

OFFICE OF THE  
**DISTRICT ATTORNEY**  
COUNTY OF SANTA BARBARA

**JOYCE E. DUDLEY**  
District Attorney



**J. GORDON AUCHINCLOSS**  
Chief Deputy District Attorney  
**STEPHEN P. FOLEY**  
Chief Deputy District Attorney  
**KIMBRA MCCARTHY**  
Administrative Director

**HILARY M. DOZER**  
Chief Deputy District Attorney  
**KELLY D. SCOTT**  
Chief Deputy District Attorney  
**DAVID M. SAUNDERS**  
Chief Investigator

October 10, 2012

**PUBLIC REPORT ON OFFICER INVOLVED SHOOTING OF LAWRENCE ALAN  
KITCHEN BY LOMPOC POLICE ON JUNE 4, 2012**

The Santa Barbara County District Attorney's Office has completed its review of the investigation by the Santa Barbara County Sheriff's Office of the homicide of Lawrence Alan Kitchen that occurred on June 4, 2012, in Lompoc, California.

The District Attorney finds the shooting was a justifiable homicide under Penal Code Section 196(2).

**SUMMARY**

On June 4, 2012, at approximately 8:50 a.m., Lompoc Police Officers responded to 208 South I Street, in Lompoc on a "shots fired" call. The investigation revealed the occurrence of the following events. Lawrence Kitchen became involved in a dispute with a neighbor's visitor over parking in the multi-unit residential property. Kitchen armed himself with a shotgun and handgun. He confronted Michelle Velasquez and shot her with the shotgun, injuring her and killing a small dog she was holding. Kitchen then pointed his weapon at Eusebio Ruiz who was attempting to seek refuge in apartment #1. Kitchen shot Ruiz in the torso and leg. When confronted by officers and instructed to drop the weapon and get down, he pointed his weapon at Lompoc Police Officers Dan Sessions and Willie Francis. Both officers fired at Kitchen. They hit Kitchen twice. Kitchen died at the scene.

The District Attorney's role in reviewing this homicide is to determine whether the shooting of Lawrence Alan Kitchen was lawful and to provide a detailed explanation to the public about the facts and the law in that regard. As stated in *Graham v. Connor* (1989) 490 U.S. 386, this process "requires careful attention to the facts and circumstances." Hence, this analysis will give careful attention to both the facts and the circumstances of the fatal shooting of Lawrence Alan Kitchen.

☐ SANTA BARBARA OFFICE  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
(805) 568-2300  
Fax (805) 568-2453

☐ SANTA MARIA OFFICE  
312-D East Cook Street  
Santa Maria, CA 93454  
(805) 346-7540  
Fax (805) 346-7588

☐ LOMPOC OFFICE  
115 Civic Center Plaza  
Lompoc, CA 93436  
(805) 737-7760  
Fax (805) 737-7732

## **Part I – STATEMENT OF FACTS<sup>1</sup>**

### **Officers' Statements**

#### **Officer Dan Sessions**

Lompoc Police Officer Sessions responded “Code 3” to a “shots fired” call from Ocean Avenue and 7<sup>th</sup> Avenue. When he arrived, he drew his Glock .40 caliber handgun and worked his way, along with Officer Francis, who deployed his AR-15 (department issued semi-automatic rifle), to a position of cover in the 200 block of South I street. They took cover behind a dark colored Saab on the east curb line. While waiting for other responding officers to establish a perimeter, Sessions saw a balding, white, adult male stick his head out from around the corner of the fence at 208 South I Street. Sessions and Francis immediately yelled at him, “Show us your hands, police department! Show us your hands!” The suspect came out from around the fence holding what appeared to be a shotgun in a low position in front of him. Sessions and Francis both yelled multiple times, “Drop the gun!” Sessions said he yelled so loud he gave himself a sore throat. The suspect mumbled something Sessions could not understand. The suspect then swung the barrel of the gun towards Francis and Sessions. Sessions believed the suspect was going to fire at them. Sessions fired his gun two times at the same time Officer Francis fired. The suspect immediately went down. The suspect moved slightly and Sessions again ordered the suspect to show his hands. The suspect did not respond and Sessions and Francis moved in to handcuff the suspect. Sessions placed two pair of cuffs on the suspect due to his large size.

