

REPORT ON THE OFFICER-INVOLVED SHOOTING AT  
QUESADA AVENUE ON MAY 21, 2017



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## **I. INTRODUCTION**

The San Francisco District Attorney's Office (SFDA) has completed its review of the officer-involved shooting that occurred on the night of May 21, 2017, at Quesada Ave., in the Bayview neighborhood of San Francisco, California. The SFDA's review was conducted by the office's Independent Investigations Bureau (IIB) and focused exclusively on determining whether any criminal charges relating to the officers' conduct are warranted. IIB's review did not examine issues such as the officers' compliance with internal SFPD policies and procedures, their training or tactics, or any issues related to civil liability. This report should not be interpreted as expressing any opinions on such non-criminal matters.

In brief, San Francisco Police Department (SFPD) officers responded to a 911 call regarding an armed robbery of a house located at 2131 Quesada Ave. Officers set up a perimeter around the house. Three officers, who were stationed in the backyard of a neighboring house at 2127 Quesada Ave., observed three robbery suspects exit 2131 Quesada Ave. through the back door. One suspect, armed with a gun, fired at least five rounds at the officers. One of the officers, Officer Dack Thompson (Star No. 1292), fired a single shot in the suspect's direction. No one was injured by the gunfire. For the reasons detailed below, the District Attorney declines to pursue criminal charges against Officer Thompson because his actions were reasonably undertaken in self-defense and in defense of others and are, therefore, legally justified.

## **II. FACTUAL SUMMARY**

On Sunday, May 21, 2017, at 10:56 p.m., a woman called 911 and reported an armed robbery in progress. She reported that when she and her boyfriend returned to his home at 2131 Quesada Ave., her boyfriend was confronted by an unknown man wearing a ski mask and holding a handgun. She said she immediately ran out of the house but her boyfriend remained inside. She told police dispatch that there were probably three other victims in the home in addition to her boyfriend.

Numerous SFPD officers responded and attempted to set up a perimeter around 2131 Quesada Ave. Quesada Ave. is located in a densely populated residential portion of San Francisco's Bayview neighborhood. With the residents' consent, Officer Thompson, and Officers Mikael Pusung (Star No. 890) and Rodney Freeman (Star No. 1567), entered a home at 2127 Quesada Ave., which is immediately adjacent to 2131 Quesada Ave. All three officers were in their full SFPD uniforms. At approximately 11:04 p.m., they went into the backyard of 2127 Quesada Ave. to help secure the rear of 2131 Quesada Ave. They observed that the back door of 2131 Quesada Ave. was open. It was dark outside, but there was some indirect illumination from the interior lights and rear porch light of 2127 Quesada Ave. 2131 Quesada Ave. had no interior or exterior lights on.

The officers positioned themselves along a railing on a raised rear deck in the backyard of 2127 Quesada Ave., from where they could see the rear of 2131 Quesada Ave. The deck abuts the wooden fence between 2127 Quesada Ave. and 2131 Quesada Ave. Officer Thompson was positioned closest to the wooden fence between 2127 Quesada Ave. and 2131 Quesada Ave., with Officers Pusung and Freeman to his right (see Figure 1 below). The wooden fence between 2127 Quesada Ave. and 2131 Quesada Ave. was approximately four feet taller than the raised deck and did not completely conceal the officers, nor provide them effective cover from any potential gunfire.



**Figure 1:** Arrows indicate the approximate location of officers on the backyard deck of 2127 Quesada Ave. The house in the background is 2131 Quesada Ave., the site of the armed robbery. This photo was taken with additional artificial lighting that was not present at the time of the incident. (Source: SFPD Crime Scene Investigations (CSI)).

From their position on the raised deck, all three officers could see flashlights and the outlines of people moving inside 2131 Quesada Ave. At approximately 11:05 p.m., the officers heard SFPD officers who were towards the front of 2131 Quesada Ave. announce their presence. Officers Thompson and Freeman both said they then heard people inside 2131 Quesada Ave. say something akin to: “The police are here. We gotta go!” All three officers then looked toward the back door of 2131 Quesada Ave. with their weapons drawn, anticipating that the robbery suspects might attempt to flee through the open back door.

