

**Officer Involved Shooting of Jose Sanchez
El Monte Police Department**

Officer Aldair Figueroa, #659

Officer Nicholas Kearney, #633

Officer Jared Atkinson, #658

J.S.I.D. File #16-0642



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 2, 2019

MEMORANDUM

TO: CHIEF DAVID REYNOSO
El Monte Police Department
11333 Valley Boulevard
El Monte, California 91731

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

SUBJECT: Officer Involved Shooting of Jose Sanchez
J.S.I.D. File #16-0642
E.M.P.D. File #16-043293
L.A.S.D. File #016-00148-3199-013

DATE: July 2, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 23, 2016, fatal shooting of Jose Sanchez by El Monte Police Department (EMPD) Officers Aldair Figueroa, Nicholas Kearney, and Jared Atkinson. We have determined that Officer Figueroa, Officer Kearney and Officer Atkinson acted in lawful self-defense and the defense of others when they fired their duty weapons.

The District Attorney's Command Center was notified of this shooting on December 23, 2016, at approximately 11:41 p.m. The District Attorney Response Team responded to the location of the shooting, where they received a briefing and walk-through of the scene.

The following analysis is based on investigative reports, interviews, radio transmissions, 9-1-1 calls, crime scene photographs and diagrams, videos, and autopsy, toxicology and ballistic reports submitted to this office by the Los Angeles County Sheriff's Department (LASD) Homicide Bureau. Compelled statements were not considered for purposes of this analysis.

FACTUAL ANALYSIS

On December 23, 2016, at approximately 9:16 p.m., EMPD Officer Cody Cowell, who was wearing a full police uniform and driving a marked black and white police vehicle, observed a Chevrolet Trailblazer SUV stopped northbound on Peck Road, blocking the intersection of Peck Road and Ramona Boulevard. The traffic light for the SUV was red. Cross-traffic was forced to

drive around the SUV. It was dark and raining heavily, and driving conditions were dangerous. Cowell, who was driving southbound on Peck Road, turned on his red-and-blue lights and drove closer to check on the welfare of the driver. Cowell illuminated the inside of the SUV with a spotlight and saw Jose Sanchez, the driver and sole occupant, staring straight ahead. Sanchez initially failed to react to the light Cowell shined on him. Cowell pulled up to the SUV, rolled down his window, and motioned to Sanchez to move out of the intersection. Sanchez turned suddenly towards Cowell with an angry expression, rolled down his window slightly and said, "No, it's fine." Cowell again instructed Sanchez to pull over. Sanchez ignored Cowell's command, spun his tires on the wet pavement, and turned left onto Ramona Boulevard.

Cowell followed Sanchez westbound on Ramona Boulevard. Sanchez accelerated, ran the red light at Valley Boulevard and Santa Anita Avenue and turned westbound onto Valley Boulevard. Cowell activated his full, rotating lights and sirens and informed dispatch that he was in pursuit. Several EMPD vehicles joined the pursuit, including Atkinson and Figueroa.

At the intersection of Valley Boulevard and Arden Drive, Sanchez rear-ended a car that was stopped westbound at the red light. Sanchez did not stop to assist the driver or exchange information.¹ Sanchez continued through the red light, drove over the curb, and sped away, turning northbound onto Arden Drive. Sanchez continued evading officers, weaving in and out of traffic at speeds of up to 60 m.p.h. in a 35 m.p.h. zone.

From Arden Drive, Sanchez turned east on Arden Way into a residential neighborhood. Officer Adam Girgle, a K-9 unit, joined the pursuit. As Sanchez approached the intersection of Esto Avenue and Fieldcrest Street, Sanchez came to a stop, rolled his window down and called out towards the house at [REDACTED] Fieldcrest Street.² Officers got out of their patrol vehicles to conduct a felony traffic stop, but Sanchez sped away, driving southbound on Esto Avenue and back through the neighborhood. Officers got back in their vehicles and continued the pursuit.

Sanchez repeatedly circled back to Esto Avenue and Fieldcrest Street, slowing down several times near the northeast corner. Officers heard him calling out "EMF" and saw him give the middle finger and flash an "F" gang sign at them.³ Sanchez refused to respond to commands to stop. During the pursuit, the SUV nearly collided with cars parked along the residential streets.

Believing Sanchez would return to the same location on Fieldcrest Street, officers called for spike strips to be deployed. Officer Steven Fonseca responded and placed a spike strip in the middle of the street on Esto Avenue north of Fieldcrest Street. Sanchez's front tire drove over the strip, but it did not appear to affect his ability to drive. Fonseca removed the strip, so officers could follow the SUV.

