REPORT ON THE FATAL SHOOTING
OF SHAUN KENNEDY
ON JANUARY 5, 2019

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I. PREAMBLE

The summary of this incident is drawn from reports prepared by the Santa Clara Police Department and submitted to this office by responding and investigating officers. The submission included various narrative reports documenting interviews of the involved officers and civilian witnesses, audio recordings of those interviews, and video footage from body-worn cameras and at least one traffic signal mounted camera. This review is being conducted pursuant to the Officer-Involved Guidelines adopted by the Santa Clara County Police Chiefs’ Association on October 12, 2017.

II. SUMMARY OF FACTS

On January 5, 2019, at approximately 5:42 a.m., the Santa Clara Police Department received multiple calls regarding an active shooter at the Rotten Robbie gas station located at 3471 Lafayette Street in Santa Clara. Callers reported that gunshots could be heard inside the convenience store attached to the gas station, they described the shooter as a male wearing a bright orange vest, and they reported that there were victims inside the store.

Santa Clara Police Department Officers Eric Janssen, DJ Bell, Ken Nagata, and Jerry Ogg arrived on scene within minutes. They saw a subject matching the description given by the 911 callers. He was firing a shotgun in the parking lot/gas servicing area of the business. The subject then retreated inside the store and continued firing. The convenience store has double glass doors on both the west and east sides of the building. The counter is at the north end of the building. Officers Nagata and Ogg took up a position on the west side doors. Officers Bell and Janssen were on the east side of the building. All four officers could see the front counter from their respective positions.
While officers were positioned at both doors, the subject was indiscriminately firing a shotgun within the convenience store. All four officers watched the suspect come into view from behind the front counter. The subject was holding a shotgun in his hands and turned toward the east entrance pointing his weapon directly toward the door where Officers Bell and Janssen were positioned. All four officers then discharged their weapons in order to stop the shooter. The subject was later identified as Shaun Kennedy. He was pronounced dead at the scene. No officers or civilians were injured during the incident.

After the scene was secured, it was discovered that Shaun Kennedy had been an employee of Rotten Robbie for 24 years. He had previously worked at the incident location but had moved to a location in Cupertino several years prior. After Kennedy’s death, it was discovered that the attendant booth at the Cupertino location had been doused with engine oil and a fire had been started. Kennedy is the sole suspect in that arson.

III. EVIDENCE

A. PHYSICAL EVIDENCE

Santa Clara Police Officer Stephanie Knight was the primary crime scene investigator for the Department. She has been a member of the crime scene team since November of 2010. Because the weather on the morning of January 5, 2019, was extremely windy and a storm was imminent Officer Knight tasked two other officers with the duty of identifying the locations of shell casings as soon as possible. The Santa Clara County Crime Lab was contacted for assistance because of the sheer amount of evidence involved, and three criminalists were dispatched to the scene to help process the evidence.

Members of the team prepared diagrams and made the following observations:
Overall sketch of Rotten Robbie gas station store at 3471 Lafayette St. Santa Clara, CA 95054.

*Not to scale. Not all intervening objects or vehicles depicted. Red arrows indicate approximate directionality of forces.

Suspect Vehicle
Mercury Villager
CA 3ELR866

Victim Vehicle
Ford F-550
CA 23361Y1

Covered Picnic Area

Convenience Store

Lafayette St.

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*Not to scale. Not all intervening objects, equipment, product shelves, or evidence items depicted.*

- Red numbers represent holes which indicate a projectile(s) travelled from inside the store to outside.
- Blue numbers represent holes which indicate a projectile(s) travelled from outside the store to inside.
- Green numbers represent holes whose origin and source are undetermined.
- Arrows indicate approximate directionality of holes or a group of holes.
- Number 7 was two holes, the L and H denote lower and higher respectively.

Some holes were observed in the item shelves which were not numbered.

Two safes were located in the back office and had been shot. These were not numbered.
Incident Location

Rotten Robbie is located on the corner of Lafayette Street and Aldo Avenue in the City of Santa Clara. The “front” of the building faces westward toward Lafayette Street. There are three rows of traditional gas pumps running in an east-west direction. There is a convenience store in the middle of the property, and there are glass door entrances on both the west and east sides that provide a virtual corridor through the northern end of the building. On the east side of the building are trucking gas pumps that are longer and wider than those on the west side. There is also a car wash on the northeastern side of the parking lot. There is a covered patio area on the far north end of the convenience store. Below are four photographs depicting the area:

View from the southwest corner of Lafayette Street and Aldo Avenue
View from the south side of the building

Extended view from the east side of the convenience store
View from the east side of the convenience store

Several gas pumps on the east side of the business sustained bullet damage. There were bullet impact points on the outer wall of the adjoining car wash building. There was bullet damage to two additional gas pumps on the west side of the business. A customer’s truck with a camper shell had also been struck in the southwest corner of the parking lot. Over 60 bullet holes were documented as being fired within, into or out of the convenience store where the suspect died. The above diagrams depict the bullet hole directions inside and out of the convenience store.

