



Diana Becton

District Attorney

Report of the Law Enforcement Involved Fatal Incident of ROBERT STEVEN JONES

on March 22<sup>nd</sup>, 2022

## Table of Contents

Privacy Statement.....	3
Executive Summary.....	4
Introduction.....	5
Investigation.....	6
Notification and Assignments.....	7
Evidence Reviewed.....	8
Dispatch/CAD Log Timeline.....	9
Scene Description.....	10
Relevant Body Worn Camera.....	11
Interviews of Involved Police Officers.....	13
Interviews of Medical Emergency and Fire Personnel .....	24
Civilian Interviews.....	26
Evidence Scene Recovery.....	28
Autopsy.....	30
Legal Principles .....	31
Legal Analysis.....	36
Conclusion.....	38

## **Privacy Statement**

This report includes redactions of the names and other identifying information of victims, witnesses, and family members. 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 the readability of this report, the witnesses and locations will be indexed as follows:

- Witness 1 (W-1), refers to JONES' wife who initiated the 911 call to police.
- Location #1 (L-1), refers to the address of the fatal incident in Discovery Bay.

## Executive Summary

On March 22<sup>nd</sup>, 2022, at approximately 8:44 pm, Contra Costa County Sheriff's Dispatch received a 911 call from W-1, who was the wife of ROBERT STEVEN JONES [Hereinafter referred to as JONES]. W-1 reported that her husband was drinking and pushed her at their residence [hereinafter referred to as location #1].

At approximately 8:46 pm, Contra Costa County Sheriff Deputies Livingston and Duke were dispatched to location #1. Deputies Livingston and Duke arrived at the scene within minutes and saw W-1 standing outside the residence. W-1 reported the assault and said her husband had been acting strange for the last few days.

Deputies Livingston and Duke approached the residence and attempted to contact JONES, who they saw sitting in the living room. JONES ignored the deputies, at which point Deputies Livingston and Duke entered the residence. JONES stood up and brandished a large knife in his hand. Deputy Livingston and Duke drew their firearms and ordered JONES to drop the knife.

JONES then grabbed what appeared to be a rifle.<sup>1</sup> JONES told the deputies to, "Get the fuck out of my house," which prompted Deputies Livingston and Duke to retreat out the front door and into the front yard of the residence, in an attempt to de-escalate the encounter.

Once outside, Deputy Livingston radioed for backup. Both Deputy Livingston and Deputy Duke remained outside and waited for additional officers to arrive. Multiple backup officers responded to the scene and took tactical positions around the residence.

As the officers were positioned around the house, at approximately 9:26 pm, JONES came out the of front door of the residence armed with the suspected rifle. JONES placed the weapon in a two-handed stance while pointing the suspected rifle at the officers.

JONES then walked slowly toward multiple deputies while pointing the suspected rifle at them. Several Officers and Deputies yelled verbal commands for JONES to drop the weapon. Officers yelled at JONES to drop the weapon for over 20 seconds. JONES did not drop the weapon. JONES advanced on officers over a span of 40 feet while pointing the weapon at them.

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<sup>1</sup> This weapon, although similar in appearance to a rifle/shotgun, was later determined to be an Umarex Air Javlin CO-2-powered Arrow Rifle. The Arrow Rifle is a deadly weapon capable of firing an arrow at a speed of 300 feet per second. According to manufacturer specifications, the arrows can cause serious injury or death.

Fearing for their safety, as well as that of the community, JONES was shot at by Sergeant Sears, Deputy Duke, Deputy Powell, Oakley Police Officer Radcliffe, and Oakley Sergeant Morris. JONES fell to the ground with the suspected firearm next to him.

Once it was determined safe to approach, the Deputies/Officers began life saving measures on JONES. JONES was transported to the hospital via ambulance, where he succumbed to his injuries and was pronounced deceased.

On March 24<sup>th</sup>, 2022, an autopsy was conducted on JONES by Dr. Ikechi Ogan. A toxicology report revealed that JONES blood alcohol level was 0.169 g/100 ml. JONES' cause of death was listed as, "multiple gunshot wounds."

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, Officers Sears, Duke, Powell, Morris, and Radcliffe were justified in their use of lethal force. The officers acted with an actual and reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury. As such, no further action will be taken in this case.

## **INTRODUCTION**

This report is the final step in the CCCDAO investigation of the Oakley Police Department and Contra Costa County Sheriff Department's officer involved fatal incident of JONES on March 22<sup>nd</sup>, 2022, in Discovery Bay, California. The CCCDAO and every law enforcement agency in Contra Costa County follow the Law Enforcement Involved Fatal Incident Protocol ("the Protocol")<sup>2</sup> 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 in-custody deaths 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 an in-custody death, 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 the criminal investigation. In addition, criminal investigators from the law enforcement agency

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<sup>2</sup> 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.

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 that 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 other relevant investigative work necessary to complete the investigation. The Contra Costa County Sheriff's Office Crime Lab responds to every incident and is responsible for evidence collection of all in-custody deaths.

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 the criminal and administrative investigations. Under the law, neither an officer nor civilian can be compelled to give a statement as part of a 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 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 by (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.

In the present case, the Coroner's Inquest occurred on January 13<sup>th</sup>, 2023. At the conclusion of the hearing, by a vote of 8 – 7, the jury found the death of JONES was, "at the hands of another, other than by accident."

## INVESTIGATION

### Notification and Assignments:

On March 22<sup>nd</sup>, 2022, the Contra Costa County District Attorney's Office [hereinafter CCCDAO] was notified that Contra Costa County Sheriff's Department [CCCSO] invoked the protocol for an officer involved fatal shooting.

Members of the District Attorney's Office as well as personnel from the Contra Costa County Sheriff's Department responded to the scene. Chief Inspector Arnold Threats, Senior Inspector Steve Cheatham, Senior Inspector John Garcia, as well as other members of the CCCDAO responded to the LEIFI incident.

The scene at location #1 was physically guarded by law enforcement personnel and the entire surrounding area was marked off with crime scene tape to aid in the preservation of any physical evidence. The CCCSO Forensics Division (Crime Lab) was notified and arrived on scene to document their findings and collect evidence. The CCCDAO investigative team joined the CCCSO detectives at which point 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 all the relevant information.

The involved officers were sequestered in separate rooms and were awaiting the arrival of their legal representatives before being interviewed.

The following personnel were assigned investigative teams with specific investigative tasks:

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#### **TEAM #1:**

CCCDAO Senior Inspector Steve Cheatham, CCCSO Detective Ryan Nichols, and CCCSO Detective Jeff Jackson.

**Assignment:** Interview AMR/CONFIRE/DOCTOR and Interview witness Deputies Livingston and Scanlon.

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**TEAM #2:**

CCCDAO Senior Inspector John Garcia, CCCSO Detective Mendez, and CCCSO Detective Melen

**Assignment:** Interview W-1 and all actor officers<sup>3</sup>. Overview of crime scene.

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**TEAM #3:**

Criminalist Johanna Estrada-Ballardo [Contra Costa Crime Lab]; Criminalist Stephanie Souza [Contra Costa Crime Lab]; and Crime Scene Investigator Brendan Kellerman [Contra Costa Crime Lab].

