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## MEMORANDUM

TO: ERIC JONES, CHIEF  
STOCKTON POLICE DEPARTMENT

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

DATE: MARCH 3, 2017

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF  
PATRICK WETTER, (SPD DR #15-720).

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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 Patrick Wetter on January 6, 2015. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, and the Department of Justice.

## FACTUAL SUMMARY

On January 6, 2015, at approximately 3:41 p.m., the Stockton Police Department received a 911 call that a man has kicked the door in at 805 Howard St., in the City of Stockton. Stockton Police Officers Gabriel Guerrero and his partner Mark Afanasev respond on a priority call. Both Officers were wearing standard Stockton Police Department uniforms, and had a canine attached to their unit.

805 Howard St., Stockton, is a single-family residence, which is located in a residential neighborhood, and enclosed by a tall fence with a gate. Nine people resided at the residence: the 58 year-old homeowner and his 50 year-old wife; their 13 year old son, their two daughters, ages eight and five; and three foster children ages 13-15.

On January 6, 2015, at 3:41 p.m., the adults were confronted at their front gate of their front yard by the suspect, who was residing next door with his father. The suspect, who they described

as being in his 20's, over six feet tall, and weighing in excess of 200 pounds, ignored their requests to stop coming into the yard. The suspect forced his way into the yard, past the gate, and began peering into the windows. The adults told the four children inside the home to lock the front door, while the suspect began calling out for his cousin, Desiree.

The adults repeatedly told the suspect there was no Desiree at the residence, but this had no effect on the suspect. The suspect opened the security door, and proceeded to kick in the front door of the residence. The four children, ages 5, 8, 13, and 15, who were trapped in the house and crying, armed themselves with the largest kitchen knives they could find, and fled to a back bedroom. The bedroom door did not have a lock, so they blocked the door with a chair, and the two youngest children hid in a closet.

The adult residents and the children in the bedroom, called 9-1-1 while attempting to reason with the suspect and de-escalate the situation. One adult armed himself with a hammer, telephoned a family member for assistance, and tried stopping the suspect from entering the house by grabbing him. This had no effect and the suspect entered the home, proceeded down the hallway, and toward the bedroom where the children were crying and screaming. The suspect was armed with a knife and was attempting to break down the bedroom door where the children were inside, terrified, and believing they were going to die.

Officers Guerrero and Afanasev arrived at the call location within minutes. They exited their patrol vehicle and a male in the middle of the street told them the suspect is inside the house and believes he is on drugs. The male also told the Officers there are some females in the house who have armed themselves with knives and locked themselves in the bedroom. Officer Guerrero had his canine in his left hand and had his duty weapon pulled and was holding it in his right hand as he began running up the walkway to the front door. Officer Afanasev was slightly behind Officer Guerrero and also had his duty weapon unholstered.

As both Officers were heading up the walkway, they both could see into the house and down the hallway where a large male was seen in the hallway and pulling on a bedroom door as to attempt entry. Officer Guerrero radioed for assistance, but did not wait to enter the house due to Wetter's attempts to gain entry into the bedroom. As Officer Guerrero entered the home he began yelling out verbal commands, "walk this way, walk toward me, get your hands up." The suspect, later identified as Patrick Wetter (d.o.b. 09/30/89), continued to pull on the door and refused to comply with the commands.

Officer Guerrero and Afanasev described Wetter as a white male, over six feet tall and at least 250 pounds. The hallway was approximately four feet wide. Officer Guerrero noticed Wetter's hands were clenched as if he was upset and he immediately became concerned Wetter was too much for he and Officer Afanasev to handle on their own.

Officer Guerrero continued to give Wetter commands to walk toward him. The commands were ignored, so Officer Guerrero released the canine to engage. The canine latched onto Wetter's legs who then began yelling to get the dog off of him but Wetter refused to get down and began back pedaling down the hallway until he reached the back wall with the canine still on him.

Officers Guerrero and Afanasev had followed the canine slightly down the hallway. Officer Guerrero quickly realized that he and Officer Afanasev were also going to have to engage Wetter because the canine was not able to gain compliance from Wetter. As Officer Guerrero began to move forward, Wetter reached into his left pocket with his left hand, and pulled out a knife. Wetter moved his hand over his head with the knife blade down in his fist, and thrust it down toward the canine.

