REPORT ON THE FATAL SHOOTING OF FRANCIS CALONGE

ON OCTOBER 31, 2019

JEFFREY F. ROSEN
DISTRICT ATTORNEY
# TABLE OF CONTENTS

I. PREAMBLE 4

II. SUMMARY OF FACTS 5

A. SYNOPSIS 5

B. EVENTS BEFORE POLICE ARRIVED ON SCENE 6

C. EVENTS AFTER POLICE ARRIVED ON SCENE 7

III. EVIDENCE 12

A. PHYSICAL EVIDENCE 12

B. MEDICAL EXAMINER’S AUTOPSY 12

C. SURVEILLANCE VIDEO 12

D. BODY-WORN CAMERA VIDEO 12

E. PRIOR POLICE ENCOUNTERS 13

   1. SJPD CASE #152990512 13

   2. SJPD CASE #16304025 13

   3. SJPD CASE #170230747 14

   4. SJPD CASE #191100218 14

   5. SJPD CASE #191720483 14

IV. WITNESS STATEMENTS 15

A. CIVILIAN WITNESSES 15

B. POLICE WITNESSES 15

   1. OFFICER EDWARD CARBONI 15
2. OFFICER GARETT MCKENZIE

3. OFFICER ANDY YCIANO

V. LEGAL ANALYSIS

A. RELEVANT LEGAL PRINCIPLES

B. OFFICER CARBONI ACTED IN LAWFUL SELF-DEFENSE OF DEFENSE OF OTHERS

1. OFFICER CARBONI 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 CALONGE POSED TO THE OFFICERS AND NEARBY BYSTANDERS

3. OFFICER CARBONI USED NO MORE FORCE THAN REASONABLY NECESSARY

VI. CONCLUSION

APPENDIX A (AREA DIAGRAM)

APPENDIX B (CHRONOLOGY OF EVENTS)
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 early afternoon of October 31, 2019, 33-year-old Francis Ray Calonge openly brandished what appeared to be a real semiautomatic handgun at multiple drivers and pedestrians in the neighborhood surrounding Independence High School. Responding to frantic reports of Calonge’s threatening behavior from multiple witnesses, uniformed San Jose police officers raced to the area and found him at the intersection of N. Jackson Avenue and McKee Road. In his right hand was a black handgun, which he then tucked inside his waistband.

Keeping his hand on the gun, Calonge continued walking north on Jackson Avenue toward Independence High School, ignoring repeated pleas from officers to disarm and surrender for over one minute. When Calonge was getting increasingly closer to unarmed and frightened bystanders, Officer Edward Carboni shot Calonge to stop what he perceived as an armed threat to the lives of men, women, and children in the area. Calonge, who long battled suicidal thoughts due to mental illness and was under the influence of alcohol and methamphetamine, was killed by a single bullet. Only after recovering the gun did police determine that Calonge’s weapon was an imitation firearm—indistinguishable from a Beretta M9 semiautomatic pistol.

Attached as Appendix A is a diagram showing Calonge’s path of travel from the front of 24-Hour Fitness at 2323 McKee Road, San Jose, to the point where he was shot, which is marked with a red “X.” The image also shows the relative distance between the gym and Independence High School. A detailed chronology of events reconstructed from body-worn camera audio and video is attached as Appendix B.
B. EVENTS BEFORE POLICE ARRIVED ON SCENE

After the bell rang at Independence High School on October 31, 2019, at 2:05 p.m. to mark the end of the school day, the surrounding neighborhood quickly filled with students walking and driving home, excited to celebrate Halloween. Around 2:15 p.m., Lorena R. finished her workout at the 24-Hour Fitness located in the shopping center at N. Jackson Avenue and McKee Road—just a few blocks from the high school. As she left, Lorena R. observed a person, later identified as Francis Calonge, holding what appeared to be a semiautomatic handgun and “clicking” it. Concerned, Lorena walked to her car and called 911. At 2:25 p.m., Calonge left the 24-Hour Fitness walking east along the parking lot sidewalk away from Jackson. As he did so, Calonge was captured on surveillance video openly brandishing a black semiautomatic handgun in front of a man who was walking into the gym.

