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S A N J O A Q U I N C O U N T Y**

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MEMORANDUM

TO: MARK HELMS, CHIEF
LODI POLICE DEPARTMENT

FROM: ROBERT HIMELBLAU, DEPUTY DISTRICT ATTORNEY
SAN JOAQUIN COUNTY

DATE: SEPTEMBER 14TH, 2011

SUBJECT: DAVID ANGELO PARADISO

Pursuant to the provisions of the San Joaquin County Officer-Involved Critical Incident Protocol, effective August 1, 1994, the responsibility of the Office of the District Attorney is to review the facts and determine what, if any, criminal charges should be filed whenever there is an officer-involved fatality or life threatening incident.

This memorandum reviews the fatal shooting on March 4, 2009, of David Angelo Paradiso. This protocol investigation was jointly conducted by the San Joaquin County District Attorney's Investigations Unit, the Stockton Police Department, the Lodi Police Department, the San Joaquin County Sheriff's Office, and the California Department of Justice.

FACTUAL SUMMARY

Underlying Crime

On December 3, 2006, Eileen Pelt, of Auburn, CA, and David Paradiso, (hereinafter referred to as "Defendant.") drove to Oakland from Sacramento, California. Defendant and Ms. Pelt had only recently met two weeks prior. Once in Oakland, they smoked marijuana with an acquaintance of Ms. Pelt.

After a short while, Defendant and Ms. Pelt left and drove to Grass Valley ending up at the home of Alfred Castillo sometime after midnight. At the Castillo home, Defendant and Ms. Pelt smoked crystal methamphetamine with other residents at the home. Defendant and Ms. Pelt finally left around 5:00 a.m. From Grass Valley, Defendant and Ms. Pelt drove to the home of Defendant's mother, Debra Paradiso, on Baldwin Lane in Stockton.

At 1:54 p.m, Ms. Pelt called her sister to say she would be returning soon to her job at Applebee's Restaurant in Auburn. Debra Paradiso, however, claims that they were all to drive to Defendant's father's home in Lodi and that she was to drive them there.

According to Mrs. Paradiso, she drove Defendant and Ms. Pelt to Lodi. Both Defendant and Ms. Pelt sat in the back seat on the drive. When they arrived at their destination, Mrs. Paradiso turned around to say goodbye and saw a large hole in the right side of Ms. Pelt's neck. The hole appeared to have been caused by a "Navy Seal" style survival knife wielded by Defendant. As she looked at Ms. Pelt, Defendant said "Now what can you do?" Mrs. Paradiso then heard Ms. Pelt calmly say to Defendant, "Why did you do that?"

Defendant then ordered his mother to drive off or he would stab her too. She drove to a remote location near Pioneer in Amador County where Defendant dumped Ms. Pelt's body off the side of the road.

Defendant and Mrs. Paradiso returned to Lodi where he was dropped off before leaving the area in her car. Mrs. Paradiso contacted attorney Jeff Hirschfield and soon after both went to the Lodi Police Department where Ms. Paradiso gave a statement about Ms. Pelt's stabbing to Lodi Police Detective Eric Bradley. After she gave her statement and left the Lodi Police Department, Mrs. Paradiso called back after midnight to report that Defendant was in the Rio Vista area. The Rio Vista police were alerted and it was not long before a police officer spotted Defendant. An attempt was made to pull Defendant over, which resulted in a high speed chase reaching speeds of over 125 mph. Ultimately, Defendant was captured and arrested off of Hwy 88 and Alpine Road in Stockton.

After his arrest and transfer to the Lodi Police Department, Defendant asserted his right to be silent, but did agree to show police where he had disposed of Ms. Pelt's body. Although no mention of a sexual assault was made by police, Defendant nevertheless volunteered "Since you guys are going to find [sic], are going to find out anyways, I want you to know we had sex earlier today. It was consensual. I don't want ya thinking I raped her."

When Ms. Pelt's body was found, her pants were pulled down to her calf area. Defendant claimed the consensual sex happened in his mother's car but during the trial he claimed the consensual sex took place in an orchard sometime when he and Ms. Pelt were in Lodi that day.

Dr. Robert Lawrence performed the autopsy on Eileen Pelt. His finding showed that Ms. Pelt suffered a fatal entry stab wound to her right neck, which exited her right upper back, just below the shoulder. In addition, two separate knife marks on Ms. Pelt's neck indicated that the

knife was twisted into the neck. Moreover, Ms. Pelt had three knife tip puncture wounds to her right upper thigh and buttocks area that also indicated the knife was being twisted.

COURT CASE SUMMARY

On December 5th, 2006, Defendant was arrested.

On December 7th, 2006, a complaint was filed against Defendant charging one count of Murder, Kidnapping and Evading Police. Additionally, Defendant was charged with using a knife and having three prior prison terms. Deputy District Attorney Kevin Mayo was assigned to prosecute Defendant and, soon after, Attorney Charles “Chuck” Pacheco was retained to defend Defendant.

On May 16th, 2007, after the preliminary hearing, Defendant was bound over for trial on all counts and was arraigned on an information May 30th, 2007.

On February 11th, 2009, the jury trial began in Department 21, San Joaquin County Courthouse at 222 East Weber Avenue in Stockton, California, before San Joaquin County Superior Court Judge Cinda Fox. Soon after that date, a jury was sworn and testimony began.

Before the completion of the trial, Defendant David Paradiso attacked Judge Fox with a sharpened weapon and was shot and killed by Detective Eric Bradley in Department 21.

On March 30th, 2009, by operation of law, San Joaquin County Superior Court Judge Bernard Garber dismissed all charges against Defendant.

INVESTIGATIVE SUMMARY

Facts Leading to and including Shooting

By March 4th, 2009, the trial against Defendant David Paradiso for the murder of Eileen Pelt was in its 2nd week of testimony. The prosecution having rested its case, Defendant had taken the stand in his own defense. Deputy District Attorney (DDA) Kevin Mayo was to resume his cross-examination that morning, however, by stipulation of the parties, Chuck Pacheco was allowed to call witnesses prior to Defendant re-taking the stand.^a Dr. Gary Cavanaugh, a psychiatrist, testified first.

