

**Fatal Officer Involved Shooting of Michael Thomas
Los Angeles County Sheriff's Department**

Deputy Ty Shelton, #639668

J.S.I.D. File #20-0202



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

May 10, 2022

MEMORANDUM

TO: CAPTAIN JOE MENDOZA
Los Angeles County Sheriff's Department
Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Michael Thomas
J.S.I.D. File #20-0202
L.A.S.D. File #020-10361-1121-013

DATE: May 10, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 11, 2020, fatal shooting of Michael Thomas by Los Angeles County Sheriff's Department (LASD) Deputy Ty Shelton. We have concluded that there is insufficient evidence to prove beyond a reasonable doubt that Shelton did not act lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting on June 11, 2020, at 7:02 a.m. The District Attorney Response Team responded to the location and was given a briefing and walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of interviews, a recorded 9-1-1 call, DNA analysis reports, the autopsy report, crime scene diagrams, photographic evidence, and witness statements submitted to this office by LASD Detective John Duncan and Sergeant Gene Takashima. Deputy Shelton's voluntary statement was considered in this analysis.

FACTUAL ANALYSIS

On June 11, 2020, at approximately 5:15 a.m., LASD Deputies Ty Shelton, Ruben Perales, Louie Herrera, Miguel Gonzalez, and Kyle Murphy responded to a duplex in the City of Lancaster regarding a possible spousal assault. The deputies were informed via their in-car mobile digital computers that there was an "open line" and that arguing could be heard in the background.¹

¹ [REDACTED], who is deaf, called 9-1-1 but never spoke to the dispatcher. The dispatcher remained on the line and unsuccessfully attempted to get [REDACTED]'s attention during the incident. The 9-1-1 recording provides a low-quality audio recording of the events that occurred that morning. Thomas can be heard yelling during much of the recording, making many of the statements by others unintelligible.

Each deputy drove to the location separately in a marked black and white police vehicle and wore a distinctive LASD uniform.²

Perales and Herrera arrived at the location first. As they approached the residence on foot, they heard yelling and arguing coming from within. The deputies announced their presence and knocked on an exterior metal screen security door and adjacent window but received no response.³ Murphy arrived at the location and positioned himself near the rear exit of the residence. Shelton and Gonzalez arrived and joined Perales and Herrera at the front door. After deputies knocked on the security door again, Michael Thomas opened the interior door, leaving the exterior metal screen security door closed and locked.⁴

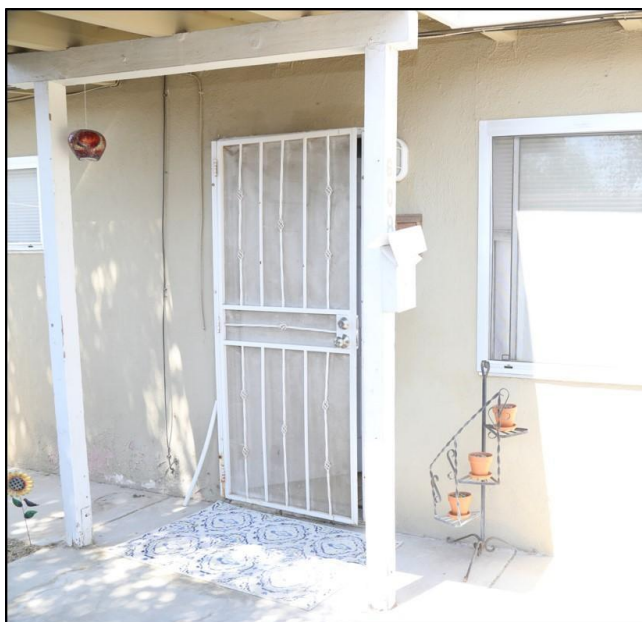


Figure 1 – Photograph of the metal security door and window located at the front of Thomas’ residence.

Shelton and Perales stood to the left of the security door, and Herrera and Gonzalez stood to the right of the door. Deputies ordered Thomas to open the door, but Thomas refused. Thomas yelled, “No bitch, don’t open the door. I am now in fear for my life! You guys (unintelligible) and your homies just killed somebody.”⁵ According to the deputies, [REDACTED] stood in the living room behind Thomas and appeared visibly upset.⁶ Murphy heard arguing coming from the front of the residence and joined the other deputies at the front door.

² None of the deputies had been issued LASD body worn video (BWV). Perales wore a personal BWV but did not activate it until after the deputy-involved shooting occurred.

³ A blanket covered the front window and prevented the deputies from being able to see inside the residence.

⁴ Thomas was 61 years old, 5’7” tall, and weighed approximately 185 pounds.

⁵ Thomas can be heard yelling this on the 9-1-1 recording. The statement seems to be a reference to the May 25, 2020, murder of George Floyd by then Minneapolis Police Department Officer Derek Chauvin. Multiple deputies stated they heard Thomas reference Floyd while refusing to open the door.

⁶ Multiple deputies described her as “yelling” and “in distress.” Shelton, Perales, and Gonzales stated they could not understand what she was saying. Herrera recalled her telling Thomas to, “Open the door!”

