



Sacramento County District Attorney's Office

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District Attorney

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MEMORANDUM

DATE: November 20, 2018

TO: Sheriff Scott Jones
Sacramento County Sheriff's Department
711 G Street
Sacramento, CA 95814

Chief Chris Pittman
Rancho Cordova Police Department
2897 Kilgore Road
Rancho Cordova, CA 95670

FROM: Sacramento County District Attorney's Office

RE: Officer-Involved Shooting Case No. SSD-17-150089
Shooting Officers: Ken Becker #931
Gabriel Rodriguez #379
Jeffrey Wright #46
Person Shot: Mikel Laney McIntyre (DOB 12/20/84)

The District Attorney's Office has completed an independent review of the above-referenced officer-involved shooting. Issues of civil liability, tactics, and departmental policies and procedures were not considered. We only address whether there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Mikel McIntyre. For the reasons set forth, we conclude that the shootings by Deputies Jeffrey Wright, Ken Becker, and Gabriel Rodriguez were lawful.

The District Attorney's Office received and reviewed written reports and other items, including:

- Sacramento Sheriff's Department (SSD) report number 17-150089 and related dispatch logs/audio;
- Witness interview recordings;
- 9-1-1 audio recordings;
- In-car camera, surveillance, aircraft, and crime scene video recordings;
- Photographs and diagrams;
- Veterinary records;
- California Highway Patrol report number 2017-00082;
- CAD View Event Details 17-149914;

- Sacramento County District Attorney Laboratory of Forensic Services Toxicology, Blood Alcohol, and Firearms Examination reports;
- Report of Outside Expert David Blake;
- Sacramento County Coroner's Report; and
- Sacramento County Office of Inspector General, Officer Involved Shooting Review Mikel McIntyre, Incident Date May 8, 2017.

FACTUAL SUMMARY

On May 8, 2017, at approximately 4:00 p.m., SSD Deputy Gabriel Rodriguez responded to a family disturbance call. When he arrived, Deputy Rodriguez observed Mikel McIntyre standing against a car. McIntyre was calm and compliant. He did not have any weapons. Deputy Rodriguez handcuffed McIntyre for officer safety because McIntyre was larger than him,¹ and placed McIntyre in the patrol vehicle so they could talk. McIntyre explained there was a family argument. He wanted to see his grandmother, but his family did not want him to see her. A family member applied pepper spray to McIntyre and locked him out of the house because he was yelling, screaming, and exhibiting odd behavior. McIntyre told Deputy Rodriguez he did not require medical attention. Deputy Rodriguez conducted a mental health evaluation on McIntyre and concluded detention was not necessary. Family members confirmed McIntyre's description of the incident and requested his removal from the property. After speaking with Deputy Rodriguez, McIntyre got his belongings and left the area.²

Later that day, McIntyre and his mother went shopping at the Ross Dress for Less store near Olsen Drive and Zinfandel Drive in Rancho Cordova. As they returned to their car in the parking lot, McIntyre had the car keys. His mother requested the keys, but McIntyre would not give them to her. She eventually retrieved the keys and would not return them to her son. McIntyre became irritated. As she sat in the driver's seat, he grabbed her hair, choked her, and attempted to pull her out of the car. Witnesses observed this physical altercation, called 9-1-1, and reported that a man was beating and choking a female, yanking her by the hair, and trying to pull her out of a vehicle.³ Some of the witnesses tried to intervene.

At approximately 6:46 p.m., Deputy Jeffrey Wright responded to this incident. He drove into the lot in his fully marked patrol vehicle and observed a female witness just north of the Panda Express restaurant. The witness pointed at McIntyre and stated, "That's him. He's the primary aggressor." Deputy Wright observed McIntyre walking southbound across the lot. Deputy Wright approached McIntyre and used the patrol vehicle's public-address system to order him to stop. McIntyre looked back, said something inaudible, and walked away on Olson Drive towards Zinfandel Drive. Deputy Wright parked his vehicle, exited, and followed McIntyre. Deputy Wright jogged behind McIntyre and followed him across Olson Drive towards the Red Roof Inn and into the Hooters restaurant parking lot. Deputy Wright repeatedly ordered

¹ Deputy Rodriguez later described McIntyre as approximately 6'3" and 200 pounds, several inches taller and many pounds heavier than Deputy Rodriguez. The Coroner's Report described McIntyre as 70 inches in length. His California Driver's License listed his height as 6'2".

² Deputy Rodriguez also advised McIntyre that he had a "small warrant" (i.e., marijuana possession and failure to appear) and instructed him to take care of it.

³ None of the witnesses were aware of the familial relationship between the parties.

McIntyre to stop and tried to grab him, but McIntyre resisted.

