

Officer Involved Shooting of Lee Denney
Burbank Police Department

Officer Jesus Espindola, #13345

Officer Corey Chefalo, #13784

Officer Paul Lin, #13207

J.S.I.D. File #16-0323



JACKIE LACEY

District Attorney

JUSTICE SYSTEM INTEGRITY DIVISION

January 3, 2018

MEMORANDUM

TO: CHIEF SCOTT LACHASSE
Burbank Police Department
Investigation Division
200 Third Street
Burbank, California 91502

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

SUBJECT: Officer Involved Shooting of Lee Edward Denney
J.S.I.D. File #16-0323
B.P.D. File #16-6160

DATE: January 3, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 24, 2016, fatal shooting of Lee Edward Denney involving Burbank Police Department (BPD) Officers Jesus Espindola, Corey Chefalo and Paul Lin. It is our conclusion that Officers Espindola, Chefalo and Lin acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on June 24, 2016, at approximately 3:05 a.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 BPD Sergeant Sean Kelley and Detective Emil Brimway. The reports include photographs, videos, audio-recorded interviews of witnesses, and radio transmissions. The compelled statements of Officers Espindola, Chefalo and Lin were considered in this analysis.

FACTUAL ANALYSIS

Summary of Incident

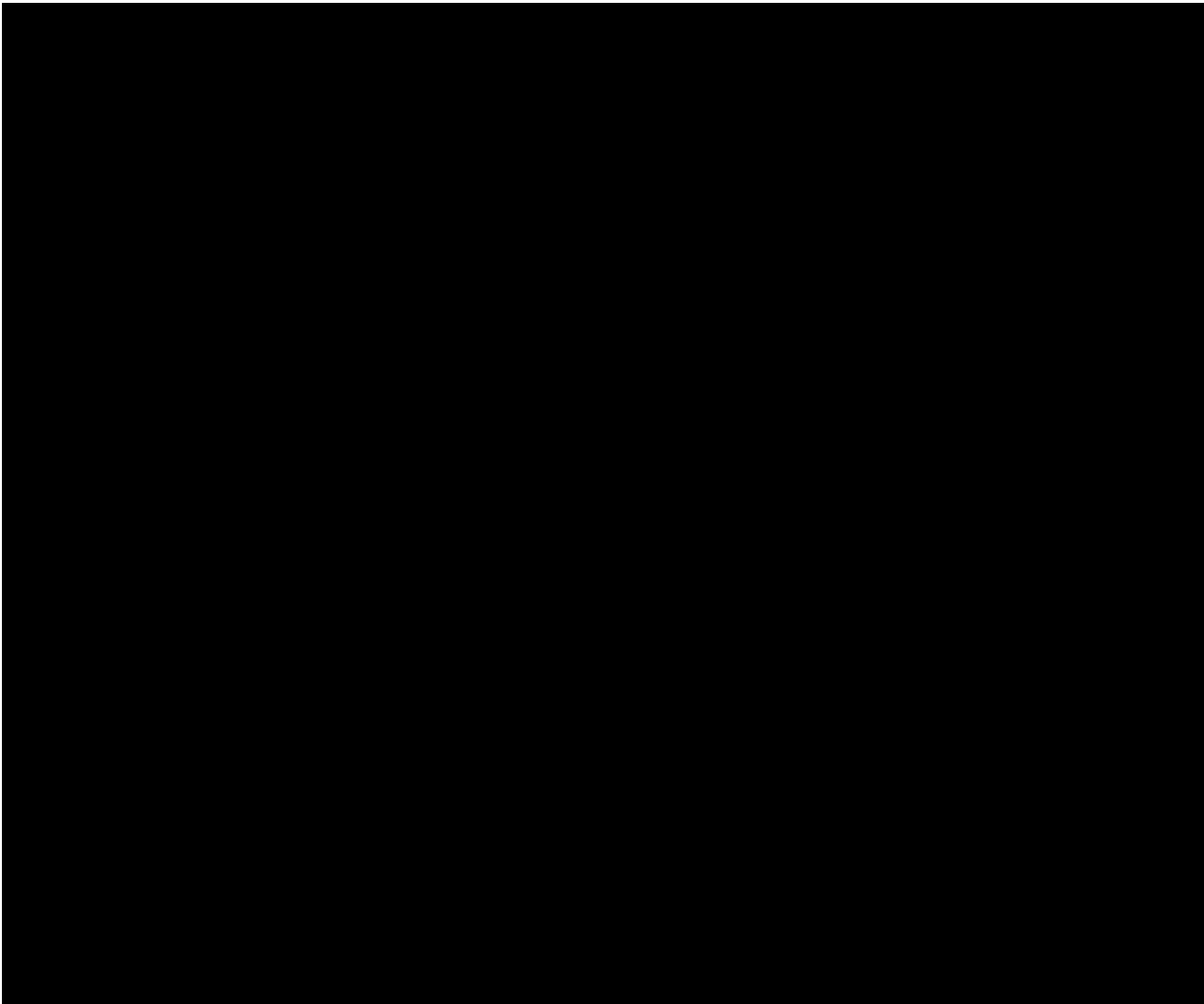
On June 24, 2016, at approximately 12:10 a.m., BPD dispatch received a call from an employee at a McDonald's restaurant located at 2565 Hollywood Way, in the City of Burbank. The initial call was a "check of welfare" on a man, later identified as Lee Denney, who was acting paranoid and refusing to leave after the restaurant closed. As BPD officers responded, they were advised by dispatch that Denney had a gun. Officers arrived at the location and evacuated the employees inside the McDonald's. The officers monitored Denney's movements inside the restaurant. Denney was sitting at the northeast corner booth of the restaurant and at times, Denney paced back and forth along the east wall.

