



C A L I F O R N I A

---

DEPARTMENT OF JUSTICE

**Report on the Investigation into the  
Death of Sean Monterrosa on June 2, 2020**

Solano County

---

DECEMBER 2023



# TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	<b>1</b>
<b>PRIVACY STATEMENT</b> .....	<b>1</b>
<b>FACTUAL SUMMARY</b> .....	<b>2</b>
<b>INVESTIGATION</b> .....	<b>3</b>
Evidence Reviewed.....	3
Scene Description.....	4
Evidence Recovery.....	5
Walgreens Surveillance And Body-Worn Camera Footage .....	6
Autopsy.....	10
Interviews of Involved Officers.....	10
Interviews of Civilian Witnesses.....	17
Tonn’s Personnel File .....	19
Monterrosa’s Companions.....	19
<b>USE OF FORCE EXPERT REPORTS</b> .....	<b>21</b>
<b>APPLICABLE LEGAL STANDARDS</b> .....	<b>23</b>
Murder .....	23
Voluntary Manslaughter.....	23
Self-Defense.....	24
Burden of Proof.....	25
<b>LEGAL ANALYSIS AND CONCLUSION</b> .....	<b>26</b>
Objective Reasonableness .....	26
Actual Belief.....	28



# INVESTIGATION OF OFFICER INVOLVED SHOOTING

## INTRODUCTION

On May 13, 2021, the Office of the Attorney General-Department of Justice (“DOJ”) assumed jurisdiction to review the June 2, 2020 fatal shooting of Sean Monterrosa by Vallejo Police Department (“VPD”) Detective Jarrett Tonn. This report is the final step of DOJ’s review. DOJ’s review focused solely on the potential criminal liability of the officer in light of the relevant charging standard. The report does not encompass or comment on any potential administrative or civil actions.<sup>1</sup> Based on the criminal investigation, review of evidence, and evaluation of the case, DOJ has determined that there is insufficient evidence to prove beyond a reasonable doubt that Detective Jarrett Tonn is guilty of murder or manslaughter.

**CAUTION:** The images and information contained in this report may be graphic and disturbing. Therefore, viewer discretion is advised, especially for young children and sensitive individuals.

## PRIVACY STATEMENT

This report redacts the names and other identifying information of civilian witnesses. The public interest in such information is limited because it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure outweighs the public interest in disclosure.

For privacy reasons, as well as readability of this report, the witnesses will be identified as follows:

- Witness 1 (W-1), paramedic supervisor for Medic Ambulance
- Witness 2 (W-2), logistics manager for Medic Ambulance
- Witness 3 (W-3), night supervisor for Medic Ambulance
- Witness 4 (W-4), operations manager for Medic Ambulance
- Witness 5 (W-5), girlfriend of Monterrosa
- Witness 6 (W-6), friend of Monterrosa

---

<sup>1</sup> Contract Investigators Michael Gennaco and Stephen Connolly authored an Administrative Investigation Report for the Vallejo Police Department published in June 2021. This report includes compelled statements from Officer Tonn. However, criminal prosecutions may not rely on compelled statements of defendants or conclusions drawn from those compelled statements. (*Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 827-828 [public employees, including police officers, may be compelled by an employer to answer questions for administrative purposes, but the use of such statements in criminal proceedings is prohibited].) Therefore, this report does not rely on those statements or those conclusions, and does not evaluate the analysis or conclusions in that report.

## FACTUAL SUMMARY

On the night of June 1, 2020, the City of Vallejo, in the midst of ongoing civil unrest and peaceful protest across the country following the murder of George Floyd in Minnesota, was beset by looting and other criminal activity.<sup>2</sup> The Walgreens located at 1050 Redwood Street had been a target of multiple burglaries that night, including one at 10:17:37 p.m. and another at 10:42:53 p.m. After midnight, a group of people including Monterrosa drove to the Walgreens. This group may have included as many as nine people. This group arrived in two cars, a black sedan and a white sedan.

Monterrosa and three of his companions entered the store on June 2 at 12:33:47 a.m. through the window of the drive-thru pharmacy. Based on surveillance footage from within the Walgreens, Monterrosa searched the pharmacy shelves and attempted to break open a locked cabinet using a hammer that he had brought with him. At 12:35:17 a.m., Monterrosa left the Walgreens through the drive-thru window.

While the burglary was in progress, another vehicle, a silver Nissan Titan truck, pulled into the lot. The three occupants of the truck stepped out of the Nissan truck and watched the looting.

VPD Captain Horton was on patrol in the area in an unmarked SUV. Horton had responded to an earlier burglary at the same Walgreens. He saw cars pull into the Walgreens parking lot. He reported observing ten to twelve people running back and forth. He saw some of the subjects enter the Walgreens through the pharmacy drive-thru window.

Tonn and witness officers Detectives Wagoner and Pittman arrived on scene in an unmarked police truck. Tonn was the rear passenger; Wagoner, the driver; and Pittman, the front passenger. Horton devised a tactical plan which he relayed verbally to the others, wherein Horton would enter the parking lot through the Broadway entrance and the others would enter the lot via the Redwood entrance, penning in the looters so arrests could be made.

As Horton was driving toward the Broadway entrance, he became concerned because he thought the subjects were, in his words, acting “like a professional bank robbery crew.” He took particular note of a lookout who he believed was holding a gun. Horton changed his angle of approach to place his vehicle’s engine block between him and the lookout in order to provide himself cover from potential gunfire. At 12:36:30 a.m., Horton issued a warning over the radio: “It looks like they’re armed, possibly armed.”

Tonn, Wagoner, and Pittman heard Horton’s radio broadcast seconds prior to encountering Monterrosa. As they approached in their truck, they saw Monterrosa running away from them toward the black sedan. Tonn and Wagoner later stated that, at the time, they believed Monterrosa was carrying a firearm concealed in his clothing based on Horton’s warning and the way Monterrosa was running. Monterrosa suddenly stopped and turned to face the officers. Tonn later stated that, as Monterrosa turned, Tonn saw him grabbing at an object in the area of his waistband. Tonn stated that he believed the object was a gun.

---

<sup>2</sup> Because the City of Vallejo had received information regarding planned looting, it imposed a city-wide curfew from 8:00 p.m. on June 1, 2021 to 5:00 a.m. on June 2, 2020. ([ci.vallejo.us/common/pages/DisplayFile.aspx?itemid-16785382](http://ci.vallejo.us/common/pages/DisplayFile.aspx?itemid-16785382).) Despite the curfew, rampant looting and other criminal activity occurred throughout the night.

VPD requested assistance from area police departments including the American Canyon Police Department and the Napa County Sheriff’s Department. Multiple officers interviewed during the course of the VPD investigation reported that there were roving groups of looters who appeared to be well organized as well as a large number of vehicle pursuits that night. The officers also reported multiple instances of shots fired and armed robberies occurring on June 1.

Tonn fired five shots from his rifle through the windshield at 12:36:36 a.m. One of these shots struck Monterrosa in the back of the head, and he subsequently fell to the ground.

The silver Nissan Titan truck fled the parking lot.<sup>3</sup> The black sedan was in the process of driving away but still in the parking lot when the shooting occurred. The black sedan collided with Horton's SUV<sup>4</sup> and then drove away. Horton later stated that he believed the black sedan intentionally rammed his car as there had been sufficient space for the Nissan Titan to pass without striking his vehicle. Horton suffered injuries from the collision.

It is not known where the white sedan was at the time of the shooting.

After the shooting, Tonn, Wagoner and Pittman approached Monterrosa's prone body. The handle of the hammer visibly protruded from the left side pocket of Monterrosa's sweatshirt. Pittman removed the hammer and began lifesaving measures.

Emergency medical personnel arrived and transported Monterrosa to the Kaiser Permanente Vallejo Medical Center. He was pronounced dead at 1:31 a.m. on June 2, 2020.

No gun was found at the scene.

## INVESTIGATION

VPD and the Solano County District Attorney ("SCDA") were responsible for the initial investigation of this case. SCDA provided its file to DOJ in May 2021. Supplemental investigation was conducted by agents of DOJ's Division of Law Enforcement ("DLE").

### Evidence Reviewed

- Dispatch records
- Police radio communications
- 911 recordings
- Police reports
- Body-worn camera footage
- Walgreens surveillance video
- Interviews of officers involved in the incident
- Interviews of civilian witnesses
- Autopsy of Monterrosa (Case No. 20-0569)
- Forensic analysis of Monterrosa's cell phone
- Call detail records for Monterrosa's cell phone

---

3 The Nissan truck led responding VPD units on a high speed chase. The three occupants of the Nissan truck were ultimately detained. VPD determined that the three men did not know Monterrosa's group and had no relevant information to provide other than having heard the shots from behind as they fled the scene. According to their VPD interviews, they had been driving along, saw the burglary at the Walgreens, and opportunistically stopped in the hopes of participating in the looting. The police arrived just after they had exited the truck but before they entered the Walgreens.

4 Initially, Horton believed that the Nissan truck had rammed his car.

- Analysis of call detail records by NCRIC
- San Mateo Crime Laboratory reports related to this incident
- VPD and NCFI reports relating to Mavic drone
- Non-privileged portion of personnel file of Detective Tonn obtained by SCDA and VPD
- Crime scene analysis report authored by Bureau of Forensic Services (“BFS”) Senior Criminalist James Hamiel
- Use of force report authored by expert Sean McCann
- Use of force report authored by expert Jody Stiger
- California Department of Justice criminal history information for Monterrosa
- Prior police reports involving Monterrosa

## Scene Description

The Walgreens is located at the intersection of Redwood Street and Broadway. The drive-thru pharmacy is located on the Broadway side of the building.



