

Officer Involved Shooting of Jason Conoscenti
Long Beach Police Department

Officer Eric Barich, #10042
Officer Salvador Alatorre, #10119

J.S.I.D. File #14-0271



JACKIE LACEY

District Attorney

Justice System Integrity Division

August 30, 2016

MEMORANDUM

TO: CHIEF ROBERT LUNA
Long Beach Police Department
400 West Broadway
Long Beach, California 90802

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

SUBJECT: Officer Involved Shooting of Jason Conoscenti
J.S.I.D. File #14-0271
L.B.P.D. DR #14-25241

DATE: August 30, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 27, 2014, fatal shooting of Jason Conoscenti by Long Beach Police Department (LBPB) Officers Eric Barich and Salvador Alatorre. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that Officers Barich and Alatorre used unreasonable force to apprehend a dangerous fleeing felon. Likewise, there is insufficient evidence to prove beyond a reasonable doubt that Officers Barich and Alatorre did not act in lawful self-defense and defense of others at the time they fired their duty weapons.

The District Attorney's Command Center was notified of this shooting on April 27, 2014 at approximately 5:15 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene by LBPB.

The following analysis is based on reports, photographs, and recordings submitted to our office by the LBPB. This office also considered a report authored by use of force expert retired Los Angeles Police Department (LAPD) Captain Greg Meyer. The officers' voluntary statements were considered in this analysis.

FACTUAL ANALYSIS

On April 27, 2014, at 2:45 p.m., Los Angeles County Sheriff's Department (LASD) Deputies Jessie Legazpi and Sal Valencia were patrolling near Compton Towne Center located at 1621 South Alameda Street in the City of Compton. Legazpi and Valencia were driving a marked black and white police vehicle and dressed in uniform.

As the deputies drove through the parking lot, they saw Target security employee Andrew Nunez trying to detain an individual, later identified as Jason Conoscenti, who was exiting Target without paying for items contained in his shopping basket. Nunez and Conoscenti exited the store and Nunez continued to try to stop Conoscenti. Legazpi and Valencia stopped their patrol vehicle near Conoscenti and Nunez and exited their vehicle. The deputies' approach

momentarily distracted Conoscenti and allowed Nunez to secure the basket of stolen Target items.¹

Legazpi approached Conoscenti. Conoscenti attempted to evade Legazpi and drew a pair of scissors from his right waistband area using his right hand.² Conoscenti pointed the scissors at the deputies, who were approximately five feet from him, and motioned with his right hand while holding the scissors. He told the deputies, “Don’t fucken’ get near me!” while simultaneously gesturing with the scissors in a threatening manner. Conoscenti appeared to be under the influence of a controlled substance.

In fear for their safety, Legazpi and Valencia stood back, drew their department issued firearms, and ordered Conoscenti to put the scissors on the ground. Conoscenti did not comply with the order to put the scissors down and Valencia requested the assistance of other LASD units. Conoscenti began walking through the parking lot, still holding the scissors and yelling profanities, while Legazpi and Valencia followed behind at a safe distance. Conoscenti entered a white Isuzu Rodeo and drove through the parking lot. Valencia requested that additional units respond and updated dispatch regarding the vehicle description and direction of travel. Deputies Abbott and Morales responded in a marked black and white vehicle and located Conoscenti’s vehicle still in the parking lot.³

Abbott and Morales positioned their vehicle behind Conoscenti’s car and activated their lights and siren. Conoscenti did not pull over and a vehicle pursuit was initiated. Conoscenti exited the parking lot and turned southbound onto Alameda Street. Several additional LASD patrol units arrived at this time and followed after Conoscenti.

The pursuit travelled from the City of Compton and terminated at 14th Place and Ocean Boulevard in the City of Long Beach. LASD black and white units followed Conoscenti for approximately 12 miles. During the pursuit, Conoscenti failed to yield to the pursuing units, but generally did not drive recklessly or travel at excessive speeds.

LASD notified LBPD of the pursuit. LBPD officers were informed that LASD units were pursuing a white Isuzu Rodeo and that the pursuit was entering the City of Long Beach. The information provided by LASD indicated that Conoscenti was wanted for assault with a deadly weapon on a police officer. Further information was relayed indicating that the deadly weapon used by Conoscenti was a pair of scissors.⁴ LASD requested the assistance of LBPD units in deploying spike strips to stop Conoscenti. LBPD units attempted to assist in deploying spike strips.⁵ However, prior to LBPD successfully deploying spike strips, Conoscenti drove his car to the south end of the cul de sac at 14th Place and Ocean Boulevard and stopped his vehicle. Several pursuing LASD units followed.

