 198, homicide is justifiable and not unlawful when committed by a person who reasonably believed that he, or someone else, is in imminent danger of being killed, suffering great bodily injury, or to prevent a forcible and atrocious crime (*People v. Ceballos* (1974) 12 Cal.3d 470, 478). For a homicide to be in self-defense, the person must actually and reasonably believe in the need to defend with deadly force (*People v. Flannel* (1979) 25 Cal.3d 668, 674). If the belief both subjectively exists and is objectively reasonable, it constitutes "perfect self-defense" and the homicide is considered legally justified. (*In re Christian S.* (1994) 7 Cal.4th 768, 783).

Penal Code Section 197 states:

Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, or person against one manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in violent, riotous or tumultuous manner. To enter the habitation of another for the purpose of offering violence to any person therein; or
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline in further struggle before the homicide was committed.

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Homicide committed by a law enforcement officer is governed by Penal Code section 196 (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333). Penal Code section 196 states:³

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either-

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

The test whether a police officer may use deadly force to apprehend a fleeing felon was announced in *Tennessee v. Garner* (1985) 471 U.S. 1, 11-12: “Where the officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

The test of reasonableness is judged by an objective standard of “a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Graham v. Conner* (1989) 490 U.S. 386, 396-397, see also, *Jeffers v. Gomez* (9th Cir. 2001) F.3d 895, 909, “broad discretion...must be afforded to police officers who face tense situations.”)

Penal Code section 835a also states that, “[a] peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the

³ See also, jury instruction CalCrim 507.

resistance or threatened resistance of the person being arrested; nor shall such an officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or prevent escape or to overcome resistance.” As stated above, “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary.” (*Garner, supra*, 471 U.S. at 11-12.)

The test for determining whether a homicide was justifiable under Penal Code section 196 is whether the circumstances “reasonably created a fear of death or serious bodily harm to the officer or to another.” (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334). Reasonableness must be considered in the context of the “dangerous and complex world” police officers face every day, because “what constitutes ‘reasonable’ action might seem quite different to someone facing a possible assailant than to analyzing the question at leisure.” (*Martinez, supra*, 47 Cal.App.4th at 343, quoting *Smith v. Freeland* (6th Cir. 1992) 954 F.2d 343, 347).

Penal Code sections 196 and 835a, *supra*, have recently been amended by Assembly Bill (A.B.) 392. Passed by the legislature this year, Governor Gavin Newsom signed the bill into law on August 19, 2019. A.B. 392 incorporates the language of section 196, relevant United States Supreme Court case law - discussed in this memorandum - and placed it within section 835a. Additionally, in the new language of the amended statute, emphasis is placed on “imminent” threats and “necessary” use of force. While the law will not be in effect until January 1, 2020, the standard set forth by A.B. 392 is consistent with the standard in current use by the District Attorney’s Office and is applied in this case.

Application of Law

In analyzing the reasonableness of the decision by Officer Schiesser to use deadly force, the totality of the circumstances, including the information that the individual officer possessed at the time of his decision, is examined. The “‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (*Graham, supra*, 490 U.S. at 396.)

In the instant case, the following set of facts have been sufficiently established:

1) Officer Schiesser’s use of lethal force was reasonable and necessarily committed to prevent his immediate great bodily injury or death from being stabbed.

CONCLUSION

In applying the prevailing legal standards, and based upon the totality of the circumstances and in light of all of the evidence obtained from the multi-task force investigation, it is the opinion of the District Attorney that the lethal use of force by Officer Benjamin Schiesser on August 2, 2014, was justified, and that no criminal charges are warranted.

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