

# **REPORT ON THE FATAL SHOOTING OF JONATHAN ERICK ALEXANDER ON APRIL 6, 2018**



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DISTRICT ATTORNEY**

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## **REVIEW OF THE EVIDENCE**

### **1. Items Reviewed**

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

- Yuba Sutter Officer Involved Shooting Team report OIS SCDA 18-006
- California Highway Patrol, Valley Division, Multidisciplinary Accident Investigative Team report VL-007-18
- California Department of Justice, Bureau of Forensic Services Field Investigation Report CH18-000093-0001
- California Department of Justice, Bureau of Forensic Services Physical Evidence Examination Report CH18-000093-0002
- California Department of Justice, Bureau of Forensic Services Physical Evidence Examination Report CH18-000093-0003
- California Department of Justice, Bureau of Forensic Services Physical Evidence Examination Report CH18-000093-0004
- Marysville Police Department report 1804-0411
- Wheatland Police Department report 18-115
- Yuba City Police Department mutual aid incident report 18-008928
- Yuba County Sheriff's Office report 18-1242
- Yuba County Coroner's investigative report 18-1243
- Autopsy Report Y18-037; Kelly Kobylanski, DO, pathologist
- National Medical Services, Inc. toxicology report 18104335 and associated Sacramento County District Attorney's Office forensic laboratory report 18-003166
- California driver record and criminal history information of Jonathan Alexander

## **2. Events as determined from the reviewed materials**

### **Background**

Jonathan Erick Alexander was 26 years old on the date of his death. Information taken during his autopsy reflected that he was a normally developed African American male, 5 foot, 4 inches tall and weighing 117 pounds.

Mr. Alexander lived in Oroville and was training at National Career Education in Citrus Heights to be an HVAC technician.

According to records from the California Department of Motor Vehicles and Department of Justice, Mr. Alexander had no major interactions with the criminal justice system. He was arrested in 2015 for Driving Under the Influence (“DUI”) in Butte County. As a result of that DUI arrest, Mr. Alexander was convicted of an alcohol-related reckless driving in September 2015. His privilege to drive was administratively suspended from August 2015 to February 2016.

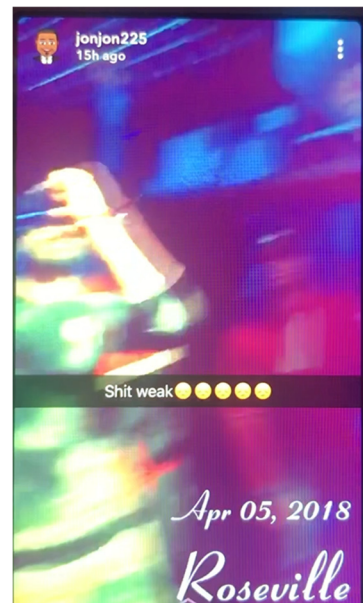
On the date of his death, Mr. Alexander was still on informal probation out of Butte County for the alcohol-related reckless driving. His privilege to drive had been reinstated after the reckless driving, but had been suspended again by DMV over a child support dispute.

### **Events Leading Up to Traffic Stop in Wheatland**

On Thursday April 5, 2018, Mr. Alexander shared several videos to his Snapchat Story<sup>1</sup>. Those videos show Mr. Alexander spent time that evening at Buffalo Wild Wings in Citrus Heights with other National Career Education students, and then a club in Roseville.



Mr. Alexander



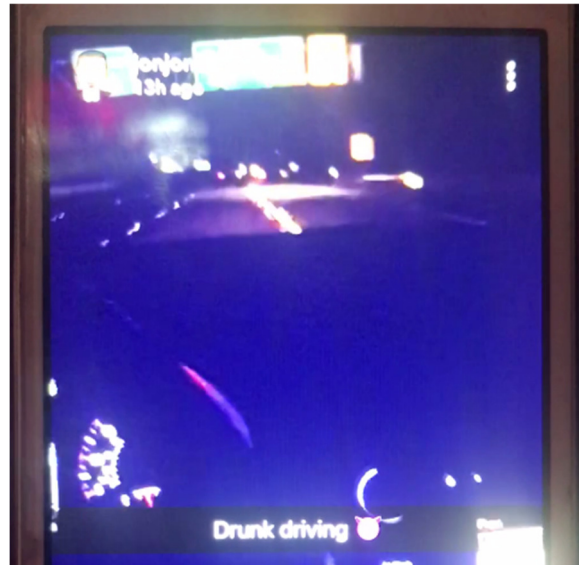
Mr. Alexander continued to share videos to his Story during the early morning hours of Friday April 6, 2018. The first video, shared sometime around 2:00 a.m., was shot from inside the Toyota Camry driven by Mr. Alexander. The video shows the Camry traveling

<sup>1</sup> On April 6, 2018, at approximately 2100 Hours, an acquaintance of Mr. Alexander showed YCSO Deputy J. Murphy Mr. Alexander's Snapchat Story from the previous 24-hours. The acquaintance asked to remain confidential. Deputy Murphy verified the times the most relevant videos were posted. He also video recorded and preserved the Snapchat Story as evidence. A Snapchat Story is available for viewing for 24 hours after the last snap.

eastbound on Interstate 80, approaching the exit for northbound Highway 65. Mr. Alexander placed a caption on the video, “drunk driving.” A navigation device can be heard telling Mr. Alexander to exit as he approached the off-ramp.



Screenshot from Google Maps Street View – Image Capture June 2018.



Screenshot from Mr. Alexander's Snapchat.

The “drunk driving” video was followed by a second video taken from inside Mr. Alexander's Camry. The second video was not captioned. It shows the Camry traveling northbound on Highway 65 between Blue Oaks and Sunset Boulevards. The Camry is traveling approximately 80mph and can be seen weaving back and forth between the two northbound lanes. The Camry has the windshield wipers activated and it appears to be raining.



Screenshot from Google Maps Street View – Image Capture June 2018.



Screenshot from Mr. Alexander's Snapchat.



