

**Officer Involved Shooting of Lionel Gibson
Long Beach Police Department**

Officer Christopher Brammer, #10014

Officer Bernardo Barajas, #6234

Officer Craig Hazelwood, #10793

Officer Randall Beach, #10071

Officer Fernando Archuleta, #10649

Officer Rodolfo Rios, #6254

J.S.I.D. File #16-0220



JACKIE LACEY

District Attorney

Justice System Integrity Division

May 8, 2017

MEMORANDUM

TO: CHIEF ROBERT LUNA
Long Beach Police Department
400 W. Broadway Avenue
Long Beach, California 90802

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

SUBJECT: Officer Involved Shooting of Lionel Gibson
J.S.I.D. File #16-0220
L.B.P.D. File #16-29201

DATE: May 8, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 7, 2016, fatal shooting of Lionel Gibson by Long Beach Police Department (LBPD) Officers Christopher Brammer, Bernardo Barajas, Craig Hazelwood, Randall Beach, Fernando Archuleta, and Rodolfo Rios. It is our conclusion that the officers acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on May 7, 2016, at approximately 6:20 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene by Lieutenant Lloyd Cox.

The following analysis is based on reports prepared by the LBPD Investigations Bureau, Homicide Detail, detectives Donald Goodman and Mark Mattia. The reports include photographs, audio-recorded interviews of witnesses, a 9-1-1 call, radio transmissions, and surveillance videotape.

INTRODUCTION

On May 7, 2016, at approximately 4:46 p.m., an anonymous caller called 9-1-1 and reported a man with a gun. The caller described the man, later identified as Lionel Gibson, and said he was armed with an "Uzie" (a commonly known model of submachine gun) and talking to three people in a red car parked on 21st Street between Long Beach Boulevard and Locust Avenue. At 4:46 p.m., LBPD broadcasted a "417" call ("417" is police vernacular for a man with a gun). The call was also transmitted to the responding officers via computer as follows:

16:48:17	ENTRY	Info:417....M/B WRNG GRY AND WHI SRTIPED SHIRT/LT BLU PANTS SUBJ HAS AN UZIE IN HIS HAND.....TALKING TO 3 SUBJS IN A RED BLAZER.....ON 21ST BTWN LBB AND LOCUST
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Officers Christopher Brammer and Ryan Christopher were the first to arrive at the scene, followed shortly by Officers Bernardo Barajas and Randall Beach.

Upon arrival, the officers saw a red Chevrolet Blazer parked in the mouth of an alley. The truck was occupied by two men, later identified as Erick C. and Francisco M. Erick C. was seated in the driver's seat and Francisco M. was in the rear seat. Another man, later identified as German G., was standing outside of the truck and talking to Gibson, who was standing near the truck. The officers had good visibility in the daylight hours and were approximately 20 to 30 feet from the group of men. From that vantage point, the officers could see the grip of a black firearm in the front of Gibson's waistband, which was consistent with the information reported by the 9-1-1 caller.

Brammer ordered Gibson and German G. to put their hands up. Instead, Gibson reached for the grip of the firearm and did not comply with Brammer's order to keep "his hands all the way up in the air or he would be shot." Brammer ordered Gibson and German G. to lay on their stomachs with their hands facing out from their bodies. Instead, Gibson and German G. sat down with their hands raised, and did not lie onto their stomachs as ordered.¹

Additional LBPD officers arrived to assist and held Gibson and the other men at gunpoint. Despite the officers' orders to keep his hands in the air, Gibson began to slowly lower his hands in the direction of the firearm, which was still in his waistband. Gibson continued to lower his hands, eventually turning his right palm towards the grip of the gun, in a position that would allow him to draw the weapon.

Fearing Gibson was drawing his gun to attack them, Brammer, and Officers Barajas, Hazelwood, Beach, Archuleta and Rios, who by then had arrived to assist, fired their duty weapons at Gibson. Despite suffering gunshot wounds to his face and torso, Gibson again reached for the gun and continued to ignore the officers' orders to stop moving. Fearing Gibson was trying to return fire after being shot multiple times, the officers fired a second volley of shots at Gibson, who was then incapacitated. The officers moved Gibson's body a short distance, for safety reasons, and commenced CPR. The fire department declared him deceased a short time later.

Officers removed the gun from Gibson's waistband and moved it a safe distance away. At that point they determined that Gibson's gun was a BB gun designed to resemble an AK-47 assault weapon.

