

**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF VENTURA
March 6, 2012**

**REPORT ON THE FATAL SHOOTING
OF JAIME DANIEL DELGADO
BY SIMI VALLEY POLICE OFFICER JASON WILKINSON
ON NOVEMBER 13, 2010**



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INTRODUCTION

On November 13, 2010, Simi Valley Police Officer Jason Wilkinson responded to a 911 call involving a disturbance at 2611 Phipps Avenue in the city of Simi Valley. As Officer Wilkinson drove past a male pedestrian, Jaime Delgado, Delgado charged at Officer Wilkinson's police car. Officer Wilkinson swerved away from Delgado and stopped his police car a short distance from Delgado. When Officer Wilkinson exited his patrol car to contact Delgado, Delgado pulled a large knife from his waistband and ran directly at Officer Wilkinson. Officer Wilkinson then shot and killed Delgado. At the time of the shooting, Delgado had both alcohol and methamphetamine in his system, and was armed with three knives.

The District Attorney's Office has a 24-hour on-call officer-involved shooting team available to all Ventura County law enforcement agencies to assist in the investigation of officer-involved shootings. The District Attorney's review team consisted of Senior Deputy District Attorney Anthony Wold, who authored this report, and District Attorney Investigator Robert Coughlin.

The Simi Valley Police Department conducted a thorough and detailed investigation of the shooting, which included: interviewing witnesses, collecting physical evidence, photographing the area of the shooting, and conducting interviews with the involved officer as well as all responding officers. Officer Wilkinson cooperated in this investigation and provided a complete and voluntary statement regarding the shooting and the events leading up to the shooting. The Simi Valley Police Department investigation reports were then submitted to the District Attorney's Office for a determination of whether the shooting of Jaime Delgado was justified and, if not, whether criminal charges should be filed. The scope of the District Attorney's review was limited to those issues.

The District Attorney's review included: studying over 500 pages of reports, documents, interviews of police and civilian witnesses, diagrams, photographs, audio recordings, records of radio transmissions, and visits to the scene of the shooting as well as consulting and interviewing the Ventura County medical examiner.

After a complete review of all of the evidence, it is the conclusion of the District Attorney that Officer Jason Wilkinson acted lawfully and in self-defense when he shot Jaime Delgado, and Delgado's resulting death was a justifiable homicide.

STATEMENT OF FACTS

In the hours immediately preceding the shooting, Jaime Delgado, age 22, exhibited erratic and threatening behavior and armed himself with a knife. This behavior ultimately led to a 911 call for police assistance that was made at the direction of Delgado's mother. This 911 call resulted in Officer Wilkinson's response to the area where the confrontation and fatal shooting occurred. The shooting occurred at approximately 6:42 p.m. The District Attorney's review of the facts indicates the following:

Family Member Statements

At the time of his death, Delgado was living with his mother and sister at 2611 Phipps Avenue. This location is a multi-dwelling complex. Delgado had a history of drug addiction, particularly methamphetamine, of which his family was aware.

Monica Zacarias

The evening of the shooting, Delgado's sister, Monica, reported that she arrived at the family residence accompanied by her mother, Margarita, and her father, Antonio Zacarias. Monica's

mother and father eventually left and went to the father's separate residence elsewhere in Simi Valley. After her parents left the Phipps Avenue residence, Monica was home alone with Delgado. Delgado's mother and sister were familiar with Delgado's mannerisms when he was under the influence of narcotics, and Monica believed that Delgado's mannerisms on this evening were consistent with his being under the influence of narcotics.

At one point, Monica observed that Delgado had armed himself with a large knife and was walking around the residence with it. Delgado did not, however, act aggressively towards Monica with the knife and voluntarily surrendered the knife to Monica when Monica asked for it. Monica then returned the knife to a kitchen drawer. This knife was found to be missing from the kitchen drawer later that same evening after Delgado had left the residence and confronted Officer Wilkinson. The description of this missing knife was consistent with the knife Delgado was carrying when he charged Officer Wilkinson. Family members declined further police contact that might have allowed positive identification of the missing knife as the same knife recovered from Delgado.

Monica reported that after she disarmed Delgado, he became increasingly aggressive. Monica eventually became concerned for her safety and decided to telephone her mother and request that her mother return home. As Monica waited for her mother's return, Delgado began jumping in and out of the kitchen window on to a paved roadway and parking area between the dwellings. Delgado would then jump from the parking area back into the residence through the same kitchen window.

Margarita Gutierrez

Delgado's mother, Margarita, returned home after Monica called her and reported that Delgado was "high" and acting aggressively. Margarita observed Delgado running up and down between the unit buildings, yelling and insulting people and "saying crazy things." She stated that Delgado was yelling, "I am just tired, everyone looks at me bad, they took my cars, they charge me rent, this is my house." Margarita stated that Delgado did not own a home, a car, or pay rent, but that such claims were consistent with his demeanor when he was under the influence of narcotics.

