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**MEMORANDUM**

TO: ERIC JONES, CHIEF  
STOCKTON POLICE DEPARTMENT

FROM: RICHARD B. PRICE, *RBP*  
DEPUTY DISTRICT ATTORNEY  
SAN JOAQUIN COUNTY

DATE: AUGUST 29, 2017

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF  
DONALD RAY HAYNES, (SPD DR #14-5346).

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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 Donald Haynes on February 9, 2014. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, SST Forensics, and the Department of Justice.

**FACTUAL SUMMARY**

On February 9, 2014, at approximately 9:00 a.m., Officer Robert Johnson of the Stockton Police Department was attending roll call when he was made aware of a domestic violence incident which had occurred the evening of February 8, 2014. The incident involved a potential suspect by the name of Donald Ray Haynes (d.o.b. 10/30/68). Officer Johnson read the related reports and researched Haynes' background and photographs.

At approximately 10:30 a.m., Officer Johnson and Officer William Kambic parked their marked unit around the corner from 1547 Carpenter, Stockton, CA, the original location of the domestic violence call the night before. A woman answered the door and informed Officer Johnson the suspect was not there but that his family lived across the street and could possibly help him in locating the suspect's whereabouts.

Officer Johnson returned to his patrol car and was leaving for another possible address when he observed a male standing in the driveway that was consistent with the suspect's description. The suspect entered the backseat of a gold vehicle which then left the driveway of the suspect's family residence. Officer Johnson turned the patrol car around and began following the vehicle.

When they caught up with the gold car, Officer Johnson could see there was a shorter woman driving the vehicle and a much larger subject seated in the backseat. The taillight was out and the Officers decided to make a traffic stop. Officer Johnson waited until the gold car got closer to the fairgrounds and then initiated a traffic stop by activating the emergency lights near 6<sup>th</sup> St. The vehicle traveled approximately 100 yards and then pulled to the right curb.

As the vehicle was pulling over, Officer Johnson's attention was turned toward the larger man in the backseat who appeared to be jumping around, moving back and forth from one side to another. It appeared to Officer Johnson the man was attempting to hide something or remove something from under the backseat cushion.

Officer Johnson parked the patrol unit and exited the driver's door. Officer Kambic exited the passenger door. At that point the rear passenger stepped out of the rear passenger side of the gold vehicle. Officer Kambic, after identifying the rear passenger as Donald Haynes, drew his duty weapon and ordered Haynes back inside the gold vehicle. Haynes got back into the car and Officer Johnson called for back up.

Officer Johnson was concerned that Haynes would run so he got his canine out of the car and moved past Officer Kambic on the sidewalk. Back up units were arriving when Officer Johnson noticed that Haynes was again moving around in the back seat of the gold vehicle. Officer Johnson did not know what Haynes might be grabbing so he ordered Haynes out of the car with his hands in the air. Officer Johnson had the canine with him, but had not unholstered his duty weapon as Officer Kambic was providing cover.

At this point, the back door of the gold vehicle popped open real fast and Haynes had his feet outside the vehicle. Haynes began getting out of the vehicle as if in a hurry, and it appeared to Officer Johnson as if Haynes was holding a small sword. This small sword, which was also described as a knife, was discovered and determined to be a 19 inch bayonet. Officer Johnson was approximately ten to twelve feet from where Haynes was now standing.

As Haynes began moving toward Officer Johnson, Officer Johnson held onto the canine with his left hand, unholstered his duty weapon with his right hand and fired one round from his hip. Haynes made a slight hesitation and then fell slightly back into the vehicle. Haynes was still staring at Officer Johnson and holding the weapon. Both Officer Johnson and Officer Kambic are yelling for Haynes to drop the weapon. Haynes ignored the commands, stood back upright and began moving toward Officer Johnson while holding the weapon. Officer Johnson fired two more rounds, knocking Haynes back into the car jamb, and then rolling over to his side.

Officer Dan Zwicky, of the Stockton Police Department, had arrived as back up prior to Haynes exiting the gold vehicle. Officer Zwicky moved quickly around the gold vehicle once the shots were fired. Haynes was still refusing to comply with orders to give up the knife, even after Officer Johnson had fired his duty weapon the second time. Officer Zwicky used his baton two times in the upper right arm, prompting Haynes to drop the weapon. (Photograph of bayonet attached)

Stockton Police Officers immediately began rendering first aid until medics arrived and took over. Medics arrived, began CPR and transported Haynes to the San Joaquin County Hospital, arriving at 11:18 a.m. Haynes was pronounced dead at 11:34 a.m., by Dr. Mahmoud.

