

Fatal Officer Involved Shooting of Anthony McClain

Pasadena Police Department

Officer Edwin Dumaguindin, #1928

J.S.I.D. File #20-0313



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

March 31, 2022

MEMORANDUM

TO: CHIEF CHERYL MOODY
Pasadena Police Department
207 Garfield Avenue
Pasadena, California 91101

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

SUBJECT: Fatal Officer Involved Shooting of Anthony McClain
J.S.I.D. File #20-0313
P.P.D. File #20008867

DATE: March 31, 2022

The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office (LADA) has completed its review of the August 15, 2020, fatal shooting of Anthony McClain by Pasadena Police Department (PPD) Officer Edwin Dumaguindin. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that Officer Dumaguindin did not act in lawful self-defense at the time he fired his weapon.

The District Attorney's Command Center was notified of the shooting on August 15, 2020, at 9:35 p.m. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of interviews, firearm analysis reports, DNA analysis reports, the autopsy report, crime scene diagrams, photographic evidence, body worn video evidence, dash camera video evidence, surveillance video, and witness statements submitted to this office by PPD Homicide Detective Barry Glockson as well as a forensic video analysis report provided by an expert retained by the LADA. The voluntary statement of Officer Dumaguindin was considered in this analysis.

FACTUAL ANALYSIS

On August 15, 2020, at approximately 7:51 p.m., PPD Officers Ryan Mulrooney and Edwin Dumaguindin were on patrol in the area of Raymond Avenue and Howard Street in the City of Pasadena. The officers were in a marked PPD patrol vehicle and dressed in distinctive PPD uniforms.¹ Both officers were equipped with body worn video cameras (BWV). Mulrooney was driving the patrol vehicle, and Dumaguindin was sitting in the front passenger seat. As the officers traveled north on Raymond Avenue, Mulrooney observed a black Infinity M35x with no front license plate turn right onto Raymond Avenue from Howard Street. The Infinity traveled south past the officers, and Mulrooney made a U-turn to conduct a traffic stop.

¹ The patrol vehicle was equipped with a forward-facing dash camera (DCV), and the incident was video recorded.

As the patrol vehicle approached the Infinity, the driver, Witness 1, pulled over and stopped his car against the west curb of Raymond Avenue, just south of Grandview Street. Mulrooney parked behind the Infinity and exited the patrol vehicle. As Mulrooney approached Witness 1, he paused and asked him to lower his rear windows due to their dark tint.² Witness 1 lowered the windows, and Mulrooney walked up to the driver's side door and spoke with him about the reason for the traffic stop. Simultaneously, Dumaguindin approached the car's passenger side with a flashlight in his left hand.³ Dumaguindin contacted Anthony McClain, who was seated in the front passenger's seat of the Infinity.

Dumaguindin shined his flashlight in the vehicle while he spoke with McClain. Mulrooney told Witness 1 that he pulled his vehicle over because it did not have a front license plate.⁴ Witness 1 told Mulrooney that the license plate was inside the vehicle but had fallen off the car when he purchased it. McClain then handed Witness 1 a license plate. Mulrooney asked Witness 1 for his driver's license, and Witness 1 informed him that it was suspended. Dumaguindin asked McClain if he had a driver's license and stated, "That way, we walk away [and] we release the vehicle to you." McClain responded, "I don't have my I.D. on me." Dumaguindin asked McClain if he had anything with his name on it, and McClain began searching his pockets. Mulrooney then asked Witness 1 to turn off the vehicle and step outside so they could talk on the sidewalk.

Mulrooney accompanied Witness 1 to a dirt area between the street and sidewalk near the rear of the Infinity. Mulrooney asked Witness 1, "Any weapons on you or anything like that?" Witness 1 replied in the negative, and Mulrooney asked, "Cool if I check real quick?" Witness 1 stated, "You're good. Go ahead and check me." As Mulrooney patted Witness 1 down for weapons, Dumaguindin remained at the passenger door speaking with McClain.⁵

As Mulrooney patted down Witness 1, he asked him where they were coming from, and Witness 1 responded, "I just—we just got in the car, right here from—on Howard." Mulrooney asked, "On Howard?" Witness 1 replied, "I just picked him up on Howard." Mulrooney finished patting Witness 1 down and said, "Alright, you're good. You can relax man." Witness 1 stated, "I just picked him up right now. Literally."

As Witness 1 continued to explain where he picked up McClain, Dumaguindin opened the front passenger door and directed McClain to step out of the vehicle. When McClain got out of the car, he placed his right hand in his shorts pocket and his left hand near his waistband. McClain immediately began running toward the rear of the Infinity while keeping his left hand near his front waistband. Dumaguindin attempted to grab McClain with his left hand and stated, "No, no." As McClain started to run, his shirt raised slightly, first exposing what appears to be a dark object protruding from the left side of his waistband and then a reflective object near the center of his waistband.

² Mulrooney activated his BWV upon exiting the patrol vehicle. Dumaguindin did not activate his BWV until after the officer-involved shooting occurred.

³ It was dusk, and the interior of the vehicle was dark.

⁴ The conversation between Witness 1, McClain, and the officers was recorded on Mulrooney's BWV.

⁵ The conversation between McClain and Dumaguindin that occurred at this time cannot be heard on Mulrooney's BWV.



Figures 1 & 2 – Still images from the patrol vehicle’s DCV depict McClain beginning to run away from Dumaguindin. In Figure 1, a dark object appears to be protruding from McClain’s waistband. In Figure 2, a reflective object can be seen near McClain’s left hand.⁶

McClain turned to his right and ran between the patrol vehicle and the Infinity while keeping his left hand near his front left waistband and front left pocket area.⁷ Dumaguindin began chasing McClain and drew his service weapon as he ran between the two vehicles. McClain ran southeast toward the middle of Raymond Avenue. As McClain ran, he swung his right arm in a typical running motion while keeping his left arm bent at the elbow and his left hand in front of his body. Dumaguindin stated something, possibly “Drop it,” as he chased McClain.⁸ Dumaguindin held his service weapon with both hands and pointed it toward McClain as he ran. Mulrooney followed Dumaguindin, initially jogging and then walking, with his hand on his holstered service weapon.⁹

McClain continued to hold his left hand near his waistband as he ran.

⁶ The DCV’s quality is insufficient to definitively identify the object(s). During the incident, McClain wore a brown belt with a silver belt buckle (see page 21, Figure 24).

⁷ McClain’s quick movements as he ran past the front of the patrol vehicle caused considerable blurring in the DCV.

⁸ Dumaguindin can be heard saying something on Mulrooney’s BWV. However, his exact words are unclear. According to Dumaguindin, he “mumbled,” “Drop it!” to McClain.

⁹ Mulrooney did not draw his service weapon during the incident.



Figure 3 – Still image taken from the patrol vehicle's DCV depicts McClain running with his left hand near his waistband area.

When McClain reached the center of Raymond Avenue, his left arm and hand briefly came out from in front of his body.¹⁰

