



## PUBLIC RELEASE MEMORANDUM

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**Date:** December 20, 2021

**Subject:** Non-Fatal Officer-Involved Incident

**Involved Officer:** Officer Ryan Schuelke Mayer  
San Bernardino Police Department

**Involved Subject:** "NV" [JUVENILE]  
**Subject's Residence:** San Bernardino, CA

**Incident Date:** October 17, 2020

**Case Agent:** Detective William Flesher  
San Bernardino Police Department

**Agency Report #:** 2020-112506

**DA STAR #:** 2021-20647

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**TABLE OF CONTENTS**

PREAMBLE ..... 3

FACTUAL SUMMARY..... 3

STATEMENTS BY LAW ENFORCEMENT..... 5

    Officer Christopher Shipley ..... 5

    Officer Ryan Schuelke Mayer ..... 6

    Additional Law Enforcement Personnel..... 8

STATEMENT BY CIVILIAN WITNESSES..... 9

INCIDENT AUDIO/VIDEO ..... 9

    Dispatch Recordings..... 9

    Body Worn Camera Video Recordings ..... 10

    Surveillance Camera Video Recordings..... 12

INCIDENT SCENE INVESTIGATION ..... 13

INJURED PARTY ..... 14

APPLICABLE LEGAL PRINCIPLES ..... 14

ANALYSIS ..... 19

CONCLUSION ..... 25

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 3

---

**PREAMBLE**

The summary of this non-fatal incident is drawn from a submission of materials prepared by the San Bernardino Police Department (SBPD). The case agent for this submission was SBPD Detective William Flesher.

The submission reviewed included the following: reports of law enforcement witnesses, police dispatch audio recordings, body-worn camera (BWC) video recordings and other video recordings of law enforcement and civilian witness interviews, civilian video recordings, law enforcement photographs, law enforcement scientific investigation reports and medical records.

**FACTUAL SUMMARY**

On October 17, 2020, at approximately 12:31 a.m., SBPD Officer Ryan Schuelke Mayer fired his duty weapon at [REDACTED] ("NV") in the city of San Bernardino. NV, a juvenile, was armed with a loaded semi-automatic pistol at the time of the officer-involved shooting. No law enforcement officer sustained physical injury during the encounter. NV sustained a gunshot wound to the right leg, received medical aid at the scene and was transported to Arrowhead Regional Medical Center (ARMC) for further care.

The series of events that culminated with the officer-involved shooting began at approximately 12:29 a.m. Officer Schuelke Mayer and his partner, Officer Christopher Shipley, were in a marked SBPD patrol unit and patrolling the area of West Baseline Street and North Sierra Way. Several men standing around a black Mercedes parked in the parking lot of Fame Liquor on the northeast corner of West Baseline Street and North Sierra Way caught the officers' attention. Unbeknownst to the officers, NV had a gun tucked into the right side of his pants as he stood outside the rear passenger side of the Mercedes. The officers were aware, however, that the location was notorious for gang and narcotics activity. Officer Shipley (who was driving the patrol unit) saw the Mercedes leave the liquor store parking lot and fail to lawfully stop behind a limit line on North Sierra Way before turning west onto West Baseline Street. Officer Shipley followed the Mercedes. Meanwhile, the occupants of the Mercedes appeared to be nervously looking back at the officers. For about eight blocks, the officers watched the Mercedes swerve in lanes. The officers believed that the occupants may be stashing contraband. The officers also believed that the recent location and movement of the Mercedes warranted an investigation into whether the driver was under the influence of alcohol.

Officer Shipley initiated a traffic stop of the Mercedes in the area of West Baseline Street and North F Street by activating the patrol unit's red and blue emergency lights. The Mercedes appeared to move to the right but did not yield although there was adequate room to do so along West Baseline Street. Officer Shipley activated the police unit's "chirp" siren to further signal the Mercedes to stop. Instead, the Mercedes continued for two more blocks towards North G Street. The Mercedes turned north (right) onto North G Street and slowly rolled and weaved

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 4

---

towards the curb. Suddenly, the rear passenger-side door cracked open and NV got out. NV sprinted north on the east sidewalk of North G Street. Officer Schuelke Mayer got out of the patrol unit, drew his duty weapon and ran after NV. As Officer Schuelke Mayer trailed NV, it appeared to the officer that NV may have had a gun in his right hand. Officer Schuelke Mayer ordered NV to stop. NV did not stop.

While Officer Schuelke Mayer pursued NV on foot, Officer Shipley approached the Mercedes driver's window. Officer Shipley ordered the driver (Jerome Julian) to turn off the car. Mr. Julian looked at Officer Shipley, then without warning turned the car towards Officer Shipley and sped away. The Mercedes narrowly missed hitting Officer Shipley by a foot. Immediately thereafter, Officer Shipley ran back to his unit and a second responding marked SBPD patrol unit being driven by Officer Andrew Saibene pursued the Mercedes with emergency lights flashing.

A short distance north on North G Street, NV ran on the east sidewalk as Officer Saibene's unit approached. The lights of Officer Saibene's unit illuminated NV and allowed Officer Schuelke Mayer to confirm his suspicion that NV had a firearm in his right hand. It appeared to Officer Schuelke Mayer—who was still chasing NV, that NV was raising his gun towards the approaching patrol unit. Three times, Officer Schuelke Mayer yelled at NV to drop his gun or that he would be shot. After Officer Saibene's unit passed, NV turned to the left, ran west into the roadway, looked at Officer Schuelke Mayer and appeared to turn his body towards the officer. Officer Schuelke Mayer believed that NV was going to shoot him; Officer Schuelke fired his weapon five times at NV.

After the gunfire ceased, NV continued running west across the street and dropped his gun on the asphalt. NV took several more steps west to move between two parked cars then turned south along the west sidewalk of G Street before falling in the adjacent grass. Officer Andrew Petree, who was the front passenger of Officer Saibene's patrol unit, alerted dispatch to shots being fired behind their unit as they continued north on G Street, a half block north. When Officer Schuelke Mayer reached NV, he took hold of NV's hands. By that time, Officer Shipley had moved his patrol unit closer to where NV had fallen and ran towards Officer Schuelke Mayer to assist.

Less than 15 seconds passed from the time the foot-chase began to the time Officer Schuelke Mayer first fired his weapon at NV. NV was handcuffed by Officer Shipley at 12:31 a.m. Emergency medical services arrived at the scene and attended to NV at approximately 12:39 a.m. NV was transported to ARMC and released to officers with a through and through gunshot wound to the right leg, below the knee.

