



**TORI VERBER SALAZAR**  
*District Attorney, San Joaquin County*

**SCOTT A. FICHTNER**  
Assistant District Attorney

**KRISTINE M. REED**  
Assistant District Attorney



**DAVID J. DERKSEN**  
Chief Investigator

June 28, 2019

Today, the San Joaquin County District Attorney's Office (SJCD A) released its findings in the October 23, 2017 officer-involved shooting that resulted in the death of Matthew Palaita. It is the decision of the SJCD A that the use of deadly force by Lodi Police Officers was justified under the circumstances.

This decision was made after SJCD A Office's Officer-Involved Critical Incident Review Committee reviewed the investigations by the San Joaquin County District Attorney's Bureau of Investigations, the Lodi Police Department, the San Joaquin County Sheriff-Coroner's Office, and the California Department of Justice.

The findings and conclusion of this investigation was completed on April 15, 2019 and has been memorialized in a report. On that date, this Office notified the Lodi Police Department of the findings.

In addition, the family of Mr. Palaita was also notified and this Office requested a meeting with the family to present the findings of the report. At the family's request, this Office withheld public release of the report until they could make travel arrangements to attend. The date of June 28<sup>th</sup> was requested by the family since all family members live out of state.

This morning, representatives of the SJCD A met with the family of Mr. Palaita to discuss the findings in the report.

The memorandum detailing the SJCD A's findings and conclusion follow below.

SAN JOAQUIN COUNTY DISTRICT ATTORNEY  
MEMORANDUM OF  
OFFICER-INVOLVED CRITICAL INCIDENT  
OCCURRING ON OCTOBER 23, 2017  
AT NORTH PLEASANT AVENUE, LODI, CA.



TORI VERBER SALAZAR, DISTRICT ATTORNEY  
OFFICER INVOLVED CRITICAL INCIDENTS UNIT  
APRIL 15, 2019



**TORI VERBER SALAZAR**  
*District Attorney, San Joaquin County*

**SCOTT A. FICHTNER**  
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## **MEMORANDUM**

**TO:** TOD PATTERSON, CHIEF  
LODI POLICE DEPARTMENT

**FROM:** SAN JOAQUIN COUNTY DISTRICT ATTORNEY

**DATE:** APRIL 15, 2019

**SUBJECT:** INVESTIGATION OF THE FATAL SHOOTING OF  
MATTHEW DAVID PALAITA (LPD DR #17-006857)

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Pursuant to the provisions of the San Joaquin County Officer-Involved Critical Incident Protocol, effective August 1, 1994, the responsibility of the Office of the District Attorney is to review the facts and determine what, if any, criminal charges should be filed whenever there is an officer-involved fatality or life-threatening incident.

This memorandum reviews the officer-involved shooting of Matthew Palaita on October 23, 2017. The investigation was jointly conducted by investigators from the San Joaquin County District Attorney's Investigation Unit, the Lodi Police Department, the San Joaquin County Sheriff-Coroner's Office, and the California Department of Justice.

### **INVESTIGATION SUMMARY**

On October 23, 2017, at approximately 8:20 a.m., Lodi Police Officers responded to the 900 block of North Pleasant Avenue in Lodi, San Joaquin County, after a call of "shots fired" was aired by Lodi Police Officer Dominic Carillo. Responding officers located Officers Carillo and Daniel Bristow attending to and performing cardiopulmonary resuscitation on a subject later identified as Matthew Palaita (DOB 1/22/1982).

One of the responding officers, Lt. Fernando Martinez began securing the scene and noticed a revolver 3-4 inches from Mr. Palaita. That revolver was

documented and secured.<sup>1</sup>

Another subject, later identified as Witness #1 and the driver of a nearby Honda Pilot, was detained and later interviewed.

Emergency medical personal arrived on the scene and took over life-saving measures. After attempting to revive Mr. Palaita and consulting with doctors at San Joaquin General Hospital, Mr. Palaita was pronounced dead at 8:46 a.m.

