

Officer Involved Shooting of John Dutchman III

South Pasadena Police Department

Officer Patrick Zamora, #210

Alhambra Police Department

Officer Michael Hennes, #279

J.S.I.D. File #16-0514



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 14, 2017

MEMORANDUM

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

SUBJECT: Officer Involved Shooting of John Dutchman III
J.S.I.D. File #16-0514
L.A.S.D. File #016-00116-3199-055
S.P.P.D. File #16-2113
A.P.D. File #16-6745

DATE: July 14, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 9, 2016, non-fatal shooting of John Dutchman III by South Pasadena Police Department (SPPD) Officer Patrick Zamora. It is the conclusion of this office that Officer Patrick Zamora acted reasonably and lawfully in self-defense and in defense of others when he used deadly force against John Dutchman III. It is the conclusion of this office that there is insufficient evidence to prove beyond a reasonable doubt that Alhambra Police Department (APD) Officer Michael Hennes acted unlawfully under the circumstances in shooting at Seo K.

The District Attorney's Command Center was notified of the shooting on October 9, 2016, at approximately 9:57 a.m. The District Attorney Response Team responded and was given a walk-through of the scene.

The following analysis is based on investigative reports and witness statements taken during the investigation by the Los Angeles County Sheriff's Department (LASD) and submitted to this office by Sergeant Tim Cain and Detective Dean Camarillo. The reports also include photographs, video,

and radio communications recordings.¹ No compelled statements were considered for purposes of this analysis.

FACTUAL ANALYSIS

On October 8, 2016, John Dutchman attended a birthday party in Alhambra where he met up with several friends. Prior to arriving at the party, Dutchman drank two beers and while at the party, Dutchman drank a bottle and a half of wine and took three “hits” of marijuana. At about 11:30 p.m., Dutchman and his friends, Victor T., Danny G., and Cynthia Y. drove to The Barkley Restaurant and Bar in South Pasadena to continue the celebration.² At approximately 1:45 a.m. the group of friends left the bar with Cynthia Y. driving, Victor T. in the front seat, and Dutchman and Danny G. in the back seat. As they were traveling in the area of Fremont Avenue and Huntington Drive, Dutchman suddenly exited the car and walked away. Dutchman’s friends were driving around the area trying to find Dutchman, when they were stopped by SPPD Officer Gilbert Carrillo at about 2:20 a.m. for driving on the wrong side of the road. Cynthia Y. informed Carrillo that they were looking for their friend, Dutchman, who suddenly exited their vehicle as they were driving home. Carrillo determined Cynthia Y. was not intoxicated and gave her a warning for traveling on the wrong side of the road. Dutchman’s friends then drove to Victor T.’s apartment in Alhambra, figuring Dutchman would eventually return there.

Dutchman instead walked to [REDACTED] Huntington Drive and entered the residence of Soon L. and her daughter, Seo K. The residence at [REDACTED] Huntington Drive is located in South Pasadena and is a two-story residential duplex with an attached unit on its west side which has an independent address of [REDACTED] Huntington Drive. The residence has two-bedrooms, a full bathroom, and a half-bathroom. There is a kitchen, half-bathroom, living room and dining room on the first floor. Two bedrooms are located upstairs along with a full bathroom. The property has a common balcony located on the second floor, which faces Huntington Drive. The front door of the residence also faces Huntington Drive.



[REDACTED] Huntington Drive

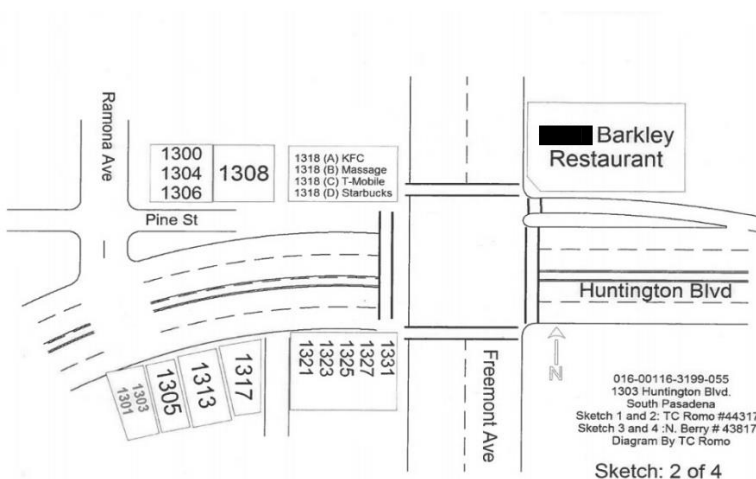
¹ Neither officer was wearing body worn video. However, digital in-camera video (DICV) from Hennes’ patrol car did capture a portion of Hennes’ approach to the location and the subsequent sound of his weapon firing. The DICV camera was not positioned in a way to visually capture Hennes actually discharging his weapon.

