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Report of the Law Enforcement Involved Fatal Incident investigation of Kevin James McDonald  
on June 28<sup>th</sup>, 2023.

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### **Privacy Statement**

This report includes redactions of the names and other identifying information of civilian witnesses and family members. Specific addresses are also not provided in this report. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as the readability of this report, the witnesses and locations will be indexed as follows:

- Witness 1 (W1), the individual accused of assaulting an individual with a firearm and who was arrested by the police prior to the search of the residence.
- Witness 2 (W2), Kevin McDonald's Mother.
- Location #1, the residence where the shooting occurred.

## **Executive Summary**

On June 28<sup>th</sup>, 2023, Richmond Police Department [RPD] personnel were investigating a Richmond resident [hereinafter referred to as (W1)] who reportedly committed multiple firearm violations, including an assault with a firearm on June 26<sup>th</sup>, 2023. As part of the investigation, RPD officers conducted surveillance at (W1)'s residence [hereinafter referred to as location #1].

At approximately 3:00 am, RPD officers observed (W1) exit his residence, enter his car, and drive away. RPD personnel conducted a traffic stop on the vehicle and arrested (W1). RPD searched the vehicle and located a firearm.

Following W1's arrest, RPD personnel obtained a search warrant for location #1 to search for additional firearms. RPD officers were aware that an individual named Kevin McDonald [hereinafter referred to as MCDONALD] and his mother (W2) also lived at the residence and would likely be inside the home during the search. MCDONALD's criminal history did not reveal a history of violence or illegal possession of firearms.

At approximately 9:00 am, multiple Richmond Police officers responded to location #1 to serve the search warrant. The officers knocked on the door of the residence, announced they were from the Richmond Police Department, and stated that they were there to serve a search warrant. Despite numerous announcements, no one answered the door.

Over ten RPD officers entered the home via a garage door located on the side of the residence. The entry team continued into the living room, where they encountered MCDONALD's mother, who was elderly and appeared disoriented. Multiple members of the team continued to search the residence while one RPD officer remained with MCDONALD's mother. RPD personnel continued to call out to MCDONALD while repeatedly identifying themselves as the Richmond Police Department.

Members of the RPD team eventually proceeded to the second story of the home where they were tasked with checking and clearing all the rooms for safety purposes. The last room to be cleared was located behind a closed door at the end of a hallway.

Four RPD officers lined up behind the closed door while a fifth member, Richmond Police Sergeant Alex Caine, positioned himself on one side of the hallway as a cover officer. Richmond Police Detective Robert Branch was positioned closest to the door, followed by Officer Mauricio Canelo, Detective Aaron Pomeroy, and Officer Johnathen McKinney.

Detective Robert Branch reached out to open the door and gave another announcement identifying himself as the police. Just prior to opening the door, MCDONALD yelled at the officers, telling them not to come into the room.

Detective Branch opened the door and saw MCDONALD seated on his bed facing the door. MCDONALD was holding an assault style rifle in his hands and pointed it at the officers. RPD Officers announced “gun.” Detective Branch fired at MCDONALD. In addition, Sergeant Caine, who was positioned at the opposite end of the hallway, fired his weapon at MCDONALD. MCDONALD was struck by the bullets and fell back onto the bed.

MCDONALD was administered first aid and additional medical personnel were called to attend to him. MCDONALD was later pronounced deceased at the scene by medical personnel.

The Contra Costa Law Enforcement Involved Fatal Incident [LEIFI] Protocol was invoked. All involved Richmond Police Officers were sequestered and the Law Enforcement Fatal Incident investigation was initiated.

In applying the law and California District Attorney’s Uniform Crime Charging Standards to the present case, Richmond Police Detective Robert Branch and Richmond Police Sergeant Alex Caine acted in lawful self-defense/defense-of-others and their use of force was justified. As such, no further action will be taken in this case.

## **INTRODUCTION**

This report is the final step in the CCCDAO investigation of the Richmond Police Department’s officer involved shooting incident of Kevin MCDONALD on June 28<sup>th</sup>, 2023, in Richmond, California. The CCCDAO and every law enforcement agency in Contra Costa County follow the Law Enforcement Involved Fatal Incident Protocol (“the Protocol”)<sup>1</sup> to investigate incidents when officers or civilians are shot, killed, or die during an encounter with law enforcement.<sup>2</sup>

Under the Protocol, the CCCDAO investigates LEIFI incidents that occur in Contra Costa County for the purpose of making an independent determination of criminal liability. The sole purpose of the District Attorney investigation is to determine if there is proof beyond a reasonable doubt that an individual involved in the incident committed a crime.

Pursuant to the Protocol, the involved law enforcement agency is required to notify the appropriate district attorney personnel immediately after an officer involved shooting. Once notified, trained, and experienced members of the District Attorney’s Office respond to the scene and begin the criminal investigation. In addition, criminal investigators from the law enforcement agency involved in the incident and from the jurisdiction where the incident

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<sup>1</sup> Contra Costa County was one of the first counties in the country to adopt a fatal incident protocol between the District Attorney and the law enforcement agencies within the county. The complete LEIFI protocol document can be located on the Contra Costa County District Attorney’s Office website.

<sup>2</sup> Although the LEIFI Protocol references “Fatal” incidents, LEIFI protocol is initiated when officers or civilians are shot during an encounter with law enforcement, regardless of whether or not the involved individual is killed.

occurred, if different, respond to the scene as well. It is important to note that although these investigations happen simultaneously, each agency conducts its own independent investigation.

As part of the criminal investigation, law enforcement officers and civilians who witnessed the incident may be interviewed. Evidence is collected at the scene and may be submitted to the county crime lab for testing and analysis, in addition to any other relevant investigative work necessary to complete the investigation. The Contra Costa County Sheriff's Office Crime Lab responds to every incident and is responsible for evidence collection.

During the course of the criminal investigation, an officer or deputy has the right to be represented by an attorney. They may voluntarily choose to provide a statement, physical evidence, or other relevant information during the criminal and administrative investigations. Under the law, neither an officer nor civilian can be compelled to give a statement as part of a law enforcement agency administrative investigation only. (See, Public Safety Officers Procedural Bill of Rights Act, Government Code Sections 3300 et seq). In accordance with the law, the CCCDAO does not participate in compelled administrative investigation interviews and does not review them as part of the independent criminal investigation. There are very narrow circumstances where an exception to this rule is allowed.

Independent of the CCCDAO and in accordance with the Protocol, the Coroner's Division of the Contra Costa County Sheriff's Office (CCCSO) conducts a Coroner's Inquest following most deaths that involve law enforcement personnel or law enforcement operations or activities within Contra Costa County.

