

LAW ENFORCEMENT EMPLOYEE-INVOLVED FATAL INCIDENT REPORT



Employer Agency: Sonoma County Sheriff's Department

Lead Agency: Petaluma Police Department

Decedent: Wayne Allen Courtright Jr.

Date of Incident: November 18, 2013

Report Prepared by:
SONOMA COUNTY DISTRICT ATTORNEY

RELEASED TO GENERAL PUBLIC

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SCOPE AND STANDARD OF REVIEW	1
III.	SUMMARY OF FACTS	2
IV.	STATEMENT OF THE LAW	15
V.	LEGAL ANALYSIS	17
VI.	CONCLUSION.....	18

I. INTRODUCTION

On November 18th, 2013, Wayne Courtright Jr., 58, died as a result of a single gunshot wound that was sustained when he was shot by an on-duty deputy sheriff employed by the Sonoma County Sheriff's Office. The shooting event occurred during a dispatch call out on a report of an armed subject threatening to kill his wife. Sheriff's Deputies returned fire after Courtright left the front of his residence with a high powered rifle and began firing towards perimeter deputies and the Sheriff's substation in Guerneville.

After the shooting, the Sonoma County Sheriff's Office invoked the Sonoma County Law Enforcement Employee-Involved Fatal Incident Protocol. The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol, an outside law enforcement agency is to investigate officer involved fatalities. Accordingly, members of the Petaluma Police Department assumed responsibility for the investigation of this shooting incident. Members of the Sonoma County District Attorney's Office were also assigned to participate in the investigation. The involved shooters, Sheriff's deputies F. Chavez and Boustany, were sequestered until they were separately interviewed by Detectives from the Petaluma Police Department. They both agreed to give a voluntary statement about the events that had transpired.

The role of the Sonoma County District Attorney's Office in a law enforcement employee-involved fatal incident is to review the investigation in light of relevant statutes to determine if there exists any criminal liability on the part of the involved party(s), including the law enforcement employee(s); to provide assistance to the investigating agency regarding relevant criminal law issues; to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the criminal law.

Once the investigation is complete, the District Attorney is required to complete a thorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. After review of this incident, a completed report was submitted to the foreman of the Sonoma County Grand Jury including a summary of facts surrounding the death of Wayne Courtright Jr., statement of applicable law, legal analysis, specific conclusions, and a report of the autopsy. This report is essentially the same, with some information redacted to protect the confidentiality of the surviving family members and other civilian witnesses.

II. SCOPE AND STANDARD OF REVIEW

The District Attorney, as the chief law enforcement official in Sonoma County, and as the person responsible for deciding what cases to prosecute, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function, i.e., to charge a person with a crime, is not without limit.

The standard to be applied by the District Attorney in filing criminal charges is accurately

expressed in a publication of California District Attorneys Association entitled, *Uniform Crime Charging Standards*.¹ It provides:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all of the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

Additional restraint on the charging authority is found in *The California Rules of Professional Conduct, Rule 5-110*, which provides that an attorney in government service (this definition includes prosecutors) shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause.

Simply put, the standard for charging a crime is high because the burden of proof required at trial is quite high, i.e., proof beyond a reasonable doubt.

III. SUMMARY OF FACTS

The following is a brief summary of facts intended to assist the reader in understanding and applying the legal standards explained herein. In no way is it intended to replace the exhaustive investigative reports submitted by the Petaluma Police Department. It is, however, an accurate statement of what the District Attorney believes the material facts in this case to be.

Background

After the incident Jane Doe #1 was interviewed and provided the following information to detectives. As of November 18th, 2013, Wayne Courtright had been married to Jane Doe #1 for 31 years and they had two children together. Wayne, Jane Doe #1, and their 20 year old daughter, Jane Doe #2 all moved to the Riverlane Resort in Guerneville a little over a year prior to the incident. Jane Doe #1 managed the resort and Wayne did some minor repair work to the cabins on the property when necessary.

According to Jane Doe #1, Wayne Courtright had been diagnosed with medical issues and had become demoralized and depressed because of his health issues. As a result, over the last several months, Courtright's alcohol consumption had increased and during the last few weeks he was drinking a six pack of beer and a bottle of Jägermeister per day. On the day of the incident, Wayne had consumed a six pack of beer, a tall bottle of Jägermeister (a 70-proof digestif²), and several glasses of champagne.

1 California District Attorneys Association, *Uniform Crime Charging Standards* (1996) p. 12.

2 See: Wikipedia: Jägermeister; acquired September 16, 2014.

Events Leading Up to the Dispatch

On November 18, 2013, around 2:00 p.m. Jane Doe #1 confronted Courtright about opening a bottle of champagne that she received as a birthday gift and he became “furious”. Jane Doe #1 said that Courtright then calmed down and they finished the rest of the champagne together. Jane Doe #1 said she believed that during the day he also drank a six-pack of beer and a bottle of Jägermeister.

Jane Doe #1 stated that at approximately 7:30 p.m., she made Courtright dinner and sometime after 8:30 p.m., Courtright called his brother, John Doe #1, who was living in a clean and sober residence, about taking his firearms and coming to their house for Thanksgiving. Jane Doe #1 interjected on their phone conversation and told Courtright to stop harassing John Doe #1 about those issues because he was enrolled in a 30 day program. Courtright became enraged, ended the call and told Jane Doe #1 that he had saved a few rounds with her “name” on them. Jane Doe #1 told Courtright that she did not know he felt that way about her. Courtright replied, “Oh yeah, I’ve had those bullets with your name on them for a long time.”

Jane Doe #1 stated that at the time of the incident, Courtright and Jane Doe #1 were sleeping in different bedrooms inside the residence. Courtright slept upstairs and she slept downstairs. Courtright went upstairs and she assumed he was going to bed, but a short time later she heard some “clunking” and “thumping” noises. Jane Doe #1 went upstairs to check on Courtright and saw that he had pulled out a rifle from a gun case and had removed some ammunition from a trunk stored near the upstairs hallway. Courtright showed her some live ammunition that he had found in the trunk. Jane Doe #1 went to Jane Doe #2’s upstairs bedroom and woke her up.

