



OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE

MICHAEL A. HESTRIN
DISTRICT ATTORNEY

May 19, 2020

Chief Mike Washburn
Indio Police Department
46800 Jackson Street
Indio, California 92201

Re: Non-Fatal Officer-Involved Shooting of R.R. on April 30, 2019, by Indio Police Officer Joshua DeJong, Badge No. W230; Riverside County Sheriff Central Homicide Case No. R191200001

Dear Chief Washburn:

We have reviewed the investigative reports and other materials submitted by the Riverside County Sheriff's Central Homicide Unit concerning the non-fatal shooting of R.R. by Officer Joshua DeJong on April 30, 2019. Our office completed its review of this incident on March 16, 2020.

PERSONS INVOLVED

R.R. was [REDACTED] years old at the time of the shooting.

Officer Joshua DeJong was dressed in full uniform. Sergeant Christopher Shannon, Corporal Gabrielle Ladanne, Officer Recardo Cerna, Officer Oscar Santos, and Officer Christopher Piscatella were witness officers and were also dressed in full uniform.

Witness [REDACTED] had been [REDACTED] with R.R. and was present in the residence when R.R. called law enforcement and threatened to shoot.

Witness Jane Doe was present in the residence when R.R. made threats about shooting law enforcement. Witness Jane Doe called 911 from her bedroom as the incident was unfolding.

Witness [REDACTED] observed R.R. prior to the arrival of law enforcement.

FACTUAL SUMMARY OF THE INCIDENT

On Tuesday, April 30, 2019, around 5:38 a.m., Indio Police officers were dispatched to a domestic disturbance. Police dispatchers had received several phone calls from a [REDACTED]-year-old female advising that her [REDACTED] and [REDACTED] were in a verbal altercation. Dispatchers also received a

call from the female's [REDACTED] later identified as R.R., stating that he was armed and was going to shoot the occupants inside of the house as well as responding officers.

Indio Police Officers Shannon, Ladanne, Cerna, Santos, and DeJong arrived on scene and developed a plan to approach the residence. As the officers rounded a block wall at the start of the residential street, they observed R.R. in the front yard armed with what appeared to be a black rifle. R.R. slammed the rifle on the ground, breaking it in half, and then armed himself with what appeared to be a black handgun. R.R. was given multiple commands to drop his weapon and get on the ground. He did not comply with any commands.

Multiple less than lethal rounds were fired at R.R., but he continued to refuse to comply with commands to drop the weapon and get on the ground. R.R. turned and walked back into his residence. He returned a short time later and still appeared to be armed with a handgun. As R.R. turned to go back into his residence again, he pointed the weapon toward Officer DeJong. In response, Officer DeJong fired his handgun at R.R. and struck him one time in the upper back.

R.R. entered his residence again and returned unarmed through the open garage door. Officers ordered R.R. to get on the ground, but he did not comply. Officers eventually wrestled R.R. to the ground and took him into custody. R.R. was transported to Desert Regional Medical Center and treated for a non-fatal gunshot wound. Both of the apparent guns used by R.R. were later determined to be pellet guns.

R.R. was discharged from the hospital after several hours and was interviewed later that day at the Indio Police Department. After waiving his rights under *Miranda*, R.R. said he was depressed after a dispute with his longtime girlfriend. He called the police after waking up that morning due to suicidal feelings and a desire to be shot by the police. R.R. admitted to walking out of his residence with a pellet guns that resembled a rifle and a pistol. He denied pointing either at any of the officers.

THE INVESTIGATION

Interview with Officer Joshua DeJong

On April 30, 2019, Indio Police Officer Joshua DeJong was interviewed at the Indio Police Department by Investigator Navarette.

Officer DeJong had seven years of experience in law enforcement and approximately six years were spent with the Stockton Police Department. He had begun working with the Indio Police Department about six months prior to the shooting. While working with the Stockton Police Department, Officer DeJong served on the mobile field force team for riot and crowd control. Prior to working as a police officer, Officer DeJong served four years in the Marine Corps.

