



PUBLIC RELEASE MEMORANDUM

DATE: October 20, 2020

SUBJECT: Officer Involved Shooting (Non-Fatal)

Officer: Sergeant Christopher Tusan
Fontana Police Department

Involved Subject: Devon Martel King (Injured)
Date of Birth: 09/04/1989 (Age 29)
Colton, CA

Gang Related: Yes

Date of Incident: 05/11/2019

Incident location: Jurupa Avenue east of Cypress Avenue
Fontana, CA 92337

DA STAR #: 2020-6255

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Charles Phillips

DR #: 601900043

PREAMBLE

This case involves a non-fatal officer involved shooting by a police officer from the Fontana Police Department. The shooting was investigated by the San Bernardino County Sheriff's Department. The accompanying factual summary is based on a thorough review of the investigative reports, photographs, video recordings, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 2020-6255.

PRINCIPAL INVOLVED PARTIES

Devon Martel King, DOB: 09/04/1989 of Colton, California, was injured during the incident under review.

Sergeant Christopher Tusan of the Fontana Police Department was the police officer involved in the shooting of Devon Martel King. Sergeant Tusan sustained minor injuries as a result the incident.

SCENE

This incident occurred on Saturday, May 11, 2019, at approximately 11:13PM. Location of occurrence was Jurupa Avenue east of Cypress Avenue in the City of Fontana, California.

BACKGROUND INFORMATION

Devon Martel King has a prior criminal history that includes juvenile true findings and adult convictions. The adult conviction is listed below:

2007, §211 of the Penal Code, **Second Degree Robbery with Use of Firearm**, Riverside County Case number RIF134592, a felony (strike).

RELATED CASE

Because of this incident, criminal charges were filed against Devon Martel King in San Bernardino County Superior Court case number FWV19001874. The case was resolved on July 11, 2019. King entered a plea of guilty to violations of Penal Code §29800(a)(1) Possession of Firearm by Felon and §69 Resisting an Executive Officer. King was sentenced to two years in state prison.

FACTUAL SUMMARY

On May 10, 2019, Fontana Police Department officers were dispatched to a call concerning shots fired at a party located at a residence in the 14000 block of Nevada Court in the City of Fontana. Upon their arrival, officers found 18 year old **Witness #1** paralyzed and lying in a pool of blood with gunshot wounds to the lower torso. Two additional party guests, 16 year old **Witness #2** and 19 year old **Witness #3** were later found at a nearby hospital also suffering from gunshot wounds to their feet.

Officers interviewed several party goers as witnesses to the shooting. The witnesses stated a suspect or suspects arrived in a vehicle and shot at the party attendees. One or more of the party attendees returned fire. Witnesses described the suspects as young black male adults in their late teens to early twenties. Investigators discovered that one of the shooting victims, or a relative of the victim, robbed the suspected shooter approximately 10 days before the May 10, 2019 party.

After speaking with several party guests, officers believed that the same Disc Jockey would be performing at another party on May 11, 2019. Law enforcement believed that suspects of the shooting would be in attendance at the May 11, 2019 party. Based on this belief, Fontana Police Department officers began fixed surveillance of a residence located at 16000 block Applegate Drive in the City of Fontana.

On May 11, 2019, at approximately 11:11PM, Fontana Police Department officers conducting the surveillance of the Applegate party observed three black males standing several houses away from the party. The men were congregated under a streetlamp and looking in the direction of the Applegate party. One of the black males, later identified as **Witness #4**, was wearing a camouflaged hoodie standing near a second black male, later identified as Devon Martel King ("King"). At the time, King was wearing a white T-shirt. **Witness #4** walked behind King. He lifted King's white T-shirt exposing a handgun in King's waistband. **Witness #4** then retrieved the handgun from King. King, **Witness #4**, and the third black male then entered a 4-door red Chevrolet Impala. The Impala drove out of the residential neighborhood toward Cypress Avenue.

At approximately 11:13PM, Fontana Police Department Officer Joshua Patty and Sergeant Christopher Tusan were partnered together in a marked Fontana Police Department patrol unit. Both officers were dressed in civilian clothing with Fontana Police Department tactical vests bearing cloth departmental badges on the front and badging emblazoned with "POLICE" on the front and back. The two officers conducted a traffic stop on the red Impala on Jurupa Avenue, near the intersection of Cypress Avenue.

The Impala properly yielded when the traffic stop was conducted, but officers noticed a lot of movement from the occupants of the vehicle. Officer Patty exited his patrol unit to contact the driver of the vehicle. At the time of his contact, four people were in the red

Impala. The driver of the vehicle was identified as **Witness #5**. Seated next to **Witness #5** was Devon King ("King") in the front passenger seat. The rear driver's side passenger seat was occupied by **Witness #6**. The rear passenger's side seat was occupied by **Witness #4**.

Officer Patty contacted **Witness #5** at the driver's door. Officer Patty gave a command that all occupants of the vehicle were to put their hands on the headrest or dash in front of them. Officer Patty noted open containers of alcohol in the vehicle. Officer Patty ordered **Witness #5** from the vehicle. **Witness #5** complied. Officer Patty began to speak with **Witness #5** near the trunk of the Impala, as Sergeant Tusan continued observation of the vehicle's occupants.

Sergeant Tusan stood in a tactical position on the south sidewalk of Jurupa Avenue, facing east toward the Impala. Sergeant Tusan was approximately 4 feet south of the passenger side of the Impala. Sergeant Tusan could clearly see into the vehicle from his vantage point. Sergeant Tusan was also standing close enough to the vehicle to hear both King and **Witness #4** exclaim, "shit!" when the two noticed Sergeant Tusan's presence on the scene.

As Officer Patty spoke with **Witness #5**, King quickly moved toward the driver seat. Sergeant Tusan yelled at King, "Get your hands up! Hands up!" King failed to adhere to Sergeant Tusan's order. Sergeant Tusan drew his duty weapon, a handgun, and pointed the weapon toward King. Sergeant Tusan indicated he did not discharge his weapon or use deadly force at this time because "[King] did not pose a threat at this time."

Still failing to comply with Sergeant Tusan's orders, King jumped over the vehicle's center console and exited the driver's side door, placing the Impala between himself, Officer Patty and Sergeant Tusan. King ran in a north easterly direction on Jurupa Avenue into the darkness. Sergeant Tusan pursued King on foot.

Initially, Sergeant Tusan was approximately 40 to 50 feet away from King. Sergeant Tusan gave several commands and warnings to King. At one point during the foot pursuit, King began reaching to his waistline and changing his stride. Sergeant Tusan indicated that he feared for his safety because he believed King to be reaching for a firearm. Sergeant Tusan told King, "You're gonna get shot! Get your hands up! Hands up, now! Get them up, get them up! I'm not playing man!" King was not compliant. Though lighting conditions were poor, Sergeant Tusan was aware of King's non-compliance due to intermittently illuminate King with a flashlight.

Despite Sergeant Tusan's directives, King continued to flee. Yet again, Sergeant Tusan ordered King to put his hands up, indicating "I am not playing man, I'm not playing." King disregarded Sergeant Tusan's warnings. King continued to keep his left hand at his waistband. Sergeant Tusan indicated that he believed King had a firearm. When asked why he did not shoot at that time, Sergeant Tusan again stated, "Well at this point, his shoulders were completely square... but neither of his shoulders began to

swivel... he wasn't a threat to shoot at this point... [h]e was a threat to continue to point my gun at..."

Importantly, during a large portion of the pursuit, Sergeant Tusan found himself without cover or concealment. He was not in radio contact with dispatch; nor was there back-up aiding him in the area. Sergeant Tusan was forced to continue pursuit alone.

As the pursuit continued, a car carrying more than one occupant slowed for King. Sergeant Tusan observed the front passenger of the vehicle through a partially opened window. A voice can be heard in the background of Sergeant Tusan's body camera footage at this time, but any communication is inaudible. What is apparent is that King continued to run.

King attempted to scale an embankment but fell, sliding partially down the slope. As King attempted to get up, Sergeant Tusan closed the distance of the pursuit to approximately 20 feet. From that distance, Sergeant Tusan was able to observe a gun in King's right hand.

King continued back down the embankment to a small retaining wall located at the embankment's base. Preparing to tackle King, Sergeant Tusan closed his distance from King to approximately 5 feet. King leapt off the embankment colliding with Sergeant Tusan. It is unknown, but reasonable to believe that King collided with Sergeant Tusan intentionally.

The collision caused Sergeant Tusan to fall backward, landing on his right side on the pavement. The force of the collision caused Sergeant Tusan to believe that he was shot.

King fell onto the roadway facing Sergeant Tusan. As King did so, Sergeant Tusan observed King holding a black object in his hand that resembled the silhouette of a handgun in the low light conditions present at the time. King sprang to his feet.

Again, King began to run. Initially, Sergeant Tusan stated that, "[King] got up so fast and he turned away from me, that I didn't need to shoot him." However, as King ran, King's posture changed. King swiveled his upper body to the right, toward Sergeant Tusan, who was still laying on the ground. King performed a motion much different than what Sergeant Tusan delineated earlier in the pursuit as non-threatening and "squared" up. During this occurrence, King's left arm stayed at his waist while King dropped his right shoulder down. King began to turn at the waist. King's hands were in front of King, and not visible to the sergeant.

Seeing the furtive movement and being aware that King was armed only moments before, Sergeant Tusan discharged his duty weapon, a Glock Model 22 .40 caliber handgun. Sergeant Tusan fired rapidly four consecutive times. Sergeant Tusan stated that he believed he was in imminent danger of death or great bodily injury at the time he discharged his weapon. Sergeant Tusan stopped firing the weapon when he perceived

King was no longer a threat. Notably, King stopped running only after he was struck by rounds to his right and left leg.