Margarita was aware that Delgado's actions were startling their neighbors and she convinced him to come back inside their residence. Once inside the residence, Delgado continued to act aggressively. Margarita then told Delgado that she was going to call Delgado's probation officer. Delgado followed Margarita and took the phone away before Margarita could place the call to his probation officer. Delgado was becoming more aggressive and Margarita became frightened and wanted to call 911 for help, but Delgado prevented her from doing so. Margarita was also afraid of Delgado because of his past claims to "go out and kill anyone who says anything to me." Delgado refused to allow his mother to call 911 so she instead called Monica's father, Antonio Zacarias. Margarita asked Antonio to call 911 on her behalf, which he did. Antonio's call to 911 resulted in Officer Wilkinson being dispatched to 2611 Phipps Avenue for an unknown disturbance. Antonio was not at Delgado's residence when he called 911, so Antonio could not provide specific details regarding the exact nature of the disturbance. While Margarita was on the phone with Antonio asking him to call 911, Delgado left the residence on foot. Moments later, Margarita heard gunshots in the area.

Antonio Zacarias

Antonio Zacarias was interviewed and stated that shortly after he and Margarita arrived at his residence, his daughter Monica called and asked Margarita to return home because of concerns over Delgado's behavior. A short while later, Margarita called Antonio from her residence and asked Antonio to call 911 on her behalf. Antonio reported that Margarita sounded nervous and frightened, and that she sounded "too scared" for Antonio to not call 911. Antonio reported that because he was not at the Phipps Avenue residence with Margarita at the time he called 911, he could not provide specific information to the 911 dispatcher. Dispatch records and transcripts indicate that prolonged discussions occurred between Antonio, who did not speak English, and the 911 dispatcher (who utilized a translator) to ascertain the location of the disturbance and the involved parties. While these communication difficulties did not delay the police response to the call for help, they did leave gaps regarding the exact nature of the emergency and the physical description of Delgado.

Neighbor Statements¹

Neighbor L.T. lived near Delgado's residence on Phipps Avenue. She stated that at around 6:00 p.m. on November 13, 2010, (the evening of the shooting) she heard a nearby resident screaming and swearing "really, really wildly" while he was jumping in and out of a window. She identified Delgado's residence as the scene of this activity. Her physical description of the disturbing party and his clothing was consistent with Delgado. Her observations of the male subject jumping in and out of the window were also consistent with the observations of Delgado's sister, Monica, who reported that Delgado was jumping in and out of their residence through the kitchen window.

¹ Witnesses who lived in close proximity to Delgado's residence are referred to by their initials to protect their privacy.

Neighbor S.O. lived near Delgado's residence on Phipps Avenue. On November 13, 2010, she was outside her residence when she observed a Hispanic male walking back and forth who was yelling in Spanish and appeared upset. She observed the male climb out of the window of Delgado's residence and pace the parking lot. The male's actions caused her to become concerned for her safety and she walked back inside her residence. Her observations were consistent with the observations of Delgado's mother, Margarita, and Delgado's sister, Monica.

Neighbor M.B. lived on the same street as Delgado. He reported he was on the sidewalk in front of his residence when he saw a police car drive by. He said an unknown male subject, whom he did not recognize, yelled, "Get out of my house" at the police car as it drove past the male subject. M.B. reported that he just assumed the male subject was "on something." The subject appeared to drop an unknown object which he bent over to pick up. The subject continued walking out of sight around a corner.

Additional Witness Statements

The shooting occurred approximately two hours after sunset. Street lights at the intersection of Sycamore Drive and Heywood Street provided ambient light that illuminated the scene of the shooting.

Joseph Gibbs

Joseph Gibbs was driving northbound on Sycamore Drive and came to a stop at the red light at the intersection of Sycamore Drive and Heywood Street. His driver side window was down. Gibbs saw a marked police car drive east to west through the intersection on Heywood. Gibbs watched the police car drive through the intersection. As he watched, Gibbs noticed a male subject (later identified as Delgado) standing on the south side of Heywood just west of the

intersection. The male subject was in the street. Gibbs reported Delgado appeared as if he was trying to “flag” the officer down as Delgado walked towards the police car as it crossed the intersection. Delgado’s hands appeared to be inside the pockets of either a sweatshirt or his pants. As Delgado came closer to the police car, he “lunged” at the police car.

Gibbs then saw the police car abruptly swerve to the right towards the north curb of Heywood Street. Gibbs observed the police car continue westbound for a brief distance and then turn southbound and stop, effectively blocking the eastbound lane of Heywood Street. The officer then exited his police car and drew his gun, which he pointed at Delgado. Gibbs estimated the distance between the officer and Delgado at approximately fifteen to twenty feet at this point. Gibbs distinctly heard the officer shout at Delgado to get on the ground in a very clear voice. After the officer gave the verbal command, Delgado “shuffled his feet” and “hopped.” Delgado looked around “like he was real nervous” and like he was going to possibly run.

