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Report of the Law Enforcement Involved Fatal Incident/Officer-Involved Shooting of
Donald Eversen Jr. by the Concord Police Department on December 1, 2019

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Privacy Statement

This report included redactions of the names and other identifying information of witnesses, neighbors, and the family members of Donald Eversen Jr. Specific addresses are also not provided in this report. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as readability of this report, the witnesses and key locations will be indexed as follows:

- Victim 1 (V-1), the Father of Eversen
- Victim 2 (V-2), the Mother of Eversen
- Witness 1 (W-1), neighbor across the street
- Witness 2 (W-2), neighbor
- Witness 3 (W-3), passerby in vehicle
- Location #1, Eversen's residence, and the location where the incident occurred

EXECUTIVE SUMMARY

On December 1, 2019, at approximately 1115 hrs¹, the Concord Police Department (CPD) received a 911 call from V-1 and V-2, reporting their son Donald Eversen Jr. (referred as Eversen hereafter) was acting erratic and was armed with a knife. V-1 told the dispatcher Eversen also had a plastic handgun. They requested police assistance due to their concern for their son. V-2 informed CPD dispatch they had recently called the police (11/6/21), due to similar behavior by Eversen. During the prior incident, Eversen had been taken into custody and later admitted to the hospital under a 5150 W&I² hold.

V-2 then described Eversen as being a long time abuser of alcohol and drugs. V-2 was not sure what type of drugs Eversen may have ingested on this date but, he smelled of an alcoholic beverage.

During V-2's call with CPD dispatch Eversen could be heard in the background yelling if the police were coming, "to have them turn around," and that he would "kill any police officer" who showed up to the house.

Both V-1 and V-2 continued to try and calm Eversen down. Eversen exited the front door and stood in the front yard of the residence. Eversen was yelling at passersby and neighbors. Eversen continued to get more aggravated and aggressive. Eversen had a knife in one hand, a replica handgun in the other and was waving them around at passersby. V-1 updated the dispatcher, Eversen now had a different knife and it was not in a sheath. V-1 also told the dipatcher there was a real gun in the house and was not sure if it was secured. V-1 later confirmed the gun was secure as they talked to the dispatcher. While Eversen was outside in the front yard, V-1 locked the front security screen in an attempt to keep him out of the house until the police arrived. V-2 remained on the line with CPD dispatch. The security screen was closed, but the front door was still open. Eversen became angrier at his parents. Eversen continued to yell he would "kill every police officer" that showed up to the house.

Between 11:24 am and 11:29 am, several neighbors called 911, to report a man with a gun in front of Location #1. One neighbor told CPD dispatch they could hear Eversen threatening to kill his parents³.

¹All times and distances in this report are approximations.

² W&I 5150 authorizes a peace officer to take a person into custody for a medical health evaluation if they represent a "danger to others, or to himself or herself, or gravely disabled" (California Welfare and Institutions Code, 5150)

³ Information obtained from the certified transcript of the call.

CPD officers had arrived on scene, but parked in an area out of sight of Location #1 prior to contact with Eversen. The responding officers had been given information that Eversen had a handgun which may be a replica, but there had also been mention of a real gun which may still be in the house. Additionally, information was given to the officers that Eversen may have some mental health issues. Eversen was still in front of the house with both weapons while yelling at the officers. The officers continued to stage⁴ until the supervisor arrived on scene.

Meanwhile V-1 and V-2 were still on the phone with CPD dispatch and were inquiring as to when the officers would arrive at Location #1. At that time, Eversen was still outside in front of the house, with a visible knife in one hand and a replica handgun in the other hand. Eversen was still being aggressive toward the neighbors and passersby. Other neighbors and passersby called 911, to inform CPD there was a man with a gun in front of Location #1.

Sgt. Graham arrived on scene at approximately 11:33 am. Sergeant Graham held an in-field briefing at Whitman Rd. and Oasis Dr., approximately two blocks from Location #1. The following CPD personnel were present for the briefing: Corporal Tucker, Officers Lazar, Rodriguez, Cedras, Corey and Gatlin. At the time of their briefing, Eversen was still in front of the house and could be heard yelling in the background as Sergeant Graham was relaying his plan. Sergeant Graham planned to approach the house using their patrol cars for cover in the event Eversen actually had a real firearm. Sgt. Graham formed the following contact team; Officer Lazar was to have the "Ballistic Shield"⁵, Corporal Tucker was assigned to have the "Sage"⁶ gun for a less lethal option, Officer Rodriguez and Cedras were to have rifles for lethal cover. When contact was made with Eversen, Officers Gatlin and Corey were supposed to join the contact team as well. As the team made their approach to Location #1, Eversen went back into the house out of their view.

As the CPD officers were approaching, Eversen cut a hole through the screen of the security door, with the knife; then reached in and unlocked the security door. Eversen re-entered the house and was enraged toward V-1 and V-2, because he believed they had called the police. Eversen then physically attacked both of his elderly parents, V-1 and V-2. Eversen knocked V-1 to the ground by punching him in the face. V-1 was lying on the ground, when Eversen picked up a large coffee table and used it as a weapon to strike him (V-1). V-2 attempted to stop Eversen's attack on V-1 and he turned his attention to her. Eversen then knocked V-2 to the ground. After knocking V-2 to the ground, Eversen picked up a smaller coffee table and struck

⁴ A pre-determined location where law enforcement personnel meet prior to deploying to a specified area within a crime scene.

⁵ The ballistic shield is a shield which is carried by an officer that affords protection from bullets fired from certain caliber handguns or rifles. The officer can carry the shield in front of him/her to protect themselves from gun fire.

⁶ The Sage gun fires a less-lethal kinetic injury projectile (hard foam projectile). This tool is an intermediate level of force designed to generate blunt force trauma and achieve pain compliance.

her with it. For several minutes Eversen picked up furniture and violently struck both V-1 and V-2 with the furniture. Eversen used the furniture as a weapon, striking V-1 and V-2 with enough force to break the furniture and cause severe injuries to both V-1 and V-2.

After Eversen had gotten back inside the residence of Location #1, Sergeant Graham, Corporal Tucker, Officers Lazar and Rodriguez had moved up to a position across the street, in front of Location #1. The group of officers took cover behind a parked car directly across the street from Location #1. The officers could hear loud banging and yelling coming from inside the house. Sergeant Graham instructed Officer Higby, who was a hostage negotiator, to make a call inside the house to attempt contact with either the victim's or Eversen. Officer Higby advised via police radio, that he had made contact with Eversen on the phone. Eversen yelled at Officer Higby and then hung up.

Without prior warning the front door opened. Sergeant Graham and several officers called into the house for Eversen to come out. V-1 walked out the front door onto the porch. Sergeant Graham approached the front of the house with his gun drawn. As V-1 reached the porch, Sergeant Graham approached the house, Eversen then closed and locked the front door. V-1 was injured and bloody. V-1 told Sergeant Graham, V-2 was still in the house and she was hurt. Sergeant Graham heard crashing and screaming coming from inside the house.

Fearing for the safety of V-2, Concord PD officers forced entry into the residence to save V-2's life. Upon forcing the door open, V-2 could be heard screaming and Eversen yelled, "I'm going to kill her." Sergeant Graham with his handgun drawn and Officer Rodriguez with his rifle, were the first two officers inside the residence. They went through the living room and confronted Eversen inside the kitchen. He was on his knees, straddled over V-2, on the kitchen floor. Eversen had a large kitchen knife which was pointed down at V-2. Sergeant Graham yelled for Eversen to "Stop" numerous times as V-2 continually yelled "Make Him Stop!" Eversen did not comply and due to the imminent threat of death to V-2, Sgt Graham, as well as Officer Rodriguez discharged their weapons at Eversen. Sergeant Graham fired his weapon four times and Officer Rodriguez fired his weapon one time at Eversen. Eversen was struck by the gunfire, which caused him to drop the knife and fall off of V-2.

Officers attempted CPR and other life saving measures on Eversen but were unsuccessful. Eversen was later pronounced deceased by paramedics who later arrived on scene.

V-1 sustained significant injuries and V-2 sustained life threatening injuries, both requiring hospitalization.

At approximately 12:00 pm, the Contra Costa County District Attorney's Office (CCDAO) was notified of the incident. The CCDAO sent Deputy District Attorney Barry Grove and a group of four Senior Inspectors to investigate this incident

No officers were injured during this incident.

On December 2, 2019 the Contra Costa County Coroner's Office conducted an autopsy on Eversen's remains. The forensic pathologist determined the cause of death to be multiple gunshot wounds.

The Contra Costa County Sheriff's Office Coroner's Inquest was held on November 18, 2020. The jury returned a verdict of death caused by Accident.

