

**VERN PIERSON**

**EL DORADO COUNTY DISTRICT ATTORNEY**



**FINAL REPORT**

**OFFICER INVOLVED SHOOTING OF  
KRIS MICHAEL JACKSON**

**SOUTH LAKE TAHOE POLICE  
SOUTH LAKE TAHOE POLICE OFFICER JOSHUA KLINGE**

JUNE 21, 2017

The El Dorado County District Attorney's Office has completed our review of the June 15, 2015, fatal shooting of Kris Michael Jackson by South Lake Tahoe Police Department ("SLTPD") Officer Joshua Klinge ("Officer Klinge"). The District Attorney cannot definitively find that the shooting was justified. However, for reasons set forth below, we are not filing criminal charges. Criminal homicide charges would require proof beyond a reasonable doubt. Criminal charges cannot be proven. Specifically, the People would have to prove that the killing of Kris Michael Jackson did not occur in lawful self-defense or that his killing was caused by criminal negligence. This report covers only the criminal liability issues.

The District Attorney was notified of this shooting on June 15, 2015, at about 7:00 a.m. when District Attorney Investigator Bryan Kuhlmann was driving by the scene and inquired in to the circumstances. The El Dorado County Critical Incident Protocol was then invoked.<sup>1</sup> The investigation initially involved investigators from the El Dorado County Sheriff's Office, South Lake Tahoe Police Department and the District Attorney's Office.<sup>2</sup> Pursuant to the protocol, South Lake Tahoe Police Department was the lead investigative agency. The final reports were submitted by South Lake Tahoe Police Department in February, 2016.<sup>3</sup> The entire investigation, including the voluntary statement of Officer Klinge, was considered as part of this analysis.

Additionally, on March 14, 15, 16, and 21, 2017, the El Dorado County Grand Jury heard the testimony of sixteen (16) witnesses and investigated charges of Involuntary Manslaughter.<sup>4</sup> The Grand Jury did not indict Officer Klinge on any charges.

### **Factual Analysis**

This incident occurred on June 15, 2015, at about 2:50 a.m. at the Hacienda Inn located at 3820 Lake Tahoe Blvd. The shooting occurred in the rear pedestrian alley located behind the east side buildings, including Rooms A and B. Kris Jackson ("Jackson") was exiting the rear bathroom window wearing only two toned shorts with a thick dark colored waistband. He was not wearing shoes or a shirt. Officer Klinge shot him one time in the chest exiting his back. The round lodged into Room B's bathroom wall.

**Attachments # 1, 2, 3, 4 illustrate the relevant areas of Hacienda Inn Rooms A and B.**

The Hacienda Inn (the "Inn") is a motor lodge style motel. The Inn is laid out in a U shape with the majority of parking located in the front of each room. The rooms on the east and west side of the Inn are separated by a swimming pool area and office.

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<sup>1</sup> Per the SLTPD Call for Service log at 0307 hrs. Lt. B. Williams seems to invoke the critical incident protocol; At 0257 hrs. SLTPD detectives called; at 0503 hrs. EDSO detectives are notified

<sup>2</sup> Members of the CHP, Sacramento County Coroner's Office and Calif DOJ Lab also assisted in the investigation

<sup>3</sup> The City of South Lake Tahoe during oral argument on October 26, 2016 before the Third District Court of Appeal incorrectly stated that the investigation was submitted to the DA Office in October 2015. *People ex rel. Pierson v. Superior Court ex rel. South Lake Tahoe POA and City of South Lake Tahoe* #C081603 (7 Cal. App. 5th 402.)

<sup>4</sup> Penal Code section 904.6(a) In any county or city and county, the presiding judge of the superior court, or the judge appointed by the presiding judge to supervise the grand jury, may, upon the request of the Attorney General or the district attorney or upon his or her own motion, order and direct the empanelment, of one additional grand jury pursuant to this section.

At the time of this incident, Room B was rented by 19 year-old Tiana Perez (“Perez”). Perez occupied the room with her boyfriend, Jackson, who was 22 years-old at the time of the incident. Room A was occupied by Dena Richardson and Douglas Feeney. Rooms A and B are on the east side of the Inn. The aforementioned rooms are the only rooms in the third set of separate buildings on the east side. There are breezeways on each end of the building that lead to a back pedestrian alley. The breezeway on the south side of Room B is slightly more than 4 feet wide. The east side rooms including rooms A and B back up to the two-story building occupied by the EconoLodge (3838 Lake Tahoe Blvd).

The rear pedestrian alley running behind the rooms is dirt (unpaved) and is littered with various items of debris. At the time Officer Klinge fired he was partially standing on large piece of corrugated metal roofing material. The rear alley is slightly more than 8 feet wide.

As mentioned, Jackson was shot as he was exiting the rear bathroom window of Room B. The dimensions of the bathroom window are approximately 36” x 36”. One side of the window slides to the side. The window opening is about 15 inches. The bottom of the window is located 63 inches from the walking surface of the alley. Facing the bathroom from the alley, the window opening is on the left side and slides horizontally to the right.

Officers Klinge, Clark, and King were all working uniformed, marked car patrol on the graveyard shift (6 p.m. to 6 a.m.). The shift supervisor was Sgt. Cheney.

Officer Klinge was carrying a departmental approved Springfield XD .45 caliber semi-automatic handgun at the time of the shooting. The gun had a mounted flashlight. After this shooting, the firearm was test fired by a Department of Justice Firearms examiner. The firearm was in working order.

All the officers have an audio recording device that works as part of the patrol cars "dash cam" system (MicPacks). None of the involved officers had MicPacks activated during the incident and none of the officers had body-worn cameras. South Lake Tahoe Police Department officers are not equipped with body worn cameras.

The South Lake Tahoe Police Department call for service (Communications Center) timeline is as follows:

On June 15, 2015, at 2:40:12 a.m. SLTPD received a call from a woman requesting anonymity that a man and woman were fighting in the Room B at the Hacienda Inn. The caller was later identified as Dena Richardson.

At 2:41:27 a.m. SLTPD dispatch sent Officers Clark and Klinge to a “415DV” at the Hacienda Inn Room B.

At 2:45:35 a.m. Dena Richardson called SLTPD dispatch back stating that the fighting was still going on. This information was apparently not relayed to Officers Clark and Klinge.

At 2:47:24 a.m. Officer Clark arrived on scene.

At 2:47:52 a.m. Officer Klinge arrived.

At 2:49:27 a.m. Officer Klinge broadcasts that he has someone going out the back window.

At 2:49:57 a.m. Officer Klinge broadcasts "shots fired."

At 2:50:21 a.m. An unidentified male called SLTPD dispatch reporting hearing "gunshots"

At 2:51:49 a.m. Officer Klinge radioed his location as "behind the room, southeast corner".

At 2:51:54 a.m. Sgt. Cheney and Officer King arrived on scene.

At 3:07 a.m. Jackson was transported by ambulance to Barton Memorial Hospital.

At 3:13 a.m. Jackson arrived at Barton Memorial Hospital.

At 5:02 a.m. Emergency room time of death.

Crime scene measurements and analysis of the expended .45 caliber round path is consistent with Officer Klinge's description of his position, location and distance from Jackson when he fired. The expended .45 caliber round was recovered from the interior bathroom wall of Room B.

See Attachment #5.

### **Forensic Autopsy**

As noted, Kris Michael Jackson was 22 years-old at the time of his death. He was 5' 8" tall and weighed 129 pounds.

