

**REPORT ON THE FATAL SHOOTING OF  
SCOTT IRWIN DUNHAM  
ON MARCH 24, 2015**



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## **PREAMBLE**

The summary of this incident is drawn from reports prepared by the San Jose Police Department and submitted to this office by case agents, Sergeant Rick Yu and Detective Ken Tran. The submission included narrative reports documenting interviews of the involved officers and civilian witnesses, electronic recordings of those interviews, and crime scene details. This review is being conducted pursuant to the Officer-Involved Incident Guidelines adopted by the Santa Clara County Police Chief's Association on October 11, 2012.

## **SCENE**

This incident took place in front of and inside Senterville Terrace condominium complex. Senterville Terrace is located at 2664 Senter Rd., San Jose, California. The area is predominantly residential with some commercial business. Senter Rd. is a paved, six lane roadway that generally travels north/south. There is a raised dividing section that separates the lanes of travel. There are designated bicycle lanes on both the east and west side of Senter Rd. There are sidewalks on both the east and west sides of Senter Rd. Umbarger Rd. intersects Senter Rd. to the north and Balfour Dr. intersects Senter Rd. to the south. There were 7 parked cars at the east curb of Senter Rd. in front of the complex's northern building and there were 5 parked cars at the east curb in front of the southern building. There is a driveway that travels east from Senter Rd. into the Senterville Terrace apartments at 2664 Senter Rd. This driveway splits the northern and southern buildings. There are painted red curbs on both sides of the driveway on Senter Rd. Seven San Jose Police patrol vehicles were parked on northbound Senter Rd. in the bicycle lane south of the driveway of 2664 Senter Rd.

Senterville Terrace condominiums are located on the east side of Senter Rd. between Umbarger Rd. and Balfour Dr. The buildings are two story, tan with white trim and sitting on elevated ground. There is a grass area between the east sidewalk of Senter Rd. and the buildings. There are three separate stairways leading from the east sidewalk of Senter Rd. up into the units. A vehicle was parked on the north side of the driveway, facing west. The middle stairwell leads up to Dunham's unit #217. The steps are concrete and lead up to #217, which is on the right. There was a white metal gate over the red front door.



**UNIT 217 FROM OFFICERS' POSITION**



**DUNHAM'S VIEW OF OFFICERS**

Upon entering unit 217, the living room/dining area opened up to the right. The south wall of the apartment wrapped around into the dining area and then into the kitchen. On the west wall of the dining area was an open sliding glass door. The door led out onto a small patio/enclosed storage area. The patio had small potted and hanging plants and a table and chairs.

## FACTUAL SUMMARY

On March 24, 2015 at 6:48 p.m., San Jose Police received a phone call from Katrina Trask who lived in Paradise, California. She reported that her mother, Altheia Dunham, had called and told her that her father, Scott Irwin Dunham, was extremely intoxicated and suicidal in their home at 2664 Senter Rd. #217 in San Jose, California. Trask said that her mother told her that Dunham was holding a handgun to his head. Dunham had told Altheia that he was going to kill himself and take her with him if she did not leave. Altheia then left the home and called Trask. Trask reported that her father had tried to kill himself with pills approximately 6 years previously and had wanted to commit suicide for a long time.

Almost immediately, San Jose police officers began responding to 2664 Senter Rd. #217 in San Jose, California. While officers arrived on scene and were in the process of evacuating neighbors, gathering information from Dunham's wife, and establishing a perimeter, Ofc. Michael Johnson positioned himself behind a parked car in the street in front of #217. He stood behind the vehicle with his AR-15 rifle pointed up toward the balcony of the unit to provide cover for the responding officers. He was joined by Ofc. Reyes and then Ofc. Potwora. Ofc. Potwora stood to Ofc. Johnson's right behind the parked vehicle, keeping his rifle trained toward the balcony while he was brought up to date on the situation.

While Officers Johnson and Potwora spoke, Dunham came out onto the balcony. Ofc. Potwora ordered him to show his hands. Rather than comply, Dunham ducked down, hiding himself from police view. Within seconds, and without showing himself again, Dunham shot down from the balcony with a 30-30 rifle, shooting and killing Ofc. Johnson. Ofc. Potwora was unable to see Dunham on the balcony at the time that Dunham shot Ofc. Johnson. However, shortly thereafter, Dunham was visible again over the balcony railing and had a large black object in his hands. Ofc. Potwora then fired two rounds at Dunham. Dunham again ducked down out of sight. Dunham then looked back over the railing. Ofc. Potwora shot two more times. Dunham ducked again. Ofc. Potwora then engaged the scope on his AR-15 rifle and focused his sights on the spot where Dunham had previously appeared over the railing. When Dunham showed himself for the final time, Ofc. Potwora fired a single shot and saw Dunham's head move back in a manner that indicated he may have been hit. Dunham then fell from view and did not reappear.

After several hours of attempting to determine whether it was safe to enter Dunham's unit, officers entered his home and found Dunham on the patio floor, lying face up with his head generally to the north and feet to the south. Also on the patio floor near the suspect's feet were two 30-30 win. casings. A 30-30 rifle, which was loaded and cocked was laying to Dunham's right.



DUNHAM'S RIFLE

## STATEMENT OF FACTS

### LAW ENFORCEMENT OFFICER STATEMENTS

#### OFFICER DOUGLAS POTWORA

Officer Douglas Potwora was interviewed by Sgt. Rick Yu and Det. Ken Tran. He had been employed by the San Jose Police Department for approximately 17 years. He is currently assigned as a Field Training Officer and works patrol during the swing shift. Ofc. Potwora has been a Specialist<sup>1</sup> for 12 years. This required that he qualify on the rifle every 6 months and participate in trainings every 2-3 months. As of March 24, 2015, Ofc. Potwora used a department issued AR-15 rifle with department approved specifications. He was current on all of his Specialist Training Requirements and he had completed qualifications to carry the rifle on duty.

On March 24, 2015, Ofc. Potwora was working patrol on the swing shift, driving a marked patrol vehicle and wearing battle dress uniform (BDU). He was finishing up a call in another part of his district when he heard an alert tone from police dispatch concerning a welfare check. Ofc. Potwora explained that an alert tone is given when a priority call that may involve violence, weapons, or panic alarms is being dispatched within that officer's district. The call stated that the husband of the reporting party was intoxicated. The reporting party also stated that the husband had a couple of handguns and wanted to commit suicide. Ofc. Potwora cleared the call he had been on and responded to the welfare check. He decided to respond using his patrol unit's emergency lights and siren as he felt the call could turn into a critical situation. He advised dispatch that he was a Specialist and en route.

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<sup>1</sup> A Specialist receives specialized training in responding to high risk situations as a first responder and providing long gun and/or sniper cover for other officers until the specialized response teams arrive.

When Ofc. Potwora arrived at 2664 Senter Rd., he saw approximately 4-6 patrol vehicles lined up on the east side of Senter Rd. just south of Dunham's unit. Ofc. Potwora approached from the north, made a U-turn, and parked behind all of the other patrol vehicles.

After parking, Ofc. Potwora immediately exited his patrol vehicle, went to the trunk to get his rifle, knee pads and extra rifle magazines. Ofc. Potwora then chambered a round in the rifle and rechecked it to be certain that a round was chambered. As Ofc. Potwora was closing his trunk, Sgt. Cleaver asked him to join Ofc. Johnson. Ofc. Potwora grabbed his extra rifle magazine pouches and complied with Sgt. Cleaver's request.

Ofc. Potwora looked toward Ofc. Johnson and saw him pointing his rifle toward a second story unit. Ofc. Reyes, with her handgun drawn, was standing next to Ofc. Johnson. Once Ofc. Potwora joined Ofc. Johnson, he asked Ofc. Reyes to assist him with securing his extra rifle magazine pouches while he kept his focus on Dunham's unit.

As Ofc. Potwora positioned himself, Ofc. Reyes was in the middle between Ofc. Johnson and Ofc. Potwora. While Ofc. Reyes was attaching Ofc. Potwora's extra rifle magazines, Ofc. Potwora asked Ofc. Johnson about Dunham's residence. Ofc. Johnson pointed out the second story balcony. Ofc. Potwora estimated the distance to be approximately 20-30 yards. They did not have a view of the front door to the unit or the top of the steps leading up to the door. They were using a parked vehicle as cover. Ofc. Potwora ducked down to minimize his exposure due to his height. Since Ofc. Potwora was not sure where Dunham was located, he was not using his rifle sights. Ofc. Potwora explained that using the scope limited his area of visibility.

Ofc. Johnson stood just to the left of Ofc. Potwora and they both leaned their rifles on the roof of a parked car which they were using as cover. After Ofc. Reyes finished securing Ofc. Potwora's extra rifle magazines, she started to move to Ofc. Potwora's right since he had relieved her.

Ofc. Potwora saw a male with gray hair, gray mustache and possibly wearing a black short sleeve t-shirt walk out on to the balcony very quickly. Ofc. Potwora saw some of the skin on Dunham's arms, but could not see his hands.<sup>2</sup> Ofc. Potwora gave a loud verbal command "Police, let me see your hands, let me see your hands". Dunham immediately stepped out of Ofc. Potwora's view and did not follow the instructions. Due to the design of the balcony and where Ofc. Potwora and Ofc. Johnson were positioned, they had a very limited view of the balcony.

Ofc. Potwora did not recall whether he made a radio transmission about seeing Dunham on the balcony or whether he just told Ofc. Johnson about his observations.<sup>3</sup> Within five seconds of having lost sight of Dunham, Ofc. Potwora heard a loud explosion next to his head. Ofc. Potwora believed that the male on the balcony had fired the shot. Based upon his training and experience as a Specialist, the shot he heard sounded like a shotgun or a rifle. He was confident that the shot was not fired by any of the other officers at the scene.

Ofc. Potwora told the detectives that he got "sprayed". Ofc. Potwora said that he saw Ofc. Johnson "go down" from his peripheral vision. Ofc. Potwora did not turn around, but he believed

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<sup>2</sup> Dunham was wearing a black long sleeve t-shirt with the sleeves pulled up a few inches above his wrists.

<sup>3</sup> Radio dispatch recordings establish that Ofc. Potwora did transmit the information over the radio at 7:08:36 p.m.

that Ofc. Johnson had been shot. Ofc. Potwora did not see Dunham when he heard the gunshot because the south wall of the balcony blocked his view of the rest of the balcony.

“All of a sudden” Dunham was in Ofc. Potwora’s view and had something in his hand. Ofc. Potwora was unable to see how big it was but it was black and appeared to be large. At that point, Ofc. Potwora believed he was going to be shot. Ofc. Potwora fired two shots and Dunham ducked down. Ofc. Potwora decided to take two steps to the right for better cover. Dunham then “popped up again”. Ofc. Potwora took two more shots and Dunham ducked down again. Ofc. Potwora continued to side step to his right to attempt to gain a better position.

Ofc. Potwora wanted to prevent Dunham from having another opportunity to fire and decided to use his scope and focus on a specific location on the balcony where he had last seen Dunham move. Dunham popped up again and Ofc. Potwora took another shot.<sup>4</sup> After that single shot, Ofc. Potwora saw Dunham’s head go backwards in a manner consistent with having been hit. However, Ofc. Potwora did not see any other evidence to confirm that Dunham had been shot.

Ofc. Potwora said that after he fired the last shot, it was “quiet”. He then continued moving to his right. From behind him, he heard Sgt. Cleaver say “he’s 10-55<sup>5</sup>, no rescue”, or something similar. Ofc. Potwora had not yet looked at Ofc. Johnson and just continued moving to his right. He stood by a parked vehicle that was immediately south of the vehicle he and Ofc. Johnson had originally used as cover and aimed his rifle toward Dunham’s balcony until he was relieved by Sgt. Sciba, a supervisor on the MERGE Unit.

When Sgt. Sciba arrived, he instructed Ofc. Potwora to leave his position. For the first time, Ofc. Potwora then saw Ofc. Johnson down on the ground. Ofc. Potwora ran to the side of the building and was later driven to the Command Post and then to the police department.

As Ofc. Potwora was asked more specific details about the incident, he described how he was unable to see the sliding glass door from the unit onto the balcony. Every time Ofc. Potwora saw Dunham, Dunham was on the balcony. Ofc. Potwora could not say whether Dunham went back into the unit or just remained on the balcony. Ofc. Potwora recalled that the first time he saw Dunham, he quickly lost sight of him as Dunham leaned down and slightly to his left. From Ofc. Potwora’s recollection, Dunham was moving in a sideways and down motion near the railing of the balcony. Ofc. Potwora did not remember seeing Dunham running or walking in and out of the unit.

Ofc. Potwora described Dunham as a white male, in his 40-50s. He believed he would be able to identify him if he saw him again. Sometime after the incident, Ofc. Potwora was shown two different photos of Dunham, one of which more closely resembled the individual Ofc. Potwora saw on the balcony due to the hair style.

Ofc. Potwora believed that Ofc. Reyes had just started to retreat back toward Sgt. Cleaver’s location when the first shot was fired. After that first shot, Ofc. Potwora was concerned not only

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<sup>4</sup> The recording of the interview of Altheia Dunham at the scene captured the gunshots. A loud gunshot is heard, approximately 8 seconds later two shots are heard in sequence, a 3 second pause, and then 3 additional shots.

<sup>5</sup> Deceased.



for his own safety, but also for the safety of the other officers on the scene. After Ofc. Johnson went down, Ofc. Potwora was the only officer with a rifle pointed toward Dunham and, therefore, the only one able to provide protection for everyone else on scene.

