



LOUISIANA DEPARTMENT OF JUSTICE

27 MARCH 2018

**The Final Report of the Investigation and the Determination of Criminal
Responsibility and Use of Force by Officers Blane Salamoni and Howard Lake of
the Baton Rouge Police Department in the Officer Involved Death of Alton
Sterling Occurring July 5, 2016.**

In May of 2017 the United States Department of Justice concluded a ten-month, comprehensive, and independent investigation of the events surrounding Alton Sterling's death. Following that investigation, on May 3, 2017, the United States Department of Justice through the U.S. Attorney for the Middle District of Louisiana announced its findings. It found insufficient evidence to proceed with any federal civil rights violations or criminal charges. Subsequently, the case was turned over to the Louisiana Department of Justice for an investigation and determination of any possible violations of state criminal laws. This report details the Louisiana Department of Justice's review of the evidence produced by the U.S. Department of Justice and the independent investigation conducted by the Louisiana Department of Justice for the purpose of determining the potential criminal culpability of Officers Blane Salamoni and Howard Lake with regard to the death of Alton Sterling.

TABLE OF CONTENTS

I. INTRODUCTION	4
A. Summary	4
B. Role of the State Attorney General	5
C. Death of Alton Sterling	6
D. Autopsy of Alton Sterling	9
E. Alton Sterling History with Law Enforcement	10
F. Interviews	11
II. USE OF FORCE EXPERT OPINION	16
A. Kenneth Sanders	16
B. Charles Key	19
III. STATEMENT OF LAW	22
A. Statutory Authority	22
B. Jurisprudence and Analysis	27
IV. CONCLUSIONS	31

I. INTRODUCTION

A. SUMMARY

On or about 12:30 a.m. on July 5, 2016, the Baton Rouge Police Department Dispatch received a telephone complaint of a suspect brandishing a weapon and committing an assault with a firearm at the location of Triple S Food Mart, located at 2112 North Foster Drive.

The complainant, John Young, described the suspect as a black male wearing a red shirt who was outside after midnight selling CDs at the store front. Officers Howard Lake and Blane Salamoni were dispatched to the scene. According to the complainant, who remained at the scene, upon the arrival of the Police Officers, Alton Sterling began to resist the officers. During the ensuing encounter between Sterling, Lake and Salamoni, Alton Sterling was fatally wounded by shots fired from the weapon of Blane Salamoni.

Immediately following the incident, the Baton Rouge Police Department (BRPD) initiated an investigation into Sterling's death in accordance with BRPD Policy.

On July 6, 2016, Governor John Bel Edwards - joined by then Louisiana State Police Superintendent Mike Edmonson and others - held a press conference to announce an official request that the Obama Administration's Department of Justice (USDOJ) conduct a complete and thorough investigation in the shooting death of Alton Sterling.

Following multiple requests, the United States Department of Justice utilizing the FBI and the U.S. Attorney's Office for the Middle District of Louisiana took the lead in their investigation. Governor Edwards also announced he had tasked Colonel Edmonson and the Louisiana State Police with assisting in the investigation.

On July 11, 2016, East Baton Rouge District Attorney Hillar Moore filed a Motion to Recuse himself and his office from the case. District Attorney Moore indicated a personal relationship with the family of Blane Salamoni precluded him from handling the prosecution and or investigation of this matter.

Upon receipt of the Motion to Recuse, members of the Louisiana Department of Justice (LADOJ) met with then U.S. Attorney Walt Green and then-Assistant U.S. Attorney Corey Amundson to determine the status of the Federal investigation and to determine the possibility of LADOJ involvement. LADOJ officials were informed they would not have access to any investigative materials compiled by the United States Department of Justice (USDOJ) until the conclusion of the federal investigation. Later, the Louisiana Department of Justice received official correspondence from the USDOJ advising that the matter would be solely and exclusively investigated by the USDOJ and that LADOJ would be notified upon the completion of the investigation and the prosecutorial decision of the USDOJ.

From the time of the incident of July 5, 2016 until the completion of the USDOJ's investigation, the LADOJ did not receive or review any information, evidence, or investigative

materials generated by the USDOJ's investigation. The LADOJ was prohibited from participating in the investigation during this time to ensure the integrity of the United States Department of Justice investigation.

On May 3, 2017, the USDOJ announced its findings relating to the shooting death of Alton Sterling. It determined there was insufficient evidence to file federal charges and released a report of same.

Within 24 hours of the USDOJ announcement, the LADOJ met with the appropriate USDOJ officials and began to coordinate with USDOJ to receive, catalog, and store all reports and evidence created by the USDOJ in this matter.

In cooperation with, and accompanied by, the Louisiana State Police, LADOJ agents went to the FBI offices on May 31, 2017 and took possession of the entirety of the Federal Bureau of Investigations investigative materials. These materials were then processed by the LSP and LADOJ.

On June 1, 2017, LADOJ agents went to the office of the U.S. Attorney for the Middle District of Louisiana, located in Baton Rouge, and took possession of the investigative materials held by the U.S. Attorney's Office.

The extensive investigative materials produced by the USDOJ included thousands of pages of documents and reports, scores of photographs, and extensive video evidence.

On June 14, 2017, the LADOJ began a comprehensive process to review the investigative materials and to conduct a further investigation into potential violations of State criminal law by Officers Salamoni and Lake.

B. ROLE OF STATE ATTORNEY GENERAL

The role of the State Attorney General in this investigation and review of facts is limited to determining whether potential violations of Louisiana Criminal Laws occurred, whether any person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law.

The State Attorney General neither establishes nor enforces law enforcement agency policy, procedures, or training requirements and compliance. The State Attorney General does not determine disciplinary action or pursue civil litigation in these matters.

Under Article 5, Section 26 of the Louisiana Constitution, the District Attorney "shall have charge of every criminal prosecution by the state in his district." He has the power to bring or dismiss any state criminal charge. However, Louisiana Code of Criminal Procedure Article 680 "Grounds for recusation of district attorney" allows for a District Attorney to recuse a criminal case resulting from a conflict of interest either perceived or real. When this occurs, the case ordinarily becomes the responsibility of the State Attorney General who assumes all powers previously reserved for the respective District Attorney in the matter.

Before the State Attorney General may bring any charge before a Grand Jury, he must determine whether he has sufficient evidence to warrant a conviction based on the facts of the case upon a fair and thorough review of the evidence.

The standard of proof for any state criminal charge is proof beyond any reasonable doubt. This is the highest standard of proof in the law. Every element of any crime contemplated must meet this test. That is, each element of any crime contemplated must be proven beyond a reasonable doubt in order to obtain a guilty verdict. This is true in both state and federal prosecutions. There is not a lesser burden of proof in State criminal cases when compared to federal criminal cases. While the elements of the crimes may be different between State and Federal criminal statutes, the standard of proof - beyond a reasonable doubt - remains the same.

The State Attorney General may present cases to a Grand Jury. In doing so, he is bound legally and ethically by certain standards. First, he must determine the evidence he has to present "if unexplained and un-contradicted, warrants a conviction." (La. C.Cr.P.Art.443) Furthermore, pursuant to the Rules of Professional Conduct required of all prosecutors, the State Attorney General is required to "refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause"(Rule 3.8).

C. DEATH OF ALTON STERLING

On 7/5/2016 at approximately 12:35 a.m., Dispatcher Dunder of the Baton Rouge Police Department received a 911 call from the person later identified as John Young.

John Young called 911 to report that a person, later identified as Sterling, was selling CDs in front of the Triple S Food Mart after midnight.

Young advised the dispatcher that Sterling was armed with a handgun and had showed it to Young in a threatening way.

Under State law, this action would constitute the crime of Aggravated Assault with a Firearm, (La. R.S. 14:37.4). Young described Sterling as a black male wearing a red shirt, weighing approximately 250 pounds, selling CD's in front of the store after midnight.

Young reiterates several times that Sterling had a handgun in his pocket.

Several minutes later, Young called 911 again and spoke with Dispatcher Jordan. Young began to provide additional information and request a plain clothes officer. However, as he was on the phone with the dispatcher, Young advised the police were at the location with Sterling. Young then hung up the phone.

While reviewing the security footage from the Triple S Store, along with the officers' body cameras and police unit cameras, and the enhanced videos generated by the United States Department of the Justice the following was observed:

On July 5, 2016 at approximately 12:16 a.m., Alton Sterling is seen in front of the Triple S Store apparently selling bootlegged CDs. At about this time, he is seen walking to the corner of the store and threatening someone with what was later determined to be a firearm concealed in his right pocket, presumably the victim, Mr. Young. Sterling then returns to his position in front of the store and continues his illicit activities.

At approximately 12:42a.m., Officers Howie Lake and Blane Salamoni arrived at the location to investigate the complaint made by Young. Officer Lake was the first officer to come into contact with Sterling.

Officer Lake arrived at the location in a fully marked BRPD Unit and in full BRPD uniform. Lake appears to immediately identify Sterling as the suspect as described by the complainant, Mr. Young. Sterling appears to be in the middle of a CD sales transaction with two females.