Over the next minute, the deputies repeatedly ordered Thomas to open the door so they could check on the occupants' welfare. Thomas repeatedly refused to open the door, yelling at the deputies and telling them they had no right to enter his house. While Thomas was arguing with the deputies, ██████. asked Thomas multiple times, "Why did you put your hands on me?"⁷ Thomas told the deputies that ██████ "keeps doing this [presumably calling the police] to me" and referenced a recent domestic violence arrest.⁸ According to multiple deputies, ██████. walked up behind Thomas and reached for the door. Thomas responded by shoving or slapping ██████. with his left hand to prevent her from opening the door.⁹

Shelton and Perales grabbed the locked metal security door and quickly forced it open. Herrera and Perales were the first to enter the residence. According to Perales, Thomas clenched his fists and took a "fighting position." Herrera stated that upon entry, Thomas started to back up into the house. Thomas yelled, "You all gonna kill me!"¹⁰ Herrera grabbed the left side of Thomas' body while Perales grabbed the right. Shelton straddled the entryway to the residence, slightly behind and to the left of Perales. Gonzales was directly in front of Thomas but was not touching him. Murphy entered the residence, turned to the right, and contacted Kimberly S., who was in the living room screaming.¹¹



Figure 2 – Photograph depicting the entryway of Thomas' residence. The approximate positions of Thomas (T), Perales (P), Herrera (H), Shelton (S), and Gonzalez (G) upon entry into the residence are labeled.¹²

⁷ These statements can be heard on the 9-1-1 recording.

⁸ These statements can be heard on the 9-1-1 recording.

⁹ ██████. can be heard saying "Ahh!" or "Stop!" on the 9-1-1 call at this time. Shelton, Perales, and Murphy stood to the left of the front door and were able to see Thomas, ██████., and the inside of the residence. Each stated they saw Thomas prevent ██████. from getting to the security door by contacting her with his left hand. Herrera and Gonzalez did not describe seeing Thomas make physical contact with ██████. They stood to the right of the front door and could not clearly see Thomas or ██████ before entering the residence. In ██████.'s brief statement, she described herself as "pull[ing] at the door."

¹⁰ This statement can be heard on the 9-1-1 recording.

¹¹ ██████. can be heard on the 9-1-1 call repeatedly screaming "Help!" or "Ahh!"

¹² The distance between the front door threshold and the edge of the couch seen in the photograph was approximately four feet and nine inches.

Perales and Herrera attempted to control Thomas' arms so he could be handcuffed, but Thomas resisted. According to Perales, he felt "movement" on the left side of his body and duty belt in the area of his holstered service weapon. Shelton then screamed that Thomas was grabbing Perales' gun.¹³ According to Shelton, he grabbed Thomas' right arm with both of his hands and attempted to remove Thomas' hand from Perales' duty weapon but was unable to do so. Perales said that when he looked down at his left hip, he saw Thomas' hand on top of his holstered firearm. Perales brought his left arm down in a chopping motion toward Thomas' arm. Simultaneously, Shelton drew his duty weapon with his left hand while continuing to hold Thomas' arm with his right hand. Shelton pointed his duty weapon at Thomas' chest and fired one round.¹⁴

Perales and Herrera released their grips on Thomas, and he fell back onto a couch before falling to the floor. The deputies briefly exited the residence and radioed that they had been involved in a shooting. They then reentered the residence and removed [REDACTED], J [REDACTED], and [REDACTED].¹⁵ Gonzalez put on medical gloves and performed CPR on Thomas until additional deputies arrived. Thomas was transported to Antelope Valley Hospital and was pronounced dead by Doctor Jake Wilson at 5:52 a.m.

Autopsy

An autopsy was performed on June 13, 2020, by Senior Deputy Medical Examiner Odey C. Ukpo. The cause of death was determined to be a gunshot wound to the chest. Toxicology results indicated the presence of marijuana, phencyclidine, amphetamine, methamphetamine, and benzoylecgonine in Thomas' blood at the time of the incident.¹⁶

Incident Location and Evidence Recovered

Thomas' residence was a one-story duplex, with another attached residence directly to the south. Thomas' front door opened into the living room, which was approximately 16 feet by 13 feet. A couch was located approximately four feet and nine inches west of the front door. Investigators recovered one cartridge casing discharged from Shelton's service weapon headstamped "FC 9MM Luger" from the living room floor near the entryway. Following the incident, Perales went to the Lancaster Sheriff's Station, where his personal BWC and duty belt were collected as evidence. Perales also submitted to a buccal deoxyribonucleic acid (DNA) swab being taken.

¹³ Shelton can be heard yelling on the 9-1-1 recording. Due to the poor quality of the recording and multiple people speaking and yelling at the same time, Shelton's precise wording cannot be deciphered. The words "he's grabbing" or "he's reaching" and "gun" can be heard.

¹⁴ Based on the 9-1-1 recording, approximately ten seconds elapsed between the deputies' entry into the residence and the shot being fired. Approximately 1.5 seconds elapsed between Shelton yelling that Thomas was grabbing Perales' gun and the shot being fired.

¹⁵ [REDACTED] and [REDACTED] were in the rear bedrooms of the home during the incident and did not observe the shooting.

