

**REPORT ON THE OFFICER-INVOLVED SHOOTING OF
JESSICA WILLIAMS ON MAY 19, 2016**



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INDEPENDENT INVESTIGATIONS BUREAU
CITY AND COUNTY OF SAN FRANCISCO
OCTOBER 18, 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 resulted in the death of Jessica Williams (née Jessica Nelson) on Helena Street in San Francisco, California at approximately 9:40 a.m., on May 19, 2016. The SFDA's Independent Investigations Bureau (IIB) reviewed all evidence previously collected by the San Francisco Police Department (SFPD) and SFDA, and also conducted its own, independent follow-up investigation. IIB focused exclusively on determining whether criminal charges relating to the officers' conduct are warranted. IIB's review did not examine issues such as 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.

The investigation revealed that only Sergeant Justin Erb (Star No. 686), Officer Eric Eastlund (Star No. 1318), and Adriana M., a civilian witness, saw the incident that unfolded in a matter of seconds. The general sequence of events is largely undisputed based on their statements and the available physical evidence.

In brief, Sergeant Erb and Officer Eastlund, who were in uniform, were working a stolen vehicle recovery operation in the Bayview District when they noticed a parked Honda Accord on Helena Street that was listed on the SFPD stolen vehicle report. When the officers knocked on the Accord's window, Williams sat up, started the car, and sped off before crashing into a parked utility truck approximately 75 feet away. When Sergeant Erb ran to the driver's door following that crash, Williams quickly reversed the car. According to both officers, the Accord reversed right at Officer Eastlund, who was standing in the street behind the car.

Sergeant Erb remained on the sidewalk next to a fence when the Accord stopped in the middle of Helena Street, paused, and then drove forward in his general direction. Stating that he feared that his life was in danger, Sergeant Erb fired one shot at Williams, killing her. Ballistics and accident reconstruction experts placed Sergeant Erb within the Honda Accord's potential path when he fired. Expert analysis also confirmed that Williams could have turned the other direction and driven away down Helena Street but instead drove in Sergeant Erb's direction.

As discussed in further detail below, the prosecution has the burden of proving beyond a reasonable doubt that the shooting was not in self-defense. A key consideration under self-defense law is whether the use of deadly force is objectively unreasonable. Here, when the relevant legal and prosecutorial ethical standards are applied, the available evidence does not support the conclusion that Sergeant Erb's use of deadly force was objectively unreasonable. Accordingly, under controlling California law and the pertinent prosecutorial guidelines, the District Attorney declines to file criminal charges against Sergeant Erb in this matter.

II. DESCRIPTION OF THE SCENE

The 100 block of Helena Street is an east-west, two lane residential street next to the Interstate 280 John F. Foran Freeway. Helena Street connects to Elmira Street, which is also a small residential street. Helena Street slopes downward 10.6 degrees at the incident site.

The shooting occurred on the sidewalk area just south of the entrance to a commercial lot. Additional photographs are incorporated throughout this report.

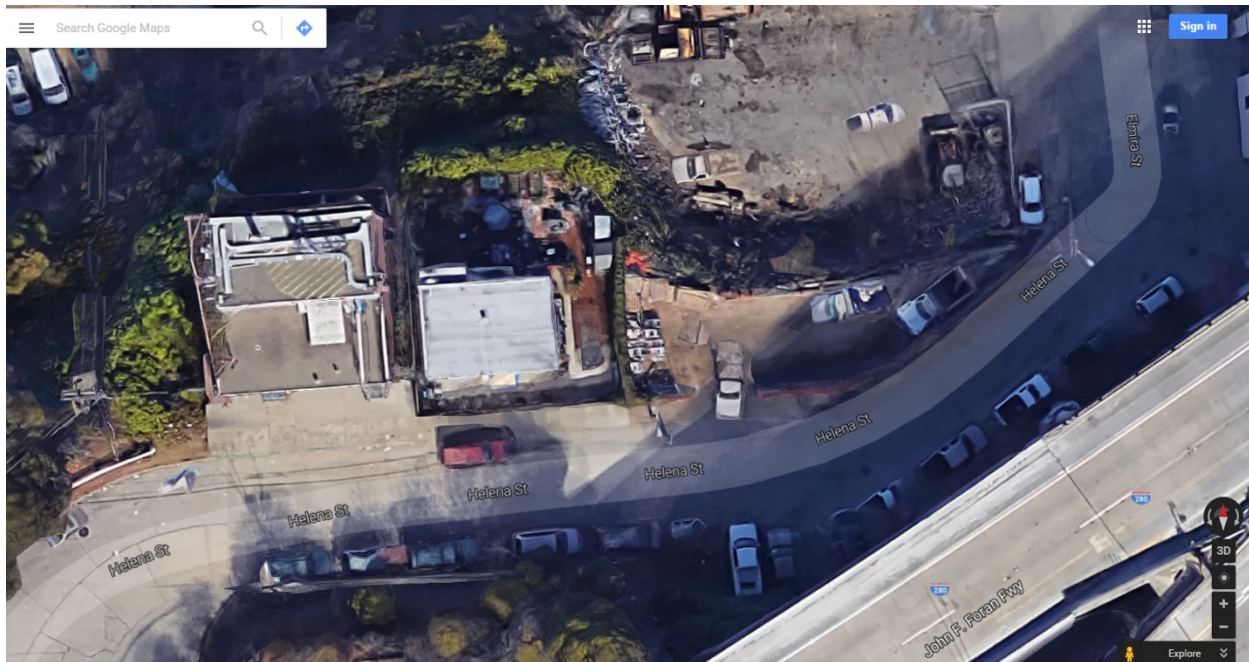


FIGURE 1: GOOGLE EARTH VIEW OF HELENA STREET. (SOURCE: GOOGLE EARTH).

III. SUMMARY OF STATEMENTS

Only three people - Sergeant Erb, Officer Eastlund, and Adriana M. - witnessed this incident. Their accounts are summarized below. Collectively, each account states that Williams sped away from the officers at a high rate of speed, crashed the car into the back of a truck, reversed the car, paused, and then drove downhill toward Sergeant Erb before he fired his weapon.