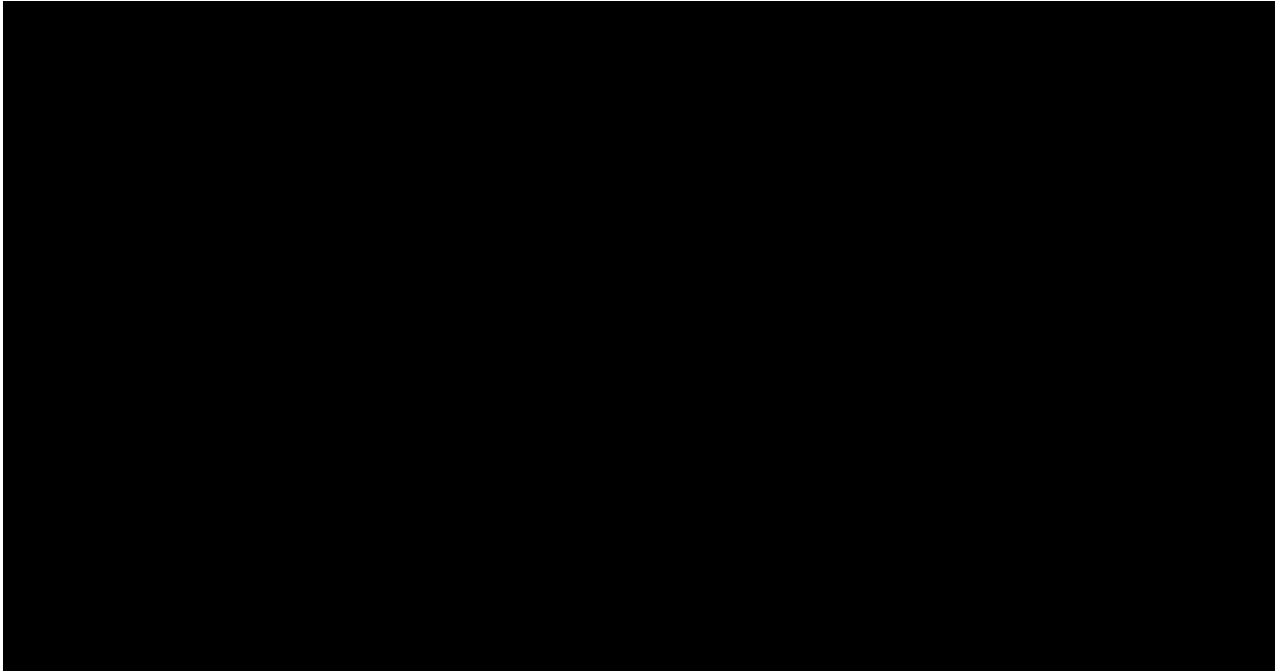
A BPD “Bearcat” arrived and parked at the front of the McDonald’s with Officer Jesus Espindola positioned inside the turret.¹ Officer Chefalo was positioned behind a BPD patrol unit near the front doors to McDonald’s and Officer Paul Lin was positioned behind a commercial, stucco sign box, on the north side of the restaurant. At approximately 12:32 a.m., officers saw Denney exhibiting signs of extreme agitation while waving a semiautomatic handgun and holding a cell phone. At approximately 12:48 a.m., Denney began firing rounds inside the restaurant. In response, officers fired at Denney. Denney fired at a large plate glass window in the northeast corner of the restaurant and jumped through the window, landing in the drive-thru lane of the restaurant. Denney then took his handgun and shot himself in the head. Officers approached Denney and handcuffed him. Denney was still breathing and was transported to Los Angeles County Medical Center where he succumbed to his injury.

