



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: April 14, 2021

SUBJECT: Officer Involved Shooting (Non-Fatal)

Officer: Officer Michael Searing
Montclair Police Department

Involved Subjects: John Ramos (Injured)
Date of Birth 08/23/88
Ontario, CA

Date of Incident: July 12, 2020

Incident location: ***** Ramona Ave.
Montclair, CA

DA STAR #: 2020-55450

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Narcie Sousa

Report Number#: DR # 602000118 / H # 2020-062

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PREAMBLE

This was a non-fatal officer involved shooting by a police officer from the Montclair Police Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 602000118 and H# 2020-062.

RELATED CASE

Because of this incident, criminal charges were filed against John Ramos in San Bernardino County Superior Court case number MWV21005639. It was alleged in Count 1 and Count 2 of the criminal complaint that Ramos committed a violation of Penal Code §417.4 Brandishing a Replica Gun.

FACTUAL SUMMARY

On July 12, 2020, during the early morning hours, Witness #1 was driving on Orchard Street in the City of Montclair. When she stopped at the intersection of Orchard Street and Ramona Avenue, Witness #1 saw a male subject, later identified as John Ramos, standing at the southeast corner of the intersection. Ramos was wearing brown shorts, no shirt, and no shoes. According to Witness #1, Ramos was yelling, jumping around, and holding a rifle. Ramos then pointed the rifle at Witness #1's vehicle. Witness #1 feared she was about to be shot and drove through the intersection. Witness #1 drove to Pomona to retrieve her cell phone and then returned to the area approximately fifteen minutes later to see whether Ramos was still there. When she returned in her vehicle, Witness #1 saw Ramos still standing near the intersection. Ramos was holding the rifle and waiving the weapon in the air. Ramos was also aiming the rifle in various directions. After she saw that, Witness #1 drove to another street where she contacted Montclair Police Department to report what she had observed.

Officer Michael Searing, from the Montclair Police Department, responded to the call for service regarding a man with a gun. Dispatch advised Ramos was waiving a rifle in the air. Officer Searing was wearing a Montclair Police Department uniform and driving a marked patrol vehicle on that date. Officer Searing heard over the radio that Officer Jesse James was already at the scene with a possible subject. When Officer Searing arrived at the location, he stopped his patrol vehicle in the northbound lane of Ramona Avenue. After Officer Searing exited his patrol vehicle with his rifle, Officer Searing saw Ramos standing with a black rifle in his right hand. The rifle appeared to be an AR15 style rifle.

Officer Angelo St John and Officer Searing both gave Ramos verbal commands to drop the gun. Ramos did not comply with those commands. Instead, Officer Searing saw

Ramos turn to his left and raise the rifle up toward Officer Searing. Fearing for his physical safety, Officer Searing fired three rounds at Ramos from his rifle. Ramos ran westbound through an alley. Officer St John tapped Officer Searing's shoulder, indicating he was good and that they should move up to look for Ramos.

Officer Searing looked around the corner of a concrete wall to look for Ramos. Officer Searing saw Ramos. The two made eye contact and Officer Searing ordered Ramos to drop the gun again. Ramos did not comply with Officer Searing's command. Ramos started to run, with the rifle in his hand, in the alley toward a residence. Officer Searing feared Ramos would force his way into someone's home or hide and attempt to gain a position of advantage over the officers. Officer Searing fired one additional round at Ramos, causing Ramos to drop the rifle and fall to the ground.

After the shooting, Officer Searing and the other officers continued to give Ramos commands not to reach for the rifle. Officers moved up closer to Ramos and handcuffed him. Officers called for medical personnel and attempted to render aid to Ramos. Ramos was subsequently transported to Pomona Valley Hospital Medical Center for treatment. Ramos suffered a gunshot wound to the abdomen, a traumatic abdominal hernia, a laceration of sigmoid colon, a small bowel laceration, and a rectal laceration.

A replica firearm resembling an AR15 style rifle was recovered at the scene.

