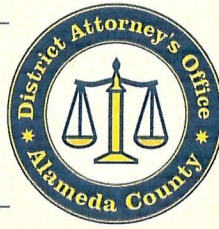


Office of the District Attorney  
Alameda County  
Nancy E. O'Malley, District Attorney



Rene C. Davidson Courthouse  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

October 19, 2018

Chief Carlos Rojas  
BART Police Department  
800 Madison Street  
P.O. Box 12688  
Oakland, CA 94604

Dear Chief Rojas:

Enclosed is the District Attorney's Final Report on the fatal shooting of Sahleem Tindle, which occurred on January 3, 2018.

I have reviewed the report and agree with the conclusion that the evidence does not justify criminal charges against Officer Joseph Mateu.

As indicated in the report, no further action will be taken in this case.

A copy of the report will be available to the public no earlier than October 24, 2018.

Very truly yours,

Nancy E. O'Malley  
District Attorney

Enclosure

# **DISTRICT ATTORNEY'S REPORT**

**OFFICER INVOLVED SHOOTING**

**OF**

**SAHLEEM TINDLE**



**NANCY E. O'MALLEY**  
**District Attorney**

**Officer Involved Shooting Team**

**October 19, 2018**

# **INVESTIGATION OF THE SHOOTING DEATH OF SAHLEEM TINDLE**

## **INTRODUCTION:**

The Alameda County District Attorney's Office has assembled an Officer Involved Shooting ("OIS") Team. The OIS Team consists of experienced Senior, Assistant, and/or Deputy District Attorneys as well as experienced District Attorney Inspectors, who are sworn peace officers. The OIS Team conducts an investigation involving any death of a person caused by an officer involved shooting in Alameda County. The OIS Team is authorized by agreement with each local law enforcement agency serving Alameda County to conduct a separate, but parallel, investigation into the circumstances leading to the shooting death.

The OIS Team focuses exclusively on the question of whether there is sufficient evidence to prove beyond a reasonable doubt that a law enforcement official committed a crime in connection with the shooting death. The OIS Team does not examine collateral issues such as whether law enforcement officials complied with internal policies, used appropriate tactics, or any issues that may give rise to civil liability. This report should not be interpreted as expressing any opinions on non-criminal matters.

The OIS Team prepares a report documenting the investigation, factual background, and legal conclusions. The prosecutor supervising the OIS Team reviews materials from the investigation and the OIS Team report. The case is reviewed by multiple veteran prosecutors, including the Chief Assistant District Attorney and the District Attorney. When the report has been completed and approved, it is delivered to the Chief of Police or Sheriff of the involved law enforcement agency. Thereafter, the report is made available to the public.

## **SCOPE OF THE INVESTIGATION:**

On January 3, 2018, at approximately 4:40 p.m., BART Police Officer Joseph Mateu shot and killed Mr. Sahleem Tindle. The incident occurred in front of 1498 – 7<sup>th</sup> Street in Oakland. This report documents the investigation conducted by the Alameda County District Attorney's Office.

On January 3, 2018, at approximately 5:20 p.m., the on-call OIS Team was notified that an officer involved shooting had occurred. The OIS Team responded to the Oakland Police Department ("OPD") and then to the incident location. The OIS Team completed a walk-through of the scene and observed evidence items. The OIS Team then returned to the Oakland Police Department and reviewed various materials, including Officer Mateu's body worn camera recording. Beginning at 9:13 p.m., the OIS Team participated in an interview of Officer Mateu.

Note: The Oakland Police Department Incident Report and Alameda County Coroner's Report refer to Mr. Tindle's first name as "Shaleem".

As part of its investigation, the OIS Team reviewed, among other things, police reports, dispatch communication recordings and records, 911 recordings, evidence technician reports, diagrams, sketches, crime lab reports, photographs, video recordings, medical records, and recorded statements. The OIS Team also reviewed the Coroner Investigator's Report, Autopsy Protocol, and toxicology report relating to Mr. Tindle.

### **FACTUAL SUMMARY:**

On January 3, 2018, shortly before 4:40 p.m., Mr. Tindle was in the area of 7<sup>th</sup> and Chester Streets in West Oakland. He was with his fiancée (Witness #2), their two young children, and his fiancée's sister (Witness #9). They were all walking towards the West Oakland BART Station, intending to travel on BART to San Francisco.

As they were walking towards the BART Station, a man, later identified as Witness #1, got into an argument with Mr. Tindle. Various witnesses gave sometimes differing accounts of the nature of the argument, and the events that unfolded. Further details regarding these accounts are provided below. It appears that the argument related to a bag containing tennis shoes. Witness #1 said that, during the argument, Mr. Tindle pulled a pistol from his clothing and threatened Witness #1. Mr. Tindle later put the pistol back in his clothing.

Mr. Tindle, and those he was walking with, resumed walking towards the BART Station. His fiancée's sister, and the children, continued on to the BART Station, but Mr. Tindle turned back and again began arguing with Witness #1. Some witnesses said that Mr. Tindle clutched at his clothing, as if he were going to pull out a gun. Witness #1 went into a burrito shop near the corner of 7<sup>th</sup> and Chester Streets. Mr. Tindle followed Witness #1 and took out a cell phone. Mr. Tindle began recording Witness #1 and others in the area with his cell phone.

Witness #1 left the burrito shop and grabbed Mr. Tindle. The men began struggling in front of a barber shop located on the corner of 7<sup>th</sup> and Chester Streets. In the course of the struggle, Mr. Tindle pulled out the pistol and had it in his hand. Two shots were fired from the pistol. One shot went through the window of the barber shop, where people were inside. None of the people were struck by the bullet. One shot caused a through-and-through gunshot wound to Witness #1's leg. Some witnesses said that Mr. Tindle intentionally fired into the barbershop and at Witness #1. After the shots, the two men were wrestling on the ground in front of the barbershop. Witness #1 said that he was trying to wrestle the gun away from Mr. Tindle.

As these events were unfolding, BART PD Officer Mateu was inside the West Oakland BART Station. He observed a woman pass through a fare gate without paying. He detained the woman and activated his body worn camera. Officer Mateu spoke with the woman and obtained her identifying information. While Officer Mateu was relaying this information to dispatch via radio, there was a sound of a gunshot. A few seconds later, there was a sound of another gunshot.

Officer Mateu saw people running into the BART Station. He heard a woman say that there was a shooting. Officer Mateu ran out of the BART Station on the 7<sup>th</sup> Street side, into the parking lot

area. He asked people outside the Station what was going on. Two men pointed in the direction of the corner of 7<sup>th</sup> and Chester Streets. Officer Mateu looked in that direction and saw two men on the ground at the corner and it appeared that they were wrestling. Officer Mateu advised dispatch that shots had been fired in the area of 7<sup>th</sup> and Chester Streets.

Officer Mateu ran towards the corner where the men were wrestling. As he got closer, he withdrew his service weapon and pointed it at the men. Officer Mateu yelled repeatedly for the men to “show me your hands.” The men did not comply. As Officer Mateu got within approximately 20 feet of the men, he noticed that the men were wrestling over a gun. Officer Mateu said that Mr. Tindle was holding a black pistol in his left hand. Mr. Tindle’s hand was on the ground, he was holding the gun by the grip, and the gun was pointed towards the barbershop. Officer Mateu said that Witness #1 was on top of Mr. Tindle, trying to hold Mr. Tindle’s hand down, and wrestle the gun away. Officer Mateu said that it looked like Mr. Tindle had firm control of the gun and that Witness #1 was not able to wrestle the gun away. Officer Mateu said that he believed that Mr. Tindle was the aggressor and that Witness #1 looked like he was scared and was trying to wrestle the gun away.

Officer Mateu continued to yell, “Let me see your hands.” Neither man complied with the commands. Officer Mateu positioned himself behind Mr. Tindle, approximately four feet away. Mr. Tindle had his back to Officer Mateu and Witness #1 was on top of Mr. Tindle. They were still fighting over the gun. At some point, Officer Mateu could no longer see the gun. He said that it appeared that the gun was brought in closer to Mr. Tindle’s body. At this point, Officer Mateu was unable to see either of Mr. Tindle’s hands.

Officer Mateu said that moments later, Mr. Tindle’s left hand became visible again. Officer Mateu saw that Mr. Tindle no longer had the gun in his left hand. Officer Mateu said that he feared that Mr. Tindle now had the gun in his right hand, which was not visible. He also feared that Mr. Tindle could have been pointing the gun at Witness #1.

Officer Mateu then noticed Mr. Tindle starting to get up off the ground. Mr. Tindle had been crouched over on his knees and it appeared that he was starting to lift up off his knees and was attempting to stand up. Officer Mateu said that he was afraid that if Mr. Tindle stood up, he could have easily turned to shoot Witness #1 or turned around to shoot Officer Mateu.

Officer Mateu fired three rapid shots into Mr. Tindle’s back. Officer Mateu said that, after he fired the shots, he saw the gun fall out of Mr. Tindle’s right hand and the magazine fall out of the gun. Mr. Tindle fell to the ground. Once on the ground, Mr. Tindle raised his hands up. Witness #1 also raised his hands up. Officer Mateu contacted dispatch via radio and advised that there had been an officer involved shooting and requested that medical assistance be sent.

Shortly thereafter, BART PD Officer Valdehueza arrived on scene in his patrol vehicle. He got out of the car and withdrew his service weapon. Officer Mateu noticed the pistol on the sidewalk. He was concerned about the pistol being unsecured in the chaotic scene. Officer Mateu picked up the pistol and locked it inside Officer Valdehueza’s vehicle. He also attempted to obtain a trauma kit from the vehicle so that the officers could render medical aid to Mr. Tindle.

OPD Officers arrived and began to provide medical assistance to Mr. Tindle and Witness #1. Mr. Tindle was transported to the hospital. Despite lifesaving attempts, he was pronounced dead. A later autopsy determined that he died from multiple gunshot wounds. Witness #1 was also transported to the hospital where he was treated for a through-and-through gunshot wound to the lower left thigh, and later released.

### **Scene Examination and Evidence Recovery**

OPD crime scene personnel responded and processed the scene. They observed medical treatment being provided for Mr. Tindle and Witness #1. They noted that activity on the scene, including the medical treatment, may have resulted in the movement of evidence items on the sidewalk. They located three fired cartridge cases ("Federal 40 S&W") along the north side of the sidewalk, directly in front of the barbershop. They located one fired cartridge case ("SIG 40 S&W") in the center of the sidewalk, south of the front door to the barbershop. They located one live round of ammunition ("SIG 40 S&W") on the sidewalk, just west of the fired cartridge case described above. They located a partially loaded Sig Pro magazine on the sidewalk just south of the live round.

OPD crime scene personnel recovered the Sig Sauer pistol that had been placed in BART PD Officer Valdehueza's patrol vehicle after the shooting incident. They noted that the pistol slide was closed and the magazine well was empty. An OPD officer rendered the pistol safe by pulling the slide back and locking it to the rear. As he did so, a fired cartridge case ("SIG 40 S&W") fell from the ejection port and was recovered.

OPD crime scene personnel examined the exterior and interior of the barbershop. They noted a possible strike mark to a metal security bar outside the front window. The strike mark was approximately six feet above the ground. They also noted possible bullet holes through the sliding window of the shop, behind the metal security bar. An employee in the shop confirmed that the bullet holes were new. They located a possible bullet hole in the rear wall of the barbershop, approximately ten feet above the floor. They also recovered two bullet jacketing fragments on the floor of the shop.

OPD Officer Hunt, who works as a crime scene technician, met with Officer Mateu. He recovered Officer Mateu's firearm and spare magazines. The pistol was a 40 S&W caliber Glock model 22 semi-automatic pistol. Officer Hunt performed a round count of the pistol and magazines. He found a live round in the chamber and 12 live rounds in the magazine. All of the rounds were "Federal 40 S&W." Officer Hunt confirmed with Officer Mateu that prior to the officer involved shooting, the pistol had been "duty loaded" with 15 rounds in the magazine and one round in the chamber. Accordingly, the round count confirmed that Officer Mateu had fired three times. Officer Hunt determined that each of Officer Mateu's spare magazines was fully loaded with 15 rounds. Officer Hunt collected Officer Mateu's pistol and magazines for later testing by the crime laboratory.

