REPORT ON THE FATAL SHOOTING OF

EFREN ESQUIVEL ON

MAY 4, 2019

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TABLE OF CONTENTS

I. PREamble 4

II. SUMMARY OF FACTS 4
   A. SYNOPSIS 4
   B. ESQUIVEL STEALS A SHERIFF DEPUTY’S PERSONAL CAR 5
   C. SAN JOSE POLICE OFFICER FINDS THE STOLEN CAR 5

III. EVIDENCE 10
   A. PHYSICAL EVIDENCE 10
   B. MEDICAL EXAMINER’S AUTOPSY 10
   C. SURVEILLANCE VIDEO 11
   D. BODY-WORN CAMERA VIDEO 12
   E. ESQUIVEL’S BACKGROUND 12

IV. WITNESS STATEMENTS 12
   A. CIVILIAN WITNESSES 12
   B. POLICE WITNESSES 13
      1. OFFICER CARBONI 13
      2. OFFICER ALVAREZ 15
      3. SERGEANT MASON 16

V. LEGAL ANALYSIS 18
   A. RELEVANT LEGAL PRINCIPLES 18
B. THE OFFICERS ACTED IN LAWFUL SELF-DEFENSE AND
DEFENSE OF OTHERS

1. THE OFFICERS HAD AN HONEST AND
REASONABLE BELIEF IN AN IMMINENT
THREAT OF DEATH OR SERIOUS INJURY

2. THE IMMEDIATE USE OF FORCE WAS
NECESSARY TO DEFEND AGAINST THE
DANGER ESQUIVEL POSED TO THE OFFICERS

3. THE OFFICERS USED NO MORE FORCE
THAN REASONABLY NECESSARY

VI. CONCLUSION

APPENDIX A

APPENDIX B
I. PREAMBLE

The summary of this incident was prepared after a review of materials submitted by the San Jose Police Department and Santa Clara County District Attorney’s Bureau of Investigation. The submissions included: reports of the responding police officers; reports summarizing interviews of the involved officers and civilian witnesses; recordings of interviews; body-worn camera footage; photographs; Medical Examiner’s reports; and 911/police radio communications. This review is being conducted pursuant to the Officer-Involved Incident Guidelines adopted by the Santa Clara County Police Chief’s Association on October 12, 2017.

II. SUMMARY OF FACTS

A. SYNOPSIS

In the late morning of May 4, 2019, the decedent Efren Esquivel stole the personal vehicle of a Santa Clara County Sheriff Deputy. An hour later, San Jose police officers found Esquivel sitting in the stolen vehicle in the carport area of an apartment complex located on Kollmar Drive in San Jose (see Appendix A). After refusing repeated and urgent commands to surrender, Esquivel committed the crimes of assault with a deadly weapon and attempted murder by driving the stolen car at the police officers at high speed, crushing a police sergeant between the stolen vehicle and another car parked nearby. Considering the circumstances, the officers were left with no choice but to discharge their weapons to save themselves and other officers from great bodily injury or death.
B. **ESQUIVEL STEALS A SHERIFF DEPUTY’S PERSONAL CAR**

On May 4, 2019, a Santa Clara County Sheriff Deputy started her 2011 Toyota Camry in the driveway of her home in San Jose, CA. The employee went back into her home, leaving the keys in the running car. She returned a few minutes later to see the vehicle gone and called San Jose Police around 11:30 a.m. Her home surveillance video clearly showed a man, later identified as decedent Efren Esquivel, passing by her home, seeing the unattended car running, getting into the driver’s seat, and driving it away. The victim’s cellphone and badge were in the car when it was stolen, but not her firearm.

Around noon, the Sheriff’s employee called San Jose Police again and said the cellphone she left in her car was “pinging” around Kollmar Drive and Story Road in San Jose. At approximately 12:30 p.m., dispatch instructed nearby units to circulate the area looking for the stolen vehicle and the suspect. San Jose Police Officer Samuel Patterson was on patrol in that district wearing a full police uniform and badge and driving a marked patrol vehicle SUV. After checking the Pep Boys parking lot at Kollmar Drive and Story Road with negative results, Officer Patterson drove through the apartment parking areas along Kollmar Drive.

C. **SAN JOSE POLICE OFFICER FINDS THE STOLEN CAR**

At approximately 12:47 p.m., Officer Patterson found the stolen car parked in an alleyway carport stall behind the apartment complex located at 2748 Kollmar Drive. In the front passenger seat was a young light-skinned man wearing a white tank-top later identified as Efren Esquivel.

