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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DOROTHY JEAN SAMS et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B275851 (Los Angeles County Super. Ct. No. BC537879)

APPEAL from a judgment of the Superior Court of Los Angeles County. Malcolm H. Mackey, Judge. Affirmed.

Mgdesyan Law Firm and George G. Mgdesyan for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, and Shaun Dabby Jacobs, Deputy City Attorney for Defendants and Respondents.

This appeal involves the shooting death of Roger Christopher Williams (Williams) by Officer Steve Sainz of the Los Angeles Police Department, and the subsequent wrongful death action filed by appellants.[1] The matter went to trial and resulted in a judgment for respondents City of Los Angeles (City) and Officer Sainz (collectively respondents)[2] after the jury determined that he used reasonable force. According to appellants, the judgment must be reversed due to improper bifurcation of liability and damages, trial court bias, improper evidentiary rulings and misconduct by defense counsel. Upon review, we find no error and affirm.

FACTS

The Shooting: Police Version

On March 3, 2011, Officer Sainz and his partner, Los Angeles Police Officer Nicholas Rothemich, were driving on Florence Avenue in a police car. They stopped to speak to a pedestrian standing in the road.

Williams pulled up behind the police car, honked and said, "Officer, officer, officer." Williams had alcohol as well as methylenedioxyamphetamine (MDA) and

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[1] Appellants are Dorothy Jean Sams (Sams), Kristal Shareece Williams (Kristal), Roger Christopher Williams IV (Roger), Sonya La Slav as guardian ad litem for C.T.W., and Tammie Williams as guardian ad litem for K.W. According to the first amended complaint (FAC), they are Williams's mother and surviving children.

[2] The Los Angeles Police Department (LAPD) is listed as a defendant in the pleading below. But the judgment is in favor of City and Sainz only. To the degree this appeal implicates the LAPD as an entity separate from City, our analysis also applies to the LAPD.

methylenedioxymethamphetamine (MDMA) in his system. He exited his car holding a beer can and a gun, saying, "I have a gun." Officer Sainz stepped out of the police car and asked Williams if he was serious. Williams waived and pointed his gun at Officer Sainz and then threw it over his shoulder. The gun landed on the roof of Williams's car.

Officer Rothemich turned the police car around to face Williams. At the same time, Officer Sainz gave Williams various commands such as telling him to move away from the gun and get on the ground. In response, Williams said, "F**k you. You're going to have to shoot me. You're going to have to kill me or I'm going to kill you. I have another gun." Williams was walking back and forth between his car with the gun on its roof and the officers. While Officer Rothemich aimed a pistol at Williams, Officer Sainz retrieved a rifle from the trunk of the police car. Officer Rothemich called for backup and an airship.

After retrieving a rifle, Officer Sainz positioned himself behind the passenger side door of the police car. During colloquy with his partner, Officer Sainz told Officer Rothemich to retrieve the taser they had checked out earlier that day. Then Officer Sainz instructed Williams to get on his knees with his hands up, and said he did not want to shoot. Williams repeated that he had another gun and said, "[I]f you don't shoot me[,] I will shoot you."

Officer Rothemich looked for the taser in the trunk but was unable to locate it.

Williams moved toward the officers. According to Officer Sainz, Williams was reaching into his pocket. Per Officer Sainz, he saw what he believed to be the butt of a handgun, and he believed Williams was gripping it. Though Officer Rothemich did not see Williams's hand in his pocket, he saw Williams's hand

near the top of his waistband, and was unable to see if his fingers were inside his waistband. Both officers believed Williams was reaching for a second gun. As Williams approached the officers with his body turned sideways, Officer Sainz feared for the safety of himself and Officer Rothemich. Officer Sainz fired his rifle at Williams five times, which resulted in his death.[3]

The Shooting: Edwin Alfaro's Version

On the night of March 3, 2011, Edwin Alfaro (Alfaro) was in bed in a house on the corner of the intersection where the shooting occurred. He heard an argument and looked out his window. Two police officers were arguing with Williams. A moment later, one of the officers turned a police car around and parked in front of Alfaro's bedroom. An officer then walked behind the police car and retrieved a rifle. The two officers took positions behind the opened doors of the police car. According to Alfaro, "[T]hey were arguing. And [Williams] was saying bad words. And that he was going to kill them. And he was screaming at them." Williams was next to his car, "[a]nd he was walking towards [the officers] and then he would walk backwards and arguing [with them] very strongly."

