
**Office of the District Attorney
Alameda County**
Nancy E. O'Malley, District Attorney



**Rene C. Davidson Courthouse
1225 Fallon Street, Suite 900
Oakland, CA 94612**

August 14, 2018

Chief David Spiller
4833 Bernal Avenue
Pleasanton, CA 94566

Dear Chief Spiller:

Enclosed is the District Attorney's Final Report on the fatal shooting of Shannon Estill, which occurred on May 20, 2017.

I have reviewed the report and agree with the conclusion that the evidence does not justify criminal charges against Officer Keith Batt.

As indicated in the report, no further action will be taken in this case.

A copy of the report will be available to the public no earlier than five calendar days after August 15, 2018.

Very truly yours,

A handwritten signature in black ink that reads "Nancy E. O'Malley". The signature is written in a cursive style and is positioned above the typed name.

Nancy E. O'Malley
District Attorney

Enclosure

DISTRICT ATTORNEY'S REPORT

OFFICER INVOLVED SHOOTING

OF

SHANNON ESTILL



NANCY E. O'MALLEY
District Attorney

Officer Involved Shooting Team

Deputy District Attorney Chris Infante
Inspector III Mark Moreno

August 14, 2018

INVESTIGATION OF THE SHOOTING DEATH OF SHANNON ESTILL

INTRODUCTION:

The Alameda County District Attorney's Office has assembled an Officer Involved Shooting ("OIS") Team. The OIS Team consists of experienced Senior, Assistant, and/or Deputy District Attorneys as well as experienced District Attorney Inspectors, who are sworn peace officers. The OIS Team conducts an investigation involving any death of a person caused by an officer involved shooting in Alameda County. The OIS Team is authorized by agreement with each local law enforcement agency serving Alameda County to conduct a separate, but parallel, investigation into the circumstances leading to the shooting death.

The OIS Team focuses exclusively on the question of whether there is sufficient evidence to prove beyond a reasonable doubt that a law enforcement official committed a crime in connection with the shooting death. The OIS Team does not examine collateral issues such as whether law enforcement officials complied with internal policies, used appropriate tactics, or any issues that may give rise to civil liability. This report should not be interpreted as expressing any opinions on non-criminal matters.

SCOPE OF THE INVESTIGATION:

On May 20, 2017, at approximately 11:48 a.m., Pleasanton Police Officer Keith Batt shot and killed Mr. Shannon Estill. Mr. Estill pointed what appeared to be a firearm at Officer Batt. The "firearm" turned out to be a realistic looking BB pistol at the officer. The incident occurred outside a residence on Burgundy Drive in Pleasanton, California. This report documents the investigation conducted by the Alameda County District Attorney's Office.

On May 20, 2017, at approximately 1:50 p.m., the on-call OIS Team was notified by the Pleasanton Police Department ("PPD") that an officer involved shooting had occurred. The OIS Team went to the incident location. The OIS Team completed a walk-through of the scene and observed evidence items.

Beginning on May 20, 2017, and continuing into May 21, 2017, the OIS Team participated in the interviews of the following law enforcement personnel: PPD Officer Brian Jewell; PPD Officer Lisa Cavellini; PPD Officer Keith Batt.

As part of its investigation, the OIS Team reviewed, among other things, police reports, dispatch communication recordings and records, 911 recordings, evidence technician reports, diagrams, sketches, crime lab reports, photographs, video recordings, medical records, and recorded statements. The OIS Team also reviewed the ACSO Coroner Investigator's Report, autopsy protocol, and toxicology report relating to Mr. Estill.

The question for the OIS Team is whether there is evidence that the shooting was unlawful and, whether the officer had a reasonable fear for his life when he fired his weapon under the reasonable, objective belief his life or the lives of others were in danger.

FACTUAL SUMMARY:

On May 19, 2017, at approximately 12:30 p.m., California Highway Patrol (“CHP”) Officer Jarvi was dispatched to the area of Redwood Road in Castro Valley, under the I-580 overcrossing, because multiple callers reported that a male pedestrian was staggering, falling, and appeared intoxicated. Officer Jarvi responded to the area and noticed a man, later identified as Mr. Estill, staggering and falling to the ground. Officer Jarvi contacted Mr. Estill. The officer noted that Mr. Estill appeared disoriented, incoherent, confused, and had a strong odor of alcohol about him. Officer Jarvi ultimately determined that Mr. Estill could not care for himself and was intoxicated to the point that he was a danger to himself, because Mr. Estill could have stumbled into the roadway and been injured by motorists. Officer Jarvi arrested Mr. Estill for a violation of Penal Code Section 647(f). This statute defines the crime of disorderly conduct and prohibits a person from being in a public place and under the influence of alcohol to the point where the person is unable to exercise care for his own safety or interferes with the free use of any street, sidewalk, or public way. Officer Jarvi transported Mr. Estill to the Santa Rita Jail. Mr. Estill was booked into the jail at approximately 1:27 p.m. Mr. Estill had no apparent physical injuries at the time he was booked into the jail. According to jail records, Mr. Estill was issued a citation and released from the Santa Rita Jail on May 20, 2017, at 12:51 a.m.

On May 20, 2017 at approximately 2:05 a.m., PPD officers were dispatched to Mr. Estill’s residence. The dispatch reported that a heavily intoxicated male was threatening to kill his wife and that the male was in the garage of the home and was trying to access the gun safe. Upon arrival, PPD officers observed bloody hand prints on the front door of the home.

PPD officers ultimately located Mr. Estill on the ground inside the garage. Officers observed that Mr. Estill appeared to be under the influence of alcohol and that he was bleeding heavily from a wound to the back of his head. Officers noticed the door to a cabinet housing a gun safe was partially opened but that there was a car parked in the garage that prevented the door from opening all the way.

Medical personnel arrived and transported Mr. Estill to Eden Medical Center for treatment. Paramedics observed that Mr. Estill had a laceration to the rear of his head at the base. The police remained at the residence to investigate the incident.

Officers spoke with Mr. Estill’s wife, Witness #1. She said that she had been married to Mr. Estill for 27 years and they have a 17-year-old daughter, who was also living at the residence. Witness #1 said that Mr. Estill has had trouble with alcoholism since his mother died approximately one year earlier.

Witness #1 said that, on May 19, 2017, at approximately 5:20 p.m., she began receiving telephone calls from Mr. Estill, who was in custody at the Santa Rita Jail. She said that Mr. Estill asked her to pick him up at the jail. Witness #1 called the jail and she was instructed not to come to the jail,

but rather to wait until Mr. Estill was released. Witness #1 said that, at approximately 6:00 p.m., she returned home from work and noticed that Mr. Estill's wallet and keys were on the hood of one of the cars parked in the drive-way of their home. She did not know how the wallet and keys got there.

Witness #1 said that, on May 20, 2017, at approximately 2:00 a.m., she heard noises from the front of her home. She checked on the noises and saw Mr. Estill trying to access the backyard from the gate located on the east side of the home. When she asked Mr. Estill what he was doing, he approached her and grabbed her by her wrist. She noticed that Mr. Estill had a significant amount of blood on him. She reported that the blood was coming from the back of Mr. Estill's neck and that he was extremely intoxicated.

Witness #1 said she pulled away from Mr. Estill and ran back into the house. She locked the door to prevent Mr. Estill from entering. Mr. Estill banged on the front door and smeared blood on the windows located on the front of the home. Witness #1 said that Mr. Estill gained access to the backyard and tried to enter through the back door unsuccessfully. Mr. Estill eventually entered the garage. Witness #1 said that she could hear Mr. Estill yelling in the garage and she believed he was attempting to open the safe to get a rifle and handgun. Based on the noises coming from the garage, Witness #1 thought that Mr. Estill may have opened the safe. Witness #1 said that she could hear Mr. Estill yell, "I am going to kill you" as he tried to break into the home.