### **OFFICER KATIE REYES**

Officer Reyes had been with the San Jose Police Department for about 10 years. On March 24, 2015, she was working as a Field Training Officer on patrol. She was wearing full patrol uniform and driving a marked patrol car. Her immediate supervisor was Sgt. Todd Cleaver.

When Ofc. Reyes heard the call regarding the welfare check at 2664 Senter Rd., she and Ofc. Potwora were on another call in the area of Capitol and McLaughlin. After completing that call, they both responded to the call for service at 2664 Senter Rd. As she was following Ofc. Potwora to the scene, she read the details of the call on her computer. She read that a female reported that her father wanted to kill himself and that he had a handgun. He was holding the gun to his head and was telling her to leave or he would shoot her.

As they were responding to the call, a request for a Specialist was broadcast. Ofc. Potwora said that he was a Specialist and responded Code-3<sup>6</sup>. At that point, Ofc. Reyes also responded Code-3 and followed Ofc. Potwora. They both arrived at 2664 Senter Rd. at about the same time.

Upon her arrival, Ofc. Reyes saw Ofc. Johnson standing next to a vehicle on the east side of the road, with his AR-15 rifle out. Ofc. Reyes made a U-turn and parked behind other patrol vehicles. She saw Sgt. Cleaver and other officers talking to civilians. She made contact with Sgt. Cleaver and he told her to join Ofc. Johnson.

Ofc. Reyes approached Ofc. Johnson and took a position next to him. They were standing in the street, next to the driver's side of a parked vehicle. They were just south of Dunham's unit. Ofc. Johnson had his rifle over the parked vehicle and pointed in the direction of Dunham's unit. Ofc. Johnson pointed the unit out to Ofc. Reyes. Ofc. Reyes had her handgun drawn and pointed toward Dunham's unit. Ofc. Johnson asked Ofc. Reyes to handle radio traffic so he could keep his eyes on the balcony. Shortly thereafter, Ofc. Reyes saw some movement by the window just north of Dunham's balcony, which appeared to be the blinds being partially opened and then closed. Ofc. Reyes broadcast this information over the radio. About that time, Ofc. Johnson told Ofc. Reyes to have an arrest team move up to the first alcove. She put that request out on the radio and someone advised that an arrest team was in place.

As Ofc. Reyes and Ofc. Johnson were holding their focus on Dunham's unit, Ofc. Potwora came over and said he was there to relieve her. He then asked her for help with attaching his extra magazine pouch before she left. Ofc. Reyes holstered her gun, crouched between Ofc. Johnson and Ofc. Potwora and attached Ofc. Potwora's extra magazines, enabling him to keep his rifle pointed at Dunham's unit. As Ofc. Reyes attached the magazines, she noticed somebody come out to the balcony. She was able to see "a body" and movement, but did not get a good look before "it was gone". She then told Officers Johnson and Potwora that she was "heading out". Just as she turned to leave, she heard a shot fired and felt something hit the top of her head. As

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<sup>6</sup> Lights and siren on.

she moved to a point of cover and was putting out "shots fired" on the radio, she heard more shots fired.

When Ofc. Reyes made it to the corner of the building where she would be out of view of Dunham's balcony, she heard Sgt. Cleaver say "officer down". At that same moment, she saw Ofc. Johnson on the ground. Immediately after that, Sgt. Cleaver, Ofc. Delacruz, Ofc. Ramos, Sgt. Fong and herself formed a rescue team and made their way toward Ofc. Johnson. Ofc. Potwora had moved one vehicle down from his previous position and was holding his rifle pointed toward Dunham's balcony. He was the only one providing cover for the officers on the ground when they attempted to rescue Ofc. Johnson. As the rescue team approached Ofc. Johnson, it was obvious that he was deceased. Sgt. Cleaver announced that Ofc. Johnson was dead and told them all to move back to positions of cover. Ofc. Reyes and the other officers moved back to the southwest corner of the building while Sgt. Cleaver stayed with Ofc. Potwora. She stayed at the corner of the building where she had a view of the edge of Dunham's balcony. Ofc. Reyes stayed there until she was relieved by MERGE officers. After being relieved by MERGE, Ofc. Reyes noticed that both she and Ofc. Potwora had been sprayed with Ofc. Johnson's blood.

### **SERGEANT TODD CLEAVER**

Sgt. Todd Cleaver had been with San Jose Police Department for 22 years. Prior to that, he had been an officer in Santa Cruz for 2-1/2 years. On March 24, 2015, Sgt. Cleaver was working as a Field Training Officer Sergeant. At approximately 6:48 p.m. he heard the call for service regarding a male who was threatening to commit suicide. The call was received by San Jose Police Department from a reporting party who was out of state. The reporting party was the daughter of the male and had received a phone call from her mother indicating that her father wanted to commit suicide. The daughter then called the San Jose Police Department to report the incident. The daughter told San Jose Dispatch that the male was inside his unit on Senter Rd. He was reportedly very intoxicated, possibly suffering from bipolar disorder, and possibly holding a gun to his head.

Sgt. Cleaver responded to the call. Other officers responding to the call were Ofc. Johnson, Ofc. Reyes, Ofc. McCarthy and his recruit Ofc. Balala, Ofc. Guess, and two other units from District Sam.

When Sgt. Cleaver arrived at 2664 Senter Rd., Ofc. Johnson was already there. Sgt. Cleaver parked his patrol vehicle on the east side of Senter Rd. south of the residence where the event was occurring. There was a line of patrol cars parked in front (north) of his patrol car. Ofc. Johnson had taken up a position and was crouched behind a patrol car north of Sgt. Cleaver. Ofc. Johnson was pointing his rifle toward an unknown residence. Ofc. Johnson was covering the front of the building. Officers McCarthy and Balala were covering the back side. Ofc. Guess was speaking to Dunham's wife at the rear of his patrol car, gathering as much background information as he could about Dunham, including weapons owned, prior history of similar conduct, and any incident that led up to this event. Dunham's wife, Altheia Dunham, told them that Dunham was drunk, had previously threatened suicide, and that today's incident happened

after a conversation she and Dunham had that day about an ex-girlfriend of his. She mentioned that Dunham was in possession of handguns. She did not mention any rifles at that time.

As Ofc. Guess was speaking to Dunham's wife, Ofc. Reyes and Ofc. Potwora arrived. Ofc. Reyes joined Ofc. Johnson. After Ofc. Potwora gathered his rifle, ammunition and knee pads, Sgt. Cleaver told Ofc. Potwora to replace Ofc. Reyes. Sgt. Cleaver had previously worked with Ofc. Potwora in Special Operations (Metro). Because of Ofc. Potwora's specialized training, Sgt. Cleaver wanted him to be in front in case the situation became violent.

As Ofc. Potwora was relieving Ofc. Reyes, Sgt. Cleaver asked Mrs. Dunham to call her husband. She agreed and dialed his cell phone number. The volume on her cell phone was turned up so Sgt. Cleaver could hear the conversation if Dunham answered. Sgt. Cleaver heard the phone ringing, but there was no answer.

As the phone rang, Ofc. Potwora advised that he had visual contact with Dunham. Ofc. Potwora said he was going to attempt to make verbal contact with him. Sgt. Cleaver yelled to Ofc. Potwora to instruct Dunham to answer the phone. Sgt. Cleaver wanted to get Dunham to come outside.

Sgt. Cleaver was not able to see Dunham, but he saw Ofc. Potwora talking upwards toward a balcony facing Senter Rd. Officers Potwora and Johnson were both aiming their rifles (AR-15s) toward the balcony while they were attempting to make contact with Dunham.

After Sgt. Cleaver was told that officers had visual contact with Dunham and as he was asking them to tell Dunham to answer his cell phone, Ofc. Johnson was shot and fell to the ground. Sgt. Cleaver then heard a gunshot. He saw Ofc. Johnson get shot before he heard the gunshot.

Sgt. Cleaver immediately notified San Jose Police Communications of "shots fired, officer down". He then saw Ofc. Potwora return fire with a "handful of rounds" from his AR-15. Sgt. Cleaver did not know exactly how many rounds Ofc. Potwora fired, but he estimated five. Ofc. Potwora held his position and did not retreat as he shot at Dunham and maintained his focus on the balcony.

Sgt. Cleaver ran toward Officers Johnson and Potwora. As he approached, it was clear to him that Ofc. Johnson was deceased. Ofc. Potwora told Sgt. Cleaver that he thought he may also have been shot because he felt liquid on his body. Sgt. Cleaver checked Ofc. Potwora but did not locate any injuries. Ofc. Potwora did have Ofc. Johnson's blood on him.

After the exchange of gunfire, there was no additional activity from Dunham's unit. Sgt. Cleaver called for air support to determine if a helicopter could see Dunham on the balcony. Sgt. Cleaver's team held their positions until they were relieved by San Jose Police Department Special Operations.

Sgt. Cleaver said Dunham never engaged officers in conversation, never answered his phone and never verbally threatened anyone prior to opening fire and striking Ofc. Johnson. The suspect

began shooting very quickly after appearing on the balcony. Sgt. Cleaver estimated that he had been on scene for less than five minutes prior to the murder of Ofc. Johnson.<sup>7</sup>

After the shots were fired, Sgt. Cleaver stayed close with Ofc. Potwora behind cover of the parked vehicles on Senter Rd. Sgt. Cleaver had previously requested that fire and ambulance personnel respond to the area in case they were needed. He saw the fire trucks and ambulance down the street when he was with Ofc. Potwora.

Sgt. Cleaver estimated that he and Ofc. Potwora stayed in their positions for less than thirty minutes after the shooting until they were relieved by San Jose Police Department Special Operations officers.

After they were relieved, Sgt. Cleaver and Ofc. Potwora were escorted to the side of the building and then to the back of the unit building. They were then taken to the Command Post, debriefed and then driven back to the police department.

### **OFFICER DON GUESS**

On March 24, 2015, at approximately 6:49 p.m., Ofc. Guess was working patrol in full uniform and a marked vehicle. He responded to a welfare check at 2664 Senter Rd. #217, San Jose. The caller identified herself as Dunham's daughter. She had called to say that her mother had contacted her about her father, Dunham. Dunham had told his wife that he wanted to kill himself and that he had a gun to his head. While en route, Ofc. Guess requested records checks to determine if there were guns registered to the address, if the caller could identify who was currently at the residence and to attempt to obtain direct phone numbers. Dispatch had obtained the names of the suspect, Dunham, and his wife, Altheia Dunham.

At approximately 6:54 p.m., Ofc. Guess arrived at 2664 Senter Rd. and parked his car south of #217. Ofc. Johnson had also been dispatched and arrived at the same time as Ofc. Guess. Ofc. Guess began to orient himself to the layout of the grounds. As he did so, a woman drove up as if exiting the driveway in a red car. She identified herself as Dunham's wife. Ofc. Guess had her park the car where she stopped at the driveway and took her back towards his patrol car.

Ofc. Johnson took up a position near the front of Dunham's unit, behind a parked vehicle. Ofc. Potwora arrived shortly after and joined Ofc. Johnson. Other officers arrived and took positions to secure the area.

After his initial contact with Mrs. Dunham, Ofc. Guess asked her to confirm whether Dunham was armed. She stated he had a 9mm handgun. She told him that Dunham had pointed the gun at her and threatened to shoot her. She also expressed that Dunham was depressed and suicidal.

Ofc. Guess obtained a digital recorder and began recording Mrs. Dunham's statement. After he confirmed Dunham's identity, Ofc. Guess requested criminal records checks and any prior contacts involving mental health issues.

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<sup>7</sup> According to the Net Viewer Event Chronology, Sgt. Cleaver arrived on scene at 6:59:12 p.m. and advised SJPD Communications of "officer down" at 7:08:48 p.m.

While taking Mrs. Dunham's statement and attempting to contact Dunham with her cell phone, Ofc. Guess heard someone call out that Dunham had stepped out from the unit. He then heard a loud gunshot. He looked over and saw Ofc. Johnson falling to the ground and Ofc. Potwora returning fire. The gunshot from Dunham preceded Ofc. Potwora's return fire.

Ofc. Willis had been on scene and moved Mrs. Dunham to a safer position. Ofc. Guess retrieved his rifle from his patrol car and began to advance toward Ofc. Potwora's position. He saw that Ofc. Reyes was near Ofc. Potwora so he then attempted to confirm whether the backside of the building was secure. Ofc. Guess notified Dispatch that he was advancing to the back of the building. Ofc. Guess located Ofc. Balala and took a position with him to the rear of the residence until being relieved by MERGE units.

### **OFFICER SHAWN MCCARTHY**

On March 24, 2015, Ofc. McCarthy and his recruit, Ofc. Balala, were working patrol in full uniform and driving a marked patrol vehicle. At approximately 6:50 p.m., they responded to a weapons disturbance call at 2664 Senter Rd #217 in San Jose. They were informed that the reporting party had been contacted by her mother who stated that her father, Dunham, was intoxicated and was holding a gun to his head while expressing an intent to kill himself.

Officers McCarthy and Balala arrived at 2664 Senter Rd at approximately 6:55 p.m. and parked behind two patrol vehicles to the south of the main entrance. After Ofc. Guess spoke to Dunham's wife and consulted with Ofc. Johnson, it was decided that Ofc. Balala and Ofc. McCarthy would take up a position to the rear of unit #217, behind several parked vehicles in the parking lot to the west of the swimming pool. Ofc. McCarthy helped with evacuating residents from the surrounding units. As he was doing so, Ofc. McCarthy heard Ofc. Potwora broadcast that he saw movement in the front of the residence. Approximately 5-10 seconds later, Ofc. McCarthy heard a loud blast from above his location, followed by several distant blasts. He instructed the residents to get down and stayed with them until it was safe to leave.

