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Date : June 21, 2007

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From : Michael T. Murphy
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Subject : Fatal Shooting of Jorge Ramirez on July 29, 2005, by San Diego County Sheriff's Department Deputy Mark Ritchie; SDSO Case No. 05056674H; SDCDA Special Operations No. 05-099PS; AG No. SD2007800585

I. INTRODUCTION

On July 29, 2005, San Diego County Sheriff's Deputy Mark Ritchie fatally shot Jorge Ramirez in the City of Vista. The Sheriff investigated the shooting, and the case was reviewed by the San Diego County District Attorney for possible criminal charges. Based on the Sheriff's investigation, the district attorney determined the homicide was reasonable and therefore lawful.

The district attorney is the public prosecutor and is vested with the power to charge persons within that jurisdiction with criminal offenses. (Gov.Code, §§ 26500-26501.) The district attorney is not required to file all possible criminal cases but is vested with substantial discretion in selecting which cases to charge and at what level. (*People v. Andrews* (1998) 65 Cal.App.4th 1098, 1102.)

At the request of a local citizens group, the Attorney General is reviewing this case to determine whether the district attorney's decision constituted an abuse of discretion. It is appropriate that the Attorney General review the charging decision of a district attorney. By constitutional mandate, the Attorney General is the chief law enforcement officer of the state, and has a duty to see that the laws of the state are uniformly and adequately enforced. To this end, the Attorney General exercises direct supervision over all district attorneys in the state. (Cal. Const., art. V, § 13.)

This evaluation is based on the investigative materials provided to the Attorney General by the district attorney, a visit to the scene of the shooting on April 9, 2007, and input from three experts concerning peace officer use-of-force and tactics.

II. BACKGROUND INFORMATION¹

Ritchie was hired by the Sheriff's Department in December of 2000. He worked for about three and one-half years at the central jail, and then transferred to Vista as a patrol officer. He completed his training as a patrol officer in September of 2004. At the time of the shooting, he was working the day shift, 6 a.m. to 6:30 p.m.

On the day of the shooting, Ritchie awoke at 4 a.m. and drove to the station. He worked out, ate breakfast and started his shift, which proved to be uneventful and slow. Near the end of his shift, his sergeant asked for a volunteer to stay on duty for half of the night-shift, until midnight, because they were short-staffed. Ritchie volunteered, but was not planning to stay until midnight. He explained to investigators he had been tired most of the day, and would stay as long as he could.

About 8 p.m., Ritchie returned to the station to finish some paperwork and planned to go home around 9 p.m. He had noticed the battery in his hand-held radio was dying and he planned to get a replacement battery. While at the station, he was asked to respond to a residence to take a report of a burglary. He agreed, and returned to his patrol unit. He had forgotten to replace the battery in his radio.

As he was leaving the station parking lot, he heard a call of an armed robbery at the Circle K in the Shadowridge community. That radio dispatch occurred at 9:00 p.m. Ritchie had been working for 15 hours.

The radio dispatcher broadcasted to officers that the suspects were described as two Hispanic male adults, 20 years old, wearing black clothing. One was about 6'2" and the other was about 5'8." One of them had a blue bandana on his face. One had a handgun. They were last seen on foot going north on Watson Way. Deputy George Crysler broadcasted that the suspects matched the description of two suspects in a commercial burglary that occurred the night before, and that they had been driving a black Jeep Wrangler.

According to Ritchie, he was not one of the officers dispatched to the call, but he decided to respond because it sounded to him like more than a one or two deputy call, which he believed was the number of deputies who were dispatched.

Ritchie drove south on South Melrose and turned East on Shadowridge. At that point, about

¹All of the information relayed in this and the next section derives from the materials produced by Sheriff's investigators.

9:04, Ritchie used the radio in his patrol unit to broadcast that he was on Shadowridge checking for suspects. Ritchie decided to turn north on Lupine Hills Drive to check the parking lot at Thibodo Park.

As he approached the parking lot, he saw a dark colored Jeep Wrangler exit the lot and turn northbound on Lupine Hills Drive. Close behind the Jeep was a second car, which Ritchie suspected was being driven by a person connected to the people in the Jeep. He shined his spotlight on the cars. The second car, a Kia Sephia, immediately pulled to the shoulder of the road and stopped. Ritchie saw that it was driven by a female, and he saw no one else in the car. He then noticed at least two, maybe three, Hispanic males in the Jeep. Shortly after the Kia pulled over, the Jeep pulled to the shoulder. Ritchie decided to pull his patrol unit a little in front of the Jeep and at an angle, to provide cover for him if necessary. But just as Ritchie's patrol unit was adjacent to the Jeep, the occupants of the Jeep opened the doors and ran. He believed that the one or two passengers ran northeast between some houses. The driver (Ramirez) ran southbound down Lupine Hills Drive.²

III. THE SHOOTING

Ritchie opened his door and ran after Ramirez. He tried to call for backup on his handheld radio, but realized it was not transmitting because of a weak battery. Ritchie did not bring his flashlight with him. He explained that when he patrols at nighttime, he normally keeps his flashlight on his seat in his crotch area so whenever he gets out of the car he has it with him, but this time the flashlight was on the passenger seat and he forgot to grab it.

After chasing Ramirez about 150 feet, Ritchie fired 11 rounds at Ramirez from about 20 to 25 feet behind him. None of these shots hit Ramirez. Ritchie described his thoughts leading up to his decision to shoot Ramirez:³

²Attachment A is an aerial photograph of the scene of the shooting. The curved road running down the middle of the photograph is Lupine Hills Drive. For purposes of this memorandum it is assumed that the top of the photograph is roughly oriented to North. Thibodo Park is depicted on the right side of Lupine Hills Drive. The entrance to the parking lot of the park is roughly in the middle of the photograph. The Jeep Wrangler and Ritchie's patrol unit are depicted near the top of the photograph. The location where Ramirez was shot is depicted near the bottom of the photograph, in front of the patrol units parked parallel to each other.