Deputy Wright drew his gun, pointed it at McIntyre, and instructed him to get on the ground. McIntyre turned away, screamed, quickly turned back around, and faced the deputy. McIntyre approached Deputy Wright. When McIntyre got closer, Deputy Wright holstered his gun so that he could try to grab McIntyre. He communicated to dispatchers that he was “fighting” with McIntyre and had him at gunpoint.⁴ McIntyre ran around a red pickup truck on the east side of the parking lot. As Deputy Wright reached out to grab McIntyre near the right front corner of the vehicle, he tripped and fell to the ground. Deputy Wright landed on his left side, quickly got to his knees, and saw McIntyre with a rock approximately 5-7 inches in length in his right hand.⁵ As McIntyre raised the rock over his head, the deputy turned his face away. McIntyre then threw the rock from about five feet away, striking Deputy Wright in the back of his head. The rock bounced off and hit the red pickup truck. A photograph of Deputy Wright taken later depicted the injury he received:



Deputy Wright was initially dazed and unable to hear or see anything. He did not want to continue laying on the ground and risk death. Deputy Wright got up, drew his gun, and saw McIntyre facing him 7-10 yards away.⁶ He fired a shot at McIntyre. McIntyre turned away and fled. McIntyre continued to look over his shoulder as the deputy fired another round at him from approximately 20 yards away. Deputy Wright chose not to fire additional rounds at McIntyre because McIntyre was now backdropped by the Hooters restaurant. McIntyre continued to flee southbound towards Highway 50.

Deputy Wright holstered his gun and told dispatchers he was struck in the back of the head with a rock and had fired shots at McIntyre. Deputy Wright suffered a laceration on his head and was

⁴ Although there were no punches thrown by either party, Deputy Wright later explained that he used the term “fighting” because it was too difficult for him to describe McIntyre’s actions of resisting his efforts to grab him.

⁵ Deputy Wright and other witnesses described this rock as “football-sized” or near “football-sized.”

⁶ A civilian witness described the distance as approximately 25 yards.

bleeding profusely. The Sacramento Metropolitan Fire District and medics were dispatched to provide treatment for Deputy Wright.

Deputy Ken Becker heard the initial dispatch call regarding the man attacking the woman in the Ross Dress for Less store parking lot. After hearing the man was walking away from Deputy Wright, Deputy Becker responded to the scene. He then heard Deputy Wright tell dispatchers he had the man at gunpoint, as well as Deputy Wright's later communications that he was fighting with the man, shots were fired, and he was hit over the head with a rock. As Deputy Becker drove northbound on Zinfandel Drive from Highway 50, he observed McIntyre in the northeast cloverleaf running westbound towards Zinfandel Drive. Deputy Becker turned around at Zinfandel Drive and Olson Drive, but lost sight of him.

Another deputy now saw McIntyre walking westbound under the Zinfandel Drive overpass on the north side of Highway 50 and announced it to dispatchers. Deputy Becker drove his patrol vehicle to the Zinfandel Drive on-ramp to westbound Highway 50 and parked on the left side. He exited his vehicle, attached a 6-foot leash to his K9 partner, Ranger, and walked southbound through the brush in the cloverleaf.

During this time, Deputy Rodriguez also responded to the scene. He heard the broadcasts regarding Deputy Wright being struck with a rock and fighting with McIntyre, as well as shots being fired. Deputy Rodriguez also learned Deputy Wright was injured, had a large gash on the back of his head, and needed medical attention. Deputy Rodriguez arrived at the location and parked his patrol vehicle next to the center divider on the eastbound side of Highway 50 near the Zinfandel Drive exit. He saw McIntyre on the westbound side underneath the overpass walking westbound on the embankment and informed dispatchers. Deputy Rodriguez recognized McIntyre from his earlier contact with him. He also saw McIntyre holding a large object in his hand and taking an aggressive stance towards a deputy approaching from the east. Deputy Rodriguez climbed over the center divider and proceeded across the westbound lanes of the freeway.

As Deputy Nathan Jennings approached in his patrol car from the east, he observed McIntyre throw a rock or brick from the embankment towards him or other deputies on the freeway. Dispatch logs and audio also indicated a female witness called 9-1-1 and stated McIntyre threw a rock at her vehicle at the Zinfandel on-ramp.

Unaware of McIntyre's exact location, Deputy Becker positioned himself and K9 Ranger at a higher elevation on the west side of the overpass, believing McIntyre was walking on the freeway and intending to gain an advantage over him. As he was waiting, Deputy Becker observed movement out of the corner of his eye. Deputy Becker looked up and saw McIntyre standing approximately 10 feet above him on the embankment right under the overpass and approximately 50-60 feet away.⁷ McIntyre had already brought his arm back in a manner that Deputy Becker later described to investigators as "like ... a pitcher." McIntyre threw a river rock approximately 5-6 inches in diameter at Deputy Becker's face. Deputy Becker backed up a few feet, used his arm to shield his face, and pulled K9 Ranger's leash. The rock struck K9 Ranger in the face and then Deputy Becker on the thigh. Deputy Becker believed McIntyre was

⁷ These distances are based on Deputy Becker's estimation.

trying to kill him so he drew his gun and fired one round at McIntyre. McIntyre ran down the embankment holding another slightly smaller rock. He threw it at Deputy Becker and missed. McIntyre ran westbound past Deputy Becker. As McIntyre passed him, Deputy Becker quickly fired another shot at McIntyre. McIntyre then continued westbound away from Deputy Becker. Deputy Becker continued to fire multiple shots at McIntyre as he fled and increased his distance from the deputy. Deputy Becker believed a gunshot struck McIntyre.

