

Officer Involved Shooting of Leundeu Keunang

Los Angeles Police Department

Sergeant Chand Syed, #38475

Officer Francisco Martinez, #36823

Officer Daniel Torres, #39733

J.S.I.D. File #15-0109



JACKIE LACEY

District Attorney

Justice System Integrity Division

November 9, 2016

MEMORANDUM

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

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

SUBJECT: Officer Involved Shooting of Charley Leundeu Keunang
 (a.k.a. Charley Saturmin Robinet)
 J.S.I.D. File #15-0109
 F.I.D. File #F018-15

DATE: November 9, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 1, 2015, fatal shooting of Charley Leundeu Keunang. We have concluded that Los Angeles Police Department (LAPD) Sergeant Chand Syed and Officers Francisco Martinez and Daniel Torres acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting on March 1, 2015 at 12:31 p.m. The District Attorney Response Team responded to the scene and was given a briefing of the circumstances of the shooting and a walk-through of the scene.

The following analysis is based on reports, recordings and videos submitted by LAPD Force Investigation Detectives John Simmons and Jen Kim. Video recordings included those made by the body worn video (BWV) recorders used by Sergeant Syed and Officer Martinez. Compelled statements of Sergeant Syed, and Officers Martinez and Torres were not considered for this analysis.

FACTUAL ANALYSIS

Brief Overview of the Facts

The incident occurred on the sidewalk immediately south of the Union Rescue Mission (URM) in the 500 block of South San Pedro Street, in the heart of the "Skid Row" area of downtown Los Angeles.¹ A significant number of homeless people seek shelter at the missions on Skid Row as well as in tents on the sidewalks in the surrounding area. At the time of the incident, Keunang and ██████████ were staying in adjacent tents on the sidewalk approximately 80 feet south of the front door of the URM.²

¹ South San Pedro Street is a two way street that runs from north to south.

² Keunang was initially identified as "Charley Saturmin Robinet" and was referred to by that name in both media coverage and in the initial reports prepared by LAPD. His true name was later established to be Charley Leundeu Keunang.

At approximately 11:30 a.m., Keunang and ██████ argued about the use of ██████' cell phone. According to ██████, after the argument, Keunang attempted to rob ██████, threatened to kill him, and pursued him with a small baseball bat.³ Keunang attacked ██████' tent while ██████ was inside, violently pushing and kicking both the tent and ██████ into South San Pedro Street. ██████ called 9-1-1, reported the attempted robbery and assault and asked for both paramedics and the police. LAPD dispatch transmitted two calls relating to the assault. Paramedics from the Los Angeles City Fire Department arrived, addressed ██████' minor injuries and left as the first LAPD officers arrived.

Sergeant Syed arrived first, joined by Officers Martinez and Volasgis within a minute.⁴ Syed, Martinez and Volasgis were specifically assigned to the "Operation Safer Cities Unit."⁵ The officers spoke to ██████, who remained seated on the curb near his collapsed tent throughout the events. Martinez and Volasgis verified the basic facts of the assault with ██████ who pointed Keunang out as the assailant and informed the officers that Keunang had used a bat during the assault.⁶ The officers approached Keunang, who stood at arm's length from the entrance of his tent. Keunang wore a long sleeved sweatshirt and long, baggy pants. Keunang's tent was approximately four feet in height, and approximately seven to nine feet in width as assembled at the scene. The entrance faced the wall of the URM.

Keunang refused to produce identification, disobeyed officers' commands to go to a nearby wall and disregarded the officers' admonitions that he would be tased. Keunang suddenly dove into his tent. Sergeant James Tafoya arrived and joined Syed in stripping the tent away from Keunang.⁷ Keunang was exposed kneeling on the floor of his tent, which was strewn with his belongings. Keunang leapt to his feet, assaulted Martinez, then struck and grabbed Volasgis. Martinez deployed a Taser with no apparent effect on Keunang. As Volasgis wrestled Keunang to the ground, Keunang tried to grab Volasgis' firearm from its holster while falling to the sidewalk. Officers Daniel Torres and Jose Vasquez arrived and joined the other officers on the edge of the struggle. Volasgis dropped onto Keunang and tried to gain control of Keunang's hands. Simultaneously, Keunang continued to attempt to grab Volasgis' firearm, which was still in the holster on his right hip. Volasgis felt his gunbelt being pulled and twisted and felt his gun being pulled from the holster. Volasgis used his right hand to prevent Keunang's left hand from fully withdrawing his firearm. Martinez, Torres and Syed all assisted Volasgis in the struggle. Torres attempted to contact stun Keunang with his Taser. Volasgis felt his firearm being pulled

³ Keunang, 5'11", 186 pounds, was 43 years old at the time of his death. At the time the crime scene was processed, detectives did not know that a bat had been used by Keunang and the focus of evidence collection was on ballistic evidence. Keunang's personal property inside his tent was removed by a private security detail and could not later be recovered.

⁴At the time of the incident, all of the officers were in full uniform and driving marked patrol vehicles. Syed was armed with a department authorized 40 S&W caliber Glock semi-automatic pistol, and an ASP baton. Syed wore and operated a (BWV) camera. Martinez was armed with a department authorized 40 S&W caliber Glock semi-automatic pistol, and an ASP (collapsible) baton. Martinez wore and operated a BWV. Volasgis was armed with a department approved Glock 9 mm Luger firearm holstered in a Safariland 6360 level III retention holster, a side handle baton, and a Taser.

⁵ Operation Safer Cities, now known as "Restart," is a unit within Central Division specifically designated to interact with the population of Skid Row, including both the homeless and mentally ill.

⁶ ██████ told the 9-1-1 operator that Keunang had chased him with a bat, but that information was not included in the radio broadcasts monitored by the officers involved.

⁷ Tafoya was armed with a department approved firearm and a side handle baton.

from the holster by Keunang and shouted out, “He’s got my gun!” In response, Martinez fired his weapon once, then Torres and Syed each fired his weapon twice. Keunang died from gunshot wounds at the scene.

The Chronology of Events Established by Recordings

A combination of video and audio recordings from four sources provides a virtually complete visual record of the incident and the events that preceded it. Recordings from a security camera at the URM, from the body worn videos (BWVs) of Syed and Martinez, and from a civilian cell phone camera all memorialize a portion of the events. Dispatch recordings, radio transmissions and Taser logs provide a concrete time frame.

The Union Rescue Mission Camera

The incident occurred on the sidewalk that runs along the eastern wall of the URM, 81 feet south of the front door of the URM, on the west side of South San Pedro Street. A security video camera, mounted fourteen and a half feet above the front door of the URM, recorded the expanse of sidewalk housing Keunang and [REDACTED]’ tents before, during and after the incident.⁸ The URM videotape has no audio. Because of both the distance between the URM camera and the incident and the relatively poor quality of the URM video, the figures shown in the recording from the URM video camera appear as little more than silhouettes. Their movements and gestures are, nonetheless, possible to discern. A free standing bathroom structure on the sidewalk between the tents and the URM eclipses a portion of both the street and sidewalk north and east of the tents.⁹

The Body Worn Video Cameras

Syed and Martinez were both equipped with BWV cameras as part of a pilot program.¹⁰ The BWVs of both officers were mounted on their chests, just below their shoulders. The BWVs were programmed to continuously record video but not audio for short term storage. When the BWVs are activated, they begin to record both audio and video instantly and append the 30 seconds of video without audio that precede the activation.

