



**Office of the District Attorney
Alameda County**

Nancy E. O'Malley
District Attorney
alcoda.org

March 28, 2022

Chief Chris Costigan
California Highway Patrol
Golden Gate Division
1551 Benicia Road
Vallejo, CA 94591

Dear Chief Costigan:

Enclosed is the District Attorney's Office Report on the Officer Involved Shooting death of Erik Salgado which occurred on June 6, 2020.

I have reviewed the report and agree with the conclusion that the evidence does not justify criminal charges against any law enforcement agency.

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 calendar days after March 28, 2022.

Very truly yours,

Nancy E. O'Malley

Nancy E. O'Malley
District Attorney



Office of the District Attorney Alameda County

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Enclosed is the District Attorney's Final Report on the fatal shooting of Erik Salgado which occurred on June 6, 2020. I have thoroughly reviewed the Report. I concur in the conclusions that the evidence does not support criminal charges being filed against any law enforcement official related to this incident.

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

ERIK SALGADO



NANCY E. O'MALLEY
District Attorney

Officer Involved Shooting Team

March 28, 2022

INVESTIGATION OF THE SHOOTING DEATH OF ERIK SALGADO

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

SCOPE OF THE INVESTIGATION:

On June 6, 2020, at approximately 10:45 p.m., California Highway Patrol Sergeant Richard Henderson, and Officers Donald Saputa and Eric Hulbert shot Erik Salgado and Witness #1. Salgado died on scene from his injuries. Witness #1 was transported to a local hospital and survived her injuries. The incident occurred on Cherry Street between 96th and 98th Avenues within the City of Oakland, California.

On June 7, 2020, at approximately 11:00 p.m., the on-call OIS Team was notified that an officer involved shooting had occurred. The OIS Team initially met with Oakland Police detectives at the Oakland Police Department and then went to the scene of the incident. The OIS Team later participated in the interviews of Sergeant Henderson and Officers Saputa and Hulbert.

As part of the investigation, the OIS Team reviewed, among other things, police reports, dispatch communication recordings and records, 911 recordings, evidence technician reports, diagrams, crime lab reports, photographs, video recordings and recorded statements. The OIS Team also reviewed the Coroner Investigator's Report, Autopsy Protocol, the Toxicology Report relating to

Mr. Salgado, and the conclusions of Michael Braun, an expert in accident reconstruction. There is no video from CHP body worn cameras because none of the officers involved in this incident were wearing, nor were they required, to wear body worn cameras. In addition, none of the CHP vehicles on scene were equipped with working video recording systems.

FACTUAL SUMMARY:

On June 6, 2020, officers of the California Highway Patrol were conducting a follow-up investigation of a freeway shooting that occurred on Interstate 580, in the City of Oakland, a few days prior. The officers had developed investigative leads that the suspect was driving around East Oakland and was considered armed and dangerous. The officers had no information and there is no evidence that the decedent in this incident was involved in the freeway shooting days prior. Nor did the involved officers have any information that the decedent was himself considered armed and dangerous. On the date in question, the officers were driving three vehicles for their investigative operation: two undercover Dodge Ram pickup trucks, one silver and one dark gray, both equipped with lights and siren, as well as a fully marked California Highway Patrol K-9 vehicle. The dark gray pickup was driven by Officer Jared Mountour, Sergeant Richard Henderson was the front passenger and Officer Donald Saputa was located in the rear passenger seat behind Sergeant Henderson. The silver Dodge pickup truck was driven by Officer Eric Hulbert. Officer Greg Ramos was located in the front passenger seat and Officer Michael Diehl was seated behind Officer Ramos in the rear of the silver pickup. The marked patrol vehicle was driven by Officer Nate Kirby. Investigator Taylor Case was located in the front passenger seat with Officer Kirby and Officer Kirby's K-9 partner was in the back of the vehicle. The marked patrol car was designated to make traffic enforcement stops.

While proactively searching for the suspect vehicle, a red Dodge Challenger Hellcat (referred hereafter as the "Challenger" or the "Hellcat") was observed in the vicinity of 90th Avenue and Bancroft Avenue, driving recklessly at a high rate of speed.¹ The officers had prior knowledge that during the looting and violence during the week of June 1, 2020, over 70 Dodge vehicles were stolen from a dealership in San Leandro, including several Dodge Challenger Hellcats. At least one of the stolen Hellcats was known to be red in color.

After obtaining the license plate of the red Hellcat, an officer queried the license plate, 7JPM952, and learned that the plate had been reported as lost or stolen. With this information in mind, the officers concluded that the Hellcat was possibly stolen and decided to initiate a traffic enforcement stop with the marked CHP K-9 patrol car.

The stolen red Hellcat (suspect vehicle) drove eastbound onto Cherry Street from 94th Avenue. The officers in the marked CHP unit were inadvertently and erroneously informed that the suspect vehicle was traveling westbound on Cherry Street instead of the actual eastbound direction.

¹ A Dodge Challenger is a muscle car also known as the Hellcat. Car & Driver Magazine describes it as: "The name Hellcat conjures up images of tire smoke and drag racing, and this ultra-powerful version of the Dodge Challenger muscle car lives up to those expectations." (Stafford, 2020)

Both the marked CHP car and the suspect vehicle approached the 9600 block of Cherry Street and were facing each other in opposite directions. Officer Kirby and Investigator Case, who were in the marked vehicle, activated their code three lights and take down lights to initiate an enforcement stop. At the same time, CHP Officers Mountour and Saputa, along with Sergeant Henderson, who were in the dark gray Dodge pickup truck, positioned their vehicle behind and moving in the same direction as the Hellcat, eastbound onto the 9600 block of Cherry Street. The silver Dodge pickup truck was driven by Officer Hulbert approached the area in the opposite direction of the Hellcat, westbound onto the 9600 block of Cherry Street, to assist in the enforcement action by the marked patrol car.

Officer Hulbert and Investigator Case from the marked patrol car and Officers Hulbert, Ramos and Diehl from the silver pickup were exiting or about to exit their respective vehicles to contact the driver of the Hellcat on the 9600 block of Cherry Street. Of these five officers, four were dressed in plain clothes wearing tactical vests marked with police identifiers. The other officer, the driver of the marked car, was wearing a full CHP duty uniform.

Suddenly the Hellcat reversed its direction, striking the dark gray Dodge truck that was previously occupied by Officer Mountour, Officer Saputa and Sergeant Henderson. They were dressed in plain clothes and wearing their tactical vests with police identifiers. They identified themselves as police officers and ordered the driver to stop, but the driver of the Hellcat changed directions again and accelerated forward, striking the marked CHP patrol car and the silver Dodge truck. At this point officers said they believed the suspect vehicle had struck one of the officers on scene, pinning him underneath the suspect vehicle.

Officer Saputa and Sergeant Henderson fired their rifles and Officer Hulbert fired his pistol towards the suspect vehicle striking the driver, Erik Salgado, and the right front passenger referred to as Witness #1.

Salgado sustained 16 rifle wounds to his torso and upper extremities. Salgado succumbed to his injuries at the scene. Witness #1 sustained gunshot wounds to her stomach, leg and arm. She was transported to Highland Hospital where she underwent surgery and survived her injuries.

While recovering in the hospital, investigators from the Oakland Police Department (OPD) interviewed Witness #1. During the recorded interview, Witness #1's voice seemed very low and slow. It also appeared that Witness #1 nodded off on several occasions during the interview and at one point sounded as though she was vomiting. Witness #1 said that she was in pain and felt dizzy.

Witness #1 explained that she was in the passenger seat in the car with the deceased suspect Erik Salgado. Witness #1 said that she was with Salgado the day before this incident. Witness #1 asked Salgado where he got the car, but he refused to tell her. Witness #1 said that they slept in the car at Salgado's aunt's home on 96th Avenue and Cherry Street in the City of Oakland. At one point during her time at this location, Witness #1 tried to leave the car, but Salgado woke up and asked where she was going. Witness #1 explained she was going to her home, but Salgado told her "No you are not going nowhere" so she said she laid back down because she was "scared and traumatized by him." Witness #1 said she tried to leave the car, but he would refuse to let her go.

Witness #1 said that he was driving crazy, going fast down city streets, but she does not know how fast he was driving.

Witness #1 said at one point Salgado was driving fast down Cherry Street towards 98th Avenue and that is when the police lights came on, including a bright spotlight. Salgado tried to reverse but there was another car behind him. Salgado tried to drive straight and hit the police car. Witness #1 said that she only remembers hitting a police car once. Witness #1 said she panicked and wanted to get out of the car. She told Salgado to stop. Witness #1 said she asked Salgado “What are you doing?” “They are going to shoot you or something.” Witness #1 later clarified in the interview that she meant that the police were going to shoot at them because Salgado hit the police car. Witness #1 said she was scared, so she leaned back in the seat and Salgado tried to fit in between the side of a truck and the police car. Witness #1 did not see the police car after that. Witness #1 said she heard gunshots and pieces inside of the car were breaking off. Witness #1 said that she was scared she would be shot and die. Witness #1 said she did not see any people outside, only the police car. Witness #1 said she did not see who was shooting at them. Witness #1 said Salgado’s foot was on the gas and the engine was revving. She stated that she put the car in park and that is when the revving stopped. Witness #1 said she was able to ultimately turn the car off when directed to by the police. Witness #1 said the police told her to get out of the car. She complied and was laying out on the concrete screaming because she thought she was going to die.

Witness #1 said that there was a lot of smoke while she was inside the car and she didn’t know if it was from the airbag, or from the tires spinning. Witness #1 said that there was so much smoke that she could not really see. She said she put her head down and she started hearing gunshots. Witness #1 said that she did not think Salgado had any firearms that night.

The OIS Team has made several attempts to reinterview Witness #1 through her attorneys after she recovered from her injuries. Witness #1’s attorneys have refused to make her available for an interview.

Witness #1 is the only civilian witness who has come forward and described the details of the incident. The Oakland Police and members of the OIS Team canvassed the area of the shooting on multiple occasions to locate additional witnesses, but no other witnesses have been identified.

As previously noted, none of the involved officers were wearing body worn cameras.

