



**REPORT ON THE APRIL 4, 2017
OFFICER-INVOLVED SHOOTING OF
STEPHEN FERRY**

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I. ROLE OF THE DISTRICT ATTORNEY

The role of the Napa County District Attorney's Office in an officer involved shooting is to review the circumstances of the incident for the sole purpose of determining if there is any criminal liability on behalf of any member of law enforcement. The District Attorney does not examine concurrent issues of law enforcement policy or procedure, compliance with police training, or civil liability. This report should not be interpreted as expressing an opinion on any of those attendant matters.

This report summarizes the events that took place on April 4, 2017 in the area of Bueno and Roberto Streets and Linda Vista Avenue in the City and County of Napa that resulted in the shooting of Stephen Ferry and documents the legal conclusion drawn from the evidence. This summary is not intended to include every aspect of those events. Rather, it is a composite of the material facts that were considered by the District Attorney in coming to her legal conclusion. This report draws from a thorough review of the police investigation, interviews of witnesses, physical evidence, case law, forensic science and testing.

The Napa Police Department (NPD) invoked the Napa County Major Crimes Investigation Team Protocol. This protocol sets forth the procedures and guidelines to be used by Napa County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under this protocol, in order to eliminate the risk or appearance of conflicts of interest, an outside law enforcement agency is required to participate in the investigation of law enforcement employee-involved fatalities. Accordingly, investigators with the Napa County District Attorney's Office assumed responsibility for the investigation of this shooting incident, as both Napa Police Department officers and Napa County Sheriff's Office (NSO) deputies were involved in this incident. Napa County District Attorney Investigator Joe Dulworth led the investigation. He presented a comprehensive report to the Napa County District Attorney's Office.

II. SUMMARY OF INCIDENT

A. Stephen Connard Ferry

Stephen Connard Ferry was a 64 year old male who lived in the City of Napa. Specifically, Mr. Ferry resided in a rented single family residence on Bueno St, where he had lived by himself for the last 15 years. Mr. Ferry appeared to support himself as a self-employed freelance writer, tour guide and wood chip salesman. Mr. Ferry was described by neighbors and acquaintances as strange and paranoid loner who rarely had guests or visitors at his home and

who was subject to frequent outbursts of anger and yelling. For example, it was noted that Mr. Ferry would go out to his back yard and scream and yell profanities, sometimes for as long as 30 continuous minutes. In addition, several neighbors noted Mr. Ferry's deteriorating mental state over the last several years, as he appeared to be drinking heavily, becoming even more isolated and harboring strong resentments and prejudices toward several ethnic, racial and/or religious groups. (Numerous writings were found inside Mr. Ferry's home containing derogatory and prejudicial terms and slang in referring to specific religious, racial and/or ethnic groups.)

Mr. Ferry had a minimal criminal history, consisting of one misdemeanor marijuana possession conviction in New Jersey in 1972 and two recent traffic citations by the Napa Police Department for speeding (2013) and failing to stop at a stop sign (2015).

Mr. Ferry began having problems and issues with his next door neighbor, Witness # 1, shortly after Witness # 1 moved into his home in July 2015. Mr. Ferry confronted Witness # 1's roommate in a hostile manner regarding parking and garbage bin placement issues on more than one occasion. In early 2016 Witness # 1 obtained a rescue dog, which barked and whined during the day when left alone, which aggravated Mr. Ferry who was home during the day. Mr. Ferry then began an escalation of his antisocial and criminal conduct with Witness # 1 as follows:

4/5/16: Human feces smeared on Witness # 1's recycle bin when left out an extra day and in the street in front of Mr. Ferry's residence;

4/25/16: For over a month Mr. Ferry intermittently played a portable stereo in his backyard at high volume of the sounds of a cat screeching, thus causing Witness # 1's dog to constantly bark;

3/26/17: While gone from his home, urine was poured over the patio furniture in Witness # 1's backyard;

4/2/17: While Witness # 1 was away from home, liquid human feces was thrown over the fence from Mr. Ferry's backyard into Witness # 1's backyard, covering the top of the fence and the tops of Witness # 1's trees and bushes, patio furniture and cushions and the patio itself. Witness # 1 called the NPD and a report was taken regarding felony vandalism and information was provided on how to obtain a restraining order. In addition, since Mr. Ferry would not answer his door for the police during the investigation of this offense, Witness # 1 was told that if he saw Mr. Ferry out front to call NPD so they could talk to Mr. Ferry. The above damage and source of the vandalism was observed by Witness # 1, multiple family members of Witness # 1, as well NPD Officer Omar Salem (investigating officer on the vandalism case);

