

Officer Involved Shooting of Primitivo Macias

Los Angeles Police Department

**Officer Ramon Soria #39371
Officer Matthew Okubo #37535**

J.S.I.D. File #18-0018



JACKIE LACEY

District Attorney

Justice System Integrity Division

February 26, 2020

MEMORANDUM

TO: COMMANDER TIMOTHY NORDQUIST
Los Angeles Police Department
Force Investigation Division
100 West First Street, Suite 431
Los Angeles, California 90012

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

SUBJECT: Officer Involved Shooting of Primitivo Macias
J.S.I.D. File #18-0018
L.A.P.D. File #F002-18

DATE: February 26, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 8, 2018, fatal shooting of Primitivo Macias by Los Angeles Police Department (LAPD) Officers Ramon Soria and Matthew Okubo. We have concluded both officers acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 7:25 p.m., on January 8, 2018. 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, audio recordings of interviews, firearm analysis reports, crime scene diagrams and sketches, photographs, video evidence, witness statements and the autopsy report submitted to this office by LAPD Force Investigation Division (FID). The compelled statements of Soria and Okubo were not considered as part of this analysis.

FACTUAL ANALYSIS¹

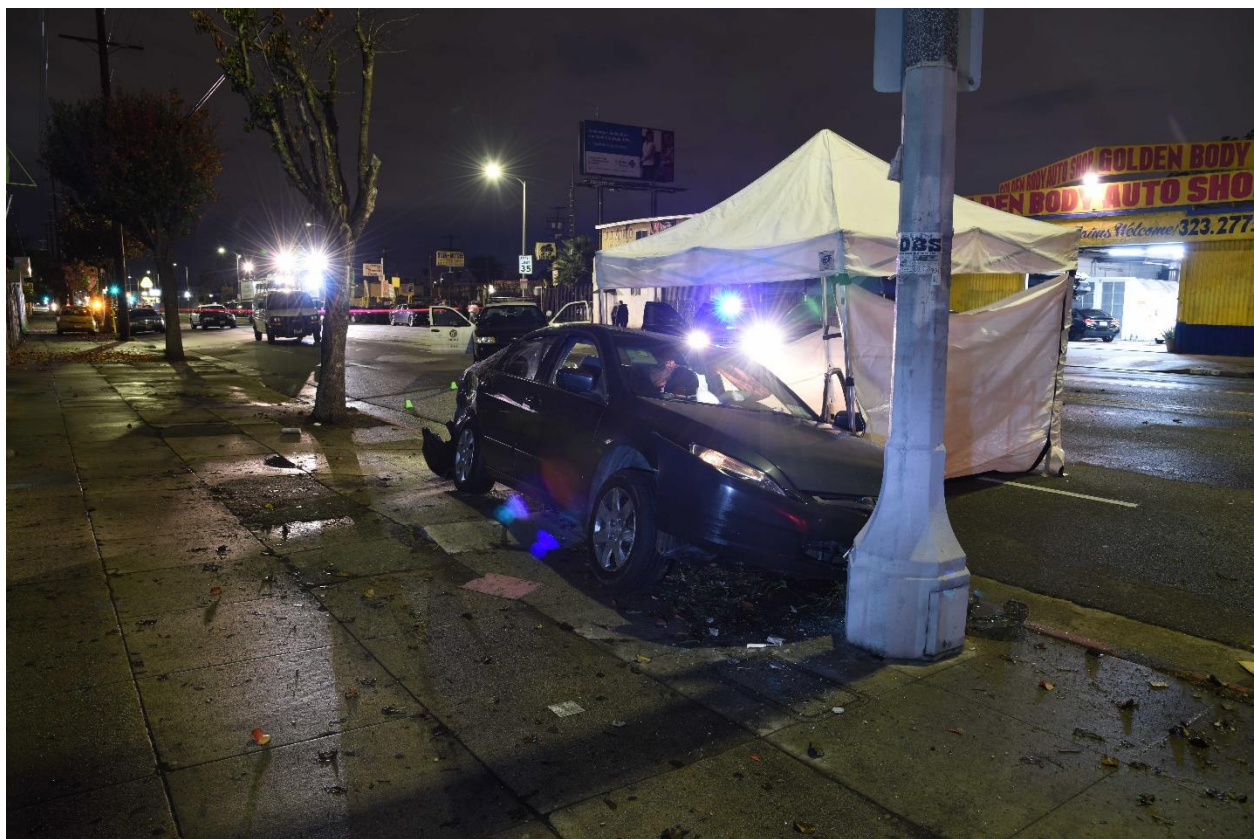
On January 8, 2018, LAPD Metropolitan Division Officers Ramon Soria and Matthew Okubo were assigned to conduct crime suppression in Newton Area.² Okubo was the driver of an unmarked hybrid police vehicle equipped with a forward-facing emergency red light and siren, while Soria was the front passenger. Both officers were in full LAPD uniform.

