



INTEROFFICE MEMORANDUM

DATE: September 21, 2017

FROM: **Michael Selyem,**
Deputy District Attorney
San Bernardino 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 (Non-Fatal)

Officer: Special Agent # 1
Special Agent # 2
Bureau of Alcohol Tobacco & Firearms
(names withheld due to safety concerns)

Involved Subject: Pedro Acereto

**Date of Birth 07/17/1970
San Bernardino, CA**

Date of Incident: July 12, 2017
Incident location: 295 Carousel Mall San Bernardino, CA 92410
DA STAR #: 2017-00-0042275
Investigating Agency: San Bernardino Police Department
Case Agent: Detective Nick Oldendorf
DR #: 2017-79995

PREAMBLE

This was a non-fatal, officer involved shooting by two Special Agents with the bureau of Alcohol, Tobacco, Firearms & Explosives. The shooting was investigated by the San Bernardino Police Department (SBPD). This factual summary is based on a thorough review of all the investigative reports, photographs, video recordings, and audio recordings submitted by the SBPD, DR# 2017-79995.

PRINCIPAL INVOLVED PARTIES

Pedro Acereto, DOB: 07/17/1970, of San Bernardino, California was shot during the incident under review and subsequently arrested.

Raymond “Dreamer” Mendoza, DOB 07/25/1988, of San Bernardino, California, was arrested at the scene.

Jose “Lil Man” Cerbellon, DOB 07/04/1991, of San Bernardino, California, was arrested at the scene.

Special Agents Special Agent #1 and Special Agent #2 of the Bureau of Alcohol Tobacco & Firearms were the officers involved in the shooting of Pedro Acereto.

SCENE

This incident occurred on July 12, 2017, at around 1908 hours. Location of occurrence was 295 Carousel Mall in the City of San Bernardino, California.

BACKGROUND INFORMATION

Pedro Acereto has a prior criminal history that includes convictions for the offenses listed below:

1994, 488 of the Penal Code, Petty Theft. San Bernardino County Case number MSB08597, a misdemeanor.

1996, 11377(a) of the Health & Safety Code, Possession of a Controlled Substance. San Bernardino County Case number MSB21315, a misdemeanor.

2002, 11377(a) of the Health & Safety Code, Possession of a Controlled Substance. San Bernardino County Case number TSB110181, a misdemeanor.

Note: Acereto told police when he was interviewed that he was on probation for possession of more than a pound of methamphetamine. In 2016, he was a passenger in a car where 5 pounds of methamphetamine was recovered. The case is pending and it is 16CR-041776.

Raymond Mendoza has a prior criminal history that includes convictions for the following offenses listed below:

2006, 664/211 of the Penal Code, Attempted Robbery. Riverside County Juvenile case number RIJ112482, a “true finding.”

2009, 187 of the Penal Code, 2nd Degree Murder with a Firearm. Riverside County case number RIF128477

2009, 11351 of the Health & Safety Code, Possession of a Controlled Substance for Sale. Riverside County case number RIF134063.

Jose Cerbellon has a prior criminal history that includes convictions for the following offense listed below:

2011, 11377(a) of the Health & Safety Code, Possession of a Controlled Substance. San Bernardino case number MSB1103063, a misdemeanor.

2014, 245(a)(4) of the Penal Code, Assault with Great Bodily Injury Likely. San Bernardino County case number FSB1400331.

2014, 496d(A) of the Penal Code, Receiving Stolen Property, Motor Vehicle. San Bernardino County case number FSB1404852.

2016, 29800 of the Penal Code, Felon in Possession of a Firearm. San Bernardino County case number 16CR-040764

2016, 10851(a) of the Vehicle Code, Taking or Driving a stolen Motor Vehicle. San Bernardino County case number FSB1404527.

FACTUAL SUMMARY

On July 12, 2017, a shooting occurred during an undercover detail operation with the joint multi-agency task force near the closed Montgomery Ward's Automotive Center, located at 707 West 3rd Street in San Bernardino. The shooting occurred between federal agents with the Department of Alcohol, Tobacco, Firearms and Explosives (ATFE) and three suspects during an undercover narcotic buy. The scene was the now closed and out of business automotive center located within the northwest portion of the Carousel Mall property, located at 295 Carousel Mall in the city of San Bernardino. The shooting took place during daylight hours at approximately 1908 hours.

Several members of the Joint ATFE Federal Task Force were working a pre-planned controlled purchase of narcotics. The agents were working with two confidential reliable informants as well. The undercover operation involved the purchase of one pound of methamphetamine. At approximately 1900 hours Confidential Reliable Informant #1 (CRI), CRI #2 and an Under Cover (UC) Special Agent (SA) arrived to the location in a [REDACTED] which was used as an undercover vehicle. Upon arrival, the UC placed a phone call to Raymond "Dreamer" Mendoza who was brokering the narcotics purchase. Dreamer is an alleged Redlands gang member. A short time after the call was placed Dreamer arrived driving a black Honda Civic with Jose "Lil Man" Cerbellon. Lil Man is an alleged West Side Verdugo Mount Vernon gang member.

Upon arrival, the Honda parked directly east of the red [REDACTED] facing the street. Dreamer and Lil Man exited the Honda and opened the hood of the vehicle to give the appearance they were having car trouble and were working on the vehicle. The UC, CRI 1 and CRI 2 exited the [REDACTED] and met with Dreamer and Lil Man standing between the [REDACTED] and the Honda Civic. About 5 minutes later, a gold Mercedes E 320 pulled into the parking lot. This was the vehicle that was supposed to contain the pound of methamphetamine involved in the transaction. The Mercedes pulled in and parked in the area as the [REDACTED] and the Civic just east of where the Civic was parked. The UC got into the front passenger seat of the Mercedes and Dreamer got into the rear passenger seat.