The suspect’s gold minivan was discovered parked on the south side of the building. Officer Knight searched the vehicle and found a backpack with fishing gear, approximately 110 grams of marijuana, an empty long gun case on the floor in between the driver’s seat and the front passenger seat, and an empty black gun holster on the front passenger seat.

Underneath the gun holster, Officer Knight found an old cassette tape player. It had a record button and there was a microphone attachment plugged in. Officer Knight rewound the tape and stopped at several intervals. She heard a male voice saying, “When you poke the bear,
the bear pokes back,” followed by what appeared to be an apology to his family. The male voice also stated that once “those charges” were placed on him it was all over.

Approximately 110 grams of marijuana were found in the suspect’s car in various forms and locations.

**Weapons Involved**

After discharging their weapons, officers made crisis entry into the building. Shaun Kennedy was found lying face down just in front of the cashier’s counter closer to the west side doors of the convenience store as depicted in the diagram on page seven. Officers immediately moved the weaponry surrounding Kennedy. It is unclear exactly where those weapons were first discovered. It is known that he was armed with two firearms: a Springfield Armory XD-9 9mm semi-automatic pistol and a Mossberg 500 pump shotgun. Kennedy had legally obtained the firearms. Both weapons were loaded and subsequently rendered safe by responding officers. Kennedy had a bandoleer with additional shotgun shells, a loaded magazine in the pistol, a spare loaded pistol magazine, as well as a backpack that contained 97 additional 9mm rounds.

Approximately 60 discharged bullets were found inside the store belonging to the officers and Kennedy. All rounds discharged outside the convenience store are attributable to Kennedy because none of the officers discharged a weapon outside the convenience store.

**B. MEDICAL EXAMINER’S AUTOPSY**

Due to the nature of his injuries, Shaun Kennedy was declared dead at the scene and not transported for medical treatment. On January 7, 2019, Dr. Joseph O’Hara of the Santa Clara County Medical Examiner’s Office performed the autopsy on the body of 54-year-old Shaun Kennedy. He was noted to be 5’9” tall and 330 pounds. Kennedy suffered nine gunshot sounds in total: (1) two gunshot wounds to the head—one was on the right side of the his upper neck/jaw
area and the second was noted to be on the top of his head centered between the ears; (2) one shot to the abdomen; (3) two to his mid-upper right arm; (4) three to his upper right arm and chest; and, (4) a fragment to the left side of the upper chest. The cause of death was noted to be multiple gunshot wounds of the right arm, trunk, and head.

C. BODY-WORN CAMERA VIDEO

Officer DJ Bell did not have his body-worn camera on at the time of this incident as described in his interview. Officer Eric Janssen did not activate his BWC until the suspect was deceased. Body-worn camera footage was reviewed from Officers Nagata, Ogg, and Adjei. Because those three officers had their weapons drawn when they left their vehicles, the view from their BWCs is largely obstructed. That footage was reviewed, however, and there was nothing in the footage inconsistent with the statements of the officers, the civilian witnesses, or the forensic evidence.

D. TRAFFIC CAMERA VIDEO

There was video footage available from a city-installed camera that was positioned at the traffic light on the corner of Lafayette Street and Aldo Avenue. The video footage from the traffic camera was helpful in that it captured the first few moments of the incident before officers arrived, as well as the officers’ conduct thereafter.

The video captures the suspect (what appears to be a heavy-set male) at 5:40 a.m. entering Rotten Robbie through the west side entrance from the south side of the building where his car was ultimately discovered. At 5:41 a white four-door sedan pulled into the parking lot and stops in front of the west side doors. Within two minutes that car urgently backs up out of its previous stopping point and exits the west side curb. At 5:45 another subject comes running out of the west side doors and appears to hide behind a gas station post. At 5:45:50 a black
s sedan pulls into the same spot the white four-door sedan had parked. A subject is seen running from the far southwest corner of the parking lot toward that car and makes it approximately 25 yards before turning around and running back. At this same time, the subject who had been previously hiding behind the gas post runs out to Lafayette Street.

At 5:45:56, the subject who was seen walking into the store at 5:40 a.m. casually walks out to the black four-door sedan as it is backing up and stops briefly (presumably saying something to the driver of the car.) The black four-door sedan then pulls out quickly toward the Aldo Avenue exit of the business.

The suspect takes a few more steps, and at 5:46:05 two muzzle flashes can be seen in the direction of Lafayette Street.

