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Stanislaus County**

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May 20, 2019

Chief Galen Carroll  
Modesto Police Department  
600 10th Street  
Modesto, CA 95354

Re: Jason Perkins shooting

Dear Chief Carroll:

In complaint # 4004796, defendant Jason PERKINS (DOB 3/22/1979) was charged with unlawful flight from an officer as well as an assault with a firearm on a police officer. During the arrest of Perkins for the above case as well as for additional warrants, he was shot after once again attempting to flee (in a vehicle) endangering those around him in a bank parking lot. The review of the shooting was submitted to us under MPD case #MP17-114273 and has been on hold until resolution of the underlying criminal case. The criminal case against the defendant has now been resolved; based upon a review of the submitted reports, witness statements and the audio and video evidence, it is our conclusion that the use of force by the involved officer does not warrant criminal prosecution. This finding is also supported by the guilty plea entered by the defendant. To explain our finding, I begin with a summary of the known facts.

**FACTS**

On July 17, 2017, the Stanislaus County Auto Theft Task Force (StanCATT) located a stolen car in a motel parking lot in Turlock. Task Force agents took up surveillance of the car in an attempt to arrest those in possession of the stolen car. A male with distinctive tattoos got into the car and drove away from the motel. The male was later identified as Jason Perkins. Sgt. Dave Shaw of the Turlock Police Department pulled behind Perkins and conducted a traffic stop. Perkins refused to pull over and fled in the stolen car. As Perkins drove away, he failed to stop at red lights, drove at unsafe speeds, passed vehicles on the right causing them to brake and make maneuvers to avoid collisions and drove into oncoming lanes. Perkins drove with wanton disregard for the public's safety.

Perkins was eventually able to escape his pursuers by leaning out the car window and pointing a black handgun at Sgt. Shaw. Sgt. Shaw was forced to drop back which allowed Perkins to get away. Based on this incident a criminal complaint was filed (in case #4004796) for a violation of

Section 245(d)(1) of the Penal Code, a violation of Section 2800.2(a) of the Vehicle Code and a violation of Section 10851(a) of the vehicle Code, all felonies. Judge Zeff issued a warrant for Perkins's arrest in the amount of \$350,000.00.

On November 6, 2017 at about 0850 in the morning, Stanislaus County 911 was contacted by bail agents. The caller identified themselves as bail agents looking for a possibly armed and dangerous fugitive – Jason Perkins. The agents advised that Perkins had a \$350,000.00 warrant because he “417’d” [brandished a firearm] at a TPD officer. This information was broadcast to officers and units were dispatched to the general area Perkins was believed to be. The bail agents updated 911 that they had located Perkins in a bank parking lot and needed police assistance. The vehicle Perkins was driving was described by one of the bail agents and the officers were told he was parked by the ATM.

The first two officers to arrive in the bank parking lot were Officer Ryan Olsen and Sgt. Jerry Ramar. They were both motorcycle officers; having no vehicle with which to block the suspect's car in the parking stall (or for their own protection) they had to dismount and approach on foot. As the officers approached to within a few feet of the driver's side window (which was rolled down) they gave commands to Perkins to “show your hands.” Officer Olson's body camera (BWC) was activated during the events; Ramar's was not. One of the bail agents was also parked directly behind the stall Perkins was parked in, only separated by the space between the two parking rows.

Perkins appeared to see the two officers and quickly reached down and to his right. It is unclear what he reached for, but the vehicle's brake/back-up lights came on as if he had put the car in gear. The bail agent stated that Perkins accelerated the car so rapidly in the crowded parking lot that the “back end of the vehicle raised” up. In the split second that Perkins reached for something and accelerated the car, Sgt. Ramar fired his handgun at Perkins.

Perkins continued backwards in the car at a high rate of speed until the car struck a concrete planter (coming to rest next to the bail agent's vehicle). The agent stated that bark from inside the planter was spilling up onto his vehicle, causing him to believe the vehicle's wheels were still in motion. The officers moved closer to Perkins continuing to yell “show me your hands.”

The bail agent stated at this point, while he was looking in the passenger compartment of the vehicle, he could see Perkins reaching with one of his hands in the passenger area of the vehicle. At the time, the agent suspected Perkins was reaching for a gun and felt as though there was going to be a shootout between Perkins and the two officers. The agent stated he feared for his own safety and his son's safety (who was in the agent's vehicle with him) and felt as though he had to get out of the bullets' path. Sgt. Ramar fired again and Perkins ceased any rapid movements.

Perkins was removed from the car and provided medical treatment. He survived his injuries. Pursuant to the county-wide officer involved incident protocol the scene was preserved – video collected and witnesses interviewed.

On March 25, 2019, Perkins pled guilty to assault with a deadly weapon (firearm) on a police officer, among other charges. He was sentenced to four years in prison.

## LAW

Any application of deadly force is unlawful unless it is either justified or excused. The use of force by a peace officer is governed by the Fourth Amendment. As the U.S. Supreme Court has said:

“The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, nor by the mistaken execution of a valid search warrant on the wrong premises. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: “Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,” violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” [Internal citations omitted.]  
Graham v. Connor, (1989) 490 U.S. 386, at p. 396-397.

Peace officers are extended rights that differ from ordinary citizens due to their need to enforce the laws. The right to use force is codified in Penal Code §835a which states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. ¶ A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

The standard for self-defense by an officer (or the use of force that results in death) is set out in the Penal Code:

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 felony, and who are fleeing from justice or resisting such arrest.**

Penal Code § 196 [Bold added.]

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Federal courts have said:

With respect to deadly force, the Court has explained that "it is unreasonable for an officer to 'seize an unarmed, nondangerous suspect by shooting him dead.' But '[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force.'" Id. (citations omitted). The "broad discretion that must be afforded to police officers who face a tense situation," must be extended to mistakes of fact concerning "the existence of probable cause" as well as to mistakes as to what the law requires under particular circumstances.

Foster v. City of Fresno, (E.D. Cal. 2005) 392 F. Supp. 2d 1140, 1148 (citing to Jeffers v. Gomez, (2001) 267 F.3d 895, 909)


### CONCLUSION

Based on the law as set out above, Sgt. Ramar and Officer Olson were legally performing their jobs as peace officers cloaked with the protections of the law; they were in uniform and exhibited the authority of the State. They had a lawful reason to contact Perkins, who was believed to be armed and dangerous and had an outstanding felony warrant for an assault on a police officer.

Perkins had fled in the past, resulting in a pursuit. The arrest warrant outstanding for his arrest was more than sufficient to establish probable cause to arrest and forcibly stop him if necessary. Once Perkins accelerated the car in the parking lot, he was a danger to all those around and the officers had a legal right (and a duty) to stop him. Under these circumstances, the shooting of Perkins was not unlawful.

Very truly yours,

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District Attorney



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cc: Sgt. Jerry Ramar

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