Sanchez again circled the neighborhood. Fonseca placed two spike strips down on Esto Avenue near Fieldcrest Street. Sanchez appeared to run over the strips with all four tires but continued driving into the Fieldcrest Street cul-de-sac. Fearing he would be struck by the SUV, Fonseca ran away, leaving the strips in the middle of the street on Esto Avenue.

¹ Other officers stopped to assist the driver, who was not injured.

² Sanchez's relatives lived at the location.

³ The area surrounding the pursuit is claimed by the El Monte Flores gang, known as "EMF".

Cowell saw the spike strips ahead of him and stopped his patrol vehicle north of the cul-de-sac along the east curb of Esto Avenue. Atkinson drove around the strips and stopped his vehicle just inside the opening of the cul-de-sac, partially blocking the exit. Figueroa parked behind Atkinson's vehicle on Esto Avenue, further blocking Sanchez's escape path. Girgle parked facing southbound on Esto Avenue behind Cowell's vehicle.

Sanchez briefly stopped his SUV along the north curb in front of [REDACTED] Fieldcrest Street and yelled at people who had come out of the house. Sanchez then continued driving slowly, clockwise around the cul-de-sac, until his SUV pointed directly towards the officers' vehicles blocking his exit. Several cars were parked on both sides of the street around the cul-de-sac, which further limited Sanchez's ability to escape.

Atkinson got out of his patrol vehicle and stood behind his driver's side door for cover. Figueroa exited his vehicle and stood behind Atkinson, while Kearney stood on the passenger side of Atkinson's vehicle. Officers repeatedly ordered Sanchez to stop and get out of his car. Instead of complying with officers' commands, Sanchez revved his engine and accelerated directly towards Atkinson's patrol car. Fearing they or other officers would be struck by Sanchez's SUV, Atkinson, Figueroa and Kearney opened fire as Sanchez drove towards them.

Sanchez was struck by gunfire several times. The SUV came to rest against the northeast curb of Fieldcrest Street and Esto Avenue near the driver's side door of Atkinson's patrol vehicle. Cowell approached the SUV with his weapon drawn, determined that Sanchez was unresponsive, and placed the SUV in park. Paramedics were called and arrived shortly thereafter. Sanchez was pronounced dead at the scene at 9:44 p.m.



Photo looking east from Esto Avenue into the Fieldcrest Street cul-de-sac.