At 5:46:14, the camera captures Santa Clara Police Department Officer Jerry Ogg arriving at the scene. The suspect is still outside the Rotten Robbie west side doors at this point. Officer Ogg parks his vehicle at the crosswalk of the northeast corner of Lafayette and Aldo, exits his car and runs to the illuminated Rotten Robbie sign that is on the northwest corner of the Rotten Robbie parking lot. Officer Ogg stops there for a few seconds and the camera captures another officer (unclear if it is Officer Harry Adjei or Officer Kenneth Nagata) arriving in approximately the same location at 5:46:35. At 5:47:16, three officers (believed to be Ogg, Adjei, and Nagata) run forward to a small pick-up truck parked perpendicular to, and just south of, the west side Rotten Robbie's front doors. At 5:47:36, Officer Adjei is then seen running to the south side of the building. At 5:47:29, a third patrol vehicle pulls into the parking lot, parks at the west side gas pumps, and the occupant runs to join the three officers positioned behind the pick-up truck. At least one other officer runs to the south side of the building. At 5:48:29,
another officer runs to join the two officers positioned behind the pick-up truck. It appears as though a fourth officer joins them from that location at 5:50:04.

There is movement from a person inside the store and the officers discharge their weapons at 5:50:44 a.m.

E. SHAUN KENNEDY’S BACKGROUND

Shaun Kennedy had been an employee at Rotten Robbie since 1995. He lived in San Jose and rented a room with at least two other roommates.

He left no express motive for his actions. A review of the District Attorney’s files indicates that he had no significant criminal record; however, he was investigated for a sexual assault a few months before the shooting. The District Attorney’s Office reviewed the sexual assault case, and on December 26, 2018, prosecutors declined to file charges. While Kennedy was certainly aware the investigation was ongoing, there is no evidence that he was aware of the District Attorney’s decision declining to prosecute. Though not explicit, it may be that the sexual assault allegations were the “charges” to which Kennedy referred in the cassette tape recording that Officer Knight recovered from Kennedy’s vehicle.

Various witnesses contacted by law enforcement after the shooting denied that Kennedy used drugs (other than marijuana) or alcohol. Kennedy’s employer at Rotten Robbie was unaware of any dispute with the company or his coworkers. He had no known mental health history.
IV. WITNESS STATEMENTS

A. CIVILIAN WITNESSES

Santa Clara Police officers spoke with numerous civilians who witnessed the shooting. Summaries of their statements are below.

1. ERENDIRA BANDERAS

Banderas works at the Rotten Robbie gas station. She started her shift at 11:00 p.m. on January 4, 2019. Banderas saw the suspect enter the store and heard him tell everyone to leave or he would kill them. The suspect then shot three times in the direction of the cash register. She was approximately 15-20 feet away from the suspect when he discharged those rounds. Banderas fled through the east side doors of the building. She saw her co-worker exit from an emergency door located on the southeast side of the building. She believed there were approximately two or three patrons in the store when the suspect entered. As she fled, Banderas heard several additional gunshots that she believed were discharged from outside the building. Banderas ran to a neighboring business building across Aldo Avenue and waited for officers to arrive.

2. ROSA MENDEZ

Mendez has worked at the Rotten Robbie on Lafayette Street for 14 years. She began her shift at 4:00 a.m. on January 5, 2019. She saw the suspect enter the store through the west side (front) of the store. Mendez heard the suspect tell everyone to run or he would kill them. Mendez then heard a shotgun being racked and a round being fired. She and a patron ran for their lives as the suspect fired three additional shots. Mendez ran to a neighboring business and asked the business owner to call 911.
3. **JORGE ALFAZEMA**

Alfazema had just finished his weekend graveyard shift at Owens Corning. He drove his Toyota pickup truck to Rotten Robbie and parked his vehicle in front (west entrance) of the store and entered the building. He saw two female employees that he recognized from previous contacts and then went to the self-service donut location. Very shortly after entering the store, Alfazema heard a male voice yell “everybody out of the fucking store now!” Alfazema saw the suspect come in through the same door he used to enter the business and noticed that he was carrying a large shotgun with shells on the side of the gun.

Shortly after directing everyone to leave, the suspect began shooting. Alfazema took cover behind an aisle, and the two employees began running down the aisle. Alfazema followed the female employees and saw one of them trying to open a door that was locked. The three of them were then able to run out through the east side doors and across the street to a neighboring business. The suspect was continuously shooting the shotgun as they fled.

Alfazema continued to watch as officers arrived and saw at least two officers run to the east side of the building and other officers respond to the west side. The suspect was continuing to fire off rounds. Alfazema believed the suspect was shooting at the police officers because the two shotgun shots happened “while officers were right outside the business.” Alfazema said that he feared for his life throughout the incident and believes that the suspect “went in there prepared to die.”

4. **LANE MILLER**

Miller arrived at the Rotten Robbie at approximately 5:20 a.m. He got a cup of coffee and a sweet roll from inside the convenience store. He was sitting in his truck, which was parked on the southwest corner of the Rotten Robbie parking lot, when he heard three shotgun blasts

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coming from the area of the fuel pumps on the northeast side of Rotten Robbie. He then observed approximately 10 patrons running southbound from the east fuel pumps. The suspect then walked southbound between the Rotten Robbie store and the east fuel pumps while discharging his shotgun. Miller described the suspect as a white male adult, approximately 45 to 55 years old, approximately 225-250 pounds, 5'9" or 5'10" with short balding hair, a round face, and a beard. He was wearing gray shorts, white tennis shoes, a black hoodie, and a shirt with orange sleeves.

