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Today, the San Joaquin County District Attorney's Office (SJCDA) released its findings in the 2016 officer-involved shooting that resulted in the death of Colby Friday. It is the decision of the SJCDA that the use of deadly force by a Stockton Police Officer was justified under the circumstances.

Statement of District Attorney Tori Verber Salazar:

"We have a responsibility to make these decisions based on the evidence before us, and in this case, the evidence does not support charging this police officer. My office does not hesitate to hold law enforcement accountable for criminal behavior when the evidence supports it, but that was not the case in this situation. I have talked with Mr. Friday's family in the past and am doing so today, and my heart breaks for his mother, his loved ones and our entire Stockton community who lost a loving father and son."

The family of Mr. Friday has been notified of the decision and is being given an opportunity to review the findings.

This decision was made after a review by the Office's Officer Involved Critical Incident Review Committee of the investigations by the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, the San Joaquin County Sheriff-Coroner's Office, and the California Department of Justice.

The Memorandum detailing the SJCDA's findings and conclusion follows below.

SAN JOAQUIN COUNTY DISTRICT ATTORNEY
MEMORANDUM OF
OFFICER-INVOLVED CRITICAL INCIDENT
OF AUGUST 16, 2016
AT E. JAMESTOWN, STOCKTON



TORI VERBER SALAZAR, DISTRICT ATTORNEY
OFFICER INVOLVED CRITICAL INCIDENTS UNIT
JULY 17, 2018



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MEMORANDUM

TO: ERIC JONES, CHIEF
STOCTON POLICE DEPARTMENT

FROM: SAN JOAQUIN COUNTY DISTRICT ATTORNEY'S OFFICE

DATE: JULY 17, 2018

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF
COLBY FRIDAY (SPD DR #16-30832)

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 Colby Friday on August 16, 2016. Investigators from the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, the San Joaquin County Sheriff-Coroner's Office, and the California Department of Justice jointly conducted the investigation.

INVESTIGATION SUMMARY

On August 16, 2016 at approximately 2:02 p.m., Stockton Police Officers responded to the parking lot outside Pena's Market (aka Pena's Supermercado) located at 123 E. Jamestown Street, Stockton, San Joaquin County, for a report of a shooting. Responding officers located Officer David Wells of the Stockton Police Department and Colby Friday (DOB, 10/12/1985) on the east side of the market in a paved lot. Mr. Friday was suffering from several gunshot wounds. Responding officers attempted life-saving efforts on Mr. Friday until paramedics arrived at 2:03 p.m. to transport Mr. Friday to the San Joaquin County Hospital. Upon arrival at San Joaquin County Hospital, Mr. Friday was taken immediately to the emergency room where life-saving efforts continued. In the emergency room, Mr. Friday succumbed to his injuries and was pronounced dead at 2:44 p.m.

Responding officers set up a perimeter around to scene in order to preserve its integrity. A bolt cutter was needed in order to open the gateway between the parking lot and Jamestown Street to allow access by law enforcement personnel. Of note, located at the scene was a loaded

Model 1911 .45 caliber semi-automatic handgun on a grass strip by the sidewalk; a cell phone in the lot; and, several expended cartridge cases from Officer Wells's service pistol.

As provided by the Memorandum of Understanding for the San Joaquin County Officer-Involved Critical Incident Protocol (hereinafter referred to as "Protocol"), the Stockton Police Department invoked the Protocol. A multi-agency task force was created that included the San Joaquin County District Attorney's Office (hereinafter "DAI"), the Stockton Police Department (hereinafter referred to as "SPD"), 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 August 16, 2016, at around two o'clock in the afternoon, Mr. Friday, another male and a child were walking near Pena's Market. Officer Wells, who was on routine patrol in his marked patrol unit, drove past the pedestrians. Officer Wells noted Mr. Friday, as he appeared to resemble a domestic violence suspect he was looking for.