At one point, Williams put a can of beer on top of his car and continued arguing. He put his hands up and held them behind his head. The officers told Williams to walk backwards. He turned his back to the officers, and proceeded to walk backwards toward them with his hands raised up. Williams and the officers continued to "exchang[e] words," and Williams stopped in front of the police car. While his back was still turned toward the officers, Williams said he was going to kill them.

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[3] Respondents contended that one shot grazed Williams, one shot missed, and three shots hit Williams.

Soon after that, Williams half-turned and stepped toward the officers. They shot him. Alfaro never saw Williams's hands go below his head.

Investigation

The police secured the crime scene and evidence. In addition, the police questioned two witnesses, Alfaro and Rosemary Veliz (Veliz).[4] Subsequent investigation revealed that Williams was not armed with a second gun.

This action

Appellants sued respondents.

The FAC alleged causes of action for wrongful death and battery by a police officer.

Appellants' Motions in Limine; Bifurcation

Appellants moved to exclude evidence of Williams's 1993 felony conviction for carrying a concealed weapon, and his 1994 and 1999 misdemeanor convictions for obstructing a peace officer (Motion in Limine No. 1). In addition, they moved to exclude testimony by Williams's ex-girlfriend, Vanessa Gonzales (Gonzales), and the testimony of Alfaro regarding his lay opinions of Williams's actions (Motion in Limine No. 2). Last, appellants moved to limit respondents' experts to the opinions previously expressed in their written reports (Motion in Limine No. 3).

Respondents moved to bifurcate the liability and damages phases of trial.

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[4] Veliz did not testify at trial. Her statement was reviewed by appellants' experts.

The trial court deferred its ruling on Motion in Limine No. 1, and denied Motions in Limine No. 2 and No. 3.[5] It granted respondents' motion to bifurcate liability and damages.

Trial

The parties stipulated that Officer Sainz was acting in the course and scope of his employment during the shooting, and that Williams owned the gun found at the scene. Officer Sainz and Officer Rothemich testified. Afterwards, Alfaro testified.

Appellants called Dr. Ogbonna Chinwah, a forensic pathologist for the Los Angeles County Coroner's Office, to testify regarding Williams's gunshot wounds. Per Dr. Chinwah, Williams had "four gunshot wounds," one being a graze wound to the buttocks. The other three gunshot wounds were all to Williams's back. On cross-examination, Dr. Chinwah explained that a toxicology panel was performed on Williams. His femoral blood alcohol level was .20. His heart blood alcohol level was .23, almost three times the legal limit of .08. If anything, the levels went down when he died. Also, Williams had MDA and MDMA in his system.

Dr. Chinwah testified that Williams's personal effects were booked into inventory at the coroner's office. One of the items was a cell phone.

Appellants next called Dr. Marvin Pietuszka, who testified that "[u]niversally the scientific community agrees that a

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[5] The trial court's minute order was silent regarding Motion in Limine No. 3. But in the minute order, it purported to deny a fourth motion in limine. A fourth motion in limine by appellants is not included in the record. Presumably, this was a typographical error and the trial court intended to deny Motion in Limine No. 3 filed by appellants. In their opening brief, appellants represent that Motion in Limine No. 3 was denied.

postmortem blood sample is inaccurate. There are no pathologist[s] or toxicologist[s] anywhere in the world that will agree that a postmortem sample is a valid sample." In his view, interpretations of the blood can be made only if organ tissues are examined in conjunction with the blood. Dr. Pietuszka opined that the drugs in Williams body could have been from the day before the shooting, and that any reading of drugs in his body were "meaningless." From the toxicology screen done on Williams, all Dr. Pietruszka could say was that Williams had some level of alcohol and drugs in his body. He may have been under the influence of those substances.