**Assignment:** Processed crime scene and involved officers.

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**ADDITIONAL INVESTIGATIVE DUTIES CONDUCTED:**

CCCDAO Senior Inspector Steve Cheatham; Dr. Ikechi Ogan [Pathologist]; Brianna Ward, Pathology Assistant [Contra Costa Crime Lab]; Criminalist R. Khouie-Vargas [Contra Costa Crime Lab]; Fingerprint Technician Janine Fong [Contra Costa Crime Lab]; and CCCSO Detective Matt Ingersol.

**Assignment:** Conduct/Attend Autopsy.

**Evidence Reviewed:**

- The location of the incident.
- Contra Costa County Sheriff Department reports associated with this incident.
- CCCDAO Investigative report associated with this incident.
- Contra Costa County Crime Lab reports associated with this incident.
- Audio and video recordings.
- Surveillance/Body worn camera footage.
- Involved officer interviews.
- Witness interviews.

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<sup>3</sup> An Actor, defined in the LEIFI Protocol is any law enforcement personnel whose conduct was “actually or conceivably a factor” in a fatality.



- Additional investigative duties conducted.
- Evidence collected from the scene.
- Coroner's Report.
- Coroner's Inquest.
- 911 Call/Radio Traffic/CAD Logs.

**Dispatch / CAD Log Timeline:**

On March 22<sup>nd</sup>, 2022, at approximately 8:44 pm, Contra Costa County Sheriff Dispatch received a 911 call from W-1, who stated that her husband, JONES, was yelling and pushed her while at their residence. W-1 further reported that JONES was drinking, but she was not injured from the assault.

- 8:46:56 CCCSO Deputy Jason Livingston is dispatched to location #1.
- 8:46:58 CCCSO Deputy Kevin Duke is dispatched to location #1.
- 8:47:15 Dispatch provides a description of the suspect as Robert JONES, white male adult, wearing a white T shirt with no weapons. Dispatch further advises that W-1 and JONES were inside the residence.
- 9:10:32 Dispatch advises that the reporting party (W-1) is stepping outside the residence.
- 9:14:56 CCCSO Deputy Livingston radios that he has, "one at gunpoint."
- 9:15:07 CCCSO Deputy Livingston radios that the subject is armed with a rifle.
- 9:15:12 Backup unit CCCSO Sergeant Amanda Sears is dispatched to the scene.
- 9:15:23 Backup unit, Oakley Police Officer Tyler Radcliffe, is dispatched to the scene.
- 9:15:40 CCCSO Deputy Livingston radios that the subject is shouting out the door to get off of his property.
- 9:16:18 Backup unit CCCSO Deputy Jon Scanlon is dispatched to the scene.
- 9:16:57 CCCSO Deputy Duke radios that the subject is back inside the residence and they no longer have eyes on him.

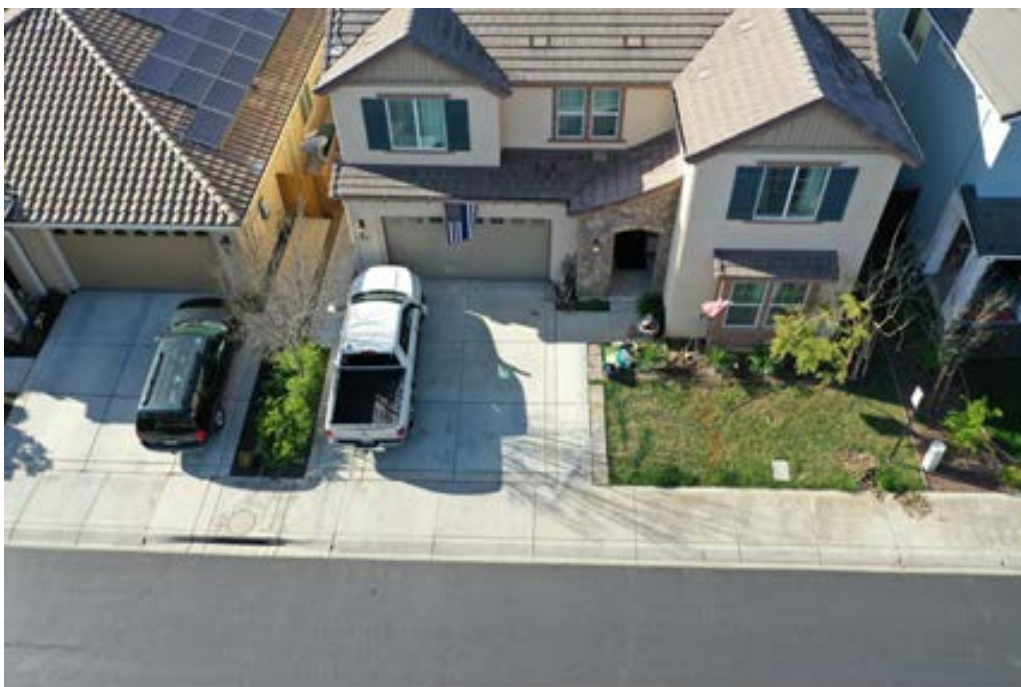
- 9:18:22 CCCSO Deputy Livingston radios that the subject closed the door, is moving the blinds, and the porch light is off.
- 9:19:00 CCCSO Deputy Livingston radios that they sent the wife (W-1) down the street and that her current location is unknown.
- 9:26:13 CCCSO Deputy Livingston radios that JONES is out front with a rifle and looking left.
- 9:27:01 CCCSO Deputy Duke radios that JONES is pointing a shotgun at us and is walking towards us with it.
- 9:27:44 CCCSO Deputy Livingston radios that shots were fired and one is down.
- 9:28:36 And on scene CCCSO Deputy asks if any units have a ballistic shield available.
- 9:37:14 CCCSO Deputies approach JONES with a ballistic shield.
- 9:38:35 CCCSO advises dispatch that is safe to send in medical assistance.
- 9:38:47 CPR and life saving measures are initiated on JONES.

**SCENE DESCRIPTION:**

Location #1 is a single-family home located in a residential neighborhood in Discovery Bay, California. The residence is a two-story dwelling with 5 bedrooms and 3 baths.

The construction of the residence was a wood frame with a stucco exterior and a pitched tiled roof. The home had a landscaped front yard and a landscaped rear yard. The rear yard was enclosed by a 6-foot wooden fence.

The front door faced the street (northwest). The garage was attached. The front door was accessed from the driveway and concrete walkway. There was a residence on each side (east and west).



Picture of Location #1

The road at location #1 is a straight asphalt roadway with sloped concrete curbs on each side of the street. The roadway was approximately 35 feet in width with no street markings. The roadway at the location of the incident had east/west travel.

**RELEVANT BODY WORN CAMERAGE FOOTAGE AND SURVEILLANCE VIDEO:**

Various portions of the incident were captured by body-worn camera footage (BWC). At the time of the incident, Oakley Police Officers were equipped with BWC, however, Contra Costa County Sheriff Deputies were not equipped with BWC. The BWC video footage of Oakley Police Officer Tyler Radcliffe and Oakley Sergeant Kevin Morris was downloaded and stored as evidence.

In addition, video footage from a RING doorbell camera was collected during the investigation. This footage was obtained from a neighboring residence located immediately west of location #1. If facing location #1 from the street, the neighboring house was located to the right.