STATEMENTS BY POLICE OFFICERS

On July 15, 2020, at approximately 12:40 in the afternoon, **Officer Michael Searing** was interviewed by Detective Narcie Sousa and Detective Max Kunzman.¹

On July 12, 2020, Officer Michael Searing, from the Montclair Police Department, was assigned to patrol. Officer Searing was driving a marked patrol vehicle and wearing a short sleeve "Class C" Montclair Police Department uniform. On that date, Officer Searing and Officer Angelo St John were on a burglary alarm call when Officer Searing heard dispatch put out over the radio a call of a man with a gun. The subject was described as a Hispanic male with no shirt wearing blue jeans. The reporting party advised the subject, later identified as John Ramos, was waving a rifle in the air. Officer Searing and Officer St John were close to the location and decided to respond to the call.

As Officer Searing drove to the location, Officer Searing heard Officer Jesse James put out over the radio that he was already at the scene and was out with Ramos. Officer Searing tried to get to the scene quickly because he knew Officer James was a newer officer and was without a partner. When Officer Searing neared the intersection of

¹ Officer Searing reviewed his belt recording prior to being interviewed by Detective Sousa and Detective Kunzman.

Ramona and Orchard, Officer Searing observed Officer St John's patrol vehicle break abruptly. Officer St John opened the door of his patrol vehicle. Officer Searing was unsure what Officer St John may have seen. Officer Searing did not see Officer James at the scene.

Officer Searing stopped and exited his patrol vehicle with his rifle already out. Officer Searing saw Ramos illuminated by flashlights. Ramos had a black rifle in his right hand which appeared to Officer Searing to be an AR15 style rifle.² Officer Searing estimate Ramos was approximately fifteen to twenty yards away from him. Ramos was pacing back and forth. Ramos was facing toward Officer St John who was standing closer to Ramos. Officer Searing heard Officer St John giving Ramos verbal commands to drop the weapon. Officer Searing also ordered Ramos to drop the gun. Ramos would not comply with commands.

Officer Searing saw Ramos turn to his left while raising his right arm with the rifle up and extending toward Officer Searing. Officer Searing could see the barrel of the weapon facing toward him. Officer Searing was scared and believed he was about to be killed. Officer Searing fired three rounds at Ramos. Ramos ran westbound through the alley and tried to hide. The lighting in the alley was dark; the only lighting in the alley came from some residential lights that were turned on.

Officer St John tapped Officer Searing's shoulder to indicate they should move up. Officer Searing and Officer St John moved up to a concrete wall on the south side of the alley. Officer Searing looked around the corner of the wall to see whether he could see Ramos. Officer Searing made eye contact with Ramos and ordered Ramos to drop the rifle. Ramos, still holding the rifle in his right hand, ran northbound in the alley towards a residence. Officer Searing was familiar with the area and was concerned Ramos could jump the block wall on the south side of the alley and force his way into someone's home or move to another hiding spot and try to gain a position of advantage over the officers. Officer Searing ordered Ramos to drop the gun. Officer Searing heard Officer St John order Ramos to drop the weapon. Officer Searing feared for his safety and the safety of his partners. Officer Searing aimed his rifle at Ramos and fired one round. At that time, Officer Searing estimated the distance between himself and Ramos was approximately thirty-five to forty yards. After the shooting, Ramos dropped the rifle and fell to the ground.

When Officer Searing saw Ramos, on the ground, attempting to reach for the rifle and get up, Officer Searing gave Ramos several more commands to stay on his stomach. Ramos appeared to comply with those commands. When backup arrived, Officer St John and Officer James Blum approached Ramos and handcuffed him. Officer Searing asked Officer Alma Hernandez to get an active shooter kit, which had medical supplies, from the patrol vehicle so they could render medical aid to Ramos. Sergeant Andrew Graziano requested over the radio for dispatch to roll fire department personnel. Officer Searing returned to his patrol vehicle to secure his rifle. Officer Searing was then given a ride back to the police station.

² Subsequent investigation would later determine Ramos was holding a replica rifle.

On July 12, 2020, at approximately 5:17 in the morning, **Officer Angelo St John** was interviewed by Detective Narcie Sousa and Detective Max Kunzman.³

On July 12, 2020, Officer Angelo St John, from the Montclair Police Department, was assigned to patrol. Officer St John was wearing a Montclair Police Department uniform and driving a marked patrol vehicle. On that date, just after midnight, Officer St John was with Officer Michael Searing at an alarm call near the area of Fremont Avenue and Mission Boulevard. Officer St John heard dispatch broadcast over the radio a call of a man with a gun near the area of Ramona Avenue and Orchard Street. Officer St John decided to respond to the call. As Officer St John drove to the location, dispatch advised the subject, John Ramos, was shirtless and armed with a firearm, possibly a rifle.