The Coroner's Inquest is open to the public, conducted by a hearing officer (a private attorney hired by the Coroner's Division) and is held in front of a jury of citizens randomly selected from the Contra Costa County Superior Court jury pool. During the inquest, the hearing officer questions witnesses, and additional evidence may be presented. After hearing all the evidence, the role of the jury is to decide whether the death was by (1) natural causes, (2) suicide, (3) accident, or (4) at the hands of another person other than by accident (i.e., homicide). The jury's decision has no legal bearing on the civil or criminal investigations or liability of any person(s) involved in the incident.

## **INVESTIGATION**

### **NOTIFICATION AND ASSIGNMENTS:**

On June 28, 2023, at approximately 9:45 am, the Contra Costa County District Attorney's Office [CCCDAO] was notified that the Richmond Police Department [RPD] invoked the LEIFI protocol for an officer involved shooting that occurred at location #1, in the City of Richmond.

Members of the District Attorney's Office LEIFI team as well as personnel from the Richmond Police Department responded to location #1. The scene was secured and marked off with crime scene tape by RPD personnel.

The CCCSO Forensic Division [Crime Lab] was notified and subsequently arrived at location #1 to process the scene. The United States Bureau of Alcohol, Firearms, Tobacco, and Explosives [ATF] responded due to multiple assault style rifles being located at the residence. The United States Air Force Explosives Ordinance Disposal (EOD) was contacted and arrived at the scene to safely identify, evaluate, and dispose of a live hand grenade located inside the residence.

At approximately 12:12 pm, a joint briefing with both RPD and CCCDAO personnel was held. The briefing was conducted to give an overview of the incident and to review evidence such as Body Worn Camera [BWC] footage and dispatch audiotapes. Following the briefing, members of the CCCDAO LEIFI team and RPD personnel were given the following assignments:

- Senior Inspector Steven Cheatham and RPD Officer Mike Sagan.
  - Interview three RPD personnel, including RPD Officers Robert Branch, RPD Sergeant Alex Caine, and RPD Lieutenant Elizabeth Bashan (the two actor Officers and the supervising Lieutenant)
- Senior Inspector Leo Sanchez and RPD Detective Ruben Munguia
  - Interview two of the RPD officers involved in the service of the search warrant, including RPD officers Richard Ramos and Mauricio Canelo.
  - Detective Munguia interviewed the following medical personnel: Paramedic Amy Staggs and Richmond Fire Captain John Stevens
- Senior Inspector Kirk Sullivan and RPD Detective Jaime Guzman:
  - Interview four of the RPD officers involved in the service of the search warrant, including RPD Officers Alyana Woody, Brian Hoffman, Johnathen McKinney, and Sergeant Aaron Pomeroy.
- Senior Inspector Fraser Ritchie and RPD Detective Mariah Farr:
  - Interview three of the RPD officers involved in the service of the search warrant, including RPD officers Alysa Alvarado, Andrew Domenici, and Sergeant James Moody.
  - Interview MCDONALD's mother.
- Senior Inspector John Garcia
  - Assist the CCCSO Crime Lab, ATF and EOD in the processing and collection of evidence from the scene and to witness the Autopsy of MCDONALD.

In total, twelve (12) police officers and three (3) civilian witnesses were interviewed. ATF Agents, the United States Air Force Explosive Ordinance Disposal, and crime scene personnel recovered 47 assault style rifles, hundreds of rounds of live ammunition, and a live grenade. All were seized from inside MCDONALD'S residence.

## **Evidence Reviewed:**

- The scene at location #1.
- Richmond Police Department reports associated with this incident.
- CCCDAO Investigative reports associated with this incident.
- Contra Costa County Crime Lab reports associated with this incident.
- Available audio and video camera recordings.
- Involved officer interviews.
- Interviews of civilian witnesses.
- Physical evidence collected from the scene.
- 911 Call/Radio Traffic.
- Autopsy Report.
- The Search Warrant for location #1.
- Coroner's Inquest Hearing testimony and findings.
- Additional Investigative materials.

## **TIMELINE**

On the morning of June 28, 2023, RPD Detectives conducted surveillance at location #1 in order to locate (W1), who was suspected of committing multiple firearm violations. At approximately 3:00 am, (W1) exited his residence at location #1 and left the scene in his car. RPD officers conducted a traffic stop on (W1) and arrested him. A loaded handgun was found in his car.

RPD Detectives authored a search warrant to return to location #1 and search the residence for additional firearms. The search warrant was reviewed by a Contra Costa County Superior Court Judge. The Richmond Police Department officers conducting the search arrived on scene at approximately 9:05 am.

The remainder of this summary will be relayed according to the chronological timeline provided by the available Body Worn Camera footage and RPD logs [CAD logs]. All times are approximate.

**9:08:22** RPD personnel lined up at the side garage door.

**9:08:49** RPD personnel discovered the side garage door was unlocked.

**9:08:52** RPD personnel started knocking on door and announced their presence.

RPD gave announcements and waited for approximately 46 seconds before team entered residence.



**9:09:38** RPD entered the residence through the garage door.

**9:09:53** RPD moved through the garage and encountered MCDONALD's mother (W2) in the living room. They attempted to call her toward them, but she did not respond or move.

**9:11:15** RPD personnel proceeded into the living room and contacted (W2).

**9:11:16** Detective Branch covered stairway leading to second floor.

**9:11:20** RPD announcement, *"Richmond Police Department, anybody upstairs come down now."*  
No one responded.

**9:11:28** An officer asked (W2), *"Where is Kevin?"* A female voice stated *"Upstairs"*.

**9:11:29** RPD yelled, *"Kevin if you're upstairs, come down now."*

**9:11:45** Another officer yelled, *"Kevin, Richmond Police Department, make yourself known."*

**9:12:30** RPD personnel proceeded up the stairs. Detective Branch was in the lead position [per BWC].

**9:12:37** Another officer announced, *"Richmond Police Department."*

**9:12:43** Detective Branch proceeded to the second floor and stated that he saw a door on the right side of the upper landing.

**9:12:49** Detective Branch covered the hallway, as other RPD personnel searched the right side of the second story.

**9:12:51** An RPD officer announced, *"Richmond Police Department."*

**09:13:02** Detective Branch and 3 other officers searched three rooms on the left side of left hallway

**9:14:43** Detective Branch lined up to lead entry squad into last door at end of the hallway.

**9:14:44** Detective Branch looked to right back toward the hallway entrance and saw Sergeant Caine at the end of hallway covering the last door.