Officer Hunt also performed a round count on Officer Valdehueza's firearm and magazines. The examination confirmed that Officer Valdehueza did not fire his weapon during the incident.



OPD crime scene personnel responded to Highland Hospital in Oakland, where Mr. Tindle and Witness #1 had been transported. They photographed gunshot wounds of both individuals. They also conducted a gunshot residue test on Witness #1.

On January 4, 2018, the day after the incident, OPD crime scene personnel and officers returned to the scene during daylight to search for a bullet that may have struck Witness #1. They conducted a grid search of at least a block in each direction, with negative results.

On January 11, 2018 OPD Crime Lab personnel and crime scene personnel returned to the barbershop to conduct further examinations. Criminalist Mark Bennett, a firearms examination expert, examined the metal security bar outside the front window. He noted a deformation to the metal bar with grey metallic deposition, consistent with a bullet strike to the bar. He noted that the two holes in the double pane glass window were consistent with a single fragmented bullet that split on impact with the security bar.

In the interior of the barbershop, Criminalist Bennett discovered a hole in a ceiling fan blade and a strike mark on the ceiling. He determined that this was consistent with a fragment of the bullet that entered the window passing through the ceiling fan blade and having insufficient energy to penetrate the ceiling. He also examined the bullet entry hole in the back wall, near the ceiling. He cut open the wall and located a lead fragment consistent with a bullet core.

#### **POLICE OFFICER INTERVIEWS:**

##### **BART Police Officer Mateu**

On January 3, 2018, Officer Mateu was interviewed at OPD. OPD Sergeant Michael Cardoza was the lead investigator conducting the interview. Also present from OPD were Captain Roland Holmgren, Lieutenant Randy Brandwood, Sergeant Richard Vass, and Officer Jason Turner. The OIS Team was present and participated in the interview. The OIS Team members present were Assistant District Attorney John Brouhard and District Attorney Inspector Jason Riechers. Attorney Steven Welty, from the Mastagni Holstedt Law Firm, was present, representing Officer Mateu.

Officer Mateu was advised of his rights and voluntarily provided a statement. The interview was audio and video recorded. The interview commenced at 9:13 p.m. and concluded at 10:32 p.m. Officer Mateu's statements are summarized as follows:

Officer Mateu has been a BART Police Officer since 2003. On January 3, 2018, he was working at the West Oakland BART Station. He was wearing a full police uniform and was equipped with a body worn camera affixed to his chest. He was in the Station Agent booth when he observed a woman exit the fare gate without processing a ticket. He detained the woman for fare evasion and activated his body worn camera. He spoke with the woman and was in the process of obtaining her identifying information and relaying the information to dispatch via radio.

While speaking with the woman, Officer Mateu heard two "pops." At first he didn't realize what the sounds were, and then he saw multiple people running into the BART Station. He heard people screaming and saw people ducking down. He asked a woman what was going on and she said,

“They’re shooting.” Officer Mateu then realized that the “pops” he heard were gunshots.

Officer Mateu ran out of the BART Station on the 7<sup>th</sup> Street side, into the parking lot area. He asked people outside the Station what was going on and “where are they at?” Two men that were behind a parked car pointed in the direction of the corner of 7<sup>th</sup> and Chester Streets. Officer Mateu looked in that direction and saw two men on the ground at the corner and it appeared that they were wrestling. Officer Mateu also saw several people in the parking lot ducking behind vehicles. Officer Mateu said that the people ducking behind cars further confirmed in his mind that a shooting had taken place. Officer Mateu used his radio to advise dispatch that shots had been fired in the area of 7<sup>th</sup> and Chester Streets.

Officer Mateu ran through the parking lot and eventually made his way onto 7<sup>th</sup> Street. When he was approximately half way across the street, Officer Mateu pulled out his firearm and pointed it towards the two men wrestling on the sidewalk at the corner of 7<sup>th</sup> and Chester Streets. Officer Mateu said that he withdrew his gun because he believed that a shooting had occurred and that one or both men might be armed with a gun. He said that he withdrew his gun, in part, to protect himself from a possible deadly situation.

Officer Mateu yelled for the men to “show me your hands.” The men did not comply. Officer Mateu noticed that there were people inside the barbershop, adjacent to where the men were wrestling. Officer Mateu also noticed that there was a woman in the area who was possibly yelling for the men to stop fighting.

As Officer Mateu got within approximately 20 feet of the men, he noticed that the men were wrestling over a gun. Officer Mateu saw that the male, later identified as Mr. Tindle, was holding a black pistol in his left hand. Mr. Tindle’s hand was on the ground, he was holding the gun by the grip, and the gun was pointed towards the barbershop. Officer Mateu said that the man, later identified as Witness #1, was on top of Mr. Tindle, trying to hold Mr. Tindle’s hand down, and wrestle the gun away. Officer Mateu said that it looked like Mr. Tindle had firm control of the gun and that Witness #1 was not able to wrestle the gun away. Officer Mateu said that he believed that Mr. Tindle was the aggressor and that Witness #1 looked like he was scared. Officer Mateu said that it appeared that Mr. Tindle could have tossed the gun away if he wanted to, but he did not do so.

Officer Mateu said that he continued to yell commands like “show me your hands” and “drop the gun.” Neither man complied with the commands. Officer Mateu positioned himself behind Mr. Tindle, approximately four feet away. Mr. Tindle had his back to Officer Mateu and Witness #1 was on top of Mr. Tindle. They were still fighting over the gun. At some point, Officer Mateu could no longer see the gun. He said that it appeared that the gun was brought in closer to Mr. Tindle’s body. At this point, Officer Mateu was unable to see either of Mr. Tindle’s hands.

Officer Mateu said that moments later, Mr. Tindle’s left hand became visible again. Officer Mateu saw that Mr. Tindle no longer had the gun in his left hand. Officer Mateu said that, based upon the body positions, it did not appear that Witness #1 had gained possession of the gun. Officer Mateu said that he did not hear the sound of metal hitting the ground so he did not believe the gun had been dropped. Officer Mateu said that he feared that Mr. Tindle now had the gun in his right



hand, which was not visible. He also feared that Mr. Tindle could have been pointing the gun at Witness #1.

Officer Mateu also noticed Mr. Tindle was starting to get up off the ground. Mr. Tindle had been crouched over on his knees and it appeared that he was starting to lift up off his knees and was attempting to stand up. Officer Mateu said that he was afraid that if Mr. Tindle stood up, he could have easily turned to shoot Witness #1 or turned around to shoot Officer Mateu.

Officer Mateu fired three rapid shots into Mr. Tindle's back. Officer Mateu said that, after he fired the shots, he saw the gun fall out of Mr. Tindle's right hand and the magazine fall out of the gun. Mr. Tindle fell to the ground. Once on the ground, Mr. Tindle raised his hands up. Witness #1 also raised his hands up. Officer Mateu contacted dispatch via radio and advised that there had been an officer involved shooting and requested that medical assistance be sent. Officer Mateu said that a woman approached and was hysterical. Shortly thereafter, BART Officer Valdehueza arrived on scene in his patrol vehicle. Officer Mateu said that he tried to push the woman back away from the scene so that they could provide medical assistance to Mr. Tindle.

Officer Mateu noticed the pistol on the sidewalk. He was concerned about the pistol being unsecured in the chaotic scene. Officer Mateu picked up the pistol and locked it inside Officer Valdehueza's vehicle. He also attempted to obtain a trauma kit from the vehicle so that the officers could render medical aid to Mr. Tindle. Shortly thereafter, OPD officers arrived and began to provide medical assistance to Mr. Tindle. Officer Mateu said that Witness #1 said that he had been shot. Officer Mateu noticed blood on the leg of Witness #1. Officer Mateu said that he was not aware, until after the officer involved shooting, that Witness #1 had been shot. More police officers arrived and Officer Mateu was eventually transported away from the scene.

Officer Mateu explained his state of mind and why he shot Mr. Tindle. He acknowledged that he had to process everything very quickly. He said that he believed that Mr. Tindle had the gun in his right hand. He said that when Mr. Tindle started to get off the ground, as if he were going to stand up, Officer Mateu feared that Mr. Tindle was going to gain an advantage. He said that Mr. Tindle could have stood up and could have easily turned to shoot Witness #1, or could have turned around to shoot Officer Mateu.

Officer Mateu said that he believed that Mr. Tindle might have shot Witness #1, Officer Mateu, or others. He based his belief on the fact that shots had already been fired, Mr. Tindle never followed his commands, and Mr. Tindle never dropped the gun. Officer Mateu stated that, in his opinion, "this guy wasn't giving up." Officer Mateu said that he believed that if Mr. Tindle had gotten up, either Witness #1 or Officer Mateu would have gotten shot.

Officer Mateu said that he was afraid. He explained that he had already heard two gunshots. He said that he was afraid for his own life and the life of Witness #1. He was also afraid for the lives of the people in the barbershop and the other people in the area. Officer Mateu explained that this incident occurred during commute time. There were numerous people in the BART parking lot and people coming to and from the BART Station in general.

Officer Mateu explained that he fired three shots because he needed to stop the deadly threat posed

by Mr. Tindle. He fired the shots in rapid succession. He explained that Mr. Tindle was wearing a dark jacket and Officer Mateu could not visually determine whether his shots were striking Mr. Tindle. Officer Mateu said that after the third shot, he saw that Mr. Tindle dropped the gun from his right hand and began to fall to the ground. At that point, Officer Mateu believed that the imminent threat was over. Officer Mateu was able to review his body worn camera recording prior to his interview. He acknowledged that, before reviewing the recording, he was unsure whether he had fired two or three times. After reviewing his body worn camera recording, he believed that he fired three shots.

Officer Mateu explained why he believed that deadly force was his only option in the situation. As he said, “there were no other options for me.” He stated that he was alone and did not know how far away his cover officer was. He said that when confronting a subject with a gun, use of a Taser was not an option. The Taser can be ineffective and Mr. Tindle could have still shot Witness #1 or Officer Mateu. Similarly, Officer Mateu said that his baton was not an option. The baton would not have prevented Mr. Tindle from shooting Witness #1 or Officer Mateu.

Officer Mateu was asked whether, once he saw the two men wrestling on the sidewalk, he could have just taken cover and radioed for other officers to come assist. Officer Mateu explained that, if he had done that, “who knows who would have gotten killed.” He said that Witness #1 could have been killed or the gun could have discharged while the men were wrestling, killing someone inside the barbershop.

### **BART Officer Valdehueza**

On January 3, 2018, Officer Valdehueza was interviewed by OPD investigators. The interview was recorded. The following is a summary of the statement provided by Officer Valdehueza.

Officer Valdehueza has been a police officer with BART PD for 11 years, and has 26 years total law enforcement experience. On January 3, 2018, he was working as a BART PD K9 Officer. He was in a marked BART PD vehicle, in the parking lot of the West Oakland BART Station, when he heard a radio transmission that Officer Mateu was responding to shots fired at 7<sup>th</sup> and Chester Streets.

Officer Valdehueza drove through the BART parking lot and onto Chester Street. His path was blocked by a bus that was trying to get around a vehicle. Officer Valdehueza said that, while he was behind the bus, he heard approximately two to three gunshots. Once the bus moved, he drove to the corner of 7<sup>th</sup> and Chester Streets. He saw Officer Mateu with his gun out and two men on the ground, in front of the barbershop. Officer Valdehueza saw a black Sig style pistol lying on the ground in-between the two men on the ground.

Officer Valdehueza saw one man, later identified as Witness #1, on the ground with a gunshot wound to the leg. He saw that the other man, later identified as Mr. Tindle, was lying on the ground with his eyes open, but he was not moving. There was a woman on scene, later identified as Witness #2, who was screaming and trying to kick Witness #1. Officer Valdehueza tried to secure the scene, but Witness #2 continued to yell and he believed that she tried to punch him.