An aerial photograph of the scene showing Gibson's gun near his body after the shooting is shown below:

¹ The officers learned later that German G. was armed with a loaded 9mm handgun concealed in his pants pocket.



A photograph of Gibson's gun is shown below:



FACTUAL ANALYSIS

Statement of Officer Christopher Brammer

Brammer was working as a uniformed patrol officer with his partner, Officer Ryan Christopher, who was driving their police vehicle when they received a radio call regarding a man with a firearm at 21st Street and Locust Avenue. The call detailed a man armed with an Uzi submachine gun who was talking to three men in a red vehicle.

Brammer and Christopher responded to the call and, as they arrived, Brammer drew his service weapon. He saw Gibson standing next to two men who were inside a red Blazer parked in the mouth of the alley. Gibson was conversing with another man, German G., who was standing outside the vehicle. Christopher parked the car canted toward the alley and Brammer exited the car, took cover behind the car door, and ordered Gibson and German G. to put their hands in the air. As Gibson turned to face the officers, Brammer noticed the grip of a firearm in the front of Gibson's waistband.

As Brammer broadcasted a backup radio call of a "417" suspect, Gibson lowered his hand toward the firearm. Brammer yelled at Gibson, "Keep your hands all the way up in the air or you will be shot!" Brammer then instructed Gibson and German G. to lay on their stomachs with their arms extended away from their bodies. Both men failed to follow his instructions and instead sat on the cement facing the officers with their hands in the air.

As backup officers arrived, Brammer saw Gibson begin to lower his arms, with the tips of his fingers reaching his forehead. German G., seated approximately four feet to Gibson's right, kept his arms raised. Brammer ordered Gibson to raise his hands higher into the air, but Gibson continued to lower his hands with his right palm facing the grip of the firearm.

Fearing that Gibson was preparing to arm himself with the weapon concealed in his pants, and perceiving a threat to himself, his fellow officers and innocent bystanders, Brammer fired two shots at Gibson's upper torso to prevent him from reaching the weapon. Following those two rounds, Gibson continued to reach for the grip of the weapon so Brammer fired an additional three rounds.

Brammer noticed Gibson was bleeding from his face and neck area as he slowly dropped onto his left side with his right hand falling to his side. Despite again ordering him not to reach for his firearm, Gibson again moved his right arm towards his waistband and the grip of the weapon. Brammer feared that Gibson was intent on killing himself. He also feared that Gibson would shoot his fellow officers. Brammer fired three rounds to prevent him from reaching the weapon. After those three rounds, Gibson continued to reach for the weapon so Brammer fired an additional three rounds. Gibson's right arm then went limp and fell onto the sidewalk.

Brammer observed another officer remove the gun from Gibson's pants. Brammer then noticed that the gun appeared to be a replica machine gun.

Statement of Officer Bernardo Barajas

Barajas and his partner Officer Beach were working as uniformed patrol officers when they responded to a “417” call from Officer Brammer regarding a male suspect with an Uzi. Barajas and Beach responded and parked to the right of Brammer’s vehicle.

Barajas saw a red SUV Blazer parked in the alley. German G. was laying on his back with his arms extended. Gibson was seated on his buttocks with his arms extended above his head. Barajas broadcasted the license plate of the vehicle and the descriptions of the two additional men seated in the car. He saw the grip of a firearm visible in Gibson’s waistband and heard the other officers’ orders to Gibson to keep his hands up. Barajas kept his service weapon pointed at Gibson.

Gibson began to lower his arms, ignoring orders to stop moving and keep his hands up above his head. Gibson ignored the order and began to drop his arms towards his stomach and the firearm grip at his waist. Believing that Gibson presented an immediate threat to himself and the other officers, Barajas fired a single shot at Gibson’s torso. The shot failed to stop him from reaching for his waist, so Barajas fired a second round at Gibson’s torso.

Observing Gibson fall onto his left side with his arms at his sides, Barajas broadcast a “shots fired” call and requested the fire department. As he began turning his attention to the driver and passenger in the red Blazer, Barajas heard another officer yell, “Stop moving!” followed by additional gunshots. He turned back to Gibson and saw him lying still on the ground.