The RING doorbell video footage provides the clearest video of JONES as he approached police officers while pointing the suspected firearm at them.

The following are a series of zoomed in still shots from the RING doorbell footage where JONES is seen approaching the officers while pointing his weapon at their position.



Approximately location of JONES' weapon, which is not visible in this still shot due to poor lighting.

JONES' head/shoulder.



The tip of JONES' weapon, which is seen in the lighted backdrop as he advances towards officers.



The center structure of JONES' weapon, which is seen in the lighted backdrop as he continues to advance towards officers.

The RING doorbell footage depicts JONES advancing towards officers for over 40 feet [approximately 15-16 steps]. JONES is pointing his weapon at them during this time, prompting officers to eventually open fire. The RING doorbell footage, which was on a timer, ends seconds before the shooting. The entirety of the encounter with the Oakley officers was captured on BWC.

During the video male and female law enforcement officers can be heard yelling at JONES, multiple times, to “get on the ground, don’t make me shoot you, put the gun down, get on the ground, get on the ground and put the gun down.” The video depicts officers ordering JONES to drop the weapon for approximately 22 seconds before firing on JONES.

### **INTERVIEWS OF LAW ENFORCEMENT OFFICERS/DEPUTIES:**

#### **Interview of CCCSO Sergeant Amanda Sears:**

On 03/24/2022, at approximately 10:00 am, Detective Jay Melen and CCCDAO Senior Inspector John Garcia interviewed CCCSO Sergeant Amanda Sears at the CCCSO Field of Operations Bureau Facility in Martinez. Sergeant Sears was represented by Attorney Andrew Ganz of Rains, Lucia, and Stern Law Firm.

The following is a summary of Sergeant Sears’ statement:

Sergeant Sears has been a deputy for over ten years and had worked in patrol, jail operations, investigation bureau, and on the “J-Team” which was a uniformed crime suppression team. Sergeant Sears was assigned to the Federal Bureau of Investigation (FBI) Safe Streets Team, in Martinez which was comprised of numerous law enforcement agencies throughout the county. Sergeant Sears was promoted to Sergeant in October of 2021, where she was assigned to the Delta Station, supervising a patrol shift.

Sergeant Sears was working a modified patrol shift from 2:30 pm to 4:15 am. Sergeant Sears was in full uniform and driving a marked CCCSO patrol vehicle. Sergeant Sears was not wearing a body worn camera.

Sergeant Sears was at the Delta Station in Brentwood when she heard Deputy Duke and Deputy Livingston get dispatched to location #1 in Discovery Bay on a domestic call. Sergeant Sears later heard over the police radio that Deputy Duke had a subject at gunpoint.

Sergeant Sears responded, “code three,” which means overhead lights and siren. While enroute to their location Sergeant Sears heard, over the police radio, Deputy Duke advised the male subject [later identified as Robert JONES] was armed with a rifle and still inside the residence.

Sergeant Sears told the deputies to maintain a “long eye”<sup>4</sup> until she arrived. Sergeant Sears and Deputy Scanlan arrived on scene at the same time. Sergeant Sears instructed Deputy Scanlan to quickly drive his patrol vehicle past JONES residence and position it near Deputy Livingston’s location to provide more cover for him. Sergeant Sears parked her patrol vehicle west of JONES residence, got out of the car, and met with Deputy Duke.

Deputy Duke briefed her on the incident, and they determined that based on JONES turning off all the lights inside the residence, closing the front door, and the blinds being shut, that she was dealing with an armed barricaded subject.

Sergeant Sears telephoned Lieutenant Johnson to update him on the situation when Deputy Duke advised her that JONES was walking out of the residence with a firearm. Sergeant Sears and Deputy Duke immediately positioned themselves behind a Gold Volvo, parked in a nearby driveway. The residence was on the northside of the street. JONES walked toward the street from the front of his residence where Sergeant Sears saw that he was carrying something that she could not clearly identify. JONES turned toward Deputy Duke and her and she immediately saw that he was carrying a rifle and pointing it in their direction.

Sergeant Sears repeatedly yelled for JONES to drop the rifle. Sergeant Sears heard Deputy Duke and other officers yelling commands for him to drop the weapon. Sergeant Sears yelled repeatedly to JONES, “please don’t make me shoot you”, “I don’t want to shoot you”, and to “drop the weapon.” JONES yelled back at them. Sergeant Sears was not sure what he said, but thought it was something similar to, “get on the ground.”

Sergeant Sears believed JONES was an “imminent threat” and feared for her life once he walked into the street and pointed the rifle at them. Sergeant Sears felt she did not have time to use or formulate a plan to utilize less than lethal options. Sergeant Sears believed JONES intended to shoot her and the other officers. Sergeant Sears estimated that JONES walked toward them with his rifle pointed at them for approximately fifteen seconds while they were giving commands to him to drop the weapon.

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<sup>4</sup> A long eye is tactical language for maintaining a safe distance from a presented threat. In this incident, due to the subject being armed with a rifle Sergeant Sears wanted her deputies away from the residence.

Sergeant Sears aimed her handgun at JONES' center mass and fired two rounds at him. JONES continued to advance, still on his feet, and she fired a third round at his center mass which caused him to fall to the ground.

JONES fell to the ground on top of his rifle. Due to JONES still moving after being shot, they did not want to approach him without a ballistic shield. They requested a ballistic shield from Brentwood Police Department. Once the ballistic shield arrived, they approached JONES in a safe and cautious manner and removed the firearm. They then began life saving measures. JONES was transported to the hospital and a protective sweep of the residence was conducted.

#### **Interview of CCCSO Deputy Kevin Duke:**

On 03/24/2022, in the morning hours, Detective Jay Melen and CCCDAO Senior Inspector John Garcia interviewed, CCCSO Deputy Kevin Duke at the CCCSO Field of Operations Bureau Facility in Martinez. Deputy Duke was represented by Attorney Andrew Ganz of Rains, Lucia, and Stern Law Firm.

The following is a summary of Deputy Duke's statement:

Deputy Duke joined the Contra Costa Sheriff's Office in September of 2017, when he went to the police academy. After graduation, Deputy Duke worked at the West County Detention Facility for approximately ten months, before being transferred to the courts where he remained for two years. Deputy Duke was then assigned to the Martinez Detention Facility until being transferred to patrol in July of 2021.

On 03/22/2022, Deputy Duke was working overtime on a swing shift. He was in full uniform, driving a marked patrol vehicle, equipped with a patrol rifle. He was not equipped with a body worn camera.

At 8:46 pm, Deputy Duke and Deputy Livingston were dispatched to a call of a domestic disturbance at location #1. Dispatch informed them that the reporting person, W-1, stated that JONES had pushed her. When Deputy Duke and Deputy Livingston arrived, they met with W-1 in the front yard of the residence. W-1 reiterated that she was pushed.

Deputies Duke and Deputy Livingston went to the front door of the residence in an attempt to contact JONES while W-1 waited outside.

Deputy Livingston approached the front door with Deputy Duke behind him and saw that it was opened. Deputy Livingston announced his presence and identified himself as a deputy with the Sheriff's Office. They took one step inside the residence and Deputy Duke saw JONES, who was

sitting on the couch in the family room, stand up and saw that he had a knife with an approximately six-inch blade in his right hand.

