

**Fatal Officer Involved Shooting of Jimmy Briggs Jr.
Gardena Police Department**

**Officer Peter Graffeo, #107916
Officer Humberto Ruvalcaba, #112777
Detective Edward Wenke, #111804**

J.S.I.D. File #17-0099



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

September 14, 2022

MEMORANDUM

TO: CHIEF MICHAEL SAFFELL
Gardena Police Department
1718 West 162nd Street
Gardena, California 90247

CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: Fatal Officer Involved Shooting of Jimmy Briggs Jr.
J.S.I.D. File #17-0099
L.A.S.D. File #017-00023-3199-013
G.P.D File #17-883

DATE: September 14, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 16, 2017, fatal shooting of Jimmy Briggs Jr. by Gardena Police Department (GPD) Officers Peter Graffeo and Humberto Ruvalcaba, and Detective Edward Wenke. We have determined that insufficient evidence exists to prove that Officers Graffeo and Ruvalcaba committed an unlawful assault when they fired their duty weapons. We have further determined that insufficient evidence exists to prove that Detective Wenke committed an unlawful homicide when he fired his duty weapon.

The District Attorney's Command Center was notified of this shooting on February 17, 2017, at approximately 1:15 a.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Los Angeles County Sheriff's Department (LASD) then-Lieutenant Joe Mendoza.

The following analysis is based on reports and other materials, including recorded interviews, 9-1-1 calls, body-worn video (BWV), dash camera videos, video surveillance recordings, and radio communications submitted to this office by LASD Homicide Bureau. No compelled statements, if they exist, were considered in this analysis.

FACTUAL ANALYSIS

On February 16, 2017 at approximately 10:00 p.m., Jimmy Briggs, [REDACTED], and [REDACTED] were gambling at Larry Flynt's Lucky Lady Casino on Rosecrans Avenue in the City of Gardena.¹ Briggs and [REDACTED] came together in [REDACTED] black Mercedes; [REDACTED] arrived separately in his silver Chevrolet Malibu. While they were gambling, [REDACTED] and [REDACTED] engaged in a verbal argument over a perceived slight. They argued in the casino for a few minutes before [REDACTED] left the casino and went to the parking lot, where he sat in his car. [REDACTED] was upset and was yelling and using profanity as he left the building.

Several minutes after [REDACTED] left the casino, [REDACTED] followed him out to the parking lot. [REDACTED] and [REDACTED] continued their verbal altercation and [REDACTED] took off his shirt. Briggs trailed behind [REDACTED] and tried to break up the argument.

The argument attracted the attention of [REDACTED], a security guard at the casino. [REDACTED] watched [REDACTED] and [REDACTED] go to their respective cars. [REDACTED] opened his trunk and [REDACTED] got out and acted as if he were going to physically fight [REDACTED]. [REDACTED] broadcast his observations to other security officers, requested assistance, and approached the men to tell them they had to leave. In response, several other security officers came running into the parking lot. [REDACTED] told the men to leave, and Briggs told [REDACTED] that they were "going to leave right now." [REDACTED] entered his car and started to pull out of the parking lot. [REDACTED] and Briggs entered [REDACTED] Mercedes and prepared to leave as well.

As the security officers were running toward [REDACTED] and [REDACTED], Gardena Police Department (GPD) Officer Peter Graffeo was on patrol and driving east on Rosecrans Avenue. Graffeo apparently saw the security officers and, at 10:27:21 p.m, he broadcast his observations to the GPD dispatcher: "We have – uh – it looks like security is chasing somebody over in the Lucky Lady parking lot." Graffeo then drove past the casino, made a U-turn on Rosecrans Avenue, drove back to the casino, and entered the parking lot. By the time Graffeo entered the parking lot, [REDACTED] was exiting the parking lot in his Chevrolet Malibu. Graffeo blocked [REDACTED]'s car and activated his patrol car's emergency lights. [REDACTED] backed his Mercedes out of the parking spot, then, apparently having seen the traffic stop, drove into an adjacent spot.

[REDACTED], another security officer, responded to the parking lot before GPD officers arrived and observed part of the altercation between [REDACTED] and [REDACTED]. [REDACTED] heard [REDACTED] state that [REDACTED] and Briggs were going to shoot [REDACTED] and that [REDACTED] was going to "catch a fade," or fight them. After the men entered their respective cars to leave, [REDACTED] watched as [REDACTED] was stopped in his car by Graffeo's police car. [REDACTED] then walked toward [REDACTED] Mercedes. [REDACTED] and Briggs exited the Mercedes and walked toward [REDACTED] while saying, "I thought you told us to leave?" [REDACTED] noticed Briggs stopped and started walking back toward the Mercedes. A moment later, he heard the sound of "metal on concrete." He shone his flashlight at Briggs, who was reaching under the front tire of a car, and told Briggs to "Leave it right there!" and to "Stop reaching!" Briggs responded, "I'm