The Cell Phone Video

A bystander used a cell phone camera to record a 62 second portion of the incident that included Keunang rushing at Martinez and continued until several seconds after the shooting. The cell phone video was taken from a distance of 25 to 35 feet from the incident. The videographer was on the sidewalk north of the incident, facing south.

⁸ The URM video camera records continuously. The videotape provided for this review included the time period from 40 minutes before the incident until several minutes after the incident.

⁹ The free standing bathroom structure is nine and half feet in height, six and a half feet in width, and eleven feet in length.

¹⁰ Operation Safer Cities was the first division within LAPD to be provided with BWVs.

The Events Prior to the Incident

The URM video, which provides the only recording of the events prior to the arrival of the first officers, shows Keunang's dark blue tent on the sidewalk, south of the bathroom structure, with [REDACTED]' orange tent immediately south and slightly east. There are several tarpaulins at the base of Keunang's tent that are largely obscured from the view of the URM camera by the freestanding bathroom. [REDACTED], who is seen emerging from under the tarpaulins about forty minutes before the incident, continuously walks around the area of the tents before the incident, talking to people including Keunang.¹¹

Approximately 27 minutes before the incident, [REDACTED] emerges from his tent for the first time in the recording and walks to the edge of Keunang's tent. [REDACTED] appears to address Keunang, who has remained in his tent. Keunang thrusts his head, shoulders and one arm out of the tent and makes a series of emphatic, stabbing gestures with his arm pointing toward [REDACTED]. [REDACTED] appears to interact with Keunang for several more seconds, then re-enters his own tent, disappearing from view. Within 90 seconds, Keunang marches to [REDACTED]' tent and shoves and kicks it into South San Pedro Street, with [REDACTED] inside. Once [REDACTED]' tent falls into South San Pedro Street, it is almost entirely hidden from view by the bathroom structure.

Keunang marches back to his tent. The small portion of [REDACTED]' tent still visible is shown heaving in a manner that is consistent with [REDACTED] struggling inside. Keunang stands at the entrance of his tent, first making emphatic arm gestures towards [REDACTED]' tent, then bending at the waist and appearing to root through unseen items inside the mouth of his tent. At one point, Keunang appears to lift what may be a small stick from the ground and his body gestures are consistent with his putting it into his pants pocket or otherwise attaching it to his hip.

Approximately one minute after Keunang's first assault on [REDACTED]' tent, Keunang walks back to [REDACTED]' tent and launches a second assault on [REDACTED]' tent for 35 seconds, both tugging and shoving the tent. Both the tent and Keunang's body are obscured from view so much that it is impossible to discern whether Keunang is brandishing a stick or bat at this time. As Keunang walks back to his tent, for a fraction of a second, it appears he may again have a short stick in his hands. Keunang sits down on the milk crate in front of his tent and gesticulates emphatically with both arms toward South San Pedro Street. A few minutes later, [REDACTED] emerges from his crumpled tent and walks southbound, then northbound toward the entrance of the URM and out of sight.

At 11:35 a.m., [REDACTED] called 9-1-1 and informed the operator that an assailant had pushed him into the street in his tent, assaulted him and threatened to take his property. [REDACTED] described Keunang and told the operator Keunang was still at the scene. [REDACTED] was placed on hold. At 11:38 a.m., Central dispatch broadcast the first call regarding the incident, including the information that it was an attempted robbery with a suspect still present near the restrooms outside of 545 South San Pedro. [REDACTED] continued his conversation with the 9-1-1 operator, providing more details about the assault and requesting an ambulance. At 11:43 a.m., Central area dispatch broadcast the information that there was an "ambulance battery" at 545 South San Pedro Street, and included the description of Keunang. At 11:46 a.m. there was a supplemental broadcast indicating the possible attempted robbery suspect was still present.

¹¹ [REDACTED] was 34 years of age, 5'2" and 140 pounds at the time of the incident.

At 11:46 a.m., Martinez and Volasgis advised Central area dispatch that they believed that both incidents were related, and that they would handle both calls. During the same time frame, the URM video shows Keunang moving around his tent, thrusting his arms around in what appear to be random, jerky motions. [REDACTED] returns to his tent cutting a wide swath around Keunang and appears to talk to Keunang, who is still by the mouth of his tent. Keunang reaches down to the floor of his tent, just inside the entrance, and picks up what appears to be a two foot long stick or bat and pursues [REDACTED] into the street. [REDACTED] stands in the middle of the street, looking southbound toward 6th Street, the direction from which Central area patrol cars would be expected.

At 11:49 a.m., approximately seven minutes before the arrival of the first LAPD officer, Los Angeles Fire Department (LAFD) paramedics Daniel Sankey and Greg Harvey arrived. The URM video shows Curls speaking with them for a few minutes, then sitting on the curb south of the tents, with his back to Keunang's tent, where he remains throughout the incident.¹²

At 11:52 a.m., Syed was flagged down on South San Pedro Street between 5th and 6th Streets and responded to the scene. Syed arrived first, parked north of [REDACTED], and consulted with one of the paramedics. Syed activated his BWV once he exited his vehicle, filming [REDACTED] on the curb and Keunang's tent on the sidewalk behind him. A paramedic is seen walking southbound, toward the fire department ambulance. [REDACTED] is shown partially emerging from underneath the tarpaulin adjacent to Keunang's tent. Syed's audio begins 30 seconds after the video, and Syed is heard finishing a discussion with an unseen female, possibly [REDACTED], who is out of view.

Martinez and Volasgis arrive forty seconds after Syed, and exit their patrol car. Syed converges with them near [REDACTED], tells them that [REDACTED] is the victim of the reported assault, and instructs [REDACTED] to tell them what he told the paramedics. [REDACTED] is recorded by Syed's BWV telling Martinez and Volasgis that he wants to press charges.

Syed walks westbound, away from the conversation, and positions himself against the easternmost wall of the URM facing Keunang in the foreground, and Volasgis, Martinez and [REDACTED] in the background. For approximately one minute, Martinez and Volasgis talk to [REDACTED]. There is no audio recording of that conversation because Syed was too far away and Martinez had not yet activated his BWV. Near the end of the conversation, the fire truck departs. Keunang is seen standing by the mouth of his tent facing the ground, and does not appear to notice the arrival of the officers.

Martinez and Volasgis leave [REDACTED], who remains seated on the curb, and walk to the mouth of Keunang's tent, where they stand four to six feet from him, talking to him. As Keunang becomes more agitated, Syed nears and his BWV picks up a fraction of the discussion. [REDACTED] is out of view, but can be heard shouting unintelligible words in the background.¹³

Martinez activated his BWV several seconds after he and Volasgis began their conversation with Keunang, and the audio recording lags 30 seconds behind the video recording. When Martinez' BWV begins, Keunang is at the entrance of his tent, facing Martinez who is approximately five to six feet from him. Keunang continues to talk unabatingly during the statements of the

¹² [REDACTED] suffered only minor injuries. The paramedics left as soon as the first LAPD officers arrived and therefore did not witness any uses of force by LAPD.

¹³ This portion of the incident was recorded on Syed's BWV.

officers, often with very little relation to what is being said to him. A few early words from the interchange between Martinez and Keunang were recorded by Syed's BWV:

Martinez: Did you hit him?

There follows unrecorded dialogue for approximately 30 seconds, during which Keunang makes a series of emphatic gestures with his right hand toward his tent and Martinez uses his handheld radio to request an additional unit. (Central Division dispatch recordings indicate that call was made at 11:55 a.m.) Martinez and Volasgis remain within five to ten feet of Keunang and the following dialogue is recorded:

Martinez: You don't tell me how to do my job, alright? Alright. I'm just letting you know, sir. Well, hold on. We'll wait for another additional unit...