Officer Valdehueza saw Officer Mateu recover the pistol from the ground and take it towards

Officer Valdehueza's police vehicle. Officer Mateu returned and both officers handcuffed Witness #1. Officer Valdehueza did not fire his service weapon during the incident.

#### **CIVILIAN WITNESS STATEMENTS:**

##### **Witness #1**

Witness #1 was the person struggling with Mr. Tindle at the time of the officer involved shooting. After being treated at the hospital for a gunshot wound, Witness #1 was transported to the Oakland Police Department. Witness #1 refused to talk with investigators. OPD investigators contacted Witness #1 on subsequent occasions but Witness #1 persisted in his refusal to talk with investigators. Witness #1 eventually agreed to an interview, at the office of his attorney, in Oakland. On February 16, 2018, Witness #1 was interviewed by OPD investigators. The interview was recorded. The following is a summary of the statement provided by Witness #1.

On January 3, 2018, Witness #1 was in West Oakland, walking south on Chester Street from the corner of 8<sup>th</sup> Street towards 7<sup>th</sup> Street. At the time, Witness #1 was in the company of Witness #1's cousin, who was riding a bicycle. Witness #1 was carrying a "Michael Jordan" duffle bag and a second bag that contained a pair of women's black and pink "Air Jordan" shoes. While walking on Chester Street between 7<sup>th</sup> and 8<sup>th</sup> Streets, Witness #1 stopped, put the bag containing the black and pink "Air Jordan" shoes down on the ground, and lit a cigarette. After lighting the cigarette, Witness #1 continued walking south on Chester Street towards 7<sup>th</sup> Street. After walking a short distance, Witness #1 realized that he left the bag of "Air Jordan" shoes on the sidewalk. Witness #1 ran back to where he had left the bag containing the shoes and noticed that Mr. Tindle was walking on Chester Street, carrying the bag that contained Witness #1's black and pink "Air Jordans".

Witness #1 confronted Mr. Tindle, telling Mr. Tindle that the bag containing the "Air Jordan" shoes belonged to him. Mr. Tindle initially denied having the "Air Jordan" shoes, but then Mr. Tindle retrieved the black and pink "Air Jordan" shoes from a female that was walking with Mr. Tindle. Mr. Tindle handed the shoes to Witness #1 and Witness #1 thought the interaction was over. Witness #1 said that Mr. Tindle then pulled a gun on him. Witness #1 dropped the bags he was carrying after seeing the gun being displayed by Mr. Tindle. Witness #1 watched as Mr. Tindle then tucked the gun somewhere in his clothing, and Witness #1 began to quickly walk away from Mr. Tindle. Witness #1 noticed that several of his associates were standing near the corner of 7<sup>th</sup> and Chester Streets and as Witness #1 got closer to his associates, Witness #1 began to inform his associates that Mr. Tindle had just pulled a gun on him.

Witness #1 saw that Mr. Tindle was accompanied by several women and children and they too were also walking south on Chester Street towards 7<sup>th</sup> Street. At that point, Witness #5, who was standing on the corner of 7<sup>th</sup> and Chester Streets, tried to settle Witness #1 down. As Mr. Tindle neared Witness #1, Witness #5 intervened between Witness #1 and Mr. Tindle to try and calm the situation. Witness #5 encouraged Mr. Tindle to go to the West Oakland BART Station and leave the area. Mr. Tindle, his female associates, and the several young children began to walk across 7<sup>th</sup> Street towards the West Oakland BART Station. Witness #1 said that one female associate of Mr. Tindle began to yell at Mr. Tindle saying Mr. Tindle should "go pop him" and "knock him out" referring to Witness #1. Witness #1 heard this verbal interaction and Witness #1 began to

yell at the female associate of Mr. Tindle, saying that he had seen the female before and knew her face. Witness #1 said that he yelled this several times in the direction of Mr. Tindle and his female associate. At that point, Mr. Tindle turned around in the Street and began to run back across the street towards Witness #1, Witness #5, and several of their associates. As Mr. Tindle was running in the direction of Witness #1 and his associates, Mr. Tindle began to clutch for the gun that was hidden in Mr. Tindle's clothing.

Witness #1 said that he quickly ran into a nearby burrito shop. Witness #1 explained that he ran into the burrito shop because Witness #1 thought that Mr. Tindle was going to pull the gun out of his clothing and start shooting in his direction. Witness #1 watched from the burrito shop as Mr. Tindle pulled out his cellular telephone and began to record Witness #1 and his associates, who had been standing on the corner of 7<sup>th</sup> and Chester Streets. Witness #1 said that Mr. Tindle then opened the door to the burrito shop and stood in the doorway and video recorded Witness #1 with his cellular telephone. After video recording Witness #1, Mr. Tindle walked out of the burrito shop and began to video record Witness #5, who had returned to the street corner from the barbershop. Witness #1 continued to hear Mr. Tindle's female associate yell at Mr. Tindle to "pop him" and "knock him out".

While Mr. Tindle had his back turned to Witness #1, Witness #1 exited the burrito shop and grabbed Mr. Tindle from behind in an attempt to keep Mr. Tindle from pulling the gun out from his clothing and shooting either Witness #1, Witness #5, or their associates. Witness #1 said that he was able to eventually wrestle Mr. Tindle to the ground. Witness #1 said that from the time that he initially grabbed Mr. Tindle, to the time they were both on the ground, Mr. Tindle was able to pull the gun out from his clothing. While they were on the ground, Witness #1 was able to see the gun that Mr. Tindle was holding in his hand. Witness #1 said that he began to yell to his associates to help get the gun away from Mr. Tindle.

Witness #1 said that as he was struggling to get control of Mr. Tindle and get the gun out of his hands, Mr. Tindle was able to point the gun towards the barber shop and fire several shots. Witness #1 said that Mr. Tindle shot the gun twice towards Witness #1's associates so they would be intimidated and not try and help Witness #1 wrestle the gun from Mr. Tindle. Witness #1 said that Mr. Tindle began to stand up as Witness #1 was struggling to keep Mr. Tindle near the ground and keep him from shooting the gun. As Mr. Tindle was trying to stand up, he pointed the gun in a downward direction and fired the gun for a third or fourth time, striking Witness #1 in the leg. After being shot in the leg, Witness #1 was able to slam Mr. Tindle on the ground and Witness #1 noticed that Mr. Tindle's gun had become "stuck" or malfunctioned.

Witness #1 began to yell at his associates who were standing nearby to grab Mr. Tindle's gun because it had malfunctioned and Witness #1 knew that his associates could not be shot while the gun was "stuck". Witness #1 said that his associates did not try to grab the gun from Mr. Tindle's hand, but instead began to yell at Witness #1 that "5-0" was coming, referring to the police. Witness #1 said that he continued to hold Mr. Tindle to the ground even though the police were coming because he did not want Mr. Tindle to get up off the ground, fix the gun, and start shooting. Witness #1 saw a police officer in uniform running in the direction of where Witness #1 and Mr. Tindle were on the ground struggling. As the uniformed police officer approached Witness #1 and Mr. Tindle, Witness #1 heard the officer yell, "Get on the ground," "freeze," and "drop the gun,"

approximately four times. Witness #1 said that he did not stop struggling with Mr. Tindle despite hearing the officer's commands because Mr. Tindle was still holding the gun in his hand and would not let go of the firearm. Witness #1 said that after hearing the commands from the police officer, he then heard several gunshots coming from the police officer's direction. The police officer then ordered Witness #1 and Mr. Tindle to lie on the ground. Witness #1 let go of Mr. Tindle and laid on the ground as ordered by the police officer.

## **Witness #2**

On January 3, 2018, Witness #2 was interviewed by an OPD officer at the scene. This interview was recorded and the officer also wrote out a written statement. Thereafter, Witness #2 went to the OPD Station, where she was interviewed by OPD investigators. The interview was audio and video recorded. The following is a summary of the statements provided by Witness #2.

Witness #2 described Mr. Tindle as her fiancé. She said that they had been in a relationship for approximately 11 years. They have two young children.

Witness #2 said that, prior to the shooting incident, she was with Mr. Tindle, their two children, and her sister (Witness #9). They were walking to the West Oakland BART Station. She said that her sister was walking ahead, with the children. As they were in the area of 7<sup>th</sup> and Chester Streets, a man, later identified as Witness #1, approached Mr. Tindle. Witness #1 said something about some "Jordans." Mr. Tindle and Witness #1 began to argue. Witness #2 said that she walked ahead, across 7<sup>th</sup> Street. She yelled at Mr. Tindle, telling him to forget about Witness #1 and to come with her to the BART Station so they could catch a train to San Francisco.

Witness #1 and Mr. Tindle continued to argue. Witness #1 then rushed Mr. Tindle and tackled him from behind. They began tussling on the ground, in front of the barbershop. Witness #2 said that Witness #1 threatened to kill Mr. Tindle.

Witness #2 said that she saw a police officer run up towards the men. She heard the officer yell, "sto, put your hands up." She said the officer yelled this multiple times. The men continued to fight. Witness #2 said that she was yelling for the men to stop fighting. She said that she also yelled for the officer to not shoot, but to "hit him with the baton." She said that the officer was pointing his gun primarily at Mr. Tindle. The officer then fired two times. After the shooting, Witness #2 went up to Mr. Tindle to check on his condition.

Witness #2 said that she never saw a gun during the incident, other than the officer's gun. She said that she never heard any gunshots, prior to the officer shooting. Later in the interview, she said that while the men were tussling, she heard a loud noise, or boom, but she didn't think it was a gunshot. She thought it was just the sound of someone hitting the ground.

Investigators asked whether Witness #2 ever saw Mr. Tindle filming with his cell phone during the incident. She said that she did not. Investigators showed Witness #2 a photo of the firearm recovered from the sidewalk after the police shooting. She said that she did not recognize the gun. She said that the last time she saw Mr. Tindle with a gun was in July, 2017.

### **Witness #3**

On March 19, 2018, Witness #3 was interviewed by OPD investigators. The interview was recorded. The following is a summary of the statement provided by Witness #3.

Witness #3 said that she knew Witness #1 as a “play brother.” On the day of the shooting incident, Witness #3 was walking with Witness #1 from a store in West Oakland towards the barbershop (located at 7<sup>th</sup> and Chester Streets in Oakland) when they saw Mr. Tindle, who was accompanied by a female. Witness #3 knew that Witness #1 and Mr. Tindle did not get along with each other. Witness #3 believed that Witness #1 and Mr. Tindle did not normally get along because Witness #1 may have sold Mr. Tindle some bad marijuana in the past. While they were walking, Witness #1 and Mr. Tindle began “talking shit” to each other. Witness #3 described hearing Mr. Tindle say, “fuck you,” and other things towards Witness #1.

Witness #3 said at some point, Mr. Tindle pulled out a black handgun. Witness #3 heard Mr. Tindle yell at Witness #1, “I’m going to pop your ass. I’m going to pop your ass.” Witness #3 said that Mr. Tindle and Witness #1 were both standing up when Mr. Tindle pointed the handgun at Witness #1 and shot Witness #1 in the leg. Witness #3 heard Witness #1 yell out, “Ah shit, you shot me, you shot me.” Witness #3 said that Mr. Tindle fired the handgun two to three times.

Witness #3 said that after Mr. Tindle fired the handgun, a BART police officer came running from across the street towards Mr. Tindle and Witness #1. Witness #3 said that Mr. Tindle was not paying attention to what the BART officer was yelling at him. Witness #3 thought that Mr. Tindle was going to shoot the BART officer. Witness #3 said that she was standing between two vehicles that were parked on the street a short distance from the corner of 7<sup>th</sup> and Chester Streets when Witness #3 saw the BART officer shoot Mr. Tindle. Witness #3 said that if the BART police officer did not shoot Mr. Tindle, Witness #3 believed that Mr. Tindle would have shot and killed Witness #1. After the BART police officer shot Mr. Tindle, Witness #3 left the area and went to Witness #1’s family residence to inform the family what occurred. Witness #3 later returned to the scene while police officers were still present. Witness #3 spoke with media representatives about the incident but was not interviewed by police on the day of the incident.