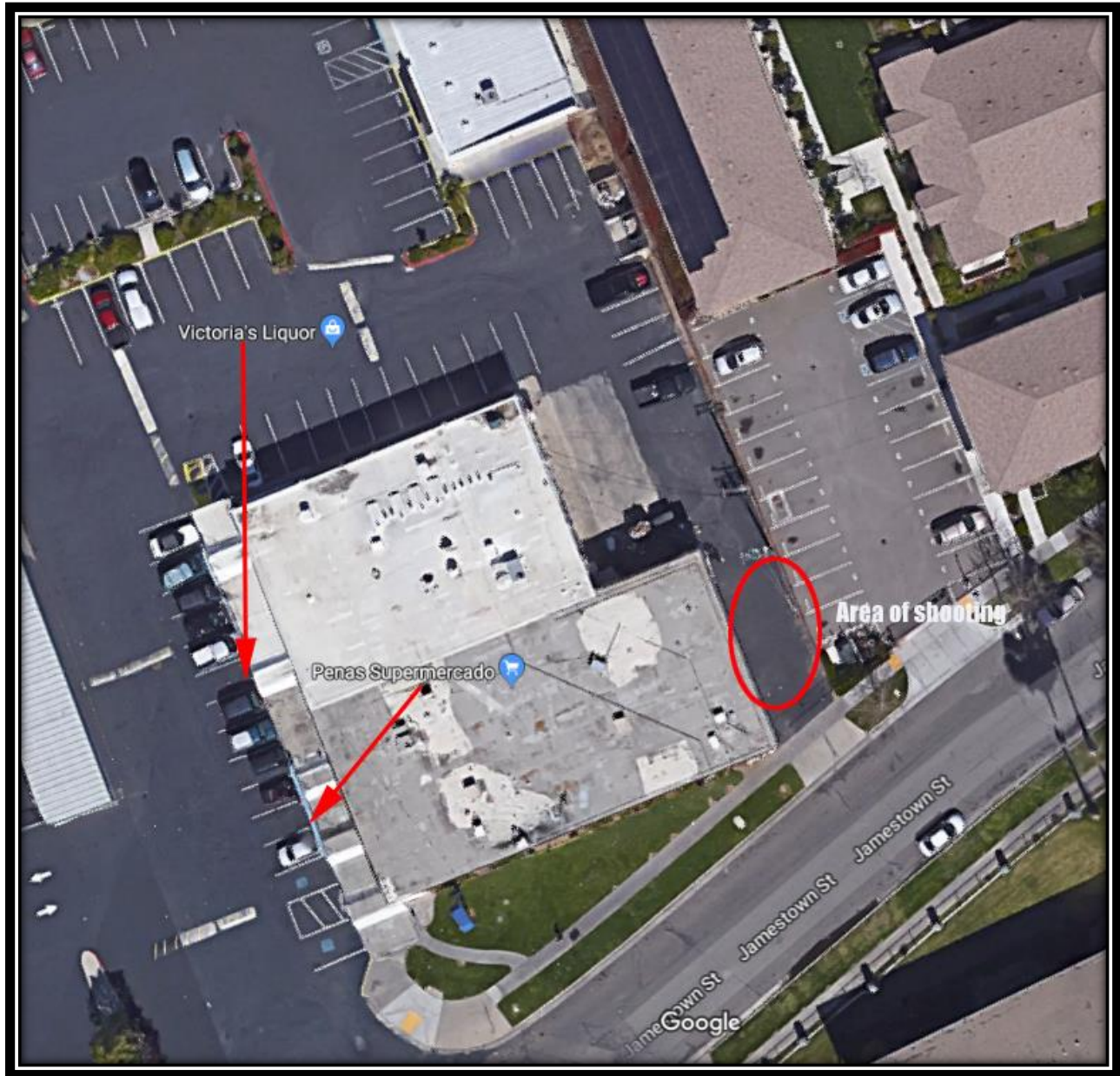
This domestic violence suspect, Kyle Hamilton, had a "no bail" felony warrant issued for his arrest arising out of a domestic dispute that occurred a week earlier. Hamilton was described as an African-American male, between 6'1" and 6'3", between 180 and 200 pounds, with dreadlocks. The reporting party, and victim in the case, reported that Hamilton was carrying a gun.¹

As Officer Wells drove past, Mr. Friday abruptly turned, abandoned the other male and child, and walked into Pena's Market. A clerk working at the cash register saw Mr. Friday come into the store, walk past the vegetable section and to the rear of the store.

Officer Wells stopped, got out of his patrol unit and followed Mr. Friday into the market. Once inside, Officer Wells lost sight of Mr. Friday. Officer Wells asked the clerk where Mr. Friday had gone and the clerk directed Officer Wells to the back of the market. Officer Wells made his way to the back when he spotted Mr. Friday, and called out, "Hey you in the white shirt, can I talk to you for a second?" Mr. Friday did not respond and kept walking. Officer Wells continued to follow Mr. Friday still calling out, "Hey you in the white shirt, I need to talk to you for a second."

Mr. Friday walked past the clerk and then ran towards the front, going through the turnstile and out the front door. Officer Wells chased after Mr. Friday, observing that Mr. Friday was holding his waistband or something in his waistband with one hand; this led Officer Wells to believe Mr. Friday was armed with a gun. Once outside, Mr. Friday ran to the right towards and past Victoria's Liquor store. As Officer Wells pursued, he shouted to Mr. Friday, "I know you have a gun! Show me your hands!" Mr. Friday continued to flee, running around the corner of the building into an enclosed parking area.

¹ Supporting documentation found in "*Confidential Page APPENDIX A: Kyle Hamilton Summary Page.*"

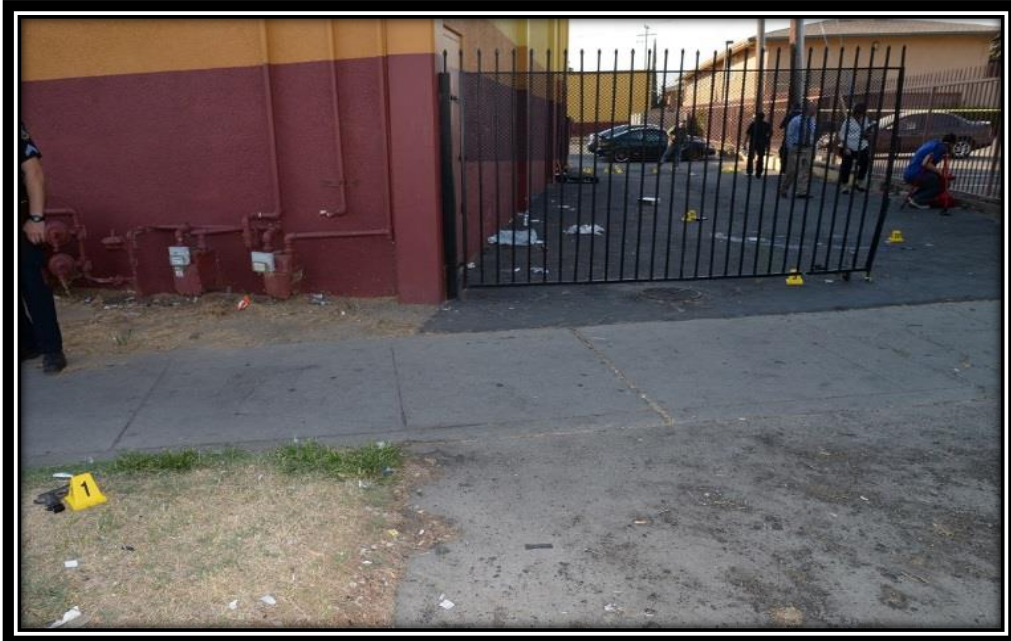


[Overview of scene]