1. SERGEANT JUSTIN ERB

On Thursday, May 19, 2016, Sergeant Erb was working with Officer Eastlund as part of a stolen vehicle recovery operation. At approximately 9:40 a.m., the two officers, who were both in uniform, drove up Elmira Street and onto Helena Street in a marked SFPD patrol car. Sergeant Erb saw a parked white Honda Accord facing their direction with a license plate that was listed on the SFPD stolen vehicle report. Officer Eastlund, who was driving, stopped their car next to the rear of the Accord, facing the opposite direction.



FIGURE 2: PHOTOGRAPH FROM SERGEANT ERB'S INTERVIEW. ERB DREW THE BOX WITH THE "I" TO REPRESENT THE ACCORD WHEN THEY FIRST ENCOUNTERED WILLIAMS. THE DRAWN ARROWS ARE ERB'S MARKINGS NOTING THE OFFICERS' PATHS OF TRAVEL FROM THEIR CAR TO THE ACCORD. (SOURCE: SFPD PHOTO UNIT)

Both officers approached the Accord's driver's door. Sergeant Erb drew his pistol but kept it pointed down. Sergeant Erb stood to Officer Eastlund's left as they faced the door. Because of the loud ambient noise from the nearby freeway, Sergeant Erb could not tell if the car was running when they approached. A woman later identified as Jessica Williams was leaning back in the driver's seat but Sergeant Erb could not tell if she was asleep.

Sergeant Erb and Officer Eastlund knocked on the window to get Williams's attention. In response, Williams suddenly sat up and then started the engine. Both officers yelled several times for her to stop. Sergeant Erb did not hear Williams say anything.

Officer Eastlund tried to open the car door but Williams sped off before forcefully crashing into a parked truck and fence on the opposite side of the street. Sergeant Erb ran toward the car to arrest Williams and to render medical aid.

When he reached the car, he saw that the corner of the truck had gone through the passenger-side windshield. When he got approximately two feet from the driver's door, Sergeant Erb saw Williams changing gears and trying to reverse the Accord, which was stuck underneath the truck.

After a few seconds of revving her car engine, Williams was able to free the car and reversed it at a high rate of speed toward Officer Eastlund, who was in the direct path of the reversing Accord. He did not specify the distance between the vehicle and Officer Eastlund, but Sergeant Erb stated that Officer Eastlund had to run very fast to get out of the Accord's path and avoid being hit.

The car stopped, paused, and then slowly moved forward toward Sergeant Erb, who was standing near the fence and the truck on the sidewalk. Although Williams could have turned the car to the right, she instead drove forward in his direction. Sergeant Erb felt "pinned in" because the car was coming toward him while the truck was on his left and the fence was behind him. He

initially said he did not believe that he had a way to escape the oncoming car. At one point during the interview, Sergeant Erb stated that he might have been able to move out of the way of the vehicle, “based just on . . . the (slow) speed . . . of the vehicle,” but that he was not sure he was understanding the question. He then clarified he did not think he could move out of the way, that he felt “trapped,” and that he believed Williams was going to run him over.

Sergeant Erb estimated that fewer than five seconds passed from when the car reversed to when it moved forward. He stated the incident happened quickly.



FIGURE 3: PHOTOGRAPH FROM SGT. ERB'S INTERVIEW. ERB MARKED AN "X" NEAR THE ORANGE FENCE INDICATING WHERE HE WAS STANDING WHEN HE FIRED. THE LINE INDICATES THE ACCORD'S PATH OF TRAVEL WHEN IT REVERSED AND DROVE FORWARD. THE OTHER "X" INDICATES WHERE ERB PLACED OFC. EASTLUND WHEN THE CAR REVERSED AND THE LINE TO THE LEFT OF THAT "X" WAS EASTLUND'S PATH OF TRAVEL AWAY FROM THE ONCOMING CAR. (SOURCE: SFPD PHOTO UNIT)

The car was rolling forward as if it was in drive but not being accelerated. He moved to his right as he raised his pistol, which he was holding in his right hand, from a low ready position and pointed it at Williams. Initially, he aimed at Williams through the front windshield but as he moved to his right, and as the Honda drove towards him, his view of her transferred to the driver's side window.

Sergeant Erb noticed the Accord's wheels were pointed forward rather than pointed out toward the street. At that moment, Sergeant Erb stated: "I thought she was going to punch it again and if she had, then I would have got run over and I would have had nowhere to go... I was afraid for my life." In response, he fired a single shot at the driver as the Accord approached. Sergeant Erb did not fire additional shots because he believed he had hit the driver. He did not remember if he said anything before he fired.

The car continued forward and hit the truck at approximately the same spot as the first crash. After the Honda came to rest, Officer Eastlund ran up to the door, pulled Williams from the car, and began CPR. Both officers made emergency broadcasts over the radio and requested assistance and an ambulance. Throughout the incident, Sergeant Erb never heard Williams say anything.

2. OFFICER ERIC EASTLUND

Officer Eastlund stated that when he and Sergeant Erb first approached the Accord, Williams appeared to be asleep. He had unseated his pistol but did not actually draw it out of his holster as he approached. Officer Eastlund knocked on the window and stated, "Police, open up." Williams sat up but did not open the door. He thought that maybe she could not hear him, so he tried to open the door but it was locked. Williams appeared startled as she put the car into drive with her right hand, revved the engine, and sped away. Both officers yelled, "Police, stop!"

Officer Eastlund had to jump back to avoid being hit by the Accord. When the car pulled away, he reseated and secured his pistol. The car drove onto the opposite side of the street as the officers pursued on foot. The car hit the parked truck, causing a "loud, loud, loud crash."

Sergeant Erb, who was ahead of Officer Eastlund, ran onto the sidewalk toward the driver's side door. Officer Eastlund was still behind the car when he saw the reverse lights come on and saw the car accelerate rapidly toward him. He ran onto the sidewalk near the gate opening to avoid being hit. He had pulled his pistol out as he ran onto the sidewalk and was now standing uphill from Sergeant Erb.

