

**Officer Involved Shooting of Mharloun Saycon
Long Beach Police Department**

Officer Vuong Nguyen, #5970

J.S.I.D. File #15-0662



**JACKIE LACEY
District Attorney**

**Justice System Integrity Division
July 28, 2020**

MEMORANDUM

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

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

RE: Officer Involved Shooting of Mharloun Saycon
J.S.I.D. File #15-0662
Long Beach P.D. File #15-76868

DATE: July 28, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office (LADA) has completed its review of the December 14, 2015, fatal shooting of Mharloun Saycon by Long Beach Police Department (LBPB) Officer Vuong Nguyen. It is our conclusion that the People cannot prove beyond a reasonable doubt that Officer Nguyen did not act lawfully in self-defense and defense of others at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on December 14, 2015, at 11:59 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to our office by LBPB as well as a use of force report provided by an expert retained by the LADA. No compelled statements, if any exist, were considered in this analysis.

FACTUAL ANALYSIS

Introduction

On December 14, 2015, at approximately 10:00 p.m., a 9-1-1 call was received by the City of Long Beach requesting police respond to a business, "Loof's Lite-a-Line" (Loof's), regarding an intoxicated man, later identified as Mharloun Saycon, who was brandishing a knife. Shortly after 10:00 p.m., LBPB Officers Vuong Nguyen and Robert Cruz were dispatched to the call and arrived at the scene.

Upon arrival, Nguyen and Cruz observed Saycon seated inside the business on a chair near the entrance to the building with a folded knife in his hands. They also observed approximately 15 to 20 patrons inside the business. Nguyen gave Saycon numerous commands to drop the knife, but Saycon did not comply. Saycon appeared to be under the influence of an unknown

intoxicant. After additional commands failed, Cruz deployed his Taser at Saycon, as did Nguyen, but both Taser deployments were ineffective. Cruz then struck Saycon with a police baton, but Saycon remained seated and did not drop the knife. While seated, Saycon opened the knife exposing the blade, at which point Nguyen fired multiple rounds from his service weapon at Saycon resulting in Saycon's death.

Location of Occurrence

The shooting occurred at Loof's, a gaming establishment located at 2500 Long Beach Boulevard in the City of Long Beach. The business is located on the east side of Long Beach Boulevard with an outdoor parking lot along the west and south sides of the business. The entire front of the business faces Long Beach Boulevard and consists of glass windows and entrance doors on the north and south ends.

The gaming area is a large open facility with three walking aisles and two rows of gaming tables. Table numbers 1-32 are located on the south side of the gaming area. Table numbers 17-32 are on the north side of the gaming area. Some of the interior walls and partitions are mirrored.



The interior of Loof's showing the north and south entrances.

Witnesses

Statement of Officer Vuong Nguyen

At the time of the incident, Nguyen was a 12-year LBPD veteran.¹ On December 14, 2015, at approximately 10:10 p.m., while working uniformed patrol, Nguyen was dispatched to Loof's regarding a person armed with a knife. According to the reporting party, Saycon appeared to be under the influence and brandished a knife when asked to leave the business. The knife was described as a "switch blade."

¹ Nguyen wrote a report after the incident and was deposed for the related civil case on August 15, 2017. Both statements were largely consistent with each other.

While en route to the location, dispatch advised that Saycon was scratching glass within the business with the knife, but had not attempted to stab anyone inside the business. Saycon was also reported to be waving the knife, causing customers to leave. Nguyen became concerned as it appeared that Saycon's actions were becoming more aggressive and he was frightening customers.

Upon arriving at the location, Nguyen parked his patrol vehicle and noticed another patrol vehicle, driven by Cruz, stop behind him. Both officers walked towards the business. As they approached the entrance, a man exited the south door, pointed inside the business and said Saycon was seated inside.

Nguyen walked to the north entrance and noticed Saycon sitting on a chair approximately 15 to 20 feet from the north door, slightly towards the center of the business. Saycon was facing westbound towards Long Beach Boulevard, with his back against some gaming machines.

Before opening the glass north door to the business, Nguyen drew his duty handgun from its holster and initially held it in "low ready position."² Nguyen was assessing the situation and formulating a plan on how to deal with Saycon. While standing outside the door, Nguyen noticed Saycon was still seated and mumbling something to himself. Saycon was holding a black folding knife with both hands resting on his lap.³ The knife appeared to be folded closed.

Nguyen glanced inside the business and noticed rows of gaming machines and approximately ten to 15 people scattered throughout the business. Fearing Saycon would stand up and attack the patrons inside, Nguyen opened the door slightly, pointed the gun at Saycon and gave him verbal commands to "Drop the knife!" and "Get on your knees!" Nguyen intended to prone Saycon on the ground, handcuff him and take him into custody, but Saycon did not comply. Saycon continued to sit in the chair with the knife in his hands and both hands resting on his lap. At one point, Saycon passed the knife from his right hand to his left hand while continuing to mumble to himself.

Nguyen suddenly noticed Cruz enter through the south entrance door and approach Saycon. Cruz was standing approximately 15 feet from Saycon when Nguyen heard the sound of a Taser being activated by Cruz. Nguyen redirected his attention at Saycon and noticed two probes strike him in the front torso area. Saycon had an angry facial expression and appeared to become agitated, but did not drop the knife. He pulled off the probes while holding the knife in his right hand. Saycon was wearing a thick jacket, which prevented the probes from penetrating deeply enough to create an effective Taser cycle.

While Saycon was still removing the probes from the Taser, Nguyen holstered his handgun and removed his own Taser from its holster. Nguyen aimed his Taser at Saycon's abdomen area and activated it for one cycle. Nguyen was standing approximately ten to 15 feet from Saycon at the time. The probes struck Saycon's jacket in the chest area. Again, the Taser deployment was ineffective and Saycon removed the prongs while continuing to hold the knife in his right hand.

² "Low ready" means Nguyen pointed it at a 45-degree angle towards the ground in front of him.

³ Nguyen perceived that Saycon began to focus on and glare at him.

Cruz then rushed in and struck Saycon's left body area with his baton. Once again, this action had no effect on Saycon and he continued to sit in the chair with the knife in his hand. Saycon appeared to become angrier and more agitated. Based on his angry facial expression and heavy breathing, Nguyen believed Saycon was preparing to attack them. As Cruz stepped back, Nguyen observed Saycon trying to unfold the knife and lock the blade open.⁴

Saycon leaned forward slightly using both hands and wrists to push downward on his lap, as though he were trying to brace himself to stand up. Based on Nguyen's training and experience, he was aware that the threshold distance where a person armed with a knife can rush and stab an officer before the officer can draw and fire is approximately 20 feet.⁵ As such, Nguyen believed Saycon posed an immediate threat to both him and Cruz. He believed Saycon was not merely playing with the knife, but attempting to open it. He feared Saycon would lunge at Nguyen or Cruz and stab them.

