

**M e m o r a n d u m**

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Date : May 2, 2007

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Subject : Roman Torres, Vista Shooting  
SD2007800583

**SUMMARY**

Our office was asked to review this officer involved shooting to determine whether the San Diego County District Attorney's Office abused its discretion when it declined to file criminal charges against San Diego County Sheriff's Deputies John Spach and Clayton Lisk for their roles in the May 15, 2005, shooting death of Gilberto Torres-Ramirez a.k.a Roman Torres (Roman).<sup>1</sup> I have concluded that Deputies Spach and Lisk justifiably used deadly force in the defense of self and each other. Accordingly, the District Attorney's Office did not abuse its discretion in declining to prosecute Deputies Spach and Lisk.

**BASIS OF REVIEW**

In evaluating this case, I relied upon detailed and extensive investigative materials of the San Diego County Sheriff's Department. Those materials included the 911 call, the recorded interview of the victim of Roman's gun assault, the recorded interviews of Deputies Spach and Lisk and Roman's two brothers conducted the night of the shooting, numerous recorded and written interviews of civilian witnesses, the autopsy report and photographs, Roman's toxicology results, photographs and diagrams

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1. The decedent is referred to by his first name in order to avoid confusion with his two brothers Florencio and Guadalupe Torres who are also discussed in this analysis.

of the scene and all other reports generated as a result of the investigation into this matter. After examining the entire case file and reaching my own decision, I reviewed the letter of the San Diego District Attorney which also concluded that the shooting was justified.

## **FACTS**

### ***The 911 Call and Reports of Shots Fired***

Around 4:30 p.m. on May 15, 2005, sixteen-year-old Jesus V.<sup>2</sup> called 911. In obvious distress and fear, Jesus reported that his neighbor (Roman) was really drunk and accused him of breaking into his car. Roman then pointed a silver revolver at Jesus, threatened his life and that of Jesus' family and fired the revolver twice as Jesus fled into his apartment at 334 Hillside Terrace, Vista. Jesus believed Roman had also fired his gun before confronting Jesus because he heard one or two gun shots preceding their encounter.

Jesus gave a description of Roman as an Hispanic male, 5'3 or 5'4, approximately 140 lbs., mid-thirties, bald, wearing a blue flannel shirt and blue jeans and carrying a silver revolver. His report of gunfire and description of Roman were broadcasted to patrolling Sheriff's deputies. During the 911 call Jesus declined the operator's request to meet the responding officer outside, stating that he was too scared to leave his apartment.

### ***Officers Respond to the Scene and Shooting***

Deputies Spach, Lisk and Myers each arrived at the scene around 4:43 p.m. All three deputies armed themselves with AR-15 rifles. Side-by-side Deputies Spach and Lisk entered the south side of the Hillside Terrace two-duplex apartment complex. Deputy Myers followed behind. The pathway between the duplexes had a lot of natural light and visibility was good. The deputies observed an Hispanic male matching the description of the shooter. The suspect, later identified as Roman Torres, sat approximately 15 to 20 feet away on the top step of a concrete stairway at the front of

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2. Because Jesus V. expressed concern for his safety and that of his family as a result of reporting Roman's gun shots to police and the possibility of this report becoming public I am not using Jesus' last name.

the complex. Roman had his back to deputies. With guns drawn and pointed at Roman, Deputy Lisk identified themselves as officers and asked to see Roman's hands, yelling: "Sheriff's Department! Let me see your hands!" In response, Roman suddenly twisted his upper body, raised his right hand and pointed a silver revolver at the deputies. Deputy Lisk could also see Roman's finger on the trigger. The uniformed deputies were equally visible to Roman. Out of fear of their own life and that of each other, Deputies Lisk and Spach fired their weapons at Roman, striking his head and torso five times. Roman fell down the steps.

Deputy Myers did not fire at Roman because his line of fire was obscured by Deputies Lisk and Spach. Deputy Myers checked Roman for signs of life but found none. The silver revolver lay on second to the top step. The revolver was loaded with two cartridges, one chambered and the other lined up for firing. There were two .38-caliber shell casings on the ground near Roman.

### ***Follow-up Investigation***

Both Deputy Spach and Deputy Lisk submitted to separately recorded interviews the night of the shooting. Each consistently related Deputy Lisk's identification of Roman as the suspected shooter, his announcement of their presence and call to show hands to Roman as well as Roman's disregard of the command and his act of pointing a gun at the officers. Deputy Myers completely corroborated this course of events.

After securing the shooting area, the Sheriff's Department, using numerous deputies, canvassed the apartment complex and surrounding area for possible witnesses to the shooting. The deputies contacted Jesus as well as numerous neighbors, recording most of the interviews.

Jesus repeated his statements that he made to 911. He added that Roman had lived with his two brothers, who are named Florencio and Guadalupe Torres. Jesus was not friends with the Torreses but they had a neighborly relationship, saying hello and sometimes Roman came over and asked to borrow sugar or use the telephone. Roman and his brothers had told Jesus in the past that they were "famous" in Mexico because

they had "killed some people" and that is why they came to the United States. Jesus

stated the Torres brothers were often drunk and high. Jesus had also seen Roman with a handgun and a shotgun during the course of the previous year.

A month prior to the shooting someone broke into Florencio's car. Two weeks ago Roman asked Jesus whether he had broken into the car and Jesus denied that he did. Jesus believed that was the end of it but when he came home on May 15, 2005, after playing soccer, Roman confronted him again. Jesus had seen Roman in his apartment with a friend when he arrived home. He heard someone say, "he's home" and believed they were talking about him but continued to the apartment he shared with his mother and grandmother. About 20 minutes later, after Jesus heard two shots fired, Roman knocked at Jesus' door. The two spoke on the landing. Jesus could see Roman was really drunk, he smelled of beer and his eyes were "red and bloody." Roman started accusing Jesus of breaking into his car and threatened, "You're going to pay for what happened to my car. I'm going to kill you. I'm going to kill your family." Roman then pulled out a silver revolver and said, "you shouldn't mess with me, I could kill you." When Roman started to point the gun at Jesus he quickly went inside his apartment. As he shut the door, Roman fired two shots toward the apartment. Jesus heard another shot before he heard the gunfire from the responding deputies. Jesus estimated he heard a total of five shots.

Sheriff's deputies also interviewed Roman's two brothers the same evening of the shooting. Roman, Guadalupe and Florencio Torres came to San Diego from Tijuana between a year and half to three years ago. To the brothers' knowledge, Roman had been shot once or twice in Mexico. The brothers were not clear on whether Roman had been shot during the course of criminal activity, but Florencio suspected that was the case.

On the day of the shooting, Guadalupe said he left work because a neighbor told him Roman had been drinking and had fired his gun. He said Roman became very aggressive and violent when upset, regardless of whether he had been drinking. Guadalupe was aware Roman had a gun and ammunition. He last saw Roman handling the gun a week prior to the shooting. Guadalupe did not make it home before the shooting. Florencio had also been at work at the time of the shooting. He, too, was aware Roman possessed a gun. He said Roman gave inconsistent stories about how he

acquired the gun, one time saying he borrowed it from a friend and another time saying

that he had purchased the gun. The gun used by Roman was in fact reported stolen in a residential burglary that occurred on July 22, 2004.

The Torres brothers consented to a search of their apartment and the deputies recovered a 12-gauge shotgun and ammunition. The apartment was cluttered with beer bottles.

The toxicology report confirmed Roman had a blood alcohol of .21 in his system at the time of the shooting and Roman tested positive for marijuana. Ballistics confirmed that the silver revolver had been fired and the two shell casings by his body and on the stairs came from the revolver.

One interviewed neighbor saw Roman with the gun and heard the shots fired during his encounter with Jesus. She confirmed he appeared “drunk.” Although she at one point said she saw Roman get shot by the deputies she later admitted that she did not see Roman until after he had fallen down the steps as a result of the shooting. None of the other neighbors observed the deputies shoot Roman. However, numerous neighbors stated that they heard two series of gunshots consistent with Roman firing his revolver before the deputies arrived followed by the deputies’ gun fire. They were not aware of the presence of the deputies until after the gunfire. No one was in a position to contradict the deputies’ version of the shooting.

## **LEGAL PRINCIPLES**

Homicide is the killing of one human being by another. (*People v. Antick* (1975) 15 Cal.3d 79, 87.) There are two types of homicide, murder and manslaughter. Murder is the unlawful killing of a human being with malice aforethought. (Cal. Pen. Code, § 187, subd. (a).) A willful, deliberate, and premeditated killing is murder of the first degree. (Cal. Pen. Code, § 189.) There are two types of second degree murder. An unlawful killing which occurs as the direct, causal result of an intentional act which carries a high probability that it will result in death, which is done with a base, antisocial purpose, and wanton disregard for life, is second degree murder. Second degree murder also occurs when there is manifested an intention to unlawfully kill a human being, but the evidence is insufficient to establish deliberation and premeditation. (*People v. Rogers* (2006) 39 Cal.4th 826, 866-867.) Voluntary manslaughter is the unlawful killing of a human being without malice, upon a sudden quarrel or heat of passion. An unlawful killing based on an honest but unreasonable belief in the need to defend

oneself is also voluntary manslaughter. (Cal. Pen. Code, § 192; *People v. Breverman* (1998) 19 Cal.4th 142, 162.)

Not all homicides are unlawful. A homicide is lawful when done in self-defense or the defense of another. In that situation, the individual must have reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, that he reasonably believed that the immediate use of deadly force was necessary to defend against danger, and he used no more force than necessary to defend against that danger. (Cal. Penal Code, § 197; CALCRIM 505.) The law of self-defense is available to police officers as it is to any other citizen.

