

**Officer Involved Shooting of John Garcia  
California Highway Patrol**

**Officer Felix Serpas, #19854  
Officer Jeremy Keller, #20847**

**J.S.I.D. File #15-0486**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**February 20, 2018**

## MEMORANDUM

TO: CAPTAIN KEVIN GORDON  
California Highway Patrol  
Southern Division Investigative Services Unit  
437 North Vermont Avenue  
Los Angeles, California 90004

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

SUBJECT: Officer Involved Shooting of John Garcia  
J.S.I.D. File #15-0486  
C.H.P. File #0902-509-15

DATE: February 20, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 11, 2015, non-fatal shooting of John Garcia by California Highway Patrol (CHP) Officers Felix Serpas and Jeremy Keller. We find that the officers acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on September 11, 2015, at 3:14 a.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene by Lieutenant Charles Sampson.

The following analysis is based on reports by the CHP Investigative Services Unit and submitted to this office by CHP investigators Stephen Wadleigh and Summer Weathers. The reports include radio transmissions, witness interviews, surveillance videotape, and MVARs (dash camera) footage of the incident. The voluntary statements of Officers Serpas and Keller were also considered as part of this analysis.

### **FACTUAL ANALYSIS**

#### **Introduction**

On September 11, 2015, at approximately 1:40 a.m., CHP Officers Felix Serpas and Jeremy Keller were on patrol and driving a marked police vehicle when they saw a Cadillac Escalade driving very slowly in the far right lane of the I-10 freeway. Serpas and Keller conducted a traffic stop on the vehicle and, using their public address system, ordered the driver, later identified as John Garcia, to exit the freeway. Garcia complied, drove off the freeway, and stopped in a parking lot. Serpas and Keller exited their vehicle and approached Garcia's vehicle. Serpas and Keller were unaware that Garcia had been involved in a string of armed robberies, had been smoking marijuana and methamphetamine, and had a loaded 12-gauge semiautomatic shotgun in his lap. As Serpas approached the driver's window of the Escalade, he asked Garcia, "Hey, how you doing?" Garcia fired his shotgun at Serpas, hitting him in the face, chest, arms,

and hands. Although badly wounded, Serpas was able to return fire. Keller also fired at Garcia, who exited the vehicle and moved around the Escalade in an apparent attempt to gain a tactical advantage on the officers to shoot at them again.<sup>1</sup> Garcia was struck by gunfire, jumped back into his vehicle, and sped away.

Crime broadcasts, including a description of the Escalade, were generated immediately. Within minutes after Garcia exited the parking lot, he was observed by West Covina Police Department (WCPD) K-9 Officer Miller. WCPD Officers Miller and Melnyk, both driving separate patrol vehicles, attempted to apprehend Garcia and a pursuit ensued. During the pursuit, Garcia attempted to ram and strike Miller and Melnyk's patrol vehicles with his Escalade. In response to the assault, Miller fired his weapon at Garcia, striking the interior of his patrol vehicle.<sup>2</sup> Garcia again fled from the scene and another pursuit ensued that terminated in a dirt parking lot in the City of Fontana. Miller assisted with placing Garcia in custody by utilizing his K-9. Garcia sustained multiple gunshot wounds and dog bites. Garcia's shotgun was recovered, lying on the floorboard of the front passenger seat of the Escalade.

Garcia was charged with attempted murder and assault with a firearm on a peace officer and robbery in case number KA110677. On October 17, 2017, Garcia was convicted of attempted murder of a peace officer and sentenced to 40 years to life in state prison.

Officer Serpas survived his injuries.

#### **MVARS Video (Dash Camera)**

The dash camera in the police vehicle captured the shooting. The frame below shows Serpas at the moment Garcia pointed and fired the shotgun at him:



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<sup>1</sup> The investigation later revealed Garcia's shotgun was loaded with two more live shells, but had an empty shot shell jammed in the chamber, which possibly prevented the shotgun from firing again.

<sup>2</sup> The bullet did not exit the patrol vehicle.