Deputy Rodriguez observed McIntyre's actions at the top of the embankment and his assault on Deputy Becker. He saw McIntyre at the top of the embankment make a gesture that looked like McIntyre either lost his footing or reached down for another item to hurl.

McIntyre then ran approximately 20-25 feet away from Deputy Becker. Deputy Rodriguez crossed the Highway 50 westbound lanes and fired several shots at McIntyre, who was now fleeing westbound. McIntyre was approximately 25-40 feet away from Deputy Rodriguez.⁸ McIntyre continued running away from Deputies Becker and Rodriguez. Deputy Rodriguez fired multiple shots at McIntyre as he ran off. Deputy Rodriguez later stated that he fired these shots to prevent McIntyre from causing a traffic collision and fleeing towards commercial areas to the south. During the shooting, a responding California Highway Patrol (CHP) officer observed McIntyre running away, turning around, and gripping something in his hands. Deputy Becker holstered his gun and ran towards McIntyre with K9 Ranger, whose leash got tangled on a wooden sign post. McIntyre looked down at his hands, slowed down to almost a walk, and started to turn in their direction. After K9 Ranger became untangled, he chased McIntyre and bit his lower left thigh above the knee, causing McIntyre to fall to the ground. Other deputies and CHP officers arrived to detain McIntyre. Officers assessed McIntyre's condition and started cardiopulmonary resuscitation.

Medical assistance was requested, and McIntyre was transported to UC Davis Medical Center for treatment. McIntyre was pronounced deceased at approximately 7:59 p.m.

K9 Ranger suffered an injury to his mouth. He was taken to UC Davis Veterinary Medical Teaching Hospital for treatment.

Based on deputies' interviews, round counts, recovered discharged cartridges, and examination of firearm magazines, it was determined that Deputy Wright fired two rounds, Deputy Becker fired eight rounds, and Deputy Rodriguez fired eighteen rounds at McIntyre.

According to the Sacramento County Coroner's Report, McIntyre died from multiple gunshot wounds. It appears that McIntyre was struck seven times. The report noted that he had a penetrating gunshot wound to the right side of the back, with the direction being back to front, slightly right to left, and slightly upward. The projectile passed through a rib, part of the right lung, the right hemidiaphragm, the liver, and a large vein that carries blood into the heart, and penetrated into the anterior abdominal wall, where it was recovered 22 inches below the top of the head and one inch to the left of the anterior midline. The report also indicated that McIntyre suffered a penetrating gunshot wound to the right arm, with the direction being back to front. Multiple projectile fragments were recovered in the right arm. McIntyre also had perforating

⁸ Both distances are based on Deputy Rodriguez's estimation.

gunshot wounds to the left forearm, right thigh, and left thigh. The direction of the gunshot wound to the left forearm was slightly back to front, right to left, and downward. The direction of the gunshot wound to the right thigh was back to front and left to right. The direction of the gunshot wound to the left thigh was back to front, right to left, and upward. There were also tangential gunshot wounds to the top of the head⁹ and left fifth finger. The direction of the gunshot wound to the head could not be determined, while the direction of the gunshot wound to the left finger was front to back and right to left.

Based on ballistics analysis conducted by the Sacramento County District Attorney's Office Laboratory of Forensic Services, of the three firearms discharged in this matter, the projectiles recovered from McIntyre's body were fired from Deputy Becker's duty weapon. The laboratory also confirmed the presence of diazepam in McIntyre's blood.¹⁰

In the Hooters parking lot where McIntyre struck Deputy Wright, there is a barred metal fence, approximately five feet tall, running north and south along the property line, dividing the restaurant from the Red Roof Inn. Located on the Hooters' side of the fence is a planter bed consisting of a row of river rocks embedded in the soil. In the area immediately adjacent to the red pickup truck, two river rocks were located lying loose over the top of the row of embedded rocks. These two rocks appeared to be lying upside down as they each had a layer of dried soil over the top but were clean and smooth underneath. One of the rocks had red transfer paint and a small scrape mark. These two rocks were 7" x 5" and 5" x 4" inches in size. Two indentations in the soil in the area were consistent with the dimensions of the two loose rocks. The following photographs show each of these rocks:



⁹ A "tangential wound" to the head is a glancing wound where the bullet or bullet fragments do not penetrate the skull.

¹⁰ Diazepam is a benzodiazepine used to treat anxiety disorders, alcohol withdrawal symptoms, or muscle spasms.