While the facts indicate Mr. Sterling was on felony probation, it is unknown if, at the time of the incident, either officer was aware that Sterling was on probation for a felony and therefore in violation of the conditions of his probation. (Art. 895. Conditions of probation; that the defendant shall: (6) Refrain from owning or possessing firearms or other dangerous weapons) Additionally, Mr. Sterling had been previously convicted of La. R.S. 14:95 E, Possession of a Firearm While in Possession of Controlled Dangerous Substances, and this previous conviction alone would have made possession of a firearm by him a felony with a mandatory minimum imprisonment of 10 years according to La. R.S. 14:95.1, Possession of a Firearm by a Convicted Felon.

Officer Lake interrupts the transaction between Sterling and the females and gives Sterling verbal commands to place his hands on the vehicle that is parked where Sterling is standing. Sterling is noticeably apprehensive. Officer Lake tells Sterling to stop twice.

Officer Lake then attempts to physically control Sterling's hands and have Mr. Sterling place his hands on the vehicle. Officer Salamoni, who arrived as Sterling was beginning to resist Officer Lake's commands and attempts to assist Officer Lake in gaining hand control of Sterling.

Officer Lake attempted to control Sterling's left arm as Officer Salamoni attempted to control Sterling's right arm while also giving Sterling verbal commands to place his hands on the car.

During this initial struggle, Sterling asks, "what I did?", while refusing to submit to the officers request. As Sterling spins around and pulls his right arm away from Officer Salamoni, Officer Salamoni draws his firearm from the holster and tells Sterling in a stern voice "Don't fucking move or I'll shoot you in your fucking head". This level of verbal control appears to work as the Officers are then able to direct Sterling to the vehicle and attempt to place him into custody.

While Officer Salamoni had his service weapon drawn, he kept it at an arm's length from the suspect. Despite the aggressive, purposeful tone of Officer Salamoni, Sterling again began to resist as Officer Lake continues attempts to gain hand control of Sterling after he was directed to the vehicle.

After Officer Lake failed to gain hand control of Alton Sterling, Officer Salamoni takes a defensive position away from Sterling and tells Officer Lake to “taze” Sterling utilizing his Electronic Control Device.

Officer Salamoni maintained defensive cover with his handgun as Officer Lake deployed his taser to Sterling’s back. The taser appeared to work initially as Sterling momentarily fell to the ground. However, the effects did not last. Officers then order Sterling to get on the ground using strong verbal commands.

Mr. Sterling continued to be non-compliant and turned toward Officer Lake. Officer Salamoni then requested Officer Lake to administer another activation of the taser. The second activation of the taser had no effect on Sterling.

As Sterling continued to face Officer Lake, Officer Salamoni holstered his weapon and approached Sterling on his left side and aggressively tackled Sterling into a parked car in an attempt to gain control over Sterling. Both Sterling and Officer Salamoni fell to the ground and landed chest to chest with Officer Salamoni on top of Sterling.

A struggle took place as Officer Salamoni attempted to control Sterling’s right arm. Officer Lake knelt next to Sterling and attempted to control Sterling’s left arm. It should be noted that throughout this engagement, Officers Lake and Salamoni continuously attempted to gain control of Sterling’s hands while Sterling actively resists.

Officer Salamoni is then observed attempting to retrieve his own handgun from his holster and tells Sterling “if you move, I swear to God.” At this time, Officer Salamoni made several attempts to gain control of Sterling’s right hand. After failing to do so, Salamoni loudly announced to Lake that “he’s got a gun” and verbally demanded that Sterling relinquish control of his right hand. It should also be noted that Sterling was positioned in a manner which concealed the lower right half of his body, and more particularly, his right front pocket.

Officer Salamoni then drew his firearm from his holster and pointed it at Sterling. As this is happening, Officer Salamoni also yells to Officer Lake “he’s going for the gun”. Officer Salamoni then fired three times at Sterling’s chest and rolls off of him keeping his handgun pointed at Sterling.

Officer Lake appears to stand up and draw his handgun from the holster at this time and provide cover to Officer Salamoni who is lying on the ground in close proximity to Sterling.

As Sterling sits up Officer Lake yells at him to “get on the ground” Sterling appears to roll to his left, away from Officer Salamoni; and Officer Salamoni again fired shots at Sterling. It is important to note that when Sterling rolled away from Officer Salamoni his hands and his right side are concealed from Salamoni and Lake’s view. At this point, Sterling lies on the ground having been completely disabled by the officer’s shots.

Officer Lake immediately notified his dispatch of the “shots fired” and requested Emergency Medical Services for Sterling.

Officer Lake then approached Sterling and removed a loaded .38 caliber handgun from Sterling's right front pocket. Officer Lake then secured Sterling's firearm.

Officer Salamoni, apparently not realizing the firearm was removed, begins to look through Sterling's pockets and questioned Officer Lake as to where the firearm was located. These actions by Officer Salamoni support his belief that Sterling was actually armed during the encounter. Officer Lake advised Officer Salamoni that Sterling's firearm was secure.

As additional units arrived, officers approached Salamoni and he requested they secure the scene with crime scene tape.

The decision not to handcuff Sterling was made and the scene was secured. A short time later, emergency medical personnel arrived and Officers Lake and Salamoni's body cameras were turned off.

When emergency medical personnel arrived on the scene to examine and render aid to Sterling they found Sterling to be unresponsive and have no signs of life. Sterling was pronounced dead on the scene due to apparent gunshot wounds to his chest and back.

Baton Rouge Police Department Crime Scene Investigators arrived and processed the scene accordingly. The Baton Rouge Coroner's Office also arrived and conducted a preliminary examination of Sterling's body. After a preliminary examination was completed, Sterling's body was properly transported to the Baton Rouge Coroner's Office for further examination where a complete autopsy would be conducted.

D. AUTOPSY OF ALTON STERLING

On July 5, 2016, Dr. Jimmie Smith, a pathologist with the East Baton Rouge Parish Coroner's Office, performed an autopsy on the body of Alton Sterling.

The autopsy revealed six gunshot wounds to Sterling's body. Three entrance wounds were located in the chest of Sterling while three entrance wounds were located in the back of Sterling. No exit wounds were present and all six projectiles were recovered from Sterling's body.

Dr. Smith classified Sterling's manner of death a homicide with the cause being multiple gunshot wounds to the body injuring his heart, right lung, esophagus, and liver. There were no puncture wounds found on Sterling's skin as a result of the taser probes.

A toxicology test (Exhibit C) was conducted during the autopsy and the results indicated Sterling's chest blood tested positive for the following substances:

- Ethanol (29 mg/dL)
- Blood Alcohol Concentrate (BAC 0.029 g/100mL)
- Benzoylcegonine (130 ng/mL)
- Cocaine (26 ng/mL)
- Amphetamine (23 ng/mL)
- Methamphetamine (280 ng/mL)
- Delta-9 Carboxy THC (13ng/mL)

- Delta 9 THC (3.8 ng/mL)

Additionally, Sterling's urine tested positive for Opioids, Cocaine, Cannabinoids (THC), Amphetamines, and Fentanyl.

The toxicology report indicated that blood levels of 200-600 ng/mL have been associated with methamphetamine abusers who exhibited violent and irrational behavior. Sterling's blood level for Methamphetamine was (280 ng/mL) which placed him in this category.

The toxicology of Alton Sterling clearly indicated that he was under the influence of a combination of illegal substances.

E. STERLING'S HISTORY WITH LAW ENFORCEMENT

Alton Sterling has a very extensive history with the Baton Rouge Police Department and has been listed in numerous police reports as a victim, a witness, and a suspect.

The interactions between Alton Sterling and local law enforcement were amenable for the most part.

However, a review of documentation generated by Baton Rouge Police Department and provided by United States Federal Bureau of Investigation produced an incident which is very similar to the facts of this investigation.

This incident was documented by the Baton Rouge Police Department under item number 09-00054712 and, other than a seven year difference, mirrors the exact incident that occurred on July 5, 2016 in all but the outcome.

On May 29, 2009, Baton Rouge Police Officer Timothy Daigre responded to a call for service at 999 Rosenwald Street, Baton Rouge, LA. The complainant, identified as Anthonia Anderson B/M, DOB: 04/12/1980, reported that earlier in the evening on May 29, 2009, he had been driving and was approached by Alton Sterling who produced a dark colored handgun and pointed it at him and his passenger.

After being given this information Officer Daigre was directed to where Alton Sterling was selling contraband CDs. This location was identified as 1375 Rosenwald Street, the Scotlandville Grocery Store.

Officer Daigre relocated to this location and observed an individual who matched the description provided by the victim as Alton Sterling. Upon the officers approach Alton Sterling was carrying a milk crate full of music CDs.

The officer asked Alton Sterling if he had any weapons.

Alton Sterling did not answer the officer, and was instructed put the milk crate on the ground and place his hands on the officer's marked patrol unit. Alton Sterling complied with the officer instructions.

Officer Daigre began to conduct a Terry frisk, a pat down, of Alton Sterling's outer clothing for officer safety. As Officer Daigre began this frisk, he noticed Alton Sterling removed

his left hand from the hood of the marked unit and moved his hand toward his left front pants pocket.

Officer Daigre stopped Sterling from going into the pocket, and told him (Alton Sterling) to keep his hands on the hood of the vehicle.

At this time, Sterling ignored the officer's instructions, spun away from where the officer was attempting to conduct his frisk, and tried to flee from the officer. Officer Daigre grabbed Sterling by the shirt and was able to push him to the ground. During this process, he was giving loud verbal instructions to Sterling to stop resisting.

