



PUBLIC RELEASE MEMORANDUM

DATE: March 27, 2020

SUBJECT: Officer Involved Shooting (Non-Fatal)

Officer: Officer Alberto Balcazar
San Bernardino Police Department

Involved Subject: Joe Louis Dockery (Injured)
Date of Birth 03/22/85
San Bernardino, CA

Date of Incident: July 6, 2019

Incident location: *** W. 2nd Street
San Bernardino, CA

DA STAR #: 2019-57062

Investigating Agency: San Bernardino Police Department

Case Agent: Detective Donald Sawyer

DR #: 2019-86074

PREAMBLE

This was a non-fatal officer involved shooting by a police officer from the San Bernardino Police Department. The shooting was investigated by the San Bernardino Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, video recordings, and audio recordings submitted by the San Bernardino Police Department, DR# 2019-86074.

PRINCIPAL INVOLVED PARTIES

Joe Louis Dockery, DOB: 03/22/85, of San Bernardino, California was injured during the incident under review.

Officer Alberto Balcazar of the San Bernardino Police Department was the police officer involved in the shooting of Joe Louis Dockery.

SCENE

This incident occurred on July 6, 2019, at around 10:14 am. Location of occurrence was *** W. 2nd Street in the City of San Bernardino, California.

BACKGROUND INFORMATION

Joe Louis Dockery has a prior criminal history that includes convictions of offenses listed below:

2004, 417(a)(2) of the Penal Code, Exhibiting A Firearm, San Bernardino County Case number MWV084078, a misdemeanor.

2006, 243(e)(1) of the Penal Code, Domestic Battery, San Bernardino County Case number MWV103582, a misdemeanor.

2006, 273a(b) of the Penal Code, Willful Cruelty To Child, San Bernardino County Case number MWV106313, a misdemeanor.

2006, 273.5(a) of the Penal Code, Corporal Injury To Spouse/Cohabitant, San Bernardino County Case number FWV039057, a felony.

2010, 417(a)(1) of the Penal Code, Exhibiting A Deadly Weapon: Not Firearm, San Bernardino County Case number MVI1000099, a misdemeanor.

2010, 69 of the Penal Code, Obstruct/Resist Executive Officer, San Bernardino County Case number FVA1001323, a felony.

2013, 148.9(a) of the Penal Code, False Identification To Specific Peace Officers, 653.23(a)(1) of the Penal Code, Supervise/ETC Prostitution, San Bernardino County Case number MWV1205605, a misdemeanor.

2017, 245(a)(1) of the Penal Code, Assault With Deadly Weapon, San Bernardino County Case number FWV17002671, a felony.

2018, 29800(a)(1) of the Penal Code, Felon In Possession Of Firearm, San Bernardino County Case number FSB17003757, a felony.

RELATED CASE

Because of this incident, criminal charges were filed against Joe Louis Dockery in San Bernardino Superior Court case number FSB19002346. The case was resolved on December 17, 2019. Dockery entered a plea of nolo contendere to a violation of Penal Code §29800(a)(1) Possession Of Firearm By Felon. Dockery was sentenced to two years and eight months in state prison.

FACTUAL SUMMARY

On July 6, 2019, at around 10:14 in the morning, police officers from the San Bernardino Police Department were dispatched to a report of a battery at the Transit Center located at *** W. Rialto Avenue in the City of San Bernardino. The female reporting party indicated she was being assaulted by her boyfriend. Officer S. Galarza responded to the location and contacted the victim who had an injury to her hand. The victim described her boyfriend as a black male adult, approximately 49 years of age, approximately 5 foot 7 inches to five foot 8 inches in height, wearing a white Raiders shirt, blue jeans, and a black baseball cap. The victim said her boyfriend's name was "Frankie Lucas." Officer Galarza broadcast the suspect description over his radio so responding officers could check the surrounding area.

Officer Alberto Balcazar, from the San Bernardino Police Department, responded to the location and searched for the suspect. Officer Balcazar saw a subject, later identified as Joe Dockery, walking in the Food 4 Less parking lot. Dockery matched the suspect description put out by Officer Galarza. Officer Balcazar exited his marked patrol vehicle and contacted Dockery who was walking with a female, later identified as Witness #1.

Officer Balcazar was wearing a San Bernardino Police Department police uniform when he contacted Dockery. As Officer Balcazar was attempting to conduct a patdown of Dockery for weapons, Dockery took off running. Officer Balcazar chased after Dockery on foot. During the foot pursuit, Officer Balcazar saw Dockery had a gun in his right hand. Officer Balcazar drew his duty weapon during the foot pursuit. Officer Balcazar gave Dockery multiple verbal commands in an effort to get Dockery to stop and to put the gun down. A witness, Witness #2, saw Dockery running with the gun in Dockery's right hand and heard Officer Balcazar yelling at Dockery to stop or stop reaching.

