

Officer Involved Shooting of Matthew Hurtado

California Department of Corrections and Rehabilitation

Special Agent William Braden, #50871

Pasadena Police Department

Officer William Broghamer, #0675

Officer MacLaurin Adesina, #0048

Glendale Police Department

Officer Justin Darby, #19505

J.S.I.D. File #17-0482



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 2, 2018

MEMORANDUM

TO: ACTING DEPUTY DIRECTOR DAVID ANDERSON
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United States Department of Justice
Washington, D.C. 20530-0001

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

SUBJECT: Officer Involved Shooting of Matthew Hurtado
J.S.I.D. File #17-0482
L.A.S.D. File #017-11562-0542-013

DATE: July 2, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 6, 2017, fatal shooting of Matthew Hurtado in Duarte, California, by members of the Pacific Southwest Regional Fugitive Taskforce (hereafter the "Task Force").¹

¹ The Task Force is under the direction of the United States Marshals Service and is comprised of eighteen federal, state, and local agencies, including the Pasadena Police Department, Glendale Police Department, and the California Department of Corrections and Rehabilitation (CDCR).

We find that the agent/officers involved in the shooting, Pasadena Police Department Officers MacLaurin Adesina and William Broghamer, CDCR Special Agent William Braden, and Glendale Police Department Officer Justin Darby, were reasonable in their use of deadly force to prevent the escape of a dangerous, fleeing felon.

The District Attorney Command Center was notified of this shooting on October 6, 2017, at 2:38 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 Joe Mendoza.

The following analysis is based on reports prepared by the LASD Homicide Bureau submitted to this office by Detectives Phillip Guzman and Eric Arias. The reports include photographs, audio-recorded interviews of witnesses, and radio transmissions.

The compelled statements of Officers Adesina and Broghamer were considered in this analysis.²

FACTUAL ANALYSIS

The Pasadena Shooting

On October 5, 2017, at approximately 8:30 p.m., Matthew Hurtado, a 28 year-old Varrio Pasa Rifa ("VPR") gang member with the moniker "Creeper," who was on parole in four separate cases for robbery, carjacking, assault by means likely to cause great bodily injury, and battery causing serious bodily injury, armed himself with a stolen 9mm semiautomatic handgun and confronted a 19 year-old man in front of a residence in Pasadena.³

Hurtado called the man a "bitch ass nigga" and yelled, "This is my 'hood!" before shooting the man multiple times, seriously injuring him and a 16 year-old girl who was standing nearby. Both victims survived.

Hurtado fled in a white vehicle with another man. Pasadena Police Department detectives investigated the shooting, identified Hurtado as the shooter, sought to apprehend him for two

² Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. Adesina and Broghamer were interviewed and ordered to submit to questioning concerning the performance of their official duties. Like any other individual, the officers possess a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against themselves. *Uniformed Sanitation v. City of New York*, *supra*, at 284-285. Because the PPD ordered the officers to answer questions which might expose them to criminal liability, the PPD compelled the officers to participate in interviews. The effect of this legal compulsion is that the officers' statements cannot be used against them in a criminal proceeding, nor can any material derived from the compelled interviews be used against them. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 715. Further, because these compelled statements are part of the officers' police personnel files, their statements are confidential and may not be disclosed absent an evidentiary showing and court order. *Penal Code* section 832.7.

³ Hurtado was convicted of robbery on February 14, 2013, in case number KA099763, robbery and carjacking on March 1, 2013, in case number GA08698, assault by means likely to cause great bodily injury on April 20, 2015, in case number PA079257, and battery causing great bodily injury on August 7, 2015, in case number GA092562.

counts of attempted murder, and requested assistance from the Task Force in making that apprehension.