POLICE OFFICER INTERVIEWS

California Highway Patrol Sergeant: Richard Henderson

Sergeant Richard Henderson was interviewed by members of the OIS Team at the California Highway Patrol Office in the City of Oakland on June 8, 2020. Sergeant Henderson has been a member of the Highway Patrol for seven years and 11 months. Sergeant Henderson is currently the Supervisor of the Solano County Auto Theft Task Force assigned to the Golden Gate Division Investigative Services Unit of the California Highway Patrol. On the night of this incident, Sergeant Henderson was dressed in plain clothes, wearing a vest over his clothing. The vest had the word “POLICE” written on a large patch on both the front and on the back in large letters.

Sergeant Henderson also was wearing his gold CHP issued badge on a chain around his neck outside the vest. Sergeant Henderson was not wearing a body worn camera.

Sergeant Henderson said on the night of the incident, he was on a special assignment at the Emergency Operations Center in the City of Oakland for an ongoing protest. According to Sergeant Henderson, once that assignment was complete, he and his team were assigned to locate and attempt to seize a vehicle involved in a freeway shooting that took place the previous day and to look for any of the vehicles stolen from a San Leandro Dodge dealership earlier in the week. Sergeant Henderson was armed with his issued .40 caliber pistol and 5.56 caliber patrol rifle. The pistol was kept on his person, the rifle on a single point sling in the unmarked truck. Sergeant Henderson also possessed a less lethal shotgun stored in the gun box in the bed of the truck.

Sergeant Henderson said once the protests were over and they were released from the Emergency Operations Center, he briefed his team on the rest of the assignment. Sergeant Henderson described briefing the other officers about the facts surrounding the shooting the prior day. He said he also briefed officers on the stolen vehicles from the San Leandro Dodge dealership. Sergeant Henderson described he also specifically informed them of more than one incident involving the burglaries of gun stores using these stolen vehicles, as well as threats made to police officers. Sergeant Henderson also said:

“I briefed that, you know, we would not engage in any vehicle pursuits with our unmarked vehicle. Um, and that we would make every effort for any traffic stops be conducted by the marked vehicle and except in the most exigent of circumstances. Um, I had briefed that we would not box in any vehicles because of the fact that they were stolen, driven by gang members, um, we knew there was a good chance they would ram us if we tried to do that.”

On the night of the incident, Sergeant Henderson said that he was a passenger in a dark gray Dodge Ram pickup truck. The truck was driven by Officer Jared Montour. Sergeant Henderson said he was in the right front seat of the truck and Officer Saputa was directly behind him. Sergeant Henderson said the truck is equipped with a police radio, siren, flashing “wig-wag” headlights, an internal single solid red light, and an internal flashing blue light. In the front grill were additional flashing red and blue lights and flashing blue lights across the rear tailgate of the truck.

Sergeant Henderson said that they were driving southbound on 90th Avenue approaching Bancroft Avenue when he heard an engine revving very loudly, tires squealing, and saw a red sedan go through the intersection of Bancroft Avenue and 90th Avenue. Sergeant Henderson said he instructed Officer Montour to follow. Sergeant Henderson said Officer Montour went through the intersection without using the police lights or siren so as not to give away their identity as law enforcement. Sergeant Henderson said the red vehicle turned southbound onto 94th Avenue and they followed from a distance. Sergeant Henderson described the vehicle as driving about five to 10 miles per hour at this point. Sergeant Henderson caught up with the vehicle and he was able to read the license plate on the vehicle so that a computer check could be run on the plate. Sergeant Henderson read the plate to the other units working with him that had mobile data terminals and learned that the plate had been reported as a lost or stolen rear plate. Sergeant Henderson said at

that point the car was still moving slowly south on 94th Avenue and he asked for the marked K9 police car that was working with his team to move into the area to attempt a traffic stop. Sergeant Henderson said he was providing updates to the other units as his vehicle continued to follow the red sedan. Sergeant Henderson said that the red sedan made an abrupt left turn onto Cherry Street. Sergeant Henderson said there was confusion about the direction of travel for the car and the initial direction was given as westbound on Cherry Street. Those directions were immediately updated to describe eastbound on Cherry Street.

Sergeant Henderson said they turned onto eastbound Cherry Street and followed from 35 to 45 yards behind the red sedan for about a block until it abruptly stopped and turned its lights off. Sergeant Henderson estimated Cherry Street to be approximately the width of four cars plus three to four feet from the north curb line to the south curb line. Sergeant Henderson further described that there were minimal streetlights on the street, and it was dark on the street. Sergeant Henderson said at the same time he saw the headlights of the marked K9 police car turn onto Cherry Street travelling westbound. Sergeant Henderson said the red sedan's engine accelerated and the red car lurched forward in the direction of the K9 police car and stopped less than half a car length from the patrol car. Sergeant Henderson said the lights of the red car came on at that point. Sergeant Henderson said he put out a broadcast to get behind the red car but the patrol car's police lights came on. Sergeant Henderson said the red car went into reverse and accelerated rapidly and slammed on the breaks but struck the front of the police truck. Sergeant Henderson said that Officer Montour had to put the dark gray pickup truck in reverse to get out of the way. Sergeant Henderson said next the red car drove forward and rammed the K9 police car and at that point Sergeant Henderson and Officer Saputa yelled for Officer Montour to close the distance between the truck and the patrol car. Sergeant Henderson explained, at that point they were committed, so he wanted to pin the vehicle by putting the front bumper of the truck on the rear bumper of the car and hoped that the K9 police car would put his car bumpers on the front bumper of the red car, before the red car could get out and injure anyone. Sergeant Henderson, later in the interview said, "Once I saw him ram the K9 police car, I knew he was either intent on, intentionally hurting us or he was intent on and comfortable with hurting us to escape." Sergeant Henderson said the effort to pin the red sedan failed because the red sedan was able to push past the patrol car.

Sergeant Henderson said he heard Officer Saputa say "I'm getting out" and he and Officer Saputa both got out on the passenger side of the dark gray Dodge truck into the street. Sergeant Henderson said that he saw Investigator Case open the passenger door in the K9 police car and get out on the passenger side of the car. Sergeant Henderson said he saw the K9 police car driver's door open and saw the red vehicle accelerate towards the open door, hit the door, and push past the K9 police car. Sergeant Henderson said that beyond the K9 police car and the red car, he saw who he believed to be Officer Hulbert standing behind the driver's door of a silver Dodge Ram unmarked CHP pickup truck. Sergeant Henderson said at that point he could not fire his weapon because the officer was in the line of fire. So, he screamed for Officer Saputa to fire. Sergeant Henderson said he knew Officer Saputa had run to the south curb and was running forward to try and get a possible shot on the driver of the vehicle. Sergeant Henderson said he kept running forward to close the distance with the suspect vehicle. Sergeant Henderson said the suspect vehicle struck a parked car in front of Officer Hulbert's silver pickup truck, and the suspect vehicle went up in the air and that

was the last time Sergeant Henderson saw Officer Hulbert. Sergeant Henderson said that he was five to 10 feet behind the suspect vehicle when it came back down. Sergeant Henderson said he could hear the driver manipulating the throttle from open to close, over and over, and the car was slowly making its way further between a parked car and Officer Hulbert's truck. Sergeant Henderson said he believed Officer Hulbert was under the car. Sergeant Henderson said that he got close enough that he knew he would not hit Officer Hulbert or anyone else and from the rear of the suspect vehicle, he took aim where he thought the driver's head was; and he started firing as fast as he could. Sergeant Henderson said he ran out of ammunition after about five seconds and he reloaded. Sergeant Henderson said that as he was reloading, he could hear Officer Saputa and someone else firing. Sergeant Henderson said he also heard the engine redline (reach maximum revolutions per minute). Sergeant Henderson said he raised his weapon again but at that point he believed the suspect was incapacitated and firing additional rounds would have no effect.

Sergeant Henderson said that he began yelling for "Eric" (Officer Hulbert). Sergeant Henderson then heard a female voice from the vehicle say, "I'm shot in the stomach." Sergeant Henderson said the rear tires were still spinning at that time. Sergeant Henderson said the engine stopped and he could hear Officer Saputa give commands to the female inside the car. Sergeant Henderson said that he had Officer Montour call for an ambulance for Officer Hulbert, who he believed was under the car and for the woman who had been shot and he and others cleared the car.

California Highway Patrol Officer: Donald Saputa

Officer Donald Saputa was interviewed by members of the OIS Team at the California Highway Patrol Office in the City of Oakland on June 8, 2020. Officer Saputa has been a member of the Highway Patrol for 11 years. Officer Saputa is currently part of the Investigative Services Unit of the Highway Patrol. On the night of this incident, Officer Saputa was dressed in plain clothes but was wearing a vest over his clothing that had his badge number, and a cloth CHP badge on the front and on the back which had, in large letters, the word "POLICE Major Crimes Task Force" written on it. Officer Saputa was assigned a body worn camera by Fremont Police Department. Officer Saputa explained that his regular assignment is with a Task Force that operates out of Fremont Police Department and is required to wear the body worn camera only when he is involved in Task Force operations. Officer Saputa further explained that he was not working as part of the Task Force during this incident, therefore, he did not wear the body worn camera.

Officer Saputa was armed with an AR-15 rifle which had one magazine loaded, and he carried two magazines on his vest. Each of the magazines were loaded with 28 rounds of .223 caliber ammunition. In addition, Officer Saputa carried a Smith and Wesson M&P .40 pistol. He had one magazine loaded in the pistol, plus one additional round in the chamber. He also carried two additional 15 round magazines of .40 caliber ammunition for the pistol on his vest.

Officer Saputa was asked about the CHP use of force policy specifically as it pertains to shooting at a vehicle. He said they are allowed to shoot vehicles in immediate defense of life or if they believe that a vehicle is in the process of currently committing assault with a deadly weapon, which would result in great bodily injury or death.

Officer Saputa explained that on the night of this incident, the first half of his shift was spent providing surveillance on the political and civil unrest occurring within the City of Oakland. The second half of the night was to try and locate a vehicle used in a freeway shooting from the day before and locate any vehicles stolen from a San Leandro Dodge dealership earlier in the week.

Officer Saputa explained that on the night of the incident he was in the right rear seat of a dark gray Dodge Ram pickup truck. He said that the truck was driven by Officer Jared Montour. Sergeant Richard Henderson was seated directly in front of Officer Saputa in the right front seat. Officer Saputa described the truck as unmarked, but it did have a siren, a single red visor light, and other discrete emergency lights. The vehicle was not equipped with a dash mounted camera.