Dockery ran around the passenger side of a Mazda which was parked in the parking lot. On the passenger side of the Mazda, Dockery bent over and tossed the gun underneath the parked vehicle. Officer Balcazar gave Dockery verbal commands to get down but Dockery did not comply. Dockery turned to run away from Officer Balcazar. As Dockery was turning, Dockery's hands came down toward his waistband. Officer Balcazar feared Dockery was reaching for a weapon and fired three times at Dockery. After the shooting, Officer Balcazar handcuffed Dockery and called for medical personnel to treat Dockery's injuries.

Dockery was transported to Loma Linda University Medical Center in the City of Loma Linda for treatment. Dockery sustained the following injuries: a gunshot wound to his left hip, a gunshot wound to his right flank, a gunshot wound to his left upper back, a gunshot wound to his mid back, a gunshot wound to his right lower back, a fracture to his left femur, and a laceration to his liver.

During the investigation, a black semiautomatic pistol was located underneath a dark gray Mazda-3 which was parked in the Food 4 Less parking lot. There was an ammunition magazine loaded with ten 9mm cartridges inserted into the pistol. There was one "Perfecta" 9mm Luger cartridge loaded in the chamber.

WITNESSES AND CORROBORATION

On July 6, 2019, at approximately 12:14 in the afternoon, **Witness #1** was interviewed by Detective Mike Siems.

On July 6, 2019, Witness #1 met her friend at a hotel. Witness #1 said her friend Joe, later identified as Joe Dockery, was also at the hotel. Witness #1 said she had known Dockery for approximately three years and the two used to have a dating relationship. Dockery asked Witness #1 if she wanted to go to the store with him. Witness #1 wanted some chips and agreed to walk with Dockery. Witness #1 said she and Dockery were walking through the Food 4 Less parking lot when a police officer, later identified as Officer Alberto Balcazar, drove up to them and asked Dockery if he was a certain person. Witness #1 could not remember the specific name the officer said. Dockery told the officer, "No, I'm Joe Dockery."

Next, Witness #1 said Officer Balcazar stepped out of his patrol vehicle and approached Dockery. Officer Balcazar told Dockery to relax and put his hands behind his back. Witness #1 heard Officer Balcazar ask Dockery if he had anything on him. Dockery said no. Officer Balcazar put one of Dockery's hands behind Dockery's back. When Officer Balcazar went to the grab Dockery's other hand, Witness #1 said she stepped to the side and Dockery "took off, he ran." Witness #1 said Officer Balcazar ran after Dockery and told him twice to stop running.

Witness #1 said she turned around to see what was happening. Witness #1 saw Dockery making motions of either pulling up his pants or grabbing the sides of his pants. Witness #1 heard Officer Balcazar yell at Dockery to "get down." Witness #1 heard Dockery say "don't shoot" twice. Witness #1 said Dockery got down on the ground, but she was unsure what Dockery did because Witness #1 heard two gunshots. Witness #1 said when Dockery initially stopped running, it looked like Dockery was not sure which way to run. Witness #1 said everything happened so fast. After the shooting, Witness #1 said she took off.

Witness #1 said it appeared to her that Dockery was grabbing something, but she was unsure what it may have been. Witness #1 said Officer Balcazar told Dockery to "freeze" and "don't move." Witness #1 also heard Officer Balcazar tell Dockery to put his hands up. Witness #1 said Dockery only had one hand up. Witness #1 said Dockery had turned around as he was running. It appeared to Witness #1 that Dockery was going to grab something from his pants. Witness #1 demonstrated that Dockery appeared to be pulling up his pants with one hand on each of his hips. Witness #1 stated that was when Officer Balcazar fired his handgun.

Witness #1 said Officer Balcazar was close to Dockery when Officer Balcazar told Dockery to "freeze." Witness #1 estimated the distance between Officer Balcazar and Dockery to be the width of the interview room she was in, which was approximately twelve feet. Witness #1 saw Dockery holding on to the left side of his pants. It appeared to Witness #1 that Dockery was holding on to something but Witness #1 did not see whether Dockery ever pulled anything out of his pants.

Witness #1 said Officer Balcazar did what he had to do when he saw whatever he saw and felt threatened. Witness #1 said it did not seem to her that Officer Balcazar was in the wrong. Witness #1 estimated she was approximately ten to eleven parking spaces away when the shooting happened. Witness #1 said Officer Balcazar handcuffed Dockery after the shooting.