Once it was determined to be safe to leave, Ofc. McCarthy evacuated the residents to the north, making a hole in the fence and taking them through a path along Coyote Creek and over to a 7-11 located at 602 Tully Rd.

### **OFFICER CHRISTIAN BALALA**

On March 24, 2015 at approximately 6:48 p.m., Ofc. Balala and Ofc. McCarthy were dispatched to 2664 Senter Rd. in San Jose. The call involved a man with a gun wanting to kill himself. The report indicated that he had threatened to kill a woman in the house if she did not leave. Ofc. Balala and Ofc. McCarthy were the third unit to arrive. They positioned themselves to the east of the complex in order to attempt visual contact with the man. Officers Balala and McCarthy saw a garage door open and heard power tools. Ofc. Balala took cover behind a white van and Ofc. McCarthy checked to see who was in the garage. Ofc. McCarthy contacted and stayed with the individuals in the garage. Ofc. Balala stayed behind the van.

While positioned behind the van, Ofc. Balala heard approximately five gunshots coming from the west side of the complex. An officer yelled "officer down!" over the radio. Ofc. Balala stayed where he was while Ofc. McCarthy stayed with the individuals in the garage. Ofc. Balala aimed his firearm at the rear window and balcony of unit 217 until relieved by Ofc. Guess.

Ofc. Guess relieved Ofc. Balala and Ofc. Balala moved to a new position behind a patrol SUV until he was escorted from the scene.

### **OFFICER ARMANDO RAMOS**

On March 24, 2015, Ofc. Ramos was working patrol in his last week of field training with Field Training Officer Yvonne Delacruz. He was conducting a vehicle stop when he heard the priority call involving weapons at 2664 Senter Rd. He got back into his car and attached himself to the welfare check. As he turned onto Senter Rd. going south, he made a U-turn to go north on Senter and parked behind other units that were already on scene. As soon as he got out of the car, he saw officers approaching the driveway and an officer speaking to Dunham's wife. Officers discussed how to secure the area. Ofc. Delacruz asked him to go and get 40mm rounds from the patrol car. He went back, got the rounds and returned. Initially, he was told to go to the rear of the building, but Ofc. Johnson directed another recruit unit to go to the back and asked Ofc. Delacruz and Ofc. Ramos to remain on the front side.

Ofc. Ramos was standing near the driveway and watched Ofc. Johnson walk behind parked cars and point his rifle toward Dunham's unit. Ofc. Johnson was joined by a second officer with a rifle whose name Ofc. Ramos did not know. Ofc. Ramos was able to see the two officers, but not the unit they were directing their rifles toward. Ofc. Reyes was with the two officers with rifles.

Ofc. Ramos was directing civilians in the area to move back and away from the scene. He then heard an officer say "hands up". This caught Ofc. Ramos' attention and he looked toward Ofc. Johnson. He saw Ofc. Johnson with his AR-15 pointed up. He then heard a shot and saw Ofc. Johnson get hit and go down. He saw the other officer fire while ducking behind the parked cars. Ofc. Ramos was not able to see Ofc. Johnson and began moving up toward where Ofc. Johnson had gone down. He then heard someone say "officer down, officer down". Ofc. Ramos knew that Ofc. Johnson was dead because he saw the shot. He heard officers discussing going to help Ofc. Johnson and he thought he should say something, but he did not want to believe what he knew to

be true. Ofc. Ramos joined the rescue team and approached Ofc. Johnson. As they neared him, it was clear that Ofc. Johnson was dead. The rescue team started backing up and then held their ground until other units arrived and relieved them.

After the other units arrived, Ofc. Ramos assisted Ofc. Potwora in removing some of the blood from his uniform. He and Ofc. Delacruz then obtained more information from Dunham's wife, including a layout of the unit and what other weapons Dunham might have available to him. He was told that another unit had an identical layout to #217, so they did a walkthrough of the other unit with Dunham's wife. Ofc. Ramos was then transported to the police department.

### **OFFICER JUAN HERNANDEZ**

On March 24, 2015, at approximately 6:58 p.m., Ofc. Hernandez responded to a report of a suicidal subject with a gun at 2664 Senter Rd. #217 in San Jose. He arrived at the location at approximately 7:05 p.m. After arrival, he blocked the east sidewalk, north of unit 217, parking his car at the opening of the north alleyway to the complex. As he exited his vehicle, he heard several gun shots in quick succession. After a brief pause, he heard another several gun shots. He believed the sound of all the gun shots were similar. He immediately took cover and saw Ofc. Johnson down on the street in the area in front of 2664 Senter Rd. From his position, he could not determine whether Ofc. Johnson was breathing.

Ofc. Hernandez immediately moved so that he could watch the staircase leading up to 2664 Senter Rd. #217 to provide cover for the officers directly in front of the unit. His location was approximately one unit to the north of #217. He was concealed near the vehicles parked on the east curb. He remained in position until he was relieved by MERGE officers. He did not observe anyone exit or enter the area of the staircase.

### **OFFICER TOPUI FONUA**

On March 24, 2015 at 7:07 p.m., Ofc. Fonua was in full police uniform assigned to the Canine Unit when he responded to an emergency officer aid request at 2664 Senter Rd. #217. While he was en route, dispatch advised that an officer had been fatally injured and the male suspect, Dunham, was still at the residence with a high powered rifle. Dunham was wanted for homicide and was barricaded inside his home.

On March 25, 2015 by 3:20 a.m., there had been numerous unsuccessful attempts to have Dunham exit his residence. Inner containment officers determined that there was a male matching Dunham's description on the ground on the enclosed balcony. Due to Dunham's access to weapons and his violent actions in the murder of Ofc. Johnson, Ofc. Fonua sent his canine partner, Rex, into the residence to search and safely apprehend Dunham.

After Rex entered the unit, Ofc. Fonua could hear Rex barking near the balcony area. He relayed the information to the arrest team. The arrest team entered the residence and Ofc. Fonua immediately noticed multiple boxes of ammunition and a firearm inside the living room. The arrest team moved in and covered Dunham. They advised that there was an additional firearm

next to Dunham on the patio. Rex was engaged and biting Dunham on his lower legs. Once the arrest team was safely in position, Ofc. Fonua recalled Rex.

Dunham sustained canine bite injuries to his right calf and left thigh.

### **SERGEANT CHRISTOPHER SCIBA**

On March 24, 2015, Sgt. Sciba was assigned to the MERGE unit as a supervisor and was off duty. At approximately 7:16 p.m., he received a phone call from Communications advising him of a critical incident in the area of 2664 Senter Rd. He was told that MERGE was being asked to assist. Sgt. Sciba responded from his home to 2664 Senter Rd. While responding, he heard that an officer had been shot and was possibly dead. He learned that the gunfire had come from a suspect in a second story unit.

When Sgt. Sciba arrived on scene, he ran to the area of the downed officer. He observed Ofc. Potwora standing behind a vehicle pointing his patrol rifle over the roof of the car toward the second story balcony of an apartment. He also saw several officers hiding down behind that vehicle and another to the south. To Ofc. Potwora's left, behind another car, was a downed officer that Sgt. Sciba later learned was Ofc. Johnson. It was obvious to Sgt. Sciba that Ofc. Johnson was deceased.

Sgt. Sciba positioned himself between Ofc. Potwora and Ofc. Johnson's body to assist Ofc. Potwora in covering the second floor. Sgt. Sciba asked Ofc. Potwora if he had shot at the suspect. Ofc. Potwora said that he had fired at the suspect and believed that he had hit him, but was not sure if the suspect was down. It appeared to Sgt. Sciba that Ofc. Johnson had been shot while in a similar cover position to that which Sgt. Sciba and Ofc. Potwora were in, which Sgt. Sciba believed was vulnerable. Any attempt to recover Ofc. Johnson's body would put officers in the line of fire from the second story balcony. Sgt. Sciba instructed a female officer to his right to run to cover on the south side of the building. He then told Ofc. Potwora that he would provide cover while Ofc. Potwora ran to the south side of the building. Once Ofc. Potwora was out the line of fire, Sgt. Sciba left his position and began calling in additional resources.

As those additional resources arrived, Sgt. Sciba coordinated the placement of snipers, the perimeter and armored vehicles. Sgt. Shab coordinated the evacuation of tenants from the suspect's building. Once the perimeter was secure and evacuations were completed, Sgt. Shab and Sgt. Sciba developed a plan for searching Dunham's unit. They tried to contact Dunham via his cell phone and his home phone. There was no response to either.

Due to the serious threat posed from Dunham, an explosive charge was placed on a common wall with the attached unit to the south of the suspect. The charge was detonated, creating a 12" x 12" porthole in the wall through which officers could observe Dunham's living room and kitchen. Sgt. Sciba directed a MERGE officer to shine his weapon light through the hole from a distance to elicit a response from Dunham. There was none. A pole camera was then used to search Dunham's unit. The camera operator cleared the living room, dining room and kitchen area, seeing no sign of Dunham. At that time, the CHP helicopter reported a thermal heat source on the balcony that was not moving. Sgt. Sciba repositioned the MERGE pole camera operator



and a cover team to the front exterior of the unit. From that position, they extended the pole camera to Dunham's balcony. They located Dunham laying on his back on the balcony, not moving. Sgt. Shab then took a team and entered Dunham's unit. They got through the front security screen and door using a breaching shotgun. They then used a noise flash distraction device at the front door. Dunham did not react. Ofc. Fonua sent in his police canine. The dog located Dunham on the porch and appeared to bite him on the knee. Again, Dunham did not react. The entry team pushed up to Dunham and confirmed that he was dead from a gunshot wound to the face. MERGE recovered their equipment and turned the location over to the Crime Scene Unit.

### **OFFICER MANUEL OCHOA**

On March 24, 2015 at approximately 6:48 p.m., Ofc. Ochoa was in full uniform working patrol. He was dispatched to a call regarding a welfare check at 2664 Senter Rd. The call involved a male who was drunk and said he wanted to kill himself. The reporting party indicated that her father had pointed a gun at his head and told his wife to leave or he would kill her.

Upon arrival, Ofc. Ochoa made contact with Ofc. Delacruz and her recruit, Ofc. Ramos, at the front of the complex, just to the south of #217. He saw Ofc. Johnson and Ofc. Potwora walk on to the street and position themselves with long rifle AR-15s. They took cover behind a vehicle parked parallel to Senter Rd., near #217.

Officers Delacruz, Ramos and Ochoa were the arrest team. They positioned themselves just south of the unit, near the driveway into the complex.

An officer in the front provided an update indicating that the male had come out of the apartment and onto the balcony and then walked back inside.

Shortly after the update, Ofc. Ochoa heard a very loud bang. He was no longer able to see Ofc. Johnson. Ofc. Ochoa saw Ofc. Potwora return fire in the direction of unit #217. He heard Ofc. Potwora yell out that an officer was shot. Ofc. Ochoa saw Ofc. Potwora continue to return fire and then slowly back away.

Upon hearing the shots, Ofc. Ochoa immediately took a couple of steps back and then moved forward with his handgun pointed in the direction of #217. He was unable to see Dunham from where he was standing.

Ofc. Ochoa heard someone, he believed it was Ofc. Delacruz, yell out for a rescue team. He saw Sgt. Cleaver, Ofc. Reyes, Ofc. Delacruz and Ofc. Ramos run in Ofc. Johnson's direction. He then heard someone say that Ofc. Johnson was dead and the officers backed off. Ofc. Ochoa provided cover by pointing his hand gun in the direction of #217 and then quickly moved back when the rescue mission was abandoned.

Ofc. Ochoa then looked back to the rear of the apartment complex and saw who he believed was Ofc. Balala taking cover behind a parked vehicle. Ofc. Ochoa asked him if he was alone and Ofc.

Balala responded yes. Ofc. Ochoa moved toward Ofc. Balala and then saw Ofc. Guess with an AR-15 and Sgt. Fong.

Ofc. Ochoa stayed on the back side of the unit until several other officers arrived and they were gradually relieved by MERGE officers.

### **SERGEANT ERIN FONG**

On March 24, 2015 at approximately 6:48 p.m., Sgt. Fong was working as the Canine Sergeant. She was driving in the area of Stockton at Julian when she saw a welfare check event pop up on her MDT screen. She switched her radio channel to listen to the event as it was dispatched. As she listened to the event, she learned that the reporting party was calling from out of state. Her mother had called her to say that Dunham had a hand gun and ordered her out of the house or he would kill her. Dunham wanted to commit suicide and was in the house by himself. Dunham had attempted suicide in the past by taking pills. Since the call sounded like additional officers might be needed, Sgt. Fong attached to the event and responded.

When Sgt. Fong arrived at approximately 7:00 p.m., she parked her vehicle on Senter Rd. to the south of unit #217 and south of the driveway entrance. She met with Sgt. Cleaver and Ofc. Guess who were talking to Dunham's wife. Sgt. Fong looked north and saw Ofc. Potwora, Ofc. Reyes and another officer she could not identify standing on Senter Rd. behind an SUV. They were approximately 25 yards away from Sgt. Fong. Sgt. Fong asked Sgt. Cleaver a few questions about the call and whether there was anything she could do to assist. Since they were still speaking with Dunham's wife, Sgt. Fong waited until they had further information. Mrs. Dunham stated that Dunham wanted to kill himself, but she thought that she would be able to talk him outside. After a loose perimeter was formed, Dunham's wife attempted to call him from her cell phone.

