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### MEMORANDUM

TO: ERIC JONES, CHIEF  
STOCKTON POLICE DEPARTMENT

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

DATE: AUGUST 7, 2017

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF  
KENNETH GARCIA, (SPD DR #15-22067).

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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 Kenneth Garcia on June 14, 2015. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, the San Joaquin County Sheriff's Department, and the Department of Justice.

### FACTUAL SUMMARY

On June 14, 2015, at approximately 5:30 p.m., Officer Robert Barrington of the Stockton Police Department was patrolling the area of Pershing Avenue and Rosemarie, in the City of Stockton, as part of the Crime Response Team. Officer Barrington was patrolling in an unmarked vehicle while wearing a raid vest marked as a Stockton Police Officer.

While patrolling in the area of Pershing Ave., Officer Barrington observed a Hispanic male with tattoos on his face whom he believed he recognized from previous contacts. Officer Barrington turned his unmarked vehicle around and began driving back toward Rosemarie when he observed the Hispanic male get into the driver's seat of a white Kia, and began striking the female passenger in the head area with his hand.

Due to the battery which Officer Barrington just observed, he radioed for a marked unit to assist in traffic stop. Stockton Police Officers Jessie Smith and Benham Parsa, were patrolling

in the area of Pershing Ave., in a marked Stockton Police Department SUV, and received the call for assistance in a traffic stop of a white Kia. Upon receiving the call, they almost immediately saw the suspect vehicle accelerate out of a car wash parking lot. Officer Smith maneuvered his marked unit behind the suspect vehicle at Rosemarie and turned on his lights and siren. The suspect vehicle immediately accelerated, running several stop signs, exceeding the speed limit, and passing several cars until the pursuit made its way to March Lane.

At March Lane, the suspect vehicle traveled into oncoming traffic and then proceeded up the Northbound I-5 off-ramp, traveling south against traffic. Officers Smith and Parsa followed but on the shoulder and had to slow down because of all the cars that were stopping and swerving to avoid a head on collision with the suspect.

The suspect vehicle continued south on I-5 against traffic until they exited the on-ramp at Alpine Avenue. The suspect vehicle turned right on Alpine and Officer Smith was able to close the gap and follow. The suspect vehicle again began to run stop signs and turned right on Delano Ave., with Officer Smith right behind him. At this point the Officers decided to do a pit maneuver as the suspect vehicle approached Calariva Drive. As the suspect vehicle began to navigate the turn at the intersection, Officer Smith caused his marked SUV to hit the rear bumper of the suspect vehicle causing the suspect vehicle to collide into a parked vehicle.

Officer Smith drove his SUV into the corner of the suspect vehicle attempting to pin the white Kia in and thus ending the chase. Officers Smith and Parsa both exited the marked SUV with their guns drawn. Both Officers were wearing standard issued Stockton Police Department uniforms. Both Officers began giving verbal commands to the suspect behind the wheel, (later identified as Kenneth Garcia, (d.o.b. 11/06/86) "stop the car, turn the car off." Both Officers repeated these commands several times.

Garcia refused to follow the commands being given and continued to shift the car into reverse, and then drive over and over again while moving the front tires back and forth. While trying to steer clear of the vehicles blocking his escape, the rear tires were spinning and kicking up smoke. Officer Smith had approached on the driver's side, while Officer Parsa had approached on the passenger side of Garcia's vehicle. Both Officers observed Garcia looking back at them while clenching the steering wheel with one hand and shifting the gears from reverse to drive with the other hand.

Garcia had all of the doors locked, but during the pit maneuver, the back driver's side window had shattered. Officer Smith decided while having his gun drawn, to reach in through the back window and attempt to unlock the driver's door so he could attempt to pull Garcia out of the car. While Smith's arm was in the vehicle, Garcia was able to get the car free and spun the front end around almost running over Officer Parsa who was able to jump out of the way and retreat toward the front of the car.

Officer Smith felt the car moving and was able to pull his arm out and move out of the way and toward the side front of the vehicle. As Garcia spun the front end of the vehicle around, Officer Smith was now toward the front of the vehicle on the passenger side and had an open view of the driver without the passenger being in the line of fire. Officer Parsa was now in front of Garcia's vehicle toward the driver side.

Officer Parsa was frightened that he had almost been run over, had observed Garcia driving on the wrong side of I-5, and when Garcia began spinning the tires forward, felt he was about to get run over, or that Garcia would endanger the public further in attempting to escape.

In response to these fears, Officer Parsa fired his duty weapon three to four times. Officer Smith almost simultaneously began firing his weapon and reported firing it four to five times.