On July 10, 2019, at approximately 8:26 in the morning, **Joe Dockery** was interviewed at Loma Linda University Medical Center by Detective Donald Sawyer.¹ Prior to the

¹ Dockery was recovering from surgery at the time of the interview. Detective Sawyer noted Dockery was alert and was able to answer questions.

interview, Detective Sawyer advised Dockery of his Miranda rights. Dockery indicated he understood his rights and said he was willing to speak with Detective Sawyer.

On the morning of July 6, 2019, Joe Dockery and his girlfriend, later identified as Witness #1, had just left a motel and were walking to McDonalds to get breakfast. While they were in the parking lot a police officer, later identified as Officer Alberto Balcazar, drove toward them. Dockery said he knew Witness #1 had a handgun with her. Dockery did not want Witness #1 to get in trouble for having the gun so Dockery took the gun from her. Dockery said he placed the gun in the front waist band of his pants before Officer Balcazar made it over to him.

Dockery said Officer Balcazar asked Dockery whether he was someone. Dockery was unable to remember the specific name Officer Balcazar used. Dockery told Officer Balcazar that was not him. Dockery said Officer Balcazar grabbed him and started to search him. Dockery ran from Officer Balcazar before Officer Balcazar was able to search him. Dockery said he ran toward a vehicle in the parking lot. While he was running, Dockery said he heard Officer Balcazar was yelling at him stop and to get down.

Dockery said he did not have the gun out while he was running. Dockery said when he ran around the vehicle, he stopped on the passenger side. Dockery said he removed the gun from his waist, dropped the gun on the ground, and kicked the gun underneath the vehicle. Dockery said he used his left hand to take the gun from his waistband. Dockery said he did not stop and get down because he wanted to get rid of the gun and he did not want to get shot. Dockery said he put his hands up after he got rid of the gun. Dockery said he believed Officer Balcazar could see Dockery's waist when he put his hands up because Dockery's shirt was short enough to show his waist. Dockery also believed Officer Balcazar saw him drop the gun under the car because after the shooting, Officer Balcazar was telling other officers the gun was under the vehicle.

Dockery said, after he put his hands up, Officer Balcazar had his gun pointed at Dockery. Officer Balcazar told Dockery to get on the ground. Dockery, however, advised he was not going to get on the ground. Dockery said he started to run away from Officer Balcazar and Officer Balcazar shot him one time. Dockery said he went down to the ground and Officer Balcazar continued to shoot. Dockery believed Officer Balcazar shot him five times.² Dockery said Officer Balcazar then placed his leg on Dockery's back while he handcuffed him and Officer Balcazar held Dockery in that position until medical personnel arrived.

During his interview, Dockery said there was a male subject in the parking lot at the time who witnessed the incident. Dockery said the male subject was yelling that Dockery was unarmed. Dockery claimed Officer Balcazar still fired his gun, striking Dockery in the back. When asked whether he had anything else in his hands during the incident, Dockery said he was unsure whether he may have had his cell phone in his hand. Dockery said if he had would have gotten on the ground when Officer Balcazar ordered

² Officer Balcazar fired three times at Dockery.

him to, everything most likely would have ended. Dockery also admitted that if he had never run, Officer Balcazar would not have shot him.

On July 6, 2019, **Witness #3** was interviewed by Officer Marcus Pesquera, from the San Bernardino Police Department.³

Witness #3 told Officer Pesquera that he witnessed the entire shooting. Witness #3 said he saw a police officer, later identified as Officer Balcazar, approach a male and female. The male, later identified as Joe Dockery, started to run away from Officer Balcazar. Witness #3 said Officer Balcazar got into a foot pursuit with Dockery. Witness #3 said as Dockery was running away from Officer Balcazar, Dockery kept on looking back as if he was going to stop.

Next, Witness #3 said Dockery ran toward a gray car. Dockery continued to look back at Officer Balcazar. Witness #3 said Dockery then ran in a northwest direction away from the vehicle when Dockery was shot in the back by Officer Balcazar. Witness #3 said he did not see a weapon in Dockery's hands and believed Dockery was unarmed at the time. Witness #3 left the scene and refused to provide any further information.

On July 6, 2019, at approximately 3:00 in the afternoon, **Witness #2**, was interviewed by Detective Donald Sawyer.