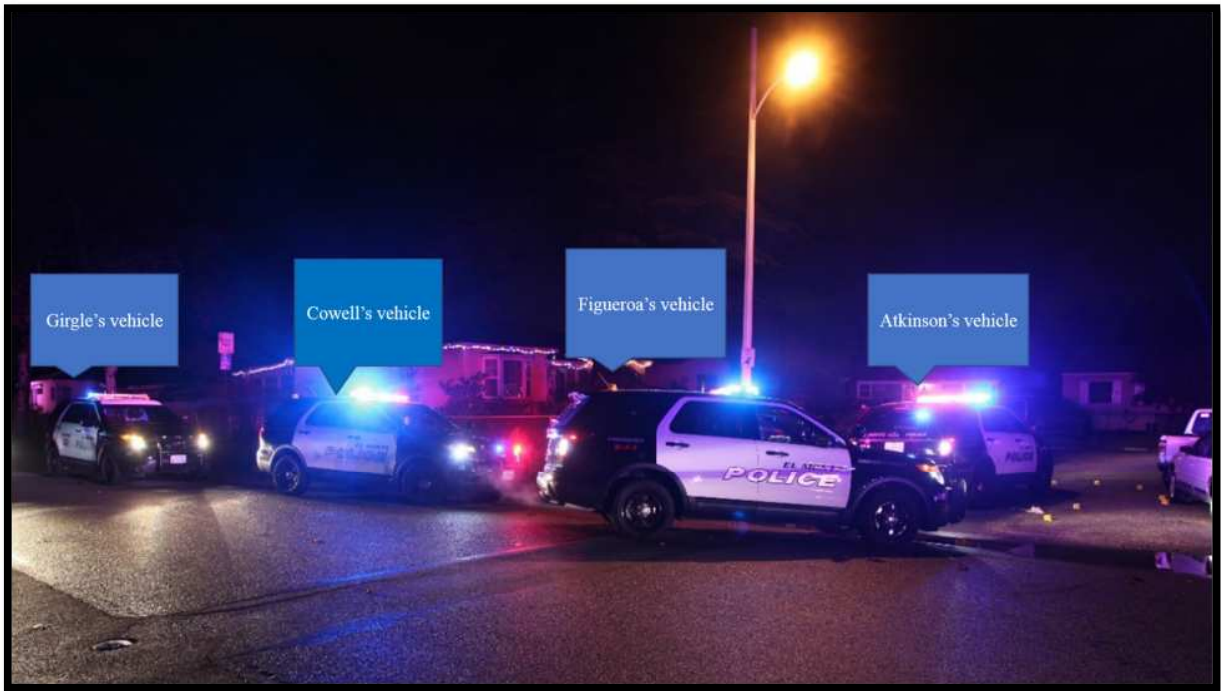
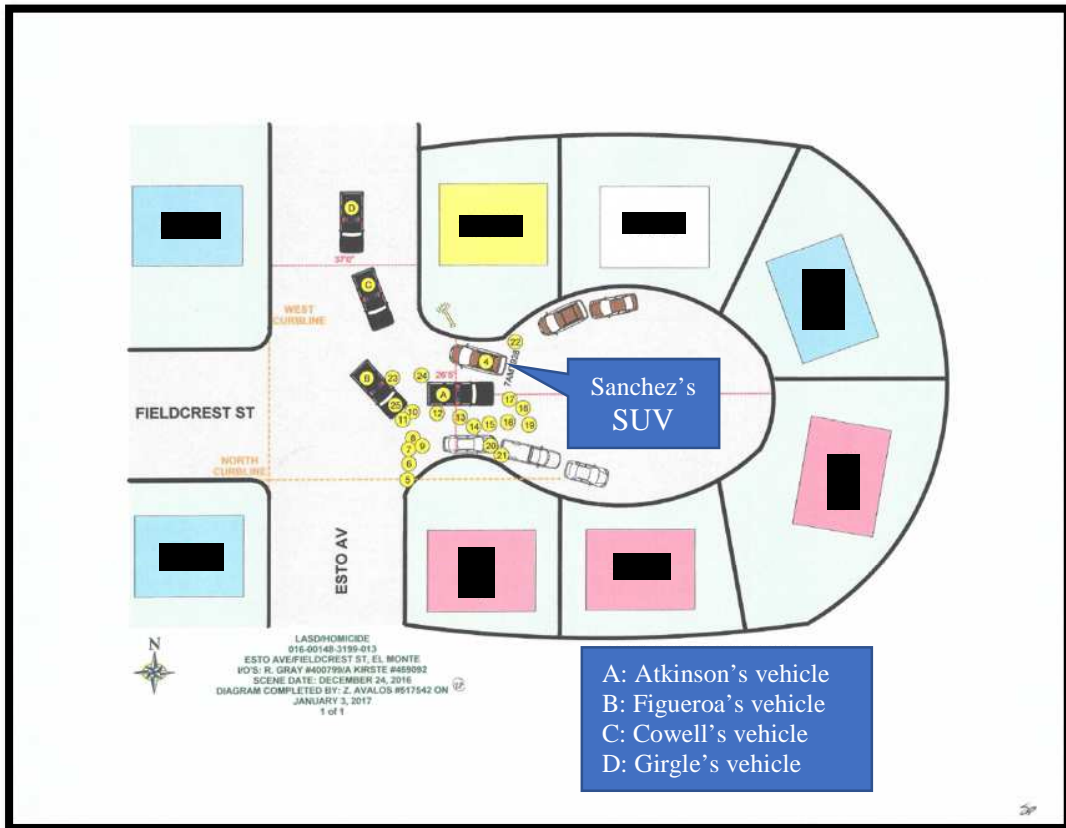


Photo looking towards the northeast corner of Esto Avenue and Fieldcrest Street.



Scene Diagram.

Witness Statements

Statement of Officer Cody Cowell

Cowell told investigators that on the evening of December 23, 2016, he was driving southbound on Peck Road, when he observed an SUV stopped northbound in the middle of the intersection of Peck Road and Ramona Boulevard, blocking traffic. Concerned that the SUV was going to cause an accident or be hit by cross-traffic, Cowell drove next to the SUV to check on the welfare of the driver. Cowell said he did not know whether Sanchez was under the influence or had some other problem. Cowell instructed him to pull into a parking lot. Instead of following Cowell's instructions, Sanchez suddenly turned left, westbound on Ramona Boulevard, spinning his tires on the wet pavement. Cowell followed Sanchez through the intersection. Sanchez accelerated to approximately 60 m.p.h. along Ramona Boulevard.

