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SAN JOAQUIN COUNTY**

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MEMORANDUM

TO: MARK HELMS, CHIEF
LODI POLICE DEPARTMENT

FROM: ROBERT HIMELBLAU, DEPUTY DISTRICT ATTORNEY
SAN JOAQUIN COUNTY

DATE: December 19, 2014

SUBJECT: PARMINDER SINGH SHERGILL

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 fatal shooting on January 25, 2014, of Parminder Singh Shergill. This investigation was jointly conducted by the San Joaquin County District Attorney's Investigations Unit, the Lodi Police Department, the San Joaquin County Sheriff's Office, and the California Department of Justice. Additional documents reviewed included prior law enforcement incident reports, Superior Court files, District Attorney files involving Shergill, medical report records from various health care organizations, as well as recent civil deposition transcripts, and private investigator reports provided by Shergill's family's retained counsel.

FACTUAL SUMMARY

January 25th, 2014, (all dates refer to 2014 unless otherwise noted) officers from the Lodi Police Department shot and killed Parminder Singh Shergill (hereinafter referred to as Shergill) after he advanced on officers with a knife.

Precursor Events to Officer Involved Shooting

On January 25th, in the early morning hours, Shergill became involved in a domestic dispute with his mother where she was pushed by him. As a result, at 9:06 AM, Shergill's sister-in-law called the Lodi Police Department (hereinafter referred to as "LPD") to ask for assistance: "I have my brother-in-law [inaudible] paranoid schizophrenic and he's going....going crazy.[Inaudible] He's attacking my mother-in-law." The Shergill family had recently called for such assistance and was once again requesting help from LPD to help them with Shergill and mental issues he was dealing with.¹

Police were dispatched to the Shergill residence at 23 Elderica Way in Lodi. Both LPD Corporal Scott Bratton (hereinafter referred to Cpl. Bratton) and LPD Adam Lockie (hereinafter referred to Ofc. Lockie) arrived at the residence separately in their marked 2013 Ford Interceptor Sports Utility Vehicles (hereinafter referred to as "SUV") contemporaneously at approximately 9:17 AM.

As they walked up to the front door, Ofc. Lockie noted two stickers on the back of a Toyota pick-up truck parked in the driveway. The first sticker was an oval with the numbers ".223" and a small drawing of an assault weapon. The second sticker had the words "Don't tread on me," and a coiled snake, commonly referred to as the Gadsden flag. Ofc. Lockie pointed out the stickers to Cpl. Bratton.

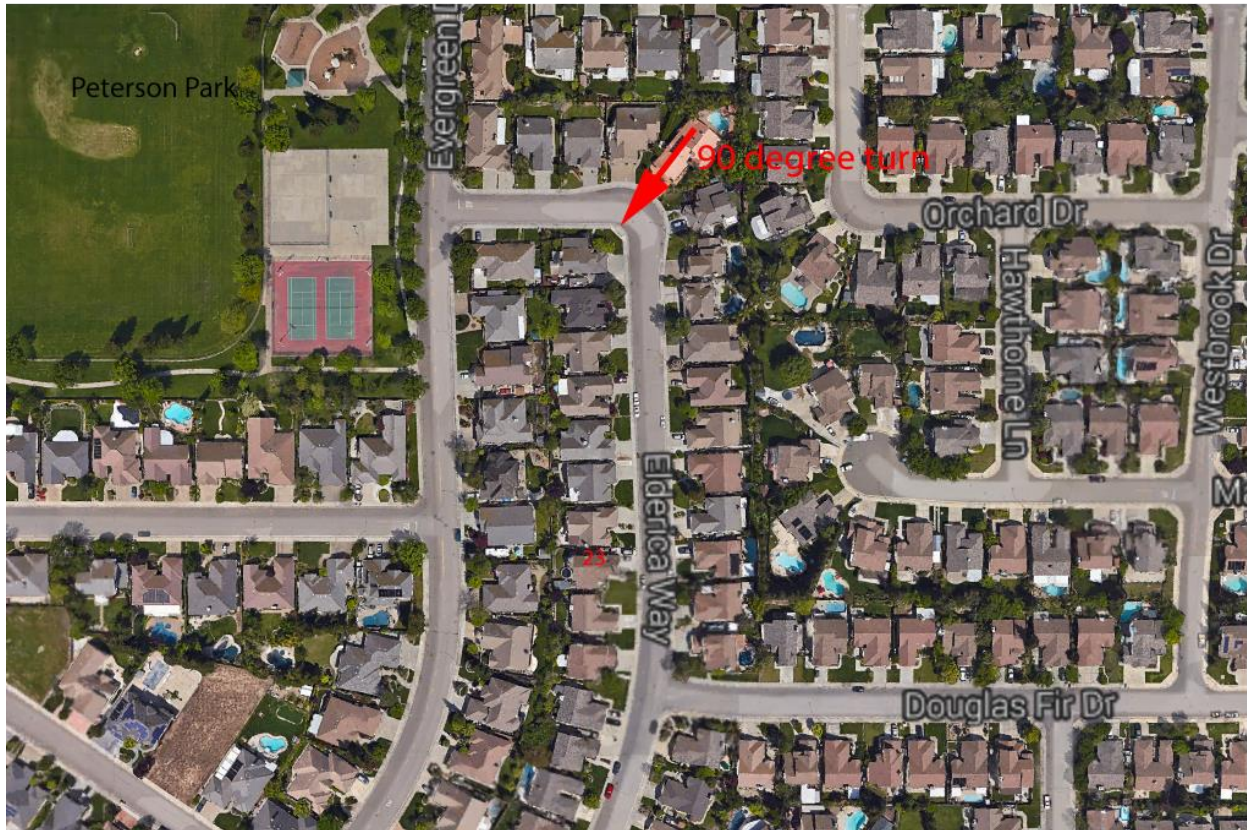
The officers knocked on the door and were met by Shergill's mother. She was not fluent in English so her daughter-in-law, also present, helped translate and, in addition, provided her own information. They told police that Shergill was schizophrenic and was not taking his medication. Police were also told that early in the morning, Shergill had become violent towards his mother. Shergill's brother came to the door and told the officers that Shergill had just left the residence and walked towards Petersen Park. The family requested that the officers assist them in getting Shergill to a Veteran's Administration Hospital. The family requested this because this is what they believed the LPD had done with Shergill in recent months.²

With a description provided by the family, both officers went in search of Shergill. The officers, in their separate vehicles, drove around the corner to the park arriving at approximately 9:24 AM. Cpl. Bratton spotted Shergill walking in the park. Shergill was observed walking through a large group of people who were attending a "boot camp" exercise class. He was described as "agitated" and "very out of it". Shergill walked through the class, drawing the attention of the class participants to him, and over to a garbage can. Cpl. Bratton parked his vehicle and got out to contact Shergill. Cpl.

¹ See, below, Background: Mental Health.

² In October of 2013, LPD were called to the Shergill residence under similar circumstances. See, below, Background: Mental Health, for details.

Bratton tried to speak to Shergill, but was ignored. Shergill then began walking back towards Elderica Way. Ofc. Lockie arrived and as Shergill walked towards Elderica Way, Ofc. Lockie attempted to thwart Shergill's forward progress by placing his police vehicle in Shergill's path. Shergill, however, simply walked around Ofc. Lockie's vehicle and reached Elderica Way. Cpl. Bratton continued to follow Shergill on foot while Ofc. Lockie drove down Elderica Way to the corner where Elderica Way turns southbound. (Hereinafter referred to as the "90 degree turn.")



[Overview of scene]

As Cpl Bratton followed Shergill, he continued to ask Shergill to stop. When Shergill arrived at the 90 degree turn, Cpl. Bratton observed a "tactical knife" in Shergill's right hand. The knife matched the description of a knife that Shergill had recently purchased at a local flea market. Approximately twenty feet behind Shergill, Cpl. Bratton ordered Shergill to drop the knife. Shergill did not respond other than to open the knife so that the blade was now exposed. At 9:24:49 AM, Cpl. Bratton dispatched: "Two-Adam-Four. He has a knife in his right hand. Two-Adam-Four he's refusing my commands."

Officer-Involved Shooting

As Ofc. Lockie drove to the 90 degree turn, he spotted the knife in Shergill's hand. Ofc. Lockie parked his SUV at the 90 degree turn, got out and drew his service pistol.

