Fatal Officer Involved Shooting of Malik Gresham

Gardena Police Department

Officer Steven Penko, #386

J.S.I.D. File #19-0202

GEORGE GASCÓN

District Attorney

Justice System Integrity Division

November 8, 2022

MEMORANDUM

TO: CHIEF MIKE SAFFELL
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Gardena, California 90247

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

SUBJECT: Fatal Officer Involved Shooting of Malik Gresham
J.S.I.D File #19-0202
Gardena P.D. DR #19-0002529
L.A.S.D. File #019-00048-3199-013

DATE: November 8, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 13, 2019, fatal shooting of Malik Gresham by Gardena Police Department (GPD) Officer Steven Penko. We have concluded that Officer Penko acted lawfully in self-defense when he fired his weapon.

The District Attorney's Command Center was notified of the shooting on May 13, 2019, at 11:36 p.m. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, recorded interviews, photographs, video evidence, the autopsy report and witness statements submitted to this office by Los Angeles County Sheriff's Department (LASD) Sergeant Stephanie Shrout and Detective Adan Torres. Penko's voluntary statement was considered as part of this analysis.

FACTUAL ANALYSIS

Introduction

On May 13, 2019, at 9:46 p.m., a driver of a vehicle passing by the intersection of Western Avenue and Rosecrans Avenue in the city of Gardena observed Malik Gresham walking in the intersection and point a knife menacingly at a passing police vehicle. The driver informed the police, who reported to the scene in an attempt to contact Gresham. When Gresham refused to follow commands to drop the knife and then charged at the officer with his knife extended out a

fatal officer involved shooting ensued. The incident was captured on Penko's Body Worn Video (BWV).

[redacted].'s Statement

[redacted]. was in her car driving north on Western Avenue about to turn left onto Rosecrans Boulevard heading west. [redacted] saw Gresham crossing the street in front of her at the same time as a GPD patrol SUV drove by. [redacted] saw Gresham reach into his jacket, pull out a knife, and gesture it towards the police SUV as the police SUV drove by. Gresham made a motion like he was following the SUV, but the SUV continued to proceed on Rosecrans Boulevard. [redacted] saw him continue walking and could see that he was mumbling something. [redacted] said Gresham continued walking across the street towards a gas station and a liquor store. Gresham appeared agitated and "not in his right mind" according to [redacted]. [redacted] could not hear what Gresham was saying, but she could see his mouth moving.

[redacted] called 9-1-1 from her cell phone and told the operator that she had seen Gresham walking with a knife and acting strangely. [redacted] said she called 9-1-1 because she felt it was the right thing to do, in that Gresham's carrying a knife out and gesturing with it at a police vehicle was not a normal thing to do.

[redacted] turned and then came back and parked in the gas station to observe Gresham and to try to make sure that Gresham did not hurt anyone while the police were arriving. [redacted] waited three to four minutes for the police to arrive while Gresham kept pacing with the knife in his hand. [redacted] saw three police cars arrive with their police lights on and decided to leave. While turning, [redacted] heard a police officer shouting, "Drop the knife!" [redacted] heard gunfire and saw Gresham fall to the ground. [redacted] estimated that Gresham and the officer were approximately ten feet apart when she heard the officer shouting to, "Drop the knife!"

[redacted]'s 9-1-1 Phone Call

The 9-1-1 call [redacted] made was recorded wherein she described Gresham and the knife he was holding. [redacted] told the operator that Gresham yelled at a passing police car and waved his knife at the car, but that the officer driving the vehicle did not appear to notice him doing that. [redacted] attempted to describe the threatening motions she observed Gresham make and which prompted her call but the 9-1-1 operator cut her off and asked specifically if Gresham was actually threatening anyone. After not answering immediately, [redacted] finally told the operator that Gresham was just holding the knife and was not threatening anyone at that moment. [redacted] said Gresham was acting suspiciously.

Radio Transmissions

Radio transmissions took place between dispatch, responding officers, and GPD Sergeant James Heitmeyer, who was monitoring a City Pole Camera. Dispatch updated responding officers with the information from [redacted]s call, describing Gresham and noting that he had a small knife and was not threatening anyone. Heitmeyer updated the responding officers with Gresham's location by observing him on the City Pole Camera. Heitmeyer noted that he was able to see Gresham pacing back and forth in front of a liquor store with an object in his left hand.