¹ The value of the items taken by Conoscenti was \$11.10. Conoscenti had \$.98 on his person.

² The scissors measured approximately 11 inches long with a six inch blade.

³ The incident at Target was recorded on security cameras. The footage does not contain audio.

⁴ Although a better characterization may have been that Conoscenti brandished a weapon at the officers, the officers who received the information that Conoscenti assaulted deputies with a deadly weapon were entitled to reasonably rely on this information.

⁵ Officers Salvador Alatorre and Armando Garcia were one of the units that responded to the request for spike strips and attempted unsuccessfully to deploy the strips.

Conoscenti stopped his vehicle on the street at a dead end facing southbound. Just east of his location was a multi-unit, 18 story high rise building located at 1900 East Ocean Boulevard. Just west of his location was a multi-unit, eight story high rise building, located at 1830 East Ocean Boulevard. A pedestrian staircase from 14th Place leading to the beach was located south of Conoscenti's vehicle.⁶ Several marked LASD units pulled behind Conoscenti's vehicle, blocking his car and preventing him from driving away. A helicopter circled overhead to monitor the incident.⁷

Conoscenti remained inside his vehicle for approximately 25 minutes while LASD attempted to persuade Conoscenti to surrender. During this time, the LASD helicopter flew overhead. Several orders were given for Conoscenti to surrender, but Conoscenti did not exit the vehicle.

A tactical plan was formulated by the units that were present.⁸ LASD requested that LBPD provide them with a K-9 unit until an LASD K-9 arrived. LBPD K-9 Officer Victor Ortiz arrived at the scene to assist. LASD deputies told Ortiz that if Conoscenti exited his vehicle, did not comply with LASD orders to surrender, and began to run down the stairs, LASD would deploy less-lethal force to take him into custody. After less-lethal force was used, LASD instructed Ortiz to deploy his K-9.

Officers Alatorre and Garcia received the communication that Conoscenti was pinned in at 14th Place and responded to the beach along the bike path near the bottom landing of the 14th Place stairs. Officer Barich also heard this information. Knowing that this location was a dead end, Barich responded directly to the beach. Additional LBPD officers, including Joseph Schlobohm, Donald Wright, William Neal, and Santos Perez, assembled at that location as well. The officers were informed that Conoscenti had assaulted a deputy with a deadly weapon earlier that day and formed an emergency action team. Neal was assigned as the officer in charge of less-lethal force.⁹ Barich and Alatorre were assigned as lethal cover. Wright and Schlobohm were to give verbal commands and designated to be "hands-on." Officers attempted to clear pedestrians from the area, particularly the pedestrian traffic on the bike path which ran in an east-west direction just south of the staircase. The police activity generated interest in passers-by and people began to gather east and west of the officers' location.

⁶ The staircase leading to the beach consists of a top, middle, and bottom section. Each section is separated by a concrete landing measuring approximately five feet by five feet. The top and middle portions consist of 20 stairs and the bottom section consists of 17 stairs. The staircase is bordered by many plants, shrubs, and trees. Just east of the staircase and south of the high rise building located at 1900 East Ocean Boulevard are several palm trees which LBPD officers used as cover.

⁷ The Air Unit was orbiting very close to the ground which called significant attention to the incident to individuals in the buildings on either side of 14th Place and created substantial background noise in the area.

⁸ Special Enforcement Bureau (SEB) deputies were called to the scene. Only a few of the SEB deputies arrived prior to Conoscenti exiting his vehicle.

⁹ At the time he was designated as less-lethal, Neal only had access to a Taser. At 3:40 p.m., LBPD Officer Santos Perez requested that the emergency action team be provided with a less-lethal 40 mm launcher. However, Conoscenti exited his car and ran down the staircase just after this request was made.

During this 25 minute period, information was relayed to the LBPB officers staged on the beach.¹⁰ The officers were told that Conoscenti was wanted for assault with a deadly weapon on a police officer and was not complying with orders to exit his car. Additional information indicated that Conoscenti was reaching and grabbing at unknown items inside his car. The officers were also told that LASD Special Enforcement Bureau (SEB) was en route to the scene.¹¹ Based upon this information, Conoscenti's assault on deputies earlier that day, and his attempt to evade arrest, the officers were concerned that Conoscenti was arming himself and planning an escape. They were concerned for their safety as well as the individuals who were on the beach watching the police activity. The officers positioned themselves east of the staircase and used palm trees as cover.