As the phone was ringing, Sgt. Fong heard an unknown number of shots ring out. She looked back north and saw an officer fall to the ground. More shots rang out and Sgt. Fong ducked behind the vehicle where she was standing because she was unsure who was shooting and she thought she might be in the line of fire. Sgt. Fong heard Ofc. Delacruz yell "officer rescue" and Sgt. Cleaver and Sgt. Fong took off running toward the rear of the SUV. Sgt. Fong ducked below the SUV as Ofc. Potwora was still pointing his rifle at the residence and providing cover. Sgt. Fong saw Ofc. Johnson lying motionless on the ground a few feet from her. It was obvious that he was deceased. Sgt. Fong put out over the radio that multiple shots had been fired and that the officer was "10-55". They did not proceed with a rescue at that point because they could not get to Ofc. Johnson without being directly in Dunham's line of fire.

Ofc. Potwora stated that he might be shot on the left side of his face. Sgt. Fong checked for injuries. Ofc. Potwora did not appear to be injured but he was covered in blood.

Sgt. Cleaver and Sgt. Fong regrouped at the rear of the SUV. Sgt. Fong then called for traffic control, the Bearcat and any MERGE and Canine Officers who were logged on to respond Code 3. As more officers arrived, Sgt. Fong ran to the back of the complex to check the perimeter. Ofc. Guess was covering Dunham's back patio and window with a rifle. A recruit officer was

with Ofc. Guess and another officer was in the garage to the north of Dunham's unit. Sgt. Fong asked dispatch to send a few more units with rifles to the back side. As time went on, and more officers arrived, they set up a patrol SUV for cover and lighting. Ofc. Guess and the recruit officer moved from their positions. Sgt. Fong coordinated with and briefed incoming sergeants and MERGE Sgt. Sciba.

As MERGE took over the scene, Sgt. Fong met with Canine Ofc. Jimenez<sup>8</sup> who was assigned to be the rear side sniper. Ofc. Jimenez and Sgt. Fong went to two apartments in the building on the south side of the pool to locate a spot for Ofc. Jimenez to set up. They attempted to make contact at unit #206, but no one answered. The neighbor indicated that the occupant worked late and did not have any dogs. Ofc. Jimenez kicked open the front door so he could use it as a safe sniper spot. Sgt. Fong then coordinated with Sgt. Ceballos who responded to assist.

As this was taking place, Sgt. Fong heard Sgt. Johal ask for involved and witness officers to meet at the Command Post. Sgt. Ceballos asked Sgt. Fong to disable a light on the walkway which was impairing their vision. Once she was sure the snipers were briefed and set, Sgt. Fong left the apartment and kicked out the walkway light on her way. She then returned to the Command Post and met with MERGE Lt. Dwyer. Sgt. Fong then went to the San Jose Police Department witness center.

#### **OFFICER YVONNE DELACRUZ**

On March 24, 2015 at approximately 6:48 p.m., Ofc. Delacruz was working as a Field Training Officer in plain clothes with her recruit, Ofc. Ramos. They were on a vehicle stop on South 1<sup>st</sup> Street and Goodyear in San Jose when they heard a call about a subject that had a gun to his head and wanted to kill himself.

Officers Delacruz and Ramos attached to the call at 6:50 p.m. and arrived at 2664 Senter Rd. at 6:57 p.m. When they arrived, Ofc. Delacruz saw an officer speaking with a woman whom she presumed to be Dunham's wife.

Officers Delacruz and Ramos took a position on the southwest corner of the building. Ofc. Delacruz could see Sgt. Cleaver standing behind a vehicle with his gun drawn and pointed in the direction of the apartment. Ofc. Potwora was standing next to Ofc. Johnson. They were both behind another vehicle directly in front of Dunham's apartment.

Ofc. Delacruz was standing with Ofc. Ochoa, Ofc. Ramos and Ofc. Reyes. Ofc. Reyes had previously been standing in front of the apartment building but was replaced by Ofc. Potwora because Ofc. Potwora had a rifle.

Ofc. Reyes returned to the front of the apartment building to provide cover as Ofc. Potwora made a few adjustments. As Ofc. Reyes was returning to Ofc. Delacruz' position on the southwest corner, Ofc. Delacruz heard several gun shots.

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<sup>8</sup> He has since been promoted to Sergeant.

Ofc. Delacruz looked in the direction of Ofc. Potwora and could see him shooting in the direction of Dunham's apartment. She then heard Ofc. Potwora say "Officer down!" At that time, Ofc. Delacruz had no idea who had been shot. She looked at Sgt. Fong, who was standing a few feet south of her location and said "Officer rescue!" Sgt. Fong motioned her head in agreement.

Sgt. Fong, Sgt. Cleaver, Ofc. Delacruz, Ofc Ramos and Ofc. Reyes all ran in the direction of Ofc. Johnson. Ofc. Potwora provided cover as they ran northbound on Senter Rd. behind vehicle cover to rescue Ofc. Johnson.

Ofc. Delacruz saw Ofc. Johnson lying on the ground. He was obviously dead. Ofc. Delacruz turned around and said "he is 10-55, back to safety". Sgt. Fong, Ofc. Ramos and Ofc. Reyes ran back to the side of the building. Ofc. Delacruz advised dispatch that an officer had been killed. This announcement resulted in a Code 20<sup>9</sup>. Ofc. Reyes, Ofc. Ramos, Ofc. Ochoa and Ofc. Delacruz remained on the side of the building until they were relieved by MERGE officers.

After being relieved by MERGE, Sgt. Sciba advised Ofc. Delacruz to locate Dunham's wife to learn more about Dunham and the layout of the apartment. Ofc. Delacruz located Mrs. Dunham in front of a building south of Dunham's building. She was wrapped in a blanket. Mrs. Dunham said that the unit she was sitting by was vacant and had the exact same lay out as hers. Ofc. Ramos drew a sketch of the unit.

Mrs. Dunham indicated that Dunham had a .22 caliber handgun, a 9mm handgun and a 33 rifle in the closet. She also told Ofc. Delacruz that Dunham had a lot of ammunition and a knife collection. Ofc. Delacruz relayed this information to Sgt. Sciba. Ofc. Delacruz remained on scene until directed to walk to the Command Post and then return to the police department.

### **OFFICER MARK WILLIS**

On March 24, 2015 at approximately 6:45 p.m., Reserve Ofc. Willis was riding with Sgt. Cleaver and responded to a call for a welfare check in the area of Senter Rd. south of Lewis. When they arrived, they parked along the east curb behind other units. They were to the south of Dunham's apartment. They made contact with Dunham's wife, who had fled the apartment. They had her attempt to contact Dunham by cell phone. During that time, approximately five shots rang out. The wife started to run towards the apartment. Ofc. Willis yelled at her to return. She did so and he grabbed her and moved with her up to the side of the complex for cover. He stayed with her until he was instructed to report to the Command Post. While with Ofc. Willis, Mrs. Dunham told him that her husband was on medication and had been drinking wine that day. She said that prior to fleeing the apartment, she had been taking a bath when her husband removed the handgun from the nightstand. She said Dunham told her "get out of the house before I kill you and then myself". She then threw on some clothes and left the apartment.

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<sup>9</sup> All officer response.

## **CIVILIAN STATEMENTS**

In addition to the statements set forth below, San Jose Police Officers spoke with numerous civilians who heard gunshots but did not see any of the events surrounding the shooting. The estimates of the number of shots fired ranged between two and six.

### **ALTHEIA DUNHAM**

Altheia Dunham was Dunham's wife. She was interviewed at the scene on March 24, 2015 by Ofc. Guess. She told Ofc. Guess that Dunham had a 9mm handgun and a .22 caliber handgun. She explained that the .22 may have been in a case but that he had the 9mm with him. She told Ofc. Guess that Dunham had set it on the bed. She also said that he had pointed the gun at her and threatened to shoot her. Mrs. Dunham stated that Dunham only had access to two guns. Apparently Dunham had acquired the guns from an unidentified friend. She also indicated that Dunham had a large cache of ammunition.

Mrs. Dunham provided Ofc. Guess with a description of the apartment, its location and its layout.

Mrs. Dunham and Dunham had been married for approximately 13-14 years. Dunham was upset because he had recently learned that an ex-girlfriend of his had passed away. He directed his anger toward his wife. Mrs. Dunham stated that Dunham may have had hepatitis-C and took medication for bipolar disorder and schizophrenia. He also suffered from chronic obstructive pulmonary disorder (COPD).

Mrs. Dunham stated that Dunham had been drinking alcohol in addition to taking his medications, which included Valium. She stated that alcohol intensified the effects of the medication. According to Mrs. Dunham, Dunham also self-medicated with marijuana. She described Dunham as "really sick". She stated that he had "lost it" and that he would "shoot himself in the head".

Mrs. Dunham indicated that she had been sitting in the bathtub when she heard Dunham "cock the gun", at which point she "got out of there". She also stated that Dunham had pointed a gun at her previously.

Mrs. Dunham expressed concern that Dunham was likely to "kill himself when he sees all these cops". Ofc. Guess told her that the police would make every attempt to resolve the situation peacefully.

In later interviews, after the shooting, Mrs. Dunham said that she and Dunham had married in 1978 and divorced in 1987 when she had an affair. They were apart for 2-1/2 years and got back together in approximately 1990. They did not remarry until 2003 and have been married since then. They met when she was 16. Mrs. Dunham said that Dunham had suffered from medical issues since he was approximately 19 years old. He had gone even more downhill after his suicide attempt in 2006. According to Mrs. Dunham, Dunham had suffered from COPD, bipolar disorder, hepatitis-C and other various illnesses.

When asked for more details about what led up to the incident on March 24, 2015, Mrs. Dunham indicated that Dunham had been obsessing regarding an ex-girlfriend from his teenage years. He asked Mrs. Dunham to see if she could locate her. Mrs. Dunham researched the woman on line and determined that she had died of hepatitis-B in 1999. Dunham was very upset about this. He wanted to talk to Mrs. Dunham about his ex-girlfriend, and she told him she did not want to hear about it. Dunham was also upset about the fact that Mrs. Dunham had sent flowers to an ex-boyfriend of hers. Mrs. Dunham explained that she had done so approximately 3 years prior to the incident, but Dunham thought it had only been 3 months. Mrs. Dunham walked away from Dunham and into the bathroom to take a bath. He continued to follow her and told her that he could cut off her head and no one would ever know. She said "dude, you're not ISIS ... snap out of it". She said that Dunham was obsessed with ISIS and would talk about joining the army to fight against them.

While Mrs. Dunham was in the bathtub, she heard a gun click as if he was loading it. She jumped out of the tub, wrapped a towel around herself and went into the bedroom. Dunham was there, swinging a gun around. She described the gun as a black gun, but she was not sure whether it was the 9mm or the .22 handgun. He told her "get out of here before I shoot you" and pointed the gun in her direction. Dunham said that he would shoot her and then shoot himself. Initially she told him to calm down and put the gun down. She then told him not to do it on her brand new bed and that he should take it outside if he was going to shoot himself so he would not mess up her house. Dunham got angry, stood up from the bed, bent over and kicked Mrs. Dunham with a backward kick. Mrs. Dunham took off her towel and flicked it at Dunham. Dunham told her she could go ahead and call the police and see what happened. She then got dressed and gathered her purse and left the condominium. She went to her car and called her daughter Katrina. After speaking to her daughter, she called a friend and then drove around the parking lot until she saw a police officer.

While she was speaking to an officer, she heard five shots. She believed that her husband, Dunham, fired all five shots. She also said she was able to hear Dunham screaming when he came out on the balcony, but she does not know what he was saying. She did not hear her husband yelling anymore after the gunshots. She then heard that a police officer had been shot.

Mrs. Dunham said that the 30-30 rifle had been given to them by her father before he passed away. The rifle had not been shot for years and had been on the floor of the closet behind her clothes. Mrs. Dunham said that the rifle was kept unloaded and Dunham would have had to dig for the rifle to find it. The bullets for the rifle were kept in a drawer in her dresser.

Mrs. Dunham said that Dunham's behavior on the night of March 24, 2015 was different than on prior nights. He was more angry and crazier than usual. He had been drinking. She described him as usually pretty mellow, but he had a quick trigger if you said something he was not happy with. Mrs. Dunham said that Dunham had a great deal of respect for fire and police personnel and could only have acted as he did on the night of March 24, 2015 if he was not in his right mind.

Mrs. Dunham said that Dunham had been abusive toward her in the past, hitting her on an almost daily basis until she was 36 years old. She also indicated that Dunham had become a recluse and

did not leave their home much since having been out on disability from his job at Foothill College. He had described to her that he wanted to commit suicide by taking his truck and driving it into a brick wall at De Anza College at 100 mph.

### **KATRINA TRASK**

Katrina Trask is the adult daughter of Altheia and Scott Dunham. She lived in Paradise, California. She described her relationship with her father as "indifferent". They had not really talked much for the prior 3-1/2 years. She had not lived with him for the last 16 years. When she called her parents, she usually called her mother's cell phone so that she could avoid speaking to Dunham. During her childhood, Dunham was abusive mentally and emotionally.

On March 24, 2015, at approximately 5:30 p.m., Trask's mother called and put her on speaker phone. Her father was in the room. Her parents called to discuss the fact that Trask and her sister Athenia Dunham were arguing. Dunham spoke to Trask, her husband and her oldest son. The conversation was "weird but cool". Dunham was being humorous. The call lasted approximately 15 minutes and was what she considered a positive interaction.

