

REPORT ON THE FATAL SHOOTING OF

MOISES NERIO

NOVEMBER 12, 2015



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PREAMBLE

The summary of this incident is drawn from the Sunnyvale Police Department reports and accompanying audio and video recordings, the Coroner's Report and a criminal history of the deceased. The police reports include various police officer narrative reports of the crime scene and document interviews of the involved officers and civilian witnesses. The audio and video recordings encapsulate those interviews. There is also audio of the incident from the officer's body camera. This review is being conducted pursuant to the Officer-Involved Guidelines adopted by the Santa Clara County Police Chief's Association on December 8, 2016.

FACTUAL SUMMARY

On November 12, 2015, at approximately 11:54 a.m., officers from the Sunnyvale Police Department were dispatched to a call at 1235 Ayala Drive, Apartment #4, in Sunnyvale. The responding officers were advised that the reporting party, Jane Doe, was awaiting contact in front of the nearby Shop N Save Liquors on South Bernardo Ave. Dispatch informed the officers that Doe called Sunnyvale Police Dispatch to report that her brother, Moises Nerio, forced open her bedroom door and forced himself on her. Sunnyvale Police Dispatch also advised that Doe believed her brother had been drinking alcohol, was possibly under the influence of drugs and was bipolar.

Public Safety Officer Barron Renzi ("PSO Renzi"), contacted Doe at the Shop N Save Liquors while Lieutenant Daniel Pistor ("Lt. Pistor"), who received training in Mental Health Response in 2013 and was certified in Crisis Intervention in 2014, and Public Safety Officer Sean Mula ("PSO Mula") went to 1235 Ayala Dr. #4, to contact Mr. Nerio. Doe provided PSO Renzi with information that suggested she had been a victim of a violation of Penal Code § 220, Assault with Intent to Commit Rape. After speaking with Doe, PSO Renzi went to Mr. Nerio's residence to continue the investigation with PSO Mula and Lt. Pistor.

The three officers walked up to the residence and found the front door open with Mr. Nerio inside. The officers instructed Mr. Nerio to come outside and talk with them. Mr. Nerio refused to come outside and instead walked into the kitchen and retrieved a large kitchen knife. At that time, he grabbed a 13-inch knife from the kitchen. PSO Mula was approximately 10 to 15 feet away and standing in the open threshold of the front door. PSO Renzi and Lt. Pistor were standing on a nearby patio and could see through the blinds of the closed sliding glass door into the house. Mr. Nerio then approached PSO Mula with the knife. The officers informed Sunnyvale Police Dispatch that Mr. Nerio was armed with a knife and refused to comply with the officers' repeated commands to drop the knife. The officers made approximately forty commands to Mr. Nerio to put the weapon down prior to shooting.

Mr. Nerio refused to comply and began approaching PSO Mula, who was now approximately seven to eight feet away. At one point, just before shots were fired, Mr. Nerio made a "jerking" motion with his hand while approaching PSO Mula. All three officers stated that they were

fearful for their safety and formed an opinion that their lives were in danger, especially PSO Mula who was completely exposed with no door between him and Mr. Nerio. At the time the officers discharged their weapons, Mr. Nerio was approximately 7 feet from PSO Mula with nothing in between them. Lt. Pistor fired up to seven rounds, PSO Mula fired up to nine rounds, and PSO Renzi fired up to eight rounds. The shooting occurred at approximately 12:18 p.m.

Fire and Paramedics were immediately called to the scene to assist with lifesaving measures. At approximately 12:19 p.m., Sunnyvale DPS Fire Engine 46 responded with Lt. Sartwell and PSO Ramirez. Additionally, County EMS Paramedic Joseph Ojeda and EMT Melanie Matthews arrived on scene and treated Mr. Moises. At approximately 12:52 p.m. County EMS, accompanied by PSO Fujii, PSO Ramirez and Lt. Sartwell, transported Mr. Nerio to Valley Medical Center where he received additional medical treatment. The ambulance arrived at Valley Medical Center at approximately 1:07 p.m. and Mr. Nerio was immediately transferred to the Emergency Room. At 1:21 p.m., Mr. Nerio was pronounced deceased.

At the time of his death, Mr. Nerio had a blood alcohol level of .426, which is over five times the legal limit to drive a car.

Later that evening, PSO Mula, PSO Renzi and Lt. Pistor gave statements to detectives recounting what happened. They were separated shortly after the shooting and none of them spoke with one another before giving their statements. Additionally, none of the officers read any police reports nor listened to any audio recorded statements, including PSO Mula's audio of the incident captured on his body camera. All three officers gave their statements based solely on their memory of the events.

STATEMENT OF FACTS

LAW ENFORCEMENT OFFICER STATEMENTS

STATEMENT OF LIEUTENANT DANIEL PISTOR

On November 12, 2015 at approximately 6:25 p.m., Detectives Joel Lockwood and Matthew Hutchinson interviewed Lieutenant Daniel Pistor at the Sunnyvale DPS.

Lt. Pistor is a twelve-year veteran of Sunnyvale DPS and is a Patrol Supervisor. As a Patrol Supervisor, Lt. Pistor is required to supervise his assigned officers and monitor the calls they respond to while on duty. He stated this assignment includes being available for advice on complicated cases and responding to difficult or complex calls for service with the officers he supervises.

On November 12, 2015, Lt. Pistor's shift began by completing briefing with his squad. While monitoring the radio calls for service, Lt. Pistor heard PSO Renzi and PSO Mula get dispatched to a call on Ayala Drive in Sunnyvale. Lt. Pistor heard over the radio the call involved a possible sexual assault of a female by her brother. He heard that the male was three hundred pounds and was possibly drunk or high and was acting bizarre. The dispatcher ran the suspect's history and indicated that the suspect may have a mental health history. While listening to the information

over the radio, Lt. Pistor decided he should respond to the call as well. This decision was based on the type of call, the suspect's size (over three-hundred pounds), the suspect's description of being under the influence of drugs or alcohol, and the suspect's mental health history. Lt. Pistor believed the call had a potential for violence and could require the use of force. Lt. Pistor stated his concern was based on the details of the crime and the characteristics of the suspect described above.

Upon arrival, Lt. Pistor saw PSO Mula walking on Ayala Dr. towards Mr. Nerio's residence. Lt. Pistor began walking westbound on Ayala Dr. to catch up with PSO Mula. After PSO Renzi completed his interview with Jane Doe, he met up with Lt. Pistor and PSO Mula in front of Mr. Nerio's apartment. Lt. Pistor stated they discussed Jane Doe's statement and then made a plan to speak with Mr. Nerio. Lt. Pistor stated he and PSO Mula discussed the potential assault that took place and Doe's desire for Mr. Nerio's arrest. Lt. Pistor noted that the front door of Mr. Nerio's apartment was open. He also noticed that the apartment had a fenced-in patio that faced the front of the apartment. Lt. Pistor stated there was a sliding glass door leading to the patio and the blinds covering the doors were open such that Lt. Pistor could see into the apartment. Lt. Pistor stated PSO Mula initially responded to the front door while he and PSO Renzi remained outside the patio fence. Lt. Pistor stated the plan was to ask Mr. Nerio to come out of the apartment to speak with them.

Lt. Pistor could hear PSO Mula addressing someone inside and he believed PSO Mula could see Mr. Nerio inside the apartment. Lt. Pistor stated he moved towards the opening of the patio where PSO Mula was standing. As he got there, PSO Mula moved forward and took a position in the threshold of the front door. Lt. Pistor stated at that point he and PSO Renzi moved forward onto the patio as PSO Mula continued to try to get the suspect to comply with verbal commands to come outside. From his position on the patio, Lt. Pistor could see Mr. Nerio standing in the kitchen area. Lt. Pistor stated PSO Mula was trying to coax Mr. Nerio outside without escalating the situation, but Mr. Nerio would not comply. He stated Mr. Nerio was just rocking back and forth. Lt. Pistor stated he began to be concerned for PSO Mula and PSO Renzi's safety based on the circumstances of the call and Mr. Nerio's actions.

Lt. Pistor stated while Mr. Nerio was in the kitchen he grabbed a large knife. Lt. Pistor did not remember which hand Mr. Nerio accessed the knife with but stated Mr. Nerio eventually held it in his left hand. Lt. Pistor focused on the size of the knife and the shine of the blade. He stated the knife was large and he thought of it like a sword. He stated he was really scared because the distance between Mr. Nerio and PSO Mula was approximately fifteen feet from where PSO Mula stood at the threshold of the front door. Lt. Pistor knew Mr. Nerio could close that distance quickly and possibly kill PSO Mula. Lt. Pistor stated if an officer was stabbed somewhere vital, he would bleed to death before an ambulance even arrived. He stated when he saw the knife, he believed that he, PSO Mula and PSO Renzi were in a deadly use of force scenario. Lt. Pistor stated he called for an ambulance to respond and park a few blocks away from the residence because he believed the situation was dangerous and was going to result in the use of force.

Lt. Pistor stated he repositioned himself to be next to PSO Mula at the threshold of the front door. He stated he wanted to see if he could get PSO Mula out of the open doorway. Lt. Pistor

wanted to change places with PSO Mula to keep PSO Mula safe. Lt. Pistor knew Mr. Nerio had the ability to close the distance between Mr. Nerio and PSO Mula quickly. Lt. Pistor confirmed there were no obstacles obstructing the path from Mr. Nerio to PSO Mula. Lt. Pistor stated he was not able to get PSO Mula out of the doorway and could not stay there with him because the doorway was too small. He stated while he was in the doorway he heard Mr. Nerio say something similar to "Just do it." Lt. Pistor stated he went back to the patio, which is directly to the right of the front door and was looking at Mr. Nerio through the blinds at the closed sliding glass patio door. He stated he, PSO Mula, and PSO Renzi, who was next to him at the closed sliding glass door, were all yelling commands at Mr. Nerio to drop the knife and to stay where he was. Lt. Pistor was also telling Mr. Nerio that he did not want to hurt him.

Lt. Pistor recalled that Mr. Nerio moved from around the kitchen counter and started marching directly at PSO Mula with the knife in his hand. Lt. Pistor expressed fear that PSO Mula would be hurt. He stated he was scared that if he shot, he may miss Mr. Nerio, or his shots would be ineffective in stopping Mr. Nerio's attack. Lt. Pistor contemplated the size of Mr. Nerio and the fact that he would be shooting through the sliding glass door. He stated while Mr. Nerio advanced on PSO Mula, he decided to fire his gun at Mr. Nerio in defense of PSO Mula's life. Lt. Pistor estimated the distance between Mr. Nerio and PSO Mula was approximately eight feet when he decided to fire his weapon. Lt. Pistor stated he knew PSO Mula and PSO Renzi had fired as well. He stated he saw the sliding glass door shatter and Mr. Nerio fall to the floor. Lt. Pistor stated he checked on the welfare of PSO Mula and PSO Renzi. At that time, all three officers entered the apartment, cleared it for other occupants, and called for additional resources. Lt. Pistor directed PSO Mula and PSO Renzi to put on gloves and administer lifesaving aid to Mr. Nerio. Lt. Pistor stated he saw where Mr. Nerio had fallen and estimated it to be approximately one foot away from where PSO Mula stood when he fired his weapon. Lt. Pistor estimated that he fired approximately three to five shots.

Lt. Pistor stated as he directed PSO Mula and PSO Renzi to begin CPR; additional officers arrived on scene and replaced them in these life-saving efforts. Lt. Pistor, PSO Mula and PSO Renzi went outside, separated, and eventually provided separate statements to Sunnyvale DPS. Lt. Pistor stated before giving his statement to the Detectives, he did not review any recordings, police reports, videos, or speak with others about the incident besides his attorney.

STATEMENT OF PSO BARRON RENZI

On November 12, 2015 at approximately 8:27 p.m., Det. Lockwood and Det. Hutchinson interviewed PSO Renzi at the Sunnyvale DPS.

PSO Renzi was hired by Sunnyvale DPS in October of 2014. PSO Renzi stated he had just recently completed his patrol training and became a solo Beat Officer. He explained this meant he no longer has another officer in the vehicle with him while he is working. He stated he is responsible for the calls in his assigned patrol area, but he is also called to other areas of the city to assist based on the availability of officers when calls are dispatched.

PSO Renzi stated on November 12, 2015, his day began with squad briefing and then loading up his patrol vehicle with his equipment and supplies. At that point, he began patrol activities by

responding to calls for service. PSO Renzi stated he heard a call come out on Ayala Drive and he responded to the call.