Officer Penko's BWV[1]

Officer Penko wore a BWV which activated as he drove to the location. The video shows him arriving at the corner of Rosecrans Avenue and Western Avenue and receiving a radio update that Gresham was still on Rosecrans Avenue. Penko turns onto Rosecrans Avenue and passes Williams' patrol SUV as he approaches Gresham, who was walking on the street. Penko illuminates Gresham with his spotlight and tells him to, "Come here." Penko tells dispatch that Gresham has a knife in his hands and that Gresham made a stabbing motion with the knife towards Penko's police vehicle as Penko slowly trailed Gresham.

Photograph from Penko's BWV showing Gresham walking away, as Penko commands him to stop and drop the knife.

As Gresham walked away, Penko drives slowly behind him saying through the intercom "Gardena Police, stop now!" and "You're going to get yourself tased!" Penko gets out of his patrol vehicle while Williams calls out on the intercom for Gresham to, "Drop the knife!" From outside his patrol vehicle Penko tells Gresham to, "Stop now!" Gresham stops and turns towards Penko and begins to slowly approach Penko.

[1] The BWV and City Pole Cameras depict the same incident. The differences in the times reflected on those videos stem from the usage of Greenwich Mean Time for the BWV and east coast time for the City Pole Cameras.

Photograph from Penko's BWV showing Gresham turning towards him after Penko has exited his vehicle.

The BWV shows Penko's hand point towards Gresham with a yellow Taser in it. Penko says, "I'm going to tase you!" as Gresham continues to walk slowly towards him. At this point Gresham is off screen but Penko's Taser can be seen and Penko fires his Taser at Gresham.

Photograph from Penko's BWV showing Penko pointing a Taser at Gresham as Gresham approaches Penko.

As soon as Penko fires his Taser at Gresham, Gresham charges towards Penko. Penko raises his duty weapon and fires a single shot at Gresham. After Penko fires his duty weapon at Gresham, Gresham immediately turns away and falls to the ground.

Photograph from Penko's BWV showing Gresham beginning to charge Penko after Penko fired his Taser at Gresham.

Photograph from Penko's BWV showing him firing his duty weapon at Gresham as Gresham charges Penko.

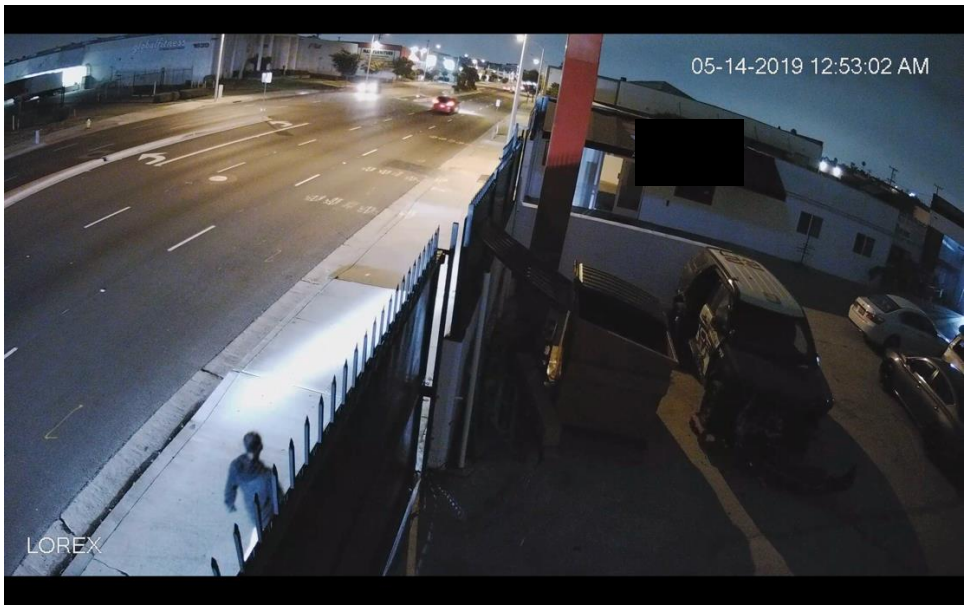
Photograph from Penko's BWV showing Gresham turning and falling to the ground after Penko fires his duty weapon at him.

Penko calls on his radio that shots have been fired and requests medical backup. Gresham is eventually handcuffed and treated by other officers and medical personnel who arrive at the scene.

