



# MEMORANDUM

SACRAMENTO COUNTY DISTRICT ATTORNEY'S OFFICE

**ANNE MARIE SCHUBERT**  
DISTRICT ATTORNEY

**DATE:** September 23, 2016

**TO:** Deputy District Attorney Tan Think

**FROM:** Criminal Investigators Scott Waterman #54 and Daniel Garbutt #19

**SUBJECT:** Officer involved shooting (SSD 16-285423)  
Jesse ATTAWAY (XRef: 2104112) Deceased

**Criminal Investigator Scott Waterman:**

## NOTIFICATION

At 0530 hours, I received a phone call from Sacramento County District Attorney's Office Criminal Investigator Dan Garbutt advising me that there had been an officer involved shooting by the Sacramento County Sheriff's Department (SSD) and that our office had received a request to respond to the incident. I responded to the command post established at the intersection of Piedra Way and Mohawk Way.

## BRIEFING

At 0655 hours a briefing was given regarding the officer involved shooting. SSD units responded to [REDACTED] Tucson Way for a reported burglary in progress. The homeowner at [REDACTED] Tucson Way reported that he had found someone, later identified as Jessie ATTAWAY, inside his residence and was able to escort him outside. The homeowner at [REDACTED] Tucson Way called to say that ATTAWAY had attempted to gain access to her residence but she was able to prevent him from opening the back door. The woman said her husband was outside with ATTAWAY who then fled the scene through the back yard. Apparently ATTAWAY fled on foot northbound Vincent Ave across Madison Ave to Hazel Ave where Deputies Cater and Mai spotted him at Piedra Way. Deputies Cater and Mai followed ATTAWAY, in their fully marked patrol vehicle, westbound Piedra Way to Mohawk Way where ATTAWAY went southbound. Deputies Cater and Mai stopped their patrol vehicle and exited and commanded ATTAWAY to come toward them. ATTAWAY apparently had his back to the deputies and turned toward them with his hands together in front of him in a "shooting like stance." ATTAWAY apparently had a dark object in his hands. ATTAWAY was then fired upon by both deputies. As other deputies arrived on scene lifesaving efforts were performed and medical assistance was requested however, ATTAWAY expired at the scene.

## WALKTHROUGH

No formal walkthrough was performed as it was not feasible. Observations were made from outside the crime scene tape that surrounded the area. The 8800 block of Mohawk Way is a north to south residential street that intersects the 8800 block of Piedra Way to form a "T" intersection. The nearby yards have mature trees. I observed two SSD fully marked patrol vehicles, one on the east side of Mohawk Way and one on the west side of Mohawk Way. Each was facing south with their front vehicle doors open. The east side vehicle was the primary vehicle and the west side vehicle was a cover unit that apparently arrived after the shooting occurred. A short distance in front of the east patrol vehicle I observed a white male, unclothed except for underwear and cloth/bandages covering his head and face area, lying on the street. I observed more than one shell casing on the ground.

**Criminal Investigator Daniel Garbutt:**

## INTERVIEW(S)

SSD Homicide Detectives interviewed the resident victims who lived at [REDACTED] Tucson Way who were the victims of attempted residential burglaries at their respective residences. Those interviews are not documented in this memorandum, however, the interviews will be documented in SSD's completed investigation report regarding each of the victim's interactions with ATTAWAY during the attempted burglaries.

## DEPUTY INTERVIEWS

SSD Deputies Andrew Cater, a Field Training Officer, and Bao Mai, a Second Phase, Week One Trainee, were the two Deputies who fired shots from their issued duty handguns during this incident. Neither Deputy was equipped with a body worn camera. Their assigned patrol car was equipped with an In Car Camera (ICC) system which captured the entire incident and interaction that these Deputies had with ATTAWAY. Deputy Cater was the driver of the patrol car, and Deputy Mai was the front seat passenger. Both Deputies were wearing fully marked SSD issued black patrol uniforms.

Deputy Kevin Mickelsen, President of the Sacramento County Deputy Sheriff's Association (DSA), reviewed the ICC footage of the incident along with the attorneys representing Deputy Cater and Deputy Mai. Deputy Mickelson said the ICC footage was consistent with the statements the Deputies provided to their respective attorneys regarding the incident. As a result, neither of these Deputies reviewed the ICC footage of this incident prior to being interviewed by SSD Homicide Detectives.

## DEPUTY ANDREW CATER

On 9/23/2016 at 1045 hours, Deputy Andrew Cater was interviewed by SSD Homicide Detectives at the SSD Centralized Investigations Division (CID) Office. Cater's interview is summarized as follows.

Cater is a 12 year SSD veteran, having been hired by SSD in April 2004.