Accordingly, in applying the applicable law and the California District Attorney's Uniform Crime Charging Standards to the present case, there is no evidence to support a criminal prosecution against Sergeant Graham or Officer Rodriguez. As such, no further action will be taken in this case.

INTRODUCTION

This report is the final step in the CCCDAO investigation of the Concord Police Department fatal officer-involved shooting of Donald Eversen Jr. on December 1, 2019, in Concord, CA.

The CCCDAO and every law enforcement agency in Contra Costa County follow the Law Enforcement Involved Fatal Incident Protocol (“The Protocol”)⁷ to investigate incidents when officers or civilians are shot, killed or die during an encounter with law enforcement. Under the Protocol, the CCCDAO investigates all officer-involved shootings in Contra Costa County for the purpose of making an independent determination of criminal liability. The sole purpose of the District Attorney Investigation is to determine if there is proof beyond a reasonable doubt that an individual involved in the law enforcement involved fatality committed a crime.

Pursuant to the Protocol, immediately after a fatal officer-involved shooting, the involved law enforcement agency is required to notify the appropriate District Attorney personnel. Once notified, trained and experienced members of the District Attorney’s Office respond to the scene and begin a criminal investigation. In addition, criminal investigators from the law enforcement agency involved in the incident and from the jurisdiction where the incident occurred, if different, respond to the scene as well. It is important to note, although these investigations happen simultaneously, each agency conducts its own independent investigation.

As part of the criminal investigation, law enforcement officers and civilians who witnessed the incident may be interviewed, evidence is collected at the scene and may be submitted to the county crime lab for testing and analysis, in addition to any relevant investigative work necessary to complete the investigation. The Contra Costa County Sheriff’s Crime Lab responds to every incident and is responsible for evidence collection of all shooting incidents.

During the course of the criminal investigation, an officer or deputy has the right to be represented by an attorney. They may voluntarily choose to provide a statement, physical evidence, or other relevant information during criminal and administrative investigations. Under the law, neither an officer nor civilian can be compelled to provide a statement as part of a criminal investigation. However, an officer may be compelled to provide a statement during the law enforcement agency administrative investigation only. (See, Public Safety Officers Procedural Bill of Rights Act, Government Code Sections 3300 et seq.) In accordance with the law, the CCCDAO does not participate in compelled administrative investigation interviews and

⁷ Contra Costa County was one of the first counties in the country to adopt a fatal incident protocol between the District Attorney and the law enforcement agencies within the county. The complete LEIFI Protocol document can be located on the Contra Costa County District Attorney’s Office website.

does not review them as part of the independent criminal investigation. There are very narrow circumstances where an exception to this rule is allowed.

Independent of the CCCDAO and in accordance with the Protocol, the Coroner's Division of the Contra Costa County Sheriff's Office (CCCSO) conducts a Coroner's Inquest following most deaths that involve law enforcement personnel or law enforcement operations or activities within Contra Costa County.

The Coroner's Inquest is open to the public, conducted by a Hearing Officer (a private attorney hired by the Coroner's Division), and is held in front of a jury of citizens randomly selected from the Contra Costa County Superior Court jury pool. During the Inquest, the Hearing Officer questions witnesses and additional evidence may be presented. After hearing all the evidence, the role of the jury is to decide whether the death was (1) natural causes, (2) suicide, (3) accident, or (4) at the hands of another person other than by accident (i.e., homicide). The jury's decision has no legal bearing on the civil or criminal investigations or liability of any person(s) involved in the incident.

*Note- This report contains information, photos, and descriptions of an officer-involved shooting that resulted in the death of a person. The information contained herein is sensitive and the reader of this report may find some of this information to be objectionable.

INVESTIGATION

Overview:

On December 1, 2019, at approximately 12:00 pm, Paul Mulligan, CCCDAO Chief of Inspectors, received a call from the Concord Police Department, Lt. Sam Staten that an officer-involved shooting had occurred in the City of Concord. Chief Mulligan made the decision to have Deputy District attorney (DDA) Barry Grove and four District Attorney Senior Inspectors respond to the scene to conduct the criminal investigation on behalf of the CCCDAO.

When the CCCDAO investigative team arrived at Location #1, the crime scene was being physically guarded by the CPD personnel and the entire surrounding area was being marked off with crime scene tape, to aid in the preservation of any physical evidence. Our team also observed the location of key items of evidence, paying particular attention to the areas where the shooting had taken place. After CCCDAO investigators reviewed the shooting scene, the CCCSO Forensic Division (Crime Lab) was notified and arrived on scene to document their findings and collect evidence.

After walking through the crime scene and reviewing the associated evidence, the CCCDAO investigative team joined the CPD Detectives at the Concord Police Department. A joint briefing with both agencies was held to give an overview of the incident to ensure everyone with an active role in the investigation had the same information before any further steps were taken in the investigation.

After the briefing, DDA Grove assigned each of the four CCCDAO Senior Inspector's different investigative tasks. The investigative assignments were as follows:

- Senior Inspector Fraser Ritchie – Interview the Concord Police officers who fired their weapons (the actors) at Eversen Jr.
- Senior Inspector Lori Curran – Interview V-1 and V-2 at John Muir Medical Center in Walnut Creek. Interview witness officers
- Senior Inspector Darryl Holcombe – Interview neighbors and civilian witnesses
- Senior Inspector John Garcia – Interview fire and medical personnel
- Senior Inspector Jeff Swatman – Interview witness officers

Consistent with the Protocol, each Senior Inspector was accompanied by a CPD detective when performing the assigned investigative tasks.

As the investigation progressed, assigned Senior Inspectors reported the results of their activity to DDA Grove and the leadership team from CPD.

Every CPD officer involved in the incident was interviewed separately and was represented an attorney after having been sequestered.

Prior to interviewing the officers who fired their weapons at Eversen DDA Grove, Senior Inspectors Ritchie, Curran, Garcia and other CPD detectives reviewed body-worn camera footage of this incident. The involved officers who fired their weapons against Eversen did not view the footage from their body-worn cameras prior to being interviewed.

Once the scene was processed and all the interviews were completed, the next steps in the investigation were to await the formal autopsy results, the completion of lab testing and the Coroner's Inquest Hearing.

Overall the CCCDAO investigation of the death of Donald Eversen Jr. was comprehensive, thorough, objective and independent. In all twelve police officers, seven firefighters/emergency medical personnel and twelve civilian witnesses were interviewed; along with one crime scene being processed for evidence (Location #1). This report represents hundreds of hours of investigation conducted by CCCDAO, CPD and the CCCSO Crime Lab.

Evidence Reviewed

- The crime scene, Location #1 on Oasis Drive.
- Dispatch records and logs of the incident
- 911 audio recordings
- California Department of Justice criminal history information involving Eversen
- Prior Police Reports involving Everson Jr.
- Body worn camera footage from the officers involved in the incident
- Interviews of all the officers categorized as actors (2), and witnesses (10)
- Interviews of all civilian witnesses associated with this incident (14)
- Interviews of all the victims associated with this incident (2)
- Interviews of the responding support personnel from CFD and AMR emergency medical personnel
- Autopsy of Eversen by CCC Sheriff's Coroner's Office (Report Number 2019-5505)
- CCC Forensic Services Division Report (19-5700)
- CCCSO Coroner's Inquest testimony and findings

Crime Scene Description

There was one crime scene associated with this incident. Location # 1 is a single-story family residence located between Kasba Street and Nuala Street in the city of Concord, California. This residence is a three-bedroom, two-bath dwelling with an attached garage. The front door faces south and is accessed by a long concrete pathway with lawn on each side. There was a large knife with a wooden handle stuck into the trunk of the tree on the west side of the front yard (See Figure 1).

There is a concrete driveway on the west side of the residence. At the end of the driveway, is a metal cyclone fence with green slats. The front porch area is covered with a wooden front door. There is a black metal security grate affixed to the front door. There were blood droplets on the west side of the porch (See Figure 2). The front door had been forced open. There was damage to the structure of the door and the door frame (See Figure 1).

Inside the front door was a narrow hallway which accessed the living room and another hallway. At the end of the hallway, was the entrance to the kitchen. There were broken pieces of ceramic and other items knocked over on the tile floor of the hallway (See Figure 3). There was smeared blood on the tiles in the hallway near the front door, leading to the kitchen.

