

Officer Involved Shooting of Michelle Shirley

Torrance Police Department

Officer Dusty Garver #15554

Officer Scott Nakayama #17261

Officer Jason Sena #18263

J.S.I.D. File #16-0563



JACKIE LACEY

District Attorney

Justice System Integrity Division

February 20, 2018

MEMORANDUM

TO: CHIEF BERNARD ANDERSON
Torrance Police Department
3300 Civic Center Drive
Torrance, California 90503-5056

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

SUBJECT: Officer Involved Shooting of Michelle Shirley
J.S.I.D. File #16-0563
T.P.D. File #160059585

DATE: February 20, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 31, 2016, fatal shooting of Michelle Shirley by Torrance Police Department (TPD) Officers Dusty Garver, Scott Nakayama, and Jason Sena. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that the officers used unreasonable force in self-defense or in defense of others.

The District Attorney's Command Center was notified of this shooting on October 31, 2016, at approximately 6:30 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by TPD Detective Eric Applegate.

The following analysis is based on reports, recorded interviews, video, and photographs submitted to this office by TPD. The voluntary statements of the involved officers were considered in this analysis.

FACTUAL ANALYSIS

On October 31, 2016, at approximately 2:20 p.m., Manuel J [REDACTED] stopped his Ford F450 on Artesia Boulevard at Vermont Avenue in the City of Los Angeles for a red signal. When the light turned green, he proceeded through the intersection and a beige Ford Fusion pulled in front of his truck. He was unable to stop, and impacted the passenger side of the Fusion, resulting in significant damage and causing the car to spin, its curtain airbags to deploy, its four way flashers to turn on, and its horn to start beeping. After the collision, the driver of the Fusion, later identified as Michelle Shirley, drove south on Vermont Avenue with her horn blaring and lights flashing.

At 2:27 p.m., Claudia H [REDACTED] was outside her home on Post Avenue in the City of Torrance with her son when she saw Shirley driving her heavily damaged Ford Fusion through H [REDACTED]'s neighborhood.¹ H [REDACTED] described Shirley's driving as "crazy;" Shirley was

¹ The intersection of Post Avenue and Carson Street is just over four miles from the scene of the collision.

driving on the wrong side of the road, swerving, and almost hitting cars. H [REDACTED] called TPD twice to report what she had seen. By 2:30 p.m., TPD had received multiple calls from different callers in the area of Post Avenue and Carson Street reporting Shirley's unsafe and unusual driving behavior.

In response to the multiple 9-1-1 calls, TPD Officers Jason Sena and Bryan Okazaki were dispatched to the area. At 2:32 p.m., Sena found Shirley driving on Post Avenue at Carson Street. He immediately observed that Shirley's vehicle's flashers were illuminating, its horn was going off rhythmically, and it had suffered heavy collision damage. As Shirley passed Sena, she looked at him and raised her middle finger in his direction. Sena positioned his TPD motorcycle behind Shirley's vehicle and activated his emergency lights and siren. In response, Shirley accelerated away from him and failed to stop for a posted stop sign.

Sena notified his dispatcher that he was in pursuit and other TPD units responded. As she was being pursued, Shirley accelerated through stop signs and red traffic control signals, drove her vehicle into oncoming traffic, and was swerving wildly. TPD supervisors quickly authorized officers to "PIT" Shirley's car and advised all responding units to use their emergency lights and sirens to get to the pursuit as rapidly as possible.² At 2:35 p.m., as Shirley was driving south on Cabrillo Avenue approaching Sepulveda Boulevard, Okazaki was able to successfully PIT Shirley's car so that it spun and stopped facing north.



Figure 1: Still from F [REDACTED] cell phone video. After the PIT maneuver was completed, the front of Shirley's car was blocked by three TPD patrol cars. Lee's vehicle is closest to the camera.