¹⁶ Phencyclidine is more commonly known as PCP. PCP is a hallucinogenic drug used for its mind-altering effects. At low doses, PCP may cause irritability, paranoia, and hallucinations. Steinpreis, R. (1996) *The behavioral and neurochemical effects of phencyclidine in humans and animals: some implications for modeling psychosis*, Behav. Brain Res., 74(1-2), 45-55. Benzoylecgonine is the major metabolite of cocaine.

Perales' Duty Belt

Perales wore a standard LASD issued duty belt and firearm holster.



Figure 3 – Photograph of the duty belt Perales was wearing during the incident.

Perales' duty weapon was secured by a Safariland Model 6280 Mid-Ride Level II Retention Duty Holster.¹⁷ The Model 6280 prevents the firearm from being removed from the holster without first releasing the security “hood” by simultaneously pushing it down and moving it forward.¹⁸



Figure 4 – Photograph of Perales' duty weapon and holster.

¹⁷ A holster's retention level refers to the number of actions required to release the firearm from the holster. Safariland holsters have retention levels ranging from one to four.

¹⁸ Model 6280 SLS Mid-Ride Level II Retention Duty Holster, <http://www.safariland.com/products/model-6280-sls-mid-ride-level-ii-retention-duty-holster-23292> (last visited Feb. 15, 2022).

DNA Evidence

Following the incident, LASD Forensic Identification Specialist Desiree Rollins took possession of Perales' duty belt and transported it to the LASD Crime Lab. On June 17, 2020, Senior Criminalist Gregory Wong took five DNA swabs of Perales' duty weapon and holster, including the holster and security strap, trigger and trigger guard, grip, pistol surface, and magazine.¹⁹ On July 24, 2020, LASD Senior Criminalist Sara Cohen-Hadria completed her comparison of the DNA swabs taken by Wong to the buccal reference sample taken from Perales and a reference sample collected from Thomas' blood.

Cohen-Hadria determined that the sample from Perales' holster and security strap had an assumed number of two contributors, with one being Perales. She concluded that the sample was "uninformative," meaning that Thomas could not be included or excluded as the other contributor.²⁰ Cohen-Hadria concluded that there was "limited support" for excluding Thomas as a possible contributor to the DNA located on the firearm's grip and surface. The sample from the grip had three assumed contributors, with Perales being one of them. According to Cohen-Hadria's report, the DNA profile was approximately seven times more likely if it originated from Perales and two unknown individuals than if it originated from Perales, Thomas, and an unknown individual. Cohen-Hadria excluded Thomas as a potential contributor to the DNA found on Perales' firearm's trigger, trigger guard, and magazine. The sample from the firearm's surface had four assumed contributors, with one being Perales. Cohen-Hadria concluded that the DNA profile was approximately 55 times more likely if it originated from Perales and three unknown individuals than if it originated from Perales, Thomas, and two unknown individuals.

Studies show that the lack of Thomas' DNA in the samples provided does not mean Thomas did not touch the objects sampled.²¹ Cohen-Hadria stated that so many variables affect the quantity of DNA deposited on a touched surface that it is virtually impossible to assign a quantitative likelihood of finding no DNA on an item that had been touched. Such variables include but are not limited to: the shedder status of the individual, environmental factors, the duration and nature of the touching, the surface type of the item being touched, and the preservation and collection methods employed.²²

¹⁹ According to LASD investigators, their request to have Perales' entire duty belt swabbed for DNA was denied by a supervising criminalist, who authorized swabbing only the holster and firearm.

²⁰ According to Cohen-Hadria, an uninformative conclusion means it is just as probable that the DNA contained in the sample belongs to some unknown individual as it does Thomas.

²¹ Many studies have noted instances of DNA not being deposited on touched objects during controlled experiments. Burrill, J., Daniel, N., Franscione, A. (2019) *A Review of Trace "Touch DNA" Deposits: Variability Factors and an Exploration of Cellular Composition*, Forensic Sci. Int. Genet. 39: 8-18. See e.g., Samie, L., Taroni, F., Champod, C. (2020) *Estimating the Quantity of Transferred DNA in Primary and Secondary Transfers*, Sci. Justice, 60(2): 128-135 (All six participants had at least one instance where DNA was not deposited onto the handle of the knife they touched). Phipps, M., Petricevic, S. (2007) *Tendency of Individuals to Transfer DNA to Handled Items*, Forensic Sci. Int. 168: 162-168 (Participants who washed their hands 15 minutes prior to the experiment frequently deposited no DNA on plastic tubes after holding them for ten seconds).

²² 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.

Perales' Body Worn Video

At the time of the incident, LASD did not provide their deputies with BWV. LASD did allow deputies to purchase and use a personal BWV if they chose to do so. When Perales responded to Thomas' residence, he had a Miufly brand BWV attached to his duty belt. According to Perales, he did not turn the camera on until after the incident. A review of the video shows Perales walking through the residence following the incident. At one point, a deputy can be seen performing chest compressions on Thomas in the living room.

When Perales exited the residence, an unidentified sergeant asked him if he was there during the incident. Perales told the sergeant, "He [Thomas] was grabbing my gun as I was trying to hold him down." Perales explained that Shelton said, "He's going for your gun Perales! Stop, he's going for your gun!" Perales told the sergeant, "I went to go smack him like this, and as soon as I did [Shelton discharged his service weapon]."