4/3/17: Witness # 1 called both the owner and property manager of Mr. Ferry's rental residence and explained what he had been subjected to by Mr. Ferry, primarily the above incidents. By late that afternoon, a 60 day eviction notice had been posted on the front door of Mr. Ferry's residence; and

4/4/17: Between 3:00-4:00 a.m. Witness # 1 heard loud screaming and shouting of profanities coming from Mr. Ferry's residence that he felt were directed at him. Witness # 1 called NPD, but once again Mr. Ferry refused to open his door for police officers. Officers stayed in the area for 20 minutes and didn't hear any unusual noises and no other neighbors called in a complaint. Again at 6:30 a.m. Witness # 1 heard similar screamed threats from Mr. Ferry's property. In addition, other neighbors heard loud screaming or yelling in the area around 6:30 a.m. as well.

B. Pre-Incident

On April 4, 2017, at approximately 1:00 p.m., Witness # 2 drove to Witness # 1's residence to check that no additional vandalism had occurred. When Witness # 2 arrived, she observed Mr. Ferry in front of his house and called Witness # 1 and let him know. Witness # 1 then notified NPD so Mr. Ferry could be questioned regarding the vandalism that had occurred on 4/2/17 and then began to drive home. When Witness # 2 arrived she parked in Witness # 1's driveway and went to talk to other neighbors of Witness # 1 (occupants on the opposite side of Witness # 1 than Mr. Ferry). While Witness # 2 was talking to these neighbors Mr. Ferry walked over to Witness # 2's car in the driveway and stood next to the driver's door and urinated in Witness # 1's driveway.

When Witness # 1 arrived at his home, Mr. Ferry, while standing in his own driveway next door, began yelling and screaming things at Witness # 1 and Witness # 2, such as racial slurs and unintelligible rantings. NPD Officers Jeff Hansen and Nathan Kistner (partnered together in the same patrol car) arrived a shortly after Witness # 1 and talked to both Witness # 1 and Witness # 2 about what was occurring with Mr. Ferry, both today and previously. NPD Officer Mike Moore arrived while the other officers were talking with Witnesses # 1 and 2 and waited on the sidewalk outside Mr. Ferry's home. Mr. Ferry had gone into his home and had brought out a camera on a tripod and chair and proceeded to sit on his front porch and film the officers. Officers Hansen and Kistner then came over to Mr. Ferry's house and Officer Kistner went up to the porch to speak with Mr. Ferry while Officer Hansen observed from the sidewalk with Officer Moore. Mr. Ferry was getting more and more agitated and loud while speaking with Officer Kistner, so Officer Hansen joined them on Mr. Ferry's porch. Officer Hansen determined from Mr. Ferry's angry attitude and demeanor that he was not going to obtain any voluntary compliance with Mr. Ferry. He and the other officers then went back to Witness # 1's property to discuss the case and legal options with Witness # 1, Witness # 2 and now Witness # 3 (who arrived while the officers were speaking with Mr. Ferry). Mr. Ferry followed them onto Witness # 1's property, continuing to film the encounter and loudly interrupting their conversation with the police. Mr. Ferry was warned about trespassing and ordered off the property, but remained on the sidewalk filming and observing the officers conversation with Witness # 1 and 2. When the officers left the area, Officer Kistner observed Mr. Ferry on his

porch take a drink from what appeared to be a 40 oz. beer bottle. Officers Hansen and Kistner drove around the block and parked on Roberto Street, to both type in notes about the call and to ensure that Mr. Ferry did not continue harassing Witnesses # 1 and 2, who were still at the scene.

Almost immediately after the officer left, Witness # 1 left the scene. When Witness # 3 was heading for his car to leave Bueno Street, Mr. Ferry began yelling at him as well. Mr. Ferry yelled, "I'm going to kill you, bitch." Witness # 2 took out her cell phone and began video recording Mr. Ferry's threats as Witness # 3 left Bueno Street. Witness # 2 was standing on the sidewalk behind her car, which was parked in Witness # 1's driveway. When Mr. Ferry saw he was being recorded, he ran towards Witness # 2 yelling "I'm going to kill you," hit her and they both fell into the street. Witness # 2 was on her knees in the street yelling for help and for someone to call the police and Mr. Ferry began kicking her and appeared to be trying to take her cell phone. Several neighbors came out of their houses and yelled at Mr. Ferry to let go of Witness # 2, but she eventually broke free and Mr. Ferry fell to the ground near the curb. Mr. Ferry then ran inside his house. Four (4) next door neighbors of Witness # 1 came out to help Witness # 2 and talked with her while on the phone with 911 requesting police assistance.