The forensic post mortem examination was conducted by Dr. Jason Tovar ("Dr. Tovar") of the Sacramento County Coroner's Office. Dr. Tovar is a Board Certified Forensic Pathologist. He determined that the cause of death was gunshot wound to the chest. The wound entered the upper chest at the midline of the body. The entry wound had no evidence of soot or stippling from the firearm. The exit wound was on the left side of the mid-back. In the anatomical position, the round traveled front to back, right to left, and downward.<sup>5</sup> There was no projectile or fragments found in the body.

Jackson's blood was analyzed and it was determined that he had a blood alcohol concentration of 0.10% and cocaine, cocaethylene, Delta-9 THC and Delta-9 Carboxy THC (cannabis) in his system. At the time of the incident, Jackson had recently used cocaine and was under the influence of alcohol.

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<sup>5</sup> Barton Hospital ER doctors and EDSO Deputy Aguilar stated the entry wound was in the back exited out the chest. The ER doctor stated that he was repeating information provided to him by paramedics during lifesaving procedures. The ER doctor stated that he did not make any independent medical or factual analysis of the entry and exit wounds. Deputy Aguilar stated that he was basing his opinion on what he saw while assisting with first aid in the alleyway behind Room B.

## Statements

Officer Clark provided a voluntary statement to investigators. Officer Clark stated that he was writing reports at the SLTPD station when the disturbance call was dispatched to him with Officer Klinge to cover. Officer Clark stated that he drove directly to the location. He was not entirely clear where the room in question was located and he inadvertently drove past it. He parked south of the room and south of the breezeway leading to the back alley. He then walked directly to Room B. As he approached the room's door he saw Officer Klinge's car parking. He saw that Officer Klinge parked north of the room near the office and swimming pool. Officer Clark stated that he listened at Room B's door a short time. He did not hear anything so he knocked on the door. At this time, he did not see or hear Officer Klinge. Officer Clark did not get a response to his knock. He could not hear anything in the room. He knocked louder and a woman's voice asked who it was. Officer Clark announced his presence and asked that she open the door. Officer Clark stated that the door opened a short distance and he could barely see inside of the room. Officer Clark asked the woman at the door (later identified as Perez) if everything was okay and if there was anyone else in the room. Perez told him that no one else was in the room.

As Officer Clark started to open the door wider telling the woman he needed to make sure, he suddenly heard a loud gunshot. He was not certain who was shooting and where it came from. He then heard a male voice yelling at the back area of Room B. Officer Clark ran around to the south side breezeway and rear pedestrian alley near the southeast corner of the room. Officer Clark saw Jackson down on his knees and obviously bleeding. He asked Officer Klinge what happened. Officer Klinge's response was to tell him to make sure the room was clear. Officer Clark then ran back to Room B. Perez was in the bedroom/front room area. Officer Clark quickly checked for any other suspect(s), injured person(s) and weapons. Officer Clark found none of those items. He threw some clothing items from the bathroom floor out the window to Officer Klinge to use as a bandage. He did not hear any commands prior to the gunshot. Officer Clark stated the he did not know that Officer Klinge was in the back alley until he ran to the back after the shooting,

Tiana Perez said that her boyfriend, Jackson, came to the room about 30 minutes before he was shot. They were loudly arguing but she was not being physically assaulted. The argument may have involved throwing items in the room. Jackson was wearing a pair of shorts, no shirt and no shoes. Just prior to the knock on the door, their arguing had quieted down. When the knock came at the door, she suspected that it was the police. She said Jackson got "spooked" and ran for the bathroom. She went to the door and told the Officer at the door that she was alone and everything was okay. The officer was still at the door and about to come inside when she heard a loud gunshot followed by Jackson crying out. Perez went to the bathroom and saw Jackson sitting with his rear end on the window sill with his hands up out the window. Kris Jackson was bleeding and someone pulled him out the window. Perez said that there were no weapons in the room. Perez did not hear any commands prior to the gunshot.

Witness Dena Richardson ("Richardson") said that she was already awake when she heard someone arrive at Room B. Almost immediately a loud argument started between a man and woman. It sounded to Richardson like the man was assaulting the woman. Richardson first

called the front office and was told to call the police. She called the police and reported what she heard and the location. When the police did not arrive, Richardson called back and told the dispatcher the argument was still occurring. Richardson stayed in room A. Thereafter, she heard the officers arrive and speak to the woman. She heard the woman say that everything was okay. Richardson then heard a loud gunshot, followed by the woman screaming about "why did you shoot?" Richardson did not hear any commands prior to the gunshot.

Officers also contacted Douglas Feeney who stated that he did not hear anything because he was asleep.<sup>6</sup>

### **Officer Klinge's Statement**

On June 15, 2015, Officer Klinge provided a voluntary statement. The statement was audio and video recorded. The interview was conducted by SLTPD Detective Roberson and DA Investigator Kuhlmann. Also present in the interview were two South Lake Tahoe Police Officer Association lawyers from Mastagni, Holstedt Inc.

Officer Klinge stated the following:

He was in the station writing reports when he was dispatched to Inn as a cover officer for Officer Clark. The nature of the call was domestic disturbance in Room B. He had just seen Officer Clark in the station. Officer Klinge's radio battery was low so he stopped to exchange his battery. He then went out to his patrol car and noticed that Officer Clark was already gone. He drove directly to the Inn. As he arrived, he located Officer Clark's patrol car parked past Room B. Officer Clark was getting out of his car and walking back towards Room B. Officer Klinge said he did not rush. He gathered his gear and made sure his patrol car was locked. As he got out of his car, he could see Officer Clark at the front door of Room B. The door was not open. Officer Klinge approached from out in the parking lot along swimming pool fence. He saw that no one came to the door. Officer Clark knocked a second time. By this time Officer Klinge was still out in the parking lot area and was passing Officer Clark's location. He heard Officer Clark announce his presence but the door still had not opened. Officer Klinge watched the front window of Room B for movement and started to walk even with the breezeway on the south side of Room B. He stated he was aware from personal experience of "suspects" fleeing out the back of the rooms at the Inn. He could now see down the breezeway and saw diffused light or a shadow from the rear area silhouetting on the light colored back wall of the EconoLodge. It appeared to him that someone was in that light causing a shadowing effect. He did not communicate directly with Officer Clark his intention to move towards the rear of the building. He started to go down the breezeway, when he heard the sound of a window screen hitting the ground. He used his radio to communicate that he had someone going out the back window.

Officer Klinge started to walk quickly down the breezeway expecting to see someone either go past him in a southerly direction in the back alley or come around the southeast corner of the building coming at him in the breezeway. Officer Klinge did not have his flashlight out or any weapons out. He stated the he expected to be either ordering or tackling someone to the ground.

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<sup>6</sup> During the audio recording of Dena Richardson's first call to SLTPD she can be heard asking someone in her room for the room number next door.



No one went past him or came around the corner. He said he could not recall if he still saw the shadows silhouetting the light on the back wall. Officer Klinge then rounded the southeast corner of the building expecting to see someone fleeing north in the rear alley away from him. Prior to rounding the corner of the building, he did not slow his pace to see what was around the corner before exposing himself. He had not removed his flashlight or any weapons at that point. He did not see anyone going away from him.

Officer Klinge said that he was then confronted by a male figure in the window of Room B. The person was perched slightly above him. He immediately recognized the person as Jackson.<sup>7</sup> He could see that Jackson did not have on a shirt and was wearing shorts. Jackson had his left foot on the window and his left arm and hand up on the window frame. Jackson's right knee appeared to also be on the window sill but most of his right side was out of view. Officer Klinge said Jackson stared at him with an intent or menacing stare. Officer Klinge was concerned that he was about to be shot. Officer Klinge stated that he immediately drew his firearm and he gave a command to show his hands. He stated that Jackson moved his right hand from his right side at about waist level and was holding a firearm. Officer Klinge stated he fired once from a low position. He then saw Jackson move his right hand up to his chest and heard Jackson say something about being shot. When Jackson moved his right hand to his chest there was nothing in his hand. Officer Klinge did not see nor hear anything drop.