At this moment, Witness #1 was just returning home from work. As he got out of his car, he saw Officer Wells chasing Mr. Friday. Mr. Friday was running towards Jamestown towards a locked gate. Witness #1 saw that Mr. Friday was holding his waistband with one hand.

As Mr. Friday got closer to the fence, Officer Wells continued to shout commands. Officer Wells then heard a gun fall to the ground. Mr. Friday suddenly stopped and turned, now facing Officer Wells, and began to bend down as if to pick up something. Officer Wells continued to shout commands at Mr. Friday to stop and to drop the gun. Mr. Friday ignored the commands and as he began to stand, Officer Wells fired his service pistol. Mr. Friday was struck once in the face and seven times in his extremities. Officer Wells approached Mr. Friday and

began life saving measures. Mr. Friday's gun, a loaded Model 1911 .45 caliber semi-automatic pistol, was found approximately ten yards away on the other side of the gate in the parking strip.²



[Market Parking Lot, Model 1911 at Marker 1- Task Force]



[Colby's .45 caliber Model 1911- Task Force]

² See, below, "Subsequent Investigation, Firearms Examination".

The call history shows Officer Wells informed dispatch that shots had been fired and a suspect was down at 2:02 p.m. Despite life-saving measures at the scene by officers and paramedics, Mr. Friday died from a fatal gunshot wound to his face shortly after arriving at the San Joaquin County Hospital emergency room.

On August 17, 2016, Dr. Bennet Omalu performed an autopsy. Dr. Omalu certified that death occurred as a result of a “Gunshot Wound of the Head”.³

WITNESS STATEMENTS

Investigators from the San Joaquin County District Attorney’s Office and Stockton Police Department detectives jointly interviewed the involved officers, medical personnel, and civilian witnesses. Whenever possible, these interviews were audio and/ or video recorded. The investigators also conducted a neighborhood canvas of residences in the area. If no person was home, an attempt was made to make later contact. 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 B: Civilian Witness Information.*”

Stockton Police Officer David Wells

Officer Wells was interviewed on August 16, 2016, by investigators at the Stockton Police Department, and stated the following:

Stockton Police Department Officer David Wells was a thirteen-year veteran of the Stockton Police Department and, at the time of this incident, was in good standing with the department. This day, Officer Wells was on duty and on patrol in a marked unit, wearing his department-issued uniform with his K-9 unit canine partner. He was armed with his service weapon; a .40 caliber Sig Sauer pistol. His pistol was loaded with a twelve round magazine clip with one additional round chambered in the firearm.⁴

A week earlier, on August 10th, Officer Wells was made aware of a suspect by the name of Kyle Hamilton who was wanted for a domestic violence crime involving Hamilton’s girlfriend. Officer Wells was involved in search for Hamilton during this incident. Officer Wells was also aware that Hamilton was reported to be armed. Officer Wells did a computer search and knew Hamilton had been living at the Jamestown Apartments in the past and over the last week. Because of this information, Officers Wells had been actively looking for Hamilton in the area of Jamestown Street and Kentfield Road.

³ See below, “*Subsequent Investigation, Pathology.*”

⁴ See below, “*Subsequent Investigation, Firearms Examination.*”

At approximately 2:00 p.m., on August 16, 2016, Officer Wells was driving westbound toward Pena's Market on Jamestown Street, when he observed two males walking; one with a child, and one who appeared to look like Hamilton. This latter person turned out to be Mr. Friday. As Officer Wells began to drive up, Mr. Friday appeared to look toward Officer Wells and it appeared to Officer Wells they made eye contact. At that point, Mr. Friday abruptly turned and stopped walking with the other male and child, and began walking into Pena's Market.

To Officer Wells, this behavior seemed odd so he decided to park his patrol unit and determine if the man was in fact Hamilton. Officer Wells entered the market but did not initially see Mr. Friday. Officer Wells asked the clerk where the guy who just came in went. The clerk directed him to the back of the store. As Officer Wells walked to the back, he saw Mr. Friday. Officer Wells called out, "Hey you in the white shirt, can I talk to you for a second?" Mr. Friday kept walking. Officer Wells crossed over an aisle and was now behind Mr. Friday, while walking toward the front doors. Officer Wells again said, "Hey you in the white shirt, I need to talk to you for a second."

Mr. Friday ignored the request and began running. There is a turnstile before the front door and Officer Wells saw Mr. Friday use his right hand to get through the turnstile and keep his left hand on his waistband. Mr. Friday did the same thing at the front door, using his right hand to push it open while never taking his left hand from holding something at his waistband. Based on how Mr. Friday went through the turnstile and the door without using both arms, Officer Wells suspected that Mr. Friday was armed with a gun. Officer Wells chased Mr. Friday outside of the market. As they were running in front of the Victoria's Liquor store, Officer Wells shouted at Mr. Friday, "I know you have a gun! Show me your hands!" Mr. Friday ignored the verbal commands and kept running around the corner of the building.