³Ritchie was interviewed at the Sheriff's station in Vista by two Sheriff's detectives on July 30, 2005, at 1:30 in the morning, approximately four and one-half hours after the shooting. Also present was Ritchie's attorney, Brad Fields. Ritchie's statement to detectives was voluntary. Unless otherwise indicated, all references in this memorandum to Ritchie's thoughts

I'm like in the worst position that I've ever been. I'm out in the middle of nowhere, I have two suspects unknown direction of travel. I don't know what they're doing, if they're gonna come after me. And I have this other vehicle which I don't even know where it is right now. I might have ran past it. I don't remember. So I continue chasing this suspect and I have no flashlight. And he was initially towards the middle or center lane of the road, and he started to veer to the left which would have been towards the woods of the dark park. There's no lighting there. And I'm just watching his, his gloves. And I can't tell they're, it's dark out and his gloves are dark colored. And they're so fat, I would, I can't tell what he's got. . . . [¶] . . . And he was running in such a manner that I knew that he was running for his life. He was not gonna stop and give up. As I'm pursuing him on foot, I may have told him to get on the ground. I don't recall. I knew that he knew I was a deputy sheriff. He saw my police car, and saw the spotlight. And he got out and ran from me cause he knew what I was there to do. Right after I started chasing him, I noticed that his right hand was out of my view. He was reaching towards his inner, upfront. At this point, he's still heading towards the woods and I'm thinking to myself, I'm out here with no radio, there's not a deputy that's even coming to my location because it didn't get out. They don't know that's going on. [¶] And I don't have a light. And if he goes in to those trees and even if he doesn't go in the trees an stops in his tracks and turns around to engage me, and I get shot and something happens to me, there's no one coming to save me. I have nothing. I'm here out, out on my own and I was thinking I bit off more than I could chew this time. I was doing my job, and I came upon some armed robbery suspects, and um, unfortunately the circumstances that were present, I'm, when the time when you need to communicate with other deputies and get them there, I didn't have anything. I was on my own. So I was scared. I mean, I was, my, my Adam's apple was, I just remember thinking this is not good. I'm not comfortable [with] the situation. He's got gloves on, it's hot out, and now I lost sight of his right hand. As I'm running about twenty feet behind him, I don't remember drawing my pistol, I don't remember putting my finger on the trigger. I shot one round towards the back of 'em. And after the initial round, he didn't get down on the ground. He wasn't stopping, he didn't stop. I'm thinking, well if I was running from somebody and they were track, they were behind me and shooting at me, I'd probably stop. That's maybe a natural instinct is to not continue to run and put yourself at risk. Whatever. His hand never came back. I continued to shoot as I'm running behind him about twenty feet down gaining a little bit of distance on him. I don't remember how many rounds I shot, but it's one-hand point shooting as I'm chasing him.

Later in the interview Ritchie commented:

Due to the circumstances, I felt that he was gonna grab whatever weapon he had to engage me. I didn't put it past that guy to kill me to get away. And the last thing I wanted was for him to stop and turn around engage me because I don't, I mean, I was alone. And I, nobody, if I would'a got shot and, I wouldn't have been able to radio for help. It was a, it's always, it's a more, it's a dangerous situation by not having communication device on you. And I was completely outnumbered. And I don't know what's going on behind me. I don't know what they're thinking, or what they're gonna do to me.

As noted above, Ritchie fired 11 rounds during the first several seconds of the chase, none of which hit Ramirez. Several seconds later, and about 350 feet further down the road, Ritchie fired the remaining five rounds in his gun at Ramirez. Ritchie described this portion of the pursuit as follows:

I felt myself catching up twenty feet, and then fifteen feet. And he's slowing down. I can hear 'em breathing and his feet are getting heavier, and he's slowing down. And I'm thinking he's still heading towards the trees, and he's getting, he's slowing down. And he can hear me cause my keys are jiggling, and I'm firing right now. He knows I'm there. [¶] This guy was either going to stop and engage me. I still don't have visual on his hand. Or I mean, I just didn't anticipate him jogging at a slow pace with me behind him shooting at him, and not doing something. I just felt like at any second he was either gonna dart quickly off in the woods, and completely place me out of the game because I wouldn't have, I don't think I would have gone in there after him. It just wasn't worth it. And I just anticipated him stopping because he was getting to the point where he just wasn't making any, he wasn't gaining any more ground on me. And I'm thinking he's gonna either fight or flight. And it's, it's time to fight. And I did not feel comfortable tackling, OC'ing [pepper spraying], using my baton, any other sort of force option at that time where I had to be in close quarters with him in that lighting situation without cover, without a light. I just didn't feel comfortable with it. I shot one round from probably ten feet to his rear. I know I, I know that round entered probably, probably the center or the lung because I heard him gasp for air. Not like a heavy breathing, like it's obvious to me there's some sort of trauma that went, that happened. And he immediately stopped running and he started to walk. At about this time I noticed headlights coming up on from my rear. And I was still aware that there might be two guys chasing me. I, I didn't know, but I mean, obviously I had some tunnel vision and I was focusing on him because I was chasing him, but I knew that I needed to turn around and get my back to the Jeep and my patrol car soon as possible to see what this vehicle's doing,

cause it was the only vehicle in the area at the time. Its' a very low traffic street and it's late at night. So as he's slowly coming to a stop, I run to his right from directly behind him, and I go to make a u-turn in front of him, engage him. Well as I do that, he falls, I believe to his left, and he lands on his side facing the curb away from me. So now I don't have a visual on his hands, he's facing away from me, and I have that Nissan rolling up on me with its headlights on.

Ritchie had in fact shot Ramirez in the right leg, which resulted in the complete fracture of his femur. The missile entered from the back of the thigh.

Ramirez also suffered a second wound to the back of his right thigh which was described by the medical examiner as an "atypical entrance wound." The medical examiner recovered a corresponding bullet fragment from under the skin. The medical examiner concluded this wound was consistent with being struck by a bullet fragment that ricocheted off the asphalt. There was an apparent bullet strike on the asphalt underneath where Ramirez's right leg came to rest. Based on the wound characteristics, the location of the apparent bullet strike on the asphalt and the location of Ramirez's body relative to this strike, a crime scene investigator concluded Ramirez was likely lying on the asphalt on his right side when Ritchie fired this shot.

At that point Ritchie had fired 16 rounds at Ramirez and hit him twice in the leg. Ramirez was on the road, lying somewhere between flat-on-his-back and his right-side. Ritchie had circled around Ramirez to a position where Ramirez was about five feet away from him, with the top of Ramirez's head directed towards him. Ritchie was roughly in the center of the roadway, and no longer had his back to the car that was coming down the road towards him.

As Ritchie was circling around Ramirez, he dropped the empty magazine from his gun and inserted a new magazine containing 15 rounds. Ritchie explained what he was thinking from the time he noticed the headlights coming down the road:

[A]t that second I felt overwhelmed, I felt like I could, I could be either ambushed by him if I take my eyes off him cause he, I don't know what he's got in his hand, and I, I sure as hell don't know what this girl in this car is gonna do cause if that's her boyfriend and she's out helping him do armed robberies, she's not gonna have any problem running me over, or if she is armed, she's gonna kill me. I made the choice to fire some more rounds at the suspect while he's on the ground with no visual on his hands, so that I could focus on the other threat that I now had to deal with. And not to leave out the fact that I don't know where the other two suspects are, and they could be in the woods coming at me.

