

SAN JOAQUIN COUNTY DISTRICT ATTORNEY  
MEMORANDUM OF  
OFFICER-INVOLVED CRITICAL INCIDENT  
OF FEBRUARY 23, 2016  
AT SR 99 AT JACKTONE ROAD



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

OCTOBER 19, 2017

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## MEMORANDUM

TO: ERIC JONES, CHIEF  
STOCKTON POLICE DEPARTMENT

JODIE ESTARZIAU, CHIEF  
MANTECA POLICE DEPARTMENT

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

DATE: OCTOBER 19, 2017

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF  
ANGEL GLEASON, (SPD DR # 16-7337, MPD # 16-07631).

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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 Angel Gleason on February 23, 2016. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, the Manteca Police Department, the Ripon Police Department, the California Highway Patrol, and the Department of Justice.

### FACTUAL SUMMARY

On February 23, 2016, members of the Delta Regional Auto Theft Task Force Unit, hereinafter DRATT, were serving a search warrant on North Street, in Manteca, CA. Members of DRATT were wearing plain clothes with tactical vests which stated in bold lettering "POLICE" on the front and back.

While serving the warrant at the location on North St., between 2:00 p.m., and 3:00 p.m., they were informed by Officer Armen Avakian, of the Manteca Police Department, that down the street from their location was a four door silver BMW, which had stolen plates from a Ford vehicle, and that they may want to keep an eye on the car. Officer Avakian had just been on regular patrol

when he had noticed the car and believed it to be out of place. Officer Avakian knew the neighborhood after being a Manteca Police Officer for over 25 years, and he ran the plates to verify the registered owner. The plates were registered to a Ford sedan and the plates had been reported stolen. Officer Avakian was driving an unmarked Nissan truck and was wearing plain clothes.

Officer Houston Stephens<sup>1</sup>, of the Stockton Police Department, was currently assigned to DRATT, and received the information from Officer Avakian. Officer Stephens looked down the street and was able to see the four door silver BMW. Officer Stephens observed the BMW to be occupied by a male driver, later identified as Angel Gleason (d.o.b. 5/4/1979), and a female passenger. Officer Stephens and Avakian both knew that stolen vehicles often will have a stolen license plate from a different car affixed to it, hoping the owner of the plate will not report the stolen plate or not notice it, to assist in avoiding contact with law enforcement.

Officer Stephens followed the BMW in his unmarked Chevy Tahoe. As Officer Stephens was following the vehicle, he turned on his emergency lights and chirped his siren in order to make a traffic stop. Gleason kept driving failing to stop. During the pursuit, Gleason slowed down enough to allow for the female passenger to jump out of the vehicle, but then he sped back up. Gleason then drove eastbound in the wrong lane of traffic on East Yosemite Avenue. Officer Avakian, driving an unmarked Nissan truck with its lights and sirens activated, followed Officer Stephens who had also activated his lights and sirens.

The chase continued onto southbound SR 99 with speeds between 105 and 120 mph. Gleason was using all lanes and the shoulder to get by traffic. Officer Stephens relinquished his pursuit as primary and allowed Manteca Police Department to assume primary, and followed the pursuit.

As Gleason approached Jacktone Rd., in Ripon, Gleason exited the offramp and collided with a black Jeep, forcing the BMW up against a guardrail. At the same time, Officer John Machado, of the Manteca Police Department was following Gleason on his Manteca Police Department motorcycle, wearing his helmet and standard issued Police uniform. Gleason exited the vehicle from the passenger side and began running across the exit toward the embankment. Officer Stephens saw the Gleason with a handgun in his right hand.

Officer Machado was on his way home around 3:00 p.m., when he heard radio traffic that a pursuit was coming his way and a BMW was traveling in the number three lane and shoulder at speeds of 105 mph. Officer Machado was in the number three lane and decided to exit Jacktone and pull to the side to avoid being struck. As the BMW passed Officer Machado, he observed the collision between the BMW and the Jeep.