Officer Patterson ordered Esquivel to place his hands on the dashboard of the stolen car, which he did. Since the officer was alone, he did not instruct Esquivel to exit the vehicle at that time. While waiting for backup, Officer Patterson removed his handgun and kept it at the low-
ready position. Within two minutes, Sergeant James Mason arrived, followed by Officer Topui Fonua and his canine partner, Officer Aaron Alvarez, and Officer Edward Carboni.

Sergeant Mason instructed Officers Alvarez and Carboni to enter the carport and approach the stolen car from behind to determine if there were any additional suspects in or around the vehicle. Both officers did so with their handguns displayed, found no other people in the car or parking area, and then returned to the front of the vehicle. Officer Carboni put his gun away and drew his taser, notifying the other officers, “I got taser.”

Officer Patterson then ordered Esquivel to exit the open passenger window of the stolen car hands first. Esquivel replied, “What did I do?” Officer Patterson responded, “We’ll talk about that when you come outside.” For a full minute, the officers urged Esquivel to exit the stolen vehicle through the open passenger window. Esquivel refused to do so, repeatedly asking the officers, “Did I do something?” and “What did I do?”

Esquivel ultimately climbed out of the stolen car through the open sunroof and stood on the hood. Officer Patterson, directly in front of Esquivel, said to Sergeant Mason, “You go lethal, I’m going hands,” and then put his firearm away. Officer Fonua and his canine partner were on Esquivel’s left and Sergeant Mason was on his right, pointing his firearm at Esquivel. Officer Carboni was to Sergeant Mason’s left, pointing his taser at Esquivel.

As Esquivel stood on the hood of the stolen car, Officer Patterson instructed Esquivel to get on the ground. Esquivel, smiling widely, put his hands on his head as if exasperated. Officer Fonua then told Officer Patterson, who was unarmed, “Just go up and take him.” When Officer

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1 That phrase was not an instruction for Sergeant Mason to use lethal force. Rather, it was notifying Sergeant Mason that Officer Patterson was putting his gun away to take the suspect into custody without the use of weapons and for Sergeant Mason to cover him with a firearm.
Patterson moved toward the hood of the car, Esquivel quickly turned around and climbed back into the vehicle through the sunroof.

When he got back into the car, Esquivel moved his right hand down, as if trying to reach for something. Below are two screenshots that show Esquivel appearing to reach what could have been a weapon immediately after refusing to surrender and reentering the stolen car:

![Screenshots of Esquivel]

After reaching down into the car, Esquivel quickly placed his right hand back on the roof. Despite Esquivel's alarming movements, the officers did not shoot. Instead, the officers continued to urge Esquivel to surrender.

Esquivel refused, climbing out of the stolen car and onto the adjacent vehicles, moving away from Officer Patterson and Sergeant Mason and toward Officer Carboni, who was armed only with his taser. Esquivel then returned to the stolen vehicle, climbed down through the sunroof into the driver's seat, started the ignition, and rolled up the front passenger window.

Esquivel was then heard saying through the closed windows of the vehicle words to the effect of "You're gonna have to shoot me" or "You're gonna have to kill me." At that moment, Officer Carboni put away his taser and drew his sidearm, warning the other officers, "He's gonna come right towards us."
Esquivel backed the stolen car up about four feet, then rammed Officer Patterson’s patrol vehicle with such force he moved the police SUV at least two to three feet. The image below shows the position of Officer Patterson’s vehicle when Esquivel started the ignition of the stolen car:

The image below shows the position of Officer Patterson’s SUV after being struck by Esquivel:
Esquivel backed up and rammed Officer Patterson’s patrol vehicle once again, trying to drive between the SUV and the carport wall. Ignoring repeated calls from the officers to stop, Esquivel backed the car into the stall a third time. At that moment, Officer Carboni said, “If he comes towards us, we’re going,” referring to the use of firearms.

Esquivel then inched the car forward and turned the wheels hard to his right, putting Sergeant Mason in the path of the vehicle. Just as an unidentified officer yelled “Stop!” one last time, Esquivel hit the gas. He accelerated so quickly that the tires momentarily lost traction.

At that moment, Sergeant Mason and Officers Carboni and Alvarez discharged their firearms multiple times directly into the vehicle. Esquivel, however, continued to drive into Sergeant Mason, knocking him down and pinning him between the stolen car and another car parked in the carport. After being hit by multiple gunshots, Esquivel continued to accelerate crushing Sergeant Mason with the passenger side of the stolen car. He ultimately stopped after he collided with a support post in the carport area. Below are three body-worn camera images from Officer Carboni showing Sergeant Mason being crushed by Esquivel.