Garcia, still armed with the shotgun, jumped out of the vehicle and looked for the officers, who had taken cover. One of the officers yelled, “Drop it! Drop it!” and then gunshots from the officers are heard. It was determined later that Serpas and Keller fired 21 rounds at Garcia. Frames showing Garcia leaping out of his car with the shotgun and looking for the officers are shown below:



## **Officer Statements**

### ***Statement of Officer Felix Serpas***

Serpas and Keller were working patrol together at the time of the incident. Serpas drove and Keller was the passenger. At approximately 1:30 a.m., as the officers patrolled a portion of the westbound I-10 Freeway, Serpas noticed Garcia's Cadillac Escalade ahead of them, drifting onto the shoulder in the far right lane. Serpas advised Keller to "keep an eye" on the Escalade. Serpas and Keller began to accelerate to follow the Escalade and conducted a traffic stop on the vehicle. The Escalade pulled off the freeway and drove into a parking lot. Serpas and Keller followed the Escalade into the parking lot and exited their vehicle.

Serpas approached the driver's side of the Escalade with his flashlight in his left hand. As he approached the driver's window of the Escalade, Serpas saw a woman who appeared to be in the driver's seat. Serpas neared the driver's window, and said, "Hey, how you doing?" Serpas then saw the barrel of a shotgun protruding a few inches from the driver's window and saw Garcia leaning back in the driver's seat of the Escalade, with the shotgun on his left shoulder. Serpas believed that Garcia yelled in response, but could not remember the words. Serpas did not know whether he was shot at that point, but recalled raising his hands, retreating backward, and falling toward the left back side of the Escalade.

Serpas got back on his feet and tried to go toward the passenger side of his patrol vehicle for cover. Serpas heard more gunshots and took cover. Serpas saw Garcia looking for him and Keller. Serpas feared for both of their lives and returned fire from the area near the driver's side of the patrol vehicle. Serpas believed he struck Garcia a few times. Serpas reloaded his weapon and fired additional rounds. Serpas felt a blast of air come from Garcia's weapon while Garcia fired at an unspecified target. Serpas felt blood flowing from the top of his head, although he felt no pain at that time. Serpas radioed in an "officer down" call. Serpas and Keller sought cover at the back of a building as the Escalade drove away. Serpas received numerous injuries from being struck with shotgun pellets in his face, throat, esophagus, arms, hands, left lung, and elbow.

### ***Statement of Officer Jeremy Keller***

As Garcia was being instructed to exit the freeway, Keller noticed an unusual amount of movement by Garcia, indicating he might be trying to grab something inside the vehicle. Garcia followed the officers' instructions to exit the freeway and stopped in a parking lot.<sup>3</sup> Serpas positioned the patrol vehicle directly behind the Escalade. Using his public address system, Keller instructed the driver to lower all the windows of the Escalade to enable him and Serpas to see inside the vehicle. Serpas approached the Escalade on the driver's side while Keller approached on the passenger's side, acting as Serpas' backup.

As the two officers advanced, Serpas disappeared behind the rear driver's side of the Escalade. Keller heard Serpas make contact with Garcia, but could not discern the words. Keller's initial focus was on the female passenger in the front seat of the Escalade, whom he saw lower her head. Keller heard a commotion near the driver's door of the Escalade. From a distance of

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<sup>3</sup> Keller saw two men in the parking lot near a pickup truck.

approximately 40 to 60 feet, Keller saw the barrel of a shotgun rise and heard Serpas yelling. Keller saw a flash and heard a bang from the driver's side of the vehicle as Serpas moved backward. Serpas yelled, "Put it down! Put it down!"

Keller saw Garcia's head rise on the driver's side of the vehicle. Keller felt that his and Serpas' lives were in danger. Keller drew and aimed his service weapon and fired approximately five shots at Garcia. Keller's first shots went through the right rear window. After Keller fired, he moved backward, toward the patrol vehicle. Keller fired additional rounds, until the engine block of his patrol vehicle was between him and Garcia.

Keller was nearly out of rounds and Serpas was returning to the patrol vehicle. A shot shattered the passenger window of the patrol vehicle and Keller knew Garcia was aiming at them. Garcia was at the front end of the Escalade and it appeared that he was going to the passenger side of the vehicle to pursue Keller. Garcia briefly disappeared at the front end of the Escalade. When Garcia reappeared on the passenger side of the Escalade, Keller had a clear view of him and opened fire. Serpas also shot at Garcia. Keller heard Serpas say that he had been hit and saw that Serpas had blood dripping down his forehead, causing him to believe Serpas had been struck in the head. Keller pulled Serpas toward cover as Garcia sped away.

