



## PUBLIC RELEASE MEMORANDUM

**Subject:** Officer Involved Shooting (Non-Fatal)

**Officer:** Brandon McCaulley  
San Bernardino Police Department

**Involved Subject:** Rickie Clark (Injured)  
Date of Birth 04/30/1998  
San Bernardino, California

**Date of Incident:** August 2, 2019

**Incident location:** West Highland Avenue at H Street  
San Bernardino, California

**DA STAR #:** 2019-11901

**Investigating Agency:** San Bernardino Police Department

**Case Agent:** Detective J. Cunningham

**DR #:** 2019-97875

### PREAMBLE

This was a non-fatal officer involved shooting by a police officer from the San Bernardino Police Department. The shooting was investigated by the San Bernardino Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, video recordings, and audio recordings submitted by the San Bernardino Police Department, DR# 2019-97875.

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**PRINCIPAL INVOLVED PARTIES**

Rickie Clark, DOB: April 30, 1988, of San Bernardino, California, was injured during the incident under review.

Officer Brandon McCaulley of the San Bernardino Police Department was the police officer involved in this shooting.

**FACTUAL SUMMARY**

On Friday, August 2, 2019, at about 1:38 a.m., officers from the San Bernardino Police Department reported they heard shots fired involving two cars that were speeding down Highland Avenue near Sterling Avenue. A short time later, Officer Brandon McCaulley, who was in uniform and driving a marked patrol unit, arrived in the parking lot of 7-11 on West Highland Avenue. Officer McCaulley had a juvenile detained and was releasing him to his father at 7-11. As Officer McCaulley was getting out of his patrol unit, he saw a gray Nissan Altima turn from West Highland Avenue onto H Street. At that time, Officer McCaulley saw an arm extended from the Nissan Altima and muzzle flashes. Officer McCaulley believed he was being fired upon and returned fire, discharging six rounds from his duty weapon. The Nissan Altima lost control and crashed into a house a short distance later. Several subjects ran from the wreckage. Rickie Clark, a passenger in the Altima, was located at the scene of the crash. It was later determined that Involved Party #1, Involved Party #2 and Involved Party #3 fled from the Altima after the crash.

**BACKGROUND INFORMATION**

Rickie Clark has a prior criminal history that includes convictions of offenses listed below:

09/22/2017 Section of the Penal Code, Second Degree Burglary, San Bernardino County Case number FSB17003929, a felony. The defendant pled guilty to this charge as a misdemeanor on 12/18/2017.

**RELATED CASE**

As a result of this incident, criminal charges were filed against Rickie Clark and a co-defendant in San Bernardino Superior Court case number FSB19002684. The case against Rickie Clark was dismissed on December 17, 2019.

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**WITNESSES AND CORROBORATION**

Witness Officer C. Holgate

Officer Holgate was at a call for service in the 2000 Block of East Highland Avenue when he heard cars accelerating and two gunshots. Officer Holgate looked to the south and saw a silver sedan followed by a black sedan speeding westbound on East Highland Avenue passing Sterling Avenue. Officer Holgate had a person in his care at the time and could not pursue the vehicles.

Witness Officer Moreno

Officer Moreno was at a call for service in the 2000 Block of East Highland Avenue when he saw a black sedan and a silver Nissan driving westbound on East Highland Avenue. Officer Moreno heard two gunshots but could not determine where the shots were coming from or if officers were being fired upon. Officer Moreno tried to catch up to the cars driving westbound on East Highland. He heard an officer broadcast that shots were fired in the area of West Highland and North H Street. Officer Moreno arrived at the residence on West 21<sup>st</sup> Street after the Nissan had crashed into a residence. Officer Moreno helped clear the residence. He later responded to Loma Linda Medical Center where Rickie Clark was taken for treatment. Medical staff informed Officer Moreno that Clark suffered non-life-threatening injuries. Officer Moreno obtained a statement from Rickie Clark at that time which is included in the summary of Clark's statements below.

Witness 1

Witness 1 was interviewed by Detective Plummer on August 2, 2019. Witness 1 was sitting on a bench near Bank of America in the 2000 block of East Highland Avenue. Witness 1 saw two cars travelling at a high rate of speed on East Highland. One of the cars almost hit a traffic light near the left turn lane for Sterling Avenue. Witness 1 said he heard about two shots fired. Witness 1 could not identify anyone.