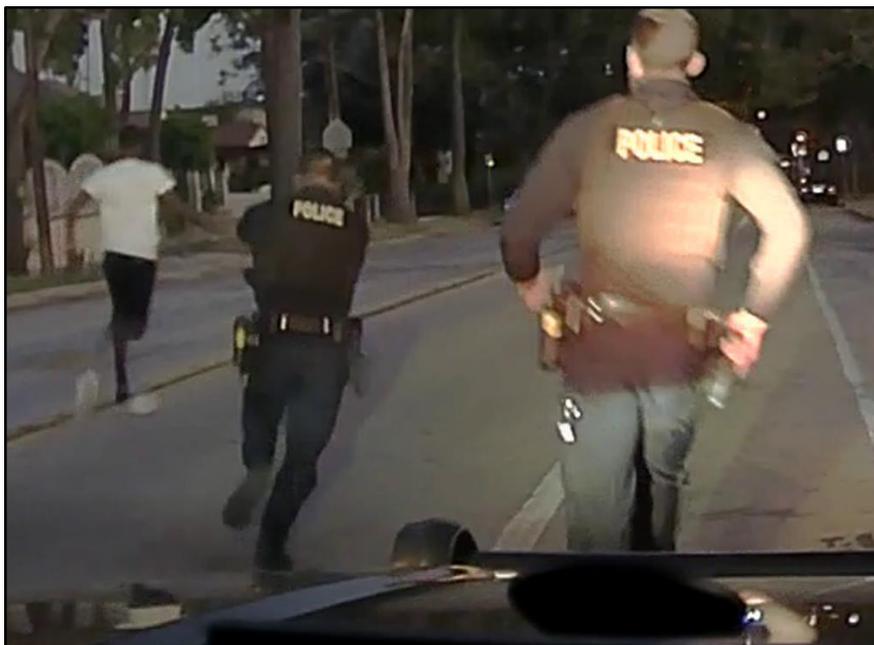
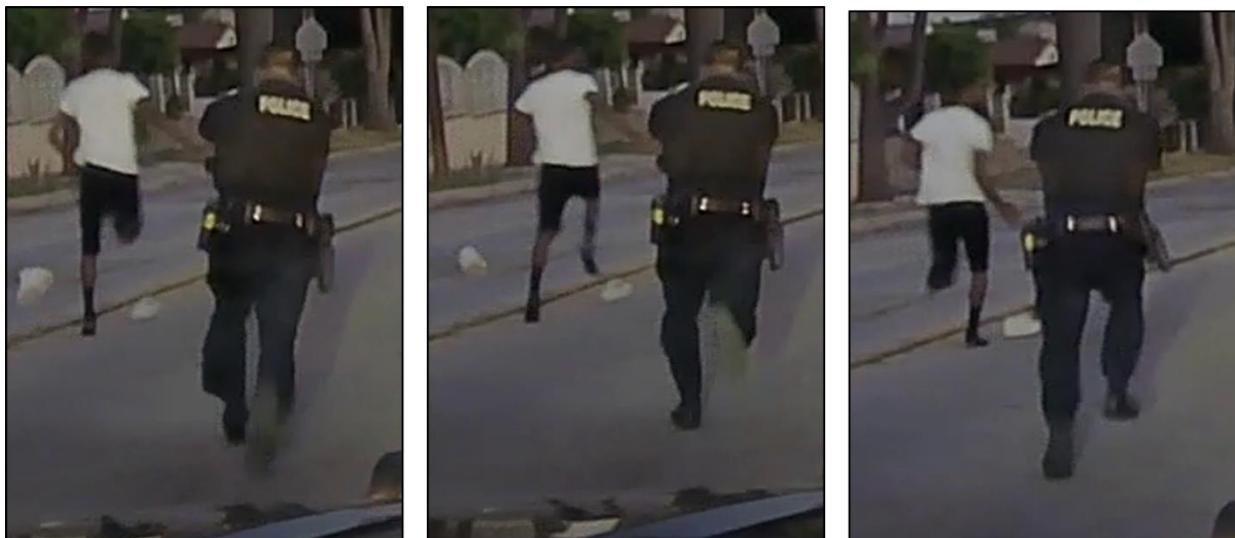


Figure 4 – Still image taken from the patrol vehicle's DCV depicts McClain's left arm out of his waistband area and to the left of his body as he runs from Dumaguindin.

¹⁰ Following the incident, Dumaguindin and Mulrooney provided voluntary statements to investigators. Both officers stated that when McClain's left arm came out from his waistband area, they observed him holding a handgun in his left hand. The quality of the DCV is insufficient to make a definitive determination as to whether McClain had a firearm in his left hand at that time.

As McClain ran, his shoes fell off his feet. McClain bent his left elbow and moved his left hand across the front of his body while turning his head to the right to look back at Dumaguindin. Simultaneously, Dumaguindin yelled, “Stop right there!”



Figures 5, 6, & 7 – Sequential still images taken from the patrol vehicle’s DCV depict McClain’s left arm bending and moving in front of his body as his head turns toward Dumaguindin.

McClain turned his head to the left, away from Dumaguindin, and Dumaguindin discharged two rounds in rapid succession from his service weapon at McClain.¹¹ One round grazed McClain’s left shoulder, and the other round struck his lateral right back.

McClain continued running southeast until he reached the east sidewalk of Raymond Avenue, at which time he ran south. Dumaguindin continued chasing McClain as Mulrooney radioed, “3A22, shots fired! Shots fired! Code-3 back! Code-3 back! My partner’s in pursuit.”¹² After passing multiple cars parked on the east curb of Raymond Avenue, McClain briefly ran into the northbound lanes of Raymond Avenue before returning to the east sidewalk area. While running down the east side of Raymond Avenue, McClain discarded a handgun by throwing it across the street.¹³

Mulrooney radioed dispatch again, this time stating, “Black male, he’s armed with a firearm. White shirt, black shorts.” Mulrooney then redirected his attention to Witness 1 and yelled, “Get on the ground!” When Witness 1 questioned why he was being ordered to lie on the ground, Mulrooney stated, “Well, your buddy [McClain] just pulled a gun out on my partner.”

¹¹ Approximately .70 seconds elapsed between McClain looking back toward Dumaguindin and Dumaguindin firing the first shot. Approximately .13 seconds elapsed between McClain turning his head away from Dumaguindin and Dumaguindin firing the first shot.

¹² Code-3 is used to describe a mode of response requiring exigency in which an emergency vehicle’s lights and siren are activated. The word “back” in this context is used as an abbreviation for the word backup.

¹³ While not directly captured on video, this conclusion is supported by substantial evidence, including surveillance video, officers’ BWV, DNA evidence, and the recorded statement of a witness. This evidence will be discussed in detail later in this memorandum.

PPD Officer Ronald Sereno was on patrol in a marked PPD vehicle in the area of Raymond Avenue and Washington Boulevard when Mulrooney broadcasted that shots had been fired. Sereno immediately activated his emergency lights and sirens and began driving north on Raymond Avenue toward their location. Sereno exited his patrol vehicle and ran north on Raymond Avenue toward McClain, who was still running south and being pursued by Dumaguindin. After running approximately 150 yards from the traffic stop location, McClain laid down on his back in a dirt area between Raymond Avenue and its east sidewalk.¹⁴ Dumaguindin approached and kept his firearm trained on McClain. McClain turned onto his stomach and laid face down.¹⁵ When Sereno approached, he asked McClain, “Hey, where’s the gun?” Dumaguindin then also asked McClain, “Where’s the gun? Where’s the gun at?” McClain responded, “I don’t have no gun.” Dumaguindin told Sereno, “He tossed it up there.”

Sereno put latex gloves on and told McClain that he was going to help him. Dumaguindin informed McClain that an ambulance was on the way. Sereno again asked McClain where the gun was, and McClain denied having one. Sereno and Dumaguindin handcuffed McClain. Sereno rendered aid to McClain by kneeling next to him and applying pressure to his lower back wound. Dumaguindin stood nearby, drew his Taser, and attempted to maintain distance between Sereno and a group of people who had gathered and were yelling at the officers.

Shortly after, additional PPD officers arrived and stood between the growing crowd and Sereno and McClain. PPD Officer Dylan Alexander briefly stopped working crowd control and helped Sereno provide medical aid. During this time, Sereno told Alexander that he had not searched McClain for weapons, and Alexander patted down McClain’s pockets. PPD Officer Kourtney Zilbert arrived at the scene and helped Sereno render aid to McClain by applying pressure to McClain’s chest wound as Sereno continued applying pressure to his back wound.¹⁶ At 8:00 p.m., Pasadena Fire Department (PFD) and Rescue Ambulance (RA) personnel arrived at the scene. The RA transported McClain to Huntington Memorial Hospital in Pasadena. At 9:46 p.m., McClain was pronounced dead by Doctor Amal Obaid-Schmid.

Officer Statements

Statement of Edwin Dumaguindin¹⁷

On the evening of the incident, Dumaguindin and Mulrooney were providing extra patrol in the La Pintoresca Park area. While traveling north on Raymond Avenue near Grandview Street Mulrooney conducted a U-turn in order to conduct a traffic stop on a vehicle without a front license plate. As they approached the car, it began pulling to the curb, and Mulrooney activated the patrol vehicle’s emergency lights. Mulrooney exited the patrol vehicle and asked the driver to roll down the vehicle’s windows due to their dark tint. The driver, later identified as Witness

¹⁴ This part of the incident was recorded by Dumaguindin’s and Sereno’s BWV.

¹⁵ Dumaguindin’s BWV does not have audio during the initial 30 seconds. According to Dumaguindin, he told McClain to roll onto his stomach.

¹⁶ A single round entered McClain’s lower right back and exited his right chest area causing two wounds.