Officer St John was near the area of Ramona Avenue and Brooks Street when he heard Officer Jesse James put out over the radio that he was at the scene. Officer St John knew Officer James was a newer officer and did not have a partner with him. Dispatch advised the reporting party was no longer in the area. Dispatch advised Ramos was last seen walking south on Ramona Avenue from Orchard Street. Officer St John was concerned that there was no one in the area who knew Ramos' location.

Officer St John used the overhead flood lights on his patrol vehicle to check the area around Ramona Avenue. A few seconds later, Officer St John heard over the radio Officer James say he was on Orchard Street with a possible person matching the description. Officer St John accelerated toward Officer James' location with the flood lights on his patrol car still activated. Officer St John was approximately fifty feet away from reaching Orchard Street when he observed Ramos holding a rifle. Officer St John estimated Ramos was approximately 30 feet away from Officer St John's patrol vehicle.

Officer St John exited his patrol vehicle and pointed his duty handgun at Ramos. Ramos was facing toward Officer St John. Officer St John ordered Ramos to drop the firearm, but Ramos did not comply with Officer St John's commands. Ramos yelled something but Officer St John was unable to make out what Ramos said. Ramos was holding the rifle on the side, near his hip, with one hand on the grip and one hand on the barrel. Officer St John was not able to see details about the rifle but believed the rifle in Ramos' hands was real.

Ramos turned away from Officer St John and started walking west, a few steps on Lehigh Avenue. Ramos stopped walking and Officer St John heard a faint but distinct sound coming from Ramos' direction. Officer St John recognized the sound from a replica firearm he owned as a child. Officer St John said approximately half a second later, Ramos quickly turned and brought the rifle up to eye level as he punched the weapon forward. The buttstock of the rifle was away from Ramos' body. Ramos pointed the rifle at Officer St John and Officer Searing.

³ Officer St John reviewed his belt recording prior to being interviewed by Detective Sousa and Detective Kunzman.

Initially, Officer St John did not know Officer Searing was standing to his left but then Officer St John saw Officer Searing in his peripheral vision. Officer St John heard three gunshots and when he looked to his left he saw Officer Searing pointing his rifle at Ramos. Officer St John and Officer Searing ordered Ramos to drop his rifle. Officer St John explained he did not fire his weapon because he made a mental connection, based on the faint but distinct sound he had heard earlier, that the rifle Ramos was holding was a replica firearm. Officer St John did not verbalize his belief that Ramos was holding a replica rifle because the situation unfolded too quickly. Ramos did not comply with commands to drop the rifle and walked west on Lehigh Avenue with the rifle in his hands.

Officer St John and Officer Searing ran to the southwest corner of Ramona Avenue and Lehigh Avenue and used the block wall for cover and concealment. As he looked around the wall toward Ramos, Officer St John told Officer Searing he wanted to cross the street. Ramos continued to walk west on Lehigh Avenue while looking over his shoulder in Officer St John's direction. Officer St John was focused on the location Officer St John was headed when Officer Searing turned the corner and pointed his rifle at Ramos. Officer St John heard one gunshot but did not see what Officer Searing shot at. Officer St John heard Ramos yell and then saw Ramos on the ground with the rifle directly beside Ramos.

Officer St John ran to the north side of the street. Officer Searing stayed on the south side of the street. Officer St John and Officer Searing ordered Ramos multiple times to stay away from the rifle. Ramos slowly moved away from the rifle. At that time, Officer St John believed he could safely handcuff Ramos. Officer James Blum assisted Officer St John in rolling Ramos onto his stomach while Officer St John handcuffed Ramos. Officer St John told Officer Blum to get the medical bag and active shooter kit from a patrol vehicle. The officers attempted to render medical aid to Ramos. Officer St John advised dispatch that medical personnel could respond to the scene. Officer St John and Officer Blum stayed with Ramos until Montclair Fire Department personnel arrived.

On July 12, 2020, at approximately 6:21 pm, **Officer Jesse James** was interviewed by Detective Narcie Sousa and Detective Max Kunzman.

