

REPORT ON THE FATAL SHOOTING OF
PHILLIP WATKINS
ON FEBRUARY 11, 2015



JEFFREY F. ROSEN
DISTRICT ATTORNEY

PREAMBLE.....	3
FACTUAL SUMMARY.....	3
STATEMENT OF FACTS.....	4
LAW ENFORCEMENT OFFICER STATEMENTS.....	4
STATEMENT OF OFFICER RYAN DOTE.....	4
STATEMENT OF OFFICER JAMES SOH.....	6
STATEMENT OF OFFICER ANTHONY KILMER.....	8
STATEMENT OF RAYMOND MCNAIR.....	9
STATEMENT OF OFFICER DANIEL AKERY.....	10
STATEMENT OF SERGEANT STEVEN GUGGIANA.....	10
STATEMENT OF SERGEANT BERNARDO LOPEZ.....	11
STATEMENT OF OFFICER JONATHAN BYERS.....	12
STATEMENT OF OFFICER KEVIN PETERS.....	12
STATEMENT OF OFFICER DANIEL GUERRA.....	12
STATEMENT OF OFFICER CASSADY ELISCHER.....	13
STATEMENT OF OFFICER CARL PURNELL.....	13
STATEMENT OF SERGEANT PAUL JOSEPH.....	13
STATEMENT OF OFFICER HECTOR VASQUEZ.....	14
STATEMENT OF OFFICER RUBEN CHAVEZ.....	14
STATEMENT OF OFFICER WILLIAM LEYS.....	15
STATEMENT OF OFFICER CARLOS GARIBAY.....	15
STATEMENT OF OFFICER JARROD VALDES.....	15
CIVILIAN STATEMENTS.....	16
STATEMENT OF DEVINY BUCHANAN.....	16
STATEMENT OF SYLVIA “FAYE” BUCHANAN.....	19
STATEMENT OF YANCEY SILVAS.....	22
STATEMENT OF SHARON WATKINS.....	23
STATEMENT OF ERICA MENCHACA.....	23
STATEMENT OF DORA DELFIN.....	23
STATEMENT OF THU HO.....	24
STATEMENT OF AN HO.....	24
STATEMENT OF PABLO ORTIZ.....	24
STATEMENT OF ERNESTO DIAZ.....	25
STATEMENT OF BENIGNO SILVA.....	25
STATEMENT OF PETRA BECERRA.....	25
STATEMENT OF LEROY RAMIREZ.....	25
STATEMENT OF VERONICA RODRIGUEZ.....	26
911 CALL.....	26
MEDICAL EXAMINER.....	27
PHOTO OF KNIFE.....	28
RELEVANT LEGAL PRINCIPLES.....	28
ANALYSIS.....	30
CONCLUSION.....	31

PREAMBLE

The summary of this incident is drawn from reports prepared by the San Jose Police Department and submitted to this office by case agents, Detective Raul Corral and Sergeant Bertrand Milliken. The submission included narrative reports documenting interviews of the involved officers and civilian witnesses, audio recordings of those interviews, and crime scene details. This review is being conducted pursuant to the Officer-Involved Guidelines adopted by the Santa Clara County Police Chief's Association on October 11, 2012.

FACTUAL SUMMARY

On February 11, 2015, at 5:01 p.m., a San Jose Police Department dispatcher advised San Jose Police Department officers of an unknown person with a knife inside the residence of 1377 Sherman Street in the City of San Jose. The unidentified reporting party called the 911 Communications Dispatch Center and stated there was a crazy guy with a knife "threatening to kill my family" at 1377 Sherman Street and asking officers to "please come fast." The reporting party told the 911 operator that he did not know who the suspect was and the suspect was inside the reporting party's residence. The reporting party further stated he was with his kids behind a locked door before hanging up the phone. Multiple San Jose Police Department officers immediately responded to the scene.

What the officers did not know was that the caller was Phillip Watkins, who was making a false report to 911 after telling his ex-fiancée Deviny Buchanan and his ex-fiancée's mother Sylvia Buchanan that he wanted to die. Sylvia Buchanan was so concerned by Watkins' statements and actions that she called a suicide hotline to try to get Watkins to talk with a counselor. As she was on the phone with a mental health worker, Watkins was making his false 911 call describing an armed assailant in order to get an immediate police response. While this was happening, Deviny Buchanan was removing all the knives from the first floor of the house and locking her kids inside a car to keep them safe from Watkins. Watkins told Deviny Buchanan that he was going to go after the police so that they could "handle it." She understood this to mean that he wanted the police to shoot him. Watkins armed himself with a knife he found upstairs and went outside where the first police officers were arriving.

San Jose Police Officers James Soh #4075 and Ryan Dote #4006 were the first officers to arrive at 1377 Sherman St. at approximately 5:03 p.m. Upon arrival, Officer Soh parked his patrol car several houses away in front of 1357 Sherman St. and both officers got out of the car. They saw two women, Deviny Buchanan and Sylvia Buchanan and one man, Phillip Watkins, outside the residence at 1377 Sherman St.

Watkins looked at them and started walking in their direction. Officer Dote could see an object in Watkins' right hand. Officer Dote identified the object as a knife as Watkins continued to walk towards them. Watkins held the knife with his arm outstretched towards the officers.

Watkins then began to run full stride towards Officer Soh and Dote while maintaining direct eye contact with them. Officers Soh and Dote commanded Watkins to stop, and drop the knife. Watkins ignored the officers and continued to run towards them with the knife.

Fearing for their safety, Officers Soh and Dote fired their department issued guns, hitting Watkins multiple times. Watkins fell to the ground. Officers Soh and Dote approached Watkins as other officers began to arrive, kicked the knife that he was still holding away, took him into custody, and began providing medical care to him. Watkins was transported to Valley Medical Center via ambulance for further treatment of his injuries. Watkins was pronounced dead at approximately 6:24 p.m.

Afterwards, Watkins' roommate Yancey Silvas talked with police about how Watkins would talk about killing his girlfriend and then killing himself. When asked why Watkins would have run at the police the way he did, Silvas said, "he probably wanted to get shot." Silvas talked about the fact that Watkins wanted to die, but that "he just couldn't do it himself."

STATEMENT OF FACTS

LAW ENFORCEMENT OFFICER STATEMENTS

STATEMENT OF OFFICER RYAN DOTE

Officer Ryan Dote has been an officer with the San Jose Police Department for eight years, and was assigned to the police department's gang suppression unit. Officers Dote and Soh have been partners since 2013, and are comfortable communicating to one another in high risk situations. Officer Dote was not Crisis Intervention Team (CIT) trained.

On February 11, 2015, he and Officer Soh were together, on duty, in a marked patrol car when they received the dispatch notification about an armed man in a residence. Officer Dote thought it could be a home invasion robbery because there had been a lot of those lately. Additionally, a lot of home invasion robberies are committed by gang members, and the area of the call was a known gang area. Officer Dote and his partner, Officer Soh, thought they would help with the call since they were in the area. Officer Soh drove while Officer Dote rode as passenger. They did not turn on their lights and sirens as they drove there because they were so close to where the call was reported. Officer Soh parked the patrol car three or four houses north of the address of the call because they did not

have any updates on the call, and it also gave them a tactical advantage to park away from the house. Officer Dote asked for a description of the suspect but did not get one. Officers Dote and Soh were the first officers on the scene.

Officers Soh and Dote got out of their patrol car and stepped onto the sidewalk. While they were on the sidewalk, Officer Dote saw an African American male in a red shirt (later determined to be Phillip Watkins) talking to an African American female near 1377 Sherman St. They did not know how or if Watkins was related to the call that came in. While the officers began to make a plan, Watkins turned toward them. Officer Dote did not know if Watkins was involved with the call or if he was just a random person on the street. Officer Dote saw Watkins reach his right arm out and there was something in his right hand. Officer Dote could not tell what the object in Watkins' hand was until he got closer, when he could tell it was a knife. Then Watkins walked toward the officers.

Watkins fixated on Officers Soh and Dote as he walked toward them. Watkins approached first by walking then he sped up to a run. Officer Dote stated he did not have time to try to get an officer with a less than lethal projectile to the scene. When Watkins started running at the Officers, Officer Dote had his pistol unholstered at the low ready position (pointed downward). Then Watkins began sprinting at the Officers. Officer Dote heard a female yell out to Watkins to stop, "you don't have to do this."

