

**Officer Involved Shooting of Kenneth Ross  
Gardena Police Department**

**Officer Michael Robbins, #80862**

**J.S.I.D. File #18-0135**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**May 28, 2019**

**MEMORANDUM**

TO: POLICE CHIEF THOMAS KANG  
Gardena Police Department  
1718 West 162<sup>nd</sup> Street  
Gardena, California 90247

CAPTAIN KENT WEGENER  
Los Angeles County Sheriff's Department  
Homicide Bureau  
1 Cupania Circle  
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Kenneth Ross  
J.S.I.D. File #18-0135  
G.P.D. File #18-2008  
L.A.S.D. File #018-00027-3199-013

DATE: May 28, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 11, 2018, fatal shooting of Kenneth Ross by Gardena Police Department (GPD) Officer Michael Robbins. It is our conclusion that Officer Robbins acted in lawful self-defense and in an effort to arrest a dangerous fleeing felon.

The District Attorney's Command Center was notified of the shooting on April 11, 2018, at approximately 4:45 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene, and interviewed civilian witnesses.

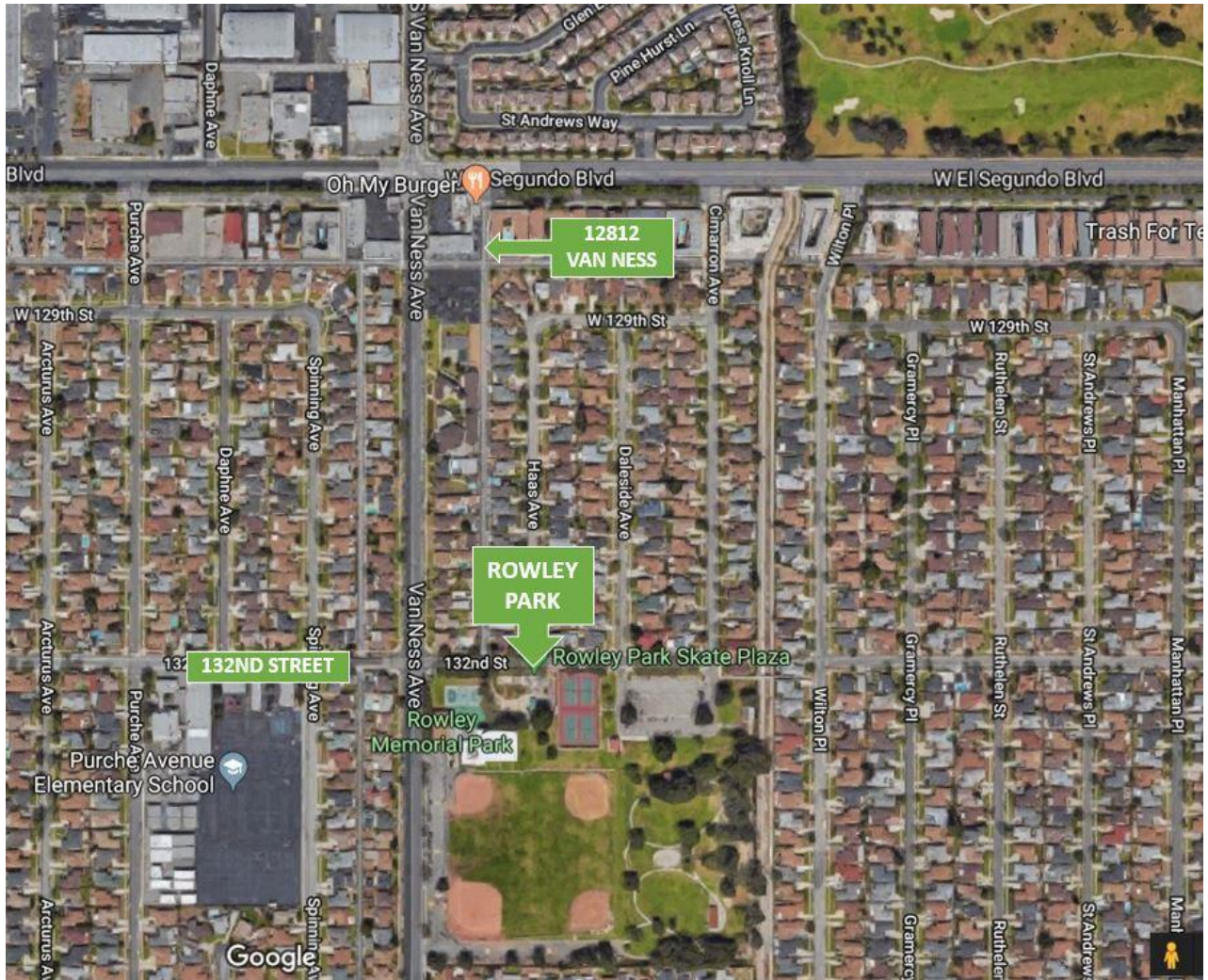
The following analysis is based on reports submitted to this office by Detectives Frederick Morse and Mike Davis, Los Angeles County Sheriff's Department, Homicide Bureau. Officer Robbins provided a voluntary statement which was considered as part of this analysis.