At the time Okazaki spun Shirley's car, Officer Scott Nakayama was immediately behind him in a TPD Ford Crown Victoria and Sena and Officer Michael Guell were following Nakayama on TPD motorcycles. After Shirley's car spun, Nakayama positioned his car such that its front

² Officers are trained to use their patrol vehicles to push a fleeing vehicle and cause it to spin. This technique, known as the "PIT Maneuver" or "Legal Intervention," is intended to stop a vehicle without causing injury or significant damage.

bumper was touching, or nearly touching, the front bumper of Shirley's car, then took cover behind his door. Sena and Guell stopped their motorcycles on the passenger side of Nakayama's car and took cover behind the passenger side door. Officer Dusty Garver arrived at the scene several seconds after the PIT and positioned his TPD Crown Victoria on the driver's side of Nakayama's vehicle, exited and stood behind his door. Officer Juhn Lee arrived several seconds after Garver, positioned his TPD Crown Victoria on the passenger's side of Nakayama's vehicle, and stood outside his driver's door. Okazaki pulled onto Sepulveda Boulevard and exited his vehicle to stop traffic in the intersection.

Once Shirley stopped, Sena, Nakayama and Garver drew their sidearms while Guell drew his Taser and announced that fact to the other officers. The officers told Shirley to exit her vehicle and to keep her hands visible. Shirley responded by staring at the officers while displaying both of her middle fingers in their direction.

As the officers were giving commands, Officer Edward LaLonde drove around the stopped vehicles and positioned his TPD Crown Victoria to the rear of Shirley's car. As he was pulling into position, Shirley put her car into reverse, engaged full throttle, and crashed into the front bumper of LaLonde's car. After Shirley's car impacted LaLonde's car, LaLonde exited his car and started jogging north on the sidewalk adjacent to Cabrillo Avenue toward the other officers. Simultaneously, Lee reentered his car and started to move it toward Shirley's car to prevent her from driving away.

As Lee started to move his vehicle toward Shirley's, Shirley put her car in drive and accelerated rapidly toward the arrayed officers. As she accelerated, Shirley turned her car to the left and struck Lee's vehicle. In response to her driving toward the officers, Sena, Nakayama, and Garver opened fire with their duty weapons. Shirley continued accelerating after striking Lee's vehicle, forcing Lee's car onto the sidewalk. Shirley's vehicle crossed over the sidewalk, through a hedge, and came to a rest against a concrete pole in an adjacent gas station.



Figure 2: Aerial photograph depicting final position of the involved vehicles. Lee's vehicle is on the sidewalk. Shirley's vehicle is circled in red. Her path is depicted by the dashed yellow line.

Once Shirley's car came to a stop, Okazaki moved his car behind Shirley's and the officers pulled Shirley out of her car. The officers immediately requested an ambulance and performed CPR on Shirley until an ambulance arrived. Shirley was transported to Harbor General Hospital where she was pronounced dead.

Video Recordings

There is a gas station on the northwest corner of the intersection of Cabrillo Avenue and Sepulveda Boulevard which uses security cameras to monitor their property. While the security cameras are adjusted to capture what occurs on the station property, one camera captured much of the incident. Shirley's car comes into frame as Okazaki is performing the PIT maneuver at 2:35.20 p.m. Nakayama immediately positions his car in front of Shirley's, while Guell and Sena stop their motorcycles on the passenger side rear of Nakayama's car, dismount, and take cover behind the passenger side door of Nakayama's car. At 2:35.41 p.m., Garver arrives and positions his car on the driver's side of Nakayama's car. Shortly thereafter, at 2:36.03 p.m., Lee arrives and positions his car on the passenger side of Nakayama's car. Lee was followed immediately by LaLonde, who drove through the gas station property, onto Sepulveda Boulevard and then onto Cabrillo Avenue behind Shirley's car. At 2:36.14 p.m., as LaLonde is pulling behind Shirley's car, Shirley drives backwards and impacts LaLonde's car. Immediately after the collision, LaLonde exits his car and jogs north toward Lee's car. At 2:36.21 p.m., while LaLonde is jogging parallel to Shirley's car, Shirley accelerates quickly toward the arrayed officers while simultaneously, Lee is moving his car toward Shirley's car. The cars impact one another, and Shirley's car drives over the sidewalk, over a hedge, and into a post next to a fuel pump. Shirley's car comes to rest at 2:36.33 p.m.



Figure 3: Still from gas station surveillance video facing Cabrillo Avenue immediately after the PIT. Shirley's car is circled in red.