**9:14:50** Detective Branch set up to open the last door. A male voice yelled *"Don't Come in Here."*

**9:14:51** Detective Branch yelled, *"Richmond Police Department"* as he opened the door and then yelled, *"Show Me Your Hands"* two times.

**9:14:53** Sergeant Caine yelled *"Gun, Gun, Gun"*, and then Detective Branch yelled *"Gun."*

**9:14:54** Sergeant Caine and Detective Branch fired their rifles at MCDONALD, who had pointed a rifle at them as Detective Branch opened the bedroom door.

**9:14:56** Sergeant Caine yelled the command, *"Shot."*

- 9:14:57** MCDONALD fell back onto the bed.
- 9:15:06** Detective Branch and RPD personnel entered the room. Detective Branch took the rifle out of McDonald's hand and placed it on a chair away from McDonald.
- 9:15:22** Medical Aid was requested.
- 9:16:27** RPD personnel applied First- Aid.
- 9:17:22** Officer McKinney (Trained Paramedic) took over medical care of MCDONALD.
- 9:18:20** Sergeant Caine and Detective Branch exited the scene to be sequestered.

### **SCENE DESCRIPTION:**

Location #1 is a residence located in the City of Richmond. According to Zillow, an open-source Internet real estate website, location #1 is a 5 bedroom, 2.5 bath, approximately 2,604 square feet, two-story, single-family residence.

The front of the residence faced south and included a two-car attached garage. A door located on the east side of the property provided an entry point into the garage. The rear of the residence had a small deck. Located in the driveway was a red, four door, Cadillac sedan, which was parked in the driveway. The vehicle was registered to MCDONALD's mother.

A hallway was located on the north side of the garage and led to the interior of the residence. A bathroom and a bedroom were located on the right side of the hallway. Continuing into the interior of the home was a staircase that led to the second story of the residence. The end of the hallway on the first floor opened into the living room of the residence, which is where RPD initially contacted MCDONALD's mother.

On the second floor, across from the top of the stairs, was a room located on the west wall of the residence. A hallway on the second floor led to additional rooms. Three rooms were located on the left (eastside) of the hallway and an additional room was located at the end of the hallway (south). MCDONALD was discovered in the bedroom at the end of the hallway (south door).

The following photographs depicts the scene:



The above photograph depicts the front of the residence. The red arrow points to the location where entry was gained through the side garage door.



This photograph illustrates the garage door on the east side of the residence

A large locked safe was located in the middle of the garage. Numerous shooting targets were affixed to the top portion of the walls with aluminum cans hanging in front of the targets. The targets and cans all appeared to have been shot.



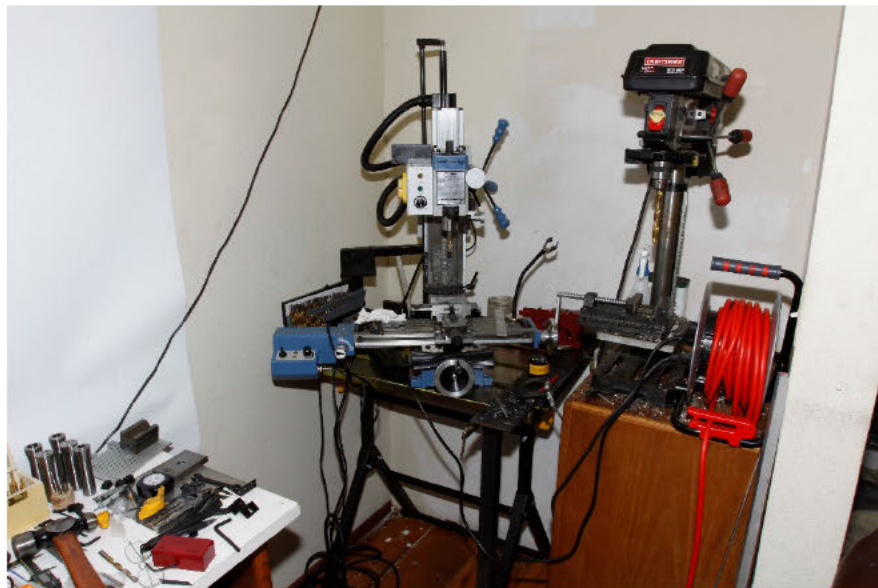
The above photograph depicts the targets that were mounted on the walls.





The above photograph depicts the entrance into lower floor rooms from the garage.

The downstairs bedroom contained several computers, two drill presses and milling equipment capable of modifying firearms. Metal shavings were present on the bottom of the drill presses.



This photograph depicts two drill presses capable of modifying firearms.



This photograph illustrates the entry into the downstairs living room, where MCDONALD's mother was located.



This photograph depicts the upstairs landing/bedroom door across from the top of the stairs and the entrance to the left hallway.



This photograph depicts the view from the upstairs landing down to first floor living room.



This photograph depicts the left upstairs hallway leading to MCDONALD's bedroom, with (W1)'s bedroom marked as the first bedroom on the left.





This photograph illustrates the interior of (W1's) bedroom. The red circle illustrates the assault rifle hanging on the metal rack.

Indicia in the name of (W1) was scattered throughout his bedroom. An assault type rifle was located hanging off a metal rack, next to a bed. A 30-round capacity magazine was inserted in the weapon.



This photograph depicts an assault rifle hanging on a metal rack in (W1's) bedroom.





This photograph depicts the last two doorways at the end of the left hallway. The room to the left was MCDONALD's mother's bedroom. The room on the right is where MCDONALD was located.



This photograph depicts the interior of MCDONALD'S bedroom.



This photograph depicts assault rifles on the table on the west wall of MCDONALD's bedroom.

During the walk through of the crime scene by investigative personnel, MCDONALD was located on the floor lying on his back. His head was facing south next to the bed. He was wearing sweatpants with his t-shirt pulled over his neck.

### **Evidence Recovery:**

Evidence recovery, scene documentation and photographs were conducted by the Contra Costa County Sheriff's Office, Crime Lab, the Richmond Police Department, and the United States Air Force EOD.

The weapon recovered from MCDONALD was a modified, un-serialized, black, AR-15 assault rifle. The firearm was equipped with a magazine that contained 29 live, unfired rounds. One live unfired round was located in the chamber of the gun.





The above photograph depicts the weapon recovered from MCDONALD.

A full-size mannequin was located inside of MCDONALD's room. The mannequin was equipped with tactical gear, including a ballistic helmet, tactical vest, and a tactical belt. An assault weapon was slung around the mannequin's neck.