**FACTUAL ANALYSIS**

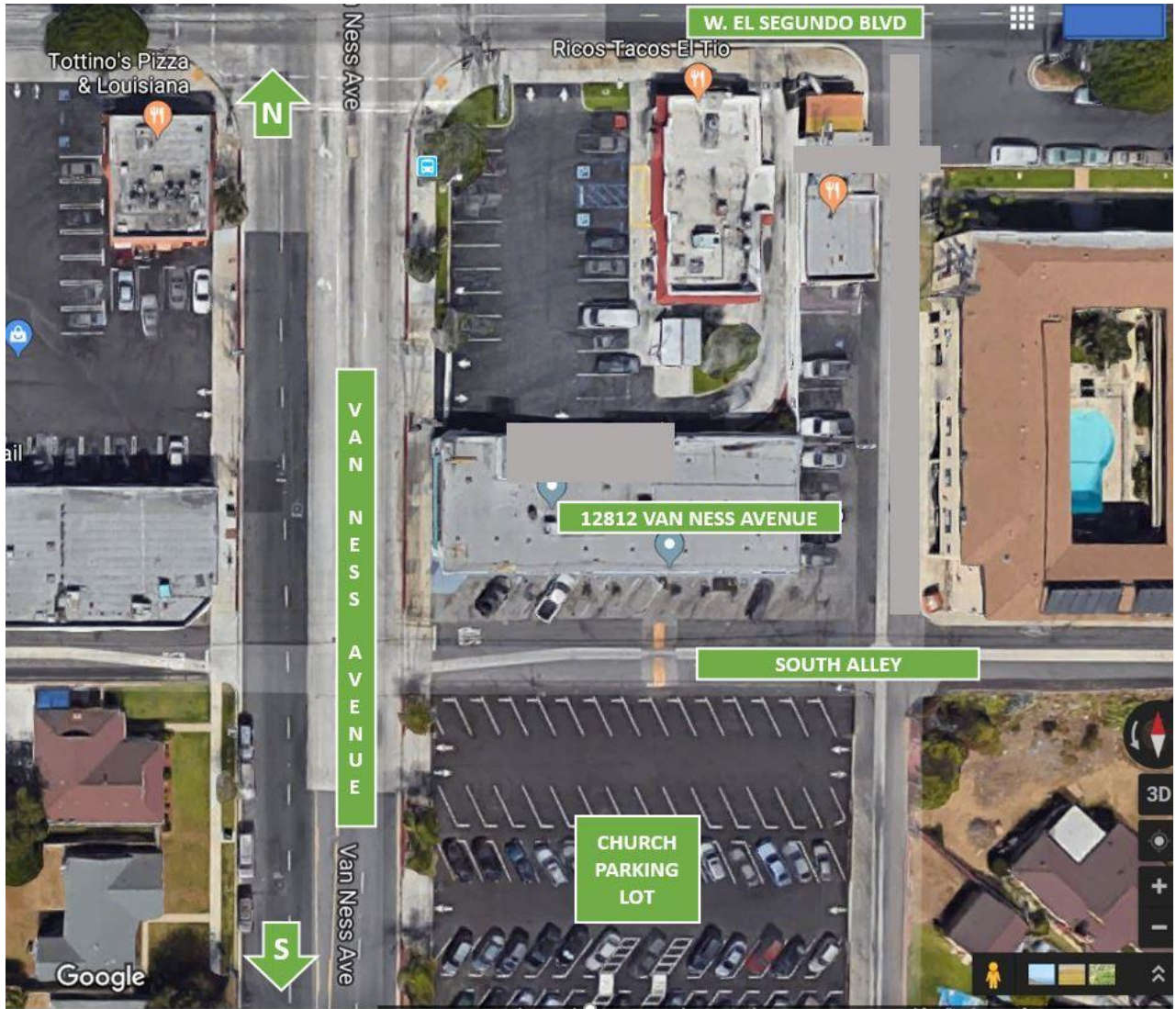
On April 11, 2018, at 2:24 p.m., the Gardena Police Department began receiving multiple 9-1-1 calls regarding a shooting at 12812 Van Ness Avenue in the City of Gardena. Callers indicated that a person was outside the location firing a gun. It was unknown if anyone had been hit. One caller estimated hearing 20 gunshots. The suspect was described as a male with dreadlocks wearing a gray shirt and gray shorts. The weapon was described as a lavender or pink gun.

12812 Van Ness Avenue is located on the east side of Van Ness Avenue, south of West El Segundo Boulevard. There are parking stalls in front of the businesses and an east/west alley runs along the south side of the parking lot. A larger church parking lot is located south of the alley and

is separated by a metal fence. A residential neighborhood, elementary school, churches and public park are located south of 12812 Van Ness Avenue.



Map of the area.



