

REPORT ON THE FATAL SHOOTING OF JAHMAL DERRICK STEWART ON JANUARY 14, 2019



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I – REVIEW OF THE EVIDENCE

1. Items Reviewed

The following items were reviewed along with attached transcripts, diagrams and photographs:

- Yuba Sutter Officer Involved Shooting Team reports for OIS SCDA 19-002
- California Department of Justice, Bureau of Forensic Services Field Investigation Report CH-19-000015-0001
- California Department of Justice, Bureau of Forensic Services Physical Evidence Examination Report CH-19-000015-0002
- California Department of Justice, Bureau of Forensic Services Physical Evidence Examination Report CH-19-000015-0003
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- Yuba County Sheriff's Department reports for Incident No. 1-19-000188
- Yuba County Sheriff's Department reports for Coroner Case No. 1-19-000189
- Yuba County Sheriff's Department Computer Aided Dispatch Logs for Call Numbers 190140126, 190140127, 190140128, and 190140129
- Autopsy Report Y19-009; Kelly Kobylanski, DO, Pathologist
- National Medical Services, Inc. toxicology report 19017730
- California driver record and criminal history information of Adam Wayne Smith

2. Events as determined from the reviewed materials

Background

Jahmal Derrick Stewart was 45 years old on the date of his death. Information taken during his autopsy reflected that he was a normally developed black male; 6'tall, and weighing 160 pounds.

Mr. Stewart is believed to have been transient at the time of his death. According to records from the California Department of Motor Vehicles and Department of Justice, Mr. Stewart had a long history of violent behavior, resisting arrest, theft, weapons, and the use of methamphetamine. Mr. Stewart returned regularly to custody for the commission of new crimes or violations of the terms of his parole and community supervision. Mr. Stewart was last released from custody after serving a jail sentence in Sacramento County for a 2018 case in which he possessed a concealed dagger and violated the terms of his post release community supervision.

Initial Call for Service

On January 14, 2019, at 3:33 p.m., Yuba County Sheriff's Public Safety Dispatcher Kimberly Moua received a 911-call from a female caller. The caller reported that a male subject was hitting an elderly male with a cane on North Beale Road in front of the Country Florist. The woman provided a description of the man's clothing and indicated he was heading towards the Wal-Mart. Several additional persons called 911 to report the crime in progress.

Yuba County Sheriff's Deputies Scott Johannes and Justin Young were dispatched to the incident at 3:33 p.m. Dispatch provided the deputies the description of the suspect and updates on his location. Yuba County Sheriff's Sergeant Tamara Pecs, the on-duty patrol shift sergeant, also began responding to the incident. All three were wearing full uniforms and driving marked sheriff's vehicles.

Officer Involved Shooting Incident

Deputy Johannes arrived first, traveling eastbound on North Beale Road. Deputy Johannes saw Jahmal Derrick Stewart walking westbound on the south side of North Beale Road. Mr. Stewart matched the suspect's description, location, and direction of travel. Deputy Johannes pulled the patrol car to the side of North Beale Road and parked against the south curb.

Getting out of the patrol car, Deputy Johannes told Mr. Stewart that he needed to talk with him. Mr. Stewart was slow to cooperate and Deputy Johannes observed Mr. Stewart was wearing baggy clothing that could conceal a weapon. Knowing that Mr. Stewart had possibly just assaulted someone with a weapon, Deputy Johannes decided to pat down Mr. Stewart to make sure he did not have any concealed weapons.

Deputy Johannes grabbed Mr. Stewart's right arm to detain him. As Deputy Johannes reached for Mr. Stewart's left arm, Mr. Stewart pulled away as if to run. Deputy Johannes managed to grab Mr. Stewart's shirt while still holding onto his right arm. At that moment, Mr. Stewart spun around and Deputy Johannes felt Mr. Stewart grab the deputy's duty weapon.

Deputy Johannes's duty weapon was a Glock Model 17 handgun chambered in 9mm. Deputy Johannes had the weapon holstered on his duty belt at his right hip.

Upon feeling Mr. Stewart grab his handgun, Deputy Johannes immediately cupped his hand over the handgun to keep it in the holster. Deputy Johannes hooked Mr. Stewart's arm and they both went to the ground. Once on the ground they continued to struggle over Deputy Johannes's handgun. Deputy Johannes broadcast over the radio the subject was trying to get his gun. He could feel his holster being tugged up and was convinced he would be killed if Mr. Stewart managed to get his handgun.

