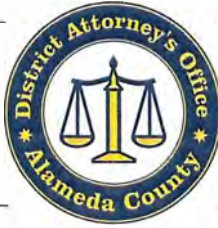

**Office of the District Attorney
Alameda County
Nancy E. O'Malley, District Attorney**



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

May 13, 2019

Chief Mark Koller
Hayward Police Department
300 West Winton Avenue
Hayward, CA 94544

Dear Chief Koller:


Enclosed is the District Attorney's Final Report on the fatal shooting of Agustin Andres Gonzalez which occurred November 15, 2018.

I have reviewed the report and agree with the conclusion that the evidence does not justify criminal charges against Hayward Police Officer Phillip Wooley and Officer Michael Clark.

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 working days after May 13, 2019.

Very truly yours,


Nancy E. O'Malley
District Attorney

Enclosure 



Enclosed is the District Attorney's Final Report on the fatal shooting of Agustin Andres Gonzalez which occurred on November 15, 2018. I have thoroughly reviewed the Report. I concur in the conclusions that the evidence does not support criminal charges being filed against Hayward Police Officer Phillip Wooley and Officer Michael Clark.

When a law enforcement officer is involved in a shooting that results in the death of an individual, there are grave and great impacts on the community, on the family and friends of the person. There are also impacts on the police officer(s) and the police agency. The Alameda County District Attorney's Office, and I as the District Attorney, take seriously the need for accountability. As such, it is our legal and ethical obligation to conduct a separate, independent, thorough and impartial investigation into the case.

The police agency in whose jurisdiction the shooting occurred has that primary responsibility to do a criminal investigation of the shooting. The District Attorney conducts a parallel though separate investigation. The District Attorney's Officer Involved Death Review Team (OIDRT) responds to the scene, is involved in interviews of all witnesses, including law enforcement witnesses. The case and all known facts are reviewed by the OIDRT. Ultimately, the case and recommendation of the OIDRT are reviewed by the District Attorney.

After a comprehensive review of all of the evidence gathered by and presented to the OIDRT, the question that we, as prosecutors, must answer in the criminal law context: Can the case be proved beyond a reasonable doubt that the officer acted unlawfully and in violation of the law. In making that determination, we are legally and ethically mandated to evaluate whether or not the officer feared for his or her life or believed that the lives of others were at risk and if so, whether that fear was reasonable under the circumstances. The legal threshold is not whether the officer was in imminent danger, but whether the officer reasonably believed that he or she or others were in imminent danger, and the belief was "Reasonable" is evaluated by the "Reasonable person standard."

As in every criminal case filed, my prosecutors also consider whether or not a jury of 12 people would convict the person of the potential charges alleged. The suspect's potential defenses must be considered in that analysis. This legal axiom protects all of our rights against unfair accusations of a crime.

There can be confusion about the District Attorney's role if the law enforcement agency finds that an officer involved shooting was out of policy or the officer used improper tactics. Acting out of policy or using improper tactics are not crimes. Those issues are sometimes determined by a civil action. The standard of proof in a civil trial is much lower than in a criminal trial. The District Attorney's Office is not making determinations about civil liability.

We know that when the use of force turns deadly, families are devastated. Family and friends are grieving and the community is in pain. That is why the District Attorney's Office must adhere to all ethical and legal standards under criminal law as we do in all cases. By doing so, we are upholding our commitment and our sworn duty to protect all members of our community.

DISTRICT ATTORNEY'S REPORT

OFFICER INVOLVED SHOOTING

OF

AGUSTIN ANDRES GONSALEZ



NANCY E. O'MALLEY
District Attorney

Officer Involved Shooting Team

May 10, 2019

INVESTIGATION OF THE SHOOTING DEATH OF

AGUSTIN ANDRES GONSALEZ

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.

The OIS Team prepares a report documenting the investigation, factual background, and legal conclusions. The prosecutor supervising the OIS Team reviews materials from the investigation and the OIS Team report. The case is reviewed by multiple veteran prosecutors, including the Chief Assistant District Attorney and the District Attorney. When the report has been completed and approved, it is delivered to the Chief of Police or Sheriff of the involved law enforcement agency. Thereafter, the report is made available to the public.

Executive Findings

On November 15, 2018, Agustin Gonzalez was tragically shot by Hayward Police Officer Phillip Wooley, who had been an officer for 28 years, and Hayward Police Officer Michael Clark, who had been an officer for 11 years. Mr. Gonzalez died from injuries resulting from the shooting. As explained in greater detail below, the officers were provided information that Mr. Gonzalez was armed with a knife. In fact, Mr. Gonzalez was armed with a small razor blade and was suicidal.

When Officer Wooley first got out of his patrol car and confronted Mr. Gonzalez, events unfolded rapidly. Mr. Gonzalez said, "You're gonna have to shoot me." Officer Wooley withdrew his firearm and repeatedly commanded Mr. Gonzalez to drop the knife. Mr. Gonzalez did not comply, but instead immediately walked quickly towards Officer Wooley. Mr. Gonzalez had his arms outstretched, and his hands close together. Officer Wooley later said that he believed that Mr. Gonzalez was holding a box cutter and that he caught a glimpse of what looked like the blade of a box cutter. Mr. Gonzalez never stopped advancing on Officer Wooley and never dropped the razor blade. When Mr. Gonzalez got within approximately 10 feet of Officer Wooley, Officer Wooley

began firing. Officer Wooley later explained that he feared that Mr. Gonzalez was about to cut him, and cause him great bodily injury or death.

Officer Clark saw Mr. Gonzalez advancing rapidly towards Officer Wooley, with his arms extended in front of him. Although Officer Clark could not actually see a weapon in Mr. Gonzalez' hands, he heard Officer Wooley repeatedly yelling, "Drop the knife." Officer Clark later said that he believed that Mr. Gonzalez was about to attack Officer Wooley with a knife, so Officer Clark fired to protect Officer Wooley's life.

In evaluating this incident, it is of utmost importance to consider the state of mind of Mr. Gonzalez and the officers involved.

Based on a thorough review of all of the available evidence, it is clear that, on the day of this incident, Mr. Gonzalez felt suicidal, acted threateningly to civilians, and advanced at officers with the intention of getting the officers to shoot and kill him.

Mr. Gonzalez' state of mind at the time of the shooting can be determined from the following facts. On the day of the incident, Mr. Gonzalez sent a text message to his ex-girlfriend's mother (Witness #4) which she interpreted as "want[ing] someone else to end his life for him." Approximately five hours before contact with the Hayward Police Department, Mr. Gonzalez wrote a note stating in part, "I've surrendered myself to the devil and gave in. I don't care if I look like a coward, but now everyone needs to suffer like I have...I'm sorry to everyone but you are the blame to this....I'm dead inside so I'm not sorry for the outcome."

In addition to these statements made on the day of the incident, Mr. Gonzalez had previously made statements to Witness #1, his ex-girlfriend, indicating a desire to end his life and that he "wanted to kill himself." Mr. Gonzalez had attempted to cut his wrists and was taken to the hospital. During a second attempt at suicide, Mr. Gonzalez used a box cutter to try and cut his wrist. When Witness #1 attempted to intervene, she was cut as a result. Witness #1 described that Mr. Gonzalez had often indicated a desire to kill himself.

On November 15, 2018, Mr. Gonzalez' blood alcohol level was 0.14 percent, and there was evidence of him prowling outside Witness #1's house. Witness #1 was fearful of Mr. Gonzalez, and requested the assistance of her neighbor, Witness #3. When Witness #3 went to look for Mr. Gonzalez, Mr. Gonzalez called Witness #1 and stated, "You sent your neighbor over here, you think he is going to do anything? I just knocked him the fuck out. I don't fucking care, I will kill him." This threat to kill occurred just before Witness #3 called 911 and reported that Mr. Gonzalez threatened him with a knife. Before the police arrived, Witness #1 described arming herself with a screwdriver and box cutter because she feared Mr. Gonzalez. Additionally, Witness #3 later described trying to disarm Mr. Gonzalez just prior to the police arriving. In response, Mr. Gonzalez attempted to cut Witness #3 on the shoulder and chest and then chased Witness #3 around a parked vehicle.

As Hayward officers arrived on scene, Mr. Gonzalez was heard yelling, "I don't give a fuck. They're going to have to shoot me. If you call the police on me, they're gonna have to shoot me." Within moments of making this statement, Mr. Gonzalez approached the officer with his hands

close together and his arms outstretched toward Officer Wooley. Officer Wooley began to shout, "Put the knife down. Put the knife down. Put it down."

The evaluation of Officer Wooley's state of mind is guided by the following factors.

Training: Officer Wooley is a firearms instructor and Field Training Officer with the Hayward Police Department. He has been trained that someone with a knife or bladed weapon constitutes an extreme danger. He is also aware that such objects can be lethal from a distance of 21 feet. Studies have shown that an average person can cover 21 feet by the time an officer can draw and fire his/her sidearm. Training on this subject also addressed that the hijackers during the 9/11 events used box cutters to gain compliance and that such weapons can cause massive cuts, slashes and hemorrhaging. Finally, Officer Wooley is aware that police body armor is not designed to stop edged weapons.

