

**REPORT ON THE FATAL SHOOTING
OF JENNIFER VAZQUEZ AND NON-FATAL
SHOOTING OF LINDA CARMONA-BRUNO
ON DECEMBER 25, 2018**



**JEFFREY F. ROSEN
DISTRICT ATTORNEY**

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PREAMBLE

The summary of this incident is drawn from reports prepared by the San Jose Police Department and submitted to this office by San Jose Police Department Detective Elizabeth Ramirez and Sergeant Michael Montonye. The submission included: reports of the responding police officers; reports summarizing interviews of the involved officers and civilian witnesses; recordings of interviews; surveillance video; photographs; body-worn cameras (BWC) and 911/police radio communications. The review also included material submitted by the family of Jennifer Vazquez.

This review of the evidence is being conducted pursuant to the Officer-Involved Incident Guidelines adopted by the Santa Clara County Police Chiefs Association on October 12, 2017. This review included examinations conducted by the Santa Clara County Crime Laboratory and the report from the Santa Clara County Medical Examiner's Office, which classified Jennifer Vazquez's death as a homicide due to multiple gunshot wounds.

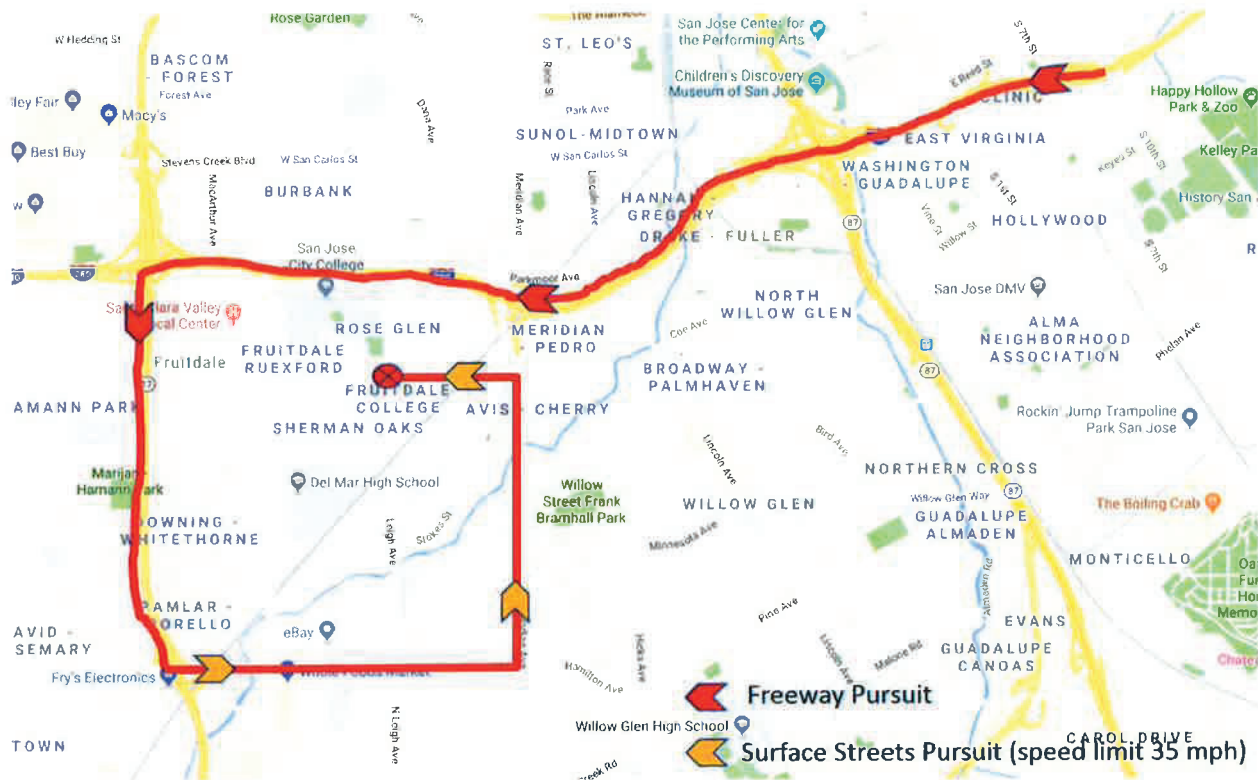
FACTUAL SUMMARY

On December 25, 2018, at approximately 2:00 a.m., officers with the San Jose Police Department responded to the area of Story Road and Clemence Avenue on a report of a shooting at that location. While the call was unfolding, a bystander told a patrol officer that the vehicle involved in the shooting was leaving the area of Story Road and Clemence Avenue. The witness yelled, "That way! They shot!" pointing southbound on Clemence Avenue. Looking in the direction indicated by the witness, the officer saw an older white Toyota Camry turning from Clemence Avenue westbound onto Owsley Avenue. At that moment, one of the officers observed the Camry driving on Owsley Avenue just west of Clemence Avenue.

Police dispatch reported that the Camry was reported stolen. Dispatch also informed officers that the shooting at Story Road and Clemence Avenue resulted in two people being hit with gunfire from a shotgun. Based on the information relayed by the bystander and the dispatcher, police attempted to stop the car. The driver of the Camry refused to yield and led police on a high-speed chase through San Jose on both freeways and city streets. During the chase, police radio traffic informed officers that there had been another similar shooting a couple of hours earlier near Stockton Avenue and Lenzen Avenue in San Jose where another person had been shot with a shotgun.

The Camry was driven well in excess of the speed limit and, at times, drove in opposing lanes of traffic. After failing to yield for nearly nine miles, the Camry crashed at the intersection of Leigh Avenue and Fruitdale Avenue on the sidewalk of southbound Leigh Avenue next to the playground for Sherman Oaks Elementary School. The intersection of Fruitdale and Leigh is a controlled intersection with a traffic signal, and southbound Leigh Avenue has a sidewalk. On the west side of the sidewalk is a short chain link fence that the Camry crashed into after losing control during the turn from Fruitdale Avenue to Leigh Avenue.

Multiple officers, with their guns drawn, ordered the driver of the Camry to stop or they would shoot. The driver accelerated forward and backward 11 times, losing traction in an effort to escape. When the Camry accelerated into a San Jose Police car with Officer Anaya standing on the other side, four officers discharged their firearms. At the time of the shooting, each officer believed that: 1) the driver of the Camry was directly involved in the earlier shooting at Story Road and Clemence Avenue; 2) the driver of the Camry may still have a firearm, and 3) the driver of the Camry was trying to escape, which if allowed, would present a significant threat to the public because of the previous shootings coupled with the dangerous driving. Over the course of three to four seconds, approximately 37 shots were fired until it appeared to the officers that the car was no longer pushing forward.



Map showing the path of the stolen car from the approximate location of the initiation of the pursuit by Officer Mercado until the crash at the intersection of Leigh and Fruitdale Avenues.

Officers identified the driver of the Camry as Jennifer Vazquez, 24. She was pronounced deceased on scene. Officers identified the passenger as Linda Carmona-Bruno, 28, who was injured by police fire and suffered non-life threatening injuries.

Only after a comprehensive review of witness statements and surveillance video did investigators determine that the Camry was not the car directly involved in the drive-by shooting at Story Road and Clemence Avenue. However, none of the officers pursuing the Camry was aware of this fact. Rather, each officer believed that the stolen Camry that Vazquez was recklessly driving was directly involved in an attempted murder only moments before it was seen leaving the area of Story Road and Clemence Avenue.



Elevated view looking south on Leigh Avenue from Fruitdale Avenue

TIMELINE

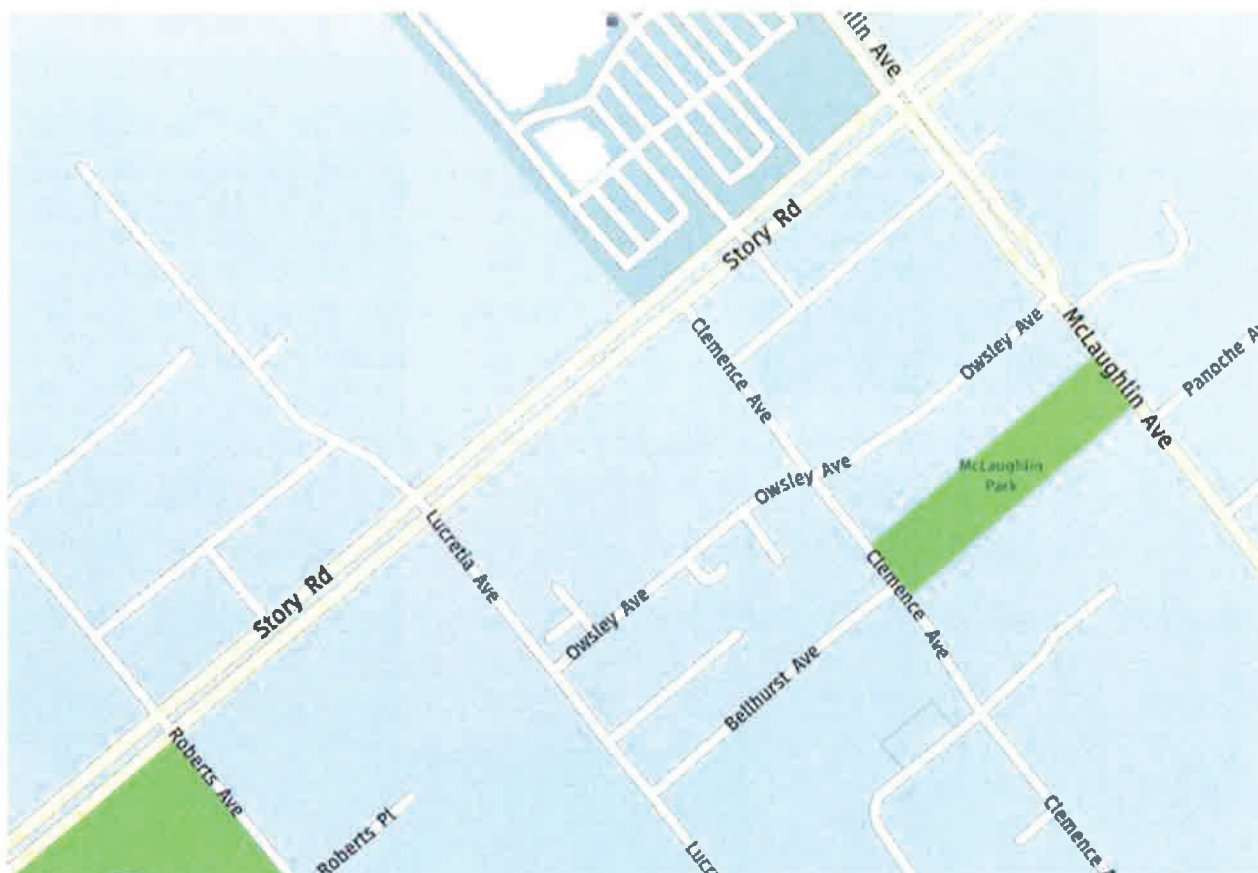
This timeline and the specific times are determined from a review of police reports, 911 and radio traffic recordings, the police dispatch log, and body-worn camera video. The timeline below is not an exhaustive list of all events.

- 2:06 AM – 911 call reporting that 10 to 11 shots had been fired near Story Road and Clemence Avenue.
- 2:10 AM – (Police Radio Traffic Starts) Priority dispatch - shots fired with a white Nissan in the area. Shell casings were seen.
- 2:11 AM – Officer Mercado asked if the 911 call came from the same number as a shotgun brandishing case from the night before.
- 2:13 AM – Officer Monlux reported he was being “flagged down by a couple of people uh pointing [him] toward Lucretia and a white car going that way.”
- 2:13 AM – Officer Mercado started following the car and called in license plate number 4UMK742.

- 2:13 AM – Dispatch informed patrol officers that 4UMK742 was a stolen white 1998 Toyota Camry.
- 2:14 AM – Officer Mercado confirmed the car he was following came from the area of the shooting and inquired whether victims were located at the reported shooting scene.
- 2:15 AM – Dispatch reported that the San Jose Police helicopter (Air 3) was unavailable.
- 2:16 AM – Officer Monlux reported that he found eight spent shotgun-shell casings at the scene.
- 2:16 AM – An officer reported that the previous shooting involved a shotgun, specifically buckshot. Officer Mercado asked if there was a vehicle description associated with that call.
- 2:17 AM – Officer Monlux reported that he found two people suffering from gunshot wounds. He had previously reported that no one had been injured.
- 2:17 AM – Officer Mercado began his pursuit of the Camry for failing to yield to his lights and siren while on northbound Interstate 280 around Tenth Street.
- 2:24 AM – The Camry crashed into the cyclone fence at Fruitdale and Leigh Avenues.
- 2:24 AM – Vazquez repeatedly drove the car back and forth, hitting a tree, fence poles and police cars, while ignoring four uniformed and armed officers ordering her to stop.
- 2:25 AM – Vazquez freed the front of the Camry from the fence and accelerated toward Officer Anaya who was standing behind his police car.
- 2:25 AM – Shots were fired.

STATEMENTS BY POLICE OFFICERS

The following accounts are based on the officers' written reports, recorded interviews describing his or her actions, and/or body-worn camera footage. Consistent with the protocol documented in the Officer-Involved Incident Guidelines governing an involved officer's access to body camera footage and other audio/video evidence, each involved officer in this case gave a statement to investigators prior to viewing any of the body-worn camera or surveillance footage. To assist the reader in understanding the street names surrounding the shooting at Story Road and Clemence Avenue, a map of the immediate area is provided below.



Officer Brendan Monlux

Officer Brendan Monlux responded to the shots-fired dispatch at Story Road and Clemence Avenue in San Jose. Officer Monlux pulled into the driveway of Modern Dental at 992 Story Road and was flagged down by a witness who yelled, “That way! They shot!” Because the witness was pointing southbound on Clemence Avenue when he said this, Officer Monlux looked southbound and saw an older white car turning from Clemence Avenue onto Owsley Avenue.

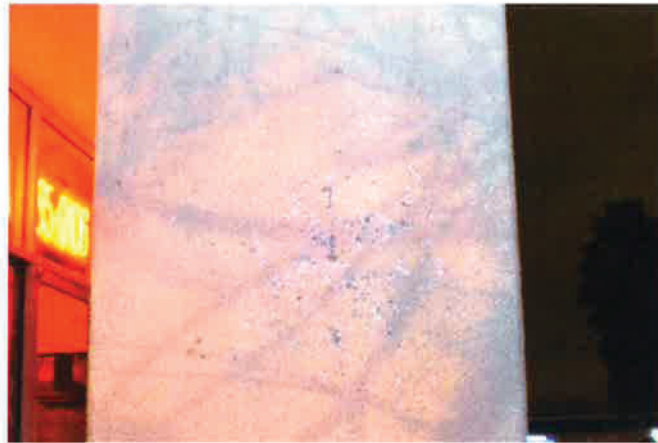
Officer Monlux broadcasted over his radio that a possible suspect vehicle was on Owsley Avenue heading toward Lucretia Avenue. The radio traffic recording reflects that he said that he was “flagged down by a couple of people, uh, pointing me toward Lucretia and a white car going that way.” Officer Monlux saw the white car turn northbound on Lucretia Avenue and observed a police car pull behind it.

Officer Monlux began his investigation as Officer Mercado was following the white car leaving the area. He spoke with four people in front of 992 Story Road: BR, MM, FZ and MC.¹ Officer Monlux could see that BR and MM had been shot and had several wounds. A review of the

¹ The true names are being protected because the attempted murder case remains an ongoing investigation.

radio traffic and BWC revealed that Officer Monlux did not locate the shooting victims until about two minutes after he arrived on the scene.

FZ and MC were not hit, but there was further evidence of gunfire due to impacts of shotgun pellets on a tree, a pillar, and the glass of the front of the dental office.²



Pellet strikes on support pillar



Pellet strikes on door frame

MM declined to be treated at the hospital, however, BR was taken to Regional Medical Center where his statement was taken. Her statement is described in the Civilian Witness section of this report.

Officer Monlux observed numerous red 12-gauge shotgun shell casings at the scene. The evidence collection for this scene is more fully described in the Crime Scene Unit Examination section of this report.

Officer Marco Mercado

Sergeant Isidro Bagon and District Attorney Investigator Nate Wandruff interviewed Officer Mercado in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the interview began around 10:22 a.m. on December 25, 2018. Officer Mercado has been a San Jose Police Officer for just under six years and was a field training officer in 2017. His assignment on December 25, 2018, was as a patrol officer driving a marked police unit.

Officer Mercado was in the area of Tully Road and Lucretia Avenue when he heard a “shots fired” call for service come out over the radio. The report was that a shotgun had been fired multiple times in the area of Owsley Avenue and Clemence Avenue. Based on Officer Mercado's training and experience, he knew that this was a known Sureños³ gang area. Officer

² The photos depicted are selected photos. Officers documented numerous other areas of pellet strikes in front of the dental office.

³ Sureños, Southern United Raza, Sur 13 or Sureños X3 are groups of loosely affiliated gangs that pay tribute to the Mexican Mafia while in U.S. state and federal correctional facilities.

Mercado was aware of a call the previous night in the same area involving suspects pointing a gun at people while uttering gang slurs. The suspects and victims in that case had fled the area prior to police arrival.

Officer Monlux had broadcasted that he was told that a witness was pointing at a white car that was driving westbound on Owsley Avenue toward Lucretia Avenue and that it was the suspect vehicle in the shooting. As Officer Monlux was making the radio call, Officer Mercado saw a white Toyota Camry westbound on Owsley Avenue at Lucretia fail to stop at the stop sign. The Toyota Camry made a right turn onto northbound Lucretia Avenue toward Story Road. Officer Mercado pulled in behind the Camry and believed it was the same car that was being pointed out to Officer Monlux as being involved in the firearms-discharge call. Officer Mercado did not initiate a vehicle stop at that time because it was unsafe as he was the only police unit behind the car. At this time, he thought the driver was a male.