③



EASTLUND #1318 5/19/16

FIGURE 4: PHOTO WITH NOTATIONS FROM OFFICER EASTLUND'S INTERVIEW. OFFICER EASTLUND INDICATED WHERE HE ("X") AND SERGEANT ERB ("E") WERE STANDING AFTER THE ACCORD REVERSED. THE "T" REPRESENTS THE TRUCK WITH THE ACCORD BEHIND IT. (SOURCE: SFPD PHOTO UNIT)

Officer Eastlund estimated the Honda reversed approximately two car lengths before stopping in the street. Williams then drove forward again toward the sidewalk where Sergeant Erb was standing. Sergeant Erb made an evasive action by moving “back” toward the fence.

Officer Eastlund believed Williams was attempting to hit Sergeant Erb with the car. Officer Eastlund heard one gunshot but he did not see Sergeant Erb fire his pistol because he was focused on the moving car. When the car crashed a second time into the same parked truck, he re-holstered his gun. Officer Eastlund estimated that after the second crash, Sergeant Erb was standing approximately two to three feet away from the Accord. Officer Eastlund estimated three to four seconds passed from the time Williams first collided with the truck, reversed, and then drove forward.

Officer Eastlund ran to the driver’s side door and saw Williams reaching for the gear shift with her right hand. Officer Eastlund made an emergency radio broadcast announcing that shots had been fired, opened the door through the shattered window, and put the car into park. He removed Williams’s seatbelt and pulled her from the vehicle. He saw a large amount of blood from her chest area but was unable to find the wound to apply pressure. Williams’s breathing was shallow and then stopped. He was unable to find a pulse and started CPR.

Williams did not say anything before she stopped breathing. Officer Eastlund heard Sergeant Erb behind him, speaking on the radio. Officer Eastlund also stated that he saw a person standing in the window of the nearby house, which he circled in Figure 4 above.

3. ADRIANA M.

Adriana M. was interviewed multiple times by both SFPD and SFDA investigators. On the day of the incident, she was babysitting two small children at 148 Helena Street. When she was working, she routinely looked out of the second story window above Helena Street to make sure her car was not broken into.

That morning, she looked out of the window and saw two white cars parked across the street from her house, one behind the other. One of the cars drew her attention because the backseat was overflowing with items. She saw a male, later determined to be Daniel R.,¹ in the driver’s seat leaning back.

Adriana M. soon saw a police car approach and stop next to the two white cars. Two police officers in uniform, one white and the other non-white², exited and approached the front car. Adriana M. could not see the driver of that car because the seat was fully reclined.

One of the officers knocked on the window. The driver sat up and appeared to be startled. The officers attempted to open the door but the white car sped away in a diagonal direction across the street. The officers ran alongside and eventually behind the car as it raced away from them and collided into a parked truck. The officers continued running to the car and one officer attempted to open the driver’s door.

¹ Daniel R. identified himself as Williams’s husband.

² Sergeant Erb is Asian American and Officer Erb is Caucasian.



FIGURE 5: PHOTO OF 148 HELENA STREET FROM ADRIANA M. INTERVIEW. THE CIRCLE DENOTES WHERE SHE WAS STANDING WHEN SHE FIRST NOTICED THE STOLEN VEHICLES. (SOURCE: SFPD PHOTO UNIT)

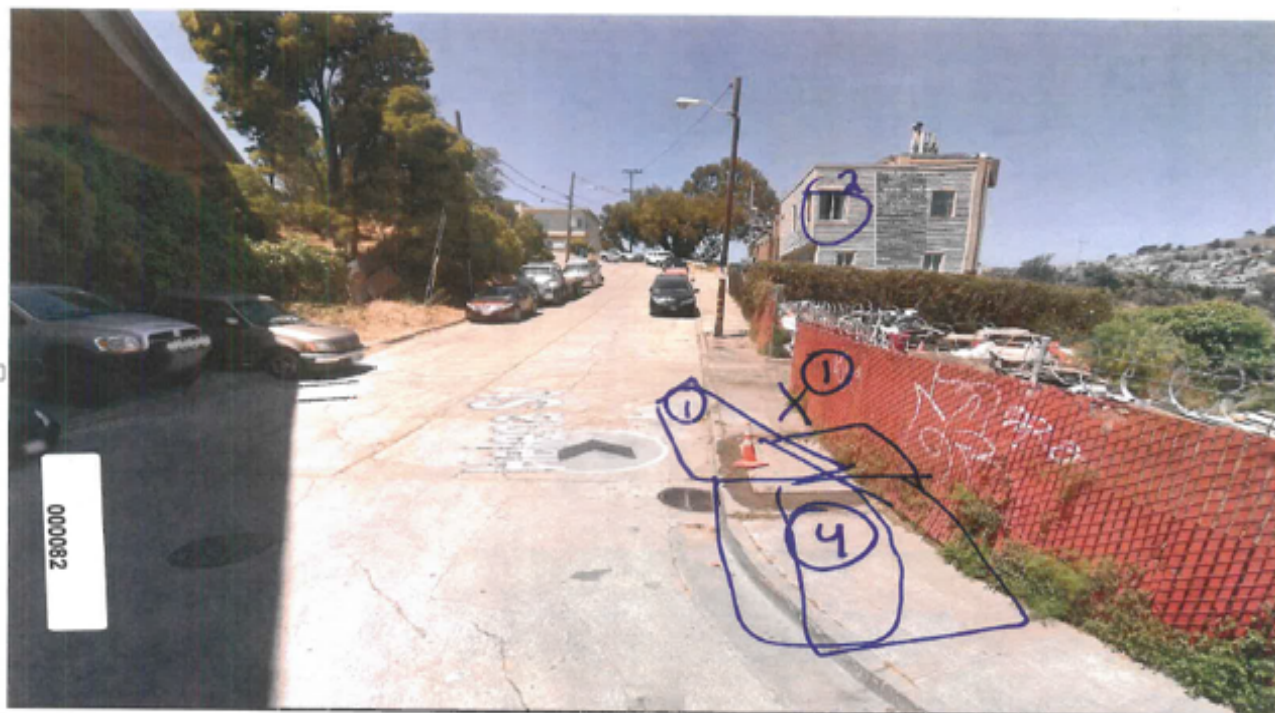


FIGURE 6: PHOTO FROM ADRIANA M. INTERVIEW INDICATING WHERE SERGEANT ERB WAS STANDING ("X") AND HER WINDOW. ("2")

Adriana M. saw the car dislodge and then rapidly reverse approximately five meters (about 16.4 feet). (She did not specify that one of the officers was behind the car when it reversed.) The car stopped, paused briefly, and started to move forward. She saw one officer point his gun toward the car.³ Believing that the officer was about to shoot, Adriana M. moved away from the window to gather the children she was babysitting and take them to the bathroom for safety. As she was moving away from the window, she heard one gunshot followed by a loud crash. After a short while, Adriana M. went back to the window and saw officers performing CPR.