### **Traffic Stop in Wheatland**

As Mr. Alexander made his way north on Highway 65, Officer Anthony Davis was on duty for the Wheatland Police Department. Officer Davis was in uniform and parked in a marked patrol vehicle south of Wheatland, monitoring traffic on Highway 65. It was raining and the roadway was wet. The patrol vehicle was “blacked out” with all lights off.



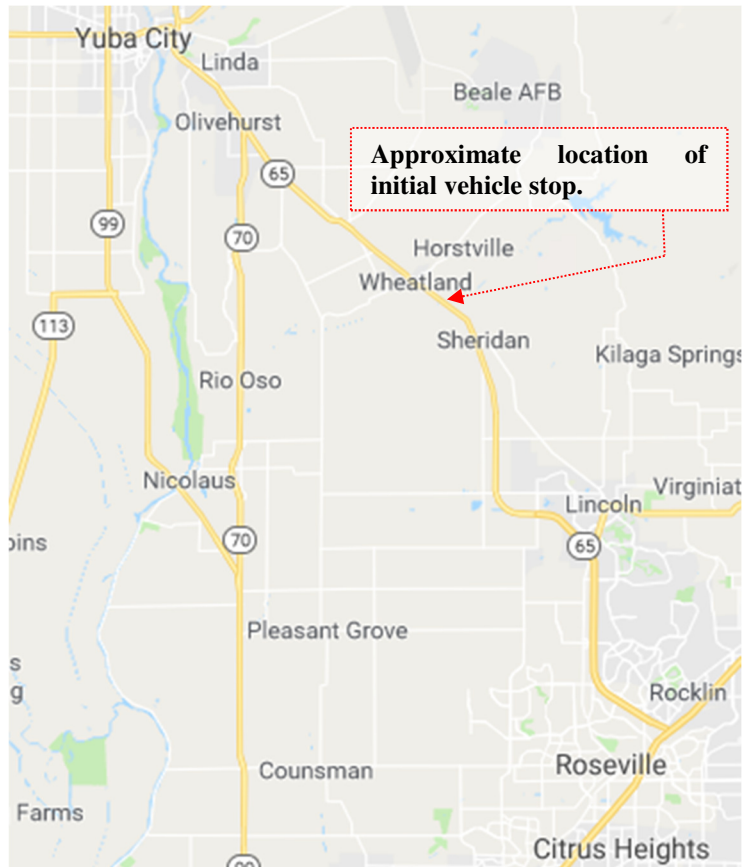
Photo taken during scene investigation of patrol vehicle operated by WPD Officer Davis.



Screenshot from Google Maps Street View showing view south on Highway 65 from State Street – Image Capture June 2018.

At approximately 2:17 a.m., Officer Davis heard a vehicle approaching northbound on Highway 65 at a high rate of speed. Davis activated his radar unit and locked in the vehicle’s speed at 90 mph, well in excess of the 55 mph speed limit. As soon as Davis locked the vehicle on radar, the vehicle’s headlights turned off. The vehicle, a black Toyota Camry, passed Davis and continued north on Highway 65. Due to the darkness and heavy rain, the blacked out Camry became nearly invisible without its lights. The Camry traveled another 500’ and Davis saw the lights turn back on.

Davis turned his headlights on and pulled out to pursue the Camry. Before Davis could catch up and activate the emergency lights the Camry stopped on the shoulder of the highway, south of State Street. Officer Davis pulled in behind the Camry, activated his



overhead emergency lights, and radioed YCSO dispatch that he was conducting a traffic stop. YCSO CAD records establish the time of the vehicle stop at 2:17 a.m.

Officer Davis contacted Mr. Alexander, the driver of the Camry. Mr. Alexander provided his vehicle registration. When asked if he knew why he had been stopped, Mr. Alexander responded “yeah,” “because of that shit I did back there, fuck you.” Mr. Alexander began rummaging in the glove box, saying he was looking for the vehicle registration.

Officer Davis could see that Mr. Alexander’s eyes were red, watery and bloodshot. Officer Davis noticed that Mr. Alexander’s speech was slurred and could smell an odor of alcohol coming from the vehicle. Officer Davis asked him if he had been drinking. Mr. Alexander initially denied having anything to drink, but admitted having one Long Island Iced Tea after he was confronted about the odor of alcohol. Officer Davis attempted to check Mr. Alexander for Horizontal Gaze Nystagmus<sup>2</sup>, but Mr. Alexander had difficulty tracking the tip of the officer’s finger without turning his head.

Officer Davis returned to his patrol vehicle and requested YCSO dispatch run a DMV records check on Mr. Alexander. Dispatch informed Officer Davis that Mr. Alexander’s privilege to drive was suspended. While waiting for the license information, Officer Davis observed Mr. Alexander digging through the center console of the Camry.

Officer Davis returned to the Camry and ordered Mr. Alexander to keep his hands on the steering wheel. Officer Davis told Mr. Alexander that his license was suspended and that he suspected Mr. Alexander was driving under the influence. Mr. Alexander replied that he was not drunk. Officer Davis offered to have Mr. Alexander blow into a preliminary alcohol screening device (“PAS”), telling him he would let him go if he was under .08%. Mr. Alexander said no. Officer Davis told Mr. Alexander that his other option was for Davis to take him to the Chevron gas station in Wheatland, where it was well-lit and protected from the rain, to perform the field sobriety tests. Mr. Alexander said no.

Mr. Alexander began reaching between the driver’s seat and the center console with his right hand. Officer Davis ordered Mr. Alexander to stop reaching and to keep his hands where Davis could see them. Mr. Alexander kept reaching. Officer Davis unholstered his duty weapon and pointed it at Mr. Alexander, telling him again to stop reaching. Mr. Alexander said “calm down, I am getting my cell phone,” and continued to reach between the seat and the center console. Officer Davis again told him to put his hands on the steering wheel. Mr. Alexander told the officer “fuck you,” and rolled up his window. Officer Davis tried to open the driver’s door, but it was locked. Mr. Alexander fled in the Camry northbound on Highway 65.