Cater cleared and unloaded his department issued Glock Model 17, Generation 4, 9mm semi-automatic pistol during the interview at the direction of Detectives. There was one live round in the chamber and 5 live rounds in the magazine. Cater keeps one round in the chamber with the magazine loaded to the 17 round capacity. Based on this, Cater expended 12 rounds during the altercation with ATTAWAY.

Deputy Cater and Deputy Mai were taking a missing person report in SSD District 4 in the Arden Area near the Sacramento city limits when Cater heard a call of a burglary in progress and possible home invasion robbery in progress call in the Fair Oaks area. An altercation had occurred between the suspect and the homeowner. Radio updates continued to take place as multiple deputies began driving toward the call at [REDACTED] Tucson Way near the major intersection of Hazel Avenue and Madison Avenue. One of the radio updates was that the suspect was a white male aged 30-40 who had left the house and was now breaking into the residence at [REDACTED] Tucson Way which was directly next door to [REDACTED] Tucson Way. SSD patrol deputies established a perimeter after learning the suspect had ran over a fence from the second residence after he was unable to make entry into the residence.

Deputies Cater and Mai arrived in the area of Madison Avenue and Hazel Avenue and spotted a male subject matching the description of the suspect walking northbound on the west side of Hazel Avenue. Deputy Cater had his emergency lights and siren turned on as they searched for the suspect. Deputy Cater drove the patrol car northbound on Hazel Avenue and looked to the west where he saw the suspect walking at a brisk pace westbound on Piedra Way from Hazel Avenue.

Deputy Cater drove onto Piedra Way and then turned southbound at the intersection of Mohawk Way as the suspect walked southbound on Mohawk. The suspect was now walking out into the street away from the sidewalk. Deputy Cater stopped the patrol car and ordered the suspect to stop, but he didn't comply and continued to walk away from the deputies with his back turned to them. Deputies Cater and Mai exited the patrol car and continued to yell commands at the suspect. The suspect still had his back turned with his hands in front of him. Deputies ordered the suspect to let them see his hands. The suspect smirked as he turned his head toward deputies but continued to have his back turned and his hands in front of him near his body.

Deputy Cater thought that it seemed as if the suspect was refusing to comply with the commands from the deputies in order to draw them closer to him. The suspect then turned his body part way around, and Deputy Cater saw the suspect's arm and hand go over to his waistband. The suspect then hunched over and drew an object from his waistband. The suspect then turned his body rapidly toward the deputies and assumed a shooting stance with something black in his hand. Deputy Cater immediately began to retreat to behind a nearby tree in the yard near his patrol car since he believed the tree had, better cover than the patrol vehicle. The suspect meanwhile continued to try to aim the object toward the deputies. Deputy Cater then fired his handgun toward the suspect, and he did not want the suspect to be able to shoot a round toward him. Deputy Cater fired between 2 and 4 rounds initially and could hear rounds also being fired from where Deputy Mai was located (to Deputy Cater's right on the other side of the patrol car).

The suspect then began to fall over toward one side and to the ground, but the suspect was able to control his fall, and it did not appear as if the suspect went limp and just dropped to the ground. The suspect then got up again and squared off at the deputies and again pointed an object at them again. Deputy Cater said he was afraid for himself and for his partner (Deputy Mai), so Deputy Cater fired again, and this time, the suspect appeared to have gone limp as he fell to the ground.

Deputy Cater then took cover behind the tree in the yard at the corner of Piedra Way and Mohawk Way. Deputy Cater looked out from behind the tree, and the suspect was bleeding from the head.

Deputy Cater immediately called on the radio for medical aid, and Deputy Gomes arrived on scene. Other deputies arrived on scene and formed a three man arrest team to move forward toward the suspect and take him into custody. Deputy Mai began to move forward toward the suspect as well, but Deputy Cater ordered Deputy Mai to stay back. The suspect was taken into custody by the other deputies, and he still had a pulse but expired shortly thereafter on scene.

As Deputy Cater was driving to this call, he was thinking in his mind that this whole call was crazy. He was attempting to fathom why a suspect would attempt to commit a home invasion robbery and then immediately try to commit another one right next door. Deputy Cater knew he and Deputy Mai would be dealing with a serious violent felon who was not acting normal or logical. It just didn't seem right that someone would commit two home invasions right next door to each other and attempt to kidnap a woman, which was the information he had based on the radio updates on the way to the call.

Based on the suspect's behavior, Deputy Cater believed it was very likely the suspect would be armed with a weapon and would not hesitate to confront deputies based on his confrontations with the civilian victims during the call.

Deputy Cater added that Deputy Mai was a second phase, day two trainee in the SSD field training program. He had been assigned to patrol for 8 weeks prior in phase one. At this stage of Deputy Mai's training, Deputy Cater believed that he still needed direct supervision and shouldn't be considered a full partner officer.

Deputy Cater said it was very dark in the neighborhood at the scene where he and Deputy Mai made contact with the suspect.