Elsewhere in the interview Ritchie explained:

And then once I did hit 'em [referring to the shot he believed entered Ramirez's chest and/or lungs], I stopped to see what, what my threat was gonna be. And, uh, the threat was still there because of my line of sight, and because of his movements, and he was still alive. And, uh, if, if that Nissan hadn't come, rolled up on me, that car, I don't know if I would have been able to maybe give him more commands and not shoot at him again, but with that circumstance being added to the situation, I made the decision to, to shoot him. I couldn't see his hands, I didn't know what he was doing. And I didn't, I didn't wanna have two threats at once. I needed to eliminate that so I could address the second.

After shooting Ramirez again, Ritchie saw Ramirez roll onto his back, "and his arms open up and [he] ends up like this, or with his hands by his side. I didn't feel as though he was a threat any more. I placed the, the female at gunpoint."

Ritchie had fired six rounds from the new magazine into Ramirez's upper left chest, killing him (Ramirez was pronounced dead at the scene approximately ten minutes later by paramedics). An autopsy confirmed that Ramirez had been hit eight times, twice in the back of his right thigh and six times in the chest. The gunshot wounds to the chest were fatal. The trajectory of the missiles that entered the chest were all similar: front to back, left to right and downward.⁴

Ramirez did not have a gun. A folding pocket knife was clipped to his right front pant pocket.

After shooting Ramirez in the chest, Ritchie attempted to transmit a call with his handheld radio, which this time worked sufficiently for other deputies to hear Ritchie say that shots had been fired and that he wanted someone to call his cell phone. Deputy Crysler called Ritchie on his cell phone and learned of Ritchie's location. Crysler radioed that information to dispatch and drove to Ritchie's location. He reached Ritchie's location within two minutes, possibly less than one minute. Deputy Myers arrived about the same time.

Crysler saw Ritchie standing next to Ramirez who was lying on the road. As Crysler exited his patrol car, Ritchie told him there were possibly two armed suspects still in the area.

⁴Attachments B and C are diagrams depicting the approximate locations of items of evidence found at the scene. Attachment D is a diagram depicting the approximate location of Ritchie when he fired the last six shots.

Crysler radioed this information to dispatch. As Chrysler approached Ramirez, he noticed a car driving slowly by in the opposite lane of traffic. This was the Kia that had followed the Jeep out of Thibodo Park. Adriana Sosa was driving the Kia, and her seven-year-old son was in the back seat. Sosa was the girlfriend, and the child was the son, of one of the occupants of the Jeep who had fled from the scene. Ritchie said to stop the car because he believed they were involved. According to Chrysler, he and Myers stopped the car.

According to Myers, the Kia was already stopped next to Ramirez's body when he arrived. Ritchie told Myers and Chrysler he believed the woman in the car was connected to the suspects, and Ritchie removed Sosa from the car and placed her in handcuffs. Deputy Myers placed her in the back of his patrol car. Myers then removed the child from the back seat. No weapons were found on Sosa or the child, or in their car.

Deputy Beaumont apparently arrived before either Chrysler or Myers. He saw Ritchie pointing his gun at Sosa while she was seated in the driver's seat of her car.

About five hours after the shooting, Sosa told Sheriff's deputies she had driven down the hill because she realized Ritchie was shooting at Ramirez, and she wanted to leave the area. She was unfamiliar with that neighborhood, and was backtracking. But Ritchie did not let her leave. She heard Ritchie transmitting on his radio that he had shot someone, and requesting someone call his cell phone.

According to Deputy Myers's report, he asked Ritchie if Ramirez shot at him. Ritchie said, "He was dressed all in black with gloves on and reaching for his waistband, I don't know."

Sergeant Miller arrived shortly after the shooting. According to Miller's report, he pulled Ritchie aside to ask if he was injured and discover the direction of any shots that had been fired. In the course of that conversation, Ritchie told Miller that he continually yelled at Ramirez as he chased him. Ritchie noticed that Ramirez was wearing gloves and dark clothing. Ritchie said he feared for his safety when Ramirez's hand went by his waistband. Ritchie said he fired several rounds while chasing Ramirez down the hill, but missed. Ritchie said he then fired a second series of rounds and Ramirez "spun around." Ritchie described all of these shots as being fired in a southerly direction. Ritchie said that when Ramirez spun around he fired at Ramirez again, this time in a northerly direction.

Detectives interviewed the surrounding residents. Those who heard anything heard two or three series of gunshots that extended over a period of no more than 30 seconds.

IV. RELEVANT LEGAL PRINCIPLES

LAWFUL HOMICIDE

Not all homicides are illegal. A killing is lawful when it is excusable or justifiable. (*People v. Frye* (1992) 7 Cal.4th 1148, 1155; Pen. Code, §§ 195-199.) A homicide is excusable when committed by accident and misfortune under certain circumstances. (Pen. Code, § 195.) A homicide is justifiable when committed in the lawful defense of self, others or property, or was necessarily committed to prevent the commission of certain offenses, to apprehend certain felons, to discharge legitimate police duties or to preserve the peace. (Pen. Code, §§ 196-199.)

No legal theory of excusable homicide is implicated by the facts of this case and therefore none will be discussed. The evidence, including Ritchie's statement, implicate two theories of justifiable homicide: apprehension of a fleeing felon and self defense. These will be discussed in turn.

APPREHENSION OF A FLEEING FELON

A peace officer is authorized to use "reasonable force" to effect an arrest, to prevent escape or to overcome resistance. Further, a peace officer who attempts to make an arrest need not retreat or desist from his efforts because the person being arrested resists, nor shall the 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. (Pen. Code, § 835a.)

Peace officers are also specifically authorized to use deadly force when "necessarily committed in overcoming actual resistance to the execution of some legal process, or in discharging any other legal duty." (Pen. Code, § 196, subd. 2.) And all persons are authorized to use deadly force when "necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed. . . ." (Pen. Code, § 197, subd. 4).

Read literally, these statutes justify every homicide committed by a peace officer in attempting to apprehend a person for any felony, when the use of deadly force reasonably appeared to be the only means by which the arrest could be accomplished. They reflect the common law rule that a private citizen or a peace officer had the "privilege to kill a fleeing felon if he could not otherwise be taken." (Perkins on Criminal Law, 2d ed. 1969, at p. 981.) This privilege developed at a time when all felonies were punishable by death. "As the felon had forfeited his life by the perpetration of his crime, it was quite logical to authorize the use of deadly force if this reasonably seemed necessary to bring him to justice." (*Id.* at p. 985.)

But during the second half of the twentieth century, courts generally rejected a literal reading of these statutes as out-dated. In 1977, the California Court of Appeal, in dicta, interpreted the Penal Code as prohibiting "the use of deadly force by anyone, including a

police officer, against a fleeing felony suspect unless the felony is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.” (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.) The California Supreme Court has not addressed in modern times the authority of a peace officer to use deadly force to arrest a fleeing felon, and *Kortum* remains the touchstone case on this topic. (See, e.g., *Foster v. City of Fresno* (N.D. Cal. 2005) 392 F.Supp.2d 1140, 1159.)

