



BUTTE COUNTY DISTRICT ATTORNEY



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September 28, 2017

Chief Michael O'Brien
Chico Police Department
1460 Humboldt Road
Chico, CA

**RE: Chico Police Sergeant Scott Ruppel and the July 23, 2017 shooting of Tyler Rushing
(DOB: 10/22/1982) – CPD #17005125 / BCDA #1700279**

Dear Chief O'Brien,

On the evening of July 23, 2017 at approximately 10:48 p.m., the Chico Police dispatch center received a call from a private security guard reporting a burglar alarm had been tripped at the Mid Valley Title Company, 601 Main Street, and he was proceeding to check the source of that alarm. A few minutes later at approximately 11:00 p.m., that guard's dispatch center reported their guard had been attacked and stabbed at the title company and the guard had fired his sidearm at the attacker. Chico Police units responded to the title company and talked to the guard. Evidence at the scene, which included a large amount of blood, indicated the unknown attacker had been wounded and was still inside the business. Sgt. Scott Ruppel and other officers entered the business at approximately 11:12 p.m. and called to the unknown subject to come out. The subject responded from somewhere inside the business that he had a gun. It was determined the subject was inside a bathroom and was refusing to come out despite repeated pleas from Sgt. Ruppel to come out and to have his wounds treated by medics on scene. Approximately 11:50 p.m. after the sergeant's pleas failed to have the subject come out from the bathroom, Chico Police officers, including a Butte County Sheriff's K-9 unit, breached the bathroom door and entered the bathroom in an attempt to take the subject into custody and to get him medical attention. The subject violently resisted the officers and hit one officer over the head with a large piece of ceramic and stabbed Sgt. Ruppel in the neck with a metal object. Sgt. Ruppel said he determined the subject was beyond control and in danger of stabbing other officers in the bathroom when he decided to use lethal force to stop the threat and used his sidearm to shoot the subject twice at close range.

The subject fell to the floor, was handcuffed and removed from the bathroom to the main area of the business to be treated by medics. He was pronounced dead at the scene shortly before midnight.

Immediately after the shooting, the Butte County Officer Involved Shooting Protocol was instituted and the Butte County Officer Involved Shooting/Critical Incident Protocol Team was activated and began its extensive investigation that night. As you know, the objective of the team's investigation is not an administrative investigation to determine whether there was a violation of your departmental policy nor is it a critique of any involved officers' tactics. Its

purpose is to determine whether there was any criminal liability on the part of any involved officer (and additionally in this case, the armed private security guard). The investigation, as was done here, was accomplished by uninvolved, professional investigators from separate agencies to supply a complete, unbiased and uncompromised investigation to be reviewed by my office.

That review has been completed. As noted, the investigation was extensive and included the collection of all operating body camera videos and a frame-by-frame analysis of those videos (including the security guard's body camera video); interviews of involved officers and the guard; photos and forensic processing of the crime scene; analysis of the autopsy and blood toxicology. Additionally interviews of Mr. Rushing's family members, friends, acquaintances and local citizens who interacted with him in the days before his death were conducted.

In summary, a finding of criminal liability on the part of Sgt. Ruppel or the security guard could only be found if it could be established beyond a reasonable doubt they did not act in reasonable self-defense or defense of others. Under the law of self-defense, a good faith reasonable belief in the necessity of the use of force, even if mistaken, would defeat the prosecution's burden of proof of beyond a reasonable doubt. In other words, before a criminal case can be brought against either man, the evidence must show the sergeant or the guard did not reasonably believe they needed to defend against the deadly force presented by Mr. Rushing's actions. In fact, the evidence reviewed weighed substantially toward supporting the security guard's belief in the necessity of self-defense as reasonable. Additionally Sgt. Ruppel's belief in the necessity of defense for not only himself but also for the other involved officers was not unreasonable. Therefore no criminal case could be brought against either man.

FACTS

The Mid Valley Title Company is a large single-story business located in downtown Chico at 601 Main Street. It has motion-sensing burglar alarms located at strategic locations inside the business. On July 23, 2017, at approximately 10:37 p.m.¹, the motion sensor covering the south west portion of the building was tripped. Five minutes later, at approximately 10:42 p.m., the motion detector in the employee break room was tripped. The alarm company contacted the business owner who authorized the company to call out the business' contracted private security company to check on the nature of the trip.

An on-duty guard with the security company was called and requested to respond to the alarm. This 23-year-old guard was a sergeant in the security company and had been employed with the company for approximately a year and four months. He is a CSUC graduate with a degree in criminal justice and is certified and licensed through the State of California Bureau of Security and Investigative Services as an armed security guard. He responded from the area of Glenn Oaks Memorial Park, where he had been patrolling. Per standard protocol, he called the Chico Police dispatch center at approximately 10:48 p.m. and informed them of the alarm call and that he was responding.

¹ This time was extrapolated from the alarm company's later reported time of 10:40 p.m., which was determined to be approximately 3 minutes fast when compared to the times on Chico Police's body camera videos. (E.g. when the police entered the north east/west motion zones in the building and tripped those alarms, the alarm company reported the trip time as 11:18 p.m. while the CPD body camera video timestamp showed a time of 11:15 p.m. The CPD body camera video times were chosen as the most accurate times based upon views of computer monitor and cell phone time displays captured on the videos. (Of note, CPD body camera times are displayed on their videos as "Zulu" or Greenwich Mean Time, which was 7 hours ahead of Pacific Daylight Time.)

The security sergeant drove directly to the Mid Valley Title Company and parked his security vehicle on 6th Street to the rear (east) of the business. He began checking the eastern portion of the business from the north to the south, believing that perhaps maintenance persons had set off the alarm. During his check of the outside of the building, he noted a breach in a shrub-covered cyclone fence which surrounded an employees' outside patio on the southeast side of the building. The breach had been created by someone pulling the fence post, which had anchored the fence to the building, away from the stucco of the building. The security sergeant, now believing someone may have broken into the outside patio area, went through the breach onto the patio. He turned on his personal body camera which he wore on his chest. His camera was activated at approximately 10:58 p.m.²

As the security sergeant moved about the patio, he discovered a low building window, which faced the southwest corner of the patio, had been broken in towards the interior of the title company. He reported over his radio to fellow security guards he had discovered a break in and requested they notify the police department. As he made this radio call, he continued to check around the patio area for any persons and began to look behind a bush near the southeast corner of the patio. Within 5 seconds of the end of his radio call, the security sergeant was attacked – a rapid and violent attack as captured on his body camera.