Believing it would take Saycon only three to four steps to close the distance with either officer from where he was seated, Nguyen dropped his Taser, drew his handgun from the holster, and aimed it at Saycon.⁶ Nguyen was aware that his backdrop was the gaming area, but knew any shots he fired would travel in a downward angle. Saycon moved his back and shoulder slightly forward, causing Nguyen to believe that he was trying to stand up. Saycon was still trying to open the knife and partially exposed the blade. Nguyen believed Saycon was going to attack so he fired three to four rounds at Saycon from his handgun. Saycon continued to open the knife and was still trying to stand up. His body was bent slightly forward and both his wrists were pressed downward on his knees, indicating he was attempting to stand.

Nguyen was in "shock" and in a "surreal-like state" believing Saycon was still attempting to attack them even after being shot. At this point, the knife was now locked in the open position with the blade fully exposed. The first shots appeared to be ineffective, but Saycon was moaning. Saycon still had the knife in his right hand, gripping the handle with the blade pointing upward, revealing the knife to have a "tanto" type blade.⁷ Believing Saycon would fully stand up and attack either officer, Nguyen fired three to four more rounds at Saycon, causing him to drop the knife and tip over to his left side, falling off the chair.

⁴ Nguyen owns various folding knives and is familiar with their handling and function. In a folding knife, when open, the blade is normally locked in place and requires either a thumb or index finger to release a latch to unlock the blade and close the knife. Saycon's movements indicated to Nguyen that he was trying to unfold the knife and lock the blade open.

⁵ The "21 Foot Rule" is a phrase that was coined after Salt Lake City Lieutenant Dennis Tueller shared his studies about defending against edged or blunt trauma weapons in an article published in the March 1983 issue of SWAT magazine. In the article, Tueller proposed that there was a point where the distance was too close for an officer to be able to respond and defend against a charging subject. He opined, based on his studies, that it was entirely possible for a suspect armed with an edged weapon to successfully and fatally engage an officer armed with a handgun within a distance of 21 feet. The "21 Foot Rule" was thus born and soon spread throughout the law enforcement community. It eventually became a police doctrine taught to officers throughout the United States by use of force instructors during their officer safety, firearms and deadly force training.

⁶ Based on measurements from the scene and video evidence, Nguyen was eleven feet from Saycon when he drew his gun.

⁷ The tanto knife has a high point with a flat grind, leading to an extremely strong point that is perfect for stabbing into hard materials.



Photograph of Saycon's knife recovered at the scene.

Immediately after discharging his duty weapon, Nguyen ordered the customers and employees to exit the business through the south door. Another unit arrived and assisted Cruz in handcuffing Saycon and administering life-saving efforts, while Nguyen requested fire personnel respond to the location.

Statement of Officer Robert Cruz

At the time of the incident, Cruz was a nine-year veteran of the LBPD.⁸ On December 14, 2015, Cruz was dispatched to Loof's regarding a subject with a knife. While en route, dispatch advised that the knife was a switchblade and that the suspect had brandished it in front of staff at the location.

Cruz arrived at the location a short time after Nguyen arrived. He parked his vehicle along the east curb of Long Beach Boulevard and walked towards the south entrance door. A Loof's customer outside the door indicated where Saycon was. Upon entering, he observed Saycon sitting in a chair inside the business near the entrance, facing westbound. Saycon was holding a black object in his hands, which were resting on his lap. Cruz was unable to tell what the object was since he was 35 to 40 feet from Saycon at that time.

Cruz noticed 15 to 20 patrons inside the business. There were multiple patrons sitting behind Saycon in the gaming area, with the nearest person approximately ten to 15 feet away. The patrons continued playing at the tables, which made the situation more dangerous for everyone present.

Cruz observed Nguyen open the north entrance door, take a shooting stance and point his gun at Saycon. Nguyen immediately yelled at Saycon to "Drop the knife!" in a very loud and clear voice. Saycon continued to sit in the chair and refused to drop the knife. Nguyen gave additional commands to drop the knife and ordered Saycon to drop to the ground, but Saycon did

⁸ Cruz wrote a report after the incident and was deposed for the related civil case on July 5 and July 7, 2017. The report and deposition statements were largely consistent with each other.

not comply. He continued to look at Nguyen with his hands in his lap, holding the knife in a closed position.

Cruz was approximately 15 to 20 feet away from Saycon concealed behind a large object just south of where Saycon was seated. Since Saycon refused to drop the knife, Cruz drew his Taser from its holster. To protect all parties involved and prevent Saycon from causing bodily harm or killing someone, Cruz approached Saycon, who was still seated in the chair, and deployed his Taser at him from a distance of approximately ten feet. The Taser completed its full five-second cycle with no effect on Saycon. The probes appeared to have made contact with Saycon, since he pulled the wires away from his body, but did not come into contact with his skin due to the thick jacket he was wearing.

Cruz believed Saycon was under the influence of an unknown substance. His movements were slow and uncoordinated, his face was flushed, he was slurring unintelligible words and swaying from side to side as he sat in the chair.

After the first Taser deployment failed, Cruz removed the cartridge from his Taser, dropped it on the floor and placed the Taser in the back right pocket of his pants. He did not have an extra cartridge and was unable to use his Taser a second time. Cruz heard Nguyen deploy his Taser, again with no effect on Saycon. Saycon pulled the wires away from his body, but was unsuccessful in removing them and eventually stopped pulling on them. Saycon then held the knife in his left hand, resting on his left leg.

In an attempt to disarm Saycon, prevent him from using the knife and protect all the parties inside the business, Cruz removed his baton from his duty belt. As Saycon was looking at Nguyen who was giving him commands, Cruz approached Saycon and struck him on his left hand one time with his baton. The baton strike was unsuccessful and Saycon remained in the chair with the knife in his hand.

As Cruz began to back away from Saycon, he could see Saycon become upset. Saycon made a grunting noise, took a breath, said something to himself and opened the knife. The knife was approximately five to seven inches in length with a fixed blade. Saycon was holding it in his left hand and it was resting on his left leg, pointed in Nguyen's direction. Cruz placed the baton back in his baton ring and was about to unholster his duty handgun when Nguyen shot Saycon six to eight times with his firearm. Nguyen was approximately ten feet away from Saycon when the shots were fired. After being shot, Saycon leaned forward and fell out of the chair.

After the shooting, another officer arrived at the location. He and Cruz placed Saycon in handcuffs and administered life-saving measures until the Long Beach Fire Department arrived.

Statement of Witness One

On December 14, 2015, Witness One was at Loof's seated at a gaming table when she noticed Saycon.⁹ He was stumbling behind her and stopped to speak to Witness Two. Saycon was showing Witness Two a ten to 12-inch army knife, with the blade exposed. After speaking to

⁹ Witness One gave a statement after the incident and was deposed for the related civil case on November 30, 2016.

Witness Two, Saycon put the knife away and walked to the vending machines located in the front of the business, near the entrance, and took the knife out again.

Witness One told Witness Seven to call the police for the safety of the patrons and then she exited the business. While outside, she saw Nguyen and Cruz arrive and told them what she had observed inside the business. Saycon was seated in a chair near the entrance and Witness One pointed him out to the officers. Cruz went to the south entrance door and Nguyen went to the north entrance door. Witness One remained outside the building, facing the north entrance area.

Nguyen ordered Saycon to drop the knife in a calm manner. Saycon said, "No." Nguyen repeated his command three times in a louder voice. Saycon remained seated and shook his head. Saycon held the knife in the open position and was manipulating it with both hands, looking at it and turning it.

