



# OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NEVADA



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## MEMORANDUM

DATE: September 22, 2023

TO: Jesse Wilson, District Attorney

FROM: Cambria Lisonbee, Assistant District Attorney

RE: Austin Wallace: Officer Involved Shooting January 4, 2023

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### **Introduction**

This memorandum contains a description of the scope and legal conclusion resulting from the Nevada County District Attorney's investigation of the January 4, 2023, officer involved shooting of Austin Wallace. The memorandum includes a description of the relevant evidence, witness interviews, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of Grass Valley Police Officers involved in the shooting.

The shooting of one human being by another is often a criminal offense in California. Analytically speaking, shooting another human being may be either lawful or unlawful. Shooting another person is a crime when it is committed unlawfully, as in the case of assault with a firearm or attempted murder. Shooting another person 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 shootings are subject to review by the District Attorney to determine their lawfulness. The shooting of a 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 January 4, 2023, Grass Valley Police Officers Chris Roberds and Jonathan Brown shot at Austin Wallace, who sustained a gunshot wound to the abdomen as a result. This memorandum attempts to document the review, analysis, and conclusion regarding the lawfulness of that shooting.

The review of this incident is drawn from an investigation conducted by the Nevada County District Attorney's Office in conjunction with the Nevada County Officer Involved Critical Incident Protocol. This investigation includes but is not limited to; interviews of all involved officers, interviews of other first responders who were present at the scene, a review of all body worn video, patrol car video footage, physical evidence, and interviews with residents in the area.

### **Penal Code Section 835a: Justifiable Physical Force by a Peace Officer**

California Penal Code Section 835a enumerates the circumstances when physical force by a peace officer is justified under the law. 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 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.

(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 January 4, 2023, Officer Hooper was investigating a report of theft in the City of Grass Valley. While clearing the scene and after talking with the reporting party, J. Doe, J. Doe observed Mr. Wallace leave the detached garage and walk towards the main residence. J. Doe notified Officer Hooper. J. Doe and Officer Hooper began to search the property for Mr. Wallace. While they searched, they heard noises as if someone was jumping a fence near the main structure on French Avenue. Officer Hooper went back to his patrol vehicle to conduct an area search on French Avenue and, while walking to his vehicle, heard a gunshot. Officer Hooper located J. Doe along French Avenue who advised he had been shot in the abdomen by Mr. Wallace with a rubber projectile. It was later found to be an actual bullet, not a rubber projectile. Officer Hooper requested additional units respond to the scene. Nevada County Sheriff’s Deputies, Grass Valley Police Officers and CHP Officers responded to the scene.

While CHP Officer Kostik was holding a perimeter position near the intersection of French Ave. and Jenkins Street, Mr. Wallace emerged from the front yard of 410 French Ave. and fired one round in the direction of Officer Kostik. Officer Kostik was in full CHP uniform and alongside a marked CHP vehicle. GVPD Officer Perry witnessed Mr. Wallace shoot towards Officer Kostik.

Officer Brown, Detective Bird and Detective Roberds made their way to the area where Mr. Wallace fled, ran across the street, and into a vacant lot behind a house at 417 French Ave. All four officers chased after Mr. Wallace. Mr. Wallace fired a shot at the officers at which time Detective Roberds and Officer Brown fired at Mr. Wallace, striking him once in the torso. Detective Bird attempted to shoot as well, however, his firearm jammed. In addition to being struck once in the torso, one of the fired bullets struck Mr. Wallace’s backpack. Mr. Wallace surrendered at this time, was detained in handcuffs, and a firearm was located in close proximity to his person. The firearm was a .22 caliber revolver with 4 spent shell casings and 2 live rounds within the firearm.

After Mr. Wallace was taken into custody, he told the officers to “just kill me” as well as “I’m going to make you kill me”.

J. Doe was taken to a local hospital where a .22 caliber round was retrieved from his abdomen. J. Doe survived his injuries.

### **Analysis**

Determining whether Officers Roberds or Brown were legally justified in shooting Mr. Wallace, under principles of defense of others, involves a two-step review. First, did the officers personally believe it was necessary to shoot Mr. Wallace to protect J. Doe and/or others from imminent threat of death or great bodily injury? And secondly, if so, was the officer’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 Officers responded to the area of French Avenue, they were aware that the Mr. Wallace had already shot one individual and that he was armed with a gun. This information was broadcast via the radio prior to their arrival. Under the circumstances, they knew they were dealing with a dangerous individual.

After Detective Bird, Detective Roberds, and Officer Brown arrived on scene, they heard a gunshot- this was Mr. Wallace shooting at Officer Kostik. Officers Roberds, Bird, and Brown were not aware at this time if anyone else had been shot. Officers Bird, Roberds, and Brown, followed the suspect behind a house where the suspect turned and shot at them. Both Detective Roberds and Officer Brown returned fire, the defendant was struck, and was thereafter detained.

The entire incident occurred during daylight hours in a residential neighborhood.

### **Conclusion**

The shooting of Mr. Wallace by Grass Valley Police Officers Chris Roberds and Jonathan Brown was justified within the meaning of California Penal Code section 835a(c)(1)(A). Under the circumstances known to them at the time of this incident, the officers had a reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to themselves and any other residents in the area, including J. Doe. Mr. Wallace had already shot J. Doe, causing injury, and then continued to shoot at police officers who arrived on scene to assist with the incident. Mr. Wallace’s actions displayed a lack of regard for the lives of others.

Based on the totality of the circumstances and pursuant to Section 835a of the California Penal Code, no criminal charges will be filed against Grass Valley Police Officers Roberds or Brown.