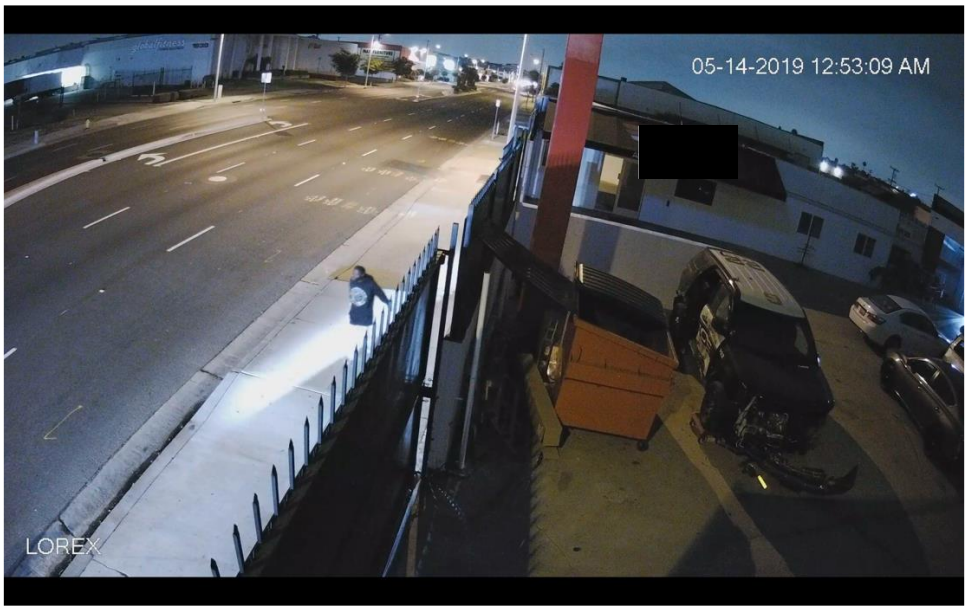
City of Gardena Pole Cameras

The City of Gardena has cameras mounted on poles throughout the city to monitor any incidents taking place in the city. One of the pole cameras recorded the incident as it happened. This camera is mounted above the sidewalk looking down and it shows the incident from a different perspective than the perspective that came from Penko's BWV. The video does not show Penko, but it shows Gresham as he walks down the street and is illuminated by the spotlight on Penko's car.

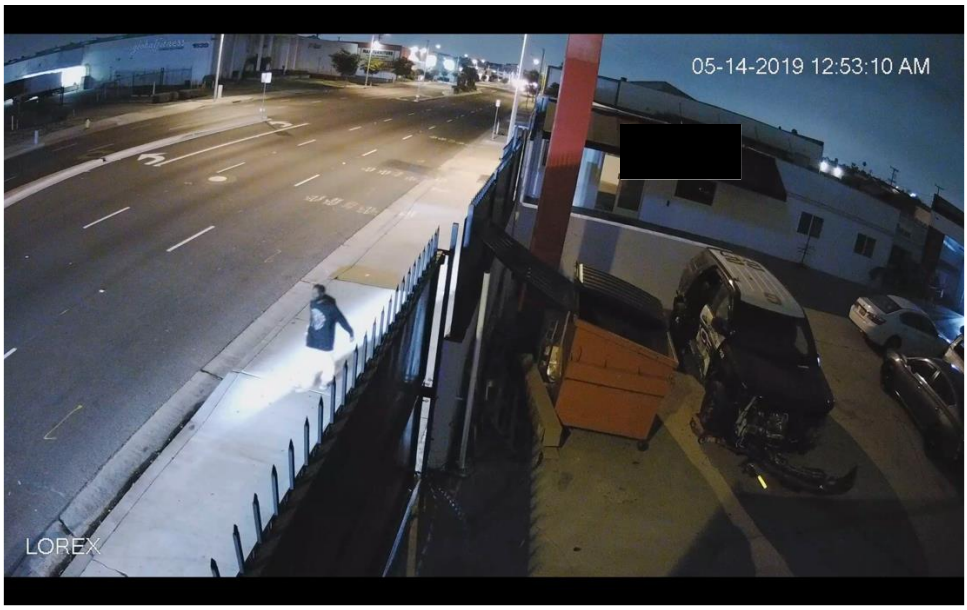
The pole camera shows Gresham walking away from Penko, turning back to him, walking towards Penko, being struck by Penko's Taser (which appears to have no affect on him), and then charging at Penko, then being shot by Penko, turning and falling to the ground.