Inside the living room, were numerous pieces of furniture knocked over and damaged. There were numerous items knocked off shelves which were scattered about the floor. Broken picture frames, artifacts, lamps, and broken glass was scattered about the floor (See Figure 5). There was a frame of a Daisey BB gun located on top of a table in the living room and the slide for the BB gun was located partially under the couch in the same area (See Figure 6). There were large amounts of blood in front of the couch in the living room as well as blood droplets, smeared blood, throughout this area on various pieces of furniture, on the floor, and on lamp shades. A single bloody hearing aid was located at the foot of the couch (See Figure 7).

The encounter with Concord PD officers took place in the kitchen of the residence. Eversen was located on his back on the floor of the kitchen. The physical evidence indicates that Eversen was armed with a large kitchen knife, in the process of stabbing his mother when confronted by officers. The large knife was located near the body of Eversen. The blade measured over twelve (12) inches in length and had smeared blood on the blade of the knife (See Figure 4). An empty 750 ML bottle of gin was located in the living room to suggest alcohol consumption by Eversen.

A review of the evidence, to include body cam footage, evidence located outside and inside the residence, suggested a violent encounter occurred inside the residence where a violent attack of Eversen's parents took place. Eversen assaulted them and attempted to stab V-2 when encountered by police.

Crime Scene Recovery

The evidence at the crime scene located inside and outside of Location #1, was processed by criminalists from the CCCSO Crime Lab. Evidence recovery, scene documentation, and photographs were completed by the Crime Lab.

Five fired cartridges were seized, four (4) 9-millimeter and one (1) .223 caliber casings were located in the kitchen and hallway.

A large knife was recovered from the trunk of a tree in the front yard. Several droplets of blood were located on the front porch area. Inside the residence, where Eversen encountered members of the Concord Police Department, was a large kitchen type knife with a blade measuring over approximately twelve (12) inches long with smeared blade on the blade.

Eversen's, deceased body was located in the kitchen. He was on his back, clothed, lying in a pool of blood. He had medical pads on his chest and abdomen along with an AED device by his side. On the kitchen floor near Eversen's body, were deformed bullets and fragments. There were bullet holes in the kitchen cabinets where some of the bullet fragments were located.

Inside the living room, were parts of a Daisy BB gun. This BB gun had the appearance of looking like a real semiautomatic handgun. A large hunting type knife inside a sheath was located on the dining room table. There was an empty 750 ML bottle of gin located in the living room to indicate consumption by Eversen

There were a large amount of blood droplets, contact smeared blood, and numerous articles of evidence with smeared blood throughout the hallway, living room, and kitchen.

All evidence was seized and collected by the CCCSO Crime lab for later analysis.

Donald Eversen Jr. – Relevant Prior Incidents with Law Enforcement

1. 8/02/19, CPD 19-10079: Eversen was arrested for PC 647f, Drunk in Public
2. 8/18/19, CPD 19-10801: Eversen was arrested for PC 647f, Drunk in Public
3. 11/06/19, CPD 19-14502: Eversen was detained per W&I 5150 after attempting suicide at Location #1.

Figure 1



Figure 2



Figure 3 - Hallway of Location # 1 leading to kitchen



Figure 4 - Bloody knife used to stab V-2



Figure 5 - Broken furniture in living room



Figure 6 – Lower receiver of Daisy BB Gun



Figure 7



Factual Summary

On December 1, 2019, at 11:15 am V-2 called 911 from Location #1 reporting her son Eversen was acting erratically, screaming, and yelling. He had armed himself with a plastic handgun, as well as knife in a sheath. V-2 also told CPD Dispatch that Eversen had been contacted at Location #1 by CPD and taken into custody under a 5150 W&I hold on 11/6/19. V-2 and V-1 stated that Eversen was a chronic alcohol and drug abuser. They did not know what if any drugs he had ingested but, they did smell alcohol. V-2 said she would like the police to come and “take him away,” because she and V-1 were elderly, and they could not handle him anymore.

Officers Cerdas and Sherwin were dispatched immediately, and Officer Sherwin asked for additional personnel to be added to the call.

The following information is meant to give the reader a detailed understanding of how the events unfolded. The remainder of this summary will be relayed according to a chronological timeline of when the events occurred⁸

11:17 am – V-2 updated Eversen was outside yelling at a neighbor over a fence. V-1 and V-2 were still inside the house.

⁸ The times, distances, and information provided is a summary of what occurred, for more detailed information see the CAD printouts and interviews with the referenced personnel.

11:18 am – V-2 told the dispatcher her son had come back into the house and the dispatcher could hear Eversen inquire who his parents were talking with on the phone. For several minutes Eversen could be heard on the phone getting more agitated, as his parents tried to calm him down.

11:21 am – Eversen could be heard over the phone in the background shouting, “I’m standing outside the front door with a loaded 45,” “tell them to turn around or I’ll kill them.” Eversen was referring to the police, stating he would kill officers if they came to the house. At that time, V-1 explained to the dispatcher Eversen had a plastic gun and still had the knife. Eversen went back outside.

11:23 am – V-1 reported Eversen had gone outside with another knife, not the one in the sheath and was still armed with the “plastic” gun. V-1 explained he had a revolver in the house but, it was locked up. He checked while the dispatcher waited on the phone and confirmed the revolver was still secure.

Several other officers then started to respond to Location #1. Sergeant Graham had already started to respond but, then upgraded his response to code 3.

11:24 am – A neighbor called 911 stating a male matching Eversen’s description was outside of Location #1 with a gun.

V-1 and V-2 confirmed Eversen was still outside, and they were able to lock the security gate to keep him out of the house. Only the security screen was locked, the front door was still in the open position.

11:26 am – The first officers arrive on scene, staging several blocks away. As the officers were arriving on scene, another neighbor called 911. That neighbor reported a male subject matching Eversen’s description was outside of Location #1, pointing a handgun at the house.

11:27 am – V-1 and V-2 are still on the phone with CPD dispatch. Eversen had come back to the front security door and could be heard yelling he was going to kill cops if they came to the house.

11:29 am – Another neighbor called 911 to check on the ETA of the officers. The neighbor heard Eversen threatening to kill the parents.

11:31 am – Sergeant Graham arrived on scene with more officers and formulated a plan to tactically approach the residence using patrol cars for cover, a “Sage” less lethal rifle, a shield and two officers assigned with rifles for lethal cover if necessary.

As Sergeant Graham was briefing his team, other CPD officers approached within view of Location #1 and could see Eversen outside. He was by himself in front of the residence, waving his arms and had an indistinguishable object in his hand.

11:36 am – Sergeant Graham and his team started their approach and stopped short of the house. Sergeant Graham and the team lost sight of Eversen

Eversen was seen running back to the front door. Eversen used the knife to cut through the screen on the security door and regained entry into the residence.

CPD officers could hear banging and yelling from inside of the residence. V-1 and V-2 were still on the phone with CPD dispatch when Eversen regained entry into the house.

Sergeant Graham, Corporal Tucker with the Sage gun, Officer Lazar with the ballistic shield and Officer Rodriguez with his rifle, re-position behind a parked car directly across from Location #1. Sergeant Graham yelled commands for Eversen to come out of the house.

Sergeant Graham then instructed Officer Higby to call into the house and attempt to speak to Eversen

11:44 am – Officer Higby stated over the radio he was able to contact Eversen who made demands for money and a helicopter and then hung up the telephone.

11:45 am – Lt. Staten announced he is on scene. The front door opened, and V-1 walked out of the house. Sergeant Graham and Officer Lazar approached V-1 and yelled for Eversen to come out of the house. Eversen slammed the door behind V-1 and left him on the porch.

Sergeant Graham made contact with V-1. He appeared injured and confused, as Sergeant Graham asked questions about V-2. Sergeant Graham observed large amounts of blood covering V-1’s face and head. Lt. Staten requested code 3 fire and ambulance.

Upon further questioning, Sergeant Graham learned that V-2 was injured inside the house.

Yelling and banging could still be heard coming from inside the house.

Lt. Staten ordered officers to force entry into the house, to save V-2.

11:45 am – Sergeant Graham was the first one at the door with his handgun drawn. Corporal Tucker still had the Sage gun, with Officers Rodriguez, who had his rifle, Corey, and Gatlin with their pistols drawn, lined up behind Sergeant Graham. They were going to enter the residence once the door was forced open. Officer Sherwin initially held the security door. Officer Sherwin then attempted to kick the door open and was unsuccessful. Corporal Tucker then kicked the door and a lower panel of the door broke inward. Corporal Tucker kicked the door again and it broke open.

The first thing that the officers heard, upon the door being forced open was Eversen yelling, “I’m going to kill her!” from inside the house. Sergeant Graham went into the house, immediately followed by Officer Rodriguez with his rifle. Sergeant Graham immediately yelled “No” after he heard Eversen yell he was going to kill her, then continually yelled “Stop!” He and Officer Rodriguez crossed an entry way and stopped at the kitchen door. Officer Rodriguez was positioned to Sergeant Graham’s right side as they confronted Eversen, both pointing their weapons at Eversen.

