



INTEROFFICE MEMORANDUM

DATE: March 3, 2017

FROM: **Lynette Grulke,**
Deputy District Attorney
Rancho Cucamonga Office

TO: **Terry Brown,**
Supervising Deputy District Attorney
San Bernardino Office

Simon Umscheid,
Chief Deputy District Attorney
Central Division

Mary Ashley,
Assistant District Attorney
Central Division

Michael A. Ramos,
District Attorney

SUBJECT: Officer Involved Shooting (Fatal)

Officer: Officer Dominick Martinez
San Bernardino Police Department

Involved Subject: Roy Manuel Carreon (Deceased)
Date of Birth 06/16/66
San Bernardino, CA

Date of Incident: December 12, 2015
Incident location: *** North Tia Juana Street
San Bernardino, CA
DA STAR #: 2016-00-0063046
Investigating Agency: San Bernardino Police Department
Case Agent: Detective William Flesher
DR #: 2015-0136700

PREAMBLE

This was a fatal officer involved shooting by an officer from San Bernardino Police Department. The shooting was investigated by San Bernardino Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, and audio recordings submitted by the San Bernardino Police Department, DR# 2015-0136700.

PRINCIPAL INVOLVED PARTIES

Roy Manuel Carreon, DOB: 06/16/66, of San Bernardino, California was killed during the incident under review.

Officer Dominick Martinez of the San Bernardino Police Department was the officer involved in the shooting of Roy Carreon.

SCENE

This incident occurred on December 12, 2015, at around 1118 hours. Location of occurrence was *** North Tia Juana Street in the City of San Bernardino, California.

FACTUAL SUMMARY

On December 12, 2015, Witness #1 and his wife Witness #2 left their house on North Tia Juana Street to run errands. Witness #1 was driving his Jeep Cherokee when he was flagged down by Roy Carreon. Witness #1's wife is sisters with Witness #3, Carreon's "common-law" wife. Witness #1 stopped his vehicle to talk to Carreon.

Witness #1's driver side window was rolled down. Carreon approached the driver's side of the vehicle and started yelling at Witness #1. Carreon tried to open the car door. At the same time, Carreon raised his right hand and tried to stab Witness #1 through the open window with a large military-type style knife. Witness #1 saw the knife and was quickly able to step on the accelerator and move the vehicle forward causing Carreon to miss striking Witness #1. Instead, Carreon stabbed the vehicle door near the gas tank.

Witness #1 fled the scene and stopped near the Omnitrans Bus entrance near 5th Street. Witness #1's wife called 911 to report the assault. As Witness #1's wife was on the phone with the 911 operator, Witness #1 saw a police patrol vehicle drive by. Witness #1 honked on his horn to get the officer's attention. Officer Dominick Martinez, from San Bernardino Police Department, heard Witness #1 honking and stopped. Witness #1 told Officer Martinez that Carreon had attempted to stab him with a large knife and showed Officer Martinez the damage to his vehicle. While Officer Martinez spoke to Witness #1, dispatch put out a disturbing the peace with weapons call in the area of 5th Street and North Tia Juana Street. Officer Martinez believed the call could be related to what happened to Witness #1 and responded to the area.

Officer Martinez was in a police uniform and driving a marked black and white San Bernardino Police Department SUV. When Officer Martinez drove northbound he saw Carreon and Witness #3 in the doorway of *** North Tia Juana Street. Carreon appeared to be trying to force his way inside the house while Witness #3 was trying to keep Carreon outside. Officer Martinez got out of his patrol vehicle and approached the residence. Officer Martinez heard children inside the residence screaming. As Officer Martinez neared the fence surrounding the front of the residence, he noticed Carreon had a large military-type knife in Carreon's right hand. Officer Martinez pulled out his service weapon and pointed it at Carreon.

Officer Martinez ordered Carreon several times to drop the knife. Carreon refused to comply with commands. Officer Martinez told Witness #3 and the children inside to run and get out of the house. Officer Martinez repeated his commands for Carreon to drop the knife but Carreon would not comply. Carreon told Officer Martinez, "Shoot me, motherf**ker. Shoot me."

