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**PUBLIC REPORT ON OFFICER INVOLVED SHOOTING OF FERNANDO CASTRO
BY LAW ENFORCEMENT OFFICERS ON NOVEMBER 21, 2016**

The Santa Barbara County District Attorney's Office has completed its review of the investigation, conducted by the Santa Barbara County Sheriff's Office, of the homicide of Fernando Castro, age 19, which occurred on May 26, 2016, in Solvang, California.

The following analysis is based upon investigative reports, analyzed evidence reports, video and audio recordings, as well as witness statements taken during the investigation conducted by the Santa Barbara County Sheriff's Office ("SBSO") and submitted to this office by SBSO Detective Sergeant Richard Brittingham and SBSO Detective Matthew Fenske.

The District Attorney finds the shooting was a justifiable homicide under Penal Code section 196(2).

FACTUAL SUMMARY

This incident began with a kidnapping and potential murder in Vallejo, California and ended with the suspect, Fernando Castro, leading officers on a high speed chase through northern Santa Barbara County. Castro then fired at law enforcement officers at two separate locations before being fatally shot by law enforcement officers in Solvang, California.

On the morning of May 25, 2016 in Vallejo, California, a witness flagged down a Vallejo Police Officer and reported that someone had been shot on the I-780 pedestrian over-crossing at Home Acres Avenue and Lewis Avenue in Vallejo. The witness explained that he was walking towards the over-crossing and saw what looked like a male suspect, later identified as Fernando Castro and a female, later identified as 15-year-old Pearl Pinson, arguing. The witness saw that Castro appeared to be forcing Pinson to walk quickly over the crossing. As the witness began to catch up to Castro and Pinson he saw Castro on top of Pinson who was on the ground and bleeding from her face. Castro was holding a small silver revolver hand gun and was screwing something on the barrel. According to the witness Pinson yelled, "Help! Call the police. He is going to shoot me." Castro turned to look at the witness and Castro pointed the gun at him. The witness ran away and heard a gunshot.

The Solano County Sheriff's Office began an investigation to locate Pinson. Video surveillance showed a gold Saturn leaving the area shortly after the incident. Solano County Sheriff's detectives conducted a search of Castro's residence where several items of interest were seized

including .38 caliber ammunition, zip ties, a “suicide letter,”¹ and a makeshift gun silencer fashioned from an automotive filter.

The California Highway Patrol initiated an “Amber Alert” on May 26, 2016 at 1230 hours. The alert was focused on Solano, Yolo, Sacramento, Contra Costa, Alameda, Napa and San Joaquin Counties. The information shared included descriptions of Pinson, Castro and the associated vehicle, a gold colored 1997 Saturn license number 5XZD385. The information relayed to law enforcement also included that Castro may be armed with a firearm and should be considered dangerous.

On May 26, 2016 at around 1432 hours a witness in the Santa Maria area received the Amber Alert on her cellular phone and made note of the license plate number. A short time later, as she was driving southbound on US-101 in the Santa Maria area, she observed a vehicle matching the description given in the Amber Alert and she called 911. The call was routed to the California Highway Patrol (“CHP”). The CHP also notified the Santa Barbara County Sheriff’s Office.

CHP Officer Olsen heard the broadcast and was able to locate Castro’s vehicle traveling southbound on US-101 around the Cat Canyon area between Santa Maria and Los Alamos. Officer Olsen attempted to initiate a traffic stop on the vehicle as it approached Los Alamos. CHP dispatch informed Officer Olsen that Castro may be armed and should be considered dangerous. Castro exited the freeway at the State Route 135 off-ramp, drove through a stop sign and almost collided with another vehicle. Castro eventually pulled over on Main Street just north of Augusta Street in Los Alamos. Officer Olsen got out of his patrol vehicle, drew his firearm and stood in the “V” created by the driver door of his vehicle. Officer Olsen called out to Castro to turn off his vehicle engine. Castro did not respond but instead drove off at a high rate of speed through Los Alamos with Officer Olsen in pursuit. Officer Olsen radioed other CHP units and Officer Franco and Sergeant Heidebrink entered the pursuit. Multiple Sheriff’s Deputies positioned themselves in the area while the CHP units pursued Castro.