Witness #1 said that she woke her daughter, Witness #2, and they both retreated to the master bedroom and locked the door. Witness #1 called 911. She told the dispatcher that her husband was intoxicated and was in the garage getting a gun. She told the dispatcher that her husband was threatening to kill her. Witness #1 told the police that she feared for her life and thought that Mr. Estill was going to hurt her and her daughter. She told police that she did not want Mr. Estill to return to the residence. Witness #2, the daughter, told police that she did not see or hear most of the incident, but she did say that she was afraid of Mr. Estill because of his recent drinking problem and behavior.

The police determined that Mr. Estill had a Smith and Wesson handgun registered to him at the residence. Witness #1 told police that Mr. Estill also had an antique rifle. She believed the firearms were located in the safe in the garage. Witness #1 said that she believed those were the only two firearms at the residence. She also said that the guns were not loaded and that there was no ammunition inside the safe. The police attempted to access the safe in the garage. However, there was a car parked in the garage that blocked access to the door of the safe. Witness #1 was unable to locate the keys to the car so the guns were not removed. Witness #1 told police that she would contact Mr. Estill's brother, who had an extra set of keys to the car. She said that, once the car could be moved, she would contact the police to have the guns confiscated.

Witness #1 told police that she did not want Mr. Estill to be arrested. She refused to sign a citizen arrest form. Nevertheless, the police applied for an Emergency Protective Order. The police contacted a court commissioner and described what Witness #1 had told the police about the incident and the results of the police investigation. The court commissioner issued the Emergency Protective Order. The Order provided that Mr. Estill was prohibited from coming within one

hundred yards of the residence. The Order also prohibited Mr. Estill from contacting his wife and daughter, or coming within 100 yards of them.

As indicated above, Mr. Estill had been transported to Eden Medical Center by paramedics. PPD Officer Cerri went to Eden Medical Center at approximately 4:40 a.m. Hospital staff told Officer Cerri that Mr. Estill would be admitted to the hospital for treatment of his laceration and because he was extremely intoxicated. Officer Cerri spoke with Mr. Estill at the hospital and observed that Mr. Estill appeared intoxicated. Officer Cerri served Mr. Estill with a copy of the Emergency Protective Order. The officer explained the terms of the Order to Mr. Estill. The officer also had Mr. Estill read back each term of the Order. Mr. Estill acknowledged that he understood the terms of the Order and that a written copy of the Order would be left with Mr. Estill's property at the hospital. Because Mr. Estill was going to be admitted to the hospital, Officer Cerri did not arrest him.

Mr. Estill remained at Eden Medical Center and received treatment. Medical staff repaired the laceration. Treatment included cardiac monitoring, IV hydration, and physical therapy. Mr. Estill was discharged from the hospital later the same day, May 20, 2017, at approximately 10:50 a.m.

Shortly before 11:30 a.m., Mr. Estill arrived back at his residence in Pleasanton. Witness #1 and Witness #2 were inside the residence. They noticed Mr. Estill outside, attempting to enter the residence. Mr. Estill was acting erratic and appeared to be intoxicated. Witness #1 went outside in an attempt to calm Mr. Estill down. Mr. Estill continued to try to enter the residence and said that he was going to get a gun. Witness #1 retreated into the house and locked the doors. Witness #1 and her daughter locked themselves in the upstairs master bedroom. Witness #1 called 911 at 11:36 a.m. and spoke with a police dispatcher.

Witness #1 told the dispatcher that Mr. Estill was at the residence, attempting to enter. Witness #1 was whispering, sounded afraid, and could be overheard trying to comfort her daughter. Witness #1 remained on the phone with the dispatcher during the entire incident. At one point, Witness #1 told the dispatcher that it sounded like Mr. Estill was in the garage. Witness #1 said that there was an antique rifle in the safe in the garage, but that the safe was inaccessible because of a car parked in front of it. Witness #1 later told the dispatcher that she believed Mr. Estill broke the door down, had gained access into the home, and was upstairs. While she was talking to the dispatcher she began yelling out to Mr. Estill, telling him to "Please stop." Witness #1 sounded panicked. She later told the dispatcher that it sounded like Mr. Estill was downstairs, throwing things around, but that she wasn't sure of his exact location.

As Witness #1 was talking with the dispatcher, another police dispatcher directed officers to respond to the residence and updated the officers with information as it developed. The dispatcher told the officers that the police had been at the house the previous night, that an Emergency Protective Order had been issued, and that Mr. Estill was now inside the garage of the residence, pounding on the door. The dispatcher told officers that Mr. Estill had been

intoxicated during the previous incident and that the wife and daughter were locked upstairs in a bedroom. The dispatcher advised officers that police were unable to remove any guns from the

gun safe the previous evening because of the parked car.

The dispatcher updated officers that Mr. Estill may have broken down a door and entered the residence. Dispatch then advised that Mr. Estill was outside the upstairs bedroom door where the wife and daughter were hiding. The dispatcher later told officers that Mr. Estill was downstairs, throwing things around, and may be on the left side of the house. Dispatch later told officers that Mr. Estill might be back inside the residence.

PPD Officers Keith Batt and Brian Jewell responded to the dispatch and parked near the residence. Officer Jewell was in field training at the time and was being supervised by Officer Batt. Officer Lisa Cavellini also responded to the dispatch and parked near the residence. The three officers approached the residence on foot. They were all wearing police uniforms. There was no visible activity outside the house. The garage was located on the left side of the house (when facing the house). The garage door was closed and there were vehicles parked in the driveway. There was a fence and gate to the left of the garage, which blocked the view of the side yard next to the garage.

The three officers approached the gate to the left of the garage. The officers heard noises coming from the other side of the gate, near the side door to the garage. The officers decided to enter the side yard through the gate, to see if they could locate Mr. Estill. One of the officers advised dispatch that they would be entering the yard and asked the dispatcher to advise the wife and daughter to stay in the bedroom.

Officer Batt withdrew his pistol and opened the gate. Officer Jewell withdrew his Taser, at Officer Batt's direction. Officer Cavellini also withdrew her pistol. Officer Batt proceeded through the gate, followed by Officer Jewell, and then Officer Cavellini. There was no one visible in the side yard. There was a side door to the garage, which was open. The officers could hear noises coming from inside the garage. The officers paused after passing through the gate. Officer Batt called out loudly, "Police department. Come out now." Officer Batt again called out "Police." There was no response but the officers continued to hear noises coming from inside the garage. The officers walked slowly along the side of the house, towards the side door of the garage. Officer Batt again called out loudly, "Police department. Come out now." There was no response.

Officer Batt approached the open side door to the garage, in an attempt to see inside. Officers heard what sounded like the racking of a shotgun inside the garage. Officer Batt saw the muzzle of a shotgun pointed at him from just a few feet away. The officers quickly retreated back through the side gate, which closed behind them, and into the driveway area. They notified dispatch that the suspect had a shotgun and requested additional backup.

Officer Batt kept his pistol pointed at the side gate and yelled loudly, "Come out now." There was no response from the other side of the gate. Officer Cavellini took cover behind one of the

cars parked in the driveway and continued to point her pistol toward the gate. The officers also repeatedly directed nearby civilians to go back inside their houses. Officer Jewell went into the open garage of a neighboring house and escorted a civilian inside.

Officer Batt directed Officer Cavellini to continue to cover the front of the house while he quickly went to his police car to retrieve his duty rifle. Officer Batt anticipated that he would return to Officer Cavellini's location and they would form a game plan while awaiting the arrival of more officers. Officer Batt obtained the rifle and moved quickly back toward the driveway area of the residence.