Figure 1 Aerial view of Walgreens

The shooting took place in the area just in front of the drive-thru pharmacy. The relative positions of the police truck and Monterrosa can be seen on Pittman’s body-worn camera (BWC).<sup>5</sup> Senior Criminalist Hamiel determined the truck and Monterrosa’s body were at least 26 feet apart.

<sup>5</sup> According to the officers’ BWC, the police truck appears to come to a stop at the same time that Tonn begins firing. Monterrosa may have taken a step or two away from the truck after the shots were fired. Thus, the image in Figure 2 roughly captures the distance between Monterrosa and the police truck at the time of the shooting.

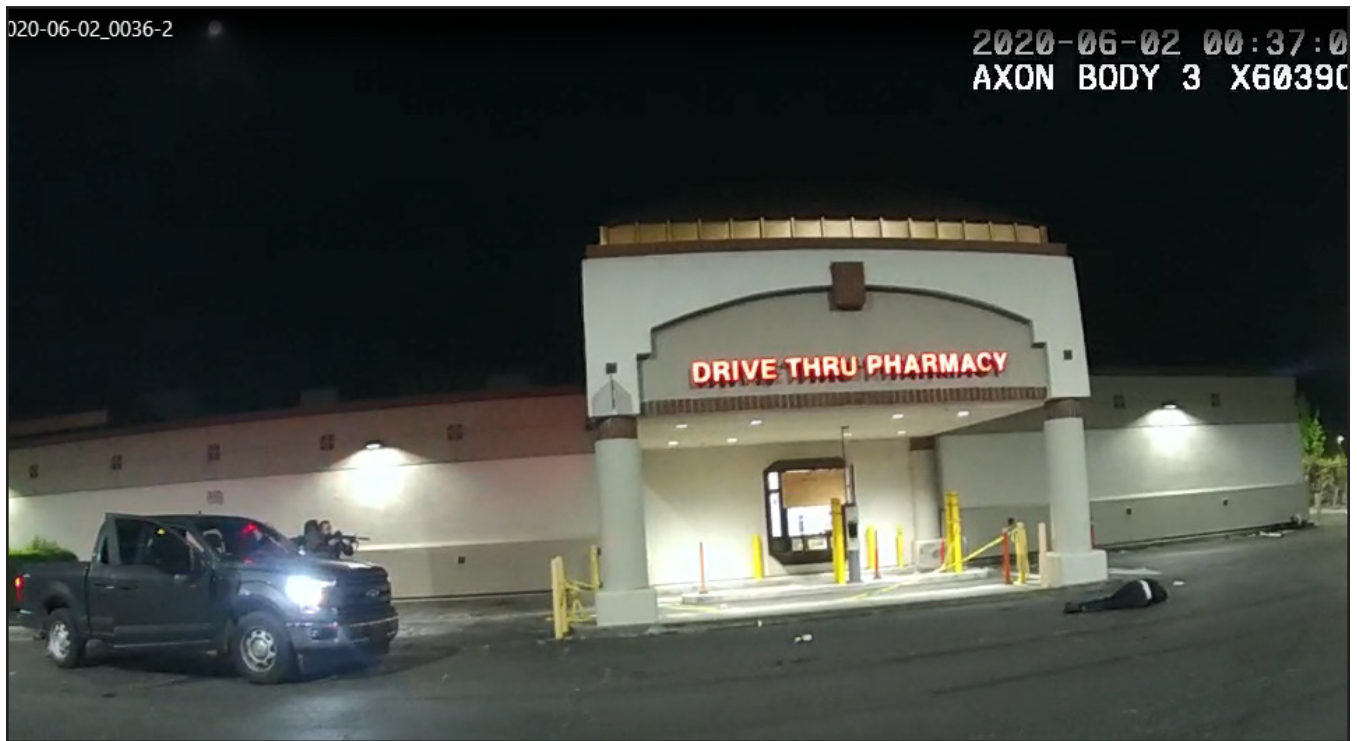


Figure 2 Screen grab from Pittman's BWC

## Evidence Recovery

VPD officers seized evidence from Monterrosa's person and the area in front of the drive-thru pharmacy. There was a large pool of blood where Monterrosa's body had been lying. Monterrosa's cell phone was found nearby. The hammer that Monterrosa had brought with him had been removed from his pocket by Pittman prior to the administration of CPR. Pittman also removed a knife and a black bag from Monterrosa's person. Numerous pill and liquid medication bottles were found in the area. A face mask, two black gloves, and a key fob were also located in the area.

The hammer was seized from the scene by VPD Corporal McCarthy. McCarthy noted the hammer was a 19 oz. framing hammer and that the handle had been cut from the bottom to make it shorter. The hammer measured 14.5 inches in length; the hammer head was 6 inches wide.



Figure 3 Framing hammer removed from Monterrosa's pocket



Figure 4 Bullet strikes on windshield of VPD truck

Tonn's truck had five bullet holes in the windshield. There were five shell casings found in and around the truck.



Figure 5 Four shell casings from Tonn's rifle



Figure 6 Fifth shell casing from Tonn's rifle

An unexpended cartridge was found near Horton's vehicle as well.

## Walgreens Surveillance And Body-Worn Camera Footage<sup>6</sup>

The Walgreens had a surveillance system. One of the system's cameras covered part of the parking lot around the drive-thru pharmacy. Unfortunately, that camera was destroyed during a prior burglary on May 30, 2020, and was not repaired prior to this incident.

Walgreens video for the interior of the store shows Monterrosa entering through the pharmacy drive-thru window along with three other people at 12:33:47 a.m. Monterrosa attempts to break open a locked cabinet with his hammer. Monterrosa and two of his companions rifle through the pharmacy shelves, by aggressively searching, removing items, and placing them on their person. While he is in this area, Monterrosa can be seen talking on his cell phone. Monterrosa and two of his companions abruptly stop ransacking the shelves. They leave the Walgreens through the drive-thru window at 12:35:17 a.m. The hammer handle visibly protrudes from Monterrosa's sweatshirt pocket as he exits through the pharmacy drive-thru window.

---

<sup>6</sup> The time displays for the BWCs of Tonn and Wagoner and the Walgreens surveillance video for the drive-thru pharmacy window appear to be in sync. The time/date stamp on Pittman's BWC appears to be approximately 5 seconds behind.





Figure 7 Hammer in Monterrosa's pocket as he enters Walgreens

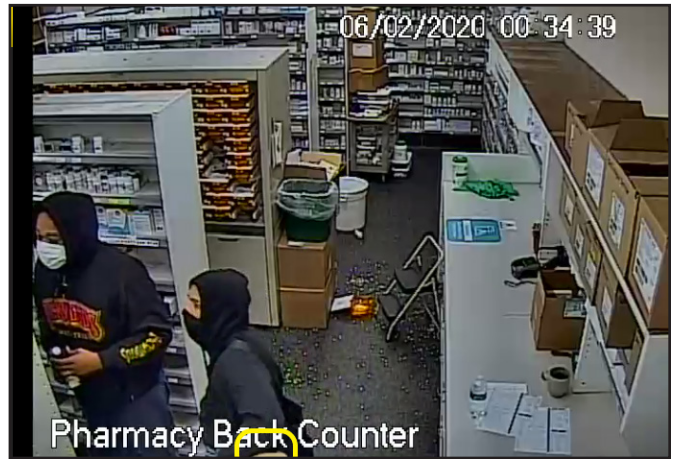


Figure 8 Hammer in Monterrosa's pocket



Figure 9 Hammer visible as Monterrosa leaves Walgreens

Monterrosa still had the hammer in his pocket when he was shot. After the shooting, the hammer can be seen on the officers' BWCs protruding from the left side pocket of Monterrosa's sweatshirt. Pittman's BWC shows that the head of the hammer was lodged securely in the pocket; it took Pittman approximately five seconds and twisting of the handle to remove it.<sup>7</sup>

---

<sup>7</sup> Refer to Pittman's BWC at 12:38:21 a.m.



Figure 10 Screen grab of Pittman's BWC showing hammer in Monterrosa's pocket after shooting

Although all of the BWCs were recording leading up to and during the shooting, none of the cameras were positioned to film Monterrosa as he ran and then turned.<sup>8</sup> Monterrosa can be seen for an instant on Pittman's BWC next to the open door of the black sedan immediately before the shooting. Monterrosa's head appears to be below the level of the roof of the car, suggesting a lowered body position. As noted above, the time stamp on Pittman's BWC was approximately 5 seconds behind the others; Monterrosa appears on Pittman's BWC at 12:36:31 a.m., which equates to a time of approximately 12:36:36 a.m.—the instant before Tonn fires his rifle.



Figure 11 Screen grab of Pittman's BWC showing Monterrosa at open door of black sedan

---

8 The BWCs were affixed to the officers' chests. Due to the officers' seated position in the truck, the field of view of each BWC was limited.

The BWCs establish a number of other significant facts. First, Pittman's BWC shows the black sedan is still in the parking lot three seconds after the shooting.



Figure 12 Black sedan as it collides with Horton's SUV three seconds after the shooting

Second, Officer Tonn makes a number of statements after the shooting.<sup>9</sup> There are three significant statements captured on BWC.

The first occurs at 12:36:56 a.m., approximately twenty seconds after the shooting. Tonn speaks with Wagoner as they are standing outside of the police truck with their guns aimed at the prone body of Monterrosa. Tonn and Wagoner have the following exchange:

TONN: What did he point at us?

WAGONER: I don't know, man.

TONN: Hey, he pointed a gun at us!

WAGONER: Don't move! Do not move!

TONN: Do not move! Alright, hey.

WAGONER: What's up?

TONN: Did you see a gun on him?

WAGONER: No, I did not see him yet.

---

<sup>9</sup> The officers activated their BWCs after Tonn fired his rifle. The particular BWCs used by VPD were set with a pre-event buffer that captured video but not audio for 30 seconds prior to activation. Accordingly, there is no audio recording of the shooting itself.