Miller exited his pickup truck and took cover behind the left front tire of his truck. The suspect then turned and walked approximately 10 feet westward toward the victim. The suspect fired three handgun rounds toward the victim, and one of the rounds struck the right front passenger door frame just above the door handle, shattering the right front passenger window of his pickup truck.

The suspect then walked northbound and entered the Rotten Robbie. Miller then heard approximately 30 or more shots fired from within the store. He saw two patrons running out the west door of the store. Miller then observed a black Cadillac drive into the Rotten Robbie’s parking lot from Lafayette Street. The black Cadillac pulled into a parking stall in front of the west entrance to the store, stopped very briefly, and then immediately reversed away from the store. The suspect walked out of the store’s west doors approximately 30’ feet toward the west fuel pumps and fired two rounds “point-blank” toward the driver side of the Cadillac. The Cadillac immediately drove off. Santa Clara Police officers responded to the scene within a few minutes and after several rapidly-fired rounds, the incident ended.
5. EDUARDO ALANIZ

Alaniz came to Rotten Robbie to get a cup of coffee at approximately 5:45 a.m. When he saw the suspect holding a long gun, he fled into the store for safety. Alaniz took cover behind a merchandise rack but was aware that the suspect had come into the store because shots were being fired throughout the store. Alaniz was able to run out of the store and away from the suspect. Throughout the incident, Alaniz believed the suspect was trying to kill him.

6. PAUL CRUZ

Cruz works for El Paseo Limousine Company located just down the street from Rotten Robbie. Cruz was pulling into the southwest corner driveway of Rotten Robbie when he saw a male inside the business wearing an employee vest. Cruz saw the male exit the store and thought he was carrying a broom in one hand and a dustpan in the other. The male yelled, “I hate Rotten Robbie!” and then lifted his hand. At that point, Cruz realized that the man had a handgun in his left hand and a rifle in his right hand. Cruz heard one gunshot and then drove off toward Aldo Avenue. Immediately after the gunshot, Cruz stated that his tire sensor went off and that his tire had gone completely flat later that morning. He looked for a bullet or any bullet fragments in his vehicle tire but did not see anything.

B. POLICE WITNESSES

Following the shooting, each of the officers were sequestered from each other and separately interviewed by Santa Clara County District Attorney’s Office investigators with the assistance of Santa Clara Police detectives.

1. OFFICER ERIC JANSSEN

Officer Janssen has worked for the Santa Clara Police Department since March of 2010. He had been previously assigned to SCAT (Specialized Crimes Action Team – approximately
one year) and RATTF (Regional Auto Theft Taskforce – approximately one year). Both of those assignments are more tactical assignments than an average patrol assignment. Officer Janssen carries a department-issued assault rifle (AR-15) in his car and is certified to use an assault rifle.

On the date of this incident, Officer Janssen was assigned to weekend day shift (Friday, Saturday, Sunday, and every other Monday.) Officer Janssen and Officer Bell started at 3:30 a.m. in an unmarked vehicle. They were tasked with surveilling a location at which a search warrant was supposed to be served that day. Both officers were in full uniform but were in an unmarked car.

Sometime before 6:00 a.m., Officer Janssen heard a radio call and saw his computer monitor dispatch officers to a person shooting at Rotten Robbie on Lafayette Street. The suspect was described as a male wearing a bright colored construction vest. The suspect was described as carrying a shotgun and a pistol. Officer Janssen was aware that there were multiple 911 callers and was concerned that there was an active shooter at a location where there were multiple potential victims. Based on that information, Officers Janssen and Bell left their surveillance post and responded to the Rotten Robbie with lights and sirens.

Officers Janssen and Bell were at the scene within a minute of the call being dispatched. Officer Janssen could hear a shotgun being discharged. He exited the passenger side of the car and took up a position by a civilian car. He saw a male subject walk casually into the business and immediately believed that to be the shooter because most people would be running away from the location. Officer Janssen heard Officer Ogg say “push up, push up” from behind. Both Officer Janssen and Officer Ogg took up a position behind a civilian car that was parked very close to the west side of the Rotten Robbie, which Officer Janssen described as the front of the building. Officer Janssen heard his partner, Officer Bell, say that he was on the north side of the
building (the back of the building) and that he could see into the convenience store from his location. Officer Janssen then moved to the east side of the building with Officer Bell and took up a position at the double glass doors on the east side of the business. Per his training, Officer Janssen kneeled in a position where he could see through the bottom of a blown-out window. Officer Bell was standing immediately behind Officer Janssen.