Dispatch Information: Officer Wooley was informed via radio that there was a man armed with a knife, who was threatening another person. Subsequent dispatches repeatedly made reference to the subject being armed with a knife. Dispatch described the subject as "wearing a red and black checked shirt" and confirmed that the person was armed with a knife.

On Scene Observations: When Officer Wooley arrived he saw an individual matching the earlier description, later identified as Mr. Gonzalez, in close proximity to two other people, with something in his hand. Officer Wooley believed Mr. Gonzalez posed a grave risk to the other people, given the information from dispatch that the subject had threatened someone with the knife. Given the poor lighting and visibility, Officer Wooley pulled his patrol vehicle closer to Mr. Gonzalez than he would have liked. As Officer Wooley got out of his vehicle, he made eye contact with Mr. Gonzalez, who immediately shouted, "You are going to have to shoot me," and began advancing toward Officer Wooley. Officer Wooley described Mr. Gonzalez as having a "blank thousand yard stare on his face." This was very alarming to Officer Wooley, who described that a person with such a look is "checked out, and whatever decision they have made in their mind, they are going to carry out.... A person with that look is purpose-driven, and nothing is going to stop them."

Officer Wooley then drew his service pistol and pointed it at Mr. Gonzalez. Officer Wooley began shouting commands to "Put the knife down. Put the knife down." Mr. Gonzalez began closing the distance between Officer Wooley and himself. Mr. Gonzalez had his hands near each other and arms outstretched toward Officer Wooley and continued to close the distance. Officer Wooley felt he could not retreat given the close proximity of the two civilians to Mr. Gonzalez. Mr. Gonzalez made no effort to change the position of his hands or to change course. Given the speed in which the situation developed, Officer Wooley was able to glimpse something that appeared to be the blade of a box cutter, as Mr. Gonzalez was purposefully approaching him. Mr. Gonzalez got within 10 feet of Officer Wooley without any indication of hesitancy or obeying the officer's commands. Given Officer Wooley's training and the observations above, he believed that if he did not fire his weapon, he would have suffered death or great bodily injury.

Officer Clark heard the same dispatch information and arrived on scene shortly after Officer Wooley. He heard Officer Wooley repeatedly tell Mr. Gonzalez to put the knife down, and he saw

Mr. Gonzalez walking toward Officer Wooley with his hands together and arms outstretched. Based on the dispatch information, the belief that Mr. Gonzalez had a knife, and the observations of Mr. Gonzalez ignoring Officer Wolley's commands to put the knife down, he feared for Officer Wooley's life and he discharged his weapon.

Given these circumstances, it cannot be proved beyond a reasonable doubt that the officers' belief in the need to use deadly force in self defense or defense of others, is unreasonable.

SCOPE OF THE INVESTIGATION:

On November 15, 2018, at approximately 9:15 p.m., Hayward Police Officers Phillip Wooley and Michael Clark shot Agustin Gonzalez. Mr. Gonzalez later died from his injuries. The incident occurred in front of a residence in the 24000 block of Oneil Avenue in the City of Hayward, California.

On November 15, 2018, at 11:00 p.m., the on-call OIS Team was notified that an officer involved shooting had occurred. The OIS Team initially met with Hayward Police detectives at the Hayward Police Department and then went to the scene of the incident. The OIS Team later participated in the interviews of Officers Wooley and Clark.

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

FACTUAL SUMMARY:

On November 15, 2018, between the hours of 4:00 and 9:00 p.m., Witness #1 and her sister, Witness #2, were in a home located in the 24000 block of Oneil Avenue in Hayward. Witness #1 lived in the home with her 2-year-old son, her mother (Witness #4), and her father. Witness #2 was visiting overnight with Witness #1 while their parents were out of town. Between the listed hours, Witness #1 and Witness #2 heard several noises outside and around the home. When the two sisters went to investigate, they found two chairs missing from in front of their home and located a vape pen and half empty bottle of Modelo beer in the side yard. Because of the vape pen and beer, Witness #1 believed that her estranged boyfriend, Mr. Gonzalez, had been prowling around the home.

Witness #1 said that, although she was estranged from Mr. Gonzalez, there had never been any violence in their relationship. However, according to Witness #1, Mr. Gonzalez was angry and depressed over the break up and on at least two prior occasions he had attempted suicide by cutting himself.

Witness #1 asked her neighbor, Witness #3, to go see if he could find Mr. Gonzalez in the area and try to convince him to leave the area. Witness #3 located Mr. Gonzalez outside, down the street from the residence, and confronted him. According to Witness #3, Mr. Gonzalez appeared angry.

Witness #3 said that Mr. Gonzalez said that he had a razor blade and that he was going to cut himself.

Witness #3 tried to take the razor blade away from Mr. Gonzalez by reaching out to grab his arm. Mr. Gonzalez was able to get away from Witness #3. Witness #3 said that Mr. Gonzalez swung the razor blade at Witness #3 but missed. Witness #3 said he tried to run away from Mr. Gonzalez but Mr. Gonzalez chased him around a white pick-up truck parked on the street. Witness #3 then called 911, while trying to keep the pick-up truck between him and Mr. Gonzalez.

The initial 911 call was connected to California Highway Patrol dispatch at 9:12 p.m. Witness #3 provided little information during the call. CHP thereafter transferred the call to Hayward Police dispatch. Witness #3 told Hayward Police dispatch that his neighbor's boyfriend was threatening him with a knife. Witness #3 described the subject as a male wearing a red shirt with black stripes and blue jeans. Witness #3 described the location of the incident as being at Oneil Avenue and Orchard Avenue. The Hayward Police dispatcher was unable to get much further information from Witness #3 because he did not answer the dispatcher's follow up questions. The telephone line remained open and a heated argument could be heard in the background. Witness #3 asked the police to hurry up.

Hayward Police dispatchers directed officers to Orchard Avenue and Oneil Avenue, while the 911 dispatcher remained on the call listening and attempted to gather more information from Witness #3. After several minutes, the dispatchers could hear someone say "put the knife down" and could hear whistling.

The dispatch to officers was preceded by a tone, indicating a priority call. The dispatcher told officers that there was a report of a male with a knife at Oneil Avenue and Orchard Avenue. The dispatcher told officers that the reporting party said that a neighbor's boyfriend was threatening him. The dispatcher later said that dispatchers could hear a heated argument in the background. The dispatcher provided a description of the suspect as a male wearing a red shirt with black stripes and jeans. The dispatcher let officers know that they still had an open line with the reporting party.

Hayward Police personnel, including Officer Wooley, Officer Clark, and Sergeant Tasha DeCosta, headed to the scene in an attempt to locate persons involved in the incident. Initially, they were unable to locate the scene. Sergeant DeCosta arrived in the area of Orchard Avenue and Oneil Avenue. She advised dispatch that she was being flagged down by a person, later identified as Witness #3. The dispatcher then updated officers with information that they could hear someone on the open line saying "put the knife down" and that they heard whistling. Officer Wooley advised dispatch that police had located the person who was whistling. The dispatcher again told officers that the male wearing a red shirt and jeans is supposed to be the one with the knife.

Sergeant DeCosta got out of her vehicle and made contact with Witness #3. He gestured further up the street and said, "He has a knife. Stop him." Sergeant DeCosta looked up the street and saw Mr. Gonzalez and Witness #1 in the street arguing. It appeared that they had their hands on each other. Sergeant DeCosta heard Mr. Gonzalez yelling. Sergeant DeCosta recalled hearing Mr. Gonzalez say words to the effect of, "I don't give a fuck. They're going to have to shoot me. If you call the police on me, they're gonna have to shoot me."

Witness #1 later told police that during this encounter, Mr. Gonzalez appeared very angry, tense, and was holding a small razor blade in his hand. She said that Mr. Gonzalez started to move towards her, but she backed away from him because she was scared to touch him. Witness #1 said that she yelled at Mr. Gonzalez and asked him what he was doing. Mr. Gonzalez told her he did not care anymore and was going to kill himself.

Witness #3 began walking towards Mr. Gonzalez and Witness #1. Sergeant DeCosta also began walking in the same direction. As she was walking in that direction, a patrol car, driven by Officer Wooley, drove past her and stopped closer to where Mr. Gonzalez and Witness #1 were located. A second patrol car, driven by Officer Clark, also passed Sergeant DeCosta and stopped behind Officer Wooley's car.

As Officer Wooley drove onto the scene, he noticed a man, later identified as Witness #3, walking up the street. Officer Wooley recalled that Witness #3 told him, "Up there. Stop that guy." Officer Wooley looked further north on Oneil Avenue and saw a male in a red and black shirt and a female in the street. The male was later identified as Mr. Gonzalez and the female was later identified as Witness #1. Officer Wooley proceeded to that location and stopped his car approximately 20 feet away from Mr. Gonzalez and Witness #1. Officer Wooley and several other witnesses later explained that visibility that night was affected by smoke from the ongoing wildfires in California.