Deputy Duke and Deputy Livingston pulled out their respective firearms and yelled for JONES to drop the knife. As they retreated back out of the residence, Deputy Duke saw JONES bend down and grab what he thought was a rifle.

Deputy Duke initially did not see JONES point the rifle at them, as the barrel of the rifle was pointing toward the ground. Deputy Duke retreated and took cover behind a truck that was parked in the driveway of the residence. Deputies Duke and Livingston re-positioned across the street from JONES' residence.

Deputy Duke decided to leave this location and return to his patrol vehicle, which was parked west of JONES' residence, so he could retrieve his rifle. As he was doing this, he saw that JONES shut the front door and turned off the interior and exterior lights. Deputy Duke saw JONES peeking out of the blinds. Deputy Duke relayed his observations over the radio.

Deputy Duke retrieved his rifle and took a cover position behind a vehicle that was parked in a nearby driveway. While at this position, Deputy Duke observed several people exit their respective residences. Deputy Duke fearing for their safety, yelled for them to get back into their homes.

Once Sergeant Sears arrived, she joined Deputy Duke's position. Sergeant Sears used her cell phone to call her supervisor. Deputy Duke overheard one of the officers say JONES had walked out of his residence. Deputy Duke looked up and saw that JONES walked from his house, out onto the street, armed with the rifle.

Deputy Duke described JONES to be in a "shooting platform" similar to what law enforcement officers are taught during tactical training. Deputy Duke saw JONES holding the rifle with both hands in the ready position.<sup>5</sup>

Deputy Duke yelled repeatedly for JONES to drop the weapon and get on the ground. While doing this, JONES advanced toward his location while pointing the rifle at him. Deputy Duke continued to give commands for JONES to drop the weapon and that he did not want to shoot JONES. Deputy Duke heard other officers giving similar commands to JONES. Deputy Duke heard JONES yell back at him for him to get on the ground twice.

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<sup>5</sup> The ready position is common language used by firearms instructor that mean a target has been acquired and the shooter is in a position to fire the weapon.



Deputy Duke believed there was no time to consider the option of using a less than lethal approach as JONES continued to advance on Sergeant Sears' and his position. JONES ignored his commands to drop the weapon. JONES' actions made Deputy Duke fear for his life, his fellow officers' life, and the residents' lives.

Deputy Duke believed it was imminent that JONES was going to shoot him, so he aimed his rifle at JONES' center mass.<sup>6</sup> Deputy Duke, at that moment, heard a shot being fired -- but did not know who fired. Deputy Duke saw that JONES still had his rifle pointed at his position and was advancing on his location, so he fired two rounds at JONES center mass.

After firing two rounds, Deputy Duke saw JONES was still pointing the rifle at him, so he fired two more rounds at JONES' center mass. At that time, Deputy Duke saw JONES fall to the ground, and the rifle fell underneath him.

After JONES was shot, a team of officers approached JONES with a ballistic shield and disarmed JONES. Deputy Duke then began life saving measures on JONES until medical aide arrived.

#### **Interview of CCCSO Deputy Antonia Powell:**

On 03/24/2022, in the morning hours, Detective Jay Melen and CCCDAO Senior Inspector John Garcia interviewed CCCSO Deputy Antonia Powell at the CCCSO Field of Operations Bureau Facility in Martinez. Deputy Powell was represented by Attorney Andrew Ganz of Rains, Lucia, and Stern Law Firm.

The following is a summary of Deputy Powell's statement:

Deputy Powell began her law enforcement career in 2008 when she attended the police academy. She briefly worked for Brentwood PD and started with the Contra Costa Sheriff's Office in 2010. Deputy Powell had been a commissioned officer for the United States Army for approximately fourteen years and held the rank of Major.

Deputy Powell had been assigned to jail operations for approximately seven years and three years as a patrol deputy. Deputy Powell had extensive training in firearms both in the military and with CCCSO. She recently qualified with the military two weeks prior.

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<sup>6</sup> Center mass is common terminology used in law enforcement firearms training to aim at the upper torso where most of the vital organs are located to neutralize an imminent threat.

Deputy Powell was assigned to the graveyard shift and was in full uniform and driving a marked CCCSO patrol vehicle. While getting ready for her shift, she heard over the police radio that Deputy Duke had one subject at gunpoint.

Deputy Powell immediately loaded up her patrol vehicle, including her department issued patrol rifle, and responded code three to Deputy Duke's location. When Deputy Powell arrived, she saw JONES approaching Sergeant Sears and Deputy Duke's location with a rifle. Deputy Powell parked her patrol vehicle south of the other patrol vehicles and exited her vehicle. She positioned herself next to her passenger side door for cover.

Deputy Powell was armed with her patrol rifle and immediately aimed it at JONES and acquired a sight picture. In her mind, she wondered why JONES had not already been shot, as he was advancing on the officers and was posing an immediate threat.

Deputy Powell heard a shot go off and saw that JONES was still standing, armed with the rifle, and pointing it at Deputy Duke and Sergeant Sears. Deputy Powell, fearing for her life and the lives of the other officers fired one round at JONES center mass, but saw that he was still standing, pointing the gun at officers. Deputy Powell fired another round at JONES center mass. JONES fell to the ground, and she immediately announced, "suspect down", to other officers.

Deputy Powell said once a ballistic shield arrived from Brentwood PD and JONES was rendered safe, she assisted in performing life-saving measures.

#### **Interview of Oakley Police Officer Tyler Radcliffe:**

On 03/24/2022, at approximately 1:33 pm, CCCSO Detective Melen and CCCDAO Senior Inspector John Garcia interviewed Oakley Police Officer Tyler Radcliffe at the CCCSO Field of Operations Bureau facility in Martinez. Officer Radcliffe was represented by Attorney Andrew Ganz of Rains, Lucia, and Stern Law Firm.

The following summary of Officer Radcliffe's statement:

Officer Radcliffe has been a police officer for over 14 years and had worked with the Contra Costa County Sheriff's Office and Oakley Police Department. Officer Radcliffe was working swing shift (2 pm to midnight), was in full uniform as an assigned K-9 officer and was driving a marked Oakley Police vehicle. Officer Radcliffe was equipped with a body worn camera which he activated during the incident.

Officer Radcliffe was at the Oakley Police Department when he heard, over the police radio, a domestic violence call for service in Discovery Bay. Officer Radcliffe then heard over the radio

that JONES was armed with a rifle and brandished it at officers. Officer Radcliffe responded with Sergeant Morris in his vehicle. Once they arrived in the area, Officer Radcliffe heard, over the radio, JONES exited the residence while armed with a shotgun.

Officer Radcliffe arrived on scene and parked behind patrol vehicles on the south side of the street. Officer Radcliffe exited the driver's door and immediately heard officers yelling commands for JONES to get on the ground and drop his gun. Officer Radcliffe ran along the south sidewalk and positioned himself on the passenger side of a marked patrol vehicle parked in the front. Deputy Powell was positioned with her rifle on the front passenger door next to Officer Radcliffe.

Officer Radcliffe made his approach and immediately saw JONES standing in the middle of the street. JONES was armed with what he thought was a shotgun or a long gun and was pointing it at officers who were giving him verbal commands to drop his weapon.

JONES refused to comply with the officers' verbal commands. Officer Radcliffe feared for his life and fired at JONES. Officer Radcliffe believed he fired three rounds at JONES' upper torso. Officer Radcliffe heard several of the other officers fired their weapons at JONES as well.