² The Barkley Restaurant and Bar is located at [REDACTED] Huntington Drive.



████████████████████ Huntington Drive

Dutchman would later state that he had no memory of walking to the residence or entering the residence.³



Proximity of The Barkley Restaurant and Bar to ██████████ Huntington Drive

At approximately 4:00 a.m., Soon L. was asleep on the first floor of her residence when she awoke feeling ill and went upstairs to use the bathroom. While inside the bathroom, Soon L. heard Seo K.'s dog barking loudly and Seo K. emerging from her bedroom. Upon opening the bathroom door to see what the commotion was about, Soon L. observed a bald headed adult, later identified as John Dutchman III, ascending the staircase in her home. In fear that Dutchman, a stranger, was there to attack them, Soon L. grabbed Seo K. and pulled her into the bathroom. Soon L. closed the door and held it shut to prevent Dutchman from gaining entry.⁴ Dutchman began pushing on the door attempting to gain entry, but Soon L. held firm against the door. Soon L. screamed and yelled for help while telling Dutchman to go away. Dutchman made unintelligible growling noises as he continued to push on the door. Soon L. had her cell phone and was able to call 9-1-1.⁵ After

³ The Barkley Restaurant and Bar is located approximately 500 feet from ██████████ Huntington Drive.

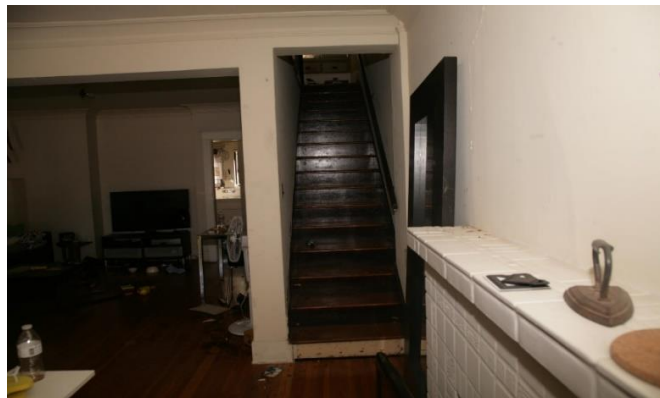
⁴ The bathroom door was not equipped with a locking mechanism.

⁵ Soon L.'s call was handled by a SPPD operator.

struggling back and forth over the door for a while, Soon L. heard Dutchman walk back down stairs to the first floor. Soon L. then heard the noise of items breaking and crashing downstairs.

Soon L. directed Seo K. to go get help by climbing out the bathroom window to the balcony. Seo K. broke the bathroom window and threw it outside onto the front yard as she screamed for help. While Seo K. was outside on the balcony, she saw a gunshot fired by an officer. Seo K. heard the officer screaming at her to raise her hands and Seo K. immediately complied. Meanwhile inside the bathroom, Soon L. heard a single gunshot and Dutchman returning upstairs. Dutchman made one last attempt to get into the bathroom, but was unable to push past Soon L. Soon L. then heard Seo K.'s bedroom door close and believed Dutchman was inside the bedroom. At that time, Soon L. climbed through the bathroom window onto the balcony.