Officer Statements

Statement of Officer Jesus Espindola

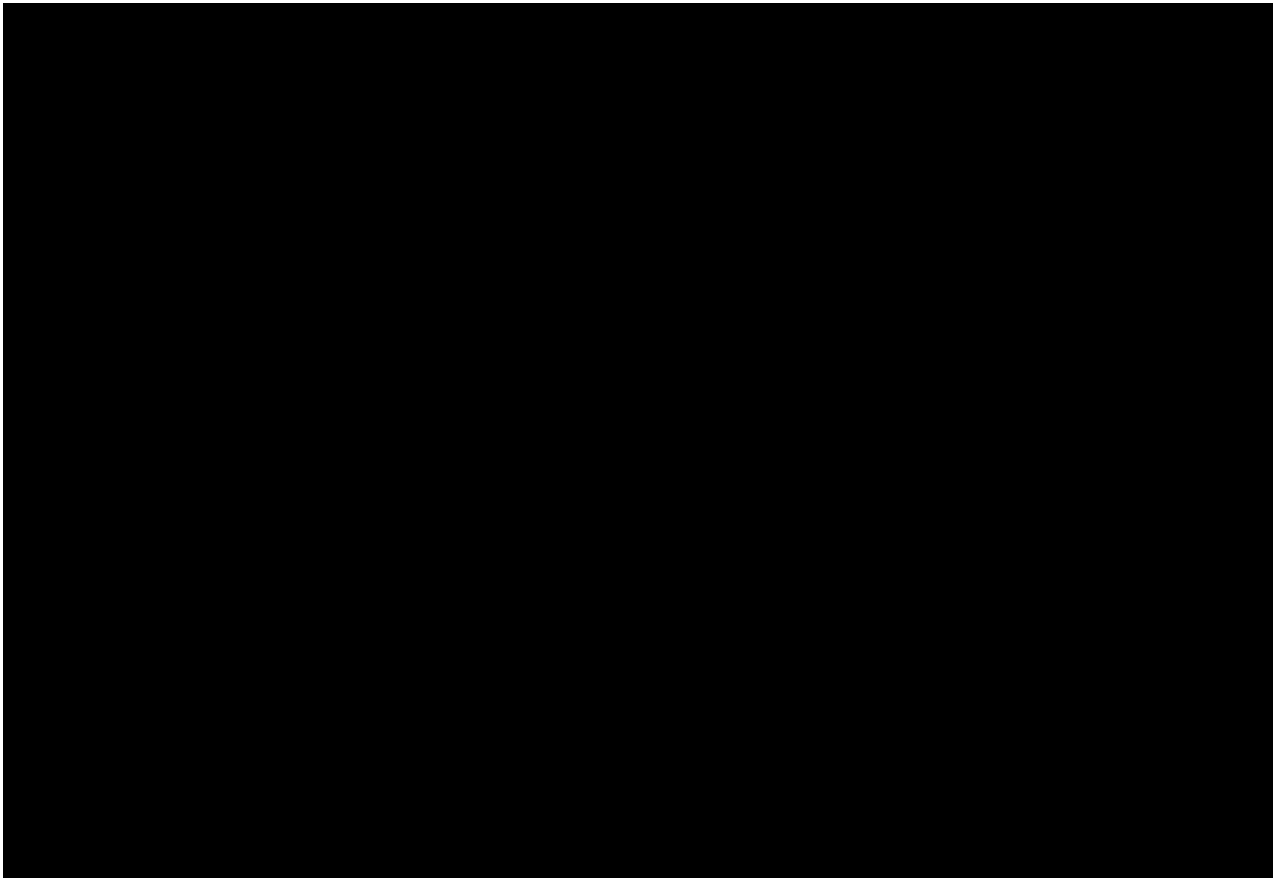
Officer Jesus Espindola provided a compelled statement to investigators.²