### **Witness #4**

On January 3, 2018, Witness #4 was interviewed by OPD investigators at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #4.

Witness #4 was inside the barbershop when the incident began. He knew Witness #1 from the neighborhood. He said that Witness #1 came to the barbershop and said, “This dude is trying to rob me and he got a gun.” Witness #4 looked outside and initially saw Mr. Tindle walking away from the area towards the BART Station. Witness #4 said that Mr. Tindle was with his girlfriend and that the girlfriend was “egging him on.” He said that the girlfriend told Mr. Tindle to “go fire on him.”

Mr. Tindle then started walking back towards the barbershop. He was arguing with Witness #1. Mr. Tindle took out his cell phone and started recording everyone in the area of the barbershop.



Mr. Tindle made a comment about wanting to get everyone on camera. Witness #1 and Mr. Tindle continued to argue.

Mr. Tindle then tried to pull a gun out. Witness #1 began tussling with Mr. Tindle, trying to prevent Mr. Tindle from getting the gun out. Witness #1 was able to get Mr. Tindle on the ground. Then Mr. Tindle got ahold of the gun, stood up, and shot into the barbershop twice. Witness #4 said that he was inside the barbershop at the time the shots were fired and he, and other occupants, took cover. Witness #4 said that Witness #1 then got control of Mr. Tindle, tackled him to the ground, and he was trying to control Mr. Tindle so that he couldn't "do it again."

Witness #4 said that he went outside the barbershop. He saw a police officer coming across the street. Witness #4 then ran around the corner and up Chester Street. He was almost to 8<sup>th</sup> Street when he heard gunshots. He eventually returned to the area and was contacted by police at the barbershop.

Witness #4 said that Mr. Tindle was the aggressor. He said that Mr. Tindle got the gun from the front of his pants. He described the gun as looking like a black Glock.

#### **Witness #5**

On January 3, 2018, Witness #5 was interviewed by OPD investigators at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #5.

Witness #5 said that he was standing on the corner of 7<sup>th</sup> and Chester Streets near the "Upperkutz" Barbershop. While Witness #5 was standing on the corner, he looked up the street and saw Witness #1 walking with Mr. Tindle and a girlfriend of Mr. Tindle. Witness #5 was familiar with Witness #1. Witness #5 said that he did not know the name of Mr. Tindle but had seen Mr. Tindle before this occasion. Witness #5 believed that Witness #1 and Mr. Tindle were arguing about a pair of tennis shoes. At some point during their argument, Witness #5 overheard Mr. Tindle say, "I'll clap on your ass," as Mr. Tindle tugged on the front of his pants pocket like he had a gun. Witness #5 said that Mr. Tindle's girlfriend was egging him on.

Witness #5 watched as Mr. Tindle had walked halfway across the street from the corner of 7<sup>th</sup> and Chester Streets towards the West Oakland BART Station, when Mr. Tindle turned around and began to pull the gun out of his clothing. Witness #5 yelled out to Mr. Tindle, "no, no, no, no!!!" Witness #5 said that after he intervened, Mr. Tindle and his girlfriend continued walking towards the BART Station away from where Witness #1 and Witness #5 were standing. Witness #1 began to tell Witness #5 that he could not believe what was going on, because Mr. Tindle had taken Witness #1's shoes and Witness #1 could not understand why Mr. Tindle was upset.

Witness #5 said that he watched as Mr. Tindle and his girlfriend continued to walk towards the BART Station, and Witness #5 could see and hear Mr. Tindle's girlfriend yelling at him about the situation. Mr. Tindle then stopped and ran back towards Witness #5 and Witness #1 as he was clutching for his gun that was concealed in his clothing. Witness #5 said that he walked into a nearby restaurant, and Mr. Tindle took out his cellular telephone and started to record all the people that had been standing on the sidewalk at 7<sup>th</sup> and Chester Streets. Witness #5 said that during this

time, Mr. Tindle was continuing to clutch at a gun in his clothing. Mr. Tindle proceeded to pull a black semi-automatic handgun out of his clothing and was holding the gun in one hand while continuing to record people on the street and in the restaurant with his phone in the other hand.

Witness #5 said that as Mr. Tindle was recording people with his phone, Witness #1 tackled Mr. Tindle and they fell to the ground. Witness #5 said that when Mr. Tindle and Witness #1 were on the ground, Mr. Tindle had the gun in his hand all the way out of his clothing. After seeing the gun in Mr. Tindle's hand, Witness #5 said that he and several of his associates who were also on the corner, ran into the barbershop. Witness #5 then heard a "boom" and then "boom, boom." Witness #5 believed there may have been a total of five gunshots. Witness #5 said that he did not see a gun being fired, because he was in the back of the barbershop, he only heard the gunshots.

Witness #5 heard several people inside the barbershop yell that Witness #1 had Mr. Tindle pinned down, and someone should try to get the gun away from Mr. Tindle. Witness #5 then heard "boom, boom" and a voice yell "stay down." Witness #5 looked outside the barbershop and saw a uniformed BART police officer standing near Witness #1 and Mr. Tindle, who were both lying on the ground.

#### **Witness #6**

On January 3, 2018, Witness #6 was interviewed by OPD investigators at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #6.

Witness #6 was hanging outside "Upperkutz" Barbershop when Witness #1 came walking around the corner from the direction of Chester and 8<sup>th</sup> Streets. Witness #1 was followed by Mr. Tindle and Mr. Tindle's female associate, along with two elementary aged children. Witness #6 observed that Mr. Tindle and Witness #1 were in a verbal argument. Witness #6 watched as Mr. Tindle, his female associate, and the two children walked away from Witness #1, crossing 7<sup>th</sup> Street in the direction of the West Oakland BART Station.

At some point, Mr. Tindle came back across the street and began to argue with Witness #1. Witness #6 went inside the barbershop to avoid the confrontation. He then heard a gunshot coming from outside. After hearing the gunshot, Witness #6 moved to the back of the barbershop to hide behind an interior wall with other individuals who were also inside the barbershop. Witness #6 was behind the interior wall when he heard two more gunshots.

Witness #6 came out from behind the interior wall inside the shop to see what had occurred outside. Witness #6 saw a BART police officer with a gun in one hand and he was using the other hand to direct people away from the shooting scene. Witness #6 did not see any other weapons in the BART officer's hands.

#### **Witness #7**

On January 3, 2018, Witness #7 was interviewed by OPD investigators at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #7.

Witness #7 was smoking a cigarette outside the barbershop when Witness #7 observed Mr. Tindle and Witness #1 get into a verbal altercation, near where Witness #7 was standing. Witness #7 said that at the time the verbal argument began, Mr. Tindle was with a woman. Witness #1 yelled out towards Witness #7, "he just whipped out on me. He just whipped out on me for nothing." The female associate of Mr. Tindle responded to Witness #1 saying, "you know what you did."

Mr. Tindle and his female associate walked away from Witness #1 towards the West Oakland BART Station, which was across the street. Shortly thereafter, Mr. Tindle ran back across the street to where Witness #7 and Witness #1 were standing, which was still on the sidewalk near the barbershop.

As Mr. Tindle came running towards their location, he had a cellular telephone in his hand and began recording everyone who was standing on the sidewalk. Witness #1 then walked away from Mr. Tindle and entered a restaurant that was located next to the barbershop. Mr. Tindle followed Witness #1 to the restaurant. Witness #7 watched as Witness #1 was trying to cover his face so as not to be recorded.

Mr. Tindle then came back onto the sidewalk, and began recording Witness #7, and other persons on the street, with his cellular telephone. At that time, Mr. Tindle pulled out a black handgun from his clothes with his right hand and displayed the gun to Witness #7 and the others standing on the sidewalk, while holding his cell phone with his left hand. Witness #1 then rushed Mr. Tindle and they started physically fighting on the ground. Witness #7 saw the barrel of the handgun pointed in his direction and he ran into the barbershop.

While Witness #7 was inside the barbershop, he heard several gunshots go off with a pause between each round that was fired. Witness #7 saw glass shatter from the barbershop window and he tried to keep down so as not to get shot. Witness #7 then heard another voice yelling from outside the barbershop that sounded like someone was giving "commands," which Witness #7 assumed was a police officer. Witness #7 heard another three shots go off in quick succession. When Witness #7 finally exited the barbershop, he saw a police officer on the sidewalk standing next to Mr. Tindle and Witness #1. Mr. Tindle was lying on the ground receiving medical treatment, while Witness #1 was lying on the ground a few feet away.

### **Witness #8**

On January 3, 2018, Witness #8 was interviewed by an OPD officer at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #8.

Witness #8 was inside the barbershop getting a haircut when he heard a verbal argument between several males outside the barbershop. Witness #8 then heard someone from outside the barbershop yell, "oh shit," followed by two to three loud "pops." Witness #8 ran to the back of the barbershop after hearing the gunshots, and dropped to the ground. Witness #8 said that one of the barbers, who worked in the barbershop, jumped on top of him to also avoid being hit by the gunshots.

After the shooting stopped, Witness #8 walked out of the barbershop and noticed that the police were on scene and two males were lying on the ground. Witness #8 walked away from the

barbershop towards the West Oakland BART Station where the witness stayed until he was contacted by the police.

#### **Witness #9**

On January 3, 2018, Witness #9 was interviewed by an OPD officer at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #9.

Witness #9 is the sister of Witness #2. She was with Mr. Tindle, Witness #2, and the children, on the way to the BART Station. When they were in the area of 7<sup>th</sup> and Chester Streets, Witness #1 approached and began arguing with Mr. Tindle. Witness #1 acted as though he was going to pull something out of a bag. Witness #9 described this action as the motion one might use to pull a gun, or to pretend to have a gun. Witness #9 decided to continue to the BART Station with the children. She noticed that Mr. Tindle and Witness #1 started fighting. Witness #9 then took the children into the lobby part of the BART Station.

While waiting inside the Station, Witness #9 heard two to three gunshots. Someone in the Station yelled, "they are shooting." Witness #9 saw a BART police officer run out of the station, towards the gunfire. Shortly thereafter, Witness #9 heard three gunshots. Witness #9 took the children up to the BART train platform and waited. Eventually the police contacted Witness #9 by telephone and she met police in the BART Station lobby.

#### **Witness #10**

On January 3, 2018, Witness #10 was interviewed by an OPD officer at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #10.

Witness #10 was inside the burrito shop adjacent to the barbershop. Witness #1 ran into the burrito shop. Mr. Tindle came in with his girlfriend and was recording with his cell phone. Mr. Tindle said, "you over here messing with some fucking kids. I'm gonna record you." Mr. Tindle's girlfriend said, "Yeah, take a picture of him too." Mr. Tindle then left the burrito shop, with his girlfriend. Witness #1 then left the burrito shop.

Witness #10 heard some tussling outside so she looked out the window of the burrito shop. She saw Mr. Tindle holding a gun. She was not sure which hand he used to hold the gun. She also said that Witness #1 was hunched over Mr. Tindle, and the men were tussling.

Witness #10 retreated to the back of the restaurant to take cover. She heard a gunshot. Approximately five seconds later, she heard what she thought was the sound of a Taser, and then she heard five or six gunshots. After the shooting, she went outside. The police were on scene. She attempted to check on Mr. Tindle's condition and noticed that he was not breathing.

#### **Witness #11**

On January 3, 2018, Witness #11 was interviewed by an OPD officer at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #11.

Witness #11 was inside the burrito shop adjacent to the barbershop. She heard people arguing outside the restaurant. Witness #1 then walked into the burrito shop, and began yelling outside through the restaurant window. Witness #11 said that Witness #1 was yelling at Mr. Tindle, who she believed was walking across the street towards the burrito shop. Witness #1 walked out of the restaurant for a short time and then quickly walked back into the restaurant. Witness #11 saw Mr. Tindle walk into the threshold of the burrito shop's door, and Mr. Tindle and Witness #1 began yelling at each other.