K.W., Williams's daughter, was called to testify regarding her relationship with Williams. Also, she testified regarding some of his background.

Dr. Jesse Wobrock, an expert in forensic biomechanics, testified on behalf of appellants. Prior to testifying, he reviewed various photos, videos and statements. Among the statements he reviewed were statements made by Alfaro and Veliz.
Dr. Wobrock opined that "[the] physical evidence is. . . consistent with the statements of Mr. Alfaro and Ms. Veliz, the independent witnesses, when it comes to what Mr. Williams was doing right before he was shot." According to Dr. Wobrock, there was no evidence that Williams was "standing in a sideways position when he was shot[.]" Continuing on, Dr. Wobrock testified that Williams was shot in the back. When asked if there was any evidence Williams "was turned facing the officers," Dr. Wobrock replied, "I don't see any evidence of that."

In forming his opinions, Dr. Wobrock assumed that Williams did not suffer the graze wound to the buttocks noted by Dr. Chinwah. Dr. Wobrock determined there was no scientific

evidence of a graze wound. On cross-examination, Dr. Wobrock conceded that if there was a fourth gunshot wound—the graze wound to Williams's buttocks—that could be consistent with a grazing shot, a missed shot, then three shots to the back as Williams pivoted away.

Roger Clark (Clark) testified for appellants as a police practices consultant. He considered, among other things, the statements made by Alfaro and Veliz. Clark offered opinions based on two sets of facts: the version of the shooting relayed by Officer Sainz and Officer Rothemich, and the version of the shooting relayed by Alfaro and Veliz. According to Clark, if Williams had his hands up, then use of lethal force was not justified. Looking at the facts most favorable to Officer Sainz, Clark opined that he was not justified in shooting "until he was sure there was a weapon; that would mean being able to see the weapon" because "it's extremely unusual" for a suspect "to have a second gun. And the officer would know that."

Asked if Officer Sainz and Officer Rothemich made tactical errors, Clark stated: "Yes. There were, in my opinion, very key departures from required tactics[,] and that influenced the outcome."

Respondents called Paul Shearholdt (Shearholdt), an LAPD officer. He was a field supervisor the night of the shooting, and he took a public safety statement from Officer Sainz. Toward the end of his statement, Officer Sainz said there was "another weapon on" Williams. Officer Shearholdt believed that Officer Sainz was indicating that there were two weapons.

Next, respondents called Alexander Jason (Jason), an expert in the reconstruction of shooting incidents. He was asked his opinion as to whether Officer Sainz "should have waited to

see the weapon before firing[.]" Jason replied: "Well, if [Officer Sainz] believed that the suspect had a gun in his pocket or in his pants and was about to withdraw it, he really cannot wait until you see the gun to take an action." This is because a gun can be pulled and fired "extremely fast." Due to "perception lag time," it takes more than a quarter of a second for an officer to perceive a threat and react to it. The perception lag time also relates to an officer appreciating whether a threat has been stopped before ceasing to fire. It takes time to stop shooting once an officer has started. In Jason's opinion, a threat is not eliminated just because a suspect turns away while being shot. The suspect "can turn away all the way around and shoot you as they come back around. You really don't know what they're doing."

Based upon his review of the physical evidence found from the autopsy, Jason opined that there was evidence that Williams was moving during the shot sequence. Also, Jason had cause to believe that Officer Sainz was in a stationary position when he fired his five rounds. In Jason's view, the physical evidence did not coincide with the scenario of Williams standing up and looking back toward the officers with his hands clasped behind his head. In contrast, Jason concluded that the "wound track analysis" was consistent with the scenario in which Williams had his left shoulder facing toward the officers as he was turning and reaching as if to pull out a weapon.