At the intersection of Ramona Boulevard and Valley Boulevard, the SUV suddenly turned right onto Valley Boulevard on a red light, forcing cross-traffic to stop. Cowell feared that Sanchez was going to cause an accident or hit pedestrians in crosswalks. Cowell activated his full, rotating lights and sirens and announced he was in pursuit.

Sanchez continued speeding and weaving in and out of traffic. At Valley Boulevard and Santa Anita Avenue, Sanchez ran a red light and continued westbound on Valley Boulevard. At the intersection of Valley Boulevard and Arden Drive, Sanchez rear-ended a car stopped at the red light. Sanchez did not stop after the collision, ran the red light and turned right onto Arden Drive. Sanchez turned into a residential neighborhood.

As Sanchez approached Esto Avenue and Fieldcrest Street, he slowed his SUV and then came to a complete stop. Cowell thought that Sanchez might try to get out and run. Cowell could hear Sanchez yelling at people in the driveway of the residence at the corner of Esto Avenue and Fieldcrest Street. Instead of getting out, Sanchez drove away and circled the neighborhood. Cowell realized that Sanchez was familiar with the area, which Cowell knew was gang territory, and became concerned about the possibility of an ambush. Cowell requested spike strips and an additional unit to join the pursuit.

Officers followed Sanchez back to Esto Avenue, where he slowed down near the corner and called out again. Cowell opened his car door to try to hear what Sanchez was saying and heard officers giving Sanchez commands to stop and get out of his car. Cowell saw Sanchez give him the middle finger, yell expletives, and make an "F" gang sign (representing "El Monte Flores"). Sanchez sped away southbound on Esto Avenue and circled the neighborhood.

When they returned to the area the final time, Cowell believed the SUV drove over spike strips, but it continued driving. Fearing that he would drive over the spike strips and disable his own vehicle, Cowell stopped north of the cul-de-sac on Esto Avenue. Atkinson and Figueroa drove around Cowell's vehicle and parked near the opening of the cul-de-sac, partially blocking the exit.

Cowell saw Atkinson get out and stand behind his open driver's side door for cover. Figueroa exited his vehicle and stood behind Atkinson's left side. Kearney got out and moved to the passenger side of Atkinson's vehicle. Cowell exited his patrol car and stood near Figueroa. Sanchez drove slowly along the north side of Fieldcrest Street and continued clockwise around the cul-de-sac. Cowell said he did not believe that Sanchez was going to stop or surrender, given his behavior throughout the pursuit. Sanchez leaned his head out of his window and cursed at officers as they gave him commands to stop and get out of the SUV. Cowell saw people standing in the front yard of the corner house on Fieldcrest Street and Esto Avenue.

Cowell believed that Sanchez was going to try to drive on either side of Atkinson's police vehicle. Cowell was concerned that Kearney, who was standing alone on the passenger side, would not have any cover if Sanchez got out armed with a gun, so he decided to reposition himself near Kearney. As Cowell was running around the rear bumper of Atkinson's vehicle, he heard Sanchez's SUV accelerate, followed by ten to 15 rounds of gunfire. Sanchez's SUV came to a stop with the passenger tire against the curb on Fieldcrest Street.

Cowell approached Sanchez's SUV with his weapon drawn and saw that Sanchez had been shot and was unresponsive. Cowell reached into the SUV and placed it in park. Cowell smelled the strong odor of beer from inside the SUV.

Statement of Officer Jared Atkinson

Atkinson was on uniformed patrol when he heard Cowell broadcast a traffic stop that turned into a pursuit. He joined the pursuit near Valley Boulevard and Valley Circle as the number two vehicle. At the intersection of Valley Boulevard and Arden Drive, he saw the SUV collide into another vehicle, drive up over the curb, and turn right onto Arden Drive.

At the end of the pursuit, spike strips were deployed in the middle of the street on Esto Avenue. The SUV drove over them, turned onto Fieldcrest Street and stopped in front of the corner house. Atkinson followed the SUV and stopped at the entrance of Fieldcrest Street. Atkinson got out of his vehicle as people came out of the corner residence. Sanchez yelled at the people, then continued driving into the cul-de-sac, made a U-turn and stopped briefly.