On July 12, 2020, Officer Jesse James, from the Montclair Police Department, was assigned to patrol. Officer James was wearing a short sleeve "Class B" Montclair Police Department uniform and driving a marked patrol vehicle. On that date, Officer James was parked in the Monte Vista Elementary School parking lot when he heard dispatch broadcast a call for service regarding a man with a gun at the intersection of Ramona Avenue and Orchard Street. Dispatch described the subject, John Ramos, as a Hispanic male with a thin build, wearing pants, no shirt, and carrying a rifle. Officer James immediately responded to the call.

When Officer James arrived at the intersection of Monte Vista Avenue and Orchard Street, Officer James unlocked the rifle assigned to his patrol vehicle and placed it on the front passenger seat. Officer James broadcasted over the radio that he was on scene when he arrived at Camulos Avenue. Officer James stopped his patrol vehicle on the north side of Orchard Street, east of Ramona Avenue. Officer James saw an unidentified man walking north on the east sidewalk of Ramona Avenue and then east on the south sidewalk of Orchard Street. The unidentified subject walked into a "guest home" Officer James was familiar with on the southeast corner of Orchard Street.

Moments later, Officer James recalled either rolling his window down or opening the front driver's door of the patrol vehicle. Officer James heard Officer Michael Searing yelling commands. Approximately two seconds later, Officer James heard two or three gunshots. Officer James knew the gunshots came from a Montclair Police Department rifle because of the distinct sound from the suppressor attached to all Montclair Police Department rifles. Officer James drove over to the intersection of Ramona Avenue and Orchard Street and parked his patrol vehicle. Officer James was unsure from what direction the shots were fired and did not want to be caught in a crossfire situation.

Officer James ran with his rifle south on Ramona Avenue and joined Officer Angelo St John who was on the north side of the alley. Officer St John had his handgun drawn and was partially concealed behind a wall on the north side of Lehigh Avenue. Officer Michael Searing was standing on the south side of Lehigh Avenue and had his patrol vehicle rifle pointed west. Officer James saw Ramos either on his hands and knees or on his stomach. Ramos was on the south side of the alley, approximately twenty feet away from Officer James. Through his rifle scope, Officer James saw a rifle approximately five feet from Ramos' feet. Officer James was unable to determine whether the rifle was operable or a replica.

Officer James heard Officer Searing give Ramos several verbal commands. Officer Searing ordered Ramos to "Roll over," "Roll away from the gun," and "Show me your hands." Ramos did not comply with Officer Searing's commands and appeared to try to get to his feet. Approximately thirty seconds later, Officer James Blum and Officer Alma Hernandez arrived at the scene. The group of officers approached Ramos on foot. Officer St John and Officer Blum handcuffed Ramos and then immediately provided medical aid. Officer James removed a tourniquet out of the trauma kit and handed it to Officer Blum. Sergeant Andrew Graziano arrived at the location.

Officer James exited the alley and secured his patrol rifle in his vehicle. Officer James contacted individuals living in the surrounding area to check on their welfare. Officer James also checked for any bullet strikes to nearby homes; Officer James did not find any bullet strikes during his search. When Officer James returned to the alley, medical personnel were treating Ramos. Officer James followed the ambulance that transported Ramos to Pomona Valley Medical Center. Officer James waited at the hospital until he was relieved by another officer.

On July 12, 2020, at approximately 4:33 in the morning, **Officer Augustine Tejas** was interviewed by Detective Narcie Sousa and Detective Max Kunzman.

On July 12, 2020, Officer Augustine Tejas, from the Montclair Police Department, was assigned to patrol. Officer Tejas was wearing a short sleeve "Class B" Montclair Police Department uniform and driving a marked patrol vehicle. On that date, Officer Tejas responded to a call for service in the area of Fremont Avenue and Mission Boulevard. Officer Tejas was assisted on the call by Officer James Blum and Officer Alma Hernandez. While at the location, Officer Tejas heard dispatch broadcast over the radio a call for service regarding a man with a gun near the intersection of Ramona Avenue and Orchard Street. Dispatch described the subject, John Ramos, as a Hispanic male wearing pants, no shirt, and carrying a rifle.

Officer Tejas heard over the radio Officer Jesse James indicate he was out with a subject matching the suspect description on Ramona Avenue. Officer Tejas drove to Officer James' location with his emergency overhead lights and siren activated. As he was driving, Officer Tejas heard a muffled sound broadcast over the radio. Immediately following the muffled sound, dispatch broadcast a "Code 777," an emergency broadcast limiting radio traffic, for "shots fired." Officer Tejas heard Officer Michael Searing put out over the radio that Ramos was in the alley.