Officer Janssen continued to hear shotgun rounds being discharged within the building, but he could not see the shooter inside the building. His field-of-view was primarily the front counter where a cashier would ring up a customer and an island where coffee and other items were being displayed. He did not hear any screaming or other noises coming from within the building. He then saw the back of a man’s head walking toward the west side of the building. The man was shorter and heavyset and had a blue vest and an orange shirt underneath. Officer Janssen saw a wire running behind the subject’s neck that was connected to ear-protection that was like what officers would wear during shooting practice. Officer Janssen’s first thought that was the shooter had taken an employee’s vest from a victim to disguise himself and/or ambush responding officers.

The subject walked a few feet with his arms in front of him as though he was holding something. Because Officer Janssen knew that a shotgun was involved, and because he’d seen the ear protection, he believed the subject was holding a shotgun. At that point, the subject turned and looked directly in Officer Janssen’s direction. Officer Janssen saw the subject’s arms begin to come around and was concerned that the subject was then positioned to shoot at the officer and/or his partners. Officer Janssen discharged his weapon aiming directly for the subject’s torso. The subject then disappeared.
After a few seconds, Officer Janssen heard Officer Bell say something along the lines of "subject is hard down," which meant that the subject had been critically injured or killed. He and other officers made entry to the business and immediately searched for victims; none was discovered. Officer Janssen noticed that the suspect had a bag with additional ammunition and was lying face down on the floor. Other officers handcuffed the suspect and secured his weapon. Throughout the event, Officer Janssen was convinced that they would find victims in the store, and there was no chance that the suspect would be the only person in the store. Officer Janssen did not activate his BWC until after the fatal shooting.

2. OFFICER KENNETH NAGATA

Officer Nagata has been a Santa Clara Police Officer since October of 2016. He had no previous law enforcement experience. Officer Nagata was commissioned as a second lieutenant in the Army after graduating from college through the ROTC program and was stationed internationally in multiple locations including Afghanistan. On duty, Officer Nagata is qualified to carry and use a firearm and a shotgun. He is not qualified to carry and use an assault rifle. Officer Nagata is a midnight patrol officer working Friday, Saturday, Sunday and every other Monday from 8:00 p.m. to 7:00 a.m. On January 5, 2019, Officer Nagata was in full uniform in a single-man patrol vehicle.

Prior to the call, Officer Nagata was close to Department headquarters because he was preparing to end his shift. He saw a computer dispatch to a shots-fired call at the Rotten Robbie on the corner of Lafayette and Aldo. While en route, he heard dispatch update that the shooter

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1 Officer Nagata acknowledged after the incident he saw a few of the news reports about the shooting on his phone. The content of the reports from ABC, NBC and Fox News were reviewed by the District Attorney’s Office during the investigation of the shooting, and the reports were determined to be brief and not influential. The reports essentially stated that there had been a shooting in the City of Santa Clara, the suspect was deceased, and that no one else had been injured.
was shooting into the Rotten Robbie and that the suspect was inside the business and that there were victims down. The last update he remembers hearing was that the suspect was still shooting inside the business.

When Officer Nagata arrived, he parked his vehicle on the southwest corner of the building. He saw officers responding to the rear of the building and another officer just forward of him. He saw that some of the glass on the building had been shot out. Officer Nagata grabbed his shotgun and made sure it was fully loaded. He saw a civilian vehicle in between his patrol car and the building on the west, or “front,” of the building. He ran to that car for cover and took up a position just behind that vehicle. Officer Ogg joined him at that location.

Officer Nagata saw people running from the building. He continued to hear rounds being discharged from within the convenience store. Officer Ogg then announced that they needed to move forward. He and Officer Ogg ran to a pick-up truck that was parked perpendicular to the building, and they took cover behind that vehicle. Initially, Officer Nagata was in front and Officer Ogg was behind him. They switched positions because Officer Nagata had a long gun and was covering the counter where a cashier would have been located. Officer Ogg was covering the aisleway in front of that cashier counter. Officer Nagata could not see anyone inside the store at that point. His vision was obstructed by item displays inside the store and the store layout itself, specifically, aisles that ran perpendicular to the cashier counter.

Officer Nagata then saw the suspect appear. He was walking toward the cashier counter, and he matched the description that had been provided by dispatch. The suspect was a white male wearing some type of blue reflective vest. Officer Nagata saw that the suspect had a long gun, which Officer Nagata believed was a shotgun. The suspect walked behind the counter and into what appeared to be a back room.
Officer Nagata was told to hold his position while they were forming a team to make entry into the back of the building. A few moments after that, Officer Nagata heard another round of gunfire and saw the glass from the west doors blow outward. At that point, Officer Nagata believed the suspect was either shooting at him, other officers, or civilians behind him that he could not see. The suspect then turned south toward the aisles while lowering his weapon. Officer Nagata heard another three to five rounds being discharged. Because the suspect was shooting down the aisles in a direction Officer Nagata could not see, he believed there was an immediate threat to human life. Officer Ogg then aimed at the suspect and discharged approximately three rounds. The suspect went down to the ground and Officer Nagata stopped firing.

