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November 1, 2019

Today, the San Joaquin County District Attorney's Office (SJCDA) released its findings in the December 21, 2016 officer-involved shooting that resulted in the death of Luis Ambrosio. It is the decision of the SJCDA that the use of deadly force by a San Joaquin County Sheriff's Deputy was justified under the circumstances.

This decision was made after SJCDA Office's Officer-Involved Critical Incident Review Committee reviewed the investigations by the San Joaquin County District Attorney's Bureau of Investigations, the San Joaquin County Sheriff and its Coroner's Division, and the California Department of Justice.

The findings and conclusion of this investigation was completed on October 17, 2019 and has been memorialized in a report. On that date, this Office notified the Stockton Police Department of the findings.

In addition, family members of Mr. Ambrosio were also notified. Yesterday morning, members of the SJCDA Office met with family members of Mr. Ambrosio to discuss this decision. A copy of the report has been provided to them.

The memorandum detailing the SJCDA's findings and conclusion follow below.

SAN JOAQUIN COUNTY DISTRICT ATTORNEY
MEMORANDUM OF
OFFICER-INVOLVED CRITICAL INCIDENT
OF DECEMBER 21, 2016
AT WATERLOO ROAD & BELVEDERE AVENEUE IN STOCKTON.



TORI VERBER SALAZAR, DISTRICT ATTORNEY
OFFICER-INVOLVED CRITICAL INCIDENTS UNIT

OCTOBER 17, 2019



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MEMORANDUM

**TO: PATRICK WITHROW, SHERIFF
SAN JOAQUIN COUNTY SHERIFF'S DEPARTMENT**

FROM: SAN JOAQUIN COUNTY DISTRICT ATTORNEY

DATE: OCTOBER 17, 2019

**SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF
LUIS AMBROSIO (SO DR #16-33922).**

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 Luis Ambrosio on December 21, 2016. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Bureau of Investigations, the San Joaquin County Sheriff's Department, the San Joaquin County Sheriff-Coroner's Office, and the California Department of Justice.

INVESTIGATION SUMMARY

On December 21, 2016 at approximately 6:22 p.m., San Joaquin County Sheriff's Deputies responded to the intersection of Waterloo Road and Belvedere Avenue, Stockton, of a report of a man with a knife threatening to kill someone.

San Joaquin County Sheriff's Deputy Jason Belus arrived at the scene and encountered Luis Ambrosio (DOB 8/25/86) armed with a 14.5-inch knife. Mr. Ambrosio refused to comply with orders to disarm and advanced on Deputy Belus. When Mr. Ambrosio got within eight to twelve feet of Deputy Belus, Deputy Belus fired his service weapon five times, fatally striking Mr. Ambrosio.

Mr. Ambrosio succumbed to his injuries and was pronounced dead at 6:57p.m.

As provided by the Memorandum of Understanding for the San Joaquin County Officer-Involved Critical Incident Protocol (hereinafter referred to as "Protocol"), the San Joaquin County Sheriff's Office invoked the Protocol. A multi-agency task force was created that included San Joaquin County District Attorney's Office's Bureau of Investigations (hereinafter "BOI"), the San Joaquin County Sheriff (hereinafter referred to as "SJCSO"), the San Joaquin County Sheriff-Coroner's Office (hereinafter referred to as "Coroner"), and the California Department of Justice (hereinafter referred to as "DOJ").