A homicide may also be justified when a public officer committed a killing if it is done while performing a legal duty, that the killing was necessary to accomplish a lawful purpose, and the individual had probable cause to believe that the other person posed a serious threat of physical harm to himself or to others. (Cal. Penal Code, § 196; CALCRIM 507.) Under these provisions, deadly force is authorized in order to prevent the commission of a felony when there is a reasonable fear of death or great bodily injury to the officer or another. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349.)

The Fourth Amendment is also implicated in the use of deadly force. The use of deadly force is permissible for Fourth Amendment purposes when the officer has probable cause to believe that a suspect poses a threat of serious physical harm to the officer or another others. (See *Tennessee v. Garner* (1985) 471 U.S. 1, 11.) “All determinations of unreasonable force must embody allowance for the fact 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. (*Graham v. Connor* (1989) 490 U.S. 386, 396-397, 109 S.Ct. 1865, 1872, 104 L.Ed.2d 443).

## **ANALYSIS**

The shooting was justified under Penal Code section 196, as self-defense and defense of others, and the Fourth Amendment. The homicide was justified under Penal Code section 196 because Deputies Lisk and Spach shot and killed Roman while responding to a 911 call of shots fired, the deputies knew that Roman posed a serious threat of physical harm to others because he had fired two rounds at or near Jesus’

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apartment and Roman then turned his revolver on the responding deputies. The shooting was also justified under the basic principles of self-defense and defense of others. The evidence indisputably shows that Roman, in direct contradiction to Deputy Lisk's command to show his hands, turned and pointed a loaded revolver directly at the deputies with his finger on the trigger. The deputies stood only 15 to 20 feet away. Fearing for their lives, both Deputy Lisk and Spach fired their weapons to save themselves and each other. For the same reason, the actions of Deputies Lisk and Spach did not exceed the Fourth Amendment limitation on the use of deadly force.

#### **CONCLUSION/RECOMMENDATION**

The District Attorney did not abuse its discretion in declining to file criminal charges against Deputies Lisk and Spach. I recommend no further action be taken in this matter.

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## **M e m o r a n d u m**

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Subject : Jesus Eduardo Manzo, Vista Shooting

### **Summary**

Our office was asked to review this officer-involved shooting to determine whether the San Diego County District Attorney's Office abused its discretion in declining to file criminal charges against San Diego County Sheriff's Deputy Lewis Schott for his role in the shooting death of Jesus Manzo. I have concluded that Deputy Schott used deadly force in self defense. The shooting was justified. Accordingly, the District Attorney's Office did not abuse its discretion in declining to prosecute Deputy Schott.

### **Review/Evaluation**

I relied on the following information in conducting my evaluation in this case:

1. The contents of a large, three-ring binder, which I am informed contains, and appears to contain, the entire investigation in this matter with the exception of the physical evidence that was impounded. The binder contains reports of the lead detective, all responding deputies, reports from other officers who had background information pertinent to the shooting, statements of all known witnesses, statements of the shooting officer, forensic reports, autopsy report, photographs, rap sheets, and other materials.
2. I visited the scene on March 23, 2007, with lead Sheriff's Homicide Detective Pat Gardner and a sheriff's sergeant who was not involved in the case.
3. Ultimately, the District Attorney's letter concluding that the shooting was justified, although I did not review this letter until after I had reviewed the entire case file and formed my own conclusion.

### **Background**

On August 1, 2005, around noon, Vista Sheriff's Deputies Shannon and Byrne met and discussed 23-year old Jesus Manzo, known to them at that time only as "Chuey." During this conversation, they discussed the possibility that Chuey was a Vista Home Boys gang member, because Deputy Shannon had seen Chuey earlier in the day hanging out with Baltazar Luna,



a documented Vista Home Boys gang member. They also discussed Chuey's connection to a stolen vehicle, based on information relayed to Deputy Shannon by Deputy Myers a few days earlier. Deputy Myers had told Deputy Shannon that he had seen Chuey driving a car in Vista, which was later found abandoned and determined to be stolen. Deputy Myers had told Deputy Shannon that he believed Chuey lived at the corner of Newport Drive and Newport Terrace, and that he thought he might be a Vista Home Boys gang member. Deputy Shannon told Deputy Byrne that none of deputies at the Vista station knew Chuey, and they agreed to contact Chuey to obtain a photograph, his true identification, and some personal information, and to determine whether he was a gang member and if so, to serve him with a gang injunction.

### **Facts**

At approximately 4:03 p.m., Deputies Byrne and Gildersleeve drove in separate patrol cars to 830 Newport Drive. When they arrived, they saw Manzo working on a white Ford Thunderbird which was parked in the driveway. Another man, later identified as Marco Lita, was sitting in a chair. A third man, Jose Meza, was also at the scene.

The deputies got out of their cars and walked towards Manzo. Manzo ran into his backyard, out of their view.<sup>3</sup> Deputy Gildersleeve chased on foot. Deputy Byrne pulled his car to the rear of the residence and broadcast a description of Manzo as wearing a tan beanie cap and a tan tank top. As Deputy Gildersleeve was chasing Manzo, he saw a pouch on Manzo's right hip. Deputy Gildersleeve activated the emergency button on his radio which overrides all radio traffic, and broadcast that he believed Manzo had a sidearm.

The backyard area where Manzo ran is dense with trees, bushes, brush and debris. There are fences of all types separating the yards of neighboring homes in the area, which are also crowded and overgrown. Manzo escaped into the area behind those homes. Deputy Gildersleeve saw Manzo jump a fence and double back towards 830 Newport Drive. Deputy Gildersleeve went back to that location and detained Lita and Meza, who had stayed at the house.

The officers set up a perimeter in the area to contain Manzo. Other deputies, including Deputy Schott and Deputy Dinger, with a canine unit, came on to the scene to do a yard to yard search. Deputy Dinger broadcast information that Manzo was known to carry a handgun. Deputy Dinger had received this information approximately one month earlier from a gang deputy who had told him that Chuey was driving a stolen truck and was armed with a .45 caliber pistol.

Deputy Dinger used a loudspeaker to tell Manzo to come out with his hands up or a dog would

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3. Lita later told sheriff's deputies that Manzo had said he was going to run because he had a warrant. A warrant had been requested by Manzo's probation officer on July 30, 2005, two days before the shooting, but did not actually issue until August 3, 2005, two days after his death.

be sent in and the dog would bite him. Dinger made this announcement three times, but Manzo did not surrender.

Astrea (helicopter) arrived on scene to assist at approximately 4:27 p.m. Manzo jumped into the back yard of 837 Smith where Deputy Shannon confronted him. Deputy Shannon pointed a rifle at Manzo, and told him to stop and show his hands. Manzo fled. During the pursuit, Deputy Salvador also confronted Manzo, pointing a gun at Manzo from ten feet away and commanding him to stop and show his hands. Manzo did not comply.

The Astrea deputies watched Manzo run through the backyards. Deputy Pavlenko confronted Manzo in the back of 820 Newport Terrace. He pointed a gun at Manzo and gave him verbal commands to stop and show his hands. Manzo continued to run. When Manzo was about ten feet away from Deputy Pavlenko, Manzo tripped, and Deputy Pavlenko saw a small black object in Manzo's waistband over his right hip. Deputy Pavlenko saw Manzo go behind a bush and reach into his waistband. Deputy Pavlenko was about to shoot Manzo when Deputy Salvador came up from behind, so he did not have a clean shot. Deputy Pavlenko ran around the bush and Manzo fled, changing directions, and the pursuit continued. Manzo ran across the front of 840 Newport towards where Deputy Dinger was located. At that point, Deputy Pavlenko could see that Manzo did not have anything in his hands.

At some point during his time hiding in the backyards, Manzo changed shirts and discarded his beanie cap. The beanie cap was subsequently discovered by a canine unit concealed under a bush in a backyard.

Meanwhile, Deputy Dinger walked up the driveway at 844 Newport with the canine, and Deputy Schott walked up the driveway next door. Deputy Kimball, the passenger in the helicopter, saw Manzo running and jumping fences, directly towards Deputy Dinger and his canine. Deputies Dinger and Schott were positioned on opposite sides of a wooden fence that separates two residences. Manzo ran towards the fence and tried to jump over it. He was on the same side of the fence as Deputy Dinger. Deputy Dinger's canine bit Manzo's shoe while he was jumping the fence. The portion of the fence where Manzo jumped is very close to the house at 840 Newport Drive, where Deputy Schott was positioned. As Manzo climbed over the fence, he held on to the roof for support. From his side of the fence, Deputy Schott used his sap three times to hit Manzo on the legs to get him to come down.

Manzo came down from the fence on Deputy Schott's side, either falling or jumping towards the deputy. As he did so, Deputy Schott saw what he believed to be the butt of a gun in Manzo's waist area. He saw Manzo reach for that area with his right hand and believed he was about to get shot. Deputy Schott stepped back and fired one shot into Manzo's chest. Manzo fell back and died at the scene after resuscitation efforts failed. The "shots fired" call was made at 4:31 p.m. 28 minutes passed from the time of the initial contact to the time of the shooting. Manzo was pronounced dead at 4:45 p.m.

A leatherman knife tool was found in a black nylon pouch on Manzo's right hip. The tool contained a bottle opener, knife blades and a screwdriver.

Deputies searched the Thunderbird on the driveway which Manzo had been working on when they first approached. The hood was open and there were tools laying around. The car was not reported stolen and was registered to Laura Reyes from Illinois.