Calonge brandishing replica firearm at unknown bystanders in the parking lot.

Calonge continued walking east along the sidewalk until he passed a Round Table Pizza, where he made a left and exited the north end of the shopping center parking lot onto Rinehart Drive. Two minutes later at 2:28 p.m., Florante D. called 911 to report a man holding a gun walking westbound on Rinehart Drive and then turning southbound onto Jackson Avenue. Florante told police he was concerned for the safety of Independence High School students and
later explained that he saw multiple cars traveling east on Rinehart Drive swerve quickly away as they approached Calonge holding his gun. He described seeing multiple teenagers at the corner of Rinehart Drive and Jackson Avenue and even saw some walking in the direction of Calonge. Florante told police he worriedly thought, “He will massacre somebody.”

C. EVENTS AFTER POLICE ARRIVED ON SCENE

Officer Edward Carboni responded to the multiple 911 calls at the south end of N. Jackson Avenue at McKee Road. At the time, he was in full uniform and driving a marked patrol vehicle. When Officer Carboni arrived, Calonge had not been located. Fearing he might be headed toward Independence High School, Officer Carboni immediately requested that the San Jose Police Guardian Rapid Response Team, a specialized unit equipped and trained for active shooter threats in San Jose, respond to the school.

Having completed the San Jose Police Department’s tactical first responder course, Officer Carboni was a designated rifle operator with the department. After calling in the Guardian units to Independence High School, Officer Carboni exited his patrol vehicle, retrieved his department-issued AR-15 assault rifle and put on his tactical vest. Officer Carboni later explained that he chose to use his rifle instead of his Glock 17 handgun because he prefers to keep as much distance as possible between himself and armed suspects for officer safety. Using a rifle at that distance would be far more accurate than a handgun if deadly force proved to be necessary and would reduce the chances the suspect could hit the officer.

As Officer Carboni was putting on his vest, witness Kristy K. was turning right onto northbound Jackson Avenue and passed his patrol vehicle. She distinctly recalled seeing an officer putting a vest on, seeing other police in the area, and becoming concerned. She drove past Calonge on the eastern sidewalk of Jackson Avenue, who at the time was facing
northbound, away from the police. She saw Calonge insert what appeared to be a magazine into a handgun. She expressed fear Calonge planned to hurt himself or someone else and noticed around 10 kids at the corner of Jackson Avenue and Lanning Way—just one block north of Rinehart Drive and less than two blocks from Calonge. In the car with Kristy were two of her friends, both of whom also saw Calonge insert what appeared to be a magazine into a handgun. All three women described being extremely scared. They were so scared, in fact, they attempted to call a friend who lived nearby to warn her of Calonge’s presence.

After Kristy drove past Officer Carboni, Calonge turned southbound on Jackson Avenue, approaching Officer Carboni and the other San Jose Police officers set up at the intersection with McKee Road. Multiple marked patrol vehicles were parked at the intersection with emergency light bars activated. As Calonge approached the officers, he concealed the gun in his waistband. Officers gave him repeated instructions to show his hands, yet he refused to do so. In light of the open businesses and students in the area, Officer Carboni felt at that time that Calonge was a threat to himself and others. He chose not to fire his weapon, however, because if he shot at Calonge at that moment he might have accidentally hit one of the many bystanders behind him on Jackson Avenue. To safely shoot an armed suspect, Officer Carboni needed a safe “backstop” that could stop bullets that might pass through the suspect and prevent others from being hit. Concluding it was not safe to discharge his weapon, Officer Carboni continued to order Calonge to show his hands and “drop it.”