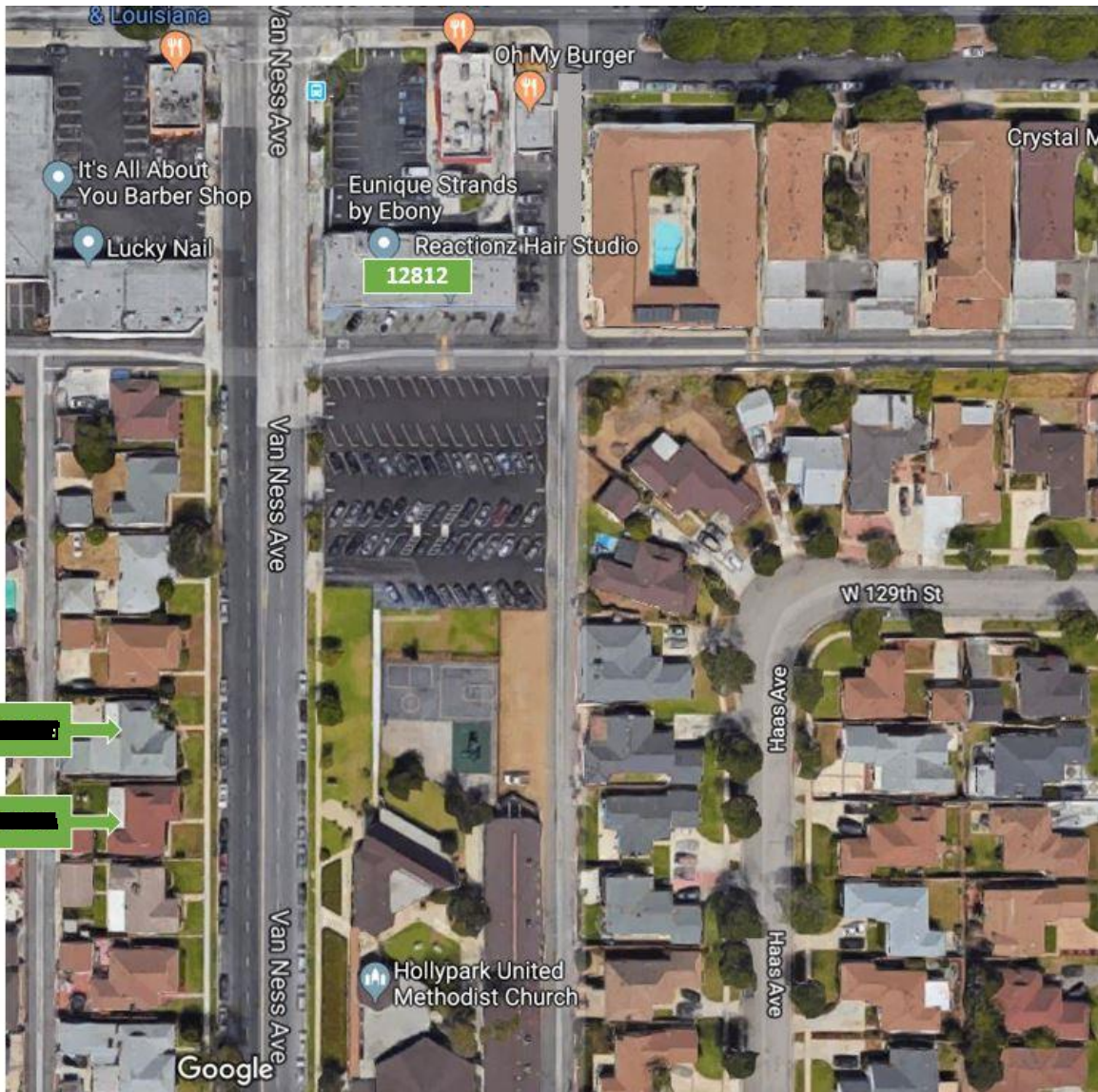
Map of the area.



Looking east at the front of 12812 Van Ness Avenue and into the south alley.

### Shooting Witnesses

Desiree L. was in front of her residence at [REDACTED] when she observed a man, later identified as Kenneth Ross, running toward Van Ness Avenue from the south alley. Ross was shooting toward the businesses with his right hand. Ross ran across Van Ness Avenue and headed south on the sidewalk. Ross stopped and fired two more rounds at the businesses. Desiree L. ran into her house. Ross ran past her home toward 132<sup>nd</sup> Street. A female police officer was driving north on Van Ness Avenue when her next-door neighbor yelled, “That’s him!” The officer made a U-turn and followed Ross. Seconds later, Desiree L. heard several gunshots coming from Rowley Park.



Map of the area.

Between 2:15 p.m. and 2:30 p.m., Alondra J. was awakened by six to eight gunshots. Alondra J. walked outside his home located at [REDACTED] and observed Ross walking in a southwest direction across Van Ness Avenue, approximately three houses north. Ross fired two shots toward 12812 Van Ness Avenue when he reached the grass parkway on the west side of the street. Ross continued south on Van Ness Avenue along the west sidewalk. Alondra J. and his gardener went inside his house and watched Ross walk by his home. Ross was holding a pink handgun in his right hand. Alondra J. believed it may have been a 9mm semiautomatic.

Alondra J. exited his home and continued to watch Ross walking southbound. Alondra J. flagged down a female police officer traveling north on Van Ness Avenue and pointed toward Ross. The officer followed Ross. Ross ran eastbound toward Rowley Park. Alondra J. lost sight of Ross at the park's north entrance. Five seconds later, Alondra J. heard two gunshots coming from the park.<sup>1</sup>

<sup>1</sup> Rowley Park is one-third of a mile from 12812 Van Ness Avenue.