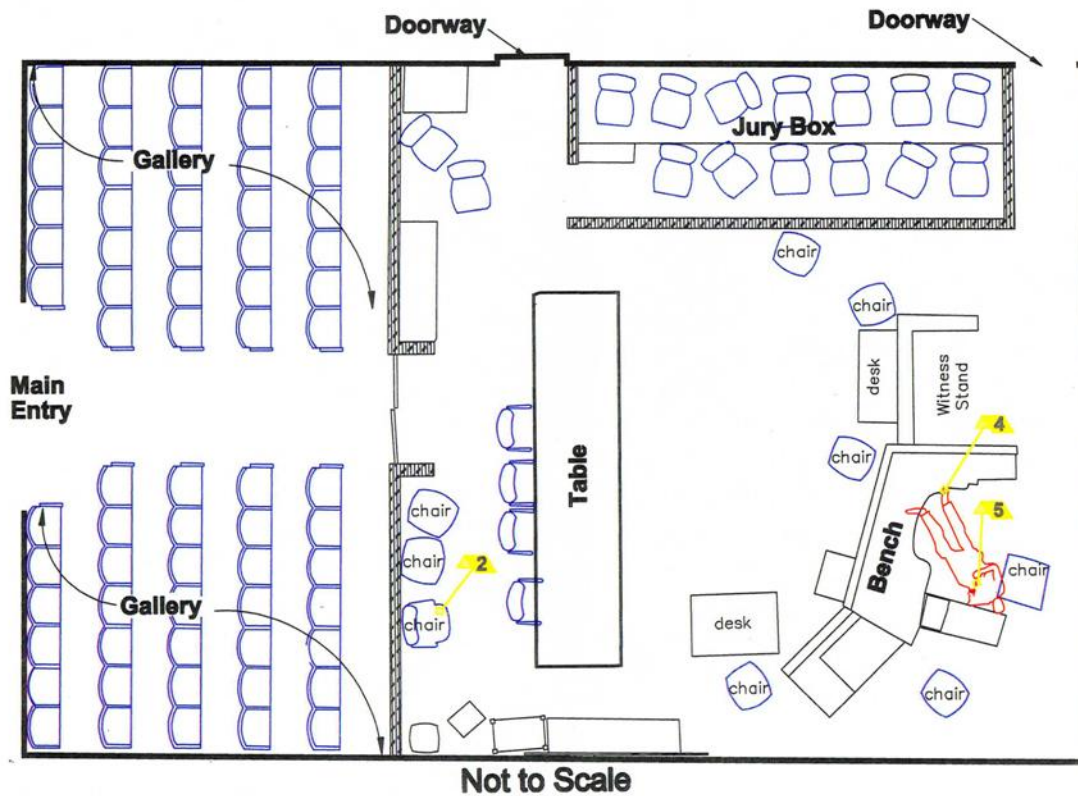
Dr. Cavanaugh’s testimony, both on direct and cross-examination lasted the entirety of the morning session and into the noon hour. After Dr. Cavanaugh finished, Judge Cinda Fox called for the lunch recess and ordered the trial to resume at 1:45 P.M.

After the noon recess, all parties returned including the jurors and Lodi Police Detective Eric Bradley.^b In addition to the court staff, (clerk, court reporters, and bailiffs), a number of spectators were present. These spectators included family members of the Defendant, Ms. Pelt, a juror and the Judge. Members of the district attorneys’ office and press^c were present as well.

^a Calling witness out of order is not uncommon in criminal trials. Often, witnesses have conflicting schedules and the parties usually agree to interrupt one witness for the testimony of another as a matter of professional courtesy and convenience.

^b Each party, by law, is allowed an investigating officer to remain at counsel table during the pendency of a trial. It is customary in San Joaquin County that the lead investigating officer in the matter being tried sits at counsel table with the prosecutor in all jury trial cases. Detective Bradley was designated as the investigator officer by Judge Fox and sat at counsel table at the outset of the trial.

^c Layla Bohm, reporter for the Lodi New Sentinel, wrote of her observations, which appeared in her newspaper: http://www.lodinews.com/news/article_f338cb94-8f77-5625-9ab9-2b7028015b7e.html. Record reporter Keith



Department 21 Diagram

The court was called to order at 1:45 p.m. and Mr. Pacheco called two law enforcement officers to buttress Dr. Cavanaugh's earlier testimony. Their testimony was short and Defendant was soon asked by Judge Fox to resume his testimony under cross-examination.

Defendant turned to his attorney and stated he did not want to resume testifying. Sensing an issue, Judge Fox excused the jury from the courtroom and requested to see DDA Mayo and Mr. Pacheco in her chambers. After a brief discussion^d, the Judge and attorneys returned to the courtroom. Mr. Pacheco spoke to Defendant and Defendant acquiesced and retook the witness stand. At approximately 2:00 p.m. San Joaquin Sheriff's Deputy Justin Fearn escorted Defendant from his seat at counsel table to the witness stand. As is customary, Defendant was wearing civilian clothing and not his jail garb. Underneath his clothing, Defendant was outfitted

Reid, reporter for the Stockton Record, wrote of his observations, which appeared in his newspaper:

http://www.recordnet.com/apps/pbcs.dll/article?AID=/20090305/A_NEWS/903050339/-1/A_SPECIAL0259

^d In chambers Judge Fox ruled that if a witness testifies on direct examination and refuses to be subject to cross-examination, then, by law, the entirety of the testimony is stricken from the record and a trier of fact, judge or jury, is required to ignore that testimony.

with a security leg brace.^e As he walked to the stand, Defendant fidgeted with his right leg where the security leg brace was affixed. After Defendant sat in the witness chair, Deputy Fearn remained at his left side^f between Defendant and the jury box. Once Defendant was seated, the jury was called back in.

DDA Mayo began the cross-examination of Defendant. Defendant's demeanor was noticeably different. In days past, Defendant was calm and quiet, showing little reaction to the testimony or evidence. Now, Defendant seemed more tense and angry. The prior day, Defendant testified that he had killed Ms. Pelt and DDA Mayo began essentially, where they had left off.

Q: And what is your reasoning for not [calling 9-1-1 after stabbing Ms. Pelt]?

A: Because she deserved to die

Q: She deserved to die. What did she do to you that caused her to deserve to die?

[seven second pause]

A: She couldn't suck dick good.

Q: Did you tell her that before you killed her?

A: No, I just killed her.

Debra Paradiso then exclaimed from the audience, "I told you he didn't want to [testify]!" At Judge Fox's direction, San Joaquin Sheriff's Deputy Willis Smith moved toward Mrs. Paradiso in order to escort her from the courtroom. Detective Bradley moved to assist but was requested by Deputy Smith to stay behind to assist with security if needed. Mrs. Paradiso moved on her own towards the courtroom doors with Deputy Willis following her. As the doors opened, Defendant's brother was outside^g and began yelling, "Mistrial!"

