

Officer Involved Shooting of Adrian Simental
Azusa Police Department

Officer Jon Rush, #1152

J.S.I.D. File #15-0311



JACKIE LACEY

District Attorney

Justice System Integrity Division

June 10, 2016

MEMORANDUM

TO: CHIEF SAM GONZALEZ
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Adrian Simental
J.S.I.D. File #15-0311
AZUSA P.D. File #15-21205
L.A.S.D. File #015-00043-3199-013

DATE: June 10, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the June 21, 2015, fatal shooting of Adrian Simental by Azusa Police Department Officer Jon Rush. It is the conclusion of this office that there is insufficient evidence to prove beyond a reasonable doubt that Officer Jon Rush acted unlawfully under the circumstances.

The District Attorney's Command Center was notified of the shooting on June 21, 2015 at approximately 4:35 p.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 and submitted to this office by Homicide Bureau Detectives Donna Cheek and Gene Okada. The reports also include photographs, radio communications recordings, and an autopsy report generated by the Los Angeles County Coroner. Officer Rush's voluntary statement was also considered in this analysis.

FACTUAL ANALYSIS

On June 21, 2015 at approximately 12:53 p.m., Azusa Police Officers Jon Rush, Samantha Sutcliffe, and Sergeant Richard Hayden responded to the 500 block of East Lee Drive in Azusa regarding suspicious circumstances. Azusa dispatch received two calls regarding the 500 block of East Lee Drive. In the first call, the reporting party stated her cousin had "cut his arm bad" and she was not sure if it was self-inflicted. In the second call, the reporting party said there was a male inside the residence next door to her breaking windows to the residence.

Rush and Hayden were the first to arrive and were directed by citizens to 560 East Lee Drive. Officers noticed massive amounts of blood inside the location. When Sutcliffe arrived shortly thereafter, Sutcliffe, Rush and Hayden began to clear the residence and they noticed Simental lying face down on the concrete rear patio. Rush positioned himself in the rear doorway of the residence and held Simental at gunpoint while Sutcliffe and Hayden cleared the residence looking for possible victims. While Rush was covering Simental, an officer-involved shooting occurred. Simental was transported to Foothill Presbyterian Hospital and was pronounced dead shortly thereafter.

Officer Jon Rush

Rush heard a call of a male breaking out windows inside a house. Because it was his “beat” he began to coordinate the responding units. He directed Sutcliffe to go “lethal” and he would go “less than lethal” with a bean bag shotgun. While in route to the location, the call was updated and they were advised the male was at a different house and breaking windows. As he parked his patrol vehicle at 560 East Lee Drive, a woman frantically screamed “Hurry up! Hurry up! You have to get in there!” Hearing this, Rush abandoned his less-lethal plan. Hayden and Rush were the first two officers there and Hayden was right behind Rush as they walked up to the front door. A male outside of the house advised them they had to hurry up and go inside. The male said something to the effect of “He is attacking her” or “He beat her up pretty bad.”¹ This led Rush to believe that this was an active assault situation, such as an active shooter or active stabber. When Rush inquired who “he” was, the male pointed across the house to the outside and said “That’s him.” At that point, Rush saw what looked like a person in a T-shirt just outside of the rear door. As Hayden and Rush proceeded into the house, Rush observed that the glass from the back door had been shattered and saw Simental just outside the house at the base of the rear concrete steps. As they got closer to Simental, Rush observed blood on the kitchen floor. Rush smelled a strong odor of blood and saw blood throughout the house. Hayden was to Rush’s right as they contacted Simental lying outside. Hayden and Rush ordered Simental to show his hands a couple of times. Simental raised his right arm first, then slowly rolled towards Rush and raised his left hand. Simental’s left hand was almost completely severed off at the wrist and was gushing blood.