Witness #3 tried to push Carreon out of the doorway. Carreon grabbed Witness #3 and wrapped his arm around Witness #3's shoulders. Carreon still had the knife in his hand and was swinging it around in a slashing motion. Officer Martinez warned Carreon that he would shoot Carreon if he did not drop the knife. Officer Martinez told Witness #3 to run. Witness #3 was able to push off from Carreon and break free from Carreon's grip. At that time, Officer Martinez fired approximately three to four shots at Carreon. Carreon fell inside the house. Witness #3 told Officer Martinez she kicked the knife away from Carreon towards the wall. Officer Martinez told Witness #3 to take her family out of the house through the back door and to sit on the curb. Officers handcuffed Carreon and called for medical aid to respond.

Medical personnel arrived at the scene and started to administer first aid to Carreon. Carreon was subsequently transported to Arrowhead Regional Medical Center where he was pronounced deceased.

WITNESSES AND CORROBORATION

On December 12, 2015, at approximately 3:40 in the afternoon, **Witness #4** was interviewed by Detective Sharon Bonshire. Witness #4 was 13 years old at the time of the incident under review.

Witness #4 lives at **** West 5th Street with his mother, Witness #3, his little sister, and his father, Roy Carreon. Witness #4's grandmother lives in a smaller residence to the rear of their house. On December 12, 2015, Witness #4 was at his grandmother's house with his sister and Witness #3. Witness #4 was playing with his cell phone when he heard his mother yelling at Carreon.

Carreon was banging on the front door of his grandmother's residence. Witness #4's mother was yelling at Carreon to go away. Carreon refused to leave. At one point, Witness #3 opened the front door and continued to argue with Carreon. Witness #3 and Carreon were pushing each other back and forth. Witness #3 was trying to keep Carreon out of the house and Carreon was trying to push his way into the house. During this altercation, Witness #4 focused on keeping his grandmother safe and stopping his grandmother from confronting Carreon.

Witness #4 watched Witness #3 get pushed during the argument. Witness #3 stumbled backward but did not fall down. Shortly after this, Witness #4 saw Carreon remove a knife from his waistband area and start stabbing the exterior of the front door while it was open. Witness #4 thought Carreon was trying to intimidate Witness #3 into complying with his demands. A couple of minutes later, Witness #4 saw a police officer standing at the chain-link fence near the front of his grandmother's house. Witness #4's sister had gone into the kitchen and called 911 while Witness #4 was with his grandmother.

Witness #4 heard the police officer give Carreon commands to come out and to drop the weapon. The police officer had his weapon drawn and pointed at Carreon as he yelled the commands. Carreon yelled back at the police officer, "No need to pull a gun" and "F you." The police officer yelled for Witness #4 and his family to get back and to get into the kitchen. Witness #4 then heard three or four shots being fired.

On December 12, 2015, at approximately 2:30 in the afternoon, **Witness #5** was interviewed by Detective Sharon Bonshire. Witness #5 was 11 years old at the time of the incident under review.

Witness #5 lives at **** West 5th Street with her mother, Witness #3, her brother, Witness #4, and her father, Roy Carreon. Witness #5's grandmother lives in a smaller residence to the rear of their house. Witness #5 said the night before the shooting, Carreon was not acting right. Carreon was falling down everywhere and Witness #5 thought Carreon was acting strange. On December 12, 2015, Witness #5 woke up around 7:30 in the morning. Carreon was pushing Witness #5 and telling her to come here and then telling Witness #5 to leave. Witness #5 was concerned about Carreon's behavior and woke up her mother. Witness #5, her mother, and Witness #4 decided to take some stuff and walk over to her grandmother's house to get away from Carreon.

Later, Witness #5 was looking out her grandmother's bedroom window when she saw her uncle, Witness #1, and her aunt, Witness #2, left their house to do errands. Witness #5 watched as Carreon walked over to her uncle's side of the vehicle. Witness #5 saw Carreon remove a knife from his waistband area with his right hand. Witness #5 saw Carreon try to stab her uncle and then her uncle had to hurry up and drive away. Carreon chased after her uncle's car and stabbed the car with the knife. Witness #5's uncle was able to get away from Carreon by driving down 5th Street.

At this time, Witness #5 watched Carreon walk up towards her grandmother's house and start pounding on the front door. At one point, Witness #3 opened the door to yell at Carreon and to tell Carreon to go home. Witness #5's grandmother also told Carreon to leave. Carreon would not go and yelled back at Witness #5's grandmother. Witness #3 was able to close the door again and lock it but Carreon just kept banging on the door which made the lock start to break. Witness #3 did not want the lock to break so she opened the door slightly. Witness #5 saw that Carreon now had the knife back out in his right hand.