At approximately 4:26 a.m., officers from the SPPD responded to Soon L.'s 9-1-1 call which was reported as a burglary in progress. SPPD dispatch advised the suspect was downstairs and was described as a male Hispanic, 30-35 years of age, wearing a yellow shirt and dark shorts. SPPD Officer Carrillo was the first unit on scene and positioned his patrol vehicle a few houses east of the location.⁶ SPPD Sergeant Spencer Louie and SPPD Officer Patrick Zamora arrived on scene seconds later.⁷ As they stood near the front door, they were advised the suspect was making his way upstairs. Hearing frantic screams coming from the residence, Carrillo, Zamora, and Louie entered the location by pushing open the front door, which was locked but not secured.⁸ Zamora entered first, followed by Carrillo and Louie. The interior of the residence was completely dark. As Zamora positioned himself at the base of the stairs, Carrillo stood directly behind Zamora and Louie walked toward the kitchen area to clear it. Meanwhile, the frantic screams continued upstairs. Within seconds after taking a position at the base of the stairwell and illuminating the stairwell, Zamora observed a suspect, later identified as Dutchman, leaning down towards the stairwell while holding something in his hands and pointing it at Zamora. Fearing he was about to get shot, Zamora fired his weapon in Dutchman's direction. Zamora fell backwards down the stairs, onto Carrillo, and landed on his back as he continued to fire in Dutchman's direction. Zamora fired a total of seven rounds, not knowing if he had actually struck Dutchman.

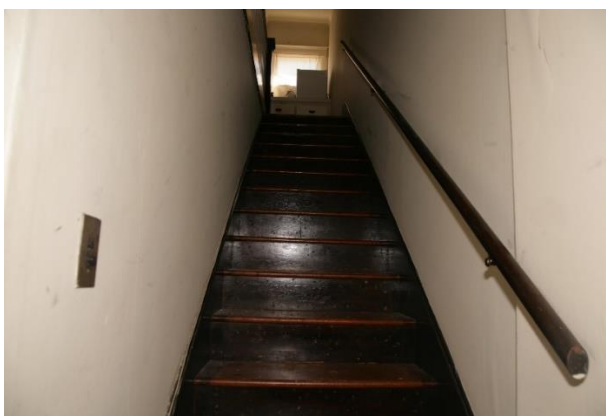


Interior Stairwell of [redacted] Huntington Drive

⁶ Coincidentally, Carrillo had conducted a traffic stop of Dutchman's friends about two hours earlier.

⁷ The SPPD had only four units (three patrol officers and a sergeant) on duty at the time of this incident and all responded to the location. Officer Michael Smith also responded to the location, but covered the rear part of the residence and did not enter the location.

⁸ A subsequent examination of the door revealed that the door could be pushed open even if the door knob was in the locked position because the door knob failed to engage in the strike plate while the door was in the closed position. The only way to secure the front door was to engage the deadbolt.



Close-up of Stairwell

Dutchman retreated into a bedroom upstairs and assistance was requested from neighboring police agencies. Zamora and Carrillo stood up and positioned themselves behind cover at the base of the stairwell. As the screaming continued upstairs, Zamora called out to Dutchman, but there was no reply. The officers then heard footsteps and someone running the length of the house, toward the south portion of the house. Carrillo stepped outside and observed a woman, later identified as victim Seo K., lean over the balcony. The sound of glass breaking was heard upstairs. Meanwhile, Seo K. had climbed out the bathroom window and onto the balcony. At this time, Carrillo observed officers from the Alhambra Police Department (APD) and San Marino Police Department (SMPD) standing in the front yard of the residence.⁹ Carrillo advised them there was a woman, Seo K., on the second floor that needed to be rescued. Carrillo also advised his dispatcher of their intent to rescue a woman from the second floor. Carrillo instructed Seo K. to climb down in his arms, but she refused.¹⁰ The officers requested a ladder from the fire department, who were staged nearby.

SMPD Officer Kevin Cordischi was among the first assisting officers to respond. Upon his arrival, officers from the SPPD were in the process of rescuing Seo K. As Cordischi was about to go retrieve a ladder from the fire department, he heard a gunshot but did not see who fired. SMPD Sergeant Danny Gutierrez also responded to assist. When Gutierrez arrived at the location, Carrillo was standing at the threshold of the location and Louie was inside. Carrillo advised Gutierrez they had a “hot prowl” call, that two shots had been fired (Gutierrez assumed by officers), and that it was unknown if the suspect was hit. Carrillo further advised that the victims and the suspect were upstairs. Gutierrez and Carrillo formulated a plan to get the victims down, and the fire department was requested to stage nearby. While Gutierrez was in the process of obtaining a ladder from the fire department, he observed several APD officers, among them Hennes and Corporal Will Ruiz, arrive and approach the residence. Shortly thereafter, Gutierrez heard a shot fired and in fear of getting ambushed, hid in nearby shrubs. Gutierrez then heard an Alhambra officer ask who shot, at which time Hennes responded he had.¹¹

The APD patrol vehicles of the officers who responded to the location were equipped with digital in-car video (DICV). The DICV from Hennes’ patrol vehicle, parked approximately three houses from the location, partially captured Hennes’ initial approach to the location. The DICV video footage shows Hennes running on the sidewalk of 1303 Huntington Drive headed toward the location, followed immediately behind by APD Officer Christopher Bates. Hennes and Bates are then seen running into the front yard of the location where they disappear from camera view. The

⁹ The Monterey Park and San Gabriel Police Departments also responded, all within a few minutes of each other.

