



OFFICE OF THE DISTRICT ATTORNEY

520 Main Street, Room 404 • Quincy, California 95971

(530) 283-6303 • Fax (530) 283-6340

E-mail: davidhollister@countyofplumas.com

DAVID HOLLISTER
DISTRICT ATTORNEY &
PUBLIC ADMINISTRATOR

27 January 2014

The Honorable Greg Hagwood
Sheriff, Plumas County
1400 East Main Street
Quincy, California 95971

***Re: Fatal Shooting of Mariano Joseph Mauro on October 20, 2013
PCDA OIS Report #DA 13-014***

Dear Sheriff Hagwood:

The question addressed by the Plumas County District Attorney's Office is whether the fatal shooting of Mariano Joseph Mauro by Deputy Tom Klundby on October 20, 2013 at the Eastern Plumas District Hospital in Portola, California constituted a violation of law. Upon reviewing all of the evidence in this case, I conclude Deputy Klundby acted lawfully in shooting Mariano Joseph Mauro on October 20, 2013.

In investigating this case, it was of paramount importance the investigation conducted, regardless of the outcome, be thorough, complete, accurate, and worthy of the public's trust. I believe this outcome has been achieved.

In reaching my conclusion, I rely on the applicable law of California which I am attaching to this letter for your review.

Factually, I rely on District Attorney Investigator Jeff Wilkinson's report and the accompanying supplemental reports and evidence.

In conclusion, I have undertaken every effort to assure all material leads were explored. In arriving at my decision, I have reviewed all reports, supplemental reports, witness statements, photographs of the scene, audio and video

recordings, lab reports, and physical evidence. In addition, I arrived at the scene of the shooting just hours after the shooting and personally viewed the crime scene then as well at a subsequent time.

The overwhelming credible evidence shows Deputy Klundby acted in self-defense and in defense of others in the shooting of Mariano Joseph Mauro. No evidence exists to support any contention the shooting was criminal.

I would like to thank District Attorney Investigations Supervisor Jeff Wilkinson for his work in preparing the present report as well as recognize the professional and dedicated efforts of members of the Plumas County District Attorney's Office, Plumas County Sheriff's Office, California Highway Patrol – Quincy Command, and the California Department of Justice in assisting in this investigation.

This office contemplates no further action in this case. The investigation is considered closed, and the materials collected will be retained by the Plumas County District Attorney's Office.

Respectfully yours,

A handwritten signature in black ink, appearing to read "D. Hollister", written in a cursive style.

David Hollister
District Attorney
Plumas County, California

enclosure

APPLICABLE LAW

Crime Charging Standard

The California District Attorney's Association Uniform Crime Charging Standards Manual directed criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the evidence, is satisfied the evidence shows the accused is guilty of the crime to be charged. Additionally, the charging standards direct there must be legally sufficient admissible evidence to prove each element of the crime. At the time of charging, the admissible evidence must be of such convincing force that it would warrant conviction of the crime by a reasonable and objective fact finder after that fact finder has heard all the evidence and after considering the most plausible, foreseeable defenses that could be raised by the evidence.

Applicable State Law

Penal Code § 187: Murder is the unlawful killing of a human being or a fetus, with malice aforethought.

Penal Code § 188: Such malice may be express or implied. It is express when there is manifested a deliberated intention to unlawfully take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act is deliberately done with knowledge of the danger to an with conscious disregard for human life.

Penal Code § 192: Manslaughter is the unlawful killing of a human being without malice.

Penal Code § 196: Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance – [2.] when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty...

Penal Code § 197: Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person;

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner to enter the habitation of another for the purpose of offering violence to any person therein; or
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily harm, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in a mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or
4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Penal Code § 195: Homicide is excusable:

1. When committed by accident and misfortune, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without unlawful intent.

Applicable Jury Instructions

CalJic 5.13: Homicide is justifiable and not unlawful when committed by any person in the defendant of himself if he actually and reasonably believed that the individual killed intended to commit a forcible and atrocious crime and that there was imminent danger of that crime being accomplished. A person may act upon appearances whether the danger is real or merely apparent.

CalJic 5.14: The reasonable ground of apprehension does not require actual danger, but it does require:

1. That the person about to kill another be confronted by the appearance of a peril such as has been mentioned;
2. That the appearance of peril arouse in his mind an actual belief and fear of the existence of that peril;

3. That a reasonable person in the same situation, seeing and knowing the same facts, would justifiably have, and be justified in having, the same fear; and
4. That the killing be done under the influence of that fear alone.

CalJic 5.00: The unintentional killing of a human being is excusable and not unlawful when:

1. Committed by accident and misfortune in the performance of a lawful act by lawful means; and
2. Where the person causing the death acted with that care and caution which would be exercised by an ordinarily careful and prudent individual under like circumstances.

CalCrim 507: A person is not guilty of murder or manslaughter if he killed someone while acting as a public officer. Such a killing is justified, and therefore not unlawful, if:

1. The person was a public officer;
2. The killing was committed while overcoming some actual resistance to some legal process or while performing any other legal duty;
3. The killing was necessary to accomplish one of those lawful purposes; and
4. That person had probable cause to believe that the individual killed posed a threat of serious physical harm, either to the public officer or to others.

A person has probable cause to believe that someone poses a threat of serious physical harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or great bodily injury to another.