Officer Machado observed Gleason exit the vehicle out of the front passenger side and start to run. Officer Machado drove within 30 feet of Gleason when he saw Gleason turn and point a gun at him. Officer Machado thought he was going to die and dumped the bike and took cover behind his motorcycle. Officer Machado called out over the radio that Gleason had a gun. Officer Machado does not know if Gleason shot at him. Officer Machado explained that while wearing his motorcycle helmet, outfitted with a radio, it made it difficult to hear. Officer Machado did not see any muzzle flash from Gleason's gun while he was ducking behind his motorcycle.

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<sup>1</sup>Officer Houston Stephens was hired by the Stockton Police Department under the name of Houston Sensabaugh, and was assigned by the Stockton Police Department to DRATT.

Once Officer Machado looked up after taking cover, he saw Gleason running down the embankment.

Officer Stephens said he did not hear any shots but he was in his vehicle with the siren on. Officer Stephens believed he saw the gun moving as if Gleason was firing the gun at Officer Machado. Once Officer Stephens saw Gleason running down the embankment off the west side of the offramp, he exited his vehicle and began running alongside, shadowing him from a distance. At the same time, Officer Stephens began yelling "Stop. Police." At this point, Gleason turned toward Officer Stephens and pointed the gun at him. Officer Stephens fearing for his life, fired his duty weapon five to six times. Gleason turned and ran and Officer Stephens again began yelling for Gleason to stop and identified himself as a police officer. Gleason again stopped and turned toward him with the gun, and Officer Stephens fired his duty weapon again. Officer Stephens could also hear other rounds being fired from a different location. Gleason continued to run a little further along the fence line and then dropped to the ground.

Officer Avakian had been driving the unmarked Nissan truck that took over as the primary in the pursuit once Officer Stephens slowed down. Officer Avakian observed the BMW exit Jacktone and then saw a blast of car parts from the BMW colliding with the Jeep. As Officer Avakian was on the offramp, he saw Gleason with a gun in his hand and heard Officer Machado on the radio stating he had a gun. Officer Avakian saw Gleason run down the embankment. Officer Avakian drove past the BMW further up the offramp to get to higher ground, and as he exited his truck, heard shots fired. He did not hear Officer Machado's radio traffic. Officer Avakian was scared that Officer Machado had been shot and began running alongside the top of the overpass, while watching Gleason continue to run.

Officer Avakian was now concerned that Gleason would do anything to get away. He had seen Gleason traveling at over 100 mph on the shoulder of the freeway, saw the collision into innocent civilians, saw Gleason pointing his gun at an Officer, and was scared Officer Machado had been killed. Officer Avakian was scared that Gleason could end up trying to take a hostage or hurting more people. From around fifty to sixty yards away and on top of the offramp, Officer Avakian fired his duty weapon. Gleason dropped to the ground and Officer Avakian ceased firing. While pursuing Gleason, Officer Avakian could not see anyone else in the vicinity, including Officer Stephens.

Once Officer Machado got up from taking cover, he looked down the embankment and did not see where Gleason had run. Instead of pursuing Gleason, he decided to check on the passengers and driver of the Jeep that had been struck and rolled over the guardrail on the east side of the offramp. As he was checking on the occupants of the Jeep, he heard shots being fired.

Ripon Police Officers, now on scene, moved in quickly to secure Gleason. Once he was secured, emergency medical was started on Gleason including CPR. Firefighter Jeremy Abundez and EMT Scott Scheffel arrived moments later, picked up Gleason on a backboard, and loaded him into the ambulance. Gleason was taken to Doctor's Hospital in Modesto, CA. Gleason was pronounced deceased on February 23, 2016, at 3:34 p.m., by Dr. Seavey, in the emergency room.