![Body-worn camera images showing Sergeant Mason being crushed](image)

After the car came to a stop, all officers stopped firing their weapons. Officer Fonua’s canine partner entered the right passenger window of the car to check if Esquivel was still alive
and a threat to the officers. Getting no response, Officer Carboni moved his patrol vehicle in to block the stolen car from driving any further. Officers broke the driver’s side window of the stolen vehicle and ordered Esquivel to show his hands. Getting no response, officers approached and ensured he was not armed. Esquivel was then removed from the vehicle and placed in handcuffs until medical assistance arrived.

III. EVIDENCE

Below is a summary of the evidence collected that is relevant to the findings of this report.

A. PHYSICAL EVIDENCE

Items recovered from the stolen car included the gray hat and black backpack that Esquivel is seen wearing in the home surveillance video of the car theft. No weapons were located inside the vehicle. The cellphone belonging to the Sheriff deputy was found discarded elsewhere in the neighborhood.

A total of 21 shell casings were recovered from the scene: 16 9mm casings and five (5) .40 caliber casings. Those are consistent with the officers’ descriptions of their shots fired. Officer Carboni advised he fired 15 9mm rounds and Officer Alvarez said he fired one 9mm round. Sergeant Mason was the only one to discharge a .40 caliber handgun and the five recovered .40 caliber shell casings were consistent with his weapon.

B. MEDICAL EXAMINER’S AUTOPSY

Dr. Joseph O’Hara conducted Esquivel’s autopsy. He determined the cause of death was multiple gunshot wounds to the trunk and right arm. A toxicology analysis determined Esquivel
was under the influence of a “near toxic” level of methamphetamine. The effects of methamphetamine toxicity include violent behavior, paranoia, and hallucinations.²

C. SURVEILLANCE VIDEO

Esquivel is easily identified as the perpetrator of the vehicle theft. The man in the video has the same stature and facial expressions as Esquivel. The man in the video is also wearing the same type of black cargo shorts with pockets on the sides, as well as a large gold-colored watch on his right hand, which is visible in the body-worn camera video leading up to the shooting. In addition, the backpack and baseball cap found in the car match those worn by Esquivel in the surveillance video:

² https://www.drugabuse.gov/publications/drugfacts/methamphetamine
D. BODY-WORN CAMERA VIDEO

The body-worn camera videos of all the officers present for the shooting were reviewed in detail. Pertinent portions were incorporated into the Statement of Facts section of this report. Relevant portions will be released for examination by the public and media. A chronology based on the body-worn camera video is attached as Appendix B.

E. ESQUIVEL’S BACKGROUND

San Jose police reports describe Esquivel as a documented gang member. He has multiple prior convictions for auto theft, resisting arrest, and assault-related crimes.

IV. WITNESS STATEMENTS

A. CIVILIAN WITNESSES

Investigators interviewed two non-law enforcement witnesses. Both know Mr. Esquivel as a drug-dealing gang member who goes by the street moniker of “Sicko.” To protect their privacy and possibly prevent gang retaliation, they will be referred to as Witnesses X and Y.

Witness X witnessed the shooting, but his/her perception was inconsistent with the body-worn camera video, describing Esquivel as pulling out of the parking stall and “trying to go around” the police vehicles “slowly . . . to get away.” Witness X did say that he/she observed police trying to get Esquivel to obey commands. Witness X never saw Esquivel driving the stolen car prior to the day of the shooting. Witness X told police that Witness Y told him/her that Esquivel recently said, “I’m never going back to prison.”

Witness Y did not witness the shooting but said he/she never saw Esquivel driving the stolen car prior to the day of the shooting. Witness Y told police Esquivel never told him/her, “I’m never going back to prison.”
B. POLICE WITNESSES

The statements of the San Jose Police officers present at the scene were consistent with the body-worn camera videos. Relevant portions of their interviews are incorporated into the Statement of Facts portion of this report. The three officers who discharged their firearms were sequestered immediately after the incident and interviewed separately. In accordance with the Officer Involved Incident protocol, the interviews of the involved officers were conducted by detectives from the District Attorney’s Bureau of Investigation with the assistance of San Jose Police Department Homicide detectives. Summaries of their statements are included below.

1. OFFICER CARBONI

San Jose PD Detective Gabriel Cuenca and DA Investigator Ray Avalos interviewed Officer Edward Carboni. At the time of the incident, Officer Carboni’s body-worn camera was activated. He was wearing a tactical uniform with his name, badge number, and SJPD patches. He was also wearing a baseball cap with the SJPD logo. He was armed with his department-issued Glock 17 9mm semiautomatic handgun.