As Shergill continued to walk, Cpl. Bratton broadcast to dispatch at 9:25:31 AM: "We're going back to Elderica. I'm going to need you to call the RP [reporting party] back. Advise them to barricade the front door. We have a subject armed with a knife, very agitated, right hand."

Shergill had now turned southbound at the 90 degree turn and Cpl. Bratton drew his service pistol. Cpl. Bratton continued to shout commands to Shergill to drop the knife, but was ignored. Cpl. Bratton continued to maintain a distance of fifteen to twenty feet behind Shergill. Once southbound, Shergill began verbally responding to the officers, yelling at them. Cpl. Bratton fanned across a lawn and onto the driveway of the corner residence while Ofc. Lockie stayed on the street equidistant from Shergill creating a triangle with Shergill at the apex.

Cpl. Bratton continued to order Shergill to stop and drop the knife. Shergill continued to walk away while shouting back. Suddenly, Shergill turned and faced the officers. With the knife still in his right hand, Shergill raised it towards the officers, while continuing to shout. As he extended his right hand with the knife, Shergill quickly advanced towards Cpl. Bratton. As Shergill closed the gap between he and the officers – coming as close as seven to eight feet away - both officers discharged their weapons.³

Cpl. Bratton discharged his service pistol eight times. Ofc Lockie discharged his service pistol six times.

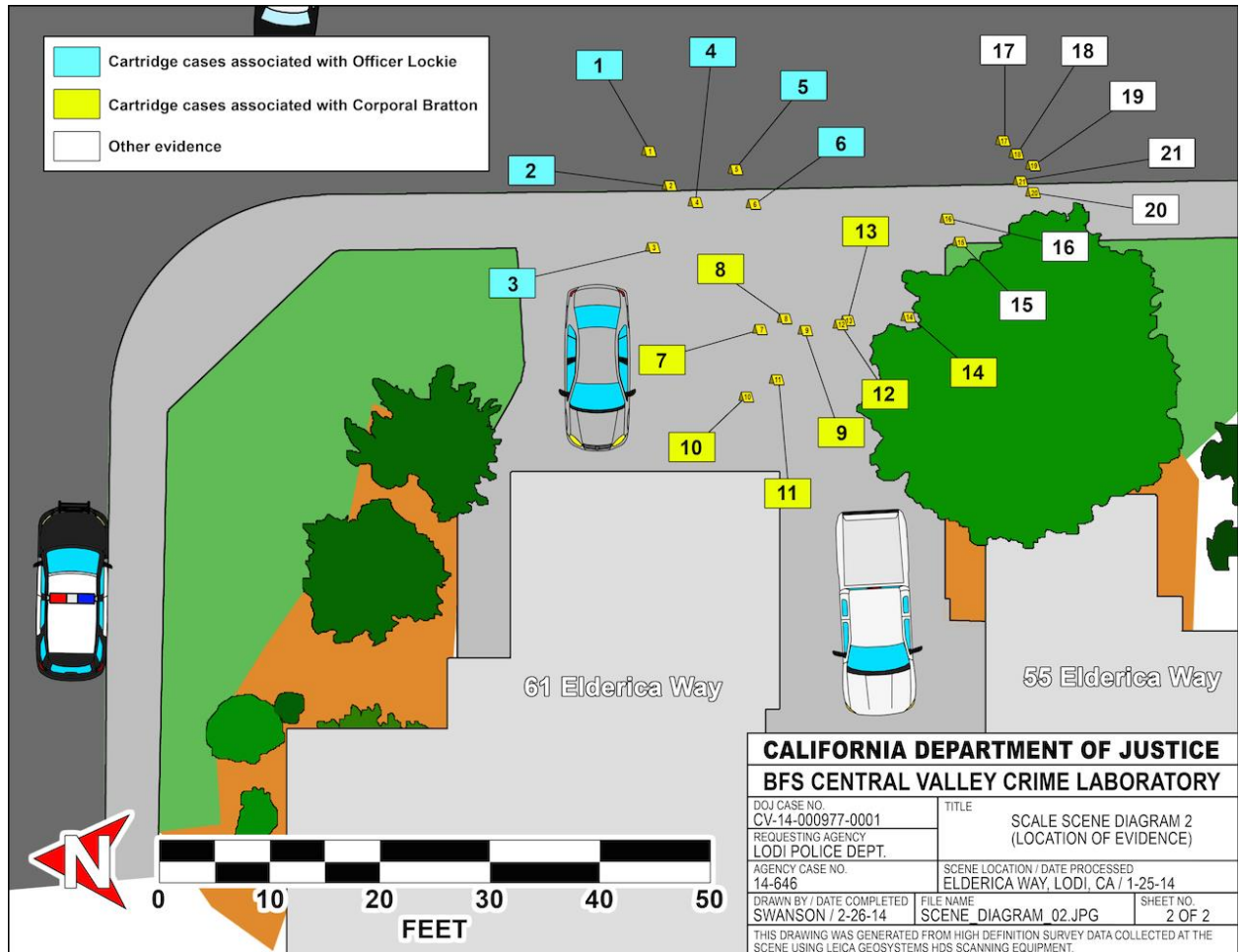


[DOJ scene photograph]

³ See, below, "Subsequent Investigation, Firearms Examination".

Shergill was most likely was struck by all fourteen gunshots.⁴

After Shergill was shot, Cpl. Bratton approached and handcuffed him. Ofc. Lockie radioed that shots had been fired and Cpl. Bratton requested Lodi Fire and Ambulance, as well as a supervisor, to the scene. It was 9:25:41 AM.



[DOJ scene diagram]

Cpl. Bratton then began to provide first aid to Shergill until emergency medical personal arrived and took over.

Shergill was transported by an ambulance to the hospital where he was pronounced dead at 10:09 AM.

On January 27th, an autopsy was performed by Dr. Arnold Josselson. Dr. Josselson certified that death occurred as a result of "Multiple gunshot wounds of chest and abdomen".⁵

⁴ See, below, "Subsequent Investigation, Firearms Examination".

⁵ See below, "Subsequent Investigation, Autopsy."

INVESTIGATIVE SUMMARY

WITNESS INTERVIEWS

The individual witness synopses below are to assist the reader in supplementing the above Factual Summary. There are numerous witnesses - over 75 civilian percipient and neighborhood witness, and several law enforcement personnel witnesses - to this event but not all are summarized below. Many witnesses recounted similar facts but from different perspectives. Minor differences that did not illuminate the overall understanding of the events have not been detailed in the summaries. Some witnesses are inconsistent with one another but, as in most cases, many people may witness the same event yet see or hear it differently. As an example, civilian witnesses interviewed recounted hearing anywhere from four to ten reports. The evidence shows that fourteen handgun shots were fired.

LAW ENFORCEMENT

Lodi Police Corporal Scott Bratton

LPD Corporal Scott Bratton is a 14 year veteran of the Lodi Police Department and, at the time of this incident, was in good standing with the department. Cpl. Bratton was on duty on this day wearing his department-issued uniform and armed with a .40 caliber Glock 22 pistol. His pistol was loaded with a fifteen round magazine clip with one additional round chambered in the firearm. He also carried two additional fifteen round magazines.⁶

Cpl. Bratton was at the Lodi Police Department when he heard a dispatch requesting officers to respond to 23 Elderica Way. He left the Department in his marked 2013 Ford Interceptor Sports Utility Vehicle (hereinafter referred to as "SUV"), where he read the details of the call on his Mobile Digital Computer (hereinafter referred to as "MDC"). He then drove to the Shergill residence at 23 Elderica Way. He arrived contemporaneously with LPD Officer Adam Lockie. As both walked to the front door, Ofc. Lockie alerted him to two stickers on the back of a Toyota pick-up truck parked in the residence driveway.⁷ The first sticker was an oval with the numbers, "223" and a small drawing of an assault weapon. Cpl. Bratton associated the numbers with the .223 caliber ammunition used in assault weapons. The second sticker was the words "Don't tread on me," and a coiled snake, commonly referred to as the Gadsden flag. This alerted Cpl. Bratton that there might be weapons at the residence. At this time, Cpl. Bratton was not aware of Shergill's mental health history, any prior call history to this residence or any other law enforcement contacts with Shergill.

Cpl. Bratton knocked on the door. Both officers took a defensive position based on the stickers they saw. Two women answered the door, a younger woman and an older woman.⁸ The older woman was frantic, pointing to her head while turning her finger in a circle which he interpreted that she thought Shergill had mental issues. She

⁶ See, below, "*Subsequent Investigation, Firearms Examination*".