The Camry made a left turn onto westbound Story Road, and Officer Monlux followed it while running the license plate over the radio. San Jose Police Communications said the car came back as a stolen 1998 Toyota Camry.

At this point Officer Mercado believed that the Camry was stolen and involved in the “shots fired” call. Officer Mercado continued to follow the car and requested the assistance of the San Jose Police helicopter and the California Highway Patrol as the Camry was likely to head toward the freeway. As expected, the Camry turned onto 10th Street from Keyes Street and then got onto northbound Interstate 280.

Officer Monlux initially reported over the radio that he located multiple expended shotguns shells at the scene of the shooting on Story Road and Clemence Avenue. Soon thereafter, Officer Monlux updated over the radio that he had located two persons at the scene with gunshot wounds that were not life threatening. When Officer Mercado received this information, he believed that the Camry he was following was directly involved in a recent attempted murder or assault with a firearm incident.

Officer Mercado activated his emergency lights and siren to make a traffic stop in the area of northbound Interstate 280 and Highway 87.⁴ The Camry did not pull to the side of the road and continued at the same speed for about 10 seconds. Officer Mercado said that the fact that the car was stolen and that the driver failed to yield further confirmed in his mind that the car he was following had just been involved in a shooting.

The Camry accelerated to speeds of up to 96 mph. The Camry “acted like it was going to exit” at the Bascom Avenue/Leigh Avenue exit and then returned to northbound Interstate 280. The Camry did the same at another exit and then returned to northbound Interstate 280.

During the pursuit, Sergeant Jourdenais had broadcasted over the radio that earlier in the night there was another shooting involving the use of a shotgun. Officer Mercado believed that the car

⁴ Throughout the interview, Officer Mercado described his radio communications. Those descriptions are not included as they are fully captured in the radio traffic that has been summarized in the 911/Radio Traffic section of this report.

he was pursuing may be involved in that shooting as well due to both involving a shotgun, which he knew to be an unusual firearm to be used in a shooting. One person had been shot in this incident.

The Camry continued driving at speeds between 85-95 mph on Interstate 280 and then onto southbound Highway 17 toward Santa Cruz. The Camry exited on Hamilton Avenue and started skidding. Officer Mercado expected that a foot pursuit was going to ensue, but the Camry did not stop. Instead, it made a left turn onto Hamilton Avenue and turned off its headlights. On Hamilton Avenue, the Camry drove approximately 80 mph against traffic (on the wrong side of the roadway) and failed to obey traffic signals. Officer Mercado did not drive against traffic due to the significant risk to public safety.

The Camry turned left onto northbound Meridian Avenue in opposing lanes. Officer Mercado continued to pursue the vehicle up to Fruitdale Avenue. The Camry turned onto westbound Fruitdale Avenue, also against traffic in the eastbound lanes. The Camry continued westbound on Fruitdale Avenue, turning left at Leigh Avenue at 60 mph. The vehicle spun out and crashed into a cyclone fence on the southwest corner of Fruitdale and Leigh. The Camry appeared to have gotten stuck in the fence for a school playground.

Officer Mercado stopped his police car, got out, and took cover behind his car with his firearm drawn. He did this because of the dangerous and high-risk nature of the call. Officer Mercado pointed his firearm at the driver and yelled commands to turn off the car and put their hands up. It was at this time Officer Mercado first realized that there was a passenger in the car and that the driver was a female. Both the driver and passenger were looking at Officer Mercado as he was giving commands, however the windows were rolled up. The driver made eye contact with Officer Mercado as he was ordering her to put her hands up and turn off the car. The Camry was stopped, but neither the driver nor the passenger raised their hands.

Officer Mercado knew there were other officers with him, so he requested a 40mm less lethal projectile launcher to break out the windows and try to communicate with the car's occupants. Officer Mercado also thought the use of the 40mm on the suspect driver could be used to incapacitate her enough so they could approach and turn off the car. Officer Anaya announced that he had the less-lethal launcher, and then he went to get it. Officer Mercado also asked if one of the other officers could use their police cars to block the stolen car from the back.

Officer Mercado knew that Officer Anaya's police car was in the front of the stolen car. Although there was a gap in which the stolen car could get through (between Officer Mercado's and Officer Anaya's police cars in front), because of potentially armed occupants, Officer Mercado was not going to ask for any police cars to be maneuvered in front of the stolen car as it was too dangerous. He acknowledged that there was a gap between the cars that would allow the Camry to get through, but he did not expect the driver to drive toward the police cars and felt that the gap was covered as best as could be under the circumstances.

Officer Mercado thought that blocking the Camry would de-escalate the situation and the suspects would surrender or at least try to run on foot. Officer Mercado described that when a suspect flees on foot the officer is at an advantage because the car is no longer a threat and the

officer can see the person's hands. Officer Mercado continued to yell commands to the suspects in the car, however neither the driver nor the passenger complied by placing their hands in the air. Instead, the passenger was moving around, and Officer Mercado could not see the passenger's hands. Officer Mercado believed based upon the original call that there was a shotgun in the car, and he was concerned that the passenger may be reaching for the shotgun. The driver had her fists clenched on the steering wheel and was looking at Officer Mercado as he was yelling commands to stop.

Instead of raising her hands, the driver stepped on the gas and began driving the Camry back and forth to try and break free, except that the car was turning toward the police as opposed to away from them. Based on Officer Mercado's training and experience, this was not a common reaction for a suspect. He described this process as revving the engine and driving backward and forward numerous times.

At this point, Officer Mercado was not sure of Officer Anaya's position with the 40mm less-lethal, but he knew that Officer Stimson was to his right. Considering that deadly force was going to be a possibility, Officer Mercado checked the area behind the Camry. The school was closed due to the time of the morning and being a holiday, which meant there were no people on campus or people in the building. Officer Mercado decided that if the vehicle drove in his direction or the direction of the other officers, he was going to have to "draw a line in the sand." He believed that if the driver drove at them there was not much he could do with his Taser or any other available less-than-lethal option.

Officer Mercado articulated that he believed that the stolen car's occupants were involved in the night's shooting (at Story Road and Clemence Avenue) and may have been involved in another shotgun shooting a couple of hours earlier, and that if he were to let the suspects go they would present an imminent danger of death or physical injury to another person. Officer Mercado was also concerned that the continuing failure of the Camry to stop, instead driving back and forth to free itself, might result in himself, Officer Anaya, or Officer Stimson being hit. Officer Mercado described that he did contemplate a retreat to a safer position for himself and the other police officers, but he added that if he were to let the car go, he believed that the suspects were dangerous to the police and the public. Given the positioning of the cars, Officer Mercado believed that the car could manage to drive toward his position and get away as it continued going forward and backward trying to free itself from the fence.

The Camry broke free from the fence and accelerated toward Officer Anaya's police car. Officer Mercado moved from his position to a position of cover behind his engine block. Officer Mercado did not know exactly where Officer Anaya was but remembered that he was to his left, which was the same direction the car was driving toward. Officer Mercado was in fear for his safety and in fear for the safety of his fellow officers. Officer Mercado fired six to eight rounds from his duty weapon at the Camry's driver to stop the threat. He stopped firing when he could hear that the driver was no longer revving the engine and pushing the Camry into Officer Anaya's police car, which indicated to him that the threat had stopped. He explained that his target was the driver in order to stop the threat.

The front passenger now complied with commands and put her hands up in the air. Officer Mercado formulated a plan with his fellow officers to render medical aid, but the driver door was pinned in, and they could not extract the driver to render medical aid. Officer Mercado knew the passenger had been shot, but was responding to commands, so she was told to exit from the rear driver's side door. Another officer pulled the passenger out of the car and brought her over to get medical treatment. Once officers searched the car, including the trunk, Officer Mercado was relieved and placed in the back of Sergeant Sadsad's police car, which is standard procedure.

The interview concluded at about 10:33 a.m.

Officer Mitchel Stimson

Detective Elizabeth Ramirez and District Attorney Investigator Erin Fong interviewed Officer Mitchell Stimson in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the interview began around 2:10 p.m. on December 25, 2018. Officer Stimson has been a San Jose Police Officer for about one year. He was a United States Marine for three years. His assignment on December 25, 2018, was as a patrol officer driving a marked police unit.

Officer Stimson said he responded to a "shots fired" call, involving numerous shots with a shotgun, and a vehicle description of a white Nissan leaving the scene toward Lucretia Avenue. As Officer Stimson drove behind Officer Mercado, they travelled northbound on Lucretia Avenue from Tully Road, where a white vehicle pulled out from Owsley Avenue in front of Officer Mercado. Officer Mercado got behind the car and ran the license plate, which came back to a stolen car.

Neither Officer Stimson nor Officer Mercado ever made it to the actual scene of the call as the white car came out in front of them while they were heading to the call. When Officer Stimson heard that the car was reported stolen, it significantly contributed to his belief that the car he and Officer Mercado were following had been involved in the shooting that had just taken place and that a shotgun was inside the car. Because of the events, Officer Stimson further believed that anyone inside of the car was dangerous and would be willing to use the firearm.

Officer Mercado did not immediately attempt to stop the car until the unit on the scene of the shots fired call updated that two people had actually been shot. Officer Mercado attempted to stop the car, which failed to yield, and both Officers Mercado and Stimson began their vehicle pursuit.

Officer Stimson described his actions with respect to the pursuit, but because the vehicle pursuit is described in detail in Officer Mercado's statement and is reflected in the radio traffic communications, Officer Stimson's description of the pursuit is omitted here.

Officer Stimson was behind Officer Mercado far enough that he did not see the crash at Fruitdale and Leigh avenues. As Officer Stimson approached the area of the crash, he saw a gap in the southernmost area where he thought the car could drive past another car (Officer Anaya's) on the sidewalk. Officer Stimson parked his car to close that escape route. As he did this, Officer Stimson realized that he was too close to the suspect vehicle, and he did not like his positioning

in front of the car so he drew his firearm, activated his body-worn camera, and proceeded to Officer Mercado's position.

Officer Stimson further articulated that he believed the individuals in the car had just shot two people and, based on how the suspect was driving, he could see other people being injured if the suspect was able to get away. The officers on scene already had their weapons drawn. As Officer Stimson tried to get cover, which he described as difficult due to his height, he noticed the driver's face and saw that she did not appear like she was going to give up, which made Officer Stimson feel concerned for his and others' safety.

Officer Stimson recalled the driver's head turning and possibly her right hand was going down. But he said that he could not really remember other than the driver being really frantic and trying to get out of the position she was in. As Officer Stimson got next to Officer Mercado, he did not feel safe, but he did not feel like anyone else was close enough to Officer Mercado to set up an arrest team. Officer Stimson did not realize that the driver was a female until he saw her after he parked his police car.

Officer Stimson felt that the driver knew she was boxed in with officers surrounding her with their weapons drawn. He said that her expressions seemed to indicate that she was not going to surrender.

Officer Stimson saw the suspect car drive forward and backward numerous times, eventually breaking free and driving with the wheels toward Officer Anaya, Officer Mercado and himself. Concerned for his life and that of his fellow officers, specifically Officers Mercado and Anaya, Officer Stimson thought the driver was willing to do anything necessary to get away, including running over an officer. Officer Stimson did not give any verbal commands himself, but he did hear other officers giving verbal commands before the shooting.

At that point the driver ran the car into Officer Anaya's police car. Officer Stimson described being unsure of the sequence of events that took place within the next two seconds. He did say that the suspect drove toward them, but he was not sure if the first shot happened, or if she leaned to her right before the first shot happened. He said that the driver took both of her hands off the steering wheel and reached over to her right. Officer Stimson believed the driver was reaching over for her shotgun, and he thought she was going to shoot them, which led him to fire his weapon.

Officer Stimson believed he fired between three and six rounds. Officer Stimson stated that when he fired his shots, he was aiming at the visible portion of the driver's upper body. Officer Stimson fired at the driver because she was a threat at the time. He stopped shooting to reassess, and the driver was not moving and was hunched over.

Officer Stimson said that the actual shooting was still kind of a "black spot" from the point he started shooting to the point when he stopped shooting. Officer Stimson recalled the scene being silent. Officer Stimson said his goal in shooting his weapon was to stop the driver from reaching for whatever she was reaching for and to stop her from driving toward the officers. Officer Stimson articulated that he was scared that the suspect was going to "plow through all three"

officers. Officer Stimson described the look in the suspect's eyes as "scary" and the kind of look that made him believe she was not going to jail and not going into custody. Officer Stimson thought the suspect was just going to "shoot it out" with officers or drive through the officers, which made Officer Stimson scared for his life and the lives of his fellow officers. Officer Stimson stated that the shooting was a different situation than he had ever been in.

After the shooting, Officer Stimson recalled that Officer Mercado said they needed to render aid to the driver. Officer Stimson then heard the other passenger screaming, "She's dead," or something along those lines. Officer Stimson described stating that he then told the other officers that he was going "off gun" as he put on gloves in order to render aid. A pole prevented the officers from opening the driver door to attempt to get her out. As he got closer he could tell the driver was deceased.

The passenger was then told to get out of the car through the back door. She was taken out of the car and moved from the area. Officer Stimson was then pulled aside by a sergeant and was separated from the rest of the officers according to standard procedure.

Officer Stimson recalled that during the vehicle pursuit, he believed the stolen car was driven by suspects who had shot two people. He was also aware that someone else had been shot earlier that night with a shotgun. This information made him concerned that the people in the suspect vehicle were driving around shooting random people. Officer Stimson was also aware of an event from the previous night involving the "racking of a shotgun" in the area of Clemence Avenue and Owsley Avenue. Officer Stimson was thinking that if the suspects in the stolen car got away they would hit someone during the pursuit or would shoot someone again.

The interview concluded at about 2:55 p.m.

Officer Eliseo Anaya

Detective Elizabeth Ramirez and District Attorney Investigator Erin Fong interviewed Officer Eliseo Anaya in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the interview began at 11:58 a.m. on December 25, 2018. Officer Anaya has been a San Jose Police Officer for one year and was with the Santa Clara County Sheriff's Office for four-and-a-half years. His assignment on December 25, 2018, was as a patrol officer driving a marked police unit.

He was parked in a church parking lot in the area of Cherry Avenue and Minnesota Avenue writing a report when he heard some information about the shooting at Story Road and Lucretia Avenue. He believed a witness had pointed out a white car that was involved in the event. He became aware that Officer Mercado caught up to the white car, that it was reported stolen, and that gunshot victims were located at Story and Lucretia. He also heard that Officer Mercado tried to stop the car, however, the driver failed to stop. Officer Anaya heard Officer Mercado broadcast the direction of travel, speeds and traffic conditions. He did not remember the specifics, however.

During the pursuit, Sergeant Jourdenais reported on the police radio that there had been a shotgun shooting earlier that night in District Frank (Stockton and Lenzen). Officer Anaya heard

that the shooting in District Lincoln (Story and Lucretia) involved a shotgun. He believed the two shootings were connected.

Officer Anaya joined the pursuit when he got onto northbound Interstate 280 at Parkmoor Avenue. He could see the police vehicle emergency lights in the distance but did not catch up to the pursuit until on eastbound Hamilton Avenue at Leigh Avenue. Officer Anaya described his observations with respect to the pursuit, but because the vehicle pursuit is described in detail in Officer Mercado's statement and is reflected in the radio traffic communications, Officer Anaya's description of the pursuit is omitted here.

Officer Anaya described the pursuit as dangerous, however, the driver of the vehicle was a suspect in two separate attempted homicide events, and he believed the occupants of the vehicle were a threat to the public. He was also concerned about the outstanding shotgun and thought it could be in the car.

Officer Anaya heard Officer Mercado broadcast that the suspect vehicle crashed as it turned onto Leigh Avenue, but he did not see the crash. When Officer Anaya arrived at the crash scene, he saw a patrol car stopped in the roadway facing the stolen Toyota Camry, just south of the crosswalk. He described that the car was entangled with a fence on the border of a school playground.

Officer Anaya expected that there would be a foot pursuit, so he bypassed the other cars and parked in the roadway, perpendicular to the front of the Camry just before the curb and sidewalk. His police car was in front of the Camry, about 15 yards to the south. He could clearly see inside the car and saw there was a driver and a passenger. He got out of his police car and the driver began driving in reverse and then forward approximately 10 times. He described the driver as "flooring" it and causing the tires to spin, with the car moving each time.

Officer Anaya could tell the car was starting to get free of the fence, so he got back into his police car and drove over the curb to close the distance between his car and the fence. This blocked southbound travel on the sidewalk. He saw there was still space for the car to turn left between his car and the other police car (Officer Mercado's) to the north. When Officer Anaya got out of his car after moving it, he positioned himself to the front of his police car and drew his firearm. He was yelling, "We will shoot you!" hoping to get the occupants to stop and surrender.

Concerned about positioning of the officers in case deadly force became necessary, he was telling other officers to watch for crossfire. He could hear other officers giving commands to the suspects, but he was not sure what they were saying. He could see directly into the Camry. The passenger was just sitting there while the driver was still attempting to maneuver the car out of the area. Both the driver and the passenger ignored the officers' commands. He believed the windows of the Camry were rolled up, but he was sure the occupants could hear the officers and chose to ignore them. He was not able to see the hands of either occupant and was concerned there was a gun in the car. He was not able to see where the other officers were.

The driver was finally able to untangle the Camry from the fence and rammed his police car. He was standing on the other side of the car at the time it was hit, but he was not leaning on it, so his

car did not contact him when the Camry struck his police car. When his police car was hit, he began shooting at the driver. Officer Anaya was not sure if the suspect was intentionally trying to hurt him, or just trying to injure him and flee, but he believed she was going to do whatever it took to get away.