Witness 2

Witness 2 was interviewed by Detective Plummer on August 2, 2019. Witness 2 said he was sitting on a bench near Bank of America in the 2000 block of East Highland Avenue. Witness 2 saw two cars driving at a speed of about 90 miles per hour. The first car appeared to be black and silver and he couldn't provide a description of the second car. Witness 2 saw the first car shooting back towards the second car and the

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second car shooting at the first car. He thought he heard about six shots. He could not describe any of the occupants of the cars.

Witness 3

Witness 3 was interviewed by Detective Plummer on August 2, 2019. Witness 3 said he was asleep in his home when he heard about thirteen rounds fired. Witness 3 said he saw a car driving full speed into his neighbor's house. Witness 3 was concerned for his neighbor's safety and ran to the crash site. Witness 3 saw a tall, heavysset black male getting out of the car. The homeowners came out and were calling 911. The man from the car walked out of the front door of the house and sat on the porch. The man was yelling, "I got shot, God please help me!" The man then took the phone from the homeowner and began calling someone. Witness 3 was not aware of any other people in the car.

Witness 4

Witness 4 was driving a Toyota Tundra with Witness 5 as a passenger. They went to 7-11 to get some beer. They left the parking lot driving north on H Street towards West Highland Avenue and were stopped at a red light at the intersection. As Witness 4 waited, he saw two cars speeding westbound on Highland Avenue towards H Street. Witness 4 said one of the cars swerved into oncoming traffic and Witness 4 heard multiple gunshots. Witness 4's passenger said someone threw a rock and their car was hit. Witness 4 saw an officer with his gun drawn. Witness 4 did not see the officer fire the weapon. As the officer had his gun drawn, Witness 4 saw a newer gray Chrysler 300 turn southbound onto H Street. He also saw a light colored 2008 Chevy Impala head westbound on West Highland Avenue. Witness 4 said he then "took off" to his friend's house and later learned his car had been struck by gunfire.

Witness 5

Witness 5 was the passenger in a Toyota Tundra driven by Witness 4. They left 7-11 after buying beer and were waiting at the stoplight at North H and West Highland Avenue. He saw two cars speeding westbound on West Highland Avenue. Witness 5 heard a shot and felt the passenger door shake as if it had been hit by a rock. One of the cars continued on West Highland while one turned onto H Street. Witness 5 saw a police officer fire four to five shots at the car. They were afraid of being shot so they left the area.

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Witness 6

On August 2, 2019, at approximately 5:00 a.m., Witness 6 was interviewed by Detective Cunningham at the San Bernardino City Police Department. Witness 6 said he was standing in front of the 7-11 with his girlfriend. Witness 6 was at the front of his girlfriend's car talking to several people when he heard tires screeching. Witness 6 looked up and saw a gray Nissan being followed by a black sedan. Both cars were driving westbound on Highland Avenue. Witness 6 heard gunshots and ducked behind his girlfriend's car. Witness 6 estimated he heard about twenty gunshots. He did not believe the gunshots were coming from the gray Nissan. Witness 6 was unable to describe the occupants of either car saying it all happened very fast.

Witness 6 related that about ten to twenty seconds before the shots were fired, he saw a police officer pull into the 7-11 parking lot with a male in the back of his unit. The officer opened the rear door to let the male subject out. Witness 6 said the gray Nissan turned south onto H Street and he believed the black sedan continued on West Highland Avenue. Witness 6 then heard the gray Nissan crash into a house down the street. Witness 6 did not see anyone walking away from that car.

Witness 7

On August 2, 2019, at about 6:45 a.m., Detective Grenado interviewed Witness 7 at the San Bernardino City Police Department. Witness 7 said she was at 7-11 between 1:00 and 1:30 a.m. She arrived in her own car, she was by herself and had just purchased a soft drink inside the store. Witness 7 heard two cars driving at a high rate of speed westbound down Highland Avenue. Witness 7 said there was a gray Altima that Witness 7 believed was being chased by a black sedan. She heard tires screeching a banging sounds which sounded like the cars had collided. As the Altima turned left from Highland Avenue, it looked like it was losing control as it was driving. Witness 7 said while that was happening, she heard sixteen to twenty gunshots. She believed the shots were coming from the black sedan.