Nguyen tased Saycon, but Saycon removed the darts and was unaffected. Cruz approached Saycon and struck him on the left wrist with a baton, but it had no effect on him either. Saycon still had the knife in his left hand. His arm was resting on the armrest to the chair and the blade was pointed downwards. As Cruz backed away after striking Saycon, Nguyen fired his handgun multiple times. When the first shot was fired, Witness One was looking at Nguyen, but turned to look at Saycon. Saycon remained seated in the chair after the initial shots. Witness One stated, "It was like a movie. He was Superman." It appeared as though the shots were not penetrating, but Saycon eventually dropped the knife. Nguyen was approximately 15 to 20 feet from Saycon when the shots were fired.

During the entire incident, Saycon was seated in the chair. He never attempted to get up from the chair and never raised the knife in a threatening manner at the officers.

Statement of Witness Two

Witness Two was a former Loof's employee who continued to frequent the location and was present at the time of the incident. An IT technician, he assisted LBPD detectives by downloading the Loof's surveillance videos, and saw the videos during that process.¹⁰ Witness Two arrived at Loof's at approximately 9:00 p.m. He was playing at a game table when Saycon approached and engaged him in conversation. Saycon was friendly and polite, but appeared to suffer from some form of mental illness or post-traumatic stress disorder. He had difficulty communicating and his sentences were somewhat incoherent. Saycon told Witness Two he was in the military and recently returned from Afghanistan. He also showed Witness Two his army tattoos.

During their conversation, Saycon displayed a small pocketknife, but did not do so in a hostile or threatening manner. Staff at the location became upset because they believed Saycon damaged a machine with the knife, but Witness Two did not see Saycon vandalize anything while they were

¹⁰ Witness Two gave a statement to investigators on the night of the incident and later was deposed on December 8, 2016 for the related civil proceeding. As noted below, there are some significant differences between the two statements, the physical evidence in the case, and the observations of other witnesses and investigators.

speaking. At one point, Saycon was dancing to the music playing at the location while opening and closing the knife.

Saycon eventually walked away from Witness Two and went to the front of the business where he sat in a chair located near the entrance. While seated, he folded the knife and placed it on his lap.¹¹ Sometime thereafter, Nguyen appeared at one of the entry doors and began giving Saycon commands to drop the knife.¹² Saycon was holding the knife in his hands “loosely” as if “twiddling his thumbs” on his lap. Saycon appeared to be looking in Nguyen’s direction, but did not comply. Witness Two believed that because of his mental illness, Saycon could not understand what Nguyen was saying and remained seated in the chair.



Photo depicting Witness Two’s location at the time of the shooting.

Nguyen opened the door wider and pointed a Taser at Saycon. Cruz entered the business from the other entry door. Cruz also gave Saycon verbal commands to drop the knife and pointed a Taser at him. Both officers deployed their Tasers, but they had no effect on Saycon.¹³ Cruz then approached Saycon and hit him on the side of his head one time with a baton.¹⁴ After giving Saycon at least six more commands to drop the knife, Nguyen shot Saycon with his handgun.¹⁵

¹¹ In his deposition, Witness Two stated he could see that Saycon’s eyes were closed and his head was tipped back as if he were napping.

¹² In his deposition, Witness Two stated that Nguyen initially put one foot inside the door, crouched, and assumed a firing stance with his “pistol,” and yelled “Drop the F’ing knife” a few times in an aggressive manner.

¹³ In his deposition, Witness Two said that it was Nguyen who first fired a Taser, and that Saycon’s eyes remained closed as if napping while the officers fired their Tasers at him.

¹⁴ In his deposition, Witness Two said that the blow made a loud “resonating crack” which forced his head to the right. “It appeared that he was knocked unconscious by the... blow... and his head stayed that way for the rest of the incident.” He believed Saycon’s eyes began to twitch. Photos of Saycon’s head taken at the scene do not show any blunt force trauma. The Coroner’s examination shows no internal or external injuries or hemorrhage to his head. In his deposition on July 28, 2017, Dr. Poukens described a superficial linear abrasion on Saycon’s right forehead that does not correspond to Witness Two’s claim of a blow to the side of the head which would force his head to the right.

¹⁵ In his initial statement, Witness Two also said that “the first officer,” [Nguyen], fired three to four shots, and “the second officer,” [Cruz], fired two to three shots at Saycon. In his deposition, Witness Two said Nguyen fired “eight rounds” without warning.

Saycon was sitting in the chair throughout the entire incident and never lunged at the officers or attempted to get up from the chair. He appeared “completely gentle and tranquil at all times after he became seated.” He still held the knife loosely in his hands in his lap, with no blade exposed, as the shots were fired.¹⁶ After the shooting, officers approached and handcuffed Saycon, whereupon he slumped over and fell off the chair into a potted plant.

Statement of Witness Three

On December 14, 2015, Witness Three was at Loof’s seated at a gaming table when he observed Saycon etching on one of the front windows to the business with a knife. Witness Three was approximately ten feet away from Saycon when he made this observation. Witness Three told a male employee to call the police, but the employee said he was already calling them.

Witness Three walked to the south entry door and stood in the doorway to prevent Saycon from leaving. When the police arrived, Nguyen approached the north entrance and Cruz approached the south entrance. Saycon was sitting in a chair near the entrance, playing with the knife, which was open.

The officers told Saycon to drop the knife several times, but he did not comply. Nguyen spoke in a soft voice and then began shouting to drop the knife. The officers tased Saycon, but he removed the darts and “did not care about it.” The officers gave Saycon several more commands and then Nguyen shot him three to four times. Saycon remained seated the entire time until he was shot. The distance between Saycon and Nguyen at the time of the shooting was fewer than ten feet.¹⁷

¹⁶ Visible in the surveillance videos, Witness Two was approximately 15 feet behind the location where Saycon was seated when the shooting occurred. Saycon’s back was against a partition separating the front lobby area from the gaming tables. According to Witness Two, he could see Saycon’s hands through a mirror and in reflections from the front windows. As part of the investigation, detectives returned to Loof’s on May 24, 2016, to view Witness Two’s vantage point from where he was seated at the time of the shooting, which was determined by Witness Two’s own statement as well as surveillance video footage from the night of the incident. The detectives positioned themselves in the same area as Witness Two during the same approximate time as the shooting, but were unable to determine what mirror Witness Two looked through when he observed Saycon’s hands just prior to the shooting. The only mirrors in close proximity to Witness Two were directly behind him along the west wall of the location and did not provide a view of the area where Saycon was seated at the time of the shooting. Moreover, the reflection from the front windows did not provide a view of that area either. The area was not otherwise visible from the location where Witness Two was seated. As discussed further below, Captain Greg Meyer (LAPD, retired) reviewed this case as a use of force expert and visited the scene and stood in the area that Witness Two said he was standing during the incident. An investigator was placed in the position Saycon was seated in. Using the mirrors and the west-facing front window reflections, Meyer reported he could not view the front of the body of the person seated in Saycon’s place.

