

**Officer Involved Shooting of Hector Morejon
Long Beach Police Department**

Officer Jeffrey Meyer, #5326

J.S.I.D. File #15-0201



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District Attorney

Justice System Integrity Division

September 22, 2016

MEMORANDUM

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

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

SUBJECT: Officer Involved Shooting of Hector Morejon
J.S.I.D. File #15-0201
L.B.P.D. DR #15-24739

DATE: September 22, 2016

The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office has completed its review of the April 23, 2015, fatal shooting of Hector Morejon by Long Beach Police Officer Jeffrey Meyer. We have determined that it cannot be proved beyond a reasonable doubt that Meyer's shooting of Morejon was unlawful.

The District Attorney Command Center was notified of this shooting at 3:37 p.m. on April 23, 2015. The District Attorney Response Team (DART) responded to the location of the shooting where they received a briefing and "walk-through" of the scene.

The following analysis is based upon a series of reports prepared by the Long Beach Police Department (LBPD), supplemental material requested by the District Attorney's Office and provided by LBPD, as well as supplemental investigation conducted by the District Attorney's Office. The voluntary statement of Officer Meyer was considered as part of this analysis as was his written police report.

FACTUAL ANALYSIS

1150 Hoffman Avenue in the City of Long Beach is a detached bungalow within a small complex of four rental units. In April 2015, these units were being remodeled and all appeared to be unoccupied.¹ The front of the complex is on Hoffman Avenue, the rear of the complex borders an unnamed alley. This area, Hoffman Avenue between Anaheim and 11th Streets, is a location "claimed" by the Eastside Longo criminal street gang. It is an area known for violent gang activity. Eastside Longo gang graffiti was also located on the walls to the rear of the complex.

Approximately one week before this shooting, squatters broke into 1150 Hoffman Avenue and took up intermittent residence. According to one of the occasional squatters, Edgar Rodarte,

¹ The four units have distinct addresses; 1148, 1150, 1152 and 1154 Hoffman Avenue.

access to the unit was generally obtained through a rear window that was broken and unlocked, or through the front door which was left unlocked by the squatters when they left the residence. While 1150 Hoffman Avenue appeared to have been recently remodeled, at the time of this incident, the inside of the unit was heavily tagged with graffiti, including decedent, Hector Morejon's gang moniker.²

At approximately 2:10 p.m., a representative from Beach Front Property Management called LBPD to report that one of her tenants at the Hoffman complex was reporting that 11 males and females had broken into 1148 Hoffman Avenue and were vandalizing the inside of the property. The dispatcher asked for the name of the tenant, but the property management representative declined to provide the name because she said that the tenant was afraid. The dispatch officer broadcast the call for service to investigate possible trespassers at the location. No additional effort was made, prior to the arrival of patrol officers, to contact the person who witnessed the trespassers and their activities.

At approximately 2:14 p.m., LBPD Officers Jeffrey Meyer and Xavier Veloz arrived at the complex. They were both working one-man cars and dressed in full police uniform. Veloz and Meyer observed two men working on a wrought iron security gate that separated the complex from the sidewalk on Hoffman Avenue. Veloz and Meyer contacted the workers and then walked through the complex. They observed that units 1148, 1152 and 1154 appeared to be locked and vacant. The front door to 1150 Hoffman Avenue was locked. However, Meyer observed a partially broken window on the north side of 1150 as well as a partially open window on the back or east side of 1150. Meyer looked inside the partially open window and concluded that, because the unit had no furniture, it was vacant. He also saw what appeared to be a bicycle inside the residence.

Once they completed their initial reconnaissance of the complex, Veloz and Meyer returned to the central courtyard and spoke with the workers. Veloz asked one of the workers if he could contact the property management company to have someone respond to open the door for 1150. The worker made several phone calls and then advised Veloz that a representative from the property management company was responding to the location.

While Veloz was waiting with the workers for the property management representative to arrive, Meyer separated from Veloz and the workers and walked into a narrow breezeway that bounded the west and south side of 1150. Once Meyer was in the breezeway, he was not visible to Veloz. As he turned the corner to the south side of 1150, Meyer saw a broken window and noticed two overturned five gallon buckets directly beneath the window. Without announcing his presence or identifying himself as a police officer, and also without notifying his partner officer of his intentions, Meyer un-holstered his service weapon and approached the window.

In his report, Meyer wrote that he pulled back the vertical blinds hanging in the window in order to look inside. The bottom edge of the window is approximately 54-60 inches from the ground. In order to look into the window, Meyer's head and part of his shoulder was exposed above the bottom edge of the window. Meyer pointed his firearm inside the residence and began scanning the interior using the illumination from the flashlight attached to his firearm.

² Hector Morejon's moniker was "Dynamite."