The Surveillance

On October 6, 2017, at approximately 8:30 a.m., the Task Force was engaged to locate and apprehend Hurtado. The Task Force was informed that Hurtado was on parole, was probably armed, possibly with two guns, had shot two people 12 hours earlier, and was a “high risk” suspect. The Task Force located Hurtado and his girlfriend, Jane Doe, in a stolen white Toyota in the City of Upland in San Bernardino County.⁴ The Task Force surveilled Hurtado and Doe as they drove to Encanto Park in the City of Duarte in Los Angeles County. When Hurtado and Doe arrived in the park, they parked and exited the vehicle. Hurtado and Doe went for a walk in the park as the surveillance team formulated a plan to apprehend Hurtado when he returned to his vehicle.

The Officer Involved Shooting

At approximately 11:45 a.m., when Hurtado and Doe re-entered their vehicle, 12 members of the Task Force approached, in ten vehicles, and surrounded Hurtado’s vehicle. The team used their vehicles to block Hurtado’s vehicle, identified themselves as police officers, held Hurtado at gunpoint, gave him commands to put his hands up, and attempted to take him into custody. The approximate positions of the parties and their vehicles at the time of the shooting are shown below:



Hurtado, who had the presence of methamphetamine in his bloodstream and had previously told Doe that he would not go back to jail, did not comply and instead drove his vehicle forward, at full throttle, into a curb and in the direction of one of the agents, in an apparent attempt to

⁴ “Jane Doe” is a pseudonym.

escape. Hurtado then accelerated in reverse and rammed one of the Task Force vehicles blocking him in. A photograph of the skid marks Hurtado's vehicle left on the curb and asphalt is shown below:



Hurtado also appeared to be reaching for something in the vehicle. A stolen gun was later located in the backseat of the car, unloaded but cocked, and stored in a plastic bag, within reach of the driver.⁵ The gun was examined forensically. Hurtado's fingerprints were on the magazine of the gun. The five cartridge casings located at the scene of the Pasadena shooting were compared and matched positively to the gun. The gun, magazine, and 35 live rounds found with the gun are shown in the photograph below:



⁵ In 2017, the gun had been reported stolen in a residential burglary in Arizona.

As Hurtado was driving back and forth, trying to jump the curb in front of him and ramming the car behind him, Task Force members fired at Hurtado, killing him and injuring Doe.

Statement of Glendale Police Department Officer Justin Darby

Darby was a Glendale Police Department Officer assigned to the Task Force and was informed that Hurtado was a gang member with a violent history, was on parole, and was wanted for shooting two people the night before. Darby was assigned to assist other members of the task force to locate and apprehend Hurtado.

During his surveillance, Darby saw Hurtado and Doe walking in Encanto Park. The decision was made to wait for Hurtado and Doe to re-enter their car before making the arrest. It was also decided that the Task Force would attempt to make the arrest before Hurtado started driving, to avoid a vehicle pursuit.

When Hurtado and Doe re-entered their vehicle, Darby moved in and stopped his vehicle close behind Hurtado's Camry. The other surveillance vehicles surrounded Hurtado's vehicle and activated their emergency lights. One vehicle sounded its siren.

Darby exited his vehicle and drew his 9mm semiautomatic service weapon. He was wearing a ballistic vest marked "POLICE" on the front. Darby approached the driver's side of Hurtado's vehicle, held Hurtado at gunpoint, and ordered him to put his hands up. Other agents identified themselves as police and also issued commands to Hurtado. Darby could not see Hurtado's hands, and Hurtado ducked down momentarily, out of view. Darby was concerned that Hurtado was retrieving a gun. Hurtado put his vehicle in reverse and rammed Darby's vehicle. Hurtado accelerated and "screeched" his tires as he pushed Darby's vehicle backward. A photograph of Hurtado's vehicle in contact with Darby's vehicle is shown below:



Hurtado then drove his car forward toward CDCR Special Agent Max Sievers, who had stopped his vehicle in front of Hurtado's vehicle on the other side of a hedge. Hurtado struck a curb, and then reversed and rammed Darby's vehicle again. Darby feared that he was going to get pushed back and trapped under his own vehicle. Darby fired four or five rounds at Hurtado.