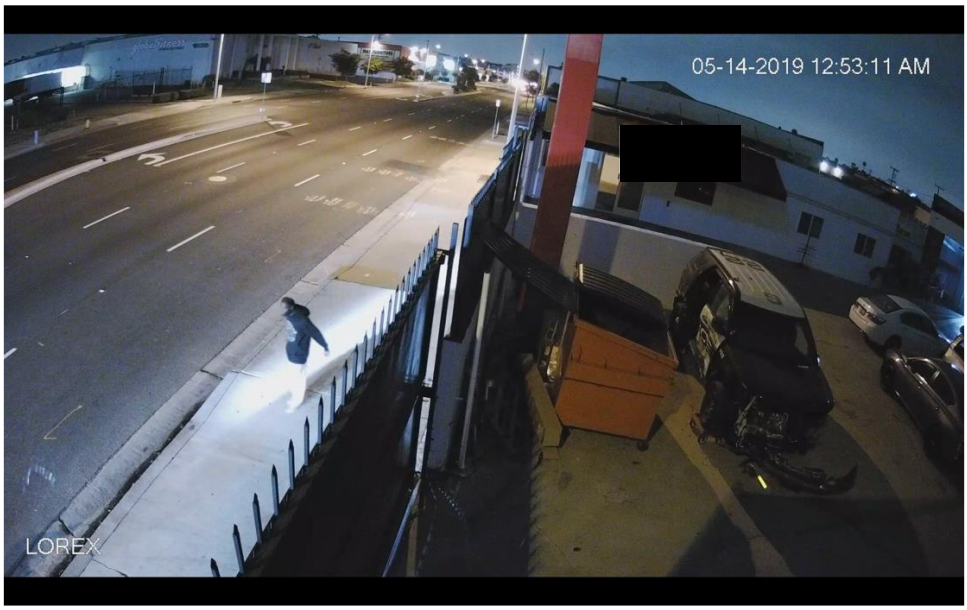
Photograph from the City Pole Camera showing Gresham walking away from Penko.



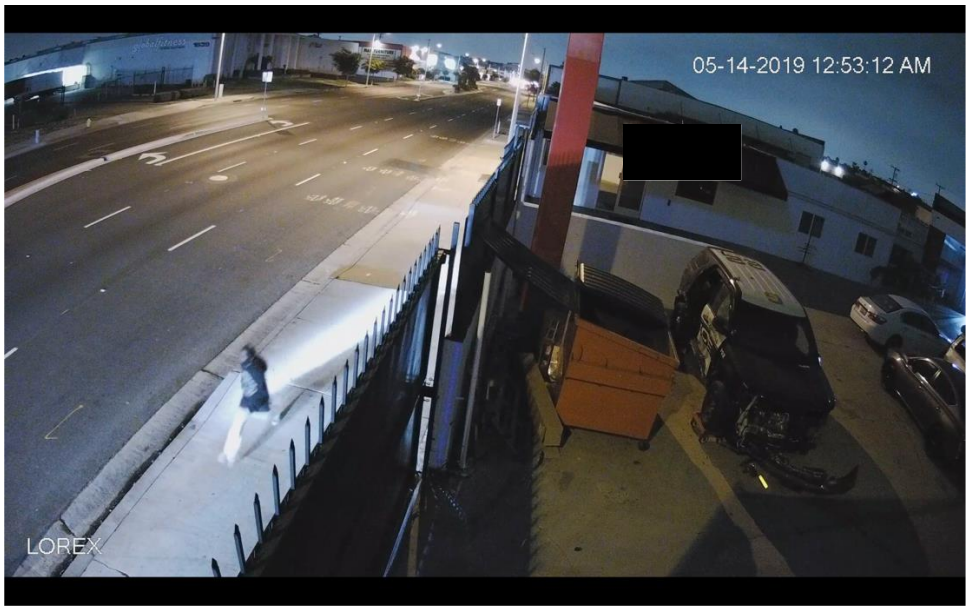
Photograph from the City Pole Camera showing Gresham turning towards Penko and approaching Penko.