As Meyer scanned the interior of the residence, he saw the profile of a male Hispanic wearing a grey shirt, later identified as Hector Morejon, standing inside the residence approximately 10 feet from the window.³ Meyer wrote that Morejon turned quickly to his right while “simultaneously turning at me and raising and extending his right arm in my direction in one movement.” Meyer saw a “dark object” protruding from Morejon’s right hand and saw Morejon take a “firing stance.” Fearing that Morejon was armed with a firearm and about to shoot him, Meyer fired his service weapon one time. Meyer wrote that he did not announce himself or give any orders to Morejon before firing because he did not have time to do so. After firing one shot, Meyer retreated from the window to the southwest corner of the residence and notified Veloz that he had just fired his weapon.

Shortly thereafter, numerous police officers responded to the location. Three occupants of 1150 Hoffman Avenue, Edgar Rodarte, German Rodarte and Yesinia Pineda came out of the front door and were detained. A fourth individual, Cecelia Cox, was detained outside the rear of the residence. Hector Morejon exited the rear window and was also detained. He was suffering from a single gunshot wound. Morejon was transported by ambulance to Saint Mary’s Medical Center where he underwent emergency surgery. Morejon did not survive his injuries.

A search was conducted of the interior of 1150 Hoffman Avenue. A significant amount of graffiti was found inside the residence as well as various personal items. No weapon was located.

On April 28, 2015, Deputy Medical Examiner Lawrence Nguyen conducted an autopsy of Morejon’s remains. He determined that the cause of death was a single gunshot wound to the torso. Doctor Nguyen opined that the bullet entered the left side of Morejon’s back and exited his right upper abdomen. The corresponding bullet path was left to right and back to front.

Statement of German Rodarte:

German Rodarte was 21 years old at the time of this incident.⁴ He was interviewed at LBPD on April 23, 2015, regarding this shooting. Members of LBPD homicide division conducted the interview. Members of the District Attorney’s Office were present and participated in the interview.

German stated that he was homeless and had been homeless for approximately one and a half years. He generally either stayed with friends, with his mother or in public parks. German arrived at the residence approximately two hours before the shooting occurred. He stated that he knocked on the door and Yesinia Pineda admitted him.⁵ When he arrived at 1150 Hoffman Avenue the only other occupants of the residence were Pineda and Morejon. Shortly after he arrived, German lay down in the front room of the residence and fell asleep.

³ Morejon’s name will be used to identify him even though his name was not known to Meyer at the time of this incident.

⁴ Because German and Edgar Rodarte share a last name their first names will be used for clarity.

⁵ According to both German and Pineda, German and Pineda have a child together but were not boyfriend and girlfriend at the time of the incident.

German claimed that he awoke to the sound of a gunshot. German denied seeing what, if anything, Morejon did just before he was shot. After he awoke from the sound of the gunshot, German saw his brother, Edgar, hiding below the kitchen sink and saw Morejon lying in the hallway. He could smell burnt gunpowder inside the residence. German was not immediately aware that Morejon had been shot and did not know where the shooter was. After a few seconds, Morejon screamed and ran toward the back of the residence and out of German's view.

German, Edgar and Pineda discussed what they should do. They were concerned that the shooter might still be outside the residence. After several minutes, Pineda opened the front door. At that point, LBPD officers announced themselves and began giving Pineda directions. Eventually German, Edgar and Pineda exited the residence and were detained by LBPD.

Statement of Yesinia Pineda:

Yesinia Pineda was 23 years old at the time of this incident. She was interviewed at LBPD on April 23, 2015, regarding this shooting. Members of LBPD homicide division conducted the interview. Members of the District Attorney's Office were present and participated in the interview.

Pineda stated that Morejon first entered 1150 Hoffman approximately 10 days earlier. Pineda stayed at the residence when she had used drugs and she knew that she and the other occupants were trespassing. Pineda arrived at the residence at approximately 6:30 a.m. on the morning of the shooting. Prior to arriving at the residence, she had been smoking methamphetamine with German in the Belmont Shores area of Long Beach. Morejon admitted her into the house and she saw Edgar asleep on the living room floor. She went to sleep in one of the bedrooms. She woke up later in the day and admitted German into the residence and then she and German went to sleep in the living room.

Pineda awoke to the sound of screaming. She believed it was Morejon screaming. German and Edgar told her to stay down as Morejon had just been shot. Pineda claimed that she was asleep at the time of the incident and did not see the shooting or what took place immediately before the shooting. Pineda stated that approximately one to two minutes after she woke up, she exited the front door of the residence and was detained by police.

Officer Meyer's Written Report:

Officer Meyer wrote a report of his involvement in this incident. The report is dated April 23, 2015. It was approved on May 7, 2015. In his report, Meyer wrote that he was dispatched to an "unlawful lodging" call with additional information that there were 11 people inside possibly tagging. Based on his experience he concluded that the people inside were "probably gang members." Meyer also described his prior contact with the location. He described responding to the rear ally near this location one month earlier for a shooting investigation. He also wrote that the area is known for drug sales and gang activity and that the alley has gang graffiti associated with the violent criminal street gang "Eastside Longo."