As Officer Wooley was pulling up, Sergeant DeCosta was beginning to transmit information over the radio. Sergeant DeCosta intended to advise the other officers that Mr. Gonzalez was threatening to commit "suicide by cop." However, at about the same time, Officer Wooley stopped his car, got on the radio, advised that there were subjects in the street, and requested that radio traffic be kept clear while he was making contact. Sergeant DeCosta was approaching on foot and started to verbally tell the officers that Mr. Gonzalez was threatening "suicide by cop" but she was not close enough to Officers Wooley or Clark to verbally communicate this information.

Just after Officer Wooley asked dispatch to keep radio traffic clear, he began to exit his vehicle. As was doing so, he heard a male voice yell something similar to, "You are going to have to shoot me." Officer Wooley believed it was Mr. Gonzalez who made that statement.

Officer Wooley got out of his patrol car, withdrew his service pistol, and immediately began yelling for Mr. Gonzalez to drop the knife. Mr. Gonzalez turned towards Officer Wooley and began to walk towards him with his arms stretched out in front of him. As Mr. Gonzalez was advancing towards Officer Wooley, Officer Clark, who was driving in a separate patrol vehicle, pulled to a stop behind and to the right of Officer Wooley's patrol car. As Officer Clark got out of his patrol car, he could hear Officer Wooley giving commands to Mr. Gonzalez to drop the knife. Officer Clark saw Mr. Gonzalez walking towards Officer Wooley, who was standing behind the driver's side door of his patrol vehicle. Officer Clark ran to the passenger side front quarter panel of Officer Wooley's car. Once Officer Clark reached the front quarter panel of Officer Wooley's patrol car, he saw Mr. Gonzalez continuing forward towards Officer Wooley with his arms stretched forward. Mr. Gonzalez was approximately 10 feet away from Officer Wooley when both officers began to fire their service pistols at Mr. Gonzalez. Mr. Gonzalez eventually stopped moving towards Officer Wooley and fell to the ground.

Once Mr. Gonzalez was on the ground, Officers Wooley and Clark stopped shooting. Officer Clark holstered his service pistol and went forward of the patrol car and handcuffed Mr. Gonzalez. Officer Gillette arrived on scene as the shooting was ending and he helped Officer Clark handcuff Mr. Gonzalez. Once Mr. Gonzalez was handcuffed, Officer Gillette picked up a 1" x 1-1/2" single edge razor blade from the ground underneath Mr. Gonzalez and moved it approximately four feet away from Mr. Gonzalez.

Hayward Fire Department personnel were called to the scene and provided medical treatment to Mr. Gonzalez. Mr. Gonzalez was ultimately transported by ambulance to Eden Medical Center. Despite lifesaving attempts, Mr. Gonzalez died from his injuries.

Crime Scene Technicians responded to the scene and recovered the single edge razor blade from the location Officer Gillette had moved it to after it was found under Mr. Gonzalez. There was no knife or box cutter found at the scene. Technicians also recovered fired cartridge cases at the scene and examined Officer Wooley's and Officer Clark's firearms. It was later determined that Officer Wooley fired nine shots from his .40 caliber handgun and Officer Clark fired three shots from his 9mm handgun.

A later search of Mr. Gonzalez' cell phone revealed an electronic note, that was created approximately five hours before the shooting. In part, the note stated as follows: "I've surrendered myself to the devil and gave in. I don't care if I look like a coward, but now everyone needs to suffer like I have...I'm sorry to everyone but you are the blame to this....I'm dead inside so I'm not sorry for the outcome."

POLICE OFFICER INTERVIEWS:

Hayward Police Officer Wooley

On November 18, 2018, Officer Wooley was interviewed at the Hayward Police Department. Immediately prior to the interview, Officer Wooley had the opportunity to review footage from his body worn camera. The interview was conducted by Hayward Police Detectives Rob Purnell and Eric Mulhern. The OIS Team was present and participated in the interview. The OIS Team members present were Deputy District Attorney Autrey James and District Attorney Inspector Caesar Basa. Attorney Harry Stern, from the Rains Lucia Stern Law Firm, was present representing Officer Wooley.

Officer Wooley was advised of his rights and voluntarily provided a statement. The interview began at 1302 hours and was audio and video recorded. The interview concluded at 1438 hours. Officer Wooley's statements are summarized as follows:

Officer Wooley has been a police officer with the City of Hayward since 1990. On November 15, 2018, Officer Wooley was working in the north end of the City of Hayward. He was wearing a full police uniform and was equipped with a body worn camera affixed to his chest. Officer Wooley had been dispatched to a call of a reported stolen vehicle when a call of a "415 ascertain" came over the radio. Officer Wooley described the nature of the call as something going on at the intersection of Orchard Avenue and Oneil Avenue. Officer Wooley said the call was over the

radio and not on his mobile data terminal because his previously assigned call, a stolen vehicle report, was still on this screen. According to Officer Wooley, dispatch advised that there was a male who had a knife and attempted to stab a roommate. Officer Wooley said that the information was sketchy because the reporting party was not being forthcoming with information about the incident. Officer Wooley, at that point, informed his dispatcher he was diverting to the call of the man with the knife.

While in route to the call, Officer Wooley said that dispatch informed him that the subject with the knife was wearing a red and black checked shirt, that he was arguing with a roommate, and the phone line was open, meaning the dispatcher could hear voices in the background but was not actually talking to the reporting party. As Officer Wooley was arriving in the area of Orchard Avenue and Oneil Avenue in his marked black and white police car, he activated his body worn camera.

Officer Wooley said that the only other information he had was that this was in an apartment complex near the intersection. Once he arrived, Officer Wooley did not see any activity and asked for any additional information about the location as he continued to look for the incident. Officer Wooley said that at one point he heard whistling and yelling at him coming from north of him on Oneil Avenue. Officer Wooley said he was driving north on Oneil Avenue in the direction he heard the whistle, and heard Sergeant DeCosta say over the radio she was with the informant. At that point, Officer Wooley could see the subject in the red and black shirt (later identified as Mr. Gonzalez) arguing with another male and a female. Officer Wooley said that he was afraid that Mr. Gonzalez was going to stab the other male or the female. Officer Wooley said that Mr. Gonzalez had something in his hand but he could not see what it was. Officer Wooley described Mr. Gonzalez as holding the object "oddly." Officer Wooley described that while on his way to the call, the only information he had about the weapon was that it was a knife and that someone on the radio informed him that someone had already been stabbed.

Officer Wooley said that because it was dark, he pulled his car up closer than he would have liked to, but did so in order to see the people better. He also noted the reduced visibility caused by smoke for the ongoing wildfires. Officer Wooley said that as he got out of his car, Mr. Gonzalez looked at him with what Officer Wooley described as a "blank thousand yard stare on his face." According to Officer Wooley, Mr. Gonzalez looked at him and said, "You are going to have to shoot me." Officer Wooley said that when he stopped his patrol car and got out, he was approximately five yards away from Mr. Gonzalez.

Officer Wooley said that he dropped the flashlight from his hand, withdrew his service pistol, and pointed it at Mr. Gonzalez. Officer Wooley said that he told Mr. Gonzalez "drop the knife, drop the knife, drop the knife," as Mr. Gonzalez was walking towards him. Officer Wooley described that as Mr. Gonzalez was walking towards him, he had his arms extended out in front of him, his hands cupped together almost as if he was in a "low ready" shooting stance. Officer Wooley described "low ready" as a position where someone holds a handgun in front of their body about two inches below the waistline. Officer Wooley said it was obvious it was not a gun in his hand but he had something in his right hand. Officer Wooley said he believed the object was a box cutter because of the way Mr. Gonzalez was holding it and he caught a brief "glimpse" of the object and believed it looked like a blade of a box cutter.

Officer Wooley described that in training, one of the things that was addressed was the idea of drawing a line in the sand when it came to subjects who were a threat. Officer Wooley said, in his mind, he had set an imaginary line where if the subject came any closer than that imaginary line in the sand then he was going to be an extreme threat. Officer Wooley said that he set that line at two to three yards in front of him. Officer Wooley said that he feared that Mr. Gonzalez was going to stab him or turn his direction back to the other two people he had been arguing with. Officer Wooley said he told Mr. Gonzalez to stop, but he kept coming towards him. Officer Wooley described Mr. Gonzalez' rate of approach as not fast, but not slow.

Officer Wooley said that he understood, based on his training, that at 21 feet away, an average person with an edged weapon could cut or stab the average officer before that officer could fire one shot from a holstered weapon. Officer Wooley said that Mr. Gonzalez closed the distance down to two to three yards and that is when he made the decision to shoot, because he thought Mr. Gonzalez was going to stab him with the knife, which could kill or cause great bodily injury to Officer Wooley.

Officer Wooley said that he used deadly force (his service pistol) because he believed that Mr. Gonzalez had a deadly weapon and was about to stab him. Officer Wooley explained why he did not choose to use non-deadly force, such as his Taser. Officer Wooley said that if he used a Taser, and it did not work in stopping Mr. Gonzalez by the time that Officer Wooley could transition to his service pistol, Officer Wooley would have been stabbed. Officer Wooley also said that at the time, he was not yet aware of the presence of any cover officer who would be able to assist Officer Wooley in avoiding being stabbed.