¹ This factual summary is based upon the statements of witnesses, video evidence and physical evidence obtained during the investigation.

² The officers were tasked with conducting pedestrian and vehicular code enforcement in high frequency gang crime areas to combat an increase in gang conflicts in Newton Area.

At approximately 6:00 p.m., the officers observed a gray Honda Accord while travelling north on Broadway Avenue from Florence Avenue. The Accord, driven by Macias, suddenly accelerated and drove away at a high rate of speed into a Shell gas station's parking lot. The Accord then quickly exited the lot via a driveway onto Broadway Avenue. Okubo followed the Accord through the lot as Macias drove diagonally across the intersection of Florence Avenue and Broadway Avenue in a reckless manner. Macias failed to stop for a red-phase tri-light at Broadway Avenue, nearly colliding with oncoming traffic.

The officers conducted a computer inquiry of Macias' license plate number via their Mobile Digital Computer (MDC).³ The inquiry revealed that the vehicle had no wants or warrants. Macias lost control of his vehicle and collided with a vehicle travelling east on Florence Avenue. After the collision, Macias' vehicle spun out and slid across lanes of traffic, striking the curb and colliding with a light pole.⁴



Front Views of Macias' Vehicle After it Collided with Light Pole

³ Macias was the registered owner of the vehicle.

⁴ Surveillance video retrieved from Golden Body Auto Shop, located on East Florence Avenue, captured the traffic collision as well as the officer involved shooting that followed. From the video it appears the officers had their forward-facing emergency light on as they followed Macias. The video does not have sound. Civilian witnesses near the location recalled the officers' vehicle also having its siren on prior to Macias' collision with the light pole.