Officers Dote and Soh shouted at Watkins to stop and drop the knife. Watkins was still sprinting with his right arm outstretched towards the officers and holding the knife. Based on Officer Dote's training and experience someone within 21 feet holding a knife can be a deadly threat. Officers Dote and Soh took a few steps back with their guns still at the low ready position. Officer Dote estimated the knife blade to be three to four inches long.

Officer Dote described Watkins' eyes as being locked on them, while running at the officers with the knife. Watkins was not saying anything or responding to anything the woman behind him was shouting. When Watkins was what Officer Dote estimated to be 20 feet away from the Officers, Officer Dote fired his nine millimeter pistol at Watkins.

Officer Dote explained that his training is to shoot until the threat is neutralized. Officer Dote indicated that he fired about six or seven rounds at Watkins before he dropped to the ground. Watkins still had his knife in his hand when he fell to the ground.

Officer Soh advised dispatch that Watkins was charging at them and that they fired shots at him but the scene was not yet secure. Watkins was still holding the knife in his right hand.

Officer Kilmer and another officer arrived at the scene. Officer Dote approached Watkins with his pistol still drawn, and Officer Soh was able to kick the knife away from Watkins' right hand. Officer Kilmer then placed Watkins in handcuffs and rolled him over onto his side in the rescue position. Officer Kilmer also tried to apply first aid to Watkins. Officer Dote then immediately told dispatch that the scene was secure and to send medical assistance. The woman Watkins had been talking to, Sylvia Buchanan, said

after the shooting that Watkins just needed medical help. A medical team responded very quickly after Officer Dote called dispatch because they had been about a block away.

Officer Dote stated that as Watkins was running at him and Officer Soh, Officer Dote feared for his own life as well as Officer Soh's life. Watkins would have been able to kill or incapacitate either officer if they had not shot him. There was no other team of officers yet there, and none arrived in time to help Officers Dote and Soh.

Officer Dote did not shoot Watkins in the leg or hand because it is very difficult to shoot a moving person, and they are trained to shoot at center mass because it is the largest surface area. Officer Dote explained that he would have been more likely to miss and hit an innocent bystander if he had aimed for Watkins' hand or leg. Officer Dote was wearing a Kevlar bullet-proof vest, but he explained from his training and experience he knew that a knife could easily penetrate the vest. Officer Dote also explained that it would have been impractical to turn and run away because each Officer was wearing 20 to 30 pounds of gear and Watkins was already gaining on them by sprinting. Officer Dote believes that there was nothing he could have done differently in this situation. Officer Dote stated that it seemed Watkins was intent on committing an assault on a police officer.

STATEMENT OF OFFICER JAMES SOH

Officer James Soh has been with the San Jose Police Department for eight years. On the date of the incident, February 11, 2015, Officer Soh was assigned with Officer Dote to the police department's gang suppression unit. He was not a Crisis Intervention Team officer.

While on the gang suppression unit on February 11, 2015, a call came in regarding someone with a knife. Officer Soh was in full uniform, accompanied by Officer Dote of the San Jose Police Department. The officers notified dispatch that they were responding to the call because they were nearby. Officer Soh did not know whether any other officers had responded to the call. Officer Soh was driving, while Officer Dote rode as the passenger in the patrol car.

Officer Soh recalled that dispatch said someone had a knife, and that the caller was barricaded inside the house with one or more people. Officer Soh was not given a description of the suspect, but he did ask for a description. Officer Soh initially thought he and Officer Dote would be approaching a stabbing, an assault with a deadly weapon, a kidnapping, or something of that nature because of the way the call was described by dispatch. Officer Soh understood that one or more people had barricaded themselves for protection against an armed suspect in the home.

Officer Soh stopped three or four houses away from the address in the call. He stated that parking three or four houses away gives officers the advantage because they have time and distance to formulate a plan before approaching a situation.

Officer Soh got out of the car. Officer Soh was on the sidewalk, closest to the street, while Officer Dote was on the sidewalk beside him, closest to the houses. As soon as Officer Soh got out of the car he heard screaming, "No!" and "Stop!" Officer Soh saw a black male adult (in his 20s) holding a large knife, and he was with two other females. The black male, later determined to be Phillip Watkins, turned and saw the officers and began to walk toward the officers.

The women were still screaming "No!" when Watkins started to walk, then jog, and then fully sprint toward the officers. The women seemed to move closer toward the residence when Watkins began approaching the officers. It all happened very quickly. Officer Soh yelled at Watkins to stop, but Watkins was not stopping. He was "locked" on the officers. Officer Soh recalled Watkins looking right at his face as though he was looking right into his eyes. Officer Soh could see the muscles in Watkins' arm as though he was grabbing the knife really hard. The entire time, Officer Soh yelled "Stop! San Jose Police!" Watkins was not responsive to the Officer Soh's commands, and did not say anything at all while approaching the officers. Officer Soh feared for his life, and his partner's life, so he unholstered his firearm at the low-ready position (pointed down).

Everything happened very quickly. When Watkins began sprinting at the officers, Officer Soh raised his gun and fired it. Officer Soh estimated that Watkins was approximately 10 to 15 feet away from the officers when Officer Soh fired his gun. Officer Soh recalls firing approximately three to four rounds out of his Glock 17. Watkins fell to the ground. He was still moving, and he was still grasping the knife tightly in his right hand.

Officer Soh immediately notified dispatch of the shooting and requested medical assistance and additional units to respond. Then Officer Soh requested that a supervisor come to the area because he had been involved in a shooting.

Additional officers arrived. Officers Soh and Dote kept telling Watkins to put the knife down, but he was not responsive. Officer Soh stepped on the knife and was able to kick it out of Watkins' hand. Officer Kilmer and another SJPD Officer were there when Officer Soh disarmed Watkins. An officer then handcuffed Watkins, and then immediately administered first aid.

Officer Soh believes that Watkins was targeting him and his partner, and that Watkins had made up his mind on what he was going to do. Officer Soh was never trained to shoot at a suspect's hand because a moving target is difficult to shoot, let alone the appendage of a moving target. Officer Soh did not turn and run away because Watkins was running quickly, and would have likely caught up to the officers. Officer Soh was wearing a bullet proof vest, but based on his training and experience a bullet proof vest will not stop a knife penetration. Officer Soh was unaware at the time he fired shots if any other officers had responded to the call.

Officer Soh thought Watkins was going to get close enough to kill him or his partner, Officer Dote, and Officer Soh feared for his life. There was no time for the two officers to discuss a plan about how to handle this situation, because it all happened so quickly. Officer Soh believes that he had no other way to handle what happened.

STATEMENT OF OFFICER ANTHONY KILMER

On February 11, 2015, at approximately 5:02 p.m., Officer Kilmer was in full police uniform and driving a marked police vehicle. Officer Kilmer was working in a two officer patrol car with Officer McNair. Officer Kilmer was driving while Officer McNair sat in the passenger seat. Officers Kilmer and McNair responded to 1377 Sherman Ave regarding a report of a suspect armed with a knife. The reporting party told police communications that he was locked in a room, and children were present. Officer Kilmer broadcasted over his police radio that Officer McNair and he would be responding with 40 mm device (a device that shoots a large projectile rather than a bullet, referred to as a less than lethal device). Officers Kilmer and McNair are Crisis Intervention Team (CIT) trained officers.

While on the way, Officer Kilmer was notified that Officers Dote and Soh had arrived at the scene. Officer Kilmer heard Officer Dote broadcast that the suspect was armed with a knife and walking towards the officers. Officer Kilmer then heard Officer Dote broadcast that shots were fired. Officer Kilmer drove on Sherman Street from Floyd towards the scene at approximately 5:05 p.m. Officers Kilmer and McNair were the first additional officers to arrive at the scene.

When he arrived, Officer Kilmer saw Officers Soh and Dote pointing their firearms in the direction of the suspect. The suspect was lying down on the sidewalk in front of 1357 Sherman Ave. Officers Soh and Dote were located several feet north of the suspect's body. The suspect was on his back facing upwards and holding a folding type knife in his right hand. The knife was locked in an open position and still clenched in the suspect's right hand. The blade faced in the direction of the officers. Officer Kilmer heard the other officers ordering the suspect to put the knife down and to release it.