Hector Vidal (Vidal), a former LAPD detective, testified that he interviewed Alfaro about the shooting. At the time of the interview, Alfaro smelled of alcohol. According to Vidal, Alfaro said he saw Williams make "a movement where he turns in a halfway position turning his body, reaching down towards his waistband area." At no point did Alfaro say he observed Williams

with his back turned to the officers and his fingers interlaced behind his head. On cross-examination, Vidal testified that Alfaro said Williams put his hands in the air. When appellants' counsel pointed out that the interview was recorded and Alfaro never said Williams turned and reached for his waistband, Vidal said Alfaro demonstrated how Williams moved.

Next, respondents called William Joseph Lewinski (Lewinski), a use of force expert. He talked about action/reaction time, explaining: "If the perceived assailant draws and fires, . . . and that time is a quarter to a third of a second[,] [t]here's nothing the officer can do within that time span to prevent them from being struck. Because everything the officer does will take much longer than that." When given a hypothetical based on Officer Sainz's version of the shooting, and when asked how he would expect an officer to interpret that scenario, Lewinski said, "The most important element that I've found in my interviewing . . . is the danger to officers comes from their inability to have control over the situation or the person they're dealing with. It's a lack of control that really is a threatening element. And then you add a deadly potential on top of that. And that really escalates it, ramps up the threat potential for the officer." Lewinski added, "And officers are telling me that [control] is the element that is most important for them . . . with a threat that could unfold faster than they could respond."

Last, respondents called Scott Reitz (Reitz), a firearm tactics trainer. He opined that after Williams said he had a gun, it was consistent with reasonable police practices for Officer Sainz to get out of his vehicle and ask if Williams was serious because it is difficult for an officer to shoot from inside a vehicle, and because Williams was parked at the rear of the police car. If

Williams had shot at the back window of the police car, the safety glass would have fractured, making the window opaque and making it impossible for the officers to see through. Moreover, the officers were at a tactical disadvantage inside the police car. The safety glass might not have stopped William's bullets, which any reasonably trained officer would know. If the officers tried to shoot at Williams through the back window, there was a chance the bullet would deflect from its target. Also, because of people, cars, and residences in the area, it would be dangerous for an officer to indiscriminately fire a weapon. Officer Sainz's decision to alight from the police car was consistent with LAPD training as wall as general law enforcement training. In Reitz's view, Officer Sainz displayed remarkable composure by not shooting as soon as he got out of the police car and saw that Williams had tossed a gun onto his car.

Officer Rothemich's decision to reposition the police car was appropriate "in light of department and nationwide law enforcement training." This gave the officers cover and tactical advantage due to the ballistic door panels, the door post and engine, and due to the headlights making it easier for them to see. It was appropriate for Officer Rothemich to request backup and an airship.

In Reitz's opinion, it was appropriate that Officer Sainz did not try to physically subdue Williams due to the distance between them, and due to Williams's claim that he had a second gun. Reitz opined that the way Officer Sainz retrieved the rifle was consistent with reasonable police practices. Regarding Officer Sainz's decision to use a rifle instead of a pistol, Reitz pointed out that a rifle has more potential accuracy because a pistol has only two points of contact with the body while a rifle has four, which

creates "a more stable weapons platform." In addition, a rifle has a longer site radius, which allows for more accuracy, and a rifle is potentially capable of defeating more intermediate obstacles and barriers, such as vehicles. For example, if Williams had retrieved his gun from on top of his car and gotten behind his car, the rifle would have been "superior in terms of trying to defeat any type of actions" directed at the officers.

Regarding Officer Rothemich's attempt to locate the taser, Reitz opined that he looked for a few seconds and then returned to his position behind one of the doors because he realized the critical nature of the situation. Asked if Officer Rothemich's attempt to get a less lethal device was consistent with department training, Reitz stated, "Yes, I think it shows tremendous composure. I think it also shows a tremendous reverence for life. You're trying to . . . obtain a device which may mitigate the use of lethal force. Even though you're potentially in a lethal force incident."

Based on "post guidelines" and LAPD training, officers are allowed to consider a suspect's statements and actions when evaluating the totality of the circumstances in deciding to deploy deadly force.

Reitz opined that Officer Sainz's decision to shoot was appropriate under the circumstances.