One of the rocks was photographed next to the dent on the red pickup truck, which the owner indicated must have come from the rock striking his vehicle:



McIntyre's mother was interviewed by investigators later that night. She said that her son came to the house that morning and was acting strange. She eventually called the fire department for assistance. They arrived and concluded that McIntyre did not need medical treatment. Later, his mother called law enforcement because he was still acting strange. Deputies arrived and, according to her, the deputies indicated they did not believe McIntyre met the criteria to detain him for psychiatric reasons and left. She explained that she and McIntyre then went to the Ross store. At one point, McIntyre obtained the car keys and they returned to the car. Although his mother asked for the keys back, McIntyre would not give them to her. His mother eventually sat in the car, slipped the keys off the ring, and would not return the keys to her son. McIntyre became irritated and pulled her hair. His mother explained to investigators that McIntyre had recently been severely depressed and stressed out. Investigators noted that his mother had no visible bruising on her face and her hair braid was pulled out approximately one inch from her scalp.

Investigators spoke to witnesses who observed McIntyre in the Ross parking lot. They described him standing at the driver's side door of the parked vehicle, striking a woman (his mother), and grabbing her hair while trying to pull her out of the car. Another witness intervened and hit McIntyre with her purse. McIntyre stopped and walked away.

Investigators also spoke to witnesses who observed Deputy Wright's confrontation with McIntyre in the parking lot near Hooters. They described Deputy Wright falling down to the ground as he attempted to arrest McIntyre. The witnesses saw McIntyre pick up a large rock and strike Deputy Wright on the head. They also observed McIntyre attempt to pick up a second large river rock and one witness yelled at McIntyre to leave the deputy alone. McIntyre walked away. Deputy Wright was disoriented, managed to stand up, and retrieved his firearm from the holster. He yelled for McIntyre to stop multiple times, but McIntyre continued to walk away.

Deputy Wright fired two gunshots at McIntyre, who continued to flee.

The shots fired by Deputies Becker and Rodriguez were captured on multiple in-car camera and helicopter recording devices. The videos depict McIntyre at the top of the embankment under the Zinfandel overpass on Highway 50. He begins to walk westbound and then briefly stops to look at the traffic below.¹¹ McIntyre continues to jog westbound, stops at the top of the embankment, and throws a rock at Deputy Becker and K9 Ranger. Next, McIntyre runs westbound down the embankment towards the on-ramp. While he is running down the embankment, a video shows McIntyre making a second throwing motion at Deputy Becker and K9 Ranger. Deputy Becker is at the bottom of the embankment. The video also depicts Deputy Becker firing shots towards McIntyre as he is fleeing.¹² Deputy Rodriguez climbs over the center divider and eventually crosses the westbound traffic lanes. He reaches the middle lane and begins firing multiple shots at McIntyre as he is running towards the on-ramp. Deputy Rodriguez briefly pauses for one to two seconds as a vehicle drives by in the background, then continues to fire several more rounds at McIntyre. Deputy Rodriguez stops firing his gun, drops the empty magazine, and reloads with a new magazine, but does not fire again. Other deputies, CHP officers, and K9 Ranger eventually detain McIntyre near the on-ramp and sound wall separating the backyard of the residences adjacent to the freeway. In-car camera and aircraft video show a traffic block was utilized on the westbound lanes. The last cars of regular traffic passed through the area during the time that Deputy Becker was shooting. Normal traffic can be observed driving eastbound at regular speeds throughout the incident.

USE OF FORCE AND HUMAN FACTORS ANALYSIS

The District Attorney's Office requested that David Blake of Blake Consulting & Training Group assess the use of force and human factors involved in this incident. He provides consultation and expert witness services in police practices, use of force, and human performance science consisting of perception, attention, reaction time, and memory.

Blake is a retired California peace officer with over 20 years of experience at the Lawrence Livermore National Laboratory Force Division, San Francisco Bay Area Rapid Transit Police Department, and Livermore Police Department. Blake is certified as a Force Science Analyst by the Force Science Institute.¹³ He is a Human Performance Science instructor with California Training Institute,¹⁴ as well as a Law Enforcement Practices/Use of Force Expert with Martinelli

¹¹ It is difficult to see McIntyre's actions at the top of the embankment because his figure is covered by the dark shadow created by the overpass.

¹² Although a video depicts Deputy Becker approaching the embankment under the Zinfandel Drive overpass, the angle of view is obstructed and does not show Deputy Becker initially firing his gun at McIntyre after the rocks are thrown at him.

¹³ The Force Science Institute is a team of physicians, psychologists, behavioral scientists, attorneys, and other professionals who study areas associated with human factors, including human movement, action/reaction times, how the mind works during rapidly unfolding events, and decision-making under stress to provide information on human behaviors to those who are tasked with evaluating and investigating the behavior of individuals involved in those types of events.

¹⁴ California Training Institute provides specialized human performance training to the law enforcement, military, aviation, and government communities. The program educates students to assess threat, and to avoid or mitigate errors that lead to accidents or incidents in the work place.