At 3:42 p.m., Conoscenti exited his car with a wooden stick in his hand. He looked at the deputies, turned, and ran down the stairs, discarding the stick near the top of the stairs as he fled.¹² LASD deputies fired several less-lethal rounds at Conoscenti.¹³ Ortiz released his K-9 after hearing the deputies fire less-lethal rounds. Conoscenti fled down the staircase while being pursued by the K-9. Ortiz called his K-9 back because he believed he heard gunshots coming from the bottom of the stairs.

LBPB officers on 14th Place relayed to the LBPB officers on the beach that Conoscenti had exited his car and was running down the stairs. Shortly thereafter, the officers on the beach heard multiple rounds of gunfire.¹⁴ Barich believed that Conoscenti had just been involved in a shooting with deputies. Alatorre indicated, "[Conoscenti] had already showed violent behavior toward law enforcement officers by assaulting a [d]eputy with a deadly weapon. At this point, I believed he had just engaged the Officers/Deputies on 14th Place with a firearm and was now attempting to flee toward the populated beach."¹⁵ After hearing the initial rounds, Alatorre moved from behind a palm tree towards the staircase, abandoning his cover to get a better view of the staircase. A few seconds after the gunfire, LBPB officers saw Conoscenti begin to run down the stairs. A K-9 followed behind.

LBPB officers stationed on the beach gave multiple commands to Conoscenti to "Stop!" and "Get on the ground!" Alatorre indicated that as Conoscenti ran down the staircase, "his right hand continuously moved toward the right side of his waist then away and I kept losing sight of

¹⁰ At some point, LBPB Officer Schlobohm switched frequencies so that he was listening to the same tactical frequency as LASD. However, much of the information relayed to the LBPB officers staged on the beach was from LBPB Sergeant Abraham Yap, who was on 14th Place, and other LBPB officers. Sergeant Yap did not broadcast LASD's plan to use less-lethal force because he "did not want to broadcast the plan over the radio in case the suspect or any other person was listening to [the] communications." After LASD deployed less-lethal force, Yap was "unable to broadcast less-lethal rounds were fired because the suspect was already running down the staircase and I was concentrating my focus on K-9 Officer Ortiz to ensure his safety and the safety of his service dog." The LBPB officers staged on the beach were not informed that the only rounds fired were less-lethal.

¹¹ Alatorre indicated, "I knew that if a Swat (sic) Team was being called out it was because we have a very violent armed barricaded suspect situation."

¹² The stick was ultimately recovered and described as a wooden stick measuring 2 ½ feet long with a one inch diameter.

¹³ Four less-lethal rounds were fired.

¹⁴ Several witnesses who were in the adjacent buildings described the sound of the gunfire as consistent with less-lethal rounds.

¹⁵ Garcia also believed that Conoscenti had engaged in a gun battle with the officers.

his right hand.” Despite being ordered to stop, Conoscenti “continued to run down the staircase with his hands moving in the same fashion...his right hand moved toward his waist and [Alatorre] lost completely sight of it. At this point, it appeared as if his right [sic] was not on his waist and underneath his shirt. It appeared as if he was holding an object, possibly a weapon, which he was trying to keep close to his body.” Alatorre saw Conoscenti “turn his upper body” toward the deputies located at the top of the staircase as he continued to flee. Based upon the information provided to him and Conoscenti’s behavior, Alatorre believed, “[Conoscenti] was looking for the position of pursuing Officers/Deputies [sic] in order to obtain a target to shoot them...and felt the Officers/Deputies [sic] were in immediate danger.” Alatorre fired his weapon twice, but believed that these shots did not hit Conoscenti.

Conoscenti continued to run down the staircase toward the beach. Alatorre could not see Conoscenti’s right hand and believed “[Conoscenti] still had his right hand on his waist.” Alatorre again ordered Conoscenti to “stop running and show me his hands or I would have to shoot again.” Conoscenti “continued running down the staircase with his right hand on his waist and out of my sight.” As he ran down the stairs, Conoscenti looked at Alatorre. “While holding his right hand on his waist, I noticed [Conoscenti] began to turn his upper body toward my direction. At this point, I felt he was aware of my location and was positioning his body to obtain a better angle (shooting position) to shoot at me. I felt I was in a dangerous position because I was too close to the suspect who I believed was armed with a firearm and was willing to use any force necessary to escape our arrest...I began to take backwards steps toward the palm tree I was using for cover earlier. While stepping backwards, I fired my duty weapons (sic) approximately four to five times...”¹⁶ At this time, Alatorre’s duty weapon malfunctioned. He cleared the malfunction, inserted another magazine, and did not fire again. Conoscenti fell down at the bottom of the staircase and remained there.¹⁷