On July 6, 2019, Witness #2 said he was just entering the parking lot when he saw a police officer, later identified as Officer Alberto Balcazar, chasing a subject, later identified as Joe Dockery. Officer Balcazar was chasing Dockery east through the parking lot. Witness #2 said Officer Balcazar was chasing Dockery toward a vehicle that was parked in the center of the parking lot. Witness #2 heard Officer Balcazar telling Dockery to stop at least two to three times. Witness #2 observed Dockery had a gun in Dockery's right hand while he was running.

When Dockery ran around the passenger side of the parked vehicle, a Mazda, Witness #2 saw Dockery throw a gun underneath the vehicle. Witness #2 said Dockery then turned and faced Officer Balcazar while raising his hands in the air. Witness #2 heard Dockery tell Officer Balcazar, "I threw the gun. I threw the gun." Witness #2 did not know whether Officer Balcazar heard Dockery's statement that he threw the gun. Witness #2 said Officer Balcazar was pointing what Witness #2 initially believed was a Taser at Dockery. Witness #2 said Dockery was reaching at his waist and appeared to grab the bottom of his shirt. Dockery pulled his shirt up to mid chest level and then lifted his hands up by his head. Witness #2 said that when Dockery made this motion, his side was facing Officer Balcazar. Witness #2 said Officer Balcazar shot three times at Dockery and Dockery went down to the ground. Witness #2 said he could understand

³ Witness #3 refused to be transported to the police station to be interviewed by detectives. Witness #3 said he would be willing to make phone contact with detectives.

why Officer Balcazar fired at Dockery because of how Dockery was reaching at his waist.

After the shooting, Witness #2 walked closer to where Officer Balcazar had Dockery detained. Witness #2 asked Officer Balcazar why he shot an unarmed man. Witness #2 said Officer Balcazar pointed his weapon at Witness #2 and told Witness #2 to get back.⁴ Witness #2 said he put his hands in the air and backed away from the officer. Witness #2 was later transported to the San Bernardino Police Department to be interviewed.

Witness #2 indicated he was standing near a truck which was located southwest of the Mazda during the incident under review. Witness #2 said he was in a position where he had a clear view of the passenger side of the Mazda. Witness #2 also said he had a clear view when Dockery threw the gun underneath the Mazda. Witness #2 advised he heard the gun when it hit the ground. Witness #2 indicated he had a clear view of both Officer Balcazar and Dockery during the incident and stated he was approximately thirty five feet away from where the shooting happened.

Witness #2 said he did not believe Officer Balcazar heard the gun hit the pavement because Officer Balcazar had all his gear on when he was running and it was making a lot of noise. Witness #2 also did not think Officer Balcazar saw Dockery drop the gun because Dockery dipped down on the passenger side of the car when he dropped it and Officer Balcazar was still behind the car. Witness #2 advised the incident happened really fast. Witness #2 estimated the entire incident, from the time Officer Balcazar chased Dockery around the rear of the parked vehicle to the time the shots were fired, was less than ten seconds.

On July 6, 2019, **Officer S. Galarza**, from the San Bernardino Police Department, was assigned to patrol. On that date, at around 10:32 in the morning, Officer Galarza responded to the Transit Center located at *** W. Rialto Avenue in reference to a battery call. The text of the call indicated the reporting party stated her boyfriend "Frankie" assaulted her and the reporting party kept yelling "Get away from me."

When Officer Galarza arrived at the location he spoke with the victim. The victim said she was assaulted by her boyfriend. Officer Galarza noticed the victim was bleeding from her hand. The victim indicated she needed medical attention. While Officer Galarza waited for medical personnel to arrive, he asked the victim to provide a description of the suspect. The victim described her boyfriend as a black male adult, approximately 49 years of age, approximately 5 foot 7 inches to five foot 8 inches in height, wearing a white Raiders shirt, blue jeans, and a black baseball cap. The victim said her boyfriend's name was "Frankie Lucas." Officer Galarza broadcast the suspect description over his radio for surrounding officers to check the area.

⁴ This was not observed on the recording from Officer Balcazar's body camera.

Paramedics arrived and started attending to the victim's injuries. Suddenly, the victim pointed across the intersection of W. Rialto Avenue and N. E Street and stated her boyfriend was walking across the intersection toward the northwest corner. Officer Galarza saw a black male adult that fit the description, however, the subject appeared to be wearing a plain white shirt and not a Raiders jersey. While Officer Galarza was speaking with the victim, Officer Galarza heard three gunshots coming from the direction the subject was seen walking.

On July 8, 2019, at approximately 11:50 in the morning, **Officer Alberto Balcazar**, was interviewed by Detective Donald Sawyer.