Immediately after securing King, Sergeant Tusant attempted medical aid, asking King where King was shot. Sergeant Tusant advised dispatch that medical personnel were required on scene. Sergeant Tusant also ordered officers arriving on scene to bring tourniquets for King's legs.

Fontana Police Department Officer Andrew Hackett was the first officer to arrive on scene. Officer Hackett immediately rendered medical aid to King, placing tourniquets on King's left and right leg. American Medical Response paramedics arrived and transported King to Arrowhead Regional Medical Center ("ARMC") for treatment.

King sustained the following injuries: a "through and through" gunshot wound to his left calf just below the knee with a corresponding hole located in the left shin and a "through and through" gunshot wound to his right calf with a corresponding hole below the right knee cap. The right leg gunshot wound resulted in a broken right tibia. King was admitted for further medical treatment and underwent surgery for the fracture to his right tibia.

Sergeant Tusant sustained bruising injuries to his right shoulder, right elbow and right hip. While medical attention was received, the injuries were not life threatening. Sergeant Tusant was seen by medical personnel and released without medication prescription.

During the investigation, Fontana Police Department officers located a loaded 9mm semi-automatic handgun where King fell from the embankment. The weapon resembled a Glock style handgun but had no manufacturers brand markings. The weapon did not bear a serial number. When located, the weapon had a live round chambered and was ready to fire.

During an interview with King, King admitted to fleeing from Sergeant Tusant, but denied being in possession of the 9mm handgun. The 9mm handgun and magazine were later DNA tested. King's DNA was located on the 9mm handgun and magazine. No other DNA from the other occupants of the red Impala were found on the weapon.

OTHER RELEVANT FACTORS

Devon Martel King is a known and self-admitted gang member from the "Edgemont Criminals" street gang. King has the monikers "FACE" and "NINE FACE".

At the time of the officer involved shooting, King was on active parole for a 2007 Robbery in which he was sentenced to 12 years in state prison. (See Riverside County Superior Court Case RIF134592) King was paroled under CDCR number F74052. He was paroled on May 16, 2018 with an anticipated discharge date of November 26, 2021.

As a term of parole, King was to have no contact with other gang members.

The rear driver's side passenger, Witness #6, was on active parole from CDCR. Witness #6 was also a known and self-admitted gang member from the "Edgemont Criminals" street gang. Witness #6 also had parole terms that he was not to have contact with other gang members.

SUSPECT INTERVIEW

On May 12, 2019 at approximately 3:46AM, Devon Martel King was contacted at Arrowhead Regional Medical Center by San Bernardino County Sheriff's Detective David Lara. Due to the circumstances surrounding King's initial contact with Officer Patty and Sergeant Tusant, King was advised of his Miranda rights. While initially hesitant to speak to law enforcement, King ultimately affirmed that he understood his rights and agreed to speak with Detective Lara.

During the course of the interview, King was pugnacious and somewhat uncooperative. King stated that he was in good standing with his parole officer. King detailed that he was released on parole after a twelve-year sentence, after which he worked at the United Parcel Service (UPS).

King indicated that on the night of May 11, 2019 he and the occupants of the red Impala left a house party after attending for a couple hours. King was in the front passenger seat of the vehicle. King stated that no one in the vehicle was involved in any type of suspicious activity while at the party. King relayed that after leaving the party the occupants of the vehicle planned to drive to a hookah bar.

King admitted that he was aware that Witness #6, an occupant of the vehicle King was in, was a parolee. King refused to provide the names of the other people in the vehicle. King stated that the driver of the vehicle was initially contacted and removed from the car after law enforcement asked the driver for his license and registration. King believed that this was "shady".

King stated that once the driver of the vehicle was removed, King thought to himself, "fuck these mother fuckers." King then stated that he waited for officers to move the vehicle's driver to the rear of the vehicle. Once they did so, King stated that he jumped over the vehicle's center console and out of the vehicle through the open driver's side door. King stated he fled from the vehicle on foot. King articulated that it was at this time that he was pursued by an additional police officer. King stated that he ran up a small hillside but slipped and fell off the hill. King stated that when he looked back, he saw the officer that was chasing him on the ground. King believed that the officer may have fallen on his own accord.

King believed the only reason he was shot was because the officer fell. King denied being near or causing the officer to fall. King thought he heard the officer drop his gun and so

King fled a second time. The officer (Tusant) was seated on the ground approximately 10-20 feet from King when King was shot. King stopped running because he was shot.

King denied having a handgun even when confronted with information that a video existed. King maintained that the video would show that he never had a handgun. According to King, neither his fingerprints, nor his DNA would be on the handgun that was found on scene. King then stated, "I am not about to admit to nothing." King went on to state that if a handgun was located on the ground, he should not have been shot. King stated that he was running away, and the threat (handgun) was on the ground. King alleged that the officer may have dropped the gun found at the scene.

WITNESSES AND CORROBORATION

Statement of Sergeant Christopher Tusant

On May 14, 2019, at approximately 9:40AM, **Sergeant Christopher Tusant** was interviewed by Detectives David Lara and Oscar Godoy from the San Bernardino County Sheriff's Department. A summary of his statements is detailed below:

At the time of the shooting, Sergeant Tusant was a 19-year veteran of law enforcement. He worked for 6 years for the Colton Police Department prior to transitioning to the Fontana Police Department in 2006. Sergeant Tusant has performed functions in patrol, SWAT, gang enforcement and field training prior to his time as a sergeant for the Fontana Police Department.

Sergeant Tusant explained that on May 10, 2019 the Fontana Police Department Gang Unit was on shift. That night, the unit assisted on the scene of a drive-by shooting at a party on the 14500 block of Nevada Court, within the city, due to possible gang involvement. The shooters shot into the crowd of party guests. There were three victims of the shooting: an approximately 20 year old with two bullet wounds to his back which left the victim a paraplegic, a 15 year old with a gunshot wound to the bottom of his foot, and 20 year old with gunshot wounds to his calf and foot.

On scene, there were multiple calibers of fired cartridge casings found on both sides of the street. This indicated that a shootout had occurred between the suspects and party guests. Through the course of investigation, officers believed that the shooting was related to a robbery that occurred earlier. Officers also believed some of the party guests that returned fired at the vehicle used in the drive-by were part of the DJ's entourage. The same DJ was going to host another party on May 11, 2019 at 16000 block of Applegate Drive in Fontana.

Sergeant Tusant believed this to information to be a boon for intelligence gathering. Based on this belief, Sergeant Tusant devised a surveillance operation for May 11, 2019 to monitor the Applegate party. As part of the plan, three undercover units would

contain two-man elements and observe the party from fixed positions. Three additional marked units would be available for any necessary enforcement stops.

On May 11, 2019, Sergeant Tusan was assigned to work from 2:00PM until 12:00AM. On that date and time, Sergeant Tusan was assigned to a marked Fontana Police Department vehicle with his partner, Officer Joshua Patty. Both officers were dressed in "undercover dress" but wearing black tactical vests with cloth police badges. Each vest also had "POLICE" written on the front of the vest in white on a black background. A San Bernardino County Movement Against Street Hoodlums (SMASH) patch was also affixed to the front of the vest. The back of the vest had "POLICE" and "GANG UNIT" emblazoned in large font. Both officers had other law enforcement accoutrements including radio, hand cuff cases and firearm magazine holders exposed. Sergeant Tusan also carried his duty weapon, a .40 caliber Glock model 22. The weapon was loaded with 15 rounds in the magazine and one in the chamber. He had four additional magazines with 15 rounds loaded in each.

Surveillance of the Applegate party began at approximately 8:30PM. Sergeant Tusan indicated that he believed counter-surveillance may have been taking place in the area based on other subjects he observed. By 11:11PM Officer Drayer relayed that a black male adult in a camo hoodie was standing next to a red sedan and a street sign. Officer Drayer indicated that the male in a camo hoodie was joined by another black male in a white t-shirt. Both males were observed to be looking in the direction of the party. The black male in the camo hoodie stepped behind the black male wearing the white t-shirt and lifted the white t-shirt up, retrieving a handgun from the rear waistband of the black male wearing the white t-shirt. Both men then entered a red four door sedan and drove east on Applegate Drive toward Cypress Avenue. The red sedan then turned northbound on Cypress and disappeared from Officer Drayer's sight.

Concurrently, Officer Patty and Sergeant Tusan pulled on to Cypress Avenue and saw the previously described vehicle from their unit. Sergeant Tusan first became aware that there were four occupants in the red sedan immediately before a traffic stop was conducted on the sedan. Sergeant Tusan could clearly see two black male adults in the back of the vehicle turn their bodies completely around, then look forward.

Sergeant Tusan stated there was "chaos" in the red sedan. Everyone in the vehicle became animated. The occupants of the red sedan were a shifting to the right and left and hunching down. Sergeant Tusan believed the occupants, including the driver, were attempting to hide something.

Once the driver failed to stop at a red light during a right turn on to Jurupa Avenue, Officer Patty initiated a traffic stop of the red sedan. Officer Patty used the patrol unit's takedown lights consisting of blue and red forward-facing lights to stop the sedan. The driver of the sedan appeared disoriented or caught off guard by the police unit's presence. The vehicle immediately jerked to the right and struck the curb.

Once the red sedan yielded, Officer Patty approached the driver, while Sergeant Tusan approached the passenger side of the sedan. The lighting was relatively good in the area of the traffic stop. As Sergeant Tusan approached, he observed that the rear passenger (Witness #4) on the passenger side of the sedan was wearing a camouflaged jacket and the front passenger was wearing a white t-shirt. Sergeant Tusan's attention was drawn to these individuals because there was a high probability that they were armed.