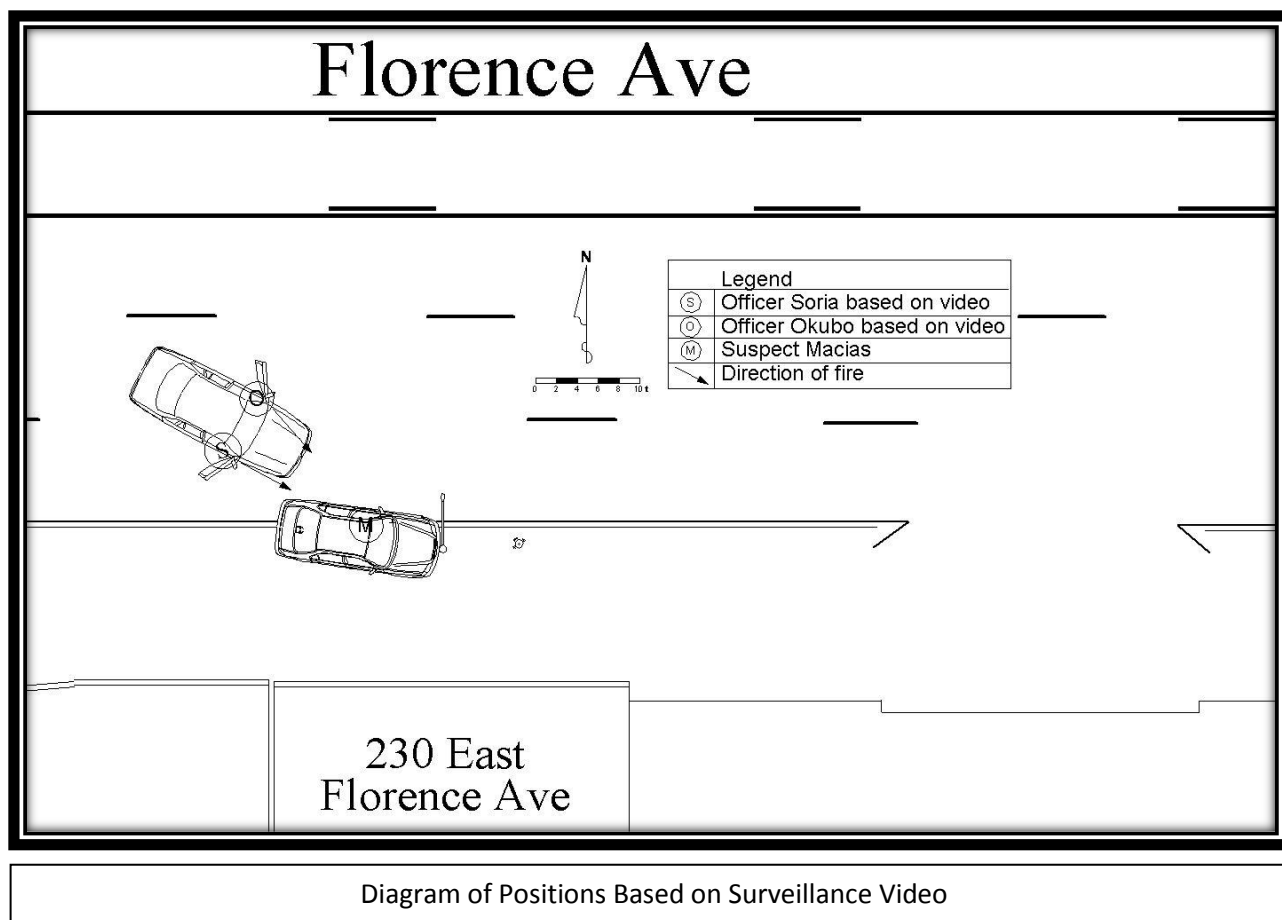
Rear View of Macias' Vehicle After it Collided with Light Pole

Macias' vehicle came to rest on the south sidewalk facing east on Florence Avenue with the driver's side of the vehicle partially straddling the roadway. Oscar M. was standing in front of his business, located on East Florence Avenue, when he heard tires screeching followed by a car crash across the street. Oscar told his sister Christina M., "Hey, let's go help him." Oscar then saw Macias exiting his car window holding a large gun in his right hand. The gun was pointed towards the officers. Macias was yelling, "I'm guilty! I'm guilty! I'm guilty!" Fearing for his safety, Oscar ran inside of his business and got on the ground. Oscar then heard gunshots emanating from outside.

Christina was talking to Oscar when she heard a loud crash. She turned towards the street and observed Macias' vehicle. Christina then observed Macias holding what she described as a rifle out of his car window and pointing it at Okubo and Soria. Christina ran inside and later heard gunshots.

After stopping their vehicle, Okubo opened his driver's side door and drew his service weapon. Okubo aimed his pistol at Macias from an approximate decreasing distance of 15 to ten feet and fired three rounds as the police vehicle slowly rolled forward towards Macias' vehicle.

Simultaneously, Soria opened his car door, as Macias emerged from the driver side window holding an assault rifle, which was pointed at him. Soria drew his service weapon and fired three rounds at Macias from an approximate decreasing distance of 15 to ten feet.



Surveillance video captured Macias emerging through the driver side window holding a firearm and pointing it in the direction of the approaching officers, as well as the officers firing rounds at him.⁵ Additionally, Oscar M., Christina M., Elvira G. and Vanity A. all observed Macias pointing a firearm at Soria and Okubo. Both Elvira and Vanity believed Macias fired the weapon at officers, but no physical evidence was located to support that claim. Oscar told investigators, “The officers did what they had to do. It wasn’t something that they could – you know, the guy had his gun out, and it was either they shot him, or they were going to get shot. So they did the right thing.”