⁷ The vehicle was registered to Sukhwinder Kaur.

⁸ Cpl. Bratton did not ask or receive their identification. It is most likely that the women were Kuldeep Shergill and Sukhwinder Kaur, respectively.

spoke limited English so the younger woman translated. The information given to Cpl. Bratton was that the subject, Shergill, had left the residence, that he was schizophrenic and currently not taking his medication, and that before leaving he became violent and attacked the older woman. At this point, a male resident appeared⁹ and told the officers that Shergill had walked off in the direction of Petersen Park and gave a description of what he was wearing: long pants, a dark green jacket, a black beanie knit cap. When asked if there were firearms at the residence, the male answered affirmatively, but assured they were secured. The male stated if Shergill came home before the officers located him, the male would take him to the Veterans Hospital. Cpl. Bratton responded if officers contacted Shergill, they would take him to the San Joaquin County Mental Health. With that, both officers returned to their respective vehicles and drove around the corner to Petersen Park.

As Cpl. Bratton approached the park, he saw an individual matching Shergill's description and so informed dispatch. He watched Shergill walk thru a "Cross Fit" class¹⁰. Cpl. Bratton parked his vehicle and approached Shergill. Shergill began to walk towards Cpl. Bratton, but when Cpl. Bratton called out to him, "Sir, I need to speak with you. Please stop," Shergill ignored him and began to walk back towards Elderica Way. Cpl. Bratton saw Ofc. Lockie move his vehicle into Shergill's path in an attempt to stop him but Shergill simply walked around the police vehicle.

Cpl. Bratton followed Shergill on foot and called out verbally to him several times. Ofc. Lockie drove down Elderica Way and stopped where the street makes a 90 degree turn south. Shergill continued to walk and ignore Cpl. Bratton's requests to stop until he finally said, "I'm not fucking talking to you." As Shergill arrived at the 90 degree turn, Cpl. Bratton could see that Shergill had pulled out a "tactical knife" from either his right pants or jacket pocket. By this time, Ofc. Lockie was outside his car. From approximately twenty feet behind, Cpl. Bratton could see the knife in Shergill's right hand. Cpl. Bratton ordered Shergill to drop the weapon, however, Shergill did not respond other than to open the knife so that the blade was now exposed. Fearing that Shergill might attempt to return home to attack Shergill's family, Cpl. Bratton used his portable radio to contact his dispatchers. He told them to call Shergill's family and tell them to lock their doors.

Shergill then turned south at the 90 degree turn. Ofc Lockie already had his gun drawn as Cpl. Bratton drew his. Still fifteen to twenty feet away, Shergill yelled, "Fuck you." Cpl. Bratton fanned across a lawn onto the driveway of the corner residence¹¹, as Ofc. Lockie stayed on the street equidistant from Shergill, creating a triangle.

Suddenly, Shergill turned with the knife still in his right hand and held it up while shouting, "I'm going to fucking kill you! ... Fucking kill me!"

Cpl. Bratton continued to order Shergill to drop the weapon and warn that he would shoot Shergill. With the knife raised, blade pointed downward, Shergill yelled, "Fuck you! I'm going to fuckin' kill you," and charged Cpl. Bratton. As Shergill quickly closed the fifteen to twenty foot gap, Cpl. Bratton discharged his weapon, fearing if he did not, either he or Ofc. Lockie would be stabbed. The initial shots were aimed at center mass, but Shergill's forward movement was not stopped. When Shergill was

⁹ It is most likely this man was Sarabjit Shergill.

¹⁰ This was a large "Fitness Boot Camp" class. See, below, a summary of a witness in this class.

¹¹ 61 Elderica Way

seven feet away, Cpl. Bratton aimed and fired one shot at Shergill's head. Shergill dropped to his knees and Cpl. Bratton stopped firing. Cpl. Bratton believed he discharged his pistol eight times. While Cpl. Bratton heard Ofc. Lockie's weapon, he did not know how many shots were fired.

Cpl. Bratton approached Shergill and handcuffed him. Ofc. Lockie radioed that shots had been fired and Cpl. Bratton requested Lodi Fire and Ambulance to the scene. Cpl. Bratton then began to provide first aid to Shergill until emergency medical personnel arrived and took over.

LODI POLICE DEPARTMENT OFFICER ADAM LOCKIE

Lodi Police Department Officer Adam Lockie is a 15 year veteran of the Lodi Police Department and, at the time of this incident, was in good standing with the department. Ofc. Lockie was on duty on this day and on patrol wearing his department-issued uniform and armed with a .40 caliber Glock 22 pistol. His pistol was loaded with a fifteen round magazine clip with one additional round chambered in the firearm. He also carried one additional fifteen round magazine.¹²

Ofc. Lockie was on active patrol in his 2013 Ford Interceptor Sports Utility Vehicle (hereinafter referred to "SUV"), when he heard the dispatch call and read his Mobile Digital Computer (hereinafter referred to "MDC") to get the details. Ofc. Lockie drove to 23 Elderica Way, arriving there contemporaneously with Cpl. Bratton.

As both walked to the front door, Ofc. Lockie noted two stickers on the back of a Toyota pick-up truck parked in the residence driveway. The first sticker was an oval with the numbers ".223" and a small drawing of an assault weapon. The second sticker was the words "Don't tread on me," and a coiled snake, commonly referred as to the Gadsden flag. Ofc. Lockie noted this and alerted Cpl. Bratton to the stickers. At this time, Ofc. Lockie was not aware of Shergill's history, any prior call history to this residence or any other law enforcement contacts with Shergill.

At the door of the residence, two women were present. The younger of the two told Cpl. Bratton that Shergill was off his medication and had pushed the older woman. She also said that Shergill had walked to the park and requested that the officers assist them in getting Shergill to a Veteran's Administration Hospital. This caused Ofc. Lockie to be concerned that Shergill might have military combat training and might be suffering from Post-Traumatic Stress Disorder.¹³ In addition, during their contact, the older woman pointed at her head while turning her hand in a circle, which he interpreted to mean that Shergill had mental issues.

Cpl. Bratton asked if there were any weapons in the house and a male resident appeared and told him that there were firearms and they had been secured. The residents gave the name and description of Shergill: a dark green jacket and a black beanie knit cap. Cpl. Bratton informed the residents that they would look for Shergill,

¹² See below, "*Subsequent Investigation, Firearms Examination*".

¹³ As late as October 18, 2013, Shergill had been diagnosed with chronic Bipolar disorder, not otherwise specified. Other diagnoses had been made, but he was never diagnosed with Post-Traumatic Stress Disorder (PTSD). See, below, "Background: Mental Health."

but if he came home, they should call the LPD. With that, both officers returned to their respective vehicles and drove around the corner to Petersen Park.

Cpl. Bratton pulled up to the park while Ofc. Lockie remained in the intersection of Elderica Way and Evergreen Drive. Ofc. Lockie saw Shergill walking through the park “deliberately”, as opposed to “strolling”. Cpl. Bratton got out of his vehicle and approached Shergill and attempted to contact him by saying something to the effect of, “Hey, stop. I need to talk to you.” Shergill kept walking and Ofc. Lockie maneuvered his SUV in an attempt to block Shergill. Shergill avoided the SUV and continued to walk towards and then down (east) Elderica Way.

Ofc. Lockie drove his SUV in the same direction intending to stop at the 90 degree southerly turn of Elderica Way. While driving there, he heard Cpl. Bratton broadcast that Shergill was armed. Ofc. Lockie looked at his side mirror and could see the knife in Shergill’s hand. He parked at the 90 degree turn, got out of his SUV and drew his gun. Shergill continued to walk at a deliberate pace as Ofc. Lockie heard Cpl. Bratton broadcast that dispatch should contact the residents at 23 Elderica Way to tell them to lock their doors.

As Shergill approached Ofc Lockie, Cpl. Bratton continued to order Shergill, “Stop. Stop. Drop the knife.” At this point, Ofc Lockie was calculating how they would stop Shergill from returning to the residence. As Shergill continued to approach him, Ofc. Lockie backed up about ten feet into the street and ordered Shergill to drop the knife. Shergill did not respond as ordered and turned the 90 degree corner, continuing southbound towards 23 Elderica Way. Cpl Bratton fanned onto the lawn of the corner house¹⁴ with Shergill twenty to twenty-five feet ahead of him. Ofc. Lockie moved two to three feet off the curb, remaining in the street so that he was twelve feet to Cpl. Bratton’s left. Cpl. Bratton continued to order Shergill, “Drop the knife. You need to drop the knife,” but Shergill’s only response was to curse at him. Shergill continued to yell words to the effect of, “Leave me alone, motherfuckers,” as he arrived at the next home.¹⁵

Once Shergill reached the border of the next home, he suddenly turned towards the officers. Still ignoring commands to drop the knife, Shergill raised the knife, blade turned down, yelling, “Go ahead. Do it mother fuckers,” and advanced on the officers with a “full head of steam”, but not running. Fearing that either he or Cpl. Bratton would be stabbed, he fired.