Sometime after 6:00 p.m., Trask received a call from her mother saying that she had been in the bathtub and Dunham threatened to kill her. Dunham said that he was going to kill himself and Mrs. Dunham as well if she did not leave the house. Trask confirmed that her mother was out of the house and then asked her if she knew whether or not Dunham had actually killed himself. When Mrs. Dunham confirmed that she did not know whether Dunham was still alive, Trask informed her mother that she was going to call the police because she did not want to live with the guilt of not calling. Trask googled the San Jose Police Department and called them directly to request a welfare check.

Trask understood from her mother that Dunham had threatened Mrs. Dunham with a gun when Mrs. Dunham was pregnant with Athenia. Trask also mentioned that Dunham had tried to commit suicide approximately 6 years prior to this incident. On that occasion he took pills. She did not know why he attempted suicide on that occasion.

Trask described Dunham as an alcoholic. She stated that for as long as she could remember, he was always drunk. She also said that he suffered from COPD. She was not sure when that started, but she recalls him always having a cough. When asked about drug use, she said that he just used marijuana and "his pills". She believed he was on medication for bipolar and COPD. She was not sure what other medications he might have.

Trask knew that her father had guns. She was not sure how many, but she knew he had a "30-30" and a 9mm. She told dispatch that her father had a gun but she did not describe what type or how many.

Trask said that approximately 1-1/2 years previously, Dunham had told her husband and her son that if he ever got in trouble with the police he "wanted to go suicide by cop". She said that Dunham did not have a vendetta against the police, though. She could not recall how the

conversation came about. When asked if her father was suicidal, she said Dunham had been suicidal for as long as she could remember.

### **ATHENIA DUNHAM**

Athenia Dunham is the adult daughter of Altheia and Scott Dunham. She lived in Paradise, California. She stated that recently she and her father had gotten along decently, but they had a rocky relationship when they were younger. Earlier on the day of March 24, 2015, at approximately 5:00 p.m., her mother and father had called her and said that they wanted to have a three-way conversation in which they got everything out. Dunham expressed that he wanted to “blow his brains out”. Athenia expressed empathy for his feelings. Dunham then asked her how old she was. When she asked him what he thought, he continued to misstate her age. She described this as a fairly typical pattern in their communication. Dunham called her back two more times and she did not answer.<sup>10</sup> Her boyfriend then unplugged the phone. When they plugged the phone back in she received a phone call from her sister telling her that Dunham had shot a police officer. Athenia then went to her sister’s home.

Athenia indicated that Dunham has been suicidal since she was a child. He would talk to her about how it would be better if he could just go to sleep and not wake up. She also heard from her mother that Dunham had pulled a gun on Mrs. Dunham when Athenia was a child.

When asked about health issues, Athenia indicated that Dunham was bipolar, disliked being around people and had numerous health issues including hepatitis-C. When asked about drug use, she said that Dunham used marijuana and at one point had also “done shrooms”.

### **FATIMA SALAHUDDIN**

Fatima Salahuddin lives in an upstairs unit at 2664 Senter Rd. directly above Billy Ray Lewis. On March 24, 2015, at approximately 7:00 p.m., she was in her kitchen when she heard 2-3 shots fired. She went to the kitchen window and looked out. She saw one officer, in uniform, standing behind a van on Senter Rd. and shooting. She could not tell what the officer was shooting at. She was not able to distinguish between the sounds of any of the shots, but she believed the officer fired 2-3 shots. She then went away from the window and did not look out again. She stayed in her apartment until she received a phone call from the police indicating that they were being evacuated from the complex.

Prior to the gunfire, she did not see or hear anything suspicious at the complex.

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<sup>10</sup> Dunham left her multiple messages in which he told her that she was immature, behaving like a 3 year old and should not contact him again until she had grown up.



### **SHARON BROWN**

Sharon Brown was interviewed on March 25, 2015. She lived directly below Dunham at 2664 Senter Rd. On the evening of March 24, 2015, she and her husband were preparing to leave their home when she saw a patrol car drive down the driveway. Within moments of seeing the patrol car, she heard a series of loud booms that set off car alarms. Next she heard several loud footsteps directly above her and then there were no further sounds from the unit above hers.

### **BILLY RAY LEWIS**

Billy Ray Lewis was interviewed on March 24, 2015. Lewis stated that earlier that evening he was inside his residence at 2664 Senter Rd. #116. He said that he was watching a basketball game and had the television turned up pretty loud. He heard some loud bangs from outside that sounded like they could be gunshots. Lewis looked out his window and saw officers pointing guns in an upward direction toward his upstairs neighbor's residence. One of the officers had a rifle and the other had a handgun. Lewis gathered his grandchildren and brought them to an area away from the window and had them get down on the ground. Lewis called 9-1-1 and was told that there had been an exchange of gunfire between police and a civilian. He was told to stay in his apartment until contacted by police. Lewis then took cover with his grandchildren. Lewis said they remained like that until officers contacted him to evacuate his residence.

Lewis described the loud noises he heard as one loud bang followed by one or more bangs that did not seem to be as loud. Lewis did not witness anyone shooting a gun at any time and only heard what sounded like gunshots. Lewis stated that he knew his neighbor by the name of "Wayne" and that he saw him at the mailboxes occasionally. Lewis had never had any problems with his neighbor "Wayne" and did not know anyone by the name of Scott Dunham. When asked to describe the apartment where "Wayne" lived, he identified Dunham's unit.

### **MEHULKUMAR SHAH**

Mehulkumar Shah was interviewed on March 25, 2015 by Ofc. Valosek. He resided in the complex at 2664 Senter Rd. On March 24, 2015, he arrived home at about 6:30 p.m. and parked his vehicle in his designated parking space. He then walked to his mail box toward the front of the complex and he saw three police officers on Senter Rd. They were standing with a female and he heard the female say "better be careful, this guy is aggressive". He went inside his unit and, within about 5 minutes, he heard approximately 5 gun shots. He did not know where they came from and he remained inside his home for the rest of the night. He looked out his window periodically and saw police.

### **LUIS MANCILLA**

On March 24, 2015, in the evening, Mancilla was on his way from the liquor store when he saw a number of police officers on Balfour Dr. and Senter Rd. He was curious about what was going on so he rode his bicycle close to the police vehicles parked on Senter Rd. He pulled out his phone and began taping the incident. He was able to hear the suspect's wife talking to police and

describing that there were a lot of guns and ammunition inside the house. He saw three or four officers pulling out their rifles and hiding behind parked cars on Senter Rd. He then heard two gun shots from the area of the upstairs unit, one of which struck an officer who was standing on the street. Mancilla saw that the officer flew back and was immediately unresponsive. Other officers ran to the fallen officer and then retreated. Officers returned fire. Mancilla believed that Dunham shot twice and officers shot 7 or 8 times for a total of 10 shots. Mancilla believed that there were four officers firing back toward the suspect and that each of them fired two times. Later, he said he was not sure how many officers fired back toward the suspect, he just heard 7 or 8 shots. Mancilla indicated that he went to the range all the time and the first two shots fired were a high powered gun and sounded differently than the return fire. He thought Dunham's gun sounded like a .308 rifle.

When asked for more specific information about the location of the officers near the fallen officer, Mancilla stated that there was a female officer who was crouching down near the bumper of the SUV behind which they were taking cover. He believed the officer who was shot was leaning his rifle against the vehicle and looking up. He thought that there were two additional officers behind the vehicle as well. He then indicated he thought there was a total of either 3 or 4 officers behind the SUV. He thought the female officer had a pistol and the other officers had rifles or shotguns.

Mancilla said that the officers had no opportunity to defend themselves against Dunham. He gave them no warning of what was about to happen. Mancilla was very clear that Dunham shot before any shots were fired by police.

Mancilla's cell phone had multiple sections of video, seven of which were downloaded by police. The first was 7 minutes 7 seconds long and showed officers arriving and taking up positions along Senter Rd. Officers are seen talking to Dunham's wife next to her car in the driveway to Senterville Terrace. Ofc. Potwora is seen arriving and walking toward Ofc. Johnson's position behind a parked SUV on Senter Rd. The second video is just one second long and shows sidewalk. In the third video, which is 6 minutes and 42 seconds long, within 4 seconds, gun shots are heard. There are what sounds like five shots, two, then after approximately three seconds two more and then a final shot. The video did not appear to capture the initial shot fired by Dunham. Ofc. Potwora is seen staying alert and focused, returning fire toward Dunham's apartment. Mancilla's video establishes that he stayed on scene within Dunham's line of fire for over 8 minutes after the initial shots were fired despite being told by police officers multiple times to get to a position of safety. Mancilla's remaining video clips, which total 11 minutes and 8 seconds, show police officers continuing to arrive on scene and him attempting to stay in the area to record. He moved from the street to his friend's front yard where he could continue to record responding officers from behind a wooden fence.

After videotaping, Mancilla returned home, where he downloaded the video to his desktop computer. Mancilla then returned to the street because he heard that news stations were buying video of the incident. Mancilla showed NBC news a clip of the video he took and they recorded a copy with a secondary device. He was interviewed on television.

## **DONNA JONES-DULIN**

Donna Jones-Dulin was the Associate Vice President of College Operations at DeAnza College. She was interviewed by Sgt. Yu and Det. Tran on March 26, 2015. Jones-Dulin was Dunham's manager/supervisor during the period of 2001-2007. Dunham worked on the grounds crew for the college, which included cleaning the campus, trimming the bushes, and emptying the garbage cans on the exterior portion of the campus.

Jones-Dulin said that Dunham was a hard worker who got along very well with people. Dunham was reserved, humble, and did not like conflict. During the time she supervised him, he showed up to work on time and did not abuse sick leave. However, at some point, Dunham did go out on some sort of medical leave. She also believed that he had some substance abuse problems. Jones-Dulin did not know what types of substance he abused, nor did she notice him coming to work while under the influence. She saw him on an almost daily basis while she was his supervisor.

Jones-Dulin did not have to handle any type of disputes between Dunham and his coworkers. She said that Dunham tried to avoid conflicts. Dunham was characterized as a "nice guy", but she said he clearly had issues. When asked what type of issues, Jones-Dulin said that Dunham did not like "stressors". She said guys he worked with would tease him and he would not react. Instead, Dunham would internalize it. However, Jones-Dulin said Dunham was pretty reserved and he fit in with his coworkers. She said he got upset but not angry about his coworkers when they teased him or when they did not do their jobs correctly. During the period she supervised him, Dunham did not share any of his family issues, good or bad, with her. Jones-Dulin had the impression that his wife was supportive of him.

Jones-Dulin did not witness Dunham get angry with coworkers or students on campus. Dunham's "nervousness" and "jittery" behavior pattern prompted her to think he may have had a substance abuse problem. When asked why Dunham was transferred to Foothill College, Jones-Dulin said that Dunham was tired of his coworkers teasing him and that she was a "hard" boss. Jones-Dulin added that it was her personal observation that Dunham obviously had some emotional issues. She said that he was grappling with some "demons" with which he was not comfortable. Jones-Dulin said she would not have expected him to act as he had on March 24, 2015 unless he wanted to commit suicide by cop. She felt that Dunham would get really depressed at times and she was not surprised he committed suicide. She was definitely surprised that he killed someone else.

## **JESUS GARCIA**

On March 26, 2015, Sgt. Yu and Det. Tran interviewed Jesus Garcia. Garcia had been employed by DeAnza and Foothill Colleges for approximately 18 years. He worked around Dunham between the years of 1999 and 2006. He saw Dunham on a daily basis and they also took breaks together. However, Garcia did not consider Dunham a friend because they did not spend time together outside of work and had never been to each other's homes.

Garcia believed that Dunham had been raised with lots of problems due to the way in which he communicated with people at work. Garcia said sometimes Dunham was "very sweet" and other

times he was “very angry”. Garcia indicated that Dunham had problems with “drugs”. Garcia knew that Dunham had a license for his marijuana use and that Dunham also had other health issues. Dunham used lots of “candy” and marijuana as Dunham bragged about his marijuana usage while at work. When asked what he meant by candy, Garcia explained that Dunham was ingesting candy laced with marijuana.

Garcia stated that Dunham also abused alcohol and would come to work in “bad” condition. Garcia recalled numerous occasions on which Dunham arrived to work looking very bad and having an odor of alcoholic beverage on his breath. On a few of those occasions, Dunham became angry at work. Garcia would then ask Dunham to stay away, calm down and relax. “Too many times,” Dunham would get aggressive and angry and then apologize afterwards. Garcia said Dunham bragged to everyone about owning guns. Garcia knew that Dunham had handguns and rifles. Garcia had heard that Dunham not only spoke about owning guns but that he also sold them. Garcia had never seen Dunham bring firearms onto campus. Due to his knowledge about Dunham’s gun ownership, Garcia paid particular attention to Dunham’s actions when they were working together due to Dunham’s unstable mental status.

Approximately 2-3 times per month, Garcia would see Dunham sitting in their office by himself as everyone else was just showing up for work. Garcia said that whenever Dunham had a fight with “his woman” and could not sleep, Dunham would leave home and show up at work at 3:00 a.m. to take a nap and wait for everyone else to arrive. Dunham was very open when discussing his personal problems and would fight with his wife fairly often. Dunham mentioned to Garcia that he had a lot of problems with his wife and daughters. When Dunham came to work early to escape his troubles at home, Garcia noticed that Dunham was “high”, stoned, or drunk. Garcia indicated that their supervisors knew about Dunham’s substance abuse issues. Their supervisor at the time was Frank Nunes, who was also Dunham’s neighbor when they were all working together.