Barich indicated that Conoscenti did not comply with the officers’ commands to “Stop!” as he ran down the step. “[Conoscenti] failed to comply...He reached for his front waistband, which I believed may contain a weapon. [Conoscenti] was running down the stairs and he slowed down. He turned his upper torso to his right and looked back in the direction of the LASO and LBPD officers...I believed that [Conoscenti] was arming himself with the intent to ambush pursuing officers.” Barich continued to issue orders and heard what he believed to be a Taser discharged from south of his location at Conoscenti.¹⁸

Barich knew that Conoscenti had been involved in an assault with scissors on a deputy and believed that he had just been involved in a “shooting with police officers and deputies.” Barich believed Conoscenti was “an immediate threat to officers and citizens if he was not stopped. [Conoscenti] was also a substantial risk if the arrest of the wanted felony suspect was delayed.” Barich believed that Conoscenti could “easily reach the sand and run westbound away from all

¹⁶ After hearing the gunshots emanating from 14th Place, Alatorre moved from his position of cover behind a palm tree forward in order to see Conoscenti fleeing down the stairs.

¹⁷ The time between the first less-lethal gunshot until the last gunshot is fewer than 15 seconds. Fewer than seven seconds passed between the first gunshot and last gunshot.

¹⁸ No Taser was actually deployed.

officers toward the apartment building just west of the stairway. He could enter a beach accessible apartment and take a hostage or possibly kill an innocent victim.”¹⁹

Barich believed the Taser deployment had been ineffective and his “only option at this point was deadly force.” Barich held his fire until he believed that his gunfire would not endanger residents at the apartment building located at 1830 Ocean Boulevard. Barich waited until he believed his backdrop was clear and “discharged [his] firearm approximately two times.”²⁰ Barich believed that Conoscenti turned his body toward Barich and continued to advance down the stairs. Barich “feared for his life that [Conoscenti] was still attempting to remove his weapon” and fired his duty weapon approximately two additional times. Conoscenti fell onto the landing at the bottom of the staircase with his hands placed near his waistband.²¹

LBPB officers approached, handcuffed Conoscenti, and requested that the fire department respond to their location.

Paramedics arrived and transported Conoscenti to St. Mary’s Medical Center. Doctors at St. Mary’s unsuccessfully attempted to perform life saving measures. Conoscenti succumbed to his injuries and was pronounced dead at 5:43 p.m.

On May 2, 2014, Deputy Medical Examiner Paul Gliniecki, M.D., performed an autopsy on Conoscenti’s remains. Dr. Gliniecki ascribed the cause of death as multiple gunshot wounds. Conoscenti was hit by seven rounds of gunfire which entered his chest, hip, right hip/leg, right thigh, left thigh, right lower leg, and left foot. Three of the gunshot wounds were considered rapidly fatal. An analysis of Conoscenti’s blood detected the presence of amphetamine, methamphetamine, and ephedrine.²²

Several witnesses who were in the apartments located at 1900 East Ocean Boulevard recorded all or part of this incident using their cell phones. All of the recordings are from above the location and therefore offer a different perspective than the shooting officers’ perspective. All recordings have obstructions preventing a clear view of the entire incident. These recordings depict Conoscenti opening the door to his car and exiting the vehicle holding a wooden stick. Conoscenti closes his car door and flees in the direction of the staircase. Conoscenti tosses the wooden stick and runs down the stairs. During the time period that Conoscenti is running toward the staircase, several gunshots can be heard.²³ A police K-9 runs behind Conoscenti and begins to follow Conoscenti as he proceeds down the staircase toward the beach.

As Conoscenti runs down the upper two sets of stairs leading to the beach, he moves his arms around. As Conoscenti approaches the end of the second set of stairs or the beginning of the third set of stairs, he drops his right arm by his right side. A single gunshot can be heard on the recording just after Conoscenti drops his arm to his side. Conoscenti continues to run down the

¹⁹ All officers staged east of the staircase to avoid a crossfire situation.

²⁰ Barich described Conoscenti’s location as approximately four stairs from the first landing from the bottom of the staircase.