When Sutcliffe arrived, Hayden told Simental “Do not move or you will be shot” before leaving to clear the rest of the house with Sutcliffe. Rush held Simental at gunpoint. Simental was lying on his left side with his back towards Rush and was rolled slightly onto his back raising his left hand. Simental said “Shoot me, shoot me” and then uttered something in Spanish. Although Simental appeared to be badly injured, he did not show any signs of distress or pain. Rush repeatedly re-assured Simental that he would not shoot him, saying “I am not going to shoot you, dude. Just don’t move, I’m not going to shoot you.” Simental said a few more things in Spanish. Simental kept repeating “Shoot me” as Rush held him alone at gunpoint. Rush saw Simental looking at him as Simental slowly lowered his right hand while still keeping his left arm up.² Simental used his right hand to feel around for something and palmed a piece of broken glass.³ All of a sudden, Simental “popped” up to a standing position.⁴ Although Rush believed he maintained the commands he was

¹ It was later determined that no one was home at the location at that time and there was no female victim involved in the incident. Simental’s high pitched screams were mistakenly assumed by witnesses to be that of a woman.

² Rush noted that Simental’s right hand movement was not quick and it did not appear as if he was reaching for his waistband or making an apparent effort to pull some type of weapon on Rush.

³ Simental grabbed the glass shard and closed his fist around it. The glass shard was big enough so that it fit in the palm of his hand. Rush did not recall any piece of glass protruding out of Simental’s hand.

⁴ Rush stated Simental “sprung up” and that he “just jumped up on his feet.” Rush was unable to describe precisely how Simental stood up because “it happened really fast.”

giving Simental, he did not recall what he said to Simental at that moment.⁵ At that point, Rush was still standing at the threshold of the rear door and Simental was at the bottom of the two concrete steps.

Rush, in shock that Simental had stood up so suddenly, became scared. Although he could not see anything in Simental's hand and was not sure if Simental still had the glass shard, Rush felt he had to act. Rush believed that Simental was either going to come at him, or was going to continue doing whatever violent act he had set out to do. Rush stated, "I am thinking that this is someone who just committed some sort of very nasty crime and he was going to keep doing it. He obviously wasn't following commands and that's when I decided that I needed to stop him and I shot him." The circumstances led Rush to believe "that this is a serious, violent person, and because he jumped up so fast I thought that he was either going to attack me or attack somebody else, and that's when I decided to fire." Rush cleared the door outside and was on the first step, walking towards Simental when he fired three shots at Simental. Upon seeing Simental go down, Rush decided not to fire anymore. Immediately thereafter, Hayden and Sutcliffe were outside as Rush continued to maintain Simental at gunpoint. Sutcliffe searched Simental and the paramedics responded to the scene.

Sergeant Richard Hayden

Hayden arrived at the location at the same time as Rush. As they got out of their patrol units, four to five residents came out from across the street yelling, "Someone is attacking a woman in there, he's broken in, he's breaking things!" Two males got really close to them saying, "He's in there, he's hurting people, attacking somebody, attacking a woman." Hayden moved forward with Rush believing there was an "active shooter or stabber" situation occurring inside the location. They approached the front door of the location. Hayden saw a lot of blood on the threshold, which heightened his concern about the "active shooter or stabber." Hayden was directly behind Rush when they entered the house.

As they moved past the living room, they observed Simental lying prone just outside the rear kitchen door and just below the steps. It appeared Simental had run through the glass plate of the rear kitchen door.⁶ Hayden could not see Simental's hands, but one of his hands appeared to be almost severed off. Hayden does not recall if Rush gave any orders at this time but recalls himself yelling "Let me see your hands! Let me see your hands!" Hayden heard Simental moaning but does not recall Simental saying anything. Hayden did not know if Simental was a victim that had been trying to escape an attack or a suspect.⁷ Hayden was concerned there was still someone inside the house that could attack them from the rear. When Sutcliffe arrived, Hayden asked Rush to "cover" Simental while he and Sutcliffe cleared the house.⁸ Rush remained just inside the rear kitchen door covering Simental. Hayden and Sutcliffe then walked down the hallway and he directed Sutcliffe to

⁵ Simental did not say anything to Rush at that point and did not "stare him down" or do anything to threaten him. Rush stated, "I remember him standing up and that I had to shoot him. I don't know if he was coming towards me or if he was going away from me. But that's when I engaged him, so I just remember a blurry target. I don't remember his face or anything like that."

⁶ The majority of the glass interior portion of the door was shattered and shattered glass was on the tiled floor of the kitchen area and outside on the concrete slab.

