



## **PUBLIC INFORMATION RELEASE MEMORANDUM**

**DATE:** October 25, 2021

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

**Officers:** Deputy Ryan Pepler  
San Bernardino County Sheriff's Department  
Highland Station

Deputy Gregory Ditfurth  
San Bernardino County Sheriff's Department  
Highland Station

Deputy Arturo Alvarado  
San Bernardino County Sheriff's Department  
Highland Station

**Involved Subject:** Manuel Quintero (Injured)  
Date of Birth 08/28/1973  
San Bernardino, CA

**Date of Incident:** December 31, 2012

**Incident location:** Union Street and Del Rosa Ave.  
Highland, CA

**DA STAR #:** 2020-13770

**Investigating Agency:** San Bernardino County Sheriff's Department

**Case Agent:** Detective D. Rodriguez and Sgt. J Steers

**Report Number#:** DR # 131205868 / H # 2012-116

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## PREAMBLE

This non-fatal officer involved shooting involved deputies from the San Bernardino County Sheriff's Department, Highland Station. The factual summary is based on a thorough review of all the investigative reports, photographs, video recordings, and audio recordings submitted by the Homicide Division of the San Bernardino County Sheriff's Department under DR# 131205868, H# 2012-116.

## FACTUAL SUMMARY

At approximately 5:40pm on December 31, 2012, a 911 call was received regarding a subject brandishing a handgun, a violation of Penal Code section 417. The subject was driving a blue/green Chevy Astro van.<sup>1</sup>

Deputy Peppler responded to the call. He observed the suspect vehicle near Shirley's Market<sup>2</sup> at the corner of Del Rosa Ave. and 6<sup>th</sup> St. The van was stopped short of the stop sign on Del Rosa with its lights off. Deputy Peppler pulled his patrol vehicle behind the van. The van did not move or proceed through the intersection. Deputy Peppler opened the driver's side door of the patrol vehicle and stood behind it. He used the patrol vehicle's spotlight to illuminate the van and driver (Manuel Quintero). As he did so, he heard a gunshot from the van. Glass from the van's rear window fell to the ground. Mr. Quintero drove off. Deputy Peppler broadcast shots fired and pursued the van.

Deputy Ditfurth was also responding to the brandishing call when he heard Deputy Peppler's broadcast. He joined the pursuit taking a position behind Deputy Peppler's vehicle. The van traveled at low speeds, between 30-40mph. Mr. Quintero eventually stopped the van on Union Street, between Del Rosa Ave. and Elmwood Ct. The pursuit lasted under two minutes. Deputy Peppler parked his patrol vehicle behind and to the left of the van. Deputy Ditfurth parked his patrol vehicle to the right of Deputy Peppler's vehicle and directly behind Mr. Quintero's van. The van was approximately fifteen feet in front of them.

Mr. Quintero remained in the driver's seat of the van. Deputy Peppler exited his car and stood behind his open driver's door. Deputy Ditfurth exited his patrol vehicle and pointed the Mini 14 rifle towards the van and Mr. Quintero. Both deputies repeatedly yelled for Mr. Quintero to put his hands up and/or to show them his hands. Mr. Quintero did not comply.

Deputy Peppler moved forward and to his left, taking cover behind/near a parked truck. This provided him with a better view of Mr. Quintero, who remained in the driver's seat. Mr. Quintero was ordered to show his hands, but he did not comply. Mr. Quintero

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<sup>1</sup> \*\*\*\*\*

<sup>2</sup> The parties refer to the business as Shirley's Market or Shirley's Liquor Store.

was looking around, and at one point, Deputy Pepler believed the two made eye contact. Mr. Quintero then leaned to his right. Deputy Pepler fired his weapon three times. Again, Mr. Quintero was ordered to show his hands. He did not comply. Deputy Pepler fired again. Deputy Ditfurth fired his rifle one time when he saw Mr. Quintero lean to the right. Deputy Pepler fired three more times. Deputy Pepler moved back to his patrol vehicle where he took cover behind his driver's side door. Mr. Quintero's van rolled forward slowly then stopped. The deputies remained where they were. The van was now approximately thirty to forty feet in front of the patrol vehicles.

Sgt. Eddie Gonzalez parked his vehicle directly behind that of Deputy Ditfurth. Sgt. Gonzalez positioned himself behind the open front passenger door of Deputy Ditfurth's patrol vehicle. He instructed Deputy Ditfurth to use the patrol vehicle's PA system when ordering Mr. Quintero to put his hands up and to exit the car. Deputy Ditfurth sat in the car and did so.

Deputy Arturo Alvarado arrived on scene. He parked his vehicle to the left of Deputy Pepler's vehicle. He exited his patrol vehicle with his Mini 14 rifle and ultimately took cover behind his driver's side door.

The deputies continued to order Mr. Quintero to show his hands and/or to put his hands out of the window. He did not comply with their commands.

Mr. Quintero eventually exited the driver's door and stood next to the van. His hands were in the air as he faced the deputies. He was ordered to turn and face away from them. As he turned, Mr. Quintero lowered his left arm as if to reach across to his waist/right side of his body. When he did so, Deputies Pepler and Alvarado fired their weapons. Mr. Quintero fell to the ground.

No weapons were found on Mr. Quintero's person. A Smith and Wesson .38 handgun was found on the front passenger seat of the van, however.

Medical personnel treating Mr. Quintero at the scene noted one gunshot wound to his left leg, one gunshot wound to his left hip/side and one gunshot wound to the left side of his chest. Mr. Quintero was transported to Loma Linda University Medical Center for further treatment.

## STATEMENTS BY POLICE OFFICERS

### Deputy Ryan Pepler<sup>3</sup>

Deputy Pepler heard Deputy Ditfurth being dispatched to a call regarding a male brandishing a firearm, so he decided to assist. The suspect was described as a Hispanic male adult driving a blue/green van. Deputy Pepler located the van before Deputy Ditfurth. The van was stopped at the stop sign on Del Rosa Ave., where it intersects with 6<sup>th</sup> St. The van's lights were off. Deputy Pepler pulled his patrol vehicle behind the van. The area was dimly lit. Deputy Pepler's belt recording device was activated.