Officer Kilmer saw that the subject was bleeding from his upper body area. He equipped himself with gloves and walked up with other officers to the suspect. One officer, Officer Kilmer is unable to recall, kicked the knife from the suspect's right hand. Officer Kilmer at this point placed the suspect in handcuffs in front of his body for officer safety purposes since the suspect has not been searched and was armed with a knife. Officer Kilmer conducted a brief search for additional weapons, and removed and placed the contents from the suspect's pockets on to the sidewalk.

Officer McNair provided Officer Kilmer with materials from their trauma kit. Officer Kilmer applied pressure to the subject's injuries and turned him onto his right side. Officer Kilmer was concerned about the suspect's airway because he was spitting up blood. Officer Kilmer continued to apply pressure until San Jose Fire Paramedics from Engine 3 took over medical assistance for the suspect. Officer Kilmer then removed the suspect's identification card from his wallet, and provided the Fire Department with the suspect's name and date of birth for a medical report.

Officer Kilmer notified Sgt. Guggiana when he arrived on scene of his involvement in the incident. Officer Kilmer remained at the scene until he was transported to the San Jose Police Department by Sgt. Jimenez.

OFFICER RAYMOND MCNAIR

On February 11, 2015, at approximately 5:02 p.m., Officers McNair and Kilmer were in full police uniform and in a marked patrol vehicle. They were dispatched to a weapons-related disturbance in the area of 1377 Sherman in San Jose. The reporting party stated that a male with a knife was trying to get inside of the house.

Dispatch requested a vehicle with a less-lethal weapon respond. Officer McNair notified dispatch that he would respond with his department issued 40 mm projectile weapon (a device that shoots a large projectile rather than a bullet). Officer McNair is a Crisis Intervention Team (CIT) trained officer. While on the way, Officers Soh and Dote from the Gang Suppression Unit notified dispatch that they had arrived on scene and that the suspect was walking towards them. They notified dispatch that the suspect had a knife and they were initiating a high-risk pedestrian stop. A few seconds later, the officers notified dispatch that shots were fired and the suspect was on the ground.

Officers McNair and Kilmer arrived on scene at 1357 Sherman at approximately 5:05 p.m. Their patrol vehicle faced South while parked at the driveway entrance of 1357 Sherman. Officer McNair observed Officers Soh and Dote who were first on scene standing on the sidewalk facing South, approximately 20 feet north of the driveway of 1357 Sherman. Both officers had their guns drawn and pointing South.

Officer McNair observed the suspect lying on the sidewalk in the middle of the driveway of 1357 Sherman. The suspect's head was positioned south of his feet as he lay perpendicular to the driveway. The suspect was dressed in a red shirt and black pants. Officer McNair saw a bullet hole in the upper front portion of the suspect's head, middle of his neck, the front torso area, and his right upper leg. Officer McNair noted the scene was in broad daylight and there were no objects obscuring or blocking the suspect's path to Officer Soh and Dote.

The suspect's eyes and mouth were still moving and he was still breathing. The suspect held the knife in a forward position in what appeared to be a firm grip while on the ground. Officer McNair described the knife as a folding-style knife with a silver "tanto" blade approximately four inches and tan handle. Officers approached the suspect and one officer pushed the knife out of the suspect's hand with his boot. The knife landed in a gutter approximately four feet east of the suspect. Officer McNair returned to his patrol vehicle and obtained an emergency trauma kit.

Officer McNair returned to the suspect with the trauma kit. The suspect's hands were handcuffed and positioned in front of his body. Officer McNair provided Officer Kilmer with several gauze bandages to be applied to the suspect's wounds. Officer McNair began taking photographs of the scene with his department issued camera while Officer Kilmer

attended to the suspect. After several photos, Officer McNair returned to his vehicle for Officer Kilmer's camera and resumed photographing the scene.

Officer McNair took photographs from where the officers were standing when they fired; a view of the street east of the suspect's location, close ups from several angles; Officer Kilmer rendering medical aid to the suspect; and later the Fire Department rendering aid. Officer McNair ceased taking photographs when the suspect was placed on a backboard by paramedics and taken to the hospital.

STATEMENT OF OFFICER DANIEL AKERY

On February 11, 2015, at approximately 5:08 p.m., Officer Akery arrived on scene at 1377 Sherman Street based on a report of a disturbance with a weapon and an officer involved shooting. Upon arrival he saw the suspect lying on the east side of the street receiving first aid by a reporting officer until the Fire Department responded to the scene. The suspect was identified as Phillip Watkins based on his California Identification Card.

When Watkins was taken by ambulance to Valley Medical Center, Officer Akery went as well. Officer Akery stayed with Watkins while doctors performed emergency treatment. The medical staff returned to Officer Akery the handcuffs that were placed on the suspect. He noted the blood on the cuffs and placed them in a bag before returning them to Officer Kilmer.

Doctor Garland declared Watkins deceased at approximately 6:24 p.m. Officer Akery took Watkins' clothes and placed them in his locked patrol vehicle.

Officer Akery took photos of the bullet wounds on Watkins. The pictures included the: left temple; left neck; left ankle; left ring finger; right shoulder; right bicep; right forearm; right elbow; right thigh; two graze wounds on the right thigh; and a metal fragment located in the lower back.

Officer Akery secured the body at the hospital in room #11 until the Medical Examiners arrived.

STATEMENT OF SERGEANT STEVEN GUGGIANA

On February 11, 2015, Sgt. Guggiana was working as a patrol supervisor. At 5:01 p.m. he heard the incident broadcasted and responded to the scene at 5:04 p.m. when officers broadcasted "shots fired". He arrived at the scene at 5:09 p.m. with Sgt. Lopez. Sgt. Guggiana direct Sgt. Lopez to determine which officers discharged their weapons while he checked on the suspect. He further assigned Officer Valdes as the Log Officer.

The suspect was located on the right side of the sidewalk and bleeding heavily from his upper body. A knife was located in the gutter area approximately four feet from the suspect. The suspect hands were handcuffed and placed in front of his body while Officer

Kilmer provided first aid to the suspect. San Jose Fire Department arrived on scene while multiple officers secured the immediate area and began interviewing witnesses.

Sgt. Guggiana contacted Sgt. Lopez and K9 Sgt. Fong and they informed him that Officer Soh and Officer Dote were the only officers who fired their weapons. Officer Soh confirmed he fired approximately four shots in a southern direction at the suspect. Officer Soh was located on the west sidewalk of Sherman while the suspect was on the same sidewalk immediately south of Soh's position. Officer Soh was uninjured. Officer Dote fired approximately eight times at the suspect. Dote was located on the sidewalk immediately to the right side of Officer Soh. Dote was uninjured as well. Both officers were transported to the San Jose Police Department by Sergeants Lopez and Fong.

Sgt. Guggiana directed nearby officers to attempt to account for any rounds that may have missed the suspect in the southern direction, and to safeguard the area the officers were reportedly standing when the shots were fired. He directed Sgt. Joseph to supervise a thorough canvassing of the area for witnesses, and the southern portion of the block for evidence including any bullets or bullet strikes.

Sgt. Guggiana learned that Officers Kilmer and McNair, had arrived on scene immediately after the shooting. Both officers were transported to the police department as potential witnesses. Sgt. Guggiana established a command post south of the intersection of Sherman and Floyd.

Sgt. Guggiana remained at the scene until 11:52 p.m. He subsequently reviewed and approved all associated reports by patrol personnel and completed a Watch Commander Log entry regarding the event.

STATEMENT OF SERGEANT BERNARDO LOPEZ

On February 11, 2015, at approximately 5:01 p.m., Sgt. Lopez was dispatched to 1377 Sherman St. regarding a disturbance involving a weapon. He responded in his patrol vehicle with red lights and siren engaged. At the corner of Monterey Rd and Alma Ave, he heard Officers Soh and Dote, the initial officers on scene, report over the radio that shots had been fired.

When Sgt. Lopez arrived, he saw Officers Soh and Dote on the west side of Sherman St. Both officers were facing southbound with their weapons drawn. The officers told Sgt. Lopez that the three women who were crying and hugging each other were witnesses to the incident.

Sgt. Lopez made contact with one of the women, identified as Sylvia "Faye" Buchannan, and obtained several recorded statements from her. He transported Sylvia to the San Jose Department witness center where she was interviewed by homicide detectives.

STATEMENT OF OFFICER JONATHAN BYERS

On February 11, 2015, at approximately 5:05 p.m., Officer Byers was conducting gang suppression in full uniform and driving a marked patrol vehicle with Officer Solomon in the area of The Alameda and Stockton Ave in San Jose. Officer Byers and Solomon responded to a report of a weapons disturbance at 1377 Sherman St. The reporting party stated that an unknown male had come into his residence with a knife.