As provided by the Memorandum of Understanding for the San Joaquin County Officer-Involved Critical Incident Protocol (hereinafter referred to as "Protocol"), the Lodi Police Department invoked the Protocol. A multi-agency task force was created that included San Joaquin County District Attorney's Office's Bureau of Investigations (hereinafter "BOI"), the Lodi Police Department (hereinafter referred to as "LPD"), the San Joaquin County Sheriff-Coroner's Office (hereinafter referred to as "Coroner"), and the California Department of Justice (hereinafter referred to as "DOJ").

### FACTUAL SUMMARY

Lodi Police Officer Daniel Bristow was working traffic patrol near Lincoln Avenue and Turner Road in Lodi when he observed a driver, Witness #1, of a Honda Pilot using his cell phone drive by him. Officer Bristow activated the overhead lights in his marked police unit and began to initiate a traffic stop.

In the Honda Pilot was also Matthew Palaita who was seated in the rear of the vehicle. When Officer Bristow activated his overhead lights, he saw Mr. Palaita throw an item into the rear cargo area of the vehicle. At approximately the same time, Mr. Palaita told Witness #1, "Ah man, I can't go to jail." <sup>2</sup>

The Honda Pilot stopped in the 900 block of North Pleasant Avenue. Officer Bristow exited his unit leaving his body worn camera that was turned on, on the dashboard.<sup>3</sup> As he contacted Witness #1 on the driver's side of the Honda Pilot, he noted Mr. Palaita was attempting to hide from him on the floorboard of the back seat area. Mr. Palaita would not acknowledge Officer Bristow and so the officer decided to request another officer for backup.

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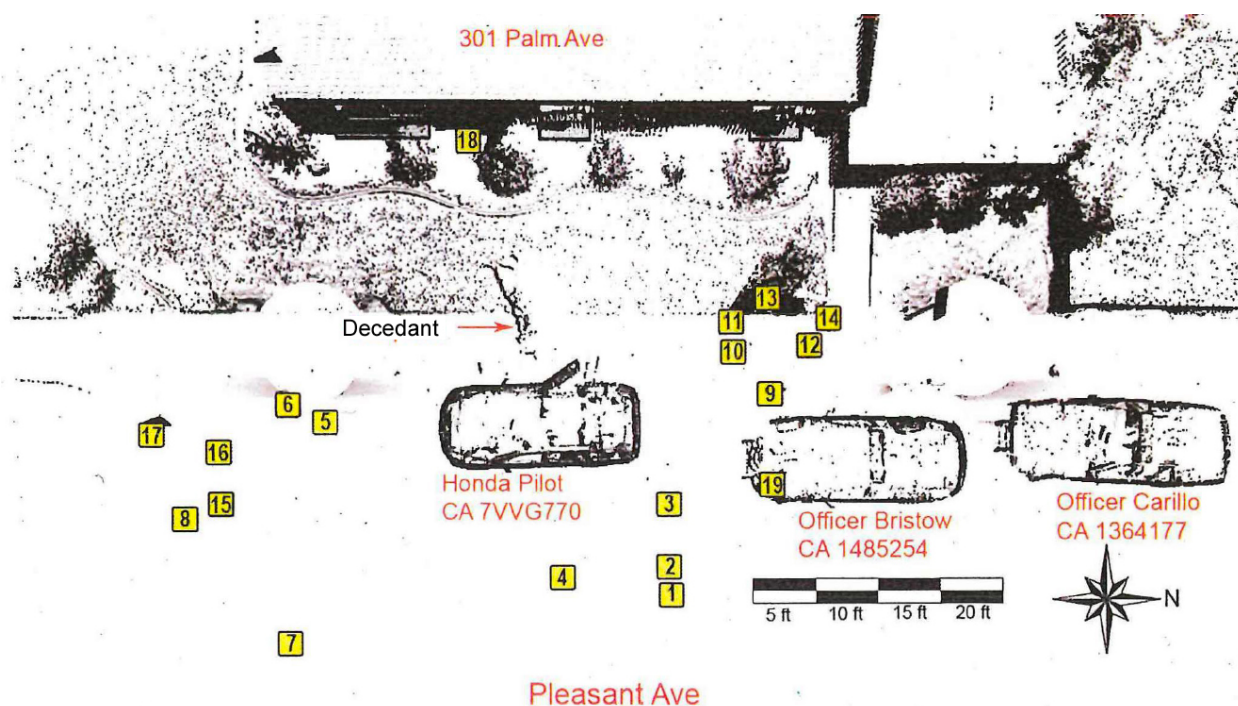
<sup>1</sup> See, below, "Subsequent Investigation, Firearms Examination".