Officer Klinge then holstered his firearm, reached up and grabbed Jackson by the right arm and pulled him out of the window. He searched Jackson for a weapon. He did not feel any weapon and he did not see a weapon on the ground. He started to handcuff Jackson then decided not to handcuff him.<sup>8</sup> It was at this point he realized that he had a lot of blood on himself and that his shot had hit Jackson in the chest. He remembers radioing shots fired and needing an ambulance. He placed Jackson on his side and started first aid. He remembers Officer Clark coming around the back and could hear a woman screaming.

Officer Klinge remembered that someone threw a towel or a shirt out of the Room B bathroom for him to use on Jackson's gunshot wound. Shortly thereafter, Officer King and an El Dorado County Deputy Sheriff arrived. They had a medical kit and took over first aid until paramedics arrived.

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<sup>7</sup> On June 1, 2015, Officer Klinge was involved in an investigation that resulted in the arrest of Jackson, Tiana Perez, and two other people. During that investigation, Officer Klinge located a loaded firearm in a car that he associated to Kevon Lomack. The June 1 investigation is filed under *People v. Kevon Lomack*, Superior Court Case No.S17CRF0039. Jackson was not armed during June 1<sup>st</sup> investigation.

<sup>8</sup> Photographs taken shortly after the shooting during initial first aid show Jackson's left hand and arm positioned behind his back similar to a handcuffing position, however there are no handcuffs on his wrists or arm.

Below are portions of the Officer Klinge's interview. These excerpts cover significant details of the shooting. These excerpts are offered in the same chronological order as they occurred during the interview

**1. In this portion of the interview, Officer Klinge gives a narrative description of the encounter with Jackson in the rear alley area.**

*Detective Roberson: Okay. Okay. So -- um -- going to the incident at the Hacienda this morning -- um -- walk me through that incident from the time that you got the radio call.*

*Officer Klinge: ...:-- why I was familiar with -- uh -- Kris when I -- I saw him in the window. Um -- and I -- I knew his association and -- uh -- I knew his -- he appeared to have a violent tendency from our prior contacts. And when he -- when he looked at me and took the aggressive kind of turning toward -- turning his body like in my direction -- uh -- versus in my experience, a lot of people when they -- when contacted by the police and they're wanting to escape, they're looking for their avenue of escape. Um -- he didn't motion like he was just going to hop back in the window, which would have been easy for him to do. He didn't look to the opposite direction to me like he was going to look to see if another officer would run down the alley way. Um -- he looked at me and it in a confrontational way. Um I couldn't see his right hand. Um -- I was drawing my service weapon. Um at the same time he's turning to me, looking at me aggressive. I'm -- uh -- saying something similar to show me your hand. Um -- I -- as I'm bringing up my -- my firearm, I can see as he's -- uh -- bringing his -- uh -- right hand kind of from behind the windowsill area out of my view. And all I could see is his hands -- um -- uh -- clinched and grasping -- uh -- it looks like a black -- uh -- handgun, and I can see his knuckles. And immediately when I see him grasping and face in me in the direction and stare me down, and the -- the knuckles come around the window, I immediately shoot, because I uh -- the way he was bringing his hand out and coming at me, I thought he was going to kill me. And so -- so I shot and -- uh I don't think I had even brought my arm all the way up when I shot. Um -- um -- right after I shot, I was -- uh -- I think I was trying to step kind of left into my back maybe towards the building. Um -- he -- uh -- it was -- it was all really quick. And uh -- he made some like comment. I don't know exact -- my -- I don't remember hearing very well. Um -- it sounded like he had said something like you shot me or something, the same time I see his hand open up, his right hand open up and kind of goes towards his side. And uh -- um -- I'm just staring at him in -- in the eyes. And I know it was -- it wasn't -- it was only like seconds, but it seemed - it seemed like it was quite a while. And he's kind of there, and then he - he's coming out the window at the same time -- um -- I'm grabbing for his -- uh -- like his right arm. Um -- he's not wearing a shirt, he's uh -- got like shorts or boxers or something on. And -- uh -- I gained control of his right arm as it comes out of the window. And -- uh -- he's -- he's moving around a lot. And -- um -- I really wasn't sure at that moment if I had even hit him or not. Um -- uh -- I did -- I could see -- because I could -- earlier I could see his left hand, I could see his right hand now because I had control of it. Um -- I -- while I was holding his right arm, I'm kind of feeling around on his -- on his pants or area -- shorts area -- uh -- seeing if I can't feel a gun. And I -- I don't feel anything. I can't see anything -- uh -- um -- other than just -- I can make out his figure, but I can't really see anything, it was too dark. Uh -- he's kind of laying kind of on his left arm a little bit while I got his right arm. Um -- as -- as I'm feeling around though, I ca -- I can feel my hands are kind of warm and wet. And -- uh so then I'm uh -- I'm thinking, oh, this is blood. I just shot him and it's blood. And so I started checking, and -- uh -- immediately kind of look around. I grab my -- my flashlight in my back pocket and I kind of look -- uh -- around him. Um -- just looking for a gun on the ground in the immediate area. I was going to -- I was going to cuff him, and I -- I don't know if I started fumbling around to grab my cuffs or not, but initially I was going to cuff him. Then -- um -- because he was just -- he didn't have a shirt on, I saw his shorts on, and I checked the shorts, and I didn't see a gun in the immediate area. Um -- about that time too, I had saw -- uh -- the gunshot wound -- um -- through his back area. And -- uh -- um -- the -- uh -- anyway --*



start to -- uh -- yeah, it's about the time that I say that shots were fired on the radio, because now I -- I used my left hand which was -- uh -- I freed it up after searching him. Officer Clark at some point had come around the building. Um -- I don't remember if he had a gun out or not, or whatnot. But he -- um -- kind of asked me what happened and whatever, and -- uh -- I was -- I started telling him that -- uh -- I think at the same time, I was trying to -- uh -- request an ambulance. You know, I was telling Clark because -- um -- to go kind of direct people in, because the -- the area we were in -- uh -- even if somebody had pulled in and seen our cars, it might have taken them a little bit to actually find where -- exactly where we were at. Um -- and, I mean, we were talking about other shootings I've been at. I've been at other shootings where -- um -- it took a while for medical personnel to show up just because they couldn't find us. Um -- and then -- uh -- um -- I could also hear when he was trying to breathe at -- uh -- he was kind of gurgling sound, like his -- um -- like it a sucking chest wound like his lung was collapsing.

**2. Officer Klinge describes the aggressive or focused stare of Jackson preceding Officer Klinge firing. The questioning continues through the time sequence, Jackson's positioning in the window, and lastly, through the decision to shoot.**

Detective Roberson: Okay. Um -- so like we were out there today -- um -- you got the -- kind of the perspective of where the window was in relation to that corner. Um -- and you said he was just like sitting there looking at you. Um -- did he say anything to you?

Officer Klinge: No, I -- I didn't hear him say anything.

Detective Roberson: Did -- um -- you said he -- he had an aggressive look. Can you tell me about that? I mean, like a menacing scowl on his face? I mean, kind of -- kind of walk me through with that aggressive look was.