Statement of Officer Craig Hazelwood

Hazelwood and his partner Officer Rios responded to the “417” call. Hazelwood exited the car and drew his service weapon, a 45mm Springfield Armory semiautomatic handgun. Standing to the right of Beach, Hazelwood was informed that Gibson, seated on the alleyway cement with his arms extended upwards, had a firearm, possibly an Uzi, in his waistband. Gibson looked at the officers from left to right, appearing to gauge if they were paying attention to him, while the officers were formulating their plan. Gibson then began to lower his hands toward his waistband, ignoring Hazelwood and the other officers’ orders to keep his hands raised. Hazelwood feared that Gibson was trying to arm himself and shoot him and the other officers. Hazelwood attempted to fire his weapon, but failed, as he did not disengage the safety.

Gibson then fell onto his left side with his hands on the cement. Approximately one minute after the initial shots were fired, Hazelwood saw Gibson sit up into a seated position again, looking at the officers with blood dripping from his face. Gibson then reached with both hands towards his gun, again ignoring the officers’ orders to stop moving and put his hands up. Perceiving that Gibson posed an immediate and deadly threat to himself and others, Hazelwood fired three shots at Gibson’s center mass. He heard additional officers fire their weapons and saw Gibson fall onto the cement, motionless.

Statement of Officer Randall Beach

Beach responded to the scene with his partner Barajas, and initially observed German G. and Gibson sitting beside the Blazer with their arms raised slightly above their heads. Brammer

alerted Beach to the firearm in Gibson's waistband, which he assumed was an Uzi as reported by the 9-1-1 caller.

Beach focused his attention on securing German G. as the team formulated a plan. In his peripheral vision, Beach saw Gibson lower both his hands towards the gun in his waistband. Beach moved his firearm stance toward German G. as the other officers discharged their weapons. Beach did not initially fire his weapon and observed that Gibson had been wounded.

Approximately 15 seconds after the first round of gunshots, Gibson abruptly sat up and raised his hands towards the center of his chest. Despite other officers issuing orders not to move, Gibson again dropped his hands towards the firearm in his waistband. Beach feared that Gibson was trying to retrieve his firearm to return fire at the officers. Fearing for his safety and the safety of his fellow officers, Beach fired his duty weapon three times at Gibson's torso. Gibson immediately fell onto his back, unconscious and still.

Statement of Officer Fernando Archuleta

Archuleta responded to the "417" call with his partner Officer Vriens. Archuleta exited his vehicle and drew his service weapon. He approached the scene and saw Gibson sitting on the ground with the grip of a firearm sticking out of his waistband. Archuleta focused his line of sight on Gibson, while the other officers issued commands and began to coordinate a plan to take Gibson and the other men into custody. Gibson began to lower his arms towards the firearm, ignoring orders to stop moving and keep his hands raised. Archuleta feared that Gibson was reaching for his gun to shoot him and the other officers. Archuleta fired one round at Gibson.

Gibson's arms fell to the ground following the first round of fire, leaning onto his left side. Archuleta observed blood staining Gibson's shirt and face. Despite his wounds, Gibson sat up and again faced the officers, moving his right hand towards the grip of the firearm. Fearing Gibson was going to return fire, Archuleta fired an additional round at Gibson's center mass. Gibson fell onto the cement, lying flat on his back.

Statement of Officer Rodolfo Rios

Rios and Hazelwood responded to the "417" call. Rios said he heard a radio broadcast that Gibson had pointed an Uzi at the red Blazer before speaking with the occupants of the vehicle. Rios exited his police vehicle and drew his service weapon. Rios and Brammer ordered Gibson and German G. to sit on the cement with their arms raised above their heads. Rios noted that Gibson appeared nervous. Rios also saw the grip of a firearm sticking out of Gibson's waistband.

Gibson appeared to be moving his head from side to side, "as if looking for an escape route." Fearing he would try to flee with the gun in his possession, Rios ordered Gibson to stay on the ground with his hands up. A few moments later, Gibson lowered his arms, slowly moving them towards his waistband while watching the officers.

Rios ordered Gibson three to five times to keep his hands up and stop moving. Gibson failed to comply and lowered his hands to within four inches of the gun. Fearing for the safety of himself,

his fellow officers, and surrounding bystanders, Rios fired a single round at Gibson in unison with the other officers.

About 20 seconds after the first shots, Gibson sat upright and moved his right hand towards the handle of the weapon. Again, fearing Gibson was attempting to arm himself and discharge his weapon, Rios fired a second round at Gibson's torso. Rios saw Gibson fall onto the cement unresponsive.

Statement of German G.