Calonge suddenly turned west and crossed to the median of Jackson Avenue. With the gun still in his waistband, he ignored repeated commands from multiple police officers to show his hands and drop his weapon. After pausing on the median, Calonge continued to the west sidewalk of Jackson Avenue and turned north toward Independence High School.
Calonge was slowly followed by a marked SJPD SUV and six officers on foot. Three of the officers followed in the street behind the cover of the SUV, their weapons in the low ready position. Three others, Officers Carboni, McKenzie, and Yciano, followed Calonge by walking along the median with their weapons aimed directly at him. Officer Carboni was armed with his AR-15, Officer Yciano with a shotgun and Officer McKenzie with a handgun. The screenshot below from Officer Hernandez’s body-worn camera shows the three officers on the median trailing Calonge northbound on Jackson Avenue.

![Screenshot of Calonge walking north on Jackson Avenue next to an apartment complex toward Independence High School, pedestrians, and drivers.](image)

The screenshot above demonstrates that Calonge was not only headed directly toward pedestrians and drivers just a half-block away at Rinehart Drive, but he was also adjacent to a residential apartment complex.

Officer Carboni was on point in the front loudly repeating commands for Calonge to show his hands and drop his weapon. Calonge ignored them and continued his march toward the
high school, keeping his back to the officers and his right hand concealed near his waistband.

The inset image from the screenshot below taken from Officer McKenzie’s body-worn camera shows Calonge’s left arm swinging freely but his right hand concealed.

![Image of Calonge walking north on Jackson Avenue with his right arm clearly visible and right hand concealed.]

Calonge repeatedly looked over his right shoulder to observe the officers following him as he continued to approach the school and multiple southbound cars on Jackson Avenue that were turning east onto Rinehart just a half-block away. At approximately 2:33:23 p.m., Officer Andy Yciano can be heard on his body-worn camera saying, “He has his hand on the gun.”

About five seconds after Officer Yciano announced Calonge’s hand was on his gun, Calonge walked in front of a cement wall separating the sidewalk from the apartments. At that moment, Officer Carboni felt he now had a good “backstop,” making it safe to fire without endangering bystanders. Believing Calonge was about to either ambush the police or shoot bystanders, and not wanting to lose a good backstop, Officer Carboni made the decision to shoot to protect himself, his fellow officers and the surrounding residents, drivers, and pedestrians in
the area. Officer Carboni warned his fellow officers, “I’m gonna shoot him,” and advised them to back up. At 2:33:32 p.m., Officer Carboni fired a single shot with his AR-15, hitting Calonge once through the back.

Calonge went down immediately, but officers initially stayed at a distance because his gun was clearly visible at his feet and within reaching distance. Multiple officers, including Officer Carboni, slowly approached with weapons aimed at Calonge. Officer Garett McKenzie grabbed Calonge’s gun and realized it was not a real firearm. Rather, Calonge’s gun was a “Powerline 340” BB gun. The Powerline 340 is visually indistinguishable from a real Beretta M9.

![Real Beretta Handgun (For Comparison) Suspect's Replica Beretta Handgun](image)

*Side-by-side comparison of a real Beretta M9 and Calonge’s BB Gun.*

The replica gun is so authentic in appearance it even has a safety, a moveable hammer and detachable magazine for holding the BB ammunition. A video showing the functionality of the BB gun, and its striking similarity to a real firearm, can be seen at:

[https://www.youtube.com/watch?v=cxCusyogv6M](https://www.youtube.com/watch?v=cxCusyogv6M)

Once Officer McKenzie removed the imitation firearm, officers cuffed Calonge and began administering first aid. Calonge died from a single gunshot wound.
III. EVIDENCE

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

A. PHYSICAL EVIDENCE

As discussed above, Calonge was armed with a Powerline 340 BB gun, which is indistinguishable from a real Beretta M9 in appearance. The weapon was found lying at his feet, consistent with multiple officer statements that Calonge was holding the gun at the time he was shot and persuasive evidence that he likely removed it from his waistband as his back was turned.

B. MEDICAL EXAMINER’S AUTOPSY

The medical examiner determined that Calonge died from a single gunshot wound entering his back and exiting through his chest, perforating his heart. A toxicology test determined he was under the influence of alcohol and a “toxic” level of methamphetamine. The effects of methamphetamine toxicity include violent behavior, paranoia, and hallucinations¹.