Officer Klinge: It was like -- um -- a really focused stare. Um -- he wasn't looking around, he was just looking right at me. I remember looking in his eyes for -- um -- and -- uh -- it just -- just eliminating all the other factors, it's just that -- because he wasn't looking around, he was focused on me. And -- uh -- he was facing me, turning towards me. Um -- and he -- I couldn't -- I don't know how to describe it, it was -- it was just -- it was like -- uh -- I don't know, almost like he was glaring at me or something.

Detective Roberson: Okay. Never said a thing?

Klinge: I can't -- I didn't hear him say anything.

Detective Roberson: Um -- I know it's hard to estimate time in situations like this, but can you -- can you kind of guess how long he might have been sitting there and staring at you? Was that --

Officer Klinge: Before he was -- oh, when he was staring at me?

Detective Roberson: Yeah. Did it -- did it seem like a really protracted, drawn out like thing?

Officer Klinge: Um -- I mean, it was all pretty quick. Uh -- like the part that seemed like it lasted a long time was us staring at each other. Um -- I really don't think it la -- was that long.

Detective Roberson: Okay.

Officer Klinge: Um -- I don't know if that's -- I don't -- I -- I just remember him staring at me a lot.

Detective Roberson: Did you -- uh -- did you say anything to him?

*Officer Klinge: Yeah, I -- the -- uh -- because I couldn't see his right side -- um -- I'm pretty sure I said -- uh -- something similar to show me your hands.*

*Detective Roberson: Okay. And that was when he had his -- let me make sure I got this right, his like left leg out the window, his left arm on the window, and his right knee on the windowsill?*

*Officer Klinge: Yeah, it -- his left leg wasn't even really out the window.*

*Detective Roberson: Oh, okay.*

*Officer Klinge: It was -- it was -- it was kind of like if he was perched on the windowsill. Um -- I didn't -- it was -- I don't know, it was kind of strange.*

*Officer Roberson: Like feet on the windowsill, knees in his chest kind of?*

*Klinge: No, it -- just like -- you know, like he was resting on his right knee on wh -- with his -- um -- left leg out there. But -- uh -- I don't know, he wasn't jumping out of the window. It was -- I don't know.*

*Detective Roberson: Was it a position that appeared that -- like, you know, he could -- he could spring from that -- that position and -- and jump on top of you, or --*

*Officer Klinge: Yes. It -- it was like a preparation to jump kind of position.*

*Detective Roberson: Okay. Jump down, jump out?*

*Officer Klinge: Out of the window.*

*Detective Roberson: Okay. Um -- but not just like a climb out the window, it's like he's going to spring, that's --*

*Officer Klinge: Yeah, it was like he was up in the window getting ready to launch himself out the window.*

*Detective Roberson: Okay. Um --*

*DAI Kuhlmann: I just wanted to get a -- I'm sorry, I'm not conceptualizing exactly how -- uh -- if best -- at least the best you way -- the best way you can describe he's at the window. So if I get it right, his right knee is down on the windowsill or window frame?*

*Officer Klinge: Yes.*

*DAI Kuhlmann: His left foot is on the windowsill, like -- almost like you're taking your knee type of position with one -- one knee up -- one -- one knee down and -- and the other one kind of --*

*Officer Klinge: Yeah, I'm saying probably similar to something like that.*

*DAI Kuhlmann: And then you said his left hand was --*

*Officer Klinge: Up on the window.*

*DAI Kuhlmann: Up on the window on the outside?*

*Officer Klinge: I don't -- well, I don't know if it's outside or just holding the frame, yeah.*

*DAI Kuhlmann: Okay. And then, again, the right hand, you -- you couldn't see it at that point?*

*Officer Klinge: I couldn't see the majority of the right side of his body.*

*Detective Roberson: Um -- so I was -- so he -- you can't see the right side of his body, he -- um -- you kind of motioned like he was punching out -- and, you know, what was that punch out from that -- from that waist and kind of what his knuckles were showing based on your training and experience?*

*Officer Klinge: Uh -- the -- it was like if he was grasping the gun and -- um -- getting ready to point it out me. Um -- the -- uh -- and just -- his body in position and everything, and he was staring at me, it was -- it was all directed at me.*

*Detective Roberson: So at that -- so his right side -- so the window is here, his body is here, kind of looking over to the right towards you, and the wall is here, and initially his fist is behind the wall where you can't see it. What -- how much of his fist protruded from that plane of that wall -- um -- that -- that gave you that perception?*

*Officer Klinge: His knuckles. It was -- I mean, the second that I thought I was getting a gun pointed at me, I shot.*

**3. Officer Klinge describes that after shooting, he does not see anything in Jackson's hand. Additionally, Officer Klinge explains that he did not expect to see anyone in the window**

*Detective Roberson: Okay. So when he's sitting in the window and you thought he was about to shoot you, and you shoot him, and you said his hand opened -- um -- did -- did you see what had been in his hand?*

*Officer Klinge: No.*

*Detective Roberson: Okay. Did you hear anything fall?*

*Officer Klinge: I don't remember hearing any -- I don't even remember hearing a gunshot.*

*Detective Roberson: Okay.*

*Officer Klinge: I remember feeling the recoil on my handgun -- um -- seeing a flash, and that was -- that was about it.*

*Detective Roberson: Okay.*

*Officer Klinge: I -- I don't remember hearing much of anything -- um -- except for -- uh -- when he was saying something about being shot, and then -- uh -- when he was on the ground.*

*Detective Roberson: Okay. So -- um -- so as -- as you're going around the corner anticipating, you know, a fight or somebody running at you or anything -- um -- you come around the corner -- before you saw his hand like that, had you formulated a plan of action for him being in the window? Have you form -- did you formulate I'm going to grab this guy immediately out of the window, and dump him on the ground and handcuff him, was there any like plan of action where you had kind of made in your mind?*

*Officer Klinge: Uh -- no, because I didn't expect him to be in the window.*

*Detective Roberson: Okay.*

*Officer Klinge: I -- my plan of action was going to be -- uh -- either chasing him and telling (inaudible) which way he was going down the alley or tackle him as he came around in my direction.*

**4. Officer Klinge describes pulling his firearm from the holster as he turns towards Jackson perched in the window.**

*DAI Kuhlmann: Had -- uh -- how long -- uh -- with the -- with him looking at you, you looking -- you looking at him -- uh -- was it into that that got your -- started taking out your firearm?*

*Officer Klinge: I started taking my firearm out when I saw there was somebody in the window in my peripheral vision. Um -- I was -- I wasn't -- uh -- I was kind of -- I was standing more facing down the alley way with the window more off to my side. Um -- and my firearm was on my right -- uh -- leg.*

*DAI Kuhlmann: Uh-huh.*

*Officer Klinge: And so then I was turning towards the window with my -- as I was taking my firearm out.*

**5. Officer Klinge describes area from the corner of the building as he advanced before he sees Jackson and turns towards him.**

*Detective Roberson: Okay. So one of the things that kind of came up in -- in -- as we were talking today, is -- um -- you know, and you said you didn't even remember the -- uh -- roofing metal being there. Um -- is like how far around the corner you came before you en -- you know, encountered it. That's why I asked you, you know, you said you saw him out of your peripheral vision -- um -- and how far around the corner you came before you caught view of him in the window? Do you remember how -- do you remember how far around the corner you were?*

*Officer Klinge: Yeah, I -- I'd taken a couple steps around the corner.*

*Detective Roberson: Okay. And -- uh -- just, I mean, they -- there was light, there was shadow, there was movement, but there was nobody in the window until you got to that point around the corner, right?*

*Officer Klinge: At least that I -- I could see. I -- I couldn't -- I couldn't tell.*

