

**Non-Fatal Officer Involved Shooting of  
Wolfgang Mountford  
Santa Monica Police Department**

**Officer Eloy Rodriguez, #3911**

**J.S.I.D. File #19-0302**



**GEORGE GASCÓN**

**District Attorney**

**Justice System Integrity Division**

**June 21, 2022**

## **MEMORANDUM**

TO: CHIEF RAMON BATISTA  
Santa Monica Police Department  
333 Olympic Drive  
Santa Monica, California 90401

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

SUBJECT: Non-fatal Officer Involved Shooting of Wolfgang Mountford  
J.S.I.D. File #19-0302  
S.M.P.D. File #19-84369

DATE: June 21, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 14, 2019, non-fatal shooting of Wolfgang Mountford by Santa Monica Police Department (SMPD) Officer Eloy Rodriguez. We have concluded that insufficient evidence exists to prove beyond a reasonable doubt that Officer Rodriguez did not act in lawful self-defense when he fired his duty weapon.

The District Attorney's Command Center was notified of this shooting on July 14, 2019, at approximately 4:12 a.m. The District Attorney Response Team (DART) responded to the location, where they received a briefing and walk-through of the scene.

The following analysis is based on police reports, 9-1-1 calls, radio transmissions and records, body worn video (BWV), surveillance video, recorded interviews, crime scene photographs, ballistic reports, toxicology reports, and other evidence submitted to this office by SMPD Detective David Haro. Rodriguez's voluntary statement was considered in this analysis.

### **FACTUAL ANALYSIS**

On July 14, 2019, at approximately 1:19 a.m., a woman called 9-1-1 reporting two men arguing loudly outside her home, located on the 2000 block of 10<sup>th</sup> Street in the City of Santa Monica. The caller heard one of the men threatening to kill the other. [REDACTED] called 9-1-1 reporting the man was shouting and throwing objects. [REDACTED] called 9-1-1 reporting the man was banging on her fence, and she was concerned the man was going to jump over the fence into her yard.

Sergeant Carlos Jaen, who was wearing a full police uniform and driving a marked, black-and-white patrol vehicle, responded to the call. When Jaen arrived, he observed Wolfgang Mountford standing next to the open, driver's side door of a white Chevrolet Tahoe, yelling loudly into a cell phone. Mountford was wearing shorts and no shirt. Mountford told Jaen he was having an argument with a music promotor. Officers Eloy Rodriguez and Matthew Jones,

who were wearing full police uniforms and driving in a marked, black-and-white patrol vehicle, arrived shortly thereafter. Jones spoke to [REDACTED] and [REDACTED], who said Mountford was yelling as though he was under the influence of narcotics. With Mountford's permission, Rodriguez retrieved two black backpacks from the front seat of Mountford's Chevrolet.<sup>1</sup> Rodriguez located Mountford's identification inside the front pocket of the smaller black backpack.<sup>2</sup> Dispatch informed the officers that Mountford had a valid Oregon driver's license and did not have any warrants. Mountford told the officers he was going to return to Van Nuys. When Jones informed the reporting parties there was no basis to arrest Mountford at that time, they said they were concerned Mountford would return. Jones told them to call 9-1-1 if anything happened. Rodriguez briefly spoke to [REDACTED], who told him Mountford said, "Whoever turned off the light, I'm going to fucking kill you!" and was acting like he was under the influence of methamphetamine. Rodriguez told Mountford not to drive, and Mountford rode away on his skateboard. At approximately 1:56 a.m., Jaen, Rodriguez and Jones cleared the location to respond to another call.

Immediately after the officers drove away, Mountford returned and began causing a disturbance.<sup>3</sup> Several witnesses called 9-1-1.<sup>4</sup> Dispatch informed the responding officers that the callers reported Mountford was screaming he was the "son of Satan," threatened to burn their house down, and had thrown a garbage can at their house. At 2:04 a.m., Jones and Rodriguez returned to the location and observed Mountford tipping over a trashcan in the alley. At 2:07 a.m., the officers informed dispatch that Mountford was "moving trashcans around."<sup>5</sup> At approximately the same time, dispatch informed the officers that Mountford was attempting to enter a caller's gate from the alley. At 2:09 a.m., dispatch told the officers Mountford had punched in the caller's back gate.<sup>6</sup> The officers drove into the alley and saw Mountford run westbound. Jones drove around the block westbound on Grant Street where the officers saw Mountford. When Jones illuminated the patrol vehicle's takedown lights, Mountford ran eastbound past the patrol vehicle. The officers exited their patrol vehicle and Jones yelled at Mountford, who continued running northbound on 10<sup>th</sup> Street and westbound into the alley.<sup>7</sup>

Jones followed Mountford in the patrol vehicle and turned northbound into alley 8, where the officers observed Mountford crouched down behind the passenger side of a large, black Ford pickup truck parked parallel to several garage doors.<sup>8</sup> Jones parked next to the driver's side of the Ford. Rodriguez exited the passenger side holding his flashlight in his left hand. Rodriguez drew his handgun with his right hand and moved towards the passenger's side of the Ford where Mountford was crouching. Rodriguez recognized Mountford, who was wearing a shirt and carrying a backpack. Mountford suddenly stood up and ran at full speed directly towards

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<sup>1</sup> Rodriguez briefly scanned the interior of the Chevrolet with his flashlight and located the backpacks. Rodriguez briefly looked into the larger backpack, which was unzipped, but did not search the backpack.