Both Jane Doe #1 and Jane Doe #2 told police that Jane Doe #2 approached Courtright and asked what was going on and that Courtright replied that he was going to shoot Jane Doe #1. Jane Doe #1 recalled him saying, “I’m going to shoot your mother in the head,” and Jane Doe #2 recalled him saying, “I’m going to shoot your mom.” When they asked him “Why?” both women recalled Courtright saying something similar to “because Jane Doe #1 was a “bitch” and her being “born that way””. Jane Doe #1 stated it looked like Jane Doe #2 was “trying to get the gun away from him,” but Jane Doe #1 told Jane Doe #2 that they should leave and Jane Doe #1 went downstairs and began calling the Sheriff’s dispatch center.³

Jane Doe #1 stated she and Jane Doe #2 then went to the Sheriff’s (Guernville) substation, which was less than one block east of the Courtright residence.⁴ Jane Doe #1 stated that:

“As soon as I saw him in the condition that his mind was in when I left and went down those stairs and went across the street, the die was cast. And it was either gonna be him or you (police.) I was hoping they could go over there and arrest

³ Event chronology records (CAD log) show the initial call was received at 11:00:21 p.m. The call for service went out as “DISTURBANCE DOMESTIC. HUSBAND IS THREATENING TO KILL THE RP AND HE IS GETTING HIS GUN OUT. RP IS LEAVING THE HOUSE WITH HER DAUGHTER... GUN IS A RIFLE.”

⁴ Chronology records indicate that they arrived at the substation at 11:01:40.

him and get him to detox. You know, get him help. But at this point in his life he didn't have anything to live for.”

Sheriff's Office Received an Emergency Call

Deputy Gary Thornton stated that he was working at the Guerneville substation the evening of November 18th with Deputy Carlos Chavez when a call came into the substation from dispatch. The call concerned a female reporting her husband was armed with a rifle and threatening to kill her and that the female was enroute to the substation. Deputy Thornton then heard a “frantic pounding” on the front door (public entrance door) of the substation. Jane Doe #1 and Jane Doe #2 met with Deputy Thornton at the substation and began to tell him what happened, including that the suspect may be suicidal. Deputy Thornton placed Jane Doe #1 and Jane Doe #2 outside to the rear of the substation and turned off the rear light. Deputy Dan Mori and his trainee, Deputy Joseph Ricks, took control of Jane Doe #2 and Jane Doe #1. While Deputy Thornton was interviewing Jane Doe #1 and Jane Doe #2, Deputy C. Chavez exited the building and took up a cover position at the northeast exterior corner of the substation. Deputy C. Chavez was able to see the front parking lot, the front of the Riverlane Resort and First Street.

Initial Group of Shots Fired

Deputy C. Chavez described hearing gunshots while cover units were arriving at the substation. Deputy C. Chavez said he heard a single gunshot coming from the direction of Riverlane Resort. He radioed to dispatch “shots fired.”⁵ Approximately 15 seconds later⁶, Deputy C. Chavez heard a second gunshot and described it as sounding “a whole lot closer, a lot and louder” and stated that he felt the shockwave of the second shot. He stated “it almost felt like it was fired in our direction” and he believed they “were getting fired upon.” After the second gunshot, Deputy C. Chavez moved with Deputies Mori, Ricks, Moritz, Avina, and Mestrovich, to a position behind some parked vehicles along the east fence line of the substation property. From this position Deputy C. Chavez had a better view of the front of the Riverlane Resort. Deputy Chavez estimated that approximately five to eight minutes later he heard a third gunshot. (It should be noted that a number of deputies describe hearing multiple gunshots during this time frame, however, the spacing of the gunshots' timing varies.) The CAD log shows that two shots were reported being fired at 11:29 p.m. and a third at 11:39 p.m., ten minutes later.⁷

Jane Doe #3 resided in an apartment approximately 100 yards from the Courtright residence. She estimated that she went to bed around 11:30 p.m and heard two gunshots approximately ten minutes later, followed by one more gunshot approximately five minutes later⁸.

Deputy Thornton stated that he met up with Deputy Robert Crabb and entered a patrol vehicle. They circled around to the west side of the Courtright residence, parked, and took up a position on

5 11:29:16 p.m. according to CAD log followed by a dispatch of “it came from within the residence.”

6 11:29:33 p.m. according to CAD log.

7 11:39:03 p.m. according to CAD log.

8 (The neighborhood was later canvassed by the Petaluma Police Department. There were witnesses who heard gunshots, but didn't see or hear anything more.)

the north side of First St. From that position, they stated that they heard multiple (three) gunshots that appeared to come from the main residence at the Riverlane Resort. Deputy Thornton could not see the front of the residence or anybody shooting.

Sergeant Mark Fuston was the supervisor who was covering the “Russian River area” deputies (the area where the incident occurred) the night of the incident. Sgt. Fuston stated to detectives that he heard police radio that a female was reporting that her husband had threatened to kill her with a gun. He responded “code 3” (lights and siren) to the scene. While responding he said he heard (on the police radio) Deputy C. Chavez broadcast that he heard three (3) shots fired from the residence.⁹ Sgt. Fuston requested SWAT be dispatched at that point.¹⁰

Sgt. Fuston stated that as he was driving out to the scene he was receiving a “play by play” from Deputy C. Chavez and that when he arrived on scene he spoke to Deputy C. Chavez further and discussed where the perimeter units were at that time. Sgt. Fuston described that he was “supplementing the perimeter” with deputies as they arrived on scene.