*Detective Roberson: Okay.*

*DAI Kuhlmann: Uh -- can you -- where you showed us where you ended up today, was that where you first saw him? Uh -- do you -- once you first saw him, did you stop? Was that -- so that's as far as you got when you first -- that's right about that peripheral you're talking about, right?*

*Officer Klinge: That's -- that's about where I -- I turned towards him was where -- where I was standing at today.*

*DAI Kuhlmann: Okay. So that's like how you first registered him being there --*

*Officer Klinge: Yeah.*

*DAI Kuhlmann: -- is where -- is where you stopped? And there was no movement closer or back once you -- um -- made that -- made that observation?*

*Officer Klinge: Yeah, I'm -- I'm pretty sure I was -- I just turned.*

**6. Officer Klinge's attorney asked some clarifying questions regarding how close Officer Klinge was to Jackson; obtains an affirmative response that Officer Klinge gave Jackson orders to show his hands and that Jackson had ample time to respond to that command.**

*Attorney: Okay. Um -- you mentioned that you were fairly close to the suspect -- um -- during this incident. I think you said four or five feet. Um -- in your training and experience -- what does being in close proximity with someone tell you in terms of -- uh -- potential danger?*

*Officer Klinge: Uh -- that you're in the -- uh -- zone of being easily attacked --*

*Attorney: Okay.*

*Officer Klinge: -- uh -- by either any type of weapon, knife. They say it was a 20-foot -- 21-foot roll -- um -- so it was very close proximity.*

*Attorney: Okay. So were you afraid at that point in time that he could maybe, you know, lunge at you or do some sort of other -- uh -- physical harm to you?*

*Officer Klinge: Yes.*

*Attorney: And when we're talking about the hand coming out with the pistol grip, the knuckles showing -- um -- you were able to, you know, get a good glimpse of that hand and see that aggressive motion, correct?*

*Officer Klinge: Uh -- I don't know about a good glimpse, I was able to see his knuckles versus -- um -- uh -- in the pistol grip -- uh -- fashion, but the -- uh -- um -- his body was blocking a lot of lighting.*

*Attorney: Uh-huh. But you could see some sort of dark object in his hand --*

*Officer Klinge: Yes.*

*Attorney: -- that looked like a gun to you? Okay. And you had had experience with him before -- um -- as you were mentioning with his narcotics experience. Um -- were you thinking at the time that, you know, he had access to handguns, he could possibly have a handgun at this point in time?*

*Officer Klinge: Yes.*

*Attorney: Okay. And you mentioned that, you know, he's -- he's giving you this aggressive look. Um -- you mentioned that if he were to try to flee, he'd be looking around -- um -- is that correct?*

*Officer Klinge: Yes.*

*Attorney: Okay. So in your experience, you know, this focused look on you, what does that tell you is about to happen?*



*Officer Klinge: Um -- that he's going to try to confront me.*

*Attorney: Okay. And it's safe to say he has no intention of potentially fleeing either into the building or outside?*

*Officer Klinge: No, I -- I -- if he was intending on -- uh uh -- fleeing into the building, he could have done it -- uh -- even before I turned to him, because I think he -- he may have been able to see me before I saw him.*

*Attorney: Okay. And you mentioned that you gave him a command to the effect of, you know, show me your hands. And you mentioned that previously in your experience with incidents like this, you mentioned the fellow who was on the stairs and you yelled at him, you know, show me your hands, and immediately he puts his hands up. Um -- when you say show me your hands, what does compliance look like in that scenario?*

*Officer Klinge: Uh -- typically, compliance is an open-hand where someone is showing you their hand -- um -- because they don't want to -- uh -- have any violent reaction to their aggressive behavior or anything.*

*Attorney: Okay. And to you, the presenting of a pistol gripped fist with an object in it is not compliance?*

*Officer Klinge: Yes, not compliance.*

*Attorney: Okay. And would you say that, you know, you said that things happened fairly quickly. Um -- prior to using force -- um -- do you feel that the suspect had enough time to comply with your demand to show you his hands?*

*Officer Klinge: Yes.*

**7. Officer Klinge provides details of how he approached the corner of the building, no longer watching the lighting on the back wall of the EconoLodge, and being concerned with what was around the corner.**

*DAI Kuhlmann: When you're coming down here, is that a -- is that your focus, watching that movement or whatever you saw there?*

*Officer Klinge: No, I -- when I was coming down the walkway, I was -- I wasn't really focused on the light at that point because I was concerned -- uh -- to try to make sure I focused on if anyone was going to come around the corner. I was -- I was trying to watch the --*

*DAI Kuhlmann: So you -- gotcha.*

*Officer Klinge: -- this corner, see if anyone was going to pop out.*

*DAI Kuhlmann: You were watching this corner, but your attention is taken away from -- from this here?*

*Officer Klinge: Yes.*

*DAI Kuhlmann: Okay. And what about when you get down here to the corner, do you -- do you remember at all taking a look up at that to see if there was any more movement or anything like that?*

*Officer Klinge: Because I was concerned about -- uh -- around that corner.*

DAI Kuhlmann: Okay, so basically you're only focused on this is probably ten yards out of the -- out of this -- uh -- breeze -- uh -- the breezeways.

Officer Klinge: And once -- once I saw that unusual -- um -- shadowing, and then as I started going and I heard the screen popping out --

DAI Kuhlmann: Uh-huh.

Officer Klinge: -- uh -- I really think I didn't think it was really necessary to focus on the shadow, because I couldn't make anything out anyway in the shadow.

DAI Kuhlmann: Uh-huh.

Officer Klinge: I was more concerned about whatever threat might be around the corner.

DAI Kuhlmann: Okay.

Detective Roberson: So when you got around the corner -- um -- where is your attention? Where are you focused once you get around the corner? Are you looking for the runner running away from you, at the runner coming at you, where's your -- are you focused on the alley?

Officer Klinge: Yeah, I was -- I was more focused on down that al -- the alley way between the buildings.

Detective Roberson: Okay. So and I guess that -- that might answer one other question we have is, you know, when you saw him in the window, was -- were you surprised by his presence because he just popped up, or because you just noticed him at that point?

Officer Klinge: No, just because I just noticed him. I don't think he just popped up.

DAI Kuhlmann: You didn't see any movement at that point, you just -- you fine -- you finally got to the point for -- from probably you're looking down the --

Officer Klinge: Yeah.

DAI Kuhlmann: -- the back alley to the point where you -- you catch the fact that he's there.

Officer Klinge: I mean, it -- I -- I would think it kind of seemed like -- like he maybe had seen me first and froze.

Detective Roberson: Did you see any changes in the silhouette that would indicate that, that he just -- he -- there was no movement in the silhouette on the wall anymore?

Officer Klinge: On the wall -- on that wall? No, I -- once I saw someone out of the corner of my eye, I didn't notice anything on this side.

DAI Roberson: So se -- you -- as you were coming down the -- that breezeway, you were noticing that there was some -- there was movement in the silhouette, right? And at some point when he got in the window, either the silhouette darkened or stopped moving. And I -- you know, so that's -- that's kind of what I'm getting at is that movement ceased at some point. Do you remember where you were in that -- in that breezeway where that movement ceased?