Officer Anaya fired shots at the driver because he believed the car could push his own car into him and injure him. He also believed she was a fleeing felon wanted for attempted murders with a shotgun and was a danger to the public. His belief that the Camry was involved with the previous shootings was enhanced because in his experience it is common for stolen cars to be used in such crimes. He described that if the driver would have reversed once more, she could have gotten the car out between his car and another police car (Officer Mercado's) and fled the scene.

Officer Anaya said he stopped firing when he believed the threat had stopped – meaning the car had stopped. His goal was to take the occupants into custody. Officer Anaya believed he fired about six rounds, but he became aware that he fired more when his magazine was examined for the number of remaining cartridges. When he stopped firing, he could see the driver was slumped over and the passenger was leaning over and not moving.

Officer Anaya and the other officers attempted to get the passenger out of the car. Eventually, she was directed to exit the rear driver side door. The passenger was handcuffed and someone took custody of her. Additional officers showed up, and the car was searched for any weapons or persons. When the trunk was opened, the key broke in the lock.

The interview concluded at about 12:51 p.m.

Officer Mark Koska

Sergeant Isidro Bagon and District Attorney Investigator Nate Wandruff interviewed Officer Mark Koska in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the interview began at 1:14 p.m. on December 25, 2018. Officer Koska has been a San Jose Police Officer for about one year. He previously worked as a Special Agent for the Drug Enforcement Agency for three years and as an agent for the United States Border Patrol for three years. His assignment on December 25, 2018, was as a patrol officer driving a marked police unit.

Officer Koska said he was in his police car typing a police report when he heard a “shots fired” call in District Lincoln (Story Road and Clemence Avenue). Officer Koska said that shortly after hearing the initial broadcast of the shooting, he heard Officer Mercado broadcast that he had arrived in the area of the reported shooting and saw a white vehicle “fleeing from the scene.” Officer Koska remembered that Officer Mercado broadcasted that he was following the white car as it left the area of the shooting.

Officer Koska said he then heard another broadcast from the scene of the shooting that two people had been struck by gunfire. He heard Officer Mercado's transmission of the license plate and dispatch reporting the car as a stolen car. Officer Koska heard Officer Mercado broadcast that he was in a pursuit of the stolen white Toyota. As Officer Koska monitored the pursuit, he

heard that it was getting closer to his position, so he attempted to catch up to the pursuit. The officer believed the white Toyota was being driven by the subject(s) responsible for the shooting of two victims at Story Road and Clemence Avenue.

Officer Koska was able to join the pursuit as the cars joined southbound Highway 17 from Interstate 280. He took over responsibility for transmitting relevant information over the radio as is standard police procedure. Officer Koska continued to pursue the suspect vehicle for the duration of the pursuit. Officer Koska described his observations with respect to the pursuit, but because the vehicle pursuit is described in detail in Officer Mercado's statement and is reflected in the radio traffic communications, Officer Koska's description of the pursuit is omitted here.

Officer Koska said at one point in the pursuit he heard someone broadcast that there were two occupants in the Camry. He remembered being particularly concerned about public safety and the safety of himself and fellow officers because of the high speed of the pursuit and the erratic and dangerous driving behavior. Officer Koska became increasingly concerned because the suspect vehicle maintained dangerously high speeds, there were residential and commercial districts in the path of the pursuit, and there were hazardous road conditions. As the car approached the intersection of Fruitdale and Leigh avenues, it attempted to negotiate a left-hand, southbound turn. The vehicle left the roadway and collided with a chain link fence, becoming partially stuck.

Officer Koska said he arrived at the intersection immediately after the crash. He saw Officer Mercado's police car just to the left and offset slightly rearward of the Camry, in an apparent attempt to block an avenue of escape for the car. He parked his police car behind the Camry, offset slightly to the left/rear of Officer Mercado's car. Officer Koska said other police cars arrived and positioned themselves around the scene of the collision, one of which assumed a position somewhat perpendicular to the front of the Camry, blocking an avenue of escape.

Officer Koska got out of his car and moved to a position on the opposite side of Officer Mercado's police car. It was at this point that he first could see the driver and the passenger, and he could hear the engine revving. He took a position directly to the right of Officer Mercado, with the front of Officer Mercado's car between the officers and the Camry. When he heard the engine of the car revving, it appeared to him that the suspect driver was attempting to free the car from the fence. He pointed his pistol at the driver. He and other officers repeatedly yelled orders like "Stop" and "Stop the car." Neither the driver nor the passenger responded or complied. Officer Koska said he could not see the hands of either the driver or the passenger. He said he has never seen a person ignore the police when a gun was being pointed at them. In his mind, he believed the driver would do anything to escape.

Officer Koska decided to move his police car to gain a better angle with his vehicle on the suspect vehicle. While doing so he realized he had placed himself in a compromised position due to his proximity to the occupants he believed were armed with a firearm. In addition, he was concerned the Camry was going to ram and injure him. He also believed, given the nature of the call and the behavior of the occupants, the event was going to turn into a "close quarters gun battle." He got out of his police car again and resumed a position next to Officer Mercado.

The giving of verbal commands continued as the driver continued to rev the engine, moving the car back and forth in an apparent attempt to free the car from the fence. Officer Koska remembered having made eye contact with the driver while he and other officers yelled commands and pointed their guns at her. After ignoring all orders to stop, the driver was able to free the car from the fence.

Officer Koska described what he observed and heard as the driver “gunned it” causing the car to crash into the police car (Officer Anaya’s) that was to the front. At this time, he believed the occupants of the Camry were involved in the shooting of at least two people, were armed with at least one firearm, were refusing to surrender, and were stopping at nothing to avoid being arrested.

Officer Koska said he did not believe he and the other officers had established containment of the Camry at this point. Officer Koska said he was afraid for his safety, the safety of his fellow officers, and he was concerned that the suspects would escape to continue their pattern of violent behavior, placing the public at grave risk. It was at this point that Officer Koska aimed at the driver and discharged his firearm approximately three to four times. Officer Koska said he stopped shooting when he perceived the threat to stop – when the car stopped moving and revving.

After the shooting, he and other officers issued commands to the passenger. He heard the passenger yelling, “Get me out!” Other officers assisted the passenger in getting out of the car. He assisted with the emergency medical technician evaluating the passenger.

The interview concluded at about 2:00 p.m.

Officer Jacob Goetz

Detective Brian Meeker and District Attorney Investigator Erin Fong interviewed Officer Jacob Goetz in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the interview began at 8:13 a.m. on December 25, 2018. Officer Goetz has been a San Jose Police Officer for about one year. His assignment on December 25, 2018, was as a patrol officer driving a marked police unit.

Officer Goetz described the radio traffic that he heard with respect to the shooting on Story Road and Clemence Avenue. He recalled he heard radio traffic associated to a firearms-discharge call on Story Road. He was aware that there were shotgun shells found at the scene. He learned that a patrol officer located a vehicle that the officer believed was associated to the shooting. Officer Goetz said that an officer at the scene described that there were two people that had been shot. Officer Goetz became aware that the car believed to be involved in the shooting failed to yield, and that a police pursuit had been initiated.

Officer Goetz described where he was when the pursuit began, and that he positioned himself at the intersection of Hamilton and Meridian avenues to wait for the suspect vehicle to pass. A short time later, the car passed his position, and he joined the pursuit in the fifth position. Officer Goetz did not know about the car being stolen; he understood the car was being chased because of a shooting. Although Officer Goetz described his observations of the pursuit, because

of his position and the description of the pursuit elsewhere in this report, his observations will not be further described.

Officer Goetz did not see the suspect vehicle crash, but he heard it over the radio. When he arrived, there were four other police cars stopped around the Camry. Officer Goetz said the Camry was wedged in between the fence and a tree. He remembered that the vehicle was going backward and forward a number of times until it "broke loose" and started heading to where officers were standing. The officers moved, and subsequently fired at the driver of the car.

Goetz said that he heard the officers telling the driver to stop at least 10 times. Officer Goetz said that prior to officers firing, he saw the Camry jockeying back and forth, five or six feet every time that it moved. He said that when the car was in reverse, the driver would hit a tree that was behind the car. He then described that the car "broke free," and it was able to move forward. When asked to describe what he meant, he said the Camry looked like it was stuck on the fence, but the car got enough traction, and the nose of the Camry was pointed directly toward one of the marked patrol cars in the area where officers were standing. He said the Camry drove straight toward them, and they immediately moved out of the way. He then heard the gun shots.

Officer Goetz said he did not fire because he was concerned about his backstop as there were officers on the other side, and he could not see the suspects. Officer Goetz was standing about 30 to 40 feet back from the Camry. His perception was that there were officers on the other side of the police car in front of the Camry, but he was not sure of all the officer positions. Officer Goetz said he could not see the driver or passenger inside the car from where he was standing. He could not tell anything about their descriptions.

Even after the use of force, Officer Goetz was still concerned that the passenger could be a danger as the initial call was for a shotgun shooting. Officer Goetz assisted in safely removing the passenger from the Camry.

The interview concluded at about 9:04 a.m.

Officer Nathaniel White

Detective Brian Meeker and District Attorney Investigator Erin Fong interviewed Officer Nathaniel White in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the interview began at 9:19 a.m. on December 25, 2018. Officer White had just completed Field Training and had been a solo-beat officer for two days when this event occurred. His assignment on December 25, 2018 was as a patrol officer driving a marked police unit.

Officer White was finishing a call for service at Valley Medical Center when he heard radio traffic regarding a shotgun, a white Toyota Camry, and a stolen car. He heard that officers were in pursuit of a car linking to a shooting. He heard shells were found at the scene and that officers were trying to determine if birdshot was used.

As he heard the pursuit travelling closer to his location, he stopped his car on Fruitdale Avenue and then saw the white Toyota Camry make a left-hand turn in front of him with police cars

following. After the pursuit passed him, he attempted to catch up, however by the time he did, the car had already crashed. Officer White parked his police car in the intersection at Fruitdale and Leigh to block traffic. He ran over to two officers who already had their guns out and were giving commands to the suspect. He heard the officers yell, "Show me your hands!" multiple times. He did not hear anyone in the vehicle respond to the officers. Officer White had a limited view of the Camry, and he could not see the occupants. He could not remember the actions of the suspect vehicle at that time.

Officer White stated that the driver "gassed" it (he heard its engine rev), then he saw its front bumper hit the right front quarter panel of a police car. He did not see any officers standing near the patrol vehicle that was struck. Officer White then heard gunshots. He did not fire his weapon because the other officers were in front of him, and it would have been a hazard to fire in between them. Officer White also did not have a clear view of the suspect vehicle and what was occurring.

Officer White estimated from the time he got out of his car until the time shots were fired was maybe 10 seconds.

After the shots were fired, Officer White drew his firearm and covered the passenger. He assisted in the process of removing the passenger from the car. Officer White assisted in the search of the car for evidence. He removed the keys from the car's ignition and attempted to open the trunk. He could not remember if the vehicle was running and could not remember if the vehicle was in park. The key broke off in the trunk lock as he turned it, so he was not able to open the trunk lid. He then searched inside the vehicle for any weapons but did not move any items inside the car while doing so.

Officers eventually pulled the rear seats down and looked inside the trunk. They did not locate any evidence. Afterward, Officer White placed the black key fob on top of the trunk.

The interview concluded at about 10:00 a.m.

Sergeant Nicholas Jourdenais

Sergeant Jourdenais was the patrol supervisor for the area where the officer shooting took place on December 25, 2018. Because of the holiday, he was responsible for two districts that night. Sergeant Jourdenais was monitoring radio traffic and made his way to the area in which the stolen Toyota Camry was headed.

Sergeant Jourdenais pulled up to the crash scene. Before he got out of his car he heard loud pops, which were the gunshots fired by Officers Mercado, Anaya, Stimson and Koska. Sergeant Jourdenais supervised the scene from that point until relieved, including the extraction of passenger Linda Carmona-Bruno, establishing a perimeter around the scene, and identifying witnesses to the events.

Officer Christopher Randolph

Officer Randolph responded to Fruitdale and Leigh after the shooting. He assisted in providing passenger Linda Carmona-Bruno first aid and thereafter scene security.

Officer Nathalie Arevalo

Officer Nathalie Arevalo was working as a patrol officer just after midnight on December 25, 2018. She responded to a shooting in the area of Lenzen and Stockton Avenue. The victim was shot through his tent by a shotgun.⁵

When Officer Arevalo arrived on the scene, she found DG suffering from multiple puncture wounds to his left leg. Officer Arevalo also observed numerous holes in DG's tent. DG was taken to Valley Medical Center for treatment.



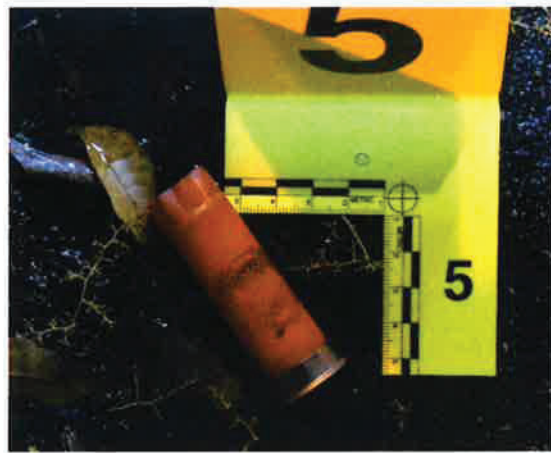
Photo of DG's left leg depicting shotgun pellet injuries

An examination of the scene revealed one spent 12-gauge shotgun shell. This shell was the same type of shell found at Story Road and Clemence Avenue in the shooting just after 2:00 a.m.

⁵ As noted earlier, the true names of the witnesses will not be used in this report as the case is an open investigation. The victim in this case will be referred to as DG.



Spent shotgun shell (Lenzen/Stockton)



Spent shotgun shell (Story/Clemence Avenue)

DG said he was asleep in his tent when he was shot in the leg. He did not see anyone and only heard a car drive away.

NEIGHBORHOOD CANVASS AND STATEMENTS BY CIVILIAN WITNESSES

Officers Kyle Burchfiel, Espiridion Reyes, Evan Motooka, Mario Margiotta, James Hussey, Timothy Maldonado, and Francis Magalang conducted neighborhood canvassing for witnesses in the area of Fruitdale Avenue and Leigh Avenue. Between the seven of them, they received no answer at approximately 37 nearby residences. The officers spoke with approximately 18 additional neighbors, who informed them that they did not see or hear anything related to the event.

The following accounts are summarized from the police reports and/or recorded interviews, if any, of the civilians who spoke to the police. As a reminder, a map of the area for the reader's assistance can be found at the beginning of the section titled Statements by Police Officers.

As noted previously, because some of the civilian witnesses were witnesses to an on-going, possible gang-related attempted murder, the names of the witnesses are not used in the public copy of this report. Additionally, some details of the attempted murder investigation are not included in this report in order to preserve the integrity of that investigation.

Vivian Ramirez

Vivian Ramirez said she only heard the gunshots.

Magen Meidan

Magen Meidan said he heard sirens, then a crash and thereafter what sounded like fireworks. He did not see the incident.

Hahu Alemu

Hahu Alemu said she heard sirens and then gunshots. She did not see the incident.

Catherine Akem

Catherine Akem said she was awakened by a popping sound, which she described as a possible gunshot. She did not get up after she heard the sound.

Tosin Falasinnu

Tosin Falasinnu said he heard three or four firecrackers, then he heard what he thought was an ambulance siren. He did not go outside.

Jean Gebler

Sometime after 2:00 a.m., Jean Gebler heard tires spinning as if someone was stuck in the mud or snow. She thought that someone may have been involved in an automobile collision outside her apartment. She then began to hear sirens in the distance. Moments later, she heard approximately six to seven "pops" but did not think they were gunshots since it was common for people in her neighborhood to light fireworks. She walked out and noticed the incident at the intersection. She immediately returned to her apartment when she saw a group of unknown subjects yelling at police officers on scene. Gebler did not hear any yelling prior to the gun shots.

MM (age 32)

Statement to Officer Monlux (Initial statement)

MM flagged down Officer Monlux, who was the first officer to arrive at the scene of the initial shotgun shooting at Story Road and Clemence Avenue. Officer Monlux pulled into the driveway of the dentist office at 2:10 a.m. MM yelled, "That way! They shot!" Because MM was pointing southbound on Clemence Avenue when he said this, Officer Monlux looked southbound, and he saw an older white car turning from Clemence Avenue westbound onto Owsley Avenue.

Statement to Officer Ramiro Garcia (Second statement)

MM said he was standing in front of the Modern Dental business with his friend, REDACTED, listening to music and drinking beer. MM's other friend (FZ) and his girlfriend (BR) were also nearby, sleeping in front of the business.

MM said he was looking down at a cell phone in his hand when he suddenly heard about four to five gunshots. MM said that the shots came from a newer white four-door Honda that was stopped in the middle of Clemence Avenue with its headlights off. MM said that, when he took cover to protect himself, he was grazed by a gunshot (on his left lower back just above his buttocks). He did not see the occupants of the suspect car and did not know why anyone would shoot at his group.

This interview was conducted in Spanish.

Statement to Detective Elizabeth Ramirez and Sergeant John Cary (Third statement)

MM gave a third statement to Sergeant John Cary and Detective Elizabeth Ramirez in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the

interview began around 7:50 a.m. on December 25, 2018. This interview was conducted in Spanish.