At the time of the shooting, Officer DeJong was assigned to work graveyard shifts from 6:00 p.m. to 6:00 a.m. from Sunday through Wednesday. On April 30, 2019, he was in the report writing room at the police station around 5:38 a.m. when he was dispatched to a family disturbance. At the time the call came out, it involved a male possibly having a gun and making threats.

Officer DeJong went to his patrol car and followed other officers to the scene. While en route, Officer DeJong learned that the reporting party was [REDACTED] calling from inside of the residence.

A male, later identified as R.R., had also called dispatch and stated that the police should “hurry up” or he would start shooting. The male made additional statements that he would shoot the police upon their arrival.

Officer DeJong arrived near the location and met with several other officers about a block and a half from the residence. The other officers present were Sergeant Shannon, Corporal Ladanne, Officer Piscatella, Officer Cerna, and Officer Santos with his K9 partner. These officers developed a less than lethal plan to approach the residence, while some officers, including Officer DeJong, would approach the residence armed with their handguns. Officer DeJong could hear R.R. yelling from the direction of the target residence.

As Officer DeJong made his approach toward the residence, he peered around the corner of a block wall and saw R.R. standing in the front yard shirtless and armed with a rifle. Officer DeJong described the rifle as black with a long round barrel, and R.R. as looking directly at the officers – as though he knew they were coming. R.R. lifted up the rifle, and pointed it in the officers’ direction. Officer DeJong took cover behind the wall.

Officer DeJong heard another officer report that R.R. broke the rifle in half and heard another officer say, “Let’s go.” Officer DeJong and the other officers approached the residence and gave verbal commands for R.R. to get on the ground. Officer DeJong was scared for his safety and the safety of the other officers.

As Officer DeJong approached the residence, he saw a vehicle in the driveway with a person in the driver’s seat. The vehicle was positioned between Officer DeJong and R.R. and he heard other officers telling the driver of the car to leave the driveway. Officer DeJong walked around the car and saw R.R. armed with what appeared to be a black .40 caliber semi-automatic handgun. Officer DeJong told the other officers that R.R. had a gun. Officer DeJong pointed his handgun at R.R. and ordered him to drop the gun and get on the ground. R.R. did not comply.

Initially, R.R. was holding the pistol by the barrel and then switched to holding the pistol by the grip. When R.R. changed his grip on the pistol, Officer DeJong moved behind a truck that was parked on the street in front of R.R.’s residence.

R.R. was yelling, sounded angry, and was making statements about the officers shooting him. Officer DeJong still had his handgun pointed at R.R. while making repeated verbal commands for R.R. to get on the ground. R.R. failed to comply. Instead, R.R. walked back towards the house and Officer DeJong believed that R.R. was going to shoot the officers.

As R.R. was walking toward the front door, Officer DeJong heard the less than lethal 40mm fired multiple times. It did not appear to have any effect on R.R. R.R. continued toward the front door of the residence and stepped inside the house. When R.R. was standing inside of the screen door, Officer DeJong was still able to see R.R. He then exited the residence, turned his body towards Officer DeJong, raised his right arm, and pointed the handgun at Officer DeJong.

Officer DeJong repeatedly ordered R.R. to drop the gun and get on the ground. R.R. turned as though he was going back in the house and pointed the gun directly in Officer DeJong’s direction. Officer DeJong fired two to four shots to protect himself and the lives of his officers.

After the shots were fired, R.R. continued to hold the gun and did not appear to have been hit. Officer DeJong sought cover behind the engine block of the truck out of concern that R.R. was going to reengage him and the other officers.

R.R. went back inside of his residence and then came out again through the garage. Officer DeJong saw blood coming down one of R.R.'s arms and approached R.R. to take him into custody. The other officers grabbed R.R. and took him to the ground. In response to R.R.'s active resistance, Officer DeJong drew his Taser and placed it against R.R.'s back. Ultimately, R.R. was taken into custody.

Interview with Sergeant Christopher Shannon

On May 13, 2019, Indio Police Sergeant Christopher Shannon was interviewed by Investigator Navarette at the Indio Police Department.