At this point, the driver of the Mercedes (later identified as Pedro Acereto) called a third person to come to the location to deliver the drugs. A few minutes after the call, a black vehicle (Toyota Camry or Honda Accord) pulled into the parking lot and it was occupied by only the driver. Acereto, Dreamer and the UC exited the Mercedes and Acereto walked to the passenger side of the Camry/Accord. The driver of the Camry/Accord then handed Acereto the package (one pound of methamphetamine). The methamphetamine was inside a plastic shopping bag.

As soon as the driver handed the package to Acereto, the driver of the Camry/accord began to drive away from the scene. At the same time, Acereto, Dreamer and the UC got back inside the Mercedes. During this time, CRI 1, CRI 2 and Lil Man were still standing between the black Honda Civic and [REDACTED]. CRI 1 attempted to get the license plate of the black Camry as it left the location but was unsuccessful. The UC confirmed that the package Acereto had received was in fact the suspected methamphetamine. The UC then asked CRI 1 to go to the [REDACTED] and retrieve the money. CRI 1 walked to the rear of the [REDACTED] and opened the rear cargo door as if he was retrieving the money. **The opening of the cargo door was the take down signal for the rest of the team.**

At this point, Corporal Steven Aranda of the SBPD drove toward the crime scene in a [REDACTED]. As he drove up, Lil Man started screaming, "the cops," "the cops" in Spanish. Corporal Aranda exited his vehicle with his gun drawn and yelled at everyone involved to "get down." He and other officers now at the scene gave this same command approximately 4-5 times. As the police were given their commands, CRI 1, CRI 2 and Lil Man all got down on the ground. Acereto (driving the Mercedes) immediately began backing the vehicle up rapidly squealing the tires as he backed up nearly striking the UC as he backed away from the on-coming police officers. Acereto then placed the Mercedes in drive and proceeded eastbound through the parking lot. The agents yelled at the driver to stop 6-7 times as he attempted to flee. The car was driven directly toward several agents that were screaming for Acereto to stop driving.

SA Special Agent #1 had come into the parking lot from his surveillance position at the Fairview Ford parking lot just southwest of the location. SA Special Agent #1 was driving a [REDACTED] and was accompanied by SA Special Agent #8 who was seated in the front passenger seat of the vehicle. SA Special Agent #1 got out of the vehicle and approached the tan Mercedes on the passenger side. The Mercedes was being driven in reverse and SA Special Agent #1 had to move to his right to avoid being hit by the Mercedes. The Mercedes was then put into drive and the vehicle began to move directly toward SA Special Agent #3, who was standing near the driver's side of the Mercedes and SA Special Agent #2 who was standing to the front of the Mercedes. At this point, the vehicle was accelerating rapidly towards SA Special Agent #3 and SA Special Agent #2. Believing that the Mercedes was headed directly toward SA Special Agent #2 and SA Special Agent #3 and trying to kill them, SA Special Agent #1 unholstered his weapon and discharged his weapon at the driver of the Mercedes. SA Special Agent #1 estimates he fired his weapon 4-5 times and that he discharged it directly at the driver of the Mercedes. SA Special Agent #1 stated that once the vehicle went past agents Special Agent #2 and Special Agent #3 he stopped firing his weapon. He then watched as the Mercedes collided with a [REDACTED] which was another undercover vehicle being used in the operation.

SA Special Agent #2 was driving in a [REDACTED] with SA Special Agent #4 seated in the front passenger seat. His vehicle was parked near the Fairview Ford dealership prior to the shooting. As soon as he saw the takedown signal he drove his

vehicle eastbound on 3rd street toward the crime scene. He activated the front facing emergency lights on his vehicle but did not activate the siren. Once near the scene, SA Special Agent #2 exited his vehicle and approached the tan Mercedes on the driver's side of that vehicle with his weapon drawn. As he approached he was shouting commands at the driver (Acereto) to "show his hands." SA Special Agent #2 indicated that numerous agents were giving commands to the driver of the Mercedes and identifying themselves as law enforcement officers.

As SA Special Agent #2 approached the Mercedes he observed the vehicle to start driving in reverse. He attempted to use a window punch tool he had affixed to his vest to shatter the front driver's side window to get a better view of the driver's hands. He was able to shatter the window but the window remained intact due to the tint that was attached to it. The vehicle continued to drive in reverse and SA Special Agent #2 was now standing in front of the vehicle approximately 15 feet away while holding his duty weapon with both hands. The driver then placed the vehicle into drive and SA Special Agent #2 gave one additional command to the driver to show his hands. SA Special Agent #2 said once the vehicle was in drive the driver began to drive directly towards SA Special Agent #2 and he believed the driver was intending to run him over. He felt he had no time to get out of the way.

As the driver accelerated the vehicle, SA Special Agent #2 fired one round from his duty weapon at the silhouette seated in the driver's seat of the vehicle. SA Special Agent #2 said he continued to fire at the silhouette until the vehicle passed his location and he deemed it no longer a threat to himself or his fellow officers. SA Special Agent #2 estimated he fired his weapon three times during the incident. SA Special Agent #2 indicated that he would have been dead or severely injured by the vehicle had he not taken the actions he did. As the vehicle proceed past his location, SA Special Agent #2 stopped firing his weapon and then saw SA Special Agent #5 driving the [REDACTED] toward the Mercedes and then collide with the Mercedes.