¹⁰ Unbeknownst to Carrillo, Seo K. was partially blind and did not see Carrillo or his attempt to help her.

¹¹ Gutierrez was wearing an audio recorder which captured this portion of the incident.

visible portion of the front yard appears dark but for a street light directly in front of the location. Approximately twelve seconds later, Hennes' rifle shot is heard and Hennes and Bates return into camera view as they run back taking cover behind a low concrete wall/border along the front yard and to the right of the location. Hennes is immediately heard stating, "She pointed something my way. I couldn't see what it was."

Officer Raymond Cota, a K9 unit from the Monterey Park Police Department also responded to assist. When Cota arrived, patrol cars from the Monterey Park Police Department were stationed on the east and west sides of the location, with their post mounted spotlights lighting up the front of the house. At this point, Cota did not know there were South Pasadena officers inside the house. Each responding police department was on its own radio frequency and hence, each was not receiving information being directly transmitted by the SPPD and officers at the scene.¹² Cota was walking toward a large tree on the west side of the house, where he intended to take a position of cover, when he heard a single gunshot. Cota observed Hennes, who was directly in front of him, fire in a southbound direction. Hennes immediately stated, "She pointed something at me. She pointed something at me." Cota looked up toward the residence and observed Seo K. standing on the second story balcony. Seo K. knelt down taking cover behind the balcony. Seo K. was out of sight for about ten seconds before standing up with her hands raised as instructed.

Officer Zachary McFarland was the first APD officer to respond to the scene. As he was approaching the location, McFarland briefly spoke to a security guard standing nearby who advised him that he had heard several gunshots coming from the location of the radio call. Upon his arrival, McFarland observed a SPPD officer standing in the front yard of [REDACTED] Huntington Drive. The officer was yelling at a female, who was standing on the upstairs balcony, and she was in turn yelling back.

McFarland inquired what was going on but was only told to cover the side yard to the west of the duplex, whereupon McFarland drew his firearm and covered the side yard of the residence. While he was covering the side yard, McFarland overheard a SPPD officer tell a San Marino sergeant that a male and female were still inside the residence and that one possibly had a gun. Based on the information obtained from the security guard and what he overheard from the SPPD officer, McFarland advised the incoming APD units that the situation possibly involved an active shooter and suggested they wear their vests and bring rifles.

While covering the side yard, McFarland heard a loud gunshot close to him. McFarland then observed Hennes yelling and pointing his rifle upwards at the balcony.¹³ Hennes yelled, "She pointed something at me!" Hennes and McFarland then retreated to the sidewalk just west of the location behind a small cinder block wall.

Members of the Los Angeles County Sheriff's Department Special Enforcement Bureau (SEB) subsequently responded to the location where they made announcements for Dutchman to show himself. Dutchman responded by moaning and asking for help. Dutchman yelled out he was not armed, and in a confused and rambling way stated that this was a big misunderstanding and he did not know how he got there. Dutchman then emerged from the second floor, stood with his hands

¹² The SPPD department communications log shows that at 4:49 a.m. the SMPD and the APD were advised to switch to SPPD frequency. This was *after* SPPD units had made entry at 4:30 a.m., *after* the initial shots were fired at 4:31 a.m., and *after* "shots fired heard on the Huntington side – Unk if from susp or officer" was reported at 4:41 a.m.

¹³ Hennes was armed with his department issued M4, 5.56 x 45 mm caliber, semiautomatic rifle.

raised and said, "I thinking I'm shot." Dutchman removed his shirt as instructed, revealing a through-and-through gunshot wound to his right bicep. Dutchman then came downstairs and was taken into custody without incident. The fire department responded and transported Dutchman to Huntington Memorial Hospital for medical treatment.

Dutchman was subsequently charged in case number GA099283 with two counts of false imprisonment by violence in violation of Penal Code section 236, felony vandalism in violation of Penal Code section 594(a), and aggravated trespassing in violation of Penal Code section 602.5(b). On December 12, 2016, Dutchman was convicted of one count of false imprisonment by violence and sentenced to 129 days in jail and three years of formal probation.