Officer Carboni had been an officer with San Jose Police for seven months leading up to the day of the shooting. He worked as a police officer with San Jose State Police Department before that.

Shortly before the shooting, Officer Carboni was working alone in his SUV patrol car when he heard a “Be on the Lookout” for a stolen car belonging to a Sheriff’s deputy in the area of Kollmar Drive and Story Road. Officer Carboni had just finished clearing the parking lot of a nearby McDonald’s when Officer Patterson notified that he located the stolen vehicle. Upon hearing that, Officer Carboni responded to Officer Patterson’s location with his lights and siren.
When he arrived, Sergeant Mason was already there, and Officer Alvarez followed Officer Carboni.

Sergeant Mason instructed Officer Carboni and Officer Alvarez to clear the rear area of the carport. Both officers did so with their firearms drawn. Once they determined no one other than Esquivel was in the carport area, Officer Carboni put away his firearm and drew his taser.

Officer Carboni said officers tried multiple times to get Esquivel to exit the vehicle and surrender, but he refused. According to Officer Carboni, Esquivel “Was looking through us... looking at his eyes, he was looking for an exit, a way to get away from us. I could tell he was under the influence of a controlled substance.”

At one point it appeared Esquivel was going to surrender by getting on the hood of the stolen car, but then turned around and got back in the vehicle through the sunroof. When asked why Officer Carboni did not use the taser while Esquivel was on the hood of the vehicle, he said, “If I deployed my taser when he was on top of the vehicle, I was afraid he would fall off and suffer great bodily injury.”

When Esquivel got back into the vehicle, Officer Carboni heard him say, “Just shoot me.” After that, Esquivel drove into Officer Patterson’s SUV multiple times and then drove at Sergeant Mason and himself. Officer Carboni fired multiple times because “I was in fear for my life... he wasn’t slowing down and was accelerating, so I fired my service weapon.” He concluded that “I needed to stop him from running me over and ultimately from killing Sergeant Mason because that’s what I believed he was going to do.”

After the car came to a stop, Officer Carboni pulled Sergeant Mason to safety and observed tire tread marks on his leg.
2. OFFICER ALVAREZ

Officer Aaron Alvarez was interviewed by SJPD Sergeant Ali Miri and DA Investigator Mike Montonye. At the time of the incident, Officer Alvarez’s body-worn camera was activated. He was wearing a tactical uniform with his name, badge number, and SJPD patches. He was also wearing a baseball cap with the SJPD logo. He was armed with his department-issued Glock 17 9mm semiautomatic handgun.

Officer Alvarez joined SJPD in 2018 but worked for 20 years in the U.S. Navy’s Submarine Force.

Officer Alvarez responded to the carport area of 2748 Kollmar Drive after Officer Patterson announced he located the stolen car. When he arrived, Officer Alvarez saw Sergeant Mason and Officer Patterson outside of their vehicles giving Esquivel commands to surrender.

At the direction of Sergeant Mason, Officers Carboni and Alvarez drew their weapons and cleared the back of the carport to ensure no one else was hiding. Once it was clear, Officer Carboni took out his taser and moved toward Esquivel, who was inside the stolen car. Officer Alvarez moved back to cover a carport doorway that Esquivel could use to escape.

Officer Patterson continued giving verbal commands the entire time for Esquivel to show his hands and exit the vehicle through the front passenger window. Esquivel, however, was erratic, shouting at officers and refusing to exit the stolen vehicle. When told a canine officer would be sent into the car, the suspect got out through the sunroof and stood on the hood of the vehicle. When Esquivel refused to get down, Officer Alvarez heard another officer say, “go hands,” which he understood to mean take the suspect into custody without weapons, so Officer Alvarez moved up to assist.
Esquivel then started hopping on top of other cars in the carport area, approaching Officer Alvarez. Officer Alvarez backed up to keep distance, but Esquivel suddenly turned around and got back into the stolen vehicle. After getting back into the stolen car, Esquivel closed the windows and sunroof and then started the ignition.

Officer Alvarez then heard Esquivel say, “You’re gonna have to shoot me” before driving the stolen car into Officer Patterson’s SUV, causing it to move. After he backed up, he smashed the SUV a second time. Once clearing enough room for the stolen car, Esquivel turned right and drove at Sergeant Mason, at which point the officers opened fire to protect themselves.