*Officer Klinge: No, I -- I don't remember that.*

**8. Officer Klinge further explains how much of Jackson he could see before shooting.**

*DAI Kuhlmann: Okay, that -- that goes perfect into the next -- so I -- about how much of his body had cleared the -- the -- the -- uh -- the frame out?*

*Officer Klinge: Mostly his -- a left shoulder -- uh -- left foot, knee, and head.*

*DAI Kuhlmann: Okay.*

*Officer Klinge: Or -- and just -- because if you're talking about actually clearing the building, I could see kind of his -- the end of his like right kneecap or something, but it hadn't actually like cleared. I could just see that it was up there.*

*DAI Kuhlmann: Okay.*

*Detective Roberson: Okay.*

*Officer Klinge: If that -- if that makes sense.*

*Detective Roberson: So is it -- I mean, is that kind of what -- how he was on the ledge?*

*Officer Klinge: Yeah, it'd be -- be somewhere to that, yes.*

*Detective Roberson: So this -- so the window frame comes up here, this is a really bad drawing but -- so the window frame comes up like this, right, through his left hand, his right hand is behind the plane of the wall, his left foot is on the windowsill, and his right knee is on the windowsill?*

*Officer Klinge: Yeah, that's pretty similar to how I remember it.*

*Detective Roberson: Okay. All right.*

*DAI Kuhlmann: (Inaudible) but his head was breaking the plane. His head was also out when he's look - when he -- when you --*

*Officer Klinge: Yeah, his head was outside of it.*

*DAI Kuhlmann: Okay. Um -- and -- uh -- we talked -- uh -- earlier about when you first perceived him is when you started coming out of the holster, when you did that first perception to the -- to the left?*

*Officer Klinge: Yes.*

*DAI Kuhlmann: Okay, from -- uh -- how far do you -- can you recall how far were you out? Were you at two hands, were you only at one hand? Where was your gun in --*

*Officer Klinge: (Overlapping).*

*DAI Kuhlmann: -- relation of where the shoot -- shot came out once you --*

*Officer Klinge: Um -- I didn't -- I don't -- I was not fully extended, I know that. I don't -- I know I didn't have both hands on my gun. And I -- I think I was probably about in this position.*

*DAI Kuhlmann: Okay, so that would be like --*

*Detective Roberson: Three.*

*DAI Kuhlmann: -- three.*

*Detective Roberson: That's number three.*

*DAI Kuhlmann: Three. And then your next -- would your next move be to join your hands and then go out --*

*Officer Klinge: Yeah.*

*DAI Kuhlmann: -- roughly -- roughly about that part? So you're out of the holster, pointing in the direction away fr -- uh -- you rotated the gun up --*

*Officer Klinge: Yeah.*

*DAI Kuhlmann: -- and that's right about the position you're -- uh -- when -- when you took the shot?*

*Officer Klinge: Yeah*

### **Relevant Legal Principals**

In California, murder is defined as the unlawful killing of a human being with malice aforethought. (Cal. Pen. Code section 187(a).) In order to prove murder the prosecution must prove beyond a reasonable doubt that: (1) a person was killed, (2) the killing was unlawful, and (3) the killing was done with malice aforethought OR the killing occurred during the commission or attempted commission of a listed, or an inherently dangerous felony. (See CALCRIM No. 520 and CALJIC No. 8.10.)

A legally justified killing is lawful. In every case, the People bear the burden of proving that the killing was *not* justified. (CALCRIM 505.) In the context of a killing committed by an on-duty police officer, the potential legal justifications are: (1) to resist another from committing or attempting to commit a “forcible and atrocious crime” (Cal. Pen. Code section 197(1); CALCRIM No. 505; CALJIC No. 5.10),<sup>9</sup> (2) self-defense (Cal. Pen. Code section 197, 198; CALCRIM No. 505; CALJIC No. 5.12), (3) defense of another (Cal. Pen. Code section 197, 198; CALCRIM No. 505; CALJIC Nos. 5.13, 5.14); or (4) when necessary to apprehend dangerous

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<sup>9</sup> The plain language of Penal Code section 197(1) would justify a killing to prevent any felony but, in light of the large number of relatively non-serious felonies, this defense has been limited to those felonies which are “forcible and atrocious.” A forcible and atrocious crime is: 1) one that by the nature and manner of its commission threatens the life of the defendant or threatens great bodily injury to the defendant, or 2) one in which the defendant reasonably believes that he is so threatened, and 3) actually instills in the defendant a reasonable fear of death or great bodily injury.

fleeing felons (Cal. Pen. Code section 197(4); CALCRIM Nos. 507, 508; CALJIC Nos. 5.25, 5.26).<sup>10</sup>

In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court held that claims of excessive force by police officers in the course of an arrest, investigatory stops or other “seizures” should be analyzed under the Fourth Amendment “reasonableness” standard. Pursuant to *Graham*, the test of “reasonableness” “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect’s crime poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to avoid arrest by flight.” *Id.* at 396. “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* “The calculus of reasonableness must embody allowance for the fact that police are often forced to make split second judgements - in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.” *Id.* at 396-397.<sup>11</sup>

California law permits the use of deadly force in self-defense or defense of others if it reasonably appears that the person claiming the right of self-defense or defense of others actually and reasonably believed that he was in danger of great bodily injury or death. (*People v. Randall* (2005) 35 Cal. 4th 987, 994 (overruled on other grounds in *People v. Chun* (2009) 45 Cal. 4th 1172, 1201); *People v. Mercer* (1962) 210 Cal.App.2d 153, 161.) In protecting himself or another, a person who reasonably believes that he or someone else is in imminent danger of being killed or suffering great bodily injury may use deadly force to defend against that danger, if he uses no more force that was reasonably necessary to defend against that danger. (CALCRIM 505.) Additionally, in determining if one’s belief in self-defense is reasonable, the law requires a consideration of “all the circumstances as they were known to and appeared to the person and to consider what reasonable person in a similar situation with similar knowledge would have believed.” *Id.* “If the defendant’s beliefs were reasonable, the danger does not need to have actually existed.” *Id.* The Defendant is only entitled to use that amount of force that a reasonable person in a similar situation with similar knowledge would have believed. (*Id.*)

Actual danger is not necessary to justify the use of deadly force in self-defense. *Id.* If one is confronted by the appearance of danger, which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. (*Id.*) Reasonably apparent danger (as opposed to actual or real danger) may be sufficient to justify a killing in self-defense. (*People v. Toledo* (1948) 85 Cal.App.2d 577 (superseded by statute on other grounds).)

A killing which is partially justified is unlawful but does not constitute murder. Such partially excused killings will support a charge of voluntary manslaughter when the killer harbored an

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<sup>10</sup> This justification applies to peace officers, or others acting at their direction in apprehending dangerous felons. Dangerous felons are those persons who either: 1) pose a significant threat of death or serious bodily injury to others, or 2) who have committed a forcible and atrocious felony.

<sup>11</sup> On May 30, 2017, the Supreme Court of the United States reaffirmed the *Tennessee v. Garner* 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386 standard of determining the use of excessive force. (*City of Los Angeles v. Mendez* (2017) \_\_\_U.S.\_\_\_ [198 L.Ed.2d 52, 60].) The Supreme Court reversed the Ninth Circuit’s ruling in *Billingham v Smith* 292 F. 3d 1177. Specifically, the court held that the “provocation” rule is incompatible with the Court’s previous excessive force rulings.



actual but unreasonable belief in the need for self-defense. (Cal. Pen. Code section 192(a); see also, *People v. Blakeley* (2000) 23 Cal. 4th 82, 999; *In re Christian S.* (1994) 7 Cal. 4th 768; *People v. Flannel* (1979) 25 Cal. 3d 668; *People v. Barton* (1995) 12 Cal. 4th 186, 199; CALCRIM No. 571; CALJIC Nos. 8.40, 8.42.)<sup>12</sup>

Here, to find Officer Klinge committed murder or voluntary manslaughter, the People would have to prove beyond a reasonable doubt that the killing was unlawful. The People cannot prove that Officer Klinge’s perceptions were objectively unreasonable under the circumstances.

