

REPORT ON THE OFFICER INVOLVED SHOOTING OF  
MATTHEW JOSEPH HOFFMAN ON JANUARY 4, 2015



GEORGE GASCÓN, DISTRICT ATTORNEY  
INDEPENDENT INVESTIGATIONS BUREAU  
CITY AND COUNTY OF SAN FRANCISCO  
FEBRUARY 14, 2018

## **TABLE OF CONTENTS**

I.	INTRODUCTION.....	3
II.	SUMMARY OF INVESTIGATION.....	4
III.	LEGAL STANDARD .....	13
IV.	LEGAL ANALYSIS .....	14
V.	CONCLUSION .....	15

## I. INTRODUCTION

The San Francisco District Attorney's Office (SFDA) has completed its review of the officer-involved shooting of Matthew Joseph Hoffman in San Francisco, California, on January 4, 2015. The SFDA's review was conducted by SFDA's Independent Investigations Bureau (IIB), and focused exclusively on determining whether criminal charges related to the officers' conduct are warranted. IIB's review did not examine issues such as officers' compliance with internal SFPD policies, procedures, their training, tactics, or any issues related to civil liability. This report should not be interpreted as expressing any opinion on such non-criminal matters.

In brief, on January 4, 2015, at approximately 5:18 p.m., San Francisco Police Department (SFPD) Sergeants Michael Serujo, Star # 1825, Nicholas Pena, Star # 2361, and Thomas Johnson, Star # 603, were leaving the parking lot of SFPD's Mission District Station, located at 630 Valencia Street, San Francisco, when they encountered an unknown male trespassing in the parking lot. The male, later identified as Matthew Hoffman, refused to leave the parking lot, kept his hand hidden under his sweatshirt, and became confrontational with the sergeants after they repeatedly instructed him to leave the property. Hoffman eventually pulled from his waistband an object that all of the sergeants believed to be a black handgun and pointed it directly at the sergeants. Fearing for their lives, Sergeants Serujo and Pena fired their duty weapons several times at Hoffman, who later died from the gunshot wounds he sustained. As later determined, the gun Hoffman was carrying was actually a black Colt Defender Airsoft BB gun that was modified to resemble a real firearm. Hoffman also had three suicide letters on his phone, one of which was addressed to the officers, absolving them of their actions and stating that he wanted to commit suicide.

As detailed below, the available evidence supports the conclusion that the sergeants here acted in defense of themselves and others. The District Attorney, therefore, declines to pursue criminal charges in this matter.



*Image 1: Aerial view of SFPD Mission District Station (Source: Google Maps)*

## **II. SUMMARY OF INVESTIGATION**

On January 4, 2015, at approximately 5:18 p.m., SFPD Sergeants Michael Serujo, Nicholas Pena, and Thomas Johnson, exited the south entrance of the Mission District Police Station and entered the police parking lot. All three sergeants were on-duty and in full patrol uniform. The sergeants encountered an unknown, male adult, later identified as Matthew Joseph Hoffman, seated on the edge of a concrete planter box located in the northeast corner of the police parking lot.

The police parking lot is clearly designated as a secure area, not open to public access per numerous signs indicating "Restricted Area" in both English and Spanish. Sergeants Serujo and Pena advised Hoffman he could not remain in the parking lot as it was a restricted area. Referring to a bar across the street, Hoffman replied, "It's too loud out there." Sergeants Serujo and Pena again instructed Hoffman to leave the property. Hoffman stood up and began to slowly walk toward the parking lot exit, which led to the west sidewalk of Valencia Street. Sergeants Serujo and Johnson each walked toward their parked patrol cars, while Sergeant Pena continued watching Hoffman leave the parking lot. Hoffman stopped walking, faced Sergeant Pena directly, and stood in front of the parking lot exit driveway. Sergeant Pena again ordered him to leave the police parking lot. Sergeants Serujo and Johnson re-joined Sergeant Pena and gave Hoffman additional verbal orders to leave the parking lot.

All three sergeants observed that Hoffman's right hand was concealed by the sweatshirt he was wearing. More specifically, he kept placing his right hand under his sweatshirt and into his waistband where there was an observable bulge. The sergeants gave Hoffman multiple verbal commands to take his hand out of his sweatshirt, to which Hoffman refused by stating, "No!" Hoffman continued to slowly walk backwards out of the parking lot, while still directly facing the three sergeants.

