

**Officer Involved Shooting of Dylan Wilson
Bell Gardens Police Department**

Officer Dano Neslen, #497

J.S.I.D. File #16-0381



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 12, 2017

MEMORANDUM

TO: CHIEF ROBERT BARNES
Bell Gardens Police Department
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Bell Gardens, California 90201

CAPTAIN CHRISTOPHER BERGNER
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Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Officer Involved Shooting of Dylan Wilson
J.S.I.D. File #16-0381
B.G.P.D. File #16-00019116
L.A.S.D. File #016-00086-3199-057

DATE: July 12, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 28, 2016, non-fatal shooting of Dylan Wilson by Bell Gardens Police Department (BGPD) Officer Dano Neslen. We find that Officer Neslen acted in lawful defense of himself and others, and used reasonable force in attempting to prevent the escape of a dangerous, fleeing felon.

The District Attorney's Command Center was notified of this shooting on July 28, 2016, at approximately 1:29 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Los Angeles County Sheriff's Department (LASD) Lieutenant Michael Rosson.

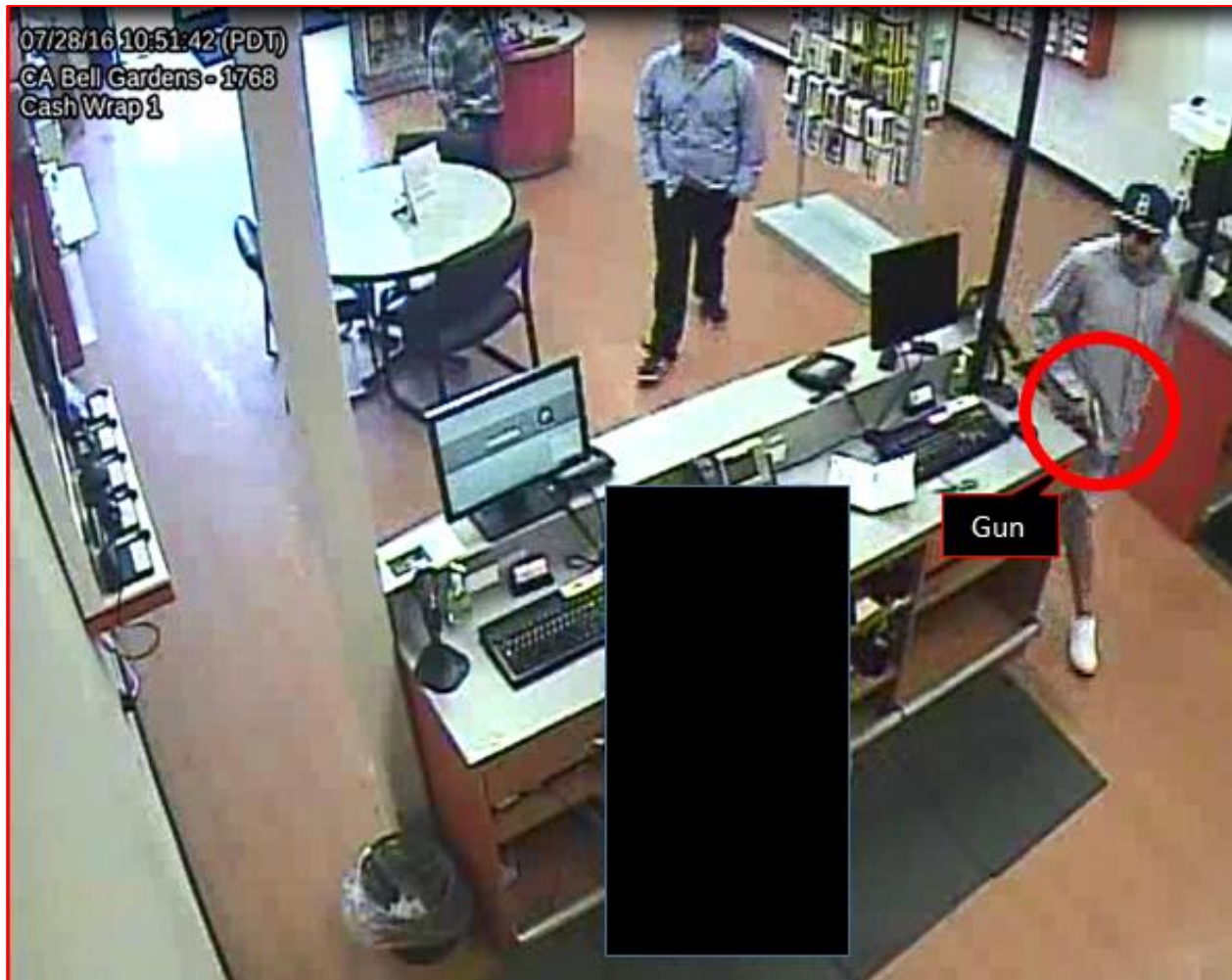
The following analysis is based on reports prepared by the LASD Homicide Bureau submitted to this office by Detectives David Gunner and Frederick Morse. The reports include photographs, audio-recorded interviews of witnesses, radio transmissions, surveillance videotape, and dash camera videotape.