Deputy Pepler wasn't sure why the driver (Mr. Quintero) failed to proceed through the stop sign, so he opened the driver's side door of his patrol vehicle and stood behind it. Deputy Pepler did not have his gun drawn. He used the patrol vehicle's spotlight to illuminate the van and Mr. Quintero. According to Deputy Pepler, approximately ten seconds passed when he heard a gunshot, or a "pop", as he described it; glass from one of the van's rear windows shattered. The van drove off. Deputy Pepler notified dispatch of the fired shot and pursued the van. The patrol vehicle's lights and sirens were activated. Mr. Quintero was driving slowly which led Deputy Pepler to believe that he was being lured to another location where the shooting would continue. Deputy Ditfurth joined the pursuit too, positioning his patrol vehicle behind Deputy Pepler's vehicle. Mr. Quintero eventually stopped the van on Union Street, between Del Rosa and Elmwood Court.

Deputy Pepler stopped his patrol vehicle behind and to the left of the van. Deputy Ditfurth stopped his vehicle to Deputy Pepler's right. The flashing lights from the patrol vehicles made it difficult for Deputy Pepler to see Mr. Quintero and the driver's area of the van. Deputy Pepler saw a truck parked in the front yard of the residence to his left, approximately ten feet away. Deputy Pepler ran to it and used the truck as cover. That location and position also provided him with a better view of Mr. Quintero. Initially Deputy Pepler and Deputy Ditfurth both yelled for Mr. Quintero to put his hands up and to comply. To avoid any confusion, Deputy Pepler stopped giving commands and allowed Deputy Ditfurth to continue doing so. From his position, Deputy Pepler could see Mr. Quintero looking left and right, as if he were trying to locate the deputies. Deputy Pepler feared that Mr. Quintero was going to engage them in a gunfight so he drew his handgun and pointed it at the driver's area of the van. At one point, Deputy Pepler believed he and Mr. Quintero made eye contact. Deputy Pepler then saw Mr. Quintero motion or reach "up underneath the front driver's seat." Deputy Pepler feared that Mr. Quintero, having seen Deputy Pepler, was going to grab a gun and come out shooting. As a result, Deputy Pepler discharged his weapon towards Mr. Quintero and the driver's area of the van. Deputy Pepler believed he fired

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<sup>3</sup> Deputy Pepler was interviewed on January 1, 2013. It is unknown if he reviewed his belt recording before being interviewed.

his weapon six-eight times. Deputy Peppler heard a gunshot to his right and believed that Deputy Ditfurth also fired his weapon.

Mr. Quintero's van rolled forward after the gunshots. Deputy Peppler ran back to his patrol vehicle and moved his vehicle forward, as well. The van stopped and so did Deputy Peppler. Although he doesn't recall seeing it happen, Deputy Peppler believed that Deputy Ditfurth must have moved his vehicle forward too, as it was next to Deputy Peppler's vehicle again.<sup>4</sup>

Deputy Peppler again got out of his vehicle and stood behind his driver's side door. Deputy Ditfurth continued with his orders to have Mr. Quintero exit the van with his hands up as other deputies arrived. At one point, Deputy Peppler saw Mr. Quintero's fingers sticking out of the partially rolled down driver's side window. Mr. Quintero eventually opened the driver's door and stepped out, facing the deputies. Deputy Peppler could see blood and bloodstains on the left side of Mr. Quintero's body. His hands were at shoulder level. According to Deputy Peppler, Mr. Quintero seemed able to comply with the orders to keep his hands up despite sustaining an injury. Mr. Quintero turned to his right in order to face away from the deputies. As he did so, he lowered his left hand/arm towards his waist and appeared as if he were about to crouch down. Deputy Peppler feared that Mr. Quintero was reaching for a weapon so he fired. Deputy Peppler believed he fired five-six times. He also heard gunshots coming from his left. Mr. Quintero fell to the ground. Deputy Peppler changed the magazine in his weapon then he and Deputy Silva approached Mr. Quintero. Mr. Quintero was bloody, but alive. He did not have any weapons on or near him. Deputy Peppler heard other deputies say that a revolver had been located on the passenger seat of the van

#### **Deputy Gregory Ditfurth<sup>5</sup>**

Deputy Ditfurth was dispatched to a brandishing of a firearm call in which the suspect was described as a white or Hispanic male adult, driving a blue or green Astro van. While en route to the call, Deputy Ditfurth heard Deputy Peppler broadcast that he had located the van at 6<sup>th</sup> Street and Del Rosa. Deputy Ditfurth drove in that direction to assist. Within seconds, he heard Deputy Peppler broadcast that the suspect had fired a gun or shot at him, or something to that effect. Deputy Ditfurth activated his vehicle's lights and siren and sped towards Deputy Peppler's location. Deputy Ditfurth caught up to Deputy Peppler's vehicle which was in pursuit of the van. Deputy Ditfurth joined the pursuit. The van travelled slowly, approximately 30-40 mph, then slowed to a stop after turning on to Union Street. Deputy Peppler stopped his patrol vehicle behind, and to the left of the van, while Deputy Ditfurth stopped his vehicle to Deputy Peppler's right, and nearly in-line with the back of the van. Both patrol vehicles were approximately fifteen feet behind the van.

Deputy Ditfurth grabbed the Mini 14 rifle and exited his vehicle. He stood behind his open driver's side door and, looking through the rear window of the van, aimed the

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<sup>4</sup> Neither patrol vehicle actually moved, he just believed that they did.