Officer Alvarez discharged his weapon one time when he had a clear shot at Esquivel. He did so because he feared for the safety of Officer Carboni and Sergeant Mason. According to Officer Alvarez, Sergeant Mason had “nowhere to go and the car was headed straight for him.” He did not fire a second time because he no longer had a clear and safe shot at Esquivel.

After the stolen car came to a stop, Officer Alvarez observed Sergeant Mason laying on the ground to the rear of the vehicle. Officer Alvarez assisted with calling for medical aid for Sergeant Mason and Esquivel and then helped remove Esquivel from the stolen car.

3. SERGEANT MASON

Sergeant James Mason was interviewed by SJPD Sergeant Ali Miri and DA Investigator Ray Avalos. At the time of the incident, Sergeant Mason’s body-worn camera was activated. He was wearing a tactical uniform with his name, badge number, and SJPD patches. He was armed with a .40 caliber Glock 35 semiautomatic handgun.

Sergeant Mason has been employed by SJPD since 2002 and worked as a police officer in Burlingame for 10 years before that.
Sergeant Mason’s description of events leading up to the shooting was consistent with the BWC footage and statements of the other officers. He instructed Officers Carboni and Alvarez to clear the carport. Esquivel was non-compliant with repeated commands to exit the vehicle and surrender. Sergeant Mason believed Esquivel was under the influence of PCP based on his erratic behavior.

Sergeant Mason recalled hearing Esquivel say words to the effect of “Shoot me” or “Kill me” before he drove at officers, but he was unsure if that happened prior to starting the vehicle or after the vehicle was started.

Initially, Sergeant Mason did not believe Esquivel had enough room to maneuver the vehicle to hit him. When Esquivel did make the turn and accelerated at a high rate of speed, he fired his weapon. Sergeant Mason said he felt Esquivel was trying to use the stolen car to kill him and “the kid” (in reference to Officer Carboni, who was to Sergeant Mason’s left).

Sergeant Mason said he fired between three and five rounds at Esquivel, hoping to incapacitate the driver long enough to give him a split second more to get out of the way. Sergeant Mason, however, was struck by the stolen car and knocked to the ground. Sergeant Mason said he felt he “was getting crushed” and thought he was going to die as he was dragged by the car.

As for injuries, Sergeant Mason suffered a shattered scapula and multiple bruises from the collusion.
V. LEGAL ANALYSIS

A. RELEVANT LEGAL PRINCIPLES

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

Possible criminal charges against an officer involved in a fatal shooting include murder (Penal Code section 187) and manslaughter (Penal Code section 192). To convict an officer of such a charge, however, it would be necessary to prove beyond a reasonable doubt that no legal justification existed for the officer’s actions. (People v. Banks (1976) 67 Cal.App.3d 379, 383-384.) Several justifications may apply in any given case, and they are set forth in Penal Code sections 196 and 197. The justifications pertinent to this case are the use of force in self-defense and defense of others, which are found in Penal Code section 197.

California law permits all persons to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others. The relevant criminal jury instruction is set forth in Judicial Council of California Criminal Jury Instruction No. 505 (2019) (“Justifiable Homicide: Self-Defense or Defense of Another”). The

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3 This report evaluates this shooting under California use of force law that existed on July 28, 2019, prior to the effective date of AB 392 on January 1, 2020. However, the changes to the law of police officer self-defense enacted by AB 392 would not change the conclusions contained in this report.
instruction states that a person kills in lawful self-defense or defense of another if all the following are true:

1. The person reasonably believed he or she, or someone else, was in imminent danger of being killed or seriously injured;

2. The immediate use of force was necessary to defend against the danger; and

3. The person used no more force than reasonably necessary to defend against the danger.

(CALCRIM No. 505.)

A person may resort to the use of deadly force in self-defense or in defense of another where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. Self-defense requires both subjective honesty and objective reasonableness. (People v. Aris (1989) 215 Cal.App.3d 1178, 1186.) Additionally, “[i]mminence is a critical component of both prongs of self-defense.” (People v. Humphrey (1996) 13 Cal.4th 1073, 1094.) In Aris, the trial court’s clarifying instruction to the jury on the subject was to the point and later cited with approval by the California Supreme Court: “[a]n imminent peril is one that, from appearances, must be instantly dealt with.” (In re Christian S. (1994) 7 Cal.4th 768, 783.)

