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MEMORANDUM

TO: ERIC JONES, CHIEF
STOCKTON POLICE DEPARTMENT

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

DATE: APRIL 4, 2016

SUBJECT: INVESTIGATION OF THE FATAL SHOOTING OF
MATAUTU NUU, (SPD DR #15-3482).

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 Matautu Nuu on January 27, 2015. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Stockton Police Department, and the Department of Justice. This recommendation is made after reviewing all of the investigative reports, photographs, autopsy reports, Department of Justice reports, radio traffic, and phone video from witnesses including a still frame break down of the video.

FACTUAL SUMMARY

On January 27, 2015, at approximately 11:48 p.m., Stockton Police Department Officers were dispatched to 7616 Pacific Ave., Stockton, California, on a report that a family member was causing a disturbance, was armed with a hammer, was breaking things, and threatening family members. Stockton Police Officers arrived on scene within minutes. Family members continued to advise dispatch the suspect was drunk and acting crazy, and was refusing to put the hammer down. When Officers arrived, the suspect was walking in the middle of the street and stopped at the Northeast corner of Martinique and El Dorado. The suspect, who was identified by family members as Matautu Nuu (d.o.b. 07/09/1979), was still holding a hammer.

Sergeant Steven Williams arrived on scene within minutes of the first Officers arriving. While Sergeant Williams was assessing the situation, Officer Thomas Heslin of the Stockton Police Department was attempting to speak with Nuu, and get him to drop the hammer

(photograph attached). Officer Heslin was wearing a standard issued Stockton Police Department uniform. Officer Heslin repeatedly asked Nuu to drop the hammer. Nuu responded to him by telling him to "fuck off, you're going to have to shoot me." Officer Heslin asked Nuu what was bothering him and attempted to get Nuu to talk to him to see if they could de-escalate the situation. Nuu responded with random statements and more profanity.

Sergeant Williams then called for Officer James Manor and his canine Nitro to work around the side of Nuu and hold a position while an arrest team was put together. Officers Heslin, John Griffin, Daniel Villalobos, Darius Buhari, and Jason Shaffer were to make up the arrest team. All of the Officers were wearing standard issued Stockton Police Department uniforms. Officers Heslin and Griffin had their tasers out in case they were needed.

During this entire time, a crowd had gathered and were yelling at the Police and at Nuu. Besides the fact that the noise was agitating Nuu further, the crowd also was warning Nuu as to the location of the canine and the Officers' movements. Sergeant Williams told Officer Manor to move in to see if he could get the dog to engage. While this was occurring, Officer Heslin began giving Nuu commands to drop the hammer in attempts to get Nuu's attention focused away from where Officer Manor would be approaching.

Officer Manor was able to get within ten feet of where Nuu was standing on the corner, when he released the canine Nitro. Nitro began to engage Nuu when Nuu turned and swung the framing hammer from above his shoulder, striking the dog near the eye and jaw. Nitro became stunned and went to the ground on his belly. Officer Manor began moving in to retrieve the dog.

As Officer Manor moved in to retrieve the dog, the entire arrest team began moving forward closing the gap of 25 feet down to ten feet within seconds. As Manor was retrieving the dog, he was grabbing the six foot leash with one hand and had slightly turned his back and shoulder away from Nuu who was now within four to six feet from Officer Manor.

Officers Heslin and Griffin both fired their tasers. Both Officers state they saw the tasers strike Nuu and neither taser had any affect. Nuu verbalized the fact the prongs had struck him, but he was still raising the hammer and appeared to be readying himself to strike at one of the Officers or to throw the hammer at one of them.

Officer Heslin believed they could not get close enough to use the batons due to the hammer being swung and immediately dropped his taser and went to pull his duty weapon. While he was doing this Officer Shaffer had his duty weapon pointed at Nuu and believing Nuu was about to strike one of them with the hammer, fired one time into Nuu's upper torso. Officer Griffin had already dropped his taser and pulled his duty weapon. Officer Griffin, seeing that the taser had no affect, and fearing one of them was about to get killed or seriously injured by the hammer, fired two rounds into Nuu's upper torso.

The arrest team quickly moved in, taking the hammer out of Nuu's right hand, and first aid was begun immediately. AMR was standing by and moved in and took over treatment and transportation of Nuu to the San Joaquin County Hospital. Nuu was pronounced dead by Dr. Ali, of the San Joaquin County Hospital, at 12:36 a.m. Nitro was transported to the veterinarian for an open wound to the jaw area, and made a full recovery.

Due to the distance from the incident, the lighting, and poor quality, the video is inconclusive as to Nuu's actions before the shots are fired. The video is therefore not helpful when reviewing this matter for the purposes of analyzing the legality of the Officers' actions.

PATHOLOGIST'S REPORT

On January 29, 2015, San Joaquin County Pathologist Bennet I. Omalu, conducted an autopsy upon Nuu and concluded that Nuu died from multiple gunshot wounds to the upper trunk area. Nuu was struck a total of three times in the upper trunk area. Blood samples were taken showing Nuu had a blood alcohol level of .13, along with the presence of marijuana measured at 1.6 ng/ml of THC

CRIMINAL HISTORY

Nuu had a history of being drunk in public, and resisting arrest. Nuu's only convictions were for misdemeanor drunk in public in 2008, 2009, and January 16, 2015.

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* (6th 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 Shaffer and Griffin were part of an arrest team that was moving forward at the orders of their Sergeants. Officers had repeatedly given Nuu verbal commands to drop the hammer, give himself up and surrender. Nuu refused to comply with the verbal commands. Law enforcement used the non-lethal method of engaging the canine in order to apprehend Nuu. This did not work as Nuu used the hammer to strike and injure the dog. Law enforcement used non-lethal tasers to persuade Nuu to surrender. The tasers had no affect upon Nuu who continued to swing his hammer overhead. As the arrest team had moved in, it appeared to the Officers that not only was Officer Manor in jeopardy of being seriously hurt or killed, they too were in danger due to the proximity of the hammer and the fact the tasers had no affect upon Nuu. Because of this fear, Officer Shaffer fired his duty weapon one time, and Officer Griffin fired his duty weapon two times, stopping the perceived threat.

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 the use of force involved in this incident was criminally unlawful, and therefore does not warrant the filing of criminal charges.