Eversen was on his knees, straddled over V-2, as she continually yelled “Stop him! Stop Him!” V-2 already appeared injured and was bloody as she lay pinned under Eversen. Eversen held a large kitchen knife in his right hand, and the tip was pointed down at the victim.

Sergeant Graham yelled numerous additional times for Eversen to stop and Eversen continued to yell. Sergeant Graham shot Eversen five times and Officer Rodriguez shot Eversen one time with his rifle, to stop Eversen from stabbing V-2 to death. After being shot, Eversen fell to the floor off of V-2.

11:46 am – Officers pull V-2 out from under Eversen into the dining room. Sergeant Graham requested a medical bag, for life saving measures, for Eversen and first aid for V-2.

Lt. Staten Invoked the Protocol, prior to Eversen being pronounced deceased.

11:46 am to 11:52 am – CPD officers performed CPR on Eversen and were relieved by Fire/Paramedics that had arrived on scene. Paramedics continued to administered life saving measures and attempted a use of an AED, on Eversen The life saving measures were unsuccessful.

11:54 am – Paramedic Dylan Fuchs pronounced Eversen deceased at the scene.

Vehicular, Body-Worn and Civilian Camera Footage

There was body-worn camera (BWC), in-car dash camera, cell phone video and stationary surveillance camera footage that captured key portions of the incident⁹. The relevant footage captured Sergeant Graham's contact with V-1 in front of the house. V-1 is injured and bloody and confirms Eversen was the person who injured him. V-1 also confirmed Eversen was in the house with V-2. V-1 confirmed V-2 was inside the house, and she was hurt. The decision was made to breach the front door to save V-2. The first thing that was heard, immediately after the door is forced open was, Eversen yelling "I'm going to kill her." Sergeant Graham and Officer Rodriguez entered the house and advance toward the kitchen. The footage showed Eversen was on his knees, straddled over V-2 underneath him. Eversen had a large knife in his right hand, and the tip of the knife was pointed down at the victim. Sergeant Graham was yelling commands to Eversen while he pointed his firearm at him. Seconds later the footage showed Sergeant Graham discharging his pistol and officer Rodriguez discharging his department issued AR-15 rifle, striking the suspect. Eversen dropped the knife, fell to his left side and then onto his back. Sergeant Graham and Officer Rodriguez had their BWC's turned on the entire time and captured the relevant portions of the incident.



Figure 8 – Initial contact of V-1 on porch

⁹ The original BWC footage is maintained by CPD. CPD released footage of the incident and its available to view in several public sources on the internet.

Interviews of Involved Police Officers:

There were (12) sworn law enforcement officers involved in this incident. Of that number, two discharged their firearms and are considered actors¹⁰. This report will detail the interviews of all the actors, or those who witnessed a key portion of this incident and can help provide a more complete picture of what occurred¹¹. The interviews will describe the incident from the perspective of the involved officers¹². The information is being listed in the manner in which it was relayed to the investigators¹³.

During the course of the criminal investigation, an officer has the right to be represented by an attorney. The officer may choose to provide a statement, physical evidence and other relevant information. It's important to note that, neither the officer or civilian can be compelled to provide a statement or any other evidence in a criminal investigation. An officer can only be compelled to provide a statement or other relevant information during an internal administrative investigation by the officer's employer¹⁴. In this investigation, all the involved officers provided voluntary statements to the CCCDAO and Concord PD, with their attorney present.

Each police officer was interviewed separately from the others, within hours of the incident and after subject to sequestration. It is important to note, that none of the involved officers viewed their body worn camera video footage prior to being interviewed.

Sergeant Josh Graham

Sergeant Josh Graham was interviewed on December 1, 2019 at approximately 8:22 pm, by Senior Inspector Fraser Ritchie and Detective Provost of the Concord Police Department. Sergeant Graham's legal counsel, Joseph Lucia, was present and Deputy District Attorney Barry Grove was present as well. The interview was concluded at approximately 9:04 pm.

The following is a summary of the relevant portions of Sergeant Graham's interview:

Sergeant Graham confirmed with Senior Inspector Ritchie and Detective Provost, that this interview was voluntary. Sergeant Graham has worked for the Concord Police Department for 17 ½ years. He is a patrol supervisor but also has the collateral duty of Team Leader of the Crisis Negotiation Team (CNT), of which he's been a member for the past 5 years. Sergeant Graham

¹⁰ Actors – Law Enforcement personnel whose conduct was actually or conceivable a factor (CCC Protocol, pg.14).

¹¹ The original records are retained by agencies involved in this incident. Copies can be obtained by contacting them directly.

¹² There may be information, statements, or recollections of the events that are inaccurate or inconsistent with facts of this incident as they are currently understood.

¹³ The authors of this report did not participate in the interviews of the officers.

¹⁴ Public Safety Officers Procedural Bill of Rights Act, Government Code sections 3300 et seq.

has been to advanced officer training for basic hostage negotiations and crisis intervention training courses.

On December 1 2019, Sergeant Graham said he was the dayshift supervisor. Sergeant Graham was in the Valley area of the City of Concord. At approximately 11:15 am, he heard two officers get dispatched to a 5150 W&I call. The parents of an adult son had called due to erratic behavior and he had armed himself with a sheathed knife. Sergeant Graham also heard that the son had been placed on a 5150 W&I detainer in the recent past. Sergeant Graham advised dispatch that he would be enroute and believed the situation could be dangerous. Due to the son's erratic behavior, he ordered the other responding officers to stage until he got there. Sergeant Graham also had Officer Higby respond as well since he was a member of the Crisis Negotiation Team (CNT).

Sergeant Graham had the other responding officers stage at Whitman Road and Oasis Drive. Sergeant Graham had been provided information that Eversen had armed himself with a plastic gun and a knife. He was also updated that there was a real gun in the house but, was told it was secured inside the house. Sergeant Graham knew Eversen still had a knife. CPD dispatch continued to update Sergeant Graham as he was responding to Location #1. CPD dispatch relayed to him, neighbors and passersby had called 911 reporting a subject matching Eversen's, description had pointed a gun at them. Eversen was in front of Location #1 acting aggressive while holding a (plastic) gun and knife. Sergeant Graham was concerned for the safety of the officers, the occupants of the house and the neighbors, due to the fact that he was unsure if Eversen only had a plastic gun. Sergeant Graham held an in-field briefing and assigned officers specific tasks for their approach to Location #1. Officer Lazar was assigned the ballistic shield, Corporal Tucker had the Sage gun for a less lethal option, Officer Rodriguez was to carry his department AR-15 and several other officers were assigned to approach with them as well. They were going to use the cars for cover in the event Eversen had a real firearm. They were going to stop a block short of Location #1 and attempt to get Eversen to comply. Ultimately, the goal was to take Eversen into custody safely in front of the house.

Sergeant Graham stated he heard Eversen down the street yelling as he was planning his approach with other officers. Sergeant Graham heard an officer attempt to engage Eversen in conversation but was unsuccessful. That officer reported seeing an unknown object in Eversen's hand, as he was in front of Location #1.

Sergeant Graham and the officers started their approach and stopped a block short of Location #1. He lost sight of Eversen behind some bushes and wasn't sure if he went back to the house. The officers gave Eversen verbal commands, however there was no response.

Sergeant Graham stated he heard some loud banging and noises from in front of Location #1. Sergeant Graham then heard what he believed to be things breaking, loud noises and a female screaming from inside Location #1. He was not sure how much time had passed since he had seen or heard Eversen. Sergeant Graham was not sure if Eversen had gotten back into the house. He then then heard a neighbor tell him, Eversen had gotten back into the house. Sergeant Graham then had Officer Lazar, with the shield, move with him behind a parked car directly across from Location #1. Corporal Tucker also came with his Sage gun and Officer Rodriguez came with his rifle.

Sergeant Graham was trying to get a better view in front of the house to see what Eversen was doing. He could see a silhouette in the front room of the house and believed it was Eversen. He was yelling and trying to get Eversen's attention to maybe get him to come back outside. Sergeant Graham then had Officer Higby attempt a phone call into the house and try to talk to Eversen. After a few minutes, Officer Higby advised he had Eversen on the phone but after a short time, Eversen had disconnected the phone call.