Deputy Statements

Statement of Ty Shelton²³

On the morning of the incident, Shelton responded to a call for service regarding a possible spousal assault. His mobile digital computer informed him that there was an "open phone line" and screaming could be heard. When Shelton arrived, he observed multiple deputies already at the location. Deputy Murphy was standing by a backyard fence on the west end of the house, and Deputies Herrera and Perales were near the front of the house. Shelton heard "aggressive" yelling and screaming coming from inside the residence. Shelton knocked on the front door and gave verbal commands to open the door. Shelton stood to the left of the door, Perales was behind him, and either Herrera or Gonzalez was to his right. A man, later identified as Thomas, "violently" opened the interior door but left the metal security door closed.²⁴ A female, later identified as ██████████, stood behind Thomas and slightly to his left. Shelton assumed Thomas was the suspect and ██████████ was the victim based on Thomas' aggressive behavior.

The deputies remained outside the front door for approximately forty-five seconds as Thomas yelled at them and refused to open the door.²⁵ Shelton said Thomas' fists were clenched as he yelled at the deputies. Shelton told Thomas that the deputies needed to enter the house to check on everyone, but Thomas refused to let them inside. According to Shelton, Thomas said something like, "I know how you guys are. You kill our people. You're not coming in this house." Shelton attempted to open the metal security door, but it was locked. ██████████ was also talking, but Shelton could not hear her voice over Thomas' yelling. ██████████ moved toward the door and appeared to reach for the handle, but Thomas moved to his left and blocked her from opening the door. Shelton said, "He [Thomas] yelled something to tell her to get back in the house and go away, and then he swung his left hand upwards towards her and made it sound like he made contact—probably like striking her in the face with his hand." ██████████

²³ Investigators interviewed Shelton on June 12, 2020, at Lancaster Sheriff's Station. This statement was recorded.

²⁴ Shelton described Thomas as approximately six feet tall with a medium build.

²⁵ Shelton said Thomas repeatedly yelled, "What the fuck are you doing here?"

began screaming, but Shelton could not hear what she was saying because “he [Thomas] was yelling and shouting the entire time.”

Shelton grabbed the metal security door and forced it open, then held it open as another deputy, likely Perales, entered. Shelton also entered the home, and he and Perales stood in the entryway door frame. Herrera entered and went to the right, slightly into the living room.²⁶ When the deputies entered the residence, Thomas dropped into a “squat” and extended his arms in front of his body and slightly to his side. Perales moved directly toward Thomas and grabbed him by his upper shoulders and armpits. Herrera stood to the right of Perales with his hand on Thomas’s left shoulder. Shelton straddled the threshold with his right foot outside and his left foot inside the residence. Thomas and ██████████ were both screaming, but Shelton could not decipher what was being said.

According to Shelton, as Perales and Herrera attempted to detain Thomas, Thomas’ right arm wrapped around Perales’ right hip.²⁷ Shelton stated, “And then I look down, and I saw his [Thomas’] arm, and I immediately saw his arm retract, slide across his [Perales’] belt and his hand grabbed Deputy Perales’ duty weapon.” Shelton continued, “I distinctively see his hand go around—either it’s the initial grip or behind where the holster connects to the belt ... and [I] immediately went from being concerned to extremely terrified. Now he’s got his hand on a firearm.” At that point, Shelton grabbed Thomas’ forearm with both hands and said to Perales, “He has your gun! He’s grabbing your gun!” at least five times.²⁸ Shelton attempted to pull Thomas’ arm away from Perales’ service weapon but could not move it.²⁹

Shelton worried that Perales’ service weapon would come out of its holster at any moment. Shelton explained that although department issued holsters have safety mechanisms that require specific actions to remove the firearm, such as pushing the hood down while moving it forward, he feared Thomas would gain possession of Perales’ firearm:

I know that whether it’s my holster, in particularly the one that’s issued by the county, there’s a hood that goes over the top of the firearm that holds the back of the firearm in place. Those are the easiest thing in the world to have come down unintentionally. I’ve gotten out of my patrol vehicle [and] that hood is down whether I’ve accidentally bumped it with my elbow.

Shelton moved his left hand down to his firearm and kept his right hand on Thomas’ forearm. He observed Perales’ hip moving towards Thomas, which made him believe Thomas was pulling hard on the firearm. Shelton explained what happened next:

[A]nd given his belligerent statements, how he’s screaming. We had nowhere to go, and he’s un—he’s not letting go of this firearm. I now know that he had, in my opinion, the

²⁶ The front door of the home entered immediately into the living room.

²⁷ Shelton explained that he was trained to look at a suspect’s hands during an altercation.

²⁸ This statement, or a similar one, can be heard one time on the 9-1-1 recording.

²⁹ Shelton believed Thomas knew he was grabbing Perales’ duty weapon. “There’s no way you cannot distinguish that that’s a firearm, at least in my personal opinion, to even any prudent person aware of the shape of a firearm, how they look and would feel.”

complete intention he's going to kill one of us with that firearm. So, once I—I've—once I know that that's going to happen, I draw my firearm from my left side, which is where it's holstered on my hip. I extend my arm all the way outward, point my firearm at his chest and fire one round.