FACTUAL SUMMARY

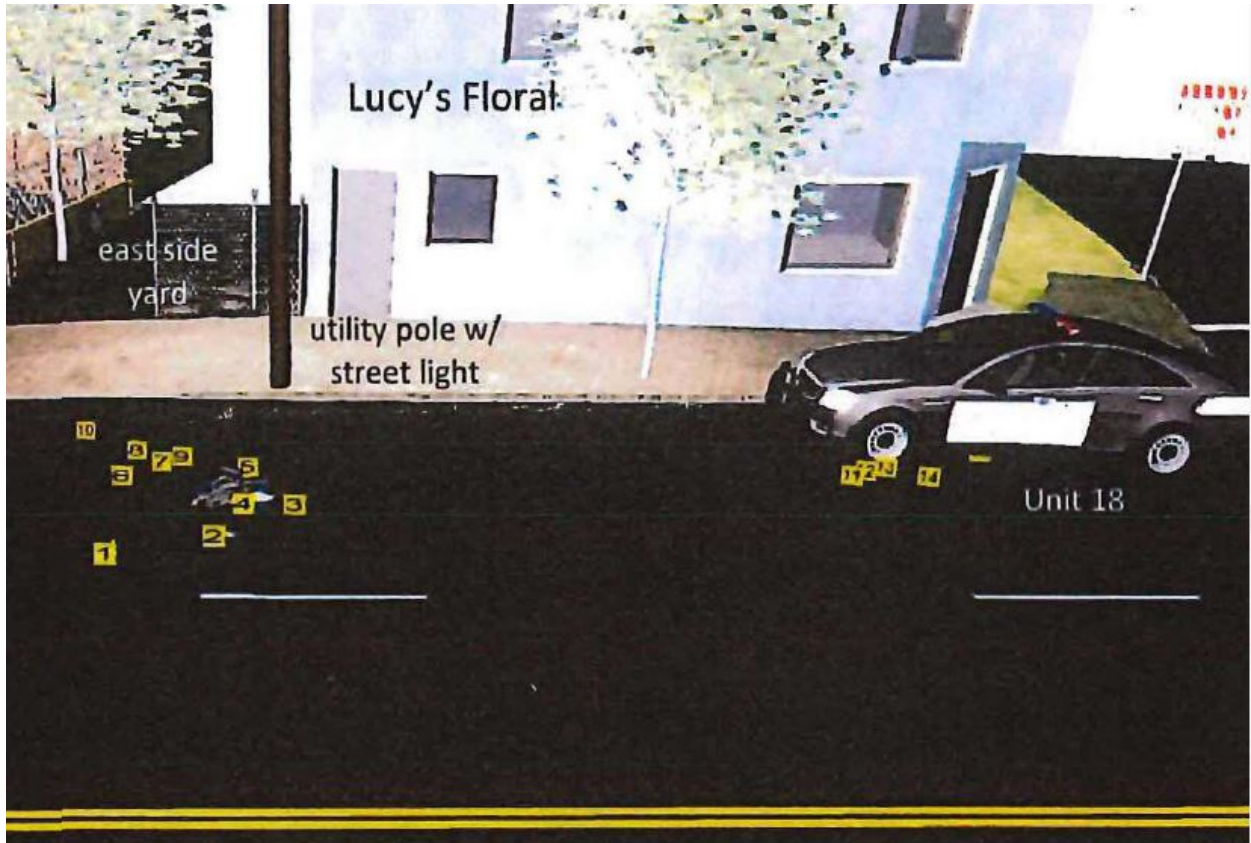
On December 21, 2016, at approximately 6:22 p.m., Deputy Jason Belus responded to a dispatch reporting that a Hispanic male armed with a knife threatening to kill someone.¹ The location was dispatched as a flower shop on the 2300 block of Waterloo Road

Deputy Belus arrived at the location, a mixed commercial and residential area, within four minutes. Once there, he observed Luis Ambrosio who matched the description given to him.

Deputy Belus exited his patrol unit and observed Mr. Ambrosio standing on the sidewalk with a large beer in a paper bag. Deputy Belus asked Mr. Ambrosio to put his beer down. Mr. Ambrosio did not comply with the request but instead, took a large drink of the beer, reached into his waistband, and pulled out a 14.5-inch knife.

Deputy Belus ordered Mr. Ambrosio twice to put the knife down. Mr. Ambrosio refused to comply with the order and began advancing toward the Deputy. When Mr. Ambrosio was within eight to twelve feet of Deputy Belus, in fear for his safety and life, Deputy Belus fired his service weapon five times. All five shots struck Mr. Ambrosio.