After an examination of the scene and the collection of evidence, a total of four fired cartridge casings (FCC's) were recovered that were attributable to the semi-automatic pistol fired by Officer Schuelke Mayer. The weapon used by Officer Schuelke Mayer was collected and examined by a SBCSD Scientific Investigations Division (SID) Criminalist. The Criminalist found that Officer Schuelke Mayer's weapon fired without malfunction and had no apparent damage. NV's weapon was also collected from the scene. NV's Glock 26, semi-automatic pistol was outfitted with an extended magazine with a 30-round capacity; the pistol contained nine live

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 5

---

rounds. NV's gun was also examined and found to fire without malfunction.

**STATEMENTS BY LAW ENFORCEMENT OFFICERS<sup>1</sup>**

**Officer Christopher Shipley** gave a voluntary interview to Detective Flesher, at 5:47 a.m. on October 17, 2020, a little more than five hours after the shooting. The shooting incident occurred in the last hour of Officer Shipley's 15-hour workday. By the time the interview took place, Officer Shipley had been awake for almost 27 hours. Officer Shipley both admitted and exhibited his fatigue during the interview.

At the time of the shooting incident, Officer Shipley wore a black department-issued SBPD uniform, including a short-sleeved polo shirt with SBPD insignia patches affixed upon both outer shoulders and black pants. Over the black polo shirt, Officer Shipley wore a department-issued black tactical vest with "POLICE" displayed on the right chest. The back of the vest included the word "POLICE" in large white block letters. Officer Shipley was armed with his duty weapon but did not fire it that evening.

The following is a summary of relevant portions of the interview:

Officer Shipley recalled that at about 12:30 a.m., he saw four or five men loitering around a black Mercedes parked at Fame Liquor. At the time, Officer Shipley was driving a police unit eastbound on West Baseline Street and Officer Schuelke Mayer was the front passenger. Officer Shipley stated that Fame Liquor was a location notorious for gang and narcotic activity, and for that reason the loitering group caught the officer's attention. Officer Shipley turned his unit around, drove westbound on West Baseline Street and noticed the Mercedes fail to stop behind the limit line on North Sierra Way. Officer Shipley saw the Mercedes make a westbound turn into the #1 lane of West Baseline Street. Officer Shipley positioned his unit behind the Mercedes and watched the Mercedes weave within its lane, while its occupants (including the driver) repeatedly looked back towards the officers.

Officer Shipley initiated a traffic stop of the Mercedes at the intersection of West Baseline and F Streets by activating his emergency lights and "chirp" siren. In addition to violations of the vehicle code, Officer Shipley believed that the driver could be driving under the influence of alcohol since the Mercedes was leaving a liquor store. Officer Shipley watched the Mercedes move over to the #2 lane, but it failed to move to the right curb despite there being enough room to stop on West Baseline Street. Instead, the Mercedes continued to move towards G Street. Upon reaching G Street, the Mercedes

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<sup>1</sup> Herein is a summary only. All involved and investigating officers were employed by the San Bernardino Police Department. All reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or NV by name are made here for ease of reference.

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 6

---

moved at a "slow roll" pace north-bound onto G Street and continued to weave, then stop. Next, Officer Shipley saw the rear passenger-side door open. NV got out of the Mercedes and ran north on G Street. Officer Schuelke Mayer got out of the police unit and ran after NV. Meanwhile, Officer Shipley also got out of the police unit to make contact with the driver. Officer Shipley drew his weapon and ordered the driver to turn the car off. The rear passenger on the driver's side ("Passenger #2") and the driver looked at Officer Shipley. Then, without warning, the driver abruptly steered the Mercedes toward Officer Shipley. Officer Shipley stated that the Mercedes came within a foot of hitting him and sped away.

Another SBPD Unit (occupied by Officers Petree and Saibene) pursued the Mercedes after it sped away. Officer Shipley went back to his own unit. As Officer Shipley began driving again, he saw NV run west across G Street, reach the curb and fall onto the ground. Officer Shipley saw that Officer Schuelke Mayer was 15 to 20 feet behind NV. Officer Shipley did not hear any gunshots, nor did he see that NV had a gun. Officer Shipley thought that NV moved to the ground voluntarily to surrender. Officer Shipley stated that his attention was diverted between NV and a group of uninvolved civilians who were yelling in the street. Officer Shipley stated that he drove north a short distance, parked his unit approximately 30 feet away and facing a northwest direction on G Street. Officer Shipley then got out and ran towards Officer Schuelke Mayer, who was struggling somewhat with NV. Officer Shipley assisted with detaining NV.

**Officer Ryan Schuelke Mayer** gave a voluntary interview to Detective Flesher, at 7:00 a.m. on October 17, 2020, approximately six and a half hours after the shooting. Officer Schuelke Mayer's attorney was present for the interview. At the time of the incident, Officer Schuelke Mayer had been a law enforcement officer for six years.

During the incident, Officer Schuelke Mayer wore a black department-issued SBPD uniform, including a short-sleeved polo shirt with SBPD insignia patches affixed upon both outer shoulders and black pants. Over the black polo shirt, Officer Schuelke Mayer wore a department-issued black tactical vest with an SBPD cloth badge displayed on the left chest, and "R. Schuelke" and "POLICE" displayed on the right chest. The back of the vest included the word "POLICE" in large white block letters. Officer Schuelke Mayer also wore black boots.

The following is a summary of relevant portions of the interview:

Officer Schuelke Mayer was the passenger of a two-man unit, with partner Officer Shipley driving. The officers were near the end of their shift and headed back to the police station. As they moved eastbound past Fame Liquor on West Baseline Street, Officer Schuelke Mayer saw a man next to a Mercedes parked at the liquor store look nervously at the officers. Officer Schuelke Mayer believed that the man may be involved in criminal activity. Officer Schuelke Mayer was aware of multiple arrests at Fame Liquor that involved firearms, shootings, stabbings and other violent crime, but that narcotic trafficking was the primary illegal activity there. The officers made a u-turn on

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 7

---

West Baseline Street shortly thereafter and got behind the Mercedes as it moved westbound and away from the liquor store.

As the officers followed, Officer Schuelke Mayer noted that the Mercedes swerved within its lane. Officer Schuelke Mayer believed that the car occupants may be stashing contraband, or the driver was driving under the influence. The Mercedes continued along West Baseline Street, and as the Mercedes neared the intersection of West Baseline and F Streets, Officer Shipley activated the unit's emergency lights and siren to initiate a traffic stop. The Mercedes slowed to five to ten miles per hour, like it may stop, but instead the car made a northbound turn onto G Street. Officer Schuelke Mayer believed that this was typical behavior of subjects trying to figure out what to do with contraband. Officer Schuelke Mayer recalled that the officers activated their siren three or four times to signal the Mercedes to yield.