German G. told investigators he was with Erick C. and Francisco M. driving in Erick C.'s red Blazer when they saw Gibson walking. German G. was armed with a 9mm pistol concealed in his pants pocket. German G. knew Gibson from elementary school so they pulled over to talk to him. German G. exited the vehicle and conversed with Gibson. German G. did not immediately see Gibson with a gun but later Gibson told him the gun was a BB gun. The gun was large and visible from Gibson's waistband. German G. was nervous and could not believe that Gibson had such a big gun in his possession.

German G. was conversing with Gibson when the police arrived. The officers ordered German G. and Gibson to get on the ground and put their hands up. They complied. German G. first went down to his knees and then sat down with his hands up. He laid down on his back looking toward the sky and had his hands up, following the officers' commands. He heard the officers repeatedly ordering them not to move and to keep their hands up, and he could tell that the officers were serious by the tones in their voices so he concentrated on not moving his body. It was not loud outside so German G. was able to clearly hear the officers' commands.

German G. was not looking at Gibson who was several inches away from him on his left. German G. heard a volley of gunshots and looked to his left, and saw Gibson laying on the ground with his feet stretched out in front of him. He saw Gibson fall and then get up again. Before the gunshots, German G. was not moving so he assumed Gibson must have moved. German G. was not struck with gunfire.

Statement of Francisco M.

Francisco M. told investigators he was driving with his friends Erick C. and German G. when German G. recognized Gibson walking slowly and "drowsily" down the street. German G. told Erick C. to pull over and he did. German G. exited the vehicle and approached Gibson. Francisco M. believed that Gibson was "high." Gibson had a black metal gun sticking out from his pants, so Francisco M. grew nervous about the situation. The gun looked real. Although Gibson did not initially recognize German G., they began to talk as friends while Erick C. and Francisco M. waited in the vehicle.

A minute later, the police arrived and screamed repeatedly, "Put your hands up! Keep your hands up!" and not to move. Francisco M. complied. German G. and Gibson initially complied by sitting on the ground and putting their hands up. However, Gibson, who was seated with his legs stretched out in front of him, mouthed something Francisco M. could not hear as he slowly brought his hands down toward his lap. Francisco M. believed the police started shooting because Gibson was moving. Francisco M. demonstrated Gibson's movements by first placing

his arms above his head bent at the elbows and then lowering his head, with his head bouncing forward, and then slowly bringing both hands down toward his lap. He heard gunshots as Gibson's hands were near his legs. Before the shooting started, Francisco M. heard the officers yell repeatedly at Gibson not to move. After the first volley of gunshots, Gibson leaned to his left. Gibson moved again and Francisco M. heard another volley of gunshots.

Statement of Erick C.

Erick C. told investigators he was driving with German G. and Francisco M. when they saw Gibson crossing the street in front of them with a machine gun. German G. recognized Gibson so they pulled over to talk to him. German G. exited the vehicle, approached Gibson, and said, "What's up?" German G. and Gibson shook hands. Gibson did not appear to immediately recognize German G. Erick C. initially thought Gibson's gun was real but later questioned whether it was real or not because he was surprised someone would walk around with a "big ass" gun like that, particularly with so many police officers around. He said it was not normal to walk around like that. Gibson did not appear to be high or drunk to him. Gibson continued to hold the gun as he conversed with German G. He saw Gibson shove the gun in his pants, and then officers arrived and told them to put their hands up and not go near the weapon. Erick C. complied by putting his hands out of the driver's side window of his truck. He was not looking at Gibson when he heard gunshots. After the gunshots, he looked toward German G. to see if he had been shot. The officers ordered Gibson again not to go near his gun and he heard a second volley of gunshots.

Statement of Pratchaya R.

Pratchaya R. was dining in a restaurant across the street from where the shooting occurred when he made his observations. He was seated facing in the direction of the shooting and from his vantage point he could see Gibson's left side. He could see the vehicles and people involved, but he could not see the lower half of Gibson's body because his view was obstructed by a pole and bushes. Before the shooting he saw German G. and Gibson conversing. They did not appear to be fighting. He could not hear what was going on outside. He saw the officers arrive and point their guns at the men. German G. was facing away from the officers, put his hands up, and got down on his knees. Gibson got down on his knees, faced the officers, and put his hands over his head. Gibson had something in his right hand but Pratchaya R. could not tell if it was a gun. The last time he saw Gibson he had his hands over his head, but he was watching the officers and not Gibson when the shooting started. After the shooting, Gibson was seated on his buttocks and leaning toward his left. He heard a second volley of shots and the officers started CPR on Gibson.