⁷ Upon observing an injured Simental, Hayden called for the fire department for medical assistance. Hayden is overheard in the radio traffic communications saying "We need fire to roll in. Sam [Sutcliffe] when you get here, you're 911 with me." Approximately one minute after Hayden's call for the fire department, Sutcliffe is overheard saying "We have one at gunpoint in rear yard at gunpoint and we're UTL (unable to locate) on a victim so far." The operator responds "It's going to be a victim/suspect."

⁸ "Cover" is commonly used to tell an officer to watch a specific person or area.

cover the rooms on the left. As he entered the room on the right to clear it, he heard three gunshots. Hayden backed out, directed Sutcliffe to hold her position and went to assist Rush. Hayden found Rush standing inside the house, still in the same spot but Simental was now lying close to the gate, so Hayden knew that Simental had moved.⁹

Officer Samantha Sutcliffe

Rush and Hayden were at the location prior to Sutcliffe's arrival. Sutcliffe parked in front of the house and joined Hayden at the front door. Hayden said there might be someone else inside the residence and he wanted to conduct a protective sweep. When she and Hayden entered the house she saw a lot of blood on the floor. She saw Rush standing by the rear door. Sutcliffe did not see Simental but recalled hearing Simental say "Just shoot me, just shoot me" when she first entered the house. Sutcliffe then entered a hallway which led to the back bedrooms and observed more blood on the floor and on the walls. Sutcliffe heard Rush say "Stay down" a couple of times. Sutcliffe was in the hallway waiting to clear one room when she heard three shots. She used her radio and notified dispatch that shots were fired.¹⁰ Sutcliffe ran to where Rush was located and saw Simental lying on his back on the south part of the rear yard. Sutcliffe noticed Simental was covered in blood and that his left arm was nearly severed. Rush had Simental at gunpoint, while Simental was attempting to lift his head, moving his arms around, and mumbling. Sutcliffe checked Simental's front pockets for weapons but found none. The paramedics then arrived and treated Simental.

Statement of Carol Gomez

Gomez resides at the residence just east of 560 East Lee Drive [REDACTED]. Gomez was inside her bedroom when she heard her neighbors' dogs barking. The barking was immediately followed by what sounded like a female screaming. At first she thought children were playing outside, but after a couple of seconds "it did not sound right." Gomez looked outside her bedroom window which faces the pool area of 560 East Lee Drive. She saw a male Hispanic, later identified as Simental, and thought he was screaming because the dogs were barking at him. Simental jumped onto a washer/dryer located in the backyard against the rear wall of the residence and started to kick out the back windows of the house. Gomez yelled at her daughter, Monique, to call 9-1-1. Gomez described Simental as "crazy" and said the situation was very scary. Gomez heard Simental yell "Fuck you!" at the dogs which were barking at him. Simental was screaming in a high pitched manner which made him sound like a female. Gomez saw Simental near the rear door of the residence, heard a window break, and lost sight of him. Police officers arrived shortly after.

Through the opened front door, Gomez observed blood in the house. She saw two men run inside the house. Gomez heard approaching sirens, so she told the men that the police were coming and to get out of the house. Gomez saw the men exit the house when the officers arrived. The officers entered the house with their guns drawn. Although she did not witness the shooting, Gomez heard the officers yell something at Simental, then heard three gunshots.

⁹ Although neither Hayden nor the investigative reports indicate the exact distance Simental moved toward the gate, it is apparent from the crime scene photographs that Simental moved approximately 25 to 30 feet toward the gate.

¹⁰ The radio communications captured Sutcliffe announcing "We got shots fired" approximately 15 seconds after announcing that they had someone at gunpoint in the rear yard but had yet been unable to locate a victim. Overall, approximately one minute and 15 seconds elapsed between the time Hayden initially called for the fire department and Sutcliffe announcing that shots were fired.

Statement of Jaime Ledesma

Ledesma was inside his residence at [REDACTED], which is located across the street from 560 East Lee Drive, when he heard glass break. Shortly after, he heard a female screaming. It sounded like the female screaming was in distress, so he went outside. Ledesma noticed the screams were coming from 560 East Lee Drive, so he and Jose Benitez ran to the door of the house. Ledesma was at the front door when he saw Simental's shadow inside. Police officers arrived and Ledesma went back to his residence. Ledesma heard three shots but he did not see the shooting.