<sup>5</sup> Deputy Ditfurth was interviewed on January 1, 2013.

rifle at the Mr. Quintero. Deputy Pepler was out of his vehicle, too. Both yelled for Mr. Quintero to show them his hands. Deputy Ditfurth used his vehicle's spotlight to illuminate the inside of the van. He could see Mr. Quintero rubbing the top of his head as he looked around. The deputies repeated their commands for him to show his hands and to put his hands up. Deputy Pepler then moved to his left, towards an open yard. Deputy Ditfurth would occasionally lose sight of Mr. Quintero's hands. Deputy Ditfurth could see Mr. Quintero look in Deputy Pepler's direction as Deputy Pepler gave commands. Deputy Ditfurth lost sight of Mr. Quintero's left hand, then heard one-two gunshots coming from his left. Deputy Ditfurth saw Mr. Quintero lean forward and believed he was reaching for a gun. With the Mini 14 aimed at Mr. Quintero's head/back, he fired one shot through the van's rear window. Deputy Ditfurth heard two-three more gunshots from his left. Deputy Ditfurth could not see Mr. Quintero after the shots were fired and assumed he had leaned forward. The van rolled forward approximately ten-fifteen feet as if Mr. Quintero's foot had come off the brake, then stopped. Mr. Quintero's head came back into view as he sat/remained in the driver's seat. Deputy Pepler then returned to the driver's side his patrol vehicle.

Deputy Ditfurth and Deputy Pepler continued to give commands. Deputy Alvarado appeared between the two patrol vehicles then just as quickly disappeared. Mr. Quintero stuck his fingers, then hands, out of the driver's side window. It was about that time that Sgt. Gonzalez arrived at Deputy Ditfurth's passenger side door and told him to use the vehicle's PA system to give the commands. Deputy Ditfurth sat in the driver's seat of his vehicle and did so.

Mr. Quintero eventually opened the driver's side door and staggered as he stepped out. Deputy Ditfurth didn't know if Mr. Quintero was staggering as a result of a gunshot wound or if he was intoxicated. Mr. Quintero's hands were in the air, above his head, as he faced the deputies. Deputy Ditfurth ordered Mr. Quintero to turn away from them and he did. During that movement, Deputy Ditfurth could see that one of Mr. Quintero's hands was red. Mr. Quintero continued turning as if to face the deputies again despite Deputy Ditfurth's commands to the contrary. Deputy Ditfurth saw Mr. Quintero drop his hands, then heard gunfire. Deputy Ditfurth was still in his car so he did not fire his weapon. Mr. Quintero slowly fell to the ground.

Deputy Pepler approached Mr. Quintero while Deputy Ditfurth and Sgt. Gonzalez checked the van. Deputy Ditfurth saw a black revolver on the passenger's seat.

### **Deputy Arturo Alvarado<sup>6</sup>**

Deputy Alvarado was at the station working on a report when he heard the dispatch regarding the brandishing of a firearm. He decided to assist with the call when he heard that the suspect vehicle had been located. Moments later he heard the deputy report shots fired and that a pursuit was underway.

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<sup>6</sup> Deputy Alvarado was interviewed on January 1, 2013.

Deputy Alvarado arrived on Union St. and parked his vehicle to the left of Deputy Peppler. He noticed the van rolling forward approximately twenty feet, then stopping. He believed that Deputies Peppler and Ditfurth and Sgt. Gonzalez were already on scene when he arrived. Deputy Alvarado exited his vehicle with the Mini 14 rifle and ran to his right, to the area between Deputy Peppler's and Deputy Ditfurth's vehicles. He opened Deputy Peppler's passenger side door, but there wasn't enough room for him to stay there. Deputy Ditfurth even said as much to him. According to Deputy Alvarado, the other deputies were yelling for Mr. Quintero to show his hands. Although he was only in that position briefly, he noticed the van's rear window was shattered. He could also make out Mr. Quintero as he moved around while in the driver's seat. Deputy Alvarado then ran back to his vehicle and positioned himself behind his open driver's side door.

Deputy Alvarado heard Deputy Ditfurth and Sgt. Gonzalez yelling for Mr. Quintero to exit the van with his hands up and to face away from them. Mr. Quintero eventually opened the driver's door and got out. His hands were in the air, by his head. As he exited, he turned to face away from the deputies. Mr. Quintero then suddenly lowered his hands as he kept turning to his right. Deputy Alvarado feared that Mr. Quintero was reaching for a gun to either shoot him or the other deputies. Deputy Alvarado fired four-five rounds from the Mini 14 rifle. Mr. Quintero fell to the ground.

Deputy Alvarado heard one of the deputies, Deputy Ditfurth he believed, say that there was a gun on the passenger seat of the van. Deputy Alvarado eventually looked into the van and saw a black revolver on the passenger seat.

### **Sgt. Eddie Gonzalez<sup>7</sup>**

Sgt. Gonzalez was working as the Watch Commander when he heard Deputy Peppler responding to a report of a PC417, brandishing a weapon. Shortly thereafter he heard that Deputy Peppler had located the suspect vehicle, that the driver had shot at him and that he was in pursuit of the vehicle.<sup>8</sup> He also heard that Deputy Ditfurth had joined the pursuit behind Deputy Peppler.

Sgt. Gonzalez heard several gunshots as he arrived at the scene on Union St. He parked his vehicle directly behind Deputy Ditfurth's vehicle, which was directly behind Mr. Quintero's van. Sgt. Gonzalez saw the van roll forward then stop as if Mr. Quintero had taken his foot off the brake. The van was approximately thirty-four feet in front of the patrol vehicles. Sgt. Gonzalez took a position behind Deputy Ditfurth's open passenger side door. He told Deputy Ditfurth to use the vehicle's PA system when giving commands.

Sgt. Gonzalez could see Mr. Quintero looking around/moving around in the driver's seat as if he were trying to decide what to do next. He could see Mr. Quintero

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<sup>7</sup> Sgt. Gonzalez was interviewed on December 31, 2012.