At the end of the back area of this parking lot is a tall wrought iron gate that is locked, a wrought iron fence on the east side of the lot, and the building on the west side. As Mr. Friday approached the end of the lot toward the gate, Officer Wells saw Mr. Friday fumbling with something with his left hand, near his waistband. As Mr. Friday turned away from the iron gate, Officer Wells heard a metal object hit the ground. To Officer Wells, his experience told him that the sound he had just heard was a gun striking the ground. Officer Wells stated that in the past when he has chased a suspect who has discarded or dropped their gun, the gun has made a distinct sound, different from other metallic objects that may hit concrete or pavement.

Officer Wells then saw Mr. Friday stop, turn around, and begin bending down to pick up what he had dropped. Officer Wells yelled at Mr. Friday to not pick it up and "Don't do it!" Mr. Friday ignored the commands and continued bending down to pick up what he had dropped. As Mr. Friday started coming up, Officer Wells fired his service weapon. When Officer Wells fired, he and Mr. Friday were face to face, approximately 35 feet away from each other.

Officer Wells elaborated saying that when Mr. Friday bent down, he believed that Mr. Friday was going to pick up a gun and engage in a shootout. Officer Wells believed that the enclosed nature of the area created a situation where Mr. Friday felt trapped and would use deadly force to escape. In Officer Wells's past experiences, suspects in flight abandon any items

dropped and continue to flee. Because Mr. Friday stopped and turned to pick up the item Officer Wells believed to be a firearm, Officer Wells was in fear for his life.

Once Mr. Friday went to the ground, Officer Wells retreated approximately 20 feet to the back corner of the building for cover, and at this moment realized his body camera had not been activated. Officer Wells activated his body camera, reloaded his weapon, and then called dispatch that shots were fired. He then approached Mr. Friday.

While checking on Mr. Friday, Officer Wells saw a civilian witness, later identified as Witness #1, on the other side of the fence in the apartment parking lot. Officer Wells asked Witness #1, who was fumbling with his phone, to put the phone away and try to help him save Mr. Friday's life, by asking him to get some towels or to gain entry so he could apply pressure to the wounds. Witness #1 could not get in due to the gate being locked. As Officer Wells was applying medical aid to Mr. Friday, he asked Witness #1 where the gun was.⁵

The gun was outside of the gate in the parking strip, and he asked Witness #1 to stand by the gun (*Marker No. 1, above*) and make sure no one touched it.

Witness #1

Witness #1 was identified as a witness and contacted at his residence by investigators. He was interviewed on August 16, 2016, around 3:11 p.m. by investigators at the Stockton Police Department, and stated the following:⁶

Witness #1 had left work and was just getting home. Witness #1 parked and while walking from his car saw a foot chase and heard an officer (Officer Wells) yelling, "Don't move! Get down!" Witness #1 saw a man (Mr. Friday), running holding his waistband with one hand. It appeared to Witness #1 that Mr. Friday was about to hop the gate. But as Mr. Friday approached the gate, he stopped holding his waistband as if to free both hands, and it appeared he dropped something. Witness #1 believed it was a cell phone that was dropped. Mr. Friday stopped running and turned around to pick up whatever he had dropped, and Officer Wells began firing. Witness #1 believed Officer Wells fired several times while Mr. Friday was on his feet, and a couple times after Mr. Friday had fallen to the ground.

Witness #1 elaborated that prior to the shooting, Witness #1 heard Officer Wells giving verbal commands to not move and to get on the ground. Witness #1 did not hear Mr. Friday say anything. He only heard Officer Wells's commands such as "Don't move!" and, "Stop running!" but Mr. Friday did not listen to those commands. Witness #1 did not see anything in Mr. Friday's hands but believed he heard the cell phone, that he later saw laying on the ground, drop.

When the shooting occurred, Witness #1 estimated the distance between Officer Wells and Mr. Friday was approximately 15 feet. When asked, Witness #1 explained that Mr. Friday

⁵ See below, "*Subsequent Investigation, Video Documentation*".

⁶ See also below, "*Subsequent Investigation, Video Documentation*".

had turned toward Officer Wells when he dropped what he believed was a cell phone and was facing Officer Wells as Mr. Friday bent over to pick up what he had dropped.

After the shooting, Officer Wells approached Mr. Friday, now laying on the ground, and kicked something away as if to clear the item from being grabbed by Mr. Friday. Witness #1, however, did not know if the kicked item had been a cell phone or a gun. Witness #1 left his position in his parking lot and went to the gate closer to Officer Wells and Mr. Friday. He saw that Officer Wells was distraught and was rendering medical aid to Mr. Friday. Officer Wells asked for assistance with rendering aid to Mr. Friday, but Witness #1 said there was nothing he could do because the gate was locked.

Officer Wells said to Witness #1, "He had a gun," and wanted to know where the gun was. It was at that time that both Officer Wells and Witness #1 spotted the gun lying in the parking strip. Officer Wells told Witness #1 not to touch the weapon, which he had no intention of doing, and at that time, responding police officers arrived.