Seconds later, the robbery suspects came running out of the back door of 2131 Quesada Ave. According to Officer Pusung, there was one male suspect who turned toward the officers and

began shooting at them immediately after exiting the back door. Officer Freeman said he observed two male suspects exit through the back door, and that at least one of them began shooting towards the officers. Because the shooting occurred so quickly, Officer Freeman said he could not be sure which of the two robbery suspects shot at them. Both Officers Pusung and Freeman dove to the ground to try and take cover and reduce their exposure to the incoming gunshots.

Officer Thompson, who was closest to the fence between 2131 Quesada Ave. and 2127 Quesada Ave., and therefore closest to the robbery suspects and the gunfire, said he observed three male suspects exit the back door. He said that the first suspect to exit the back door was wearing a black ski mask and had a gun in his left hand. Based on our review of all three officers' body-worn camera recordings, the officers may have been noticeable in the dark because one of them had his flashlight on. The officers did not appear to otherwise make their presence known. According to Officer Thompson, once the first suspect saw the officers, the suspect began firing his gun in the officers' direction and continued firing in their direction as he ran through the backyard of 2131 Quesada Ave. towards the rear fence. Officer Thompson said he returned fire based on his "fear for [his] life, and that of [his] partners, and the public." After firing, Officer Thompson said he ducked down because he continued to face incoming gunshots, but he kept an eye on the scene and saw a total of three suspects run through the backyard and hop over fences. Officer Thompson broadcast over the radio that shots were fired and also provided a description of the three robbery suspects and their direction of travel.

All available evidence indicates that no one was hit during the exchange of gunfire. SFPD Tactical teams searched the entire block of residences and also contacted numerous residents. They did not locate any injured persons or locate any signs of injury, for example, blood. Additionally, no one identified themselves as having been injured in the incident.

To date, none of the robbery suspects has been positively identified and no one has been charged in relation to the home invasion robbery. A single suspect was arrested shortly after the incident, but denied any involvement in the robbery and subsequent shooting and thus gave no account about the shooting in the backyard of 2131 Quesada Ave.



**Figure 2:** *Depicts Officer Thompson’s approximate view of the back door of 2131 Quesada Ave. from where he was positioned on the rear deck of 2127 Quesada Ave. This photo was taken with artificial lighting that was not present at the time of the incident. (Source: SFPD CSI).*

Once the area was secure, SFPD Crime Scene Investigations (CSI) responded to the scene and found drugs, cellphones, and guns inside 2131 Quesada Ave. In the backyard of 2131 Quesada Ave., they found four 9 mm shell casings and observed four bullet holes in the fence between 2131 Quesada Ave. and 2127 Quesada Ave.—the same fence next to which Officer Thompson had been positioned.