A person’s right to self-defense is the same whether the danger is real or merely apparent. (People v. Jackson (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM No. 505.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. In one case, a robber pointed a gun at his victim and a deputy sheriff was called to
the scene of the robbery. Before the robber could get off a shot, the deputy fired his weapon, wounding the robber. The appellate court remarked that "[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot." (People v. Reed (1969) 270 Cal.App.2d 37, 45.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (CALCRIM No. 505.) In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (Martinez v. County of Los Angeles (1996) 47 Cal.App.4th 334, 348.) When deciding whether a person's beliefs were reasonable, a jury considers all the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM No. 505.)

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

This report evaluates the use of deadly force in the shooting of Efren Esquivel on May 4, 2019. I have carefully examined the recorded statements, the reports of law enforcement officers who witnessed the shooting, the statements of civilian witnesses, body-worn camera video, relevant audio recordings, as well as the other materials described herein. Based on the evidence, Officers Alvarez and Carboni, and Sergeant Mason, acted in lawful self-defense and defense of others as all three of the required elements exist.

1. THE OFFICERS HAD AN HONEST AND REASONABLE BELIEF IN IMMINENT THREAT OF DEATH OR SERIOUS INJURY

There is overwhelming evidence to conclude the officers actually and reasonably believed that they were in imminent danger of being killed or seriously injured by Efren Esquivel. Esquivel was caught on video stealing a car out of the owner’s driveway. Rather than peacefully surrender when found inside the car that he stole just one hour earlier, he continued to act as if he had done nothing wrong, demanding officers to tell him what he did. He refused repeated commands to surrender for several minutes before getting back into the car, closing the windows, and starting the engine. Then, after saying, “You’re gonna have to shoot me/kill me,” Esquivel rammed an SJPD police vehicle twice before turning toward Sergeant Mason and hitting the gas. He accelerated so quickly at Sergeant Mason that the wheels momentarily lost traction. After striking Sergeant Mason, Esquivel continued to accelerate, only stopping when the stolen car struck a carport support pillar.

Had he survived, Mr. Esquivel’s actions would have certainly resulted in him being charged with vehicle theft, assault with a deadly weapon on Officer Carboni and the attempted murder of Sergeant Mason. Based on the circumstances, these officers had a reasonable belief
that Esquivel posed a threat of death or great bodily injury to themselves and other officers. The fact that Sergeant Mason did suffer great bodily injury just underscores the reasonableness of the officers’ beliefs.

2. THE IMMEDIATE USE OF FORCE WAS NECESSARY TO DEFEND AGAINST THE DANGER ESQUIVEL POSED TO THE OFFICERS AND NEARBY BYSTANDERS

For over five minutes, Esquivel refused to surrender to the police after being caught inside a stolen car. When he drove at Sergeant Mason at high speed, the officers had no other recourse to save Sergeant Mason than to discharge their firearms. Had they not fired, the vehicle likely would not have come to a stop, allowing Esquivel to inflict greater injury to Sergeant Mason and possibly hit additional officers as he attempted to escape. Sergeant Mason, most significantly, had no other choice than to shoot.

As discussed above, there is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating in self-defense cases. (CALCRIM No. 505.) Consequently, Sergeant Mason’s right to self-defense would not be affected if he made a conscious decision to stand in the path of the car.

Sergeant Mason, however, did not choose to stand in front of the moving vehicle. Sergeant Mason did not believe Esquivel would be able to make the turn so sharply and quickly as he did. In fact, the space was so tight that Esquivel struck the driver’s side of Officer Patterson’s SUV as he accelerated toward Sergeant Mason. Until the point at which he drove toward Sergeant Mason, it appeared Esquivel was trying to go left toward Officer Fonua’s SUV by making room between Officer Patterson’s SUV and the carport wall.

Moreover, Sergeant Mason had nowhere to safely retreat. To Sergeant Mason’s right was Officer Patterson’s patrol SUV; moving to the rear of Officer Patterson’s patrol SUV would
have put Sergeant Mason in danger of being struck by that vehicle if Esquivel struck it again as he did twice before. To his left were other cars packed tightly in the carport and other officers. Retreating backward would still have placed him in the path of the vehicle.

Most importantly, the speed at which Esquivel accelerated gave Sergeant Mason virtually no chance to move to safety as shown in the body-worn camera footage. Only four seconds lapsed from the time Esquivel turned the wheels to the right toward the officers until the instant he hit Sergeant Mason. Expecting an officer to make the split-second decision to move out of the way of the car when taken by surprise, in such a small window of time, in such a confined space, while weighed down by a full uniform, bulletproof vest, belt, gear, and gun, is not reasonable.