As Officer Batt was returning with his rifle, Officer Cavellini noticed that the roll up garage door was beginning to open. She advised over the radio that the garage door was opening. Officer Cavellini later said that, as the garage door was opening, she saw a man (later identified as Mr. Estill) crouching down and then coming out from under the garage door with a pistol in his hand. She yelled out twice, "Show me your hands." At about the same time, Officer Batt was approaching the driveway area from the street. He later said that he saw Mr. Estill come out from the garage and that Mr. Estill was moving quickly toward Officer Batt and was pointing a handgun at him. Officer Batt yelled "Hands up." Officer Batt said that Mr. Estill continued to move toward Officer Batt, still pointing the gun at him. Officer Batt said that he feared that Mr. Estill was going to shoot him. Officer Batt then fired his duty rifle towards Mr. Estill. Officer Batt initially fired five rounds. Officer Batt was moving backward as he was firing and he fell onto his back. He noticed that Mr. Estill was on the ground on the driveway. Officer Batt said that he feared that Mr. Estill still had the gun and could still shoot him or the other officers. Officer Batt then fired one additional round towards Mr. Estill.

Mr. Estill remained on the ground in the driveway. The officers observed that Mr. Estill had a severe gunshot wound to the head and that he was deceased. Additional officers arrived. Officers later entered the house and determined that Witness #1 and Witness #2 were not physically injured.

Personnel from the Alameda County Sheriff's Crime Lab responded and processed the scene. Mr. Estill was found lying on his back on the driveway, between a Jeep Wrangler and a Toyota Corolla parked in the driveway. Mr. Estill's head was to the south toward the street and his feet were to the north toward the garage. Mr. Estill's head and torso were positioned beyond the bumper areas of the parked cars, towards the street. A Marksman Repeater .177 caliber BB pistol was recovered from underneath Mr. Estill's right shoulder. The BB pistol was black in color and had the appearance of an actual firearm. There were no bright colored markings on the BB pistol that would potentially identify it as a BB gun, rather than an actual pistol. The Coroner's Bureau later removed Mr. Estill's remains from the scene.

Crime Lab personnel recovered six fired cartridge cases in the street and gutter east of the driveway. Later testing revealed that all six cartridge cases were fired from Officer Batt's rifle, a Colt M4 Carbine 5.56mm (.223 Rem.) caliber semiautomatic rifle. The location of the fired cartridge cases corresponded to the location where Officer Batt said he was when he fired his

weapon. An examination of Officer Batt's rifle, magazine, and ammunition, confirmed that he fired six rounds. An examination of other firearms confirmed that no other officers fired weapons during the incident.

Crime Lab personnel observed four apparent bullet holes at the scene. Two holes were in the vehicles in the driveway on either side of Mr. Estill. One hole was in the passenger side hood of the Toyota Corolla, just above the headlight. This vehicle was backed into the driveway. The second hole was in the Jeep Wrangler passenger side door just below the side view mirror. This vehicle was parked facing forward, toward the garage. Two other holes were located in the Cadillac that was parked in the garage. One hole was on the passenger side of the rear window. The second hole was in the passenger side rear quarter panel.

Crime Lab personnel examined the west side yard and the door leading into the garage. The door had extensive damage to the door knob area. The door knob was missing and there was an apparent blood stain on the door. There were pieces to a door knob and three empty vodka bottles found in a garbage can in the west side yard.

Inside the garage, there was a Cadillac parked on the west half, partially blocking a cabinet on the west wall, next to the side garage door. The door to the cabinet was partially open, revealing a floor safe. The door to the floor safe was also partially open. To the left of the cabinet, on a shelf, there was a Winchester 1200 12 Gauge pump action shotgun. The shotgun was not loaded. There was a box of .380 Auto ammunition on the hood of the Cadillac.

PPD personnel were eventually able to move the Cadillac and examine the floor safe and its contents. The dial on the safe was hanging down and appeared to have been broken off. The safe contained three rifles, two pistols, and a BB gun. It also contained 58 boxes of ammunition, of various calibers, including ammunition for the shotgun found on the shelf.

POLICE OFFICER INTERVIEWS:

Officer Jewell

On May 20, 2017, Officer Jewell was interviewed at PPD. PPD Detective Robert Shuffield conducted the interview for PPD. The OIS Team was present and participated in the interview. Attorney Kathleen Storm, from the Mastagni Holstedt Law Firm, was present, representing Officer Jewell. Officer Jewell was advised of his rights and voluntarily provided a statement. The interview was audio recorded. The interview commenced at 8:52 p.m. and concluded at 9:41 p.m. At the outset of the interview, the participants in the interview, including Officer Jewell, reviewed his body worn camera recording from the incident.

Officer Jewell was sworn in as a PPD officer on March 15, 2017. At the time of this incident, Officer Jewell was in the second phase of his field training and was assigned to work with Officer Batt.

Officer Jewell had some experience with firearms growing up and was familiar with shotguns. Officer Jewell and his father used to shoot shotguns together while he was growing up. Officer Jewell had also qualified with a shotgun during the police academy.

On the day of this incident, Officers Jewell and Batt were on foot patrol in the downtown area of Pleasanton when they were dispatched to the call. They were dispatched to a return call at a residence on Burgundy Drive. Officer Jewell said that he had never been to the residence before this incident.

Officer Jewell described his recollection of the information provided by dispatch regarding the call. Dispatch advised that the husband (Mr. Estill) was back at the residence, in violation of an Emergency Protective Order. Dispatch advised that there was a woman in her house with her daughter. They were upstairs locked in a bedroom. Dispatch continued to provide updated information. Dispatch advised that the suspect had moved from the garage into the house and was banging on the door. Dispatch later advised that the suspect had returned to the garage and that there was a gun safe and access to guns and a rifle. Dispatch later advised that the suspect was on the left side of the house.

Officer Jewell said that, on the way to the call, he and Officer Batt were talking about the information provided by dispatch. They discussed that they would take caution and that they would approach from the side of the house.

Once they arrived on scene Officer Cavellini parked behind them. They parked across the street, one house down from the residence at issue. Officer Jewell said that, as he approached, he noticed three cars in the driveway. He approached from the left side (west side) of the home. Officer Jewell got to the fence of the residence and stopped. He said that he was making this type of approach because of the nature of the call, and because guns may be involved.

Officer Jewell said once he was at the fence he could hear movement coming from the side of the home. He said that it sounded like someone moving a bunch of things. Officer Jewell reported what he heard to Officers Batt and Cavellini. Officer Jewell said that Officer Batt took out his hand gun and told Officer Jewell to take out "less lethal." Officer Jewell took out his Taser and made sure it was activated. Officer Jewell said this was in case the suspect did not have a weapon.

Officer Jewell said that Officer Batt opened the gate and proceeded into the side yard. Officer Jewell said that they realized the noises were coming from inside the garage. Officer Jewell said there was a side door that entered the garage. He said that Officer Batt called out to the suspect, "Police department come out; police department come out." Officer Jewell said that the suspect did not say anything and did not come out. Officer Jewell said that Officer Batt looked at him and gave him a sign that they were going to move up. Officer Jewell said that the area of the side yard they were in was very narrow between the shed and doorway that lead to the garage. Officer Jewell said it was narrow enough that he could not extend his arms all the way across.

Officer Jewell said that the three officers proceeded to the side door that leads to the garage. Officer Batt was in the lead, followed by Officer Jewell and then Officer Cavellini. Officer Jewell said that, as the three approached the door to the garage, he heard Officer Batt call out again to the suspect. Officer Jewell said that he then heard a shotgun rack noise coming from inside the garage. He said, "I was familiar with the sound of a shotgun racking. And that was the sound I heard. Immediately that put me in fear. I was scared and I believed it was a shotgun." Officer Jewell said he heard Officer Batt say, "Oh shit," and then start to turn as if he was going to run. All three officers turned and retreated.