The second takes place at 12:38:32 a.m. Tonn paces as other officers are rendering aid to Monterrosa. Tonn appears distraught and groans several times. He then states, “He f\*\*\*ing came around, came right at us. He put....[groans].”

Finally, at 12:40:48 a.m., Tonn’s BWC records the following interaction with Horton:

TONN: I thought that f\*\*\*ing, I thought the f\*\*\*ing axe was a gun.

HORTON: Well, I thought he was armed, too, dude. I saw him going like this<sup>10</sup>—he was on the radio.

## Autopsy

Monterrosa was pronounced dead on June 2, 2020 at 1:31 a.m. by Dr. Rebecca Rossner at Kaiser Permanente Vallejo Medical Center.

Dr. Arnold Josselson (Forensic Pathologist) performed an autopsy on June 3, 2020. The findings were: “1. Multiple abrasions of the face; 2. Penetrating gunshot wound of head with multiple skull fractures, passage through brain and subarachnoid hemorrhage and scalp contusions; 3. Marked aspiration of blood in each lung.”

Dr. Josselson determined the bullet entered through the occiput, i.e., the rear part of the skull, and lodged in the front of the skull. Dr. Josselson traced the pathway of the bullet: “The projectile passes through the skull and brain, and comes to rest embedded I [sic] the left frontal bone just to the left of the midline.”

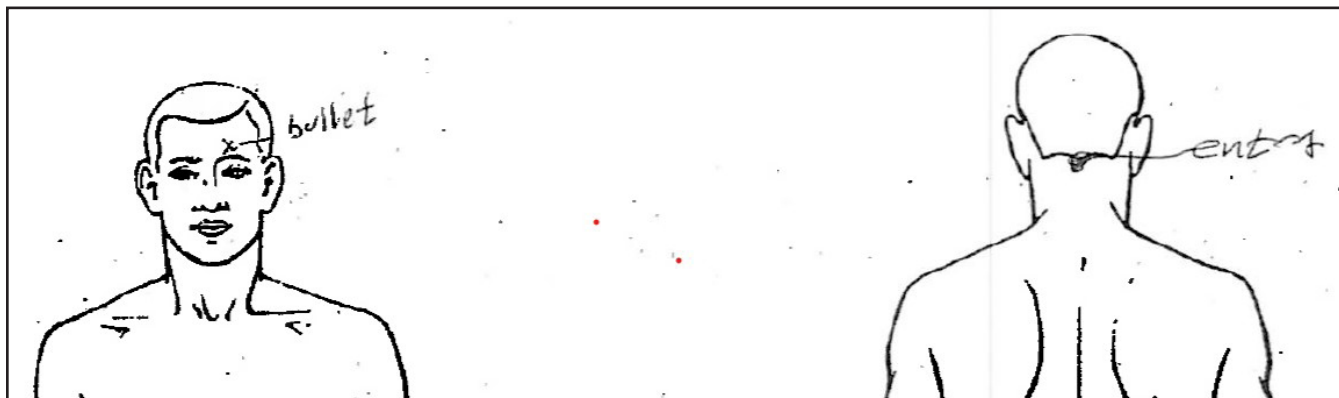


Figure 13 Autopsy diagram showing location of gunshot wound

A toxicological screen did not reveal the presence of any drugs. The cause of death was determined to be “gunshot wound of head.”

## Interviews of Involved Officers

There were four VPD officers involved in this incident. An officer has the right to counsel during a criminal investigation such as this one. (Govt. Code § 3303(i).) An officer may provide a voluntary statement, which each of the officers did in this case. The officers were interviewed separately.

---

10 On Tonn’s BWC video, Horton holds his left hand cupped near his mouth and his right hand is positioned at his side as if to draw his handgun.

The following statements are summaries of their interviews, which describe the incident from the point of view of the individual officers. The interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

### **Statement of Detective Jarett Tonn**

Tonn was interviewed the morning after the shooting, on June 2, 2020 at 9:33 a.m. by VPD Detective Ross and SCDA District Attorney Investigator Mineni. Tonn was represented by attorney Tashayla Billington. Tonn reviewed his BWC footage prior to the interview. Tonn's statement was audio recorded. The following account is based on Tonn's statement.

Tonn had been an officer with VPD for approximately seven years as of the date of the incident. Prior to that, he had been a police officer with the Galt Police Department for seven years. He was assigned to both the Crime Reduction Team (CRT) and to the SWAT team.

Tonn was not regularly scheduled to work the night of June 1, 2020. He had been placed on standby due to ongoing looting. At 8:00 p.m. on June 1, 2020, he was ordered to report. His orders were to address looting calls and other felonies.

Tonn and his partner officers Wagoner and Pittman responded to the Walgreens based on Horton's report of a burglary in progress. Tonn observed someone who appeared to be smashing the pharmacy drive-thru window. Tonn saw a truck and a black sedan in the parking lot.

Horton came up with a plan. Horton said that he would take the Broadway entrance to the parking lot. Horton directed Tonn and his partners to take the Redwood entrance with the idea that they would block the looters in between them.

A second or two before seeing Monterrosa, Tonn heard Horton's broadcast. When asked if he recalled exactly what Horton said, Tonn told the investigators, "I believe he said, 'It looks like they're armed.' ... I took that to mean that they had firearms."

Tonn saw Monterrosa running to the black sedan from the drive-thru area. Monterrosa had his hands at his midsection or chest area. Tonn stated:

"I immediately recognized that's not how normal people run....It was consistent with someone that had—you know, something on them at that point; something that they're concealing or something, something that they don't want to fall out. I've seen that numerous times. Just last week, there was a guy walking around with a gun during surveillance, and...I said... 'That guy's got a gun. He's favoring one side. He's holding his arm down.' And then...sure enough, he had a gun....I haven't even said that a lot—like, "Hey, that guy's got a gun.' Like, I rarely say that. If I say, 'that guy's got a gun,' it's—you know, he's got a gun or a weapon.... And so he's got his hand, like, in this weird center position...."

Tonn assumed that Monterrosa would get into the black sedan, the black sedan would drive off, and there would be a vehicle pursuit. He stated, "I start immediately thinking pursuit the second he starts running over there, because that's what everyone else had done that night—everyone else that had been caught breaking in these places, like, all went pursuit." Monterrosa, however, suddenly stopped running and turned clockwise, to the right, to face Tonn. Monterrosa dropped to a kneeling position, taking what Tonn believed to be a shooting position. Tonn saw Monterrosa grab what appeared to be the handle of a pistol from his waistband area. He described the waistband as "where people keep guns." Tonn thought, "We're getting in a shootout 100 percent."

Tonn was concerned for his partners who he believed were getting out of the truck. He knew that his partners would lose sight of Monterrosa as they came around the doors of the truck.

“And I see them; they’re—they’re starting to get out. I don’t know if they see it, and I’m, like—I...I just was, like, ‘We’re getting in a shootout.’ I’m, like, ‘He’s going to shoot us, and we’re going to get killed, or they’re going to get hit, or somebody....’”

Tonn could think of no other explanation than that Monterrosa was going to engage in a firefight. He stated:

“I heard—you know, Captain Horton say, ‘They’re...he’s armed,’ and I’m, like, ‘That’s it.’ I mean, why else the turning, the—the kneeling down, the grabbing?...I’ve seen hundreds of—I’m one of those people that watches any shooting video online. I watch them all. And it’s, like—if you’re going to flee, you flee; and that’s what everyone else has had [sic] done that night.... And when he turned and went—took that crouched position, and then reached in, and I saw what I thought at the time was the handle of a gun, I’m, like, ‘Shootout. That’s it. He’s going to start shooting at us, so everyone else can get away.’”

Tonn elaborated on the factors that led him to conclude Monterrosa was a deadly threat:

“So from not fleeing, was my number one indicator—did not flee—you know, apart from—you know, hearing that someone is armed from Captain Horton, not fleeing—again, if someone doesn’t flee—I mean, it’s flee, fight, or hide. Can’t hide; he’s right there. Fighting is the other option. And so him not fleeing was my first indicator of there’s—something’s not right. He’s getting down—I thought you were going to take off in a car. You’re getting down now. The position he took was—you know, a kneeling—a perfect position for—for combat kneeling, shooting, crouching down, becoming a low target; makes it harder for law enforcement to hit you, smaller target, aim better. Uh, you also have the ability to distract the police because—you know, when you drop down like that, maybe they don’t see you get the gun out.

Everything said—you know, he’s dropping down to access a weapon, coupled with then seeing what, at the time, looked like a handle of a—of a pistol—a wood handle, a dark-colored handle, and him—him going from where his hands were already—again, also concealing what I thought was probably a weapon, based on his—you know, not—his running movement, his hands being high, and then going to access what looked like the handle of a firearm.”

Tonn fired five rounds through the windshield of the officers’ vehicle. Tonn justified the number of shots based on his understanding of the unpredictable effect that windshield glass can have on bullet trajectories.

“It’s really a crap shoot if a—if a round hits your target through a window—it’s laminated....If you have to shoot at someone in or through a car, that’s not the time to fire one round and evaluate, because it’s too late at that point....I’ve just seen—bullets can do crazy things when they hit glass.”

Tonn believed that Monterrosa was somewhere between fifteen and thirty feet away when he fired.

Tonn explained that he felt he had no other choice but to shoot:

“But everything that he did could only have meant one thing. Um—And I wasn’t—I was scared enough that I’m not going to risk my life or my partners’ lives—especially my partners’ lives getting out of the car. It just was at that threshold where it can’t be anything else, and I can’t risk thinking it’s something else. It’s happening now. It’s

absolutely going to happen instantaneously. Um—This is my only choice. Especially from inside a vehicle—I have no way to grab him or do anything else, not that I would with a gun but—I mean, that's—that's it. It's—it's now or someone gets shot.”