Deputy Smith arrived and interviewed Felix Simental, who lives at the home where Manzo was shot. Simental said he arrived home while the incident was in progress. He claimed he saw three deputies chasing a Hispanic male in the driveway next to his. He saw the Hispanic male jump the fence into his driveway, and run back and forth in the driveway as the three deputies chased him. The three deputies took a position at the entrance of the driveway. He heard the deputies yell to the man to stop, but it appeared that the man was trying to find a way to escape. All three had their guns drawn, and then Simental heard a shot.

Simental was later interviewed by Deputy Jones. Simental said he saw three deputies running up his driveway as he returned home in his tow truck. He also saw a man he believed was Chuey running across his yard, and believed Chuey was trying to get into his house. He then saw Chuey run to the side of his house and towards the front of the house looking like a "scared rabbit," with both arms out to the side, moving from right to left, and acting like he was "dodging" something. Simental heard the deputies say something, which he assumed was, "Stop . . . stop." Simental did not see Manzo reach for a weapon but his view was partially obstructed by trees. Simental heard a shot and saw the suspect fall to the ground.

Ana Simental also lives at the home where the suspect was shot. She was home at the time of the incident with her 8-year old son and her neighbor, Maria Govea, who is Manzo's sister. Simental was aware of the events going on outside her home, and she saw some deputies running and screaming with a dog, but she did not see the actual shooting, and she did not know it was Chuey involved in the incident. By the time she pulled up a chair and looked outside, Manzo was on the ground in the driveway. Simental's 8-year old son Felix Verdin said he heard a gunshot but did not see anything.

An 85-year old neighbor who lives at 839 Newport Drive witnessed some of the incident. He said he did not hear the deputy say anything before the shooting but he is hard of hearing, although he did hear Deputy Dinger's announcement about the dog. He said he saw the dog run up the driveway at 844 Newport Drive, then saw the suspect come out between 840 and 844, then heard a shot and saw the suspect drop. A line of bushes separating 840 and 844 Newport could have impaired his view.

Marco Lita told officers he saw Manzo jump the fence and saw the dog go after Manzo. He said Manzo tried to climb on the roof of a house but a deputy grabbed him and pulled him down. Lita said Manzo got away again and tried to run, and then Lita heard one gunshot. Lita

said he did not believe Manzo carried a weapon, but he may have had a flashlight in his right hip area.

Lita later told officers Manzo ran because he was wanted for a parole violation. Manzo had told Lita the day before that he had a warrant for violating his probation. Manzo said he was going to run away because he was afraid the cops were going to hurt him. Subsequent investigation revealed that Manzo's probation officer had told Manzo's sister that a warrant was going to issue for a probation violation. At that time, a warrant had been requested but not yet issued. On August 3, 2005, after Manzo's death, the warrant was issued for auto theft, resisting arrest and a probation violation.

Jose Meza said he saw Manzo get shot. He said Manzo was walking along the top of a fence trying to get away from the police dog. He was holding on to the roof for balance. The police grabbed Manzo and pulled him down from the fence, and then he heard an explosion and saw Manzo falling.

The cause of death was determined to be a gunshot wound to the chest. Deputy Schott's firearm was determined to have fired the fatal shot. The distance between the muzzle and Manzo's jacket at the time of the shooting was 12 to 36 inches. The body to body distance between Schott and Manzo was between 2 and 6 feet. The positions of the bodies at the time of the shooting could not be determined. Gunpowder and soot were present on Manzo's jacket. Schott's firearm was determined to be capable of leaving detectable gunshot residue up to a distance of 4 ½ feet. Manzo's lab report was positive for methamphetamine.

None of the physical evidence was found to contradict Deputy Schott's description of events.

Deputy Schott has been with the Sheriff's department for 9 years. He said he had no prior contact with Manzo, although a 2003 police report shows that Deputy Schott was one of several officers involved in a hot stop felony arrest where Manzo was the passenger in a stolen vehicle. Manzo was also arrested in another 2003 auto theft case which was strikingly similar to this case. In that case, he was reported by the owner to be driving a stolen car. He abandoned the car and fled on foot, and deputies set up a perimeter. He hid himself in a garage and was able to escape when confronted. He then hid inside a garbage can and struggled with deputies who tried to pull him out. During the incident, deputies shot Manzo with less than lethal force and he was taken into custody. During another incident that occurred in May 2005, a sheriff's deputy chased Manzo after seeing him place a license plate on a stolen vehicle. Manzo escaped but the car was recovered and determined to have been stolen. Inside the car, deputies found a loaded handgun and two stolen license plates. Although the detective involved in that case did not specifically remember speaking to Deputy Dinger about this incident, he may have, as he routinely passes such information along to the deputies at the Vista station. Manzo's prior arrests, including juvenile arrests, include burglary, drugs, domestic violence, auto theft and receiving stolen property.

Subsequent investigation revealed no documentation that Manzo was, in fact, a member of the Vista Home Boys gang or any other criminal gang.

### **Potential Charges**

The circumstances unequivocally lead to the conclusion that Deputy Schott intended to kill Manzo when he shot him in the chest. Accordingly, the potentially applicable charges are first degree murder, second degree murder and voluntary manslaughter.

PC 187(a) provides that murder is the unlawful killing of a human being with malice aforethought. Malice may be express or implied. Express malice exists when there is manifested a deliberate intention to unlawfully take away the life of a fellow creature. Malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (PC 188.) A willful, deliberate and premeditated killing is murder of the first degree. As relevant here, any other form of murder is murder of the second degree. (PC 189.) There are two types of second degree murder. An unlawful killing which occurs as the direct, causal result of an intentional act which carries a high probability that it will result in death, which is done with a base, antisocial purpose, and wanton disregard for life, is second degree murder. Second degree murder also occurs when there is manifested an intention to unlawfully kill a human being, but the evidence is insufficient to establish deliberation and premeditation. (*People v. Rogers* (2006) 39 Cal.4th 826, 866-867.) Voluntary manslaughter is the unlawful killing of a human being without malice, upon a sudden quarrel or heat of passion. An unlawful killing based on an honest but unreasonable belief in the need to defend oneself is also voluntary manslaughter. (PC 192; *People v. Breverman* (1998) 19 Cal.4th 142, 162.)

### **Potential Defenses**

PC 196 sets forth the law on justifiable homicide by public officers, as follows:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either -

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

But peace officers are limited under the Fourth Amendment in their ability to use deadly force. In *Tennessee v. Garner* (1985) 471 U.S. 1, the Court decided that shooting a nondangerous fleeing suspect is not so vital as to outweigh the suspect's interest in his own life. (*Id.*, at p. 11.) The court explained:

Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. (*Ibid.*)

Penal Code section 835a provides,

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

The law of self defense is available to police officers as it is to any other citizen. A person is not guilty of murder if he killed another in lawful self-defense, meaning he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; he reasonably believed that the immediate use of deadly force was necessary to defend against that danger, and he used no more force than was reasonably necessary to defend against that danger. The person's belief must be reasonable and he must have acted only because of that belief. He may only use the amount of force that a reasonable person would believe was necessary in the same situation. (CALCRIM 505.)

### **Analysis**

The shooting was justified under Penal Code section 196, and under basic principles of self-defense. Under Penal Code section 196, although Deputy Schott was not acting in obedience to a judgment of a court (subsection 1), or retaking or arresting a person charged with a felony (subsection 3), he was arguably overcoming resistance in the execution of a legal process or in the discharge of any legal duty. Armed with reliable information that "Chuey" was a possible gang member and a suspected auto thief, sheriff's deputies properly discharged their legal duty of maintaining public safety by making an effort to contact Manzo in order to obtain identifying information on him, and serve him with a gang injunction if appropriate. Manzo's flight upon their arrival was suspicious and they lawfully pursued him. Almost immediately, Deputy Gildersleeve saw what he reasonably believed was a gun on Manzo's hip, and broadcast that information to all responding deputies. Subsequently, Deputy Dinger broadcast

information he had received from a reliable source that Manzo was known to carry a gun. Manzo evaded sheriff's deputies for nearly half an hour, changing clothes and hiding in brush and debris in backyards. During that time, other deputies saw what they believed was a gun holster on Manzo's right hip. Manzo failed to comply with any verbal commands, showed no indication that he was going to surrender even when confronted by deputies at gunpoint, and was not subdued by efforts to use less-than-lethal force, including a canine unit and a sap.

The shooting was justified based on general principles of self-defense because of the information Deputy Schott had at the time he confronted Manzo, and his observations when he encountered Manzo. Prior to the final confrontation, Deputy Schott reasonably believed Manzo was armed with a gun. In forming that belief, he relied upon Deputy Gildersleeve's emergency broadcast that he had seen a pouch on Manzo's right hip which he believed was a sidearm. Under the circumstances, that information carried objective indicia of reliability, and Deputy Schott acted reasonably in relying upon it, because he knew that Deputy Gildersleeve was in a position to observe Manzo's waist area, and because Deputy Gildersleeve had interrupted radio traffic to make an urgent announcement. Moreover, Deputy Gildersleeve's belief that Manzo had a gun was reasonable, because he observed a black nylon pouch on Manzo's waistband which looked like a gun holster, although it was later determined to contain a leatherman tool.