The Mercedes proceeded to pull over on G Street and Officer Schuelke Mayer saw the rear passenger door crack open. In response, the officer cracked open his door. Next, Officer Schuelke Mayer saw the rear passenger (NV) get out and move east toward the curb. NV began running north on the sidewalk. Officer Schuelke Mayer got out of the police unit and ordered NV to stop. Officer Schuelke Mayer saw that NV had a black object protruding from the right side of his right hand that *looked like* a gun. Officer Schuelke Mayer ran after NV and saw NV weave between cars parked along the east curb. As a police unit with emergency lights proceeded north and illuminated the area, Officer Schuelke Mayer saw clearly that NV had a gun with an extended magazine in his right hand. Officer Schuelke Mayer warned NV to drop the gun or that he would be shot, approximately three times. Officer Schuelke Mayer explained that in his six years that he has been involved in more than an average number of foot pursuits of armed individuals but that this was the first time that the individual did not immediately drop the gun or discard the gun under a car. Instead, NV proceeded into the roadway just as the police unit crossed NV's path and appeared to raise the gun. Officer Schuelke Mayer stated "I thought he was going to shoot at the police vehicle." Officer Schuelke Mayer then slowed down and aimed his firearm. After the police unit passed, Officer Schuelke Mayer saw NV turn to his left, look over his left shoulder and turn his body towards Officer Schuelke Mayer. Officer Schuelke Mayer stated that he was in fear for his life and believed that NV was going to turnaround to shoot at the officer. Ultimately, Officer Schuelke Mayer shot at NV to prevent NV from shooting at him.

Officer Schuelke Mayer believed he fired his weapon four or five times from approximately 15 feet, during which NV ducked his head, maintained control of his firearm and continued to run across the street. Then, Officer Schuelke Mayer saw NV stumble or trip and NV's gun was sliding on the ground near one of the cars. NV took a few more steps between some cars and fell onto grass. Officer Shipley then took control of NV and Officer Schuelke Mayer went to stand next to NV's weapon. As he was doing so, Officer Schuelke Mayer heard other officers announce via dispatch that shots had

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 8

---

been fired. As soon as Officer Schuelke Mayer caught his breath, he too announced that shots had been fired and requested medical aid.

At the conclusion of the interview Officer Schuelke Mayer stated that he was armed with a Glock 19 with a tactical light attached. Officer Schuelke Mayer stated that he typically loaded his weapon with 17 rounds in total. Detective Flesher collected Officer Schuelke Mayer's weapon and found it contained 12 rounds. Detective Flesher concluded that Officer Schuelke Mayer fired his weapon five times during the incident.

**Additional Law Enforcement Personnel** submitted narrative reports regarding their involvement in this incident and the investigation that followed. Officer Andrew Saibene reported that immediately prior to the shooting incident that he was driving a marked SBPD unit and saw Officer Shipley's marked unit conducting a traffic stop of a black Mercedes turning north onto G Street from West Baseline Street and ahead of him. By the time Officer Saibene also turned north onto G Street from West Baseline Street, Officer Saibene saw Officer Schuelke Mayer chasing after a black male northbound on the east curb and the Mercedes driving away from the traffic stop and failing to yield. Officer Saibene then initiated his own emergency lights and siren to try to stop the Mercedes. Officer Saibene continued north past Officer Schuelke Mayer and as he crossed 13<sup>th</sup> Street and heard three to five gunshots behind him.

Officer Andrew Petree was the front passenger in Officer Saibene's unit. Officer Petree reported that he alerted dispatch of the shots fired as Officer Saibene continued in pursuit of the Mercedes. Officers Saibene and Petree lost sight of the Mercedes for a brief time. Officers Saibene and Petree later located the Mercedes on West 18<sup>th</sup> Street; the Mercedes was unoccupied. Officer Petree located the identification card of Passenger #2 on the rear driver's-side passenger seat. With additional investigation, Officer Saibene determined that the driver of the Mercedes was Jerome Julian.

After the shooting incident, NV's weapon was collected by a SBPD Forensic Technician who noted that NV's pistol contained nine bullets. Later, Detective Jesse Vega examined NV's weapon and test-fired it. NV's weapon fired without noted malfunction. The FCC generated by the test firing of NV's weapon was submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives National Integrated Ballistic Information Network (NIBIN) for comparison to the unidentified FCC collected from the scene of the officer-involved shooting. The result of the NIBIN search revealed that NV's weapon FCC *did not* match the FCC collected from the scene. Moreover, records revealed that NV's gun—a Glock GMBH, model 26, 9mm Luger caliber semi-automatic pistol, had been purchased by a resident of New York in 2019 and was not registered to any party involved with the shooting incident.

A San Bernardino County Sheriff's Department Scientific Investigations Division Criminalist examined Officer Schuelke Mayer's duty weapon. The Criminalist identified Officer Schuelke Mayer's weapon as a Glock model 17Gen4, 9mm Luger caliber semi-automatic pistol. The Criminalist found Officer Schuelke Mayer's weapon had no apparent modification or defect and fired without malfunction.



### **STATEMENTS BY CIVILIAN WITNESSES<sup>2</sup>**

Multiple civilian witnesses who heard gunshots and/or saw police activity on North G Street were contacted after the shooting incident. One civilian reported hearing, “if you’re gonna shoot me, shoot me” but no additional information was provided as to who made the statement and when it was said in relation to the officer-involved shooting. In sum, no uninvolved civilian provided substantive information regarding the specific foot-pursuit and culminating officer-involved shooting.

Through their contact with civilians, SBPD detectives determined that there were four occupants in the Mercedes at the time Officers Shipley and Schuelke Mayer initiated their traffic stop prior to the shooting. Mr. Julian was identified as both the owner and driver of the Mercedes, as well as the owner of the gun carried by NV.<sup>3</sup> It was also reported that Mr. Julian, NV and the front passenger of the Mercedes were cousins. Passenger #2 was interviewed and admitted that he saw the police car when they were leaving the liquor store and was aware that the police car got behind them as they were driving away. Passenger #2 believed that Mr. Julian was going to stop after the police activated their emergency lights. When NV got out of the car, Passenger #2 heard an officer say to NV, “Get on the floor or I’m gonna shoot” and the Mercedes then sped away.

### **INCIDENT AUDIO/VIDEO<sup>4</sup>**

**Dispatch Recordings.** The case agent’s submission included audio files containing dispatch radio broadcasts. The dispatch recordings appear to have been submitted in real time. The actual timing of the recordings, however, was not apparent from the recordings themselves, except to make approximations based on the digital title and content of the calls. There was some indication of timing when the audio recordings were considered alongside the dispatch logs prepared by SBPD, which noted approximate timestamps for radio communications delayed only by the time to receive and record the information. With those limitations in mind, the following is a summary of the relevant submitted recordings:

On October 17, 2020, at approximately 12:29 a.m., Officer Schuelke Mayer advised dispatch that his unit would attempt a traffic stop at West Baseline and E Streets. Officer

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<sup>2</sup> Multiple civilian witnesses were interviewed pursuant to the submitted investigation. Every civilian statement and recorded statement submitted was reviewed in totality. However, only selected parts of those statements are included here. No civilian witness used the name of any person involved in the lethal force encounter, unless otherwise indicated. Names are included in this summary for ease of reference only.