Garcia's hands came off the steering wheel and he appeared to have been struck, but the tires were still spinning. Garcia's foot was still on the accelerator and the Officers had to get the passenger to open the doors and assist them in getting his foot off the accelerator and the car out of gear.

First Aid was started and radio dispatched for shots fired. AMR arrived within minutes, took over first aid and Garcia was transported to San Joaquin County General Hospital. Garcia was pronounced dead by Dr. Madden at 6:10 p.m., on June 14, 2015.

Melissa Wallace (d.o.b. 10/22/84) was the passenger in the vehicle during this incident. Wallace was not injured during the events described above, and was interviewed by law enforcement on June 15, 2015, at 12:33 a.m. Wallace explained that she and Garcia had been dating since September 13, 2013, but really had only spent the last few months together because both of them had been in and out of custody. Wallace was seventeen weeks pregnant at the time of this incident.

Wallace stated this was the first time Garcia had hit her and it was probably due to the fact they were living out of the car and the fact Garcia was worried about going back to jail on a parole violation due to a hit and run matter that occurred in Tracy a few weeks earlier. Wallace said that Garcia saw the marked unit get behind them when they left the car wash parking lot, but told her he did not want to go back to jail and began accelerating even before the lights and sirens were turned on.

Wallace further explained that Garcia drove on the wrong side of I-5 on purpose and kept telling her not to worry that the cops would have to call off the pursuit because they were going the wrong way. Wallace heard the Officers giving Garcia verbal commands to put his hands up but that Garcia just kept yelling, "I'm just trying to get away." When asked if Garcia had taken any drugs, Wallace said not today, but that he is an alcoholic and probably had been drinking.

### **PATHOLOGIST'S REPORT**

On June 15, 2015, San Joaquin County Pathologist Bennet I. Omalu, conducted an autopsy upon Garcia and concluded that Garcia died from a lethal gunshot wound to the upper left chest area. Garcia was struck a total of eight times, six to the upper trunk area and twice to the upper extremities. Toxicology reports showed a blood alcohol of .03 and methamphetamine of 1.1 mg/L.

### **CRIMINAL HISTORY**

Garcia had a significant criminal history given his age. In 2005, Garcia went to prison for California Vehicle Code sec. 10851, from Alameda County. His parole was violated in 2006 and 2007. The 2007 violation occurred when he was convicted of Penal Code sec. 496, a felony, in Alameda County. In October 2007, Garcia was convicted of California Vehicle Code sec. 2800.2, and was sentenced in Alameda County to two years in prison. In 2010, Garcia was convicted of Penal Code sec. 12021, from Alameda County, and sentenced to

prison. In 2011, Garcia was convicted of Penal Code sec. 12021(a)(1), in San Joaquin County, and sentenced to prison. In 2014, Garcia was convicted of Penal Code sec. 29800, out of Alameda County. In that matter, he received a five year grant of probation and was sentenced to a year local. Garcia's last conviction came in January 2015, for California Vehicle Code sec. 2800.2. Garcia was sentenced out of Manteca, to sixteen months prison.

### 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 under a reasonable doubt standard, Officers Smith and Parsa were justified in making a traffic stop on Garcia due to the fact a battery had occurred in the presence of Officer Barrington. Officers Smith and Parsa were working in a marked police unit and activated their lights and siren. Instead of stopping the vehicle, Garcia led Officers on an extremely dangerous pursuit during commuter hours, running stops signs, and exceeding the speed limit on residential streets. Garcia drove against oncoming traffic on March Lane, and then on I-5, endangering numerous peoples' lives who had to swerve or slam on their brakes to avoid a head on collision at freeway speeds.

Officer Smith finally completed a pit maneuver while the vehicles were traveling at slower speeds, and was able to temporarily pin Garcia's car in between two vehicles. Officers Smith and Parsa repeatedly gave Garcia verbal commands to put up his hands and to turn off the car. Garcia refused to comply. Officer Smith attempted to reach into the vehicle to unlock the doors so he could pull Garcia out. Officer Smith could not get the door unlocked before Garcia spun the vehicle around almost running over Officer Parsa. At this point Officers Smith and Parsa were toward the front end of the vehicle while Garcia was stepping on the accelerator, trying to free the car further, and moving toward the Officers. Both Officers, in fear for their safety, and the safety of innocent citizens, fired their duty weapons approximately four times each.

In light of the evidence, and viewing the incident through the totality of the circumstances, there is insufficient evidence to establish proof beyond a reasonable doubt that the use of force involved in this incident was criminally unlawful, and therefore does not warrant the filing of criminal charges.