



CITY of NAPA

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Clerk of the Napa Superior Court

By: C. Brennan
Deputy

August 22, 2012

Honorable Diane Price
Presiding Judge
Napa County Superior Court
825 Brown Street
Napa, California 94559-3031

RE: 2011-2012 Napa County Grand Jury Final Report On Shooting in Alta Heights

Dear Judge Price:

The City of Napa received the identified Grand Jury report on June 28, 2012. Following review and consideration at the August 21, 2012 meeting of the City Council, and pursuant to California Penal Code Section 933, this letter serves as the City's response to the Grand Jury's findings and recommendations, as noted below.

Mr. Poccia's death was tragic, particularly for his family, but also for those who witnessed it and its immediate aftermath. The Grand Jury conducted extensive investigation of the incident, which was done with the full cooperation and assistance of the Napa Police Department. The Grand Jury's report is clear that it is not intended to, and does not, analyze the officers' use of force. The Napa County District Attorney has published the only report analyzing that force, and concluded that the shooting was fully justified under law, due to the "immediate and serious threat of death or great bodily harm" the officer reasonably perceived at the time of the shooting. The District Attorney's full report is attached to this letter, and can be located at <http://www.cityofnapa.org/images/police/poccia.pdf>.

Instead, the Grand Jury's report focuses on and recommends improved coordination between law enforcement and mental health agencies, improved law enforcement liaison with the community, improved after-action procedures, analysis and reporting, and a civilian review board to analyze officer-involved shootings. The City and NPD wish to thank the Grand Jury for its diligent review of these matters.

The City's responses are as follows:

Finding 1 – *The Napa Police Department is delinquent in not publishing the results of its Administration Investigation in a timely manner.*

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Response – Disagree. By its very nature, the Napa Police Department's ("NPD") investigation and report regarding its officers' adherence to law and Department policy is expressly a confidential police "personnel record." The disclosure of which is prohibited by Penal Code Sections 832.7 and 832.8. A law enforcement department is entitled to do a different type of analysis and report of a critical incident (not focusing on the performance of specific officers), which may be released to the public. However, that type of investigation and report was not done by the NPD here.

The District Attorney's release, which is attached, provides a thorough summary of the facts and circumstances leading up to the shooting, and in the City's view provides the public with an accurate factual and legal analysis, prepared by an independent elected official with expertise in such matters.

Finding 2 – *Richard Poccia's body was left on the street over thirteen hours, an inordinate and unacceptable amount of time.*

Response – Partially Disagree re: an inordinate and unacceptable amount of time. Mr. Poccia's body remained in the position where he fell until approximately midnight. Mr. Poccia's body was covered shortly after the incident, and remained covered for most of the period it remained in that position. Shortly after the incident, the Napa Sheriff's Office took over the investigation, and responsibility for the incident scene. Naturally, painstaking forensic analysis of the scene was required. Mr. Poccia's body was removed as soon as all work requiring the scene to be undisturbed had been completed.

Finding 3 – *There is a need for more effective collaboration between Napa County Mental Health and the Napa Police Department in crisis situations.*

Response – Agree. Although significant strides have been made, even more effective collaboration between law enforcement and Napa County Mental Health is desirable, and may be helpful in future crisis response. In 2006, Napa County Health and Human Services, Queen of the Valley Medical Center, the Napa County Sheriff's Office ("NSO") and NPD created the Napa County Interagency Emergency Response Protocol. The Protocol directs roles and responsibilities for the screening, transportation, assessment and treatment of individuals in crisis. Perhaps more relevant here, since February 2011, County mental health professionals have interacted with the NPD/NSO Crisis Negotiation Team. The Team has received joint training, including responding to mental health crisis scenarios. A Law Enforcement/ Mental Health Team has also met on numerous occasions to discuss specific coordinated mental health interventions to avoid crisis. As the Grand Jury notes, mental health professionals have been called to, and directly involved in, multiple crisis responses since Mr. Poccia's death.

Finding 4 – *There is no civilian review board in Napa County for OIS incidents.*

Response – Agree. There is no such board or entity in the vast majority of jurisdictions in California.