Sergeant Tusan heard Officer Patty command the rear seat passengers to put their hands on the headrests in front of them. Officer Patty also ordered the front seat passenger to place his hands on the dash. At Sergeant Tusan's direction, Officer Patty asked for the keys to the vehicle. Eventually, Officer Patty asked the driver to step from the vehicle due to Officer Patty observing open containers of alcohol. As the driver was exiting the vehicle, Sergeant Tusan observed the front passenger (King,) immediately drop his hands to his knees where the handle would be for the side door. The front passenger then looked up and turned the direction of the Sergeant Tusan, momentarily, then look the other direction while saying "shit". While Officer Patty walked to the rear of the vehicle, the front passenger (King) jumped over the center console and through the driver's side front door.

Sergeant Tusan immediately drew his firearm over the top of the red sedan and pointed it at King as he exited the vehicle. Sergeant Tusan stated at that point he told King "Hands up! Hands up!". Sergeant Tusan stated he did not shoot King at that time because King did not pose a threat. King began to run.

King turned and looked back at Sergeant Tusan, as if to see if either officer would begin pursuit. Sergeant Tusan described the area King ran toward as "really, really dark". Sergeant Tusan stated, "[King was] running into a shadow, away from the streetlight". Sergeant Tusan became concerned that King was moving into an area that King could shoot from. Sergeant Tusan stated, "So, I had the engine block between me and him at this point and I was still able to keep my gun drawn and pointed at him in case he posed a threat toward us." Sergeant Tusan went on to say, "But again, (referencing why he didn't shoot), [King] didn't pose a threat at this time."

Sergeant Tusan began to chase after King. He described the foot chase as being "in the dark". During the pursuit, Sergeant Tusan did not observe any innocent bystanders. Sergeant Tusan could see King running with his hands down around his waistband. King began yanking at his waist with his left hand. Sergeant Tusan believed King was reaching for a gun. Sergeant Tusan ordered King to get his hands up again. Sergeant Tusan warned King, "you're gonna get shot!" Sergeant Tusan then illuminated King momentarily with his tactical light attached to his duty weapon believing King was immediately presenting a threat. Sergeant Tusan had no idea where his partner was at that time.

Shortly thereafter, King continued to run with his shoulders "squared" to Sergeant Tusan. Sergeant Tusan described that a swivel at the shoulders would be the first

indication that King was going to shoot. King did not make this movement and Sergeant Tusant did not believe King to be an immediate threat at this point. The chase continued and Sergeant Tusant found himself without any type of cover.

As the pursuit continued, a car carrying more than one occupant stopped for King. Sergeant Tusant observed the front passenger of the vehicle through a partially opened window. Sergeant Tusant believed the rear passenger door of the vehicle opened and a voice from within the vehicle said, "get in". King did not enter the vehicle, but instead continued to run.

King reversed his direction and began to run toward the initial traffic stop. He quickly diverted, hopped on to a retaining wall and ran up an embankment where he slipped and slid down the slope back to the retaining wall. Sergeant Tusant began to close the distance between King and Sergeant Tusant. King pushed himself up from the ground. As he did so, Sergeant Tusant could see a firearm in King's right hand. Sergeant Tusant began to prepare to tackle King when King "bounded" from the wall. King collided with Sergeant Tusant. Sergeant Tusant indicated that based on King's action, King did this on purpose.

The force of the collision knocked Sergeant Tusant into the street where he landed on his right side, laying on the pavement. Sergeant Tusant believed he was shot. Sergeant Tusant was at a tactical disadvantage because he was laying on his gun side as King quickly got to his feet. King stood over Sergeant Tusant for a moment, then immediately turned away and ran. Sergeant Tusant indicated that he did not shoot at King at that time because, again, King was not a threat.

In the dimly lit area, Sergeant Tusant did not notice that King's gun was then laying in the street. In his interview Sergeant Tusant tells us that he said to himself, "he's got [the gun], he has it...", just seconds prior to shooting King. Shortly thereafter, King made a leftward motion with his arm as though he were going to "come forward", leaning as if retrieving an item from his waistband. Concurrently, Sergeant Tusant saw King's right shoulder come down. Sergeant Tusant thought, "you're not gonna shoot me in the street... I have to shoot you." Then Sergeant Tusant fired his duty weapon four times. The first shot was fired without the benefit of illumination from the sergeant's tactical flashlight.

Sergeant Tusant stopped firing when King fell. He could see at that time that King had nothing in his hands. Sergeant Tusant got to his feet and continued to give commands to King. Sergeant Tusant immediately began to assess King for medical treatment. Sergeant Tusant notified dispatch of the shots fired and requested medical personnel on scene.

Officer Hackett is the first officer to arrive, Officer Collopy the second. Sergeant Tusant ordered tourniquets for King's legs. Sergeant Tusant then began to direct the investigation, ensuring the crime scene was maintained. Sergeant Tusant noted that

King's handgun was moved inadvertently by Officer Collopy when the weapon was "rendered safe".

Statement of Officer Joshua Patty

On May 12, 2019, at approximately 7:09 AM, **Officer Joshua Patty** was interviewed by Detective Tramayne Phillips of the San Bernardino County Sheriff's Department. Officer Patty relayed the following information concerning the shooting:

On May 11, 2019, Officer Patty was assigned to the Fontana Police Department Gang Unit. At approximately midnight on the morning of May 11, 2019, Officer Patty responded to a party in the area of Nevada Court in Fontana. Upon his arrival, Officer Patty was notified that other officers located several party guests who were wounded by gunfire.

Officer Patty conducted an investigation in which he interviewed several witnesses who did not see the shooting but provided additional pertinent information. Officer Patty was told by witnesses familiar with the party guests that several people in attendance were known to possess firearms. The witnesses stated that those persons were known to carry their firearms in satchels or fanny pack bags and were from Blood criminal street gangs in Pasadena and Pomona. Officer Patty was also informed that the same DJ who hosted the Nevada Court party would be hosting a party the following night at 1600 block of Applegate Drive, in Fontana.

Officer Patty and Sergeant Tusan were partnered together later in the evening on May 11, 2019 after a briefing regarding surveillance on the second party. Officer Patty and Sergeant Tusan were responsible for responding to any emergencies arising from the surveillance conducted on the Applegate address. Officer Patty and Sergeant Tusan were both dressed in civilian attire, but had tactical vests designating them as police officers. The two men were also in a marked Fontana Police Department patrol vehicle during their shift.

Throughout the evening, Officer Patty observed several groups of people going to the Applegate address. At an unknown time, Officer Christopher Drayer broadcasted that he saw a group of black males standing around a red sedan on Applegate Drive. One of the black males was holding a gun. The black males entered the red sedan and drove east on Applegate Drive towards Cypress Avenue. Officer Patty observed the red sedan fail to come to a complete stop at a red traffic signal. Based on his observations, Officer Patty conducted a traffic stop of the red sedan.

The red sedan yielded to the right of the road, striking a curb as it pulled over. Officer Patty also saw the rear passengers of the vehicle "reaching and digging" around the rear seat of the sedan. Officer Patty believed that the driver and passengers were distracted by something occurring in the vehicle.

Officer Patty approached the driver of the vehicle and saw the driver reaching down towards the floorboard by the driver's legs. Patty instructed the driver to turn the vehicle off and hand Officer Patty the keys. Officer Patty noticed an open can of beer in the center console. Officer Patty asked all occupants of the vehicle for their identification. The front seat passenger, Devon Martel King, did not provide any identification. Officer Patty believed King may have stated a name but did not recall. Officer Patty ordered King to place his hands on the dash. Officer Patty also ordered the rear seat passengers to place their hands on the headrest of the seats in front of them. Officer Patty instructed the driver of the vehicle to exit the vehicle and began to speak with the driver at the rear of the red sedan.

As Officer Patty was at the rear of the red sedan, he heard Sergeant Tusan instructing someone inside the red sedan to "show me your hands". Patty looked toward the red sedan and observed King run eastbound on Jurupa Avenue away from the driver's side of the red sedan. Officer Patty saw King reach into his waistband with both of his hands while King was approximately 20-30 feet away. Officer Patty observed Sergeant Tusan immediately chase King on foot. King and Tusan crossed the center median into the westbound lanes of traffic and continued to run eastbound on Jurupa Avenue. Officer Patty remained at the traffic stop with the other occupants of the vehicle (Witness #4, Witness #5, and Witness #6). Officer Patty ordered the driver of the vehicle to the ground once the foot pursuit initiated.

Officer Patty stated that he never lost sight of Tusan or King during the foot pursuit. Officer Patty noted that Sergeant Tusan did not broadcast any radio traffic while chasing King. Officer Patty observed Tusan yelling at King but he could not decipher the words. Officer Patty saw Tusan fall backward to the ground and believed King possibly assaulted Tusan. Officer Patty observed King running again. While running, King turned around toward Tusan. At that time, Officer Patty heard four gunshots and saw King fall to the ground. Officer Patty believed Sergeant Tusan was seated on the ground when he fired. Officer Patty simultaneously broadcasted "shots fired" on the radio and requested additional units to respond. Officer Patty held the remaining occupants of the vehicle at gunpoint until additional officers arrived.

Once additional officers arrived on scene, Officer Patty ran to Sergeant Tusan to assess whether medical assistance was necessary. Officer Patty recognized King as the front seat passenger who ran from the traffic stop. Officer Patty noticed that King was handcuffed and bleeding while on the ground. Officer Patty applied a third tourniquet to control King's bleeding. Medical aid arrived on scene a short time later.