While en route, officers at the scene broadcasted that a male had charged them with a knife in his hand and shots were fired. When Officers Byers and Solomon arrived on scene at W. Alma Ave and Sherman St., Sgt. Joseph asked them to canvass the scene for witnesses.

Officer Byers contacted the residents of 1341 Sherman St. The residents stated they heard screaming and came outside once the incident was over. They were unable to record any part of the incident because they did not have any cameras or recording devices. After speaking with the residents, Sgt. Joseph notified Officer Byers and Solomon that they were not longer needed on scene.

STATEMENT OF OFFICER KEVIN PETERS

On February 11, 2015, at approximately 5:05 p.m. Officer Peters responded to the area of Sherman St. and Alma Ave to assist with an Officer Involved Shooting incident. Officer Peters assisted with vehicle and pedestrian control at the south end of Sherman Street near Alma Ave.

Officer Peters provided assistance to Officer Garibay while he spoke with Deviny Buchannan. D. Buchanan allowed the officers to view her text message correspondence with her ex-fiancé, the deceased Phillip Watkins, during the day of the incident. Officer Peters took photos of the text messages.

Officer Peters was assigned to scene security, which required he make sure that people who were still in their homes did not exit their homes into the crime scene area. Officer Peters maintained his role as scene security for the duration of his time on scene.

STATEMENT OF OFFICER DANIEL GUERRA

On February 11, 2015, at approximately 5:05 p.m., Officer Guerra was working a San Jose gang suppression detail with Officer Vasquez. Officer Guerra was assigned as a Field Training Officer (FTO) to the police Bureau of Field Operations Patrol Division. Officers Guerra and Vasquez responded to an emergency request for assistance by an officer who had reported "shots fired" on a call-for-service.

Officers Guerra and Vasquez arrived at approximately 5:10 p.m., and secured the intersection of Sherman Ave and Floyd Street. Officer Vasquez notified Officer Guerra

that at 7:16 p.m., Officer Solomon, contacted him and directed him to a maroon Chevrolet Blazer parked on the east curb line facing north. Officer Solomon advised him there was a witness, Erica Menchaca, seated inside, and he determined that she needed to be interviewed. Officer Guerra transferred Menchaca to the police department Witness Center and obtained a digitally recorded statement.

STATEMENT OF OFFICER CASSADY ELISCHER

On February 11, 2015, at approximately 5:06 p.m., Officer Elischer was dispatched to the area of Alma Ave and Sherman Street to assist with the incident. Officer Elischer arrived on scene and blocked the intersection of Alma Ave. and Sherman St. with her patrol car.

Officer Elischer observed several potential witnesses standing on the northeast corner of Alma Ave. and Sherman St. Officer Elischer contacted Dora Delfin who stated she saw officers pointing their guns at a person, backing up, and then hearing several shot fired. Officer Elischer obtained a digitally recorded statement before transporting Delfin to the SJPD Witness Center for a more detailed statement. Officer Elischer was then relieved by SJPD Detective Constantin, and she returned to the scene of the incident to provide traffic control.

STATEMENT OF OFFICER CARL PURNELL

On February 11, 2015, at approximately 5:06 p.m., Officer Purnell responded to 1377 Sherman St. regarding a report of a man with a knife. The report stated that an unknown man with a knife was in the house. Officers on scene broadcasted that shots had been fired. Officer Purnell arrived on scene at 5:08: P.M, and was assigned to scene security of the north perimeter at Sherman St. and Floyd St.

Officer Purnell made contact and obtained a statement from Benigno Silva, the resident of 1350 Sherman St. Officer Purnell was briefly relieved of his security detail by Officer Valdes #4138 while Officer Purnell spoke to Silva. Silva told Officer Purnell that the security system in his home did not work because of an issue from the previous week. Officer Purnell noted the cameras were not currently on because the tablet controlling the system was off and unplugged. Silva plugged the tablet in and initiated the cameras to show Officer Purnell the problem. The cameras were completely black and did not show anything. Officer Purnell returned to Sherman St. and Floyd St. and remained there until the scene was cleared at 11:52 p.m.

STATEMENT OF SERGEANT PAUL JOSEPH

On February 11, 2015, at approximately 5:13 p.m., Sgt. Joseph was on duty in full uniform driving a marked police car assigned as the Patrol Sergeant in District Lincoln in the City of San Jose. He responded to the area of Alma and Sherman based on a report of a person armed with a knife that had broken into a house. He advised dispatch that he would be in charge of organizing a canvas of the area for witnesses.

Sgt. Joseph spoke to Officer Elischer who had obtained a recorded statement from witness Dora Delfin. He directed Officer Elischer to transport Delfin to the police department Witness Center.

Sgt. Joseph spoke to Officer Lopez who obtained a recorded statement from witness Sylvia "Faye" Buchanan. He directed Officer Lopez to transport Buchanan to the Witness Center. S. Buchanan initially refused to go, but later went with Sgt. Milliken to the Witness Center.

Sgt. Joseph spoke to Officers Garibay and Chavez who obtained a recorded statement from witness Deviny Buchanan. He directed Officer Garibay to transport Deviny Buchanan to the Witness Center.

Sgt. Joseph assigned Officer Reyes and Officer Marshall to make contact with all the residences on the east side of Sherman Street from Alma to Floyd Street. Officer Marshall obtained a recorded statement from the resident of 1352 Sherman, Pablo Ortiz. He directed Officer Marshall to transport Ortiz to the Witness Center.

Sgt. Joseph directed Officer Byers, Officer Solomon and Officer Casey to make contact with all the residences on the west side of Sherman Street from Floyd to Alma Avenue. Officer Byers notified Sgt. Joseph that they made contact with every house from Floyd Street to 1349 Sherman Street.

Sgt. Joseph directed Officer LaBarbera and Officer Patterson to contact the remaining houses on the west side of Sherman Street, as well as the house at 1401 Ford Avenue. Joseph cleared the scene at approximately 9:27 p.m.

STATEMENT OF OFFICER HECTOR VASQUEZ

On February 11, 2015, Officers Vasquez and Guerra responded to the area of Sherman and First Street to assist in an Officer Involved Shooting. Upon arrival, Officer Solomon directed Officer Vasquez to a female standing near the southeast corner of Sherman and First. He was advised that she was a possible witness.

Officer Vasquez contacted the female identified as Ms. Menchaca provided a statement. Ms. Menchaca was transported to the San Jose Police Department Witness Center to be interviewed by homicide detectives. Officer Guerra conducted a recorded interview at the Witness Center.

STATEMENT OF OFFICER RUBEN CHAVEZ

On February 11, 2015, at approximately 5:01 p.m., Officers Chavez and Garibay responded to a report of a disturbance involving a suspect with a knife. Upon arrival, Officer Chavez made contact with witness Leroy Ramirez who was standing in the street

just north of the residence. Ramirez provided a digitally recorded statement regarding what he heard.

STATEMENT OF OFFICER WILLIAM LEYS

On February 11, 2015, at approximately 5:01 p.m., Officers Patterson and Leys were in full police uniform and driving a marked police vehicle. They responded to the area of 1377 Sherman St. regarding an Officer Involved Shooting.

Upon arrival to the intersection of Alma and Sherman, Officer Leys checked in with the log officer and handed him crime scene tape to secure the area. Officer Leys entered the perimeter and observed several females crying hysterically on the west side of the street. He also saw one officer standing near a black male who appeared to be lying down on the western side walk approximately three houses north of Alma Ave.

Officer Leys approached and observed medical personnel assessing the black male. The male was bleeding from the head and was nonresponsive. During the approach, the females started walking towards the officers and screaming uncontrollably. The females began to interfere with the investigation, prompting Officer Leys and another Officer to remove them from the area. He walked them south on Sherman St. and separated them from each other. One female was identified as Veronica Rodriguez and Officer Leys obtained a recorded statement.

Witness Rodriguez's husband, Jose Luis Rodriguez returned from work approximately an hour later. An officer directed him to park his truck on Alma near Sacred Heart Community Center and escorted him to his residence. Mr. Rodriguez was not at the residence during the time of the shooting.