Doe climbed out of the vehicle and a rescue team, using a ballistic shield in fear that Hurtado was armed, approached the vehicle, extracted Hurtado, who was injured, and provided him first aid. Detective Broghamer performed CPR on Hurtado. Hurtado regained consciousness and began fighting with the officers. Paramedics arrived soon thereafter and airlifted Hurtado to the hospital.

Statement of Deputy U.S. Marshal Toby Green

Green was a Deputy U.S. Marshal assigned to the Task Force. He was informed that the Task Force was attempting to locate and apprehend Hurtado, an active parolee who was wanted for an attempted murder that occurred the night before. Green was assigned to assist.

Hurtado was located in Upland and then drove to Encanto Park in Duarte. Green and the other Task Force members arrived almost simultaneously at the park and decided to apprehend Hurtado when he re-entered his vehicle.

When Hurtado and Doe re-entered their car, Green and the other agents converged and Green positioned his vehicle very close to Hurtado's right, front passenger door. Hurtado rocked his car back-and-forth as the agents gave him commands to show his hands and surrender. Hurtado's car moved away from Green's car so Green drove the front bumper of his car into Hurtado's car, as shown in the photograph below:



Green believed that Hurtado was going to hurt someone by ramming the car behind him and attempting to escape. Hurtado was “willing to do anything to get away.” He was not complying

with the agents' commands, appeared to be reaching into different areas of his car, and was raising and lowering his hands. He rammed Darby's vehicle at least twice. Hurtado had just rammed Darby's vehicle as Green was exiting his vehicle and Green heard gunshots. Green drew his service weapon but did not fire because Doe was between him and Hurtado.

Statement of CDCR Special Agent Timothy Ohno

Ohno was a Department of Corrections Special Agent assigned to CDCR'S Fugitive Apprehension team and the Task Force. He was partnered with CDCR Special Agent William Braden and was assigned to assist in locating and apprehending Hurtado. They were informed that Hurtado was on active parole and had been involved in a shooting the night before.

The Task Force located Hurtado in Upland and eventually tracked him to Encanto Park. Hurtado exited his vehicle and walked in the park. They decided not to attempt to take Hurtado into custody at that time because there were people in the park who could have been placed in danger.

Eventually, Hurtado re-entered his vehicle and the decision was made to take him into custody at that time.

The Task Force surrounded Hurtado's vehicle and contained the area. Ohno and Braden stopped their vehicle approximately 50 feet from Hurtado's driver's side door, activated their emergency lights and siren, exited their vehicle, and Ohno armed himself with a rifle.

Members of the Task Force yell to Hurtado, "Put your hands up!" and "Show me your hands!" Braden yelled, "He's dropping his hands!"

In an apparent attempt to harm the agents and/or escape, Hurtado reversed his vehicle and rammed the undercover vehicle parked behind him, at least three times.

The agents continued to issue commands to Hurtado, but he did not comply. Braden yelled again, "He's dropping his hands!"

Ohno heard gunshots and saw that Hurtado was struck.

Ohno called 9-1-1 and requested backup and the fire department to respond, as other agents extracted Doe from the vehicle and performed CPR on Hurtado.

Statement of CDCR Special Agent William Braden

Braden was a CDCR Special Agent assigned to CDCR's Fugitive Apprehension Team and the Task Force. He was partnered with Ohno and was informed that Hurtado was an active parolee, had been involved in a shooting the night before, and might be in possession of two guns. Hurtado was considered a "high risk" suspect. Braden and Ohno were assigned to assist in locating and apprehending Hurtado, who they located in Upland, and then tracked to Encanto Park in Duarte.

Braden and the other agents located Hurtado's vehicle parked in the parking lot and drove toward him. Braden and Ohno stopped their car on the driver's side of Hurtado's vehicle, behind Broghamer's vehicle.