& Associates.¹⁵ Blake is also employed by the Alameda County Sheriff's Office as a Force Options Simulator instructor. Blake is a California Peace Officer Standards and Training instructor with certifications for Firearms, Defensive Tactics, Force Options Simulator, and Reality Based Training. He has been retained as an expert in police practices, use of force, and human factors in California, Texas, Missouri, and New Mexico. Blake is a member of the International Association of Chiefs of Police, American Psychological Association, American College of Forensic Examiners Institute, International Law Enforcement Educators & Trainers Association, Academy of Criminal Justice Services, International Public Safety Association, and the Human Factors & Ergonomics Society. He has also published articles on performance psychology, tactics, and officer safety considerations in various scientific and professional periodicals.

In reviewing this incident, Blake evaluated the reasonableness of force used by Deputies Wright, Becker, and Rodriguez, and what, if any, human factors issues may have been involved. He separated his analysis by deputy.

Blake concluded in his report that Deputy Wright's use of deadly force was "reasonable and in line with contemporary police practices." Blake noted McIntyre battered and choked a female, resisted arrest by using violence to cause serious bodily injury on Deputy Wright, and was in close proximity to additional rocks. Deputy Wright was bleeding profusely, had trouble standing, and did not have any immediate assistance, which decreased his ability to defend himself. Blake stated a "secondary assault by McIntyre may have resulted in Wright losing control of his weapon." As such, Blake opined that a "reasonable officer in Wright's position would also believe it is necessary to use deadly force to prevent serious bodily injury or death to other officers or citizens."

Blake opined it was reasonable for Deputy Wright not to immediately stop firing when McIntyre turned or ran away from him. Blake noted that the time it takes a person to start and stop an action is of great import in an officer-involved use of force because human beings do not start and stop actions instantaneously. A person must perceive a change in the environment, process the information, decide what to do, and then move to take that action. If the situation changes, this process repeats (e.g., time to stop an action). Decision making between two different stimuli or choice responses generally doubles response time, and adding additional stimuli and response choices exponentially increases response time. Blake stated that "it is more-likely-than-not that both rounds [discharged by Deputy Wright] were fired rapidly due to the dynamic nature of the event and Wright's statement [to a civilian at the scene] that he did not utilize his sights." It is Blake's opinion that after Deputy Wright decided to fire his gun, there would be a slight delay before actually firing due to response time factors. Likewise, there would be another delay between the decision to stop firing and actual cessation of firing due, again, to response time factors.

Blake also concluded that Deputy Becker's use of deadly force was "reasonable and in line with contemporary police practices." Blake explained that Deputy Becker was aware McIntyre choked a female and struck Deputy Wright with a rock, causing serious bodily injury. Deputy

¹⁵ Martinelli & Associates is a training and consulting firm specializing in forensic investigations and law enforcement practices.

Becker also “would reasonably be surprised by McIntyre’s appearance at an elevated position and immediately throwing a large rock towards his head.” In fact, Deputy Becker believed that McIntyre had attempted to kill Deputy Wright and that McIntyre was trying to kill him. McIntyre appeared to have no regard for anyone’s safety and Deputy Becker was concerned as to what McIntyre might do unless he was stopped. It was Deputy Becker’s belief that McIntyre had tried to kill multiple people in a short period of time. Blake also noted that McIntyre “assaulted the K9 officer, making this less lethal alternative ineffective for a time. It was McIntyre’s actions which temporarily deterred the K9’s deployment and ultimately ensured it was ineffective.”

Blake opined that McIntyre’s violent actions showed his continuing and ongoing threat to the deputies and public. Deputies could not determine McIntyre’s intentions as he fled from them adjacent to the freeway. “McIntyre’s behaviors of battery/choking a female, attacking a peace officer and causing serious bodily injury, coupled with the violent assault on [Deputy Becker] provided probable cause that McIntyre was a continuing threat to the public and other peace officers responding to apprehend him. . . . A reasonable officer would also believe it is necessary to use deadly force to prevent serious bodily injury or death to other officers or citizens.”

Blake also concluded that Deputy Rodriguez’s response of using deadly force was “reasonable and in line with contemporary police practices.” Blake explained that Deputy Rodriguez recognized McIntyre from his earlier contact and was aware of the violence McIntyre inflicted on his mother and Deputy Wright. Deputy Rodriguez then observed McIntyre apparently lying in wait underneath the overpass before assaulting Deputy Becker and K9 Ranger with a rock. Deputy Rodriguez was unsure whether McIntyre armed himself further with more rocks as he ran down the embankment. Blake noted deputies were unable to contain McIntyre near the overpass. His violent actions and continued flight showed his willingness to continue assaulting deputies with deadly force, as well as his danger to the public. Deputy Rodriguez was concerned McIntyre would flee southbound into traffic. McIntyre ignored all commands, sirens, and shots fired by the deputies during the entire incident. Blake opined McIntyre’s actions and behavior “provided probable cause that McIntyre was a continuing threat to the public and other peace officers responding to apprehend him.”