Keunang: Do you understand me?

Martinez: Yeah, I understand you sir. We're going to do things my way-

Keunang: Listen, listen!¹⁴

Martinez: No, no. It doesn't work like that-

Keunang: Right here, right now, right now, right now-

Martinez: Partner, give me the Taser.

Syed walks closer to the interchange, positioning himself within 10 feet of Keunang. Volasgis hands his Taser to Martinez. Martinez is approximately six to eight feet from Keunang, initially holding the Taser raised to waist level, pointing in the general direction of Keunang, but slightly downward. Martinez quickly drops the Taser to a position parallel to his thigh.

Syed: Hey sir, sir, sir. Hey sir. (Keunang does not acknowledge Syed speaking to him and remains focused on Martinez.)

Keunang: Right now? Right now, I think that...

Martinez: Sir, you're going to get tased, do you understand?

Keunang: Let me express myself. I didn't have a chance to explain-

Syed: Hey, sir, sir, sir you will get hurt if you don't comply, the Taser's gonna hurt

Keunang: (Unintelligible) and I say if you don't let me express myself....

Martinez: Sir, sir, you're going to get tased, do you understand?

Syed: Can you relax?¹⁵

Keunang: If you don't let me express myself....(Unintelligible)

Martinez: Alright, well, the thing about it is...

Keunang: Martinez!

Martinez: I'm doing my job, alright? Alright? I'm just letting you know. You need to come up over here and get up against the wall.

Keunang: Let me express myself!

Martinez: You're gonna get up against the wall, sir!

Keunang: Martinez! Martinez!

Martinez: You're gonna get-

Unknown Officer: Let's go!

¹⁴ During this interchange, Keunang is speaking concurrently with the officers much of the time. The transcript reflects the chronology of the words spoken as accurately as possible.

¹⁵ Syed's BWV is pointed directly at Keunang as he asks this question.

Martinez: There you go again.
Keunang: Martinez!
Martinez: Get up against the wall!
Keunang: Are you going to listen?
Martinez: Sir, you're gonna get tased, do you understand? Hold on partner...
Keunang: Are you gonna listen?
Syed: They're going to tase him.
Martinez: Are you going to go to the wall? If you don't go to the wall, you're gonna get tased, do you understand? You're gonna get tased.
Keunang: (Talking simultaneously with Martinez) You can go ahead and tase me, You can go ahead and tase me! I can guarantee you this, you will have-

Keunang takes two very small steps toward Martinez. Keunang has been moving his right arm and at times his right forefinger in a gesture of emphatic scolding at Martinez. Keunang's right arm and hand movements become increasingly exaggerated and rapid.

Martinez: Don't walk up to me! Don't walk up to me! Get up against the wall.
Keunang: (Shouting) You need to stop it, you need to stop it right now!
Syed: Hey, you gotta get up against the wall so we can handcuff you. Hey! Don't go back inside, Hey!

While telling Keunang not to walk up to him, Martinez briefly raises his Taser and points it at Keunang with his right hand while gesturing toward the wall of the URM with his left hand. Martinez immediately drops his right arm and points the Taser back toward the ground. Martinez and Keunang are approximately three to five feet apart.

█ has emerged from the tarpaulin and risen to her feet. █ has repositioned herself near the curb, facing the discussion and yelling. Most of █'s words are unintelligible but during this part of the interchange, she says, "You're going to have to tase me..." Volasgis rushes over to her and lightly pushes her with his right hand, moving her back a few inches away from Keunang. At that moment, Volasgis has his baton in his right hand, pointed downward. After pushing █, Volasgis rushes back to the confrontation between Martinez and Keunang, who are in the same positions by the mouth of Keunang's tent. Suddenly, Keunang, who has never left the entrance of his tent, ducks into his tent and pulls the entrance flaps of the tent inward, disappearing from view. Syed and Martinez rush toward him.

Martinez: Hey! Hey! Hey! Hold on, hold on. Let him in there, let him in there.

Tafoya, who has just arrived alone, runs to the southern end of Keunang's tent. Martinez has the Taser pointed at the tent. Syed starts pulling aside the tent flaps. While Keunang is inside the tent, the officers continue to give him commands and to reason with him:

Syed: Hey, you gotta come out-
Martinez: You're gonna get tased, do you understand? You're gonna get tased, get outside.
Keunang: Listen! Listen! Listen! Leave me alone!
Martinez: Get outside!

Keunang: Leave me alone!

While Keunang is still hidden inside the tent, Volasgis is approximately six to eight feet from the entrance, pointing his firearm into the entrance of the tent. Martinez is approximately five to six feet from the entrance of the tent, pointing the Taser at the entrance.

Martinez: Get a backup. We've got a 415 man.¹⁶ (This radio transmission was recorded at 11:57 a.m.)

Syed: You gotta come outta here, you gotta step outside man, we've gotta figure out what's going on, come on brother. Just relax.

Martinez: Step outside. I'm gonna tase him, I'm gonna tase him. You're gonna get tased! You're gonna get tased!

Tayofa and Martinez pull on opposite sides of the tent, bringing it to the ground. Once the tent is down, Keunang can be seen in a crouching position with his hands on the floor of the tent with an array of small items at his knees. Martinez is within two to four feet of Keunang, pointing his Taser at him. Volasgis is directly in front of Keunang, at a distance of approximately five to ten feet with his firearm drawn, pointing it toward Keunang. Syed, Martinez and Volasgis surround Keunang, who shakes his head back and forth, looking at the officers for 15 to 20 seconds. Martinez activates the Taser in his hands. (Taser logs indicate it was "armed" at 11:57 a.m.)

Keunang uses his right hand to grab a small black object that has been concealed from view near his right knee. Keunang rises to his feet with the object in his right hand and lunges toward Martinez. As he rises, Keunang makes a series of rapid martial arts style hand gestures toward Martinez. Keunang then throws the small dark object overhand at Martinez from a distance of approximately 10 to 15 feet. Martinez orders Keunang to the ground while Keunang begins to spiral clockwise with both arms extended at shoulder height. By spiraling, Keunang appears to be trying to strike Martinez in the face and upper chest with his flailing left arm, and to grab Volasgis with his flailing right arm. It appears Keunang may have connected with Martinez' face or chest, but it cannot be established with certainty from the BWVs.

Syed: Hey! Put your hands up!

Martinez: Get down on the ground! Get down on the ground! Get down on the ground...Get him! Get him!

Officers Torres and Vasquez arrive and run toward the altercation just as Keunang and Volasgis make contact.¹⁷

Volasgis has his gun in his right hand and his baton in his left hand as Keunang lunges at Martinez. Volasgis leans forward and drops his baton to the ground with his left hand, then reholsters his firearm with his right hand.¹⁸ Volasgis rushes forward, reaching Keunang before Keunang can connect with Martinez. Keunang quickly redirects his attack at Volasgis, lunging

¹⁶ Penal Code section 415 defines various public disturbance misdemeanors.

¹⁷ Vasquez was armed with a department approved firearm and a side handle baton. Torres was armed with a department approved 40 S&W caliber Glock semi-automatic pistol firearm, and an ASP baton.

¹⁸ Volasgis does not appear to have difficulty reholstering his firearm at this moment, indicating that the gun fit properly into the holster.

at him, then appears to strike Volasgis in the face or chest. Martinez deploys Volasgis' Taser for five seconds at 11:57:39, according to the Taser log. A Taser wire becomes visible in the videos at this point, but Keunang does not react as though he has been tased.