PSO Renzi recalled the dispatched information from the call being a female reporting party stating her brother had broken into her bedroom and touched her inappropriately. PSO Renzi stated that the dispatcher indicated that the suspect was over three hundred pounds and that there had been multiple prior psychiatric calls to the suspect's residence. PSO Renzi stated he responded to a liquor store near the address in question where the victim was waiting for police. He stated the suspect in the case was described as a large male with a history of mental health problems and possibly being intoxicated. PSO Renzi stated dealing with people under the influence or under mental distress can be dangerous and unpredictable. PSO Renzi was concerned about the call based on the information he was provided by dispatch. He stated he had been to calls involving people under the influence and suffering from mental illness. He stated he had experienced such people to be violent.

PSO Renzi responded to the liquor store and located Jane Doe. Doe informed PSO Renzi that when she got home earlier that morning she saw her brother, Mr. Nerio on the couch and he appeared to be sleeping. She then went to her bedroom and closed and locked the door. Sometime later, Mr. Nerio opened the door by unknown means and pushed Doe against a dresser and touched her buttocks and vagina over her clothing. Doe stated she fled the apartment to the liquor store, where she called various members of her family. PSO Renzi stated based on the information provided to him, he believed Mr. Nerio committed a crime. Doe told him she desired to prosecute Mr. Nerio for the assault. PSO Renzi allowed Doe to leave to pick up her children and then he responded to Doe's address. PSO Renzi stated Lt. Pistor and PSO Mula were already there.

Upon arrival, PSO Renzi relayed Doe's statement to Lt. Pistor and PSO Mula. The three Officers formulated a plan to contact Mr. Nerio inside the open apartment at that time. PSO Renzi stated PSO Mula approached the area of the open front door and indicated he could see Mr. Nerio inside. PSO Renzi stated he attempted to see through the closed sliding glass door through the open vertical blinds. This sliding glass door is immediately to the right of the front door. He stated his view was partially obstructed by a glare and the angle of the blinds so he repositioned himself near PSO Mula. PSO Renzi described Lt. Pistor being next to him on the patio while PSO Mula stood in the threshold of the open front door. He stated once he was in the patio area, he could see Mr. Nerio through the sliding glass door and Mr. Nerio was standing in the kitchen. He stated Mr. Nerio appeared to be doing something in the kitchen.

PSO Renzi stated he could hear PSO Mula trying to get Mr. Nerio to come outside. PSO Renzi stated he could hear Mr. Nerio answer with something similar to "No." PSO Renzi stated when he heard this, he believed he, PSO Mula and Lt. Pistor may need additional help getting Mr. Nerio to comply. He stated when suspects refuse commands, they commonly fight with officers or attempt to flee. PSO Renzi stated at this point he allowed PSO Mula to give most commands to avoid confusion. PSO Renzi stated Mr. Nerio then grabbed a knife somewhere on the kitchen counter area. He stated Mr. Nerio was holding the knife in his right hand with the blade pointing down. PSO Renzi stated Mr. Nerio held the knife in an aggressive manner. He stated Mr. Nerio

was also clenching his left fist and standing in an aggressive posture with the knife raised and the blade facing downward. PSO Renzi stated all three Officers began giving commands to Mr. Nerio while pointing their firearms at the suspect.

PSO Renzi recalled that he, PSO Mula and Lt. Pistor were repeatedly commanding Mr. Nerio to drop the knife. PSO Renzi stated, at this moment, PSO Mula was trying to appeal to Mr. Nerio. He was telling Mr. Nerio things like "it's not worth it" and "there are other options." PSO Renzi stated Mr. Nerio continued to refuse to comply. PSO Renzi described the knife as a chef style knife, approximately eight inches in length. PSO Renzi stated he was scared for his safety and the safety of the other officers, especially PSO Mula, who was in the front doorway. PSO Renzi stated he believed the suspect could kill the officers on scene with the knife and thus felt that the knife was a deadly threat that permitted the use of deadly force if necessary.

PSO Renzi stated repeated commands were made to Mr. Nerio in a clear loud manner and Mr. Nerio continued to respond, "Do it." PSO Renzi stated shortly after saying "Do it," Mr. Nerio began walking towards PSO Mula with the knife in his hand. PSO Renzi stated he thought that the Mr. Nerio's actions were similar to a "suicide by cop" scenario. PSO Renzi stated there was nothing obstructing the path between Mr. Nerio and PSO Mula. PSO Renzi estimated the distance between them to be approximately fifteen feet.

PSO Renzi stated as soon as Mr. Nerio began advancing in PSO Mula's direction, all three officers fired their weapons at him until he was on the ground and no longer posed a threat. PSO Renzi stated he fired at Mr. Nerio in defense of PSO Mula's life. PSO Renzi believed that when he began shooting, Mr. Nerio was approximately five to seven feet away from PSO Mula.

PSO Renzi described having to shoot through the patio sliding glass door. He stated he knew this meant that he may not strike the suspect with his rounds or the rounds may have less effect on Mr. Nerio. PSO Renzi stated in addition to the knife, Mr. Nerio's state of sobriety, his mental health history that he learned from dispatch, and Mr. Nerio's size caused him concern. PSO Renzi stated he knew it may take multiple rounds to stop Mr. Nerio from advancing. PSO Renzi estimated that he fired approximately six shots. PSO Renzi stated after the shooting he no longer saw the knife and did not know where it went. He stated after moving inside the apartment, he was concerned about seeing both of Mr. Nerio's hands before approaching in case Mr. Nerio was still armed. PSO Renzi stated they cleared the apartment for additional occupants and then handcuffed Mr. Nerio after he was moved slightly away from the wall so that the three officers could begin administering aid. PSO Renzi could not remember seeing the knife during that time.

PSO Renzi stated as the three officers began to render aid, they were replaced by additional arriving officers. He stated he, PSO Mula and Lt. Pistor then went outside. PSO Renzi stated before giving his statement to the detectives, he did not review any recordings, police reports, videos, or speak with others about the incident besides his attorney.

STATEMENT OF PSO SEAN MULA

On November 12, 2015 at approximately 9:51 p.m. Det. Lockwood and Det. Hutchinson interviewed PSO Mula at the Sunnyvale DPS.

PSO Mula went through initial police officer training in July 2014 and he was assigned to patrol in approximately September of 2015. PSO Mula described November 12, 2015 beginning normally. He attended briefing, loaded his vehicle with his equipment and went out on his assigned district for patrol activities and calls for service.

PSO Mula stated he was in the reporting room when he heard a call dispatched to his Beat. He stated he believed one officer was off duty in a short time so he replaced that officer on the call. PSO Mula stated he did not hear the whole call initially, but checked his car computer and read the details of the case. He stated he was aware he was responding to a possible assault between a brother and sister. PSO Mula stated the assault had taken place after the suspect entered the victim's room.

PSO Mula stated while responding to the call he heard over the radio that the suspect, Mr. Nerio, had been placed on three recent 72-hour mental health evaluations, which can be concerning because people in mental distress can sometimes be violent. He said sometimes these individuals use alcohol or drugs as a means of self-medication, which makes the situation even more unpredictable. PSO Mula stated he was considering these factors as he responded to the call. He stated he heard over the radio that PSO Renzi was making contact with the victim at a nearby store; therefore, PSO Mula decided to continue to the residence to contact Mr. Nerio. PSO Mula stated rather than making immediate contact with Mr. Nerio, he chose to wait to speak with PSO Renzi to determine what Jane Doe reported. He stated as he arrived, he contemplated requesting an additional officer to respond based on the information he had at that point and the belief that Mr. Nerio may pose a risk to the officers' safety. PSO Mula stated before he could call for an additional officer, he saw Lt. Pistor arrive.

PSO Mula stated he and Lt. Pistor took positions outside Doe's apartment while PSO Renzi conducted his interview with Doe. PSO Mula stated he and Lt. Pistor observed that the front door to the apartment was open. They stood at a position away from the open door while they waited for PSO Renzi. PSO Mula stated he spoke with PSO Renzi over the phone and he told him the incident involved a sexual battery. After completing his interview with the victim, PSO Renzi joined PSO Mula and Lt. Pistor at the apartment. PSO Mula stated the three officers discussed the elements of the potential crime they were investigating based on Doe's statement. PSO Mula stated they then formulated a plan to call Mr. Nerio outside so they could obtain his statement.

PSO Mula stated he stood at the threshold of the open front door where he could see inside the apartment. When he approached the door, he saw Mr. Nerio inside the living room. PSO Mula stated he began asking Mr. Nerio to come outside, but Mr. Nerio responded, "No." PSO Mula stated he found it to be odd Mr. Nerio did not want to comply. PSO Mula stated this was the first time he had dealt with someone refusing to respond to him. He also stated it was strange that Mr. Nerio did not say anything other than "No." PSO Mula stated he then moved closer to the open front doorway while he continued to call out to Mr. Nerio. PSO Mula stated Mr. Nerio continued to refuse. When he reached the open front doorway, he stood at the threshold and looked inside the apartment. He stated he could see Mr. Nerio standing in the kitchen next to a counter top or island. He stated at some point he also heard metal hitting metal, as if Mr. Nerio opened a drawer. PSO Mula stated at the same time, it appeared that Mr. Nerio grabbed something with

his right hand, which was concealed from view. PSO Mula stated he believed Mr. Nerio grabbed a knife. PSO Mula stated Mr. Nerio was standing approximately ten to fifteen feet away from where he was standing at this point. PSO Mula stated Mr. Nerio had a blank stare on his face. Because he could not see what Mr. Nerio had in his right hand, he accessed his department issued CEW (Taser). PSO Mula stated he wanted to gain Mr. Nerio's compliance; however, as he reached for his CEW, he saw Mr. Nerio raise his arm and that's when he saw he was holding a knife. PSO Mula stated as Mr. Nerio displayed the knife, Lt. Pistor advised PSO Mula to take out his firearm. PSO Mula holstered his CEW and drew his firearm. He stated he was aware that the CEW may not be effective at stopping Mr. Nerio because CEWs fail 60% of the time. Further, PSO Mula was unsure if Mr. Nerio would be struck properly in a "target zone" based on the exposed area of Mr. Nerio's body. PSO Mula stated he also recalled a training scenario where he was assaulted by a role player charging at him with a knife. In that training, PSO Mula did not have enough time to access his firearm to defend himself.

PSO Mula stated he began giving Mr. Nerio repeated commands to put down the knife but Mr. Nerio did not comply. PSO Mula stated Mr. Nerio also stepped to his left so that he had a direct line to PSO Mula. PSO Mula stated there were no obstructions between them. At that time, PSO Mula aimed his firearm directly at Mr. Nerio's chest while all three officers gave Mr. Nerio commands to drop the knife. PSO Mula stated he began thinking of his partners at the scene and their families. He stated he also thought of his own safety and was scared. PSO Mula stated he thought of what he would need to do if Mr. Nerio charged at him. He considered firing two rounds to Mr. Nerio's body and one to Mr. Nerio's head to stop Mr. Nerio. However, PSO Mula considered the surrounding apartments and the possibility of missing Mr. Nerio. PSO Mula stated he wanted to stop the threat immediately based on the close distance between him and Mr. Nerio. Based on his concern for the occupants of neighboring apartments, PSO Mula decided to aim at the center of Mr. Nerio's mass.

PSO Mula stated he told Mr. Nerio multiple times to stop walking towards him. He told Mr. Nerio that he was scared and that he did not want to hurt him. However, PSO Mula stated Mr. Nerio continued to walk towards him slowly, with the knife still in his hand in a stabbing position. PSO Mula stated Mr. Nerio made a "jerking" motion to his right behind a sofa as he continued to walk towards PSO Mula. PSO Mula remembered thinking the suspect's movement was odd and he believed it was an effort to provoke the Officers on scene to shoot him. PSO Mula stated after the jerking movement, Mr. Nerio moved back to his left in a direct line to PSO Mula's position. PSO Mula stated all three officers continued to command the suspect to drop the knife but Mr. Nerio refused. PSO Mula stated he heard shots fired and he decided to fire his weapon in defense of his life. PSO Mula stated when he fired at Mr. Nerio he was approximately seven feet away from him. He stated when he began firing, he believed Mr. Nerio could kill him based on Mr. Nerio's size thus he was not certain that he could stop Mr. Nerio before Mr. Nerio reached him with the knife. PSO Mula continued to fire until Mr. Nerio fell at his feet and was no longer a threat to his safety. PSO Mula stated he followed Mr. Nerio to the ground while still pointing his gun at him. PSO Mula estimated that he fired twelve shots.

