

**Officer Involved Shooting of  
[REDACTED] Be [REDACTED] and [REDACTED] Br [REDACTED]  
Los Angeles Police Department**

**Lieutenant Joseph Sanchez, #25339**

**J.S.I.D. File #16-0120**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**April 29, 2019**

**MEMORANDUM**

TO:                   COMMANDER ROBERT E. MARINO  
Los Angeles Police Department  
Force Investigation Division  
100 West First Street, Suite 431  
Los Angeles, California 90012

CAPTAIN KENT WEGENER  
Los Angeles County Sheriff's Department  
Homicide Bureau  
1 Cupania Circle  
Monterey Park, California 91755

FROM:               JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT:           Officer Involved Shooting of [REDACTED] Be [REDACTED] and [REDACTED] Br [REDACTED]  
J.S.I.D. File #16-0120  
L.A.S.D. File #016-00029-3199-064

DATE:               April 29, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 15, 2016, non-fatal shooting of [REDACTED] Be [REDACTED] and [REDACTED] Br [REDACTED] by Los Angeles Police Department (LAPD) Lieutenant Joseph Sanchez. It is the conclusion of this office that there is insufficient evidence to prove beyond a reasonable doubt that Lieutenant Joseph Sanchez acted unlawfully under the circumstances.

The District Attorney's Command Center was notified of the shooting on March 15, 2016, at approximately 11:00 a.m. The District Attorney Response Team responded and was given a walk-through of the scene.

The following analysis is based on investigative reports and witness statements taken during the investigation by the Los Angeles Sheriff's Department (LASD) Homicide Bureau, and submitted to this office by Detective Kevin Acebedo. The reports also include photographs and radio communications recordings.

**FACTUAL ANALYSIS**

In 2016, [REDACTED] Be [REDACTED], [REDACTED] Br [REDACTED], [REDACTED] Ca [REDACTED], and [REDACTED] Ja [REDACTED] were students at Crenshaw High School.<sup>1</sup> On March 15, 2016, at approximately 10:00 a.m., Be [REDACTED], Br [REDACTED], Ca [REDACTED], and Ja [REDACTED] drove to the area of Los Olivos Drive in the City of San Gabriel intending to burglarize a residence. Once in the area, Be [REDACTED], Br [REDACTED], Ca [REDACTED] and Ja [REDACTED] targeted the residence

---

<sup>1</sup> At the time of this incident, Be [REDACTED] was 17 years old, Br [REDACTED] was 16 years old, Ca [REDACTED] was 17 years old, and Ja [REDACTED] was 17 years old.

located at [REDACTED] Los Olivos Drive believing it to be unoccupied. Unbeknownst to the men, the residence belonged to LAPD Lieutenant Joseph Sanchez, who was sleeping inside the residence at the time. Be [REDACTED], Br [REDACTED], and Ca [REDACTED] entered the rear yard of Sanchez's residence, as Ja [REDACTED] waited nearby in his vehicle, a red Nissan Xterra SUV.



[REDACTED] Los Olivos Drive

Once in the rear yard of Sanchez's residence, Be [REDACTED], Br [REDACTED], and Ca [REDACTED] used a patio chair to reach an east-facing kitchen window. They removed the window screen, and using a crow bar Be [REDACTED] had in his backpack, forced open the kitchen window. Be [REDACTED] and Br [REDACTED] then crawled through the open window and entered Sanchez's residence, as Ca [REDACTED] waited outside the window.



Opened Kitchen Window, Patio Chair, and Screen



Interior View of Opened Kitchen Window

Sanchez, who was sleeping in the northwest bedroom of the residence, was awakened by the noise Be [REDACTED] and Br [REDACTED] made as they made their way from the kitchen to the dining room and living room area of the house. Sanchez armed himself with a 9mm Smith and Wesson handgun he kept in his bedroom, and confronted Be [REDACTED] and Br [REDACTED] inside the residence. Be [REDACTED] and Br [REDACTED] quickly attempted to flee through the opened kitchen window.<sup>2</sup> As Be [REDACTED] and Br [REDACTED] were in the process of fleeing, Sanchez fired three rounds at them from his kitchen window.<sup>3</sup>



Living Room of Sanchez's Residence (View from Front Door)

<sup>2</sup> Ca [REDACTED] was standing outside the window at the time, apparently acting as a look-out, and was able to escape unharmed to Ja [REDACTED]'s waiting vehicle.