Officer Saputa said that they were at an intersection in East Oakland when he noted a red Dodge Hellcat make a right turn directly in front of their vehicle. According to Officer Saputa, the Hellcat was driving on the wrong side of the road and ran a red light. Officer Saputa said they attempted to catch up to the vehicle which was travelling above the speed limit. They were able to get behind the vehicle and obtain a view of the license plate. Sergeant Henderson was able to broadcast the plate so other units with mobile computers could run the plate. The plate was run, and it came back as a lost or stolen license plate. Officer Saputa said that at this point he believed that the Hellcat may have been one of the Dodge vehicles stolen from San Leandro, disguised with a lost or stolen license plate. Officer Saputa said they continued to follow the vehicle which was traveling on the wrong side of the road. Officer Saputa said eventually the Hellcat made a left and was travelling eastbound on Cherry Street. The Hellcat continued eastbound on Cherry Street and then stopped in the middle of the block and turned off all its lights. Officer Saputa said as they turned onto Cherry Street, the lights of the car came back on and the Hellcat continued rapidly eastbound on Cherry Street and ran a stop sign. Officer Saputa also said that as they turned eastbound onto Cherry Street, Sergeant Henderson said over the radio they were travelling westbound on Cherry Street.

Officer Saputa explained at the same time, the Hellcat continued eastbound on Cherry Street. Officer Nate Kirby, in a marked K-9 police car, advised he was westbound on Cherry Street driving towards the Hellcat. Officer Saputa said as the Hellcat approached Officer Kirby's patrol car, it stopped in the middle of the roadway and Officer Kirby activated his emergency lights and his white "takedown light." Officer Saputa explained with the takedown light on, everything in the K-9 police car and beyond was backlit so he could not see beyond the K-9 police car. Officer Saputa saw the reverse lights on the Hellcat come on and the car began to back up at a high rate of speed and make contact with the front of the truck that Officer Saputa was in. Officer Saputa said that Officer Montour activated the emergency lights in the truck and the Hellcat accelerated at a high rate of speed and rammed Officer Kirby's patrol car. Officer Saputa said he told Officer Montour to try to close the distance to try and prevent the Hellcat from fleeing. Officer Saputa explained that he is a trained negotiator, so if they contained the vehicle it would give them the opportunity to negotiate or use other force options like less lethal or the K-9 instead of resorting to the use of firearms. Officer Saputa said that Officer Montour was able to make contact with the Hellcat and had it relatively jammed between the patrol car and their truck.

Officer Saputa said he got out of the truck with his rifle and gave commands to the driver to put his hands up. Officer Saputa explained that the engine of the Hellcat was accelerating, but the car was not going anywhere. Officer Saputa described that the wheels of the car were spinning in drive and the car was moving towards the south side of the street. Officer Saputa said that the Hellcat was able to get free and drive forward hitting the patrol car as it was trying to maneuver around it. Officer Saputa later described this as "I noticed like it wasn't as much wide-open throttle, it was more like trying to maneuver the car into this eastbound lane towards the south like basically trying to maneuver around the K-9 police car." Officer Saputa said he continued to give commands "Police, stop the vehicle" and believes the passenger side window was down, but the driver did not respond to the commands.

Officer Saputa said he saw the silver Dodge truck stopped behind the patrol car and saw those investigators get out of the truck to assist. Officer Saputa said that the silver truck stopped, leaving about five feet between the truck and cars parked on the roadway.

Officer Saputa said he specifically remembers seeing Officer Michael Diehl in the middle of the road next to the closed driver's door of the silver pickup. Officer Saputa explained that the headlights of the Hellcat were illuminating Officer Diehl and the silver pickup truck. Officer Saputa said that Officer Diehl was standing in the roadway when the Hellcat began to rev its engine and then accelerated at a high rate of speed. Officer Saputa estimated the speed at 40 to 50 mph in a short distance. Officer Saputa said when the Hellcat hit the other cars, it became airborne and slammed back down on the ground. Officer Saputa was asked to explain what he meant by other cars and he said "I mean, I couldn't tell if it hit the K-9 police car, but I know for certain that it slammed into this parked car and the next parked car. Officer Saputa said he discharged his weapon because he felt that Officer Diehl was going to be run over and killed and the only way to stop that from happening was to discharge his rifle towards the driver. Saputa said that he fired his weapon "because I figured if I could shoot and incapacitate the driver, it might stop his action of accelerating and reduce the amount of impact that Officer Diehl would suffer, uh, hopefully reducing the injury or reducing the possibility that he would be killed." Officer Saputa said he fired his weapon initially from 40 feet away, until the vehicle crashed into parked cars approximately 60 to 70 feet away.

Officer Saputa said that when the suspect vehicle crashed, it had a wide-open throttle and the tires were spinning, and the car appeared to be stuck where it was. Officer Saputa said he did not know where Officer Diehl was, but noticed Officer Hulbert was standing on the sidewalk further ahead, so he moved to where Officer Hulbert was located. From Officer Hulbert's position, Officer Saputa said he could see the driver was incapacitated and that there was a passenger in the car. Officer Saputa said at that point he and Officer Hulbert moved back. Officer Saputa gave commands to the passenger. Officer Saputa said that as the passenger was following his commands to get out of the Hellcat, the passenger told him that she had been shot.²

² Early press reports had indicated Witness #1 was pregnant at the time of the incident. This later turned out to be false based on statements made by Witness #1 at the scene of the incident and later during an interview with law enforcement.

Officer Saputa said that Sergeant Henderson told everyone to check themselves and reload if needed. According to Officer Saputa, Sergeant Henderson was yelling repeatedly for Officer Hulbert until he advised Sergeant Henderson that Officer Hulbert was with him.

California Highway Patrol Officer: Eric Hulbert

Officer Eric Hulbert was interviewed by members of the OIS Team at the California Highway Patrol Office in the City of Oakland on June 8, 2020. Officer Hulbert has been a member of the Highway Patrol for five and one-half years. Officer Hulbert is currently part of the Investigative Services Unit of the Highway Patrol. Officer Hulbert's regular supervisor is Sergeant Richard Henderson. On the night of this incident, Officer Hulbert was dressed in plain clothes, but was wearing a vest over his clothing that had his badge number, and a cloth CHP badge on the front and on the back that had, in large letters, the word "POLICE" written on a large patch. Officer Hulbert was not assigned a body worn camera.

Officer Hulbert was asked to explain the California Highway Patrol use of force policy as it pertains to shooting at vehicles. Officer Hulbert said "we are allowed to use the reasonable force necessary to either prevent escape, affect an arrest, overcome resistance and prevent injury to... or self-defense either to ourselves or others. A moving vehicle, we're not allowed to put ourselves into the line of danger, but I mean, if we're there, we're allowed to shoot into them to defend ourselves or others."

Officer Hulbert explained on the night of the incident, he was part of the unit that was at the Traffic Management Center in Oakland providing security for the building during the protest. Officer Hulbert said once the protest ended, he and his unit went to East Oakland to look for a vehicle involved in a freeway shooting the night prior and multiple vehicles stolen from a San Leandro Dodge dealership several days prior. Officer Hulbert explained that he had been told that some of the vehicles stolen from a San Leandro Dodge dealership had been used in robberies, car-jackings, and at least one homicide.

Officer Hulbert said on the night of the incident, he was driving an unmarked silver Dodge Ram pickup truck. In the front passenger seat was Officer Greg Ramos and in the back seat behind Officer Ramos was Officer Michael Diehl. Officer Hulbert said they were in East Oakland looking for the vehicle from the shooting when he heard a license plate run by Sergeant Henderson had come back as a lost or stolen plate. He heard Sergeant Henderson's vehicle advise that they were behind a red or maroon Dodge Challenger Hellcat. Officer Hulbert said that he immediately recognized that as the description of one of the cars that had been stolen from the San Leandro Dodge dealership. Officer Hulbert was driving on Bancroft Avenue, approaching 98th Avenue, when Sergeant Henderson advised they were near 94th Avenue. Officer Hulbert said they saw Officer Kirby and Investigator Case in the patrol car on 9th Avenue and began to follow them because Investigator Case was most familiar with the area. Officer Hulbert said he heard Sergeant Henderson say they were on Cherry Street near 96th Avenue and that the suspect vehicle was blacked out and possibly parking. Officer Hulbert said they turned right onto Cherry Street, westbound, following the patrol car. Officer Hulbert said that he saw lights coming towards him and Officer Kirby. He then saw Officer Kirby activate his emergency lights.

Officer Hulbert said he could not see past Officer Kirby, because the lights were flashing which obscured the cars beyond the patrol car. Officer Hulbert said he and Officer Diehl decided they should get out of the truck in case someone from the stop attempted to run away on foot. Officer Hulbert said he stopped his truck approximately 30 feet behind the patrol car and in the center of the road. He got out of the driver's side of the truck and believes he may have left his door open. Officer Hulbert said that he ran up forward on the south side of the street along the street side of the parked cars. Officer Hulbert said he saw the Hellcat reversing and strike Sergeant Henderson's vehicle and the emergency lights on Sergeant Henderson's vehicle came on. Officer Hulbert said that he heard the loud exhaust from the car. Officer Hulbert said that he was looking right at the driver of the car and believed they locked eyes, but he did not notice a passenger in the car. Officer Hulbert said the driver of the Hellcat looked calm as he drove the car in his direction. Officer Hulbert said he moved to the sidewalk because he did not want to be in the way in case the car came in his direction. Officer Hulbert said that he saw the Hellcat hit Officer Kirby's car and he was sure Officer Kirby was in the car. Officer Hulbert later clarified he believed Officer Kirby was in the car but was not certain. Officer Hulbert said he thought Officer Kirby was in danger because the car was travelling directly toward his car. Officer Hulbert said at that point he did not have a shot because the car was right next to Officer Kirby's car. Officer Hulbert said the Hellcat scraped past Officer Kirby's car and continued traveling eastbound. Officer Hulbert said he was "moving up to try and keep sight on this guy because he's like trying to get away and he's still full throttle, basically, is what I... I can hear engines roaring." Officer Hulbert said "I look up to my right and I see Diehl and he's just right in the line of this guy's sight. And then I look back over at the car, he's still going and I didn't see Diehl anymore so I didn't know... because they were... I mean, they were so close, I didn't know if Diehl got out and I'm just thinking oh fuck, this guy just... he just killed Diehl." Officer Hulbert said when he saw Officer Diehl, he was on the driver's side of the truck near the rear tire. Officer Hulbert said "I don't know if Diehl's underneath his car or what's going on. So, I started shooting at the driver and basically the car came to a stop because it hit another car, it hit my truck and I still don't know where Diehl is." Officer Hulbert said "I continue to fire because I can hear this thing... just like, this guy's trying to get away still, and it like revving up and down and shaking... or not shaking but like rocking up and down because like this guy's throttling in and out of the pedal." Officer Hulbert said at one point he moved over and was able to look into the car and see the driver was incapacitated. Officer Hulbert stopped shooting at this point. Officer Hulbert said it was at this point he saw movement in the car and realized for the first time there was a passenger in the Hellcat.