After the third shot was fired, Deputy C. Chavez observed two separate subjects walk across First St. north on Church St. (towards Main St.). According to Deputy C. Chavez the first subject was wearing a black baseball cap and blue jeans and didn’t appear to be involved. Deputy C. Chavez thought it looked like he probably walked from Johnson’s beach up Church St. headed towards Main St. During his interview, Deputy C. Chavez recalled that about five minutes later, another male subject crossed Church St., appearing to have come from the Riverlane Resort. Deputy C. Chavez described this male as wearing dark clothing, looked like a sweater and long pants, and a knit, wool-type cap. Deputy C. Chavez didn’t see anything in his hands at the time and the subject crossed First St. and walked north on Church St., out of Chavez’s view¹¹. Deputy C. Chavez stated that the subject crossed back toward the resort within a minute or two later.

Deputy Thornton also described seeing an unknown subject emerge from the area of the Riverlane Resort a “couple minutes” after the third shot was fired. Deputy Thornton described the subject as wearing a dark sweatshirt and dark pants, but was only able to see a silhouette. The subject did not appear to be carrying a weapon at the time and the subject walked across the street northbound on Church St. toward the liquor store.¹² The subject then walked out of Deputy Thornton’s line of vision. Deputy Avina stated that he also saw the male that “seemed to fit the description” walk away from the area of the residence. Deputy Avina also stated that it didn’t appear that he had anything in his hands.

Deputy Moritz explained why he and others who were already in place did not approach or contact the unknown subject who walked from the area of the Riverlane resort: the deputies “just maintained our spot because we did not know who this person was and we had some semblance of cover concealment, didn’t want to give that up and approach if it wasn’t the person.”

9 The CAD log indicates Deputy C. Chavez reported the first two shots at 11:29:16 and 11:29:33 p.m. and Deputy Avina reported the third shot being fired at 11:39:03 p.m.

10 The CAD log indicates Sgt. Fuston requested SWAT be called out at 11:39:16 p.m.

11 The CAD log indicates this occurred at 23:40:56

12 The CAD log indicates this occurred at 11:40:11 p.m.

However, Deputy J. Pederson was advised to “grab the subject in all dark clothing with hoodie up --- heading to the liquor store.¹³” (It should be noted that at the time the subject was observed leaving Riverlane Resort there were no deputies stationed on Church St. north of the Riverlane Resort, so no one was in the immediate pathway of this subject. According to Deputy Moritz, after the initial (two) “shots fired” Deputy C. Chavez had informed deputies to *not* go down Church St. as it was “not a safe tactical approach.” Further, at 11:30:06 p.m. dispatch advised deputies to hold at Armstrong Woods Rd. and that they would be directed in (to the area). Additionally, at 11:31:51 p.m. dispatch advised incoming units to *not* take Church St. to enter the scene. Deputy Ricks stated that “we wanted to make sure no units went down (Church St.) because that was a direct line of fire for the house.”) Unfortunately, the subject was able to return to the Riverlane Resort before Deputy J. Pederson was able to make contact with him.

When Deputy Avina saw the subject return back toward the residence he could see the subject’s hair and beard. Deputy Avina saw the subject walk back to the front residence at the Riverlane Resort and he radioed to everyone¹⁴ that the subject was returning to the residence. Less than thirty seconds later Deputy J. Peterson advised dispatch that he was at the liquor store and did not see the subject mentioned¹⁵.

Deputy Mori radioed to Deputy Thornton and asked if he saw “the subject walk back into the residence¹⁶,” to which Deputy Thornton replied, “Negative, only saw someone leave¹⁷.” Deputy Crabb then radioed that “he walked back to the porch and the front door was closed.” And then “unknown if the same subject – but he fit the description from (Deputy Mori).¹⁸”

Additionally, at the time that the third shot was reported being fired and then the subject was seen leaving the area of Riverlane Resort and walk toward the liquor store, the SWAT team had just been dispatched and had not yet assembled. Sgt. Fuston stated that when heard the “shots fired” (on the radio) that he needed to “coordinate the scene, prevent (the deputies) from being in a position of crossfire, (and) get SWAT out so we can lock down the scene.” When Sgt. Fuston heard that the subject was able to walk down Church St., he realized that they didn’t have the perimeter contained enough and needed to “get deputies in position without getting them killed, because most of the deputies were a good distance away and rightfully so,” explaining that he believed that Courtright had a “high powered rifle or more than just a handgun.”

Sgt. Fuston explained that he wanted to “coordinate units so that I knew where everybody was, so none of the (deputies) were hit with our fire or if he made it out in the perimeter again and there was an exchange of gunfire, that we didn’t hit any civilians,” to assure that civilians were out of the area, and finally, that all the deputies were safe. In order to facilitate this Sgt. Fuston stated that he had “dispatch doing roll call” so he could figure out where everybody was and coordinate

13 The CAD log indicates this occurred at 11:42:27 p.m.

14 The CAD log indicates he made this dispatch at 11:45:43 p.m.

15 The CAD log indicates this occurred at 11:46:10

16 The CAD log indicates this occurred at 11:47:41 p.m.

17 The CAD log indicates this occurred at 11:47:46 p.m.

18 The CAD log indicates this occurred at 11:48:34 p.m.

the perimeter of the house.

Deputy C. Chavez stated that after the third gunshot he started hearing deputies arrive and he was concerned that the area to the south of the residence was not secure and since he was familiar with the area he and two other deputies walked to gate at the (south) end of Church St. where they had a visual of the back area (south side) of the Riverlane Resort.

John Doe #2, an employee of the liquor store was interviewed and said he only remembered selling one bottle of Jägermeister during his shift (1:00 PM – 12:00AM) and it was to an older white male, 55 to 60 years old, wearing glasses and who had a white beard. John Doe #2 thought the man had been drinking a little, but was not drunk. John Doe #2 thought he sold the Jägermeister sometime after 11:30 p.m. and described hearing three gunshots a short time later.¹⁹

Involvement of Additional Deputies

Deputy Frank Chavez stated to detectives that he was on patrol in Santa Rosa and while checking his patrol vehicle's MDC (Mobile Data Computer) he noticed that there was a domestic disturbance where a male subject was threatening his wife with a firearm and dispatch was asking for cars to assist. Deputy F. Chavez volunteered to assist and he was dispatched out to the call. While driving towards Guerneville he recalled hearing on the dispatch radio that multiple shots had been fired, and that the person in the house may have been suicidal and may have been armed with a weapon. When he arrived in Guerneville, he recalled two vehicles being ahead of him, Sergeant Fuston in a patrol car and an "SUV" from the Windsor Police Department. Deputy F. Chavez grabbed his shotgun out of his patrol car and after meeting with Sgt. Fuston and some other deputies who were there, ultimately positioned himself on the southeast side of a building which was kitty-corner to the Courtright residence. Deputy F. Chavez's position had a southwest facing view of the front porch of the Courtright residence.