Regarding verbal commands, Deputy Cater said he thought that he remembered giving verbal commands, and his focus was on the hands of the suspect which he was unable to see. Deputy Cater feared for his safety and thought that the suspect was going to shoot him, and there was no doubt in his mind that this was about to happen. Deputy Cater estimated the distance from him to the suspect at the time of the encounter to be about 20 yards.

The interview with Deputy Cater ended at 1132 hours.

#### DEPUTY BAO MAI

On 9/23/2016 at 1150 hours, Deputy Bao Mai was interviewed by SSD Homicide Detectives at the SSD Centralized Investigations Division (CID) Office. Mai's interview is summarized as follows.

Mai is 32 years old and was hired as an on-call deputy with SSD in June 2011. He became a permanent full time hire in May 2014. His prior assignments include the Sacramento County Main Jail and the Rio Consumnes Correctional Center (RCCC). He is currently assigned to the SSD North Patrol Station as a patrol trainee deputy. His shift started the previous night on 9/22/2016 at 2130 hours and was to end this same morning on 9/23/2016 at 0730 hours. This was only the second day of this shift for Deputy Mai as he had previously been assigned to day shift for the

previous 8 weeks of his phase one training. His shift during that time period was 0630 hours until 1630 hours.

Deputy Mai unloaded and cleared his issued Glock Model 17 9 mm handgun at the direction of the Homicide Detectives. There was one chambered round and 7 more in the magazine. Due to the stiffness of the spring of the new magazine, Deputy Mai only loaded the magazine with 15 total rounds and then cocked the gun to put one in the chamber, leaving 14 in the magazine. This means that Deputy Mai expended 7 rounds. The next magazine was loaded with 16 rounds, and the final magazine was loaded with 17 rounds.

Prior to the start of his shift, Deputy Mai inspected the patrol vehicle that he and Deputy Cater were assigned to drive. All of the lights, sirens, and the in car computer were in working order. Deputy Mai drove for the first half of the shift, and Deputy Cater was driving when they received the call that they responded to in Fair Oaks.

Deputy Mai was taking a missing person report on Bell Avenue in District 4 when he heard a radio call of the burglary in progress. Deputy Cater told Deputy Mai that they needed to leave and respond to the burglary call. Multiple SSD patrol units were responding Code 3 to this call.

Deputy Mai and Deputy Cater were driving southbound on Hazel Avenue near Madison Avenue. Deputy Mai looked out his passenger side window and saw a white male adult who looked at him. After a repeat description of the suspect's clothing was broadcast from SSD Dispatch, Deputy Mai told Deputy Cater that he thought this was the suspect they were looking for.

The deputies briefly lost sight of the suspect but saw him again as they drove down Piedra Way toward Mohawk Way. As they drove toward the suspect, Deputy Mai told the suspect, "Hey you. Come here." The suspect continued walking away from the front of the patrol car, and Deputy Mai thought that the suspect was going to run from them. Deputy Mai got out of the passenger's seat of the patrol car, and the suspect, who had his back turned to the deputies, reached into his front waistband area. Deputy Mai repeatedly ordered the suspect to get his hands up. The suspect ignored these commands and again reached toward his waistband and pulled out what Deputy Mai said appeared to be a gun and extended it in a punching out motion (Punching out is a term used to aggressively extend a handgun toward an intended target).

Deputy Mai fired his gun once and could also hear shots coming from Deputy Cater's location. The suspect fell down but then immediately got back up and pointed something at the deputies again. Both Deputy Mai and Deputy Cater fired their guns again toward the suspect. Deputy Mai said he feared for his life.

Deputy Mai said the initial call was a burglary in progress which was a felony crime. The suspect was still said to be in the area and the crime was in progress. This posed a high risk for the deputies and residents since the suspect had confronted the victim inside of the house. The suspect then tried to pull a woman out of a second house. The suspect seemed to be determined.

Deputy Mai clarified that he took cover behind the passenger's door of the patrol car during this encounter. The suspect aimed at Deputy Mai and walked toward him while bringing his hands up in a gun pointing motion. Deputy Mai knows that suspects who carry guns typically keep them in their waistband area, and this suspect was about 25 feet away from Deputy Mai. The suspect took a square shooting stance just like Deputy Mai had been taught in the academy.

Deputy Mai fired his gun, and the suspect stumbled. The suspect then stood back up, and Deputy Mai shot him again. The suspect dropped to the ground and was laying on his side. The suspect then reached out and was trying to grab something on the ground next to him and was still moving. Deputy Mai heard another shot be fired by Deputy Cater, and the suspect laid still and didn't move anymore.

Deputy Cater ordered Deputy Mai not to approach the suspect and to stay behind cover. An arrest team of other SSD Deputies assembled and moved forward to the suspect and took him into custody. Deputy Cater and Deputy Mai never approached the suspect.

The interview was concluded at 1225 hours.