Based on what she had seen, Adriana M. believed that the driver “wanted to run the cop over.”



FIGURE 7: PHOTO OF THE CRASHED HONDA ACCORD. (SOURCE: SFPD PHOTO UNIT)

IV. SFPD POST-SHOOTING RESPONSE AND INVESTIGATION

Officer Eastlund reported by radio that a shot had been fired at 9:45 a.m. In response to that call, numerous backup officers arrived. Officers Louis Hargreaves (Star No. 2321) and Stephen Coleman (Star No. 4184) were working with Sergeant Erb and Officer Eastlund on the stolen vehicle recovery operation and arrived first. They observed Sergeant Erb standing in the street behind the Honda and Officer Eastlund performing CPR on Williams, who was lying face-up on the ground next to the Honda Accord. Officer Eastlund told Officer Coleman to check on Sergeant Erb stating, “He shot.”

³ Adriana M. had difficulty differentiating between the two officers at points during the incident and often lumped them together.

Additional officers responded and secured the scene, initiated a crime scene log, and looked for witnesses. Sergeant Stephan Jonas (Star No. 79) arrived and took the Public Safety Statement from Sergeant Erb.⁴ Sergeant Erb told Sergeant Jonas he was standing near a small bush on the sidewalk when he fired.

Officer Coleman later interviewed Daniel R., the driver of the Honda Civic. Daniel R. stated he had been sleeping after being up all night and only woke up when officers knocked on the car window. Williams was in the Accord that was parked in front of him when he fell asleep but he did not see or hear any part of the incident. Shortly after completing the interview, Sergeant Kelvin Sanders (Star No. 4191) ran the Vehicle Identification number on the Honda Civic and discovered it had been reported stolen. Officers arrested Daniel R. for being in possession of a stolen vehicle and discovered a hypodermic needle containing a brown-red liquid on him.

During subsequent interviews, Daniel R. stated he and Williams were staying in a tent and had been smoking methamphetamine before the incident. At approximately 6:00 a.m. that morning, an unidentified person gave them the stolen vehicles and Daniel R. and Williams loaded their belongings into the two white Hondas. At approximately 8:00 a.m., Daniel R. parked on Helena Street directly behind Williams's Accord. During a third interview with SFDA, he briefly and vaguely hinted that he may have seen part of the incident, but then repeatedly affirmed that he was asleep and did not wake up until the officers knocked on his window after the shooting.

V. MEDICAL RESPONSE AND AUTOPSY

San Francisco Fire Department Medic Unit No. 67 responded and transported Williams to San Francisco General Hospital at 10:02 a.m. She was pronounced dead at 10:12 a.m.

Assistant Medical Examiner Harminder Narula of the Office of the Chief Medical Examiner (OCME) of San Francisco conducted the autopsy.⁵ Dr. Narula noted three injuries to Williams: a single gunshot wound to the chest, a grazing wound on the left forearm, and superficial blunt trauma on the right side of the forehead. The gunshot wound -- the cause of death -- entered her upper left chest area and travelled in a left to right and front to back direction before coming to rest in her right chest cavity.

The grazing wound on Williams's left forearm was likely caused by the bullet. An SFPD criminalist subsequently examined the black sweatshirt that Williams was wearing during the incident and chemically tested a hole on the left sleeve that corresponds to the grazing wound. The test yielded results consistent with a bullet causing the hole.

OCME conducted a toxicology test that showed that Williams's blood contained methamphetamine (1.61 mg/L), amphetamine (0.14 mg/L), and nicotine. According to Dr. Luke Rodda, the Chief Forensic Toxicologist, a methamphetamine level of 1.61 mg/L would likely be fatal to an adult who does not use the drug. The fact that a person may have been asleep with this amount of the drug suggests that Williams was a chronic user who may have been in the decline

⁴ During a Public Safety Statement, a supervisor obtains a brief statement from the officer involved in the shooting in order to determine any existing threats to public safety and to preserve evidence.

⁵ Although certain reports have indicated that Williams was pregnant when she was shot, they are incorrect. The Medical Examiner conducted a complete examination and Williams was not pregnant.

phase of a use cycle. According to Dr. Rodda, a habitual methamphetamine user in the decline phase could exhibit erratic and unpredictable behavior and aggressiveness.

VI. CRIME SCENE INVESTIGATION

The SFPD Crime Scene Investigation Unit (CSI) analyzed the scene of the shooting and found key bullet fragment and safety glass evidence. When CSI investigators arrived, they found the Accord still running with the passenger windshield area underneath the truck.⁶ The vehicle had three of its wheels on the sidewalk and the front tires were in a left-canted position. The California Highway Patrol's Multidisciplinary Accident Investigation Team (MAIT) later inspected the Accord and found its steering, braking, and transmission were fully functional.



FIGURE 8: CSI PHOTO SHOWING THE ACCORD'S TIRES CANTED SLIGHTLY LEFT. (SOURCE: CSI)

CSI also identified two key pieces of evidence. As outlined below in greater detail, this evidence allowed the experts to determine potential bullet trajectories and reconstruct the incident.

First, CSI noted a bullet defect on the inside edge of the driver's side mirror housing. Metal fragments found at the scene "had what appeared to be white paint transfer on it...consistent with the projectile striking the driver[']s side view mirror housing." CSI conducted a lead copper detection test on the mirror, which returned positive results. Copper bullet jacket fragments were recovered from the car's interior.

⁶ CSI noted "very loud ambient reverberation of the freeway noise [which] made it difficult to speak to each other from more than a few feet away from one another." CSI also noted that the wheels may have canted left upon impact.

Second, investigators also marked glass fragments consistent with vehicle safety glass on Helena Street approximately 6'6" south of the curb line. These glass fragments were consistent with safety glass found in vehicles.