Officer Hulbert was asked about the sequence of events as to when he started shooting. Officer Hulbert said "I look at Diehl, I look back at the car and I don't see Diehl anymore because I know, I know I looked back in that area, so I don't know if he's down, if he is under the car, if he made it out alive or what happened." Officer Hulbert went on to explain he fired because he thought Officer Diehl was dead or going to be dead.

Officer Hulbert also said that he heard other people shooting but during the shooting he did not hear any commands. Officer Hulbert said prior to the shooting he did hear who he believed was Sergeant Henderson say "Hey shoot him!" Officer Hulbert said he did not know who Sergeant Henderson was speaking to because he was focused on the vehicle.

Officer Hulbert fired 16 rounds with his pistol; he reloaded but did not fire again.

After the shooting stopped, Officer Hulbert said he heard someone say “where is Eric? where is Eric?” a couple of times and believes it was Sergeant Henderson. Officer Hulbert said that Officer Saputa was near him and called Officer Hulbert back behind cover. Officer Hulbert said Officer Saputa gave commands to the passenger to shut the car off and the car went off. The passenger was ordered out of the car and she explained that she had been shot.

California Highway Patrol Officer: Nate Kirby

Officer Kirby was interviewed by members of the Oakland Police Department on the morning of June 7, 2020. Officer Kirby has been a member of the California Highway Patrol for about 12 years. Officer Kirby’s current assignment is as a K-9 officer. On the date of this incident, Officer Kirby was assigned to work with a suppression team that was focused on a freeway shooting from the day before and stolen vehicles taken from a San Leandro Dodge dealership a week prior. Officer Kirby said that he was dressed in a blue CHP utility uniform and driving a black and white patrol car marked “K-9.” In the car with him was his K-9 partner and Investigator Taylor Case.

Officer Kirby said just prior to the incident, he was on 106th Avenue in the City of Oakland. He heard a request to run a license plate on his mobile computer, which he did. Officer Kirby learned that the license plate in question was reported lost or stolen. When that information came back on the terminal, dispatch also advised the same information over the radio. Officer Kirby said he heard someone in one of the unmarked vehicles on the suppression team give the direction of travel of the vehicle as westbound Cherry Street. Officer Kirby said he was already travelling in that direction. Officer Kirby said that he turned left onto 98th Avenue and right, westbound, onto Cherry Street. Officer Kirby said that he thought they would be a couple of blocks behind the unmarked vehicle and the vehicle with the lost or stolen plate. Officer Kirby said once they were on Cherry Street, he realized that the vehicle was now coming towards him on the wrong side of the road and he was advised on the radio that they, the vehicle, and the unmarked car, were right in front of him.

Officer Kirby said he turned on his “Code-3” lights to make a stop. Officer Kirby explained the decision to stop the Dodge because he heard radio traffic that it was travelling at high speed, that it had all the lights out, that he thought it was going to run, and he was not in a position to turn his vehicle around on the street because there were too many cars parked on the curb. Officer Kirby said he felt it was the safest thing to do at that point. Officer Kirby said he got out of his vehicle to get the K-9 out for deterrent. Officer Kirby said he believed there was enough room for the car to get by his car when he made the stop. Officer Kirby said he made eye contact with the driver of the Hellcat that had the stolen plate on it. Kirby described the driver as a male with frizzy hair. He said the driver calmly looked behind him, put the Hellcat into reverse, and rammed the unmarked truck behind him. Officer Kirby said the Hellcat was then put in drive and came forward and rammed his patrol car on its left front. He later in the interview described the collision with the marked car as a tap. According to Officer Kirby, the Hellcat backed up and then began to drive forward. Officer Kirby said he realized the Hellcat had a clear path, so he closed the door to his car and moved to a position at the back of his patrol car.

Officer Kirby said the Dodge Charger “shot” past his patrol car striking the left side of the patrol car as it went by. Officer Kirby said, “it was very clear to me this guy’s intent was I gotta get out of here.” Officer Kirby also said the car “was hell bent on getting out of there.” Officer Kirby said as the car went by him it got hung up somewhere near him because he had a chance to shoot but chose not to. Officer Kirby explained that if he could get out of the way, then he was going to get out of the way because that is their training. Officer Kirby explained that it was not good for him to stop the threat and also be put down by the car as well. Officer Kirby said he did not know what the Hellcat was hung up on, whether it was another car or another officer, but he knew something was wrong because the car was not able to go anywhere but it was still trying. Officer Kirby said he heard a bunch of crunching and then saw the tires just burning and melting.

Officer Kirby said he went back to the front of his patrol car where he met up with Sergeant Richard Henderson. Officer Kirby said he heard shots ringing out and he pulled his weapon out. Officer Kirby said he did not fire his weapon. Officer Kirby said he was with Sergeant Henderson while Sergeant Henderson was shooting and saw the rear window break on the Hellcat. He could see the driver and a portion of the passenger. Officer Kirby said that he and Sergeant Henderson were using his patrol car as cover as Sergeant Henderson fired into the car. Officer Kirby said the car was revving and heard more shots and after that he could not see anymore because of the smoke but he could hear the shots until they stopped.

Officer Kirby said when the shots stopped, the vehicle engine continued to run at full throttle. Officer Kirby said that the officers checked to make sure they were all okay and that everyone was accounted for. Officer Kirby said he heard Officer Saputa giving directions to the passenger. Officer Kirby said the passenger turned the car off and exited the car. Officer Kirby said he realized she was injured. He began to give her first aid. Officer Kirby said he did not see any wounds on the passenger that seemed to be life threatening so he went to check for a pulse on the driver’s neck and arm but did not get a pulse. Officer Kirby said he went back to the passenger and asked for his medical bag and continued to treat the passenger’s wound. Officer Kirby said he had Officer Montour apply a tourniquet to her leg while he applied pressure to her abdomen and splinted her arm.

California Highway Patrol Investigator: Taylor Case

Investigator Taylor Case was interviewed on June 7, 2020 at the Oakland Police Department (OPD) Administration Building. The interview was conducted by members of the Oakland Police Investigators and the OIS Team reviewed the recording of that interview.

Investigator Case explained he has been a highway patrol officer for approximately seven years and has been an Investigator for eight months. Investigator Case explained that he was part of the team that was working during the protest in downtown Oakland. Once the protest ended, he and other members of the team were assigned to locate a suspect vehicle from a freeway shooting the night prior and to look for vehicles taken from the Dodge dealership in the City of San Leandro. Investigator Case said he was dressed in plain clothes with a black vest over his clothing. On the front of the vest was written “POLICE” written along with a cloth California Highway Patrol badge and his identification number.

Investigator Case was the right front passenger of a marked CHP patrol car. The driver of the car was Officer Nate Kirby, and his K-9 partner was in the rear of the car. Investigator Case said that he was not wearing a body worn camera and the vehicle he was in did not have a dash mounted camera. Investigator Case said while in East Oakland searching for the vehicles, he was asked by one of the unmarked vehicles assigned to the detail to run a license plate. The license plate came back as a stolen license plate. Case said he notified the unmarked unit that the license plate was stolen. He was then told they wanted to make a stop on the vehicle using their marked patrol car.

Investigator Case said they responded to Cherry Street between 96th Avenue and 98th Avenue in the City of Oakland. Investigator Case explained that initially they were led to believe the car was westbound on Cherry Street. Case explained they were travelling westbound on Cherry Street from 98th Avenue and they first noticed a Dodge Hellcat driving eastbound on Cherry Street in a "snake" pattern. Investigator Case said they advised the unmarked unit they were going to make a stop on the vehicle. Investigator Case said they were head to head with the Hellcat and turned on the emergency lights. Investigator Case said the Hellcat initially stopped in the roadway and the engine revved. Investigator Case said the car then went in reverse and drove into the unmarked Dodge Ram truck which he described as black. Investigator Case said he was not sure of the exact sequence of events but believes the Hellcat hit the Dodge Ram at least once and then hit the marked patrol car once, almost hitting Officer Kirby who was on the driver's side of the patrol car. Investigator Case said he was on the passenger side of the car but does not remember if he was inside or outside the car. Investigator Case explained he initially got out of the patrol car but got back in when the Hellcat rammed the dark gray Dodge Ram pickup so he is not clear if he was in the patrol car or outside the patrol car when the Hellcat struck it, but he believes he was outside the patrol car near the front passenger door. Investigator Case said it appeared the Hellcat was attempting to ram the patrol car to get away. Investigator Case said the Hellcat then rammed a Silver Dodge truck that was behind the patrol car at what seemed like a high rate of speed. Investigator Case said when the Hellcat collided with the Dodge Ram, he thought it had killed Officer Hulbert. Investigator Case said he thought Officer Hulbert had been killed or was under the car because he saw Officer Hulbert in the path of the vehicle and the vehicle was travelling at a high rate of speed. Investigator Case said he raised his pistol to shoot the driver but there was already an officer between him and the vehicle, so he did not have a clear shot. Investigator Case remembers seeing Sergeant Henderson fire his weapon as he was advancing on the vehicle.

Investigator Case explained that although he did not have a clear shot, other officers began firing on the Hellcat and it seemed to be stuck, and the tires were spinning creating a lot of smoke so he moved to the sidewalk to get cover.

Once the shooting stopped, Investigator Case said he broadcast over the radio that shots had been fired and their location. He then got the medical bag from Officer Kirby's car because someone had been hurt. Investigator Case said he did not know where Officer Hulbert was for a while after the shooting.

California Highway Patrol Officer: Michael Diehl

Officer Diehl was interviewed on June 7, 2020 at the Oakland Police Department (OPD) Administration Building. The OIS Team was present but monitored the interview from outside the room where Officer Diehl was being interviewed. The interview was recorded by members of the OPD Investigations Team. The interview began at 0522 hours and concluded at 0632 hours with a five minute break.