As Ofc. Lockie fired, Shergill appeared to be struck but continued to move forward until Shergill went to his knees. As soon as Shergill dropped, both officers ceased shooting. Shergill fell over onto his right side, causing the knife to fall from his hands. Ofc. Lockie was unsure who fired first. He believed he discharged his weapon four to five times.

After notifying dispatch that shots had been fired, Ofc Lockie moved towards Shergill and slid the knife away with his foot. He then assisted Cpl. Bratton handcuffing Shergill. Cpl. Bratton started to attend to Shergill’s wounds and Ofc. Lockie went to his car to get protective gloves. At this time, LPD Sergeant Douglas Chinn arrived on scene with medical personal shortly behind.

¹⁴ 61 Elderica Way.

¹⁵ 55 Elderica Way.

LODI POLICE DEPARTMENT SERGEANT DOUGLAS CHINN

LPD Sergeant Douglas Chinn was on duty and in the field monitoring the events unfold on Elderica Way. When Sgt. Chinn heard Cpl. Bratton broadcast that Shergill was armed with a knife, he started to drive to the scene. Sgt. Chinn continued to monitor the radio broadcasts from Cpl. Bratton and Ofc. Lockie. As he drove to the scene, he heard the broadcast that shots had been fired. He immediately drove to the scene with his lights and sirens activated.

When he arrived at the scene, he saw Cpl. Bratton giving aid to Shergill. Cpl. Bratton informed Sgt. Chinn that he did not believe that Shergill would survive. Already hearing that emergency medical personnel was on their way, Sgt. Chinn started to secure the scene by first placing police tape around the area. Once emergency medical personnel arrived and other officers began to secure the scene, Sgt. Chinn separately debriefed Cpl. Bratton and Ofc. Lockie.

Cpl Bratton gave this brief synopsis: After locating Shergill at the park, he observed Shergill had a knife in his hand, but the blade was not out. Shergill ignored Cpl. Bratton's orders to drop the knife and continued to walk eastbound on Elderica Way. Cpl. Bratton followed on foot, continuing to order Shergill to drop the knife. Shergill continued eastbound as Ofc. Lockie drove past and parked his car in front of Shergill. He saw Lockie draw his weapon. Cpl. Bratton also drew his weapon, but was not sure exactly when he did so.

Cpl Bratton flanked Shergill as Shergill was on the sidewalk/driveway of 61 Elderica Way. Ofc. Lockie was approximately fifteen to twenty feet behind Shergill and to the left of Bratton. Cpl. Bratton continued to order Shergill to drop the knife. Shergill, instead, stated words to the effect of, "Shoot me." Shergill, while holding the knife in a threatening manner, advanced on Cpl. Bratton. Cpl. Bratton then fired approximately six to eight times.

Sgt. Chinn then debriefed Ofc. Lockie. Ofc. Lockie gave the following synopsis: Ofc Lockie was following Cpl Bratton eastbound on Elderica Way as Cpl. Bratton was following Shergill. Ofc. Lockie drove eastbound to position his SUV in order to cut off Shergill. As he was doing this, he observed Shergill flip open his knife. Ofc. Lockie parked his SUV, got out and drew his firearm. Cpl Bratton continued to order Shergill to drop the knife all the way until Shergill stopped in front of 61 Elderica Way. There Shergill raised the kinife and ran at the officers. Both he and Cpl. Bratton fired at Shergill. Ofc. Lockie believed he discharged his weapon three times.

CIVILIAN WITNESSES

Investigators with the San Joaquin County District Attorney's Office (hereinafter referred to as, "DAI") in conjunction with LPD detectives conducted a neighborhood canvas. Each residence on Elderica Way to Douglas Fir Drive was contacted. If no person was home, an attempt to make later contact was made. Where residents directed investigators to potential witnesses on other streets, those persons were also contacted.

Other potential witnesses included members of an outdoor exercise class being held at Peterson Park on Evergreen Drive.

As of this writing, private investigators hired by private counsel representing Shergill family members have interviewed seventeen persons. Of those seventeen, twelve had already been interviewed by law enforcement investigators. The five persons not previously interviewed by law enforcement investigators have subsequently been interviewed. Moreover, a number of witnesses were deposed as part of a civil lawsuit against the officers and City of Lodi by Shergill's family¹⁶ between July 3 and September 29th. All deposed witnesses had been previously interviewed. Where those deposed witnesses provided additional or contrary information, that is noted. Not all witnesses interviewed are summarized below. Those who were not percipient witnesses to the events, or provided redundant information on tertiary issues are not included in this memorandum.

SUKHWINDER KAUR¹⁷

Sukwinder Kaur lives at 23 Elderica Way and identified herself as the mother of Shergill.

On this date, she noticed Shergill had left the residence that morning at 4:00 a.m. and did not return until 8:00 a.m. When he returned, he was agitated. Speaking in English, Shergill claimed that the U.S. Army was after him, trying to kill him. It was difficult to know everything he was saying since he was yelling and speaking in English. He continued to pace back and forth and yell for approximately an hour.

At around 9:00 a.m. she requested her son, Sarajbit Shergill, to call the police. She wanted police to be called so they would transport him to the Veterans Administration Hospital.

She denied that Shergill pushed her.

KULDEEP SHERGILL

Kuldeep Shergill (hereinafter referred to as "Kuldeep" to avoid confusion) also resides at 23 Elderica Way and identified herself as the wife of Sarajbit Shergill and the sister-in-law of Shergill.

On this date, at 9:00 a.m. Kuldeep was awaked by Shergill yelling at his mother, Ms. Kaur. Kuldeep could not make out what was being said. She called her husband, who was in the back yard, and asked him to intervene. She then heard her husband and Shergill yelling at each other. Soon, both her mother-in-law and husband asked her to call the police. Still upstairs, Kuldeep called 9-1-1 and requested assistance.¹⁸

Prior to police arriving, Shergill left the residence. When the police arrived, she came downstairs to answer the door. She informed them that Shergill had left and provided a description of him.

¹⁶ Kaur et al v. City of Lodi et al, 14-828.

¹⁷ Ms. Kaur spoke limited English. LPD Nick Rafiq attempted to translate for Ms. Kaur but he voiced concern that her dialect might prove problematic. For that reason, after her son, Sarajbit Shergill was interviewed separately, he was asked to assist in the translation of his mother's statement.

¹⁸ "I have my brother-in-law [inaudible] paranoid schizophrenic and he's going....going crazy.[Inaudible] He's attacking my mother-in-law." - Transcribed call at 9:06 AM.

Approximately five minutes after the police left her residence, she heard four to five gunshots she believed came from Petersen Park. It was not until her husband went to investigate that she learned Shergill had been shot.

SARABJIT SHERGILL

Sarabjit Shergill (hereinafter referred to as “Sarabjit” to avoid confusion) resides at 23 Elderica Way with his wife, Kuldeep Shergill. He identified himself as Shergill’s brother.

Sarabjit was in his backyard this morning when his wife called him on his cell phone. She told him that Shergill was yelling at their mother. Sarabjit came indoors to find his brother yelling randomly about Social Security, Iraq, doors being locked and his checkbook. Sarabjit attempted to calm down Shergill but he was unable to do so. As Shergill continued yelling at their mother, he pushed her. Ms. Kaur told Kuldeep to call the police as Sarabjit ushered her into her bedroom. As he did this, Shergill went upstairs to his own bedroom and returned downstairs and left the residence.

Sarabjit returned to the backyard until police arrived. He told the police that Shergill had left. He returned to the backyard. Five minutes later, he heard six to eight gunshots. He went out front to investigate when a neighbor told him his brother was shot.

Sarabjit reported that Shergill had bought a knife with a 3 1/2” blade at a Galt flea market about two to three months ago. Sarabjit allowed police to search Shergill’s room. There, investigators found a notebook. In it was a complaint dated October 18th, 2013, the day after he was released from a mental health hold. The note complained of “*Invasion of privacy, terrorist threats from. D.A., police unions and associations from various law enforcement and healthcare professional (so-called) and their employers.*”

Sarabjit compared Shergill’s anger to that of an October 2013 event¹⁹ and said it was much more focused today.