Tonn explained his post-shooting remarks on his BWC as his inarticulate effort to convey that Monterrosa had a gun:

“I saw what I saw. I know he had a gun. I know what I saw. And I’m trying to convey that or ask that, and I’m also—you know, I’m not being articulate after a shooting, I’m not getting the nuance—I was also trying to convey to them he had a firearm, and I think I said, “You guys saw that?” Or, “Did he have a gun?” And I go, ‘No, he pointed a gun at us, and’—um...and again—I’m not trying to get into the nuances of point versus grab versus tried to access. I’m just trying to get the point across: ‘He’s got a gun.’ And that’s kind of what came out, but—you know, I was certain of what I saw.”

Tonn further stated that he was upset and angry when he realized that what he thought was a firearm was a hammer:

“I made some comments on my body camera, because I was pissed like when I—like, that was my first reaction afterwards was like—when I saw the handle [of the hammer] I was like...you did everything consistent that I’ve seen with someone who’s about to try to shoot me....That was my first reaction, like, ‘I just had to shoot you because you completely acted like you had a gun and you were going to shoot me, all for a hammer or whatever.’”

Tonn described his mindset going into the incident. He said his “safety concern [was] as high as it can get.” He was aware of multiple caravans of criminals driving through Vallejo and looting businesses. He knew that four Bay Area gun stores had recently been burglarized by organized groups of looters and believed that these groups were intent on arming themselves. He knew that on the night of the incident there were several attempts to break into a local gun store. He knew shots had been fired by a group of looters at a cannabis dispensary earlier that night. According to Tonn, every call that night involved a pursuit or a “guy with a gun.” He added, “I’m on edge already because—you know, we’re going—we’re responding to these calls, and these aren’t just people that are breaking into things or vandalizing things; these are people that are shooting at people—you know, we’re going after armed, dangerous felons who are—who are shooting at innocent people, and it doesn’t get more dangerous than that.” Tonn was aware of attacks on law enforcement, including the recent ambush killing of a federal security officer,<sup>11</sup> intelligence bulletins warning of violent attacks on law enforcement, and an attempt to storm the VPD station the Saturday prior to the incident. Tonn stated: “I’ve never seen such a violent, pervasive situation as long as I’ve been a cop.”

### **Statement of Detective Bretton Wagoner**

Wagoner was interviewed the morning after the incident, on June 2, 2020 at 10:31 a.m. by VPD Detective Long and SCDA District Attorney Investigator Fisch. Wagoner was represented by attorney Joel Weinstein. Wagoner reviewed his BWC footage prior to the interview. Wagoner’s statement was audio recorded. The following account is based on Wagoner’s statement.

---

<sup>11</sup> Federal Protective Service Officer Underwood was killed in a drive-by shooting while guarding the Ronald V. Dellums Federal Building in Oakland on May 29, 2020.

Wagoner had been a VPD officer for over seven years as of the date of the incident. He was assigned to both the CRT and the SWAT team.

Wagoner was not regularly scheduled to work on June 1, 2020, but both the CRT and SWAT teams were called out that day. Wagoner reported for work around 6:00 p.m. Wagoner heard dozens of calls for service regarding burglaries, looting, shootings, and shots fired as he was preparing for duty.

Wagoner was driving in the area of Tuolomne Street and Redwood Street when Horton reported the looting at the Walgreens over the radio. Wagoner pulled up next to Horton's vehicle. He saw the Nissan truck and the black sedan in the Walgreens parking lot. He saw people going in and out of the Walgreens. After Pittman talked to Horton and got instructions, Wagoner drove into the lot from the southeast corner.

When his truck was in the parking lot halfway between Redwood Street and the Walgreens drive thru area, he heard Horton radio that the subjects were armed. According to Wagoner, "I think [Horton] said it three—two or three times. He's like, 'Hey guys. They're armed. They're armed with—they're armed.'" Wagoner saw people moving quickly in the parking lot. Wagoner activated his emergency lights and siren.<sup>12</sup>

He saw three people get into the Nissan truck. He saw at least two people run to the black sedan and appear to get in. He thought at least one or two of these people were carrying weapons based on the way they were moving.

Monterrosa was the last person to come out of the pharmacy drive-thru area. Monterrosa was holding his waistband as if he were holding a firearm. Wagoner stated: "I couldn't see his hands as he was running. They were tucked like as if he was grabbing his belt or retrieving or holding onto a firearm." The driver's door of the sedan was open. Monterrosa stepped one foot into the driver's side of the car. As Monterrosa was getting in, Wagoner saw something protruding from Monterrosa's sweatshirt, which he believed at the time to be either a pistol handle or magazine. Wagoner told VPD investigators that, after thinking about it since the shooting, he concluded the object was too light in color to be a magazine.

Wagoner believed that Monterrosa would drive away and that there would be a vehicle pursuit. At that point, the Nissan truck pulled out, distracting Wagoner. When Wagoner returned his attention to Monterrosa, he saw Monterrosa come out of the area of the driver's seat holding his waistband. Monterrosa quickly turned to the left, counter-clockwise, facing Wagoner. Wagoner believed that Monterrosa was armed and going to shoot them. He stated: "I thought I was going to be shot. I mean, I've never had someone turn so aggressively towards us in a manner holding their waistband."

As soon as Monterrosa turned and faced them, Tonn fired his rifle. Monterrosa fell down face first.

Wagoner indicated that were he in Tonn's position, he would have shot Monterrosa.<sup>13</sup>

---

12 According to Wagoner's BWC, the emergency lights come on at 12:36:31 a.m.

13 The investigators did not inquire about Wagoner's comments to Tonn that were captured on BWC.



## **Statement of Detective Wesley Pittman**

Pittman was interviewed the morning after the incident, on June 2, 2020 at 8:43 a.m. by VPD Detective Ross and SCDA District Attorney Investigator Mineni. Pittman was represented by attorney Tashayla Billington. Pittman had reviewed his BWC footage prior to the interview. Pittman's statement was audio recorded. The following account is based on Pittman's statement.

Pittman had been a VPD officer for over 3 years at the time of the incident. He had served as an officer with the Galt Police Department for 11 years.

On the night of June 1, 2020, he was on duty handling looting and riot control. He described a "heightened sense of alert from everybody" based on the "increasing violence and hostility" over the course of the past several days, including assaults on peace officers.

He was the front passenger in the truck. They were in the area of Redwood and Tuolumne and planning to check on some pending shots fired calls when Horton put out on the radio that he was observing a burglary in progress. They drove to Horton's location and pulled up next to his vehicle. They came up with a "quick game plan" where Horton would enter through the north driveway on Broadway and Pittman's group would enter through the south parking lot off of Redwood.

Pittman was holding a flash-bang grenade as their truck approached the Walgreens. Tonn's role was to act as "sort of like lethal cover for us."

Pittman heard Horton's warning on the radio. When asked what he recalled Horton saying, Pittman stated, "'They were armed.' I think that's his exact words." Pittman understood Horton to mean they were carrying guns.

Pittman saw two vehicles in the Walgreens parking lot, the Nissan truck and the black sedan. The left rear door of the black sedan was open.

The Nissan truck took off as they pulled into the parking lot.

He saw Monterrosa walk up to the black sedan. Wagoner activated the emergency lights. The black sedan began to drive forward. Monterrosa ran back to the black sedan and appeared to either try to get into the back seat or throw something into the back seat, but the car drove forward a few feet. Monterrosa ran back up to the car, but then the car took off. Monterrosa then took a knee and rotated to his (Monterrosa's) left, facing the officers' truck. Monterrosa was holding something dark in his right hand pointed at the officers as he was taking the knee. Monterrosa was holding it as if he were holding a gun close to his chest. Pittman believed the object was a gun "based on everything that was going on and...Captain Horton saying they were armed." He stated: "And, just to be clear, when he, when he came around, I was fully expecting that we were going to start taking rounds. I mean, he was—that was—I recognize that as like a shooting position, right? It was a kneeling shooting position." Pittman believed that there was no opportunity for Tonn to take any other action other than to shoot Monterrosa. There was no time for the officers to warn one another.

Pittman was still holding the flash-bang when Tonn shot Monterrosa. He put away the flash-bang and drew his handgun after Tonn fired because he thought Monterrosa had a gun and that Monterrosa was going to shoot at them.

Pittman estimated that Monterrosa's body was 30 to 35 feet in front of the truck after the shooting.

Pittman saw the black sedan ram Horton's vehicle, drive out the Broadway entrance, and flee northbound. He first ran after the black sedan. Pittman then attended to Monterrosa. The officers rolled Monterrosa onto his back. Pittman saw the handle of the hammer sticking out. Pittman removed the hammer from Monterrosa's jacket. He also removed a knife from Monterrosa's pocket. Pittman then began CPR given the nature of Monterrosa's wound. He continued CPR for a minute and a half. He stopped because he saw "more and more blood coming out of him" as he was administering CPR. Paramedics arrived 30 seconds to a minute after he ceased CPR.

### **Statement of Captain Lee Horton**

Horton was interviewed the morning after the incident, on June 2, 2020, at 8:44 a.m. by VPD Detective Long and SCDA District Attorney Investigator Fisch. Horton was represented by attorney Joel Weinstein. Horton's statement was audio recorded. The following account is based on Horton's statement.

Horton had been a VPD officer for twenty-two years and a Daly City police officer for three years as of the date of the incident. Horton normally worked the day shift. On June 1, 2022, he was called in to work at 9:00 p.m. to address looting calls. He was driving an unmarked SUV.

Horton had responded to the same Walgreens earlier during his shift on a prior looting incident. He drove back to check on it again. As he approached the Walgreens on Redwood Street, he saw activity around the drive-thru window. He turned off his headlights and observed. He saw a black sedan and a silver Nissan truck. Horton started talking on the radio to report his observations and noticed that one of the looters appeared to react as if he were listening to the police radio. Horton believed that the group at the Walgreens was highly organized and seemed like "a professional bank robbery crew like you'd see in the movie." He noted people running out of the cars and several going through the drive-thru window. Horton saw between ten and twelve people in the group.