<sup>3</sup> Jerome Julian was arrested and charged by felony complaint (San Bernardino County Superior Court, case number FSB2000609) for his conduct related to this incident. On March 9, 2021, Mr. Julian plead guilty to the charges of felony evasion (Vehicle Code, section 2800) and resisting an executive officer in performance of his duty by force or violence (Penal Code, section 69).

<sup>4</sup> All submitted audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are summarized here.

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 10

---

Schuelke Mayer relayed the license plate of the Mercedes and was advised that the registration for the car was "current" to an address in Murrieta (not Mr. Julian). Approximately 25 seconds after the first broadcast, Officer Schuelke Mayer alerted dispatch that the vehicle was "finally stopping" at West Baseline and G Streets.

By 12:30 a.m., Officer Petree broadcasted that the Mercedes failed to yield and that their unit was pursuing the Mercedes northbound on G Street. About 17 seconds later, Officer Petree radioed that shots had been fired behind them. Immediately thereafter, Officer Schuelke Mayer also advised that shots were fired and requested medical aid for the injured subject.

At approximately 12:32 a.m., Officers Petree and Saibene advised that they had located the Mercedes, but that it was unoccupied.

Emergency medical services were noted to be at the scene where the shooting occurred at 12:38 a.m. By 12:45 a.m., NV was prepared for transport by ambulance to ARMC.

**Body Worn Camera Video Recordings.** The BWC recordings made by the following officers were submitted by the case agent: Officers Petree, Saibene, Schuelke Mayer and Shipley. The identity of the officer from whom the footage was received can be inferred by the name given to these video files as submitted as well as from the video content. The BWC recordings do include the date and time being recorded, and the timestamps on each recording appear to be consistent with each other. Only the BWC footage of Officer Schuelke Mayer captured the officer-involved shooting. All other BWC footage pertained to incidents occurring after the shooting occurred. Each recording was reviewed in light of the interview given or narrative report prepared by the person to whom the recording was attributed. The submitted BWC recordings were generally consistent with the wearing-officer's interview or narrative report. The timing of events noted in the dispatch recordings and companion logs appear to be consistent with the timestamps indicated by these BWC recordings.

Officer Schuelke Mayer wore his BWC mechanism at mid-sternum. As such, the resulting footage was subject to the limitation of the camera mechanism and the view resulting from being worn on the officer's chest. Moreover, it is understood that BWC footage does not recreate what the wearing officer perceived by his senses. Of note, no audio was included in Officer Schuelke Mayer's BWC camera footage until after the shooting had occurred. With those parameters in mind and in the context of all other material submitted, the following is a summary of Officer Schuelke Mayer's BWC video footage:

The recording began with a timestamp at **12:30:04 a.m.** on October 17, 2020. Officer Schuelke Mayer was still in the passenger seat of his patrol unit, but was immediately getting out and within four seconds, NV's feet were visible ahead of Officer Schuelke Mayer.

[**12:30:08 a.m.**] The officer's shadow showed his right hand and elbow bend to his right

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 11

---

side, suggesting that Officer Schuelke Mayer drew his duty weapon as soon as he got out of the patrol unit. The patrol unit's blue and red emergency lights were flashing. The involved Mercedes was stopped in front of the patrol unit with its brake light illuminated and the rear passenger door was ajar. The sudden jogged picture frame included in the BWC footage was consistent with reports that Officer Schuelke Mayer pursued NV on foot.

**[12:30:10 a.m.]** Officer Schuelke Mayer had his weapon's tactical light pointed at NV as they ran north along G Street's east sidewalk. This indicated that Officer Schuelke Mayer was pointing his weapon towards NV to illuminate him. NV and the officer ran onto the west side of cars parked on the east curb after passing the Mercedes and two parked cars, roughly to the front of 1253 North G Street.

**[12:30:15 a.m.]** NV ran from the street and back onto the east sidewalk of G Street. Officer Schuelke Mayer was still in the street but in pursuit of NV. The involved Mercedes passed to Officer Schuelke Mayer's left. As Officer Schuelke Mayer continued to the sidewalk, his tactical light shone forward and upon a man sitting on a piece of furniture next to the driveway of 1259 North G Street. The sitting man appeared to almost fall backwards as Officer Schuelke Mayer ran past him and onto the east sidewalk.

**[12:30:18 a.m.]** NV pivoted to the left (west) and into the grass between the east sidewalk and curb. Officer Schuelke Mayer was still behind NV and continued to have his tactical light trained on NV.

**[12:30:19 a.m.]** At the front of a truck parked against the east curb of G Street in front of 1267 North G Street, NV was about to step off of the east curb. NV's gun came into view of the BWC device; the gun was in NV's right hand. Intensifying red and blue flashing lights indicated Officers Saibene and Petree's unit was south of NV and moving north. NV's right hand appeared to rise (with the gun in it) as Officers Saibene and Petree approached.

**[12:30:20 a.m.]** NV ran into the street and was facing southeast. Officer Saibene's unit appeared suddenly to the front of NV. NV turned to look at the unit and Officer Schuelke Mayer. Officer Schuelke Mayer had both hands on his firearm, extended out in front of his chest, but both NV and Officer Schuelke Mayer appeared to still be running.

**[12:30:21 a.m.]** Smoke from apparent gunfire was visible. Officer Schuelke Mayer's tactical light was on NV, who was facing southwest and looking away from Officer Schuelke Mayer. NV ducked his head down while he continued to hold his gun in his right hand.

**[12:30:23 a.m.]** NV dropped his gun to the street asphalt. The gun skipped west/southwest as it hit the ground as NV stumbled towards the west curb/grass and momentarily out of view of Officer Schuelke Mayer's BWC device.

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 12

---

[12:30:25 a.m.] Officer Schuelke Mayer was right upon NV as NV laid in the grass abutting the west concrete sidewalk. Officer Schuelke Mayer had both hands on his firearm. NV looked backward at the officer from a prone position. NV put his left open and empty palm up and facing Officer Schuelke Mayer. NV's right hand was outstretched with the palm down in front of him, propping upper body up slightly.

[12:30:27 a.m.] Officer Schuelke Mayer grabbed NV's left hand with his left hand, while the officer maintained his right-handed grip on his duty weapon. Officer Shipley appeared and assisted in taking NV into custody.

[12:30:35 a.m.] The audio of the BWC footage engaged as Officer Shipley took NV into custody. Officer Schuelke Mayer was breathing heavily and was preparing to announce that shots had been fired. Within seconds, Officer Petree was heard broadcasting "shots fired behind us."

[12:30:48 a.m.] Officer Schuelke Mayer radioed "X-ray-three, we have shots fired. Both involved officers code-four. Suspect is down for now."