The above photograph depicts the mannequin located in MCDONALD's room

The Richmond Police Department Crime Scene Investigators collected all the identified assault weapons, assorted assault weapons parts, and ammunition found at location #1. In total, forty-seven firearms were located and seized in MCDONALD's bedroom. In addition, hundreds of

rounds of ammunition and approximately 20 air soft replica firearms were located in his room. Numerous firearm components, tools, and machinery used to manufacture firearms were located in the residence.

An F5 M67 Grenade launcher attachment for an AR-15 rifle was located inside MCDONALD's room. Additional firearms and rifles were located throughout the residence. A live hand grenade was located in the upstairs room across from the stairs. United States Air Force EOD personnel took possession of the hand grenade, for later destruction.



The above photograph depicts the numerous airsoft rifles in MCDONALD's room.



The above photograph depicts the live hand grenade located in the upstairs bedroom.

Located inside MCDONALD's room was a table that had a mirror and two straws on top of the table. A white powdery substance was located on the mirror. In addition, a pipe commonly used to smoke methamphetamine was located on the table.

Inside the residence the CCC Crime Lab collected ten cartridge casings from the rounds fired by Detective Branch and Sergeant Caine. The CCC Crime lab completed a ballistics test on the casings and the firearms used by the officers. The ballistics test determined that four of the

cartridge cases were fired by Sergeant Caine's rifle and six were fired from Detective Branch's rifle.

The CCC Crime Lab collected multiple deformed bullets/fragments during the investigation that were believed to have been fired from Detective Branch and Sergeant Caine during the fatal incident.

#### **BODY WORN CAMERAGE FOOTAGE:**

At the time of the search warrant, multiple Richmond Police personnel were equipped with a Body Worn Camera [BWC]. Sergeant Caine did not have his BWC on his person at the time of the shooting.

A review of the available BWC minutes before the shooting shows Detective Branch and the other RPD personnel searching the rooms down the left upstairs hallway and then advancing south toward MCDONALD's bedroom. Detective Branch and the other RPD personnel set up to clear the last room to the left of their location. The last room was located at the end of the hallway. The camera footage shows a view of the hallway toward the stairs, (Northward direction), away from the last door at the end of the hall. Prior to entry into MCDONALD's room, Detective Branch's BWC shows the upper half of Sergeant Caine's torso, and he was looking in Detective Branch's direction.

Sergeant Caine was positioned to cover RPD personnel as they went down the left hallway. Sergeant Caine stayed in that position to cover Detective Branch as Detective Branch prepared to open the last door at the end of the hallway.

Detective Branch's BWC depicts him reaching out to open MCDONALD's bedroom door as a male voice [MCDONALD] yelled, "Do not come in here". Detective Branch opened the door and yelled, "Richmond Police Department, show me your hands", two times. The camera view was blocked by the left wall of the doorway, which Detective Branch used for cover. As he opened the door, the camera footage into the room was also blocked by Detective Branch's hands and rifle.

Detective Branch points his rifle into the room, in the direction of MCDONALD. Available BWC captured both Sergeant Caine and Detective Branch yell, "gun." Detective Branch's BWC shows Detective Branch fire his rifle into the room approximately six to eight times. BWC footage briefly showed MCDONALD fall back onto the bed, which he was seated on, in the south part of the room. Detective Branch entered the bedroom and stopped near the bed. Detective Branch can be seen taking an AR-15 style rifle out of MCDONALD's hand.





Depicted above is a still shot from Detective Branch's BWC footage at the time he fired his rifle at McDONALD.



Depicted above is a still shot from Detective Branch's BWC footage of him taking the rifle out of McDonald's hand.



Depicted above is an additional still shot from Detective Branch's BWC of him taking the AR—15 rifle out of MCDONALD's hand.

#### **INTERVIEWS OF INVOLVED OFFICERS:**

##### **Interview of Richmond Police Sergeant Alexander Caine**

On June 28, 2023, at approximately 7:13 pm, RPD Officer Sagan and CCCDAO Senior Inspector Steven Cheatham interviewed Richmond Police Sergeant Alex Caine. Sergeant Caine was represented by attorney Joe Lucia from the law firm of Rains, Lucia, and Stern. The following is a summary of his interview:

Sergeant Caine has been a police officer for approximately 18 years. He started his career with the San Pablo Police Department in 2005 and transferred to the Richmond Police Department in 2009. In 2010 he became a canine handler for the Richmond Police Department. In April of 2023 he was promoted to the rank of Sergeant. Sergeant Caine's collateral assignments included being a member of the SWAT team and the Tactical Response Team (TRT).<sup>3</sup> Sergeant Caine's experience also includes being a SWAT Sniper, a SWAT team leader, and a Firearms Instructor. As a result of his experience, Sergeant Caine has been involved in hundreds of search warrant entries.

On today's date Sergeant Caine was the TRT team leader, and as team leader his job was to plan an operation and assign personnel their duties for the service of a search warrant at location #1. The TRT team was assigned to search location #1 as part of an ongoing

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<sup>3</sup> Both SWAT and TRT are law enforcement units who may assist/conduct search warrants, depending on the threat level posed for each search. Typically, TRT teams conduct searches that are considered lower risk.

investigation into (W1), who resided at that location. (W1) was a suspect in two separate instances where he was allegedly armed with a firearm.

Prior to the search of the residence, RPD personnel confirmed the location of (W1)'s residence and what car he was driving. RPD personnel arrested (W1) after he drove away from his residence. RPD personnel recovered a firearm inside (W1)'s vehicle.

Following his arrest, (W1) provided information to RPD personnel that a handgun, a shotgun, and a rifle were located in his room at the residence. In addition, (W1) provided information that a person named Kevin MCDONALD and his elderly mother lived in the residence.

RPD personnel authored a search warrant for (W1)'s residence and presented the search warrant to a judge, who approved the search. Sergeant Caine planned the operation and submitted the plan to Lieutenant Bashan. Lieutenant Bashan approved the operation. Sergeant Caine conducted a briefing of TRT personnel and designated their respective assignments.

Sergeant Caine and the TRT team responded to location #1. Sergeant Caine was wearing a fully marked Richmond Police uniform and was equipped with his department issued Colt AR-15 rifle. Sergeant Caine was wearing his BWC on his vest earlier in the day, but while preparing for the search, he inadvertently forgot to transfer his BWC when he changed into a tactical vest.

Once on scene Sergeant Caine and the TRT team attempted to enter the front door of the residence. However, upon approach, they discovered the area near the front door was under construction, so the team proceeded to the side garage door. Once at the side garage door the TRT team provided multiple knock notice announcements.<sup>4</sup> The team waited at the door for approximately a minute to a minute and a half, at which point they continued to give knock notice announcements. After receiving no response, Sergeant Caine instructed another officer to knock on the wall to give additional knock notice announcements.