Based on Hoffman's hand being concealed under or inside his sweatshirt, his refusal to obey repeated commands, walking slowly backwards but still facing the sergeants, and an unknown object under his sweatshirt, Sergeants Serujo and Pena believed Hoffman may have been armed with a weapon and drew their department-issued service weapons and pointed them at Hoffman.

Sergeant Johnson discharged his O.C. spray directly toward Hoffman's face without noticeable effect while Hoffman simultaneously pulled what Sergeants Serujo and Pena believed to be a black handgun (later determined to be an airsoft/pellet replica gun, but modified to resemble a real firearm) from his waistband area and pointed it directly toward the three sergeants. Immediately fearful for their lives, Sergeants Serujo and Pena fired multiple rounds at Hoffman from their duty service weapons. Hoffman was shot several times and fell to the ground on Valencia Street, just northeast of the open gate of the police parking lot, dropping the replica gun as he fell. Hoffman later died from the gunshot wounds he sustained in the shooting.

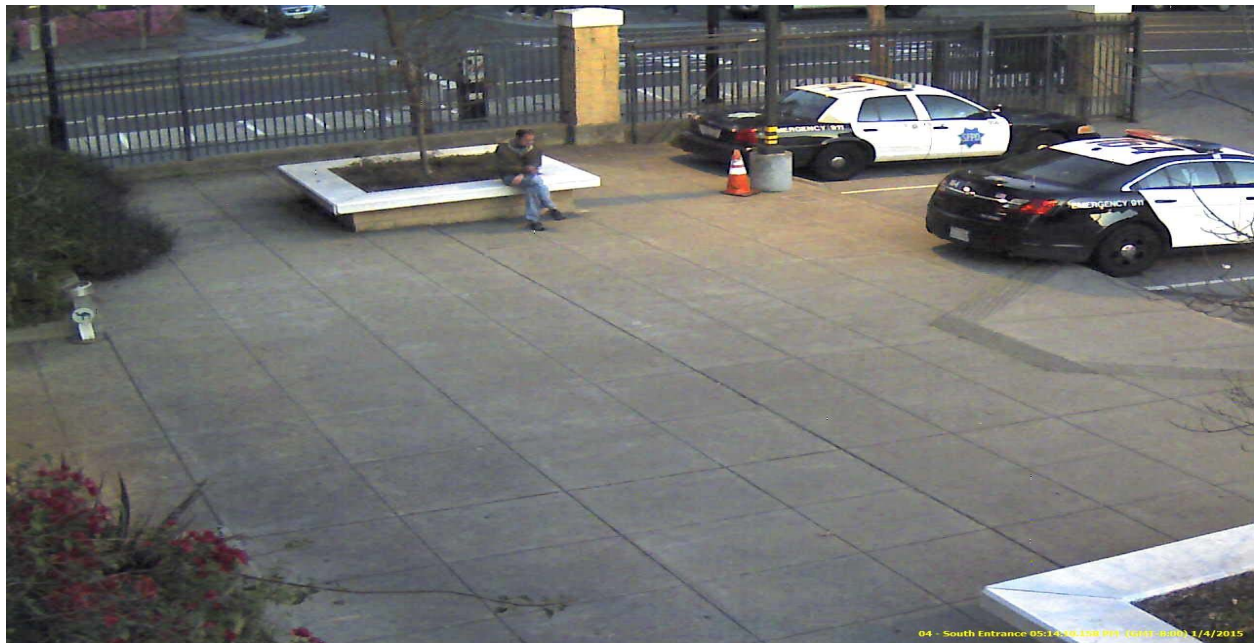
The subsequent investigation revealed that Hoffman's iPhone had three separate notes written in advance and addressed to his father, girlfriend, and the officers who would shoot him. In the note to the officers, Hoffman absolved the officers of any wrongdoing and accepted responsibility for purposely instigating the shooting.

The incident was captured on video by SFPD Mission Station surveillance cameras from two different angles and witnessed by several civilian witnesses and one off duty SFPD officer.