Officer Diehl said he has been employed by the California Highway Patrol since May of 2013 and was assigned to the Organized Retail Crime Task Force in October 2019. Officer Diehl said he was assigned to a unit working the recent protests. Once they concluded with the protest assignment, they were going to attempt to locate a vehicle used in a freeway shooting. That vehicle was believed to have been in the area of East Oakland. In addition, they were also going to assist the Alameda County Regional Auto Theft Task Force with locating stolen vehicles from a burglary at the San Leandro Dodge dealership.

Officer Diehl said he was the right rear passenger in an unmarked silver Dodge Ram. The driver was Officer Eric Hulbert, and the right front passenger was Officer Gregory Ramos. Officer Diehl was unsure what emergency lighting was on the vehicle but was aware that every unmarked CHP vehicle has at least a solid red forward-facing light. Officer Diehl was in plain clothes and was wearing an IRDV tactical vest which had "POLICE" over his right breast, a badge patch over his left breast and "POLICE" across the back of the vest. Officer Diehl was wearing his gold CHP badge on his pant belt directly in front of his pistol, where his duty weapon was located.

Officer Diehl's shift began at 1800 hours and he was supervised by Sergeant Richard Henderson. Officer Diehl said that they left from Downtown Oakland and exited the freeway at 106th Avenue and was making their way back to the area where the shooting suspect vehicle might be located. He heard over the police radio someone run a license plate and that license plate came back as a lost or stolen plate. This license plate was currently on an orange Dodge Hellcat southbound on 94th Avenue approaching Bancroft Avenue. Diehl said the vehicle he was in was following a marked police K-9 police car, which was attempting to intercept the suspect vehicle. Officer Diehl said they were advised over the radio that the car was going westbound on 94th Avenue and they made a right turn to go westbound on Cherry Street from 98th Avenue. Radio traffic came out and said the car was actually going eastbound on Cherry Street from 94th Avenue. Officer Diehl said that there was no room for two cars to go through on Cherry Street. Officer Diehl saw the emergency lights on the K-9 unit come on and he assumed a felony stop was in progress. Officer Diehl explained that the K-9 officer had no way to go on the street, he could not go left or right because it was narrow and he could not back up because the silver Dodge vehicle was behind the K9 police car.

Officer Diehl said his truck was stopped three to five feet directly behind the K-9 police car. Officer Diehl said he got out of his vehicle from the right rear passenger side of the silver pickup truck with his handgun drawn. Officer Diehl said he approached the K-9 unit and attempted to take a position of cover behind the front right door. Officer Diehl said he pointed his gun at the car because it was potentially stolen, and he was not obeying commands to stop. Officer Diehl said

the suspect vehicle was moving on the north side of the street travelling against traffic flow. Officer Diehl said multiple officers were giving commands "stop the car, turn it off." Officer Diehl said the engine started revving and he knew the driver was not going to stop. Officer Diehl said he looked around and realized Salgado had only one of two ways to go: either directly at him or go the other way. Officer Diehl said he ran backwards and attempted to jump on the hood of a parked car. Officer Diehl said he ran because he was concerned that the momentum of the powerful car could force the K-9 police car out of the way causing him to be caught between the K-9 police car and the parked cars. This would cause him to be put in a position where he could be hit and run over. Officer Diehl said he thought the Hellcat was coming at him and then it went right to the side of the K-9 police car. Officer Diehl said he heard the impact of the Hellcat hitting a car. He looked back and did not see anyone who was with him or anyone who was in the K-9 police car. Officer Diehl said he did not know where they were. Officer Diehl said he believed that his partners were in the roadway and that they were either under the car or in the roadway, because standard protocol was that CHP officers would stand behind the door in a felony car stop.

Officer Diehl said he saw the Hellcat then drive forward full throttle. Officer Diehl said the Hellcat hit a car and rode up like the wheels were off the ground. Officer Diehl said he realized the Hellcat was not coming at him but thought that one of his partners who was in front of that car might be run over. Officer Diehl said the Hellcat was stuck between the truck and another car and the tires were spinning and creating smoke to the point he could not see two to three feet in front of him. Officer Diehl said he went around the front and thought his partners were under the Hellcat or about to get run over. It was then that shots were fired. Officer Diehl saw Sergeant Henderson standing behind the suspect vehicle with his rifle and heard him shooting. Officer Diehl said the Hellcat was between the truck and another car, but the wheels were still spinning. Officer Diehl said he was standing somewhere between the front of his silver truck and the back of the K-9 police car at that time. Officer Diehl said he never fired his weapon.

After the shooting, Officer Diehl said he started doing roll call of officers. He asked Sergeant Henderson if he was okay and Sergeant Henderson asked him to make sure everyone was okay. Officer Diehl said officers were attempting to render aid to the occupants of the Hellcat. Officer Diehl said that he had to get in the truck through the passenger side and climb over the center console in order to back the truck up so they could open the driver's door of the Hellcat because it was pinned against the driver's side bed of the truck. Officer Diehl said he then repositioned the truck more to the north side of Cherry Street and pulled forward.

California Highway Patrol Officer: Jared Montour

Officer Jared Montour was interviewed by members of the Oakland Police Department Investigative Team and the OIS Team reviewed the recorded interview. Officer Montour was in plain clothes, but was wearing a tactical vest with a cloth badge, his ID number on the front of the vest and on the back of the vest the word "POLICE" was written in large yellow letters. Officer Montour said that he was in a dark gray Dodge Ram with Sergeant Henderson in the right front seat and Officer Donald Saputa in the right rear seat. Officer Montour said their attention was drawn to a red Dodge Hellcat. They got behind the vehicle and ran the license plate over their radio. Officer Montour said the plate came back as lost or stolen. Sergeant Henderson called for

a marked unit to make a stop on the vehicle. They continued to follow the Hellcat and noted that it ran a couple of stop signs but not at a high rate of speed. Officer Montour said they were travelling southbound on 94th Avenue. As they reached Cherry Street, the Hellcat made a left turn onto Cherry Street. Officer Montour said as they turned onto Cherry Street, the Hellcat was stopped in the middle of the street with all its lights off. Officer Montour said after they turned onto Cherry Street, the Hellcat continued forward and the lights on the car came back on.

Officer Montour said the marked CHP vehicle was now westbound on Cherry Street and was going to initiate a traffic stop. Officer Montour saw the Hellcat's reverse lights activate. Officer Montour said he closed the distance between his truck and the Hellcat and turned on the red and blue lights in his truck. According to Officer Montour, the Hellcat accelerated towards the marked patrol car and believed it collided with that car. Officer Montour said that he continued to close the distance and made contact with the Hellcat and maintained contact with the car to keep the Hellcat between his vehicle and the marked patrol car. Officer Montour then explained that the Hellcat accelerated at a high rate of speed toward the marked patrol car. It then reversed direction and accelerated at a high rate of speed towards his truck, causing a collision. Officer Montour described that the impact of the Hellcat was enough to create space between the vehicles so that the Hellcat could escape. Officer Montour then described the Hellcat driving forward and to the right of the patrol car where it made impact with the side of the marked patrol car. Officer Montour said that when the Hellcat hit the patrol car, he could see the bodies of the officers in the vehicle move backward due to the impact. Officer Montour said the car accelerated again and went airborne. It seemed to switch direction in the air before it came down and contacted a vehicle behind the patrol car. Officer Montour said the patrol car had its emergency light on at the time they attempted to make the traffic stop.

Officer Montour said he exited his vehicle with the intent to draw his weapon. However, when he saw Investigator Case exit the patrol car, he decided not to draw his weapon for fear of crossfire. Officer Montour said that there were vehicles that were blocking his view of the Hellcat when he heard the shots. Officer Montour said that the Hellcat was creating so much smoke that he could barely see 10-12 feet in front of him. Officer Montour said he put out the shooting on his CHP radio and then went forward to the passenger side of the Hellcat where he saw Officer Kirby providing first aid to a female. He helped Officer Kirby provide first aid.

Officer Montour described that there was damage to the driver's side bumper of his vehicle from this incident.

California Highway Patrol Officer: Greg Ramos

Officer Greg Ramos was interviewed by investigators from the Oakland Police Department. The OIS Team reviewed the recorded interview of Officer Ramos. Officer Ramos said that he was working in plain clothes on the night of the incident but was wearing a vest over his clothes that had a cloth CHP badge, his ID number and the word "POLICE" on the front. The back of his vest had the word "POLICE" written on it. Officer Ramos said that he was part of a group of officers assigned to provide security at the Traffic Management Center at 11 Clay Street in Oakland. Once that assignment was completed, he was assigned to assist in locating a vehicle from a freeway

shooting the night before and to look for a number of vehicles stolen from a San Leandro Dodge dealership the week prior.

Officer Ramos said that he was the right front passenger in an unmarked CHP silver Dodge Ram pickup truck. The driver of the truck was Officer Eric Hulbert and Officer Mike Diehl was in the right rear seat behind Officer Ramos. Officer Ramos said they went out to East Oakland to look for the vehicle involved in the shooting. Officer Ramos said he heard Sergeant Henderson run a license plate on a red Dodge Hellcat over the radio. Officer Ramos said that he also ran the plate on his vehicle computer, and the license plate came back as a lost or stolen rear plate.

Officer Ramos said he was not familiar with the area because he normally works in Solano County. Officer Ramos said that he remembers they came from the area of Bancroft Avenue and 98th Avenue. Officer Ramos said they arrived on Cherry Street behind a marked K9 CHP vehicle. Officer Ramos said they were travelling westbound on Cherry Street from 98th Avenue. Officer Ramos said Cherry Street was very narrow with cars parked on both sides of the street. Officer Ramos said they realized a vehicle was coming right at them. Officer Ramos said as the vehicle was coming towards them, he could only see the headlights of the vehicle, but could not determine the make of the car. Officer Ramos said that as the K9 police car came to a stop, Officer Kirby, the driver in the K9 police car, turned on his overhead emergency lights. Officer Ramos said the Dodge Hellcat was coming right at the K9 police car. Officer Ramos said that as he got out of the vehicle, he heard the engine revving and tires squealing. He thought to himself, "oh shit here we go." Officer Ramos said from his perspective, there was nowhere for the Hellcat to go. He believed that this incident was going to end in a "felony stop" and they would take the driver into custody. Officer Ramos said he could hear the Hellcat shifting gears. Officer Ramos said that the Hellcat backed up. Officer Ramos said he heard a bang, a pause, and then it sounded as if the Hellcat was shifting gears followed by another bang. Officer Ramos said that he was trying to move his body so that he could get behind the Hellcat. Officer Ramos said it was at that point he realized that the Hellcat was rocking back and forth, and he could see tire smoke. Officer Ramos said initially he was going to go forward but then he heard someone yell "watch out for the crossfire."