Sergeant Pecs arrived at 3:36 p.m., only three minutes after the initial dispatch. As she approached in her patrol vehicle westbound on North Beale Road she saw that eastbound traffic had stopped. Sergeant Pecs saw Deputy Johannes's patrol car parked and Deputy Johannes and Mr. Stewart fighting on the ground. Sergeant Pecs advised dispatch there was a fight and requested additional

deputies make an emergency “Code 3” response. Sergeant Pecsí had just heard Deputy Johannes’s distressed radio communication that the suspect had his gun when she crossed into the eastbound lanes and pulled up to Deputy Johannes’s patrol car.



Photo taken by YCPD Detective Kodani on 1/14/2019. The Dodge Charger on the right was driven by Deputy Johannes. The Chevy Tahoe on the left was the vehicle driven by Sergeant Pecsí. Neither vehicle was moved after the incident before this photo was taken.

Sergeant Pecsí exited her patrol vehicle and ran towards the fight. She could see Mr. Stewart was on top of Deputy Johannes when she heard a gunshot. She saw Deputy Johannes begin to roll toward his stomach. Sergeant Pecsí believed that Mr. Stewart had just shot Deputy Johannes and would shoot him again or engage her with the firearm. Sergeant Pecsí, believing their lives were in danger, discharged her duty weapon at Mr. Stewart.

Deputy Johannes had also heard a single gunshot during the struggle and believed Mr. Stewart had fired a gun. He was not sure where the gunshot came from because he was fully concentrating on keeping his own handgun in his holster. Deputy Johannes rolled onto his right side with Mr. Stewart on top of him, when he heard three or four more gunshots. At that point, Deputy Johannes rolled away from Mr. Stewart and saw Sergeant Pecsí with her duty weapon standing over them.

Actions After the Shooting

Believing he had been shot, Deputy Johannes scrambled around Sergeant Pecsí and took cover behind his patrol car.

Sergeant Pecsí continued to hold Mr. Stewart at gunpoint, radioing for emergency backup and informing dispatch an officer was down. She requested units shut down North Beale Road and

called for medical assistance. Sergeant Pecsí also called out to Deputy Johannes, asking him where he was hit.

Deputies Young and Ruggirello arrived moments later. Deputy Ruggirello was in the process of handcuffing Mr. Stewart when personnel from the Linda Fire Department and Bi-County Ambulance arrived. Emergency medical personnel assessed Mr. Stewart, discovering he had no pulse and his pupils were fixed. Several bullet wounds were noted in Mr. Stewart's torso. Bi-County Paramedic Heather Jenkins pronounced Mr. Stewart deceased at 3:44 p.m.

Sergeant Pecsí secured Deputy Johannes's duty weapon, removing it from his holster while several deputies assisted Deputy Johannes to remove his uniform shirt and protective vest to check for injuries. Sergeant Pecsí ejected the magazine out of Johannes's duty weapon. When she went to eject what she assumed would be a live round from the chamber, she was surprised when she ejected a fired casing instead. Deputy Johannes's uniform shirt, protective vest, duty weapon, magazine, and the fired casing were all left on the hood of Johannes's patrol car.

Photo taken by SCDA Investigator J. Arana on 1/14/2019. Photo depicts Deputy Johannes's uniform shirt, gloves, protective vest, duty weapon and magazine. The fired casing ejected by Sergeant Pecsí can be seen between the magazine and handgun.



When Linda Fire Department Captain Dave Gothrow arrived, he observed that Deputy Johannes was out of breath and had his protective vest off. Captain Gothrow asked him where he had been shot. Deputy Johannes replied, "I don't know." Captain Gothrow examined Deputy Johannes, observing that he was bleeding from his lip and had an abrasion on his face. Deputy Johannes had no other injuries.

3. Field Investigation

On January 14, 2019, by 3:45 p.m., the Yuba Sutter Officer Involved Shooting ("OIS") Team was called to investigate the incident. The Chief Investigators from the offices of the Yuba and Sutter County District Attorneys lead the team, which is comprised of peace officers from each of the member agencies, including the Yuba City and Marysville Police Departments, Sutter and Yuba County Sheriffs' Offices, and the Sutter and Yuba County District Attorneys' Offices. The purpose of the team is to provide an unbiased and professional investigation into officer involved shooting incidents. Investigators on the team are all experienced officers with specialized training in investigating critical incidents.

The scene was secured within minutes of the shooting and the OIS investigation team members began arriving at the incident scene at approximately 4:00 p.m. Based on standard procedures investigators sent the involved deputies to a secure location for processing. Each of the involved deputies surrendered their duty weapons to the OIS investigators so that rounds could be counted and ballistic comparisons could be made if necessary.