Deputy Schott also reasonably relied upon information provided by Deputy Dinger that Manzo was known to carry a firearm. Again, the information carried indicia of reliability under all of the circumstances. Deputies were responding to a fast-evolving situation where an unidentified man, who had been seen with what appeared to be a gun holster, was fleeing and hiding and refusing to comply with orders to surrender. Deputy Dinger then broadcast that Manzo was known to carry a handgun. Under the circumstances, Deputy Schott could reasonably assume that this information had been provided to Deputy Dinger by other sheriff's deputies who were quickly trying to obtain information about the man who was evading them. Subsequent investigation revealed that Deputy Dinger had obtained this information through appropriate channels and reliable sources, having learned a month earlier from a gang deputy that Chuey had fled from a stolen car which contained a loaded pistol. Deputy Dinger properly disseminated this information for officer safety reasons.

Deputy Schott's observations at the time of the final confrontation also led him to the reasonable belief in the need to use deadly force in self defense. Manzo did not surrender even after being bitten by the canine, and hit on the leg with a sap. He did not respond to all verbal commands. Instead, he jumped or fell towards Deputy Schott from a distance of 12 to 36 inches away. Deputy Schott saw that Manzo was reaching for a black nylon pouch on his waistband. Deputy Schott stepped back, yelled "gun, gun, gun," and shot Manzo once, believing Manzo was about to shoot him.

Other deputies corroborate Deputy Schott's claim that Manzo had a black pouch on his right

hip, and that he reached for that area at the time he was shot. Deputy Washington saw Manzo twist to the right and saw his hands drop towards his waist area as he heard someone say, "He's got a gun!" Just before the final confrontation with Deputy Schott, Deputy Pavlenko confronted Manzo in the backyard and saw Manzo hide behind a bush and reach towards a small black object over his right hip. Deputy Kimball (Astrea passenger) saw Manzo escape from Deputies Salvador and Shannon after they confronted him at gunpoint, and saw Manzo head back to Deputy Dinger's location. Deputy Morsch saw Manzo jump over the fence and advance towards Deputy Schott. Deputy Weldon, watching from the helicopter, saw Manzo's hands moving around by his waist. Deputy Weldon saw Manzo come face to face with other deputies and stated he appeared to be "extremely determined not to be taken into custody." And Deputy Gildersleeve, who was on the same side of the fence as Deputy Schott, could no longer see the weapon because Manzo had changed into a pendleton shirt, but did see Manzo reach for his right side while he was still on the fence, and heard Deputy Schott yell something about a gun when Manzo jumped off of the fence. Deputy Schott said that Manzo had failed to comply with all orders up to that point, and both civilian and law enforcement officers describe Manzo's behavior as a desperate effort to escape.

The main officers involved provided detailed statements within hours of the incident, apparently with little or no opportunity prior to their interviews to speak to each other in detail. Overall their statements are very consistent with each other, and consistent with the accounts given by the deputies in the helicopter and the other deputies at the scene. Due to the visual obstructions in the immediate area of the shooting, the proximity of Deputy Schott to Manzo at the time he fired his weapon, Manzo's position at the time of the shooting, and the positions of the witnessing deputies, none of the deputies in the immediate area other than Deputy Schott were in a position to have a full frontal view of Manzo reaching for his waist at the critical moment. But their claimed observations are consistent with their relative positions. The physical evidence is consistent with the events as reported by Deputy Schott. None of the physical evidence contradicts that account.

Neighbor Felix Simental, and Manzo's companions Lita and Meza give somewhat differing accounts of the events. The inconsistencies are largely irrelevant because none of them claim to have seen, or been in a position to see, Manzo's hands immediately prior to the shooting. In fact Meza's statement that he did not see a pouch on Manzo's belt calls his credibility into serious doubt, because Manzo had such a pouch, several officers saw the pouch, and Meza should have seen it given the fact that they were hanging out together.

### **Conclusion/Recommendation**

The District Attorney did not abuse its discretion in declining to file criminal charges against Deputy Schott. I recommend no further action be taken in this matter.



Vistareviewmemos.wpd

State of California

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From : Alana Cohen Butler  
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Appeals, Writs & Trials  
**Office of the Attorney General - San Diego**

Subject : Sergio Garcia-Vasquez, Vista Shooting

## **SUMMARY**

Our office was asked to review this officer involved shooting to determine whether the San Diego County District Attorney's Office abused its discretion when it declined to file criminal charges against San Diego County Sheriff's Deputy Shawn Aitken for his role in the shooting death of Sergio Garcia-Vasquez. I have concluded that Deputy Aitken justifiably used deadly force in the defense of another deputy. Accordingly, the District Attorney's Office did not abuse its discretion in declining to prosecute Deputy Aitken.

## **BASIS OF REVIEW**

In evaluating this case, I relied upon the materials contained in the investigative file of the San Diego County Sheriff's Department. Those materials included interviews of the three involved deputies, interviews of the three civilian witnesses who witnessed the shooting, the autopsy report and photographs, Vasquez's toxicology results, photographs and diagrams of the scene, Vasquez's prior criminal history, communication tapes, and all other reports generated as a result of the investigation into this matter. After examining the entire case file, I reviewed the letter of the San Diego District Attorney concluding that the shooting was justified.

## **FACTS**

### *Introduction*

As will be discussed in further detail below, Sergio Garcia-Vasquez rented a room in a house in Vista. On July 28, 2005, he acted aggressively toward his roommate, who in turn, called the police. San Diego Sheriff Deputies were dispatched to the scene. After Vasquez advanced on one of the deputies swinging 10 pound barbells, he was shot two times. Vasquez died of a shot to his back.

### *Background*

Vasquez had been subletting a room from a married couple, Asucion Perrea and Pedro Ramirez, for about three months at 804 North Citrus Drive in Vista. He shared his room with two other roommates. About a month prior to the incident described below, Vasquez started acting strangely. Generally, he believed he was being watched and that his wife was being held hostage.

*Contacts With Vasquez The Evening Prior To The Shooting (July 27, 2005)*

The day before the shooting, Deputies Spach and McMasters responded to a call placed by Vasquez, who wanted to report his wife missing. When the deputies arrived, Vasquez seemed either under the influence of a controlled substance or mentally disordered. Nevertheless, Deputy Spach took a missing persons report from Vasquez and left without incident. After Deputy Spach left, Perrea called Vasquez's mother-in-law. She confirmed that Vasquez's wife was in Mexico and that everything was fine.

Nevertheless, Vasquez made at least two more calls to the police that night about his wife. He also complained that someone had put cameras inside his room. Dispatchers felt that he was either under the influence or mentally disordered. Deputies Spach and McMasters went back to talk to Vasquez. When they arrived, Vasquez was standing outside the front door. Deputy Spach noticed that Vasquez's pockets were bulging. Deputy Spach asked Vasquez if he had any weapons, drugs, or needles in his pockets. Vasquez replied "yes" in Spanish. When Deputy Spach attempted to conduct a pat down search, Vasquez ran inside the house and locked the door. The deputies could hear Vasquez laughing from inside the house. They decided to leave since it did not seem that Vasquez was going to come out of the house, and there was nothing left for them to do.

*Events Leading Up To Police Contact With Vasquez On The Day Of The Shooting (July 28, 2005)*

The next day, Perrea returned home from work and rested in her room after doing chores. Vasquez came into her room and accused her of hiding his wife in her closet. Perrea told Vasquez to leave, but he refused. She tried to shut the door on him, but he prevented her from doing so. During the struggle, Vasquez grabbed Perrea's wrist. She called out to her other roommate for help. The other roommate was able to calm Vasquez and get him away from Perrea. She locked the door to her room and called her husband because she was afraid. He told her he was on his way home and instructed her to call 911, which she did.

Dispatch notified Deputy McMasters to respond to the scene. She did not want to go alone, as she recognized the address and recalled Vasquez's weird behavior the night before. Deputy Spach agreed to go with her. He called Deputy Aitken to assist with the call as well. They all arrived at the Citrus Street address at about the same time.

Shortly before the deputies' arrival, Perrea's husband, Ramirez, returned home. Vasquez

apologized to Ramirez for entering Perrea's bedroom and assured Ramirez that he would not do so again. Vasquez explained that he had been looking for his wife and children. Ramirez told him that they were not in the bedroom. Although the situation had calmed down, Ramirez confirmed on his phone's redial that his wife had called 911.

Ramirez then met the deputies outside. He informed them that Vasquez was acting bizarrely again. He directed them to Vasquez's bedroom.

#### *Vasquez Attacks Deputy Spach*

Deputies Spach, Aiken, and McMasters approached Vasquez's room. Deputy Spach knocked on the door, announced that he was with the Sheriff's department, and calmly instructed Vasquez to come out. Deputy Spach could hear someone talking in the room. After knocking several times, Deputy Spach opened the bedroom door and saw Vasquez talking on the phone. Deputy Spach repeatedly motioned for Vasquez to hang up the phone and come out of the room. Vasquez eventually hung up the phone. He seemed either under the influence or mentally disordered.

After hanging up the phone, Deputy Spach motioned for Vasquez to come out of the room. In response, Vasquez clenched his fists and started screaming. He told them that he did not want to come out and "if you want, come and kill me." Vasquez then reached underneath a bed and pulled out two 10 pound dumbbells. He charged at Deputy Spach, swinging the dumbbells in a windmill-like fashion. Deputy Spach pulled out his pepper spray and sprayed Vasquez in the face for about two seconds. The spray had no effect.

Vasquez continued to advance upon Deputy Spach, swinging the dumbbells at him. Deputy Spach retreated into the hallway and then the living room while yelling at Vasquez to stop. Vasquez continued to swing at Deputy Spach. Deputy Spach drew his handgun and ordered Vasquez to stop. Seeing that Vasquez was trying to harm Deputy Spach, Deputy Aitken pulled out his firearm as well.

