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MEMORANDUM

TO: TOD PATTERSON, CHIEF
LODI POLICE DEPARTMENT

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

DATE: AUGUST 7, 2017

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF
AUSTIN REID, (LPD DR # 15-6320).

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 Austin Reid on September 10, 2015. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Lodi Police Department, and the Department of Justice.

FACTUAL SUMMARY

On September 10, 2015, at approximately 11:50 a.m., the Lodi Police Department received information from an anonymous caller that Austin Reid (d.o.b. 3/4/1983), could be located at the McDonald's Restaurant on Lodi Ave., in the City of Lodi. Reid was wanted for an attempted murder of an individual where it was alleged he shot the victim in the neck. Since the gun was never recovered, he was considered still armed and dangerous.

Detectives Elias Ambriz and Mitch LeStrange, of the Lodi Police Department, responded to the McDonald's in an unmarked Ford F150 truck. Both were not in uniform but were wearing raid vests that were clearly marked with large white lettering "POLICE" on the front and back of the vests. Both were familiar with Reid and knew what he looked like. Detective Ambriz was driving.

Detective Ambriz entered the McDonald's parking lot from the Lodi Ave., entrance and pulled into one of the parking stalls in the middle of the parking lot. Within seconds, both

Detectives Ambriz and LeStrange observed Reid next to a truck at the west end of the parking lot. They also observed Reid had a gun in his hand. Detective Ambriz accelerated toward Reid because he feared that Reid was about to shoot them.

Reid turned and began running southbound along the fence line of the McDonald's parking lot and went west along Lodi Avenue. Reid still had the gun in his hand. Detective LeStrange jumped out of the vehicle in order to take cover behind the truck. When Reid took off running, Detective LeStrange followed on foot. Detective Ambriz followed Reid in the truck.

Detective Ambriz followed Reid in the truck who ran behind a vehicle parked in the driveway of 315 S. Pleasant Avenue. Reid then turned and began firing his gun at Detective Ambriz. The front passenger window was shattered by the first round's impact. Reid had taken cover behind the blue vehicle and in Detective Ambriz's mind, had a tactical advantage over him. Detective Ambriz had no time to issue any verbal commands and exited his truck and moved behind, toward the bed of the truck, and began returning fire.

Detective Ambriz continued to exchange fire with Reid. It was at this time Detective LeStrange had caught up to their location, and seeing the exchange of fire, fired his duty weapon one time while Reid was moving behind a fence for cover. Reid had only made it a few feet behind the fence when Reid raised one of his arms in the air, as if he was giving himself up. Both Detectives ceased firing their duty weapons.

Verbal orders were given for Reid to raise his arms but there was no response. Reid was eventually secured by other Lodi Police Officers who had responded. Paramedics were already on scene and began life saving measures immediately. Paramedic Chad Bradley made contact with San Joaquin County Hospital regarding the situation. Reid was pronounced dead at the scene by Dr. Chuang at 12:36 p.m.

Devin McGee was interviewed regarding this incident. Mr. McGee stated he had been at the McDonald's parking lot in his 2014 Dodge Truck, when he observed Reid walk from behind his truck. Reid had approached the driver's side door and attempted to open the door but it was locked. Reid had his right hand in his pocket, and when he realized it was locked, took his left hand and pointed his finger at Mr. McGee with his thumb up, indicating he had a gun. This is when the police showed up. Mr. McGee stated he was about to be car jacked when the police showed up and saved him.

Melissa Martinez was interviewed regarding this incident. Ms. Martinez indicated she was in the parking lot when the police arrived. She stated she heard one of the officers give verbal commands for Reid to get down on the ground and to stop. Some time passed and then she heard multiple gun shots. She did not observe the shooting itself.

Richard Collins was interviewed on the day of the incident. Mr. Collins lives across the street from where the shooting occurred. Mr. Collins saw Reid come running down the street and duck behind a car. Mr. Collins then observed Reid stand up and fire his gun at the Officers and then duck down and hide. Mr. Collins saw Reid do this several times and believes Reid shot as many as six rounds toward the Officers. Mr. Collins stated that Reid was the first person to shoot, and that the Officers did not fire their weapons until they had been fired upon.

A physical exam of the unmarked Ford F150 revealed a bullet hole in the driver's side rear bed rail, and two small holes in the roof lining of the vehicle above the driver's side seat. The passenger window had been shattered and an expended round was found in the door panel of

the passenger side. The vehicle had taken several rounds coming from the location that Reid was hiding at.

An American Arms .22 Semi-Automatic pistol was found next to Reid and secured. When test fired with the rounds that were still within the magazine, Armscor Precision cartridges, it would not properly feed the rounds, but when loaded with Federal brand cartridges, the gun functioned properly. Also found at the scene on Reid was a box containing 39 rounds of Federal brand .22. If Reid had mixed the rounds within the magazine, this could explain why the gun was functioning properly while he was firing at the Detectives, and then why he decided to take cover behind the fence, and appear to give himself up.

PATHOLOGIST'S REPORT

On September 11, 2015, San Joaquin County Pathologist Bennet I. Omalu, conducted an autopsy upon Reid and concluded that Reid died from a gunshot wound to the trunk area that lodged near the thoracic spine. Reid was only struck once to the trunk area and a second round went through his right forearm. Blood results showed a blood alcohol content of .17 and he was positive for methamphetamine and THC.

CRIMINAL HISTORY

Reid had six convictions for resisting arrest under Penal Code sec. 148, from 2003 to 2013. Reid was sentenced to State Prison for Penal Code sec. 245(a)1 on 4/23/08 on case number LF010268A, and had his parole violated several times between 2010 and 2013. At the time of this incident, he had been positively identified as the shooter in an attempted murder, where he shot the victim in the neck with a .22 semi-automatic pistol.

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, Detectives Ambriz and LeStrange were justified in making contact with Reid as there was an active Ramey warrant in the system for Penal Code sec. 664/187, attempted murder with the use of a firearm. Detectives Ambriz and LeStrange were legally justified in shooting their duty weapons and the use of lethal force in order to stop the immediate threat of death to themselves or others because Reid appears by the evidence presented, to be attempting to kill them.