Witness #3 kept trying to close the door but Carreon kept forcing the door open. Carreon was yelling at Witness #3, telling Witness #3 to stop hiding from him and to come home. Carreon pushed the door open, while Witness #3 was holding the door, and began stabbing the door multiple times with the knife. Witness #3 tried to close the door and yelled at her family to call the police. Witness #5, Witness #4, and Witness #5's grandmother were all standing in the living room area offset behind Witness #3 at the time. Witness #5 went to the kitchen area to call 911. As Witness #5 and her grandmother were on the line with operators, Witness #5 heard a police officer arrive on scene.

Carreon was cursing at the officer and yelling, "You're not going to stop me." Witness #5 heard the officer tell Carreon, "Get on the floor and drop your weapon." Witness #5 heard Carreon yelling back at the officer that he was not going to do it. Witness #5 said Carreon's left arm was holding Witness #3 tightly around Witness #3's shoulder area, preventing Witness #3 from escaping. Witness #3 struggled with Carreon to escape his grip but Carreon would just squeeze tightly, keeping Witness #3 next to him.

Witness #5 said after the police officer arrived, Carreon was pointing the knife at the police officer and waving the knife around. Witness #5 was afraid Carreon would stab

Witness #3 and was also afraid that the police officer would shoot Carreon. The officer ordered Carreon to drop the knife. When Carreon refused to drop the knife, Witness #5 said the police officer shot Carreon. Carreon fell backwards and released his grip on Witness #3. After Carreon fell to the ground, Witness #3 kicked the knife away from Carreon. Witness #5 and her family then ran out the back of the residence and sat on the curb as the officer instructed.

On December 12, 2015, at approximately 4:41 in the afternoon, **Witness #6** was interviewed by Detective Sharon Bonshire.

Witness #6 lives at *** North Tia Juana Street. Witness #6 is mother to Witness #3, wife of Roy Carreon, and grandmother to Witness #4 and Witness #5. Witness #6 lives in the rear of the residence while the family lives in the main residence. On December 12, 2015, Witness #6 was at home when Witness #3, Witness #4, and Witness #5 came over to the house. At some point, Carreon came to Witness #6's house and started banging on the front door. Carreon wanted his family to go home with him. Witness #6 said Carreon looked bad and was not in his right mind.

Witness #6 did not initially see a knife and was unable to hear what was being said because Witness #6 is partially deaf. At some point, the family decided to call the police. Later, when Witness #6 got closer to the front door, Witness #6 did see a hunting knife in Carreon's hand. During the incident, Witness #6 saw Carreon pounding on the front door both when it was closed and when it was open. However, Witness #6 never saw Carreon stab anything with the knife. Witness #6 did not remember whether she ever saw Carreon grab Witness #3 while they were in the doorway.

Witness #6 was on the phone with 911 when a police officer showed up at the house. Witness #6 heard the officer say, "Drop it and come out." Witness #6 said this is when the officer shot Carreon after Carreon would not do what he was told. Witness #6 said she was standing in the archway by the kitchen and living room with Witness #4 and Witness #5 when the shots rang out. The officer ordered Witness #6 to move towards the back of the residence and that is when she exited the back of the house with her family.

On December 12, 2015, at approximately 4:50 in the afternoon, **Witness #1** was interviewed by Detective William Flesher.

Witness #1's wife, Witness #2, and Roy Carreon's "common-law" wife Witness #3, are sisters. On December 12, 2015, Carreon lived in the main house at **** North 5th Street. His mother-in-law, Witness #6, lived in a house to the rear of the residence. The address for Witness #6's home was *** North Tia Juana Street. Witness #1 and his wife live across the street from his mother-in-law's house at *** North Tia Juana Street. Witness #1 and Carreon did not get along. Witness #1 said Carreon was not working and was running the streets and "getting high."

On December 12, 2015, Witness #1 said Carreon was having problems with Witness #3. Carreon started following Witness #3 when she took off earlier in the day. Witness #1 said Carreon's speech was mumbling and Carreon was staggering as he walked. Carreon was repeatedly yelling, "I want my son David," as Carreon was walking down the street. Also on that date, Witness #1 said Carreon tried to stab him.