Because Vasquez was quickly descending upon him, Deputy Spach fired one shot at Vasquez. Deputy Spach could not tell whether he actually hit Vasquez, and in any event, the shot had no effect on Vasquez. In fact, Vasquez seemed to get angrier and continued to advance upon Deputy Spach. Vasquez proceeded to throw a dumbbell at Deputy Spach's head, which Deputy Spach blocked with his arm. Vasquez started to reach down into his pocket. Deputy Spach fired another shot at Vasquez. Again, the shot seemed to have no effect on Vasquez.

At that point, Vasquez had backed Deputy Spach into the corner of the livingroom. Deputy Aitken, who had moved to the other side of the living room, aimed at Vasquez's head, but then lowered his gun and fired one round into Vasquez's back. He felt that Vasquez was attacking Deputy Spach, and he shot him in order to prevent him from hurting Deputy Spach. Vasquez dropped to the ground.

Deputy Spach immediately instructed Deputy McMasters, who had moved outside the front

door, to remove Perrea and Ramirez from the house. He and Deputy Aitken then applied first aid to Vasquez. Other deputies arrived to assist with Vasquez's treatment until the paramedics arrived. In spite of their efforts, Vasquez died at the scene.

#### *Follow-Up Investigation*

The San Diego Sheriff's Department conducted a thorough investigation. In the course of doing so, all three deputies were interviewed, in addition to other percipient witnesses to the incident. Of note, Perrea and Rodriguez were present during the shooting. In addition to corroborating the deputies' account of what occurred, they both felt that the deputies acted out of the need to defend themselves against Vasquez's attack. Another witness, Antonia Morales, was outside when the deputies arrived and watched the incident. She saw Vasquez charge the deputy, the deputy back away, and a gun being drawn. She then heard gunshots. All witnesses interviewed were consistent on material facts.

The autopsy corroborated the witnesses' accounts as well. Vasquez had two gunshot wounds. He suffered one wound to the upper thigh. The fatal wound was found in the upper back. It appears that first shot fired by Deputy Spach hit Vasquez's clothing and wallet. A toxicology screening revealed that Vasquez had .59 mg/L of methamphetamine in his blood.

Vasquez had a number of prior convictions. In 1997, he was convicted of misdemeanor battery and possession of false identification. In 2001, Vasquez was convicted of possession of a controlled substance. Later in 2001, he was convicted of possession of a controlled substance and child cruelty. In 2002, Vasquez was convicted of driving with a blood alcohol level of .08 or greater.

#### **LEGAL PRINCIPLES**

Homicide is the killing of one human being by another. (*People v. Antick* (1975) 15 Cal.3d 79, 87.) There are two types of homicide, murder and manslaughter. Murder is the unlawful killing of a human being with malice aforethought. (Cal. Pen. Code, § 187, subd. (a).) A willful, deliberate, and premeditated killing is murder of the first degree. (Cal. Pen. Code, § 189.) There are two types of second degree murder. An unlawful killing which occurs as the direct, causal result of an intentional act which carries a high probability that it will result in death, which is done with a base, antisocial purpose, and wanton disregard for life, is second degree murder. Second degree murder also occurs when there is manifested an intention to unlawfully kill a human being, but the evidence is insufficient to establish deliberation and premeditation. (*People v. Rogers* (2006) 39 Cal.4th 826, 866-867.) Voluntary manslaughter is the unlawful killing of a human being without malice, upon a sudden quarrel or heat of passion. An unlawful killing based on an honest but unreasonable belief in the need to defend oneself is also voluntary manslaughter. (Cal. Pen. Code, § 192; *People v. Breverman* (1998) 19 Cal.4th 142, 162.)

In some instances, a homicide may be lawful. For example, a homicide may be justified when done in self-defense or the defense of another. In that situation, the individual must have reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, that he reasonably believed that the immediate use of deadly force was necessary to defend against danger, and he used no more force than necessary to defend against that danger. (Cal. Penal Code, § 197; CALCRIM 505.) The law of self-defense is available to police officers as it is to any other citizen.

A homicide may also be justified when a public officer committed a killing if it is done while performing a legal duty, that the killing was necessary to accomplish a lawful purpose, and the individual had probable cause to believe that the other person posed a serious threat of physical harm to himself or to others. (Cal. Penal Code, § 196; CALCRIM 507.) Under these provisions, deadly force is authorized in order to prevent the commission of a felony when there is a reasonable fear of death or great bodily injury to the officer or another. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349.)

The Fourth Amendment is also implicated in the use of deadly force. The use of deadly force is permissible for Fourth Amendment purposes when the officer has probable cause to believe that a suspect poses a threat of serious physical harm to the officer or another others. (See *Tennessee v. Garner* (1985) 471 U.S. 1, 11.) The inquiry largely turns on whether the officer's actions were "objectively reasonable." (*Scott v. Harris* 2007 WL 1237851 at p. 5.)

## ANALYSIS

Here, a homicide occurred when Deputy Aitken fired a shot into Vasquez's back, thus causing his death. As will be discussed in further detail below, the homicide was justified under the circumstances.

To begin with, Deputy Aitken clearly shot Vasquez in defense of Deputy Spach. Throughout the contact with Vasquez, Deputy Spach attempted to use non-lethal means to stop Vasquez from attacking him. The pepper spray had no effect. The first shot fired by Deputy Spach, which only grazed Vasquez's clothing, did not deter Vasquez from advancing. The second shot, which hit Vasquez's thigh, likewise did not slow Vasquez's approach. At that point, Deputy Spach was cornered and all other means to stop Vasquez had failed. Vasquez had already demonstrated his intention to kill or seriously injure Deputy Spach when he threw a 10 pound barbell at his head. At that point, Deputy Aitken reasonably believed that Deputy Spach was in imminent danger of being killed or suffering great bodily injury and that the immediate use of force was necessary to defend Deputy Spach at that time. Deputy Aitken used no more force than was necessary, as he initially aimed at Vasquez's head, but then lowered his aim to his back. Furthermore, Deputy Aitken only fired one shot and felt that no more shots were necessary as that one shot immediately ended the attack. It is clear that Deputy Aitken justifiably used deadly force in defense of Deputy Spach.

For many of the same reasons, the homicide was justified because Deputy Aitken acted in

his authority as a public officer pursuant to Penal Code section 196. Here, Deputy Aitken was performing a legal duty when he assisted Deputies Spach and McMasters in the investigation of a disturbance call. In doing so, it became apparent that Vasquez posed a serious threat of harm to Deputy Spach and continued to pose a threat after non-lethal force was used. Thus, Deputy Aitken's actions were likewise justified under Penal Code section 196.

Furthermore, Deputy Aitken's actions did not exceed the Fourth Amendment limitation on the use of deadly force. The evidence demonstrates that Deputy Aitken had probable cause to believe that Vasquez posed a threat of serious physical harm to Deputy Spach. Indeed, Vasquez had already thrown a dumbbell at Deputy Spach's head and continued to attack him. Those circumstances eliminate any possibility of a Fourth Amendment violation, as Deputy Aitken's actions were objectively reasonable.

It should be noted that Vasquez's bizarre and aggressive behavior was in all likelihood attributable to his methamphetamine use. It is well known that methamphetamine use can increase instances of paranoia, delusions, and aggression. Vasquez's actions leading up to the shooting is consistent with methamphetamine use, as was his behavior in attacking Deputy Spach. The methamphetamine in his system probably rendered Deputy Spach's attempts to use non-lethal force ineffectual, contributing to the danger he posed to all those present.

It is evident that Deputy Aitken's act of shooting Vasquez was done in defense of Deputy Spach. Although Deputy Spach attempted to use alternatives to deadly force to quell the attack, i.e., pepper spray and non-lethal shots, he nevertheless became backed into a corner by a man trying to attack him. At that point, Deputy Aitken reasonably believed that Deputy Spach was in danger of being killed or suffering great bodily injury and he reasonably acted accordingly in shooting Vasquez in a manner that would stop the attack. That being the case, the evidence to support a finding of justifiable homicide is overwhelming. The consistent accounts from all percipient witnesses fully support the conclusion that Deputy Aitken had no choice but to open fire upon Vasquez in light of his persistent attack upon Deputy Spach. Vasquez's methamphetamine use appeared to be a significant cause leading up to the shooting and the shooting itself.

## **CONCLUSION**

In light of Vasquez's attack of Deputy Spach, Deputy Aiken was justified in using lethal force to protect Deputy Spach. As such, the District Attorney did not abuse its discretion when it declined to file charges against any of the deputies involved here.

State of California

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From : Deana Bohenek  
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**Office of the Attorney General - San Diego**

Subject : Jose Antonio Mendoza, Vista Jail Shooting



### **Summary**

Our office was asked to review this officer-involved shooting to determine whether the San Diego County District Attorney's Office abused its discretion in declining to file criminal charges against San Diego County Sheriff's Lieutenant Ray Rawlins and Sergeant Mike Nichols for their roles in the shooting death of Jose Mendoza.

After reviewing the facts and applying the relevant law, I determined the shooting was justified. Rawlins used deadly force in self-defense and Nichols used deadly force in both self-defense and in defense of Rawlins. Accordingly, the District Attorney's Office did not abuse its discretion in declining to prosecute Rawlins and Nichols.