¹ The dispatch printout read: "2ND HAND INFO... EMPLOYEE AT FLORAL SHOPPED [sic] CALLED RP ADV'ING OF A MALE ARMED W/KNIFE TRYING TO 187 SOMEONE...EMPLOYEE HAS LOCKED DOOR...\NAME:[Witness #5] \PH: -Redacted]." "187" refers to California Penal Code section 187, the statute defining murder.



DOJ Diagram. Mr. Ambrosio's knife at Marker #1.

Paramedics were immediately called and Deputy Belus began life saving measures. Paramedics arrived on scene at 6:29 p.m. and took over life-saving measures. Mr. Ambrosio was transported to the county hospital where at 6:57 p.m. he was pronounced dead.

Earlier in the day, at 6:37 a.m. the Stockton Police department received a 9-1-1 call from an address on E. Waterloo Road “regarding a Hispanic male making comments about people being killed.” Stockton Police arrived on scene and found an intoxicated Mr. Ambrosio. Mr. Ambrosio was arrested for public drunkenness and was transported to the county jail.² Later that day, Mr. Ambrosio was released and left the jail at 3:14 p.m..

WITNESS STATEMENTS

Investigators from the San Joaquin County District Attorney’s Office and San Joaquin County Sheriff’s Office detectives jointly interviewed the involved officers,

² Stockton Police Department report number 16-33922; Sheriff booking number 16-21639.

medical personnel, and civilian witnesses. Whenever possible, these interviews were recorded. The investigators also conducted a neighborhood canvas of residences in the area. Not every witness interviewed is summarized here. The individual witness synopses below are to assist the reader in supplementing the above Factual Summary. Civilian witnesses are identified in this memorandum as "Witness #" to protect their privacy rights. See, "Confidential Page APPENDIX A: Civilian Witness Information."

San Joaquin County Sheriff's Deputy Jason Belus

San Joaquin County Sheriff's Deputy Jason Belus was interviewed on December 21, 2016, at 11:59 p.m., by investigators at the Sheriff's Office and stated the following:

Deputy Jason Belus was a fifteen-year veteran deputy of the San Joaquin County Sheriff's Office currently assigned to patrol. On this date, he was dressed in his standard Sheriff's Department uniform and driving in a marked San Joaquin County Sheriff's Department vehicle. He was armed with his service weapon: a Sig-Sauer model P226R.

At approximately 6:22 p.m., he received a dispatch of a Hispanic male with a knife, near a floral shop on Waterloo Road threatening to kill someone. Deputy Belus was northbound on State Route 99 approaching Waterloo and exited westbound. As he was approaching Belvedere Avenue, Deputy Belus saw an individual that matched the description dispatched, standing near the floral shop and holding what appeared to be a large beer in a paper bag.

Deputy Belus made a U-turn and parked his vehicle. Upon exiting his vehicle, Deputy Belus told Mr. Ambrosio to put his beer down on the ground. Because the report was about a man with a knife, Deputy Belus had already drawn his service weapon. Mr. Ambrosio refused to comply with the order to put the beer down. Instead, Mr. Ambrosio took a large drink from his beer, which he was holding in his left hand. Mr. Ambrosio then reached into his waistband with his right hand and pulled out a knife. (The knife was later determined to be 14.5-inches long.)

Deputy Belus immediately ordered Mr. Ambrosio to drop his knife. Mr. Ambrosio refused to drop his knife and began walking toward Deputy Belus. Deputy Belus gave Mr. Ambrosio another order to put the knife down in English and in Spanish. Mr. Ambrosio continued to move toward Deputy Belus. Deputy Belus believed Mr. Ambrosio reached a point where he was approximately six to

eight feet away from Deputy Belus, and out of fear of being seriously injured or killed, fired his service weapon what he believed to be four times.

Deputy Belus immediately radioed shots fired and at about that time, Deputy Brian Merritt arrived at the scene. He told Deputy Merritt to cover him while he secured Mr. Ambrosio. Deputy Belus checked Mr. Ambrosio for a pulse and finding none, Deputy Belus began life saving measures until paramedics arrived and took over treatment.

