

April 16, 2019

Chief Allwyn Brown
Richmond Police Department
1701 Regatta Boulevard
Richmond, CA 94804

Dear Chief Brown:

Enclosed is the District Attorney's Final Report on the fatal shooting of Demilo Trayvon Hodge which occurred September 27, 2017.

I have reviewed the report and agree with the conclusion that the evidence does not justify criminal charges against Richmond Police Department Sergeant Donovan Decious, Sergeant Chris Llamas, Officer Cedric Tagorda, Officer Benjamin Mendler, Officer Orlando Guzman, Detective Anthony Diaz and Detective Michael Ricchiuto.

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 April 16, 2019.

Very truly yours,

Nancy E. O'Malley
District Attorney

Enclosure



Enclosed is the District Attorney's Final Report on the fatal shooting of Demilo Trayvon Hodge which occurred on September 17, 2017. I have thoroughly reviewed the Report. I concur in the conclusions that the evidence does not support criminal charges being filed against Richmond Police Department Sergeant Donovan Decious, Sergeant Chris Llamas, Officer Cedric Tagorda, Officer Benjamin Mendler, Officer Orlando Guzman, Detective Anthony Diaz and Detective Michael Ricchiuto and Fairfield Police Department Sergeant Kelly Rombach, Sergeant Brent Pucci, Officer Erik Aagaard, Officer Shane Raftery, Officer James Sehr and Officer John Divine.

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 Office 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.

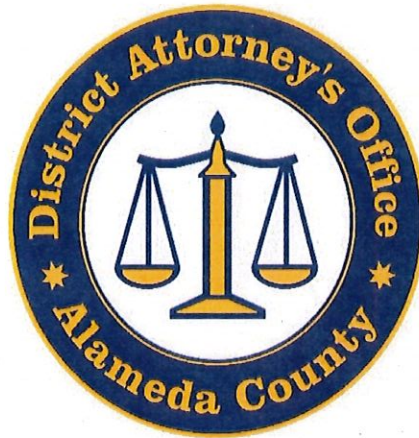
We know that when the use of force turns deadly, families are devastated. Family and friends are grieving and the community is in pain. That is why the District Attorney's Office must adhere to all ethical and legal standards under criminal law as we do in all cases. By doing so, we are upholding our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

DISTRICT ATTORNEY'S REPORT

OFFICER INVOLVED SHOOTING

OF

DEMILO TRAYVON HODGE



NANCY E. O'MALLEY

District Attorney

Officer Involved Shooting Team

April 16, 2019

INVESTIGATION OF THE SHOOTING DEATH OF DEMILO TRAYVON HODGE

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 primary responding OIS Team in this investigation was Deputy District Attorney Kevin Wong and Inspector Caesar Basa. Additional members of the OIS Team later assisted in interviews of the involved officers.

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 Sherriff of the involved law enforcement agency. Thereafter, the report is made available to the public.

SCOPE OF THE INVESTIGATION:

On September 27, 2017, at approximately 9:35 a.m., seven officers from the Fairfield Police Department ("FPD") and six officers from the Richmond Police Department ("RPD") shot at and killed Mr. Demilo Trayvon Hodge following a prolonged "stand-off" on westbound Interstate 80 in Emeryville. Immediately, before the officers shot at Mr. Hodge, Mr. Hodge had exited his vehicle, pointed a firearm in the direction of police officers, and shot the firearm at officers.

On September 27, 2017, at approximately 10:40 a.m., the OIS Team was notified that an officer involved shooting had occurred on the freeway in Emeryville. The OIS Team traveled through heavy traffic to arrive at the incident location. The OIS Team, along with other law enforcement agencies, completed a walk-through of the scene and observed evidence items.

Given the number of police officers involved in this incident, additional OIS Team members assisted in conducting interviews of the 13 "involved officers." Beginning on September 28, 2017, and continuing into September 29, 2017, the OIS Teams participated in interviews of the following

13 law enforcement personnel from FPD and RPD who discharged their firearms at Mr. Hodge during the shooting incident:

Fairfield Police Department

Sergeant Kelly Rombach
Sergeant Brent Pucci
Officer Erick Aagaard
Officer Shane Raftery
Officer James Sehr
Officer John Divine

Richmond Police Department

Sergeant Donovan Decious
Sergeant Chris Llamas
Officer Cedric Tagorda
Officer Benjamin Mendler
Officer Orlando Guzman
Detective Anthony Diaz
Detective Michael Ricchiuto

As part of its investigation, the OIS Team thoroughly reviewed police reports; video footage of the incident from the California Highway Patrol ("CHP"); photo and video footage from civilians; video footage from police body-worn cameras; involved officer statements; witness officer statements; civilian witness statements; the CHP Multidisciplinary Accident Investigation Team ("MAIT") report; the autopsy report; autopsy photos; the Alameda County Coroner Investigator's Report; crime lab reports; ballistics reports; photos and videos of the shooting scene; evidence photos; 911 dispatch recordings; police radio traffic recordings; and other evidence collected during the investigation.

The OIS Team also reviewed Confidential Information related to a criminal investigation of Mr. Hodge. Public disclosure of the Confidential Information is prohibited by statute and a court order.

FACTUAL SUMMARY:

In September of 2017, FPD was conducting an ongoing investigation of a murder which occurred in December of 2015 in Fairfield. As a result of this murder investigation, FPD had identified Mr. Hodge as a primary suspect responsible for this murder. As part of the continuing investigation, FPD planned to execute search warrants on September 27, 2017, including a search of Mr. Hodge, his vehicles, and his home.

At approximately 4:00 a.m. on September 27, 2017, members of the FPD SWAT Team attended an operational briefing regarding the execution of search warrants related to Mr. Hodge and another suspect in the 2015 murder investigation. FPD Sergeant Kelly Rombach prepared the operational briefing PowerPoint and presented it to the members of the FPD SWAT Team. Among those in attendance at this operational briefing were the following FPD officers: Sergeant Brent Pucci, Officer Erick Aagaard, Officer Shane Raftery, Officer James Sehr and Officer John Divine.

During the operational briefing, photos and a physical description of Mr. Hodge were presented, as well as information regarding Mr. Hodge's violent criminal history, including the crimes of robbery, burglary, assault and weapons offenses. Also during the briefing, information was provided that Mr. Hodge illegally manufactured and sold pistols and assault rifles. The operational briefing PowerPoint included numerous photos of Mr. Hodge holding assault rifles and assault rifles belonging to Mr. Hodge. The briefing included Confidential Information. In very general

terms, the Confidential Information informed officers that Mr. Hodge would likely resort to deadly force to avoid arrest.

FPD officers planned to conduct surveillance of Mr. Hodge and at the appropriate time, conduct a "vehicle assault" on Mr. Hodge's car. Officers wanted to avoid a standoff or hostage situation at Mr. Hodge's residence. The "vehicle assault" tactic was designed to prevent Mr. Hodge's car from moving and to safely take Mr. Hodge into custody. The plan would only be executed when it was confirmed that Mr. Hodge was alone in his vehicle.

At approximately 7:15 a.m., FPD officers began surveillance of Mr. Hodge as he left his residence in Napa and began driving his black Chevrolet Suburban. FPD officers attempted multiple vehicle assaults of Mr. Hodge's vehicle but were unsuccessful. On each occasion, Mr. Hodge evaded and drove recklessly away from police officers. Due to concerns for Mr. Hodge's unsafe evasive driving, FPD officers temporarily abandoned their surveillance and pursuit efforts but utilized GPS tracking information and CHP helicopter surveillance to assist in locating Mr. Hodge's vehicle. CHP helicopter surveillance tracked Mr. Hodge as he drove his vehicle from the Pinole area to the City of Richmond.

The CHP advised the RPD officers that Mr. Hodge, a murder suspect, had driven into Richmond and provided a description of Mr. Hodge's vehicle and location. At approximately 8:46 a.m., RPD motorcycle and patrol car units located Mr. Hodge's vehicle on the south side of Richmond and attempted to stop him. At 4th Street, between Nevin Avenue and MacDonald Avenue, a fully marked RPD patrol vehicle blocked Mr. Hodge's vehicle's path in an attempted vehicle stop but Mr. Hodge drove his vehicle onto the sidewalk around the patrol car, and fled at a high rate of speed. Multiple RPD patrol car and motorcycle units pursued Mr. Hodge's vehicle through Richmond city streets. Mr. Hodge drove recklessly and at a high rate of speed through the city streets and onto eastbound Interstate 580.

RPD officers continued the vehicle pursuit of Mr. Hodge onto eastbound Interstate 580. Given the time of day, the Interstate 580 freeway contained rush hour traffic blocking all lanes. Mr. Hodge drove his vehicle at a high rate of speed on the shoulder of the freeway as multiple RPD patrol vehicles pursued Mr. Hodge. The pursuit continued as Interstate 580 merged onto westbound Interstate 80. Traffic conditions remained heavy and Mr. Hodge continued to drive at a high rate of speed on the shoulder of the freeway. At times, Mr. Hodge would weave in and out of traffic on the freeway to avoid collisions. Mr. Hodge also drove off of the freeway shoulder and onto the dirt to evade RPD patrol vehicles. On the right shoulder of the freeway, at approximately University Avenue, CHP deployed "spike strips" in an attempt to disable Mr. Hodge's vehicle. Mr. Hodge continued to drive away from RPD patrol vehicles at a high rate of speed on the Interstate 80 freeway, passed Ashby Avenue, towards Emeryville.

At approximately 8:56 a.m., the front driver's side tire of Mr. Hodge's vehicle blew out and he appeared to lose control of the vehicle. On westbound Interstate 80, shortly after Powell Street, his vehicle struck the right side freeway barrier and then collided with the freeway center median. Shortly after colliding with the center median, Mr. Hodge's vehicle came to rest in the HOV lane by the center median. Five RPD patrol vehicles and a motorcycle unit stopped behind and to the rear passenger side of Mr. Hodge's vehicle. RPD officers exited their vehicles with their firearms

pointed at Mr. Hodge's vehicle. Traffic was heavy going eastbound on Interstate 80 and continued to pass by Mr. Hodge's vehicle and the RPD officers until eventually officers stopped the flow of eastbound Interstate 80 traffic. Westbound Interstate 80 traffic was stopped approximately 100 to 200 yards behind the RPD patrol vehicles.

Shortly after this freeway standoff began, RPD Officer Daniel Campos began communicating with Mr. Hodge over a patrol car loudspeaker, announcing RPD's presence and ordering him to put his hands outside the vehicle window where officers could see them. Additionally, RPD Officer Campos communicated over the loudspeaker that Mr. Hodge had nowhere to go, that he exit his vehicle with his hands up and to surrender peacefully. RPD Officer Campos communicated over the loudspeaker to Mr. Hodge to surrender continuously until the shooting incident occurred. Additionally, during the pursuit and standoff, FPD Sergeant Morris communicated directly with Mr. Hodge on his cell phone attempting to get Mr. Hodge to surrender peacefully.

Before and during the standoff, law enforcement provided further Confidential Information to the involved officers. In very general terms, the Confidential Information informed officers that Mr. Hodge had a firearm in the vehicle, that he planned to use the firearm against police officers, and that Mr. Hodge expected to die while confronting police.

At approximately 9:12 a.m., Mr. Hodge drove his vehicle further westbound on Interstate 80 at a slow rate of speed, moving right from the HOV lane to the number three lane. He came to a stop before the HOV lane splits from the freeway and is separated by a barrier. RPD officers moved their patrol vehicles forward and stopped approximately 40 yards behind Mr. Hodge's vehicle and across the lanes of the Interstate 80 freeway. RPD officers positioned themselves behind patrol car doors with firearms pointed at Mr. Hodge's vehicle.

At approximately 9:17 a.m., FPD officers from the initial surveillance and pursuit operation began arriving at the scene, parking behind the line of RPD patrol vehicles. FPD officers coordinated with RPD officers regarding the tactical plan to deal with the standoff. FPD officers took positions along the existing police vehicle line. At approximately 9:26 a.m., FPD SWAT officers from the original surveillance and pursuit arrived at the scene and also took up positions along the police line.

At approximately 9:31 a.m., Mr. Hodge moved his vehicle a second time. This time, he moved the vehicle a short distance at a slow rate of speed, further westbound on Interstate 80. Mr. Hodge stopped his vehicle in between the number three and four lanes and in line with the start of the yellow plastic barriers which separated the HOV lane from the other freeway lanes. FPD and RPD police vehicles also moved a short distance westbound on Interstate 80 and reformed a police vehicle line behind Mr. Hodge.

Upon stopping his vehicle a second time, Mr. Hodge rolled down the driver's side window and placed both hands out of the vehicle. He then rolled up the driver's side window. At approximately 9:33 a.m., Mr. Hodge rolled down the driver's side window again, leaned his head towards the open window, and appeared to say something out of the open window as well as motioned with his hand. Mr. Hodge rolled up his window again.

At this time, FPD officers deployed a series of less-lethal rounds at Mr. Hodge's vehicle. At FPD Sergeant Rombach's direction, FPD Officer Michael Ambrose deployed the first less lethal round at the rear window of the vehicle. This deployment was not successful in breaking out the window. FPD Officer Ambrose deployed a second less lethal round and this time was successful in breaking the rear window of the vehicle. Sergeant Rombach directed FPD Officer Ambrose to switch to a less lethal gas round. RPD Officer Campos continued to order Mr. Hodge over the loudspeaker, to put his hands out the window and open the door from the outside.

At approximately 9:34 a.m., Mr. Hodge partially leaned out of the driver's side window with both hands out and his head facing towards the police line. He appeared to say something in the direction of the police line and made hand gestures. At this time, FPD Officer Ambrose deployed a less lethal gas round at the back of the vehicle. This less lethal round appeared to startle Mr. Hodge and he quickly retreated back into his vehicle.

Seconds after retreating into his vehicle, at approximately 9:35 a.m., Mr. Hodge quickly opened the driver's side door and immediately exited his vehicle. Mr. Hodge exited with both hands together holding a firearm and pointing it in the direction of police officers and vehicles. Mr. Hodge fired once in the direction of officers. Fortunately, the fired round did not strike any person. In response, FPD and RPD officers discharged their firearms at Mr. Hodge. Mr. Hodge was hit by numerous gunshots and he fell to the ground, dropping his firearm when he fell. The gunshots from police ceased approximately seven seconds after Mr. Hodge exited his vehicle.

FPD and RPD officers gathered together behind a vehicle to conduct a security check of the vehicle and Mr. Hodge. They slowly approached the vehicle and Mr. Hodge to make sure that the vehicle was not occupied. Within three minutes of Mr. Hodge falling to the ground, officers provided medical assistance to Mr. Hodge until emergency medical service technicians arrived. Mr. Hodge was transported to San Francisco General Hospital by police officers due to the gridlock situation and lack of ambulance. Despite lifesaving efforts at the hospital, Mr. Hodge was pronounced deceased 10:17 a.m. The cause of death was later determined to be multiple gunshot wounds.

It was determined at the scene that the following involved FPD and RPD officers discharge their firearms during the shooting incident: FPD Sergeant Kelly Rombach; FPD Sergeant Brent Pucci; FPD Officer Erick Aagaard; FPD Officer Shane Raftery; FPD Officer James Sehr; FPD Officer John Divine; RPD Sergeant Donovan Decious; RPD Sergeant Chris Llamas; RPD Officer Cedric Tagorda; RPD Officer Benjamin Mendler; RPD Officer Orlando Guzman; RPD Detective Anthony Diaz; and RPD Detective Michael Ricchiuto.

INVOLVED OFFICER STATEMENTS:

Prior to the shooting incident, all of the involved officers were aware of at least part of the Confidential Information discussed above. The following summaries of the involved officers' statements do not include the officers' statements about the Confidential Information.

Statement of Fairfield Police Department Sergeant Kelly Rombach

On September 29, 2017, members of the OIS Team and the Emeryville Police Department conducted an interview of Fairfield Police Department Sergeant Kelly Rombach. Sergeant

Rombach was represented by counsel during the interview. He was advised of his rights and he voluntarily agreed to proceed with the interview.

Sergeant Rombach has been a police officer with the FPD for 13 years and before that he was a police officer for two years with the City of Ferndale. He also worked at the Shasta County Sheriff's Department in a jail setting. At the time of the incident, he was assigned to the Special Operations Team with FPD. On September 27, 2017, he was assigned as a SWAT Team leader, an assignment he has held for approximately four years.

Sergeant Rombach was involved in the murder investigation of Mr. Hodge. As part of this investigation, Sergeant Rombach had been involved in the surveillance of Mr. Hodge. Sergeant Rombach was responsible for creating an operation plan for September 27, 2017. The goals of the operation were to execute an arrest of Mr. Hodge for murder, execute a search warrant for his DNA, his cell phone, his black SUV, and his apartment. At approximately 4:00 a.m., on September 27, 2017, Sergeant Rombach gave an operational briefing in the form of a PowerPoint presentation to approximately 15 SWAT Team members and approximately 10 investigators. During the briefing, Sergeant Rombach went through all the information contained in the operations PowerPoint. This included that Mr. Hodge was a murder suspect and his violent criminal history. The PowerPoint also included photos collected during the investigation of Mr. Hodge holding multiple loaded AR-15 assault rifles. Another photo shows Mr. Hodge wearing a Halloween mask and holding multiple assault rifles with a handgun placed in the waistband of his pants. The operations briefing reviewed taking Mr. Hodge into custody when he was away from his young daughter by using a vehicle assault. The purpose of this tactic was to gain the element of surprise and to not allow him to barricade himself or create a hostage situation. The operation teams left the briefing and went to another Fairfield facility to practice the vehicle assault operation.

As part of the operation, Sergeant Rombach stated that he was assigned to a [REDACTED] with driver Officer John Divine, front passenger Officer Michael Ambrose, with Officer Erick Aagaard, Officer Keith Pulsipher, and himself in the rear area of the minivan. At approximately 6:30 a.m., the operation began with surveillance of Mr. Hodge in his black SUV. Initially, he was observed with his daughter but eventually, Sergeant Rombach received information that Mr. Hodge had likely dropped off his daughter at school. At this point, Sergeant Rombach described Mr. Hodge beginning to drive in a way that indicated he suspected he was being surveilled by the police. He also stated that there was a failed attempt at a vehicle assault of Mr. Hodge. Sergeant Rombach decided not to pursue Mr. Hodge at this time because they had lost the element of surprise. He then heard that one of the other surveillance units had located Mr. Hodge and were following him again. His team in the minivan headed in the direction of Mr. Hodge and were able to see him again.

As his team followed Mr. Hodge's vehicle again, Sergeant Rombach observed Mr. Hodge driving evasively and dangerously. Mr. Hodge was weaving in and out of traffic, driving into oncoming lanes of traffic, and driving at a high rate of speed. Sergeant Rombach decided to abort the vehicle assault operation and monitor Mr. Hodge's movements using a GPS tracker which had been placed on Mr. Hodge's car, as well as a CHP helicopter which was surveilling Mr. Hodge. At this point, Mr. Hodge was in the City of Richmond. Sergeant Rombach learned that RPD unsuccessfully

attempted to conduct an enforcement stop and that a pursuit lead to the freeway. He heard that RPD pursued Mr. Hodge and that CHP successfully "spike stripped" Mr. Hodge's vehicle tires and he was stopped on the freeway in a barricade situation. In response to a request that the FPD come to the scene to assist, Sergeant Rombach and his team made their way through traffic to the location where Mr. Hodge was stopped.

When Sergeant Rombach arrived in the minivan at the scene of the Interstate 580/80 interchange, he stated that he saw approximately seven or more RPD cars with their lights on and their doors open behind Mr. Hodge's vehicle. Sergeant Rombach was carrying his department-issued, AR-15, .223 caliber, rifle slung over his tactical vest. He noted that approximately 100 feet behind the fan of police vehicles and officers was gridlocked, stopped traffic. Sergeant Rombach also noted approximately 150 yards in front of his location on the opposite side of the freeway, a CHP unit was blocking all lanes of traffic across the entire freeway. Amongst this gridlocked traffic in front of him, he could see groups of people congregating and people standing on top of box trucks. To the right of his location, on the frontage road, and behind him, people were also congregating in groups and standing in the stopped traffic. Sergeant Rombach contacted the RPD sergeant who had been in charge of the scene and learned that Mr. Hodge was still in the vehicle and that the tires had been punctured. It was agreed that Sergeant Rombach would take over tactical control of the scene.

At this point, Sergeant Rombach stated that he evaluated his safety priorities at the scene. His first priority was the safety of all the civilians in front, to the left, to the right, and behind him, who were standing out in traffic and on top of box trucks and ambulances. Next, he stated that he was concerned for the police around him. Finally, he was concerned for the safety of Mr. Hodge. Sergeant Rombach had also learned that after Mr. Hodge's vehicle was successfully spike-stripped, Mr. Hodge began driving again and a slow, five miles per hour pursuit occurred to Mr. Hodge's current location. Therefore, Sergeant Rombach stated that he was also concerned that Mr. Hodge was not completely immobilized. Sergeant Rombach stated that Mr. Hodge could not get off the freeway but he could turn his car around and drive towards the police or he could drive towards the crowds of people ahead of him.