<sup>2</sup> Rodriguez briefly opened the smaller backpack before Mountford directed Rodriguez specifically to the front, zippered pocket. Mountford did not otherwise allow Rodriguez to search either backpack.

<sup>3</sup> At some point, Mountford moved his Chevrolet to 10<sup>th</sup> Street and Pacific Street.

<sup>4</sup> Dispatch received calls from at least five different reporting parties after Mountford returned. Dispatch upgraded the call from a priority 3 to a priority 2.

<sup>5</sup> This was the officer's last transmission to dispatch before the shooting occurred.

<sup>6</sup> This was the last information dispatch relayed to the officers.

<sup>7</sup> In his statement, Jones stated he could not recall exactly what the officers yelled to Mountford.

<sup>8</sup> The truck was parked between 1 ½ and 2 ½ feet parallel to the garage door.

Rodriguez.<sup>9</sup> Rodriguez raised the handgun in his right hand and tried to grip the handgun with his left hand as Mountford quickly advanced towards him.<sup>10</sup> As Mountford approached Rodriguez with both hands outstretched in front of him, Rodriguez released his left hand from the handgun and held the handgun out to his right side with his right hand. When Mountford's left shoulder struck Rodriguez's left shoulder, Rodriguez rotated in Mountford's direction. As Mountford grazed past Rodriguez's left shoulder, Rodriguez fired one round from his handgun, striking the right rear portion of Mountford's skull. Mountford immediately fell to the ground.

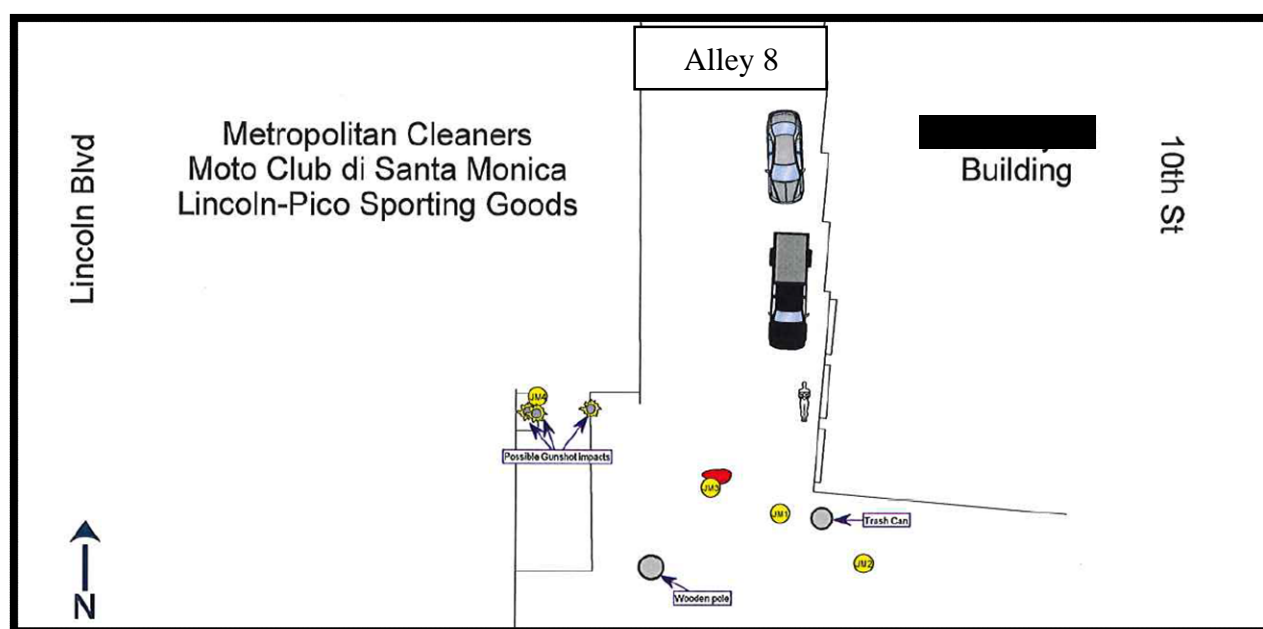


Diagram of the scene.