¹ [REDACTED] and [REDACTED] identify themselves as "god-brothers" and have known one another since they were children. [REDACTED] told investigators Briggs was someone he "gamble[s] with." [REDACTED] told investigators he did not know Briggs and had just met him the night of the incident.

getting my money!” while he was reaching under the car. ██████████ and his supervisor, ██████████, were within a few feet of Briggs when they heard a gunshot as Briggs was reaching under the car. Briggs then stood up and ran at a full sprint away from the officers with both hands in his “hoodie,” appearing to hold something in the front pocket. Approximately one minute and six seconds elapsed from when Graffeo activated the emergency lights on his patrol car to stop ██████████ in the parking lot and the moment Briggs fired a round.

Officer Jasmine Zaragoza arrived at the casino and parked her patrol car next to Graffeo’s patrol car just before Briggs fired his gun. She exited her patrol car, heard the gunshot, and broadcast over the radio, “Shots fired.” After Briggs fired his gun, he ran west through the parking lot and between a group of parked white vans. Dash camera video shows Graffeo looking in Briggs’ direction as Briggs ran westbound in the parking lot.

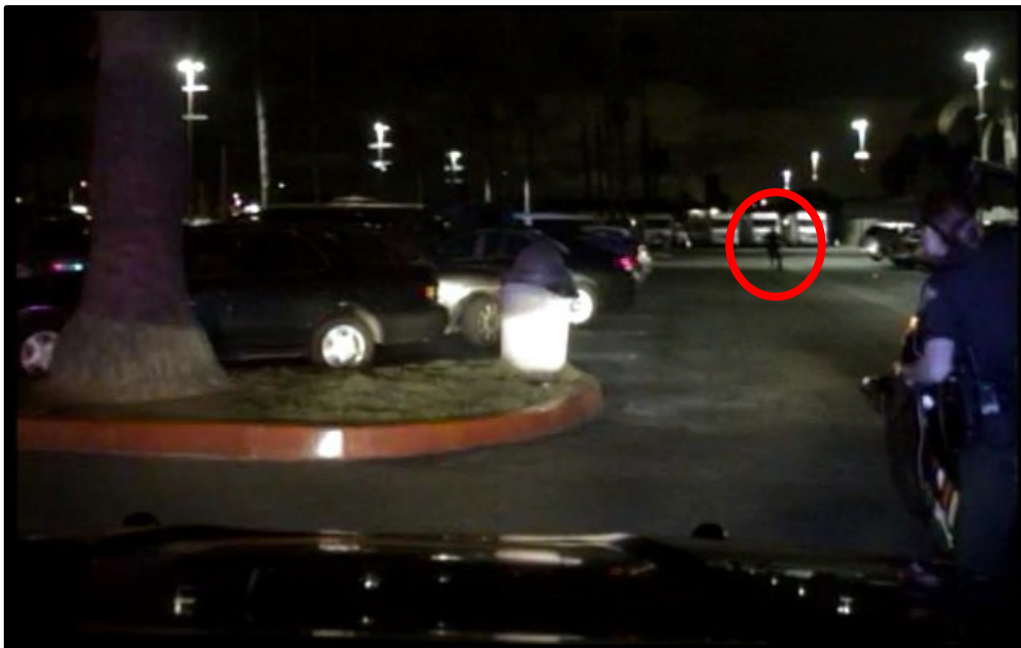


Figure 1: Still from Graffeo’s patrol car, with Zaragoza in the foreground. Briggs ran west, away from the officers, and between several panel vans that were parked in the western third of the parking lot.

Briggs discarded two handguns over the north wall of the parking lot, jumped a fence on the western edge of the parking lot onto Budlong Avenue, and ran toward Rosecrans Avenue. The handguns were located and retrieved by officers after the officer involved shootings that followed. No evidence or radio communications exists showing that anyone saw or had any knowledge of Briggs discarding the handguns until after Briggs was taken into custody.

When Zaragoza broadcast, “Shots fired,” Officers Humberto Ruvalcaba and Zuleyma Murphy were travelling in a marked patrol car on Rosecrans Avenue approaching the casino. Ruvalcaba activated the car’s emergency lights and siren and drove the patrol car into the driveway of the casino. Surveillance video depicts several people, including security guards, police officers, and civilians, taking cover when Ruvalcaba and Murphy’s police car entered the parking lot before turning around and driving back to Rosecrans Avenue toward Budlong Avenue. Simultaneously,

Graffeo entered Zaragoza's patrol car, activated the emergency equipment, and followed Ruvalcaba out of the parking lot.