LEGAL ANALYSIS

A peace officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to detain or arrest the person, to prevent the person’s escape, or to overcome the person’s resistance. (California Penal Code section 835a; CALCRIM 2670.) An officer who detains or arrests a person does not need to retreat or stop his or her efforts if the person resists or threatens resistance. Moreover, using reasonable force does not make the officer an aggressor or cause him or her to lose the right to self-defense. (California Penal Code section 835a.) The person being detained or arrested has a duty to permit himself or herself to be detained, and the person must refrain from using force or any weapon to resist arrest. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985; California Penal Code section 834a; CALCRIM 2670, 2671, 2672.)

In the present matter, Deputy Wright initially had reasonable cause to detain McIntyre for assault and battery. Witnesses reported that McIntyre was striking, choking, and pulling the hair of a

woman, later identified to be his mother, and appeared to be trying to pull her out of a vehicle. Deputy Wright clearly had sufficient reason to detain McIntyre to investigate that matter further. Deputy Wright ordered McIntyre to stop fleeing, but he refused. McIntyre evaded the deputy and resisted the deputy's attempts to grab him as the deputy pursued McIntyre on foot. McIntyre had a duty to submit himself to Deputy Wright's custody, but he failed to do so. Instead, he chose to violently attack Deputy Wright, striking Deputy Wright in the head with a large rock he used as a deadly weapon.

California law permits the use of deadly force if an officer actually and reasonably believed he or another person was in imminent danger of death or great bodily injury. If an officer actually believes that deadly force is necessary and that belief is reasonable under the circumstances, the officer's actions are lawful even if it is later determined that the danger did not actually exist. (CALCRIM 505, 507, 3470; *People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.)

As stated previously, the District Attorney's Office does not evaluate departmental tactics, training, policies, or issues of civil liability. A critical distinction exists between a District Attorney's analysis of police conduct for criminal prosecution and an analysis of police conduct by other reviewing entities, experts, or independent bodies, such as an Inspector General, Police Review Commission, Public Safety Accountability Office, or other similar organizations. One of the primary objectives of reviews of that type is to search for opportunities to improve outcomes in future use of force and potential use of force incidents. As such, police tactics, training, departmental policies, and equipment are evaluated with the benefit of hindsight and information unavailable to the witnesses and responding officers on scene. On the other hand, in evaluating an officer use of force incident for criminal prosecution, the state of the law is clear and unambiguous on this point. The reasonableness of an officer's use of force must be judged from the perspective of a reasonable officer on scene at the time of the event, not with 20/20 hindsight. Thus, it is neither inconsistent nor unusual that a use of force incident that is not suitable for prosecution as a criminal act may be suitable for improvement in tactics, training, or other departmental operations.

Deputy Wright was working alone when he encountered McIntyre. He knew McIntyre had previously used violence on a female, was currently refusing to comply with his instructions, and was evading detention. At one point, McIntyre turned around and faced the deputy in the parking lot, which caused Deputy Wright to believe that McIntyre was going to fight him. McIntyre then struck Deputy Wright with a large river rock while Deputy Wright was on the ground, causing a laceration and profuse bleeding and causing Deputy Wright's vision and hearing to become impaired. Deputy Wright recognized his vulnerability and believed he would die if he continued to lay on the ground.¹⁶ Deputy Wright stood up while dazed and drew his gun. McIntyre's close proximity to the deputy, his potential of committing another assault with a second rock, and the possibility of him taking the deputy's gun created a dangerous situation for

¹⁶ A similar incident occurred recently. On July 15, 2018, in Weymouth, Massachusetts, Emanuel Lopes fled the scene of a single-car crash and started throwing decorative rocks through the window of a home. When Police Officer Michael Chesna approached Lopes, Lopes threw a rock at Chesna from about 10 to 12 feet away, striking the officer in the head. Lopes then took Officer Chesna's duty weapon and shot the officer multiple times in the head, torso, and legs, killing him. Lopes then fired the gun several times at pursuing officers, striking and killing an innocent bystander, 77-year-old Vera Adams, as she sat on her sun porch. (<https://www.boston.com/news/local-news/2018/07/17/latest-weymouth-shooting-killed-michael-chesna-vera-adams>.)

Deputy Wright. Deputy Wright clearly perceived McIntyre as an imminent threat to his safety and fired at McIntyre. It was reasonable for Deputy Wright to believe that deadly force was necessary in self-defense under these circumstances.

After McIntyre attacked Deputy Wright with the rock, there was reasonable cause to arrest McIntyre for multiple felony offenses, including resisting an executive officer by force or violence (a violation of Penal Code section 69), assault with a deadly weapon upon a peace officer (a violation of Penal Code section 245(c)), and attempted murder of a peace officer (a violation of Penal Code sections 664/187). Instead of submitting to arrest, McIntyre attempted to escape.

