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February 1st, 2023

**MEMORANDUM FOR RECORD:** Review of the Officer Involved Shooting (**OIS**) by San Antonio Police Department (**SAPD**) Officer Stephen Ramos #954, resulting in the death of Andre Hernandez, SAPD # 2022-108176; June 3<sup>rd</sup>, 2022.

**1. Standard of Review:** The District Attorney’s Office reviews all officer-involved shootings for presentation to a Grand Jury and to determine whether there is sufficient, admissible evidence to prove a criminal offense under state law. To successfully prosecute any case in court, our office must prove every element of a charge beyond a reasonable doubt and overcome all potential defenses and/or justifications also at a beyond a reasonable doubt standard. Our decisions, based on standards of Texas criminal law do not address or limit administrative action by the employing law enforcement agency where tactical or procedural issues may be reviewed. Neither does our decision address or limit other civil actions or federal criminal action, where other laws, rules and/or lower levels of proof may apply.

**2. Summary of facts:** When quotation marks (“...”) are used in this document, the language within is taken directly from evidence contained in the investigative file and/or judicial proceedings. The source for these quotes are witness statements (oral or written), and or sworn testimony if available; oral statements which are captured on either audio or video recordings (public or private). This memorandum contains both Body Worn Camera (BWC) and Mobile Video Recording / “COBAN” video clips which are each timestamped and reflect Bexar County local time. Events as described below happened both sequentially and simultaneously.

**a. Background of events leading up to the OIS.**

**(1)** Officers in the South Sub-station of SAPD began receiving reports of random gunfire, and other disturbances from the residents of the Indian Creek community between May 10<sup>th</sup> and June 3<sup>rd</sup> 2022. Those reports increased in frequency between June 1<sup>st</sup> and June 3<sup>rd</sup>, where residents specifically complained of “...shots being fired, loud music being played during the early morning hours, and people driving or standing in front of private residences with firearms in plain view.”<sup>1</sup> The residents provided descriptions and pictures of some of the vehicles and occupants that they had

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<sup>1</sup> See SAPD Case #22/117641 Supplement - 30 Report, Ofc Chamness dated June 3<sup>rd</sup>, 2022.

observed and taken with their own cell phones to officers of the SAFFE Unit. The South Sub-Station responded to these requests by providing increased patrols and officer presence to this community.

(2) On June 3<sup>rd</sup>, 2022 San Antonio 911 received three calls from residents witnessing and hearing shots fired between 1:02 am and 1:14 am. The first call was received at 1:02 am [Audio Files\1st 911 Call\\_030102Jun22.wav](#), the second call at 1:09 am [Audio Files\2ndCall\\_030109Jun22.wav](#), and the last call at 1:14 am [Audio Files\3rdCall\\_030112Jun22.wav](#). Once the information from these calls was assessed, Officers' Ramos (call sign 6341T), Espinoza (call sign 6361T) were initially assigned to the calls collectively, and Officer Claire (call sign 6351T) was assigned as their back-up.<sup>2</sup>

**b. Officer Claire.** Officer Claire is assigned to this call at 1:18am<sup>3</sup>. At 1:20am the dashcam video from his patrol unit shows him in the vicinity of War Horse Drive and Big Creek Drive, see [Video Clips\Ofc Claire DashCamara P2.wmv](#). Officer Claire turns left onto War Horse Drive, and the dash cam video shows vehicle headlights at a distance. Officer Claire slows his speed to observe and the video shows two vehicles move to the left behind the headlights. At 1:21:03am Officer Claire reports "...there are three cars blocking the roadway here on War Horse...and they're all taking off now."<sup>4</sup> Officer Claire continues to observe the headlights facing him (uses his floodlight), and finally pursues the vehicles that left at 1:22am. At 1:23am he turns left onto War Cloud Street, and he comes to a stop behind Officer Espinoza's unit and assess in the detaining the front passenger of a red vehicle that has collided with Officer Espinoza's unit.