¹⁷ Dumaguindin provided a voluntary statement and was interviewed by PPD detectives on August 17, 2020. Prior to the interview, Dumaguindin reviewed the DCV and BWV of the incident. This statement was recorded.

1, complied, and Mulrooney approached on the driver's side of the vehicle as Dumaguindin approached on the passenger's side.

Mulrooney contacted Witness 1 as Dumaguindin contacted McClain. When Dumaguindin overheard that Witness 1 did not have a valid driver's license, he asked McClain if he had one. Dumaguindin told McClain that, "for liability reasons," they would only be able to release Witness 1's car to him if he possessed a valid license. McClain stated he had a license and patted his shorts pockets before telling Dumaguindin that he did not have it on him. Dumaguindin asked McClain if he had anything with his name and date of birth on it. Again, McClain patted down his pockets. Dumaguindin noticed that Mulrooney was having Witness 1 step out of the vehicle, so he told McClain to "hang out" while his partner patted down Witness 1.

Dumaguindin stated McClain was acting nervous but not suspicious. Dumaguindin told McClain that once Witness 1 was patted down for weapons, he would have McClain exit the vehicle, pat him down for weapons, and check his license status. When Mulrooney finished patting Witness 1 down, Dumaguindin opened the passenger's door and asked McClain to exit the vehicle. As McClain exited, Dumaguindin told him to face the vehicle.

While McClain was exiting the vehicle, he was "adjusting his waistband" and then began to run toward the rear of the car. As McClain ran, Dumaguindin noticed McClain was not running in a typical manner because he kept both of his hands in his waistband area. Dumaguindin perceived this as a "threat" and believed McClain may have had a firearm in his waistband. In response, Dumaguindin drew his service weapon and ran after McClain.

McClain ran around the back end of the Infinity and headed toward the middle of the street. When he reached the middle of the street, McClain moved his arms in a more typical running motion. Dumaguindin observed a black handgun in McClain's left hand. Dumaguindin mumbled, "Drop it." and shouted, "Stop right now!" Dumaguindin explained what happened next:

Now he has more of a natural running motion with the weapon in his left hand. And then, as it blades across his body, he begins looking over his right shoulder ... I'm seeing him like he's looking for me to shoot me. That's what I believe he's doing. So, he has the gun. I can see the gun. Now, he's looking for his target. And, I'm his target. He's looking for me to engage at me.

Dumaguindin believed McClain was about to fire "over his shoulder" at him because when McClain looked back toward him, Dumaguindin could no longer see McClain's left hand or gun, which was "across his chest." At that time, Dumaguindin was "scared" and "feared for his life." He discharged two rounds from his service weapon toward McClain. McClain "immediately" looked forward and continued running from Dumaguindin. Dumaguindin stated he did not fire additional rounds because, "At that moment, even though [McClain] still had the gun, I don't feel I was being actively targeted."

Dumaguindin estimated he was eight feet behind McClain when he discharged his service

weapon and saw that at least one round had impacted McClain. McClain reached the east sidewalk of Raymond Avenue and ran south while still carrying the gun in his left hand. McClain continued running south while running between vehicles parked on the eastern curb of Raymond Avenue. At one point during the foot pursuit, something fell out of Dumaguindin's pocket, and he looked down to see what had fallen. When he looked up, he no longer saw the firearm in McClain's hand. Dumaguindin continued chasing McClain and caught up to him when McClain fell to the ground near the east curb of Raymond Avenue.

Dumaguindin did not know where McClain's firearm was, so he told McClain to roll over onto his stomach. Dumaguindin visually scanned the area for the firearm as he continued to hold McClain at gunpoint.¹⁸ Dumaguindin told McClain that an ambulance was on the way and asked him, "Where's the weapon at? Where's the weapon at?"¹⁹

Sereno arrived, and Dumaguindin holstered his service weapon and helped Sereno handcuff McClain. A loud and upset crowd was gathering around Dumaguindin, Sereno, and McClain. Dumaguindin drew his Taser and told the crowd, "Get back!" as Sereno applied pressure to McClain's wound. When other officers arrived, Dumaguindin briefly walked north on Raymond Avenue and canvassed the east side of the street, looking for McClain's firearm. He did not locate the firearm. Dumaguindin was then taken to the PPD station.

Statement of Ryan Mulrooney²⁰

On the evening of the incident, Mulrooney was working patrol in full uniform, driving a marked police vehicle with his partner, Dumaguindin, who was the passenger in the vehicle. He and Dumaguindin were providing extra patrol service in the area of La Pintoresca Park due to recent gang activity in the area. Mulrooney stated that he and Dumaguindin had "recovered three firearms" within a quarter-mile radius of the traffic stop location in the week preceding the incident.

After pulling Witness 1 over because his vehicle had no front license plate, Mulrooney had Witness 1 step out of the car because his driver's license was suspended. Witness 1 exited the vehicle, and Mulrooney walked him to the dirt area between the west sidewalk and street of Raymond Avenue. Mulrooney asked Witness 1 if he could search him for weapons, and Witness 1 gave him permission. Mulrooney stated that Dumaguindin was in his peripheral vision at this time and appeared to be following their standard procedure and routine by keeping McClain in the vehicle until Mulrooney completed patting down Witness 1.

Once Mulrooney finished patting down Witness 1, Dumaguindin had McClain step out of the vehicle. Mulrooney then heard "a brief struggle" and looked over and saw McClain "grabbing his waistband" as he ran between the Infinity and the patrol vehicle. Mulrooney said it appeared McClain was "reaching for something, as opposed to ... trying to pull up his pants." Mulrooney explained what happened next:

¹⁸ According to Dumaguindin, it was around this time he noticed his BWV had not been activated and turned it on.

¹⁹ During the interview, Dumaguindin was not asked and did not state whether McClain responded to this question.

²⁰ Mulrooney provided a voluntary statement and was interviewed by PPD detectives on August 16, 2020. Prior to the interview, Mulrooney reviewed the DCV and BWV of the incident. This statement was recorded.

I see my partner chasing after him. I briefly follow. As we're—so, my partner is in front of me. The, uh, passenger [McClain] is in front of him. And, as he's running, I see him, in his left hand, what appears to be a firearm. Immediately, as soon as I see the firearm, uh, I hear my partner fire two shots. And, they continued south down, uh—down Raymond Avenue.

Mulrooney was approximately ten to fifteen feet away from McClain when he saw what he believed to be a firearm in McClain's left hand. Mulrooney believed it was a firearm because McClain reached into his waistband and held the object in a particular way, the object appeared to have the rectangular slide of a firearm, and the object was dark silver or black in color. Mulrooney radioed for backup and then redirected his attention toward Witness 1, whom he detained. Once other officers arrived, Mulrooney got back in his patrol vehicle and drove south on Raymond Avenue to check on Dumaguindin. After contacting Dumaguindin, Mulrooney canvassed the area for the firearm but did not locate it.

Dumaguindin's BWV

Dumaguindin did not initially activate his BWV.²¹ The video begins at 7:53:57 p.m., and Dumaguindin can be seen chasing McClain south down the street and sidewalk area of Raymond Avenue. Seven seconds into the BWV, McClain can be seen lying down on his back in the dirt area between Raymond Avenue and its eastern sidewalk. Dumaguindin pointed his service weapon at McClain as he approached. McClain's hands were raised above and to the side of his body. Blood can be seen on the front of McClain's white T-shirt. McClain then rolled onto his stomach into a prone position. Dumaguindin kept his duty weapon pointed at McClain, and McClain turned his head toward Dumaguindin and appeared to say something.

At 7:54:27 p.m., Dumaguindin can be seen activating his BWV. Dumaguindin ordered McClain to keep his hands up and told him that an ambulance was coming. At 7:54:58 p.m., Sereno can be seen approaching McClain with latex gloves on. When Sereno approached, he asked McClain, "Where's the gun? Where's the gun?" Dumaguindin also asked McClain, "Where's the gun? Where's the gun?" McClain can be heard responding, "I don't have no gun." Sereno and Dumaguindin then handcuffed McClain, and Sereno began rendering medical aid to McClain by applying pressure to his wound. Dumaguindin attempted to keep a hostile crowd that had formed away from Sereno and McClain until other PPD officers arrived.