FACTUAL ANALYSIS

The Armed Robbery

On July 28, 2016, at approximately 10:51 a.m., Dylan Wilson and two accomplices robbed a Verizon Wireless store in Bell Gardens. Wilson brandished a handgun and ordered the cashier to open the safe. She complied. Wilson and his accomplices collected various wireless devices and

other valuables from the safe and took U.S. currency from the cash register. They also took the cashier's identification. A frame from the surveillance videotape of the robbery, with Wilson's silver handgun circled in red, is shown below:



The group fled together in a black pickup truck but split up a short distance away. Wilson got into a second vehicle, a black 2008 Saturn Outlook SUV, and drove away alone. A witness, however, followed the group from the Verizon store and saw Wilson get into the second vehicle. He called 9-1-1, reported the description and location of that vehicle, and BGD PD started looking for the vehicle.

Verizon was also able to track one of the stolen telephones in Wilson's possession to pinpoint his location. That information was relayed to BGD PD officers who located Wilson and attempted to conduct a traffic stop. Wilson evaded the police and led the officers on a lengthy, high speed pursuit.

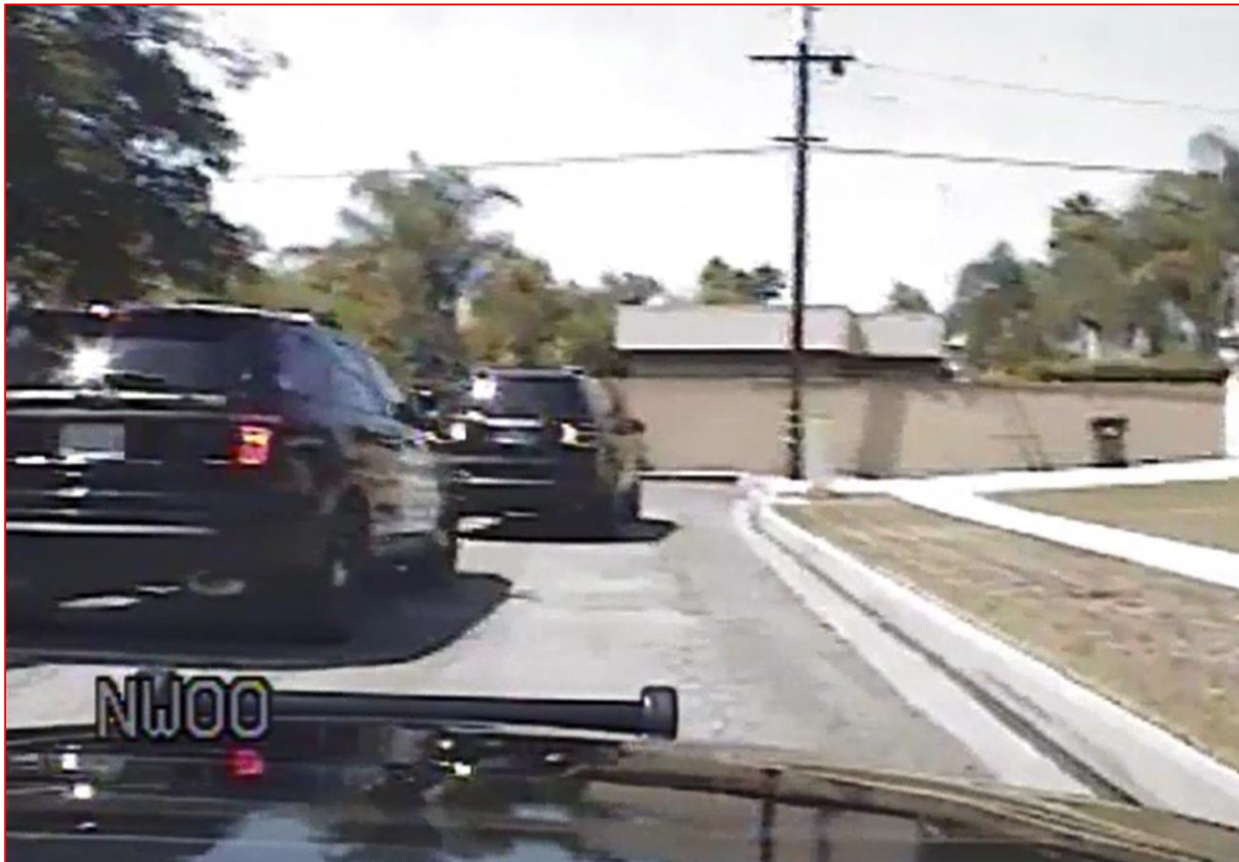
The Pursuit

Approximately one mile from the Verizon store, BGD PD officers saw Wilson driving out of an alley. The officers positioned their vehicle behind Wilson, turned on their overhead lights and