Pedro Acereto was then pulled from the Mercedes by SA Special Agent #2 and others and SA Special Agent #2 indicated he was still resisting arrest efforts made the officers. SA Special Agent #2 could also see that Acereto was injured as he had blood on his face and blood on the dark colored shirt he was wearing. Acereto was rolled onto his stomach and the officers were able to get handcuffs on him. SA Special Agent #2 then radioed for his partners to bring a medical kit to the scene so that they could begin treating Acereto for his gunshot wounds. Acereto was struck multiple times by gun fire and SA Special Agent #2 observed multiple gunshot wounds to Acereto to include wounds to his torso and chest. Medical aid was also summoned immediately. Acereto was treated at the scene and then transported to Arrowhead Regional Medical Center where he was treated for multiple non-life threatening injuries. Two other suspects were taken into custody at the scene. They were identified as Raymond "Dreamer" Mendoza and Jose "Lil Man" Cerbellon.

CRIME SCENE ANALYSIS

The investigation discovered multiple vehicles involved at the scene. The first one was a [REDACTED], which was identified as an undercover police vehicle. This vehicle was parked in a north westerly direction within the first parking stall northeast of the 3rd Street entrance. The second vehicle in the parking lot was a black Honda Civic, CA license 6ULM955, which was identified as a suspect vehicle. This vehicle was parked straddling the 3rd and 4th parking stall southeast of the 3rd Street entrance in a northwesterly direction. This vehicle was found with the engine hood open and the sunroof and driver and passenger windows open. Directly behind the Civic was a piece of glass with the tinted window film attached lying on the ground. Just north east of the Honda Civic was a planter area southeast of the sidewalk on the south side of 3rd Street. Inside the planter was a fully loaded Glock .40 caliber ammunition magazine.

There were also three vehicles identified just northwest of the parking lot where the shooting occurred. In the roadway and blocking the number 2 eastbound lane of 3rd Street facing an easterly direction there was a [REDACTED]. The second vehicle was a [REDACTED], which was located directly northeast of the silver Explorer and facing in a southerly direction straddling the number 1 and number 2 eastbound traffic lanes of 3rd Street approximately 10 feet northwest of the south curb. The third vehicle was a [REDACTED], with no license plate and was observed parked in the roadway along the south curb in a southwesterly direction. This vehicle had a [REDACTED]. All three of these vehicles were identified as undercover law enforcement vehicles utilized by the ATFE Federal Task Force.

Near the northeast corner of the vacant automotive center was a gold Mercedes E 320, CA license 5EKZ858. This vehicle was facing in a northeasterly direction. Skid marks measuring approximately 10 feet in length were observed on the ground extending to the passenger side rear tire. On the ground by the rear driver's side tire was a black flip phone as well as a smartphone and a pair of scissors just in front of the driver's side rear tire. There were also several blood transfers located on the pavement northwest of this vehicle as well as blood transfers on the driver's side door and blood splatter on the interior driver's door panel and on the dashboard of the vehicle. Shattered glass with tint film was on the driver's floorboard and on the ground outside the driver's door. The driver's door window was completely shattered and there appeared to be a bullet strike near the window edge on the top of the interior door panel. Located on the dashboard was a fired bullet. There was also a bullet strike to the driver's side of the windshield.

On the ground northeast of the Mercedes approximately 6 feet from the driver's side of the vehicle was another fired bullet. On the passenger side of the Mercedes there was a bullet strike to the rear quarter panel and two additional bullet strikes were found to the lower rear portion of the front passenger door. Another bullet strike was found within the lower window trim of passenger front door which caused the window to shatter. The glass, however, remained intact because of the tint film that was attached. The Mercedes had sustained right front damage to the fender when it collided with a [REDACTED]. The Silverado was facing in a westerly

direction northeast of the vacant automotive service center just east of the Silverado parked in a northerly direction was a [REDACTED] that was identified as an undercover law enforcement vehicle used by the ATFE Federal Task Force.

While processing the parking lot, the police also recovered three fired cartridge casings southeast of the black Honda Civic. Further southeast from there by the northwest exterior wall of the automotive center 5 additional fired cartridge casings were located. Also in this immediate area, a knife was located as well.

WITNESSES AND CORROBORATION

On July 13, 2017, **Corporal Steven Aranda of the SBPD** was interviewed by Detective Nick Oldendorf of the SBPD. Corporal Aranda's assignment that day was to assist with the arrest of the suspects once the take down signal was given. Corporal Aranda was wearing a black raid vest with police patches on the front and the back and an SBPD badge on the front. Corporal Aranda was driving a [REDACTED] at the time. Corporal Aranda had been staged at 4th Street and H Street while awaiting the takedown signal to be given. Corporal Aranda was inside the vehicle seated in the left rear passenger seat along with SA Special Agent #3 who was driving, SA Special Agent #6 who was the front passenger and SA Special Agent #7 who was the right rear passenger. When the signal was given, Corporal Aranda approached the scene. He saw Jose Cerbellon laying on the ground in the prone position and Jose Mendoza in the rear passenger seat of the gold Mercedes. Corporal Aranda said the Mercedes began to drive in reverse while numerous agents were giving commands to the driver to stop the vehicle. The vehicle then began to drive forward and Corporal Aranda said it appeared several agents were trying to get out of the way of the vehicle while continuing to give commands for the driver to stop. Corporal Aranda heard 2 shots fired, a pause, and 2 more shots fired.

On July 13, 2017, **Witness #1** was interviewed by Detective William Flesher of the SBPD. Witness #1 is a resident of the Telacu Hacienda Senior Center Assisted Living Center. Witness #1 was walking her dog eastbound on 4th Street when she heard gunfire. She saw several vehicles approach the automotive center and then saw numerous individuals dressed like police officers in the parking lot near three vehicles that were already in the lot. She saw a silver vehicle speeding through the lot and crash into a white truck. She said she saw a passenger either fall out or jump out of the silver vehicle prior to the collision with the white truck. She then saw the police remove the driver from the silver vehicle and render medical aid to him. Witness #1 indicated she did not see the gunfire but only what she witnessed after the gunfire had stopped.