During the interview, Shelton was asked whether he considered using less than lethal force, namely pepper spray or his Taser. Shelton stated he did not use pepper spray out of fear of contaminating everyone, including the deputies. Shelton explained that he did not use his Taser because Perales' left leg was between his own legs, blocking access to his right hip, where he kept his Taser. According to Shelton, the duration of the entire incident was approximately five minutes, with about two minutes elapsing between forcing the metal security door open and discharging his duty weapon.

Statement of Ruben Perales³⁰

On the morning of the incident, Perales responded to a 9-1-1 call regarding possible domestic violence. The mobile digital computer in Perales' car stated there was an open phone line, and arguing could be heard in the background. Perales and Herrera responded to the location together in their separate police vehicles. While en route, Perales and Herrera spoke over the radio and decided that Perales would be assigned to less than lethal force if needed.³¹

Once at the location, Perales and Herrera approached the front door together. Perales heard yelling coming from within the home and "a bumping sound of some kind, or a fight." Both Herrera and Perales knocked on the front door and stated, "Sheriff's Department," but were not acknowledged. Perales then knocked on the window adjacent to the door. Perales stood to the left of the front door, and Herrera was to the right of the door. Thomas opened the interior door but left the metal security door closed. Thomas said, "You're not fucking coming in here," and "Do you see what you did, you bitch?" Perales was unsure of the order in which they arrived but noticed Shelton and Gonzalez standing at the door. Perales saw a female, later identified as [REDACTED], standing behind Thomas. [REDACTED] was screaming and yelling, but Perales could not understand what she was saying.

Perales told Thomas that they needed to enter the location to talk to him and "make sure everybody's okay." Thomas told them to, "Fuck off!" Perales then saw Thomas shove [REDACTED] with his hand. Perales said Thomas was "trying to keep her away from the door." Shelton told Thomas they would enter the home if Thomas would not let them in, and Thomas responded, "Fuck you!" At that point, Perales assisted Shelton in forcing the metal security door open, and they both entered the residence to detain Thomas. Thomas yelled, puffed out his chest, clenched his fists, and assumed a "fighting position." [REDACTED] was in the back of the living room crying. Perales grabbed Thomas' right clavicle and outer bicep of his right arm and attempted to push him down toward the ground so they could arrest him. Herrera was trying to get Thomas' left arm behind his back. Deputies told Thomas to, "Stop resisting!" but Thomas tensed his body and pulled away. Perales said, "I felt like a shrug or a brush of some kind. Some

³⁰ Investigators interviewed Perales on June 11, 2020, at Lancaster Sheriff's Station. The interview was recorded.

³¹ It is common for deputies responding to 9-1-1 calls to discuss a tactical plan and delegate specific duties prior to arriving at the location.

movement to the left side of my gun belt ... Specifically, like my gun area.” At the time, Perales assumed it was another deputy “bumping” into his duty belt.

Perales heard Shelton yell, “Perales, your gun! He’s going for your gun!” Perales described Shelton’s tone as a “shriek” and heard “concern” in Shelton’s voice. At that point, Perales understood the source of the movement to his duty belt. Perales briefly glanced down and saw Thomas’ right hand on the locking mechanism of his holster.³² Perales explained, “[W]hen I looked down, and I saw that he was attempting, or had his hand over my gun, there was only one reason why anybody would—would want to reach for an officer’s gun, and that’s to—to kill us.” Perales made a downward chopping motion toward his holster with his left arm and attempted to turn his left hip away from Thomas. As Perales tried to turn, he saw the muzzle of Shelton’s firearm come in front of his face. Perales then saw muzzle flash and heard Shelton’s service weapon discharge to the left of his shoulder.

Perales jumped back and reached for his service weapon, which was in his holster with the locking mechanism partially disengaged.³³ Perales drew his service weapon, stepped outside, and radioed that a deputy involved shooting had occurred. Perales reentered the home and observed ██████ in the back of the room crying and ██████ in the hallway. Herrera ordered ██████ and ██████ out of the house, and Gonzalez began CPR on Thomas.

Statement of Louie Herrera³⁴

Herrera and Perales responded to a domestic violence call, and as they walked toward the front door, Herrera could hear a male and female arguing. Shelton, Gonzalez, and Murphy arrived and walked up the driveway as Herrera knocked on the metal security door several times with his flashlight. Herrera stood to the right of the door and against the wall. Shelton and Perales stood to the left of the door. Thomas opened the interior door but repeatedly refused to open the metal security door. Due to Herrera’s position, he could only see the left half of Thomas and could not see further into the living room. Thomas said, “You guys are killers ... I heard what you did to George Floyd. You guys are just killers. I don’t want you in my house.” Herrera said he could not see ██████, but could hear her. ██████ sounded distressed and was “telling us to open the door [and] telling him to open the door.”³⁵

At that point, Shelton and Perales forced the metal security door open. Herrera was the first deputy to enter the house. Upon entry, he grabbed Thomas by his shirt to prevent him from moving further into the living room. He then grabbed Thomas’ left elbow or tricep with his right arm and Thomas’ left hand or wrist with his left arm. Herrera forced Thomas’ hand into his abdomen and applied a control hold. Perales then grabbed Thomas’ right arm. Herrera stated that Thomas resisted and leaned back onto the couch’s armrest. Shelton told Thomas, “Stop!” and “Calm down!”