<sup>3</sup> Sanchez stated he fired at Be [REDACTED] and Br [REDACTED] from his kitchen window, and Ca [REDACTED] stated Be [REDACTED] and Br [REDACTED] "were inside the house when the shots went off." However, neither Be [REDACTED] nor Br [REDACTED] could state with certainty whether they were inside or outside the house when the shots were fired. A detailed account of their statements appears later in this memorandum.





Living Room, Entrance to Dining Room, and Kitchen in Rear

Be█, Br█, and Ca█ ran along the east side of the residence towards the front of the house. Sanchez ran out of his front door, and confronted Be█ in the driveway of his house. Sanchez detained Be█ at gunpoint, but Br█, Ca█, and Ja█ were able to escape. Sanchez yelled for help, and shortly thereafter, Sanchez's neighbor, William L., called 9-1-1.

San Gabriel Police Department (SGPD) Officer Greg Mallette responded to the location. At the scene, Mallette observed Sanchez and William L., kneeling down next to Be█, who was lying face-down in the driveway of the residence. A small blood spot was visible on Be█'s back. Sanchez identified himself as an off-duty LAPD officer, stated he had shot Be█ and that Be█ had burglarized his home. Mallette radioed for paramedics to respond to the location.

Paramedics responded to the location, and subsequently transported Be█ to Huntington Memorial Hospital for treatment.

Immediately upon leaving the location, Ja█ drove an injured Br█ to the San Gabriel Valley Medical Center (SGVMC) for medical treatment, and left him there with Ca█.<sup>4</sup> Br█ and Ca█ arrived at the SGVMC at approximately 10:37 a.m., and were detained while in the emergency room.

Ja█ was stopped by police as he attempted to flee from the SGVMC in his vehicle. Parking Enforcement Officer Mariana Alvarez was near the intersection of Las Tunas Drive and Santa Anita Street when she heard a radio broadcast stating there was an outstanding burglary suspect from the incident at █ Los Olivos Drive. It was relayed that the burglary suspect was driving a burgundy Nissan Pathfinder with license plate █, which was last seen fleeing the SGVMC westbound on Las Tunas Drive.<sup>5</sup> Alvarez observed the suspect vehicle traveling in the area of Las Tunas Drive, followed it and notified dispatch. The driver, Ja█, was subsequently stopped and arrested in the City of Alhambra by assisting officers.

Investigators obtained Be█ and Br█' medical records from Huntington Memorial Hospital. █ he sustained an abrasion to his

<sup>4</sup> The SGVMC is located at 438 West Las Tunas Drive in the City of San Gabriel. Due to the serious nature of Br█' injuries, Br█ was subsequently transported to Huntington Memorial Hospital for treatment.

<sup>5</sup> Later, the correct license plate number for the burgundy Nissan was determined to be █, and the vehicle was identified as a red Nissan Xterra SE (not a Pathfinder).



Sanchez began shooting at them. Be [REDACTED] was unsure whether he was struck by gunfire at the time he went through the window, during the time his “feet were dangling out the window,” or after he fled through the window and was in the rear yard.

Once outside, Be [REDACTED] ran along the east side of the residence toward the street, and attempted to jump over the fence. However, Be [REDACTED]’s legs gave out, and he fell to the ground on the driveway in front of the residence. Sanchez then came out the front door of the residence, and identified himself as a police officer. Be [REDACTED] remained at the location until the police and fire department arrived, and he was transported to the hospital.

### Statement of [REDACTED] Br [REDACTED]

After being advised of his *Miranda* rights and waiving them, Br [REDACTED] agreed to speak with investigators. Br [REDACTED] was interviewed by Acebedo and Martinez while hospitalized at Huntington Memorial Hospital. Br [REDACTED] stated Ja [REDACTED] picked him up from South Los Angeles the morning of the incident. Ja [REDACTED] drove Be [REDACTED], Br [REDACTED], and Ca [REDACTED] to the location and parked along the curb near the front of Sanchez’s residence.

Br [REDACTED] stated the group went inside Sanchez’s house to “see what we could find.” Be [REDACTED], Br [REDACTED], and Ca [REDACTED] exited the vehicle, while Ja [REDACTED] stayed in the car.

Be [REDACTED], Br [REDACTED], and Ca [REDACTED] climbed a fence at the end of the driveway and entered the rear yard. Once in the rear yard, one of them used a chair to get to the window, and Be [REDACTED] used a metal tool to pry open the window. Br [REDACTED] entered the location first, followed by Be [REDACTED], and Ca [REDACTED], who went in last. Br [REDACTED] walked from the kitchen to the dining room, and into the living room toward the front door of the residence. Be [REDACTED], Br [REDACTED], and Ca [REDACTED] were inside the residence for approximately three minutes, but did not have time to take any valuables. Br [REDACTED] looked for cash or valuables in plain sight, but did not go into any bedrooms inside the location. Br [REDACTED] stated they attempted to open an interior door, which they thought led to the rest of the house, but were unsuccessful.