Sergeant Graham then stated a few minutes later, V-1 walked out the front door. He appeared severely injured and covered in blood. Sergeant Graham saw Eversen behind V-1 as he slammed the front door closed. Sergeant Graham and other officers approached V-1. V-1 confirmed to Sergeant Graham that Eversen was the one who had injured him. V-1 told Sergeant Graham that his wife (V-2) was still inside the house. Sergeant Graham knew Eversen had a knife, had injured both his parents, and potentially had access to a real firearm still inside the house. Sergeant Graham believed that if they didn't make entry into the house to rescue V-2, Eversen would kill her. Sergeant Graham told the officers around him that they were going to force entry into Location #1.

Sergeant Graham recalled Officer Sherwin next to him. Officer Sherwin attempted to force the door open, but was unsuccessful. Corporal Tucker stepped in, kicked the door once and the lower panel broke. Tucker kicked the door one more time and it broke open. Sergeant Graham entered the home and went straight toward the kitchen. He saw broken furniture and blood on the floor. Sergeant Graham was at the door of the kitchen and Eversen was in the middle of the kitchen, hunched over V-2. Eversen had a "huge" knife and it was pointed at V-2 (See Figure 9). He saw that V-2 had blood all over her face and upper torso. Eversen was extremely agitated and looked away from Sergeant Graham, then down toward V-2 and stated he was going to kill her. Based on his behavior, Sergeant Graham quickly formed the opinion that Eversen was intent on killing V-2. Having no other viable tactical option, Sergeant Graham fired his handgun at Eversen until he stopped assaulting V-2.

Sergeant Graham knew Officer Rodriguez was next to him, but did not know he had fired his weapon. Sergeant Graham learned after the fact, that Officer Rodriguez had fired his rifle at Eversen. Other officers entered the residence, walking around to the other side of the kitchen. They pulled V-2 out from under Eversen and administered first aid to her. Sergeant Graham stated he ordered the officers to go get a medical bag. He checked Eversen for a pulse. He initially felt a faint pulse, then no pulse. He then ordered officers to start life saving measures on Eversen.

Sergeant Graham directed Officer Higby to secure the knife, that was on the floor in between Eversen Jr and V-2. He then went outside, turned his camera off and gave it to Lieutenant Staten.

Figure 9 - Sgt. Graham BWC view of Eversen From kitchen door



Officer Oscar Rodriguez

Officer Rodriguez was interviewed on December 1, 2019 at approximately 7:10 pm, by Senior Inspector Fraser Ritchie and Detective Provost of the Concord Police Department. Officer Rodriguez's counsel, Joseph Lucia, was present and Deputy District Attorney Barry Grove was present as well. The interview was concluded at approximately 7:55 pm.

The following is a summary of the relevant portions of Officer Rodriguez's interview:

Officer Rodriguez confirmed with Senior Inspector Ritchie and Detective Provost, that this interview was voluntary. Officer Rodriguez has worked for the Concord Police Department for approximately 18 months. Prior to working for CPD, he had attended the Contra Costa County Sheriff's Training Academy. Officer Rodriguez had no prior law enforcement or military background, before joining the Concord Police Department.

On December 1, 2019 at approximately 11:15 am, Officer Rodriguez responded to Location #1 after hearing two other officers dispatched to a 5150 W&I call at that location. The adult son (Eversen) was threatening to kill himself with a knife. Dispatch advised that Eversen had previously been placed on a 5150 W&I detainer several days prior.

Officer Rodriguez responded to the staging area of Whitman Road and Oasis Drive. Sergeant Graham arrived on scene and directed Officer Rodriguez to carry his department issued AR-15. Officer Lazar was assigned to carry the shield and Corporal Tucker was assigned to deploy the Sage gun. They drove together as a group, in individual vehicles, toward Location #1.

Officer Rodriguez stated he saw Eversen in front of Location #1. He appeared agitated and angry. Eversen was yelling at them, but Officer Rodriguez could not understand what he was yelling. Officer Rodriguez saw something in Eversen's left hand but could not discern what the object was. Officer Gatlin used the public address speaker on his patrol car, in an attempt to get Eversen's attention to drop whatever he had in his hand. Eversen then walked back toward the front of the house out of his view.

At that time, Officer Rodriguez heard a neighbor tell them Eversen had gotten back inside of Location #1. Officer Rodriguez, Officer Lazar, Corporal Tucker and Sergeant Graham then moved to a position behind a parked car, directly across the street from Location #1. The neighbor approached the officers and told them, again, that Eversen had gone back into the house.

Officer Rodriguez recalled Officer Higby calling into the house in an attempt to make contact with Eversen. Sergeant Graham was also yelling commands towards Location #1. Officer Rodriguez stated V-1 came out the front door of Location #1. Officer Rodriguez recalled V-1 being drenched in blood, with his face bruised and swollen. Officer Rodriguez walked toward V-1 and he saw Eversen behind him. Eversen had a wooden object or possibly a cane and he swung it at the back of V-1's head. Officer Rodriguez heard Eversen say something to the effect, "I'm going to kill you or I'm going to kill her." Eversen went back inside the house and closed the door. Officer Rodriguez described V-1 as being disoriented or in shock. V-1 told Sergeant Graham that Eversen had injured him and V-2. V-2 was injured and still in the house with Eversen.

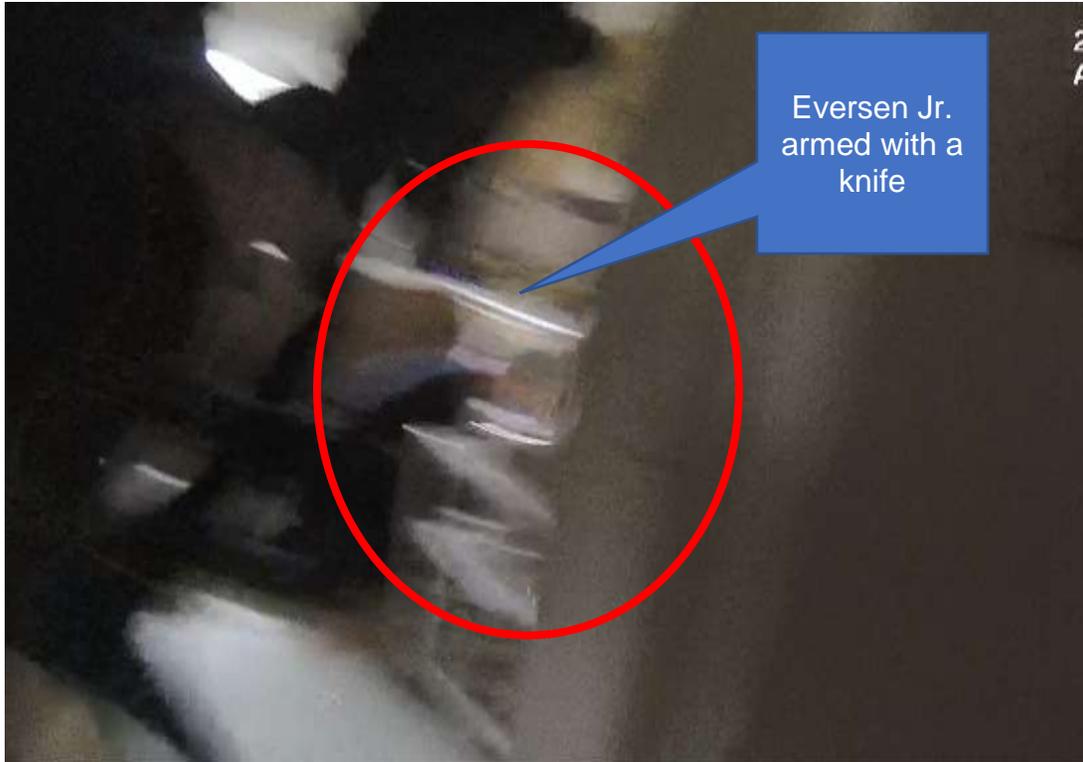
Officer Rodriguez recalled Sergeant Graham telling him that they were going to force entry into Location #1 to save V-2. Officer Rodriguez could hear V-2 screaming from inside the house. Officer Rodriguez stated he was number two in line behind Sergeant Graham to enter the house after the door was forced open. Officer Rodriguez recalled entering the house and walking straight toward the kitchen. Officer Rodriguez saw the living room furniture appeared to have been ransacked and saw blood on the carpet. Sergeant Graham stopped in front of him at the door of the kitchen. Officer Rodriguez could see into the kitchen and saw Eversen sitting on or straddling over V-2. Officer Rodriguez thought he saw Eversen actively stabbing V-2. The suspect had a large knife in his right hand. Eversen was saying "I'm going to kill her" and Sergeant Graham yelled several times "Stop! Stop! Stop!" At that time, Officer Rodriguez believed Eversen was going to kill V-2.