PSO Mula stated after the shooting, all three officers entered the apartment. PSO Mula conducted a search of the apartment for any other occupants. PSO Mula stated he observed both of Mr. Nerio's hands were not clearly visible. PSO Mula stated the three officers coordinated their response and accessed both of Mr. Nerio's hands. PSO Mula stated Mr. Nerio was handcuffed, and at some point, one of the officers saw the knife near a couch in the living room. PSO Mula could not recall who saw the knife and he did not remember seeing it after the shooting.

PSO Mula stated he, PSO Renzi, and Lt. Pistor began administering aid to Mr. Nerio until they were replaced by other responding officers. PSO Mula stated he, PSO Renzi, and Lt. Pistor went outside and were separated. PSO Mula stated before giving his statement to the Detectives, he did not review any recordings, police reports, videos, the audio of his body camera, or speak with others about the incident other than his attorney.

STATEMENT OF FIRE OFFICER RUDY RAMIREZ

On November 12, 2015 at approximately 12:17 p.m. Sunnyvale DPS Fire EN46 was dispatched to 1235 Ayala Drive #4 to assist Patrol with a forty-two-year-old gunshot patient. Upon entering apartment #4, Mr. Nerio was lying on his back with obvious gunshot wounds to his front torso. PSO Pistor and PSO Gantt were inside the apartment and had attached an Automated External Defibrillator (AED) to Mr. Nerio and initiated CPR procedures prior to Ofc. Ramirez's arrival.

Mr. Nerio was lying on his back with his head pointing in a south-western direction towards the front door and window. The window adjacent to the front door was shattered, and glass fragments from the window were located near the head and right torso of Mr. Nerio.

To perform CPR, Ofc. Ramirez, PSO Pistor, and PSO Gantt moved Mr. Nerio towards the center of the living room. Lt. Sartwell moved a coffee table and a couch that was flipped onto its backrest towards the northern wall of the living room. While moving the couch, Lt. Sartwell observed what he believed was a kitchen knife in the center fold of the backrest and cushions of the couch. Lt. Sartwell, the DPS Officers, and the paramedics did not tamper with or touch the knife.

STATEMENT OF OFFICER JASON PISTOR

On November 12, 2015, at approximately 12:16 p.m., Lt. Pistor's brother, PSO Jason Pistor ("PSO Pistor"), responded to 1235 Ayala Dr. #4 to assist with the investigation of a sexual assault case. While on route to the scene, PSO Mula reported via Sunnyvale DPS police radio frequency that the front door to the residence was open and the occupant was not responding to officers' commands. PSO Pistor heard Lt. Pistor report via police radio that the occupant of the residence was armed with a knife. PSO Pistor responded Code 3 to Lt. Pistor's location. While responding, he heard via police radio the suspect had been shot.

PSO Pistor arrived on the scene at approximately 12:19 p.m. and parked his vehicle immediately outside apartment #4. He entered the apartment with an AED/first aid bag and found an adult male face up with his head pointed toward the broken glass sliding door near the front door and

his feet in the direction of the kitchen. PSO Mula, PSO Renzi, and Lt. Pistor were in the apartment donning gloves and preparing to provide lifesaving techniques. PSO Pistor approached the adult male and was informed it was Mr. Nerio who had been shot. Mr. Nerio's hands were handcuffed to the front of his body. Mr. Nerio's eyes were closed, he was unconscious, he was not breathing, he did not have a pulse, and a large pool of blood was forming underneath him as a result of several penetrating wounds to his chest.

PSO Pistor performed CPR on Mr. Nerio with the assistance of PSO Gantt. PSO Pistor applied vehicle 24's AED pads on the upper and lower chest of Mr. Nerio. The AED analyzed and instructed to begin CPR. PSO Pistor started chest compressions while PSO Gantt used a bag valve providing breaths. Mr. Nerio's hands were removed from the handcuffs and his clothing was cut from his body while PSO Pistor conducted an initial assessment of Mr. Nerio's injuries. PSO Pistor noticed multiple penetrations to Mr. Nerio's skin on his chest, right arm, and left thigh area. Mr. Nerio was bleeding profusely from all penetrations. While performing CPR, PSO Pistor treated the chest penetration and applied a four-inch bandage and a cloth blanket from the living room over the penetrations that were underneath PSO Pistor's hands to attempt to slow the bleeding. Sunnyvale DPS officers maintained an open airway and controlled Mr. Nerio's bleeding until Sunnyvale DPS Fire arrived. PSO Pistor continued to assist in performing CPR until Mr. Nerio was transported to Valley Medical Center.

STATEMENT OF DETECTIVE ERIC GOLEMBIEWSKI

On November 12, 2015, at 3:26 p.m., Detective Eric Golembiewski arrived at 1235 Ayala Dr. where he acted as liaison between the detectives and the CSI team. Det. Golembiewski remained at the vehicles in front of the scene and did not enter the inner scene including the apartment or the front lawn.

At 7:06 p.m. Det. Golembiewski was informed by PSO Nunez that a man, Mr. Isaac Rodriguez, was at the perimeter of the outer tape and was related to the family. Det. Golembiewski made contact with Mr. Rodriguez and took his statement. Mr. Rodriguez is Jane Doe's ex-boyfriend.

Det. Golembiewski took a second telephone statement from Mr. Rodriguez at 8:20 p.m.

STATEMENT OF DETECTIVE JOEL LOCKWOOD

On November 12, 2015, Detective Joel Lockwood was assigned to the Sunnyvale DPS Investigations Bureau as a Crimes against Persons Detective. His primary responsibilities included the investigation of robbery, homicide, felony-based assault crimes, and cold case homicides. He was also responsible for investigating officer involved shootings that occur in Sunnyvale. Det. Lockwood was on duty and driving to the area of Lawrence and Sandia to conduct follow up investigation on an unrelated case. He was monitoring the Sunnyvale DPS primary dispatch channel while driving and at approximately 12:15 p.m. he heard PSO Mula advise that he, Lt. Pistor, and PSO Renzi were attempting to contact a possible sexual assault suspect at 1235 Ayala Dr. #4.

At approximately 12:16 p.m., Lt. Pistor advised via the radio that the suspect, Mr. Nerio, was armed with a knife and “in a stand-off” with officers. Lt. Pistor requested Sunnyvale DPS Fire and County Paramedics to stage in the area.

At approximately 12:18 p.m., PSO Renzi advised over the radio that shots had been fired, Mr. Nerio was shot, and no officers were injured. Lt. Pistor immediately requested Sunnyvale DPS Fire and County Paramedics respond directly to the scene. While in route to the scene Det. Lockwood contacted Det. Hutchinson and requested that he respond to the scene.

When Det. Lockwood arrived on scene he spoke with Lieutenant Kirk Kim who advised him CPR was being performed on Mr. Nerio inside the apartment. He also advised that Lt. Pistor, PSO Renzi, and PSO Mula were all involved in the shooting. Lt. Kim advised Det. Lockwood that Jane Doe left to pick up her children from school prior to the shooting. Based on this information, Det. Lockwood contacted Detective Elizabeth DiGiovanna and requested she locate and interview Doe.

Scene Description

After speaking with Lt. Kim, Det. Lockwood walked into the apartment and conducted an initial scene walk-through. Upon entering the apartment, he observed multiple expended handgun shell casings on the ground and multiple expended handgun shell casings on the front door step entering the apartment. The expended handgun shell casings were both inside and outside of the apartment’s front door.

Det. Lockwood further observed Mr. Nerio lying on his back on the floor of the living room, approximately three to four feet inside the apartment with his head closest to the front door and his feet positioned away from the front door facing the kitchen. Det. Lockwood observed CPR being performed on Mr. Nerio by Sunnyvale DPS Fire personnel, Lt. Sartwell and PSO Ramirez, Patrol personnel, PSO Gantt, PSO Pistor, County Ambulance personnel, Paramedic Joe Ojeda and EMT Melanie Matthews.

Det. Lockwood observed a glass sliding door leading to the apartment’s patio area on the right side of Mr. Nerio. The glass in the door was shattered and there were holes in the blinds on the door consistent with bullet holes. Det. Lockwood also saw holes in the hallway wall, north of the living room, that were consistent with bullet holes. He also saw what appeared to be glass embedded in the hallway wall. It was determined that the distance, from north to south, from the sliding glass door to the hallway was approximately eighteen feet. The distance, from east to west, from the front door to the kitchen area of the apartment was also approximately eighteen feet.

Based on the size of the apartment, the distance from the front door of the apartment to the kitchen area and hallway area, the location of Mr. Nerio’s body on the ground, the locations of the expended handgun shell casings, the blood evidence, and the broken glass from the sliding glass door, it appeared to Det. Lockwood the shooting took place at close range. Based on the position of Mr. Nerio’s body on the ground, it appeared he had fallen down approximately three to four feet from the front door of the apartment. Based on the location of the expended casings

and bullet holes, it appeared at least one officer was standing in or near the front door of the apartment at the time of the shooting. Based on the bullet holes, the broken glass from the sliding door, and the expended shell casing in the patio area, it appeared at least one officer was standing in the patio at the time of the shooting and the officer shot through the sliding glass door.

Investigation Continued

As Det. Lockwood exited the apartment he observed PSO Spencer Chen in the patio area and asked him to begin photographing the scene while CPR was still being performed on Mr. Nerio to best document the scene to encapsulate how it looked immediately following the shooting.

Outside of the apartment, Det. Lockwood contacted Det. Hutchinson and his direct supervisor Lt. Greg Giguere. Det. Lockwood provided them with the information he received from Lt. Kim and described what he observed when he walked into the apartment. Det. Hutchinson and Det. Lockwood then conducted a walk-through of the crime scene together.

Prior to the shooting, radio traffic by Lt. Pistor indicated Mr. Nerio was in possession of a knife when contacted by the officers and was not responding to the lawful commands of the officers. Based on the radio traffic, Det. Hutchinson and Det. Lockwood looked for a knife in and around the living room area of the apartment. A handle of a large kitchen knife was located in the cushion of an overturned couch in the living room near Mr. Nerio's body. Sunnyvale DPS Fire and Patrol indicated they did not move the knife. Based on the information provided by PSO Ramirez, the knife was not touched or moved by Santa Clara County Ambulance personnel.

After completing the walk-through of the crime scene, Det. Lockwood and Det. Hutchinson spoke with Lt. Giguere. Additional detectives responded to the scene to oversee and assist with a neighborhood canvas. Detective Anthony Serrano responded to the scene to coordinate and oversee the neighborhood canvas. Det. Jason Swick and Detective Steven Gorshe were assigned to assist with the canvas.

While Det. Lockwood and Det. Hutchinson conducted a walk-through of the scene, Lt. Pistor, PSO Mula, and PSO Renzi were transported back to DPS headquarters for processing and evidence collection. Det. Golembiewski and Det. Nicholas Epidendio oversaw the processing of the three involved officers.

Det. Hutchinson and Det. Lockwood returned to DPS headquarters to continue the investigation and discovered PSO Mula had his department issued digital recorder on during the contact with Mr. Nerio. Det. Hutchinson and Det. Lockwood reviewed the recording. In the recording, the voices of Lt. Pistor, PSO Mula, PSO Renzi, and Mr. Nerio can be heard. The recording documents the initial contact with Mr. Nerio, the commands given to Mr. Nerio, Mr. Nerio's verbal responses to the commands, and the audio recording of the shooting. The recording documented PSO Mula giving several commands to drop the knife. PSO Mula can also be heard telling Mr. Nerio to stop walking towards him and that he did not want to shoot him. The recording continued following the shooting and includes Lt. Pistor telling PSO Renzi and PSO Mula to search the residence and then telling them they need to begin CPR. PSO J. Pistor can be

heard on the recording when he arrived on scene, entered the apartment, and took over medical care of Mr. Nerio.

STATEMENT OF DETECTIVE STEVEN GORSHE

On November 12, 2015, Detective Steven Gorshe was working for the Sunnyvale DPS as a Community Crimes Unit Detective.

At approximately 12:18 p.m., an Officer Involved Shooting Incident occurred and Lt. Giguiere responded to the scene and requested Det. Swick and Det. Gorshe respond to assist with the investigation. Det. Gorshe and Det. Swick responded to the scene and reported to Lt. Giguiere.

Lt. Giguiere explained they were to assist in locating and interviewing potential witnesses as part of the neighborhood canvas. Det. Serrano was coordinating the canvas and Det. Swick and Det. Gorshe reported to him for their specific assignment. Det. Serrano asked Det. Swick and Det. Gorshe to assist with the interview at 1235 Ayala Dr. #35.