Once on the ground, Officer Daigre attempted to gain positive control of Alton Sterling, giving him instructions to stop resisting.

During his attempt to restrain Sterling, the officer was able to use his radio and summon assistance.

As the struggle continued, a black semi-automatic 9mm handgun fell from Alton Sterling's waistband.

East Baton Rouge Sheriff's Deputy Dain Lewis had heard the officers call for assistance and responded. Upon arrival, Deputy Lewis helped subdue Sterling and his resistance was brought to an end.

Alton Sterling was subsequently arrested for the following charges: 40:966C Possession of a firearm while in possession of a Controlled Dangerous Substance, to wit: Marijuana; 14:37 Aggravated Assault; 14:108 resisting arrest; and 14:69.1 Possession of a stolen firearm.

Like the incident that is the subject of this review, the above incident reflects Sterling's failure to submit to a lawful arrest while he was armed with a dangerous weapon. One factor that is clearly different in this incident is that the weapon Sterling possessed fell to the ground and hence terminated the immediate threat to officers. Once this occurred, officers were able to gain control of Sterling without additional use of force, lethal or non-lethal.

F. INTERVIEWS OF ON SCENE WITNESSES

Statement by John Young

On September 6, 2017 at 11:30 a.m., Special Agents of the Louisiana Bureau of Investigation (LBI) went to East Baton Rouge Parish Prison to interview Mr. John Young. The investigating agents sought Mr. Young for his knowledge in the Alton Sterling investigation. Initially, the agents were unable to locate Mr. Young at any of the addresses listed in the past. Further investigation revealed that he was being held in the aforementioned parish jail.

Once located within the correctional facility, LBI Agents were allowed to speak with Mr. Young in a secluded area. After introductions were complete, Mr. Young was asked if he remembered the incident involving Alton Sterling and if he (John Young) remembered the statement he provided to the East Baton Rouge Police Department and to FBI Agents. Mr. Young responded that he did remember the aforementioned incident and his statements. When

asked if there was any additional information he could provide or if he knew of any additional information that may have been omitted from his prior statements, Mr. Young responded that his prior statements were complete and he did not have any further information to add.

The interview with Mr. Young was concluded at 11:50a.m. on September 6, 2017. The agents thanked Mr. Young for his time and patience and returned him to the general population of that correctional facility.

The statement provided by Mr. Young evidences that on July 5, 2016 Alton Sterling threatened him (John Young) with a handgun and told him to leave the area of the Triple S Food Mart. Taking the threat seriously; Mr. Young left the immediate area and contacted the local police for assistance. Mr. Young stood on the opposite side of North Forest Drive and awaited the arrival of the Baton Rouge Police Department. Mr. Young indicated he observed the arrival of the Baton Rouge Police Officers and watched them approach Alton Sterling. Mr. Young said he saw the initial escalation of resistance by Alton Sterling, and the officers' attempts to subdue the suspect. As the physical confrontation between the officers and Alton Sterling continued and went to the ground, Mr. Young's view of the physical confrontation was diminished due to a silver vehicle that was parked in front of the Triple S Food Mart.

Mr. Young stated he could hear the report of the firearm and could see the physical responses of the nearby witnesses who were in close proximity to the officers and Sterling. Mr. Young waited in the area until the scene was under control of the Baton Rouge Police Department. Mr. Young would later be taken to Baton Rouge Police Headquarters where he would provide information regarding his incident and his observations of the responding officers.

Statement by Quentin Knight

On September 18, 2017 at approximately 2:00 p.m., an LBI Agent met with Quentin Knight at the Cousins Food Mart located at 6288 Airline Highway, Baton Rouge, LA. This location was chosen by Knight as it was his place of employment. Knight was advised that the reason for the meeting was to determine if he recalled the incident involving Alton Sterling and if he recalled the statements he made to law enforcement agents during the federal investigation. Knight advised he understood and requested to meet in the stock room of the business. Knight was asked to describe the Alton Sterling incident as it occurred in the best detail he could remember.

Knight advised he was working as a stock man at the Triple S Food Mart on the night of the Sterling incident. Knight stated he had known Sterling for several months prior to the night of the incident. Knight heard a commotion from in front of the business and advised he went outside to see what was going on. When Knight walked outside, he saw Sterling arguing with two police officers and it appeared he was "tased". Sterling was being told to get on the ground as one of the officers tackled Sterling to the ground. Knight advised both officers were trying to get Sterling's hands however it appeared that Sterling's right arm was under a car during the struggle. Knight heard one of the officers yell "gun, gun, gun." Knight advised he then heard approximately 4-6 gunshots.

Statement by Kierica Reed

On September 20, 2017, at approximately 3:00 p.m., Kierica Reed called a Louisiana Bureau of Investigation Agent and indicated she had received the business card left on her door by the LBI and was calling to follow up. Reed was advised the reason LBI Agents wanted to talk to her was to determine if she recalled the incident involving Alton Sterling and if she recalled the statements she made to law enforcement agents during the federal investigation. Reed advised she previously provided statements to the Baton Rouge Police Department and the FBI. Reed advised she did not have any additional information to add to her previously documented statement.

Statement by Abdullah Muflahi

On August 29, 2017, at about 12:30 p.m., LBI Agents went to the Triple S Food Mart located at 2112 Foster Drive in Baton Rouge, LA for the purpose of interviewing Abdullah Muflahi. This location is the site where the incident involving Alton Sterling occurred. The manager of the Triple S Food Mart, Mr. Muflahi, is one of the witnesses to the incident that occurred on July 5, 2016.

Mr. Muflahi was asked if he remembered his statements to Baton Rouge Police Department and to the FBI. Mr. Muflahi indicated he did remember the aforementioned statements and that his prior statements were complete and he did not have any further information to add.

Statement by Dandry Gaines

On August 30, 2017 at about 10:02 a.m. a LBI Agent contacted Ms. Dandry Gaines regarding her knowledge of the Alton Sterling shooting. Ms. Gaines is one of the witnesses to the incident.

Ms. Gaines was contacted by phone and asked if it would possible to meet for a face to face interview to aid in this investigation. Ms. Gaines declined a face to face interview and further declined to provide her current place of residence. LBI agents confirmed the identity of the caller as Ms. Gaines by social security number.

Ms. Gaines was asked if she remembered the statements she provided to East Baton Rouge Police Department and to the FBI. Ms. Gaines responded that she did remember the aforementioned statements and that there was nothing she wanted to add. She further stated she just wanted to forget the entire incident.

Contact with Officer Salamoni and Officer Lake's Attorneys

On September 27, 2017, at approximately 9:41 a.m., attorneys for Blane Salamoni and Howie Lake were contacted by LBI. At the time of this contact, John McLindon represented Blane Salamoni and Fred Crifasi represented Howie Lake. Mr. McLindon and Mr. Crifasi were informed that the LBI was involved in the state's investigation into the Sterling shooting. McLindon and Crifasi both agreed to meet with LBI Agents at the LBI office in Baton Rouge on September 28, 2017.

On September 28, 2017 at approximately 3:30 p.m., Mr. McLindon and Mr. Crifasi arrived at the LBI office and met with LBI Agents. Counsel for Salamoni and Lake were offered the opportunity to have their clients meet with LBI Agents to discuss their statements provided during the initial investigation. Mr. McLindon and Mr. Crifasi explained that Officers Salamoni and Lake will cooperate with the investigation but respectfully declined the offer to provide any additional statements. Counsel for Salamoni and Lake also requested all questions pertaining to the investigation can be forwarded to their respective attorneys. Both McLindon and Crifasi asked that the initial statements provided by Salamoni and Lake be used as their account of the events surrounding the Sterling shooting.

Statement by Officer Howard Lake to BRPD

On July 5, 2016, at about 5:30 p.m., Officer Lake was interviewed by Baton Rouge Police Department Homicide Detectives. At the beginning of this interview, Officer Howie Lake was given his Miranda warnings, which he verbally acknowledged. When presented a rights of arrestee form for these warnings, Officer Lake endorsed the aforementioned form and verbally stated that he would make a statement and answer questions posed by the investigating detectives. The following information summarizes his statement to BRPD detectives.

Officer Lake stated that he and Officer Salamoni had responded to the scene at the Triple S Food Mart at nearly the same time. Officer Lake arrived first and approached a large black male who was wearing a red shirt as was described by the Baton Rouge Police Dispatcher.

Upon making contact with the previously described individual, who would later be identified as Alton Sterling, Officer Lake instructed a black female to step away from Alton Sterling and then instructed Alton Sterling to place his hands on a nearby vehicle so that he could conduct a cursory frisk of Alton Sterling's outer clothing for weapons.

Officer Lake stated that Alton Sterling refused to comply with his instructions. At this time, Officer Lake had been joined by Officer Salamoni and both officers attempted to escort Alton Sterling to the selected vehicle.