¹⁷ Witness Three gave a statement on the night of the incident and was later deposed on May 10, 2017. At his deposition, Witness Three added that he saw Cruz hit Saycon on the hand where the knife was, but that had no effect. After the baton strike, Witness Three walked out so as not to see any more violence. Upon hearing shots, he turned back to see Saycon falling slowly out of the chair.

Statement of Witness Four

On December 14, 2015, Witness Four arrived at Loof's at approximately 10:00 p.m.¹⁸ She parked her vehicle in front of the business in a designated disabled parking stall. While seated in her vehicle, she observed Nguyen arrive at the location. She could see inside the business through the front windows and saw Saycon seated in a chair near the entrance, holding a knife in his hand. Nguyen opened the door to the business and stated, "Drop your knife, sir." Saycon appeared to be in a daze and "just kept sitting there, didn't try to get up or nothing," but he "was doing something with the knife." Witness Four was not sure whether the blade was exposed.

Nguyen was approximately 15 feet away from Saycon. After several commands to drop the knife, Nguyen deployed his Taser, but it had no effect on Saycon. A second Taser deployment was attempted, but again it had no effect except that after the officers tased him, he twitched. Nguyen then fired two to three rounds from his firearm at Saycon.¹⁹ The chair where Saycon was seated "flipped over" and Saycon fell to the ground. Prior to being shot, Saycon "never did act like he was going to get up. He was just holding the knife in his hand."

Statement of Witness Five

On December 14, 2015, Witness Five was employed at Loof's as the cashier and manager. At approximately 9:50 p.m., Witness Seven told her Saycon was walking around the business showing customers a pocket knife. Witness Five decided to speak to Saycon before taking any further action. Saycon was seated in a chair near the front entrance to the business, muttering to himself, when Witness Five asked him to step outside with her. He stood, walked ahead of her, and held the door open for her. Once they were outside, Saycon opened the knife, exposing the blade, and held it in an "aggressive pose." Witness Five feared for her safety and said, "Never mind, I don't want to talk to you." She then entered the building and asked Witness Seven to call the police.

Saycon entered the building with the knife still open. He began to scrape the mirrored surface behind the chair where he had been seated. He walked around next to customers who were seated in that area. Witness Five told the customers that the police had already been called. The police arrived approximately five minutes later.

Saycon was seated in the chair when Nguyen entered through the north entrance. Nguyen shouted, "Put the knife down! Put the knife down!" When Saycon did not respond to his commands, Nguyen deployed his Taser at Saycon. Witness Five could not see Saycon when he was tased, but believed he fell to the ground. Nguyen then fired six rounds at Saycon. After Saycon was shot, Cruz, who entered through the south entry door, struck Saycon with a baton. In a subsequent interview, Witness Five conceded that her view of the officers' uses of force was blocked by the wall between Saycon's chair and herself and that she had made assumptions about the shooting that she was not able to view directly.

¹⁸ Witness Four's deposition testimony on July 7, 2017 was consistent with her initial statement, except as noted below.

¹⁹ In her deposition for the civil matter related to this incident, Witness Four stated she did not see if Cruz used his Taser or baton on Saycon but thought he fired his gun after Nguyen fired on Saycon.

Statement of Witness Six

Witness Six stated that she observed Saycon holding the knife with the blade open and tapping his other hand with the knife. The actions scared her, and she was in fear for her safety. Saycon then sat in a chair that faced Long Beach Boulevard. At that point, she could only see the tip of his head. She observed the two officers enter. Nguyen told Saycon at least four times to drop the knife. She could not observe what Saycon was doing. Cruz hit Saycon with his baton. Nguyen used his Taser on Saycon. She could not see how Saycon reacted. Nguyen drew his handgun and shot Saycon four to five times. From her point of view, she saw the tip of Saycon's head fall over.

Statement of Witness Seven

Witness Seven was employed at Loof's as the shift manager on December 14, 2015. At approximately 10:00 p.m., Witness Seven observed Saycon seated at table 17 opening and closing a black folding knife, which had a four to five-inch blade. Witness Seven approached Saycon and asked him to put the knife away. Saycon closed the knife, put it in his right front pants pocket and walked to the men's restroom.

Approximately two minutes later, Saycon exited the restroom and spoke to Witness Two, who was seated at a gaming table. While they were speaking, Saycon removed the knife from his pants pocket, at which point Witness Seven approached Saycon and asked him to leave the premises. Saycon walked toward the exit, but stopped and began to scratch a mirror located at the northwest area of the lobby with the knife.

Saycon was making patrons uncomfortable so Witness Seven spoke to the manager, Witness Five, and advised her of the situation. Witness Five indicated she would speak to Saycon. A short time later, Witness Five asked Witness Seven to call the police. Witness Seven called the general dispatch number and remained on the phone with the dispatcher until the officers arrived.

Witness Seven could not see Saycon from his vantage point when the officers arrived, but heard the officers ordering Saycon to drop the knife and saw one of the officers deploy his Taser at Saycon. Witness Seven could only see one of the officers from where he was standing, which was approximately 30 feet away from Nguyen. Witness Seven then heard four gunshots.

When Witness Seven was deposed for the related civil case he added that he could see the officer walking backwards as he fired his gun and could see smoke coming from the gun. The rest of his view of Saycon was blocked by the wall as Witness Seven was towards the rear of the establishment when the officers arrived. He could not see Saycon until Witness Seven went to the front and saw him on the ground. Witness Seven surmised that if Saycon got up from his chair he would have seen him appear over the wall.²⁰

²⁰ Witness Seven was deposed for the related civil proceeding on November 21, 2016. At that proceeding, he indicated that he thought the detectives were trying to get him to change his answers during his initial interview. JSID personnel were present for that recorded interview. In reviewing the recording, it is unclear to this author what questioning Witness Seven found to be suggestive.

Statement of Witness Eight

On December 14, 2015, Witness Eight was at Loof's seated at a gaming table when he heard Nguyen enter the building and order Saycon, who was seated in a chair near the entrance, to "Drop the knife!" Witness Eight had seen Saycon earlier that evening in the gaming area "poking" the glass on one of the tables with a knife, while listening to music and mumbling to himself.

Nguyen gave Saycon several additional commands to drop the knife, but Saycon did not comply. There were tables obstructing Witness Eight's view of Saycon, but he could partially see Saycon's body.²¹ Witness Eight observed two officers, Nguyen to the right (north) of Saycon and Cruz to the left (south). After giving numerous commands, Cruz tased Saycon, but Saycon was unaffected and removed the darts with his hands. Nguyen then tased Saycon, but again Saycon removed the darts. Cruz subsequently struck Saycon with a baton and Witness Eight heard the sound of metal hitting the ground. Witness Eight assumed Saycon dropped the knife, but could not see Saycon's hands at that time, nor did he see an object fall to the ground. Five to ten seconds later, Nguyen fired approximately six rounds at Saycon, causing him to fall to the ground.

Statement of Witness Nine

Witness Nine stated that Saycon was acting crazy. She was afraid of Saycon and moved away from him. She observed two officers enter the location. She heard both officers say, "Drop the knife!" The "Hispanic officer" [Cruz] used his baton on Saycon. She heard gunshots. She left the location.