### **A. Sergeants' Statements**

All three sergeants provided individual statements, which were corroborated by video surveillance and multiple civilian eyewitness accounts. The following summarizes the sergeants' statements collectively:

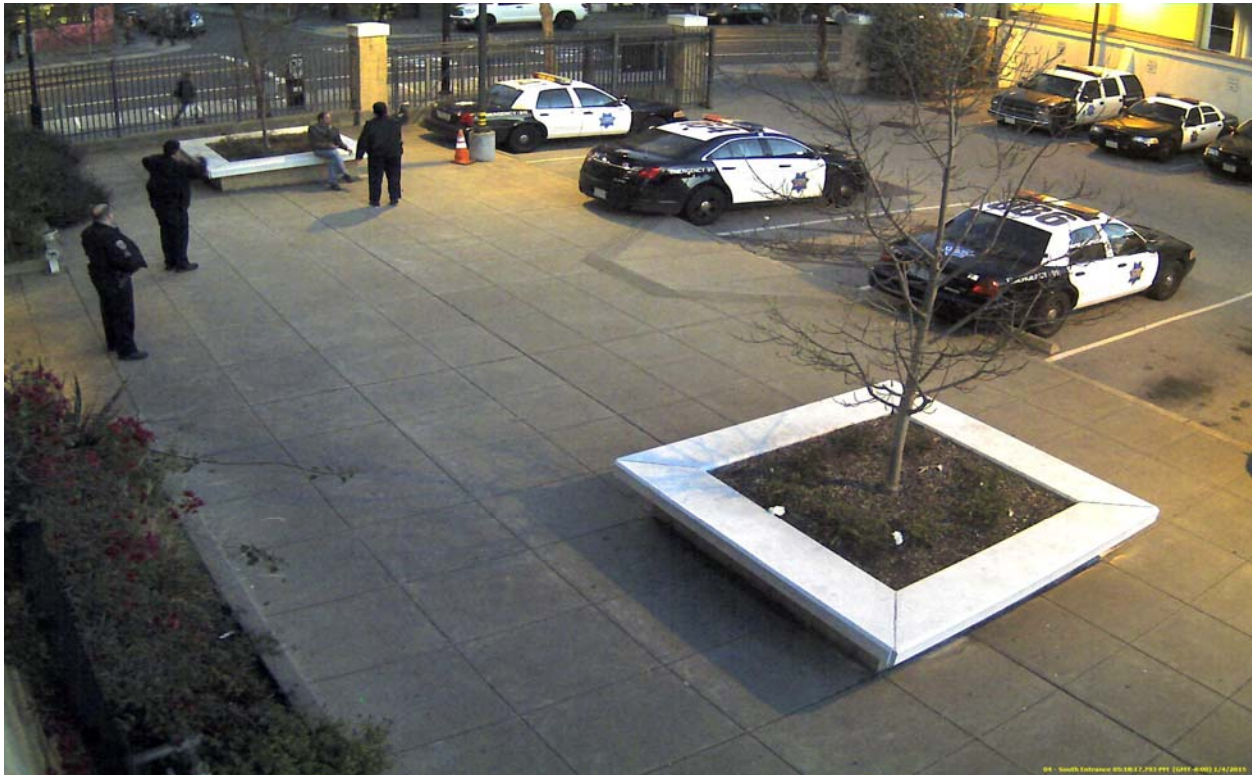
On the date of the incident, January 4, 2015, at approximately 5:18 p.m., Sergeants Serujo, Pena, and Johnson exited the south entrance of the Mission Street Station into the station's parking lot. Upon entering the parking lot, they each observed an unknown, white male seated on a concrete planter box near the exit. (*See Image 2.*)



*Image 2: Hoffman sitting within the restricted area of SFPD's Mission District Station  
(Source: SFPD Security Video)*

Sergeant Pena asked the male, later identified as Hoffman, "What are you doing here?" Hoffman replied, "It's too loud over there." and pointed to a bar across the street with loud music playing. The three sergeants instructed Hoffman, "You can't be here. This is a restricted area and you have to leave. This is a police parking lot." Sergeant Serujo advised Hoffman, "We have signs on the pillar saying, 'Restricted Area.'" (*See Image 3.*)





*Image 3: SFPD sergeants telling Hoffman to leave the restricted area of the Mission District Station property (Source: SFPD Security Video)*

Hoffman eventually stood up to leave and asked, “Can I be arrested for this?” Sergeant Serujo replied, “You can be cited.” Hoffman began to walk slowly away toward the parking lot exit. Sergeants Johnson and Serujo felt Hoffman was complying with their orders to leave the area and continued walking toward the patrol cars in the parking lot. Sergeant Pena continued to monitor Hoffman’s departure.