STATEMENT OF OFFICER CARLOS GARIBAY

On February 11, 2015, at approximately 5:01 p.m., Officer Garibay responded to the area of 1377 Sherman St. to investigate a call about a man with a knife. He arrived on scene and made contact with witness Deviny Buchanan. Deviny Buchanan was standing in front of 1373 Sherman St., and was crying hysterically. She provided a digitally recorded statement. Officer Garibay transported D. Buchanan to the police department Witness Center and turned her over to Officer Constantin.

STATEMENT OF OFFICER JARROD VALDES

On February 11, 2015, at approximately 5:02 p.m., Officer Valdes was on patrol and dressed in full uniform and driving a marked patrol car. Officer Valdes responded to 1377 Sherman St. regarding a report of a disturbance with a weapon. While on his way to the scene, officers at the scene advised over the radio that the suspect was armed with

knife and ignored officer commands. A moment later the officers advised that shots had been fired.

At the scene, Officer Valdes advised Sgt. Guggiana that he would be create and maintain a crime scene log. Sgt. Guggiana advised him that the area of Sherman St. and Floyd St. would be the entry point to the crime scene. Officer Valdes maintained the log until the Crime Scene Unit had completed its investigation and all units cleared the scene at approximately 11:52 p.m.

CIVILIAN STATEMENTS

STATEMENT OF DEVINY BUCHANAN

Deviny Buchanan spoke to Officer Carlos Garibay at the scene of the shooting shortly after it occurred and gave this initial statement:

D. Buchanan stated she lived at 1377 Sherman St. her entire life. She stated that Watkins was her ex-fiancé, they dated for eight years, and that they had a two year old daughter together.

D. Buchanan ended the relationship with Watkins in September 2014 because he had been threatening to kill her and himself, and he started acting "crazy." She believes that Watkins began acting crazy once he started using steroids in 2012. Watkins had been sending her various text messages for two days prior to the incident, but she refused to reply to any of his messages.

On February 11, 2015, at approximately 4:00 p.m., D. Buchanan was shopping at the Wal-Mart located at 1450 Monterey Road in San Jose. She returned to her home before 5:00 p.m., and saw Watkins standing outside of her home. D. Buchanan was afraid of Watkins because she knew he was going to be upset that she had not returned his text messages.

D. Buchanan stated Watkins began acting "crazy." Watkins began stating that he wanted to die and saying things that didn't make sense. D. Buchanan and Watkins entered the house and Watkins continued stating he wanted to die. D. Buchanan and her mother attempted to calm Watkins down but it did not work. D. Buchanan's mother decided to call psychiatric services for assistance.

At this point Watkins ran upstairs and grabbed a military knife. D. Buchanan feared for the safety of her two children and took them outside and locked them in a car. Watkins came downstairs and told D. Buchanan that he had called the police. He stated he was going to go after the police so they could "handle it." D. Buchanan understood the comment to mean that Watkins wanted to have the police to shoot him.

Watkins left the residence and D. Buchanan followed him out of fear for her children who were in the car. Watkins displayed the knife to D. Buchanan and she believed

Watkins intended to stab her because of threats he had made to her in the past that he would “stab her to death.” D. Buchanan moved out of Watkins’ path.

At this moment, D. Buchanan saw two officers with guns drawn giving verbal commands. D. Buchanan turned around because she did not want to see what was going to happen next. She heard the officers on scene giving multiple verbal commands to Watkins before she heard gun shots.

Later that evening D. Buchanan went to the San Jose Police Department Witness Center where she gave the following additional statement:

D. Buchanan lives at 1377 Sherman Street. D. Buchanan dated Phillip Watkins for approximately eight years; he lived at her house starting in 2010, and moved out about six months before this incident. The couple has one child in common, their daughter Laniyah, who was two years old at the time of the incident. D. Buchanan recalled that Watkins was acting crazy lately, but said that there had never been any domestic violence in their relationship.

D. Buchanan said that Watkins was upset with her because a male friend texted her, so Watkins was not talking to D. Buchanan. He habitually would ignore D. Buchanan for days when he was mad at her, so this was not unusual. On the day of the incident, Watkins started a conversation with D. Buchanan via text message. He texted that they were going to get married, and he did not care if she wanted to be with him or not. D. Buchanan explained to Watkins that they were not going to get married because they were not in a good place at the time. Watkins told D. Buchanan “I’m not going to live without you,” but this was not the first time Watkins said something like this to her. D. Buchanan thought that Watkins seemed to be having a manic episode or something, and she suggested that he talk to someone.

D. Buchanan had been limiting Watkins’ contact with their daughter Laniyah because “he’s been off.” D. Buchanan said Watkins threatened to kill her and then himself. He initially made that threat a couple weeks prior, and then a few days prior to the incident. D. Buchanan put some distance between herself and Watkins because “he’s having his moments.” D. Buchanan said Watkins never acted this way before but it had become worse lately. D. Buchanan told Watkins that he really needed help.

In the text message conversation, Watkins told D. Buchanan that no matter what she says, he is not done. Then Watkins asked D. Buchanan about the engagement ring he gave her, and got mad when D. Buchanan explained that she used it as collateral to get a loan. D. Buchanan explained that Watkins would get really mad and stop talking, but then he would calm down and apologize, stating “I don’t know why I get so mad at you.”

On the day of the incident, D. Buchanan went with her mother and ran some errands, and came home to find Watkins sitting on her front porch. He appeared to be sleeping in a chair in the corner of the porch. D. Buchanan took her daughter and five year-old nephew Patrick to the park to buy some time. When the family returned home Watkins was still

on the front porch. D. Buchanan went into the house with her mother, and the two children, and Watkins walked in behind D. Buchanan.

D. Buchanan did not want to talk to Watkins and noticed his demeanor and the look on his face as being concerning. Watkins was not under the influence of alcohol or drugs, but D. Buchanan said Watkins took steroids for a time. She told him that he should really just leave. Watkins said "No. I'm not fucking going anywhere." D. Buchanan explained to Watkins that she was not going to argue with him right then.

D. Buchanan told Watkins that there was nothing to talk about, and Watkins responded by saying he was sorry for what he was about to do. Watkins told D. Buchanan "you know what I'm gonna do." D. Buchanan thought Watkins was saying he was going to hurt her; she did not know what he was going to do.

D. Buchanan did not want to talk to Watkins or be alone with him because of the way he was acting. She really wanted Watkins to leave her house. D. Buchanan's mom, Sylvia Buchanan, went to talk to Watkins because she was usually pretty good at calming him down.

Watkins began telling her mother that he wanted to kill himself. This was not the first time that Watkins had talked about suicide, but D. Buchanan was more worried this time because of Watkins' demeanor. D. Buchanan put the kids in the car because of the way Watkins was acting. D. Buchanan was very nervous because Watkins was "tripping out beyond what [she] had seen before."

D. Buchanan's mother asked her for her phone so that she could call for some help. Watkins went upstairs, which was not unusual because he used to live at the house. Watkins went into D. Buchanan's room. D. Buchanan's mother called a suicide hotline, and D. Buchanan could only hear her mother's responses. D. Buchanan's mother said she felt like Watkins would go after the police if she called them. D. Buchanan's mother went upstairs to try to get Watkins to talk to the suicide hotline, but then she came back downstairs saying that Watkins had already called the police. D. Buchanan could hear her mother upstairs trying to calm Watkins down before he came downstairs. D. Buchanan's mother was explaining to Watkins that D. Buchanan did not want to talk to him because he was acting crazy.

While Watkins was upstairs, D. Buchanan sat in the kitchen. D. Buchanan had to explain to her daughter that she could not go upstairs. When D. Buchanan overheard her mother telling Watkins he did not need to hurt himself, she took the children outside and put them in the car. She also heard her mom tell Watkins "no you're not going to grab any of the knives from downstairs," at which point D. Buchanan took all the sharp objects and placed them in the trunk of the same car. Then D. Buchanan went outside because the kids were in the car.

D. Buchanan's brother is a marine and has some knives. He has a tan one with a handle and blade that is about four to five inches long, and he also has a small black one. He left both of them in a keepsake type box that D. Buchanan had in her room. D. Buchanan

does not know if they are specifically marine knives. Watkins had seen the knives before, and knew where they were in D. Buchanan's room. Watkins was in D. Buchanan's room for maybe 20 to 30 minutes. Watkins grabbed the knife with the tan handle; it also has a clip so it can be attached to a belt or pants. Watkins clipped the knife to his pants when he walked out of her room.