<sup>8</sup> Although the word "pursuit" was used, Sgt. Gonzalez said it seemed more like a failure to yield, given the suspect's driving pattern.



with his hands up, but then lower them slightly. Mr. Quintero eventually put his hands out of the vehicle and stepped out. His hands were up, about head high, then lowered to his shoulder. Deputy Ditfurth ordered Mr. Quintero to face away from the deputies as he exited. Sgt. Gonzalez was focused on the passenger side of the van but could see Mr. Quintero out of his periphery. He saw Mr. Quintero lower his hands and move, then heard gunshots. Mr. Quintero fell to the ground.

Sgt. Gonzalez and Deputy Ditfurth approached the passenger side of the van while other deputies approached Mr. Quintero.

### **Deputy Nicholas Silva<sup>9</sup>**

Deputy Silva heard the broadcast regarding a suspect driving a blue or green Astro van who had brandished a gun. While en route to the area, he heard Deputy Peppler broadcast that he had located a possible suspect vehicle. Shortly thereafter, he heard Deputy Peppler announce that the driver (Mr. Quintero) discharged a gun from within the vehicle. Deputy Silva activated his patrol vehicle's lights and sirens and drove towards Deputy Peppler's location. He then heard that Deputy Peppler was in pursuit of the van. He heard a broadcast that shots had been fired as he arrived on Union St.

Deputy Silva parked his vehicle and grabbed his Mini 14 rifle. He then moved to the area between Deputy Alvarado's and Deputy Peppler's vehicles. Deputy Silva opened and stood behind Deputy Alvarado's passenger side door. He pointed his rifle at the van and Mr. Quintero. He could hear Deputy Ditfurth giving commands over the PA system.

Deputy Silva saw Mr. Quintero open the van door and step out. Mr. Quintero initially faced the deputies, but then turned and faced away from them. Deputy Silva did not see anything in his hands. Mr. Quintero took two steps backwards and stopped. Deputy Ditfurth could still be heard giving commands over the PA system. Deputy Silva also ordered Mr. Quintero to show his hands and to keep them up. Mr. Quintero moved his left arm/hand across his body and to the right, however. Deputy Silva again ordered Mr. Quintero to keep his hands up where they could be seen. Deputy Silva lost sight of Mr. Quintero's left hand as he moved. Deputy Silva then heard approximately 5 gunshots from his right and left. Although his rifle was pointed at Mr. Quintero, Deputy Silva did not fire. Mr. Quintero fell to the ground.

Deputies Silva and Peppler approached Mr. Quintero while other deputies searched the van. No weapons were found on Mr. Quintero. Deputy Ditfurth announced that he located a handgun on the front passenger's seat of the van.

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<sup>9</sup> Deputy Silva was interviewed on December 31, 2012.

## STATEMENTS BY CIVILIANS

### Manuel Quintero<sup>10</sup>

Mr. Quintero bought some beer at a liquor store and returned home. He had not consumed alcohol for approximately two years, but decided to drink on this date after arguing with his girlfriend about money and rent. It was 10 a.m. on December 31, 2012.

Mr. Quintero believed he left his residence around 2 p.m. and drove the Astro van to visit his friends. He remembered drinking two shots of tequila while visiting them. Mr. Quintero believed he left his friends around 4 p.m. and returned home. The argument with his girlfriend continued. He entered the garage to retrieve his Smith & Wesson .38 caliber blue steel revolver. Although it was a five-shot gun, it was only loaded with four bullets.<sup>11</sup> He wrapped the gun in a handkerchief and put it in the front pocket of his pants. Although his plan was to sell the gun, he never made any attempts to do so. He left the house in the Astro van and just drove around.

Later in the interview Mr. Quintero recalled leaving his home around 12 p.m. and driving the blue Astro van to Shirley's Liquor Store and bought beer.<sup>12</sup> While there, he encountered a girl he knew from the neighborhood. The two sat in the van and drank. Although he didn't specifically recall doing so, he assumed that he must have shown the handgun to her. Mr. Quintero drove the girl home and was given permission to use the restroom. He believed the gun was either in or on the van's center console when he entered the residence. A woman at the location did not want him there and yelled at him to leave. He entered the Astro van and drove away.<sup>13</sup>

Mr. Quintero recalled passing a police officer as he drove and the officer stopping behind him. He said the officer exited the patrol car so he exited the van. The officer ordered him to get on the ground, but he did not listen so the officer shot him.

When informed that the initial encounter had been captured on surveillance video from outside of Shirley's Liquor, Mr. Quintero recalled wanting to hide the gun when he saw the officer stopped behind him. He leaned back to put the gun behind the front

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<sup>10</sup> Mr. Quintero was interviewed on January 2, 2013. He was *Mirandized* and agreed to speak with the detectives. Mr. Quintero said that he did not remember what happened, other than being shot. His memory of the events didn't necessarily align with the actual timeline of events.

<sup>11</sup> Mr. Quintero said the gun came loaded in that fashion when he purchased it approximately 7 months before this event.

<sup>12</sup> Note that this differs from his earlier statement in which he told investigators that he believed he left his residence around 2pm.

<sup>13</sup> This encounter was the basis for the underlying brandishing of a firearm call. And, although he believed this event happened at 12pm, it could not have, given the time of the call for service.

passenger's seat of the van. He did not recall if he fired the gun or not. He drove off and the officer chased him. He remembered thinking, "What am I doing? How am I going to get out of this?" The "this" he referred to was driving under the influence. Believing he had been caught, Mr. Quintero eventually pulled over.

Mr. Quintero heard the officer yelling for him to show his hands as he sat in the driver's seat. Although stopped, the van's engine was still running. Mr. Quintero reached down to retrieve the gun from the floorboard and placed it on the passenger seat. He recalled the officer using a loud speaker to order him out of the car and to get on the ground. He recalled exiting the van and facing the officer. He was ordered to show his hands and to get away from the van. He was ordered to turn and face away from the officer, so he started to do so. In the process it occurred to him that he needed to turn off the van.<sup>14</sup> As he turned, he moved and/or reached towards the van. He recalled being shot in the chest and legs.