Interior Door (Leading to Attached Garage) and Black Cell Phone on Dining Room Table

Sanchez emerged from the side of the residence opposite the kitchen, and yelled, “You motherfuckers, get out!” Sanchez “started going crazy” and fired “five to seven rounds” at them.<sup>10</sup> Br████ stated, “So we all go through the window, and in the process, shooting, shooting, shooting.” Br████ was unsure whether he was struck by gunfire while he was inside, or outside the residence. Br████ stated, “I’m not sure. I didn’t know I got shot until I got to the car.” Br████ added, “I was running for my life.”

Br████ stated that no one had a weapon, and that he never reached to his waistband.

### **Statement of ██████ Ca████**

After being advised of his *Miranda* rights and waiving them, Ca████ agreed to speak with investigators. Ca████ stated Ja████ picked him up the morning of the incident, and drove him to a liquor store at Vernon Avenue and Sixth Avenue, where they met up with Br████ and Be████. It was Ja████’s idea to drive to the location.

Ja████ pulled the car to the curb, and Ca████, Be████, and Br████ exited the vehicle. Be████ was in possession of a screw driver, and Be████ and Br████ went inside the house, as Ca████ stood waiting outside the house. Ca████ stated, “I heard two to three shots, so I took off.” Ca████ stated that Be████ and Br████ “were inside the house when the shots went off.” Ca████ was unsure if Be████ and Br████ were struck by gunshots while outside the house. Ca████ stated, “Once they came outside, I was going...” and added, he did not look back.

### **Statement of ██████ Ja████**

After being advised of his *Miranda* rights and waiving them, Ja████ agreed to speak with investigators. Ja████ stated the vehicle involved in this incident was his, but is registered to his mother. Ja████ stated that the morning of the incident, he picked up his friends, Br████ and Ca████, from their respective residences, and drove them to a nearby liquor store where they picked up a friend of Br████. Be████, Br████, and Ca████ then directed Ja████ to drive to a location he was not familiar with. Once at the location, the group directed Ja████ to drive down a residential street, and Be████, Br████, and Ca████ exited the car, while he remained in the car.

Ja████ lost sight of his companions once they entered a rear yard, however a couple of minutes later, he heard gun shots, and saw Br████ and Ca████. As Br████ and Ca████ got back in Ja████’s car, Br████ stated, “I’m hit. Take me to the hospital.” Ja████ then drove to the nearest hospital.

### **Statement of Joseph Sanchez**

#### **Public Safety Statement of Joseph Sanchez**

Sanchez provided a public safety statement to Mallete, who first responded to the scene. Sanchez stated he resides at ██████ East Los Olivos Drive. On March 15, 2016, at approximately 3:00 a.m., Sanchez went to sleep after locking and securing his residence. At approximately 10:10 a.m., he was awoken by suspicious noise. Sanchez looked out his north-facing bedroom window, and saw a vehicle parked in front of his house. The noise continued, and sounded as if someone was

---

<sup>10</sup> A post-incident examination of Sanchez’s handgun revealed Sanchez fired his weapon three times during this incident. An analysis of the physical evidence recovered is detailed later in this memorandum.



rummaging and walking throughout the house. Startled, Sanchez armed himself with a 9mm pistol he kept in his bedroom, and exited his bedroom to investigate the noise. Sanchez walked to the living room, continued into the dining room, and into the kitchen. Sanchez stated, "That's when I saw two males." One of the subjects was crawling out of his east-facing kitchen window, just above the kitchen sink, as the other subject was running towards the same window. The first subject exited through the window, followed immediately by the second subject.

As the subjects exited the residence through his kitchen window, Sanchez yelled at them, "Stop! Stop! Stop! I have a gun! Stop!" several times. Sanchez ran to the same kitchen window the subjects had exited from, and continued to yell at them to stop and announce he had a gun. At this point, one of the subjects, who was now on his outside patio heading north, quickly turned towards him and simultaneously reached toward his front waistband with one of his hands, as if he was reaching for a firearm. Based on Sanchez's training and experience, Sanchez feared for his life as he believed the subject was going to pull out a firearm from his waistband.<sup>11</sup> Sanchez then fired two to three rounds at the subject in order to protect himself.