D. Buchanan stood at the bottom of the porch steps as Watkins approached. She thought he was going to go after her or the kids when he looked at her with his hand on the knife. Watkins flipped open the knife when he saw the police. Two officers had been approaching the house until Watkins pulled the knife. Then Watkins "came at them with the knife." She described Watkins as "power walking" toward the officers. Watkins raised the knife in his right hand. D. Buchanan turned around because she did not want to see. She was standing on the porch looking at her mom.

Watkins did not say anything. D. Buchanan could hear her mother screaming to the officers not to shoot Watkins because he needs help. D. Buchanan recalled that the officers might have told Watkins to drop the knife. D. Buchanan said it looked like Watkins wanted the police to shoot him.

D. Buchanan stated that after Watkins passed the neighbor's driveway it was only about three to five seconds after that she heard maybe five or six gunshots. D. Buchanan covered her ears and left the porch to see Watkins lying on the ground, with the knife still in his hand. D. Buchanan saw an officer kick the knife out of Watkins' hand and roll him to his side and put handcuffs on him. An ambulance arrived quickly after that.

D. Buchanan has a sister who is bipolar and schizophrenic, and Watkins was acting a lot like her before the incident. He was manic, thought he heard voices, and felt like people were watching him or following him. D. Buchanan stated this has only been a recent thing within the past few months he would have mood swings and seconds later he would be calm and apologize. D. Buchanan stated that Watkins has also been really depressed.

D. Buchanan thinks the officers should have Tased Watkins instead. She is not mad because she understands that it is their job. She does not know whether the officers thought they were in danger when Watkins was walking toward them with the knife. She wishes they had just shot his hand off or done something else instead.

STATEMENT OF SYLVIA "FAYE" BUCHANAN

Sylvia Buchanan spoke to officers at the scene of this incident shortly after it occurred and gave the following statement:

She said that Watkins and her daughter had recently separated and that Watkins was depressed about the break-up. Watkins came over to her house on this day and was depressed. Watkins told S. Buchanan that he felt like dying. As a result, S. Buchanan called a suicide prevention hotline to try to get Watkins help. While she was on the phone

with the suicide prevention line, Watkins called the police. Shortly after hanging up the phone, Watkins went outside and ran at three officers who had their guns drawn and was shot. S. Buchanan said Watkins may have had something in his hand. S. Buchanan then agreed to come to the police department for a more detailed interview.

S. Buchanan provided the following statement at the police department:

S. Buchanan lives at 1377 Sherman Street with her daughter, Deviny Buchanan, her adopted son Patrick, and her granddaughter Laniyah. S. Buchanan stated that Watkins used to live at her house up until about two months ago, then he moved out to live with his friend in Gilroy. D. Buchanan however, stayed at the home at 1377 Sherman Street. Watkins lived at S. Buchanan's house for six years. Watkins moved out because he wanted to be a man on his own. S. Buchanan was uncertain whether her daughter and Watkins had a falling out that was the cause of Watkins' moving out. Watkins had moved out and come back in the past but S. Buchanan made it clear that this time he could not come back. S. Buchanan stated that her daughter and Watkins were still getting along well and that he would still come to visit the house occasionally. She also stated that her daughter and Watkins were engaged at one point.

S. Buchanan, her daughter, and Laniyah went to pick Patrick up from school. Then the family went to the pound to see about adopting a dog. They went to the grocery store and D. Buchanan got some things to make salad. When the family returned home around 3:30 or 4:00 p.m., Watkins was sitting on the porch because he no longer had a key to the house. S. Buchanan asked Watkins if he was hungry, to which he responded that he was not. He came inside and D. Buchanan started getting the salad together for dinner. S. Buchanan changed the kids into their pajamas and began talking to Watkins.

Watkins told S. Buchanan that he was unhappy, and felt depressed as though he wanted to kill himself. S. Buchanan explained to Watkins that he could not kill himself because he has a daughter. Watkins told S. Buchanan that people came to him and told him things that they should not know about him. He started talking about the illuminati and "devil stuff." Watkins had talked about the illuminati in the past but he had never mentioned anyone being after him, and he had never talked about suicide. S. Buchanan told Watkins, "I'm gonna call to get you some help."

S. Buchanan did not like the way Watkins sounded so she borrowed her daughter's phone to call 211 and they gave her the phone number for the hospital. S. Buchanan called the hospital and spoke with a woman who stated she would call the police to send out a Crisis Intervention Team to handle the situation. S. Buchanan stated that she did not want the police coming to her house because she knew what would happen.

S. Buchanan stated that Watkins and her daughter, Deviny, had broken up. S. Buchanan thought that this time her daughter was really done with Watkins and perhaps Watkins wanted to get back together and her daughter did not want to. S. Buchanan said she thought Watkins believed there was nothing left for him. S. Buchanan stated that Watkins did not drink or do drugs, and she would have been able to tell if he had been under the influence. He was just really depressed about him and Deviny not being together.

Watkins told S. Buchanan "I just don't wanna live anymore." Watkins never said how he would hurt himself.

During this conversation, D. Buchanan was in the kitchen getting the chicken prepared for chicken ceasar salad. The kids were running around playing. S. Buchanan told Watkins that she was going to get him some help. S. Buchanan did not have a feeling that Watkins was going to do anything, but she said, "you don't ever play with people saying stuff like that." At some point D. Buchanan took the kids outside to the car to play. They have a car that does not work that the kids like to play in.

Then Watkins got on the phone. He might have been on the phone for five minutes or so. S. Buchanan could not be sure because she was on the phone herself. S. Buchanan did not know who he was talking to. S. Buchanan borrowed her daughter's phone to call 211 and was directed to the mental health department at the county hospital. S. Buchanan talked to a woman who wanted to call the police. S. Buchanan just wanted to bring Watkins to the mental health department because she did not want the police to show up and "misconstrue anything."

S. Buchanan started talking to Watkins when he got off the phone. Watkins said he called the police, and then he went outside. Watkins never told S. Buchanan why he called the police. S. Buchanan saw the police and then she and her daughter went running behind Watkins. Watkins started walking toward the officers. The police were two houses away and there were three officers who drew their guns when Watkins started running. S. Buchanan stated Watkins was not running fast but he was running and he was not far from the officers. S. Buchanan saw something in Watkins' right hand as he was running but she could not make out what it was because she has poor eyesight.

S. Buchanan begged the officers not to shoot Watkins, screaming that he needs help. S. Buchanan could not hear the officers giving commands because she was screaming and yelling and so was her daughter. An officer told them to get back and then S. Buchanan heard more than six gunshots. S. Buchanan believed all three officers shot Watkins. After the gunshots S. Buchanan heard officers telling Watkins to drop it. S. Buchanan could not tell what was in Watkins' hand until he was on the ground. Watkins was shot on the sidewalk. S. Buchanan thinks that Watkins could have been trying to use the police to kill himself because he wanted to die. She said that the officers fired a lot of rounds.

This all happened approximately 15 minutes after the family came home from the park. S. Buchanan said that Watkins did not take any medication and was a healthy young man. S. Buchanan knew of one occasion when Watkins carried a knife and it was during a period of time that he worked nights at Wal-Mart and had to walk home. Watkins also did security work out in Gilroy. S. Buchanan stated that the officers did not need to shoot Watkins the way they did. She said they could have shot him in the leg or the arm or somewhere else.

STATEMENT OF YANCEY SILVAS

Officer Graeme Newton interviewed Yancey Silvas, the suspect's roommate, at the emergency room of the Valley Medical Center (VMC). Silvas has known Watkins since the age of seven. Silvas and Watkins grew up together and were roommates in Gilroy at the time of this incident. Silvas described Watkins as being "depressed," but he stated he was unaware that Watkins took medications or was being treated for depression. Interviewing Officer Newton noted that Silva made a remark that "it was a cry for help... when [Watkins] called the police... it was a cry for help."

Silvas stated he was on his way home from work when Deviny Buchanan called him. She told Silvas that Watkins called the police on himself and that Watkins possessed a knife.

Silvas believed Watkins' depression started seven or eight years ago when his parents divorced. Watkins had problems with his "baby mama" (Deviny Buchanan) as well. Additionally, Watkins had a two year old daughter (Laniyah), and he was struggling to support her. Watkins had a difficult time obtaining work to make money, and sometimes helped out at Silva's job, Stevens Creek Tintworks. Watkins had previously worked at a Wal-Mart on Monterey Road and was supposed to start work at the Wal-Mart in Gilroy.