Sergeant Rombach decided to direct a member of his team to use a "soft-tip" 40-millimeter round on Mr. Hodge should he come out of the vehicle and if that did not gain compliance, RPD would utilize their dog. As he and RPD began to set this plan up, Mr. Hodge's vehicle drove forward again approximately 100 feet. Sergeant Rombach was concerned that Mr. Hodge had traveled closer to the crowds of people in the gridlocked traffic. He was concerned that Mr. Hodge was still not completely immobilized and that he could get out of his car, run towards a civilian, carjack someone, or steal a car. Sergeant Rombach did not feel he had control over the scene. At this time, he knew that FPD was trying to negotiate with Mr. Hodge for his surrender over Mr. Hodge's cell phone, and RPD was trying to negotiate with Mr. Hodge over the PA system. Despite these efforts, Mr. Hodge was not giving up. Sergeant Rombach was concerned that Mr. Hodge could continue to drive closer to the people and believed the general public could be in extreme jeopardy.

In order to get Mr. Hodge out of his car and surrender with the least amount of property damage, Sergeant Rombach told Officer Ambrose to shoot a single "soft-tip" 40-millimeter round at the back window of Mr. Hodge's vehicle. Officer Ambrose did so but missed the back window, hitting

the rear of the vehicle near the license plate. Mr. Hodge rolled down the window and put his hands out of the window. He appeared to be communicating with the officer on the PA system. At this point, because Mr. Hodge was engaging, Sergeant Rombach told Officer Ambrose not to fire any additional shots. However, Mr. Hodge then rolled up the window.

Sergeant Rombach ordered a second "soft-tip" 40-millimeter shot at the back window. This time the round hit and broke the back window. After the second shot, Sergeant Rombach observed Mr. Hodge roll down the window again and stick his hands out. Mr. Hodge seemed to be communicating out of the window. At this point, it appeared to Sergeant Rombach that Mr. Hodge stopped communicating and then systematically looked at all of the people on the freeway in the parked cars off to the left. Sergeant Rombach became concerned that Mr. Hodge was looking at the people and formulating a plan. He became concerned that the general public was at risk and he gave Officer Ambrose the order to launch gas into the car to disrupt Mr. Hodge's plan of attacking police officers or attacking the general public. Officer Ambrose, who was directly in front of Sergeant Rombach, shot the gas round into the back window and Mr. Hodge immediately reacted, bringing his head and hands into his vehicle.

Seconds after Mr. Hodge brought himself into the vehicle, Sergeant Rombach observed the driver's side door of the SUV open. Sergeant Rombach yelled to Officer Ambrose to transition to another "soft-tip" 40-millimeter round to shoot at Mr. Hodge and incapacitate him should he exit the vehicle. Sergeant Rombach then observed Mr. Hodge come out of the car holding a handgun in his right hand. Mr. Hodge took one step towards Sergeant Rombach and then got in a well-balanced, slightly shoulder-width apart stance. Mr. Hodge squatted deeply and brought his left hand over his right hand to create a two-handed pistol grip. As he squatted, Mr. Hodge simultaneously pointed the firearm outward, and he pointed the firearm at Sergeant Rombach. Sergeant Rombach watched the firearm and he saw the muzzle flash on the firearm. He saw the firearm cycle as it was a semi-automatic handgun and it appeared to Sergeant Rombach that Mr. Hodge did this multiple times very quickly.

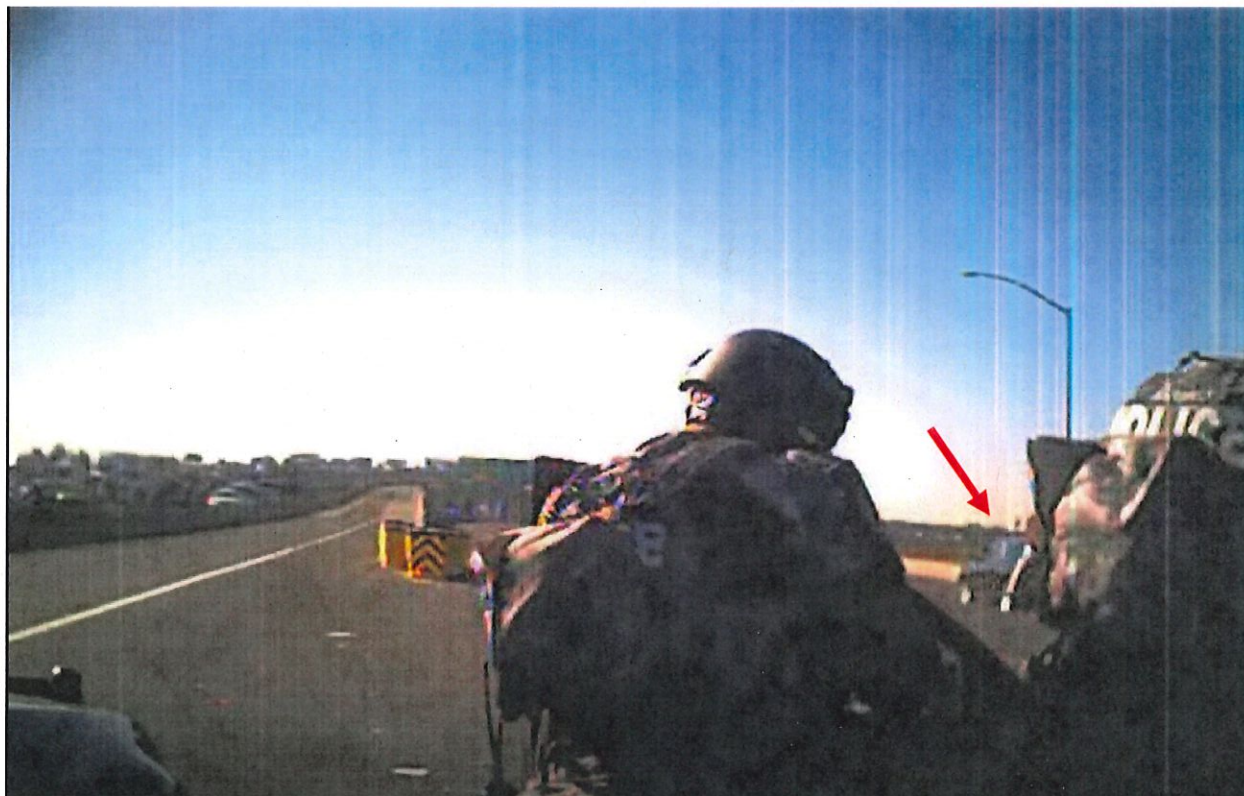
Sergeant Rombach stated that Mr. Hodge had committed an attempted murder of police officers and that he feared for his life. He feared that Mr. Hodge, with the use of the firearm, was going to cause great bodily injury or death to him, to all the other officers who were there, all the people behind him, and all the people in front of him. Sergeant Rombach believed that if Mr. Hodge attempted to run off to the left, it would take him very little time to get between the police and the crowd of people to the left, creating a "crossfire" situation with the crowd. He feared that Mr. Hodge could run to the crowd and then officers would not be able to use lethal force against him anymore. Sergeant Rombach stated that he was in fear for his life and the lives of others. As a result, Sergeant Rombach stepped off to the left and fired approximately two times with his rifle at Mr. Hodge's upper chest, and once at Mr. Hodge's head. Sergeant Rombach stopped shooting when Mr. Hodge was laying on his side and no longer appeared to be a threat to him as the firearm was no longer pointed at him or anyone else.

Sergeant Rombach further described his decision-making process regarding the incident. He considered that he was originally arresting Mr. Hodge for murder. Mr. Hodge tried to kill the police with a firearm and Sergeant Rombach believed Mr. Hodge could cause great bodily injury or death. Sergeant Rombach considered that Mr. Hodge was armed with a firearm, displaying a

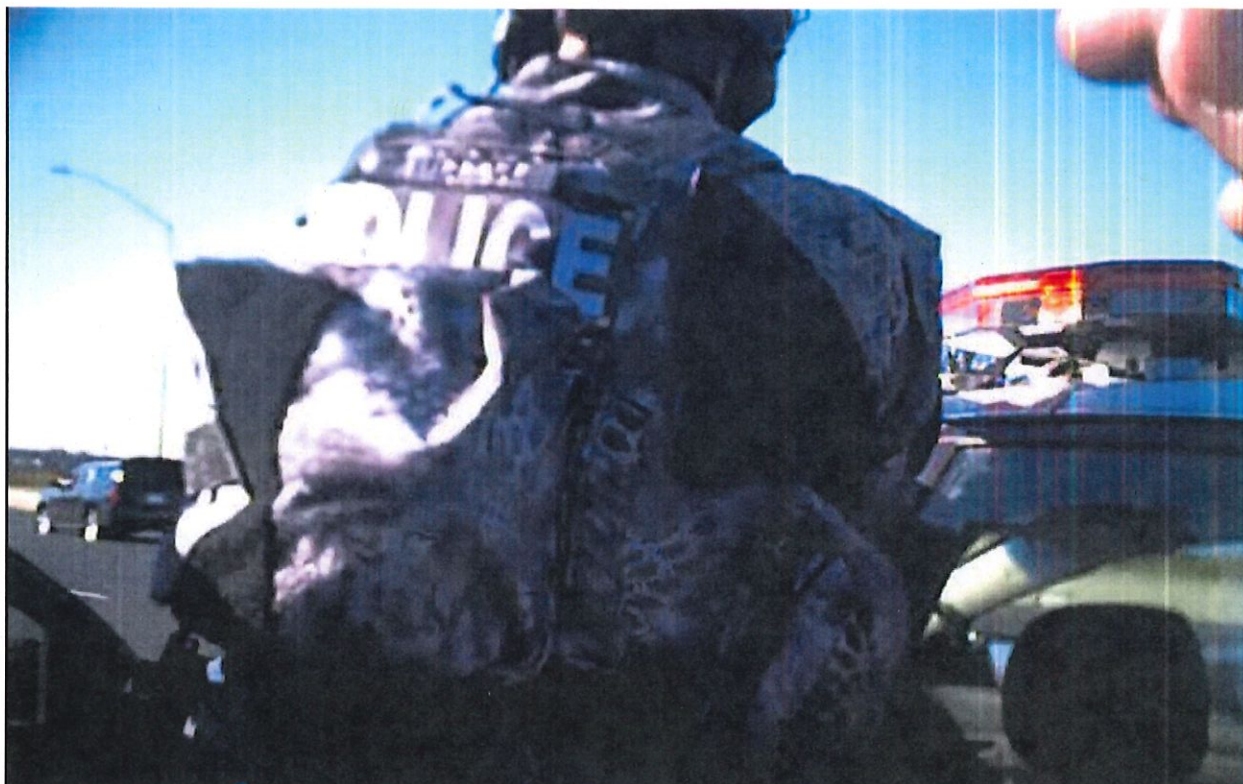
propensity for violence and he had already showed a disregard for public safety earlier when he drove his vehicle into oncoming traffic. Sergeant Rombach believed that Mr. Hodge was willing to die and that he failed to submit with all the uniformed police, police vehicles, vehicle lights behind him, and negotiators on the phone. He believed that if he let Mr. Hodge leave the scene at any time, he posed the greatest risk to public safety, and all the people who were trapped in traffic, in a "funnel trap," with no way to escape. Sergeant Rombach believed that with Mr. Hodge armed and with a propensity for violence, everyone in the one-square mile area was in danger.

Following the shooting incident, Sergeant Rombach confirmed that the other officers on scene had not been injured or shot. He and other officers then approached Mr. Hodge and the area of his vehicle to make sure the area and vehicle were safe and to provide medical assistance to Mr. Hodge. When Sergeant Rombach reached Mr. Hodge, he observed a semi-automatic handgun lying about an arm's reach away from Mr. Hodge.

Sergeant Rombach activated his body-worn video camera shortly before the shooting incident. The OIS Team reviewed this video recording. The video does not show Mr. Hodge's action immediately before the shooting incident, nor does it show the shooting. The video shows Sergeant Rombach issuing orders regarding less-lethal deployments by Officer Ambrose. Sergeant Rombach can be seen and heard modifying his orders based on Mr. Hodge's level of compliance. The video shows the proximity of the gridlocked traffic on Sergeant Rombach's left to Mr. Hodge. It also shows Mr. Hodge looking out of the driver's side window when Sergeant Rombach orders Officer Ambrose to deploy the gas. Following the shooting, Sergeant Rombach's video captures footage of the officers' approach of Mr. Hodge, the clearing of the scene, and the arrival of medical assistance. Below are still photos from Sergeant Rombach's body-worn video.



Proximity of stopped traffic to Mr. Hodge's SUV (red arrow) – Sgt. Rombach body-worn camera (0:18)



Mr. Hodge's arm outside of driver's window before gas round deployment by Officer Ambrose (in photo) – Sgt. Rombach body-worn camera (1:17)



Approach after shooting with Mr. Hodge's firearm on ground (red arrow) – Sgt. Rombach body-worn camera (1:34)

Statement of Fairfield Police Department Sergeant Brent Pucci

On September 29, 2017, the OIS Team and Emeryville Police Department conducted an interview of Fairfield Police Department Sergeant Brent Pucci. Sergeant Pucci was represented by counsel during the interview. He was advised of his rights and he voluntarily agreed to proceed with the statement.

At the time of the interview, Sergeant Pucci had been a police officer with FPD for approximately nine years. He began his law enforcement career in 1994 with the Tarrant County Sheriff's Department in Fort Worth, Texas. In 1997, he began working for the California Highway Patrol. Sergeant Pucci then began working for the Vallejo Police Department in 2002.

Beginning in September of 2017, Sergeant Pucci was the head of a "street team" that assisted in the murder investigation of Mr. Hodge. Sergeant Pucci received background information on Mr. Hodge including his criminal history. He learned that Mr. Hodge had committed crimes against persons, weapons violations, and narcotics violations. Sergeant Pucci knew that Mr. Hodge had spent time in prison. Based on all this background information, it was Sergeant Pucci's belief that Mr. Hodge had a propensity for violence, that he had access to firearms, and that he was going to be resistant to an arrest.

On September 27, 2017, Sergeant Pucci knew through attending briefings and conversations from the night before that the Major Crimes Unit had secured a search warrant for Mr. Hodge's vehicle, his cell phone, and his person, and that there was probable cause to arrest him for murder. The

plan was to arrest Mr. Hodge using a vehicle assault in an effort to minimize exposure to threats by utilizing the element of surprise. As part of the vehicle assault operation, Sergeant Pucci was assigned as a team leader for a three officer surveillance team in Napa.

When the surveillance began, Sergeant Pucci noticed that Mr. Hodge was aware of the police surveillance. Sergeant Pucci began to see aggressive driving behavior by Mr. Hodge which created separation between his vehicle and the surveillance team. Sergeant Pucci's surveillance team lost sight of Mr. Hodge at Highway 37 on the way to Interstate 80. Sergeant Pucci was able to use a tracking tool, CHP helicopter surveillance, and other surveillance vehicles to locate Mr. Hodge's vehicle in Benicia and then into the Pinole/San Pablo area. Sergeant Pucci was able to observe Mr. Hodge driving aggressively in this area but then lost him again. He heard CHP contacting RPD regarding Mr. Hodge.

FPD was no longer following Mr. Hodge and they were staging in Richmond when Sergeant Pucci learned that the RPD was involved in a felony stop on westbound Interstate 80, west of Powell Street. Sergeant Pucci made his way towards this location through traffic. He heard that it was a stand-off situation but that Mr. Hodge had tried to drive off but then stopped again.

Sergeant Pucci arrived to see a line of RPD officers across the roadway with car doors open and their firearms aimed towards Mr. Hodge's vehicle. Mr. Hodge's vehicle was in the center lanes facing westbound towards the MacArthur maze. He then made contact with two RPD sergeants and a CHP sergeant. CHP informed Sergeant Pucci that they had all lanes of traffic shut down in both directions. RPD informed him that they had rifles, handguns, less lethal options, a canine and hostage negotiator on scene and that an armored vehicle was in route. Sergeant Pucci stated that the decision was made to maintain what they had and react to any threats until the SWAT Team arrived.

FPD SWAT arrived to the scene about 10 to 15 minutes after Sergeant Pucci arrived. He put Sergeant Kelly Rombach in touch with the RPD sergeant. FPD SWAT then began developing a tactical plan and Sergeant Pucci transitioned to a location behind one of the RPD vehicles. His position was such that Mr. Hodge's vehicle was in front of him but he was slightly off to the left of the vehicle. From his position, Sergeant Pucci could see the entire driver's side and the back tailgate of Mr. Hodge's vehicle. He estimated he was located about 100 feet from Mr. Hodge.

Sergeant Pucci then observed Mr. Hodge's vehicle move forward about 20 to 30 feet before coming to a stop. He recalled hearing Sergeant Rombach give orders of a "40-millimeter" deployment. Sergeant Pucci did not hear any other orders at this time. He observed the 40-millimeter round hit the tailgate of Mr. Hodge's vehicle below the rear window. Immediately after that, a second 40-millimeter round was deployed which struck and broke the rear window. However, due to the tint, the rear window held its shape. Sergeant Pucci then observed the driver's window go down and he saw Mr. Hodge's hands briefly come out. Sergeant Pucci's handgun was out but it was in a "low-ready" position. Sergeant Pucci was armed with a department-issued Glock 17, 9-millimeter, semi-automatic firearm. He had a full magazine with 17 rounds in the magazine and one in the chamber. Around this time, he activated his body camera.

A short time later, Sergeant Pucci observed Mr. Hodge's window go down again, the second and last time he observed the window go down. On this occasion, Mr. Hodge's hands and face came out of the window. Sergeant Pucci recognized the person as Mr. Hodge. To his left, he heard someone giving commands. Mr. Hodge did not follow the commands. Sergeant Pucci heard the command of "gas" and then he heard the deployment of a gas round. Mr. Hodge went back into the car but the car window was still down. Sergeant Pucci described Mr. Hodge's conduct of putting his hands in and out of the car as showing nothing was in his hands but also as not complying. Sergeant Pucci was concerned enough at this time that he was not going to holster his firearm.

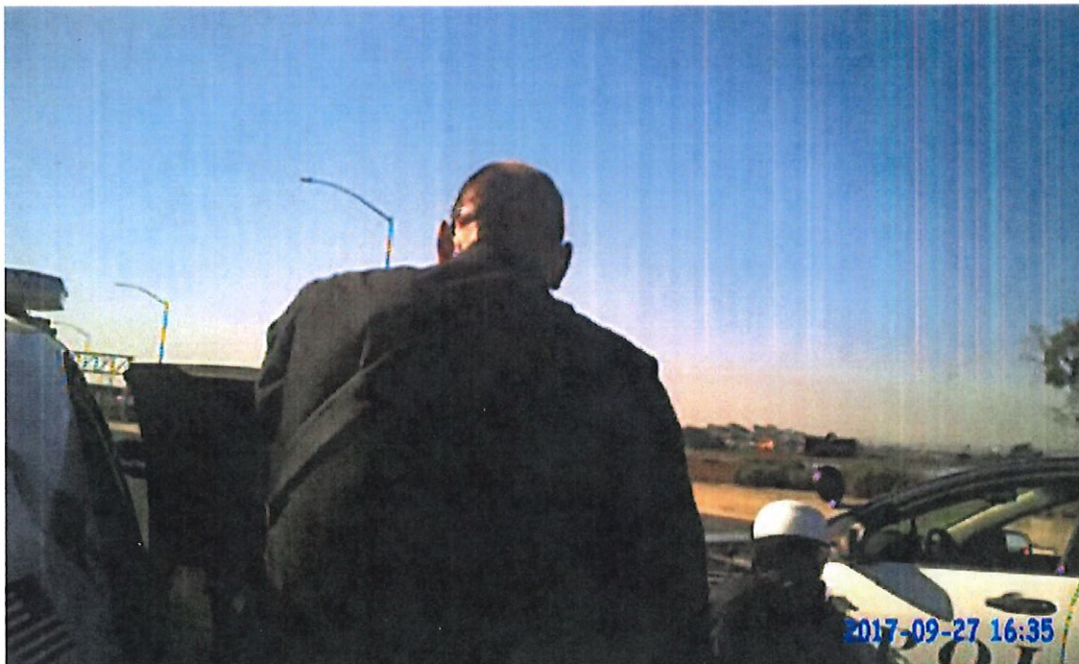
Sergeant Pucci estimated that eight to 10 seconds went by before he observed the door open and Mr. Hodge come out of the car. Almost instantaneously, Sergeant Pucci heard a gunshot and he observed smoke coming from the area of Mr. Hodge's hand. Sergeant Pucci recalled a black handgun in Mr. Hodge's right hand or in both hands as he came out of the car. When Mr. Hodge came out of the car, the firearm was pointed in the direction of all of the officers in Sergeant Pucci's area, on the left side of Mr. Hodge's vehicle. The firearm was shot in Sergeant Pucci's direction. Sergeant Pucci described his initial reaction as a flinch and he was surprised. He further described Mr. Hodge's conduct as coming out of the car, charging at the police. He believed that Mr. Hodge fired at least two shots because after the first shot, he heard a second isolated shot coming from the same area where Mr. Hodge was located.

At the time that Mr. Hodge got out of his car and fired his firearm, Sergeant Pucci described the scene. Mr. Hodge was in close proximity to all of the motorists to Sergeant Pucci's left. According to Sergeant Pucci, Mr. Hodge had the ability to gain access to these motorists. Further, behind the line of police officers were additional motorists who were out of their cars. It was a dangerous situation. Mr. Hodge had access to police officers or the motorists depending on which direction he went.