At 7:58:00 p.m., Mulrooney approached Dumaguindin. Dumaguindin asked Mulrooney, "Hey, did we recover the 417?"²² Dumaguindin stated, "You didn't? He tossed it there," as he gestured north on Raymond Avenue. Mulrooney and Dumaguindin then walked north on the east sidewalk of Raymond Avenue. Both officers had their flashlights out and appeared to be searching for the firearm as they walked back to the location of the traffic stop.

²¹ Although Dumaguindin activated his BWV at 7:54:27 p.m., the recording begins thirty seconds earlier because the camera is equipped with a feature that recovers thirty seconds of video prior to the camera being activated by the officer. However, the "recovered" portion does not have audio. Therefore, the BWV's audio begins when Dumaguindin activated his camera.

²² 417 is a police code meaning person with a gun. Officers also use the number 417 to refer to the firearm the person possessed.

Mulrooney's BWV

As Mulrooney spoke with Witness 1, his BWV captured McClain exiting the Infinity with both of his hands near the pockets of his shorts. Dumaguindin can then be heard saying, "No, no."²³ McClain ran around the rear of the Infinity with his hands in his waistband area. Dumaguindin ran slightly behind McClain. As McClain ran away, his left arm can be seen near his waistband.

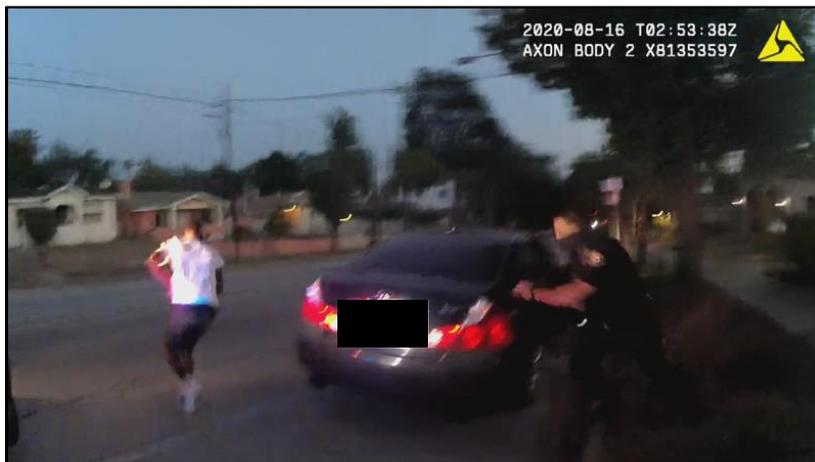


Figure 8 – Still image taken from Mulrooney's BWV depicts Dumaguindin chasing McClain around the back end of the Infinity.²⁴

Dumaguindin can be heard saying something unintelligible, possibly "Drop it," and then yelling, "Stop right now!" before discharging two rounds from his service weapon. When shots were fired, Mulrooney's BWV's view of McClain was blocked by Dumaguindin.

Dumaguindin continued chasing McClain south on Raymond Avenue. Mulrooney's BWV became obstructed by his hand as he radioed in the officer-involved shooting and requested backup. Mulrooney then redirected his attention to Witness 1. Mulrooney ordered Witness 1 to, "Get on the ground!" When Witness 1 questioned why he was being forced to lie on the ground, the following exchange occurred:

Mulrooney: Just relax man. You're good, alright?
Witness 1: Hope so, man. You got me on the ground like I did something wrong.
Mulrooney: Well, your buddy just pulled a gun out on my partner.
Witness 1: Oh, fucking serious?
Mulrooney: Yeah.
Witness 1: You're bullshitting!
Mulrooney: No, I just saw it.

Mulrooney continued detaining Witness 1 until backup arrived at the location.

²³ Mulrooney's hand temporarily blocked his BWV's view of Dumaguindin and McClain.

²⁴ The rapid movements of McClain, Dumaguindin, and Mulrooney caused the BWV to blur. As seen in Figure 8 and other BWV still photographs in this memorandum, PPD BWV contains timestamps in Coordinated Universal Time (UTC) or "Zulu time." UTC is seven hours ahead of Pacific Daylight Time (PDT).

Witness Statements

Statement of Witness 1²⁵

PPD arrested Witness 1 on the date of the incident. On August 16, 2020, investigators interviewed Witness 1 at the PPD station. Witness 1 told investigators that he was driving south on Fair Oaks Avenue when he received a call from a friend, McClain. McClain told Witness 1 that he had just driven past him and asked Witness 1 if he could come back and give him a ride. Witness 1 agreed and picked McClain up at the intersection of Fair Oaks Avenue and Howard Street.

When McClain got in Witness 1's car, he was sweating, appeared nervous, and had a "weird-ass look in his—like his energy." Witness 1 began driving McClain to where he had requested to be dropped off, the intersection of Raymond Avenue and Hammond Street. During the drive, McClain received two phone calls. During both calls, McClain lied to the person he was speaking with about where he was. Witness 1 thought McClain may have been under the influence of a controlled substance; however, he did not know McClain to use drugs. Due to McClain's odd behavior, Witness 1 wanted him out of his car.

When Witness 1 turned south on Raymond Avenue from Howard Street, he passed a PPD patrol vehicle. Witness 1 saw the patrol vehicle conduct a U-turn in the intersection, and he believed he was going to be pulled over. When he told McClain that the police were going to pull them over, McClain said, "Oh, man, you should keep going. Keep going. Just go. Like, just go." When Witness 1 slowed down and pulled his car to the shoulder of Raymond Avenue, McClain said, "Oh fuck, fuck, fuck," and began texting on his phone.

Witness 1 was contacted on the driver's side by one officer, identified as Mulrooney, while another officer, identified as Dumaguindin, approached McClain. When Witness 1 informed Mulrooney that his license was suspended, he was asked to exit the vehicle. Witness 1 said that Mulrooney told him that he was going to search him, the passenger, and then the vehicle. After Mulrooney searched Witness 1, Dumaguindin removed McClain from the vehicle.

When McClain exited the vehicle, he was "fixing" and "picking up" his pants. Dumaguindin asked McClain what was wrong, and McClain replied, "Nothing." McClain then looked at Witness 1 and said, "Man, bro" and started running. Witness 1 heard Dumaguindin shout, "Stop! Stop!" Dumaguindin then fired two shots at McClain. Witness 1 did not see a gun in McClain's hands, nor did he see him turn around while running. Witness 1 stated, "When you run, the thing about running is you use your hands when you run. So, when he ran, he had his hands out ... I didn't see nothing." After the shots were fired, Mulrooney returned his attention to Witness 1 and informed him that McClain had just shot at his partner.²⁶

Witness 1 did not know McClain possessed a weapon on the day of the incident. He has never known McClain to carry a weapon.

²⁵ This statement was recorded.

²⁶ Mulrooney's BWV recorded Mulrooney telling Witness 1, "Well, your buddy just pulled a gun out on my partner."

Statement of Witness 2²⁷

Witness 2 was in her home near the location of the traffic stop. She was looking out her partially opened screen door and saw a police car on Raymond Avenue. She could not hear the conversation between the officer and the driver of the vehicle that had been pulled over. At one point, the driver exited the vehicle, and the officer patted him down. The passenger then exited the car and ran south down the middle of Raymond Avenue. A police officer chased the man and shot at him twice as he ran away.²⁸

Statement of Witness 3²⁹

Witness 3 was in her front yard located north of the traffic stop location. During the traffic stop, she saw two black men, one wearing a blue tank top and another wearing a white shirt. The man wearing the white shirt ran from the police, and she heard an officer yell, "Put the gun down!" She then heard two gunshots and ran inside her home.³⁰

Statement of Witness 4³¹

Witness 4 was in her home, located slightly south of the traffic stop location. Witness 4 heard two gunshots and looked out her front window. She saw a man, who appeared to be chasing another man, running south on Raymond Avenue. The man had a black gun in his hand and was wearing a white T-shirt, black backpack or vest, and black pants. She was unable to determine his race or which hand was holding the gun. Witness 4 and her husband, Witness 5, dropped to the floor for their protection.

Statement of Witness 5³²

Witness 5 was in his house watching television when he heard two gunshots. Witness 5 looked out the window and saw a man with a dark complexion wearing a white T-shirt running south on Raymond Avenue. Witness 5 did not notice anything in the man's hands and stated the incident happened "very fast." Witness 5 saw a police officer with his gun drawn chasing the man down the street. Witness 5 and his wife, Witness 4, dropped to the floor for cover.