Officer Newton asked Silvas whether Watkins harbored any ill will towards the police or desired to harm the police. Silvas responded that Watkins did not charge the police because he wanted to hurt them, rather he charged the police because "he probably wanted to get shot." Silvas stated that Watkins told him he wanted to kill his girlfriend and then kill himself. Silvas stated that Watkins "just couldn't do it himself, which is why he called the police today". Silvas said that he had previously talked Watkins out of killing his girlfriend and himself.

Silvas asked Officer Newton why he was asking these types of questions, and Officer Newton explained that he was trying to understand why Watkins would call the police and subsequently attempt to assault them. Silvas reiterated that "it was a cry for help." Silvas personally believed that Watkins did not actually want to kill his girlfriend, rather just himself. However, Silvas stated that Watkins would talk about killing his girlfriend and say "I don't care what happens to me."

Silvas stated that Watkins appeared to be well the morning of the incident before going to work. Silvas and Watkins did not maintain contact throughout the day of the incident which is typical of their relationship. Silvas recalled the last time he saw Watkins upset was about a week ago during a fight with his girlfriend. At the time of the fight, Watkins again stated "I don't care what happens to me."

Officer Newton asked Silvas why Watkins was at his girlfriend's house today. Silvas believed that Watkins was trying to reconcile with her, however, he was unaware of any other significant issue or fight that occurred that day that would have angered Watkins enough to call the police.

STATEMENT OF SHARON WATKINS

Sharon Watkins is the mother of Phillip Watkins. She stated that she was working when she received a frantic phone call from Deviny Buchanan. Deviny Buchanan told Sharon Watkins that "Phil tried to commit suicide and called the police." Deviny Buchanan explained that Phillip Watkins wanted the police to kill him.

Watkins knows the suspect lived in Gilroy with "Tommy" and that he usually takes the bus to Deviny Buchanan's house. Deviny and the suspect have one child in common and have been dating for approximately seven years. The suspect has no history of mental illness and does not take medications.

STATEMENT OF ERICA MENCHACA

Erica Menchaca was walking West on Floyd St. toward Sherman Ave. on the south sidewalk at about 5:05 p.m. She stopped at the southeast corner because she believed her vehicle was parked on the west curb of Sherman Ave. She saw a police car "zoom" past her going southbound. She noted that the lights of the police car were not on, and since this "is not uncommon for this area," she initially thought everything was okay.

Menchaca remembered her vehicle was actually parked on the east curb of Sherman Ave., south of Floyd Street and facing north. She walked to her car, opened the front passenger door to put her package down. She then closed the door and walked around the rear of her vehicle to the rear driver's side door. She intended to move some items around however she felt something was "not right" and opened her driver's side door.

Menchaca heard someone yelling and noticed a male wearing a red shirt. She believed the male was running towards the officers but she states she is unsure because a black SUV partially obstructed her view. She heard some yelling but was unable to discern if the officers said anything because she was too far away. She believes she was approximately 50 feet away during the time of the incident. Menchaca stated she heard three to four shots before she was no longer able to see the male wearing a red shirt. She was shaken by the event, and moved to her driver's seat to sit. Moments later, an officer contacted her and asked if Menchaca observed the incident. She responded affirmatively and the officer asked her to stay in her vehicle. She agreed and Officer Vasquez contacted her.

STATEMENT OF DORA DELFIN

Dora Delfin stated she was walking from the Sacred Heart Community Center located on Alma Ave and S. 1st Street, to her car, parked along the east curb line of Sherman Street, facing northbound, north of Alma Ave.

When she was approximately 20 feet from her car, she saw two police officers on the West sidewalk with their guns drawn at someone. The officers backed up approximately 15 to 20 steps while having their guns drawn. She heard four shots and became frightened. She began running Southbound towards Alma Ave., where she stopped until she was contacted by officers. She does not recall if she heard anything before the shots being fired.

STATEMENT OF THU HO

Witness Thu Ho lives at 1354 Sherman St. She stated that she was in her living room at the time of the shooting. She estimates that she heard more than two gunshots followed by a woman screaming and crying. Thu Ho stated she did not see anything.

STATEMENT OF AN HO

Witness An Ho lives at 1354 Sherman St. He stated that he was in his side garden on the south side of his residence, located along Alma Ave. He stated he did not see anything but heard four gunshots.

STATEMENT OF PABLO ORTIZ

Pablo Ortiz lives at 1352 Sherman St. Ortiz stated he had been at his residence since 2:15 p.m. and was in his living room which is located on the side of the house closest to Sherman St. Ortiz heard a female screaming "Don't shoot, don't shoot," which prompted him to look out of his living room window. He saw two male officers with their guns drawn and pointing south in front of 1357 Sherman St. Ortiz described the demeanor of the officers as being "reluctant to shoot" as he observed the officers for two to three seconds. Ortiz stated he looked away and heard two burst of gunfire. He described the burst of gunfire as approximately three shots, a pause, then an additional two shots being fired. Immediately after the gun shots, Ortiz heard officers order "everyone stay in your home."

Ortiz stated he walked upstairs to continue watching the scene of the incident. He observed an African American female, located on the east sidewalk of Sherman St. a little further south of his house, crying and saying "No." The female was being held by an officer in a "non-aggressive manner." Ortiz stated another officer was standing in the middle of Sherman St. He was unable to determine if the two officers were the same officers he observed with guns drawn moments before.

Ortiz stated he observed an African American male lying on his back and bleeding from his chest. Ortiz stated this was the first time he has ever seen the suspect. Ortiz stated he does not remember if the suspect had any objects near him, or the clothing he was wearing. Ortiz did not see any officers around the suspect who was lying down motionless.

Ortiz stated he called his neighbor and friend Eric Reyes, “who lived two houses down from the shooting,” (he is the cousin of the person living two houses down) to see if he heard anything. Reyes told Ortiz that he overheard “someone was trying to get into a house.”

Ortiz stated he heard sirens and observed police officers and firefighters arrive to the scene. He saw a firefighter perform chest compressions on the unresponsive man. Ortiz saw a stretcher being deployed next the suspect and did not see anything after that.

STATEMENT OF ERNESTO DIAZ

Ernesto Diaz lives at 1342 Sherman St. He stated that he was in his living room at the time of the shooting. Diaz heard five to six gunshots but believed they were firecrackers. He did not hear anything prior to the shooting or afterwards. Diaz stated that after 30 seconds he went to the window and saw two police officers pointing their firearms. He was unable to see who they were pointing at, and walked away from the windows.

STATEMENT OF BENIGNO SILVA

Benigno Silva lives at 1350 Sherman St. Silva stated that nobody was at home when the shooting occurred. Silva and his daughter were escorted to their home by Officer Purnell who asked to check the security camera footage from their house. Silva stated that his security cameras did not work because his daughter had “done something to the system last week” and he has not been able to get it to work. Officer Purnell examined the system and confirmed that the cameras did not work.

STATEMENT OF PETRA BECERRA

Petra Becerra lives at 54 Floyd St. Becerra stated that she was inside the kitchen of her residence when she heard two loud pops, which she believed were gunshots. She did not see the incident and stated he residence is not equipped with video security cameras.

STATEMENT OF LEROY RAMIREZ

Leroy Ramirez stated he parked his delivery truck just north of 1377 Sherman St. to pick up a package on Alma Ave. He exited his truck and walked over to make the pick up. While walking back to his truck, he noticed two females next to each other standing in front of 1377 Sherman St. He heard one female say “please don’t shoot him.” He was unable to see or hear who they were talking to. He also did not see any police officers or any other males.

Ramirez heard approximately 4-6 gun shots but did not see where they came from or who was involved in the shooting. After the shots, he walked over to see if he could help the

females who were yelling. At this point he noticed several police vehicles drive into the area and was soon contacted by authorities.

STATEMENT OF VERONICA RODRIGUEZ

Veronica Rodriguez stated she is a stay at home mother and cares for six children ranging from ages eight months to 16 years old. At the time of the shooting she was inside her residence with five children. Her eldest son was at school and her husband was at work. No other people were inside the residence. Her property does not have surveillance cameras.

At approximately 5:00 p.m., she heard three quick gunshots then heard her neighbors crying in front of her house. She ran outside and “saw Phil on the floor” and “Deviny” and “Faye” on the sidewalk in front of her house. Deviny and Faye were screaming, “Don’t shoot!” and “He needs help!” Rodriguez did not see or hear what precipitated the shooting. She believes there were four police officers near Phil when she came outside. She does not recall what the officers were doing or said.