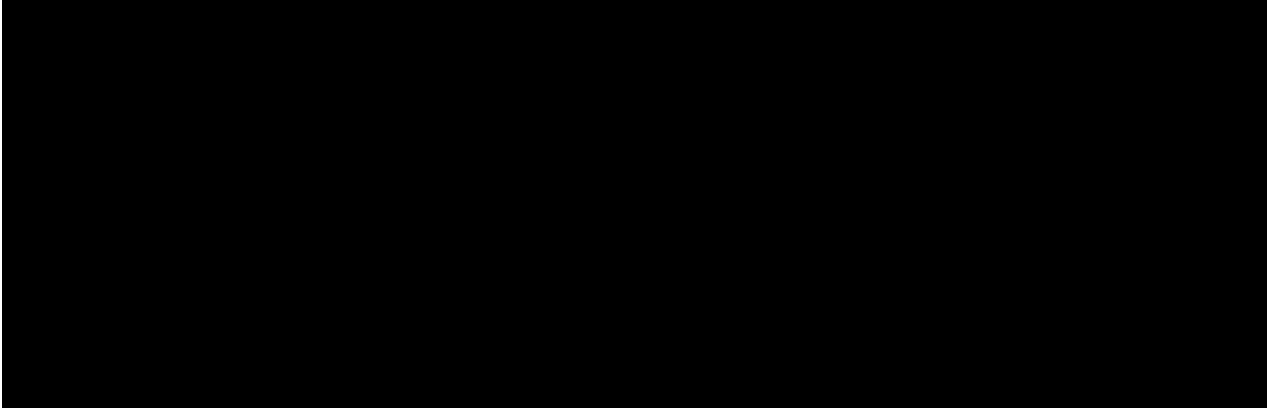




Statement of Officer Corey Chefalo

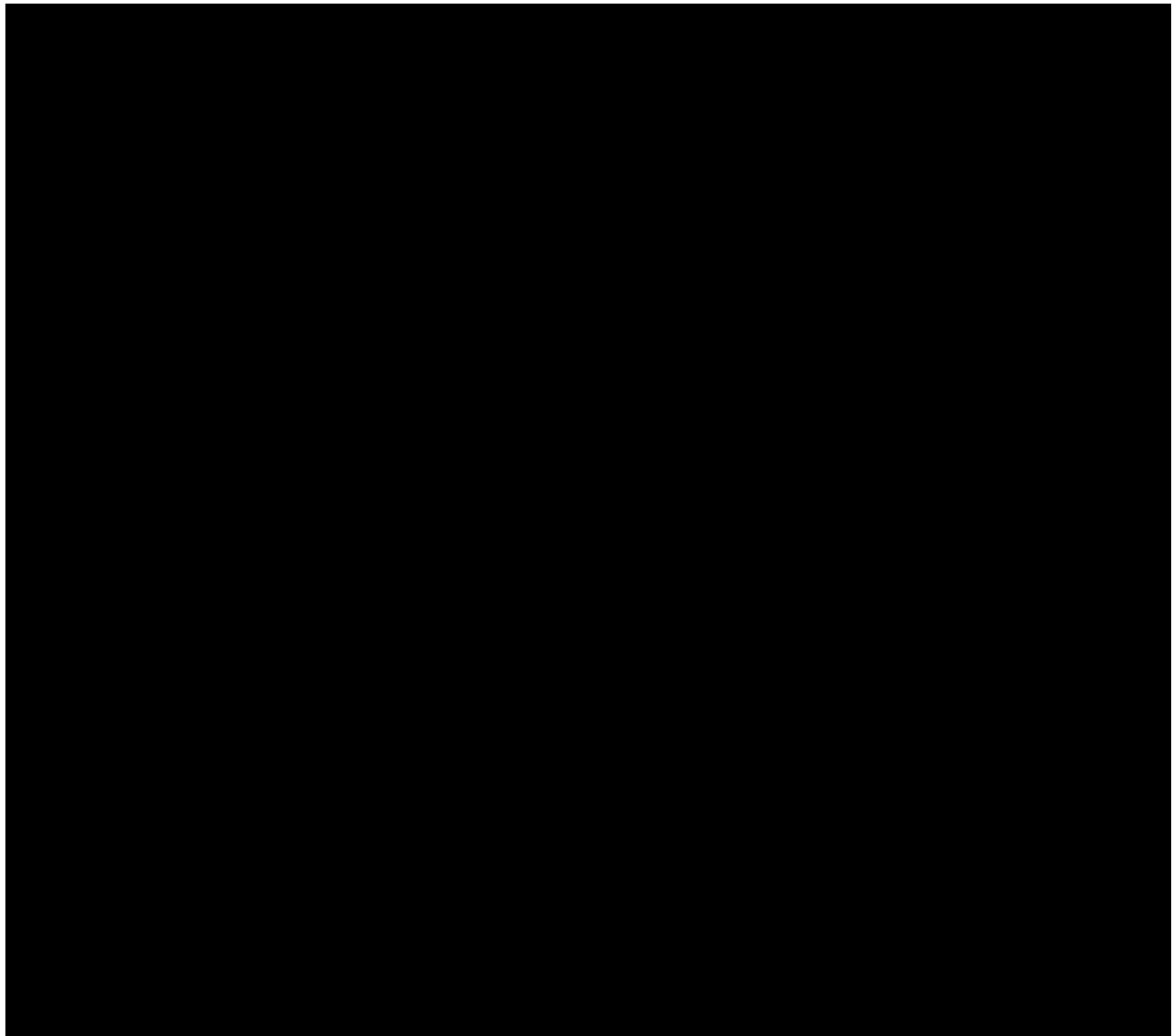
Officer Corey Chefalo provided a compelled statement to investigators.





Statement of Officer Paul Lin

Officer Paul Lin provided a compelled statement to investigators.



Statement of Detective Stephen Santiago

Detective Santiago was dispatched to a “Check the wellbeing call” at McDonald’s at approximately 12:15 a.m. Upon arrival, Santiago was requested to block traffic from entering the parking lot on the north side of McDonald’s. Santiago was able to see Denney sitting in the northeast corner of the restaurant. Denney appeared to be talking to himself and would stand up and sit down frequently. Santiago positioned himself near Lin. Santiago saw Denney stand up several times and saw that he was holding a small dark colored semiautomatic pistol in his right hand. After several minutes, Denney pointed the gun toward the ceiling and Santiago heard a gunshot. It appeared to Santiago that Denney fired a round into the ceiling because he saw debris fall from the ceiling. A few seconds later, Denney pointed the gun in a north direction and Santiago heard another gunshot. A large window on the east side of the building shattered and it appeared that Denney was firing at the officers outside the location.