#### **Officer Willie Francis**

Lompoc Police Officer Francis responded “Code 3” to the shots fired call from the 1100 Block of North O Street. As Francis responded, he received an update over the radio that two victims had possibly been shot. Sgt. Lardner, who arrived on scene prior to Francis, confirmed that two victims had been shot by the suspect. Francis waited for Sessions, and when Sessions arrived, they took up a position in the 200 block of South I Street, using a Saab for cover. Sessions saw a large statured white, male, adult peek around the corner of the fence at 208 South I Street. The suspect held a rifle at port arms (diagonally in front of his body.) Francis and Sessions began yelling orders at the suspect, “Police, show us your hands! Put down the gun!” The suspect did not comply, but instead began moving towards them while uttering something Francis did not understand. Francis and Sessions continued to command the suspect to put down the weapon. Francis said the suspect then pointed the rifle directly at them. Francis said he fired his AR-15 two to three times and the suspect went down. Officer Sessions moved in and handcuffed the suspect. Medics were called to the scene.

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<sup>1</sup> Information in this report is compiled from Sheriff’s Office case number 12-7605.

## **Agent Scott Morgan**

Lompoc Police Agent Morgan responded to the 200 block of South I Street from the Lompoc police station with his trainee, Officer David Magana. Morgan deployed his AR-15 rifle and took up a position of cover to the rear of a Saab that Officers Francis and Sessions were already behind. Morgan saw the suspect begin walking towards the Saab with a rifle at “port arms.” Morgan yelled several times at the suspect, “Put the gun down! Drop the gun!” Morgan also heard Francis and Sessions yell at the suspect to put the gun down. Morgan said the suspect did not comply with their orders but continued to walk towards them and turned the gun towards them. Morgan then heard multiple shots fired and saw the suspect go down. Morgan was uncertain if the suspect fired his weapon. Morgan did not fire his weapon because a bush partially obstructed his ability to have a clear target on the suspect.

## **Statements of Medics**

Medics John Tinsley and Fred Cota were dispatched to the “shots fired” call. Tinsley and Cota staged in the 100 block of South I Street. Tinsley saw several officers approach 200 South I Street on foot and take cover behind a vehicle. Approximately two to three minutes later he heard gunshots and called for an additional medic unit in case there were more injured persons. Approximately ten to fifteen minutes later they were told the area was safe. Tinsley and Cota responded to the scene of the shooting and treated Michelle Velasquez before taking her to Lompoc Hospital for further treatment. Tinsley and Cota later transported her to Cottage Hospital. Velasquez sustained injuries to her hand and several fingers appeared to have been partially amputated. Velasquez told Medic Tinsley that a neighbor (Kitchen) had confronted her for parking in the driveway. Velasquez said she called Kitchen an asshole before she moved her car. As she was walking up to apartment #1, Kitchen shot her with a shotgun from about eight feet away.

Medics Angela Johnson and Justin Leishman responded to a staging area off Cypress Street. Police officers brought Eusebio Ruiz to the medics. Ruiz had gunshot pellet injuries from his right thigh to right torso and they transported him to Lompoc Valley Hospital for treatment.

Medics Lisa Vargas and Roy Hale were dispatched to the shots fired call in the 200 block of South I Street. Vargas and Hale were in Santa Maria when they heard the radio activity about the shooting in Lompoc. Vargas and Hale immediately started driving towards Lompoc in anticipation of possibly being needed. Vargas and Hale were only minutes away from the shooting scene when they were officially dispatched to the call. Vargas and Hale were immediately directed to a male lying face down and handcuffed on South I Street. The male suspect appeared deceased but police officers requested they check for vitals. Vargas and Hale connected a heart monitor by cutting open the back of the suspect’s shirt. The monitor showed the suspect was “asystole,” meaning the heart was no longer functioning. Vargas declared the suspect deceased at the scene at approximately 9:25 a.m.

## Civilian Victims and Witnesses

### Victim No. One – Michelle Velasquez

Michelle Velasquez pulled into the driveway at 208 W. I Street to pick up the six-year-old son of Arthur Chavez, resident of apartment #1, to take him to school. Velasquez normally has her six-year-old son with her, but Chavez' son was running late, so she dropped her child off at school first and then returned to pick up Chavez' child. Velasquez honked her horn once to alert Chavez she was there. The suspect, Kitchen, approached Velasquez and told her he was tired of her pulling into his driveway and waking everyone up by honking her horn. Velasquez responded that she would no longer park in the driveway, but she would honk her horn to alert Chavez that she was there. Kitchen responded, "Oh no you won't."