Statement of Officer Patrick Zamora

Zamora provided a voluntary statement to Investigating Officers Cain and Camarillo. Zamora responded to a burglary in progress at [REDACTED] Huntington Drive at approximately 4:15 a.m. Dispatch advised that the reporting party was still on the phone with the dispatcher and the suspect was still at the location. Zamora responded "Code 3" (with lights and siren) to the location, turning off his sirens about a block from the location and parked approximately two residences east of the location. Upon Zamora's arrival, Carrillo and Louie were already out of their vehicles and approaching the location. As Zamora neared the residence, he heard a high-pitched scream coming from inside the location. The scream sounded as if someone was in great peril and in dire need of help.

Zamora was the second officer to enter the house. Zamora made a tactical decision not to announce his presence, so as not to give a direction as to where he was located. Once inside, Zamora noted the location was dark and the screaming continued coming from upstairs. Zamora also heard a pounding sound, as if someone was hitting a wall. Zamora went toward the stairwell and stopped at the base of the stairs for his fellow officers to fall in behind him. The staircase was dark. To the right of the staircase was a solid wall which separated the unit from the adjoining unit, and to the left was a solid wall that stopped midway up the staircase, where a railing started. A ceiling was over the lower portion of the stairs. As the officers ascended up the stairs, Zamora was in front, followed by Carrillo and Louie. Zamora activated the light attachment on his duty weapon. As Zamora reached the fourth step, he observed a suspect, Dutchman, to his immediate left and above him. Dutchman was leaning over the rail with his hands together and both of his arms bent at an approximate 45-degree angle. During his interview with investigators Cain and Camarillo, Zamora demonstrated Dutchman's position on the stairwell when he encountered him.



Zamora Demonstrating Dutchman's Position on the Stairs

In fear that Dutchman was holding a weapon and was about to shoot him and his fellow officers, Zamora turned and twice fired in Dutchman's direction.¹⁴ Zamora did not know if he struck Dutchman, but after Zamora fired his weapon, Dutchman appeared to lean more in Zamora's direction. Zamora began to move backwards down the stairs, but fell backward as he continued to fire in Dutchman's direction. As Zamora landed on his lower back, he felt pain go through his body which caused him to believe he had been shot. Zamora then rolled to his left and took a position of cover behind the solid wall while still maintaining a view up the stairs. Louie then instructed Zamora to change out his weapon's magazine, which he did.¹⁵

Following the shooting, Zamora continued to cover the stairs as Carrillo covered the downstairs and Louie covered the backdoor area. Meanwhile, the screaming and the pounding continued upstairs. Zamora yelled upstairs asking where the suspect was. A female voice (Seo K.) replied that he was in her room or getting into her room. Thereafter, Zamora heard Seo K. behind him, as if she made it outside or through a window. Zamora then heard Seo K. yelling that her mother was holding the door. At this point, Zamora knew that officers from other agencies had arrived and were communicating with the victims from outside. Thereafter, a ladder arrived and he heard an officer telling the victims they would be taken down the ladder. Once the victims were evacuated from the location, Zamora and Louie were relieved of their positions inside the location.

At some point in the middle of the incident, Zamora heard an additional shot whereupon he had Carrillo take his position near the stairs, so that he could look out the door to ensure they were not in a crossfire situation. Zamora yelled out asking who was shooting and an unknown voice responded he had shot.

Statement of Officer Michael Hennes

Hennes provided a voluntary statement to investigators Cain and Camarillo. Hennes was on patrol when he responded to the location to assist the SPPD with a "shots fired" call. Hennes was not specifically dispatched to the location; he heard a radio broadcast that SPPD had shots fired at [REDACTED] Huntington Drive and headed that way to assist. Hennes knew that McFarland was already at the location. Hennes asked McFarland questions regarding coordination, such as where he should set up and also communicated with another APD unit, Ruiz and Bates, who were following him to the location. As he arrived at the location but before he exited his vehicle, Hennes heard McFarland advise over the radio, "Active shooter, grab your vests and rifles." Hennes did not receive any type of suspect description.¹⁶

As instructed, Hennes removed his rifle from his vehicle and got his vest and helmet. While still at the vehicle, he "racked" a round into the weapon's chamber. Hennes briefly spoke with Ruiz and Bates along the lines of, "Are you ready?" before heading towards the location. As he neared the

¹⁴ Zamora was armed with his department issued Glock, Model 22, .40 caliber semiautomatic pistol, equipped with a tactical light mounted on the frame.