Sergeant Pucci then raised up his firearm and started shooting at Mr. Hodge. He shot and Mr. Hodge hit the ground. Sergeant Pucci was aiming at Mr. Hodge's "center mass" – his torso area. Mr. Hodge rolled as he went to the ground, but his body was still facing Sergeant Pucci and he was still moving. Due to this body position on the ground and that he had just observed Mr. Hodge fire his gun, Sergeant Pucci still perceived a threat to himself and the officers around him. He also perceived a threat to the motorists in the area. Therefore, Sergeant Pucci continued to shoot at Mr. Hodge while he was on the ground and he continued to shoot until he felt that the threat had stopped. Sergeant Pucci estimated that he shot five times. It wasn't until a round count was conducted when he learned he shot seven times. Sergeant Pucci stated that he shot in reaction to a threat, not only to himself, but to all the officers and all the citizens around him. Sergeant Pucci believed Mr. Hodge was going to continue to charge until he was stopped or he killed the officers.

Sergeant Pucci described the steps that were taken after the shooting to approach Mr. Hodge, to preserve the crime scene, and to provide medical attention to Mr. Hodge.

The OIS Team reviewed Sergeant Pucci's body-worn camera footage and Mr. Hodge's actions were not caught on video shortly before nor during the shooting incident. Below is a still photo from Sergeant Pucci's body-worn camera video to show his vantage point.



Sergeant Pucci's body-worn camera vantage point shortly before the shooting incident (1:04).

Statement of Fairfield Police Department Officer Erick Aagaard

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of Fairfield Police Department Officer Erick Aagaard. With counsel present, Officer Aagaard was advised of his rights and he voluntarily agreed to proceed with the interview.

Officer Aagaard has been a police officer with FPD for 12 years. Officer Aagaard is a member of the FPD SWAT Team and on September 27, 2017 he was assigned to a SWAT operation.

On September 27, 2017, at 4:00 a.m., Officer Aagaard attended a briefing on the SWAT operation at FPD. At the briefing, Officer Aagaard received information that they were going to contact a subject who was wanted for a homicide. A PowerPoint presentation was shown at the briefing and he saw photos of the subject with several rifles. He received background on the subject that he manufactured assault weapons and that he had prior arrests for domestic violence, assault with deadly weapons, and other weapons violations.

The plan of the operation was to do a "vehicle assault" of the subject's vehicle after he dropped off his daughter at school and take him into custody. Officer Aagaard described the vehicle assault as positioning a police vehicle in front of and behind the subject's vehicle so that it could not go anywhere. At that point, the officers would take the subject out of the vehicle. Officer Aagaard stated that he and the other members of the operation practiced the vehicle assault that morning at their training facility before beginning the operation.

Officer Aagaard stated that they began their operation which involved other undercover vehicles, the use of a GPS vehicle tracker, and a CHP surveillance helicopter. Officer Aagaard was assigned to a minivan with other members of the SWAT operation that would participate in the vehicle assault. Officer Aagaard then described the attempts by FPD to execute the vehicle assault of the subject's vehicle which he described as a Chevy Tahoe. According to Officer Aagaard, it had become apparent that the subject was aware of the police operation and he began to drive evasively. The subject would go through red lights, around vehicles, and into opposite traffic. The operation had made its way into San Pablo and at that point lost sight of the subject vehicle. FPD decided to stop the vehicle assault operation because it was too dangerous with the subject being aware of their operation. Around this time, FPD notified RPD of the subject vehicle and they monitored the subject's movements in Richmond using the GPS tracker and the CHP surveillance.

Shortly after stopping the vehicle assault operation, Officer Aagaard received information that RPD was in pursuit of the subject vehicle. He then learned that the subject vehicle had entered the freeway, that the subject vehicle tires had been popped with a "spike strip" and that the vehicle was now stopped on Interstate 80. FPD could see the location of the subject vehicle using the GPS tracker they had on the car, so they decided to go to the location. They made their way through traffic and reached the location of the subject vehicle.

Upon arrival at the scene, Officer Aagaard observed that CHP had blocked all freeway traffic. Beyond the area where traffic was stopped, he observed empty space and then several RPD police vehicles "fanned" out behind a black SUV. RPD officers had executed a "high risk stop," meaning they were behind their cars with the lights on and with their guns drawn on the black SUV. Officer Aagaard observed freeway traffic blocked off in westbound and eastbound directions.

Officer Aagaard observed the black SUV in the middle of the freeway with flat tires and it wasn't moving. Officer Aagaard and other FPD officers took positions behind the RPD police vehicles located about 40 yards behind the black SUV. From his position, Officer Aagaard could see the rear of the subject vehicle and the entire driver side. He could hear an officer providing commands to the subject in the black SUV to get out of the vehicle and surrender. The subject in the vehicle did not appear to be following the commands, rolling his windows down, poking his head out, yelling, and then rolling the windows up. The subject did this a couple times.

Officer Aagaard stated that FPD Officer Michael Ambrose shot two "soft tip" rounds at the back window of the black SUV with the purpose of breaking the window. The first shot hit the trunk of the SUV. The second shot hit the rear window of the SUV and broke the glass. Officer Ambrose shot a final "gas" round into the vehicle through the back window which is supposed to disburse a chemical agent.

Approximately five seconds after Officer Ambrose's final round, Officer Aagaard observed the driver's side door open on the black SUV. He then saw the male inside (Mr. Hodge) come out very quickly and he saw a firearm in Mr. Hodge's hand. Officer Aagaard stated that Mr. Hodge pointed the gun in his direction and then fired at least one round. He saw the gun come up and heard the round go off. He could not say whether Mr. Hodge fired more than once. When Mr. Hodge fired one round, Officer Aagaard started firing his rifle which was up on his shoulder, with

the front of the rifle resting on the top of the patrol car door. Officer Aagaard believed he fired his rifle four times in a steady flow, aiming for Mr. Hodge's center mass. He could not say for certain whether he hit Mr. Hodge and stopped firing when Mr. Hodge hit the ground. Officer Aagaard recognized the man who came out of the black SUV as the man from the morning briefing. He described the gun as a silver handgun and stated that it was pointed in his direction and at other officers near him. Officer Ambrose was standing directly to Officer Aagaard's right and there were other officers in his immediate area.

Officer Aagaard stated that when he saw Mr. Hodge come out with the gun, he was in fear for his life, his safety, as well as the officers around him, and the general public in the area. When Officer Aagaard fired his first shot from his rifle, Mr. Hodge was facing in his direction and had his gun pointed with both hands up in his direction. Officer Aagaard continued to fire his rifle until Mr. Hodge no longer appeared to be a threat, which was when he fell to the ground. Officer Aagaard stated that Mr. Hodge was a threat because he had a gun in his hand, he had shot at them, and he believed that he would continue to shoot at them.

Officer Aagaard assisted as a cover officer as the officers approached Mr. Hodge on the ground, cleared the surrounding area, and got medical treatment for the subject.

Officer Aagaard did not have a body-worn camera video recording of the incident.

Statement of Fairfield Police Department Officer Shane Raftery

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of Fairfield Police Officer Shane Raftery. With counsel present, Officer Raftery was advised of his rights and he voluntarily agreed to proceed with the interview.

Officer Raftery stated that he has been a police officer with FPD for over four years. Before working for the FPD, he was an explorer for six months with the Sonoma County Sheriff's Department. Officer Raftery is a member of the SWAT Perimeter Team which is attached to the SWAT Team. As part of the Perimeter Team, Officer Raftery participated in the same SWAT training but has not attended the SWAT school. He had been taking part in this specialized training for about two years.

Officer Raftery stated that on September 27, 2017, he attended a SWAT briefing at the Fairfield Police Department at 4:00 a.m. During this briefing, Officer Raftery was provided information regarding an ongoing homicide investigation involving two suspects, with the primary target identified as Mr. Demilo Hodge. Background information provided on Mr. Hodge revealed that he was wanted for murder and that he had an extensive criminal background. At the briefing, photographs were shown of Mr. Hodge holding numerous firearms, including rifles. Mr. Hodge was presumed to be armed but it was never stated that he was armed during the briefing.

Officer Raftery stated that he was assigned to a group that would arrest Mr. Hodge. It was determined that the best tactical maneuver to arrest Mr. Hodge would be to utilize a "vehicle assault" while Mr. Hodge was driving. Officer Raftery was driving a fully-marked FPD vehicle. Other FPD officers were conducting surveillance on Mr. Hodge, his residence in Napa and his

vehicle. Officer Raftery stated that officers conducting surveillance observed Mr. Hodge get into his black SUV but a vehicle assault was not initiated because Mr. Hodge had his daughter in the vehicle. Officers followed Mr. Hodge to Benicia where he dropped his daughter off at school.

At this point Officer Raftery stated that officers believed that Mr. Hodge had identified the surveillance officers because he suddenly accelerated at a high rate of speed onto the freeway. When Mr. Hodge drove toward the freeway, he was near a school and there were children and bystanders present as he accelerated away. Officer Raftery stated that it would have been unsafe to attempt the vehicle assault because Mr. Hodge was driving erratically. Additionally, there was a CHP helicopter tracking Mr. Hodge's vehicle so the surveillance units did not continue the pursuit.

Officer Raftery stated that Mr. Hodge dropped off two occupants making him the sole occupant of his SUV. Mr. Hodge continued to drive, passing the officers who were surveilling him. Officer Raftery stated that Mr. Hodge suddenly started driving erratically on the wrong side of the road in wanton disregard for public safety. According to Officer Raftery, officers decided to back off pursuing Mr. Hodge because they believed he would seriously injure someone if there was a vehicle collision.

After FPD officers made the decision to back off from pursuing Mr. Hodge, Officer Raftery stated that officers from RPD observed Mr. Hodge's SUV driving erratically and a vehicle pursuit started after he refused to pull over. The FPD officers decided to regroup and determine their next course of action. Officer Raftery stated that during this time, information was developing that CHP had "spiked" Mr. Hodge's SUV and he was refusing to exit his vehicle. Officer Raftery stated that the incident was now a barricaded subject inside a vehicle on the freeway.

FPD officers immediately drove to the scene and upon arrival, Officer Raftery observed Mr. Hodge's disabled vehicle. Directly behind Mr. Hodge's vehicle and some distance away, were a line of police vehicles and officers. According to Officer Raftery, the officers on scene were armed with different options of force, lethal as well as non-lethal weapons, and there was also a canine on scene. FPD and RPD officers discussed what would be the roles of each agency during the incident.

Officer Raftery stated that while these discussions were occurring, Mr. Hodge's vehicle started creeping forward. Officer Raftery believed Mr. Hodge was driving to escape, so he got back into his patrol car. However, after moving forward 10 feet, Mr. Hodge stopped his car again. Officer Raftery described a police vehicle parked offset and behind Mr. Hodge's SUV with another officer taking a knee by the front of the police vehicle. Officer Raftery armed himself with his rifle and took up a position near this police vehicle. His rifle was a Colt AR-style rifle with a magazine containing 30 rounds. Officer Raftery stated this position provided a good vantage point of the driver's side door of the suspect vehicle. He estimated he was 30 yards away from the suspect. From his position, Officer Raftery could see a portion of the driver's side of the SUV and the back of the SUV.

Officer Raftery believed that an officer from crisis intervention was still trying to communicate with Mr. Hodge at this time but he also believed communications with Mr. Hodge were starting to

fail. Officer Raftery stated that officers continued to give Mr. Hodge commands to surrender and less-lethal options were deployed to break the back window of Mr. Hodge's SUV. A FPD officer deployed less lethal rounds. Officer Raftery stated that the first less lethal round was ineffective, bouncing off the back window, but the second less lethal round broke the back window. A third round was deployed which was a gas round in an attempt to gain compliance from him. Officer Raftery stated that Mr. Hodge stuck both hands out the driver's window showing he didn't have a weapon. Officer Raftery believed Mr. Hodge might surrender at that point and interpreted this as an act of good faith since he didn't have a gun in his hand.

However, Officer Raftery stated that after the gas round was deployed Mr. Hodge's hands went back inside the SUV. Then the driver's door opened up and Mr. Hodge got out armed with a black pistol in his hand. This surprised Officer Raftery. Officer Raftery stated he was not sure what hand the suspect was holding his pistol. Officer Raftery stated that as Mr. Hodge moved forward he raised the gun and Officer Raftery heard the first gunshot. Officer Raftery stated that it sounded to him like the round had come right off his left side, causing him to involuntarily flinch to his right.

Officer Raftery feared for his safety, and the safety of every other police officer present, and the people in the backdrop. Officer Raftery believed that Mr. Hodge was actively trying to shoot and kill police officers. After Mr. Hodge's first gunshot, Officer Raftery stated he regained his sight picture of Mr. Hodge and observed him still standing, still holding a gun, and he thought he was still shooting. Officer Raftery stated he fired two rounds from his rifle aiming at Mr. Hodge's torso area to neutralize the threat which was extremely active and apparent. Officer Raftery stated that Mr. Hodge's actions were so aggressive and violent that it commanded an immediate response. Officer Raftery stated that on his second round, he saw Mr. Hodge's body drop to the ground and that is when he stopped shooting because he believed that he and other officers had effectively neutralized Mr. Hodge.

Once Mr. Hodge went down to the ground, verbal commands were given and then a dog was deployed. Mr. Hodge made no response. Officer Raftery regrouped with his team and approached the suspect and the vehicle to clear any additional threats at the scene. Then Officer Raftery began rendering life-saving aid to Mr. Hodge. Officer Raftery checked Mr. Hodge's pulse and didn't feel one so he started applying CPR.

Officer Raftery was not wearing a body-worn camera during the incident.

Statement of Fairfield Police Department Officer James Sehr

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of Fairfield Police Department Officer James Sehr. With counsel present, Officer Sehr was advised of his rights and he voluntarily agreed to proceed with the interview.

Officer Sehr stated he has been employed by FPD since 2014. He did not have any prior law enforcement experience. He normally works patrol but was assigned to a SWAT Team at the time

of this incident. During the incident, Officer Sehr discharged his Colt M4, short barrel, 223 caliber rifle. His rifle was loaded with one round in the chamber and 29 in the magazine.

Officer Sehr stated he attended an operational briefing in the morning of September 27, 2017 at FPD. Lieutenant Jausiah Jacobsen and Sergeant Kelly Rombach gave a briefing on the operation which included a PowerPoint presentation. From this presentation, Officer Sehr learned the background information on the suspects in a homicide investigation. One of the homicide suspects was Mr. Demilo Hodge. Officer Sehr said he received information on Mr. Hodge's criminal history which included a series of violent felonies. Officer Sehr stated that during the briefing, he saw photographs of Mr. Hodge with assault rifles.

As part of the operation, Officer Sehr stated he was assigned to the "Napa Team," which was responsible for conducting a vehicle assault on Mr. Hodge to arrest him. This vehicle assault involved attempting to apprehend a suspect while the suspect is mobile in a vehicle. Their goal was to conduct the vehicle assault when Mr. Hodge was alone in the vehicle.

Officer Sehr stated his role was to be in a vehicle with Officer Strickland and they were going to be the lead takedown car for a vehicle assault. The role of the lead takedown car would be to obstruct the suspect vehicle's path and then the officers in two SWAT vehicles would affect the arrest. Officer Sehr stated he was the passenger of an unmarked black Ford Crown Victoria with no police markings. The vehicle was equipped with embedded police lights and siren. Officer Strickland drove the vehicle.

Officer Sehr stated they then went to Napa and staged at a Burger King parking lot while a surveillance team conducted surveillance on Mr. Hodge. They received information from the surveillance officers that Mr. Hodge and his daughter drove off in his vehicle. Officer Sehr stated they were not going to conduct the vehicle assault while the daughter was in the vehicle. They knew Mr. Hodge would normally take his daughter to school in Benicia during this time. The surveillance team maintained surveillance on Mr. Hodge.

Officer Sehr stated they followed Mr. Hodge to Benicia where at some point they received an order from Sergeant Rombach to conduct the vehicle assault because Mr. Hodge was believed to be by himself. They were on a street close to Interstate 780 when they attempted to conduct the vehicle assault. Officer Sehr stated that Officer Strickland sped their vehicle past the suspect vehicle and attempted to cut off and "pin down" the suspect vehicle. Officer Sehr said that the suspect vehicle made a quick evasive maneuver out of its lane and drove onto Interstate 780 at a high rate of speed. Sergeant Rombach ordered them not to follow the suspect vehicle. Officer Sehr stated that the operation had other assets like CHP aerial surveillance and a tracker device that would allow the team to follow the suspect. Officer Sehr said that they staged at an industrial area in Benicia and waited.

Officer Sehr stated that they then received orders to go to Pinole Valley Road where the suspect vehicle was located. They responded to Pinole Valley Road and staged. The suspect vehicle drove past them and they attempted another vehicle assault, but Mr. Hodge fled and drove against traffic in front of a school. Officer Sehr said they terminated their attempts at this point because Mr. Hodge was driving recklessly. They lost sight of the suspect vehicle on Pinole Valley Road and

received information that Mr. Hodge entered a freeway. They loosely followed the suspect vehicle on the freeway while other officers maintained surveillance.

Officer Sehr said that they got close to the suspect vehicle due to traffic congestion in the area of San Pablo Dam Road or McBride Road. Officer Sehr said that Mr. Hodge saw them and exited the freeway. Mr. Hodge was driving on the opposite lane of traffic all through the City of Richmond. Officer Sehr said his team terminated their pursuit and staged at a retail area.

They then received information that RPD and CHP were involved in a vehicle pursuit with the suspect vehicle. They maintained their position and continued to receive updated information on the situation. Officer Sehr stated they received general information that "stop sticks" were deployed and other officers were conducting a high risk felony stop on the suspect vehicle on Interstate 80 near the City of Albany. Sergeant Rombach ordered the team to prepare because the incident had turned into a barricaded suspect in a vehicle situation.

Officer Sehr stated they responded to the scene at westbound Interstate 80 in Emeryville. He observed heavy traffic congestion on the way and several law enforcement officers on the freeway. On arrival, Officer Sehr saw the suspect vehicle disabled on the freeway with significant damage. He saw a line of officers covering all the lanes, conducting a felony stop with extra standoff distance. Most of the officers were from RPD. They arrived behind the line of marked police vehicles. Sergeant Rombach started to formulate a plan and tried to integrate the other police agencies on the scene.

Officer Sehr stated he positioned himself by a police vehicle on the eastern portion of the freeway, with the suspect vehicle to his right. He observed that the westbound lanes were clear but the eastbound lanes of Interstate 80 and lanes towards Interstate 580 were clogged with motorists. He also observed motorists behind them and bystanders in the immediate area.

Officer Sehr stated they did what they normally do during a standard barricaded suspect situation. Sergeant Rombach was integrating the other agencies and they took up position of cover with the proper amount of standoff distance. Officer Sehr heard an officer to his left giving commands to the suspect to peacefully surrender. Officer Sehr stated that FPD Officer Michael Ambrose was directly in front of him to his left and he believes that FPD Officer Erick Aagaard was the next officer to his left positioned behind a ballistic shield which acted as an extension to the police vehicle door. To Officer Sehr's right was the police vehicle. From his position, Officer Sehr observed that the suspect vehicle's windows were heavily tinted, offering no visibility, but he could see the driver via the suspect vehicle's side view mirror.

Officer Sehr stated that Mr. Hodge briefly put his hands out of the driver's side window but then put his hands back in and closed the window. Officer Sehr said a decision was made to deploy less lethal munitions, and he provided cover for Officer Ambrose who was designated to deploy 40-millimeter less lethal rounds. Officer Ambrose deployed the less lethal rounds. The first round struck the rear door area of the suspect vehicle and the second round struck and shattered the rear window. Officer Sehr said he could see Mr. Hodge moving about. He observed that Mr. Hodge put his hands out of the window and was yelling something unintelligible. Officer Sehr stated that a gas round was then deployed to draw Mr. Hodge out of the vehicle. The gas round went in the

suspect vehicle and he saw gas coming out of the vehicle, indicating that the gas round took effect. Officer Sehr said that Mr. Hodge yelled something unintelligible again.

Officer Sehr stated the suspect vehicle seemed to move and he thought that Mr. Hodge was going to lead them to a slow speed vehicle pursuit. Within a split second, however, Mr. Hodge exited his vehicle and took a stance parallel to the vehicle. Officer Sehr demonstrated Mr. Hodge's stance as two hands together in front of him and his arms parallel to the ground. Officer Sehr said that Mr. Hodge had a pistol and fired at the officers from a distance of about 30 to 40 yards. Officer Sehr stated that it appeared that Mr. Hodge was shooting directly at him. Mr. Hodge's whole frontal torso with a firearm was pointing at Officer Sehr's direction. At this time, Officer Sehr stated that he felt scared and that he did not want to get shot. He felt that Mr. Hodge had the advantage as he just fired a shot at Officer Sehr and he felt afraid for his life.

Officer Sehr ducked down realizing that he had limited cover. There were several more shots that followed. Officer Sehr thought that the rounds were striking the police vehicle that he, Officer Ambrose and Officer Aagaard were behind. Officer Sehr could hear metal clink as if metal was striking the police vehicle. Officer Sehr thought that he, Officer Ambrose and Officer Aagaard were being directly targeted because the less lethal rounds had come from their direction.

Officer Sehr stated that he stood up and discharged two rounds. Officer Sehr stated that he fired shots at Mr. Hodge because he was in fear for his life and for the lives of the people around him, including Officer Ambrose, Officer Aagaard and the civilians. Officer Sehr believed that Mr. Hodge was still engaging them when he fired his two rounds. Officer Sehr fired his first two rounds, with a quarter second in between, at Mr. Hodge's center mass. Officer Sehr was not sure what his two rounds did. Mr. Hodge fell and the shooting around him ceased. Mr. Hodge was down and not moving. Officer Sehr said that there were a lot of shots fired coming from around him but did not see who was shooting. Officer Sehr stated that after he fired his first two "response" rounds, he assessed the situation. In Officer Sehr's assessment, Mr. Hodge was completely down on the ground, he was not moving and he was not actively firing his weapon any longer. Therefore, Officer Sehr did not fire again.