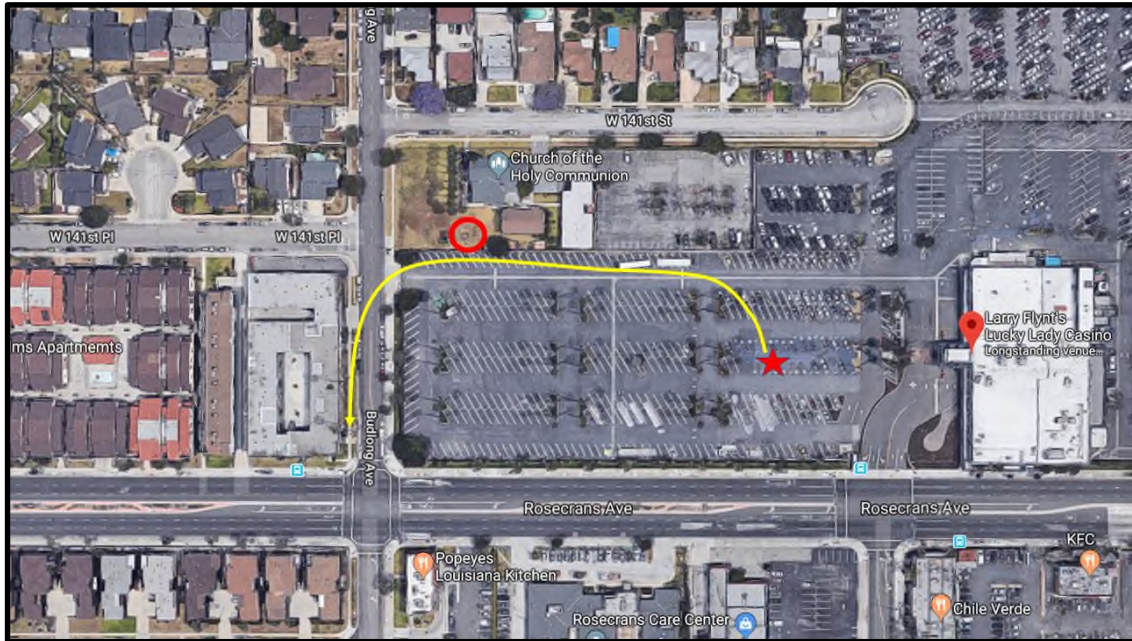


Figure 2: After Briggs fired a gun (in the area of the red star), Briggs ran west through the parking lot, discarded two handguns over the wall into the yard of an adjacent church (red circle), and jumped the fence at the far western edge of the parking lot.

As Ruvalcaba and Murphy approached Budlong Avenue, Briggs was running in a southwest direction near the entrance of an apartment building on the northwest corner of Budlong Avenue and Rosecrans Avenue. When Briggs approached the entrance, he began to walk and continued to cut across the corner lawn of the complex in a southwest direction and onto the sidewalk of Rosecrans Avenue.



Figure 3: Video from a traffic light camera depicted Briggs walking across the corner and west on Rosecrans Avenue.

Ruvalcaba slowed his patrol car in the intersection and opened the driver side door. Graffeo passed Ruvalcaba and pulled his patrol car to the north curb of Rosecrans Avenue in front of Ruvalcaba's patrol car. Graffeo's patrol car came to an abrupt stop behind Briggs.



Figure 4: Video from a traffic light camera depicted Briggs walking west on Rosecrans Avenue as Ruvalcaba's police car entered the intersection.



Figure 5: Video from Ruvalcaba's dash camera depicted Graffeo driving past and pulling in front of Ruvalcaba's car.

Briggs continued to walk along the sidewalk when Graffeo stopped his police car. Within two seconds of Graffeo's police car coming to an abrupt stop, Briggs slightly turned his torso and looked in Graffeo's direction as depicted by dash camera video. Graffeo's dash camera video depicted Briggs' left hand inside his sweatshirt pocket. At this point, Graffeo had presumably exited the police car, but the video evidence is inconclusive. Graffeo was equipped with BWV, but it was not activated. Also, Graffeo's dash camera video did not record audio, so any commands Graffeo gave prior to firing his service weapon are not recorded.



Figure 6: Video from Graffeo's dash camera depicted Briggs looking in Graffeo's direction with his left hand in his sweatshirt pocket before the officer involved shooting.

After Graffeo's police car came to an abrupt stop, Ruvalcaba exited his police car and yelled, "Let me see your fucking hands!"² Murphy yelled, "Hey stop!" Briggs began to run and Graffeo's gunfire is heard as Murphy continued to yell, "Let me see your hands!"³ Graffeo fired three rounds from his service weapon in quick succession. Ruvalcaba ran to the driver side of Graffeo's police car as Graffeo fired his service weapon and Ruvalcaba immediately and subsequently fired three rounds from his service weapon as Briggs turned to run northbound through the driveway of an apartment complex.⁴ Approximately 53 seconds elapsed from when Briggs fired his gun in the parking lot to when Graffeo and Ruvalcaba fired their service weapons.



Figure 7: Still from Ruvalcaba's dash camera video immediately before Graffeo fired his service weapon.