**c. Officer Espinoza.** Officer Espinoza was assigned to the call at 1:18 am<sup>5</sup> along with Officer Ramos. His prior experience working in this district made him aware "...that there have been multiple complaints from concerned citizen's saying people have been shooting in the area. The shot's heard are usually near War Horse Drive where a young female teen was shot and recently killed. Our Sergeant's had also advised us today saying SAFFE officer were requesting patrol drive-by's due to the increased number of shots being fired or heard in the area."<sup>6</sup> He and Officer Ramos initially responded to the vicinity of Old Sky Harbor due to the first 911 call. At 1:13:52 dispatch informs him that a caller "...heard 6 gun shots..." and both he and Officer Ramos are diverted to that call, with Officer Espinoza following Officer Ramos' patrol unit. Officer Espinoza breaks away from Ramos at 1:21am when Officer Claire reports seeing the group of cars on War Horse. See [Video Clips\Ofc Espinoza DashCam P2.wmv](#).

(1) At 1:21:45am, Ofc Espinoza is able to identify two sets of tail lights turning north onto Tesoro Hills and he pursues them to the War Cloud Street where one of the two vehicles turns left. As Officer Espinoza pursues the fleeing vehicle, both vehicles are met by the flashing lights of Officer Ramos' patrol vehicle at 1:22:17am. The two police units - both with flashing lights – have the vehicle, a red Toyota, boxed in.

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<sup>2</sup> See Incident Detail Report # SAPD-2022-0707921, generated 6/3/2022, 13:51:28.

<sup>3</sup> Supra.

<sup>4</sup> See Officer Claire's Body Worn Camera Video, at 1:21:03am.

<sup>5</sup> See Incident Detail Report # SAPD-2022-0707921, generated 6/3/2022, 13:51:28.

<sup>6</sup> Officer Espinoza's written statement, given to Det. Dorsey #2113 on 06/03/2022 at 3:28am.

(2) The red Toyota backs away from Officer Ramos patrol unit, towards the front end of Officer Espinoza's patrol unit, veering off to the driver's side a few feet from his front bumper. At 1:22:31am the dash camera shows the front end of his unit move as the red Toyota strikes the driver's side door, while Officer Ramos dismounts from his unit, while drawing his service weapon.

(3) Simultaneous with dash camera video from his patrol unit, Officer Espinoza's BWC footage captures Officer Claire's report of the vehicles on War Horse, and their movement towards Creek Bend at 1:21:25am. Once he identifies the vehicles, he buckles his seatbelt and reports the vehicle movement on Tesoro Hills at 1:21:50am. At 1:22:14am, he follows the vehicle left/westbound onto War Cloud Street, and the video captures the glare of the emergency lights of Officer Ramos' patrol unit at 1:22:18am, and Officer Ramos' warning "...don't let him ram you!". Officer Espinoza stops his vehicle, opens his driver's side door, positions his left-leg on the door stop, while commanding "...let me see your hands!" At 1:22:31 he quickly pulls his left leg back inside the patrol unit, as the driver's door slams shut. See: [Video Clips\Ofc Espinoza BWC\\_P3.wmv](#).

**d. Officer Ramos.** Officer Ramos was initially assigned to the first 911 call vicinity of Emerald Point and Boston Harbor.<sup>7</sup> When assigned by the dispatcher both he and Officer Espinoza were parked at Old Pearsall and S.W. Military and he "... heard the shots going off from where I was parked."<sup>8</sup> While enroute to that initial assignment, the second and third 911 calls were received, which led Officer Ramos to request of dispatch "... can you show us all re-locating to that War Horse address?... that sounds like where it's coming from..."<sup>9</sup> at 1:17:40am.

(1) Officer Ramos had also been "...briefed about multiple vehicles driving through the Indian Creek area, firing shots over the past several days....since a 13 year old girl was shot."<sup>10</sup> At 1:20:27am, Officer Ramos reacts to Officer Claire's notification of the vehicles fleeing from War Horse, and types instructions to Officer Espinoza "...to go a different route to the area because the people...usually take off when the police arrive."<sup>11</sup>

(2) At 1:21:45am, he monitors Officer Espinoza say over the radio that "...he was taking a left on Tesoro Hills because he had eyes on the vehicles involved"<sup>12</sup>. As a result Officer Ramos decided "... I was going to take a back route to the area so I could attempt to apprehend any of these vehicles that left the area where shots were being fired. I was driving eastbound on War Cloud when I saw a vehicle approaching me at a high rate of speed going westbound. I activated my emergency lights to alert the vehicle approaching that I was a police officer. The vehicle pulled to the side as if he was going to go around me, but the vehicle couldn't because of a parked car on the side of the road. I saw another vehicle behind that vehicle. I realized that the second

<sup>7</sup> See Incident Detail Report # SAPD-2022-0707921, generated 6/3/2022, 13:51:28, and Officer Ramos' written statement given to Detective Hines #2358, 6/3/22 at 5:00am.