### **Review/Evaluation**

I relied on the following information in conducting my evaluation in this case:

1. The contents of a large, three-ring binder, which I am informed contains, and appears to contain, the entire investigation in this matter with the exception of the physical evidence that was impounded. The binder contains reports of the lead detective, all responding deputies, reports from other officers who had background information pertinent to the shooting, statements of all known witnesses, statements of the shooting officers, forensic reports, an autopsy report, forensic technical reports on the vehicle driven by Mendoza, photographs, rap sheets, and other materials.
2. The District Attorney's letter concluded that the shooting was justified. I did not review this letter until after I had completed this memo. I did not make any changes to my memo as a result of that review.

### **Background**

On March 7, 2005, at approximately 2:28 p.m., Oceanside Police Officer Mark Kalb responded to the intersection of Mission Avenue and El Camino Real in Oceanside. He learned that a red Ford Mustang had exited a car wash, crossed a concrete center divider and collided with a car on Mission Ave. The driver of the Mustang, later identified as Jose Mendoza, did not stop after the collision, but proceeded southbound on El Camino Real. The car's license plate number was obtained by witnesses. After this incident, an officer, making a traffic stop on El Camino Real, saw the Mustang travel by him at approximately 90 mph.

Minutes later, at approximately 2:50 p.m., the same red Mustang was photographed and

captured on video<sup>4</sup> running a red light at the intersection of College and Oceanside Boulevards.

Several minutes after that, the Mustang was seen by witness, Octavio Rodriguez, speeding south on Vista Village Drive. Rodriguez was turning left and saw the Mustang go through the red light in front of him. The Mustang had to swerve to avoid hitting a truck in the intersection. Rodriguez, who proceeded behind the Mustang, next saw the Mustang turn right, going through the red light at the intersection of Vista Village and Hacienda Drive. It went around vehicles to do so. The Mustang then went through the red lights at the next two intersections, the last one being the entrance to the Vista Courthouse complex. At the entrance to the court complex, the Mustang swiped the side of another car as it sped in between two stopped cars. It then made a right turn into the complex.

It was now approximately 3:05 p.m. and the Mustang continued into the court complex, heading toward the Vista Detention Facility. According to witness Gamaliel Hurtado, the vehicle was accelerating loudly and the sound of tires "burning" could be heard. The driver appeared "out of it." Hurtado saw the Mustang stop at a stop sign. He assumed the Mustang's driver stopped because an Escondido Police Car was stopped on the other side of the intersection. Hurtado then watched as the driver of the Mustang accelerated loudly, again "burning" his tires, and drove through the intersection. The driver then accelerated to what appeared to Hurtado to be 30 m.p.h.

At that point, Jay Parker, who was leaving the Vista Patrol Station, heard a vehicle coming toward him at a high rate of speed. He was just stepping off of the sidewalk when he saw the Mustang headed his direction on the road in front of him. He jumped back onto the sidewalk and the Mustang drove past in front of him. The Mustang then crashed head-on into the Vista Detention Facility. It appeared to Parker that the driver intentionally ran his vehicle into the building. Parker's first thought was that the driver was trying to "blow up the jail."

Before it crashed, the Mustang left the paved road that surrounded the parking lot, went up the curb, and crossed over a public sidewalk. The front of the vehicle was then airborne on the right side, as the land sloped down toward the building. The front of the Mustang crashed into the wall, and then slid down the wall until it rested on the ground. Experts determined it was traveling at a minimum speed of 25.42 miles per hour just before it crashed.

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4. The Mustang was photographed by the City of Oceanside, Red Light Camera Program.

Due to the force of the crash, the driver's and passenger's side air-bags deployed, and the front end sustained major damage. Several bystanders said they did not see the driver of the Mustang apply the brakes prior to crashing into the building. However, experts noted that skid-marks on the roadway indicated that the driver did apply brakes, skidded, and proceeded to crash into the building.

After the crash, Christine Branch, who was standing by the stairs that led to the visitor's entrance to the jail, ran over to the Mustang to offer help to the driver. She observed Mendoza exiting the front passenger side of the vehicle. Branch, a former EMT, physically grabbed Mendoza and attempted to "set him down" to provide him with medical attention. She noticed, however, that his eyes looked "psycho" and he resisted her hold. Mendoza broke free of Branch's grip and ran to the visitor's entrance to the building. Branch noticed he was holding his stomach and thought he might have a gun in his waistband. According to Mary Louise Sanders, a witness who was standing in front of the jail, Mendoza had an angry look on his face.

### **The attack on Lieutenant Rawlins and the consequent shooting**

#### ***Statement of Ray Rawlins regarding incident***

Lieutenant Ray Rawlins was in his office at the Vista Jail Administration Office Building, when he heard a screeching sound and a couple of "bam" sounds come from the parking lot. He believed that a car had run into the building right above his head. He was startled, jumped out of his chair and ran out of his office. He then cautiously went back into his office and looked out the window. He saw the undercarriage of a car above him. He surmised there might be some kind of problem outside.

Rawlins grabbed his radio and started to leave his office. He then thought that he might need his gun so he went back, got it out of his locker and put it on his belt. He yelled to the secretary to call 911 and walked toward the lobby.

When Rawlins arrived outside, he was told that the driver of the vehicle had run into the jail. Rawlins went back into the jail lobby, checked in the restroom for Mendoza, and did not find him. Rawlins then yelled to the people in the lobby, "Where did he go?" and, "Did you see where he went?" They indicated Mendoza had gone down the visitor information hallway.<sup>5</sup>

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5. That hallway led to the jail inmate visiting area and was accessible through a single metal door that was open at the time of the event. It was the first door on the right after entering the lobby. After entering that door, the hallway led left through a second set of double doors, which also were open during the event. After the double doors, there was a long hallway that

Rawlins used his radio to call for backup and requested a deputy with a handgun. He then went down the corridor to find Mendoza. When Rawlins was about halfway down the first section of the corridor, Mendoza came around the corner at the end of the hallway and walked toward Rawlins. Rawlins put his hand up and ordered Mendoza to, "Stop, turn and face the wall!" Mendoza ignored the command and kept walking toward Rawlins. Rawlins again commanded Mendoza to, "Stop, turn and face the wall!"

At that point, Mendoza crouched forward and charged at Rawlins. As Mendoza got close and was about to attack, Rawlins reacted by jumping up and kicking Mendoza in the chest. Mendoza fell back a little bit, but then got up and "jumped at" Rawlins. At that point, Mendoza grabbed hold of Rawlins and they both fell to the ground. Rawlins wrestled with Mendoza, struggling to subdue him.

Rawlins recalled that it was around this time that Sergeant Lovelace arrived and jumped on Mendoza. Mendoza continued to fight. Mendoza then gained control of Rawlins' handgun. Mendoza pointed the gun at Rawlins and attempted to pull the trigger, however, because the gun was still in the holster, Mendoza could not make it fire.<sup>6</sup> Rawlins heard Lovelace yell, "oh no! oh no! oh no!" This scared Rawlins, because he believed that meant Lovelace feared she was about to be killed. Rawlins gripped the slide of the gun to prevent it from firing. Rawlins then again grabbed for and fought to regain control of the firearm. Finally, Rawlins wrestled the gun out of Mendoza's hands using a twisting motion.

At that point, Rawlins was on top of Mendoza and may have hit Mendoza with the gun in an effort to subdue him. The gun then fell to the ground. Rawlins feared Mendoza could reach the gun because he was on the ground, so Rawlins jumped away from Mendoza and grabbed the gun with both hands.

When Rawlins stood back up, Mendoza was leaving the hallway, heading back to the lobby. Rawlins followed, expecting that Mendoza would leave the building. However, when Rawlins arrived in the lobby, Mendoza was there.

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turned left and then opened up to a public visiting room.

6. Just after the incident, and prior to the formal interview by homicide detectives, an initial statement was taken from Rawlins by Deputy M. Myers. During that interview, Rawlins stated Mendoza had pointed the weapon at him, while it was holstered, and attempted to fire. However, in the subsequent interview, when asked if that occurred, he could not recall.

Rawlins took his gun out of the holster, pointed it at Mendoza, and commanded him to, "Stop and freeze!" Mendoza turned toward Rawlins and, instead of surrendering, started to charge at him again. Rawlins fired twice, hitting Mendoza. Mendoza did not fall and instead, advanced toward Rawlins again. Rawlins fired one more time.

Just then Sergeant Nichols entered the lobby with his gun drawn. He fired three shots at Mendoza. Once Mendoza fell and was no longer a threat, no further shots were fired. Mendoza was then handcuffed and medical attention was obtained for him.

Rawlins said that when he, Mendoza and Lovelace were struggling for the gun, Rawlins thought Mendoza was going to get it from him and kill both he and Lovelace. Rawlins said he was scared to death. Rawlins explained that at the time he fired the gun, Mendoza was close to him. Rawlins feared Mendoza would get the gun away from him again if Mendoza got too close. Rawlins needed to prevent that from happening. Rawlins fired at Mendoza because he was not going to let Mendoza get the gun and kill him or the people in the lobby.

Rawlins noted that Mendoza never said one word during the incident. Mendoza had a look in his eyes that he was there to fight. Mendoza was combative.

At the time of this incident, Lieutenant Rawlins had been with the Sheriff's Department for 27 years. Prior to that, he was a Harbor Policeman for four and one half years. Rawlins said he had never seen Mendoza prior to this incident. He knew of no threats against his person or the jail. Rawlins noted that if Mendoza's car had struck the building two feet closer to where Rawlins was sitting, it would have gone through his office window and landed on top of him.