On April 30, 2019, a call for assistance was received involving a family disturbance with a person making threats about killing people. Sergeant Shannon directed all of the officers on duty to respond. While en route to the location, dispatch broadcast that the male made a statement that he was going to kill the officers that arrived on the scene. Sergeant Shannon arrived and met with the other responding officers and discussed approaching the residence. Sergeant Shannon took cover behind a silver truck on the north side of the street and observed the male waving a long gun around, so he alerted the other officers that the male had a gun.

While the other officers began to approach the male, Sergeant Shannon moved to the south side of the street. The other officers yelling, but Sergeant Shannon could not make out what they were saying. Sergeant Shannon then noticed a vehicle in the male's driveway start to move and pull away from the house.

Officer DeJong and Officer Santos then moved toward the west side of the male's house while the other officers stayed just east of the house. After the vehicle left the male's driveway, Sergeant Shannon saw the male had a handgun and was no longer holding the long gun. Sergeant Shannon did not see how the male obtained the handgun.

The other officers were giving the male commands while he was holding what appeared to be a gun in his right hand and was moving it around. Sergeant Shannon did not see the male point the gun at him or any of the other officers.

Officer DeJong then moved toward the west side of the house. The male began to walk towards the front door of the residence. Officer Shannon's view of the male was blocked by the garage when he heard three shots fired. After the shots were fired, the male went inside of the house.

The male then returned to the front yard through the garage door. Sergeant Shannon told Officer Santos to deploy his K-9 partner, but the K-9 did not engage with the male. Officer Cerna fired a less than lethal launcher twice at the male, but it appeared that the male was only struck once. The officers continued to give the male commands, but the male did not comply. Officer Piscatella moved in to take the male into custody. The male continued to refuse to follow commands, and Sergeant Shannon assisted Officer Piscatella in taking the male to the ground.

Interview with Corporal Gabriel Ladanne

On May 1, 2019, Indio Police Corporal Gabrielle Ladanne was interviewed by Investigator Navarette at the Indio Police Department.

On April 30, 2019, Corporal Ladanne was at the end of her shift when the call relating to this incident came in. Sergeant Shannon directed all officers to respond to the call for a family disturbance between a male and a female. The male, later identified as R.R., had called dispatch and advised that the police needed to hurry or he was going to start shooting.

While en route to the call, dispatch advised that the male was going to have the front door open and was going to shoot at police officers. Corporal Ladanne directed other responding officers to meet at a location away from the residence.

As the officers began to approach, dispatch maintained contact with the juvenile caller that was at R.R.'s location. Dispatch advised that R.R. was in the front yard with a gun. The officers stacked up along a block wall and peered around. One of the officers stated, "He has a rifle. He sees us."

When Corporal Ladanne looked around the corner, she saw R.R. slam the rifle on the ground. Officer Piscatella then said, "Let's move up." As they approached, there was a female in a car in the driveway who was crying and yelling. The officers told her to back up since she was in the line of fire between them and R.R. After the female backed out of the driveway, R.R. grabbed a handgun and started swinging it around. R.R. was yelling, seemed angry, and was not complying with commands to get on the ground.

R.R. then turned to go back towards the front of his house, and Officer Cerna attempted to fire a less than lethal round at R.R., but missed. Corporal Ladanne moved up to the mailbox to obtain a better position and heard Officer DeJong shoot. Corporal Ladanne heard someone say, "He went back into the house." At that point, Corporal Ladanne retreated towards the back of a truck and kneeled down to look into the open garage.

R.R. then emerged from the house into the garage. R.R. did not appear to have anything in his hands, but he was coming toward the officers. R.R. failed to comply with additional commands. Officer Cerna shot R.R. with a less than lethal projectile, but it appeared to have no effect. Eventually, R.R. went to the ground and was detained.

Corporal Ladanne did not observe R.R. point the rifle or the handgun at the officers on scene. Corporal Ladanne perceived both the rifle and handgun to be real firearms.

Interview with Officer Christopher Piscatella

On May 6, 2019, Indio Police Officer Christopher Piscatella was interviewed by Investigator Navarette at the Indio Police Department.