<sup>8</sup> See Officer Ramos' written statement given to Detective Hines #2358, 6/3/22 at 5:00am.

<sup>9</sup> See Officer Ramos' Body Worn Camera Video, at 1:17:am

<sup>10</sup> See Ramos' written statement.

<sup>11</sup> Supra.

<sup>12</sup> Supra.

vehicle was a patrol car when the overhead lights were activated. The initial vehicle backed away from me in an effort to evade, and Officer Espinoza pulled up to assist me with stopping the vehicle.<sup>13</sup> See [Video Clips/Ramos Dash Cam Video\\_P4a.wmv](#):

(A) At 1:20:54am Ramos is traveling eastbound on War Cloud Street. He makes a “U-turn” at 1:21:31am to drive westbound, and a second “U-turn” at 1:21:59am to assist Officer Espinoza in detaining the vehicle that he is pursuing.

(B) As Ramos completes the “U-turn” on-coming headlights are clearly visible at 1:22:11am, and he activates the flashing lights on his patrol unit to signal the approaching vehicle to stop. Instead of stopping the on-coming vehicle attempts to evade Officer Ramos by passing on the driver side of his unit, but escape is blocked by a parked vehicle.



Figure 1- The Red Toyota attempts to evade Ramos.



Figure 2-Red Toyota blocked by Espinoza and Ramos patrol units.

(C) The Toyota starts to back away from Officer Ramos’ patrol unit into the path of Officer Espinoza’s on-coming patrol unit. Espinoza also “lights-up” the Toyota at 1:22:21am. In an attempt to evade Espinoza’s patrol unit, the driver of the red Toyota veers to the driver’s side of Espinoza’s patrol unit and comes to a complete stop with its rear wheels on the sidewalk at 1:22:27am.

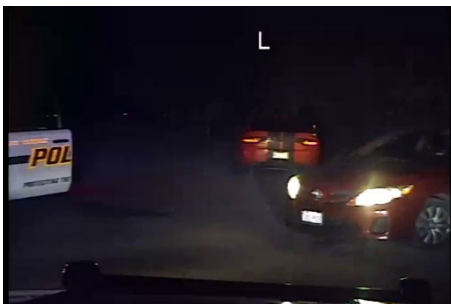


Figure 3- Door to Espinoza's unit opens

(D) Once the Toyota stops, the driver’s side door of Espinoza’s patrol unit opens. At 1:22:29am the red Toyota moves forward towards Officer Espinoza’s patrol unit in an apparent effort to continue to evade detention. The

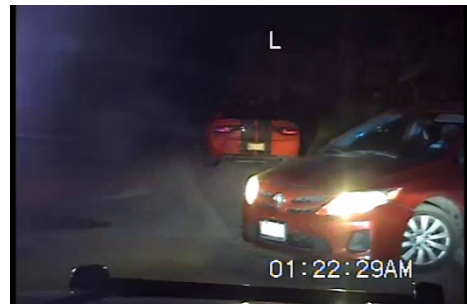


Figure 4- Red Toyota moves towards Espinoza's unit

left front end of the Toyota strikes the driver’s door of Espinoza’s vehicle, causing the door to slam shut as seen in Espinoza’s BWC footage above.