#### ***Statement of Lena Lovelace regarding incident***

Lena Lovelace recalled that she was sitting in her office, which was just down the hallway from Lieutenant Rawlins' office, when she heard a loud screeching and a huge "bang." She left her office and saw Lieutenant Rawlins in the hallway. They commented to each other that it sounded like someone had just driven through his office window. They both proceeded outside, exiting through the lobby.

Once outside, Lovelace walked up the stairs to the parking lot and saw a car lodged into the side of the building. Lovelace started to approach the vehicle when Mendoza stumbled out the passenger side. He staggered up the embankment to the sidewalk. Lovelace asked Mendoza if he was okay, however, Mendoza did not respond to her question. He had a despondent look on his face. His eyes appeared to be "enlarged" and he seemed to be staring as he looked at her.

He did not show any recognition that he understood what she was saying to him. She did not see any blood on him or any sign of injury caused from the crash.

Mendoza seemed to be coming at Lovelace, who did not have any weapons on her. Thus, for her safety, she backed away from Mendoza and tried to keep a distance between him and herself. Mendoza then walked past Lovelace and headed to the stairs leading down to the jail lobby. She saw him walk into the jail lobby.

Lovelace went over to the Mustang and looked to see if there was anyone else inside. It was smoking and the windows were tinted, so she just looked in from a safe distance away. At that time, Lieutenant Rawlins walked up some of the stairs. She told Rawlins that the driver of the car had come out of the vehicle and entered the lobby. Rawlins turned around and went back into the lobby. Lovelace followed him back in and saw him check the men's restroom. She saw one of the information clerks motion toward the visitor's corridor.

While Rawlins and Lovelace walked toward the visitor's hallway, Rawlins called on his radio and requested that armed deputies come to the lobby. Lovelace then saw Mendoza walking toward them in the corridor and alerted Lieutenant Rawlins, saying, "Subject coming at you!"

Lieutenant Rawlins went into the hallway and commanded Mendoza to stop where he was and to get against the wall. Lovelace then watched as Mendoza ignored the commands and rushed Rawlins. When Mendoza rushed Rawlins, Mendoza grabbed Rawlins' holstered gun and ripped it from his belt. Rawlins and Mendoza then began to struggle.

Lovelace immediately grabbed Mendoza's head and tried to force him to the ground. While doing so, she kept a visual on Mendoza's hands. It looked like he was trying to get the gun out of the holster. At this point, Mendoza and Rawlins were locked in an embrace, struggling for control of the gun. They all struggled for several seconds before Rawlins finally got the gun away from Mendoza.

Mendoza then ran toward the lobby and Rawlins followed. Lovelace stayed in the corridor because she was not armed. She then heard Rawlins yell at Mendoza, "Stop! Stop, or I'll shoot!" She looked into the lobby and saw Mendoza move toward Rawlins. She heard the sound of shots being fired. After the first shots were fired, it looked like Mendoza doubled over. However, he stood back up and moved toward Rawlins again. She believes that was when Rawlins fired again and when Sergeant Nichols also entered the scene. She saw Sergeant Nichols come in with his weapon drawn and fire several rounds.

When Mendoza took Rawlins' gun away from him, Lovelace felt threatened. She was particularly afraid because Mendoza was trying to get the gun out of the holster and, because at some point, the holster did end up on the ground. At one point, Mendoza had clear possession

of the gun, causing Lovelace to be concerned for her safety.

***Statement of Sergeant Mike Nichols regarding incident***

Sergeant Mike Nichols was in the mail intake area of the jail and heard that a car ran into the building. He exited the intake sally port and went to his car to retrieve his gun belt and gun. As he was putting his gun on, he heard calls for cover in the visitor's lobby. He ran to the lobby and, as he entered, observed Lieutenant Rawlins struggling and pushing Mendoza away from him. Just as he did that, Lieutenant Rawlins shot at Mendoza two times. Mendoza did not surrender at that point, but started to advance on Rawlins again.

Mendoza was facing Rawlins and was positioned in such a way that Nichols could not see the front of Mendoza. Nichols was unable to tell if Mendoza had a weapon. Lieutenant Rawlins shot Mendoza again and was yelling at him. At that point, Nichols drew his weapon and fired one shot into Mendoza. As Nichols did that, Mendoza turned toward him and started charging Nichols. At that point, Nichols fired two more shots at Mendoza, who finally went down to the ground. Nichols stood aiming his gun at Mendoza until Mendoza was secured.

Nichols believed Mendoza was a threat because he saw Mendoza fighting with Rawlins and he saw Rawlins firing. Nichols could not tell if Mendoza was charging at Rawlins with something. When Nichols first saw Rawlins and Mendoza, Mendoza was advancing back and forth on Rawlins. Nichols believed that Rawlins' life was in danger. Nichols fired to protect Rawlins. Nichols also feared that Mendoza could take the gun from Rawlins. When Mendoza turned and charged at Nichols, Nichols believed Mendoza was definitely a threat to Nichols' safety. Mendoza had a "wild look" as he advanced on them. Mendoza appeared "really, really, angry" and "very intense." Mendoza never spoke.

At the time of this incident, Sergeant Nichols had been with the Sheriff's department for 14 years. Nichols said he had never seen Mendoza prior to this incident.

***Statements of witnesses regarding incident***

Maria Patricia De Calles was in the jail lobby waiting in line at the visitor's desk. She heard a commotion coming from the visitor's hallway and heard a male voice yelling, "Stop!" De Calles could see Mendoza struggling with Rawlins and Lovelace. She saw Mendoza push Lovelace against the wall and saw her fall onto the floor. De Calles saw Rawlins strike Mendoza on the neck area with an object. She then saw Mendoza run into the jail lobby. Rawlins and Lovelace were not far behind him.

De Calles heard Rawlins tell Mendoza to "Stop!" two times. De Calles next saw Mendoza crouch down and turn toward Rawlins and Lovelace. Mendoza had his hands near the bottom of his trousers and appeared to be grasping his trouser pant legs in his hands. As Mendoza

turned toward Rawlins, Rawlins fired a gun at Mendoza. Another officer then entered the jail lobby and he also fired his gun at Mendoza.

Raymundo Lozano was in line in the jail when she heard loud noises coming from the visitor's hallway. One of the voices yelled, "Stop!" She looked and saw Mendoza, Rawlins and Lovelace. Mendoza pushed Lovelace. Lozano then saw Rawlins strike Mendoza on the back of the head with a handgun.

Mendoza grasped the bottom of his pants and lifted the pant legs up. Nichols then entered the jail lobby via the main entrance. Nichols pointed the gun at Mendoza and yelled at him to "Stop!" Nichols then fired his gun. Rawlins fired his gun. Lozano then left the lobby via the side door. She heard a total of approximately seven gunshots.

Lisa Murty was in the lobby area when Rawlins and Lovelace came in and asked where the man from outside went. After the officers were directed toward the visitor's hallway, Murty looked down the hallway and saw Mendoza walking toward the jail lobby. Rawlins and Lovelace talked calmly to Mendoza until he began physically assaulting them. Mendoza started the altercation by punching Rawlins. When Lovelace came to assist Rawlins, Mendoza began punching her. All three of them were wrestling on the hallway floor. Rawlins and Lovelace were unable to control Mendoza.

Murty then grabbed her daughter and went into the women's restroom. She peered through the partially open door and saw that Mendoza was now away from the deputies. She heard a deputy command Mendoza to stop and saw that the deputy had his gun drawn. She heard Rawlins tell Mendoza to stay where he was and to get down. Murty then heard approximately three gunshots. At that time, she closed the bathroom door.

Deborah Preston, a clerk at the Vista detention facility, was working in the information window in the lobby when the incident occurred. She saw Lieutenant Rawlins and Sergeant Lovelace enter the lobby area, apparently looking for Mendoza. She pointed them toward the hallway leading to the visiting area, where she had seen Mendoza go.

Preston next saw Mendoza walking in the hallway toward Rawlins and Lovelace. Mendoza charged at Lieutenant Rawlins and they started wrestling. Lieutenant Rawlins and Mendoza fell to the floor and continued wrestling. Preston could tell that Mendoza was getting the upper hand on Lieutenant Rawlins, in that he was "kicking [Rawlins'] ass." Rawlins' face was very red and he appeared to be out of breath.

Sergeant Lovelace bent down and placed her arms around Mendoza's neck. Preston believed Lovelace was attempting to render Mendoza unconscious. However, Mendoza was able to struggle loose from Lovelace's hold. Rawlins then grabbed Mendoza around the waist and they continued wrestling for about 30 seconds. Mendoza then broke free of Rawlins and ran into the



lobby area.

Sergeant Nichols came into the lobby area from outside the facility and had his weapon drawn. Nichols pointed the gun at Mendoza. Sergeant Nichols had both hands on his weapon. Preston heard two gunshots and saw Mendoza fall to the ground on his stomach. Preston did not see Rawlins or Lovelace in the lobby.

### **Other Investigation/Criminal History**

The cause of death was determined to be multiple gunshot wounds. Mendoza suffered gunshot wounds in the: (1) left thigh; (2) left torso; (3) abdomen; (4) left upper arm; (5) left forearm; (6) right wrist; and (7) right shoulder.

Mendoza's blood contained .73 mg/L of methamphetamine, .06 mg/L of amphetamine and cannabis.

The Mustang was found to be mechanically sound, therefore, the crash could not be attributed to any equipment failure.

The physical evidence was consistent with the description of the events provided by Rawlins and Nichols.