The security sergeant saw and later reported white bearded male wearing prescription-type glasses, camouflage shorts, plaid shirt, and tennis shoes with orange laces and blue patterned socks. The security sergeant said the male came directly at him moving south between the bush and cyclone fence. The security sergeant had his 9mm Glock semi-automatic pistol with a flashlight attachment out in front of him and pointed at the male. The security sergeant yelled “Hey, hey, hey, hey! Stop, stop, stop, stop!” at the rapidly advancing form. Suddenly he saw and felt himself being stabbed on his left forearm.³ Fearing for his life, the security sergeant fired his gun at what he believed to be the attacker's center torso area. The attacker turned and ran away cursing the security sergeant.

The stabbing was so sudden and rapid the security sergeant was unsure what had been used to cut him. However a frame-by-frame analysis of his body camera video revealed the attack was carried out with the broken glass rod handles off a blown-glass flowerpot. The video shows the attacker begin to swing the intact flowerpot in his right hand in an underhanded motion towards the security sergeant. As the flowerpot comes up, the main body of the flowerpot breaks from its handles and goes towards the fence line where it was later recovered.⁴ A few frames later the broken glass rod handles are seen in the attacker's right hand now coming down in an overhand strike downward towards the security sergeant. It was this motion and the broken ends of these sharp glass rod handles which impacted the security sergeant's left forearm (and possibly his

² The security sergeant's body camera video displayed its start time as 23:12:12 hrs. However in comparing this time stamp to the (determined to be accurate) time stamp on a subsequent CPD body camera in which the security sergeant is heard talking with CPD Sgt. Ruppel, it was determined the security sergeant's body camera time stamp was approximately 14 minutes fast.

³ Subsequent medical care at Enloe Hospital noted two deep laceration to the left forearm approximately 2 cm and 3 cm in length. They were closed with 2 sutures and 7 sutures respectively. There was also some minor lacerations between the two major lacerations and an abrasion to his right wrist.

⁴ The main body of the multi-colored glass pot which had been fashioned to resemble a ladies purse was found on the ground in the area the video showed it traveling towards near the locked gate of the fence. The glass flower pot had been on a desk of an employee inside the business.

right wrist).⁵

The startled security sergeant can be seen on his body camera video recharging his pistol,⁶ coming out from the bush area, checking the open patio area and putting out on his radio (a push to talk feature on his cell phone as seen in the video) the exclamation that he had fired his pistol (“Shots fired! Shots fired! . . . Subject’s been shot! I shot him!”) His company immediately notified the Chico Police dispatch center at approximately 11:00 p.m. Chico Police dispatched all available units to Mid Valley Title Company.

The security sergeant, in the meantime, continued to check the open patio area for the male attacker. He later said he thought the attacker may have gone out the breach in the patio fence as it was the area he saw him run towards. Of significance, in checking his body camera video, a sliding glass door which separated an interior employee breakroom from the outside patio is seen open. This sliding glass door was right next to the fence breach and the security sergeant would have seen it as open when he first went through the fence breach. He however did not, which lead to the conclusion along with other evidence to be discussed, that the attacker had silently slipped that sliding glass door open from the inside as the security sergeant was first checking the broken window on the other end of the patio.

Chico Police units including Sgt. Ruppel arrived at the Mid Valley Title Company in approximately 2 ½ minutes from the shots-fired notification. Sgt. Ruppel went through the fence breach and onto the patio to meet with the security sergeant. Sgt. Ruppel got quick information from the security sergeant about the stabbing and shooting as well as a quick description of the attacker. Sgt. Ruppel recognized the description as roughly the same as a subject who earlier that evening had been seen acting suspiciously behind a thrift shop known as the Discovery Shoppe (at 3rd Street and Flume – approximately 5 blocks away in a northeast direction) and so noted that over his police radio. He also noted the security sergeant’s belief the attacker had fled out the breach and headed in a northerly direction.

Sgt. Ruppel led the bleeding security sergeant out through the fence breach and took him to fire and medical personnel who had staged at Jack’s Restaurant on the opposite corner from the Mid Valley Title Company at the corner of 6th and Main Streets. There the security sergeant was initially treated and then taken by ambulance to Enloe Hospital for further treatment.

Meanwhile Chico Police officers Alex Fliehr and Cedric Schwyzer headed toward the alleyway behind the Discovery Shoppe. Officer Fliehr had earlier been dispatched at approximately 9:10 p.m. to that alleyway behind the thrift shop in response to an 8:23 p.m. call by neighbors in the area who had called Chico Police dispatch complaining a male was in the alleyway behind the

⁵ The two glass rod handles of the of the purse-style glass flowerpot were later recovered in four pieces from beneath the bush where the attack occurred. The pieces were matched physically to one another and to the recovered flowerpot in the Department of Justice’s laboratory. No other forensic testing for blood or flesh was possible however as the glass pieces were not discovered and collected until after an automatic sprinkler system activated in the patio area, washing any trace evidence from the pieces.

⁶ The security sergeant’s semi-auto pistol failed to automatically feed another live round into the gun’s chamber after it had fired, causing him to have to pull the gun’s slide back to eject the discharged casing and feed a live round into the chamber. It was speculated the surprise attack caused the security sergeant to hold his pistol in such a way that the auto feed mechanism was interfered with and failed. He only fired the single shot as confirmed on his body camera video and a count of the rounds in his pistol magazine. The sound of his shot on the video is muted due to other high decibel sounds (the security sergeant’s yells and the subject’s growls) maxing out the cameras audio feed.

thrift shop stuffing his backpack with items from the donation boxes there and “making spears.” When Officer Fliehr arrived in the area at approximately 9:18 p.m., he drove into the alley and said his vision was partially blocked but he saw a male standing there as if he was trying to hide behind a couple of homemade “spears” (one with a hooked end). The officer noted the male had a “scruffy” beard and was wearing a baseball-type hat, shorts and dark plaid shirt. Officer Fliehr told the male that he (the officer) could see him and would he mind putting the spears down. The male then said “Yup,” and ran off south on Flume Street towards 4th Street carrying the spears. The officer made a search of the area but could not find the subject. He returned to the alleyway area two more times during that evening but did not see the subject there.