Statement of Witness 6³³

Witness 6 was in her bedroom when she heard two gunshots outside her residence. A few seconds later, she looked out her window and saw a police officer running south on Raymond Avenue in the middle of the street. She did not see who the officer was chasing.

²⁷ PPD officers interviewed Witness 2 on the night of the incident. The interview was recorded on BWV.

²⁸ Witness 2 was not asked if she could see the hands of the man running away before shots were fired.

²⁹ PPD officers interviewed Witness 3 on the night of the incident. The interview was recorded on BWV.

³⁰ Witness 3 was not asked if she could see the hands of the man running away before shots were fired.

³¹ PPD officers interviewed Witness 4 on the night of the incident. The interview was recorded on BWV.

³² PPD officers interviewed Witness 5 on the night of the incident. The interview was recorded on BWV.

³³ PPD officers interviewed Witness 6 on the night of the incident. The interview was recorded on BWV.

Statement of Witness 7³⁴

Witness 7 was in his front yard, located approximately 150 yards south of the traffic stop location. Witness 7 heard two gunshots, then saw a young black man wearing a white T-shirt running south on Raymond Avenue. A police officer chased him and yelled, “Get on the ground!” He then saw the man in the white T-shirt lay on the ground, and police officers handcuffed him.

Firearm Recovery

PPD officers initially focused their efforts to locate a firearm on the east side of Raymond Avenue, looking near the curb and sidewalk area of the street. Officers also searched the front yards of residences on the eastern side of the road. At 8:05 p.m., PPD Officer Connor Duncan located a firearm near the west curb of Raymond Avenue, approximately 100 yards south of the traffic stop location and 75 feet from the La Pintoresca Teen Education Center (PTC).³⁵



Figure 9 – Satellite image depicting Raymond Avenue between Grandview Street and Washington Boulevard. The approximate location of significant events and buildings are labeled in yellow.

³⁴ PPD officers interviewed Witness 7 on the night of the incident. The interview was recorded on BWV.

³⁵ Duncan’s BWV was not activated when he located the firearm. A review of Duncan’s BWV shows Duncan walking north on Raymond Avenue toward where the firearm was recovered. At 8:04:34 p.m., Duncan received a call on his cellphone. After briefly speaking with the caller, Duncan turns his BWV off at 8:04:40 p.m. At 8:05:24 p.m., Duncan’s BWV comes back on, and Duncan has located the firearm.

The firearm's slide appeared to have been partially detached, and there was one round next to the handgun. The recovered firearm was later determined to be a Polymer80, model PF940SC .40 S&W caliber semiautomatic handgun.³⁶



Figure 10 – Photograph depicting the firearm recovered near the west curb of Raymond Avenue.



Figures 11 & 12 – Photographs depicting the Polymer80 firearm (7) and .40 caliber cartridge (8) recovered next to one another near the west curb of Raymond Avenue.

The recovered firearm contained a magazine loaded with seven rounds headstamped “WIN 40 S&W.” The additional round recovered near the firearm, Figure 12 above, had the same headstamp.

A review of available video evidence was conducted to determine when and how the recovered firearm came to rest on the west side of Raymond Avenue. The PTC is located at 1415 Raymond Avenue, on the west side of the street and approximately 75 feet from where the Polymer80 handgun was recovered. The PTC has a surveillance camera on the northeast corner of the building. The camera faces southeast, toward Raymond Avenue. The PTC surveillance camera recorded approximately one frame every three seconds. The following is a three-frame

³⁶ Polymer80 firearms are sold online. The handguns are sold no more than 80% complete, thereby avoiding federal firearms regulations. Consumers can purchase lower receivers and the other materials needed to build and complete the firearm assembly at home. Polymer80 lower receivers and handgun frames lack serial numbers for identification and are often referred to as “ghost guns.”

sequence taken when McClain entered the surveillance camera's field of view, between 7:53:49 p.m. and 7:53:55 p.m.³⁷



Figure 13 – Still image from PTC surveillance camera. McClain can be seen running on the east sidewalk of Raymond Avenue. No dark object can be seen near the west curb of the street.



Figure 14 – Still image from PTC surveillance camera. McClain can be seen further south on Raymond Avenue as Dumaguindin runs behind him. A small dark mark or object can now be seen along the west curb.



Figure 15 – Still image from PTC surveillance camera. McClain and Dumaguindin are further south on Raymond Avenue. The dark object can no longer be seen to the left of the yellow pole. A new dark object has appeared further south on Raymond Avenue.

³⁷ The times of events captured on the PTC surveillance camera are based on its timestamp, which appeared accurate and consistent with PPD BWV timestamps on the night of the incident.

At approximately 8:04:59 p.m., PTC surveillance video recorded Duncan standing in the area where the firearm was recovered.



Figure 16 – Still image from PTC surveillance camera depicts Duncan standing near the west curb of Raymond Avenue after locating the firearm.

The BWV of multiple officers that initially responded to the shots fired call depict what appears to be the recovered firearm lying on Raymond Avenue immediately following the incident. At approximately 7:56 p.m., PPD Officers Duncan, Marshon McIntosh, Christian Rosa, and Vincent Taylor arrived at the traffic stop location. Mulrooney told them, “Go south! Go south!” The officers ran south on Raymond Avenue toward McClain’s location. As they ran, they passed the area where the Polymer80 firearm was later recovered.³⁸



Figures 17 & 18 – Still images depicting the area of Raymond Avenue where the firearm was recovered. Figure 17 is a crime scene photograph taken by PPD. Figure 18 is a still image taken from Duncan’s BWV as he ran past the location immediately following the incident.³⁹

³⁸ McIntosh ran near the center of Raymond Avenue. Due to the distance between McIntosh and the location where the firearm was recovered, his BWV was not helpful in determining the presence of a handgun on the street. Rosa’s body worn camera was angled slightly upward and rapidly moved as he ran, causing excessive blur. His BWV was not helpful in determining the presence of a handgun on the street.

³⁹ Duncan’s BWV image’s brightness, contrast, and sharpness were adjusted to help determine if the firearm was present when Duncan ran past the location.



Figure 19 – Still image from Taylor’s BWV depicts the area where the firearm was recovered.⁴⁰

Shortly after arriving at the traffic stop location, Sergeant Carlo Montiglio walked south on Raymond Avenue. Montiglio walked near the west curb of Raymond Avenue and appeared to be searching for evidence as he shined a flashlight at the ground. At 8:00:38 p.m., Montiglio stood facing south near the west curb of Raymond Avenue and used his cellphone. He was a short distance away from where the firearm was later recovered.



Figures 20 & 21 – Still images from Montiglio’s BWV. Figure 20 is the original image from Montiglio’s BWV as he used his cellphone. Figure 21 is a magnified, cropped, and enhanced image taken from Figure 20.

At 8:01 p.m., Officer Zachary McFarland walked south on the western sidewalk of Raymond Avenue. At 8:02 p.m., McFarland passed the location where the firearm was later recovered.

⁴⁰ Taylor’s BWV image’s brightness, contrast, and sharpness were adjusted to help determine if the firearm was present when Taylor ran past the location.



Figure 22 – Still image from McFarland’s BWV.⁴¹

Witness 8 was sitting in the driver’s seat of a Ford Fusion parked against the east curb of Raymond Avenue when McClain and Dumaguindin ran past her vehicle. PTC surveillance video recorded her exiting the car approximately ten seconds after McClain and Dumaguindin passed.



Figure 23 – Still image from the PTC surveillance video depicts Witness 8 standing by her driver’s side door after exiting her vehicle.

On August 16, 2021, at approximately 1:40 a.m., Witness 8 went to the PPD station to recover the keys to her boyfriend’s car.⁴² PPD Lieutenant Caroline Gordon and Officer Adrian Woolford spoke with Witness 8 and another female outside the station.⁴³ During the conversation, Witness 8 stated, “He threw his shit over my vehicle.” Gordon asked, “He threw what over your

⁴¹ McFarland’s BWV image’s brightness, contrast, and sharpness were adjusted to help determine if the firearm was present when McFarland walked past the location.

⁴² Witness 8’s boyfriend was arrested during protests that occurred on the night of the officer-involved shooting.