HEATHER H.

Heather H. (hereinafter referred to as “Heather”), does not reside in the immediate neighborhood but this morning was taking a 9:00 a.m. outdoor exercise class known as “Boot Camp.” She was participating in the class with approximately two dozen other people in Peterson Park.

During the class, around 9:30 AM, she saw a man fitting the description of Shergill walk through the middle of her class and over to a garbage can. She recognized Shergill from times past; this time, he appeared to be agitated.²⁰ Shergill spent a few minutes at the garbage can and began to walk eastbound towards Evergreen Drive. As he walked there, the first of two police vehicles arrived. The officer from the first vehicle got out and spoke to Shergill, “You need to stop.” The command was loud and clear enough for Heather to hear. Soon after this contact, a second police vehicle appeared.

¹⁹ See, below, “Background: Mental Health”.

²⁰ Civil Deposition 14:4-12.

Shergill continued to walk, paying no attention to the officers, passing them and heading down Eldercia Way. The first officer followed Shergill on foot while the second officer drove down Elderica Way and stopped at the 90 degree turn.

At the turn, the second officer got out of his vehicle. It appeared that there was something in one of the officers hands. She lost sight of the officers and Shergill as they turned the corner. She could hear the command, "Stop, get on the ground," as well as other repeated commands to stop.²¹ Shortly thereafter, she heard six to eight gunshots.

CASSANDRA L.

At the time of this incident, Cassandra L. (hereinafter referred to as "Cassandra") lived at 61 Elderica Way. Cassandra had been outside on her driveway by her car shortly before Shergill approached the 90 degree turn at Elderica Way. She returned to her upstairs bedroom to retrieve a personal item when she heard either, "Put down your weapon" or "Drop your weapon." This order was followed by the command to, "Turn around, turn around." She went to her bedroom window and opened the shades to look outside. Her window is one of two windows facing east with a view of the south-north direction of Elderica Way. Her bedroom window is the southernmost window with a view of her driveway as well as the street.

When she looked outside she saw Shergill walking south on Elderica Way on her side of the street, about to reach her driveway. She did not recognize who it was although she was familiar with Shergill. After she saw Shergill, she saw two Lodi police officers following him. They both had their guns drawn²². Shergill continued on Elderica Way, walking southbound with the police side by side and eight feet behind Shergill. Shergill continued to walk despite commands by police to stop and drop his weapon.²³ When Shergill was in front of her driveway, he suddenly turned around. Shergill had his arms down. She said she could not see anything in his hands. She also said that she was unable to see his right hand.²⁴ When he turned to face the police, the police discharged their firearms approximately ten times. Cassandra had heard news reports that police fired fourteen times and said that while she did know the exact number of shots, it was more than ten.

She never heard Shergill say anything during the event. She also did not see a knife in Shergill's possession although she could not see his hands. Nevertheless, "right after everything went down," she saw the knife lying on the ground.

After the shooting, she left her bedroom to gather other family members, including her mother, Gayleen S. When she returned to her window, she observed the police giving Shergill "CPR."

²¹ Civil Deposition 22:12-18.

²² Civil Deposition 25:12-19.

²³ Civil Deposition 15:19 – 16:1; 25:1-21.

²⁴ Civil Deposition 17:17-20.

TIMOTHY A.

At the time of this incident, Timothy A. (hereinafter referred to as "Timothy") lived at 61 Elderica Way. He is the 24 year-old son of Cassadra L.

Timothy was in his second story bedroom cleaning it when he heard voices yelling, "Hey come here. Let me talk to you," "Stop, stop," and, "We want to talk to you." He then heard someone scream, "Oh, you want to talk to me?" and "Motherfucker!" Afterwards he heard, "Put down the weapon," and "Drop the weapon"²⁵, which prompted him to go to his bedroom window and "flip" open the blinds to look outside. His window is one of two windows facing east with a view of the south-north direction of Elderica Way. His bedroom window is the northernmost window and is inset with an obstructed view (due to the roof line) of the driveway.

When he looked outside, he saw two police officers with their weapons drawn and presumably, Shergill. Timothy did not know Shergill and only knew of him from information provided by his mother. He estimated that the police were fifteen to twenty feet behind Shergill.²⁶

At some point, Shergill turned²⁷ to face the police and started taking his hands out of his pockets, but did not "lunge" or "move in a violent way." The police then both discharged a total of six to seven rounds at Shergill. Shergill fell and the police began giving him "CPR."²⁸ Timothy estimated that from the time he looked out his window to the shooting, fifteen to twenty seconds had passed. Timothy did not see a knife or anything in Shergill's hands, and while he believed that Shergill's hands were in his pocket – either a jacket or jeans pocket--²⁹ he never actually saw Shergill's hands.³⁰ He did, however, see the knife lying on the ground.³¹ At some point, he left his room and went into his mother's room in order to get a better view.³²

Shortly afterwards, as police tape was being put up, Timothy went outside where he saw the shell casings (he counted fourteen³³) and the knife.

²⁵ Civil Deposition 60:1-9.

²⁶ In his unrecorded statement to private investigators, Timothy stated the police and Shergill were 12 to fifteen feet apart.

²⁷ In his unrecorded statement to private investigators, Timothy stated Shergill made only a ¼ turn to his left.

²⁸ In his unrecorded statement to private investigators, Timothy stated police first handcuffed Shergill and then removed them to preform "CPR." At his deposition, Timothy testified that after Shergill was placed in handcuffs, police went through Shergill's pockets. Civil Deposition 18: 19-20.

²⁹ In his unrecorded statement to private investigators, Timothy stated that because the roofline obstructed his view, he could not see Shergill's hands as he turned towards the officers.

³⁰ Civil Deposition 64:13-16.

³¹ Civil Deposition 20:4-5.

³² Civil Deposition 73: 8-10.

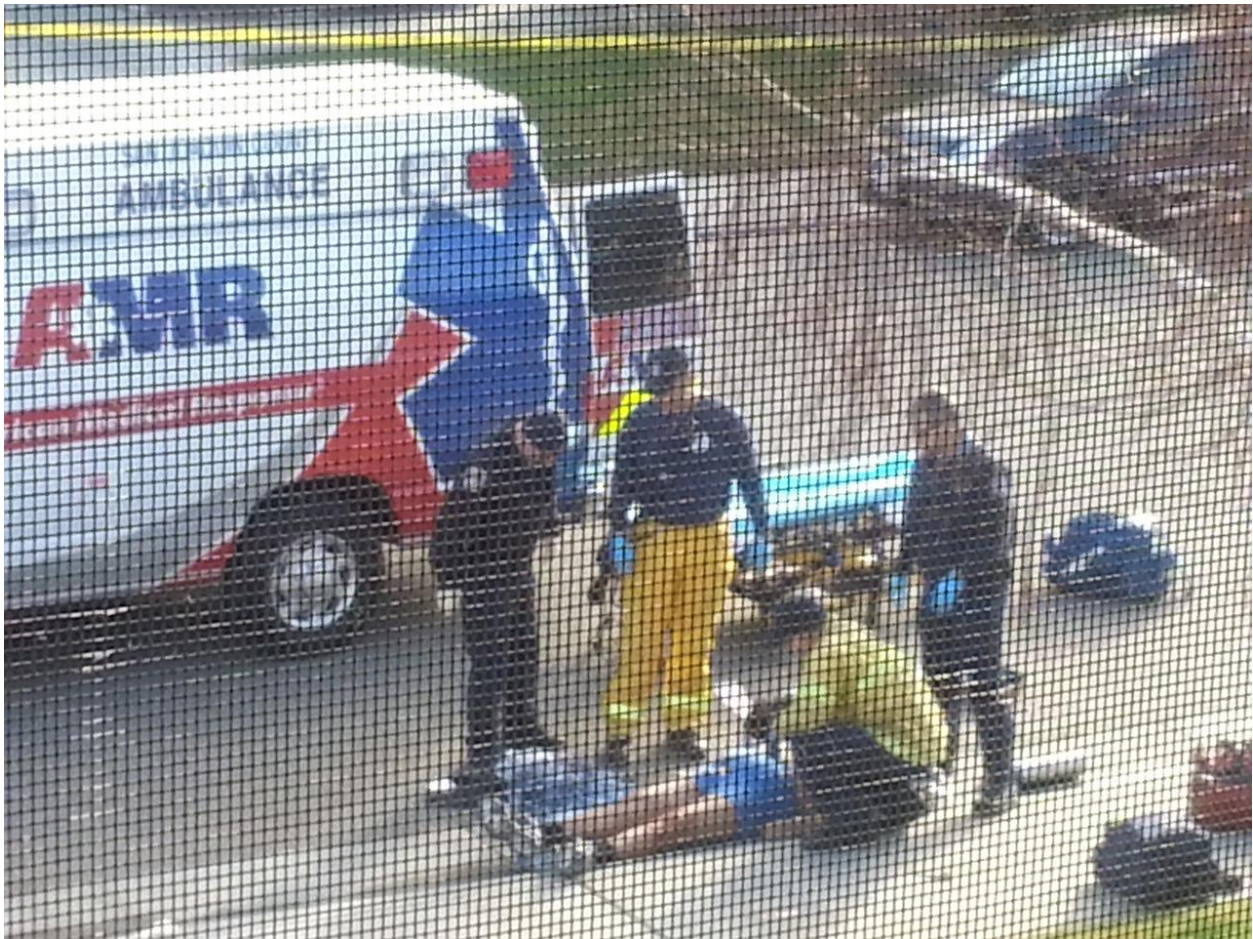
³³ At his deposition, Timothy testified he counted eighteen to nineteen shell casings and then later testified he counted seventeen to eighteen shell casings. Civil Deposition 9:5-7; 23:15-17.