On the morning of April 30, 2019, Officer Piscatella was on patrol and nearing the end of his shift when he heard a call come out from dispatch involving a male inside of a house that was brandishing a firearm. While en route to the location, dispatch advised that the male stated that he was waiting for the police to arrive and was going to shoot the police when they got there.

Officer Piscatella responded to the a location away from the residence to meet with other responding officers. As the officers prepared to approach the residence, they lined up against a block wall. Someone said the male was in the front yard and had a rifle. When Officer Piscatella looked around the wall, he observed the male smashing the rifle into the ground. Ultimately, the male broke the rifle and was holding a piece of it in his hand.

Officer Piscatella told the other officers to move up, and the officers approached the male's front yard. The officers gave the male commands to drop the weapon. There was a car in the driveway of the male's residence with a female occupant. Officer Piscatella told the female to back up and get out of the way. After the female complied with his request, Officer Piscatella was able to clearly view the male. The male had a piece of the broken rifle in his hand and was shouting. Officer Piscatella was unable to hear what the male was saying due to the other officers commanding the male to drop the weapon.

Officer Piscatella ran to a pickup truck parked east of the male's house and again ordered the male to drop the weapon. The male appeared agitated and was not complying. Officer Piscatella then saw the male holding what looked like a .45 caliber handgun in his left hand. The male started waiving it back and forth, but Officer Piscatella did not see the male point the gun at anyone.

Officer Piscatella told Officer Cerna to deploy the less than lethal launcher. The less than lethal was deployed, but Officer Piscatella did not see whether it struck the male. The male disappeared from Officer Piscatella's view toward the front of the house.

Officer Piscatella could see Officer DeJong in the street standing behind a truck and pointing his handgun at the male. Officer DeJong repeatedly told the male to drop the weapon. Officer Piscatella then heard three shots fired.

Officer Piscatella ran over to Officer DeJong's location, and saw the male inside of the residence in the kitchen. Officer Piscatella ordered the male to come outside with his hands up. The male came out of the residence unarmed. Officer Piscatella ordered the male to get on the ground, but the male did not comply.

Officer Piscatella told Officer Santos to release his K-9 partner. The K-9 partner bit Officer Piscatella in his right thigh as Officer Piscatella was grabbing the male and pushing him toward the ground. Officer Piscatella grabbed the male's arm and ordered him again to get on the ground.

Officer Piscatella holstered his handgun and dragged the male to the ground in an arm bar. The male was placed in handcuffs once he was on the ground.

Officer Piscatella did an interior sweep of the residence with another officer and observed the lower receiver of a handgun laying on the ground. Officer Piscatella said the pistol and the rifle used by the male appeared to be real.

Interview with Officer Oscar Santos

On May 6, 2019, Indio Police Officer Oscar Santos was interviewed by Investigator Navarette at the Indio Police Department.

Officer Santos was at the Indio Police Station, downloading video from his body worn camera when he heard a call dispatching Officer DeJong and Corporal Ladanne. Officer Santos heard Sergeant Shannon request that the entire shift respond, so he went to the call.

Officer Santos described the call as involving a female reporting that [REDACTED] was saying he was going to shoot the police when they arrived.

Officer Santos met up with the other responding officers around the corner from the dispatch location. After forming a plan for approaching the residence, Officer Santos approached with his K-9 partner. As the officers were walking along a block wall, dispatch advised that the male was standing in front of the house holding a gun. Some of the other officers could see the house as they cleared the wall, and Officer Piscatella said, "He has a rifle." Officer Piscatella then said, "He broke it." As they were walking toward the residence, Officer Santos saw a car in the driveway with a female and a child. The female was advised to back up and get out of the way.

Officer DeJong was to the left of Officer Santos, behind a truck that was parked in front of the house against the north curb. Officer Santos was positioned directly in front of the house, and Officer Piscatella and Corporal Ladanne were east of the house next door. After the female reversed the car out of the driveway, Officer Santos could see the male gripping a pistol with his left hand over the slide.