On July 6, 2019, Officer Alberto Balcazar, from the San Bernardino Police Department, was assigned to patrol. On that date, Officer Balcazar was driving a marked patrol vehicle and wearing a San Bernardino Police Department uniform. Officer Balcazar had just finished a call when he received another call from dispatch. This call was in reference to a spousal battery at the Transit Center located at *** W. Rialto Avenue. While en route to the location, Officer Balcazar heard another officer was on scene and with the victim.

The officer at the scene broadcast information about the call. The officer at the scene advised the suspect was no longer at the scene and put out a suspect description. The suspect was described as black male adult, approximately 5 feet 7 inches to 5 feet 8 inches tall, with a white shirt, blue jeans, and an unknown color baseball cap. Officer Balcazar was initially attempting to locate the suspect in the area of Meadowbrook park when he heard over the radio that the suspect was seen walking toward the Food 4 Less parking lot. Officer Balcazar made his way to the Food 4 Less parking lot.

When Officer Balcazar entered the Food 4 Less parking lot he saw a black male, later identified as Joe Dockery, who matched the description of the suspect. Dockery was walking with a female adult, later identified as Witness #1. Officer Balcazar drove his patrol vehicle toward Dockery and Witness #1 to contact them. Officer Balcazar approached Dockery and asked if his name was "Frankie." Dockery told Officer Balcazar no and said his name was "JoJo."

Officer Balcazar attempted to pat Dockery down for weapons. Officer Balcazar said he grabbed Dockery's right wrist and placed his arm behind his back. Officer Balcazar then grabbed Dockery's left wrist and did the same thing. Officer Balcazar attempted to start a patdown search on Dockery's waist for weapons. Officer Balcazar asked Dockery if he had anything on him and Dockery said, "Nah." At that point, Dockery pulled away from Officer Balcazar and ran east and then turned to run north.

Officer Balcazar chased after Dockery on foot. Officer Balcazar put out over the radio that he was in a foot pursuit. While he was running, Officer Balcazar saw Dockery reach into his waistband area and pull out a gun. Officer Balcazar was unsure which

hand Dockery had the handgun in and Officer Balcazar was unable to describe the gun. Officer Balcazar removed his duty weapon and continued to chase after Dockery. Officer Balcazar ordered Dockery to put his hands up and to get down on the ground. Officer Balcazar said Dockery did not comply with his commands. Officer Balcazar estimated he was approximately seven feet away from Dockery.

Officer Balcazar chased Dockery east and then ran north around a vehicle that was parked in the parking lot. Officer Balcazar said when Dockery ran around the parked vehicle he paused and faced Officer Balcazar. When Officer Balcazar approached Dockery, Dockery started to run again. Officer Balcazar believed he ordered Dockery to put his hands up and to get on the ground. Dockery did not comply with the commands and started to run again. Officer Balcazar said he remembered seeing the gun in Dockery's hand when he was running but did not remember seeing the gun in Dockery's hand when Dockery paused on the passenger side of the parked vehicle. Officer Balcazar said he believed Dockery placed the gun back in the waistband of his pants.

After Dockery started running, Officer Balcazar said Dockery continued to reach his hands into his waistband area. Officer Balcazar said Dockery started to turn around and face him. Officer Balcazar said this is when he fired his weapon three times at Dockery. Officer Balcazar was afraid Dockery was going to shoot him and Officer Balcazar was in fear for his life. Officer Balcazar said Dockery was not completely facing him when he fired his weapon. Dockery's left side was facing him and Officer Balcazar was not able to see Dockery's right hand or Dockery's waist on Dockery's right side.

After the shooting, Dockery went down the ground. Officer Balcazar searched Dockery and handcuffed him. Officer Balcazar said Dockery asked Officer Balcazar why he shot him. Dockery advised Officer Balcazar that he tossed the gun. Officer Balcazar said he told Dockery that he did not know Dockery had tossed the gun. Officer Balcazar looked for the weapon and observed a gun underneath a vehicle parked near where Dockery had been detained. Officer Balcazar said he put out over the radio that shots were fired and the subject was down. Officer Balcazar requested dispatch to have medical aid respond to the location.

Axon Body Camera Summary⁵

Officer Alberto Balcazar

Officer Balcazar was equipped with a body camera on the date of the incident under review. The body camera was activated and recording during the incident under review. The recording is approximately 1 hour, 9 minutes and seven seconds in length.

⁵ The body camera recording was reviewed in its entirety. There was a thirty second delay before the audio on the recording could be heard. The summary will cover the initial contact between Officer Balcazar and Dockery through the arrival of medical personnel.