Keunang throws his arms around Volasgis, grabbing him in a bear hug with both of his arms around Volasgis' rib cage below underarm level. At the same time, Keunang uses his head and right shoulder to ram Volasgis in the center of his chest. Volasgis appears to be forced backward a fraction of a step, but never appears off balance. Volasgis twists counterclockwise and downward, loosening Keunang's grasp on him. As Keunang falls, Volasgis uses his hands and arms to strike at Keunang, appearing to connect with Keunang's head or torso.

Martinez also lunges toward Keunang with both arms and hands fully extended as if to grab him, but Keunang is brought to the ground too quickly for Martinez to connect with him. When Martinez reaches for Keunang, his hands are empty and a Taser can be seen at his feet.

As Keunang falls, he continues to grab at Volasgis. Syed's BWV, played at a slow speed, shows that when Keunang is about halfway to the ground, his left hand is over the top of the butt of Volasgis' gun, which is holstered on Volasgis' right hip. It appears that Keunang touches the butt of the gun. At that instant, Volasgis has his right hand pulled back in preparation to strike Keunang in the face. As Keunang falls, he is briefly separated from Volasgis and his left hand is pulled away from Volasgis' hip area.

Volasgis immediately comes to rest astraddle Keunang, who has landed on his back, with his head near Volasgis' baton. Volasgis looks to his left, northwest, toward the location in which his baton has fallen. Volasgis directs his attention toward his fallen baton and makes a gesture with his left arm.

Volasgis: Get my stick! Get my stick get my stick! Get my stick!

█████, who has been moving around the periphery of the altercation has run to Volasgis' fallen baton. Just as Keunang's head comes to rest on the sidewalk next to Volasgis' baton, █████ bends and snatches the baton from the ground. From a distance of a few feet behind Martinez' back, █████ raises the baton above her head as if preparing to strike Martinez, who is bent at the waist, attempting to help Volasgis control Keunang. Torres and Vasquez arrive together just as Keunang lands on his back. They run toward the struggle between Volasgis and Keunang. Vasquez runs past the fight and joins Tafoya in disarming and detaining █████. Volsasgis refocuses his full attention on Keunang.

The Shooting

Keunang's attempt to gain control of Volasgis' firearm during the struggle on the ground was recorded by both Syed's BWV and by the cell phone video.¹⁹ Syed's video, played at a slow speed, shows that, while Volasgis' attention is diverted toward █████, Keunang's right hand is grasping at the left side of Volasgis' waist near Volasgis' baton holster. Within a fraction of a second later, the fingers of Keunang's left hand appear around the butt of Volasgis' firearm.

¹⁹ During the struggle for control of Volasgis' firearm, his right side faces South San Pedro Street to the east.

Syed, who is south of the struggle, leans down and begins to pull on Keunang's leg. As he does so, Torres' arm is seen reaching in and attempting to contact stun the back of one of Keunang's legs. (The Taser log for Torres' Taser indicates it was armed at 11:57:39 a.m. and activated for 5 seconds at 11:57:49 a.m.)

Martinez: Stop resisting! Stop resisting!

Volasgis: He's going for my gun!

Martinez: He's going for your gun!

Volasgis: He's going for my gun! He's going for my gun! He's going for my gun! He's got my gun! He's got my gun!

While Volasgis is yelling that Keunang is going for his gun, he is urgently grabbing at his gun holster with his right hand and at his left hip with his left hand. Volasgis appears to be trying to raise his body while keeping his right hand pressed downward, on or near the ground.

The cell phone video, viewed frame by frame, shows a silhouette of Keunang's left arm and hand as he struggles underneath Volasgis. The outline of Keunang's left hand is visible reaching toward Volasgis' waist and pulling upward on an object that is consistent in size, shape and location with Volasgis' firearm in his holster. Volasgis appears to react dramatically by pushing down on Keunang's left hand with his right hand. There is a series of additional movements of Volasgis and Keunang's hands that are consistent with a struggle over Volasgis' gun, but the movements cannot be discerned with certainty. While Volasgis and Keunang struggle for control of the firearm, it appears that Volasgis' right hip is being pulled downward with tremendous force, causing him to turn counterclockwise and nearly fall toward his right, and flinging his left arm into the air. The effect of this movement is to place Volasgis' gun closer to Keunang's left hand.²⁰ During the struggle, Keunang is on his back, but his torso rocks from side to side.

Based upon the position of the participants, it is unlikely that Martinez, Syed or Torres could see the exact location of Volasgis' firearm while Volasgis shouted that Keunang had his gun. Martinez was leaning over Volasgis' left side, bending toward the struggle and moving with Volasgis. Volasgis' torso appears to have blocked Martinez' view of Volasgis' firearm just before Martinez fired his weapon. Neither Syed nor Torres appears to have been in a position to have seen exactly who had control of the firearm at the moment the first shot was fired. Therefore, they may not have known whether the first shot was fired by Keunang or a fellow officer.

Two seconds after the second time Volasgis shouts, "He's got my gun!" Martinez fired the first shot. Martinez' BWV recorded the sound of that shot but does not show Martinez' arm as he shoots. At the instant the first round was fired, Martinez is close enough to have fired a contact shot at Keunang's torso. Martinez' firearm is not shown at the time of that shot, but a brief glimpse of the barrel of his firearm can be seen passing across the bottom right corner of the video. After the sound of the first shot, Martinez' camera immediately reels backward and to the right, showing Torres and Syed, standing and firing downward at Keunang. During the gunfire,

²⁰ While Volasgis struggles for control of his gun, Tafoya and Vasquez are engaging ██████, north of Volasgis. Just as the shots are fired, the struggle with ██████ eclipses the cell phone videographer's view of Volasgis.

the officers are moving, and they block the view of Keunang. As the officers step away, Keunang is seen lying partially on his right side, with his left side facing partially upward.

Syed's video shows that, when the first shot is heard, Syed's hands are on Keunang's leg, pulling it upward towards himself. Torres, who has positioned himself to Martinez' right, is bent down by Keunang's lower body, and his right hand is visible applying a Taser to Keunang's legs. Syed's BWV video shows that he keeps pulling on Keunang's right leg until the first shot is heard. Syed's arms block his BWV, then, after the first shot, Syed's arms are shown pointing his firearm at Keunang. Syed appears to fire once or twice. Syed's hand blocks the camera when he raises it to use his radio, and he broadcasts, "Officer needs help! Officer needs help! Shots fired, shots fired!" (That transmission was made at 11:58 a.m.)

The sound of five shots is captured by the recordings. The shots are all fired within approximately two seconds. Syed and Torres each fired his weapon twice in rapid succession after the initial shot by Martinez, but the order of those four shots cannot be established with certainty.

Five seconds after the last gunshot, the following statements were recorded:

Unidentified Officer (either Syed or Torres): Where's your gun? Where's your gun?²¹

Martinez: He's got it, he's got it.

Unidentified Officer: Have you got your gun?

Unidentified Officer: Hey, stop moving, stop moving.

Unidentified Officer: Stop resisting!

Immediately, a crowd is heard shouting.

Volasgis rises from his position on top of Keunang. His gun is drawn and pointing downward at Keunang, who has partially rolled onto his right side. Volasgis slowly backs away from Keunang, looks down at him and continues to point his gun at him. Volasgis is slightly hunched and appears to be breathing and moving as though he is physically exhausted.

Unidentified Officer: Have you got your gun? Hey stop resisting!