### **Vehicle Pursuit**

When Mr. Alexander fled, Officer Davis ran back to his patrol vehicle and drove after him, notifying YCSO Dispatch at 2:24 a.m. the driver had fled the traffic stop and was suspected of

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<sup>2</sup> Horizontal Gaze Nystagmus test (“HGN”) is part of a battery of field sobriety tests that can quickly assess whether a person is too impaired by alcohol to safely operate a motor vehicle. HGN is sometimes used as a quick initial screen for impairment while the driver is still seated in his or her vehicle.

driving under the influence. The patrol vehicle can be heard rapidly accelerating in the background of the radio transmission.

As the pursuit progressed through the City of Wheatland on Highway 65 Officer Davis activated the patrol vehicle's siren. Mr. Alexander did not yield to the overhead emergency lights or siren. The siren can be heard in the background of Davis's radio transmission as they approached the Chevron at the north end of Wheatland at approximately 60 mph.

Within moments of hearing the radio transmissions from Officer Davis confirming he was in a pursuit, multiple peace officers from MPD, YCSO and CHP began preparing to assist. Officer Davis broadcast that the suspect smelled of alcohol, had refused field sobriety tests, and fled the traffic stop. Officer Davis also broadcast that the suspect was weaving all over the roadway, and provided periodic updates on the speed and location of the pursuit.

After Officer Davis's request for assistance, YCSO Deputy Trenton McDaniel broadcast at 2:27 a.m. that he was at Highway 65 and McGowan Parkway and had spike strips. At 2:29 a.m., Officer Davis indicated they were a mile south of McGowan, traveling at 78 mph. Deputy McDaniel deployed the spike strips and broadcast that the Camry's right tires passed over the strips.



The spike strips had no apparent effect and Mr. Alexander continued driving northbound on Highway 65, accelerating as high as 105 mph. After the pursuit passed McGowan Parkway, YCSO Deputies McDaniel and Erik Swanson joined the pursuit in their marked patrol vehicles. YCSO Deputies Arthur Williams and Mark Nelson, riding together in a patrol vehicle, were trailing the pursuit at a distance.

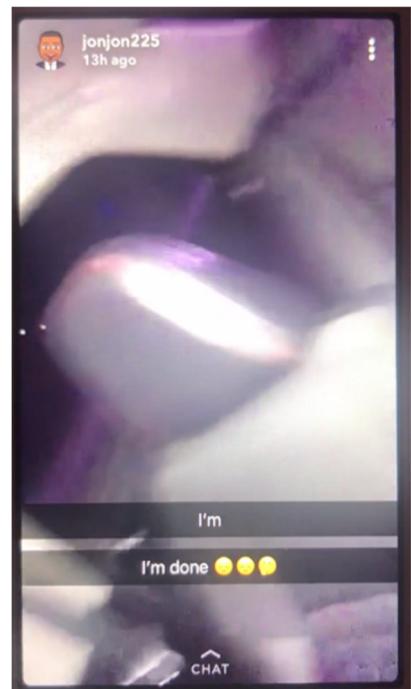
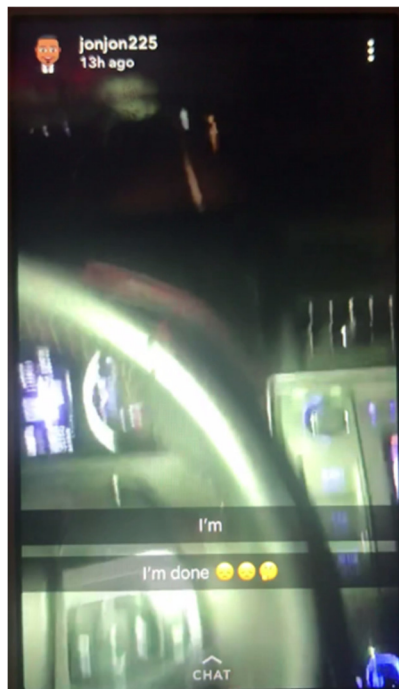
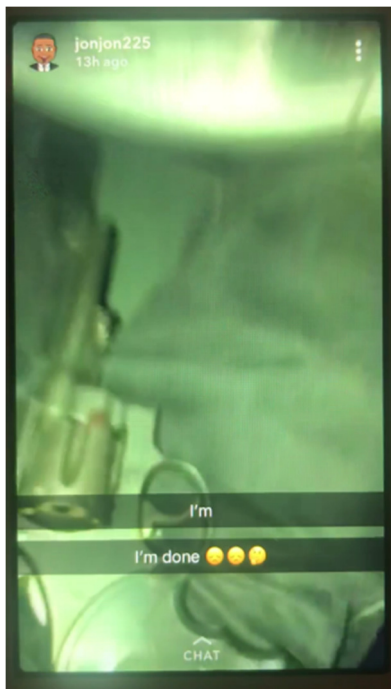
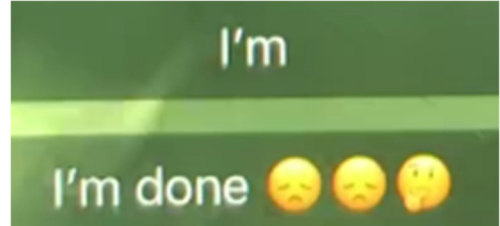
Once Deputy Swanson joined he began "calling" the pursuit, updating everyone on the speed, location and traffic conditions. At 2:31 a.m. Deputy Swanson broadcast that they were passing Olivehurst Avenue at approximately 100 mph. At 2:32 a.m. Deputy Swanson broadcast that they were approaching Feather River Boulevard at approximately 90 mph. At 2:33 a.m. Deputy Swanson reported that they were northbound over the E Street Bridge at approximately 80 mph.

By the time Mr. Alexander reached the E Street Bridge, the following law enforcement personnel were part of the pursuit: WPD Officer Davis, YCSO Deputies Swanson, McDaniel, Henry Abe, and CHP Officers John Hughes, Joshua LaPointe, James Cunningham and Steven Klippel; YCSO Deputies Williams, Nelson, and Jeremy Baumgardner were trailing the pursuit.