C. SURVEILLANCE VIDEO

As discussed in Section II, Summary of Facts, Calonge was captured on 24-Hour Fitness surveillance video openly brandishing a firearm in public just minutes before the police arrived. No surveillance video was recovered that captured the shooting.

D. BODY-WORN CAMERA VIDEO

The body-worn camera footage of all present officers was reviewed in preparing this report. Unfortunately, the camera detail is not sufficiently clear to see Calonge’s hand on his firearm. However, when Calonge begins walking toward Independence High School, his left

¹ https://www.drugabuse.gov/publications/drugfacts/methamphetamine
arm can be seen swinging freely, but his right arm and hand are not visible—consistent with the observations of multiple officers that his hand was holding the gun in his waistband. There is no footage of Calonge being struck by the bullet because the cameras were not pointed directly at him or were obscured by the officers’ weapons.

E. PRIOR POLICE ENCOUNTERS

Francis Calonge had a documented history of schizophrenia, suicidal thoughts and attempts to commit “suicide by cop.” Calonge’s identity was unknown to the officers when they responded on October 31, 2019, so they were unaware of his mental health history until after the shooting. We have included the following summaries of five San Jose Police Department reports over the last four years describing encounters with Calonge because they offer insight into his state of mind on October 31, 2019.

1. SJPD CASE #152990512

On October 26, 2015, Calonge’s mother called SJPD because her son was schizophrenic and off his medication for two months. She advised she was not worried about herself but concerned about the neighbors. Calonge told police he was in a “dark place” and was considering suicide. He was taken into custody and placed on a 72-hour W&I 5150 hold.²

2. SJPD CASE #163040625

On October 30, 2016, Calonge’s sister called the police saying he locked himself in his room with a large kitchen knife. Before police arrived, he emerged from his room, told his sister, “It’s game over for me, see me in hell,” grabbed her by the throat and shoved her to the ground. Police eventually found him in a nearby parking lot holding a 5” bladed knife. Calonge ignored repeated orders to drop the knife. Officers eventually shot him with a rubber bullet once

² Welfare and Institutions Code section 5150 authorizes peace officers to take into protective custody persons who, as a result of a mental health disorder, are a danger to themselves or others.
in the arm, causing him to drop the knife. Calonge was taken into custody and placed on a 72-hour W&I 5150 hold.

3. **SJPD CASE #170230747**

On January 23, 2017, Calonge’s mother called SJPD and advised that he texted his sister, “I feel like I want to end my life . . . This time they won’t shoot me with a rubber bullet.” Officers spoke with Calonge who admitted to sending the texts and suffering from schizophrenia. He was placed on a W&I 5150 mental health hold.

4. **SJPD CASE #191100218**

April 20, 2019, SJPD found Calonge walking on North Jackson Avenue at Madden Avenue carrying a 12” knife at 6:50 a.m. Calonge refused repeated commands to drop the knife but ultimately did so when threatened with a stun bag. After tossing the knife to the ground, he was taken into custody and placed on a 72-hour W&I 5150 mental health hold.

5. **SJPD CASE #191720483**

On June 21, 2019, SJPD responded to Calonge’s residence around noon after his mother called saying he wanted to kill himself. Santa Clara County Mobile Crisis Mental Health Team responded, and it was determined Calonge did not meet the requirement for a 72-hour W&I 5150 mental health hold and no further action was taken.
IV. WITNESS STATEMENTS

A. CIVILIAN WITNESSES

Three non-law enforcement witnesses observed Calonge in possession of what appeared to be a real firearm and saw him brandish it in such an alarming way they feared for their safety. The relevant portions of the interviews and 911 calls made by Lorena R., Krystal K., and Florante D., are incorporated into section II, Summary of Facts.