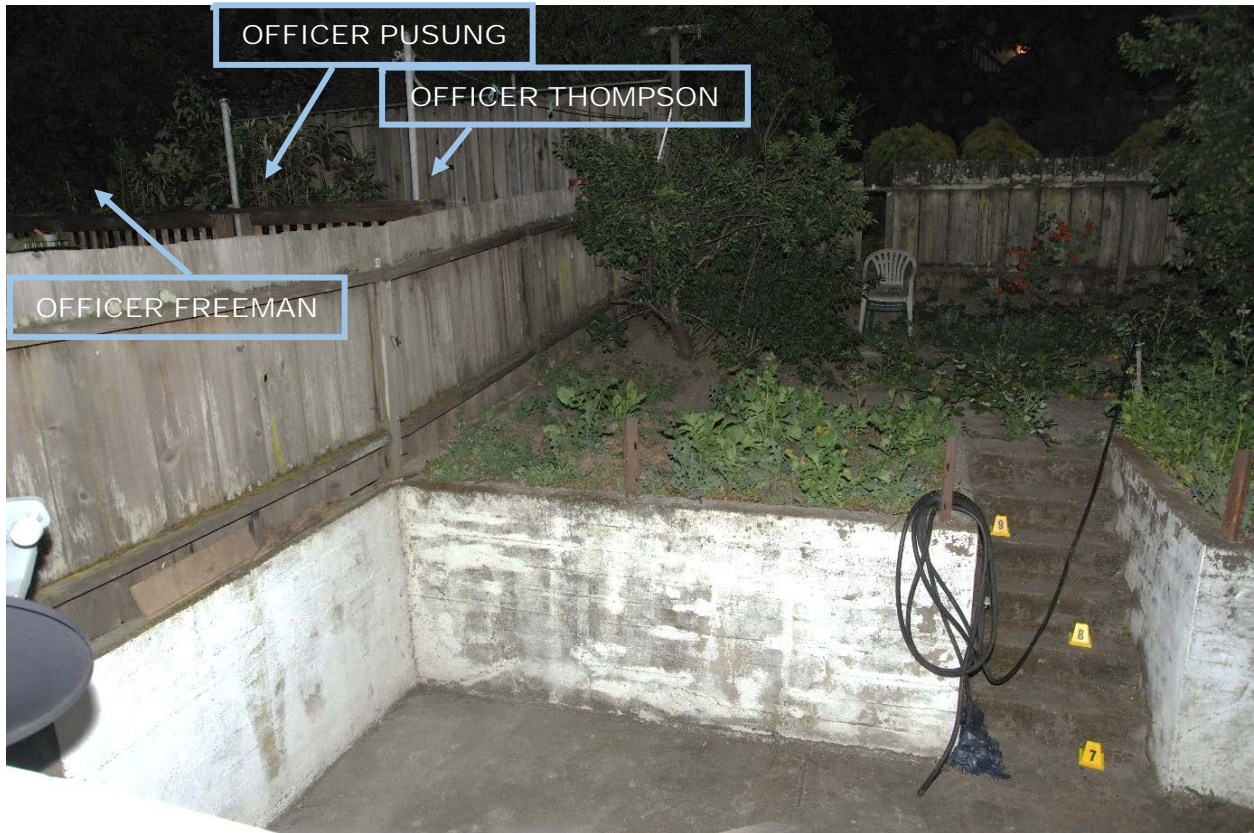
In the backyard of 2127 Quesada Ave., where the officers were positioned, CSI found one .40 caliber bullet casing and one unfired .40 caliber bullet. Officer Thompson was using his duty-issued Sig Sauer .40 caliber gun that night.

SFPD promptly notified IIB of the shooting. IIB responded to the scene and inspected the site. IIB participated in or reviewed all civilian witness interviews, and participated in the interviews of Officers Thompson, Pusung and Freeman. When IIB investigators returned to the scene on May 26, 2017, they identified one additional bullet hole in the fence, bringing the total number of bullet holes in the fence to five.