⁴³ The conversation was recorded on Woolford’s BWV.

vehicle?” Witness 8 did not immediately answer Gordon, and Gordon stated, “Let’s keep shit real.” Witness 8 replied, “He threw his gun over my roof.” Witness 8 then described what she saw: “I was sitting in my car. I’m the first car. I was watching my movie, and I was sitting, and I heard gunfire. But I know better than to put my head up when I hear that. Uh, he ran by my window, like blood; he was already shot by the time he got by my window.” Witness 8 explained to Gordon that she could tell he was bleeding because he was wearing a white shirt. Witness 8 then stated, “I didn’t—I didn’t see him throw anything, though. I was told that was what happened cause I seen it [the firearm] after the fact.”

DNA Evidence

On August 19, 2020, PPD Forensic Specialist Jonathan Schmidt took four deoxyribonucleic acid (DNA) swabs of the firearm recovered at the scene, including the firearm’s grip, trigger and trigger guard, slide, and magazine. The swabs were submitted to LASD’s Scientific Services Bureau (SSB) Biology Section. On September 30, 2020, LASD Senior Criminalist Amber Sage completed her comparison of the DNA swabs taken by Schmidt and a reference sample collected from McClain’s blood.

Sage determined that the DNA profile sample taken from the firearm’s grip had an assumed number of three contributors. She concluded, “The DNA profile is approximately 1×10^{29} times more likely if it originated from Anthony McClain and two unknown individuals than if it originated from three unknown individuals. This analysis provides very strong support for the proposition that Anthony McClain is a contributor to the DNA obtained from this sample.”⁴⁴ The trigger and trigger guard swab contained DNA of at least five contributors, making the sample unsuitable for interpretation due to its complexity.⁴⁵ Sage concluded that the DNA sample taken from the firearm’s slide was assumed to be from one contributor, and McClain is included as a contributor to that sample. According to Sage’s report, “The DNA profile is approximately 6×10^{29} times more likely if it originated from Anthony McClain than if it originated from an unknown individual. This analysis provides very strong support for the proposition that Anthony McClain is a contributor to the DNA obtained from this sample.” Due to the complexity of the DNA profile of the sample taken from the firearm’s magazine, it was unsuitable for interpretation.⁴⁶

On October 30, 2020, Duncan and Mulrooney provided DNA samples to PPD Detective Brian Bulaon. Dumaguindin, through his attorney, declined to provide a DNA sample. LADA is unable to obtain a search warrant compelling Dumaguindin to provide a DNA sample without sufficient evidence to establish probable cause that Dumaguindin committed a felony. However, as discussed below, the lack of a sample of Dumaguindin’s DNA is not determinative of whether he touched the handgun allegedly discarded by McClain. Other evidence suggests he did not.

⁴⁴ For reference, 10^6 is 1,000,000.

⁴⁵ According to Sage, LASD SSB only interprets mixtures of up to four contributors.

⁴⁶ According to Sage, the DNA profile located on the magazine was “very partial” and provided a limited amount of DNA information. It is difficult to confidently determine the number of contributors in such profiles, which is a prerequisite for interpretation. Therefore, the profile was deemed too complex, and no comparisons were made.

On November 19, 2020, the swabs containing Duncan's and Mulrooney's DNA were submitted to LASD SSB Biology Section to determine if either of the officers' DNA matched any of the DNA found on the recovered firearm. On December 20, 2020, Sage reported her findings. Sage concluded that there was "limited support" to exclude Duncan's and Mulrooney's DNA from that found on the handgun's grip.⁴⁷ Sage excluded the officers as possible contributors to the DNA found on the firearm's slide.⁴⁸

Evidence Recovered at the Scene

On the night of the incident, PPD Forensic Supervisor Alex Padilla, Forensic Specialist Jennifer Castillo, and Forensic Specialist Noel Herrera responded to the scene. While there, they examined the scene for ballistic impacts, projectiles, cartridge casings, and other physical evidence. Padilla photographed the area, and Castillo took measurements and created a diagram of the scene.

Herrera recovered McClain's Nike shoes from the Raymond Avenue roadway, located southeast of Witness 1's Infinity. Dumaguindin's notebook was recovered from Raymond Avenue directly behind the Infinity. Investigators observed blood droplets that began in the northbound lane of Raymond Avenue, slightly south of where McClain's shoes were located. The droplets continued south on the eastern side of Raymond Avenue and its sidewalk area, consistent with the path McClain took while running from Dumaguindin. Witness 1's Infinity was impounded, and McClain's cellphone was recovered from the front passenger seat.⁴⁹

Ballistics

Investigators recovered two cartridge casings discharged from Dumaguindin's service weapon. One was headstamped "WCC + P + 16" and the other was headstamped "WMA + P + 19." Both casings were located near the west curb area in front of the Alkebu-Lan Cultural Center located at 1435 Raymond Avenue. An additional cartridge case headstamped "WIN 9mm Luger" and a bullet fragment were recovered next to one another near the west curb of Raymond Avenue in front of the PTC.⁵⁰

As previously discussed, a Polymer80, model PF940SC .40 S&W caliber semiautomatic handgun was recovered from the west curb area of Raymond Avenue, approximately 75 feet south of the PTC. The firearm was loaded with seven cartridges headstamped "WIN 40 S&W." One additional cartridge with an identical headstamp was located on the street next to the firearm. LASD Senior Criminalist Amanda R. Davis examined the firearm for functionality. Davis stated the Polymer80 handgun was received "partially disassembled" and was missing the

⁴⁷ According to Sage, limited support for exclusion means it is more likely that a random unknown individual would be included as a contributor to the profile than Duncan or Mulrooney.

⁴⁸ Due to the previously discussed limitations of the DNA profiles on the firearm's trigger, trigger guard, and magazine, no comparisons were made between the samples obtained from those locations and the officers' DNA.

⁴⁹ PPD Investigators obtained a search warrant to review the contents of McClain's cellphone. The phone remains connected to a forensic extraction tool that has yet to successfully bypass the phone's security features.

⁵⁰ Due to Dumaguindin's fired cartridge casings being recovered near where he discharged his duty weapon and the firearm recovered from the roadway being a .40 caliber, investigators determined this casing and bullet fragment were unrelated to this incident.

recoil guide assembly, locking block, and trigger pins. Therefore, Davis concluded the firearm was “inoperable as received.”

Investigators observed an apparent bullet strike mark on the west exterior wood siding of a residence located on the east side of Raymond Avenue, directly across from the PTC. The strike mark was located between the north front window and the front door of the home. Below the strike mark, investigators observed fresh wood siding fragments. The round did not penetrate the interior walls of the residence. Investigators contacted the resident, who informed them that she did not believe the strike mark was there prior to the incident. Investigators were unable to retrieve the bullet from inside the wall.

McClain’s Clothing

PPD investigators recovered McClain’s clothing from the Los Angeles County Department of the Medical Examiner - Coroner (LAC DOC). McClain was wearing black shorts and a white T-shirt during the incident. He also wore a brown belt with a silver “MK” (Michael Kors) belt buckle.



Figure 24 – Photograph of the black shorts, brown belt, and silver belt buckle McClain was wearing during the incident.

Autopsy

On August 20, 2020, LAC DOC Deputy Medical Examiner Doctor J. Daniel Augustine performed a post-mortem examination of McClain’s remains. Doctor Augustine ascribed the cause of death to a gunshot wound to the torso and collected samples for toxicological analysis.

Doctor Augustine noted two gunshot wounds, which he labeled “Gunshot wound #1” and “Gunshot wound #2.”⁵¹ Gunshot wound #1 was a one and one-quarter inch by seven-eighths of an inch skin abrasion to the top of McClain’s left shoulder. The direction and range of fire were indeterminate. This wound was determined to be a superficial graze wound.

⁵¹ The numbering sequence was used for descriptive purposes and was not intended to convey an opinion as to the order in which the wounds were inflicted.

Gunshot wound #2 entered the lateral right back, 22.5 inches from the top of the head and 5.5 inches to the right of midline.⁵² The projectile traveled from back to front and right to left with an upward trajectory. The projectile exited the right side of the chest, 17.5 inches from the top of the head and 2.75 inches to the right of midline. No projectile was recovered. The range of fire was indeterminate, and no soot or stippling were present.⁵³ This wound was deemed immediately life-threatening due to injuries the projectile caused to the right lung. The mechanism of death was determined to be blood loss.