### **Last Snapchat Video**

Sometime during the pursuit Mr. Alexander posted a final video to his Snapchat Story. The video begins by providing a close up view of a loaded revolver in Mr. Alexander's lap. A brief glimpse of the speedometer and the roadway shows that the vehicle is still traveling at a high rate of speed. The camera view then turns toward the rear of the vehicle. Red and blue lights can be seen reflected on the front passenger head rest and the rear passenger window. The view out the back window of the Camry is completely obscured by bright headlights. Mr. Alexander captioned the video "I'm done" and followed it with sad-faced emojis.



### **End of the Vehicle Pursuit**

Marysville Police Department Sergeant Jason Garringer and Officer Kathryn Danisan had been monitoring the pursuit via radio and were waiting at the intersection of E and 3rd Streets. As Mr. Alexander came into Marysville, Sergeant Garringer deployed a spike strip. The Camry went over the spike strip. After the pursuing law enforcement vehicles passed, both Officer Danisan and Sergeant Garringer joined the pursuit.

WPD Officer Davis was still the lead pursuit vehicle as they came into Marysville at approximately 70 mph. Officer Davis saw Mr. Alexander's Camry go over the spike strip. The Camry veered to the right at one of the next intersections and struck the sidewalk curb. Shortly thereafter the Camry came to a stop in the #2 lane of northbound E Street just inside the

intersection of E and 6th Streets. The Camry's engine was still running. None of the deputies or officers were aware that the front right wheel had completely separated from the drivetrain causing the Camry to be disabled.

Officer Davis stopped his patrol vehicle approximately 15' behind and slightly offset from Mr. Alexander's Camry. Dispatch was notified at 2:34 a.m. by Deputy Swanson that they had "one at gunpoint." Within a minute the rest of the pursuing and trailing officers had stopped to assist with the felony traffic stop.

The pursuit traversed approximately 14 miles, from just south of Wheatland to E and 6th Streets in Marysville.



### **Felony Traffic Stop**

Officer Davis initiated a felony traffic stop. He stood behind his driver's door and began giving commands to Mr. Alexander over the patrol car's public address ("PA") system. Officer Davis instructed Mr. Alexander to put his hands outside of the window. Mr. Alexander initially complied, but then rolled his window back up, then down, shouting. Officer Davis could not understand what Mr. Alexander was saying.

Deputy Abe parked his patrol vehicle in the #1 northbound lane of E Street to the left of Officer Davis's patrol vehicle. Deputy Abe exited his patrol vehicle and retrieved his K-9 partner, "Glock," from the back. Yuba County Deputies Williams, Nelson and McDaniel joined Deputy Abe on the driver's side of Abe's patrol vehicle.

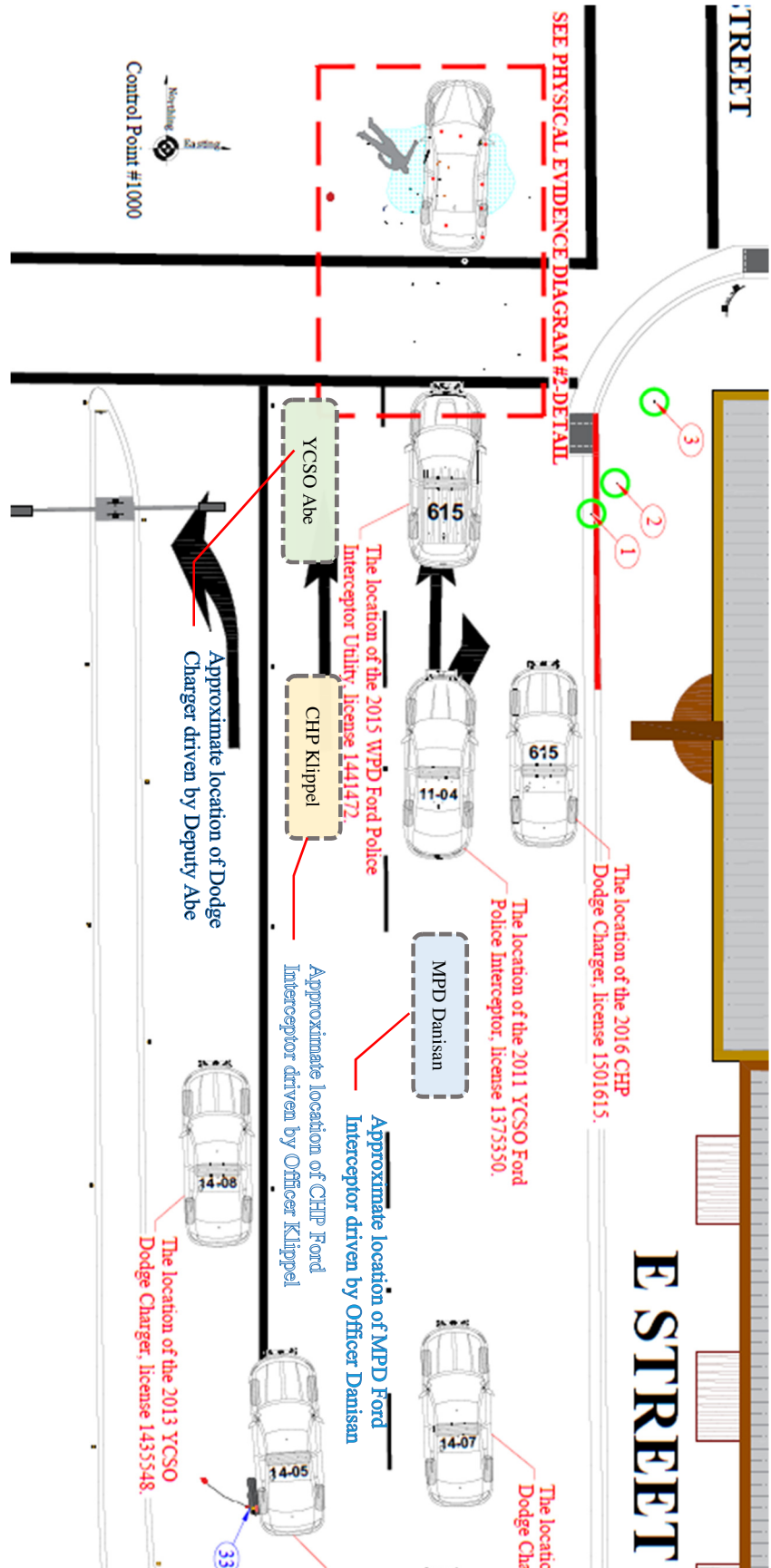


Photo taken at veterinary hospital of the patrol vehicle operated by YCSO Deputy Abe during the incident.  
See Excerpt – Diagram #1 for scene diagram.