Meanwhile, Deputy Henry Boustany and his trainee, Deputy Stefani, were completing a pedestrian stop in Santa Rosa when Deputy Boustany heard radio traffic that there was a "shots fired" call and he told his trainee that they needed to go. Deputy Boustany continued to monitor radio traffic and determined the call was occurring in Guerneville and believed the call was that of a subject threatening his wife with a gun. He gave his trainee directions to Guerneville.

Deputy Boustany said that halfway to Guerneville from Santa Rosa he heard someone broadcast shots fired. He also heard someone give a description of the subject, a male with a gray hoodie, blue shirt, and dark colored pants.²⁰ The subject was described as having a white beard. As they entered the Guerneville area Deputy Boustany advised dispatch they were in the area.²¹ They responded to the area of Church St. and Main St. and parked, blocking Church St.

19 Video footage from the liquor store and a receipt of the transaction confirm Wayne Courtright purchased a 200ml bottle of Jägermeister at approximately 11:41 p.m.

20 CAD log shows this was broadcast by Deputy Mori at 11:41:48 p.m.

21 CAD log shows this was broadcast at 11:51:12 p.m.

According to Sgt. Fuston, he drove to Church St. and Main St. and met with Deputies Peterson and Dulworth and discussed the locations of all personnel on the perimeter. (He arrived after Courtright had already and came and went from the liquor store as described above.) Sgt. Fuston stated that his immediate goal at that point was to contain the house and contain (Courtright) inside the house so he continued to coordinate units to "lock down" the area. Sgt. Fuston described having a conversation with Deputy Boustany about what they would do if the suspect came out onto the porch armed and what they would do if he came out unarmed.

Deputy Boustany stated that he removed his M16 rifle from the trunk of the patrol vehicle and began advancing toward Church St., attempting to clear the area as they moved, and met with Deputy Pederson at the northeast corner of First St. and Church St. Deputy Pederson pointed out the involved residence and Deputy Boustany heard radio traffic that a secure perimeter was being set up. Deputy Boustany and Deputy Stefani moved west around the side of the building that was directly across the street from the involved residence. Deputy Boustany and Deputy Stefani met with Sgt. Fuston at the rear of that building and determined they had good concealment due to the darkness and a clear view of the residence. Deputy Boustany, Sgt. Fuston and Deputy Stefani positioned themselves in the alley on the west side of the building.

Deputy Boustany estimated that his position was 65 yards from the front door of Courtright residence. He described a small red SUV in front of the residence that blocked his view of the stairs that lead up to the porch of the residence from the sidewalk. He stated he was approximately 60 yards from the front of the house and could see the front door and approximately 5-15 feet to the right of the door and five feet to the left of the door. Deputy Boustany, armed with his M16 rifle, and Deputy Stefani, armed with his handgun, continued to watch the front door of the residence while listening to radio traffic and remained in that position for approximately 20 minutes.

Deputy Boustany said that he heard a noise on the porch and he looked up and saw quickly what he thought was a person fall down on the steps or slip on the porch. He said it was "confusing" because he didn't see anybody walk out of the house. Deputy Boustany moved forward to open up his field of vision. He said there was radio traffic concerning movement on the porch but he was unclear what he had seen. Deputy Boustany stated he turned his attention away from the front door for a moment and when he looked back there was a "shape standing at the front door." He said it appeared someone had come out the front door, his attention was drawn to the person, and he could see that he was wearing dark clothing. He could not identify a white beard at that time, just a dark silhouette on the porch.

Sheriff's Deputies Engage Courtright

Deputy Boustany said the subject on the porch moved, turning toward the east, and he saw the subject's arms coming up. He said the arms were extended, but he could not see any type of weapon in them. Deputy Boustany knew there were deputies and citizens to the east of the

subject in the same direction that he was turning towards, including Deputy Pederson and another deputy, who were last in the area of Church St., to the southeast near the substation. Deputy Boustany said at that point he was “starting to see that there is something in this person’s hand” and broadcast to dispatch that “someone at the front door fell and is standing up. Unknown what is in his hands.”²² (It should be noted that Deputy Boustany’s broadcast was the first to alert deputies that someone was on the porch.) Deputy Boustany quickly realized that there was something in the subject’s hands and it was being pointed east toward the Sheriff’s substation and the location of other Sheriff’s units. Deputy Stefani told investigators that after witnessing the shadow of the person holding what appeared to be a long gun, he advised Deputy Boustany of his observations. Sgt. Fuston stated that he heard Deputy Boustany say, “Hey, he’s come out on the porch. He’s got a gun.”

Deputy Boustany stated that he saw “the first muzzle flash” and heard “the report of a firearm,”²³ followed quickly by “another muzzle flash and simultaneous noise of a firearm being discharged towards either the Northeast or the East.”²⁴ According to Deputy Boustany, he “was almost certain that deputies were being engaged by gunfire.” He said that “without a doubt they were shots from a firearm.” He stated at that point he “let go of the radio, raised my rifle, I have an in-point sight on it, brought the red dot up and from a distance of 50 yards fired four, five, or six rounds, and immediately after firing those rounds, I saw the subject drop.”²⁵ Deputy Boustany did not know if the subject had fallen down the stairs or was on the porch or if he had ducked down and was still able to engage the deputies. Deputy Boustany and Deputy Stefani and the other deputies on the perimeter stayed in place until the SWAT team assembled.²⁶

Sgt. Fuston described that when Deputy Boustany said that a subject was on the porch, they tried to move up to get better cover and be able to “challenge him” and say “drop the gun, drop the gun, you know, deputy sheriff, deputy sheriff, drop the gun” (as they had previously discussed in their earlier tactical meeting) but the subject began shooting before they could do so. Sgt. Fuston confirmed that no commands were given “because he (Courtright) started firing right away.”