Witness 7 said she then saw a police officer pull into the parking lot with a juvenile detainee. She said the officer got out of his patrol car and appeared to point his gun in the direction of the cars. She then heard gunshots and saw the officer firing his gun in the direction of the Altima. Witness 7 could not see any muzzle flashes, but it looked as if the officer's arm was recoiling while he fired his weapon. Witness 7 believed the officer fired about five shots. While that was happening Witness 7 said she could hear shots being fired from a separate gun. Witness 7 said the sixteen to twenty shots she heard included the shots fired by the officer. Witness 7 was not sure if the Altima was hit but she later learned the Altima crashed into a nearby house. Witness 7 saw the officer remove the juvenile from his car and rush the juvenile into the 7-11.

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Witness 7 then saw the officer come back out of 7-11 and she did not believe there were any more gunshots.

Witness 7 did not see any muzzle flashes during the shooting. She said the driver of the Altima was a black male. At that time, she could not see the occupants of the black car. Witness 7 was told by officers to wait so they could get her statement and she then saw the car she believed was the black car involved in the shooting return to the area. Witness 7 said that car came from the east on Highland Avenue and she could see two black males in the car. One was the driver and the passenger was turned in his seat looking towards the incident location. Though the windows were tinted on the black car she could see that the passenger was bald.

Witness 8

Witness 8 was interviewed on August 2, 2019, by Detective Rutherford. Witness 8 said he was waiting at the 7-11 to meet with Officer McCaulley. Witness 8 saw a patrol unit parked in front of 7-11. He saw Officer McCaulley opening the passenger door to his patrol unit. Witness 8 then saw a gray Honda and an aqua blue car driving west on Highland Avenue and he heard gunshots. Witness 8 saw the blue car turn onto H Street and saw a "spark" from the end of a gun. He saw the gray car continue on Highland Avenue and the blue car continued south on H Street. Witness 8 saw someone from the blue car shoot at the gray car and then at the officer. Witness 8 then saw the officer shoot at the blue car. Witness 8 said the blue car continued down H Street and the officer came inside the business and said the vehicle had shot at him. Witness 8 later saw the blue car inside the house on the corner. Witness 8 said the officer did what he had to do.

CHP Officer Julien

Officer Julien was interviewed by Detective Karmann on August 2, 2019, at about 6:38 a.m. Officer Julien was partnered with CHP Officer Ubaldo Gonzalez and they were travelling on eastbound Highland Avenue towards State Route 259. They saw a black 2017 to 2019 Nissan Altima pass them at a high rate of speed on Highland Avenue from State Route 259. Officer Julien made a U-turn to catch the vehicle which accelerated to approximately 100 mph. The car made a right turn onto northbound Muscupiabe Drive driving on the wrong side of the road and then a left turn onto westbound 24<sup>th</sup> Street. The officers checked the area for the black Nissan but were unable to find it.

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Witness 9

Witness 9 lives across the street from the collision site on West 21<sup>st</sup> Street. On the incident date at about 1:20 a.m. Witness 9 woke up to tend to her baby. When she returned to bed she heard the Nissan crash into her neighbor's house. Witness 9 went towards the crash site when she saw a man, who was later identified as Rickie Clark, walking in the house saying, "They shot me. I got shot." Clark then grabbed the phone from the homeowner's hand to make a call. Witness 9 also saw a second black male who fled from the car. Witness 9 provided a description of that person and said she last saw him hiding behind a tree in front of the house.

Victim Officer Brandon McCaulley

On August 2, 2019, at 9:09 a.m., Officer McCaulley was interviewed by Detective Cunningham at the San Bernardino City Police Station. The interview was recorded on a body worn camera.

Officer McCaulley has been a police officer for three years. He was wearing a police uniform and driving a marked unit. He had been dispatched to a "man gun" call and detained a juvenile who was carrying a BB gun which appeared real. Officer McCaulley went to 7-11 to release the juvenile to the custody of his father.