The two subjects then ran towards the east side of his house, and then north towards Los Olivos Drive. Sanchez gave chase, ran back through his house, and exited the north facing front door of his residence. Sanchez saw a subject, later identified as Be [REDACTED], jump over a front gate which leads to his rear yard. Sanchez detained Be [REDACTED] on his front driveway, and ordered him to lay down on the ground. Be [REDACTED] did so, and told Sanchez he was shot. Sanchez yelled for help, and a few moments later, his neighbor, William L., came to his aid and called 9-1-1. Sanchez remained with Be [REDACTED] until the police arrived.

### **Voluntary Statement of Joseph Sanchez**

On March 15, 2016, Acebedo and Martinez conducted a voluntary interview of Sanchez. Sanchez stated he wished to speak about what happened before the shooting and his observations of the subjects in his residence but, on the advice of counsel who was present during the interview, declined to make a statement to detectives regarding the details of the shooting.<sup>12</sup>

At the time of the incident, Sanchez had been a sworn peace officer with the LAPD for 29 years. Sanchez worked afternoon hours until 2:00 a.m., and regularly slept into the midday hours after getting home from work.<sup>13</sup>

On the morning of March 15, 2016, Sanchez was sleeping in his bedroom located in the northwest corner of the residence when he was awakened by footsteps and movement noises coming from the dining room area, located towards the east side of his residence. Sanchez lived alone in the residence, and was not expecting company, which led him to believe there was an intruder in his residence. Sanchez looked out of his bedroom window, which faces north, to Los Olivos Drive, and saw a burgundy colored SUV parked one house east of his driveway. The SUV did not look familiar, and it appeared to be stopped an unusual distance away from the curb line. Sanchez had also recently heard from a neighbor about several daytime residential burglaries in the area.

---

<sup>11</sup> Based on Sanchez's training and experience, suspects who commit burglaries and other felony crimes, often conceal firearms in their waistbands to assist them in the commission of a crime.

<sup>12</sup> In other words, Sanchez made a statement limited in scope to the circumstances surrounding the burglary of his residence, but declined to discuss the factual details surrounding the shooting.

<sup>13</sup> Sanchez did not work the night prior to the incident.

Sanchez armed himself with a Smith and Wesson 9mm handgun, opened his bedroom door, and walked toward the living room in the direction of the noises.<sup>14</sup> Sanchez heard feet pounding on the hardwood floor, and it became clear that there was an intruder in his house. As he proceeded out of the bedroom, Sanchez stated he tried to be “tactical” with his approach. Sanchez stated, “Because I’m thinking, the tactical part, who is in here? How many? So, I started approaching kind of a like a pie-chart type of thing, when I came around, that’s when I saw them.” As Sanchez walked to the doorway, which separates the dining area from the living room, he observed two male subjects, whom he did not know, inside his residence. Sanchez was standing approximately twenty feet from the two subjects at this time. The subjects were thin, appeared to be in their early 20’s, and were “heavily clothed.” The subjects wore hooded sweatshirts, backpacks, and had most of their body covered in some way. Sanchez ordered the two subjects to “Stop!” and announced, “I have a gun!” but the men did not stop and fled through a kitchen window above the sink, which was now open.<sup>15</sup>

Sanchez had several guns inside his residence, including a .45 caliber duty handgun, which was kept inside a belt holster, at the back porch near the back door of the residence, and a .380 caliber handgun in the center console of his truck, which was parked in the attached garage adjacent to the dining room. Sanchez observed that the interior door located in the dining room, which led to the attached garage was open, and a cell phone had been moved from a stand next to the sofa to the dining room table.<sup>16</sup>

After the subjects fled outside, they turned north onto a walkway which leads to a gate separating the front and rear yards of the location. Sanchez ran through the interior of his residence to the front door to see if he could see the men getting into a car, but the SUV was now gone. Sanchez heard climbing noises over his side gate toward the driveway and saw Be■■■■, who was now wounded and was on Sanchez’s driveway, attempting to flee. Sanchez then ran to the driveway, and held Be■■■■ at gunpoint as he gave him commands to surrender. Be■■■■ stated “You shot me,” and laid face-down on Sanchez’s driveway. Sanchez knelt on Be■■■■’s back and yelled for help. A neighbor, William L., came and assisted by calling 9-1-1. A short time later, SGPD officers responded to the scene, and transported Be■■■■ to the hospital.