Margaritte J. was in the front office of her home when she heard three to seven gunshots. Margaritte J. told her husband, Alondra J., what she had heard. Margaritte J. then heard a flurry of approximately 20 gunshots. It sounded like they came from two different guns. Alondra J. ran outside then ran back inside with the gardener. Margaritte J. heard additional gunfire and called 9-1-1. Margaritte J. observed Ross walking south along the west sidewalk of Van Ness Avenue. Ross crossed to the east side of the street approximately two houses south of her residence and walked out of view. She pointed Ross out to a female police officer driving north on Van Ness Avenue. Margaritte J. then heard gunshots coming from Rowley Park.

Desiree L., Alondra J. and Margaritte J. recognized Ross from the neighborhood. They suspected that he suffered from a mental illness. Ross constantly yelled out loud and talked to himself about conspiracies. Ross would also walk into traffic and make rude gestures at motorists.

Alondra J.'s gardener recovered a fired bullet casing from the grass between his home and Desiree L.'s residence. Alondra J. provided the casing to GPD.

#### Statement of GPD Officer Emily Colon

Colon was at 135<sup>th</sup> Street and Van Ness Avenue in a marked black and white patrol vehicle when she heard the radio call of shots fired. Colon drove north on Van Ness Avenue and passed 132<sup>nd</sup> Street when a bystander waved at her. Colon made a U-turn and observed the bystander pointing south toward Rowley Park.

Colon drove toward 132<sup>nd</sup> Street and observed Ross standing at the southwest corner. Ross had dreadlocks and matched the clothing description of the shooting suspect. Due to the nature of the call, Colon pointed her service weapon at Ross while seated in her vehicle. Ross looked in Colon's direction then ran across the street into the parking lot of Rowley Park. Colon followed Ross into the lot and broadcast his description and direction of travel.

Colon observed Ross' left hand move straight to his left pocket area the moment he ran from her. As Ross ran through the parking lot, his left hand never moved from his left hip area, while his right hand moved back and forth. At one point, Colon could see his shorts swinging as if it held something bulky. Colon believed that Ross had a gun in his left short's pocket.

Colon observed GPD Motor Officer Michael Medeiros approaching northbound on Van Ness Avenue. Medeiros dismounted his marked motorcycle and ran eastbound through the parking lot toward Ross. Medeiros yelled, "Let me see your hands! Let me see your hands!" Ross did not stop and ran southeast through the parking lot. Colon slowed her vehicle and noted another GPD unit, later identified as GPD Officer Michael Robbins, on Van Ness Avenue to her right.

Colon lost sight of Ross as he ran behind a restroom building in the parking lot. She next observed Ross running south after she drove past the building. Colon stopped her vehicle to join the foot pursuit when she heard two gunshots coming from Robbins' location. Colon did not see who fired the shots. Ross went to the ground.

The Los Angeles County Fire Department responded to the scene. After placing Ross on a gurney to transport him to the hospital, a paramedic removed a pink handgun from his left front short's pocket. The firearm was consistent with the bulky object Colon observed in his pocket while running.

## Colon's Body Worn Camera Footage

Colon is driving south through the parking lot at the beginning of the footage. Ross can be seen running in front of her vehicle, on the passenger side. Colon is holding her service weapon in her left hand. Medeiros is visible on his motorcycle, northbound on Van Ness Avenue, next to the east curb. (See Photo-1).



Photo-1

Medeiros stops next to the east curb. Ross runs away from Medeiros to the east (left) side of the lot. Medeiros dismounts his bike and chases Ross on foot. Colon follows behind them. Robbins can be seen standing outside the driver's door of his vehicle north of Colon, at the east curb. (See Photo-2).





Photo-2

Medeiros follows Robbins down the left side of the restrooms. Colon drives down the right side of the building and passes Robbins as he is leaning over the hood of his vehicle pointing a rifle to the east. (See Photo-3). The next time the camera captures Ross, he is on the ground. There is no audio on the recording.



Photo-3

## Statement of GPD Officer Michael Medeiros

Medeiros and Robbins responded north on Van Ness Avenue from Marine Avenue.<sup>2</sup> Due to the number of gunshots and 9-1-1 callers, Medeiros believed there may be an active shooter. When Medeiros reached 135<sup>th</sup> Street, at the south end of Rowley Park, he observed Ross cross Van Ness Avenue in a southeast direction at 132<sup>nd</sup> Street. Colon drove after Ross, following him into the park at the northwest driveway. Ross ran south through the parking lot. Ross matched the suspect description.

Medeiros drew his service weapon, pointed it at Ross while yelling, "Let me see your hands!" At that time, Medeiros could only see Ross' right hand. Medeiros ordered Ross to show his hands several more times. Medeiros dismounted his motorcycle. Medeiros noted that Ross' right hand was moving while his left hand stayed in the same position. Medeiros thought he may be holding a gun with his left hand and kept his service weapon pointed at Ross.