The officers were able to get Alton Sterling to the vehicle but unable to gain positive control. Seeing that verbal instructions and escort were not effective in gaining the compliance of Alton Sterling, Officer Lake created distance from Alton Sterling and deployed his taser. The probes struck Alton Sterling but failed to achieve the neuromuscular incapacitation that was desired. Officer Lake believed that the spread of the deployed probes was too narrow to achieve the desired effect. Officer Lake then deployed his taser for a second time, which contacted Alton Sterling but again the desired affect was not achieved. As the taser cycled, Officer Lake could see that the taser was ineffective and stopped the cycle. At this time, Officer Salamoni tackled Alton Sterling to the ground.

As a result of being taken to the ground, Alton Sterling was on his back and Officer Salamoni was astride Alton Sterling. Officer Lake stated that he then went to control Alton Sterling's left arm, while Officer Salamoni worked at gaining control of Alton Sterling right arm. Officer Lake did state that Alton Sterling's right side was partially under the front bumper of a car, and due to Sterling's size and the size of Officer Salamoni a very limited space was available for Officer Salamoni to secure the right arm. Furthermore, Officer Lake stated that at this point

he did observe the black handle of a handgun in the right hand front pocket of Alton Sterling's pants. Officer Lake then heard Officer Salamoni state that he (Alton Sterling) has a gun. When the first gunshots erupted, he was unsure who had shot, either Officer Salamoni or Alton Sterling. Officer Lake then stated that Officer Salamoni rolled off of Alton Sterling, Alton Sterling sat up and attempted to reach towards his right front pants pocket and Officer Salamoni fired a second volley into Alton Sterling.

When asked by homicide investigators did he fear for his life or the life of Officer Salamoni, Officer Lake responded that he feared for the life of Officer Salamoni believing that he would be the first target should Sterling retrieve his concealed weapon; then believing that Alton Sterling would next threaten his life. Once all resistance had stopped, Officer Lake reached for and retrieved a small dull colored revolver from Alton Sterling's right front pants pocket. Officer Lake considered handcuffing Alton Sterling. Officer Lake explained his concern that if he handcuffed Alton Sterling, he (Officer Lake) could cause further injury to Sterling. Officer Lake then asked Officer Salamoni if they should handcuff Alton Sterling. Officer Salamoni responded that they should not.

Statement by Officer Blane Salamoni

On July 5, 2016, at approximately 5:57 p.m., Officer Salamoni provided a voluntary taped statement to the Baton Rouge Police Department Investigators. LADOJ Investigators were provided a copy of this statement and were able to review in its entirety. Officer Salamoni was advised of his Miranda Rights by the BRPD Investigators and he advised he understood his rights and endorsed a Miranda Rights Form.

Officer Salamoni advised BRPD Investigators that he was dispatched to the Triple S Food Mart for a 911 call. The complainant on the call advised that a black male wearing a red shirt was selling CD's in front of the store. The caller also advised this same subject was in possession of a firearm in his pocket. The complainant advised that the subject in question (later identified as Alton Sterling) had pulled out the firearm and threatened the complainant with it. Officer Salamoni goes on to explain that Officer Lake pulled into the parking lot ahead of him and approached Sterling, who appeared to be selling CDs and fit the description provided by the complainant.

Officer Salamoni observed Sterling refusing to cooperate with Officer Lake, who was requesting Sterling place his hands on a parked car. As Officer Lake attempted to gain control of Sterling's arm, Officer Salamoni observed Sterling pull away from Officer Lake. As Sterling continued to be non-compliant, Officer Salamoni advised he escalated his verbal commands and forcefully ordered Sterling to comply by stating he would shoot him in his head if he did not put his hands on the car. According to Officer Salamoni, Sterling continued to resist and not follow commands.

Officer Salamoni advised that both he and Officer Lake were not able to gain control over Sterling's hands and Officer Lake backed up and deployed his taser on Sterling twice to no effect. According to Officer Salamoni, Sterling then stood up and faced Officer Lake. At this point Officer Salamoni attempted to get control over Sterling by tackling Sterling to the ground. Officer Salamoni observed Sterling reach down with his right hand toward his right pocket where the handle of a gun was visible to Officer Salamoni.

Officer Salamoni grabbed Sterling's right hand in an attempt to keep him from grabbing the gun. Sterling jerked his right hand away from Officer Salamoni causing Officer Salamoni to draw his firearm in response. At the same time, Officer Salamoni observed Sterling continue to grab for the firearm from his pocket. Officer Salamoni advised at this point he fired his weapon at Sterling and cannot recall if he was knocked off of Sterling by Sterling or if he rolled off under his own strength. Officer Salamoni advised he landed on his side and Sterling began to sit up. Officer Salamoni observed Sterling again reach down in the direction of the firearm and Officer Salamoni again fired his weapon three times and observed Sterling lay on his back with arms out to his side. Officer Salamoni advised at this point he felt the threat from Sterling was over.

Officer Lake advised BRPD dispatch via the radio that shots were fired and requested EMS for Sterling. Officer Lake then retrieved Sterling's firearm from Sterling's right pocket and secured it. Officer Salamoni did not feel the need to handcuff Sterling due to Sterling's injuries and Officer Salamoni no longer perceiving Sterling to be a threat.

II. USE OF FORCE EXPERTS

The United States Department of Justice engaged independent, qualified experts in Law Enforcement use of force, Kenneth Sanders and Charles Key.

Both of these experts independently reviewed the investigative materials and disclosed their findings and opinions to the FBI.

Both experts concluded that the actions of Officers Lake and Salamoni did not amount to an unreasonable use of force. Both experts agreed that Officers Lake and Salamoni were justified in the use of force.

A. KENNETH SANDERS'S FINDINGS

The expert examinations for the use of force in this investigation were provided by Kenneth Sanders.

Mr. Sanders' ability and skills are well documented and he is recognized by federal authorities as a documented expert in use of force. To summarize Mr. Sanders' analysis of the case involving Alton Sterling, Mr. Sanders states that the force used by Officers Lake and Salamoni was justifiable and reasonable. In his interview provided by the Federal Bureau of Investigation, Mr. Sanders cited United States Supreme Court Case *Graham vs. Conner* and used four focal points to establish the reasonableness of force used in a given incident. The four points referred to by the acronym "S.I.R.F." are as follows:

- i. Severity of the crime.
- ii. Immediacy of the threat.
- iii. Resistance of the subject.
- iv. Flight of the subject.

It should be noted that some use of force experts combine resistance and flight as a single factor. The presence of any one of the S.I.R.F. factors justifies the use of some level of force under *Graham vs. Connor*.

Mr. Sanders addressed the S.I.R.F. model as it applies in this investigation as follows.

The first two factors, severity of the crime and the immediacy of the threat, were met before the officers arrived on scene and encountered Sterling. The officers were advised Sterling was in possession of a weapon and had brandished it on the complainant. Any reasonable officer without the benefit of hindsight would have understood the severity of the crime and felt the immediacy of threat. (Sanders, K. 11/09/2016)

Upon encountering Sterling, the officers used verbal commands. The use of verbal commands did not work. Sterling immediately resisted. There was a flex in Sterling's chest area and his hand came up above his waist, which are both signs of aggression. Hands up in the air would have demonstrated compliance. (Sanders, K. 11/09/2016)

Sanders did not have a problem with the BRPD officers pulling their service weapons out and having them at the ready position. He believed Officer Salamoni pointing his service weapon at Sterling's head and using profane language was a policy issue and Salamoni should have been disciplined but it was not a 4th or 8th Amendment issue. Officer Salamoni did not discharge his weapon at that time therefore there was no use of force. (Sanders, K. 11/09/2016)

Sanders believed the BRPD Officers appeared to attempt a stop and frisk of Sterling. However, it was performed incorrectly because Officer Salamoni covered his partner with his weapon (i.e. the partner was in the line of sight of Salamoni's weapon). (Sanders, K. 11/09/2016)

Sanders believed the BRPD Officers' use of the taser on Sterling was a reasonable use of force. Tasers are used as commonly as chemical sprays and the use of tasers after failure to follow verbal commands is widely accepted within law enforcement communities. Sterling failed to follow the officers' verbal commands. Sterling lifted his body off the hood of the car before he was tased the first time. After Sterling was tased the first time, he went to the ground and was given commands to stay on the ground. Sterling did not follow the commands to stay on the ground. He stood up and was tased a second time. It is not uncommon for a taser to have little or no effect on a person as large as Sterling. (Sanders, K. 11/09/2016)

Sanders thought Officer Salamoni's tackle of Sterling was a proper and effective destabilization technique. The officers had already unsuccessfully tried verbal commands, soft/open hands, and tasing Sterling. Officer Lake was standing directly in front of Sterling and had Sterling's attention and Officer Salamoni was standing to the side of Sterling. They were in a classic "L" Formation. Tackling a subject to the ground was a good idea because when an officer has a subject on the ground he typically just has to hold him to the ground to secure him. (Sanders, K. 11/09/2016)

While on the ground Sterling's pectoral muscle was moving which indicated he was moving or was attempting to move his hand. Sanders could not see Sterling's right hand while it was on Sterling's right side, but he assumed Sterling was moving or attempting to move it based on the pectoral muscle moving. Officer Salamoni continued to lose control of Sterling's right hand. It appeared Officer Salamoni was trying to hold Sterling's hand down on the ground and

Sterling kept trying to pull it back and away. Although Sanders could not see Sterling's right hand, he appeared to be reaching for something when it went back down. (Sanders, K. 11/09/2016)