Syed: (Into his radio) Officer needs help, officer needs help, shots fired!

Martinez: Stop resisting!

Syed: Officer needs help, shots fired!

Volasgis attempts to reholster his firearm and is unable to do so because the barrel of the firearm does not fit in the holster. The video recordings show that crowds of people have begun to accumulate to both the north and south of the incident.

²¹The officer asked, "Where's your gun?" approximately eight seconds after the first shot was fired.

Officer Witnesses

Statement of Officer Joshua Volasgis

In accordance with the LAPD BWV policy in place at that time, Volasgis was shown footage from Martinez' BWV before his interview.²² At the time of the incident, Volasgis had been out of the academy for ten months and was still on probation. Martinez was his training officer.

Volasgis and Martinez responded to a call of an "ambulance battery, possible 211."²³ When they arrived at the scene, they contacted [REDACTED], who pointed out Keunang as the person who had threatened his life, used a bat on him and thrown his belongings out into the street. [REDACTED] indicated he feared for his life and that he wanted to press charges. When Volasgis and Martinez approached Keunang, Volasgis believed that Keunang had just committed a battery and had possibly also made criminal threats.

Martinez asked Keunang for identification, which Keunang refused to produce. Martinez asked Keunang to go to the wall of the URM to be handcuffed, and to put his hands behind his back. Keunang refused to follow any commands, instead becoming increasingly agitated, tense and aggressive. Keunang raised his voice and displayed clenched fists. Martinez urged Keunang to calm down. Keunang demanded to know who had called the police and told the officers to leave him alone, telling them they could not prove he had done anything.²⁴

As the encounter continued, Keunang became more aggressive and combative, prompting Martinez to radio for backup. Keunang approached Martinez, who told him to back away. Martinez armed himself with Volasgis' Taser. Keunang was warned that the Taser would be used on him and that it would harm him if he did not comply.²⁵ Volasgis drew his baton as he handed his Taser to Martinez. Briefly, Volasgis held the baton with one hand and the Taser with his other hand, preventing him from placing the baton properly in its holster. Volasgis recalled having tried to place his baton in its holster and believed he might have done so.

Keunang went to his tent in a purposeful fashion as though he wanted to retrieve something to use in the confrontation with the officers. Volasgis did not know what Keunang was looking for in his tent, but he was afraid it was something to be used against the officers. Once inside his tent, Keunang reached around the walls for objects. Volasgis drew his firearm, and pointed it at Keunang. For a brief period, Volasgis had his firearm in one hand and his baton in his other hand. Keunang stepped away from his tent and reached for an unidentifiable black object under his right thigh with his right hand. The object appeared to be hard edged, rectangular, and approximately four inches by six inches. Volasgis feared it might be a weapon. Volasgis

²²At the time of the incident, it was the policy of LAPD to allow an officer to review BWV footage taken with a camera he personally wore, or if he wore none, to view any video recorded by his partner's BWV prior to being interviewed.

²³Volasgis believed the radio transmission or the comments of the call may have included the information that the assailant was armed with a bat. There was no reference to a bat in the radio transmissions or related comments, but according to both [REDACTED] and Volasgis, [REDACTED] told the officers about the bat as soon as they arrived.

²⁴ This portion of the dialogue was not captured by either BWV.

²⁵ Keunang wore thick clothing, which may have formed a barrier inhibiting the Taser prongs from reaching his body. There were no injuries or marks on Keunang's body found during the autopsy that indicated that he was struck by a Taser dart.

believed he told Keunang to put the object down. Syed ordered Keunang, “Put that down! Put that down! Show me your hands!”

Keunang jumped out of the tent and approached Martinez rapidly and aggressively from a distance of four to five feet, closing the distance by a few feet. Keunang’s fists were clenched, and he was very tense. Martinez fired the Taser at Keunang, who appeared unaffected. Martinez began to back away. Keunang continued to charge at Martinez very aggressively, took a fighting stance, and looked poised to harm Martinez. Once Volasgis saw that the Taser appeared ineffectual, he reholstered his firearm to make physical contact with Keunang. Volasgis believed that the use of physical force instead of potentially deadly force was appropriate because Keunang had only been physically combative, and had not yet displayed any weapons.

Volasgis grabbed Keunang, punched him two or three times in the face and “took him to the ground.” As Keunang fell, he grabbed Volasgis’ equipment, including his belt, his badge and his name tag. Volasgis felt he was being pulled down by his chest and his belt. Volasgis fell on top of Keunang, who continued to grip his belt. As Volasgis grappled for control of Keunang, Keunang alternated between swinging at Volasgis and pulling him aggressively downward by his belt. Volasgis used his hands to try to get control of Keunang’s hands to prevent him from hitting Volasgis’ face and from accessing Volasgis’ gun belt. Martinez ordered Keunang numerous times to, “Stop resisting!”

During the struggle on the ground, Volasgis saw [REDACTED] with his baton, holding it as though she planned to use it. [REDACTED] held the baton like a baseball bat, over her right shoulder, manipulating it as if she intended to swing it at Tafoya, whose back was to [REDACTED].

Keunang latched onto the pistol grip of Volasgis’ firearm and began to tug and twist it with such force that the magazine of the gun was nearly unseated:

“I feel my belt being pulled hard to the point where it deforms...[Volasgis felt his belt buckle being pulled on] I looked down. His hand is on the pistol grip of my service pistol pulling it as rapidly as he possibly could...[Keunang] had his hand on the pistol grip...He’s yanking it out and he’s defeated the first level of retention of my holster, which is the loop latch which sits above...[The retention loop] it’s in a downward position which means if it was upward it would be retaining the pistol instead of down position, which means there’s only one level of retention that’s partially not really keeping my gun in anymore, at which point I capped his hand with my hand placing my – which is basically me placing my hand on his hand and not allowing him to draw it out any further, but it’s coming out.”

Volasgis trapped Keunang’s hand by capping it, and prevented him from drawing the firearm any further from the holster:

Trapping his hand on it, [Keunang] has the grip. I grabbed his wrist and as much pistol as I possibly can to keep it in [with Volasgis’ right hand]...[Keunang is] pulling the pistol into him, at this point my belt is deformed to the point where a normal draw for me to pull my weapon out would be straight up and out, but my

belt is twisted just based off the pulling that he's creating, and the pistol's pointing now at him because he's pulling on it and it's bent, the belt leather plastic of the holster, and all he has to do is pull back and the pistol is his."

Keunang pulled the grip of the gun towards himself. Volasgis realized that all of the safety features of his holster had been defeated. As Keunang pulled on the grip of the gun, bringing it toward himself, the barrel pointed directly behind Volasgis:

"At which point I'd say he has my gun. The only thing to keep my gun in the holster is my hand holding his hand there. And he's, he's pulling with all his might."

As Keunang tugged the firearm, Volasgis heard a "distinctive click," which Volasgis believed to be the sound of the final level of retention of the holster, a pin that latches into the ejection port, releasing the firearm. Volasgis felt his gun rising from within the holster, and felt that it could be moved freely by Keunang. After the first level of retention of the holster had been defeated, Volasgis felt the slide of his firearm moving while he placed his hand over Keunang's hand. Only Volasgis' hand prevented the firearm from being taken. Ultimately, Volasgis felt that only approximately one and a half to two inches of the barrel of the firearm remained within the holster.

At the end of the struggle, Martinez was either kneeling or bent over, attempting to hold Keunang down and to help Volasgis rise. Volasgis did not know the location of Syed or Torres.