Ross ignored Medeiros and veered east behind parked cars, toward the baseball field. Several of the cars were occupied and Medeiros feared that Ross may try to take one of the occupants as a hostage. Medeiros chased Ross on foot. Medeiros briefly lost sight of Ross as he went behind the parked cars. Medeiros closed the distance to between 15 and 20 feet. Ross ran between the baseball field fence and the restrooms. Medeiros followed him. A large green electrical box is positioned approximately 15 feet past the restrooms. Ross was at the electrical box when Medeiros cleared the restrooms. Ross' left hand was either in his pocket or holding the outside of the pocket. Moments later, Medeiros heard two gunshots and saw Ross fall to the ground. Medeiros immediately transitioned to his Taser. Hawthorne Police Department officers, who had responded to the shots fired call, began cardiopulmonary resuscitation on Ross.

## Medeiros' Body Worn Camera Footage

Medeiros is riding his motorcycle north on Van Ness Avenue toward Rowley Park at the beginning of the footage. Medeiros reaches the southern edge of the park and passes Robbins. Medeiros passes the restroom building as he drives north, paralleling the parking lot. Medeiros draws his service weapon, points it and yells, "Hey! Let me see your hands!" Colon's police vehicle is visible driving south in the parking lot. Ross can be seen running in front and to the right of Colon's vehicle. (See Photo-4).

Medeiros orders Ross to show his hands three more times. As Ross nears Medeiros' position, he veers to his left toward the baseball field. Ross runs past Medeiros. During the time that Ross approaches and passes Medeiros, his right hand can be seen moving back and forth to the right side of his body. Ross' left hand, however, is never visible. His left arm does not come to the front of his body in the same manner as his right arm. (See Photo-5 through Photo-10).

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<sup>2</sup> Medeiros and Robbins were working the same traffic accident when the shots fired call was broadcast.