Officer Rodriguez heard Sergeant Graham discharge his firearm one time and he fired one round from his rifle at Eversen. Officer Rodriguez heard Sergeant Graham discharge his weapon several more times. Officer Rodriguez attempted to fire again, but he experienced a malfunction with his rifle (the magazine had fallen out of the rifle). He resolved the malfunction and was preparing to re-engage when he saw Eversen fall off of V-2 and on to his left side.

Officer Rodriguez then looked around and saw V-2 was covered in blood and the furniture in the entire house had been ransacked. Sergeant Graham had asked for a med-bag and officers went to go get one. Officer Rodriguez then started to check Eversen for injuries. Other officers had pulled V-2 out from under Eversen and were treating her. Officer Rodriguez recalled as he was treating Eversen he was still alive, but his breathing was labored. Rodriguez recalled putting a chest seal on one of Eversen's wounds and he was later relieved by other officers to continue life saving measures on Eversen.

Officer Rodriguez then went outside with Sergeant Graham and they gave their BWC's to Lt. Staten. They were then sequestered awaiting the protocol team.

Figure 10 - Officer Rodriguez' BWC view of Eversen from the hallway



Lt. Sam Staten

Lieutenant Sam Staten was interviewed on December 1, 2019, at approximately 6:52 pm, by Senior Inspector Jeff Swatman and Detective Jesse Hunt of the Concord Police Department. The interview was concluded at approximately 7:08 pm. The interview was in a conference room of the Concord Police Department.

The following is a summary of relevant portions of Lieutenant Staten's interview:

Lieutenant Staten confirmed the interview with Inspector Swatman and Detective Hunt was voluntary. Lieutenant Staten had been a law enforcement officer for 19 ½ years. He has been a Lieutenant since 2016 and is the Watch Commander for the weekend dayshift. The Watch Commander manages all patrol personnel, to include patrol supervisors, patrol officers and civilian staff during specific patrol shifts.

Lieutenant Staten heard the call about a 5150 W&I with a knife come out over the radio at approximately 11-11:15 am. Lieutenant stated he heard the officers get dispatched and the sergeant was going to coordinate things on the call with the officers. Lieutenant Staten stated that this type call was a very common in the City of Concord. He felt the response from the officers and supervisor was appropriate.

Lieutenant Staten responded to the call as well. He got all the updates and heard the sergeant had staged all the officers and blocked the street. The subject was a 60 year old male, he was possibly 5150, armed with a knife and gun. The information about the gun was updated to indicate it was a replica. Lieutenant Staten stated he was going to get there and be the Incident Commander and Sergeant Graham would be the Tactical Commander. Lieutenant Staten arrived to the area of Location #1 and parked a half a block away from the house. As he was walking up to the group of officers, he heard Officer Higby had gotten the subject on the phone. Lieutenant Staten knew Officer Higby was a hostage negotiator and he would be the right person on the phone with the suspect. Officer Higby then broadcast the suspect wanted money and a helicopter. Lieutenant Staten remembered thinking did the suspect have hostages? Was this incident a hostage situation now? Lieutenant Staten was on the same side of the street as Location #1. He saw officers behind a car directly across the street from Location #1. He then saw officers break cover and go to the front of the house. Lieutenant Staten saw V-1 come out the front door of Location #1. He was covered in blood. Officers met with V-1 and he told them V-2 was hurt real bad. He then looked at the officers and told them, "Go, breach, go." Lieutenant Staten then started to lead V-1 away from the house.

Lieutenant Staten watched the entry into Location #1. He recalled telling Lazar to go get the shield, don't breach without the shield. Officer Lazar ran back to a car and got the shield. Officer Lazar was at the back of the stack behind other officers. He saw Officer Sherwin having difficulty kicking the door in. It was eventually forced open and he heard commands being yelled from inside the house. He then heard three to four gunshots from inside the house. Lieutenant Staten informed dispatch shots had been fired, to start Code 3 medics and to invoke the protocol. He then heard officers from inside the house announce, shots fired and one person was down.

Lieutenant Satten walked V-1 back toward his police car. V-1 stated he was getting dizzy, so Lieutenant Staten had him sit in the nearest police car until medics arrived. V-1 asked if his son had been shot and if his wife was ok. He noted V-1 had lacerations to his head and face.

At short time later, Lieutenant Staten went into Location #1 and saw Officer Cedras giving CPR to Eversen He also saw Corey and Gatlin in the the dining room rendering first aid to V-2.

Sergeant Graham then informed him, that he and Officer Rodriguez had fired their weapons. Sergeant Graham gave Lieutenant Staten their BWC's. Lieutenant Staten told Sergeant Graham and Officer Rodriguez to go sit in a car until they could be taken out of the area. Lieutenant Staten then turned his attention to scene management and notified the Captain. Paramedics arrived on scene and the suspect was declared deceased at the scene. V-2 was later transported to an area hospital.

Officer Joe Higby

Officer Joe Higby was interviewed on December 1, 2019, at approximately 7:51 pm, by Senior Inspector Lori Curran and Detective Josh Gilfry of the Concord Police Department. The interview was concluded at approximately 8:17 pm. The interview was in a room of the Concord Police Department.

The following is a summary of relevant portions of Officer Higby's interview:

Officer Higby confirmed the interview with Inspector Curran and Detective Gilfry was voluntary. Officer Higby has been a sworn officer with the City of Concord Police Department for 23 years. Officer Higby is on the Concord PD Tactical Negotiator Team (TNT). Duties for the TNT entail training for tactical communications and with talking to suspects during hostage negotiation situations.

Officer Higby was assigned to the Patrol Division. He heard the call come out over the radio in reference to a 5150 subject. The parents of a 60 year old subject reported he was acting erratic and was armed with a knife. Officer Higby was quite a distance away from the call and asked his sergeant if he should go to the call. Officer Higby started heading to the call before he got an answer from the sergeant. Officer Higby listened to the information associated with this call and thought this incident may turn into a hostage or a barricaded subject. His sergeant then told him to respond.

Officer Higby arrived on scene and parked in a perimeter position around the block from Location #1. From his position he could see Officers Hoak and Sherwin. He also saw several officers behind a parked car across the street from what he believed to be Location #1 . Officer Higby could not see the front of Location #1 from his location.

Officer Higby heard PA announcements telling the suspect to come out with his hands up. He then heard a neighbor yelling at the police officers, the suspect was in the house and hurting

the parents and they needed to get in there to stop it. After some time Sergeant Graham asked him to call into the house, to attempt to contact the suspect via telephone.

Officer Higby called into the house the first time and got no answer. On the second call, the suspect picked up the phone and yelled and screamed into the phone. The suspect stated he wanted \$10,000 and a helicopter. He wanted the police to leave or he would kill them all. Officer Higby tried to calm the suspect down. Eversen told him to shut up, then hung the phone up. Officer Higby relayed that information over the radio to Sergeant Graham. He then heard that V-1 had come outside and officers approached the front of the house. He heard Lieutenant Staten announce they were going to force entry into the house. He heard three to four loud bangs and believed the officers were forcing entry. He then heard yelling coming from inside the house. He then heard five to six gunshots, come from inside the house.

Officer Higby then went into the house and saw the suspect in the kitchen and V-2 in the dining/living room area. Officers were talking to the female and other officers were giving the suspect CPR. He also saw a large kitchen knife, with blood on its blade, on the floor between the suspect and V-2. He stood by the knife so it would not be disturbed. He then looked around the house and saw broken furniture and blood in different areas of the living room.

Interviews of Victims and Civilian Witnesses

Victim – 1 (V-1)

V-1 was interviewed on December 1, 2019, by Senior Inspector Curran and Detective Gilfry while in the emergency room of a local hospital. V-1 sustained multiple fractures to his ribs, back, arm and nasal bone. V-1 also had deep lacerations to his left ear and lip, along with noticeable swelling to his face, head, and arms.

V-1 explained Eversen is a chronic alcoholic and drug abuser. Earlier in the morning, at approximately 8:00-8:30 am, Eversen exited his bedroom in a “very loud and agitated state,” yelling and using profanity. V-1 and V-2 attempted to calm Eversen down but were unsuccessful. Eversen had a black replica firearm and a knife in a sheath on his belt around his waist. He became more agitated as the morning progressed and went outside and started yelling at neighbors and passing cars. V-1 described his behavior as “verbally attacking people as they walked by.”

Having the need to call CPD the week prior for similar behavior, V-1 call 911 again this morning. As V-1 and V-2 were talking to police dispatch, Eversen noticed they were on the phone. He

accused his parents of calling the police and told them to hang up. He told his parents to have the police turn around or he would kill the cops.

