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**MEMORANDUM**

DATE: June 17, 2022  
TO: Jesse Wilson, District Attorney  
FROM: Robert Burns, Assistant District Attorney   
RE: Sage Crawford: Officer Involved Shooting Review

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Introduction

The killing of one human being by another is the very definition of "homicide" in California. Analytically speaking, homicide may be either lawful or unlawful. Homicide is a crime when it is committed unlawfully, as in the case of murder or manslaughter. Homicide is not a crime when it is committed lawfully, when it is justified or excused, as in a case of self-defense or defense of others. All homicides are subject to review by the District Attorney to determine their lawfulness. The shooting death of person by a peace officer, while on duty or otherwise, is no exception.

Role of the District Attorney

The role of a District Attorney in an officer-involved shooting investigation is to review the circumstances of the incident for the sole purpose of determining if there is criminal liability on behalf of any member of law enforcement.

Standard of Review

A District Attorney, as the chief law enforcement official of whichever county they serve, and as the person responsible for deciding what cases to prosecute within their jurisdiction, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function has limits.

The standard to be applied by a District Attorney in deciding whether to file criminal charges is expressed in the Uniform Crime Charging Standards. It provides:

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

### This Incident

On February 4, 2021, Nevada County Deputy Sheriff Caleb Todorean shot and killed Deirdre Eloise Hawkins, otherwise known as Ariella Sage Crawford. This memorandum attempts to document the review, analysis, and conclusion regarding the lawfulness of that shooting. This review does not address the ineffective deployment of the Taser by Deputy Harrison upon the person of Ms. Crawford prior to the shooting.

The review of this incident is drawn from an investigation conducted by the Nevada County District Attorney’s Office. This investigation includes, but is not limited to, 911 calls and dash camera footage from the Nevada County Sheriff’s Office, audio and video recorded interviews of witnesses, and physical evidence.

### Penal Code Sections 196 and 835a: Justifiable Homicide by a Peace Officer

California Penal Code section 196 enumerates the two circumstances when a homicide committed by a peace officer is legally justified. The first is when a death warrant is being executed pursuant to a lawfully imposed death penalty. The second is when the homicide results from a peace officer’s use of force and then only when in compliance with Penal Code section 835a.

It should be noted that section 835a was amended by way of AB 392 in the 2019 legislative session. The effective date of the amendment was January 1, 2020. This analysis is prepared with the amendment, and all its implications, in mind.

Section 835a of the California Penal Code reads, in its entirety:

- (a) The Legislature finds and declares all of the following:
  - (1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

**(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:**

**(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person. (emphasis added)**

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has

objectively reasonable grounds to believe the person is aware of those facts.

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

(d) A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other de-escalation tactics.

(e) For purposes of this section, the following definitions shall apply:

(1) "Deadly force" means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.

(2) A threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(3) "Totality of the circumstances" means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

### Factual Summary

On February 4, 2021, at approximately 1:00 p.m., an individual called 911 to report a woman with two children (later identified as Ms. Crawford) walking in the middle of Alta Sierra Drive, near Gibboney Lane. The caller reported that as she was driving out of her street, she saw a loose dog as well as a woman with two kids. The caller indicated she asked the woman if it was her dog and "she was really weird about it". The caller indicated that the woman said it was not her dog and was "...like grabbing at her kids by the arms...". The caller then said she left to pick up her (child) and when she returned the woman was walking now on Alta Sierra Drive on "...this really curvy road on the wrong, on the same side as traffic, and people had to turn, on the right because of the dog...and this woman like walked out into the street with these kids...during this whole traffic confusion with this dog thing...I couldn't believe she was out there with kids and

um, anyway we watched her go up a driveway and were like okay cool...she must live there, and the woman let her into the house. Well now I drop my son at home and I come back and she is walking up Alta Sierra again with the kids and she has one on her shoulders and one holding her hand. Its just, she's not well."

A second caller called shortly thereafter to report Ms. Crawford and her children came to that second caller's door. The second caller answered the door and, among other things, Ms. Crawford wanted that resident to take her somewhere safe, that "they" were hurting her kids and she (Ms. Crawford) was really scared. Ms. Crawford also asked the resident to take her to Nevada.

Apparently, the first caller had pulled into the driveway of the second callers' home, which the second caller saw, to which the second caller notified dispatch that there may, in fact, be someone following Ms. Crawford. The dispatcher was correct to identify the car in the driveway of the second callers home as belonging to the first caller.

Thereafter, the first caller followed Ms. Crawford and her children down Alta Sierra Dr. for quite some distance.

At 1:12 p.m. Nevada County Sheriff's dispatch center radioed Deputy Toderean to ask about when he might be clear from a call he was then attending to. Dispatch indicated that there was another call pending and that "...I have suspicious circumstances at Alta Sierra and Gibboney". The Deputy acknowledged.

Within one minutes' time, Deputy Haack radioed to dispatch that he would be going that direction as well.