Statement of Duangruthai R.

Duangruthai R. was dining in a restaurant across the street from where the shooting occurred. She wears glasses but was not wearing them when she first made her observations. Duangruthai R. was initially seated in the restaurant facing away from the shooting. When she heard gunshots, she turned around and looked out the restaurant window toward the shooting. From her vantage point she could see Gibson's left side. She saw German G. laying on his back with his hands over his head. Gibson was seated on his buttocks with his arms crossed in his lap. Other than the gunshots, she could not hear what was going on outside. Duangruthai R. saw

Francisco M. exit the red vehicle and crawl away. After the shooting she saw an officer giving CPR to the man who was shot.

Statement of Victoria Y.

Victoria Y. was dining in a restaurant across the street from where the shooting occurred and from her vantage point she could see Gibson's left side. She noticed police officers outside the restaurant and saw German G. laying on the ground with his hands up, and Gibson sitting on the ground with his hands up. Gibson had something in his hands that looked like a gun, but she was unsure. The officers fired at Gibson and he went down. Gibson got back up and the officers fired again.

Statement of Felicitas Y.

Felicitas Y. was dining in a restaurant across the street from where the shooting occurred. She looked over her left shoulder and from her vantage point she could see the police officers and Gibson's left side. She saw officers pointing their guns. She could not hear what the officers were saying. She saw German G. on his back with his arms in the air. Gibson was seated with his buttocks on the ground. She heard gunshots and saw Gibson fall.

Statement of Grace Y.

Grace Y. was dining in a restaurant across the street from where the shooting occurred. From her vantage point she could see the police officers pointing their guns at two men and could see Gibson's left side. She could not hear what was going on outside because music was playing in the restaurant. German G. was on his back with his hands up, and Gibson was sitting down with his hands up and his legs stretched out in front of him, and he had something in his hands that looked like a gun. It was small and silver. Grace Y. said Gibson's hand "looked like it was moving" and then she heard gunshots. Gibson went down but got back up and she heard more gunshots.

Statement of Katayoun K.

Katayoun K. was dining in a restaurant across the street from where the shooting occurred when she made her observations. She could not hear what was going on outside except for what sounded like firecrackers. She looked outside and saw Gibson seated on the ground, sitting up, with his legs stretched out in front of him, and his hands in his lap. Gibson was slumped to his left and Katayoun K. believed he had just been shot by the police. She was too far away to see if Gibson had anything in his hands. She returned to her seat and heard a second volley of shots. She looked outside again and saw Gibson slumped over. An officer performed CPR on Gibson.

Statement of Babak B.

Babak B. was dining in a restaurant across the street from where the shooting occurred. From his vantage point he could see Gibson's left side. He could not hear what was going on outside because music was playing in the restaurant, but he heard gunshots and looked outside. He saw German G. lying on the ground and Gibson seated on his buttocks next to him, and slumped forward. Babak B. returned to his seat and heard a second volley of gunshots. He looked

outside again and saw Gibson still seated on his buttocks, with his hands on his thighs, leaning toward his left, and eventually falling over on his left side. An officer performed CPR on Gibson.

Statement of Lucy D.

Lucy D. was inside a residence when she heard officers giving commands to someone and yelling, "Put your hands up!" The officers continued to give those commands for approximately one minute and then she heard eight to ten gunshots. She heard the officers continue to give commands after the gunshots. Lucy D. heard one officer say, "I see a gun." She heard the officers continue to yell verbal commands and heard another eight to ten shots.

Statement of Maria A.

Maria A. was inside a residence when she heard eight to ten gunshots. She looked outside and saw and heard police officers yelling at someone in the alley. She heard multiple police officers yell, "Get on the ground!" She heard an officer yell, "Drop the weapon!" and at least ten more gunshots.

Surveillance Videotape from the Alley

Investigators collected surveillance videotape from a camera mounted on an apartment building located near the shooting. The angle of the camera captured part of the shooting sequence, but the view of the shooting itself was mostly off camera or obstructed by vehicles or other objects between the camera and where Gibson was seated when the shooting occurred.

The footage shows at 4:28 p.m., Erick C. driving his red truck onto 21st Street.