A literal reading of the above statutes would also contravene the Constitution. In *Tennessee v. Garner* (1985) 471 U.S. 1, 11, the United States Supreme Court explained that the Fourth Amendment’s proscription against unreasonable seizures limits the scope of state statutes that authorize police to use deadly force in making an arrest:

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, nondangerous suspect by shooting him dead.

The California Court of Appeal has recognized that the decision in *Garner* limits the scope of California’s justifiable homicide statutes as applied to peace officers. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.)

SELF DEFENSE

Any person, including a peace officer, may use deadly force against another when the circumstances reasonably create a fear of imminent death or serious bodily harm to the person, and the use of deadly force reasonably appears necessary to resist the threat. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630; *People v. Harris* (1971) 20 Cal.App.3d 534, 537; Pen. Code, § 197, subs. 1 - 3.)

The use of deadly force is not justifiable as self defense, however, merely because a person is reasonably fearful of *potential* harm. Rather, a person’s fear must be of *imminent* harm:

The danger which justifies homicide must be imminent, and a mere fear that danger will become imminent is not enough. It certainly is not the law that a defendant can justify the taking of human life upon the belief that danger is about to become imminent, or that it will in the future become imminent. There must be imminent

danger of such design being accomplished, and this at the time the fatal shot was fired.

(*People v. Aris* (1989) 215 Cal.App.3d 1178, 1188, internal punctuation omitted, disapproved of on another point in *People v. Humphrey, supra*, 13 Cal.4th at p. 1089.)

As stated by the California Supreme Court:

Fear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The defendant’s fear must be of *imminent* danger to life or great bodily injury. The peril must appear to the defendant as immediate and present and not prospective or even in the near future. *An imminent peril is one that, from appearances, must be instantly dealt with. . . .* This definition of imminence reflects the great value our society places on human life.

(*In re Christian S.* (1994) 7 Cal.4th 768, 783, italics in original, internal punctuation omitted.)

The person’s belief in the need to defend against imminent harm must be objectively reasonable. Although the test is objective, “reasonableness is determined from the point of view of a reasonable person in the defendant’s position.” (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) In making this determination, a trier of fact must consider what “would appear to be necessary to a reasonable person in a similar situation and with similar knowledge.” (*People v. Humphrey, supra*, 13 Cal.4th at pp. 1082-1083.) Thus, a trier of fact should consider all the elements in the case which might be expected to operate on the person’s mind. (*Id.* at p. 1083, & 1087 [“The jury must consider defendant’s situation and knowledge”].)

V. DISTRICT ATTORNEY’S CONCLUSION

The district attorney concluded Ritchie’s use of deadly force against Ramirez was reasonable under the circumstances and therefore lawful. The district attorney explained:

Deputy Ritchie’s decision to fire at Ramirez as he fled was not unreasonable under the circumstances, since Deputy Ritchie believed Ramirez’s actions and the potential actions of the other three individuals posed a significant threat of death or serious bodily injury to him. Likewise, when Ramirez fell to the ground his right hand was still concealed. Deputy Ritchie reloaded his handgun. At the same time, he was faced with Sosa’s vehicle driving towards him. At that point, he made a deliberate decision to attenuate what he reasonably believed to be the major threat to his safety—Ramirez’s unseen hand. Deputy Ritchie fired more rounds at Ramirez. We conclude that Deputy Ritchie’s decision to fire additional rounds at Ramirez, in order to reduce the threats, was not unreasonable under the circumstances, as Ramirez’s continued movements were reasonably perceived by Deputy Ritchie as

posing a potential threat of death or serious bodily injury.

Since we conclude that Deputy Ritchie's use of deadly force was reasonable under the circumstances, he bears no criminal liability for his actions.

VI. ANALYSIS

The circumstances in this case suggest a three-part analysis. The first part will examine the use of deadly force near the beginning of the chase when Ritchie fired 11 rounds as he ran after Ramirez. The second part will examine the decision to fire the five rounds at Ramirez that ended the chase, two of which hit Ramirez in the back of the leg. The third part will examine the fatal six shots to Ramirez's chest that were fired when Ramirez was lying on the ground.

THE FIRST 11 GUNSHOTS

When Ritchie left his patrol car and started chasing Ramirez on foot, he suspected that Ramirez, Sosa and the other occupants of the Jeep had been involved in the armed robbery of the Circle K. This suspicion was reasonable considering the following factors: the proximity to the Circle K, the similarities between the Jeep occupants and the description of the robbers, the similarity of the Jeep to the description of a car used by burglars the night before, and the conduct of running away from a uniformed officer in a marked patrol car which showed a consciousness of guilt.

Shortly after the chase began, Ritchie saw Ramirez move his right hand to his front waistband area. Ritchie said he thought Ramirez was going to "grab whatever weapon he had to engage me." It was reasonable for Ritchie to suspect that Ramirez possessed a weapon, most likely a gun, because the radio dispatch indicated one of the robbers had a gun.

Ritchie was also concerned that Ramirez might dart into the wooded area to the northeast. This would have enhanced Ramirez's chances of avoiding arrest because Ritchie had decided he would not have followed Ramirez into the woods. The wooded area was dark and would have provided cover for Ramirez to use a weapon, to escape, or both.

It appears it was moments after Ramirez moved his hand towards his waistband when Ritchie began firing rounds. Ritchie did not explicitly offer a reason why he fired at that time, but he told Sergeant Miller at the scene that he feared for his safety when Ramirez's hand went to his waistband.

Ritchie said he initially fired only one round, and was struck by the fact that Ramirez did not stop running. Ritchie figured a person in Ramirez's position would stop running after

being shot at to avoid “put[ting] yourself at risk.” Ritchie then quickly fired 10 more rounds. Ritchie explained that after the first round, Ramirez’s hand “never came back.” “I continued to shoot as I’m running behind him about twenty feet down gaining a little bit of distance on him.”

Ritchie’s use of deadly force in these circumstance was justifiable based on two legal theories. The first is the fleeing-felon rule. This rule allows any person to use deadly force when necessary to apprehend a person whom he believes is fleeing from the commission of a “forcible and atrocious” crime. Armed robbery unquestionably fits this definition. (*People v. Ceballos, supra*, 12 Cal.3d at p. 479.) Because Ritchie reasonably suspected Ramirez was armed with a weapon and fleeing after having committed the robbery at the Circle K, and because Ritchie reasonably believed Ramirez might run into the woods to avoid arrest at any moment, he was justified in using deadly force to attempt to arrest Ramirez at that time.

The second legal theory is self defense. When Ritchie saw Ramirez reach towards his waistband, he reasonably feared Ramirez was reaching for a weapon to use immediately to inflict serious injury or death. It was also reasonable for Ritchie to believe that he needed to fire his gun at that time to prevent Ramirez from inflicting such injury.