siren, and attempted a traffic stop. Wilson immediately accelerated and sped away from the officers. He drove at approximately 60 miles per hour, weaved in and out of traffic, and nearly collided head-on into oncoming traffic. He ran a red light at a major intersection and caused other vehicles to skid to a stop to avoid a collision. Wilson made an abrupt right turn into the parking lot of a market, exited the parking lot, swerved around a vehicle stopped at a stop sign, and drove 50 miles per hour in a residential area. He ran a stop sign and continued to drive at a high rate of speed and ran another red light. Wilson continued to drive at a high rate of speed, made an abrupt right turn at a major intersection, and nearly struck a pedestrian in the crosswalk. Wilson continued to weave in and out of traffic at a high speed and ran another red light. He continued to drive to another major intersection where he ran a red light and was struck by two vehicles travelling through the intersection. He continued to drive and ran two more stop signs at high speed. Wilson drove into an oncoming lane, ran a stop sign, and passed two cars stopped at that intersection. He drove into a residential area at a high speed and made a series of turns in an attempt to evade the officers.

The Collision

Wilson eventually drove down a residential street and was boxed into a cul-de-sac by three patrol vehicles. Wilson tried to escape by reversing his vehicle and ramming two of the police cars behind him. A still photograph of Wilson reversing his vehicle toward the patrol cars is shown below:

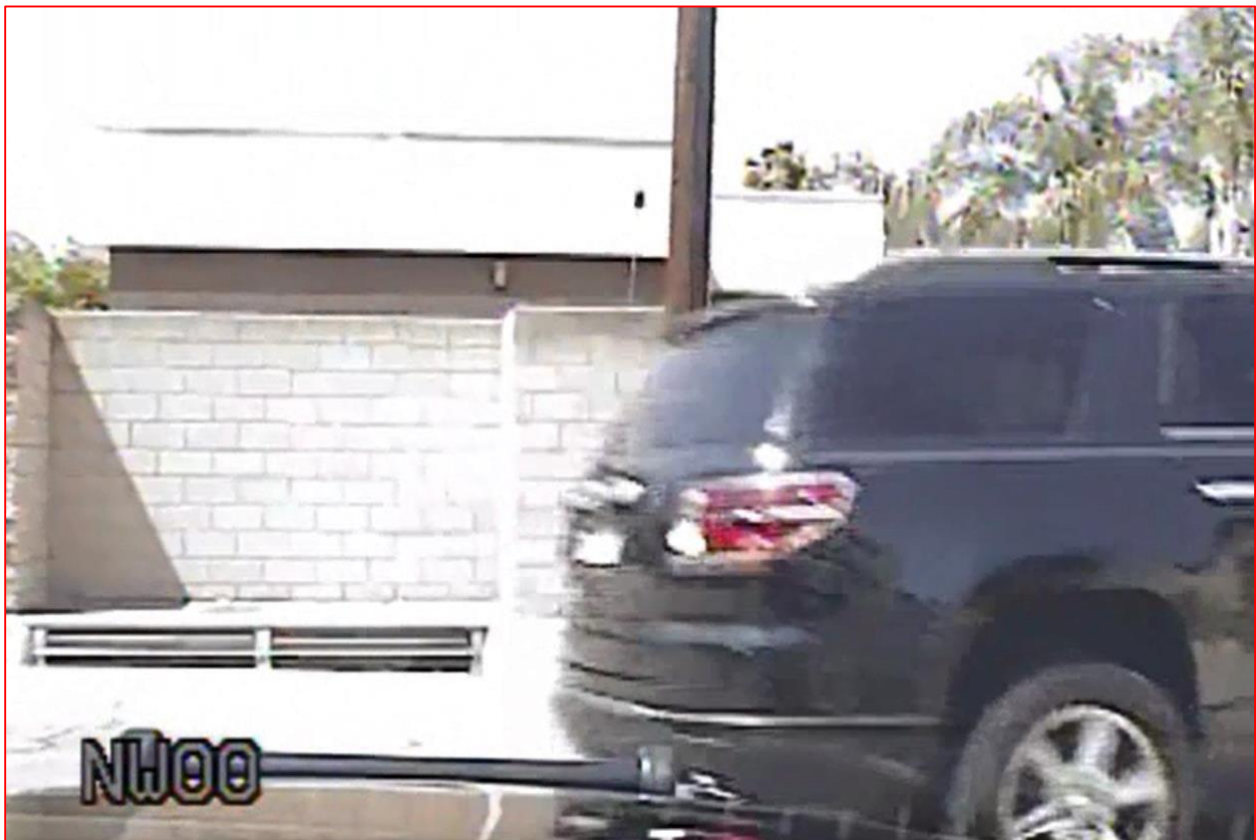


The Shooting

As Wilson rammed the patrol cars, Officer Ornelas exited his patrol car in an attempt to get in position to detain Wilson.

While he did so, Officer Torres rammed the back of Wilson's car and shoved it toward a wall in an attempt to pin it against the wall and terminate the pursuit.

Wilson's vehicle went forward but it spun clockwise before it hit the wall, allowing Wilson to turn around and drive onto a residential lawn to exit the cul-de-sac. A photograph of Wilson's vehicle, as it spun away from the wall after being rammed, is shown below:



Wilson drove on the lawn directly toward Ornelas.

Officer Neslen, fearing that Wilson was going to run over Ornelas, fired his service weapon at Wilson, striking Wilson's vehicle multiple times and grazing Wilson's head. The shooting itself was not captured on the dash camera because the camera was out-of-position by the time Wilson spun around and drove away from the cul-de-sac.

Ornelas dove out of the way of Wilson's vehicle as Neslen was firing. Ornelas was uninjured.

Wilson Arrested

The pursuit resumed and Wilson continued to evade the officers at high speed, driving approximately one more mile before abandoning his vehicle and running into a wash where he was captured.

The pursuit covered a distance of approximately six miles and lasted over six minutes. A loaded .380 caliber semiautomatic handgun was found in Wilson's car, along with numerous stolen cellular telephones from the Verizon store.

Wilson was charged in case number VA142495, convicted of armed robbery and assault on a peace officer, and on April 27, 2017, was sentenced to 15 years in state prison, which he is currently serving at North Kern State Prison.

Statement of BGPD Officer Esteban Perez

Officer Perez was in a single man patrol unit when he and two other BGPD patrol units pursued Wilson's vehicle into a cul-de-sac and boxed him in.

Perez's patrol vehicle was stopped behind two other patrol vehicles when Wilson reversed his vehicle and rammed those vehicles. Officer Torres responded by ramming the back of Wilson's vehicle and shoving it toward a wall. Wilson's car went forward but spun around. By that time, Officers Gerardo Ornelas and Dano Neslen had exited their patrol vehicles. Wilson drove directly toward them, and they did not have cover. As Wilson accelerated toward them, Neslen fired several rounds from his service weapon at Wilson's vehicle, but he continued to drive out of the cul-de-sac. Perez resumed the pursuit of Wilson, who drove to a wash and exited his vehicle and ran. Perez and another officer took Wilson into custody a short time later.

Statement of BGPD Officer Gerrado Ornelas

Officers Ornelas and Torres were driving in the same patrol car. Torres was driving. They pursued Wilson's vehicle and cornered him in a cul-de-sac.