**Surveillance Camera Video Recordings.** Surveillance video footage from Fame Liquor and Riley College Prep Academy was submitted by the case agent and was considered in the context of the investigation. The video footage captured on the evening of the shooting incident depicted the involved parties but included no sound.

Fame Liquor's video footage included a date stamp consistent with all other submitted video, however the timestamp was likely incorrect. The submitted liquor store video footage showed NV getting out of and back into the involved Mercedes via the rear passenger door. As NV got back into the Mercedes, before the Mercedes left Fame Liquor, NV's gun was visible to the surveillance camera at NV's right pant waistband or pocket. Video footage then showed the Mercedes move out of the liquor store parking lot, onto Sierra Way and turn west onto West Baseline Street. Less than 15 seconds later, Officers Shipley and Schuelke Mayer's unit can be seen trailing behind the Mercedes on West Baseline Street.

Riley College Prep Academy is located on the northwest corner of West Baseline and North G Streets. Surveillance cameras at the school, though presumably meant to capture the school premises in the foreground, did capture the involved parties on North G Street in the background. All submitted school surveillance video was date and time stamped. The school surveillance showed the involved Mercedes turn slowly on to North G Street from West Baseline Street and stop. Officers Shipley and Schuelke Mayer's unit was immediately behind the Mercedes with its emergency lights flashing. The Mercedes stopped momentarily and two figures (NV and Officer Schuelke Mayer) are seen moving north on the sidewalk and past the stopped Mercedes. Next, Officers Petree and Saibene's unit turned right (north) onto North G Street from West Baseline Street just as the Mercedes was speeding away. Officer Petree and Saibene's unit immediately

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 13

---

began to pursue the Mercedes with emergency lights activated. Officer Shipley's unit trailed behind Officer Petree and Saibene's unit.

While the Mercedes and Officers Petree and Saibene's unit moved north on North G Street, the vehicles passed NV and Officer Schuelke Mayer, who were running parallel and east of the moving cars. Officer Schuelke Mayer appeared to trail NV by approximately two car lengths. Just as Officer Petree and Saibene's unit moved past NV's position, NV appeared to pivot left (west) and enter the street with his arms swinging widely in a running motion. The video footage included no distinct and obvious indications of active gunfire (i.e., muzzle flash) from Officer Schuelke Mayer. But the school video footage does show a light following NV that is consistent with Officer Schuelke Mayer's report that he activated the tactical light on his duty weapon during the foot pursuit. NV appeared to continue to move west, then south, before falling into the grass on the west side of the street. Just as NV fell to the ground, Officer Shipley stopped his patrol unit, got out and began running (north) towards NV. Officer Schuelke Mayer, who followed NV west and then south, reached NV first. Officer Shipley arrived to assist Officer Schuelke Mayer quickly thereafter.

**INCIDENT SCENE INVESTIGATION**

The case agent managed the crime scene investigation with the assistance of SBPD forensic technicians who collected evidence, took photographs and recorded video of the scene with an unmanned aerial vehicle. The precipitating foot pursuit and shooting incident occurred entirely within the 1200 block of North G Street, a two-way (north/south) residential roadway extending approximately 680 feet, bordered by West 13<sup>th</sup> Street to the north and West Baseline Street to the south. This block of North G Street included single-family and multi-family dwellings along the east side of the street. Riley College Prep Academy occupied the west side of the street.

Five FCC's were located on the asphalt of North G Street, in the area west of 1267 North G Street. Four of those FCC's were attributable to Officer Schuelke Mayer's weapon, based upon their appearance. Officer Schuelke Mayer's FCC's were located at positions consistent with the running path the officer traveled in pursuit of NV, after NV entered the roadway. The fifth FCC, though found in close proximity to Officer Schuelke Mayer's FCC's, appeared weathered, was not visually similar to Officer Schuelke Mayer's ammunition and did not match the test-fired FCC generated by NV's weapon (as discussed above).

Three bullet strikes were discovered in two cars west/southwest of the recovered FCC's, all at leg-level. NV's gun was located on the southbound lane of North G Street, west of the left front tire of one of those cars, southwest of the FCC closest to the west curb.

A blood spot in grass abutting the west concrete sidewalk was noted west of 1259 North G Street. Officer Shipley's patrol unit was noted at the scene, parked diagonally in the middle of the street, facing northeast, to the west of 1255 North G Street. The case agent reported that Officer Shipley's patrol unit was initially in the middle of the street and facing northwest but had

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 14

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to be repositioned to face northeast after Officer Shipley parked it there.

**INJURED PARTY**

NV was 17 years old at the time of the shooting incident. After the shooting incident, NV received medical attention at the scene and was transported by ambulance to ARMC for further care. Medical staff estimated NV stood approximately 6'2" tall and weighed 160 pounds. NV was treated for a gunshot wound to the right calf. No bone fracture was noted in the right leg and no surgical intervention was required. A physician determined that the gunshot wound had a back to front trajectory. NV was discharged approximately an hour and a half after he was received in the emergency room.

After discharge from ARMC and approximately eight hours after the shooting occurred, NV gave a voluntary statement to the case agent. NV told Detective Flesher that there was a driver and a front passenger in the Mercedes and that NV was the only person in the back seat. NV stated that he did not know the driver or front passenger and had met them while trying to buy "weed" about 10 minutes prior. NV admitted that he had his gun when he got into the Mercedes. NV stated that he bought the gun two to three weeks prior for protection. NV denied that he received the gun from the other men in the car.

NV told Detective Flesher that a police car got behind the Mercedes after they left a liquor store. NV stated that he decided to run after the police got behind them. NV stated that he got out of the car and ran with the gun in his right hand. NV admitted that he heard the officer tell him to drop the gun, though he did not comply initially. NV stated that he dropped the gun when he ran across the street, had run away from the gun and was shot after doing so.

**APPLICABLE LEGAL PRINCIPLES**

If a police officer witnesses a moving vehicle commit traffic violations, it is both reasonable and lawful for the officer to initiate a traffic stop of that vehicle. (*People v. Lomax* (2010) 49 Cal.4<sup>th</sup> 530, 564.) A peace officer may use objectively reasonable force to effect an arrest, to prevent escape or to overcome resistance. (Calif. Penal Code §835a(b)).<sup>5</sup> An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, citing, *In re Tony C.* (1978) 21 Cal.3d 888, 895.) An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a) A subject who draws or exhibits a firearm with the intent to resist or prevent arrest or detention of himself by a peace officer commits a serious felony. (Penal C. §417.8, 1192.7(c)) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in

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<sup>5</sup> All references to code sections here pertain to the California Penal Code.