### **Statement of William L.**

On March 15, 2016 at approximately 10:15 a.m., William L. heard two gunshots and someone yelling for help. William L. went outside his residence, and saw Sanchez in his driveway kneeling down over Be■■■■ and yelling for help. William L. then ran over to assist Sanchez. Sanchez told William L. that the man broke into his home and was shot. William L. called 9-1-1. William L. observed one gunshot wound to the front of Be■■■■’s lower torso near his waist.

### **Physical Evidence**

■■■■ Los Olivos Drive is a single-story residence located on the south side of Los Olivos Drive. A concrete driveway, located on the east side of the residence, leads to an attached garage. A cinder block wall borders the east property line. The residence consists of a living room, dining room, two bedrooms, bathroom, utility room, kitchen, and an attached garage. The kitchen is south of the dining room area. A small utility room is located south of the kitchen leading to the rear exit door.

---

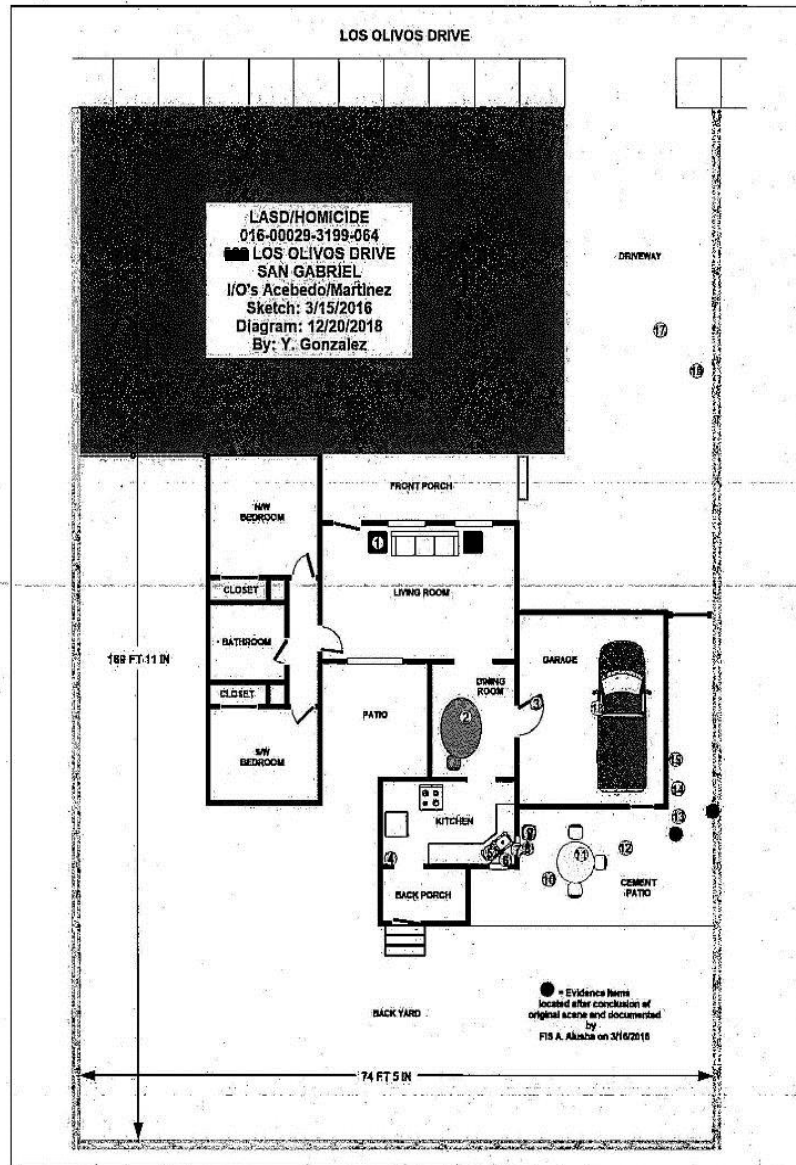
<sup>14</sup> The Smith and Wesson handgun was fully loaded, which was later determined to be eight in the magazine, plus one, for a total of nine rounds.

<sup>15</sup> Sanchez stated all the windows and doors to his residence were locked and secured when he went to sleep.

<sup>16</sup> This door was closed when Sanchez went to bed.

A gun belt containing Sanchez's duty weapon was located near the northwest portion of the utility room floor. The gun belt and duty weapon were undisturbed.