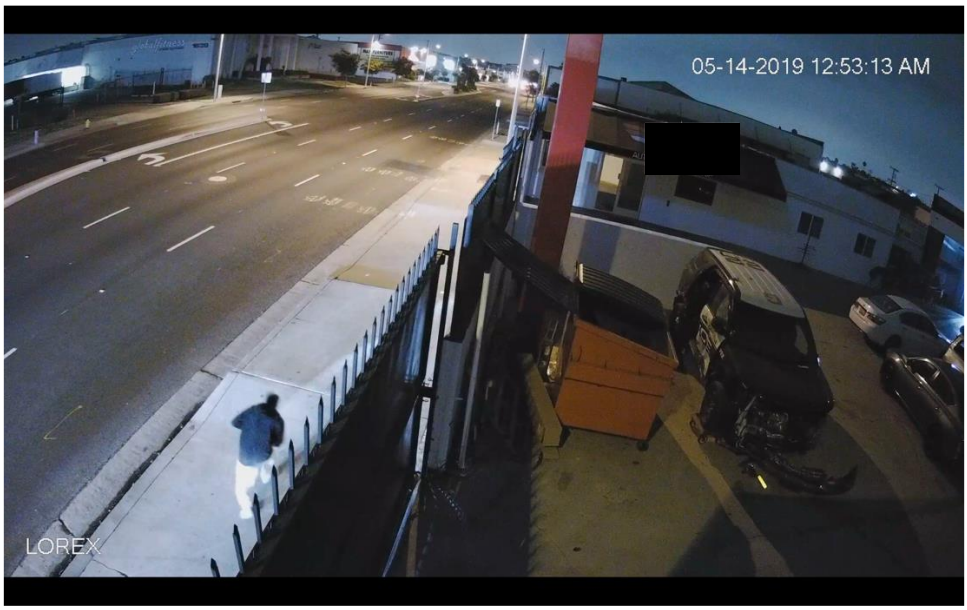
Photograph from the City Pole Camera of Gresham continuing to approach Penko.



Photograph from the City Pole Camera at the moment Penko deploys a Taser on Gresham.



Photograph from the City Pole Camera showing Gresham charging Penko.



Photograph from the City Pole Camera of Gresham as he is struck by a gunshot.

Officer Williams' BWV

Williams' BWV turns on as he is following Penko's car as it slowly follows Gresham. Williams' audio turns on while Williams talks on his radio, Penko's car stops and Penko gets out. Penko is out of sight of the camera (blocked by Penko's car) when Williams calls out, "Steve, stay in your car!" Williams says into his radio that Gresham, "Still has a knife and is still coming at you" when a single gunshot is heard, and Williams quickly gets out of his car. Penko is not visible in the video when the shot is fired. Gresham is slightly visible to the right side of

Penko's patrol vehicle. Williams and Penko then approach Gresham as Gresham lays on the sidewalk after being shot.

Officer Eric Williams' Statement

Williams was on patrol when he received a call related to a man on the street with a knife. Penko was also assigned to the call, but Williams did not speak with him while approaching the location. Instead, Williams spoke with Sergeant Heitmeyer who was monitoring security cameras that are placed around the city and was able to observe Gresham walking on Rosecrans Avenue. Heitmeyer told Williams where to find Gresham, so Williams drove to that location and saw Gresham walking on the sidewalk.

Williams arrived first in his patrol vehicle with overhead police lights on. Penko came immediately after Williams, pulled in front of Williams' car and began engaging with Gresham, telling him to put the knife down. Williams also saw the knife and informed dispatch that he saw it. Williams made an announcement over his speaker telling Gresham to drop the knife. Both Williams and Penko drove slowly behind Gresham and continued to issue commands to Gresham to drop the knife. Gresham responded to those commands by turning and facing Penko and Williams with an angry look on his face, then turning back and continuing to walk away. Williams saw Penko stop and get out of his car. Williams stopped his car behind Penko's car, and upon seeing Penko getting out to engage with Gresham, also got outside to assist Penko. As Williams began to get out of his car, he saw Gresham turn towards Penko, raise the knife, and begin running towards Penko. At that moment Williams heard a single gunshot. Williams estimated that Gresham was approximately 15 feet away from Penko when Gresham ran towards Penko.

Williams had one foot outside of his door when he heard the gunshot. He did not see anyone shoot and did not know for sure when he first heard the gunshot that Penko had been the one to fire his duty weapon. When Williams ran around his car towards Penko he noticed Gresham lying on the sidewalk with a gunshot wound. Penko put out a radio call that he fired his weapon and that he needed paramedics to respond to the location. As he approached Gresham, Williams noticed the knife on the ground, which he kicked away as other officers handcuffed Gresham.