GAYLEEN S.

At the time of this incident, Gayleen S. (hereinafter referred to as “Gayleen”) lived at 61 Elderica Way. She is the mother of Cassandra L.

Gayleen was in her upstairs bedroom in the southwest corner of the house listening to music when she heard eight to nine “popping” sounds. As the “popping” took place, Cassandra, her daughter, was running downstairs, presumably to attend to her younger son, T.. Gayleen went to Cassandra’s bedroom to look outside because her grandson’s room has an obstructed view of the front area. Timothy soon joined her in Cassandra’s room for, what she believed, the same reason, he had an obstructed view from his bedroom.

When she looked outside, she saw Shergill, whom she recognized, laying on the ground. She heard the officers calling “9-1-1,” and saw them performing “CPR” on Shergill. She later saw emergency medical personnel and took three photographs of the scene from Cassandra L.’s bedroom window. (See, below photograph.)



[Gayleen S Photograph from Bedroom]

When asked if Gayleen had received information from other sources, she stated that her daughter will, “probably say things ten different ways even though she saw something particularly.”

ROBERT M.

At the time of this incident, Robert M. (hereinafter referred to as “Robert”) lived at 24 Elderica Way. Robert, lives across from the Shergill’s and was familiar with them and very friendly with them, especially with Sukwinder Kaur.

That morning, Robert was working in his open garage when he saw Lodi police officers arrive at the Shergill residence. He continued to work as they left the residence a short time later. Robert observed the officers to be in a relaxed state and decided that the visit was unimportant so he continued about his business. After a period of time, he heard yelling down the street and walked out of his garage and onto his driveway. Looking northward, he saw one officer on the front lawn of the residence at the 90 degree turn and one officer on the street. Both had their firearms drawn and were yelling at Shergill, whom he recognized. Shergill was yelling as well.³⁴ He could not discern what exactly was being said.

Shergill turned towards the officers. The distance between the officers and Shergill appeared to be the width of the residence’s driveway. Shergill began yelling at the officers and raised his right arm extending it towards the officers. He could not see, what, if anything, might have been in Shergill’s hand.

When Shergill raised his right hand, Robert heard, “Get back or I’ll shoot.”³⁵ Shergill then took three to four steps quickly towards the officers³⁶ but not a “sprint or a run,” nor at “full bore.”

The officers discharged their firearms four to five times and stopped once Shergill fell to the ground. Robert then heard the officers broadcast on their radio, “Shots fired,” and begin to render aid to Shergill. He saw Sarajbit come out of his residence and Robert went over to tell him Shergill had been shot.

ALEXANDRA W.

At the time of this incident, Alexandra W. (hereinafter referred to as “Alexandra”) lived at 62 Elderica Way, with her mother Jennifer W.

Alexandra was asleep in her bedroom when she was awakened by someone shouting either, “Don’t shoot,” or “Don’t shoot me.”³⁷ She then heard eight gunshots.

³⁴ Civil Deposition 15: 11-12.

³⁵ At the Civil Deposition he testified he heard, “Stop or we’ll shoot.” It was not clarified exactly when he heard this but one may assume these words may have been uttered at the same time he heard, “Get back or I’ll shoot”. Civil Deposition 18: 1-2.

³⁶ During the interview, Robert demonstrated the movement he witnessed Shergill take towards the officers, it was “three or four steps with [his] arm raised in kind of just a fast moving walk.”

³⁷ At the Civil Deposition, she testified she was awakened by voices. When she fully awoke, she then heard, “Stop,” and then “Don’t shoot”. Civil Deposition 9: 15-19. Later in the deposition, she testified that the first thing she heard was, “Don’t shoot.” Civil Deposition 27: 13-18. Still later, she explained she didn’t hear any words like “freeze,” or “halt,” but testified that she heard “stop” “[b]ecause I heard what other people said about it and they said they heard the police yelling, “Stop.”” Civil Deposition 30: 3-20;

She immediately went to her window and looked outside for two minutes and observed a person lying on the ground groaning and two officers kneeling by his side. She left for a few minutes to get her mother³⁸. When she returned, she saw the person who had been lying on the ground being put into the ambulance.³⁹

JENNIFER W.

At the time of this incident, Jennifer W. (hereinafter referred to as “Jennifer”) lived at 62 Elderica Way.

Jennifer was in her upstairs bedroom when she heard male voices, but could not make out what was being said. Shortly thereafter, she heard what she believed were six firecrackers. She went to a bedroom with a view of the front where she watched for “about twenty seconds.” She saw a police SUV at the 90 degree turn of Elderica Way and two police officers bent over attempting to move a person. She heard the person moan. As she watched, her daughter came in the bedroom and told her someone had been shot. She saw a man approach the officers and tell them that the person was his brother. The officers responded that an ambulance was coming. With that, the man returned south down Elderica Way.

Jennifer then walked downstairs to get a cup of coffee. After that, she went outside and walked to her neighbor’s home to the south. There she watched as medical emergency personnel were rendering aid to the person. It still appeared to her that the officers were trying to move the person. She watched as police tape was put up and then she went back inside her house to get another cup of coffee. By the time she returned outside, the person was being placed into an ambulance.

GRANT GIBSON

Grant Gibson (herein referred to as “Fireman Gibson”) was employed by the Lodi Fire Department at the time of the incident.

He was dispatched to Elderica Way concerning a person who had been shot. He arrived on scene and observed police personnel. He and his partner attended to an individual (Shergill) laying on the ground. Fireman Gibson noted Shergill was handcuffed and asked police for the key in order to remove the handcuffs. Fireman Gibson observed exit gunshot wounds in Shergill’s back while removing the handcuffs. Once the handcuffs were removed, Fireman Gibson cut away Shergill’s clothing in order to assess his injuries and render aid by giving him CPR. CPR was performed because Shergill was no longer breathing. It appeared to Fireman Gibson that Shergill was deceased.⁴⁰ Additionally, he noted a strong fruity or alcohol odor. A smell he recognized as alcohol or a smell associated with diabetics. As he tended to Shergill, Fireman

34: 21-25.

³⁸ Civil Deposition 48: 4-9.

³⁹ At the Civil Deposition, she testified that after she contacted her mother and approximately fifteen minutes after the shooting, an ambulance arrived and obstructed her view. She then went outside and observed medical personnel render aid to Shergill. She stayed until he was put into the ambulance. Civil Deposition 38:15 – 39:8.

⁴⁰ Civil Deposition 18:7-9

Gibson overheard an officer tell another officer, “I told him several times, I kept telling him to stop and he kept coming at me.” ... “I told him if he kept coming at me you were going to shoot him.”⁴¹ Because the speaking officer was turned away, he would not be able to identify the speaker.

Shortly, American Medial Response (AMR) personnel arrived in their ambulance. Once there, AMR took over caring for Shergill.

After the ambulance left with Shergill, Fireman Gibson noticed a knife lying on the sidewalk at the edge of the lawn.