C. Initial Shooting at Neighbors

Mr. Ferry exited his house 1-2 minutes later and walked back towards the group in the street holding a revolver in his hand. Someone in the group yelled "GUN" and "RUN" and everyone in the group ran toward the front door of the next door neighbor's house to try and escape Mr. Ferry and get inside. Four people dove through the front door of the house, while the oldest person, who couldn't make it that far hid behind a parked car in the driveway, while Mr. Ferry shot four (4) times at the group from approximately 10-20 yards away. Once inside the house everyone laid on the floor to avoid getting shot. One person inside the house retrieved his handgun to protect himself and the other from Mr. Ferry if he tried to enter the home.

Later examination of the next door neighbor's home showed bullet holes that penetrated the front window, the front door area and two bullet holes in the front exterior wall. These bullets penetrated the exterior walls of the house and bullet fragments were found embedded in interior walls in the living room and kitchen cabinets. The calling party remained on the phone with 911 during and after the shooting. No person was hit or injured by this shooting.

D. Law Enforcement Response to the Shooting

911 began receiving numerous calls regarding the above shooting on Bueno Street at 1:54 p.m. from the victims and surrounding neighbors. All available law enforcement officers were immediately dispatched to the scene of the shooting.

NPD Officers Jeff Hansen and Nathan Kistner, who were still parked around the block on Roberto Street when the shooting occurred, did not hear the shooting where they were parked. They responded almost immediately to the scene and were the first law enforcement officers to arrive. When the officers arrived on Bueno Street, the street was deserted and quiet. They were aware Mr. Ferry was identified as the shooter, but did not know whether he shot in the air, at a home or at a person. Officer Hansen drew his service pistol and Officer Kistner carried his AR-15 type patrol rifle as well as his service pistol. Officer Kistner later moved their patrol car to the intersection of Bueno and Carlos Streets to attempt to block the intersection and set up a perimeter.

Napa County Sheriff's Office (NSO) Sgt. Kyle Eddleman was the next law enforcement to arrive at the scene. He lived in the area and heard the gunshots from his home. Although dressed in civilian clothes, he immediately put on his Sheriff's Department ballistic raid vest, which identified him as a law enforcement officer, his service pistol and an AR-15 assault rifle and went on foot to the scene of the shooting. He arrived there within 1-2 minutes and joined Officers Hansen and Kistner mid-block on Bueno Street.

NPD Officer Mike Moore had just left the call on Bueno Street and was enroute to another call when he heard the dispatch call of shots fired on Bueno Street. He immediately returned and parked his patrol car at the intersection of Bueno Street and Linda Vista Avenue to begin blocking off the area. Officer Moore was armed with his service pistol and carried an AR-15 type assault rifle.

NSO Deputy Matt Macomber was on patrol nearby and responded immediately. He also parked his patrol vehicle at the intersection of Bueno Street and Linda Vista Avenue to set up a perimeter to secure the area. He was armed with his service pistol and an AR-15 type assault rifle.

NPD Officer Garrett Wade was on patrol by Queen of the Valley Hospital in Napa when he heard the dispatch call of multiple shots fired on Bueno Street. He responded in his patrol car and parked on Linda Vista Avenue just north of the intersection with Bueno Street. He was armed with his service pistol and an AR-15 type assault rifle.

NPD Officer Tristan Cline was working as the School Resource Officer at Redwood Middle School, located a short distance away from the shooting. He heard the dispatch call of multiple callers reporting an active shooting on Bueno Street. He ran to his patrol car and drove immediately to the scene, where he was requested to set up a perimeter mid-block on Roberto

Street. Officer Cline parked his car on Roberto Street, 2-3 houses west of Linda Vista Avenue, and took a position on foot near his vehicle. Officer Cline was armed with his service pistol and an AR-15 type assault rifle.

NPD Sgt. Ryan Cole and NPD Cpl. Keri Sedgley responded immediately from the Napa Police Department when they heard the dispatch call. They parked their patrol vehicles at the intersection of Roberto Street and Linda Vista Avenue to block off the area. Cpl. Sedgley remained in the area and was armed with her service pistol and an AR-15 type assault rifle. Sgt. Cole was armed with his semiautomatic service pistol and started to walk northbound on Linda Vista Avenue to meet up with Officer Hansen at the scene of the shooting on Bueno Street.