(E) Officer Ramos continued to drive his patrol unit eastbound on War Cloud to close the distance on the red Toyota. He has visibility on both Officer Espinoza’s

<sup>13</sup> Supra.

unit and the red Toyota. Although his BWC was obscured by the steering wheel and dashboard of the patrol unit, he: “...saw Officer Espinoza getting out of his vehicle. As Officer Espinoza was getting out of the vehicle, I saw the vehicle accelerated directly towards Officer Espinoza. I believed that Officer Espinoza was standing at the driver’s side door of his patrol car when the driver accelerated towards him. At this time, I believed the driver of the vehicle was using his vehicle as a deadly weapon to attempt to kill Officer Espinoza. I fired one shot at the driver of the vehicle to stop the threat to Officer Espinoza.”<sup>14</sup>

(F) Officer Ramos sees the red Toyota backing away from his unit at 1:22:25 am



Figure 5- Ofc Ramos draws his weapon

and calls out to Officer Espinoza “...don’t let him ram you!” He closes the distance on the red Toyota, and brings his unit to a stop at 1:22:29am as the red Toyota begins to



Figure 6- Ofc Ramos fires at the red Toyota

advance towards Officer Espinoza’s open door. Ramos simultaneously puts his unit in park and opens his driver’s door to dismount at 1:22:31am. The red Toyota is moving as Ramos exits, draws his weapon, aims his weapon and fires one round at 1:22:33am.

(3) At 1:22:40am Officer Ramos notifies dispatch of “shots fired!” while the driver gets out of the car, and steps towards Officer Ramos, then falls to ground saying “...I’m shot sir ...”. Ramos immediately begins to check the driver for wounds and injuries, running to his patrol unit for his medical kit and begins to administer life support. In the background, Officers Espinoza and Claire detain the other two passengers in the car. At 1:25:57am Officer Ramos notifies dispatch that “I have one juvenile male shot, one entry wound, no exit wound, has a good response.” As the police presence increases, Ramos is removed from the activity and segregated at 1:29:45am, and he shuts his BWC off at 1:31:45am.

e. **SAPD Investigation.** Detective Randall Hines of SAPD Homicide was assigned as the lead investigator. Detective Hines was assisted by Detective’s Thornton, Soto and Dorsey. Additionally, the undersigned Assistant District Attorney met with Detective Hines at the crime scene, received a briefing and observed the red Toyota get separated from Officer Espinoza’s patrol unit for transport to the SAPD storage facility. Paramedics arrive at 1:36 am and transport the driver of the red Toyota to medical care at 1:38am. The driver was identified as “AH” with a date of birth 10/20/2008. AH was pronounced deceased at 3:52am.

(1) Upon notification, Detective Hines went to the crime scene and assumed control from Detectives Thornton and Soto. Evidence technicians were collecting evidence to

<sup>14</sup> Supra.

include processing the red Toyota with TXLP DX1P537 which was *still running with the gearshift in drive*<sup>15</sup>. He observed that the red Toyota had rammed SAPD Patrol Unit 776420S (the serial number of the unit operated by Officer Espinoza). He further observed *“the suspect vehicle was wedged into the patrol vehicle in a manner that indicated a hard collision. There was damage to both doors on the driver’s side of the patrol vehicle. The suspect vehicle had a large amount of front-end damage that was evenly distributed across the front of the vehicle.”*<sup>16</sup> When complete he returned to the homicide office to take a written statement from Officer. Ramos. Initial results of the investigation determined that the red Toyota had been reported as stolen on May 22<sup>nd</sup>, 2022.<sup>17</sup>

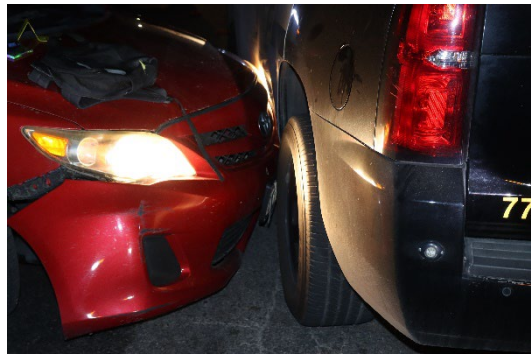


Figure 7- Crime Scene Photo of the Vehicles

(2) Evidence technicians downloaded the COBAN video from all patrol units involved in this incident, documented, and collected the evidence from the crime scene and the person of Officer Ramos and his service weapon was seized for inspection and examination with the 40mm shell casing collected from the scene. Subsequent investigation that night documented a collection of nine 9MM F.C. Luger shell casings on the street in the vicinity of 4900 War Horse which is adjacent to the intersection of Big Creek and War Horse.<sup>18</sup> Additional officers went door to door of the residences on War Cloud to determine if private security cameras’ had video of the incident, but none was found<sup>19</sup>.