Officers Fliehr and Schwyzer arrived at the alleyway behind the Discovery Shoppe at approximately 11:08 p.m. to search for the subject from the Mid Valley Title Company break in, stabbing and shooting. As noted, police thought the earlier alleyway subject may be the same subject from Mid Valley Title Company based on the description and travel paths. The two officers found what appeared to be the earlier subject’s property – a shopping cart, recyclables, miscellaneous items, papers, and a dark colored backpack. The officers could be seen on their body camera videos going through these items and the backpack when they were then suddenly called back to Mid Valley Title Company at approximately 11:13 p.m. as a subject had been discovered inside that business.⁷

While Officers Fliehr and Schwyzer were checking the Discovery Shoppe alleyway, officers at rear (east) entrance to Mid Valley Title Company noticed a great deal of blood both dripped and smeared on the inside of the glass entrance doors. This led officers to believe the subject the security sergeant said he had shot was still inside the business.

Sgt. Ruppel, followed by other officers with activated body cameras⁸, went back through the breach in the cyclone fence and into the employees’ breakroom at approximately 11:11 p.m. where large blood drops and smears were seen. At approximately 11:12 p.m. Sgt. Ruppel stepped slightly out into the hallway outside of the employee breakroom and announced loudly, “Chico Police! If you are in here, come out!”

From further inside the building a voice could be heard by the officers and their body cameras to reply, “Fuck you! I’ve got a gun!” Sgt. Ruppel replied, “So do I.” The other unseen subject again replied, indistinctly, “. . . F . . . bastard . . . bastard . . .!”

Sgt. Ruppel stepped fully into the hallway and began to move out into the main part of the business while loudly stating, “We know you’re hurt. Just come out and we’ll deal with it. . . . Hey, partner, we know you’re hurt. We’ve got an ambulance waiting.”

Sgt. Ruppel and other officers moved out into the main area of the business and determined that the voice of the unknown, presumably wounded, subject was coming from the women’s bathroom located near the middle of the east side of the building. Officers checked other areas of the building to confirm there were no other subjects. Blood smears outlining a heart and a peace sign were seen on a filing cabinet in the building’s south area.

⁷ A number of these items, including loose notebook pages of handwritten journal entries were later secured by Chico Police units at 12:59 a.m. , about an hour after the Mid Valley shooting. However as documented by later photos and videos of those items, the backpack was missing – presumably stolen by persons unknown after Officers Fliehr and Schwyzer had left.

⁸ Sgt. Ruppel did not have a body camera that night. Chico Police sergeants have not been issued body cameras.

Sgt. Ruppel maintained near continuous and calm pleas directed to the bathroom for the subject inside – e.g. “We want to get you help. The ambulance is right here. We’ll get you the help you need. Partner, we just need you to come out. Go ahead and step out. Let’s see your hands and we’ll get you some help.”

At approximately 11:15:40 p.m. the internal burglar alarm, a very loud high-pitched buzz, was triggered by officers moving in the north side of the building. Sgt. Ruppel raised his voice and continued his pleas in a calm manner: “Partner, we just need for you to come out and we’ll get you some help. Sir, just come out and we’ll get you some help. Let’s see your hands. Sir, we just want to get you some help. Step out where we can see your hands. If you need to, crawl out partner. Crawl out. Whatever happened, happened. You just got to deal with it now. Come out slowly. Sir, we know you are in there. Just step out. We’ll help you. We know you are hurt. We just want to get you some help at this point. Nobody else needs to get hurt. Not you or anyone else.” At approximately 11:19:41 the alarm shut off.⁹

Sgt. Ruppel was able to lower his voice and continued to plead variants of what he hoped would motivate the person in the bathroom.¹⁰ E.g. “Go ahead and step out. Just think about it. You know it is the right thing to do. We have medics waiting for you. You can make the right decision. C’mon man, do the right thing. If you can’t walk, crawl. We’ll get you some help man.”

During this time, the door to the bathroom would occasionally open and then close. The light was on inside the bathroom, but the subject could not be seen when the door was opened. At approximately 11:24 p.m. sounds such as metallic objects hitting the floor inside the bathroom could be heard along with other muffled thuds and crashes from inside. Sgt. Ruppel continued his pleas.

Occasional sounds of an indistinct nature were heard coming from the bathroom. At approximately 11:31 p.m. a voice from inside the bathroom could be heard in sing song manner say, “. . . la, la, tra, la, la.” Approximately 11:33 p.m. several times the subject inside the bathroom could be heard moaning a low painful “Ahhh, ahhhh, ahhhh . . .” Sgt. Ruppel continued to plead with the subject.

Approximately 11:36 p.m. more loud snapping, thrashing and metallic sounds could be heard coming from the bathroom. Approximately a minute later, a loud shattering sound could be heard as if something breakable had been thrown on the hard bathroom floor. And again about this time the bathroom door opened and a louder painful “Waaaaah” could be heard. Sgt. Ruppel continued to plead for the subject to come out.

Approximately 11:40 p.m. and for the next two minutes, the low painful “Ahhhh” could be heard behind the closed bathroom door. Sgt. Ruppel continued to say medics were waiting to help.

Approximately 11:43 p.m., Butte County Sheriff’s Office K-9 Deputy Ian Dickerson, along with his dog “Tig”, was let into the building via the front (west) door. (Chico Police officers had contacted the business owner and obtained a key to open the door to let other officers, equipment

⁹ The alarm company confirmed the internal alarm would trigger its loud alert noise for only four minutes once it was triggered by a motion sensor and then would go silent until either manually reset or another motion sensor would activate.