At 2:10 a.m., Jones requested a supervisor and additional units to assist and informed dispatch that an officer involved shooting had occurred. As Rodriguez attempted to apply pressure to the wound, Mountford became increasingly agitated and repeatedly tried to stand up. Additional SMPD officers arrived and attempted to render aid until the paramedics arrived. For over thirty minutes, SMPD officers and paramedics attempted to render aid to Mountford, who was uncooperative and began making threatening statements directed at Rodriguez. At 2:43 a.m., the Santa Monica Fire Department transported Mountford to UCLA Westwood Hospital.<sup>11</sup> During the transport, Mountford resisted medical treatment and made threatening statements directed at Rodriguez. At the hospital, Mountford continued to resist medical treatment but was eventually treated for a gunshot wound to his head. JSID independently reviewed Mountford's medical records.

<sup>9</sup> Mountford is six-feet-five-inches tall and 210 pounds. Rodriguez is six-feet tall and 190 pounds.

<sup>10</sup> In his voluntary statement, Rodriguez said he did not have time to give Mountford any commands.

<sup>11</sup> SMPD officers accompanied Mountford in the ambulance to the hospital. Mountford was not handcuffed or under arrest at the time. Mountford's spontaneous statements were recorded on BWV.

On July 15, 2019, Mountford was released from the hospital and placed under arrest for felony resisting a peace officer, in violation of Penal Code section 69.<sup>12</sup> On July 17, 2019, the Santa Monica City Attorney's Office charged Mountford in case 9AR22949 with one misdemeanor count of resisting a peace officer, in violation of Penal Code section 148(a)(1), and one misdemeanor count of vandalism, in violation of Penal Code section 594. On September 9, 2019, Mountford was convicted of one count of battery, in violation of Penal Code section 242.<sup>13</sup>

## Witness Statements

### ██████'s Statement

██████ told SMPD Officer Carlos Madrid that he was asleep on his couch when his wife woke him up, and he heard a man screaming outside. ██████ looked outside and saw Mountford yelling across the street. When a neighbor turned the porch light on, Mountford screamed, "You fucking call the cops, you will see what happens!" and made threatening statements directed at the neighbor. ██████ described Mountford's voice as "demonic" and his behavior as "terrifying." ██████ said Mountford was acting as though he was under the influence of "PCP." Three officers arrived and detained Mountford, who was "agitated but calm" while speaking to the officers. When ██████ told an officer they needed to arrest Mountford, the officer said they could not arrest him. Thirty seconds after the officers left, Mountford began screaming and making "wolf calls." ██████ looked out of his window, saw Mountford walking on the west side of 10<sup>th</sup> Street holding a skateboard, and heard a loud crashing noise. Mountford was swinging his skateboard around and tipping over trashcans. ██████ called 9-1-1. ██████ saw Mountford dragging a trashcan towards his neighbors' house across the street. Mountford began running northbound on 10<sup>th</sup> Street and westbound down the alley followed by a patrol vehicle. A few minutes later, Mountford came running northbound on 10<sup>th</sup> Street and went westbound down the alley followed by a patrol vehicle. ██████ went back to bed and heard a "bang" two to three minutes later.

### ██████'s Statement

On the night of the incident, ██████ told Madrid he was in his backyard when he heard Mountford screaming he was the "son of Satan" and was going to kill someone. ██████ heard the man yell, "I am going to kill you!" outside his house and believed the man was directing the threat towards them. ██████ looked out his front window and saw Mountford standing in front of his house. ██████ called 9-1-1. Police officers responded and spoke with Mountford, who left on a skateboard. Immediately after the officers left, Mountford returned and ██████ heard Mountford scream, "I'm going to fucking burn your house down!" ██████ called 9-1-1 again. ██████ heard a loud noise near his front door, heard someone pulling on the front gate and heard wood ripping. ██████ believed Mountford was trying to break into his property. ██████ saw that a piece of his front gate was missing and was concerned Mountford entered his courtyard. ██████ did not hear the shooting.

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<sup>12</sup> The District Attorney's Office referred the case to the Santa Monica City Attorney's Office.

<sup>13</sup> On August 11, 2020, Mountford filed a Federal civil case alleging violations of 42 U.S.C. section 1983 arising from this incident. The case has been settled. Wolfgang Mountford v. City of Santa Monica, et al., No. 2:20-cv-07220-MCS-E (C.D. Cal.).

The following day, ██████ was interviewed by SMPD Detective Nicole Murphy. ██████ said Mountford yelled, “You think you can call the police on me! I’m going to kill you!” when he returned after being released by the police. Mountford broke two wood panels and removed one, but a deadbolt prevented him from opening the gate. Mountford also tried to enter their side gate, which was deadbolted. When he was unable to get inside their property, Mountford threw a green trash can over their front gate and tried to throw a blue trashcan over the fence. ██████ and his wife were afraid Mountford was going to harm them. The next day, ██████ believed Mountford damaged the front left bumper of his vehicle, which was parked in the alley.