NPD Detective Dominic Deguilio was at the Napa Police Department when he heard the dispatch call of shots fired. He responded immediately and parked his vehicle in the intersection of Roberto Street and Linda Vista Avenue to block the road. He put on his NPD issued ballistic vest which identified him as a law enforcement officer. At that time he heard radio traffic that the suspect was coming around the corner and saw Sgt. Cole sprinting back toward the intersection of Roberto Street and Linda Vista Avenue. He believed the suspect may try to drive in that direction, so he moved his car to block part of Roberto Street. Det. Deguilio was armed with his service pistol and later in the incident an AR-15 type assault rifle.

NPD Officer Eric Koford was on duty in the Browns Valley area of Napa when he heard the dispatch call of shots fired on Bueno Street. He immediately responded to the area in his patrol car. He moved his car to the intersection of Roberto Street and Linda Vista Avenue. Officer Koford was armed with his service pistol and an AR-15 type assault rifle.

Six minutes after the first call of shots fired had been received by 911, law enforcement officers had set up an initial perimeter around the crime scene and were trying determine exactly what had occurred during the shooting and whether anyone was injured. At this point, Mr. Ferry raised his garage door and drove a silver Honda Civic out of the garage, down the driveway and headed west on Bueno Street. A civilian witness across the street saw Mr. Ferry also roll down the window in his car while he was driving away. Mr. Ferry was immediately ordered to stop by officers at the scene and refused, driving around their patrol car parked at the intersection of Bueno and Carlos Streets, driving southbound on Carlos Street and continuing around the corner towards Roberto Street. This information was immediately transmitted to all the other officers present over their police radios.

NSO Sgt. Kyle Eddleman pursued Mr. Ferry's car on foot, running south on Carlos Street to the corner of Carlos and Roberto Streets. From here Sgt. Eddleman observed a NPD patrol car parked mid-block on the north side of Roberto Street with a uniformed NPD officer on the driver's side of the vehicle. At the same time, NPD Sgt. Cole ran back to the corner of Roberto Street and Linda Vista Avenue and could see Mr. Ferry's silver Honda Civic turn the corner from Carlos onto Roberto Street. In addition, Sgt. Cole could see NPD Officer Tristan Cline standing behind his patrol car in the street. Both Sgt. Cole and Eddleman watched as Mr. Ferry drove his

car closer to Officer Cline at a slow rate of speed, pointed a pistol out the open window of his car and fired multiple shots at close range at Officer Cline. Both Sgt. Eddleman and Sgt. Cole saw Officer Cline go down and believed Officer Cline had been shot by Mr. Ferry.

NPD Officer Tristan Cline was located on Roberto Street and was part of the perimeter surrounding the scene of the suspected shooting. He was aware Mr. Ferry was driving towards his location and was standing in the street at the rear of his patrol car. Officer Cline saw the silver Honda car come around the corner from Carlos Street traveling very slowly, approximately 5-10 MPH. Officer Cline noticed the front windows were down in the car and the car was traveling in the opposite lane of traffic, very close to where he was standing behind his parked car. Officer Cline signaled for the car to slow and yelled out, "Stop Police Stop." As Mr. Ferry's car approached where Officer Cline was standing, Officer Cline backed up several steps towards the passenger side of his car. As the car reached Officer Cline's location, he noticed the older white male driving was staring intently at him with a blank look on his face and holding a revolver pointed at him out the driver's window, with the barrel braced on the window of the car. The car seemed to slow down as well. Mr. Ferry then shot 2-3 rounds directly at Officer Cline from his car, at a range of 3-6 feet. Officer Cline was deafened by the blast from the handgun at such close range and went down to the ground to avoid being hit. Examination of Officer Cline's clothing after the incident revealed a bullet hole perforated his pants above the knee.

NPD Sgt. Ryan Cole was the person closest to Officer Cline when Mr. Ferry shot at Officer Cline. As Mr. Ferry continued to travel eastward in his car past Officer Cline, Sgt. Cole observed Mr. Ferry continuing to fire his pistol out the driver's window at officers, including at Sgt. Cole. Sgt. Cole took cover behind a small tree and began to return fire with his service pistol, firing 4 rounds at Mr. Ferry as he drove past his location and 4 more rounds at the rear of the Mr. Ferry's driver's seat as Mr. Ferry drove across Linda Vista Avenue and crashed into a tree, thereby stopping his car.