Jury Instructions

The trial court provided the jury with various instructions. In part, it instructed pursuant to California Civil Jury Instruction (CACI) No. 1305, which pertains to the elements and factors relevant to battery by a police officer. CACI No. 1305 provided, inter alia: "In deciding whether [Officer] Sainz used unreasonable force, you must determine the amount of force that

would have appeared reasonable to a police officer [in] [Officer] Sainz's position under the same or similar circumstance. You should consider, among other factors [¶] . . . [¶] Whether the decedent Roger Williams reasonably appeared to pose an immediate threat to the safety of [Officer] Sainz."

Jury Question

During deliberations, the jury asked for an explanation of the phrase "immediate threat" in CACI No. 1305. Appellants' counsel suggested giving the jury a definition of the word "immediate" based on definitions he obtained from a Google search and dictionary.com. In response, the trial court said "[w]e know what immediate is" and "we'll just tell them, 'You have the instruction.'"

Appellants counsel pressed for a clarification.

The trial court said it could also refer the jury to two instructions previously given, which were: (1) "A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officers or others. An officer may reasonably use force when he or she confronts an armed suspect in close proximity whose actions indicate an attempt to attack." (2) "Reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight." Also, the trial court said it would refer the jury back to CACI No. 1305.

Appellants' counsel argued that the instruction needed to clarify that the jury had to focus on "what is happening at the moment of the shooting." The trial court replied, "It would be at the moment of the shooting. [What] else would the immediate

threat be, sir?" After that colloquy, the trial court stated, "I'm going to refer them to look at 1305 and the other instructions."

Judgment

The jury returned a special verdict on liability in favor of respondents. Judgment was entered.

Posttrial Matters

Appellants moved for a new trial. Subsequently, the trial court denied the motion.

This appeal followed.

DISCUSSION

I. Use of Force.

Appellants challenge the jury's finding that Officer Sainz used reasonable force. It is unclear whether they are challenging sufficiency of the evidence, or arguing that the trial court should have granted a new trial based on the law not supporting the jury's finding. To the degree appellants challenge sufficiency of the evidence, the challenge is unavailing because they make no attempt to apply the substantial evidence standard of review. (*People v. Foss* (2007) 155 Cal.App.4th 113, 126 ["When an appellant fails to apply the appropriate standard of review, the argument lacks legal force"].)

Respondents presume that appellants challenge the sufficiency of the evidence. To be complete, we apply the substantial evidence test and conclude that the jury's findings were amply supported.

"When the 'findings of fact are challenged in a civil appeal, we are bound by the familiar principle that "the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.]' In

applying this standard of review, we "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . ." [Citation.] "'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." [Citation.] We do not reweigh evidence or reassess the credibility of witnesses. [Citation.] We are 'not a second trier of fact.' [Citation.] A party raising a claim of insufficiency of the evidence assumes a daunting burden." (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245–1246.)

Appellants' claims are based on the theory that Officer Sainz used unreasonable force when shooting Williams. Whether use of force is reasonable requires a balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the counterveiling governmental interests at stake. (*Graham v. Connor* (1989) 490 U.S. 386, 396 (*Graham*).) "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. [¶] [T]he 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Id.* at pp. 396–397.) The test of reasonableness "requires careful attention to the facts and circumstances of each particular case, including the severity of

the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. [Citation.]" (*Id.* at p. 396.)

According to the Ninth Circuit, these and other factors must be considered "in relation to the amount of force used to effect a particular seizure[.]" (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 701.)

As to whether there was an immediate threat to the safety of the officers, appellants argue: "Given independent witness statements placing [Williams's] hands above his shoulders and [the] officers' contradicting testimony [about whether Williams's hand was in his pocket or near his waistband], it is evident there was no 'immediate threat.'"

The problem with this argument is that it eschews the substantial evidence rule. Under that rule, we must indulge the evidence most favorable to the respondents, which is that Officer Sainz heard Williams's threats and claim that he had a second gun, that Williams refused to comply with the officers' commands, and that when he approached the officers, he was turned sideways and was reaching into his pocket. Also, we must indulge Officer Sainz's testimony that he believed he saw a second gun, and that Williams was gripping that second gun. The record contains substantial evidence of an immediate threat of death to the officers.