### ██████’s Statement

██████ told investigators he heard a man screaming outside his house, “Humans are useless! All your Instagram won’t save you!” in a “demonic” voice. After the police left, the man revved his engine, briefly left the area, and returned. ██████ heard the man yell, “I’m going to burn your house down! You’re all going to die!” before throwing trashcans against a neighbor’s fence. ██████ said the man was in “full attack mode” and thought he was going to break into someone’s home. ██████ saw the police return and heard the man yelling in the alley. ██████ did not witness the shooting. ██████ said the man’s behavior was “next level scary” and traumatized him and his wife.

### ██████’s Statement

██████ told investigators she heard a man screaming loudly outside her home and heard something hitting the side of her building. ██████ saw a man hitting the wooden fence and trying to pull the fence down. When ██████ told the man she was calling the police, he told her he did not care. Afterwards, ██████ saw a broken skateboard and an Angry Orchard beer can lying next to the broken fence. ██████ did not witness the shooting.

### Mountford’s Statements

While being transported to the hospital, Mountford spontaneously said, “Tell your officer whoever hit me, he’s going to get it back in return! I promise!... I’m not going to rest until he’s dead! I promise you!... If you were regular humans that hit me, I would have slaughtered you! [screaming] That was his only saving grace from me was that I knew he had a badge! [screaming] ‘Cause I knew if I would have picked him up and dropped him on the back of his fucking head, you would have shot me! You would have shot me out of self-defense!”<sup>14</sup>

On July 14, 2019, Detective Elias spoke with Mountford in the hospital.<sup>15</sup> Mountford said he was about to drive away after his initial encounter with the police, when an officer told him to take a walk. Ten to fifteen minutes into his walk, a car flashed its “high beams” at him. At first, Mountford did not realize it was a police car, since many cars in Oregon have “light bars” on them. Mountford started running and hid behind a trashcan when he realized it was the police. Mountford came out from behind the trashcan and was “just walk[ing] by” when he was hit with a baton or pistol whipped by an officer. Mountford said when he was lying on the ground, he

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<sup>14</sup> The statements were recorded on BWV.

<sup>15</sup> Mountford was not in custody at the time.

told the officer he could not breathe and had to “wiggle” his body to get the officer to move his knee off his spine. Mountford told Elias, “I can understand if I came running at him, and I had a weapon. [If] I was yelling and being vulgar, I can get it. ‘Dude’s going crazy!’ You guys deal with fucking crazy people all the damn time.... [people who] wouldn’t care to hurt another human being without a second thought. I get it. That’s not me. However, I was treated as though I was in that category.”

On July 15, 2019, Officer Trevor Smith and Officer Elaina Hassan were assigned to transport Mountford from the hospital to jail. Mountford ignored the officers’ directions and remained in bed for several minutes. When Smith attempted to handcuff Mountford, Mountford became agitated and started yelling at the officers. Mountford spontaneously said, “You guys let me go, and then fifteen fucking minutes later, I’m getting chased after you guys again, by another fucking cop car, and because I’m freaked out, I hide and I come out and I get hit in the head?”<sup>16</sup>

On July 15, 2019, Detective Murphy and Detective Richard Elias interviewed Mountford at the SMPD jail.<sup>17</sup> After waving his Miranda rights, Mountford said after the first contact with the police, he agreed to take a walk but was not intoxicated. After the officers left, Mountford told the neighbors, “Ha ha! You called the cops and nothing happened!” Mountford believed the neighbors were “hurt” by this statement and called the police again. When a car began following him, Mountford did not think it was the police, since he had just spoken to them and did not hear sirens or announcements. Mountford realized it was the police when they flashed the high beams in his direction. Mountford ran out from behind the trash can and saw the “Santa Monica Police” decal on the car.

Mountford said he did not run towards the officers or towards the police car, which was five to ten feet away from him. Mountford said an officer hit him on the head as he ran: “It was very quick. I thought I was going to get tased, because I thought I saw him pull something out... Initially, I thought it was a gun, and that’s what I thought I got hit with. He took it out to shoot me, so he hit me with his fucking gun... I saw they had something drawn, and I thought it was a Taser. I felt like I was going to get tased, and that’s when I got hit in the head.” Detective Elias asked Mountford about the disturbance call and the overturned trashcans. Mountford said that while he was walking in the area, he saw a tall Black man with dreadlocks acting aggressively and yelling. Mountford did not see what the man was doing and tried to avoid him.