Officers Guerrero and Afanasev were within 10 feet of Wetter at the time he dropped his fist with the knife down toward the canine. Wetter then raised the knife again over his shoulder. At this point Officer Guerrero believed Wetter was either going to rush he and his partner with the knife, or stab the canine. Officer Guerrero fired his duty weapon five times.

Officer Afanasev was slightly behind Officer Guerrero as they were moving down the hallway. Officer Afanasev saw Wetter pull the knife from his pocket and strike the canine. Officer Afanasev then feared Wetter would stab his partner or himself and fired his duty weapon six times, almost simultaneously as Officer Guerrero had fired his.

Stockton Police Officer John Cox had been in route due to the request for assistance by Officer Guerrero. Officer Cox arrived within seconds of hearing shots fired on the radio. As Officer Cox entered the home, he could see the canine still standing over Wetter's legs. Officer Afanasev informed Officer Cox that Wetter still has a knife (photograph of knife attached).

Officer Cox moved down the hallway and saw Wetter face down and still moving his hand and saw the knife in his fist. Cox ordered Wetter to show him his other hand and to drop the knife. Wetter was still refusing to comply with verbal orders. Cox deployed his taser which had no affect on Wetter who still refused to drop the knife. Cox used his baton on Wetter's back four to five times and although Wetter was still moving, he refused to drop the knife. Cox grabbed Wetter's hand and hit it against the door jamb until Wetter dropped the knife. Another knife was later found in Wetter's pocket.

Wetter was then hand cuffed and first aid was begun immediately. Paramedics took over treatment until Battalion Chief Lane Healy appeared on scene. Healy did a physical assessment of Wetter and along with paramedics, concluded that Wetter had succumbed to his injuries and was deemed dead at the scene.

A witness by the name of Robert Lopez was interviewed on January 6, 2015. Lopez said he was a neighbor and that Wetter had been on a methamphetamine binge for about a week and had been getting progressively paranoid and acting strange. Lopez was present in the street during the incident and heard the Officers yelling at Wetter to get down. Lopez then heard the dog barking and then four to six gun shots.

Found in the room that Wetter was attempting to enter were two girls, ages five and eight. They were found shaking, crying, and had urinated themselves in fear. They were found inside a closet holding knives to defend themselves, from Wetter who had been trying to break into the room.

The canine had suffered one stab wound near the shoulder area and was taken to a veterinarian for treatment. The canine recovered from his injuries.

### **PATHOLOGIST'S REPORT**

On January 7, 2015, San Joaquin County Pathologist Bennet I. Omalu, conducted an autopsy upon Wetter and concluded that Wetter died from multiple gunshot wounds to the trunk area. Wetter was struck a total of nine times, seven to the trunk, and two times to extremities. Blood results showed 1.5 mg/L of methamphetamine and .13 mg/L amphetamine in Wetter's system.

## CRIMINAL HISTORY

Wetter was a documented Norteno gang member. Wetter had several tattoos including one dot on the top side of his right hand, and four dots, one on each finger except the thumb on the left hand. On August 29, 2014, Wetter was convicted of carrying a dirk or dagger, a felony conviction of Penal Code section 21310, of San Joaquin County Superior Court case number SF129163A, and at the time of this incident, was still on probation.

## 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, Officers Guerrero and Afanasev were justified in making contact with Wetter as there was an ongoing felony being committed in their presence. Officers repeatedly gave Wetter verbal commands to put up his hands or to get down on the ground. Wetter refused to comply and continued to attempt to enter a bedroom where the Officers knew there were two juvenile females locked inside.

Officer Guerrero attempted to use less than lethal force by engaging the canine which did not result in compliance. Wetter then pulled out a knife and stabbed the canine. When Wetter raised the knife over his shoulder a second time, Officers Guerrero and Afanasev were in fear that Wetter was going to attempt to stab them, or the canine, and both Officers discharged their duty weapons. Guerrero and Afanasev were legally justified in their use of lethal force to stop the immediate threat.