¹⁰ An audio experiment conducted later at the business confirmed a person in the women’s bathroom could hear a loud voice outside the bathroom coming from the area where Sgt. Ruppel stood on that night.

and the K-9 unit into the building.) The dog could be clearly heard to begin to bark and whine as he came into the building.

Approximately 11:45 p.m. the deputy and his dog had moved to a position just outside of the bathroom and Deputy Dickerson announced loudly: “Butte County Sheriff’s officer with a canine! I need you to come out! My dog will find you and he will bite you! If you come out now, you won’t get hurt!” Deputy Dickerson repeated his advisement and Sgt. Ruppel continued his pleas for the subject to come out, “C’mon man, let’s get you some help. Do it the easy way. Help is waiting.”

The dog began barking more vigorously and loudly as the deputy and Chico police officers now began planning to move into the bathroom to take into custody what they believed to be a wounded, possibly dying man – but a man who had already attacked at least one other person and a man who said he was armed with a gun.

The officers settled on a plan which would involve Sgt. Ruppel ramming the door open (earlier it sounded as if the door latch had locked) with a battering ram, which would clear the path for Officer Schwyzer to go into the room first with a ballistic shield to cover the other entering officers – Deputy Dickerson with his dog, Officer Jeremy Gagnebin next with a less-lethal (beanbag) shotgun and Sgt. Ruppel next with his pistol as the lethal option.

At 11:48 p.m. the officers noticed water tinged with blood start to seep from under the bathroom door.

At 11:49 p.m. Sgt Ruppel gave his last plea to the unknown armed wounded subject: “Sir, just take it easy, okay? We are just going to help you at this point. We are not going anywhere. We need you to shut down and do what we tell you.” No reply was heard.

At 11:50 p.m. Chico Police officers Fliehr and Marcelo Escobedo went into the employee break room and began pounding on the north wall (which was also the south wall of the women’s bathroom) as a distraction to the subject inside the bathroom, while at the same time Sgt. Ruppel rammed the bathroom door with a battering ram. The door opened slightly but seemed to be pushed back. The sergeant rammed the door again and succeeded in opening it fully.¹¹

Officer Schwyzer moved in first with the ballistic shield held in his hands. He did not have his pistol out. He saw no one was in the main area of the bathroom which was awash in water and blood and debris. He soon realized the wanted subject was behind the bathroom door, between the door and the wall it opened against. He then tried to use the shield to pin the subject behind the door and against the wall. As he did so, Deputy Dickerson and Sgt. Ruppel stepped to the threshold and also seeing that the subject was behind the door, attempted to put their weight against the door to trap the subject behind the door and against the wall. However both Deputy Dickerson and Sgt. Ruppel saw the flash of something in the subject’s right hand coming from

¹¹ At this point in the event, a frame-by-frame analysis was done of the videos taken by the multiple police body cameras both inside the bathroom and just outside of the door. The cameras giving the best views and angles were worn by Officers Schwyzer, Gagnebin, Fliehr and Ryon Mitchell. Deputy Dickerson did not have a body camera as he had lost his issued camera approximately two weeks before. A special video/audio editing software program was used to assist in the analysis by synchronizing the various officer’s videos together to each movement and action of the fight in the bathroom from simultaneous and different angles. The individual CPD body camera videos each had slight variations in their displayed time stamps, so it was determined the most accurate synchronization was by audio matching to within 1/30 of a second (the frame rate of the videos).

low behind the door slashing at Officer Schwyzer's legs. Deputy Dickerson thought it was a broken ceramic piece from the toilet he could see in the bathroom. Sgt. Ruppel thought it might be a knife and announced to the other officers, "He's got a knife." Of note, a large (8 x10") ceramic shard (determined later to be a shattered piece from the top of the toilet tank lid) can be seen on Officer Schwyzer's body camera video in the subject's right hand slashing low from behind the door.

The officers pushing against the door had a difficult time attempting to keep the subject behind the door as he was pushing forcefully back against them. Both Officer Schwyzer and Sgt. Ruppel are over 6' 2" tall and over 225 pounds and Deputy Dickerson is 6' tall and 220 pounds. At about this time, Officer Schwyzer saw the ceramic shard for the first time as it came over the top of his shield like an axe blade and hit him on his forehead, through his hat, at his hairline.¹² The blow to Officer Schwyzer's forehead can be detected in Officer Mitchell's body camera video which shows Officer Schwyzer's hat being deformed by the white ceramic shard.¹³ The blow stunned Officer Schwyzer and sent him backwards away from the subject. The officer saw his own blood dripping from his wound and he exclaimed, "Fuck!" which can be heard on the body camera videos. The ceramic shard can later be seen on the floor of the bathroom for the first time.

Deputy Dickerson pulled his dog into the room by its leash and commanded him to bite the subject behind the door. The dog pushed through the bloody water and did attempt to bite the subject as he was now coming out from behind the door – despite the continued efforts of Sgt. Ruppel and Deputy Dickerson to hold the subject between the door and the wall. At the time, it did not appear to the officers the dog was successful in biting the subject as there was no reaction from the subject and the dog fairly quickly disengaged.¹⁴

At about this time, some 30 seconds into the confrontation in the bathroom, the subject who is violently resisting the officers' attempts to restrain him is heard to yell, "All of you are going to fucking die!"

Approximately seven seconds later, as the officers continued to attempt to control and grab the wet and slippery subject in the wet and slippery bathroom, Sgt. Ruppel was stabbed in the right neck area with an object wielded in the subject's left hand in an overhead stabbing motion. He suffered a puncture wound within approximately one-half inch of his carotid artery. The sergeant described the object as long and skinny, reminding him of a hole punch, nail punch or prison-like "shank". Officer Schwyzer also saw the same object in the subject's hand as it "flailed about" and described it as a "silver metal object sticking out the bottom of the subject's hand." Multiple officers saw the sergeant suddenly grab his own neck with his left hand to cover his wound. At the same time, Sgt. Ruppel was forced nearly out of the room as he lost his grip on the subject and the subject kicked out towards the sergeant. The sergeant said he looked back to where the subject was struggling with and stabbing at Deputy Dickerson and Officer Schwyzer. Sgt. Ruppel said he believed the subject was out of the control of the officers and was an immediate

¹² Later medics at the scene and the treating physician at Enloe Hospital took pieces of ceramic from within Officer Schwyzer's head wound, which was a laceration approximately 3 cm long. It was sutured closed.