B. POLICE WITNESSES

The statements of the SJPD officers were consistent with the body-worn camera videos and the relevant portions of their interviews were incorporated into Section II, Summary of Facts. Each of the three officers closest to Calonge at the time of the shooting were interviewed by Santa Clara County District Attorney’s Office Investigators with the assistance of San Jose Police Department Homicide Detectives. Summaries of their statements are included below.

1. OFFICER EDWARD CARBONI

Officer Edward Carboni has worked as a San Jose Police Department sworn officer for two years after having worked as a San Jose State University Police Department officer. On October 31, 2019, he was in uniform and was one of the first units to arrive in his marked patrol vehicle after receiving a report of a suspect walking around the 24-Hour Fitness with a gun in his waistband. In light of a potential active shooter situation and the proximity to Independence High School, Officer Carboni requested a Guardian Unit respond to the school. He parked his marked vehicle on the eastern side of Jackson Avenue at the intersection of McKee Road and donned his tactical vest and AR-15 assault rifle. He is a trained rifle operator and explained the reason for arming himself with his rifle as opposed to his service weapon in this scenario:
So, I knew that distance is key when you are dealing with people that are armed, especially when it’s a firearm. We didn’t know for sure if he was armed with any other deadly weapons other than his firearm. And I know that with a rifle I am effective at greater distances that a handgun, versus a handgun, would not be.

Officer Carboni first saw Calonge walking toward him and other officers southbound on the eastern sidewalk of Jackson Avenue. Calonge’s left hand was swinging freely, and his right hand was holding what appeared to be a pistol grip in his waistband. Calonge ignored multiple commands from officers to show his hands, stop and drop the weapon. Officer Carboni said Calonge appeared to be “looking through them.”

Officer Carboni activated his body-worn camera as Calonge turned to his right and began crossing Jackson Avenue westbound toward the median. Multiple officers continued to yell for Calonge to “show your hands,” “drop it,” “don’t reach for it,” as he crossed Jackson Avenue and turned northbound toward Independence High School, pedestrians, and occupied vehicles. Officer Carboni said he recalled Calonge smiling, indicating he knew what was happening.

Officer Carboni followed Calonge by walking northbound on the median, using the trees as cover. Before Officer Carboni fired his rifle, Calonge was being followed by six officers and a clearly marked SJPD SUV. Calonge ignored commands to surrender and disarm for over one minute and repeatedly glanced over his right shoulder at the officers. Officer Carboni observed him maintain his right hand at his front waistband area throughout the encounter.

When asked why he decided to fire his gun, Officer Carboni stated:

Had I not, I believe that we would have been shot at by that suspect or he would have reached that group of students and posed an immediate threat to them, either by taking them as a hostage or engaging them in a fire fight, as well as creating a bad backstop for us as well to engage him. The closer he got to the school, the increase in the amount of possible victims that he could encounter. So I knew that I needed to stop that threat at that point.
When asked why he did not wait for Calonge to raise the weapon, Officer Carboni stated if he had waited any longer, he thought the suspect would have killed a San Jose Police officer or children. “He looked back and knew the police were there and he knew that he was getting shouted at. And he continued towards, continued not listening, he continued to keep his hand on the gun and not remove it and checking back to figure out where we were at. So I knew that had I not acted, he was going to do some violent action and we did not have time.” Officer Carboni concluded: “We didn’t have time to wait around any longer.”

2. OFFICER GARETT MCKENZIE

In October 2019, Officer Garett McKenzie had worked for the San Jose Police Department for 13 months. Before that, Officer McKenzie worked for the Antioch Police Department for two years, and Daly City Police Department for approximately four years. On October 31, 2019, Officer Garett McKenzie was in uniform with Officer Eduardo Pedreira in a marked SJPD SUV in the area of Jackson and McKee when they received a priority call for service. Officer Pedreira was driving. According to dispatch, there were two 911 callers reporting an Asian or Hispanic male adult walking around the 24-Hour Fitness “cocking or clicking a gun.”