Statement of Sandra Zarate

Zarate was in front of [REDACTED] (which is across the street northwest of 560 East Lee Drive) when she heard a window breaking and what sounded like a woman screaming. Zarate thought a woman was being attacked. She saw Simental in the rear yard of 560 East Lee Drive and heard him yell "Shoot me" three times. Zarate stated "I saw the guy come outside and I saw him get shot."¹¹

Statement of Joe Benitez

Benitez was in the backyard of [REDACTED] when his girlfriend, Julie Zarate, started to yell at him that the lady across the street was getting beat up. Benitez ran to the front and heard glass breaking and there were people yelling "They're hurting her, they're hurting her." He was concerned for the residents of 560 East Lee Drive because he knew a woman and her two daughters lived there and he needed to help them. Benitez ran to the front of the residence and opened the door. Simental, who was inside the house, saw him and ran straight through the glass window of a rear door.¹² After Simental ran through the glass door, he fell down, was bloody and was not moving. Benitez ran through the house looking for possible victims but did not find anyone. Benitez ran outside the house and that is when Rush arrived. Benitez directed Rush to the residence and advised him that there was a male below the rear door. Rush walked toward the rear of the house with his gun drawn. Benitez heard Rush say, "Don't move or I'll shoot you." More police officers arrived and entered the house, although Benitez was not sure how many more officers arrived. Benitez went back to the front yard of his residence and a few minutes later he heard three shots.

Statement of Julie Zarate

Zarate heard glass break and then heard "scuffling" that sounded like fighting. Zarate believed whoever was screaming sounded like a woman and that scared her because she knew that a family lived at the residence of 560 East Lee Drive. Zarate's boyfriend, Joe Benitez, went over to the house and Zarate was yelling at whoever was in the house to "Stop!" Zarate believed there was someone inside getting hurt, screaming at the top of her lungs, and "yelling for dear life."¹³ Zarate

¹¹ Zarate's interview is very brief, just 50 seconds long, and does not contain additional details surrounding her observations. Investigators' efforts to obtain a more detailed statement from Zarate proved unsuccessful. Investigators went to Zarate's home on two separate occasions to interview her but family members informed investigators Zarate was not home. Investigators left messages with the family members to have Zarate contact them but as of this date, Zarate has not contacted investigators.

¹² The rear door leading to the rear yard was a glass door with a wooden frame.

¹³ Zarate did not know who was inside the house and did not see anyone but said the person screaming "sounded like a woman."

followed Benitez over to the house and stood to the front on the sidewalk as Benitez went inside the house to help. After Benitez went inside, Zarate heard glass break and heard Benitez say to someone to “Get out!” Officers arrived on scene and told Benitez to get out of the house. Zarate then walked over to her front yard and saw officers go inside the house. While Zarate was in front of her residence she heard Simental say, “Shoot me.”

Statement of Jesse Zarate

Zarate’s niece, Julie Zarate, told him someone was inside 560 East Lee Drive screaming. Shortly after, he saw officers go inside the house. Zarate wanted to make sure his neighbors at 560 East Lee Drive were okay, so he walked across the street. While he was standing on the east sidewalk of the 400 block of Lee Drive, Zarate saw through the chain-link fence cracks, Simental run out the rear door of the house.¹⁴ Zarate saw an officer run behind Simental. Zarate does not recall if the officer said anything, but heard Simental, who was facing the officer, say “Shoot me” approximately three times. Simental then turned southbound toward the south fence. Zarate heard three shots, saw Simental fall to the ground and heard Simental moan in pain.

Statement of Juan Simental

Juan Simental stated that Adrian Simental was his son and lived with him at [REDACTED].¹⁵ Juan stated that Simental was a drug user. Juan did not know what kind of drugs his son was ingesting but suspected it must have been something strong because there were times Simental did not sleep at night. On the date of the shooting at about noon, Simental would not let his mother, Rebecca Simental, leave to work. Rebecca called an acquaintance for a ride because Simental would not let Rebecca take her car. The acquaintance picked Rebecca up and they left to work. Moments later, Juan, who was in the living room, saw Simental come in the house from the back with his left hand cut and hanging from his arm. Simental was screaming and was bleeding everywhere. Simental went out the front door to the neighbor’s house at 560 East Lee Drive and went inside. Officers arrived, entered the house, and detained Simental. Juan was standing on the east sidewalk, just south of the driveway of 560 East Lee Drive when he heard an officer order Simental to “Stop” and, approximately 30 seconds to a minute later, he heard three shots. Moments later, an officer told him to leave and Juan returned to his residence. Juan later checked his garage and discovered that Simental had apparently used an electric saw to cut his arm.