While working with Dunham on a daily basis, Garcia often detected that Dunham was intoxicated. Garcia said everyone who worked around Dunham knew he was always intoxicated. Garcia knew because of the odor of burnt marijuana or the odor of alcohol emanating from Dunham’s person. Management ignored Dunham’s problems.

Dunham did have issues with a previous supervisor named Donna Jones. On one occasion, Garcia saw Dunham display angry behavior with Jones in her office. Garcia believed that Dunham was “high” and spoke to Jones in an inappropriate manner. During the incident, Garcia remembered that Jones was pregnant. As he was witnessing the interaction, Jones asked Garcia to stay with her due to the volatile situation and her fear for her safety. Dunham was unhappy about Jones denying his vacation request during the Christmas holidays and felt that Jones favored other employees over him when granting holiday vacations. After Dunham had problems with Jones, Nunes transferred Dunham to the Foothill campus. Garcia believed the transfer was the result of Dunham’s anger management problems.

Garcia and other coworkers had discussed amongst themselves their concerns about Dunham bringing weapons to work. They did not take the concerns to supervisors because they did not

actually think he would do anything. When asked if they complained to Jones, Garcia said that employees usually just complain to their leads.

When Dunham had situations at work, Garcia was usually the one to calm him down and defuse the issues.

Dunham told Garcia that he had a hard life growing up as a child and lived in five different foster homes.

When asked if he was aware of Dunham's murder of Ofc. Johnson, Garcia indicated that he had seen it on the news. Garcia mentioned that Dunham had a lot of health problems besides his mental issues. Garcia said that Dunham sometimes talked about things which did not make sense and got angry for "stupid" things. Dunham also said he blamed the government for his life experiences, housing situation and other personal life situations. Dunham never seemed to be happy even though they had a good job working at the college. Garcia had suspected something might happen with Dunham, but not to this level. He said that all of Dunham's coworkers were relieved when Dunham retired due to his unstable mental state. Dunham would be fine for a few days and the other days he would be angry at people for everything. Garcia was not scared of Dunham because he knew how to deal with him, but he always kept an eye on him to make sure he did not bring weapons to the workplace. Garcia had never dealt with someone quite like Dunham.

### **MATELUND DUNLAP**

On March 27, 2015, Sgt. Yu and Det. Tran interviewed Dunlap at Foothill College in Los Altos. Dunlap had been employed at Foothill College for approximately 8 years. He worked with Dunham at Foothill College between 2008 and 2012. They both had the same classification and worked as the ground crew. Dunlap described Dunham as a "handful". Dunham was "diligent" in certain ways, but he was also obsessive and compulsive. If he felt things were not done properly, Dunham would give up, making it frustrating for others trying to get things accomplished. Dunlap said that Dunham obviously had substance abuse issues, referring to hard core narcotics or street drugs. Dunlap did not believe that Dunham considered marijuana to be a drug. Dunlap also did not believe that Dunham would pay for cocaine. He said Dunham was always doing drugs and spoke about having a pharmacist. He believed Dunham also used prescription drugs. Dunlap believed Dunham's wife had similar substance abuse problems.

Dunlap stated that Dunham was most often under the influence of marijuana. He said if there was a day that Dunham was not under the influence of marijuana, he would be surprised. After Dunham left Foothill College, Dunlap visited his home a few times. During the visits, Dunham appeared paranoid and accused him of being an undercover officer working for the school district. Dunham seemed to believe he was being investigated for some sort of fraudulent retirement and/or disability claim. Dunham had also been paranoid when he first began working at the college. He thought Dunlap was an undercover police officer watching him at that time.

Dunham had talked to Dunlap about his suicidal past. Dunham told him that he had tried some barbiturates and almost overdosed. Dunlap said that, with as many personal issues as Dunham

had throughout his lifetime, Dunlap did not believe Dunham would hurt other people. Dunlap would not have been surprised to hear that Dunham had committed suicide, but he was surprised that Dunham killed a police officer.

Dunlap said that Dunham had mentioned bartering or trading with relatives from some guns. Dunham may have showed Dunlap a handgun on one of Dunlap's visits to his home.

Dunlap had seen Dunham get angry with other coworkers during work. It was not frequent, but when it happened, Dunham let people know he was angry. Dunlap had never been too concerned about work place violence from Dunham and did not hear any other coworkers expressing that type of concern. Dunham had some problems with supervisors regarding smoking marijuana while working on campus.

Dunlap indicated that Dunham had "highs and lows". It was very noticeable when Dunham felt things were not going his way.

When asked about Dunham's background, Dunlap said that he believed: Dunham's mother was a prostitute; Dunham lived in many foster homes; Dunham and his siblings were molested growing up; Dunham and his siblings ran away from foster homes quite often due to abusive situations; and, growing up in the Bay Area, they moved around a lot. Dunham also told Dunlap that his father was not very stable while working at a car dealership because he used methamphetamine.

Dunlap mentioned that Dunham had no upper teeth and Dunham was very open about the fact that he lost his teeth as a result of methamphetamine use during his trucker days.

When asked how he felt about what Dunham had done to Ofc. Johnson, Dunlap responded that he was in disbelief. He felt anger and hatred toward Dunham for doing something like that. He saw Dunham as someone who was paranoid and believed people were out to get him. Dunlap said he wished Dunham would have just committed suicide because a lot of people had stuck their neck out for him. Not only were his actions "irrational", they were "selfish". Dunlap said that Dunham was probably really paranoid and that this was not the first time police had been to his home.

Dunlap had not spoken to Dunham since the fall of 2014. Dunham had called him in February 2015 and asked for a return call, but Dunlap did not call him back because "he's not an enjoyable character". Most of the time when Dunham phoned Dunlap, he was having some type of issue. The last phone call Dunlap received from Dunham, Dunham did not sound distressed. Dunham was not someone Dunlap really wanted to be friends with because he was an annoying person.

### **ORLANDO AGUON**

On March 27, 2015, Sgt. Yu and Det. Tran spoke with Dunham's former coworker Aguon at Foothill College. Aguon indicated that he had worked at the college for 8 years. He worked with Dunham from 2007-2010 and saw him on a daily basis. Aguon described Dunham's personality

as “hot and cold”. Sometimes Dunham was friendly, other times he would walk by and not say anything. Most of their conversations were positive, talking about sports and cars.

Aguon had heard others talking about Dunham having conflicts and difficulty getting along with his leads. On occasion, Dunham spoke about his medical marijuana usage. Dunham also told Aguon about his medical issues, including cysts on his body and hepatitis-C, which he medicated with prescription drugs.

Aguon did not know of any street narcotics use by Dunham. He also denied knowing anything about Dunham being intoxicated on the job. He did describe Dunham as being “spacy” when he was at work. Aguon said Dunham’s character and demeanor was always kind of “loopy” and, most days, Dunham showed up to work “spaced out”.

Aguon said that the department where Dunham worked was having “turmoil” in their shop. Aguon worked in a different department and had a different classification than Dunham.

Aguon never saw Dunham getting into any altercations with his coworkers and he did not have any knowledge of Dunham owning any weapons.

Aguon expressed that he was shocked by Dunham’s murder of Ofc. Johnson. Aguon believed Dunham may have had something wrong “upstairs”, based upon Dunham’s actions, his personality, and his “hot and cold” demeanor. Aguon also attributed Dunham’s behavior to his prescription medications.

### **ROBERT NUSSBAUMER AND LEO BOGER**

On April 13, 2015, Det. Tran and Sgt. Yu interviewed Robert Nussbaumer and Leo Boger. When the detectives arrived, Nussbaumer immediately said they knew why the detectives were there. Nussbaumer was a longtime friend of Dunham’s and Boger was a longtime friend of Nussbaumer and, therefore, knew Dunham. They described him as a “good guy”.

Nussbaumer revealed that Dunham was abused by his parents, physical and mentally, when he was younger. He said that Dunham’s father abused “crank” into his 70s, his mother used to lock Dunham and his siblings in a closet for hours while she went out on dates, and, subsequently, Dunham was placed in foster homes.

Nussbaumer said Dunham needed his wife for “emotional support” and she needed him “for the extra money to pay for the place they have”. He stated that Dunham’s wife was “kind of hard on him ... she’s the instigator”, and was physically and mentally abusive to him. Nussbaumer also revealed that Dunham had a lot of medical problems and used to be “hooked on pills” but then stopped taking them after he almost died.

Nussbaumer had talked to Dunham over the phone about 5 days prior to March 24, 2015. He said that Dunham “sounded sad ... like he wanted to talk to me more” and Dunham told him about receiving a \$50,000 settlement for his disability from Foothill College. Dunham said he was going to have to get a job because \$50,000 was not going to last that long.

Nussbaumer explained that Dunham was a longtime friend of his cousins, Thomas Lee Burkett and Milton Burkett, both of whom are deceased. Dunham grew up with the Burkett brothers. Thomas Lee Burkett owned the handguns found in Dunham's apartment. When he passed away, Milton Burkett inherited the guns. Milton Burkett subsequently sold the guns to Dunham.

### **EVIDENCE COLLECTION**

The following summaries document the reports of San Jose Police Department Crime Scene Unit Officers.

#### **OFFICER KEVIN LAUNDRIE**

On March 24, 2015 at 7:26 p.m., Ofc. Laundrie was notified by Ofc. Kirby that a homicide and an officer involved shooting had occurred at 2664 Senter Rd. #217. Ofc. Laundrie met Sgt. McFadden and Ofcs. Kirby, Cusimano, Thompson, Borges and O'Brien at the police department. He then drove the crime scene van to the shopping center at Senter Rd. and Lewis Rd. where a Command Post had been set up on the outer perimeter.

At 9:15 p.m., Ofc. Laundrie arrived at the Command Post and was briefed on the details known at the time. He was advised that patrol officers had responded to 2664 Senter Rd. #217 on the report of a welfare check. The suspect had threatened to shoot his wife and himself and had reportedly held a gun to his own head. Officers arrived on scene and observed the suspect standing on a second story balcony that faced Senter Rd. The suspect fired shots at officers and struck one officer, killing him. Officers shot back at the suspect and no movement in the home had been seen since. The perimeter was set up and the MERGE unit was in the process of securing the unit.

At 9:38 p.m., Ofc. Laundrie was notified that Ofc. Potwora's carbine rifle had been taken and placed into the trunk of a patrol vehicle. Ofc. Thompson retrieved the rifle. The rifle was a Colt law enforcement carbine. The rifle had a scope mounted on the top and the scope caps were off of the scope. The fire selector switch was in the "safe" position. There was blood spatter on the left side of the scope and frame. The magazine and one chambered cartridge were removed from the rifle to render it safe. The rifle was packaged and placed into the crime scene van.

At 3:30 a.m. on March 25, 2015, the inner perimeter of the scene was rendered safe and the Crime Scene Unit was advised that the suspect was deceased on the second story balcony. The suspect was pronounced dead by Sgt. Shab at 3:30 a.m.

At 3:35 a.m., the Crime Scene Unit entered the inner perimeter scene. At 3:41 a.m., they were advised by Det. McDonald that he had received consent to search unit #217.

At 3:54 a.m., Coroner's Investigator C. Pantoja and Sgt. Shaheen of the Santa Clara County Sheriff's Department arrived on scene. Pantoja was briefed on what they knew and she took photographs of the outside scene near Ofc. Johnson. Ofc. Johnson was lying in the bicycle lane of northbound Senter Rd. north of the driveway of 2664 Senter Rd. A red car was parked next to



where he was lying. Ofc. Johnson was wearing a dark blue San Jose Police Department BDU uniform. He had a law enforcement carbine rifle slung across his body and laying over his right shoulder. The carbine rifle sling was cut by Ofc. Kirby at the direction of Inv. Pantoja. The carbine rifle was made safe (one chambered cartridge removed and magazine removed from rifle). Ofc. Johnson's body was removed from the scene at 5:40 a.m.

On March 25, 2015, at 10:04 a.m. Coroner's Investigator Whelan and Sgt. Shaheen of the Santa Clara County Sheriff's Department arrived on scene to process Dunham and to have him removed. He was removed at 11:30 a.m.