On July 17, 2017, **SA Special Agent #1** was interviewed by Detective Nick Oldendorf of the SBPD. Special Agent #1 was wearing plain clothes with his duty belt and a vest that had police patches on the front and the back. His assignment that day was to be part of the surveillance team and to provide security to the CRI's. He is currently assigned as the "handler" of one of the two CRI's involved in this case. His job, once the takedown signal was given, was to follow SA Special Agent #2's vehicle to the arrest location and

enter from the southern most driveway on third street. He was to use his vehicle ([REDACTED]) as a blocking vehicle to provide cover for the UC and CRI's.

When the takedown signal was given and he arrived to the location he saw the UC and the 2 CRI's standing near the [REDACTED]. He told them all to get down and stay down and immediately ran toward the direction of the gold Mercedes. As he was running toward the vehicle he heard other officers yelling at the driver to stop. He saw SA Special Agent #3 standing to the front near the driver side of the Mercedes and saw SA Special Agent #2 standing to the front of the Mercedes. He observed the Mercedes accelerate toward SA Special Agent #3 and SA Special Agent #2 and he immediately drew his weapon. SA Special Agent #1 believed the driver of the Mercedes was intentionally driving toward the two agents intending to kill them. Believing there was an imminent threat to his partners, SA Special Agent #1 drew his weapon and fired at the driver of the Mercedes. SA Special Agent #1 estimated he fired 4-5 rounds and indicated he was aiming at the driver when he fired his weapon. SA Special Agent #1 indicated he believed that SA Special Agent #2 was about 15 feet away from the Mercedes when it accelerated toward SA Special Agent #2 and SA Special Agent #1 believed that SA Special Agent #2 would not have had time to get out of the way.

SA Special Agent #1, along with SA Special Agent #2, then ran to the vehicle and SA Special Agent #1 pulled the driver from the driver seat and laid him out on the ground. SA Special Agent #1 indicated that he attempted to get the driver's hands behind his back to handcuff him and that he was extremely uncooperative during this time. The agents were giving Acereto commands but he was still non-compliant. They eventually placed Acereto in handcuffs and provided medical aid.

On July 17, 2017, **SA Special Agent #2** was interviewed by Detective Nick Oldendorf of the SBPD. SA Special Agent #2 said he was wearing a black tactical vest with police written on the front and back as well as a badge on the front. SA Special Agent #2 was Special Agent #8 carrying a Glock Model 22, .40 caliber semi-automatic handgun. The magazine on his duty belt had a 15- round capacity and had 15 rounds in the magazine. The magazine in the firearm was removed and it had 12 rounds in the magazine plus one in the chamber. SA Special Agent #2 was driving a [REDACTED] and was parked at the Fairway Ford dealership at G Street and the 215 Freeway. When the arrest signal was given, SA Special Agent #2 proceeded to the location. When he arrived to the location he saw Jose Cerbellon standing to the front of a black Honda Civic. He got out of his vehicle and began moving toward the gold Mercedes and moved past Cerbellon. He approached the driver side of the Mercedes with his weapon out and was giving commands to the driver to show his hands. SA Special Agent #2 drew his weapon and was unsure whether any weapons were involved in the incident when he arrived. As he approached the driver side door, he saw the vehicle go into reverse and start driving backwards. SA Special Agent #2 used a window punch tool and tried to break the driver side window. He broke the window but the attached tint kept the window intact. The vehicle continued to back away and SA Special Agent #2 said he was 10-15 feet away from the car as it was backing up. He realized he was standing directly to the front of the car when it started to drive toward him. He indicated that he

believed “100%” the driver was intentionally driving toward him and that he did not have enough time to get out of the way. As the driver accelerated toward him, SA Special Agent #2 fired one round toward the driver and continued to fire as the driver went past his location. SA Special Agent #2 indicated he fired three rounds and believed that he would have been killed or seriously injured had he not taken such action.

On July 14, 2017, **CRI 1** was interviewed by Detective Flesher of the SBPD. CRI 1 indicated he arrived to the location with the UC and another CRI in a [REDACTED]. The UC called Dreamer who arrived shortly after the call in a black Honda Civic with Lil Man. They arrived, exited the Honda and popped open the hood of the Honda. About 5 minutes later a gold Mercedes arrived and the UC and Dreamer got inside the Mercedes. A few minutes later a third vehicle arrived which he believed was a black Toyota Camry. Everyone in the Mercedes approached the Camry and the driver of the Camry handed the package (one pound of methamphetamine) to the driver of the Mercedes. The UC confirmed the package was narcotics and told CRI 1 to go get the money from the red Jeep by opening the rear cargo door, which was the takedown signal for the rest of the team. As he opened the door the rest of the team moved in as two [REDACTED] entered the area. CRI 1 was standing to the rear of the red Jeep and immediately went to the ground when the agents entered the area. He heard the Mercedes accelerate in reverse and heard the tires squealing. CRI 1 believed the Mercedes might have run over the agents that were near the car. He could hear the agents giving commands to the driver and he then saw the car going forward and heard but did not see the gunshots that were fired.