Officer Santos moved over to the truck where Officer DeJong was located. Officer DeJong was giving the male orders, and the K-9 partner was fixated on Officer DeJong. Officer Santos went around the back of Officer DeJong and toward his left so that the K-9 partner would not bite Officer DeJong.

As Officer Santos was moving toward the front of the truck, he heard Officer DeJong and the other officers telling the male to drop it. Officer Santos saw the male change his grip on the gun to holding it by the handgrip. Officer Santos walked to the front of the truck while Officer DeJong was positioned near the bed of the truck. Officer Santos heard shots fired. Officer Santos saw the male go into a recessed area by the front door out of his line of sight. Officer DeJong moved closer to Officer Santos near the front of the truck.

Officer DeJong then yelled, "He's in the house. He's in the kitchen. He's coming out to the garage." Officer Santos ran around to the bed of the truck in front of the driveway and deployed the K-9. The K-9 turned back around and began to go after Officer DeJong. Officer Santos retrieved the K-9 and walked up the driveway with Officer DeJong. All of the other officers began closing in on the male. The K-9 bit Officer Piscatella, and Officer Santos attempted to direct the K-9 to the male while other officers were getting ahold of him. The male was then detained and handcuffed.

Interview with Officer Ricardo Cerna

On April 30, 2019, Indio Police Officer Ricardo Cerna was interviewed by Investigator Navarette at the Indio Police Department.

On April 30, 2019, at around 5:30 a.m. Officer Cerna was getting ready to end his shift and was emptying his vehicle. He heard dispatch advise that a male had called saying he was going to

shoot the police when they showed up. Sergeant Shannon requested everyone on shift to respond to the call. Officer Cerna took a car along with his less lethal launcher and drove to the location.

When Officer Cerna arrived near the residence, he met with the other responding officers. Officer Cerna was assigned to the 40 mm less than lethal launcher. As he approached the residence, he heard doors banging and a male screaming. A female sitting in a car across the street got out and rushed into her home. As the female went into the home, she pointed in the direction of the dispatch location.

The officers approached the location, and one of the officers yelled, "He's got a rifle." Officer Cerna grabbed his handgun and briefly retreated with the other officers behind a block wall. Officer Cerna, Officer DeJong, and Corporal Ladanne crept along the perimeter of the wall and took cover behind a pickup truck that was parked in front of a neighbor's home. Sergeant Shannon went to the opposite side of the street while Officer Santos and Officer Dejong took cover behind a truck in front of the male's house.

Officer Cerna then saw the male holding a rifle in his right hand and described the rifle as very small, thin and thought it was possibly a .22. Everyone was ordering the male to drop the gun. Officer Cerna saw a female in a vehicle in the driveway who was screaming and crying. The female reversed her vehicle and parked on the opposite side of the street.

As the officers approached the male, Officer Cerna saw the male put the rifle down and arm himself with what appeared to be a handgun. The male was waving his right hand in the air while holding the handgun. Officers continued to order the male to drop the gun, but he did not comply.

Officer Cerna fired a 40mm less than lethal round at the male, but it appeared to miss him. Officer Cerna reloaded and moved toward the south side of the street. He fired an additional less than lethal round at the male, but he was uncertain whether the round struck the male.

Officer Cerna heard three gunshots and saw the male retreat back towards the front door of the house. The officers advanced toward the door and the male walking towards the kitchen. The male came back out of the kitchen and Officer Cerna fired two additional less than lethal rounds. One of the rounds struck the male in the left thigh but appeared to have no effect on him. The male continued to walk toward the officers in the driveway and was ignoring commands to get down on the ground. The other officers took the male to the ground and placed him in handcuffs.

Officer Cerna and Officer Santos cleared the residence. Officer Cerna observed the upper receiver portion of the pistol by the front door and saw the bottom portion in the living room. The rifle was in the grass in front of the residence – split it half.

Interview with [REDACTED]

On April 30, 2019, [REDACTED] was interviewed by Investigator Navarette.

[REDACTED] [REDACTED] [REDACTED]. She was living at the residence with R.R. and [REDACTED], Jane Doe.