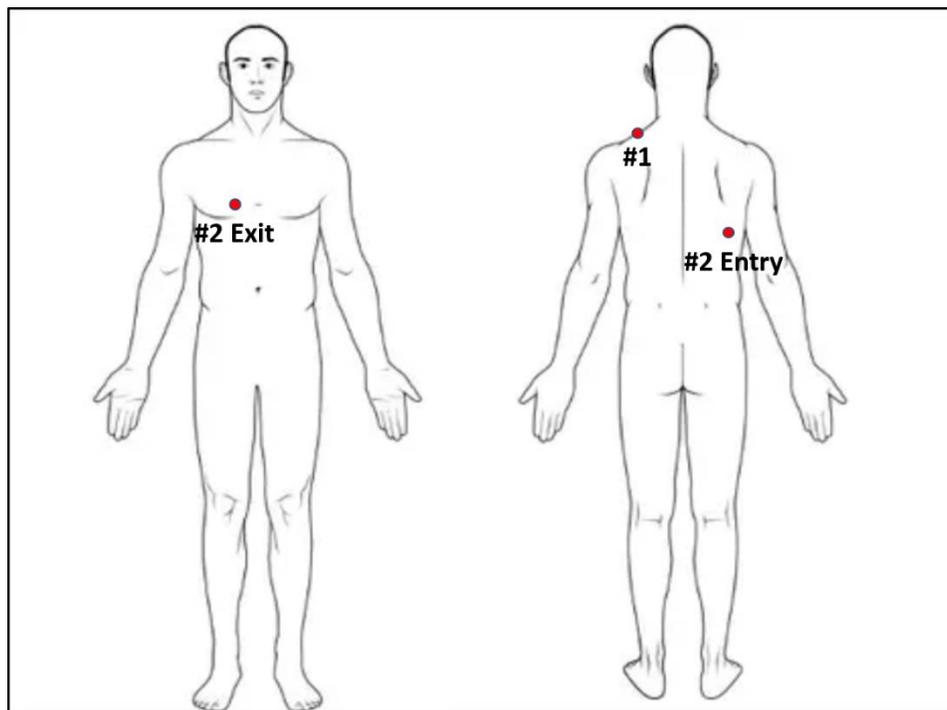


Figure 25 – Diagram depicting approximate location of McClain's wounds.

Forensic Video Analysis Expert

As part of LADA's investigation, video analysis expert George Reis was retained to enhance and analyze the DCV to determine if there is visual evidence that McClain possessed a firearm when Dumaguindin discharged his duty weapon.⁵⁴ On September 17, 2021, Reis provided JSID with a four-page report documenting his analysis and findings.⁵⁵

⁵² The spine is the human body's midline.

⁵³ The presence of soot or stippling is indicative of an extremely close-range shot.

⁵⁴ Reis has been conducting forensic image analysis for approximately 17 years. He has qualified as a video analysis expert in superior court and is certified by the Law Enforcement and Emergency Video Association International (LEVA).

⁵⁵ Reis' report referenced an additional 15 pages of still images extracted from the DCV by Reis and used in his analysis. Reis enhanced the images by cropping, enlarging, and adjusting them for brightness and contrast.

Reis analyzed 324 frames from the PPD patrol vehicle DCV. Reis noted the limitations of the video caused by McClain’s distance from the camera, dim lighting, and motion blur.⁵⁶ Reis wrote that after McClain exited the vehicle, “an object can be seen extending from behind the waistband.”



Figure 26 – Still image taken from the patrol vehicle DCV and labeled by Reis.

Reis observed that the object is initially inside McClain’s waistband and is “lifted out of the waistband by [McClain’s] left hand, and is supported with both hands.”



Figure 27 – Still image taken from the patrol vehicle DCV and labeled by Reis.

Reis addressed the possibility that the object was McClain’s belt buckle. Reis wrote, “The object’s full shape cannot be determined, but based on the positions of the hands, it appears to be larger than a belt buckle. At least part of the object is reflective, which is consistent with a metal object.”

⁵⁶ According to Reis, “Motion blur results in the subject appearing streaked or smeared due to either camera or subject motion during the exposure of the frame. Motion blur can also cause objects to appear ghosted or disappear if the movement is rapid and/or the shutter speed is slow.”

Reis stated that, as McClain ran away, his left hand “remains tight against his waist while his right hand and arm swing freely,” which is consistent with someone “holding something against, or at, their waist.” Reis added, “It is less likely that one would hold a belt buckle in place while running than an object such as a handgun.”

Finally, Reis analyzed the portion of the DCV where McClain’s left hand briefly came out from his waistband as he ran away, immediately preceding Dumaguindin discharging his service weapon. Reis examined the six frames where McClain’s left arm and hand were away from his body. Reis wrote, “In these frames there is a slight dark area below [McClain’s] left hand in each frame. It is possible that this dark area is caused by an object extending below [McClain’s] hand and is indistinct due to motion blur. It is also possible that this area could be caused by image compression.”



Figure 28 – Six consecutive still images taken from Mulrooney’s patrol vehicle DCV by Reis.⁵⁷

Based on the entire DCV analyzed, Reis concluded, “[T]here is support for the object being a handgun ... [I]t is more likely than not that the subject is holding an object that is consistent with the size and weight of a handgun.”⁵⁸

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009)

⁵⁷ The slightly dark area extending below McClain’s left hand referenced by Reis is more discernible when watching the DCV in slow motion than in the individual still images in Figure 28.

⁵⁸ Reis listed the possible range of findings as strong support for, support for, inconclusive, support against, and strong support against.

45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) & (B).

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) & (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

Under the current use of force law, the reasonableness of an officer's use of deadly force is analyzed using a reasonable officer standard, not the reasonable person standard that was previously applied and articulated in *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 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 People have the burden of proving beyond a reasonable doubt that the peace officer did not act in lawful self-defense or defense of another. If the People fail to meet this burden, a jury must find the defendant not guilty. CALCRIM Nos. 505, 507. Before a jury can rely on circumstantial evidence to find a person guilty, the jury must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the accused person is guilty. "If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence." CALCRIM No. 224.

The act of fleeing from the police, without more, does not justify the use of deadly force. *Tennessee v. Garner* (1985) 471 U.S. 1. Dumaguindin's use of deadly force is only justified if he reasonably believed McClain had the present ability, opportunity, and apparent intent to immediately inflict serious bodily injury or death upon him. The reasonableness of Dumaguindin's beliefs largely depends on whether McClain had, or appeared to have, a firearm in his hand at the time Dumaguindin discharged his service weapon. The evidence presented in this case strongly supports the proposition that McClain was armed with a firearm when Dumaguindin discharged his duty weapon. That evidence includes:

McClain's Demeanor and Actions Prior to the Officer-Involved Shooting

While Witness 1 repeatedly denied knowing that McClain possessed a firearm while in his car and stated he did not see one in McClain's hands before Dumaguindin discharged his duty weapon, his description of McClain's behavior suggests McClain may have been armed. Witness 1 stated that when he informed McClain that the police were pulling them over, McClain told him, "Keep going. Just go." When Witness 1 pulled his car over, McClain had a strong negative reaction, stating, "Oh fuck, fuck, fuck."

Dumaguindin also described McClain as acting "nervous" during their initial interactions. Ultimately, McClain ran from Dumaguindin for no apparent reason. Although unprovoked flight from the police does not equate to wrongdoing, flight may be suggestive of it. *People v. Souza* (1994) 9 Cal.4th 224; CALCRIM No. 372. Possession of the assembled and unregistered Polymer80 handgun is a possible motive for McClain's flight from Dumaguindin.⁵⁹

Patrol Vehicle DCV

The incident was captured on Mulrooney's patrol vehicle's dash camera. Although the quality of the video is insufficient to clearly identify a firearm, it provides strong support that McClain was armed. The video clearly depicts McClain reaching into his waistband as he begins to run from Dumaguindin. A dark-colored object appears to be protruding from McClain's waistband in the same area he is placing his left hand. McClain ran from Dumaguindin in an unorthodox manner, pumping his right arm in a traditional running motion while keeping his left hand in his waistband area, consistent with holding something in or at his waist.

Forensic video analysis expert Reis noted that when McClain's left hand came out from his waistband, six consecutive frames contained a slightly dark area below his hand. While not definitive, this is consistent with McClain holding a firearm.