Officer Ramos then decided he would retreat to the rear of his vehicle across the street and where he would make his way west up the south sidewalk of Cherry Street where other officers were located. Officer Ramos said that he heard the engine of the Hellcat screaming as he stepped from behind the cover of his truck. He saw the Hellcat "launching" with its right wheels in the air. Officer Ramos said that he thought he was going to get hit, so he backed up. Officer Ramos said he stepped one or two steps into the street before he turned around and took cover behind the truck. Officer Ramos said that he then went west on the north sidewalk of Cherry Street between the front of the truck and the rear of the K9 police car when he heard the shots. Officer Ramos said that he could hear the throttle was wide open on the car and upshifting through multiple gears. Officer Ramos said that the noise from the engine revving was so loud he could not tell if anyone was giving commands.

Officer Ramos said the Hellcat was next to their truck and then he heard the shooting start. Officer Ramos was unsure if the Hellcat struck the silver truck he had been a passenger in. Ramos said

he could see the silhouette of Sergeant Henderson with the rifle, but remembers hearing what he believed to be multiple shooters. Officer Ramos said he never fired his weapon on the night of this incident. After the shooting stopped, the car engine was still revving at high speed.

Officer Ramos said once the Hellcat was turned off, he saw CHP officers providing medical aid to the female passenger. Officer Ramos said that in order to get the driver out of the Hellcat, they had to move the silver truck. Once the truck was moved, officers provided first aid to the driver.

California Highway Patrol Witness Officer: Zachary Trzesniewski

On June 10, 2020 Officer Zachary Trzesniewski was interviewed by officers from the Oakland Police Department. The OIS Team reviewed the interview. Officer Trzesniewski said that he has been with the CHP for over seven years. On the night of this incident, he was in a burgundy Jeep Wrangler with CHP Officer Robert Koehn and Investigator Cosmo Bruno. Officer Trzesniewski said that they were monitoring the CHP radio and heard that there was a shooting on 98th Avenue and Cherry Street. Officer Trzesniewski said at that time they were not aware it was an officer involved shooting. Officer Trzesniewski said they responded to the scene. When he arrived, Officer Trzesniewski saw a silver Dodge Ram in the middle of the road and the suspect vehicle was jammed in between the truck and another vehicle. He knew the silver Dodge Ram belonged to the Investigative Service Unit and was assigned to Officer Eric Hulbert. Officer Trzesniewski saw Officer Kirby performing first aid on a woman. Officer Koehn asked Officer Michael Diehl to move the Dodge Ram so that he and Officer Kane could remove Salgado from his vehicle to perform first aid. Officer Trzesniewski said that Officer Diehl backed his dark gray Dodge Ram away from the door. He does not know if the truck was repositioned after the initial move. Officer Trzesniewski said that while he was on scene, Sergeant Henderson was asking “where is Hulbert? where is Hulbert?” Officer Trzesniewski described that Sergeant Henderson seemed very concerned as if Officer Hulbert had been injured or killed. Another officer answered that Hulbert was okay and every other officer on scene at the time of the shooting was accounted for.

Oakland Police Department Witness Officer: Ben Olson

The OIS Team reviewed the statement of Oakland Police Officer Ben Olson who was one of the first Oakland Police Officers to respond to the scene immediately after the shooting. Officer Olson has been a police officer since 2018. For seven years and prior to his law enforcement employment, Officer Olson was employed as a combat medic for the United States Navy. Officer Olson explained that he was working as part of a two-man patrol unit in East Oakland when he heard a call over the radio of a “940B.” Officer Olson explained that a “940B” is a request that officers needed emergency assistance for an officer involved shooting involving CHP in the area of 96th Avenue and Cherry Street. Officer Olson said he was in the area of 106th Avenue and MacArthur Boulevard at the time of the call. Officer Olson said when he arrived on scene, he contacted CHP officers and was told there were no suspects outstanding and that a crime scene perimeter needed to be established. Officer Olson said initially he did not see anyone who needed medical attention.

Officer Olson said he was told by his partner that two individuals had been shot and needed assistance. Officer Olson said he went to the Hellcat and saw two individuals who had been shot.

Officer Olson said CHP was rendering aid to the male who appeared to him to be deceased. Officer Olson went to the next person who he described as a Hispanic female. Officer Olson said the female had a gunshot to her right thigh, a gunshot to her right forearm, which appeared broken, and a gunshot to her right abdomen area. Officer Olson said that CHP applied a tourniquet to the leg to prevent life threatening bleeding, a splint and bandage to the injured arm, and applied bandaging to the abdomen. Officer Olson said that he assisted the CHP by rechecking the female to make sure nothing was missed. Officers also administered the female oxygen as an extra precaution. Officer Olson and the CHP stayed on scene until they were relieved by either Oakland Fire or Ambulance. Officer Olson estimated that it was approximately 10 to 15 minutes before they were relieved. Officer Olson then left the scene and returned to duty.

Witness #1

The OIS Team reviewed the statement of Witness #1. Witness #1 gave a statement to Oakland Police Investigators at a local hospital. Witness #1 was admitted to the hospital for treatment of gunshot wounds. During the recorded interview, Witness #1's voice seemed very low and slow. It also appeared that Witness #1 nodded off on several occasions during the interview and at one point sounded as though she was vomiting. Witness #1 said that she was in pain and felt dizzy. During the interview Witness #1 explained that she was in the passenger seat in a car with the decedent Erik Salgado. Witness #1 said that she was with Salgado the day before this incident. Witness #1 asked Salgado where he got the car but he refused to tell her. Witness said that they slept in the car at Salgado's aunt's house on 96th Avenue and Cherry Street. At one point, Witness #1 tried to leave the car, but Salgado woke up and asked where she was going. Witness #1 explained to Salgado that she was going to her home. Salgado told her "No you are not going nowhere." So, she lay back down because she was "scared and traumatized by him." Witness #1 said she tried to leave the car, but Salgado would refuse to let her leave. Witness #1 said that he was driving crazy, going fast down city streets but she does not know how fast he was going.

Witness #1 said at one point Salgado was driving fast down Cherry Street towards 98th Avenue. It was at that point when the police lights came on, including a bright spotlight. Salgado tried to reverse, but there was another car behind him. Salgado tried to drive straight and hit the police car. Witness #1 said that she only remembers hitting a police car once. Witness #1 said she panicked and wanted to get out of the car. She told Salgado to stop. Witness #1 said she told Salgado, "What are you doing? They are going to shoot you or something." Witness #1 later clarified in the interview that she meant that she believed that the police were going to shoot at them because Mr. Salgado hit the police car. Witness #1 said she was scared so she leaned back in the seat. Mr. Salgado tried to fit the car by the side of a truck. After that she did not see the police car. Witness #1 said she heard gunshots and pieces inside of the car were breaking off. Witness #1 said that she was scared she would be shot and die. Witness #1 said she did not see any people out on the street, only the police car. Witness #1 said she did not see who shot. Witness #1 said Salgado's foot was on the gas and the engine was revving so she put the car in park and that is when it stopped. Witness #1 said she was able to ultimately turn the car off when the police told her to.

Witness #1 said the police told her to get out of the car and she complied. She was lying on the concrete screaming because she thought she was going to die. Witness #1 said that there was a lot of smoke while she was in the car. She did not know if it was from the airbag or the tires spinning. Witness #1 said that there was so much smoke that she could not really see and that is when she put her head down and she started hearing gunshots. Witness #1 said that she did not think Salgado had any firearms that night.

REVIEW OF MEDICAL RECORDS WITNESS #1

The OIS Team was provided copies of medical records pertaining to Witness #1 from the Oakland Police Department. A review of the records show that Witness #1 suffered multiple gunshot wounds including one to her right arm, her right abdomen, and right thigh. The records also indicate that Witness #1 had a surgical procedure done on June 5, 2020, the day prior to this incident.

AUTOPSY AND LABORATORY FINDINGS:

Autopsy Protocol

There are an estimated 16 rifle injuries to the torso and upper extremities of Erik Salgado (three penetrating, 12 perforating, and one graze wound). Mr. Salgado died of multiple gunshot wounds.

Toxicology Report

A review of Salgado's toxicology report indicates that at the time of his death, his blood tested positive for the following controlled substances:

Amphetamine 72ng/mL, Methamphetamine 496ng/mL, and opiates including Morphine 221 ng/mL, 6-acetylmorphine 9.3 ng/mL, and Codeine 13 ng/mL.

ADDITIONAL EVIDENCE REVIEWED:

Crime Scene Technician Report and Photos

Trajectory Report

A trajectory report focusing on the Hellcat was completed by Oakland Police Department Criminalist Mark Bennett. Bennett concluded from his examination of the evidence that there were only three positions of the shooters.

Position One shows a trajectory of a weapon fired from a direct rear position on the driver's side, through the rear window towards the driver position. Position One is consistent with the position that Sergeant Henderson described he was in when he fired his rifle.

Position Two shows a trajectory of a weapon fired from the passenger side rear, towards the driver's position either stopping at or entering the trunk. Additional shots pass through the rear window towards the driver's side. Position Two is consistent with the position that Officer Saputa described he was in when he fired his rifle.

Position Three shows a trajectory of a weapon fired from the right side of the vehicle towards the rear passenger's door, with a forward angle across the passenger's side towards the driver's position. Position Three is consistent with the position that Officer Hulbert stated he was in when he fired his pistol.

Vehicle Inspections

Mike Braun of Boster-Kobayashi was enlisted to assist the OIS Team by inspecting, photographing, and reviewing the vehicles involved in this incident. Mr. Braun is a mechanical engineer and an expert in accident reconstruction. Over a period of two days, a team from the Department of Justice and attorneys for the civil plaintiff were onsite at CHP offices in Vallejo and Oakland to conduct the inspections.