Under California law, a peace officer may use deadly force against a fleeing felon if “the felony is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.” (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.) A “forcible and atrocious” felony is any felony that threatens, or is reasonably believed to threaten, life or great bodily injury. (*People v. Lang* (1989) 49 Cal.3d 991, 1022 n.14; *People v. Bush* (1978) 84 Cal.App.3d 294, 304.) Great bodily injury means a significant or substantial physical injury or damage as distinguished from trivial or insignificant injury or moderate harm. (See California Penal Code section 12022.7(f); *People v. Cross* (2008) 45 Cal.4th 58, 63-64.) California Penal Code section 196 provides that a homicide committed by a peace officer is justified when necessary to overcome actual resistance to the execution of legal process, when used in retaking escaped felons, or when necessary in attempts to make felony arrests of persons fleeing or resisting arrest. This statute does not expressly define what type of felony must be involved before deadly force may be justified, but the *Kortum* case limited this authority to forcible and atrocious ones. (*Kortum, supra*, 69 Cal.App.3d at p. 333; see also *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349.)

The United States Supreme Court has held that the *Fourth Amendment* does not prohibit the use of deadly force to prevent escape if the officer has probable cause to believe that the suspect poses a threat of serious physical harm either to the officer or others. “Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.)

In *Graham v. Connor* (1989) 490 U.S. 386, the United States Supreme Court clarified that “all claims that law enforcement officers have used excessive force — deadly or not — in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the *Fourth Amendment* and its ‘reasonableness’ standard.” (*Id.* at p. 395 (emphasis in original).) Determining whether force used to effect a particular seizure was reasonable under the *Fourth Amendment* requires carefully balancing the nature and quality of the intrusion on the individual’s *Fourth Amendment* interests against the countervailing governmental interests at stake. The facts and circumstances of each case must be carefully considered, “including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (*Id.* at p. 396.)

The Supreme Court later explained that in *Garner* it provided an example of the “reasonableness” standard in that deadly force may be used “if necessary to prevent escape” when the suspect is known to have committed a crime involving the infliction or threatened infliction of serious physical harm “so that his mere being at large poses an inherent danger to society.” (*Scott v. Harris* (2007) 550 U.S. 372, 382 n.9.)

The *Graham* decision also emphasized that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight and must allow 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. (*Graham, supra*, 490 U.S. at pp. 396-397.) “What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at p. 343 (quoting *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347).)

Deputy Wright fired at McIntyre after McIntyre committed a forcible and atrocious felony and attempted to flee. McIntyre struck Deputy Wright in the head with a large river rock, causing a laceration with profuse bleeding and causing Deputy Wright to have difficulty seeing and hearing. McIntyre’s actions threatened Deputy Wright’s life and threatened to cause him serious bodily harm. Pursuant to *Kortum* and *Garner*, Deputy Wright was justified in shooting at McIntyre. Additionally, under *Garner*, McIntyre posed a danger of death or serious physical harm to other responding officers and to the public. McIntyre could have been armed with additional rocks or easily obtained another large river rock in the area, overcome Deputy Wright, and obtained his firearm.

Thereafter, McIntyre attacked Deputy Becker and his K9 partner. Deputy Becker stated he believed he was in imminent danger of death or great bodily injury. Deputy Becker was aware that McIntyre was acting violently, as he had choked a woman prior to the deputies’ arrival and resisted and struck Deputy Wright over the head with a rock, which injured Deputy Wright and resulted in shots being fired. Deputy Becker and K9 Ranger were alone on the west side of the overpass as they looked for McIntyre. McIntyre suddenly appeared in a different location than Deputy Becker expected, with McIntyre in an elevated position putting Deputy Becker at a disadvantage. McIntyre threw a rock at Deputy Becker, striking him and his K9 partner. The blow to K9 Ranger’s face rendered the less lethal alternative of having Ranger apprehend McIntyre temporarily ineffective. McIntyre’s actions demonstrated a determination to avoid apprehension by law enforcement and Deputy Becker believed McIntyre was attempting to kill him. Deputy Becker fired to defend himself and K9 Ranger.

McIntyre threw another rock at the deputy while running down the embankment, which caused Deputy Becker to attempt to protect himself by further discharging his duty weapon at McIntyre. It was reasonable for Deputy Becker to believe that deadly force was necessary to defend himself under the circumstances. Deputy Becker’s use of force was not immediately effective, and McIntyre continued his attempt to escape.

At this point, McIntyre had committed a forcible and atrocious felony against Deputy Becker, assaulting him with a deadly weapon, and now attempted to flee. McIntyre had already

threatened Deputy Wright's life and threatened serious bodily harm, and then similarly attacked Deputy Becker, causing Deputy Becker to reasonably believe his life was threatened. Pursuant to *Kortum* and *Garner*, Deputy Becker was justified in continuing to shoot at McIntyre as McIntyre fled. Additionally, under *Garner*, McIntyre posed a danger of death or serious physical harm to other responding officers and to the public. McIntyre could have continued his attacks against the officers, or attacked a motorist in the area.