Meyer described his arrival at the location, his contact with the workers and his and Veloz's reconnaissance of the complex. After checking the other three units, he concluded that 1150 Hoffman was likely the unit that was being unlawfully occupied. He and Veloz were standing near the front door of 1150 Hoffman while one of the workers was calling the management company to gain access to the unit.

Meyer then walked into the breezeway on the west side of 1150 Hoffman. He turned the corner onto the south side of the residence and saw two five gallon buckets beneath the kitchen window. He drew his firearm and approached the window. Meyer pulled the vertical blinds aside with his left hand while pointing his service weapon through the window. His head and shoulders were above the lower frame of the window, while the remainder of his body was blocked by the exterior wall. Meyer used the flashlight attached to his firearm to illuminate the interior of the residence.

Meyer saw the right side profile of a "male Hispanic" standing approximately 10 feet from his position. According to Meyer's report, the male was facing south then "quickly turned to his right and started to crouch down by bending his knees, simultaneously turning at me and raising and extending his right arm in my direction in one movement." Meyer wrote that he saw a "dark object protruding from his right hand" and "believed that the male was holding a handgun." Meyer also wrote that the male was taking a "firing stance."

Meyer wrote that he discharged his weapon one time without ever identifying himself as a police officer. Meyer explained his failure to identify himself or to give any commands before discharging his weapon "because of how fast everything was happening." After firing once, Meyer retreated from the window to the southwest corner of the house. He heard yelling from inside the residence and then heard Veloz giving commands to someone east of the residence.

Meyer then saw the front door to 1150 Hoffmann open and saw a male and female in the doorway. Meyer ordered them to the ground at gunpoint. They complied. A short time later, a second male emerged from the house. Meyer ordered him to the ground and he also complied. Additional LBPD officers arrived at the location and detained Edgar and German Rodarte and Yesenia Pineda.

Interview of Officer Meyer:

Meyer was interviewed on April 30, 2015 by representatives from LBPD's homicide division. This was a non-compelled, voluntary interview. Representatives of the District Attorney's Office were not present during this interview. The detectives began by advising Meyer that the bullet's entrance wound was to Morejon's back.⁶ Meyer responded by saying that Morejon was facing him when he fired. Meyer stated that Morejon was turning towards his right, towards Meyer, at the time that he fired. When Meyer saw Morejon turning, he released the blinds with his left hand and began to back up and move behind the edge of the exterior wall. He admitted he did not really see Morejon's body position as he fired but he thought Morejon was facing him. He thought he shot Morejon in the front and "that's what he was aiming for." Meyer did not remember if the flashlight on his firearm remained illuminated as he fired.

⁶ Morejon's name was not used during the interview but will be used in this narrative for clarity.

Statements of Edgar Rodarte:

Edgar Rodarte was 20 years old at the time of this incident. Edgar was interviewed on three separate occasions regarding this shooting. The first interview took place at LBPD on April 23, 2015. Members of LBPD homicide division conducted the interview. Members of the District Attorney's Office were present and participated in the interview. Edgar was re-interviewed on September 25, 2015 by members of LBPD homicide division. JSID was not notified about this interview and accordingly no representatives from the District Attorney's Office were present at this interview. Because significant inconsistencies exist between Edgar's first and second statements, Edgar was interviewed a third time by representatives of the District Attorney's Office on May 5, 2016. A member of LBPD homicide division was present during this third interview.

April 23, 2015 interview:

Edgar stated that he was homeless at the time of this shooting. He had stayed at 1150 Hoffmann Avenue on approximately two occasions prior to this incident. He arrived at the residence at approximately 6:00 a.m. on the day of the shooting. He fell asleep in the living room and awoke to the sounds of people talking outside the residence but thought it was the owner or manager of the building. He did not want to get in trouble for being inside the residence so he got up and went to the bedroom to wake up Morejon.⁷ He returned to the living room and woke up German and Pineda. Morejon followed him into the living room and was standing east of Edgar toward the back of the unit. German and Pineda were fully awake before the shooting occurred. They all intended on exiting out of the back of the unit to avoid getting into trouble.

They were all preparing to go to the back of the unit to exit when the sound of the vertical blinds moving drew Edgar's attention to the kitchen window. Almost immediately, Edgar heard the sound of a gunshot and dove to the floor. He did not see the muzzle flash from the firearm but heard the gunshot and smelled the burnt gunpowder. There were no police announcements prior to the shooting, nor did Edgar hear any police type radio traffic before the shooting occurred. He did not realize the police were outside but thought it was the property owner or manager.

Just before the shooting, Morejon was in front of Edgar. Morejon was facing the back of the unit. Morejon's hands were in front of him. Edgar did not see anything in Morejon's hands. Morejon did not turn toward the kitchen window prior to the shooting.

After diving to the ground, Edgar tried to find cover for fear of being shot. German told him to hide near the stove, which he did. He heard Morejon screaming but did not see him. He and German wanted to check on Morejon but they were afraid to do so for fear of being shot. After a few minutes, Pineda opened the front door and at that point they realized the police were outside. He, Pineda and German exited the unit and were detained by the police.