While walking toward the parking lot exit, Hoffman turned back toward Sergeant Pena and asked why he could not remain. Sergeant Pena remarked, “It’s a police station. That’s why there are police cars.” Hoffman commented that it was not a police station. Sergeant Pena stated, “There’s a big sign out front that answers- will answer all your questions. It’s a big red sign that says, ‘Restricted Area.’” Hoffman stopped walking, squared his stance and faced Sergeant Pena. Hoffman then stood in front of the parking lot exit driveway and stared directly at Sergeant Pena.

Sergeant Pena asked Hoffman, “Do you need help reading? Do you- you know you can’t be here and now you’re blocking the driveway.” Hoffman initially backed away from Sergeant Pena and placed his right hand into the front pocket of his hoodie. Hoffman stopped again and stood directly facing Sergeant Pena. Sergeant Pena could see a bulge near his waistband and ordered Hoffman to take his hand out of his pocket. Hoffman lifted his sweatshirt which exposed a black object inside his waistband which Sergeant Pena believed was a gun.

Sergeants Serujo and Johnson observed the interaction between Sergeant Pena and Hoffman and re-joined Sergeant Pena at the parking lot exit where Hoffman was refusing to obey Sergeant Pena’s commands. (See Image 4.)



*Image 4: SFPD sergeants approaching Hoffman as he reaches into his sweatshirt (Source: SFPD Security Video)*

Believing Hoffman may have a concealed weapon and fearful for their safety, Sergeants Serujo and Pena both un-holstered their duty service weapons and pointed them at Hoffman while yelling, “Let me see your hands! Put your hands up! Show me see your hands!” Hoffman continued to back away from the sergeants onto Valencia Street stating, “No!” (See Images 5 and 6.)



*Image 5: Hoffman with his hand inside his sweatshirt and SFPD sergeants with their guns drawn (Source: SFPD Security Video)*





*Image 6: SFPD sergeants pursuing Hoffman into the street with guns drawn  
(Source: SFPD Security Video)*

Once outside the parking lot, Sergeant Johnson deployed his OC canister (*i.e.*, pepper spray) directly into Hoffman's face with no effect. Directly afterward, Hoffman raised his right hand from under his sweatshirt and pulled from his waistband what appeared to be a handgun and pointed it directly at the sergeants. All three sergeants believed Hoffman's intent was to kill them.

Sergeant Johnson began to transition from his OC spray to his duty firearm while taking cover behind a tree. Both Sergeants Serujo and Pena fired multiple rounds from their duty service weapons at Hoffman. (*See Image 7.*)



*Image 7: SFPD sergeants taking cover on Valencia Street during shooting  
(Source: SFPD Security Video)*



Hoffman fell backwards and the gun dropped out of Hoffman's hand onto the ground at his side. Sergeant Serujo notified SFPD dispatch that shots were fired and a medical response was required. The sergeants immediately secured the scene and provided medical aid to Hoffman, who had visible gunshot wounds. While Sergeant Pena assessed Hoffman's injuries, Hoffman told him, "I'm sorry."

Sergeant Johnson did not discharge his firearm because he saw Hoffman fall to the ground almost immediately after the gunfire exchange with Sergeants Pena and Serujo began. Once Hoffman was on the ground, Sergeant Johnson saw the gun that fell out of Hoffman's hand and was lying next to Hoffman on the sidewalk. Upon closer inspection, the gun appeared to be a pellet gun. (*See Images 8a and 8b.*)

Hoffman was transported to San Francisco General Hospital (SFGH) for emergency medical treatment and was pronounced dead at 7:53 p.m. that same evening.