A finding of involuntary manslaughter requires that the killing was the result of criminal negligence. (CALCRIM 580.) Criminal negligence is defined as more than ordinary carelessness, inattention, or mistake in judgment. (*Id.*) A person acts with criminal negligence when he acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. (*Id.*) A criminally negligent person acts so different from the way an ordinarily careful person would act in the same situation that his act amounts to disregard for human life or indifference to the consequences of that act. (*Id.*)

In California, the evaluation of the reasonableness of a police officer’s use of deadly force employs a reasonable person acting as a police officer standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146 (holding that California law “follows the objective ‘reasonable person’ standard—the trier of fact is required to evaluate the conduct of a reasonable person in the defendant's position [citations omitted] . . . the jury should consider all relevant circumstances surrounding the defendant's conduct. This enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation—but this is not the same as following a special ‘reasonable police officer’ standard.”).)

In addition, “[a]s long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the ‘most reasonable’ action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect, in order to avoid liability for negligence.” (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 537–538.)

Generally an officer’s failure to warn a suspect, when feasible, is a factor that may be considered in evaluating the objective reasonableness of the officer’s decision to use force. (See, *Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 831.)

### **Analysis**

The District Attorney’s independent evaluation of the facts does not support a finding of criminal negligence. Moreover, the Grand Jury reviewed the evidence in this case, including live testimony of witnesses, and chose not to indict Officer Klinge for criminal negligence.

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<sup>12</sup> A killing is partially justified when the killer acts upon an actual (formerly called honest) but unreasonable belief in the need for self-defense. So if a killer actually believes he is in imminent peril of death or great bodily injury, but such a belief is not objectively reasonable, the killing constitutes the crime of voluntary manslaughter

Based on the investigation, the following circumstances occurred in a rapid succession in the rear alley area of Room B at the Inn:

- Officer Klinge did not expect to have a possible suspect in a window prior to going around the southeast corner of the building.
- Officer Klinge expected to see a person running away from him in the back alley area.
- Officer Klinge did not take precautions to determine what, if anything was around the southeast corner of the building before entering the back alley and exposing himself to any potential threat.
- Officer Klinge did not have his firearm at a low ready position or his flashlight out as he rounded the southeast corner of Room B.
- Officer Klinge was surprised to see Jackson positioned in the window.
- Jackson was not concealed even in the low lighting conditions. However, the majority of the right side of his upper body could not be seen from Officer Klinge's position.
- Officer Klinge was completely exposed to any potential threat in the back alley.
- Officer Klinge did not give any verbal commands (none of the on-scene witnesses heard any verbal commands or voices prior to the shot).
- Officer Clark did not know where Officer Klinge was at the time of the shot.
- Jackson was not armed and did not have anything in his hands at the time he was shot.

Officer Klinge found himself in a perilous situation after rounding the southeast corner of the building without first slowing to determine what, if any, danger existed in that unknown area. He did not have his flashlight or his service sidearm equipped with a flashlight out and ready to be used. Officer Klinge found himself in an exposed situation that he did not expect to encounter. His vision caught Jackson in the window to Officer Klinge's left and positioned above Officer Klinge. Officer Klinge perceived the movement of Jackson's right hand and the "intent stare" of Jackson as a life-threatening assault on him. Reacting to his perceptions, in a rapidly moving sequence, Officer Klinge felt his life was in danger and he fired.

As explained above, the Courts in *Graham* have cautioned against looking at the reasonableness of an officer's decision to use deadly force under uncertain, quickly developing and tense situations through the lens of 20/20 hindsight. (*Graham v. Connor* (1989) 490 U.S. 386) The right of self-defense is not negated merely because an actual danger does not exist, so long as the danger is reasonably apparent. The issue must be decided based on what is reasonable when considering all the circumstances. We find that it cannot be proven that Officer Klinge's belief in self-defense was unreasonable under the circumstances.

There is insufficient evidence to suggest that Officer Klinge fired for any other reason than his perception that he was in imminent danger. The evidence suggests that Officer Klinge actually or honestly believed that he was in imminent danger at the time he fired. His actual and honest belief prevents prosecution for murder.

Furthermore, there is no evidence to suggest that Officer Klinge intended to provoke a violent response from Jackson in order to employ deadly force.

A more difficult question is whether or not Officer Klinge's belief in the need for self-defense was objectively reasonable under the circumstances. If Officer Klinge's belief was objectively unreasonable under all of the circumstances, then Officer Klinge is guilty of manslaughter. However, the same factual and legal self-defense analysis previously done for murder applies here. Thus, a voluntary manslaughter charge is not warranted.

Additionally, Officer Klinge's actions are very unlikely to proven to be criminally negligent. In *People v. Brunette*, (2011) 194 Cal. App. 4th 268, the Court of Appeal held that “[c] onduct which creates not only an unreasonable risk but also a ‘high degree’ of risk (something more than mere ‘unreasonable’ risk) may be termed ‘gross negligence,’ and if in addition the one who creates such a risk realizes that he does so, his conduct may be called ‘recklessness.’” (*Brunette*, supra at 285, citing *LaFave*, Substantive Criminal Law (2d ed. 2003) § 14.4(a), p. 437). Under this formulation, recklessness requires both a knowledge that one's conduct creates a high risk of danger and conscious decision to engage in the conduct despite the elevated risk. *Brunette* quoted *People v. Penny* (1955) 44 Cal.2d 861, 877 for the proposition that criminal negligence “must be aggravated, culpable, gross, or reckless, that is, the conduct of the accused must be such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to consequences.” (*Penny*, supra at pp. 879–880.) This sentiment is echoed in *Stark v. Superior Court*, where the court, again quoting *Penny*, holds that “[C]riminal negligence refers to a higher degree of negligence than is required to establish negligent default on a mere civil issue. The negligence must be aggravated, culpable, gross, or reckless.” (*Stark v. Superior Court* (2011) 52 Cal. 4th 368, 399; see also, *People v. Valdez* (2002) 27 Cal.4th 778, 783.)

Officer Klinge's failure to determine what he was likely to encounter around the corner of the building significantly contributed to the perilous circumstances he found himself. However, the facts do not render themselves to a finding that the actions amounted to a disregard for human life or an indifference to the consequences of his actions. His actions were not so far beyond the norm of a reasonable officer under similar circumstances as to amount to criminal negligence or recklessness.

Officer Klinge's decision to enter the alley way without first determining what was around the corner of the building was not criminally reckless given the totality of the circumstances. Although California civil negligence law considers conduct that precedes the use of deadly force, the criminal analysis does consider the preceding conduct. (*Hayes v. County of San Diego* (2013) 57 Cal.4th 622.) The Fourth Amendment reasonableness standard is not the same as the standard of reasonable care under the civil tort law, and negligent acts do not incur constitutional liability.

(*Id.* at 639.) Thus, the faulty tactics that precede an incident are not considered in determining criminal negligence.

The differences between criminal negligence and ordinary negligence under the state civil negligence analysis are highlighted in *Hayes*, supra. *Hayes* would likely provide for the admission of Officer Klinge's pre-shooting tactical mistakes. Thus, the reasonableness of Officer Klinge's actions could be undermined by the actions he took preceding the discharge of his weapon. Thus, unlike a criminal action, the pre-shooting actions taken or omitted could be admissible to establish the ordinary negligence.

### **Conclusion**

Based on the foregoing, at this time, the District Attorney is closing this case.