On July 14, 2017, **CRI 2** was interviewed by Detective Nick Oldendorf of the SPBD. CRI 2 indicated he arrived to the location with the UC and another CRI in a [REDACTED]. CRI 2 said shortly after they arrived the “sellers” arrived in a black Honda Civic. He identified the sellers as Dreamer and Lil Man. CRI 2 believed that Lil Man was affiliated with the West Side Verdugo criminal street gang and believed Dreamer was affiliated with an unidentified Redlands gang. About 5 minutes later a gold Mercedes arrived and CRI 2 indicated the driver of the Mercedes seemed hesitant to conduct the transaction. Eventually the driver of the Mercedes made a phone call and a few minutes later a third vehicle arrived which he believed was a 2003 or 2004 Honda Accord. The driver of the Honda provided the driver of the Mercedes a package that the UC confirmed was narcotics and the takedown signal for the rest of the team was given. CRI 2 was standing to the back of the [REDACTED] when the signal was given. He heard Lil Man tell Dreamer and Acereto that the cops were coming and he believed that Lil Man was acting as a lookout. He heard the Mercedes “burn rubber” as the car drove backwards and stated that the Mercedes nearly hit an agent that was to the rear of the Mercedes. He could hear several agents yelling commands at the driver of the Mercedes to stop. Then Mercedes then started driving forward and CRI 2 saw a couple of agents standing to the front of the car. He then heard the shots fired and believed the shots were fired after the car starting driving forward. He did not see the Mercedes collide with the white pick-up truck. He was also unsure how many shots were fired.

On July 17, 2017, **ATFE SA Special Agent #8** was interviewed by Detective Nick Oldendorf of the SBPD. SA Special Agent #8 said that his assignment that day was to accompany SA Special Agent #1 in his vehicle and once the takedown signal was given he was to provide cover for and ensure the safety of CRI 1, CRI 2 and the undercover officers involved in the drug buy. SA Special Agent #8 indicated he arrived to the location in [REDACTED] driven by SA Special Agent #1. SA Special Agent #8 was wearing plain clothes with a soft vest on underneath and was wearing a neck lanyard around his neck with his police badge affixed to the lanyard. When the takedown signal was given SA Special Agent #1 moved his vehicle to block the southwest driveway of the parking lot. Both SA Special Agent #8 and SA Special Agent #1 exited their vehicle and when SA Special Agent #8 exited he saw a tan Mercedes driving in reverse at a high rate of speed. As the Mercedes was backing up he saw another agent jump out of the way of the Mercedes to avoid being struck. SA Special Agent #8 indicated that SA Special Agent #1 also made a quick movement to avoid being hit by the Mercedes as it was driven in reverse. After a short pause, the Mercedes then began driving forward with SA Special Agent #1 to the passenger side of the Mercedes and SA Special Agent #8 approximately 15 feet to the rear. SA Special Agent #8 also saw SA Special Agent #2 standing to the front of the Mercedes but closer to the driver's side. SA Special Agent #8 indicated the Mercedes was now being driven directly toward SA Special Agent #2 and it appeared that the driver was trying to run SA Special Agent #2 over. SA Special Agent #8 heard SA Special Agent #2 shouting numerous commands at the driver to stop driving. The driver disobeyed the commands and then SA Special Agent #8 heard 3-4 gunshots and saw SA Special Agent #2 firing his weapon. After the shooting stopped SA Special Agent #8 saw the Mercedes collide with the white ATFE vehicle. SA Special Agent #8 indicated SA Special Agent #2 was no more than 8-9 away from the Mercedes when the shooting occurred.

On July 17, 2017, [REDACTED] **UC** was interviewed by Detective Nick Oldendorf of the SBPD. UC indicated he was present at the scene and was with CRI 1 and CRI 2. The UC along with the 2 confidential informants arrived to the location in a [REDACTED]. After making a call to Raymond "Dreamer" Mendoza, who according to the UC, was supposed to broker the narcotics transaction, Dreamer arrived to the scene a few minutes after the call. He was driving a black Honda Civic and was accompanied by Jose "Lil Man" Cerbellon. UC, CRI 1 and CRI 2 exited the [REDACTED] and met with Dreamer and Lil Man. About 5 minutes later, a gold Mercedes E 320 pulled into the parking lot. UC entered the front passenger seat and Dreamer got into the back seat.

At this point, the driver of the Mercedes (Pedro Acereto) called a third person to come to the location to deliver the drugs. A few minutes after the call, a black vehicle (Toyota Camry or Honda Accord) pulled into the parking lot and it was occupied by only the driver. Acereto, Dreamer and the UC exited the Mercedes and Acereto walked to the passenger side of the Camry/accord. The driver of the Camry/accord then handed Acereto the package (one pound of methamphetamine).

As soon as the driver handed the package to Acereto, the driver of the Camry/accord began to drive away from the scene. At the same time, Acereto, Dreamer and the UC

got back inside the Mercedes. The UC confirmed that the package Acereto had received was the suspected methamphetamine. The UC then asked CRI 1 to go to the [REDACTED] and retrieve the money. CRI 1 walked to the rear of the [REDACTED] and opened the rear cargo door as if he was retrieving the money. The opening of the cargo door was the take down signal for the rest of the team.

UC indicated that as soon as the takedown signal was given the rest of the team moved in to affect the arrest. UC recalls hearing tires screeching as the team moved in and then saw the Mercedes being driven in reverse in toward his [REDACTED]. UC heard SA Special Agent #6 yelling to the UC telling him to "get down." SA Special Agent #6 then put the UC on the ground and jumped on top of him to protect him. Once on the ground, UC heard approximately 4 gunshots but could not see what was happening. Approximately one minute after the shooting, UC, CRI 1 and CRI 2 were escorted away from the scene by SA Special Agent #10. As he was being escorted from the scene, UC could see other agents rendering medical aid to the driver of the Mercedes.