Mr. Quintero said this would not have happened if he had not been drinking.

## **INCIDENT AUDIO AND VIDEO**

### **BELT RECORDING<sup>15</sup>**

Deputy Pepler's belt recording device was activated and captured the audio from the incident. The recording is approximately 7 minutes and 36 seconds in length. The recording began when Deputy Pepler stopped behind the Astro van at Del Rosa Ave. and 6<sup>th</sup> St. It sounded as if Deputy Pepler opened the patrol vehicle's driver's side door and exited his vehicle.

0:12-1:40: Deputy Pepler yelled, "Stop!" A faint "thud" sound could be heard on the recording.<sup>16</sup> It then sounded as if Deputy Pepler got back into the patrol vehicle and closed the driver's door. He notified dispatch that the suspect had just "shot the gun." The patrol vehicle was heard accelerating as Deputy Pepler informed dispatch that the van drove away and that he was in pursuit. The patrol vehicle's siren was audible. Deputy Pepler informed dispatch that the van was "blacked out." Another deputy, later identified as Deputy Ditfurth, was heard over the radio saying that he'd be "second" and call "it."<sup>17</sup> Deputy Ditfurth could be heard over the radio calling out the direction of travel. Deputy Ditfurth could then be heard over the radio advising that the van began to slow, then stop, on Union.

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<sup>14</sup> The headlights and taillights were off, but the van was still on and running when the scene was being processed by SBSO personnel.

<sup>15</sup> The summary of the recording includes the interaction with the subject as well as any commands given by the deputies. It does not include all communications, radio traffic or statements that may be heard on the recording.

<sup>16</sup> It is unknown if this "thud" was the sound of Mr. Quintero's gun being fired.

<sup>17</sup> Deputy Ditfurth joined the pursuit behind Deputy Pepler and was advising/updating dispatch of the streets traveled during the pursuit.

1:41- 59: Deputy Peppler then yelled, "Let me see your hands!" "Put your hands up." "Put your hands up." Then, "Let me see your hands!" "Let me see your hands!" "Put your hands up!" "Let me see your hands!"

2:00-03: The sound of a gun racking was heard. Deputy Peppler then said, "Let me see your hands!"

2:04-14: Deputy Ditfurth yelled, "Driver put your hands out of the window, now!" "Driver put your hands out of the window, now!"

2:22: Deputy Peppler yelled, "Let me see your hands!"

2:24: Deputy Ditfurth yelled, "Driver, get your hands out of the driver window, now!"

2:42: The audio was consistent with someone walking or moving.<sup>18</sup>

2:51: Deputy Ditfurth then yelled, "Driver, stick your hand out of the window!"

2:59: Deputy Peppler yelled, "Put your hands up!"

3:02: Deputy Ditfurth yelled, "Driver, get your hands up out of the window, now!"

3:11-18: Deputy Peppler yelled, "Let me see your hands, man!" "Put 'em out the window!" "Put your hands out the window!"

A siren and another radio broadcast were audible in the background.

3:30: Deputy Peppler yelled, "Put your hands out the window!"

3:35 Gunshot.

3:36: Gunshot.

3:38: Gunshot.

3:40: Deputy Peppler yelled, "Put your hands up!"

3:43: Gunshot.

3:44: A louder sounding gunshot was heard.<sup>19</sup>

3:45-46: Three more gunshots were heard in rapid succession.

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<sup>18</sup> The timing of this sound was likely when Deputy Peppler moved to take cover behind the truck that was parked forward and to his left.

<sup>19</sup> This was presumably when Deputy Ditfurth discharged the Mini 14 rifle, as he was the only other deputy on scene. He also acknowledged firing the weapon one time.

3:49-51: Deputy Pepler notified dispatch that shots were fired.

3:56: Deputy Pepler then said, "He was reaching down, bro."<sup>20</sup>

A siren activated briefly as dispatch was notified that the van was rolling forward. A gun was heard racking. Dispatch acknowledged the update.

4:09: Deputy Ditfurth yelled for the driver to, "Step out!"

4:12-20: Deputy Pepler radioed to the deputies in the helicopter flying overhead asking if any movement from within the van could be seen.<sup>21</sup>

4:21: Deputy Ditfurth then yelled for the driver to, "Put your hands out of the, out of the driver window, now!"

4:30: Radio broadcast stating that the subject was moving within the van.

4:39 Deputy Ditfurth yelled, "Driver put your hands out of the driver window, now!"

4:58: Radio broadcast that the driver was noncompliant.

5:03-09: Deputy Ditfurth, using the PA system, told the driver to "put your hands out of the driver's side window, now; both hands outside of the driver's window, now."

...

5:20-24: Deputy Ditfurth, with the PA, told the driver to put, "both hands out of the window. Both hands all the way out. All the way out the window."

5:32-40: Deputy Ditfurth, with the PA system, said, "Driver, with your hand out the window, open the driver's side door. Open your door from outside."

5:49: A voice over the radio stated that the door was coming open

5:49-53: Deputy Ditfurth, with the PA system, told the driver to "open the door slowly and face away from us."

5:55: Deputy Pepler yelled, "Let me see your hands!"

5:56: An unidentified deputy yelled for the driver to put his hands in the air.

5:57-60: Deputy Ditfurth, with the PA system, told the driver to "put your hands up in the air and face away. Turn away."

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<sup>20</sup> Deputy Pepler had returned to his patrol vehicle and was making this statement to Deputy Ditfurth.

<sup>21</sup> A faint response was received, but difficult to make out.

6:02-06: Deputy Ditfurth, with the PA system, told the driver to "keep your hands up in the air. Turn away from us."

6:07: An unidentified deputy yelled for the driver to put his hands up.

6:08-11: A gunshot was heard. Then a volley of gunfire.