CSI also recovered one spent cartridge casing in the lot inside an open gate to the right rear of where Sergeant Erb stated he was standing when he fired. CSI noted that the cartridge's location could not depict the shooter's location because the casing could bounce and roll, giving it little evidentiary value.

VII. BULLET TRAJECTORY AND SHOOTING RECONSTRUCTION ANALYSIS

Three different experts analyzed the available evidence and found that Sergeant Erb was standing to the front left of the Accord when he fired. SFDA retained two of them, Dr. Rajeev Kelkar and Lucien Haag, in order to conduct an independent review of the evidence.

1. CSI

CSI conducted bullet trajectory and shooting reconstruction analyses shortly after the incident occurred.

With respect to the bullet trajectory, CSI used trajectory rods tracking a path from the mirror through the glass blast or checking marks. CSI noted the "relatively small pathway for a bullet path between the edge of the mirror housing and the door window."



FIGURE 9: CSI BULLET TRAJECTORY PHOTO. THE YELLOW TRAJECTORY ROD MATCHES UP THE BULLET DEFECT WITH THE GLASS CHECKING ON THE DOOR. (SOURCE: CSI)

Based on the bullet trajectory, CSI was able to “indicate an area where the shooter was possibly positioned at the time of the discharge and eliminate areas where the shooter was highly unlikely to be positioned.” CSI placed Sergeant Erb to the left front of the Accord, as the diagram below indicates.

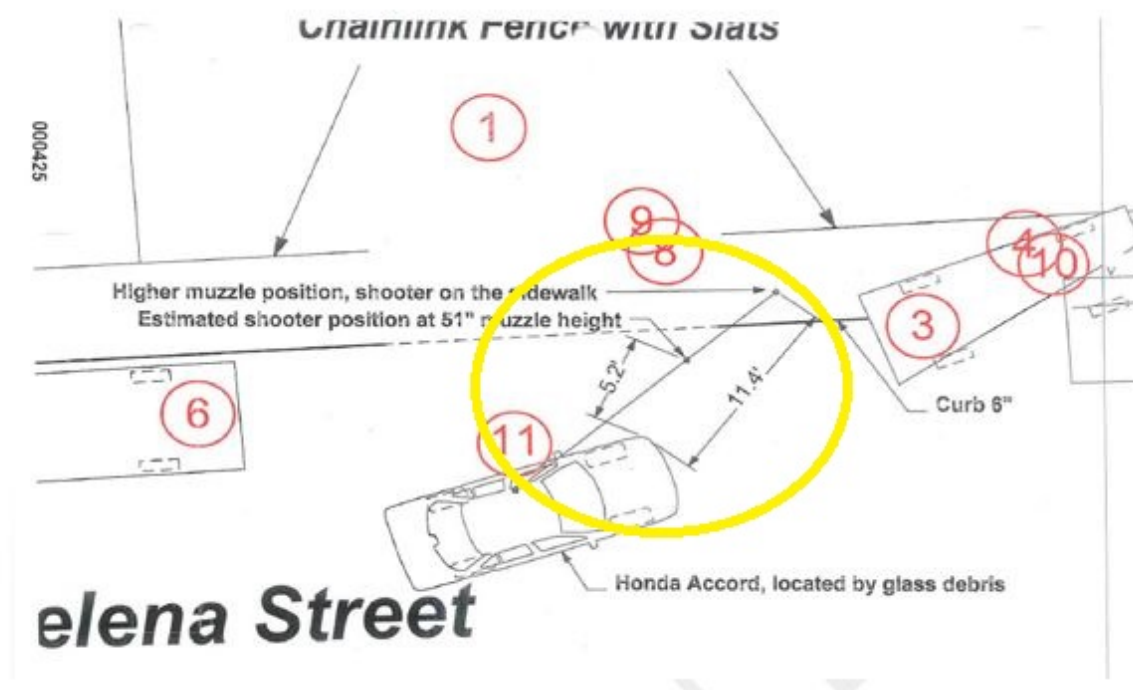


FIGURE 10: EXCERPT OF CSI DIAGRAM OF ACCIDENT RECONSTRUCTION. THE MARKERS REPRESENT THE RECOVERED SHELL CASING (1), THE HONDA ACCORD (3), COPPER METAL FRAGMENTS RECOVERED FROM INSIDE THE ACCORD (10); AND GLASS FRAGMENTS (11). (SOURCE: CSI)

The highlighted circle notes the bullet’s path. For illustrative purposes, CSI also showed how the shooter’s location, based on the muzzle’s position, could vary along the trajectory path because of the street’s slope and the sidewalk’s 6-inch elevation from the street.

2. DR. KELKAR

Dr. Kelkar is a recognized expert in accident reconstruction. SFDA retained Dr. Kelkar to evaluate the available evidence and determine (1) the Accord’s speed, time, and distance traveled during key points in time; and (2) the car’s and sergeant’s locations when the shot occurred. As noted below, Dr. Kelkar, like CSI, concluded that Sergeant Erb was standing to the front left of the Accord when he fired.

Dr. Kelkar also made a number of findings regarding various stages of the incident. First, regarding the initial crash, Dr. Kelkar concluded the Accord traveled approximately 75 feet from its parked location to where it hit the truck. Based on the car’s damage and the descriptions of how the car accelerated, Dr. Kelkar estimated that it hit the truck at approximately 20 to 25 miles per hour.

Second, Dr. Kelkar determined the vehicle's speed after it paused and then moved forward before the fatal shot. Based on the location of the safety glass fragments CSI found on the roadway and the height of the vehicle's window frame, he concluded the fragments fell to the ground over approximately 0.4 to 0.5 seconds and traveled approximately 3 to 5 feet in an eastward direction. Based on the location of the glass and the Accord's ultimate resting point, Dr. Kelkar opined that the car traveled approximately 8 to 12 feet in 2.5 seconds or less as it accelerated forward before the shot was fired. Assuming vehicle idle and based on the grade of the roadway, he estimated that the vehicle accelerated to a speed of approximately 6.9 miles per hour in those first 2.5 seconds.

Using the car's estimated speed and the location of the glass fragments, Dr. Kelkar placed Sergeant Erb on the north sidewalk of Helena Street when he fired. Dr. Kelkar's laser photogrammetry reconstruction of Sergeant Erb's relative location to the vehicle at the time the shot was fired is below.