¹⁵ An examination of the magazine in use at the time Zamora fired his weapon revealed there were eight cartridges left in the magazine, indicating Zamora fired seven rounds.

¹⁶ The audio recording of the APD communications log indicates that Hennes, in fact, did not receive any suspect information or details regarding the nature of the call prior to approaching the location. The radio call is announced as, "South Pas shots fired" at [REDACTED] Huntington Drive. Shortly thereafter McFarland announces, "Possible active shooter, you guys may want to wear your vests, bring rifle." APD officers are then advised that two SPPD officers are at scene and it is going to be a SPPD "handle." An inquiry immediately follows, "What time do you want units to switch to South Pas frequency?" However, APD units are not advised to switch to SPPD frequency until well after Hennes has discharged his rifle.

location, Hennes heard male voices coming from the area of the house. Because it was dark and his view was obstructed by bushes, Hennes did not see anyone at this point. When Hennes cleared the tree line on the east side of the property, he observed McFarland standing on the porch of the location a few feet away from two officers he did not recognize. The two unknown officers were yelling into the house. Hennes quickly scanned the location by looking to his left and right. He observed the location was a two-story duplex with a solid balcony. Hennes noted the house was poorly lit and the inside was illuminated by officers. It appeared as if there was an interior light on upstairs, and there was glass and/or a screen on the sidewalk that divided the duplex's front lawn.

Thinking he needed to find out more information regarding the call, Hennes ran directly to McFarland. As he was running towards McFarland, Hennes observed a figure (Seo K.) "pop up" from the balcony. The figure appeared to be that of a person who was hunched over and leaning forward with the arms fully extended in front of the body. Hennes could not otherwise observe any distinguishing features due to the darkness of the location. Although he was able to see the person's head and shoulders, Hennes could not tell if the person's hands were together or apart. Although Hennes did not see any objects in the person's hands, he could not be certain that there was not anything in the person's hands. Hennes did not hear the person say anything. Nonetheless, when the person "popped up" unexpectedly, it "registered" to Hennes that this person was the shooter. Feeling vulnerable and exposed in the middle of the yard, Hennes fired his rifle one time in the direction of the figure which he perceived to be a shooter. As he fired, Hennes did not stop to take direct aim. Hennes was running in a southwest direction, quickly turned his head to his left, and fired in the direction of the figure who was to Hennes' left and forward. Because the incident happened so quickly, Hennes did not give any verbal commands prior to pulling the trigger. The figure immediately dropped behind the balcony and Hennes braced himself anticipating the impact of being shot, however that never came. Hennes then made his way to a planter, which was west of the location, as he yelled at the figure to, "Let me see your hands!"

Hennes did not recall if the tactical light on his rifled was turned on at the time. After he shot, the balcony was illuminated with a spotlight from the street and Hennes observed that the figure he saw was, in fact, a young female Asian who was standing in the center of the balcony. At the time he fired his rifle, Hennes was unaware of any rescue attempts and a ladder had not arrived at the location.¹⁷

Statement of John Dutchman III

Dutchman is an Army veteran who experienced combat during the Gulf War. In 2009, Dutchman was diagnosed with Post Traumatic Stress Disorder and tinnitus. Although Dutchman receives disability benefits, he is not prescribed any medications. Dutchman has been married for five years, but most of the time his wife lived in her native country of Korea, while he lived in the United States. About three weeks prior to this incident, Dutchman began living with his wife and her two children in North Carolina. After approximately three weeks of cohabitation, Dutchman left his wife and came to California to meet up with his friend and fellow Gulf War veteran, Miguel G. Dutchman arrived in the Los Angeles area on October 5, 2016, and had been staying at Miguel G.'s residence in Whittier. On October 8, 2016, Dutchman had a case of wine delivered to Miguel G.'s house. Dutchman and Miguel G. then went to Victor T.'s house in Alhambra to celebrate Victor T.'s birthday where they finished the six bottles of wine with their other friends, Danny G. and

¹⁷ The DICV video footage from Hennes' patrol vehicle shows there was no ladder in the front yard of the location at that time.