An interior door on the east wall of the dining room leads to the attached garage. The garage access door was ajar at the time of the investigation.<sup>17</sup> A green Toyota Tacoma truck was parked, facing north, in the attached garage.<sup>18</sup>



Created using ScenePD. Licensed customer: LOS ANGELES CO. SHERIFF'S DEPT SCIENTIFIC SERVICES

Page 1 of 1

www.tranicle.com

<sup>17</sup> No latent prints were recovered from various items of evidence processed for latent prints evidence, including the door knob on the interior garage door or the exterior sill or window.

<sup>18</sup> Sanchez stated that the truck was unlocked at the time of this incident.

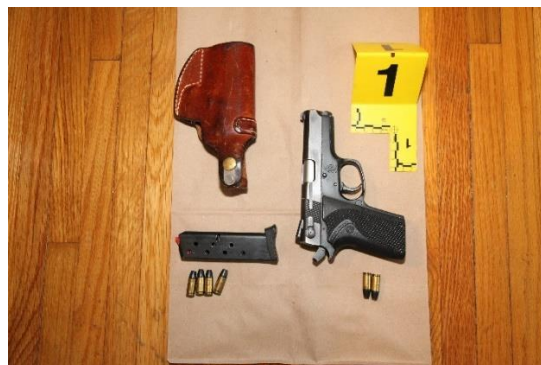
Be■■■■'s torn and blood stained clothing, consisting of a gray hooded sweatshirt, a "New Balance" athletic shoe and a left hand glove, were collected from the driveway of the residence. A multi-colored backpack, with apparent blood stains, containing a tire iron, was also collected from the driveway of the residence.



Shoe, Blue Glove, Backpack, and Miscellaneous Items on Driveway

A window screen was on the ground, under the open east kitchen window, as well as a metal patio chair. The window sill sustained notable damage. A "New Balance" athletic shoe was on top of a patio table in the rear yard/patio area.<sup>19</sup> A right hand blue glove was on the rear yard east side walkway of the residence.<sup>20</sup>

A semiautomatic Smith and Wesson 9mm handgun, secured in a tan holster, was collected from a speaker on top of an end table inside the living room of the residence. The handgun was loaded with one live round in the chamber, and five rounds in the magazine.<sup>21</sup>



Sanchez's Smith & Wesson Handgun

A total of three 9mm expended cartridge cases were collected: one cartridge case was located from near the southwest corner of the kitchen floor, one from the right side kitchen sink drain, and one from the ground south of the patio table in the rear patio area. A fired bullet was recovered from the

<sup>19</sup> This shoe was the same brand and similar to the shoe found in the driveway.

<sup>20</sup> This right hand blue glove appeared to match the left hand blue glove found in the driveway.

<sup>21</sup> This was consistent with Sanchez's statement that he fired his handgun three times.

cement walkway east of the residence, and a bullet fragment was recovered from the ground in the rear yard patio area. An additional fired bullet was extracted from Br█████ during surgery.<sup>22</sup> A bullet fragment encrusted with cement was recovered from the ground east of the patio table.<sup>23</sup> A bullet impact was located on the east cinder block wall, directly facing the southeast corner of the garage.<sup>24</sup>



Cartridge Case on Kitchen Floor



Fired Cartridge Case (10), Bullet Fragment (12), and Fired Bullet (13) in Rear Yard

An inventory search of Ja█████'s vehicle revealed a pair of blue and white gloves, with dry blood on the exterior, on the right rear passenger floorboard of the vehicle, as well as a red screwdriver. A plastic baggie containing a green leafy substance resembling marijuana was located in the back seat of the vehicle. Two smaller baggies containing the same substance were also located inside one of Br█████' jacket pockets. During a search conducted pursuant to search warrant, detectives located three backpacks, containing paper work for Ja█████, Br█████, and Car█████ respectively, and a drawstring bag, in Ja█████'s vehicle.

<sup>22</sup> The fired bullets and bullet fragment were subsequently analyzed and determined to have been fired from Sanchez's Smith and Wesson handgun.

<sup>23</sup> The lead core was subsequently analyzed and determined to have "no comparison value."

<sup>24</sup> A forensic analysis revealed that the bullet traveled in a west to east direction, but no further trajectories could be determined.





Blue Gloves with Blood and Red Screw driver in Ja [REDACTED]'s Vehicle

## LEGAL ANALYSIS

Homicide is justifiable when committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein. Penal Code §197(2).