Witness #2

Witness #2 was interviewed on August 16, 2016, by investigators at the scene and stated the following:

Witness #2 was in his apartment with his girlfriend when he heard gunshots. Witness #2 initially took cover and when he felt it was safe, he looked out his window. Witness #2 saw the officer (Officer Wells), pistol in hand, approach a man (Mr. Friday) on the ground. When Mr. Friday was rolled over by Officer Wells, he saw there was a gun under Mr. Friday's body. Witness #2 described the gun under the body as steel in color with the hammer cocked back. Witness #2 then saw the officer begin life saving measures.

Witness #3

Witness #3 was interviewed on August 16, 2016, at around 6:55 p.m. by investigators at the Stockton Police Department, and stated the following:

Witness #3 parked her car on Jamestown Street just a few feet from the back entrance of where the incident took place. As she got out of her car and walked to the rear of her car, she saw a man in a dark uniform (Officer Wells) running after another man (Mr. Friday.) She believed she saw Officer Wells kneel. She then heard three to five gunshots and ducked behind her car. When she next looked, she saw that Mr. Friday was on the ground. Witness #3 stated that she heard no voices and she never saw anything in Mr. Friday's hand. She then immediately left the area, walked to a restaurant and then to her work on Kentfield Road. After several minutes, she returned and saw that police had arrived.

Witness #4

Witness #4 was interviewed on August 16, 2016, at around 2:40 p.m. by investigators at the Stockton Police Department. During the interview Witness #4 was anxious and claimed her

“nerves are wrecked,” and possibly due to this, the exact sequence of events according to her is somewhat difficult to discern. She stated the following:

Witness #4 was in a second story apartment north of the area where the incident occurred. She was in the process of making a bed when she heard someone say, “Drop the gun!” and saw Mr. Friday, who she did not know but recognized from the area, running. Witness #4 then heard a “kind of thud” which she believed was the sound of a gun striking the ground. She initially thought that the sounds she heard were from a video game but then realized it was occurring outside the window.

Witness #4 then heard someone shout, “I’m going to shoot you in your back,” and then shots rang out. This caused her to go to the window and press her face to the screen to get a look. She saw an officer (Officer Wells) standing with his gun drawn but not running, on his police radio. Witness #4 surmised that Mr. Friday had been running to discard some type of contraband in the dumpsters nearby and get to the gate to escape.

Witness #4 threw on some clothes to go outside and walked up to the scene on Jamestown Street. She observed Officer Wells rendering aid to Mr. Friday. Then she saw the gun in the parking strip. Immediately after, the ambulance arrived.

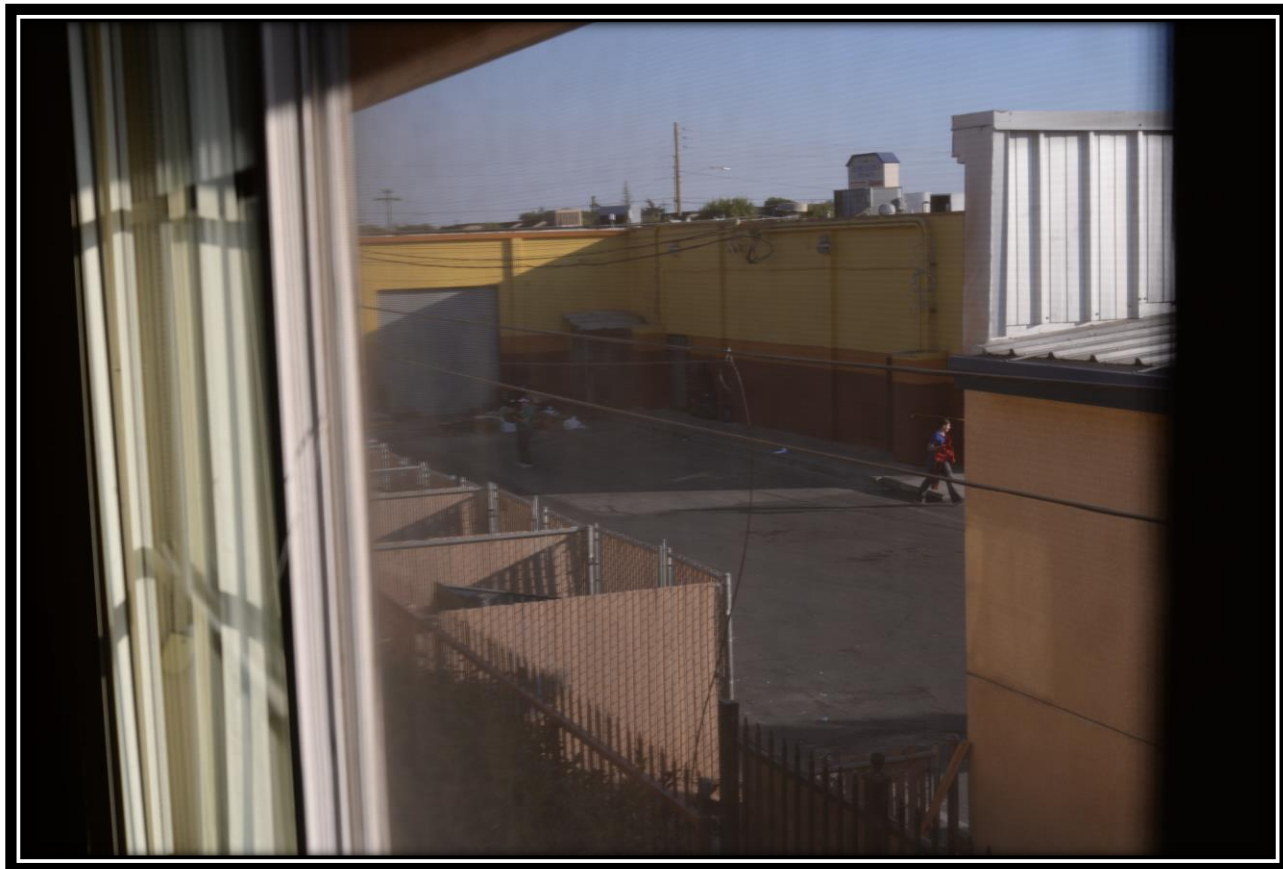
Alternatively, Witness #4 also stated that from the apartment window, she actually saw Officer Wells fire the shots, Mr. Friday fall, and the gun lying in the parking strip.