Rodriguez stated she had been neighbors with Deviny and Faye for approximately 16 years and recognized Phil as being Deviny’s partner for “a long time.” She stated that Deviny and Phil separated approximately six months ago with Phil moving out of the house. However, she continued to see Phil at Deviny’s house and described their interactions as civil. She has never seen Phil act hostile or unusual even after they separated.

Rodriguez never suspected Phil to have any mental, emotional or drug problems, although she overheard Deviny tell an officer at the scene that Phil abused steroids.

The last time she saw Phil in the area was earlier that day at approximately 2:00 p.m. Phil was seated on Deviny’s doorstep and appeared to be waiting for someone to arrive. She does not know how long he stayed at the house. She did not observe anything unusual about his behavior.

911 CALL

Key portions of 911 Call, February 11, 2015, 5:01 p.m.

Dispatcher: San Jose Emergency, what are you reporting?

Watkins: There’s a crazy actually guy with a, with a knife threatening to kill my family at 1377 Sherman Street. Will you please come fast?

...

Dispatcher: Who is this person?

Watkins: Huh, I, I’m not sure who it is.

...

Dispatcher: So, is he in your house or outside?

Watkins: Yes he is inside my house right now.

...

Dispatcher: Who is he?

Watkins: I do not know, Ma'am.

...

Dispatcher: Where are you right now?

Watkins: I am in the house with the door locked, my kids are here. Hurry up, please.

...

Dispatcher: Hold on just a moment, don't hang up.

(WATKINS HANGS UP)

MEDICAL EXAMINER

On Friday, February 13, 2015, Medical Examiner Doctor Michelle Jorden performed an autopsy on the body of 23 year-old Phillip Watkins. Seven (7) projectiles were recovered from his body. The following pathological diagnoses were noted:

A distance range gunshot wound to the left side of the face that travelled and ended in the right shoulder. A bullet was recovered from the left shoulder.

A distance range gunshot wound on the left neck hitting the spinal cord. A bullet was recovered from the spinal cord area.

A distance range gunshot wound to the right chest. A bullet was recovered from the right back area.

A distance range gunshot wound to the right buttock. A bullet was recovered in the right thigh.

A distance range gunshot wound to the right thigh. A bullet was recovered in the right buttock.

A distance range superficial gunshot wound to the right thigh.

A distance range gunshot wound of the right arm. A bullet was recovered from the right arm.

A through and through distance range gunshot wound to the right forearm.

A through and through distance range gunshot wound to the left ankle.

A distance range gunshot wound to the left hand.

Toxicology: No drugs of abuse were detected, and a small amount of lidocaine was the only other drug detected.

The cause of death was multiple gunshot wounds.

PHOTO OF KNIFE



RELEVANT LEGAL PRINCIPLES

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

Possible criminal charges against an officer involved in a fatal shooting include murder (Penal Code section 187) and voluntary manslaughter (Penal Code section 192). In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Banks* (1977) 67 Cal.App.3d 379.) Several justifications may apply in any given case and they are set forth in Penal Code sections 196 and 197. The justification pertinent to this case is found in Penal Code section 197: use of force in self-defense/defense of others.

Penal Code Section 197: General Right to Self-Defense

California law permits all persons to use deadly force to protect themselves from the threat of death or great bodily harm. Penal Code section 197 provides that the use of

deadly force by any person is justifiable when used in self-defense or in defense of others. The relevant Criminal Jury Instruction as written by the Judicial Council of California as set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that great bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

One may resort to the use of deadly force in self-defense where there is a reasonable need to protect oneself from an apparent, imminent threat of death or great bodily injury. Perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) “Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. The person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.)

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

In *Aris*, the trial court’s clarifying instruction to the jury on the subject was to the point and later cited with approval by the California Supreme Court: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.)

What constitutes “reasonable” self-defense is controlled by the circumstances. The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. In one case, a robber pointed a gun at his victim and a deputy sheriff was called to the scene of the robbery. Before the robber could get off a shot, the deputy fired his weapon, wounding the robber. The appellate court remarked that “[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot.” (*People v. Reed* (1969) 270 Cal.App.2d 37, 45.)

PENAL CODE SECTION 417: THREATENING WITH A WEAPON

Any person who, except in self-defense, in the presence of any person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner is guilty of a misdemeanor.

ANALYSIS

Determining whether Officers Dote and Soh were legally justified under principles of self-defense and defense of others to discharge their firearms involves a two- part analysis: (1) did they each have an objectively reasonable belief in the need to protect themselves or the other officer from an apparent, imminent threat of death or great bodily injury and (2) did they each, individually, subjectively and honestly believe that they needed to protect themselves or their partner from an apparent, imminent threat of death or great bodily injury.

Here, both Officer Dote and Officer Soh were afraid for their own lives and that of their fellow officer. That fear of imminent danger was objectively reasonable based on the below facts.

Police dispatch had informed the officers that someone was armed inside the reporting party's home and the caller was hiding inside with children. Officers Dote and Soh were close by and immediately responded to the call, parking their patrol car a few houses away. Officer Dote got out of the patrol car and walked toward the location of the call on the sidewalk next to his partner Officer Soh. They saw Watkins down the sidewalk near the location of the call. As they walked toward the residence, Watkins turned toward them and Officer Dote could see an object in his right hand. Initially they could not tell what the object was. Watkins focused on them and walked toward them. Without saying a word Watkins began to jog and then sprint towards Officer Dote and Officer Soh. As Watkins got closer they could see that Watkins had a knife in his right hand.

The officers yelled at Watkins to stop and drop the knife. Watkins did not comply but rather continued with his arm outstretched holding the knife. The officers are trained that a person with a knife can be a deadly threat within 21 feet and that their Kevlar vests would not stop a stabbing instrument. The officers drew their guns which would have been visible at that time of the day.

Watkins did not comply with the officers' commands to stop and drop the knife and continued running at the officers. Watkins said nothing as he was running at the officers. The officers could see that Watkins was holding a knife as he was running at them. Both officers fired their guns at this point. Even after being shot Watkins did not drop the knife, and Officer Soh had to kick it from his hand.

Officer Dote described Watkins as "fixated" on them and focused on them as he ran at them on the sidewalk. Even after Watkins has been shot and was down on the ground, Officers approached Watkins with their guns drawn and immediately handcuffed him. The officers could not have fled as they were wearing 20 to 30 pounds of gear and Watkins was gaining on them quickly.

Based only on what they saw and the circumstances known to the officers, the officers acted reasonably in self-defense and in defense of each other in shooting Phillip Watkins.

Moreover, the totality of the evidence leads to the conclusion that Phillip Watkins was intent on dying at the hands of police officers on February 11, 2015. In the weeks leading up to the incident Watkins had been acting increasingly erratically, threatening to kill himself and his ex-fiancée Deviny Buchanan. On the day of the incident, Watkins said he wanted to kill himself, causing Sylvia Buchanan to make a call for psychiatric help for him. Based on what he was saying and how he was acting, Deviny Buchanan went so far as to remove knives from the residence and to put the children in the house in a car to be safe from Watkins. While this was going on, Watkins called 911 and made a false report of an armed intruder. That call was designed to solicit an immediate response by law enforcement. Watkins armed himself with a knife from the house just prior to police arrival. Watkins told Deviny Buchanan that he was going to go after the police so that they could "handle it," which she took to mean that Watkins wanted the officers to shoot him. It is apparent from the totality of the evidence that Watkins was intent on dying that day. He called for police to come, ran at them with a knife, and ignored their commands to stop and drop the knife so that the police officers would be forced to shoot him in their own defense.

California law permits any person to use deadly force where there is a reasonable need to protect oneself, or another, from an apparent, imminent threat of death or great bodily injury. Here, the officers both believed and were reasonable in believing that they needed to use deadly force to protect themselves from Watkins who was running at them with a knife.

CONCLUSION

Under the facts, circumstances and applicable law in this matter, Officers Dote and Soh were justified in their use of force in response to an immediate threat of great bodily injury or death. Therefore, their conduct is legally justifiable and no criminal liability attaches to them.

Dated: September 29, 2015

Respectfully submitted by,
Charles Gillingham
Deputy District Attorney



JEFFREY F. ROSEN
DISTRICT ATTORNEY