In addition to the surveillance video, three civilians recorded part of the incident on their mobile devices.

Emily B [REDACTED] was travelling northbound on Carrillo Avenue when she stopped at a red signal at the intersection of Sepulveda Boulevard. She was the first car stopped at the light. Her video

begins as LaLonde's vehicle is pulling behind Shirley's vehicle. Because of B■■■■'s position, the video does not clearly show what occurred; however, the camera recorded the sound of a collision as Shirley backed into LaLonde's vehicle and then a barrage of gunfire as Shirley's car starts driving forward. The gunfire continues as the car rolls into the paved apron around the fuel pumps. The video ends after Shirley's car rolls to a stop in the gas station driveway.



Figure 4: B■■■■ Video Still

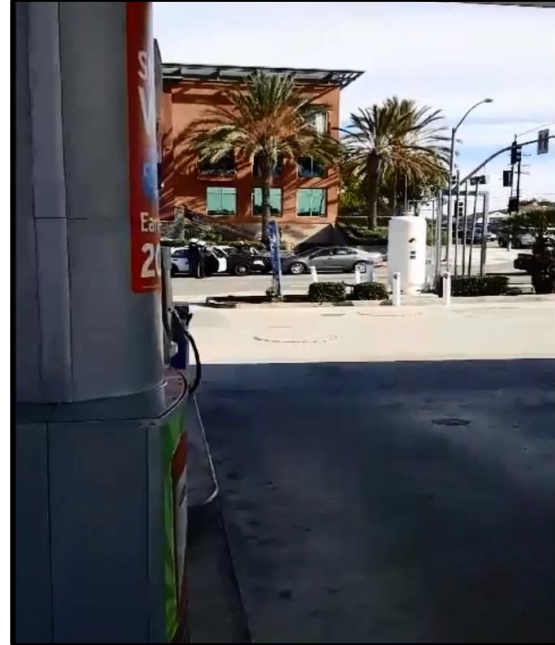


Figure 5: F■■■■ Video Still

Scott F■■■■ was refueling his car when he heard what he thought was a traffic collision. He turned to see what was happening and started recording video when he saw a police car bumper to bumper with Shirley's car. He continued taking video throughout the incident. F■■■■'s video clearly shows Shirley accelerating backward into LaLonde's patrol car, LaLonde exiting his car, and Shirley accelerating aggressively toward Lee's patrol car and in the direction of LaLonde. The video captures the sound of gunshots being fired as soon as Shirley begins accelerating toward the officers and continuing until just before Shirley's car comes to a stop, over a period of approximately eight seconds. The majority of the shots occur within the first three seconds, and approximately six shots are fired in the final five seconds, as Shirley's car is driving over the sidewalk and onto the concrete surrounding the fuel pumps. Officers can be heard yelling commands after the shooting, but not before.

Salome M■■■■ was parked in her driveway facing the intersection of Cabrillo Avenue and Sepulveda Boulevard. She recorded a ten second clip of the shooting on her mobile device and provided that clip to Channel 7 News. She subsequently provided it to detectives. The video starts as LaLonde is exiting his vehicle, shows Shirley accelerate toward, and impact, Lee's vehicle, and ends just as Shirley's vehicle drives over the sidewalk on Cabrillo Avenue.³ Gunshots can be heard as soon as Shirley's vehicle starts moving forward and they continue until the end of the video.

³ Figure 7 is a still taken from the video recorded by M■■■■.

Audio Recordings

TPD equips its officers with audio recorders. Three of the involved officers activated them during this incident; however, only Garver activated the recorder before the shooting occurred. Garver's recording begins with other, unknown, officers ordering Shirley to put her hands up; Garver responds by saying, "She's got her hands up. She's flicking us off!" Several seconds later, an engine can be heard revving, followed shortly by the sound of a collision. After the collision, the noise of the engine gets suddenly louder, someone yells, "Heads up!" and numerous gunshots are heard. The remainder of the audio captures the sounds of radio broadcasts and attempts to secure, and then assist, Shirley.

Officer Statements

Each of the officers at the scene of the shooting provided a statement to investigators regarding the moments leading up to the shooting and the shooting itself.