Deputy Abe could hear several officers repeatedly yelling at Mr. Alexander "get out of the car" and "show us your hands." Mr. Alexander kept lowering and raising his car window. Deputy Abe began yelling to Mr. Alexander, telling him that he was a Yuba County Sheriff's K-9 officer and to come out or the dog would be released and he would be bitten. Mr. Alexander rolled down his window again, placed his hands outside the window and began talking. Mr. Alexander was telling the deputies to come talk to him. Deputy Abe ordered Mr. Alexander to "open the door" and "get out of the car." Mr. Alexander responded "here are my hands," but he did not comply with the order to get out of the car. This went on for several minutes, with Mr. Alexander ignoring the commands given, raising and lowering his car window, motioning for the officers over toward him, and saying "talk to me, come talk to me."

Deputies Abe and Williams both thought Mr. Alexander was possibly trying to lure them to his vehicle. Deputy Abe told Deputy Williams to assemble an arrest team and that if Mr. Alexander failed to exit the vehicle he would deploy his K-9 into the vehicle when the car window was down. Deputy McDaniel was sent to get a shotgun loaded with a less-lethal munition. Deputy Abe communicated the plan to deputies immediately around him. Deputy Abe continued to call out to Mr. Alexander "come out, come out or the dog is going to bite you."

The next time Deputy Abe saw Mr. Alexander roll down the driver's window he released K-9 Glock and gave the bite command. K-9 Glock ran toward the Camry, followed by Deputies Abe, Williams, and Nelson. K-9 Glock slipped on the wet asphalt and Mr. Alexander began raising his window again. K-9 Glock attempted to jump inside the Camry but bounced off the driver's window. Deputy Abe believed retreat was not safe because he and the other deputies were now exposed right outside the Camry without any cover. Deputy Abe used the butt of his baton to shatter the driver's window and then assisted K-9 Glock into the Camry. Deputy Williams saw Mr. Alexander turn his body away from the window and lean toward the passenger floorboard.



### EXCERPT – DIAGRAM #1

This is an excerpt from Physical Evidence Diagram #1 created by Investigator Jones with the CHP Valley Division Multidisciplinary Accident Investigation Team (“MAIT”). Diagram #1 was drawn to scale using data from an engineering survey completed by MAIT on April 6, 2018.

Based on the statements from the deputies and officers, and dash-camera footage from the two CHP patrol vehicles, we know that several patrol vehicles were moved prior to the scene being frozen. The approximate locations of those vehicles has been added to the diagram at the right using dashed gray rectangles.



Deputy Abe saw K-9 Glock bite Mr. Alexander, who was still turned and leaning away from the window. Mr. Alexander could be seen struggling with K-9 Glock, which was when Deputy Abe began trying to open the driver's door in order to extract Mr. Alexander from the Camry. As he was trying to open the door, Deputy Abe heard a muffled gunshot come from inside the car and felt a warm blast of air on his face. Immediately believing that Mr. Alexander was shooting at them, Deputy Abe yelled "gun, gun, gun," drew his duty weapon and shot at Mr. Alexander. Deputy Abe estimated firing approximately five to seven times.

Deputy Williams was standing right behind Deputy Abe when K-9 Glock was lifted into the car window. Deputy Williams also heard a muffled gunshot come from the car. Although Deputy Williams could see that Mr. Alexander was facing away from the driver's door, he could not see Mr. Alexander's hands and did not know which way the shot had been fired. Deputy Williams stepped to the left of Deputy Abe and heard Abe yell "gun, gun, gun." Deputy Williams was approximately 1' away from the driver's window and had a clear shot toward Mr. Alexander's back. Believing Mr. Alexander was shooting at them and that their lives were in danger, Deputy Williams recalled firing four to seven times at Mr. Alexander.

Deputy Nelson was standing abreast of the Camry's left rear wheel when K-9 Glock was lifted into the car. Deputy Nelson could see the back of Mr. Alexander's head and could tell that Mr. Alexander was leaning toward the front passenger area. Deputy Nelson heard a muffled gunshot come from inside the Camry and heard Deputy Abe yell "gun." Deputy Nelson was terrified, thinking that Mr. Alexander had shot Deputy Abe or Williams. Deputy Nelson, fearing for their lives, fired his duty weapon at Mr. Alexander. Deputy Nelson remembered firing at least twice.

MPD Officer Danisan had taken up a position on the passenger side of WPD Officer Davis's patrol vehicle. She had watched Mr. Alexander reach several times toward the passenger side of the vehicle and observed that he was not complying with the commands being given to him by the officers on the scene. Officer Danisan was concerned based on Mr. Alexander's actions that he was possibly armed and they were facing an "ambush situation." When Officer Danisan saw K-9 Glock and the deputies approach the Camry, she moved forward to cover the passenger side of the car. Officer Danisan was looking at Mr. Alexander through the rear passenger side window when she heard a gunshot and Deputy Abe yell "gun!" Believing that Mr. Alexander had shot at the deputies, Officer Danisan fired her duty weapon at Mr. Alexander. She recalled firing approximately three times before retreating to cover.

At 2:38 a.m. MPD dispatchers two blocks away at the Marysville Police Station heard the gunshots. The shooting lasted approximately four seconds. Deputy Abe saw that Mr. Alexander was not moving and yelled for the officers to "stop." Deputy Williams notified YCSO dispatch at 2:38:40 that shots had been fired.