Officer Balcazar could be seen driving in his patrol vehicle. Officer stops his patrol vehicle and gets out. Officer Balcazar approaches Dockery and Witness #1 as they are walking through the parking lot. Officer Balcazar asked Dockery, "Are you Frankie?" Dockery responded, "Am I Frankie? Hell no. My name is Joe Dockery." Officer Balcazar said, "Give me one second."

Officer Balcazar tells Dockery, "Relax." Officer Balcazar can be seen moving Dockery's arms behind Dockery's back. At the 48 second mark, Officer Balcazar asks Dockery, "Do you have anything on you?" Dockery tells Officer Balcazar, "No. My name's not Frankie." Officer Balcazar tells Dockery, "Hold on. Relax. Don't move. Don't pull away from me." At the 55 second mark, as Officer Balcazar has a grip on Dockery's hands, Dockery takes off running.

Officer Balcazar can be heard saying over the radio he is in pursuit. Officer Balcazar chases after Dockery. Officer Balcazar yells at Dockery, "Hey. Hold up. Hold up. Hey. Put your hands up. Put your hands down." Dockery has the gun in his right hand. Dockery bends down and appears to toss the gun on the ground. At the same time, Officer Balcazar continued to yell at Dockery, "Don't do it. Don't do it. Put that on the ground. Put that on the ground. Down. Down. Down. Down." At the 1 minute 4 second mark, Dockery's left hand can be seen reaching down toward his waistband. Dockery's hands were down near his waist when Dockery turned to run away from Officer Balcazar. Dockery's right side of his body is turned away from Officer Balcazar. At the 1 minute 6 second mark, Officer Balcazar fired his weapon three times. Dockery yells out and goes to the ground. Officer Balcazar put out over the radio, "Shots fired. Shots fired."

Officer Balcazar approached Dockery. Officer Balcazar says, "Down on the ground. Get down on the ground. Get down on the ground. I got you dude. I'm gonna shoot you. I'll shoot you again." Officer Balcazar turned Dockery over onto Dockery's stomach. Officer Balcazar told Dockery, "Relax. Relax. Put your hands behind your back." Officer Balcazar handcuffed Dockery. Officer Balcazar advised dispatch that he had one subject down and requested medical respond. Officer Balcazar told another police officer to grab a male who was a witness. Officer Balcazar told the police officer that there was a female who was walking with Dockery that was going to Food 4 Less. Officer Balcazar told another police officer who arrived at the scene that there was a gun underneath a vehicle.

Dockery could be heard moaning. Officer Balcazar told Dockery to relax. Officer Balcazar asked Dockery, "Dude. What are you doing dude?" Dockery asked Officer Balcazar why he shot him. Officer Balcazar told Dockery, "You were pulling on your waistband." Dockery told Officer Balcazar he threw the gun. Officer Balcazar responded, "You threw the gun but then you went again." Dockery said he was only running. Officer Balcazar searched Dockery. Medical personnel arrived at the scene and started to treat Dockery.

Weapon

A black 9mm Taurus Millennium-G2, Model PT111, semiautomatic pistol was located underneath a dark gray Mazda-3 which was parked in the parking lot. There was an ammunition magazine loaded with ten 9mm cartridges inserted into the pistol. There was one "Perfecta" 9mm Luger cartridge loaded in the chamber. One latent print lifted from the magazine was examined by CAL-ID and identified as belonging to Joe Louis Dockery.

De-escalation

When reviewing Officer Balcazar's body camera video, it was clear that the incident under review unfolded very quickly. Nevertheless, Officer Balcazar did attempt to de-escalate that situation with verbal commands once Dockery took off running. Officer Balcazar saw a gun in Dockery's right hand as they were running. Officer Balcazar yelled at Dockery, "Hold up. Hold up." Officer Balcazar told Dockery, "Put your hands up. Put your hands down." Officer Balcazar yelled at Dockery, "Don't do it. Don't do it." Officer Balcazar yelled, "Put that on the ground. Put that on the ground." Officer Balcazar could also be heard yelling at Dockery, "Down. Down. Down. Down."

Injuries

Joe Dockery was transported to Loma Linda University Medical Center in the City of Loma Linda for treatment. Dockery sustained the following injuries: a gunshot wound to his left hip, a gunshot wound to his right flank, a gunshot wound to his left upper back, a gunshot wound to his mid back, a gunshot wound to his right lower back, a fracture to his left femur, and a laceration to his liver.