R.R. had prior problems with methamphetamine, and [REDACTED] believed he had started using again. R.R. also had mental health problems that resolved when he took his medication. R.R. became angry when he did not take his medications.

On the day prior to the shooting, R.R. woke up and told [REDACTED] that he was going to work. [REDACTED] returned to the residence around 10:00 a.m. and saw that R.R. was home. [REDACTED] said she was going to have lunch with [REDACTED]. R.R. asked [REDACTED] to stay home instead. When [REDACTED] refused, R.R. became angry. When [REDACTED] returned from lunch around noon, R.R. was not home. R.R. returned to the house around 2:00 p.m. and began to argue with [REDACTED] about her not staying home earlier. R.R. said he was going to leave the house because [REDACTED] did not want R.R. there. [REDACTED] did not beg R.R. to stay, as he wanted. R.R. left and drove by the house periodically. [REDACTED] went to bed that evening and was awakened by R.R. banging on the gate around 3:00 a.m. on April 30, 2019. She allowed R.R. back into the residence and returned to bed.

At about 5:00 a.m., [REDACTED] woke to get ready for work. While she was in the shower, she heard R.R. yelling and cursing in the garage. R.R. argued with [REDACTED] about choosing her family over R.R. As the argument escalated, R.R. said he was going to have the police kill him. R.R. said, "You're going to see. You didn't need me? Okay. I'm going to call the police. I'm going to go out with these guns, and you're going to see me die, and you're not going to – you're not going to leave anywhere. You're going to see this. This is on you." [REDACTED] begged R.R. not to do it, but R.R. picked up the landline phone and called 911. [REDACTED] heard R.R. say, "I'm going to shoot these motherfuckers" while on the phone. R.R. then waited for the police to arrive while holding his pellet guns. R.R. said he wanted to walk out aiming the pellet guns at the officers so they would shoot him. R.R. said he was tired of living and that he was going to die that day.

[REDACTED] continued getting ready for work while R.R. was waiting for the police to arrive. R.R. searched for the phone and called 911 again. R.R. told the 911 operator, "How long does it take to get anybody out here? I'm going to shoot those mother fuckers." R.R. hung up the phone and told [REDACTED] not to call the police back and tell them that the guns were fake.

[REDACTED] went to check on [REDACTED] Jane Doe, and then became aware that Jane Doe was on her cellular phone speaking with the 911 operator. [REDACTED] had previously told Jane Doe to call 911 if she ever heard R.R. "going crazy." R.R. approached [REDACTED] and told her to take Jane Doe to [REDACTED] house because he did not want Jane Doe to "see this."

[REDACTED] and Jane Doe left the residence and got into [REDACTED]'s car as the police arrived. The officers told her to reverse her car out of the driveway, and she complied. She parked her vehicle and shouted to the police that the guns were not real.

One of the officers told her to move back. After she moved, she heard gunshots. She then saw R.R. with blood and saw R.R. "go down."

Interview with Witness [REDACTED]

On April 30, 2019, [REDACTED] was interviewed at her residence by Indio Police Detective Jesus Gutierrez. She walked out to her car at about 5:50 a.m. that morning. While sitting in her car, she saw a man, later identified as R.R., screaming and yelling from inside of his garage. R.R. was shirtless and wearing shorts. R.R. was walking in and out of his garage. She saw R.R. walk to the corner and

appeared to be looking around. R.R. walked back to his residence and appeared to be holding a beer.

While seated in her car, [REDACTED] observed four police officers arrive with a K-9 and stand behind a brick wall. When the officers arrived, [REDACTED] returned to the inside of her residence. From inside of her residence, she saw a fifth officer arrive. She heard an officer yell "gun" and heard what sounded like five airsoft gunshots fired a short time later. She then observed the officers placing someone face down in handcuffs on the driveway. It was difficult to get a clear view of what was happening due to multiple vehicles being in her line of sight. She did not see R.R. with any type of weapons.

Interview with R.R.

On April 30, 2019, R.R. was interviewed by Investigator Navarette at the Indio Police Department.