⁷ Edgar only knew Morejon by his moniker "Dynamite" and referred to him as Dynamite throughout this interview.

September 25, 2015 interview:

Significant substantive inconsistencies exist between Edgar's April 23rd and September 25th statements. In his April 23rd statement, Edgar stated that he never heard any police radio traffic prior to the shooting and that he, and the other occupants of the residence, thought it was the property owner or manager outside the unit. In his September 25th statement, Edgar stated that he heard police radios outside the unit before the shooting. Moreover, he stated that when he woke Morejon, he and Morejon briefly discussed the fact that the police were outside.

In his April 23rd statement, Edgar stated that all the occupants of the residence were awake prior to the shooting and preparing to exit out of the back of the unit. In his September 25th statement, Edgar stated that German and Pineda were asleep before the shooting and only woke up after the shooting had occurred.

In his April 23rd statement, Edgar stated he did not see the muzzle flash from the firearm but only heard and smelled the gunshot. In his September 25th statement, Edgar stated that he saw the muzzle flash.

In his April 23rd statement, Edgar stated that he was certain that Morejon was not holding anything in his hands just before the shooting occurred. In his September 25th statement, Edgar at first reiterated that Morejon was not holding anything in his hands just prior to the shooting. After further questioning by the LBPB detectives, Edgar agreed that it was "possible" that Morejon had a glove in his hand at the time of the shooting.

Most significantly, in his April 23rd statement, Edgar stated that Morejon was facing the back of the unit (east) at the time of the shooting and did not turn back toward the kitchen window (south) or the living room (west) before he was shot. In his September 25th statement, Edgar stated that Morejon turned back toward the living room and pointed just before he was shot. The LBPB investigators had Edgar participate in a videotaped re-creation of Morejon's movements following the September 25th interview. Edgar demonstrated how Morejon turned from facing the back of the unit toward the south and west while simultaneously pointing with his right hand. Edgar explained that Morejon turned and pointed to the sleeping German and Pineda while advising Edgar not to forget to wake them before they fled.

Edgar was consistent during both interviews that the police officers did not identify themselves or give any commands before the shooting occurred.

May 5, 2016 interview:

Because of the significant and material inconsistencies between Edgar's April 23rd and September 25th statements, the District Attorney's Office conducted a third interview of Edgar Rodarte. That interview was conducted at the District Attorney's Office and tape recorded. A member of LBPB's homicide division was present during the interview.

Edgar was serving a sentence in the county jail, for a crime unrelated to this incident, at the time he was removed from custody for the interview. He was returned to the county jail after the

interview was concluded. He was not promised or given any reduction in his sentence or any other benefit in exchange for his agreeing to be re-interviewed.

The interview began by asking Edgar to recount, uninterrupted, his memory of the incident. He described waking to voices outside, waking Morejon and returning to the living room. He then stated that they were preparing to exit the rear window of the residence when the gunshot occurred. Edgar ducked down and hid in a corner with his brother German. He heard Morejon screaming but did not go to check on him for fear of being shot. Shortly thereafter, they opened the front door and were detained by the police.

Edgar was then confronted with his differing statements with regard to hearing (September 25th) or not hearing (April 23rd) police radios prior to the shooting. In the May 5, 2016 re-interview, Edgar stated that he did hear police radios prior to the shooting. He said he did not know why he stated that he did not hear police radios during the April 23, 2015 interview. Edgar also reaffirmed his September 25, 2015 statement, that after he woke Morejon he told Morejon that there were cops outside. Edgar also stated that he did not believe he heard any police radios after he woke Morejon. This is inconsistent with his September 25, 2015 interview when he said that both he and Morejon heard police radios and discussed the fact that the police were outside.

Edgar was next confronted with his differing statements with respect to German and Pineda being fully awake before the shooting (April 23rd) and waking up to the gunshot (September 25th). In the May 5, 2016 interview, Edgar stated that German and Pineda were not awake before the shooting but woke after the gunshot. He was pressed with respect to how he could have provided specific detail about German and Pineda's actions and demeanor after being awakened before the gunshot in the April 23 interview, if they were in fact asleep. Edgar eventually admitted that during his second interview (September 25th) he tried to conform his statement to German's April 23rd statement that German was asleep at the time of the shooting. Edgar reaffirmed, however, that German and Pineda were asleep at the time of the shooting.

Edgar then was questioned about seeing the muzzle flash from the firearm (September 25th) or not seeing the muzzle flash (April 23rd). In the May 5, 2016 re-interview, Edgar stated that he did see the muzzle flash of the gunshot. He explained his failure to relate that he saw the muzzle flash during the April 23rd interview may have be the result of his being intoxicated from having used drugs prior to the shooting and being shaken up by the incident.