² As heard on Ruvalcaba's BWV.

³ As heard on the police car's dash camera video.

⁴ Ruvalcaba's police car dash camera depicts Briggs near the wall when Ruvalcaba's rounds are heard being fired.



Figure 8: Still from Ruvalcaba's BWV when he fired his first shot. Graffeo is visible above Ruvalcaba's right forearm.

Briggs was struck three times by the gunfire – a graze wound to the right shoulder, and two gunshot wounds to his left leg. None of these wounds were fatal. Briggs ran to the first driveway, jumped over the driveway gate, and ran north, away from the officers.

This shooting was captured by three different video cameras. Both police cars were equipped with dash cameras and Ruvalcaba had activated his BWV. Graffeo's BWV was not activated. Murphy was equipped with BWV and stated she thought she had activated it, but it was not activated.

After the first shooting, numerous additional officers arrived and established a perimeter in search for Briggs. An LASD helicopter was also dispatched to assist. At 10:41 p.m., a security guard at the Lucky Lady Casino called 9-1-1 to report a "shooting" where security had "the shooter's friend in custody."

At approximately 10:57 p.m., a resident of a house in the vicinity of the area Briggs was last seen running called 9-1-1 and told the dispatcher she saw someone hiding under a trampoline in the backyard of her house. The dispatcher warned the woman to be cautious because police believed "he could have a weapon." LASD's helicopter equipment detected a heat signature under the trampoline and GPD officers put together an arrest team.

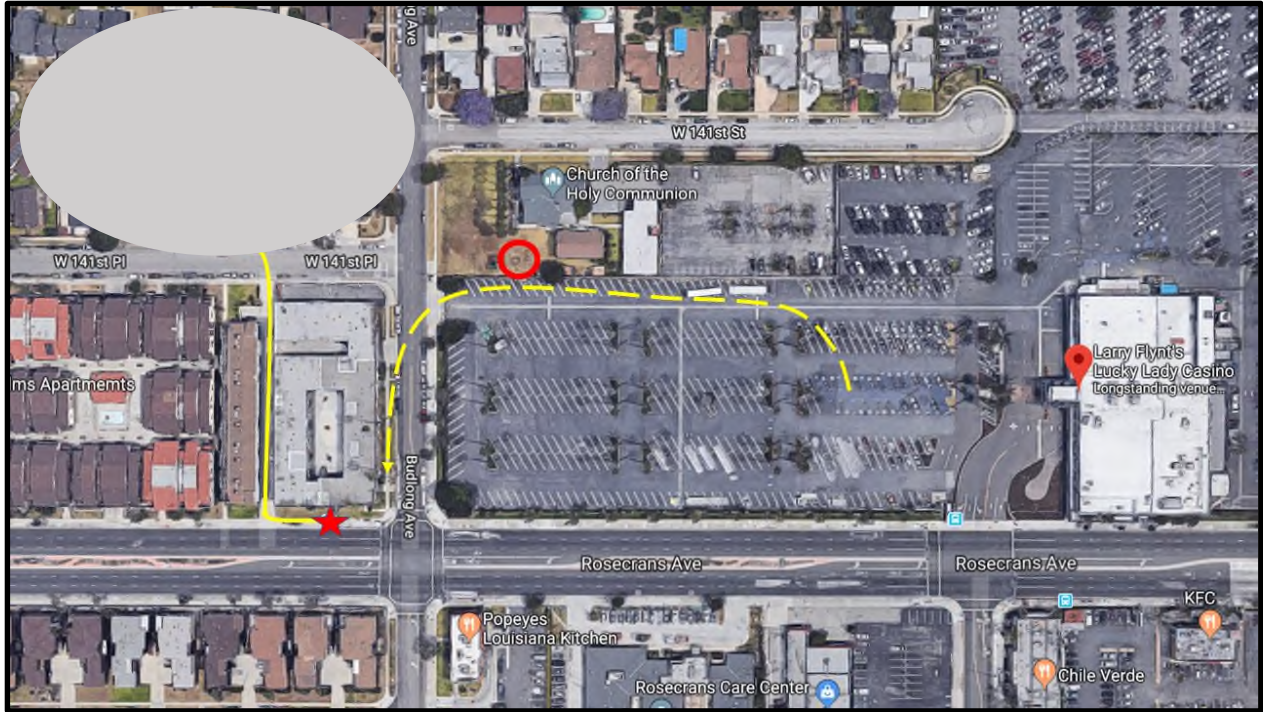


Figure 9: After the first officer involved shooting (red star), Briggs ran through the driveway of an adjacent building, continued north, and hid under a trampoline in the backyard of a nearby house.