Atkinson repeatedly gave Sanchez commands to turn off the car and get out. Sanchez yelled "Fuck you" at him several times, then accelerated his SUV directly towards Atkinson, who was standing behind his open, driver's side door. Sanchez looked in his direction. Atkinson heard the SUV's engine rev and the tires trying to gain traction on the wet pavement. Atkinson believed that Sanchez was either going to ram him or attempt to squeeze his SUV through the opening between the patrol car and a car parked along the north curb of Fieldcrest Street. When Sanchez was travelling towards him about one to two car lengths away, Atkinson tried to step back to escape but realized the SUV was coming too fast for him to get out of the way. Atkinson believed he was going to get hit by the SUV, so he fired his duty weapon two to three times towards the driver's side windshield until his gun malfunctioned. Atkinson heard other officers shoot at the same time. The SUV continued moving forward a few feet and then stopped.

Statement of Officer Aldair Figueroa

On the night of the incident, Figueroa was in uniform, driving a marked black and white vehicle. Kearney was his partner. Figueroa heard Cowell broadcast a traffic stop, which turned into a pursuit. Figueroa joined the pursuit near Santa Anita Avenue and Valley Boulevard.

At the end of the pursuit, Sanchez turned left into the Fieldcrest Street cul-de-sac and stopped his SUV. Atkinson parked behind the SUV and got out of his vehicle. Figueroa parked behind Atkinson. Other officers parked behind them on Esto Avenue. As Figueroa walked towards Atkinson's vehicle, Sanchez made a U-turn and continued driving around the cul-de-sac until his SUV faced Atkinson's vehicle. Figueroa stood on Atkinson's left behind Atkinson's open, driver's side door for cover. Figueroa and Atkinson had their weapons drawn.

Figueroa heard officers give Sanchez several commands to stop. Sanchez was yelling towards a residence and was unresponsive to the officers' commands. Sanchez's window was down, and he yelled "Fuck you" at the officers as he continued driving slowly towards them. When the SUV was approximately one car length away, Sanchez accelerated towards Figueroa and Atkinson. Figueroa said there was not enough space for the SUV to pass where they were standing. Figueroa believed Sanchez was going to run him and Atkinson over, so he fired his duty weapon at Sanchez four to six times as he took several steps back. Atkinson fired as well. The SUV came to a stop within a foot of Atkinson's vehicle's front door.

Statement of Officer Nicholas Kearney

Kearney told investigators he was working with his partner, Figueroa, in a marked black and white vehicle, when they joined the pursuit near Valley Boulevard and Santa Anita Avenue. Kearney saw the SUV collide into the rear of a car at the intersection of Valley Boulevard and Arden Drive, drive up over the curb and turn right onto Arden Drive.

The pursuit continued into a residential area, where Sanchez attempted to communicate with people at a house on Esto Avenue several times. The first time, Kearney exited his vehicle to assist Cowell with a felony stop. Officers ordered Sanchez to exit the SUV. Sanchez did not comply, yelled "Fuck you" at them, and continued circling the neighborhood. Kearney heard a supervisor request a spike strip. Kearney believed that the SUV may have driven over the strip when they returned to the area, but it continued driving.

Officers pursued the SUV to the same location where spike strips were deployed again. This time, Sanchez turned into the cul-de-sac. Figueroa parked at the intersection of Fieldcrest Street and Esto Avenue behind Atkinson's car. Kearney went to the passenger side of Atkinson's car and opened the door for cover. Sanchez drove forward and made a clockwise U-turn until the SUV was directly facing the officers. Kearney gave Sanchez verbal commands to stop. Sanchez responded, "Fuck you," and drove towards them at five to ten m.p.h.

As the SUV approached, Kearney shut Atkinson's passenger door and moved behind the vehicle to try to give Sanchez room to drive past him. Instead of driving in Kearney's direction, Sanchez drove towards the driver's side of Atkinson's car. Kearney moved back to the passenger side of

Atkinson's vehicle. When the SUV was ten to 15 feet away, Kearney gave Sanchez commands to stop. Sanchez looked at Kearney, gave him the middle finger and said, "Fuck you!" Kearney saw the SUV accelerate towards the driver's side of Atkinson's vehicle, where Kearney knew officers were standing. Fearing for the safety of other officers as well as himself, Kearney fired his duty weapon towards the SUV. Kearney heard other officers fire at the same time. The SUV continued forward then stopped.

Statement of Officer Steven Fonseca

Fonseca was on uniformed patrol in a marked police vehicle on the night of the incident. Fonseca heard Cowell initiate a traffic stop and announce that he was in pursuit. Fonseca joined the pursuit as the fifth or sixth police vehicle. During the pursuit, Fonseca heard an officer request spike strips, so he set one up on Esto Avenue north of Fieldcrest Street and hid between parked cars. A woman⁴ exited the corner residence and asked Fonseca what was going on. Fonseca told her to go back inside, and she complied.