V-1 locked the front security door to keep Eversen outside. But he left the front door open. Eversen came back to the security gate and told his parents again he would kill the cops if they showed up. He also told them he would kill them as well. Eversen then cut through the screen of the security door, reached through the hole he had made and unlocked the security screen. He was yelling at V-1 and V-2. Eversen then started throwing things at both V-1 and V-2. He threw brass lamps and furniture at them. He hit V-1 and knocked him down and threw a coffee table at his head. Eversen then attacked V-2 and hit her with a table as well. V-1 got up and was knocked down again by Eversen

V-1 tried to shield V-2 from the attack from Eversen V-1 was continually struck by books and objects that Eversen threw at V-1 and V-2. V-1 then saw a police officer outside the front door. He went out the front door to an officer. As he got outside, Eversen closed the front door behind him. V-1 told the officer V-2 was still inside. V-1 was led away from the house and few moments later he heard three gunshots from the area of his house.

Victim – 2 (V-2)

On December 6, 2019, V-2 was interviewed by Senior Inspector Curran and Detective Chris Loercher (CPD), in her room at a local hospital. Senior Inspector Curran initially attempted to interview V-2 after the incident on December 1, 2019, however, due to the severity of her injuries she was unable to do so. V-2 sustained deep lacerations to the right side of her head, face and right hand.

V-2 provided history about Eversen She stated he was an alcoholic and drug abuser. He had struggled with authority figures and was unsuccessful in his attempt to join the military. He only held menial jobs in his lifetime and had a hard time keeping jobs because of his lack of dependability. He received SSI monies but usually spent it on drugs.

A week prior she had called CPD because of Eversen's "erratic and irrational behavior." At that time, CPD responded to Location #1 and detained Eversen per W&I 5150. He was released two days later. A counselor from the County Hospital called and advised them not to let Eversen back into the house, due to his violent behavior. They ignored the advice and let him back into the house based on his promise that he would not drink or use drugs, and that he would look for employment.

V-2 stated Eversen was verbally abusive to she and V-1 but, never physically violent toward them. V-2 stated Eversen had bought three large knives the day prior. On 12/1/19, V-2 saw Eversen outside of the house acting erratic and loud. They threatened to call the police and Eversen stated he would kill the police if they showed up. She believed he may be under the influence of drugs or alcohol again. He had a plastic gun and a knife. V-2 called the police. She could see Eversen acting aggressively toward the neighbors, yelling profanities at them and passing cars. V-1 locked the security screen to prevent Eversen Jr. from getting back into the house.

V-2 was still on the phone with 911 when Eversen cut a hole in the mesh of the security door. He was able to reach inside the hole and unlock the security screen. After he regained access to the house, V-1 approached Eversen and told him the police were coming. Eversen again stated he would kill all the cops that showed up. Eversen then violently pushed V-1 and knocked him backwards. V-1 hit his head on a coffee table and broke the glass out of it. V-2 attempted to stop Eversen and he knocked her down as well. Eversen then threw furniture at both of them as they just tried to cover up from being struck with items. She described the attack as endless. He then yelled he was going to kill both of them, while he held a knife. She recalled going into a semi-consciousness state and the next thing she recalled was hearing the police crashing through the front door. She heard an officer yell "put it down" and then she heard five gunshots. She then lost consciousness. V-2 did not know her son, Eversen had been straddled over her with a knife ready to stab her.

V-2 was sad her son had been killed, but she credited the police with saving hers and V-1 life.

Witness - 1 (W-1)

W-1 had just pulled up to her house and she saw Eversen. She knew him and knew he was the son of V-1 and V-2. As she pulled up to her house, she saw Eversen was holding a gun. She also saw he was holding a knife in his other hand. She and her husband pulled into her garage and called 911. She and her husband went into the house and watched Eversen from their front window. She heard Eversen yell, "get off the phone and don't call the police." Eversen stated he would kill every cop that showed up. Eversen kept getting more agitated and pointing the gun at the house. W-1 called 911 again. W-1 then stated Eversen got back into the house. She heard screaming, things breaking in the house and the people in the house calling out for help. She saw the police in front of the house, calling Eversen out of the house and telling him to drop the gun. V-1 then came out of the house and Eversen closed the door behind V-1. V-2 was still inside the house. The officers broke down the front door, she heard yelling and then five to seven shots.

Witness - 2 (W-2)

W-2 saw a subject in front Location #1 and hear a loud commotion. He walked up the street and saw Eversen come out of Location #1 with a handgun. W-2 called 911. Eversen was yelling he was going to kill someone and walked around the yard with the gun. He then saw Eversen beating on the front door of Location #1. The police arrived and Eversen later pushed V-1 out of the house. W-2 heard the officers giving Eversen commands over the PA and a few minutes later he heard six shots.

Witness – 3 (W-3)

W-3 was interviewed on December 2, 2019, by protocol investigative personnel. W-3 stated she was with her boyfriend at approximately 11:00 am, they were driving by the area of Location #1. She saw a white male adult in his 60's, in front of Location #1. The subject had a gun in his hand. As they drove by, he pointed the gun at them and their vehicle. W-3 described the handgun as a black semi-automatic handgun. W-3 described the subject as agitated. They turned the corner as saw a police officer. They flagged him down and told the officer what they saw.

Autopsy

Donald Eversen Jr. was pronounced dead on December 1, 2019, at 11:54 am., by Contra Costa County Consolidated Fire Department, Paramedic D. Fuchs of Station 10.

Dr. Ikechi Ogan (Forensic Pathologist) performed an autopsy on December 2, 2019, at the CCC Sheriff's Coroner's Office. In summary, the autopsy findings are as follows:

There is one pattern of injury consisting of lethal gunshot wounds. There is no evidence of close-range firing on the skin around any of the entrance gunshot wounds. Two different sets of projectiles were recovered. The gunshot wounds are numbered without regard to sequence of occurrence. Numbering of the gunshot wounds is purely for descriptive purposes.

- There were five (5) penetrating and perforating gunshot wounds. Dr. Ogan was not able to determine the sequencing of the gunshot wounds or which officer's firearm was responsible for a specific gunshot wound. Two projectiles were recovered from within the body bag, adjacent to a gunshot wound in the neck and a gunshot wound to the arm. Both projectiles are medium to large caliber, fully jacketed and deformed.
 - **Gunshot Wound # 1** –There was a gunshot wound to the chest, located on the left side, thirteen (13) inches below the top of the head and one (1) inch to the left of the anterior midline. The projectile caused multiple lacerations and perforations of the pericardium, heart, left lung prior to fracturing the posterior left ribs as it exited the chest and enters the axillar. No projectile was located.
 - **Gunshot Wound # 2**-There was a gunshot wound to the right side of the chest, twenty-one (21) inches below the top of the head and six (6) inches to the right of the anterior midline. No projectile was located.
 - **Gunshot Wound # 3**- There was a gunshot wound on the back. The entrance was located on the right side, twenty -one (21) inches below the head and five (5) inches to the right of the anterior midline. No projectile was located from this wound.
 - **Gunshot Wound # 4**-There was a gunshot wound to the right forearm
The entrance gunshot wound was located on the ulnar border of the arm six (6) inches below the elbow. No projectile was located from this wound.

- **Gunshot Wound # 5-** There was a gunshot wound to the left side of the back. The entrance of the gunshot wound was located twenty (20) inches below the top of the head and eight (8) inches to the left of the posterior midline. No projectile was located from this wound.
 - During the autopsy, two (2) medium to large caliber fully jacketed and deformed projectiles were recovered within the body bag, lying adjacent to the body. Both projectiles were given to the criminalist.
- Toxicology – The blood toxicology was positive for the presence of, methamphetamine, amphetamine, and ethanol. Urine screen was positive for methamphetamine.
- **CAUSE OF DEATH: Multiple (four) gunshot wounds.**

Findings

- On December 1, 2019, at approximately 11:15 am, V-1 and V-2 called the CPD due to Eversen’s erratic behavior. Eversen was armed with a knife and a replica handgun, which he used to threaten neighbors and passersby.
- The officers evaluated the situation and appropriately determined there was probable cause to take Eversen into custody for a mental health evaluation, because he represented a danger to others and potentially himself.
- After regaining entry into the house, Eversen attacked both of his elderly parents (V-1 and V-2); causing significant injuries to both of them.
- V-1 was able to exit the residence, however V-2 remained inside the residence.
- Sergeant Graham and a small team of officers forced open the front door and entered the residence to rescue V-2.
- Upon entry, the team of officers confronted Eversen as he was straddled over V-2 on the kitchen floor with his arm raised, knife in hand, preparing to stab her. Fearing for V-2’s life, Sergeant Graham fired his duty handgun and Officer Rodriguez fired his duty rifle at Eversen
- Sergeant Graham discharged his handgun four (4) times and Officer Rodriguez discharged his rifle once (1).
- The total time from when the door was forced open, to the last shot fired by Sergeant Graham was approximately eight (8) seconds.
- CPD officers then rendered medical aid to V-1 and Eversen until medical staff arrived on scene.
- Eversen was pronounced deceased at the scene by emergency medical staff.
- The Coroner’s Inquest Jury determined the manner of death to be: at the hands of another.