At 4:36 p.m., Gibson is shown walking in the alley, holding the gun, and walking out of view.

At 4:40 p.m., Gibson reappeared on camera and walked onto 21st Street where the red Blazer approached him. German G. exited the Blazer and contacted Gibson, who continued to hold the gun. German G. and Gibson shook hands and conversed while standing in the mouth of the alleyway.

At 4:43 p.m., a dark grey Crown Victoria driven by Brammer and Christopher appeared and parked on 21st Street. They were joined shortly thereafter by Barajas, Beach and several additional officers.

While much of the shooting scene was obscured by the vehicles and a telephone pole, at 4:50 p.m. the officers can be seen taking positions behind their vehicles.

A frame from the surveillance videotape showing Gibson with the gun shortly before the shooting is shown below:



A frame from the surveillance videotape showing the position of Brammer and Christopher's vehicle at the time of the shooting is shown below:



Videotape from Bystander

Cellular telephone videotape was taken by an unidentified bystander who witnessed the shooting. A local news agency obtained and published a segment of that videotape. The footage was filmed in a northbound direction and captures the backs of the officers as they discharged their weapons. While the officers can be heard giving indiscernible commands, and volleys of shots are audible, the officers and their police vehicles obstruct Gibson's actions prior to the shooting. A frame from that videotape is shown below:



A search warrant was served on the news organization in order to obtain the raw footage of the videotape for this investigation. That company declined to provide the raw footage, citing the California shield law.²

Photograph from Bystander

A bystander in a restaurant across the street from where the shooting occurred photographed part of the incident. One of those photographs is shown below:



² Cal. Constitution article. I, §2(b) and Evidence Code §1070.

Gibson's Cellular Telephone

Gibson's cellular telephone was recovered from the scene and searched. Numerous photographs of Gibson were recovered, including 19 photographs of him displaying the gun. One of those images is shown below:



Several of the images in the telephone also included Gibson pointing the gun at the camera and at his own head.

Gibson's Injuries

A postmortem examination was performed and the forensic pathologist, Timothy Dutra, M.D., determined that Gibson had thirteen gunshot wounds to his head, chest, and upper extremities. The gunshot wounds to the head and chest were fatal, and the trajectory was from front to back. A toxicology analysis was performed and determined that Gibson had the presence of THC and alcohol in his bloodstream at the time of his death.

The Gun

Officers recovered a Crosman Comrade AK semiautomatic BB gun from Gibson's waistband and moved it away from him to a dirt planter, where it was later recovered by investigators. The gun is CO2 powered and designed to expel 4.5mm BB's, and is therefore defined under California law as a "BB device."³ It is not an "airsoft" gun, which fires a different type of projectile, nor is it a toy. It is further defined as an "imitation firearm" because it is a BB gun and a device "so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive the device is a firearm." Notably, in 2016, California passed, via SB-199, a new gun law to address the danger presented to law enforcement by imitation firearms. Penal Code section 16700(a) was amended to expand the definition of imitation firearms and require certain markings on certain guns, particularly airsoft guns. Airsoft guns are now required to have a blaze orange ring on the barrel, as also required by federal law, and the gun must have a trigger guard that has fluorescent coloration over the entire guard, and there must be a two-centimeter wide adhesive band with fluorescent coloring around the circumference of the pistol grip or buttstock, or ammunition magazine. In passing that new law,

³ See Penal Code section 12001(g).

the legislature noted the following rationale regarding the control of imitation firearms, including BB guns:

“Imitation guns are deliberately fabricated to be indistinguishable from real firearms. Law enforcement officers have extreme difficulty distinguishing these fake guns from lethal weapons, particularly when officers must react within seconds to emergency situations. One of the primary dangers posed by replicas is that such guns are used by children and young adults who may not comprehend the seriousness of displaying them around unsuspecting law enforcement officers or around armed individuals. As a result, officers and community residents can find themselves in precarious situations when unable to distinguish replica guns from handguns and assault weapons. On October 22, 2013, a thirteen-year-old boy from Santa Rosa was tragically shot and killed by Sonoma County deputies who mistook the plastic airsoft gun he was carrying for an actual AK-47. This tragedy is neither new nor uncommon. A 1990 study commissioned by the Department of Justice found that there are well over 200 incidents per year in which imitation guns are mistaken for real firearms.”