Detective Bradley returned to counsel table and briefly spoke to DDA Mayo about the upcoming line of questioning. Defendant remained seated but was looking to his right and left as if he were scanning the courtroom. Deputy Smith returned to the courtroom as Mr. Pacheco was asking the court for a hearing on what had just happened. Judge Fox asked Deputy Smith to locate a free room for the jury so that the Court and counsel could discuss the commotion. Judge Fox instructed the jury to follow Deputy Smith and as the jury stood to leave through the side door, Defendant, who had been seated this entire time, stood up. Deputy Fearn told Defendant to sit down, as did Mr. Pacheco. Detective Bradley, as did others, saw Defendant move his chair and step backwards until his back was against the wall nodding negatively to commands to sit down. As Defendant was being told to sit down, he furtively put his right hand in his right pants pocket and retrieved a knife.^h

As soon as Defendant took out the knife, he turned and moved towards Judge Fox. Deputy Fearn attempted to place his hand on Defendant's back but missed. Detective Bradley moved from his spot at the right of DDA Mayo, around the left side of counsel table, and towards Paradiso. Before Detective Bradley reached the witness stand, Defendant had already

^e See, "Security," section below for a more detailed description.

^f All directions are oriented facing the witness stand.

^g Aaron Paradiso had been previously removed from the courtroom during the trial by Judge Fox for disruptive behavior.

^h The "knife" that was described as a blade or knife by numerous witnesses was a so-called "shank". A shank is slang for a home-made knife usually made in a jail or prison setting. See "Weapons Analysis", section below for more details on the knife.

reached the judge. With his free hand, Defendant grabbed Judge Fox and with his right hand he stabbed Judge Fox in the neck. As Judge Fox tried to avoid the knife, she ended up with her back on the bench. Defendant stabbed her in a twisting type motion. With Defendant stabbing Judge Fox, Mr. Pacheco moved around his side of counsel table to assist Judge Fox. Detective Bradley had already made it into the well with his gun drawn. Court reporter Jeannie Coffey ducked and fled from the position in front of the witness stand. Student court reporter Alexis McCutchen hid under a table. With a clear shot, Detective Bradley fired one round, aiming at Defendant's chest. The bullet missed, striking the desk between the judge and her court clerk. Defendant continued to thrust the knife at Judge Fox and while still moving forward, Detective Bradley fired a second round. The second round struck Defendant in the right shoulder in the deltoid. Undeterred, Defendant continued stabbing at Judge Fox who was using her hands to defend against the knife thrusts. Detective Bradley had now made it to the bench, and reaching over, he fired a third round directly into Defendant's head.ⁱ

The third shot was fatal and Defendant immediately fell to the ground. Detective Bradley and Deputy Fearn went to where Defendant lay to determine whether he was still a danger. Defendant still gripped the knife in his right hand as he lay dead. After that, Detective Bradley left Deputy Fearn to watch the Defendant as others came to Judge Fox's aid.

WITNESS INTERVIEWS

The individual witness symposia below are to assist the reader in supplementing the above Factual Summary. There are numerous witnesses to this event. While all the witnesses, essentially recounted similar facts, as in most cases, many people may witness the same event yet see or hear it differently.

Lodi Police Detective Eric Bradley

Detective Eric Bradley gave an interview to the Protocol Team on March 4th, 2009 and stated as follows:

Detective Bradley was the lead investigator for Eileen Pelt's murder. During the trial, he acted as the investigating officer and aided DDA Kevin Mayo. After the noon recess on March 4th, 2009, Detective Bradley returned to his seat at counsel table to the right of DDA Mayo. When Defendant David Paradiso was escorted to the witness stand, to resume cross-examination, Detective Bradley noticed Defendant walked with a limp as if his leg was stiff; he had not seen Defendant walk this way before.

When DDA Mayo began his cross-examination, Detective Bradley saw that Defendant's facial expression had changed. Defendant had an intense look on his face that the detective had not seen before. When Defendant answered, "She couldn't suck dick good," Detective Bradley heard a commotion from the gallery including from Debra Paradiso. Detective Bradley looked at Defendant and noticed him scanning the courtroom.

As Deputy Willis Smith went to escort Mrs. Paradiso out of the courtroom, Detective Bradley got up from counsel table and went to assist Deputy Smith. Deputy Smith asked

ⁱ From the time Defendant stood to the final shot was approximately thirteen seconds. The time from the first shot to the third shot was less than 2 seconds.

Detective Bradley to stay inside the courtroom to assist Deputy Fearn who was by Defendant, if necessary.

Detective Bradley returned to counsel table and conferred with DDA Mayo. As he was doing this, he noted that Defendant appeared to be getting more intense and continued to scan the courtroom. He then saw Defendant stand and heard Chuck Pacheco commanding Defendant to sit down. Defendant shook his head, “no,” and moved the witness chair aside. Defendant then reached into his pants pocket and retrieved what appeared to Detective Bradley to be a four to six inch knife or “shank.” Defendant switched the knife from his left hand to his right hand and began moving toward Judge Cinda Fox. As he did this, Detective Bradley started to move towards Paradiso while removing his holstered firearm. Defendant began stabbing Judge Fox forcing her onto her bench. Detective Bradley, believing Defendant was attempting to kill Judge Fox, moved forward, closer to Defendant so that when he fired his weapon the chance someone other than Defendant would be struck would be minimized. With Judge Fox laying on her bench and Defendant standing over her, Detective Bradley fired his first round. Detective Bradley saw a slight backwards movement by Defendant but was unsure the round struck him. Defendant continued to stab Judge Fox and Detective Bradley continued to move forward firing a second round. Defendant, still unfazed, kept stabbing Judge Fox and Detective Bradley was now at the bench. Reaching over, Detective Bradley aimed his third and final shot at Defendant’s head. After seeing Defendant fall to the ground, Detective Bradley enlisted the aid of Deputy Fearn in determining whether Defendant was still alive and securing the immediate area around him.

Judge Cinda Fox

Judge Cinda Fox gave an interview to the Protocol Team on March 5th, 2009 and stated as follows:

Judge Fox was assigned to conduct Defendant David Paradiso’s jury trial. After the noon recess on March 4th, 2009, all parties returned and she took her place at the judge’s bench. When Defendant was escorted to the witness stand, to resume cross-examination, Judge Fox noticed Defendant reaching down on the outside of his leg as if to adjust the security leg brace he was wearing.

DDA Mayo began his cross-examination and Judge Fox noted that Defendant was less calm than he had been when he testified the day before. When Defendant answered, “She couldn’t suck dick good,” Judge Fox heard a commotion from the gallery especially from Debra Paradiso, who began yelling. Deputy Willis Smith responded to the commotion by escorting Mrs. Paradiso out of the courtroom. When he returned, Judge Fox asked Deputy Smith to find a jury room for the jury so that she could deal with the legal ramifications, if any, of the outburst.