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 15

---

*Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

**PENAL CODE SECTION 196.** Police officers may use *deadly* force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a use of force that “is in compliance with Section 835a.” Section 835a(c)(1) specifies a *police officer is justified in using deadly force* when he reasonably believes based upon the totality of the circumstances, that it is necessary “defend against an imminent threat of death or serious bodily injury to the officer or another.” The “[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).)

A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense using objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

**PENAL CODE SECTION 197.** California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code §197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

The pertinent criminal jury instruction to this section is CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction, rooted in caselaw, states that a person acts in lawful self-defense or defense of another if :

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required for a police officer to use lethal force under section 835a(c)(1), as stated above.

While the appearance of these principals was new to section 835a in 2020,<sup>6</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the

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<sup>6</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 16

---

suspect he is attempting to apprehend has “threatened infliction of serious physical harm” to the officer, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that state statutory requirements may also be satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at \*25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw is still relevant.

There is one additional pertinent and new factor in section 835a that did not appear in the section previously, nor was it developed in prior caselaw: deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

In addition, the legislature included generalized findings and declarations at subsection (a) of Section 835a that are instructive. These findings and declarations lend guidance to our analysis but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;<sup>7</sup>
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and

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<sup>7</sup> Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).



**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 17

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- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

**IMMINENCE.** “Imminence is a critical component” of self-defense. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, *imminent* threat of death or great bodily injury. “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows, and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

Imminence more recently defined in the context of police use of lethal force is similar:

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal C. §835a(e)(2).)

In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 348.) The court in *Scott* explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment...Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.

(*Scott, supra*, 39 F.3d at 915.)

**REASONABLENESS.** Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer’s right to use force in the course of an arrest, stop or seizure,

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 18

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deadly or otherwise, must be analyzed under the Fourth Amendment's "reasonableness" standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight....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 in a particular situation.

(*Id.* at 396-397, citations omitted.)

The "reasonableness" test requires an analysis of "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Id.* at 397, citations omitted.) What constitutes "reasonable" self-defense or defense of others is controlled by the circumstances. A person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.)

The *Graham* court plainly stated that digestion of the "totality of the circumstances" is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, "reasonableness" cannot be precisely defined nor can the test be mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the "reasonableness" calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the "most important" *Graham* factor. (*Mattos v. Agarano* (9<sup>th</sup> Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer's use of deadly force. (*Reynolds v. County of San Diego* (9<sup>th</sup> Cir. 1994) 858 F.Supp. 1064, 1071-72.) If an officer is acting in the course of an arrest or detention, it is not required that the subject point the firearm at the officer, or even draw the weapon in a rude, angry or threatening manner to qualify as a serious felony being committed against that officer. (Penal C. §§245(d), 417.8; *People v. Raviart* (2001) 93 Cal.App.4<sup>th</sup> 258, 266, *People v. Pruett* (1997) 57 Cal.App.4<sup>th</sup> 77, 88.) An officer may reasonably use deadly force when he confronts an armed suspect in close proximity whose actions indicate an *intent* to attack. (*Id.*) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when "necessary to account for the totality of the circumstances in a given case." (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

The use of force policies and training of an involved officer's agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 8, *supra*.)

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 19

---

When undertaking this analysis, courts do not engage in *Monday Morning Quarterbacking*, and nor shall we. Our state appellate court has warned,

under *Graham* 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.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4<sup>th</sup> at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4<sup>th</sup> at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.)

**ANALYSIS**

This report evaluates the use of deadly force by Officer Ryan Schuelke Mayer. As indicated above, there are legal bases that must be met before a use of force is justified and the right to self-defense ripens. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent's submission.

A use of force must be "reasonable" in order to be deemed lawful. When considered in the context of self-defense, whether Officer Schuelke Mayer was justified in employing lethal force involves a two-part analysis: (1) did the officer subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was the officer's belief in the need to protect himself from an apparent, imminent threat of death or great bodily injury objectively reasonable.

**Subjective Belief of Imminent Need to Protect.** The subjective belief of Officer Schuelke Mayer is stated here based upon the officer's statement.

While Officers Schuelke Mayer and Shipley were returning to the station at the end of their saturation patrol shift, the officers traveled eastbound on Baseline Street near Fame Liquor. Officer Schuelke Mayer explained that the liquor store was notorious for narcotics trafficking, gun possession and violent crime. Officer Schuelke Mayer saw a man standing outside the driver's door of a Mercedes in the parking lot of Fame Liquor. The man looked nervously at the officers in their passing patrol unit. Officer Schuelke Mayer stated that the man's nervousness signaled that he may be involved in some criminal activity. The officers proceeded past Fame Liquor and made a u-turn. As the officers approached Fame Liquor again, Officer Schuelke

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 20

---

Mayer saw that the Mercedes left the liquor store and was ahead of them, traveling westbound on Baseline Street. Officer Schuelke Mayer watched the Mercedes swerve in its lane and the driver kept looking at officers through the rear-view mirror. Officer Schuelke Mayer believed that the driver could possibly be driving under the influence or he and the other occupants may have been stashing contraband within the car. Officer Schuelke Mayer advised dispatch that they would be initiating a traffic stop of the Mercedes, and Officer Shipley activated their unit lights and siren to effectuate the traffic stop at West Baseline and North F Streets.

Initially, it appeared to Officer Schuelke Mayer that the Mercedes was going to stop; the Mercedes moved to the right and slowed to five to ten miles per hour. However, the Mercedes did not stop. Instead, the Mercedes continued west until it made a slow rolling right turn onto North G Street. Officer Schuelke Mayer recognized this maneuver to be typical of someone trying to figure out what to do with contraband prior to pulling over. When the Mercedes finally came to a stop, Officer Schuelke Mayer noticed that the rear passenger of the Mercedes cracked his door open. So, Officer Schuelke Mayer did the same. Suddenly, the rear passenger (NV) got out with a black object in his hand that looked like a gun. Officer Schuelke Mayer got out of the patrol unit and commanded NV to stop. NV did not stop. NV ran northbound on North G Street and Officer Schuelke Mayer pursued him.

During the foot chase, Officer Schuelke Mayer commanded NV three times to drop the gun or the officer would shoot him. NV did not drop the gun. As another patrol unit with emergency lights on approached northbound on G Street, Officer Schuelke Mayer saw clearly that NV had a gun barrel protruding from his hand, and that the weapon had an extended magazine. Officer Schuelke Mayer explained that this was the first time in his six-year career, during which he had been in an above-average number of foot pursuits trailing an armed subject, where the subject *did not* immediately toss the gun away. This anomaly convinced Officer Schuelke Mayer that NV intended to hold on to his gun to use it against the officer, once NV had the opportunity.