Officer Olsen pursued Castro southbound on US-101 at speeds varying from 90-110 miles per hour until he was relieved by other CHP Officers. Officer Ortega, responding from the Buellton area, deployed a spike strip southbound on US-101, south of Santa Rosa Road, but it was unsuccessful. Just south of the Three Bridges area, Castro eventually drove across the median on US-101 and began traveling southbound in the northbound lanes. At this point CHP Sergeant Heidebrink terminated the pursuit to protect the public. Shortly thereafter, Castro made a U-turn and began traveling northbound in the northbound lanes, but CHP units lost visual contact with him.

SBSO deployed a helicopter, Copter 2, which was used to observe and “call” the pursuit. Deputy Jon Simon was inside the helicopter broadcasting over the radio the suspect’s direction of travel as law enforcement officers were not always able to remain in close pursuit of Castro. Deputy Simon reported that Castro was traveling eastbound on State Route 246 in the city of Buellton. At about the same time SBSO Sergeant Uhl began pursuing Castro as he passed the Albertsons Shopping Center on Highway 246. Shortly thereafter, Sergeant Uhl lost visual contact with Castro.

¹ While the note is referred to as a “suicide note,” it was not found in a place where it could have been easily found by family members and it contained no date indicating when it was written.

First Officer Involved Shooting

At approximately 1517 hours SBSO Deputy Nathan Flint responded from the Solvang Substation to the radio traffic of a pursuit in the area. Deputy Flint drove towards Buellton on Highway 246 as he heard the broadcasts that Castro was traveling northbound on US-101 towards Buellton. Deputy Flint was stopped at Highway 246 at Ballard Canyon facing westbound when he encountered the suspect's vehicle and began pursuing it as the lead police vehicle.

Castro drove recklessly at a high rate of speed through heavy traffic on Highway 246 towards Solvang with Deputy Flint in pursuit. As Castro passed Skytt Mesa, Deputy Flint broadcast that the suspect kept reaching towards the center console. Castro turned off Highway 246 onto streets and alleyways in downtown Solvang and continued to drive recklessly – driving through stop signs and speeding. Around the area of Molle Way and First Street, Deputy James Kurowski joined the pursuit behind Deputy Flint.

Castro led the deputies southbound onto Alisal Road then turned right onto Fjord Drive. Deputy Flint reported numerous times that Castro kept reaching down and towards the center console². Castro then turned right onto Sierra Vista Drive, which is an entrance into the Rancho Santa Ynez Mobile Estates. Shortly after this turn, Castro's driver side door swung open and Castro jumped out of his vehicle while his vehicle continued traveling forward towards the intersection of Sierra Vista and Paseo Del Rio. As Castro jumped out of his vehicle he was facing Deputy Flint's vehicle, raised his right arm with a gun in his hand, and pointed it directly at Deputy Flint. Castro momentarily fell to the ground but quickly jumped back up and began firing his gun at Deputy Flint. Deputy Flint, meanwhile, yelled "Gun! Gun! Gun!," exited his vehicle, and returned fire at Castro. A bullet fired from Castro's gun hit Deputy Flint's windshield and was later recovered from the front passenger seat; debris from this bullet strike is visible on Deputy Flint's in-car video.

Deputy Kurowski stopped his vehicle to the right of Deputy Flint's and started to open his door when Castro began shooting at Deputy Flint. Deputy Kurowski crouched down in the vehicle while pulling out his handgun and broadcasting shots fired over the radio. By the time Deputy Kurowski looked up, Castro began running up Sierra Vista towards Val Verde. As Castro ran, he pointed his gun at Deputy Kurowski and fired an additional shot. Both Deputy Kurowski's in-car video and a physical examination of his patrol vehicle indicated that a round fired by Castro hit the front license plate of Deputy Kurowski's patrol car.

Castro fired a total of four rounds at Deputies Flint and Kurowski. Deputy Flint fired a total of three rounds at Castro. It was later determined that one of Deputy Flint's rounds hit Castro in the leg. Deputy Kurowski did not fire his weapon.

² In the search of Castro's vehicle SBSO personnel discovered ammunition in the center console area.

Second Officer Involved Shooting

Castro ran around a corner and Deputy Simon observed him from overhead re-loading his gun. Castro then walked east towards the mobile home at 156 Val Verde. The resident at 156 Val Verde called 911 to report she was inside her home, saw Castro walk up her front steps, hit the front window and break it. Castro then crawled through the broken window and inside the residence. The occupant ran out a side door and to a neighbor's house at 154 Val Verde. Castro remained inside 156 Val Verde for about 25 minutes before exiting the home and stealing the occupant's Toyota truck.