⁵ The video is grainy and the view at points is obstructed, but the video clearly depicts Macias leaning out of his driver’s side window with a large firearm in his hand, pointed toward the police vehicle as it is approaching him. It further depicts the police vehicle moving in reverse after shots are fired. Casings recovered from the location are consistent with each officer having fired three rounds from the distances described previously, consistent with the positioning depicted in the video. Other videos from surrounding locations, and other responding units were obtained by investigators but do not show the officer involved shooting.



Still Shot from Surveillance Video of Officers Approaching and Firing at Macias

After being struck in the head by gunfire, Macias dropped the rifle, which landed on the ground outside of his driver's side door. Macias' body slumped over the driver's side window with his upper torso hanging outside the window. Okubo then entered and reversed his vehicle as Soria continued to cover Macias with his service weapon.



Still Shot from Surveillance Video of Officers After Macias was Shot

Soria broadcast that shots had been fired and requested two Rescue Ambulances (RA), one for Macias and one for the victims of the traffic collision. Additional officers responded to the location, cleared the Accord and then extracted Macias from the vehicle. Officers noted that the Accord's ignition was still running when they approached, and the left wheel was still spinning. Macias' weapon was moved to the pavement east of the Accord prior to his extraction.

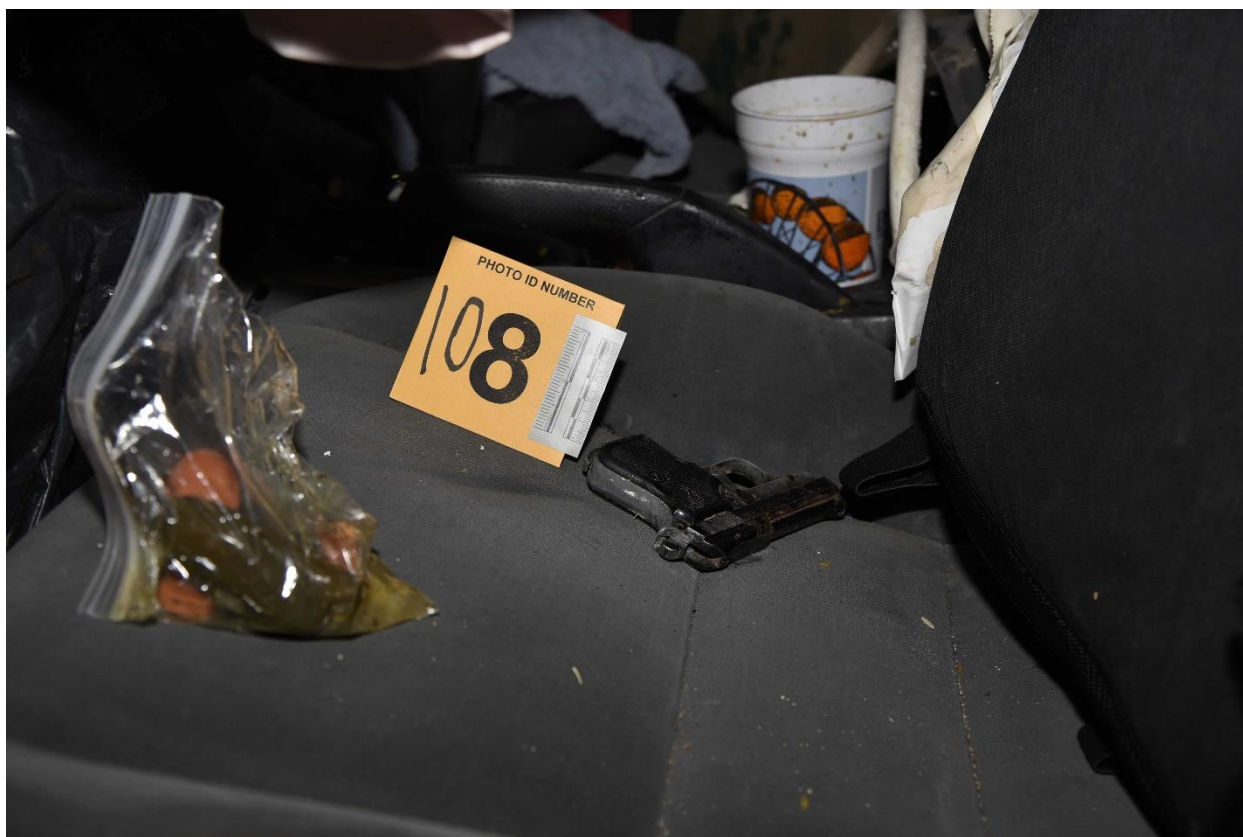
Macias' weapon was later determined to be a red .223 caliber semiautomatic pistol with black grips. Criminalists were unable to determine the make, model or serial number of the pistol. The pistol had a barrel length of approximately nine inches. The pistol had a magazine fully inserted, loaded with 16 .223 caliber cartridges. An additional unfired cartridge was retrieved from the chamber. The weapon was determined to be a California Assault Weapon as described in sections 30515(4)(C) and 30515(a)(4)(D) and clarified in section 30520 of the California Penal Code. The weapon was determined to be functional.⁶ DNA testing was done on a swab taken from the firearm and the DNA was found to be a match for Macias' profile. The profile obtained from the weapon was found to occur approximately once in greater than one septillion unrelated individuals.