Officer Schuelke Mayer described NV to be holding the gun in a running motion, and as the approaching police unit passed, NV seemed to bring the gun up higher. Officer Schuelke Mayer thought that NV may shoot at the police unit, so he slowed his running and aimed his firearm at NV. When the police unit moved past NV, Officer Schuelke Mayer saw NV turn left into the street, turn around with his body opened towards Officer Schuelke Mayer and look at the officer over his shoulder. Officer Schuelke Mayer stated, "when he opened his shoulders towards me, I thought he was going to turnaround to shoot at me. So, I fired at him to end the threat, prevent him from shooting me."

Officer Schuelke Mayer believed he fired four to five shots at NV, during which NV maintained hold of his firearm, ducked his head and continued to run across the street. Officer Schuelke Mayer stated he stopped firing as soon as he saw NV's gun sliding on the ground near one of the cars parked on the west side of the street. Next, Officer Schuelke Mayer saw NV take a few more steps and fall to the ground. Officer Shipley then helped Officer Schuelke Mayer take control of NV before moving towards where NV's gun came to rest.

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 21

---

The stated account of Officer Schuelke Mayer of the circumstances at play prior to the officer-involved shooting is consistent with the submission, as a whole. Furthermore, the submission supports Officer Schuelke Mayer's conclusion that NV was capable of and intended to fire his weapon at the officer. Based upon the foregoing, it is reasonable to conclude that Officer Schuelke Mayer bore an honest and subjective belief that he was under imminent threat of being killed or suffering great bodily injury at the time he used lethal force.

**Reasonable Belief of Imminent Need to Protect.** Although Penal Code section 835a(c)(1) is the authority for an officer's use of lethal force, the analytical framework for determining what is "reasonable" is included in *Graham* and its progeny. This analysis also overlaps with the second component to a self-defense claim: a finding that each officer had an objectively reasonable belief of the need to use deadly force to protect himself from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. It was happenstance that Officers Shipley and Schuelke Mayer were driving by when NV and his companions were in the parking lot of Fame Liquor. In surveillance video from Fame Liquor, it appeared that Officer Shipley stopped at a red light while facing eastbound on West Baseline Street at Sierra Way; NV and his companions had been in the parking lot for less than five minutes. It was presumably at that time that the officers had an opportunity to watch NV and his companions surrounding the Mercedes to the front of the liquor store and vice versa. The surveillance video from the liquor store showed NV and his companions get into the Mercedes and begin to move away from the liquor store less than 30 seconds after Officers Shipley and Schuelke Mayer drove by. What's more, Passenger #2 told the case agent that he saw the police car when they were coming out of the liquor store. At that point, Officers Shipley and Schuelke Mayer had no specific reason to believe that NV was committing a crime. However, it was the officers' prerogative to patrol their city and they needed no reason to change their course of travel. As the officers did so, the movements of the Mercedes began to exhibit unlawful conduct. The officers immediately noted that the Mercedes driver committed vehicle code violations, and in light of the vehicle's recent departure from a liquor store, the officers had a reasonable articulable suspicion that the driver may be driving under the influence of alcohol. It was incumbent of the officers, then, to initiate a traffic stop of the Mercedes. Even if their suspicions were confirmed, however, these would still be low-level offenses.

Once the Mercedes yielded on North G Street and NV got out and ran with his firearm in hand, the character of the involved crimes shifted dramatically. For example, drawing or exhibiting a firearm with the intent to prevent detention by a peace officer is a violation of Penal Code section 417.8 that could qualify as "serious" felony pursuant to Penal Code section 1192.7(c). Another "serious" felony is assault of an officer engaged in in the performance of his duties with a loaded semi-automatic firearm—a violation of Penal Code section 245(d)(2). Assault of a peace officer with a semi-automatic firearm could also be deemed a "violent" felony pursuant to Penal Code section 667.5(c)(8). Neither sections 417.8, nor 245(d)(2) required that NV fire his weapon at Officer Schuelke Mayer, or even point the weapon directly at the officer. It was sufficient that NV armed himself with an operable and loaded semi-automatic firearm and

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 22

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wielded it such that NV *could have* used it against Officer Schuelke Mayer. As such, it was reasonable for Officer Schuelke Mayer to believe immediately prior to using lethal force that NV was actively engaged in committing especially serious and/or violent felonies against Officer Schuelke Mayer.

Resistance is another essential consideration in a *Graham* analysis. In order to effectuate NV's arrest or detention, officers were authorized to use reasonable force. For NV's part, NV had a duty to refrain from using any force or weapon to resist arrest. NV was aware he was being pursued by law enforcement, even before he ran from Officer Schuelke Mayer. The evidence submitted shows that Officers Shipley and Schuelke Mayer were wearing police uniforms replete with badges and insignia and traveled in a marked black and white police car. NV admitted that he recognized that the officers had gotten behind the Mercedes after they left the liquor store. Moreover, NV stated it was *because* the police got behind the Mercedes that NV decided to run. The officers initiated their traffic stop of the Mercedes with flashing emergency lights and chirp siren. Further, while NV ran from Officer Schuelke Mayer, the officer did yell commands at NV (that NV heard) that would only reasonably come from a police officer. In sum, the submission supports a conclusion that NV knew or should have known based upon his flight, that officers intended to detain him. NV's flight alone, however, was not the pinnacle of his resistance; it was that he maintained possession of the loaded weapon and wielded it in the presence of an armed and pursuing police officer.

NV made the distinct choice to maintain possession of his firearm before stepping out of the Mercedes. From the time NV got into the Mercedes and for the duration of the attempted traffic stop, NV had the opportunity to disarm himself or otherwise disassociate himself from the weapon. For example, NV could have left the gun in the car or dropped it to the ground. Even if he did not think to do so, after NV got out of the Mercedes and ran, NV was ordered to drop his weapon. NV admitted hearing the commands and refusing to comply, at least initially. Instead, during the majority of the roughly 20 second foot-pursuit, NV specifically chose to *maintain hold* of his firearm. Then, it appeared to Officer Schuelke Mayer that NV began to raise his gun towards the approaching marked SBPD unit with Officers Petree and Saibene inside. After the patrol unit passed, NV turned in Officer Schuelke Mayer's direction and looked at Officer Schuelke Mayer over his left shoulder. NV still held the gun in his right hand. At this point, it was well within reason for Officer Schuelke Mayer to believe that NV intended to escape detention not only by running, but also by using the firearm in the process. Self-armament with a semi-automatic firearm in the face of detainment by uniformed and armed law enforcement contact is an extreme level of resistance. Officer Schuelke Mayer was not obligated to retreat, nor did he forfeit the right to defend himself or others from the lethal threat posed by NV. Had NV fired his weapon at Officer Schuelke Mayer, the backdrop would have included the occupied dwellings immediately east of the officer. It was also apparent to Officer Schuelke Mayer that NV's weapon was outfitted with an extended magazine. Had NV's weapon been loaded to capacity, it would have exceeded the present capacity of Officer Schuelke Mayer's duty weapon. The submission supports a finding that NV was actively resisting deputies at the time Officer Schuelke Mayer used lethal force.