Garver arrived at the scene immediately after the PIT maneuver. Shirley was sitting in her car, "flipping us off and just had that thousand-yard stare in her eyes." He "called for a unit to block her in and that's when Ed LaLonde came...as he was pulling in behind her, she put it in reverse [and] completely mash[ed] the accelerator, slammed into Eddie LaLonde's car that had just blocked her in, I mean at a high rate of speed, slammed into his car." After that collision, LaLonde exited his car and was running by Shirley's car when she "put the car in drive and,



Figure 6: Still from F [redacted] cell phone video depicting Shirley accelerating forward after striking LaLonde's vehicle. LaLonde is pictured on the bottom left corner.

again, completely mashed the accelerator." "She made an abrupt left turn right where Officer LaLonde was running...She went directly towards him, so my thought was, 'she's going to run over and kill Eddie LaLonde'...She turned her car straight towards where Eddie was running...I

didn't want to see our guys get run over and killed, so I began to open fire. At that point...I didn't know who it was, but another patrol unit came up on the right side of Officer Sena and Guell in a patrol car and basically intercepted her from going through Ed LaLonde and Sena and Guell and crashed the car and changed its course of direction from going northbound through the officers."

Nakayama watched Shirley back into LaLonde's car and then he "heard the engine revving. She came straight towards my car and turned a little bit to my left so now she's, all I can picture was her running over Jason [Sena] who's in my...passenger door. That's when I open fire."

Sena was standing next to Nakayama's vehicle after the PIT, when Shirley raised her middle fingers at the officers. He watched as, "[her] finger up and she's smiling, puts it in reverse and you hear her just step on it." She went "as fast as she could and collides with Lalonde's vehicle." After that collision, she was revving her engine when "she puts it in drive and the vehicle just bucks towards us...I thought for sure she was going to be coming for our door because she made like a quick turning movement toward the left...She's coming right at us so I started discharging my firearm to try to stop her from accelerating...I was worried that she was going to come at us and take out our door while I'm standing in the pillar of the door [next to] my partner Guell... What happens when that door closes, I mean, is she going to run him over, kill him? So I kept firing."