On July 17, 2017, **ATFE SA Special Agent #4** was interviewed by Detective William Flesher of the SBPD. SA Special Agent #4 said he was assigned to the arrest team for this operation and arrived to the location with SA Special Agent #2 in the [REDACTED]. SA Special Agent #4 was wearing a black kevlar vest with "Police" emblazoned on the front and back of the vest. SA Special Agent #4 said the first pedestrian vehicle to arrive was a black Honda Civic and the gold Mercedes arrived a few minutes after that. SA Special Agent #4 says that a third suspect vehicle, possibly a black Toyota Camry, arrived and SA Special Agent #4 believed this vehicle was the source for the narcotics transaction. As soon as the Camry left the location, the team was given the initiate arrest command from SA Special Agent #9. As SA Special Agent #4 exited the [REDACTED] being driven by SA Special Agent #2 he observed the Mercedes with a driver inside and a second subject either getting out of the Mercedes or hiding behind it. SA Special Agent #4 indicated the Mercedes began rapidly driving in reverse while numerous agents were shouting commands to the driver to stop driving. SA Special Agent #4's attention was focused on the subject that was either hiding behind or had recently gotten out of the Mercedes when he heard gunfire and saw the Mercedes now driving forward. SA Special Agent #4 stated there were numerous agents all around the vehicle. SA Special Agent #4 saw SA Special Agent #2 to the front of the Mercedes and then heard more gunfire. He then saw the Mercedes collide with the [REDACTED] truck. SA Special Agent #4 said he observed several agents have to jump out of the way of the Mercedes as it drove in reverse and SA Special Agent #2 having to get out of the way of the Mercedes as it drove directly toward him.

On July 17, 2017, [REDACTED] **SA Special Agent #3** was interviewed by Detective William Flesher of the SBPD. SA Special Agent #3 indicated he had arrived to the scene in a [REDACTED] which he was driving with SA Special Agent #6 seated in the front passenger seat and SA Special Agent #7 and SBPD Officer Steven Aranda seated in the back seat. SA Special Agent #3 was wearing his duty belt and a black tactical vest with the word police on the chest and the back. From the initial location where SA Special Agent #3 was staged he could not see the transaction taking place in the

parking lot. Once the take down signal was given, SA Special Agent #3 drove to the area and immediately saw SA Special Agent #2 trying to break the window of the gold Mercedes. SA Special Agent #3 exited his vehicle and ran to the driver's side door. SA Special Agent #3 attempted to break the driver's side window with his metal baton (ASP) as the driver was driving the vehicle backwards. SA Special Agent #3 stated he believed that the driver (Acereto) was targeting law enforcement when he drove the vehicle in reverse. SA Special Agent #3 drew his firearm but saw officers behind the vehicle and decided not to discharge it. After the incident, SA Special Agent #3 accompanied Acereto to the hospital. During the transportation, SA Special Agent #3 indicated that Acereto stated "I should have stopped" and apologized for his actions.

On July 17, 2017, **SA Special Agent #7** was interviewed by Detective William Flesher of the SBPD. SA Special Agent #7 was in the [REDACTED] driven by SA Special Agent #3. She was seated in the rear passenger seat. She was wearing plain clothes with a black raid vest with the words police on the front and back. When the takedown signal was given, she exited the vehicle and ran to secure the two confidential informants located at the scene. As she made contact with the two CRI's, she heard continuous gunfire but could not detail how many shots she heard fired. She also was unable to see any of the driving maneuvers made by Acereto from her position when she contacted the CRI's.

On July 17, 2017, **SA Special Agent #9** was interviewed by Detective William Flesher of the SBPD. SA Special Agent #9 was designated as the operation arrest team leader. He arrived in a [REDACTED] and was staged at the corner of 3rd and G Street. SA Special Agent #9 was wearing a raid vest with the words police on the front and the back. SA Special Agent #9 said from his position he had continuous observation of the [REDACTED] driven by the UC. SA Special Agent #9 said that after the UC arrived in the [REDACTED], within 5 minutes, the first suspect vehicle arrived (black Honda Civic) and a few minutes later the gold Mercedes arrived. A short time after the Mercedes arrived a possible black Honda Accord arrived stopping for a short time before leaving. After the possible Honda Accord left the scene that takedown signal was given SA Special Agent #9 confronted one of the two suspects (unidentified in reports but either Lil Man or Dreamer) from the Honda Civic. SA Special Agent #9 saw the Mercedes begin backing up and it appeared to him that the driver was intentionally trying to run over officers who were behind the Mercedes. SA Special Agent #9 heard 4-5 gunshots but could not tell where the shots came from because he was focused on the suspect that he had contacted. He saw that SA Special Agent #2 and SA Special Agent #3 were at the driver's side of the Mercedes as it backed up while SA Special Agent #1 was standing near the rear passenger side quarter panel right before the shooting started.

On July 17, 2017, **SA Special Agent # 10** was interviewed by Detective Flores of the SBPD. SA Special Agent #10 was driving a [REDACTED] and his assignment was to block the entry/exit along he west portion of the parking lot where the incident occurred. SA Special Agent #10 was wearing plain clothes and a vest. When the takedown signal was given, SA Special Agent #10 drove to his designated location. As

he was driving he heard 3-4 gunshots. He continued and drove to the location where the two CRI's were located and the UC. He was able to get all three of them into his vehicle and drove them away from the scene. He drove eastbound on 4th Street and then southbound on E Street.

On July 17, 2017, **SA Special Agent #6** was interviewed by Detective Flores of the SBPD. SA Special Agent #6 was assigned to make sure that the UC was protected at all times. He was a passenger in the [REDACTED] driven by SA Special Agent #3. SA Special Agent #6 was wearing plain clothes and an ATF issued vest. When the takedown signal was given he immediately gave a command to the two CRI's and the UC to get on the ground. SA Special Agent #6 then heard the screeching of tires and a "volley of gunfire." SA Special Agent #6 was unable to determine how many gunshots he heard. He then directed the two CRI's and the UC to a [REDACTED] where they were driven away from the scene SA Special Agent #10.