[Witness #4 Vantage Point – DOJ]

During the scene investigation, investigators were allowed entry into Witness #4’s apartment to see what could be observed from her vantage point. Pressing their faces to the

window screen, they were unable to see the area of the paved lot where the incident occurred. Investigators took photographs of this vantage point.



Witness #4 from Vantage Point - Task Force]

SUBSEQUENT INVESTIGATION

Video Documentation

An attempt was made to secure any video that may have recorded any aspect of this incident. Pena's Market had interior and exterior cameras but neither recorded the initial encounter. No other businesses in the mall strip had exterior cameras. Cell phone footage after the shooting was also reviewed for any relevant footage. Below are descriptions of the most relevant footage.

SPD "Body Camera"

The body camera of Officer Wells was obtained and reviewed. Officer Wells activated his body camera after the shooting. The recording shows Officer Wells reloading his weapon, and moving toward Mr. Friday while Mr. Friday lay on the ground. The body camera shows Witness #1 walking along the fence and arriving at the gate at approximately the same time that Officer Wells gets close to Mr. Friday. The body camera also seems to show Officer Wells

possibly clearing some items away from Mr. Friday with his foot and you can hear Officer Wells ask Witness #1 where the gun is. The body camera then shows the gun lying in the parking strip. The gun is a Model 1911 .45 caliber semi-automatic with the hammer cocked in a firing position.⁷ Because the body camera was not activated prior to the shooting, there is no camera recording of the foot chase, verbal orders, or the shooting itself.

Apartment Surveillance Camera

Surveillance camera footage from a camera at a neighboring apartment complex, although grainy and its time stamp off by an inconsequential amount, shows at 1:57:52 p.m., the witness Witness #1 (blue circle in below photograph) parking his car and exiting his vehicle. Witness #1 begins to walk towards the apartment complex when, at 1:58:20 p.m., it appears his attention is diverted to the chase. It appears from the video that Witness #1 was within 80 to 90



feet of where the shooting occurred, and was present during the entire incident.

At 1:58:25 p.m., Mr. Friday (yellow circle in above photograph) comes into frame in the upper right-hand corner of the video. The footage shows Mr. Friday, at 1:58:27 p.m., run in a

⁷ See below, "*Subsequent Investigation, Firearms Examination*".

circular manner and then drop to the ground. Witness #1 starts to walk over to the incident to observe. Within a minute, 1:59:27 p.m., Witness #1 runs to the exit of his lot, and down Jamestown Street towards the iron gate and the incident. Due to the angle of the camera, the footage does not provide any pictures of the incident.

The video also shows an unidentified pedestrian (red circle in below photographs), walking by the incident on the Jamestown Street sidewalk during the shooting. The unidentified witness appears at the time stamp on the video at 1:58:06 p.m. and continues to walk westbound. At 1:58:20 p.m., Witness #1 stops and begins to observe the chase and subsequent shooting. At 1:58:25 p.m., Mr. Friday comes into frame in the upper right-hand corner of the video. As this occurs, the unidentified witness continues to walk westbound and out of camera range at 1:58:25 p.m.. At 1:58:27 p.m., Mr. Friday appears to fall to the ground.





This unidentified pedestrian did not remain on scene and has never been identified. Investigators canvassed the neighborhood looking for percipient witnesses and this individual has not come forward to assist in the investigation.

Witness Cell Phone Camera

Witness #1 took video footage with his cell phone. The video begins after the shooting had already occurred and began with Officer Wells administering CPR to Mr. Friday.