THE NEXT FIVE GUNSHOTS

After firing 11 rounds, Ritchie continued chasing Ramirez for another 350 feet. After that distance, Ramirez had slowed down considerably and Ritchie believed he could overtake Ramirez. Ritchie believed Ramirez was also aware that the chase was nearing an end. Ritchie sensed it was either “fight or flight” time. He believed Ramirez was likely to dart into the woods to escape, or turn and confront him. Ritchie also felt it was not safe to attempt to tackle Ramirez or otherwise engage him in close quarters “in that lighting situation without cover, without a light. I just didn’t feel comfortable with it.” At that moment, Ritchie fired four of the next five rounds from about ten feet behind Ramirez. One of those rounds hit Ramirez in the back of the right thigh.

The use of deadly force at this time also implicates the fleeing-felon rule and self defense, although the circumstances are less compelling. Ritchie does not articulate, nor does other evidence reveal, that Ramirez changed his conduct in any way to suggest he was about to run into the woods or engage Ritchie with a weapon at the time Ritchie fired these rounds. Ramirez continued to do what he had been doing for the past 500 feet, which was run down the street away from Ritchie, albeit at a slower pace.

Nonetheless, Ritchie’s concern that Ramirez knew he was not going to get away by continuing to jog down the street was reasonable, as was Ritchie’s calculation that Ramirez was therefore likely to change his strategy at any moment to avoid arrest by running

towards the woods or engaging Ritchie with a weapon. Further, Ritchie's desire not to engage Ramirez up close was reasonable because it could diminish his ability to control Ramirez and subject Ritchie to greater risk of harm. Accordingly, Ritchie's belief that he needed to shoot Ramirez to prevent his escape and to prevent imminent harm to himself appears to be reasonable.

The medical examiner determined Ramirez suffered two distinct wounds to the back of his right thigh. Based on the location of the apparent bullet impact site on the pavement relative to where Ramirez fell to the ground, the medical examiner noted that one of the wounds was consistent with a ricochet type injury. A crime scene investigator concluded all of the evidence was consistent with the second injury to Ramirez's thigh having been caused by a ricochet bullet that was fired as Ramirez lay on the ground on his right side. The investigator also concluded that this round was fired before Ritchie reloaded his gun, and before he fired the final six rounds.

Ritchie does not address this shot in any of his statements. To the extent he addresses any shots he fired after the first 11 rounds, but before he reloaded, Ritchie said, "I shot one round from probably ten feet to his rear. I know that round entered probably the center or the lung because I heard him gasp for air." Ritchie said Ramirez immediately stopped running and started to walk. Ritchie said he noticed the headlights and ran to the right of Ramirez to get around him so he could watch both Ramirez and the car at the same time. Ritchie indicated Ramirez fell to the ground at that time. Ritchie next addressed the six final shots to Ramirez's chest.

The crime scene investigator concluded, based on all of the evidence, that Ritchie continued to shoot and move after Ramirez had been shot and fallen to the ground. This conclusion is consistent with the evidence and appears reasonable. But there is little evidence as to why Ritchie continued to fire after Ramirez was on the ground. Considering all of the circumstances, the most likely reason appears to be that, consistent with training standards, Ritchie fired several rounds in this series of gunshots upon his unwavering decision that he needed to use deadly force. Because of the nature of the femur injury, Ramirez likely fell to the ground almost immediately upon being hit in the femur, and the round that ricocheted from the pavement was likely the final shot in that series, which would have spanned only seconds. There appears to be no basis to analyze this shot separately from the others in this series.

THE FINAL SIX GUNSHOTS

After the second series of shots, Ritchie's gun was out of bullets. He dropped the empty magazine and inserted another. Ritchie was now dealing with a suspected armed robber whom he had chased for approximately 500 feet, whom he believed had been shot in the chest or lungs and who had fallen to the ground. Ritchie also had to address the car, which he reasonably thought might be connected to the robbers, that was moving down the street

towards his location.

At this stage of the incident, the fleeing-felon rule is no longer implicated because, quite simply, Ramirez was no longer fleeing. And no reasonable person in Ritchie's position would conclude that the further use of deadly force was necessary at that point to prevent Ramirez from getting away. Indeed, Ritchie never indicated he fired the last six rounds to prevent Ramirez from escaping.

Nor is there any indication Ramirez was otherwise actively resisting arrest at that point. In particular, there is no evidence Ramirez refused to comply with any commands Ritchie might have been giving, or that he physically resisted any efforts to arrest him. Ritchie stated Ramirez was moving on the ground, but did not specify what the movements were, and indicated he could not see Ramirez's hands and did not know what he was doing. Instead, the evidence suggests that after Ritchie shot Ramirez to the ground and noticed the car coming down the street, he did not attempt to further control Ramirez by any means short of deadly force. As discussed above, Ritchie decided to shoot Ramirez in the chest so he could more safely focus his attention on the car.

Likewise, Ritchie's act of firing an additional six rounds into Ramirez's chest does not appear justifiable as self defense. The test for self defense consists of a subjective element and an objective element. That is, the person must have an actual belief in the need to defend himself against imminent peril, and that belief must be justified from the point of view of a reasonable person in the position of the person who used deadly force.

In a homicide case, the subjective element of self defense requires that the person actually believe that his life is in imminent danger (*In re Christian S.*, *supra*, 7 Cal.4th at p. 773 ["It is the honest belief of imminent peril that negates malice in a case of complete self-defense"]), and he must act based on that fear alone (Pen. Code, § 198).⁵ Evidence of the person's circumstances and mental state are properly considered in determining what he actually believed. (*People v. Minifie*, *supra*, 13 Cal.4th at p. 1065.)

The circumstances surrounding the last six shots are set forth in detail in the preceding sections of this memorandum, as are Ritchie's explanations of his mental state at that time. Parts of Ritchie's explanations of his actions are worth repeating here:

⁵Penal Code section 198 states:

A bare fear of the commission of any of the offenses mentioned in subdivisions 2 and 3 of Section 197, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

[A]t that second I felt overwhelmed, I felt like I could, I could be either ambushed by him if I take my eyes off him cause he, I don't know what he's got in his hand, and I, I sure as hell don't know what this girl in this car is gonna do cause if that's her boyfriend and she's out helping him do armed robberies, she's not gonna have any problem running me over, or if she is armed, she's gonna kill me. I made the choice to fire some more rounds at the suspect while he's on the ground with no visual on his hands, so that I could focus on the other threat that I now had to deal with. And not to leave out the fact that I don't know where the other two suspects are, and they could be in the woods coming at me.

Elsewhere Ritchie explained:

And then once I did hit 'em, I stopped to see what, what my threat was gonna be. And, uh, the threat was still there because of my line of sight, and because of his movements, and he was still alive. And, uh, if, if that Nissan hadn't come, rolled up on me, that car, I don't know if I would have been able to maybe give him more commands and not shoot at him again, but with that circumstance being added to the situation, I made the decision to, to shoot him. I couldn't see his hands, I didn't know what he was doing. And I didn't, I didn't wanna have two threats at once. I needed to eliminate that so I could address the second.