Sgt. Fuston described being behind Deputy Boustany while they were taking cover in the alleyway directly across the street from the subject’s porch. He explained that he also saw the suspect “crank a round off” in the direction of the substation and was concerned the suspect was “going to kill one of the deputies” and/or “eventually discover” his own location and “shoot us.” Sgt. Fuston also believed that “action” had to be taken immediately so the suspect could not “get off any more rounds in anybody’s direction or shoot us.” Sgt. Fuston explained that he (Fuston) didn’t fire because when Deputy Boustany was engaging the suspect, he (Boustany) was maneuvering and Sgt. Fuston didn’t want to fire over Deputy Boustany’s head.

22 This was broadcast by Deputy Boustany at 11:59:48 p.m.

23 The CAD log notes that a report of shots fired was made at 12:00:05 a.m.

24 The CAD log notes that a report of 8 shots fired was made at 12:00:39 a.m.

25 The CAD log notes that at 12:01:06 Sgt. Fuston dispatched “we fired 6 shots. He is pinned by the front porch he may be down ...

26 The CAD log notes that at 12:53:47 a.m. Sgt. Fuston dispatched that deputies were moving up to the porch and at 1:16:00 a.m. they had cuffed the suspect on the porch.

Deputy Stefani also indicated that while he had un-holstered his pistol, he was always behind Deputy Boustany and Sgt. Fuston and never had a clear or unobstructed view, and thus, never fired his pistol during the incident.

Deputy Boustany remained at his location until Deputy Craver arrived at and took Deputy Boustany's position. Deputy Craver gave Deputy Boustany a loaded .223 magazine and Deputy Boustany loaded his M16 with a new magazine, placing his used magazine in his pocket.

Deputy F. Chavez described that while at his post on the southeast corner of a bank building he heard and saw a subject on the porch, a sound like they fell down, and some discussion about it on the radio. Deputy F. Chavez then described a subject standing on the porch in front of the window, being backlit by a light that was on inside the house. Deputy F. Chavez could see the shape of a person, but couldn't give any further description. A few seconds later Deputy F. Chavez heard what he described as the sound of a rifle being fired and seeing a muzzle flash. Deputy F. Chavez believed that the person appeared to be shooting at him or in his direction, and began to return fire with his shotgun, firing two slugs. He paused, and saw that the person was still standing on the porch, so he fired another shot. Based on Deputy F. Chavez's knowledge of rifles from hunting, the military, and working at the Sheriff's Office, he described the sound of the rifle the subject was shooting as a "high powered rifle" and he stated he knew that if the person "was willing to shoot like that, he could've taken out a lot of people, very easy." Deputy F. Chavez described that he was worried about his own safety, the safety of all the deputies that were there, and the citizens who were "milling around in the area." (It should be noted that there was a bar east of (behind) Deputy Chavez that Sgt. Fuston described as being "full of people.")

After Deputy F. Chavez fired his third shot he stated that he saw the person on the porch either fall or that he "went to the ground." Deputy F. Chavez described that while he was shooting he could hear a few other shots but didn't know who was shooting. Deputy F. Chavez didn't know whether any of his shots hit the subject or if anybody else had hit him. He concentrated on the house making sure the subject wasn't "low crawling" around, trying to get a better position or taking off out of the back.

Deputy F. Chavez held his position until the SWAT team came out. He left the spent shotgun shells at the corner of the building where he was standing. Deputy Hulquist stayed with the expended shells so that they were not tampered with. Deputy F. Chavez never unholstered his duty weapon during this incident.

During the course of the investigation, no witnesses described seeing any deputies other than Deputies Boustany and Frank Chavez fire their weapons during this incident, nor did any other deputy indicate that they fired their weapon during this incident.

SWAT Team Arrival and Control of the Scene

While holding his position, Sgt. Fuston radioed for the SWAT armored vehicle to approach from Church St. so they could safely clear the porch area of the suspect's residence. Once SWAT obtained a visual of the suspect, who was down, Sgt. Fuston authorized the release of Deputy

Jones' canine because he still felt the suspect could be a threat to the deputies since the gun was not able to be seen from their vantage point. The canine engaged the suspect and caused the suspect to roll over enough for them to see both of his hands. Deputies eventually placed the suspect in handcuffs. Next to the suspect was what Sgt. Fuston described as a "lever action .30-.30 rifle with the lever cocked open, like he was reloading it." Sheriff's deputies breeched the front door and conducted a protective sweep to determine if there were any victims or others hiding in the residence. None were found. After clearing the residence, Sgt. Fuston requested medics to respond for the suspect.²⁷ Medical aid was not called sooner because Sgt. Fuston wanted to assure that the residence was clear and contained no other suspect(s) who could pose a threat to medics.

Paramedic J. Clopton was escorted by Deputy Matelli through a pre-scouted path as to minimize the disruption of potential evidence. Clopton was able to place electrodes on the suspect's body without moving him. Clopton pronounced the suspect deceased at approximately 1:41 a.m. Additional fire personnel were on scene, but were not allowed inside the yard of the residence at that time.

A search warrant was executed at the residence and deputies seized four rifles found in a wood firearms display cabinet and a large amount of assorted ammunition. Additionally a small handbook titled, "Armed Forces Service Book," the inside cover indicating that it belonged to "US Marine Corps Lance Corporal Wayne Courtright," was located, as were two US Marine Corps firearms medals: "Rifle Expert" and "Pistol Expert". Petaluma Police Detective Lance Novello stated he knew these medals indicated the Marine to whom they were awarded was qualified in all respective firearm platforms, and had received Basic, Intermediate, and Advanced combat firearm training, and shot high scores during qualifications.