Sterling's right hand went up while he was on the ground but then it went back down. The officer believed Sterling had a gun. In Sanders' opinion, under those circumstances any reasonable officer would have believed he was in a fight for his life. Sterling controlled his own destiny. He could have submitted to the officers at any time and could have ended the confrontation. However, he never submitted to the officer's commands. (Sanders, K. 11/09/2016)

While on the ground, Sterling's head came up off the ground and he was up on his elbows. He was clearly not complying with the officers and trying to get up. Officer Salamoni had control of Sterling's right hand but then lost it. Sterling could have complied when Salamoni had control of his hand, but he continued to resist. Sterling's hand moved down in the direction of his pocket. Sterling's head again came up off the ground and he was up on his elbows. He was clearly not complying with the officers and trying to get up. Officer Salamoni briefly had control of Sterling's right hand but then lost hand control again. Sterling could have complied when Salamoni had control of his hand, but he continued to resist. Sterling's hand moved down in the direction of his pocket. It appeared Officer Salamoni attempted to keep Sterling's right hand on the ground when it moved back down in the direction of the pocket but Sterling appeared to pull it up. (Sanders, K. 11/09/2016)

Sanders found the fact that Sterling said, "I have a gun man," after one of the officers said, "I'm going to search his pocket," inconsequential. In fact, it could have been perceived as a threat by the officers. (Sanders, K. 11/09/2016)

Sanders opined Officer Salamoni's use of deadly force, regarding the first series of shots, was reasonable under the circumstances. The standard is whether a reasonable officer would have believed Sterling was attempting or might attempt to get the gun out of his pocket. An officer does not have to wait until a subject goes for his weapon before acting, because the subject's action will be faster than the officer's reaction. Sanders used the officer's view/perspective, to evaluate the use of force, not the view/perspective from the camera that captured the video. (Sanders, K. 11/09/2016)

He also concluded the second series of shots were reasonable. Before the second series of shots the officers could not see what Sterling's right hand was doing and the threat had not been eliminated because Sterling was still moving. Police officers were not trained to shoot to kill. They were trained to eliminate the threat. (Sanders, K. 11/09/2016)

Sanders agreed with Salamoni's statement that Sterling could have shot him or his partner in the femoral artery without removing the gun from his pocket. In addition, gunshots to the femoral artery are almost always fatal. (Sanders, K. 11/09/2016)

The officers tried verbal, soft hands, taser, and tackling Sterling to the ground. A reasonable officer would have thought Sterling had a gun because they were told by dispatch he had a gun. If Sterling wanted or intended to surrender he would have raised his hands. Hands above the waist would have meant surrender, and hands below the waist were a sign of aggression. Based on *Graham vs. Connor*, Louisiana State statues, and the Faulkner Model,

Sanders concluded the force used by BRPD Officers in the shooting death of Alton Sterling was justified and reasonable. (Sanders, K. 11/09/2016)

B. CHARLES KEY'S FINDINGS

Charles J. Key Sr. was the second use of force expert interviewed by the United States Federal Bureau of Investigation who rendered an opinion.

Mr. Key's ability and skills are well documented and he is recognized by federal authorities as a documented expert in use of force. To summarize Mr. Key's analysis of the case involving Alton Sterling, Mr. Key also concluded that the force used by Officers Lake and Salamoni was reasonable.

Mr. Key provided the following information concerning his analysis of the materials he reviewed regarding the Sterling shooting to the FBI.

Key also used the standard established in *Graham vs. Conner (Graham)* to analyze the reasonableness of the officers' use of force. This standard established that an officer's use of force should be evaluated through the perspective of what an objectively reasonable officer would do at the time in the same situation being analyzed. In his review of the video evidence, Key described the overall tactics he observed by Baton Rouge Police Department Officers Salamoni and Lake during their encounter with Sterling as "poor" and somewhat "aggravating;" however, the tactical problems created by Salamoni and Lake were irrelevant when analyzing whether the force used was objectively reasonable under *Graham*. The tactical decisions Key suggested the officers could have made were more for putting the officers in a better position to deal with the situation with Sterling. (Key, J. 12/20/2016)

Salamoni and Lake responded to a BRPD dispatch believing they were responding to a situation involving a potentially violent offender who was armed and who had committed a violent assault by pointing a pistol at someone. Sterling matched the description of the individual with the pistol provided in the dispatched call which, in his opinion, may have been enough to have established probable cause against Sterling. (Key, J. 12/20/2016)

Throughout the officers' encounter with Sterling, he was actively resistant. While Lake and Salamoni's actions created tactical problems which may have escalated the situation as opposed to deescalating the situation, these tactical problems did not change the fact Sterling was actively resisting. Further, while a subject who jerked his or her arms away from an officer is considered to be actively resisting, any resistance by a subject such as Sterling, who is believed to be in possession of a firearm, increases in severity from active resistance to assaultive resistance. While the video footage did not show Sterling reach for his pocket, the footage did not show every angle of the incident. Key assumed the officers did not see Sterling make any overt movements towards his pocket for a firearm when Salamoni's firearm was initially pointed at Sterling's head. Police officers are not required to see an actual firearm in order to reasonably believe a subject is reaching for a firearm. The threat posed by a subject, such as Sterling, who is believed to be armed is an imminent threat, which meant the threat is "pending" as opposed to immediate or instant. (Key, J. 12/20/2016)

In Key's opinion, instead of initially approaching Sterling up close, the officers would have been at a greater tactical advantage had they engaged Sterling by ordering him at gun point from a position of cover. Sterling posed an initial threat to the officers by not complying with their commands to put his hands on the hood of a nearby vehicle. Salamoni acted reasonably when he initially drew his firearm because officers may use their firearms to prevent a situation from escalating. Salamoni, however, created a tactical problem by drawing his firearm and placing it within approximately an arm's length of Sterling. At the point when Salamoni drew his firearm, Key opined that Salamoni should have disengaged from Sterling and given commands to Sterling with his firearm pointed at him based on Sterling's resistance and the officers' belief he was armed. (Key, J. 12/20/2016)

With respect to the language used by the officers during their encounter with Sterling, Key explained officers in that situation may need to use whatever language was necessary to convince the subject that the officers may have to shoot the subject. Tactically, the language the officers used may have exacerbated the situation more than if they had drawn their firearms and had given Sterling commands from a position of cover. Theoretically, it may have been prudent for Officers Salamoni and Lake not to announce to Sterling why they were there because at the point in time Sterling understood they knew he was armed, he may have presented a greater threat to them. (Key, J. 12/20/2016)

Prior to the shooting, the officers used less than lethal force by both deploying a taser and by tackling Sterling. While it appeared the taser deployed correctly, the deployment had no effect on Sterling. (Key, J. 12/20/2016)

Key provided the following additional information and opinion regarding the use of a taser on Sterling: Based on *Graham*, the use of a taser on Sterling was reasonable. The use of a taser was an acceptable way of dealing with a subject as big as Sterling who had been resisting. The taser was deployed against Sterling in roughly a half second span of time in a manner consistent with the training officers received teaching them to create distance between themselves and a subject to prevent the officers from being tased themselves. Tasers are routinely deployed by officers to stop a resistant subject in order to handcuff the subject without any further use of force. The taser did not work effectively on Sterling. Had the taser incapacitated Sterling, Key believed the shooting would not have happened. Evaluating the situation from the perspective of the officers, Sterling was not controlled at that point he was tased initially because Sterling got back up after he was tased the first time. (Key, J. 12/20/2016)

In Key's opinion, after the first taser deployment failed, the officers should have backed away from Sterling, taken cover, and talked to him with their guns pointed at him in an attempt to bring him under control; however, even this approach may have only put off the inevitable use of deadly force. (Key, J. 12/20/2016)

Police officers often use de-escalation techniques when dealing with subjects. Even if the officers tried de-escalating the situation with Sterling by speaking with him, the fact remained that no matter what Sterling said or did during his encounter with Salamoni and Lake, they believed he was armed with firearm. While the question Sterling posed to the officers asking them "What I do," could have been an example of him attempting to comply, it could also have been an example of Sterling using subterfuge in an attempt to convince the officers he was not a

threat even though his intentions may have been otherwise. While the video showed Sterling with his hands in the air, a possible sign he was giving up, the officers had just experienced Sterling's continued resistance even when he was tased and had a firearm pointed at him. (Key, J. 12/20/2016)

Key provided the following opinion and information regarding Salamoni tackling Sterling: The "dumbest" thing Salamoni did throughout the entire encounter with Sterling was tackling him. By tackling Sterling, Salamoni completely exposed himself and left his partner with nothing but a taser to react. Key identified the officers subsequently pushing Sterling's head away while he was on the ground as a defensive technique used to try and gain control of his Sterling's hands. Key heard someone in the video say "I got a weapon man," but could not identify who made the statement. Unless Sterling did something to physically demonstrate he was no longer resisting and was complying to the point of being brought under the officer's control, Key's analysis would not change regardless of what Sterling may have said. (Key, J. 12/20/2016)

Key provided the following information and opinions regarding shots four, five, and six. Once it is determined lethal force is necessary, officers are taught to shoot to eliminate the threat. The video showed Sterling tried to get up after shots one, two and three. From Sterling's perspective, he may have been moving because he was shot; however, this does not change the analysis from the objectively reasonable officer's perspective. Sterling's right hand was not visible. Salamoni may have been concentrating on his gun sights at the time shots five and six were fired. What was seen in the video may not have registered with Officer Salamoni. The officer reacted instinctively to Sterling turning in a manner that a reasonable officer would have believed Sterling was reaching for a firearm. (Key, J. 12/20/2016)