These explanations, taken at face value, show that Ritchie generally feared he might be harmed from three separate sources: Ramirez's cohorts who ran from the Jeep, the person driving the car down the hill, and Ramirez.

But they also show that Ritchie did not shoot Ramirez because he believed he needed to defend against an *imminent* attack. Instead, Ritchie said he shot Ramirez in order to focus on the car, and because he did not want to have "two threats at once." In other words, Ritchie decided to "eliminate" the chance that Ramirez might try to harm him in the near future, while he directed his attention towards the car. Indeed, Ritchie acknowledged that if the car had not been coming down the street, he might have been able to "give him more commands and not shoot at him again, but with that circumstance being added to the situation, I made the decision to shoot him." This statement shows Ritchie was reacting to the car, not to anything Ramirez did that might have caused him to believe Ramirez was attempting to harm him at that point.

Ritchie's own description of his mental state at the time he fired the last six rounds demonstrates he shot Ramirez in the chest as a preemptive strike against the possibility of future harm, not to defend against a perceived imminent attack. Such a state of mind does not establish the subjective element of self defense. (*In re Christian S.*, *supra*, 7 Cal.4th at p. 783 ["Fear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice"].) It also renders the use of deadly force as an act of self defense objectively unreasonable, especially in light of the fact that Ritchie also

believed he had just shot Ramirez in the chest or lungs, a rapidly incapacitating wound. Therefore, Ritchie's act of firing the last six rounds that killed Ramirez cannot be justified as self defense.

Another possible justification for the last six shots may be found in the language of Penal Code section 196, subdivision 2, which purports to authorize peace officers to use deadly force in discharging any legal duty. (Pen. Code, § 196, subd. 2 [authorizing deadly force by a peace officer when "necessarily committed in overcoming actual resistance to the execution of some legal process, or in discharging any other legal duty"].) California courts have not been called upon to interpret this statute in the context of a criminal case brought against a peace officer, and therefore the contours of a defense to a homicide charge based on this statute are not established. It is unclear whether this statute authorizes a peace officer to use deadly force in circumstances where neither self defense nor the fleeing-felon rule are satisfied. The only certain limitation on the broad language of section 196 is the Fourth Amendment proscription against unreasonable seizures.

In the context of civil rights cases that allege excessive force by a peace officer, state and federal courts have applied a reasonableness test under the Fourth Amendment that is highly deferential to the officer's need to protect himself and others. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 343, & 344 ["the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases"].) The Fourth Amendment reasonableness test is strictly an objective one, and does not consider the officer's mental state: "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Graham v. Connor* (1989) 490 U.S. 386, 397.) Application of this test requires "careful attention to the facts and circumstances of each particular case, include the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Id.* at p. 396.) The most important element is "whether the suspect poses an immediate threat to the safety of the officers or others." (*Smith v. City of Hemet* (9th Cir.2005) 394 F.3d 689, 702.)

Thus, the question of whether Ritchie's killing of Ramirez can be justified based on a peace officer's privilege to use deadly force under Penal Code section 196 appears to turn on whether his actions were objectively reasonable in light of the facts and circumstances confronting him.

Courts that have applied the Fourth Amendment test in cases similar to this one have invariably determined the use of deadly force to be appropriate where the circumstances reasonably suggested the suspect was attempting to use a weapon against the officer. For example, in *Thompson v. Hubbard* (8th Cir.2001) 257 F.3d 896, a lone police officer ran after a suspected armed robber and followed him between two buildings. The suspect

climbed over a short fence and fell to the ground. According to the officer, the suspect “got up from the ground, looked over his shoulder at [the officer], and moved his arms as though reaching for a weapon at waist level.” (*Id.* at p. 898.) The officer fired a single shot, which killed the alleged robber. No weapon was found on the victim’s person. In addressing the fact that the alleged robber was unarmed, the court noted “[a]n officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun.” (*Id.* at p. 899.) The court further held as a matter of law that if the suspect turned and looked at the officer “while the two were in close proximity and moved as though reaching for a weapon,” the officer’s use of deadly force was reasonable. (*Ibid.*)

In *Billingsley v. City of Omaha* (8th Cir. 2002) 277 F..3d 990, a peace officer came upon a burglar in an upstairs room of a residence. The officer ordered the suspect to stop and put his hands up. The officer saw the suspect was holding a purse in one hand but could not see his other hand. The suspect ran out of the room onto a deck, and jumped to the ground some 15 feet below. The officer ran to the deck with his gun drawn and repeated his earlier command. The suspect had landed in a crouched position and then rotated his left shoulder. The officer fired a single round that hit the suspect in the lower back and exited his groin area. The suspect was arrested and found to be unarmed. (*Id.* at p. 992.) The court found that a jury “could properly draw the inference of an immediate threat of death or serious bodily harm to [the officer] from his inability to observe [the suspect’s] hand and his shoulder movement. [Citations.] Therefore, probable cause for the use of deadly force is satisfied by the immediate threat of death or serious bodily harm, as observed through the Fourth Amendment prism of objective reasonableness.” (*Id.* at p. 995.)

In *Foster v. City of Fresno* (E.D. Cal. 2005) 392 F.Supp.2d 1140, a team of three police officers and a police canine were searching for a suspected armed robber in an orchard about 2:30 in the morning. The suspect had just driven a truck through a red light to evade arrest by police, and crashed into another car. He had fled on foot into the orchard, and was believed to be armed with a gun. Shortly after the search began, police found the suspect hiding in some bushes along a fence. An officer shined his flashlight on the suspect, who had his back to the officers. Officers commanded the suspect to show his hands. The suspect did not comply, and after a warning, the officers released the canine. The dog bit the suspect on the lower back and initially the suspect did not react to the bite. Officers continued to command the suspect to show his hands and to come out of the bushes. (*Id.* at pp. 1143-1144.) The canine pulled the suspect from the bushes, and the suspect then raised one arm up and brought it back down towards his waistband. One of the officers fired four rounds in rapid succession, all of which struck the suspect from the back. (*Id.* at pp. 1151-1153, 1157). The court held the use of deadly force was reasonable because the officers reasonably believed the suspect was armed, and because he moved his arm towards his waistband area which could reasonably be perceived as posing an immediate threat to the officers. (*Id.* at pp. 1157-1158.)

Here, the district attorney concluded Ritchie's use of force was reasonable, and therefore lawful, because Ramirez posed a potential threat of serious bodily injury or death to Ritchie. The district attorney noted Ritchie could not see Ramirez's right hand. This precluded Ritchie from determining at that point whether Ramirez was holding a weapon. The district attorney also noted Ritchie was concerned that Ramirez was still moving. Even though Ritchie did not perceive a particular movement he deemed threatening, the fact Ramirez was moving at all caused Ritchie to fear Ramirez was capable of using a weapon against him if he directed his attention towards the car.