APPLICABLE LEGAL STANDARDS

The sole question to be decided by the CCCDAO is whether Sergeant Josh Graham and Officer Oscar Rodriguez violated any criminal laws. Whether an officer is criminally liable depends on the facts of the case and whether those facts constitute a crime under the applicable laws.

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 to him or her, believes there is evidence that proves beyond a reasonable doubt, that the accused is guilty 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 applicable California Penal Code Sections are as follows:

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 judgement 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 when 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 arrest.

Section 197: Homicide is also 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 criminal or justifiable 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. (CALCRIM 505.)

Pursuant to 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.

Pursuant to CALCRIM 507:

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

1. The killing was committed while overcoming actual resistance to some legal process 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. (CALCRIM 505 and 507.) It is not a criminal defendant's burden to prove that force was necessary or reasonable. The People must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others. Absent direct evidence that an officer did not actually or reasonably believe in the need for force, circumstantial evidence must be used. If two reasonable conclusions can be drawn from circumstantial evidence, however, and one of those reasonable conclusions points to innocence, jurors are instructed that they must accept the one that points to innocence. (CALCRIM 224.)

The United States Supreme Court has held that a police officer's use of force should be analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. The Supreme Court stated, "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 calculus of reasonableness must embody allowance for the fact that police 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." *Graham v. Conner* (1989) 490 US 386, 396-397.

If the killing was not justifiable as outlined above, or excusable as in an accidental killing, only then would it be criminal. 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.)

To establish criminal liability, the evidence must show beyond a reasonable doubt that Sergeant Josh Graham and Officer Oscar Rodriguez killed EVERSEN and the officers did not reasonably believe that they or another person was in imminent danger of death or great bodily injury.

LEGAL ANALYSIS

The CCCDAO conducted an independent investigation and review of the facts and circumstances that lead to the death of EVERSEN.

The evidence shows that Sergeant Josh Graham and Officer Oscar Rodriguez acted in what each of them actually and reasonably believed to be defense of others. The examined evidence does not support the contention that the shooting of EVERSEN was criminal.

On December 1, 2019, at 1115 hours, V-2 called 911 to report that her son, EVERSEN, was acting erratically while armed with a knife in a sheath. Two neighbors called 911 to report that EVERSEN was yelling outside the home with what appeared to be a firearm. When he realized

that V-2 had called the police, EVERSEN shouted, "I'm standing outside the front door with a loaded .45; tell them to turn around or I'll kill them." He could be heard yelling, "Hang up the phone!" and "I'll kill you!" V-2 then reported that EVERSEN was cutting through the screen door with a knife.

Officers arrived on scene and developed a plan to approach the residence using patrol vehicles for cover. Officers could see EVERSEN in the front yard, waving his arms and holding something in one of his hands. The public address system was used to command EVERSEN to drop what he was holding. At 1136 hours, officers saw EVERSEN run back into the house. Officers could hear yelling inside the residence and could see someone throwing objects around the home.

Banging noises could be heard from dispatchers while on the phone with V-2 and her husband, V-1. At this point, officers were aware that EVERSEN was armed and had made threats to kill both his parents and police. Additional "less lethal" equipment was requested by Sgt. Graham, including a 40 mm launcher that fires sponge rounds and ballistic shields.

At 1144 hours, Officer Higby contacted EVERSEN by phone as part of the Concord Police Department's Tactical Negotiation Team. EVERSEN made demands for a helicopter and money, or else he would "kill everyone."

Shortly thereafter, V-1 exited the house with EVERSEN behind him. EVERSEN was seen striking his father in the back of the head with an unknown object. Officers moved toward the door and EVERSEN retreated into the house, closing and locking the door behind him.

V-1 had significant visible injuries to his face and was bleeding profusely from his head. Emergency medical response was requested. V-1 told officers that V-2 was hurt inside the home. Officers forced entry through the locked door and entered the home to render aid to V-2.

Upon entry, EVERSEN could be heard saying, "I'm going to kill her!" Officers found EVERSEN in the kitchen, straddling V-2 on the ground and wielding a large kitchen knife over her body in a stabbing position. V-2 was screaming and had significant visible injuries. Sgt. Graham yelled, "Stop! Stop!" several times.

Believing that EVERSEN was about to kill his mother, Sgt. Graham and Officer Rodriguez both shot EVERSEN. Once he was no longer a danger to his mother or officers, lifesaving attempts were initiated.

Sergeant Josh Graham

Sergeant Graham shot EVERSEN based on a reasonable belief that V-2 was in imminent danger of being killed and that immediate use of deadly force was necessary to prevent her death.

Upon entering the residence at 954 Oasis Drive in Concord, Sgt. Graham was aware that EVERSEN was armed with a knife and possibly a firearm and had just brutally attacked his

elderly father, V-1. Sgt. Graham was aware that EVERSEN had made multiple threats to kill his parents and had also threatened to kill police. EVERSEN'S level of violence and volatility had escalated rapidly, despite efforts from law enforcement to negotiate peacefully.

After staggering outside with serious visible injuries, V-1 stated that EVERSEN was beating his wife and that she was injured. The fact that EVERSEN retreated into the house and locked the door behind him indicated the emergency was ongoing and was in danger.

The first thing Sgt. Graham observed after entering the home was EVERSEN crouched over V-2. V-2 appeared severely injured and was bleeding from the face and torso area. EVERSEN was holding a large kitchen knife with an approximate 10" blade with his right hand. Sgt. Graham yelled numerous times for EVERSEN to stop. EVERSEN looked at Sgt. Graham and looked back at V-2, stating he was going to kill her. Sgt. Graham believed EVERSEN was going to kill V-2 and that he had no way of protecting her other than discharging his handgun. EVERSEN did not appear to be affected by Sgt. Graham's initial shot so Sgt. Graham discharged his weapon three to four more times. At that point EVERSEN fell backward and dropped the knife.

Given the uncontroverted evidence in this case, it cannot be proven beyond a reasonable doubt that Sgt. Graham's belief that he or someone else was in imminent danger of being killed was unreasonable. EVERSEN was in the process of stabbing his elderly mother after beating her severely with furniture. When Sgt. Graham entered the residence, V-2 was covered in blood with visible injuries. She was pinned to the ground by EVERSEN who was holding a large knife. EVERSEN knew police were at the home and was not deterred. He did not heed Sgt. Graham's pleas to stop and instead verbalized his intent by saying, "I'm going to kill her!" At that point, the only reasonable option available to Sgt. Graham to save V-2's life was to immobilize EVERSEN with his firearm.

Officer Oscar Rodriguez

Officer Rodriguez similarly shot EVERSEN based on a reasonable belief that EVERSEN was going to kill V-2.

Officer Rodriguez entered the house behind Sgt. Graham. Upon entering, Officer Rodriguez could see the living room furniture was in disarray and there was blood on the carpet. He could see directly into the kitchen where EVERSEN was straddling V-2 and saying he was going to kill her. He saw that EVERSEN had a knife in his right hand. Officer Rodriguez heard Sgt. Graham yell "Stop!" several times. He saw EVERSEN start to stab his mother in the torso. Officer Rodriguez believed that EVERSEN was killing V-2 Eversen and felt he had no other option but to discharge his weapon to prevent the homicide. Officer Rodriguez heard Sgt. Graham discharge a round from his duty pistol. Officer Rodriguez then discharged his rifle at EVERSEN.

As above, given the uncontroverted evidence in this case, it cannot be proven beyond a reasonable doubt that Officer Rodriguez's belief that he or someone else was in imminent danger of being killed was unreasonable. The totality of the circumstances, including EVERSEN'S repeated threats of violence to both police and his parents, EVERSEN'S disregard of law

enforcement demands to surrender, V-1's visible injuries and statements that EVERSEN was in the house hurting his wife, and Officer Rodriguez's observations of EVERSEN in the act of causing serious injury to V-2, show that Officer Rodriguez acted reasonably in using deadly force.

CONCLUSION

In applying the applicable law and the California District Attorney's Uniform Crime Charging Standards to the present case, there is insufficient evidence to support criminal prosecution Sergeant Josh Graham and Officer Oscar Rodriguez. As such, no further action will be taken in this case.