3. **THE OFFICERS USED NO MORE FORCE USED THAN REASONABLY NECESSARY**

Given the conditions described above, less-than-lethal force like a taser or stun bag would be ineffective on a steel car moving at high speed. Consequently, lethal force was the only way to stop Esquivel from killing or seriously injuring Sergeant Mason after Esquivel suddenly turned the stolen car in Mason’s direction and accelerated. Once the car came to a stop and was no longer a threat, the officers immediately ceased firing. No force was used in extricating Esquivel from the car beyond deploying a canine officer to ensure he was no longer a threat, and medical assistance was called for him immediately after.

Unfortunately, why Esquivel refused to surrender after being caught behind the wheel of the car he stole just hours earlier will never be known with any certainty. One thing, however, is clear—the San Jose police officers gave Esquivel multiple opportunities surrender without the use of force. For several minutes, they pleaded with him to just exit the car and to give up. When Esquivel climbed out onto the hood of the stolen car, it appeared that the entire encounter
would end peacefully and without incident. At that moment, the body-worn camera shows that Officer Patterson attempted to place Esquivel under arrest while completely unarmed:

12:50:57 Esquivel squats on the car; Officer Fonua says to Officer Patterson, “Just go up and take him.”

12:50:58 Officer Patterson, unarmed, moves forward.

Unfortunately, Esquivel chose to escalate the situation by quickly retreating through the sunroof:

12:50:59 Esquivel gets back into the car through the sunroof, reaches his right hand down into the car. Officer Patterson stops.

That the officers did not shoot when Esquivel suddenly climbed back into the vehicle and appeared to be reaching for something inside—with Officer Patterson completely exposed and unarmed—demonstrates that they wanted to end this encounter without violence. Instead of shooting, the officers continued to plead with Esquivel to surrender. Esquivel, however, continued to ignore them, climbing on the tops of the other vehicles in what appeared to be an attempt to find an escape route, and later smashing his way out of the carport in the stolen vehicle.
Officer Alvarez, Officer Carboni and Sergeant Mason only fired their weapons as a last, and necessary, resort following multiple attempts to de-escalate the situation and resolve it without force. Only when Esquivel ignored their attempts to surrender peacefully and drove at Sergeant Mason at a high rate of speed posing a clear threat of injury or death did they fire their weapons. Consequently, they used no more force than reasonably necessary.

VI. CONCLUSION

On May 4, 2019, Efren Esquivel, while under the influence of methamphetamine, placed Sergeant Mason, Officer Carboni and Officer Alvarez in a situation in which they had no choice but to use lethal force to prevent great bodily injury or death to one or more of them. Under the facts and applicable law in this matter, all three officers reasonably believed that they needed to use deadly force to protect their own lives and lives of other officers. Consequently, their actions were both lawful and justified.

Dated: 9/2/20

Respectfully submitted,

ROB BAKER
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JEFFREY F. ROSEN
District Attorney
Appendix A
Overview of the apartment complex and carport area at 2748 Kollmar Drive, San Jose, CA.
Appendix B

Chronology of events based on body-worn camera audio and video beginning at 12:48 p.m. on May 4, 2019

12:48:25 Sergeant Mason directs Officers Alvarez and Carboni to go to the rear of the carport and check the back of the stolen car to see if others are inside.

12:48:42 Officers Carboni and Alvarez confirm the rear of the stolen car is clear of additional suspects.


12:49:07 Officer Carboni announces, “I got taser” and points it at Esquivel.

12:49:12 Officer Patterson tells Esquivel, “You’re gonna come over here and lay on the ground.”

12:49:16 Officer Patterson says, “Come out of the window, hands first.” Sergeant Mason waves for Esquivel to come to him.

12:49:22 Sergeant Mason tells Esquivel, “You know you really don’t want to get bit by the dog.”

12:49:24 Esquivel, in the front passenger seat and smiling, yells “What did I do?!?”

12:49:27 Sergeant Mason says, “We’ll talk about that when you come outside.”

12:49:29 Esquivel asks loudly, “Did I do something?”

12:49:30 Officer Patterson says, “Come out of the window, come out.”

12:49:31 Esquivel says, “OK” but remains in the car, smiling at officers, hands outside of the vehicle but body still inside.

12:49:36 Officer Patterson says, “This is not the time to play around” while Sergeant Mason motions with his left hand for Esquivel to get out. Esquivel asks again, “Did I do something?”

12:49:44 Esquivel moves from open front passenger window to open sunroof.

12:49:48 Esquivel’s body is out of the sunroof, legs and feet inside, holds out hands, and asks, “What did I do?”