R.R. had spent the Thursday and Friday before the shooting working at the dump and decided on Monday that he could find a better job. R.R. returned to his home and saw that his [REDACTED] of nine years, [REDACTED], was getting ready to leave the residence to have breakfast with her [REDACTED] and [REDACTED]. R.R. told [REDACTED] that he had come home because he decided that working at the dump was beneath him. R.R. tried to convince [REDACTED] to cancel her plans and stay with him, but she refused to do so. After [REDACTED] left to meet her family for breakfast, R.R. left the house and drove around.

R.R. grew tired of being in his truck and knocked on the door of the residence. [REDACTED] let him back inside, and he slept until she woke to get ready for work at about 4:30 or 5:00 a.m. As [REDACTED] was getting ready for work, R.R. said he was suicidal and he felt abandoned when [REDACTED] left to meet with her family the day before.

R.R. became upset and decided he would end his life by having police officers shoot him. He said, "My intentions were for me to get shot."

R.R. called 911 and ask police to come to the residence, but he could not recall exactly what he said to the dispatcher. R.R. denied making any statements about shooting anyone when he called 911.

R.R. saw the officers arrive and position themselves in front of his residence, behind his truck, and at the neighboring house. R.R. heard the officers yelling at him and recalls being shot with a bean bag.

R.R. recognized the officers to be law enforcement, but had difficulty remembering the details of the incident. R.R. denied pointing either of the pellet guns at the officers. R.R. admitted that it must have happened if it was recorded on video.

Physical Examination of Scene

The scene is a residence located at in the City of Indio.

A total of four 40 mm less than lethal baton projectiles were located at the scene. Two of the projectiles were located across the street from the residence. A third less than lethal projectile was located on the driveway of another residence. A fourth less than lethal projectile was located on the dirt easement in front. Two 40 mm less than lethal casings were located in the driveway, east of a

brown Toyota Truck. A third less than lethal casing was located on the sidewalk adjacent to the mailbox. A fourth less than lethal casing was located in the less than lethal rifle used by Officer Cerna at the scene.

A total of three Hornady .40 caliber shell casings were located in front of the residence. The location of the casings was consistent with a gun being fired in a northern direction toward the location where R.R. was standing in the front yard, and near the front door.

A projectile was located and collected from the front porch area of the residence. A second projectile was located and collected on the northeast window sill of the residence. A third projectile was removed from R.R. during treatment at the hospital.

A strike mark was observed on the top left front of the security door frame at the residence. The projectile causing the mark appeared to travel from south to north and slightly left to right. It appeared that the projectile struck the metal door frame and came to rest on the floor of the porch.

A second strike mark was on the north living room wall of the residence. The projectile causing the mark appeared to travel from south to north and traveled through the north living room, through the adjacent master bedroom closet, through a lamp, and struck the northeast window frame. The projectile came to rest on the windowsill.

A Daisy Powerline pellet rifle was found broken into two pieces on the front lawn of the residence and a slide of a pellet gun pistol was found on the front porch. The bottom piece of the pistol was found on the living room floor of the residence. Neither pellet gun was loaded.

Physical Examination of Officer DeJong's Handgun

An examination of Officer DeJong's handgun was conducted. A single .40 caliber round was located in the chamber. Twelve rounds were located in the magazine that holds a maximum of fifteen rounds. The two additional magazines removed from Officer DeJong's duty belt were each filled to capacity with fifteen rounds. A total of three rounds were missing from Officer DeJong's handgun.

The handguns of the other involved officers were also examined. No rounds were missing.

911 Call From R.R.

On April 30, 2019, R.R. called 911 and said he was going to "shoot these motherfuckers." R.R. called 911 a second time and asked how long it takes for the police to get someone to his house.

911 Call from Witness Jane Doe

On April 30, 2019, Jane Doe called 911 to report that [REDACTED], R.R., was fighting with [REDACTED]. She told the dispatcher that R.R. said he was going to start shooting and later in the call that R.R. said that he was going to start "shooting at the cops."

Body Worn Camera Video Footage

Sergeant Shannon's body worn camera captured the incident from his arrival at the scene through the detention of R.R.