By this time numerous Sheriff's deputies and CHP officers had responded to the area and took positions of cover away from the residence at 156 Val Verde. Some officers also positioned vehicles to block Fjord Drive east of Castro's location. The plan for law enforcement officers was to contain Castro in the area so that he could not escape. Several deputies were armed with AR-15 patrol rifles and took cover behind patrol vehicles and trees.

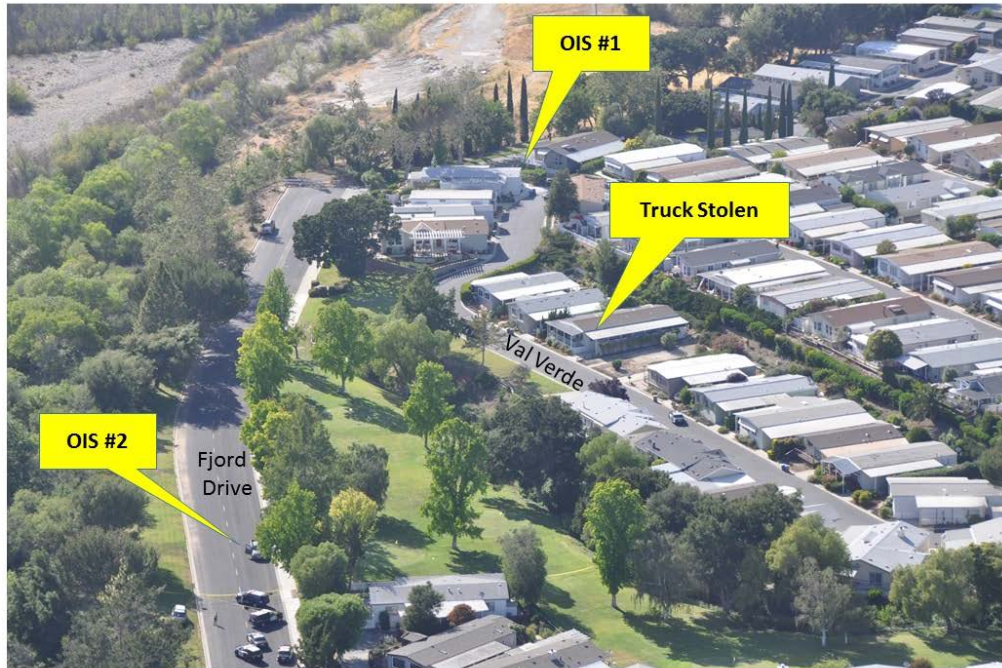
Castro drove the truck out of the carport at 156 Val Verde then proceeded westbound, drove onto a grassy area, then onto Fjord Drive. Parallel to Fjord Drive is the Santa Ynez riverbed, and as Castro drove slowly on the wrong side of the roadway, officers were concerned he was either planning to drive into the riverbed or ram the law enforcement vehicles ahead of him in an attempt to flee. Castro continued driving slowly and straight on Fjord Drive toward officers. With his left hand, Castro pointed the barrel of a handgun out of the open driver's side window at officers. Castro fired three shots and deputies returned fire. Shortly thereafter Castro's vehicle came to a stop and Castro was slumped over the steering wheel. He was later pronounced dead at the scene.

The five SBSO deputies who returned fire at Castro as he drove towards them pointing a handgun and firing were Senior Deputies Dave Robertson and B.J. Fortier, and Deputies Chris Heidt, Jamie Vanwagoner, and Mike McNeil.

The SBSO deputies at this second shooting location fired a total of 36 .223 caliber rounds.³ Evidence recovered at the scene was consistent with witness accounts of Castro firing at law enforcement officers and officers returning fire. An SBSO Forensic Technician examined Castro's revolver⁴ and saw that it contained three fired .38 Special cartridge casings and two unfired .38 Special cartridges. There was a dent on the front passenger side quarter panel and holes in the driver's side rear tire on one of the SBSO patrol vehicles which was strategically parked on Fjord Drive to block Castro's escape from the area. This dent and the "through and through" holes are consistent with being struck by a .38 caliber projectile. In addition, a projectile, consistent with a .38 caliber was recovered next to this flat tire.

³ Each of the five SBSO deputies involved in the shooting on Fjord Drive fired their department-issued AR-15 patrol rifles.