NPD Detective Dominic Deguilio observed Mr. Ferry's car come around the corner and onto Roberto Street. Det. Deguilio saw Mr. Ferry point his revolver out the window of his car and shoot towards Sgt. Cole. (Mr. Ferry was traveling from left to right in front of Det. Deguilio.) Det. Deguilio then began shooting at Mr. Ferry through his open passenger side window with his service pistol and continued shooting at him until his magazine was empty, a total of 11 rounds. Mr. Ferry then drove his car past Det. Deguilio's SUV and crashed into tree on Linda Vista Avenue.

NPD Officer Michael Moore was positioned at the intersection of Bueno Street and Linda Vista Avenue. When he saw Mr. Ferry leave his driveway in his car and turn west on Bueno Street, he immediately ran towards the intersection of Roberto Street and Linda Vista Avenue where the other officers were located. As he began running, he heard the sound of gunfire coming from around the corner, where other officers were located. As he got closer

Officer Moore observed Sgt. Cole with his gun out shooting at Mr. Ferry's Honda Civic. Officer Moore then fired approximately 4-6 rounds at Mr. Ferry with an AR-15 type rifle from 30-40 feet away as the Honda crashed into a tree.

Mr. Ferry crashed his Honda Civic straight into a tree located on the eastside of Linda Vista Avenue, just south of the intersection with Roberto Street. The horn of his car was sounding continuously and Mr. Ferry was slumped over in the driver's seat. It was unknown whether Mr. Ferry had been hit, and if so, the extent of his injuries. At this point, every officer at the crime scene had responded to the location of the car crash, surrounding Mr. Ferry and his car. Several law enforcement vehicles were parked approximately 8-15 yards around Mr. Ferry's car and provided cover for some of the officers surrounding Mr. Ferry.

Initially Mr. Ferry appeared unconscious or dazed in the driver's seat of his car (for approx. 30 seconds). He then appeared to straighten up in his seat and to be moving around in his seat, often with his head down as if he was looking for something. Numerous officers gave commands to Mr. Ferry to put his hands up or put his hands out the window of the car. Shortly thereafter a loudspeaker on a patrol car was used to give similar commands to Mr. Ferry-he verbally responded to none of them. After about 60-90 seconds, Mr. Ferry straightened up in his seat and moved his right arm out the window of his car. Mr. Ferry was holding a black revolver in his hand and fired one shot at the surrounding law enforcement officers.

The below listed law enforcement officers returned fire immediately in response to being fired upon:

1. NPD Det. Dominic Deguilio: AR-15 type rifle, approx. 10 rounds;
2. NPD Cpl. Keri Sedgley: AR-15 type rifle, approx. 3 rounds;
3. NSO Dep. Matt Macomber: AR-15 type rifle, approx. 10 rounds;
4. NPD Off. Eric Koford: AR-15 type rifle, approx. 6-8 rounds;
5. NPD Off. Jeff Hansen: service pistol, approx. 6 rounds;
6. NPD Off. Nathan Kistner: AR-15 type rifle, approx. approx. 6 rounds;
7. NPD Off. Lucas Stalker: service pistol, approx. 3 rounds;
8. NPD Det. Pete Piersig: service pistol, approx. 4 rounds;
9. NPD Off. Michael Moore: AR-15 type rifle, approx. 8-10 rounds;
10. NPD Off. Garret Wade: AR-15 type rifle, approx. 13 rounds;
11. NPD Off. Adam Davis: service pistol, approx. 13 rounds; and
12. NSO Sgt. Kyle Eddleman: AR-15 type rifle, approx. 10-12 rounds.

The shooting lasted approximately 8-9 seconds, until Mr. Ferry slumped over in the driver's seat. Several officers yelled, "Cease Fire" after it appeared Mr. Ferry was no longer a threat. The officers approached the car shortly thereafter and found Mr. Ferry clearly deceased from multiple gunshot wounds.

E. Post-Incident

Mr. Ferry was found in the driver's seat of his silver Honda Civic. No medical treatment was initiated, as he was clearly deceased. Time of death was established as 2:01 pm. A search of his vehicle revealed a revolver next to his right hand in his lap, two boxes of ammunition and an additional revolver. Several bottles of beer were found in the back seat.