Santiago heard several gunshots and heard Lin fire his patrol rifle one time. An air unit advised that Denney was outside the restaurant lying in the restaurant drive-thru. Santiago was subsequently advised that Denney had possibly shot himself in the head.

Statement of Detective Adam Chang

At approximately 12:25 a.m., Detective Chang responded to a call to assist units at a McDonald’s regarding a man with a gun. Chang responded to the scene “Code 3” driving a Bearcat.⁵ Chang brought the Bearcat into the parking lot of McDonald’s and Espindola entered the Bearcat through the rear entrance, climbing to the turret. Espindola stated to Chang that he would provide lethal cover from the turret using his department issued rifle. Espindola directed Chang where to park the Bearcat to allow the best vantage point to observe Denney’s actions inside the restaurant. Chang could see Denney seated in the booth at the northeast corner of the restaurant.

Chang saw Denney stand up and walk south towards the beverage fountain area. Chang then heard a gunshot and saw smoke in the interior of the restaurant. It appeared to Chang that Denney fired up into the ceiling. Denney took several steps towards the booth where he was previously seated and partially turned in Chang’s direction. The window shattered and Chang heard another gunshot. Chang realized Denney was shooting at him and the other officers. Chang heard Espindola fire several times at Denney and saw Denney run north towards the booth where he was seated earlier. Denney fired again through the window towards the officers. Denney climbed out of the shattered window and Chang advised BPD communications via radio, “Shots fired.”

Chang heard officers on the north side perimeter advise that Denney appeared to have shot himself while in the drive-thru lane. Chang and other officers formulated a plan to approach Denney. Officers Martinez, French and Chefalo utilized the cover of the Bearcat while Chang

⁵ “Code 3” is a radio call that is designated as an emergency.

slowly drove the Bearcat into the drive-thru in order to take Denney into custody. Using the Bearcat, Chang and the other officers slowly advanced until they were able to effectively take Denney into custody. Chang could see Denney's chest rise and fall indicating he was still breathing. The arrest team moved forward and took Denney into custody.

Statement of Officer Edward Escobar

At approximately 12:15 a.m., Escobar responded to the incident at McDonald's. Upon arrival, Escobar took a position on the northeast side of McDonald's and approached on foot. Escobar saw Denney seated at a table in the northeast corner of the McDonald's. Denney looked paranoid and nervously continued to look around. When Denney stood up from the table, Escobar noticed he was holding a black semiautomatic handgun with both hands. Denney immediately crouched down and moved through the dining room, pointing his gun toward the officers that were positioned on the north side of the restaurant. Denney crawled back to the table and continued to look around, appearing to be nervous and paranoid, while still holding the gun with both hands.

Escobar retreated from his position to create distance because Denney was in possession of a gun and was pointing it at him as well as other officers surrounding the location. Denney continued to crouch down holding the gun, pointing it back and forth in the direction of the officers on the north side of the building and in the direction of Escobar. While Denney was crouched, Escobar heard a loud pop and recognized the sound as a gunshot. Immediately after, Denney crouched back near the table where Escobar originally had observed him. Denney then stood up and faced Escobar's direction. It appeared that Denney was standing on a chair or table when Escobar heard another gunshot coming from inside the dining area. The window Denney was standing near then shattered. Escobar heard another gunshot coming from where Santiago and Lin were positioned.