Post Incident Conduct of Deputy Henry Boustany

Deputy Pederson accompanied Deputy Boustany to his patrol vehicle. Deputy Boustany placed his M16 rifle in the trunk of a Sheriff's patrol vehicle. Deputy Boustany was cooperative both at the scene, and later during an investigative interview with Detective Shoemaker of the Petaluma Police Department.

Deputy Henri Boustany was employed by the Sonoma County Sheriff's Office for approximately seventeen years. Deputy Boustany is a firearms instructor and previously served as a less lethal use instructor. Before being employed by the Sheriff's Office, he served active duty and reserve for thirteen years in the U.S. Marine Corps with an Infantry Company. On the day in question, Deputy Boustany was assigned swing shift (3 p.m. – 2 a.m.) out of the main office in Santa Rosa and was working as a Field Training Officer (FTO) and had Deputy Stefani with him. Deputy Boustany was wearing a standard issue uniform with green pants and tan shirt with Sonoma County Sheriff's Office patches on the sleeves and a cloth badge on the left chest. Deputy Boustany was armed with a .40 caliber Glock (duty weapon), a Smith and Wesson 340PD .357 (back up weapon), and an M16 rifle.

²⁷ The CAD log shows this occurred at 1:33:06 AM

Petaluma Police Detective Robert Barnes collected Deputy Boustany's M16 rifle from the trunk of the patrol car. The rifle was loaded with a 30-round magazine that contained 28 rounds of 5.56mm ammunition and had one 5.56mm cartridge in the chamber. This magazine had been provided to Deputy Boustany by Deputy Craver at the scene. Deputy Craver indicated that it was loaded with approximately 28 rounds of 5.56mm ammunition.

Detective Barnes met with Deputy Boustany and he (Boustany) provided Detective Barnes a 30-round M16 magazine that contained 22 rounds of 5.56mm ammunition, confirming that he had reloaded his rifle with a spare magazine after the shooting (the one located in the rifle by Det. Barnes). Detective Barnes also confirmed that Deputy Boustany's duty pistol, a Glock Model 22, was loaded (one cartridge in the chamber) and the magazine contained fifteen rounds of ammunition

Post Incident Conduct of Deputy Frank Chavez

Deputy Joe Dulworth accompanied Deputy Frank Chavez to his patrol vehicle where Deputy Chavez placed his shotgun in the trunk of his patrol vehicle. Deputy Frank Chavez was cooperative both at the scene, and later during an investigative interview with Detective Garihan of the Petaluma Police Department.

Deputy Frank Chavez was employed by the Sonoma County Sheriff's Office for approximately 19 years and was assigned to the Tact team, a tactical team that responds to riots, protests, and similar events. Before being employed by the Sheriff's Office, he served active duty for eight years in the U.S. Army and National Guard. On the day in question, Deputy Frank Chavez was assigned vehicle patrol (graveyard shift 8:30 p.m. – 7:30 a.m.) out of the main office in Santa Rosa. Deputy Chavez was wearing a standard issue uniform with green pants and tan shirt with Sonoma County Sheriff's Office patches on the sleeves and a cloth badge on the left chest. He was also wearing a baseball cap with the Sheriff's Office star on it and a raincoat with Sheriff's Office patches on it. Deputy Chavez was armed with a Glock Model 22 (duty weapon).

Detective Novello searched Deputy F. Chavez's patrol car and located the police issue Remington 870 Police Magnum shotgun used during this incident. It had four unexpended slug type shells in the magazine and one chambered and unexpended slug shell (3 spent, 12 gauge casings, and 1 live round were located on the ground where Chavez was positioned). Chavez said that after he shot his rounds, he grabbed 3 more shells out of his side saddle and loaded them up.

After the incident Petaluma Police Detective Robert Barnes confirmed that Deputy Frank Chavez's duty pistol, a Glock Model 22 was loaded (one cartridge in the chamber) and the magazine contained fifteen rounds of ammunition.

Additional Evidence Located at the Scene

The Santa Rosa Police Department was requested to assist Petaluma Police Department with

evidence processing. Field evidence technician (FET) Adora Pinnow was assigned to collect the evidence.

At the building where Deputy Frank Chavez was positioned, three spent shotgun shell casings and 1 live (unexpended) shotgun shell round were located and collected. All four shotgun shells were "Winchester 12 gauge, Ranger 2 3/4" – 1 oz. slug, low recoil."

In between the two buildings where Deputies Boustany and Stefani were with Sgt. Fuston, FET Pinnow initially located and collected three spent cartridge shell casings. FET Pinnow went back to the scene the following day and searched the same area for additional spent cartridge casings. The area was overgrown with vegetation along the fence line and garden bed. In the groundcover vegetation two more spent cartridge shell casings were located and collected. All five cartridge shell casings were of similar make.

At the bottom of the steps of the front porch area of the Courtright residence, FET Pinnow noted a 200ml bottle of Jägermeister that was 3/4 full. Two spent cartridge shell casings were located on the 4th step of the porch. On the porch, behind Courtright, adjacent to the front door was a live cartridge round. Next to Courtright was a Winchester, Model 94-30, wood stock long gun/rifle with the lever action partially open. Inside the chamber of the rifle was one spent metal cartridge and one live cartridge round. Next to his head was a spent cartridge casing. Four spent cartridge casings total were found in this area. All were "30-30 WIN." An apparent shotgun slug that had remnants of wood was located on the walkway fronting the northeast corner of the porch. In total, three apparent shotgun slugs were located on scene.

Numerous projectile impacts and ricochet marks were observed on the porch pillars, porch area and exterior wall of the residence. A total of four projectile impacts were noted in the exterior wall of the residence east of the front door. A larger apparent spent bullet fragment was located within one of the four projectile impacts. Another projectile impact was noted in the exterior wall of the residence west of the front door. The second apparent spent slug (with wadding) was recovered within the north wall and appeared to correspond with that projectile impact. Additionally, the window west of the front door also had a projectile impact. The third spent slug was located on top of a footlocker that was below this window inside of the residence. Inside the residence numerous projectile impacts and ricochet marks were observed along with apparent bullet fragments and two apparent spent slugs.