Assault With A Deadly Weapon

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

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

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

As to the “deadly weapon” theory of Penal Code section 245(a)(1), some objects, such as dirks and blackjacks, are deadly weapons as a matter of law. (*In re D.T.* (2015) 237 Cal.App.4th 693, 698; *People v. Brown* (2012) 210 Cal.App.4th 1, 6.) But any object can be a deadly weapon when used in a manner capable of producing death or great bodily injury. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029; *People v. Brown, supra*, 210 Cal.App.4th at pp. 7, 11; *In re Brandon T.* (2011) 191 Cal.App.4th 1491, 1496.) In determining whether an object not inherently deadly becomes so, the trier of fact may look at the nature of the weapon, the manner of its use, and all other factors that are relevant to the issue. (*In re D.T., supra*, 237 Cal.App.4th at p. 699; *In re Jose R.* (1982) 137 Cal.App.3d 269, 276-276.) The question is essentially one for the trier of fact. (*Id.* at p. 277; cf. *People v. Page* (2004) 123 Cal.App.4th 1466, 1473 [sharp pencil held up to neck]; *People v. Henderson* (1999) 76 Cal.App.4th 453, 467-470 [pit bull can be a deadly weapon under Pen. Code, § 417.8]; *People v. Simons* (1996) 42 Cal.App.4th 1100, 1106-1108 [screwdriver can be a deadly weapon under Pen. Code, § 417.8]; but see *In re Brandon T., supra*, 191 Cal.App.4th at pp. 1496-1498 [small rounded butter knife not deadly weapon].)

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

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

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

The defendant in *People v. Chance, supra*, 44 Cal.4th 1164 was held to have the “present ability” to inflict injury, as required for the crime of assault on police officer, even

though there was no round in firing chamber of his gun and he did not point gun at officer. The defendant hid behind a trailer and pointed the loaded gun at a place where he believed Officer Murdoch would appear. The officer instead approached defendant from behind thwarting the defendant's plan.

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

(*Id.* at p. 1173.)

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

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

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

APPLICABLE LEGAL STANDARDS

Laws of Arrest

California Penal Code section 834a

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

California Penal Code section 835

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

California Penal Code section 835a

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Laws of Self-Defense

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: "Homicide is justifiable when committed by any person in any of the following cases: (1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person...(4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed,...or in lawfully keeping and preserving the peace." Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be sufficient to prevent injury to the party about to be injured, or the prevent injury to someone else. (Pen. Code §693.)

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the

assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the person act out of that fear. (*People v. Clark* (1982) 130 Cal.App.3d 371, 377.) "He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures." (*People v. Collins, supra*, 189 Cal.App.2d at p. 588.)

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

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

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

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

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

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

USE OF DEADLY FORCE BY A PEACE OFFICER

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

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

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner, supra*, 490 U.S. at p. 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary. (*Id.* at p. 396-397.) The question is whether the officer's actions are "objectively reasonable" considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 397.)

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

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

Reasonableness: The Two Prongs

Penal Code section 197, subdivision (3) requires that one who employs lethal force have a "reasonable ground to apprehend" a design to commit a felony or to do some great

bodily injury. Further, Penal Code section 198 requires that such fear be "sufficient to excite the fears of a reasonable person." This is clearly an objective standard. In shorthand, perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093.)

When specific conduct is examined under the analytical standard of reasonableness the concepts of apparent necessity and mistake are invariably, and necessarily, discussed, for they are part of the same equation. "Reasonableness," after all, implies potential human fallibility. The law recognizes, as to self-defense, that what is being put to the test is human reaction to emotionally charged, highly stressful events, not mathematical axioms, scientifically provable and capable of exact duplication.

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

Imminence of Perceived Danger

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

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

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

Retreat and Avoidance

Under California law one who is faced with an assault that conveys death or great bodily injury may stand his ground and employ lethal force in self-defense. There is no duty to retreat even if safety could have been achieved by retreating. (CALCRIM No. 3470.) Indeed, in California the retreat rule has been expanded to encompass a reasonably

perceived necessity to pursue an assailant to secure oneself from danger. (See *People v. Holt* (1944) 25 Cal.2d 59, 63; *People v. Collins* (1961) 189 Cal. App.2d 575, 588.)

Nature and Level of Force

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

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

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

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

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

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

ANALYSIS

On July 6, 2019, at around 10:14 in the morning, police officers from the San Bernardino Police Department were dispatched to a report of a battery at the Transit Center located at *** W. Rialto Avenue in the City of San Bernardino. The female

reporting party indicated she was being assaulted by her boyfriend. Officer S. Galarza responded to the location and contacted the victim who had an injury to her hand. The victim described her boyfriend as a black male adult, approximately 49 years of age, approximately 5 foot 7 inches to five foot 8 inches in height, wearing a white Raiders shirt, blue jeans, and a black baseball cap. The victim said her boyfriend's name was "Frankie Lucas." Officer Galarza broadcast the suspect description over his radio so responding officers could check the surrounding area.