Officer Sehr stated that Officer Ambrose was down in front of him and he did not know whether he had been shot. He checked on Officer Ambrose and then assisted in securing Mr. Hodge and the suspect vehicle. Officer Sehr secured the suspect vehicle while other officers rendered medical aid to Mr. Hodge. He observed an officer stepping on a firearm located near the suspect. He believed that firearm was the one used by Mr. Hodge and Officer Sehr directed the officer not to step on said firearm. Officer Sehr then stood by the center median until he was transported from the scene to the RPD.

Officer Sehr was not wearing a body-worn camera during the incident.

Statement of Fairfield Police Department Officer John Divine

On September 29, 2017, the OIS Team and the Emeryville Police Department conducted an interview of Fairfield Police Department Officer John Divine. With counsel present, Officer Divine was advised of his rights and he voluntarily agreed to proceed with the interview.

Officer Divine stated that he had been employed by FPD since 2004 with no prior law enforcement experience. He is a member of FPD SWAT Team as a sniper. Officer Divine stated he completed basic sniper school in March 2017. He attends sniper training twice a month for a total of 20 hours and he completed annual sniper qualifications. On the date in question, September 27, 2017, Officer Divine was equipped with an Accuracy International 308 caliber rifle, bolt action, with a 10 round magazine. The rifle had a night force scope and was set at three and a half power at the time of the incident. He carried two extra magazines for this rifle each containing 10 rounds. Officer Divine discharged his rifle once during the incident.

Officer Divine stated that he attended an operational briefing where he learned information regarding a homicide suspect, Mr. Demilo Hodge. At the briefing, Officer Divine learned the suspect's criminal history and his involvement in the manufacture of illegal high-powered rifles similar to the ones used for SWAT. He also learned that Mr. Hodge was known to carry guns and was the main suspect in a murder for hire case. He learned that Mr. Hodge had a very violent history including crimes against family members and he served time in prison.

As part of the operation, Officer Divine stated his team was divided in two groups. His group was in an unmarked silver minivan and the other group were officers in a black unmarked unit and a marked unit. Officer Divine stated he drove the minivan with Officer Aagaard, Officer Pulsipher and Sergeant Rombach as passengers. They went to a range facility after the briefing to practice the vehicle assault. The vehicle assault plan was once the suspect vehicle was located, Officer Divine was to drive their van towards the rear of suspect vehicle and make contact with the back end. Simultaneously, the black unmarked unit would race up and make contact with the front of the suspect vehicle with the goal of blocking it in. The officers in the van would then deploy, initiate a flash bang, break out the windows of the suspect vehicle and gain control of the suspect as quickly as possible.

After practicing the vehicle assault, Officer Divine stated they went to Napa and staged in a Burger King parking lot. Officer Divine stated that Mr. Hodge was being surveilled by undercover officers and CHP aerial surveillance. Mr. Hodge's vehicle movement was also being monitored by a tracker placed on the car. They also had information that Mr. Hodge normally drops off his daughter at school in Benicia during that time.

Officer Divine stated that the suspect vehicle traveled on Highway 29 towards Benicia. They were relying on the tracker and CHP for updates on its direction of travel. There was a time when they momentarily lost track of the vehicle as it appeared Mr. Hodge was conducting "counter surveillance." Officer Divine stated Mr. Hodge dropped off a passenger at a Starbucks. Officer Divine said he then saw the suspect vehicle drive by their location, and they got behind him and waited for an opportune time to conduct the vehicle assault.

Officer Divine stated that it appeared Mr. Hodge became aware of their presence and started to drive in an unsafe manner. Mr. Hodge drove against traffic as he approached a school zone and was not obeying traffic signs and signals. Officer Divine stated that they backed off while CHP aerial and the tracker continued to monitor the suspect vehicle's activity. Officer Divine said that they caught up with the suspect vehicle as it travelled on 680 or 780 towards the Benicia Bridge. They attempted to get close but the suspect vehicle fled at a high rate of speed.

Officer Divine stated they received information that the suspect vehicle continued to Highway 4 going towards Interstate 80. He drove towards the suspect vehicle location and caught up with it around the City of Richmond. Officer Divine stated that Mr. Hodge fled from them again and drove recklessly and without regard for safety. The suspect vehicle travelled on the opposite lanes of traffic and Mr. Hodge disobeyed traffic signs and signals. Officer Divine stated that they expected Mr. Hodge to hurt or kill someone given the way he was driving. A decision was made to back off again from following the suspect vehicle when it approached Interstate 580. Officer Divine said his team then staged at a parking lot in Richmond. He stated that the RPD was notified about the incident.

Officer Divine stated he received information that RPD had located the suspect vehicle and were in a vehicle pursuit. He also learned that CHP deployed spike strips which disabled the suspect vehicle. The situation turned into a barricaded subject with FPD's Crisis Negotiation Team negotiating with Mr. Hodge on the phone for a peaceful surrender. Officer Divine stated that they decided it would be best to make their way towards the scene because they were better equipped and they had more knowledge of the suspect. They travelled through heavy traffic and arrived on the scene, stopping behind a line of RPD and CHP police vehicles.

Officer Divine stated they set up on the scene immediately. He grabbed his sniper rifle and bag and communicated with the other sniper, Officer Strickland. He took the driver's side of the suspect vehicle while Officer Strickland took the passenger side. Officer Divine stated that he positioned himself over on the far left side of the freeway, with a RPD officer by his police vehicle. Officer Divine took a prone position, laying down so he had a clear line of sight on the suspect vehicle's driver door. From his position, Officer Divine stated that he could see Mr. Hodge inside the vehicle with the window open or closed. Officer Divine said the suspect vehicle drove forward and stopped. He and the RPD officer repositioned themselves, moving up and forming a static line approximately 20 yards forward.

Officer Divine stated that he again took a prone position. He was down low and couldn't see any officers to his right, but he could communicate with them. He could hear announcements on the PA system for Mr. Hodge to peacefully surrender. Officer Divine said that at one point, he saw Mr. Hodge put his hands out of the vehicle for a couple of seconds but then he retreated and closed the window. Officers continued to negotiate and again Mr. Hodge put his hands out but then retreated and closed the window. Officer Divine then heard his team discuss deploying a less lethal round to break the rear window of the suspect vehicle. The suspect vehicle was heavily tinted, and the other officers could not see inside.

Officer Divine could hear officers on the scene talking about deployment of less lethal ammunition and then he heard a 40-millimeter less lethal round deploy in an attempt to break the rear tailgate window of the suspect vehicle. The first round did not produce the desired effect, so he heard the deployment of a second 40-millimeter less lethal round that shattered the suspect vehicle's rear window. Officer Divine stated that at this point he heard Mr. Hodge yelling, "What are you shooting at me?" and "What the fuck are you shooting?" He also heard Mr. Hodge yelling, "Put the dog away." Officer Divine stated that he heard an announcement on the PA system advising Mr. Hodge that the dog was put away. Officer Divine stated that he heard a third less lethal round deploy and he believed this to be a 40-millimeter Ferret gas round.

Officer Divine stated that after a few seconds he saw the driver's door open, and he could see Mr. Hodge start to exit the vehicle. He saw Mr. Hodge's left hand come down, and as his torso turned, he could immediately and clearly see that Mr. Hodge had a handgun in his right hand. The suspect spun while he held his gun at about waist height. Officer Divine stated that he fired as fast as he could upon seeing Mr. Hodge's firearm. Officer Divine said he was starting to take his shot when he saw Mr. Hodge fire one round from his gun. Officer Divine discharged one round at the suspect with his rifle from a distance of about 25 yards. Officer Divine stated he was aiming at the upper portion of Mr. Hodge's chest. Officer Divine perceived that Mr. Hodge fired two more rounds after Officer Divine's shot. Officer Divine stated that he reloaded his rifle and he heard gunfire addressing the suspect. Officer Divine said he only fired one round at Mr. Hodge. He stated that Mr. Hodge collapsed, went to the ground and Officer Divine remained in his prone position to provide cover while other officers secured the suspect vehicle and Mr. Hodge. Officer Divine stated that he made his observations of Mr. Hodge through the rifle scope at three and a half power.

Officer Divine stated that he fired his one shot because there was an absolute and imminent threat of death or danger to the other officers, including himself. He also stated that he fired his rifle because Mr. Hodge was firing a gun in the direction of innocent persons, the backdrop of thousands of people who were stopped on the freeway.

Officer Divine stated that once the scene was secured, he rendered his rifle safe. He noticed his expended casing underneath the Richmond Police vehicle and he pointed it out until someone marked its location with chalk. Officer Divine stated that Officer Pulsipher witnessed him take one round out of his rifle and place it in the magazine, giving him nine rounds in the magazine. He then stood by until ordered to leave the scene.

Officer Divine was wearing his Axon body-worn camera but it was not powered on. Officer Divine was in a prone position during the shooting incident so there would not have been any footage during the relevant time period had the camera been powered on.

Statement of Richmond Police Department Sergeant Donovan Decious

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of RPD Sergeant Donovan Decious. With counsel present, Sergeant Decious was advised of his rights and he voluntarily agreed to proceed with the interview.

Sergeant Decious stated that he has been with RPD since 2005. He previously worked for the Mountain View Police Department from June of 2001 until hired by RPD. Sergeant Decious is currently assigned to the Gang and Parole Unit and is a member of RPD SWAT.

On September 27, 2017, Sergeant Decious was off-duty travelling to work. He was driving his assigned undercover vehicle when he monitored RPD radio traffic regarding a suspect/vehicle related to a murder investigation that was being pursued by CHP in the City of Richmond. Sergeant Decious stated that RPD units were mobilizing in an attempt to locate and stop the vehicle. Sergeant Decious obtained further background information about the suspect from

dispatch and later, from FPD. Sergeant Decious requested that RPD dispatch provide the background information about the suspect to all RPD units, for officer safety reasons.

Sergeant Decious described a situation that was fluid and learned that spike strips had been used to disable the suspect vehicle. Sergeant Decious heard via radio that the suspect had crashed the suspect vehicle at a high rate of speed on the freeway and the vehicle became disabled. Based on the known information, Sergeant Decious determined to respond to the location to provide assistance.

Sergeant Decious first went to RPD to change into an identifiable police uniform and to get a marked RPD police vehicle. While at the Department, Sergeant Decious stated that he had alerted two detectives who worked for him that they were not going to do their planned operation but they were going to assist with this suspect. Sergeant Decious drove from RPD to the scene with Detective Michael Ricchiuto and Detective Anthony Diaz. Because a homicide suspect was involved, units at the scene were requesting officers who had tactical training. Sergeant Decious believed that he and Detective Diaz, both members of the SWAT Team, could provide needed resources at the high risk scene.

Upon arrival at the scene, Sergeant Decious observed that traffic on Highway 80 was at a standstill with a buffer of about 150 yards between the civilian traffic and six to eight marked police vehicles spread out along the entire width of Highway 80. The police vehicles had the driver and passenger doors open and officers were standing behind the doors pointing their firearms (rifles, shotguns, handguns) towards a black SUV with flat tires, stopped between the number three and four lanes. The windows of the black SUV were blacked out in tint and he couldn't see inside the SUV.

Sergeant Decious coordinated with RPD Sergeant Llamas who was the scene supervisor. They knew that the FPD SWAT Team was in route to the scene so they decided it would be best to wait for that team with more equipment to arrive. When FPD SWAT members arrived at the scene in tactical gear, Sergeant Decious stated that command of the incident would be given to FPD regarding the suspect and suspect vehicle. Sergeant Decious stated that announcements were made for the suspect to surrender and that a canine unit was on scene to take the suspect down safely.

While observing the suspect vehicle Sergeant Decious observed several times, the occupant of the suspect vehicle, Mr. Hodge, roll down the driver's window, reach out with his hands, peer out, and close the window. Given the circumstances of the standoff on a main traffic artery, Sergeant Decious then understood FPD's plan to peacefully resolve the situation by deploying 40-millimeter gas rounds at the back window of the SUV. While on scene Sergeant Decious observed three less lethal 40-millimeter rounds fired into the back window of the SUV. Sergeant Decious recalls that after one of the less lethal round deployments, Mr. Hodge rolled down the window of the SUV and made comments similar to, "What are you shootin' at me?" At that time, announcements were made over the PA system stating commands similar to, "Hey, come out with your hands up," and "We want to end this peacefully."

After the final 40-millimeter Ferret round went into the SUV, Sergeant Decious stated that he was positioned at the back of his police vehicle and had his pistol drawn. Sergeant Decious could see movement inside the vehicle. He could not tell how many people were inside the vehicle. Sergeant

Decious stated he saw the driver's door "fling" open. Upon the door opening, Sergeant Decious stated he saw Mr. Hodge step out, spin "extremely fast," with arms "punched out" in a firing position as his butt and legs were squatting down in a fighting stance or shooting position. Sergeant Decious stated that he saw two rounds coming from Mr. Hodge's gun at him and the other officers. He stated that he heard one distinct pop and saw smoke coming from Mr. Hodge's gun. Sergeant Decious described hearing "bang, bang" coming from Mr. Hodges's gun.

At this moment Sergeant Decious stated he side-stepped to his right, stepped forward, and with his gun still drawn, punched out to get a good "sight picture." Sergeant Decious stated that he fired with two hands on his gun, four to five rounds at Mr. Hodge in rapid succession. At the time he fired, Sergeant Decious described Mr. Hodge as still standing up with his arms outstretched in front of him and the gun pointed directly at him. He estimated he was 35 to 40 yards away from Mr. Hodge at the time he shot. When Sergeant Decious shot his firearm at Mr. Hodge, he stated he was absolutely fearful for his life. Sergeant Decious stated that Mr. Hodge was shooting at them and he wanted to shoot Mr. Hodge before anyone was hit by Mr. Hodge's gunfire. After firing at the suspect, Sergeant Decious brought his gun to low-ready to reassess and he observed Mr. Hodge laying on the ground. Sergeant Decious observed a police canine run from his right and engage the suspect and could see a gun and magazine on the ground near Mr. Hodge. Sergeant Decious stated that he was part of a team of officers that approached the suspect, secured the SUV and provided first aid to the suspect.

At the time of the shooting, Sergeant Decious stated he was armed with his RPD approved Nighthawk Custom GRP Model 1911, .45 caliber pistol. The pistol contained one live round in the chamber and seven live rounds in the magazine.

Sergeant Decious did not have any body-worn camera video footage of the incident.

Statement of Richmond Police Department Sergeant Chris Llamas

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of RPD Sergeant Chris Llamas. With counsel present, Sergeant Llamas was advised of his rights and he voluntarily agreed to proceed with the interview.

Sergeant Llamas has been employed with RPD since 2002. Sergeant Llamas is assigned to the Patrol Division as a day shift team leader problem solving officer. Sergeant Llamas is also a member of the RPD SWAT Team and a firearms instructor.

During the incident Sergeant Llamas did not fire his service pistol but discharged a RPD issued Remington 870 12-gauge shotgun that contained four live rounds. Sergeant Llamas last qualified with his firearms in January of 2017 and is right handed.

At around 8:15 a.m., on September 27, 2017, Sergeant Llamas was on duty when he heard via a RPD radio broadcast that a homicide suspect was travelling through the City of Richmond in a black SUV. A CHP helicopter was providing information on the black SUV's location and there was a request for assistance from RPD to locate the vehicle in Richmond.

Sergeant Llamas learned that a RPD officer had observed the suspect vehicle in Richmond and he responded to that location in his patrol vehicle. Sergeant Llamas observed the suspect vehicle and became involved in a pursuit. Sergeant Llamas stated that his vehicle was the second police vehicle in the pursuit and that he and the officer in front of him activated the overhead police vehicle lights and sirens. Sergeant Llamas described pursuing the suspect SUV through the Richmond city streets at speeds of 50 to 70 miles per hour. He observed the suspect SUV travel through multiple stop signs without stopping and attempt to evade officers through the light traffic at the time.

Sergeant Llamas continued the vehicle pursuit of the suspect SUV onto the Interstate 580 freeway heading eastbound towards Oakland. He estimated that the suspect vehicle was travelling between 80 and 100 miles per hour and continued onto westbound Interstate 80 in Albany. Sergeant Llamas heard over dispatch that CHP officers were going to deploy "spike strips" at University Avenue to disable the suspect SUV. Sergeant Llamas observed the suspect SUV travelling at approximately 70 miles per hour on the shoulder of the highway. At University Avenue, Sergeant Llamas stated that the spike strips had been successfully deployed on the suspect SUV. He observed the SUV travel at about 60 to 80 miles per hour for another mile before the driver's front tire completely exploded and the vehicle was driving on a rim. The SUV crashed into the right concrete median and then went on to collide with the center concrete median before coming to rest on Interstate 80.

Upon the SUV coming to a stop, RPD officers spread out across all lanes of traffic behind the black SUV. Sergeant Llamas stated that they requested a traffic break coming from Interstate 580 westbound (eastbound Interstate 80), the opposite direction, because the crossfire was bad given the location of the SUV stopped by the center median. Officers fanned out behind the SUV and RPD Officer Campos began crisis negotiation over the PA system with the suspect (Mr. Hodge) to have him surrender. Sergeant Llamas stated that Officer Campos kept repeating to Mr. Hodge, "Surrender, nobody wants to get hurt," "It's the police," "We're not leaving," "Put your hands up," and "Let us see your hands." These announcements continued repeatedly throughout the incident.

While the SUV was at the center median location, on approximately three occasions, Sergeant Llamas stated that Mr. Hodge rolled down the windows of his SUV, raised the rear hatch, and showed his hands. Officer Campos continued with the crisis negotiation announcements. However, Mr. Hodge would then close the windows and rear hatch. At one point, Sergeant Llamas stated that Mr. Hodge yelled something that he could not understand. This went on for approximately 15-20 minutes until Mr. Hodge drove the SUV from the center median area to the middle of the traffic lanes of the freeway and came to a stop.

At this new location, Sergeant Llamas stated that crisis negotiation commands were continually made to the occupant of the suspect vehicle via the PA system by Officer Campos. Approximately 45 minutes into the incident, FPD SWAT members arrived at the scene. Sergeant Llamas meet with the FPD Tactical Commander and it was determined to give command of the incident to FPD SWAT and that RPD would provide support.

Sergeant Llamas stated that a decision was made by FPD to deploy less lethal rounds at the suspect vehicle to break a window of the SUV and gain a visual view of the inside of the SUV. After breaking out the window, gas rounds would be deployed into the SUV. Sergeant Llamas observed

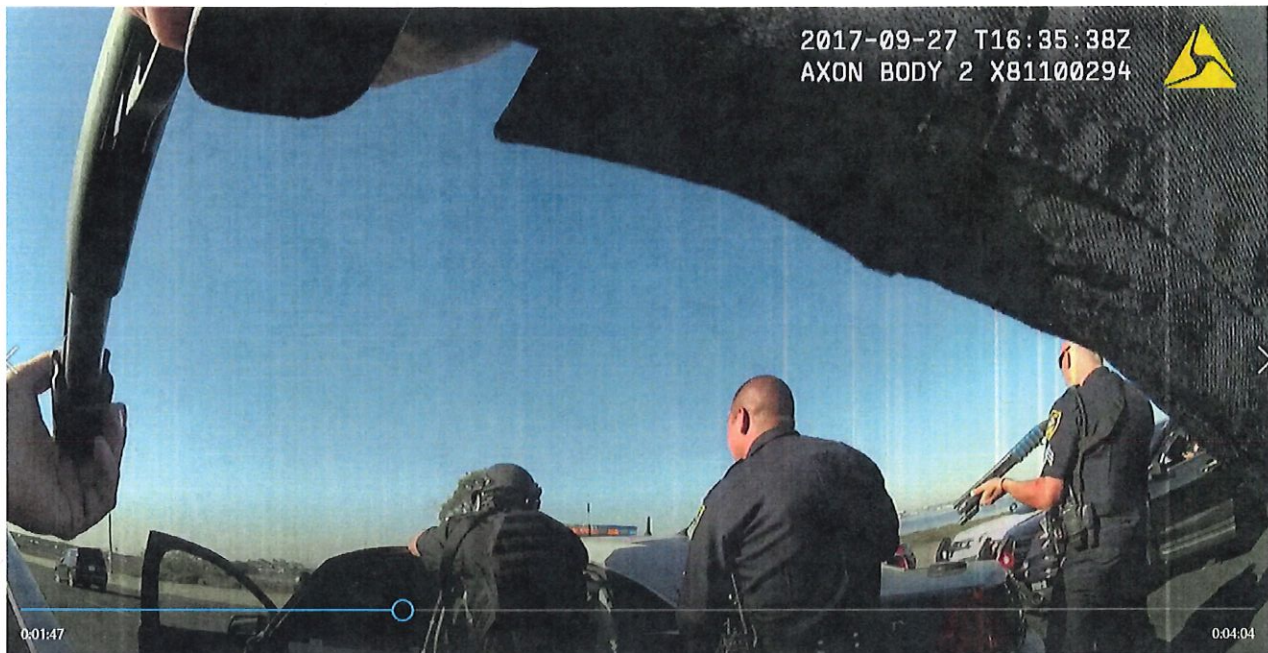
three less lethal 40-millimeter rounds fired at the SUV. Sergeant Llamas stated that he presumed the last less lethal round was a tear gas round.