Despite numerous knock notice announcements, no one answered the door. As a result, the TRT opened the door using a key they obtained from (W1) following his arrest. The team entered through the side garage door. Once inside Sergeant Caine saw numerous used paper silhouette shooting targets on the walls. Sergeant Caine's observation of the used targets made him feel uneasy.

The TRT team continued to announce their presence as they went through the garage. Once they entered the living room he saw an elderly female. She seemed disoriented and the team continued to search the lower level of the residence. Team members continued to announce,

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<sup>4</sup> "Knock notice" is a legal term referring to the requirement that an officer knock on the door of a residence and announce their presence as a police officer when serving a search warrant. After announcing their presence, the law requires law enforcement to wait a reasonable period of time to allow the occupant/s to respond, prior to law enforcement forcible entering a home.



“Richmond Police Department” and yelled Kevin’s name to get him to respond. Sergeant Caine was cognizant of the fact no one was responding when calling for MCDONALD, which he felt was unusual.

In total, twelve RPD personnel entered the residence. Once inside, multiple TRT members began securing the home. During a typical search, Sergeant Caine sends four TRT members into each room to secure the area. A different four-person squad would then search the next room. The squads would go from room to room, until the entire search was complete. The TRT team proceeded in this manner during the search.

The purpose of this search method is to identify and locate any people or suspects in the residence or building. For officer safety reasons, people who are discovered are detained and moved to a secure area. A detailed search for evidence would then be conducted after all subjects who could interfere with the search were detained.

After clearing the first floor Sergeant Caine sent all but one person upstairs to continue to search for MCDONALD, who they believed may still be in the residence. The one team member who remained downstairs stayed with the elderly female they found on the first floor.

Once upstairs he saw there was a hallway to his left and a room to the right across from the stairs. Three doors were located on the left side of the left hallway. The door at the end of the hallway was closed. Sergeant Caine directed a squad of four TRT team members to the left and another four to the right.

The squad who proceeded down the hallway entered the first room. He then asked the squad members he had directed to search the room to the right if they had completed their search because he wanted the teams to continue searching the additional rooms down the hallway. At this point, however, the right-side squad had not finished their search and could not link up with the squad in the left hallway. Both squads continued to loudly announce their presence and asked for MCDONALD by name, but he did not respond.

Sergeant Caine saw the search team complete their search of the second to last room in the left hallway and then saw the team line up behind the door of the last room. Detective Branch was positioned as the first person in front of the door, with a line of officers stacked up behind him.

Sergeant Caine leaned out into the hallway and pointed his rifle at the door as Detective Branch prepared to open the door to the last room. Sergeant Caine covered the door for any possible lethal threat. Sergeant Caine yelled, “Hey Kevin, Richmond Police Department, if you’re inside, make yourself known.” There was no answer or noise from the room.

Detective Branch position himself by the left side of the door frame as he prepared to open the door. Detective Branch reached out and checked the doorknob, to determine if the door was

locked. Sergeant Caine leaned farther to his right into the hallway to make sure Detective Branch was not in the line of sight of his rifle.

Just prior to Detective Branch opening the door, Sergeant Caine heard a male voice say, “You better not come in here.” Sergeant Caine was surprised and realized MCDONALD was in the room. Detective Branch opened the door. Sergeant Caine saw a white male adult, sitting on the bed directly in his line of sight. The white male raised an AR variant type rifle and pointed it at him. Detective Branch moved into the threshold of the room, but Detective Branch was not in Sergeant Caine’s line of fire.

Sergeant Caine had a clear view of the white male pointing a rifle at him. Sergeant Caine yelled “gun.” In his mind Sergeant Caine quickly eliminated any non-lethal options which may have been available to him in this situation. His first thoughts were, could he deploy a flash bang<sup>5</sup>, a diversionary device or a taser, but he quickly decided none of those options would be effective in that moment. Sergeant Caine saw Detective Branch move into the threshold of the room. Sergeant Caine leaned more to his right, to keep Detective Branch out of his line of fire and yelled “gun” again.

Sergeant Caine fired his rifle at MCDONALD. Sergeant Caine believed MCDONALD was going to shoot and kill him and his teammates as they entered the room. He saw Detective Branch move further into the threshold of the door and he saw Detective Branch fire his rifle at MCDONALD. Detective Branch then moved into his line of fire and Sergeant Caine stopped pointing his rifle down the hallway. Sergeant Caine saw MCDONALD fall backwards after he and Detective Branch fired their rifles.

Sergeant Caine yelled, “shot,” which is a command given in order for everyone to freeze and to prevent friendly fire. Sergeant Caine quickly told the team to go into the room. Sergeant Caine felt the concussion from the fired rounds and was not sure if MCDONALD had fired his rifle at them. He quickly assessed if he was not injured.

Sergeant Caine went forward down the hallway into the room where MCDONALD was located. The TRT team cleared the room for other threats. Sergeant Caine recalled seeing a belt fed machine gun on a tripod inside the room as well as numerous AR type rifles.

Sergeant Caine saw MCDONALD was bleeding profusely from his head and obtained a first aid kit from Officer Woody. Sergeant Caine called up Officer McKinney, who was a former Navy Corpsman. Sergeant Caine believed Officer McKinney was the best trained person to care for MCDONALD.

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<sup>5</sup> A flash bang is a non-lethal explosive device that emits an extremely loud noise and bright lights to disorient an individual or group of individuals.

Sergeant Caine radioed for medical assistance. He then checked to see if other team members were injured and learned no one else was harmed. He directed the squad to perform a secondary search to determine if anyone else was in the residence. Sergeant Caine directed Sergeants Pomeroy and Moody to take over command of the operation, as he and Detective Branch were to be sequestered.

Sergeant Caine went outside and saw that there appeared to be bullet exit holes in the exterior of the residence, from the upstairs room. Sergeant Caine had officers complete an area canvass and welfare check in the neighborhood in order to determine if anyone was harmed by the bullets which exited the residence. Sergeant Caine was advised that no one else was harmed. Sergeant Caine and other members of the TRT were then sequestered.

### **Interview of Richmond Police Detective Robert Branch**

On June 28, 2023, at approximately 6:26 pm, RPD Officer Mike Sagan and CCCDAO Senior Inspector Steven Cheatham interviewed Richmond Police Detective Robert Branch. Detective Branch was represented by attorney Joe Lucia, from the Law Firm of Rains, Lucia, and Stern. The following is a summary of his interview:

Detective Branch has been a Richmond Police Officer for approximately 17 years. Detective Branch started in patrol, but in 2015 he was selected as a Detective in the Domestic and Sexual Assault Unit. In 2020 he was reassigned back to Patrol. In 2022 he was assigned as a Detective in the Robbery Division and is currently a member of the Tactical Response Team (TRT).