When Det. Gorshe entered apartment #35 PSO Sorin Halmagean and PSO Stewart were already present and advised that all parties in apartments #34, #35, and #3 had been interviewed and provided recorded statements. Additionally, one of the parties in apartment #35 may have a video of the incident.

Det. Gorshe activated his recording device and asked if anyone recorded the incident. Det. Gorshe noticed Gyapan Pathak smile and asked Mr. Pathak to show him the recording he had taken. Mr. Pathak walked to his room and produced his cell phone. Det. Gorshe then took Mr. Pathak's statement regarding the recording.

The video did not show the incident unfold as the phone was pointed to the ground. The video did record sound of an officer telling someone to "drop the knife." It then recorded a rapid succession of shots and the sound of residents from unit #35 screaming. The video then shut off. The video was booked into evidence with Sunnyvale DPSO.

Det. Gorshe continued to canvas 1260 Ayala Dr. which is southwest of 1235 Ayala Dr. Det. Gorshe spoke briefly with residents at 1260 Ayala Dr. #206, #102, #203, #103, #104, #205, #202, #101, and #100. Det. Gorshe left business cards at #204, #100, #101, and #202 where the units were dark and it appeared no one was home.

Det. Gorshe spoke with residents at 1260 Ayala Dr. #202, #101, and #100 over the telephone. All recorded interviews were transferred to a CD and booked into evidence at Sunnydale DPSO.

STATEMENT OF DETECTIVE JASON SWICK

On November 12, 2015 Detective Jason Swick was working for Sunnyvale DPS as a Community Crimes Unit Detective.

At approximately 12:18 p.m. an Officer Involved Shooting Incident occurred and Lt. Giguiere responded to the scene and requested Det. Gorshe and Det. Swick respond to the scene to assist with the investigation.

Det. Gorshe and Det. Swick reported to Lt. Giguiere. Lt. Giguiere explained they were to assist in locating and interviewing potential witnesses as part of the neighborhood canvas.

Det. Swick went to apartment #34 where Omar Jamal stated he took three photos of the scene after the incident. Mr. Jamal agreed to provide the photographs to Det. Swick via text message. Det. Swick viewed the photos which appeared to be taken from Mr. Jamal's balcony looking down over the street. The photos depicted patrol vehicles, a fire engine and an ambulance parked on the street with numerous emergency responders walking on the sidewalk and standing in the street. The photos were saved on a CD and booked into evidence.

On November 13, 2015, Det. Swick was contacted by Shashi Prakash via telephone who agreed to meet at his apartment at 12:15 p.m. Det. Swick took Mr. Prakash's digitally recorded statement and took photos from his vantage point. Both the audio and photos were booked into evidence.

CRIME SCENE INVESTIGATION

STATEMENT OF OFFICER BRYAN SMART

On November 12, 2015, CSI Bryan Smart was assigned to Patrol as a Crime Scene Investigator. At approximately 12:20 p.m. he responded to 1235 Ayala Dr. #4 to assist with an Officer Involved Shooting that just occurred. Upon arriving at the scene, he noted that there was yellow crime scene tape that established an outer perimeter. He met with Lt. Kim, who designated CSI Smart as the lead Crime Scene Investigator.

CSI Smart used yellow crime scene tape to set an inner crime scene perimeter around the exterior of apartment #4. He met with PSO Fernando Limon and PSO Matthew Meyer and instructed them to maintain a Crime Scene Log and document all persons entering and exiting the inner crime scene perimeter.

Sunnyvale DPS Patrol personnel, Sunnyvale DPS Fire personnel and Rural Metro personnel were inside apartment #4 providing emergency medical care to Mr. Nerio. CSI Smart stood outside the apartment while they provided medical care. CSI Ross Spencer stood inside the apartment and took several digital images of the apartment while medical treatment was being provided. At 12:52 p.m. Mr. Nerio was transported to Valley Medical Center by the Rural Metro crew. CSI JW Carrell followed the ambulance to the hospital, took photos of the ambulance crew and took photos of Mr. Nerio inside the emergency room immediately after he was pronounced deceased.

At 3:33 p.m. Lt. Giguiere notified CSI Smart they had received consent to search the common areas of the apartment. CSI Chen began taking additional digital images of the patio and interior of the apartment to document the scene as it was found. CSI Smart, CSI Tiffany Shillito and CSI Spencer Chen assisted with the crime scene search. CSI Shillito used a metal detector to search the sidewalk and grass area in front of the apartment for evidence, including fired casings and fired projectiles. CSI Smart used yellow and black numbered photo markers to highlight items of

evidence as he located them. All evidence items were then assigned item numbers and were documented with digital images at the scene.

CSI Smart located thirty-two (32) apparent fired projectile perforations and marks inside the apartment. Some of the fired projectiles appeared to have made more than one perforation and/or mark in objects at the scene. The CSIs collected sixteen (16) .45 fired casings and seven (7) .40 fired casings. CSIs also collected a black handled knife with a metal blade approximately eight (8) inches long, and handle approximately four point five (4.5) inches long.

STATEMENT OF CSI SPENCER CHEN

On November 12, 2015, CSI Spencer Chen ("CSI Chen") was working as a Crime Scene Investigator for the Sunnyvale DPS.

At approximately 12:20 p.m., CSI Chen responded to 1235 Ayala Dr. #4 to assist with an officer involved shooting. When he arrived, he observed yellow crime scene tape had already been utilized to establish an outer perimeter of the area surrounding the street and sidewalk area in front of 1235 Ayala Dr.

CSI Chen retrieved his department issued digital camera and entered apartment #4. As he crossed into the exterior patio of the apartment, he observed an AED just outside the front door to the apartment. He observed fired bullet casings scattered around the cement ground in the patio area, and that the window next to the sliding glass door was shattered. Most of the glass from the lower half of the window had already fallen to the ground and what glass remained continued to fall intermittently as the event progressed. CSI Chen also observed two fired casings near the exterior steps leading to the front door.

Immediately inside the front door of the apartment, on the floor, he observed a fired casing. Just to the right of the front door, on the floor, he observed another fired casing.

Mr. Nerio was located to the right of the front door and was positioned in the supine position with his head pointed towards the west. CSI Chen observed what appeared to be several puncture wounds on multiple portions of Mr. Nerio's body. As Mr. Nerio was provided with medical care, Lt. Sartwell directed CSI Chen's attention to two fired bullets that Lt. Sartwell observed near Mr. Nerio's body.

As CSI Chen continued scanning the room, he observed what appeared to be the black handle of a knife sticking out from between the cushions of a couch just north of Mr. Nerio. Also on the couch was a red Sunnyvale DPS Patrol EMS Bag with a Patrol AED next to it. West of the couch was a single-seater sofa chair with Sunnyvale Fire EMS Bags open on it. From CSI Chen's position at the front door of the apartment, he observed several of the vertical window blinds of the sliding glass door with holes in them. A few of the vertical blinds were broken in half with the detached portions on the floor directly below. CSI Chen also observed several holes in the couch, the walls, and a closet door between the two bedrooms.

With his department issued digital camera, CSI Chen obtained digital images of the scene and Mr. Nerio's condition as EMS personnel provided medical treatment. After obtaining initial

scene photos, CSI Chen began marking items of evidentiary value. He utilized index cards and field interview cards to create small tents which he placed over all the firearm casings. After Mr. Nerio was loaded into the ambulance for transport to Valley Medical Center, the tents were replaced with yellow evidence markers.

On a side table inside the front door was a cell phone and a tablet. Just below the side table was a black backpack and a red San Francisco 49ers bag. Both the backpack and the 49ers bag contained prescription medications, supplements, and medical paperwork. Behind the single-seater sofa chair, along the west wall of the apartment, was a nearly empty 1.75L bottle of Seagrams VO Canadian Whiskey.

In the kitchen garbage can, CSI Chen located an empty white wine bottle. On the kitchen counter, he located a 24oz Steel Reserve opened beer can, a partially empty 1.75L bottle of Canadian Mist whiskey, a 24oz Rockstar can which contained liquid, and a Powerade container filled with a brown colored liquid.

With the two whiskey bottles, CSI Chen used a black marker to mark the exteriors of the bottles to indicate the fluid levels contained by each bottle. After marking the levels with a line, CSI Chen initialed and dated the bottles. He collected a sample of the fluids contained in each of the bottles except for the wine bottle, which was empty. After collecting the samples, he discarded the remaining liquids prior to collecting the bottles as evidence.

In the northeast bedroom, CSI Chen observed a fired bullet on the ground approximately three to four feet into the room from the doorway of the room. In the same bedroom, he observed what appeared to be a bullet hole at the top left corner of the window frame. Just left of the window, CSI Chen located a dresser with what appeared to be a gouge in the left side of it. When he followed the path of the gouge, CSI Chen located what appeared to be a bullet hole in the north wall of the bedroom. In the closet of the same bedroom, he observed two holes which appeared to follow the path of where the bullets had come from. There was one hole at the south end of the closet and one at the north end.

CSI Chen assisted CSI Smart and CSI Shillito in locating and collecting the fired bullets from the couch, carpet, walls, hallway closet, and bedroom closet. CSI Chen obtained digital images of the bullets where they came to rest and again after they had been recovered. All bullets and casings collected were packaged individually in evidence envelopes and sealed at the scene prior to being transported to the DPS Lab.

After all the evidence was collected, CSI Chen obtained exit photos of the apartment to document the condition in which they were leaving the apartment.

In the CSI lab, CSI Chen sorted through Mr. Nerio's medications collected from the apartment. He photographed each of the bottles and the pills contained within each container. Each bottle was sealed in a KPAK with their respective medications.

All the evidence was transported to the DPS Lab where it was ultimately booked into DPS Property as evidence.

STATEMENT OF CSI JW CARRELL

On November 12, 2015, CSI JW Carrell was assigned as a Crime Scene Investigator with the Sunnyvale Department of Public Safety. At approximately 12:21 p.m., CSI Carrell responded to 1235 Ayala Drive #4 to assist with processing the scene of an officer involved shooting. CSI Carrell was assigned to follow the ambulance to Valley Medical Center ("VMC") to document the injuries to Mr. Nerio. CSI Carrell arrived at VMC at approximately 1:07 p.m.

The attending physician was Dr. Carla Carvalho. Mr. Nerio was pronounced deceased at 1:21 p.m. The coroner, Jesika Grubaugh ("Grubaugh") arrived at VMC at 2:40 p.m. CSI Carrell observed and photographed the following injuries to Mr. Nerio:

1. 2-3 millimeter oval shape puncture wound under left arm close to chest;
2. 3-4-millimeter-long and 1-2-millimeter-wide oblong shaped puncture wound on upper left chest under left arm with a piece of metal in the wound;
3. 1-2 millimeter oval shaped puncture wound under left arm on his latissimus dorsii (lat muscle);
4. 2 millimeter oval shaped puncture wound on left side of chest under left nipple;
5. 1-2 millimeter oval shaped puncture wound on left side of chest above left nipple;
6. 1-3 millimeter oval shaped puncture wound on right side of chest close to neck;
7. 1-2 millimeter oval shaped puncture wound in the middle of chest under nipple line;
8. 1-2 millimeter oval shaped puncture wound in the middle of chest under nipple line;
9. 3-4 millimeter oval shaped puncture wound under right arm on lat;
10. 1-2 millimeter oval shaped puncture wound on mid-back;
11. 1-2 millimeter oval shaped puncture wound on right buttock;
12. 2-3 millimeter oval shaped puncture wound on stomach on lower left side;
13. 5-6 millimeter oblong shaped puncture wound on stomach on lower left side;
14. 4-5 millimeter oblong shaped puncture wound on upper left leg close to stomach;
15. 2-3 millimeter oval shaped puncture wound on upper left leg midway between knee and stomach;
16. 4-5 millimeter oblong shaped puncture wound on lower stomach mid-line;
17. Three, 3-4 millimeter oblong shape puncture wounds on upper left leg.

CSI Carrell copied the photos onto a CD and booked the CD into evidence. CSI Carrell obtained a property receipt from Grubaugh who took the clothing and property of Mr. Nerio with her. CSI Carrell made a copy of the receipt for the file and submitted the original into evidence.

Det. Giovanni asked CSI Carrell to make a copy of the contents of Jane Doe's cellphone based on Doe's consent. CSI Carrell used the Cellebrite UFED to process the phone for possible evidence. CSI Carrell provided Det. Giovanni a copy of the cellphone data.