Velasquez then backed her vehicle out of the driveway. As she parked on the street she called Chavez using her cell phone. Velasquez told Chavez that in the future he would need to have his son out front so she could pick the child up to avoid confrontation with Kitchen. Velasquez got out of her car and walked past Kitchen's house on her way to Chavez' apartment. Chavez' dog ran up to greet her and she picked the dog up. Velasquez heard Kitchen say something like, "I should just shoot you!" She turned and saw Kitchen on his front porch with a shotgun. Kitchen fired one shot that hit the dog, her hand, and the right side of her chest. Velasquez immediately dropped the dog and ran into apartment #1, yelling for help. Kitchen followed Velasquez and began shooting into the apartment, hitting at least one other person inside the apartment. Kitchen was yelling as he fired his gun, calling the occupants of apartment #1 "pussies" and other derogatory names. Velasquez called 911 and then heard sirens. Eventually, Velasquez heard shots fired from the street area, and was later transported to the hospital by paramedics.

### Victim No. Two – Eusebio Ruiz

Ruiz is a friend of Arthur Chavez, the resident of apartment #1. Ruiz arrived sometime before 9:00 a.m. As Ruiz walked to apartment #1, he saw Kitchen, the resident of the main house, looking at him in an angry way. Ruiz said, "Good morning," but Kitchen did not reply. Kitchen continued staring at Ruiz with a mean/angry look on his face. Ruiz entered apartment #1 and shortly thereafter heard what he first thought was a firecracker. He then heard Velasquez yelling from outside, followed by Velasquez running into the apartment with an injury to her hand. He heard shots come into the apartment and realized they were being shot at. Kitchen then entered apartment #1 holding his shotgun while pursuing Velasquez. Kitchen saw Ruiz standing in the apartment. Kitchen made eye contact with Ruiz and then shot him one time, hitting his leg and torso. Kitchen said, "Come on you pussies," and fired at least one more round. Ruiz pulled a table over in the dining area for cover until Kitchen left the apartment. About five minutes later he heard three shots from the area of the street. Ruiz made his way outside the apartment to a picnic bench and waited for help. Ruiz was later transported to Lompoc Valley Hospital by paramedics.

### **Victim No. Three – Arthur Venegas Chavez**

Chavez lives at 208 South I Street in apartment #1 with his two sons. Chavez' apartment is closest to the main house where the suspect, Lawrence Kitchen, lives with his wife. Chavez said that on June 2, 2012 (two days prior to the shooting), he was celebrating a birthday and ordered a bounce house to be placed in the common area on the property. When the workers arrived, Kitchen confronted them as they were setting up the bounce house. Kitchen was angry at Chavez for ordering the bounce house so he began calling the workers "Mexican pussies" and made mention that he had "been to Vietnam." Chavez said to avoid potential problems, he told the workers to remove the bounce house.

On June 4, 2012, at 7:39 a.m., Chavez was awakened by his friend, Ruiz. Chavez first awoke at approximately 7:00 a.m., but fell back asleep and was now hurrying to get his six-year-old son ready for school. Chavez knew Michelle Velasquez would soon be coming by to pick up his son for school. Velasquez called him from her cell phone shortly before 9:00 a.m. to report she had been confronted by Chavez' neighbor about parking in the driveway. (Chavez said he tried to tell people who visited his apartment to avoid blocking the driveway area because he knew this upset Kitchen.) As he continued getting his son ready for school, he heard what sounded like a gunshot. Chavez looked out a window and saw his dog injured and Velasquez running to the apartment. When Velasquez entered she screamed at him to call 911 and Chavez saw her hand appeared to be severely injured. Velasquez told Chavez she had been shot. Shortly thereafter, shots were fired into Chavez' apartment. Chavez and one of his sons climbed out his bathroom window to escape the gunfire. Chavez had shrapnel in his left shoulder area and a swollen left leg which he said was injured climbing out the window. He declined medical treatment at the scene.