Wilson reversed his vehicle and rammed Ornelas and Torres' vehicle, pushing it backward. Torres responded by ramming the back of Wilson's vehicle, as Ornelas exited the patrol vehicle. Wilson's vehicle spun 180 degrees and Wilson drove back toward Ornelas, who by that time was standing on a residential lawn. Ornelas had to jump out of the way to avoid being struck by Wilson's vehicle. If he would not have jumped out of the way, Wilson would have run him over. As he jumped, he heard six or seven gunshots and saw Wilson drive out of the cul-de-sac.

Statement of BGPD Officer David Torres

Officer Torres was driving with Ornelas and was part of the team that pursued Wilson and cornered him in the cul-de-sac. Wilson reversed his vehicle and rammed his car and the patrol car stopped next to him. Torres responded by ramming Wilson's vehicle from behind in an attempt to pin it against a brick wall. Wilson's vehicle spun around and Wilson drove directly toward Ornelas, who by that time had exited the patrol vehicle. Torres feared that Wilson had run over Ornelas. He heard several gunshots and believed Neslen had fired at Wilson, who then

drove out of the cul-de-sac. Torres later assisted in the arrest of Wilson and saw that Wilson had blood on his clothing.

Statement of BGPD Officer Dano Neslen

Officer Neslen was driving a single man patrol unit and was part of the team that pursued Wilson and cornered him in the cul-de-sac.

Neslen stopped his patrol vehicle behind Wilson's vehicle in the cul-de-sac and started to exit. As he was doing so, Wilson reversed his vehicle and rammed into Neslen's vehicle. Neslen exited to the rear of his car and saw Ornelas already outside of his own patrol car and positioned on a residential lawn. Wilson turned his vehicle around and drove on the lawn toward Ornelas. In fear that Wilson was going to run over Ornelas and kill him, Neslen fired his service weapon at Wilson's vehicle, striking it multiple times.

Firearms Evidence

Officer Neslen was armed with a Sig Sauer, 1911, semiautomatic .45 caliber pistol with a magazine capacity of eight rounds plus one in the chamber. Investigators recovered seven .45 caliber cartridge casings at the scene.

Wilson was armed with a stolen, .380 caliber semiautomatic handgun, loaded with six live rounds in the magazine, which was recovered from his vehicle. That gun is shown below:



Wilson's Injuries

Wilson had an abrasion to the right side of his forehead that appeared to be a graze wound. He also had abrasions to the cheek area.

Vehicle Damage

The front bumper of Torres' patrol vehicle was damaged in the collision with Wilson's vehicle, as shown below:



The front bumper of Neslen's vehicle was damaged in the collision with Wilson's vehicle, as shown below:



Wilson's vehicle had bullet holes in the front windshield, driver's door window, driver's side roof area, and the right front and rear passenger doors. The front windows were shattered and the right rear tire of the vehicle was flat.





LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of others if that person actually and reasonably believes that he or others are 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 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 3470. “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 the police 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 test of whether the officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others.” *Munoz v. City of Union City* (2004) 120 Cal. App.4th 1077, 1102. It is well-settled that, “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.

A police officer may also use reasonable force in making an arrest, preventing an escape, or in overcoming resistance. Reasonableness is judged from the perspective of a reasonable person acting as a police officer at the scene and considers the circumstances surrounding the use of force including: (1) whether the suspect poses an immediate threat to the safety of the officers or others, (2) whether the suspect is actively resisting arrest or attempting to evade arrest by flight, and (3) the severity of the crime at issue. *Penal Code* section 835a. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape. *Tennessee v. Garner* (1985) 471 U.S. 1.

Analysis

Officer Neslen's use of deadly force against Wilson was reasonable under the circumstances. He was defending Officer Ornelas, who was in imminent danger of great bodily harm if Wilson ran him over. Wilson had also just committed an armed robbery, was engaged in a dangerous high speed pursuit, and was an immediate threat to the pursuing officers and the public, and therefore Neslen was justified in using deadly force in an attempt to stop a dangerous, fleeing felon.

CONCLUSION

Wilson committed an armed robbery and used his vehicle in an extremely dangerous manner to attempt to effectuate his escape. He posed a substantial and immediate risk of serious physical injury or death to Officer Ornelas, the other officers present, and the general public. Based on a review of the totality of the evidence in this case, the force used by Officer Neslen was reasonable under the circumstances in order to defend Officer Ornelas and attempt to capture a dangerous, fleeing felon. We are closing our file and will take no further action in this matter.