⁴ Castro's firearm was a .38 caliber Rossi M68 revolver modified with a piece of pipe.



Aerial photograph depicting the two OIS locations and residence where Castro stole the Toyota truck.

Autopsy

On June 1, 2016, Dr. Manuel Montez, a forensic pathologist employed by SBSO, performed an autopsy of Fernando Castro. Dr. Montez opined that Castro died of multiple gunshot wounds to his body. There were a total of 12 gunshot wounds – one perforating gunshot wound to the head, one penetrating gunshot wound to the neck, three penetrating gunshot wounds to the left upper back and chest, two perforating gunshot wounds to the upper left back and chest, one perforating gunshot wound to the left upper arm, one perforating gunshot wound to the right thigh, one penetrating gunshot wound to the right thigh, and one perforating gunshot wound to the left thigh. Detective Rivera from SBSO Coroner's Bureau determined the manner of Castro's death was a homicide.

As of the time of this report, 15 year-old Pearl Pinson has not been located.

LEGAL ANALYSIS AND CONCLUSION

Applicable Law

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide which are lawful. The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful. Penal Code section 196(2) defines justifiable homicide by

public officers. “Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty.” Under California law anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal.App.2d 85, 95.

A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Connor* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334. In *Graham*, the United States Supreme Court held that the reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident “including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (*Id.*, at 396). Further the Court states, “[t]he ‘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.” (*Id.*, at 397). Moreover, “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make a split-second judgment—in circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.*, at 397-398). Under *Graham*, we must avoid substitution of our personal notions of proper police procedure for the instantaneous decision of an officer at the scene. “We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347. *Graham’s* definition of reasonableness has been described as “comparatively generous to police in cases where potential danger, emergency conditions or other exigent circumstances are present” (*Roy v. Inhabitants of the City of Lewiston* (1st Cir. 1994) 42 F.3d 691) and also as giving police “...a fairly wide zone of protection in close cases....”*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.

Legal Analysis

Deputy Flint responded to an Amber Alert and further radio broadcasts of an armed and dangerous man who was leading law enforcement officers on a high speed pursuit in the northern Santa Barbara County area. When Deputy Flint located Castro’s vehicle he observed Castro driving recklessly through traffic on Highway 246 and on the streets of downtown Solvang. Deputy Flint also noticed Castro reaching down into what he believed was the center console of the car several times during the pursuit. Instead of pulling over for Deputy Flint, Castro jumped out of his moving vehicle, pointed a .38 caliber revolver directly at him and fired multiple rounds. In response, Deputy Flint returned fire at Castro, firing three rounds from his .40 caliber service weapon, striking Castro once in the leg.

Senior Deputies Robertson and Fortier, and Deputies Heidt, Vanwagoner, and McNeil responded to the high speed pursuit in progress through the City of Solvang. They all learned that Castro had

already fired on Deputies Flint and Kurowski. The deputies took various positions of cover in a grassy field adjacent to Fjord Drive and Val Verde Drive in the Rancho Santa Ynez Mobile Home Estates while Castro remained barricaded in a residence on Val Verde Drive. Other law enforcement officers parked vehicles on Fjord Drive in an effort to contain Castro should he attempt to flee.

When Castro drove across the grassy field and onto Fjord Drive, it appeared he was either going to drive into the riverbed in an attempt to escape or ram the patrol vehicles. As he slowly drove forward and towards the officers, he pointed the barrel of a .38 caliber revolver out of the driver's side window and fired at least three shots at law enforcement officers. Two of the bullets struck a patrol vehicle and one of the tires on that vehicle where officers and deputies were standing behind for cover. In response, Deputies Robertson, Fortier, Heidt, Vanwagoner and McNeil fired at Castro, striking him numerous times.

The deputies' actions were reasonable under the standard set forth in *Graham* based on the totality of circumstances in this case.

CONCLUSION

The circumstances created a reasonable fear of death or great bodily injury in the minds of Deputy Flint, Senior Deputies Robertson and Fortier, and Deputies Heidt, Vanwagoner, and McNeil. Based on the investigation by the Santa Barbara County Sheriff's Office, applying the law as set forth in PC 196(2), and the cases cited *supra* in this report, the deputies each acted reasonably in his use of deadly force; therefore, the shooting of Fernando Castro is a justifiable homicide.