Statement of Jossie Simental

Jossie Simental is Simental’s sister and provided a statement to the coroner investigator, Anthony Lopez. Jossie stated that although Simental had never been formally diagnosed with any mental condition, the family was aware of schizophrenic behavior and hallucinations which Simental had been experiencing over the previous two years leading up to the date of the shooting.¹⁶ Simental smoked marijuana and drank alcohol since attending high school. Approximately two years ago, Simental had a verbal altercation with his mother which escalated into a physical altercation with

¹⁴ A 5’ tall chain link fence with tan vinyl slats woven into the links, which created a visibility barrier, surrounded the west and southwest portion of the rear yard of 560 East Lee Drive. .

¹⁵ Simental’s home is the first residence to the south of 560 East Lee Drive.

¹⁶ Simental had been detained on a Welfare and Institutions 5150 hold on February 26, 2015.

Jossie. The Azusa Police Department was called and Simental was arrested.¹⁷ Simental's abnormal behavior escalated since then.¹⁸ The week previous to the date of the shooting, Simental's behavior was more abnormal and was accompanied by his inability to sleep. Jossie believed Simental may have been using methamphetamine. The family urged Simental to seek medical treatment but due to his age they could not force him into treatment.

Physical Evidence

Rush's service weapon was a Glock model 22, 40 caliber pistol. There was one live round in the chamber and 12 live rounds in the magazine.¹⁹ On the concrete patio south of the rear security screen door of 560 East Lee Drive investigators located three expended 40 caliber cartridge casings. Investigators noted blood stains on the concrete near the base of the rear door concrete steps. Further south of the blood stains, investigators found Simental's clothing, a fired bullet jacket fragment, and medical debris. Numerous blood stains on the walls, doors, windows, on the floor, and all throughout the house were documented and photographed, along with broken doors and broken windows. Broken glass was visible throughout the location.

Postmortem Examination

On June 24, 2015, Deputy Medical Examiner Odey C. Ukpo performed a postmortem examination of Simental's remains.

The medical examiner noted three gunshot wounds, all fired at an indeterminate range. Gunshot wound one was to the right superior lateral buttock, gunshot wound two was to the left tricep, and gunshot wound three was to the right mid back.²⁰ Gunshot wound one entered back to front on the right buttock and exited through the right thigh. Gunshot wound two entered back to front on the left tricep and exited on the left bicep. Gunshot wound three entered back to front on the right mid back and did not exit the chest. A jacketed bullet was recovered from the right upper chest.²¹

The medical examiner also noted amputation of Simental's left forearm, left thumb, and a left wrist gaping incise wound. Sharp force injuries were also noted to Simental's upper body, lower body, and head. Blunt force trauma was also noted to Simental's head and shin.

The medical examiner attributed the cause of death to the gunshot wound to the back but noted that the amputation of the left forearm also significantly contributed to Simental's death.

The toxicological examination showed an elevated amount of methamphetamine in Simental's body.²²

¹⁷ At the time of the incident, a criminal protective order was in effect listing Rebecca Simental and Jossie Simental as protected victims in case number 2JB01736 arising out of a February 22, 2012 incident where Simental had attacked his mother and sister with a skateboard leaving visible bruises and abrasions.

¹⁸ Simental had nine violence related arrests against members of his family dating back to 2010.

¹⁹ Rush normally had 15 rounds in the magazine and one round in the chamber.

²⁰ The gunshot wounds were arbitrarily labeled for reference purposes.

²¹ The gunshot wound to the back perforated the liver and the right lung causing a large amount of blood in the right chest cavity. It caused bleeding over the spinal cord, but no direct injury. The gunshot wounds of the left arm and right buttock did not damage vital organs.

²² The toxicology result for methamphetamine was 2.0 ug/mL (microgram per milliliter). This result is at the maximum level on the calibration scale.