Officer Radcliffe estimated JONES was approximately 20 to 30 yards away from him and he had a clear and unobstructed view of him. Officer Radcliffe estimated approximately 45 seconds passed from the time he exited his patrol vehicle to the time he discharged his weapon.

Officer Radcliffe saw JONES fall to the ground and he ceased fire. Officer Radcliffe believed JONES landed on top of the weapon. Officer Radcliffe, along with all the other officers involved, remained in their respective tactical positions as they awaited the arrival of a ballistic shield before they approached JONES, out of fear that he was still armed.

Officer Radcliffe participated with several officers and approached JONES once the ballistic shield arrived. After JONES' weapon was secured, medical aid was provided to him. Officer Radcliffe assisted in conducting a protective sweep of the residence at location #1 and determined no one else was in the home.

#### **Interview of Oakley Sergeant Kevin Morris:**

On 03/24/2022, at approximately 2:25 pm, Detective Melen and CCCDAO Senior Inspector John Garcia interviewed Oakley Police Sergeant Kevin Morris at the CCCSO Field of Operations Bureau Facility in Martinez. Sergeant Morris was represented by Attorney Andrew Ganz of Rains, Lucia, and Stern Law Firm.

The following is a summary of Sergeant Morris' statement:

Sergeant Morris has been a police officer for approximately 14 years. He has worked for the Contra Costa Sheriff's Office and is currently working for the Oakley Police Department. Sergeant Morris has held positions in the jail, patrol, and investigations at both agencies. Sergeant Morris was an operator with the CCCSO SWAT team for approximately 4 years, working as a sniper and grenadier.

Sergeant Morris has received training in crisis intervention and de-escalation techniques. Sergeant Morris has been a Sergeant for nine months. Sergeant Morris previously worked a swing shift but came in at noon on the date of this incident for overtime.

Sergeant Morris was in full uniform, equipped with a duty belt and body worn camera (BWC). Sergeant Morris' BWC was activated, and the footage from this incident was downloaded and placed in the case file.

Sergeant Morris was at the Oakley Police Department when he heard, over the police radio, a call for service in Discovery Bay involving a domestic violence incident. The radio call advised that suspect JONES had brandished a rifle at deputies on scene and that JONES ran back inside his residence, turned off the lights, and closed the blinds.

Based on the seriousness of the situation Sergeant Morris elected to respond with Canine Officer Radcliffe in the same vehicle. As they were nearing the location he heard, over the radio, that JONES was outside and armed with a rifle or shotgun. Sergeant Morris then heard, over the radio, that JONES was walking toward the deputies armed with the weapon.

Officer Radcliffe parked behind CCCSO vehicles and Sergeant Morris exited the passenger side of the car. Sergeant Morris positioned himself on the passenger side of the CCCSO vehicle, which was parked in the middle of the street. Upon exiting the vehicle, he immediately heard deputies yelling at JONES to drop his gun.

Sergeant Morris saw JONES facing him and the other officers who were standing in the middle of the street. JONES was wearing a white t-shirt, armed with a shotgun or rifle, and was pointing it at the officers. Sergeant Morris described JONES as utilizing his sights of the rifle and pointing the barrel at them. It was dark outside and the only light was from vehicles and streetlights.

Sergeant Morris turned on his firearm's mounted light to illuminate JONES. JONES then immediately turned and pointed the barrel of the weapon in his direction. Sergeant Morris,

fearing for his life, turned off his light and JONES directed his attention toward the deputies positioned in the driveway.

Sergeant Morris stated he believed JONES yelled something at them but was unable to decipher what he was saying. Sergeant Morris said he heard a shot fired, saw a flash of light, and believed JONES fired the rifle or shotgun at them. Fearing for his life and for the lives of other officers, Sergeant Morris discharged his firearm several times.

JONES was advancing on the officers at the time of the shooting and estimated the distance between them to be approximately 20 yards. Once JONES fell to the ground, Sergeant Morris ceased fire and assessed the situation. Sergeant Morris estimated he fired five or six rounds at JONES.

Sergeant Morris realized they did not have a ballistic shield and requested one from incoming officers. Sergeant Morris wanted to approach JONES safely and perform medical aid, but due to the weapon being in close proximity to JONES, he chose to wait for the ballistic shield to arrive.

Once the ballistic shield arrived, he coordinated several officers to approach JONES, disarm him, and provide medical aid. After JONES was taken into custody, he participated in clearing the residence. No one else was located in the residence.

Sergeant Morris estimated the time he exited Officer Radcliff's vehicle, to the time when the shots were fired, was approximately 45 seconds.

#### **Interview of CCCSO Deputy Jon Scanlan:**

On 3/23/22 at approximately 6:37 am, CCCSO Detective Jeff Jackson and CCCDAO Senior Inspector Steve Cheatham interviewed Deputy Jon Scanlan. The following is a summary of his interview:

Deputy Scanlan has been a sworn deputy for 16 years. On 3/22/22 Deputy Scanlan was at the Sheriff Deputy station when he heard a domestic violence call for an incident that occurred in Discovery Bay. Deputy Scanlan heard Deputies Livingston and Deputy Duke were dispatched to the call. Deputy Scanlan continued to listen over the radio and heard Deputy Duke state that they were in the doorway of the residence and saw a male subject with a gun.

After learning this information, Deputy Scanlan got to his patrol car and responded Code 3 to the location of the incident. Deputy Scanlan arrived on scene and saw a female on the sidewalk with a child. Deputy Scanlan spoke to the woman [W-1], who said she called 911 to report the domestic violence incident.

Deputy Scanlan then spoke to Deputy Duke, who was positioned nearby, and asked about Deputy Livingston. Deputy Duke told Deputy Scanlan that Deputy Livingston was numerous houses east of his location, closer to the suspect's house, and was taking cover across the street from the suspect's house.

Deputy Scanlan advised his Sergeant he was going to drive toward Deputy Livingston so his car could be used for cover. Deputy Scanlan drove up the block to Deputy Livingston's location and Deputy Livingston got into Deputy Scanlan's car. Deputy Scanlan drove passed the suspect's house and made a left turn on the intersecting street. Deputies Scanlan and Livingston then got out of Deputy Scanlan's car and took cover on the northeast corner of the house across from the suspect's house.

Deputy Scanlan could see the front of the suspect residence and stood by to keep an eye on the suspect house. From their vantage point Deputy Scanlan saw the suspect come out of the house armed with either a rifle or a shotgun. Deputy Scanlan advised Deputy Livingston to put the information that JONES was armed over the radio.

Deputy Scanlan saw JONES peer around some columns in front of the suspect's house and look west toward where the other deputies were located. It appeared to Deputy Scanlan that JONES did not know Deputies Scanlan and Livingston were watching him from the Northeast corner of the street. Instead, JONES appeared focused on the other law enforcement personnel to the west of his location.

Deputy Scanlan believed JONES was waiting to ambush the other deputies as he hid from them in front of his residence. Deputy Scanlan saw JONES step out from behind the columns in front of the house and walk towards the Deputies to the west of JONES' house. JONES held his rifle at the "low ready" with the barrel of the gun facing down. JONES then disappeared from his view as JONES continued to walk toward the other deputies.