Escobar saw Denney jump out of the broken window and immediately fall to the ground. He crawled on his hands and knees a couple of feet and fell onto his side and then to his back. Denney was slowly moving around while lying on his back. Escobar heard a single gunshot from where Denney was lying and Denney stopped moving. It appeared to Escobar that Denney shot himself. Other officers utilized the Bearcat and approached Denney cautiously. The officers placed Denney in handcuffs and immediately had a rescue ambulance treat Denney.

Statement of Officer Paul French

Officer French was dispatched to the McDonald's. Upon arrival, French joined other officers who were positioned at the main entrance of the McDonald's on the west side of the building. Denney was sitting in a booth located at the northeast corner of the restaurant with his back to the east wall. French heard Espindola verbally identify himself and the other officers as "Burbank Police Officers" and give Denney commands to exit the building with his hands in the air. Denney did not comply. French heard Denney say, "If you come in here, it's going to be a shooting." French heard Espindola ask Denney if he had a gun and French heard Denney respond, "Yes."

Statement of Sergeant Henry Gomez

Sergeant Gomez was the on-duty watch commander for the Burbank Airport Police Department and was dispatched to the incident at the McDonald's restaurant. Gomez saw Denney jump out the window from inside the restaurant and fall to the ground in the drive-thru lane approximately 90 feet away from him. It appeared to Gomez that Denney could not walk as he only moved his upper body while attempting to stand up. Denney looked around in all directions several times before he produced a black handgun in his right hand and pointed it to the right side of his head. Denney was lying on his left side while using his left arm as leverage to hold himself up. While pointing the handgun at his head, Denney again looked in several directions before firing one round into the right side of his head and then collapsing to the ground.

Witness Statements

Statement of Brian D.

Brian Denney is Denney's father. Brian told investigators that Denney called him during the incident and was on speaker phone. Denney told Brian he was inside a McDonald's and armed with a gun, surrounded by police officers. Denney told Brian he did not do anything wrong but Brian could hear police officers say, "Drop it!" multiple times. Brian told Denney to "Drop it." Brian told investigators he believed Denney wanted the police to shoot him because he told Brian, "I want suicide by cop."

Statement of Anita D.

Anita Dukes is Denney's mother. On June 24, 2016, at approximately 1:15 a.m., Dukes contacted the BPD Communications Center believing that her son was involved in an officer involved shooting. Dukes stated that Denney had contacted his father, Brian Denney, around midnight on June 24, 2016, and told him he was at a McDonalds and armed with a gun. Denney further told his father that he was "going out suicide by cop." Dukes said that Denney was on speaker phone with Brian during the incident and she could hear officers say, "Put it down!" The phone disconnected and both Dukes and Brian attempted to contact Denney multiple times but there was no answer.

Statement of Adriana H.

Adriana H. was an employee working at McDonald's at the time the incident occurred. Adriana H. contacted Denney to advise him to leave the restaurant as the lobby was closed. Denney refused to leave and she notified her manager Ana R. Adriana H. told investigators she remembers Denney reaching for his belt line but did not see a weapon. Adriana H. exited the restaurant and waited for the arrival of police officers.

Statement of Ana R.

Ana R. was the manager working at McDonald's when the incident occurred. She was contacted by Adriana H. who told her Denney was refusing to leave even though the lobby was closed. Ana R. contacted Denney and advised him of the restaurant hours. Denney told her a biker was outside the restaurant waiting for him and wanted to kill him. Ana R. told Denney she would contact the police to assist him. Denney told her he had a gun for protection. Ana R. contacted BPD and went back inside to get the employees out of the restaurant. Ana R. did not see a weapon.

Surveillance Videos

Surveillance video was obtained from various cameras located inside of the McDonald's restaurant. Denney is seen entering the McDonald's at 9:49 p.m. through the west side, double doors and walking directly into the men's restroom. At 10:20 p.m., Denney exits the bathroom and arrives at the corner table where he spends the majority of his time. Throughout the video, Denney is seen pacing around and acting anxious and nervous and is also seen using his phone several times.