By the time Officer Tejas got to the area, Officer Angelo St John, Officer Searing, Officer Blum, Officer Hernandez, and Officer James were already approaching Ramos. Ramos was laying on the ground, near backyard fencing along the southside of Lehigh Avenue. Officer Tejas heard the other officers giving Ramos various commands. The officers then handcuffed Ramos. Officer Tejas immediately started looking for the firearm. Officer Tejas located the firearm less than six feet from Ramos' body. Officer Tejas used his foot to pull the firearm from underneath a gate. At that time, Officer Tejas realized the rifle was a plastic toy. The toy firearm looked like a M-16 rifle with an M203 grenade launcher attached under the barrel. Officers rendered medical aid to Ramos. When Sergeant Andrew Graziano arrived at the scene, Officer Tejas left the alley to attempt contact with neighbors in the area.

STATEMENTS BY CIVILIAN WITNESSES

On July 14, 2020, at approximately 9:22 in the morning, Detective Max Kunzman and Detective Narcie Sousa went to the Pomona Valley Hospital Medical Center to interview **John Ramos**. Ramos was being treated for a gunshot wound to his lower abdomen. Detective Sousa explained to Ramos the purpose of the interview. Ramos was advised of his Miranda rights prior to the interview. Ramos indicated he understood his rights but did not want to speak with detectives. No additional questions were asked of Ramos.

On July 12, 2020 **Witness #1**, the reporting party, was interviewed by Officer James Blum, from the Montclair Police Department. On that date, during the early morning hours, Witness #1 said she was driving westbound on Orchard Street in the City of Montclair. While Witness #1 was stopped at the intersection of Ramona Avenue and Orchard Street, she observed a subject, James Ramos, standing at the southeast corner of the intersection. Ramos was wearing brown shorts, no shirt, and no shoes.

Witness #1 could see Ramos yelling but Witness #1 was unable to make out what Ramos was saying because the windows to her vehicle were rolled up. Ramos was jumping around, potentially dancing. Witness #1 then observed Ramos holding a black or dark brown rifle. Ramos pointed the rifle at Witness #1's vehicle. Ramos had the rifle shouldered and was looking down the sights of the rifle. Witness #1 was immediately afraid of being shot and began to drive west through the intersection. Witness #1 saw Ramos running toward the middle of the intersection. Witness #1 ducked her head out fear of being shot by Ramos.

Witness #1 realized she did not have her cell phone and it was at her brother's home in Pomona. Witness #1 drove to her brother's home to retrieve her phone. Concerned, Witness #1 returned to the area of Orchard Street and Ramona approximately twelve to fifteen minutes later. Witness #1 wanted to see if Ramos was still in the area before she called the police. Witness #1 saw Ramos standing near the southeast corner of the intersection. Witness #1 could see Ramos still had the rifle. Ramos was waving the rifle in the air and aiming it in various directions. Witness #1 then drove east on Orchard Street to Monte Vista Avenue where she called Montclair Police Department.

INCIDENT AUDIO AND VIDEO

BELT RECORDINGS. Police officers with Montclair Police Department are equipped with belt recorders. All belt recordings submitted were reviewed in their entirety.

Officer Michael Searing

Officer Searing had a belt recorder activated during the incident under review. The recording was approximately twenty-nine minutes and twenty-three seconds in length. The summary will only cover from the start of the belt recording through the point at which officers handcuffed Ramos.

Officer Searing said "Man with a gun call. Ramona. Orchard." Vehicle heard driving. Radio traffic could be heard in the background. An officer said, over the radio, he will be out with a possible subject at Orchard, just east of Ramona. Same officer described possible subject as a Hispanic male, no shirt, blue jeans. Officer Searing yelled, "Drop

the gun!" Multiple gunshots were then heard. Officer Searing puts out "Shots are fired." Officer Searing heard yelling, "Drop the gun!" Additional gunshot could be heard. Person heard moaning and yelling. Officer Searing said, "Shots are fired." Officer Searing yelled, "Don't reach for the gun! Get on your stomach! Get on your stomach! Get on your stomach!" Another officer could be heard giving commands in the background. Officer Searing yelled, "Don't reach for it!" Officer Searing said, "We're in the alley just south of Orchard. Shots are fired. No officer hurt." Radio traffic could be heard in the background. Officer Searing yelled five more times, "Get on your stomach." Another officer heard giving commands for Ramos to put his hands up, to roll over, and to put his hands behind his back. Ramos was then handcuffed.