*Image 8a: CSI photo of the pellet gun Hoffman pulled from his waistband*



*Image 8b: CSI photo of Hoffman's Colt Defender Airsoft BB Gun*

## **B. Other Witness Statements**

On January 4, 2015, at about 5:16 p.m., SFPD Officer Victor Silveira, Star # 1373, exited the south entrance doors to the Mission District Station parking lot. Silveira observed Hoffman standing in the parking lot exit, facing Sergeants Pena, Serujo, and Johnson. Hoffman walked backwards through the open gate toward the west sidewalk of Valencia Street. Silveira could hear and observe Sergeant Pena ordering Hoffman to leave the parking lot and Hoffman refused to comply with orders to show his hands. Silveira saw Sergeant Johnson pull out his OC spray as Hoffman began to manipulate his shirt and waistband. He then heard an individual, whom he believed to be Sergeant Pena, yelling at Hoffman to get his hands out of his waistband.

Silveira walked toward the sergeants and Hoffman to provide additional assistance, but once they walked through the exit gate, his view was obscured. Still walking in the direction of the sergeants, Silveira heard loud commands of "Take your hands out of your pants!" The sound of five to seven simultaneous gun shots followed. Silveira took cover behind a vehicle and ran to assist the sergeants when the shooting ceased. Upon arrival, he found Hoffman lying on his back with Sergeant Serujo rendering first aid. Silveira saw what he believed to be a black handgun lying on the street less than two feet from the Hoffman's hand.

Six civilian eyewitnesses provided accounts, which were generally consistent with the sergeants' statements and video surveillance recordings. According to these witnesses, the sergeants repetitively and loudly commanded Hoffman to "Show your hands" before lethal force was used. Joel T. described Hoffman reaching into the right side of his waistband with his right hand and pulling out a handgun from what appeared to be a tan holster from within his waistband. Many of the witnesses vividly described Hoffman's posturing and verbal refusals to obey the Sergeant's orders. Steve W. described Hoffman as appearing to intentionally face the officers before aggressively bringing his hands together in front of his chest and pointing at the three officers. Steve W. also described watching a gun fall out of Hoffman's hand as he fell to the ground and then hearing the sound of a gun hit the ground with a clattering noise.

### **C. Video and cell phone evidence**

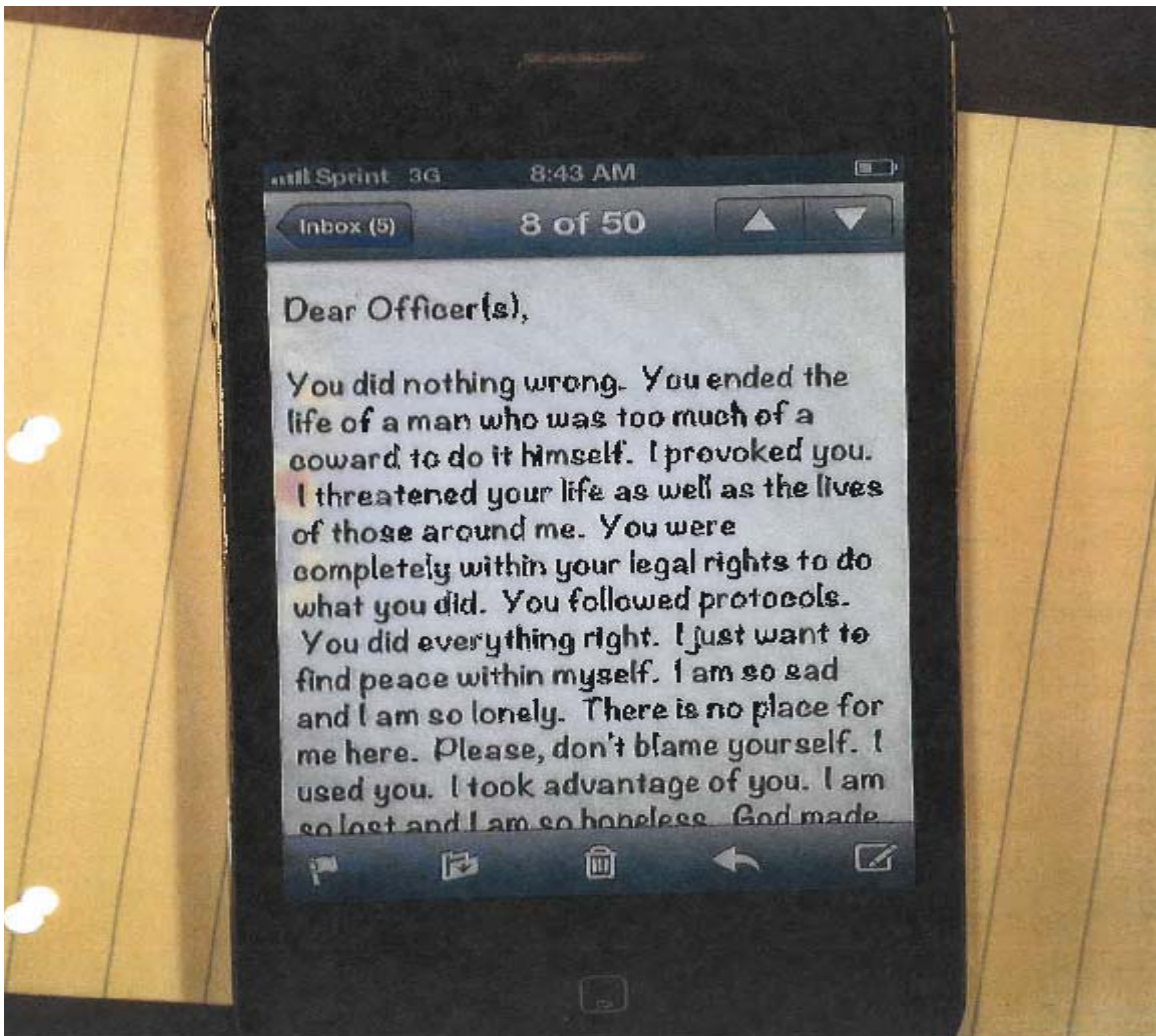
#### **1. Station Surveillance Cameras**