San Joaquin County Sheriff's Deputy Brian Merritt

San Joaquin County Sherriff's Deputy Brian Merritt was interviewed on December 22, 2016, at 1:05 a.m., by investigators at the Sherriff's Office and stated the following:

Deputy Jason Merritt was a two-year deputy of the San Joaquin County Sherriff's Office currently assigned to patrol. On this date, he was dressed in his standard Sheriff's Department uniform and was driving in a marked San Joaquin County Sheriff's Department vehicle. He was armed with his duty service weapon.

Deputy Merritt was dispatched to a man with a knife threatening to kill someone. While still en route, he heard Deputy Belus say over the radio that shots had been fired. Deputy Merritt arrived on scene at approximately 6:29 p.m. and saw Deputy Belus with his gun drawn and pointing at Mr. Ambrosio who was down on the ground. Deputy Belus told Deputy Merritt to cover him as Deputy Belus moved in to cuff Mr. Ambrosio and check his wounds. Deputy Belus informed him there was no pulse, and started life saving measures.

At no time did Deputy Merritt fire his service weapon or come into contact with Mr. Ambrosio.

Witness #1

Witness #1 was interviewed on December 22, 2016, at 1:40 a.m. at the Sheriff's Office and stated the following:

Witness #1 resided with Mr. Ambrosio. The previous evening he came home from work and found that Mr. Ambrosio was acting abnormally. Mr. Ambrosio had a pickaxe and was "acting crazy." He and his roommates³ had to take the pickaxe

³ Another roommate, Witness #4, called his landlord, Witness #5, to report what was happening. Witness #5 then called 9-1-1, which ultimately lead to Deputy Belus responding to the call location.

away from Mr. Ambrosio. Once they got the pickaxe away from him, Mr. Ambrosio grabbed a large knife. Witness #1 and his roommates tried to get the knife away from Mr. Ambrosio but they were unable. Mr. Ambrosio left the apartment and they locked the door behind him. He believed Mr. Ambrosio had left to go to the liquor store.

Later, Witness #1 looked out the window and saw that Mr. Ambrosio was back. He saw a deputy arrive. Witness #1 yelled out the window to the deputy that Mr. Ambrosio had a knife but he was not sure if anyone heard him. Witness #1 believed that the deputy was telling Mr. Ambrosio to stop but Mr. Ambrosio did not listen to him and kept walking toward the deputy. When Mr. Ambrosio continued to walk toward the deputy, the deputy shot him.

Witness #2

Witness #2 was interviewed on December 21, 2016, at the scene and stated the following:

Witness #2 was at the intersection and saw and heard the deputy's patrol unit with its lights and siren activated. Witness #2 saw Mr. Ambrosio with a knife in his right hand and a beer in a paper bag in his left hand. Witness #2 could hear the deputy yelling at Mr. Ambrosio but could not make out specifically what was being said. Mr. Ambrosio continued to walk toward the deputy with the knife in an aggressive manner and then Witness #2 heard four shots.

Witness #2 believed from his point of view, it did not appear the deputy wanted to shoot Mr. Ambrosio. Witness #2 felt bad for the deputy because he had to shoot Mr. Ambrosio.

Witness #3

Witness #3 was interviewed on December 21, 2016, at the scene and stated the following:

Witness #3 was driving home when he saw the lights and heard the siren from a patrol car. He stopped his truck in the middle of the road about forty to fifty yards away from the patrol car and rolled down his window. Witness #3 could not hear specifically what was being said but could tell a deputy was yelling commands at Mr. Ambrosio.

To Witness #3, it appeared as if Mr. Ambrosio had both hands balled up and

had a posture as if he was going to fight. Mr. Ambrosio began walking toward the deputy; he had a shiny object in his right hand and a dark object in his left hand. A few moments later Witness #3 heard what sounded like four shots being fired.

SUBSEQUENT INVESTIGATION

Video Documentation

Deputy Jason Belus's Body Worn Camera (BWC)

Deputy Belus was not issued a BWC and therefore no BWC footage of the incident was captured.