Officer Nagata did not go into the building after discharging his weapon. He did not discuss the incident with other officers while waiting to be interviewed. Officer Nagata’s BWC was activated throughout the incident.

3. OFFICER JERRY OGG

Jerry Ogg was hired by the Santa Clara Police Department in August of 2012. He was a reserve officer for a year prior to being hired. Officer Ogg enlisted in the military in 2008 and served in the military until being hired by the Santa Clara Police Department. On January 5, 2019, Officer Ogg was working as the K-9 officer assigned to the midnight shift Wednesday through Saturday, 8:00 p.m. to 6:00 a.m. January 4-5, 2019, was a normal working shift for him. Officer Ogg carries a department-issued Glock .21 handgun while on duty and has an assault rifle in his vehicle.

At approximately 5:40 a.m., Officer Ogg was in the parking lot of the Santa Clara Police Department preparing to end his shift when he heard dispatch broadcast that multiple callers
were reporting that shots had been fired at the Rotten Robbie gas station on Lafayette and Aldo. The suspect was described as a solo male wearing a reflective vest firing both a shotgun and a handgun at the business.

The Rotten Robbie on Lafayette is heavily trafficked because it services big-rig trucks and is the only gas station in the area that is open 24-hours a day. As Officer Ogg was en route to that call, he was preparing for a “mass casualty active shooter at the Rotten Robbie.” He attempted to release his assault rifle as he was driving to the location but remembered that he had already secured it in the department weapons locker. At that point, he only had access to his handgun. Officer Ogg was aware that Officers Janssen and Bell were also arriving on scene. Officer Ogg saw the suspect in the parking lot discharging a weapon. He observed a white male with facial hair wearing a reflective vest carrying a long gun from which approximately two rounds were fired while Officer Ogg was watching. Officer Ogg parked quickly and exited his vehicle. At that time, Officer Ogg believed it was more likely than not that there were people inside the convenience store and the suspect was making his way into the building. Officer Ogg thought the suspect had already injured people inside the store, come outside of the store after injuring people, and then retreated into the building when he saw law enforcement responding. Officer Ogg was concerned that they could be entering into a hostage situation, but he could not see anyone inside the building at that point.

Because he was armed only with a handgun, Officer Ogg needed to move closer to the business in order to have effective range and accuracy. Officer Ogg was with Officer Nagata and announced that they needed to move up. He and Officer Nagata ran to a pick-up truck that was parked very close to the west side glass doors of the business. They took cover behind that pick-up truck.
Officer Ogg heard a few shots and then things went silent. He heard on the radio that officers were preparing to make crisis entry into the back of the building. He and Officer Nagata changed positions so they could effectively cover both the front counter area and the south side of the building because they did not know where the suspect was within the building.

Officer Ogg then saw the suspect come into his line of sight in between the aisles (running north and south) and the front counter area (running east-west). The suspect was still holding the shotgun when he turned toward the east side of the building where other officers were staged. At that point, the suspect was poised to shoot at the officers positioned on the east side of the building. Officer Ogg then opened fire on the suspect from a hunched position behind the pick-up truck. He believes he discharged appropriately five to six rounds with his Glock .21 handgun. Officer Ogg heard Officer Nagata discharge his weapon simultaneously.

Officers Ogg and Nagata held their positions until the scene was declared safe. Officer Ogg’s BWC was recording throughout the incident.

4. OFFICER DOUGLAS BELL

Officer Douglas (DJ) Bell was hired by the Santa Clara Police Department in 2006. He has been a member of the S.W.A.T. team for approximately 10 years. He is a team leader on the S.W.A.T. team and provides training to other officers regarding tactical entries and is a Field Training Officer. He was working his normal weekend day shift when this incident occurred. He flexed his schedule on the morning of this incident to start at 3:30 a.m. conducting surveillance with Officer Janssen on an unrelated matter.

At approximately 5:45 a.m., Officer Bell heard dispatch advise that there was a male subject wearing some type of construction or reflective shirt at the Rotten Robbie on Lafayette and Aldo who was carrying a shotgun and a firearm shooting indiscriminately both inside and
outside the building. Officer Bell was advised that there were victims “down” at the scene. Officers Bell and Janssen arrived on scene within two minutes of receiving the call. While still in the car, Officer Bell heard shots being discharged and upon arrival, he saw the suspect carrying a long gun that he discharged at least one time outside in the parking lot area. Officer Bell saw Officer Adjei assisting what he believed was a victim near a parked truck.

Officer Bell grabbed his AR-15 from the center console rack and exited his vehicle. It was apparent to Officer Bell that not only were responding officers in immediate danger, patrons both inside and outside the store were in danger. Officer Bell knew that if the suspect had time, he could find victims who had hidden inside the business and cause them harm. It appeared the windows and doors had been shot out. The Rotten Robbie is a well-trafficked business, and he was concerned that there were people inside the building who were trapped and needed help. At that point, the suspect retreated into the building.