“Any person using force intended or likely to cause death or great bodily injury within his residence shall be presumed to have held a reasonable fear of imminent peril or death or great bodily injury to self, family, or a member of the household when that force is used against another person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using the force knew or had reason to believe that an unlawful and forcible entry occurred.” Penal Code §198.5

The People have the burden of overcoming the presumption afforded by Penal Code §198.5. This means that the People must prove that a person did not have a reasonable fear of imminent death or injury to himself, when he used deadly force against the intruder. If the People have not met this burden, a jury must find that the person reasonably feared death or injury to himself. CALCRIM No. 3477.

Homicide is also justifiable when necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace. Penal Code §197(4). Deadly force may be directed toward the arrest of a felony suspect only where the felony committed is one which threatens death or great bodily harm. *People v. Piorkowski* (1974) 41 Cal.App.3d 324.

The felony feared for purposes of Penal Code §197(2), must be “some atrocious crime attempted to be committed by force.” *People v. Ceballos* (1974) 12 Cal.3d 470, 477-479. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious

bodily harm. *Id.* at 479. Murder, mayhem, rape, and robbery have been deemed forcible and atrocious as a matter of law. *Ceballos* specifically held that burglaries which “do not reasonably create a fear of great bodily harm” are not sufficient “cause for exaction of human life.” *Id.* at 479. However, where the offense is burglary, this standard is satisfied where the circumstances of the particular case establish that the perpetrator’s conduct “threatened, or was reasonably believed to threaten death or serious bodily harm. *Gilmore v. Superior Court* (1991) 230 Cal.App.416 (quoting *Ceballos* at p. 479).<sup>25</sup>

“A person assailed in his own house is not bound to retreat from the house to avoid violence, even though a retreat may safely be made. And if the intruder resists his ejection and assaults the lawful occupant, the latter need not retreat, but, in protecting his person, he may, if necessary, intentionally take the intruder’s life if he has reason to believe and does believe that his own life is in danger or that he is in danger of receiving great bodily harm.” *People v. Hubbard* (1923) 64 Cal.App.27, 36.

California law permits the use of deadly force in self-defense, or in the defense of others, if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code §197; *People v. Randle* (2005) 35 Cal.4<sup>th</sup> 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4<sup>th</sup> 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4<sup>th</sup> 1073, 1082; see also, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person’s beliefs were reasonable, the danger does not need to have actually existed. *Id.*

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. *People v. Jackson* (1965) 233 Cal.App.2d 639.

## CONCLUSION

The evidence examined in this investigation shows that on the morning of March 15, 2016, Be█, Br█s, Ca█, and Ja█ targeted Sanchez’s house to burglarize. Be█ and Br█ pried open a kitchen window, and forced their way into Sanchez’s house, as Ca█ remained outside as a look-out while Ja█ waited nearby acting as the getaway driver. Unbeknownst to the group, Sanchez was sleeping alone in a bedroom inside the residence, and was awakened by the sound of Be█ and Br█ inside his residence.

Startled and understandably in fear for his safety, Sanchez armed himself with a handgun he kept in his bedroom and carefully walked outside his bedroom, suspecting an intruder or intruders had entered his home. Sanchez’s suspicions were confirmed when he encountered Be█ and Br█, who were heavily clothed, inside his living room. Fearing Be█ and Br█ were armed, and that

---

<sup>25</sup> The court in *Gilmore* found that undisputed facts established that the defendant did in fact entertain the belief that he was so threatened and that his belief was reasonable where the defendant was in his home asleep, was awoken to scraping noises at his window, became “absolutely frantic” when he encountered an intruder attempting to remove a window screen to enter his residence, and shot the intruder, killing him.

there were additional subjects inside, Sanchez ordered them to stop, at gunpoint, and told them he had a gun.<sup>26</sup> It was clear to Sanchez that a felony burglary had been committed by the two subjects, because they had forced their way into Sanchez's previously secured home without his permission. Undeterred by Sanchez's actions and orders to stop, Be [REDACTED] and Br [REDACTED] fled.

The evidence shows that at the time Be [REDACTED] and Br [REDACTED] fled, they were fleeing felons, who had just committed a residential burglary of Sanchez's residence, and that Sanchez was lawfully attempting to detain them. As in *Gilmore*, the character and manner of this burglary arguably warranted deadly force to detain the perpetrators. As in *Gilmore*, Sanchez was alone inside his residence when confronted by not one, but two intruders, Be [REDACTED] and Br [REDACTED]. Further, Sanchez had reasonable grounds to believe that Be [REDACTED] and Br [REDACTED] may have armed themselves with the gun Sanchez kept in plain sight in the truck, which was unlocked and parked in the attached garage, and the service weapon in the duty belt Sanchez kept by the back door. The evidence shows that these weapons were located in areas within the residence in close proximity to where Be [REDACTED] and Br [REDACTED] were when confronted by Sanchez. Sanchez also noted that the door to the attached garage had been opened, further giving him reasonable suspicion that the two subjects may have accessed the gun within the truck. Be [REDACTED] and Br [REDACTED] were also heavily clothed, making it more difficult for Sanchez to determine if they were armed.