Deputy Abe commanded K-9 Glock to release and the deputies and officers retreated to cover. K-9 Glock was obviously bleeding. Deputy Abe loaded K-9 Glock into his patrol car and left with lights and sirens to take Glock to Northpointe Veterinary Hospital in Yuba City.



The remaining officers and deputies saw the Camry's reverse lights come on and the engine begin revving loudly. MPD Sergeant Garringer retrieved his patrol rifle from his vehicle and formed a team to make a tactical approach. Sergeant Garringer led the team to the Camry. Once in position, Sergeant Garringer could see a revolver laying on the front passenger floorboard of the vehicle. Mr. Alexander was not moving. YCSO Sergeant Brandt Lowe reached in through the window and shut off the vehicle ignition. Sergeant Lowe then removed Mr. Alexander from the vehicle.

It was obvious that Mr. Alexander had been shot multiple times. Sergeant Lowe and CHP Officers Hughes and then LaPointe began giving Mr. Alexander CPR. Marysville Fire and Bi-County Ambulance personnel arrived and took over first aid once the scene was safe. Bi-County Paramedic Jaime Sims discontinued CPR and made the determination of death at 2:56 a.m.

### **3. Initial Field Investigation**

On April 6, 2018, shortly after 3:00 a.m., the Yuba Sutter Officer Involved Shooting ("OIS") Team was activated to investigate the incident. The OIS investigation team is led by the Chief Investigators from the offices of the Yuba and Sutter County District Attorneys. The team is comprised of peace officers from each of the member agencies, including the Yuba City Police Department, 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.

Based on standard procedures the deputies and officers who had fired their weapons were sent to a secure location for processing. At 4:00 a.m. OIS team member Detective Brent Slade from the Yuba City Police Department began processing the involved officers. Detective Slade photographed the involved officers, received their firearms for evidence and conducted a count of the rounds in each of their magazines. Deputy Abe was not present because he was still at Northpointe Veterinary Hospital with K-9 Glock. All personnel photographed by Detective Slade were wearing uniforms that clearly identified them as peace officers.

At 4:15 a.m., OIS team member Yuba City Police Sergeant Steve Thornton responded to Northpointe Veterinary Hospital. When he arrived Deputy Abe was with K-9 Glock. The K-9 had lost a considerable amount of blood and it was necessary for Deputy Abe to help keep Glock calm until a sedative could take effect. As the situation allowed, Sergeant Thornton photographed Deputy Abe and collected his duty weapon and ammunition.

Sergeant Thornton noted that Deputy Abe had blood on his arms, uniform shirt, pants and boots. Based on the large amount of blood observed in the K-9 area of Deputy Abe's patrol vehicle, the blood on Deputy Abe appeared consistent with transfer from K-9 Glock. Yuba City Police K-9 Officer Kenny Sowles collected a piece of copper bullet fragment that had been removed from Glock's gunshot wound by hospital staff. The bullet fragment was preserved and booked into evidence.

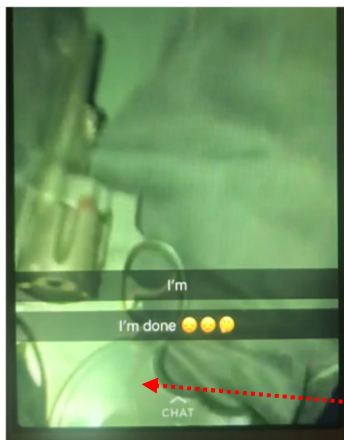


Photo taken by Sergeant Thornton of K-9 area of Deputy Abe's patrol vehicle.

The OIS investigation team members began arriving at the incident scene at approximately 3:30 a.m. Sutter County DA Investigator Carl Dinwiddie photographed the incident scene.



Photographs taken by Investigator Dinwiddie show the Camry had been disabled when it finally came to a stop at 6th Street. His photos also document the Smith & Wesson revolver first seen by MPD Sergeant Garringer on the floorboard of the Camry during the second tactical approach.



Photos show Camry was disabled.

Photo of S&W revolver taken by DAI Dinwiddie.

Revolver located in the Camry appears to match the one from the Snapchat video.





Investigator Dinwiddie preserved the video from the CHP in-car video systems. These were the only video systems on the scene at the time of the incident. Neither video system had an unobstructed view of the critical incident at the driver's window of the Camry. The videos are consistent with the statements from the deputies and officers. The videos also show how quickly the incident unfolded after K-9 Glock was deployed – approximately 8 seconds from the K-9 deployment until shots are heard, and 4 seconds from the first to last shot.



Screenshot of felony stop from video from patrol car driven by CHP Officer Klippel.



Screenshot of felony stop from video from patrol car driven by CHP Officer LaPointe.

The OIS investigation team requested assistance from crime scene experts from the both California Department of Justice Forensic Services (“DOJ”) and the California Highway Patrol Multidisciplinary Accident Investigation Team (“MAIT”).

Investigators from the CHP MAIT team were on scene by 5:25 a.m. The MAIT team completed a survey using a Trimble Total Station to measure the exact location of each piece of evidence. The MAIT team also used a Leica ScanStation high-definition survey instrument to visually scan the incident scene.



Photo captures CHP MAIT officers in yellow jackets conducting survey while DOJ criminalists process area next to Mr. Alexander's Camry.



California DOJ Senior Criminalists Anna Brewer and Kirsten Wallace arrived at approximately 6:00 a.m. The DOJ team collected 23 fired Hornady 9mm Luger +P cartridge cases located in and around Mr. Alexander's Camry. Assuming each officer began their shift with a full magazine plus one round in the chamber, the number of fired casings matched the round count done by Detective Slade.

DOJ Criminalist Wallace collected a Smith & Wesson revolver from the front passenger floorboard of the Camry. The hammer was down on a fired Winchester 45 Auto cartridge case. The cylinder contained a total of two fired 45 auto cases and four unfired 45 auto cartridges. A cellphone was collected by Yuba DA Investigator James Perin from the driver's seat of the Camry. Due to the weather conditions it was decided to have Mr. Alexander's Camry towed to a secure location to finish processing.