Tonn's truck arrived within a minute. Horton devised a plan where Tonn's group would enter the Walgreens parking lot through Redwood Street and he would enter through Broadway, trapping the looters between them.

After the other officers were on their way and as Horton was driving by on Broadway, he noticed a person from the group acting as a lookout. This man was dressed all in black and had a black mask. Horton saw the lookout was holding either a radio or phone in his left hand. Horton believed he was holding a firearm in his right hand. Horton based this opinion on the fact that that the lookout had an object in his right hand and was holding his right arm straight down by his side.<sup>14</sup> Horton was aware of other gun related incidents earlier that night, including a pursuit in which he was involved where a gun was recovered and another incident involving shots fired at a cannabis dispensary. He stated, "So when I saw the lookout, and the way he was acting, and his holding his right arm down, I became fearful—like really fearful that we were going to be involved in a shooting."

Horton changed the angle of approach to place his SUV's engine block between him and the lookout to protect himself from possible gunfire and to give him more time to observe the lookout. Horton believed he broadcast over the radio, "He's armed or possibly armed."<sup>15</sup>

As Horton approached, the sedan and the truck began moving and his focus shifted away from the lookout.

---

<sup>14</sup> At the time of the incident, Horton believed Monterrosa was the lookout. By the time of his interview, Horton was not certain. Based on the Walgreens video, Monterrosa would have been outside of the Walgreens for over a minute prior to the shooting.

<sup>15</sup> DLE obtained a recording of this radio call. In actuality, Horton said, "It looks like they're armed, possibly armed."

The Nissan truck drove past him. The black sedan slammed into the front of his SUV. Horton believed he was rammed intentionally because there was sufficient room to pass him as the truck had done. The black sedan drove south on Broadway.

Horton suffered injuries to his neck, back and knee from the collision.

Horton heard gunshots. He was uncertain whether the shots were fired before his car was struck or simultaneously with the collision.

Horton noted that Tonn was distraught after the shooting. He reported that Tonn said, "I thought he had a gun. He turned."

## **Interviews of Civilian Witnesses**

The civilian witnesses were all employees of Medic Ambulance. The following statements are summaries of their interviews, which describe the incident from the point of view of each person. The interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

### **Statement of W-1**

W-1 was interviewed several times by VPD, first by Detective Scott<sup>16</sup> on June 4, 2020 and June 8, 2020. He was interviewed again by Detective Rose and District Attorney Investigator Menini on July 23, 2020. This third interview was audio recorded. He was interviewed a fourth time by DLE investigators Special Agent Supervisor Romero and Special Agent Coats on July 15, 2021. This interview was also recorded. The following is a summary of these interviews.

W-1 was a paramedic supervisor for Medic Ambulance as of the date of the shooting. On that night, W-1 had been called in to work at the Medic Ambulance building on Couch Street. He had brought his personal Mavic drone to work and was given permission to fly it because of the criminal activity around the paramedic station. He used the drone to surveil the looting in the area and to try to deter criminal activity. His attention was divided during this incident because he had to fly the drone and monitor its altitude and battery level.

W-1 watched the incident via the drone video feed.<sup>17</sup> The drone hovered at an altitude of approximately thirty feet.

---

<sup>16</sup> W-1's interviews with Scott were not audio recorded.

<sup>17</sup> W-1 had set the drone to record video during the incident. After the incident, W-1 landed the drone. W-1 had to respond to the scene of the shooting, so he left it in the custody of one of the support staff with instructions to guard it and not to touch it. When he returned, he saw that the file had closed out as it normally would. He located the file, but the file indicated a video length of 00:00:00 rather than the 11 to 14 minutes he expected. W-1 provided the DJI Mavic2 pro drone to VPD. Unfortunately, the video files were corrupted. The drone was forensically examined by the VPD and the NCFI Laboratory of the United States Secret Service. Both concluded that no video could be extracted from the drone. The NCFI report indicates that "[u]pon further research into DJI devices it was determined that this 'overwrite' occurs when the device (drone) is improperly shutdown [sic]." W-1 indicated that he occasionally had the same problem in the past with the drone not recording, including shortly before the incident. Accordingly, the absence of drone video appears due to user error by W-1 or a malfunction with the device rather than any malfeasance or negligence.

There were two cars at the Walgreens, a white sedan<sup>18</sup> and a dark sedan. People were going in and out of the Walgreens, apparently working in concert. He saw a pickup truck pull up and one of the passengers got out. W-1 brought the drone lower, which this man appeared to notice. The three occupants of the truck returned to the truck. As Tonn's police truck pulled into the lot, the pickup truck took off. The group of people burglarizing the Walgreens dispersed and ran in different directions.

W-1 was listening to the police radio. Someone on the police radio said "gun, gun." Less than 15 seconds later, he saw the gunshots strike the police truck's windshield. He believed at the time that someone had shot into the police truck. He saw Monterrosa on the ground and recognized him as someone who had come from the dark sedan.

W-1 said that as the officers' truck approached, Monterrosa was standing 10-15 feet away from one of the sedans. Monterrosa ran a couple of steps, then spun to his left toward the officers. As he spun, one hand was out and the other hand was near his chest or his waist.<sup>19</sup> W-1 was unable to see if Monterrosa had anything in his hands. The shots were fired the moment Monterrosa was fully facing the officers. After the shots were fired, he saw an unidentified object fly up in the air.<sup>20</sup> Monterrosa turned and took another step or two, possibly going to a knee, before falling over.

W-1 qualified his account, noting that the drone was 30 feet in the air, the drone camera picture did not offer high resolution, and that there was a filter on the camera that darkened the video. He described the drone as a "landscape type recreational drone."

W-1 thought there were eight people in total between the three vehicles.

## **Statement of W-2**

W-2 was the Logistics Manager for Medic Ambulance. W-2 was interviewed by Detective Scott on June 17, 2020 and again by Rose and Menini on July 23, 2020. Both interviews were recorded.

On the night of the incident, W-2 periodically watched the drone video feed over W-1's shoulder. W-1 called for someone to contact the police because someone was breaking into the Walgreens. W-2 saw people going through the Walgreens window. He saw two cars.

W-2 diverted his attention to deal with an employee. He looked back and saw the police truck pulling up. The statement "I think they're armed" or "I think he is possibly armed" came over the radio.

The police truck came in quickly. All of the people who came out of the drive-thru window began to run. In his June 17, 2020 interview, W-2 stated:

"One car took off, and then there was a second car. And that's the one that the—the gentleman that was shot was trying to get into. And it looked like he kind of turned back when they—because what I remember—it is hard to—you know, kind of an emotional night for everybody. But it looked like the

---

18 W-1 and witness W-4 describe seeing the white sedan at the Walgreens and its occupants apparently working in concert with those in the black sedan. This white sedan does not appear on the officers' BWC or the available surveillance video. None of the VPD officers reported seeing it.

19 W-1 varied between his statement taken by Rose and Mineni in 2020 and the one taken by Coats and Romero in 2021 as to which hand was up and which hand was near his chest. Also, in his statement on June 4, 2020 to Scott that was not audio recorded, W-1 stated that "he did not see in detail what the person who was shot was doing."

20 A number of liquid medication and pill bottles as well as Monterrosa's cell phone were found near Monterrosa's body. W-1 believed based on his later observation of the scene that the object was Monterrosa's hammer, but the hammer was in fact removed from Monterrosa's body by the VPD officers.

car started taking off, and I think he thought he was—he was being left. So he turned back towards the cops at that point.”

W-2 took his attention away from the screen momentarily to take a phone call, but looked back when he heard the shots. He saw Monterrosa lying on the ground.<sup>21</sup> W-2 rode in a supervisor vehicle to the Walgreens and rendered aid to Monterrosa.

### **Statement of W-3**

W-3 was the night supervisor for Medic Ambulance. W-3 was interviewed by Detective Scott on June 18, 2020. The interview was recorded.

He watched the drone feed. He saw people from two or three cars break into the Walgreens. They called in to police dispatch that three cars were actively looting. The police truck came on the scene. The people came out of the building and ran to the cars. He heard over the radio something about a weapon and then heard five shots. He saw the shots striking the police truck window and thought the police truck had been shot.

His team drove to the Walgreens. He began lifesaving measures on Monterrosa. W-3 rode to the hospital with Monterrosa.

### **Statement of W-4**

W-4 was the operations manager for Medic Ambulance. W-4 was interviewed by Detective Scott on June 18, 2020. The interview was recorded.

W-4 watched the drone feed over W-1’s shoulder. He saw a black car and a white car heading toward the drive-thru area. Three to four people from the cars rushed the drive-thru window. He called for a colleague to notify VPD dispatch.

He saw the police truck come in. Monterrosa was in front of the truck. He heard the gunshots and saw Monterrosa fall on his back. W-4 thought there had been a gun battle and that a VPD officer had been shot as well.

W-4 ran to his supervisor truck. He began lifesaving measures on Monterrosa who still had a pulse and was still breathing.

## **Tonn’s Personnel File**

Tonn’s personnel file was reviewed for information that was not administratively compelled. The review showed that Tonn had never before been a shooting officer in a fatal officer-involved shooting incident. It also disclosed that he had been a shooting officer in two prior non-fatal incidents. The first was a 2015 incident in which a suspect drove his car into Tonn’s patrol car, and the second a 2018 incident in which an armed suspect appeared to be drawing his gun during a foot pursuit.