Edgar was also asked about the marked difference between his recitations of Morejon's actions just prior to the shooting. In his April 23rd interview, he stated that Morejon was facing the bedroom (east) and did not turn back towards the front of the residence (west) or the kitchen window (south) just before the shooting. Edgar also stated that he was certain that Morejon's hands were in front of him at the time of the shooting. In his September 25th interview and video reenactment, Edgar stated that Morejon not only turned to the front of the residence (west) just before the shooting but also raised his hands and pointed to the living room (west) just before he was shot.

Edgar was read his statements from the April 23rd interview and then shown the September 25th reenactment. He could not provide a cogent explanation for the marked inconsistencies with

respect to Morejon's movements prior to being shot. Edgar reiterated that at the time of the April 23rd interview he was still feeling the effects of having used drugs. He also affirmed that the recitation of facts contained in the September 25, 2015 reenactment accurately reflects his memory of the events.

Finally, Edgar denied that anybody tried to influence him to change his statements between April 23rd and September 25th. He also stated that no one tried to influence his statement prior to being re-interviewed on May 5, 2016.

LEGAL ANALYSIS

In California, murder is defined as the unlawful killing of a human being with malice. Cal. Pen. Code section 187(a). In order to prove murder the prosecution must prove beyond a reasonable doubt that: 1) a person was killed; 2) the killing was unlawful; and 3) the killing was done with malice aforethought; or 3a) the killing occurred during the commission or attempted commission of a listed, or an inherently dangerous felony. See, CALCRIM No. 520; CALJIC No. 8.10.

A killing which is legally justified is a lawful killing. In the context of a killing committed by an on-duty police officer the potential legal justifications are: 1) to resist another from committing or attempting to commit a "forcible and atrocious crime" (Cal. Pen. Code section 197(1); CALCRIM No. 505; CALJIC No. 5.10.);⁸ 2) in self-defense (Cal. Pen. Code section 197, 198; CALCRIM No. 505; CALJIC No. 5.12); 3) in defense of another (Cal. Pen. Code section 197, 198; CALCRIM No. 505; CALJIC Nos. 5.13, 5.14); or 4) when necessary to apprehend dangerous fleeing felons (Cal. Pen. Code section 197(4); CALCRIM Nos. 507, 508; CALJIC Nos. 5.25, 5.26).⁹ In every case, the People bear the burden of proving that the killing was not justified.

The use of deadly force is justified, not unlawful, when the killer actually and reasonably: 1) believes there is an imminent danger that the other person will kill him or cause him great bodily injury and, 2) believes that it is necessary to use deadly force to avoid death or great bodily injury. CALCRIM No. 505; CALJIC No. 5.15. The killer must actually believe that these circumstances exist and that belief must be objectively reasonable under the circumstances. In addition, the fear of imminent death or injury must be the sole motive for the use of deadly force and the danger must be apparent and so immediate that it must be instantly dealt with. Stated slightly differently, California law permits the use of deadly force in self-defense if it reasonably appears that the person claiming the right of self-defense actually and reasonably

⁸ The plain language of Penal Code section 197(1) would justify a killing to prevent any felony but, in light of the large number of relatively non-serious felonies, this defense has been limited to those felonies which are "forcible and atrocious." A forcible and atrocious crime is: 1) one that by the nature and manner of its commission threatens the life of the defendant or threatens great bodily injury to the defendant, or 2) one in which the defendant reasonably believes that he is so threatened, and 3) actually instills in the defendant a reasonable fear of death or great bodily injury.

⁹ This justification applies to peace officers, or others acting at their direction in apprehending dangerous felons. Dangerous felons are those persons who either: 1) pose a significant threat of death or serious bodily injury to others, or 2) who have committed a forcible and atrocious felony.

believed that he was in imminent danger of great bodily injury or death. *People v. Randle* (2005) 35 Cal. 4th 987, 994.

In protecting himself, 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.

A killing which is partially justified is unlawful but does not constitute murder. Such partially excused killings will support a charge of voluntary manslaughter when the killer harbored an actual but unreasonable belief in the need for self-defense. Cal. Pen. Code section 192(a); see also, *People v. Blakeley* (2000) 23 Cal. 4th 82, 999; *In re Christian S.* (1994) 7 Cal. 4th 768; *People v. Flannel* (1979) 25 Cal. 3^d 668; *People v. Barton* (1995) 12 Cal. 4th 186, 199; CALCRIM No. 571; CALJIC Nos. 8.40, 8.42.¹⁰

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

The Supreme Court in *Graham* held, “[D]etermining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.” *Graham, supra* at 396. The *Graham* court also held that “the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application” instead “its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham, supra* at 396.

In California, the evaluation of the reasonableness of a police officer’s use of deadly force employs a reasonable person acting as a police officer standard. *People v. Mehserle* (2012) 206 Cal. App. 4th 1125, 1146 (holding that California law “follows the objective ‘reasonable person’ standard—the trier of fact is required to evaluate the conduct of a reasonable person in the defendant’s position [citations omitted] . . . the jury should consider all relevant circumstances surrounding the defendant’s conduct. This enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation—but this is not the same as following a special ‘reasonable police officer’ standard.”)