Photo-4

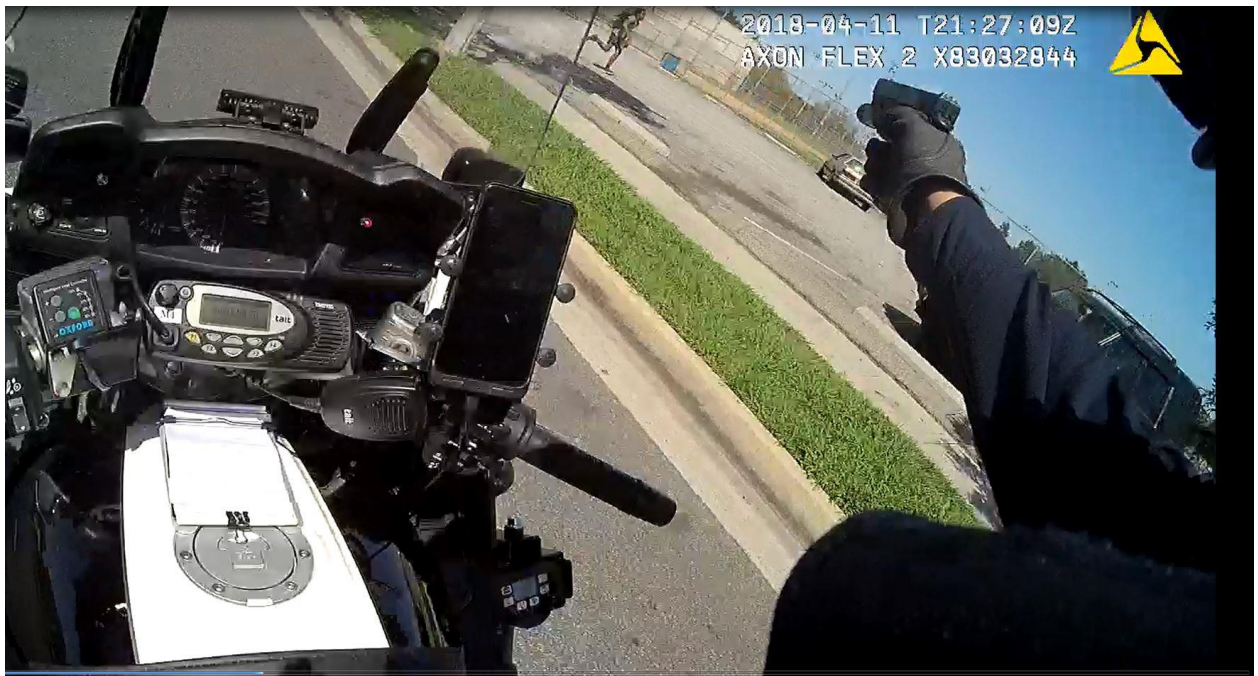


Photo-5

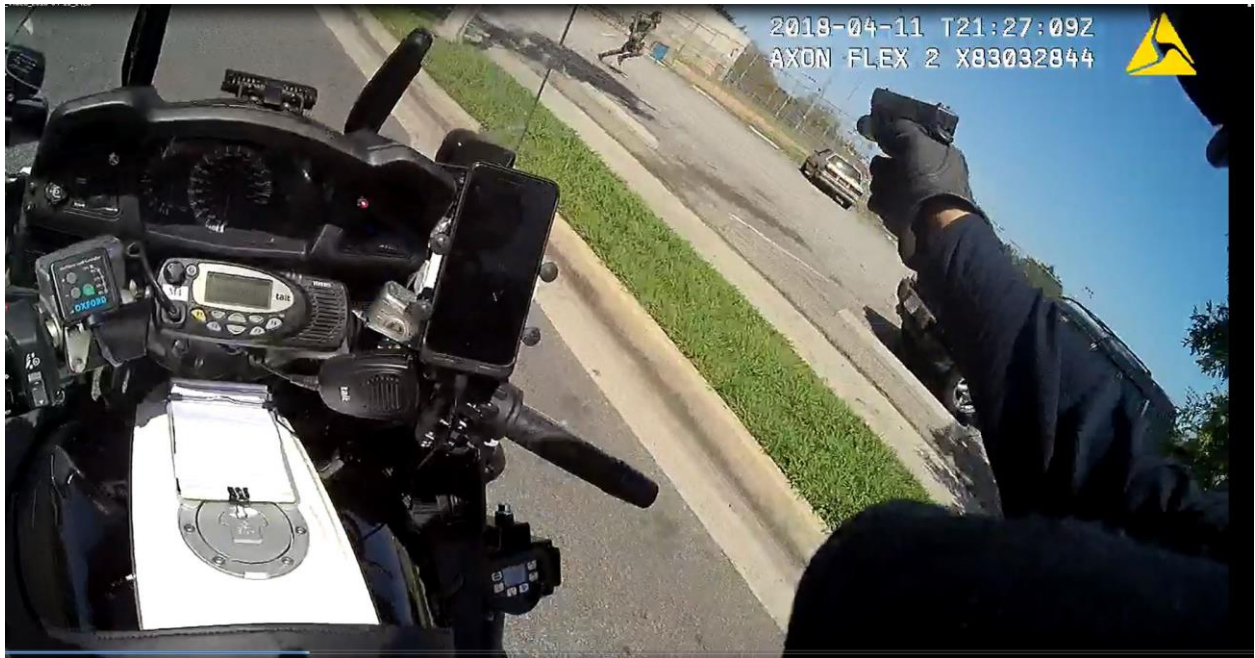


Photo-6



Photo-7



Photo-8



Photo-9



Photo-10

Medeiros dismounts his bike and chases Ross on foot. Ross disappears from view when he runs down the left side of the restrooms. The camera recaptures Ross when Medeiros reaches the rear of the restrooms. Ross has cleared the building and is running south with his head facing forward. His left hand remains at his left waist area while his right arm moves in a normal running manner. Ross turns his head to the right then his body begins to turn to the right. (See Photo-11 through Photo-13). Ross then falls to the ground.



Photo-11



Photo-12



Photo-13

Statement of GPD Officer Michael Robbins<sup>3</sup>

Robbins was working patrol in a black and white police vehicle when he heard a radio call for an assault with a deadly weapon. The call stated that a witness observed someone shooting outside of 12812 Van Ness Avenue and that up to 20 rounds had been fired. Robbins believed there may be

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<sup>3</sup> Robbins activated his body worn camera. Ross is not visible on the footage from the time he disappears behind the restrooms until after the shooting.

an active shooter and that a rifle was involved due to the high number of rounds fired. Robbins decided to arm himself with his GPD issued AR-15 rifle.

Robbins and Medeiros responded northbound Van Ness Avenue. Robbins heard updates over the radio indicating that the shooting suspect was running south on Van Ness Avenue and was described as a male with long dreadlocks wearing shorts.

Robbins and Medeiros shut down their lights and sirens before crossing 135<sup>th</sup> Street so the suspect would not see them approaching. At 134<sup>th</sup> Street, Robbins heard Colon broadcast that the suspect was at 132<sup>nd</sup> Street. Robbins looked north on Van Ness Avenue and saw Ross running eastbound across all lanes of traffic and into the north driveway of Rowley Park. Ross was wearing shorts and Robbins could see his dreadlocks moving on his back as he fled into the parking lot.

Robbins briefly lost sight of Ross as he ran behind parked vehicles. Medeiros rode past Robbins as Robbins slowed down and pulled to the east curb at the south end of the park. In Robbins mind, Ross only had two avenues of escape: Running south through the parking lot or east back onto Van Ness Avenue. Robbins was concerned because there was a residential neighborhood behind the park at 134<sup>th</sup> Street and there was an elementary school at 135<sup>th</sup> Street. Robbins decided to position himself on the south side of the park.

Robbins opened the driver's door and grabbed his rifle. Robbins could now see Ross running south through the parking lot. Ahead of him, Medeiros slowed down, exited his bike and ran diagonally toward Ross to intercept him. Robbins exited his vehicle and took cover at the front driver's side fender. Medeiros overshot Ross and was now chasing him southbound on foot. Robbins had a clear view of Ross and noticed that he was running in a strange fashion. It appeared that Ross was holding an object in his left hand against his waist area. Ross was holding his left hand as if he had a holster or was pinning a gun or heavy object against his left waist area. Meanwhile, his right arm was moving in a typical running manner.

Ross continued running south through the parking lot toward Robbins. When Ross was within 100 feet of Robbins, Ross looked in his direction. Robbins pointed his rifle at Ross and yelled, "Stop or you're gonna get shot!" Ross veered to the left and ran behind two vehicles that were parked next to the restrooms. Robbins was worried that Ross was going to use the restroom building as cover in order to engage or shoot at Medeiros or himself.