Statement of Witness Ten

Witness Ten stated that Saycon was "flashing" a knife, and he believed Saycon had mental health issues. Saycon was talking to himself and showing the knife to no one in particular. LBPD officers arrived, and he heard them tell Saycon three times, "Drop the knife" with no response from Saycon. He heard the sound of the Taser being deployed [by Cruz], and heard the officers again tell Saycon three times to drop the knife. He did not hear any verbal responses from Saycon. A few seconds later, he heard six gunshots. Nguyen fired the shots.²² Witness Ten's view of Saycon was obscured by a wall, so he could only see the officers. He estimated that the officers were three to five feet in front of Saycon. He was upset by the shooting and felt it was excessive.

Statement of Witness Eleven

Witness Eleven heard the officers repeatedly tell Saycon to drop the knife, and both used their Tasers on Saycon to no effect. Witness Eleven said she did not see the shooting, and she did not see how Saycon ended up on the ground; but then she said that Nguyen shot Saycon while he

²¹ Witness Eight was unable to see the knife's position as Saycon's back was toward him. Witness Eight's observations were based on reflections in the glass window.

²² At a second interview, Witness Ten was unable to specify which officer fired.

was on the ground. In the same interview, she stated that the first time she saw Saycon was after the shooting, when she was leaving the business. Witness Eleven said she was “in her own little world,” and she did not know why the police had been called.

Statement of Witness Twelve

On December 14, 2015, Witness Twelve arrived at Loof’s at approximately 10:00 p.m. He observed Saycon seated at a gaming table, talking to himself and holding a knife. Saycon got up from the table and later sat in a chair while holding the knife. The knife was approximately five to six inches and appeared to be open.

Witness Twelve saw the police arrive. Nguyen stood at the north door and Cruz went to the south door. Both officers had their guns drawn and ordered Saycon to drop the knife. Both officers tased Saycon and Cruz struck Saycon with a baton. Both officers told Saycon to get down. Nguyen then shot Saycon five to six times. Witness Twelve believed Cruz fired at Saycon as well.

Statement of Witness Thirteen

Witness Thirteen observed Saycon in possession of a knife and talking to himself. She was scared and tried to ignore him, but she could not. Witness Thirteen heard Saycon repeatedly mumble words to the effect of, “I’m gonna kill some bitch.” Saycon was scratching the table with the knife. She thought he was mentally impaired and she feared she would be stabbed. Witness Thirteen moved to another gaming table. She observed two police officers arrive and order Saycon, who was sitting in a chair, to drop the knife. Her view of Saycon was obstructed and she could not actually see his response. One of the officers struck Saycon with a baton. Witness Thirteen heard the sound of six gunshots and immediately hid under the table.

Statement of Witness Fourteen

Witness Fourteen noticed Saycon holding an open knife and was scared for her safety. She told Witness Seven to call the police. Saycon sat on a chair near the front entrance. Two officers entered, one from the north door and one from the south door. She heard an officer say, “Drop the knife” a few times. Nguyen used his Taser on Saycon. Cruz struck Saycon with a baton. Nguyen then dropped his Taser and drew his handgun while yelling at Saycon to drop the knife. Nguyen fired what sounded like four gunshots at Saycon.

LBPD Dispatch and Radio Calls

On December 14, 2015, at 10:08:14 p.m., Witness Seven called the LBPD requesting their assistance at 2500 Long Beach Boulevard. He advised the operator there was a man waving a knife and refusing to leave.

An LBPD operator radioed the call and advised as follows:

Operator: Suspect is a male Asian, 40's, in black and white jacket. Possibly 647f.²³ Pulled a knife out when the staff asked him to leave and now he's refusing to leave.

And this is going to be to Loof's.

And the 417 is going to be a switch blade.²⁴

The suspect wasn't waving it at anyone. Just kind of waving it around and is now scratching the glass with it.

Weapons Evidence

Nguyen was armed with a Kimber Custom CDP .45 caliber semiautomatic pistol. The pistol had a seven round capacity magazine. After the incident, the firearm was examined and contained six cartridges in the magazine, and one in the chamber.²⁵

Saycon's knife was recovered from the scene on the ground northeast of Saycon's body. It was a black steel Master folding knife with a three-and-three-quarter inch blade.

Taser Download Printouts

Nguyen and Cruz were both armed with Model X26 Tasers. Cruz activated his Taser one time. Nguyen activated his Taser twice. The times indicated for arming,²⁶ activation,²⁷ and making safe²⁸ in the downloaded data do not correlate exactly with the timer on the video footage. However, as indicated below in the "Surveillance Video Timeline," by comparing the time between deployment events in the downloads with actions visible in the videos recovered from the scene, the actions the officers took with their Tasers can be placed in sequence with other events.

Notably, Cruz armed his Taser for eleven seconds, activated for a single, standard five-second deployment, and then made it safe nine-and-a-half minutes later (indicating Cruz did not turn the Taser off until well after the shooting incident). Nguyen armed his Taser one second prior to activating it. He then held the trigger down for twelve seconds (seven seconds longer than a standard five-second cycle), released the trigger, and then immediately reactivated for a standard

²³ "647(f)" refers to the California Penal Code section for Public Intoxication.

²⁴ "417" refers to the California Penal Code section for brandishing a weapon.

²⁵ Nguyen indicated he conducted a tactical reload during the incident and dropped the empty magazine on the ground. Nguyen also stated his firearm had a full magazine with seven live rounds prior to the shooting. Eight casings and three rounds were recovered from the scene. An additional five rounds were recovered at autopsy, which indicates he started with one additional round in the chamber and fired eight rounds.

²⁶ "Arming" a Taser means turning it on so that it is ready for use.

²⁷ "Activating" a Taser means firing it. A standard activation runs for a 5-second cycle.

²⁸ A Taser is "made safe" when it is turned off so that it is no longer ready to be activated.

five-second cycle. It was not made safe until four-and-a-half minutes later, several minutes after Nguyen dropped the Taser on the ground and drew his handgun.²⁹

Surveillance Video Timeline

Surveillance video was obtained from various cameras located inside Loof's. The following activity was captured on video:



- 10:01:14 p.m.: Saycon is standing and leaning over a chair between two patrons.
- 10:01:28 p.m.: Saycon appears to reach into his right jacket pocket and retrieves something. He then makes hand gestures as if he is speaking to himself or someone else.
- 10:01:45 p.m.: Saycon is waving an object around in front of him with his right hand.
- 10:02:06 p.m.: Saycon is waving an object around in front of him with his left hand.
- 10:02:12 p.m.: Saycon walks toward the north entrance.
- 10:03:38 p.m.: Saycon sits down in a chair near the north entrance.³⁰

²⁹ As discussed further, below, Captain Greg Meyer (LAPD, retired) reviewed this case as a use of force expert and commented in his report that “in stressful situations such as this one, it is not unusual for officers to be unaware that they held the trigger down beyond the normal five-second cycle, and to be unaware of the number of activations they made.”

³⁰ Saycon is not visible on the video while he is seated in the chair.