<sup>2</sup> Mr. Palaita was prohibited from possessing a firearm or live ammunition. (Penal Code section 29800, 29900, 29905, and 30305.) See, Confidential "APPENDIX B: Criminal History of Matthew Palaita" for supporting documentation.

<sup>3</sup> See below, "Subsequent Investigation, Video Documentation".

Officer Dominic Carillo responded to the request, arriving in his marked unit. Officer Carillo took up a position on the passenger side of the stopped vehicle. As Officer Bristow interacted with Witness #1, Officer Carillo began giving Mr. Palaita verbal orders to show his hands.

Mr. Palaita would not comply and was told by Officer Carillo if he did not comply and show his hands, Officer Carillo would send his canine into the vehicle. In response, Mr. Palaita quickly removed his right hand from the cargo area and began to exit the vehicle pointing a Harrington & Richardson .22 caliber revolver directly at Officer Carillo.



*DOJ laser scan of scene. Markers indicate ballistic evidence.*

Officer Carillo, who was retreating, fired his service pistol. Officer Bristow moved from his position by the driver to the rear of the Honda Pilot while continuously firing his service pistol. Mr. Palaita fell to the ground having been struck by five rounds.

Life-saving measures were undertaken but ultimately were unsuccessful and Mr. Palaita was pronounced dead at the scene.

## WITNESS STATEMENTS

Investigators from BOI and LPD jointly interviewed the involved officers, medical personnel, and civilian witnesses. Whenever possible, these interviews were recorded. The investigators also conducted an area canvas to locate witnesses. Not every witness interviewed is summarized here. The individual witness synopses below are to assist the reader in supplementing the above Factual Summary. Civilian witnesses are identified in this memorandum as "Witness #" to protect their privacy rights. (See, "Confidential Page APPENDIX A: Civilian Witness Information.")

### Lodi Police Department Officer Daniel Bristow

Lodi Police Department Officer Daniel Bristow was interviewed on October 23, 2017, at 1:39 p.m., at the Lodi Police Department, and stated the following:

Officer Daniel Bristow was a four-year police officer of the Lodi Police Department. This day, Officer Bristow was working traffic enforcement, in a marked unit, wearing his department-issued uniform. In addition to regular patrol duties, Officer Bristow was a member of the LPD SWAT team. He was armed with his service weapon: a .40 caliber Glock model G22 pistol.

Officer Bristow was working patrol near Lincoln Avenue, in the City of Lodi, and had placed his body camera on the dashboard in order to capture traffic violations when they occurred. As he was observing the flow of traffic, he saw a driver of a Honda Pilot, Witness #1, pass by and talking on his cell phone. Officer Bristow accelerated behind the vehicle in order to initiate a traffic stop. As the vehicle turned onto North Pleasant Avenue, Officer Bristow saw a rear passenger, Mr. Palaita, throw something into the rear cargo space, which raised a "red flag" in his mind.

Officer Bristow initiated the traffic stop and approached the vehicle with caution. Officer Bristow made contact with Witness #1 and noticed Mr. Palaita was attempting to hide on the floorboard in the back seat area. Officer Bristow attempted to talk to Mr. Palaita but Mr. Palaita would not acknowledge him. Officer Bristow began asking Witness #1 for his information and kept his attention on Mr. Palaita. Officer Bristow felt uncomfortable about the situation and called for another officer to respond.

Soon after the request for back up, Officer Dominic Carillo arrived. Officer Bristow directed Officer Carillo to approach on the passenger side of the Honda

Pilot. As Officer Carillo began approaching on the passenger side, Officer Bristow began focusing more on Mr. Palaita because he could no longer see his hands.

Officer Carillo opened up the rear passenger door and Mr. Palaita sat up, moved toward the middle of the seat, and reached his right hand behind the seat and into the cargo area. Officer Carillo asked Mr. Palaita why he was acting in this manner. Both he and Officer Carillo now drew their service weapons. When Mr. Palaita placed his right hand in the cargo area; both he and Officer Carillo began yelling for him to show them his hands. Mr. Palaita pulled his hand up, exposing a revolver, and began exiting the vehicle. Officer Bristow raised his service weapon toward Mr. Palaita and heard a gunshot. He thought Officer Carillo had been shot dead, and Officer Bristow began firing his service weapon at Mr. Palaita until Mr. Palaita went down.