While driving to 7-11, Officer McCaulley heard a car to car shooting broadcast over the radio. Officer McCaulley heard Officer Rutherford report that the cars were heading westbound on Highland Avenue. Officer McCaulley intended to escort the juvenile into the store and asked him to get out of the car. About that time, Officer McCaulley heard engines speeding westbound on Highland Avenue. He had not heard any gunshots but saw the silver Nissan with the black sedan driving next to it. He saw the silver car slam on its breaks and turn left onto H Street. He was not sure if these were the same cars involved in the car to car shooting, but he felt something was "off."

As Officer McCaulley was watching the cars, he heard gunshots and saw three muzzle flashes coming from the driver's side of the car shooting at him and in his general direction. It appeared the windows were rolled down and there were people in the front and back seats, but he could not describe them. Officer McCaulley said he was afraid he was going to get shot, or the juvenile or patrons at the 7-11 may be shot. He was also afraid the car may stop allowing the occupants to get out and shoot at them. He was about five feet from his patrol car with his gun holstered when he heard the shots. Officer McCaulley then drew his service weapon and fired approximately three shots towards the car. He described that he was "shooting on the move" and trying to find cover. He did not know if he hit the vehicle.

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The car continued down H Street and was no longer a threat, so he stopped firing. He was not aware at the time that the car crashed into a house. Officer McCaulley thought the juvenile was still in his car so he opened the door to take the juvenile to his father. He then saw that the juvenile was in the store with his father. Officer McCaulley checked to make sure no one was injured and then left the scene on foot to help the other officers at the crash site. Officer McCaulley recognized the car at the crash scene as the same car he saw on Highland Avenue. He saw Rickie Clark at the scene and Clark said he had been shot. Officer McCaulley saw Clark was bleeding from his head but he did not know the extent of Clark's injuries. He could not say if Clark was one of the occupants of the car. After Officer McCaulley helped the other officers clear the house he returned to 7-11 to help secure that scene and then went back to the police station.

**CRIME SCENE AND SCIENTIFIC INVESTIGATION**

There were three different areas involved in the crime scene investigation.

**2000 Block of East Highland**

On August 2, 2019, Detective Jonathan Plummer investigated the scene at the 2000 block of East Highland Avenue near its intersection with Sterling Avenue. This was the location where officers initially heard shots fired and saw the two cars speeding down Highland Avenue. Detective Plummer located three spent bullet casings as follows: one FCC RP 40 S&W was found in the westbound left turn lane on East Highland Avenue, one FCC RP 40 S&W was found near the crosswalk by the left turn lane on East Highland Avenue, and one FCC Federal Auto 380 was found near the apron to the entrance of the Del Taco parking lot on East Highland Avenue.

**700 Block of West 21<sup>st</sup> Street**

Detective M. Granado investigated the scene at West 21<sup>st</sup> Street responding at around 4:00 a.m. on August 2, 2019. This was the location where the incident ended with the gray Nissan Altima crashing into the residence. Detective Granado noted the gray Altima came to a rest within the house after crashing through the north wall into the living room. The Altima sustained major front-end damage. The rear window was shattered and missing. There was glass on the trunk of the Altima.

Detective Granado found three possible bullet strikes to the left rear driver's side door. He also found two additional apparent bullet strikes to rear of the car at the



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license plate and the right-side rear bumper. There was also an apparent bullet strike on the right-side rear door.

The air bags within the car deployed. Blood was found inside and outside of the car including blood spots on the driver's and front passenger's airbags and on the outside driver's side doors. Three cell phones were found within the car.

Forty-three latent print cards were submitted to the crime lab for analysis. Those prints were lifted from the interior and exterior of the Nissan Altima. On August 6, 2019, the latent print cards were examined with the following results:

Nine latent print impressions were identified to Everett Norwood.

Four latent print impressions were identified to Rickie Clark.

Two latent print impressions were identified to Vandel Ridge.

One latent print impression was identified to Malcolm Augustus.

Additional latent print impressions were identified to two people who are not suspects herein.

Rickie Clark was detained at the scene. A gun shot residue test kit was performed on Rickie Clark using right-hand and left-hand adhesive discs. On August 12, 2019, the San Bernardino Sheriff's Crime Lab report indicated the adhesive discs were analyzed and no characteristic gunshot residue particles were found.