F. Witness Interviews

Over 85 witnesses were interviewed by law enforcement. In particular, several key individuals saw Mr. Ferry shoot at the group of people on Bueno Street, shoot from his car at NPD Officer Tristan Cline and finally shoot from his car at the law enforcement officers surrounding him after crashing into the tree. Witnesses corroborated the rapid timing of events, the short distances between the officers and Mr. Ferry, the officers repeated verbal commands to "stop police" and "put your hands out of the car window", and the lack of compliance by Mr. Ferry to any order by the police. Witnesses also corroborated the fact that Mr. Ferry was armed with a pistol and had used deadly force by shooting at both neighbors and law enforcement officers.

G. Rounds Fired and Recovered Guns

The below firearms were located with Mr. Ferry inside his silver Honda Civic:

1. Smith & Wesson .357 Magnum revolver, found on Mr. Ferry's lap, containing five (5) expended cartridge cases and one (1) live cartridge; and
2. Ruger LCR .38 Special+P 5 round revolver, found on front passenger floorboard, containing five (5) expended cartridge cases.

The evidence suggests Mr. Ferry shot at least 10 rounds at neighbors and law enforcement officers during this incident. This is consistent with the observations of witnesses at the scene.

Firearms and magazines from all involved law enforcement officers were seized and photographed. The crime scene was processed and all firearm evidence, including vehicles, expended shell casings and bullets, were photographed, diagramed and collected. Due to the volume of rounds fired, the number of officers involved and the condition of fired rounds (extensive deformation from hitting objects prior to striking Mr. Ferry), no matching of recovered rounds or shell casings to firearms was attempted.

H. Autopsy

The autopsy on Mr. Ferry was performed on April 11, 2017 by Napa County Forensic Pathologist Dr. Joseph Cohen. Dr. Cohen determined the cause of death to be multiple gunshot wounds to the head, neck and torso. Death was nearly instantaneous. None of Mr. Ferry's wounds showed signs of stippling or fouling. This suggests that the guns were not at close range when fired and are consistent with the statements of the officers and witnesses.

A sample of Mr. Ferry's blood was analyzed and it was determined that he was acutely intoxicated (blood alcohol content of 0.31%) and that he had recently used marijuana.

I. Physical Evidence

The crime scene was processed by crime scene specialists from several law enforcement agencies. Members of the California Highway Patrol Major Accident Investigation Team assisted at the scene by preparing the crime scene diagram. Evidence was collected, documented and stored. Over 1,000 photographs were taken. Only NSO Deputy Matthew Macomber and NPD Officer Aaron Medina were equipped with video recording devices, both on their person and their patrol vehicles. These videos were downloaded, preserved and reviewed and corroborated the statements of other witnesses. NSO Deputy Macomber's patrol car video clearly shows Mr. Ferry shooting first at the surrounding law enforcement officers after crashing into the tree. One surveillance video was recovered from a home on Carlos Street. This surveillance video showed traffic on the street in front of the house at the time of this incident and was consistent with witness statements.

III. STANDARD OF REVIEW

The District Attorney, as the chief law enforcement official of Napa County, and as the person responsible for deciding what cases to prosecute within this jurisdiction, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function is not without limit.

The standard to be applied by the District Attorney in filing criminal charges is expressed in the *Uniform Crime Charging Standards*. It provides:

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

IV. STATEMENT OF THE LAW

The sole issue to be resolved in this report is whether the shooting of Stephen Ferry by law enforcement officers was lawful: specifically, was the use of force by these officers reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose.

Several key principles of law apply to the question posed by the facts of April 4, 2017.

It is sometimes necessary to use force to make an arrest. *Graham v. Connor* (1989) 490 US 386, 396 [“[T]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”]; California Pen. Code §835a [the officer “need not retreat or desist from his efforts by reason of the resistance or threatened resistance.”]. How much force is permissible and how much is excessive? The short answer is that force is permissible if it is reasonably necessary. The United States Supreme Court notes that the inquiry into reasonableness is intensely fact specific.

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 officers 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. Connor* (1989) 490 U.S. 386, 396-97.

The use of deadly force is lawful if it reasonable under the circumstances. As the Court observed in *Tennessee v. Garner*, “Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.” *Tennessee v. Garner* (1985) 471 US 1, 11.

The Court has acknowledged, however, that there is no obvious way to quantify the risks on either side, that there is no magical on/off switch for determining the point at which deadly force is justified and that the test is cast at a high level of generality. Still, it has ruled that the use of deadly force can be justified under the Fourth Amendment only if the following circumstances existed:

- (1) The arrestee must have been fleeing or otherwise actively resisting arrest.
- (2) Officers must have had probable cause to believe that the arrestee posed a significant threat of death or serious physical injury to officers or others.
- (3) Officers must, when feasible, warn the arrestee that they are about to use deadly force.