Officer Wooley said that he did not remember the exact number of rounds he fired, but believes it was six to eight times. At the same time he began to fire, Officer Wooley saw Officer Clark in his peripheral vision also firing his weapon. Officer Wooley was unsure how many rounds Officer Clark may have fired.

Officer Wooley said that as he fired the first couple of shots, they didn't seem to affect Mr. Gonzalez and he didn't drop to the ground immediately. Officer Wooley said that Mr. Gonzalez still had the object in his hand. Officer Wooley said that Mr. Gonzalez turned to his right while still holding the object and Officer Wooley believed he was a continuing threat so he continued to fire. Officer Wooley said that Mr. Gonzalez eventually fell down to the ground in a fetal position, still holding the blade, and Officer Wooley stopped firing. Officer Wooley said that he told Mr. Gonzalez "don't move" and Mr. Gonzalez responded that he was not moving. Officer Wooley said Officer Clark and Officer Gillette then went forward and handcuffed Mr. Gonzalez.

Hayward Police Officer Michael Clark

On November 18, 2018, Officer Clark was interviewed at the Hayward Police Department. Immediately prior to the interview, Officer Clark was afforded the opportunity to review footage from his body worn camera. The interview was conducted by Hayward Police Detectives Purnell and Mulhern. The OIS Team was present and participated in the interview. The OIS Team members present were Deputy District Attorney Autrey James and District Attorney Inspector Caesar Basa. Attorney Harry Stern, from Rains Lucia Stern Law Firm was present representing

Officer Clark.

Officer Clark was advised of his rights and voluntarily provided a statement. That interview began at 1509 hours and was audio and video recorded. The interview concluded at 1627 hours. Officer's Clark's statements are summarized as follows:

Officer Clark has been a police officer with the City of Hayward for nine years. Prior to his employment at the Hayward Police Department, he was employed as a peace officer with Stockton Police Department for two years.

On November 15, 2018, approximately 2100 hours, Officer Clark was parked in his black and white patrol car when he heard a tone over his police radio signify a priority call. Hayward Police dispatch advised there was a Hispanic male wearing a red and black shirt and jeans with a knife threatening people in the area of Orchard Avenue and Oneil Avenue. Officer Clark assigned himself to the call using his Mobile Data Terminal (MDT).

Officer Clark said he believed this call was significant and the situation was ongoing as he travelled towards the location of the incident. Officer Clark said he was concerned for the public and other officers who might be there because the call related to someone armed with a knife. Officer Clark said he has seen the results of prior stabbing incidents during his 11-year career in law enforcement and has seen first-hand the damage that knives can inflict, including death and great bodily injuries.

Officer Clark said he got to the intersection of Oneil Avenue and Orchard Avenue and he heard Sergeant DeCosta over the radio advise the name of an apartment complex, but he did not recognize nor recall the name. Officer Clark heard Officer Wooley on the radio say he was being flagged down.

Officer Clark turned north on to Oneil Avenue and saw a patrol car parked on the side of the road. Officer Clark was not sure, but believed that the parked patrol car was Sergeant DeCosta's car. It did not appear that anyone was in the car, so Officer Clark continued north on Oneil Avenue to a second patrol car stopped in the street, which Clark believed was driven by Officer Wooley.

Clark stopped his car in the middle of the street behind and slightly to the right of Officer Wooley's patrol car. Officer Clark described that the headlights of his patrol car were on as well as his driver's side spotlight. Officer Clark said he got out of his patrol car and saw that Officer Wooley was off to his left. Officer Clark said as he was walking towards the front of Officer Wooley's car, he saw a male wearing a red and black Pendleton style shirt walking at a methodical pace towards Officer Wooley. The male was later identified as Mr. Gonzalez. Officer Clark said that he could see Mr. Gonzalez from over the top of Officer Wooley's patrol car and never lost sight of him. Officer Clark said he did not see where Sergeant DeCosta was at that point.

Officer Clark said that Mr. Gonzalez had his hand extended out in front of his body. Officer Clark said he heard Officer Wooley say "put down the knife, put down the knife" and then, according to Officer Clark, Officer Wooley told Officer Clark that the man had a knife. Officer Clark ran to the passenger side of Officer Wooley's patrol car.

Officer Clark said when he got to the side of the patrol car the first thing that caught his attention was a general sense of chaos going on in the area. Officer Clark said that people were frantic but he could not hear what they were saying. When asked to describe what he meant by frantic, Officer Clark said that people were milling about the area and based on “normal standards, a lot of people aren’t going to be out on the streets at nine o’clock at night and there seemed as though there was a pretty good crowd.”

Officer Clark said that when he got to the front of Officer Wooley’s car, he realized that Mr. Gonzalez was the man described by dispatch, because of his clothing and because Officer Wooley was commanding him to drop the knife. Officer Clark said it was obvious to him that this was the person armed with the knife, especially when Officer Wooley said “he’s got the knife in his hand or something similar and he was walking not obeying any commands given by Officer Wooley.”

Officer Clark said that Mr. Gonzalez was approximately 10 to 15 feet away from him and Officer Wooley. Officer Clark said he saw Mr. Gonzalez’ hands out in front of him and he was walking towards Officer Wooley. Officer Clark said he did not see anything in Mr. Gonzalez’ hands at that moment, but he believed that the man had a knife. Officer Clark described Mr. Gonzalez as having a blank stare on his face and it seemed like he had a purpose to walk towards Officer Wooley and harm him. Officer Clark said that he also believed that Mr. Gonzalez intended to cause Officer Wooley to shoot him, because he continued to advance on Officer Wooley and did not obey commands.

Officer Clark said he did not hear Mr. Gonzalez say anything at the time he was walking towards Officer Wooley. Officer Clark said, as soon as he saw Mr. Gonzalez advancing on Officer Wooley, he un-holstered his service pistol. Officer Clark said, when he un-holstered his service pistol he was stopped on the passenger side of Officer Wooley’s car near the hood. Officer Clark said as Mr. Gonzalez was approaching Officer Wooley, he believed that Officer Wooley’s life was in danger, so he fired two or three rounds from his service pistol to stop the threat. Officer Clark said Mr. Gonzalez was 20 feet away initially and moved to about 10 feet from Officer Wooley when he fired his service pistol.

Officer Clark said, as he fired his service pistol, he saw Mr. Gonzalez stop his advance and fall to the ground. Officer Clark said he then re-holstered his service pistol and went forward to handcuff Mr. Gonzalez as he was trained to do and to make sure that he was no longer a threat. Officer Clark said when he rolled Mr. Gonzalez over to handcuff him, he saw a box cutter on the ground that was directly under him. Officer Clark described the box cutter as a “grayish metal four inch box cutter.” When shown a photo of a razor blade recovered at the scene, Officer Clark said he did not recognize that as being at the scene.

Officer Clark said that he had no time for any other force options. Officer Clark said that the situation was quickly evolving and he fired to protect Officer Wooley’s life. Officer Clark said that he did not activate his body worn camera until after the shooting incident.

Hayward Police Sergeant Tasha DeCosta

On November 18, 2018, Sergeant DeCosta was interviewed at the Hayward Police Department. Immediately prior to the interview Sergeant DeCosta had the opportunity to review footage from

her body worn camera. The interview was conducted by Hayward Police Detectives Mosby and Mulhern. The OIS Team members monitored the interview from a location outside the interview room and were able to direct follow up questions after a break in the interview. The OIS Team members present were Deputy District Attorney Autrey James and District Attorney Inspector Caesar Basa. Sergeant DeCosta was unrepresented during her interview. The interview was recorded, and the following is a summary of the statement provided by Sergeant DeCosta.

Sergeant DeCosta has been a member of the Hayward Police Department since 2005. Prior to her time with Hayward Police Department, Sergeant DeCosta was a member of the Benicia Police Department from 2003 until she left for Hayward Police Department in 2005. Sergeant DeCosta in her time as a police officer, has held several collateral assignments including as a member of the Hostage Negotiations Team.

On the night of this incident, Sergeant DeCosta was on-duty working overtime as the Sergeant in the north end of the City of Hayward. Sergeant DeCosta described hearing an alert tone over the radio often used for priority calls. Dispatch advised there was a male subject with a knife. Sergeant DeCosta said she remembered thinking that the call sounded like a domestic violence call and that the male was brandishing the knife. Sergeant DeCosta also said that dispatch was unable to get much information because there was yelling in the background of the call. According to Sergeant DeCosta, the location of the incident was originally given as Oneil Avenue and Sycamore Avenue. Sergeant DeCosta said she proceeded to the call because she was close and because she wanted to assist the assigned officers. Sergeant DeCosta also felt that if the call escalated, she might use her training as a hostage negotiator to defuse the situation.

Sergeant DeCosta arrived on Sycamore Avenue at Oneil Avenue and did not see anyone. Sergeant DeCosta continued southbound on Oneil Avenue towards Orchard Avenue. Sergeant DeCosta explained that as she reached the driveway for Oneil Commons Apartments, she noticed a male subject wearing an orange shirt walking on the sidewalk, northbound on Oneil Avenue. The male in the orange shirt was later identified as Witness #3. Sergeant DeCosta said the information she had about the subject with the knife was that he was wearing a red shirt, however, because of the lighting and the smoke from fires in Northern California, she thought it was possible that Witness #3 could be the involved subject.