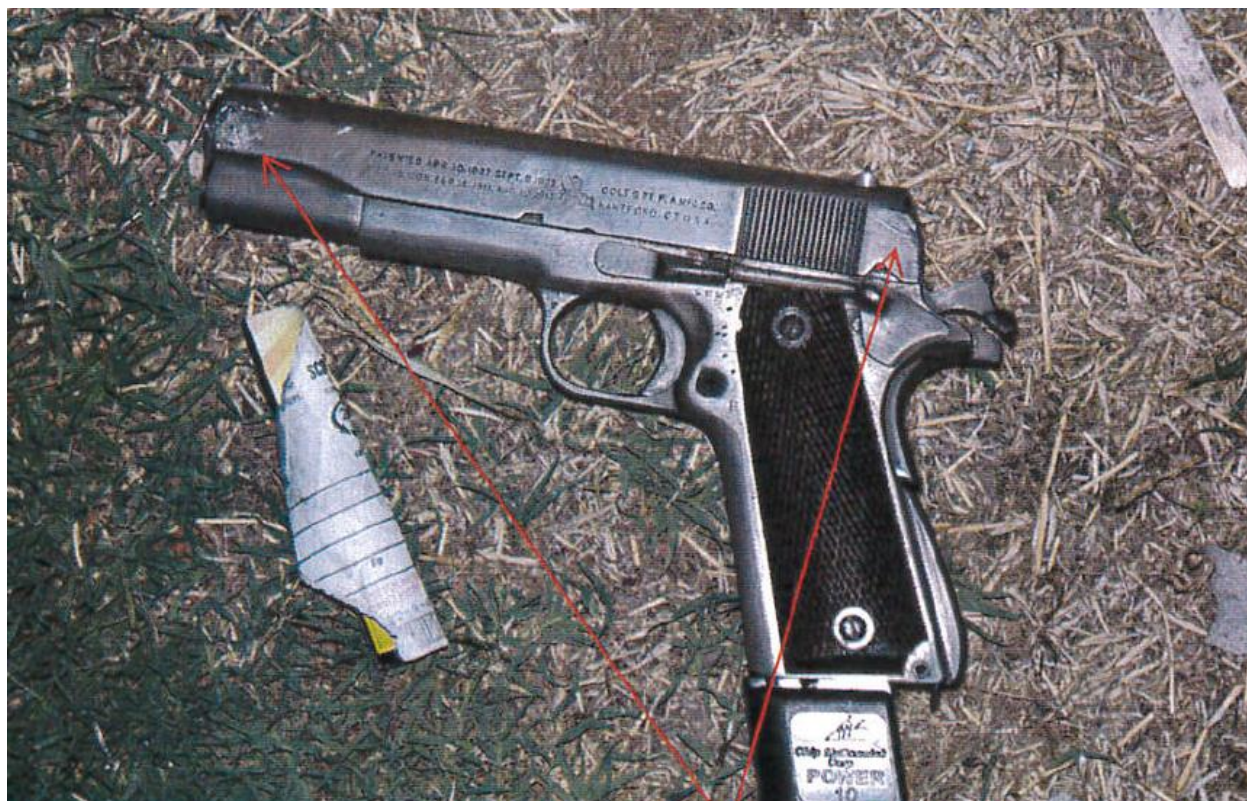
Firearm Examination

DOJ criminalists arrived at the location of the shooting shortly after the event. DOJ criminalists documented the scene independently from SPD crime scene technicians, using traditional equipment as well as a laser scanner.⁸

⁸ The DOJ utilizes a scanning machine that takes specialized photographs that assists in reconstruction analysis. The scans are preserved as photographs and also are used to create diagrams.

Later that afternoon, in the presence of DAI and SPD investigators, DOJ criminalists took custody of the issued service pistol of Officer Wells, which consisted of a .40 caliber Sig Sauer semi-automatic pistol. His pistol was loaded with a twelve round magazine clip with one additional round chambered in the firearm. He also carried two additional twelve round magazines.

Mr. Friday was armed with a Model 1911 .45 caliber semi-automatic pistol. The firearm was loaded with one round in the chamber and five rounds in the magazine. The hammer was cocked and the safety off. Fresh scrape marks were apparent on the side of the gun facing down when found, consistent with the firearm sliding across the cement.

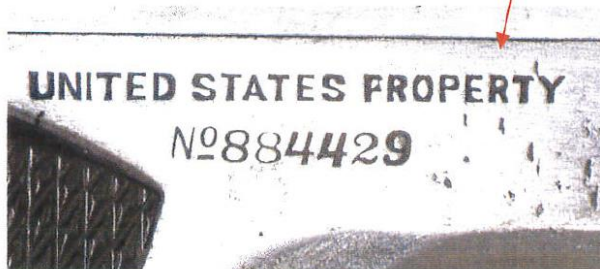


[Colby's .45 caliber Model 1911 with scrape marks at scene – DOJ]

The firearm was military issue so its original and subsequent owners cannot be determined. The Model 1911 was examined by DOJ who confirmed that it was chambered for .45 caliber cartridges. The gun was test fired and it functioned normally. Six live copper jacketed rounds were also recovered with the gun.



Left and right sides of Item 1



Item 1 serial number

[Colby's .45 caliber Model 1911 at DOJ lab - DOJ]

The Model 1911 .45 caliber pistol was also examined for DNA by DOJ criminalists. The DOJ concluded the DNA of too many different people (known as “contributors”) was on the grips or trigger to have further interpretation.

Mr. Friday’s DNA was located on five of the bullets from the Model 1911’s pistol magazine.⁹

Pathology

On August 17, 2016, San Joaquin County Pathologist Bennet Omalu, conducted the autopsy of Mr. Friday. Mr. Friday’s blood results showed .57 mg/L of methamphetamine and 1.5 mg/ml of THC (the primary psychoactive found in cannabis) in Mr. Friday’s system.

Dr. Omalu’s autopsy revealed that Mr. Friday suffered the following gunshot wounds:¹⁰

- 1) a fatal penetrating gunshot wound to the head - entering the right upper lip and traversing to the intra-cranial cavity causing trauma to the brain;
- 2) a perforating gunshot wound to the right arm and elbow;
- 3) a perforating gunshot wound to the right lateral mid-thigh;
- 4) a perforating gunshot wound to the right foot;
- 5) a penetrating gunshot wound to the left anterior medial thigh;
- 6) a penetrating gunshot wound to the left posterior/medial thigh;
- 7) a penetrating gunshot

⁹ DOJ Bureau of Forensic Science Case Number 16-006573-0003 dated September 7, 2017.