(3) The occupants of the red Toyota were juveniles “JL” (8/21/2005) who was recovered from the rear driver’s seat and “MH” (10/10/2006) who was in the front passenger seat. Neither was competent to give a statement to police that night. JL was interviewed on June 8<sup>th</sup>, and confirmed that *“ ... we {occupants of the Toyota} ... knew the car was stolen ... we was at a memorial {vicinity of Big Creek and War Horse}, where people were shooting, AH told everyone you need to leave because the police are coming ... and they all took off and AH was the last one to pull out ... and that’s when he saw the police car coming up the street and AH took off, and the police started chasing him, ... he was trying to escape ... he did T-Bone the officer’s vehicle but the officer didn’t come out of his vehicle, he stopped in front of AH, and the other officer in the other vehicle came out and shot AH in the side ... ”*<sup>20</sup> MH was released to the custody of an a responsible adult and has refused to give a statement to police.

<sup>15</sup> See SAPD Report # SAPD22117641 - Supplement -28 Report, Det. Bonilla #2206, Jun 3, 2022.

<sup>16</sup> See SAPD Report #SAPD22117641 -Investigations Supplement -1 Report, Det. Hines #2358, Jul 15, 2022.

<sup>17</sup> See SAPD Offense/Incident Report #22/108176. Also see SAPD Offense/Incident Report #22/108513 – Deadly Conduct Firearm May 22<sup>nd</sup>, 2022176

<sup>18</sup> See Report #SAPD22117641 – Supplement 24 Report, Det. Herrera #23292, June 3<sup>rd</sup> 2022.

<sup>19</sup> See Det. Hines report, Page 12.

<sup>20</sup> See JL’s recorded interview with Detective Hines, June 8<sup>th</sup>, 2022.

(4) Residents of the Indian Creek Community had communicated with SAPD SAFE between June 1<sup>st</sup> and 3<sup>rd</sup> about multiple vehicles speeding through the neighborhood during the early morning hours, shooting firearms and discharging rounds. The residents also sent SAFE Officers of one of the vehicles. This information had been relayed to Officers Claire, Espinoza and Ramos before they began their duty shift at 5:00pm on June 2<sup>nd</sup>.<sup>21</sup>



Figure 8 - Picture Sent to SAPD on June 1st, 2022

(5) The Bexar County Medical Examiner performed an autopsy was performed on AH on the morning of June 4<sup>th</sup> which concluded that AH died because of a gunshot wound of the torso and deemed the manner of death to be a Homicide.<sup>22</sup> A projectile was recovered during the autopsy and submitted to the Bexar County Crime Laboratory on June 6<sup>th</sup>. Analysis confirmed that the projectile had been fired by Officer Ramos' service weapon.<sup>23</sup>

(6) The investigation was completed, and the case file submitted to the Civil Rights Division of the District Attorney's Office on September 17, 2022. AH's family was initially viewed BWC and COBAN video at Public Safety Headquarters on June 14<sup>th</sup>, 2022, and again in detail with their advisors at the District Attorney's office on December 21<sup>st</sup>, 2022.

### 3. District Attorney Actions.

The file was received by the District Attorney and the Civil Rights Division in October 2022. The file along with all accompanying photos, videos and reports were reviewed and evaluated in accordance with applicable Texas Law to determine whether or not a crime was committed.

#### Applicable Law.

##### a. Texas Penal Code.

(1) **Chapter 9 Justification Excluding Criminal Responsibility** chapter 9 of the code and all of its subchapters and sections provide the statutory basis to examine and assess an actor's use of force and deadly force to determine whether criminal charges – for any use of force – are viable. § 9.02 **Justification as a Defense** specifically states “**It is a defense to prosecution that the conduct in question is justified under this chapter.**”

(2) § 9.22 **Necessity**; conduct is **justified** if the actor reasonably believes the conduct is immediately necessary to avoid imminent harm.

