

To any number of concerned citizens

By now a number of concerned persons have seen the dashcam video released by my office and are as shocked as I was when I first saw it. However, most have not had the opportunity to review the full report which accompanied that video and which discussed the other evidence collected that night. That report **is attached** and explains the evidence which was collected through the efforts of a number of seasoned investigators and forensic scientists. (The Butte County Officer Involved Shooting Task Force Team consists of senior investigators from all Butte County law enforcement agencies plus forensic scientists from the state Department of Justice crime lab.) The report also summarizes many hours of legal research in an effort to find what criminal charges, if any, were appropriate in this case. It is not, and never was, intended to pass judgment upon the tactics and judgment exercised by the officer that night. That judgment awaits both an administrative review by the Paradise Police management and very likely a review of liability in the civil courts.

Most of the persons who view the video for the first time, like the investigative team itself that night, are justifiably horrified by what they first see. As an example, the team knew that night the officer was claiming the discharge of his semi-automatic pistol was “accidental.” But what was first seen in the video was the very real perception that he shot twice. It was only after a software program was obtained which allowed the original video to be broken down to its original 25 frames per second that it could be seen that what appeared to be a “second shot” was actually an optical illusion produced by a beam of light coming from the flashlight attached under the barrel of the officer’s gun. This is detailed in the report attached.

Also detailed in the report is the evidence from the frame-by-frame analysis of the video and the combined experience of the investigators which indicates the officer did not intend to fire his pistol and was “surprised” by its discharge. This included the fact the discharge is seen occurring while the officer is in mid-stride; and that he flinches his head and does a “stutter-step” when the gun fires. Officers do not intentionally fire weapons in such a manner and additionally they are trained, as was this officer (from his training records over five years), to fire a minimum of two shots when they fire intentionally.

A review of whether he should have pulled his weapon at all when the vehicle’s driver suddenly pulled himself out of the vehicle was also extensively examined. Some of the investigators expressed concern as to whether the gun was necessary and whether there could have been another approach. Others however, noted the pulling and pointing of the weapon at the rapidly exiting driver was reasonable within an officer’s training involving a “felony vehicle stop.” What was known to the officer at the time was the vehicle had sped out from the bar’s parking lot at high speed, with tires screeching and no headlights. This was confirmed by bar patrons who witnessed the driver quickly speed out of the parking lot, nearly running over some people in that parking lot. The video shows the car, without headlights, turn at high speed through the red turn signal and continue to rapidly accelerate down Pearson until it recklessly hit the median and overturned, throwing the woman passenger out and onto the ground in front of the officer. Investigators noted the officer could reasonably expect he was dealing with a quickly-exiting driver who had just committed a felony DUI vehicular manslaughter in front of him and it was

within the realm of reasonable tactics for the officer to be prepared for either an attempted escape or the possibility that the suspect was armed.

Not noted in the report, but heavily commented on in the public debate, was that the officer appeared very calm both as he approached the driver and after the gun discharged. Although the dashcam video was released with the officer's actual radio traffic to his dispatcher appended, that version does not seem to have been circulated in much of the social media. The evidence showed the officer was on his radio as he rolled to a stop calling out very excitedly that he had a rollover "TC" (traffic collision), where he was, and that he needed "medics, Code 3!" (Fire and ambulances immediately with lights/sirens). This, again, was just before he got out of his patrol vehicle and came into range of the forward facing dash cam. The stress was so elevated and evident in his voice that it caused one of the responding officers, who knew the officer's normal calm demeanor and tone, to become very concerned that something was "very wrong." This responding officer, who was in the police station's report writing room as the call came in, dropped his coffee cup in reaction to the radio call, shattering it on the floor before he and another officer raced out of the station. The evidence presented by this dispatch tape and the notes of the responding officers do not paint a "calm" officer.

Whether the stress and anxiety of the situation caused the officer to reflexively pull the pistol's trigger when he took it out of his holster is subject to a great deal of speculation and debate. There was also speculation by a number of the very experienced law enforcement range masters, who were among the investigators on this case, that the design of the pistol's after-market flashlight activation system – with the on-button on the pistol's grip just below the trigger guard – may have caused finger confusion as to what was being pressed. Speculation however is not evidence and the officer did not blame his gun's flashlight system. The testing evidence on the pistol's functioning showed it would not fire without a pull of the trigger. As detailed in the report the officer was at a loss to explain what happened to cause the discharge. A search of the internet did show several news stories about "accidental/negligent discharges" among police agencies, particularly with this officer's pistol model or similar trigger-safety weapons.

The investigators were clear in their collection of the evidence in this case that the officer did not purposely or intentionally fire his pistol. Some in the public will never accept that conclusion, but as explained in the legal research portion of the report – without being able to **prove beyond a reasonable doubt** that there was a conscious, intentional, willful pulling of the trigger – there are no **criminal** charges that can be filed under California law for the negligent discharge of a weapon resulting in injury, no matter how horrible, as long as there is not a death and in this case the driver was not killed by the gun shot. **Civil liability**, of course, is an entirely different analysis and will undoubtedly be decided in the civil court differently than the criminal courts.

And under California Supreme Court opinions (see *People v. Williams* (2001) 26 Cal. 4th 779) for a defendant to be **criminally** guilty of assault (with a deadly weapon) he must be aware of the facts that would lead a reasonable person to realize that a battery would directly, naturally and probably result from his conduct. Mere recklessness or criminal negligence is not enough under the law of assault because a jury cannot find a defendant guilty of assault based on facts the defendant should have known but did not know. Again the civil liability analysis would be different.

As noted in the report, this is not a manslaughter case as, fortunately, no death has occurred. The law of manslaughter does analyze negligence in determining criminal liability. However, unlike with civil negligence standards, manslaughter requires **criminal negligence** which is defined for California criminal juries as involving “more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when: 1) He or she acts in a reckless way that creates a high risk of death or great bodily injury; and 2) A reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.” Such proof of criminal negligence is upon the prosecution **to prove beyond a reasonable doubt**. The facts here do not meet that proof.

This brings us to the potentially most troubling part of this shooting, the lack of a specific notification of the “accidental discharge” to the other responding officers for up to 11 minutes and only when the driver was removed from the vehicle by firefighters and “unexplained” blood was found. [Note – medics, which include rescue firefighting units, were called for by the officer before he even stepped out of his car. The officer and another responding senior officer can be seen on the dashcam video trying to remove the vehicle’s windshield to remove the driver, while another officer tends to the injured and dying female passenger. But it is not until firefighters arrive approximately seven minutes after the crash that the driver is successfully removed through the vehicle’s sunroof, which is removed by the firefighters’ efforts.]

This lack of immediate notification greatly troubled all the team investigators, as it did me. The officer explained it as a result of his shock and confusion of the entire event – and the unreasonable hope and belief that maybe his gun really did not go off and injure the driver. But there is no criminal charge for such inaction (without a death). The officer’s actions after the shooting will be handled in the administrative portion of the internal investigation being conducted by Paradise Police and is not something I am involved in. Not every accident, negligent act or lack of judgment has a criminal charge attached. That is the realm of the civil and administrative panels, not necessarily the criminal courts, as in this case where there are no criminal charges that can be filed.

Regardless of the investigators’ and my own feelings about the nature and quality of the action they investigated and reported to me, I can only determine if there was any potential criminal liability under the facts as shown by the evidence. I cannot ethically bring a criminal charge unless it is possible to prove the officer committed a crime beyond a reasonable doubt. The officer, just as any other citizen, is entitled to due process and the presumption of innocence.

Mike Ramsey, District Attorney