### **Witness Statements**

#### ***Statement of Andrew A.***

Andrew was employed as a private security guard, patrolling the grounds of the Promenade Apartment complex immediately northeast of where the officer involved shooting took place. Andrew saw the Escalade and the patrol vehicle pull into the parking lot. The CHP officers approached the Escalade cautiously on foot. As soon as Serpas reached the left rear door of the Escalade, Andrew heard him shout, "Drop your gun! Drop your gun!" four or five times. Both officers retreated for cover toward their patrol car, with their weapons drawn and pointing at the Escalade. Once the officers were within eight or nine feet of the front of their patrol vehicle, Garcia fired the first shot from what sounded like a shotgun. The officers returned fire, shooting approximately ten to fifteen rounds between them in a salvo that lasted fifteen to twenty seconds. After this, Andrew saw that Serpas was limping. Garcia was positioned near the front end of his vehicle, making tactical moves. Garcia took aim at the officers and fired one or two more rounds while the officers took cover behind the patrol vehicle. The officers returned fire.

#### ***Statement of Jonathon S.***

Jonathon was working as a private security officer at the Promenade Apartments northeast of the incident. He saw the CHP patrol vehicle effectuate the stop of the Escalade and saw both officers approach. He could see Keller at all times, but Serpas was obscured by the Escalade when he was closest to the driver's door. Jonathon watched Serpas approach the Escalade, but could not see him as he neared the driver's window. Meanwhile, Jonathon saw both the driver and passenger moving around inside the Escalade as the officers illuminated their vehicle. Jonathon heard Serpas yell, "Gun! Gun! Gun!" as he retreated back toward his patrol vehicle. Jonathon also heard someone yell, "Drop the fucking gun! Don't do it!" The first shot Jonathon heard was a single shot from what sounded like a very large gun that he believed came from the driver's side of the Escalade. Keller retreated, drew his service weapon, and fired approximately

three rounds. Keller and Serpas met with one another, repositioned themselves a little farther south and fired approximately ten to fifteen rounds between them over the span of ten to fifteen seconds.

#### ***Statement of Alexander M.***

Alexander and his uncle were waiting to be picked up in the parking lot at the time of the shooting. Alexander saw the Escalade drive into the parking lot followed by Serpas and Keller's patrol vehicle with the lights activated. Alexander positioned himself by the driver's side of a truck. Alexander heard the commands of the CHP officers, but paid little attention because the interaction appeared to be routine.

Suddenly, Alexander heard shouting coming from the direction of the Escalade. Alexander heard one round fired from a shotgun. He ran and climbed down the embankment along the boundary of the parking lot to seek cover. From his vantage point, which he estimated to be 40 to 50 feet from the patrol vehicle and the Escalade, Alexander saw Garcia exit the driver's door of the Escalade. Garcia was holding a black shotgun, which he was "pumping." Garcia was shouting at the officers, but Alexander could not understand what he was saying. After the initial shotgun round, Alexander heard several pistol shots. Alexander saw Garcia fire two additional shotgun rounds toward the patrol vehicle. Alexander had not seen the CHP officers exit their vehicle, nor could he see them at the time of the gunfire. Alexander ducked after the shotgun was fired and heard the Escalade drive away.

#### ***Statement of Juan M.***

Juan was waiting next to a truck when Garcia drove into the parking lot. Almost immediately after the Escalade entered the parking lot, Juan saw Serpas exit the driver's door of the patrol vehicle and walk approximately ten feet in the direction of Garcia's door. Garcia was leaning toward Serpas from inside the Escalade, and started shooting immediately. Juan saw Garcia exit the driver's door of the truck with a "long gun," with a barrel he estimated to be 16 inches. Juan ran down the embankment on the side of the parking lot and then heard what he believed to be a shotgun firing approximately four times. Juan did not know whether he heard the officers firing their weapons. When Juan heard the sound of screeching tires, he looked up again and saw the Escalade was gone.