¹³ The actual shard itself could not be seen on the video as it is a white object against a white wall at a distance and the video does not pick it up – but Officer's Schwyzer's dark hat can be seen deforming over two frames of video.

¹⁴ Later autopsy findings showed the dog to have successfully bitten the subject's legs with several minor bites and one major bite which caused a large gash on his calf of his left leg.

mortal danger to them. A frame-by-frame review of Officer Schwyzer's body camera video shows no less than five downward stabbing motions by the subject's left hand. The video reveals his hand is grasping a slender metallic like object whose point is sticking out from the bottom of the palm of the hand. The item, clearly captured in one frame, is consistent with a metal-tipped retractable ball point pen.

When Sgt. Ruppel saw the danger to the other officers he drew his .45 Glock semi-automatic pistol from his holster and stepped forward towards the subject who was between Deputy Dickerson and Officer Schwyzer with the intent to stop the threat presented. He placed his pistol near the upper chest of the subject and fired one shot (at approximately 11:50:47 p.m.). The sergeant said the shot did not immediately stop the threat as the subject remained upright, remaining a threat. According to the multiple body camera audio tracks, the sergeant fired a second time 50 frames later (or $1 \frac{2}{3}$ seconds later per the 30 frames per second rate on the videos.) He said he fired his second shot close in as the subject was twisting away from him. The subject immediately fell forward on his right side and stomach with his hands partially under a plastic storage container which had overturned on the floor.

Sgt. Ruppel left the bathroom immediately to check his wound and other officers covered the prone subject with their drawn pistols. An officer announced his belief the subject was still alive and moving. A Taser was requested and it was determined the subject would be shot with the Taser as other officers moved in "under power" (while the Taser was activated and paralyzing the subject's muscles) and handcuff him to prevent any further threat of harm. Officer Fliehr shot the Taser at the prone subject's back area as Officers Gagnebin and Schwyzer moved in on each side of the subject and handcuffed him.

In reviewing the body camera video of Officer Gagnebin, he is seen as he grabbed the subject's left hand to start the handcuffing process and the clutched left hand of the subject is seen releasing what appears to be a ball point pen. The pen falls onto the floor at Officer's Gagnebin's feet in an area that was later photographed by DOJ criminalists and that same pen was seen there. That pen was the same style ball point pen issued to Chico Police officers from their supply room.¹⁵

After the subject was handcuffed, he was quickly removed from the bathroom at approximately 11:53 p.m. into the main area of the office building. Medics were brought in to tend to the subject and immediately began lifesaving actions such as CPR and intravenous drips. Those actions including attempting to establish an airway yielded no results and while on the phone to the emergency room at Enloe Hospital, the medics pronounced the subject deceased and ceased their lifesaving activity at approximately 11:59 p.m.

AUTOPSY

An autopsy was performed on the still unknown subject (no identification had been found on the

¹⁵ The photographed pen was not collected by DOJ criminalists that night as it was unclear what object had been used to stab Sgt. Ruppel and the ability to view officers' body camera videos in frame-by-frame detail was not immediately available. The bathroom floor was covered in a great deal of unrelated debris under several inches of water and blood. The next day, the owner of Mid Valley Title had a hazardous waste cleanup service dispose of all contaminated items.

body or in the Discovery Shoppe alleyway)¹⁶ on the morning of Tuesday, July 25. The subject was approximately 175 pounds and 5'11 ½" tall. Significant findings revealed he had been shot three times, bitten several times consistent with canine bites, and had several cuts on his right hand.

In examining the gunshot wounds, what was labeled by the doctor as **Penetrating Gunshot Wound #1** started as an entrance wound on the left upper chest approximately 2 inches above the left nipple. The bullet path then proceeded through the underlying chest wall from the subject's right to left at a slight angle and downwards at a slight angle. The bullet fractured two ribs while causing a 1" hole in the muscles between those ribs. The path continued through the left upper lobe of the left lung coming out the rear chest cavity through a rib space there and coming to a rest in the soft tissue of the left back just below the left shoulder blade. A 9 mm bullet was taken from that space.¹⁷ This wound through the ribs and lung caused a condition known as a hemopneumothorax, which would be extraordinarily painful and debilitating as the chest cavity filled with blood and air, preventing effective air intake.

Penetrating Gunshot Wound #2 was described as a close contact entrance wound just above the manubrium (upper sternum) which formed a path from the subject's front to back at a shallow angle from right to left and slightly downwards as it passed through and fractured the left collarbone, missed the chest cavity, and then passed out of the body at the upper left armpit and causing a slight abrasion on the inside of the left upper arm.¹⁸

Penetrating Gunshot Wound #3 was described as a near-contact entrance wound at the back of the neck at a point ¾ of an inch to the subject's left of midline and approximately 1 inch below the level of the bottom of ears. The wound formed a path from the back to the front, from right to left and upwards at a slight angle, missing any major structures and exiting through the left lower cheek.¹⁹

In discussions with the autopsy pathologist, he opined that Wound #1, associated with the security sergeant's shot, was eventually lethal, causing death by "Exsanguination" (i.e. bleeding to death). The other two wounds associated with Sgt. Ruppel's shots were not lethal and would have been survivable. The doctor expressed great surprise the subject was able to function as long and violently as he did after the security sergeant's devastating gunshot. He opined the subject's extraordinary stamina and strength was most likely drug induced.

TOXICOLOGY

¹⁶ Fingerprints from the subject were gathered for submission to DOJ on Monday morning after the shooting.

¹⁷ This bullet was later found by DOJ criminalists to share class characteristics (caliber and polygonal barrel rifling with a right-hand twist) with the security sergeant's pistol. Sgt. Ruppel's pistol was eliminated as having fired that bullet.