Statement of Officer John Collopy

On May 12, 2019, at approximately 5:35 in the morning, **Officer John Collopy** was interviewed at the Fontana Police Department by Detective Oscar Godoy of the San Bernardino County Sheriff's Department. Officer Collopy was assigned to the Fontana

Police Department Gang Unit on May 11, 2019. The following is a summary of the statements provided by Officer Collopy:

On the morning of May 11, 2019, at an unknown time, Officer Collopy attended a briefing by Sergeant Christopher Tusan. Sergeant Tusan briefed investigators on a shooting that occurred on Friday May 10, 2019 at a party on Nevada Court in Fontana. Three party goers were struck by gunfire. Law enforcement located several items of evidentiary value on scene including multiple caliber fired cartridge casings. Witnesses said that possible suspects were scheduled to attend a party on the evening of May 11, 2019 at 16000 block of Applegate in Fontana.

Sergeant Tusan provided a surveillance operation plan during the briefing. If illegal activity were observed during surveillance, officers would attempt to enforce the law in a safe manner away from the residence. During the briefing, Sergeant Tusan provided everyone's assignment. Officer Collopy was assigned to enforce violations of pedestrians or vehicles coming southbound from the residence in a marked patrol unit with Officer Hackett.

At approximately 11:11PM, Officer Drayer broadcasted over the radio that he observed a black male adult wearing a red shirt armed with a gun. The subject was on Applegate Drive with two additional black male subjects. All three subjects entered a red vehicle. The red vehicle then left the area.

Officer Patty and Sergeant Tusan were parked in the area and broadcasted over the radio they had observed the red vehicle. Officer Collopy heard over the radio that Sergeant Tusan and Officer Patty conducted a traffic stop of the red vehicle on Jurupa Avenue at Cypress Avenue. While Officer Collopy was on a secondary radio channel, he was advised by Officer Hackett that Officer Patty and Sergeant Tusan were in a foot pursuit. Officers Collopy and Hackett drove toward Sergeant Tusan and Officer Patty. While en route, Officer Collopy heard someone broadcast, "Shots fired, you guys need to get here!"

As they arrived at the intersection of Jurupa Avenue and Cypress Avenue, Officer Collopy observed a marked Fontana Police Department patrol unit behind a red vehicle on Jurupa Avenue east of Cypress Avenue. The unit had its red and blue emergency lights activated. Officer Collopy saw that Officer Patty had a black male adult on the ground near the sidewalk while his handgun was pointed at the vehicle where two additional black male adults were seated with their hands up.

Upon exiting his unit, Officer Collopy did not initially observe Sergeant Tusan. Concerned for Sergeant Tusan's safety, Officer Collopy asked Officer Patty where Sergeant Tusan was. Officer Patty responded by pointing in an easterly direction down Jurupa Avenue and said, "down there." Officer Collopy immediately began sprinting down the street. Officer Hackett drove eastbound paralleling Officer Collopy's route.

As Officer Collopy ran, he observed Sergeant Tusant standing in the street but could not tell what the sergeant was doing. Upon getting closer, Officer Collopy observed a black male adult, later identified as Devon Martel King, on the sidewalk laying on his back. King was laying with his head to the south and his feet to the north, blocking the sidewalk. King was wearing tan pants and a white shirt at the time. Officer Collopy saw blood coming from King's lower extremities. Sergeant Tusant told Officers Hackett and Collopy that he needed double tourniquets for King's legs. At that time, Officer Hackett got down on his knees and began to render aid to King.

Sergeant Tusant looked at Officer Collopy and pointed on to the street in an easterly direction on Jurupa Avenue and said, "the gun." Officer Collopy observed a Glock handgun with a black lower grip and a silver or gray slide approximately 10 feet east of where King laid. The weapon was half in the gutter and half in the street approximately one foot north of the south curb. *Officer Collopy believed Sergeant Tusant wanted him to secure the weapon because the gun was in reach of King if King were to get up and reach for the gun.* Officer Collopy stated that he knew that he needed to preserve the evidence and under normal circumstances would not move the gun. However, in this scenario, he knew he had to secure the weapon because he did not know how many subjects fled from the red vehicle during the stop.

Officer Collopy took photographs of the weapon in its original state with his body-worn camera. To preserve any potential DNA or fingerprints, Officer Collopy donned a pair of latex gloves. Prior to picking up the weapon, Sergeant Tusant asked Officer Collopy to double check on the status of medical personnel in bound to the scene. Officer Collopy was advised by dispatch that medical personnel were already en route.

Officer Collopy picked up the Glock style weapon and removed the magazine. When Officer Collopy picked up the gun, the gun was mild to warm to the touch. This made Officer Collopy believe the gun had not laid on the street for a long period of time. Officer Collopy pulled the slide of the weapon to the rear and ejected one unfired round from the chamber. Officer Collopy noted that the round was a 9mm Luger. Officer Collopy then ejected the magazine. The magazine had a 10 round capacity and an unknown amount of ammunition held inside. Officer Collopy stated that he personally observed at least two additional rounds inside the magazine. After making the weapon safe, Officer Collopy then placed the gun, bullet and magazine on the sidewalk, about two feet south of its original location.

As Officer Collopy maintained observation of the gun, he observed Officer Taylor Hymas conduct an area check. Hymas located four fired cartridge casings in the same proximity as the gun. Hymas placed pieces of paper near each fired cartridge casing to mark the scene. Officer Collopy maintained scene integrity until San Bernardino County Sheriff detectives arrived. No other person manipulated the gun or moved evidence on scene.

Statement of Officer Christopher Drayer

On May 12, 2019, **Officer Christopher Drayer** was interviewed by Detective Tramayne Phillips of the San Bernardino County Sheriff's Department. Officer Drayer's statements are summarized infra:

On May 11, 2019, Officer Drayer was assigned to the Fontana Police Department's Rapid Response Team (RRT). At approximately 2:15PM on that date, Officer Drayer attended a briefing by Gang Sergeant Christopher Tusan. During the briefing Sergeant Tusan advised officers of a shooting that occurred at a party on Nevada Court in Fontana the night before. Rival gang members were believed responsible. The shooting was possibly in retaliation to an attempted robbery occurring several weeks prior at a Denny's located within the city.

Several of the Nevada Court party promoters were alleged to have another party planned on May 11, 2019 at 16000 block of Applegate Drive, in Fontana. Sergeant Tusan explained that surveillance would be conducted to determine if any of the party goers were suspects to the prior night's shooting. Sergeant Tusan assigned Officer Drayer to conduct undercover surveillance partnered with Officer Steven Roe in a gray unmarked Ford F-150.

On Saturday, May 11, 2019, at approximately 8:00PM, Officers Drayer and Roe parked their vehicle on Applegate Drive, just east of the party location. At approximately 11:11PM, Officer Drayer used binoculars and saw three people standing under a streetlamp near the intersection of Applegate Drive and Old Bridge Road, near the passenger side of a red sedan. Officer Drayer described the first subject as a black male approximately 6'3" tall, dreadlock hair, who wore a camouflaged hoodie. This person was later identified as Witness #4. Officer Drayer described the second subject as a black male, approximately 6 feet tall, with a white t-shirt (King). The third subject was described as a black male who wore a red shirt. The red sedan was parked approximately eight houses west of Officer Dreyer's undercover vehicle. The black males looked in a southwest direction, towards 16000 block of Applegate Drive.

Officer Drayer saw Witness #4 walk behind King and remove a dark colored handgun from the rear of King's waistband. The firearm appeared to be a semi-automatic. Based on Witness #4's actions, Officer Drayer believed that Witness #4 knew the gun was located in King's waistband. Officer Drayer broadcasted his observations to other officers.

As Officer Drayer broadcasted his observations, the group of black males entered the parked red sedan and began to drive westbound on Applegate Drive. The vehicle then performed a U-turn and began driving eastbound. Sergeant Tusan broadcasted and asked if a marked vehicle was needed for a traffic stop. Officer Drayer broadcasted the vehicles direction of travel as the red sedan turned northbound on Cypress Avenue. Approximately one minute later, Officer Drayer then heard Sergeant Tusan and Officer

Patty broadcast the initiation of a traffic stop of the red sedan near Jurupa Avenue and Cypress Avenue.

At an unknown time after Sergeant Tusant broadcasted the traffic stop, Officer Patty broadcasted a foot pursuit. Shortly after Officer Patty broadcasted the foot pursuit, Officer Drayer heard Sergeant Tusant broadcast, "George-1, shots fired."

Upon hearing the call of "shots fired", Officers Drayer and Roe left their position at Applegate Drive and drove to the area of Jurupa Avenue and Cypress Avenue. There, Officer Drayer aided Officer Patty with cover while Officer Patty handcuffed Witness # 4 and the remaining occupants of the red sedan. Officer Drayer recognized Witness #4 as the black male who wore the camouflaged hoodie on Applegate Drive. Officer Drayer was unable to identify Witness #6, who was dressed in a red shirt, as the person he saw wearing the red shirt on Applegate Drive. However, Officer Dreyer did note that the black male wearing the white T-shirt (King), who initially had the handgun in his waistband while on Applegate Drive, was not present inside the red sedan when Officer Dreyer arrived.

Officer Drayer then attempted to assist Sergeant Tusant. When Officer Drayer arrived, he observed King wearing a white T-shirt. Officer Drayer noticed that King had several tourniquets on his legs and was detained. Officer Drayer did not know if King was the same subject he previously observed in a white T-shirt with a handgun in his waistband. Officer Dreyer estimated the time between his observations of the group of black males on Applegate Drive, to the time he heard the "shots fired" broadcast was approximately 4 minutes.