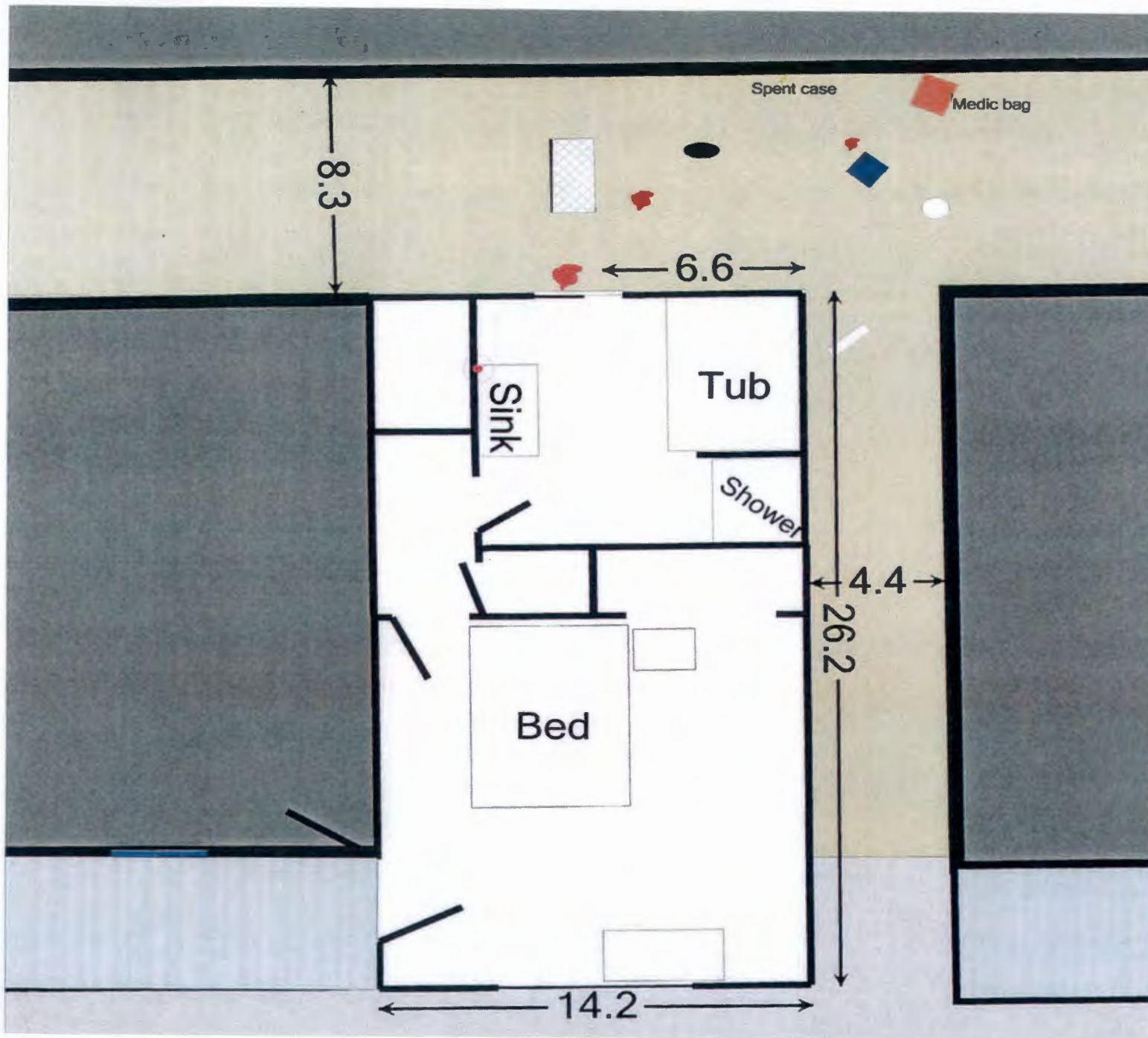
For further information, please contact Chief Assistant District Attorney William M. Clark at (530) 621-6472.



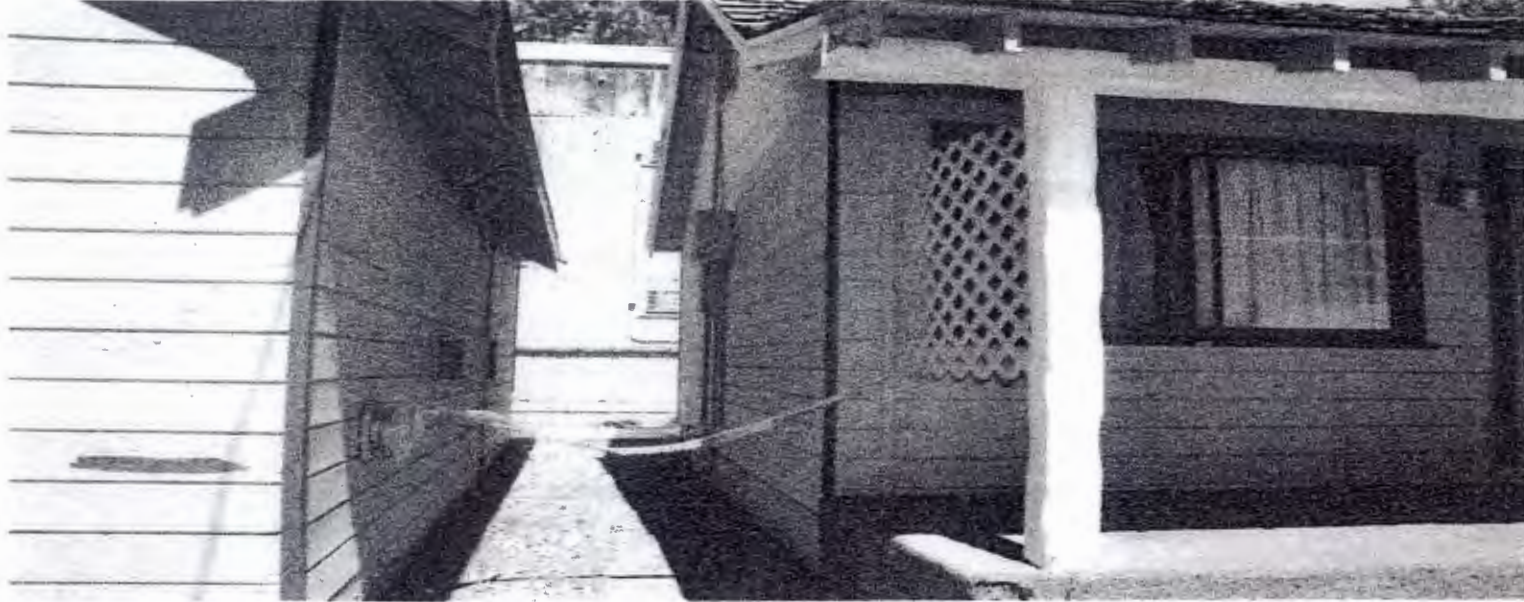


Attachment #1 depicts Rooms A and B from the parking lot. The open front door is to Room B.





Attachment #2 shows the layout of Room B, the relevant measurements south side breezeway, alley way and the distance from the southeast corner to center of the bathroom window.



**Tahoe Hacienda Inn  
Breezeway between apartment B and 7  
(view facing east)**

**Attachment #3 is a photograph of the south side breezeway from the Hacienda Inn parking lot in front of Room B back towards the rear alley and the back wall of the EconoLodge**



**Tahoe Hacienda Inn  
Alley behind Apartment B  
(view facing north)**

**Attachment #4 is a photograph of the rear alley behind room A and B depicting the room B bathroom window, corrugated roofing material and rear wall of the EconoLodge.**





**Attachment #5 shows a top down view of Rooms A and B. The red cone depicts the possible shooting area where Officer Klinge's weapon had to be at the time the shot was fired.**