Mr. Braun reviewed the data he collected and then prepared a written report. In that report Mr. Braun described the following:

At the start of the pre-impact data (t = -5.0 seconds), the Dodge Challenger (aka Hellcat) was at a complete stop. The transmission was in neutral with the brake off and the steering wheel turned approximately 99 degrees to the left. The accelerator pedal was fully applied, and the engine was revving at 4,054 RPM. This starting point appears to be the position of the Dodge Challenger after the minor impact with the dark gray Dodge Ram pickup. The vehicle remained in this condition with the engine revving at 4,054 RPM to 4,062 RPM for an additional 0.7 seconds until t = -4.3 seconds.

At t = -4.3 seconds, the accelerator pedal was released, and the engine speed dropped to 3,977 RPM. The vehicle remained stationary with the transmission in neutral, brake off and steering wheel turned approximately 89 degrees to the left.

At t = -4.1 seconds, the brake pedal was applied. The vehicle remained stationary with the transmission in neutral, accelerator pedal released, steering wheel at 88 degrees to the left and engine speed dropping to 3,598 RPM.

At t = -3.8 seconds, the transmission was shifted to drive. The vehicle remained stationary with the accelerator pedal released, brake pedal applied, steering wheel at 90 degrees to the left and engine speed dropping to 3,057 RPM. The Challenger remained in this position for an additional 1.1 seconds except that the engine speed continued to drop to 1,096 RPM and the steering wheel angle was increased to a position of 134 degrees to the left.

At t = -2.7 seconds, the accelerator pedal was fully applied. The engine speed was 1,096 RPM. The vehicle was still stationary with the brake on, and the steering wheel turned 134 degrees to the left.

At t = -2.4 seconds, the brake was released, and the vehicle started to move forward. The steering wheel angle was increased to 259 degrees to the left from the previous 134 degrees at t = -2.7 seconds. The left rear wheel of the Challenger began to break traction and slip relative to the roadway.

At **t = -2.1 seconds**, both rear wheels were breaking traction with the roadway and were spinning approximately twice as fast as the front wheels. The vehicle speed was approximately 5.4 mph at this time and the steering wheel was at approximately 253 degrees to the left. The engine speed had increased to 2,344 RPM.

At **t = -1.9 seconds**, the electronic stability control system (ESC) on the Challenger engaged. The ESC system monitors wheel speed sensors and driver input and attempts to assist the driver in maintaining control of the vehicle by varying engine power output and selectively applying individual brakes on the vehicle. The vehicle speed was approximately 7.5 mph. The steering wheel angle was 250 degrees to the left. The rear tires were still breaking traction.

At **t = -1.7 seconds**, the driver began to steer the vehicle back to the right and the steering wheel angle decreased to 224 degrees to the left. The vehicle speed was approximately 9.2 mph and both rear wheels were still breaking traction.

At **t = -1.3 seconds**, the accelerator pedal decreased from 100% to 71% of full pedal application. The steering wheel angle dropped to 95 degrees to the left and the vehicle speed was approximately 12.6 mph. The rear wheels continued to break traction.

At **t = -0.9 seconds**, the accelerator pedal dropped to 0% (fully released). The steering wheel angle was now at 96 degrees back to the right and the vehicle speed was approximately 16.3 mph. The rear wheels were still breaking traction.

At **t = -0.7 seconds**, the brake pedal was applied. The accelerator pedal remained fully released and the vehicle speed was approximately 18.6 mph. The rear wheels were regaining traction but were still rotating slightly faster than the front wheels. The steering wheel was at an angle of 82 degrees to the right.

At **t = -0.6 seconds**, the rear wheels were no longer breaking traction and the vehicle speed reached its peak at approximately 19 mph. The steering wheel angle was 45 degrees to the right, the brake pedal was still being applied, and the accelerator pedal was still fully released.

At **t = -0.4 seconds**, the anti-lock braking system (ABS) activated. This indicates that the driver was fully applying the brake pedal. The vehicle speed had slowed to approximately 16.7 mph and the steering wheel had been rotated back to the left to an angle of 45 degrees to the left.

At **t = -0.2 seconds**, the transmission went from drive into neutral. The brake pedal was still applied with ABS active. The vehicle speed was approximately 14.9 mph.

At **initial impact** with the white Lincoln, the Challenger was travelling at approximately 12 mph. The total distance travelled by the Challenger from the start position at **t = -5.0 seconds** until initial impact with the white Lincoln was approximately 43 feet to 46 feet. No additional vehicle dynamics data such as vehicle speed, accelerator pedal application, transmission gear position, brake application or steering were recorded by the EDR after the initial impact with the white Lincoln. Photographs taken at the incident scene indicate that the final point of rest of the

Challenger was approximately seven to eight feet past (towards 98th Avenue) the initial impact location with the white Lincoln.

Summary of Dodge Challenger Movement

- The data recorded by the EDR in the Challenger started at an unknown amount of time after a minor impact between the right rear of the Challenger and the front end of the dark gray Dodge Ram 1500 pickup.
- During the initial 2.6 seconds of recorded data, the Challenger was stationary with the driver manipulating the brakes, accelerator pedal, shift lever, and steering wheel angle.
- During the next 1.8 seconds, the Challenger accelerated to a top speed of approximately 19 mph with the rear wheels breaking traction. During this time, the driver was actively steering the vehicle and manipulating the accelerator pedal. The vehicle's electronic stability control was also actively engaged and attempting to assist the driver with control of the vehicle.
- During the final 0.6 seconds before impact with the white Lincoln, the driver was actively steering and applying the brakes. The vehicle's speed had slowed to approximately 12 mph at impact.
- At approximately 0.2 seconds before impact, the vehicle's transmission went into neutral. It is unknown whether this was inadvertent or intentional.
- During the 2.4 seconds that the vehicle was moving prior to impact, the vehicle travelled a total of approximately 43 feet to 46 feet. The final point of rest of the Challenger was approximately seven feet to eight feet forward of the initial impact location with the white Lincoln. The additional seven to eight feet of post-impact movement was due to the impact speed/momentum of the Challenger causing both vehicles to continue moving forward.

Mr. Braun explained that the system that captured this data is not triggered unless during the impact there is a change in velocity greater than 5 mph. Therefore, in the case of any impact with the dark gray Dodge Ram, any impact would have been less than the five mph change in velocity. Mr. Braun did indicate that there was some evidence of a minor impact with that vehicle.

Video from Scene

The Oakland Police Investigators provided the OIS Team copies of what appears to be cell phone video. The video was contained in four folders labeled "Ben Crump", "DarwinBondGraham", "henryleektvu," and "shane_bauer." The OIS Team reviewed each folder and the contents inside.

In the folder labeled "Ben Crump" was an image of what appears to be taken from a social media page and a video segment. The video is 25 seconds in length and appears to show the scene of the shooting incident shortly after the shooting. The video shows an officer in plain clothes armed with a rifle and standing in the street behind a silver pickup truck. The pickup truck appears to be stopped in the middle of the street. Against the driver's side of the truck is the red Hellcat which

is stopped and turned off against a white car parked along the curb. The video then pans to the left and shows additional officers arriving on scene. In this video there is no smoke or engine noise.

In the folder marked "DarwinBondGraham" is an image of what appears to be a social media page for someone named "Darwin BondGraham." In addition to the image is a copy of what appears to be video captured by a cell phone and labeled "video.mp4." The video is five seconds long and shows a subject on the ground and what appears to be a plain clothes officer performing CPR. In this video is a more complete video of the Hellcat which shows the driver's side of the vehicle and an open driver's side door. The silver Dodge pickup truck has been moved forward in this video.

In the folder marked "henrykleektvu" is an image from a social media site and a video labeled "video 1.mp4." The video is 00:01:59 long and appears to be a black and white surveillance video from a home. The video is date and time stamped 2020-06-06 22:47:31 at the start. The video shows a view of the street in front of the home, however, it does not appear to be the location where this incident occurred. At 22:47:41, approximately eight seconds into the video, rapid staccato sounds can be heard in the distance. These sounds do appear to be gunshots and are consistent with a pattern heard from the ShotSpotter activation. At 22:47:46, the sounds stop. At 22:47:56 a large cloud of smoke rising in the distance can be seen. This cloud of smoke dissipates at 22:49:05. There does not appear to be any other sounds or images related to this incident on the video.

In the folder marked "shane_bauer" are 11 digital images and four videos. Ten of the 11 images appeared to be screen shots of a social media page, the final image appears to be a capture from one of the four videos also located in the folder.

The video labeled "video 1.mp4" is 45 seconds long and appears to have been captured with a cell phone. The video begins with a male voice yelling to get the kids down, but the screen is dark. After about five seconds, the video shows the street and a large amount of smoke. In the background can be heard what appears to be an engine revving at high RPMs and several voices. One of the background voices is heard yelling "I did, I did, I did." At 19 seconds into the video, a voice in the background can be heard yelling "hands up motherfucker." At 22 seconds, a voice believed to be Sergeant Henderson's is heard yelling "where is Eric? where is Eric? Eric." Immediately afterwards a voice believed to be Officer Saputa's responds "he is right here, he is Code 4." At 31 seconds multiple unidentified voices can be heard yelling "turn it off, shut the car off." Shortly thereafter the car is turned off and the engine revving stops. Officer Saputa can then be heard saying "keep your hands out the window, I will give commands." The video ends at that point.

The video labeled "video 2.mp4" is 52 seconds long and begins with an image of Cherry Street, several vehicles and multiple officers with guns drawn. At one point one of the voices in the video can be heard saying "are you guys ready to get her out" and "hey keep your fucking hands up you hear me." Another unidentified voice can be heard, however, what the individual was saying was unintelligible.

The video labeled "video 3.mp4" is 25 seconds long. The image starts with a view of Cherry Street where the Hellcat came to rest between the bed of the silver CHP pickup truck parked in the middle

of Cherry Street and a white car parked along the south curb line of Cherry Street. There is also a police officer carrying a rifle and pacing back and forth in the street. The video does show other police vehicles on scene and a woman can be heard moaning in the background. There is a male voice which can be heard on the video at the end, but it is unclear what is being said. It is apparent that this video shows the scene after the shooting has ended.

The video labeled "video 4.mp4" is a 55 second video that also shows the scene on Cherry Street. The video shows the Hellcat still in place against the parked white car, but the silver truck has been moved. The video scans Cherry Street east and west and it is apparent there is crime scene tape in place and the street is filled with law enforcement vehicles in both directions. This video, like all other videos in the "shane_bauer" folder, appears to have been captured using a cell phone.