## **Monterrosa’s Companions**

Monterrosa entered the Walgreens with three people. By witness accounts, there were up to five other people involved in the looting, not counting the three in the Nissan truck. As noted, the black

---

21 According to his June 17 interview, W-2 heard the shots, hung up, looked back at the screen and “saw someone on the ground in the footage.” W-2 in his July 23 interview stated: “And then we heard the shots fired, and we saw the suspect go down.”

sedan was driving away but still in the parking lot when Tonn fired shots. Accordingly, the occupants of the black sedan could be material witnesses. Similarly, the occupants of the white sedan observed by W-1 and W-4 could also be material witnesses. However, VPD was unable to identify any of the people who accompanied Monterrosa or the individuals in the two sedans. Efforts by DLE to identify Monterrosa's companions are set forth below.

## **W-5**

W-5 was Monterrosa's girlfriend at the time of the incident. According to the Monterrosa family, W-5 called one of Monterrosa's sisters to inform her that Monterrosa had been killed. The call came in at 1:09 a.m., approximately 30 minutes after the incident.

W-5 initially told members of the Monterrosa family that she was in Burlingame at the time of the shooting. However, according to Monterrosa family members, W-5 later changed her story about her whereabouts several times.

Monterrosa's cell phone records show that W-5 called Monterrosa at 12:34 a.m., while Monterrosa was in the Walgreens, and twice at 12:35 a.m., immediately after he came out of the Walgreens pharmacy window.<sup>22</sup> All of the calls were answered. The last call began before the shooting and continued for approximately ten minutes after the shooting, ending at approximately 12:47:10 a.m. These records indicate that W-5 also called the cell phone multiple times in the hours after the shooting.

The fact that W-5 had an open phone line with Monterrosa during the shooting and that she knew that Monterrosa had been shot so close in time to the shooting indicate she is likely a material witness to the shooting itself or has information about the identity of his companions. However, W-5's attorney told Detective Rose in 2020 that W-5 was unwilling to provide a statement and repeated the same to DLE investigators in 2021.

## **W-6**

Following the incident, a man identifying himself as "Rafael Monterrosa" called the Vallejo coroner asking whether the coroner had possession of Monterrosa's body. Members of the Monterrosa family informed DLE that the telephone number used by this man belonged to W-6, a close friend of Monterrosa, and that he owned a black Acura sedan around the time of the shooting.

DLE Special Agent Tann interviewed W-6. W-6 stated that he saw Monterrosa in the evening on June 1, 2020, but did not know where Monterrosa went afterward.<sup>23</sup> W-6 spent the night at home with his mother.<sup>24</sup> W-6 reported that he received a call from Monterrosa's girlfriend (W-5) between 3:40 a.m. and 4:00 a.m. on June 2, 2020. W-5 told W-6 that Monterrosa was dead. W-6 tried calling Monterrosa. There was no answer. He called around to try to find where the body had been taken. W-6 said he did not own a car during the time period of the incident. W-6 had no information about Monterrosa's companions at the Walgreens.

---

<sup>22</sup> It is not known whether the time stamps on the call detail records for Monterrosa's phone are in sync with the Walgreens video.

<sup>23</sup> W-6 stated that he and Monterrosa smoked marijuana, although there were no metabolites detected in Monterrosa's post-mortem toxicology report.

<sup>24</sup> W-6's mother was interviewed by DLE. She corroborated his alibi.

## Monterrosa Family

DLE investigators showed Walgreens surveillance video of the three people who entered the Walgreens with Monterrosa on June 2, 2020, to members of the Monterrosa family. They were unable to identify his companions.

## USE OF FORCE EXPERT REPORTS

### Sean McCann

DOJ retained use of force expert Sean McCann to analyze this case and determine 1) whether the shooting of Monterrosa was objectively reasonable; and 2) whether human performance factors accounted for the location of the gunshot wound. McCann is an instructor for the Napa Valley College Criminal Justice Training Center who has trained thousands of officers on the use of force and self-defense. He is a writer for the Use of Force domain for POST (Peace Officers Standards and Training). McCann has consulted as an expert witness on police use of force for both criminal defense attorneys and the prosecution.

McCann defined the reasonable officer standard as “would another officer, facing like or similar circumstances, act in the same way or use similar judgement?” (McCann report at 8, quoting POST learning domain 20.)<sup>25</sup>

He opined that a reasonable officer would conclude that Monterrosa was armed based on his body mechanics and Horton’s warning. McCann noted that running while carrying a hammer in a jacket as Monterrosa would create the same body mechanics as running with a firearm. He further noted that because Horton was an experienced senior officer who based his warning on direct observation, Tonn would find Horton’s “armed, possibly armed” warning credible.

McCann further opined that a reasonable officer would construe Monterrosa’s reported behavior—running, suddenly turning on the officers, grabbing at the waistband, and dropping to a knee—to be consistent with drawing a firearm and therefore an imminent threat. McCann noted that “a reasonable but mistaken belief can lead to a reasonable though unnecessary use of force.”

McCann also noted that there was no opportunity for Tonn to have taken alternative actions such as changing the officers’ pre-shooting approach to the scene, tactical repositioning, or de-escalation attempts. Horton, not Tonn, devised the tactical plan before he observed what he thought was an armed person. Tonn was not driving the vehicle in which he was riding, thus he had limited control over the officers’ tactical approach. Horton’s warning regarding weapons came approximately six seconds prior to the shooting. Tonn’s partners were in the process of leaving the truck when the potential threat materialized. There were no opportunities to communicate with Monterrosa or otherwise deescalate the situation.

McCann also addressed human performance factors in assessing the reasonableness of Tonn’s conduct. Monterrosa was shot in the back of the head, raising the question of whether this fact is inconsistent with the consensus among the eyewitnesses that Monterrosa was facing the officers when the shooting occurred.

---

<sup>25</sup> The POST learning domains were revised after the passage of A.B. 392. Learning domain 20’s reasonable officer standard was unaffected by these revisions.

McCann cited to the scientific literature in the field of human factors and ergonomics. He noted that there is a ‘reactionary gap’ between perception of a threat and response to it, and that in shooting situations the reactionary gap is roughly one second. He posited based on a study of shooting times cited in his report that it would take between 1 and 1.25 seconds for Tonn to fire five shots. Given that it is not possible to establish which of the shots was the one that hit Monterrosa, McCann believed that the reactionary gap in this case could have been as much as 2 seconds between Tonn’s perception of the threat and the fatal gunshot wound. According to the literature, a person can turn 180 degrees within .676 seconds. Thus, McCann concluded that this incident fell within “known human performance limitations” – in other words, that Monterrosa had time to turn his body completely around in the time it took for Tonn to perceive the threat and fire his rifle. (McCann report at 19.)

Finally, McCann noted that all of the witness accounts are consistent with the shooting occurring as Monterrosa was facing the officers, suggesting that this is in fact the manner in which the shooting transpired. McCann noted that the discrepancies seen in the percipient witness accounts, including the varied descriptions of Monterrosa’s actions before the shooting, are not unusual for highly stressful events.

### **Jody Stiger**

DOJ also hired use of force expert Jody Stiger to analyze whether the shooting of Monterrosa was objectively reasonable. Stiger is the lead tactics instructor at the Rio Hondo Police Academy and instructs tenured officers from the Southern California region on use of force options and the “objectively reasonable” use of force standard, which includes the recent changes to California Penal Code section 835(a). Stiger has also consulted as an expert witness on police use of force for both criminal defense attorneys and the prosecution.

In evaluating this matter, Stiger analyzed the facts in light of the standards set forth in *Graham v. Connor* (1989) 490 U. S. 386. The primary consideration is the reasonable officer standard. A reasonable officer would be defined as an officer with similar training and experience. (Stiger report at 10.) These standards are the basis for VPD’s Use of Force Policy which was also considered. (Stiger Report at 10, 13). In addition, the information known to the officer before and during the incident was considered (Stiger Report at 13.)

After reviewing all of the available evidence in the case and taking into consideration his extensive training and experience Stiger concluded that the tactics used in approaching the Walgreens by officers that night could have been better and an alternative plan should have been reached without knowing how many people were in the store and believing that some if not all were armed. Noting that officer and community safety are paramount, Stiger opined that an alternative plan should have been developed that would minimize the risk to officers while maximizing their tactical advantage over the individuals involved in the burglary.

However, in light of the numerous high-risk incidents going on throughout the city that night there may not have been time to reach an alternate plan. Given the plan in place and the totality of the circumstances, Stiger concluded that the overall outcome was not determined by the tactics used.

Ultimately, Stiger opined that the use of the deadly force against the “unarmed, but perceived to be armed and dangerous, Sean Monterrosa was consistent with generally accepted policing best practices and VPD’s Use of Force Policy.” (Stiger Report at 18.) More specifically, he concluded that Detective Tonn’s actions, during the time when he believed that Mr. Monterrosa was armed and posed an immediate threat to him and others, “were reasonable, necessary and proportional to any imminent



threat he may have perceived and comported with law enforcement training with respect to using deadly force.” (Stiger report at 19.)

## **BFS Report**

Senior Criminalist Hamiel was asked whether it was possible to determine from the available evidence 1) if Monterrosa was facing the officers’ truck when the shots were fired and 2) if Monterrosa was standing or kneeling when he was shot. Hamiel analyzed the photographs of the scene, BWC footage, the coroner’s report, scene diagrams, the total machine scan of the scene, and the VPD truck itself. Hamiel determined that there was insufficient information to determine whether Monterrosa was facing the truck when the shots were fired. Unknown variables included the trajectory of the bullet between the windshield and the entry wound, the time between the officer deciding to fire and the bullet striking Monterrosa, and whether Monterrosa had rotated his torso or head when the bullet struck. Hamiel indicated that it was possible for Monterrosa to be facing the truck when Tonn decided to fire and to have turned and be facing away by the time he was struck by the bullet.

## **APPLICABLE LEGAL STANDARDS**

Homicide is the killing of one human being by another. (*People v. Beltran* (2013) 56 Cal.4th 935, 941.) There are two types of criminal homicide: murder and manslaughter.