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same

¹⁰ A killing is partially justified when the killer acts upon an actual (formerly called honest) but unreasonable belief in the need for self-defense. So if a killer actually believes he is in imminent peril of death or great bodily injury, but such a belief is not objectively reasonable, the killing constitutes the crime of voluntary manslaughter.

position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577.

Under California negligence law “pre-shooting circumstances might show that an otherwise reasonable use of deadly force was in fact unreasonable,” and a peace officer’s “pre-shooting conduct is included in the totality of the circumstances surrounding an officer’s use of deadly force and therefore the officer’s duty to act reasonably when using deadly force extends to pre-shooting conduct.” *Hayes v. County of San Diego* (2013) 57 Cal 4th 622, 633.¹¹ The court in *Hayes* made clear that its ruling applied only to a state law negligence claim and that “[T]he Fourth Amendment’s reasonableness standard is not the same as the standard of ‘reasonable care’ under tort law, and negligent acts do not incur constitutional liability.” *Hayes, supra* at 639.

In addition, “[a]s long as an officer’s conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the ‘most reasonable’ action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect, in order to avoid liability for negligence.” *Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 537–538.

Thus, if a police officer negligently provokes a violent response, that negligent act will not transform an otherwise reasonable use of responsive force into a Fourth Amendment violation. *Billington v. Smith* (9th Cir. 2002) 292 F.3d 1177. However, if an officer intentionally or recklessly provokes a violent response, and the provocation is an independent constitutional violation, that provocation may render the officer’s otherwise reasonable defensive use of force unreasonable. *Billington, supra* at 1190-1191.

Generally an officer’s failure to warn a suspect, when feasible, is a factor that may be considered in evaluating the objective reasonableness of the officer’s decision to use force. See, *Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 831.

CONCLUSION:

The facts of this case and the pre-shooting decisions made by Officer Meyer are troubling. At the outset it must be noted that the nature of the alleged criminal conduct to which Meyer was responding was extremely minor. Essentially, he was responding to a trespassing call with possible vandalism. The nature of the criminal conduct alleged did not present the type of life endangering criminality that required an immediate and split-second response. There was no suggestion that any of the persons inside were in immediate danger nor that they posed a

¹¹ In *Hayes*, a neighbor called the Sheriff’s Department when she heard screaming coming from the Hayes residence. When the deputies arrived, they met Hayes’ girlfriend out front who told them that Hayes had tried to kill himself earlier in the day and on previous occasions. When the deputies entered the residence, Hayes was standing in the kitchen holding a large knife. When Hayes ignored the deputies’ commands to drop the knife and began advancing toward them, both deputies discharged their firearms killing him. Based on the facts of *Hayes*, the actual application of deadly force was reasonable because at the time the deputies fired, Hayes was non-compliant and approaching them with a large knife. However, according to *Hayes*, a jury might view the deputies’ pre-shooting decisions as a breach of the deputies’ duty of care such that the actual shooting was itself negligent.

significant danger. This was not an emergency call requiring an immediate and forceful response.

While this area was known to LBPD as an area “claimed” by the Eastside Longo gang, upon arrival at the location, Meyer and Veloz did not encounter gang activity in progress. Instead, they found two workers, apparently oblivious to any danger, working on the property. During the course of the officers’ reconnaissance of the complex, they were not alerted to any potentially more serious criminality. Rather, they found a quiet and evidently unoccupied set of modest bungalows. Thus, neither the nature of the call, nor the information derived from their investigation of the complex presented any reason to believe that a serious crime was being committed that required immediate and forceful police intervention.

The lack of exigency is corroborated by Officer Veloz’s activities. After the reconnaissance was complete, and the officers had concluded that the unit being unlawfully occupied was likely 1150 Hoffman, Veloz and Meyer returned to the central courtyard and asked the workers if a representative of the property management company would respond to open 1150 Hoffman. The workers agreed and assisted Veloz by calling the management company. After making their phone calls, the workers advised Veloz that someone was responding to open the front door.

Given the minor, non-exigent nature of the alleged criminality, a reasonable and appropriate police response was to wait for the property manager to arrive. Meyer however, decided to separate from his partner, leave the safety of the courtyard and explore a narrow enclosed breezeway that placed him out of sight of his partner. There is no indication that he told his partner where he was going or why. Given the circumstances of this call, this decision cannot be tactically justified. There was no legitimate law enforcement reason for Meyer to escalate the danger to himself and the occupants inside the unit by placing himself in this tactically compromised position.

Compounding his tactical error, upon seeing a possible point of ingress into the unit, Meyer drew his service weapon and surreptitiously approached the open window. By arming himself and covertly approaching the window, Meyer increased the potential for a violent encounter without any legitimate reason. It is unclear what Meyer hoped to find. He and Veloz had already observed bicycles inside the unit and were convinced, correctly, that this unit housed the trespassers. There was little to gain and much to lose by arming himself and secretly approaching the window.