Likewise, California Penal Code §196 finds homicides justifiable when committed by public officers if the suspect was actively resisting and there are circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.

V. LEGAL ANALYSIS

On April 4, 2017, all evidence suggests that Mr. Ferry was strongly under the influence of alcohol and was consumed by anger and rage at his neighbor. He threatened to kill several people on Bueno Street and actually physically attacked a female in front of his neighbor’s home. Several other neighbors come out to intervene and protect Witness # 2 from this attack. In response, Mr. Ferry went inside his house and retrieved a pistol, chased 4-5 neighbors into their house and shot directly at them from close range as they dove for cover. One these neighbors retrieved his handgun to protect himself and the others from Mr. Ferry. Napa Police Department officers responded quickly to many urgent 911 calls for help. NPD Officers Jeff Hansen and Nathan Kistner and NSO Sgt. Kyle Eddleman arrived almost immediately on Bueno

Street and quickly protected the neighbors who lived there and tried to determine the exact details what had occurred during this shooting.

Shortly after the shooting, before the responding officers could confirm the details of what had occurred, Mr. Ferry left his garage driving his car. Officers were aware Mr. Ferry had been involved in a shooting, but at that time did not know he'd actually shoot at five neighbors. Mr. Ferry was ordered to stop his car multiple times and refused and within approximately ½ a block later drove up to NPD Officer Tristan Cline and opened fire on him, at close range and without warning, with a handgun. This was observed by multiple law enforcement officers as well as a nearby resident.

At this point it became clear that Mr. Ferry was an immediate and deadly threat to law enforcement officers and anyone else in the area that got into his way or angered him. The area of Carlos Street and Linda Vista Avenue is a highly populated residential neighborhood. West Park Elementary School is located only a block away and was in session. Mr. Ferry was also actively fleeing the police after being ordered to stop by NPD Officers Hansen, Kistner and Cline.

NPD Sgt. Ryan Cole immediately and appropriately responded when he observed Mr. Ferry shoot at NPD Officer Tristan Cline. Likewise for NPD Detective Dominic Deguilio and NPD Officer Michael Moore, who saw Mr. Ferry shoot at Sgt. Cole and Sgt. Cole returning fire at Mr. Ferry. All three officers appropriately and reasonably believed Mr. Ferry to be significant threat to both officers and any other people in the area. Their use of deadly force was justified.

Once Mr. Ferry crashed his car into the tree and the officers realized he was no longer a threat, they gave him every opportunity to surrender. He was given commands to put his hands up, put his hands out the car window and responded to none of them. Instead, Mr. Ferry responded by shooting at the group of law enforcement officers with a pistol. All twelve officers reasonably and justifiably used deadly force to protect themselves, other officers at the scene and the nearby neighbors that were put at risk.

A handgun with 5 out of 6 rounds fired was located near Mr. Ferry's right hand in the car, consistent with the officers' and witnesses statements. He was found to be heavily under the influence of alcohol. It suspected that Mr. Ferry intended to shoot at law enforcement officers from the moment he left his garage, as his neighbor observed him immediately roll down his car windows as he drove away. The temperature on April 4th was 68 degrees and his car had been parked in the garage. There was no reason to take this action, other than to remove an obstruction to shooting at the police. Mr. Ferry had a demonstrated an escalating history of erratic and troubling behavior over the last several years, culminating in committing multiple counts of attempted murder before being shot by law enforcement officers on April 4, 2017.

VI. CONCLUSION

Lethal force encounters are often brief, violent and stressful. They demand the utmost from law enforcement officers in response, performance and decision making. The encounters often become wildly unpredictable and rapidly evolving, requiring officers to make split second decisions while in fear for their own lives, the lives of their fellow officers and the citizenry they have sworn to protect.

The use of deadly force on April 4, 2017 by NPD Sgt. Ryan Cole, NPD Det. Dominic Deguilio, NPD Off. Michael Moore, NSO Sgt. Kyle Eddleman, NPD Cpl. Keri Sedgley, NSO Dep. Matt Macomber, NPD Off. Eric Koford, NPD Off. Jeff Hansen, NPD Off. Nathan Kistner, NPD Off. Lucas Stalker, NPD Det. Pete Piersig, NPD Off. Garrett Wade and NPD Off. Adam Davis was a reasonable and lawful response under the totality of the circumstances. Therefore, the actions were legally justified and criminal charges against them are neither warranted nor supported by the evidence.