#### ***Statements of John Garcia***

Garcia was arrested and treated at a hospital for a dog bite and multiple gunshot wounds.<sup>4</sup> He was interviewed on three separate occasions. In each of the interviews, Garcia told investigators a different story. During the third interview, Garcia admitted the prior interviews were fabrications. He stated he was driving on the freeway when the police began to follow them.<sup>5</sup> When Serpas approached, he had a shotgun on his lap.<sup>6</sup> When Serpas saw the shotgun, Serpas

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<sup>4</sup> A K-9 was used to assist with placing Garcia in custody, which resulted in Garcia sustaining a dog bite.

<sup>5</sup> Garcia admitted that he and his passenger had smoked marijuana and methamphetamine together.

<sup>6</sup> Garcia admitted he had traded an eight ball of methamphetamine for the shotgun.

ran back to his car. Garcia claimed he exited the Escalade only to speak with the officer.<sup>7</sup> Garcia was then shot in the left side of his face. Garcia continued to try to speak with Serpas, but he kept getting shot. Garcia realized he was about to die, so he shot Serpas once to save himself. Garcia made no reference to a second officer. Garcia admitted that he had a female passenger at the time of the shooting, but he let her out of the car before he was located and arrested.<sup>8</sup>

### **Firearms Evidence**

Officers Serpas and Keller were both armed with .40 caliber Smith & Wesson semiautomatic handguns. Twenty-one .40 caliber Smith & Wesson cartridge casings were recovered throughout the parking lot. Investigators determined Serpas fired 14 rounds and Keller fired seven rounds.

Garcia was in possession of a Sears, Roebuck and Company, Ted Williams Model 300, 12-gauge semiautomatic shotgun. The shotgun was recovered in Garcia's vehicle when he was arrested. It had one fired shotshell in the chamber and two live shotshells in the magazine. The shotgun was functional, but because of a shortened barrel, it was unable to extract and eject the expended shell, which effectively jammed the shotgun and prevented Garcia from firing at the officers again. A single fired "shot cup" (a remnant of a fired shotshell) was recovered from the parking lot, which is consistent with Garcia firing one shot during the incident. The shotgun, as it appeared when recovered in Garcia's vehicle, is shown in the photograph below:



<sup>7</sup> Garcia stated he tried to tell Serpas that he had a shotgun on his lap and tried to show it to him when he approached the Escalade. Garcia exited the Escalade with the shotgun only to talk to Serpas, but Serpas retreated and began firing at Garcia. In fear for his life, Garcia fired at Serpas.

<sup>8</sup> The female passenger was located and interviewed. She claimed she was not in the vehicle at the time of the shooting, but that Garcia always had a shotgun.



## LEGAL ANALYSIS

California law permits the use of deadly force in self-defense and defense of others if the person claiming the right of self-defense actually and reasonably believed that he was 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, 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. 505.

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that Officers Serpas and Keller pulled Garcia over for a traffic violation. As soon as Serpas approached the driver’s side of Garcia’s Escalade, Garcia shot Serpas with a shotgun. In fear for his life, Serpas ran for cover. Garcia jumped out of the driver’s side window with his shotgun and attempted to fire more rounds at Serpas and Keller. In reasonable fear for their lives and the lives of each other, Serpas and Keller returned fire, striking Garcia. It was not until Garcia realized his shotgun had malfunctioned that he decided to get back into his Escalade to flee the scene.

Garcia, who knew he had been involved in a string of robberies and was likely to be arrested for having a shotgun in his vehicle, chose to attempt to murder Serpas and Keller in order to effectuate his escape, which was nearly successful. The only barrier preventing Garcia from murdering the officers was the jamming of his gun, and the officers firing 21 rounds at Garcia in order to save their lives.

The MVARs video, together with multiple witness accounts, corroborate Serpas and Keller’s statements that Garcia fired his shotgun at them, which caused them to fear for their lives and return fire.

Based on the evidence presented, we determine that Garcia placed Serpas and Keller in reasonable fear for their lives when he fired his shotgun at them, forcing them to return fire at Garcia to end the deadly threat.

## CONCLUSION

We conclude that Officers Felix Serpas and Jeremy Keller acted lawfully in self-defense and defense of each other when they used deadly force against John Garcia. We are therefore closing our file and will take no further action in this matter.