The video from the social media platforms was inspected to determine if there was any metadata that might lead to the identity of the person or persons who created the video. Our Inspectors later discovered that all metadata had been removed from the video. Therefore, no additional leads could be developed from the potential metadata.

During a canvass of the area, Inspectors with the District Attorney's Office found the possible location where the video may have been taken, however, the occupants denied any knowledge of the video and were uncooperative with both Oakland Police Officers and District Attorney's Office Inspectors.

ShotSpotter

On the date of this incident, ShotSpotter recorded 25-28 shots in the location of this incident. The first activation was at 22:47:36 hours and the final activation was at 22:47:50 hours. Based on the ShotSpotter information, all shots were fired over the course of 14 seconds.

Oakland Police Body Worn Cameras (BWC)

OPD Lieutenant Lisa Ausmus

Lieutenant Ausmus, was wearing a BWC, however, she arrived on scene after the incident was over. Her video provides no footage helpful in the investigation.

OPD Officer Anthony Andrew

This video is unrelated to this investigation.

OPD Officer Boshai Boutta

The video marked "Cesar Boutta, Boshai_2020-06-06_22_59-08.AVI" shows a verbal confrontation with individuals in the area of what appears to be 96th Avenue and Cherry Street. During this confrontation, the officer does ask if anyone saw what happened and they respond they did, but did not want to give a statement to the officer.

The video marked "Cesar Boutta, Boshai_2020-06-07_02_50-07.AVI" does not appear to provide any information to further this investigation.

OPD Officer Benjamin Olson

The video labeled "Olson, Benjamin_2020-06-06_22-52-19.AVI" shows Cherry Street at 96th Avenue. As the officer moves forward, his BWC does capture the rear of the dark gray unmarked CHP Dodge Ram pickup truck. The viewer can see that the hidden red and blue emergency lights are activated.

The video labeled "Olson, Benjamin_2020-06-06_22-56-02.AVI" shows Officer Olson and other officers providing medical attention to a woman who identifies herself to the officers by her first name. The officers, one identified as a medic and another as an EMT, assess her injuries finding three gunshot wounds and a fractured arm. The officers address the wounds, apply a tourniquet, and a splint. Shortly afterwards, paramedics arrive on scene and continue to provide medical assistance as the woman is loaded onto a gurney and wheeled away from the scene.

The video marked "Olson, Benjamin_2020-06-06_23-08-39.AVI" does not appear to provide any information to further the investigation.

OPD Officer Carlos Carrillo

The video from Officer Carrillo shows the street after the shooting. Skid mark evidence can be found on the roadway. In addition to skid mark evidence, rubber beading can also be seen in the roadway, consistent with rubber tires spinning on the asphalt surface. The dark gray unmarked CHP pickup is seen with its emergency lights on. The front of the marked CHP K9 police car can be seen and shows the car has a white light on, as well as the side spotlight. With those two lights on, it is not clear if the red and blue emergency lights on the car were operating. The video also shows officers performing CPR on Salgado and providing medical attention to a female victim of gunshot wounds.

Officers also made contact at a home at the corner of 96th and Cherry Street where cameras were seen. The family at the home spoke Spanish and a Spanish speaking officer was called to the scene to try and determine if the cameras were working at the time of the incident.

OPD Officer Columbus Do

In the video labeled "Do, Columbus_2020-06-06_22-50-40.AVI" the officer arrives on scene after the shooting has concluded. The video shows the position of all the involved vehicles prior to any officer moving any of the cars. The video also shows several officers administering first aid to a woman lying on the sidewalk.

The Video labeled "Do, Columbus_2020-06-06_23-0245.AVI" does not appear to provide any information to further this investigation.

OPD Officer Casey Fought

Officer Fought is seen canvassing homes in the area and being told by a neighbor that she and her family members did not see anything, but they did hear what sounded like an AR-15 shooting around 10:55 p.m.

The officer spoke to another neighbor who thought they heard fireworks instead of gunshots.

OPD Officer Danny Chor

Officer Chor's camera does not appear to provide any information to further this investigation.

Officer Giani Arone

Officer Arone spoke to a neighbor who did not see anything and only heard commotion. The officer spoke to another neighbor who said he did not observe the shooting, but only heard the shots.

APPLICABLE STATE LAW:

The sole question addressed by the District Attorney's investigation is 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 to charge an officer 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 beyond a reasonable doubt 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.

California criminal jury instructions provide:

CALCRIM 505.

A homicide is justifiable and not unlawful when committed by a person who:

- (1) Reasonably believed he or she or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) Reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) Used no more force than was reasonably necessary to defend against that danger.

CALCRIM 507.

A homicide by a peace officer is justifiable and not unlawful when:

- (1) The killing was committed while arresting a person charged with a felony who was resisting arrest or fleeing from justice 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. CALCRIM 507.

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. See CALCRIM 505 and 507.

Any killing would be criminal if the killing was not justifiable as outlined above, or excusable as in an accidental killing. 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 Mr. Salgado was killed by a police officer and that the officer did **not** reasonably believe that he or another was in imminent danger of death or great bodily injury.

California Highway Patrol Use of Force Policy

The California Highway Patrol revised their Use of Force Policy in January 2020. The Policy specifically addresses Deadly Force in Chapter 1 section 4 subsection c. and states the following:

c. Deadly Force. “An 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 in defense of human life. In determining whether deadly force reasonably appears necessary, officers shall evaluate each situation in light of the particular circumstances of each case. If reasonably safe and feasible to do so, officers shall use other available resources and techniques.

(c) Self Defense and/or Defense of Others:

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

(b) In self-defense while an assault with a deadly weapon (ADW) with a vehicle is actually being committed. Officers shall not stand and/or step directly in front of or directly behind a vehicle in an attempt to impede its movement (prevent escape), intentionally creating circumstances where use of force appears to be necessary. The primary tactical consideration should be for officers to move out of the path of a vehicle whenever such movement is reasonably possible. **Once an officer no longer perceives a threat, deadly force is no longer justified.**

(2) Apprehension:

(a) omitted

(b) omitted

© When it reasonably appears to be necessary to apprehend a person who has committed an ADW with a vehicle which the officer reasonably believes has resulted in serious injury or death. The discharge of a firearm at a wrong way, high-speed, or reckless driver or vehicle solely on the assumption that other persons may be injured or killed unless the driving act is terminated is not authorized.

ANALYSIS:

The analysis of this case begins with an understanding that the people must prove each and every element of a crime beyond a reasonable doubt to sustain a conviction. In addition, there must not be any legal justification for actions of those involved such as self-defense or defense of others. In this case each of the officers who fired their weapons justified their actions by indicating the fear that another officer was facing imminent threat of death or serious bodily injury.

In the case of Sergeant Henderson, he told OIS Team members he initially believed that Officer Eric Hulbert was in the path of the Hellcat having just exited his silver truck from the driver’s side. Sergeant Henderson said he believed that Officer Hulbert may have been hit and trapped under the Hellcat as it continued to make its escape. If Sergeant Henderson’s belief is honest and reasonable even if mistaken, his actions will be justified under the laws of self-defense. Examining Sergeant Henderson’s actions, we know that at the end of the shooting he told officers he was repeatedly

calling for Officer Hulbert. This is confirmed by several of the officers on scene at the time and is further corroborated by the video recording by an unknown citizen. In that video Sergeant Henderson can clearly be heard repeatedly yelling "Eric." Other officers who chose not to shoot at the Hellcat all spoke about their fear the Hellcat was going to hit another officer. Those officers said they did not fire because other officers were between them and the Hellcat. Finally, Officer Hulbert himself spoke about being in the street in the location where Sergeant Henderson believed he was standing. Officer Hulbert moved to avoid being hit by the car, but nonetheless, he corroborates Sergeant Henderson's account.

In the case of Officer Saputa, his account of the events is like Sergeant Henderson's, but he believed that it was Officer Diehl who was in the path of the Hellcat as he fired. Officer Saputa said that he yelled commands to the driver to stop to no avail. Officer Saputa said that he feared Officer Diehl would be killed by the Hellcat so he fired his weapon until he believed the driver was incapacitated and the vehicle was not making any additional forward progress. Officer Saputa was one of the officers who heard Sergeant Henderson calling for Officer Eric Hulbert and informed Sergeant Henderson that Officer Hulbert was unharmed.

Finally, in the case of Officer Hulbert, he also justified his actions by indicating that he believed Officer Diehl would be hit and killed by the car. Officer Hulbert said that immediately, prior to firing his weapon, he saw Officer Diehl in the path of the Hellcat and then did not see Officer Diehl anymore. Officer Hulbert believed that Officer Diehl may have been under the car. Officer Hulbert continued to fire his weapon until it was empty. He reloaded at that point and then realized the driver was incapacitated.

It is also apparent that visibility may have been a factor in the perceptions of the officers. The officers described heavy smoke at the scene and their inability to see. These statements are confirmed by video from the area. One video taken from a home security system several blocks away from the scene of this incident show heavy smoke billowing above the roof line at the time of this incident. Video from an unknown civilian also shows heavy smoke in the area just after the shooting and the engine of the Hellcat can be heard revving loudly in the background.

It is important to note that there are not any statements or evidence that contradict what the officers described. In the absence of contradicting statements from independent witnesses, or video or other physical evidence from the scene of the incident, the OIS Team is unable to refute the information provided by the officers in this case.

CONCLUSION:

The District Attorney's Office has concluded its initial review of the events of June 6, 2020, that resulted in the shooting death of Erik Salgado, an unarmed man, by officers of the California Highway Patrol.

The CHP officers involved in the shooting that night have all provided statements to justify their actions. Only one civilian witness has come forward to tell us what she knows about the shooting. Her account corroborates the officers at times and leaves other questions unanswered. No other witnesses have come forward to shed light as to what happened that night. None of the officers

involved wore body cameras to document the events. Such evidence has proven critical to proving other cases in court. Unfortunately, we also lack any video documentation from civilians like there has been in other highly publicized officer involved shootings. Finally, the forensic evidence collected and developed in this case does not negate the officers' versions as to why they needed to use deadly force.

In short, while questions remain as to the use of force in this case, there is a lack of evidence and independent witnesses to proceed with criminal charges. That being said, there is no statute of limitations for a crime such as this, and should more witnesses or evidence come forward, we will revisit this decision in light of our ethical obligation to only charge a case where there is a good faith belief that it can be proven beyond a reasonable doubt with admissible evidence to twelve jurors from our community. At this point, we have not yet arrived at that high standard.