(3) § 9.31 **Self-Defense** a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

<sup>21</sup> See Ofc Chamness' Report supra and see Report SAPD #SAPD22117641 – Supplement - 19 Report, Ofc Claire #0573, June 3<sup>rd</sup>, 2022

<sup>22</sup> See Bexar County Medical Examiner's Office Autopsy Report, Case No. 2022-1492.

<sup>23</sup> See Bexar County Criminal Investigation Laboratory Firearms Report, CIL Case # 22-03149, dated October 19<sup>th</sup>, 2022.

(4) **§ 9.32 (a) (2) Deadly Force in Defense of Person** the use of deadly force is justified where the actor(s) reasonably believe that deadly force is immediately necessary to protect the actor(s) against another person's use or attempted use of unlawful deadly force.

(5) **§ 9.33 Defense of Third Person** the use of deadly force against another to protect a third person if:

(A) ... under the circumstances as the actor **reasonably believes them to be**, the actor would be justified under §§'s 9.31 and 9.32 in using deadly force to protect themselves against the unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(B) The actor reasonably believes that his intervention is immediately necessary to protect the third person.

(6) **§ 9.51 (c) Arrest and Search**; A peace officer is justified in using deadly force against another when and to the degree the officer reasonably believes that deadly force is immediately necessary to make or assist in making an arrest or search or prevent escape after arrest if;

(A) The peace officer reasonably believes the arrest is ... made under a warrant which the officer reasonably believes is valid; and

(B) The peace officer reasonably believes the conduct for which arrest is authorized included the use or attempted use of a deadly weapon.

(C) The peace officer reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(D) There is no duty to retreat before using deadly force justified by section (c).

(7) **§ 19.02 (b) Murder**. A person commits murder if he intentionally or knowingly causes the death of an individual or with the intent to cause serious bodily injury, commits an act clearly dangerous to human life that causes the death of an individual.

(8) In addition to the statutory law above, Texas case law has expanded the body of legal justifications to address situations where an actor's reasonable belief is proven factually wrong<sup>24</sup> referred to as the doctrine of "**Apparent Danger**". The Texas Pattern Jury Charge for Apparent Danger instructs jurors.

(A) When a person is attacked with unlawful deadly force, **or he reasonably believes he is under attack or attempted attack** with unlawful deadly force...

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<sup>24</sup> See *Valentine v. State*, 587 S.W. 2<sup>nd</sup> 399, Tex. Court Crim. App, Sep 19, 1979.



**(B)** ...and there is created in the mind of such person a **reasonable expectation or fear** of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, **viewed from his standpoint at the time** to protect himself from such attack or attempted attack...

**(C)** ...it is not necessary that there be an actual attack or attempted attack, as a **person has a right to defend his life from apparent danger as fully and to the same extent as he would, had the danger been real**, provided he acted upon a reasonable apprehension of danger...

**(D)** ...as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

**(E)** ...if you (the jury) have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under the circumstances, **then you should give the defendant the benefit of that doubt and say by your verdict "not guilty"**.

#### **b. Application of Law to Facts and Results of the Investigation.**

**(1)** Applying the above law to the facts and the investigative results means that our analysis must consider sections 9.22, 9.33 and 9.51(c). The facts clearly establish that SAPD officers Claire, Espinoza and Ramos were appropriately dispatched to the Indian Creek Community on the early morning of June 3<sup>rd</sup>, 2022. San Antonio 911 was contacted by community residents three times between 1:03 and 1:14am, each for complaints for shots being fired on residential streets; in addition Officer Ramos personally heard the shots from his starting position outside of the Indian Creek community. In addition, Officer Ramos' prior knowledge led him to request reassignment to the two calls on War Horse, when he found nothing in the vicinity of Boston Harbor. The officers then took separate paths to respond to the calls on War Horse and made specific tactical decisions to detain the vehicles identified by Officer Claire. Officer Ramos was able to monitor Espinoza's pursuit on War Cloud making several U-Turns to enable the detention.