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. Penal Code § 835a. California 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; *Kortum v. Alkire* (1977) 69 Cal.App.3d 325; *Tennessee v. Garner* (1985) 105 S.Ct. 1694. 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.

The prosecution is charged with the burden of proving beyond a reasonable doubt that a homicide is not justifiable. Penal Code § 1096; *People v. Banks* (1976) 67 Cal.App.3d 379, 383-384.

A defendant is not guilty of murder if he did not have the intent required to commit the crime because he did not know a fact or mistakenly believed a fact. If the defendant's conduct would have been lawful under the facts as he believed them to be, he did not commit the crime of murder. CALCRIM No. 3406.

A reasonable belief that danger exists may be formed by reliance on appearances. *Davis v. Freels* (7th Cir. 1978) 583 F.2d 337, 341. 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 Killeen, 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 Officer Rush and Sergeant Hayden responded to a very chaotic, bloody scene where several neighboring residents believed and communicated to the officers that a suspect was inside a house attacking a woman. Witness Joe Benitez heard people yelling "They're hurting her, they're hurting her" and witness Julie Zarate heard what sounded like a woman screaming at the top of her lungs and "yelling for dear life." Although the house turned out to be unoccupied at the time and the screams turned out to be Simental's screams, all of the witnesses indicated that it sounded like a woman screaming. Based on these facts, it was reasonable for the officers to conclude that a woman was being assaulted inside the house. The witnesses desperately urged the officers to act quickly as they feared someone was getting attacked within the house. There was a trail of blood leading up to the house, doors and windows were broken, and there was blood everywhere throughout the house. Additionally, Officer Rush could smell a lot of blood throughout the house. As he held Simental at gunpoint, Officer Rush did not know that there would not be any victims within the home. The horrifying circumstances strongly suggested that that would be the case. Although Simental was injured and Hayden had promptly called the fire department to render Simental medical assistance, at this early stage in the investigation it was impossible to determine whether Simental's wounds were defensive wounds, self-inflicted wounds, or wounds sustained as part of a violent struggle with his victims. Nonetheless, because Simental was potentially a dangerous murder suspect, it was critical that he be detained. By attempting to turn and flee away from Rush in disobedience of Rush's orders,

Simental's actions were more consistent with him being a suspect as they indicated a consciousness of guilt as opposed to the actions of an innocent victim who would likely wait for the medical assistance which had been summoned for him.

Further, although Sutcliffe announced that she and Hayden had been unable to locate a victim "so far", they were still in the process of clearing the house at the time Rush was attempting to detain Simental. The residence was a three bedroom, two bath dwelling. Hence, at the time Rush held Simental at gunpoint, Simental had not been cleared as a suspect. Hayden and Sutcliffe were a mere 15 seconds into clearing the house when Sutcliffe announced that shots were fired. In light of all these circumstances, as he held Simental at gunpoint, Rush had every reason to believe that Simental had just committed a violent bloody assault inside the residence. Therefore, when Rush observed Simental disobeying orders not to move by suddenly standing up, Rush reasonably, although mistakenly, believed that deadly force was necessary in order to stop Simental from continuing on his apparent violent crime spree. It was at that moment that Rush decided he needed to stop Simental because otherwise Simental "was going to continue doing whatever violent act he had set out to do." Rush reasonably believed, based on the circumstances and the information that had been conveyed to him by the witnesses upon his entry into the house, that Simental had just committed a forcible and atrocious felony; although hindsight shows Rush's belief that an atrocious felony was committed was incorrect. At the time Rush discharged his weapon, he did not know that there were no victims inside the residence and that all of the blood seen was Simental's. Nonetheless, because Rush's actions would have been lawful had the circumstances been as he believed them to be and, on these facts, it was reasonable for him to draw the mistaken conclusion that he did, it cannot be proven beyond a reasonable doubt that Rush used unreasonable force in detaining Simental.

In view of the totality of the information Rush possessed when he fired at Simental, a jury could conclude that Rush reasonably believed that Simental committed a crime involving the infliction or threatened infliction of serious physical harm thereby justifying Rush's use of deadly force to detain Simental.

CONCLUSION

Based on the foregoing, we cannot prove beyond a reasonable doubt that Officer Rush acted unlawfully under the circumstances. We are therefore closing our file and will take no further action in this matter.