Mendoza was twenty-four years old at the time of the incident. Records showed he had previously been arrested in 2001 for possessing a hypodermic needle/syringe. A bench warrant was subsequently issued. Mendoza was convicted in 2002 of Driving Under the Influence of Alcohol or Drugs (Veh. Code § 23152, subd. (a)) and possession of drug paraphernalia (Health & Saf. Code § 11364). He was given a suspended sentence and placed on probation for three years.

### **Potential Charges**

The circumstances lead to the conclusion that Lieutenant Rawlins intended to shoot Mendoza in order to prevent Mendoza from again getting possession of Rawlins' gun. Sergeant Nichols shot at Mendoza in order to stop his attack on Lieutenant Rawlins. The potential applicable charges are second degree murder, involuntary manslaughter and voluntary manslaughter, because neither Rawlins nor Nichols acted in a deliberate, calculated and premeditated manner.

Penal Code, section 187, subdivision (a), provides that murder is the unlawful killing of a human being with malice aforethought. Malice may be express or implied. Express malice exists when there is manifested a deliberate intention to unlawfully take away the life of a fellow

creature. Malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart (Pen. Code § 188). A willful, deliberate and premeditated killing is murder of the first degree. As relevant here, any other form of murder is murder of the second degree (Pen. Code § 189).

There are two types of second degree murder. An unlawful killing which occurs as the direct, causal result of an intentional act which carries a high probability that it will result in death, which is done with a base, antisocial purpose, and wanton disregard for life, is second degree murder. Second degree murder also occurs when there is manifested an intention to unlawfully kill a human being, but the evidence is insufficient to establish deliberation and premeditation. (*People v. Rogers* (2006) 39 Cal.4th 826, 866-867.)

Involuntary manslaughter is “the unlawful killing of a human being without malice aforethought and without an intent to kill.” (CALJIC No. 8.45 (Jan.1987 rev.) (4th ed.1979); *People v. Rogers, supra*, 39 Cal.4th at p. 884.)

Voluntary manslaughter is the unlawful killing of a human being, without malice, upon a sudden quarrel or heat of passion. An unlawful killing, based on an honest but unreasonable belief in the need to defend oneself, is also voluntary manslaughter. (Pen. Code § 192; *People v. Breverman* (1998) 19 Cal.4th 142, 162.)

### **Potential Defenses**

Penal Code section 196 [Justifiable homicide; public officers], provides:

“Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either -

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Penal Code section 197 [Justifiable homicide; any person] provides:

“Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do

some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.”

Pursuant to this section, deadly force may be used to effectuate the arrest of a person who has committed a felony if the felony is one that threatens death or bodily harm. (*People v. Piorkowski* (1974) 41 Cal.App.3d 324, 328-332.)

CALCRIM No. 505 provides:

“A person is not guilty of murder if he killed another in lawful self-defense, meaning he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; he reasonably believed that the immediate use of deadly force was necessary to defend against that danger, and he used no more force than was reasonably necessary to defend against that danger.

The person’s belief must be reasonable and he must have acted only because of that belief. He may only use the amount of force that a reasonable person would believe was necessary in the same situation.”

(CALCRIM No. 505.)

Penal Code, section 835a provides,

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Peace officers, however, are limited under the Fourth Amendment in their ability to use deadly force to apprehend a fleeing felon. In *Tennessee v. Garner* (1985) 471 U.S. 1, 11 [105 S.Ct. 1694, 1701] the court stated,

“The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.”

The Court described when the use of deadly force is constitutionally reasonable:

“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

(*Tennessee v. Garner, supra*, 471 U.S. at pp. 11-12 [105 S.Ct. 1694,1701.]

## **Analysis**

### ***The shooting by Rawlins***

The shooting by Rawlins was justified under Penal Code section 196, and under basic principles of self-defense. Under Penal Code section 196, subsection 3, the shots were fired

while Rawlins was “arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.”

Rawlins was aware that Mendoza had just crashed his vehicle into the side of the building. He was advised that Mendoza had left the scene of the accident and had gone into the jail. Thus, when Rawlins initially contacted Mendoza, he was properly discharging his legal duty of maintaining public safety, and investigating the accident and Mendoza’s departure from the scene of the crash. Moreover, when Rawlins went back into the jail lobby, he was advised that Mendoza had gone down a hallway not open to the general public, without authorization. At that time, Rawlins’ pursuit of Mendoza was justified to determine what he was doing at the jail facility and for public safety considerations.

Rawlins, upon seeing Mendoza, used no force, but instead twice commanded Mendoza to stand against the wall with his hands up. Mendoza did not heed the commands. Instead, Mendoza charged at Rawlins, attacked him and grabbed Rawlins’ gun. Mendoza’s attack caused Rawlins to fear for his own life and the life of Lovelace. In addition, such behavior constituted felony offenses, and/or probable cause to believe felony offenses occurred.

Thus, after Rawlins regained possession of his gun and followed Mendoza out into the lobby, he was attempting to arrest a fleeing felon who had just committed a serious and dangerous felony. Therefore, when Mendoza again came toward Rawlins, despite Rawlins’ commands for him to stop and stay where he was, Rawlins was justified in using deadly force in order to stop his attack.

Moreover, Rawlins was justified in using the deadly force in order to defend himself. After Mendoza failed to comply with any verbal commands, he physically attacked Rawlins and succeeded in getting possession of Rawlins’ gun. Rawlins struggled to get the gun back, fearing he was about to be shot. He tried to subdue Mendoza. In the process, he sprained his elbow and became short of breath. Lovelace assisted, trying to also physically subdue Mendoza with her hands. However, as Mendoza was exceptionally powerful and inordinately determined, he succeeded in overpowering both officers. Mendoza was not able to be subdued by less-than-lethal force, which included being hit with the gun by Rawlins, and grabbed around the neck by Lovelace.

After Mendoza left the visitor hallway, Rawlins followed him into the lobby. Rawlins figured Mendoza had fled the building. However, Mendoza was standing in the lobby and again failed to comply with any verbal commands. More important, however, was that Mendoza showed no indication that he was going to surrender, even when confronted by Rawlins at gunpoint. He seemed determined to attack Rawlins and fight until either he or Rawlins was incapacitated.

Thus, when Mendoza again moved toward Rawlins when Rawlins had the gun pointed

at him and was telling him to stop, Rawlins was justified in shooting at Mendoza. At that point, Rawlins reasonably knew that his life was in immediate danger. Had Rawlins not fired, Mendoza may have again wrestled the gun from him, killing him and/or others.

### ***The shooting by Nichols***

When Nichols came into the lobby, he saw Mendoza facing Rawlins. Nichols could not tell if Mendoza was armed, nor did he know whether Mendoza was wearing a bulletproof vest. However, he was responding to a call that requested a deputy with a firearm and could see that Rawlins had already fired at Mendoza. He could see that Mendoza was not retreating or falling down, but still advancing.

Therefore, Nichols was justified in firing at Mendoza in an effort to prevent Mendoza from possibly killing Rawlins. Moreover, Nichols recalled that Mendoza turned toward him. Nichols did not know if Mendoza had a firearm and therefore, whether he was about to be fired upon. Thus, Nichols acted quickly to subdue Mendoza and assist his fellow officer. He acted to prevent Rawlins and possibly himself from being injured or killed.

Rawlins and Nichols had grounds to reasonably believe that Rawlins was in immediate danger of death or serious bodily harm. (See CALCRIM No. 505.) Mendoza was not responding to any verbal commands. He had a blank, angry, and crazy look in his eyes. He seemed uncontrollably determined to harm or kill Rawlins, Lovelace, and anyone else who tried to subdue him.

Moreover, Rawlins and Lovelace tried to stop him with non-lethal force, however, due possibly to the amount of methamphetamine in his system and/or to his mental state, he was unable to be physically restrained by less than lethal force. Moreover, the continued failure to subdue him would have created the immediate danger of death or serious bodily harm to Rawlins and anyone else in that area. The fear felt by both Rawlins and Nichols was reasonable under the circumstances.

Finally, Rawlins and Nichols used no more force than was reasonably necessary to subdue Mendoza (See CALCRIM No. 505). Rawlins initially fired two shots. However, as Mendoza was still advancing, he fired another two shots. Nichols fired three shots. As soon as Mendoza was on the ground and no longer a danger, firing ceased.

### ***Corroborating evidence***

Just following the shooting, Lieutenant Rawlins, Sergeant Nichols and Sergeant Lovelace were separated and each escorted to different offices in the building. The individuals who had been in the lobby during the incident were also placed in separate offices. All were admonished

not to discuss the incident and were monitored by detectives. Interviews were subsequently conducted of all of the witnesses.

Lieutenant Rawlins, Sergeant Nichols and Sergeant Lovelace provided detailed statements to homicide detectives within hours of the incident, apparently with little or no opportunity prior to their interviews to speak to each other in detail.<sup>7</sup> When compared, their statements were consistent. Their statements were also found to be consistent with the accounts given by the witnesses at the scene. The physical evidence was consistent with the events as reported by Rawlins, Lovelace and Nichols. None of the physical evidence contradicted their accounts.

### **Conclusion/Recommendation**

The District Attorney did not abuse its discretion in declining to file criminal charges against Lieutenant Rawlins and Sergeant Nichols. I recommend no further action be taken in this matter.

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7. All three individuals involved were interviewed at the Vista Patrol Station by Sheriff's homicide detectives, C.C. Serritella and Janet Ryzdyski. Lovelace was interviewed at 6:08 p.m. Nichols was interviewed at 7:39 p.m. Rawlins was interviewed at 10:28 p.m., after being medically treated at Tri-City Medical Center for chest pains and a sprained elbow.