At 11:08 p.m., as the officers were putting together an arrest team, Officer Jaycon Sanchez broadcast a crime report regarding the initial incident. *“Definitely armed. All we got was a dark weapon. Subject went to reach under the car for the gun – two security guards saw it – then, as he picked it up, the gun went off... he picked it up from underneath the car and it went off. Unknown if he shot towards the guard or accidentally... [the] gun is still outstanding.”*⁵

At approximately 11:37 p.m., Sergeant Brian Juckett, Detective Oscar Quientero, Detective Edward Wenke, and Officers Michael Bergeron, Ryan Yee, and Laurent Hentges entered the backyard of the house to arrest Briggs.⁶ Bergeron was equipped with BWV and partnered with his police dog. The officers immediately saw Briggs laying under a trampoline. The officers used their flashlights to illuminate Briggs, announced that they were the police, and ordered Briggs to show them his hands.

⁵ Sanchez’s radio communication was broadcast shortly after BWV captured Sanchez speaking with security officers in the parking lot. ██████ told Sanchez that he saw Briggs reaching underneath the tire for a “dark gun” before it “went off.”

⁶ Each officer, except for Bergeron, was assigned to a crime suppression unit and had been working undercover earlier. They were wearing plain clothes and tactical vests with “Police” emblazoned on the front and back.



Figure 10: Still from Bergeron's BWV. Briggs laid under the trampoline as the officers approached and yelled commands.

As the officers were approaching, the police dog bit Briggs' leg. Briggs pushed his upper body up and briefly turned on his right side while looking in their direction.



Figure 11: The police dog bit Briggs' leg, and Briggs turned toward the officers.

Bergeron ordered Briggs to crawl out from under the trampoline while the police dog was still biting Briggs. Briggs then laid back onto his stomach, and slightly rolled to his left side with his back toward the officers.



Figure 12: Briggs on his left side looking back in the direction of officers while the police dog was biting his leg shortly before Wenke fired his service rifle.

As he was on his left side with his back to the officers, Briggs reached his right hand toward his waist area and Wenke fired one round from his service rifle. Bergeron continued to yell orders, “Crawl out here now!” After Wenke fired his service rifle, he said, “I shot! I shot!”



Figure 13: Briggs rolled to his left side and reached toward his lower body area when Wenke shot him.

Briggs ceased to move after Wenke shot him. Briggs was transported to the hospital where he was pronounced dead.

After Briggs was shot, it was discovered that he was unarmed. Police officers subsequently searched the yard of a church adjacent to the casino parking lot and retrieved two guns: a 9mm Glock separated from a 30-round magazine that contained ten live rounds; and, a Smith and Wesson .38 caliber revolver loaded with one fired cartridge case and five live rounds. The .38 caliber revolver was loaded with “shotshell” cartridges which contained #9 shot.⁷

None of the shooting officers provided voluntary statements to investigators. Other GPD officers who witnessed the shootings provided recorded statements to investigators.

Officer Zuleyma Murphy

Murphy was riding as a passenger in the patrol car Ruvalcaba was driving. She heard Graffeo’s initial broadcast about the activity in the parking lot at the Lucky Lady Casino and she and Ruvalcaba drove toward Graffeo’s location. As they were about to turn into the casino, she heard Zaragoza broadcast, “Shots fired.” When they pulled into the casino parking lot Murphy saw officers and security guards “hunkered down” behind cars and trees. Murphy believed that the officers were taking cover because “they were being shot at.”

Murphy heard someone broadcast that the shooter was running westbound toward Budlong Avenue. Ruvalcaba made a U-turn in the entrance to the casino parking lot and drove toward Budlong Avenue. As they approached Budlong Avenue, she saw Briggs walking just west of the intersection of Budlong Avenue and Rosecrans Avenue:

We were trying to get a better description of the suspect – we weren’t sure if that was him because that guy was not running – he continued walking westbound, so we slowly followed behind him. At this time Officer Graffeo – we were in the number three lane – Officer Graffeo came up in front of us [and] blocked the number two and three lane and started giving commands to that subject – suspect. So because Officer Graffeo was the one who had originally put out the suspicious circumstances, we assumed he had already seen the suspect and knew that was him – I assumed it. So we stopped our vehicle, got outside of our vehicles, and began yelling commands at the subject. . . ‘Stop! Let me see your hands!’ . . . He continues walking westbound, takes a couple of more steps westbound, and then turns over his left shoulder. When he turns over his left shoulder, I hear my partner and Officer Graffeo shoot towards him. . . It did not appear that he was shot. . . I did not see his hands. . . [His hands] were in front of him.

Sergeant Brian Juckett

Juckett was working as the team leader of the GPD Crime Suppression Unit. He and his team were at the police station when they heard a call of “shots fired” over the radio. He and his team responded to the area of the shooting and arrived after the first officer involved shooting.