- 10:08-10:12:34 p.m.: Saycon is standing with his back toward the north entrance, appearing to move his hands against a glass partition.
- 10:12:34 p.m.: Saycon (who had been standing facing east) turns to the right and faces west as he sits down in the chair.
- 10:13:12 p.m.: Cruz enters the south door and walks several steps north.
- 10:13:22 p.m.: Nguyen opens the north door and looks inside.
- 10:13:27 p.m.: Nguyen remains in the doorway and draws his handgun to low-ready.
- 10:13:29 p.m.: Nguyen points toward Saycon with his left hand.
- 10:13:40 p.m. Cruz approaches Saycon and fires his Taser as Nguyen enters the building and provides lethal cover by pointing his handgun at Saycon.
- 10:13:45 p.m.: Nguyen holsters his handgun and draws his Taser.
- 10:13:47 p.m.: Nguyen takes a step toward Saycon and fires his Taser
- 10:13:55 p.m.: Cruz puts his Taser away.
- 10:13:57 p.m.: Nguyen takes two steps toward Saycon approximately ten seconds into the twelve-second Taser cycle.
- 10:13:58 p.m.: Nguyen suddenly backs up a few feet north as Cruz approaches Saycon during Nguyen's twelve-second Taser cycle and strikes Saycon one time with his baton, then immediately retreats.
- 10:13:59 p.m.: Nguyen suddenly moves a step backwards (north) then a quick step to his left (east) at nearly the same time he releases the Taser trigger and immediately reactivates it.³¹
- 10:14:00 p.m.: Nguyen drops his Taser (with the Taser still running through its standard five-second cycle) and draws his handgun.
- 10:14:01 p.m.: Nguyen aims his handgun at Saycon.
- 10:14:03 p.m.: Nguyen fires eight shots in approximately seven seconds, then moves backwards (north), off screen.

³¹ This activation is undetectable on the video; however, comparing the Taser download printout and the timeline established by the video, Nguyen must have activated his Taser for the five-second cycle immediately at the end of the twelve-second cycle that started at 10:13:47, with no gap between the cycles, per the Taser download.

Autopsy

On December 17, 2015, Deputy Medical Examiner Vadims Poukens, M.D., performed a post-mortem examination of Saycon's body. Dr. Poukens observed ten gunshot wounds and ascribed the cause of death to multiple gunshot wounds. The following is the entry and direction of each wound:

- Gunshot Wound #1 to the right arm posterior/lateral surface, two and a half inches above the elbow, with a back to front, right to left, upward direction.
- Gunshot Wound #2 to the right arm medial/posterior surface, one inch above the elbow, back to front, right to left, downward.
- Gunshot Wound #3 to the right arm posterior/lateral surface, one inch above the elbow, with a back to front, right to left direction.
- Gunshot Wound #4 to the right forearm posterior/lateral surface, two inches above the elbow, with a back to front, right to left, downward direction.
- Gunshot Wound #5 to the right chest, with a front to back, right to left and probably downward direction.
- Gunshot Wound #6 to the right nipple, with a front to back, right to left direction.
- Gunshot Wound #7 to the right chest with a front to back, right to left and slightly downward direction.
- Gunshot Wound #8 to the right chest, with a front to back and right to left direction.
- Gunshot Wound #9 to the right epigastrium with a front to back, right to left and slightly upward direction.
- Gunshot Wound #10 to the right abdomen with a front to back, right to left and slightly upward direction.³²

On October 4, 2017, Dr. Poukens was interviewed by personnel from the LADA's Office and investigators from the LBPD. The purpose of the interview was to discuss the trajectory of the gunshot wounds as they relate to the position of Saycon and Nguyen at the time of the shooting. Dr. Poukens stated that the wounds were consistent with a subject that was somewhat stationary since all of the wounds were in the same general area. However, although the wounds are not indicative of any radical movements by Saycon at the time of the shooting, they are not inconsistent with Saycon being seated, starting to stand or standing at the time of the shooting. Any of those scenarios is possible based on the wounds. Poukens further explained that the angle of the trajectory would be based on Saycon's position when the shots were fired. The trajectory of Saycon's wounds indicate he was not turning left or right, but could have been leaning in either direction. Poukens lastly stated he could identify at least six separate gunshots based on the entries.

The wound paths penetrated various internal organs including the heart, but not the spinal cord. At the deposition for the related civil case, Dr. Poukens explained that the fatal wounds to Saycon's heart would have caused him to lose consciousness "in a few minutes." Dr. Poukens was not asked to elaborate on possible relative positions of Saycon's right arm and torso. The

³² The gunshot wounds are arbitrarily numbered for identification and do not indicate the sequence in which they were sustained. Dr. Poukens did not distinguish between entry wounds and possible re-entry wounds.

wound paths around Saycon's right elbow follow upward, downward, and horizontal trajectories, indicating his elbow was probably bent during the volley of shots. From the total shot count and number of entry and exit wounds, it is evident that two rounds passed through Saycon's right arm before entering his torso. The wound paths into his torso also follow upward, downward, and horizontal trajectories. Therefore, the possibility cannot be excluded that as the volley of shots began, Saycon was leaning his torso forward, with his right elbow flexed, and his right hand near or on his knees, and that before the volley ended, his weight had shifted back into the seat of the chair with his torso angling slightly back more than initially.

A toxicology analysis revealed Saycon had the presence of methamphetamine and amphetamine³³ in his system at the time of his death.

Use of Force Expert

This office retained former Los Angeles Police Department Captain Greg Meyer to conduct an independent assessment of the use of force involved in this incident. Meyer was a commanding officer at the Los Angeles Police Academy when he retired in 2006 and is credentialed as a Certified Force Analyst by the Force Science Institute. Meyer is also a member of the Faculty Advisory Committee of Americans for Effective Law Enforcement (AELE), a member of the review panel for AELE's Monthly Law Journal, and served on the AELE's faculty as a use of force instructor for over ten years. Since 1989, Meyer has worked as a litigation expert on more than 300 civil, criminal, and administrative cases throughout the United States, giving opinions both in favor of and against law enforcement officers.

After reviewing all the reports, witness interviews and depositions, audio and video recordings, photographs taken in the matter, and making a nighttime visit to the scene, Meyer prepared a 25-page report documenting his conclusions. That report was provided to JSID on October 11, 2018.

With respect to Nguyen's use of deadly force, Meyer summarized his findings in a cover letter accompanying his report, stating that the use of force "reasonably conformed to police policy, police training, and the law as it is taught to police officers." He emphasized "that this is a close call because of the uncontroverted evidence that Mr. Saycon had not actually risen to his feet before the shooting." Meyer opined that with respect to the officers' interactions with Saycon prior to the use of deadly force, "application of modern 'de-escalation' tactics may or may not have resulted in a non-shooting outcome of this incident." His further in-depth analysis contained within the report, however, indicates that the shooting was not an unreasonable use of deadly force.

Having reviewed the video of the shooting and events that preceded it, as well as the witness statements regarding the incident, Meyer analyzed the need for deadly force in light of several factors. These factors included the level of threat or resistance presented by Saycon, the imminence of any threat to officers or danger to the community, the potential for injury to officers or others, the risk should Saycon escape, the time available for Nguyen to make a decision, the availability of other resources, the seriousness of the suspected offense committed

³³ Amphetamine can be a metabolite of methamphetamine.

by Saycon, Nguyen's training and experience, the proximity or access of weapons to Saycon, and environmental factors.

