



HUMBOLDT COUNTY DISTRICT ATTORNEY'S OFFICE  
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**PRESS RELEASE**

Date: November 21, 2014

From: Paul V. Gallegos, District Attorney

The Critical Incident Response Team investigation report regarding the Officer Involved Shooting of Thomas McClain on September 17, 2014, was provided to the Humboldt County District Attorney's Office on November 12, 2014. The report was reviewed and analyzed the report in its entirety.

It is not the purpose of the Office of the District Attorney's investigation or report to determine if any officer violated police policy or procedure, or committed any act that would be subject to civil sanctions. Rather, the Office of the District Attorney reviews and analyzes all the evidence only to determine whether the officer and/or officers involved in an Officer Involved Shooting acted unlawfully.

The crime charging standards are the same for civilians and peace officers. The District Attorney's policy regarding crime charging is a state-wide policy that is reflected in the California District Attorneys Association's: Professionalism, A Sourcebook of Ethics and Civil Liability Principles for Prosecutors. It states:

"The prosecutor should charge only if the following four basic requirements are satisfied:

1. The prosecutor, based on a complete investigation and a thorough consideration of all pertinent facts readily available, is satisfied that the evidence proves that the accused is guilty of the crime to be charged;
2. There is legally sufficient, admissible evidence of a corpus delicti;
3. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged; and
4. The prosecutor has considered the probability of conviction by an objective fact finder and has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after considering the most plausible and reasonably foreseeable defenses."

After reviewing the report in its entirety, the District Attorney's Office concluded that the evidence does not prove beyond a reasonable doubt that an officer committed a crime. Therefore, no criminal charges will be filed against any officer arising out of the September 17, 2014, shooting of Thomas McClain.

Specifically, the evidence establishes that, on the early morning hours of September 17, 2014, Thomas McClain was in possession of a BB gun that resembled an actual firearm. Thomas McClain was carrying the BB gun in the front waistline of his pants. The BB gun was perceived as an actual firearm by law enforcement officers. On lawfully engaging with Thomas McClain, law enforcement officers directed him to put his hands up and comply with their orders. At that time, the officers observed what they believed was Thomas McClain moving his hand toward the BB gun. Believing that the BB gun was an actual firearm, and that Thomas McClain would shoot them, the officers responded and Thomas McClain was shot and killed. The perceived firearm was later determined to be an unarmed BB gun.

The District Attorney stated that: "Thomas McClain's death is a terrible tragedy. He is mourned by his family, his friends and this community but it was not caused by any criminal activity that I can see on the part of the law enforcement officers. My heart and my prayers go out to Thomas McClain, his family and friends and the law enforcement officers involved in this terrible tragedy. It is my sincere hope that time brings comfort and solace to all."