SUBSEQUENT INVESTIGATION **Firearm/Weapon examination**

The black folding knife in the possession of Shergill was seized and placed into evidence where it was later examined by the California Department of Justice (hereinafter referred to as, “DOJ”). An analysis of an apparent bloodstain from the knife handle and a trace swab from the knife blade determined that Shergill was the contributor to those items. The thumb grooves and lock of the knife handle were also swabbed, but yielded insufficient evidence for comparison.



[DOJ scene photograph of knife location]

⁴¹ At the deposition, Fireman Gibson did not have a specific recollection of this last statement. Civil Deposition 21: 2—23.



[DOJ scene photograph of knife]

DOJ criminalists arrived at the location of the shooting shortly after the event. There, they documented the scene independently from LPD crime scene technicians using traditional equipment as well as a laser scanner.⁴²

Aside from locating and documenting the resting location of the shell casings, knife and other items, DOJ located a bullet hole in a residence down the street. An analysis of the trajectory suggested the bullet ricocheted off the ground before impacting the wall.

Later that afternoon, in the presence of DAI and LPD investigators, DOJ criminalists took custody of Cpl. Bratton's and Ofc. Lockie's service pistols.

Cpl. Bratton was armed with a .40 caliber Glock 22 pistol. His pistol was loaded with a fifteen round magazine clip with one additional round chambered in the firearm. He also carried two additional fifteen round magazines.

Cpl. Bratton's service pistol had one cartridge inside the chamber, and seven cartridges in the magazine. Assuming the service pistol was fully loaded⁴³, then eight rounds were missing from the pistol. Cpl. Bratton's extra magazines were fully loaded.

Ofc. Lockie was armed with a .40 caliber Glock 22 pistol. His pistol was loaded with a fifteen round magazine clip with one additional round chambered in the firearm. He also carried one additional fifteen round magazine.

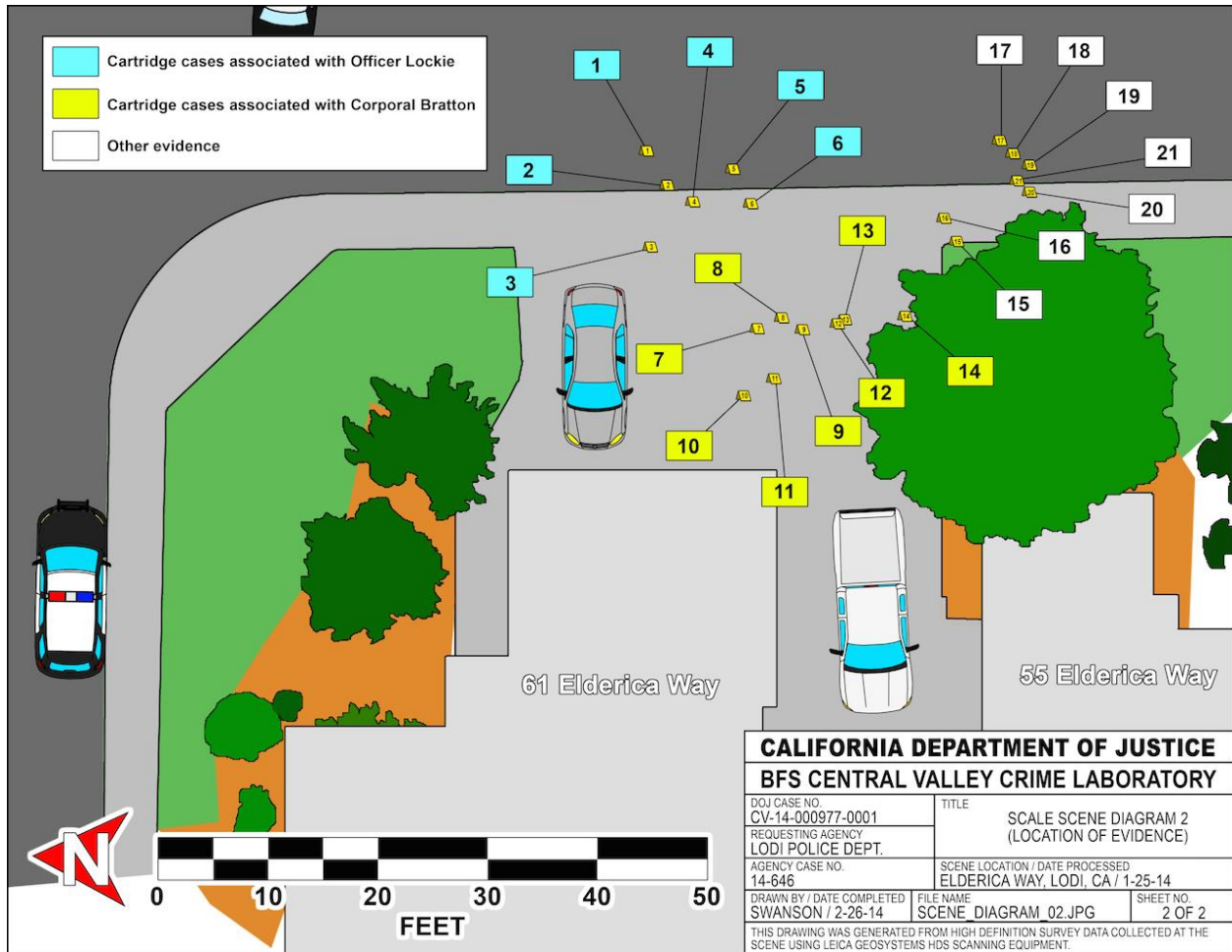
Ofc. Lockie's service pistol had one cartridge inside the chamber, and nine cartridges in the magazine. Assuming the service pistol was fully loaded, then six rounds were missing from the pistol. Cpl. Lockie's extra magazines were fully loaded.

DOJ also documented the area where Shergill was shot. Fourteen shell casings were documented and later examined. The shell casings were compared to the test

⁴² The DOJ utilizes a scanning machine that takes specialized photographs that assists in reconstruction analysis. The scans are preserved as photographs and also are used to create diagrams.

⁴³ A standard procedure is to chamber one round and then add a full magazine. In this case, that would place sixteen rounds in the firearm.

fires from the officers' service pistols by DOJ. All shell casings correspond to the two officers as noted in the diagram below. Shergill's knife is at Marker 15.



[DOJ scene diagram]

All bullets and fragments recovered at the autopsy were sent to DOJ. After an examination by DOJ, it was determined that nine bullets/fragments were not suitable for comparison. Nine other bullets/fragments were suitable for comparison. The service pistol test fire bullets, however, showed no reproducibility of microscopic detail and they could not be associated to the firearms from which they were fired.⁴⁴ In other words, it can not be determined which of the officer's bullets struck Shergill in any particular location.

Autopsy

Dr. Arnold Josselson of Delta Pathology performed the autopsy of Parminder Shergill on January 27th. Dr. Josselson determined that Shergill was a 69 inch, 245 pound male consistent with his given age of forty-three years. Shergill had a blood

⁴⁴ This is typical with handguns manufactured by Glock.

alcohol content of 0.06%. Shergill had no trauma other than those associated with the gunshot wounds listed below.

His examination revealed that Shergill suffered the following gunshot wounds⁴⁵: 1) a penetrating gunshot wound of the abdomen with no exit wound; 2) a perforating gunshot wound of the right chest with an exit wound out the right lower back; 3) a penetrating gunshot wound to the abdominal wall with no exit wound; 4) a perforating gunshot wound of the right forearm with an exit wound out the mid right forearm; 5) a penetrating gunshot wound of the right forearm with no exit wound; 6) a superficial perforating gunshot wound of the right thigh with an exit wound through the soft tissue of the posteromedial right thigh; 7) a penetrating gunshot wound of the left leg with no exit wound; 8) a penetrating gunshot wound of the lower jaw with the bullet ending up in the right shoulder; 9) a penetrating gunshot wound to the upper right back passing through the shoulder and coming to rest in the posterolateral right upper arm with no exit; 10) a penetrating superficial gunshot wound to the groin with no exit; 11) a penetrating gunshot wound to the lower left chest with no exit; 12) a perforating superficial gunshot wound of the right side of the abdomen with an exit out the right flank; 13) a superficial perforating gunshot wound of the chest wall passing through the soft tissue and exiting the anterior upper right chest wall; and, 14) a penetrating gunshot wound to the abdomen with no exit.

Dr. Josselson opined death would have occurred within minutes. The lack of soot or stippling on the skin was consistent with the gunshots being fired from a distant or indeterminate range.