Fonseca said the SUV drove over the spike strip with its front passenger tire but did not stop. Fonseca removed the strip, so the officers could pass. Fonseca heard a second request for spike strips, and he placed two strips down in the same location. The SUV drove over the strips with all four tires and turned into the Fieldcrest Street cul-de-sac. Fonseca tried to pull the spike strips back from Esto Avenue to allow officers to drive past. Sanchez stopped and looked directly at Fonseca, then yelled towards the corner house from his open window. Several people came out of the house. Fonseca heard Sanchez say to them, "Look at what you made me do!" Fonseca took cover behind a van parked in front of the residence.

While other officers positioned themselves to make a felony stop of the SUV, Fonseca heard Sanchez tell them to "Fuck off." Sanchez made eye contact with Fonseca as he drove forward into the cul-de-sac. Fonseca feared for his own safety, since he did not know if Sanchez was armed or intended to hit him with the SUV. Fonseca ran and took cover behind a vehicle further inside the cul-de-sac.

Sanchez made a U-turn clockwise in the cul-de-sac. Sanchez screamed "Fuck you" at officers several times. Fonseca heard officers telling Sanchez to stop. Sanchez stopped his SUV facing the officers from approximately one car length away. Fonseca heard the SUV's engine rev and saw the SUV accelerate directly towards officers standing next to a police car. Fonseca said he heard approximately ten to 15 gunshots.

Statement of Officer Adam Girgle

On the night of the incident, Girgle was on patrol in a black and white police vehicle with his K-9 partner. At around 9:30 p.m., he heard Cowell announce that he was in pursuit. Girgle joined the pursuit near Valley Boulevard and Arden Drive.

Girgle observed the SUV enter the cul-de-sac at Fieldcrest Street, drive along the north curb, and stop in front of [REDACTED] Fieldcrest Street. Girgle saw Sanchez waiving and yelling at the residents.

⁴ This woman was likely Cirila M.

Girgle saw several police vehicles blocking the cul-de-sac behind the SUV. Girgle parked his police car along Esto Avenue and got out, in case he needed to deploy the K-9.

Girgle saw the SUV drive forward and turn around in the cul-de-sac, until it was facing the officers standing near their police cars. Girgle heard the SUV's engine rev and the tires slip on the wet pavement. Girgle saw the SUV drive directly toward Atkinson's patrol car. Officers fired at the SUV when it was approximately two car lengths away from them. The SUV finally stopped when its front tire hit the north curb. Girgle and Cowell approached the SUV. Cowell reached into the SUV and placed it in park.

Statement of Cirila M.

Investigators interviewed Cirila M., Sanchez's paternal aunt, who lived at [REDACTED] Fieldcrest Street. She said that Sanchez had lived with her at that location several years prior. On the evening of the incident, her family was gathered at the house for her husband's funeral. At about 7:40 p.m. that evening, Sanchez called and told her that he was coming to stay with her. Sanchez said he was having problems at work and with his wife, "Connie". Cirila M. said that when she called him back between 8:00 p.m. and 8:40 p.m., he told her he would be there in about ten minutes. Cirila M. said that Sanchez did not sound drunk.

Cirila M. heard police sirens outside her house. Cirila M. called Sanchez's phone, but he did not answer. Cirila M. said her neighbors told her that Sanchez was outside yelling for help. Cirila M. said she went outside to the backyard and then to her front yard. Cirila M. initially told investigators that when she went to the front of her house, she saw Sanchez make a U-turn in the cul-de-sac and the officers shot him "without giving him a chance."

Later in the interview, Cirila M. said that before she saw Sanchez drive into the cul-de-sac, she saw an officer tying yellow tape from a light post in her front yard to a police car. Cirila M. asked the officer what was going on, and he told her to go back inside. Cirila M. told investigators that the officers were "trying to trap him."⁵ She said that when the officer was tying the yellow tape, other officers had already "closed" the north end of Fieldcrest Street and Esto Avenue. Cirila M. said that about two minutes passed between the time she went inside after speaking with the officer, and when she came back outside and saw Sanchez driving in front of her house. When she saw Sanchez, she told him "not to do anything."

At the end of the interview, Cirila M. acknowledged that she saw Sanchez drive into the cul-de-sac from Esto Avenue, make a complete a U-turn at the end of the cul-de-sac, and turn his SUV back towards the officers. Cirila M. said that the officers had their guns pointed at Sanchez the entire time he made the U-turn. Cirila M. said that the officers did not shoot at Sanchez until his SUV was within three to four feet of them. Cirila M. said she did not hear the officers say anything to Sanchez before shooting him.