Sutter County District Attorney Senior Criminal Investigator Mercy Garcia collected Sergeant Pecsí's duty weapon and magazines. Her duty weapon was a Glock 17 chambered in 9mm. Investigator Garcia found that her duty weapon had 12 rounds in the magazine and 1 round in the chamber, which was 4 rounds short of the 18 rounds it would have fully loaded. Sutter County District Attorney Senior Criminal Investigator Josephina Arana collected Deputy Johannes's Glock 17 from the hood of his patrol car, as well as the loaded magazine and fired casing ejected by Sergeant Pecsí. Investigator Arana found the magazine still contained 17 rounds. The 17 rounds in the magazine plus the fired casing ejected from the chamber accounted for all 18 rounds Deputy Johannes had in his duty weapon prior to the incident.

The OIS investigation team also requested assistance from crime scene experts from the California Department of Justice Bureau of Forensic Services ("DOJ"). California DOJ Senior Criminalists Brandi Spas and Kirsten Wallace arrived at approximately 6:00 p.m. The OIS team members and DOJ criminalists processed the scene, photographing and collecting each piece of evidence.

Four fired Hornady 9mm Luger +P cartridge casings were located and collected from the ground near Mr. Stewart's body. DOJ also received the Deputy Johannes's and Sergeant Pecsí's duty weapons.

Photo taken by DOJ criminalist on 1/14/2019. Photo depicts one of four fired shell casings recovered from the ground near Mr. Stewart's body.



4. Interviews

OIS investigation team members systematically interviewed the involved deputies, emergency medical personnel, and other witnesses who observed the incident. Multiple eyewitnesses corroborated the statements of Sergeant Pecsí and Deputy Johannes about what happened.

Witness – Scott Lawrence

Yuba City Police Detective Isabel Kodani interviewed Scott Lawrence on January 15, 2019.

Mr. Lawrence was driving his granddaughter home from school around 3:30 p.m., on January 14, 2019. He saw a Yuba County Sheriff's patrol car with lights and siren pass him shortly before he turned eastbound onto North Beale Road. Mr. Lawrence slowed down when he saw a deputy stop and jump out of his patrol car on the south side of North Beale Road. The deputy grabbed a man on the side of the road as if to handcuff him. Mr. Lawrence decided to stop to help when he saw the man push the deputy.

Mr. Lawrence stopped his car about 15' from the fight. He witnessed the deputy and man "bear hugging." The deputy was trying to get the male subject down but the man kept reaching for the deputy's gun. The man and deputy went to the ground and were wrestling and rolling on the ground. The man seemed to be overpowering the deputy. Mr. Lawrence saw the man was still trying to get the deputy's gun out of the holster. The man got the deputy's holster unsnapped and it appeared to Mr. Lawrence the man was starting to slide the handgun out of the holster. Mr. Lawrence believed the man would shoot the deputy if he obtained his gun. Mr. Lawrence opened his door to get out of his car and assist, but his granddaughter began crying. Just then, Mr. Lawrence saw the female deputy come up and shoot the man three times.

Mr. Lawrence did not remain at the scene because he wanted to get his granddaughter out of there.

Witness – Billy Gene Gardner

Yuba City Police Sergeant Stephan Thornton interviewed Billy Gene Gardner on January 14, 2019.

Mr. Gardner was traveling westbound on North Beale Road when he observed a man, later determined to be Mr. Stewart, beating an elderly man with a cane in front of the Thunder Bird Mobile Home Park on North Beale Road. Mr. Gardner saw Mr. Stewart kicking and jumping on the older man. Mr. Gardner pulled over and watched Mr. Stewart walking west on North Beale Road with the older man's cane. Mr. Stewart broke the cane by hitting it on a pole.

Mr. Gardner saw Deputy Johannes pull over and contact Mr. Stewart. He could not hear what was being said, but believed from the gestures that Mr. Stewart was not cooperating with Deputy Johannes's instructions to turn around. The next thing Mr. Gardner knew, Deputy Johannes and Mr. Stewart were "wrapped up," and then went to the ground.

Mr. Gardner exited his vehicle and began approaching to help Deputy Johannes. As he was walking up, Sergeant Pecsí arrived and began telling Mr. Stewart to put his hands up. Mr. Gardner heard a single gunshot. He was not sure where it came from. Sergeant Pecsí then fired her duty weapon at Mr. Stewart at least twice.

Witness – Ruben Moreno

Yuba City Police Sergeant Stephan Thornton interviewed Ruben Moreno on January 14, 2019.

Mr. Moreno was driving eastbound on North Beale Road when he saw Deputy Johannes and Mr. Stewart wrestling on the side of the road. Mr. Moreno parked near the patrol car and got out to assist Deputy Johannes. As he walked up it appeared to him that Deputy Johannes let go of Mr. Stewart as Sergeant Pecsí approached. Mr. Moreno was only a few feet away when he heard Sergeant Pecsí ask Deputy Johannes if he was okay and fire three shots at Mr. Stewart.