Delgado did not comply with the officer’s command and started walking toward the officer in a “hurried” manner. Gibbs did not believe that Delgado sprinted at the officer but stated Delgado walked “very quickly” at a solid pace at the officer. Gibbs could not see whether Delgado had a weapon or whether his hands were still inside his pockets. At this point, the red light facing Gibbs turned green and Gibbs drove through the intersection and looked away from the scene to focus on his driving. After passing through the intersection, he heard four shots. Gibbs could no longer see the officer or Delgado at the time he heard the shots because he had now passed the intersection.

Joseph Santacruz

Joseph Santacruz was driving northbound on Sycamore Drive approaching the intersection of Sycamore Drive and Heywood Street. As he stopped for a red light at the intersection, he saw a marked police car drive westbound on Heywood Street through the intersection. Santacruz observed a male subject (later identified as Delgado) wearing dark clothing proceed from the south curb of Heywood Street northbound across the street and towards the police car. Delgado was jumping, pounding his chest, pointing toward Sycamore Drive (the direction of Delgado's residence) and acting in an aggressive manner. Santacruz did not hear if Delgado said anything. As Delgado continued moving towards the police car, the car made a quick swerve. Santacruz perceived this movement as the police car swerving to avoid striking Delgado, who was rushing towards the police car. After swerving away from Delgado, the police car continued driving westbound on Heywood Street before turning left, into what Santacruz believed to be a driveway. Santacruz estimated the distance between the police car and Delgado to be approximately ten to twenty yards. At this point, the traffic signal turned green and Santacruz began driving northbound through the intersection. As he did so, he looked to his left and saw a light, which he believed was the officer's flashlight, pointing eastbound towards Sycamore Drive. (Officer Wilkinson's weapon was equipped with a mounted, grip-activated flashlight under the barrel.) A short time later, Santacruz heard three "pops" but could not see anything since he was no longer in the intersection.

Howard Noble

Howard Noble and his nine-year-old son, Tristen, were driving southbound on Sycamore Drive approaching Heywood Street. Noble slowed for the red light and observed a marked police unit (Officer Wilkinson) drive through the intersection on Heywood Street. While Noble was stopped for the red light facing Heywood Street, the light turned green. Noble heard a "boom" and began

turning right onto Heywood. Noble then observed an officer standing over a subject (Delgado) who was lying in a fetal position on the street. Noble surmised that Delgado had already been shot once. Noble stopped his vehicle and continued to observe the scene. Officer Wilkinson was holding his weapon directly out in front of himself with the weapon pointed at Delgado. Noble reported Delgado was on the ground, with Delgado's feet facing Noble and Delgado's head pointed towards Wilkinson. Noble then heard three consecutive gunshots and observed the muzzle flash from the officer's handgun. From his vantage point, Noble estimated the officer was five to six feet away from Delgado at the time the officer fired the three shots at Delgado while Delgado was lying on the ground. Noble said he was positive that Delgado was on the ground when shot and said "he might have shot him in the back." Noble indicated the last three shots were fired in quick succession. Noble estimated approximately ten seconds passed between the first gunshot and the second gunshot.

Tristan Noble

Tristen Noble was seated in the backseat of his father's vehicle. He heard a gunshot. His father turned the vehicle and Tristen saw the officer pointing a gun at Delgado on the ground. The officer fired his handgun about four times and then moved around Delgado as if checking Delgado for movement.

Statement of Officer Jason Wilkinson

On November 13, 2010, Officer Wilkinson was on duty in a one-person patrol unit. At approximately 6:42 p.m., Officer Wilkinson was dispatched to a call at 2611 Phipps Avenue. The specific circumstances of the call were unclear to Officer Wilkinson, but he believed the call involved either a domestic disturbance or a disturbing subject at that location. As Officer Wilkinson arrived in the general area, he was not provided a description of the disturbing subject

or information regarding who was involved. Officer Wilkinson sought a description from the dispatcher and was advised that they were still attempting to gather that information. As Officer Wilkinson entered the area of the call, he travelled from northbound Sycamore Drive to eastbound Heywood Street. As he turned right onto Heywood Street, Officer Wilkinson saw a male subject wearing a gray sweatshirt walking at a brisk pace, westbound, on the sidewalk. Although the male subject was sweating and appeared agitated and uneasy at the sight of Officer Wilkinson, since Officer Wilkinson did not have a description of the disturbing party he continued driving on his way to 2611 Phipps Avenue. At the time, Officer Wilkinson felt the subject's demeanor was consistent with someone under the influence of narcotics. Once he arrived at the location, Officer Wilkinson did not observe any disturbance. He then suspected that the male subject he had just passed might be involved in the disturbance call and turned around and re-traced his driving route.