#### **4. Interviews**

OIS investigation team members systematically interviewed all the witnesses to the incident. Most of the interviews were completed on April 6, 2018. The officers who had not fired their weapons were interviewed between 5:30 a.m. and 10:00 a.m. on the morning of April 6, 2018. OIS team members conducted a neighborhood canvas beginning shortly after 8:00 a.m., interviewing six citizen witnesses who had heard or seen parts of the incident. Marysville firefighters were interviewed later that afternoon. All the interviews were audio recorded; most of them were also video recorded.

#### **5. Forensic Autopsy**

On April 9, 2018, a forensic autopsy of Mr. Alexander's body was conducted at the Placer County Coroner's Office by Forensic Pathologist Dr. Kelly Kobylanski. The autopsy was attended by OIS team member DAI Whiteaker. The autopsy involved the external and internal examination of Mr. Alexander's body to document any injuries and determine the cause of his death. Dr. Kobylanski determined Mr. Alexander had died from multiple gunshot wounds. She documented multiple gunshot wounds to his head, trunk/back, and left upper extremity. 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'. She also noted minor injuries to Mr. Alexander's left arm/shoulder consistent with assault by a canine (K-9). Consistent with deputies' statements that at the time of the shooting Mr. Alexander



was turned away from the driver's window leaning toward the front-passenger area, the majority of the gunshot entrance wounds were located in Mr. Alexander's back to the right of midline.

Toxicology results indicated Mr. Alexander had a blood alcohol level of .11% and .70 ng/mL of Delta-9 THC, the primary active compound in cannabis. Dr. Kobylanski's autopsy findings included ethanol intoxication and cannabinoids in postmortem blood.

During the autopsy, twelve bullets and/or bullet fragments were recovered from Mr. Alexander's body.

## **6. Follow-Up Investigation**

On April 11, 2018, the three YCSO Deputies who discharged their duty weapons were independently interviewed by OIS team members. MPD Officer Danisan was interviewed on April 12, 2018. The interviews were video recorded and later transcribed.

DOJ Criminalists Brewer and Wallace met with Sutter Investigator Dinwiddie on April 11, 2018, to finish processing Mr. Alexander's Camry for evidence. Rods were placed through apparent bullet holes to determine possible bullet trajectories.

Photo shows Senior Criminalist Anna Brewer on April 11, 2018, helping run a trajectory rod to determine bullet path.



Several copper-jacketed bullets, and multiple bullet fragments were located and collected as evidence. A small amount of marijuana and six additional unfired 45 Auto cartridges were found in the trunk. All of the relevant physical evidence collected was packaged and submitted to the Department of Justice Forensic Services Lab for analysis.



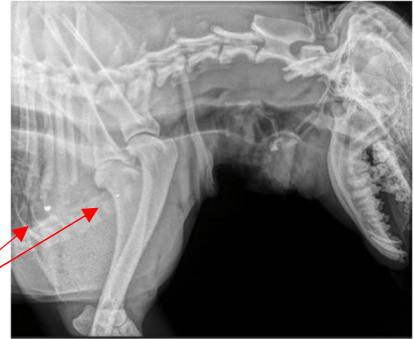
## 7. Treatment of K-9

Dr. Masae Suda treated K-9 Glock on the morning of April 6, 2018. She found that Glock was suffering from hemorrhagic shock, a through-and-through penetration of his mandible, and laceration of his jugular vein. An x-ray also identified bullet fragments in the tricep muscle of Glock's right forelimb. Pressure bandages were applied to control the bleeding, fluids were given intravenously, and K-9 Glock was sedated so he would not cause further injury to himself.



Exit wound of jugular through-and-through injury.

Bullet fragments located in right tricep.



A bullet fragment was recovered from one of the wound sites by hospital staff and subsequently placed into evidence. Glock was discharged on April 8, 2018.

During a follow-up examination on April 9, 2018, Dr. Troy Young noted "Entry (L side ventral neck)/exit wounds (R side ventral neck) dry & healing well at this time; moderate bruising & stippling present w/stellate pattern suggestive of powder burn pattern/entry wound on L side relative to R." This is a significant finding because the presence of powder burn, bruising and stippling consistent with a stellate wound indicates the muzzle of the firearm that fired the bullet was very close to K-9 Glock when it was fired. The presence of these findings around the gunshot entrance wound to K-9 Glock coupled with the absence of any stippling or sooting around Mr. Alexander's gunshot wounds provides strong evidence that the muffled gunshot heard by officers was Mr. Alexander shooting K-9 Glock.

## **8. Forensic Lab Examination & Analysis of Physical Evidence**

DOJ Criminalist Wallace authored a report on May 2, 2018, documenting her lab work and findings. The officers' duty weapons were test fired by DOJ criminalists. Microscopic comparisons were made between the test-fired casings and the fired 9mm casings recovered from the incident scene. Criminalist Wallace was able to match all 23 of the fired casings to the officers' pistols, three to Danisan's pistol, seven to Nelson's pistol, nine to Abe's pistol, and four to William's pistol. These numbers exactly matched the round count conducted by Detective Slade at the time he received their weapons as evidence. The revolver recovered from the Camry was also test fired. The two fired casings found in the revolver's cylinder were microscopically confirmed to have been fired by the revolver.

Criminalist Wallace also microscopically compared test-fired bullets with the bullets and bullet fragments recovered from the Camry and Mr. Alexander's body. Criminalist Wallace was able to match four of the bullets recovered from Mr. Alexander's body, establishing that at least three of the officers who fired their duty weapon struck Mr. Alexander. The majority of the bullet fragments could not be matched.

The revolver recovered from the passenger floorboard of Camry was also sent to the DOJ Sacramento Criminalistics Program for examination. The revolver was processed with superglue fumes and dye, examined with a laser, and processed with black fingerprint powder by Latent Print Analyst Kent Quong. No usable latent impressions were developed.