Statement of Officer Andrew Hackett

On May 12, 2019, at approximately 5:33AM, **Officer Andrew Hackett**, was interviewed by Detective Arturo Alvarado of the San Bernardino County Sheriff's Department. The following is a summary of the pertinent facts of Officer Hackett's interview:

On May 11, 2019, Officer Hackett was assigned to the Fontana Police Department Gang Unit. On that same date, Officer Hackett attended a briefing by Sergeant Tusant in which Sergeant Tusant advised officers of a shooting that occurred the day prior on Nevada Court. Sergeant Tusant advised that the shooting took place at the end of a party as partygoers dispersed from the residence. Multiple shots were fired into the crowd. Suspects were described as black males in a dark gray or tan Honda. Sergeant Tusant further advised that the possible suspects may attend a party scheduled for May 11, 2019 at 16000 of Applegate Drive. Thereafter, Sergeant Tusant provided an operational surveillance plan of the Applegate residence. Officer Hackett was assigned to a marked unit and partnered with Officer Collopy to provide security and conduct enforcement stops.

While performing their security function, at approximately 8-8:30PM, an unknown officer broadcasted that there were three black male subjects, one of which was armed with a gun, leaving the party. The subjects wore white, red and camouflage, however Hackett did not recall which had the firearm. All three subjects walked eastbound away from the home and entered a red vehicle. The red vehicle drove eastbound on Applegate Drive and then proceeded northbound on Cypress Avenue. Officer Patty and Sergeant Tusan broadcasted over the radio they were stopping the vehicle.

Officer Patty provided updated radio traffic informing officers that there was a foot pursuit. A short time later, Sergeant Tusan then broadcasted, "Shots fired! Shots fired!" Officer Hackett responded, "Code 3" and arrived approximately 30 seconds later.

Upon arriving on scene, Officer Hackett stopped his unit to the left of Sergeant Tusan's vehicle. Officers Hackett and Colopy exited their vehicle and contacted Officer Patty. Officer Patty instructed Officer Hackett to assist Sergeant Tusan who was positioned east of the traffic stop. Officer Hackett entered his vehicle and drove east where he parked in the number three lane of eastbound Jurupa Avenue traffic. Officer Hackett ran up to a black male adult, later identified as Devon Martel King, who was on the sidewalk laying on his back. King's feet faced north and head faced south. Sergeant Tusan ordered Officer Hackett to place a tourniquet on King's legs.

Officer Hackett observed a pool of blood around King's right leg. Officer Hackett placed a tourniquet on King's right thigh. Officer Patty arrived and placed a tourniquet above Officer Hackett's tourniquet. Shortly thereafter, Officer Roe arrived and placed a tourniquet on King's left thigh. Members of the San Bernardino County Fire Department arrived on scene approximately four minutes later and rendered aid to King. King was transported to an unknown hospital.

While on scene, Officer Hackett saw a silver or dark colored semi-automatic handgun on the sidewalk, approximately 10 feet from Sergeant Tusan's original position. Officer Hackett did not manipulate the firearm, nor did he know who was assigned to guard the weapon. Officer Hackett observed at least two fired cartridge casings in the roadway.

Statement of Witness #5

Witness #5 was interviewed by Detective David Lara of the San Bernardino County Sheriff's Department on May 12, 2019 at about 10:27AM. Witness #5's statements were voluntary and consensual. A summary of Witness #5's interview is below:

On Saturday, May 11, 2019, at an unknown time, Witness #5 was at home with his friend, Witness #4. An unknown female contacted Witness #5 about meeting at an apartment for a social gathering. Witness #5 agreed to meet the girl at an apartment in Moreno Valley. Witness #5 and Witness #4 arrived at the apartment complex at approximately 9:00PM. Witness #5 stated that he drove to the apartment in a red Chevrolet Impala owned by his mother, Witness #7. Witness #5 explained this was the

same vehicle he was stopped in during the traffic stop prior to the officer involved shooting.

About an hour after Witness #5 arrived at the apartment, the host of the gathering told guests to move their vehicles due to parking restrictions. Witness #5 exited the apartment to move the red Impala. While outside, Witness #5 heard other guests talking about a party in Fontana (Applegate). Witness #5 decided to join those guests at the party. Witness #5 initially had only his friend, Witness #4, in the vehicle, but they were later met by Devon Martel King ("King") and Witness #6, who asked for a ride. Witness #5 did not know King but had previously socialized with Witness #6. Witness #5 obliged the group and drove to the Applegate party.

Witness #5 arrived at the Applegate party with Witnesses #4 and 6, and King at an unknown time. There was a \$10 cover fee for entering the party. Before deciding to pay, the group sent Witness #4 into the party to see if the party was worth the cover charge. Witness #5 stated he remained outside with the other occupants of his car until Witness #4 returned. Upon his return, Witness #4 told the group that the party was not much better than the gathering they were previously at in Moreno Valley. Witness #5 stated that his group decided not to spend the cover charge and entered the car to drive back to Moreno Valley. Witness #5 believed King sat in the front passenger seat as they drove away.

When Witness #5 drove approximately two to three blocks from the party, he was pulled over by police officers. Witness #5 denied making any type of reaching motions prior to his contact by police officers. Witness #5 also denied seeing anyone else reaching around the vehicle. Witness #5 recalled one voice prior to the initial stop but could not recall what the voice said. Witness #5 presumed the unidentified person was warning him something was in the Impala.

Witness #5 stated that he was contacted by a police officer during the traffic stop. The officer asked for his license, which Witness #5 retrieved and gave to the officer. Witness #5 indicated that the officer became nervous and asked Witness #5 to exit out of the vehicle within seconds of receiving the license. Witness #5 complied and exited the Impala from the driver side door, where he was seated. Witness #5 and the officer walked to the rear of Witness #5's Impala, near the trunk area. While Witness #5 stood at the back of the Impala, the officer began to conduct a search of Witness #5. During the search, the *passenger door* to Witness #5's Impala opened, King jumped out and ran away from the vehicle.

The officer searching Witness #5 remained with Witness #5 and guided him to the ground. Another police officer gave chase and pursued King on foot. Other police officers arrived at the area of the stop. While Witness #5 was on the ground, another unknown police officer stepped on Witness #5's back. Witness #5 believed this was unnecessary. During his interview Witness #5 then, without prompting, asked if King was shot. Witness #5 was informed by Detective Lara that King had in fact been shot.

Detective Lara confronted Witness #5 in reference to officers' observations of the occupants of the vehicle being in possession of a firearm prior to leaving the Applegate party. Witness #5 denied any knowledge of the firearm. Witness #5 stated that he only suspected King had a firearm when King fled from the Impala during the traffic stop. Witness #5 again denied knowing King and stated he did not care what happened to him.

Statement of Witness #4

On May 12, 2019, at approximately 9:34AM, **Witness #4**, was interviewed by Detective Oscar Godoy of the San Bernardino County Sheriff's Department. A summary of Witness #4's statement to law enforcement is provided infra:

On Saturday May 11, 2019, at approximately 4:00PM, Witness #5 drove to Witness #4's house. Witness #4 and Witness #5 left the residence in Witness #5's red Chevrolet Impala. The two drove to the store and bought a bottle of Hennessy. Witness #4 consumed approximately half a pint of Hennessy throughout the day. Witness #4 and Witness #5 met unknown females at an undisclosed residence in Moreno Valley.

At approximately 8:00PM, Witness #4 and Witness #5 drove to a house party in Moreno Valley. During the party Witness #4 and Witness #5 met with several other guests at a house party. During the party, Witness #4 asked if anyone knew of any other parties. An unknown individual mentioned a party in the City of Fontana. Witness #4 knew Fontana was not far from Moreno Valley. Witness #4 and Witness #5 decided to leave the party to attend the party in Fontana (Applegate). Several other guests of the party decided to accompany them to the new party in Fontana.

When Witness #4 and Witness #5 left the house party to go to the Applegate party, they were accompanied by two unknown black males. Witness #4 knew one of the males as "J", later identified as Witness #6. A second individual, later identified as Devon Martel King ("King"), sat in the front passenger seat. Witness #4 again commented that he did not know Witness #6 or King but had seen them at different social events.

About four vehicles full of partygoers left Moreno Valley to attend the Applegate party in Fontana. At about 10:30PM, Witness #4, Witness #5, Witness #6 and King arrived at an unknown residence in Fontana with three additional vehicles. Witness #4 walked up to the residence and asked the security guard if he could enter to see who was in attendance. The security guard allowed Witness #4 to enter. Witness #4 entered alone and saw about 20 people inside. Witness #4 described the party as "childish", referring to the age of the guest in attendance. Witness #4 said it was not their crowd, so he exited the party, and everyone walked back to their vehicles. Witness #4 and other partygoers decided to go to a nightclub. Witness #4, Witness #5, Witness #6 and King walked back to Witness #5's red Impala. Witness #4 sat in the rear passenger seat, behind King, while Witness #5 got in the driver's seat. Witness #6 occupied the rear driver's side seat.

Witness #4 recalled that Witness #5 drove out of the neighborhood and was pulled over by the Fontana Police Department. When stopped, Witness #4 was on his cell phone and was not worried about the traffic stop. Witness #4 stayed on his cell phone and saw a police officer approach Witness #5 on the driver's side door. Witness #4 then observed a second police officer on the passenger side of the vehicle. The second officer told Witness #4 to sit up and not move. Witness #4 did so.

Witness #4 observed King jump from the front passenger seat to the driver's side and run out of the vehicle through the driver's door. Witness #4 said everything happened so fast that he could not recall all the details. However, shortly after King fled from the vehicle, Witness #4 heard an undetermined number of gunshots. Witness #4 did not know what happened. Witness #4 was then guided out of the vehicle by police officers, handcuffed and sat on the curb. Witness #4 did not know why King ran from the vehicle.