Volasgis heard Martinez say, "He has his gun! He has your gun!" He saw Martinez draw his service pistol and fire a contact shot at Keunang. Volasgis believed that Martinez fired two to three shots at Keuning's abdomen. Volasgis tried to rise to his feet while keeping one hand on his firearm and his other hand on Keunang's face or chest.

Once the first few shots were fired, Keunang released his grip on Volasgis' firearm. Volasgis believed he rose to his feet during the second or third shot and backed approximately five feet away. He withdrew his firearm and pointed it at Keunang, as did the other officers. Volasgis found his firearm to be only partially in the holster. He noticed that the slide was "racked." When Volasgis tried to reholster his firearm, he noticed the brass tip of a misfed live round was stuck in the chamber. Volasgis told Syed about the malfunction of his firearm. Syed told him to reholster the firearm and not to alter the condition of the firearm.

Martinez put out an "officer needs help" call including the information that shots had been fired. A crowd began to surround the officers. Volasgis placed handcuffs on Keunang with the help of another officer.

Statement of Sergeant James Tafoya

Sergeant Tafoya monitored the radio traffic concerning the robbery and assault on [REDACTED]. Tafoya heard the supplemental calls for additional units, went to the scene and saw Syed, Volasgis and Martinez speaking with Keunang before Keunang entered his tent. Syed was warning Keunang that he was going to tase him. The officers asked Keunang repeatedly to go to the exterior wall

of the URM. Keunang was combative, yelling and trying to “outtalk” the officers. Keunang remained near his tent, keeping one leg inside. Keunang told the officers he would disobey their orders. Volasgis had his baton unholstered and held down by his waist in a low ready position. Martinez was pointing a Taser at Keunang, cautioning him that if he did not comply, the Taser would be used on him.

Keunang abruptly turned and dove into his tent, trying to close the screen behind himself then holding it closed. Tafoya was concerned that Keunang was arming himself because of the allegation in the 9-1-1 call that a bat had been used. Keunang was out of sight for 15 to 20 seconds before Tafoya and Syed tore the tent down, exposing Keunang, who was crouching over numerous items in the tent.²⁶ Volasgis, who had his baton in his hand, drew his firearm and focused on the entrance of the tent. This provided the officers with the option to use lethal force (the firearms) or less lethal force (the baton).

Keunang immediately jumped up and lunged at Martinez, throwing punches, kicking and flailing. It appeared he was trying to “take officers out.” Tafoya believed Martinez fired his Taser, causing a Taser probe to stick to the hood of Keunang’s sweatshirt, but Keunang appeared not to be affected. Keunang “drove forward at Martinez.” Volasgis stepped in and “went hands on” with Keunang.

Volasgis began to engage physically with Keunang. Tafoya commanded, “Take him to the ground! Take him to the ground!” Keunang went down and Volasgis fell on top of him. Tafoya heard, “My baton!” or similar words and his attention was drawn away from the fight to [REDACTED], who was behind Syed and appeared ready to strike him with a baton that she had raised over her right shoulder. Tafoya and Vasquez went to [REDACTED], brought her to the ground and placed her in handcuffs. Tafoya heard Volasgis yelling, “He has my gun! He has my gun!” Tafoya turned his attention back to the struggle surrounding Keunang. He heard four to five shots but did not see who fired them. Tafoya left [REDACTED] with Vasquez, instructing him to take her to the side. When Tafoya looked toward the struggle, Keunang was on the ground, slightly on his back.

Tafoya observed Volasgis’ gun immediately after the shooting, noting that it was in the holster, but that the slide was back by a quarter of an inch to an inch, as if it was ejecting a round. Tafoya noted that the loop that secures the barrel of the firearm was not in place.

Statement of Officer Jose Vasquez

Vasquez and his partner Officer Torres were responding to Martinez’ call for an additional unit when they heard the call upgraded to a backup call for “415 man.”²⁷ When they arrived, the fight was underway. Keunang was flailing his arms around and swinging at the officers in a “Hail Mary” fashion. Vasquez believed that Keunang struck one of the officers. Vasquez did not see Keunang get tased, but he believed that he saw Taser prongs protruding from Keunang. It appeared that Volasgis struck Keunang in the face. As Vasquez approached, Keunang went to the ground.

²⁶ Tafoya indicated that the officers knew that Keunang had been involved in a robbery in which a bat had been used, but did not say how he learned that information.

²⁷ Vasquez was not shown any videotape prior to making a statement.

Vasquez saw [REDACTED] with the baton preparing to take a swing. [REDACTED] was within two feet of one of the officers and her body was swaying as though she intended to strike. Vasquez ran to [REDACTED], as did Tafoya, who called out, "She has a baton!" He and Tafoya converged at [REDACTED]'s location. Vasquez grabbed [REDACTED] to prevent her from striking any officers, causing her to drop the baton.

Vasquez did not hear any commands being given to Keunang. As Vasquez was placing [REDACTED] in handcuffs, he heard, "He's got a gun! He's got a gun!" Vasquez looked over at that moment and saw that Keunang had his hands in front of him but he could not remember how Keunang was positioned. Vasquez did not see Keunang attempting to arm himself. When Vasquez looked over, he heard four to five shots and saw that Torres and Martinez had their guns unholstered. Keunang was on the ground, motionless.

Civilian Witnesses

Statement of [REDACTED]

[REDACTED] provided a recorded statement to investigators in addition to the statements he provided to the 9-1-1- dispatcher and to the first responders.²⁸ [REDACTED] and Keunang got into a dispute about [REDACTED]'s cell phone. Afterward, [REDACTED] zipped himself inside his tent. Keunang shoved [REDACTED]'s tent into the street with [REDACTED] inside. Keunang, whom [REDACTED] knew as Charles or "Africa" was behaving erratically. After [REDACTED]'s tent was pushed into the street, Keunang chased him into the street with a baseball bat.

[REDACTED] heard the officers warn Keunang that he would be tased, but he did not hear a Taser being deployed.²⁹ [REDACTED] heard the officers say that Keunang was attempting to get a Taser, but he did not see it. [REDACTED] heard gunshots and looked toward Keunang. [REDACTED] indicated that he saw an officer standing over Keunang, shooting, but he did not see any muzzle flash. [REDACTED] claimed that he saw and heard the shooting. [REDACTED] heard the sound of Keunang's body hitting the sidewalk with a "boom" sound.

Statement of [REDACTED]

[REDACTED] was directly across the street from the incident at a distance of approximately 92 feet. Keunang and [REDACTED] were fighting prior to the arrival of the police. When the police arrived, Keunang did not want to talk to them. Keunang ran back to his tent, refusing to exit when the officers asked him to do so. The officers extracted him by tearing the tent open. Keunang did not want to be handcuffed, and refused to comply with the orders of the police. Keunang kept fighting despite being tased.

Volasgis lost his baton and asked the other officers to retrieve it. [REDACTED] wound up with the baton, and the officers got it back.

Volasgis was trying to subdue Keunang in order to get handcuffs on him. [REDACTED] could see Keunang's hands reaching for Volasgis' firearm and saw his hands on it while it was still in the

²⁸ [REDACTED]'s recorded statement to investigators, given on the date of the incident, is fairly incoherent.

²⁹ [REDACTED] remained seated on the curb near his collapsed tent with his back to the incident. The videos showed that he rarely turned to face the confrontation, even as it escalated.

holster. Keunang never got physical control of the firearm. This occurred while Volasgis was trying to handcuff Keunang. ██████ described having seen Keunang both reaching for the firearm and pulling on it for two or three seconds. ██████ assumed that the gun was “cocked” during the struggle and that the sound of the gun cocking would have been audible to the officers engaged in the struggle.³⁰ ██████ saw the first shots. Syed and another officer fired their weapons. Volasgis attempted to fire his weapon also, but it jammed.