Officer Bell ran toward the east side of the building and was yelling at other officers to move forward to the west side of the building. Officer Bell broadcasted that he wanted to establish a crisis entry team on the east side of the building and told all officers to hold their positions so they would not expose themselves to the suspect who could see out through the windows of the building. Officer Bell was also concerned about potential crossfire with other officers; however, he continued to hear gunshots and was concerned that people were potentially being shot inside the building. Officer Janssen took a kneeling position on the southeast side of the doors while Officers Bell and Adjei took a position on the northeast side of the doors. Upon approach, Officer Bell could hear gunshots coming from what he believed was a small office that runs along the east sidewall. There was silence for several moments, and even though Officer Bell could not see or hear any victims, he continued to believe that there were victims inside.
Officer Bell could see handgun magazines and shotgun shells lying on the floor. Officer Bell was concerned that the suspect had positioned himself in a way that he could shoot anyone coming into the business through the doors where the officers were staged. Officer Janssen said something along the lines of seeing someone who was bald or wearing a vest, and Officer Bell then moved behind Officer Janssen and was able to see a good portion of the suspect behind the cashier’s counter. The suspect began to move around from behind the counter toward the aisles where Officer Bell was concerned victims might be located. At that point, Officer Bell discharged his rifle. The suspect continued to move toward the aisles toward a beer display between the cashier’s counter and the aisles. Officer Bell discharged his rifle again approximately three to five times. At that time, Officer Bell saw the suspect go down very near to the beer display. Officer Bell could see a substantial amount of blood and an injury to the suspect’s head. Officer Bell believed the suspect had been killed. Officer Bell focused on the suspect and directed other officers to look for victims and clear the rest of the store. Officer Bell saw the suspect had a handgun and a pump-action shotgun.

Officer Bell was not wearing his body-worn camera during this incident. Because he was on a specialized surveillance assignment and his morning routine was disturbed, Officer Bell accidentally left his BWC on the docking station at the police station.

5. **OFFICER HARRY ADJEI**

Officer Harry Adjei responded within minutes of the call and was one of the first officers on the scene. Upon arrival, he immediately encountered a witness who was on the southwest side of the parking lot. The witness told him that there were “a lot of people” down inside the building and the guy was “very active” with a shotgun with “multiple clips.” Officer Adjei broadcasted that there were “people down inside.” He ran to the east side of the building where
he connected with Officer Bell. Officer Adjei positioned himself on the northeast corner of the
door behind Officer Bell. Officer Janssen was on the southeast corner of the same door. Officer
Adjei walked to the north side of the building and was able to see through the glass window that
was behind the cashier’s counter. Prior to the fatal shots being discharged, Officer Adjei
broadcasted over his shoulder radio that he could see the suspect behind the cashier’s counter
and that the north side of the building would give officers a place from which to take a shot.
Immediately after Officer Adjei made that announcement, a volley of shots can be heard.

Officer Adjei’s BWC was recording throughout the incident.

V. LEGAL ANALYSIS

A. RELEVANT LEGAL PRINCIPLES

This review was conducted pursuant to the joint protocol between this office and all
Santa Clara County law enforcement agencies, which calls upon the District Attorney to conduct
an independent assessment of the circumstances surrounding the use of deadly force. This
review does not examine issues such as compliance with the policies and procedures of any law
enforcement agency, ways to improve training or tactics, or any issues related to civil liability.
Accordingly, this review should not be interpreted as expressing an opinion on such matters.

Possible criminal charges against an officer involved in a fatal shooting include murder
(Penal Code section 187) and manslaughter (Penal Code section 192). To convict an officer of a
homicide charge, however, it would be necessary to prove beyond a reasonable doubt that no
legal justification existed for the officer’s actions. (People v. Banks (1976) 67 Cal.App.3d 379,

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2 This report evaluates this shooting under California use of force law that existed on January 5, 2019, prior to the
effective date of AB 392 on January 1, 2020. However, the changes to the law of police officer self-defense enacted
by AB 392 would not change the conclusions contained in this report.
383-384.) Several justifications may apply in any given case, and they are set forth in Penal Code sections 196 and 197. The justifications pertinent to this case are the use of force in self-defense and defense of others, which are found in Penal Code section 197.

California law permits all persons to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or defense of others. The relevant criminal jury instruction is set forth in Judicial Council of California Criminal Jury Instruction No. 505 (2019) (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction states that a person kills in lawful self-defense or defense of another if all the following are true:

1. The person reasonably believed he or she, or someone else, was in imminent danger of being killed or seriously injured;

2. The immediate use of force was necessary to defend against the danger; and

3. The person used no more force than reasonably necessary to defend against the danger.

(CALCRIM No. 505.)