Cynthia Y. Dutchman drank a bottle and a half of wine at the location. In addition to the wine, Dutchman drank two bottles of India Pale Ale beer and took three “hits” of marijuana.

At about 11:00 p.m., Dutchman, Victor T., Danny G., and Cynthia Y. left Victor T.’s house and went to The Barkley Restaurant and Bar.

While at The Barkley, Dutchman consumed two more India Pale Ale beers, two Mai Tais, and two Greyhounds.¹⁸ Dutchman did not feel his drinking was anything out of the ordinary, and felt he could handle his alcohol. Dutchman paid the bar bill. After he paid the first tab, Dutchman realized it was still early and continued to order more drinks. Dutchman had a clear memory of events up until the time he closed his bar tab at around 1:45 a.m.¹⁹ After that, Dutchman had no memory of leaving the bar; the last person he recalled speaking to was the bartender. Dutchman had no memory of how he got to [REDACTED] Huntington Drive, nor of entering the residence. Dutchman recalled a “wild period” which he likened to a psychedelic acid trip. During this “wild period,” Dutchman recalled hearing gun shots and female screams, being afraid, and being in a lit room with a lot of laundry. Dutchman admitted to using acid several years prior, but stated he has not used acid since.²⁰ During this time, Dutchman did not recall seeing officers, nor did he remember pointing an object at an officer. Although it is possible that Dutchman would have armed himself with something if he felt threatened, he did not have a memory of feeling threatened.

Dutchman’s next clear memory of events is from ten minutes before descending the stairs at the residence to surrender to police. Dutchman recalled “coming to” and being in a kneeling position. He had pain in his arm, which he initially thought was a result of him sleeping on it. He was in an upstairs bedroom when he heard a discussion that there was a suspect on the second floor. As he regained more consciousness, he realized he had been shot and the conversation coming from downstairs was about him. Dutchman then began to communicate with the officers and to cooperate. Dutchman told the officers he was not a threat and not to shoot. Dutchman then made his way to the wooden bannister where he removed his T-shirt as he was instructed to do, before descending the stairs and being taken into custody.

Dutchman has never suffered a blackout in the past. He could only assume he went inside the residence at [REDACTED] Huntington Drive to find a place to sleep.²¹

Physical Evidence

A ladder was on the grass, south of the curb, in front of [REDACTED] Huntington Drive. A fired cartridge case, consistent with having been fired from Hennes’ weapon, was on the grass in front of [REDACTED] Huntington Drive. A broken window frame and broken glass were on the walkway to the residence and on the balcony. Inside the residence, there were no lights on except for the bathroom on the second floor. There was blood throughout the inside in the living/dining room, kitchen, on the stairs, and upstairs. In the upstairs portion of the residence, there was blood on the hall floor, the exterior bathroom door, the bedroom door, the bed, and the floor inside the bedroom. The living room, dining room, and kitchen were in disarray. A gray bottle of aftershave was located on the

¹⁸ A Mai Tai is a cocktail drink containing rum, and a Greyhound is a cocktail drink containing either gin or vodka.

¹⁹ A copy of the two bar receipts was obtained by investigators. One receipt was for a \$30 tab at 1:07 a.m. and the other was for a \$63 tab at 1:45 a.m.

²⁰ Dutchman’s blood was drawn, pursuant to a search warrant, approximately 15 hours following the incident. A toxicology test result was positive for cannabinoids, but negative for any other controlled substances.

²¹ Dutchman has no prior criminal convictions.

fourth step of the stairs. The bottle appeared to be out of place, as there were no other items on the stairs.²²



Aftershave Bottle on the Fourth Step of the Staircase



Aftershave Bottle

Seven cartridge cases, consistent with having been fired from Zamora's weapon, were in various areas of the living/dining room. Bullet holes were in the wall downstairs and in a window and curtains upstairs. Two bullet holes were also in the ceiling above the stairs.²³

LEGAL ANALYSIS

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.²⁴ California law permits the use of deadly force by police officers when necessary to

²² A latent print examination was conducted, but no latent prints were recovered from the bottle. The bottle also appeared to have a stain resembling blood, but an examination determined the stain was not blood.

²³ No round impacts were observed on the exterior of the residence, indicating that Hennes' fired round did not make contact with the residence.

²⁴ Penal Code section 835a.

affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily injury. *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.