6:17-20: There was a radio broadcast about the subject not complying, that shots were fired again and that the subject was down.

6:27-7:03: Deputies were heard talking about who was going to cover the subject. Then deputies yelled for the subject to stay down and to show them his hands. Deputy Peppler contacted the subject.

7:04: An unidentified deputy stated that the gun was in the van.

## **SURVEILLANCE VIDEOS<sup>22</sup>**

### **Camera 15**

"Camera 15" covered the front of Shirley's Market looking towards Del Rosa Ave. where it intersected 6<sup>th</sup> St. Del Rosa Ave. and the stop sign were visible at the top of the frame. The only lighting was from the front of Shirley's Market; the street and the area near the stop sign were dark. The camera captured the right side of the vehicles. At approximately 5:48:40 p.m., Mr. Quintero's van came into view as it traveled from left to right. He stopped short of the stop sign on Del Rosa Ave., where it intersected with 6<sup>th</sup> St. The van's brake lights were illuminated on the video. At 5:48:53 p.m. a patrol car turned right from 6<sup>th</sup> St. and onto Del Rosa Ave.<sup>23</sup> The van did not move. The patrol car drove past the van. At 5:49:09, a faint light could be seen at the rear of the van.<sup>24</sup> The patrol vehicle's headlights appeared to illuminate the rear of the van at 5:49:15pm. At 5:49:20, light from the patrol vehicle's spotlight could be seen as it illuminated the rear of the van. At 5:49:22, the van's brake lights were no longer illuminated and the van started to pull forward. The brake lights were visible again as the van pulled up to the stop sign. At 5:49:30, the van turned left from Del Rosa Ave and onto 6<sup>th</sup> St. The van's lights were off as it traveled out of the camera's view. At 5:49:37, the patrol vehicle came into view and stopped briefly at the stop sign. At 5:49:39, the patrol vehicle turned left from Del Rosa and onto 6<sup>th</sup> street. Its emergency lights came on as it traveled in the same direction as the van and out of the camera's view.

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<sup>22</sup> The black and white surveillance videos were captured from the outside of Shirley's Market, located on the corner of Del Rosa and 6<sup>th</sup>. Although the videos are labeled "camera 15" and "camera 2", these were the only videos that were provided. There was no indication that any other cameras and/or videos existed. There is no audio for either video.

<sup>23</sup> This was later determined to be the patrol car driven by Deputy Peppler.

<sup>24</sup> Deputy Peppler turned his patrol vehicle around and was behind Mr. Quintero's van.

Another patrol vehicle, with its emergency lights activated, came into view at 5:49:54.<sup>25</sup> It also turned left from Del Rosa onto 6<sup>th</sup> street, traveling in the same direction as the other patrol vehicle just seconds before.

A patrol vehicle appeared on Del Rosa Ave. at 5:59:00, and stopped near the stop sign.<sup>26</sup> The vehicle's emergency lights were activated. The patrol vehicle parked in the middle of the street preventing cars from turning onto Del Rosa from 6<sup>th</sup> St. Two deputies exited the patrol vehicle; one used a flashlight to direct traffic on 6<sup>th</sup> St., while the other was shining a flashlight on the ground where the van had been stopped minutes earlier.<sup>27</sup>

## **Camera 2**

"Camera 2" was positioned to the rear of Shirley's Market and captured the parking spots along Del Rosa Ave, looking towards 6<sup>th</sup> St. The stop sign at Del Rosa Ave. and 6<sup>th</sup> St. was visible at the top of the video, just to the left of center. Mr. Quintero's van came into view at 5:48:39; its brake lights were activated. A patrol vehicle turned right from 6<sup>th</sup> St. onto Del Rosa at 5:48:54.<sup>28</sup> At 5:49:05, lights from the patrol vehicle were visible as the deputy completed a U-turn to park behind the van. Although the patrol vehicle itself was out of the camera view, the patrol vehicle's headlights illuminated the rear of the van. At 5:49:19, the patrol vehicle's spotlight was observed illuminating the back/rear of the van. At 5:49:22, the van's brake lights went out and the van started to pull forward towards the stop sign. The brake lights and left turn signal were visible again, at 5:49:24, as the van approached the stop sign. At 5:49:29, the van made a left turn from Del Rosa onto 6<sup>th</sup> St. All of the van's lights were off as it traveled out of the camera's view. The deputy's patrol vehicle came into view at 5:49:38, as it approached the stop sign. The patrol vehicle's emergency lights were activated as it turned left from Del Rosa Ave. onto 6<sup>th</sup> St., traveling in the same direction as the van and out of the camera's view.

Another patrol vehicle, with its emergency lights activated, came into view at 5:49:54.<sup>29</sup> It also turned left from Del Rosa and onto 6<sup>th</sup> street, traveling in the same direction as the other patrol vehicle just seconds before.

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<sup>25</sup> This was later determined to be patrol car driven by Deputy Ditfurth.

<sup>26</sup> At 17:56:58hrs, per the call history, a Sergeant from the San Bernardino Police Department arrived to secure the scene at Del Rosa and 6<sup>th</sup>.

<sup>27</sup> Broken glass would be found on Del Rosa Ave. and 6<sup>th</sup> St.

<sup>28</sup> See footnote 23.

<sup>29</sup> See footnote 25.

## CRIME SCENE INVESTIGATION

### EVIDENCE

Broken glass was located on Del Rosa Ave. and on 6<sup>th</sup> St., the scene of the initial contact with Deputy Pepler.

Two cans of Budweiser beer, one opened and one unopened, were located in the center console of the van.<sup>30</sup> Approximately 1.5g of marijuana and .6g concentrated cannabis were also found in the center console of the van.<sup>31</sup> An opened can of "Four Loko XXX" alcoholic beverage was located in the van's passenger side door pocket.<sup>32</sup>

Broken glass from the rear window of the van was located on the street, between the patrol vehicles and the van, where the officer involved shooting occurred.