12:49:59 Officers tell Esquivel to get out of the car and get on the ground. Esquivel says, “Get that dog out of here,” and officers respond, “No.”

12:50:03 Officer Patterson says, “Come here,” and Esquivel responds, “What did I do?”
Officer Fonua, a canine officer, tells Esquivel to go away from him and toward the officers on the passenger side of the car and points in that direction.

Esquivel is standing on the hood of the stolen car.

Esquivel straddles between stolen car and adjacent car.

Officer Patterson tells Sergeant Mason, “You go lethal, I’m going hands.” Officer Carboni has taser out. Esquivel is standing on the hood.

Officer Patterson instructed Esquivel to get on the ground. Police canine is barking. Esquivel smiling widely. Officer Fonua yells, “Do not run! Go to your right!” Esquivel says, “I’m not even running”

Esquivel squats on the car; Officer Fonua says to Officer Patterson, “Just go up and take him.”

Officer Patterson, unarmed, moves forward.

Esquivel gets back into the car through the sunroof, reaches his right hand down into the car. Officer Patterson stops.

Esquivel gets out of the sunroof and starts climbing onto nearby cars. Officers tell him to stop. Alarms on cars go off as he walks on the roofs of the vehicles.

Esquivel quickly turns back toward the stolen car and starts climbing that way.

Esquivel gets into the stolen car via sunroof again.

Esquivel starts the ignition of the stolen car.

Esquivel yells something at the officers from inside the vehicle (unintelligible on BWC).

Esquivel backs the car up; Officer Fonua moves behind the retaining wall with his canine officer.

Officer Carboni puts away his taser, removes his sidearm and holds at it the low-ready position. Officer Patterson still has no firearm out. Sergeant Mason is pointing his gun at the car. Officer Alvarez has his firearm out and is inside the carport to Officer Carboni’s left.

Esquivel hits the gas and crashes into Officer Patterson’s SUV, pushing it about three feet. Officer Fonua puts his canine officer into his vehicle, then returns with canine to the corner of the carport.

Esquivel reverses back into the carport spot. Officer Carboni and Sergeant Mason are pointing guns at the car, Officer Patterson has moved behind Officer Carboni and Sergeant Mason.
12:51:42 Officer Carboni says, "Watch your crossfire. . . he’s gonna come right towards us."

12:51:43 Officer Fonua says, "I'm gonna bring my car in."

12:51:58 Esquivel drives forward, turning wheels hard left, hitting Officer Patterson’s SUV again. Officer Fonua puts canine back in SUV.

12:52:02 Esquivel reverses back into the parking stall and an officer yells, "Stop!" Officer Carboni says, "If he comes towards us, we’re going." Officer Fonua gets in his patrol SUV.

12:52:03 Esquivel starts accelerating slowly, turning toward Officer Carboni and Sergeant Mason

12:52:04 An officer yells, "Stop!"

12:52:05 Esquivel accelerates rapidly at officers. Wheels of the stolen car can be seen breaking traction; Officer Fonua starts pulling his SUV forward.

12:52:06 Shots fired.

12:52:07 Right front bumper hits Sergeant Mason directly in the abdomen, knocking him into the adjacent car behind him.

12:52:09 Officer Carboni fires directly into the car from the right rear passenger side.

12:52:10 Despite multiple shots and the rear passenger window being blown out, the vehicle continues forward, pinning Sergeant Mason between the stolen vehicle and a parked car on its right.

12:52:11 The front right fender of stolen car crashes into carport post, crushing the hood and slightly moving the tail of the stolen car away from Sergeant Mason. Officers stop firing when the car stops.

12:52:14 Officers Carboni and Patterson help Sergeant Mason to safety. Officer Fonua's canine enters the right passenger window of the car and bites Esquivel to check if he is still alive/threat to officers.

12:52:17 Officer Fonua gives a command to canine to exit the vehicle.

12:53:22 Officer Patterson instructs Officer Carboni to pull his patrol vehicle up to block the stolen car.

12:53:40 Officer Carboni parks his SUV to block Esquivel.

12:54:11 Officer Patterson tells another officer he is lethal and that he will pop the door.

12:54:28 Officer Patterson breaks the driver’s window.
12:54:35 Officer Patterson opens the door, Esquivel slumped over to his right, left hand tucked under his torso.

12:54:40 Officers order Esquivel to “show me your hands” multiple times. Esquivel does not move.

12:55:05 Officer Patterson tells another officer “you’re lethal” and pulls Esquivel’s left hand out.

12:55:07 Officer Patterson says “left hand’s clear.”


12:55:40 Officer Patterson checks pulse.