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.²⁵ *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. If the person's beliefs were reasonable, the danger does not need to have actually existed.²⁶

A reasonable belief that danger exists may be formed by reliance on appearances. *Davis v. Freels* (7th Cir. 1978) 583 F.2d 337, 341. Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577. If a person acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken. *People v. Jackson* (1965) 233 Cal.App.2d 639.

No right is guaranteed by federal law that one will be free from circumstances where he will be endangered by the misinterpretation of his acts. *Sherrod v. Berry* (7th Cir. 1988) 856 F.2d 802, 805 (quoting *Young v. City of Killen, Tx.* (5th Cir. 1985) 775 F.2d 1349 at 1353).

In determining the reasonableness of an officer's actions, allowances must be made 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, 396-398.

The evidence examined in this investigation shows that Dutchman, in a highly intoxicated state, unlawfully entered a family residence in the early morning hours putting the two residents, a mother and daughter, in extreme fear for their safety. The two residents took refuge in a bathroom and called the police for assistance. Officer Zamora was one of the initial officers who responded to the call of a burglary in progress with the suspect still at the location. Hearing frantic screams for help, Zamora, accompanied by Officer Carrillo and Sergeant Louie entered the very dark residence. Once inside the residence, the officers continued to hear frantic screams coming from the upstairs portion of the residence. The frantic screams led officers to believe that they were confronted with a life or death situation. As Zamora illuminated the dark staircase leading to the upstairs, he encountered the intruder, Dutchman, who appeared to be holding an object in his hands and pointing it at Zamora. In fear for his safety and that of the officers immediately behind him, Zamora

²⁵ Penal Code section 197 and CALCRIM No. 505.

²⁶ CALCRIM No. 3470.

fired his weapon at Dutchman and continued to fire in Dutchman's direction as Zamora fell off the stairs and onto Carrillo. Zamora's fears were reasonable under the circumstances.

Although it was ultimately determined that Dutchman was not armed with a weapon, and no latent prints were recovered from the aftershave bottle, the location of the aftershave bottle on the staircase nonetheless suggests the possibility that Dutchman was holding the bottle, which Zamora might have reasonably but mistakenly perceived as a weapon. Given the darkness of the stairwell and the gray color of the bottle, it is not unreasonable that Zamora would have mistaken the bottle for a weapon. Further, although Dutchman had no memory of holding anything in his hands during his encounter with Zamora, Dutchman's memory is unreliable since he had no memory of his encounter with police prior to descending the stairs and being taken into custody. Given the totality of the circumstances, Zamora reasonably believed that Dutchman presented an immediate threat to Soon L. and Seo K., as well as to himself and his fellow officers. Therefore, Zamora's decision to fire at Dutchman was both lawful and reasonable given the apparent life or death situation, and rapidly evolving circumstances.

The evidence examined in this investigation further shows that once inside the residence, the SPPD officers requested assistance prompting the response of four separate police departments, Alhambra, San Marino, Monterey Park, and San Gabriel. However, each responding police agency was on its own radio frequency, resulting in a delay in effectively communicating critical, evolving information. It was not until several minutes into the incident, that agencies were coordinated to be in sync on the same radio frequency. The evidence examined in this investigation shows that Officer Hennes arrived at the location as victim Seo K. was on the balcony, and officers were formulating a rescue plan to get her and her mother safely out of the home. Hennes arrived possessing limited information about the radio call; he only knew that shots were fired at the location and that the situation involved a possible "active shooter." Beyond that, Hennes had no further information such as a description of the suspect, victim description, or the exact nature of the call. Immediately upon arriving at the location, Hennes ran directly onto the wide-open front yard of the location on his way to Officer McFarland. As he did so, Hennes glanced at the balcony and observed victim Seo K. Having no suspect or victim descriptions, and only knowing that shots were fired, Hennes in an instant, mistakenly concluded that Seo K. was a shooter and was pointing something at him. Fortunately, Hennes only fired one round and missed. Although Hennes' fired his weapon while possessing limited information, and based on a mistaken belief; it cannot be said beyond a reasonable doubt that his action was unlawful.

CONCLUSION

Based on the foregoing, we conclude that Officer Patrick Zamora acted reasonably and lawfully in self-defense and in defense of others when he used deadly force against John Dutchman III. We further conclude there is insufficient evidence to prove beyond a reasonable doubt that Officer Michael Hennes acted unlawfully when he discharged his rifle. We are therefore closing our file and will take no further action in this matter.