As Deputy Smith left to carry out her order, Judge Fox saw Defendant stand up from the witness chair, and heard Deputy Justin Fearn and Chuck Pacheco tell Defendant to sit down. Judge Fox saw Defendant step backwards and immediately saw that he had a four inch knife in his hand. As Defendant advanced toward her, Judge Fox, having heard the manner in which Eileen Pelt was killed, thought that Defendant’s intention was to kill her. Judge Fox believed at that moment that she stood and immediately thereafter heard a gunshot. Judge Fox next found herself lying with her back on the bench. Judge Fox’s next recollection is people telling her that she was safe and that she was injured.

Deputy District Attorney Kevin Mayo

Deputy District Attorney (DDA) Kevin Mayo gave an interview to the Protocol Team on March 4th, 2009 and stated as follows:

DDA Kevin Mayo was assigned to prosecute the case against Defendant David Paradiso for the murder of Eileen Pelt. The case was assigned to Superior Court Department 21 before Judge Cinda Fox. At the outset, DDA Mayo requested that Detective Eric Bradley be designated as an investigating officer and be allowed to sit at counsel table. That request was granted.

After the noon recess on March 4th, 2009, all parties returned and DDA Mayo took his place at counsel table. After Defendant was escorted to the witness stand to resume cross-examination, DDA Mayo began by reiterating Defendant's testimony from the previous day; that Defendant had admitted murdering Eileen Pelt. When Defendant eventually answered, "She couldn't suck dick good," DDA Mayo heard a commotion from the gallery and heard someone yell, "I told you not to have him testify!"

DDA Mayo saw Deputy Willis Smith respond to the commotion but immediately DDA Mayo returned to watch Defendant. As the court staff dealt with the disruption, DDA Mayo briefly consulted with Detective Bradley about further cross-examination. DDA Mayo then noticed Defendant, who had been sitting in the witness chair, stand. DDA Mayo heard someone tell Defendant to sit down. DDA Mayo then watched as Defendant stepped backward, look to his left and then to his right, and remove a knife from his pants pocket. When the knife was revealed, Defendant immediately advanced on Judge Fox and began stabbing Judge Fox in the neck in a "vicious" manner. As she was being stabbed, Judge Fox was calling out, "No, no." Deputy Justin Fearn was behind Defendant and Detective Bradley was moving towards Defendant during this time. After Judge Fox ended up with her back on the bench, DDA Mayo heard the gunshots.

Charles Pacheco

Charles "Chuck" Pacheco gave an interview to the Protocol Team on March 4th, 2009 and stated as follows:

Chuck Pacheco is a criminal defense attorney who was retained by Defendant David Paradiso's family to represent Defendant. After the noon recess on March 4th, 2009, all parties returned and he took his place at counsel table with Detective Eric Bradley to his left and Defendant to his right. When Defendant was to take the witness stand, to resume cross-examination, he told Mr. Pacheco he didn't want to resume the stand. This caused a brief interruption and after a short discussion in Judge Cinda Fox's chambers, Mr. Pacheco spoke to Defendant who then agreed to re-take the stand. Once Defendant re-took the witness stand, DDA Kevin Mayo began his cross-examination. When Defendant answered, "She couldn't suck dick good," Mr. Pacheco heard a commotion from the gallery. Mr. Pacheco had an uneasy feeling and kept his eyes on Defendant.

Mr. Pacheco requested that Judge Fox hold a hearing and the Judge told Deputy Willis Smith to locate a room for the jury. At this time, Mr. Pacheco noticed Defendant's expression become more intense. Deputy Willis began to take the jury out when Defendant stood up. Deputy Justin Fearn told Defendant to sit which Defendant ignored. Defendant looked to his right and to his left and stepped backwards. Mr. Pacheco then told Defendant to sit down. Defendant ignored Mr. Pacheco as well and pulled an object from his pants. Once the object was in his hand, Defendant charged Judge Fox and began stabbing her in the neck with the object. Mr. Pacheco ran around the right side of counsel table to the bench. On his way there, he heard

two gunshots. Mr. Pacheco saw blood on Judge Fox's neck and Defendant grinding the knife into her neck in the same area that Ms. Pelt was stabbed. Detective Bradley appeared and reached over Mr. Pacheco and the bench. Detective Bradley fired one shot into Defendant's chest causing Defendant to immediately collapse to the floor.

San Joaquin County Sherriff Deputy Justin Fearn

Deputy Justin Fearn^j started working for the San Joaquin County Sherriff on February 16th, 2009 and began working as a bailiff on March 3rd, 2009. On March 3rd, he was assigned to assist Deputy Willis Smith in Department 21.

After the noon recess on Mach 4th, 2009, Deputy Fearn assisted Deputy Willis Smith in escorting Defendant into the courtroom. Defendant was seated in his normal place at counsel table and Deputy Fearn sat in a chair directly behind him. When Defendant was to resume his cross-examination, Deputy Fearn escorted him from his seat at counsel table to the witness chair. Once Defendant was seated, Deputy Fearn sat in his own chair behind and to the left of Defendant.

DDA Kevin Mayo began his cross-examination of Defendant and Deputy Fearn noted that Defendant's answers were louder and "weird[er]" than previously. When Defendant answered, "She couldn't suck dick good," Deputy Fearn saw Debra Paradiso stand up in the gallery and walk out of the court while yelling, "I told you he didn't want to testify!" Deputy Smith followed Mrs. Paradiso and Deputy Fearn stood and kept watch over Defendant. Defendant was looking around the courtroom but not at anyone in particular. Defendant then stood. Deputy Fearn told Defendant to sit but Defendant moved around the chair and took a step backwards. Another person yelled for Defendant to sit and for a moment, Deputy Fearn believed Defendant was going to walk towards him. Instead, Defendant went towards Judge Fox. Deputy Fearn went after Defendant but Judge Fox was already on the bench on her back. From his vantage point, Deputy Fearn saw Defendant punch Judge Fox in the general area of her face. Deputy Fearn grabbed at Defendant's shoulder but only touched his shirt and did not grab hold of him. Deputy Fearn then heard two gunshots and felt the blast on his face. Deputy Fearn immediately backed away and saw Defendant collapse to the floor.

Deputy Fearn saw a woman approach Defendant and claim that he was deceased.^k Deputy Fearn looked down and saw a four to six inch knife in Defendant's hand. Detective Eric Bradley was now standing next to Deputy Fearn and once Judge Fox was taken into her chambers, Deputy Fearn left the area ushering any remaining jurors out of the courtroom.