Officer Jewell said that, as they retreated, Officer Cavellini went out the gate first, followed by Officer Jewell, and then Officer Batt. Officer Jewell said he was looking for a place for cover.

He later said he didn't believe there was any cover that would be significant on the side yard. Officer Jewell said he turned right, to the house located on the west side of the subject residence. Officer Jewell noticed a brick pillar next door and thought that would be good cover. He immediately noticed that a female resident at the neighboring house was inside the open garage. Officer Jewell said he wanted to make sure the resident remained in her house in case the suspect came out or barricaded himself in the house. Officer Jewell said he identified himself as the police and told her to open her door. Officer Jewell said that he told the resident she had to stay in the house and she told him her husband was on the side yard, which shared a fence with the subject residence. Officer Jewell said that he saw a male in the side yard and wasn't sure if it was her husband or the suspect. The woman eventually confirmed that the male was her husband.

Officer Jewell said that he began to walk to the front of the house to see what was going on and then he heard several gunshots. He didn't recall how many. When Officer Jewell got outside, he heard "shots fired" over the police radio and saw the suspect on the ground in the driveway. He saw Officer Cavellini with her firearm pointed at the suspect. Officer Jewell said that he also had his firearm out, and pointed it at the suspect, who was on the ground between two cars. Once it was clear the suspect was deceased, Officer Jewell holstered his weapon. Officer Jewell said that he only heard the shooting, but did not see the shooting incident.

Officer Cavellini

On May 20, 2017, Officer Cavellini was interviewed at PPD. PPD Detective Robert Shuffield conducted the interview for PPD. The OIS Team was present and participated in the interview. Attorney Kathleen Storm, from the Mastagni Holstedt Law Firm, was present, representing Officer Cavellini. Officer Cavellini was advised of her rights and voluntarily provided a statement. The interview was audio recorded. The interview commenced at 10:22 p.m. and concluded at 11:13 p.m. At the outset of the interview, the participants in the interview, including Officer Cavellini, reviewed her body worn camera recording from the incident.

Officer Cavellini has been a police officer with PPD since 2004. She is a Field Training Officer and was Officer Jewell's Field Training Officer during the first phase of his training.

Officer Cavellini was dispatched to the call at the residence on Burgundy Drive. She discussed the information that was provided by dispatch and why she felt that the call was a "scary situation to go into." Officer Cavellini noted that the suspect had been served with an Emergency Protective Order but was willfully ignoring the order by going back to the house. Dispatch advised that the suspect was trying to gain entry into the house and later did enter the house. Officer Cavellini noted that the wife and daughter were so frightened that they locked themselves in a bedroom. Dispatch also advised that there were firearms in the garage. As Officer Cavellini stated, the situation "had the potential, just from hearing everything, to turn bad."

Officer Cavellini said that she approached the house on the left side with Officers Jewell and Batt. Officer Batt directed them to the side gate. Once at the gate, Officer Cavellini could hear "rustling" on the side of the house. She said that Officer Batt led the way into the side yard via the gate and he was followed by Officer Jewell and then Officer Cavellini. Officer Cavellini said that she took out her firearm before proceeding into the side yard.

Officer Cavellini said that Officer Batt announced himself at least two times as he walked towards the door on the side of the garage. Officer Cavellini said that it looked like Officer Batt turned to get in front of the door to the garage and that was when she heard a noise that sounded like a shotgun being racked. Officer Cavellini heard Officer Batt say, "He's got a shotgun." Then the three officers retreated back through the gate.

Officer Cavellini said she retreated behind a Honda that was parked on the left side of the driveway. She did not know where Officer Jewell retreated. Officer Cavellini stated that Officer Batt told her he was going to get his rifle. She then heard Officer Batt moving behind her towards where the patrol cars were parked across the street.

Officer Cavellini said that she saw a neighbor outside and she tried to get him to go back in his home. She continued to watch the gate and the garage area of the subject house. Officer Cavellini said that she then saw that the garage door was beginning to open. She saw a man (later identified as Mr. Estill), emerge from under the opening garage door. Officer Cavellini said that Mr. Estill had his arm extended and was holding a gun in his right hand. She described the gun as a black handgun.

Officer Cavellini later stated that, when she first saw Mr. Estill, she said, "Show me your hands." She said that she did not know whether she gave this command before or after she saw the gun. She said the incident happened very fast. She did not think that she said anything about a gun during the incident.

Officer Cavellini said that Mr. Estill never looked around. She said it looked like Mr. Estill saw something and was going towards it. She said Mr. Estill walked "fairly quickly" down the driveway. Her view of Mr. Estill was blocked as he moved down the driveway, alongside the Jeep that was between Officer Cavellini and Mr. Estill. Officer Cavellini said that she then heard gunshots. At about the same time, she saw Mr. Estill emerge near the back side of the Jeep. She said that Mr. Estill still had the gun in his hand and he started falling towards the ground. Mr. Estill landed on his right side and rolled onto his back. Officer Cavellini said that she then saw Officer Batt on the ground, sitting "on his butt," with his feet in front of him on the street at the end of the driveway. Officer Cavellini said that Officer Batt took one more shot that struck Mr. Estill on his head. Officer Cavellini said she could see, from the nature of the head wound, that Mr. Estill was deceased.

Officer Cavellini said that it looked like Officer Batt was directly in the line of possible gunfire from Mr. Estill. She described Mr. Estill as heading straight toward Officer Batt. Officer Cavellini estimated that Mr. Estill was less than 10 feet away from Officer Batt at the time of the shooting. She also said that the driveway had a steep decline.

Officer Cavellini said that when she saw Officer Batt on the ground, she didn't know if he had been shot. She asked Officer Batt if he was okay and Officer Batt stated that he was okay. Officer Jewell then showed up and told Officer Cavellini that he was getting the neighbors into the house. Officer Cavellini said she still had her gun out and Officer Batt told her that she could holster her gun because Mr. Estill was no longer a threat.

Officer Cavellini said that, after other units arrived, she and two officers performed a quick safety check inside the home. She contacted Witness #1 and Witness #2 inside the bedroom and made sure that they were not physically hurt. She instructed them to stay in the bedroom while officers checked the backyard. Officer Cavellini also assisted other officers in locating the gun that Mr. Estill had. She said that she initially looked under the cars parked in the driveway but did not see the gun. She then noticed that the gun was partially covered by Mr. Estill's body, near his right armpit. She alerted others to the location of the gun so that its location could be documented and it could be recovered.

Officer Batt

On May 20, 2017, and continuing into the following day, Officer Batt was interviewed at PPD. PPD Detective Robert Shuffield conducted the interview for PPD. The OIS Team was present and participated in the interview. Attorney Kathleen Storm, from the Mastagni Holstedt Law Firm, was present, representing Officer Batt. Officer Batt was advised of his rights and voluntarily provided a statement. The interview was audio recorded. The interview commenced at 11:48 p.m. and concluded at 2:13 a.m. the following morning. At the outset of the interview, the participants in the interview, including Officer Batt, reviewed his body worn camera recording from the incident.

Officer Batt initially worked as a police officer with the Oakland Police Department, from 1999 to 2000. Officer Batt was hired by PPD on April 30, 2001, and has worked with PPD since.

Officer Batt has experience as a Firearms Instructor, Patrol Rifle Instructor, Taser Instructor, and Chemical Agent Instructor. Officer Batt also attended a basic SWAT school and served on the SWAT Team for five years. Officer Batt has taught active shooter response and a variety of other scenario trainings. Officer Batt has been a Field Training Officer for 11 years. During this period, he has trained around 30 trainees. Officer Batt estimated that he had responded to a couple of hundred domestic violence incidents in his career.