Sergeant DeCosta got out of her vehicle and made contact with Witness #3. He gestured further up the street and said, "He has a knife. Stop him." Sergeant DeCosta looked up the street and saw Mr. Gonzalez and Witness #1 in the street arguing. It appeared that they had their hands on each other. Sergeant DeCosta heard Mr. Gonzalez yelling. Sergeant DeCosta recalled hearing Mr. Gonzalez say words to the effect of, "I don't give a fuck. They're going to have to shoot me. If you call the police on me, they're gonna have to shoot me."

As Sergeant DeCosta began walking northbound on Oneil Avenue towards Mr. Gonzalez and Witness #1, two Hayward Police Department patrol cars passed her and stopped closer to where Mr. Gonzalez and Witness #1 were located. Sergeant DeCosta said that she attempted to get on the radio to tell the two officers who passed her that Mr. Gonzalez was threatening suicide by cop,

but was only able to get out that the male was threatening.

Sergeant DeCosta approached the two patrol cars and noted that the first was driven by Officer Wooley and the second by Officer Clark. Sergeant DeCosta saw Officer Wooley exit his patrol vehicle and stand near the driver's side, but could not remember if his door remained open or closed during this incident. Sergeant DeCosta saw Officer Clark stop his patrol car behind Officer Wooley's car. According to Sergeant DeCosta, Officer Clark got out and ran to the passenger side of Officer Wooley's patrol car.

Sergeant DeCosta said that she saw Mr. Gonzalez moving towards Officer Wooley. She also heard Officer Wooley yelling commands for Mr. Gonzalez to drop the knife. Sergeant DeCosta said that Officer Wooley gave that command at least twice. Sergeant DeCosta said at that point she had been told by dispatch the call was a man with a knife. Witness #3 had told her the man had a knife; Officer Wooley was yelling "drop the knife," so she pulled her service pistol out of its holster. As Sergeant DeCosta reached the back of Officer Wooley's patrol car, she heard shots. Sergeant DeCosta said as she moved around to the passenger side of the patrol car she saw Officer Clark and then moved to a position directly adjacent to Officer Clark as the shooting stopped. Sergeant DeCosta never fired her service pistol because as she came adjacent to Officer Clark, she saw Mr. Gonzalez on the ground in front of her and believed he did not pose a lethal threat at that point.

Sergeant DeCosta was able to get on the radio and advise dispatch of the shooting and summon medical assistance and additional police units to the area. Sergeant DeCosta said that immediately after the shooting she saw Witness #3 on the sidewalk restraining the blonde woman who was crying. Sergeant DeCosta said that as she was assessing Officer Wooley and attempting to get what she refers to as a public safety statement, she first learned that Officer Clark had also fired his service pistol.¹

Throughout the entire incident, Sergeant DeCosta said she never saw a weapon in Mr. Gonzalez's hands but also explained that prior to the shots being fired, she was never in a position to see his hands. At the conclusion of the shooting, she saw a razor blade laying on the ground but could not say this was the weapon the subject was believed to have had at the time of the shooting.

CIVILIAN WITNESS STATEMENTS:

Witness #1

On November 16, 2018, Witness #1 was interviewed at the Hayward Police Department by detectives.

Witness #1 said that she and Mr. Gonzalez began dating in August of 2017. They became engaged in January 2018 but broke up in October of 2018. Despite the breakup, Witness #1 and Mr. Gonzalez had been communicating off and on. Witness #1 described that earlier in the year, Mr. Gonzalez had become despondent and "threw a temper tantrum." As a result of this incident, Mr.

¹ A public safety statement is designed to get basic information about an officer involved shooting. It seeks to determine if there are any outstanding suspects, or weapons, direction of fire, and any individuals injured needing assistance.

Gonzalez said he was going to kill himself and attempted to cut his wrist with a debit card. Witness #1 said this happened in the City of Oakland and Mr. Gonzalez was taken to Kaiser Hospital in Oakland by the police.

Witness #1 described another incident where Mr. Gonzalez became despondent and threatened to kill himself. In that incident, Mr. Gonzalez cut his arm with a box cutter. Witness #1 said during that incident, she stuck her hand out in an attempt to stop him, and she was cut by the box cutter. Witness #1 said that Mr. Gonzalez was insecure about their relationship and often said he wanted to kill himself.

Witness #1 said that she thought Mr. Gonzalez was casing her home earlier in the day before the officer involved shooting. Witness #1 said she believed that because her sister, Witness #2, and her were home with Witness #1's son. The two adults went out to smoke marijuana and while outside, she received a text from Mr. Gonzalez in which he told Witness #1 that she cared more about smoking marijuana than her son. After smoking, Witness #1 said while she and her sister were inside preparing dinner, Hayward Police officers came to the door. The officers said they received a call from a neighbor who said that there was a baby crying. Witness #1 said the officer checked on her child, saw that he was okay, and they left without telling her who the caller was. Witness #1 said it was during the day but was not sure of what time this incident occurred.

Witness #1 said as the day progressed she heard noises she described as banging outside and around the house. Witness #1 and #2 went outside to investigate and found that two chairs that are normally located directly outside the house near the front door were missing. Witness #1 said they called their neighbor, Witness #3.

Witness #1 said that Witness #3 came directly over to investigate and found one of the chairs was on the side of the house. Witness #3 said that he would close up his work place and then stay at his home to help keep an eye on the property while Witness #1, #2, and the two-year-old child were home alone.

Witness #1 said that she also found a vape pen and a Modelo beer outside on the side of the house. Witness #1 said that she recognized the vape pen as belonging to Mr. Gonzalez. Witness #1 also said that Mr. Gonzalez drank Modelo. Witness #1 said at the time she found the vape pen she heard what sounded like someone jumping her fence and another neighbor said that someone ran through their yard which is adjacent to Witness #1's fence. Based on this information, Witness #1 believed that Mr. Gonzalez had been watching the house.

Witness #1 said that Witness #3 came back after he closed up his work place and told her he was going to go look down the street for Mr. Gonzalez. Witness #1 said that this was not unusual for Witness #3 to go look for Mr. Gonzalez when he would do something like this. After a while of sitting on her porch, Witness #1 got a call from Mr. Gonzalez. Mr. Gonzalez said to her, "You sent your neighbor over here, you think he is going to do anything? I just knocked him the fuck out. I don't fucking care, I will kill him." Before Witness #1 could respond, Mr. Gonzalez hung up the phone. Witness #1 then called Witness #4, her mother, and told her what happened.

Witness #1 said when she got off the phone she went back into the house and put on her shoes and

put a screwdriver and a green box cutter in her pocket because she was scared because she didn't know how Mr. Gonzalez was going to react. Witness #1 also said she didn't think Mr. Gonzalez would hurt her, but she has been hurt by others so she grabbed the items to protect herself.

Witness #1 said she left her house and began to walk southbound on Oneil Avenue. Witness #1 said that a police car passed her and stopped down the street from her. Witness #1 said that she started to run because she thought something bad would happen. She stopped running when she saw Mr. Gonzalez walking northbound towards her. Witness #1 also saw Witness #3 and two more police cars traveling northbound towards her. Witness #1 said that Mr. Gonzalez was yelling while talking on his cell phone. According to Witness #1, Mr. Gonzalez appeared very angry, seemed tense, and was holding a small razor blade in his hand.

Witness #1 said she heard Witness #3 tell the officers "he is right there and he has a knife." Officers pulled up and stopped. Witness #1 said that Mr. Gonzalez started to move towards her, but she backed away from him because she was scared to touch him. Witness #1 said that she yelled at Mr. Gonzalez and asked him what he was doing. Mr. Gonzalez told her he did not care anymore and was going to kill himself. The officers started to get out of their cars and Mr. Gonzalez walked past Witness #1 and Witness #3. The officers were drawing their weapons and Witness #1 said she yelled "don't shoot him," that he was "sick" and "needs help." Witness #1 said that the officers told Mr. Gonzalez to drop what he had, but he did not drop it. Instead, Mr. Gonzalez walked towards the officers and said, "I don't give a fuck. Just shoot me." Witness #1 said the officers shot him and he fell to the ground.

Witness #1 said that Mr. Gonzalez was carrying a razor blade in one hand and had his other arm extended and had the razor across that arm as if he was going to cut himself. Witness #1 said that Mr. Gonzalez never said he was going to kill an officer, and he never threatened her with the razor blade. Witness #1 said that Mr. Gonzalez was shot by multiple officers three times and then he turned and was shot in the back as well.

Witness #1 said that the officers rolled Mr. Gonzalez over and put handcuffs on him. Witness #1 was very distraught during the interview.

Witness #1 identified a photo of the razor blade that was found on scene as the one Mr. Gonzalez had. She described Mr. Gonzalez as holding the razor blade in his right hand pinched between a finger and his thumb. Witness #1 also identified a photo of a screwdriver that was found lying on the street as the one she was carrying.