San Joaquin County Sherriff Deputy Willis Smith

San Joaquin County Sherriff Deputy Willis Smith gave an interview to the Protocol Team on March 4th, 2009 and stated as follows:

Deputy Willis Smith had been a bailiff for twelve years and had been assigned to Department 21 for the past three years.

^j Deputy Fearn's only previous law enforcement experience was seven months at the Stockton Police Department Academy. He was not hired due to budget cuts.

^k It is believed that this woman is Martha Larry and is Aaron Paradiso's nurse. Witnesses saw Ms. Larry approach the Judge's bench and declare Defendant deceased. She then turned to assist Judge Fox. Judge Fox recognized her as a member of Defendant's entourage and demanded that she not be let near her. Ms. Larry has refused all attempts to interview her.

After the noon recess on March 4th, 2009, all parties returned. When it was time for Defendant David Paradiso to resume cross-examination, both Deputy Smith and Deputy Justin Fearn escorted Defendant to the witness stand. Deputy Fearn remained seated in a chair between Defendant and the jury. Deputy Smith returned to his station, a desk in front of the court clerk but he remained standing because Defendant was acting “hinky.”

DDA Mayo began his cross-examination and when Defendant answered, “She couldn’t suck dick good,” Deputy Smith saw Debra Paradiso jump up and start yelling, “I told you not to say anything like that, I told you!” Deputy Smith had just put in a call requesting that a Sergeant respond to his location. Mrs. Paradiso left the courtroom with Shelly Galvin. As Deputy Willis Smith went to keep Mrs. Paradiso from returning to the courtroom, Detective Bradley got up from counsel table to assist Deputy Smith. Deputy Smith asked Detective Bradley to stay inside the courtroom to assist Deputy Fearn who was by Defendant, if necessary. Once outside, San Joaquin County Sheriff Sergeant Russell Coleman arrived and took over so Deputy Smith could return to the courtroom.

Once inside, Deputy Smith was summoned to the bench by Judge Fox. Judge Fox told Deputy Smith to remove the jury from the courtroom. Deputy Smith turned and walked to the jury instructing them to follow him. Deputy Smith’s back was to the bench when he heard another commotion. He turned and saw Judge Fox on her bench and Detective Bradley in the court well firing three rounds at Defendant. Deputy Smith saw Defendant lying on the floor with a gunshot wound to the head.

Deputy Smith went to Judge Fox and used some alcohol swabs from a First Aid kit to clean wounds to Judge Fox’s neck. After Judge Fox was taken into her chambers, Deputy Smith radioed for an ambulance.

Shelly Galvin

Shelly Galvin gave an interview to the Protocol Team on March 4th, 2009 and stated as follows:

Shelly Galvin is Defendant David Paradiso’s first cousin on his mother’s side and has regularly attended the trial. After the noon recess on March 4th, 2009, all parties returned and she sat in the third row of the gallery on the right side. To her right was Debra Paradiso. Both of them noticed immediately that Defendant was very “stiff” and seemed different. As DDA Kevin Mayo began his cross-examination, Ms. Galvin noted that Defendant looked “mean.” When Defendant answered, “She couldn’t suck dick good,” Ms. Galvin heard Mrs. Paradiso yell, “I told you he couldn’t take the stand!” Both she and Ms. Galvin left the courtroom but Ms. Galvin returned a minute later and returned to her seat.

Judge Cinda Fox then announced they would be taking a recess. After that announcement, Ms. Galvin saw Defendant stand and put both hands in his pockets. Deputy Justin Fearn told Defendant to sit down. Defendant remained standing and scanned the courtroom. Ms. Galvin then shouted for Defendant to sit down. Defendant then took a step backwards and jumped Judge Fox. Judge Fox ended up on her back fending off Defendant. Ms. Galvin saw Defendant make three or four stabbing motions at the judge. Ms. Galvin believed that Defendant had grabbed a knife that was in evidence and might attempt to kill everyone in the courtroom so she fled. Once outside in the hallway she heard three gunshots.

Juror No. 3 [name redacted]

Juror No. 3 gave an interview to the Protocol Team on March 4th, 2009 and stated as follows:

After the noon recess on March 4th, 2009, all parties returned to the courtroom and she returned to her assigned seat, the third seat from the Judge chamber's on the top row. Defendant was on the witness stand, when DDA Mayo began to resume cross-examination. Defendant appeared to be agitated, his jaw was clenched and, his answers to DDA Mayo's questions were disdainful. When Defendant eventually answered, "She couldn't suck dick good.," Juror #3 saw Mrs. Paradiso stand and walk out of the courtroom yelling, "I told you he did not want to take the stand!"

Juror #3 saw Deputy Willis Smith follow Mrs. Paradiso out of the courtroom and Deputy Justin Fearn stand next to Defendant. As the commotion continued, she saw Defendant stand up and heard Deputy Fearn tell him to sit back down. Defendant stepped backward and reached into his pocket retrieving a small knife blade. Defendant then looked around and moved towards Judge Cinda Fox. Deputy Fearn moved towards Defendant but did not reach him before Defendant had already reached Judge Fox. Judge Fox ended up on her bench in a fetal position as Defendant began stabbing her in the right side of her chest, shoulder and neck. Juror #3 heard shots fired and saw a person at the bench; her thought was it might have been Detective Bradley who fired the shots.

SUBSEQUENT INVESTIGATION**MEDICAL****David Paradiso**

Dr. Bennet Omalu of Delta Pathology performed the autopsy of Defendant on March 5th, 2009.

His examination revealed that Defendant was shot twice. He had a gunshot wound to the right shoulder and two gunshot wounds to the head (an entrance wound and an exit wound). An examination of the the gunshot wound to the shoulder showed the bullet travelling downward and right to left, nicking the aorta, passing by the lung and lodging next to the lateral fourth rib. The examination of the the gunshot wound to the head showed this bullet entering Defendant's right side of his head, travelling downward and right to left, and exiting his left neck. The toxicology report showed that Defendant was under the influence of methamphetamine when he was killed.

Dr. Omalu certified that death occurred as a result of trauma from gunshot wound to the head, neck and trunk.

Judge Cinda Fox

Judge Cinda Fox was given aid by staff at the scene. Emergency Medical personnel arrived shortly and, after administering medical attention, transported Judge Fox to St. Joseph's Hospital.

Judge Fox suffered a penetrating stab wound to her chin near her throat, a lacerating stab wound to her chin, a penetrating stab wound to her front right shoulder, defensive penetrating stab wounds to her left forearm, and numerous bruises and abrasions on her left elbow and left hand.

On January 22, 2010, Judge Fox announced that she would retire on disability as a direct result of the March 4th attack.