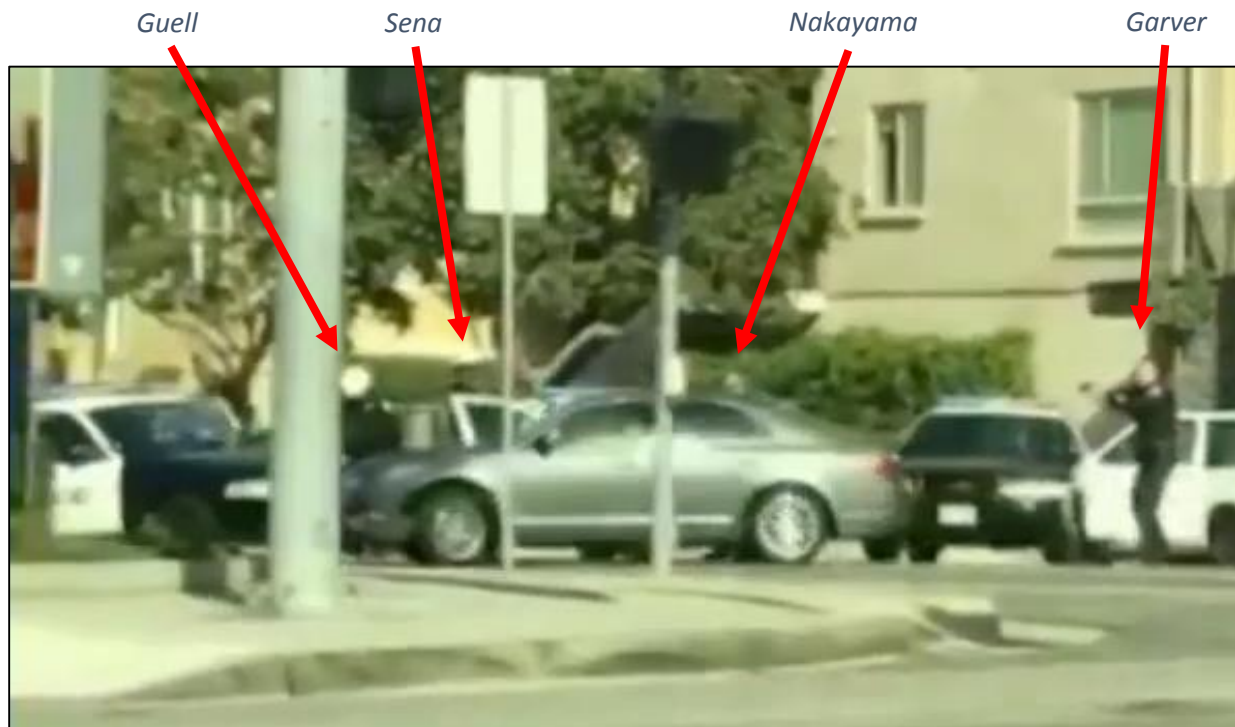


Figure 7: Still from M████ cell phone video as Shirley's vehicle impacts Lee's vehicle. The video shows Guell, who is wearing a motorcycle helmet, turn his body and brace for impact as Shirley accelerates toward him.

Guell was standing next to Sena after the PIT when Shirley "floored the throttle" and backed into LaLonde's vehicle. He watched LaLonde exit his car and start running toward him when, "She floors it...Her vehicle makes a left turn and...it's coming directly at the door Jason and I are standing at. I remember thinking, 'oh my God, it's just a motorcycle behind us; she's trying to

go through us.’ I had a Taser in my hand and I want to tell you it was the most helpless moment I think I’ve felt as a police officer. All I could do was turn my shoulder...to prepare for impact and I remember thinking, ‘This is it. This is how it’s gonna go.’”

Lee explained that after Shirley ran into LaLonde’s car, “I was getting into my car...to close the gap to prevent her from escaping, I could hear her car rev, and I looked up and she rammed me head on...The only thing I could think of doing is just putting it in drive and gassing it...to prevent her from pushing my car back.” The force of the impact drove Lee’s vehicle onto the sidewalk and Shirley’s vehicle over the sidewalk, over a hedge, and into a concrete pylon at a gas station.

Other Witness Statements

Numerous people witnessed Shirley’s behavior prior to and during the shooting. While most people just heard the gunfire, several saw what led up to the shooting.

Bryistol S■■■■ was stopped in traffic when she saw an officer PIT Shirley’s vehicle. S■■■■ watched as Shirley backed into LaLonde’s vehicle before she “stepped on the gas really hard” toward “two motorcycle officers” who were standing next to a police car. She thought that the gunfire began only after Shirley struck one of the police cars.

Christopher D■■■■ and Scott F■■■■ were standing at the gas pumps at the gas station on the corner of Sepulveda Boulevard and Cabrillo Avenue when Shirley’s car was stopped. They both watched as Shirley accelerated into LaLonde’s vehicle before driving toward the other officers and both described hearing gunshots as Shirley started driving forward. F■■■■ believed that Shirley was attempting to escape when she started driving forward.

Several other witnesses saw the events surrounding the shooting and gave accounts which were consistent with D■■■■’s.⁴

Shirley’s father, R■■■■ Shirley, was interviewed about Shirley after she was shot. He told investigators that Shirley had long struggled with bi-polar disorder and could “spiral out” if she did not get enough sleep and did not take her prescribed medication. Shirley has a history of serious mental health issues and a history of contacts with law enforcement because of those issues.

Crime Scene and Firearms Evaluation

As described above, Sena, Nakayama, and Garver opened fire on Shirley as she drove toward the officers. An analysis of their firearms and shell casings recovered at the scene revealed that Sena and Garver each fired 14 rounds while Nakayama fired seven rounds.

Shirley’s car was examined and found to have 23 apparent bullet impacts on its exterior. There were 30 apparent points of impact on its interior. Investigators were not able to account for all of the bullets nor all of their trajectories.

One bullet penetrated the windshield of LaLonde’s vehicle and impacted the partition between the front and rear seats.