MM stated he was in the area near McLaughlin Road closest to the side of a dental office. MM was with a group of friends celebrating Christmas and drinking beers. MM described the friends as: FZ (sleeping), Franco's girlfriend (unknown name, also sleeping), and his friend REDACTED. REDACTED and MM were the only ones that were awake. MM was leaning over looking down on his phone listening to music when he heard gunshots ring out. MM heard several gunshots and threw himself onto the ground. MM only saw what he described as a newer white Honda vehicle pass by. MM described the suspect vehicle as simply a newer Honda with four doors. MM thought there were two occupants inside the suspect vehicle, however that was just what he thought because he did not see how many people were inside the vehicle. When MM heard the bullets, he threw himself down and was unable to get a good look at who had shot.

MM was grazed by a bullet on his lower back. As MM tried to duck down to avoid getting hit, he was grazed by a bird-shot pellet in his lower back. MM dismissed the graze injury as nothing of major significance.

After the shooting, MM stated the suspect vehicle simply left toward an unknown direction. MM stated that the passenger shot him, but his degree of certainty wavered. MM did not actually see the shooting, but that was how he thought the shooting had taken place. MM stated he was honestly afraid of what was going on and was more worried about his life and trying to render aid to the girl who had been shot than in trying to identify who had shot at them.

MM stated he had not had any previous issues with anyone in the area and had no reason to believe anyone was looking to retaliate against him. MM was unsure if he would be able to identify the suspect vehicle if he were to see it again. After the vehicle fled, he told responding officers it was a white Honda, but he did not recall telling an officer the direction of travel. MM then added that he could not recall for certain whether he pointed out to an officer the suspect vehicle's last known location because he was shaken by what had occurred.

MM estimated he drank approximately eight beers (Bud Light) during the night starting at 6 p.m. on the 24th. He denied any drug use and stated that throughout the night he felt fine and not impaired, just nervous and afraid. At the time of the interview, MM also stated he felt fine.

MM later added that he believed he might have seen a Honda emblem on the suspect vehicle; however, he later stated he could not be certain he saw the Honda emblem. MM stated that the suspect vehicle was in the street (Clemence Avenue) when they shot at his group. MM estimated he heard approximately four shots, however he did not see the firearm, he just heard the shots. MM also denied hearing anyone from the suspect vehicle say anything to his group during the time of the shooting.

MM estimated that the first police officer responded within a minute of the shooting. MM stated that several officers responded at the same time right after the shooting.

The interview concluded at 8:09 a.m.

ER (age 23)

Sergeant Bagon interviewed ER in one of the Homicide Unit interview rooms. Her statement was video recorded in its entirety, and the interview began around 9:05 a.m. on December 25, 2018.

ER was south of Story Road and Clemence Avenue walking to her car when she heard four to five gunshots. At first she thought it may have been fireworks but determined they were most likely gunshots. The gunshots sounded like they came from the north, toward Story Road.

ER and her passenger waited in her car because she thought if there had been a drive-by shooting, a car might "fly" by. After waiting, ER proceeded on Clemence Avenue toward Story Road. While ER was driving north on Clemence Avenue, she saw a car stopped on the opposite side of the street near the business complex. The car was facing south on Clemence Avenue and it was stopped along the curb. ER described the car as a newer white four-door Nissan with tinted windows, but she did not think she could recognize the car if seen again. She could not see anyone in the car.

As ER continued north on Clemence Avenue and passing the white car, she heard four to five more "close" gunshots but did not know where they came from. She described to Sergeant Bagon that she was suspicious of how the white car was parked. Since it was raining, the windows to her car had beads of water making it somewhat difficult to see out. ER said the gunshots could have come from the car, but she was not sure. ER left the area eastbound on Story Road and did not see where the white car went.

ER was asked if the white car she saw could be any other type of car, and she said that it could have possibly been a Honda or Toyota. ER was shown a photo of a 1998 white Toyota Camry and asked if that car was similar to the car she described as a white Nissan. She said it was not, "because it was more of a newer version of what I'd seen."

The interview concluded at about 9:35 a.m.

MJ (age 21)

Sergeant Michael Montonye interviewed MJ in one of the Robbery Unit interview rooms. Her statement was audio recorded in its entirety, and the interview began at 9:03 a.m. on December 25, 2018.

MJ stated she had called 911 to report the original shooting on Clemence Avenue and Story Road. She was with her girlfriend ER and they were walking to their car near Clemence Avenue, south of Story Road, when she heard what she thought were five to six gunshots.

She and ER got into their car and drove north on Clemence Avenue, where they saw a male wearing jean pants and a dark green wind breaker with a hood up that was possibly hurt, crawling away from the area. They also saw a suspicious white car in the same area that was driving slowly. As they passed the white car she heard five to six more shots and observed a

shell casing on the ground/street behind the car.⁶ She called 911 as soon as she and ER turned onto Story Road.

MJ said she would be able to identify the white car, but she could not see anyone inside. MJ was shown a picture of a white, four door, 1998 Toyota Camry, and she said that was not the vehicle she saw associated with the shooting.

MJ was shown a map and marked where she observed everything occurring as she and ER drove through the area toward Story Road.

MJ's interview was concluded at 9:28 a.m.

BR (age 21)

Officer Eduardo Pedreira was sent to Regional Medical Center to interview BR. He photographed her injuries and collected the clothing she had been wearing when she was shot.

Statement to Officer Eduardo Pedreira (Initial statement)

BR said she was with her boyfriend sleeping in front of a dental office in the plaza near Story Road and McLaughlin Road. BR was suddenly woken up by the sounds of three to four gunshots. BR initially thought they were fireworks until she started to feel sharp pain to her left hand. She had been sleeping under a blanket and after hearing the gunshots she did not look to see what was going on.

BR did not see who the suspects were and did not see what vehicle was being driven. She finally moved from her position when she heard her boyfriend (FZ) yell that the vehicle was coming back around. At this point, BR and her boyfriend hid behind a cement wall. Police arrived shortly after.

BR did not know who shot her or why.

Statement to District Attorney Investigator Nate Wandruff (Second statement)

District Attorney Investigator Nate Wandruff took a second statement from BR. Her statement was audio recorded in its entirety, and the interview began around 8:58 a.m. on December 25, 2018. This interview was conducted at the hospital.

BR said she has been dating her boyfriend, FZ, for approximately three years. BR said she lives with her parents, but FZ is homeless and sleeps on the streets. She said she did not want FZ to have to spend Christmas Eve alone, so she decided to spend the night with him outdoors on Christmas Eve. BR said she met with FZ in the evening, they had dinner, and thereafter decided to go to sleep. They picked the doorway of a dental office ("Modern Dental" located at 992 Story Road). They laid down under a blanket at approximately 10:30 p.m.

BR said she and FZ awoke to gunshots, which she initially thought were fireworks. She then felt stinging, but initially did not realize she had been shot. She overheard an unknown voice say something similar to "It's a gun" or "It's a gunshot." She then realized she had been shot. She

⁶ Her description was consistent with shotgun shell casings recovered from the scene.

believed she had heard approximately three gunshots. BR said she did not see the shooter or any cars because she was asleep and her head was covered with a blanket.

After the shooting, BR said FZ asked the nearby group who had done the shooting. She overheard someone, possibly a person she knew as MM, say the suspects were Norteños.⁷ She overheard someone in the area say the suspect vehicle was coming back, so she and FZ hid behind a nearby wall. She never saw the car, but she heard someone say it was possibly a white Honda or something similar. She said the first police car arrived on scene shortly thereafter.

BR was asked if she knew of a reason why she had been shot. She said she did not know, but thought it was because she was in a known “Sureño” area. She said FZ was not involved in gangs, and she was not aware of anyone who would want to do them harm. She said the local homeless people were being “like rowdy,” but she never heard any gang slogans or other yelling prior to the shooting.

BR’s interview was concluded at 9:23 a.m.

FZ (age 24)

Statement to Officer Garlit (Initial statement)

Officer Garlit interviewed FZ at the scene. FZ said he was sleeping next to his girlfriend in front of a business located at 992 Story Road. FZ said he heard six gunshots and by pointing, indicated that the shots came from Clemence Avenue just northeast of his location. FZ covered his girlfriend to prevent her from getting shot. He then heard a car drive southbound on Clemence Avenue toward Owsley Avenue. He described that the car made a U-turn on Clemence Avenue and then stopped just northeast of his location. At this time, he heard another six shots. FZ said that after he heard these shots, he looked toward Clemence Avenue and saw a white older Honda or Toyota Camry four-door car that was occupied by an unknown number of people travelling northbound on Clemence Avenue. FZ could not identify the driver.

Statement to Sergeant Cary and Sergeant Montonye (Second statement)

Sergeant Cary and Sergeant Montonye obtained the second statement from FZ in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the interview began at 10:19 a.m. on December 25, 2018.

FZ said he had been lying down in front of Modern Dental at 992 Story Road with his girlfriend, BR. FZ was lying with his head under a blanket, as was his girlfriend who was sleeping. Nearby were his friends MM and REDACTED, and also present was another male who he had never seen before but who he thought might be friends with REDACTED.⁸

While his head was still under the blanket, FZ heard approximately six loud sounds that he initially thought were firecrackers. A short time later he heard one of his friends say something like “Watch out, he’s coming back.” At this point, FZ realized the sounds were gunshots so he

⁷ BR referred to the person by first name, however, it is believed she was referring to MM.

⁸ This male fled after the shooting and didn’t return.

looked out from under his blanket and saw a white car come to a stop, facing southbound, in the street next to them. FZ attempted to cover BR with his body to protect her when he heard approximately six more shots being fired and then a male voice say, “fuckin’ scraps.” The car then left southbound. He only got a brief look at the car. Approximately one to two minutes later, he saw a car pass by eastbound on Story Road that he thought looked very much like the car he had seen.

About five minutes after the shooting, the first officer arrived on scene. FZ heard his friends try to tell the officer where the suspect vehicle had gone, but he said they didn’t explain things clearly because they were “buzzing.” He said that instead of heading eastbound on Story Road, the officer drove off southbound on Clemence Avenue.

FZ described the suspect vehicle as white and not looking particularly new or old. He said he wasn’t very good at identifying cars. He saw primarily the rear half of the car and didn’t think he would be able to identify it. He also didn’t see a gun or any muzzle flash. He said he could not describe or identify anyone who might have been inside the car.

FZ said that he had consumed three “tall cans” of beer during the day, beginning at about noon, but was sober by the time of the shooting. He didn’t display any objective symptoms of drug or alcohol influence during this interview.

FZ’s interview was concluded at 10:37 a.m.

MC (age 47)

Statement to Officer Chase Brower (Initial statement)

Officer Brower interviewed MC at the scene. MC said he was standing in front of 992 Story Road behind a cement pillar in front of the dental business drinking beer with a group of people. There were other people sleeping on the ground. MC saw a car driving southbound on Clemence Avenue and slowing down, looking like the driver was looking for someone. The vehicle drove past his group and turned back around. As the car was driving by northbound the driver fired approximately five to seven shots toward MC and the people next to him.

The car turned around again to drive southbound on Clemence Avenue. MC said the driver fired again approximately four to five shots toward his group. MC said that he saw the car again driving past them going eastbound on Story Road. MC said that he had pointed out the car to the first arriving officers on scene.

MC said the driver of the car never got out. The car was described as an older white Honda sedan. MC said he could identify the car but could not provide any further details on the driver description except Hispanic male adult.

Statement to Detective Elizabeth Ramirez and Sergeant John Cary (Second statement)

Sergeant Cary and Detective Ramirez interviewed MC in one of the Homicide Unit interview rooms. His statement was video recorded in its entirety, and the interview began around 8:50 a.m. on December 25, 2018. This interview was conducted in Spanish.

MC was in the area of the dental office visiting with his friends for several hours. MC was charging his cell phone while standing around with his friends as it was getting close to 2:00 a.m. MC knew 7-11 would stop selling beer soon, so he made his way over to buy two more 12-packs. When MC returned from the 7-11 he continued to drink with his friends and that was when he first noticed a car slowly creeping down the street. One of MC's friends commented on the car as well. MC could not see the driver. He thought it could have been a vehicle similar to a Honda. MC then heard what he thought were shots, and when he asked what was happening, one of his friends said that someone from the car was shooting at his group. MC was behind a cement pillar. He and his friend took cover while his two other friends were already on the ground sleeping.

MC heard approximately six or seven shots and then the vehicle drove away, but soon returned. As the car returned, MC stayed in the same spot behind the pillar to attempt to avoid getting hit. MC wanted to be able to get a look at the license plate, but another four shots went off so MC was unable to get a look at the plate or the shooter.

MC could not wrap his mind around why someone would shoot at his group. MC did not have any problems with anyone, and he was not a gang member, so he was dumbfounded as to the reasoning behind the shooting. MC thought that maybe the suspects could have been mistaken by shooting at the wrong group. MC said he had never been through anything similar and was simply grateful to be alive.

At the time of the shooting MC was present, MM was awake and present, and FZ and his girlfriend were present, but sleeping. MC also said a man known as "REDACTED" was present but had left prior to police arrival. At the time of the shooting, MC recalled seeing only one silhouette of a single person inside the suspect vehicle. When MC first noticed the car, it was travelling southbound on Clemence Avenue headed toward the intersection of Owsley Avenue. MC believed it was a Honda, but only because MM had mentioned that it was a Honda. MC believed the vehicle was likely a 1998 or 2000 Honda or similar type.

MC said an officer arrived as the suspect vehicle drove off. When the officer arrived, the group told the officer the suspect vehicle had gone southbound on Clemence Avenue, and they pointed to that direction as the officer went over in that direction. MC stated he told the officer, "It's a white car" in English as best as he could while simultaneously pointing toward southbound Clemence Avenue. When the officers went after the car, MC believed he again saw the suspect vehicle travelling toward the area of eastbound Story Road, however no officers were behind it, and because the officers had gone in the initial direction MC had pointed them toward he did not update them of his possible sighting.

MC did not hear anyone say anything during the shooting. However, MC reacted by yelling at the suspect in Spanish, questioning why he was shooting at them. MC was unable to articulate anything distinct about the vehicle, other than the car was white.

MC was shown a photograph of a white four-door 1998 Toyota Camry and asked if he recognized the car. MC responded by stating that the car in the photo was similar and asked if

the car was a Ford. MC was told it was a Toyota, and MC responded by stating the suspect vehicle was something similar to the vehicle shown.

MC stated that during the time of the shooting, he felt fine and not impaired as he was engaging in conversation with his friends. MC estimated that the first officer arrived right away within approximately five minutes. MC saw one officer first and then saw another. MC felt like the response of the officer was rapid and thought that the officer had possibly heard what had happened and that was why he had responded so promptly. MC estimated the entire shooting incident with both waves of shooting lasted approximately three minutes from start to finish.

The interview concluded at 9:22 a.m.

MK (age 54)

Officer Jason Wellman spoke with MK. MK said that he was in his sleeping bag in front of Lee's Sandwiches at 990 Story Road. MK saw a Hispanic male ride by on a bicycle wearing a faded jean jacket, and, shortly after, he heard what he believed to be gunshots. MK described four quick shots and then a single shot. MK said he did not see the shots fired, hear an argument preempting the shots, or any vehicle speeding away.

Dyanne Ramirez (age 27)

Dyann Ramirez said she was standing on the northwest corner of Fruitdale and Di Fiore Drive with her boyfriend. She said she heard the crash, looked over and saw a police car pull behind the white crashed car and another police car pull in front. She said two officers got out of their cars and had their guns. She saw the white car reversing and then going forward and heard the officers yelling "Stop" numerous times. As the white car pulled forward toward the police car in front, she heard 15 shots. She believed both officers fired because she could hear multiple guns being used. Ramirez walked toward the scene on the north sidewalk of Fruitdale Avenue, where she was able to see a female sitting on the curb. Ramirez said she walked close enough to see the white car and saw the "dead man" and saw that the car had bullet holes in it. Ramirez said that she was with her boyfriend, but that he was too intoxicated to see or recall the event.

San Jose Police Officer Burchfiel, Detective Brian Meeker, and District Attorney Investigator Erin Fong attempted to contact Ramirez at her residence to conduct a follow-up interview. Despite knocking and waiting, there was no response.

A San Jose Police Department Crime Analyst located a posting on Instagram including the hashtag "#FuckSJPD" under user account "classicdubz." In the posting was a video clip of the event taken from the approximate position described by Ramirez to Officer Burchfiel as to where she was standing. Additional Instagram posts referred to the account holder as Dyanne.

There are voices on the video occasionally narrating the events. A male voice can be heard saying that, "some fool just crashed." A male and female voice can then be heard discussing, "He's trying to leave." During the video an engine can be heard revving in the distance. A male voice can be heard indicating he could hear the officers yelling at the driver. A female voice can be heard saying that the driver just, "crashed into the cop car." A male voice is then heard saying, "Niggaz trying to leave, brah." The female voice can then be heard telling a male named

“Joseph” that they needed to get closer. Shortly after that statement a number of gunshots can be heard in the distance. After a few more seconds, the video clip ends.

This video clip was preserved by way of recording it that night, along with serving a notice on Instagram requesting preservation. This same video clip was provided by Vazquez’s parents directly to the District Attorney’s Office.

Myant Ramirez

Myant Ramirez said she went outside to see her sister, Dyanne. The police were already present. She saw the white car back into the police car. She also saw the white car pull forward and a few seconds later heard gunshots.

Linda Carmona-Bruno

Statement to Officer Katherine Arevalo (Initial statement)

Officer Arevalo spoke with Carmona-Bruno at the hospital at around 5:00 a.m. Carmona-Bruno was read her rights from a Miranda warning card. The interview was recorded on Officer Arevalo’s BWC.