### **Witness – Adam Price**

Price said he was a friend of Chavez and showed up at the apartment earlier that morning. Price reported that Eusebio Ruiz was already there when he arrived. Price said Chavez was getting his son ready for school. Price heard a "boom" and moments later Michelle Velasquez ran into the apartment saying, "He shot me. He's got a gun. Call 911." Price said he was in the living room with his back to the door, He heard another "boom" and his back was hit by debris. Price then realized someone was shooting into the apartment from outside. Price went into Chavez' bedroom and covered Chavez' youngest son with his body. Velasquez joined him in the room and the three lay on the floor. Chavez climbed out the bathroom window followed by the second child in the apartment. Price heard shooting and Ruiz say, "Don't shoot me." Price also heard Kitchen say, "Come out, you pussies." Price said he may have heard one more shot from the shotgun. A short time later he heard six shots in rapid succession. Price waited in the apartment with Chavez' child until ordered out by police.

### **Witness – Michael Mangino**

Mangino lives several houses from 208 South I Street. Shortly before 9:00 a.m., Mangino heard a big sound which he initially believed was a traffic collision. Mangino went outside and heard two gunshots. Since his grandmother lived nearby, Mangino decided to go down the alleyway to check on her. As Mangino passed by the courtyard area at 208 South I Street, he heard a woman screaming and

saw a man fitting the description of Lawrence Kitchen holding a rifle or a shotgun. Kitchen looked at Mangino and said, "Come on in and join the party."

Mangino then saw a young boy, about 7-years-old, jump out of a window from apartment #1 at 208 South I Street, "screaming and crying." Mangino then saw Kitchen fire two rounds into the front of apartment #1. Mangino tore out a section of chain-link fence to assist the child's escape from the area. He and the child passed Sgt. Lardner and other officers as the officers proceeded to the shooting scene.

### **Witnesses - Residents at 214 South I Street**

The husband and wife who live in the house directly to the south of 208 South I Street gave the following information. They reported the residents and guests of apartment #1 consistently caused neighborhood problems by playing loud music late into the night and throwing trash. If asked to turn the music down, the residents and guests of apartment #1 would respond negatively (i.e., screaming and calling the requesting party a "bitch") and refuse to stop making noise even late at night. They drank alcohol and used loud, foul language despite the fact that children lived in the apartment.

On June 4, 2012, the husband was upstairs and heard a woman yelling at "Larry" (Kitchen). The husband looked out and the woman said something such as, "Go ahead and shoot me." The husband saw Kitchen shoot the woman from a distance of about ten feet. Kitchen then reloaded his gun and fired again at the woman. The woman was screaming, "Oh my God, he shot me! Call 911!" The husband ran downstairs to check on his wife and heard three or four more shots. After ensuring his wife was ok (they both sleep with earplugs due to the noise from apartment #1), he returned upstairs in time to see "Larry" walking around the corner towards officers, saying, "come and get me." He heard officers yelling at "Larry" to put the gun down. "Larry" continued walking towards the officers when the officers fired.

### **The Scene**

208 South I Street consists of a main residence occupied by Lawrence Kitchen and his wife. There are four apartment units to the rear, running west to east with apartment #1 closest to the main house. A driveway enters the property off I Street into an area that can be used as parking or a courtyard area.

The suspect Lawrence Kitchen's body remained at the scene during the initial phase of evidence collection and investigation. Kitchen was lying on the ground in a grass area between the sidewalk and the street on the east curb line area near 208 South I Street. After the medics arrived they pronounced Kitchen dead at the scene. Kitchen was lying face down and handcuffed.

A loaded, single shot, 16-gauge, breech loading shotgun was recovered from under Kitchen's body. Kitchen had eight, additional, unexpended 16 gauge rounds in his pockets, along with a .380 caliber, semi-automatic handgun. The handgun was loaded and there was an additional loaded magazine in his jacket pocket.

There were four expended 16 gauge shotgun shells, a deceased dog, a finger with tissue, and additional tissue that appeared to be from a finger lying on the ground, in the courtyard/parking area on the property. This corroborated the statement given by Victim #1 (Michelle Velasquez) about the location where she was shot.

Four expended .223 casings and two expended .40 casings were found near the area where Officer Francis and Officer Sessions fired their weapons at the suspect.

A picnic bench in a grass area near apartments #1 - #4 had blood on it, consistent with where Victim #2 (Eusebio Ruiz) stated he lay while waiting for medics.