Meyer noted in his analysis, "several significant limitations" of video evidence, including: the fact that a video may not capture the view of the involved officer, video may capture events and objects the officer did not see, video may not capture events and objects the officer did see, video does not capture objects and movement blocked from the camera lens, video may document very different lighting conditions than the human eye, and video does not take into account the bio-mechanical, physiological and psychological aspects a human being may experience under stress. The latter can include effects on perception during fear events that can change: focus and attention; interpretation of contextual cues; audio, visual and time distortions; memory formation/storage/recall, and other factors that will affect how different witnesses perceive and recount traumatic events. Additionally, exposure to videos of police use of force incidents can cause negative emotional reactions in viewers that can affect recall.

Meyer concluded with regard to Nguyen's incident report, later deposition, and the statements of other witnesses that his "deposition testimony was very consistent with his written report, especially regarding the articulation of his fears" and that although "witnesses' statements varied widely" and "no witness was in position to have the point of view of Nguyen," nevertheless, "several witnesses confirmed key statements of the officers regarding the moments leading up to the shooting." Meyer notes in his "experience in reviewing more than 70 shootings... that even trained police officers do not often correctly estimate the number of shots fired in an incident." He also noted that "in stressful situations such as this one, it is not unusual for officers to be unaware that they held the[ir Taser] trigger down beyond the normal five-second cycle, and to be unaware of the number of activations they made."

Having considered all of these factors, Meyer concluded that Nguyen's actions as seen on the surveillance video were consistent with his having observed a threat posed by Saycon. Meyer first outlines officer training regarding when deadly force may be used. Officers are taught that "reasonable fear" is a "controlled and legitimate fear" and "a mechanism that is necessary for officer safety based on perceived circumstances." Reasonable fear can result from:

- A sudden or erratic movement by a subject
- The sight of a weapon in a subject's possession
- The knowledge that person is in danger of bodily harm
- A sudden sound produced outside of the officer's field of vision
- Unresponsive, unexpected response to the officer's action.

Officers are trained that they may use deadly force "to protect oneself or others" when they have an objective and reasonable belief that someone "is in imminent danger of death or serious physical injury based upon the totality of the facts known to the officer at the time."

Meyer noted that Nguyen "stated and testified that he thought Saycon was getting up from the chair preparatory to attack himself or ... Cruz with the open knife."

With regard to whether Nguyen’s fear of imminent, serious injury was reasonable, specifically, Meyer notes, “Nguyen’s sudden move backwards away from Saycon (see video file Nguyen OIS Surv. Video 3 at 10:13:59), indicating that Saycon was doing something different that caused Nguyen reasonable fear.” It was at this point that Nguyen dropped the still-activated Taser, unholstered his firearm, and fired seven shots in eight seconds while Saycon remained upright in the chair before the open knife fell to the ground. Meyer concluded that the backwards move corresponds to Saycon opening the knife and Nguyen perceiving that Saycon was beginning to stand up to assault him or Cruz.

LEGAL ANALYSIS

Use of Force to Effect an Arrest

A peace officer who has reasonable cause to believe that a person has committed a public offense may use reasonable force to effect the arrest, to prevent escape, and to overcome resistance.³⁴ Arrestees do not have a right to hinder or resist being arrested. If a person knows, or should know, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force to resist such arrest.³⁵ It is a crime to resist, obstruct, or delay a peace officer in the discharge, or attempt to discharge, any duty.³⁶

Self-Defense

In California, a conviction for murder requires that the defendant kill a person with “malice aforethought” and without lawful excuse. CALCRIM No. 520; Penal Code §187. “Malice aforethought” means either an express intent to kill or the knowing commission of a deadly action with conscious disregard for human life. CALCRIM No. 520.

California law permits any person to use deadly force in self-defense or in the defense of others if that person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; *See also* 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. 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; *See* Plumhoff v. Rickard (2014) 134 S.Ct. 2012, 2022 (if a shooting is justified, officers need not stop shooting until the threat has ended). Actual danger is not necessary to justify the use of deadly force in self-defense; if the person’s beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 3470.

If a person actually believes that deadly force is necessary for self-defense or in defense of another, but that belief is unreasonable, the killing is partially justified and the killer may not be convicted of murder; however, he may be convicted of voluntary manslaughter. Penal Code §

³⁴ California Penal Code § 853a.

³⁵ California Penal Code § 834a.

³⁶ California Penal Code § 148.

192(a); CALCRIM No. 571; *See also* People v. Blakeley (2000) 23 Cal.4th 982, 999; In re Christian S. (1994) 7 Cal.4th 768; People v. Flannel (1979) 25 Cal.3d 668; People v. Barton (1995) 12 Cal.4th 186, 199.

When assessing the reasonableness of the use of deadly force, a jury must “consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with a similar knowledge would have believed.” CALCRIM No. 505. “Although the belief in the need to defend must be objectively reasonable, a jury must consider what ‘would appear to be necessary to a reasonable person in a similar situation and with similar knowledge.’” People v. Humphrey, *supra*, 13 Cal.4th at 1082-83. This rule allows a defendant to present evidence of his past experiences to both: 1) explain how they impacted his actual, subjective, perception of danger, and 2) to help the jury understand the objective reasonableness of that belief from the defendant’s perspective. *See* People v. Sotelo-Urena (2016) 4 Cal.App.5th 732 (allowing defense evidence of a homeless person’s exposure to, and fear of, violence on the streets in a murder prosecution); People v. Humphrey, *supra*, 13 Cal.4th 1073 (allowing defense evidence of domestic violence and its effects in a murder prosecution). This enables a jury who is assessing the conduct of a law enforcement officer “to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation – but this is not the same as following a special ‘reasonable police officer’ standard.” People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146.

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

The test of whether the officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others.” Munoz v. City of Union City (2004) 120 Cal. App.4th 1077, 1102. “Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” People v. Collins (1961) 189 Cal.App.2d 575, 589.

The Supreme Court in Graham held, “[D]etermining whether the force used to affect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.” The Graham court also held that “the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application” instead “its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” Graham v. Connor, *supra*, 490 U.S. 386, 396. In Mattos v. Agarano, the Ninth Circuit Court of Appeals wrote, “Ultimately, the

most important Graham factor is whether the suspect posed an immediate threat to the safety of the officers or others. Mattos, 661 F.3d 433 (9th Cir. 2011) (en banc).

The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507. Thus, to bring a murder charge against a defendant in the face of a claim of self-defense, the prosecution must be able to prove beyond a reasonable doubt that the killer did not actually believe that the decedent posed an imminent threat when the defendant killed him. To bring a charge of voluntary manslaughter, the prosecution must be able to prove beyond a reasonable doubt that the killer's belief in the need for self-defense, though honest, was not objectively reasonable at the time of the killing.

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.