That night she went to Los Banos with “White Boy” to pick up her friend Jennifer Ramos [Vazquez].⁹ She described Jennifer as 23 years-old and said she lived by San Thomas Expressway with her family. She said they headed back to San Jose to the Santa Theresa Ross store to get gifts for Christmas. Carmona-Bruno said her boyfriend never showed up to pay for the gifts, so they called Mario Lopez because Mario was with her boyfriend. They did not have a ride to Easy 8 where Mario and her boyfriend were, so they called “Elvis,” who let them borrow the white car. She claimed not to know “Elvis’s” last name or where he lived. She described Elvis’s appearance and said he is homeless. “Elvis” met them and gave them the car, and they went to find Carmona-Bruno’s boyfriend at the Easy 8 on First Street and Gish Road.

After going to the Easy 8, she and Vazquez were heading home to Carmona-Bruno boyfriend’s house (near McLaughlin and Carnelian) and that is when they saw the police. Carmona-Bruno said she did not know why Vazquez “went that way” and “they were almost there” when she saw police. She said that Vazquez “knew” she was going to be pulled over. Carmona-Bruno said that she asked Vazquez “Are you going to stop the car?” Carmona-Bruno said that Vazquez did not answer. She speculated that Vazquez knew she was going to jail and wanted to see her mother. Carmona-Bruno said that she told Vazquez that she “trusted her.” She said this occurred prior to the police turning on their overhead lights.

When asked if Vazquez said anything before the crash, Carmona-Bruno said, “She said I can’t go anymore ‘cause they are going to shoot,” but she said that this was said after the crash.

⁹ Jennifer Ramos is the same as Jennifer Vazquez, with Vazquez being the true name and the one used throughout this report.

Carmona-Bruno said, "Then they started shooting." She claimed not to have heard the police say anything. Carmona-Bruno said that she was not in a gang and never has been. She said she does not own a car.

Carmona-Bruno said that Vazquez goes by "Mala." With respect to the methamphetamine pipe found on her person, she said that Vazquez told her to hide the pipe during the chase on the freeway. She said the pipe belonged to Vazquez, and that she had hidden it in her own bra.

Statement to Sergeant Montonye and Detective Ramirez (Second statement)

Sergeant Montonye and Detective Ramirez obtained a second statement from Carmona-Bruno in one of the Homicide Unit interview rooms. Her statement was video recorded in its entirety, and the interview began at 3:18 p.m. on December 25, 2018.

At the outset, Carmona-Bruno said, "The police killed my friend." She claimed that the police did not say they were going to shoot.¹⁰ Prior to questioning, Detective Ramirez read Carmona-Bruno her Miranda rights and Carmona-Bruno said that she understood all the Miranda questions. Carmona-Bruno said, "I'll tell you everything. Ok."

Carmona-Bruno said she was good friends with Jennifer Vazquez and that Vazquez was then living in Los Banos. She said that she sent Vazquez a text message to see what she was doing. She indicated that a guy named Shane Sparks drove Carmona-Bruno to Los Banos sometime between 9:00 and 10:00 p.m. the night before. The plan was to pick up Vazquez to see her mother for Christmas, but Carmona-Bruno arrived too late so the plan was abandoned.

Vazquez joined with Carmona-Bruno and Sparks back to San Jose. On the way, they smoked marijuana. Stopping at the Ross store off Santa Teresa, Sparks went in as the store was getting ready to close for the night. Apparently Sparks left the store without Vazquez and Carmona-Bruno.

After Sparks left them at the Ross, Carmona-Bruno called her friend Mario Lopez to pick them up. Mario brought Carmona-Bruno's boyfriend Alfredo Pineda, and they picked up her and Vazquez. At times in the interview, Carmona-Bruno referred to Vazquez as "Mala," and said that Vazquez would hang out with members of the Sureños gang called "VST."¹¹

Vazquez had left her packed belongings in Sparks' car, so she wanted to go find him to get her stuff back. One of Carmona-Bruno's friends gave her a car to use, which was parked off First Street and Gish Road by the "EZ 8 Motel." This car was the stolen white Toyota Camry that Vazquez was driving when she ran from the police. Carmona-Bruno said the person who gave her the car was named Elvis and that the entire evening Vazquez was the one who drove the stolen car.

¹⁰ This statement is clearly incorrect based upon the body worn camera video.

¹¹ "VST" stands for Varrio Sureño Town and is a Sureño gang in San Jose.

Vazquez and Carmona-Bruno looked for Sparks at the EZ 8 Motel. His car was there, but they did not find him. From the motel, she and Vazquez drove to an area by the train tracks and The Alameda.¹² From there they went to one of Vazquez's friend's house by the Safeway at the corner of Meridian and San Carlos avenues. Carmona-Bruno waited in the car while Vazquez went inside the house. Vazquez was taking a long time to come back out, and when she finally returned to the car, they started driving to Chucky's (Carmona-Bruno's boyfriend). Carmona-Bruno said "Chucky" lived in a motorhome that was parked off McLaughlin near a church.

Carmona-Bruno said Vazquez got lost, and they passed by two police cars. Carmona-Bruno said Vazquez knew she had warrants for her arrest, and Carmona-Bruno thought she also had a warrant for her own arrest. Carmona-Bruno explained that police got behind them when they got off the freeway onto Story Road. She noticed a lot of police in the area, which was normal.

Vazquez realized there were more police cars following them, so she started making sharp turns until she got onto the freeway. Carmona-Bruno said she knew that Vazquez would not stop for the police, meaning if they chased her in the car. Carmona-Bruno said that she told Vazquez to stop the car, but that Vazquez said, "Just chill, I got this."

Carmona-Bruno said Vazquez was not responding to her and she felt Vazquez had a plan to not stop if the police attempted to pull her over. Carmona-Bruno was not encouraging Vazquez to drive away fast, but she was not listening to her. She said she trusted Vazquez. Vazquez "jumped" onto northbound Interstate 280 from 10th Street and then it turned into a pursuit with the police. Vazquez was driving over 100 mph. Carmona-Bruno knew something bad was going to happen.

Carmona-Bruno noted that Vazquez exited the highway at Hamilton Avenue, speculating that Vazquez was heading to her mother's house. According to Carmona-Bruno, Vazquez's mother lived in the area of the crash, and she just wanted to go see her before she went to jail. Carmona-Bruno said Vazquez was driving on the wrong side of the road at over 100 mph. Carmona-Bruno was afraid, but Vazquez would not listen to her. Then she crashed and still would not stop. Carmona-Bruno agreed what Vazquez was doing was not safe and said it would have been fine if she would have just stopped. However, she thought that Vazquez was only thinking of getting away.

Carmona-Bruno said that when Vazquez crashed the car, the police got really close to the car and one of them hit them from the back. Carmona-Bruno said she opened the car door to get out, but Vazquez would not stop, so Carmona-Bruno closed the door and remained inside. Carmona-Bruno claimed that the police never told her to stop and that they were going to shoot, but instead just shot at them. Carmona-Bruno was aware that Vazquez had been shot in the head and was not breathing. She thought Vazquez was dead.

When asked if Vazquez said anything after the crash, Carmona-Bruno said Vazquez said, "No, fuck, they are going to shoot." Carmona-Bruno told her, "I don't think they are going to shoot."

¹² The area described is the same area, Stockton and Lenzen, where another shotgun shooting of a homeless man had occurred about two hours before the shooting at Story Road and Clemence Avenue.

Carmona-Bruno said Vazquez was focused. She didn't think Vazquez would run over the officers, but she acknowledged that Vazquez hit one of the police cars.

Carmona-Bruno opined that the officers should have grabbed her or Tased her instead. Carmona-Bruno did not explain how that might have occurred given the movement of the stolen car and the fact that the windows were rolled up. Carmona-Bruno said she told Vazquez to stop, but that she would not listen, "She was just doing her own thing."

Carmona-Bruno described Sparks and the car he was driving that night. Carmona-Bruno also clarified that the purpose of their evening was so that Vazquez could see her mom in San Jose. That plan was abandoned because Carmona-Bruno did not get to Los Banos until it was too late, so the plan was to visit Vazquez's boyfriend, "Shy Boy." Carmona-Bruno explained that she thought Shy Boy was wanted by the police. Carmona-Bruno explained that after being abandoned by Sparks, she and Vazquez wanted to find Shane so they could get their belongings back from his car. She said the reason they went to the encampment on the tracks near Montgomery and Julian was to find a guy that would have Sparks' cell number.

She said she and Vazquez picked up the Toyota Camry across the street from the Denny's on First and Gish from a guy named "Elvis." She said Elvis gave them the keys and told them they could use the car. She noted, however, that the ignition was "open," meaning a key was not necessary.

Carmona-Bruno agreed Vazquez would not have stopped, and that she would have kept going back and forth until she could get out of the area. She offered that the police probably saw Vazquez as a threat. Carmona-Bruno agreed that the events were preventable. Carmona-Bruno also felt like a victim in this scenario because she did not want to be in a high-speed chase.

Carmona-Bruno denied encouraging the vehicle chase in any way, even though she thought she had a warrant for her arrest.¹³ She denied knowing the car was stolen. She denied knowing that Vazquez was high or using drugs (other than marijuana), although she said that Vazquez may have been using. At one point Carmona-Bruno admitted that the Toyota Camry might have been stolen, explaining that Vazquez rigged the ignition to open it. Carmona-Bruno said that once the pursuit started it crossed her mind that the car might be stolen. Carmona-Bruno said that Vazquez would not have stopped even if the car was "legit."

Carmona-Bruno denied any knowledge of, or involvement in, the shotgun shooting at Story Road and Clemence Avenue. She said there would be no reason for gunshot residue to be on her hands, and that she did not shoot a gun recently. She did not think Vazquez would have gunshot residue on her because they were together the entire night. Carmona-Bruno said no one shot any guns from the Toyota Camry, and there was no one else in the car with them.

The interview concluded at 5:08 p.m.

¹³ Carmona-Bruno did have a warrant for her arrest. She was booked on the warrant and released the next day after posting bail. She failed to appear on her court date and has since been rearrested. She was released again after that arrest on a promise to appear and has a court date pending.

Su Van Dao

On December 24, 2018, at 10:26 a.m., Dao reported his 1998 white Toyota Camry (license: 4UMK742) as having been stolen. Dao said the car was last seen when it was parked at an address on Senter Road in San Jose. He said the car was parked and locked the night before, around 10:00 p.m., and was not in the same place when he went to his car at 9:30 a.m.

Dao said all the keys for the car were accounted for and none was in the car. He said the car had no usual damage except that it was missing the right rear hubcap. He did not give anyone permission to take his car and wanted to press charges.

911 / POLICE RADIO TRAFFIC AND SURVEILLANCE VIDEO

911 Calls

San Jose Police Department received two calls to 911 related to this event.

First 911 Call – MJ

At approximately 2:08 a.m., MJ reported hearing four to five gunshots within a minute or two. She reported hearing an additional four to five shots five minutes before as well. MJ reported the events as having occurred at Story Road and Clemence Avenue. When asked about any vehicles, she reported seeing a white car stopped and a person with a green jacket nearby. She said the person in the green jacket may have been ducking, possibly crawling for cover because he was hit by gunfire. MJ described having seen a shotgun shell in the street and described where she saw it. When asked about the car, she described it as a white Nissan and said the car was last seen heading toward Tully Road on Clemence Avenue. MJ said she did not see the driver and said the windows were tinted.

MJ also described that there was another male associated with the person in the green jacket who was “yelling from the street.” MJ said she believed the white car “had something to do with it.”

The first 911 call lasted about eight minutes.

Second 911 Call – George Brodeur

At approximately 2:26 a.m. a neighbor called to report hearing police sirens and “a volley of shots” approximately 15 minutes earlier. He reported that he heard the police sirens and shots coming from the area of Leigh and Fruitdale. The call lasted approximately two minutes.

Significant Radio Traffic

San Jose Police radio contains large amounts of information, but not everything that officers on the scene might know. The summary below is designed to present significant details with respect to this event that were broadcast over the radio through dispatch. The times noted below are an estimate based upon the time noted in the computer aided dispatch (CAD) log.

- 2:10 AM – Priority dispatch - shots fired.
- 2:10 AM – Occurring two minutes ago, heard at least 10 gunshots, a newer white Nissan heading toward Tully on Clemence Avenue.
- 2:13 AM – Officer Monlux reports he is being “flagged down by a couple of people uh pointing me toward Lucretia and a white car going that way.”
- 2:13 AM – Officer Mercado calls in license plate number 4UMK742.
- 2:13 AM – Dispatch informs patrol that 4UMK742 was a stolen white 1998 Toyota Camry.
- 2:14 AM – Officer Mercado confirms that the car he is following came from the area of the shooting and inquires whether victims were located at the reported shooting scene.
- 2:14 AM – Officer Mercado reports he is westbound on Story Road before Senter Road and that he had not yet activated lights or siren.
- 2:14 AM – Officer Mercado reports a single occupant and reports the driver as male¹⁴ and requests air support and asks dispatch to call CHP.
- 2:15 AM – Dispatch reports that the San Jose Police helicopter (Air 3) was unavailable.
- 2:16 AM – Officer Monlux reports finding eight spent shell casings at the shooting scene.
- 2:17 AM – An officer reports that the previous shooting involved a shotgun, specifically buckshot. Officer Mercado asks if there was a vehicle description associated with that call.
- 2:17 AM – Officer Mercado reports that the white Camry he was following got onto northbound Interstate 280.
- 2:17 AM – Officer Monlux reports that he found two people suffering from gunshot wounds at initial shooting scene with non-life threatening injuries.
- 2:17 AM – Officer Mercado reports that he is in pursuit on N- 280 approaching highway 87 at approximately 60 mph (his vehicle siren can be heard in the transmission).
- 2:18 AM – Officer Mercado reports that the car is on N-280 “exiting” Bird Street at approximately 82 mph with no traffic, solo male occupant (his vehicle siren can be heard in the transmission).
- 2:18 AM – Officer Mercado reports the car is on N-280 getting back onto the freeway at approximately 92 mph with light traffic (his vehicle siren can be heard in the transmission).

¹⁴ At this time, Officer Mercado believed the driver to be male. He reported the driver as a female after the crash.

- 2:18 AM – Officer Mercado reports the car is on N-280 passing Race/Southwest Expressway with no traffic, no pedestrians, normal road conditions besides the rain (his vehicle siren can be heard in the transmission).
- 2:19 AM – Officer Mercado reports the car is exiting Bascom/Leigh at 280 and then gets back onto the freeway at approximately 87 mph, no traffic, no pedestrians, normal road conditions besides the rain (his vehicle siren can be heard in the transmission).
- 2:19 AM – Officer Stimson reports he is about 500 yards behind pursuing police car.
- 2:20 AM – Officer Mercado reports the car is southbound on highway 17 toward Santa Cruz with light traffic, no pedestrians (his vehicle siren can be heard in the transmission).
- 2:20 AM – Officer Mercado reports the car is on S-17 toward Santa Cruz with moderate traffic, no pedestrians, normal road conditions besides the rain (his vehicle siren can be heard in the transmission).
- 2:20 AM – Officer Mercado requests that another officer take over the radio calls for the pursuit.
- 2:21 AM – Officer Koska takes over radio reporting of pursuit and reports the car took the Hamilton Avenue exit off of S-17 and is heading eastbound on Hamilton (his vehicle siren can be heard in the transmission).
- 2:21 AM – Officer Mercado reports the car has two occupants.
- 2:21 AM – Officer Koska reports the car was going wrong way against the traffic on Hamilton (his vehicle siren can be heard in the transmission).
- 2:22 AM – Officer Koska reports the car passed through Bascom, wrong way traffic, and turned the Camry's lights off while still heading eastbound on Hamilton¹⁵ (his vehicle siren can be heard in the transmission).
- 2:22 AM – Officer Koska reports the car passed through Greylands Drive, wrong way traffic, Camry's lights off, still heading eastbound on Hamilton with no traffic (his vehicle siren can be heard in the transmission).
- 2:22 AM – Officer Koska reports the car passed through Leigh, wrong way traffic, and lights back on, with no traffic in the road at approximately 80 mph (his vehicle siren can be heard in the transmission).
- 2:23 AM – Officer Koska reports the car went northbound on Meridian, wrong way traffic, and lights on with no traffic in the road (his vehicle siren can be heard in the transmission).
- 2:23 AM – Officer Koska reports the car passes through Isabel Drive (his vehicle siren can be heard in the transmission).

¹⁵ Officer Koska's transmission cannot be heard, but the dispatcher reports back that she heard 30 mph during this transmission.

- 2:23 AM – Officer Koska reports the car passed through Willow Street at approximately 85 mph (his vehicle siren can be heard in the transmission).
- 2:23 AM – Officer Koska reports the car passes through Curci Drive, wrong way traffic, at approximately 80 mph (his vehicle siren can be heard in the transmission).
- 2:23 AM – Officer Koska reports the car turns westbound on Fruitdale (his vehicle siren can be heard in the transmission).
- 2:23 AM – Officer Koska reports the car passed through Southwest Expressway (his vehicle siren can be heard in the transmission).
- 2:23 AM – Officer Koska reports the car passed through Curci Drive at approximately 80 mph (his vehicle siren can be heard in the transmission).
- 2:23 AM – Officer Koska reports the car “is still driving wrong way traffic” (his vehicle siren can be heard in the transmission).
- 2:24 AM – Officer Koska reports the car turns southbound on Leigh and immediately thereafter reports that the car crashed (his vehicle siren can be heard in the transmission).
- 2:24 AM – Officer Mercado reports the driver is x-ray (meaning female).
- 2:24 AM – Officer Koska reports the driver is “trying to drive, trying to flee.”
- 2:24 AM – Officer Koska reports the driver is “trying to flee the scene” and is stuck in a fence.
- 2:25 AM – Sergeant Jourdenais reports, “shots fired, shots fired.”