Apartment #1 had two windows broken in a manner consistent with being shot out by the suspect. The apartment interior had shotgun blast damage consistent with the witnesses' statements that Kitchen fired multiple rounds into the residence.

There was an overturned table in a living room area and a large amount of blood on the floor, consistent with where Victim #2 reported being shot by Kitchen.

There was damage to two vehicles and two residences south of 208 South I Street, consistent with bullet damage from the six fired rounds, and consistent with what officers and witnesses reported.

### **Autopsy**

On June 7, 2012, at approximately 9:00 a.m., the county pathologist conducted the autopsy of suspect Lawrence Kitchen at the Santa Barbara County Sheriff's Coroner's Bureau.

The autopsy determined that two projectile rounds hit Lawrence Kitchen. One, a .223 caliber round, entered the left chest below and medial of the nipple. The bullet fragmented in the body and caused massive internal bleeding in the abdominal cavity which caused death. The second projectile round, a .40 caliber, entered the left hip and came to rest as it was exiting the left buttock. The projectile location and track through the body was consistent with the suspect leaning forward as he was hit by the round.

### **Suspect's Background**

Lawrence Alan Kitchen was 67-years-old at the time of his death. Kitchen served in the United States Navy during the Vietnam War. He enlisted June 19, 1963 and was honorably discharged May 11, 1973 as a First Class Petty Officer. He later worked as a truck driver and retired in the San Bernardino area from YRC Freight several years ago. He has no known criminal history. He and his wife relocated to Lompoc in September 2010, renting the front residence at 208 S. I Street. After his retirement from truck driving, Kitchen began complaining of symptoms of PTSD (Post Traumatic Stress Disorder). He said his PTSD came from his experience in the Vietnam War. He was undergoing treatment at the V.A. Outpatient Clinic in Santa Maria and had previously filed a claim with the V.A. in San Bernardino County. A doctor recently prescribed Kitchen a new medication to help with his PTSD. His wife reported that in the week preceding the shooting he began acting more

aggressively and paranoid. Kitchen did not sleep the night of June 2 nor eat on June 3. He would constantly turn the lights off inside the house and peer out the windows as if keeping guard, according to his wife.

## **Part II – LEGAL ANALYSIS AND CONCLUSION**

### **Applicable Law**

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide, which are lawful.

The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful.

Penal Code section 196(2) defines justifiable homicide by public officers. *“Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty.”*

Under California law anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal.App.2d 85, 95.

A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Connor* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal.App. 4<sup>th</sup> 334. In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident “including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (*Id.*, at 396) Further the Court stated, “[t]he “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.*, at 397) Moreover, “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.” (*Id.*, at 397-398).

Under *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. “We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347. *Graham*’s definition of reasonableness has been described as “comparatively generous to police in cases where potential danger, emergency conditions or other exigent circumstances are present”



(*Roy v. Inhabitants of the City of Lewiston* (1<sup>st</sup> Cir. 1994) 42 F.3d 691) and also as giving police "...a fairly wide zone of protection in close cases...*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4<sup>th</sup> 334.

### **Legal Analysis**

The evidence indicates that on June 4, 2012, Lawrence Alan Kitchen became enraged over neighborhood parking and noise at 208 South I Street. Kitchen armed himself with a 16 gauge shotgun and a .380 caliber handgun. He had additional 16 gauge shotgun and .380 caliber rounds on his person. Kitchen confronted and shot Michelle Velasquez, killing a dog she was holding and severely injuring her hand. He then pursued Velasquez into apartment #1 where he shot Eusebio Ruiz. Kitchen also fired multiple other rounds into the occupied residence. These actions constitute felony violations of Penal Code section 245(a)(2), Assault With a Firearm; Penal Code section 246, Shooting into an inhabited dwelling; and Penal Code section 459, Burglary. When Lompoc Police officers confronted Kitchen, they ordered him to disarm and surrender. Instead, he pointed his weapon at the officers – a felony violation of Penal Code 245(d)(1). Officer Francis and Officer Sessions, fearing for their safety and the safety of those in the vicinity, fired a total of six rounds, two of which hit and killed Kitchen.

### **Conclusion**

Based on the investigation by the Santa Barbara County Sheriff's Office, applying the law as set forth in PC196(2) and the cases cited *supra* in this report, Officers Dan Sessions and Willie Francis were justified in using deadly force and, therefore, this shooting was justified under the provisions of California law.