Witness #1 and his wife were leaving their residence en route to Costco when Carreon flagged Witness #1 down. Witness #1 was driving his Jeep Cherokee southbound on Tia Juana Street when he first saw Carreon. Witness #1 said he stopped his vehicle and backed up to where Carreon was standing out in the roadway. Witness #1 rolled down the driver's window and placed his vehicle into drive with his foot on the brake.

Carreon walked up to the vehicle and leaned up against the driver's door. Witness #1 asked Carreon, "What's going on, Roy?" Carreon started yelling at Witness #1, "You got a problem with me." Carreon tried to open the driver's door and at the same time lifted his right arm, exposing a large military-type knife. Witness #1 accelerated his vehicle rapidly as Carreon tried to stab Witness #1 with the knife. Witness #1 heard something metallic strike the driver's side of the vehicle as he fled southbound on Tia Juana Street.

Witness #1 stopped and parked his vehicle near the Omnitrans Bus entrance towards 5th Street. Witness #1 told Witness #2 to call 911 so he could report the assault to the police. Witness #1 got out of his vehicle and saw damage near the door of the gas tank. While Witness #2 was on the phone with 911, Witness #1 saw a police vehicle drive by and started to honk the horn of his vehicle to get the officer's attention. The officer stopped and Witness #1 told the officer what happened. Witness #1 provided the officer a description of Carreon and Carreon's address. Witness #1 also showed the officer the damage to his vehicle. The officer told Witness #1 to stay there and then drove towards 5th Street and turned left on Tia Juana Street.

Witness #1 and Witness #2 stayed at the location for approximately five minutes when Witness #1 heard what sounded like three gunshots. The gunshots sounded like they were coming from the area of 5th Street and Tia Juana Street. Witness #1 then drove over to 5th Street and Tia Juana Street and parked his vehicle on the corner. When Witness #1 got to the location, there was a police officer standing outside of his mother-in-law's house yelling for Carreon or someone inside to come outside. Witness #1 saw Witness #3, his mother-in-law, and Carreon's children walking from the back of his mother-in-law's house to the curb area near the driveway.

On December 12, 2015, at approximately 3:20 in the afternoon, **Witness #3** was interviewed by Detective William Flesher.

Witness #3 and Roy Carreon have four children together. Witness #3 lived at **** West 5th Street with Carreon and their two minor children, Witness #4 and Witness #5

Carreon. Witness #3's mother, Witness #6, lived in a separate residence on the property. The address for Witness #6's residence was *** North Tia Juana Street.

On December 12, 2015, Witness #3 and Carreon started arguing in the morning. Carreon was acting bizarre and not making any sense. At around 8:40 in the morning Carreon fell asleep and Witness #3 went with Witness #4 and Witness #5 to her mother's house to do laundry. Later, at around 10:45 in the morning, Witness #3 looked out of the living room window to her mother's house. Witness #3 saw Carreon standing in the middle of the street arguing with her brother-in-law, Witness #1. Carreon was yelling at Witness #1 and appeared to be very upset. Witness #3 saw the driver's door of Witness #1's vehicle open slightly and then Witness #1 sped off. Witness #3 did not see Carreon with any weapons.

Within a couple of minutes, Witness #3 heard Carreon yelling for her to come outside. Witness #3 told Carreon she was not coming out of the house because she could not trust Carreon. Carreon started banging and kicking the front door. Witness #3 thought Carreon was going to kick the door in so she opened it. Carreon stuck his foot inside to prevent Witness #3 from closing the door again. Witness #3 told Carreon to leave but Carreon refused. Carreon tried to force his way into the house and Witness #3 had to use her body to keep Carreon from forcing the door open.

Carreon pulled out a knife during the argument. Witness #3 tried talking to Carreon but was unable to calm Carreon down. Carreon demanded Witness #3 come outside but Witness #3 refused. Carreon raised his right hand and started stabbing the front door with a knife. Carreon reached inside and pushed Witness #3 in the chest. Carreon forced his body further inside the house.

At this time, a police officer arrived at the house and ordered Carreon to drop the knife. Carreon refused to comply with the officer's commands. Carreon grabbed Witness #3's shoulder and pulled her close to him. Carreon still had the knife in his right hand but it was concealed behind Carreon's leg. The officer ordered Carreon to drop the knife and come outside but Carreon refused and yelled, "No, f**k you. No, no." The officer told Witness #3 and the children to move away.