⁵ Girgle stated that he tied the yellow crime scene tape after the shooting incident. Cowell also stated that the crime scene tape was placed after the shooting occurred.

Statement of Dominique S.

Investigators contacted Dominique S., who identified herself as Sanchez's wife. Dominique S. said that she had last seen Sanchez on December 23, 2016, at approximately 8:00 p.m. at their residence. Sanchez had been drinking, and they were involved in an argument. Sanchez left to go to his family's house in El Monte.

Statement of Greg O.

On the night of the incident, Fonseca interviewed witness Greg O. Greg O. saw a man drive by a few times that night followed by police. Greg O. saw the man drive into the cul-de-sac with a flat tire, turn around, and then drive out of his sight. Greg O. said the man "didn't look happy" and looked like he was yelling. Greg O. heard officers ordering the driver to comply and then heard several gunshots.

Other Evidence

Several opened cans of Coors light beer were recovered from the front passenger seat and floorboard of the SUV.

Video Evidence

Mike M. Video

Mike M. provided cell phone video of the incident to investigators. At the beginning of the video, five black and white patrol cars with lights and sirens activated drive slowly southbound on Esto Avenue towards Fieldcrest Street. A female voice asks, "Did he get out?" A male voice responds, "No, he's still driving." A woman walks closer to the street as the police vehicles continue to drive slowly along Esto Avenue. The video zooms in towards the northeast corner of Esto Avenue and Fieldcrest Street. A civilian vehicle turns left onto Fieldcrest Street with its headlights illuminated. The woman says, "He went in."

The video becomes blurry. In the distance, a male voice says, "Put your hands up!" Another male voice yells, "Fuck you!" The man videotaping tells the woman, "Get over here, now." In the foreground, headlights move slowly westward on Fieldcrest Street towards Esto Avenue. Several male voices can be heard yelling. The woman in the video says, "They're going to shoot him!" An engine revs in the distance, and a male voice screams, "No! No! Get back! Get back!" followed by several gunshots. The man videotaping says, "Yeah, they killed him." Several male voices can be heard shouting, "Get inside! Get back in the house!"

Jon M. Video

On the night of the incident, Jon M. provided a cell phone video to local news media.⁶ In the video, several police vehicles can be seen in the distance with their overhead, red-and-blue

⁶ KTLA and KNBC Los Angeles aired the video footage, which can be viewed on their respective websites. <https://ktla.com/2016/12/23/1-man-shot-by-el-monte-police-after-slow-speed-pursuit/>;

flashing lights activated. A male voice yells something unintelligible, followed by gunshots. Other male voices yell for people to get inside.

Autopsy and Toxicology Reports

On December 27, 2016, Dr. Ogbonna Chinwah of the Los Angeles County Department of the Medical Examiner-Coroner conducted an autopsy of Sanchez. Dr. Chinwah noted six gunshot wounds and recovered three, large-caliber, metal jacketed projectiles from his body.⁷ Dr. Chinwah determined that the cause of death was multiple gunshot wounds, five being fatal.

Blood samples taken during the autopsy were analyzed by the LASD forensic laboratory. Sanchez's blood tested positive for methamphetamine. Sanchez's blood alcohol concentration (B.A.C.) was found to be between .17% and .217%.

Ballistic Evidence

LASD Firearms Examiner Ivan Chavez recovered Atkinson's, Kearney's and Figueroa's duty weapons on the night of the incident. Atkinson's duty weapon was a Heckler and Koch .45 caliber semiautomatic pistol. When his weapon was recovered, it had nine of 13 rounds remaining. Kearney's duty weapon was a Heckler and Koch .45 caliber semiautomatic pistol. When his weapon was recovered, it had six of 13 rounds remaining. Figueroa's duty weapon was a Springfield Armory .45 caliber semiautomatic pistol. When his weapon was recovered, it had six of 14 rounds remaining.

Nineteen .45 caliber cartridge cases were recovered at the scene. One fired bullet was recovered from the passenger seat of the SUV. Two fired bullets were recovered on the pavement at the scene. One fired bullet was recovered from the SUV during the impound inspection.⁸

Chavez completed a forensic comparison of each of the officers' weapons and the three projectiles recovered from Sanchez's body during the autopsy. Chavez determined that three projectiles recovered during the autopsy were fired from Kearney's duty weapon. Chavez determined that the bullet recovered from the SUV's passenger seat was fired from Figueroa's duty weapon. Chavez determined that one of the bullets recovered from the pavement was fired from Figueroa's duty weapon. Chavez could not conclusively determine whether the second bullet recovered from the pavement was fired from Atkinson's or Kearney's duty weapon.