The two officers circulated through the 24-Hour Fitness parking lot, where they were flagged down by a bystander who frantically told them of a man in the area with a gun. Officers McKenzie and Pedreira eventually turned westbound on Rinehart toward Jackson when Officer Yciano announced over the radio that the suspect was in the middle of Jackson and “put the gun in his waistband.”

Officer Pedreira turned left on Jackson and drove southbound, passing Calonge who was standing in the center median. After reaching McKee Road, Officer Pedreira made a U-turn and
Officer McKenzie exited the patrol vehicle. By that time, Calonge was on the west sidewalk of Jackson walking northbound. Officer Pedreira slowly followed Calonge, driving north on southbound Jackson to give cover to Officers Ian Braun and Jennica Nguyen on the passenger side. Slightly ahead of Officer Pedreira’s vehicle was Officer Carboni on point, followed by Officer McKenzie behind him aiming his department-issued handgun at Calonge. Officer Yciano followed closely behind Officer McKenzie with a shotgun.

Officer McKenzie said the suspect continued walking toward Independence High School, occupied cars, and bystanders while ignoring officers yelling at him to “Stop, let me see your hands.” McKenzie could not see Calonge’s hands as he held them at his waistband. Officer McKenzie felt that the suspect was trying to weigh what his next move would be and “play out” possible scenarios.

Officer McKenzie said if he saw a gun, he would have shot Calonge. Until that point, McKenzie had only heard a report of a firearm and did not actually see it. Officer McKenzie said he was worried about the people in the apartments and high school students who were in the area and was ready to shoot if the suspect turned on him. Officer Carboni, however, announced he was going to shoot the suspect and instructed everyone to back up.

After Officer Carboni shot the suspect, Officer McKenzie approached and picked up a black gun laying between Calonge’s feet. He only realized upon lifting the weapon that it was not real and tossed it on a patch of nearby grass.

3. OFFICER ANDY YCIANO

In October 2019, Officer Andy Yciano had worked for the San Jose Police Department for just over one year. On that day, Officer Yciano was in uniform and in a marked patrol vehicle responding to a call for service when he heard a “Priority 1” call go out for the area of N.
Jackson Avenue and McKee Road. Officer Yciano said he knew that “Priority 1” calls always involved a threat to life and the details over the radio indicated a gun was involved. Officer Yciano knew the police department was low on officers that day, so he attached himself to the call and responded immediately.

Upon arrival, Officer Yciano saw Officer Carboni putting on his tactical vest at the intersection of N. Jackson Avenue and McKee Road. After exiting his patrol vehicle, Officer Yciano saw Calonge approaching on foot carrying a black handgun at his side. Officer Yciano was caught by surprise because he thought the suspect was still inside the 24-Hour Fitness. Once he saw the weapon, Officer Yciano yelled out, “He has a gun” to the other officers nearby and announced on the radio that he located the subject who was armed with a gun. Officer Yciano grabbed his shotgun and took aim at Calonge, ordering him to drop it. Calonge put the gun in his waistband and walked west across Jackson Avenue.

As Calonge walked across Jackson and later north toward Independence High School, Officer Yciano and other officers repeatedly yelled for Calonge to surrender and disarm, but he ignored their commands. Officer Yciano followed Officers Carboni and McKenzie down the median, aiming his shotgun at Calonge. Officer Yciano was concerned for his own safety because Calonge’s back was to the officers and his hands were on his waistband as he walked northbound on Jackson. He was concerned about the kids getting out of school and bystanders in the area due to Halloween and said if Calonge had gone much further he would have shot him. However, he believed that a shotgun would not be the best weapon to use in that situation and that Officer Carboni’s AR-15 would be better due to its greater range and accuracy.

After Officer Carboni fired one shot, he and other officers approached the suspect. Once the weapon was removed from the area, officers began administering CPR.
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\(^3\). 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 a homicide 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 justification pertinent to this case is the use of force in self-defense and defense of others, which is 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

\(^3\) 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]mmimence 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.) 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 civil 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. OFFICER CARBONI ACTED IN LAWFUL SELF-DEFENSE AND DEFENSE OF OTHERS

This report evaluates the use of deadly force in the shooting of Francis Calonge on October 31, 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, and audio recordings of the incident, as well as the other materials described herein. Based on the evidence, Officer Carboni acted in lawful self-defense of himself and others as all three of the required elements exist.