Deputy Scanlan heard the other law enforcement personnel yell at JONES to put the gun down. Deputies continued to order JONES to drop his weapon for approximately 45 seconds to 1 minute. Deputy Scanlan then realized he was in a potential crossfire situation, as the other deputies were west of his location and pointing their guns in his general direction. Deputy Scanlan and Deputy Livingston moved further east and put the house between them and the other deputies in order to avoid being struck by crossfire. As he backed up, he continued to hear the commands for JONES to drop his weapon.

Deputy Scanlan then heard approximately 20 gunshots come from the area where the officers were positioned. Deputy Scanlan did not see any law enforcement shoot their guns at JONES.

After the shots were fired, Deputy Scanlan heard deputies yelling and requesting a ballistic shield from anyone on scene, so they could approach JONES safely. No one had a ballistic shield on scene and a request was made of Brentwood PD to respond with a ballistic shield.

Deputy Scanlan then conducted a protective sweep of JONES' house. After Deputy Scanlan came out of the house, he saw JONES on the ground, in the street. Dep. Scanlan saw paramedics giving Jones CPR. Deputy Scanlan then responded back to the Police Department.

### **Interview of CCCSO Deputy Jason Livingston:**

On 3/23/22 at approximately 7:06 am, CCCSO Detective Jeff Jackson and CCCDAO Senior Inspector Steve Cheatham interviewed Deputy Jason Livingston. The following is a summary of his interview:

Deputy Livingston has been a sworn deputy for 13 ½ years. On 3/22/22, Deputy Livingston and Deputy Duke were dispatched to a report of a domestic violence incident. Dispatch advised that there was a verbal argument between a husband and wife and that the husband was intoxicated. Deputy Livingston was further advised that the husband reportedly pushed the wife, who did not suffer any injuries.

Deputy Livingston and Deputy Duke arrived at the scene and saw a female [W-1] standing outside. They spoke to W-1, who said she called 911 because her husband pushed her. She said she did not have any injuries, and that her husband was acting "weird" for the last five days.

Deputies Livingston and Duke approached the residence and saw a man, later identified as JONES, sitting inside the home. They announced their presence to JONES and asked if they could speak to him. JONES did not respond. Deputy Livingston entered the residence and was followed by Deputy Duke. JONES looked at Deputies Livingston and Duke but said nothing in reply.

JONES then stood up, at which point Deputy Livingston saw JONES had a knife in his hand. The blade of the knife was approximately 6 inches long. Deputy Livingston drew his firearm and ordered JONES to drop the knife. Deputy Livingston saw JONES turn around and bend downwards. JONES then turned back towards the Deputies holding what appeared to be a shotgun. JONES held the suspected shotgun with the barrel pointing downwards. JONES told the deputies to, "Get the fuck out of my house."

Deputies Livingston and Duke then retreated out of the house in an attempt to de-escalate the encounter. The Deputies positioned themselves outside, near the driveway, and yelled at

JONES to come out of the residence with his hands up. Deputy Livingston saw JONES' wife (W-1) nearby and told her to move away from the area and to his patrol car.

Deputy Duke moved away from the driveway and went to his patrol car to retrieve a rifle. The deputies radioed for backup and a short time later Deputy Scanlan, along with other officers, arrived at the scene.

Deputy Livingston saw JONES walk out of his house approximately 5 minutes after the deputies retreated outside. When JONES exited the house, he was still holding the suspected shotgun in his hand. JONES then walked towards the sidewalk. Deputy Livingston and Deputy Scanlon retreated away from JONES. Multiple officers repeatedly ordered JONES to drop the firearm. Deputy Livingston heard the sound of a shotgun "rack."

Deputy Livingston and Deputy Scanlan retreated behind a concrete wall. Once behind cover they heard the sound of multiple shots being fired. JONES fell to the ground and was ordered to push his gun away. Officers then assemble a "rescue force," which includes multiple officers approaching JONES with a ballistic shield to safely contact the subject. After approaching JONES, they then begin to administer first aid.

#### **INTERVIEW OF MEDICAL EMERGENCY AND FIRE PERSONNEL:**

##### **Interview of Fire Captain Larry Bennett:**

On 3/23/22 at approximately 2:44 am, CCCSO Detective Ryan Nichols and CCCDAO Senior Inspector Steve Cheatham interviewed Fire Captain Larry Bennett. The following is a summary of his interview:

Captain Bennett has been a member of the fire protection district for 20 ½ years. He is certified as a Fire Fighter and an EMT. On the night of the incident, he supervised Engine 59, which included Engineer John Miller and Firefighter Lance Brashier. They were dispatched to a gunshot wound call at location #1.

Engine 59 personnel were instructed to stage near the scene and they would be called in when the deputies deemed it safe for fire personnel to enter the scene. After approximately 10-15 minutes they were cleared to come into location #1.

Once they arrived at the scene, he saw the patient [JONES] was on the ground and officers were administering first aid and CPR. Captain Bennett saw JONES appeared to have been shot and was unconscious. Captain Bennett and his team took over CPR and began medical treatment of JONES.



JONES was transported Jones to Sutter Delta Hospital, as there was a faint heart rhythm. JONES was loaded onto the ambulance and Captain Bennett and Engineer Miller followed the ambulance to the hospital. JONES was later pronounced deceased at the hospital.

**Interview of Engineer John Dean Miller:**

On 3/23/22 at approximately 2:59 am, CCCSO Detective Ryan Nichols and CCCDAO Senior Inspector Steve Cheatham interviewed Engineer John Miller. Engineer Miller's statements during this interview were consistent with those provided by Fire Captain Larry Bennett.

**Interview of Fire Fighter Lance Brashier:**

On 3/23/22 at approximately 3:15 am, CCCSO Detective Ryan Nichols and CCCDAO Senior Inspector Steve Cheatham interviewed Fire Fighter Lance Brashier. Fire Fighter Brashier's statements during this interview were consistent with those provided by Fire Captain Larry Bennett.

**Interview of Battalion Chief Craig Auzenne:**

On 3/23/22 at approximately 3:49 am, CCCSO Detective Ryan Nichols and CCCDAO Senior Inspector Steve Cheatham interviewed Battalion Chief Craig Auzenne. Battalion Chief Auzenne's statements during this interview were consistent with those provided by Fire Captain Larry Bennett.

**Interview of Paramedic Nicholas Bizjak:**

On 3/29/22 at approximately 2:05 pm, CCCSO Detective Ryan Nichols and CCCDAO Senior Inspector Steve Cheatham interviewed Paramedic Nicholas Bizjak. The following is a summary of his interview:

Nicholas Bizjak had eight years of experience as an EMT and Paramedic. On the night of 3/22/22 he was assigned to Medic 80 with EMT Crispin Flores. They were dispatched to an individual who suffered gunshot wounds in Discovery Bay. Their instructions were to stage in the area until it was safe for them to come in to treat the patient.

After being cleared to enter they drove to location #1 and saw Fire Engine 59 was already on scene. A male subject [JONES] was on the ground with multiple gunshot wounds. JONES was tended to by both paramedic and fire personnel.

JONES was then transported to Sutter Delta Hospital. He was given CPR the entire time he was transported to the hospital. JONES was taken from the ambulance into the emergency room. JONES was pronounced deceased by the Emergency Room Doctor a short time later.