Civilian Joseph C. was driving southbound on SR 99 when the BMW passed him on the shoulder doing at least 90 mph. As the BMW passed Officer Machado, the Officer pulled out behind the BMW and began following. Mr. C. then saw the collision between the BMW and the Jeep, causing the Jeep to go airborne and roll over the guardrail. Mr. C. believes the BMW came to rest 150 to 200 yards south of the collision. Mr. C. saw Gleason exit the vehicle and saw him with a gun in his hand. As Gleason was approaching the guardrail, he saw Gleason point the gun

at Officer Machado and saw the Officer immediately lay his motorcycle down and take cover. Mr. C. exited his vehicle to check on the occupants from the Jeep. As he was walking, he heard several gunshots. Mr. C. could not tell if the shots were from different guns, or the same gun.

Civilian Haylee F. was with a disabled vehicle at the top of the offramp when she heard sirens and saw Gleason running down the embankment and toward the railroad tracks. Ms. F. saw that Gleason had a gun in his hand. Ms. F. saw Officer Avakian at the top of the overpass pointing his gun toward Gleason. Ms. F. saw Gleason was running with his hands moving toward his head as if he was ducking. Ms. F. heard several gunshots but could not see who was firing. She saw what appeared to be bullets striking the ground in front of Gleason. Gleason was then struck in the left chest area and dropped to the ground.

Civilian Amanda W. was the female passenger with Gleason when he was first seen by police. Ms. W. spent most of the day with Gleason, hanging out, smoking methamphetamine, and having sex. They were heading back to Modesto when they realized they were going to be pulled over by the police. Gleason told her he was not going to stop. Ms. W. told him, "The hell you're not, let me the hell out of here." Gleason slowed down enough so she could jump out. Ms. W. said she had only met Gleason that day. She was just looking for a ride but later decided to hang out with him. Ms. W. had no idea the BMW was stolen. Ms. W. had no knowledge of a gun in the car.

The gun Gleason had was found under his body when he was secured. (Photograph of weapon is attached.) The Department of Justice took custody of the gun at the scene and had it tested. It was a Phoenix Arms HP22A pistol. The magazine was received loaded with seven cartridges, and one cartridge was cleared from the chamber at the scene. The chambered round had two light firing impressions with similar class characteristics to the pistol. DOJ Senior Criminalist Scott Bauer was unable to replicate these light firing pin strikes in the laboratory. The accompanying ten round magazine was used during test firing of the weapon. Both the pistol and magazine functioned normally.

### **PATHOLOGIST'S REPORT**

On February 25, 2016, San Joaquin County Pathologist Robert D. Lawrence, conducted an autopsy upon Gleason and concluded that Gleason died from multiple gunshot wounds. Gleason had been struck four times, once to the left lateral base of the neck, one time to the left lateral chest wall, one time to the right anterior upper thigh, and one time to the right hand. Blood results showed a presumptive positive for methamphetamine.

### **CRIMINAL HISTORY**

Gleason had been arrested for felony evasion in San Bernardino County in 2001, but was plead out to a misdemeanor. In 2014, Gleason was convicted of possession of methamphetamine, a felony, and carrying a switchblade, a misdemeanor, in Stanislaus County. In 2015, Gleason was convicted of grand theft, a felony, in San Bernardino County. All sentences were for probation and local time.

## 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 Stephens and Avakian were justified in investigating the circumstances surrounding the stolen plate on the BMW. Officers Stephens and Avakian observed Gleason commit felony evasion and saw him crash and injure innocent bystanders in an attempt to flee. Officers Stephens and Avakian observed Gleason point a handgun at Officer Machado, and it was Officer Stephens' belief he had fired the weapon at Officer Machado. Officer Avakian did not know whether Officer Machado had been shot and feared him dead. Officer Stephens gave Gleason verbal commands to stop which were ignored, and in fact, pointed the gun at Officer Stephens. Officer Avakian feared that additional Officers and members of the community could be injured or killed if Gleason was not stopped. Officers Stephens and Avakian 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 Gleason appears by the evidence to be an immediate threat of injury or death to themselves, and had already shown a lack of regard to the safety of innocent citizens of Ripon.



PHOENIX ARMS  
ONTARIO, CA