Witness – Aaliyah Moreno-Alfaro

Yuba County Sheriff Detective Natalie Mullins interviewed Aaliyah Moreno-Alfaro on January 14, 2019.

Ms. Moreno-Alfaro was riding with her father, Ruben Moreno, eastbound on North Beale Road when she saw Deputy Johannes and Mr. Stewart wrestling on the side of the road. Her father pulled over and got out to assist. It appeared to her that the deputy did not have control over Mr. Stewart. Ms. Moreno-Alfaro saw Sergeant Pecsí arrive and point either a taser or a firearm at Mr. Stewart. She heard five gunshots and saw Deputy Johannes let go of Mr. Stewart.

5. Forensic Autopsy

On January 17, 2019, Forensic Pathologist Dr. Kelly Kobylanski performed a forensic autopsy of Mr. Stewart's body at the Placer County Coroner's Office. The autopsy involved the external and internal examination of Mr. Stewart's body to document any injuries and determine the cause of his death. Dr. Kobylanski determined Mr. Stewart died from multiple gunshot wounds. She documented four gunshot wounds; one to his abdomen, two to his trunk/back and one to his right arm. There was no soot or stippling present at any of the gunshot wound sites, indicating all shots were fired at a distance of over 2'. Dr. Kobylanski recovered two deformed bullets from Mr. Stewart's chest cavity and one from the soft tissue of Mr. Stewart's left armpit. The deformed bullets were collected by OIS Team investigators and sent to DOJ.

Dr. Kobylanski's autopsy findings included methamphetamine intoxication based on the presence of methamphetamine and amphetamine in Mr. Stewart's postmortem blood.

6. Forensic Lab Examination & Analysis of Physical Evidence

DOJ Senior Criminalist Brandi Spas authored a report, documenting her lab work and findings. She microscopically compared the fired cartridge casings recovered from the scene with test-fired casings she created by test-firing the duty weapons of Sergeant Pecsí and Deputy Johannes. She verified that the 9mm cartridge casings recovered from near Mr. Stewart's body were fired from Sergeant Pecsí's Glock 17. Criminalist Spas also verified that Deputy Johannes's duty weapon fired the casing ejected from Deputy Johannes's pistol by Sergeant Pecsí.

Senior Criminalist Spas also microscopically compared the deformed bullets removed from Mr. Stewart's body to bullets she obtained by test-firing Sergeant Pecsí's Glock 17. She was able to confirm that the three bullets recovered from Mr. Stewart's body were fired from Sergeant Pecsí's duty weapon.

II - LEGAL PRINCIPLES IN OFFICER-INVOLVED USE OF FORCE CASES

The California Legislature made major changes in 2019 to the laws regarding the justification of deadly force by peace officers. The new law, Assembly Bill 392, was signed by the Governor on August 19, 2019, but does not go into effect until January 1, 2020. Put simply, AB 392 does not apply to this case because it was not the law at the time of the incident. This report analyzes the incident under the law as it existed on January 14, 2019.

Possible criminal charges against an officer involved in a fatal use of force event include murder [Penal Code Section 187]; voluntary manslaughter [Penal Code Section 192(a)]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149].

In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code 196

Police officers may use deadly force in the course of their duties under circumstances not available to members of the general public. California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used "in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty" or when necessarily committed when "arresting persons charged with felony, and who are fleeing from justice or resisting such arrest." Formal written charges are not required for this rule to apply; it is sufficient that an officer have probable cause to believe the suspect committed the offense. (*People v. Kilvington* (1894) 104 Cal. 86, 92.)

When a police officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11.) This requirement that a suspect poses a threat of physical harm can be satisfied where there is probable cause to believe the suspect has committed a crime involving the infliction of serious physical harm and deadly force is necessary to prevent escape. (*Id.* at 11-12.)

These holdings from *Garner* were subsequently clarified by the United States Supreme Court in *Graham v. Conner* (1989) 490 U.S. 386, where the Supreme Court explained that an officer's right to use deadly force is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham, supra*, 490 U.S. at 396.) It is also highly deferential to the police officer's

need to protect himself and others. 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.” (*Id.*) The “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.*)

Courts recognize “under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.)

The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In effect, the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. (*Martinez, supra*, 47 Cal.App.4th at 343-344.)