Despite this new law, which brought BB guns within the definition of imitation firearms, BB guns that are replicas of assault weapons are nonetheless not required to have the identifiable markings as indicated above. Gibson’s gun did not have those markings, nor were they required. However, it is an infraction or misdemeanor to display an imitation firearm such as Gibson’s in a public place, based on the danger these guns present, as detailed above.⁴

Firearms Evidence

Officer Brammer was armed with a 9mm caliber Glock semiautomatic firearm. An inspection of the firearm concluded that one of Brammer’s eleven round magazines was fully loaded and the other was empty, which is consistent with his statement that he fired eleven rounds during the incident.

Officer Barajas was armed with a .45 mm caliber Springfield semiautomatic handgun. Inspection of the firearm concluded that Barajas’s eight round magazine was loaded with four remaining rounds and an ejected round in the chamber, which is consistent with his statement that he fired three rounds during the incident.

Officer Hazelwood was armed with a .45 mm caliber Springfield semiautomatic handgun. Inspection of the firearm concluded that Hazelwood’s eight round magazine was loaded with five remaining rounds, consistent with his statement that he fired three rounds during the incident.

Officer Beach was armed with a .45 mm caliber Sig Sauer semiautomatic firearm. Inspection of the firearm concluded that Beach’s eight round magazine was loaded with five remaining rounds, consistent with his statement that he fired three rounds during the incident.

Officer Archuleta was armed with a .45 mm caliber Springfield semiautomatic handgun. Inspection of the firearm concluded that Archuleta’s eight round magazine was loaded with six remaining rounds, consistent with his statement that he fired two rounds during the incident.

⁴ See Penal Code section 12556(a).

Officer Rios was armed with a .45 mm caliber Springfield semiautomatic handgun. Inspection of the firearm concluded that Rios' eight round magazine was loaded with six remaining rounds, consistent with his statement that he fired two rounds during the OIS incident.

Nine bullets or bullet fragments were recovered from Gibson's body. The projectiles that could be tested were matched to Brammer, Beach, and Rios' service weapons. Some of the projectiles were fragmented and/or deformed to the extent that they could not be matched to any particular firearm.

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.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 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. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

“Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589. “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.

Here, the officers were responding to a 9-1-1 call reporting a man armed with an Uzi who had pointed it in the air and at people in a car. An Uzi is a well-known model of submachine gun that can fire up to 600 rounds per minute and presents an extremely dangerous and deadly threat to law enforcement officers.

When the officers arrived, they saw Gibson with the grip of a firearm visible in his waistband, which was consistent with the appearance of the grip of an Uzi assault weapon, and consistent with the information the officers received from the 9-1-1 caller.

Although it was determined later that the gun was a BB gun that was designed to look like an AK-47 assault weapon, the gun appeared to be real.

Under the circumstances, it was reasonable for the officers to assume that Gibson was indeed in possession of an operable assault weapon. Despite numerous orders from the officers to keep his hands in the air and not to move, Gibson, who had the presence of alcohol and marijuana in his

bloodstream, brought his hands down to his waistband and appeared to be attempting to draw his gun and use it against the officers.

Under these circumstances, the officers reasonably feared for their lives and fired their duty weapons at Gibson. The officers continued to fire at Gibson as he persisted in attempting to reach the gun in his waistband.

CONCLUSION

Based upon Gibson's movements, lack of compliance with the officers' commands to put his hands up and not to move, the 9-1-1 call indicating Gibson was armed with an Uzi, and Gibson's actual possession of a gun in his waistband that appeared to be a real assault weapon, the officers believed that Gibson was attempting to draw the weapon from his waistband and shoot them. Fearing for their lives and the lives of others, the officers fired their service weapons at Gibson in self-defense.

The officers' observations of Gibson's movements are corroborated by Francisco M., who was several feet away from Gibson at the time of the shooting, had a good opportunity to see him, and saw Gibson drop his hands toward his waistband after the officers ordered him to keep his hands in the air and not to move.

The officers' belief that Gibson was armed with an assault weapon and was attempting to draw that gun and shoot them was both reasonable under the circumstances and shared by others witnessing the same incident. As such, the officers' belief that deadly force was necessary to protect themselves and others was reasonable under the circumstances.

We conclude that Officers Brammer, Barajas, Hazelwood, Beach, Archuleta and Rios were placed in reasonable fear of death or great bodily injury by Gibson's actions, and acted lawfully in self-defense and defense of others when they used deadly force against him. We are therefore closing our file and will take no further action in this matter.