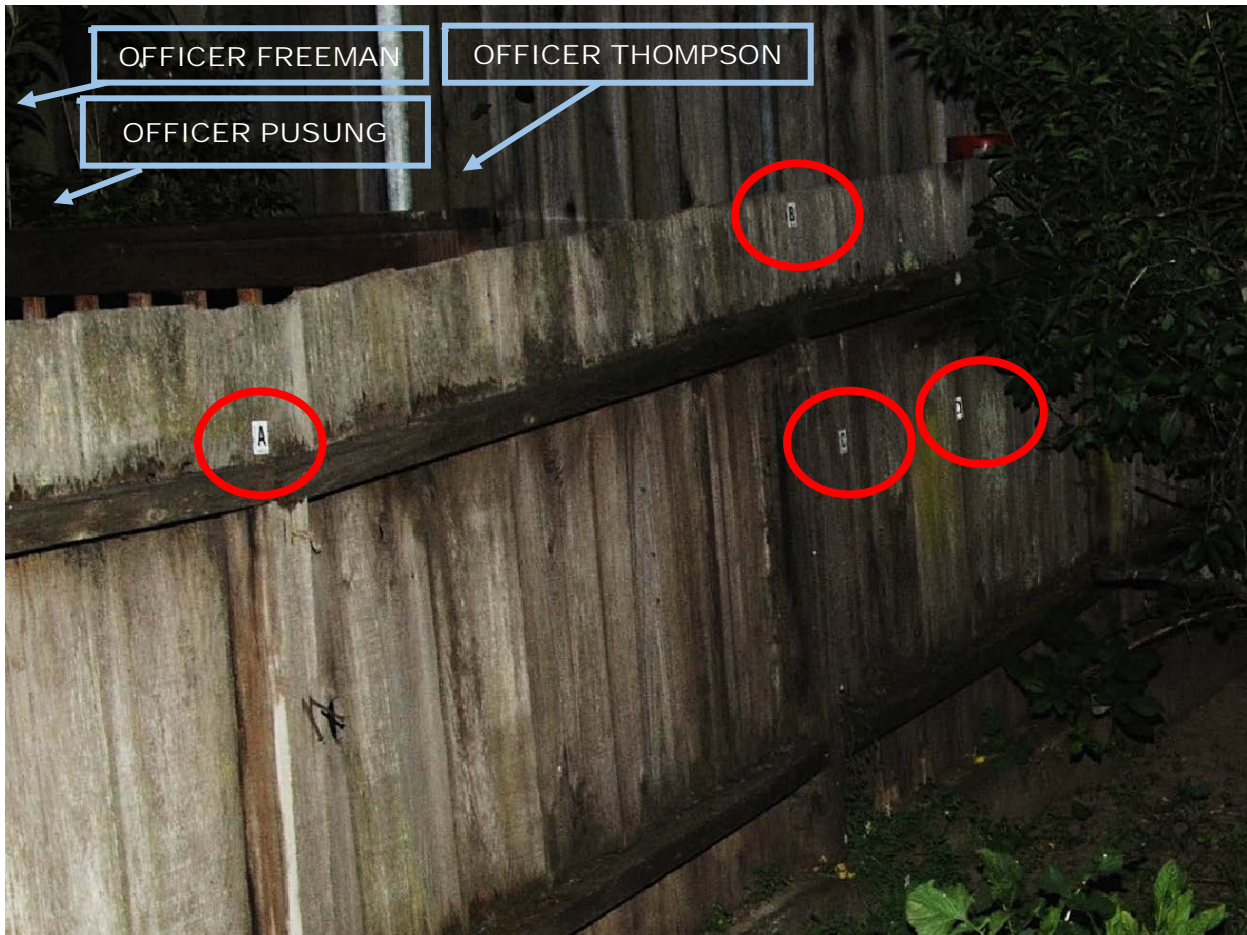
Ballistics evidence collected by SFPD CSI and IIB suggests that the suspect fired at least five shots at the officers. Based on the ballistics evidence as well as our review of the officers’ body-



worn camera recordings, Officer Thompson fired one shot, and likely ejected one live round of ammunition while performing a check on his weapon prior to the shooting.