Witness #11 said that a female subject tried to get in between Mr. Tindle and Witness #1. Mr. Tindle then pulled out a cellular telephone and began to video record Witness #1. Mr. Tindle and Witness #1 eventually went outside of the burrito shop. Witness #11 stayed inside the burrito shop and then heard what she believed to be Mr. Tindle and Witness #1 fighting outside. Witness #11 heard two gunshots. Approximately one minute later, Witness #11 heard two to three more gunshots.

### **Witness #12**

On January 3, 2018, Witness #12 was interviewed by an OPD officer at the scene. The interview was recorded. The following is a summary of the statement provided by Witness #12.

Witness #12 lives on Chester Street in Oakland, and returned home from running errands at approximately 4:25 p.m. After returning home, Witness #12 happened to look outside a front window of his house and noticed a bicycle, a box of tennis shoes and a "Nike" duffle bag lying on the ground near the driveway to his home. At approximately 4:40 p.m, Witness #12 heard what he believed to be three gunshots coming from the direction of the West Oakland BART Station.

After hearing the gunshots, Witness #12 saw several males running down Chester Street away from the direction of the gunshots. A short time later, Witness #12 watched a man, wearing a black hoodie, walk up to the bicycle, box of shoes, and the duffle bag, that were on the ground near the driveway. The man picked up the bicycle, box of shoes, and duffle bag, and left with the items towards 7<sup>th</sup> Street.

### **Witness #13 & Witness #14**

On January 3, 2018, Witness #13 and Witness #14 were interviewed by an OPD officer at the scene. The interviews were recorded. The following is a summary of the statements provided by Witness #13 and Witness #14.

Witness #13 and #14 were walking together from the West Oakland BART Station towards a liquor store located near the corner of 7<sup>th</sup> and Center Street. While they were walking, both witnesses saw two males arguing and physically fighting near the barbershop located at the corner of 7<sup>th</sup> and Chester Streets. Both witnesses said that they saw a BART police officer run from the West Oakland BART Station to where the men were fighting. The witnesses said that they saw

the BART officer 'tase' one of the men who was fighting, and then shoot the same man approximately 10 times.

The witnesses said that after the shooting, the other man who had been fighting with the man shot by police, ran away from the scene. The witnesses refused to identify themselves.

### **AUTOPSY RESULTS:**

On January 4, 2018, Dr. John Iocco performed an autopsy upon the body of Mr. Tindle at the Alameda County Coroner's Bureau in Oakland. Dr. Iocco determined the cause of death to be multiple gunshot wounds. Dr. Iocco discovered three bullet entry wounds in the back and a graze wound to the lower left arm.

There was an entry wound of the left lateral midback, 19 inches below the top of the head, and six inches to the left of the posterior midline. It was directed posterior to anterior, slightly superior to inferior, and slightly left to right.

There was an entry of the left lower back, 24 inches below the top of the head, and 4 ½ inches to the left of the posterior midline. It was directed posterior to anterior, slightly inferior to superior, and moderately left to right. There was a 2 x 1 inch grazing wound of the left posterior lower arm, in line with the gunshot wound described above.

There was an entry of the right lower back, 27-½ inches below the top of the head, and 3-½ inches to the right of the posterior midline. It was directed posterior to anterior, slightly inferior to superior, and moderately left to right.

Dr. Iocco determined that the gunshots caused a through-and-through wound to the left lung and a through-and-through wound to the heart. There was also a graze wound to the liver. Dr. Iocco recovered three hard metal slugs from the right chest, right lateral abdomen, and right upper mid abdomen.

Dr. Iocco also observed contusions to the right hand and fingers, left hand, and right knee.

A blood sample was collected and submitted for toxicology testing. The test results indicated that no alcohol or basic drugs were detected.

### **CRIME LAB EXAMINATION AND TESTING:**

#### **Firearm Related Evidence**

Criminalist Lilliam Lau, a firearms examination expert with the OPD Crime Lab, conducted examination and testing of firearms related evidence. She examined Officer Mateu's firearm, a 40 S&W caliber Glock model 22 semi-automatic pistol. She test fired the pistol and found it to be in working order. She examined the three fired 40 S&W cartridge cases that had been recovered from the sidewalk, directly in front of the barbershop. She determined that all three of the fired cartridge cases were fired from Officer Mateu's pistol.



Criminalist Lau examined the three bullets that were recovered from Mr. Tindle's body during the autopsy. She determined that they were all .40 caliber class copper jacketed hollow point bullets. There were insufficient marks on the three bullets to scientifically determine whether they were fired by Officer Mateu's pistol. However, she was able to determine that none of these three bullets were fired by Mr. Tindle's pistol.

Criminalist Lau examined Mr. Tindle's firearm, a 40 S&W caliber Sig Sauer model SP 2022 semi-automatic pistol. Trace evidence was collected from the Sig Sauer pistol for later testing. She test fired the pistol and found it to be in working order. She examined the two fired SIG 40 S&W cartridge cases that had been recovered. One had been recovered from the Sig Sauer pistol when it was made safe at the scene. The other had been recovered from the sidewalk outside the barbershop. She determined that both of the fired cartridge cases were fired from Mr. Tindle's pistol.

Criminalist Lau examined the two copper bullet jackets that were recovered from the floor of the barbershop. She determined that they were likely .40 caliber. There were insufficient marks on the two bullet jackets to scientifically determine whether they were fired by Mr. Tindle's pistol. However, she was able to determine that they were not fired by Officer Mateu's pistol.

On April 13, 2018, OIS Team members met with Criminalists Lilliam Lau and Mark Bennett at the OPD Crime Lab. The purpose of the meeting was to discuss Ms. Lau's report, examine evidence items, and determine whether further examination was warranted. Officer Mateu's body worn camera recording was also reviewed.

It was noted that, in the body worn camera recording, after the shooting, the Sig Sauer pistol was depicted on the sidewalk and it appeared that the handle was raised off of the sidewalk surface. One of the issues being addressed was whether that portion of the recording depicted the pistol at rest, or whether it was in motion. During the meeting, the Sig Sauer pistol was placed on a flat surface on its left side (as it was depicted in the recording). It was noted that the handle was raised off the surface when in this resting position.

At the time of the meeting, the Sig Pro magazine, live rounds from the magazine, and the loose live round found on scene, had not yet been formally examined by Criminalist Lau, but were examined visually during the meeting. There were seven live rounds in the magazine. There were scratches and dings on the magazine, not inconsistent with it previously having been dropped on a hard surface. The loose live round had no obvious scratches/marks upon cursory visual examination. Criminalists Lau and Bennett remarked that a live round may not exhibit such marks, even if dropped on a hard surface.

The significance of the Sig Pro magazine being found on the sidewalk separate from the Sig Sauer pistol was discussed. Criminalists Lau and Bennett demonstrated that the magazine is released from the pistol by depressing a magazine release button. Both Criminalists agreed that the only thing that should cause the magazine to separate from the pistol is depression of the magazine release button.

The significance of a fired cartridge case being found in the chamber of the Sig Sauer pistol was discussed. After the OIS, Officer Mateu picked up the Sig Sauer pistol and secured it in a police car. The body worn camera recording shows that the pistol slide was closed and the hammer was down. The Criminalists explained that the Sig Sauer pistol is double action mode. When the gun is cocked, it is in single action mode. When a round is fired, and the gun cycles with a new round from the magazine, the gun stays in single action mode, with the hammer back.

The Criminalists explained that the fired cartridge case found in the chamber of the pistol could be explained by application of force on the slide after a shot was fired. This could prevent the slide from coming all the way back. This could happen if someone was holding the slide when a shot was fired (e.g., during a struggle over the gun). If the slide does not come all the way back, the hammer would remain down. The Criminalists noted that the examination of the fired cartridge case found in the chamber of the Sig Sauer pistol revealed that it did have at least a partial drag mark, suggesting that the slide came back at least somewhat after firing.

The significance of the live round being found on the sidewalk was discussed. During the meeting, the Sig Sauer pistol was loaded with dummy rounds, using the actual magazine recovered from the sidewalk. Criminalist Bennett simulated firing, pulling the slide back somewhat, and then letting the slide return to the closed position. Criminalist Bennett then released the magazine. On two occasions, a “live” round fell from the pistol, separate from the loaded magazine. On other occasions, it appeared that the top round in the magazine was significantly loosened from its regular seated position. When the magazine was properly loaded with dummy rounds and dropped to the floor, the top round did not separate from the magazine.

After reviewing the body worn camera recording, and still frames from the recording, Criminalists Bennett and Lau were of the opinion that Officer Mateu’s shots were not the cause of the gunshot wound to Witness #1’s leg.

After the meeting, the OIS Team submitted a request for further firearms examination work by the OPD Crime Lab. Criminalist Lau conducted the further examination and issued a written report on June 18, 2018.

Criminalist Lau conducted a close examination of the live round that was found on the sidewalk. She determined that it is a 40 S&W caliber cartridge with cycling marks and indentations. She noted that the origin of the indentation marks is unknown and it could not be determined if they are consistent with being dropped onto the sidewalk.

Criminalist Lau examined the Sig Pro magazine that was found on the sidewalk. The magazine had been found with seven 40 S&W caliber cartridges. She determined that the magazine fit and functions with the Sig Sauer pistol and has a capacity for 12 cartridges.

Criminalist Lau re-examined the fired cartridge case that had been found in the chamber of the Sig Sauer pistol. Her examination did not reveal multiple firing pin strike marks.

Criminalist Lau tested the Sig Sauer pistol with a dummy round chambered and the Sig Pro magazine loaded with seven dummy rounds. She was attempting to determine if a cartridge can

work loose from the magazine during manipulation of the pistol. She found that movement of the slide can intermittently cause the top cartridge in the magazine to work loose and be separated from the magazine when removed from the pistol.

### **DNA Evidence**

Criminalist Helena Wong, a DNA expert with the OPD Crime Lab, conducted DNA testing. She developed a DNA profile for Mr. Tindle from a blood sample collected at his autopsy. She then collected swabs from Mr. Tindle's Sig Sauer pistol and the Sig Pro magazine recovered from the sidewalk. Her most significant finding came from the swabbing of the grips of the pistol. She determined that biological material from the grips typed as a DNA mixture consisting of at least four donors. The clear major donor is male. This major donor DNA profile is expected to occur once in approximately 172 decillion members of the population. Mr. Tindle could not be eliminated as the major donor. As a result of Ms. Wong's analysis, and given that the population of Earth is between seven and eight billion people, it is fair to conclude that, as a matter of scientific certainty, Mr. Tindle was the major donor of the DNA found on the Sig Sauer pistol.

### **Gunshot Residue Evidence**

Gunshot residue samples were collected from Mr. Tindle's hands at the Coroner's Office. Gunshot residue samples were collected from Witness #1's hands by OPD crime scene personnel at the hospital. The samples were sent to the County of Santa Clara Crime Lab to be tested for the presence of gunshot residue. The Santa Clara Crime Lab analyzed the samples using Scanning Electron Microscopy and Energy Dispersive Spectroscopy. The results are summarized as follows:

No particles characteristic of gunshot residue were detected on the hand samples from Mr. Tindle. The absence of gunshot residue may occur for the following reasons:

- The subject may not have discharged a firearm or been in close proximity to the discharge of a firearm;
- The subject may have discharged a firearm or been in close proximity to the discharge of a firearm, but no gunshot residue particles were deposited on the sampled area;
- The subject may have discharged a firearm or been in close proximity to the discharge of a firearm; however the gunshot residue particles were removed by washing, wiping, or other activity before the samples were collected.

Particles containing lead, antimony, and barium were detected on both hand samples from Witness #1 and are considered characteristic of gunshot residue. Gunshot residue particles are normally deposited for the following reasons:

- The subject may have discharged or been in close proximity to the discharge of a firearm;
- The subject may have handled a firearm;
- The subject may have been in contact with a surface bearing gunshot residue.