A homicide is justifiable under Penal Code Section 196 when 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 at 334.) This test is satisfied when deadly force is necessary to stop a fleeing felony suspect where the felony is forcible or atrocious. (*Kortum v. Alkire* (1997) 69 Cal.App.3d 325, 333.) Forcible and atrocious felonies are generally those crimes whose character and manner reasonably create a fear of death or serious bodily harm, such as murder, mayhem rape, and robbery. (*Id.*)

This standard under Penal Code Section 196 is consistent with the Supreme Court standard for reasonable force as stated in *Garner, supra*, 471 U.S. at 11-12. California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment, the requirements of Penal Code Section 196 are satisfied. (*Martinez v. City of Los Angeles*, 47 Ca.App.4th 334, 349.)

California Penal Code 197

California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others. The relevant criminal jury instruction is set forth in CALCRIM 505, stating that a person acts in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. In lawful self-defense or defense of another, a person may use no more force than is reasonably necessary to defend against the danger. (CALCRIM 505.)

A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. Perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) Additionally, “[i]mmminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) In *Aris*, the trial court’s clarifying instruction to the jury on the subject was to the point and later cited with approval by the California Supreme Court: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christina S.* (1994) 7 Cal.4th 768, 783.)

A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) What constitutes “reasonable” self-defense or defense of others depends on the circumstances. The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. In one case, a robber pointed a gun at his victim and a deputy sheriff was called to the scene of the robbery. Before the robber could get off a shot, the deputy fired his weapon, wounding the robber. The appellate court remarked that “[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot.” (*People v. Reed* (1969) 270 Cal.App.2d 37, 45.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (CALCRIM 505.) In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 348.)

When deciding whether a person’s beliefs were reasonable, a jury considers all the circumstances as they were known to and appeared to the person, and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.)

In the related context of cases alleging excessive force by police, the test of reasonableness of an officer’s use of deadly force is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner* (1989) 490 U.S. 386, 396.)

III - LEGAL ANALYSIS

I have carefully examined the recorded statements, the reports of law enforcement officers who witnessed or investigated the officer-involved shooting, the statements of civilian witnesses, the audio recordings and CAD records from the agency dispatch centers, as well as the other materials described herein.

On the afternoon of January 14, 2019, Mr. Stewart beat up an elderly man, hitting him with his own cane and stomping on him in front of the Thunder Bird Mobile Home Park on North

Beale Road. Multiple people called 911 to report what Mr. Stewart was doing. Dispatchers called for Deputies Johannes and Young to respond to the incident. Sergeant Pecsí chose to respond as well to assist.

Deputy Johannes located Mr. Stewart three minutes later, and lawfully attempted to detain him to conduct an investigation. Mr. Stewart chose to fight Deputy Johannes and attempted to take the deputy's duty weapon. Deputy Johannes was fighting for his life, trying his utmost to keep his duty weapon holstered.

At some point during the struggle, Deputy Johannes's Glock 17 was fired while partially removed from his holster by Mr. Stewart. This is apparent based on the fired casing recovered from his firearm. A Glock 17 normally automatically ejects the casing when the pistol cycles after the cartridge is fired. Failures to eject a casing are commonly caused when a semi-automatic pistol cannot fully cycle due to it being in a confined space.

Sergeant Pecsí saw that Deputy Johannes and Mr. Stewart were in a fight on the ground. She believed from Deputy Johannes's radio transmission that Mr. Stewart had the deputy's gun. When she heard the gunshot and saw Deputy Johannes roll, she believed Mr. Stewart had just shot Deputy Johannes in the gut. Fearing that he would fire again at Deputy Johannes or herself, Sergeant Pecsí fired her Glock 17 four times at Mr. Stewart. Evidence from the autopsy and forensic evaluation of the evidence showed that all four of Sergeant Pecsí's rounds hit their mark. Mr. Stewart likely died instantly.

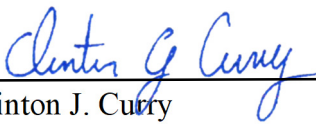
Based on the totality of the circumstances it was reasonable for Sergeant Pecsí to believe that deadly force was necessary to stop Mr. Stewart from killing or seriously injury Deputy Johannes.

IV - CONCLUSION

There is overwhelming evidence that Sergeant Pecsí's actions in this extremely dynamic environment met the standard of a reasonably prudent law enforcement officer, and the discharge of a firearm was an objectively reasonable use of force under both California statutory law and United States Supreme Court decisional law.

It is my legal opinion that there is no evidence of criminal culpability on the part of the Sergeant Pecsí in the death of Mr. Stewart. Accordingly, the Yuba County District Attorney's Office is closing its inquiry into this incident and no further action is contemplated.

DATED: December 12, 2019



Clinton J. Curry
District Attorney