WEAPONS ANALYSIS

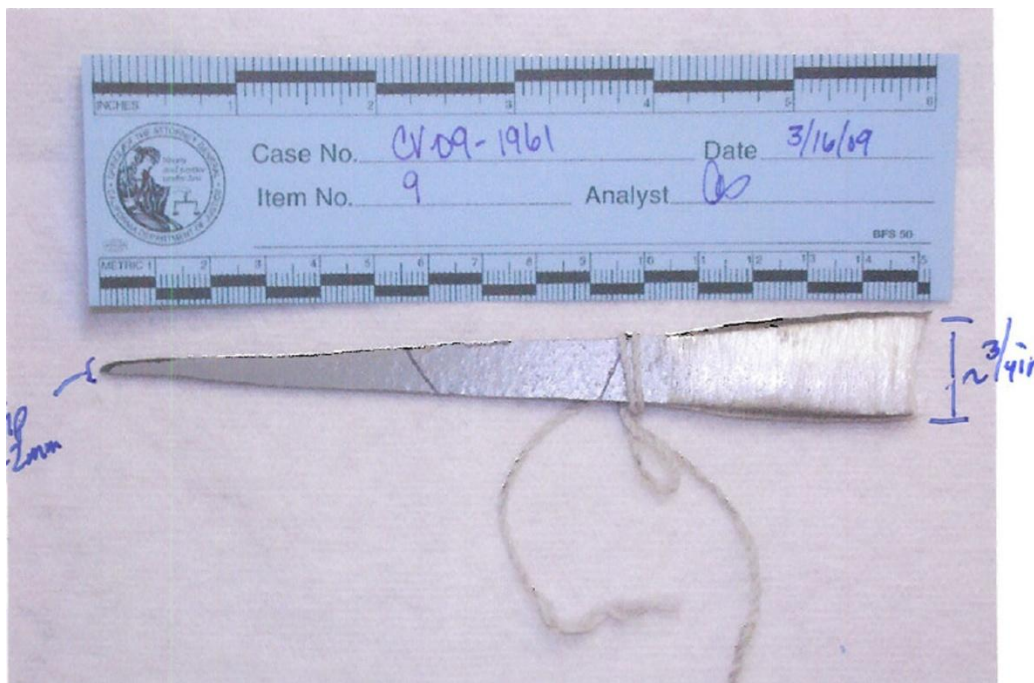
Ballistics

Detective Eric Bradley fired three rounds from his department issued .40 S&W Glock, Model 22 semi-automatic handgun. Two bullets struck Defendant and one struck the desk located between Judge Cinda Fox and her clerk. All three bullets were recovered and after an analysis by the California Department of Justice, it was determined that they were fired from a .40 Glock. All three shell casing were recovered and after an analysis by the DOJ, it was determined that they were all fired from the .40 Glock.

The bailiffs' firearms were examined and none had been fired.

Knife¹

The knife recovered from Defendant was made of metal and is approximately 5 and 3/4" long and 3/4" inches at the base. The base was wrapped in tape.



Knife in Defendant's possession

OFFICERS' BACKGROUND

At the time of the incident, Detective Eric Bradley had been a member of the Lodi Police Department for eight years. For the last three years he had served in the Special Investigation

¹ See "Jail Cell #26", below, for further details.

Unit as a detective. Detective Bradley had never been involved in a protocol investigation before this incident.

Deputy Justin Fearn was newly hired by the Sheriff's Office, and having recently graduated from the academy, was on his second day on the job.

Deputy Willis Smith, retired from the Lodi Police Department, and has been employed by the Sheriff for courtroom security for twelve years.

DEFENDANT'S BACKGROUND

Defendant, 29 years old, had been in and out of the criminal justice system since he was a juvenile. Of note:

On February 11th, 2003, Defendant was convicted of felony evading a peace officer and a misdemeanor driving a vehicle under the influence. He was sentenced to serve sixteen months in prison.

On June 30th, 2004, Defendant was convicted of misdemeanor vandalism and sent back to prison on a violation of parole. In December of 2004, Defendant was convicted and sentenced to two more years in prison for committing a battery in prison.

On November 14th, 2007, while awaiting trial for the murder of Ms. Pelt, Defendant was housed at California State Prison, Deuel Vocational Institute. There, correctional staff found a weapon in the back pocket of the pants Defendant was wearing. The weapon was two razor blades and a toothbrush. This is a common type weapon found in prison.

SECURITY

When an individual is housed in the county jail, he is first classified regarding his level of risk; Level One being the lowest risk and Level 8 being the highest. Defendant David Paradiso was classified as a Level 8 security risk by county jail personnel.

Transportation to the Courthouse

Prior to transportation, Level 8 inmates are handcuffed and those handcuffs are then connected to a waist chain. In addition, shackles are placed on the inmate's ankles. The inmate is then escorted to a bus, seated and then transported to court, along with the other inmates with court appearances.

While available, metal detectors are not used because a Level 8 inmate has three separate metal restraints, and the detector would not be able to separate the metal restraints from other metal. Because smuggling into the jail is common, searches are conducted more often when an inmate returns from court rather than when he leaves for court.

It is not uncommon for contraband, including weapons to be located in inmates' body cavities or clothing, especially the waistband. In addition, all inmates are allowed to have a legal folder with legal papers.

The morning of March 4th, 2009, Defendant was secured as described above but he was not searched prior to being placed on the bus. From the county jail, Defendant was driven to the courthouse and placed into Holding Cell #1 located in the courthouse basement.

Transportation to Department 21 (morning session)

On March 4th, 2009, at approximately 8:20 am, Deputies Willis Smith and Justin Fearn contacted Defendant David Paradiso in the Courthouse Holding Cell #1. Deputy Smith had

Defendant's clothes for that day's court appearance. After Deputy Smith searched the clothing, he gave Defendant his clothes and watched him undress to his jail issued boxer shorts and then dress in the clothing he was given – dress shirt, white undershirt, black pants, black socks, and black shoes.^m [When examining Defendant's body at the scene, California Department of Justice criminalists discovered that Defendant's right front pants pocket had a hole in it.] In addition, Deputy Smith had Defendant put on a leg brace.

The leg brace is a security device designed to be placed on a defendant's leg underneath his clothing. The brace is designed for a defendant to walk freely as long as his gait is slow and steady. If a defendant attempts to run, the brace locks up.

While Defendant dressed, Deputy Fearn stood outside the holding cell. After Defendant dressed, Deputy Smith escorted him to a holding cell on the second floor.

At the second floor holding cell, Defendant was searched again and had his leg brace checked by another deputy. Defendant was transported to and from Department 21 a number of times but returned to the holding cell because he was not needed. Each time he returned, he was patted down.