Witness #3 pushed Carreon and turned around. Witness #3 started walking towards the kitchen when she heard approximately three to four gunshots. When Witness #3 turned back around, she saw Carreon grab his side and fall to the ground. The knife fell on the ground approximately one foot away from Carreon. Witness #3 kicked the knife away so Carreon would not grab the knife and get shot again. Witness #3 grabbed her kids and mom and exited the back door and walked around the side of the house to the front. They sat on the curb as the officer had instructed them.

Witness #3 discussed Carreon's drug use. Witness #3 indicated Carreon had used methamphetamine on and off for twenty-five years. Witness #3 said Carreon had only started using PCP just prior to the beginning of 2015. Witness #3 said Carreon stopped using PCP when he got a job in January 2015 but when Carreon lost his job in July or

August 2015, things changed. Witness #3 said Carreon started using drugs again two weeks prior to the shooting. Witness #3 said she knew Carreon was using PCP again when she smelled the PCP a couple days prior to the shooting. Since then, Witness #3 said Carreon has not been acting right. Witness #3 said Carreon was abusive towards her only when he was using drugs or intoxicated.

On December 12, 2015, at approximately 5:37 in the evening, **Officer Dominick Martinez** was interviewed by Detective William Flesher.

On December 12, 2015, Officer Martinez, from San Bernardino Police Department, was assigned to dayshift patrol. Officer Martinez was wearing a San Bernardino Police Department uniform and driving a marked patrol vehicle on that date. On December 12, 2015, Officer Martinez was in the area of 5th Street and D Street when he was dispatched to a trespassing call. While en route to the trespassing call, Officer Martinez heard honking in the area of 5th Street and Medical Center Drive. Officer Martinez saw a man near a grey SUV waving his hands in the air.

Officer Martinez made a u-turn and contacted the subject, later identified as Witness #1. Witness #1 was frantic and yelling that he was just attacked by a guy with a knife. Witness #1 told Officer Martinez he knew the guy who attacked him and that the guy, later identified as Roy Carreon, was down the street. Witness #1 told Officer Martinez that Carreon tried to stab him. Witness #1 said that Carreon would have killed him but for the fact Witness #1 was able to get back into his car and drive off. Witness #1 pointed towards his car and told Officer Martinez that Carreon had stabbed the car. Officer Martinez saw a gash and then a scratch consistent with the vehicle being stabbed and Witness #1 driving off. Witness #1 told Officer Martinez he wanted Carreon arrested.

While Officer Martinez was speaking with Witness #1, Officer Martinez heard radio traffic and looked at the computer screen in his patrol vehicle. Officer Martinez noticed there was a call regarding a disturbing the peace involving weapons in the area of 5th Street and Tia Juana Street. The radio traffic indicated a Hispanic male was at the door with a knife stabbing it and the Hispanic male was trying to get inside and take a kid. Officer Martinez confirmed with Witness #1 that Carreon had gone down the street with the knife and then advised dispatch that he would respond to the call.

Officer Martinez drove to the location but initially was unable to locate any suspect. Dispatch updated Officer Martinez that they had an open line. It sounded like the phone was inside the house and dispatch could hear people screaming and someone was trying to take a kid. Officer Martinez drove again on Tia Juana Street when he saw Carreon and a female in the doorway in *** North Tia Juana Street. Officer Martinez could see Carreon had a big sheath for a knife on his right hip. Officer Martinez did not see a knife in the sheath. Carreon appeared to be trying to force his way inside the house.

Officer Martinez got out of his patrol car and walked towards the house. Officer Martinez yelled at Carreon, "Lay down. Show me your hands. Come here, come here. Talk to me." Carreon yells something and looks at Officer Martinez. Officer Martinez heard kids inside the house screaming and could see the kids running around the living room. As Officer Martinez neared the fence in front of the residence, Officer Martinez saw a big knife in Carreon's right hand. Officer Martinez recognized the knife to be a KA-BAR military-type knife. Officer Martinez pulled out his gun and pointed it at Carreon when he saw the knife in Carreon's hand. Carreon was moving the knife around in a slashing motion.

Officer Martinez ordered Carreon to put the knife down. Officer Martinez yelled, "Hey, put the knife down. Put the knife down." Carreon responded, "F**k you. F**k you. Shoot me. Shoot me, motherf**ker." Officer Martinez continued to order Carreon to put the knife down but Carreon would not comply with commands. Officer Martinez could see the female, later identified as Witness #3, trying to push Carreon and push the front door at the same time. Witness #3 was yelling at Carreon, "Just get out, get out. Get out of the house." Carreon was holding on to the front door, not allowing it to close.