⁶ When examined by criminalists, the safety on the weapon was on. It is unclear whether one of the officers who moved, recovered or booked the item turned the safety on or whether it was recovered in that position.



Assault Weapon Macias Pointed at Officers in Location Where it was Recovered

A second firearm, a .25 caliber pistol, FIE, model Titan, was found under a seat cushion on the driver's side seat of Macias' vehicle. The pistol was loaded with six .25 caliber cartridges in the magazine and an additional unfired round in the chamber. The hammer of the weapon was cocked and the safety on. The weapon was determined to be functional. No latent fingerprints of value were recovered from either of Macias' firearms.



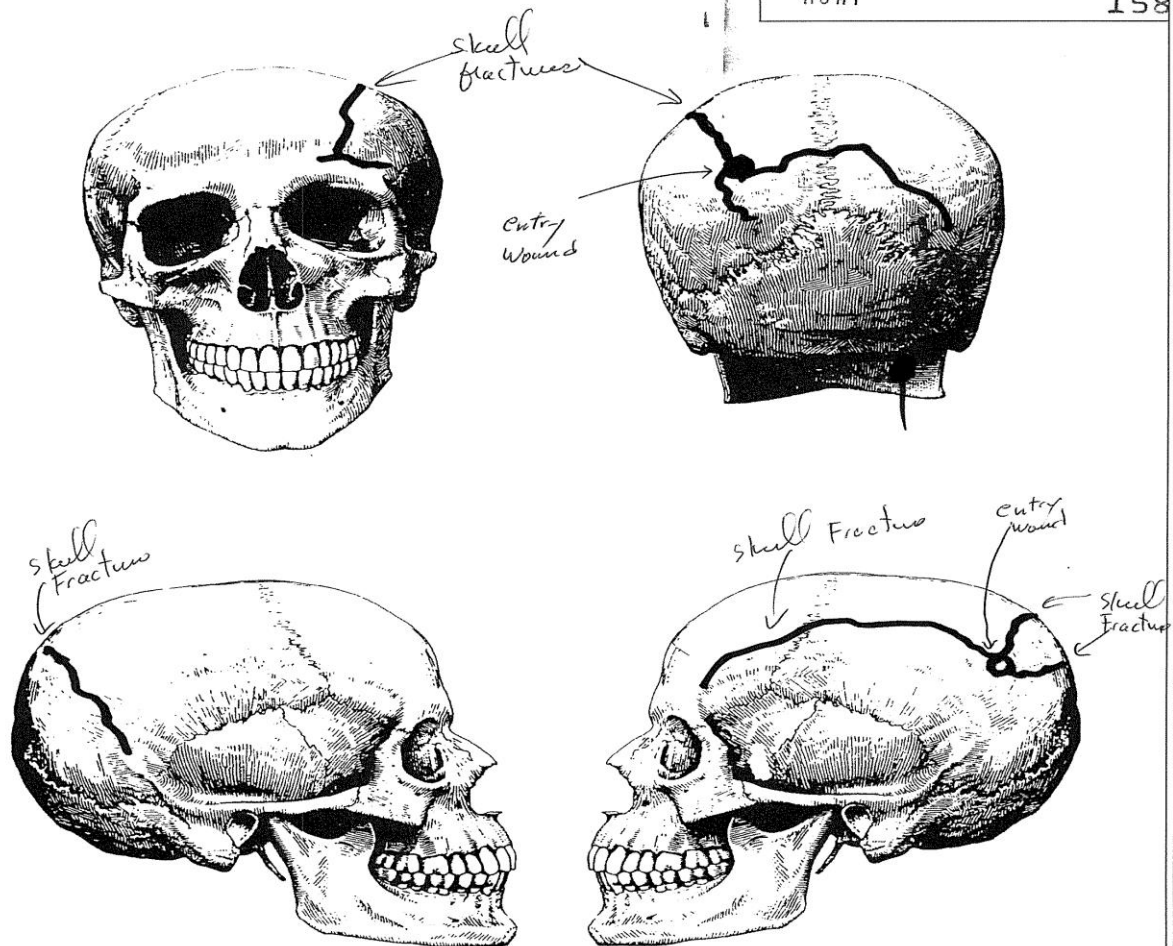
Second Firearm Recovered from Macias' Vehicle