¹⁸ A .45 caliber bullet believed associated with this wound was found lying on the bathroom floor and was retrieved and tested by DOJ criminalists and was found to share class characteristics with Sgt. Ruppel's pistol. The security sergeant's pistol was eliminated as having fired that bullet.

¹⁹ A .45 caliber bullet believed associated with this wound was found lying on the bathroom floor near a divot in the floor which was believed to have been caused by this bullet. The bullet retrieved and tested by DOJ criminalists and was found to share class characteristics with Sgt. Ruppel's pistol. The security sergeant's pistol was eliminated as having fired that bullet.

Blood drawn during the autopsy was sent for three separate rounds of toxicology at two different testing laboratories. The only controlled substance found in the blood was marijuana – at a moderate level. That other drugs were not found was a surprise to a number of the investigators for the reasons expressed above dealing with his pain tolerance and energy during the evening after being wounded. Additionally as discussed below, the personality profile of the person in the Mid Valley Title Company that evening and the person known as Tyler Rushing to his friends, family and acquaintances, was radically different.

However in discussions with experts at the testing laboratories and with others, it was noted a negative finding for controlled or exotic substances in the blood would not necessary mean those substances could not be present at some point. The experts noted many “designer drugs” are not detectable as their manufacturers intentionally and rapidly change molecular structures to avoid detection. The experts also noted many exotic substances which could cause some of the symptomology noted in this case are fragile and disintegrate rapidly in the blood leaving insufficient traces to be later tested.

Of note, during an inventory of Mr. Rushing’s clothing a small plastic bag was found containing several unknown “seeds”. Some speculation ensued about the nature of these “seeds” as possibly hallucinogenic. These seeds are currently being examined and tested by FBI, Homeland Security and independent laboratories in the hopes discovering their true nature.

TYLER RUSHING

The fingerprints taken from the unknown subject on Monday, July 24, 2017 were taken to DOJ to be compared to the state database of known fingerprints. The fingerprints were positively identified on Wednesday, July 26, 2017 as those of Tyler Scott Rushing (DOB: 10/22/1982) with an address in Ventura, CA.

Subsequent investigation showed the 34-year-old Mr. Rushing was not a homeless person as initially thought, but had his own apartment and window-cleaning business in Ventura. He would also volunteer to set up and attend musical festivals held at various outdoor venues in California. According to family and friends in the Ventura area, Mr. Rushing, who liked to go by the moniker “Tyger”, was a gentle soul whose favorite acronym was “PLP”, which stood for “Peace, Love and Positivity.” His favorite symbols which promoted PLP was a peace sign, heart and plus sign.

Mr. Rushing’s journey to Chico began with his volunteering to help set up the Northern Nights Music Festival at the Cooks Valley Campground off Highway 101 on the border of Humboldt and Mendocino Counties. It appeared he arrived at the venue around Thursday, July 14, and helped set up stages and helped in cleaning up the area. He continued working at and attending the festival through its end on Monday, July 17. According to his writings which were found in the Discovery Shoppe alleyway (confirmed as his handwriting by his parents), while staying on after the festival (Tuesday and Wednesday) to help clean up, his backpack containing his truck keys, identification, credit card, cell phone, camera, clothes and money was stolen. According to the festival organizers Mr. Rushing was seen going through some other persons’ backpacks at the festival and he was asked to leave. He decided to hitchhike out of the campground and go towards Ventura.

On Wednesday, July 19, Mr. Rushing caught a ride south out of the campground with a person

who said Mr. Rushing was upset over the theft, but not overly so, deciding to “go with the flow.” Near Willits, according to the driver, Mr. Rushing was let out to hitchhike on Highway 20 towards Chico, a place he said his mother had gone to college.

On Thursday, July 20, approximately 6 p.m., Mr. Rushing approached a 23-year-old recent female graduate of CSUC who was moving out of her apartment near Depot Park (Cedar and W. 5th Streets, Chico) to a new apartment elsewhere in the city. Although Depot Park is locally known as a homeless “hangout”, the female said Mr. Rushing did not appear homeless as he looked “clean cut”. Mr. Rushing struck up a conversation with the female asking if she had seen “his friend.” She said she had not and continued back into her apartment to gather more items. She said Mr. Rushing did not appear particularly aggressive so she was not alarmed by his presence. However when she came back out of her apartment, Mr. Rushing was in the bushes alongside the street growling like a tiger. He told the female that he was a tiger because his first name, “Tyler”, sound like “tiger”. The female said she started to become alarmed and thought he might be suffering from a mental disorder. However, Mr. Rushing asked the female for a garbage bag so he could pick up garbage, which he said was like meditation for him and made him feel good. The female gave him a garbage bag, locked her apartment and left to take items to her new apartment.

When the female returned some four hours later she found the garbage bag full on her doorstep along with a Chico State flyer which had been written on by Mr. Rushing on both sides. Generally the writings thanked the female for the bag which he filled with “your building’s trash”. The note spoke of his philosophical musings, but also noted he “was new to being homeless since 2 days ago I was robbed and kicked out of my ‘home’ by my ‘family’.” It noted several references to “love” and keeping the world “clean.” It gave his full name noting “I am the Tyger, aka Tyler Rushing.” It invited the female to add him on Facebook and ended the note with “PLP – Peace, Love and Positivity.” She took a cellphone photo of the note due to its unusual nature. Two weeks later, she looked Mr. Rushing up on Facebook and saw the condolences about his death. She then connected him to the news of the Mid Valley Title Company shooting and contacted Chico Police who put her in contact with the protocol team.

On Friday, July 21, Mr. Rushing was next seen at the Jesus Center (a homeless outreach and resource center on Park Avenue in Chico) when he came in at approximately 9:39 a.m. and signed in.²⁰ He chatted for some time with a female front desk receptionist. According to the receptionist, he told her his name was Tyger and he was travelling from a music festival where he was “robbed.” But despite this, she said Mr. Rushing’s attitude was positive and he spoke of poetry, flowing and keeping his energy going, and putting out positive vibes. He asked to use a telephone at the center to call his mom and could be seen moving around inside the center getting food and clothing. As he left, he told the receptionist he was happy because he got ahold of his mom and she would be coming to pick him up in a few days to take him home. The receptionist said he did not appear to be under the influence of any substances and seemed upbeat despite his circumstances.