Officer Martinez continued to order Carreon to put the knife down. Officer Martinez yelled at Carreon, "Put the f**kin' knife down now. Put it down. I'm gonna shoot you. Put it down." Carreon would not drop the knife and told Officer Martinez, "Shoot me, motherf**ker, shoot me." Officer Martinez told Witness #3 to run and get out of the house. Officer Martinez told Witness #3 to get the kids out of the house. Officer Martinez believed Carreon had tried to stab Witness #1 earlier and was afraid that if Carreon got into the house Carreon would try to stab those people as well.

Witness #3 tried to push Carreon again. Carreon then wrapped his arm around Witness #3's shoulder while he still had the knife in his hand. Carreon was swinging the knife in a slashing motion. Officer Martinez believed Carreon was going to stab Witness #3. Officer Martinez told Carreon, "I'm gonna f**kin' shoot you. Drop the f**kin' knife. Drop the knife." Officer Martinez told Witness #3 to run. Witness #3 pushed off from Carreon and was able to break free from Carreon's grip. At that time, Officer Martinez fired approximately three to four rounds at Carreon. Carreon fell to the ground.

Officer Martinez yelled out "shots fired" and "one down" after the shooting. Officer Martinez told Witness #3 to get the kids out of the house. Officer Martinez walked up to the doorway and yelled at Carreon, "Show me your hands." Witness #3 told Officer Martinez that she grabbed the knife and threw it away from Carreon. Officer Martinez kept his gun pointed at Carreon and told Witness #3 to get her kids and run out the back door of the house. Witness #3 and her family left the house and Officer Martinez saw them go around the outside of the house. Officer Martinez then saw Witness #1 walking up towards the house. Witness #1 told Officer Martinez that was his family and asked, "did they shoot him?" Officer Martinez told Witness #1 to keep his family outside.

Additional officers arrived on scene. Officer Martinez told the officers to clear the residence. Officer Martinez gave a brief public safety statement to the officers. Officer

Martinez and his sergeant then handcuffed Carreon. After the residence was cleared and Carreon was secured, medical personnel came into the house and started administering first aid to Carreon. Carreon was subsequently taken by ambulance to the hospital.

Surveillance Video

Surveillance video was obtained from the residence at 532 North Tia Juana Street. The video is from the front eaves of the residence. Parts of the incident under review were captured on the video recording. The shooting was not captured on the video.

At 11:12:49, a male subject in dark clothing is seen walking towards the residence at *** North Tia Juana Street. At 11:14:14 am, the same male subject in dark clothing can be seen kicking the front door at *** North Tia Juana Street several times. The male subject can be seen in the doorway of the residence for approximately the next six minutes. However, it is unclear on the surveillance footage what exactly the male subject is doing. At 11:22:19, a marked San Bernardino Police Department vehicle with its overhead emergency lights activated is seen traveling slowly northbound on North Tia Juana Street and stops in the middle of the street directly in front of *** North Tia Juana Street. At 11:22:35, Officer Dominick Martinez can be seen exiting the patrol vehicle. Officer Martinez goes around the rear of the patrol vehicle and moves towards the fence in front of *** North Tia Juana Street with his gun drawn. At 11:22:55, Officer Martinez can be seen moving northbound on the sidewalk to the front of *** North Tia Juana Street. At 11:23:14, Officer Martinez can be seen moving towards the front door of *** North Tia Juana Street. At 11:25:27, multiple subjects can be seen coming from the rear of the residence and sitting on the curb in front of *** North Tia Juana Street. At 11:25:55, a second San Bernardino Police Department vehicle is seen arriving at the scene. At 11:35:40, an ambulance can be seen arriving at the location.

Weapon

KA-BAR military-type knife with a brown handle. The blade of the knife was approximately six inches in length.

Death

Roy Carreon was pronounced deceased at Arrowhead Regional Medical Center by Dr. Todd Culhane.

Postmortem Examinations

Dr. Glenn Holt, Forensic Pathologist for San Bernardino County, conducted the autopsy of Roy Carreon on December 15, 2015. Dr. Holt noted three perforating and one penetrating gunshot wound to Carreon's body. There was a perforating gunshot wound of Carreon's right upper arm. There was a perforating gunshot wound of Carreon's upper left arm. There was a perforating gunshot wound of Carreon's left thigh. There was a penetrating gunshot wound of Carreon's right upper quadrant of the abdomen. Dr. Holt determined the cause of death was multiple gunshot wounds and death was within minutes.