Dispatch radioed Deputy Haack that Ms. Crawford was last seen leaving a residence on Alta Sierra Dr. stating she needed a ride to Nevada and stating that her and her children were in danger. This transmission could be heard by Deputy Toderean and anyone else on that frequency as well.

Approximately two minutes later, at 1:14 p.m., Deputy Toderean radioed that he and Deputy Harrison would be enroute. Deputies Toderean and Harrison were traveling in separate vehicles. Both had cleared from the unrelated call they had just been attending to.

At 1:19 p.m. Deputy Haack could be heard asking dispatch over the radio for clarification on dispatch's last transmission about Ms. Crawford's location. Deputy Haack wanted to know if Ms. Crawford was travelling on the roadway or cross country. Dispatch reported they were travelling on the roadway at last report; that they were still on Alta Sierra but headed toward the Country Club.

At 1:19 p.m., Deputy Harrison radioed that he and Deputy Toderean had arrived in the area.

At 1:22 p.m. Deputy Toderean reported he had located Ms. Crawford and her children at Alta Sierra Dr. and Names Dr.

It should be noted that the phone calls into dispatch from citizens, over phone lines, could not be heard by the deputies in the field. Nevertheless, they are offered to provide context to the radio transmissions between dispatch and the deputies. The only things the deputies knew about the call was what they were told by dispatch or heard other deputies (Haack) being told by dispatch and has been set forth above. Importantly, neither Deputy Harrison nor Deputy Toderean had ever met, contacted, or been acquainted with Ms. Crawford prior to 1:22 p.m. on February 4, 2021.

The contact that occurred between deputies and Ms. Crawford thereafter has been well documented. The sequence of events is best left to the video footage as captured by the dash cam and published previously by the Nevada County Sheriff at <https://www.youtube.com/watch?v=nnXqmMIW1-w>.

### Analysis

Determining whether Deputy Toderean was legally justified in shooting Ms. Crawford, under principles of defense of others, involves a two-step review. First, did Deputy Toderean personally believe it was necessary to shoot Ms. Crawford to protect Deputy Harrison from an imminent threat of death or great bodily injury? And secondly, if so, was Deputy Toderean's belief, based on the totality of the circumstances, objectively reasonable. (See Penal Code section 835a(c)(1) and 835a(c)(1)(A) highlighted above)

When the Deputies responded to Names Dr. they had no idea who they were dealing with or what the circumstances were. The limited information they possessed is what was reported above as relayed by their dispatchers.

Deputies Harrison and Toderean made contact with Ms. Crawford to ensure her mental and physical well-being and to determine if Ms. Crawford needed assistance. Immediately after Deputies Harrison and Toderean exited their patrol vehicles, Ms. Crawford had armed herself with a knife and became verbally aggressive with Deputies Harrison and Toderean. Ms. Crawford continuously moved towards Deputies Harrison and Toderean in an agitated and aggressive manner while holding a knife in her hands. Deputies Harrison and Toderean made their best efforts to maintain a safe distance between themselves and Ms. Crawford. In spite of their efforts to keep a safe distance from Ms. Crawford, Ms. Crawford closed the distance between herself and Deputies Harrison and Toderean by advancing towards them. As a result of Ms. Crawford's advancement towards Deputies Harrison and Toderean, the deputies attempted to retreat. Deputies Toderean and Harrison gave verbal commands to Ms. Crawford to put her knife down on multiple occasions. Ms. Crawford refused all such commands. Deputies Harrison and Toderean used hand gestures to try to get Ms. Crawford to stop advancing towards them. Ms. Crawford continued to disregard all commands. When Ms. Crawford charged Deputy Harrison with her knife still in hand, Deputy Harrison would have been legally justified in the use of deadly force against Ms. Crawford to protect himself from death and/or great bodily injury. Instead, Deputy Harrison deployed

his department issued Taser, a less than lethal means of force, in an effort to subdue Ms. Crawford. Deputy Harrison's Taser was ineffective as it appeared one of the Taser probes did not penetrate Ms. Crawford's person. As a result, Ms. Crawford continued to charge Deputy Harrison with a knife still in her hand, closing the distance between herself and Deputy Harrison. Based on a review of Deputy Harrison's dash cam, it is clear Deputy Harrison took all available evasive actions possible in order to prevent himself from being killed or seriously injured by Ms. Crawford. See photo inset below. Deputy Toderean, witnessing Ms. Crawford quickly advance towards Deputy Harrison with a knife in her hand, fired his service firearm at Ms. Crawford five times, striking and killing Ms. Crawford.

Conclusion

The shooting of Ms. Crawford by Deputy Caleb Toderean was justified within the meaning of California Penal Code section 835a(c)(1)(A). Under the circumstances known to him at the time of this incident, Deputy Toderean had a reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to himself and Deputy Harrison.

No criminal charges will be filed against Deputy Caleb Toderean as a result.