According to Sanchez, as Be [REDACTED] and Br [REDACTED] fled, one of them, whom Sanchez identified as Be [REDACTED] – the same subject he later confronted in his driveway, appeared to reach into his waistband.<sup>27</sup> Based on Sanchez's training and experience, he reasonably feared this subject was reaching for a gun, prompting Sanchez to fire his handgun three times in self-defense. Although, Br [REDACTED] denied reaching into his waistband and denied anyone was in possession of any weapons, Sanchez's beliefs were not unreasonable given his training and experience, and the circumstances confronting him.

Further, although Sanchez only described Be [REDACTED] reaching for his waistband, it cannot be proven beyond a reasonable doubt that his shooting of Br [REDACTED] was unlawful, since both he and Be [REDACTED] were fleeing at the same time and were in the same general area. Br [REDACTED] was likely wounded at the time Sanchez was firing at Be [REDACTED].

Although Be [REDACTED], Br [REDACTED], and Ca [REDACTED] stated they were only attempting to flee at the time of the shooting, ultimately, it cannot be proven beyond a reasonable doubt that Sanchez's use of deadly force in defending himself within his residence was unlawful. This is particularly so in light of the fact that Sanchez is *presumed* to have held a reasonable fear of imminent peril or death or great bodily injury to himself when he used deadly force against Be [REDACTED] and Br [REDACTED], who had unlawfully and forcefully entered his residence.<sup>28</sup> In view of the presumption weighing in Sanchez's favor, it cannot be proven beyond a reasonable doubt that Sanchez did *not* have a reasonable fear of imminent death or injury to himself when he used deadly force against Be [REDACTED] and Br [REDACTED].

---

<sup>26</sup> Sanchez stated that the door to his attached garage was opened and added, "I didn't know if they had been in there, or if someone was still in there."

<sup>27</sup> According to Sanchez's initial public safety statement, he fired two to three rounds at Be [REDACTED] who was on his "outside" patio heading north, and who quickly turned and appeared to reach toward his front waistband. The ballistics evidence and bullet impact on the east cinder block wall, appears to corroborate Sanchez's account, that Be [REDACTED] and Br [REDACTED] were, in fact, *outside* the residence when he fired.

<sup>28</sup> It bears noting that both Be [REDACTED] and Br [REDACTED] stated they were unsure about whether they were still *inside* Sanchez's house at the time they were shot. And, Ca [REDACTED] stated that Be [REDACTED] and Br [REDACTED] "were *inside* the house when the shots went off [emphasis added]." Further, Br [REDACTED] sustained a gunshot wound to his abdomen, indicating he was facing Sanchez at the time he was shot, and not running away from Sanchez.

Notably, Sanchez's account and the ballistics evidence suggesting Be [REDACTED] and Br [REDACTED] were outside when the shots were fired contravene Ca [REDACTED], Be [REDACTED], and Br [REDACTED]' accounts suggesting that they were inside when the shots were fired. Nonetheless, whether Be [REDACTED] and Br [REDACTED] were inside or outside Sanchez's residence when the shots were fired, the end result would be the same- as either way, there is insufficient evidence to prove beyond a reasonable doubt that Sanchez acted unlawfully when he used deadly force against Be [REDACTED] and Br [REDACTED]. In fact, it can be reasonably said that Ca [REDACTED], Be [REDACTED], and Br [REDACTED]' own accounts weigh slightly more in Sanchez's favor, since if Be [REDACTED] and Br [REDACTED] were inside the residence when Sanchez fired, then Sanchez would certainly be entitled to the presumption that he reasonably feared imminent peril or death or great bodily injury when he used deadly force in defending himself within his residence. Ultimately, with or without the benefit of the presumption, it cannot be said beyond a reasonable doubt that Sanchez's fear of imminent death or bodily harm and use of deadly force was unreasonable given the totality of the circumstances.

Based on the foregoing, we conclude that there is insufficient evidence to prove beyond a reasonable doubt that Lieutenant Joseph Sanchez acted unlawfully under the circumstances. We are therefore closing our file and will take no further action in this matter.