Situated near the southwest corner of First St. and Church St. was a "Riverlane Cabins" sign. The sign was made of plastic, framed in metal and attached to a metal pole. An apparent projectile impact was located on the west facing side of the sign. The projectile impact appeared to have entered through the west facing side of the sign based on its relatively small uniform circular hole and based on the larger misshapen hole located on the east facing side. In addition, the metal trim displayed a "splayed-out" pattern on the east facing side of the sign. The plastic material from the sign appeared to be the same plastic material recovered from the sidewalk below the sign. The height of the projectile entry on the west side facing side of the sign was approximately 18'1" from the ground.

It was also discovered that the streetlight fixtures in front of the Courtright residence weren't working. The light pole just west of the residence had two holes in the metal light housing. The light pole just east of the residence had a shattered lens cover and light bulb. In addition the fixture had two holes in the metal light housing. The two sets of holes in the metal light housings are consistent with damage caused by a high powered firearm.

Shots Fired

We can conclude that Deputy Boustany and Deputy Chavez were the only law enforcement employees to discharge their weapons, Boustany apparently five times and Chavez three times. This conclusion is based on the physical evidence in this case in conjunction with the statements of the involved parties.

Deputy Boustany's weapon was missing at least five rounds from the weapon's magazine used at the time of the incident. Five shell casings were recovered at the scene. One of the spent bullets was located inside Courtright's body during the autopsy. Deputy Chavez's location contained three spent shotgun shell casings and three shotgun shell slugs were recovered at the scene.

Autopsy

On November 20, 2013, an autopsy was performed on Courtright. The attending forensic pathologist was Dr. Kelly Arthur-Kenny, M.D who determined the cause of death to be the result of a single gunshot wound to the left side of Courtright's torso. The bullet entered Courtright's left chest and fragmented into several pieces which damaged several major organs including the aorta.

In Dr. Arthur-Kenny's opinion, the wound and fragmentation is consistent with a .223 caliber round typically fired from an AR-15. (An M16, the class of rifle that Deputy Boustany fired, is an adaptation of an AR-15 rifle.) According to witness statements, the left side of Courtright's body would have been most exposed to Deputy Boustany at the time he fired at Courtright. We can conclude from all of the evidence and witness statements that Deputy Boustany's gunshot was the fatal blow to Courtright.

No other evidence of a separate gunshot wound was located or documented. Courtright's blood alcohol concentration (BAC) was determined to be a 0.214 (For reference, a 0.08 BAC is the presumed illegal driving limit in California.)

IV. STATEMENT OF THE LAW

The sole issue to be resolved is whether the shooting of Courtright was lawful because the force used by the deputy was reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose. This issue must be resolved as to each involved deputy individually.

Deciding this issue involves analyzing several key principles of law. A brief legal summary, which is by no means an exhaustive explication of the controlling principles of law applied in this

case, is included to assist the reader in understanding this report and its conclusions.

A peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effectuate the arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance.²⁸

Any person, including a peace officer, has a right to use reasonable force in self-defense or for the defense-of-others.²⁹ A person can be said to have acted in lawful self-defense or for the defense of others if all of the following exist: the person reasonably believed that he or someone else was in danger or being killed or suffering great bodily injury; the person reasonably believed that the immediate use of deadly force was necessary to defend against that danger; the person used no more force than was reasonably necessary to defend against that danger.³⁰

When deciding whether the person's beliefs were reasonable, one must consider all of the circumstances as they were known and appeared to the person at the time, as well as what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.³¹

Homicide is the killing of one human being by another. Homicide can be either lawful or unlawful. When the shooting occurs in self-defense, or in defense of another, it is not an unlawful act.³² Both self-defense and defense-of-others are complete defenses to a homicide and make the homicide justifiable.³³

There are also some special rules that apply to the use of deadly force by peace officers who are in the lawful performance of their duties. Use of deadly force while in the line of duty is justified, and therefore not unlawful, provided all of the following exist: the person is a peace officer; the killing was committed while performing any legal duty; the killing was necessary to accomplish that lawful purpose; and the peace officer had probable cause to believe that the person killed posed a threat of serious physical harm, either to the peace officer, or to others.³⁴ In such situations, there is a presumption that the killing was justified. The burden falls to the prosecution to prove beyond a reasonable doubt the killing was *not* justified.³⁵

In the leading case of *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-83. The California Supreme Court succinctly and definitively articulates the law of self-defense (which applies

28 See Penal Code Section 835a.

29 See Penal Code Sections 692-694.

30 See CALCRIM 505.

31 See CALCRIM 505.

32 See CALCRIM 500, 505.

33 See CALCRIM 505; Penal Code Section 199.

34 See CALCRIM 507; Penal Code Sections 196, 199.

35 See CALCRIM 507; Penal Code Sections 189.5, 199.

equally to defense of others):

“For a killing to be in self-defense, the defendant must actually and reasonably believe in the need to defend. (Citations omitted.) If the belief subjectively exists but is objectively unreasonable there is “imperfect self-defense,” i.e., “the defendant is deemed to have acted without malice and cannot be convicted of murder, but can be convicted of manslaughter.” (Citations omitted.) To constitute “perfect self-defense,” i.e., to exonerate the person completely, the belief must also be objectively reasonable. (Citations omitted.) As the legislature has stated, ‘[T]he circumstances must be sufficient to excite the fears of a reasonable person’ (Citations omitted.) Moreover, for either perfect or imperfect self-defense, the fear must be of imminent harm. ‘Fear of future harm – no matter how great the fear and no matter how great the likelihood of the harm – will not suffice. The defendant’s fear must be of imminent danger to life or great bodily injury.’ (Citations omitted.)