Surveillance Video

Potential surveillance recordings from surrounding businesses were checked without success. One business on East Waterloo Road had footage. The footage, however, was of poor quality due to the system itself as well as the poor lighting. Nothing discernible could be viewed.

Firearm Examination

DOJ took custody of Deputy Belus's .40 caliber Sig Sauer P226 semi-automatic pistol. The firearm has the capacity to hold thirteen cartridges. The magazine contained seven .40 S&W cartridges and there was one .40 S&W cartridge in the chamber. This, along with the five casings recovered at the scene, was consistent with the Deputy Belus discharging five rounds.

Physical Evidence

The scene was taped off immediately after the shooting and inspected by DOJ, BOI, and SJCSO Field Evidence Technicians. Found at the scene was a 14-inch knife with a 9.5 inch serrated blade. Also found was five empty .40 caliber casings from the service weapon of Deputy Belus.



Mr. Ambrosio's knife

Pathologist's Report

On December 22, 2016, San Joaquin County Pathologist Susan J. Parson, conducted the autopsy of Mr. Ambrosio.

Dr. Parson's autopsy revealed that Mr. Ambrosio suffered the following gunshot wounds:⁴ 1) a penetrating gunshot wound to the superior left chest; 2) a penetrating gunshot wound to the lateral left chest; 3) a superficial gunshot wound of the upper right chest; 4) a perforating gunshot wound to the posterior-medial right arm; and, 5) a perforating gunshot wound to the lateral-anterior left arm.

Toxicology results showed Mr. Ambrosio had a urine ethyl alcohol content of .03 percent and was negative for drugs.

⁴ *The order of the wounds here or in the autopsy report do not reflect the order in which Mr. Ambrosio was shot or struck. This normally is not possible to do and it was not done in this case.*

Dr. Parson determined the cause of death was a result of “Gunshot Wounds (x2) of Left Chest. Gunshot. Wounds of Extremities and Right Chest is a contributory factor to his death.”

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

Penal Code 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.

(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.

(3) When committed in the lawful defense of such person, or of a spouse, parent, child, master, mistress, or servant of such person, when there is reasonable 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 or she 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 196 (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333). Penal Code section 196⁵ 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 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 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 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. Conner* (1989) 490 U.S. 386, 396-397, see also, *Jeffers v. Gomez* (9th Cir. 2001) 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 an officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or prevent escape or to overcome resistance.”

⁵ See also, jury instruction CalCrim 507

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.)

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, supra*, 47 Cal.App.4th at 343, quoting *Smith v. Freeland* (6th Cir. 1992) 954 F.2d 343, 347).

Penal Code sections 196 and 835a, *supra*, have recently been amended by Assembly Bill (A.B.) 392. Passed by the legislature this year, Governor Gavin Newsom signed the bill into law on August 19, 2019. A.B. 392 incorporates the language of section 196, relevant United States Supreme Court case law - discussed in this memorandum - and placed it within section 835a. Additionally, in the new language of the amended statute, emphasis is placed on “imminent” threats and “necessary” use of force. While the law will not be in effect until January 1, 2020, the standard set forth by A.B. 392 is consistent with the standard in current use by the District Attorney’s Office and is applied in this case.

Application of Law

In analyzing the reasonableness of the decision by Deputy Belus to use deadly force, the totality of the circumstances, including the information that the individual officer possessed at the time of his 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.)

In the instant case, the following set of facts have been sufficiently established:

1) Deputy Belus was acting within reason when he contacted Mr. Ambrosio (*Florida v. Royer* (1983) 460 U.S. 491; *Terry v Ohio* (1968) 392 US 1.)

2) Deputy Belus's use of lethal force was reasonable and necessarily committed to prevent his immediate great bodily injury or death from being stabbed.

CONCLUSION

In applying the prevailing legal standards, the totality of the circumstances and in light of all of the evidence obtained from the multi-task force investigation, it is the opinion of the District Attorney that the lethal use of force by Deputy Jason Belus on December 21, 2016, was justified, and that no criminal charges are warranted.

CONFIDENTIAL APPENDIX SECTION

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