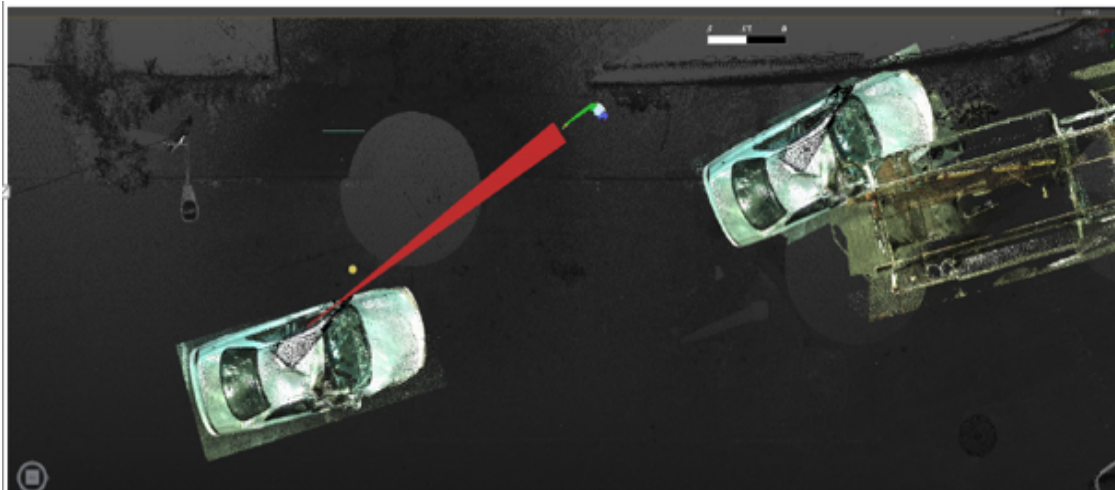


FIGURE 11: DR. KELKAR'S LASER PHOTOGRAMMETRY RECONSTRUCTION. (SOURCE: DR. KELKAR)

Third, Dr. Kelkar determined that the Accord's curb-to-curb turning radius was approximately 18.2 feet. Dr. Kelkar noted that this means Williams could have steered left directly toward Sergeant Erb or right to go around the truck and drive down Helena Street. Dr. Kelkar noted that based on the injury track, Williams was likely leaning forward and rotated clockwise near the driver's side window when she was shot.

3. LUCIEN HAAG

SFDA also retained Lucien Haag, a recognized Criminalist/Firearms expert, to conduct bullet trajectory testing and analysis in order to determine the bullet's track. Using the same model Sig Sauer that Sergeant Erb used, Haag fired into another Honda Accord of the same model year. Based on his analysis of the available evidence and his independent testing, Haag agreed with CSI and Dr. Kelkar that Sergeant Erb fired while he stood to the front left of the Accord.

According to Haag, the bullet struck the driver's side mirror while it was folded back. The bullet hit the mirror's housing and then penetrated the window at an unknown location. Because the entire window shattered, Haag was unable to identify the exact point of penetration on the

window. To identify the point of penetration, he fired test shots from the gun into two specimens of glass from an exemplar Honda Accord door with intact glass and mirror. These tests allowed Haag to conclude the bullet's impact location with the driver's side window was within an inch of the glass checking.⁷



FIGURE 12: PHOTO TAKEN ON FEBRUARY 15, 2017 OF HONDA ACCORD DRIVEN BY WILLIAMS. (SOURCE: LUCIEN HAAG)

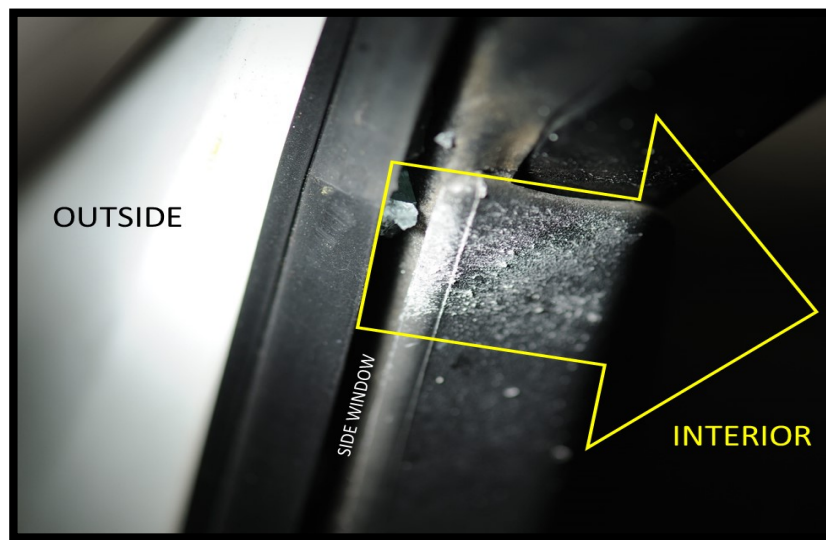


FIGURE 13: CSI PHOTO OF HONDA ACCORD SHOWING GLASS CHECKING. (SOURCE: CSI)

⁷ According to Haag, glass checking is the pitting from high velocity, energetic particles of expelled glass which depart orthogonally from the surface of flat glass immediately opposite the point of projectile impact.

The bullet marking from the mirror and the glass checking allowed Haag to determine a likely range of where Sergeant Erb was positioned when he fired. As indicated below, Haag concluded that Sergeant Erb was to the front left side of the Accord when he fired and that his gun was approximately 15 to 16.5 feet away. If Sergeant Erb's arms were extended, which results in about two additional feet, Haag's estimates would result in Sergeant Erb standing approximately 17 to 18.5 feet away from the car when he fired his gun.