Although the belief in the need to defend must be objectively reasonable, a jury must consider what “would appear necessary to a reasonable person in a similar situation and with similar knowledge” (Citations omitted.) It judges reasonableness “from the point of view of a reasonable person in the position of defendant” (Citations omitted.) To do this, it must consider all of the “fact and circumstances ... in determining whether the defendant acted in a manner in which a reasonable man would act in protecting his own life or bodily safety. (Citations omitted.) As we stated long ago, ‘... a defendant is entitled to have a jury take in to consideration all of elements in the case which might be expected to operate on his mind ...’ (Citations omitted.)

In *People v. Aris*, (1989) 215 Cal.App.3d 1178, 1188, the Court defines what is meant by *imminent harm* as applied to the law of self-defense:

“The definition of imminence in California has long been settled. ‘A person whose life has been threatened by another, whom he knows or has reason to believe has armed himself with a deadly weapon for the avowed purpose of taking his life or inflicting great personal injury upon him, may reasonably infer, when a hostile meeting occurs, that his adversary intends to carry his threats into execution. The previous threats alone, however, unless coupled at the time with an apparent design then and there to carry them into effect, will not justify a deadly assault by the other party. There must be such a demonstration of an immediate intention to execute the treat as to induce a reasonable belief that the party threatened will lose his life or suffer serious bodily injury unless he immediately defends himself against the attack of his adversary. The philosophy of the law on this point is sufficiently plain. A previous threat alone, unaccompanied by an immediate demonstration of force at the time of the reencounter [*sic*], will not justify or excuse and assault, because it may be that the party making the threat has relented or abandoned his purpose, or his courage may have failed, or the threat may have been only idle

gasconde, [*sic*] made without any purpose to execute it. On the other hand, if there be at the time such a demonstration of force ... [indicating] that his adversary as on the eve of executing the threat, and that his only means of escape from death or great bodily injury was immediately to defend himself against impending danger” (Citations omitted.)

V. LEGAL ANALYSIS

At the time the deputies became involved in this incident, Courtright was ostensibly engaged in the commission of a number of very dangerous crimes; including but not limited to: reckless discharge of a firearm, assault with a deadly weapon, assault on a peace officer with a deadly weapon, criminal threats, and arguably attempted murder.

His behavior before and during the incident was exceedingly irrational and imminently dangerous to the lives of all who were present in his line of fire. Courtright endangered the lives of anyone in or around his line of fire at the time. It was manifestly reasonable for the deputies to believe that any person in Courtright’s line of fire was in imminent danger of great bodily injury or death.

A law enforcement response to such a dangerous and dynamic situation is not predicated on the development and execution of a “perfect” response, but rather a response which is reasonable under the circumstances; circumstances that are very fluid, rapidly evolving, and require decisions to be made very quickly.

It bears noting, however, that the law enforcement response in this case was at all times professional, thoughtful, and proportionate to the evolving situation. The deputies were under a legal obligation to apprehend Courtright and to investigate the crimes he had potentially committed. The deputies responded quickly in dealing with the dynamic situation; yet still in a planned, coordinated fashion. A coordinated approach of the house was being conducted. A tactical formation was being put into place when Courtright exited the house and began firing his rifle (for the 2nd time) in the direction of numerous deputies and potentially other citizens in the downtown area.

Deputy Boustany and Deputy Chavez acted swiftly by returning fire after Courtright had fired his rifle. Deputy Boustany’s paramount concern was for the safety of his fellow deputies who were in the direction that Courtright had opened fire. Deputy Boustany saw “the first muzzle flash” and heard “the report of a firearm”, followed quickly by “another muzzle flash and simultaneous noise of a firearm being discharged....” He was “almost certain that deputies were being engaged by gunfire,” and that “without a doubt they were shots from a firearm.” Deputy Chavez, himself in the line of fire, had reason not only to be concerned for the safety of his fellow deputies and the public, but for his own life as well. Deputy F. Chavez believed that the person appeared to be shooting a “high powered rifle” at him or in his direction and stated he knew based on his training and experience that if the person “was willing to shoot like that, he could’ve taken out a lot of people, very easy.” Deputy F. Chavez described that he was worried about his own safety, “the safety of all the deputies that were there”, and the citizens who were “milling around in the area.”

Under the totality of the circumstances, Courtright presented a threat to the deputies' safety and the situation was apparently rapidly deteriorating. He was reported to have been armed with a rifle, suicidal, drinking alcohol and to have made threats to kill his wife of 31 years. In addition, he had already demonstrated that he was not afraid to discharge his weapon, given the three unprovoked shots heard by the deputies as they took up positions around the Courtright residence.

Given the seemingly perilous situation with which Deputies Boustany and Chavez were faced, and the reasonable concern of imminent danger to the other deputies, the use of deadly force was reasonably justified at that point.

VI. CONCLUSION

It is a well-established community expectation that peace officers will respond when summoned at a time of crisis and not retreat in the face of adversity. Having been dispatched to an emergency situation not of their creation, Sonoma County Sheriff Deputies, including Deputies Henri Boustany and Frank Chavez, were obligated to do everything reasonably within their power to apprehend Courtright and to safeguard members of the community and responding deputies.

The deputies never had an opportunity to carry out their law enforcement objective with non-lethal force options. Courtright never attempted to contact authorities or negotiate with them. In fact, he was on his porch, with a high-powered rifle, in the middle of downtown Guerneville and fired his weapon multiple times in the direction of law enforcement, the Sheriff's substation where his wife and daughter were, and a bar full of unsuspecting patrons.

When less than lethal force options are not an option and do not work in such a situation, then greater force, in this case lethal force, becomes a reasonable and necessary measure of force to be employed. Deputy Boustany was in a position to observe this situation unfold and to appreciate the potential dangers that Courtright posed. Deputy Boustany's decision to fire his weapon at Courtright to stop a perceived deadly and imminent threat was reasonable and appropriate under the circumstances with which he was faced. The same is true for Deputy Chavez.

Based on all of the facts and circumstances as explained above, the actions of Deputy Henry Boustany and Frank Chavez were lawful, and therefore no criminal charges are warranted.



JILL R. RAVITCH
District Attorney, County of Sonoma