Deputy Rodriguez knew from radio traffic that McIntyre had been violent towards a female and then struck Deputy Wright with a rock in the head causing injury. Deputy Rodriguez witnessed McIntyre assault Deputy Becker with a deadly weapon, which caused Deputy Rodriguez to immediately cross the freeway and attempt to disable the threat. Deputy Rodriguez was positioned across the freeway to the south. Deputy Rodriguez could not determine whether McIntyre obtained more rocks as he ran down the embankment. He also could not determine which direction McIntyre was running away because McIntyre made several jagged motions as he fled. McIntyre's actions were quick and fluid, transpiring within seconds. Pursuant to *Kortum* and *Garner*, Deputy Rodriguez was justified in shooting at McIntyre after the forcible and atrocious felonies that McIntyre had just committed. Given his conduct threatening serious physical harm upon multiple officers, McIntyre being at large posed an inherent threat to society. Therefore, under *Scott* and *Garner*, McIntyre posed a danger of death or serious physical harm to Deputy Rodriguez, other responding officers, and to the public. Regarding the number of shots fired by Deputy Rodriguez, "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." (*Plumhoff v. Rickard* (2014) 572 U.S. 765, 134 S.Ct. 2012, 2022.)¹⁷

Furthermore, as McIntyre ran westbound away from Deputy Becker and Deputy Rodriguez, he was no longer contained by the deputies. There were no other deputies or officers to the west or south of McIntyre. In fact, the aircraft video clearly depicts normal traffic in the eastbound lanes during the pursuit, from where Deputy Rodriguez had come just moments before. Deputy Jennings had observed McIntyre throw a rock or brick from the embankment towards him or other deputies on the freeway. A woman reported to 9-1-1 that McIntyre threw a rock at her vehicle at the Zinfandel on-ramp.

Deputy Rodriguez made a split-second decision under extremely stressful circumstances. He later explained he discharged his firearm at McIntyre to prevent McIntyre from causing a vehicle collision, gaining possession of a vehicle, or fleeing into the nearby residential or commercial area. He was concerned McIntyre would continue his violent behavior and cause serious physical injury to others while he fled and increased his distance from the deputies. Were McIntyre to have started running southbound, motorists on Highway 50 would have been in the background of where the deputies would have had to fire. McIntyre ignored all previous commands to stop as well as the shots fired at him by the deputies. His assaults on Deputies

¹⁷ Here, again, we are mindful of the fact that even in a critical incident where deadly force is permissible, departmental policies, tactical considerations, and, depending on the particular surroundings and circumstances, the safety of other officers and the general public may favor a different course of action. We are also aware that a post-event evaluation of an incident bolstered by information unavailable to officers at the time they used deadly force may reveal missed opportunities to use less than lethal force. In rendering the conclusions set out in this report, we take no position on those issues. Nor do we discount the significance of them. Instead, we harken back to the District Attorney's role in this review, which is strictly limited to an analysis of the action actually taken by the officers and whether that action constitutes a prosecutable crime under the law.

Wright and Becker demonstrated his willingness to continue using force capable of serious bodily injury or death against officers. It was reasonable for officers to perceive McIntyre as an ongoing threat to the deputies, other law enforcement personnel in the area, and the public.

Although no specific warning was apparently given of the officers' intent to use deadly force, such a warning was not feasible nor required by Deputy Wright as he was immediately responding to the imminent threat that McIntyre posed having just struck Deputy Wright in the head with a deadly weapon. Additionally, such a warning was not feasible nor required by Deputies Becker and Rodriguez, as McIntyre at that point had already ignored police sirens and multiple commands to stop and get on the ground and was on notice that deadly force would be used, as Deputy Wright had fired upon and apparently missed him. Moreover, all of the shootings happened under rapidly evolving circumstances and in immediate response to McIntyre's sudden attacks upon the deputies.

Under *Graham*, the shootings by Deputies Wright, Becker, and Rodriguez were reasonable. Considering the facts and circumstances of this incident, the crimes at issue were severe. McIntyre had committed multiple serious and violent felonies, including attempted murder and assaults with deadly weapons upon peace officers. McIntyre posed an immediate threat to the safety of the officers and others, having just attacked two deputies and a K9 dog with large rocks he readily obtained from the surrounding area and possibly possessed more. Finally, McIntyre actively resisted efforts by multiple officers to detain him and attempted to evade arrest by flight.

As stated previously, in hindsight, after careful consideration of all of the surrounding circumstances, there may have been tactical approaches that would not have involved the use of deadly force. However, in evaluating a case under the *Fourth Amendment*, "the appropriate inquiry is whether the officers acted reasonably, not whether they had less intrusive alternatives available to them." (*Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, 915.)

CONCLUSION

Based on the circumstances of this incident, Deputies Wright and Becker were justified in shooting McIntyre to defend themselves. Additionally, Deputies Wright, Becker, and Rodriguez were justified in shooting McIntyre when he tried to escape after he committed forcible and atrocious felony attacks upon Deputy Wright and Deputy Becker. McIntyre posed a significant threat of death or serious physical harm to the officer and others. Accordingly, we will take no further action in this matter.

cc: Sacramento Sheriff Deputy Ken Becker #931
Sacramento Sheriff Deputy Gabriel Rodriguez #379
Sacramento Sheriff Deputy Jeffrey Wright #46
Sacramento Sheriff Detective Robert Peters #701
Sacramento Sheriff Lieutenant Dan Donelli #86
Rick Braziel, Office of the Inspector General
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