Officer Batt said that, on the day of the incident, he was partnered with his trainee, Officer Jewell. They were returning to their car after conducting foot patrol in downtown Pleasanton when they were dispatched to the call.

Officer Batt recalled the following details from the dispatch. The reporting party, Mr. Estill's wife, was calling from her house with her 17-year-old daughter. Mr. Estill had been served with an Emergency Protective Order the previous evening and now he was trying to break into the house. Officer Batt did not remember if he had ever been to this residence.

Officer Batt stated that he did not consider this a "routine" call. Officer Batt provided examples of a domestic violence call that may be routine. One example was if a neighbor called about yelling or a second would be if a husband or wife was calling about an argument. Officer Batt explained that this call was "heightened" because Mr. Estill had been served with an Emergency Protective Order granted by a judge. Officer Batt said, "I believe the judge has to have some sort of reasonable cause that someone is in immediate danger." Officer Batt explained that, if a person is served with an Emergency Protective Order during the evening and then is back at the house trying to break in, "I would assume he was there to do someone harm if he is trying to break in."

Officer Batt said that he discussed his heightened concern about the call briefly with Officer Jewell as they drove to the call.

Officer Batt stated that, as they got closer to the residence, he remembered dispatch providing further information. Dispatch advised that the wife was locked in a bedroom and she could hear Mr. Estill in the garage trying to break into the house. Dispatch then advised that the wife reported that Mr. Estill was in the house and upstairs. Later, dispatch advised that Mr. Estill was back in the garage and possibly the side yard, throwing things around and causing some kind of raucous.

Officer Batt said that, when they arrived on scene, they parked on the corner so they could make a safe approach to the house. This was approximately two houses away from the residence at issue. Officer Batt believed that Officer Cavellini parked across the street or behind them. Upon parking, the three officers exited their patrol cars and walked diagonally towards the house in question.

Officer Batt said that, as they approached the residence, the side gate and the garage were closed. Officer Batt said that the front door to the residence is on the right side of the house (east). Officer Batt checked the front door of the residence while Officers Jewell and Cavellini stayed at the side gate. Officer Batt said he wanted to make sure Mr. Estill did not move from the side yard. Once the east side was visually checked, he went back with the other officers near the gate.

Officer Batt said there was a Jeep and two other cars in the driveway. Officer Batt said they had been concerned about Mr. Estill possibly trying to leave in a vehicle. But dispatch advised that keys to the cars were locked in the bedroom with the wife and daughter. Officer Batt also recalled that dispatch advised that there was a gun safe in the garage and there was a car parked close to the safe. Dispatch advised that it was unknown if Mr. Estill had access to the safe and that the previous night, the police did not seize the guns.

Officer Batt said that, because of these facts, he decided to draw his gun from his holster and make entry into the side yard, through the west side gate. Officer Batt told Officer Jewell to use his Taser so they had non-lethal and lethal force available to them and the appropriate amount of force could be used to gain compliance.

Officer Batt said he went in through the side yard first and Officer Jewell went behind him. Due to the nature of the call and the experience level of Officer Jewell, Officer Batt decided he would take the front position. Officer Batt described the side yard as "congested." He could see a shed and a narrow pathway between the shed, on the left, and the side of the house, on the right. Officer Batt said that he was concerned that someone could attack them.

Officer Batt said that, after they entered the side yard, he yelled out, "Police, police department. Come out now." Officer Batt said he could hear that somebody was there because he could hear movement. He thought the noises were coming from the garage. He could see that the side door to the garage was open. Officer Batt stated that as he moved down the side yard he could hear that someone was in the garage. Officer Batt stated, "What was going on through my mind at that moment was: He knows I'm here; I challenged him; He's not saying anything; He's not doing what dispatch described, which was kicking things, hitting, or breaking things . . . I was thinking, is he getting the guns out of the gun safe?"

Officer Batt said that he began to move into a position that would allow him to see inside the garage, through the side door. Officer Batt said that he had his gun up, at eye level. He said that suddenly he saw the front of a shotgun barrel coming around the corner. Officer Batt said that the shotgun was pointed right at his face, from only a few feet away. Officer Batt said that he retreated as fast as he could. He said that he thought about shooting at the suspect through the garage wall but decided against it because he did not know if the suspect was alone in the garage and he thought his shots might be ineffective going through a wall.

Officer Batt remembered telling the other officers that the suspect had a shotgun. He also heard Officer Cavellini say on the police radio that the suspect was armed with a shotgun.

Officer Batt said all three officers retreated through the gate. He said that he wanted to find a place where he had cover, but where he could still keep his eyes on the house and gate to the side yard. He was hoping to come up with a plan so that officers could attempt to negotiate with the suspect or, if necessary, react if the suspect went into the house and tried to attack his wife and daughter. Officer Batt said that he yelled out, "Come out now." There was no response.

Officer Batt said he was hoping that Mr. Estill would come out, without a shotgun, and give up. When Mr. Estill didn't respond, or come out, Officer Batt was concerned that Mr. Estill could be moving to gain a tactical advantage. Officer Batt said that he debated with himself at that point about what he should do. He wanted to keep his eyes on the house and try to determine what Mr. Estill was doing. Officer Batt said that he was considering that, if Mr. Estill went back into the house, he and the other officers might have to make an entry into the house to save a life. Officer Batt said that he moved away from the gate and noticed Officer Cavellini behind the front of one of the cars in the driveway, covering the front of the house. Officer Batt said he did not know where Officer Jewell went.

Officer Batt said that he decided to get his patrol rifle from the police vehicle. He explained that a handgun is a defensive weapon and it is appropriate to defend yourself against an attack. He further explained that a handgun is not the most effective tool when confronting a suspect known to be armed. Officer Batt said that a patrol rifle is better in such a scenario because it is more accurate and powerful than a handgun.

Officer Batt said that he ran to the police vehicle and retrieved the patrol rifle. He then charged the rifle so it was loaded and flipped up the rear sight, as he moved back towards the driveway. As Officer Batt was approaching the driveway, he heard Officer Cavellini say that the garage door was opening. Officer Batt said that he did not know what to expect at that point. He was concerned because he did not know whether Mr. Estill had more firearms in the garage, other than the shotgun. Officer Batt said that he was also concerned because, if he could not see inside the garage when it opened, Mr. Estill could be in a position of advantage, and could shoot at the officers outside.

Officer Batt said that he moved to the center of the driveway so that he could see inside of the garage as the garage door opened. Officer Batt then saw Mr. Estill come through the threshold of the garage door. Officer Batt said that Mr. Estill was running towards him with a handgun in his

hand, and that the gun was pointed at Officer Batt. Officer Batt said that he began to yell a command for Mr. Estill to “get on the fucking ground,” but before he could complete the sentence, Officer Batt fired four or five times directly at Mr. Estill. Officer Batt explained that Mr. Estill was running directly towards him, closing the distance to within 10 feet. Officer Batt said that he fired because he feared that Mr. Estill was about to shoot and kill him.

Officer Batt said that, as he fired, he was backpedaling in an attempt to put some distance between him and Mr. Estill. He said that, as he back pedaled, he fell onto his back. Officer Batt said that he was in a dangerous situation, because he was on the ground in the street, with nothing to hide behind. Officer Batt said that he wasn't sure if Mr. Estill shot at him. Officer Batt heard gunshots when he was firing but he wasn't sure if Mr. Estill was also firing at the same time.