Two surveillance videos (video only) from the SFPD Mission Street Station parking lot documented Hoffman entering the parking lot at 5:07 p.m. and captured the majority of the incident. The video evidence was consistent with the statements of the civilian witnesses, Officer Silveira, and the three sergeants.

#### **2. Hoffman's Cell phone**

A search warrant for the contents of Hoffman's iPhone revealed three suicide notes that were written in advance to Hoffman's father, his girlfriend, and the "Officer(s)." In addition, there were multiple internet searches related to committing suicide in San Francisco and police officer "firearm training on how to kill." The letters to his father and girlfriend detailed his rationale for committing suicide and apologies to his surviving family. In the third letter, specifically addressed to "Officer(s)," Hoffman accepted responsibility for provoking the officers. His letter stated he threatened their lives, absolved them of any responsibility in his death, and stated they acted within their legal authority to protect themselves. (*See Image 9.*)





*Image 9: Letter addressed to "Officer(s)" recovered from Hoffman's iPhone after the shooting*

#### **D. Prior Incidents Involving Hoffman**

During the investigation of this incident, it was discovered that on March 27, 2014, in Norwalk, Connecticut, a Norwalk Police Officer documented an Officer Safety—Be on the Lookout advisory to neighboring counties in Connecticut regarding Hoffman, who, at the time, resided in Danbury, Connecticut. The officer described Hoffman as psychologically unstable after he received text messages from Hoffman asking: "What would happen if a person would point a fake gun at a cop from six feet away?" and "What if the person told the cop he was going to shoot the cop after a count of three?"

Additionally, this investigation revealed that several hours prior to the January 4, 2015, shooting, Hoffman approached multiple SFPD officers at various times and made persistent inquiries about their firearms and involvement in police shootings. Hoffman apparently contacted officers while they were handling calls for service or traffic stops and inquired about their duty weapons, whether they had ever fired their guns, whether they had ever shot anyone, and/or how they felt about shooting someone. With each of these interactions, officers observed Hoffman carefully and noted that he was acting in an unusual manner. Upon arriving on scene to

assist following the shooting, these officers identified Hoffman as the individual they had encountered earlier.

### **E. Medical Examiner's Report**

Between January 5 and 7, 2015, Assistant San Francisco Medical Examiner, Dr. Ellen Moffatt performed an autopsy on Hoffman's body. Dr. Moffatt noted that Hoffman had sustained seven gunshot wounds to his torso, legs, and arms, and determined his cause of death to be from gunshot wounds to his abdomen.