Sergeant Llamas stated that 30 to 45 seconds after the gas round was fired, he observed the driver's side door open and a right foot hit the ground. He then observed Mr. Hodge's body turn completely towards him and the other officers that were in line. Sergeant Llamas stated that he clearly saw a black semi-auto handgun in Mr. Hodge's right hand. Sergeant Llamas stated that Mr. Hodge raised the gun with a two-handed grip. Sergeant Llamas stated that he saw a flash, heard the shot and the shot was fired directly at him. Sergeant Llamas stated that the shot was not over his head or down at the ground, but at him because Mr. Hodge's arms were parallel to the ground. Sergeant Llamas stated he perceived this as a deadly threat and fired two shots at the suspect with the shotgun. He estimated that he was 45 to 50 feet from Mr. Hodge when he fired the shotgun. Sergeant Llamas stated that Mr. Hodge fell to the ground.

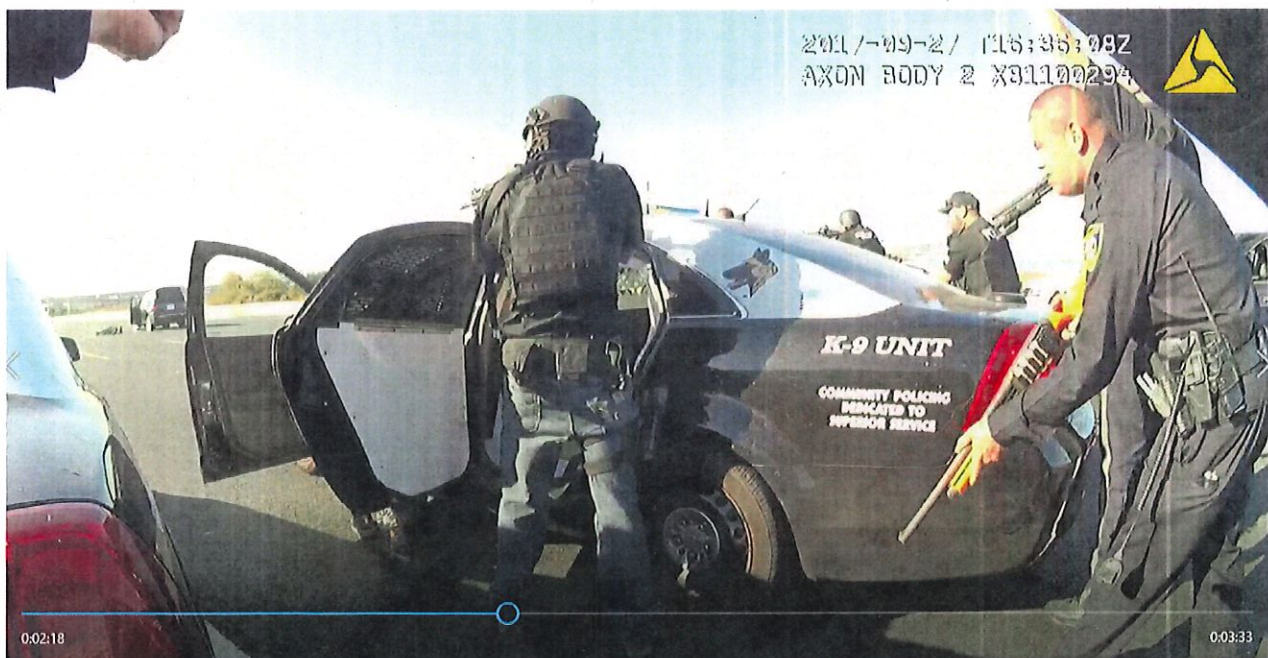
Sergeant Llamas stated that when Mr. Hodge came out of the vehicle he was in fear for his life. Sergeant Llamas stated that he believed there was a risk of "suicide by cop." In such a situation, an individual will turn their aggression towards an officer attempting to cause death or great bodily injury. Sergeant Llamas thought that this person may attempt to assault him and the other officers. Sergeant Llamas clearly saw a muzzle flash from the barrel of Mr. Hodge's gun and heard the bang of the pistol go off. There was no doubt in Sergeant Llamas' mind that Mr. Hodge was attempting to kill him and other officers. After the first time Sergeant Llamas fired his shotgun, Mr. Hodge still had the firearm in his hand and he shot the second time. After the second shot, Sergeant Llamas assessed the situation and determined Mr. Hodge was no longer a threat because he couldn't see a firearm in his hand any longer, he was not shooting, and he was no longer standing.

After Mr. Hodge fell to the ground, Sergeant Llamas was part of a team of officers that approached Mr. Hodge, secured the SUV and provided medical attention to Mr. Hodge.

Sergeant Llamas activated his body-worn video camera during the vehicle pursuit of Mr. Hodge and the camera recorded video footage from that point through providing medical attention to Mr. Hodge. The OIS Team reviewed this video recording. The video does not show Mr. Hodge's actions during the shooting incident due to the camera's positioning at the time but does show Sergeant Llamas' perspective shortly before and after the shooting incident. Below are still photos from Sergeant Llamas' body-worn video.



Sergeant Llamas' body-worn camera vantage point shortly before the final less lethal round is deployed and before the shooting incident (1:47). Mr. Hodge can be seen partially out of the driver's side window.



Sergeant Llamas' body-worn camera vantage point immediately after the shooting incident (2:18).

Statement of Richmond Police Department Officer Cedric Tagorda

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of RPD Officer Cedric Tagorda. With counsel present, Officer Tagorda was advised of his rights and he voluntarily agreed to proceed with the interview.

Officer Tagorda has been a RPD officer for 10 years, a Berkeley police officer for six months and Federal police officer for about five years. On the date in question, Officer Tagorda stated he discharged his Kimber 1911 45-caliber firearm. Officer Tagorda believed he only had 10 rounds in his magazine – one round in the chamber and nine rounds in the magazine.

Officer Tagorda stated that on the morning of September 27, 2017, RPD dispatch advised that the CHP was following a murder suspect wanted out of Fairfield and ground units were trying to catch up to the suspect vehicle. At this time, Officer Tagorda stated he had no prior information about the suspect other than the initial dispatch. When this call was dispatched Officer Tagorda stated that he was in his fully-marked RPD vehicle near Ohio Street on the Richmond Parkway on his way to cover a fellow RPD officer. Officer Tagorda heard that one of the RPD units had spotted the suspect vehicle.

Officer Tagorda stated that there were constant updates being broadcast about the suspect vehicle and direction of flight. He learned that the suspect vehicle was traveling towards the south side of Richmond. Officer Tagorda stated that he was already on the south side and he knew that most police chases end up traveling on the 580 freeway or the Richmond Parkway. Officer Tagorda eventually got into the pursuit and was the “number two car” behind Sergeant Llamas. Officer Tagorda stated that the suspect vehicle was a black Chevy Tahoe and during the vehicle pursuit on Richmond city streets, the suspect vehicle travelled from 35 miles per hour to over 90 miles per hour. Officer Tagorda activated his red lights and siren during the pursuit.

At one point during the pursuit, while at the intersection of 4th Street and MacDonald Avenue, Officer Tagorda stated that the suspect almost collided with him head-on. Officer Tagorda stated that the suspect was traveling southbound on 4th Street as he was traveling northbound on 4th Street. Officer Tagorda stated that the suspect was driving directly at him and he thought he was going to hit him. Officer Tagorda braced for impact but at the last moment the suspect drove around him. Officer Tagorda stated that he did not see the suspect inside the vehicle at this time because he was looking at the front grill of the suspect SUV as he braced for impact. Because of this near collision incident, Officer Tagorda was no longer “number two” in the pursuit but one of the last officers.

Officer Tagorda stated that he rejoined the pursuit that continued onto the 580 freeway. Officer Tagorda observed that the suspect was traveling at a high rate of speed weaving in and out of traffic. He observed the suspect fake like he was going to take an exit but at the last second would remain on the freeway. Officer Tagorda stated that CHP deployed spike strips and the suspect vehicle hit the strip causing the left front tire to go flat. Officer Tagorda observed that the suspect vehicle was riding on its rims as the tires began to shred. The vehicle then slowed down, hit the center “K-rail” and came to rest. Officer Tagorda positioned himself behind the suspect vehicle and Sergeant Llamas was positioned to his right, both about 75 to 100 yards behind the suspect vehicle.

Officer Tagorda stated that other police officers began to arrive and at one point there were at least 10 officers on scene. There was no response from the driver (Mr. Hodge) of the suspect SUV. Officer Rena started giving Mr. Hodge commands using the PA system to step out of the car with

his hands up. Officer Tagorda stated that Mr. Hodge didn't obey any of the commands. Officer Tagorda learned further information about Mr. Hodge from the radio communications. Officer Tagorda stated that he was directly behind Mr. Hodge and about 50 yards back. Sergeant Llama's vehicle was approximately 10 yards from him to his right. Officer Tagorda stated that officers continued to give commands to Mr. Hodge while he was in this first vehicle position but there was no response.

At some point, Officer Tagorda stated that Mr. Hodge's vehicle brake lights came on and Mr. Hodge began to slowly drive away toward the center of the freeway. Officers returned to their cars and started following the suspect. Commands were still being broadcast over the PA system to Mr. Hodge to stop and that there was nowhere to go. Officer Tagorda estimated that the suspect vehicle was travelling no more than five miles per hour and maybe went 150 yards before stopping again. The suspect vehicle was stopped in the middle of the freeway with Fairfield and Richmond officers still behind him. Officer Tagorda stated that at one point, the vehicle windows went up and down. Mr. Hodge, stuck his head out the window and was trying to talk or say something. Officer Tagorda stated that FPD were also in direct communication with Mr. Hodge over his cell phone.

During the incident, Officer Tagorda stated that officers started calling Mr. Hodge by his first name, Demilo, over the PA system. Officer Tagorda heard commands such as, "Demilo step out of the car"; "We are not leaving"; and "We do not want to hurt you". There was no response from the driver but the windows started to go up and down again. Officer Tagorda stated that the brake lights came on again and the vehicle started to move. The officers returned to their cars and followed the suspect. This time the suspect only went 20 yards and stopped in the number three lane. Officer Tagorda stated that officers were now approximately 50 to 75 yards behind the suspect vehicle. From his position behind his patrol car, Officer Tagorda could see a good portion of the suspect vehicle driver's side door.

After the suspect vehicle stopped, Officer Tagorda heard FPD officers yelling out that they were going to deploy less lethal ammunition toward the suspect vehicle. The first less lethal round deflected off the vehicle, the second round penetrated the rear window and third round entered the vehicle.

Officer Tagorda stated that after the third less lethal deployment, Mr. Hodge exited his vehicle with his arms extended and with a gun in his hand. Officer Tagorda said Mr. Hodge was facing him and the officers. Officer Tagorda stated that everything appeared to slow down. Officer Tagorda fired his weapon six to eight times at Mr. Hodge and he believes his rounds struck the suspect. When Officer Tagorda fired his shots, he was concerned because there were citizens behind on the opposite side of the freeway and he wanted to make sure his rounds were effective in stopping the threat. Officer Tagorda stated that he stopped shooting when he saw that Mr. Hodge was no longer a threat. Officer Tagorda stated that Mr. Hodge was no longer a threat because he no longer had the weapon in his hand. Officer Tagorda stated that he didn't know if Mr. Hodge fired his gun during the incident.

Officers checked the suspect vehicle to make sure there was no one else inside and checked on Mr. Hodge. Once the scene was secured, officers started CPR and life saving measures on Mr. Hodge.

Officer Tagorda provided a public safety statement stating the number of rounds he believes he fired. Officer Tagorda then went back to the RPD where he was photographed and turned his firearm over to the technician.

Officer Tagorda activated his body-worn video camera while he was in route to the scene in Emeryville and the camera recorded video footage from that point through his public safety statement following the shooting incident. The OIS Team reviewed this video recording. The video does not show Mr. Hodge's actions during the shooting incident due to the camera's positioning at the time. The footage immediately after the shooting incident shows Officer Tagorda's relative positioning to Mr. Hodge and his vehicle and is shown in the still photo below.



Officer Tagorda's body-worn camera vantage point immediately after the shooting incident (45:07).

Statement of Richmond Police Department Officer Benjamin Mendler

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of RPD Officer Benjamin Mendler. With counsel present, Officer Mendler was advised of his rights and he voluntarily agreed to proceed with the interview.

Officer Mendler has been an officer with the RPD since January 2010. Prior to that, he was employed by the Oakland Police Department from 2006 to 2008 and by the Albany Police Department.

On the morning of September 27, 2017, Officer Mendler was on duty and riding his motorcycle in the City of Pinole. While monitoring an incident occurring in Richmond, he heard Officer Riley, a fellow motor officer, state he may have located the suspect vehicle in the Downtown Richmond area. Officers were broadcasting several possible locations during the incident and trying to get officers in position to get behind the suspect vehicle.

Officer Mendler traveled from his location to the Richmond Parkway when he received updates that the suspect vehicle was now on Interstate 580. Officer Mendler utilized the right hand shoulder of Interstate 580 in order to by-pass the traffic congestion. When Officer Mendler arrived at the scene, Sergeant Llamas was already on scene with Officer Riley, Officer Rena and Officer Campos. Officer Mendler parked his motorcycle behind the line of police vehicles but to the middle left of the freeway. Officer Campos was broadcasting orders to the suspect, Mr. Hodge, from his PA system. The suspect vehicle's windows were all tinted. Officer Campos was positioned on the left side of the suspect vehicle as he broadcast commands and negotiated with Mr. Hodge. Officer Mendler recalls receiving broadcasts from FPD officers with background information about Mr. Hodge.

Officer Mendler believed that he positioned himself to the right of Officer Campos' vehicle or just to the right of the canine vehicle. When he arrived on scene Sergeant Llamas requested that he deploy his Colt AR-15 rifle. Officer Mendler stated that the magazine that was inserted into his rifle either had 18 or 19 rounds. He never fills the magazines to capacity because they sometimes malfunction. Officer Mendler chambered a round and took up a position behind the suspect vehicle. His position provided a good view of the driver's side of the suspect vehicle.

Officer Mendler stated that the suspect moved at least once while he was on scene. In response, Officer Mendler put his helmet back on and got on his motorcycle but the suspect only went a short distance and stopped. Officer Mendler redeployed his rifle and positioned himself next to the canine car. Additional officers arrived on scene and Officer Mendler remembered Sergeant Pomeroy looking for a tactical shield. While Officer Mendler was in a kneeling position, Sergeant Pomeroy handed him a shield. He alternated between a kneeling and squatting position during the incident.

Officer Mendler was not sure if someone was positioned at the passenger's door of Sergeant Llama's car. Officer Mendler had direct sight to the suspect driver's side and could see the back drop much better than where he was positioned earlier. He could see the railway, roadway and vegetation in the backdrop. During negotiations, the window on the suspect vehicle went down and the suspect, Mr. Hodge, put his hands out the window. An officer ordered Mr. Hodge to open the door with his left hand and Mr. Hodge either refused or was acting like he didn't understand. Mr. Hodge raised the driver's window back up and the brake lights would come on and off.

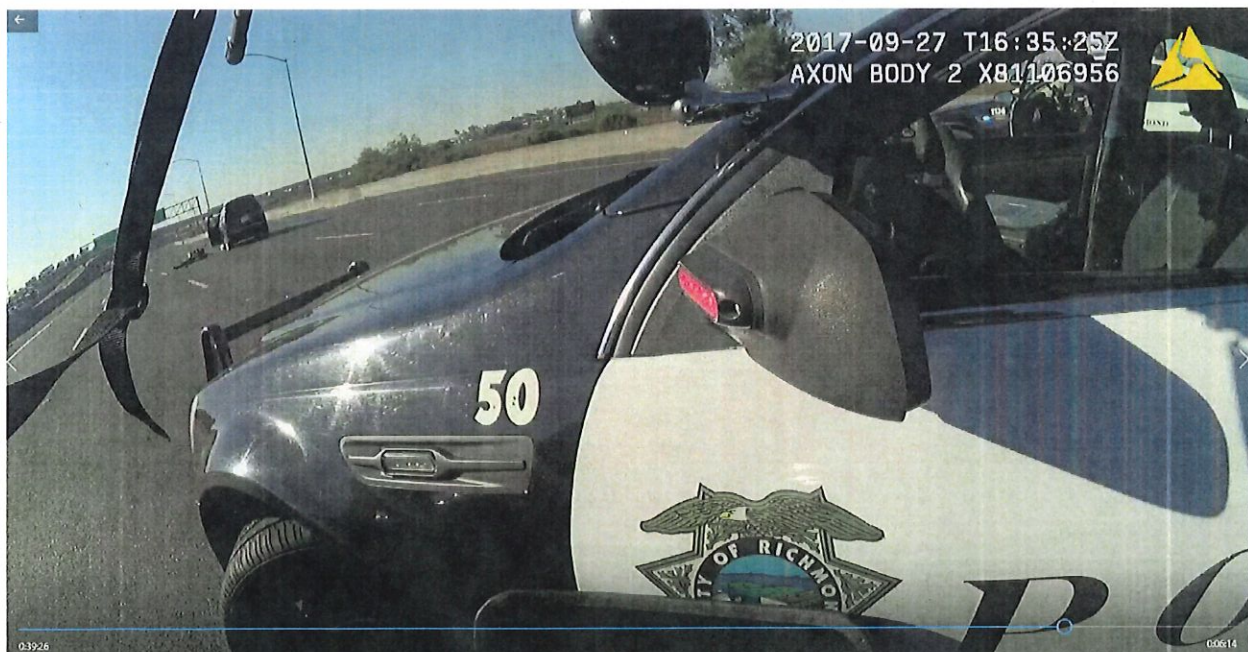
During the incident, Officer Mendler stated that FPD was given tactical lead, which included the deployment of less lethal munitions. Officer Mendler stated that the first less lethal round fired didn't break the vehicle's window but the second less lethal round fired broke out the back window, startling the suspect. Officer Mendler stated that someone yelled gas and a third round was deployed and this time Mr. Hodge put his hands out the window. Officer Mendler stated that someone said he is coming out and Mr. Hodge put his hands back inside the window. Then, the driver's door opened and Mr. Hodge stepped out, turned a little more than 90 degrees while armed with a gun. Officer Mendler could see the muzzle of the gun pointing in his direction. Officer Mendler had his trigger finger indexed while in the kneeling position.

Officer Mendler stated that he saw a muzzle flash from Mr. Hodge's gun and heard two pops before he could get his finger on the trigger. He stated that he fired three rounds center mass and at the same time could hear others firing. Officer Mendler believed that his rounds struck Mr. Hodge. Officer Mendler stated he fired his weapon because Mr. Hodge was pointing a gun at him. Additionally Officer Mendler considered that Mr. Hodge was wanted for a dangerous felony. Officer Mendler stated that there were other officers and people around whose lives would have been in jeopardy since Mr. Hodge was armed and fired his gun. Officer Mendler estimated that he was 35 to 40 yards from the suspect vehicle when he discharged his rifle.

Officer Mendler stated that he felt a brush on his side and saw Officer Rena's dog run toward Mr. Hodge. He distinctly remembers being afraid that the dog might get hit by gunfire. Mr. Hodge went down and Officer Rena was yelling commands at the dog. The dog turned around a couple of times as though it was going to listen but at the last moment ran toward Mr. Hodge grabbing his clothes or arm.

Officer Mendler stated that a reaction team was assembled to check on Mr. Hodge and to determine if anyone else was inside the suspect vehicle. The suspect vehicle was cleared and officers yelled out for a tourniquet and a "Code 3 ambulance." Officer Mendler provided a public safety statement to Sergeant Lonzo, which consisted of the number of rounds he fired and the direction he fired.

Officer Mendler activated his body-worn video camera while he was in route to the scene in Emeryville and the camera recorded video footage from that point through efforts to preserve the scene following the shooting incident. The OIS Team reviewed this video recording. The video does not show Mr. Hodge's actions during the shooting incident due to the camera's positioning at the time. The footage shortly after the shooting incident shows Officer Mendler's relative positioning to Mr. Hodge and his vehicle and is shown in the still photo below.



Officer Mendler's body-worn camera vantage point immediately after the shooting incident (39:26).

Statement of Richmond Police Department Officer Orlando Guzman

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of RPD Officer Orlando Guzman. With counsel present, Officer Guzman was advised of his rights and he voluntarily agreed to proceed with the interview.

Officer Guzman has been a Richmond Police officer almost four years and prior to that was an explorer and cadet with RPD. On the day of the incident, Officer Guzman was working his normal shift when a call was broadcast over the radio regarding officers searching for a homicide suspect who was driving around the City of Richmond. Officer Guzman joined the search for the suspect vehicle in a fully-marked patrol car. Officer Guzman learned that Officer Campos located the suspect vehicle but the suspect refused to stop and a pursuit was initiated. Officer Guzman saw the suspect vehicle and Richmond officers drive by his location, so he activated his lights and siren and joined the pursuit. Officer Guzman was the third police car in the pursuit. Officer Guzman stated that the pursuit entered the freeway and because of traffic, the maximum speed was approximately 60 miles per hour.

Officer Guzman stated that he heard over the radio from dispatch that the suspect was armed with a firearm. He also heard that the CHP had laid down spike strips to stop the vehicle. When Officer Guzman arrived at the termination point of the pursuit in Emeryville, he stated that the suspect vehicle had just crashed into the center median and was resting in the number two lane. Officer Guzman parked on the passenger's side of the suspect vehicle. Officer Guzman exited his police car and positioned himself near the canine officer's car, pointing his firearm at the driver's door of the suspect vehicle. He stated that an officer on scene was broadcasting over the PA system for the suspect to show his hands along with other commands. The suspect didn't respond to any of the commands.