In ██████’s opinion, the shooting was justified both because the shooting officers would have heard the gun cock, and because the manner in which Volasgis jumped backwards away from Keunang would have made the other officers assume that he had lost possession of his firearm.

Statement of ██████

██████ was across the street from the incident. ██████ knew Keunang as “Africa.” ██████ opined that, at the time of the incident, Keunang was under the influence of narcotics. ██████ indicated that he does some drug counseling, but no further details were elicited.

██████ saw the earlier altercation between ██████ and Keunang, in which he believed that Keunang had used a pole or a stick to beat ██████. ██████ saw Keunang zip ██████ up in his tent, trapping him. Keunang unzipped the tent and released ██████. ██████ called the fire department.

██████ saw the officers arrive. For five minutes, the officers urged Keunang to go to the wall of the URM. Instead, Keunang ran to his tent. ██████ indicated that if he were one of the officers, he would have been concerned that Keunang was searching for a gun inside the tent. The officers opened the tent, and Keunang came out swinging and fighting. The officers tried to subdue him. Keunang appeared to be under the influence of something because five officers working together were unable to subdue him.

██████ indicated both that he was not certain whether the officer succeeded in tasing Keunang and that Keunang was able to pull the Taser darts out of himself.

Volasgis was on top of Keunang, pinning him and trying to subdue him. ██████ heard shots ring out, but a tree and Keunang’s tent blocked his view of the fight as it progressed on the ground. ██████ could not see if Keunang grabbed a gun, but he could see Keunang swinging and grabbing while the word “gun” was being yelled. ██████ questioned whether anyone on his side of the street could see the wrestling on the ground because of the visual obstruction created by the placement of the tents.

Volasgis stepped away from Keunang very quickly, as though he was missing something. ██████ heard someone shout, “Gun!” ██████ saw Volasgis step back up, away from Keunang. ██████ saw no smoke from Volasgis’ gun. ██████ thought the officers behaved appropriately because Keunang had two or three opportunities to give himself up and go to the wall and because he kept fighting when the officers tried to subdue him.

³⁰ After the incident, ██████ heard that two rounds were jammed in the firearm during the incident and conceded that he had made assumptions based upon that information.

Statement of ██████████

██████████ was working as a security guard at the URM. Earlier in the day, before the incident, ██████████ saw Keunang arguing with a young lady and a bat was involved. A man was filming the fight on his cell phone.³¹ ██████████ believed that argument was the catalyst for the incident. At the time of the incident, ██████████ was on the same side of the street, approximately 90 feet north of Keunang's tent. ██████████ saw Keunang tussling with four or five officers, with whom he was not cooperating. Keunang went to the ground. ██████████ did not hear what the officers said, nor did he see what weapons were drawn. ██████████ was surprised to hear gunshots. ██████████ saw ██████████ pick up an unknown object with which she tried to strike one of the officers from behind. It appeared she may have struck the officer, but ██████████ could not be sure. Two officers took control of her.

Crime Scene Evidence

Ballistic Evidence

Five cartridge casings were recovered at the scene of the incident. Analysis by a firearms expert indicated that one of the casings was fired by Martinez' firearm, and two were fired by both Syed and Torres' firearms. Crime scene analysts were not able to find any bullet strike marks in the area of the incident.

Volasgis' Firearm and Holster

At the time of the incident, Volasgis' 9 mm Luger caliber Glock was holstered in his department issued Safariland 6360 3L Retention holster, which has three "levels of retention" or mechanical steps that must be performed to fully holster or unholster a firearm. To holster a firearm, the barrel must slide into the snug-fitting holster at the correct angle, which causes a small spring loaded lever to snap into the ejection port. If the barrel of the firearm is not placed correctly in the holster, the lever that is designed to drop into the ejection port can cause a "misfeed" in which a round is extracted and can become lodged in the ejection port. (This type of misfeed occurred at some point during the incident.) If the misfed round partially exits the ejection port while the barrel of the gun is inside the holster, it can project enough to hold the gun in place. If a round misfeeds while the barrel of the gun is outside the holster, its extra bulk can prevent the barrel of the firearm from fitting back into the holster.

The second and third levels of retention are a loop that slides over the back of the barrel of the firearm, and a small lock inside the holster that locks and unlocks the loop. The loop will not typically fit over a magazine that is "out of battery," or partially ejected from the barrel of the firearm. In order to remove a properly holstered firearm, it is necessary to release the lock, slide the loop forward and press a button inside the holster that releases a pin from the ejection port of the firearm.

A firearm properly holstered will not fall out of the holster in a fight even if only the third level of retention (the ejection port lock) is in place. A firearm that does not fit inside the holster

³¹ No noticeable argument between them appeared in the video. There was no further evidence that ██████████ and Keunang had a relationship.

cannot be secured by any of the means of retention, and can easily be knocked free from the holster.

Volasgis' firearm and holster were preserved in the condition in which he found them when he attempted to reholster his firearm after pointing it at Keunang at the conclusion of the incident. Volasgis' firearm is designed to hold 17 rounds in the magazine and an additional round in the chamber. When it was recovered, Volasgis' firearm contained 16 rounds in the magazine, one round in the chamber and an additional misfed round in the ejection port.³² An LAPD criminalist analyzed the gun and holster and found that Volasgis' firearm was partially seated in the Safariland holster on his Sam Browne belt. The magazine was in the magazine well, but not fully seated. The slide was partially back (also described as rearward or "out of battery"). One cartridge (unexpended round) was protruding, bullet end first, from the ejection port of the slide. A second cartridge was loaded in the chamber of the pistol. This second round had chambered after the other round misfed. The misfed round was being held in position in the ejection port by the holster. Therefore, if the gun were removed from the holster and the unexpended round fell out, the gun would again have been fully operational. The chambered round was ready to be fired.

According to the firearms examiner, the misfed round lodged in the ejection port of Volasgis' firearm could have been caused either by Volasgis improperly reholstering his firearm, or by the violent manipulations of Keunang as he attempted to free it from the holster.

The videotapes indicate that Volasgis had no difficulty reholstering his firearm until after the struggle with Keunang, indicating that there was no misfed round until that time. In addition, if the firearm had not been properly holstered prior to Volasgis and Keunang falling to the ground, the gun would have been insecure in the holster. This would have created a likelihood of the firearm falling from the holster before Keunang attempted to grab it.

Coroner's Findings

On March 3, 2015, Los Angeles County Medical Examiner Dr. Ajay Panchal performed an autopsy on Keunang and concluded that Keunang died as a result of six gunshot wounds. The gunshot wounds were arbitrarily numbered and the bullet trajectories were memorialized in diagrams and photographs. Projectiles and fragments of projectiles were recovered but not compared to the firearms of the officers involved. Gunshot wound number one, a fatal shot fired from an indeterminate range, entered the left side of Keunang's rib cage, exited the right side of his rib cage and re-entered his right arm pit, remaining lodged inside his right upper arm. Gunshot wounds number two and three were both fatal contact gunshot wounds that entered the left side of Keunang's chest and did not exit. Gunshot wound number four, a fatal gunshot wound, entered the left side of Keunang's rib cage and did not exit. Gunshot wounds number five and six were non-fatal through and through gunshot wounds to Keunang's left arm.