When Mr. Palaita went down, Officer Bristow saw that he had his hands and gun underneath him. With Officer Carillo covering Mr. Palaita, Officer Bristow refocused his attention on Witness #1 to make sure that the driver was not a threat. Officer Bristow handcuffed Witness #1 for safety reasons and went to assist Officer Carillo securing Mr. Palaita. Mr. Palaita was handcuffed and rolled over; at that point Officer Bristow saw a revolver with a pearl handle under Mr. Palaita. Life-saving measures were begun and taken over by other officers who had arrived until paramedics finally took over.

#### LPD Officer Dominic Carillo

Lodi Police Department Officer Dominic Carillo was interviewed on October 23, 2017, at 2:18 p.m., at the Lodi Police Department, and stated the following:

Officer Dominic Carillo was a four-year police officer of the Lodi Police Department. This day, Officer Carillo was working patrol, in a marked K-9 unit, wearing his department-issued uniform. Officer Carillo had his canine partner in the vehicle with him. In addition to regular patrol duties, Officer Carillo is a member of the LPD SWAT team. He was armed with his service weapon: .40 caliber Glock model G22 pistol.

Officer Carillo was at canine training in the morning and while he was leaving, he heard radio traffic dispatching another unit to Officer Bristow's location. Because he was close by, Officer Carillo informed dispatch that he would respond. When he arrived, he parked his unit behind Officer Bristow's marked unit, exited, and began walking toward the driver's side of the stopped vehicle where Officer Bristow was standing. Officer Bristow informed him there was a passenger in the

back seat not cooperating and that he might have thrown something in the rear cargo area. He then advised him to approach from the passenger side.

Officer Carillo approached from the passenger side and attempted to verbally engage Mr. Palaita. Officer Carillo opened the passenger side door so he could see Mr. Palaita better, and when he opened the door, Mr. Palaita moved from the passenger side of the vehicle, toward the middle of the seat, and put his right arm over the back seat and into the cargo area. Officer Carillo immediately drew his service weapon and began ordering Mr. Palaita to show him his hands. Officer Carillo drew his service weapon because Officer Bristow had told him Mr. Palaita had thrown something in the back and Officer Carillo believed he might be reaching for a knife or a gun. While drawing his service weapon, he backed up a few feet to distance himself from Mr. Palaita.

Officer Carillo gave Mr. Palaita verbal commands to show him his hands but Mr. Palaita refused to comply with the verbal orders. Officer Carillo requested for additional units to respond. Mr. Palaita then pulled his right hand up, exposing a gun, and exited the vehicle quickly. Officer Carillo thinking he would be shot and killed fired his service weapon until Mr. Palaita went down to the ground.

Officer Carillo retreated to cover. Officer Bristow asked if he was hurt. Officer Carillo replied that he was not injured and to cover the driver while he maintained cover on Mr. Palaita. Additional units arrived and were able to handcuff Mr. Palaita. When Mr. Palaita was rolled over, Officer Carillo observed the revolver underneath. Officer Carillo checked the home where the incident took place to see if anyone may have been struck by fire. Finding no one injured, Officer Carillo returned to Mr. Palaita and assisted in obtaining a mask to assist in life-saving measures until the paramedics arrived.

#### Witness #1

Witness #1 was interviewed on October 23, 2017, at 2:50 p.m., by investigators, at the Lodi Police Department, and stated the following:

Earlier that morning, while Witness #1 was getting fuel at the Valero gas station on Cherokee Lane, Mr. Palaita called him asking for a ride. Witness #1 agreed and picked up Mr. Palaita near General Mills. When Mr. Palaita got inside, he chose the rear passenger seat claiming he preferred sitting in the rear. As Witness #1 was driving with Mr. Palaita, Witness #1 was on his cell phone talking to his girlfriend. When Witness #1 noticed he was being pulled over by police, Mr. Palaita said, "Ah man, I can't go to jail."