Toxicology

Blood samples were collected from Carreon during the autopsy. Toxicology results for the left femoral blood sample: 0.02 mg/L methamphetamine, and trace amount of amphetamine, less than 0.01 mg/L, detected. The drugs of abuse screen of the heart blood sample were presumptive positive for amphetamines, cannabinoids, and phencyclidine (PCP).

APPLICABLE LEGAL STANDARDS

Laws of Arrest

California Penal Code section 834a

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

California Penal Code section 835

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

California Penal Code section 835a

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

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

Laws of Self-Defense

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (People v. Collins (1961) 189 CA 2d 575, 1 Cal Repr. 504).

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the defendant act out of that fear (Penal Code Sec. 19; People v. Clark (1982) 130 CA 3d 371, 277, 181 Cal. Repr. 682

California Penal Code section 197 (Summarized in pertinent part)

Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.

CAL CRIM 3470 (REVISED JUNE 2007) RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER

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

1. The person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully;

2. The person reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The person used no more force than was reasonably necessary to defend against that danger.

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

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

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

USE OF DEADLY FORCE BY A PEACE OFFICER

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

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

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. 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. **Graham, 490 U.S. at 396**, . The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397.

The US Supreme Court in **Graham** set forth factors that should be considered in determining reasonableness: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3)

whether he is actively resisting arrest or attempting to evade arrest by flight. The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (See also *Billington v. Smith*, (2002 9th Cir) 292 F.3d 1177, 1184.) The most important of these factors is the threat posed by the suspect. *Smith v. City of Hemet*, (9th Cir. 2005) 394 F.3d 689.

Thus, under *Graham*, the high court advised we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. "We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." (*Smith v. Freland* (6th Cir.1992) 954 F.2d 343, 347.

Reasonableness: The Two Prongs

Section 197(3) requires that one who employs lethal force have a "reasonable ground to apprehend" great bodily injury. Further, section 198 requires that such fear be "sufficient to excite the fears of a reasonable man," clearly an objective standard. In shorthand, perfect self-defense requires both subjective honesty and objective reasonableness.

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

Justification does not depend upon the existence of actual anger but rather depends on appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and that the defendant act out of that fear. [Citation.] 'He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures.' *People v. Clark* (1982) 130 Cal.App.3d 371, 377,181 Cal.Rptr. 682.

While the test, as mandated by section 198, is objective, "reasonableness is determined from the point of view of a reasonable person in the defendant's position. "[A] defendant is entitled to have a jury take into consideration all the elements in the case which might be expected to operate on his mind" What is reasonable under the circumstances is judged "from the point of view of a reasonable person in the position of defendant." "Reasonableness is judged by how the situation appeared to the *defendant*, not the victim."

Imminence of Perceived Danger

“Imminence is a critical component of both prongs of self-defense.” Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. Reasonableness and immediacy of threat are intertwined. Self-defense “is based on the reasonable appearance of imminent peril of death of, or serious bodily injury to the party assailed . . .”

In *Aris*, 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.” [*People v. In re Christian S. (1994) 7 Cal. 4th 768,783*]

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

Retreat and Avoidance

Under California law one who is faced with an assault that conveys death or great bodily injury may stand his ground and employ lethal force in self-defense. There is no duty to retreat “even though the assailed person might more easily have gained safety by flight or by withdrawing from the scene.” Indeed, in California the retreat rule has been expanded to encompass a reasonably perceived necessity to pursue an assailant to secure oneself from danger. [*See People v. Holt (1944) 25 Cal.2d 59, 63 and People v. Collins (1961) 189 Cal. App.2d 575, 588*]

Nature and Level of Force

“[A]ny right of self-defense is limited to the use of such force as is reasonable under the circumstances.” [*See People v. Gleghorn (1987) 193 Cal.App.3d 196, 200, People v. Minifie (1996) 13 Cal.4th 1055, 1065, People v. Moody (1943) 62 Cal.App.2d 476, 482 and People v. Moody (1943) 62 Cal.App.2d 18,22*]

Case law does not impose a duty to use less lethal options. “Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” [*People v. Collins (1961) 189 Cal. App.2d 575, 589*]

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

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his

mission. Instead, he would need to ascertain the *least* intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.” [Scott v. Henrich (1994) 39 F.3d 912, 915]

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

ANALYSIS

In this case, Officer Martinez was driving in the area of 5th Street and Medical Center Drive when he heard a horn honking. Officer Martinez saw Witness #1 was trying to flag down Officer Martinez. Officer Martinez made a u-turn and drove towards Witness #1's Jeep Cherokee. Witness #1 told Officer Martinez that a male subject, later identified as Roy Carreon, had just attacked him with a knife. Witness #1 told Officer Martinez that Carreon tried to stab him.