### **Jones’ Statement**

On July 15, 2019, Jones provided a voluntary interview to investigators. Jones said when the officers initially encountered Mountford, Mountford was wearing shorts but no shirt, which Jones thought was odd due to the time of day. Jones spoke with several reporting parties, who said Mountford rattled their gate and threatened to kill them because they turned their lights on. After officers determined Mountford did not have any warrants, Mountford agreed to leave and rode away on a skateboard. Jones and Rodriguez returned to the location after they heard the broadcast reporting Mountford was tipping over trashcans, was attempting to open the reporting parties’ gate and threatening to burn their house down. When Jones drove into the alley, he

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<sup>16</sup> The statements were recorded on BWV.

<sup>17</sup> The statement was recorded on audio and BWV.

observed overturned trash cans. Jones saw Mountford, who was wearing a shirt and carrying a backpack, running westbound through the alley and then southbound. Jones drove around the block and drove westbound on Grant Street, where he saw Mountford duck behind a vehicle on the north side of Grant Street. When Jones illuminated the takedown lights, Mountford ran eastbound past their patrol vehicle. Jones and Rodriguez exited the patrol vehicle and yelled at Mountford, who continued running northbound on 10<sup>th</sup> Street. Jones believed Mountford was trying to elude them.

Jones and Rodriguez got back into the patrol vehicle and followed Mountford on 10<sup>th</sup> Street and northbound in alley 8. Jones saw Mountford standing between a sports utility vehicle (SUV) and a garage. Mountford ducked down behind the SUV as Jones parked in front of the SUV. Rodriguez exited the passenger side of the patrol vehicle and approached the SUV. Jones saw Mountford sprinting in Rodriguez's direction. Jones believed Mountford was going to physically attack Rodriguez, since Mountford could have run in the opposite direction behind the SUV. Rodriguez and Mountford were face-to-face in close proximity to each other. Jones did not see whether Mountford made physical contact with Rodriguez. As Jones was rounding the rear of the patrol vehicle to assist Rodriguez, he heard one gunshot. Jones did not see Rodriguez fire his weapon and did not hear whether Mountford or Rodriguez said anything to each other. Jones realized Mountford had been shot when he saw Mountford bleeding from the back of his head. Rodriguez applied pressure to the wound while Jones made the broadcast. Other officers arrived and took over rendering aid. Mountford was yelling profanities and did not seem to realize he had been shot.

### **Rodriguez's Statement**

On July 16, 2019, Rodriguez provided a voluntary statement to investigators. Prior to the first encounter with Mountford, Rodriguez received information from dispatch that two men were arguing and one man was trying to kill the other. When Rodriguez and Jones arrived, Jaen was talking to Mountford, who was sitting on the curb wearing shorts and no shirt. Due to the fact that Mountford was wearing small shorts, the officers did not check him for weapons. Mountford was cooperative but was making "odd statements." Mountford gave Rodriguez permission to retrieve two backpacks from his car to locate his identification, but was very specific about where Rodriguez could look in his backpack for identification. The officers admonished Mountford about the disturbance, and Mountford left the area on a skateboard.

While Rodriguez and Jones were responding to another call nearby, Rodriguez heard dispatch report the same person had returned to his car and was yelling; Rodriguez believed it was Mountford. Jones and Rodriguez returned to the area to try to observe Mountford's behavior. Rodriguez exited the patrol vehicle and heard what sounded like objects being overturned a block away. As Jones and Rodriguez drove towards the sound of the disturbance, dispatch informed them that Mountford was trying to open gates and was trying to "punch through" a door. When Rodriguez heard Mountford was trying to break into peoples' properties, Rodriguez thought Mountford's behavior was escalating and that he might be under the influence of narcotics. Rodriguez was concerned the officers would have to have physical contact with Mountford in order to stop his rampage and to detain him. When Jones pulled slightly into the alley and activated the takedown lights on the patrol vehicle, Rodriguez observed Mountford tip



over a trashcan. Rodriguez recognized Mountford and saw he was wearing a shirt and a backpack. Mountford ran in the opposite direction down the alley. Rodriguez saw strewn trash and a broken mirror in the alley. The officers circled the block and saw Mountford walking on the sidewalk. The officers illuminated their takedown lights again, and Mountford ran past their patrol vehicle in the opposite direction.<sup>18</sup>