Jucket contacted Ruvalcaba at corner of 141st Place and Budlong Avenue and asked him, “What happened?” and if he had been involved in the shooting. Ruvalcaba confirmed that he had been

⁷ A shotshell is functionally a shotgun shell that is shaped and sized for a handgun. According to the manufacturer, a .38 caliber revolver loaded with #9 pellets would typically be used for rats, snakes, or other small vermin.

involved in a shooting on Rosecrans Avenue and Budlong Avenue and that he had fired two rounds. Ruvalcaba pointed in the direction he had seen Briggs run.

Juckett and his team assisted in searching for Briggs and ultimately formed the arrest team that entered the backyard where he was hiding. Juckett told investigators that he led the arrest team after the containment was set up and it was confirmed that the suspect was wanted for a “good shooting.” When asked to clarify, he explained he confirmed “the officers had been involved and they were the victims of – what I believe – was a 245.⁸ It was relayed back to me that we had a good 245, so I offered to take my team and conduct a search of that one yard.”⁹

Juckett stated that he saw Briggs laying on his stomach with his arms under his chest under the trampoline. The police dog was in the yard and Briggs “started to move and the dog immediately went for his leg.” In response, Briggs “yelled and jumped up, and when he jumped up, the hands went down from the chest down to the waist – all I could see – he was kind of turned with his left side in my direction, so I couldn’t see the right side.” Briggs “jumped up” and “at that time, the shot rang out.” Wenke stated, “I shot.”

Detective Oscar Quintero

Quintero was assigned to the GPD Crime Suppression Unit and part of the arrest team. Quintero was equipped with a 40mm less lethal weapon loaded with rubber rounds.

Quintero told investigators he saw Briggs as soon as they entered the backyard. The police dog was released and immediately “latched on” to Briggs’ left leg. Quintero said he was going to shoot a round at Briggs because “the dog latched on, I saw the suspect’s right hand begin to move – I lost visual of it – and that’s when the shot rang out.” “[Briggs] right hand started tucking – it looked like – under his body and it went from where I could see it to where I had no visual of it anymore...[while] he was laying down.” Quintero was asked about the significance of Briggs’ hand movement, and he stated the movement meant Briggs was “reaching for a weapon.”

Officer Michael Bergeron

Bergeron was the police dog handler who assisted the arrest team in the backyard.

Bergeron told investigators he deployed his dog into the yard in a search capacity. His dog immediately ran toward the trampoline and located Briggs. The police dog bit Briggs on the leg for several seconds when “the suspect’s right hand...quickly [went] under his body towards his waistband and I hear a gunshot, and one of the officers next to me goes, ‘I shot! I shot!’”

⁸ Assault with a firearm is a violation of Penal Code section 245.

⁹ Juckett did not specify how information of a “good 245” was “relayed” to him. All recorded radio communications were reviewed, and Officer Sanchez’s radio communication at approximately 11:08 p.m., previously addressed, was the most detailed recorded communication by officers regarding Briggs firing a gun.

Officer Ryan Yee

Yee was assigned to the GPD Crime Suppression Unit and part of the arrest team.

Yee told investigators that when he entered the backyard, he heard Wenke say, “There he is!” Yee looked, and saw Briggs on his stomach under the trampoline. Yee saw the police dog bite Briggs and was able to see Briggs left hand, which was raised above his head, but not his right hand, which was “tucked near his lower right chin.” Then, “the suspect propped up by pushing his hands onto the ground, lifting his body off the ground, at which time I heard a single gunshot which I...believed to be a less-lethal round.” He later described it as a “pushup.” Yee heard Wenke say, “I shot.” and the officers continued to give commands to Briggs, but Briggs did not move or respond.

Officer Laurant Hentges

Hentges was assigned to the GPD Crime Suppression Unit and part of the arrest team.

An investigator asked, “Did they say he was armed on the radio?” Hentges stated that he heard over the radio that two officers had been involved in a shooting and that the “suspect had shot at the officers and that he was wanted for attempted murder of a police officer.”¹⁰

Hentges entered the backyard with the arrest team and saw Briggs “looking straight at us” with his right hand under his chest and his left hand under his chin. He said the officers gave commands to come out and show his hands, but Briggs did not comply. He watched the dog bite Briggs on the left calf, but Briggs did not react. Then, Briggs “tries to stand up...and puts his left hand on the ground and tries to get on his knees while simultaneously pulling his right hand towards, like, his waist so definitely concealing it from my view where I was at. At that point, a shot rang out, the suspect went down...from my angle, I couldn’t see his right hand at all.”

When Wenke fired his service rifle, Wenke was on Hentges’ right side. Hentges handcuffed Briggs and searched him. Briggs was unarmed. Hentges provided first aid to Briggs.

Autopsy

On February 18, 2017, an autopsy was conducted, and the medical examiner determined that the cause of Briggs’ death was “multiple gunshot wounds.” Briggs suffered from one graze wound to the right shoulder, gunshot wounds to the left thigh and left lower leg, and a fatal gunshot wound to the neck.¹¹ Toxicology results indicated that Briggs was not under the influence of alcohol and/or drugs.