STATEMENT OF CSI SCOTT CORTESE

On November 12, 2015, at 12:45 p.m., CSI Scott Cortese was notified of this officer involved shooting and asked to respond to assist. CSI Cortese responded to DPS Headquarters and contacted Det. Golembiewski who asked CSI Cortese to take photos of Jane Doe. Following

Doe's interview with detectives, CSI Cortese took photos of Jane Doe in the clothing she was wearing at the time of the incident and took a brief statement from her. CSI Cortese took pictures of her arms and looked for redness or indications she had been grabbed or held by her arms. CSI Cortese saw no visible marks or injuries.

All digital images were uploaded to DCS and stored as evidence.

STATEMENT OF CSI DEAN MOMTAHANI

On November 12, 2015 at approximately 12:18 p.m., CSI Dean Momtaheni responded to 1235 Ayala Dr., Apartment #4, after hearing officers report that shots were fired. CSI Momtaheni arrived at approximately 12:23 p.m. and made contact with Lt. Kim who was standing on the north sidewalk directly in front of Apartment #4. Lt. Kim assigned CSI Momtaheni to process the three involved officers and their vehicles. The three involved officers were transported to DPS Headquarters separately.

PSO Mula's Duty Weapon

At approximately 1:11 p.m., CSI Momtaheni met with PSO Mula at Sunnyvale DPS Headquarters.

PSO Mula carried a Glock 21, which fired .45 caliber rounds. When CSI Momtaheni pulled back the slide on the handgun, one (1) round ejected from the chamber. He counted the number of rounds in the magazines. Two magazines were full, containing thirteen (13) rounds each, and one magazine had four (4) rounds. CSI Momtaheni determined that with the Glock 21 loaded and three full magazines, PSO Mula could have held up to forty rounds. Thirty-one rounds were in PSO Mula's possession, leaving a deficit of up to nine .45 caliber rounds.

PSO Renzi's Duty Weapon

At approximately 1:50 p.m., CSI Momtaheni met with PSO Renzi at Sunnyvale DPS Headquarters.

PSO Renzi carried a Glock 22, which fired .40 caliber rounds. When CSI Momtaheni pulled back the slide on the handgun, one round ejected from the chamber. He counted the number of rounds in PSO Renzi's magazines. Two magazines were full, containing fifteen rounds each, and one magazine had seven rounds. PSO Renzi could have possessed up to forty-six rounds with the Glock 22 loaded and three full magazines. Thirty-eight rounds were in PSO Renzi's possession, leaving a deficit of up to eight .40 caliber rounds.

Lt. Pistor's Duty Weapon

At approximately 2:25 p.m. CSI Momtaheni met with Lt. Pistor at Sunnyvale DPS headquarters.

Lt. Pistor carried a Glock 21, which fired .45 caliber rounds. When CSI Momtaheni pulled back the slide on the handgun, one round ejected from the chamber. Two magazines were full, containing thirteen rounds each, and one magazine had six rounds. With the Glock 21 loaded and

three full magazines, the gun can contain up to forty rounds. Thirty-three rounds were in Lt. Pistor's possession, leaving a deficit of up to seven .45 caliber rounds.

CIVILIAN STATEMENTS

INITIAL STATEMENT OF JANE DOE

PSO Renzi took Jane Doe's initial statement. His digital recorder was activated during the initial contact with Doe. The recorded contact was approximately 8 minutes and 12 seconds in length. The following is the paraphrased statement according to Det. Hutchinson's Police Report.

The recording begins after Doe had already begun recounting what took place between herself and her brother, Mr. Nerio. Doe stated Mr. Nerio looked weird and she was unsure if he had taken his medication. She explained that she went into her bedroom and locked the door. She stated she could tell Mr. Nerio was outside trying to open the door. Doe stated she called out, "What?" Mr. Nerio was able to open the door and he addressed Doe by asking if she was okay. Doe told him she was fine. When Mr. Nerio spoke, she noticed his speech was slurred and he was "Talking kind of weird." She asked Mr. Nerio what was wrong with him and he stated, "Nothing." Doe said at that point Mr. Nerio placed his hand on her back and then he touched her buttocks; she can be heard crying on the recording at this point. Doe stated as he touched her buttocks, she asked him what he was doing and pushed him away from her. Doe stated he then pushed her against a dresser and tried to touch her "in the front." In the recording, PSO Renzi later confirmed Doe was referring to her vagina. PSO Renzi also confirmed the touching took place over Doe's clothing. She stated at that time she grabbed her keys and fled from the apartment.

PSO Renzi then began asking Doe clarifying questions. Doe explained she had returned home from taking her children to school and Mr. Nerio was inside the apartment. Doe did not engage in conversation with Mr. Nerio when she arrived at the apartment. Mr. Nerio appeared to be sleeping in the living room. Doe confirmed she had been inside her room with the door locked when Mr. Nerio somehow forced it open.

Doe stated she did not know if Mr. Nerio was still inside the apartment, but stated she was not comfortable returning to the apartment with her children. She stated she contacted her mother and told her what happened. Her mother had been unable to reach Mr. Nerio. Doe also contacted her older brother, Daniel. Daniel and Doe's former sister-in-law both confirmed this was not the first time Mr. Nerio had tried to inappropriately touch a family member when he was drunk. Doe also stated Mr. Nerio uses drugs, but did not know which drugs. She detailed medical ailments Mr. Nerio had that required prescription medications. Some of the medical ailments Doe described included bipolar disorder, high blood pressure, heart problems, and sleep apnea. Doe did not mention the specific medications that Mr. Nerio was prescribed, but Bupropion (Wellbutrin), Hydroxybupropion (Bupropion Metabolite), and Topiramate (Topamax) were found in his system at the autopsy and officers found prescriptions for potassium chloride, topiramate, ondansetron, furosemide, aspirin, clopidogrel, bupropion, and gabapentin with Mr. Nerio's name on them. Doe did not know if he was currently taking his medications.

PSO Renzi then stepped away from Doe and made a phone call. Much of what was said on the phone call could not be heard due to background noise. PSO Renzi then obtained Doe's contact information and allowed her to leave to pick up her children. Doe confirmed she desired prosecution against Mr. Nerio for the assault.

LATER STATEMENT OF JANE DOE

On November 12, 2015, Det. DiGiovanna was requested to interview Jane Doe. Doe arrived at Sunnyvale DPS Headquarters at approximately 12:53 p.m. and was escorted to an interview room equipped with an audio and video recording system. The following is a synopsis of what Doe told Det. DiGiovanna.

Doe's family lived in Sunnyvale since November of 2014, prior to which they lived in East Palo Alto. Doe lived with her mother, Antonia Clovis, her stepfather, Carlos Rivera, her brother, Moises Nerio, and her children Gisel and Angel Santoyo. Doe moved in to her mother's home four years prior and Mr. Nerio has lived with her mother for the past eight years.

Doe and Mr. Nerio shared the same father and Doe's mother raised Mr. Nerio since he was six months old. Their father passed away when Doe was four years old. Mr. Nerio and Doe were not close growing up.

Doe's mother and stepfather work together as housekeepers from about 7 a.m. to 7 or 8 p.m. Mr. Nerio worked part-time at Walmart in Mountain View and did not have a set schedule. Mr. Nerio had not gone to work for the last few days and Doe believed he called in sick on Monday and/or Tuesday due to being drunk.

Mr. Nerio was a recovering alcoholic who had been sober for eight years but relapsed approximately four to five months prior to this incident. Doe stated he would spend several days at a time drinking alcohol. She stated he was fine when he was sober but when he drank alcohol he turned into a "different person." In the past, Mr. Nerio entered Doe's room while he was drunk and demanded money and/or alcohol from her. Doe stated she usually told him no and left the home.

Two weeks ago, Mr. Nerio asked Doe to come drink with him. Doe refused because it was 9 a.m. and she had things to do. He became very angry and began cursing at her. Doe closed her bedroom door and he barged in demanding that she come drink with him. Doe gave Mr. Nerio five dollars and told him to get whatever he wanted so he would leave her alone, which he did. Doe stated a similar incident had occurred three months prior.

Approximately two months prior, Doe returned home to find Mr. Nerio asleep and "breathing funny." Mr. Nerio had heart problems, high blood pressure, and sleep apnea, and had been drinking alcohol. Doe was afraid for his health and called an ambulance. Doe stated she called an ambulance approximately three times over a three week period for the same reason. Doe stated Mr. Nerio was passed out and unable to get up, and he would appear to stop breathing then suddenly gasp for air. Mr. Nerio's eyes would roll backward in his head and it scared Doe.

Doe stated during one incident, Mr. Nerio was playing with her son, Angel, when Mr. Nerio grabbed Angel's hair and began forcefully pulling it. Angel was nearly in tears and Doe told Mr. Nerio to stop and pushed him away. Mr. Nerio said he was playing and Angel needed to toughen up. Doe kept her children away from Mr. Nerio when he was drinking because he was a big guy and did not know his own strength. Doe was afraid Mr. Nerio might hurt the kids, even unintentionally. She stated Mr. Nerio had been aggressive recently but she never expected him to be that way with her.

Det. DiGiovanna asked how Mr. Nerio had been aggressive and Doe explained Mr. Nerio was bipolar. Doe stated he was easily triggered and became upset and would yell and "go off" on people. Mr. Nerio was diagnosed with bipolar disorder and prescribed medication, which Doe saw him take each morning. Mr. Nerio received mental health care at Stanford and San Mateo County Hospital.

Det. DiGiovanna asked Doe if she was aware of an event that occurred in the last few months causing him to turn to alcohol. Doe stated her mother was very controlling which bothered Mr. Nerio. She stated he was a forty-two-year-old man who really wanted to live on his own but he was unable to be financially independent and Doe believed it was frustrating to him. Mr. Nerio was aggressive with her mother several times, which consisted of yelling but nothing physical. Mr. Nerio was never physical with Doe but she believed he was physical with their older brother, Daniel, and sister-in-law, Sisilia, in the past.

Doe described their apartment as having two bedrooms. The room closest to the front door belonged to Doe and her children. The master bedroom belonged to Doe's mother and stepfather; Mr. Nerio lived in the living room. Doe provided a diagram of the apartment layout and written and verbal consent to search the apartment.

Doe stated that on the day prior, November 11th, Mr. Nerio drank alcohol all day. Doe saw him with a bottle of whiskey at 9:30 a.m. and he appeared drunk all day. Mr. Nerio's friend, Robert Lopez, came over between 5:00 p.m. and 6:00 p.m. to watch a movie. Mr. Nerio was acting belligerent and Mr. Lopez left before the movie ended at approximately 7:00 p.m. Doe put her children to bed and left home at 9:30 p.m. to spend time with her boyfriend, Edgar Marrujo. Doe returned home on November 12, 2015, at approximately 4:00 a.m. Mr. Nerio was awake and was folding blankets. Doe stated he appeared normal. He asked Doe if she wanted wine and she responded she did not. Doe believed he then left the residence to get alcohol and she went to bed with her children.

On the day of the incident, Doe left her home at approximately 7:30 a.m. to take her children to school. Doe's mother and stepfather left around the same time. Mr. Nerio was at home making himself coffee and appeared normal. Doe told him, "I'll be back." Doe dropped her children off at school and returned home to find Mr. Nerio sleeping. He awoke suddenly, and looked up at Doe. She stated his eyes looked "weird." Doe knew Mr. Nerio had been drinking, but she did not understand how he could go from normal to "weird" in such a short amount of time. Doe walked into her bedroom to fold and put away laundry. She locked her bedroom door from the inside

because Mr. Nerio had entered her room several times to ask for money or more alcohol in the past.

Approximately one hour later, Doe was watching a movie in her room when she heard someone trying to turn the knob to her bedroom door. Doe ignored it and turned the sound up on the television. Her door suddenly opened and Mr. Nerio entered the room. Doe does not know how Mr. Nerio was able to open the locked door but believed he may have used a credit card to overcome the lock. Mr. Nerio asked, "What the fuck are you doing?" Doe stated he looked very angry and she believed he was not just drunk but "something else." Doe told Mr. Nerio she was cleaning her room. Mr. Nerio walked towards her while she stood near the dresser. He placed his hand on her back, which Doe stated was normal. Mr. Nerio then lowered his hand and touched Doe's buttocks. She pushed his hand away and asked what he was doing. Mr. Nerio stated, "Don't act like you don't like it." Mr. Nerio pushed his body against Doe's, pinning her between him and the dresser. Doe stated, "He scared me really bad," and she felt trapped and like she "couldn't get out." Doe did not know what he was going to do to her. Mr. Nerio then touched Doe's vagina outside of her clothing. Doe said "No" and pushed him away from her, grabbed her purse and keys and fled the apartment. As she ran out Mr. Nerio said, "Manipulation is a bitch. I'll get those kids taken away from you." Doe believed he was referring to calling her children's father and having him take them. Doe explained she divorced their father one year ago.