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

There is overwhelming evidence to conclude Officer Carboni actually and reasonably believed that he, other officers, and nearby pedestrians, residents, and drivers were in imminent danger of being killed or seriously injured by gunfire from Calonge. Calonge appeared to be armed with a real firearm, which he openly brandished at bystanders in and around the 24-Hour Fitness building and parking lot. Witnesses observed him "cocking and clicking" the gun, as well as loading it with a magazine. He intentionally approached multiple police officers carrying what appeared to be a real firearm, then placed it in his waistband.

Despite the repeated urging of multiple police officers to surrender and disarm, Calonge ignored them and proceeded to walk directly toward a large residential apartment complex, nearby high school, and unwitting drivers and pedestrians just a half-block away. During that time, Calonge kept his right hand at his waist, where he was carrying the gun, and his back to the six armed officers who were following on foot and in a marked patrol vehicle. There can be little doubt that Calonge's actions, coupled with his refusal to acknowledge or comply with
officers' requests to surrender and disarm, created a reasonable belief that he posed an imminent
danger of death or serious injury to the officers, drivers, and pedestrians in the area.

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

Calonge, who as far as the officers could tell was armed with a real gun, ignored police
commands to surrender and disarm for over one full minute. He walked approximately 60 yards
with his hand on the gun in his waistband. Clearly aware of the police, Calonge repeatedly
glanced back at the officers, keeping his right hand and gun concealed from view. Just seconds
before Officer Carboni shot Calonge, Officer Yciano advised, “He has his hand on the gun.”
Under these circumstances, it was reasonable for the police to conclude Calonge intended to
soon ambush the police or kill innocent bystanders. Had Officer Carboni allowed Calonge to
continue down Jackson Avenue, and he killed an officer or innocent bystander, the community
would be justifiably outraged at his failure to act.

3. **OFFICER CARBONI USED NO MORE FORCE USED THAN REASONABLY NECESSARY**

Officer Carboni had no reasonable, less-lethal force options available to him because he
honestly and reasonably believed that Calonge was armed with a real firearm. Not only would
other force options require the officers to put themselves in greater danger by getting closer to
the suspect, but the use of non-lethal force like a rubber bullet or Taser might have angered
Calonge, encouraging him to shoot approaching officers or bystanders.

Officer Carboni fired only one round to disable Calonge, and he did so only after Calonge
was passing in front of a safe backstop to prevent injury to bystanders. Further, Officer Calonge
did not fire additional shots despite seeing Calonge moving on the ground with what appeared to
be a real gun at his feet.
VI. CONCLUSION

Tragically, Calonge—a man long-suffering from mental illness and under the influence of alcohol and illegal drugs—accomplished “suicide by cop” on October 31, 2019. His behavior placed San Jose police officers in a situation in which they had no choice but to use lethal force to prevent what could have escalated into a lethal active shooter scenario. Under the facts and applicable law in this matter, Officer Carboni reasonably believed that he needed to use deadly force to protect his life, the lives of other officers, and those of innocent students and bystanders outside of Independence High School. Consequently, his actions were both lawful and justified.

Dated: April 7, 2020

Respectfully submitted,

ROBERT BAKER
Deputy District Attorney

JEFFREY F. ROSEN
District Attorney
Appendix A

Calonge's path from the front of 24-Hour Fitness to the location where he was shot
Appendix B
Chronology of events based on body-worn camera audio and video beginning at 2:32:19 p.m. on October 31, 2019

2:32:19 Officer Yciano says, “I saw the gun. He just put it back in his pants.”

2:32:25 Officer Yciano, while pointing his shotgun yells “Hands up! Don’t reach for it!”