Once stopped, Officer Bristow asked him for his registration and said something about Mr. Palaita moving around in the back. Mr. Palaita was acting “stupid” and trying to hide in the back.

After another officer arrived, he heard both officers giving Mr. Palaita verbal commands to show them his hands. Mr. Palaita reached into the back of the vehicle and both officers drew their service weapons. Officer Bristow grabbed Witness #1 and pulled him to the ground. While Witness #1 was being pulled to the ground, Witness #1 heard gunshots going off. Witness #1 asked Officer Bristow why they were shooting at Mr. Palaita, and Officer Bristow responded because he was shooting at them.

#### Witness # 2

Witness #2 was interviewed on October 24, 2017, at 2:50 p.m., by investigators on the telephone, and stated the following:

Witness #2 had been married to Mr. Palaita for three years and had been dating for ten years before that. The two have three kids in common but at the time of the incident, they were separated because of the way Mr. Palaita was living his life. Witness #2 was living in Sacramento but Mr. Palaita was homeless and living the “street life”: being homeless, doing drugs, and drinking alcohol.

The last time Witness #2 saw Mr. Palaita was three weeks prior when she came to Lodi to bring him some clothing. Mr. Palaita seemed more normal than he had in the past and expressed the fact he missed the kids. Mr. Palaita had lost a lot of weight from the time she saw him before. She said she did not know if the loss of weight was because of the drug abuse, or from living on the streets.

Witness #2 said she wondered if he did this on purpose. Witness #2 relayed information about Mr. Palaita’s criminal background and that Mr. Palaita had told her in the past that if he was arrested, he was not going back to prison. She said she had wondered if he did this on purpose figuring, he had nothing to lose. Mr. Palaita did not know Mr. Palaita to have a gun and does not know where he would have procured a gun.

## SUBSEQUENT INVESTIGATION

### Video Documentation

#### Officer Daniel Bristow's Body Worn Camera (BWC)

The BWC of Officer Bristow was obtained and reviewed. The recording shows the following:

The BWC footage shows a vantage point consistent with it being on the dashboard of Officer Bristow's patrol vehicle. Officer Bristow is shown taking a position on a side street, monitoring traffic. The Honda Pilot being driven by Witness #1 is shown driving by and Officer Bristow pull behind it to initiate a traffic stop. The Honda Pilot turns right onto North Pleasant and pulls to the right near the curb line. Officer Bristow leaves his patrol unit and begins to converse with Witness #1. It appears that Officer Bristow is looking in the backseat of the Honda Pilot.

Officer Carillo can be seen arriving. The audio of the BWC picks up Officer Bristow telling Officer Carillo to approach on the passenger side as there is a subject in the back hiding. Officer Carillo approaches the passenger side and opens the back passenger door. Officer Carillo can be seen quickly backing up toward the front of the vehicle and drawing his service weapon. Officer Bristow has drawn his service weapon and both officers appear to be pointing their weapons at Mr. Palaita. Officer Carillo is heard on the radio calling for additional units to respond "Code 3." Officer Bristow opens the driver's door and Witness #1 exits and goes to the ground.

Mr. Palaita can be seen quickly exiting the vehicle and moving toward Officer Carillo and shots are fired. It appears Officer Bristow was firing through the vehicle, and then moves behind the vehicle while continuing to fire. Officer Carillo had moved from the passenger side of the vehicle to the front of the vehicle for cover as he was firing his service weapon. Officer Bristow keeps cover of Mr. Palatia for the next two minutes later until another officer arrives and handcuffs Mr. Palatia. Mr. Palatia is then rolled over on his back by an officer. At this point, Mr. Palatia's revolver is seen laying in the grass. Officer Bristow starts CPR briefly and then other officers take over.