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

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.)

Courts recognize that criminal suspects who flee or attempt to flee from police in a vehicle present a heightened danger to the public. (See e.g., *Scott v. Harris* (2007) 550 U.S. 372, 386 [holding that a "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death"].) *Plumhoff v. Rickard* is another example. In *Plumhoff*, officers pursued Mr. Rickard, who appeared to have been drinking, and drove recklessly while fleeing a traffic stop. (*Plumhoff v. Rickard* (2014) 572 U.S. 765, 768-770.) The Court found that Mr. Rickard's driving posed a grave risk to public safety and held it was reasonable for the officers to terminate the pursuit by shooting into the vehicle 15 times, killing both Mr. Rickard and his passenger. (*Id.* at 776.) In addressing the question of the number of shots fired in relation to the public safety risk, the Court stated it "stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." (*Id.* at 777.)

### 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 of 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 persons 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]mminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4<sup>th</sup> 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.4<sup>th</sup> 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 robbery. 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.4<sup>th</sup> 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.) It is also highly deferential to the police officer’s need to protect himself and others. The calculus of reasonableness must embody the 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.* at 396-397.)



### **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, the video footage, as well as the other materials described herein.

Mr. Alexander was lawfully detained by Officer Davis. Officer Davis observed a vehicle being driven in a grossly reckless manner for the weather conditions, speeding at 90 mph on a dark undivided two-lane highway. Officer Davis saw the vehicle's lights shut off as it passed his location. These observations gave Officer Davis authority to pull the Camry over. When Officer Davis detected Mr. Alexander's slurred speech, red and watery eyes, and the odor of alcohol, he developed a reasonable suspicion that Mr. Alexander was also too impaired by alcohol to safely drive the car. Officer Davis then learned that Mr. Alexander's privilege to drive had been suspended. At the time Officer Davis walked back up to Mr. Alexander's window, he had the legal right to continue the detention to further investigate the possible DUI, or to arrest Mr. Alexander for speeding, reckless driving, and driving on a suspended license. Mr. Alexander did not have the right to leave – he was lawfully detained.

Mr. Alexander's flight from the traffic stop quickly escalated into felony conduct. It is a felony in California under Vehicle Code Section 2800.2 to drive with wanton disregard for the safety of persons or property while attempting to evade a pursuing peace officer. To begin, Mr. Alexander was driving under the influence of both alcohol and marijuana – drugs that affect a person's mental and physical capacity to safely operate a vehicle. His driving was impaired enough that Officer Davis observed the Camry weaving all over the roadway and into the center divider. While impaired and weaving in the dark through heavy rain, Mr. Alexander drove at recklessly high speeds for the conditions, reaching speeds during the pursuit up to 105 mph. The officers had an obligation to the public to stop this grossly reckless conduct. When the Camry came to a stop in Marysville at E and 6th Streets the officers had the lawful right to arrest Mr. Alexander for the additional crime of felony evading in violation of Vehicle Code Section 2800.2.

The officers were reasonable in using standard procedures for a high-risk vehicle stop. Whenever officers stop a vehicle for felony conduct the situation is considered a "high-risk" stop or "felony" stop. These vehicle stops are considered high-risk because the person being stopped has much to lose by being taken into custody (possibly prison) and the officers don't know whether the person is armed or how far the person is willing to go to try to escape apprehension. Special practices and procedures for these stops are utilized by the officers because of the risks. In this case, the high-risk nature of the stop was elevated based on Mr. Alexander's dangerous efforts to flee. Mr. Alexander's behavior after he was stopped, refusing to get out of the car and trying to get the officers to come to his window, heightened the officers' concern that Mr. Alexander would not surrender peacefully.

Deputy Abe was reasonable in using K-9 Glock to try to take Mr. Alexander into custody. Mr. Alexander had already proven he was willing to break the law to escape and had driven

in wanton disregard of public safety to do so. It was unknown to Deputy Abe and the other officers that Mr. Alexander's vehicle had been disabled. The Camry's engine remained on and Mr. Alexander continued to roll the window up and down and adjust the volume of music, suggesting that the car was still functioning. It was reasonable for the officers to believe that Mr. Alexander might try to flee again. The use of a trained police dog to assist with taking a person into custody is considered less-than-deadly force. (*See Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 163.) Under the circumstances, Deputy Abe reasonably believed that K-9 Glock would bite Mr. Alexander, distracting him, and aiding the officers in safely removing him from the vehicle. Had Mr. Alexander not been waiting with a loaded revolver, the deployment of K-9 Glock would have resulted in minor bite injuries to Mr. Alexander's arm and shoulder, and his safe arrest.

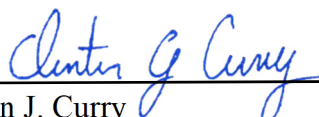
The deputies and officer who fired their duty weapons were justified in their use of deadly force. Deputies Abe, Williams and Nelson all heard a muffled gunshot come from within the car. Deputy Abe felt a puff of warm air from the muzzle blast. Based on the forensic autopsy, the observations by the veterinary doctor, and the hammer of Mr. Alexander's revolver being down on a fired casing, the evidence strongly indicates that the muffled shot heard by the deputies was Mr. Alexander shooting K-9 Glock in the neck. At that moment, the three deputies had no idea where Mr. Alexander had fired the shot, and all three reasonably believed that Mr. Alexander was shooting at them. Officer Danisan also reasonably believed Mr. Alexander was shooting at the deputies when she heard a gunshot and Deputy Abe yell "gun!" All four reasonably fired their duty weapons in lawful self-defense or defense of another, firing 23 shots in approximately four seconds.

#### **IV - CONCLUSION**

There is overwhelming evidence that officers' 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 Deputies H. Abe, A. Williams, M. Nelson, and Officer K. Danisan in the death of Mr. Alexander. Accordingly, the Yuba County District Attorney's Office is closing its inquiry into this incident and no further action is contemplated.

DATED: May 3, 2019

  
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Clinton J. Curry  
District Attorney