³² Perales did not know if the security hood was still in the locked position at that time because Thomas’ hand was blocking his view.

³³ Perales estimated the hood had been pushed forward a quarter of an inch.

³⁴ Investigators interviewed Herrera on June 11, 2020, at Lancaster Sheriff’s Station. The interview was recorded.

³⁵ According to Herrera, he was later told that Thomas had physically prevented ██████ from opening the door. He was unable to see the left side of Thomas or ██████ during the incident due to his positioning to the right side of the front door.

Herrera then heard a deputy shout, “He’s reaching for your gun!” and saw Thomas’ wrist near the left side of Perales’ belt.³⁶ Herrera said, “I was angled. I couldn’t see what he was reaching. The next thing I know, Deputy Shelton pulls out his weapon ... That’s when he—when he shoots the suspect.” After the shot, Herrera saw Thomas’ blood on his hand and released Thomas. Thomas fell back onto the couch and then onto the floor. The deputies briefly exited the house before Gonzalez reentered to perform CPR.

Statement of Michael Gonzalez³⁷

On the morning of the incident, Gonzalez responded to a domestic violence call in the City of Lancaster. Gonzalez arrived at the location at the same time as Shelton. When Gonzalez approached the front door, Herrera and Perales were already there. Thomas was yelling, “You mother fuckers are going to kill me ... It’s like George Floyd!” Gonzalez heard [REDACTED] screaming from inside the residence but could not recall what she was saying. He believed [REDACTED] was in “distress” and “needed help.” Gonzalez heard Thomas tell [REDACTED], “Shut up, bitch.” Shelton told Thomas he needed to come outside, but Thomas refused to open the security door.

Shelton and another deputy forced open the metal security door. The deputies entered the residence, and two of them grabbed Thomas.³⁸ Shelton was standing to Gonzalez’ left and was not touching Thomas. Thomas resisted the deputies. Thomas’ “arms were kind of stretched out and kind of by the deputies’ like waistline.” Gonzalez could not see Thomas’ hands. Deputies ordered Thomas to, “Stop fighting!” and Gonzalez decided to go “hands on” and assist. Gonzalez stated, “I approach the suspect with my hands up about to grab his upper torso when I heard—I don’t know—someone said ‘gun!’ I immediately looked to my left, saw Shelton’s gun out and—and saw the muzzle flash off when he fired the—his firearm.” Gonzalez was face-to-face with Thomas and approximately two feet away when the shot was fired. Gonzalez did not see where Thomas’ arms were because he was focused on Thomas’ face.

After the deputy involved shooting occurred, Gonzalez asked Shelton, “Hey, where’s the gun?” Shelton responded, “No, he was grabbing Perales’ gun.” Gonzalez then performed CPR on Thomas.

Statement of Kyle Murphy³⁹

When Deputy Murphy arrived at the location, he observed Herrera and Perales walking up the driveway. He walked to the rear of the residence to ensure no one escaped as the other deputies went to the front door. While standing at the rear, he heard the front door open and a man yelling, so he walked back to the front. Murphy saw Herrera to the right of the front door, Perales to the left, and Shelton walking back and forth. Murphy positioned himself to the left of the door. Thomas was refusing to let the deputies into the house and stated, “She does this every

³⁶ Later in the interview, Herrera said he heard, “He’s got your—he’s got your gun!”

³⁷ Investigators interviewed Gonzalez on June 11, 2020, at the Lancaster Sheriff’s Station. The interview was recorded.

³⁸ Gonzalez did not know which deputy grabbed which of Thomas’ arms.

³⁹ Investigators interviewed Murphy at Lancaster Sheriff’s station on June 11, 2020. The interview was recorded.

time, she calls, you guys come in and ruin my day,” and “I know what you guys did to that Floyd guy.” ██████ reached toward the front and stated, “He hit me.” In response, Thomas told her to, “Shut up!” and swung his arm from his chest toward ██████. Murphy then heard the “smack” sound of Thomas’ hand contacting ██████.

Shelton forced the security door open, and the deputies entered the residence. Thomas’ hands were clenched, his arms were by his side, and he was shuffling backward. Murphy was the last deputy to enter the home. When Murphy entered, he turned to the right and approached ██████, who was screaming and crying. Murphy ordered ██████ out of the house, but she did not leave and continued screaming. Someone yelled, “Shotgun!” and Murphy heard a firearm discharge. When Murphy turned toward the noise, he saw what appeared to be “dust” and the deputies stepping backward. Thomas was on the couch, and ██████ was screaming. The deputies then exited the residence. Later, Murphy checked on Shelton, and Shelton told him, “I shot him. He was going for Perales’ gun.”

Witness Statements

Statement of ██████.