#### Officer Dominic Carillo's Body Worn Camera (BWC)

The BWC of Officer Carillo was obtained and reviewed. The recording shows the following:

Officer Carillo arrives on scene and approaches the passenger side of the vehicle. Officer Carillo tells Mr. Palaita to put his hands in his lap. Officer Bristow says something to Officer Carillo who attempts to clarify if he is talking about the driver or Mr. Palaita. Officer Carillo then opens the rear passenger side door, and asks Mr. Palaita to step out. An open container of beer is visible in the arm of the passenger door. Officer Carillo asks Mr. Palaita what is going on and when he looks in, Mr. Palaita can be seen reaching over the seat with his right arm. Officer Carillo immediately steps back toward the front of the vehicle and draws his service weapon. Both officers repeatedly yell for Mr. Palaita to show his hands. Mr. Palaita can then be seen quickly exiting the vehicle and while moving toward Officer Carillo. Mr. Palaita is seen pointing his firearm directly towards Officer Carillo. Both officers fire their service weapons until Mr. Palaita goes to the ground. Officer Carillo can be heard airing that shots have been fired and to dispatch medical personnel.



*Screen shot from Officer Carillo's body worn camera.*

### Video Surveillance

No residential video surveillance that recorded the incident was discovered.

## DOJ Firearm Analysis

On October 23, 2017, the DOJ responded to the scene. As part of their responsibilities, DOJ criminalists documented the scene, collected ballistic evidence, and took possession of the officers' service weapons, along with Mr. Palaita's revolver.

### Officer Daniel Bristow's Firearm

Officer Bristow's .40 caliber Glock G22 pistol was collected and inspected. The firearm was missing ten rounds of ammunition, which was consistent with ten cartridge casings being located in the area where Officer Bristow discharged his firearm. The ten cartridge casings were compared with test-fired casings and were determined to have been fired from Officer Bristow's firearm.

Bullets recovered from the scene and the autopsy were examined. None of the bullets could be identified or eliminated as being fired from Officer Bristow's firearm.

### Officer Dominic Carillo's Firearm

Officer Carillo's .40 caliber Glock G22 pistol was collected and inspected. The firearm was missing six rounds of ammunition, which was consistent with six cartridge casings being located in the area where Officer Carillo discharged his firearm. The six cartridge casings were compared with test-fired casings and were determined to have been fired from Officer Carillo's firearm.

Bullets recovered from the scene and the autopsy were examined. None of the bullets could be identified or eliminated as being fired from Officer Carillo's firearm.

### Matthew Palaita's Firearm

Mr. Palaita was armed with a .22 caliber Harrington & Richardson revolver. The revolver was loaded with four live rounds: two .22 rim fire cartridges, and two .22 long rifle cartridges. The revolver is designed to hold as many as nine rounds of ammunition. All of the .22 cartridges were found to have at least one firing pin impression. This indicates that there was an attempt to fire the weapon.



*DOJ photograph of Mr. Palaita's Harrington & Richardson .22 revolver.*

When tested, the revolver functioned normally in single action, but when fired in double action, the firing pin did not strike the primer of the cartridge with sufficient force to fire the bullet. In other words, to fire Mr. Palaita's gun, a shooter would have to manually cock the hammer/firing pin back each time (single action) to fire the gun in order for the hammer/firing pin to generate sufficient force to strike the cartridge and fire the bullet.

When using Mr. Palaita's gun, if a shooter simply pulls the trigger to cock the hammer/firing pin back (double action), the fall of the hammer/firing pin will not generate sufficient force to strike the cartridge and fire the bullet.





*DOJ photograph of Mr. Palaita's Harrington & Richardson .22 revolver cylinder with firing pin indentations.*

The impressions found on the firing pin of the cartridge suggest that Mr. Palaita pulled the trigger at least four times using the double action and the gun would not fire.

#### Pathologist's Report

On October 24, 2017, San Joaquin Pathologist Susan J. Parson, conducted an autopsy on Mr. Palaita. Dr. Parson's autopsy revealed that Mr. Palaita suffered five gunshot wounds:<sup>4</sup> 1) a penetrating gunshot wound to the upper left back; 2) a penetrating gunshot wound to the medial right chest; 3) a penetrating gunshot wound to the medial lower right back; 4) a penetrating gunshot wound to the proximal anterolateral right thigh; and, 5) a penetrating gunshot wound to the anteromedial left thigh.

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<sup>4</sup> The order of the wounds here or in the autopsy report do not reflect the order in which Mr. Palaita was shot or struck. This normally is not possible to do and it was not done in this case.

Toxicology results showed presence of methamphetamine levels of 1.03 mg/L and amphetamine levels of .14 mg/L, in Mr. Palaita's blood.