At 12:17 a.m., Sergeant Barcus comes into view in the parking lot and approximately 23 seconds later, Denney notices Sergeant Barcus and produces a black handgun, holding it in his right hand. Denney moves to the adjacent table for a moment, and then moves back to the corner table. The gun remains in Denney's right hand throughout the duration of the video. At 12:48 a.m., Denney fires one round into the ceiling. Denney then moves back near the corner table and fires one round at the north corner window. Denney then fires another round at the window. Denney appears to be dodging gunfire and jumps out the same window. After Denney jumps out the window, he is out of view and is not seen on any camera angle.

While Denney is in the restaurant, he appears very paranoid or anxious. He is constantly looking around and fidgeting. Several times Denney is waving the gun around, pointing it at entrances of the restaurant, and hiding between tables.



Firearms

Denney was armed with a 9mm Luger caliber semiautomatic pistol. The pistol was recovered from the ground near the left side of Denney's body.

Four 9mm cartridge casings were recovered from the scene: one cartridge case from the north patio walkway of the restaurant; one cartridge case from the parkway, adjacent to the northeast corner of the drive-thru; one cartridge case from the dining area of the restaurant, south of the north entrance door; and one cartridge case from the dining area floor, west of the soda fountain.



Denney's gun found near his body.

Espindola was armed with a Colt, M16A2 Commando, 5.56mm caliber, select fire rifle.

Lin was armed with a Colt, M16A1, 5.56mm caliber, semiautomatic rifle.

Chefalo was armed with a Colt M16A1, 5.56mm caliber, semiautomatic rifle.

Eleven .223/09/5.56mm cartridge casings from the officers' M16 rifles were recovered from the scene.

Decedent Lee Edward Denney

Denney's phone was recovered from the corner table at the McDonald's restaurant and a forensic download revealed the following text messages:

Sent from Denney on March 24, 2016:

"I'm about to go on a killing spree don't tell me your about to lose it."

"Yeah foreal pull some some natural born killers shit ... I'm not opposed I swear I think I'm done with this life I hate my place in it."

Sent from Denney on March 25, 2016:

"I'm about to steal a car Rob someone or something of the such I just want to get back home and if the cops find me there will be a shoot out."

Autopsy

On June 28, 2016, Deputy Medical Examiner Ogbonna Chinwah, M.D., performed a post-mortem examination of Denney's body. Denney's death was caused by a gunshot wound to the head. The bullet went from right to left and slightly upward. Denney sustained two additional non-fatal gunshot wounds: one to his left thigh and one to his left arm. Doctor Chinwah ascribed the manner of death as a suicide.⁶

A toxicology analysis revealed that Denney had the presence of marijuana, methamphetamine, and opiates in his system at the time of his death.⁷

LEGAL ANALYSIS

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

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470.

“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 ‘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 evidence examined in this investigation shows that Denney refused to leave the lobby of the McDonald's restaurant, was acting paranoid, and stated to an employee that he was in possession of a firearm. Burbank Police Department was notified and responded to the location. Upon arrival, various officers observed Denney inside the restaurant, pacing, acting nervous and paranoid. Several officers, including Officers Espindola and Lin, saw Denney holding a dark colored handgun. Espindola saw, and Chelalo and Lin heard, Denney fire his gun into the ceiling of the restaurant and subsequently through the window towards the officers. Reasonably

⁶ Dr. Chinwah concluded in his autopsy that the rounds fired by the officers that struck Denney were not consistent with life threatening wounds.

⁷ Opiates: codeine & morphine; hydrocodone & hydromorphone

in fear for their lives and the lives of others, Officers Espindola, Chefalo and Lin, fired their service weapons at Denney, wounding Denney. The fatal wound that Denney sustained was determined to be self-inflicted.

CONCLUSION

For the foregoing reasons, we conclude that Officers Espindola, Chefalo, and Lin acted lawfully in self-defense and defense of another when they used deadly force against Lee Edward Denney. We are therefore closing our file and will take no further action in this matter.