Braden exited his vehicle, armed himself with an AR-15 rifle, took cover near the driver's door of Broghamer's vehicle, and visually identified Hurtado in the driver's seat of the Camry. Doe was in the right, front passenger seat. All of the Task Force members were yelling commands at Hurtado. Braden and other agents yelled at Hurtado, "Put your hands up! Put your hands up! Put your hands where we can see them!"

Initially, Hurtado raised his hands but then dropped them. Hurtado reversed his vehicle and rammed Darby's vehicle, and then drove forward in an attempt to drive over the curb in an "obvious" attempt to escape onto the main street. When that "didn't work," Hurtado reversed his vehicle and rammed Darby's vehicle again.

Braden was afraid that Hurtado was going to hit him or one of the other agents. Believing that Hurtado was using his vehicle as a weapon, and that other officers were in imminent danger, Braden fired four rounds at Hurtado. Darby, who was to Braden's right, also fired his weapon.

Hurtado stopped driving the car back-and-forth, and the agents extracted Doe and Hurtado from the vehicle. Darby placed a tourniquet on Hurtado's arm and Broghamer administered CPR.

Statement of CDCR Special Agent Michael Cerezo

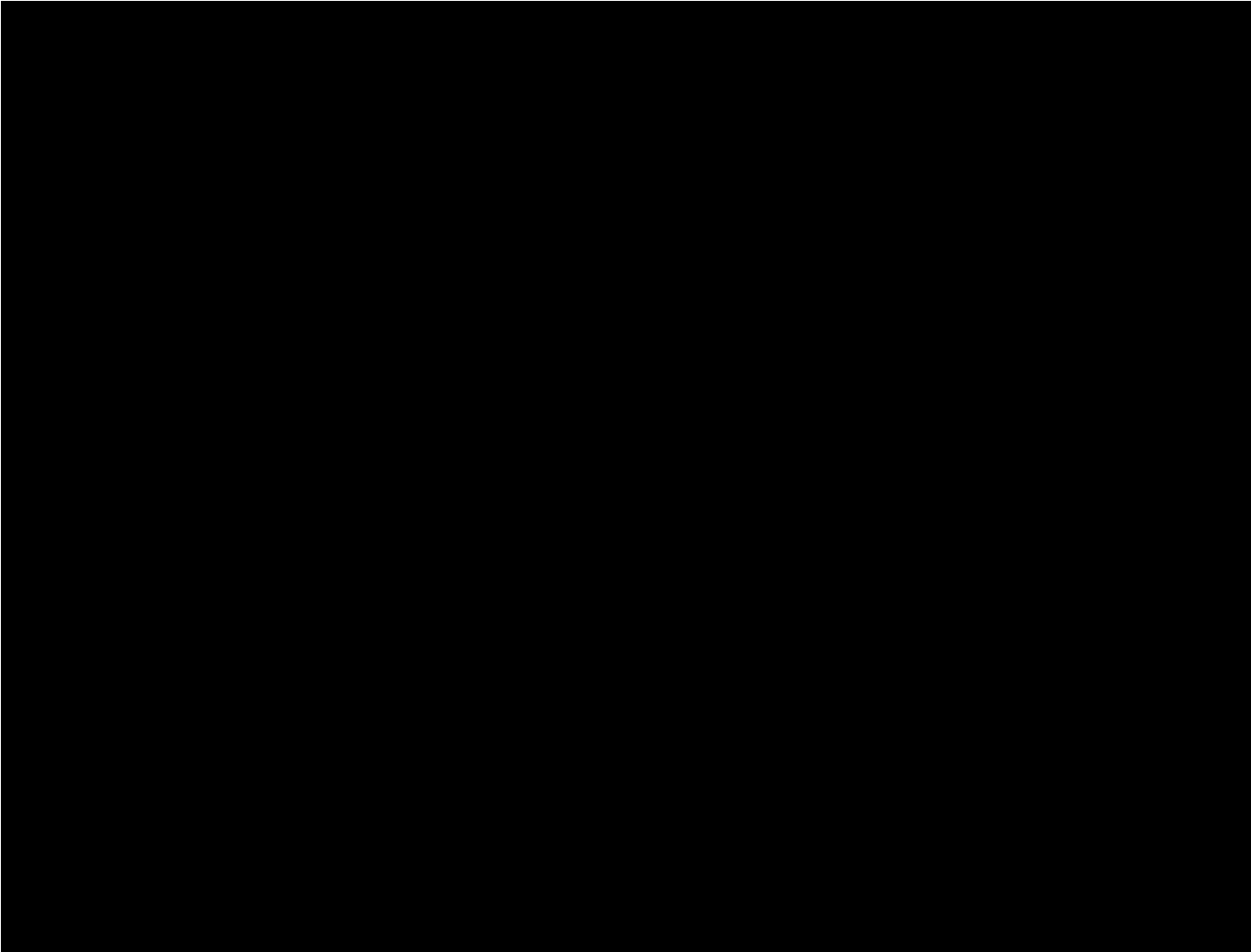
Cerezo was a CDCR Special Agent assigned to the Fugitive Apprehension Team and was assigned to assist in locating and apprehending Hurtado.