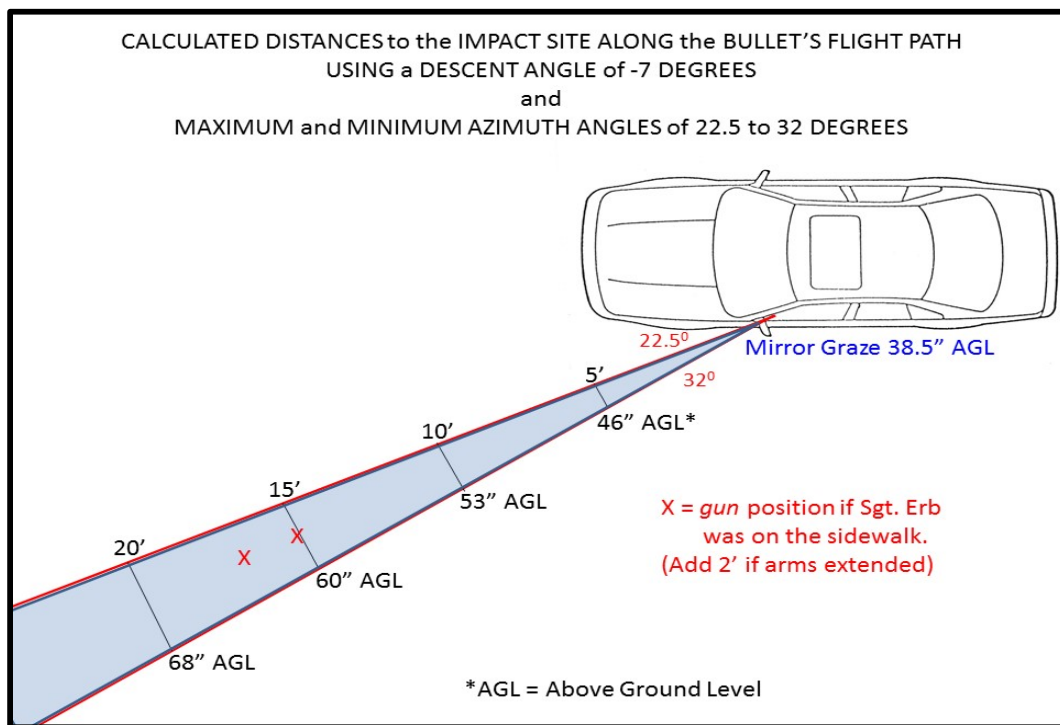


FIGURE 14: HAAG'S BULLET TRAJECTORY AND SHOT ANALYSIS WITH RED X'S DENOTING RANGE OF SERGEANT ERB'S POTENTIAL GUN POSITIONS. (SOURCE: LUCIEN HAAG)

Finally, Haag concluded Williams's left hand was likely on the steering wheel when the shot occurred based on the bullet irregularity on the left sleeve of her sweatshirt. As noted above, subsequent forensic testing conducted on the sweatshirt confirmed the presence of residues around a hole on the left sleeve that was consistent with the passage of a bullet grazing her arm prior to hitting her chest.

VIII. LEGAL STANDARD

The question presented is whether Sergeant Erb committed a criminal act in shooting Williams. Possible criminal charges against an officer involved in a fatal shooting include murder and voluntary manslaughter. In order to charge an officer with any of these crimes, the prosecutor must be satisfied that the admissible evidence will show beyond a reasonable doubt that the charged crime was committed and no legal justifications existed for the officers' actions. *See, e.g.,* CDAA Professionalism Manual. Here, the relevant legal justification offered by Sergeant Erb is that he acted in self-defense.

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 to murder and to voluntary manslaughter 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. 4th 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 the defendant 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.

Sergeant Erb had no legal duty to retreat under California self-defense law. *See, e.g., People v. Dawson* (1948) 88 Cal. App. 2d 85, 95 (no duty to retreat when danger appeared to be imminent); *People v. Rhodes* (2005) 129 Cal. App. 4th 1339, 1346 (affirming no duty to retreat in self-defense cases involving non-felons).⁸

The threat in this case stems from a car, which can clearly be used as a deadly weapon. *See People v. Finney*, 110 Cal.App.3d 705, 716 (1980); *cf. Acosta v. City & County of San Francisco* 83 F.3d 1143, 1147 fn 9 (9th Cir. 1996) (citations omitted) (“[t]here is no question that an automobile can inflict deadly force and thus under certain circumstances can constitute the type of threat that justifies an officer’s shooting the driver.”).⁹

⁸ Furthermore, under California Penal Code section 835a, a police officer has no duty to retreat and is not to be deemed an aggressor, nor does the officer lose his or her right to self-defense, when using reasonable force to make an arrest, to prevent a suspect from escaping, or to overcome a suspect’s resistance.

⁹ As previously stated, this report does not evaluate whether Sergeant Erb’s conduct complied with SFPD policy. Nevertheless, it is worth noting that although the current use-of-force policy prohibits shooting at a moving vehicle unless the driver “poses an immediate threat of death or serious bodily injury to the public or an officer by means other than the vehicle,” the relevant policy at the time permitted an officer to shoot at the operator of a moving vehicle “[i]f the operator of the moving vehicle is threatening the officer with imminent danger of death or serious bodily injury by means of the vehicle, and the officer has no reasonable and apparent way to retreat or otherwise move to a place of safety.” *Compare* SFPD General Order 5.01, Use of Force § VI.G.2.e (effective, Dec. 21, 2016), *with* SFPD General Order 5.02, Use of Firearms § I.C.5.c.2 (effective March 16, 2011 through December 20, 2016).

California law requires the prosecution to carry the legal burden to prove beyond a reasonable doubt that Sergeant Erb was *not* acting in self-defense. As explained below, that burden cannot be met here.

IX. ANALYSIS

1. The Subjective Prong

As to Sergeant Erb's subjective belief, his statement establishes that he believed that he needed to use deadly force. Sergeant Erb told investigators he feared for his life, stating "I thought I was going to get run over, based on everything that--that she had done, I thought she was gonna punch it again and if she had then I would have got run over." He also stated "She made no, uh, move to turn the wheels outward and--and leave. Um, so I believed she was coming in my direction." The investigation did not reveal evidence that undermined his stated belief that he feared for his safety and that he acted out of that fear. As a result, it cannot be established beyond a reasonable doubt that Sergeant Erb did not believe that he was in imminent danger when he fired his weapon.

Accordingly, the remaining analysis focuses on the objective reasonableness of Sergeant Erb's decision to use deadly force.

2. The Objective Prong

Because the objective analysis asks what a reasonable person standing in Sergeant Erb's shoes would have done in that position, Sergeant Erb's perceptions are the focal point. As outlined below, the available evidence demonstrates that this case is not criminally prosecutable.