Upon reaching the window, Meyer activated the flashlight on his service weapon and pointed the gun in through the window. He did not announce his presence, identify himself as a police officer, or give any commands to the occupants of the residence. Instead, he pulled back the blinds and scanned the room with his firearm. It is unclear what response Meyer reasonably expected from the occupants of the residence in a known gang area upon being confronted with the muzzle of a firearm silently pointing through the window.

Edgar Rodarte claims that he and Morejon were aware that the police were outside before the shooting either because they had both heard the police radios (September 25th interview) or because Edgar heard the radios and told Morejon when he woke him (May 5th interview).

Edgar's veracity however, is highly suspect. He directly contradicted his April 23rd statement on numerous points during the re-interviews conducted on September 25th 2015, and May 5, 2016. He provided no plausible explanation for his marked departure from his April 23rd statement, except to say that he was still feeling the effects of the drugs he had ingested when he was interviewed on April 23rd. But his statement on April 23rd was quite specific and definite with respect to his activities, what he heard and did not hear, the fact that German and Pineda were awake and Morejon's movements just before the shooting. The specificity and certainty he expressed during his April 23rd interview belies his explanation that his lingering intoxication interfered with his ability to perceive or narrate.

In a telling admission during the May 5, 2016, interview, Edgar admitted that he changed his statement about his brother being fully awake at the time of the shooting to conform his statement to the statement provided by his brother. It is unknown if Edgar also modified his later statements to conform to the statements of other witnesses to this incident. Edgar denies this, and there is no evidence to prove that such cross contamination occurred. Yet his explanations of his retreat from his unequivocal first statement taken a few hours after the incident are not convincing.

Meyer states that the reason he fired his weapon was because Morejon turned toward him, raised his right arm and took a "firing stance." Meyer states that at that moment he was afraid Morejon was about to shoot him and so discharged his service weapon in self-defense. No weapon was found inside the residence, immediately adjacent to the residence or on Morejon's person. It is illogical to assume that Morejon would point at Meyer with nothing in his hand, particularly if all that was visible protruding through the window was the barrel of a firearm. Nevertheless, there is no direct evidence to contradict Meyer's perception that Morejon was pointing something at him. Meyer was consistent in both his written statement and his voluntary interview, that Morejon turned toward him causing Meyer to fear for his life and fire his weapon. It must be noted that Meyer did not have to submit to the later interview, but did so voluntarily and without the protections of immunity. Meyer's credibility is further strengthened by his admissions that he never identified or announced himself before shooting.

Meyer's statement regarding Morejon's actions are corroborated by Edgar's later statements that Morejon turned from facing the back of the residence to point at German and Pineda just before the shooting. As stated, Edgar's credibility is highly suspect. Nonetheless, Edgar was adamant during his May 5, 2016 re-interview that Morejon turned toward the south and west and pointed just before the shooting.

The evidence presented suggests that Morejon made some turning movement with his hand extended just before Meyer fired. There is nothing to suggest that Meyer fired for any reason other than his perception that he was in imminent danger. Thus, we conclude that Meyer actually or honestly believed that he was in imminent danger at the time he fired. This actual and honest belief prevents prosecution for murder.

A more difficult question is whether or not Meyer's belief in the need for self-defense was objectively reasonable under the circumstances. This is a very close call. If Meyer's belief was objectively unreasonable under all of the circumstances, then Meyer is guilty of voluntary

manslaughter. For the purpose of a state negligence analysis, *Hayes* would likely provide for the admission of Meyer's pre-shooting tactical failures to be used to subvert a claim that at the time he fired it was reasonable to do so. But for Meyer's decision to leave the safety of the courtyard and the presence of another police officer, enter a narrow enclosed breezeway, surreptitiously approach the window, point his gun inside without ever identifying himself or making any announcement, this shooting would not have occurred. Clearly, Meyer's tactical deficiencies were a substantial, if not the primary cause of Morejon's death. In essence Meyer's negligent tactical failures created the situation which then prompted him to use deadly force. Further, by failing to identify himself as a police officer, Meyer never gave Morejon a chance to surrender.¹²

But *Hayes* applies only to a state law negligence claim and is inapplicable to the necessary constitutional analysis under the Fourth Amendment. "[T]he Fourth Amendment's reasonableness standard is not the same as the standard of 'reasonable care' under tort law, and negligent acts do not incur constitutional liability." *Hayes, supra* at 639. Under a constitutional analysis, the People would have to prove that Meyer intentionally or recklessly provoked Morejon's actions and that Meyer's provocation was an independent constitutional violation, in order to introduce Meyer's pre-shooting tactical deficiencies to rebut Meyer's claim that his decision to shoot was reasonable. *Billington, supra* at 1190-1191.¹³ That threshold cannot be met in this case.

There is no evidence to suggest that Meyer intended to provoke a violent response from Morejon in order to employ deadly force. It is a closer question whether Meyer's decision to enter the breezeway alone, arm himself and surreptitiously peer through the kitchen window without announcing his presence was reckless given the totality of the circumstances.