The driver of the gold vehicle was Antionett Haynes, the sister of Donald Haynes. Ms. Haynes had received a phone call from her father who asked her to pick up her brother and bring him to the father's home due to the domestic dispute from the night before. Ms. Haynes told investigators that while being pulled over, Donald Haynes began telling her that he would not go back to jail, "I'm going to let them kill me." Ms. Haynes confirmed that Officers ordered Donald Haynes back into the vehicle. Ms. Haynes said she rolled down her window and was scared because there was another Officer pointing a gun at her. Ms. Haynes could hear the dog barking and heard all kinds of yelling but does not recall what specifically was said. Ms. Haynes then heard the gunshots, and was pleading with the Officer to let her out of the car.

Two witnesses told investigators that they saw Mr. Haynes exit the vehicle unarmed, with his hands over his head, and was complying with the Officer's commands. Their statements do not appear accurate in light of the Officers' statements, the physical evidence, specifically the recovered bayonet, and Ms. Antionett Haynes's statement. A video referred to by the witnesses was never provided after repeated requests by the District Attorney's Office.

A search of the vehicle's trunk resulted in the finding of clothing belonging to Donald Haynes, along with a 12 gauge shotgun with an expended shell, and three live rounds in the tube.

### **PATHOLOGIST'S REPORT**

On February 10, 2014, San Joaquin County Pathologist Robert D. Lawrence, conducted an autopsy upon Haynes and concluded that Haynes died from cardiac arrest due to a lethal gunshot wound to the upper right chest area. Haynes was struck a total of three times. No evidence of alcohol or drugs in Haynes' system were detected.

### **CRIMINAL HISTORY**

Haynes had a long history of possession of narcotics. Haynes had also been to prison a half dozen times for Penal Code Sec. 496 in 1991; Health and Safety Code Sec. 11350 in 1991; Penal Code Sec. 245(a)(1) in 1993; California Vehicle Code Sec. 10851 in 1997; and Penal Code Sec. 245(a)(1) with great bodily injury in 2000, where Haynes received 13 years State Prison. The last case involved allegations of domestic violence. On the date of this incident, Haynes was wanted for questioning regarding domestic violence allegations.

### **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, was in imminent danger of being killed, suffering great bodily injury, or 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 legally justifiable. (*In re Christian S.* (1994) 7 Cal.4th 768, 783.)

Homicide committed by a law enforcement officer is also governed by Penal Code section 196. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.) 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 another. (*Martinez v. County of Los Angeles, supra* 47 Cal.App.4th at 343 (quoting *Smith v. Freeland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347.))

Additionally, Penal Code section 835a provides:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent the escape or to overcome resistance. A peace officer who makes or attempts an arrest need not retreat or desist from his efforts by reason of the resistance of the person being arrested; nor shall such officer be deemed to be the aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

The Uniform Crime Charging standards require prosecutors to critically analyze and evaluate all of the available information to ensure a case has been fully investigated and there is legally sufficient, admissible evidence to establish a crime has been committed. In addition, prosecutors are required to ensure there is legally sufficient, admissible evidence of the identity of the perpetrator. Finally, the prosecutor must be personally satisfied the accused is guilty of the crime and, considering the most plausible and reasonably foreseeable defense(s), whether there is legally sufficient evidence to convince a jury of the accused's guilt beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves one with an abiding conviction that the charge is true.

### **CONCLUSION**

In evaluating the totality of the circumstances under a reasonable doubt standard, Officers Johnson and Kambic were justified in making a traffic stop on Antionett Haynes for the taillight violation. Donald Haynes was immediately identified by Officer Kambic as a suspect wanted for questioning regarding an open felony investigation. Officers repeatedly gave Haynes verbal commands to put up his hands and to drop the weapon. Haynes refused to comply. Officer Johnson saw Haynes holding a knife like weapon and moving toward his position in an assaultive manner. Officer Johnson was in fear of his life and because of this fear Officer Johnson fired his duty weapon three times, in response to the immediate threat.

It is the opinion of the District Attorney that Stockton Police Officer Robert Johnson was legally justified in his use of lethal force against Donald Haynes.