Witness #1 said there was one officer on the driver side of a police car behind the door. The second officer was on the passenger side of the car. The officer on the driver's side yelled something but Witness #1 could not remember what he yelled. Witness #1 said that Mr. Gonzalez kept moving towards the officer. Witness #1 said that she tried to go to Mr. Gonzalez after he was shot, but Witness #3 held her back.

Witness #2

On November 16, 2018, Witness #2 was interviewed by detectives at the Hayward Police Department.

Witness #2 said that on November 15, 2018, she was visiting her sister at her parents' home on Oneil Avenue. At approximately 3:00 or 4:00 p.m., she was cooking dinner and saw two Hayward Police officers walk up to the door of the residence. The officers knocked and explained they received a call about a child crying. Witness #2 explained that the only people home were her sister (Witness #1), and her sister's minor child who has special needs. The officers checked on the child and saw that everything was in order and left.

Witness #2 explained that after they finished eating they went outside to smoke and she heard what she described as some strange noises. Witness #2 said her sister noticed that two chairs were missing from out front. The chairs were folding chairs and one of the chairs had been purchased and left at the residence by Mr. Gonzalez. The second chair belonged to her mother.

Witness #2 said she called a neighbor, Witness #3, who works next door and lives in front of her parents' home. Witness #3 looked around and found one of the missing chairs on the side on his house. Witness #2 said ultimately she and her sister went back inside but became alarmed when one of the outside lights on a motion sensor came on and she heard rustling on the side of the home. A few minutes later, Mr. Gonzalez called Witness #1 on the phone and said that he had just knocked out Witness #3. According to Witness #2, Mr. Gonzalez was never known to be violent so she was surprised.

Witness #2 said that Witness #1 went outside. After a few minutes, Witness #2 went outside and saw Witness #1 arguing with Mr. Gonzalez. Witness #2 saw Mr. Gonzalez pull away from Witness #1 and it was about the same time the police had arrived. Witness #2 said her sister was yelling for Mr. Gonzalez to, "stop, stop." Witness #2 said that Mr. Gonzalez was backing away from her sister and he seemed mad. Witness #2 described Mr. Gonzalez as saying something like "I don't care."

Witness #2 said the officers were out of their cars and they were yelling something, but she could not tell what. Witness #2 said at some point it looked like Mr. Gonzalez was walking towards the officers, but Witness #2 could not be sure because she lost sight of Mr. Gonzalez when her view was blocked by a large parked truck. Witness #2 said she was backing up and heard shots. Witness #2 was actually on the phone with her parents during this time and ran back into the house. Witness #2 said she heard approximately seven shots. When Witness #2 came back out of the house, she saw that Witness #3 was comforting her sister.

Witness #3

On November 16, 2018, Witness #3 was interviewed by detectives at the Hayward Police Department.

Witness #3 explained that he was working in his yard when he received a phone call from his neighbor, Witness #4. Witness #3 said Witness #4 asked him to check on her daughters (Witness #1 and #2) since they were home alone and were hearing noises. Witness #3 explained that he

lives in a house in front of Witness #4 and his work is directly next door. Witness #3 walked over and searched around the house. He found a vape pen and an open and partially consumed Modelo beer and a chair that would normally be in front of his neighbor's home. When Witness #1 saw the vape pen she immediately recognized it as Mr. Gonzalez' who Witness #3 knew was the former boyfriend of Witness #1.

Witness #3 went back to work but received a phone call from Witness #2. Witness #2 said they were still hearing noises. Witness #3 decided to close his business for the night and as he was locking the gate, he noticed Mr. Gonzalez down the street. Witness #3 walked down to Mr. Gonzalez and confronted him. According to Witness #3, he was upset with Mr. Gonzalez and asked him why he was scaring the girls and the child in the house.

Witness #3 said that Mr. Gonzalez said he had a knife or razor blade and was going to cut himself. (During interviews of Witness #3, he used the words "knife" and "razor blade" interchangeably.) Witness #3 said Mr. Gonzalez had a razor blade in his right hand, but he did not see the razor blade. Witness #3 said he saw something "shiny" and Mr. Gonzalez told him it was a razor blade so he believed him.

Witness #3 said that Mr. Gonzalez made two cutting motions across his arm, but Witness #3 was unable to see if Mr. Gonzalez actually cut himself because it was dark. Witness #3 tried to take the blade away from Mr. Gonzalez by reaching out to grab his arm. Mr. Gonzalez was able to get away from Witness #3. Witness #3 said that Mr. Gonzalez swung the razor blade at his shoulder and chest area when he, Witness #3, tried to grab the razor blade but missed. Witness #3 said he thought Mr. Gonzalez was drunk but also said he had never seen him drunk before. Witness #3 said that Mr. Gonzalez also seemed very angry.

Witness #3 said he tried to run away from Mr. Gonzalez but Mr. Gonzalez chased him around a white pick-up truck with a black camper parked on the street. Witness #3 said it was at this point that he got on the phone and called 911. Witness #3 said as they were going in circles around the truck, they were arguing back and forth.

Witness #3 said after a few minutes he saw a police car turn on to Oneil Avenue from Orchard Avenue. The car turned into the apartment complex down the street from where he was located so he tried to get the officer's attention by waving and calling out to the officer. Witness #3 said that when Mr. Gonzalez saw the police car, he began to walk northbound on Oneil Avenue. Witness #3 said Mr. Gonzalez continued walking until he met up with Witness #1. Witness #3 said he did speak to an officer and told the officer "right there he has a knife."

Witness #3 continued northbound and saw Mr. Gonzalez and Witness #1 meet on the street. Witness #3 said he saw an officer get out of the car. Witness #3 walked up to Witness #1 and he grabbed Witness #1 when he heard an officer tell Mr. Gonzalez to "drop the knife, drop the knife." Witness #3 said that Mr. Gonzalez kept walking towards the officer who was by the patrol car door. Witness #3 said that he saw Mr. Gonzalez raise his hands as he walked towards the officer. Witness #3 said he heard Mr. Gonzalez say something but did not hear what he said. Witness #3 said the officer was in uniform and he was standing by a black and white police SUV and he

believed it was apparent that everyone knew it was the police. Witness #3 said Mr. Gonzalez kept walking towards the officer and the officer shot him.

Witness #3 said that he believed the officer had no choice but to shoot Mr. Gonzalez. Witness #3 saw Mr. Gonzalez fall to the ground and he held on to Witness #1. Witness #3 said he later saw that the officers had Mr. Gonzalez on the ground and handcuffed.

Second Interview of Witness #3

Witness #3 was re-interviewed by detectives on November 28, 2018. In the interview, Witness #3 told officers he did not suffer any injuries as a result of this incident. Witness #3 clarified that he checked around the house twice before he confronted Mr. Gonzalez. The first time the vape pen and Modelo beer were not on the side of the house.

Witness #3 also disclosed that he was aware of at least one attempt in which Mr. Gonzalez had been hospitalized because he had attempted to cut himself.

During the course of the interview, Witness #3 watched the surveillance video from 727 Oneil Commons with the officers and attempted to explain what was occurring at different points during the video.

Witness #3 said that during the video he did try to grab the razor blade from Mr. Gonzalez and pointed out one area of the video where that occurred. Witness #3 said at three separate times, Mr. Gonzalez swung the razor blade at him but could only point out one area on the video that he believed showed Mr. Gonzalez swinging at him with the razor blade. Witness #3 said that during the time they were captured on the video, they were arguing and Mr. Gonzalez continuously challenged him to a fight saying "lets fight, lets fight." Witness #3 also said that during one part when they were fighting, Mr. Gonzalez did hit him but not with the razor blade and was not sure whether or not Mr. Gonzalez may have dropped the razor blade at that time.

Witness #3 said that when Mr. Gonzalez was chasing him around the truck, Witness #3 was trying to keep the truck between them. Witness #3 said Mr. Gonzalez was mad at that time and he believed that Mr. Gonzalez had the razor blade.

Witness #3 said when Mr. Gonzalez went northbound on Oneil Avenue when the officers arrived, he was concerned that Mr. Gonzalez "might do something to Witness #1." Witness #3 said Mr. Gonzalez never made any threats towards Witness #1 but he was concerned.

Witness #4

Witness #4 was interviewed by detectives at the Hayward Police Department on November 16, 2018.

Witness #4 described Mr. Gonzalez as a good guy, but said that he loses control when he drinks. According to Witness #4, Mr. Gonzalez did not seem to get along with his family who lived in Lathrop, California. After Mr. Gonzalez started dating Witness #1, he became insecure.

According to Witness #4, Mr. Gonzalez would throw tantrums and cut himself on his arm. She said that Mr. Gonzalez had cut himself maybe three times and later, her daughter said she was done with him.

Witness #4, said one time when Mr. Gonzalez cut himself, he was running around in the street and cut himself and said he wanted to kill himself. This incident took place in the City of Oakland around MacArthur Boulevard. Witness #1 said that Mr. Gonzalez has been prescribed Zoloft since the incident in Oakland.

Witness #4 believed that Mr. Gonzalez may have wanted to die because he told her before that he was not happy and he did not want to be in the world. Witness #4 said Mr. Gonzalez texted her on the day of the officer involved shooting and said he was sorry and that Witness #4 had been like a mother to him. She believed that Mr. Gonzalez may have been saying goodbye. Witness #4 said that that she believed Mr. Gonzalez may have wanted someone else to end his life for him.