Once the trial was about to begin, Deputy Smith returned to the holding cell and once again searched Defendant by patting him down. Once Defendant was patted down, Deputy Smith escorted him to Department 21.

Transportation from Department 21 (noon recess)

Court ended at approximately 12:15 pm and Deputies Willis Smith and Justin Fearn escorted Defendant Paradiso to a holding cell on the second floor of the courthouse. Defendant was then taken to Holding Cell #1 for lunch by other Deputies.

Transportation to Department 21 (afternoon session)

Defendant was brought from the basement to the second floor holding cell and placed in a holding cell. Prior to court resuming at 1:45, Defendant was patted down. The searching deputy found a pair of glasses in Defendant's left front pants and removed them. Seeing they were glasses, the deputy returned them and then checked the leg brace. Deputy Smith then arrived and again patted him down. Once he was patted down, Deputy Smith removed Defendant from the cell and took him to Department 21. As Deputy Smith entered the courthouse corridor, Deputy Fearn met them and joined the escort. This was happenstance and not part of any procedure.

Courthouse Holding Cell #1

After the incident, Deputy Bill Ferguson was directed to search inmate clothing in the basement holding cells. In an area where Defendant stored his clothing he discovered that a

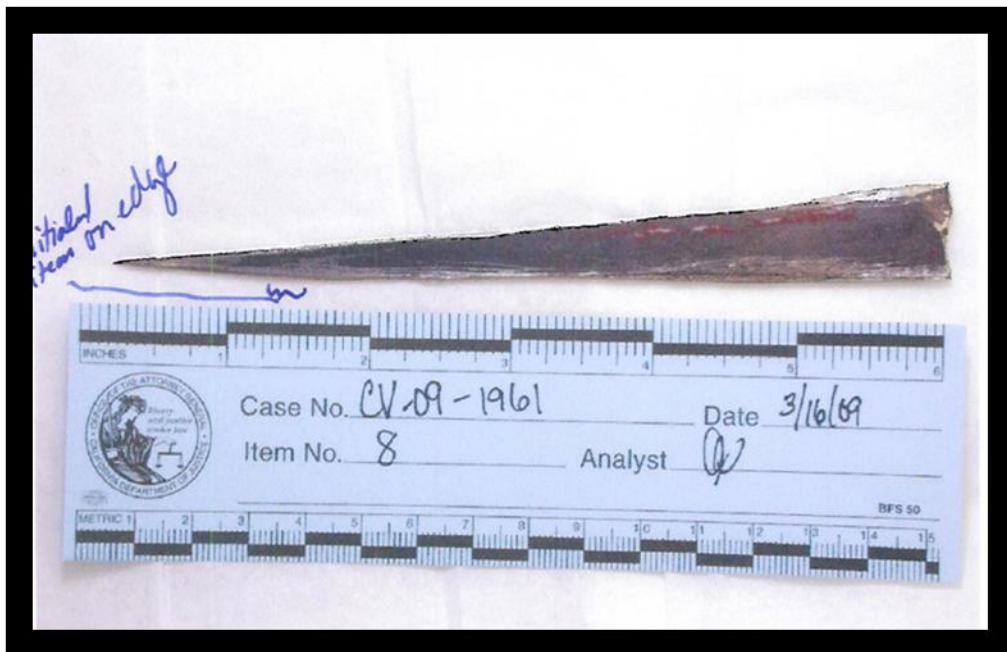
^m Defendants have a legal right to appear before jurors in civilian clothes. The clothes are provided for either by the defendant's attorney or family. Normally, the clothing is given to the bailiff assigned to the court or trial where the defendant will appear. The bailiff will then deliver the clothing to the defendant prior to his appearance in court. Shelley Galvin assisted in bringing Defendant fresh clothes for court and retrieving his dirty clothes. Ms. Galvin stated she would bring fresh clothes to a bailiff in the courtroom.

pair of grey pants had a hole in the right front pocket. The hole was three inches in length and appeared to be cut. This is similar to the hole found in the pants Defendant was wearing this day. Deputy Ferguson also searched Holding Cell #1 where Defendant was housed. In Cell #1, located in the right flange of the toilet, the deputy found a home-made knife –shank.



Knife located in Holding Cell #1

The knife, similar in material and size to the knife in the courtroom, measured 6" in length and 3/4" at the base. It did not have tape around the base like the knife in the courtroom.



Knife located in Holding Cell #1

County Jail Cell #26

Shelly Galvin visited Defendant at the county jail on February 17th, 2009. After her conversation with him, she was left with the impression that he had secreted a pair of hair clippers and planned to stab his attorney. Ms. Galvin told this to Mrs. Paradiso and requested she call the jail. Mrs. Paradiso said that she did call the jail that day and told someone that Defendant had a weapon.

On February 17th, 2009, Correctional Officer Sean Adams noted in a report that an anonymous caller, only identifying herself as a relative of Defendant, reported that Defendant was in possession of hair clippersⁿ and might harm himself. C.O. Adams and C.O Kevin Cassinelli searched Defendant's cell, cell #26 in Administrative Segregation Unit #7 (Ad-Seg 7.), and found no contraband. A rectangular hole in the bunk, however, was noted. No report regarding the hole was made because the officers assumed that the hole was purposely made by maintenance due to the straight appearance of the cut.

On February 25th, 2009, Correctional Officer Oscar Tamez conducted a random search of Defendant's cell. C.O. Tamez discovered some contraband food items and a long string know as a "fishing line," used by inmates to drag items into their cells.

In addition, C.O Tamez found a rectangular hole in the metal bunk that appeared to be cut out. C.O. Tamez notified Sergeant David Odom of this discovery. Jail staff thought the hole was cut by maintenance personnel in order to stop the bunk from making noise and because the cut was straight. There is no record that maintenance actually cut a hole in this bunk and no maintenance personnel recalled the hole being made or a request made that a hole be cut.