The district attorney's conclusion that these factors, along with all of the surrounding circumstances, rendered the situation sufficiently dangerous to Ritchie to justify shooting Ramirez several more times in the chest did not constitute an abuse of discretion. Although courts have identified the fact that a suspect posed an immediate threat to the safety of the officer or others as the most important factor tending to demonstrate the reasonableness of a particular use of deadly force, it is not an essential element of a finding of reasonableness: "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application." (*Graham v. Connor, supra*, 490 at p. 396.)

The facts and circumstances in this case do not lend themselves to an easy application of this test, nor do they suggest any obvious answer. Three experts in the field of police tactics and use-of-force, with whom we consulted, agreed that the circumstances in this case made it very difficult to resolve the issue of whether Ritchie acted reasonably in shooting Ramirez in the chest, and they each resolved the issue differently. One expert formed the opinion that the shooting was reasonable, one formed the opinion that the shooting was not reasonable, and the third remained equivocal. Accordingly, the district attorney could have reasonably concluded Ritchie's actions were reasonable and therefore justifiable under Penal Code section 196, subdivision 2.

Finally, even if reasonable legal minds could disagree whether the fatal shooting was justifiable, the district attorney was entitled to consider, based on all of the circumstances of the shooting and the available admissible evidence, the small likelihood of convincing twelve jurors at a trial that Ritchie committed murder or manslaughter, which further supports the conclusion that the district attorney's decision not to file charges was a proper exercise of discretion. (See *Uniform Crime Charging Manual* (CDAA 1989), p. II-1 [indicating a prosecutor should not file charges unless the admissible evidence is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective factfinder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor].)

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VII. CONCLUSION

Based on all of the foregoing, the district attorney's conclusion that Ritchie's use of deadly force against Ramirez was justifiable under California law was not unreasonable, and did not amount to an abuse of discretion.

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ATTACHMENT A



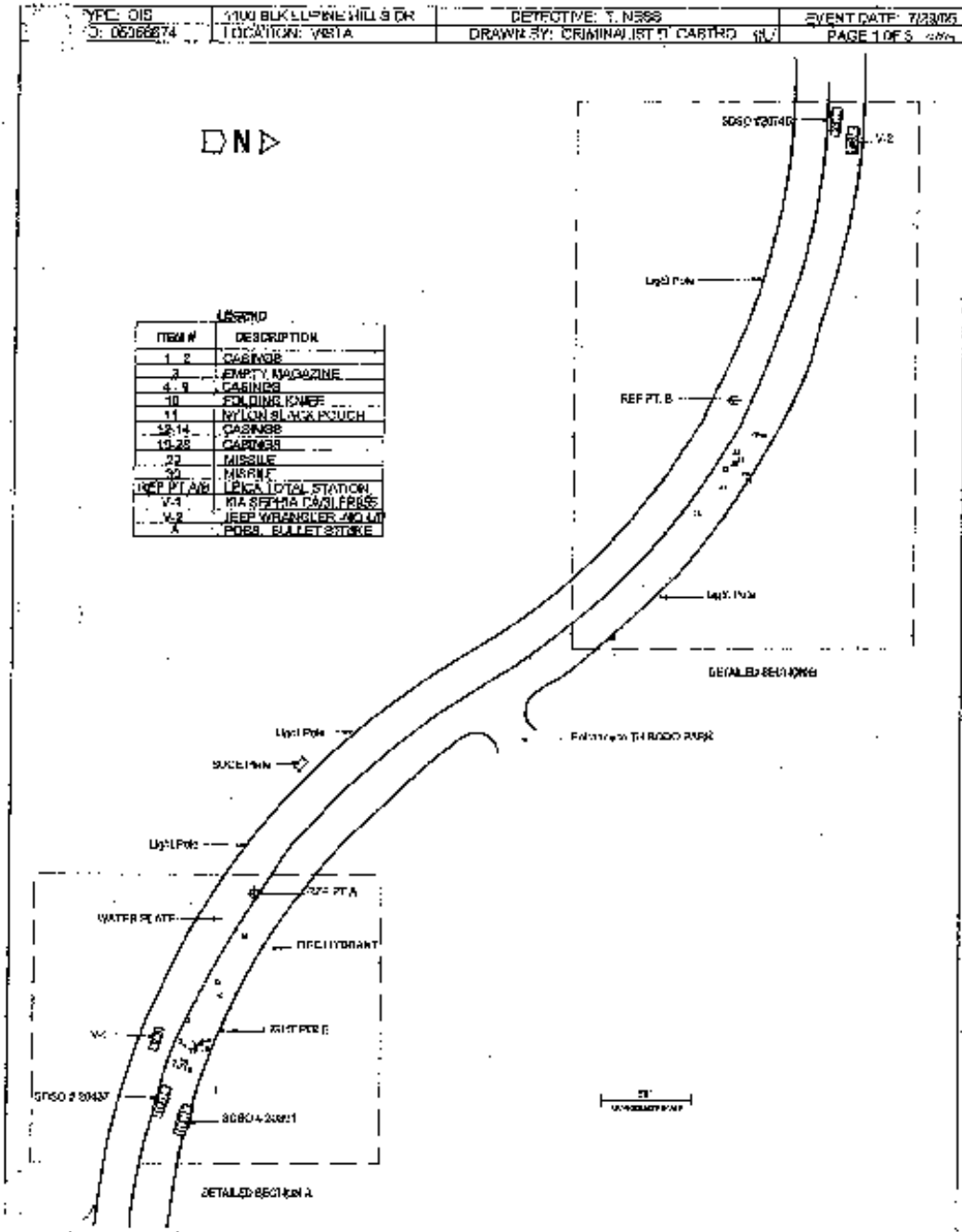
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ATTACHMENT B