On July 17, 2017, **Resident Agent in Charge Adam Ekstrom** was interviewed by Detective Flores of the SBPD. Ekstrom was driving a [REDACTED] and his role was to be on scene commander. He was not specifically assigned any particular role in the operation but rather was there to oversee the operation. He was wearing a green armored Special Agent #8ier with police placards on the front and back. By the time he had arrived on scene after the takedown signal was given, the gold Mercedes had already crashed into the white pick-up truck. He saw members of his team trying to extract the driver when he arrived. He also indicated he did not hear any gunshots. He observed SA Special Agent #2, SA Special Agent #11 and SA Special Agent #9 providing medical aid to Acereto.

On July 17, 2017, **SA Special Agent #11** was interviewed by Detective Flores of the SBPD. SA Special Agent #11 arrived on scene in a [REDACTED] driven by SA Special Agent #9. SA Special Agent #11 was wearing plain clothes and a vest that had the words police on the front and back. When the takedown signal was given, he exited the vehicle and made contact with suspect Raymond Mendoza. He ordered Mendoza to the ground and covered Mendoza while he was being handcuffed. SA Special Agent #11 recalled hearing gunshots and saw SA Special Agent #1 with his gun out but did not see him shooting. SA Special Agent #11 then went to the location where the suspect had been removed from the car and assisted with medical aid provide to Acereto.

On July 17, 2017, **SA Special Agent #5** was interviewed by Detective Flores of the SBPD. SA Special Agent #5 arrived to the location in a [REDACTED]. His assignment was to block the exit route on the north side of the automotive center parking lot. SA Special Agent #5 was wearing plain clothes and an ATF tactical vest with the words police on the front and back. After the takedown signal was given SA Special Agent #5 drove toward the north exit and immediately heard between 5-10 gunshots. As he came toward the scene he saw the suspect vehicle driving toward his location. As he came around the corner he immediately got into a head to head collision with the suspect vehicle (gold Mercedes). He exited his vehicle and went to the rear of

his vehicle to avoid a potential cross fire situation. He saw SA Special Agent #2 and SA Special Agent #1 run towards the suspect vehicle and pull the driver from the vehicle.

Defendant Statements

On July 13, 2017, suspect **Pedro Acereto** was interviewed by Detective Nick Oldendorf of the SBPD. Acereto had suffered 4 gunshot wounds to his right chest, left chest, left bicep and right shoulder. At the time of the interview Acereto told police he was on probation for possession of a more than a pound of methamphetamine. Acereto told the police he had travelled to the location to pick up money that he was owed. He indicated he drove a gold Mercedes to the location and was going to meet "Dreamer." Acereto denied knowing why the third suspect vehicle (possible Accord or Camry) had arrived to the location to drop off "that stuff" despite the fact the Detective Oldendorf said nothing to him about any drugs being found. He stated he was only there to get money owed to him from Dreamer. Acereto said when the police arrived he immediately got scared so he attempted to leave. Acereto said he initially drove backwards to back out of the parking space and that he saw the officers to the front of his vehicle as he backed away. Although Acereto initially indicated he recognized the people outside of his car as police officers he then changed his story and immediately denied knowing they were police officers believing the people outside his car were there to harm him. He also denied hearing any of the police officers telling him to stop and get out of the car because he is "a nervous guy." Acereto said he was initially supposed to meet Dreamer at the Food for Less but he (Acereto) was with his 16-year old son at the time and Dreamer refused to meet him there. It was only after Acereto dropped his son off at another location that Dreamer agreed to meet him.

On July 13, 2017, suspect **Raymond "Dreamer" Mendoza** was interviewed by Detective Eddie Flores of the SBPD. Mendoza said he was at the location to "get a sack" from a person named Paco. Mendoza told the police he had arrived to the location in a black Honda and was just trying to get high planning to pick up drugs from Acereto whom he knows as Paco. He indicated he had no money on him at the time and was trying to get Paco to "front him" the drugs. He indicated he and arrived to the location with Jose Cerbellon although he said he didn't know Cerbellon's name but only knew him because the two lived at the same apartment complex. When the police arrived, he stated he did not try to run or leave and claimed to have been hit by the Mercedes when it began to back away from the scene. Because he claims to have been hit by the gold Mercedes he did not see whether the Mercedes had driven toward anyone at the time the car was attempting to flee from the scene.

On July 13, 2017, suspect **Jose "Lil Man" Cerbellon** was interviewed by Detective Eddie Flores of the SBPD. Cerbellon stated he arrived to the location with his friend Raymond. He indicated he showed up to the location for "the reason he was arrested." When asked if he went there to sell dope he indicated "we (the police) didn't find any dope on him." He claimed he did not know the driver of the Mercedes and Mendoza also indicated that Cerbellon did not know the Mercedes driver as well. When asked what happened when the police arrived, Cerbellon said "that car (Mercedes) tried to

take off” and that Paco had tried to run someone over. Cerbellon said he knew the people that tried to stop the Mercedes were cops and that they looked like police. He said he heard 4-5 gunshots and when the police told him to get on the ground he complied. Cerbellon said that Mendoza had parked his car (black Honda) next to the “white boy’s” car ([REDACTED] driven by the UC) and that the Mercedes was parked to the right of the black Honda Civic. Cerbellon said when the police arrived he did not hear anyone yell “police” and that the Mercedes immediately began driving away. Cerbellon said he saw Mendoza get “side swiped” by the Mercedes. He said he did not believe that Paco was trying to run anyone over and did not understand why the police fired at the vehicle. He said he did see an officer standing on the driver’s side of the Mercedes as it attempted to flee the location.

All three defendants who were interviewed gave varying accounts of their purpose for being at the location. Acereto said he went to the location to collect money owed to him from Dreamer. Dreamer said he went to the location to try to get high and get drugs from Acereto whom he hoped would front him the drugs. Cerbellon said he went to the location “for the reason he was arrested.”