Both the SWAT team and the TRT unit serve criminal search warrants. A threat analysis is conducted for all search warrants to determine whether the SWAT team or TRT unit will conduct the search. The TRT unit conducts searches that are considered low risk. The TRT unit and the SWAT team are trained quarterly. Detective Branch has completed six trainings, which included entry training and scenario-based training involving both the SWAT team and the Crisis Negotiation Team (CNT).

On the date of this incident, Detective Branch was wearing a clearly marked police uniform with badges and police insignias on his uniform. Detective Branch carried his department issued Colt AR-15 rifle for this operation. The objective of the search was to determine if firearms were located inside the residence.

At approximately 8:00 am he attended an operation briefing at the Richmond Police Department. The supervisors for this entry were Sergeants Pomeroy, Caine, and Moody. Lieutenant Bashan was the overall incident commander.

Detective Branch approached the residence in a line with Detective Canelo, Detective Ramos, Detective Domenici, as well as an additional RPD officer, whose name he could not recall. The

entry team changed their initial entry point from the front door to the side garage door because the front door area was under construction and inaccessible.

The entry team knocked on the door multiple times and announced their presence as officers multiple times. After receiving no reply, the entry team used keys to the side garage door that they had in their possession and entered the garage. Announcements were continually given while they were inside the garage.

Detective Branch saw an elderly female inside the residence from his position inside the garage. The entry team tried to direct her to come to them, but she did not respond. Officers approached her and detained her. Detective Branch covered the stairs to the second floor, as other members searched the lower level for anyone else. Detective Branch was briefed that there may be an elderly female and a subject by the name of 'Kevin' inside the residence. Members of the TRT yelled MCDONALD's name several times but received no response.

Detective Branch and other TRT members went upstairs to the second floor. Once on the second floor he saw a hallway to the left of the stairway and a door on the right wall, across from the stairway. Several additional doors were located down the hallway.

Detective Branch searched two rooms down the hallway with other members of TRT in order to determine if any individuals were inside the residence. After searching the last room on the left, there was one additional door at the end of the hallway that needed to be cleared. Detective Branch positioned himself closest to the door while additional TRT members were stacked behind him.

Detective Branch was preparing to open the door to the room when he heard a male voice from inside say, "don't come in here." Detective Branch reached for the doorknob to see if the door was locked and discovered it was not. He turned the doorknob and opened the door. He immediately saw a white male [later identified as MCDONALD] sitting upright in the bed at the far end of the room. MCDONALD was facing Detective Branch and had a rifle in his hands. MCDONALD was pointing the rifle at Detective Branch's face, prompting Detective Branch to point his rifle at MCDONALD and fired seven to ten times.

Detective Branch stated that he feared for his life and the life of his teammates and believed that MCDONALD intended to shoot him. Detective Branch believed there was no available time to de-escalate this situation and had nowhere to retreat to. Detective Branch believed the only reason MCDONALD did not shoot him was because he fired at MCDONALD first.

Detective Branch saw MCDONALD fall back down on the bed while still holding the rifle. He entered the room and took the rifle out of MCDONALD's hands. Detective Branch saw MCDONALD had bullet wounds to his head and saw blood on one of his legs.

Detective Branch was subsequently sequestered and escorted out of the residence.

**Interview of Richmond Police Lieutenant Elizabeth Bashan:**

On June 28<sup>th</sup>, 2023, at approximately 5:45 pm, CCCDAO Senior Inspector Steven Cheatham and Richmond Officer Mike Sagan interviewed Richmond Police Lieutenant Elizabeth Bashan. Present for the interview was Richmond Police Officer Association [POA] President, Sergeant Benjamin. Listed below is a summary of the interview:

Lieutenant Bashan has been a Richmond Police Officer since 2011 and was promoted to Sergeant, where she was as a member of the Tactical Response Team (TRT). She had been involved in five to ten search warrant service operations as a member of the TRT. The TRT trains with the SWAT team and performs entry training on a regular basis. Lieutenant Bashan was promoted to Lieutenant in January 2022. In April of 2023 she was assigned as the Investigations Commander and was the Commander of the TRT.

Lieutenant Bashan became aware of an investigation of (W1) on June 26, 2023. She was briefed by her detectives that (W1) was under investigation for two separate incidents, including brandishing a firearm and a violation of Penal Code Section 246 [shooting at a vehicle/residence/etc.] Surveillance on (W1) indicated that (W1) resided at location #1, in the City of Richmond.

In the early morning hours of June 28, 2023, RPD officers observed (W1) leave his residence in a vehicle. Officers conducted a car stop and arrested (W1). A handgun was recovered from the vehicle during the car stop.

After his arrest, Officer Alvarado and Sergeant Caine authored a search warrant for location #1 in order to locate additional firearms. Once the search warrant was authorized, Lieutenant Bashan completed a threat assessment and determined the Tactical Response Team (TRT) was the appropriate team to conduct the entry and search of the residence.

Based on information available at the time, an individual identified as Kevin McDonald was believed to be inside the residence. A search of his criminal history indicated that he had no recent violent or weapons related crimes. In addition, it was believed that an elderly female may be inside the residence.

TRT personnel was briefed and Lieutenant Bashan was designated as the incident commander for the operation. The Sergeants assigned to the TRT Unit would be the supervisors during the entry and search of the residence. Lieutenant Bashan was positioned within line of sight of the residence and would call in additional resources, if needed.

Lieutenant Bashan saw the team approach the residence and heard the knock and notice announcements. Lieutenant Bashan could not estimate the amount of time the team waited at

the door before entering the residence. The team then made entry and she lost sight of the team as they went inside.

Over the police radio she heard the TRT team contact someone inside the residence. The search of location #1 took a significant amount of time due to the size of the residence. At one point she heard someone over the radio ask if a bedroom was clear.

At one point Lieutenant Bashan heard multiple gunshots from inside the residence and then heard Sergeant Caine advise, over the radio, that shots were fired. She told Detective Guzman, who was nearby, to relay that information over the RPD main channel. Lieutenant Bashan heard Sergeant Caine advised the suspect was in critical condition.

Detective Guzman requested an ambulance to respond to the residence. The residence was secured, and Lieutenant Bashan went inside the home. She identified the officers who had shot at the suspect, as well as the witness officers, so she could initiate the LEIFI Protocol.