¹⁰ The recorded radio communications did not indicate that Briggs was wanted for attempted murder of a police officer.

¹¹ The bullet that caused the wound to the neck exited and was not recovered. Therefore, there was no basis for a ballistics comparison with Wenke’s rifle. However, it can be inferred that Wenke fired the gunshot “deemed as fatal because the major associated injuries include[ed]: Fracture of the traverse process of cervical spine (C7), and rupture of right common carotid artery with hemorrhagic shock.”

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. CALCRIM Nos. 505, 3470. In protecting himself or another, a person may use that amount of force which he believed reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent imminent injury. *Id.* If the person’s beliefs were reasonable, the danger does not need to have actually existed. *Id.* The prosecution has the burden of proving beyond a reasonable doubt that the person did not act in self-defense. *Id.*

In California, the evaluation of the reasonableness of a police officer’s use of deadly force employs a reasonable person acting as a police officer standard, which enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

In evaluating whether a police officer’s use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

Penal Code section 835a – Use of force to effect arrest, prevent escape, or overcome resistance¹²

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. 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. Otherwise there is no necessity to take life and it cannot be permitted.” [Citation.] *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

¹² Updated versions of Penal Code sections 835a and 196 became effective in January 2020. The previous versions are applicable to the instant review.

First Non-Fatal Officer Involved Shooting

In the first officer involved shooting, Graffeo and Ruvalcaba each fired three rounds at Briggs from their service weapons, semiautomatic handguns. If the officers did not fire their handguns in self-defense, then they are guilty of the crime of assault with a semiautomatic weapon, a violation of Penal Code section 245(b). The prosecution has the burden to prove beyond a reasonable doubt that the officers did not act in self-defense. CALCRIM No. 875.

When considering circumstantial, or indirect, evidence to make a conclusion beyond a reasonable doubt, and when one reasonable conclusion points to innocence and another to guilt, the fact finder must accept the one that points to innocence. CALCRIM Nos. 224, 225.

First, neither Graffeo nor Ruvalcaba provided voluntary statements as part of the criminal investigation. Therefore, the analysis of the legality of their shooting relies in part on circumstantial evidence of each officer's state of mind. Graffeo, along with other GPD officers, were inside the parking lot when Briggs fired his revolver. Video evidence shows that immediately thereafter, Graffeo ran and looked at Briggs running westbound through the parking lot. In fact, Briggs ran through the parking lot armed with two handguns. Based on the location where the handguns were later discovered, Briggs discarded them when he was out of view. A reasonable inference is that Graffeo observed Briggs running and holding something he believed to be a gun. Graffeo immediately entered another officer's police car and drove out of the parking lot in search for Briggs. Graffeo identified Briggs as the shooter when he pulled his police car in front of Ruvalcaba's police car alongside Briggs on Rosecrans Avenue. Graffeo's action in following Briggs in another officer's police car suggests that Graffeo believed this to be an emergent situation.

Immediately before the officer involved shooting, Officer Murphy and Ruvalcaba yelled commands at Briggs to stop. Any commands Graffeo may have yelled were not recorded, but Murphy stated that Graffeo "started giving commands." Briggs did not comply with the officers' commands to stop. Briggs turned and looked in Graffeo's direction while he had his left hand inside his sweatshirt as captured in Graffeo's dash camera video. Briggs then ran west on the sidewalk and then north through a driveway as Graffeo and Ruvalcaba fired a total of six rounds at him in quick succession. Briggs was struck and injured by the officers' gunfire. Despite being shot in the leg, Briggs climbed over at least two fences and temporarily evaded law enforcement detection by hiding in the backyard of an occupied residence.

At the time of the first officer involved shooting, which occurred less than one minute after Briggs fired his revolver in the parking lot, Graffeo reasonably believed that Briggs was armed because it was unknown that Briggs had discarded his handguns. Graffeo also reasonably believed that Briggs was dangerous because Graffeo had no reason to believe that Briggs may have fired his revolver by accident, which in hindsight it appears he may have. At the time, a reasonable inference was that Briggs fired his gun at either a security guard or a police officer in the parking lot, a felony threatening death or serious bodily harm. Therefore, when Graffeo drove westbound on Rosecrans Avenue and saw Briggs, Graffeo reasonably believed Briggs to be armed and dangerous.

Ruvalcaba and Murphy entered the parking lot of the casino immediately after Briggs had already fired his handgun. Surveillance video depicts several people, including security guards, police officers, and civilians taking cover when Ruvalcaba and Murphy's police car entered the parking lot. Ruvalcaba and Murphy received information from a radio transmission that there was a shooting and that the shooter had fled on foot. Unlike Graffeo, Ruvalcaba and Murphy were not present when Briggs fired his revolver. However, when Murphy and Ruvalcaba exited the parking lot in search of the shooter, they knew that Graffeo was present at the time of the shooting. Thus, it was reasonable for her and Ruvalcaba to believe that Graffeo identified Briggs as the shooter when he pulled his patrol car in front of theirs on Rosecrans Avenue. The totality of circumstances also supports the proposition that Ruvalcaba also reasonably believed that Briggs was armed and dangerous when Ruvalcaba exited his police car behind Graffeo's police car.