West Highland Avenue at H Street

Detective W. Flesher investigated the scene in the area of West Highland Avenue and H Street.

Detective Flesher noted a .22 short fired cartridge casing was found within the westbound turn lane at West Highland Avenue east of H Street. Two Federal .380 Auto casings were located in the road on H Street south of Highland Avenue. Five Winchester 9mm Luger casings were found in the northwest portion of the 7-11 parking lot on West Highland Avenue. An additional Winchester 9mm Luger casing was later found within a planter at the same location. The Winchester 9mm casings were from Officer McCaulley's service weapon.

Bullet strikes were found on a block wall and a vertical post near a dental office at 807 West Highland Avenue. The trajectory of these bullet strikes was directly in line with Officer McCaulley's fired bullet casings.

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A Toyota Tundra in the 800 block of 21<sup>st</sup> Avenue was found to have one bullet hole in the front passenger side door.

**SURVEILLANCE VIDEO 7-11, WEST HIGHLAND AVENUE**

The 7-11 surveillance video is approximately one hour and twenty-five minutes in length. There is no audio. The camera is facing northwest into the parking lot. The time stamp on the video starts at 00:36:21 at which time a dark colored four door sedan is seen pulling out of a parking stall. There are six other cars visible in the parking lot. There are three men in front of 7-11. The white Toyota Tundra with witnesses Witness 4 and Witness 5 inside is seen at the stoplight on the southeast corner of West 21<sup>st</sup> Street at West Highland Avenue. At 00:36:45 Officer McCaulley's patrol vehicle comes into view and Witness 7 walks outside from the entrance to 7-11 holding a drink. Officer McCaulley stops perpendicular to the parking stalls in front of the business. At 00:36:51 Officer McCaulley opens his car door to get out and then opens the rear passenger door. At 00:36:54 the gray Nissan Altima comes into view travelling westbound on West Highland Avenue. At 00:36:55 the patrons in front of 7-11 begin moving towards the east side of the store and ducking as the gray Altima is rounding the corner turning left at a high rate of speed onto West 21<sup>st</sup> Street. At about the same time, headlights from a dark colored vehicle are seen passing West 21<sup>st</sup> on West Highland Avenue at a high rate of speed. The dark sedan continues on West Highland Avenue until it is out of view. As the Altima is passing the Toyota Tundra, Officer McCaulley is seen moving towards the Toyota Tundra however his patrol car is blocking part of his movements from the video camera. At 00:36:58 while he is still partially blocked from view by his patrol car, Officer McCaulley is seen discharging his weapon. Five muzzle flashes are seen from Officer McCaulley's weapon which end at 00:37:01. Between 00:36:57 and 00:37:06, the juvenile is seen exiting Officer McCaulley's patrol car, moving in front of it while ducking and running towards the 7-11 entrance. At 00:37:13 another police car is seen rounding the corner from West Highland Avenue onto West 21<sup>st</sup> Street. At 00:37:15, Officer McCaulley appears to be using his body worn police radio while his gun is still drawn. At 00:37:21 he backs towards his patrol car with his gun still drawn pointing in the direction of the Altima's path of travel. At 00:37:35 Officer McCaulley returns to his patrol car and then walks towards the 7-11 entrance. The video ends at 00:37:46.

**AXON BODY CAMERA SUMMARY**

Officer McCaulley was equipped with a body camera at the time of this incident. The body camera was activated and recording. The total recording is approximately one hour and eleven minutes, beginning at 07:52:49. The recording of the shooting incident

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begins at 08:42:10. The audio was muted at times throughout the video but was continuous during the shooting incident.

Officer McCaulley is seen driving in his patrol vehicle and audio starts at 08:39:41. At 08:39:56 another officer is heard on the radio saying, "They're westbound from me. Trying to catch up to them."

At 08:40:07 Officer McCaulley arrives to the 7-11 parking lot and gets out of his unit telling the juvenile passenger, "Hey, get out of the car. Get out of the car. Hurry up!" Screeching tires are heard at 08:40:10 followed by four consecutive shots at 08:40:11 and two additional shots at 08:40:13. During this time a light gray car is seen turning the corner onto H Street while a dark colored car speeds westbound on Highland Avenue.