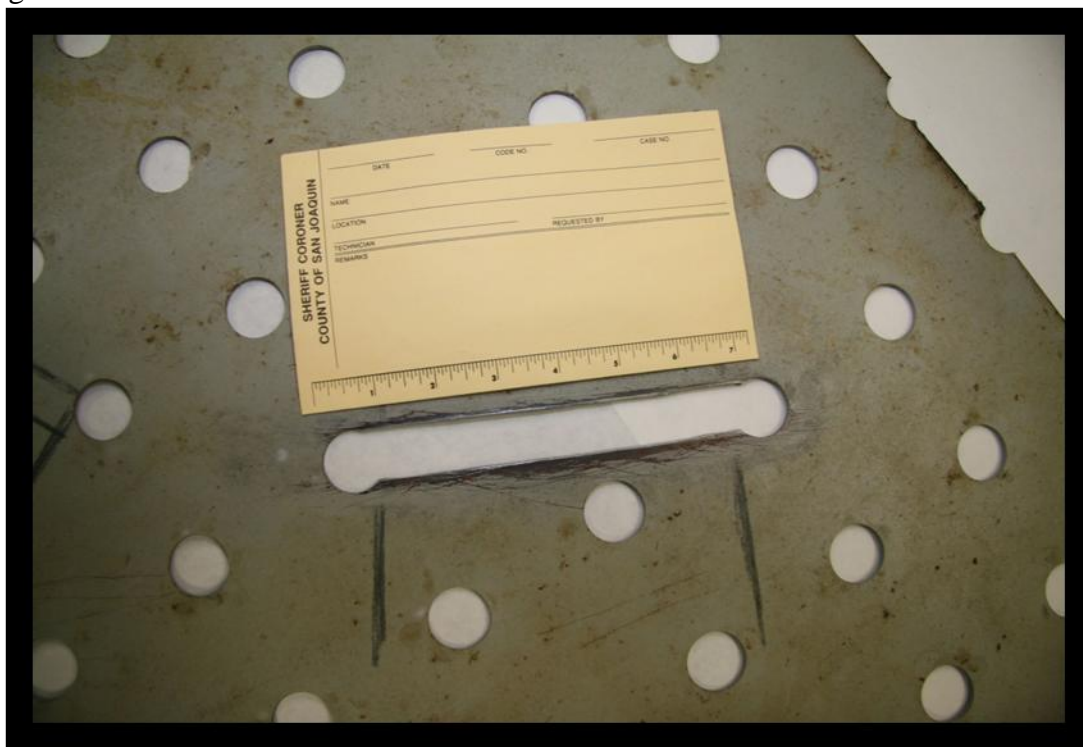


Metal bunk in Cell #26

ⁿ Prior to this incident, Level 8 inmates were given metal hair clippers to cut their own hair. Anecdotally, the inventory procedure for hair clippers is lacking but a guard is supposed to hand the clippers to the inmate through a slot in the door, wait, and then retrieve them. Since this incident, only plastic clippers are used.

On March 4th, 2009, as part of the protocol investigation, investigators reexamined Defendant's cell. There, they discovered the rectangular hole in the metal bunk. The hole itself appeared to the correction and maintenance staff to have been made with a cutting tool rather than a make-shift prison tool.^o Repetitive scratching or scoring with some instrument might have been responsible as scratches around the hole as well as other areas were noted.

The rectangular hole itself measured approximately 6 by ¾ inches. The area around the hole appeared to have a pencil-made outline around the hole. On the underside of the bunk, there appeared to be a number of drawn pencil outlines similar to the cut-out rectangular hole, including one outline made from scratches.



Un

derside of metal bunk in Cell #26

Inmate [name redacted] told investigators that for approximately three weeks, he heard a metal on metal grinding noise starting at 9:00 a.m. and lasting a couple of hours. He believed the noise came from Defendant's cell.

California Department of Justice conducted an analysis of the knives recovered from Holding Cell #1 and the Defendant. Comparing them to the metal bunk in Cell #26, analysts concluded that the knives were consistent with the rectangular hole in the metal bunk.

Moreover, when the two knives were placed together, they made a rectangle that was the same dimensions as the rectangular hole in the metal bunk.

^o The area around the hole was cut out at the direction of investigators in order to preserve it has evidence. It took approximately 15 to 20 minutes for a workman to cut out two sections of the metal bunk.



Knife from courtroom and knife from Hold Cell #1

LEGAL ANALYSIS

Under Penal Code sections 197 and 198, homicide is justifiable and not unlawful when committed by a person who reasonably believed that he, or someone else, is in imminent danger of being killed, suffering great bodily injury, or to prevent a forcible and atrocious crime (*People v. Ceballos* (1974) 12 Cal.3d 470, 478). For a homicide to be in self-defense, the person must actually and reasonably believe in the need to defend with deadly force (*People v. Flannel* (1979) 25 Cal.3d 668, 674). If the belief both subjectively exists and is objectively reasonable, it constitutes “perfect self-defense” and the homicide is considered legally justifiable. (*In re Christian S.* (1994) 7 Cal.4th 768, 783).

Homicide committed by a law enforcement officer is governed by Penal Code section 196 (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333).

Section 196 states:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either--

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

The test for determining whether a homicide was justifiable under Penal Code section 196 is whether the circumstances “reasonably created a fear of death or serious bodily harm to the officer or to another.”(*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334).

Reasonableness must be considered in the context of the “dangerous and complex world” police officers face every day, because “what constitutes ‘reasonable’ action might seem quite different to someone facing a possible assailant than to analyzing the question at leisure.” (*Martinez v. County of Los Angeles*, *supra* 47 Cal.App.4th at 343 (*quoting Smith v. Freeland* (6th Cir.1992) 954 F.2d 343, 347)). Numerous cases have established that peace officers may use deadly force when confronted with an individual “whose actions indicate an intent to attack.” (*Renyolds v County of San Diego* (S.D. Cal 1994) 858 F.Supp. 1064, 1072.)

In the instant case, Defendant David Paradiso, after refusing orders to remain seated, produced a smuggled “shank” and attacked Judge Cinda Fox, stabbing her repeatedly. Detective Eric Bradley immediately recognized the gravity of the situation discharged his firearm to protect the Judge and others.

Based on the totality of the circumstances, Detective Bradley’s use of deadly force was reasonable under both sections 196 and 197.

SUBSEQUENT ACTIONS

In addition to the attack on Judge Fox, there were two separate escape attempts from the courthouse by felons (one charged with murder) in 2008. After the attack of Judge Fox, the San Joaquin Sheriff’s Department conducted a Post Incident review and made several changes to internal communications, custodial procedures and equipment.^P

There are still areas of concern that are hampered either by cost, the courthouse infrastructure, and legal requirements. For example, the courthouse building design does not allow for the segregation of inmates and transporting inmates to courtrooms requires moving them through public areas. While efforts have been made to thwart the ability of inmates having prohibiting items, the potential has only been reduced, not eliminated.

CONCLUSION

It is the opinion of the District Attorney that Detective Eric Bradley of the Lodi Police Department was legally justified in his use of lethal force against David Angelo Paradiso. Looking at the totality of the circumstances, it is reasonable to conclude that David Paradiso’s actions “reasonably created a fear of death or serious bodily harm to another.”

^P For security purpose, the changes made to procedure and equipment will not be disclosed here.