Doe drove to a nearby liquor store on Bernardo Ave. She was very upset and did not know what to do. Doe called her boyfriend and told him what had happened. He suggested that she call her mother and tell her what happened. Doe called her mother and her mother instructed her to call an ambulance. Her mother told Doe that Mr. Nerio had problems and needed help. Her mother was worried he may try to hurt himself as he had in the past. Doe explained Mr. Nerio attempted suicide in May of 2015 by taking a whole bottle of his medication.

Before Doe was aware of the shooting, Det. DiGiovanna asked how Mr. Nerio would respond to police officers contacting him at home. Doe stated she did not know because Mr. Nerio was "unpredictable." She stated Mr. Nerio served prison time in the past but she did not know what the charges were. Doe recalled an event approximately fifteen years earlier during which San Mateo Police were called to their home and Mr. Nerio fought with officers upon their arrival.

Doe stated Mr. Nerio's last intimate relationship was three to four years ago. His ex-girlfriend's name is Marissa Escobar. Doe stated they had a bad relationship as they were both bipolar. Ms. Escobar did not keep in contact with Mr. Nerio after their breakup.

SUPPLEMENTAL STATEMENT OF JANE DOE

On November 12, 2015, CSI Scott Cortese took photos of Doe in the clothing she was wearing at the time of the incident. Doe then stated she was not injured and that Mr. Nerio only grabbed her crotch and buttocks on the outside of her clothing.

STATEMENT OF SISILIA OSAI

Det. DiGiovanna contacted Jane Doe's ex-sister-in-law, Sisilia Osai, by telephone and obtained her statement. Osai stated she is the ex-wife of Daniel Nerio, Mr. Nerio's brother. She and Daniel married in 1991. Osai lived with Mr. Nerio for years and "knows what he does." Osai stated both Daniel and Mr. Nerio struggled with drug use. Osai stated Mr. Nerio's drug of choice was cocaine. He was hospitalized for medical conditions caused by his drug use and received medical treatment from San Mateo County Hospital.

Osai and Mr. Nerio fought on many occasions while they lived together. Mr. Nerio was violent when he was under the influence of alcohol and/or drugs and made sexual advances towards her. Mr. Nerio tried to get in bed with her once, grabbed her breast once, and grabbed her buttocks more than ten times.

On Christmas of 2000, Mr. Nerio had been drinking at their home. Osai was crying about her relationship problems with Daniel and sitting in a rotating chair. Mr. Nerio spun her around to face him. He began rubbing her legs and pushed the chair backwards so her legs dangled. Osai stated he was trying to "Get on her." Mr. Nerio kissed her neck and put his hands in her shirt. She pushed him away and then ran. Osai became angry, returned, and hit him. They began to fist fight. The incident was not reported to police.

On another occasion, Mr. Nerio entered Osai's bedroom while she was laying down and began to touch her feet. Osai believed this was a sexual gesture. Osai stated there were things that "should never have happened . . . you know, brother-in-law always tryin', you know . . . always have to be on your toes and worry about him trying to do stuff." Osai finally left her marriage because there were too many problems. Osai recalled a female police officer in San Mateo warning her that someone, meaning Daniel or Mr. Nerio, was going to end up killing the other.

On another occasion while living in San Mateo, Osai walked out to the garage where Mr. Nerio was hanging out. She saw that he was not able to sit or stand straight. Osai told him he should go inside and go to bed. Mr. Nerio responded by saying, "Shut up bitch," which he would not have said if he were sober. Mr. Nerio then pulled her hair and they "scuffled."

Osai could not recall how many times she and Mr. Nerio fist fought but described it as a regular occurrence. When they fought, Mr. Nerio would hit Osai's head, back, and other parts of her body with his fists. Osai said the fights were often witnessed by others.

Osai stated in the last few years Mr. Nerio's bipolar disorder worsened. Osai believed Mr. Nerio was "popping pills." Mr. Nerio approached Osai in 2013 and asked for help selling prescription drugs. Osai refused because she already served prison time for drug distribution. Osai did not know what kind of pills Mr. Nerio was taking. She did recall seeing him with a big plastic bag of prescription medication.

On November 12, 2015, Doe called Osai and she was hysterical. Doe stated Mr. Nerio "Tried to touch me." Osai said because she had had similar things happen to her, she knew exactly what Doe was talking about. Osai instructed Doe to contact police and to "let them know what he is known for."

Osai learned of Mr. Nerio's death via Facebook. She felt bad for Doe, but she said she was not surprised by his behavior or the outcome. Osai believes her friend, Denise Montoya, may also have been assaulted by Mr. Nerio.

STATEMENT OF EDGAR MARRUJO

Det. DiGiovanna contacted Doe's boyfriend, Edgar Marrujo ("Mr. Marrujo"), by telephone and obtained his statement. Mr. Marrujo and Doe have been dating for a few months. Mr. Marrujo met Mr. Nerio three to four weeks prior to the shooting, while visiting Doe at her residence. Mr. Nerio was very drunk at the time. Mr. Marrujo and Doe were talking at the kitchen table when, out of nowhere, Mr. Nerio became very angry and "almost tried to hit [him]." Mr. Nerio told Mr. Marrujo to leave. Mr. Marrujo did not want to get into a fight. Mr. Marrujo had not seen Mr. Nerio since then.

Mr. Marrujo did not know of any prior violence between Doe and Mr. Nerio. Doe talked about their problems, and that Mr. Nerio was drunk and was "always trying to fight for no reason," but as far as Mr. Marrujo knew, Mr. Nerio never hurt Doe before.

On November 12, 2015, Doe called Mr. Marrujo between 11:00 and 11:30 a.m. She was crying because she and Mr. Nerio got into a fight. Doe explained she was inside her room when Mr. Nerio entered. He looked at her "kinda weird" and he said, "What the fuck are you doing?" Doe told Mr. Nerio she was cleaning her room and for no reason Mr. Nerio started "choking her." Doe was scared and punched Mr. Nerio in the stomach to get away from him. Doe grabbed her keys and ran out of the apartment. Mr. Marrujo believed Doe told her stepfather who was going home to confront Mr. Nerio. Doe drove around looking for somewhere safe to stay because she did not want to go home. Doe got off the phone with Mr. Marrujo because her mother was calling. Doe later told Mr. Marrujo that Mr. Nerio was shot.

STATEMENT OF ISAAC RODRIGUEZ

On November 12, 2015, Det. Golembiewski interviewed Doe's ex-boyfriend, Isaac Rodriguez in person. Mr. Rodriguez stated he was Doe's ex-boyfriend and did not have any children with her. He never lived with Doe on Ayala Dr. but he used to visit the apartment until about three months prior. In response to a question about Mr. Nerio, Mr. Rodriguez stated he had mental problems and referred to him as "sick." Mr. Rodriguez stated Mr. Nerio often took a lot of pills and that he sometimes had a bad attitude but that they got along. He's known Mr. Nerio for one year and four months and last saw him four months ago. He stated Mr. Nerio had back pain and went to the hospital two or three times a week. Mr. Nerio had a girlfriend in the past but they were no longer together.

Mr. Rodriguez stated on November 12, 2015 around 10 a.m., Doe called him and told him she was in her room and her brother came in the room "acting crazy, grabbed her by the neck . . . she pushed him or punched him, and then she ran outside." "She told me that she was gonna call her mom, and then after that she called me later and she called her brother, 'and he told me to call the police,' that was the last call that she made to me . . . Then she called me again at 4:00 p.m.

and told me what happened.” Mr. Rodriguez said he could not understand Doe because she was crying and because of electrical interference from powerlines.

STATEMENT OF MARIA CLOVIS

Maria Clovis arrived in the United States from EL Salvador in 1981 with her husband Daniel Nerio Rodriguez and his seven-year-old son, Moises Nerio. Mr. Nerio’s biological mother remained in El Salvador and her current name and whereabouts are unknown.

Ms. Clovis, Daniel, and Mr. Nerio lived in San Mateo upon arriving to the United States. During this time, Mr. Rodriguez would regularly physically abuse Ms. Clovis and threatened to kill her in front of Mr. Nerio. At times, she recalled Mr. Nerio would attempt to defend her from his father.

When Mr. Nerio was approximately fifteen years old, Maria decided to separate from Mr. Rodriguez because she no longer could take the physical abuse. Mr. Nerio decided to remain with his father. In 1990, Mr. Rodriguez died of cirrhosis and Mr. Nerio remained in San Mateo with unknown friends. Ms. Clovis moved to East Palo Alto and was away from Mr. Nerio for fifteen years. Prior to separating from Mr. Rodriguez, Ms. Clovis described Mr. Nerio as a normal boy that never presented her with any problems.

Approximately fifteen years later, Mr. Nerio fell ill and was hospitalized. Ms. Clovis reached out to him at the hospital. He was homeless and needed her help. She described Mr. Nerio as having many health issues including alcoholism and weighing approximately 540 pounds. She took Mr. Nerio in and he lived with her in East Palo Alto. Approximately one year ago they moved to 1235 Ayala #4, in Sunnyvale where they currently reside.

Maria confirmed the following people reside at their two-bedroom apartment located at 1235 Ayala Drive #4, in Sunnyvale:

1. Maria Antonia Clovis
2. Carlos Rivera Sanchez
3. Jane Doe
4. Ysel Santollo, six years’ old
5. Angel Santollo, twelve years’ old
6. Moises Nerio

Ms. Clovis stated Mr. Nerio had been formally diagnosed as bipolar, with depression and as having high blood pressure and high cholesterol. He also had heart related issues including water entering into his heart and his lungs. Because of all these conditions, Mr. Nerio could not work. Mr. Nerio had a daily routine of waking at 5:00 a.m. to take his many prescribed medications.

Ms. Clovis confirmed Mr. Nerio had not taken his prescribed medication for the past nine days. She knows this because Mr. Nerio’s daily routine involved displaying all his medication on the table with a glass of water. She noted he stops taking medication when he drinks alcohol.

Ms. Clovis said Mr. Nerio started drinking on October 31, 2015 after eight years of sobriety. She warned him to stop drinking because he does not take his medication and she does not like

it. She told him not to talk to her if he continues to drink. She stated Mr. Nerio spoke to her in Spanish but he was more fluent in English.

Events Leading to the Incident on November 12, 2015

Ms. Clovis and her current husband work together as housekeepers. On November 12, 2015, she awoke at 6:30 a.m. and entered the shower. She saw Mr. Nerio already awake sitting on the sofa watching television wrapped in a blanket. Mr. Nerio did not say anything to her. At approximately 7:30 a.m., her daughter Doe took her children to school. At 7:38 a.m., Ms. Clovis and her husband left to work.

At approximately 10:00 a.m., Ms. Clovis received a telephone call from Mr. Nerio's psychiatrist. He told her he was concerned about Mr. Nerio because he had missed several appointments.

At approximately 11:45 a.m., Doe called Ms. Clovis to tell her about an argument she had with Mr. Nerio. Doe told her she had locked her bedroom door but Mr. Nerio entered anyway. Ms. Clovis said she told Doe to wait for her in the "parking lot" as she was on her way from San Carlos. Ms. Clovis said she called Mr. Nerio's cellular telephone to tell him to respect his sister but he did not answer.

At approximately 12:30 p.m., Maria received a call from "Edith" the apartment manager. Edith informed her something terrible happened inside her apartment and many gun shots were fired. Ms. Clovis could not confirm if Edith provided the information from first-hand or second-hand knowledge. Ms. Clovis and her husband immediately went home to the apartment.

Ms. Clovis gave permission for a search of her house, specifically the kitchen, bathroom, living room, and Doe's closet. She elected not to include the bedrooms because Mr. Nerio never would go inside either of the rooms and stated all of Mr. Nerio's property was in the living room area.

STATEMENT OF CARLOS RIVERA SANCHEZ

Carlos Sanchez and Ms. Clovis met in El Salvador when they were young. In 2000, they reunited in the United States and married. Mr. Sanchez recalled seeing Mr. Nerio once when he was seven years old. The next time he saw Mr. Nerio was as an adult in his thirties when Ms. Clovis took him in to live with them in East Palo Alto. Mr. Sanchez did not interact much with Mr. Nerio as he was an adult with his own issues.