Corporal Ladanne's body worn camera begins with officers stacked along a block wall preparing to advance toward the dispatch location

Officer Piscatella's body worn camera captured the incident from the time of arrival through the detention of R.R.

Officer Cerna's body worn camera captured the incident from the time of arrival through R.R.'s initial treatment at the hospital

Officer DeJong's body worn camera captures the incident from the time of his arrival until shortly after R.R. is detained. Due to Officer DeJong taking cover behind a truck prior to the shooting, R.R. is not in view of the camera immediately before or during the shooting.

Injuries to R.R.

R.R. sustained a single gunshot wound to the right shoulder. The wound resulted in a deep laceration to the right shoulder and a laceration wound to the mid-back. As a result of the gunshot wound, R.R. sustained a broken scapula and broken right clavicle. R.R. did not sustain any life-threatening injuries.

APPLICABLE LEGAL STANDARDS

Under California law, a peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to make the arrest, prevent escape, and overcome resistance. (Pen. Code, § 835a.) The officer need not retreat or end his efforts to make the arrest because of the person's resistance. (Pen. Code, § 835a.) Penal Code section 834a requires that if a person has either actual or constructive knowledge that he is being arrested by a peace officer, the person must refrain from using force or any weapon to resist such arrest.

In addition, peace officers, in the course of their duties, may use deadly force to protect themselves or others from the threat of death or great bodily harm. As set forth in CALCRIM 2670 (Lawful Performance: Peace Officer), "Special rules control the use of force. A peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense." In addition to the laws specifically applicable to the use of deadly force by peace officers in the performance of their duties, the laws of self-defense and defense of another are available to any person, including peace officers. A person acts in lawful self-defense/defense of another if: (1) the person reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) the person reasonably believed that the immediate use of deadly force was necessary to defend against the danger; and (3) the person used no more force than was reasonably necessary to defend against that danger. (See CALCRIM 3470.)

In deciding whether a person's beliefs were reasonable, all the circumstances as they were known to and appeared to that person should be considered as well as 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. (CALCRIM 505.) Additionally, the person is not required to retreat. He is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of death/great bodily injury has passed. This is so even if safety could have been achieved by retreating. (CALCRIM 505.)

The United States Supreme Court held in *Graham v. Connor* (1989) 490 U.S. 386, that an officer's use of force is to be analyzed under the Fourth Amendment's objective reasonableness standard, and "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." (*Graham v. Connor, supra*, 490 U.S. at pp. 396-397.) Further, the High Court directed, "[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," and the totality of the circumstances must be taken into account. (*Id.* at p. 396.) "[I]ts proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Ibid.*)

CONCLUSIONS

Officer DeJong responded to a call involving an argument between domestic parties and received information prior to arriving at the call, that the male party, R.R., was armed and threatening to shoot responding officers. As he approached, Officer DeJong observed R.R. holding what appeared to be a handgun. Despite repeated commands to drop the gun, R.R. continued to hold the gun and retreated into his residence. When R.R. returned to the front yard, he was still holding what Officer DeJong believed to be a handgun and continued to ignore commands to drop the object and to get on the ground. When R.R. pointed the object at Officer DeJong, he fired three shots at R.R. Officer DeJong fired his handgun out of fear for his safety and the safety of the other officers at the scene. Given the circumstances of the call for service, as well as the behavior of R.R. up to the point of pointing the gun at Officer DeJong, it was reasonable for Officer DeJong to believe that he or his fellow officers were in imminent danger of being shot or killed. Reasonably believing that he was in danger of being shot, injured or killed by R.R., Officer DeJong fired his handgun at R.R. As such, Officer DeJong acted in reasonable self-defense and in defense of the other officers at the scene. On the part of Officer DeJong, there is no criminal liability.

A copy of this letter, along with the materials submitted for our review will be retained in our files. Absent objection in whole or in part, a copy of this letter may be made public in response to a California Public Records Act request.

Very truly yours,

MICHAEL A. HESTRIN
District Attorney
County of Riverside



JOHN AKI
Chief Assistant District Attorney

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