When Officer Wilkinson reached the intersection of Heywood Street and Sycamore Drive, he stopped for a red light. Officer Wilkinson observed the subject on the other side of the intersection walking westbound on Heywood Street. As the traffic light turned from red to green, Wilkinson saw the subject look back towards the police car as Wilkinson drove through the intersection. The subject then raised his hands up in a manner that suggested to Officer Wilkinson that the subject was attempting to flag down Officer Wilkinson. At this point, the subject was on the left hand side of Wilkinson, facing the driver's side of Officer Wilkinson's patrol car. As Officer Wilkinson neared the subject, the subject suddenly charged directly towards Officer Wilkinson's open window while Wilkinson was still seated inside his marked patrol car. Officer Wilkinson estimated the subject came within six inches of the driver's side door. Not knowing the subject's intentions, Wilkinson swerved his vehicle to the right, away from the subject, and accelerated to create distance from the subject. Officer Wilkinson drove a

short distance and turned his patrol vehicle to the left, stopped, and exited his vehicle. Wilkinson's patrol car was now diagonally blocking the eastbound lane of Heywood Street. Officer Wilkinson exited his vehicle and stood approximately two feet outside his driver door. The subject, later identified as Delgado, was in the street approximately 25 to 30 feet away from Officer Wilkinson and turned to face Officer Wilkinson. The area was illuminated by nearby street lights.

Officer Wilkinson observed Delgado reach into his waistband, look around quickly, and then use his right hand to pull a large knife from his waistband as Delgado started running towards Officer Wilkinson. As Delgado charged Officer Wilkinson, Delgado raised the knife to chest level with the blade pointing down. Officer Wilkinson believed that Delgado intended to raise the knife higher in order to stab Wilkinson. Wilkinson drew his firearm and pointed it at Delgado. Delgado did not make any statements and Officer Wilkinson did not recall giving any commands. Delgado continued running at Officer Wilkinson with the knife and came within approximately 15 feet of Officer Wilkinson when Wilkinson fired a single round at Delgado because Wilkinson believed Delgado was going to kill him. After Wilkinson fired the first shot, Delgado continued to charge at Wilkinson with the knife and Wilkinson did not see any body movements that suggested Delgado had been struck by the first round. In fear for his life, Officer Wilkinson fired an additional three rounds in quick succession. Delgado fell to the ground after the last shot was fired. Officer Wilkinson estimated that Delgado came within 12 feet of Wilkinson's position before Delgado fell, still clutching the knife, with his head facing Officer Wilkinson. Wilkinson then changed his position from just outside his driver-side door to the rear area of his vehicle where he called for help. While he continued to hold Delgado at gunpoint, Officer Wilkinson observed the handle of a second knife protruding from Delgado's left side, near his buttocks. (A third knife was later recovered from Delgado's body.) When additional

officers arrived to assist Officer Wilkinson, Wilkinson holstered his firearm. Paramedics soon arrived and began treating Delgado. Officer Wilkinson did not recognize Delgado as anyone he had previously encountered.

Other Information

Delgado claimed membership in the Oxnard criminal street gang, Colonia Chiques, and had a history of criminal offenses, mental instability, and volatility. Delgado had 53 prior contacts with law enforcement, with convictions for carrying a concealed dirk or dagger, resisting/delaying a peace officer, petty theft, assault with a deadly weapon, public intoxication, vandalism, and robbery.

Delgado was known to carry knives and to physically resist police attempts to detain or arrest him. For instance, Delgado was contacted during an investigation surrounding a gang fight at Rancho Simi Park in October 2007. Delgado was searched and an ice pick, screw driver, and large folding knife were recovered from his left front pants pocket. During his subsequent arrest, Delgado repeatedly threatened to kill Simi Valley Police officers and their families. The threats continued throughout police officers' attempts to obtain medical treatment for Delgado for injuries he sustained in the gang fight. While he was being treated at the hospital, Delgado also assaulted a doctor who was rendering Delgado medical aid.

At the time of his death, Delgado was on felony probation for second degree robbery and was being supervised by the Intensive Supervision Unit of the Ventura County Probation Agency. In a probation report and sentencing recommendation prepared in connection with the defendant's robbery conviction, the report's author noted "[t]he defendant has a lengthy criminal record, which is only increasing quickly and is of great concern." On June 21, 2010, Delgado was

sentenced to 270 days in jail and was placed on 36 months of formal probation. He was in custody from March 29, 2010, through October 8, 2010. He was seen several times by a psychiatric nurse and psychiatrist during his custody stay after complaining of anxiety and was prescribed medication. Delgado was released from jail on October 8, 2010, approximately one month prior to the shooting. When the Probation Agency assumed supervision of Delgado after his release from custody, Delgado told his probation officer that he was hearing voices and that the voices always made him mad. The probation officer believed that Delgado was mentally unstable and urged Delgado's family to seek assistance for Delgado from Behavioral Health by providing referral and contact information.

On November 3, 2010, just 10 days before Delgado's attack on Officer Wilkinson, Delgado's probation officer and her partner contacted Delgado at his residence in Simi Valley. During the probation contact, Delgado rocked back and forth on his bed and was very shaky. When he was asked questions, Delgado was at times non-responsive or provided nonsensical responses. He said that the day prior, he heard voices that told him to kill himself. Delgado claimed to have an upcoming appointment with Behavioral Health scheduled for November 19, 2010. The probation officer described Delgado as a "ticking time bomb" and feared that Delgado would jump off the bed and attack her and her partner. To avoid any escalation, the probation officer and her partner terminated the supervision contact and left the residence. Ten days later, Delgado attacked Officer Wilkinson.