### **Interview of Richmond Police Detective Mauricio Canelo**

On June 28, 2023, at approximately 8:12 PM, Senior Inspector Leo Sanchez and RPD Detective Munguia interviewed Detective Mauricio Canelo. Detective Canelo was represented by an attorney, Harry S. Stern, from the Law Firm of Rains, Lucia, and Stern. The following is a summary of his interview:

Detective Canelo has been an officer with the Richmond Police Department for the past 21 years and is a Detective in the Homicide Unit. Detective Canelo has been a member of the Richmond Police Department SWAT team for the last 6 years and is also a member of the TRT team.

On today's date he was assigned to assist in a search of location #1 as a member of the TRT. Detective Canelo attended a briefing of the search and received information that was consistent with the description provided by the other involved police officers in this LEIFI investigation.

During the search of the residence Detective Canelo was wearing a standard RPD black tactical utility uniform and vest with fully marked Richmond Police patches and insignia. Detective Canelo was equipped with an AR-15 rifle and a Nighthawk handgun. Officer Canelo was wearing his BWC, which was activated for the search of the residence. Detective Canelo believed he may have accidentally turned off his BWC but turned it back on once he noticed it may have turned off.

Detective Canelo was assigned to the #1 position of the stacking order during the initial entry into the home. The following officers were behind him: Detective Ramos, Sergeant Pomeroy,

(who would conduct knock notice announcements), Officer Domenici, Detective Branch, Officer Hoffman, and Officer McKinney. Detective Canelo described entering into the residence and searching the first floor of the home in a manner that was generally consistent with the statements of the other officers and available BWC.

Detective Canelo and the TRT then proceeded to the second floor of the residence. Detective Canelo was the last team member in a line as the team went up the stairs. Detective Canelo proceeded down the long narrow hallway on the left and began to search the second floor rooms to see if anyone was inside the home.

At one point Detective Canelo assisted in the search of the last room at the end of the left hallway. Prior to entering the room, he saw Sergeant Caine positioned at the end of the left hallway, taking a rear cover position. Detective Canelo positioned himself behind Detective Branch, who was closest to door. Detective Canelo did not hear anything or anyone in the last room prior to Detective Branch opening the door.

Detective Canelo saw Detective Branch open the door by pushing it in and begin to move into the threshold of the doorway. Detective Canelo heard Detective Branch yell "gun," and then heard and saw Detective Branch fire his rifle into the room. Detective Canelo was behind Detective Branch but was not able to see into the room.

Detective Canelo heard separate gunshots coming from down the hallway and someone yell, "shot." In total, Detective Canelo heard approximately 3-4 gunshots from Detective Branch and at least one gunshot from what was later learned to be from Sergeant Caine. Detective Canelo did not fire his weapon.

After a brief pause he entered the room with Detective Branch. Detective Canelo saw MCDONALD lying on a bed motionless, faceup with a short barrel rifle to his side. Detective Canelo saw MCDONALD was bleeding and had been shot in the face and head. Detective Canelo heard team members advising on the radio, that an OIS had occurred. Detective Canelo heard a request for medical personnel and saw Officer McKinney administering first aid care to MCDONALD by providing direct pressure with medical gauze.

**Interviews of the following RPD Personnel: Detective Richard Ramos; Officer Alyana Woody; Detective Brian Hoffman; Officer Johnnathen McKinney; Sergeant Aaron Pomeroy; Sergeant James Moody; Officer Andrew Domenici; and Officer Alysa Alvarado:**

During the course of the LEIFI Investigation all members of the TRT team serving the search warrant at location #1 were interviewed by multiple CCCDAO Senior Investigators and RPD Detectives. On whole, their interviews were generally consistent amongst each other and the available BWC footage.

Of note, although all the involved officers who were inside the residence heard multiple announcements and heard shots being fired, due to their positioning in the residence and the narrow confines of the home, none of the above listed individuals were able to see the fatal incident.

**INTERVIEWS OF MEDICAL PERSONNEL:**

**Interview of Paramedic Amy Skaggs**

On July 3, 2023, at approximately 8:00 am RPD Detective Munguia interviewed American Medical Response Paramedic Amy Skaggs. The following is a summary of her interview:

Mrs. Skaggs has been a Paramedic for approximately 28 years. On June 28, 2023, she was working with her paramedic partner, Graham Olsen, when they were dispatched to location #1 due to a call of a reported gunshot wound.

When they arrived on scene, she was escorted into the residence by an RPD officer. Mrs. Skaggs was directed to an upstairs bedroom and saw patient MCDONALD on the floor with a pool of blood under his head. She saw there was an ace bandage around the patient's head and one around his left lower leg. Mrs. Skaggs was advised by an officer on scene that MCDONALD was shot.

Mrs. Skaggs saw McDonald was not breathing. She put a heart monitor on him, but it did not register a pulse. Mrs. Skaggs then put a pulseless electrical activity monitor (PEA) on McDonald in order to measure the electrical activity in his heart, which noted only a small measure of electrical activity. Mrs. Skaggs pronounced McDonald deceased at approximately 9:34 AM, just minutes after her arrival.



### **Fire Captain John Steven**

On July 3, 2023, at approximately 8:20 am, RPD Detective Munguia interviewed Richmond Fire Department [RFD] Captain John Stevens. The following is a summary of Captain Steven's interview:

Captain Steven has been a member of the RFD for approximately sixteen years and is the supervisor of the Engine 61 company. Captain Stevens has responded to and treated numerous victims with gunshot wounds in his experience as a Richmond Firefighter.

On June 28<sup>th</sup>, 2023, he was dispatched to location #1 in regard to a gunshot wound. After he arrived at the residence, he was escorted to an upstairs bedroom of by an RPD Officer. Captain Stevens saw a paramedic was already administering care to a male subject. The paramedic had put a heart rate monitor on the subject to measure for any signs of life. Captain Stevens stood by for a few minutes as the paramedic cared for the subject. A few minutes later the paramedic pronounced the subject deceased. MCDONALD's time of death was recorded at approximately 9:34 am.

### **INTERVIEWS OF CIVILIAN WITNESSES:**

#### **Interview of MCDONALD's Mother (W2):**

On June 28, 2023, at approximately 1:30 pm, Senior Inspector Fraser Ritchie and RPD Detective Mariah Farr interviewed MCDONALD's mother (W2). The interview was conducted in an interview room at the Richmond Police Department. (W2) appeared disoriented during the interview and did not know the current date, day of the week, her date of birth, or why she was at the Richmond Police Department. The following is a summary of her interview:

(W2) has lived at location #1 for approximately 20 years. Currently she lives with her son, Kevin McDonald, and (W1). All three of them had bedrooms on the 2<sup>nd</sup> floor of the residence. Her son's bedroom was at the end of the left hallway. (W2) has not seen (W1) in three or four days.