Witness #1 told Officer Martinez he was driving with his wife when Carreon flagged him down as if he wanted to talk to Witness #1. Witness #1 stopped and rolled down his window. Carreon was agitated and armed with a large knife. Witness #1 told Officer Martinez Carreon attempted to stab Witness #1 through the open window but Witness #1 saw the knife and was able to accelerate the vehicle forward and avoided being stabbed. Carreon's knife stabbed the side of Witness #1's vehicle causing exterior damage which Witness #1 showed to Officer Martinez. Witness #1 told Officer Martinez that Carreon was east of their location. While Officer Martinez was speaking with Witness #1, a disturbing the peace with weapons call in the area of 5th Street and Tia Juana Street came in. Officer Martinez believed the call could be related to what happened to Witness #1 and responded to the area.

Officer Martinez was in police uniform and driving a marked, black and white police vehicle. As Officer Martinez drove northbound, he observed Carreon attempting to force his way into the residence at *** North Tia Juana Street. Carreon and a female, later identified as Witness #3, were in the doorway arguing. Officer Martinez could hear Witness #3 yelling for Carreon to get out and leave. Officer Martinez could hear kids inside the house screaming.

As Officer Martinez walked up towards the fence surrounding the front of the house, Officer Martinez could see Carreon had a large military-type knife in his right hand.

Officer Martinez could see Carreon is moving the knife around in a slashing motion. Officer Martinez immediately pulled out his service weapon and pointed it at Carreon. Officer Martinez started yelling commands for Carreon to drop the knife. Carreon refused to comply with the commands and told Officer Martinez, "F**k you. F**k you. Shoot me. Shoot me, motherf**ker."

Officer Martinez continued yelling commands, telling Carreon, "Put the f**kin' knife down now. Put it down. I'm gonna shoot you. Put it down." Carreon refused to comply with commands and again yelled, "Shoot me, motherf**ker, shoot me." Believing that Carreon had tried to stab Witness #1 earlier, Officer Martinez was afraid that Carreon would force his way inside the house and try to stab or kill the people inside. Officer Martinez yelled at Witness #3 and the kids to run and get out of the house.

Witness #3 tried to push Carreon out of the doorway. Carreon then grabbed Witness #3 and wrapped his arm around her shoulders. Officer Martinez saw Carreon still had the knife in his hand was swinging it around in a slashing motion. Officer Martinez believed Carreon was going to kill Witness #3. Officer Martinez ordered Carreon to drop the knife and warned Carreon that he was going to shoot Carreon. Carreon, however, would not drop the knife. Officer Martinez told Witness #3 to run and get away from Carreon. Finally, Witness #3 was able to push off and break free from Carreon's grip. At that time, Officer Martinez believed that was his best opportunity to stop Carreon from injuring or killing anyone else and fired approximately three to four shots at Carreon.

Officer Martinez had an honest and objectively reasonable belief that the use of lethal force was necessary to prevent Carreon from seriously injuring or killing Witness #3. Officer Martinez feared Carreon posed an imminent threat to the physical safety of both Witness #3 and her family. When Officer Martinez first approached the house, Carreon was extremely agitated, armed with a large military-type knife and trying to force his way inside of the house. Officer Martinez also believed Carreon was involved in the earlier attempted stabbing of Witness #1. Officer Martinez repeatedly ordered Carreon to drop his knife and warned Carreon that he would shoot him. Carreon was completely defiant in his refusal to drop the knife, challenging Officer Martinez to go ahead and shoot him. Given these circumstances, Officer Martinez reached the reasonable and at the same time frightening conclusion that Carreon had every intention of stabbing or killing Witness #3 and her family if given the chance to get inside of the house. Thus, Officer Martinez's decision to use deadly force was justified.

CONCLUSION

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

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