Finding 5 – *Much of the Alta Heights community is estranged from the Napa Police Department as result of police actions during and after the Richard Poccia event.*

Response – Partially disagree re: much of the Alta Heights community is estranged from the Napa Police Department. Although NPD has only learned of community members' dissatisfaction through the Grand Jury report, the NPD wishes to promptly address any such concern among members of the public, and to maintain a strong relationship with the community. In response, NPD has assigned two community liaison officers as detailed below. As an initial task, those officers will contact residents in the area where this incident took place to address any concerns they may have about the incident. This outreach has already started.

It should be noted that on December 1, 2011, as part of a citywide outreach called "The Council Comes to You", members of NPD as well as other departments within the city met with residents of the Alta Heights community at Silverado Middle School to discuss community issues as a whole. During this meeting there was no mention of any estrangement or dissatisfaction with the Napa Police Department related to the Meek Ave. incident or any other incident. It has been and will continue to be the intent of the NPD to enhance its relationship with the community of Napa as a whole.

Finding 6 – *It is commendable that the Napa Police Department provides access to psychological counseling for its officers following traumatic situations such as an OIS.*

Response – Agree. In truth however, the NPD's provision of these services is common decency, and an industry standard. It exists to help peace officers who are impacted by their difficult and sometimes disturbing work, which is critical to community safety.

Recommendation 1 – *The Napa Police Department explain the reason(s) the Administrative Investigation Report of the OIS of November 28, 2010, is delinquent, and release the report within 60 days.*

Response – This recommendation will not be implemented because it is not warranted and not reasonable. No report is "delinquent" by any standard. The Grand Jury's use of the term "delinquent" suggests that the NPD had an obligation to make public the results of its internal personnel investigation, and to do so within some unidentified time frame. Instead, and as stated above, the NPD's internal investigation of officers' conduct as it relates to this and similar incidents is subject to the officers' privacy rights under state law. As an effort to keep the public informed, the department does provide general information about incidents, such as Meek Avenue, through press releases and will utilize liaison officers to contact those members of the community who are immediately affected by an incident, as indicated in the City's response to recommendation 6.

Recommendation 2 – *The Napa Police Department publish future Administrative Investigation Reports within 180 days of the incidents giving rise to them.*

Response – This recommendation will not be implemented because it is not warranted and not reasonable. As set forth above, internal investigations of police officer performance is private and confidential, and may not be released under California law. As stated in recommendation number one, the department does provide general information about incidents, such as Meek Avenue, through press releases and will utilize liaison officers to contact those members of the community who are immediately affected by an incident, as indicated in the City's response to recommendation 6.

Recommendation 3 – *Within 90 days the City of Napa establish procedures to utilize appropriate screening for sensitive crime scenes.*

Response – This recommendation will be implemented within 90 days of this response.

Recommendation 4 – *Within 180 days the law enforcement departments in Napa County and Mental Health Department establish more effective coordination in situations of crisis intervention by (1) engaging in joint training exercises, and by (2) maintaining instantaneous communication and patching capability.*

Response – This recommendation will be implemented within 180 days of this response. Joint training is already occurring. Although it is not known precisely what is meant by the Grand Jury's use of the phrase "instantaneous communication and patching," NPD will ensure that all patrol officers and supervisors have immediate, 24/7/365 contact information for mental health professionals who have been jointly trained to work with law enforcement during crisis intervention.


Recommendation 5 – *Within one year the Napa County Board of Supervisors and all Napa County incorporated local governments establish a civilian review board to examine all investigation documents of this incident and all future Officer involved shooting (OIS) incidents to provide feedback from a civilian point-of-view.*

Response – This recommendation is ambiguous and undefined, and will not be implemented as written because it is not warranted and not reasonable. The recommendation seems to call for Napa County and all incorporated municipalities to establish a single "civilian review board" to examine events surrounding Mr. Poccia's death and all future officer involved shootings which may occur, county wide. The City of Napa thinks it unreasonable for the relevant agencies to commit to establishing such an undefined civilian review entity on the 90-day time frame required by Penal Code Section 933 for this response. A wide variety of complex multi-jurisdictional, administrative, legal and financial issues are involved, and the efficacy of any such body is unclear. The Napa City Council has directed the City Manager and Police Department to more fully analyze the Grand Jury's recommendation, to work with other Napa County agencies, and to report back with its recommendations regarding the potential for civilian review of law enforcement, no later than February 1, 2013.