LASD Deputy Hun Sok Pyon responded to the location after the deputy involved shooting and briefly interviewed ██████ on a nearby sidewalk.⁴⁰ ██████ was crying and expressed feelings of guilt for calling the police. ██████ stated she was “playing” with her phone and accidentally called. According to ██████, she and Thomas had been drinking that morning.⁴¹ At one point, Thomas became upset with ██████ because he thought she was bothering ██████, and they began to argue. Thomas was acting “crazy” and slapped ██████ on the right side of her face.⁴² ██████ accidentally dialed 9-1-1, and deputies arrived at the location. ██████ explained, “When you all came and—and you all telling him to open the door, and he thought I was telling you all something and—and I pull—pull the door and then you all handcuff him, and I heard him say ‘Ow! Ow!’ and then the next thing you know, you guys shot him.”⁴³

Statement of ██████.

LASD Deputy Daniel Carlin responded to the scene of the incident and contacted ██████ outside of the residence.⁴⁴ ██████ stated she arrived at the location at approximately three in

⁴⁰ This interview was recorded.

⁴¹ ██████ stated she was an alcoholic and had consumed two 40 oz bottles of “Olde English,” and Thomas had been drinking a large bottle of cognac. ██████ stated she did not know if Thomas was under the influence of a controlled substance at the time of the incident.

⁴² ██████ audio recorded six minutes and 33 seconds of the argument and altercation between her and Thomas on her cell phone.

⁴³ Pyon did not ask ██████ for clarification or additional details regarding the deputy involved shooting. Following her interview with Pyon, ██████ refused to speak with LASD investigators at the scene. Investigator’s subsequent efforts to interview ██████, ██████, and ██████ were unsuccessful. In a meeting with one of Thomas’ daughters and her civil attorney, investigators were told that ██████, ██████, and ██████ were aware of the investigator’s desire to speak with them, but they did not want to be interviewed. A civil suit was filed on behalf of Thomas’ children on February 19, 2021.

⁴⁴ This interview was not recorded.

the morning to hang out with [REDACTED] and Thomas. The three of them were in Thomas' and [REDACTED]'s bedroom together drinking alcohol when Thomas became angry with [REDACTED], and an argument ensued. During the altercation, Thomas slapped [REDACTED] on two separate occasions.

Thomas and [REDACTED] were still arguing when deputies knocked on the front door. Thomas and [REDACTED] walked to the living room, and [REDACTED] stayed in the bedroom. [REDACTED] heard Thomas arguing with the deputies and began to walk out of the bedroom. As she approached the bedroom door jam, she heard a loud "pop." She stepped out into the living room and saw Thomas on the floor. Deputies removed everyone from the home, and [REDACTED] sat on the curb outside until Carlin contacted her.

Pyon briefly interviewed [REDACTED] on the morning of the incident.⁴⁵ Pyon questioned [REDACTED] regarding the events leading up to the deputies' arrival, including the domestic violence incident. However, Pyon did not ask [REDACTED] about the events that occurred after deputies arrived at the location.

Statement of [REDACTED]

Pyon contacted [REDACTED] outside the residence. [REDACTED] stated he was in another room during the incident and did not see or hear anything.

Statement of [REDACTED]

On the morning of the incident, LASD Investigators spoke with [REDACTED] twice.⁴⁶ [REDACTED] resided in the same duplex as Thomas, in the unit directly to the south. [REDACTED] told investigators that she had been having trouble sleeping and was awake in her living room. She could hear her neighbors arguing.⁴⁷ [REDACTED] heard deputies knock on her neighbor's front door. [REDACTED] looked out her living room window and saw three male uniformed deputies on her neighbor's walkway and porch.

The deputies told her neighbor [Thomas] to, "Open the door." [REDACTED] heard Thomas tell the deputies, "She calls you guys all the time," but that everything was fine. She also heard [REDACTED] tell the deputies that everything was "fine." The deputies continued ordering Thomas to open the door, and he refused. Thomas said, "I am scared. I've been watching the news ... I know you guys are going to kill me."

[REDACTED] was unsure if Thomas opened the door, but she assumed the deputies entered the residence because she no longer saw them in front of the location.⁴⁸ Almost immediately, [REDACTED] heard a "shot." She then saw the three deputies exit the front door. One of the deputies was bending over with both of his hands on his knees and "hyperventilating." The deputy bending over said something about a gun, either "I saw a gun" or "He had a gun."

⁴⁵ This interview was recorded.

⁴⁶ Both interviews were recorded.

⁴⁷ [REDACTED] did not know her neighbors well. She knew what they looked like but did not know their names.

⁴⁸ Due to the location of the window [REDACTED] was looking through, she could not see Thomas' front door.

Character and Trait of Character Evidence

The following information is included in this memorandum solely because it is relevant evidence that would likely be admissible in Shelton’s defense if charges were filed against him. As such, it must be considered in analyzing whether or not there is sufficient evidence to prove Shelton’s actions were unlawful.

Thomas has a history of violent conduct and resistive behavior toward law enforcement. California Evidence Code section 1103 makes evidence of the character or trait of character of a victim of a crime for which the defendant is being prosecuted admissible, if the evidence is offered by the defendant to prove conduct of the victim in conformity with the character or trait of character. “[I]n a prosecution for a homicide or an assaultive crime where self-defense is raised, evidence of the violent character of the victim is admissible to show that the victim was the aggressor. *People v. Shoemaker* (1982) 135 Cal.App.3d 442, 446–447; *People v. Rowland* (1968) 262 Cal.App.2d 790, 797.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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) 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.