During the processing of the scene by the Crime Scene Unit, Officers Laundrie and Kirby measured and documented the location of evidence in the crime scene sketch found on the next page. They found:

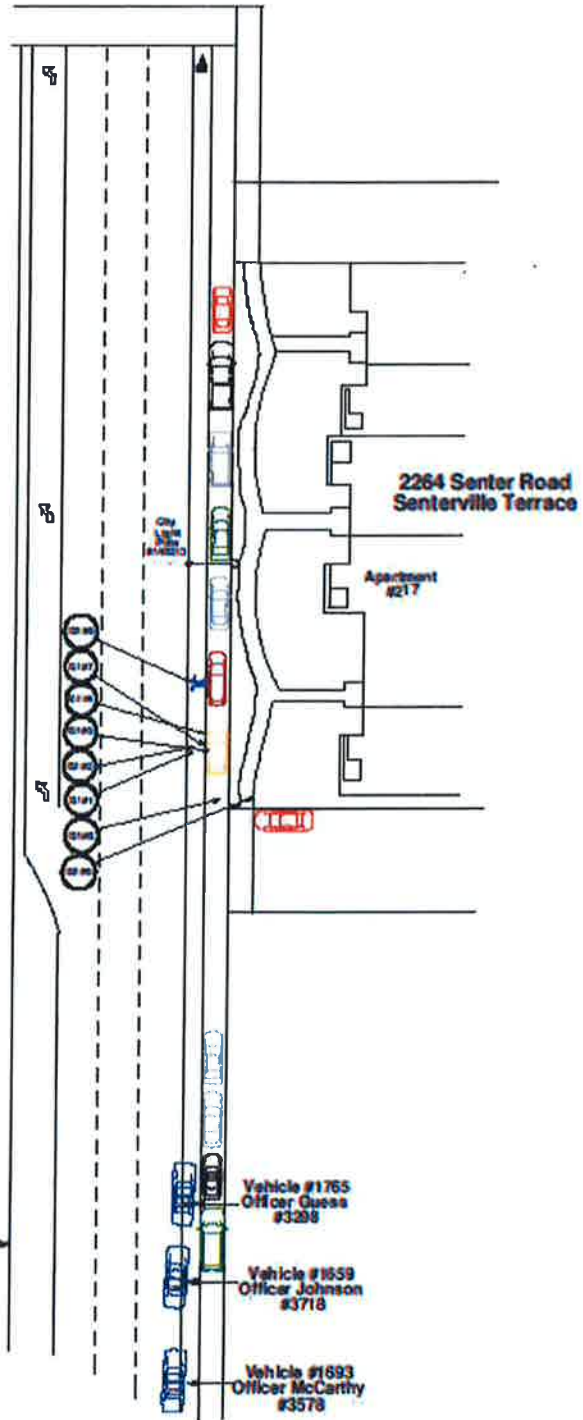
- Five Speer 12 .223 Remington spent shell casings (silver in color) in Senter Rd. behind a car parked to the South of unit 217 (Evidence items 1-5);
- Copper jacketing on the sidewalk near the driveway into Senterville Terrace (Evidence Item 6);
- Possible projectile (grey in color) in Senter Rd. behind a car parked the South of unit 217 (Evidence Item 7);
- Projectile (grey in color) in Senter Rd. near Ofc. Johnson (Evidence Item 8).

Umbarger Road



15-083-0893  
03-24-15 P.C. 187/OIS  
2264 Senter Road  
Victim: Officer Johnson #3718  
Victim: Officer Potwora #3506  
Suspect: Dunham, Scott  
Drawn By: P. Kirby #2916  
Not to Scale

Senter Road



Inside Dunham's apartment, they located:

- Ammunition in a treasure chest in the living room, including: 1 box Winchester 9mm (101 pcs.); 1 box Winchester SuperX .22 win (50 pcs.); 1 box Remington magnum Rimfire .22 win mag. (50 pcs.); 7 plastic containers with .22 cal. ammunition (491 pcs.); and 1 ziploc bag with .22 cal. (20 pcs.).



- Glock 34 9mm semi-automatic pistol with loaded magazine and one cartridge in the chamber. The magazine was loaded with 7–9mm cartridges. This gun was found on the coffee table in the living room.





- One box 9mm Winchester luger ammunition (88 pcs.) was found on the coffee table in the living room.



- One box Winchester SuperX Deer and Black Bear 30-30 win. ammunition (14 pcs.) was found on the coffee table in the living room.



- One Winchester 9mm Luger cartridge was found on the coffee table in the living room.

- One Winchester 30-30 win. cartridge was found on the coffee table in the living room.



- Two spent Winchester 30-30 win. casings were found on the patio of the balcony.
- One Winchester 64 Lever Action Rifle 30-30 blued with wood stock was found on the patio of the balcony. The rifle had one chambered cartridge and one in the tube.
- One 9mm Winchester cartridge was located on the floor of the master bedroom.
- One gun box for the Glock 9mm with an empty magazine and a loose 9mm cartridge was located in the master bedroom.
- One Walther P22 .22 cal. semi-automatic pistol was located in a gun box with two empty magazines inside of a portable oven in the master bedroom. The gun appeared to be brand new with tags on and never fired.



Gun Box



- One box of Winchester 30-30 win. ammunition (18 pcs.) was located in a dresser drawer in the master bedroom.

### **OFFICER JANET CUSIMANO**

On March 24, 2015 at 7:40 p.m., Ofc. Cusimano was contacted by phone by Sgt. McFadden. She was told that a San Jose Police Officer had been killed in the line of duty. She was asked to return to the police department to assist with the homicide and officer involved shooting investigation.

Ofc. Cusimano arrived at the police department at 8:20 p.m. She and Ofc. Borges were assigned to take photographs and process the officers that were present during the homicide of Ofc. Johnson and involved in the officer involved shooting. She was advised that only Ofc. Potwora fired his weapon at the scene.

At 9:04 p.m., Ofc. Douglas Potwora arrived on the third floor of the Police Administration Building. Ofc. Cusimano escorted him into the Technical Evidence Room. She asked him if he had been injured during the altercation. Ofc. Potwora indicated that his left ear was still ringing from when Ofc. Johnson was shot. Ofc. Cusimano asked him if he could recall how many rounds he fired and in what direction. Ofc. Potwora indicated that he fired five rounds from his carbine rifle and he fired them in an easterly direction.

Ofc. Potwora was wearing his department issued navy blue BDUs at the time of the shooting. He had additional knee pads and a rifle magazine holder attached to his left leg. Ofc. Potwora was covered in blood as a result of the shooting of Ofc. Johnson, the majority of the blood was on his left side. Ofc. Cusimano took photographs of Ofc. Potwora.

Ofc. Cusimano collected Ofc. Potwora's BDU shirt, gun belt, radio, rifle magazine holder and knee pads. These items were placed inside the Technical Evidence Room and allowed to dry. At 9:17 p.m., Ofc. Potwora left the Crime Scene Unit to take a shower in the men's locker room. Ofc. Borges followed Ofc. Potwora to the men's locker room to recover his BDU pants and boots.

At 9:20 p.m., Ofc. Cusimano located Ofc. Katie Reyes on the third floor of the Police Administration Building. She escorted Ofc. Reyes to the Technical Evidence Room at 9:22 p.m. Ofc. Cusimano asked Ofc. Reyes if she had been injured during the altercation. Ofc. Reyes advised that she was uninjured and did not fire her duty weapon at the scene. Ofc. Reyes did not have her weapon out at the time of the shooting because she was assisting Ofc. Potwora by securing the rifle magazine pouch to Ofc. Potwora's leg when Ofc. Johnson was shot and killed.

Ofc. Reyes had Ofc. Johnson's blood in her hair and on the back side of her duty uniform shirt. Ofc. Reyes advised Ofc. Cusimano that officers at the scene were wiping her back off prior to her having arrived at the police department.

Ofc. Cusimano collected Ofc. Reyes uniform shirt and placed it in the Technical Evidence Room and allowed it to dry.

At 9:41 p.m., Ofc. Cusimano and Ofc. Borges photographed the following officers on the third floor of the Police Administration Building:

Reserve Officer Mark Willis  
Officer Armando Ramos  
Officer Yvonne Delacruz  
Sergeant Erin Fong  
Officer Manuel Ochoa, Jr.  
Sergeant Todd Cleaver  
Officer Don Guess  
Officer Christian Balala

All of the above-listed officers indicated that they had no physical injuries and did not fire their weapons at the scene.

At 10:10 p.m., Ofc. Cusimano took digital photographs of Ofc. Shawn McCarthy, who advised that he had no physical injuries and did not fire his duty weapon at the scene.

On March 25, 2015 at 1:45 a.m., Ofc. Cusimano was asked by Det. Smith to download a video that was taken of the incident by witness Luis Mancilla's cell phone. Det. Smith provided her with an HP Elite book 840 laptop computer and an Apple iPhone 6. Ofc. Cusimano was able to obtain video from both items. Witness Mancilla gave consent to download the video from both items, including providing the password to enter his cell phone.

At 2:40 a.m., Ofc. Cusimano was asked by Det. Tanner to download the cell phone of Mrs. Dunham. Mrs. Dunham gave consent to cellebrite her Apple iPhone 4S cell phone. She provided her password. Ofc. Cusimano finished processing the cell phone at 4:05 a.m. She was able to obtain call logs, contact list, photos and text messages.

At 5:15 a.m., Ofc. Cusimano arrived on scene at Senter Rd. and Umbarger Rd. to assist in processing evidence. She was asked to transport Ofc. Johnson and Ofc. Potwora's carbine rifles back to the police department. She located both weapons in the Crime Scene main rig and took

them back to the police department where she placed them inside the Technical Evidence Room at 6:40 a.m. Both officers used Colt Law Enforcement Carbine 5.56mm semi-automatic rifles. Ofc. Johnson's rifle had attached flashlight, scope & nylon gun sling. His rifle had 1 cartridge in the chamber and 29 in the magazine. Ofc. Potwora's rifle had attached flashlight and scope. Ofc. Potwora's rifle had 1 cartridge in the chamber and 23 in the magazine.

### **MEDICAL EXAMINER**

On Thursday, March 26, 2015, Medical Examiner Doctor Joseph O'Hara performed an autopsy on the body of 57 year old Scott Irwin Dunham. The following pathological diagnoses were noted:

A distance range gunshot wound of the head without exit. The bullet traveled from the front to the back, slightly left to right and slightly upward. A 14 grain orange jacketed missile was recovered from the right side of the posterior fossa.

Puncture wounds and abrasions due to postmortem law enforcement agency canine activity were noted. These included multiple postmortem abrasions and lacerations, including to the left shoulder and upper arm area, the right and left sides of the chest, and the left and right thighs.

Blunt force injuries which included multiple lacerations and abrasions of the face and abrasions and contusions of the extremities.

Atherosclerotic cardiovascular disease.

Systemic hypertension.

Marked diffuse emphysematous change.

Acute mixed drug intoxication.

Toxicology: Dunham tested positive for Ethanol (.177 BAC), Acetaminophen, Caffeine, Diazepam (benzodiazepine), Nordiazepam (pharmacologically active metabolite of several benzodiazepines, including diazepam), Delta-9 THC (active ingredient in marijuana), Delta-9 Carboxy THC (inactive metabolite of THC), Dihydrocodeine/Hydrocodol – Free (opiate analgesic), Hydrocodone – Free (semisynthetic narcotic analgesic), Paroxetine at near toxic levels (antidepressant), and Quetiapine (antipsychotic compound).

The cause of death was distance range gunshot wound of the head.

On Wednesday, March 25, 2015, Medical Examiner Doctor Joseph O'Hara performed an autopsy on the body of 38 year old Michael Jeremiah Johnson. The cause of death was a distance range gunshot wound.



## CRIMINAL RECORD OF SCOTT DUNHAM

Dunham was born on July 2, 1957. On November 16, 1976, he was convicted of illegal exhibition of speed in violation of Vehicle Code section 23109(b). That same date, in a different case, he was also convicted of a misdemeanor failure to appear in violation of Vehicle Code section 40508(a). On November 26, 1976, Dunham was convicted of misdemeanor reckless driving in violation of Vehicle Code section 23103. He had originally been arrested for driving under the influence of alcohol.

On April 6, 1979, Dunham was convicted of being drunk in public in violation of Penal Code section 647(f). On April 19, 1979, Dunham was convicted of driving under the influence of alcohol in violation of Vehicle Code section 23102(a).

On July 17, 1996, Dunham was convicted of misdemeanor battery in violation of Penal Code sections 242/243(a). The charge was dismissed on August 17, 2006 pursuant to Penal Code section 1203.4. The conviction arose as a result of the incident described below.

On February 20, 1996, Santa Clara County Sheriff's Deputies responded to the home of Scott and Altheia Dunham in response to a 9-1-1 call from Mrs. Dunham. Mrs. Dunham was calling from a neighbor's home. Mrs. Dunham told deputies that Dunham had an alcohol problem and he got angry and violent after drinking. She said that on that day an argument began because Dunham burped in her face and would not clean up some salmon from the couch. Mrs. Dunham yelled at him and Dunham got up to go to the bedroom. As she started to follow him, Dunham pushed her while they were in the hallway. A fight started in which Dunham hit Mrs. Dunham in the head with a closed fist. They both struggled and fell to the floor in the hallway. At one point, Mrs. Dunham's elbow punched a hole in the wall. Dunham was on top of her choking her for a short time. Mrs. Dunham and her daughter, Katrina, age 15 at the time, left the house. Mrs. Dunham said she felt pain from being hit and choked by Dunham.

Katrina said she saw her parents struggling on the floor and Dunham was choking her mother. Katrina tried to pull him off and he pulled her hair. Dunham also tore Katrina's sweater. Katrina threw a book at her father while he was on top of her mother, but she missed and hit her mother in the face with the book instead.

After talking to Altheia and Katrina Dunham at the neighbor's home, deputies went to the Dunham residence. After announcing themselves and receiving no response, they entered. They located Dunham lying on his bed. He had a buck knife in a sheath on his belt. The deputies ordered Dunham to get off the bed and place his hands behind his back because he was under arrest for battery. He refused. Deputies ordered him three times to comply and he continued to refuse. They finally told him that if he failed to comply, O/C spray would be used on him. Dunham responded "go ahead and spray me". A deputy used his O/C spray on Dunham who then complied.

Dunham's face was decontaminated at the kitchen sink in his home. Deputies attempted to Mirandize him, but he refused to respond. Mrs. Dunham said that she did not want prosecution.

She just wanted Dunham out of the house for the night. Katrina also said that she did not want prosecution. Both declined medical attention. The only injury either exhibited was a small red mark under Mrs. Dunham's eye that she received as the result of the book thrown by Katrina.