Officer Angelo St John

Officer St John had a belt recorder activated during the incident under review. The recording was approximately twenty-eight minutes and twelve seconds in length. The summary will only cover from the start of the belt recording through the point at which officers handcuffed Ramos.

Officer heard telling dispatch, "I'll be out with a possible. Orchard just east of Ramona. Hispanic male; no shirt, blue jeans." Vehicle heard driving. Officer St John yelled, "Hey, drop the fucking gun!" Multiple gunshots heard. Officer Searing could be heard yelling, "Drop the gun!" Additional gunshot heard. Officer St John yelled, "Hey, don't reach for it. Do not reach for it!" Officer St John yelled at Ramos four times to "Roll to the right." Officer St John put out over the radio that Ramos was down, but Ramos was about five feet away from a rifle and the officers were trying to get Ramos to move over. Officer St John told Ramos five times to "move to your right." A male voice is heard moaning and yelling in the background. Officers discuss moving up to Ramos to handcuff him. Additional commands could be heard telling Ramos to put his hands up where they could see them and then to put his hands behind his back.

DASH CAMERA VIDEO RECORDINGS. All dash camera video recordings were reviewed in their entirety. The lethal force encounter was not captured on the dash camera video recordings.

CRIME SCENE INVESTIGATION

A black replica rifle, with no orange/red tip, was located at the scene. The replica rifle was approximately two feet in length and resembled an M16 rifle.

INVOLVED SUBJECT

INJURIES. John Ramos was transported to Pomona Valley Hospital Medical Center in the City of Pomona for treatment. Ramos sustained the following injuries: abdominal gunshot wound, traumatic abdominal hernia, laceration of sigmoid colon, small bowel laceration, and rectal laceration.

TOXICOLOGY RESULTS. Urine sample was collected from Ramos at the hospital. Drug screen results were as follows: positive for cannabis, amphetamine, and opiate.

CRIMINAL HISTORY. 2010, 23152(a) of the Vehicle Code, Driving Under the Influence of Alcohol/Drugs. Los Angeles County case number SBA0SY0115001, a misdemeanor.

DE-ESCALATION

Officers responding to the call of a man with a gun were wearing Montclair Police Department uniforms and driving marked patrol vehicles. When Officer Searing arrived at the location, he immediately saw Ramos standing, holding what appeared to be a rifle. Officer Searing heard Officer St John ordering Ramos to drop the gun. Officer Searing also attempted to de-escalate the situation by ordering Ramos to drop the gun. The incident quickly evolved when Ramos pointed the rifle towards Officer Searing. Officer Searing made one additional attempt to de-escalate the situation by again verbally ordering Ramos to drop the gun. At no time did Ramos comply with the officers' commands.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a)⁴ Should the arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense or to use reasonable force to effect that arrest. (*Id.*) An arrestee has a duty to refrain from using force or any weapon to resist lawful arrest, if he knows or should know that he is being arrested. (Penal C. §834a.)

⁴ All references to code sections here pertain to the California Penal Code, as they existed at the time of the incident. Significant modifications were made to sections 196 and 835a pursuant to Assembly Bill 392. (Assem. Bill No. 392 (2018-2019 Reg. Sess.) as Chaptered August 19, 2019.) However, those modifications do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at §§196 and 197. Both of these code sections are pertinent to the analysis of the conduct involved in this review and are discussed below.

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 use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are charged with a felony and who are fleeing from justice or resisting said arrest. Application of the section is broader than on its face; formal written charges are not required. (*People v. Kilvington* (1894) 104 Cal. 86, 92.) When a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.)

The relevant criminal jury instruction, as written by the Judicial Council of California, is set forth in CALCRIM 507 (“Justifiable Homicide: By Public Officer”). As it may be relevant in this case, a justifiable homicide by a peace officer requires finding a that the police officer acted as follows:

- (1) while arresting a person charged with a felony who was resisting arrest; while overcoming actual resistance to some legal process; or while performing any legal duty, and
- (2) the officer had probable cause to believe that the decedent posed a threat of death or great bodily injury either to the defendant or to others.