Her son owns guns and has been interested in guns since he was a teenager. MCDONALD owns a handgun and a rifle, but she has never noticed an overabundance of ammunition. (W2) does not recall ever seeing the shooting targets that were hanging in the garage.

MCDONALD did not anger easily and she does not know if he has any enemies. MCDONALD and (W1) have been friends for a long time. She had no knowledge if MCDONALD abused drugs or alcohol.

(W2) did not know why the police were at her residence that morning, nor did she hear any loud noises (gunshots) while she was at the residence.

## **AUTOPSY AND CORONER'S INQUEST**

### **Autopsy:**

On 6/29/2023, at approximately 12:15 pm, MCDONALD's autopsy was performed at the Contra Costa County Coroner's Office. Present for the autopsy were the following individuals: CCCDAO Senior Inspector John Garcia, CCC Crime Lab CSI B. Kellmann, CCC Crime Lab Fingerprint Examiner J. Fong and RPD CSI K. Walker. The exam was performed by Dr. Arnold Josselson and assisted by Breanna Ward.

During the autopsy Dr. Josselson observed three (3) gunshot wounds to MCDONALD's head and three (3) gunshot or shrapnel injuries on MCDONALD's left calf.

A blood draw of was taken of the decedent. A toxicology report noted the presence of Methamphetamine and Delta 9 THC<sup>6</sup>.

Following an extensive examination of the decedent, Dr. Josselson authored an autopsy report that listed MCDONALD's cause of death as, "Three fatal gunshot wounds of head."

### **Coroner's Inquest**

On February 23<sup>rd</sup>, 2024, a Coroner's Inquest was conducted regarding this LEIFI incident. After presentation of the evidence, the jury concluded that the death of MCDONALD was by, "Suicide."

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<sup>6</sup> Delta 9 THC is the principal psychoactive constituent of cannabis.

## **LEGAL PRINCIPLES**

The California District Attorneys Association 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 applicable California Penal Code Sections and Jury Instructions [CALCRIM] are as follows:

### **Pursuant to CALCRIM 220: [Reasonable Doubt Jury Instruction]**

The fact that a criminal charge has been filed against the defendant is not evidence that the charge is true. You must not be biased against the defendant just because he has been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. [ ]

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, he is entitled to an acquittal, and you must find him not guilty.

**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 peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- (a) In obedience to any judgment of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

**Section 835a:** (a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

**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.

**Pursuant to CALCRIM 507:**

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

1. The defendant was a peace officer

AND

2. The killing was committed while the defendant

either:

A. Reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the defendant or another person;

OR

B. Reasonably believed, based on the totality of the circumstances, that:

(1) A person was fleeing a felony;

(2) That force was necessary to arrest or detain that person;

(3) The commissioned felony threatened or resulted in death or serious bodily injury,

AND

(4) The person will cause death or serious bodily injury to another unless immediately apprehended.

**Pursuant to CALCRIM 505. Justifiable Homicide: Self-Defense**

The defendant is not guilty of murder or manslaughter if he was justified in killing someone in self-defense. The defendant acted in lawful (self-defense/ [or] defense of another) if:

1. The defendant reasonably believed that he was in imminent danger of being killed or suffering great bodily injury;
2. The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger;

AND

3. The defendant used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of death or great bodily injury to himself. Defendant's belief must have been reasonable and he must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the killing was not justified.

When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed.

The defendant's belief that he was threatened may be reasonable even if he relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true.

A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of death or great bodily injury has passed. This is so even if safety could have been achieved by retreating.

Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. If the People have not met this burden, you must find the defendant not guilty of murder or manslaughter.



## **LEGAL ANALYSIS**

The legal issue to be decided by the CCCDAO is whether any involved law enforcement officers or civilians violated any criminal laws. The Contra Costa District Attorney's Office analyzes each fatal incident on the case specific facts and circumstances. The community, including the deceased, his family, and the involved officers deserve an independent factual and legal analysis. Whether someone is criminally liable depends on the facts of the case and whether those facts constitute a crime under the applicable laws.

The California District Attorneys Association 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.

In the present case, a review of all of the available evidence reveals that Richmond Police Detective Robert Branch and Richmond Police Sergeant Alex Caine acted in lawful self-defense/defense of others. Both officers reasonably believed they were in imminent danger of serious bodily injury or death; both officers reasonably believed the immediate use of force was necessary to defend against that danger; and both officers used no more force that was reasonably necessary under the circumstances. As such, their use of deadly force was justified.

On June 28<sup>th</sup>, 2023, both Sergeant Caine and Detective Branch were conducting a search of a residence where probable cause existed to believe a firearm would be located inside and that one or more individuals would be located inside the home. An officer under these circumstances would reasonably believe that a potentially dangerous and/or violent incident may occur during the execution of the search.

In addition, prior to the shooting, multiple used firearm targets were found on display inside the home along with various tools used to manufacture/mill/alter firearms. A reasonable officer under these circumstances would believe that the individual in possession of the firearm is actively firing their weapon and is more likely to have additional firearms in the residence.

Furthermore, multiple RPD officers announced their presence and actively called out to MCDONALD in order to avoid a potentially dangerous encounter. Unfortunately, despite the officer's attempts to safely secure the home, MCDONALD did not respond to the officers until the moment they entered his room. An officer under these circumstances would reasonably

conclude, upon suddenly discovering MCDONALD, that he was hiding his presence because he intended to use force or violence when located by police.

Finally, once Detective Branch opened the door to MCDONALD's bedroom, MCDONALD did not submit to lawful detention. Instead, MCDONALD was positioned upright on his bed facing the doorway, armed with a loaded assault rifle, and pointed the weapon at the officers who were just feet away. An officer, under these circumstances, would reasonably conclude that deadly force was necessary to defend against the imminent threat of death that MCDONALD's actions presented.

Due to the speed and relatively close proximity of this incident, neither Detective Branch nor Sergeant Caine could effectively attempt to use non-lethal force or verbally de-escalate the encounter. Simply put, MCDONALD thrust the officers into a position where they would have to either shoot MCDONALD or be shot. Accordingly, the use of deadly force used by Sergeant Caine and Detective Branch was justified.

#### **CONCLUSION:**

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, Richmond Police Detective Robert Branch and Richmond Police Sergeant Alex Caine acted in lawful self-defense/defense of others and their use of deadly force was justified. As such, no further action will be taken in this case.