Ross ran behind the restroom building. When he emerged, Robbins observed Ross look in his direction again. Ross then ran behind a large electrical box. Robbins was again worried that Ross was about to engage with him from behind the electrical box. Ross emerged and turned his head in Robbins' direction. At the same time, Ross canted his left arm toward Robbins. Robbins believed that Ross was holding a gun in his left hand. When Ross cocked his left arm toward Robbins, Robbins feared Ross was about to "draw down on me and shoot me." Robbins also believed Ross was attempting to get past him in order to escape toward the street, occupied vehicles and the elementary school. In fear for his life, Robbins fired two rounds. Ross fell to the ground.<sup>4</sup>

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<sup>4</sup> Four minutes passed between the first 9-1-1 call and the officer involved shooting.



### Statement of Van D.

Van D. was eating his lunch at Rowley Park. He backed his black SUV into a parking space, north of the bathrooms. His driver's side window was open. To his right, Van D. saw Ross running south through the parking lot. He was being chased by the police. A motorcycle officer stopped and exited his bike and went in pursuit of Ross on foot. A second officer exited an SUV police vehicle and chased Ross southbound on foot. A third officer drove north on Van Ness Avenue, stopped and exited holding a rifle or shotgun. The pursuing officers gave at least three commands to Ross to stop and get on the ground. The officer holding the long gun yelled, "Stop or you are going to get shot!" Ross ignored the commands and continued running. Ross ran past Van D.'s car and past the bathrooms. He did not see anything in Ross' hands. Van D. saw the officer with the long gun fire two shots. Van D. exited his car and observed Ross on the ground.

### Statement of Clay C.

Clay C. was eating lunch in his car at Rowley Park. His two front windows were down and he was listening to the radio. Clay C. was parked south of bathrooms, facing northwest. Clay C. observed several police vehicles traveling north on Van Ness Avenue. He saw another police vehicle traveling south in the parking lot. One police vehicle parked at the east curb of Van Ness Avenue. That officer exited the driver's side holding a rifle. An officer north of him was holding what he thought was a Taser. Ross appeared from behind the bathroom running or "laboring" southbound. He had on a large backpack. Clay C. recognized Ross. He believes Ross may suffer from a mental illness. He talks to himself, yells at people and darts into traffic. Ross was five to seven steps south of the bathroom when the officer holding the rifle fired twice. Ross fell to the ground. Officers performed cardiopulmonary resuscitation. Ross was not holding anything in his hands when he fell. His hands were either down toward his side or at his waist.

### Statement of Marcell C.

Marcell C. is employed by the City of Gardena as a custodian. Marcell C. was engaged in cleaning duties at Rowley Park when he heard police sirens. Marcell C. observed a police car drive through the park and saw Ross running southbound through the parking lot. Ross was holding his backpack. His arms were flailing back and forth as he ran. Ross repeatedly grabbed his pants to keep them from falling. Officers ordered Ross to stop, but he refused. A motorcycle officer chased Ross on foot with his service weapon in his hand. The officer yelled, "Stop or I'm going to shoot!" three to four times. Ross ran behind the bathroom and Marcell C. heard two gunshots. He next saw Ross on the ground. Officers were giving Ross first aid. Marcell C. believes that the motorcycle officer was the one who shot Ross.

Marcell C. knew Ross from the neighborhood. Ross started using drugs a while ago and it deteriorated his mind. Ross talked to himself, cursed and made hand gestures. Ross' condition had worsened in the last few weeks. Ross acted as if everyone around him was a threat. Marcell C. avoided Ross.

## Autopsy

Ross was transported to the hospital and succumbed to his injuries. Los Angeles County Deputy Medical Examiner Scott Luzi, M.D., performed a postmortem examination of Kenneth Ross on April 16, 2018. Ross sustained a gunshot wound to the chest that entered through the back and exited from the left side of his chest. Ross sustained a second gunshot wound to the right arm that entered through the shoulder and exited the arm. It is likely the bullet associated with this wound reentered to cause a second gunshot wound to the chest that entered the lateral right chest.

Amphetamine was detected in blood taken from Ross during the autopsy. A prescription bottle for generic Adderall in Ross' name was recovered in his backpack. Adderall contains amphetamine.

## Recovered Firearm

The firearm recovered from Ross' front left short's pocket was a SCCY model CPX-1, 9MM Luger caliber semiautomatic pistol. It was loaded with two rounds.



Firearm recovered from Ross.

## Ballistic Evidence

Three loaded firearm magazines were recovered from inside Ross' backpack.

Eight fired .380 Auto caliber cartridge cases were recovered from the walkway in front of 12812 Van Ness Avenue and the parking lot.

One fired 9mm Luger caliber cartridge case was recovered from the driveway apron of 12812 Van Ness Avenue.

Five fired 9mm Luger caliber cartridge cases were recovered from the gutter and sidewalk in front of the church parking lot along the east side of Van Ness Avenue.

One fired 9mm Luger caliber cartridge case was recovered from the sidewalk in front of [REDACTED], one house north of Desiree L.

One fired 9mm Luger caliber cartridge case provided to GPD by Alondra J.