Body-Worn Camera¹⁶

The BWC provided an extremely valuable record of the events that immediately preceded the officers’ use of deadly force. The statement of each officer is included in the description of their BWC, however many of those statements can be heard in the background of the other officers’ BWC. Because the officers’ BWCs were worn on their chests, none of the recordings captured any portion of the vehicle chase because the cameras were pointed at the steering wheel of the patrol cars.

Officer Mercado’s BWC recorded the most relevant footage and had the best perspective with respect to the movements of the Camry. That footage will be primarily described in his BWC description, as opposed to duplicative descriptions in the others.

Officer Mercado

Officer Mercado’s BWC begins at 2:17 a.m. during the pursuit. As noted, the video portion shows his steering wheel. The audio portion is largely duplicative of his radio communication

¹⁶ BWC video always shows 30 seconds video before the audio track begins. This is the design of the system. Also, the BWC camera shows time in the Coordinated Universal Time. Converting the time to Pacific Standard Time (PST) requires the subtraction of eight hours. All times listed are in PST.

through dispatch, which is described above. At no point prior to the crash can Officer Mercado be heard saying anything that was not also transmitted over the police radio.

At 2:24:03 Officer Mercado stops his police car and gets out to stand near his hood on the driver's side. When the Camry comes into view, it can be seen parallel with the chain link fence adjacent to the sidewalk on Leigh Avenue but having partially pushed the fence back and upward. The first thing Officer Mercado says is, "Stay in the fucking car!" His gun is drawn and pointed toward the driver. The car is oriented with its driver side to Officer Mercado. He orders the driver to stay in the car again as the car is accelerating in reverse until it hits something. At this point Officer Mercado reports over the radio that the driver is female. After that transmission, the stolen car can be heard revving, and the front right wheel is seen spinning with the car moving forward until the front right wheel hits one of the chain link fence support posts. The front wheel is pointed toward the street as opposed to the right where there is a generally open area in the playground. Officer Mercado is heard saying, "Stay in the fucking car! Do you want to be shot? Keep your hands out!" At this point the car can be heard revving again, but with no movement. Officer Mercado calls for a "40," referring to a less-than-lethal device.¹⁷ No officer can be heard saying that they have one, but at 2:24:31 the car's front wheel can be seen spinning in the forward direction, however there was little forward movement due to a fence post.

At 2:24:33 Officer Mercado again announces, "I am going to shoot you if you don't stop!" Immediately after, the car lurches backward until it strikes something that arrests its movement, and the front wheel then spins in reverse. At 2:24:38, the car accelerates forward with the front wheel spinning in the dirt and the front of the car clearing the fence post in front of it. At 2:24:42 the car's front wheel is spinning (forward direction) in the dirt with little movement of the car. At 2:24:46 the driver side wheel gets on the sidewalk and aggressively reverses until it hits something that stops its movement. At this point, Officer Koska's patrol car comes into view because he had moved it to block the rear path of the Camry as the driver was continuing to pull forward and backward.

At 2:24:51 the Camry begins to move forward, and it appears that the rear of the car is positioned free of the fence and Officer Koska's car. As the Camry accelerates forward, Officer Mercado says, "If she comes at, at me, I am gonna shoot her!" The car strikes the fence support post again, but now with the front driver tire on the sidewalk for traction. At 2:24:53 Officer Mercado states again, "If she comes at me I am gonna shoot her!" while the car has revved and accelerated backward again hitting an unknown object. At 2:24:55 the car accelerates forward again hitting the fence support post with the wheels turned toward the left, which was toward Officer Anaya's police car that had been moved to attempt to block the front of the Camry but created an opening large enough to drive the Camry through. At 2:25:00 the Camry turns the wheels in the opposite direction and aggressively reverses in order to get the front wheels clear of the fence post in front and for traction on the sidewalk. The car continues in reverse until at 2:25:02, the car starts driving forward toward Officer Anaya's police car, which is parked perpendicular to the sidewalk. The Camry accelerates toward Officer Anaya's car and strikes it.

¹⁷ In this scenario, the 40mm would be used to shoot out the windows of the stolen car and then, if needed, to shoot at the driver to stop the threat and effectuate an arrest.

Once the car was hit, the Camry's engine can be heard revving and the front wheel breaks traction until the first shot can be heard at 2:25:04. By 2:25:07 all shots have been fired.

A couple of times during this encounter, a police siren is temporarily blasted to signal to the driver. Throughout the event, police lights can be seen flashing along with headlights illuminating the area, including the several marked police units surrounding the Camry.

Officer Koska

Officer Koska's BWC begins at 2:22:41 during the pursuit. The video portion shows his steering wheel. The audio portion of Officer Koska's BWC begins at 2:23:11, and at no point before getting to the crash can Officer Koska be heard saying anything not transmitted over the police radio. At 2:24:07 Officer Koska parks his patrol car north of Officer Mercado's to the rear of the Camry but not yet on the sidewalk. Officer Koska gets out of his police car with his gun drawn and says, "Get out of the car!" He ran to Officer Mercado's location, which was adjacent to Officer Mercado's police car and orders the driver to "Get out of the car." Officer Koska has his gun drawn, and at 2:24:20 broadcasts on the radio that the driver is trying to drive, trying to flee. Officer Koska at several points in his radio broadcasts uses the term "he" for the driver.

At 2:24:26 Officer Koska announces that he is going to "box him in" and runs back to his patrol car to move it up onto the sidewalk and behind the Camry. Officer Koska's ability to get his bumper up against the Camry is limited because the fence that the Camry is entangled in is in the way. Officer Koska finishes moving his patrol car by 2:24:48 and gets out with his gun drawn again. From behind his door and behind the Camry he again orders the driver to "Get out of the vehicle!" Officer Koska then moves back to Officers Mercado and Stimson's position next to Officer Mercado's police car. Officer Koska orders the occupants to, "Get out of the vehicle" at least two more times, at 2:25:00 yelling, "Hey!" The sounds of gunfire begin at 2:25:04 and end at 2:25:07.¹⁸

Officer Anaya

Officer Anaya's BWC begins at 2:22:31 during the pursuit. The video portion shows his steering wheel. The audio portion of Officer Anaya's BWC begins at 2:23:01, and at no point can Officer Anaya be heard saying anything before 2:24:10 when he places his patrol car south of Officer Mercado's and not quite perpendicular to the sidewalk in front of the Camry. Officer Anaya gets out of his police car with his gun drawn and points it toward the front window of the Camry. He can be heard saying at 2:24:17, "Hey, stop or I'm going to fucking shoot you, we are going to fucking shoot you right now!" Officer Anaya then begins to walk in front of his police car after another officer says something about boxing the car in, and Officer Anaya acknowledges this by saying, "I got it" several times around 2:24:30. He then goes back to his police car and repositions it on the sidewalk, closer to the front of the Camry. Officer Anaya is limited in getting his police car up to the bumper of the Camry in part due to the Camry being underneath the fence it has crashed into. The re-positioning of his patrol car was completed at 2:24:41, and he retakes his position behind the hood of his police car, which is now positioned

¹⁸ It should be noted that the time stamp on Officer Koska's BWC is approximately one second slower than Officer Mercado's.

nearly directly in front of the Camry as it continues to move back and forth in the process of breaking free from the fence.

At 2:24:52 Officer Anaya can be heard calling out, "Watch triangulation," referring to the need to consider the background of other officers should the need to fire their weapons arise. For the remainder of the event, Officer Anaya stands behind his police car with the driver side mirror directly in front of him until at 2:25:03 he begins to back up. The Camry cannot be seen as Officer Anaya backs up, but at 2:25:05 shots can be heard and what appears to be the ramming of Officer Anaya's patrol car based on its movement. Officer Anaya fires numerous shots toward the driver of the Camry, and the last of the shots is heard at 2:25:08.¹⁹

Officer Stimson

Officer Stimson's BWC begins at 2:24:23 during the pursuit. The video portion shows his steering wheel. At 2:24:38, Officer Stimson places his patrol car south of Officer Anaya's and runs to the right of Officer Mercado's position with his firearm drawn as he stands near the driver door of Officer Mercado's patrol car. At 2:24:53 the audio portion of Officer Stimson's BWC begins. Officer Stimson remains in the same general position until shots are fired, except that he moves forward in order to keep Officer Mercado out of his own line of fire.²⁰

Officer Goetz

Officer Goetz's BWC begins at 2:21:23 as he is responding to the scene. Officer Goetz did not participate in the vehicle pursuit. The video portion is pitch black.²¹ The audio portion of Officer Anaya's BWC begins at 2:21:53. At no point can Officer Goetz be heard saying anything up to the time shots are fired ending 2:25:08. The BWC camera shows an image the moment Officer Goetz begins to step out of his patrol car at 2:24:50, showing that he parked his car in the intersection of Fruitdale and Leigh, north of the cluster of police cars around the Camry. Officer Goetz takes a cover position behind his driver door until shots can be heard starting at 2:25:05 and ending at 2:25:08.

Officer White

Officer White's BWC begins at 2:25:17 after all shots have been fired. The audio portion begins thereafter. Officer White's BWC captures nothing of import as it relates to the four officers' use of deadly force.

Sergeant Jourdenais

Sergeant Jourdenais' BWC begins at 2:26:06 after all shots have been fired. The audio portion begins thereafter. The BWC captures nothing of import as it relates to the four officers' use of deadly force. The recording shows the sergeant identifying the officers who fired their weapons and separating them according to standard procedure.

¹⁹Officer Anaya's BWC appears to have the same time stamp as Officer Mercado's.

²⁰It should be noted that the time stamp on Officer Stimson's BWC is approximately one second faster than Officer Mercado's.

²¹ It is possible that Officer Goetz's shoulder harness on his seat belt was resting on top of the camera.

Surveillance Video

There was no surveillance video recovered from the area of Fruitdale and Leigh, however Jennifer Vazquez's family provided a video apparently taken by an unknown citizen. The provided video exclusively shows events that occurred after the fatal shots were fired. The video has been carefully examined and provides no information relevant to that case not caught on the officers' body cameras.

Police recovered surveillance video from the area of the initial shooting at Story Road and Clemence Avenue. San Jose Police Department forensic video analyst Courtney Triggs analyzed the footage. Below is a notated aerial photo of the area captured by this recording and showing the approximate field of view of each of the three cameras. The images provided by the three cameras were grainy and partially obscured by a tree in one of the videos.



Aerial photo of Story Road/Clemence Avenue with approximate areas covered by surveillance footage. The approximate area of the shooting is noted by a red triangle with a 10-71 notation

The video shows the subject vehicle, which is believed to be the car from which the shots were fired, turning right from Story Road onto southbound Clemence Avenue at 2:02:57. The car proceeds rather slowly until it stops in the area of the "10-71" notation in the photo above and remains there for nine seconds. The car pulls away southbound at a similarly slow pace. What appears to be the same car comes back into view from the south, now heading northbound, about one minute later. It almost comes to a complete stop in nearly the same position as before, but this time it speeds away and can be seen turning right onto Story Road at around 2:04:43.

What appears to be the same subject vehicle can be seen again turning right onto Clemence Avenue from Story Road at 2:06:37. Like before, the car proceeds southbound on Clemence Avenue, but quickly. The car stops in essentially the same position as it did before and remains there for 10 seconds. The car speeds away southbound from this spot just as it had done before. Right at this point, the car driven by civilian witness ER can be seen driving past the car in the opposite direction on Clemence Avenue.

The video shows Officer Monlux driving through parking lots between 990 Story Road and 992 Story Road at 02:13:16 and stopping just south of the area of the shooting on Clemence Avenue. This corresponds to Officer Monlux's transmission over radio soon thereafter, that he was "flagged down by a couple of people uh pointing [him] toward Lucretia and a white car going that way."

Examination of the car from the video shows that it appears to be a sedan, white in color. The details of the car from the video will not be further described due to the ongoing investigation into the shooting at Story Road and Clemence Avenue.

CRIME SCENE UNIT EXAMINATION

Fruitdale and Leigh Avenues

On December 25, 2018, Sergeant Alan Lee, Officer William Pender, Officer Wakana Okuma and Officer Kevin Landrie were assigned to the Crime Scene Unit ("CSU") at SJPd with respect to this event. Because CSU personnel work as a team, their actions will be attributed to CSU as opposed to any individual officer. CSU processed the scene at Fruitdale and Leigh and made the following observations.

The early morning hours of December 25, 2018 were cold, wet and windy. Due to the hour, the area was dark but illuminated with city street lights. The scene was appropriately marked off at an appropriate distance and access was controlled and monitored by the log officer.

The intersection of Leigh and Fruitdale Avenues is located in the City of San Jose, County of Santa Clara. The area is predominantly residential. Leigh Avenue is a paved roadway that travels north/south, and Fruitdale Avenue is a paved roadway that runs east/west. The intersection is controlled by a four-way traffic signal. All the streets near the intersection are lined with sidewalks. On the southwest corner of the intersection is a playground for Sherman Oaks Elementary School, on the north side (both east and west) of Fruitdale are residences, and the southwest corner has additional residences. The crash and officer-involved shooting occurred on the southwest corner just south of Fruitdale. In the immediate vicinity were four police cars and a white Toyota Camry license 4UMK742.

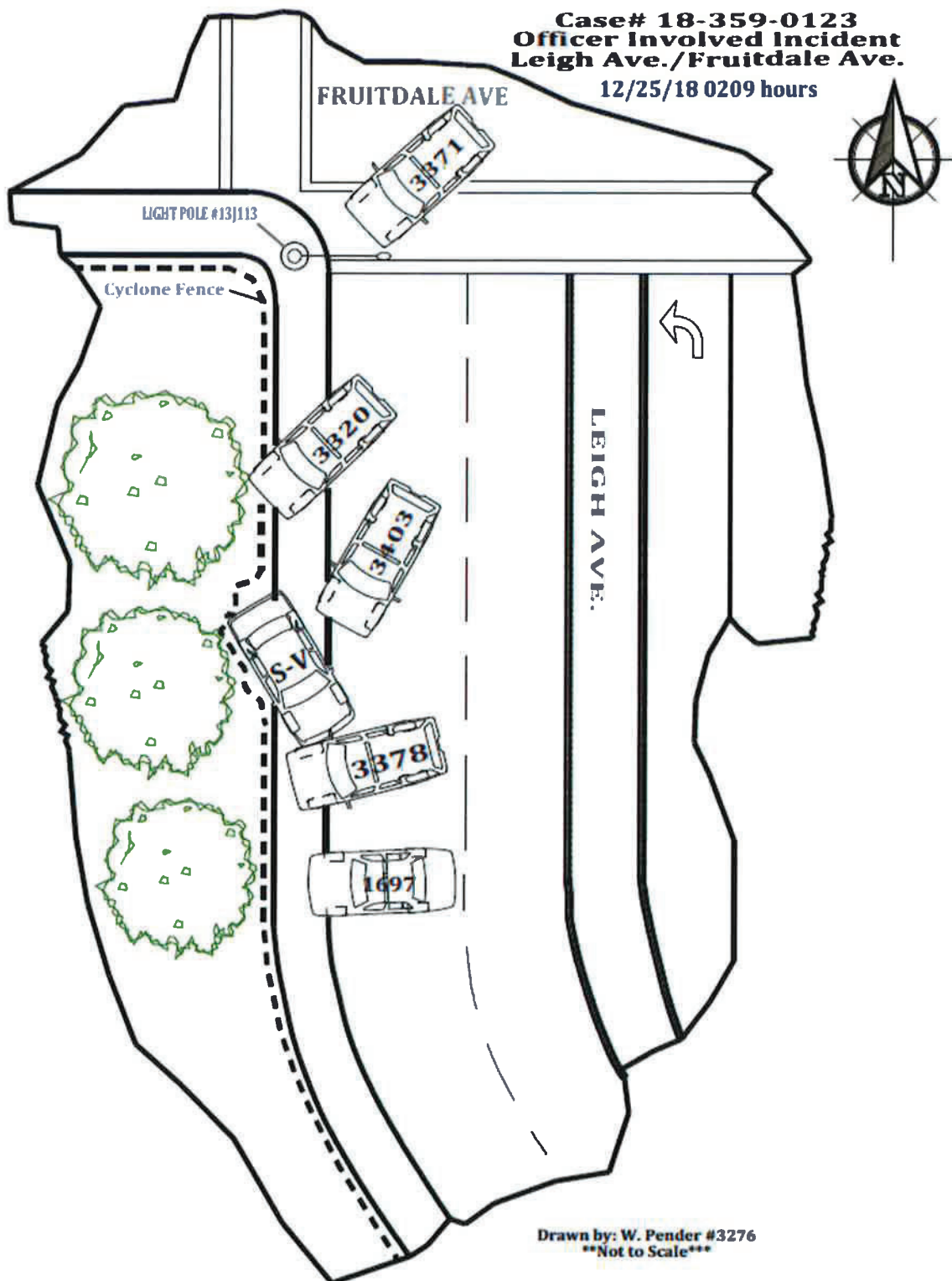


Diagram showing the final position of the Camry (S-V) and the marked patrol cars for Officers Koska (3320), Mercado (3403), Anaya (3378), Stimson (1697), and Goetz (3371)

Numerous spent 9mm shell casings were recovered in the area. The bulk of the shell casings were located in front of, on the driver side, and behind Officer Mercado's patrol car. There were additional shell casings located between Officer Anaya's and Officer Stimson's patrol cars. These areas corresponded with where Officers Mercado, Stimson, Koska and Anaya were standing when they fired. There was a stray 9mm shell casing on the southeast corner of Leigh and Fruitdale. Because of wind as well as movement in the area prior to the scene being closed for crime scene, the location of this single shell casing was considered an anomaly. No officer BWC or witness statement supports a discharge of a firearm near this location.