### **VIDEO EVIDENCE:**

The OIS Team reviewed all available video evidence as part of its investigation. The most significant video footage was recorded by the body worn camera of Officer Mateu.

### **Officer Mateu's Body Worn Camera Recording**

Officer Mateu was wearing a body worn camera, affixed to his uniform at the center of his chest. The camera recorded both video and audio of the incident. The times described below are based upon the time counter displayed when viewing the video file on a computer. Thus the recording begins at 00:00. There is no audio recording for the first 30 seconds. When the camera is activated by the user, the camera automatically captures video footage from the previous 30 seconds, but without sound.

The footage begins with Officer Mateu located in the Station Agent booth at the West Oakland BART Station. At 00:13, Officer Mateu begins to leave the booth and makes contact with the woman who was suspected of fare evasion. Officer Mateu speaks with the woman inside the Station and attempts to obtain her identifying information. At times, the camera has a view looking out the doorway of the Station leading out to the parking lot and 7<sup>th</sup> Street. At other times, as the camera rotates to the left, the camera has a view looking out another doorway leading out to the parking lot. There are numerous people inside the Station, as well as numerous people walking in and out of the Station.

At 03:17, there is the sound of a gunshot. People begin ducking, yelling, and running into the Station. At the time of the first shot, Officer Mateu is speaking to dispatch via radio, providing the name of the woman he was detaining. At 03:23, there is the sound of a second gunshot. At the time of the second shot, Officer Mateu is still speaking to dispatch via radio. Officer Mateu stops communicating with dispatch and moves towards the 7<sup>th</sup> Street exit. Officer Mateu asks, "what happened?" A female voice responds, "they shooting." Officer Mateu asks, "where?" Officer Mateu proceeds rapidly out of the station, repeatedly asking, "where?"

Upon exiting the Station, Officer Mateu's camera depicts the sidewalk area, parking lot, and the intersection of 7<sup>th</sup> and Center Streets. There are numerous people in the parking lot and sidewalk area outside of the Station. At 03:38, the camera rotates to the left, with a view of the sidewalk, the parking lot, and in the distance, the intersection of 7<sup>th</sup> and Chester Streets. Officer Mateu begins to run in that direction. Before he leaves the sidewalk area and enters the parking lot roadway, Officer Mateu uses his radio to communicate with dispatch. At 03:38, he tells dispatch: "Code 33. Got shots fired at West Oakland. Shots fired."

Officer Mateu runs across the parking lot roadway, across a dirt divider, and onto the sidewalk parallel to 7<sup>th</sup> Street. There is vehicle traffic in both directions on 7<sup>th</sup> Street. He continues to run on the sidewalk towards Chester Street. The camera depicts the corner of 7<sup>th</sup> and Chester Streets, outside the barbershop. However, the view of the area is blocked intermittently by passing vehicles. Moreover, the view "bounces" around because of the movement of the camera caused by Officer Mateu's running motion.

As Officer Mateu moves closer to the area, it appears that there are multiple people outside of the barbershop. Mr. Tindle and Witness #1 appear to be on the ground wrestling, but the image is not clear. Witness #2, appears to be near the men on the ground but she then begins to move to the

corner, and eventually out into the roadway on 7<sup>th</sup> Street. A person in dark clothing is standing near the men on the ground. A person in a white shirt appears to exit the barbershop and stand near the men on the ground.

At 3:50, voices can be heard yelling. They sound like female and male voices and may be coming from the area in front of the barbershop.

At 03:52, Officer Mateu leaves the sidewalk and enters the roadway, behind a passing minivan. At about the same time, Officer Mateu uses his radio and tells dispatch, “7<sup>th</sup> and Chester. Seventh and Chester.” Just as he says this, at 03:54, Officer Mateu’s firearm is depicted in his right hand, with his right arm extended. The firearm is pointed in the direction of the men on the ground outside the barbershop. At this point, Witness #2 is walking across 7<sup>th</sup> Street, away from the barbershop and towards the BART parking lot. She has not yet reached the center dividing line of the roadway. The person in the white shirt runs around the corner of the barbershop, northbound on Chester Street and out of view. The person in dark clothing enters the barbershop.

At 03:55, Officer Mateu is running diagonally across the street towards the men on the ground. He is approximately at the center dividing line of the roadway. He yells, “let me see your hands. Let me see your hands now. Both of you. Both of you. Let me see your hands.” He is now holding his firearm with both hands, and with both arms outstretched in front of him. He is running towards the men as he yells these commands. He completed these commands at 04:00. At this point, Officer Mateu is crossing the curb, onto the sidewalk, just east of where the men are on the ground. At 04:01, he yells, “let me see your hands.” And at 04:02, he again yells, “let me see your hands.”

As Officer Mateu is approaching, and yelling commands, the men on the sidewalk appear to be struggling and changing positions. When Officer Mateu is still in the street, Mr. Tindle is laying somewhat on his left side. He is laying parallel to the front of the barbershop, with his head towards Chester Street. He is facing the barbershop, with his back towards the officer. His arms and hands are not visible in the camera view. Witness #1 is on the ground, between Mr. Tindle and the barbershop. His head is also towards Chester Street. He appears to be next to Mr. Tindle’s head or upper body area. Witness #1’s head and the left side of his face are depicted in the camera view. For a few moments, Witness #1’s left arm and hand are visible. But then he pulls in his arm to the area in front of Mr. Tindle’s torso.

As Officer Mateu reaches the curb to the sidewalk area, Witness #1 pivots his body so that he is kneeling behind Mr. Tindle’s back, facing the barbershop. His body is hunched over Mr. Tindle’s torso and his hands are down in the area in front of Mr. Tindle’s torso. Officer Mateu proceeds onto the sidewalk and moves towards the center of the sidewalk, just east of where the men are on the ground. At this portion of the recording, the camera pivots to the right and the two men are not in view for a short period of time. The camera then pivots back to the left and the men come back into view. As this happens, at approximately 4:01, the camera depicts a dark object, possibly a gun, in the area in front of Mr. Tindle’s torso. Witness #1’s hands appear to be in the same general area.

As Officer Mateu moves closer to the men, Mr. Tindle rolls his body to the right so that he is on his knees. He then raises his torso. Witness #1 is on the left side of Mr. Tindle, still reaching over

Mr. Tindle's head or upper body. The camera depicts Mr. Tindle's back side. Neither man's hands are visible in the camera view. Mr. Tindle then moves his left arm and his left hand becomes visible. He does not appear to be holding anything in his left hand. His right arm and hand are not visible in the camera view.

At 4:04, just after Mr. Tindle's left hand comes into view, Officer Mateu fires three rapid shots. After the shots, Mr. Tindle falls forward, while rolling to the right, and falls onto his right side. As he is falling, his right hand is not visible in the camera view. When Mr. Tindle's right hip is down on the sidewalk, a gun is visible on the sidewalk in front of Mr. Tindle's torso. A firearm magazine is visible near Mr. Tindle's feet. Mr. Tindle rolls onto his back. Witness #1 kneels on the sidewalk a few feet away from Mr. Tindle. Officer Mateu yells, "let me see your hands." As he does so, Mr. Tindle raises his hands. Mr. Tindle rolls onto his right side for a few moments and then rolls onto his back. Officer Mateu continues to point his service weapon at Mr. Tindle and yell commands.

Witness #2 walks into view and begins screaming. She stands near the pistol on the sidewalk. Officer Mateu advises dispatch that there has been an OIS. Shortly thereafter he advises dispatch to send emergency medical personnel. Officer Valdehueza arrives on scene. Officer Mateu directs Witness #2 to stand back and he pushes her away from the area where the gun is on the sidewalk. Officer Mateu then picks up the gun and locks it inside Officer Valdehueza's patrol vehicle. Officer Mateu then handcuffs Witness #1, with assistance from Officer Valdehueza. While that is occurring, Officer Mateu tells Officer Valdehueza, "he had the gun in the hand." Officer Valdehueza says, "who, this one?" Officer Mateu says, "this one had the gun and . . . they were both fighting over the gun." Officer Mateu appears to gesture towards Mr. Tindle with his right hand when saying "this one had the gun . . ."

Officer Mateu checks on Mr. Tindle. He unzips his jacket and examines his chest. Officer Mateu then goes back to Officer Valdehueza's vehicle in search of a trauma kit. OPD officers arrive and begin administering first aid to Mr. Tindle and Witness #1. Officer Mateu waits next to Officer Valdehueza's vehicle. Eventually, Officer Mateu is contacted by a BART PD sergeant and he is instructed to turn off his camera.

#### **Officer Valdehueza's Body Worn Camera Recording**

Officer Valdehueza was wearing a body worn camera. The camera recorded both video and audio. There is no audio recording for the first 30 seconds.

The footage begins with Officer Valdehueza driving his police vehicle towards the shooting scene. His route is blocked by a bus. Once he is able to maneuver around the bus, Officer Valdehueza stops his vehicle at the corner in front of the barbershop and gets out. The camera depicts Officer Mateu pointing his service weapon at Mr. Tindle on the ground. Witness #2 is kneeling next to Mr. Tindle. Witness #1 is lying face down on the sidewalk.

Officer Valdehueza withdraws his service weapon and points it at Mr. Tindle, while commanding Witness #2 to back up. Officer Mateu then holsters his service weapon and picks up the pistol on the sidewalk. He takes it in the direction of the police vehicle. Witness #1 tells Officer Valdehueza that he has been shot in the leg. Witness #1 asks someone to "go get my shoes down the street."



Witness #2 continues yelling. At some point, she points at Witness #1 and says, “this bitch just attacked him.”

Officer Mateu and Officer Valdehueza handcuff Witness #1. During this process, Officer Mateu says, “he had the gun in his hand.” Officer Valdehueza points to Witness #1 and says, “Who, this one?” Officer Mateu points at Mr. Tindle and says, “this one . . . they were both fighting over the gun.” Later in the footage, Witness #1 says, “he shot me in the leg.” When other officers arrive, at one point Officer Valdehueza refers to Witness #1 and says, “he is supposed to be a suspect.” Witness #1 promptly responds by saying, “no, he is the suspect. I was fighting for the gun.”

Officer Valdehueza continues to assist as more OPD officers and medical personnel arrive. Eventually he makes contact with a BART PD sergeant and turns off his camera.

### **AC Transit Video**

A video surveillance recording from an AC Transit bus captured part of the incident. The bus was equipped with a forward facing camera, which also recorded audio. The recording begins with the bus leaving the West Oakland BART Station parking lot, approaching Chester Street. There are numerous pedestrians and vehicles in the parking lot. As the bus approaches Chester Street, there is a noise that sounds like a gunshot. Approximately six seconds later, there is a noise that sounds like a second gunshot. A person on the bus asks, “are they shooting?”

The bus turns right out of the parking lot, northbound on to Chester Street. The bus is unable to proceed because a car is backing up on Chester Street towards the bus. The camera has a view northbound on Chester Street. The camera has a distant view of the area in front of the barbershop at 7<sup>th</sup> and Chester Streets.

The camera depicts people grappling on the ground in front of the barbershop. It also depicts two individuals standing near the people on the ground. These latter two individuals leave the area. This portion of the recording corresponds with Officer Mateu’s body worn camera footage, showing the person in the white shirt running around the corner of the barbershop, northbound on Chester Street, and the person in dark clothing entering the barbershop.

The camera later depicts Officer Mateu approach the men on the ground, with his arms outstretched in front of him. Shortly thereafter, three gunshots are heard. The bus then moves to the right, to allow Officer Valdehueza’s police vehicle to pass on the left side of the bus.

### **Independent Analysis of Officer Mateu’s Body Worn Camera Recording**

The Alameda County District Attorney’s Office retained the services of 3D-Forensic, Inc. to conduct analysis of Officer Mateu’s body worn camera recording. 3D-Forensic is a private company, not affiliated with any law enforcement agency. 3D-Forensic employs experts in the fields of forensic video analysis and 3D laser scanning.