Jones circled the block and drove westbound into the alley. As Jones turned northbound in the alley, Rodriguez observed Mountford crouched down behind a large pickup truck. Rodriguez was uncertain whether Mountford was reaching for something or was lying in wait preparing to attack the officers. Rodriguez noted Mountford had time to change, and he did not know whether Mountford had a weapon. Rodriguez exited the patrol vehicle holding his flashlight and unholstered his handgun. Rodriguez moved around the truck holding his weapon at low ready. Mountford suddenly charged at him at full speed from approximately twenty feet away. Rodriguez did not see anything in Mountford's hands but was concerned Mountford intended to hurt him, since Mountford could have gone in the other direction but ran directly towards Rodriguez even though his handgun was drawn. Rodriguez did not have sufficient time to re-holster his weapon and was concerned he would not be able to maintain control of his weapon if Mountford tried to take it from him. Rodriguez was unable to give Mountford commands because it happened quickly. As Mountford ran towards him, Rodriguez tried to aim at Mountford's chest. Rodriguez tried to move aside to avoid a full impact and being knocked backwards. Mountford brushed against Rodriguez and "shoulder-checked" his left shoulder within reach of Rodriguez's handgun. Rodriguez turned and "reacted" to the physical contact by firing one round from his handgun. Rodriguez said he fired his weapon because he believed Mountford was attacking him and was concerned for his and his partner's safety if Mountford was able to obtain his handgun. Mountford fell to the ground, and Rodriguez began rendering aid.

Rodriguez did not report any use of force to Mountford's rib area. [REDACTED]

## **Evidence**

### **Rodriguez's BWV**

Rodriguez's BWV is activated while he is seated in the passenger seat of the patrol vehicle.<sup>19</sup> The patrol vehicle drives eastbound on Grant Avenue, turns northbound onto 10<sup>th</sup> Street, turns westbound in the alley and then northbound in the next alley before parking next to the hood of a black Ford truck. Rodriguez exits the patrol vehicle holding a flashlight in his left hand and closes the door with his right. Rodriguez walks around the front of the truck towards a set of garage doors before quickly raising his right hand holding his handgun and turning towards his left. Mountford is standing upright near the driver's side door between the truck and the garage doors. Rodriguez begins raising his left hand towards the handgun as Mountford runs directly towards him. Rodriguez drops his left hand from the handgun, holds the handgun out towards

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<sup>18</sup> Their patrol vehicle was the only vehicle driving on the street at the time.

<sup>19</sup> There is no audio for the first two minutes of the video.

his right side with his right hand, and bends his left arm as Mountford rapidly advances. Mountford reaches both hands out in front of him as he approaches Rodriguez.<sup>20</sup>



Mountford reaching out in front of him as he approaches Rodriguez.

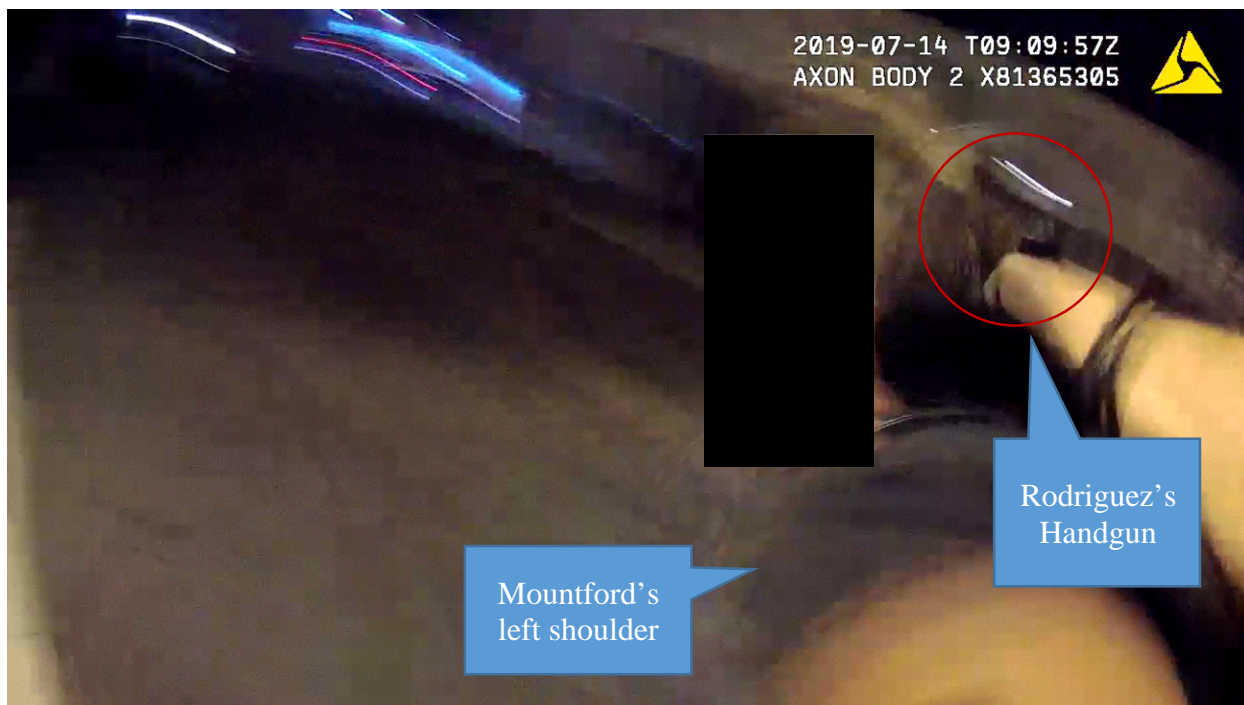
As Mountford gets closer to Rodriguez, Mountford's left elbow and black shirt block the camera's view. Rodriguez's upper torso shifts left in Mountford's direction.<sup>21</sup> Rodriguez raises the handgun with his right hand towards Mountford as Mountford is passing Rodriguez's left shoulder.<sup>22</sup>

