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MEMORANDUM

TO: ERIC JONES, CHIEF
STOCKTON POLICE DEPARTMENT

STEVE MOORE, SHERIFF
SAN JOAQUIN COUNTY SHERIFF'S DEPARTMENT

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

DATE: JUNE 3, 2016

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF
CARL LAO, (SPD DR #15-8247).

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 Carl Lao on March 4, 2015. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, the San Joaquin County Sheriff's Department, and the Department of Justice.

FACTUAL SUMMARY

On March 4, 2015, at approximately 1:47 p.m., Stockton Police Department Officers were dispatched to South San Joaquin Street, and East Church Street, Stockton, California, on a report that a male subject was firing a gun in the air and down the street. Stockton Police Officers Sean Konoske and Vincent Perez responded within minutes and were first on scene. Both Officers were in standard issued Stockton Police Department uniforms and both were driving marked Stockton Police Department vehicles. Officer Perez arrived first. When Officer Konoske arrived, Officer Perez informed him that shots had been fired in his direction. Deputy Sean Vargas, from the San Joaquin County Sheriff's Department was monitoring radio traffic, and because of the proximity of the call and information the suspect was firing his weapon down the street toward cars and buildings, responded to the scene.

Officer Konoske had grabbed his rifle, and when Deputy Vargas arrived, the three of them began working up the street toward the suspect while using parked vehicles as shields. When Officers Perez and Konoske first arrived on scene, both of them were able to see the suspect standing behind a chain link fence in an apartment complex, holding a chrome semi-automatic pistol. This information was given to Deputy Vargas as soon as he arrived.

The three Officers were able to work their way up the street until they were approximately 65 yards from the suspect. It was at this time, Sergeant Mark Couvillion of the Stockton Police Department arrived. Sergeant Couvillion was driving a marked Stockton Police Department vehicle and wearing a standard issued Stockton Police Department uniform. As Sergeant Couvillion was driving down South San Joaquin Street, from Hazelton, he came up to the apartment complex, and was about to step out of his vehicle, when the suspect began walking in the direction of Sergeant Couvillion, raised his weapon, and began firing rounds toward him. Sergeant Couvillion ducked under the dash and began yelling over the radio to Officer Konoske to take the shot because he was being fired upon.

Officers Perez, Konoske, and Deputy Vargas did not hear the command from Sergeant Couvillion to take the shot but all saw the suspect clearly raise his weapon toward the Sergeant, and began hearing shots fired and began seeing smoke coming from the suspect's gun. Officer Konoske began firing his rifle, and Officer Perez and Deputy Vargas began firing their duty weapons because Sergeant Couvillion was taking fire. The suspect appeared to be hit and went to the ground.

The arrest team quickly moved in, taking control of the gun, and first aid was begun immediately. AMR which was standing by, moved in and took over treatment and transportation of suspect to the San Joaquin County Hospital. The suspect was identified as Carl Lao (d.o.b. 1/27/87), by family members within the apartment complex.

Witness Jermaine Gover Sr., was interviewed later that day. Mr. Gover stated that he was a passenger in a car when they drove by Lao who was waiving his arms as if to stop them. The driver stopped at the intersection just past where Lao was standing. This is when Mr. Gover saw Lao point the gun in their direction and heard gun shots. Mr. Gover heard two bullet strikes on the vehicle. An inspection of the car showed dents on the body but no penetrating bullet holes.

Witness Robert Parker was interviewed this same day. Mr. Parker had heard Lao firing off his gun, and then observed the Stockton Police Department arrive. Mr. Parker heard Lao yelling "Fuck you God, I'm going to kill all you sons of bitches."

Witness Michael Shelton was interviewed. Mr. Shelton observed Lao fire several rounds in the air. He then saw Lao fire the gun down Church Street four to five times. Mr. Shelton was present when the Officers arrived. Mr. Shelton heard the Officers give Lao several commands to put the gun down. Mr. Shelton then saw Lao fire several times at an Officer and it was then the Officers returned fire until Lao went down.

Several agencies were responsible for investigating the scene. The Department of Justice reported the finding of 25 empty casings fired from Lao's .25 caliber Colt pistol. (Photograph of weapon attached)

PATHOLOGIST'S REPORT

Lao underwent numerous surgeries and had been placed on life support until he passed away on March 27, 2015. On March 27, 2015, San Joaquin County Pathologist Arnold R. Josselson, M.D., conducted an autopsy upon Lao and concluded that Lao died from a gunshot wound to the abdomen 19.5 inches below the head, just to the right of midline. Lao was struck a total of four times, but the other three rounds were to the extremities or superficial. Because of the emergency treatment and length of hospitalization, the Department of Justice did not conduct a toxicology analysis of Lao's blood. Family members and witnesses gave statements that Lao had been drinking beer and using methamphetamine all day before he began firing the weapon.

CRIMINAL HISTORY

Lao had no criminal history and only one prior contact with law enforcement regarding an uncharged battery from 2013 (SPD DR #13-10105).

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* (6th 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 Perez, Konoske, and Deputy Vargas responded to shots being fired at 1:47 p.m., at an intersection near downtown Stockton. Lao refused to comply with the verbal commands to put his gun down as witnessed by numerous citizens who were outside and near the location that day. Law enforcement had already been fired upon but were still attempting to move closer to Lao in order to get Lao to drop the weapon. It was at this time Sergeant Couvillion pulled up and stopped his vehicle. At this time, Lao began firing his weapon at the Sergeant. Officers Perez, Konoske, and Deputy Vargas were in fear that Sergeant Couvillion would be injured or killed. Because of this fear, the three Officers fired their weapons to stop the immediate threat. Their actions were justified.

It is the opinion of the District Attorney that Stockton Police Department Officers Sean Konoske and Vincent Perez, and San Joaquin County Sheriff's Deputy Sean Vargas, were legally justified in their use of lethal force against Carl Lao, and are not criminally culpable for his death.