The suspect, Mr. Hodge, then began to drive the suspect vehicle slowly forward and toward the center of the freeway. Officer Guzman got into a police car and started to slowly follow the suspect vehicle for a short distance, when it abruptly stopped again. Officer Guzman exited the police car and again took up a position near a police car, pointing his gun at the suspect driver's door. Officers again started giving commands to Mr. Hodge. Mr. Hodge rolled down the driver's side window and stuck his hands out and then placed his hands back inside and closed the window. Officer Guzman stated that the back window on the suspect vehicle opened and Mr. Hodge was saying something but Officer Guzman couldn't hear what he was saying.

At one point, Officer Guzman got into the canine officer's car as Mr. Hodge started to drive away again. The suspect vehicle moved approximately 10 yards before stopping again. From his position, Officer Guzman could see the driver's side and rear of the suspect vehicle. Officer Guzman believes he was about 25 to 30 yards from the suspect vehicle at that point and positioned himself between the driver's door and patrol car.

Officer Guzman stated that officers from the FPD arrived and filled in the gaps between police vehicles with their cars and officers. It was announced that less lethal was going to be deployed to break out the suspect vehicle's window so officers could see inside the car. The windows on the suspect vehicle were tinted making it difficult to see inside. Officer Guzman stated that the

first less lethal round missed the mark but the second round shattered the rear window. Following the second less lethal round, a canister of gas was fired into the suspect vehicle in order to force Mr. Hodge to exit.

Officer Guzman stated that a few seconds after the gas round, Mr. Hodge quickly opened the driver's door, came out, trying to face the officers with a firearm in his hand. Officer Guzman described the actions as Mr. Hodge exiting the vehicle, spinning 180 degrees, extending his arm with a gun in his hand. Detective Diaz further described it as a one-hand grip on the gun. Detective Diaz, who was standing behind and over Officer Guzman, began firing his weapon causing Officer Guzman to flinch. Officer Guzman stated that when he looked up, he still saw the firearm but Mr. Hodge was moving around and he thought that Mr. Hodge was going to kill them. Officer Guzman stated that he thought Mr. Hodge was going to kill him and the other officers because he had pointed the gun directly at them. Officer Guzman stated that he fired approximately two to three rounds. Officer Guzman stated he may have fired rounds before Detective Diaz started shooting but he isn't sure.

Officer Guzman stated that the officer's gun shooting behind him was really loud but he assumed that Mr. Hodge had shot and Officer Guzman thought he had been hit. Officer Guzman checked himself realizing he hadn't been hit but believes the sound from the shots being fired behind him damaged his eardrum. When Officer Guzman fired, he aimed at Mr. Hodge's center mass and is not sure if his rounds struck the suspect. Officer Guzman stated that after Mr. Hodge was shot, he stumbled forward with the gun still in his hand but the gun was facing toward the ground. Mr. Hodge fell to the ground and everyone stopped shooting. After Officer Guzman fired his rounds he reloaded his firearm with another magazine.

Following the shooting, officers formed a stack, advancing forward to check on Mr. Hodge and the suspect vehicle. Officers checked the suspect vehicle and it was clear. The firearm was no longer in Mr. Hodge's hand so first aid was started. Officer Guzman placed gauze on one of Mr. Hodge's stomach wounds. Paramedics arrived on scene and the suspect was placed inside a RPD car. Officer Guzman stepped back because there were enough officers and paramedics attending to Mr. Hodge.

Officer Guzman activated his body-worn video camera while he was in route to the scene in Emeryville and the camera recorded video footage from that point through efforts to preserve the scene following the shooting incident. The OIS Team reviewed this video recording. The video does not show Mr. Hodge's actions during the shooting incident due to the camera's positioning at the time. The footage does not capture any part of the shooting incident but the still photo below shortly after the shooting shows Officer Guzman's relative positioning to Mr. Hodge and his vehicle during the incident.



Officer Guzman's body-worn camera vantage point immediately after the shooting incident (48:43).

Statement of Richmond Police Department Detective Anthony Diaz

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of RPD Detective Anthony Diaz. With counsel present, Detective Diaz was advised of his rights and he voluntarily agreed to proceed with the interview.

Detective Diaz stated that he had been employed by RPD since 2008. He was assigned as a detective to the Parole Unit under the Special Investigation Services. His direct supervisor was Sergeant Decious. Detective Diaz is a POST certified SWAT and Range Master. During the shooting incident, he discharged his Colt AR-15 rifle, Model 6920, 223 caliber.

Detective Diaz stated he received information from Sergeant Decious regarding a RPD vehicle pursuit of a murder suspect vehicle. He retrieved his police radio and heard Sergeant Llamas providing details of the pursuit. He went to the police station and met with members of his unit. They monitored the pursuit and learned the suspect vehicle became disabled on westbound Interstate 80. Detective Diaz got on his uniform and equipment and met with Sergeant Decious and Detective Ricchiuto in the RPD parking lot. They responded to the scene together in a fully marked RPD vehicle.

Detective Diaz stated that upon arrival, he saw a line of police vehicles facing westbound on Interstate 80. He saw a black Chevrolet Tahoe, with tinted windows about 35 or 45 yards in front of the police vehicles. He noted that the suspect vehicle had a flat tire.

Detective Diaz stated that he took cover behind a canine police vehicle facing the suspect vehicle. He briefly heard a FPD officer speaking on the phone and it appeared that the officer was speaking with the suspect, Mr. Hodge, but he could not confirm it. Shortly thereafter, the FPD SWAT Team arrived. Detective Diaz stated that Officer Guzman was in a kneeling position, also utilizing the

same canine vehicle's driver side door. Detective Diaz advised Officer Guzman not to stand up in the event of a shooting because his line of fire was directly above Officer Guzman.

Detective Diaz stated that the suspect vehicle then moved slowly forward and came to a stop. He instructed Officer Guzman to drive the canine vehicle slowly forward and in line with the other police vehicles. They moved forward approximately 15 feet. Shortly thereafter, the suspect driver window went down. He heard someone to his left giving commands to the suspect, Mr. Hodge, to peacefully surrender. He observed Mr. Hodge open and close the suspect vehicle driver's window. Mr. Hodge would put his hands in and out of the window and at times would stick his head out and look in their direction.

Detective Diaz stated that he and other officers received notice that someone was going to deploy less lethal munitions to break out the rear window of the suspect vehicle. He witnessed the first less lethal round deployed and it was ineffective. He then witnessed a second less lethal deployed and it penetrated the suspect vehicle's rear window. He and other officers then received notice that gas rounds were going to be deployed and he heard two rounds that had a different tone.

Detective Diaz stated that Mr. Hodge was yelling out of the window but was inaudible. He could see gas fumes exiting the opening of the suspect vehicle. Detective Diaz said that he then saw the suspect vehicle driver's door open and Mr. Hodge exiting his vehicle quickly. Mr. Hodge was facing the line of officers as he exited. Detective Diaz stated that as soon as Mr. Hodge's feet hit the ground, he saw a gun that Mr. Hodge held with his right hand. Detective Diaz said that Mr. Hodge pointed the gun at him and he thought that he was going to get shot. Detective Diaz said he witnessed the suspect fire the first round when he returned fire and discharged his rifle at the suspect. In a matter of seconds, he saw Mr. Hodge move to his right, towards the ground. Detective Diaz said he stopped shooting when he saw Mr. Hodge stop moving. He saw Mr. Hodge's gun on the ground.

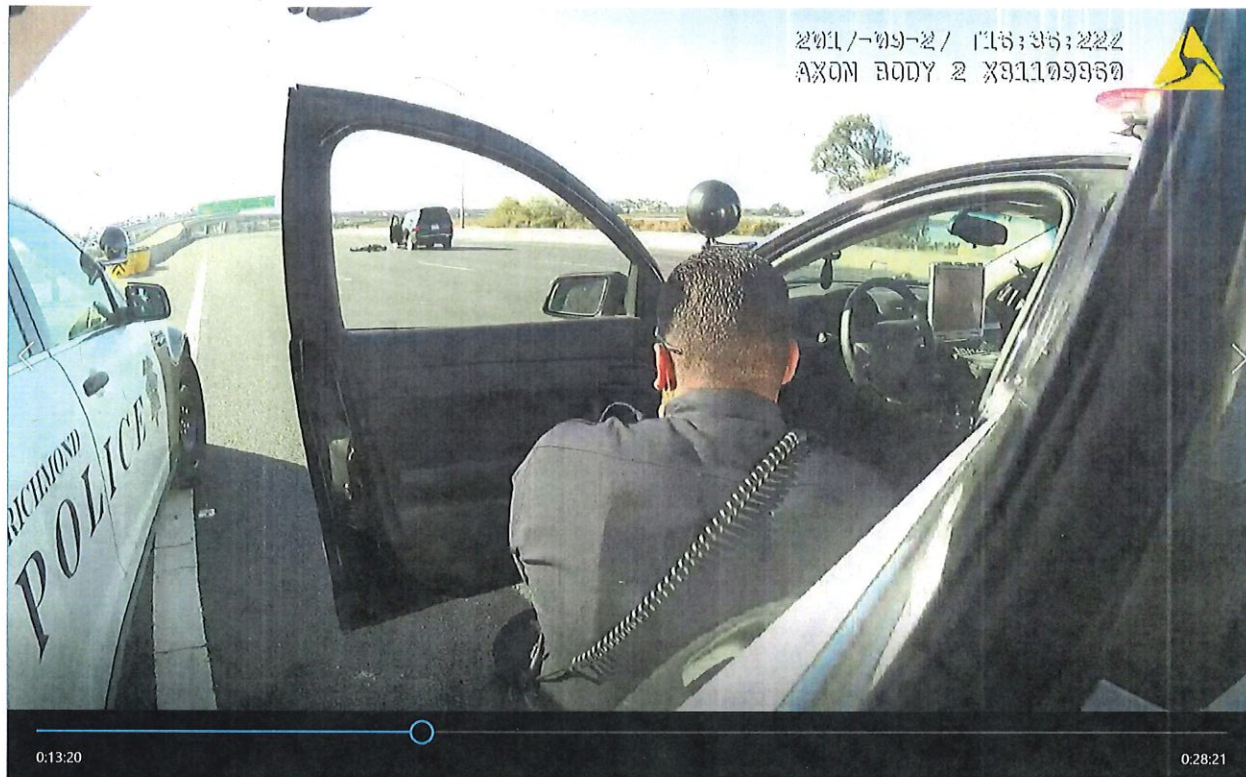
Detective Diaz estimated that he was approximately 40 yards away from Mr. Hodge at the time of the shooting. Detective Diaz stated at the time of the shooting he considered the danger of the situation with Mr. Hodge, a murder suspect, holding a firearm. He believed his life was in danger, his fellow officers' lives were in danger, and the thousands of citizens in the area were in danger.

After the shooting incident, Detective Diaz made announcements to ascertain if any officer had been shot. He then learned that no officers had been shot. Detective Diaz said he saw Mr. Hodge shoot a total of two rounds. Detective Diaz stated that he discharged approximately 12 rounds from his Colt rifle. He did not fire his service pistol.

Detective Diaz stated he remained in his position of cover. He and other officers then approached and secured the suspect vehicle and Mr. Hodge. He noted that Mr. Hodge's gun was a compact model and black in color. There was a silver magazine lying close to the gun. The magazine was loaded with bullets.

Detective Diaz stated that he rendered medical aid to the suspect and applied a tourniquet. Paramedics soon arrived and took over providing medical aid. He assisted the paramedics and transported the suspect to the hospital.

Detective Diaz activated his body-worn video camera when he arrived at the scene in Emeryville and recorded video footage from that point through his arrival at the hospital. The OIS Team reviewed this video recording. The video does not show Mr. Hodge's actions during the shooting incident due to the camera's positioning at the time. The footage does not capture any part of the shooting incident but the still photo below shortly after the shooting shows Detective Diaz's relative positioning to Mr. Hodge and his vehicle during the incident.



Detective Diaz's body-worn camera vantage point shortly after the shooting incident (13:20).

Statement of Richmond Police Department Detective Michael Ricchiuto

On September 28, 2017, the OIS Team and the Emeryville Police Department conducted an interview of RPD Detective Michael Ricchiuto. With counsel present, Detective Ricchiuto was advised of his rights and he voluntarily agreed to proceed with the interview.

Detective Ricchiuto stated that he has been employed by RPD since 2011. Prior to RPD, he was a police officer for the Oakland Police Department from 2008 to 2010. He was assigned as a detective to the Gang Unit. Detective Ricchiuto spoke about several trainings that he completed, including firearms training, during his career. On September 27, 2017, he discharged a Glock, Model 17, 9-millimeter caliber, semiauto pistol. The firearm was loaded with 17 rounds in the magazine and one round in the chamber.

Detective Ricchiuto stated he heard via radio that the CHP was surveilling a black SUV containing a murder warrant suspect. RPD officers located the suspect vehicle and a vehicle pursuit ensued. He contacted Sergeant Decious to ascertain their response and Sergeant Decious directed him and

Detective Diaz to respond to the incident together. They traveled to the scene in Emeryville in a fully-marked RPD police vehicle.

Detective Ricchiuto stated that when they arrived on the scene, he saw about five or six RPD officers in a standoff position with the suspect. He took cover behind a police vehicle. He learned that the FPD SWAT Team was responding and Richmond officers were to standby. When FPD SWAT arrived, he noticed that a FPD sniper did not have a cover officer. Detective Ricchiuto offered to provide cover to the sniper and they took a position in the carpool lane of the freeway, behind a police vehicle. Detective Ricchiuto said he stood to the right of the sniper, behind the "A-pillar" of the police vehicle. Detective Ricchiuto stated that RPD Officer Campos was seated in the vehicle and was negotiating with the suspect using the police vehicle loudspeaker.

Detective Ricchiuto stated the suspect vehicle moved forward about five feet. He noticed that three of the suspect vehicle's tires were damaged. The officers also moved their position forward. He assisted the sniper in moving his equipment. He again positioned himself behind the "A-pillar" of the police vehicle. Detective Ricchiuto stated that the suspect (Mr. Hodge) rolled down his vehicle's driver's side window. Officer Campos gave Mr. Hodge commands to surrender peacefully. Detective Ricchiuto heard the suspect repeatedly yelling, "Don't let the dog out." Officer Campos assured Mr. Hodge that the police canine was not going to be deployed.

Detective Ricchiuto stated that he heard an announcement that less lethal munitions were going to be deployed. He then witnessed FPD SWAT deploy a less lethal 40-millimeter round and it bounced from the rear window of the suspect vehicle. A second less lethal 40-millimeter round was deployed and it partially shattered the suspect vehicle's rear window. Detective Ricchiuto said he heard notice of gas being deployed. He was not familiar with less lethal deployment, so he understood this to be that the less lethal operator was going to increase the gas pressure on the mechanism that deployed the 40-millimeter less lethal round. He did not think it was an actual deployment of gas round. He then saw a less lethal round strike the tailgate of the suspect vehicle.

Detective Ricchiuto stated that Mr. Hodge responded by sticking his hands and arms in and out of the driver's side window of his vehicle. Detective Ricchiuto said Mr. Hodge opened the driver's door and abruptly exited his vehicle with his two hands holding a pistol. Detective Ricchiuto said that Mr. Hodge raised the pistol up in his direction and fired a round. Detective Ricchiuto stated that he returned fire with his service pistol until Mr. Hodge was no longer a threat. Detective Ricchiuto stated that he fired at Mr. Hodge because he feared for his life, public safety, and the safety of the officers around him. He said he saw Mr. Hodge fire one round and he heard the second round. Detective Ricchiuto said that he fired approximately 10 rounds. Mr. Hodge was about 20 to 30 yards from him. Detective Ricchiuto was convinced that the suspect shot at him to where he checked himself for injury after the incident. He stated that he continued to fire at Mr. Hodge until he was no longer a threat, and Mr. Hodge was unarmed on the ground.

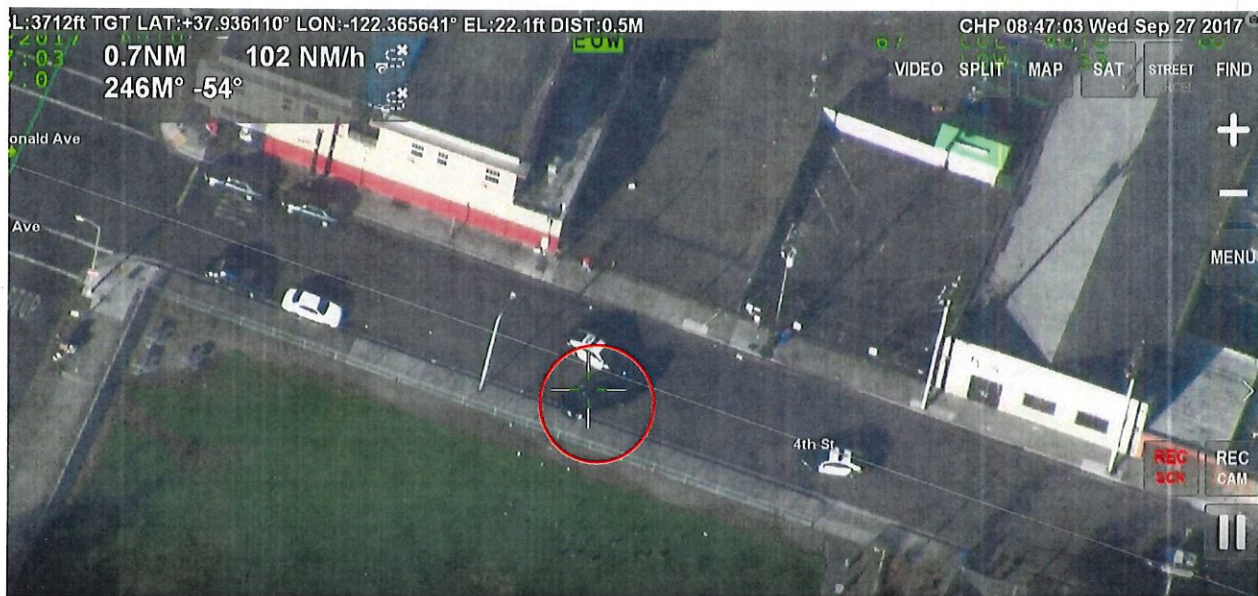
Detective Ricchiuto stated he then assisted in securing the suspect vehicle and Mr. Hodge. He observed other officers render medical aid to Mr. Hodge.

Detective Ricchiuto was not equipped with a body worn camera during the incident.