### **Murder**

Murder is the unlawful killing of a human being with malice aforethought. (Pen. Code, § 187, subd. (a).) Murder is divided into first and second degrees. A willful, deliberate, and premeditated killing is murder of the first degree. (Pen. Code, § 189; *People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1332.)

Second degree murder is the unlawful killing of a human being with malice aforethought but without the additional elements of willfulness, premeditation, and deliberation that would support a conviction of first degree murder. (*People v. Knoller* (2007) 41 Cal.4th 139, 151.) The malice required for second degree murder may be express or implied. (Pen. Code, § 188; *Hernandez, supra*, 183 Cal.App.4th at p. 1332.) Malice is express when there is an “intent to kill.” (Pen. Code, § 188; *People v. Delgado* (2017) 2 Cal.5th 544, 571.) Malice is implied “when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his [or her] conduct endangers the life of another and who acts with conscious disregard for life.” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1215.)

A homicide may also be reduced to second degree murder if premeditation and deliberation are negated by heat of passion arising from subjective provocation. If the provocation precludes a person from deliberating or premeditating, even if it would not cause an average person to experience deadly passion, the crime is second degree murder. (*People v. Padilla* (2002) 103 Cal.App.4th 675, 678.)

### **Voluntary Manslaughter**

Manslaughter is an unlawful killing without malice. (Pen. Code, § 192; *People v. Thomas* (2012) 53 Cal.4th 771, 813.) Several factors may preclude the formation of malice and reduce a killing that would otherwise be murder to voluntary manslaughter including: (1) heat of passion, and (2) imperfect self-defense. (*People v. Moya* (2009) 47 Cal.4th 537, 549.)

Imperfect self-defense is the killing of another human being under the actual but unreasonable belief that the killer was in imminent danger of death or great bodily injury and that the use of deadly force is necessary to defend against that danger. Such a killing is deemed to be without malice and thus cannot be murder. (*People v. Cruz* (2008) 44 Cal.4th 636, 664.) The doctrine of imperfect self-defense cannot be invoked, however, by a person whose own wrongful conduct (for example, a physical assault or commission of a felony) created the circumstances in which the adversary’s attack is legally justified. (*People v. Booker* (2011) 51 Cal.4th 141, 182.)

## Self-Defense

A homicide is justified and lawful if committed in self-defense. Self-defense is a complete defense to a homicide offense, and, if found, the killing is not criminal. (*People v. Sotelo-Urena* (2016) 4 Cal. App.5th 732, 744.) When a person is charged with a homicide-related crime and claims self-defense, the prosecution must prove beyond a reasonable doubt that the homicide was not committed in self-defense. (*People v. Winkler* (2020) 56 Cal.App.5th 1102, 1167.)

Penal Code sections 196 et. seq. set forth the law of self-defense in homicide cases. Penal Code section 196 provides that a homicide committed by a peace officer is justified when the use of force complies with Penal Code section 835a. (Cf. Pen. Code, § 197 [listing circumstances where homicide committed by “any person” is justifiable, which includes self-defense or the defense of others].)

Under Penal Code section 835a, an officer may use deadly force only when the officer “reasonably believes, based on the totality of the circumstances, that such force is necessary”: (1) “to defend against an imminent threat of death or serious bodily injury to the officer or to another person”; or (2) to apprehend a fleeing person who has committed a felony “that threatened or resulted in death or serious bodily injury,” and the officer “reasonably believes that the person will cause death or serious bodily injury” if not immediately apprehended. (Pen. Code, § 835a, subd. (c)(1); see Pen. Code, § 835a, subd. (a)(2) [peace officers may lawfully use deadly force “only when necessary in defense of human life”]; see *People v. Randle* (2005) 35 Cal.4th 987, 994 [self-defense arises when a person actually and reasonably believes in the necessity of defending against imminent danger of death or great bodily injury], overruled on other grounds by *People v. Chun* (2009) 45 Cal.4th 1172.)

To determine whether deadly force is necessary, “officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” (Pen. Code, § 835a, subd. (a)(2); *People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630 [“only that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified” and “deadly force or force likely to cause great bodily injury may be used only to repel an attack which is in itself deadly or likely to cause great bodily injury”].)

A threat of death or serious bodily injury is “imminent” when, based on the “totality of the circumstances,” a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or to another person. (Pen. Code, § 835a, subd. (e)(2); see *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305-1306 [imminent peril is “immediate and present” and “must be instantly dealt with”; it is not prospective or even in the near future].)

“Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force. (Pen. Code, § 835a,

subd. (e)(3).) De-escalation methods, tactics, the availability of less than lethal force, and department policies may be used when evaluating the conduct of the officer. However, when an officer's use of force is evaluated, it must be considered "from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force." (Pen. Code, § 835a, subd. (a)(4); accord, *Graham v. Connor* (1989) 490 U.S. 386, 396-397 ["The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight"]; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-1083 [to determine whether use of force is objectively reasonable for self-defense, trier of fact must consider all the circumstances that were known or appeared to the officer as well as consideration for what a reasonable person in a similar situation with similar knowledge would have believed]; *People v. Bates* (2019) 35 Cal.App.5th 1, 9-10 [knowledge of another person's prior threatening or violent conduct or reputation for dangerousness may provide evidence to support a reasonable belief in imminent harm].)

Self-defense also has a subjective component. (*Humphrey, supra*, 13 Cal.4th at p. 1082.) The subjective element of self-defense requires that a person actually believes in the need to defend against imminent peril or great bodily injury. (*People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1262.)

## Burden of Proof

A prosecutor bears the burden of proving a criminal defendant's guilt beyond a reasonable doubt. (Pen. Code, § 1096.) Where an investigation is complete and all of the evidence is available for review, prosecutors should file charges only if they believe there is sufficient admissible evidence to prove the charges beyond a reasonable doubt at trial. (See, e.g., Nat. Dist. Attys. Assn., National Prosecution Standards (3d ed. 2009) Part IV, § 2 pp. 52-53; United States Department of Justice Manual § 9-27.220; Melilli, Prosecutorial Discretion in an Adversary System (1992) B.Y.U. L.Rev. 669, 684-685 [surveying ethical standards used in the exercise of charging discretion by prosecutors]; accord, *People v. Catlin* (2001) 26 Cal.4th 81, 109 ["A prosecutor abides by elementary standards of fair play and decency by refusing to seek indictments until he or she is completely satisfied the defendant should be prosecuted and the office of the prosecutor will be able to promptly establish guilt beyond a reasonable doubt," quotation and internal quotation marks omitted]; *People v. Spicer* (2015) 235 Cal.App.4th 1359, 1374 [explaining that a prosecutor may have probable cause to charge a crime but reasonably decline to do so if they believe there is a lack of sufficient evidence to prove the charge beyond a reasonable doubt at trial]; cf. Rules Prof. Conduct, Rule 3.8(a) [prosecutor should not initiate or continue prosecution of charge that is not supported by probable cause].)

The prosecution has the burden of proving beyond a reasonable doubt that a killing is not justified; it is not a criminal defendant's burden to prove that the force was necessary or reasonable. (*People v. Frye* (1992) 7 Cal.App.4th 1148, 1154-1155; *People v. Banks* (1976) 67 Cal.App.3d 379, 383-384; see *People v. Breverman* (1998) 19 Cal.4th 142, 156 [when defendant claims self-defense or defense of others, or there is substantial evidence supportive of defense, the jury will be instructed that prosecutor bears the burden of disproving this defense beyond a reasonable doubt].) Thus, in an officer-involved shooting, the prosecution must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others.

## LEGAL ANALYSIS AND CONCLUSION

Based on Officer Tonn's statements, at trial he would either raise a claim of self-defense or there would be substantial evidence supportive of such a claim. Because a prosecutor would then need to affirmatively prove beyond a reasonable doubt that Officer Tonn did not act in lawful defense of himself or others, this is the sole issue in this case.

In order to charge Tonn with criminal homicide, DOJ must believe that the evidence proves he is guilty of the crime beyond a reasonable doubt. Further, the admissible evidence must be sufficient to warrant conviction after the finder of fact has heard all of the evidence and after considering the defenses that could be raised in the case.

There is insufficient evidence to prove beyond a reasonable doubt that Tonn did not act in self-defense or in defense of his partner officers. Both defenses require objective reasonableness and subjective honesty. As a threshold matter, while there are discrepancies between the statements of the officers, none contradict the essential facts of Tonn's account. This holds true for the civilian witnesses that were interviewed. The video footage of the incident does not repudiate Tonn's account. DOJ made determined efforts to determine the identities and contact the other civilians who were present with Mr. Monterrosa at the Walgreens; none of these civilians were ever identified and none have ever come forward or provided a statement. Accordingly, Tonn's statement, the statements of his fellow officers, and the limited video footage provide a largely uncontroverted account of the events that night. Any trial would rely primarily on the testimony of these officers. Indeed, Tonn would not need to testify at trial to raise a claim of self-defense; the testimony of his fellow officers and video footage would be sufficient.

### Objective Reasonableness

The first question is whether a reasonable officer in Tonn's position would have believed that the use of lethal force was necessary to defend himself or his fellow officers. As noted above, in evaluating the objective reasonableness of Tonn's use of deadly force, California law requires consideration of all of the circumstances as they were known or appeared to Tonn. It is undisputed that six seconds prior to the shooting, Horton radioed the warning: "It looks like they're armed, possibly armed." Horton's words were qualified in nature, but Tonn, Wagoner, and Pittman all stated that they took this warning to mean that the subjects at the Walgreens were carrying firearms. Notably, Tonn in his interview stated that he remembered hearing just the first part: "It looks like they're armed." While it could be argued that this was a self-serving statement, this by itself is not sufficient to establish that it was dishonest. As McCann notes, a warning from an experienced senior officer that appeared to be based on personal observation would be taken very seriously by Tonn.