Macias was pronounced dead at the scene by paramedics. An autopsy was conducted on January 9, 2018. Los Angeles County Department of Coroner Deputy Medical Examiner Doctor Juan Carrillo determined Macias' death was caused by a single gunshot wound to the back of the head.⁷ Diagrams included with the autopsy report show the gunshot wound to be located on the left rear side of Macias' head. The trajectory was determined to be back to front, left to right and downward. The location and trajectory are consistent with Soria having fired his weapon from the passenger side of the police vehicle at Macias while he was extended approximately halfway out of the driver's side window. It is also consistent with their locations while Macias was pointing his weapon at officers as depicted in the surveillance video.

⁷ Ballistics testing of the round recovered during the autopsy determined the round that caused the fatal wound was fired from Soria's service weapon.

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2018-00289
MACIAS-RODRIGUEZ JR, PRIN
HONI 158



2/12/18

[Signature]

M.D.
Deputy Medical Examiner

Diagram Depicting Location of Gunshot Wound to Back of Macias' Head

Swabs taken of Macias' hands for gunshot residue were tested and determined to be inconclusive due to a lack of gunshot residue particles. A toxicology screen done as part of the autopsy revealed methamphetamine, amphetamine and prescription anti-depressant and anti-psychotic medication were present in Macias' blood at the time of his death.⁸

⁸ A clear baggie containing a white substance appearing to be methamphetamine was recovered from Macias' right ankle, under his sock, by Los Angeles County Department of Coroner Investigators. Macias had been diagnosed as bipolar per his girlfriend and took medication to treat the disorder. She advised investigators, "He always took his medication. That was the one day he didn't."

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 § 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. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

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

"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.

In the instant matter, Macias demonstrated a lack of concern for the safety of others with erratic driving. When officers attempted to stop his vehicle, he fled and continued to drive recklessly, colliding with another vehicle before losing control of his car, spinning out and colliding with a light pole. Macias then emerged from the vehicle's driver's side window with a large firearm pointed at approaching officers. At that point in time, the officers were reasonably in fear for their lives and chose to use deadly force to stop the imminent threat that Macias posed. Several witnesses observed Macias pointing the weapon at the officers, and two believed Macias had shot at the

officers. Given those circumstances it was reasonable for each officer to fire their service weapon in self-defense, defense of their partner and in defense of the civilian witnesses in the vicinity who were also potentially at risk of death or great bodily injury should Macias fire his weapon.

CONCLUSION

We find that Officers Soria and Okubo acted lawfully in self-defense and in defense of others when they used deadly force against Primitivo Macias. We are closing our file and will take no further action in this matter.