All of the available evidence indicates that Williams drove extremely dangerously and was headed in Sergeant Erb's general direction when he fired. The expert evidence indicates that Sergeant Erb was within the Accord's turning radius when he fired. Even if Sergeant Erb could have somehow retreated, he had no duty to do so under California law.

a. What Sergeant Erb Saw Before The Shooting

The only three persons who saw the incident – Sergeant Erb, Officer Eastlund, and Adriana M. – provided similar accounts about the events leading up to the fatal shot. Their statements reveal a highly volatile and unpredictable situation where Williams crashed once, nearly hit Officer Eastlund, and then drove in Sergeant Erb's direction before he fired. The three witnesses said:

- When Sergeant Erb and Officer Eastlund initially approached Williams's car in full uniform, Williams refused to open the door. Instead, she sped away, almost hitting Officer Eastlund in the process.
- Williams then drove onto the opposite side of the street and crashed the car into a large pickup truck (which the investigation determined to be approximately 75 feet away). As Dr. Kelkar noted, the collision was a "major impact...substantial enough to deform the right front passenger side of the passenger compartment, and induce damage to the driver

side of the passenger compartment.” Williams had demonstrated that she posed a potential danger to herself and possibly to others.

- After the crash, Sergeant Erb and Officer Eastlund ran toward the Accord. Despite having damaged the car, Williams again refused to comply with police commands. Instead, Williams reversed the car approximately 35 to 45 feet, according to Dr. Kelkar. The officers stated that Williams almost backed into Officer Eastland while reversing.
- All three stated that the car then stopped and paused before slowly moving forward. Adriana M. stated that she turned away from the window when she saw Sergeant Erb raise his firearm. As she was moving away from the window, she heard a shot.

The officers’ and Adriana M.’s statements are largely consistent with the available physical evidence. For example, each stated that Williams drove away from the officers, crashed the car, reversed, and then moved forward. However, Adriana M.’s account differed from the officers’ statements or other evidence in two key respects: (1) she estimated that the car reversed approximately 5 meters (about 16.4 feet), and (2) she stated that she did not see Officer Eastlund behind the Accord when it reversed.

With respect to the first difference, a lay witness’s estimate of distance during a fast and chaotic incident could easily vary from the actual measurement. The window glass fragments were found approximately 25 feet from the pickup truck, rather than her estimate of 16.4 feet (5 meters). The important point is that Adriana M. saw the car reverse before moving forward, which is consistent with the general summary of the incident and the officers’ account.

As to the second difference, Adriana M.’s failure to place Officer Eastlund behind the Accord does not undermine her entire statement. There is no evidence to suggest that her accounting of the incident was the product of bias or should otherwise not be considered in the analysis. As noted above, Adriana M.’s statement largely comports with the physical evidence and corroborates the officers’ statements on several key points: she witnessed Williams drive and crash the car, reverse, and then start to roll forward prior to any gun shot.

Ultimately, the weight of the evidence demonstrates that an objective person standing in Sergeant Erb’s shoes would see an unstable and dangerous driver heading toward a police officer on foot in an exposed and potentially vulnerable position.

b. Imminence

Based on the available evidence, Sergeant Erb likely faced an imminent threat. To begin, all available accounts placed Sergeant Erb on the sidewalk with the fence behind him when or immediately before he fired. *See* Figures 3, 4, and 6 above. CSI, Haag, and Dr. Kelkar each individually determined that Sergeant Erb was at or near where all three witnesses placed him. *See* Figures 10, 11, and 13 above. All of the available, credible evidence supports this conclusion.

Second, with respect to the car’s positioning, all of the available evidence demonstrates that the Accord was headed in Sergeant Erb’s general direction. Dr. Kelkar and Haag confirmed that Sergeant Erb was standing within the oncoming vehicle’s potential path when he fired his weapon. In addition, the car’s final resting place confirms that the car was headed in his general

direction. All of the available evidence suggests Sergeant Erb faced a volatile and unpredictable situation looking uphill at an approaching car when he fired his gun at Williams.

The fact that the car was initially moving slowly in Sergeant Erb's direction does not significantly alter the analysis. *Cf. Wilkerson v. Torres* (9th Cir. 2010) 610 F.3d 546, 551-552 ("Although the vehicle was moving at a slow rate of speed...it could have gained traction at any time, resulting in a sudden acceleration of speed...[the officer's] fear for the safety of himself and others was reasonable."). A car driven by a potentially unstable driver can close a distance of approximately 25 feet extremely quickly.

Moreover, Haag and forensic testing confirmed that Williams's left hand was on the steering wheel when she was shot, which indicates that Williams had physical control of the steering wheel. The MAIT team's evaluation of the car after the incident confirmed that its mechanical functions worked, and there is no evidence suggesting the car was not able to drive in the manner that the officers or Adriana M. described. As Sergeant Erb stated, he believed that he faced an imminent harm because he feared the approaching car, which was not turning back toward the street, could speed up and kill him. As Dr. Kelkar found, the car moved forward from its probable location on the street toward Sergeant Erb in a matter of seconds.

Finally, Sergeant Erb had no legal duty to retreat under longstanding California self-defense law, as cited above. Even if he did have such a duty, there is no evidence he could have done so safely. Accordingly, questions about whether he could have run out of the oncoming Accord's path and found adequate cover do not alter the criminal legal analysis.

Ultimately, insufficient evidence exists to bring criminal charges in this matter. A potential prosecution would lack witnesses because, as detailed above, almost all of the witness statements and experts corroborate, or could be interpreted as corroborating, Sergeant Erb's claim of self-defense. California self-defense law "grants a reasonable margin within which one may err on the side of his own safety...." *Ross*, 155 Cal. App. 4th at 1057; *cf. Scott v. Heinrich* (9th Cir. 1994) 39 F.3d 912-915 ("A reasonable use of deadly force encompasses a range of conduct, and the availability of a less-intrusive alternative will not render conduct unreasonable."). The prosecution, therefore, could not prove beyond a reasonable doubt that Sergeant Erb's firing a single shot at the driver of an oncoming car falls outside of this margin.

X. CONCLUSION

For the reasons set forth above, the District Attorney declines to file criminal charges against Sergeant Erb.