(CALCRIM 507)

No variation of the word “reasonable” appears in Penal Code §196, but the principle as applied necessarily requires that an officer’s conduct be reasonable. A homicide is justifiable under Penal Code §196 when the circumstances reasonably created a fear of death or serious bodily harm to the officer or to another. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349.) This standard under Penal Code § 196 is consistent with the Supreme Court standard for reasonable force as stated in *Garner, supra*, 471 U.S. at 11-12. Whether police actions are reasonable under Penal Code section 196 depends on the facts and circumstances known to the peace officer at the time of the arrest. This rule applies even if subsequent investigation reveals the suspect was not guilty of the suspected felony. (*Kilvington, supra*, 104 Cal. at 93.) Similarly, when a police officer reasonably believes a suspect may be armed, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment, the requirements of Penal Code §

196 are satisfied. (*Martinez v. County of Los Angeles, supra*, at 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.)

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, and;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger.

(CALCRIM 505.)

“Imminence is a critical component of both prongs 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* (9th Cir. 1994) 39 F. 3d 912, 915.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (*Id.*, see also CALCRIM 505.) 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* (1996) 47 Cal.App.4th 334, 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 v. Henrich, 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, deadly or otherwise, must be analyzed under the Fourth Amendment's "reasonableness" standard. (*Graham v. Conner* (1989) 490 U.S. 386, 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.) If the person's beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) When considered in the context of an officer-involved incident, this standard does not morph into a "reasonable police officer" standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.) To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

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* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, 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* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72 "an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.") 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.)

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

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.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.)

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.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide "zone of protection" when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.'

(*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1109, citing *Graham v. Connor*, [*supra*] 490 U.S. 386, 396.)

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. "[A]ll force—lethal and non-lethal—must be justified by the

need for the specific level of force employed.” (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham v. Conner* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson, supra*, 630 F.3d at 825[taser]; *Deorle v. Rutherford, supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed “lethal force” the instrumentality must be force that “creates a substantial risk of death or serious bodily injury.” (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson, supra*, 630 F.3d at 825; *Deorle v. Rutherford, supra*, 272 F.3d at 1279-80.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject's mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson, supra*, 630 F.3d at 831; *Deorle v. Rutherford, supra*, 270 F.3d at 1283-84.)

Failure to pass-muster under *Graham* can deem the use of non-lethal force as “excessive” and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed “excessive” nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

ANALYSIS

On July 12, 2020, during the early morning hours, Witness #1 was driving on Orchard Street in the City of Montclair. When she stopped at the intersection of Orchard Street and Ramona Avenue, Witness #1 saw a male subject, later identified as John Ramos, standing at the southeast corner of the intersection. Ramos was wearing brown shorts, no shirt, and no shoes. According to Witness #1, Ramos was yelling, jumping around, and holding a rifle. Ramos then pointed the rifle at Witness #1's vehicle. Witness #1 feared she was about to be shot and drove through the intersection. Witness #1 drove to Pomona to retrieve her cell phone and then returned to the area approximately fifteen minutes later to see whether Ramos was still there. When she returned in her vehicle, Witness #1 saw Ramos still standing near the intersection. Ramos was holding the rifle and waiving the weapon in the air. Ramos was also aiming the rifle in various directions. After she saw that, Witness #1 drove to another street where she contacted Montclair Police Department to report what she had observed.

Officer Michael Searing, from the Montclair Police Department, responded to the call for service regarding a man with a gun. Dispatch advised Ramos was waving a rifle in the air. Officer Searing was wearing a Montclair Police Department uniform and driving a marked patrol vehicle on that date. Officer Searing heard over the radio that Officer Jesse James was already at the scene with a possible subject. When Officer Searing arrived at the location, he stopped his patrol vehicle in the northbound lane of Ramona Avenue. After Officer Searing exited his patrol vehicle with his rifle, Officer Searing saw Ramos standing with a black rifle in his right hand. The rifle appeared to be an AR15 style rifle.

Officer Angelo St John and Officer Searing both gave Ramos verbal commands to drop the gun. Ramos did not comply with those commands. Instead, Officer Searing saw Ramos turn to his left and raise the rifle up toward Officer Searing. Officer Searing was able to see the barrel of the rifle facing him. Fearing for his physical safety, Officer Searing fired three rounds at Ramos from his rifle. Ramos ran westbound through an alley. Officer St John tapped Officer Searing's shoulder, indicating he was good and that they should move up to look for Ramos.