The van sustained bullet strikes consistent with the deputies' stated positions.

No latent finger prints were found on the .38 caliber Smith & Wesson handgun that was located on the front passenger seat of the van.<sup>33</sup>

A Gunshot Residue Test (GSR test) was performed on Mr. Quintero's right and left hands. No gunshot residue particles were found on either hand. According to the report from the Scientific Investigations Division, "[n]o conclusion can be made whether this individual fired a firearm, handled a firearm, was in close proximity to a discharging firearm, or contacted a surface containing gunshot residue."<sup>34</sup>

### WEAPONS

Deputy Pepler's .45 caliber handgun was capable of holding 13 bullets. He would normally load it with one round in the chamber and twelve in the magazine. An examination revealed that 12 rounds had been fired. Five .45 caliber cartridge casings were located near the truck that Deputy Pepler used for cover. One .45 caliber casing was found on the roof of Deputy Pepler's vehicle. Another .45 caliber casing was located between Deputy Pepler's and Deputy Ditfurth's vehicles. Three .45 caliber casings were located under Deputy Ditfurth's vehicle. Only ten of the twelve fired .45 caliber cartridge casings could be located.

Deputy Ditfurth fired one round from the .223 caliber Mini 14 rifle. That .223 caliber cartridge casing was recovered from the curb/gutter to the right of his vehicle.

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<sup>30</sup> Latent fingerprints from the plastic bag containing the unopened beer were identified as belonging to \*\*\*\*\*. See footnote number 12 and 13. She was the young woman Mr. Quintero met at Shirley's Market and drank beer with. He then drove her home, which ultimately led to the 911 call regarding the brandishing.

<sup>31</sup> Latent prints were lifted, but did not contain enough ridge detail to make an identification.

<sup>32</sup> Latent prints were lifted, but did not contain enough ridge detail to make an identification.

<sup>33</sup> The bullets were also negative for latent prints. See also footnote 11.

<sup>34</sup> A DNA swab was also taken from the handgun, but was not submitted to the lab for analysis.



Deputy Alvarado fired seven rounds from his .223 caliber Mini 14 rifle. One fired .223 caliber cartridge casing was located on the passenger's side of his vehicle, where the hood and windshield meet. Six other fired .223 caliber cartridge casings were located on the street to the front of Deputy Alvarado's and Deputy Pepler's vehicles.

A Smith & Wesson Airweight .38 SPL revolver was located on the front passenger seat of the Astro van. A single fired .38 cartridge casing was located in one of the cylinders; the gun remained loaded with three other "live" .38 cartridges. The fifth chamber was empty.

## **INVOLVED SUBJECT**

### **INJURIES**

Medical personnel treating Mr. Quintero at the scene noted one gunshot wound to his left leg, one gunshot wound to his left hip/side and one gunshot wound to the left side of his chest. Mr. Quintero was transported to Loma Linda University Medical Center for further treatment.

### **TOXICOLOGY**

Mr. Quintero's blood alcohol level was .23%. His blood also tested positive for marijuana and benzodiazepines.

### **CRIMINAL HISTORY**

At the time of this event, Mr. Quintero's criminal history included the convictions listed below:

1992: Misdemeanor violations of Penal Code section 664/459, Attempted Second Degree Burglary (2 counts); and a misdemeanor violation of Penal Code section 69, Resisting an Executive Officer, San Bernardino County Case number MSB70124.

1993: Misdemeanor violation of Penal Code section 594(A), Vandalism; and a misdemeanor violation of Penal Code section 148(a), Resisting, Delaying or Obstructing a Peace Officer, San Bernardino County case number MSB01607.

### **RELATED CRIMINAL CASE**

Criminal charges stemming from this incident were filed against Mr. Quintero in San Bernardino County Superior Court, case number FSB1300008. On May 22, 2013, Mr. Quintero entered a plea of nolo contendere to a violation of Penal Code section 245(a)(2), Assault with a Firearm on a Person. Mr. Quintero was sentenced to two years in state prison.

## **DE-ESCALATION**

The incident, from Deputy Peppler's initial contact until Mr. Quintero was down, lasted approximately 7 minutes. Deputy Peppler's belt recording device captured the audio. During that time the deputies could be heard yelling, repeatedly, for Mr. Quintero to put his hands up, to show them his hands, to put his hands out of the driver's window and to exit the van. Deputy Peppler made approximately 15 such commands. Deputy Ditfurth made approximately 10 such commands.<sup>35</sup> Mr. Quintero failed to comply with the commands being given by the deputies. Mr. Quintero did finally comply when he stepped out of the van. He was ordered to face away from the deputies and to keep his hands up. Mr. Quintero once again failed to comply with the commands when he lowered his hand/arm towards his waist.

## **APPLICABLE LEGAL PRINCIPLES**

### **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.

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<sup>35</sup> These numbers only account for what can be heard on the belt recording and attributed to Deputies Peppler and Ditfurth. It does not take into consideration commands made by Sgt. Gonzalez, Deputy Alvarado or Deputy Silva.

## **Assault with a Deadly Weapon, Penal Code section 245(a)**

An assault pursuant to Penal Code section 245(a) requires

1. The defendant did an act with a firearm that by its nature would directly and probably result in the application of force to a person;
2. The defendant did that act willfully;
3. When the defendant acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone; and,
4. When the defendant acted, he had the present ability to apply force with a firearm to a person.

Someone commits an act willfully when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

Voluntary intoxication is not a defense to assault.

(CALCRIM No. 875 (New January 2006; Revised June 2007, August 2009, October 2010, February 2012, February 2013, August 2013)).

Penal Code section 245 (a) 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.)

## **Law 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.)

### **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.

(CALCRIM 3470 (REVISED 2012)).