PHYSICAL EVIDENCE

Delgado was wearing a gray zippered jacket with a hood, a black and gray patterned shirt, a white undershirt, dark colored sweat pants, and black tennis shoes. He was initially found lying on his right side with his head towards Officer Wilkinson's police car and his feet towards the

intersection of Heywood Street and Sycamore Drive. Delgado's right arm was under his torso and his left arm was resting on his torso. A knife was found under Delgado's body. The handle of the knife was close to Delgado's right hand and the blade was pointing towards his legs. This knife was later measured and found to have a nine-inch blade with a five-inch handle.

As the first knife was removed by a responding officer, officers noticed a bulge underneath Delgado's shirt. An officer lifted the shirt and pulled another knife from the waistband of Delgado's pants. The second knife was later measured and found to have an 8-inch blade with a 5-inch handle.

Delgado was turned onto his stomach and handcuffed. Emergency personnel then rolled him over onto his back to treat him. He was pronounced dead shortly thereafter by fire personnel. A third knife was found inside the left front pocket of Delgado's pants by a medical examiner at the scene. This knife was described as a standard steak knife. The blade of the steak knife was pointing towards the opening of the pocket with the handle at the bottom of the pocket.

Officer Wilkinson's uniform was forensically analyzed for the presence of blood splatter. Officer Wilkinson's trousers contained a blood spatter on the right front hip. Examination of the fiber indicated that the sample was liquid upon impact with the fabric and was not a transfer stain. The large size of this drop indicated that it could have travelled a distance of well over six feet and might have been caused by impact or cast-off from a blood source.



Autopsy of Jaime Delgado

On November 14, 2010, Dr. Ronald O'Halloran, Medical Examiner of Ventura County, conducted an autopsy on Jaime Delgado. Dr. O'Halloran concluded that the cause of Delgado's death was multiple gunshot wounds.

The examination of Delgado's body showed that he suffered four gunshot wounds: two gunshots to the head, a gunshot to the right mid-back, and a gunshot to the left forearm that passed through the forearm and reentered the left hip. All four gunshot wounds were classified as "distant range." Dr. O'Halloran was unable to determine the sequence in which each bullet struck Delgado's body.

Samples of Delgado's blood and urine were taken at the autopsy and sent to the Ventura County Sheriff's Department Crime Laboratory. The samples were tested for the presence of controlled substances and alcohol. Delgado's blood was positive for alcohol and contained low levels of methamphetamine. Delgado's blood alcohol concentration was .15 percent, nearly twice the legal limit permitted to operate a motor vehicle. Delgado's urine contained an alcohol concentration of .14 percent.

As part of the autopsy, Dr. O'Halloran examined the location where each bullet entered Delgado's body and determined the path and direction of travel of each bullet after it entered Delgado's body. Dr. O'Halloran determined that one bullet entered the left frontal scalp, on the top of the head, and travelled from front to back and downward at an angle of approximately 20 degrees. Another bullet entered the upper-right forehead, two inches above the right eyebrow, and travelled from front to back. Another bullet passed through the bottom of the left forearm, and reentered the left hip at the beltline and travelled from left to right in the lower torso. Another bullet entered the right upper, mid-back, 16 ½ inches below the top of the head, and travelled from back to front and left to right at a slight downward angle. Dr. O'Halloran concluded that the entry point and direction of travel of each bullet after it entered Delgado's body was inconsistent with a scenario where Delgado was shot three times in rapid succession while lying on the ground by a stationary, upright shooter.

LEGAL PRINCIPLES

Homicide is the killing of one human being by another, either lawfully or unlawfully. Homicide includes murder and manslaughter, which are unlawful, and the acts of excusable and justifiable homicide, which are lawful.

The shooting of another person in self-defense or in the defense of others is justifiable and not unlawful. The law of self-defense and defense of others was codified in 1872 and has remained substantially unchanged ever since. It is found in Penal Code sections 197 through 199. It requires that the user of deadly force honestly believe that he or someone else is in imminent and deadly peril, and that a reasonable person in the same circumstances would believe the same and would deem it necessary to use deadly force in order to protect against such peril.

Under California law, anyone, including a police officer, who is threatened with an attack that justifies the use of self-defense, need not retreat. The person attacked may stand his ground and defend himself, if necessary, by deadly force, even if he might have more easily gained safety by flight. See *People v. Newcomer* (1897) 118 Cal. 263, 273; *People v. Dawson* (1948) 88 Cal.App.2d 85, 95.

A police officer may use deadly force where the circumstances create a reasonable fear of death or serious bodily injury in the mind of the officer. *Graham v. Conner* (1989) 490 U.S. 386; *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334.