Mr. Sanchez recalled times when Mr. Nerio would tell him about his past that involved heavy drinking and gang activities. Mr. Sanchez said Mr. Nerio was not a violent person but would get angry like any other normal person. Mr. Sanchez never saw him doing any violent acts. Mr. Sanchez confirmed Mr. Nerio begin to drink alcohol approximately two months ago.

Mr. Sanchez confirmed Mr. Nerio would speak to him and Ms. Clovis in "slow" Spanish but would speak fluent English with his friends or when making doctor appointments over the telephone. Mr. Sanchez confirmed Ms. Clovis' information regarding the living arrangements and events that occurred leading up to the incident on November 12, 2015.

When asked how they were notified about the incident, Mr. Sanchez said the apartment manager called his cellular telephone. The apartment manager told him Mr. Nerio was killed, he had a knife in his hand, and officers shot him. Mr. Sanchez then told Ms. Clovis. He could not recall the name of the apartment manager nor if the information he received from her was first-hand knowledge.

STATEMENT OF FERNANDO ROMERO

On November 12, 2015 Fernando Romero was working for SDI Insulation, Inc. as the supervisor for the crew of workers installing insulation material in the apartments located at 1209 and 1235 Ayala Drive. At approximately 12:15 p.m. Mr. Romero and his coworkers began their lunch break. As they were walking out to Ayala Drive, Mr. Romero heard someone twice yell the words "Put the knife down!" Mr. Romero then heard three to four loud banging noises. He described the noise as sounding like either gunshots or fireworks. Mr. Romero was near the Northeast corner of Apartment #5 when he heard this. Apartment #5 is located immediately to the east of Apartment #4. Mr. Romero and his coworkers remained in the courtyard until contacted by officers arriving at the scene.

STATEMENT OF FREDDY RODRIGUEZ

On November 12, 2015, Freddy Rodriguez was the Facilities Supervisor for the Palm Villa Apartments located at 1235 Ayala Dr. At the time of the incident, he was installing blinds in apartment #5 which is directly next to Apartment #4. He heard loud screaming and yelling coming from apartment #4. When he exited the apartment, he saw officers standing in the patio of Apartment #4 with their guns drawn. He estimated he was approximately 25 feet away from the officers. He could see the officers' heads, shoulders, and arms extended from above the wooden fence that surrounded the patio. Once outside, he could hear the officers yelling commands such as, "Put the knife down" and "You don't want to do this." Mr. Rodriguez stated he heard the officers yell those commands at least three times each.

While the officers were yelling commands, Mr. Rodriguez saw all three officers take a step back and fire their weapons simultaneously. Mr. Rodriguez stated the officers fired their weapons immediately after giving multiple commands for the suspect to put the knife down. All three officers fired three to four shots. The entire incident lasted between three to four minutes.

After Mr. Rodriguez saw the officers fire their weapons, he ran around the corner of the apartment and dove for cover on the floor. He stayed there until there was no more noise. He then got up and walked back around the corner and saw the officers standing in the same place. When one of the officers saw him standing near the corner, he was told to leave the immediate area. Mr. Rodriguez complied and stepped back around the corner towards apartment #5. He did not hear or see anything further.

SUPPLEMENTAL STATEMENT OF GYAPAN PATHAK

On November 12, 2015 Gyapan Pathak was in 1235 Ayala Dr. #35. Det. Gorshe took Mr. Pathak's statement regarding a video recording of the incident. Mr. Pathak advised that he was in his apartment with his roommates and heard yelling outside. Mr. Pathak opened the sliding glass door and heard an officer say, "Put down the knife." Mr. Pathak then went inside to retrieve his cell phone. He got the cell phone and immediately walked out the front patio area and took a video on his cell phone. He stated he would e-mail Det. Gorshe the videos he took, and then delete the videos from his phone.

RECORDING FROM PSO MULA'S RECORDING DEVICE

PSO Mula's digital recorder was provided to Det. Hutchinson for review. The digital recorder captured the audio taking place at the time of the shooting and contained a 6 minute 23 second recording of the shooting incident. Det. Hutchinson provided a summary of that recording:

The audio begins with what sounds to be PSO Mula walking up to the front of the residence. His is the first voice that can be heard when he called out to Mr. Nerio at the front of the residence. PSO Mula begins by asking, "Hey buddy can you come out here for me?" Mr. Nerio responds but it is not clear what he said. PSO Mula then repeats his request for Mr. Nerio to come outside. PSO Mula says, "I just want to talk to you for a second okay?" Mr. Nerio can be heard clearly replying, "No." PSO Mula responded, "You don't want to come outside?" To that, Mr. Nerio again stated, "No." PSO Mula then commanded Mr. Nerio to exit the apartment. A noise can be heard in the distance that sounded similar to pieces of metal hitting each other. PSO Mula then advised over the radio that Mr. Nerio was not responding to officers on the scene and asked for a "Code 22" on the channel. PSO Mula then discusses with the other officers on scene that he can still see Mr. Nerio and they all agree Mr. Nerio is in the kitchen at this point.

While Mr. Nerio is in the kitchen, PSO Mula continues to try to command him to exit the apartment. Mr. Nerio can be heard responding calmly with an even tone, "No." As the officers continue to try to gain compliance from Mr. Nerio, one of the officers states at approximately the 1 minute 27 second mark, "He's got a knife in his hand." Lt. Pistor can immediately be heard commanding Mr. Nerio in an authoritative tone to put the knife down. He can also be heard telling one of the officers, "Get your gun out." Lt. Pistor instructs one of the officers, "Don't go on the radio." Lt. Pistor then broadcasted over the radio, "Sunnyvale Sam 2 he's got a knife in his hand. Go ahead and stage Fire and Medics." The officers on scene continue to give multiple commands for Mr. Nerio to, "Put the knife down!" Based on their persistent commands on the audio, it does not appear Mr. Nerio is compliant. At one point Lt. Pistor states, "Put the knife down dude." Mr. Nerio responds calmly, "No dude." At this point, Lt. Pistor advised over the air that they were in a standoff with an armed subject and asked for additional resources.

PSO Mula then tells Mr. Nerio, "You don't want to do this. We don't want to hurt you." He repeated multiple times to Mr. Nerio that he did not want to hurt him. As this took place, Lt. Pistor and PSO Renzi were continuing commanding Nerio "Put the knife down." At times during the exchange the inflection of their voices changed and rose. Based on the audio it sounded as

though something had changed in order to increase the stress and fear in the officers' voices. PSO Mula continued to try different commands and appeals to Mr. Nerio. He calmly told Mr. Nerio, "It's not worth it. Drop the knife. We can get through this." Mr. Nerio responded, "Just do it." His voice was slightly raised in comparison to his previous statements. As the officers told Mr. Nerio they did not want to hurt him he again stated, "Just do it." Shortly after that at approximately the 2 minute 25 second mark, PSO Mula stated, "You have the knife in a conspicuous manner. Stop walking towards me." This indicates Mr. Nerio was advancing on PSO Mula and the other officers.

At approximately the 2 minute 35 second mark, PSO Mula again commanded Mr. Nerio, "Stop walking towards me. Put it down right now." As he stated this, the other officers on scene can still be heard giving commands for Mr. Nerio to put the knife down. Multiple times the officers can be heard telling Mr. Nerio they did not want to hurt him and it was not worth it. At approximately the 2 minute 47 second mark PSO Mula stated loudly, "I feel threatened!" At approximately the 2 minute 54 second mark, an officer is heard stating, "Hey, can you guys go? Get out of the way." The voice appeared to be PSO Renzi. His statement indicates he was concerned for other people in the nearby area. Just after he completes his command a series of gunshots in rapid succession could be heard on the recording. Glass can be heard breaking and there is a distinct thud sound. It is unknown if the thud noise is Mr. Nerio coming to rest on the ground in front of PSO Mula. If it is, the fact that it was captured on the recording indicates Mr. Nerio was in very close proximity to PSO Mula.

The officers then began broadcasting what happened and requesting additional resources to the scene. Lt. Pistor checks on the welfare of PSO Mula and PSO Renzi and then coordinates the subsequent response in the apartment. The officers can be heard announcing what they could and could not see in terms of Mr. Nerio's hands. Lt. Pistor directed one officer to clear the apartment and told the other, "hold him." Movement could be heard on the recording indicating PSO Mula was the officer moving throughout the apartment determining there were no additional parties inside. At approximately the 4 minute 17 second mark on the recording PSO Mula confirms the rest of the apartment is clear. Shortly after Lt. Pistor directs someone to put gloves on so they can begin lifesaving measures. Sirens were then heard as additional officers arrived on scene for assistance.

At approximately the 4 minute 47 second mark on the recording, Lt. Pistor asks, "Where's the knife?" PSO Mula responded, "It might be. . ." His response trails off as though he was looking for the knife as he answered. A voice in the distance, possibly PSO Renzi, then states what sounds like, "Right there." PSO Mula then responds, "Ok, don't touch that." The exchange indicates the officers on scene observed the knife after the shooting, but they never indicate where it was at that point. The knife was later found in a couch cushion in the living room where the shooting took place. Shortly after that time officers arrive on scene to relieve the involved officers and get them out of the apartment. The recording ends after that time.

Det. Hutchinson calculated approximately 40 commands provided to Mr. Nerio to put down the knife before the shooting in an attempt to deescalate the encounter. Mr. Nerio failed to comply with those commands.

TRANSCRIPT FROM PSO MULA'S RECORDING DEVICE

[Pause through 00:00:11]

MULA (Inaudible) We're going to be attempting to contact uh (inaudible)

[Pause].

Hey buddy, can you come out here for me?

NERIO (Inaudible) What?

MULA Can you come out here? I just wanna talk to you for a second, okay?

NERIO No.

MULA You don't want to come outside?

NERIO No.

MULA Okay, well I'm telling you to come outside. [Pause] Sorry about that (inaudible)...he's not responding to us. Code 22 midtown.

RENZI Where is he?

MULA He's right there, I can see him. He just went into the ...

PISTOR He's in the kitchen (inaudible).

MULA Come out here right now.

NERIO No.

MULA Come out here. I don't wanna have to hurt you.

NERIO No.

MULA I just want to talk to you.

NERIO No.

RENZI What's his name?

MULA What's your name? [Pause]. [Background noises coming from television].
Can you come out here?

NERIO No.

PISTOR Hey – You need to come out here right now.

MULA Sup, buddy.

PISTOR He's got a knife in his hand.

MULA Will you put the knife down? Put the knife down – Get your gun out – Put
your knife down.

RENZI Hey, keep the knife down.

MULA Don't go (Inaudible)

NERIO No (Inaudible)

MULA (Inaudible) He's got a knife in his hand. We're going to Stage 5. Put the
knife down, dude.

NERIO Stop, dude. [Pause]

MULA We're at a standoff. He has a knife (inaudible).

PISTOR Put the knife down.

MULA You don't wanna do this. I don't want to hurt you.

PISTOR We don't want to hurt you.

MULA Keep it –

RENZI Hey. Hey, hey –

MULA Put the knife down. Put the knife down.

RENZI Put it down now –

PISTOR Put the knife down –

MULA Put the knife down – I will shoot you, don't make me do it. I do not want to hurt you –

RENZI Put the knife down – don't come at me (inaudible) –

MULA I don't want to hurt you – put the knife down. It's not worth it. Drop the knife. We can get through this –

NERIO Just do it.

MULA We don't want to hurt you.

PISTOR We don't want to hurt you – put the knife down.

NERIO Just do it.

MULA I don't – no – I'm not –

PISTOR Put the knife down –

NERIO If I have to –

MULA You have the knife in a conspicuous manner – stop walking towards me. Or I'll be forced to shoot you.

PISTOR Hey put the knife down –

RENZI Put the knife down, now –

MULA I don't want to do this –

PISTOR Put the knife down, now – put the knife down –

MULA Stop walking towards me –

RENZI Put the knife down –

MULA Put it down right now –

PISTOR Put the knife down – put it down – put the knife down – put the knife down, man. We don't want to hurt you –

MULA Don't do it. It's not worth it.

PISTOR We don't want to hurt you – put the knife down.

MULA I feel threatened right now. Put it down.

RENZI Come on man, you don't want to do this – put the knife down –

MULA Put it down –

PISTOR Put the knife down –

MULA It's not worth it –

RENZI Hey, can you guys go. Get out of the way –

MULA It's not worth it –

PISTOR Hey put the knife down – [Shots fired].