Cerezo was driving an unmarked vehicle when he saw Hurtado and Doe parked in a white Toyota Camry at Encanto Park. He stopped his vehicle near the park and assisted in containing Hurtado. He heard Hurtado revving his engine and saw him rocking his vehicle back-and-forth, reversing direction and ramming Darby's car, and then attempting to drive forward over the bushes. Cerezo feared that the agents around Hurtado's vehicle would be hurt or killed. The agents were giving commands to Hurtado to put his hands up and then he heard gunshots. There was "no doubt" that Hurtado knew that they were the police.

When the shooting stopped, Cerezo assisted in extracting Hurtado from the vehicle, detected that Hurtado did not have a pulse, and started CPR. Hurtado regained consciousness briefly and began to resist. Paramedics arrived shortly thereafter and transported Hurtado to the hospital.

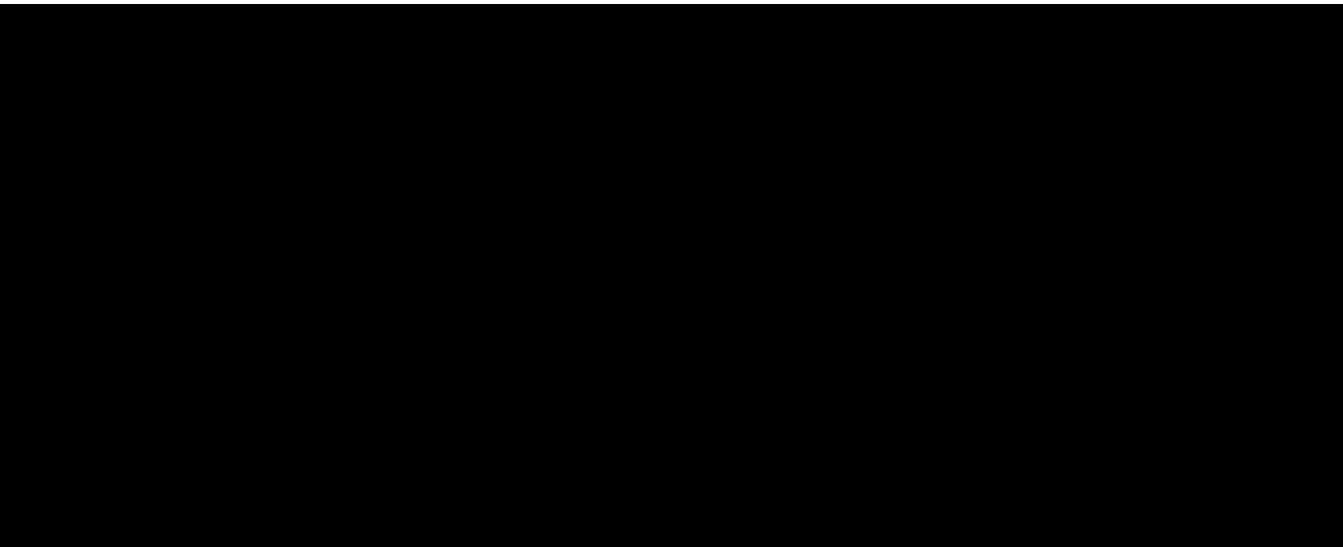
Statement of Pasadena Police Department Officer Maclaurin Adesina

Officer Maclaurin Adesina provided a compelled statement to investigators.