¹⁰ The order of the wounds here or in the autopsy report do not reflect the order in which Mr. Friday was shot or struck. This normally is not possible to do and it was not done in this case.

wound to the left posterior thigh; and, 8) a penetrating gunshot wound to the left lateral distal thigh. All gunshots are distant gunshot wounds.

Dr. Omalu determined the cause of death to be the gunshot wound to the head.¹¹

Background

At the time of the incident, Officer Wells was in good standing with Stockton Police Department with over thirteen years of experience as a police officer. This is his first use of lethal force.

Mr. Friday had an extensive criminal record which precluded him from possessing any firearm or live ammunition.¹² (See, Penal Code sections 29800 and 30305.)

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

Penal Code Section 197 states: “Homicide is 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; or,
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; or,

¹¹ As in all Protocol cases, both the Coroner’s report and the Pathologist’s (autopsy) report were independently reviewed. A Coroner’s report renders an opinion regarding the “manner of death; either natural, accident, suicide, homicide, or undetermined. This is a quasi-medical determination, not a criminal legal one. In this instance, the Coroner ruled the death a homicide. This finding does not opine whether the homicide is lawful or not. While a Coroner’s report may yield important information regarding the manner of death, it is the pathology report that renders a medical opinion as to the cause of death with which this memorandum relies.

The pathology report delves into the “cause of death” and is vital in understanding the totality of circumstances in Protocol cases. This might at times, as it did in this case, require consultation with the pathologist to review the medical opinions contained in the report. After such a review, it is the District Attorney’s Office that renders a legal opinion as to the lawful or unlawful nature of the death.

¹² Supporting documentation found in “*Confidential Page APPENDIX C: Colby Friday Criminal History*”

3. When committed in the lawful defense of such person, or of a wife or husband, 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 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 196¹³ (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333). Penal Code section 196 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 have 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 that 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 US 386, 396-397, see also, *Jeffers v. Gomez* (9th Cir. 2001) 267 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 officer be deemed an aggressor or lose his

¹³ See also, jury instruction CalCrim 507.

right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” 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 v. County of Los Angeles, supra* 47 Cal.App.4th at 343, quoting *Smith v. Freeland* (6th Cir.1992) 954 F.2d 343, 347)). Numerous cases have established that peace officers may use deadly force when confronted with an individual “whose actions indicate an intent to attack.” (*Renyolds v. County of San Diego* (S.D. Cal 1994) 858 F.Supp. 1064, 1072.)

Application of Law

In analyzing the reasonableness of the decision by Officer Wells 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) Officer Wells was acting within reason when he attempted a consensual encounter with Mr. Friday whom he believed might be a person subject to a felony arrest. (*Florida v. Royer* (1983) 460 U.S. 491.)
- 2) Officer Wells was acting with reasonable suspicion when he began to pursue Mr. Friday based on Mr. Friday’s actions of ducking into the market; fleeing from the market and the officer; continuing to run; and, his suspicion that Mr. Friday might be a person subject to a felony arrest. (*Terry v Ohio* (1968) 392 US 1.)
- 3) Officer Wells’s belief that Mr. Friday was armed was reasonable based on his suspicion that Mr. Friday might be a person subject to a felony arrest and had information that the person was known to be armed. Additionally, Mr. Friday’s physical act of holding his hand by his waistband during his flight as well as the distinct sound made when Mr. Friday dropped an object, both corroborated by independent witnesses, led to the reasonable conclusion that Mr. Friday was armed.
- 4) Mr. Friday was in fact armed with a Model 1911 .45 caliber semi-automatic pistol. This is borne out by independent witnesses who saw the firearm nearby as well as video footage and observations by scene investigators. The fact that Mr. Friday’s DNA was found on five of the six

live rounds of ammunition in the firearm is conclusive evidence that Mr. Friday was armed with this pistol during the encounter with Officer Wells.

The fresh scrape markings on the firearm documented by the DOJ provide evidence that the firearm was propelled across the ground to its resting place.

5) Officer Wells's belief that his life was in danger is a reasonable conclusion based on the preceding facts as well as Mr. Friday's actions contemporaneous with the shooting. Mr. Friday had stopped and turned around, facing Officer Wells before reaching down. The independent witness as well as the forensic evidence of the pathology report support this: Mr. Friday's fatal wound was a gunshot wound to the face that travelled backward, upward, and leftward.

The evidence that Officer Wells and Mr. Friday were facing each other when Mr. Friday was shot, coupled with the observations of an independent witness, Officer's Wells's professional experiences, and Mr. Friday's actual possession of a loaded firearm all support Officer Wells's reasonable belief that Mr. Friday was reaching for his dropped firearm and that Officer Wells was in reasonable fear for his life when he used deadly force.

Officer Wells's department-issued body camera was not activated prior to the use of deadly force. While this body camera footage would have provided additional evidence for this investigation, the inquiry of this task force is not whether department policies were followed. That is the function of the City of Stockton's administrative investigation and their employee disciplinary proceedings. The inquiry of this investigation is whether the shooting of Mr. Friday is legally justified or not, and what, if any, criminal charges should be brought. The failure to turn on a police body camera does not result in a criminal offense under prevailing statutes.

CONCLUSION

In applying the prevailing legal standards, and based upon the totality of the circumstances, and in light of all the evidence obtained from the multi-task force investigation, it is the opinion of the District Attorney that the lethal use of force by Officer Wells on August 16, 2016, was justified, and no criminal charges are warranted.