**(2)** Once the vehicle had been identified; Officer Ramos turned on his flashing lights to clearly indicate to the driver to stop his vehicle. Instead, the driver attempted to evade Ramos' unit, but was blocked by existing traffic. In reaction to Ramos' clearly marked police unit, its flashing lights and existing traffic, the driver's response was to drive in reverse in the direction of another oncoming police vehicle only to finally evade it by backing onto the sidewalk, as both patrol units closed the distance to affect a legal detention and arrest for the felony offense of evading in a motor vehicle. It is important to



*Figure 7- Damage to Ofc Espinoza's Unit*

remember that while Officer Ramos' BWC is obscured by the steering wheel and dashboard of his patrol unit, he is able to see both Espinoza's patrol unit and the red Toyota. Thus he was able to see Espinoza's door open, and the red Toyota accelerate towards that open door of the patrol unit. Thus, it was reasonable for Officer Ramos to believe that Officer Espinoza was standing outside of his vehicle and was therefore being threatened with deadly force by the red Toyota as it accelerated towards him. These facts led Officer Ramos to believe that Officer Espinoza was being threatened with deadly force<sup>25</sup>. Thus he used deadly force to prevent unjustified harm to Officer Espinoza in accordance with §9.22 of the Penal Code. The same facts and analysis also apply for § 9.33 which justifies Ramos' use of deadly force in the defense of Officer Espinoza, in that the facts – of which Ramos had direct and personal knowledge and articulated in his written statement – that Officer Ramos had a reasonable belief, that his use of deadly force was immediately necessary to protect Officer Espinoza from the driver's use of unlawful deadly force.

(3) Officer's Claire, Espinoza and Ramos were dispatched to the Indian Creek Community within 10 minutes of shots being fired within that residential community. In response to that call, the officers encountered a vehicle that attempted to evade the officer's attempts to detain them and investigate the felony offense of deadly conduct by shooting a firearm or firearms at or in the direction of private residences, and or vehicles which were occupied in accordance with the first 911 call. Thus, the officers had probable cause to arrest the driver of the red Toyota for the felony offense of evading vehicle. The officers also had reasonable suspicion to detain the occupants of the red Toyota, to investigate the felony offense of deadly conduct. The driver's conduct in attempting to evade the officer's lawful attempt to effect that arrest by evading in a vehicle, and then threatening Officer Espinoza with deadly force by driving a motor vehicle at him, established the predicate for Officer Ramos' reasonable belief that his use of deadly force was immediately necessary to make the arrest, and to prevent escape from arrest under the provisions of §9.51 (c).

(4) It is clear from the video that Officer Espinoza unbuckled his seat belt, opened the driver's door and began to get out of his vehicle. Seeing the red Toyota moving towards him, he pulled his left leg back before his door slammed shut. This fact does not negate or minimize the reasonableness of Officer Ramos' belief or the robustness of the statutory defenses available to him, because the legal standard requires a jury to assess the reasonableness of that belief. In addition to this statutory language of the defenses discussed above, it is expected that under these facts any jury would receive instruction on apparent danger wherein they are instructed that *you shall give the defendant the benefit of the doubt and say by your verdict not guilty.*


(5) Finally, it is also a fact that AH the driver of the red Toyota was a minor aged 13 on June 3<sup>rd</sup>, 2022. While this fact is a tragedy; it was not known by Officer Ramos at the time, nor does it mitigate the threat to Officer Espinoza.

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<sup>25</sup> See Ofc Ramos written statement, supra.

c. The above facts, statements of law and analysis were presented to the Bexar County Grand Jury on February 16th, 2023, and after deliberation, it declined to return a true bill of indictment. Although AH died at the hand of a member of Law Enforcement, that fact alone does not mean that an officer committed a crime. “Any officer’s engagement with a person who presents a legitimate danger to himself, or others contributes to the ultimate outcome of that interaction, but if the officer’s actions are appropriate and in accordance with their agencies’ policy and applicable law, he or she is not presumed to have committed a crime, even if the eventual outcome is undesired.”<sup>26</sup>”

Submitted by:

  
DARYL E. HARRIS  
Chief, Civil Rights Division

Approved by:

  
JOE D. GONZALES  
District Attorney

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<sup>26</sup> Report of the Tucson Sentinel Event Review Board (SERB) on the Deaths in custody of Mr. Damien Alvarado and Mr. Carlos Adrian Ingram-Lopez, Sep 18, 2020