On the day of the officer involved shooting, Witness #4 was out of town with her husband and other family members. She was in telephone communication with Witness #1 and learned about Witness #1's concerns that Mr. Gonzalez had been outside the residence. Witness #4 called Witness #3 and asked him to keep an eye on the house. Sometime later, Witness #1 called Witness #4 and said that Mr. Gonzalez had beat up the neighbor, Witness #3.

Witness #4 tried to call Mr. Gonzalez. He did not answer immediately but called back. According to Witness #4, Mr. Gonzalez was upset because she sent the neighbor over to take care of her daughters. Witness #4 tried to talk with Mr. Gonzalez to calm him down, but Mr. Gonzalez told her he didn't care anymore and then the call went dead.

Witness #4 said Witness #2 then called her and said that Mr. Gonzalez was in the street and the police were there. Witness #4 said at that point she could hear gunshots on the phone.

Witness #5

On November 18, 2018, Witness #5 was interviewed by Hayward Police officers at the scene. Witness #5 said that he was inside his apartment at Oneil Commons when he heard a male and female voice outside. Witness #5 said he heard the male voice say, "You're going to have to kill me." Witness #5 said he then heard shots and went outside. Once outside he saw a male laying on the ground near the speed bump bleeding. Witness #5 said he spoke to a neighbor who told him what happened, but he did not witness the actual shooting.

Witness #6

Witness #6 was interviewed at the Hayward Police Department on November 20, 2018. On the night of the incident, Witness #6 was on a ride along with Sergeant DeCosta during this incident.

Witness #6 said she was in the front seat of the patrol car when the radio said that there was a man with a knife on Oneil Avenue. After about 45 seconds to one minute of the radio call, there was a hysterical man wearing an orange shirt flagging us down. Witness #6 said first the man was facing

opposite us and attempting to flag someone down then he turned towards our car and flagged us down.

Witness #6 said Sergeant DeCosta got out of the car and the man was running towards our car and Sergeant DeCosta told the man to stop. Witness #6 said from that point on everything took place outside of her view.

Witness #6 said she saw two police cars pass the vehicle she was in and shortly after she heard the shots and heard a woman screaming. Witness #6 said she did not see any of the shooting or anything that took place behind her vehicle. Sergeant DeCosta called another officer who transported her back to the police station.

Witness #7

Witness #7 lives on Oneil Avenue and was interviewed by a patrol officer in front of his home. Witness #7 said that he was in his home making dinner when he heard someone jump his fence. Witness #7 went out to his yard and saw his gate open and a fence board broken. Witness #7 said his neighbor said someone was in the yard. Witness #7 said he went back inside and a little while later he heard the shots. When he heard the shots he went outside and saw the officers on scene, so he went back into his home.

AUTOPSY RESULTS:

On November 16, 2018, Dr. Michael Ferenc performed an autopsy upon the body of Mr. Gonzalez at the Alameda County Coroner's Bureau in Oakland. Dr. Ferenc determined the cause of death to be multiple gunshot wounds. Dr. Ferenc described the location and path of 14 separate gunshot wounds. However, because some of the wounds were through-and-through wounds, and the exiting bullets could have re-entered, the autopsy findings are insufficient to establish with certainty the number of distinct bullets that struck Mr. Gonzalez.

There was a gunshot wound to the right chest, which caused injuries to the heart, lung, diaphragm, and liver.

There was a gunshot wound to the left upper arm, which caused injuries to the humerus and brachial vessels.

There was a gunshot wound to the lower right back. The bullet did not enter the body cavities and exited on the right side of the torso.

There was a gunshot wound to the right thigh. The bullet did not damage the femur or large vessels and exited on the lateral right thigh.

There was a gunshot wound to the right calf. The bullet did not damage bone or major vessels.

There was a gunshot wound to the left thigh. The bullet transected femoral vessels and exited on the inner left thigh.

There was a gunshot wound to the right upper abdomen. The bullet injured the liver.

There was a gunshot wound to the left lateral hip causing a chip fracture of the pelvic bone.

There was a gunshot wound to the left lower chest. The bullet possibly caused injuries to the bowel and mesentery.

There was a gunshot wound to the proximal left thigh. The bullet did not damage bone or major vessels.

There was a gunshot wound to the left buttocks that did not cause significant injuries.

There was a gunshot wound to the proximal anterior of the right thigh causing injuries to the small bowel.

There was a gunshot wound to the back of the right thigh that did not cause significant injuries.

There was a gunshot wound to the proximal anterior right thigh. The bullet nicked the surface of the femur.

A blood sample was collected and submitted for toxicology testing. The test results indicated a blood ethyl alcohol level of 0.14 grams percent. No commonly abused drugs were detected.

VIDEO EVIDENCE:

The OIS Team reviewed all available video evidence as part of its investigation. Significant video footage was recorded by the body worn cameras of Officer Wooley and Sergeant DeCosta. Officer Clark's body worn camera was not activated until after the shooting and did not capture the shooting incident. There was also video surveillance footage from the apartment complex at 727 Oneil Commons which depicted events prior to the officer involved shooting.

Officer Wooley's Body Worn Camera Recording

Officer Wooley was wearing a body worn camera, affixed to his uniform at the center of his chest. The camera recorded both video and audio of the incident. The times described below are based upon the time counter displayed when viewing the video file on a computer. Thus the recording begins at 00:00. There is no audio recording for the first 30 seconds. When the camera is activated by the user, the camera automatically captures video footage from the previous 30 seconds, but without sound.

A forensic video expert with the District Attorney's Office examined the body worn camera footage. As part of this examination, still frame images of the footage were prepared for further analysis and illustration.

During the first 30 seconds without audio, the video generally depicts the steering wheel area of Officer Wooley's patrol vehicle and Officer Wooley is driving. The audio begins at 00:30. From 00:30 to approximately 02:40, the footage depicts Officer Wooley driving and attempting to locate the scene. He is in communication with dispatch and the dispatch communications can be heard. The dispatcher advised that there was an open line with the 911 caller but that the caller was not communicating with the dispatcher. At 02:41, Officer Wooley tells dispatch that someone is trying to flag him down. Whistling can be heard in the background.

At 03:03, Sergeant DeCosta is heard advising dispatch that she is being flagged down by someone in an orange shirt. At 03:20, dispatch advised that the subject is supposed to be wearing a red shirt. The dispatcher then said, "We're still hearing somebody say put the knife down and hearing somebody whistling." Officer Wooley tells dispatch, "Yeah. We got him." At 03:30, the dispatcher advises that the male wearing a red shirt with black stripes and jeans is "supposed to be the one with the knife."

Beginning at 03:38, loud voices can be heard coming from outside of Officer Wooley's open window. A male voice can be heard saying, "Right there. Right there." At about the same time, Sergeant DeCosta can be heard using her call sign on the radio. But immediately thereafter, Officer Wooley activated his radio and told dispatch, "They're right in the middle of the street. Give me a 10-3." Just after making this transmission at 03:42, Officer Wooley opens his car door and begins to exit the car. As this is occurring, loud voices can be heard from outside the open window.

At 03:45, as Officer Wooley is exiting his car, the camera pivots to the rear and a person in an orange shirt (later identified as Witness #3) is depicted walking in the street, alongside a white pick-up truck, and headed towards the front of Officer Wooley's car. At the same time, a male voice is heard yelling, "You're gonna have to shoot me."

At 03:46, the camera pivots back forward and the footage depicts Mr. Gonzalez and Witness #1, standing in the street. They are separated by a few feet. Witness #1 is closer to Officer Wooley than Mr. Gonzalez. Mr. Gonzalez is generally facing a parked car along the curb, with his left side profile exposed to Officer Wooley. Mr. Gonzalez immediately turns to his left and begins walking towards Officer Wooley.

Beginning at 03:46, Officer Wooley yells "Hey!" He then loudly commands, "Put the knife down. Put the knife down. Put it down." At 03:51, the first gunshot is heard. During this time period, from 03:46 to 03:51, Mr. Gonzalez is walking rapidly towards Officer Wooley. It appears that Mr. Gonzalez took at least eight steps towards Officer Wooley before the first shot.

While advancing, Mr. Gonzalez had both of his arms in front of his body. His shirt sleeves appeared to be rolled up to the elbow area, making his hands and forearms somewhat visible. The video is not of sufficient quality to determine the exact positioning of Mr. Gonzalez' hands, nor to determine whether he had any object in his hands. It appears that Mr. Gonzalez did not have his hands clasped together, but rather, that one hand is over the forearm area of the other arm.

After the sound of the first gunshot, Mr. Gonzalez' forward progress continues momentarily. As the gunfire continues, he hunches forward, turns to his right, and stumbles to his right side before falling to the ground. The gunfire ceases after Mr. Gonzalez was completely on the ground. The

sound of gunfire could be heard for approximately two to three seconds.