#### **ADDITIONAL INFORMATION ABOUT SCOTT DUNHAM**

On February 9, 2006, at 12:42 p.m., Dunham was seen at Santa Clara Valley Medical Center after having taken 30-40 tablets of Valium (10 mgs) at 9:30 a.m. Dunham indicated that he had an argument at work and "wanted to sleep". He had no acute complaints as a result of the ingestion and had not vomited. A doctor noted that Dunham was very dependent on Valium to have ingested such a large amount without displaying symptoms. He was treated with charcoal. His past medical history indicated that he suffered from hepatitis-C and depression.

On November 3, 2011, Dunham was seen by a psychologist at Kaiser in San Jose. He complained of anxiety, including excessive worry, muscle tension, hypervigilance and difficulty staying asleep. He also described panic, including shortness of breath and shaking lasting about 30 minutes. Dunham indicated that he took Seroquel and had been recently diagnosed with borderline diabetes. Dunham wondered if the diabetes could be caused by the Seroquel. Dunham stated he had been told he was bipolar, but that the person who diagnosed him said it still needed to be confirmed. He believed the diagnosis was the result of the overdose that had happened 6-7 years earlier. Dunham told the psychologist that he was not depressed, but does experience some anxiety. He reported that he does not like the "outside world" and prefers to stay at home, describing himself as a "recluse". He attributed his feelings to not liking the violence. He indicated that his car was shot at. Dunham said he avoided all social contacts because most of his old friends were drug users and he wanted to "stay out of trouble".

In his past psychiatric history, Dunham indicated that he had received drug treatment at East Valley Stride for marijuana. He also described his 2006 hospitalization for the drug overdose, which he attributed to the effect of Interferon that he was taking because he was not a suicidal person.

Under social history, Dunham described a "pretty good relationship with wife", with most disagreements being about their adult daughter and grandkids. He indicated that his mother left when he was 5-6 years old. He and his two siblings went into foster care and became wards of the State. Dunham said he was in over 15 foster homes. Dunham also indicated he had engaged in domestic violence against his wife about 6 years prior and completed a DV program. He reported that he was sexually abused by a worker in a group home when he was a child and nothing was done about it.

In his medical history, Dunham included hepatitis-C, hyperlipidemia, chronic pain syndrome, chronic bronchitis, hypertension, and bipolar disorder.

In substance abuse screening, Dunham stated that he drank 3-4 beers per day and used three cannabis joints a day. He said that he tried to eat it because he has COPD. He described past usage of methamphetamine, crystal, PCP and heroin. He claimed that he had not used those drugs in 15 years.

Dunham denied being suicidal, homicidal or having access to guns.

On November 18, 2011, Dunham decided to stop taking Seroquel.

On January 16, 2012, Dunham and his wife told a doctor at Kaiser that after Dunham stopped taking Seroquel he began to experience symptoms of depression and anxiety. Dunham was prescribed Zoloft and Klonopin to help with the symptoms.

On February 15, 2012, Dunham said he could not tolerate Zoloft and had been experiencing a lot of side effects, including tremors, gastrointestinal upset, insomnia and an increase in anxiety and irritability. Dunham was told to stop Zoloft, start with Remeron and Trazodone, and continue with Klonopin.

On March 12, 2012, Dunham never started taking Remeron and instead restarted Seroquel.

On May 13, 2013, Dunham still reported taking Seroquel and Klonopin for his anxiety. He also indicated that he was experiencing an increase in his anxiety level and more sleep problems because his disability was scheduled to end in June and he did not believe he could find a job due to his physical limitations.

October 28, 2013, Dunham said he was doing well overall except for a slight increase in anxiety and depression. His stress level was higher because of ongoing problems with his Workers' Compensation case. He obtained an increase in the dosage of Seroquel.

January 20, 2014, Dunham again reported an increase in his anxiety level despite the increased dosage of Seroquel. He told his doctor that the Klonopin was not helping much and he wanted to switch to Valium because that had been helpful in the past. Dunham was anxious because his disability was going to terminate in June and he was not sure about his coverage and income after that. Dunham's Seroquel dosage was increased again and he was given a prescription for Valium as needed.

On April 24, 2014, Dunham continued to report a high level of anxiety, racing thoughts and difficulties around social situations. Dunham did not want to increase his Seroquel, so Paxil was added to his other medications.

On June 23, 2014, Dunham was still anxious as the result of his Workers' Compensation case. He reported a lot of financial difficulties due to his inability to work. He indicated that he had missed making his mortgage payment for the first time. His Paxil dosage was increased.

On August 19, 2014, Dunham said he was improving slightly. He admitted that he never increased his Paxil dosage after the previous appointment, but he was feeling less anxious.

Dunham was seen on January 20, 2015. He said that he was doing "more or less" okay. Dunham reported physical problems related to his upper respiratory tract that he was working with his primary care provider to resolve. Dunham said he was tired during the day but all his lab work

was normal. Dunham had been denied for long term disability but his attorney was appealing the decision. He denied having any new symptoms.

The January 20, 2015 visit was the last medical visit for which documentation was received. On that date, his psychiatric diagnosis was generalized anxiety disorder and depression, unspecified. On January 20, 2015, Dunham's "Current Medications" were listed as: Valium (5 mg, 1 tablet orally 2/day when needed), Seroquel (100 mg, 1 tablet orally 2/day), Norco (5-325 mg, 1 tablet orally every 8 hours when needed for pain), Paxil (20 mg, 2 tablets orally at bedtime, Spiriva with Handihaler (18 mcg Inhl Cap w/device, inhale contents of 1 capsule daily using handihaler), Hyzaar (50-12.5 mg, 1 tablet orally every morning), Lidocaine 5% topical cream (apply topically 3-4/day to affected areas), Flonase (50 mcg, inhale 1 spray in each nostril 2/day), Albuterol (90 mcg, 2 puffs orally every 4 hours when needed for shortness of breath), Singulair (10 mg, 1 tablet orally every bedtime), Motrin (500 mg, 1 tablet orally 3/day as needed for pain), Flexeril (5 mg, 1 tablet orally 3/day as needed for muscle spasm), Meladox (3 mg, 1 tablet orally at bedtime when needed for sleep. Dunham's "Patient Active Problem List" included: hyperlipidemia, chronic pain syndrome, chronic bronchitis, hypertension, bipolar disorder, atrial premature beats, prediabetes, asthma with COPD, sleep apnea, esophageal stricture, history of colonic polyp, liver hemangioma, atherosclerosis aorta, and a history of hepatitis-C.

On March 23, 2015, the day before the incident giving rise to this report, Dunham refilled three of his prescriptions based upon a receipt that was found in his wallet. One of the three prescriptions filled was for Seroquel. It is not known what the other two were.

### **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, such a review should not be interpreted as expressing an opinion on these matters.

Possible criminal charges against an officer involved in a fatal shooting include murder (Penal Code section 187) and voluntary manslaughter (Penal Code section 192). In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Banks* (1977) 67 Cal.App.3d 379.) 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 found in Penal Code Section 197: use of force in self-defense/defense of others.

#### **Penal Code Section 197: General Right to Self-Defense**

California law permits all persons to use deadly force to protect themselves from the threat of death or great bodily harm. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others. The relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470

permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that great bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

One may resort to the use of deadly force in self-defense where there is a reasonable need to protect oneself from an apparent, imminent threat of death or great bodily injury. Perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) “Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. The person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.)

Reasonableness and immediacy of threat are intertwined. Self-defense “is based on the reasonable appearance of imminent peril of death or serious bodily injury to the party assailed...” (*People v. Turner* (1948) 86 Cal.App.2d 791, 799.)

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: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 793).

What constitutes “reasonable” self-defense 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).

## ANALYSIS

This report is limited to the behavior of the “involved” officer: Officer Douglas Potwora. We carefully examined his recorded statement outlining the events that culminated in the shooting of Scott Dunham as well as the statements of every law enforcement and civilian witness to the event, all video recordings of the incident, Dunham’s prior criminal record, Dunham’s medical records, and the physical evidence collected from the scene and during the autopsy.

### **Penal Code Section 197: General Right to Self-Defense**

Determining whether Ofc. Potwora was legally justified under principles of self-defense and defense of others to discharge his firearm involves a two-part analysis: (1) whether his belief in the need to protect himself, the other officers in his vicinity, and an unknown number of civilians

in the area surrounding Senterville Terrace from an apparent, imminent threat of death or great bodily injury was objectively reasonable, and (2) whether he did subjectively and honestly believe he needed to protect himself and others from an apparent, imminent threat of death or great bodily injury.

The following facts establish that Ofc. Potwora's fear of imminent danger was objectively reasonable.

On March 24, 2015, Ofc. Potwora was working patrol in the City of San Jose. At approximately 6:48 p.m. that evening, he was notified of a call for a welfare check regarding a male who was intoxicated, armed, and possibly suicidal. Ofc. Potwora responded to the scene at 2664 Senter Rd. When he arrived, he saw Ofc. Johnson in a position of cover behind a parked vehicle with his rifle pointed up toward a second story balcony. Ofc. Johnson was accompanied by Ofc. Reyes, who was armed with a handgun. Ofc. Potwora, a Specialist for the San Jose Police Department, took his AR-15 rifle from his trunk and joined Ofc. Johnson to provide cover for other officers on scene. As Ofc. Potwora discussed the scene with Ofc. Johnson, he saw Dunham come out on the balcony. When Ofc. Potwora yelled instructions to Dunham to show his hands, Dunham ducked down, hiding himself from police view. Within 5 seconds, Dunham opened fire, shooting and killing Ofc. Johnson who was immediately to Ofc. Potwora's left. The proximity of the two officers was so close that Ofc. Potwora was sprayed with Ofc. Johnson's blood, causing Ofc. Potwora to believe that he, too, had been hit.

Despite the incredibly stressful situation of having been fired upon and, in his peripheral vision, seeing Ofc. Johnson go down, Ofc. Potwora reacted quickly and professionally to continue to provide cover so that Dunham would not have the opportunity to shoot either Ofc. Potwora or any of the numerous other officers and civilians in the area. At that point, with Ofc. Johnson having been shot, Ofc. Potwora was the only individual with a rifle who was providing cover for those on the ground.

Showing both restraint and presence of mind, Ofc. Potwora maintained his concentration on the balcony. Ofc. Potwora was not able to see Dunham at the time Dunham shot and killed Ofc. Johnson. However, within seconds, Ofc. Potwora saw Dunham pop up over the balcony railing with a large black object in his hand. Ofc. Potwora fired two shots at Dunham to prevent him from being able to shoot at the officers and civilians on the ground. Dunham went back into hiding. Ofc. Potwora again maintained his focus on the balcony while moving himself into a somewhat safer position. When Dunham again showed himself above the balcony railing, Ofc. Potwora fired an additional two shots. Again, Dunham went back into hiding. Ofc. Potwora then determined that he would use his scope and focus his next shot on the location where Dunham had twice previously appeared above the railing. When Dunham showed himself again, Ofc. Potwora fired a single shot and saw Dunham's head appear to snap back as if hit. Dunham then fell from view in much the same way he had done on the prior occasions. Since there was no other confirmation that Ofc. Potwora's fifth and final shot had hit Dunham, Ofc. Potwora maintained his position and focus to insure not only his safety but the safety of those around him. He stayed in that position while joined by Sgt. Cleaver and until he was relieved by San Jose MERGE Units.

At the time that Dunham shot and killed Ofc. Johnson, police, with the assistance of Dunham's wife, were attempting to contact him by cell phone and resolve the situation peacefully. Rather than answer the phone and talk, Dunham opened fire on the officers below. After having killed Ofc. Johnson, he did not go back into his home and telephone his wife. He did not call down to the officers to surrender. Instead, he continued to rise up above the balcony wall with a loaded rifle in his hands. The only thing preventing him from firing the rifle again was the quick action of Ofc. Potwora.

As for part two of the analysis, the facts described above all corroborate Ofc. Potwora's statement that he fired his weapon out of fear for the danger Dunham posed to his life and the lives of those around him. Dunham appeared not only determined to die at the hands of the police that evening, but equally determined to first take as many police officers' lives as he could. Ofc. Potwora's actions on March 24, 2015 prevented further loss of life.

This investigation revealed nothing that undermines the credibility of Ofc. Potwora. The statements of all officers on scene, and the actions of Dunham himself, attest to the fact that had Ofc. Potwora not engaged his weapon when he did, Dunham would, in all likelihood, have continued to fire on the officers below, endangering their lives as well as those of the civilians in the surrounding area. This conclusion is supported by the fact that, of the three guns available to him in the apartment, Dunham chose the rifle. When Mrs. Dunham left their home, Dunham was holding the 9mm handgun. After she left, he went into her closet, searched for and found the 30-30 rifle. He then sought out ammunition for the rifle and loaded it. He chose the firearm that would do the most damage and be the most accurate when shooting at the officers on the street. Furthermore, after firing the shot that killed Ofc. Johnson, Dunham ejected the casing from the lever action rifle and then rechambered another round, preparing the rifle to take another shot. In light of the danger posed by Dunham, there can be absolutely no doubt as to the necessity of the actions taken by Ofc. Potwora on March 24, 2015.

### CONCLUSION

Under the facts, circumstances and applicable law in this matter, Officer Potwora's use of force was in response to an immediate threat of great bodily injury or death. In fact, had Ofc. Potwora not reacted as he had, despite the incredibly stressful situation in which he found himself, it seems obvious that additional officers and/or civilians would have lost their lives that night. Therefore, his conduct is legally justifiable and no criminal liability attaches.

Dated: May 5, 2016

Respectfully submitted by Deputy District Attorney Carolyn Powell.

Approved by,



JEFFREY F. ROSEN  
District Attorney