Statement of Pasadena Police Department Officer William Broghamer

Officer William Broghamer provided a compelled statement to investigators.



Statement of Jane Doe

Doe was Hurtado's girlfriend and was shot during the incident. When she was taken to the hospital, she was found in possession of methamphetamine.

Investigators asked Doe about Hurtado's gang membership and she explained that Hurtado admitted to her that he was a VPR gang member.

Doe explained that earlier in the day, before the shooting, Hurtado had picked her up in the Camry and they slept in the car.

At some point, Hurtado mentioned that he had "fucked up and was in trouble." He added, "If the police try to stop me, I'm not stopping. I'm not going back to jail."

When Hurtado and Doe were parked and the police surrounded them, Hurtado saw the police officers, panicked, and started the car. She heard the police ordering them to put their hands up and they complied.⁶ However, Hurtado then tried to "drive off, over the bushes." Doe told Hurtado, "Matthew, don't fucking do that! They're gonna kill me or try to kill you!" Hurtado responded by telling Doe he loved her, and he continued to drive the car forward and backward.

Doe said Hurtado was not trying to hurt the police, or shoot them, and the police "just started shooting" and "did not give us a chance to do anything." She was shot in the left elbow, left lower leg, and left foot.

Doe explained, "He did it to himself, dude. He said he wasn't gonna go back to jail."

She concluded by telling investigators, "I'm his girlfriend and it's my job not to incriminate him any more than I should."

⁶ The Event Data Recorder in Hurtado's vehicle indicates that, at the time of the incident, the vehicle, which is equipped with an automatic transmission with a gearshift in the center console, was shifted several times between "Park," one of the forward gears, and "Reverse," which would likely have necessitated Hurtado using his right hand to shift the vehicle after he was contacted by the police.

Statement of Judy K.

Judy K. was parked adjacent to Hurtado and saw the police approach Hurtado and his vehicle. The police had vests on bearing "POLICE" insignia. They ordered Hurtado to put his hands up. Hurtado drove his vehicle forward and backward. Then she heard gunshots.

Statement of Mark G.

Mark G. was sitting in his car doing a crossword puzzle when he saw Hurtado and Doe park their car and walk into the park. He did not notice when Hurtado and Doe returned to their car, but approximately 30 minutes later the undercover vehicles surrounded Hurtado's vehicle. The officers yelled, "Let me see your hands!" Hurtado reversed his vehicle and "slammed" into the vehicle that was blocking him in three times. Hurtado was "trying to get the hell out of there." One of the officers yelled, "He's reaching! He's reaching!" and then he heard gunshots. The officers performed CPR on Hurtado.

Autopsy

On October 11, 2017, Deputy Medical Examiner Pedro Ortiz, M.D. performed a postmortem examination of Hurtado's remains and concluded he was shot four times. There was a fatal gunshot wound to the back, and non-fatal gunshot wounds to the back, head, and right arm.

A toxicology analysis was performed and detected the presence of methamphetamine in Hurtado's bloodstream.

Firearms Evidence

There were 23 expended cartridge casings located at the scene. 18 of those casings were from 9mm semiautomatic handguns, and five casings were .223 caliber fired from an M4/AR-15 rifle.

Broghamer was armed with a 9mm semiautomatic handgun. After the shooting, there was one live round in the chamber and nine rounds in the magazine, which has a capacity of seventeen rounds, but was loaded with 16 rounds at the time of the shooting. The firearms evidence is consistent with Broghamer firing six rounds during the shooting.