**Interview of EMT Crispin Flores:**

On 3/29/22 at approximately 2:20 pm, CCCSO Detective Ryan Nichols and CCCDAO Senior Inspector Steve Cheatham interviewed EMT Crispin Flores. The statements provided by EMT Flores were consistent with those provided by Paramedic Nicholas Bizjak.

**Interview of Doctor Leann Mainis:**

On 3/23/22 at approximately 4:20 am, CCCSO Detective Ryan Nichols and CCCDAO Senior Inspector Steve Cheatham interviewed Doctor Leann Mainis. The following is a summary of Dr. Mainis' interview:

Doctor Mainis was the Emergency Trauma Doctor on duty on 3/22/22. Between 10:30 pm and 11:00 pm she was notified that a patient [JONES] was being transported to her hospital with a traumatic arrest. The subject had no pulse during the time of transport and suffered multiple gunshot wounds. When JONES arrived at the emergency room, there was no heart rhythm and no pulse. Attempts to revive JONES were unsuccessful and she pronounced him deceased.

**INTERVIEWS OF CIVILIAN WITNESSES:**

**Interview of W-1: JONES' wife**

On 03/23/2022, at approximately 1:29 am, CCCSO Detective Angela Mendez and CCCDAO Senior Inspector John Garcia interviewed W-1, the wife of Robert JONES, at the Brentwood Police Department.

The following is a summary of her interview:

W-1 has been married to JONES since December of 2021 and they have been living together for approximately 3 years. They have no children in common. W-1 had a 19-year-old son, who resided at the residence, but was not present during this incident. JONES worked at PG&E in San Ramon for 16 to 18 years as a dispatcher. W-1 was not aware of JONES to have any illnesses, other than taking heart medication and having a hard time sleeping. JONES told her that he suffered from PTSD but W-1 was not aware of an official diagnosis. On occasion, JONES would wake up in the middle of the night screaming.

JONES had been married four times prior to their relationship but had no children. There had been no domestic violence in their relationship until today. W-1 never called the police about JONES for any reason. W-1 and JONES would rarely argue, until today. W-1 described JONES as drinking half of a 750 ml bottle of whiskey, on a daily basis.

JONES never served in the military, but he worked as military contractor, possibly in Panama. JONES told her he was dealing with high value principals but wasn't aware of the details. They did not discuss that part of his life.

W-1 described JONES as a strong supporter of police who donated often. W-1 was not aware of any negative feelings directed toward law enforcement. W-1 was not aware of JONES having any firearms in the residence. JONES had several tactical knives and purchased a lot of survival gear which he kept in the garage.

On 03/22/22, at approximately 6:30 pm, W-1 arrived home and JONES was cooking dinner. In the middle of cooking, JONES left for approximately 10 minutes. JONES returned and told W-1 he had gone to a neighbor's residence and spoke to the security guard at the gate. JONES told her that he had spoken to the security guard about local break-ins and that he wanted to start a "vigilante group or neighborhood watch group."

In the last week, JONES behavior changed and he would watch her eat without taking a bite of his food, which annoyed her. That evening, while they were eating on the couch, JONES was watching her eat without taking a bite of his food. W-1 confronted JONES about him watching her eat without eating himself.

JONES got up from the couch, outraged, and began yelling at W-1. JONES yelled profanities at her, calling her a "fucking bitch, ungrateful bitch, you're going to regret this," and more.

JONES grabbed W-1 by the shoulders and pushed her backwards into the dining room. W-1 described the look on JONES face as wanting to hurt her and a look of terror. W-1 told him to, "Stop touching me, I am not afraid of you," and threatened to call the police.

JONES continued yelling so W-1 went to the kitchen, grabbed her cell phone, and dialed 911. JONES was aware she was calling the police and remained on the couch.

W-1 left the residence and waited outside for police to arrive. When officers arrived, they tried to contact JONES inside the residence. W-1 heard JONES yell out something like, "get off my lawn or get off my property."

All of a sudden, W-1 heard the officers yell out he had a weapon and told her to run away. W-1 ran to the end of the street. W-1 saw officers arriving on scene, then shortly thereafter heard several shots being fired. W-1 was too far to hear any voices and only heard the shots. W-1 did not see JONES and was not aware he came out of the residence.

W-1 was scared and feared for her safety when JONES assaulted her. W-1 had never seen him act that way and was terrified. W-1 was not injured and did not require medical attention.

### **Interviews of Neighboring Residents:**

During the LEIFI investigation law enforcement officials canvassed the surrounding area and spoke to multiple neighboring residents. Although multiple civilian witnesses overheard JONES' encounter with police, no civilian witnesses saw the fatal encounter. Neighbors/witnesses who heard what was occurring outside described statements and events consistent with the available audio/video captured on BWC and RING doorbell footage.

### **EVIDENCE SCENE RECOVERY:**

The Contra Costa County Sheriff's Office Division of Forensic Services [Crime Lab] responded to the scene and performed the following duties:

- Scene Documentation with notes
- Photographs
- Laser scan
- Evidence collection

Evidence Collected:

- Officer Radcliff's (Oakley PD) duty pistol, magazine, and associated ammunition
- Sergeant Morris (Oakley PD) duty pistol, magazine, and associated ammunition
- Sergeant Sears (CCCSO) duty pistol, magazine, and associated ammunition
- Deputy Powell (CCCSO) duty rifle, magazine, and associated ammunition
- Deputy Duke (CCCSO) duty rifle, magazine, and associated ammunition
- JONES' Umarex Air Javlin Arrow rifle with red stains
- Seven (7) .223 caliber fired cartridges
- Ten (10) .40 caliber fired cartridges
- Bullet and bullet fragment inside bedroom at location #1
- One bullet in the middle of the street
- KaBar knife (Residence inside location #1) table in center of brown sofa in family room

- Two bullet holes were located at a nearby residence. One projectile recovered in the rain gutter in the front of the residence.

The following notable measurements were obtained from the laser imaging collected by the crime lab, the video evidence collected during the investigation, and officer statements:

1. Distance from the front door (extending to middle of street) of location #1 to the east edge of the neighboring driveway depicted in the RING camera footage shows JONES advancing toward Officers for approximately 47 feet before JONES is shot.
2. Distance from the west side of the driveway where Sergeant Sears and Deputy Duke were positioned to middle of street perpendicular to the front door of location #1 is estimated to be 125 feet.
3. The distance from where JONES was standing as depicted on the Ring camera to position of Officers in the driveway of 8051 Westport Circle was estimated to be 80 to 85 feet.

**Photograph of JONES' weapon:**

The following photograph depicts the crossbow which JONES was holding and displaying at the time of the incident, as it appeared on the ground prior to being collected as evidence. The Contra Costa County Crime lab examined the weapon and determined that it was unloaded.



**AUTOPSY AND CORONER'S INQUEST**

Doctor Ikechi Ogan, Forensic Pathologist, performed the autopsy of JONES on March 24<sup>th</sup>, 2022, at the Contra Costa County Coroner's Office.

Dr. Ogan noted ten bullet holes on Jones' body. Six of the bullet holes were determined to be "through and through" wounds, which indicates the bullet entered the body and then exited the body, leaving two holes. Four projectiles were recovered. One bullet was recovered from

JONES' T-shirt, which was removed at the time of autopsy. Three other bullets were recovered from inside JONES' chest.