Officer Alberto Balcazar, from the San Bernardino Police Department, responded to the location and searched for the suspect. Officer Balcazar saw a subject, later identified as Joe Dockery, walking in the Food 4 Less parking lot. Dockery matched the suspect description put out by Officer Galarza. Officer Balcazar exited his marked patrol vehicle and contacted Dockery who was walking with a female, later identified as Witness #1.

Officer Balcazar was wearing a San Bernardino Police Department police uniform when he contacted Dockery. As Officer Balcazar was attempting to conduct a patdown of Dockery for weapons, Dockery took off running. Officer Balcazar chased after Dockery on foot. During the foot pursuit, Officer Balcazar saw Dockery had a gun in his right hand. Officer Balcazar drew his duty weapon during the foot pursuit. Officer Balcazar gave Dockery multiple verbal commands in an effort to get Dockery to stop and to put the gun down.

Dockery ran around the passenger side of a Mazda which was parked in the parking lot. On the passenger side of the Mazda, Dockery bent over and tossed the gun underneath the parked vehicle. Officer Balcazar gave Dockery verbal commands to get down but Dockery did not comply. Dockery turned to run away from Officer Balcazar. As Dockery was turning away from Officer Balcazar, Dockery's hands came down toward his waistband. Officer Balcazar feared Dockery was reaching for a weapon and fired three times at Dockery. After the shooting, Officer Balcazar handcuffed Dockery and called for medical personnel to treat Dockery's injuries.

In this case, Officer Balcazar had an honest and objectively reasonable belief that Dockery posed an imminent threat of serious bodily injury or death. Officer Balcazar had been searching for a suspect involved in a domestic violence assault. Dockery appeared to match the suspect description provided by the alleged victim. When Officer Balcazar attempted to search Dockery for weapons, Dockery took off running. During the foot pursuit, Dockery pulled out a gun. Both Officer Balcazar and Witness #2, a witness to the shooting, saw the gun in Dockery's right hand. It was reasonable for Officer Balcazar to believe Dockery may use the gun against him in order to evade arrest. Officer Balcazar yelled multiple verbal commands at Dockery in order to de-escalate the situation and gain compliance by Dockery. Officer Balcazar told Dockery to "hold up" and "put your hands up." Officer Balcazar warned Dockery "don't do it." Officer Balcazar also ordered Dockery to get "down."

Dockery did not comply with Officer Balcazar's commands to get down. Instead, Dockery's hands came down toward his waistband. As Dockery's hands were near his

waistband, Dockery turned and started to run from Officer Balcazar. When Officer Balcazar fired his duty weapon, Officer Balcazar honestly and reasonably believed Dockery was reaching for a weapon. Witness #2 even stated in his interview that he could understand why Officer Balcazar fired his weapon at Dockery given how Dockery was reaching at his waist. Given Officer Balcazar's close proximity to Dockery, it was reasonable for Officer Balcazar to believe Dockery posed an imminent threat which could result in Officer Balcazar suffering serious bodily injury or death.

Although Officer Balcazar's body camera video recording did show Dockery briefly stopped to toss his gun underneath the Mazda, Officer Balcazar stated in his interview that he did not remember seeing that. Officer Balcazar said he lost sight of Dockery as he went around the parked Mazda. It would be important to note that from the time Dockery took off running after his initial contact with Officer Balcazar to the time Officer Balcazar fired his duty weapon was approximately eleven seconds. It would not be unreasonable for Officer Balcazar not to recall some details of the incident given the narrow focus Officer Balcazar would experience in an extremely high stress situation that unfolded in a matter of seconds. Additionally, in analyzing the video in slow motion, it can be seen that when Dockery had the gun in his hand before tossing it under the car, the gun was "palmed" in his hand rather than protruding in a normal position; this fact makes it more difficult to see that he is tossing the gun. Also, Dockery's leg was in a position that partially obstructed the view which also could make it more difficult for the officer to recognize exactly what was happening. It is important to note that after Dockery tossed the firearm, he continued to be non-compliant with commands and he continued to conceal his right hand at the area of his waist band. At no time prior to the shooting, does Dockery articulate to the officer in any manner that he tossed the firearm. The first time Dockery told the officer that he tossed the firearm was after Dockery was shot. Under all of those circumstances, it was objectively reasonable for Officer Balcazar to believe Dockery posed an immediate and serious threat to his physical safety and thus, Officer Balcazar's decision to use deadly force was justified.

CONCLUSION

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

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
San Bernardino, CA 92415
April 1, 2020