Officer McCaulley discharges his weapon six times beginning at 08:40:14. At 08:40:20, a crash is heard after the gray Altima speeds down H Street. Another police unit passes the 7-11. A few seconds later, Officer McCaulley walks to the front of the 7-11 to contact the father of the juvenile and says, "They shot at me."

The remainder of the body camera footage shows Officer McCaulley hurrying to the crash site. He assists the other police officers in clearing the house. Rickie Clark is initially seen on the front porch. The extensive damage to the house and Altima as a result of the crash is evident from the video. Officer McCaulley later returns to 7-11 and installs crime scene tape before turning the body camera off to report to the police station.

Just before the shooting incident involving Officer McCaulley, he is seen in his patrol car holding what appears to be a gun as he starts to get out of the unit. That gun was the BB gun that he removed from the juvenile's possession. He had not yet unholstered his gun at that time.

**SUSPECT STATEMENTS**

Officer Moreno was the first to question Rickie Clark at Loma Linda Medical Center. At that time, Officer Moreno was unaware that Clark was a suspect in the shooting and Clark was not Mirandized. Clark said he had an argument with his girlfriend and walked to the AM/PM at on East Highland Avenue. Clark met a Hispanic adult male and two black adult men and offered them ten dollars to drive him back to Rialto. Once in the car Clark sat behind the driver and as they were driving down East Highland Avenue, he heard the occupants say, "Drive faster, they are shooting!" Clark ducked down and heard four shots. Clark did not know the occupants of the Nissan he was in and did not know if anyone in the car had a gun or were shooting back. Clark heard additional gunshots before the car crashed into a house. Clark was bleeding from the head but did not know who shot him.

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Rickie Clark was also interviewed by Detective Cunningham at approximately 11:00 a.m. on August 2, 2019. Clark was brought to the San Bernardino Police Station after being treated and released from Loma Linda Medical Center. Rickie Clark was Mirandized before he was interviewed.

Clark said he had been walking in San Bernardino when a car stopped. The guys in the car seemed cool and Clark asked them if he could give them \$15 to take him to Rialto. He did not know the people in the car. Clark was sitting behind the driver. They stopped at a gas station but Clark was tired and stayed in the car. When the guys returned to the car someone said, "Go, go, go!" to the driver. They took off at a high rate of speed driving towards the freeway while running lights. Clark said they were being chased and Clark asked to get out of the car, but they wouldn't let him out. The car that was chasing them was a black BMW or Nissan. There were two people in the black car. While they were driving Clark said he heard, "Pow, pow, pow." Clark did not remember being in the car when it crashed into the house. He did not know when he was shot.

Clark also said one of the guys in the silver car got into a fight with someone at the gas station before the car started chasing them. He said the shooting started around Highland Avenue and Del Rosa. Clark said one person in his car was shooting and that person was sitting next to Clark. Clark said that man was the only person in his car that he saw with a gun. He didn't know how many people in the black car were shooting. Clark described the three other occupants of the car he was in and said the men had been drinking cognac in the car and smelled of alcohol. Clark believes he was shot while they were driving but he was not sure. The detective noted that Clark had ten staples to the right rear portion of his head.

The last intersection that Clark remembers driving by was Highland Avenue and Sierra Way. He didn't hear any more gunshots until they got to the 7-11. He then heard more gunshots he thought came from the car behind them. After their car crashed, he said the other three men must have run but he didn't know where they went.

Clark then recanted parts of his statement admitting he knew the three men in the car, naming them. The driver was Involved Party #3 who Clark knew from his "hood." Involved Party #3 is a (gang name omitted) gang member with a moniker of (AKA #4). The car belonged to Involved Party #3's mother. The front passenger was Involved Party #2, and the man sitting next to Clark he only knew as (AKA #1). Involved Party #2 is from the (gang name omitted) gang and is known as (AKA #2). Clark has known Involved Party #3 and Involved Party #2 for years but only met (AKA #1) three or four days earlier. Clark said he is not a gang member but does hang out with gang members.

Clark said they drove to AM/PM to buy alcohol. (AKA #1) got into a fight with a man at the gas station. Clark didn't know if the other guy was from "enemy hood" or if (AKA #1) tried to rob him. The three men ran back to the car Clark was in and they took

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off. Clark said (AKA #1) was shooting at the car behind them and they were shooting back. He also said the people in the black car started shooting first. When they got to the 7-11 they almost spun out and (AKA #1) kept shooting. Involved Party #3 began swerving and they hit the house. Clark said the shooting continued after they crashed.