ANALYSIS

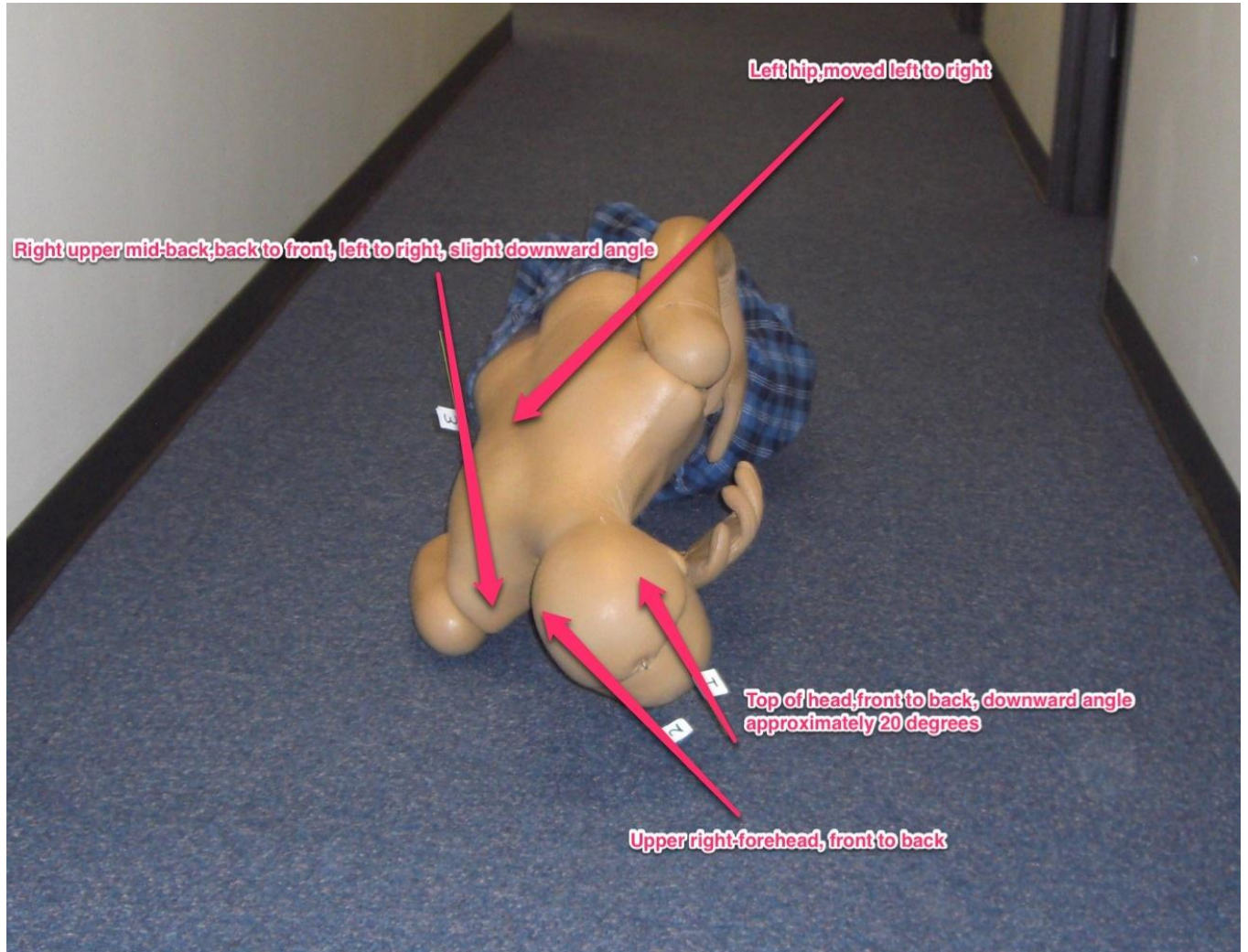
The first issue to be addressed is whether or not Officer Wilkinson reasonably believed that he was in imminent danger of great bodily injury or death from Jaime Delgado as Delgado ran directly at Wilkinson while armed with a knife. If Officer Wilkinson had such a state of mind at the moment he shot Delgado, his use of deadly force was justified under the law.

In this case, Officer Wilkinson was confronted by an armed suspect who charged at Wilkinson with a large knife without provocation from a very short distance. Officer Wilkinson reasonably

feared for his life given Delgado's charge directly at him while Delgado was armed with a large knife. Officer Wilkinson had precious little time to react when he found himself trapped between his police car (which was immediately behind him) and an armed, charging suspect. When Officer Wilkinson saw Delgado running directly at him with a large knife in a stabbing position, Wilkinson was convinced that his life was in danger because Delgado ran directly at Wilkinson, rather than away, or even around, Officer Wilkinson. Officer Wilkinson was alone, and given the short distance between himself and Delgado, he fired his weapon in self-defense to save his life. It is clear that Delgado, whose aggressive, erratic, and volatile behavior towards his mother and sister had brought Wilkinson to the area in the first place, had decided to attack Officer Wilkinson. Officer Wilkinson was in full uniform and in a marked police car. It must have been apparent to Delgado (as it was to the witnesses in the nearby intersection) that Wilkinson was a police officer.