²¹ Initially, LBPB communications indicated that the incident was a “998” by LASD, attributing the officer involved shooting to the LASD deputies.

²² Conoscenti had hypodermic needles in his pockets at the time he was arrested.

²³ These gunshots are the less-lethal rounds fired by LASD deputies.

staircase while the K-9 stops and proceeds up the stairs toward his handler. Three seconds later, a second shot can be heard and Conoscenti appears to begin to fall down the stairs after this shot. As Conoscenti falls down the stairs, eight additional gunshots are discharged within two seconds. Conoscenti fell onto the landing adjacent to the bottom of the stairs and remained there until officers approached him.

Alatorre was armed with a Springfield Operator .45 caliber semiautomatic firearm. During this incident, Alatorre's gun malfunctioned. To clear the malfunction, Alatorre ejected the magazine, inserted another fully loaded magazine, and left the original magazine at the scene. Alatorre's discarded magazine was recovered at the scene. Seven cartridge casings recovered at the scene were tested and found to have been fired from Alatorre's duty weapon. Alatorre discharged his firearm seven times.

Barich was armed with a Springfield Operator .45 caliber semiautomatic firearm. Three cartridge casings recovered at the scene were tested and found to have been fired from Barich's duty weapon. Barich fired his duty weapon three times.

INDEPENDENT USE OF FORCE ANALYSIS

This office requested that retired LAPD Captain Greg Meyer conduct an independent assessment of the use of force involved in this incident. Meyer was a commanding officer at the Los Angeles Police Academy when he retired in 2006 and is credentialed as a Certified Force Analyst by the Force Science Institute. Meyer is also a member of the Faculty Advisory Committee of Americans for Effective Law Enforcement (AELE), a member of the review panel for AELE's Monthly Law Journal, and has served on the AELE's faculty as a use of force instructor for 10 years. Since 1989, Meyer has worked as a litigation expert on more than 245 civil, criminal, and administrative cases throughout the United States, giving opinions both in favor of and against law enforcement officers. Meyer enlisted the services of retired LAPD Detective Richard Marks to assist him. Meyers and Marks have previously collaborated on many fatal shootings.²⁴

Meyer concluded that both Officer Alatorre and Barich's use of deadly force was objectively reasonable given the totality of the circumstances. Meyer noted that both officers were informed that Conoscenti had committed an assault with a deadly weapon on an officer and led the deputies on a pursuit into the City of Long Beach. Both officers knew that the pursuit ended with a lengthy stand-off, during which Conoscenti ignored multiple orders to surrender. In response to this situation, the LBPD officers formed an emergency action team in the event that Conoscenti attempted to flee from the car and descend the staircase.²⁵ When Barich and Alatorre heard multiple gunshots coming from the area of the stand-off, both officers believed that Conoscenti had engaged the LASD deputies in a gun battle.

²⁴ Among other assignments when employed by the LAPD, Marks worked in both the Homicide and Force Investigation Divisions.

²⁵ Meyer believed that the formation of the emergency action team constituted sound tactics under the circumstances and noted from the officers' position, they did not have a line of sight to the suspect or the vehicle.

As Conoscenti descended the staircase, he ignored the officers' orders to "Stop!" and flailed his arms. Meyer noted that both officers described losing sight of Conoscenti's right arm as he proceeded down the staircase and both believed, based upon this movement, Conoscenti was retrieving a weapon. Meyer also noted that, prior to discharging their firearms, both officers indicated that Conoscenti looked back and, in their opinion, attempted to gain a visual location of any pursuers. Based upon this information, Meyer concluded both officers acted in "immediate defense of life" when each initially discharged his firearm.

As Conoscenti continued to flee despite initial gunfire, Meyer noted that Alatorre believed that Conoscenti looked down directly at him. "When the suspect looked down at him, the officer also thought he was angling for a better shooting position to engage him with a firearm. In immediate defense of life, Officer Alatorre fired approximately four more rounds at Conoscenti, who collapsed and fell to the ground." With respect to Barich's continuing gunfire, Meyer noted that Barich believed that Conoscenti was still attempting to remove something from his waistband and indicated, "Fearing the presumably armed suspect was desperate to escape and posed a threat to officers and citizens should he reach the beach, Officer Barich fired approximately two more rounds at Conoscenti."

CONCLUSION

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. Penal Code section 835a. California law permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. 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.