Witness #4 was confronted with information that surveillance officers observed his group with a handgun. Witness #4 was informed that the handgun was also found. When asked whether his DNA would be located on the recovered gun, Witness #4 replied, "Nah, it shouldn't." During further questioning, Witness #4 was adamant his DNA would not be found on the gun.

Statement of Witness #6

On Sunday, May 12, 2019, **Witness #6** was contacted and interviewed regarding the officer involved shooting by San Bernardino County Sheriff's Detective Tramayne Phillips. A summary of his statements is provided below:

Witness #6 is on parole from the California Department of Corrections and Rehabilitation. Witness #6 completed a ten year prison sentence.

On Saturday, May 11, 2019, at an unknown time, Witness #6 attended a residential party at an unknown address in Moreno Valley. During the party, several guests decided to attend a different party in Fontana (Applegate). Witness #6 asked a fellow partygoer, who he identified as "Lonnie", later determined to be Witness #5, for a ride to the party. Witness #5 agreed to drive Witness #6 to the party along with Witness #5's friend, "LR". "LR" was later determined to be Witness #4. Witness #5 drove his mother's red Chevrolet Impala. Several other unidentified partygoers also decided to go to the Applegate party in three separate vehicles.

Witness #6 indicated that he and Witness #5 were not friends. Witness #5 only provided Witness #6 with a ride to the party. Witness #6 did not know Witness #4 on a personal level but did know Witness #4's older brother.

At approximately 11:30PM, Witness #5, Witness #6, and Witness #4 arrived at the Fontana party. Upon arrival, Witness #5, Witness #6, and Witness #4 determined the

party was not worth the five dollar cover charge and decided to drive to a hookah lounge in Riverside. Initially, Witness #6 anticipated driving to the hookah lounge with his female friends Witness #8 and Witness #9, from the first party in Moreno Valley. Witness #6 was unable to do so due to an overweight person in the female's vehicle.

Witness #6 asked for a ride to the hookah lounge. Witness #5 agreed to drive Witness #6 to the hookah lounge. Witness #6, Witness #4, and an unknown male entered Witness #5's vehicle. Witness #6 sat behind Witness #5 in the rear driver's side passenger seat. Witness #4 sat next to Witness #6. The unidentified male sat in the front passenger seat. Witness #5 and the caravan of other people from the Moreno Valley party then left the Applegate party.

While driving to the hookah lounge, Witness #5's vehicle was stopped by law enforcement officers. Witness #4 called Witness #9 and requested Witness #9 return to the area of the traffic stop. Witness #8 and Witness #9 did so and waited at an undisclosed location. Witness #5 yielded to the traffic stop and an officer approached the driver side of the vehicle. The officer asked Witness #5 for his license and registration. During the encounter, the officer observed and inquired about an open beer can in the front seat.

The officer instructed Witness #5 to exit the vehicle and asked the occupants of the vehicle for their identification cards. Witness #6 gave the officer his identification card and told the officer he was on parole. Witness #6 told the officer of his plans to hang out with a group of females. The officer instructed Witness #6 and Witness #4 to place their hands on the headrest in front of them. The officer then walked Witness #5 out of sight, near the rear of Witness #5's vehicle.

Witness #6 saw King exit Witness #5's vehicle though he did not know which door King exited through. King ran from the vehicle. Witness #6 saw a second officer on the passenger side of Witness #5's vehicle run into the dark after King.

Witness #6 did not look out of the window and did not know what was occurring. Witness #6 heard three to four gunshots. Witness #4 asked Witness #6, "Damn, did they shoot him?" Eventually Witness #6, Witness #5, and Witness #4 were placed in the rear of a patrol vehicle. Witness #9 and the other unidentified people arrived in the area near the traffic stop in their vehicles. Witness #6 did not know why the unidentified male ran.

Statement of Witness #10

On Sunday, May 12, 2019, at approximately 5:15AM, **Witness #10** was interviewed by San Bernardino County Sheriff's Detective David Lara. Her interview is summarized below:

Witness #10 is Devon King's wife. Witness #10 did not know King's whereabouts. Witness #10 thought King was with some friends. She was not familiar with King's friends and could not provide names. Witness #10 dropped King off at an unknown address in Moreno Valley. Witness #10 did not know where King was going to be. King planned to telephone Witness #10 when he was ready to be picked up. King never called Witness #10 to pick him up.

Witness #10 received information from King's friends that were with King at a party. The unknown friends attended a "dead party" and decided to leave. After they left the party, King was involved in the incident with police.

Witness #10 was unaware that King had a handgun and had not seen him armed. King was released from custody in November 2018. King was working as a forklift driver for the United Parcel Service.

Body Camera Summary¹

Sergeant Christopher Tusan

Sergeant Tusan was equipped with a body camera on the date of the officer involved shooting. The body camera was activated and recording during the incident. The recording is approximately 9 minutes and 59 seconds in length.

The scene is dark, with low illumination from three distal streetlights. Weather conditions appear dry. Traffic is light in the area of the traffic stop.

Sergeant Tusan is seen standing at the passenger side B-pillar of the red Impala upon initiating his body camera. Officer Patty is heard asking the driver, Witness #5 for his driver's license. Sergeant Tusan remains by the B-pillar. Officer Patty asks the occupants of the vehicle if they have an open container of alcohol in the car. At that time, Sergeant Tusan instructs Officer Patty to get the driver's keys. Officer Patty does so, setting the keys on the roof of the vehicle.

Officer Patty asks the rear seat passengers of the Impala to place their hands on the headrests in front of them. Officer Patty then instructs the front seat passenger, King, to place his hands on the vehicle's dashboard. King is initially compliant.

Officer Patty then turns his attention to the driver of the vehicle again, asking the driver to place his hands on the top of the driver's head. Officer Patty has the driver exit the vehicle with his left hand on top of his head.

¹ Only Sergeant Tusan's body camera is discussed regarding the circumstances of the shooting because no other officers were in the vicinity at the time Sergeant Tusan discharged his duty weapon. Sergeant Tusan's body camera recording was reviewed in its entirety. Relevant portions germane to the shooting are included and summarized.

King makes a furtive movement in the relative darkness of the vehicle. He jumps from the front passenger seat to the driver's seat of the vehicle. Sergeant Tusant immediately tells King, "Get your hands up! Hands up!" (Tusant Body Camera 1m49s) At the same time as his command, Sergeant Tusant raises his duty weapon, pointing it at King. Sergeant Tusant does not fire the weapon. Instead, Sergeant Tusant engages in a foot pursuit of King. During the foot pursuit, Sergeant Tusant retains his gun in his right hand. (Tusant Body Camera 1m 52s)

Sergeant Tusant pursues King into a progressively poorer lit area. There, Sergeant Tusant again tells King, "You are going to get shot! Get your hands up! Hands up now!" (Tusant Body Camera 2m 4s) A few seconds later, Sergeant Tusant again orders King, "Get them up!" (Tusant Body Camera 2m 8s) King does not comply and can be seen running approximately 40 feet in front of Sergeant Tusant. Again, Sergeant Tusant commands King, "Get them up! I am not playing man!" (Tusant Body Camera 2m 11s) King still does not comply.

At approximately 2 minutes 28 seconds into the video, Sergeant Tusant falls to the ground. Concurrently, King is viewed in the left-hand portion of the frame after the collision. A determination as to whether or not King intentionally collided with Sergeant Tusant cannot be made based on the video. However, the video does portray King falling to the ground chest first, not feet first or on his side. King braces himself with his hands in a low push-up position. A dark object is in King's right hand. The video reveals King leaving behind a handgun in the transition area between the concrete gutter and the pavement. The gun appears to be 7-8 feet from Sergeant Tusant (Tusant Body Camera 2m 28s) King begins to run. Again, Sergeant Tusant orders King, "Get your hands up!" (Tusant Body Camera 2m 31s) King fails to comply.

At approximately 2 minutes and 33 seconds into the video, King begins to turn his head and upper torso to the right. Sergeant Tusant, who remains on the ground, discharges his weapon at the 2 minute 34 second mark. Sergeant Tusant fires four times in rapid succession. The first shot occurs without the tactical light on the sergeant's gun illuminated. An unknown object appears to be in King's right hand when the shots are fired. Sergeant Tusant again yells, "Get your hands up!" King, still not compliant, falls to the sidewalk into a seated position. Sergeant Tusant instructs King again, "Hands up, Hands Up! Get them up!" (Tusant Body Camera 2m 37s) King finally begins to raise his hands while simultaneously asking Sergeant Tusant, "What did you shoot me for?"

Sergeant Tusant immediately approaches King and notifies dispatch of the shots fired. (Tusant Body Camera 2m 48s) Sergeant Tusant handcuffs King and asks King twice, "Where are you shot?". (Tusant Body Camera 2m 58s) Approximately 20 seconds later, Sergeant Tusant advises dispatch he is OK, and requests medical (Comm Center). Sergeant Tusant also requests units to bring tourniquets "ASAP". Responding units are told to double tourniquet King upon their arrival. (Tusant Body Camera 3m 55s) Sergeant Tusant also notifies responding officers where King's gun was. King denies ever having possessed a weapon. (Tusant Body Camera 4m 1s) King is advised that officers are attempting to stop his bleeding. (Tusant Body Camera 4m 30s) Sergeant Tusant turns his

attention to King's weapon which has been moved from the gutter/pavement boundary to the sidewalk by Officer Collopy. Sergeant Tusant tells Officer Collopy to "just leave [the gun] in place." (Tusant Body Camera 5m 37s)

Sergeant Tusant gives a briefing regarding the shooting. (Tusant Body Camera 5m 49s) Sergeant Tusant's narrative is consistent with the actions present in the video. Sergeant Tusant indicates that King jumped out of the front passenger seat and began to flee. During the pursuit, Sergeant Tusant observed King reaching for what Sergeant Tusant believed to be a weapon. Sergeant Tusant described King as attempting to go up an embankment where he "pulled" (reached for a weapon). Sergeant Tusant was knocked down, then observed King run, while attempting to "pull" again. At that point, Sergeant Tusant fired. At 6 minutes and 13 seconds Sergeant Tusant mutes his body camera microphone. The microphone is unmuted at 8 minutes 50 seconds.