3D-Forensic was provided with numerous materials, including the original body worn camera recording, the actual body worn camera that recorded the incident, photographs, crime scene

reports, and crime lab reports. 3D-Forensic then conducted laser scans of Officer Mateu in uniform, wearing the body camera, and laser scans of the incident location.

3D-Forensic created a 3D Model of the shooting incident. The 3D Model allowed for further analysis of the incident. One of the goals of the analysis by 3D-Forensic was to account for the different views that the body worn camera lens had versus the view that Officer Mateu had with his own eyes. The body worn camera was mounted on Officer Mateu's chest. Accordingly, the camera view was lower than Officer Mateu's eyes. By definition, the camera view and Officer Mateu's eye view were different. With the 3D Model, the forensic experts were able to create images from the potential viewpoint of Officer Mateu's eyes, and compare them to images from the camera's viewpoint.

3D-Forensic took the relevant portion of the body camera recording and separated the footage into individual still frames, to allow for closer analysis. The body camera records at the rate of 30 frames per second. The relevant portion resulted in 399 frames. 3D-Forensic then undistorted each frame. Given the wide angle of the body camera lens, images appear rounded or distorted. 3D-Forensic was able to undistort the frames for a "real world" representation.

The undistorted still frames, and 3D Model images, were used to analyze various issues raised in this investigation. An overall goal was to examine to what extent the video evidence is consistent or inconsistent with Officer Mateu's account of the incident. On September 27, 2018, members of the OIS Team met with a representative from 3D-Forensic to discuss the results of the analysis and review images documenting the analysis. The OIS Team requested additional analysis. On October 10, 2018, 3D-Forensic provided the OIS Team with a final report and images documenting the analysis.

### **Officer Mateu's View of the Pistol Prior to the Shooting**

Officer Mateu said that, as he got closer to the two men wrestling on the ground, he saw that the men were wrestling over a gun. Officer Mateu said that Mr. Tindle was holding a black pistol in his left hand. He said that Mr. Tindle's hand was on the ground, he was holding the gun by the grip, and the gun was pointed towards the barbershop. Officer Mateu said that Witness #1 was on top of Mr. Tindle, trying to hold Mr. Tindle's hand down, and wrestle the gun away.

As noted earlier, when Officer Mateu proceeds onto the sidewalk and moves towards the center of the sidewalk, the camera pivots to the right and the two men are not in view for a short period of time. In terms of the still frames, the men are completely out of view from approximately frames 185 to 205. The men start to come back into view at frame 206. At frame 208, a dark object is visible. This dark object appears to be the pistol. The 3D-Forensic analysis of frame 208 is depicted below.



Frame  
208

3.7s to OIS

Undistorted  
AXON  
Body CAM  
Footage



Frame  
208

3.7s to OIS

Camera  
Matched  
Footage  
with  
3D Overlay



Frame  
208

3.7s to OIS

Officer's  
eye view  
with 3D  
Geometry

The top image is the undistorted frame 208. This image was recorded approximately 3.7 seconds before Officer Mateu fired the first shot. The middle image is the same frame, with the 3D Model overlayed the image. The bottom image is derived from the 3D Model, and represents the view from the height of Officer Mateu's eyes. It should be noted that the "eye view" represents what the Officer could potentially see with his eyes. However, at any given moment, Officer Mateu may not have been looking at the exact same location where the camera was pointed.

As part of its analysis in creating the 3D Model, 3D-Forensic modeled a 40 S&W caliber Sig Sauer model SP 2022 semi-automatic pistol – the same type of pistol actually recovered later from the sidewalk. Based on its analysis, 3D-Forensic determined that the dark object depicted in frame 208 is consistent with being a pistol. Moreover, the 3D Model determined that the dark object was on the sidewalk or very close to the sidewalk. The dark object remains in view of the camera until frame 211. At that point, the camera again pivots to the right and the men are out of view from frames 212 – 235. When the men come back into view, their positioning has changed and the dark object is no longer visible.

The video analysis appears to be consistent with Officer Mateu's account in at least some respects. Officer Mateu said that he saw a black pistol and that it was pointed towards the barbershop. The video analysis indicates the same. Officer Mateu said that the pistol was in Mr. Tindle's left hand, on the ground, and that Witness #1 was on top of Mr. Tindle, trying to hold Mr. Tindle's hand down. The video analysis indicates that the gun was on the ground, or very near the ground. It also appears from the still images that Witness #1 is positioned on top of Mr. Tindle. However, the still frame images do not appear to have sufficient clarity to determine which hand, if any, is holding the gun. Nothing in the video analysis seems to contradict what Officer Mateu said about this portion of the incident. Moreover, it should be noted that during the portions of the recording when the men are out of view, Officer Mateu could have been looking at the men, and could have seen things that were not within the camera view.

### **Officer Mateu's View of Mr. Tindle's Change in Positioning**

Officer Mateu said that, after he saw the pistol in Mr. Tindle's hand, Mr. Tindle had his back to Officer Mateu and Witness #1 was on top of Mr. Tindle. Officer Mateu said he could no longer see the gun or Mr. Tindle's hands and it appeared that the gun got brought in closer to Mr. Tindle's body.

Officer Mateu said that Mr. Tindle's left hand became visible again and that the gun was not in his hand. Mr. Tindle's right hand was not visible. Officer Mateu said that he also noticed that Mr. Tindle was starting to get up off the ground. Mr. Tindle had been crouched over on his knees and it appeared that he was starting to lift up off his knees and was attempting to stand up.

In frame 208, depicted above, the bottom of Mr. Tindle's shoe is visible and it appears that he is lying on his side on the sidewalk. After frame 208, the camera pivots to the right and the men are out of view. In frame 241, the men are back in camera view, and Mr. Tindle's position has changed. Frame 241 is depicted below.



#### **Frame 241**

In frame 241, Mr. Tindle (wearing denim pants) has the bottom of his shoe on the ground and his knees are off the ground. Mr. Tindle's hands and the pistol are not visible in the camera view. According to the analysis by 3D-Forensic, frame 241 was recorded approximately 2.6 seconds before Officer Mateu fired the first shot.

From frames 244-265, the camera's view of the men is essentially blocked by Officer Mateu's outstretched arms, hands, and his service weapon. In frame 269, the men are back in camera view. Frame 269 is depicted below.



### **Frame 269**

In frame 269, Mr. Tindle is on his knees. Mr. Tindle's hands and the pistol are not visible. According to the analysis by 3D-Forensic, frame 269 was recorded approximately 1.5 seconds before Officer Mateu fired the first shot.

After frame 269, Mr. Tindle begins to raise his left hand. His hand is first visible in frame 273. In frame 276, Mr. Tindle's left hand is visible. Frame 276 is depicted below.





#### **Frame 276**

In frame 276, Mr. Tindle's left hand is visible. The hand appears to be open, with the back of the hand towards the officer. There is no gun in Mr. Tindle's left hand. Mr. Tindle's right arm and hand are not visible. Nor is the pistol visible. Mr. Tindle's lower body appears to be in essentially the same position as frame 269. However, in frame 276, a portion of Mr. Tindle's gray hood is now visible in the back of the neck area. This indicates that Mr. Tindle's upper body may have raised somewhat.

According to the analysis by 3D-Forensic, Officer Mateu fired the first shot at approximately frame 281. Frame 281 is depicted below.



**Frame 281**

In frame 281, the officer's left arm blocks the camera view of Mr. Tindle's left hand. According to the analysis by 3D-Forensic, the officer's eye view, which was higher than the camera, would permit the officer to see Mr. Tindle's left hand. In frame 281, Mr. Tindle's right arm and hand are not visible. Nor is the pistol visible.

The video analysis appears to be consistent with Officer Mateu's account in at least some respects. Officer Mateu said that, after he saw the pistol in Mr. Tindle's left hand, positioning of the men changed. The officer said that Mr. Tindle's back was to the officer and he could no longer see the gun or Mr. Tindle's hands. The view of frame 269 is consistent with this account.

Officer Mateu said that Mr. Tindle started to get up off the ground. The officer said that Mr. Tindle had been crouched over on his knees and it appeared that he was starting to lift up off his knees and was attempting to stand up. Mr. Tindle did change positions from frame 208 to frame 241. In frame 208, Mr. Tindle was lying on the ground. In frame 241, Mr. Tindle had at least one foot planted on the ground and his knees were raised off the ground. This change in positioning is not inconsistent with the officer's description of Mr. Tindle attempting to stand up. However, in frame 269, Mr. Tindle was on his knees. He remained on his knees until the time of the shooting. It does not appear that Mr. Tindle was raising off of his knees in the frames immediately preceding the shooting. The appearance of Mr. Tindle's gray hood in frame 276 suggests that he may have raised his upper body somewhat in the frames immediately preceding the shooting.

Officer Mateu said that Mr. Tindle's left hand became visible and that the gun was not in his hand. The officer also said that Mr. Tindle's right hand was not visible. The video analysis is consistent with this account. When Mr. Tindle's left hand becomes visible, there is no gun in his hand. And Mr. Tindle's right arm and right hand remain out of view up to the time of the shooting.

### **Officer Mateu's View of the Pistol after the Shooting**

Officer Mateu said that, after he fired at Mr. Tindle, he saw the gun fall out of Mr. Tindle's right hand and the magazine fall out of the gun. He said that Mr. Tindle fell to the ground. In the body camera footage, just after the shooting, Mr. Tindle falls forward, while rolling to the right, and falls onto his right side. As he is falling, his right hand is not visible in the camera view. When Mr. Tindle's right hip is down on the sidewalk, a gun is visible on the sidewalk in front of Mr. Tindle's torso. A firearm magazine is visible near Mr. Tindle's feet.

The camera view does not depict the gun falling from Mr. Tindle's right hand, or the magazine falling from the gun. Accordingly, the body camera footage was closely analyzed to address two questions: (1) Could the officer's eye view have seen the gun fall from Mr. Tindle's right hand and the magazine fall from the gun? (2) Is the body camera recording consistent or inconsistent with the gun falling from Mr. Tindle's right hand after the shooting, and the magazine falling from the gun? The analysis of these two questions is inter-related.

The location of the gun, where it is first seen in the footage after the shooting, is consistent with the gun having fallen from Mr. Tindle's right hand. As indicated above, the analysis by 3D-Forensic indicates that Officer Mateu fired the first shot at approximately frame 281. After the shots are fired, Mr. Tindle falls forward. The gun is first visible in the footage after the shooting at frame 319. The analysis of frame 319 by 3D-Forensic is depicted below.



Frame 319

1.2s after OIS

Undistorted  
AXON BodyCAM  
footage.



Frame 319

1.2s after OIS

Camera Matched  
footage



Frame 319

1.2s after OIS

Camera Matched  
footage with  
3D Scan data



Frame 319

1.2s after OIS

Top down view

In the body camera view of frame 319, the gun is seen on the sidewalk in front of Mr. Tindle, below his raised right leg. Using the 3D Model of the frame, 3D-Forensic created an overhead view showing the location of the gun in relation to Mr. Tindle's body. The gun is located to the left of Mr. Tindle, near his upper body.

3D-Forensic conducted an analysis of frame 281, the approximate time of the first shot. This analysis of frame 281 by 3D-Forensic is depicted below.





Frame 281

OIS

Undistorted  
AXON BodyCAM  
footage.



Frame 281

OIS

Camera Matched  
footage



Frame 281

OIS

Camera Matched  
footage with  
3D Scan data



Frame 281

OIS

Top down view

In this analysis of frame 281, 3D-Forensic created an overhead view showing Mr. Tindle's location at the time of the shooting. 3D-Forensic included in this overhead view the location of the gun in frame 319, when it is first seen in the footage after the shooting. The overhead view illustrates that, after the shooting, the gun ended up a considerable distance away from where Mr. Tindle was located at the time of the shooting. This is consistent with Mr. Tindle having the gun in his right hand at the time of the shooting, and dropping the gun after he began falling forward. Moreover, the analysis is inconsistent with the gun being on the ground, not in Mr. Tindle's hand, at the time of the shooting. If this were the case, it would be expected that after the shooting, the gun would still be on the ground near Mr. Tindle's location at the time of the shooting. In fact, 3D-Forensic reported that its analysis "indicates that the gun was still in [Mr. Tindle's hand at the time of the shooting."