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 23

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Immediacy is the “most important” *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. Here, it does not appear that NV made a blatant and obvious attempt to shoot at Officer Schuelke Mayer. Rather, the assault upon Officer Schuelke Mayer was comprised of mounting subtle actions NV took that together reasonably indicated an apparent intent to shoot the officer. First, prior to running, NV was aware that contact with police was imminent. In order to prepare for that contact, NV armed himself with a loaded gun. By running from the officer, NV indicated he did not want or intend to be detained. Officer Schuelke Mayer ordered NV repeatedly to drop his weapon or be shot. Doing so allowed the officer to check to what extent NV would go to evade Officer Schuelke Mayer. It was either to simply evade the officer or evade by means of lethal force. By ignoring Officer Schuelke Mayer’s orders to drop his gun, NV had to be perceived as someone willing to evade by means of lethal force. As stated above, Officer Schuelke Mayer perceived NV to be raising his semi-automatic pistol, turning his shoulder towards and looking at the officer immediately prior to the time the officer fired his duty weapon. Even if NV can be said merely to be turning towards a new direction of travel to continue to evade Officer Schuelke Mayer, this does not detract from what could be reasonably believed by Officer Schuelke Mayer at the time—that NV was turning to shoot at him.

NV had substantial opportunities during his flight to discard or disassociate himself from his firearm. Instead, NV chose to continue to possess the firearm and wield it to assault Officer Schuelke Mayer. What’s more, at that late hour, there were undoubtedly civilians in their homes behind the officer. Both NV and Officer Schuelke Mayer ran past a civilian sitting on a piece of furniture on the east sidewalk of North G Street. Had NV decided to shoot at Officer Schuelke Mayer, it cannot be said that this civilian or the residents on the east side of North G Street were beyond danger of being shot by NV. Officer Schuelke Mayer was afforded no other reasonable choice but to act swiftly to defend against the perceived imminent danger to himself and others. Although no bullet was recovered from the chamber of NV’s weapon, the presence of live rounds in the weapon’s magazine show that NV was ready and able to shoot and kill anyone in the presence of his gun as he wielded it. NV’s conduct, in total, demonstrated that NV had the present ability, opportunity and apparent intent to immediately cause death or serious bodily injury to Officer Schuelke Mayer and others. As such, the necessity of the use of deadly force by Officer Schuelke Mayer cannot be second-guessed. Officer Schuelke Mayer reasonably believed that his action was instantly required to avoid death or great bodily injury.

Based on the foregoing, each of the primary *Graham* factors as applied, support a finding that the use of lethal force by Officer Schuelke Mayer was reasonable. The officer had a split second to confront the lethal danger posed by NV, which by all indication to Officer Schuelke Mayer was an immediate threat to kill. As such, the use of lethal force by Officer Schuelke Mayer is also justifiable under Penal Code §197.

**Pre-Shooting De-escalation.** Section 835a(a) does advise that lethal force be used only “when necessary to defend human life” and that safe and feasible de-escalation should be employed. Here, Officer Schuelke Mayer attempted to give NV verbal commands once NV stepped out of the Mercedes. Normally, the mere presence of armed and uniformed law enforcement and the

**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 24

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issuance of verbal commands can serve as a de-escalation technique. One faced with such a response might reasonably find there is no likely escape and choose to surrender. NV, however, did not. NV's behavior after stepping out of the Mercedes negated a reasonable conclusion that NV intended either to comply or surrender. NV gave officers no explicit or implicit indication that he sought to peaceably comply or surrender. Rather, NV chose to maintain his firearm and draw Officer Schuelke Mayer out into the open where the officer and the public faced an increased risk of harm. The subjective and objective factors discussed above point to the same conclusion that the shooting officer in this case perceived an imminent lethal threat to himself and others at the time he fired his weapon.

Although there was no investigation submitted regarding the availability or contemplated use of less-lethal munitions, Officer Schuelke Mayer was immediately aware that NV could be armed with a firearm when the foot-chase began. There was no subsequent pause from the beginning of the chase to the time that Officer Schuelke Mayer became certain that NV had a pistol in his hand. As such, it would not have been reasonable for Officer Schuelke Mayer to consider using less-lethal munitions because there was no time for him to transition to less-lethal munition use. Had the officer taken the time to transition to less-lethal munitions, he would have done so at his own peril as it would have left him ill-equipped to defend against the lethal threat NV imposed. Moreover, the officer recognized that NV's weapon bore an extended magazine that could reasonably have contained substantially more rounds of fire than the officer's own weapon. Simply put, NV's actions dictated a circumstance where there was no further feasible, safe or reasonable opportunity for Officer Schuelke Mayer to de-escalate.

**Other Statutory Considerations.** The additional considerations mentioned in §835a(a) further support a conclusion that the use of deadly force by Officer Schuelke Mayer was lawful.<sup>8</sup>

First, the submission in total does not support a conclusion that Officer Schuelke Mayer acted excessively. Officer Schuelke Mayer's conduct discussed herein appears to have been judiciously exercised. Deadly force was not employed as a knee-jerk reaction to NV's flight, even though it appeared to the officer that NV possessed a gun as soon as NV got out of the Mercedes. Instead, Officer Schuelke Mayer issued verbal commands first. As set forth in detail above, the officer's use of deadly force came after the officer was presented with compounding conduct amounting to an immediate lethal threat. The medical records indicated that the trajectory of the gunshot wound to NV's right leg had a back to front trajectory. This is not surprising as NV was actively running away from the officer even as NV turned his shoulder towards and looked at Officer Schuelke Mayer. The inventory of Officer Schuelke Mayer's weapon indicated that the officer could have fired many more rounds at NV, but did not. The submitted evidence supports a conclusion that gunfire did not continue after NV dropped his weapon or after NV fell to the ground. This is consistent with the officer's explanation that he only fired his weapon to end the threat posed to him and prevent NV from shooting him. As

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<sup>8</sup> This review is based on a totality of the circumstances from the perspective of a reasonable officer in the same situation. (Penal C. §§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether agency use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any use of force policy was violated.



**PUBLIC RELEASE MEMORANDUM**

Non-Fatal Officer-Involved Incident

DA STAR #2021-20647

December 20, 2021

Page 25

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such, Officer Schuelke Mayer can be found to have well-appreciated the gravity and consequence of his use of lethal force evidenced by the judicious way he employed lethal force.

**CONCLUSION**

Under the facts, circumstances and applicable law in this matter, the use of deadly force by Officer Ryan Schuelke Mayer was exercised in self-defense and in a reasonable manner. Accordingly, no criminal liability based on the officer's conduct attaches in this incident.

**Submitted By:**  
**San Bernardino County District Attorney's Office**  
**303 West Third Street**  
**San Bernardino, CA 92415**  
**Dated: December 20, 2021**