VIDEO EVIDENCE:

CHP Helicopter Surveillance Video

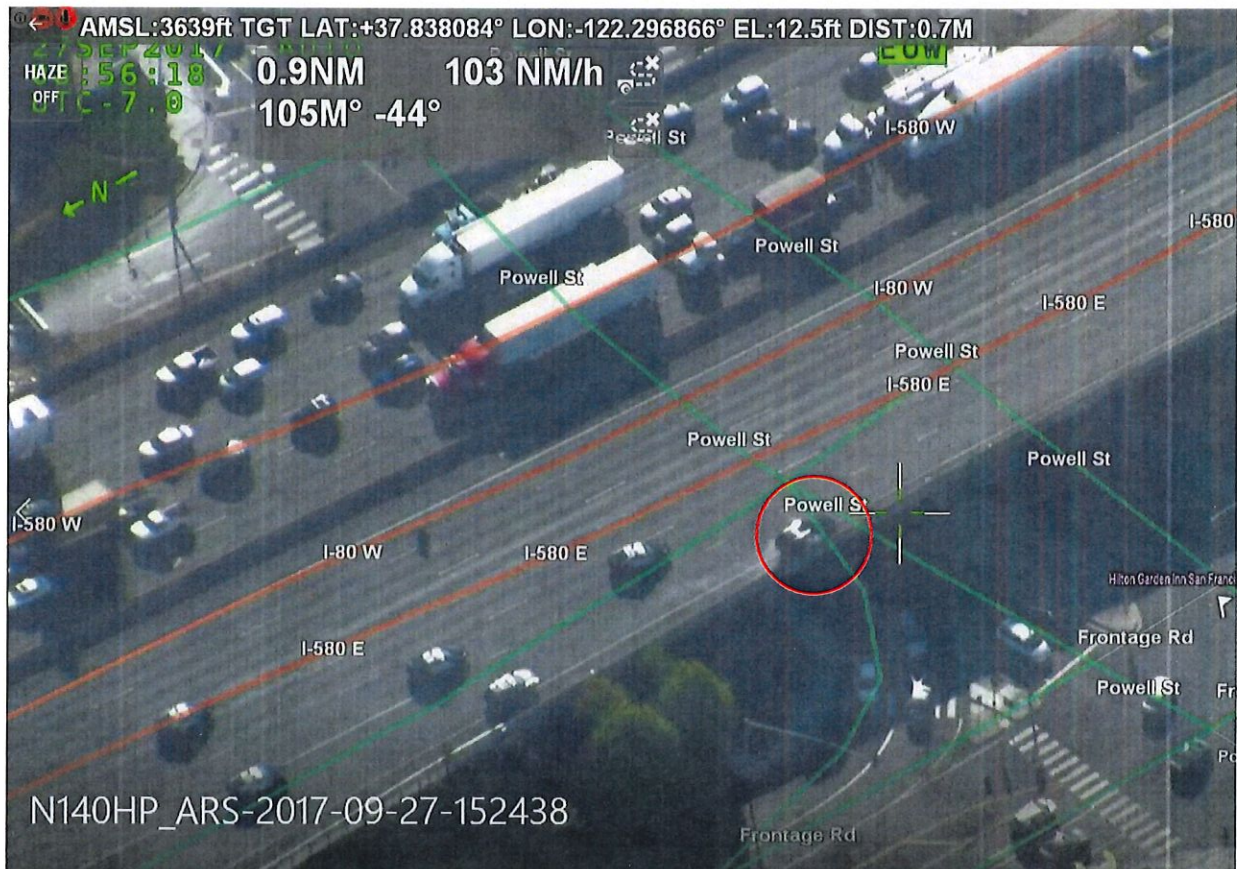
The OIS Team reviewed the CHP helicopter surveillance video footage taken on September 27, 2017 which begins with surveillance of Mr. Hodge's vehicle in Napa County more than two hours before the incident and ends approximately 13 minutes after the shooting. The surveillance video taken from a CHP helicopter contains footage of Mr. Hodge travelling from Napa County through Solano County and to Contra Costa County. The CHP video captures a failed vehicle stop of Mr. Hodge by RPD officers and the vehicle pursuit that follows. The vehicle pursuit of Mr. Hodge continues through city streets in Richmond, onto the freeway, and into Alameda County, culminating with the shooting incident on westbound Interstate 80, in Emeryville. The CHP video footage contains an unobstructed view from above of Mr. Hodge's conduct leading up to the shooting incident. It also captures footage of law enforcement and medical personnel efforts following the shooting of Mr. Hodge. Below are photo stills from the CHP video:



Failed police stop of Mr. Hodge (circled in red) in Richmond, CA. Mr. Hodge drove his SUV onto a sidewalk to avoid a police vehicle blocking his path. (08:47:03)



Police (blue arrow) pursuit of Mr. Hodge (circled in red) off-road at I580 in Berkeley, CA (08:54:50)



Mr. Hodge (circled in red) losing control of vehicle westbound Interstate 80, in Emeryville CA (08:56:19)



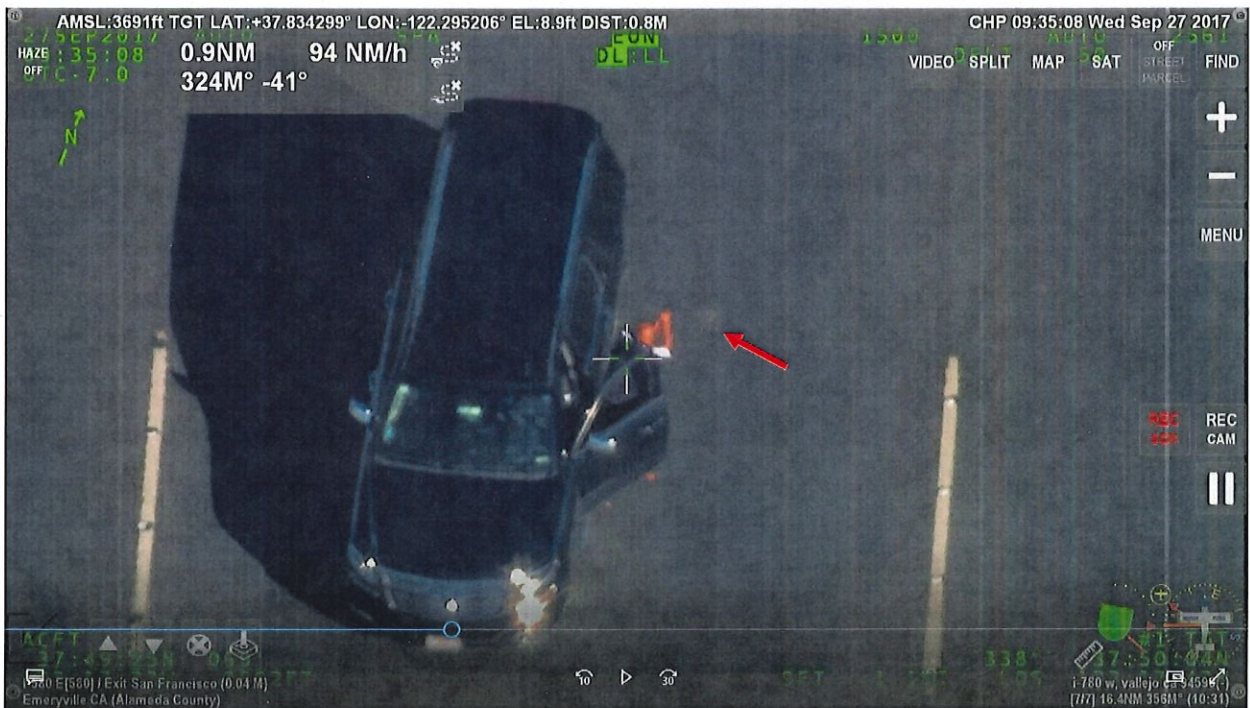
Location where Mr. Hodge (circled in red) first stops on westbound Interstate 80, in Emeryville CA (09:09:45)



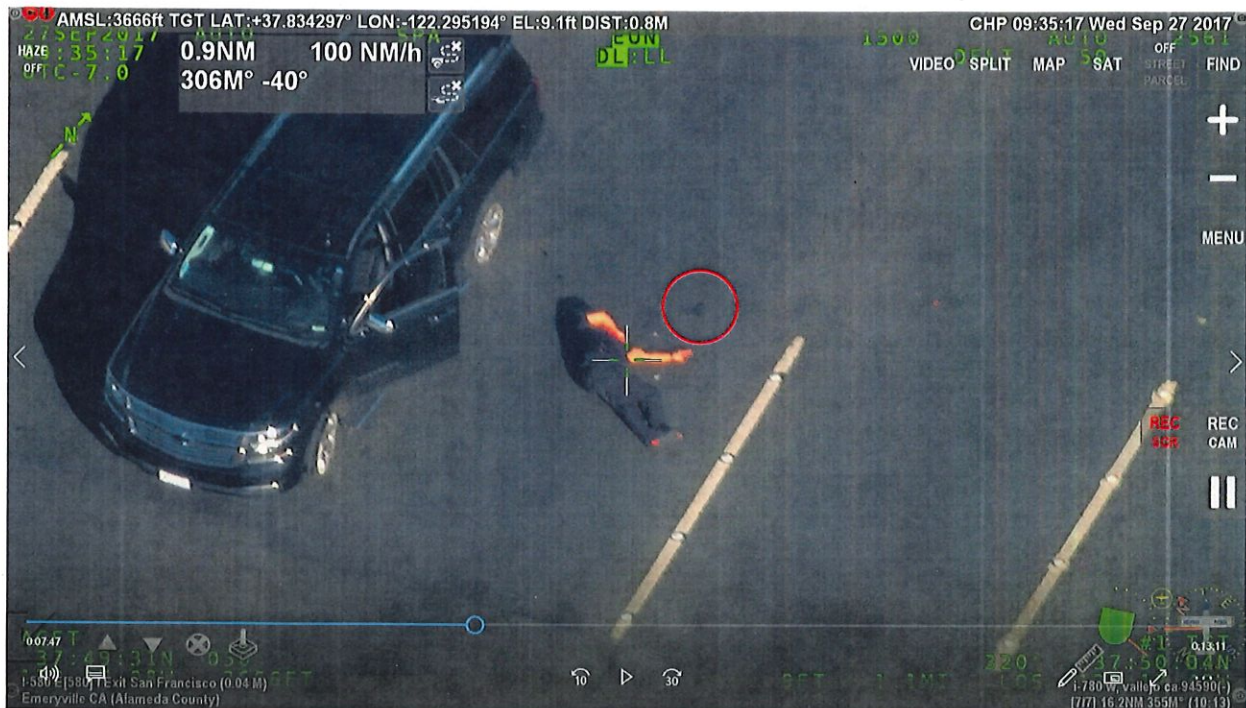
Location of Mr. Hodge (circled in red) after his second stop on westbound Interstate 80, in Emeryville CA (09:30:07)



Location of Mr. Hodge (circled in red) and police after third stop and shortly before shooting incident (09:34:37)



Mr. Hodge shooting firearm (casing - red arrow) at police during the shooting incident (09:35:08)



Mr. Hodge and his firearm, immediately after shooting incident (09:35:17)

Police Officer Body-Worn Camera Video Footage

The OIS Team reviewed the video footage of all available officer body-worn video cameras from the incident. This includes “witness” officers who were present during the incident but did not discharge their firearm and “involved” officers who discharged their firearm. For witness officers, the OIS Team reviewed the body-worn camera footage from the incident for the following officers: RPD Officer Daniel Campos (#1486); RPD Officer Khala Finley (#1685); RPD Officer Daniel Reina (#1439); RPD Dedrick Riley (#1380); RPD Officer Jeffrey Tyner (#1341); RPD Officer Leah Joseph (#1424); and RPD Officer Jovan Walker (#1634). The video recordings from these body-worn cameras included footage before, during, and after the shooting incident but the videos did not show Mr. Hodge’s actions, nor did the videos show the shooting incident. A summary for RPD Officer Campos’ body-worn camera recording appears below to summarize Officer Campos’ communications with Mr. Hodge over the police vehicle “PA System,” attempting to get Mr. Hodge to surrender without incident.

Note: The OIS Team reviewed the available body-worn video recordings from the involved FPD and RPD officers. The analysis of these video reviews appears in the “INVOLVED OFFICER STATEMENT” section for each of the individual involved officers.

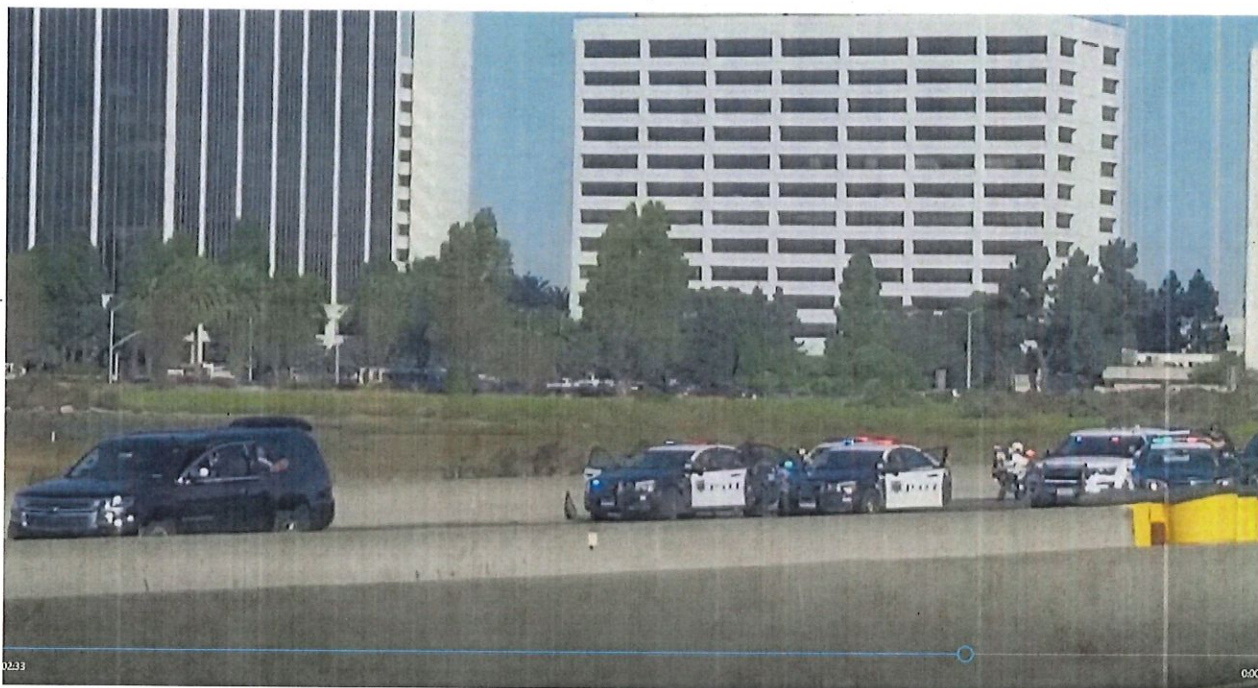
RPD Officer Daniel Campos (#1486)

RPD Office Daniel Campos’ body-worn camera does not capture Mr. Hodge’s actions nor the shooting incident. The video footage does capture Officer Campos’ repeated instructions over the PA system to Mr. Hodge in order to get him to surrender peacefully. The video recording shows RPD and Officer Campos’ efforts to communicate with Mr. Hodge via the PA system for over 23 minutes to get him to surrender. Officer Campos repeatedly communicated versions of the

following over the loudspeaker: “Demilo, we don’t want you to get hurt.”; “Roll down the windows.”; “Stick your hands out.”; “Open the door from the outside.”; “Demilo, we don’t want you to get hurt.”; “Step out with your hands up.”; “We want you to surrender peacefully.”; “We don’t want anyone to get hurt.”

Civilian # 1 Video

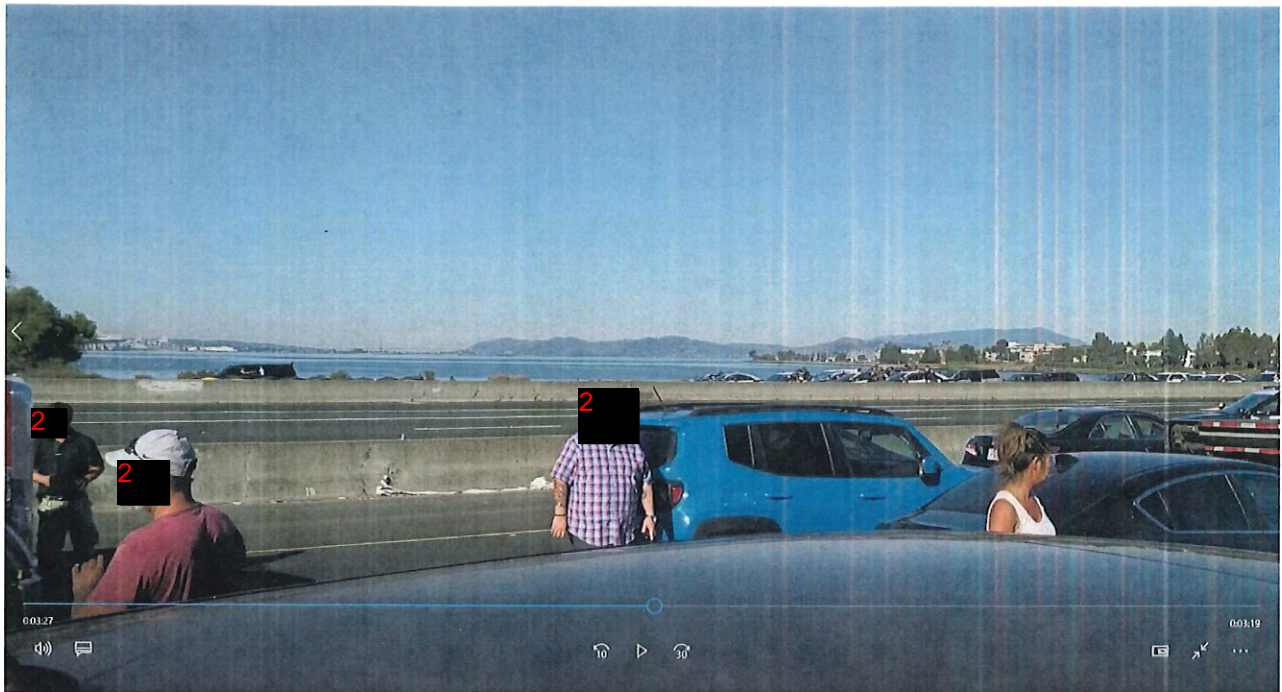
Civilian #1 took video footage of the shooting incident from the Interstate 80 eastbound area. The video faces the front and driver’s side portion of the police vehicles and Mr. Hodge’s vehicle. The OIS Team reviewed Civilian #1’s video footage which captured video of the shooting incident. Below is a still photo from the video showing Mr. Hodge outside of his vehicle immediately before the shooting incident.



Clip from Civilian #1 Video

Civilian #2 Video

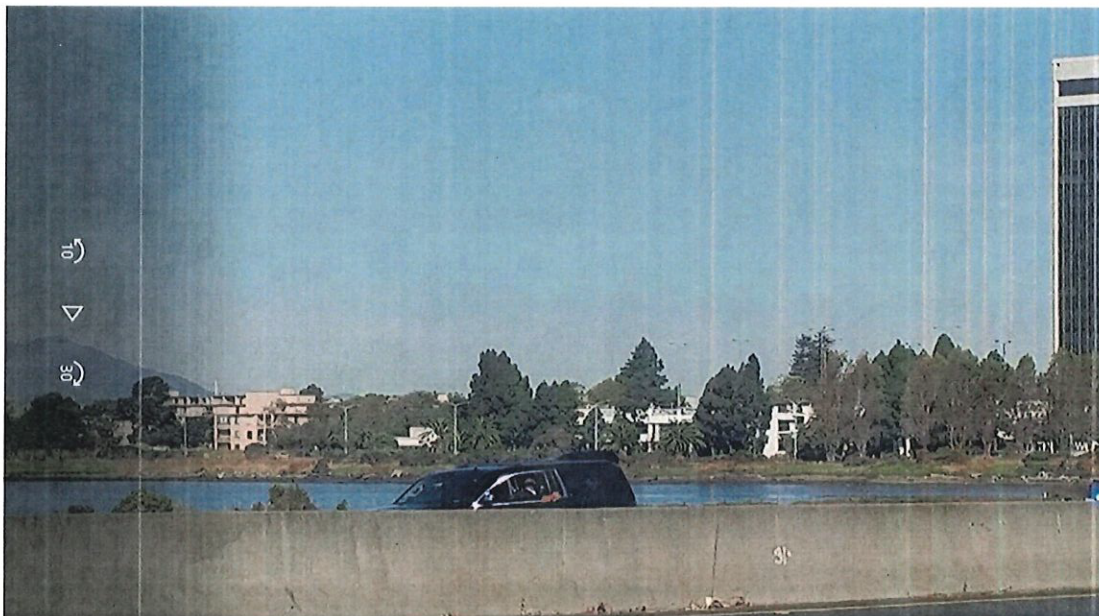
Civilian #2 took video footage from the Interstate 580/80 eastbound area. The video shows the driver’s side of Mr. Hodge’s vehicle and police vehicles separated by two highway barriers. The OIS Team reviewed Civilian #2’s videos which captured footage from before, during, and after the shooting incident. Below is a still photo from Civilian #2’s video showing Mr. Hodge outside of his vehicle immediately before the shooting incident.



Clip from Civilian #2 Video

Civilian #3 Video

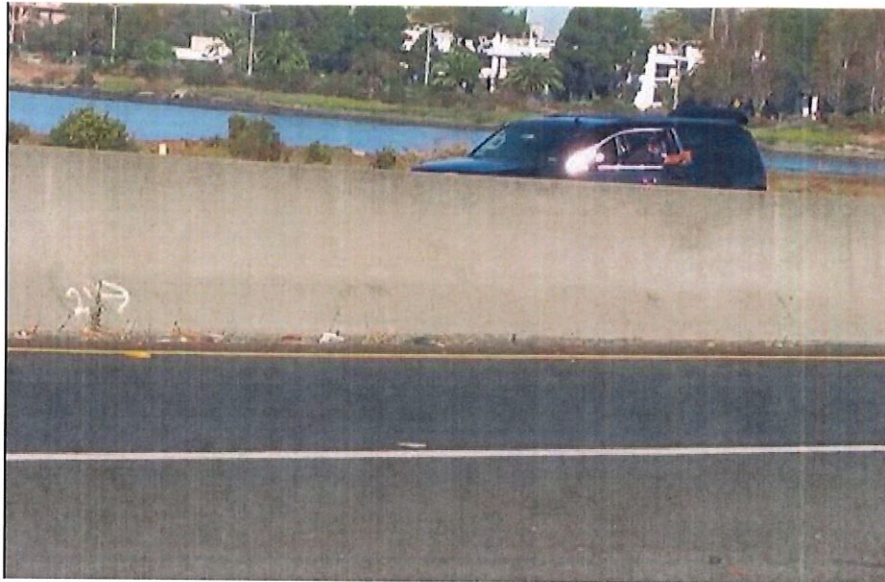
Civilian #3 recorded video of the shooting incident from the Interstate 580/80 eastbound area before, during, and after the shooting. The video shows the driver's side of Mr. Hodge's vehicle and the police vehicles. The OIS Team reviewed photos and videos from Civilian #3. Below is a still photo from Civilian #3's video showing Mr. Hodge outside of his vehicle immediately before the shooting incident.