Body Camera Videos

The UC was wearing a body worn camera that was activated and recorded much of the incident under review. The transaction where Acereto received the drugs from the third party driving the black Accord/Camry is clearly depicted on the video. The video recording was approximately 30 minutes in length.

The video shows the UC and the two CRI’s in the parking lot with Dreamer and Lil Man when Acereto shows up in the gold Mercedes. You then see a black either Camry or Accord pull into the lot. Acereto walks over to the passenger door and the driver of the Camry/Accord hands Acereto the drugs. Acereto gets back into the Mercedes and shows the UC the drugs. The UC then goes to his vehicle ([REDACTED]) with one of the CRI’s to retrieve the money. Once the rear cargo door of the [REDACTED] is opened you see the rest of the arrest team move in and you can see the Mercedes driving quickly in reverse. The UC then takes cover on the ground and you can hear gunshots but cannot see anything as the body worn camera is out of view as the UC is laying down on the ground.

Injuries

Pedro Acereto sustained a gunshot wound to his left lower chest approximately 6 inches below the left nipple. He also sustained a gunshot entry wound to his left bicep with the exit to the rear of his left upper arm. He sustained a third gunshot entry wound on the right side of his chest below the right armpit with an exit wound on the right side of his back also near the right armpit. He also sustained a 4th gunshot wound across the top of his right shoulder. He also sustained a deep laceration to his right knee and a shallow scratch to his left knee.

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 affect 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

**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*]

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 even if the person acting in self-defense could have safely withdrawn.

ANALYSIS

In this case, Raymond “Dreamer” Mendoza and Jose “Lil Man” Cerbellon were called to the location by the UC to help broker a sale of methamphetamine to the UC. After arriving and briefly meeting with the UC, Dreamer placed a phone call and several minutes later, Pedro Acereto arrived to the location in a gold Mercedes. After meeting with the UC and Dreamer inside the Mercedes, Acereto placed a call and moments later a third vehicle arrived (either a Honda Accord or a Toyota Camry). Acereto, Dreamer and the UC exited the Mercedes and Acereto walked to the passenger side of the Camry/accord. The driver of the Camry/accord then handed Acereto the package All of this is corroborated by the body worn camera footage of the UC. Upon confirming the substance was illegal narcotics, the UC and Dreamer walked to the UC’s vehicle ([REDACTED]) to open the rear door to get the money which was the “takedown” signal for the rest of the team. Upon the rear door being opened the arrest team immediately moved in. As soon as Acereto saw the officers running toward his car he immediately began driving the car in reverse to avoid apprehension. This too is captured by the body worn camera footage.

While driving the vehicle in reverse Acereto struck Dreamer with the vehicle and nearly hit SA Special Agent #1 who had to quickly get out of the way of the vehicle to avoid being struck. While he was driving the vehicle in reverse SA Special Agent #3, who was positioned to the front driver side of the vehicle, unholstered his weapon because he

believed the lives of the agents behind the vehicle were in danger. He did not fire his weapon though because he felt that the agents behind the vehicle could have potentially been in the cross fire. When the vehicle began to drive forward, SA Special Agent #3 was standing to the driver side front of the vehicle and SA Special Agent #2 was standing directly to the front of the vehicle. Both SA Special Agent #3 and SA Special Agent #2 along with several other agents, were yelling "police, get out of the car" multiple times. Additionally, all the officers that approached the car when the takedown signal was given were all wearing their issued vests with their badges and the word "Police" emblazoned on them. SA Special Agent #3, SA Special Agent #1 and SA Special Agent #2 had all unholstered their weapons because they all feared that Acereto was targeting them with his vehicle.

SA Special Agent #1 indicated when the vehicle began driving forward he believed the driver was intentionally driving directly toward SA Special Agent #3 and SA Special Agent #2 intending to strike them with the vehicle. Because of SA Special Agent #1's fear for the safety of his partners, he unholstered his weapon and began firing into the vehicle. He estimates he fired his weapon 4-5 times into the vehicle while targeting Acereto. Likewise, SA Special Agent #2 felt his life to be in danger as well as the lives of his partners who were positioned near the vehicle. Because of his fear for his safety and the lives of his partners, SA Special Agent #2 also fired several rounds toward the driver area of the vehicle while targeting Acereto.

Both SA Special Agent #2 and SA Special Agent #1 had an objectively reasonable belief the use of lethal force was necessary to prevent Acereto from injuring or killing the agents near the vehicle. Acereto was attempting to avoid apprehension as SA Special Agent #2 had already approached his vehicle in his police vest and ordered him to stop driving and get out of the car. Further, SA Special Agent #2 had broken the driver side window with a window punch device in an attempt to get Acereto out of the car. Acereto was trying to escape and avoid apprehension and it was apparent he was willing to use his car as a weapon to aid him in his attempted escape. By driving his vehicle first in reverse toward SA Special Agent #1 and then forward toward SA Special Agent #3 and SA Special Agent #2, Acereto posed a clear and immediate threat to Agents Special Agent #1, Special Agent #3 and Special Agent #2. All three agents were faced with a life and death situation and literally had no more than a few seconds to determine how to stop the threat. SA Special Agent #1, SA Special Agent #2 and SA Special Agent #3 all feared for their lives and each other's lives. Given these circumstances, it was entirely reasonable for SA Special Agent #1 and SA Special Agent #2 to believe the only way they would avoid being killed or seriously injured would be to shoot Acereto to get him to stop driving the vehicle. Thus, the decision by SA Special Agent #1 and SA Special Agent #2 to use deadly or lethal force was justified.

CONCLUSION

Based on the facts presented in the reports and the applicable law, SA Special Agent #1 and SA Special Agent #2's use of deadly force was a proper exercise of their right of self-defense and therefore their actions were legally justified.

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Date

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