Recommendation 6 – *Within 90 days the Napa Police Department provide its staff effective public interface and/or appoint a liaison officer to inform and reassure the public during tense events.*

Response – This recommendation has been implemented. Two liaison officers have been appointed to inform and reassure communities during events which can be expected to impact them. The City will seek to ensure that at least one liaison officer is available at all times. The liaison officers will be assigned to communicate with individuals and groups who have been, or may have been, impacted by a significant event in their neighborhood.

Sincerely,



Mike Barnes
City Manager

Cc: Police Chief Richard Melton



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GARY LIEBERSTEIN
District Attorney

February 22, 2011

PRESS RELEASE

Napa County District Attorney Gary Lieberstein announced today that his office has completed its investigation into the November 28, 2010 fatal shooting of Richard Poccia, age 60, by a Napa police officer. After careful review of all the evidence, the District Attorney's Office has concluded that, while this was an extremely tragic situation, Officer Nicholas Dalessi acted with legal justification, specifically, reasonable self defense, when he shot Poccia.

The incident began on the morning of November 28, when the Napa Police Department received multiple reports from Poccia's wife, Samanda Dorger, and family friends, that Poccia, who was alone in his residence on Meek Avenue, had been in severe psychiatric distress for two days and was deteriorating. The police were informed that Poccia was drinking heavily, owned at least 13 firearms, including rifles and handguns, had fired a shot through an interior wall of his residence, was suicidal, and presented a danger to others. Poccia had previously been employed as a nurse for several years but more recently had been unemployed for months. A physician friend had visited Poccia earlier in the day and told police that Poccia spoke of confronting police officers if they came to his home and said, if they did, they would die or he would die, or both. The physician confirmed that Poccia was suffering from post traumatic stress syndrome and paranoia. He also told police that Poccia was armed with two handguns and a shotgun.

Napa police consulted with Poccia's health provider who stated that Poccia may be suffering from withdrawal from Klonopin, commonly prescribed for seizure and panic disorders. Police also requested assistance from Napa Mental Health. A social worker tried to reach Poccia by telephone but he did not answer and did not return a voicemail message.

Napa police eventually managed to contact Poccia by calling his cell phone. Poccia agreed to walk out of his house unarmed and to speak with officers on scene. Due to the number of firearms that Poccia possessed and the evidence that he was mentally unstable, the officers directed Poccia to walk out of the house slowly with his hands up. Initially, Poccia complied. However, when he approached the officers to within eight feet, his demeanor quickly changed. Despite the officers' repeated assurances to Poccia, addressing him by his first name, telling him they would not hurt him and were there only to help him, Poccia became belligerent and aggressive. He ignored constant commands to keep his hands up and to move slowly. Instead, he lunged at an officer, yelled profanities, and assumed a fighting stance. Although officers repeatedly ordered Poccia to keep his hands raised, he suddenly reached into his waistband and started to pull out an object. When he did so, Officer Dalessi assumed it was a gun and fired a single shot which killed Poccia instantly. The object that Poccia had pulled from his waistband was later identified as a metallic 4" folding knife. He otherwise was unarmed.

Subsequent toxicology testing showed that at the time of his death, Poccia's blood-alcohol level was .32%. Tests also revealed the presence of Methadone and Diphenhydramine, a common sedative.

Under California law, a killing by a police officer is justifiable and lawful when necessarily and reasonably committed in overcoming actual resistance to the performance of legal process, or in the discharge of any other legal duty (see California Penal Code Section 196). In determining whether a police officer's use of deadly force was necessary and reasonable, we recognize that officers often are forced to make split second judgments under tense, dangerous, and complex circumstances. Here, Poccia ignored the officers' announcements and directions. The officers were aware of his earlier threats to kill and knew that he owned numerous firearms, including some capable of being concealed on his person. When Poccia suddenly reached into his waistband and began to retrieve an object, the officers had less than one half-second to react.

Given the totality of the circumstances, Officer Dalessi was justified in believing that Poccia presented an immediate and serious threat of death or great bodily harm. Under the law, the jurisdiction of the District Attorney is limited to a determination of whether or not a criminal act was committed in the use of lethal force. Accordingly, we have determined that Officer Dalessi's use of deadly force here was legally justified and, thereby, no criminal act was committed in the use of such force while carrying out his duties as a sworn police officer.