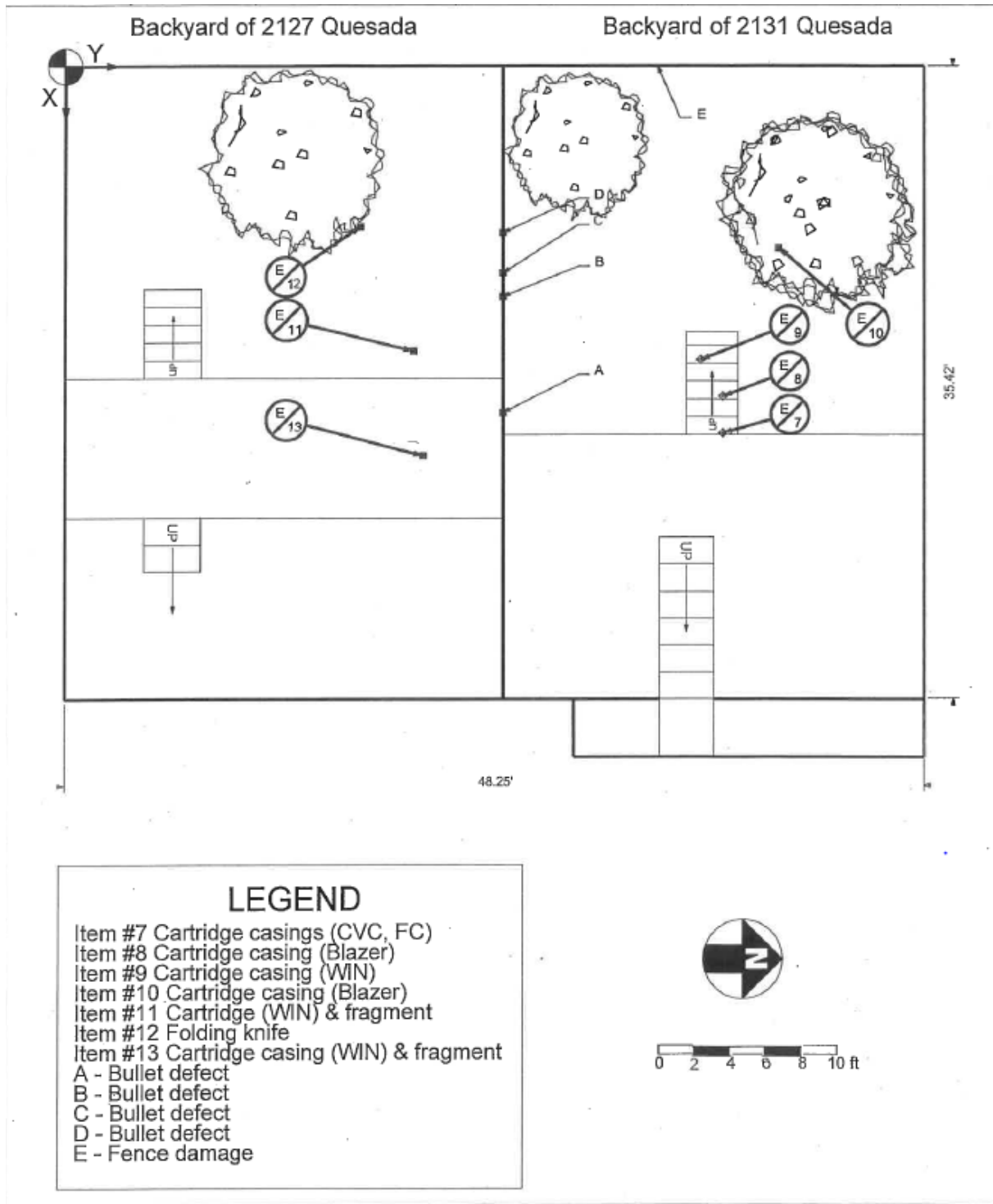


**Figure 3:** View from the back door area of 2131 Quesada Ave., where the robbery suspects exited. This view looks toward the rear deck of the neighboring house, 2127 Quesada Ave., where the officers were stationed. The arrows reflect the officers' approximate positions with Officer Thompson closest to the fence separating 2127 Quesada Ave. from 2131 Quesada Ave. This photo was taken with artificial lighting not present at the time of the incident. (Source: SFPD CSI).



**Figure 4:** Magnified portion of Figure 3. The letter markers (circled in red) indicate bullet holes caused by bullets fired by the robbery suspect. An additional bullet hole was identified later by IIB (not marked or shown here). The arrows indicate the approximate location of the officers with Officer Thompson closest to the fence, and Officers Pusung and Freeman to his right (or to the left of the photo from this view). This photo was taken with artificial lighting not present at the time of the incident. (Source: SFPD CSI).





**Figure 5:** Depicts the backyards of 2127 Quesada Ave. and 2131 Quesada Ave. The upper left quadrant reflects the raised rear deck where the officers were stationed. The center line shows the fence between the two yards. The bottom right corner depicts the back porch where the robbery suspects exited. This diagram only reflects the four bullet holes in the fence identified by SFPD and does not include the additional bullet hole later identified by IIB. (Source: SFPD CSI Crime Scene Response Form).