PISTOR (Inaudible) Shots fired. All officers are non-injured. Paramedics.

RENZI You guys, can you see (inaudible) from here?

MULA I got it, I – I can – his left hand's free.

RENZI I got his right hand here.

PISTOR (Inaudible) We have one down, nobody outstanding.

RENZI Hey, sir, I need you need to go down the road.

PISTOR You alright?

MULA Yup, good.

PISTOR Everybody alright?

RENZI Yeah, I'm good.

PISTOR Okay. You alright, partner? (Inaudible)

MULA You got him? (Inaudible)

PISTOR We need medics right to the apartment (Inaudible).

MULA Tap reload. (Inaudible) [Pause] [Radio in background] [Sirens]

RENZI (Inaudible)

MULA Yeah, we're good.

PISTOR (Inaudible)

RENZI (Inaudible)

PISTOR We're sending down a unit (inaudible). [Sirens]

MULA This is a - (inaudible) clear?

PISTOR No.

RENZI (Inaudible) We're going to start doing life saving measures okay.

MULA Okay. [Sirens]

PISTOR We're gonna begin CPR. (Inaudible). Where's the knife?

MULA It might be...

PISTOR Good. (Inaudible). Alright (inaudible) lay flat, come on.

MULA Let's start it. (Inaudible)

PISTOR Alright. (Inaudible)

RENZI Start CPR. No pulse. Start CPR.

MULA Wanna get (inaudible) –

PISTOR Yeah.

RENZI (Inaudible)

PISTOR Alright, start CP – but we need the (inaudible).

RENZI Yeah.

MULA We're gonna start CPR.

RENZI Do you wanna, uh...run the show – I got this – the medical thing –

PISTOR Yeah. Yeah.

 (Inaudible)

MULA Watch the glass.

PISTOR Hey. Next unit, I need the backup cleared. Backup cleared. Clear the

 backup.

PARAMEDIC 1 You two out. We'll take care of this. (Inaudible).

PARAMEDIC 2 So...do you move him?

PARAMEDIC 1 Yeah, yeah, yeah.

MULA Sir.

End of recording.

SUMMARY OF THE MEDICAL EXAMINATION

On November 16, 2015, Dr. Michelle Jordan performed an autopsy on the body of Mr. Nerio and determined the cause of death was multiple gunshot wounds. She noted the following:

- Twelve gunshot wounds;
- Seven projectiles were recovered;
- The first gunshot wound is described as "through and through" to the mid-chest and coursed from left-to-right and downward;
- The second gunshot wound is described as "through and through" to the upper mid-abdomen/lower chest and coursed from left-to-right;
- The third gunshot wound is described as "through and through" to the left lower abdomen and coursed from left-to-right;
- The fourth gunshot wound is described as "through and through" to the left thigh and coursed from left-to-right and slightly upward;
- The fifth gunshot wound is to the left hip and coursed from front-to-back and left-to-right. A copper-jacketed lead bullet is recovered from this area. The wound is designated "atypical" meaning the bullet struck an intermediate target prior to entering the body;
- The sixth gunshot is to the right buttock and coursed from back-to-front. A copper-jacketed lead bullet is recovered from this area. The wound is also designated "atypical;"

- The seventh gunshot wound is to the lateral left arm, with reentry into the lateral left chest and coursed from left-to-right and downward. A copper-jacketed lead bullet is recovered from this area. The wound is also designated “atypical;”
- The eighth gunshot wound was described as “through and through” to the right chest and coursed from front-to-back;
- The ninth gunshot wound is to the left chest and coursed downward. A copper-jacketed lead bullet is recovered from this area. The wound is also designated “atypical;”
- The tenth gunshot wound is to the left chest and coursed from front-to-back, slightly left-to-right, and upward. A copper-jacketed lead bullet is recovered from this area. The wound is also designated “atypical;”
- The eleventh gunshot wound was to the left back and coursed from back-to-front. A copper-jacketed lead bullet is recovered from this area. The wound is also designated “atypical;”
- The twelfth gunshot wound is to the left back and coursed from back-to-front and right-to-left. A copper-jacketed lead bullet is recovered from this area. The wound is also designated “atypical.”

Mr. Nerio had a blood alcohol level of .426 at the time of death but had no illegal drugs in his system. Mr. Nerio’s blood was positive for caffeine, bupropion, hydroxybupropion and topiramate.

PHOTOGRAPHS

Mr. Nerio armed himself with a thirteen-inch-long kitchen knife with an eight-inch blade.



This photograph shows personnel performing life saving measures on Mr. Nerio. It also shows how close he fell to the sliding glass door (where PSO Renzi and Lt. Pistor were standing) which is shown on the right side of this photograph. The paramedics near Mr. Nerio's head have their backs to the front door of the apartment.



This photograph shows how close the front door is to the sliding glass door of Apartment #4 where the incident took place. The paramedic in this picture can be seen through the front door and is standing near Mr. Nerio's head.



CRIMINAL RECORD OF MOISES NERIO

Moises Nerio has a lengthy criminal history dating back to the early 1990s.

On February 11, 1992, Mr. Nerio was convicted of felony second degree burglary where he received 180 days in the county jail and was placed on probation for three years. On November 11, 1998, he was convicted of misdemeanor possession of a switch blade knife where he received 2 days in the county jail and was placed on another probation for one year. On February 27, 1999, he was arrested for misdemeanor resisting/obstructing the police and felony possession of narcotics. The resisting/obstructing charge was dismissed in light of his guilty plea to felony possession of narcotics and he received 45 days in the county jail and was placed on another probation for 3 years. On December 30, 2003, he was convicted of misdemeanor driving under the influence of alcohol and received 10 days in the sheriff work program and placed on another probation for 3 years. On October 19, 2010, he was convicted of misdemeanor driving on a suspended license and an infraction of unlawful cell phone use and received 10 days in the county jail and was placed on another probation for 3 years. On May 3, 2011, he was convicted of misdemeanor driving on a suspended license with a prior suspended license conviction and received 35 days in the county jail and placed on another probation for two years. On January 9, 2014, Mr. Nerio was convicted of misdemeanor driving on a suspended license and received no jail time and was placed on probation for 2 years. He was on probation when he died.

RELEVANT LEGAL PRINCIPLES

This review was conducted pursuant to the joint protocol between this office and all Santa Clara County law enforcement agencies, which calls upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. This review does not examine issues such as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Possible criminal charges against an officer involved in a fatal shooting include murder (Penal Code section 187) and voluntary manslaughter (Penal Code section 192). 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. (*People v. Banks* (1977) 67 Cal.App.3d 379.) Several justifications may apply in any given case and they are set forth in Penal Code sections 196 and 197. The justification pertinent to this case is found in Penal Code section 197 - Use of force in self-defense/defense of others.

Penal Code Section 197: General Right to Self-Defense

California law permits all persons to use deadly force to protect themselves from the threat of death or great bodily harm. 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 as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had

grounds for believing and did believe that great bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

One may resort to the use of deadly force in self-defense where there is a reasonable need to protect oneself from an apparent, imminent threat of death or great bodily injury. Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) “Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. The 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.)

Reasonableness and immediacy of threat are intertwined. Self-defense “is based on the reasonable appearance of imminent peril of death or serious bodily injury to the party assailed . . .” (*People v. Turner* (1948) 86 Cal.App.2d 791, 799.)

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 Christian S.* (1994) 7 Cal.4th 768, 783.)

What constitutes “reasonable” self-defense is controlled by 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 noted 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.)

ANALYSIS

This report analyzes the behavior of the “involved” officers, PSO Mula, PSO Renzi and Lt. Pistor. We carefully examined the audio recording of the incident, as well as the statements of all law enforcement officers and civilian witnesses, all other video and audio recordings, all photographs, Mr. Nerio’s previous criminal record, Mr. Nerio’s known medical and mental health history, and the physical evidence collected from the scene and during the autopsy.

Determining whether PSO Mula, PSO Renzi and Lt. Pistor were legally justified under principles of self-defense and/or defense of others to discharge their firearm involves a two-part analysis:

- (1) whether their belief in the need to protect themselves from an apparent, imminent threat of death or great bodily injury was objectively reasonable; and

(2) did they individually, subjectively and honestly believe they needed to protect themselves from an apparent, imminent threat of death or great bodily injury.

The following facts overwhelmingly support concluding that PSO Mula, PSO Renzi and Lt. Pistor's fear of imminent danger was both genuine and objectively reasonable:

The officers were dispatched to a call involving an assault and learned that the suspect had recent 5150 holds and was potentially intoxicated. After interviewing Jane Doe and before contacting Mr. Nerio, the officers knew that Mr. Nerio was intoxicated and he acts aggressively when he is drunk. The officers also knew based on prior experience that persons with mental health issues can often become volatile.

As soon as the officers made initial contact with Mr. Nerio, he was noncompliant with their requests. PSO Mula requested that Mr. Nerio come outside but Mr. Nerio responded, "No." He could see Mr. Nerio grab something at this point and then noticed it was a knife. Mr. Nerio was approximately ten to fifteen feet away from PSO Mula with nothing in between them. At this point, Lt. Pistor and PSO Renzi were immediately to the right of PSO Mula and they too saw Mr. Nerio grab a knife. Immediately all three officers pleaded with Mr. Nerio to put down the knife. Not only did he refuse to put down the knife, but while holding the knife he came directly at PSO Mula. All three officers pleaded with Mr. Nerio approximately 40 times to put down the weapon. Mr. Nerio's subsequent actions made it obvious he had no intention to stop or comply with the officers' directives. On the contrary, Mr. Nerio quickly escalated the encounter, by failing to put down the knife and rushing at PSO Mula. His intent to commit "suicide by cop" is clear by his statements to the officers, "Just do it." He left the officers with no choice. Only after he aggressively approached PSO Mula while armed with a knife did all three officers fire their weapons. Mr. Nerio came within 7 feet of PSO Mula. The knife was recovered at the cushion of the overturned couch close to Mr. Nerio, apparently released by him as he was shot and falling.

By the time Mr. Nerio moved toward PSO Mula, PSO Mula had a genuine and reasonable belief that Mr. Nerio was an imminent threat. The law allows a person to use deadly force in self-defense where there is a reasonable need to protect oneself from an apparent, imminent threat of death or great bodily injury. There is no duty to wait until an injury has been inflicted for deadly force to be deemed appropriate. The law also allows Lt. Pistor and PSO Renzi to fire their weapons in defense of PSO Mula.

The officers' actions before, during and after the shooting were corroborated by both civilians who heard the encounter as well as PSO Mula's digital recording device that he was wearing at the time. One can hear how terrified all three officers were and that they genuinely felt their lives were in imminent danger.

In short, PSO Mula, PSO Renzi and Lt. Pistor's belief that Mr. Nerio presented an imminent threat to them was genuine and reasonable. They were confronted by a man who not only failed repeatedly to yield to the lawful orders of police, but escalated the situation by grabbing a 13-inch knife and advancing toward PSO Mula. They were left with no other reasonable option, under the totality of the circumstances, but to fire their weapon at Mr. Nerio until he no longer posed a threat to them.

As summarized in the previous section, California law permits any person to use deadly force where there is a reasonable need to protect oneself, or another, from an apparent, imminent threat of death or great bodily injury. Furthermore, it specifically permits police officers to use deadly force when arresting a person who has committed a violent felony (such as assault with the intent to commit rape) and the officers had probable cause to believe the person poses a threat of future or imminent death or great bodily injury, either to themselves or to others. Courts do not require officers to wait until they are physically attacked before they are entitled to take action.

CONCLUSION

Under the facts, circumstances and applicable law in this matter, PSO Mula, PSO Renzi, and Lt. Pistor were justified in their use of force in response to an immediate threat of great bodily injury or death. Lt. Pistor, received training in 2013 for Mental Health Response and he was also certified in Crisis Intervention in 2014. He, along with PSO Mula and PSO Renzi tried to deescalate the situation and repeatedly requested Mr. Nerio drop his weapon. Given the fact that Mr. Nerio's blood alcohol concentration was a .426 which is 5 times the legal limit to drive a car, his known mental health history, his size, and the fact he kept coming at the officers despite their repeated demands to drop the weapon, Mr. Nerio left the officers with no choice. Therefore, their conduct is legally justifiable and no criminal liability attaches.

Dated: April 27, 2017

Respectfully submitted by

Deputy District Attorney Lindsay Walsh.

Approved by,



JEFFREY F. ROSEN

DISTRICT ATTORNEY