## **III. LEGAL STANDARD**

The question presented is whether Sergeants Serujo and Pena committed any criminal acts in shooting Hoffman. To pursue criminal charges, a prosecutor must be satisfied the evidence will prove beyond a reasonable doubt that no legal justifications existed for the sergeants' actions. Here, the relevant legal inquiry is whether the sergeants acted reasonably in self-defense and/or in defense of others.

California law permits any individual to use deadly force "[w]hen resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person." Cal. Pen. Code, § 197; *see also Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333. Specifically, self-defense or defense of others serves as a complete defense to murder and to voluntary manslaughter so long as the person (1) subjectively believed in the need to resort to force in order to avert a threat of imminent and great bodily injury, and (2) the person's perceptions and actions were objectively reasonable under the circumstances. *See People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *People v. Viramontes* (2001) 93 Cal. App. 4th 1256, 1262.

The subjective prong of the self-defense standard examines the person's belief in the need to use force. The objective component of the self-defense inquiry asks what a reasonable person would have done in their position. *People v. Humphrey* (1996) 13 Cal.4th at 1082-83. The reasonable person is an abstract individual of ordinary mental and physical capacity who is as prudent and careful as any situation would require him or her to be. *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519. In making the determination as to whether an officer's conduct was objectively reasonable, one must consider all the "facts and circumstances . . . in determining whether the defendant acted in a manner in which a reasonable man would act in protecting his own life or bodily safety." *People v. Humphrey* (1996) 13 Cal.4th at 1083. Self-defense law "grants a reasonable margin within which one may err on the side of his own safety, and so long as he is found to have done so reasonably, no abuse of the right of self-defense should be found to have occurred." *People v. Ross* (2007) 155 Cal.App.4th 1033, 1057.

#### IV. LEGAL ANALYSIS

First, as to the subjective component, both Sergeants Pena and Serujo gave accounts which sufficiently articulated their respective beliefs that deadly force was necessary. All three sergeants believed Hoffman was in possession of a real firearm and his possession of that firearm posed an immediate threat to themselves and others. They believed Hoffman pulled a firearm from his waistband and was going to shoot them.

Sergeant Serujo said when he saw the butt of the gun, he thought to himself, “I don’t want to get shot, I don’t want Nick [Sergeant Pena] to get shot. I don’t want Sergeant Johnson to get shot.” Additionally, Sergeant Pena remembered Hoffman “had the stance of pointing, you know, like point just like you’d shoot the gun, you know like a shooter’s stance.” He also thought, “If [the gun] does come out, then I’m gonna die....” Therefore, the subjective prong is satisfied by the officers’ belief that they had to use deadly force to thwart the potentially lethal threat posed by Hoffman and what they believed to be a real gun.

Next, the inquiry turns to whether the officers’ perceptions and actions were objectively reasonable under the circumstances. As summarized above, all three sergeants’ accounts of the circumstances surrounding the shooting of Hoffman are corroborated by civilian and law enforcement witness accounts, as well as the video surveillance recording and other physical evidence.

During the initial encounter with Hoffman, the officers ordered Hoffman to leave the restricted area of the parking lot. At first, Hoffman appeared to comply, but soon began to act confrontational. Next, he placed his hand inside his sweatshirt and reached into his waistband after repeatedly being ordered to stop and show his hands. The sergeants then observed a suspicious bulge and what they believed to be a gun inside Hoffman’s waistband. The gun was black and had the appearance of a real firearm.

Once Hoffman was pulling what appeared to be a real gun from his waistband, Sergeants Pena and Serujo fired multiple shots at Hoffman, striking him in the chest, arms, and legs. Sergeant Johnson also perceived the same threat by Hoffman and was transitioning from OC spray to his firearm at the time of the shooting.

Several eyewitnesses believed that Hoffman had a gun at the time he was shot by the sergeants. They recall seeing the gun fall from his hand after he was shot and heard it hit the ground. Moreover, Hoffman’s conduct prior to this incident (*i.e.*, his interactions with police officers and his note written in advance to the officers) indicate his intent to provoke a shooting by police officers.

Given Hoffman’s actions before the fatal gunshots and all of the other available evidence and statements cited, Sergeants Pena’s and Serujo’s use of deadly force was an objectively reasonable response to the immediate threat they perceived. Accordingly, legal justification exists for the use of deadly force in this incident.



**V. CONCLUSION**

For the reasons stated above, the District Attorney, declines to pursue criminal charges in this matter.