Officer Batt said that he sat up and could see that Mr. Estill was on the ground between two cars, facing him. He said that he could not see Mr. Estill's hand and he didn't know whether Mr. Estill was still holding the gun. Officer Batt said that he aimed at Mr. Estill and fired one round. He said that he immediately saw that the shot hit Mr. Estill and that Mr. Estill was no longer a threat. Officer Batt explained that he fired the last shot because, although Mr. Estill was on the ground, Officer Batt believed that Mr. Estill could still be a threat. Officer Batt said, “He fell down but I'm on my back completely exposed and I'm thinking, if I just hit him in the knee . . . he might just shoot Lisa or shoot this way or shoot me and so I came up, I still perceived him to be a threat.”

Officer Batt said that he believed he had no other options other than to shoot Mr. Estill. Officer Batt explained: “He was moving rapidly at me. He was at the threshold of the garage door and closed the distance to like 10 feet and if you get to five feet there is no missing . . . I didn't want to get shot. He was right there. There was no option but to shoot until he was not a threat. All he had to do is get one lucky shot on me, on Lisa, on the trainee.”

Officer Batt noted that Mr. Estill never gave any indication that he was going to obey commands from the police. Officer Batt stated, “I told him, police come out now, and he didn't. He pointed a shotgun at me. I told him to come out now and give up and he didn't and then I said get the fuck on the ground or I wanted to and he just charged at me. So, no he did the exact opposite of obeying commands.” Officer Batt said that he never heard Mr. Estill say anything during the incident.

CIVILIAN WITNESS STATEMENTS:

Witness #1

Witness #1, Mr. Estill's wife, was interviewed by police later in the day after the shooting incident. Witness #1 described Mr. Estill's drinking problem and the events that took place early in the morning of May 20, 2017, as described in the Factual Summary, above.

Witness #1 provided further information about events later the same day, leading up to the officer involved shooting. Witness #1 said that sometime after 11:00 a.m., she was inside the residence and looked outside to see Mr. Estill exiting a taxi cab. Her daughter, Witness #2, was also inside

the residence. Witness #1 said that Mr. Estill began pounding on the doors to the residence, stating that he wanted money to pay the cab driver. Witness #1 told her daughter that she was going to go outside in an attempt to convince Mr. Estill to leave. She told her daughter to lock the door behind her and not to go outside. Witness #1 went outside and tried to calm Mr. Estill down. Witness #1 said that Mr. Estill appeared intoxicated.

Witness #1 said that Mr. Estill began walking around the exterior of the house and testing the doors to see if they were open. Witness #1 followed and tried to calm him down. Witness #1 said that Mr. Estill was agitated and mad about the Emergency Protective Order. Mr. Estill told her that he just wanted to go to bed, but at the same time, he said that he wanted some money to go get a bottle of alcohol. Witness #1 said that, when they were at the back kitchen door, Mr. Estill grabbed her and said, "You know I'll love you to the end, you and I to the end. I'm going to go get the gun." Mr. Estill then began walking towards the garage where the gun safe was located. Witness #1 said that she ran in the opposite direction, towards the front door. Her daughter unlocked the front door and let her in. Witness #1 locked the front door behind her and saw that her daughter was already calling the police. Witness #1 and her daughter went upstairs to the master bedroom and locked themselves inside, as Witness #1 was talking with the police dispatcher.

Witness #1 said that, at some point, Mr. Estill made it inside the house and began banging on the bedroom door, telling her to let him in and that he wasn't going to hurt them. Witness #1 later heard Mr. Estill walking throughout the house. Witness #1 said that later she heard approximately four gunshots in rapid succession. Witness #1 said that she was scared because she was thinking that Mr. Estill had a gun and that he would come back upstairs to "get us." She said that her daughter was crying because she thought that Mr. Estill had just killed a police officer. Witness #1 said that she only heard gunshots and did not see the shooting incident.

Witness #2

Witness #2, Mr. Estill's daughter, was interviewed by police later in the day after the shooting incident. Witness #2 described the events leading up to the shooting incident. She said that she was inside the house when Mr. Estill arrived by taxi. She said that her mother went outside to pay the taxi driver and Mr. Estill walked to the back of the house and tried to get inside. Witness #2 said that she was watching Mr. Estill from an upstairs bedroom window. She saw her mother following Mr. Estill around, trying to calm him down. Witness #2 said that she later heard her mother knocking on the front door, so she went downstairs and let her in.

Witness #2 said that she and her mother went upstairs and locked themselves in the master bedroom. They called the police because they were afraid and Mr. Estill was not supposed to be at the residence. She said that she heard banging on the sides of the house and in the garage. Eventually she heard Mr. Estill inside the house. He came to the master bedroom door and told her mother to open the door. Her mother refused and Mr. Estill said that he just wanted to say goodbye and that he wasn't doing anything wrong.

Witness #2 said that it sounded like Mr. Estill went back downstairs and then returned to the master bedroom door. He was pushing on the door trying to get inside while Witness #2 and her mother pushed back on the door to hold it shut. She said that when the police arrived, she heard Mr. Estill say, "Cops come get me" and she heard him yelling at the police. She later heard what she estimated to be five to 10 gunshots. The police eventually came inside and checked on Witness

#2 and her mother. Witness #2 said that she only heard gunshots and did not see the shooting incident.

Other Witnesses

The police conducted an extensive canvas of the residences around the shooting scene and interviewed numerous persons. None of them told police that they witnessed the shooting incident. Many witnesses heard gunshots and some observed the scene after the shooting occurred.

VIDEO EVIDENCE:

The OIS Team reviewed all available video evidence as part of its investigation. The most significant video footage was recorded by the body worn cameras of Officers Batt and Cavellini. The footage contains both video and audio recordings.

Officer Batt's Body Worn Camera Footage

Officer Batt's footage begins with him seated in the passenger seat of the police car, travelling to the scene. Upon arrival, Officer Batt approaches the residence and directs Officer Jewell to watch the gate next to the garage as Officer Batt checks out the front of the residence. Officer Batt then advises dispatch to advise the occupants of the house that the police will be entering the side gate.

The footage depicts Officer Batt enter the side gate, with his pistol in his right hand. Officer Batt stops upon passing the threshold and loudly states, "Police Department, come out now." A few moments later he again says, "Police." Officer Batt then proceeds along the wall of the garage, toward the open side door to the garage. Sounds can be heard, consistent with Officer Batt's later description of the sound of moving objects from within the garage. Upon nearing the doorway, Officer Batt again loudly states, "Police Department, come out now."

As Officer Batt turns towards the open door, the interior of the garage is visible. The footage depicts what looks like the barrel of a shotgun emerge into view from the interior of the garage. The barrel appears to be pointed through the doorway, in the general direction of Officer Batt. Officer Batt points his pistol toward the shotgun barrel, and then almost immediately he begins to retreat back towards the gate. While retreating, Officer Batt utters two expletives and then announces, "He's got a shotgun."

Officer Batt runs quickly back through the gate and down the driveway. The gate closes behind the retreating officers. Officer Batt then turns around and approaches the closed gate. He yells, "Come out now." Officer Batt remains in the driveway, in view of the gate. Officer Batt and other officers verbally direct citizens to get back in their houses. Officer Batt then tells Officer Cavellini to cover the house while he goes to get his rifle. Officer Batt runs to the police car and retrieves his rifle. Officer Batt runs back towards the driveway as he charges the rifle.

As Officer Batt approaches the driveway, Officer Cavellini yells, "Show me your hands." Officer Batt yells what sounds like, "Hands up. Get on the fucking . . ." Officer Batt then fires what sounds like five shots, in rapid succession. The footage depicts Officer Batt falling backwards onto the ground. Officer Batt utters "Fuck." Approximately three seconds after the initial shots,

Officer Batt fires a single shot. Officer Batt gets up off the ground, again utters “Fuck,” and moves quickly to the area where Officer Cavellini is positioned on the left side of the driveway. Officer Cavellini is pointing her pistol towards Mr. Estill. Officer Cavellini asks if Officer Batt is okay and he says that he is.