This review conducted within the scope and jurisdiction of the District Attorney is complete and final. The public deserves full transparency as to how and why our office reaches a decision in an officer-involved shooting and, as a result, we are now releasing our report and conclusions in their entirety.

Allison Haley, Napa County District Attorney

Exhibit A: Map of Involved Area, City of Napa

Exhibit B: Smith & Wesson .357 Magnum revolver, found on Mr. Ferry's lap in Honda Civic

Exhibit C: Ruger LCR .38 Special+P revolver, found on front passenger floorboard of Honda Civic

EXHIBIT A

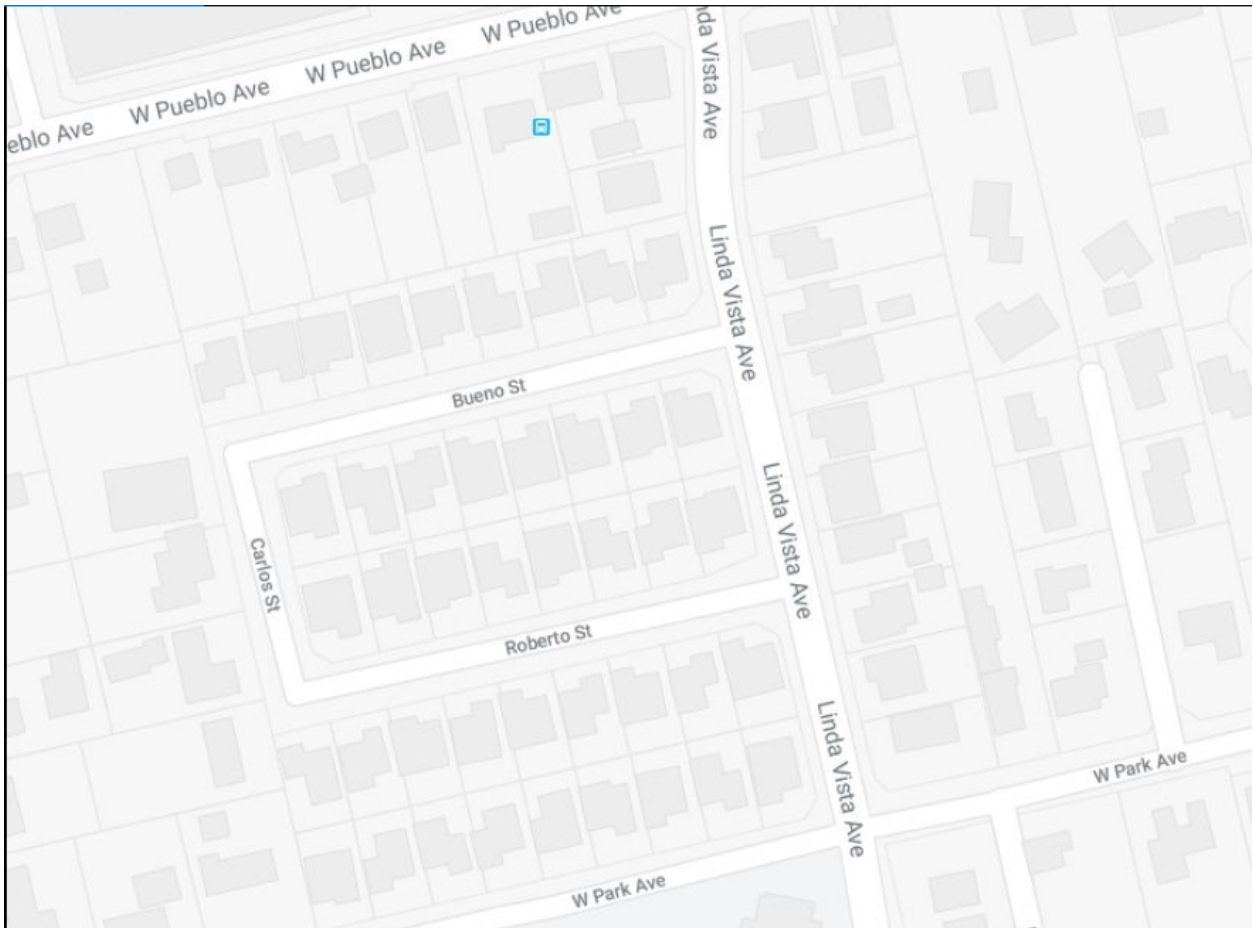


EXHIBIT B



EXHIBIT C