Key provided the following information and opinion regarding the video file identified as "V3". Salamoni should have never fought Sterling with his firearm drawn and located close to Sterling's hand. The officers should have backed off, covered Sterling, and if he went for a firearm, shot him. Neither officer could likely see Sterling's left hand when he raised it while on his back on the ground. Additionally, when Sterling raised his right hand while on his back on the ground, it became positioned in close proximity to Salamoni's firearm. While the position of Sterling's right hand in close proximity to Salamoni's firearm did not necessarily mean Sterling was reaching for Salamoni's firearm, the totality of the circumstances indicated Sterling was a threat. (Key, J. 12/20/2016)

Key also opined that while on the ground Sterling resisted by bunching up his legs and turning his shoulders. If Sterling was completely submissive while on the ground, he would have gone limp. (Key, J. 12/20/2016)

In his final analysis, Key opined that the use of force by the officers was reasonable. Furthermore, he opined that the officer's tactics and training were problematic. If the matter was declined for prosecution and Salamoni and Lake were his officers, he would review the tactical problems with the officers. (Key, J. 12/20/2016)

Key provided the following opinions and information regarding the statement's Lake and Salamoni gave to BRPD homicide detectives. Their statements did not add anything to his analysis. Any inconsistencies in the statements they provided were close enough to the video

footage to be explained by an error in the recollection of the officers and/or with the officers experiencing possible "tunnel vision" at the time of the incident. Key found that there were no major deviations between the video footage Key reviewed and the officers' statements. As such, and based on his analysis, Key's opinion is that the officer's use of force was reasonable. (Key, J. 12/20/2016)

III. STATEMENT OF LAW

A. STATUTORY AUTHORITY

La. R.S. 14:29. Homicide

Homicide is the killing of a human being by the act, procurement, or culpable omission of another. Criminal homicide is of five grades:

- (1) First degree murder.
- (2) Second degree murder.
- (3) Manslaughter.
- (4) Negligent homicide.
- (5) Vehicular homicide.

La. R.S. 14:30. First degree murder

A. First degree murder is the killing of a human being:

(1) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, second degree kidnapping, aggravated escape, aggravated arson, aggravated or first degree rape, forcible or second degree rape, aggravated burglary, armed robbery, assault by drive-by shooting, first degree robbery, second degree robbery, simple robbery, terrorism, cruelty to juveniles, or second degree cruelty to juveniles.

(2) When the offender has a specific intent to kill or to inflict great bodily harm upon a fireman, peace officer, or civilian employee of the Louisiana State Police Crime Laboratory or any other forensic laboratory engaged in the performance of his lawful duties, or when the specific intent to kill or to inflict great bodily harm is directly related to the victim's status as a fireman, peace officer, or civilian employee.

(3) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person.

(4) When the offender has specific intent to kill or inflict great bodily harm and has offered, has been offered, has given, or has received anything of value for the killing.

(5) When the offender has the specific intent to kill or to inflict great bodily harm upon a victim who is under the age of twelve or sixty-five years of age or older.

(6) When the offender has the specific intent to kill or to inflict great bodily harm while engaged in the distribution, exchange, sale, or purchase, or any attempt thereof, of a controlled dangerous substance listed in Schedules I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.

(7) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the activities prohibited by R.S. 14:107.1(C)(1).

(8) When the offender has specific intent to kill or to inflict great bodily harm and there has been issued by a judge or magistrate any lawful order prohibiting contact between the offender and the victim in response to threats of physical violence or harm which was served on the offender and is in effect at the time of the homicide.

(9) When the offender has specific intent to kill or to inflict great bodily harm upon a victim who was a witness to a crime or was a member of the immediate family of a witness to a crime committed on a prior occasion and:

(a) The killing was committed for the purpose of preventing or influencing the victim's testimony in any criminal action or proceeding whether or not such action or proceeding had been commenced; or

(b) The killing was committed for the purpose of exacting retribution for the victim's prior testimony.

(10) When the offender has a specific intent to kill or to inflict great bodily harm upon a taxicab driver who is in the course and scope of his employment. For purposes of this Paragraph, "taxicab" means a motor vehicle for hire, carrying six passengers or less, including the driver thereof, that is subject to call from a garage, office, taxi stand, or otherwise.

(11) When the offender has a specific intent to kill or inflict great bodily harm and the offender has previously acted with a specific intent to kill or inflict great bodily harm that resulted in the killing of one or more persons.

(12) When the offender has a specific intent to kill or to inflict great bodily harm upon a correctional facility employee who is in the course and scope of his employment.

B.(1) For the purposes of Paragraph (A)(2) of this Section, the term "peace officer" means any peace officer, as defined in R.S. 40:2402, and includes any constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general's investigator, district attorney, assistant district attorney, or district attorney's investigator, coroner, deputy coroner, or coroner investigator.

(2) For the purposes of Paragraph (A)(9) of this Section, the term "member of the immediate family" means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild, or grandchild.

(3) For the purposes of Paragraph (A)(9) of this Section, the term "witness" means any person who has testified or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet commenced.

(4) For purposes of Paragraph (A)(12) of this Section, the term "correctional facility employee" means any employee of any jail, prison, or correctional facility who is not a peace officer as defined by the provisions of Paragraph (1) of this Subsection.

C. (1) If the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment may be capital shall apply.

(2) If the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

La R.S. 14:30.1. Second degree murder

A. Second degree murder is the killing of a human being:

- (1) When the offender has a specific intent to kill or to inflict great bodily harm; or
- (2) When the offender is engaged in the perpetration or attempted perpetration of aggravated or first degree rape, forcible or second degree rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism, even though he has no intent to kill or to inflict great bodily harm.
- (3) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, or any combination thereof, which is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance.
- (4) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, or any combination thereof, to another who subsequently distributes or dispenses such controlled dangerous substance which is the direct cause of the death of the person who ingested or consumed the controlled dangerous substance.

B. Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

La.R.S. 14:31. Manslaughter

A. Manslaughter is:

- (1) A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed; or
- (2) A homicide committed, without any intent to cause death or great bodily harm.
 - (a) When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 30 or 30.1, or of any intentional misdemeanor directly affecting the person; or
 - (b) When the offender is resisting lawful arrest by means, or in a manner, not inherently dangerous, and the circumstances are such that the killing would not be murder under Article 30 or 30.1.

B. Whoever commits manslaughter shall be imprisoned at hard labor for not more than forty years. However, if the victim killed was under the age of ten years, the offender shall be imprisoned at hard labor, without benefit of probation or suspension of sentence, for not less than ten years nor more than forty years.

La.R.S. 14:32. Negligent homicide

A. Negligent homicide is either of the following:

- (1) The killing of a human being by criminal negligence.
- (2) The killing of a human being by a dog or other animal when the owner is reckless and criminally negligent in confining or restraining the dog or other animal.

B. The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence.

C.(1) Except as provided for in Paragraph (2) of this Subsection, whoever commits the crime of negligent homicide shall be imprisoned with or without hard labor for not more than five years, fined not more than five thousand dollars, or both.

(2)(a) If the victim killed was under the age of ten years, the offender shall be imprisoned at hard labor, without benefit of probation, parole, or suspension of sentence, for not less than two nor more than five years.

(b) If the court does not order the offender to a term of imprisonment when the following two factors are established, the court shall state, both orally and in writing at the time of sentencing, the reasons for not sentencing the offender to a term of imprisonment:

- (i) The fatality was caused by a person engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance; and
- (ii) The offender's blood alcohol concentration contributed to the fatality.

(3) If the victim was killed by a dog or other animal, the owner of the dog or other animal shall be imprisoned with or without hard labor for not more than five years or fined not more than five thousand dollars, or both.

D. The provisions of this Section shall not apply to:

(1) Any dog which is owned, or the service of which is employed, by any state or local law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

(2) Any dog trained in accordance with the standards of a national or regional search and rescue association to respond to instructions from its handler in the search and rescue of lost or missing individuals and which dog, together with its handler, is prepared to render search and rescue services at the request of law enforcement.

(3) Any guide or service dog trained at a qualified dog guide or service school who is accompanying any blind person, visually impaired person, person who is deaf or hard of hearing, or person with any other physical disability who is using the dog as a guide or for service.

(4) Any attack made by a dog lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40), against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the dog is protecting that property.

(5) Any attack made by livestock as defined in this Section.

E. For the purposes of this Section:

(1) "Harboring or keeping" means feeding, sheltering, or having custody over the animal for three or more consecutive days.

(2) "Livestock" means any animal except dogs and cats, bred, kept, maintained, raised, or used for profit, that is used in agriculture, aquaculture, agritourism, competition, recreation, or silvaculture, or for other related purposes or used in the production of crops, animals, or plant or

animal products for market. This definition includes but is not limited to cattle, buffalo, bison, oxen, and other bovine; horses, mules, donkeys, and other equine; goats; sheep; swine; chickens, turkeys, and other poultry; domestic rabbits; imported exotic deer and antelope, elk, farm-raised white-tailed deer, farm-raised ratites, and other farm-raised exotic animals; fish, pet turtles, and other animals identified with aquaculture which are located in artificial reservoirs or enclosures that are both on privately owned property and constructed so as to prevent, at all times, the ingress and egress of fish life from public waters; any commercial crawfish from any crawfish pond; and any hybrid, mixture, or mutation of any such animal.