Dr. Parson determined the cause of death to be "*Gunshot Wounds of Torso. Gunshot Wounds of Lower Extremities is a contributory factor to his death.*"

### Legal Analysis

Under Penal Code sections 197 and 198, homicide is justifiable and not unlawful when committed by a person who reasonably believed that he, or someone else, is in imminent danger of being killed, suffering great bodily injury, or to prevent a forcible and atrocious crime (*People v. Ceballos* (1974) 12 Cal.3d 470, 478). For a homicide to be in self-defense, the person must actually and reasonably believe in the need to defend with deadly force (*People v. Flannel* (1979) 25 Cal.3d 668, 674). If the belief both subjectively exists and is objectively reasonable, it constitutes "perfect self-defense" and the homicide is considered legally justified. (*In re Christian S.* (1994) 7 Cal.4<sup>th</sup> 768, 783).

Penal Code Section 197 states:

Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property, or person against one manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in violent, riotous or tumultuous manner. To enter the habitation of another for the purpose of offering violence to any person therein; or
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline in further struggle before the homicide was committed.

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Homicide committed by a law enforcement officer is governed by Penal Code section 196 (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333). Penal Code section 196<sup>5</sup> states:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either-

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

The test whether a police officer may use deadly force to apprehend a fleeing felon was announced in *Tennessee v. Garner* (1985) 471 U.S. 1, 11-12: “Where the officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

The test of reasonableness is judged by an objective standard of “a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Graham v. Conner* (1989) 490 U.S. 386, 396-397, see also, *Jeffers v. Gomez* (9<sup>th</sup> Cir. 2001) F.3d 895, 909, “broad discretion...must be afforded to police officers who face tense situations.”)

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<sup>5</sup> See also, jury instruction CalCrim 507.



Penal Code section 835a also states that, “[a] peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such an officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or prevent escape or to overcome resistance.” As stated above, “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary.” (*Garner, supra*, 471 U.S. at 11-12.)

The test for determining whether a homicide was justifiable under Penal Code section 196 is whether the circumstances “reasonably created a fear of death or serious bodily harm to the officer or to another.” (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4<sup>th</sup> 334). Reasonableness must be considered in the context of the “dangerous and complex world” police officers face every day, because “what constitutes ‘reasonable’ action might seem quite different to someone facing a possible assailant than to analyzing the question at leisure.” (*Martinez, supra*, 47 Cal.App.4<sup>th</sup> at 343, quoting *Smith v. Freeland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347).

### Application of Law

In analyzing the reasonableness of the decision by Officers Bristow and Carillo to use deadly force, the totality of the circumstances, including the information that the individual officer possessed at the time of his decision, is examined. The “‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (*Graham, supra*, 490 U.S. at 396.)

In the instant case, the following set of facts have been sufficiently established:

- 1) Officer Bristow was acting with reasonable suspicion when he detained Witness #1 for a traffic violation. (*Terry v Ohio* (1968) 392 US 1.)
- 2) Officers Bristow and Carillo were acting within reason when they requested Mr. Palaita to show his hands based on Mr. Palaita’s furtive and surreptitious actions. (*Michigan v. Long* (1983) 463 U.S. 1032; *Maryland v. Wilson* (1997) 519 U. S. 408 (1997); *Brendlin v. California* (2007) 551 U.S. 249 (2007).)
- 3) Officer Carillo’s use of lethal force was reasonable and necessarily committed to prevent his immediate great bodily injury or death from being shot.

4) Officer Bristow's use of lethal force was reasonable and necessarily committed to prevent Officer Carillo's and his immediate great bodily injury or death from being shot.

### CONCLUSION

In applying the prevailing legal standards, the totality of the circumstances, and in light of all of the evidence obtained from the multi-task force investigation, it is the opinion of the District Attorney that the lethal use of force used by both Officer Daniel Bristow and Officer Dominic Carillo, on October 23, 2017, was justified, and that no criminal charges are warranted.

## CONFIDENTIAL APPENDIX SECTION

APPENDIX A: Civilian Witness Information

APPENDIX B: Criminal History of Matthew Palaita

CONFIDENTIAL PAGE

APPENDIX A

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CONFIDENTIAL PAGE

APPENDIX B

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