Dr. Josselson certified that death occurred as a result of “ Multiple gunshot wounds of chest and abdomen”. The recovered bullets and fragments were removed from Shergill, placed into evidence and later analyzed.⁴⁶

Background

Paraminder Shergill was a forty-three year old male (5/17/70) born in India.⁴⁷ He and his family came to the United States when he was five years of age, ultimately residing in Lodi. After graduating high school, Shergill entered the U.S. military where he was an engineer. He did not participate in active combat and was rarely where fighting took place. He was honorably discharged in 1992 and remained in the reserves until 1996. Shergill married in 1994 and eventually got a job as a security guard; he was licensed in 1999. In 2003, he was granted a permit to carry a firearm.⁴⁸

His marriage suffered from his reported mental issues and his wife began to fear for her life. In 1998, his wife separated from him and their divorce became final in 2001. His wife complained that after the separation, Shergill would seek her out and appear at her residence and work. This came to a head in 2006.

⁴⁵ The order of the wounds here or in the autopsy report does not reflect the order in which Shergill was shot or struck. This normally is not possible to do and it was not done in this case.

⁴⁶ See, above, “Subsequent Investigation, Firearms Examination”.

⁴⁷ Shergill's personal history was culled from medical reports, and family statements.

⁴⁸ The permit was subsequently revoked.

Background: Mental Health⁴⁹

On November 8th, 2006, Shergill was involved in a disturbance at the emergency room of the San Joaquin County General Hospital. The disturbance stemmed from his attempt to contact his now ex-wife who worked at the hospital (but was not on duty this day). Shergill, who was intoxicated, was confronted by security and became belligerent and threatening. Responding San Joaquin County Sheriff deputies located a loaded 9 mm Glock on him. Five days later, when his ex-wife returned to work, she discovered a work voice mail left on November 8th from Shergill stating, among other things, "You will meet my 9mm friend." She had previously received threats by Shergill that he would kill her if she left him⁵⁰ and so she became fearful.

Shergill was arrested the night of the November 8th and a case was generated. He was formally charged with Criminal Threats (Penal Code section 422).⁵¹ Shortly after Shergill was arraigned in court, his attorney declared under section 1368 of the Penal Code, that Shergill was not incompetent to stand trial. On December 7th, 2006, Shergill was found by a judge not competent to stand trial, all court proceedings were suspended and Shergill was sent to a mental health facility.

Ultimately, the case was dismissed "in the interests of justice" by a Superior Court judge on December 11, 2007 based, presumably, in part by the opinion of San Joaquin County Behavior Health Services that Shergill was unlikely to be competent to stand trial even after the year of treatment he had just completed

On August 11th, 2008, Shergill was seen by a county mental health worker in order to evaluate him under section 5150 of the Welfare and Institutions Code (as a danger to self or others). During that time, Shergill was agitated and swung his fist at his mother.⁵² Shergill was taken into custody and taken to San Joaquin County Mental Health.⁵³ From there he was transferred to the Palo Alto Veterans Administration hospital for treatment. Once there, Shergill's mother reported to the VA that Shergill was not welcome back home due to prior threats and that "family members have said that they fear for their lives."

On October 17th, 2008, Shergill was discharged and placed in a board and care facility in San Joaquin County.

On October 3rd, 2013, Kuldeep called LPD requesting assistance with Shergill. Kuldeep reported that Shergill had been agitated since 5:00 AM and was yelling and throwing things in the home. Shergill reportedly began yelling at her and during that

⁴⁹ FN Shergill had a minimal criminal background which is relevant insofar as it illuminates his mental state, as well as his family's state of mind, at the time of the shooting. In addition, there are multiple mental health contacts but only those that resulted in significant treatment are outlined here.

⁵⁰ This was corroborated by an independent female witness who had briefly dated Shergill at the time the divorce became final. She also feared for her life and complained after she ended the relationship, Shergill continued to stalk her. Shergill's mother also confirmed the threats against his wife.

⁵¹ San Joaquin County Sheriff case number 06-32592 and 06-33006; San Joaquin County District Attorney case file number 06-0544754; San Joaquin County Superior Court case number TM109697A & TM109715A.

⁵² LPD case number 08-007343.

⁵³ The health worker admitted Shergill for the following reasons: "Client was agitated, pacing, angry, threatening his mother with his fist, rambling about door locks and going out for walks. Client presents as irritable, making threatening statements, with aggressive posturing toward CCRT staff, he was delusional, became elevated throwing and breaking items in the garage."

time, he pushed her to the ground. LPD officers contacted Shergill and forcibly took him into custody.⁵⁴ After he was handcuffed, LPD took him to the Lodi Memorial Hospital for a mental health evaluation. Lodi Memorial transferred Shergill to San Joaquin County Behavioral Health, from where he was later transferred to the Heritage Oaks in Sacramento County until October 18th, 2013. Shergill was then returned to his residence.

From the incident in 2006 to the day of his death, numerous mental health care professionals had seen Shergill with follow-ups in person or by phone. His treating physicians prescribed various medications to help stabilize and manage his mental health issues.

During his numerous contacts with mental health professionals, he had been diagnosed, to one degree or another, with Schizoaffective disorder (bipolar type) with sometimes paranoia and earlier on, methamphetamine abuse. While his military service may have contributed to his mental health issues, he was never diagnosed with Post-Traumatic Stress Disorder (PTSD).

It is with this background that on January 25, 2014 Shergill's family called LPD.

OFFICERS' BACKGROUND

At the time of the incident, all officers were in good standing with Lodi Police Department.

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 justifiable. (*In re Christian S.* (1994) 7 Cal.4th 768, 783).

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 who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a 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

⁵⁴ These officers were not involved in the January 25th, 2014 incident. LPD case number 13-007054.

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 any 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 196⁵⁵ (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333).

Section 196 states:

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 have 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 that 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 "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. Connor* (1989) 490 US 386, 396-397, see also, *Jeffers v. Gomez* (9th Cir. 2001) 267 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 resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an 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." 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.)

⁵⁵ See also, CalCrim 507.

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 v. County of Los Angeles, supra* 47 Cal.App.4th at 343, *quoting Smith v. Freeland* (6th Cir.1992) 954 F.2d 343, 347)). Numerous cases have established that peace officers may use deadly force when confronted with an individual “whose actions indicate an intent to attack.” (*Renyolds v County of San Diego* (S.D. Cal 1994) 858 F.Supp. 1064, 1072.)

Application of Law

In analyzing the reasonableness of the decision by LPD Cpl. Bratton and Ofc. Lockie, individually and jointly, to use deadly force, the totality of the circumstances, including the information that the individual officers possessed at the time of their 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.)

1. Officers had information that Shergill had assaulted his mother;
2. Officers had information that Shergill might be subject to detention under 5150 of the Welfare and Institutions Code. This is not because they had information of prior contacts but because of the information provided to them by the family and the request to take Shergill to a mental health facility.
3. Officers were, therefore, acting lawfully in their attempt to contact Shergill voluntarily. However, given the facts before them, officers had a reasonable and articulable reason to detain Shergill for investigative purposes.
4. When Shergill displayed his knife, he posed an immediate threat to the officers. Both officers exercised proper discretion in drawing their duty pistols.
5. It was clear to Cpl. Bratton, that Shergill's path was taking him back to 23 Elderica Way where the officer had just received a complaint of an assault by Shergill. This is borne out by Cpl. Bratton's dispatch to have Shergill's family members barricade their door. Cpl. Bratton's initial actions at this juncture were to stop Shergill from returning to the house where he might injure a family member with his knife.
6. Once Shergill turned towards the officers, facing Cpl. Bratton, Shergill's action elevated his threat level. Taking into consideration the statements of the three eyewitnesses who saw this part of the confrontation, it is evident Shergill advanced towards the officers with a raised knife. Given Shergill's height and distance from the officers, it is reasonable to believe that Shergill would have covered the distance in a matter of seconds.
7. LPD Cpl. Bratton and Ofc. Lockie, individually and jointly, were reasonable in their belief that Shergill posed a threat of death or great bodily injury to Cpl. Bratton and Ofc. Lockie. Their use of deadly force to resist such an attack was reasonable and therefore justified.

CONCLUSION

LPD Cpl. Bratton and Ofc. Lockie, individually and jointly, were reasonable in their belief that deadly force was necessary to prevent serious injury or death to themselves or others. Based on the totality of the circumstances, use of deadly force was reasonable under both sections 196 and 197.