The additional issue to be addressed is whether after firing the first round from his weapon, Officer Wilkinson fired the additional three rounds while Delgado was lying motionless on the ground in front of Officer Wilkinson. The physical evidence does not support this scenario. The entry point, direction of travel, and angle of travel of each bullet after entering Delgado's body render this scenario implausible. Howard Noble alleged that Officer Wilkinson, while standing stationary in front of Delgado, shot Delgado three times in quick succession while Delgado was lying motionless in a fetal position on the ground. This witness's description of the scene placed Delgado's feet as facing the witness while Delgado's head was pointing towards Officer Wilkinson when these three shots were fired.

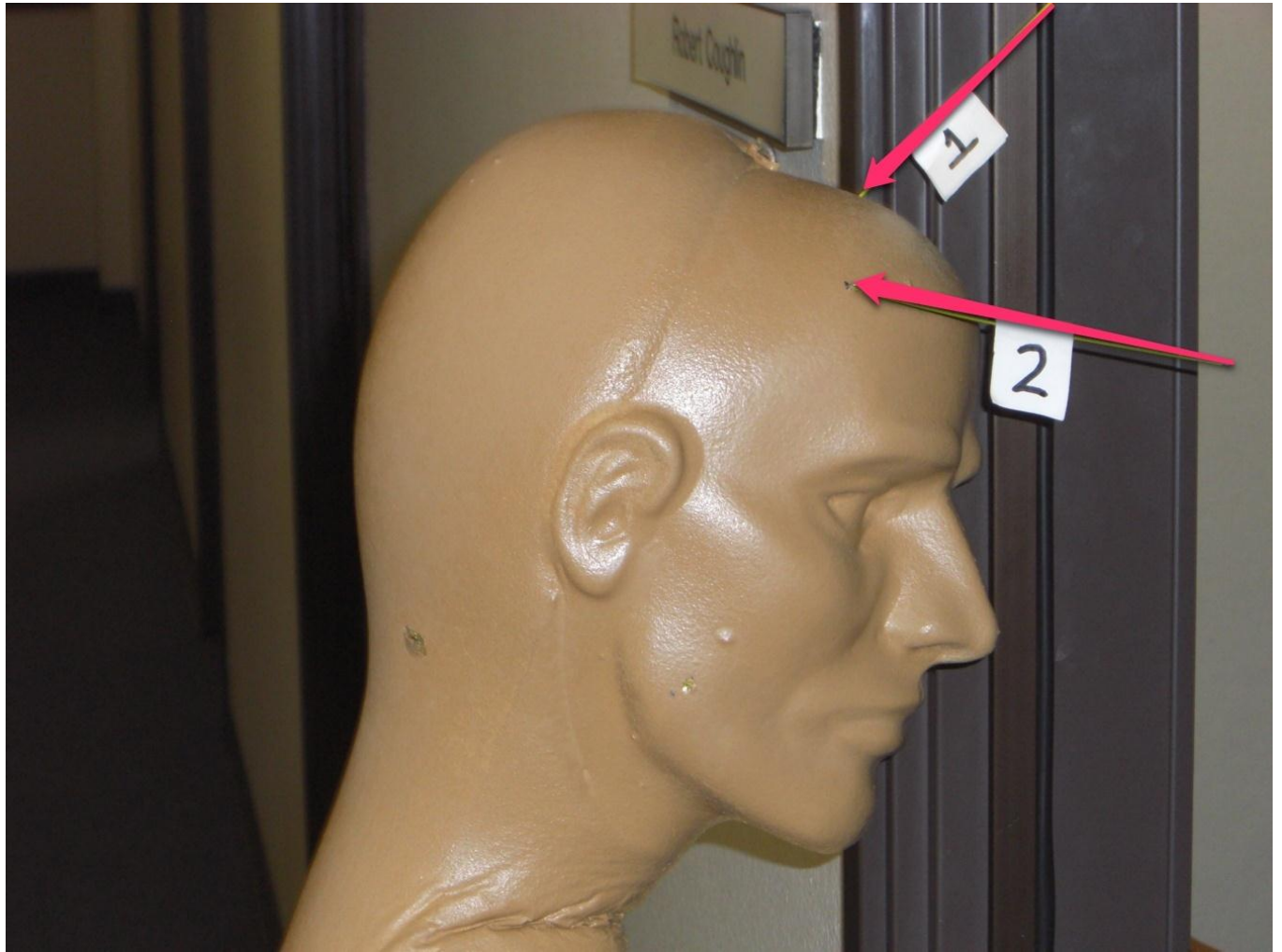
Officer Wilkinson fired four rounds, each of which struck Delgado. None of the bullet wounds are consistent with being fired in quick succession from a stationary position, above and in front of a prone body. (See Photograph “A.”)