In *People v. Brunette*, (2011) 194 Cal. App. 4th 268, the Court of Appeal held that "[C]onduct which creates not only an unreasonable risk but also a 'high degree' of risk (something more than mere 'unreasonable' risk) may be termed 'gross negligence,' and if in addition the one who creates such a risk realizes that he does so, his conduct may be called 'recklessness.'" (*Brunette, supra* at 285, citing LaFave, *Substantive Criminal Law* (2d ed. 2003) § 14.4(a), p. 437). Under this formulation, recklessness requires both a knowledge that one's conduct creates a high risk of danger and conscious decision to engage in the conduct despite the elevated risk. *Brunette* quoted *People v. Penny* (1955) 44 Cal.2d 861, 877 for the proposition that criminal negligence

¹² When feasible, officers must normally provide a warning and the failure to give such a warning is a factor to consider in the totality of the circumstances analysis for objective reasonableness. See, *Bryan v. MacPherson* (2010) 630 F.3d 805, 831.

¹³ The facts of *Billington* are as follows: off duty police detective (Smith) was driving home from a private security job with his wife and daughter in an unmarked police car. Smith sees Hennessey driving recklessly and nearly cause several traffic collisions. Smith activates his lights and siren and contacts the police dispatch advising them of Hennessey's license plate number and direction of travel. Hennessey crashes his vehicle and Smith stops his car, gets out and approaches Hennessey's vehicle to render aid and arrest Hennessey. Smith draws his firearm and is holding a flashlight in his hand as he approaches the car. Smith attempts to detain Hennessey who at first tries to drive away then exits the car, assaults Smith and attempts to obtain possession of Smith's gun. During the fight, Smith shoots and kills Hennessey. The court held that if the police intentionally or recklessly provoke a violent response and their provocation is an independent constitutional violation, then such reckless pre-shooting conduct may render the police subsequent use of defensive force unreasonable under the 4th Amendment. Here the alleged negligent acts by Smith did not amount to a reckless or intentional provocation nor did they constitute a 4th Amendment violation.

“must be aggravated, culpable, gross, or reckless, that is, the conduct of the accused must be such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to consequences.” *Penny, supra* at pp. 879–880. This sentiment is echoed in *Stark v. Superior Court*, where the court, again quoting *Penny*, holds that “[C]riminal negligence refers to a higher degree of negligence than is required to establish negligent default on a mere civil issue. The negligence must be aggravated, culpable, gross, or reckless.” *Stark v. Superior Court* (2011) 52 Cal. 4th 368, 399; see also, *People v. Valdez* (2002) 27 Cal.4th 778, 783.

Even if we concluded that Meyer’s conduct was reckless, in order to satisfy the requirements of *Billington* for admission of Meyer’s pre-shooting conduct to rebut the argument that his use of deadly force was objectively reasonable, the People would have to also prove that his actions constituted a separate constitutional violation. The evidence presented does not establish the required separate constitutional transgression.

Trespassers, like Morejon, do not have a reasonable expectation of privacy in the spaces they are unlawfully occupying. See, *People v. Satz* (1998) 61 Cal. App. 4th 322, 71; *People v. Thomas* (1995) 38 Cal. App. 4th 1331. Further, even if Morejon could establish that he had a legitimate expectation of privacy in the residence, Meyer did not enter the residence prior to discharging his service weapon. Thus, while Meyer’s decision to enter the breezeway appears tactically infirm, it did not constitute a separate violation of Morejon’s constitutional rights.

Because the People would be unable to establish the separate constitutional violation required by *Billington*, the evidence of Meyer’s pre-shooting conduct would be inadmissible to rebut the argument that Meyer’s decision to fire was objectively reasonable in a prosecution of Meyer for voluntary manslaughter. Without evidence of Meyer’s pre-shooting conduct to rebut the reasonableness of his decision to shoot, the People would be left with the testimony of both Edgar and Meyer, that Morejon turned to face the kitchen window and made a pointing motion just prior to the shooting. This turning and pointing, coupled with the fact that this neighborhood was known as an area claimed by a violent criminal stress gang, supports Meyer’s contention that he believed Morejon was about to shoot him at the time he fired his service weapon. These same facts also support the argument that Meyer’s split-second decision to fire was not objectively unreasonable under the circumstances.¹⁴

Hector Morejon’s life came to an abrupt end on April 23rd 2015, due in large part to Officer Meyer’s decision to surreptitiously approach the kitchen window and point his gun inside without identifying himself as a police officer. Meyer’s failure to give Morejon any opportunity to submit to police authority is deeply troubling. However, despite serious concern about Officer Meyer’s tactical decisions prior to the shooting, the state of the law prevents the introduction of Meyer’s pre-shooting conduct to directly rebut the reasonableness of Meyer’s decision to use

¹⁴ “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397

lethal force. Thus, the evidence is insufficient to prove beyond a reasonable doubt that his actions were criminal. Accordingly, The District Attorney's Office declines to initiate criminal prosecution in this matter.