⁴ B■■■■, who provided video from her mobile device, told investigators that she did not see Shirley reverse into LaLonde’s vehicle but believed that the police car impacted Shirley’s car. Carol S■■■■■■■■■■ told investigators that she believed that Shirley’s vehicle was stationary when officers opened fire. These statements are belied by the video evidence.

Autopsy Report

Deputy Medical Examiner Dr. Ogbonna Chinwah conducted an autopsy on Shirley. He noted the presence of eight gunshot wounds. Those included a non-fatal wound to the chest which traveled front to back and two fatal wounds to the chest which traveled right to left and front to back. There were also five wounds to Shirley's arms, two of which were classified as fatal.

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others, and, if someone dies as a result, this is a "lawful excuse" which precludes a conviction for murder. Penal Code sections 197, 198; CALCRIM No. 505. This defense is available if the killer actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 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. A person is not required to retreat; he may stand his ground and defend himself even if safety could have been achieved by retreating. Id.

Although the above rules apply to all people equally, there are also special rules regarding homicide by public officers. A killing by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. An officer has "probable cause" in this context 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. 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, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." Id. at 1146; *quoting* People v. Bond (1910) 13 Cal.App. 175, 189-190.

When officers responded to multiple calls regarding an erratic driver, they came upon Shirley who acknowledged their presence by staring at them and raising her middle finger in their direction, and then accelerated away from them. While being pursued by officers, Shirley accelerated through stop signs and red traffic lights, swerved into oncoming traffic, and, in response, TPD supervisors authorized officers to stop Shirley as soon as possible. Shirley's dangerous and erratic driving created a duty on the part of the responding officers to stop her in order to protect the public.

When Okazaki brought Shirley's vehicle to a stop, Nakayama, Garver, and Lee immediately positioned their vehicles so as to prevent Shirley from continuing her dangerous driving behavior. Shirley again acknowledged their presence by staring at them and raising her middle fingers in their direction, but she was wholly unresponsive to their commands. Approximately 45 seconds after she was stopped, Shirley rammed LaLonde's vehicle, shifted into drive, and accelerated using full throttle toward the officers arrayed in front of her.

A cursory examination of the video of the incident could lead one to believe that, in driving forward, Shirley was simply trying to escape from the officers; indeed, because she turned left as she accelerated, several of the civilians believed this to be her intent. However, when examined closely, the evidence shows that, by turning her vehicle to the left, Shirley started driving directly toward Sena, Guell, and LaLonde. The video evidence corroborates the officers' belief that Shirley was intentionally targeting them when she drove forward.

Once she aggressively drove toward the officers, they believed that they needed to use force to protect themselves and their fellow officers, and to stop her from using her vehicle as a weapon. Because Shirley had openly defied officers during the pursuit and after she was stopped, had shown a disregard for the safety of others when she rammed LaLonde's car, and was apparently attempting to use her car to run down officers who were on foot in front of her car, the officers' belief that they needed to use deadly force to protect themselves and their fellow officers was reasonable and therefore, lawful.

Although we conclude that the officers were justified in firing at Shirley when she drove toward them, we must also assess their continued shooting after Shirley's car was no longer moving in their direction. The cellular phone videos recorded the sound of multiple gunshots occurring over a period of eight seconds; approximately six of those shots are fired in the last five seconds when Shirley's car is driving away from the officers on the sidewalk and the apron of the gas station.⁵ When the officers fired, they knew that Shirley had just rammed two police cars, driven toward multiple police officers, and had been driving without concern to herself or others. As explained above, the officers had a duty to prevent her from causing serious harm to others and were empowered to use reasonable force to accomplish that duty. Therefore, there is insufficient evidence to prove beyond a reasonable doubt that those shots were unreasonable under the circumstances.⁶

CONCLUSION

We conclude that there is insufficient evidence to prove beyond a reasonable doubt that the involved officers who discharged their weapons used unreasonable force in self-defense or in the defense of others when they shot and killed Michelle Shirley. We are closing our file and will take no further action in this matter.

⁵ It is impossible to tell from the video which officer or officers fired these shots.

⁶ Shirley was apparently not struck by the bullets fired from behind her car. None of the bullet wound paths documented by Dr. Chinwah travelled from back to front.