In speaking with his mother later, investigators learned she did speak with Mr. Rushing that Friday and she was planning to go to the festival location to retrieve his truck (as she had a spare

²⁰ A surveillance video tape was obtained from the Jesus Center which showed Mr. Rushing come into the center about 9:39 a.m., move about the center between the resource (computer/telephone) room, kitchen and free clothing areas, before leaving about 11:00 a.m.

key) and then pick him up in Chico. She said no solid plans of exactly when and where she would pick him up were made but that her son sounded happy.

Later that evening Mr. Rushing happened to be photographed in downtown Chico by a local photographer in front of Collier Hardware on W. 1st Street. He was dressed in the clothes he received from the Jesus Center that morning and was pushing a shopping cart. He appeared happy and the photographer confirmed Mr. Rushing appeared happy.

The next day, Saturday, July 22, at approximately 7:30 a.m. Mr. Rushing approached a couple unloading their car at the Chico Saturday Morning Farmer's Market in the parking lot west of Flume Street and north of E. 3rd Street. They were in the process of setting up a booth for a non-profit club and Mr. Rushing offered to help them set it up. Mr. Rushing told the couple his name and that he had come from a music festival and was currently homeless in Chico, but that his mother was on her way to get him. The couple gave him \$3 to get some food and noted Mr. Rushing was pleasant and appreciative. That couple was relieved later in the morning by another club volunteer who spoke with Mr. Rushing who said his desire was to "do good in the world." However this later volunteer found the way Mr. Rushing was talking and acting was not "completely rational." Mr. Rushing offered to help take down the booth canopy at the end of the market (approximately 1:00 p.m.) and put it in a box. When the volunteer declined to have the canopy put in a box, the volunteer said Mr. Rushing became angry and agitated. However, when the volunteer told Mr. Rushing the day should not end on a "bad note," he seemed to become calmer. The volunteer said it seemed Mr. Rushing was suffering from some mental illness.

Later that same Saturday at approximately 7:00 p.m., a homeless man in Chico met Mr. Rushing as Mr. Rushing was pushing a shopping cart near the US Bank on 2nd Street in downtown Chico. The homeless man told investigators Mr. Rushing had no shirt or shoes on and appeared to be covered in mosquito bites and was "filthy dirty", but with a smile. The homeless man and Mr. Rushing had coffee at a downtown shop and Rushing told the man he had recently been at a music festival and had hitch hiked to Chico after his backpack had been stolen and he (Mr. Rushing) had been accused of being a thief and was kicked out of the festival. Mr. Rushing told the man he had been sleeping in the back right corner of Children's Park along the creek bank. The man noted Mr. Rushing said he was on some kind of life mission but really didn't know what he was doing. The man described Mr. Rushing as "spiritually confused" and a "mad man with a cause." The man told investigators he noted Mr. Rushing had a shirt and shoes in his shopping cart along with a pole of some kind. Mr. Rushing also said someone had recently given him a backpack. After coffee, the man and Mr. Rushing went to Children's Park where they parted company at approximately 9:30 p.m.

On Sunday, July 23, Mr. Rushing was next seen in the downtown Chico Bidwell Presbyterian Church when church members and staff saw him come down the aisle during the last song of the morning service approximately 12:20 p.m. They all commented to investigators that Mr. Rushing appeared under the influence of some type of drug(s). His gait and expressions were exaggerated and concerning, although he did not appear aggressive in his actions. One church member described him as overly exuberant in his worshipping. At least one staff member got in the pew behind Mr. Rushing just to keep an eye on him. Another long time church member followed Mr. Rushing outside and struck up a conversation with him. Mr. Rushing told this person he had been at a concert in Ukiah and had lost the keys to his truck and had hitch hiked to Chico. He told this church member he had no money and asked this church member to call his mother,

which was done and a voice mail message was left for the mother. This church member said it appeared Mr. Rushing was under the influence of drugs and Mr. Rushing admitted to taking drugs, but he did not reveal to the church member what kind of drug(s).

This church member then contacted a well-known local homeless person, who had assisted the church in bringing “high” homeless attendees “down”, to talk with Mr. Rushing. This homeless person makes it his mission to help young people get off drugs. He told investigators he is a former Army criminal investigator. He remembered Mr. Rushing and that he was introduced to him by a church member who was concerned about Mr. Rushing’s apparent drug use. This person said he talked with Mr. Rushing for some time that early Sunday afternoon. Mr. Rushing told him about taking some psychedelic drugs at a music festival and then getting kicked out and having his stuff stolen from him. Mr. Rushing did not say exactly what kind of drugs he had taken. This person told investigators, based on his extensive street experience, Mr. Rushing was under the influence of some psychedelic drug at the time of his conversation with him and was very “high.” This person described Mr. Rushing as very animated and aggressive in his desire to help others, but noted the aggressiveness was not harmful or confrontational, just overly intense. This person noted in his work with young people who are high, he tries to “get them to land.” However, Mr. Rushing did not express a desire to land, but wanted to learn how to get a more intense “high”. This person eventually knew he was not going to be able to help Mr. Rushing and they parted ways.

As noted above, the last time Mr. Rushing was spotted on Sunday (outside the Mid Valley Title Company) was in the alleyway behind the Discovery Shoppe where he was spotted by neighbors watching from their residences as he took items from the donation bins and put them in a back pack he had. The neighbors became concerned when they saw him making what appeared to be “spears” out of what they described as curtain rods and also sharpening a wooden stick. They called the Chico Police dispatch center about 8:23 p.m. that night and continued to watch him construct his spears, including one with a curved hook. One of the neighbors took a cell phone photo of Mr. Rushing showing him to be wearing the same clothing he would later have on inside the Mid Valley Title Company and working on one of the spears. When investigators went back to the alleyway after the shooting they found a shopping cart with recyclables and a number of miscellaneous items including loose pages from a journal written by Mr. Rushing describing some of his frustrations about having his belongings stolen at the musical festival.²¹ The spears seen in the neighbor’s photo and seen by Officer Fliehr when he initially responded to the alleyway were found inside the Mid Valley Title Company and can be seen in officer body camera videos in the hallway running outside of the bathrooms on the east side of the building. Officer Fliehr also identified those spears in the hallway as the spears he saw in the hands of the subject who fled the alleyway. Of note, the longer spear, made of PVC pipe and a shovel handle, had a detachable railroad spike concealed in the upper portion of the handle.