Officer Searing looked around the corner of a concrete wall to look for Ramos. Officer Searing saw Ramos. The two made eye contact and Officer Searing ordered Ramos to drop the gun again. Ramos did not comply with Officer Searing's command. Ramos started to run, with the rifle in his hand, northbound in the alley toward a residence. Officer Searing feared Ramos would break into someone's home or hide and try to gain a position of advantage over the officers. Officer Searing fired one additional round at Ramos, causing Ramos to drop the rifle and fall to the ground.

After the shooting, Officer Searing and the other officers continued to give Ramos commands not to reach for the rifle. Officers moved up closer to Ramos and handcuffed him. Officers called for medical personnel and attempted to render aid to Ramos. During the investigation, Officer Augustine Tejas recovered the rifle Ramos was holding. It was determined to be a replica firearm.

In this case, Officer Searing had an honest and objectively reasonable belief that Ramos posed an imminent threat of serious bodily injury or death. Officer Searing was responding to a call for service regarding a man with a gun. As soon as Officer Searing exited his patrol vehicle with his rifle, Officer Searing observed Ramos holding what appeared to be an AR15 style rifle in his right hand. Officer Searing could hear Officer St John giving Ramos verbal commands. Officer Searing immediately ordered Ramos to drop the gun. Ramos refused to comply with the officers' commands. Instead, Ramos turned and raised the rifle up toward Officer Searing. Officer Searing feared for his life and fired three rounds at Ramos.

Ramos then ran through the alley, still holding the rifle. Officer Searing moved up to the corner of a concrete wall to see where Ramos went. When Officer Searing looked around the corner of the wall, Officer Searing made eye contact with Ramos. Again, Officer Searing ordered Ramos to drop the gun, but Ramos refused to comply with

Officer Searing's command. Ramos started to run toward the side of the alley towards some residences. Officer Searing feared Ramos would force his way into someone's residence or hide where Ramos would gain a position of advantage over the officers at the scene. Officer Searing fired an additional round from his rifle at Ramos. This time, Ramos dropped the gun and fell to the ground.

Officer Searing and the other officers at the scene were wearing Montclair Police Department uniforms. Ramos was approximately fifteen to twenty yards away when Officer Searing first saw Ramos. The time between when Officer Searing exited his patrol vehicle and the time Officer Searing first fired his weapon was less than five minutes.

In the few minutes that Officer Searing had to assess the situation, it was reasonable for Officer Searing to believe the replica firearm Ramos was holding in his hand was a real firearm. There was no orange or red tip to indicate the weapon was a replica firearm. Although Officer St John was able to connect the sound Ramos' rifle was making to a replica firearm Officer St John played with as a child, Officer St John never conveyed his belief that the weapon was not real to Officer Searing. Also, important to note was how Ramos was handling the rifle. Ramos raised the rifle up towards Officer Searing to where Officer Searing could see the barrel was facing him. At that point, Ramos had refused to comply with commands by both Officer Searing and Officer St John to drop the gun. Thus, when Officer Searing fired three rounds at Ramos from his rifle, Officer Searing's fear that he was about to be seriously injured or killed was both honest and objectively reasonable.

Likewise, Officer Searing's belief that Ramos continued to pose an imminent threat even after Ramos ran into the alley was both honest and objectively reasonable. Ramos was still holding in his hands what Officer Searing believed was an AR15 style rifle. Ramos had ignored commands from officers to drop the gun. The alley was in a residential area. Officer Searing believed Ramos could potentially jump over a wall and force his way into someone's home, putting any civilian in the home at serious risk of injury or death by an armed intruder. Officer Searing also believed Ramos could potentially find a place to hide giving Ramos a position of advantage over Officer Searing and his partners. Given the lighting conditions in the alley, an armed subject concealed from officers' view would pose a significant threat to the officers at the scene. Therefore, when Officer Searing fired an additional round at Ramos, Officer Searing reasonably believed that Ramos posed an immediate threat not only to the officers at the scene but also innocent civilians. Given those circumstances, the decision by Officer Searing to use deadly force was justified.

CONCLUSION

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

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