### **III. LEGAL STANDARD**

The question presented is whether Officer Thompson committed a criminal act in discharging his weapon at the robbery suspects. To pursue criminal charges, a prosecutor must be satisfied that the evidence will show beyond a reasonable doubt that no legal justifications existed for the act at issue. Here, the relevant legal inquiry is whether Officer Thompson acted in self-defense and/or in defense of others when he used deadly force, thereby legally justifying his conduct.

California law permits any individual to use deadly force “[w]hen resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” Cal. Pen. Code, § 197; *see also Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333. Specifically, self-defense or defense of others serves as a complete defense so long as the person (1) subjectively believed in the need to resort to force in order to avert a threat of imminent and great bodily injury; and (2) his perceptions and actions were objectively reasonable under the circumstances. *See People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *People v. Viramontes* (2001) 93 Cal. App. 4<sup>th</sup> 1256, 1262.

The subjective prong of the self-defense standard examines the person’s belief in the need to use force. The objective component of self-defense asks what a reasonable person would have done in their position. *People v. Humphrey* (1996) 13 Cal.4th at 1082-83. The reasonable person is an abstract individual of ordinary mental and physical capacity who is as prudent and careful as any situation would require him to be. *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519. In making the determination as to whether an officer’s conduct was objectively reasonable, one must consider all the “facts and circumstances . . . in determining whether [they] acted in a manner in which a reasonable man would act in protecting his own life or bodily safety.” *People v. Humphrey* (1996) 13 Cal.4th at 1083. Self-defense law “grants a reasonable margin within which one may err on the side of his own safety, and so long as he is found to have done so reasonably, no abuse of the right of self-defense should be found to have occurred.” *People v. Ross* (2007) 155 Cal.App.4th 1033, 1057.

### **IV. LEGAL ANALYSIS**

Beginning with the subjective component, which examines the person’s belief in the need to use force, Officer Thompson articulated that he needed to use force because he believed that his life was in direct and imminent danger, as were the lives of his fellow officers, and the lives of any civilians who could have been subject to the robbery suspect’s gunshots. He said that when the suspect began shooting at him, his feelings were one of “utter fear.” He further explained: “In fear for my life, and that of my partners, and the public, I returned fire.”

To evaluate whether it was objectively reasonable for Officer Thompson to have believed that he needed to resort to force to avert the threat of harm, we consider all the pertinent facts and circumstances presented to Officer Thompson at the time. First, when initially responding to the call, Officer Thompson was aware that at least one robbery suspect was armed based on the report provided by the 911 caller. Then, while stationed in the backyard with his eyes trained on the back door of 2131 Quesada Ave., Officer Thompson observed three suspects exit the house they had just robbed and saw one of the suspects holding a gun. He said he saw the first robbery suspect—that is, the one who exited the house first—raise his gun as if to begin shooting towards him and the other officers. The suspect’s raising of his gun alone constituted an imminent threat. Moreover, the suspect went on to fire at least five shots almost immediately, validating the fear that Officer Thompson perceived.<sup>1</sup>

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<sup>1</sup> We cannot confirm who shot first as the robbery suspect’s five shots and Officer Thompson’s single shot were exchanged almost simultaneously based on our review of the officers’ body-worn camera recordings.

Officer Thompson's account as well as all other available evidence corroborate the imminent danger facing the officers. CSI found bullet holes in the wooden fence in the precise area where all three officers had attempted to take cover. No officers were injured, but they were within shooting distance as they were 12 to 20 feet from the robbery suspect as he ran through the backyard of 2131 Quesada Ave. firing his gun. Additionally, the officers had no cover—there was only a thin wooden fence between them and the robbery suspect. Moreover, given the suspect's approach of shooting while running through the backyard, he posed a risk of death or great bodily injury to all the residents within the many homes in that densely populated residential portion of the Bayview neighborhood. Based on these facts, we conclude that it was objectively reasonable for Officer Thompson to believe that his life, the life of his fellow officers, and the local public were in danger.

## **V. CONCLUSION**

For the above-stated reasons, we conclude that Officer Thompson's use of deadly force by firing a weapon at a robbery suspect on May 21, 2017, was legally justified as conducted in self-defense and in defense of others. Therefore, the District Attorney declines to file any criminal charges in this matter.