Officer John Collopy

Officer John Collopy's body camera was reviewed to determine the placement of King's firearm prior to the weapon being "made safe" by Officer Collopy. In his body camera footage, Officer Collopy can be seen arriving on scene asking where Sergeant Tusant is. Officer Collopy then sprints to Sergeant Tusant's position. Once there, Sergeant Tusant tells Officer Collopy where King's firearm is located. Officer Collopy moves the weapon from its original position, removes the magazine from the magazine well and ejects what appears to be a live round from the chamber. (Collopy Body Camera 2m 5s)

Weapon

A black 9mm Polymer80, Inc. (Glock-style), Model P80/PF940SC, semiautomatic pistol with a silver slide was originally located approximately 8 feet east of where Sergeant Tusant discharged his duty weapon. The 9mm handgun was moved prior to the arrival of San Bernardino County Sheriff's investigators. The weapon did not have a serial number. There was an ammunition magazine loaded with six 9mm cartridges inserted into the pistol. An additional cartridge was chambered and ready to fire within the weapon. DNA taken from both the gun and magazine were analyzed by CAL-DNA and showed a mixture of DNA with a primary contributor being Devon King. Notably, DNA did not come back to any other person in the red Impala.

De-escalation

When reviewing Sergeant Tusant's body camera video, it was clear that the incident under review unfolded very quickly. Nevertheless, Sergeant Tusant attempted to de-escalate that situation with verbal commands several times. Sergeant Tusant gave 9 different verbal warnings or commands to King prior to discharging his duty weapon.

Sergeant Tusan gave an additional 4 verbal commands to King after the shooting but prior to King complying. Laudably, even after seeing King with the gun on the embankment, Sergeant Tusan continued to command King to put his hands up.

Injuries

Devon Martel King was transported to Arrowhead Regional Medical Center (“ARMC”) for treatment. King sustained the following injuries: a “through and through” gunshot wound to his left calf just below the knee with a corresponding hole located in the left shin and a “through and through” gunshot wound to his right calf with a corresponding hole below the right knee cap. The gunshot to the right leg resulted in a broken right tibia. King was admitted for further medical treatment and underwent surgery for the fracture to his right tibia.

Sergeant Tusan sustained injuries. Sergeant Tusan had pinching pain to the right shoulder and neck, an abrasion to his right elbow and bruise to his right hip. While requiring medical attention, the injuries were not life threatening. Sergeant Tusan was seen by medical personnel and released without medication.

Assault With A Deadly Weapon

Like other types of assault, the crime of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1) (section 245(a)(1)) requires only “the general intent to willfully commit an act the direct, natural and probable consequences of which if successfully completed would be the injury of another.” (*People v. Rocha* (1971) 3 Cal.3d 893, 899; similarly, see *People v. Colantuono* (1994) 7 Cal.4th 206, 214.)

[W]e hold that assault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.

(*People v. Williams* (2001) 26 Cal.4th 779, 790; see also *People v. Golde* (2008) 163 Cal.App.4th 101, 108.) “This defines the mental state as a species of negligent conduct, a negligent assault. Where the negligent conduct involves the use of a deadly weapon ... the offense is assault with a deadly weapon.” (*People v. Wright* (2002) 100 Cal.App.4th 703, 706.)

As to the “deadly weapon” theory of Penal Code section 245(a)(1), some objects, such as dirks and blackjacks, are deadly weapons as a matter of law. (*In re D.T.* (2015) 237 Cal.App.4th 693, 698; *People v. Brown* (2012) 210 Cal.App.4th 1, 6.) But any object

can be a deadly weapon when used in a manner capable of producing death or great bodily injury. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029; *People v. Brown, supra*, 210 Cal.App.4th at pp. 7, 11; *In re Brandon T.* (2011) 191 Cal.App.4th 1491, 1496.) In determining whether an object not inherently deadly becomes so, the trier of fact may look at the nature of the weapon, the manner of its use, and all other factors that are relevant to the issue. (*In re D.T., supra*, 237 Cal.App.4th at p. 699; *In re Jose R.* (1982) 137 Cal.App.3d 269, 276-276.) The question is essentially one for the trier of fact. (*Id.* at p. 277; cf. *People v. Page* (2004) 123 Cal.App.4th 1466, 1473 [sharp pencil held up to neck]; *People v. Henderson* (1999) 76 Cal.App.4th 453, 467-470 [pit bull can be a deadly weapon under Pen. Code, § 417.8]; *People v. Simons* (1996) 42 Cal.App.4th 1100, 1106-1108 [screwdriver can be a deadly weapon under Pen. Code, § 417.8]; but see *In re Brandon T., supra*, 191 Cal.App.4th at pp. 1496-1498 [small rounded butter knife not deadly weapon].)

Assault with a deadly weapon does not require that the defendant actually try to use the weapon on the victim's person. *The test is whether the defendant demonstrates the "present ability" to complete the attack.* The present ability element is satisfied when a defendant has attained the means and location to strike immediately, which means that the defendant must have the ability to inflict injury on the present occasion although the defendant need not have the ability to inflict injury instantaneously. (*People v. Chance* (2008) 44 Cal.4th 1164.) "Numerous California cases establish that an assault may be committed even if the defendant is several steps away from actually inflicting injury, or if the victim is in a protected position so that injury would not be "immediate," in the strictest sense of that term." (*Id.* at p. 1168.)

As this court explained more than a century ago, "Holding up a fist in a menacing manner, drawing a sword, or bayonet, presenting a gun at a person who is within its range, have been held to constitute an assault. So, any other similar act, accompanied by such circumstances as to denote an intention existing at the time, coupled with a present ability of using actual violence against the person of another, will be considered an assault." [Citations.]

(*People v. Colantuono* (1994) 7 Cal.4th 206, 219.)

The defendant in *People v. Chance, supra*, 44 Cal.4th 1164 was held to have the "present ability" to inflict injury, as required for the crime of assault on police officer, even though there was no round in firing chamber of his gun and he did not point gun at officer. The defendant hid behind a trailer and pointed the loaded gun at a place where he believed Officer Murdoch would appear. The officer instead approached defendant from behind thwarting the defendant's plan.

Defendant contends he lacked the present ability to inflict injury not only because he was aiming in the opposite direction from Murdoch, but also because Murdoch had him covered and would have shot him first. However, this argument cannot be squared with cases demonstrating that an assault may occur even when the infliction of injury is prevented by environmental conditions or by steps taken by

victims to protect themselves.

(*Id.* at p. 1173.)

Here, defendant's loaded weapon and concealment behind the trailer gave him the means and the location to strike "immediately" at Sergeant Murdoch, as that term applies in the context of assault. Murdoch's evasive maneuver, which permitted him to approach defendant from behind, did not deprive defendant of the "present ability" required by section 240. Defendant insists that ... he never pointed his weapon in Murdoch's direction. That degree of immediacy is not necessary

(*Id.* at pp. 1175-1176.)

Other case examples also illustrate when a defendant's behavior is sufficient to complete the crime of assault with a deadly weapon. In *People v. Nguyen* (2017) 12 Cal.App.5th 44, the appellate court upheld the defendant's conviction for aggravated assault on a police officer when he wielded a large knife and stepped toward the officer, rejecting the argument that being 10 to 15 feet away deprived the defendant of the present ability to inflict injury. In *People v. Escobar* (1992) 11 Cal.App.4th 502, the appellate court upheld a conviction when the victim heard the defendant cock a loaded firearm, even though the gun was concealed in a leather purse, and the defendant never pointed the weapon. In *People v. Orr* (1974) 43 Cal.App.3d 666, the defendant pointed a loaded rifle at the victim, backed him into a ditch, then fled. The defendant's conviction of assault with a deadly weapon was upheld. In *People v. Thompson* (1949) 93 Cal.App.2d 780, the defendant pointed a loaded pistol towards police officers and said he would not submit to arrest. Again, the conviction of assault with a deadly weapon was affirmed. (Similarly, see *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1326.)

APPLICABLE LEGAL STANDARDS

Laws of Arrest

California Penal Code section 834a

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.

California Penal Code section 835

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

California Penal Code section 835a

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.

Laws of Self-Defense

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: "Homicide is 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...(4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed,...or in lawfully keeping and preserving the peace." Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be sufficient to prevent injury to the party about to be injured, or the prevent injury to someone else. (Pen. Code §693.)

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the person act out of that fear. (*People v. Clark* (1982) 130 Cal.App.3d 371, 377.) "He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in

his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures.” (*People v. Collins, supra*, 189 Cal.App.2d at p. 588.)

CALCRIM 3470 (REVISED 2012)
RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER

Self-defense is a defense to the unlawful killing of a human being. A person is not guilty of that/those crimes if he/she used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully;
2. The person reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The person used no more force than was reasonably necessary to defend against that danger.

When deciding whether a person’s beliefs were reasonable, consider all the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person’s beliefs were reasonable, the danger does not need to have actually existed.

The person’s belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A person is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

USE OF DEADLY FORCE BY A PEACE OFFICER

Authorization of the use of deadly force is analyzed under the Fourth Amendment’s “*objective reasonableness*” standard. (*Brosseau v. Haugen* (2004) 543 U.S.194, 197.) This question is governed by the principles enunciated in *Tennessee v. Garner* (1985) 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386.