During the portion of the footage when Officer Batt runs towards the driveway with his rifle, and continuing until the initial gunshots, his camera view primarily encompasses the street and the portion of the driveway nearest the street. The camera view does not include Mr. Estill or the garage door area. After the initial shots, and after Officer Batt falls backwards onto the ground in the street, the camera view briefly depicts the driveway area and Mr. Estill. In this view, Officer Batt’s right leg and foot are visible, extended in front of him on the ground. Officer Batt appears to be located on the street, at the right edge of the driveway, with his foot close to the beginning of the driveway. Mr. Estill appears to be lying on the ground in the driveway, between the two parked cars on the right side of the driveway. Mr. Estill’s head and upper body are closest to Officer Batt. The distance between Mr. Estill and Officer Batt appears to be less than a car length.

After this brief camera view of Mr. Estill and the driveway, the camera view then moves to the curb area at the right side of the driveway. At the time of the final shot, Mr. Estill is not in view of the camera. Immediately after the final shot, the camera view again includes Mr. Estill. He appears to be lying in the same area of the driveway with a visible gunshot wound to the head.

Later in the footage, Officer Batt speaks briefly with one of the officers arriving on scene. Officer Batt tells the officer, “He just came at me with a pistol.” Officer Batt later tells the officer, “He put a shotgun in my face and then he ran at me with a pistol.”

Officer Cavellini’s Body Worn Camera Footage

Officer Cavellini’s footage begins with her seated in the driver’s seat of the police car, travelling to the scene. Her footage captures essentially the same events described above, with respect to the approach through the side gate and the retreat back to the driveway after Officer Batt announces that the suspect has a shotgun.

When Officer Batt tells Officer Cavellini that he is going to get his rifle, Officer Cavellini takes a position on the left side of the driveway, next to a parked car in the driveway. The car is backed in on the left side of the driveway, facing out towards the street. Officer Cavellini is pointing her pistol toward the gate. Officer Cavellini then moves to the front of the parked car. Her camera view briefly depicts the lower left corner of the closed garage door and the bottom portion of an adjacent car parked in front of the left side of the garage door. The footage then shows the garage door beginning to open. Officer Cavellini advises dispatch, “Garage door is opening.” Officer Cavellini then moves back to the left side of the parked car where she initially took cover, pointing her pistol towards the garage door area.

Officer Cavellini yells loudly, “Show me your hands.” Officer Batt yells, “Hands up.” Officer Cavellini again yells, “Show me your hands.” Immediately thereafter, Officer Batt begins firing. Officer Cavellini advises dispatch, “Shots fired. Shots fired.” Officer Batt then fires one final shot.

During the portion of the footage when the garage door starts to open, and continuing until the initial gunshots, Officer Cavellini's camera view primarily encompasses the hood and windshield of the parked car in front of her. The camera view does not include Mr. Estill or the garage door area. During the initial shots, the edge of the camera view depicts officer Batt with his rifle. Officer Batt is initially standing in the street, at the edge of the driveway. Officer Batt then falls onto his back in the street. The camera view then briefly depicts Mr. Estill. He is positioned on the ground in the driveway, lying on his right side. His head is towards the street. His head and torso are positioned beyond the bumpers of the parked cars on either side of him, towards the street. The camera view then briefly depicts Officer Batt, seated on the street with his torso raised and pointing his rifle towards Mr. Estill. At the time of the final shot, neither Mr. Estill nor Officer Batt are in the camera view.

After the shooting, Officer Cavellini remains in the driveway area and provides instructions to responding officers. Later in the footage, Officer Cavellini speaks with one of the officers who came to the driveway area. Officer Cavellini tells the officer, "He came outside the garage with his gun out." She later tells the same officer, "He came running out with the gun in his hand, pointing it at Keith, who was right out front." Officer Cavellini then points out the location of the gun, underneath Mr. Estill's armpit. In later footage, Officer Cavellini enters the house and checks on the well-being of Mr. Estill's wife and daughter.

Officer Jewell's Body Worn Camera Footage

Officer Jewell's footage begins with him seated in the driver's seat of the police car, travelling to the scene. His footage captures essentially the same events described above, with respect to the approach through the side gate and the retreat back to the driveway after Officer Batt announces that the suspect has a shotgun. After retreating, Officer Jewell runs into the neighbor's garage and directs a woman into the house. He advises the woman, "He's got a gun." The footage then ends. Officer Jewell's body camera was not recording during the shooting incident. In his interview with investigators, Officer Jewell said that he did not know why his body camera stopped recording. He said that later, when he was putting up crime scene tape, he noticed that the battery pack light on the camera was off and that the cord from the battery pack to the camera was tangled up.

Other Video Evidence

The OIS Team reviewed other video evidence, none of which depicted the shooting incident. The police searched for video surveillance from nearby residences, but found none that encompassed the shooting scene. After the shooting, one neighbor recorded video of the scene with his cell phone, while standing down the street. The cell phone recording did not include the shooting incident. The OIS Team reviewed dash cam video recordings relating to Mr. Estill's arrest by the CHP on May 19, 2017, as well as video recordings at the county jail depicting Mr. Estill going through the booking process. These recordings were consistent with the reports that Mr. Estill was intoxicated and he had no observable injuries.

AUTOPSY RESULTS:

On May 22, 2017, Dr. Paul Herrmann performed an autopsy upon the body of Mr. Estill at the Alameda County Coroner's Bureau in Oakland. Dr. Herrmann determined the cause of death to be multiple bullet wounds.

Dr. Herrmann discovered two bullet wounds. One was a bullet wound which entered the lower right side of the chest. The bullet caused severe damage to the right lung, heart, and liver. Bullet fragments associated with this gunshot were recovered from the twelfth thoracic vertebra. The other was a bullet wound which entered the right anterior-parietal area of the skull, approximately 4-1/2 inches above the right ear. The bullet caused numerous skull fractures and massive damage to the brain.

A sample of the decedent's blood was submitted for testing. The toxicology report described a blood ethyl alcohol level of 0.2 grams %.

APPLICABLE CALIFORNIA LAW:

The sole question addressed by the District Attorney's investigation was whether PPD Officer Batt violated any applicable laws. Whether or not the officer is criminally liable depends upon (1) the facts of the case, and (2) whether these facts constitute any criminal violations under existing statutory law. The quality of the evidence, if any, showing a criminal act or acts must be measured against the standards used by the District Attorney's Office in deciding whether or not to charge anyone with a crime. The California District Attorney's Uniform Crime Charging Standards Manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, believes there is evidence that proves beyond a reasonable doubt, that the accused is guilty of the crime to be charged. Additionally, the charging standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

The California Penal Code provides:

Section 187: Murder is the unlawful killing of a human being or fetus with malice aforethought.

Section 188: Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately done with knowledge of the danger to and with conscious disregard for human life.

Section 192: Manslaughter is the unlawful killing of a human being without malice.

Section 196: Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either –

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

Section 197: Homicide is also justifiable when committed by any person in any of the following cases:

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

Section 199: The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Any killing of a human being at the hands of another is a homicide. A homicide may be justifiable or criminal depending upon the circumstances. It is justifiable if done while resisting a violent felony or in self-defense or in defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he or she actually and reasonably believed that he or she or another was in imminent danger of great bodily injury or death. (*See People v. Williams* (1977) 75 Cal. App. 3rd 731.) In protecting oneself or another, a person may use all force

which he or she believes reasonably necessary, and which would appear to a reasonable person, in similar circumstances, to be necessary to prevent the injury, which appears imminent. (*See* CALCRIM 505.) In order to justify killing another person in self-defense or in the defense of another, actual danger of death or great bodily injury is not necessary. (CALCRIM 505.)