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<sup>20</sup> Mountford does not appear to be holding anything in his hands at the time.

<sup>21</sup> From the BWV, it is unclear whether Rodriguez's leftward movement was caused by an impact.

<sup>22</sup> The exact moment when the handgun is fired is not discernable on the BWV, and there is no sound during this portion of the video. The time between when Rodriguez raises the handgun as Mountford is running towards him and the approximate time when the shooting occurs is fewer than two seconds.



Rodriguez holding the handgun as Mountford is passing Rodriguez's left shoulder.

Rodriguez's right arm follows through a swinging motion downward and to his left. Mountford immediately falls to the ground.<sup>23</sup> Jones approaches Mountford as Mountford is trying to stand. Rodriguez places his hands on Mountford's back to try to keep him from standing. Blood trickles down behind Mountford's left ear. Rodriguez stands over Mountford before lowering himself down and straddling Mountford's lower to mid-torso area.<sup>24</sup>

When Rodriguez's BWV audio begins, Mountford says, "You fucking hit me, man." Rodriguez tells Mountford to relax. Mountford says, "I don't even know what happened. All I was doing, I saw some dude fucking running around, I saw some lights, so I started running around. I didn't know what's going on." Rodriguez attempts to render aid and again tells Mountford to relax because he is trying to put pressure on the wound. Mountford responds, "You wouldn't have to put some pressure if you hadn't hit me in the first place, human!" Rodriguez replies, "Dude, you just charged right at me, okay? Relax." Mountford says, "I didn't charge at you, don't elaborate [unintelligible]... All I did was go around and you hit me, man." An officer tells Mountford to calm down and allow Rodriguez to apply pressure while they wait for an ambulance. Several officers arrive and take over rendering aid to Mountford. Rodriguez leaves the immediate area as Mountford continues yelling as the officers try to render aid.

## Other Evidence

SMPD criminalists located a bullet hole on the fence located on the northwest side of the alley.

<sup>23</sup> Mountford's right upper torso appears to make initial contact with the pavement.

<sup>24</sup> On Jones' BWV, Mountford can be heard asking Rodriguez, "Please take your knee off my back." Jones tell Mountford to stay down and relax. Rodriguez repositions himself and Mountford says, "There we go, that's better." Mountford does not otherwise complain of any injury or pain to his torso.





Location of bullet strike on the northwest fence.

An expended bullet was recovered inside a storage shed located behind the fence. Criminalists determined the bullet likely ricocheted off the pavement in the alley and traveled upward in a northwest direction through the fence. Criminalists could not identify the location of the bullet's initial impact on the pavement. An expended casing was recovered from the pavement on the east side of the alley.

Criminalists recovered Rodriguez's Smith and Wesson M & P 9mm semiautomatic duty weapon, which was loaded with one round in the chamber and 16 rounds in the magazine. Criminalists examined and test fired the handgun and determined the weapon to be functional. The investigation determined Rodriguez fired one round from his duty weapon.

Investigators located a folded wine bottle opener with a corkscrew and an extendible 1½ inch long foil cutter inside the backpack Mountford was wearing when the shooting occurred. A metal hatchet was recovered inside Mountford's vehicle. [REDACTED] Mountford's blood sample.<sup>25</sup>

### **Mountford's Facebook Posts**

On August 4, 2019, Mountford posted the following statement on his Facebook account in response to a SMPD press release regarding the incident:

Complete crap! I did create a disturbance, because some yuppy ass called the cops on me for being loud... I ended up going back and punching the guy's fence a few times and yelled... So gave the dude a REAL reason. I left, went on a walk and a few minutes later I felt like I was being watched. I look back and I see the front of a black SUV going really slow, and I felt like I was being followed and it sketched me out. I started walking faster and the SUV sped up, so I went into survival mode and ran down an alley to get away from what ever I felt the threat was. I hid behind a trash can and when the vehicle flashed on their high beams, I ran out from behind the trash can. At that point I saw a cop

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<sup>25</sup> The blood sample was obtained from Mountford by investigators on July 15, 2019, at 8:20 a.m.