The Coroner's report listed JONES' cause of death as, "Multiple gunshot wounds."

A sample of JONES' blood was drawn and tested. The toxicology report indicated that JONES' blood alcohol level was 0.169 grams per 100 ml, which is approximately twice the legal limit to drive a vehicle in the State of California.

A Coroner's Inquest was conducted on January 13<sup>th</sup>, 2023. At the conclusion of the Coroner's Inquest the jury found, by a vote of 8 – 7, that JONES' death was "at the hands of another, other than by accident."

### **LEGAL PRINCIPLES**

The California District Attorneys Association 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 and Jury Instructions [CALCRIM] are as follows:

#### **Pursuant to CALCRIM 220: [Reasonable Doubt Jury Instruction]**

The fact that a criminal charge has been filed against the defendant is not evidence that the charge is true. You must not be biased against the defendant just because he has been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. [ ]

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is

open to some possible or imaginary doubt.

In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, he is entitled to an acquittal, and you must find him not guilty.

**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 peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- (a) In obedience to any judgment of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

**Section 835a:** (a) The Legislature finds and declares all of the following:

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

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

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use



of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

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

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

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

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

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

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

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

**Pursuant to CALCRIM 507:**

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

1. The defendant was a peace officer

AND

2. The killing was committed while the defendant

either:

A. Reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the defendant or another person;

OR

B. Reasonably believed, based on the totality of the circumstances, that:

(1) A person was fleeing a felony;

(2) That force was necessary to arrest or detain that person;

(3) The commissioned felony threatened or resulted in death or serious bodily injury,

AND

(4) The person will cause death or serious bodily injury to another unless immediately apprehended.

**Pursuant to CALCRIM 505. Justifiable Homicide: Self-Defense**

The defendant is not guilty of murder or manslaughter if he was justified in killing someone in self-defense. The defendant acted in lawful (self-defense/ [or] defense of another) if:

1. The defendant reasonably believed that he was in imminent danger of being killed or suffering great bodily injury;

2. The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger;

AND

3. The defendant used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of death or great bodily injury to himself. Defendant's belief must have been reasonable, and he must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the killing was not justified.

When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.

The defendant's belief that he was threatened may be reasonable even if he relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true.

A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of death or great bodily injury has passed. This is so even if safety could have been achieved by retreating.

Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. If the People have not met this burden, you must find the defendant not guilty of murder or manslaughter.

## **Additional Case Law and CALCRIM Instructions:**

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.

### **Legal Analysis**

#### **I. Introduction:**

The legal issue to be decided by the CCCDAO is whether any involved law enforcement officers or civilians violated any criminal laws. The Contra Costa District Attorney's Office analyzes each fatal incident on the case specific facts and circumstances. The community, including the deceased, his family, and the involved officers deserve an independent factual and legal analysis. Whether someone is criminally liable depends on the facts of the case and whether those facts constitute a crime under the applicable laws.

#### **II. Analysis:**

##### **A. The Initial Contact/Detention of JONES in his residence was lawful.**

Where a reasonable suspicion of criminal activity exists, the public rightfully expects a police officer to inquire into such circumstances "in the proper exercise of the officer's duties." (*People v. Wells* (2006) 38 Cal.4th 1078, 1083.). A temporary detention for questioning or investigation may be justified by circumstances falling short of the probable cause needed for an arrest (*Terry v. Ohio* (1966) 392 U.S.1, 22.). To justify such a detention, an officer need only have a reasonable suspicion of criminal activity; more specifically, "the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity.

Not only must he/she subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience, to suspect

the same criminal activity and the same involvement by the person in question.” (*People v. Loewen*, (1983) 35 Cal.3d 117, 123.)

In the present case, the officers were responding to a call of a “citizen informant,” who had called the police to report that her husband (JONES) had assaulted her. Such a source of information is presumed to be reliable. (*People v. Rowland* (2022) 82 Cal.App.5<sup>th</sup> 1099, 1110-1111.)

The officers’ entry into the residence was also lawful. The officers had a reasonable, good faith belief that JONES had committed a crime (spousal battery). It was entirely proper for them to contact JONES, not only to take a statement from him, but also to assess the circumstances.

The mere fact that the call involved a domestic disturbance does not by itself justify a warrantless entry to conduct a protective sweep, where the officer lacks any reason to believe a dangerous person is inside the residence. *People v. Ormonde* (2006) 143 Cal.App.4<sup>th</sup> 282. However, where the perpetrator of the reported domestic violence has not been yet apprehended, and where officers have reason to believe that person is inside the residence, a warrantless entry may be proper. *People v. Pou* (2017) 11 Cal.App.5<sup>th</sup> 143. Here, the officers saw JONES inside the house and had information from the reporting party that he had committed a crime of domestic violence against her.

Moreover, even assuming that the entry into the residence had not been proper, the officers immediately exited once JONES brandished weapons and told them to leave. JONES then followed the officers out and continued to brandish the rifle at them. This decision by JONES to exit the residence with the weapon attenuates any potential issue regarding the warrantless entry from the later use of force. Clearly, once JONES exited and displayed the weapon in a threatening manner, the officers would not have been able to simply walk away from the situation. Cf. *People v. Cox* (2008) 168 Cal.App.4<sup>th</sup> 702 (defendant’s flight and forceful resistance attenuated any taint from initial unlawful detention); *People v. Prendez* (1971) 15 Cal.App.3d 486 (defendant’s flight from police attenuated any taint from initial unlawful entry into motel room).

**B. The Officers Were Justified in Their Use of Lethal Force Due to an Actual and Reasonable Belief in the Need to Defend Themselves Against an Imminent Threat of Death or Serious Bodily Injury.**

Upon making contact with JONES, the officers were soon confronted with the very sort of volatile situation that can arise from calls to investigate domestic violence. JONES brandished a knife at the officers who initially responded, and then proceeded to brandish what appeared to be a firearm. The officers attempted to de-escalate the situation by retreating and calling for backup officers.

Despite the officers' attempts to de-escalate the situation, JONES emerged from the residence armed with an apparent shotgun/rifle in hand. An officer under these circumstances would reasonably conclude that a violent and dangerous encounter with JONES was about to occur. In addition, not only did JONES exit his home with a weapon, but he also pointed the weapon at the officers and advanced towards them for over 40 feet. An officer under these circumstances would reasonably conclude that JONES was preparing to fire upon them in an attempt to kill them or to inflict serious bodily injury.

However, despite this threat, multiple officers and deputies continued to try and de-escalate the situation by telling JONES to drop the weapon. For over twenty seconds officers urged him to, "put down the gun," and "don't make me shoot you." Tragically, JONES refused to listen of the officers. Instead, JONES continued to point the weapon at police officers in a "ready position" as he advanced towards them.

Based on the totality of these circumstances, the officers had every reason to believe that JONES' weapon was indeed a loaded, operable firearm, and that JONES was closing the distance between himself and the officers in order to use it against them. As such, the officers use of deadly force was in lawful self-defense and defense of others.

**CONCLUSION:**

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, Officers Sears, Duke, Powell, Morris, and Radcliffe were justified in their use of lethal force. The officers acted with an actual and reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury. As such, no further action will be taken in this case.