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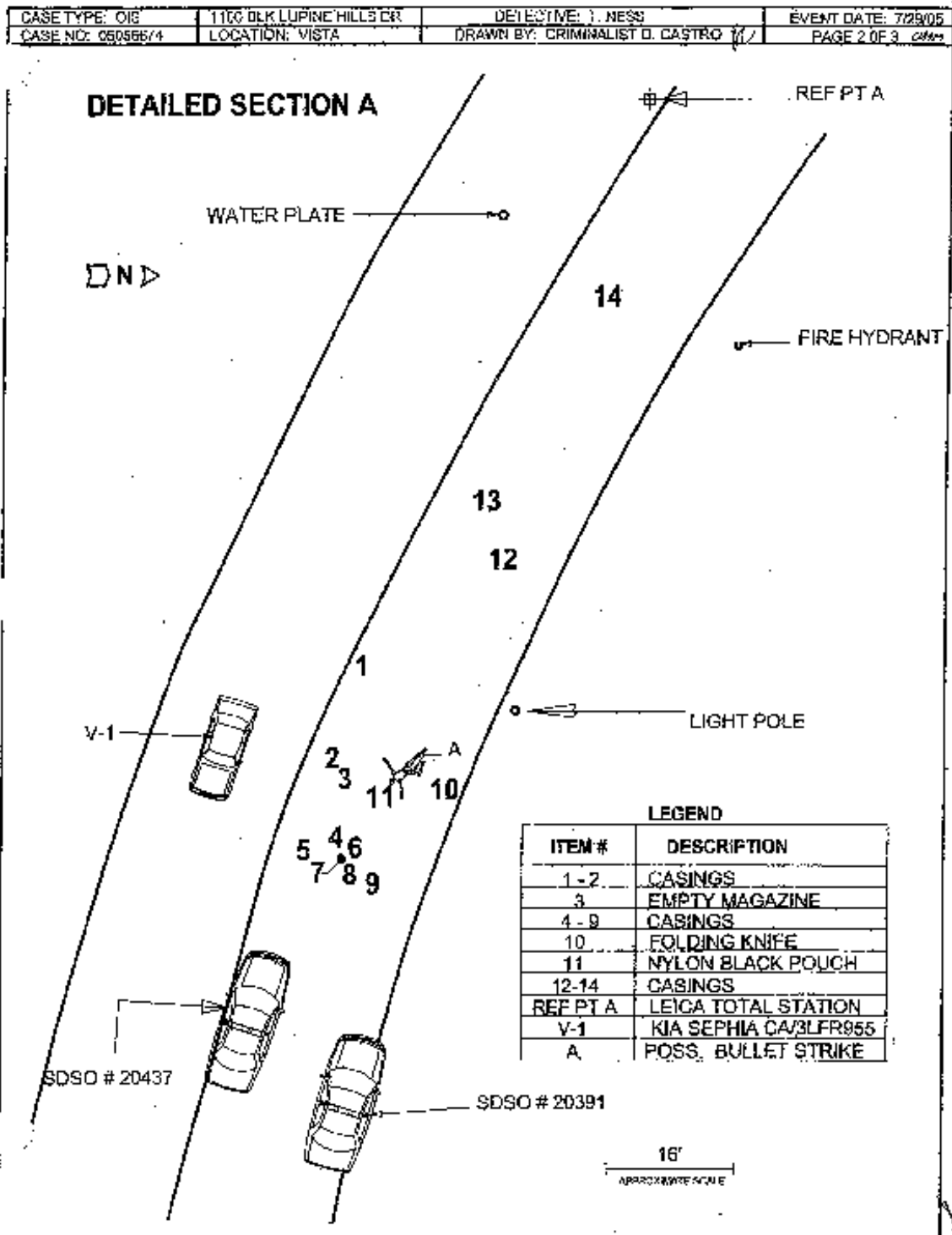
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ATTACHMENT C

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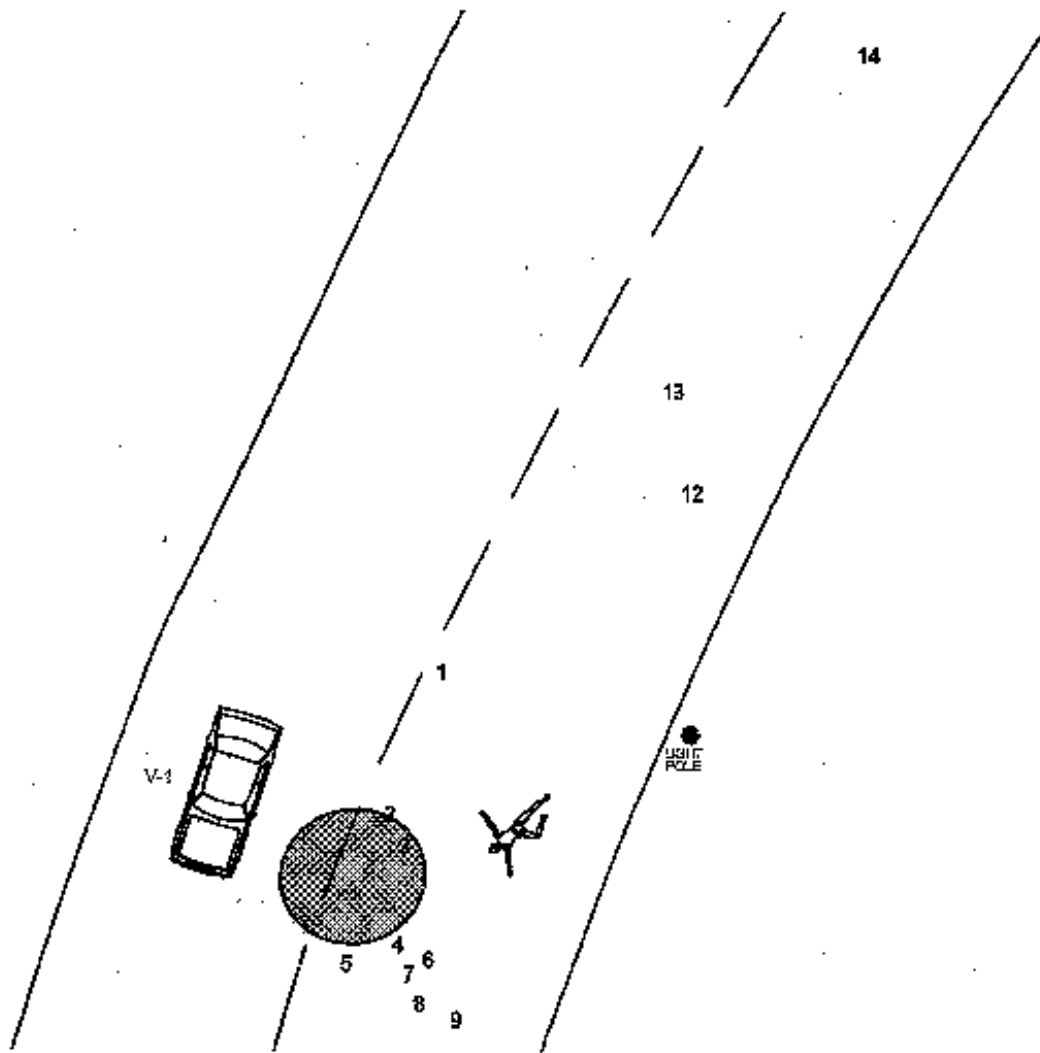
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ATTACHMENT D

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT CRIME LABORATORY
CRIME SCENE INVESTIGATION UNIT
CASE NUMBER 05056674H
(continued)



1, 2, 12, 13, 14 CASES 3 MAGAZINE 4 9 CASES- LAST 6 ● RITCHIE LOCATION

Diagram 6. Approximate Location of Deputy Ritchie for Final Six Shots.
(Not to Scale)

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