Metal fragments and spent projectiles were also located at the scene. The metal fragments appeared to be debris from bullet strikes, and the five spent projectiles were located either inside the Camry or behind Officer Koska's police car.

Patrol Car 3320

This standard San Jose Police vehicle is a mid-size Ford Explorer. It was assigned to Officer Koska and was fully equipped with police markings, lights and siren. The doors were closed, windows were up. The left front tire appeared to be low from a possible bullet strike. However, it was later determined that there was no bullet strike, but the tire may have been partially flattened due to striking a curb. There was also right-side hood damage.

Patrol Car 3403

This standard San Jose Police vehicle is a mid-size Ford Explorer. It was assigned to Officer Mercado and was fully equipped with police markings, lights and siren. The driver's door was open, all other doors and windows were closed. There was no apparent damage.

Patrol Car 3378

This standard San Jose Police vehicle is a mid-size Ford Explorer. It was assigned to Officer Anaya and was fully equipped with police markings, lights and siren. All the doors and windows were closed. There was damage to the right front quarter panel, right front door and right front wheel. The Camry made contact with the right front quarter panel, door and wheel. Measurements reflect that the Camry pushed this police SUV approximately three inches.

Seven defects of entry perforations and ricochets were located on top of the hood and in the right front quarter panel. There were two defects in the right front quarter panel that were consistent with exit holes. Based upon the BWC and the direction of the entry and exit defects, it is apparent that some of Officer Anaya's shots went into the hood of his own police car in the direction of the driver area of the Toyota Camry.

Patrol Car 1697

This standard San Jose Police vehicle is Ford Police Interceptor sedan. It was assigned to Officer Simson and was fully equipped with police markings, lights and siren. All the windows and doors were closed and it had no apparent damage.

White Toyota Camry

This was the suspect vehicle. The left rear door was open and all others were closed.²² The vehicle had damage to the front right and front left quarter panels, right rear bumper, right front rim, left rear door and left side view mirror. The front and right front of the vehicle was in contact with the right front of patrol vehicle #3378. The right rear was in contact with the chain link fence and the driver's door was in contact with the speed limit pole on the sidewalk. All the side windows had been shattered, but the rear window was intact. The front windshield had seven defects in it that were consistent with entry bullet holes. These holes were in the center to center right of the windshield when viewed from the outside. These holes lined up with shots being fired from the driver's side of Officer Anaya's police car. The front tires had dirt swirl marks on the outer portion of the tires due to the spinning of the front wheels in the mud from the playground area. There were seven defects consistent with entry bullet holes on the driver's side of the vehicle. All the defects in the Camry were given a unique identifier and photographed. A steering wheel locking device was found on the right rear floorboard.

The Camry collided with a support pole for a chain link fence along the southwest corner of Leigh Avenue/Fruitdale Avenue. Three support poles for the fence and approximately 45 feet of chain link fencing were damaged as part of the collision. The Camry collided with a tree that was near the playground and west of the fence. South of the tree was a bench that had headlight lens debris next to it. There were approximately six feet of acceleration marks on the west sidewalk of Leigh Avenue and approximately 10 feet of tire impressions in the muddy grass area along the fence line. This damage was consistent with, and BWC footage corroborates that, the Camry crashed into the fence and thereafter pulled forward and backward several times while striking a tree. It is also consistent with striking Officer Koska's police car as the Camry was accelerating backward and thereafter striking the passenger side of Officer Anaya's police car when the Camry had its final acceleration going forward.

A loaded magazine for a 9mm Glock pistol was located on the hood of the Camry. In the collection of evidence from the involved officers, Officer Mercado stated that he placed this magazine on the hood of the car when he reloaded his pistol with a full magazine after firing his weapon. The magazine had three unspent 9mm cartridges.

A broken key with a remote was found on the top of the trunk of the Camry. As noted above, several projectiles were recovered inside the Camry.

Jennifer Vazquez's body was still in the Camry in the driver's seat. She was not wearing a seat belt, and she was dressed in a black sweatshirt and blue jeans. She had a medical patch on her left shoulder. Collected from her person by the Coroner Investigator at the scene were credit cards, earrings in a plastic baggie, and a \$10 bill from her left side brassiere, a clear plastic baggie containing a white crystalline substance from her right side brassiere, and two "Bic" lighters were in her lap. An orange piece of plastic was removed from her left front pants pocket.

²² BWC revealed that this door was opened to extract the passenger soon after the shooting. It was left open.

A metal rod, likely an auto burglary tool, was observed underneath Vazquez's sweatshirt positioned on the left side of her torso. It was recovered during the autopsy.



Photograph showing crystalline substance



Photograph showing metal rod

The owner of the white Toyota Camry gave law enforcement consent to search the car. Personal items from the stolen Camry were returned to the owner, but the car remains in police custody.

Officer Equipment

On December 25, 2018, around 5:00 a.m. each of the involved officers had their equipment examined and photographed as part of the routine procedure for officer-involved incidents. Each officer was photographed and their firearms and magazines were collected. The firearms were submitted to the Santa Clara County Crime Laboratory for examination. In order to assist in determining how many shots were fired, the magazines for the firearms were inspected and collected.

Officer Mercado had a Glock 17 Gen 4 semi-automatic pistol which fires a 9mm cartridge. The magazine that Officer Mercado left on top of the Camry had three cartridges remaining. He normally topped off his magazines at capacity, 17 rounds, meaning he fired 14 times. Officer Mercado estimated that he fired approximately six times.²³

Officer Koska had a Glock 17 Gen 4 semi-automatic pistol that fires a 9mm cartridge. He had only one magazine that was not topped off and still in his firearm, which had 14 upsent rounds remaining. Officer Koska said he normally topped off his magazines at capacity, 17 rounds, meaning he fired three times. Officer Stimson estimated that he fired approximately three to four times.

Officer Stimson had a Glock 17 Gen 4 semi-automatic pistol that fires a 9mm cartridge. He had only one magazine that was not topped off and still in his firearm, which had 11 rounds remaining. Officer Stimson said he normally topped off his magazines at capacity, 17 rounds,

²³ That officers would misrecollect the number of shots fired is both a matter of empirical experience and has been examined in research. Klinger, David (1992) *Police Responses to Officer-Involved Shootings*, Washington, D.C.: National Institute of Justice. Klinger's examination of the issue revealed that as the number of shots fired increases, the accuracy of the officer's recollection decreases.

meaning he fired six times.²⁴ Officer Stimson estimated that he fired approximately two to three times.

Officer Anaya had a Glock 17 Gen 4 semi-automatic pistol that fires a 9mm cartridge. He had only one magazine that was not topped off and still in his firearm, which had four upsent rounds remaining. Officer Anaya said he normally topped off his magazines at capacity, 17 rounds, meaning he fired 13 times. Officer Anaya estimated that he fired approximately five to six times.

We are mindful that there were 37 spent shell casings recovered from the scene, but the method used above to determine the number of shots fired by each officer revealed 36 missing cartridges. Assuming all shell casings at the scene were involved in this incident, which is a reasonable assumption, it is likely that one of the officers had topped off his magazine with 18 rounds (as Officer Stimson did), instead of the design capacity of 17.

Miscellaneous

The 1998 white Toyota Camry was towed from the scene and taken to the police evidence garage. It was further examined by CSU officers, who noted and documented the location of the bullet strikes and collected evidence from inside the car. It remains at the police garage.

At approximately 7:15 a.m., Officer John Tomkins collected gunshot residue (GSR) samples from passenger Carmona-Bruno. She had been released from the hospital and brought to the San Jose Police Station when the samples were taken from her hands. The samples were delivered to the San Jose Police Crime Scene Unit.

Officer Nathalie Arevalo collected from Carmona-Bruno a glass smoking pipe with residue, which had been located by San Jose Fire personnel who treated Carmona-Bruno at the scene. A green leafy substance, consistent with marijuana, was also located on Carmona-Bruno.

The four police cars surrounding the white Toyota Camry were eventually moved from the scene. Three of the police cars, units 1697 (Stimson), 3403 (Mercado), and 3320 (Koska) were returned to the police inventory. Unit 3378 (Anaya) was towed to the San Jose Police Warehouse. The involved officers' personal belongings were removed, and arrangements made for their return.

Story Road and Clemence Avenue

Officer Trace Schaller processed the scene at Story Road and Clemence Avenue. He was assisted by Officer Huynh. To assist in the explanation of this scene, the below aerial photo shows 992 Story Road, which has the dental business where the victims were shot. Additionally, 990 Story Road and 1020 Story Road are noted because video surveillance was collected from both locations.

²⁴ One of Officer Stimson's magazines had 18 cartridges in it, however his remaining full magazine had 17.



Aerial view of Story Road and Clemence Avenue

Six 12-gauge shotgun shell casings were found at the scene. Because of high winds, the locations where they were collected is not necessarily where they came to rest upon being ejected from the shotgun that fired them. The shell casings were the same color and brand.

Hundreds of buckshot strikes were located in front of the dental business. The buckshot strikes included a tree, a pillar in front of the dental business, in the window and door frame of the dental business, and in the glass itself to the business. Several pieces of wadding and a piece of plastic that separates the buckshot from the smokeless powder charge in a shotgun shell were located at the scene as well.

Video surveillance was recovered from several businesses. Officer Schaller noted that the time and date stamp in the video collected from 1020 Story Road was accurate.

All evidence collected by Officer Schaller was turned over to CSU Officer Laundrie.

MEDICAL EXAMINER

On December 26, 2018, Dr. Mehdi Koolaee performed an autopsy on the body of Jennifer Vazquez. No personnel from the San Jose Police Department or the District Attorney's Office were present during the autopsy as is standard practice by the Medical Examiner's Office in this

type of investigation. Dr. Koolae determined that the cause of death was multiple gunshot wounds and the manner of death was homicide.²⁵

The autopsy report described six gunshot wounds to Vazquez's head, two to her chest, five to her left arm, and one to her right shoulder. There were three grazing wounds to her back and a partial bullet jacket was recovered from her left flank. Additional injuries of angulated cuts and punctate abrasions of her face, left shoulder and right hand were observed.²⁶

Consistent with the Medical Examiner's standard procedure in homicide investigations, a sample of Vazquez's blood was collected and submitted to the Crime Lab for toxicology testing.

In photo-documenting of Vazquez's body, the following tattoos were observed: "WS," "In Loving Memory," and "Flaco" on her right leg, "Maria" on her right wrist, "Jesus" on her left wrist, "Fernando Valencia" on her neck, and what appears to be an "M" on her face (left cheek).

CRIME LABORATORY TESTING

Investigators delivered the four Glock 17 Gen 4 handguns used in this officer-involved incident to the Santa Clara County Crime Laboratory for examination. Criminalist Matt Riles examined the firearms. Each firearm functioned normally during the test-fire process, and there were no damaged, excessively worn, or modified parts observed.

Analyst Rebecca Thielen examined the white crystalline substance found on Jennifer Vazquez. Ms. Thielen concluded that the submitted evidence contained 2.97 grams, net weight, of methamphetamine.

The examination of Vazquez's blood sample revealed no alcohol, cocaine, opiates or phencyclidine (PCP). Methamphetamine and amphetamine were detected. The sample revealed a concentration of methamphetamine at 0.436 ± 0.083 $\mu\text{g/mL}$ and amphetamine at a concentration of 0.026 ± 0.005 $\mu\text{g/mL}$. The cutoff value for reporting these substances as detected in a sample is 0.02 $\mu\text{g/mL}$. Amphetamine is a metabolite of methamphetamine, so it's expected to see amphetamine when someone has used methamphetamine. Criminalist Mark Burry stated that methamphetamine and amphetamine levels in Vazquez's blood were well above therapeutic levels and were consistent with drug abuse rather than medicinal therapy.

The symptoms associated with methamphetamine use can vary, but they include the following: behavioral/psychological symptoms - alertness, euphoria, excitement, increased motor activity, cyclic motor activity, increased speech activity, increased sex drive, insomnia, agitation, aggression, paranoia, hallucinations, and behavioral disorganization.

²⁵ A Medical Examiner's finding that the manner of death was homicide means the death was "at the hands of another." It does not indicate whether the homicide was lawful or unlawful.

²⁶ It appeared that these injuries were caused by accelerated broken glass.

SEARCH WARRANTS

The San Jose Police Department served one search warrant in this matter, which was signed by the Honorable Socrates Manoukian. The warrant authorized an examination of a Samsung Galaxy cell phone found in the stolen Toyota Camry and believed to be Vazquez's phone.

Once the search warrant was signed, the warrant and the request to download the content was attempted by the Crime Scene Unit. The download was unsuccessful due to the advanced security of the device. The phone is being stored as evidence so that attempts to download the device can be made at a later time if necessary.

JENNIFER VAZQUEZ'S CONTACTS WITH LAW ENFORCEMENT

In an attempt to further understand Vazquez's behavior on December 25, 2018, we examined her previous contacts with law enforcement officers based on prior police reports. The information described below is that portion of the criminal history that we have determined is relevant to this officer-involved investigation.

On February 6, 2013, Vazquez (age 19) was cited for a violation of Penal Code section 484/488 (petty theft). Loss prevention officers observed Vazquez with another female stealing shoes from the Nordstrom Rack at Westgate Mall in San Jose. The officers detained Vazquez and found in her possession the stolen shoes concealed in a handbag. Vazquez admitted the theft, saying she did not have money to pay and needed shoes. Vazquez also admitted the theft to responding police officers after a Miranda admonishment. Vazquez was prosecuted for petty theft, and the case resolved for a petty theft infraction (Penal Code section 490.1).

On April 1, 2013, officers responded to a vandalism call in the area of Poco Way and located Vazquez and another male standing next to a wall with recent Sureño gang graffiti "PW" and "PWL," which stands for Poco Way Locos. As an officer approached, the male had his hand in a garbage can. Later investigation revealed a loaded, and stolen, handgun in the garbage can, as well as blue spray paint. The citizen reporting the graffiti was brought to the scene and after a standard admonishment, identified Vazquez and the male as the persons he had reported. Vazquez was arrested for possession of stolen property, a gun, and vandalism, and the case was investigated as being potentially gang related. The male had a Poco Way tattoo on his shoulder, and Sureño tattoos near his left eye, on his wrists, and on his fingers. He had admitted being a Sureño in the past. The gang report had no further gang information on Vazquez other than her association with the male arrested with her and the gang graffiti. During a Mirandized interview, Vazquez said the male was her boyfriend, and she denied any involvement in the graffiti by either herself or her boyfriend. All charges against Vazquez were dismissed prior to preliminary examination. Her male co-defendant pled to possession of the stolen firearm for the benefit of, at the direction of, and in association with a criminal street gang.

On May 5, 2014, Vazquez fled the San Jose Police Department in a stolen car resulting in a crash. At just after midnight Vazquez was driving a stolen white Honda Accord on Story Road near Capitol Expressway. A San Jose Police officer in a marked unit learned that the car had

been stolen by running the plate while stopped at Story Road at Capitol Expressway. When the light turned green, the officer turned on her forward facing red light and siren, signaling to Vazquez to stop. Vazquez did not yield, initially driving “safely,” however she accelerated to 70 mph and the pursuit was terminated according to San Jose Police pursuit policy in effect at the time for the observed conduct. The officer turned off her lights and siren and did a U-turn consistent with policy. The car Vazquez was driving was located after crashing at Story Road and Clayton. Nearby residents assisted law enforcement in locating Vazquez, who was running on foot from the area. As she was being arrested, Vazquez asked, “How long will I be in jail for being in a stolen ride?” and “Is it a misdemeanor or a felony?” After being advised of her Miranda rights and waiving them, Vazquez admitted that she drove the stolen car and crashed it, but she declined to say where she got the car. The car had been stolen approximately 12 hours earlier. Vazquez was convicted of driving a stolen car, hit and run causing property damage, and evasion of a peace officer in a motor vehicle. On October 7, 2014, she was placed on three years of formal probation with various terms and conditions, including five months in the county jail. Vazquez was brought back to court several times in 2015 and 2016 for violations of probation. She was ultimately sentenced to county jail for 16 months, but she had accrued enough credits to serve little additional time and was released on April 22, 2016.

On September 5, 2014, Vazquez was riding in a car with a male with Sureño gang tattoos that was pulled over for a Vehicle Code violation. She was evaluated and arrested for being under the influence of methamphetamine. When she was arrested, she informed deputies that she had methamphetamine on her person (in her vagina), which was recovered at the jail during a search by female corrections personnel. Vazquez was convicted of being under the influence of a controlled substance and received a concurrent sentence to her probation violation.

On February 16, 2018, Vazquez was cited and released for possession of methamphetamine and drug paraphernalia. Despite more than one court date requiring her attendance, Vazquez never appeared. A bench warrant in the amount of \$15,000 was issued and was active at the time of her death.

On September 13, 2018, Vazquez was cited for possession methamphetamine. Vazquez was contacted after a Sheriff’s deputy noticed her erratic driving, which ended with her pulling into a driveway. When asked, Vazquez said she was lost and was looking for a friend’s house. When asked for the address, Vazquez said she was looking for a dog park. During the encounter it was determined that Vazquez was driving without a license, and a routine records check revealed she had a warrant for her arrest. The warrant was issued for Vazquez’s failure to appear on the citation for her conduct on February 16, 2018, described above. Vazquez was again cited for possession of methamphetamine and again released.²⁷ The events of December 25, 2018, occurred before the citation for the drugs on this occasion, September 13, 2018, was processed.

²⁷ Vazquez was given a new court date of October 15, 2018, at 9:00 a.m. in writing by the Sheriff’s Deputy that cited her. Court records reveal she failed to appear at that time.