A person may resort to the use of deadly force in self-defense or in defense of another where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. Self-defense requires both subjective honesty and objective reasonableness. (People v. Aris (1989) 215 Cal.App.3d 1178, 1186.) Additionally, “[i]mminence is a critical component of both prongs of self-defense.” (People v. Humphrey (1996) 13 Cal.4th 1073, 1094.) In Aris, the trial court’s clarifying instruction to the jury on the subject was to the point and later cited with approval by the California Supreme Court: “[a]n
imminent peril is one that, from appearances, must be instantly dealt with.” (In re Christian S. (1994) 7 Cal.4th 768, 783.)

A person’s right to self-defense is the same whether the danger is real or merely apparent. (People v. Jackson (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM No. 505.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. In one case, a robber pointed a gun at his victim and a deputy sheriff was called to the scene of the robbery. Before the robber could get off a shot, the deputy fired his weapon, wounding the robber. The appellate court remarked that “[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot.” (People v. Reed (1969) 270 Cal.App.2d 37, 45.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (CALCRIM No. 505.) In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334, 348.) When deciding whether a person’s beliefs were reasonable, a jury considers all the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM No. 505.)

In the related context of cases alleging excessive force by police, the test of reasonableness of an officer’s use of deadly force is an objective one, viewed from the vantage
of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (Graham v. Conner (1989) 490 U.S. 386, 396.) It is also highly deferential to the police officer’s need to protect himself and others. The calculus of reasonableness must embody the allowance for the fact that “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” (Id. at 396-397.)

Penal Code section 199 provides that if the homicide appears to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

B. OFFICERS JANSSSEN, BELL, NAGATA AND OGG ACTED IN LAWFUL DEFENSE OF SELF AND OTHERS

This report evaluates the use of deadly force in the shooting of Shaun Kennedy on January 5, 2019. We have carefully examined the recorded statements, the reports of law enforcement officers who witnessed the shooting, the statements of civilian witnesses, body-worn camera video, and audio recordings of the incident, as well as the other materials described herein. Based on the evidence, Officers Bell, Janssen, Ogg, and Nagata acted in lawful self-defense and defense of others as all three of the required elements noted above exist.

1. THE OFFICERS HAD AN HONEST AND REASONABLE BELIEF THAT KENNEDY POSED AN IMMINENT THREAT OF DEATH OR SERIOUS INJURY

On January 5, 2019, at approximately 5:45 a.m., officers were dispatched to a call of a man who was actively shooting at the Rotten Robbie gas station. Multiple 911 callers were reporting the same information that served to both validate the credibility of the information and confirm that the location was well-trafficked. Upon arrival, officers could see and hear a subject discharging multiple gunshot rounds outside and inside the business.
Both the 911 callers and at least one witness on the scene relayed that there were victims "down" inside the business. All four shooting officers reported that they believed that they were responding to a call of an active shooter with the potential for mass casualties. Santa Clara Police Department officers arrived within minutes of the first call, and despite the grave risk to their own lives they ran toward the building in tactical formation preparing to make crisis entry to render aid to victims and prevent further death.

2. THE IMMEDIATE USE OF FORCE WAS NECESSARY TO DEFEND AGAINST THE DANGER KENNEDY POSED TO THE OFFICERS AND NEARBY CIVILIANS

As the officers positioned themselves outside the glass doors, the officers continued to hear gunfire and could see that the subject was heavily armed. All four officers stated they were in fear for their own lives, the lives of their fellow officers, and what they reasonably believed were victims/hostages inside the building. When the subject came into clear view and turned toward the officers and pointed his shotgun at them, all four officers discharged their weapons with the intent of stopping the threat.

California law permits any person to use deadly force where there is a reasonable need to protect oneself, or another, from an apparent, imminent threat of death or great bodily injury. Here, Officers Douglas Bell, Eric Janssen, Jerry Ogg, and Kenneth Nagata reasonably believed they had no choice but to use deadly force to protect themselves, other officers, and the surrounding civilians from Shaun Kennedy, who had been discharging a firearm and a shotgun inside and outside of a well-trafficked gas station for the past several minutes.

3. THE OFFICERS USED NO MORE FORCE THAN REASONABLY NECESSARY

Shaun Kennedy armed himself with a remarkable arsenal intending to inflict significant damage. The use of non-deadly force was simply not an option to subdue a suspect firing
indiscriminately at police and innocent people. The police used no more force than Kennedy was using on the officers and civilians and stopped firing immediately after learning the threat was neutralized.

VI. CONCLUSION

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Santa Clara Police Department Officers Douglas Bell, Eric Janssen, Jerry Ogg, and Kenneth Nagata was in response to an immediate threat of great bodily injury or death to themselves, their fellow officers, and civilians. Their conduct undoubtedly saved lives. Their conduct is legally justifiable, and no criminal liability attaches to them.

Dated: 6/12/20

Respectfully submitted,

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District Attorney