Witness Statements

Mulrooney described McClain's initial waistband activity as "reaching for something" more than pulling up his pants. Mulrooney saw a firearm in McClain's left hand just before shots were

⁵⁹ At the time of the incident, McClain was on post-release community supervision [REDACTED]. Possessing a firearm would have violated the conditions of McClain's release and constituted a separate felony offense under Penal Code section 29800(a)(1).

fired. Mulrooney immediately radioed dispatch regarding the officer-involved shooting and informed them that McClain was “armed with a firearm.” Additionally, Mulrooney told Witness 1, “Your buddy just pulled a gun out on my partner.”

On the morning of the incident, Witness 8 told a PPD lieutenant that she saw McClain throw a gun over the roof of her car as he ran down Raymond Avenue. Witness 8 later retracted the statement, saying she was only told what had happened. However, video obtained from the PTC confirms that Witness 8 was seated in the driver’s seat of her vehicle and in a position to see McClain as he ran south on Raymond Avenue. The car Witness 8 was sitting in was located across the street from where the firearm was recovered.

Many of the witnesses who resided in the area where the incident occurred either did not see McClain running from Dumaguindin or saw him running after he would have already discarded the firearm, based on the firearm’s recovery location. The witnesses who did observe McClain when he first began running from Dumaguindin provided differing accounts. Witness 2 and Witness 5 did not report McClain carrying a firearm. Witness 4 reported seeing a man in a white T-shirt, black vest or backpack, and black pants running south on Raymond Avenue while carrying a firearm.

PTC Surveillance Video

In the PTC surveillance video, a dark mark appears near the west curb of Raymond Avenue as McClain runs past the location. In the next frame, that dark mark disappeared, and a new dark mark appeared slightly to the south. The second dark mark continued to be visible in the surveillance video until Duncan approached the area and shined his flashlight on it. The PTC video is consistent with the gun being thrown by McClain, hitting the curb, and then lying in the roadway until discovered by Duncan.

PPD Officers’ BWV

The BWV of numerous PPD officers who initially responded to the officer-involved shooting depict a dark mark or object at the firearm’s recovery location. The dark object seen in the officers’ BWV is in the same area as the dark object that appeared on the PTC surveillance video as McClain ran down Raymond Avenue.

Dumaguindin’s Actions and Statement

Dumaguindin did not immediately fire his duty weapon at McClain, indicating his decision to fire was based on more than McClain fleeing. Dumaguindin discharged his duty weapon only after McClain’s left hand appeared from his waistband and then crossed in front of his body as his head turned back toward Dumaguindin. Dumaguindin quickly ceased firing after McClain’s head turned and faced forward. Dumaguindin’s actions appear to be in response to specific movements of McClain and support the proposition that Dumaguindin saw a firearm in McClain’s left hand.

Dumaguindin told investigators that he observed a handgun in McClain's left hand as he ran away. Dumaguindin's belief that McClain possessed a firearm is supported by his BWV, which recorded him asking McClain, "Where's the gun?" multiple times immediately following his apprehension. Dumaguindin's BWV then recorded him searching for a firearm on the east side of Raymond Avenue.

Dumaguindin's participation in the search for a firearm that may have been discarded following an officer-involved shooting in which he was the shooting officer is concerning.⁶⁰ Also concerning is Dumaguindin's refusal to voluntarily provide a DNA sample that could be used to exclude him as a contributor to the DNA located on the recovered firearm. However, a thorough review of PPD officers' BWV in conjunction with the PTC surveillance video shows that the firearm appeared to be lying near the west curb of Raymond Avenue while Dumaguindin was southeast of that location with McClain and Sereno. Furthermore, once Dumaguindin left McClain and walked north on the east side of Raymond Avenue, he did not go near the area where the firearm was later recovered.⁶¹ Therefore, while Dumaguindin's decision not to provide DNA is curious, no evidence was presented suggesting he touched the firearm.

DNA

McClain's DNA was found on the firearm recovered at the scene. A review of the available evidence showed no indication of a possible indirect transfer of McClain's DNA onto the firearm.⁶² Dumaguindin touched McClain while handcuffing him and Alexander touched him while patting him down. Sereno and Zilbert came in contact with McClain when they provided medical aid. Based on their BWV and the PTC surveillance video, none of those officers were ever in close proximity to the recovered firearm after touching McClain. Duncan, who located the firearm, was near McClain when he initially arrived at the location and provided assistance in keeping a hostile crowd away from McClain and Sereno. However, Duncan never touched McClain, and Duncan's DNA was not located on the recovered firearm. This evidence supports McClain's possession of the handgun.

Without more, McClain's possession of a firearm would not necessarily justify an officer's decision to use deadly force. McClain's actions must be such that they would cause a reasonable police officer to fear for their life or the lives of others. However, an officer need not wait for a person to actually discharge their firearm. "[A]n officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer." *Martinez v. County of Los*

⁶⁰ While the quick recovery of a discarded firearm is important, there were multiple uninvolved officers available to search the area.

⁶¹ PTC video shows all law enforcement personnel who ran or walked near the firearm recovery location prior to its discovery. They were identified as PPD Officers Duncan, McIntosh, Rosa, Taylor, and McFarland, in addition to Sergeant Montiglio and Lieutenant Gordon.

⁶² During an indirect or secondary DNA transfer, there is no direct contact of the original source of the DNA and the surface on which it is located. An example of an indirect DNA transfer would be: Person A touches person B, depositing person A's DNA onto person B. Person B then touches an object and transfers Person A's DNA onto an object they have never touched. Oorschot, R.A.H., Szkuta, B., Meakin, G., Kokshoorn, B., Goray, M. (2019) *DNA Transfer in Forensic Science: A Review*. *Forensic Sci. Int.: Genet.* 38, 140–166.

Angeles (1996) 47 Cal.App.4th 334, 345, quoting *Reynolds v. County of San Diego* (S.D. Cal. 1994) 858 F.Supp. 1064, 1072.

While running away, McClain kept his left hand in his waistband area, causing Dumaguindin to suspect he may have been armed. In response, Dumaguindin drew his duty weapon. Dumaguindin reported that when McClain's left arm came out from his waistband area, he saw that he was holding a firearm. Dumaguindin did not discharge his duty weapon at that time. As McClain ran, he moved his left hand and the firearm across his chest while simultaneously turning his head back toward Dumaguindin. McClain's actions were consistent with him looking to see if Dumaguindin was chasing him, but also the beginning movements required to turn and shoot at someone while running. Given the tense, uncertain, and rapidly evolving circumstances, in addition to the minimal amount of time it would take McClain to turn around or shoot over his shoulder, it was not unreasonable for Dumaguindin to fear that McClain was about to use deadly force.

Dumaguindin discharged two rounds from his duty weapon at McClain. While Dumaguindin's shots appeared to occur as McClain turned his head forward and away from Dumaguindin, only .13 seconds elapsed between McClain moving his head forward and Dumaguindin discharging his service weapon. This short time lapse is consistent with Dumaguindin perceiving McClain's arm and head movements toward him, interpreting the movements as a threat, making the decision to discharge his service weapon, and pulling the trigger.⁶³ The sincerity of Dumaguindin's belief that he perceived McClain's arm and head movements as a deadly threat is supported by his actions during the incident. It appears that Dumaguindin did not discharge his service weapon until he believed that McClain produced the firearm, brought it across his body, and turned his head. Dumaguindin also ceased firing at McClain once McClain turned his head forward and continued to run away, even though Dumaguindin believed McClain was still armed with a firearm.

It is impossible to know McClain's subjective intent during the incident. The evidence presented strongly supports that McClain possessed a firearm. The video evidence of McClain's actions at the time of the shooting are of insufficient quality to be determinative. One interpretation of McClain's actions is that he was turning to see if Dumaguindin was pursuing him. Another interpretation is that he was turning to engage Dumaguindin. The People have the burden of proving beyond a reasonable doubt that Dumaguindin did not act in lawful self-defense. "If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence." CALCRIM No. 224. Therefore, there is insufficient evidence to prove that Dumaguindin's decision to use deadly force was not reasonable.

⁶³ The process of perceiving and reacting is referred to as response time. Response time includes receipt of information (perception), mental processing, performing a response, and device time. Balakrishnan, G., Uppinakudru, U., Singh, G.G., Banger, S., Raghavendra, A.D., Thangavel, D. (2014) *A Comparative Study on Visual Choice Reaction Time for Different Colors in Females*. *Neurol. Res. Int.* 2014, 1–5.

CONCLUSION

We conclude that there is insufficient evidence to prove beyond a reasonable doubt that Dumaguindin's decision to use deadly force was unreasonable.