Photograph “A.” (Arrows show directional path of each bullet, not entry points)

One bullet entered Delgado’s right, upper mid-back, and travelled at a slight downward angle from back to front, left to right. The location of the entry wound and angle of travel is inconsistent with being fired from above and in front of a prone body while in a stationary position. Another bullet passed through Delgado’s lower left forearm, and entered his left hip,

and travelled horizontally from left to right through the lower abdomen. The location of the entry wound and angle of travel is inconsistent with being fired from above and in front of a prone body while in a stationary position. Another bullet entered the upper-right forehead, two inches above the center of the right eyebrow. The bullet appeared to travel horizontally. The location of the entry wound and angle of travel is also inconsistent with being fired from above and in front of a prone body while in a stationary position. The only theoretical possibility for this shot being fired from above and in front of a prone body would be if Delgado was raising his head from the ground while looking upwards in the direction of Officer Wilkenson. Another bullet entered the top of the left side of Delgado's skull, two inches behind his hairline. The bullet travelled from front to back and at a downward angle of approximately 20 degrees. The location of the entry wound and angle of travel is also inconsistent with being fired from above and in front of a prone body while in a stationary position. The only theoretical possibility for this shot being fired from above and in front of a prone body would be if Delgado was raising his head from the ground while looking upwards in the direction of Officer Wilkenson. However, the divergent angles of travel for each bullet after entering the head are inconsistent with an upright, stationary shooter firing into a prone, motionless body. (See Photograph "B.")



Photograph “B.” (The model is standing upright for illustration purposes but would be facing downward in this context.)

In addition, regardless of the direction of each bullet’s travel after entering Delgado’s body, the varying entry points of each bullet alone is inconsistent with any three shots being fired in any sequence into a prone body from a stationary shooter in front of the body. One bullet entered the left hip. Another bullet entered the right, upper back. Another bullet entered the upper right forehead. Another bullet entered the top of the left side of the head. From a stationary, upright position five to six feet in front of a prone Delgado, no combination of any three of the four shots

fired in quick succession would result in such a divergent shot pattern across Delgado's body. Assuming that Delgado lay motionless in a fetal position as any three of the four shots were fired, Officer Wilkinson would need to move after each shot was fired to account for the divergent entry points of each bullet on Delgado's body. Mr. Noble, however, reported that Officer Wilkinson fired the last three rounds in quick succession from a stationary position as Delgado lay motionless on the ground. The location of each bullet's entry wound and its subsequent travel path is inconsistent with this account. Instead, the movement of Delgado's body as he charged a stationary Officer Wilkinson best explains the diverse entry points and directions of travel for each bullet that entered Delgado's body. It is reasonable to conclude that as Delgado was shot repeatedly as he moved towards Wilkinson that his body twisted and turned, which accounts for the divergent location and direction of travel of each bullet wound. Delgado was moving towards the officer as he was shot, Wilkinson was not.

Delgado had recently been released from jail and was on felony probation. He may have been fearful of the consequences of returning to jail (or prison) since his possession of concealed weapons and use of methamphetamine violated the terms of his felony probation. Based on the statements Delgado made to his probation officer just ten days before the shooting about hearing voices that told him to kill himself, it appears that Delgado was mentally unbalanced, suicidal, and intended to kill or be killed by Officer Wilkinson. Delgado left his residence while his mother was on the phone asking that a 911 call be placed on her behalf. It is reasonable to assume that when Delgado left the residence he knew the police would be arriving soon. This assumption is further supported by witness M.B., who reported Delgado yelled words to the effect of "get out of my house" as Wilkinson's police car first passed Delgado as he walked a short distance from Delgado's residence. This assumption is also supported by Mr. Gibbs' observation that Delgado was pointing back towards Sycamore (in the direction of his residence)

as he first accosted Officer Wilkinson in his patrol car just west of the intersection of Heywood Street and Sycamore Drive. Taken together, these actions strongly suggest that Delgado assumed Wilkinson was in the area responding to the 911 call and that Delgado wanted Wilkinson to contact him for purposes of creating an altercation. Witnesses Gibbs and Santacruz both corroborate Officer Wilkinson's statement that he was charged by Delgado seconds before Wilkinson opened fire. Regardless of whether Delgado intended to cause his own death or that of Officer Wilkinson, Delgado attacked Wilkinson while under the influence of methamphetamine and alcohol and presented an immediate, lethal threat to Officer Wilkinson's life.

In the hours before his death, Delgado exhibited bizarre and aggressive behavior that included arming himself with a knife in the presence of his sister. This erratic behavior towards his family members ultimately resulted in the 911 call for help that brought Officer Wilkinson into contact with Delgado. Officer Wilkinson reasonably believed that he was likely to suffer great bodily injury or death and was therefore justified in shooting Delgado to protect himself.

CONCLUSION

It is the conclusion of the District Attorney that Officer Jason Wilkinson acted reasonably under the circumstances and his use of deadly force was within the limits of the law. At the time he fired his weapon at Jaime Delgado, Officer Wilkinson honestly and reasonably believed that he was in imminent threat of death or great bodily injury. For that reason, the District Attorney concludes that the killing of Jaime Delgado was a justifiable homicide.