In hindsight, Briggs posed no actual danger because he was not armed with a firearm when approached by officers on Rosecrans Avenue less than one minute after Briggs fired a handgun. However, the crux of the self-defense analysis is whether an apparent threat – one that the officers actually and reasonably believed – existed at the time Graffeo and Ruvalcaba fired their service weapons.

The evidence is consistent with the inference that Graffeo and Ruvalcaba both reasonably believed that Briggs was armed and dangerous. Briggs failed to follow clear police commands to stop. As Briggs walked away from the officers, he slightly turned toward the direction of Graffeo with his left hand concealed in his sweatshirt. Briggs' right hand was not visible in any of the videos. Based on the totality of circumstances, one reasonable interpretation is that Briggs may have been acquiring Graffeo's location in order to shoot him with a gun he had concealed within the pocket of his sweatshirt. Since one reasonable interpretation of the evidence leads to the conclusion that Graffeo acted in response to an apparent deadly threat, insufficient evidence exists to prove beyond a reasonable doubt he did not act in self-defense. Along the same lines of analysis, insufficient evidence exists to prove that Ruvalcaba did not act in defense of Graffeo.

Second Fatal Officer Involved Shooting: Detective Wenke

Voluntary Manslaughter

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 section 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. If voluntary manslaughter is charged in lieu of murder, the same elements must be proven. CALCRIM No. 572. While the elements are the same, voluntary manslaughter is "nonmalicious" by definition.¹³ *People v. Rios* (2000) 23 Cal.4th 450, 454.

¹³ Wenke was acting in a law enforcement capacity when he shot and killed Briggs, and no circumstances indicate that he acted with malice.

To prove the crime of voluntary manslaughter, the prosecution must prove a person killed without lawful excuse or justification. CALCRIM No. 572. The prosecution must prove beyond a reasonable doubt that a person did not act in self-defense or the defense of others.

Penal Code section 196 – Justifiable homicide; public officers

A police officer is not guilty of murder or manslaughter if the killing was committed: (1) while the officer was performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the police officer had probable cause to believe (a) the person killed posed a threat of serious physical harm to himself or others, (b) or that the person killed had committed a forcible and atrocious crime. CALCRIM No. 507; Penal Code section 196.

A police officer has probable cause to believe that someone poses a threat of serious physical harm when he knows facts which would persuade someone of reasonable caution that the other person is going to cause serious physical harm to another. CALCRIM No. 507.

A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

The prosecution has the burden of proving beyond a reasonable doubt that the killing was not justified. CALCRIM Nos. 505, 507.

When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

Wenke, similar to Graffeo and Ruvalcaba, reasonably believed that Briggs was armed and dangerous when the arrest team made contact with Briggs in the backyard of the house. Radio communications relayed that Briggs was armed and had fired his gun either intentionally at a security guard or accidentally. Over an hour after the first officer involved shooting, other members of the arrest team stated that they believed that Briggs had committed an assault with a gun, and one officer mistakenly believed that Briggs had committed an attempt murder against a GPD police officer.

When the arrest team contacted Briggs in the backyard of the house, Briggs was injured but was conscious and appeared to be physically able to move. Bergeron, the police dog handler, gave Briggs several loud commands to show his hands. The police dog was released and bit Briggs on the leg. Briggs did not comply with Bergeron's commands. He pushed his upper body up and then rolled to his left side before reaching toward his waist area.

When Briggs reach toward his waist area, Wenke fired his service rifle one time and shot Briggs in the neck and killed him. In hindsight, Briggs' actions were likely only a response to the police dog biting his leg. After the shooting, officers learned that Briggs had discarded the guns earlier and it became clear that Briggs was not reaching for weapons. Briggs did not pose an actual danger of great bodily injury or death to the officers. Nevertheless, Wenke did not have the

benefit of hindsight and the circumstances support a reasonable inference that Briggs was reaching for a weapon as his other partner officers believed.

Insufficient evidence exists to prove beyond a reasonable doubt that Wenke did not act in self-defense or defense of his partner officers. Furthermore, insufficient evidence exists to prove beyond a reasonable doubt that the homicide was not justified because based on the information Wenke had at the time he fired his service weapon, a reasonable inference existed that Briggs had committed a forcible and atrocious felony by firing his gun at a person inside the parking lot.

CONCLUSION

Based on the foregoing, we conclude that insufficient evidence exists to prove beyond a reasonable doubt that Officer Peter Graffeo, Officer Humberto Ruvalcaba, or Detective Wenke committed an unlawful assault or voluntary manslaughter.