Clark said he isn't a gang member anymore but used to be with Involved Party #4 and they called him (AKA #3). He denied he was shooting from the car and said he never shot a day in his life. When asked if someone was shooting from the driver's side of the car Clark said, "Not that I know of."

Clark recalled there were several exchanges of gunfire and he didn't realize he was shot until they crashed. He didn't know when or where he was shot.

**WEAPON**

A weapon was not found in the Nissan Altima after the collision into the house on West 21<sup>st</sup> Street.

**INJURIES**

Officer McCaulley was not injured. Rickie Clark suffered a non-life-threatening wound to his head. He was treated at Loma Linda Medical Center and released within hours.

**APPLICABLE LEGAL STANDARDS**

**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

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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.)

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



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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

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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



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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

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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**

In this case, Officer McCaulley had an honest and objectively reasonable belief that the occupants of the gray Altima were shooting at him and therefore posed an imminent threat of serious bodily injury or death to him and others.

Evidence shows the shooting started several blocks away. Witness 1 and Witness 2 heard the shots fired in that area. Shell casings were also found in the street at the scene of initial shooting. Officers in that area heard the shots and advised dispatch. Those officers tried to catch up the vehicles as they sped down Highland Avenue. Evidence at the crime scenes also indicates shots were fired from the suspect cars involved as different shell casings were found at the scene other than the officer's casings. The Toyota Tundra parked at the intersection in front of the 7-11 at the time of this incident was hit by a bullet from one of the suspect vehicles. That car was parked at the stoplight directly in front of the 7-11 where Officer McCaulley had parked. The car in which Rickie Clark was a passenger also had several bullet-strikes to the rear of the car which appeared to have been fired from the suspect vehicle.

As the cars sped down Highland Avenue, they continued to the 7-11 where Officer McCaulley was parked. Several witnesses then heard shots fired in the area of the 7-11 at the time Officer McCaulley returned fire. The surveillance video from the scene at 7-11 shows patrons of the store reacting to the gunshots as they ducked and moved quickly away from where they were standing. The juvenile in Officer McCaulley's car also ducked as he ran around the front of the patrol car and towards the doors of the 7-11. Witness 6 related that as the officer was opening the door to his patrol vehicle, the shooting occurred. Witness 6 didn't see anyone shooting but he speculated that the officer may have believed the shots were coming from the gray Nissan. Witness 7 said

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when she saw the Altima turning in front of 7-11 it looked like it was losing control. Witness 7 said she heard sixteen to twenty gunshots. Witness 7 believed the shots were coming from the black sedan. Witness 8 saw a person in the blue car shoot at the gray car and then shoot towards Officer McCaulley. Witness 8 saw a muzzle flash from the Altima as it turned in front of 7-11. Witness 8 then saw the officer shoot at the blue car as it drove by.

While Officer McCaulley was watching the two cars speed towards the scene he heard gunshots. Officer McCaulley saw three muzzle flashes, which appeared to come from the driver's side of the car, shooting at him and in his general direction. Officer McCaulley said he was afraid he would be shot, or the juvenile or patrons at the 7-11 may be shot. He was also afraid the car would stop, thereby letting the occupants out to shoot at them. Rickie Clark told investigators AKA #1 was shooting from the Altima and that the black sedan chasing them was also shooting. The surveillance video at 7-11 showed the scene unfolding and it was consistent with Officer McCaulley's recollection. At least six shots are heard on Officer McCaulley's body worn camera coming from the cars as the Altima turned onto H Street from Highland Avenue. It was at that point that Officer McCaulley returned fire.

**CONCLUSION**

Based on the facts presented in the reports and given the evidence of the circumstances at the time, it was objectively reasonable for Officer McCaulley to believe the occupants of the Altima posed an immediate and serious threat to his physical safety and others. In applying the applicable law to these facts, Officer McCaulley properly exercised the use of lethal force in his right of self-defense and defense of others and therefore his actions were legally justified.

**Submitted By:**

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**Dated: March 8, 2021**