In these decisions, the US Supreme Court explained “it is unreasonable for an officer to ‘seize an unarmed, non-dangerous suspect by shooting him dead.... However, where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force.” (*Tennessee v. Garner, supra*, 471 U.S. at p. 11.)

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner, supra*, 490 U.S. at p. 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness 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. (*Id.* at p. 396-397.) The question is whether the officer's actions are “objectively reasonable” considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 397.)

The US Supreme Court in *Graham* set forth factors that should be considered in determining reasonableness: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. (*Graham v. Connor, supra*, 490 U.S. at p. 396.) The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (*Tennessee v. Garner* (1985) 471 U.S. at p. 8-9. The most important of these factors is the threat posed by the suspect. (*Smith v. City of Hemet* (2005) 394 F.3d 689,702.)

Thus, under *Graham*, the high court advised we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. “We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Smith v. Freland* (1992) 954 F.2d 343, 347.)

Reasonableness: The Two Prongs

Penal Code section 197, subdivision (3) requires that one who employs lethal force have a “reasonable ground to apprehend” a design to commit a felony or to do some great bodily injury. Further, Penal Code section 198 requires that such fear be “sufficient to excite the fears of a reasonable person.” This is clearly an objective standard. In shorthand, perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093.)

When specific conduct is examined under the analytical standard of reasonableness the concepts of apparent necessity and mistake are invariably, and necessarily, discussed,

for they are part of the same equation. “Reasonableness,” after all, implies potential human fallibility. The law recognizes, as to self-defense, that what is being put to the test is human reaction to emotionally charged, highly stressful events, not mathematical axioms, scientifically provable and capable of exact duplication.

While the test, as mandated by section 198, is objective, reasonableness is determined from the point of view of a reasonable person in the position of one acting in self-defense. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) We must take into consideration all the facts and circumstances that might be expected to operate in the persons mind. (*Ibid.*) Reasonableness is judged by how the situation appeared to the *person claiming self-defense*, not the person who was injured or killed as a result.

Imminence of Perceived Danger

“Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey, supra*, 13 Cal.4th at p. 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. Reasonableness and immediacy of threat are intertwined. Self-defense is based on the reasonable appearance of imminent peril of death, or serious bodily injury to the party assailed.

In *People v. Aris* the trial court clarified that imminent peril means that the peril must have existed, or appeared to the person to have existed, at the very time the shot was fired. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1188 disapproved on another ground in *People v. Humphrey* (1996) 13 Cal.4th 1073.) This was later cited with approval by the California Supreme Court: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal. 4th 768,783 quoting *People v. Aris, supra*, 215 Cal.App.3d at p. 1187.)

The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate.

Retreat and Avoidance

Under California law one who is faced with an assault that conveys death or great bodily injury may stand his ground and employ lethal force in self-defense. There is no duty to retreat even if safety could have been achieved by retreating. (CALCRIM No. 3470.) Indeed, in California the retreat rule has been expanded to encompass a reasonably perceived necessity to pursue an assailant to secure oneself from danger. (See *People v. Holt* (1944) 25 Cal.2d 59, 63; *People v. Collins* (1961) 189 Cal. App.2d 575, 588.)

Nature and Level of Force

The right of self-defense is limited to the use of such force as is reasonable under the circumstances. (See *People v. Gleghorn* (1987) 193 Cal.App.3d 196, 200; *People v. Minifie, supra*, 13 Cal.4th at p. 1065; *People v. Moody* (1943) 62 Cal.App.2d 18,22.)

Case law does not impose a duty to use less lethal options. “Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” (*People v. Collins, supra*, 189 Cal.App.2d at p. 578.)

The rationale for vesting the police officer with such discretion was explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the *least* intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.

Scott v. Henrich (1994) 39 F.3d 912, 915.

In summary, an honest and objectively reasonable belief that lethal force is necessary to avoid what appears to be an imminent threat of death or great bodily injury will justify the use of deadly force. This is true even if the person acting in self-defense could have safely withdrawn or had available to him a less lethal means of defense.

ANALYSIS

On May 11, 2019, at approximately 8:00PM, police officers from the Fontana Police Department were conducting fixed surveillance of a party at 16400 block of Applegate Drive in Fontana California. The officers were conducting surveillance in hopes of identifying suspects in the previous night’s shooting that occurred at a separate but related party in Fontana. The shooting was believed to be gang related.

During their surveillance, at approximately 11:11PM, Officer Drayer observed three black males leaving the area of the Applegate party. One of the black males, Witness

#4, walked behind another male, King. Witness #4 lifted King's shirt and retrieved a black handgun from King's waistband. Witness #4, King and a third unidentified male then entered Witness #5's red Impala. Officer Drayer radioed relaying his observations to other units in the area.

Officer Patty and Sergeant Tusant stopped the vehicle for a traffic infraction 1 to 2 minutes later. The occupants of the vehicle appeared to reach toward the floorboards of the vehicle before yielding to the traffic stop. During the traffic stop, King jumped over the center console from the front passenger seat and ran from the scene. He was pursued by Sergeant Tusant. Sergeant Tusant continued to give King commands to show his hands. King was also advised early in the pursuit that he would be shot. In total, Sergeant Tusant gave King thirteen commands. King was only compliant after being shot and told to raise his hands another four times.

During the pursuit, King ran from an area of relatively good lighting to a poorly lit area. Sergeant Tusant could barely see that King was reaching his hands in to his waistband. King attempted to run up an embankment but slid back down. Sergeant Tusant observed a gun in King's right hand. Shortly thereafter, King either fell on to Sergeant Tusant or attempted to tackle Sergeant Tusant from the embankment's ledge, knocking the sergeant down. Despite continued commands, King chose to run from Sergeant Tusant. Still laying on his side from the collision with King, Sergeant Tusant gave additional commands for King to show his hands. King began to turn his torso and head toward Sergeant Tusant. Fearing that he would be shot due to observing King with a firearm just moments before, Sergeant Tusant fired 4 rounds from his duty weapon, a .40 caliber Glock Model 22. Sergeant Tusant struck King in each leg, causing King to stop running.

After shooting King, Sergeant Tusant immediately called dispatch. He began to render medical aid to King. Sergeant Tusant also requested medical personnel to the scene.

In this case, Sergeant Tusant had an honest and objectively reasonable belief that King posed an imminent threat of serious bodily injury or death. Sergeant Tusant and his gang team were initially at the Applegate location in response to a gang shooting that occurred at a similar party the night before. Fontana Police Department officers observed the occupants of the vehicle pulled over by Officer Patty and Sergeant Tusant in possession of a firearm only minutes before the traffic stop was initiated. The person first observed in possession of the handgun matched King's description. Upon initiation of the traffic stop, all occupants in the red Impala were observed taking suspicious actions, reaching about the vehicle. During the stop, and without any apparent reason, King, seated in the front passenger seat, leapt over the center console and through the driver's door where he took off running. King intentionally ran into an area of low light conditions. During the foot pursuit, King continued to reach for his waistband. Ultimately, King ran up an embankment and pulled out a gun. The gun was seen by Sergeant Tusant. It was reasonable for Sergeant Tusant to believe King may use the gun against him in order to evade arrest. Sergeant Tusant yelled multiple verbal commands at King in order to de-escalate the situation and gain compliance. Sergeant Tusant ordered

King to “[g]et your hands up! Hands up!” Sergeant Tusant warned King, “you’re going to get shot!” and “I am not playing man!”

King failed to comply. Instead of immediately complying with Sergeant Tusant from the beginning, King retrieved a weapon. King attempted to gain a superior tactical position running up an embankment. King appears to have also intentionally collided with Sergeant Tusant, jumping from the embankment. While King may have accidentally dropped the gun as a result of the collision, the weapon’s absence in King’s hands is of no consequence to the analysis here. Sergeant Tusant remained focused on the threat, King.

Sergeant Tusant found himself at a unique and significantly disadvantaged position after colliding with King. As a result of the collision with King, Sergeant Tusant was left on his right side, laying on the pavement, as King sprung to his feet. King continued to create distance between himself and Sergeant Tusant by running away from Sergeant Tusant. As King’s hands were near his waistband, King turned his torso and head back toward Sergeant Tusant. When Sergeant Tusant fired his duty weapon, Sergeant Tusant honestly and reasonably believed King was reaching for a weapon.

Significantly, Sergeant Tusant was asked on more than one occasion during his interview why he did not shoot King prior. On each query, Sergeant Tusant responded that King’s posture and action did not pose a threat. King’s final motions prior to Sergeant Tusant’s discharge of his duty weapon were perceived as threats. Given Sergeant Tusant’s close proximity to King, it was reasonable for Sergeant Tusant to believe King posed an imminent threat which could result in Sergeant Tusant suffering serious bodily injury or death. Sergeant Tusant shot only four times, with 61 rounds available to him, appearing to exercise restraint when the perceived threat was neutralized.

It is important to note that King does not become fully compliant even after being shot multiple times. King only stops running once shot in both legs. King still fails to raise his hands up after the shooting until several more commands are issued to him by Sergeant Tusant. Importantly, at no time prior to the shooting, does King articulate to the sergeant, in any manner, that he lost the firearm. Instead, even once arrested, King attempts to mislead law enforcement by indicating that he never possessed a handgun.

Under all of these factors, when viewed in the totality of the circumstances, it was objectively reasonable for Sergeant Tusant to believe King posed an immediate and serious threat to his physical safety. Thus, Sergeant Tusant’s decision to use deadly force was justified. Nothing more can be expected from this officer.

CONCLUSION

Based on the facts presented in the reports and the applicable law, Sergeant Tuant's use of lethal force was a proper exercise of Sergeant Tuant's right of self-defense and therefore his actions were legally justified.

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
San Bernardino, CA 92415
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