After the shooting, the footage depicts Officers Clark and Gillette handcuffing Mr. Gonzalez. Officer Wooley directs dispatch to send medical assistance for Mr. Gonzalez. At 04:57, Officer Gillette picks up the razor blade and moves it away from Mr. Gonzalez. Officer Gillette announced that it was a “razor.” Officer Wooley then says, “Is that what he had?” Sergeant DeCosta can then be heard saying, “He was yelling that you were going to have to shoot him.” Officer Wooley confirmed that he also heard Mr. Gonzalez make that statement.

Sergeant DeCosta’s Body Worn Camera Recording

At the start of Sergeant DeCosta’s footage, Witness #3 is depicted walking in the street towards where Mr. Gonzalez and Witness #1 are located. Officer Wooley and Officer Clark have not yet pulled up to the area. A male voice can be heard yelling in the background. Sergeant DeCosta’s arm blocks the view of the camera for a period of time. She can be heard calling into dispatch using her call sign. A male voice says, “Right there. Right there.” Another male voice yells, “I don’t give a fuck,” and other words that are unintelligible.

Sergeant DeCosta then moves her arm away from the camera. Officer Wooley’s vehicle is now on scene with the door open. Officer Clark’s vehicle is pulling up and Officer Clark then gets out of the car. Sergeant DeCosta is several car lengths behind Officer Wooley’s car. Sergeant DeCosta says, “Hold on. Hold on. He’s . . . He’s threatening . . .” At about the same time a male voice can be heard yelling, “. . . shoot me.” A female voice is also heard yelling.

While this is unfolding, the footage depicts Officer Wooley exit his vehicle, step to the left of the open door, and face Mr. Gonzalez and Witness #1. Officer Clark begins to run up to the passenger side of Officer Wooley’s car. Sergeant DeCosta also begins running, behind Officer Clark. As she does so, her camera is directed away from Officer Wooley and Mr. Gonzalez. Sergeant DeCosta is seen holding her firearm.

At the time the shots are fired, Sergeant DeCosta is standing behind and to the right of Officer Clark. Her camera does not depict Mr. Gonzalez in the moments leading up to the shooting or during the shooting.

Oneil Commons Surveillance Video

The OIS Team also reviewed surveillance video footage from various cameras at Oneil Commons apartment complex. The footage does not depict the shooting incident. The footage does depict some of the interaction between Mr. Gonzalez and Witness #3 prior to the shooting incident.

The footage shows Mr. Gonzalez and Witness #3 walking in the street, near each other. They appear to be talking or possibly arguing. Witness #3 appears to reach towards Mr. Gonzalez. The two face off and Mr. Gonzalez appears to swing his arm towards Witness #3. The two then begin struggling and Witness #3 is knocked to the ground. He gets back up and the struggle continues. They separate and face off towards each other in the street. Mr. Gonzalez takes off his jacket and

then appears to pick up an object from the street. The quality of the video is insufficient to depict what the object is.

It appears that the men continue to talk or argue. Mr. Gonzalez moves closer to Witness #3 with his arms extended to his sides. He advances on Witness #3, while Witness #3 backs up. Mr. Gonzalez eventually walks away, off screen. Witness #3 follows from a distance. The men return into view and Mr. Gonzalez chases Witness #3 around a parked truck. Witness #3 keeps the truck between him and Mr. Gonzalez. Witness #3 also appears to be using his cell phone to make a call. Eventually Mr. Gonzalez walks off screen, while Witness #3 appears to be flagging down the police.

APPLICABLE CALIFORNIA LAW:

The sole question addressed by the District Attorney's investigation was whether Hayward Police Department Officers Wooley and Clark violated any applicable criminal laws. Whether or not the officers are 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.) It is not a criminal defendant's burden to prove that force was necessary or reasonable. The People must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others. Absent direct evidence that an officer did not actually or reasonably believe in the need for force, circumstantial evidence must be used. If two reasonable conclusions can be drawn from circumstantial evidence, however, and one of those reasonable conclusions points to innocence, jurors are instructed that they must accept the one that points to innocence. (CALCRIM 224.)

The United States Supreme Court has held that a police officer's use of force should be analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. The Supreme Court stated, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . the calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Graham v. Conner (1989) 490 US 386, 396-397.

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 Officers Wooley and Clark killed Mr. Gonzalez and the officer did not reasonably believe that he or another was in imminent danger of death or great bodily injury.

ANALYSIS AND CONCLUSION:

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

The credible and admissible evidence shows that Officers Wooley and Clark acted in what they 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. Gonzalez was criminal.

Mr. Gonzalez was intoxicated, suicidal, aggressive, and armed with a razor blade. When Witness #3 tried to grab the razor blade, Mr. Gonzalez swung the razor blade at him. Witness #3 eventually called the police and told dispatch that his neighbor's boyfriend was threatening him with a knife. The dispatcher could hear a heated argument in the background. The dispatcher could also hear someone say "put the knife down."

With this information, dispatchers sent officers to the scene, advising them that a neighbor's boyfriend was armed with a knife and threatening the caller. Dispatchers repeatedly advised that the subject was armed with a knife.

When Sergeant DeCosta arrived on scene, Witness #3 told her that Mr. Gonzalez had a knife. Sergeant DeCosta heard Mr. Gonzalez yelling that the police were going to have to shoot him.

When Officer Wooley arrived on scene, he saw Mr. Gonzalez near Witness #1. Officer Wooley was concerned for the safety of Witness #1. Officer Wooley then heard Mr. Gonzalez say, "You are going to have to shoot me." Officer Wooley stopped his car approximately 20 feet from Mr. Gonzalez. It was dark and visibility that night was affected by smoke from the ongoing wildfires in California.

Given the information that Officer Wooley was provided, and the scene that he was confronted with, he reasonably believed that Mr. Gonzalez was armed with a knife. He also had reason to believe that Mr. Gonzalez was intending to commit "suicide by cop." Officer Wooley's state of mind is evidenced by the fact that he immediately withdrew his firearm and began yelling for Mr. Gonzalez to drop the knife.

Mr. Gonzalez did not drop the razor blade he was holding. Instead, he immediately began walking quickly and directly towards Officer Wooley. Mr. Gonzalez had his arms stretched out in front of him. Officer Wooley said that he perceived Mr. Gonzalez to be holding his hands together, as if

holding a box cutter. Officer Wooley said that he saw a glimpse of what looked like the blade of a box cutter.

Officer Wooley's perception was that Mr. Gonzalez was not going to stop advancing on him. Officer Wooley knew that an advancing suspect, with an edged weapon, can quickly inflict death on an officer. Officer Wooley knew that his Taser was not a suitable alternative means of defense, because if the Taser did not stop Mr. Gonzalez, Officer Wooley would not have had enough time to transition to his firearm before Mr. Gonzalez could cut and kill him.

Mr. Gonzalez took at least eight steps towards Officer Wooley, and closed to within approximately 10 feet of him, before Officer Wooley began firing. During that time, Mr. Gonzalez showed no signs of stopping and did nothing to reposition his arms or hands to indicate that he was not a threat. Officer Wooley ceased firing once Mr. Gonzalez was completely on the ground, and no longer presented a threat.

Given the evidence in this case, it cannot be proven beyond a reasonable doubt that Officer Wooley's belief that he was in imminent danger of being killed was unreasonable. Aside from being unable to prove that Officer Wooley's belief was unreasonable, the facts developed from the investigation support Officer Wooley's belief. Mr. Gonzalez was armed with a razor blade, which is capable of slicing through flesh and causing death. He had swung the razor blade at Witness #3. Moreover, Mr. Gonzalez expressed an intent to commit "suicide by cop." It seems clear that Mr. Gonzalez was determined to keep advancing on Officer Wooley in an attempt to force Officer Wooley to use deadly force.

For similar reasons, it cannot be proven beyond a reasonable doubt that Officer Clark's belief that he needed to use deadly force to prevent Officer Wooley from being killed, was unreasonable. Officer Clark was presented with the same information from dispatch, indicating that the suspect was armed with a knife.

When Officer Clark ran up on the scene, he saw that Mr. Gonzalez had his hand extended out in front of his body and was advancing on Officer Wooley. Officer Clark heard Officer Wooley say "put down the knife, put down the knife." Officer Clark said that he did not see anything in Mr. Gonzalez's hands at that moment, but he believed that he had a knife. Under the circumstances, this belief was not unreasonable. Officer Clark described Mr. Gonzalez as having a blank stare on his face and it seemed like he had a purpose to walk towards Officer Wooley and harm him.

Officer Clark saw that Mr. Gonzalez continued to advance on Officer Wooley and closed to within 10 feet. Officer Clark believed that Officer Wooley's life was in danger so he fired his service pistol to stop the threat. Given the evidence in this case, it cannot be proven beyond a reasonable doubt that Officer Clark's belief that Officer Wooley was in imminent danger of being killed was unreasonable.

The incident developed rapidly. Both officers were required to make rapid decisions in a dangerous situation. The law requires that the reasonableness of the officer's actions be assessed with the understanding that "police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." This was such a circumstance. Regrettably, Mr. Gonzalez' rapid advance towards Officer Wooley, and his refusal to stop or drop

the razor blade, forced the officers to take action. The evidence suggests that Mr. Gonzalez intended this very result.

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 Wooley or Officer Clark, and this Office contemplates no further action in this case.