(3) "Owner" means any person, partnership, corporation, or other legal entity owning, harboring, or keeping any animal.

If the District Attorney seeks to prosecute either of these crimes, he is required to bring them before a Grand Jury for indictment.

La.R.S. 14:18. Justification; general provisions

The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. This defense of justification can be claimed under the following circumstances:

(1) When the offender's conduct is an apparently authorized and reasonable fulfillment of any duties of public office; or

(2) When the offender's conduct is a reasonable accomplishment of an arrest which is lawful under the Code of Criminal Procedure; or

(3) When for any reason the offender's conduct is authorized by law; or

(4) When the offender's conduct is reasonable discipline of minors by their parents, tutors or teachers; or

(5) When the crime consists of a failure to perform an affirmative duty and the failure to perform is caused by physical impossibility; or

(6) When any crime, except murder, is committed through the compulsion of threats by another of death or great bodily harm, and the offender reasonably believes the person making the threats is present and would immediately carry out the threats if the crime were not committed; or

(7) When the offender's conduct is in defense of persons or of property under any of the circumstances described in Articles 19 through 22.

La. R.S. 14:20. Justifiable homicide

A. A homicide is justifiable:

(1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.

(2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

(3) When committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling or a place of business, or when committed against a person whom one reasonably believes is attempting to use any unlawful force against a person present in a motor vehicle as defined in R.S. 32:1(40), while committing or attempting to commit a burglary or robbery of such dwelling, business, or motor vehicle.

(4)(a) When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40) when the conflict began, against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the dwelling, place of business, or motor vehicle.

(b) The provisions of this Paragraph shall not apply when the person committing the homicide is engaged, at the time of the homicide, in the acquisition of, the distribution of, or possession of, with intent to distribute a controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Law.

B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the dwelling, place of business, or motor vehicle when the conflict began, if both of the following occur:

(1) The person against whom deadly force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.

(2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.

C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.

D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.

B. JURISPRUDENCE AND ANALYSIS

The seminal question presented is whether Officers Blane Salamoni and Howard Lake can be held criminally responsible for the death of Alton Sterling under applicable laws in the State of Louisiana.

This report and the findings of this investigation do not consider and are in no way dispositive of any civil or administrative consequences.

There is conclusive evidence that proves the shots fired by Salamoni caused the death of Alton Sterling. There is no doubt that a homicide occurred, i.e. the killing of a human being by the act of another, based on the facts of this case and the overwhelming video evidence.

However, not every homicide is a criminal act. Therefore, we are tasked with determining whether this homicide was the product of criminal behavior (i.e. whether a criminal homicide occurred).

In order to prove any criminal charge, the State must prove every element of the crime beyond a reasonable doubt.

Justification is a valid defense when a police officer's conduct was "a reasonable accomplishment of an arrest which is lawful under the Code of Criminal Procedure," was otherwise "authorized by law," or was in defense of a person as described in La. R.S. 14:19 through La. R.S. 14:22. *See* La. R.S. 14:18 (2), (3), and (7).

In order to prosecute a police officer for his or her use of force during an arrest, the State must prove beyond a reasonable doubt either (1) that the force applied was unreasonable or (2) that the police officer used force to obtain an arrest that was not based upon probable cause.

The State always has the burden of proof of every element of the crime. When a defendant in a homicide prosecution claims self-defense, the prosecution must prove beyond a reasonable doubt that the defendant's actions were not justified. *See State v. Taylor*, 2003-1834 (La. 05/25/04), 875 So.2d 58, 63.

The State can defeat a justification defense with proof that the force applied was unreasonable.

Under Louisiana law, specifically under La. C.Cr.P. art. 220, "A person shall submit peaceably to a lawful arrest. The person making a lawful arrest may use reasonable force to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained."

As described above, the United States Department of Justice employed two independent experts in the use of force to evaluate the conduct of Officers Lake and Salamoni in their encounter with Alton Sterling. Both experts independently concluded that the officers in question acted in a reasonable and justifiable manner in the use of force according to current legal standards.

Although an officer may use reasonable force to affect a lawful arrest, the officer may not employ unnecessary and unreasonable brutality in arresting. If the officer uses unreasonable force against a person who has submitted peaceably to an arrest, the person being arrested may defend himself. The person may even kill, if necessary to prevent death or great bodily harm. *State v. Bryan*, 398 So.2d 1019, 1021 n. 2 (La. 1981) (citations omitted); *see also State v. Ceaser*, 2002-3021 (La. 10/21/03), 859 So.2d 639, 643 (a person resisting an illegal arrest may only use such force as may be necessary).

In *State v. Everett*, the Third Circuit affirmed a bounty hunter's conviction of aggravated battery where the bounty hunter shot the victim three times without provocation while the victim was handcuffed. 530 So.2d 615, 623 (La. App. 3rd Cir. 1988), *writ denied*, 536 So.2d 1233 (La. 1989). The Court reasoned that, even though the defendant was authorized by law to arrest the

victim, La. R.S. 14:18 and La. C.Cr.P. art. 220 require that the force used be reasonable and, in that case, the jury could rationally determine that the force employed was unreasonable. *Id.*

The State can also prove its case by showing that the police officer did not have probable cause. In order for an arrest to be lawful, it must also be based upon probable cause. *State v. Leatherwood*, 411 So.2d 29, 32 (La. 1982) Probable cause is a "non-technical concept" that "does not require the fine resolution of conflicting evidence" and is based upon "an assessment of the collective knowledge possessed by all of the police involved in the investigation... viewed from the standpoint of an objectively reasonable police officer." *McMasters v. Dep't of Police*, 13-0348 (La. App. 4th Cir. 05/15/15), 172 So.3d 105, 119 (citations and internal quotation marks omitted); *see also Ceaser*, 859 So.2d at 644 (the subjective belief that probable cause exists is not relevant, rather it is an objective determination based upon the facts within the officer's knowledge). "Furthermore, probable cause, and not absolute certainty, is the test to be applied in judging the validity of an arrest, and all possible lawful explanations of a situation need not be negated before making an arrest." *Ceaser*, 859 So.2d at 644 (citations omitted).

Determining whether probable cause existed is "based on an assessment of the collective knowledge possessed by all of the police involved in the investigation." *State v. Surtain*, 2009-1835 (La. 03/16/10), 31 So.3d 1037, 1046 (citation omitted). For example, if officer one knows that a suspect has a gun and officer two knows that the suspect is not legally allowed to carry a gun, and if both officers are involved in the investigation, probable cause exists. In this case, officers were responding to complaint of an assault with a firearm. This complainant particularly described the suspect, the location, the activities of the suspect and the location of the firearm. These details gave the complainants statements an indicia of reliability. Furthermore, when the officers arrived on the scene, they found the scene to be precisely as the scene was described by the victim. Additionally, they found a man that fit the particular description of the suspect in Alton Sterling. Also, they found the suspect engaged in the activity, selling CDs, and in the location, in front of the convenient store. Finally, the victim remained on the phone with dispatch describing the activities of the suspect (Sterling) until the officers arrived on the scene.

Considering these facts and the response they received from the suspect (Sterling) officers had probable cause to affect the arrest of Alton Sterling.

Regardless of whether a police officer had probable cause for an arrest, his or her actions will still be justified under La. R.S. 14:18(3) if the police officer was complying with *Terry v. Ohio*, 392 U.S. 1 (1968).

The State would therefore be bound to prove beyond a reasonable doubt that the police officer in question was violating Louisiana's stop-and-frisk law, La. C.Cr.P. art. 215.1. If a police officer "reasonably suspects" that a person "has committed" any crime and the officer "reasonably suspects that he is in danger, he may frisk the outer clothing of such person for a dangerous weapon. If the law enforcement officer reasonably suspects the person possesses a dangerous weapon, he may search the person." La. C.Cr.P. art.215.1(A) and (B). The Louisiana Supreme Court explained in *State v. Sims* that La. C.Cr.P. art. 220 does not apply to a *Terry* stop. 2002-2208 (La. 06/27/03), 851 So.2d 1039, 1046, *limited on other grounds*. Therefore, "an individual does not have the right to resist an unlawful stop-and-frisk."

For a discussion of the applicability of a *Terry* stop dealing with an anonymous tip where the tipster reported a crime, gave a physical description, saw a gun, and called 911, see *Navarette v. California*, 134 S.Ct. 1683, 1687-1690 (2014); *State v. Carter*, 13-1952 (La. 12/02/13), 130 So.3d 308, 311. In the alternative to a finding of probable cause, there is no doubt and it is unquestionable that Officers Lake and Salamoni were acting lawfully in conducting a stop and frisk of Sterling, which Sterling resisted until he was lethally subdued by Officer Salamoni. Based on the complaint and the actions of Sterling, the officers had a reason to believe Sterling was armed and dangerous. And, Sterling was, in fact, found to be armed with a loaded revolver.