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and (3) he used no more force than was reasonably necessary to defend against that danger. CALCRIM No. 505. The People have the burden of proving beyond a reasonable doubt that a person did not act in lawful self-defense or defense of another. If the People fail to meet this burden, a jury must find the defendant not guilty. CALCRIM No. 3470.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." Graham v. Connor (1989) 490 U.S. 386, 396-397.

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.

Before a jury can rely on circumstantial evidence to find a person guilty, the jury must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the accused person is guilty. "If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence." CALCRIM No. 224.

The evidence examined in this investigation shows that Jason Conoscenti committed the crime of theft when he removed items from Target without paying for them. Conoscenti then brandished a pair of scissors at Deputies Legazpi and Valencia to facilitate his escape. The deputies kept a safe distance from Conoscenti to avoid being hurt and Conoscenti entered his car and fled the scene. Several LASD units followed Conoscenti as he led them on a 12 mile vehicle pursuit which ended at 14th Place and Ocean Boulevard in the City of Long Beach.

LBPB units had been warned that Conoscenti had assaulted a deputy with a deadly weapon and led LASD on a pursuit from Compton to the City of Long Beach. LBPB agreed to assist LASD by holding the beach area below the pedestrian staircase at 14th Place. The LBPB officers who positioned themselves on the beach requested that a less-lethal 40 mm launcher be provided to them, but otherwise were armed with their service weapons. The only less-lethal option available to them at that time was a Taser. They were aware that Conoscenti was refusing to surrender and reaching and grabbing at unknown items inside his car. The officers were also informed that LASD SEB was responding to the location. The LBPB officers positioned on the beach were not advised of LASD's plan to use less than lethal force when Conoscenti exited his vehicle.

The LBPB officers positioned on the beach were told that Conoscenti exited his vehicle and then they heard gunfire. These officers did not know that the rounds discharged by LASD deputies were less-lethal rounds. Barich and Alatorre both believed that Conoscenti had engaged in a gun battle with LASD deputies. Although Barich and Alatorre's belief was mistaken, there is insufficient evidence to prove beyond a reasonable doubt that Barich and Alatorre were unreasonable in their belief that Conoscenti had engaged in a gun battle with LASD deputies moments prior to seeing him flee down the stairs toward the beach. Both Barich and Alatorre had been told that Conoscenti assaulted other law enforcement officers with a deadly weapon, evaded the LASD deputies while being pursued, and engaged in a stand-off, during which he moved around in his car and did not surrender to law enforcement. These facts, known to the officers, lend weight to their opinion that Conoscenti, who had yet to be searched, was armed, had engaged the deputies in a gun battle, and was a danger to both officers and others in the area. Given the ample police presence, Conoscenti had no reasonable chance to escape arrest. Under these circumstances, it would be reasonable for the officers to conclude that Conoscenti would resort to violence to avoid being taken into custody.

Conoscenti fled south down the stairs toward the beach, discarding the wooden stick prior to reaching the staircase. Barich and Alatorre were below and east of Conoscenti. As he ran down the stairs, Conoscenti flailed his arms and dropped his right arm down by his side. In response to this perceived threat, both officers discharged their duty weapons. As Conoscenti continued to flee after the initial gunfire, Alatorre began to retreat and both officers fired their duty weapons again.

Barich and Alatorre both described losing sight of Conoscenti's right hand and believing that Conoscenti was using his right hand to retrieve a weapon. Although overhead recordings show that Conoscenti dropped his right arm by his side and the investigation determined that Conoscenti was not armed, it was not unreasonable that Conoscenti's hand and arm movement was perceived by Barich and Alatorre, who were below and east of him, as reaching for his waistband with his right hand. The officers' belief that Conoscenti was retrieving a weapon and presented a life-threatening danger to them and others was a possible reasonable inference given the information available to them. Forced to make a split second determination as to the amount of force to use and lacking a feasible less-lethal option, the officers discharged their service weapons. There is insufficient evidence to prove beyond a reasonable doubt that Barich and Alatorre's belief that Conoscenti, a fleeing felon who had just assaulted LASD deputies, was arming himself and a threat to them, their fellow officers and deputies, and people on the beach and in the adjacent residences, was unreasonable although hindsight, being 20/20, shows that their belief was incorrect.

We conclude that there is insufficient evidence to prove beyond a reasonable doubt that Officers Barich and Alatorre used unreasonable force to apprehend a dangerous fleeing felon under these circumstances. Likewise, there is insufficient evidence to prove beyond a reasonable doubt that Officers Barich and Alatorre did not act in lawful self-defense and defense of others at the time they fired their duty weapons.