Pursuant to CALCRIM 505:

A homicide is justifiable and not unlawful when committed by a person who:

- (1) Reasonably believed he or she or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) Reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) Used no more force than was reasonably necessary to defend against that danger.

Pursuant to CALCRIM 507:

A homicide by a peace officer is justifiable and not unlawful when:

- (1) The killing was committed while overcoming actual resistance to some legal process or while performing any other legal duty;
- (2) The killing was necessary to accomplish one of those legal purposes; and
- (3) The officer had probable cause to believe that someone posed a threat of death or serious bodily harm, either to the officer or to others.

Probable cause exists to believe that someone poses a threat of death or serious bodily harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or serious bodily harm to another. (CALCRIM 507.)

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. (CALCRIM 505 and 507.)

If the killing was not justifiable as outlined above, or excusable as in an accidental killing, only then would it be criminal. Moreover, if an act is committed by reason of a mistake of fact which disproves any criminal intent, it is not a crime. Therefore a person is not guilty of a crime if he or she commits an act under an actual belief in the existence of certain facts and circumstances which, if true, would make the act lawful. (*See* CALCRIM 3406.)

In the present case, to establish criminal liability, the evidence must show beyond a reasonable doubt that Officer Batt killed Mr. Estill and the officer did not reasonably believe that he or another was in imminent danger of death or great bodily injury.

CONCLUSION:

The OIS Team conducted a separate, parallel investigation and review of the facts and circumstances leading to the death of Mr. Estill.

The credible and admissible evidence shows that Officer Keith Batt acted in what he actually and reasonably believed to be self-defense and defense of others. The examined evidence does not support the contention that the shooting of Mr. Estill was criminal. At the time he fired the six gunshots, Officer Batt had reason to believe that Mr. Estill was about to shoot him and his fellow officers.

At the time he responded to the call, Officer Batt was informed that Mr. Estill was at the residence in violation of an Emergency Protective Order. He was also informed the Mr. Estill's wife and daughter had locked themselves inside a bedroom in the house and that Mr. Estill may have access to firearms in the garage. After proceeding through the side gate, Officer Batt twice announced clearly and loudly, "Police Department, come out now." Mr. Estill did not comply.

As Officer Batt attempted to look inside the garage through the open side door, he was confronted with the barrel of a shotgun. The shotgun barrel is visible on Officer Batt's body worn camera footage. Moreover, officers later recovered the shotgun from a shelf near the side door. Officer Batt did not fire his weapon into the garage. Rather, he retreated with the other officers.

After retreating through the gate, Officer Batt again yelled out for Mr. Estill to "come out now." Mr. Estill did not comply. As Officer Cavellini was covering the gate and driveway area, Officer Batt ran to retrieve his rifle. As Officer Batt was running back to the front of the driveway area, Officer Cavellini saw the garage door begin to open. Officer Cavellini said that she saw Mr. Estill emerge from under the opening garage door. She said that Mr. Estill had his arm extended and was holding a black handgun. She yelled twice for Mr. Estill to "show me your hands." She said that Mr. Estill headed straight toward Officer Batt. Officer Cavellini said that her view of Mr. Estill was blocked when he passed behind one of the parked cars. She said that as she heard gunshots, she saw Mr. Estill emerge near the back of the parked Jeep, and that Mr. Estill still had the gun in his hand as he started falling to the ground.

Officer Batt said that he moved to the center of the driveway so that he could see inside of the garage as the garage door opened. He said that he saw Mr. Estill come through the threshold of the garage door and that Mr. Estill was running towards him with a handgun in his hand. Officer Batt said that the gun was pointed at him. Officer Batt yelled "Hands up" and started to direct Mr. Estill to get on the ground. Officer Batt explained that Mr. Estill was running directly towards him, closing the distance to within 10 feet. Officer Batt said that he fired because he feared that Mr. Estill was about to shoot and kill him.

Officer Batt said that, as he fired, he was backpedaling and fell onto his back. Officer Batt said that he sat up and could see that Mr. Estill was on the ground, but he could not see Mr. Estill's hand and he didn't know whether Mr. Estill was still holding the gun. Officer Batt said that he believed that Mr. Estill was still a threat, because if Mr. Estill was only wounded, he could still shoot at Officer Batt or the other officers on scene. Approximately three seconds after the initial shots, Officer Batt fired one more shot that struck Mr. Estill in the head.

Officer Batt's and Officer Cavellini's accounts of the incident are consistent with each other and are largely corroborated by other evidence. After the shooting, the police recovered a black BB pistol near Mr. Estill's armpit. The BB pistol looked like an actual firearm. It was not unreasonable for Officer Batt to believe that Mr. Estill was pointing a real firearm.

Neither of the officers' body worn camera recordings contained a view of Mr. Estill or his actions prior to the initial shots. However, the footage corroborates much of their accounts. Officer Cavellini's footage shows the garage door begin to open and records the commands she yelled at Mr. Estill. Her footage also shows that Mr. Estill fell to the ground beyond the edge of the parked cars, towards the street, and indicates that Mr. Estill moved rapidly down the driveway towards Officer Batt. Her footage also shows portions of Officer Batt's positioning during the incident, consistent with his statements. Officer Cavellini's footage also records her brief recitation of what happened, shortly after the incident. She told another officer, "He came running out with the gun in his hand, pointing it at Keith, who was right out front."

Officer Batt's footage shows that he was positioned in the street, near the driveway, just before the shooting. It also records his command to Mr. Estill to get his hands up. Officer Batt's footage also shows Mr. Estill's position on the ground after the initial shots, and establishes that he had moved towards Officer Batt. It also shows that Officer Batt was exposed in the street, and in the line of possible fire from Mr. Estill. Officer Batt's footage also records his brief recitation of what happened, shortly after the incident. He told another officer, "He put a shotgun in my face and then he ran at me with a pistol."

The physical evidence shows that Officer Batt initially fired five shots. Four shots hit parked cars and one shot struck Mr. Estill in the chest. The autopsy findings establish that the shot caused severe damage to the lung, heart, and liver, and was a fatal shot. The sixth and final shot struck Mr. Estill in the head and was also a fatal shot.

This evidence supports the conclusion that Officer Batt actually and reasonably believed that Mr. Estill posed an immediate threat of death or serious harm to Officer Batt and the other officers. Officer Batt was lawfully at the residence attempting to detain Mr. Estill for a violation of the Emergency Protective Order. Mr. Estill did not respond to police commands and brandished a shotgun towards Officer Batt. As Mr. Estill came out of the garage, he advanced quickly towards Officer Batt, pointing what looked like a pistol at him. It was reasonable for Officer Batt to believe that Mr. Estill could have shot and killed Officer Batt and/or Officer Cavellini. Officer Batt's five shots were a reasonable response to the threat of deadly force.

After Mr. Estill fell to ground, Officer Batt was still exposed on his back, in the street, and was in the line of possible fire from Mr. Estill. Officer Batt could not safely determine whether Mr. Estill still had the gun or was capable of firing at the officers. Officer Batt did not know that Mr. Estill already had a fatal gunshot wound. Seconds later, Officer Batt fired a sixth shot that struck Mr. Estill in the head and made it apparent that Mr. Estill was no longer a threat to the officers. It was reasonable for Officer Batt to believe that Mr. Estill still posed a deadly threat to the officers and his final shot was a reasonable response to the threat.

Accordingly, in applying the California District Attorney's Uniform Crime Charging Standards to the present case, there is insufficient evidence to support a criminal prosecution against Officer Keith Batt, and this office contemplates no further action in this case.

By: Chris Infante
Deputy District Attorney

Approved By: Nancy E. O'Malley
District Attorney

Dated: August 14, 2018