(officer rodriguez) with a gun drawn and I finally saw the side of the SUV and realized it was Santa Monica PD. And I ended up getting shot in the back of my head!!! I didn't know that i was running from the police, because they made no attempt to identify themselves while chasing me...

## LEGAL ANALYSIS

A police officer may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. Penal Code section 835a. An officer "may use all the force 'that appears to him as a reasonable man to be necessary to overcome all resistance, *even to the taking of life*,' ... the resistance must be such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146 (quoting *People v. Bond* (1910) 13 Cal.App.175, 189-190). The officer may use no more force than would appear necessary to him as a reasonable person. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.

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. In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger the person perceived need not to have actually existed. A prior threat or harm to the person or others can be considered when determining whether a person's conduct and beliefs were reasonable. *Id.* A person is not required to retreat. He is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of death or bodily injury has passed. This is so even if safety could have been achieved by retreating. The People have the burden of proving beyond a reasonable doubt that the person did not act in lawful self-defense or the defense of another. *Id.*

In evaluating whether a police officer's use of 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 evaluation of reasonableness should look to "the facts and circumstances of each case, including the severity of the crime, the threat posed by the suspect, and whether the suspect is resisting or attempting to evade arrest." *Graham v. Connor* (1989) 490 U.S. 386, 396. "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 judgment—in circumstances that are tense,

uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 396-397.

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest. Penal Code section 834a. An assault is an unlawful attempt, coupled with the present ability, to commit a violent injury on the person of another. Penal Code section 240.

In a criminal action, evidence of the character or a trait of character in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Evidence Code Section 1101 if the evidence is offered by the defendant to prove conduct of the victim in conformity with the character or trait of character. Evidence Code section 1103.

There is insufficient evidence to prove beyond a reasonable doubt that Rodriguez was not reasonably in fear of imminent great bodily injury or death when he discharged his weapon. The witnesses and BWV support the conclusion that Mountford’s behavior was threatening and erratic before and after the shooting. Prior to the second encounter with Mountford, Rodriguez was aware of the initial threats Mountford made against the reporting parties, his threat to burn down their house and kill them in retaliation for calling the police, and his attempt to break into their property.<sup>26</sup> Rodriguez told investigators he believed Mountford’s conduct was escalating, thought Mountford may be under the influence of narcotics, and was concerned the officers would have physical contact with Mountford. When Rodriguez saw Mountford hiding behind the truck, he believed Mountford was lying in wait and may be planning to attack the officers. Considering Mountford’s threats to others, his violent behavior, evasive conduct and concealment behind the truck, and the fact that officers had not searched Mountford or the backpack he was wearing, it was reasonable for Rodriguez to draw his handgun when he exited the patrol vehicle. When Mountford suddenly charged directly towards him, Rodriguez was not required to retreat and was entitled to stand his ground and defend himself. Due to the short distance between them, Rodriguez did not have sufficient time to secure his handgun. Rodriguez told investigators he believed Mountford intended to attack him and was concerned Mountford would take his handgun and use it against him and his partner. From his vantagepoint, Jones believed Mountford intended to physically assault Rodriguez. Rodriguez fired his weapon when Mountford made physical contact with him.

In his statement to investigators, Mountford admitted knowing Rodriguez was a police officer before he ran out from behind the trashcan.<sup>27</sup> Mountford initially told investigators he saw Rodriguez holding a Taser and anticipated being tased. Later in his statement to investigators, as well as in his Facebook post, Mountford stated he saw Rodriguez holding a handgun. Instead of surrendering or running in the opposite direction, Mountford purposefully ran towards

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<sup>26</sup> Criminal threats are prohibited by Penal Code section 422 and are considered serious felonies pursuant to Penal Code section 1192.7(c).

<sup>27</sup> Although Mountford said he ran out from behind a trashcan, the BWV shows he was hiding behind the truck before the incident.

Rodriguez, striking Rodriguez with his shoulder. Although Mountford claimed he did not intend to assault Rodriguez, Rodriguez had no way of knowing Mountford's intentions.

Insufficient evidence exists to show that Rodriguez's belief he was being attacked by Mountford was unreasonable under the circumstances. Mountford made several inconsistent or false statements that could be used to undermine his credibility if he were to testify. Although a frame-by-frame review of the BWV shows Mountford appears to be passing Rodriguez when the handgun was likely discharged, there is insufficient evidence to prove Rodriguez's real-time reaction to the rapidly unfolding events was unreasonable. Based on the totality of the circumstances, there is insufficient evidence to prove beyond a reasonable doubt that Rodriguez did not act in lawful self-defense when he fired his duty weapon.

## **CONCLUSION**

Insufficient evidence exists to prove beyond a reasonable doubt that Rodriguez did not act in lawful self-defense.