The analysis by 3D-Forensic also suggests that Officer Mateu could have seen the gun fall from Mr. Tindle's right hand, even though the camera view does not depict this. 3D-Forensic conducted an analysis of frame 315. The analysis is depicted below.



Frame 315

1s after OIS

Undistorted  
AXON BodyCAM  
footage.



Frame 315

1s after OIS

Camera Matched  
footage



Frame 315

1s after OIS

Camera Matched  
footage with  
3D Scan data



Frame 315

1s after OIS

Top down view

Shadows from  
BodyCAM and  
Officer's eye view



In the body camera view of frame 315, the gun is not yet visible. 3D-Forensic used the 3D Model to illustrate the officer's eye view. They included in the officer's eye view image the location of the gun when it appears in frame 319. The analysis illustrates that the officer's eye view was able to see the location where the gun ended up, even though the camera view did not. In short, the officer's eye view was different from the camera view. Officer Mateu said that he saw Mr. Tindle drop the gun from his right hand. The camera view does not depict this. Given the different perspectives of the officer's eye view and the camera view, it cannot be said that the video evidence is inconsistent with Officer Mateu's account. In fact, 3D-Forensic reported that, "[O]ur analysis demonstrates that while the body camera was not able to see the gun fall, the officer would have been in position to see the gun fall if the gun was still in the suspect's hand."

There is additional video evidence that is consistent with Mr. Tindle dropping the gun from his right hand after the shooting. As indicated earlier in this report, crime scene technicians located one live round of ammunition on the sidewalk in the area where Mr. Tindle fell after the shooting. They also located a magazine from Mr. Tindle's pistol on the sidewalk in the same area. The live round of ammunition was the same brand of ammunition found in Mr. Tindle's pistol and the magazine.

Mr. Tindle's pistol was found with a fired cartridge case in the chamber. This suggests that, at the time of the second shot from Mr. Tindle's pistol, the slide was prevented from moving all the way back. The firearms experts simulated this scenario with Mr. Tindle's pistol and found that, when the magazine was later released, a live round of ammunition frequently fell from the gun along with the magazine.

The still frames from the body camera footage capture the sudden appearance of the live round of ammunition after the shooting. Depicted below is frame 303, depicting Mr. Tindle falling to the ground after the shooting.



In the very next frame (frame 304) the live round of ammunition comes into view. Frame 304 is depicted below, with the live round circled in red.



In subsequent frames, the live round appears to move. Mr. Tindle eventually falls on top of the live round. This video evidence appears to show the live round falling to the ground from the general area of Mr. Tindle's right hand. This is consistent with Mr. Tindle having the pistol in his right hand after the shooting.

Similarly, the magazine from the pistol suddenly appears in view at frame 317. Frame 317 is depicted below, with the magazine circled in red.



This sudden appearance of the magazine is consistent with it having fallen to the ground. In prior frames, the magazine is not visible in the area where it later appears. As with the live round, this is consistent with the Mr. Tindle having the pistol in his right hand after the shooting.

In summary, the examination of the video evidence, including the analysis by 3D-Forensic, does not reveal any material inconsistencies with Officer Mateu's account of the incident. Moreover, the video evidence indicates that Mr. Tindle likely had the pistol in his right hand at the time of the shooting.

#### **APPLICABLE CALIFORNIA LAW:**

The sole question addressed by the District Attorney's investigation was whether BART PD Officer Mateu violated any applicable criminal laws. Whether or not the officer is criminally liable depends upon (1) the facts of the case, and (2) whether these facts constitute any criminal violations under existing statutory law. The quality of the evidence, if any, showing a criminal act or acts must be measured against the standards used by the District Attorney's Office in deciding whether or not to charge anyone with a crime. The California District Attorney's Uniform Crime Charging Standards Manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, believes there is evidence that proves beyond a reasonable doubt, that the accused is guilty of the crime to be charged. Additionally, the charging standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged

by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

The California Penal Code provides:

**Section 187:** Murder is the unlawful killing of a human being or fetus with malice aforethought.

**Section 188:** Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately done with knowledge of the danger to and with conscious disregard for human life.

**Section 192:** Manslaughter is the unlawful killing of a human being without malice.

**Section 196:** Homicide is justifiable when committed by 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 a felony, and who are fleeing from justice or resisting such arrest.

**Section 197:** Homicide is also justifiable when committed by any person in any of the following cases:

- (1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
- (2) When committed in defense of habitation, property, person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends or endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,
- (3) When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in

mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or

- (4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

**Section 199:** The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Any killing of a human being at the hands of another is a homicide. A homicide may be justifiable or criminal depending upon the circumstances. It is justifiable if done while resisting a violent felony or in self-defense or in defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he or she actually and reasonably believed that he or she or another was in imminent danger of great bodily injury or death. (*See People v. Williams* (1977) 75 Cal. App. 3<sup>rd</sup> 731.) In protecting oneself or another, a person may use all force which he or she believes reasonably necessary, and which would appear to a reasonable person, in similar circumstances, to be necessary to prevent the injury, which appears imminent. (*See* CALCRIM 505.) In order to justify killing another person in self-defense or in the defense of another, actual danger of death or great bodily injury is not necessary. (CALCRIM 505.)

Pursuant to CALCRIM 505:

A homicide is justifiable and not unlawful when committed by a person who:

- (1) Reasonably believed he or she or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) Reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) Used no more force than was reasonably necessary to defend against that danger.

Pursuant to CALCRIM 507:

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

- (1) The killing was committed while overcoming actual resistance to some legal process or while performing any other legal duty;
- (2) The killing was necessary to accomplish one of those legal purposes; and
- (3) The officer had probable cause to believe that someone posed a threat of death or serious bodily harm, either to the officer or to others.

Probable cause exists to believe that someone poses a threat of death or serious bodily harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or serious bodily harm to another. (CALCRIM 507.)

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. (CALCRIM 505 and 507.) It is not a criminal defendant's burden to prove that force was necessary or reasonable. The People must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others. Absent direct evidence that an officer did not actually or reasonably believe in the need for force, circumstantial evidence must be used. If two reasonable conclusions can be drawn from circumstantial evidence, however, and one of those reasonable conclusions points to innocence, jurors are instructed that they must accept the one that points to innocence. (CALCRIM 224.)

The United States Supreme Court has held that a police officer's use of force should be analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. The Supreme Court stated, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . the calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Graham v. Conner (1989) 490 US 386, 396-397.

If the killing was not justifiable as outlined above, or excusable as in an accidental killing, only then would it be criminal. Moreover, if an act is committed by reason of a mistake of fact which disproves any criminal intent, it is not a crime. Therefore a person is not guilty of a crime if he or she commits an act under an actual belief in the existence of certain facts and circumstances which, if true, would make the act lawful. (See CALCRIM 3406.)

In the present case, to establish criminal liability, the evidence must show beyond a reasonable doubt that Officer Mateu killed Mr. Tindle and the officer did not reasonably believe that he or another was in imminent danger of death or great bodily injury.

#### **ANALYSIS & CONCLUSION:**

The OIS Team conducted a separate, parallel investigation and review of the facts and circumstances leading to the death of Mr. Tindle.

The credible and admissible evidence shows that Officer Mateu acted in what he actually and reasonably believed to be self-defense and defense of others. The examined evidence does not support the contention that the shooting of Mr. Tindle was criminal.

Officer Mateu heard gunshots and was informed by citizens that there had been a shooting. Officer Mateu took immediate action and responded to the shooting. He advised dispatch that a shooting had occurred and gave the location. Officer Mateu saw Mr. Tindle and Witness #1 wrestling on the ground. He ran towards the men and took out his service weapon. Based upon the gunshots and information from the citizens, Officer Mateu believed that one or both of the men might be armed with a gun and Officer Mateu wanted to protect himself from a possible deadly situation.

As Officer Mateu got closer to the men, he yelled repeatedly for the men to show their hands. The men did not comply. Officer Mateu noticed that there were other people in the area of the men, including inside the barbershop. Officer Mateu continued towards the men and then saw a firearm. Officer Mateu said that Mr. Tindle was holding the pistol by the grip, that the pistol was pointed towards the occupied barbershop, and that Witness #1 appeared to be struggling to hold Mr. Tindle's hand down. Officer Mateu said that Witness #1 looked scared and the officer believed that Mr. Tindle was the aggressor.

Officer Mateu continued to yell for the men to show their hands. Mr. Tindle did not comply with the commands. He did not toss the gun away. Rather, Mr. Tindle changed his position, got up onto his knees, and pulled his arms and hands in front of him, with his back to the officer. Mr. Tindle then raised his left hand, which no longer held the gun, but kept his right hand in front of his body.

Officer Mateu said that he believed that Mr. Tindle then had the pistol in his right hand. Officer Mateu said that he feared that Mr. Tindle could have immediately shot Witness #1. Officer Mateu also feared that Mr. Tindle could have quickly turned and shot the officer, or could have shot into the occupied barbershop. Officer Mateu acknowledged that he had to process the situation very quickly. Officer Mateu explained that shots had already been fired, Mr. Tindle never followed his commands, and Mr. Tindle never dropped the gun. Officer Mateu believed that Mr. Tindle "wasn't giving up" and that Mr. Tindle was about to shoot Witness #1.

Officer Mateu said that he fired three rapid shots at Mr. Tindle to stop a deadly threat. Officer Mateu ceased firing when he saw that Mr. Tindle began to fall, dropped the gun, and no longer posed an imminent threat. Officer Mateu explained that the use of other force, like a Taser or baton, would not have prevented Mr. Tindle from shooting.

Given the evidence in this case, it cannot be proven beyond a reasonable doubt that Officer Mateu's belief that he or someone else was in imminent danger of being killed was unreasonable. Officer Mateu knew that a shooting had occurred. He later saw Mr. Tindle holding a gun. The gun was pointed towards the occupied barbershop. Mr. Tindle did not abandon the gun and show his hands, despite repeated commands by the officer. Mr. Tindle was in very close proximity to Witness #1.

Aside from being unable to prove that Officer Mateu's belief was unreasonable, the facts developed from the investigation support Officer Mateu's belief. The weight of the credible evidence indicates that Mr. Tindle produced a firearm and threatened Witness #1 with the firearm. Mr. Tindle thereafter fired a shot into the occupied barbershop and shot Witness #1 in the leg. To say that it was unreasonable for Officer Mateu to believe that Mr. Tindle was about to fire the gun is untenable given these facts.

Officer Mateu could not see Mr. Tindle holding a gun at the time he shot Mr. Tindle. Officer Mateu explained that he shot because he feared that Mr. Tindle had the gun in his right hand and could have easily shot Witness #1 or the officer. It cannot be proven beyond a reasonable doubt that this belief was unreasonable. To the contrary, the evidence, including the analysis of the body camera footage, indicates that Mr. Tindle in fact was holding the pistol in his right hand at the time the officer fired.

The analysis of this investigation includes consideration of whether it was reasonable for Officer Mateu to act when he did, rather than waiting to see if Mr. Tindle would eventually comply with the officer's commands, drop the gun, and show both of his hands. The incident developed rapidly. Once Officer Mateu realized that a shooting had already taken place, it was not unreasonable for him to believe that further shooting could be imminent. This required Officer Mateu to make rapid decisions in a dangerous situation. The law requires that the reasonableness of the officer's actions be assessed with the understanding that "police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." This was such a circumstance. Moreover, had Officer Mateu waited to take action, the consequences of such inaction could have resulted in the killing of Witness #1. The likelihood of such a result is not insignificant in this case, especially given the fact that Mr. Tindle had already shot Witness #1.

Accordingly, in applying the California District Attorney's Uniform Crime Charging Standards to the present case, there is insufficient evidence to support a criminal prosecution against Officer Mateu, and this office contemplates no further action in this case.