RELEVANT LEGAL PRINCIPLES

This review was conducted pursuant to the joint protocol between this office and all Santa Clara County law enforcement agencies, which calls upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. This review does not examine issues such as: compliance with the policies and procedures of any law enforcement agency; ways to improve training or tactics; or possible civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on those matters.

Possible criminal charges against an officer involved in a fatal shooting include murder (Penal Code section 187) and manslaughter (Penal Code section 192). Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder (Penal Code sections 664/187); attempted voluntary manslaughter (Penal Code section 664/192); and assault with a semi-automatic firearm (Penal Code section 245(b)). To convict an officer of these types of charges, it would be necessary to prove beyond a reasonable doubt that no legal justification existed for the officer's actions. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383-384.) Several justifications may apply in any given case, and they are set forth in Penal Code sections 196 and 197. Both justifications are pertinent to this case and are discussed below.

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Penal Code section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Formal written charges are not required for this rule to apply; it is sufficient that an officer have probable cause to believe the suspect committed the offense. (*People v. Kilvington* (1894) 104 Cal. 86, 92.)

When a police officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11.) This requirement that a suspect poses a threat of serious physical harm can be satisfied where there is probable cause to believe the suspect has committed a crime involving the infliction of serious physical harm and deadly force is necessary to prevent escape. (*Id.* at 11-12.)

These holdings from *Garner* were subsequently clarified by the United States Supreme Court in *Graham v. Conner* (1989) 490 U.S. 386, where the Supreme Court explained that an officer's right to use deadly force is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham, supra*, 490 U.S. at 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 in a particular situation." (*Id.*) The "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light

of the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.*)

Courts recognize “under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.”

(*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.)

The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In effect, the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. (*Martinez, supra*, 47 Cal.App.4th at 343-344.)

A homicide is justifiable under Penal Code section 196 when the circumstances reasonably created a fear of death or serious bodily harm to the officer or to another. (*Martinez v. County of Los Angeles* (1996) 47 Cal. App. 4th 334.) This test is satisfied when deadly force is necessary to stop a fleeing felony suspect where the felony is forcible or atrocious. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.) Forcible and atrocious felonies are generally those crimes whose character and manner reasonably create a fear of death or serious bodily harm, such as murder, mayhem, rape and robbery. (*Id.*)

This standard under Penal Code section 196 is consistent with the Supreme Court standard for reasonable force as stated in *Garner, supra*, 471 U.S. at 11-12. California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment, the requirements of Penal Code section 196 are satisfied. (*Martinez v. City of Los Angeles*, 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.)

Whether police actions are reasonable under Penal Code section 196 depends on the facts and circumstances known to the peace officer at the time of the arrest. This rule applies even if subsequent investigation reveals the suspect was not guilty of the suspected felony. (*Kilvington, supra*, 104 Cal. at 93.) Similarly, when police reasonably believe a suspect may be armed, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.)

Courts recognize that criminal suspects who flee or attempt to flee from police in a vehicle present a heightened danger to the public. (See e.g., *Scott v. Harris* (2007) 550 U.S. 372 [holding that flight of unarmed suspect on foot is “not even remotely comparable” to dangerous flight by a motorist]; *Brosseau v. Haugen* (2004) 543 U.S. 194, 200 [holding a police shooting of an unarmed motorist potentially reasonable, where the motorist was “set on avoiding capture through vehicular flight, [and] persons in the immediate area [were] at risk from that flight”].)

“[A] car can be a deadly weapon.” (*Smith v. Freland*, (6th Cir. 1992) 954 F.2d 343, 344.) Moreover, a person attempting to flee police in a vehicle or who is potentially armed with a firearm poses a serious risk even when surrounded by police. (See *id.* at 346, 347; *Reese, supra*, 926 F.2d 494, 501.)

PENAL CODE SECTION 197. California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others. The relevant criminal jury instruction, as written by the Judicial Council of California, is set forth in CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction states that a person acts in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. (CALCRIM 505.) In lawful self-defense or defense of another, a person may use no more force than is reasonably necessary to defend against the danger. (CALCRIM 505.)

A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. Perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) Additionally, “[i]mminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) In *Aris*, the trial court’s clarifying instruction to the jury on the subject was to the point and 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.)

A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. 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. In one case, a robber pointed a gun at his victim and a deputy sheriff was called to the scene of the robbery. Before the robber could get off a shot, the deputy fired his weapon, wounding the robber. The appellate court remarked that “[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot.” (*People v. Reed* (1969) 270 Cal.App.2d 37, 45.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (CALCRIM 505.) In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 348.)

When deciding whether a person's beliefs were reasonable, a jury considers all the circumstances as they were known to and appeared to the person, and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.)

In the related context of cases alleging excessive force by police, the test of reasonableness of an officer's use of deadly force is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner* (1989) 490 U.S. 386, 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody the allowance for the fact that "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." (*Id.* at 396-397.)

ANALYSIS

This report evaluates four different officers' use of deadly force in shooting Jennifer Vazquez and firing upon Linda Carmon-Bruno on December 25, 2018. We have carefully examined the recorded statements, the reports of law enforcement officers who witnessed or investigated the officer-involved shooting, the statements of civilian witnesses, and the video footage, as well as the other materials described herein.

When law enforcement personnel have reason to believe a person has committed a violent crime, they have a sworn duty to protect the public. In this case, the four involved officers believed that the occupants of the white Toyota Camry had just shot two people on Christmas morning. Because shotgun shootings are unusual, and because another homeless man had been shot with a shotgun a couple of hours earlier, it was reasonable for these officers to believe that the occupants of the Toyota Camry would continue to shoot at the unsuspecting public if not arrested. The fact that the car was stolen further bolstered the officers' suspicions, as it is quite common for stolen cars to be used in such crimes in order to deter identification of suspects. The fact that Vazquez refused to pull over when Officer Mercado activated his lights and siren did nothing to dispel the officers' reasonable belief that the occupants of the car had just been involved in multiple attempted murders and needed to be arrested for the safety of the public.

From the time the pursuit was initiated to the time shots were fired, Vazquez had driven on the wrong side of the roadway, with the Camry's lights off, and against traffic signals. Vazquez's speeds on the freeways were nearly 100 mph and her speeds on the surface streets were more than double the speed limit of 35 mph. The entire pursuit lasted for seven minutes and covered about nine miles. Nothing Jennifer Vazquez did on December 25, 2018, dispelled the reasonable belief that she was exactly who the police were looking for, an armed fleeing felon who had just shot two people and may have shot a third two hours earlier.

Even after the crash, Vazquez's behavior revealed to a reasonable observer that she was not going to be arrested – no matter what law enforcement would do – and that she was going to use the car in order to escape with no regard for the safety of others. As several armed and fully uniformed police officers ordered her to stop her car and put her hands up, Vazquez proceeded to slam on the accelerator, repeatedly moving her stolen car back and forth. Instead of turning the

car away from armed police officers who were threatening to shoot, she turned toward them. The officers at the scene each reasonably interpreted this behavior as evidence that Vazquez presented a threat to the arresting officers, and the general public, should she get the car out of the area. This is true whether it would be a risk to the public from a continued dangerous vehicle pursuit or from the occupants shooting more people with a shotgun.

That it turns out that Vazquez was not involved in the attempted murders at Story Road and Clemence Avenue that Christmas morning does not alter our legal analysis. Not a single officer knew, or reasonably could have known at the time deadly force was used, that Jennifer Vazquez happened to be driving around in a stolen car at 2:00 a.m., with methamphetamine and a burglary tool on her person, in the vicinity of a drive-by shooting.²⁸

Vazquez likely believed, based upon her previous vehicle chase that was terminated due to dangerousness and SJPd policy requiring termination in certain investigations, that if she just drove dangerously enough the police pursuit would be terminated. But because the officers were pursuing suspects in a drive-by shooting with reported injuries, that termination policy did not apply. Moreover, the reckless driving reinforced the officers' belief that the driver of the Camry was indeed involved in the attempted murders they were dispatched to investigate.

The San Jose Police Department arrived on an uncertain shooting scene with a witness yelling that the involved white car went south on Clemence Avenue. At that moment, a white car driven by Vazquez was seen turning from Clemence Avenue to Owsley Avenue. Officers followed that car, learned that it had been reported stolen, and pursued it in a dangerous pursuit that ended when the vehicle crashed. In the aftermath of this officer-involved incident, investigators worked tirelessly to interview witnesses, gather physical evidence, and analyze video surveillance to determine that the stolen car Vazquez was driving was not the car involved in the attempted murders at Story Road and Clemence Avenue. This type of exhaustive review could not have been conducted when Vazquez was driving on city streets in excess of 90 mph, in the wrong direction, and with her headlights off.

Determining whether the officers were legally justified in their use of a firearm under the principles of Penal Code section 196 involves an inquiry into whether the officer necessarily killed another while attempting to arrest a person suspected of a felony and the facts known to the officer would persuade someone of reasonable caution that the person killed is going to cause great bodily injury or death.

Determining whether the officers were legally justified in their use of a firearm under the principles of self-defense and defense of others involves a two-part analysis:

- (1) did he subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and
- (2) was his belief in the need to protect himself or others from an apparent, imminent threat of death or great bodily injury objectively reasonable.

²⁸ This is not to say that Vazquez's failure to yield, in violation of Vehicle Code section 2800.2, was not serious. Had she killed one or more people, it is quite probable that she would have been charged with murder.

Either justification is sufficient under the law. Indeed, if criminal charges were brought, the People would have to prove beyond a reasonable doubt that neither justification was valid under the facts of this case.

Because this event involves four different officers, they will be addressed in turn. However, the reasoning for each of the officers substantially overlaps. The investigation to date does not reveal which officer fired the particular projectiles that hit Vazquez. Additionally, the Medical Examiner's report does not specify which of those gunshot wounds were fatal. For the purposes of this report, we are making the assumption that each officer struck Vazquez and that the shot, or shots, contributed to her death.

Officer Marco Mercado

The following facts and circumstances support the conclusion that Officer Mercado believed that Vazquez had just been involved in an attempted murder of two people, and possibly a third, was a continuing threat to the public, and needed to be arrested. The facts further support the need for imminent self-defense or defense of others.

As Officer Mercado pulled in behind Vazquez, he was told over the radio that a witness had pointed toward the very same car as being involved in the shooting. The radio call was that Officer Monlux was being "flagged down by a couple of people uh pointing [him] toward Lucretia and a white car going that way." At that moment a white car appeared in front of Officer Mercado on Owsley Avenue headed toward Lucretia. Officer Mercado knew the shooting was a gang area and that stolen cars were often used in gang shootings. Running the license plate, he learned it was stolen, bolstering his suspicions regarding the car and the occupants. When Vazquez failed to yield, Officer Mercado, as a reasonable person, became more convinced that the car and its occupants were involved in the shotgun shooting of two people at Story Road and Clemence Avenue.

Given the chase, at very high speeds, both on the freeway and city streets, sometimes going the wrong way on the roadway, against the traffic signals and without headlights on a wet, rainy night, it was reasonable for Officer Mercado to believe there was probable cause that the car and its occupants were failing to pull over due to a serious crime.

Vazquez's conduct after the crash did nothing but bolster Officer Mercado's belief, and the belief of a reasonable person, that anyone who looks at four uniformed and armed police officers, some of which who are saying that they will be forced to shoot, is both running from a serious crime and a future threat to the public. That there had been a third person shot with a shotgun only two hours earlier furthered the reasonable belief that the occupants of the stolen Toyota Camry were a serious threat to the public if allowed to escape.

With respect to self-defense and defense of others, it was reasonable for Officer Mercado to believe that the occupants had just shot two people and had little to nothing to lose by driving at the police or firing at the police with the outstanding shotgun. Given Vazquez's driving of the stolen car at Officer Anaya's car and striking it and given that he did not know exactly where Officer Anaya was at that moment except that Officer Anaya was last seen in the direction the

car was headed, it was not objectively unreasonable that Vazquez presented an immediate threat to others.

California law permits any person to use deadly force where there is a reasonable need to protect oneself or another person from an apparent, imminent threat of death or great bodily injury. Here, Officer Mercado actually and reasonably believed that he needed to use deadly force to protect himself and his fellow officers when Vazquez managed to get the stolen car free of the fence and was maneuvering to get the car between his and Officer Anaya's police car. As noted above, and conceded by the passenger in the car, Vazquez was not listening to anyone and was intent on getting away. It was reasonable to think she may injure or kill in that process.

In the evaluation of the question of necessity at the time shots were fired, it must be noted that the courts have employed a standard that is highly deferential and viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The inquiry 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." With these principles in mind, and given the fact that officers reasonably believed Vazquez was directly involved in more than one attempted murder with a shotgun and that she would stop at nothing to get away, perhaps injure or kill others in the process, and commit additional deadly assaults, the necessity of deadly force cannot be successfully second-guessed in this case. In this analysis, we are mindful that Officer Mercado did attempt to secure a less than lethal option, the 40 mm, however none was available to be deployed prior to Vazquez's continued efforts to get away and breaking free of the fence.

In this review of Officer Mercado's use of deadly force, we are aware that this is not the first time that he has used deadly force in the performance of his duties. On August 17, 2016, Officer Mercado used deadly force when shooting at a person who was then driving a stolen car at another police officer. The person was not hit and was not apprehended. The suspect remains outstanding.

We have examined the facts and circumstances of that event. Standing alone, or in combination with the prior use of deadly force, Officer Mercado's conduct on December 25, 2018, is still lawful. In both instances, Officer Mercado was presented with the need to protect others through the use of deadly force. In both instances the evidence established that he believed in the need to stop an imminent threat of great bodily injury or death and that his belief was reasonable under the circumstances.

Under the applicable law, Officer Marco Mercado's homicide was justifiable under Penal Code sections 196 and 197 and therefore lawful. The same holds true for the shooting of passenger Linda Carmona-Bruno.

Officer Mitchell Stimson

Officer Stimson heard much, if not all, of the same radio traffic as Officer Mercado. The information he was relying upon to establish that the occupants of the stolen Toyota Camry had just been identified as being involved in a shotgun shooting of two people is the same

information relied upon by Officer Mercado. As a result, the facts and analysis for Officer Stimson with respect to Penal Code section 196 are materially the same.

With respect to self-defense of himself and other officers at the scene, Officer Stimson articulated that he saw the stolen car drive forward and backward numerous times, eventually breaking free and driving with the wheels toward Officer Anaya and Officer Mercado and himself. Concerned for his life and that of Officer Mercado and Officer Anaya, Officer Stimson thought the driver was willing to do anything necessary to get away, including running over an officer. When Officer Stimson saw the driver take both of her hands off the steering wheel and reach over to her right, he believed the driver was reaching over for her shotgun and was going to shoot them, which led him to fire his weapon.

Under the applicable law, Officer Mitchell Stimson's homicide was justifiable under Penal Code sections 196 and 197 and therefore lawful. The same holds true for the shooting of passenger Linda Carmona-Bruno.

Officer Eliseo Anaya

Officer Anaya also heard much, if not all, of the same radio traffic as Officer Mercado. The information he was relying upon to establish that the occupants of the stolen Toyota Camry had just been identified as being involved in a shotgun shooting of two people is the same information relied upon by Officer Mercado. As a result, the facts and analysis for Officer Anaya with respect to Penal Code section 196 are materially the same.

With respect to defense of himself and other officers at the scene, Officer Anaya articulated that he fired shots at the driver because he believed the car could push his own car into him and injure him. He described that if the driver would have reversed once more, she could have gotten the car out between his car and another police car (Officer Mercado's) and fled the scene.

Under the applicable law, Officer Eliseo Anaya's homicide was justifiable under Penal Code sections 196 and 197 and therefore lawful. The same holds true for the shooting of passenger Linda Carmona-Bruno.

Officer Mark Koska

Officer Koska also heard much of the same radio traffic as Officer Mercado. The information he was relying upon to establish that the occupants of the stolen Toyota Camry had just been identified as being involved in a shotgun shooting of two people is the same information relied upon by Officer Mercado. As a result, the facts and analysis for Officer Koska with respect to Penal Code section 196 are materially the same.

With respect to self-defense and defense of other officers at the scene, Officer Koska described that he saw and heard when the driver "gunned it," causing the Camry to crash into the police car (Officer Anaya's) that was to the front. At this time, he believed that occupants of the stolen car were involved in the shooting of at least two people, were armed with at least one firearm, were refusing to surrender, and were stopping at nothing to avoid being arrested. Officer Koska said

he did not believe he and the other officers had established containment of the stolen car at this point, and Officer Koska said he was afraid for his safety and the safety of his fellow officers.

Under the applicable law, Officer Mark Koska's homicide was justifiable under Penal Code sections 196 and 197 and therefore lawful. The same holds true for the shooting of passenger Linda Carmona-Bruno.

CONCLUSION

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Officers Marco Mercado, Eliseo Anaya, Mark Koska, and Mitchell Stimson was a lawful response to an apparent armed fleeing felon who reasonably appeared to pose a great threat to public safety if not immediately arrested, as well as an apparent and immediate threat of great bodily injury or death to the officers themselves at the time shots were fired. A criminal prosecution of the involved officers would require proof beyond a reasonable doubt that the officers were not justified in using deadly force. In our view, the prosecution would not meet that burden of proof, and the evidence would prove that under the circumstances presented to these officers, they were justified in using deadly force. Accordingly, no criminal liability attaches in this case.

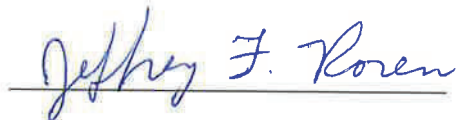
Dated: April 5, 2019

Respectfully submitted by

DAVID R. BOYD
Deputy District Attorney

Approved by

JEFFREY F. ROSEN
District Attorney

A handwritten signature in blue ink, reading "Jeffrey F. Rosen", is written over a horizontal line.