A fired bullet jacket fragment was recovered from the walkway in front of 12812 Van Ness Avenue.

A fired bullet was recovered from atop the dashboard of a vehicle parked in front of 12812 Van Ness Avenue.

The fired bullet jacket fragment, fired bullet and eight fired 9mm Luger caliber cartridge cases were determined to have been fired from the firearm recovered from Ross.<sup>5</sup>

## LEGAL ANALYSIS

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer “may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him.” *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

An officer has “probable cause” in this context when he knows facts which would “persuade someone of reasonable caution that the other person is going to cause serious physical harm to another.” CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *Mehserle* at 1147. And he may only resort to deadly force when the resistance of the person being taken into custody “appears to the officer likely to inflict great bodily injury on himself or those acting with him.” *Mehserle* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190.

The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

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<sup>5</sup> Based on the ballistic evidence recovered at the scene, there were two guns used at the original shooting scene. This fact was not determined until after the officer involved shooting. Several days later, a witness told investigators that an unidentified man confronted Ross in front of the businesses at 12812 Van Ness Avenue after she complained about Ross’ bizarre behavior and that she believed Ross was about to engage in some type of criminal activity at the location. As the unknown man confronted Ross, Ross reached into his short’s pocket causing the witness to believe he was armed. The unidentified man retrieved a gun from his car and pointed it at Ross. A shootout commenced between Ross and the man. The witness believed the unidentified man fired his weapon first.

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon these circumstances. The right to self defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580.

“An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun.” *Thompson v. Hubbard* (2001) 257 F.3d 896, 899.

Before you may rely on circumstantial evidence to find a defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. See CALCRIM No. 224

## **CONCLUSION**

The evidence examined shows that Robbins was in the performance of his duties when attempting to apprehend Ross for an assault with a deadly weapon that had just occurred. Robbins stated that he fired two rounds from his rifle because he believed Ross was drawing a gun in order to shoot him. The question in this case is whether a reasonable person, in possession of the facts known to Robbins at the time of the shooting, would believe that Ross posed a threat of serious physical harm or death and find it necessary to respond with deadly force.

Robbins was advised that someone had fired up to 20 rounds outside the businesses at 12812 Van Ness Avenue. The information described only one shooter. The subsequent investigation and ballistic evidence show that there were two shooters. However, for the purposes of this analysis, the only relevant information was the information known to Robbins at the time of the shooting.

Ross was running from Colon’s marked police vehicle when Robbins first observed him. Ross matched the physical and clothing description of the suspect. Ross fled from Medeiros through the parking lot. Robbins noticed that Ross held his left hand at his waist as if he was pinning a gun or heavy object to his left side. His right arm, however, was moving in a typical running fashion. Colon and Medeiros also observed the odd manner that Ross held his left hand. The lack of movement by Ross’ left arm was captured on Medeiros’ body worn camera footage. Under the circumstances, it was reasonable for Robbins to believe that Ross was holding a firearm at his left side. Ross matched the shooting suspect’s description, he was running from officers less than a half mile from the shooting scene and within minutes of the shooting. The evidence shows that Ross was, in fact, carrying a loaded 9mm semiautomatic firearm in his left short’s pocket.

The footage captured on Medeiros’ body worn camera shows Ross’ left hand at his waist after he ran past the restrooms and electrical box. It captured Ross turning his head to the right, toward Robbins’ position. It also captured Ross begin to turn his body, including his left arm, in the same direction before falling to the ground. The body worn camera footage corroborates Robbins’ observations.

There is no evidence that Ross had any intention of surrendering to the pursuing officers. Ross was fleeing the scene of a shooting where he fired multiple rounds and was still armed with the

gun he used in that shooting. Ross ignored multiple orders to stop and show his hands. It reasonably appeared that Ross was attempting to escape in order to avoid the consequences of his criminal actions. The law does not require Robbins to wait and set eyes on the gun before firing. If Ross moved or turned in a manner consistent with drawing a weapon while fleeing, given that Robbins had reason to believe Ross was armed, then Robbins had the right to protect himself. Under the circumstances, it was reasonable for Robbins to conclude that when Ross cocked his left arm toward him, Ross was drawing his gun to shoot at him, placing Robbins in reasonable fear of serious bodily harm or death.

A reasonable argument could also be made that Ross was simply looking in Robbins' direction to gauge his distance or to seek another avenue of escape. The burden rests with the People to show beyond a reasonable doubt that an officer's use of force was not justified under the circumstances. When two reasonable conclusions can be inferred from the same set of facts, you must choose the conclusion that points to innocence.

Finally, police officers may use deadly force to capture a fleeing suspect who has committed a forcible and atrocious felony. The evidence shows that Robbins had probable cause to believe that Ross had committed a forcible and atrocious crime that threatened death or serious bodily harm. Robbins reasonably believed that Ross was an active shooter who had fired up to 20 rounds outside a business, injuring or killing an unknown number of victims, before fleeing into a neighborhood of homes, schools, churches and public parks on a weekday afternoon.

We conclude that Officer Michael Robbins acted in lawful self-defense when he used deadly force against Kenneth Ross. We also conclude that Robbins was justified in the use of deadly force to apprehend a dangerous fleeing felon. We are therefore closing our file and will take no further action in this matter.