In this case, deputies initially responded to a 9-1-1 open-line call where yelling could be heard in the background, but the caller was not providing details of what was occurring at the location. When the deputies approached the residence, they heard yelling coming from inside the home. Thomas opened the front door but repeatedly refused to open a locked metal security door and let the deputies inside. Thomas was agitated and yelled at the deputies. [REDACTED]. accused Thomas of battery in front of the deputies by asking Thomas why he had put his hands on her.

According to multiple deputies, [REDACTED] appeared to be in distress and was physically prevented from opening the door by Thomas. At that time, the deputies forced entry into the residence.

Entry into Thomas' Residence

Penal Code section 835a(e)(3) requires the totality of the circumstances be considered, including the officer's conduct prior to the use of deadly force, when determining the reasonableness of such force. Therefore, the legality of the deputies' forced entry into the home, which was initiated by Shelton and led to the use of deadly force, will be examined.

Generally, police entry into a home must be supported by probable cause, and there must be a warrant authorizing the search. *Nathanson v. United States* (1933) 290 U.S. 41, 47. However, an exception exists to the warrant requirement when there is probable cause to believe a crime has been committed and exigent circumstances exist. *U.S. v. Martinez* (2005) 406 F.3d 1160, 1164. Exigent circumstances are generally defined as, "Circumstances that would cause a reasonable person to believe that entry ... was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." *United States v. McConney* (1984) 728 F.2d 1195, 1199, *overruled on other grounds by Estate of Merchant v. C.I.R.* (9th Cir. 1991) 947 F.2d 1390.

In this case, the deputies' entry into the home was likely justified under the exigency doctrine. Based on the deputies' observations, they had probable cause to believe domestic violence had occurred and a legitimate interest in checking [REDACTED]'s welfare, preventing any further violence, and assisting her exit from the residence. Similar warrantless entries have been deemed appropriate in other cases. *See, e.g., U.S. v. Brooks* (2004) 367 F.3d 1128 (holding 9-1-1 call reporting sounds of possible domestic violence combined with officer's observation of a disheveled room justified warrantless entry to check on the welfare of occupants).

Shelton's Use of Deadly Force

Once inside the home, Herrera, Perales, Gonzales, and Shelton attempted to detain Thomas as Murphy contacted [REDACTED]. Thomas resisted the deputies. Based on the positions of the deputies and [REDACTED], Shelton and Perales were the only people able to see Thomas' right hand and Perales' firearm, which was holstered on the left side of his body. Shelton and Perales both stated that Thomas attempted to remove Perales' gun from its holster. Before discharging his duty weapon, Shelton can be heard yelling on the 9-1-1 recording that Thomas was grabbing Perales' firearm. Shelton's voice sounds distressed, supporting his stated belief that the deputies' lives were in imminent danger.

Evidence of Thomas' history of violence and resistive behavior toward law enforcement could be used by Shelton as evidence that Thomas acted in conformity with that trait; i.e., as evidence that Thomas tried to draw Perales' service weapon. Furthermore, when the deputies arrived, Thomas told them that their presence made him fear for his life. After the deputies forced open the door and entered the home, Thomas yelled, "You all gonna kill me!" Thomas' mental state,

which may have been altered by various narcotics, and apparent fear of the deputies could be used as circumstantial evidence that Thomas attempted to gain possession of Perales' gun, believing he needed to do so in self-defense. The only evidence presented suggesting Thomas may not have grabbed Perales' firearm is the lack of Thomas' DNA on the handgun and holster. However, Thomas was not excluded as a possible contributor to the DNA located on the two areas he most likely would have touched, the holster and security strap. Additionally, as discussed previously, the lack of Thomas' DNA on the firearm and holster, without more, is insufficient to prove Thomas did not touch the firearm.

In hindsight, Shelton and the other deputies may have been able to successfully employ alternative tactics to gain control of Thomas without using deadly force. Five trained LASD deputies were tasked with detaining an unarmed 61-year-old man. However, the situation must be analyzed from the perspective of a reasonable officer and without the benefit of such hindsight. When Shelton saw Thomas' hand on Perales' firearm, he was forced to make an immediate decision in a tense and uncertain situation. While the holster's security hood provided a barrier to Thomas removing the firearm, Shelton's experiences led him to reasonably believe it could easily be unlocked, and Thomas' possession of the firearm would have put the deputies' lives in jeopardy. Furthermore, the presence of alternative non-deadly options does not make Shelton's decision to use deadly force unreasonable per se, as police officers are not required to exhaust every feasible alternative before using justifiable deadly force. *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 348. If Shelton acted honestly and reasonably in his decision to use deadly force, his actions are justified, and he acted lawfully.

The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507. It is not a defendant's burden to prove that force was necessary or reasonable. The available evidence suggests Thomas tried to obtain Perales' gun, and the People would be unable to prove otherwise. Therefore, the People would be unable to prove beyond a reasonable doubt that Shelton's belief that Thomas posed a threat of great bodily injury or death to himself and the other deputies present was unreasonable. As such, there is insufficient evidence to prove that his use of deadly force to stop the threat was not justified.

CONCLUSION

We find that although there may have been other reasonable options available to Deputy Ty Shelton at the time, there is insufficient evidence to prove he acted unlawfully when he used deadly force against Michael Thomas.