Officer Steven Penko's Statement

Penko gave a voluntary statement to investigators. He told them that he received the radio call of a man with a knife close to the intersection of Rosecrans Avenue and Western Avenue in the city of Gardena. Penko received radio updates as he responded to the call, informing him that the City Pole Camera had captured the Gresham walking back and forth on Rosecrans Avenue just east of Western Avenue. The radio updates also indicated that the man had something in his hand. Penko arrived at the location and observed Gresham with a knife in his hand walking eastbound on Rosecrans Avenue.

Penko said that as he was driving, he put his spotlight on Gresham and Gresham made a stabbing motion in Penko's direction. As Gresham kept walking away from Penko, Penko issued commands for Gresham to stop and put down the knife. Penko made these commands over his

patrol vehicle's loudspeaker. Gresham turned back and Penko believed Gresham was angry, distorted and tense.

Penko said that while Gresham was alone on the street, there were other people nearby that he feared Gresham could get close to if allowed to keep walking. Penko also saw people still standing at the gas station and restaurant where Penko had first seen Gresham walking, and did not want Gresham to head back towards those people.

Penko said that he got out of his patrol vehicle and took out his Taser and readied it for use. Penko continued to give Gresham commands to stop and drop the knife, until Gresham turned and began walking towards Penko. When Gresham was approximately 20 feet away, Penko said that he fired his Taser at Gresham because Gresham was still getting closer to him and had not dropped the knife.

Penko saw that the Taser had no effect on Gresham and Gresham suddenly began running towards Penko with the knife still in his hand. Penko said that he was blocked from retreating in one direction by his patrol vehicle directly behind him, and feared backing up into traffic on Rosecrans Avenue to the side of him, so he did not feel as if he had any place to retreat to as Gresham rapidly approached him. Penko said that he unholstered his duty firearm and fired one round at Gresham to stop his attack. Gresham immediately turned away and fell to the ground. Penko called for medical assistance while other GPD officers handcuffed Gresham and began rendering aid.

Responding officers kicked Gresham's folding knife into the street where it remained with the blade unfolded and in a locked position.

Photograph of Gresham's knife.

Medical Treatment and Autopsy

Gresham was taken to Harbor – UCLA Medical Center where he was treated for the gunshot wound. Gresham was pronounced dead at 10:26 p.m. by Dr. Putnam.

Deputy Medical Examiner Dr. Paul Glinecki of the Los Angeles County Coroner's Office conducted an autopsy of Gresham on May 15, 2019 and ascribed the cause of death as a single gunshot wound to Gresham's chest.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 197; *People v. Randle* (2005) 35 Ca1.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Ca1.4th 1172, 1201); *People v. Humphrey* (1996) 13 Ca1.4th 1073, 1082; see also, CALCRIM No. 505.

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. Penal Code section 835a. California law permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. *People v. Ceballos* (1974) 12 Cal.3d 470, 477-484. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. *Ceballos, supra*, 12 Cal.3d at 479.

In evaluating whether a police officer's use of force was reasonable, 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 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.

Penko responded to a radio call of a man with a knife walking down the street in Gardena. Penko first contacted Gresham in response to Gresham's acting erratically while he had a knife in his hand. As Penko drove up behind Gresham, he observed Gresham make a slashing motion towards Penko's patrol vehicle with the knife in his hand. Penko first called out to Gresham from inside his vehicle, then stopped his vehicle, got out of it, and again tried to get Gresham to drop his weapon.

Gresham eventually stopped, turned to face Penko and began to approach Penko without dropping his knife. According to Penko, Gresham got too close to Penko, so Penko deployed less lethal force by using his Taser in an attempt to stop Gresham. Gresham responded to the Taser by immediately starting to charge Penko while still armed with his knife. Penko said he fired his duty weapon one time in order to stop Gresham's advance on him. Both the City Pole

Camera and Penko's BWV corroborate that Gresham failed to respond to commands to drop the knife and stop approaching Penko. Both cameras also corroborate that Gresham did not stop after Penko deployed the Taser, and that Gresham then made an attempt to run towards Penko with his knife still out. Both cameras corroborate Penko's statement that he feared for his life and that he used reasonable force to repel an attack against him.

CONCLUSION

We conclude that the Officer Penko used reasonable force to defend himself.