CONCLUSIONS

²¹ The journal handwriting was identified to investigators by his mother.

Regardless of the current lack of evidence of drugs²² in Mr. Rushing's system, investigators believe Mr. Rushing was under the influence of an undetected drug(s) given the altered state of reality demonstrated by his behavior on Sunday, July 23. As noted previously the bizarre, violent behavior and extraordinary strength and endurance shown by Mr. Rushing inside the Mid Valley Title Company was entirely out of his normal character. The persons interacting with Mr. Rushing in Chico since Thursday, July 20, found him odd and eccentric, but not violent. On Sunday, his persona did seem to change, with persons at the church finding him "extremely high" and aggressively spiritual. This seemed to continue to morph to the point that by Sunday evening he was seen in the Discovery Shoppe alleyway manufacturing weapons.

Evidence of his activities inside the Mid Valley Title Company prior to his being shot by the security sergeant point to an unhinged mind. After breaking through the window at the southeast corner of the building, possibly using one of the spears, it appeared he cut his right hand and was bleeding slightly. Mr. Rushing moved through much of the southern half of the building without tripping the motion alarm by inadvertently remaining just under its sensor range. He "staged" a great number of boxes and bags throughout the south end of the building. These stashes of property consisted of random miscellaneous items, including office supplies, 3 ring binders, deeds, food items, recyclables, plants, pots, etc. Yet he left leaving behind cash in drawers he had opened. He committed strange acts of vandalism, including breaking a coffee cup to cut up a couch inside the employee breakroom, and drawing a peace sign and a heart in blood on the side of a filing cabinet. He remained inside the building while the building security alarm loudly buzzed for at least of total of eight minutes – well before the security sergeant arrived in the patio.²³ While most burglars would have fled at the first sounding of an alarm, he continued to move through the building, including stacking up food items and recyclables outside on the patio, which required several trips in and out of the building.

The violent and unprovoked sneak attack on the security sergeant was an example of violent frame of mind.

After the security guard shot him, Mr. Rushing's bizarre behavior was even more pronounced. A trail of blood was found which led from the patio through the employee breakroom into the hallway outside and to the east side set of double glass doors. Evidence was found showing he attempted to go out those doors by kicking at the bottom of the outside set of doors – which left extensive blood spattering on the glass, handles and broken trim on the doors. Once he failed to get out those locked doors, he turned around and smeared his blood in an extensive "finger-painting" style on the inside glass door. Near those doors, there is a water cooler upon which he bled extensively and painted, in blood, a plus sign.

No other sign of extensive bleeding was found elsewhere in the building, which led to the conclusion he went directly from his failed attempt to get out the east doors to the bathroom.

Once inside the bathroom, he trashed it, throwing employee personal items around and, most bizarrely, carefully making five distinct bloody handprints in a display on the south wall. He also stuffed toilet paper down the toilet and the sink in an attempt to overflow them – finally breaking

²² The previously referenced seeds are still undergoing identification efforts by the FBI and Homeland Security.

²³ When he finally tripped the southeast motion detector at 10:37 p.m., the alarm would have sounded for four minutes until 10:41 p.m. When he tripped the employee breakroom motion detector at 10:42 p.m., the alarm would have sounded until 10:46 p.m. The security sergeant did not arrive on the patio for at least another 10 minutes.

off the water pipe under the sink and taking off the lid to the toilet's water tank, breaking it and pulling out the internal toilet fill tube.

Of note, he did take the plastic trash bag liner from a trash receptacle inside the bathroom and placed it on his chest wound and fashioned a pressure bandage with his shirt and a ladies makeup bag strap to hold the plastic liner in place. This would have allowed some relief from his "sucking chest wound" but the pain and debilitating nature of the wound would still have been extraordinary – leading to the conclusion that some sort of masking drug was active in his body.

The personality known as Tyler "Tyger" Rushing to family and friends was not in the Mid Valley Title Company the night of the shooting. Instead officers faced an unknown angry, dangerous and wounded subject who had broken into a business and viciously attacked a responding security sergeant, whose uniform mimicked their own; who had been shot and was bizarrely finger-painting in his own blood; who profanely told officers when they first entered the building that he had a gun; and who, despite his cries of pain from the bathroom, refused to come out for medical aid and flooded the bathroom.

Officers showed patience and restraint in attempting to wait out the subject in the bathroom, but as his blood seeped out from under the door – evidence that he was most likely dying – their subsequent actions were driven by the circumstances rather than any desire to rapidly end their wait.

Unfortunately the result was not what the officers wanted despite their attempt to initially use the less lethal methods of the ballistic shield, the K-9 dog, beanbag shotgun and their own hands.

As noted above, a finding of criminal liability on the part of the security sergeant and Chico Police Sgt. Ruppel could only be found if there was proof beyond a reasonable doubt that the two men's beliefs they were endangered by the Mid Valley burglar were unreasonable. Given the burglar's violent assaultive actions towards the security sergeant, his announcement that he had a gun, and his use of unconventional weapons to actually injure the police officers (including narrowly missing Sgt. Ruppel's carotid artery) any conclusion that their belief of imminent great bodily harm was unreasonable would not be sustainable.

As always I thank the Butte County Officer Involved Shooting/Critical Incident Protocol Team for their excellent, professional and unbiased investigation into this case.

Yours very truly,

Michael L. Ramsey
District Attorney

cc: Butte County Officer Involved Shooting/Critical Incident Protocol Team