"A homicide is justifiable when committed in self-defense by one who reasonably believes that he [or another person] is in imminent danger of losing his life or receiving great bodily harm *and* that the killing is necessary to save himself from that danger." *State v. Hunter*, 2015-0306 (La. App. 4th Cir. 09/09/15), 176 So.3d 530, 533 (citing La. R.S. 14:20(A)(1)) (emphasis in original and brackets omitted); see also La. R.S. 14:22. It is clear from the statements of Officers Lake and Salamoni that both officers believed Alton Sterling was armed. And most importantly, at the moments before Salamoni used deadly force to subdue Sterling, he announced that Sterling "had a gun" and that "he's going for his gun".

These extemporaneous statements by Officer Salamoni are indicative of his state of mind at the instant right before he discharged his weapon to disable Sterling and end the perceived threat to both his life and the life of Officer Lake.

Under La. R.S. 14:20(A)(2) a homicide is also justifiable when it is committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

Aggravated assault upon a police officer is defined as a violent felony. See La. R.S. 14:2(B)(32); La. R.S. 14:37.2; and La. R.S. 14:2(A)(4). The elements of an aggravated assault of a police officer can consist of placing a police officer, who is acting within the course and scope of his duties, in reasonable apprehension of receiving a battery. La. R.S. 14:36; La. R.S. 14:37.2.

Therefore, a police officer can use deadly force upon a person for the purpose of preventing an aggravated assault of a police officer if the officer has a reasonable and well founded belief that there is a danger to his own life or that of another.

The federal Fifth Circuit has equated whether force was justified under La. R.S. 14:20 to whether force was excessive under the Fourth Amendment. *Connors v. Graves*, 538 F.3d 373, 377 (5th Cir. 2008). The Fifth Circuit held, that a police officer can use deadly force if the officers could have reasonably concluded that the suspect was about to commit a violent felony. *Id.*

When analyzing whether police officers used excessive force under the Fourth Amendment, the United States Supreme Court has pointed out that a federal court of appeals has held that "the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect" if the officer had reason to

believe that the suspect was dangerous. *Mullenix v. Luna*, 136 S.Ct. 305, 311 (2015) (discussing *Long v. Slaton*, 508 F.3d 576, 581-582 (11th Cir. 2007)). The *Long* Court "also rejected the notion that the deputy should have first tried less lethal methods..." *Id.* The *Long* Court thought that the "police need not have taken that chance and hoped for the best." *Id.* (discussing *Long*, 508 F.3d at 583).

Reasonableness would be analyzed "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Plumhoff v. Rickard*, 134 S.Ct. 2012, 2020 (2014) (citation and internal quotation marks omitted). The State could not reasonably refute, legally or factually, 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.* (citation and internal quotation marks omitted).

The appropriate analysis is not whether the officer could have done something different after a hindsight review of the circumstances. Instead, the law compels consideration of the rapid evolution of a police encounter and the decision made by officers at the moment that deadly force is used. In this matter, Officers Lake and Salamoni both had reason to believe Sterling was armed and that his failure to comply with verbal commands, the deployment of non-lethal force and Sterling's lack of compliance with additional physical techniques while they reasonably believed he was armed was an immediate threat to their lives.

Finally, note that this analysis does not depend upon whether the potential crimes alleged against the officer in question requires specific intent, general intent, or criminal negligence. If a police officer can prove justification, then a jury must acquit, regardless of the intent required to commit the crime.

IV. CONCLUSION

After a thorough and exhaustive review of the evidence, the facts that can be established beyond a reasonable doubt, the law and jurisprudence of the State of Louisiana, and the obligations of prosecutors under the Code of Professional Conduct, the Louisiana Department of Justice cannot proceed with a prosecution of either Officer Howard Lake or Officer Blane Salamoni.

The Louisiana Department of Justice comes to this conclusion after countless hours reviewing the evidence gathered and turned over by the United States Department of Justice, including thousands of pages of documents and reports, and scores of photographs and extensive video evidence. In addition, the Louisiana Department of Justice contacted the eye-witnesses to the event to review once again their description of the event to determine if any additional information could be ascertained and evaluated.

Two independent experts hired by the U.S. Department of Justice have concluded that both Officers Lake and Salamoni acted in a reasonable and justified manner in the shooting death of Alton Sterling. Justification is a defense that must be overcome by the State in this case beyond a reasonable doubt.

Career staff members of the United States Department of Justice drew the same conclusions after USDOJ's own exhaustive investigation relative to federal law.

After a complete and thorough review of the USDOJ investigation and the further investigations by the LADOJ into the potential violations of State criminal charges, we also find that Officers Lake and Salamoni acted as reasonable officers under the circumstances in response to their investigation into the complaint of Aggravated Assault with a Firearm in the very early morning hours of July 5, 2016.

In response to a complaint of a violent crime, Officers Lake and Salamoni attempted to make a lawful arrest of Alton Sterling based upon probable cause.

During that encounter, Sterling continuously refused to comply with officer's verbal commands and with their attempts to subdue Sterling using non-lethal force. Considering the toxicology reports, it is clear that Sterling was under the heavy influence of several scheduled and illegal narcotics. Sterling also had a history of non-compliance while armed with a firearm as demonstrated from the previous incident detailed above.

Throughout the encounter, the Officers Salamoni and Lake attempted to gain control of Sterling's hands. Considering that the complaint received from the BRPD dispatch would have led both men to believe that Sterling was armed and dangerous, their attempts to secure the suspect's hands were well founded and reasonable under the circumstances and under the law. Moreover, their apprehension regarding his status as armed and dangerous was, in fact, subsequently verified as correct.

Additionally, and in the alternative, their persistence in attempting to frisk Sterling and disarm him was also reasonable and well founded. After initially failing to gain control of Sterling's hands through strong physical techniques and very clear verbal commands, the Officers attempted to use the taser to gain control over the suspect.

No less than two attempts were made using this non-lethal technique. This use of non-lethal force evidences the intent of the officers to use alternative methods to subdue Sterling. It also indicates that the officers were not engaged with some premeditated intent to kill Alton Sterling.

After exhausting all alternative methods, Officer Salamoni attempted to take Sterling to the ground and disable the suspect. Again, Officers attempted to subdue a suspect, who they had reason to believe was armed, in a non-lethal manner. Once on the ground, both officers again immediately attempted to gain control of Sterling's hand.

Video evidence clearly shows Officer Salamoni making several attempts to gain control of Sterling's right hand. After failed attempts, Officer Salamoni removed his firearm and gave a loud and clear command to Sterling to not move and terminate his resistance.

Sterling continued his resistance and failed to give the officers control of his hands. Salomoni again attempted to prevent Sterling from putting his hand in proximity of his pocket

which at this time was under the vehicle. Salamoni then made a loud and clear statement that Sterling had a gun. During this time he continued efforts to gain control of the right hand of Alton Sterling who continued to resist these efforts.

Shortly thereafter, Salamoni announced to Lake that Sterling was “going for the gun”. Salamoni then discharged his service weapon and used lethal force to protect his life and the life of Officer Lake.

Self Defense, Defense of Others and Justification are all viable legal defenses to any homicide. These defenses do not depend upon whether the crime charged requires specific intent, general intent, or criminal negligence. If a police officer can prove justification, then a jury must acquit, regardless of the intent required to commit the crime.

Before the State Attorney General may bring any charge before a Grand Jury, he must determine whether he has sufficient evidence to warrant a conviction based on the facts of the case upon a fair and thorough review of the evidence and the applicable law. The standard of proof for any State criminal charge is proof beyond any reasonable doubt. This is the highest standard of proof in the law. Every element of any crime contemplated must meet this test. That is, each element of any crime contemplated must be proven by a reasonable doubt.

The State Attorney General may present murder cases to a Grand Jury. However in doing so, he is bound legally and ethically by certain standards. First, he must determine the evidence he has to present “if unexplained and uncontradicted, warrants a conviction.” Furthermore, pursuant to the Rules of Professional Conduct required of all prosecutors, the State Attorney General is required to “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause”.

Considering the expert opinion of two independent use of force experts, an exhaustive investigation of thousands of pages of material, and the law and jurisprudence of the State of Louisiana, we have concluded that the officers in question acted as reasonable officers under existing law and were justified in their use of force.

Therefore, the State cannot bring this matter before a Grand Jury to seek a Bill of Indictment, nor can it bring any other criminal charges by Bill of Information.

Where law enforcement officers have a legal defense to any criminal charges based on justification, including those only requiring proof of criminal neglect, it would be a violation of our mandate to uphold the laws and Constitution of the State of Louisiana, as well as our prosecutorial obligations under the Rules of Professional Conduct, to take any further action.

In drawing this conclusion, the Louisiana Department of Justice has considered all of the documentary and video evidence compiled by the U.S. Department of Justice under the administrations of President Obama and President Trump, the independent experts retained by the USDOJ, our independent investigation and review, including our independent interviews of the eye witnesses, and every aspect of the applicable laws.

THIS IS A PUBLIC DOCUMENT ISSUED AND PUBLISHED ON
WWW.AG.STATE.LA.US ONLY AFTER THE DETERMINATION BY THE
LOUISIANA STATE ATTORNEY GENERAL THAT A CRIMINAL
INVESTIGATION IS NO LONGER PENDING.