Clip from Civilian #3 Video

Civilian #4 Video

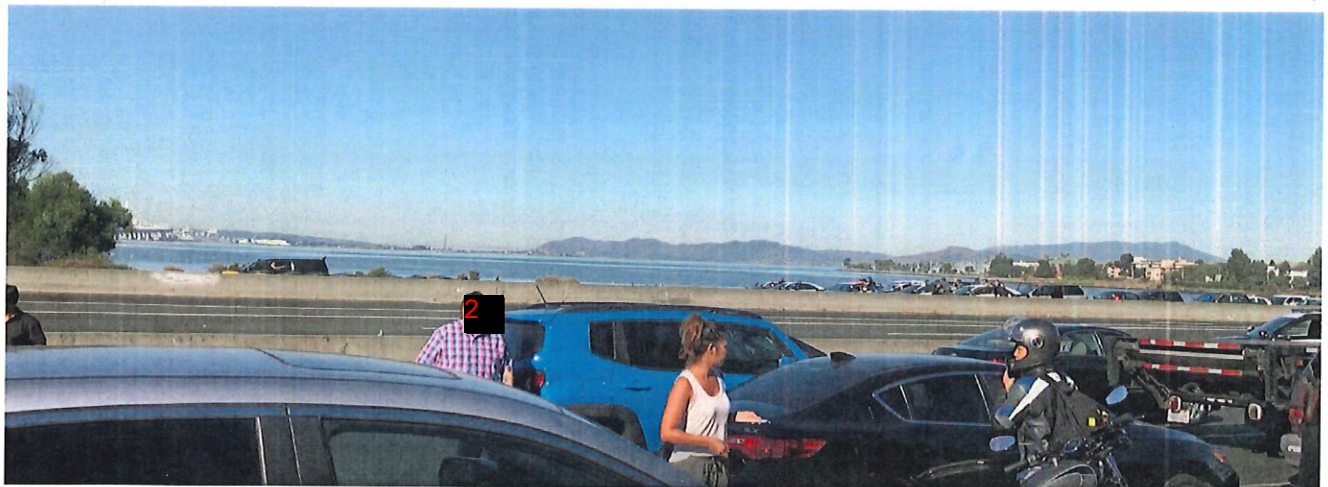
Civilian #4 recorded video of the incident from the Interstate 580/80 eastbound area. The video footage shows Mr. Hodge's vehicle and the police vehicles on Interstate 80 westbound. The OIS Team reviewed Civilian #4's video footage and below is a still photo from the video showing Mr. Hodge outside of his vehicle immediately before the shooting incident.



Clip from Civilian #4 Video

Civilian #5 Video

Civilian #5 recorded video of the shooting incident from the Interstate 580/80 eastbound area. From this vantage point, Civilian #5's recording showed the driver's side of Mr. Hodge's vehicle and the police vehicles. The OIS Team reviewed Civilian #5's recording and below is a still photo taken from the video showing Mr. Hodge outside of his vehicle immediately before the shooting incident.



Clip from Civilian #5 Video

BALLISTICS EVIDENCE:

The OIS Team reviewed involved officer statements, police technician reports, CHP MAIT report, evidence transfer receipts, police crime lab reports and photos of the firearms retrieved from the involved officers to determine the approximate number of rounds discharged by each officer during the shooting incident. The OIS Team also reviewed the same reports related to a firearm recovered next to Mr. Hodge at the scene. Additionally, the OIS Team reviewed crime lab reports related to ballistics evidence. Following the shooting incident on September 27, 2017, the involved officers from FPD and RPD were taken to RPD where the involved officers and their respective firearms were photographed by RPD personnel. Each discharged firearm was collected and photographed by a RPD crime scene technician.

FPD Sergeant Kelly Rombach

FPD Sergeant Kelly Rombach discharged his Colt AR-type rifle, Model M4 Commando, 5.56 caliber, serial number [REDACTED]. When recovered from Sergeant Rombach, the rifle was loaded with one (1) round in the chamber and twenty-four (24) rounds in the magazine for a total of twenty-five (25) "Winchester 223 REM" rounds. Sergeant Rombach advised that during this incident, he had loaded his rifle with one (1) round in the chamber and twenty-seven (27) rounds in the magazine. It appears that Sergeant Rombach discharged three (3) rounds during the shooting incident.

FPD Sergeant Brent Pucci

FPD Sergeant Brent Pucci discharged his Glock, Model 17, 9-millimeter caliber handgun, serial number [REDACTED]. When recovered from Sergeant Pucci, the firearm was loaded with one (1) round in the chamber and ten (10) rounds in the magazine for a total of eleven (11) "9 mm Luger caliber" rounds. Sergeant Pucci advised that during this incident, he had loaded his firearm with one (1) round in the chamber and seventeen (17) rounds in the magazine. It appears that Sergeant Pucci discharged seven (7) rounds during the shooting incident.

FPD Officer Erick Aagaard

FPD Officer Erick Aagaard discharged his Colt AR-type rifle, Model M4 Commando, 5.56 caliber, serial number [REDACTED]. When recovered from Officer Aagaard, the rifle was loaded with one (1) round in the chamber and twenty-five (25) rounds in the magazine for a total of twenty-six (26) "Winchester 223 REM" rounds. Officer Aagaard advised that during this incident, he had a thirty (30) round magazine in his rifle and he left the chamber empty until he chambered a round, leaving twenty-nine (29) in the magazine. It appears that Officer Aagaard discharged four (4) rounds during the shooting incident.

FPD Officer Shane Raftery

FPD Officer Shane Raftery discharged his Colt rifle, Model M4 Carbine, 5.56 caliber, serial number [REDACTED]. When recovered from Officer Raftery, the rifle was loaded with one (1) round in the chamber and twenty-seven (27) rounds in the magazine for a total of twenty-eight (28) "Winchester 223 REM" rounds. Officer Raftery advised that during the incident, the rifle had

a thirty (30) round magazine inserted, but a round was not chambered. It appears that Officer Raftery discharged two (2) rounds during the shooting incident.

FPD Officer James Sehr

FPD Officer James Sehr discharged his Colt rifle, Model M4 Commando, 5.56 caliber, serial number [REDACTED]. When recovered from Officer Sehr, the rifle was loaded with one (1) round in the chamber and twenty-five (25) rounds in the magazine for a total of twenty-six (26) "Winchester 223 REM" rounds. Officer Sehr advised that during the incident, the rifle had one (1) round chambered and twenty-nine (29) rounds in the magazine. It appears that Officer Sehr discharged four (4) rounds during the shooting incident.

FPD Officer John Divine

FPD Officer John Divine discharged his Accuracy International Rifle, Model AT308, 308 caliber, serial number [REDACTED]. When recovered from Officer Divine, the rifle was loaded with nine (9) "Hoirnady 308 WIN" rounds in the magazine. Officer Divine advised that during the incident, he loaded ten (10) rounds in the magazine, he fired one (1) round, reloaded but did not fire another round. He rendered his rifle safe on scene and had Officer Pulsipher witness him take the one (1) chambered round out of his rifle and reintroduce it into the magazine for a total of nine (9) in the magazine. It appears that Officer Divine discharged one (1) round during the shooting incident.

RPD Sergeant Donovan Decious

RPD Sergeant Donovan Decious discharged his Nighthawk Custom, Model 1911 GRP, 45 caliber handgun, serial number [REDACTED]. When recovered from Sergeant Decious, the firearm was loaded with one (1) round chambered and four (4) rounds in the magazine for a total of five (5) "Winchester 45 AUTO" rounds. Sergeant Decious advised that during the incident, the firearm contained a full seven (7) round magazine with one (1) round in the chamber for a total of eight (8) rounds. It appears that Sergeant Decious discharged three (3) rounds during the shooting incident.

RPD Sergeant Chris Llamas

RPD Sergeant Chris Llamas discharged his Remington shotgun, Model 870 Police Magnum, 12-gauge, serial number [REDACTED]. When recovered from Sergeant Llamas, the firearm contained two (2) unfired shotgun rounds stamped "12 GA MADE IN U.S.A." Sergeant Llamas advised that during the incident, the shotgun contained four (4) rounds. It appears that Sergeant Llamas discharged two (2) rounds during the shooting incident.

RPD Officer Cedric Tagorda

RPD Officer Cedric Tagorda discharged his Kimber, Model 1911 Custom TLE/RL 11, 45 caliber handgun, serial number [REDACTED]. When recovered from Officer Tagorda, the firearm was loaded with one (1) round chambered and one (1) round in the magazine for a total of two (2) rounds. Officer Tagorda advised that during the incident, the firearm contained a ten (10) round magazine. It appears that Officer Tagorda discharged eight (8) rounds during the shooting incident.

RPD Officer Benjamin Mendler

RPD Officer Benjamin Mendler discharged his Colt rifle, Model M4 Carbine, 5.56 caliber, serial number [REDACTED]. When recovered from Officer Mendler, the firearm was loaded with one (1) round chambered and fifteen (15) rounds in the magazine for a total of sixteen (16) rounds. Officer Mendler advised that during the incident there was a twenty (20) round magazine in the rifle but that the magazine was not filled up all the way because if you overfill them they malfunction. Officer Mendler stated that there were either eighteen (18) or nineteen (19) rounds in the rifle with none chambered. It appears that Officer Mendler discharged two (2) or three (3) rounds during the shooting incident.

RPD Officer Orlando Guzman

RPD Officer Orlando Guzman discharged his Wilson Combat, Model CQB, 45 caliber handgun, serial number [REDACTED]. When recovered from Officer Guzman, the firearm was loaded with one (1) round chambered and eight (8) rounds in the magazine for a total of nine (9) rounds. Officer Guzman advised that during the incident, the firearm contained one (1) round in the chamber and eight (8) rounds in the magazine for a total of nine (9) rounds. However, after he discharged his firearm, Officer Guzman stated that he ejected the original magazine and reloaded a full eight (8) round magazine into his firearm. Officer Guzman further stated that he dropped the original magazine next to the driver's door of the canine vehicle. The number of rounds in the recovered firearm is consistent with this described reload. Additionally, at the scene, a magazine with one (1) 45 caliber "Winchester" round was found by the driver's side door of a canine patrol car (lic. plate 1431911). It appears that Officer Guzman discharged seven (7) rounds during the shooting incident.

RPD Detective Anthony Diaz

RPD Detective Anthony Diaz discharged his Colt rifle, Model M16A2 Commando, 5.56 caliber, serial number [REDACTED]. When recovered from Detective Diaz, the firearm was loaded with fourteen (14) rounds in the magazine only. Detective Diaz advised that during the incident, he placed a twenty-eight (28) round magazine in the rifle and chambered one round before discharging the firearm. It appears that Detective Diaz discharged fourteen (14) rounds during the shooting incident.

RPD Detective Michael Ricchiuto

RPD Detective Michael Ricchiuto discharged his Glock, Model 17, 9-millimeter caliber handgun, serial number [REDACTED]. When recovered from Detective Ricchiuto, the firearm had one (1) round chambered and three (3) rounds in the magazine for a total of four (4) rounds. Detective Ricchiuto advised that during the incident, the firearm contained one (1) round in the chamber and seventeen (17) rounds in the magazine for a total of eighteen (18) rounds. It appears that Detective Ricchiuto discharged fourteen (14) rounds during the shooting incident.

Firearm recovered next to Demilo Hodge

The firearm recovered next to Mr. Demilo Hodge was a Springfield Armory, Model SA-XD-40, 40 caliber handgun with serial number [REDACTED]. The twelve (12) round capacity magazine was found ejected from the firearm near Mr. Hodge. The firearm was loaded with one (1) "WIN 40

S&W” round in the chamber. The magazine was loaded with nine (9) rounds, eight (8) “WIN 40 S&W” and one (1) “R-P 40 S&W.”

The Contra Costa County Office of the Sheriff Forensic Services Division processed the firearm recovered next to Mr. Hodge. DNA swabs were taken and preserved from the firearm’s slide release, slide grip, trigger, grip and magazine. Additionally, the firearm was test fired and the test-fired bullets and cartridge cases were retained as evidence.

These test-fired bullets and cartridge cases were later microscopically examined and compared by the Alameda County Sheriff’s Office (ACSO) Crime Laboratory to spent cartridges recovered from the scene in Emeryville. It was determined from this examination that one of the spent cartridges (“Item 63 – ‘WIN 40 S&W’”) recovered from the scene was fired from the Springfield Armory firearm found next to Mr. Hodge.

AUTOPSY EVIDENCE:

On September 28, 2017, Dr. Michael Joseph Ferenc performed an autopsy on the body of Mr. Hodge at the Alameda County Coroner’s Bureau in Oakland. Dr. Ferenc determined the cause of death to be multiple gunshot wounds. Dr. Ferenc observed over twenty-two (22) gunshot wounds to Mr. Hodge, with injuries to the brain, skull, lungs, aorta, vena cava, liver, and humerus. Approximately nineteen (19) entrance wounds and ten (10) exit wounds were noted in Dr. Ferenc’s report. Multiple bullets and bullet fragments were recovered by Dr. Ferenc during the examination.

A blood sample was collected from Mr. Hodge and submitted for toxicology testing. The test results indicated the presence of blood ethyl alcohol (0.02 grams %) and ibuprofen (15.5 mg/L).

APPLICABLE CALIFORNIA LAW:

The sole question addressed by the District Attorney’s investigation was whether any officer who discharged his firearm violated any applicable laws. Whether or not an officer is criminally liable depends upon (1) the facts of the case, and (2) whether those 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, is satisfied that the evidence shows 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 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. (*See CALCRIM 505*).

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. (*See CALCRIM 507*).

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. (*See 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. (*See 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 an officer killed Mr. Hodge and the officer did not reasonably believe that he or another was in imminent danger of death or great bodily injury.

ANALYSIS:

The OIS Team conducted a separate, parallel investigation and review of the facts and circumstances leading to the death of Mr. Demilo Hodge. A thorough review of the credible and admissible evidence shows that each of the involved FPD and RPD officers acted with the actual and reasonable belief that Mr. Hodge posed an imminent danger to the involved officer and others of death or great bodily injury. The examined evidence does not support the contention that the shooting of Mr. Hodge was criminal for any of the involved FPD and RPD officers.

Mr. Hodge's Actions Immediately Before the Shooting Incident

As an initial matter, a review of the evidence surrounding Mr. Hodge's actions immediately before the shooting by the involved officers overwhelmingly supports the conclusion that Mr. Hodge posed an imminent threat of death or great bodily injury to the involved officers, as well as witness officers and civilians in close proximity. The video evidence taken from the CHP helicopter surveillance and from civilians at the scene, clearly show Mr. Hodge quickly exit his vehicle holding a handgun with both hands. The video evidence shows Mr. Hodge immediately point the handgun in the direction of the line of police officers and discharge his firearm in the direction of the officers. Mr. Hodge's conduct, clearly captured on video, demonstrated that he posed a threat of death or great bodily injury to the officers and others in his line of fire when he discharged his handgun.

In their voluntary statements, each of the involved FPD and RPD officers described observing Mr. Hodge opening the driver's side door to his vehicle and quickly exiting, holding a firearm pointed in the direction of the involved officers. Each of the involved officers described observing Mr. Hodge fire his weapon in their direction at least one time. Each of the involved officers stated that upon seeing Mr. Hodge discharge his firearm at them, they feared for their lives and the lives of fellow officers or civilians. For this reason, the involved officers stated they discharged their firearms until the threat posed by Mr. Hodge had ended. Additionally, several of the involved officers expressed concern for the safety of the numerous civilians in the immediate area when discharging their firearms at Mr. Hodge.

The physical evidence supports the video evidence and involved officer statements regarding Mr. Hodge discharging his firearm at the officers. In the CHP video, Mr. Hodge's firearm can be seen falling to the freeway pavement as he is shot by the involved officers. This firearm is documented in videos, crime scene photos, and ultimately collected as evidence from the scene. Mr. Hodge's firearm, a Springfield Armory, Model SA-XD-40, 40 caliber handgun, was later test fired by the

Contra Costa County Office of the Sheriff Forensic Services Division and the test fired bullet and cartridge case was preserved. The Alameda County Sheriff's Office (ACSO) Crime Laboratory microscopically compared the test fired cartridge case with a spent casing recovered at the shooting scene and found that the spent casing from the scene matched Mr. Hodge's firearm. This ballistics analysis of the physical evidence from the scene supports the conclusion that Mr. Hodge discharged his firearm during the incident in question.

The evidence of Mr. Hodge's actions immediately before the shooting incident standing alone would support a finding of each involved officer acting in actual and reasonable self-defense and the defense of others when they discharged their firearms at Mr. Hodge. However, Mr. Hodge's actions were part of a larger incident and investigation which added to the information that the involved officers knew when they discharged their firearms in response to Mr. Hodge's actions. This information known to the involved officers heightened their concern regarding Mr. Hodge's actions during the shooting incident.

Mr. Hodge's Conduct Before Arriving at Westbound Interstate 80

FPD Sergeant Kelly Rombach; Sergeant Brent Pucci; Officer Erick Aagaard; Officer Shane Raftery; Officer James Sehr; and Officer John Divine all attended an operations plan meeting in the early hours of September 27, 2017, at which they were provided information about Mr. Hodge and his potential for violence. The operations plan was provided to FPD officers through a PowerPoint presentation. These FPD officers learned that Mr. Hodge was a primary suspect in a homicide which occurred in Fairfield in 2015. They also learned that a search warrant was obtained for Mr. Hodge, his vehicles, and his residence in connection with the homicide investigation. These FPD officers were provided with Mr. Hodge's violent criminal history which included the crimes of robbery, burglary, assault, and weapons offenses. As part of the PowerPoint presentation, numerous photos of Mr. Hodge holding assault rifles and other firearms, as well as photos of firearms belonging to Mr. Hodge were displayed at the meeting.

Following the operations plan meeting, the same involved FPD officers attempted to conduct a "vehicle assault" on Mr. Hodge's vehicle knowing his propensity for violence. The FPD officers were unsuccessful on more than one occasion in executing the "vehicle assault" as Mr. Hodge evaded FPD police vehicles and drove recklessly to avoid being stopped. Mr. Hodge then fled towards the City of Richmond to evade FPD officers. The involved FPD officers had personally witnessed Mr. Hodge's evasive and noncompliant conduct.

RPD Sergeant Llamas; Officer Tagorda; and Officer Guzman were directly involved in the vehicle pursuit of Mr. Hodge through the city streets of Richmond and to westbound Interstate 80 in Emeryville. These officers were notified by police dispatch that a murder suspect who was wanted by FPD was in the City of Richmond. They located Mr. Hodge's vehicle and began pursuing him. Officer Tagorda witnessed Mr. Hodge driving directly at him before Mr. Hodge drove his vehicle around Officer Tagorda's police vehicle. These involved RPD officers witnessed Mr. Hodge driving recklessly and at a high rate of speed to evade police officers on Richmond streets, on the Interstate 580 freeway, and ultimately the Interstate 80 freeway.

Before arriving at the standoff scene, all of the involved RPD officers received information over police radio that Mr. Hodge was a homicide suspect. Additionally, involved RPD officers also received information that Mr. Hodge was armed and would likely continue to resist arrest.

Therefore, before arriving at the standoff scene on westbound Interstate 80, all of the involved FPD and RPD officers were aware that Mr. Hodge had a propensity for violence, that he was potentially armed, and that he was actively avoiding police without regard for the safety of the public or police officers.

Mr. Hodge's Conduct During Westbound Interstate 80 Standoff

At approximately 8:56 a.m., Mr. Hodge's vehicle comes to rest by the center median after his tire had been spike stripped. A short time later, RPD officers begin issuing commands over a loudspeaker for Mr. Hodge to get out of his car with his hands up and to surrender peacefully. From this point until the shooting incident at approximately 9:35 a.m., RPD Officer Campos repeatedly and continuously communicated to Mr. Hodge over the loudspeaker to surrender. FPD Sergeant Morris also communicated directly with Mr. Hodge over his cell phone to surrender. Despite attempts by RPD and FPD to convince Mr. Hodge to surrender, Mr. Hodge did not demonstrate the willingness to comply.

Instead, Mr. Hodge twice drove his vehicle away from police officers during the standoff situation. Mr. Hodge drove at a slow speed away from officers but this conduct did not demonstrate to the involved FPD and RPD officers that Mr. Hodge was willing to surrender. To the contrary, this conduct was consistent with Mr. Hodge's previous actions to evade and failure to comply with the police.

When Mr. Hodge stopped his vehicle the final time on westbound Interstate 80, the standoff situation on a major Bay Area freeway during morning rush hour had been going on for over 30 minutes. Traffic had been blocked in both directions of Interstate 80. Even though traffic was blocked, hundreds of civilians were still in close proximity to the standoff scene. Numerous of the involved FPD and RPD officers expressed concern for the safety of the civilians who were close to the standoff situation and an armed Mr. Hodge when they fired their weapons at Mr. Hodge.

CONCLUSION:

The evidence reviewed in this investigation shows that, following a prolonged standoff with the police on a major Bay Area freeway during rush hour, Mr. Hodge quickly exited his vehicle, pointed a firearm at the involved FPD and RPD officers and fired his handgun in the direction of these officers. Mr. Hodge's action of discharging his firearm at officers placed the involved FPD and RPD officers and surrounding civilians in imminent risk of death or great bodily injury. Each of the involved FPD and RPD officers expressed an actual belief when they shot at Mr. Hodge that Mr. Hodge was going to kill him or other officers.

The overwhelming evidence supports the conclusion that the involved FPD or RPD officers on September 27, 2017 acted under the actual and reasonable belief that Mr. Hodge posed an imminent threat of death or great bodily injury to themselves and others. 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 FPD Sergeant Kelly Romback; FPD Sergeant Brent Pucci; FPD Officer Erick Aagaard; FPD Officer Shane Raftery; FPD Officer James Sehr; FPD Officer John Divine; RPD Sergeant Donovan Decious; RPD Sergeant Chris Llamas; RPD Officer Cedric Tagorda; RPD Officer Benjamin Mendler; RPD Officer Orlando Guzman; RPD Detective Anthony Diaz; and RPD Detective Michael Ricchiuto, and this Office contemplates no further action in this case.