### **USE OF DEADLY FORCE BY A PEACE OFFICER**

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

Deputy Peppler assisted with a brandishing of a weapon call on December 31, 2012. He located the suspect vehicle stopped at Del Rosa Ave. where it met 6<sup>th</sup> St. Deputy Peppler stopped his patrol vehicle behind the Astro van. He used the patrol vehicle's spotlight to illuminate the rear of the van. Mr. Quintero discharged the .38 handgun causing glass to one of the van's rear windows to break. Mr. Quintero drove off. Deputy Peppler broadcast that Mr. Quintero had fired the gun then gave chase. Deputy Ditfurth heard the broadcast and joined in the pursuit.

The pursuit came to an end on Union, between Del Rosa and Elmwood. Deputy Peppler parked to the rear and left of the van while Deputy Ditfurth parked almost directly behind the van. Deputy Peppler exited his car and stood behind his open driver's side door. Deputy Ditfurth exited his vehicle and stood behind his open driver's side door. Deputy Ditfurth was armed with the vehicle's Mini 14 rifle. Both deputies repeatedly ordered Mr. Quintero to put his hands up and/or to show them his hands, as corroborated by the belt recording. Mr. Quintero did not comply, however. Rather, Mr. Quintero moved around in the van's driver's seat.

Deputy Pepper ran forward and to his left, taking cover near/behind a truck that was parked on the front lawn of a nearby residence. That position gave Deputy Peppler a better view of the van and Mr. Quintero. The deputies continued to order Mr. Quintero to show his hands. He did not comply. According to Deputy Peppler, Mr. Quintero appeared to look in his direction, then move as if he were reaching under the seat. Deputy Peppler feared that Mr. Quintero had seen him and was retrieving a gun to shoot at him. Deputy Peppler, acting on that fear, fired his gun at Mr. Quintero. Deputy Peppler again ordered Mr. Quintero to show his hands. He did not comply, so Deputy Peppler fired again. Deputy Peppler's fear that Mr. Quintero was reaching for a weapon was further supported by the fact that Mr. Quintero had discharged a gun when initially contacted, he fled from deputies, he continued to move around in his seat and failed to comply with their orders.

Deputy Ditfurth could see Mr. Quintero moving around in the driver's seat of the van. He aimed the Mini 14 rifle at him through the rear window. Mr. Quintero was ordered to put his hands up, but he did not comply. Deputy Ditfurth saw Mr. Quintero look in Deputy Peppler's direction, but lost sight of his left hand. Deputy Ditfurth heard gunshots and saw Mr. Quintero lean to his right. Deputy Ditfurth feared that Mr. Quintero was reaching for a gun so he fired one round from the rifle. Deputy Ditfurth's fear was supported by Deputy Peppler's radio broadcast regarding Mr. Quintero's



discharge of a weapon, the pursuit, his failure to comply with orders and his movement within the van.

Deputy Peppler ran back to his patrol vehicle as the Astro van rolled forward several feet then stopped. Sgt. Gonzalez arrived and took a position at Deputy Ditfurth's passenger side door. Deputy Ditfurth sat in the driver's seat of his vehicle and made announcements over the vehicle's PA system. Mr. Quintero still was not complying with the commands he was given.

Deputy Alvarado arrived and parked his vehicle to the left of Deputy Peppler's. Deputy Alvarado initially tried to position himself between Deputy Peppler's and Deputy Ditfurth's vehicles, but realized there was not enough room. He then moved back to his open driver's side door and aimed his Mini 14 rifle at the van and Mr. Quintero. Mr. Quintero was ordered to show his hands and/or to get out of the vehicle.

Mr. Quintero eventually opened the driver's door. He faced the deputies as he stepped out from the van. His hands were up. He was ordered to turn away from them and he began to comply. As he turned, however, Mr. Quintero lowered/moved his left hand/arm down and across his body. Deputy Alvarado feared that Mr. Quintero was reaching for a weapon, so he fired. Deputy Alvarado's fear was supported by Deputy Peppler's radio broadcast regarding Mr. Quintero's discharge of a weapon, the pursuit, and his failure to comply with orders.

Deputy Peppler fired five more rounds from his handgun. He, again, feared that Mr. Quintero was reaching for a weapon.

Mr. Quintero was ordered multiple times to show his hands and/or to put his hands in the air. He failed to comply, however. Instead, he moved around within the van. At one point he moved as if to reach for an item. In doing so, he instilled in the deputies a belief and fear that he may have been/was reaching for a weapon. Deputies Peppler and Ditfurth acted on that belief and fear when they discharged their weapons.

Mr. Quintero eventually exited the van and raised his hands. He did so only briefly, however. His decision to lower his left arm and reach across his body was ill-advised and a poor one. That movement led the deputies to believe that Mr. Quintero was reaching for a weapon. The deputies feared an imminent attack involving the likelihood of injury or death to themselves or to others. Deputies Alvarado and Peppler fired their weapons as a result.

Deputies Peppler, Ditfurth and Alvarado each held an honest and objectively reasonable belief that Mr. Quintero posed an imminent threat of serious bodily injury or death.

## CONCLUSION

Based on the facts and the applicable law, it was objectively reasonable for Deputy Peppler to believe that Mr. Quintero posed an immediate and serious threat of bodily injury or death. Deputy Peppler's use of deadly force was a proper exercise of his right of self-defense and defense of others. His actions, therefore, were legally justified.

Based on the facts and the applicable law, it was objectively reasonable for Deputy Dittfurth to believe that Mr. Quintero posed an immediate and serious threat of bodily injury or death. Deputy Dittfurth's use of deadly force was a proper exercise of his right of self-defense and defense of others. His actions, therefore, were legally justified.

Based on the facts and the applicable law, it was objectively reasonable for Deputy Alvarado to believe that Mr. Quintero posed an immediate and serious threat of bodily injury or death. Deputy Alvarado's use of deadly force was a proper exercise of his right of self-defense and defense of others. His actions, therefore, were legally justified.

**Submitted By:**  
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