Even if Tonn actually had attended to the less definite phrase "possibly armed," the totality of the circumstances supported his belief that Monterrosa had a firearm. First, the hammer that Monterrosa carried in his pocket would have had the same effect on his gait and body mechanics as he ran that carrying a firearm would. The hammer was 14.5 inches long, and the hammer head was 6 inches wide.<sup>26</sup> Tonn stated that Monterrosa ran in a way that was consistent with his concealing something he did not want to fall out. His statement is corroborated by Wagoner's, who said that, as Monterrosa ran, his hands were "tucked" as though he was grabbing his belt or retrieving a firearm.

---

<sup>26</sup> By comparison, a Colt .357 Python revolver with a 6-inch barrel has a length of 11.5 inches and a height of 5.5 inches.

Second, all of the witnesses who actually saw the shooting stated that Monterrosa was running away from the officers, suddenly stopped, and made a quick turn to face the officers' truck immediately before the shooting.<sup>27</sup> Further, the witnesses who offered statements related to Monterrosa's hand position—Tonn, Pittman, Wagoner, and W-1—all stated that Monterrosa had one of his hands in his torso or waist area when the shots were fired. There is no witness known to this investigation that has given information contrary to these statements.

Tonn's knowledge and state of mind going into the incident must also be considered. In his statement, he discussed the facts that made him particularly concerned about encountering armed subjects on June 1, 2020. He was aware of reports of looters targeting gun stores in the days before June 1, 2020. He was aware of multiple firearms-related calls on June 1, 2020. In particular, 911 calls had been made that evening regarding armed looters. He also was aware of intelligence reports warning of violence directed at law enforcement and that a law enforcement officer had been shot and killed several days earlier in a drive-by shooting in a nearby county.

Based on the totality of circumstances, a reasonable officer could have believed that Monterrosa was armed and reaching for a firearm.

A firearm is a lethal weapon that can be deployed instantly and at some distance. Here, Tonn was faced with a subject who he stated he believed was in the act of drawing a firearm and who had taken what he recognized as a shooting position. His statement is corroborated by Pittman, who also stated that he saw Monterrosa rotate toward the officers and crouch on his knee. Wagoner's statement indicated he saw Monterrosa pivot toward the officers; he did not mention a crouch or kneel. Tonn stated that he believed that Monterrosa had eschewed the opportunity to escape in the black sedan. Based on the available evidence, a reasonable officer could find Monterrosa's actions consistent with a person intending to shoot.

This conclusion is bolstered by the opinion of both experts retained by DOJ, who opined that a reasonable officer in Tonn's position would have believed that lethal force was necessary to defend himself or his fellow officers.

The primary piece of evidence that potentially undermines a claim of self-defense or defense of others is the fact that the bullet that killed Monterrosa hit him in the back of the head. At first, this might appear inconsistent with the accounts of the three officers in Wagoner's vehicle who stated that he turned toward them.

However, three factors inform our analysis that this fact is insufficient to determine that Monterrosa was facing away from the officers when Tonn made the decision to shoot.

First, McCann's expert analysis established that Monterrosa could have turned 180 degrees in the 2.25 seconds it may have taken for Tonn to react to a perceived threat and fire the round that struck Monterrosa. We cannot prove beyond a reasonable doubt that a person who rises from a kneeling position and turns will take longer than the 2.25 seconds.

Second, Senior Criminalist Hamiel determined that, based on the evidence other than the percipient witnesses' statements (photographs of the scene, BWC footage, the coroner's report, scene diagrams, the total machine scan of the scene, and the VPD truck itself), there is not enough information to determine whether Monterrosa was facing the truck when the shots were fired.

---

<sup>27</sup> There is disagreement among the witness accounts as to the direction of the turn, the position of the black sedan, and whether Monterrosa was in a kneeling position when the shots were fired.

Third, not only the officers, but at least one of the civilian witnesses (W-1) confirmed that Monterrosa appeared to be fully facing the officers when the shots were fired. No witness perceived Monterrosa to be turned or turning away when the shots were fired.

Based on these factors, it cannot be established beyond a reasonable doubt that Monterrosa was turned away from the officers at the critical moment: the moment that Tonn made his decision to use deadly force.

Tonn was in the rear seat of the truck and stated that he felt scared—both for himself and for his partners—when the threat materialized. At that moment, Tonn stated that he believed his partner officers were in the process of getting out of the truck. He stated that he was concerned that his partners had not seen Monterrosa and would be taken by surprise as they came around the truck doors. There was no time to warn Wagoner and Pittman. No available evidence contradicts these contentions by Tonn. A reasonable officer faced with these circumstances could believe that Monterrosa posed an imminent threat of death or great bodily injury to all three officers.

Tonn had to make a “split second judgment” in a “tense, uncertain, and rapidly evolving” scenario. (*Graham v. Connor*, 490 U.S. at 397.) Applying the United States Supreme Court’s guidance to evaluate the reasonableness of the use of force without the benefit of hindsight and giving appropriate deference to the officer’s need to make a quick evaluation of an apparently lethal situation, a prosecution would not be able to prove that the decision to shoot was not objectively reasonable.

## **Actual Belief**

The second question is whether Tonn honestly believed that he or his partners were in imminent danger of being killed or suffering great bodily injury and that he needed to immediately resort to deadly force to protect against that danger. There is insufficient evidence for a prosecutor to establish that Tonn did not actually believe he and his partners were in imminent danger. As discussed above, Tonn’s statements about the basis for his belief that force was necessary are either corroborated or uncontradicted.

The best available evidence from which to argue that his belief was not honestly held is the colloquy between Tonn and Wagoner twenty seconds after the shooting. Tonn asked, “What did he point at us?” When Wagoner said he did not know, Tonn then insisted, “Hey, he pointed a gun at us.” Tonn then asked, “Did you see a gun on him?” One possible inference from this colloquy is that Tonn did not see a firearm, overreacted, knew he overreacted, and was trying to influence the statements of the other officers so that they would justify his actions. Another possible inference is that Tonn saw something that he perceived to be either a gun or consistent with a gun, or that Tonn was seeking confirmation for what he believed he had observed. Under this latter scenario, Tonn’s belief in the necessity of lethal force would have been actual.

The totality of the circumstances supports the latter inference. First, as noted above, the facts leading up to the shooting—Horton’s warning that the subjects were armed, the way the hammer Monterrosa was carrying in his pants affected his gait manner consistent with his carrying a firearm, Monterrosa’s sudden turn, his grabbing at an object in his chest or waistband area—support Tonn’s statement that he believed Monterrosa was about to use a firearm. Second, the question, “what did he point at us?”, supports a reasonable inference that Tonn believed he saw Monterrosa point something at the officers. Furthermore, Tonn’s subsequent comments on BWC minutes after the shooting suggest that he did believe that Monterrosa presented an immediate danger. Between groans, a distraught Tonn says,

“He f\*\*\*ing came around, came right at us.” Later, Tonn tells Horton, “I thought that f\*\*\*ing, I thought that f\*\*\*ing axe was a gun.”

Even if both inferences were considered equally plausible, when there are two reasonable interpretations of circumstantial evidence, a jury is required to adopt the inference that supports innocence. (*People v. Merkouris* (1956) 46 Cal.2d 540, 560-562.) Here, the jury would be required to adopt the latter inference, that Tonn believed he saw a gun or something consistent with a gun.

Additionally, McCann notes that “[t]he fact that Tonn fired through the windshield is evidence of Tonn’s subjective belief in the exigency of the situation.” (McCann Report at 14.) Common sense dictates that shooting from inside a vehicle is a choice of last resort. Discharging a rifle in such a close and confined space carries tactical risk, including the possibility of distracting or deafening one’s partner officers. Further, as Tonn recognized in his statement, automobile glass affects bullet trajectories unpredictably and makes it more likely that shots taken will be inaccurate. Thus, the fact that Tonn fired from inside the truck corroborates Tonn’s stated belief that he had to shoot “now or someone gets shot.”

Shooting through the windshield could also support a different inference, that Tonn acted recklessly, but there is no evidence to corroborate such an inference. Here, the inference that Tonn fired through the windshield out of fear is at least an equally reasonable interpretation of the evidence, and the jury would be required to adopt it. (*People v. Merkouris* (1956) 46 Cal.2d 540, 560-562.)

Finally, the Department has considered the contention that Tonn’s conduct was not objectively reasonable because, if the officers had made different tactical choices, the need to use deadly force might have been avoided. The tactical choices that could potentially be called into question include engaging the subjects without a more detailed plan, approaching the subjects rather than establishing a perimeter, and continuing their approach even after hearing that the subjects were armed.

The law is clear that an officer’s actions may not be viewed with the benefit of hindsight. Instead, circumstances should be viewed as they appeared to the officer at the time, taking into account that officers may be forced to make quick judgments about using deadly force. Here, any decisions made by Tonn were quick decisions made in the context of his duty to apprehend individuals engaged in unlawful conduct. As discussed above, McCann did not conclude that Tonn’s conduct leading up to the shooting was objectively unreasonable. Likewise, while Stiger recognized that the officers, as a whole, could have employed safer options, he did not find their tactics outcome determinative. Given the totality of the circumstances, it cannot be shown beyond a reasonable doubt that Tonn’s conduct in the moments preceding the shooting was so objectively unreasonable as to negate his decision to use deadly force. (Pen. Code, § 835a, subd. (e)(3).)

The shooting and subsequent death of Sean Monterrosa was tragic. In order to hold Tonn criminally liable for homicide, however, there must be proof beyond a reasonable doubt that he, individually, was not acting in lawful self-defense or the defense of others. Given the facts and issues set forth above, there is insufficient evidence to support the criminal prosecution of Officer Tonn. As such, no further action will be taken in this case.