LEGAL ANALYSIS

A police officer may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime. Penal Code section 835a. When acting under Penal Code section 196, an officer "may use all the

<https://www.nbclosangeles.com/news/local/Suspected-DUI-Driver-Fatally-Shot-by-El-Monte-Police-408140675.html>.

⁷ During the autopsy, Dr. Chinwah also recovered a round, lead fragment that was determined to not be a bullet fragment.

⁸ Since it was raining heavily, ballistics evidence may have washed away from the scene.

force ‘that appears to him as a reasonable man to be necessary to overcome all resistance, *even to the taking of life,*’ ... the resistance must be 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 (quoting *People v. Bond* (1910) 13 Cal.App.175, 189-190). The officer may use no more force than would appear necessary to him as a reasonable person. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.

A killing of a suspect 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. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333. 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. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

California law permits any person, including police officers, 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 Nos. 505, 3470. Actual danger is not necessary to justify the use of deadly force in self-defense; if the person’s beliefs were reasonable, the danger does not need to have actually existed. CALCRIM Nos. 505, 3470. The prosecution has the burden of proving beyond a reasonable doubt that the killer did not act in self-defense. *Id.*

The use of deadly force by an officer to terminate a dangerous, high-speed vehicle pursuit that threatens the lives of innocent bystanders does not violate the Fourth Amendment right against unreasonable seizures. *Plumhoff v. Rickard* (2014) 572 U.S. 765, 776 (citing *Scott v. Harris* (2007) 550 U.S. 372, 386); *see also Mullenix v. Luna* (2015) 136 S.Ct. 305, 310.

Despite dangerous, dark and wet driving conditions, Sanchez evaded police for nearly twenty minutes, driving erratically at speeds of up to 50 to 60 m.p.h. in a 35 m.p.h. zone. During the pursuit, Sanchez ran several red lights and stop signs, forcing other traffic to yield. Sanchez rear-ended a vehicle but failed to stop to render aid or exchange information with the driver. Although he was obviously being followed by several marked, black and white police vehicles with their forward-facing lights and sirens activated, Sanchez repeatedly failed to stop. Throughout the pursuit, Sanchez’s erratic driving placed the public, as well as the pursuing officers, in danger of bodily injury or death.⁹

⁹ During the pursuit, an EMPD officer was involved in a traffic collision at Valley Mall and Santa Anita Avenue.

When Sanchez slowed near the corner house on Fieldcrest Street, he cursed, made gang signs at police officers, and ignored repeated commands to stop and get out of his SUV. Sanchez continued to evade officers despite several attempts to stop his SUV, including deploying spike strips twice. Sanchez's failure to yield to pursuing officers for nearly 20 minutes, combined with his menacing conduct toward them, led officers to believe that Sanchez did not intend to comply with their orders and would continue to resist their efforts to detain him.

When Sanchez drove over the spike strips into the Fieldcrest Street cul-de-sac, Atkinson, Figueroa and Cowell blocked the exit with their patrol vehicles. Photographs taken at the scene show that there was not enough space on either side of Atkinson's patrol vehicle for the SUV to pass through without having to possibly hit cars parked on the passenger side or drive over the curb on the driver's side.

Despite being surrounded by police, Sanchez drove his SUV around the cul-de-sac, revved his engine, and drove directly towards officers standing on the driver's side of Atkinson's patrol vehicle. Believing they or other officers were going to be struck by Sanchez's SUV, Atkinson, Figueroa and Kearney fired several rounds, fatally striking Sanchez. Sanchez's SUV came to a rest at the north curb of Fieldcrest Street, within feet of where Atkinson and Figueroa had been standing.

All three shooting officers believed Sanchez intentionally drove his SUV directly towards them. All three officers believed that their lives, and the lives of other officers, were in danger. Other officers who were present, but did not discharge their weapons, also believed that Sanchez intentionally drove his SUV directly towards the officers. The Mike M. video shows that Sanchez drove his SUV in the officers' direction and revved his engine before gunshots were fired.

Based on the totality of the circumstances, the evidence supports the conclusion that Atkinson, Figueroa and Kearney actually and reasonably believed that they and fellow officers were in imminent danger of great bodily injury or death when they fired their weapons.

CONCLUSION

We find Officers Figueroa, Kearney and Atkinson were placed in reasonable fear for their lives and their fellow officers' lives and acted in lawful self-defense and the defense of another when they fired their weapons.

We are closing our file and will take no further action in this matter.