2:32:26 Calonge begins crossing Jackson to the center median from the 24-Hour Fitness parking lot driveway. Officer Carboni is pointing his rifle at Calonge.

2:32:29 Officer Yciano yells, “Don’t reach for it, don’t reach for the gun!”

2:32:32 Officer Yciano yells, “Get on the ground now” as Calonge is halfway to the median.

2:32:36 Officer Yciano and another officer yell, “Get on the ground!” Calonge continues to ignore the police, walking toward the median.

2:32:39 Officer Yciano yells, “Do not reach for the gun!”

2:32:41 Officer Carboni yells, “Drop it!” as Calonge is standing on the median.

2:32:44 Officer Carboni yells, “Let me see your hands!”

2:32:48 Officer Pedreira (with Officer McKenzie riding in the front passenger seat) drives past Calonge southbound on Jackson Avenue in a marked SJPD SUV. Officer Pedreira then makes a U-turn, facing his SUV northbound in the southbound lane. Officer Carboni yells, “Let me see your hands!”

2:32:49 Calonge steps off median heading west across southbound Jackson.

2:32:52 Calonge reaches the middle of southbound Jackson, continuing his walk toward the west sidewalk.
2:32:56 Calonge arrives on the west sidewalk of Jackson Avenue.

2:33:00 Calonge starts walking north toward Independence High School, crossing Cravens Court. Officer Carboni yells, “Let me see your hands!”

2:33:01 Officer Yciano says, “He’s reaching. Watch him, watch him.”

2:33:05 Officer Carboni yells, “Drop it!”

2:33:06 Officer Yciano yells, “Drop the gun, man!”

2:33:10 Officer Yciano yells, “Do not reach for it!”

2:33:16 Officer Braun says, “He did have something in his hand. I don’t know if it’s real or fake.”

2:33:20 Officer Carboni yells, “Drop it!”

2:33:23 Officer Yciano remarks, “He has his hand on the gun.”

2:33:24 Calonge continues to ignore commands and walks north on Jackson toward Independence High School and southbound traffic.

2:33:27 Calonge is approximately one-half block from Rinehart Drive, where multiple southbound vehicles are making U-turns. Officer Carboni warns the trailing officers that he is going to shoot Calonge.

2:33:30 Officer Carboni fires one shot with his rifle.

2:33:37 Unidentified officer yells, “Get your hands up!”

2:33:28 Unidentified officer yells, “Don’t fuckin’ move!”

2:33:38 Officer Carboni takes cover on the passenger side of SJPD SUV, pointing his rifle at Calonge, who is down on the sidewalk. Five SJPD officers begin approaching Calonge in front of Officer Carboni.

2:33:42 Officer Carboni instructs the other officers to “Hold, hold, hold!”

2:33:43 Officer Carboni yells to “Pull back.”
2:33:50  Unidentified officer yells, “Don’t move!”

2:34:00  Officer Carboni yells to shut traffic down.

2:34:07  Unidentified officer yells, “Don’t move!”

2:34:10  Officer Carboni yells, “Don’t move!”

2:34:11  Someone yells, “Stop moving!”

2:34:19  Officer Carboni yells, “Don’t move!”

2:35:06  Officer Carboni instructs other officers to “Form up on me!”

2:35:22  Officers begin a slow approach toward Calonge.

2:35:33  Officer Carboni announces, “Gun is at his feet!”

2:35:35  Officer McKenzie says, “I will get gun.”

2:35:38  Officer McKenzie walks to the driver’s side of the police SUV and begins approaching Calonge, who is lying motionless on his back.

2:35:47  Officer Carboni tells officers to hold and tells Officer McKenzie to stand by.

2:35:51  Unidentified officer says, “Move up, move up.”

2:35:52  Officer McKenzie picks up the gun lying between Calonge’s feet and says, “fuck!”

2:35:56  Officers arrive at Calonge, who is lying face up and appears unconscious. Officer Carboni says to cuff Calonge.

2:36:07  Officer Carboni says, “Let’s start medical.”