Adesina was armed with a 9mm semiautomatic handgun. After the shooting, there was one live round in the chamber and two rounds in the magazine, which has a capacity of ten rounds. Adesina had one round in the chamber before the shooting. This evidence is consistent with Adesina firing eight rounds during the shooting.

Darby was armed with a 9mm semiautomatic handgun loaded with 15 rounds in the magazine and one round in the chamber before the shooting. After the shooting there were eleven rounds in the magazine and one round in the chamber. This evidence is consistent with Darby firing four rounds during the shooting.

Braden was armed with a 5.56 x 45mm M4 semiautomatic rifle he said he loaded with 28 rounds in the magazine and one round in the chamber before the shooting. After the shooting, there were 22 rounds in the magazine and one round in the chamber. Five expended casings were

recovered at the scene. One casing is unaccounted for. The evidence is consistent with Braden firing five or six rounds during the shooting.

Event Data Recorder Evidence

The Event Data Recorder in Hurtado's vehicle detected a crash on his vehicle and recorded the accelerator and shifter position during the five seconds leading up to that impact. That data indicates that Hurtado put the car in drive and fully depressed the accelerator. He then shifted to park, then to reverse, and then fully depressed the accelerator again at 2.5 seconds before the side impact occurred.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. *People v. Ceballos* (1974) 12 Cal.3d 470; *Kortum v. Alkire* (1977) 69 Cal.App.3d 326. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. *Ceballos, supra*, 12 Cal.3d at 479. "An officer may use reasonable force to make an arrest, prevent escape or overcome resistance." *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516. When protecting the public peace, a police officer "is entitled to even greater use of force than might be in the same circumstances required for self-defense." *Id.* Where an officer has probable cause to believe that a suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. 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

At the time of this incident, Hurtado had a long criminal record, was on a recent grant of parole for four, separate violent offenses occurring over a four year span, and was a known gang member wanted for shooting two people approximately 12 hours prior. These facts were known to the Task Force agents who were attempting to apprehend Hurtado. Under the circumstances, it was reasonable for them to believe that Hurtado was violent, desperate, armed and dangerous, and presented a deadly threat to Doe, the agents, and the public.

Their belief that Hurtado presented a deadly threat was corroborated by the fact that Hurtado did indeed have a gun and ammunition in the car, within his reach.

Moreover, when the Task Force members surrounded Hurtado and ordered him to put his hands up and surrender, Hurtado, who had the presence of methamphetamine in his bloodstream, instead attempted to use his vehicle as a weapon to assault the agents/officers and attempt to escape, which is corroborated by the event data recorder in his vehicle, and the skid marks on the asphalt and curb, which shows that Hurtado accelerated at full throttle forward, and in reverse.

Under the circumstances, the agents/officers had a choice to either allow a dangerous felon to escape and/or continue to assault them with a vehicle, or use deadly force to apprehend him. Hurtado was on a deadly crime spree, was clearly a continuing threat to public safety, and the agents, under no circumstances, could allow Hurtado to escape.

Notably, during this rapidly unfolding sequence of events, instead of complying with the agents' orders and surrendering, Hurtado instead told Doe that he loved her, and continued to drive forward and backward, despite her protests and announcement that the police would kill them. It cannot be ruled out that Hurtado may have been attempting to commit "suicide by cop" by persisting in using his vehicle as a weapon against numerous agents who were holding him at gunpoint, and provoking them into shooting him.

CONCLUSION

Hurtado's recent acts of violence, coupled with his use of his vehicle as a weapon in an attempt to assault the Task Force members and escape, made him a substantial and immediate threat of serious physical injury or death to not only the agents who stood in his way, but also the public if he had managed to escape.

The force used by Officers MacLaurin Adesina, William Broghamer and Justin Darby, and Special Agent William Braden, was reasonable under the circumstances in order to defend their lives and the lives of others, and to capture a dangerous, fleeing felon. We are closing our file and will take no further action in this matter.