A. Did Officer Nguyen actually believe that deadly force was necessary for self-defense or in defense of another?

In this case, Officer Nguyen was responding to a call requesting assistance with a man who exhibited a knife upon being asked to leave the premises. The man was also vandalizing property and frightening customers. Upon arrival, Nguyen observed Saycon seated near the entrance with a knife in his hand. According to Nguyen and Cruz, the knife was in a closed position, but Saycon was manipulating it while holding it with both hands on his lap. Saycon appeared to be under the influence and there were ten to 15 other patrons inside the premises at the time, behind Saycon in the gaming area. Fearing Saycon would stand up and attack one of the patrons, Nguyen drew his firearm and pointed it at Saycon as Nguyen stood at the north entrance.

Nguyen and Cruz both immediately began giving Saycon commands to drop the knife and get on his knees, but Saycon made no attempts to comply. The officers subsequently employed less-lethal force, two Taser deployments and a baton strike, in order to get Saycon to drop the knife and safely subdue him, but these efforts were ineffective.

In their detailed statements regarding the incident, Nguyen and Cruz largely corroborate one another. However, several witnesses observing the incident from various vantage points, provide differing accounts with respect to some of the salient details. Since individuals witnessing an incident do not always perceive it in the same manner, it is not surprising that there are various accounts, descriptions and characterizations of what occurred.

Nguyen stated that after the first Taser deployment, Saycon had an angry facial expression as he pulled off the Taser probes and appeared to become agitated. Nguyen further stated that after Cruz struck Saycon with the baton, Saycon appeared even angrier, was breathing heavily and began to open the blade to the knife. Cruz stated that after striking Saycon with the baton, Cruz

began to back away from Saycon and he could see Saycon become upset. Saycon made a grunting noise, took a breath, muttered something to himself and opened the knife. Saycon was holding it in his left hand and it was resting on his left leg, pointed in Nguyen's direction.

All the witnesses agree that the officers gave Saycon numerous orders to drop the knife, but Saycon was not compliant. They also agree that both officers deployed their Tasers, but it had no effect on Saycon and that Cruz struck him with a baton to no avail. Witness Three stated Saycon pulled the darts out and "didn't care about it."

Witnesses One, Three, and Twelve all indicate that the knife was in the open position while Saycon was seated in the chair during the encounter with police. Witnesses One, Three, and Four also describe Saycon manipulating the knife in some manner while seated. While these witnesses do not specify at which point the knife came to be in the open position, their statements are consistent with both officers' accounts indicating Saycon opened the knife while seated after less-lethal means had been employed and failed. Moreover, it is not unreasonable to believe that Saycon would have reacted angrily or aggressively and opened the knife following the Taser deployments and baton strike, despite the officers' commands to drop the knife. He behaved similarly when he opened the knife and aggressively pointed it at Witness Five when she asked him to accompany her outside prior to the officers' arrival, causing her to fear for her life and re-enter the business.

In addition, the surveillance video time stamps establish that the amount of time that elapsed from the time the officers first appear on the video at 10:13:14 to the first shot being fired at 10:14:01 is less than one minute. In that time, commands were given, Tasers were deployed, a baton strike was used and the shooting occurred. Nguyen describes observing Saycon make movements indicative of an attempt to stand up while holding the knife in his hand after he was struck with the baton, causing him to fear for his own safety and the safety of others. Witnesses One, Two, Three, and Four indicated Saycon never got up or attempted to get up from the chair. However, Witness One stated she was looking at Nguyen when the initial shot was fired and subsequently turned to look at Saycon. Thus, it is likely she would not have observed such movements. Moreover, the investigation brought into question whether Witness Two was able to observe Saycon at all prior to the shooting, including his demeanor, since there was no mirror or other reflection which would have given him a view of Saycon while seated in the chair.

Given the amount of activity occurring in a short lapse of time, the stress of an event of this nature and the fact that Nguyen described only a slight movement indicative of an attempt to stand from a seated position, this discrepancy between the witnesses' statements and that of Nguyen is insufficient to establish Nguyen did not make the observations he described. In addition, the trajectory of the gunshot wounds is not dispositive one way or another with respect to Saycon's movements immediately preceding the shooting, since they could have been sustained while Saycon was seated, starting to stand or standing.

Lastly, there is no dispute that Nguyen and Cruz were within 20 feet of Saycon when the shots were fired. Based on Nguyen's training and experience, he believed it would take Saycon only three to four steps to close the distance with either him or Cruz from where he was seated. This belief that Saycon was within the threshold distance where he could stab him, Cruz or other

patrons, coupled with the fact that Saycon refused to comply and opened the knife after several failed attempts to disarm him, supports the conclusion that Nguyen actually and honestly believed he or others were in imminent danger of death or great bodily injury at the time he fired his weapon. This honest and actual belief precludes a prosecution for murder.

B. Was Officer Nguyen's belief in the need to use deadly force for self-defense or in defense of another objectively reasonable?

The question remains whether Nguyen's belief in the need for self-defense and/or defense of others was objectively reasonable under the circumstances. Would it appear to be necessary to a reasonable person in a similar situation and with similar knowledge?

An argument can be made based upon the statements of several witnesses that Saycon may have remained seated throughout the entire encounter and certainly had not charged at the officers, and therefore the shooting was premature. However, several factors weigh against this argument. Saycon appeared to be under the influence and did in fact test positive for amphetamine and methamphetamine. He refused to leave the business and was brandishing a knife in the presence of others causing them fear. He refused to comply with verbal commands. He proved resistant to less-lethal means to disarm and detain him. There were patrons in close proximity who were at risk if Saycon charged in their direction, which was away from the officers, leaving the officers in a position to attempt to stop an armed moving subject against the backdrop of an occupied game room. After the Taser deployments and baton strike, Saycon became visibly angry, increasingly agitated and began breathing heavily, according to the officers. Most significantly, he opened the knife from a closed position. This action alone, occurring in response to two police officers with their guns drawn in his direction, giving him commands to drop the knife, after two Taser deployments and a baton strike, would cause a reasonable person in a similar situation to believe that Saycon had no intention to surrender and was preparing to strike at one of the officers or turn his aggressions towards one or more patrons.

Although Saycon had not yet stood up, a reasonable person with similar knowledge as to the amount of time it takes for a person with a sharp-edged weapon to charge at an individual from a distance of 20 feet, could reasonably believe in the necessity to use deadly force to prevent a potentially deadly assault in this situation. Furthermore, the trajectories are consistent with Saycon sitting with his right elbow bent and his hand on his knee, with his torso leaning forward at the beginning of the volley, and his weight settling back into the seat of the chair before the end of the shooting sequence. As such, a reasonable trier of fact may find that, having attempted other non-lethal options available to them at the moment, Nguyen's decision to use deadly force was reasonable to prevent Saycon from assaulting him or others with a deadly weapon.

Therefore, under the totality of the circumstances, the People cannot prove beyond a reasonable doubt that Nguyen's belief in the need for self-defense was not objectively reasonable at the time of the shooting, thus precluding a prosecution for voluntary manslaughter.

CONCLUSION

Based on the foregoing, we find that Officer Vuong Nguyen had an honest belief in the need for self-defense and defense of others when he used deadly force against Mharloun Saycon. We further find that there is insufficient evidence to prove beyond a reasonable doubt that Officer Nguyen's decision to use deadly force was not objectively reasonable. We are closing our file and will take no further action in this matter.