³² Volasgis' firearm is manufactured to contain 17 rounds in the magazine and one round in the chamber. At the time of the incident, Volasgis' magazine accommodated an additional round because of a loose spring. Nonetheless, Volasgis began his shift with 17 rounds in the magazine and one in the chamber. Using Volasgis' firearm, a firearms examiner recreated the misfeed scenario that occurred during the incident. The operation of that specific firearm would have caused the round initially in the chamber to misfire, becoming lodged in the ejection port. The round recovered in the chamber would have been the top round in the magazine prior to the incident.

Five shots were fired during the incident, as established by the number of gunshot sounds recorded by the video cameras, by the number of casings recovered and by the number of live rounds missing from the firearms of the three officers who shot. Panchal catalogued six distinct gunshot wounds. To explain this discrepancy, a bullet must have passed through Keunang and re-entered his body. The two possibilities of projectiles having passed through Keunang's body and re-entering as subsequent gunshot wounds are gunshot wounds number five and six to Keunang's left arm. Gunshot wound number five contains five fragments of a projectile comprising a substantial fraction of an expended round. Any subsequent gunshot wound caused by the remainder of that projectile would likely consist of fragments, and would necessarily be diminished by the portion of the projectile left behind. There is no gunshot wound fitting that description. Therefore, gunshot wound number six, a through and through wound from which no fragment of a bullet was recovered, appears to be a gunshot wounds that re-entered Keunang's body.

The two possibilities for re-entry are gunshot wounds number one and four. Gunshot wounds two and three were both contact wounds, indicating that they could not have been generated by a projectile that had already passed through Keunang's body. Footage from Syed's BWV indicates that a few seconds after the final shot, Keunang lay on his right side, with his left arm raised. Syed's position at the feet of Keunang, when he discharged his firearm, could have generated a wound track in which gunshot wound number six formed the first part of a trajectory that continued as either gunshot wound number one or number four.

A toxicology analysis detected the presence of marijuana and methamphetamine in Keunang's blood. No evidence was found that a Taser dart had lodged in Keunang's body.

Serology/ DNA

Swabs were taken from Volasgis' firearm, magazine, belt, holster, badge and baton and submitted for DNA comparison to the DNA of Volasgis, Keunang and [REDACTED]. The presence of Volasgis' DNA and that of [REDACTED] was found on the handle of the baton. The swab taken from the top of Volasgis' holster contained Volasgis' DNA and that of two other minor contributors whose DNA profile could not be determined. The swabs taken from Volasgis' firearm, magazine, body of the holster, belt buckle and badge did not yield DNA samples adequate for comparison.

LEGAL ANALYSIS

At the moment he was fatally shot, Leundeu Keunang presented an apparent, present, and immediate lethal threat that needed to be dealt with instantly. Although four officers struggled to gain control of Keunang, Keunang was rapidly gaining control of Officer Volasgis' firearm with his left hand. At the instant Keunang was shot, he had virtually removed Volasgis' firearm from the holster, and the barrel was pointing in the direction of Sergeant Syed and the crowd gathering behind him. Keunang had pulled the firearm almost entirely free of the holster. Although Volasgis was still struggling to maintain partial control of the firearm, Keunang could well have caused the gun to discharge. In addition, when Torres and Syed heard the first shot, it was reasonable for either or both of them to assume that Keunang, having gained control of Volasgis's firearm, was now firing it.

Regardless of whether or not Keunang had gained complete control of the firearm, his violent manipulations of both the firearm and Volasgis' gunbelt created a high likelihood that the firearm would discharge, as evidenced by the misfed and chambered rounds. If the firearm had been pulled farther out of the holster and the misfed round had fallen, the chambered round was ready to be fired.

California law permits the use of deadly force in self-defense 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. *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *People v. Mercer* (1962) 210 C.A.2d 153, 161.

“The killing of another person in self-defense is justifiable and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the other person will either kill him or cause him great bodily injury; and

2. That it is necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a homicide. To justify taking the life of another in self-defense, the circumstances must be such as would excite the fears of a reasonable person placed in a similar position, and the party killing must act under the influence of those fears alone. The danger must be apparent, present, immediate and instantly dealt with, or must so appear at the time to the slayer as a reasonable person, and the killing must be done under a well-founded belief that it is necessary to save one's self from death or great bodily harm.” CALJIC No. 5.12

California law extends this doctrine to justify the use of deadly force in defense of others. CALCRIM No. 505. In protecting himself or another, a person may use all 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 imminent injury. CALCRIM No. 3470.

The doctrine of self-defense and by extension, defense of others, is available to Sergeant Syed and Officers Martinez and Torres because the overall circumstances under which they confronted Keunang presented an overwhelming likelihood that Keunang would cause Volasgis' firearm to discharge, potentially killing officers and civilians.

The reasonableness of the officers' conduct in the final seconds of the incident is underscored by their self-restraint during the six minutes leading up to the discharge of their weapons. When Syed, Martinez and Volasgis approached Keunang for the first time, they knew that he had used a bat to assault █████ and that he had thrown █████' tent into the street just moments earlier. That alone would cause a reasonable officer to be apprehensive. As the officers approached Keunang, he displayed signs of being erratic and volatile both in his speech and in his rapid, exaggerated mannerism. Perhaps most concerning, Keunang refused to leave the mouth of his tent, which, like his baggy clothing, had the potential to conceal weapons.

Martinez repeatedly asked Keunang to go to the wall, which would have separated Keunang from any concealed weapons inside his tent. The officers cautioned Keunang that he would be tased. Keunang took a few small steps toward Martinez, whose only reaction was to briefly raise the Taser and instruct Keunang not to approach him.

Instead of following the officers' directives, Keunang darted inside his tent. When he was exposed, he was crouching with an array of items by his knees. The officers would not have been able to assess what possible weapons were at Keunang's disposal before Keunang grabbed a small object, leapt to his feet and lunged at Martinez. It would have been reasonable to assume that Keunang had armed himself with a deadly weapon at that moment, and a reasonable officer could have believed that deadly force was necessary to protect himself and others. Instead, as Keunang rapidly spun toward Volasgis, Volasgis reholstered his firearm and engaged with Keunang hand to hand. This put Volasgis at far greater risk than discharging his weapon at that time.

As Keunang was brought to the ground, he attempted to grab Volasgis' gun. At that instant, the lethal threat presented to the officers elevated from possible to very likely. On the ground, Keunang managed to get his left hand on Volasgis' firearm repeatedly. In the final seconds of the encounter, when Keunang had substantially withdrawn the firearm from the holster and Volasgis could only hope to contain Keunang's manipulation of the firearm, the lethal threat presented by Keunang was imminent.

CONCLUSION

Decisional law cautions against judging the conduct of officers with 20/20 hindsight because such scrutiny makes no accounting for the "tense, uncertain and rapidly evolving" situations faced by officers. *Graham v. Connor* (1989) 490 U.S. 386, 397. Therefore, 20/20 hindsight is not typically germane to the analysis. However, the abundance of physical and video evidence in this incident in fact establishes that the officers' reasonable assessments of the threat posed by Keunang were as grave and imminent as the officers perceived them to be. The actions of Sergeant Syed and Officers Martinez and Torres survive scrutiny under the legal standard set forth above, and also through the lens of 20/20 hindsight. Keunang posed a high likelihood of killing officers and civilians at the very instant that he was shot. We conclude that Sergeant Syed and Officers Martinez and Torres were justified in using deadly force against Leundeu Keunang. We are closing our file and will take no further action in this matter.