Regarding the severity of the crime, appellants contend: "[Williams] was standing by his car, arguing, shouting, and using profanity while walking back and forth, yet he committed no crime that could have been considered so severe to apply under the *Graham* factors." We cannot concur. Williams brandished a

firearm (Pen. Code, § 417),[6] issued multiple criminal threats (§ 422), and resisted arrest (§ 148). Given the circumstances under which these offenses occurred, we consider the offenses severe because they created a situation that raised the possibility of deadly consequences.

Next, appellants aver that "although [Williams] was shouting while walking back and forth near his vehicle, he didn't attempt to run away, resist arrest, or attack the officers. . . . To the contrary, he threw away the gun upon [Officer] Sainz's orders and eventually put his hands up behind his head and turned his back on the officers." The argument that Williams did not resist arrest must be rejected. The evidence favorable to respondents showed that Williams pointed a firearm before discarding it. Also, he continually refused to comply with the officers' commands. He said he had a second gun, threatened to kill the officers, approached in a sideways orientation and reached into his pocket. Based on this evidence, it is beyond dispute that substantial evidence shows that Williams "willfully resist[ed], delay[ed], or obstruct[ed] [a] . . . peace officer . . . in the discharge or attempt to discharge [a] duty of his or her office or employment[.]" (§ 148, subd. (a).)

Based on the *Graham* factors, appellants argue that it is evident that the use of deadly force upon Williams was anything but reasonable.

In support of this argument, appellants argue that Officer Sainz should not have used a rifle. But Reitz testified that Officer Sainz's decision to retrieve the rifle was consistent with

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[6] All further statutory references are to the Penal Code unless otherwise indicated.

reasonable police practices, and it was a superior weapon to a handgun under the circumstances.

Next, appellants contend that there were discrepancies between the testimony of Officer Sainz and the defense experts regarding various details regarding how fast Officer Sainz got out of the police car, etc. Appellants do not explain, however, why these discrepancies eliminate the reasonableness of Officer Sainz's decision to shoot.

According to appellants, Officer Sainz violated policy and procedure guidelines prior to the shooting. It appears appellants are suggesting that because Officer Sainz violated policy and procedure guidelines, he put himself in or provoked a dangerous situation and therefore his use of force was unreasonable even if there was an immediate threat to the safety of himself and others. In other words, appellants want us to examine everything that transpired on the night in question and conclude any force at the end of the confrontation was unreasonable if the police officers made any technical mistakes during the beginning and middle of the confrontation. Appellants cite no law to support this novel proposition. In any event, the testimony of Jason, Lewinski and Reitz supported a finding that Officer Sainz complied with procedural guidelines, and that his use of force was reasonable.

Last, appellants argue that Officer Sainz's use of force was unreasonable because the evidence shows that "both officers did not feel an immediate threat of harm," and because Williams did not present a threat to the safety of the officers or others. These arguments cannot succeed. We must indulge the testimony of Officer Sainz that he feared for the safety of himself and Officer Rothemich. And, as we have previously discussed, there is

substantial evidence that Williams posed an immediate threat of harm.

II. Bifurcation.

Appellants argue that the trial court erred when it bifurcated the liability and damages phases of trial. We review this issue for an abuse of discretion. (*Downey Savings & Loan Association v. Ohio Casualty Insurance Co.* (1987) 189 Cal.App.3d 1072, 1086.) As we discuss below, appellants fall short of establishing error.

A trial court may not, over the objection of a plaintiff, "order the separate trial of an issue of liability when because of the nature of the case it is necessary to prove the plaintiff's damages in order to establish that liability." (*Cohn v. Bugas* (1974) 42 Cal.App.3d 381, 385–386 (*Cohn*); *Cook v. Superior Court* (1971) 19 Cal.App.3d 833, 834 (*Cook*).) According to appellants, the trial court violated the rule of *Cohn* and *Cook* because whenever excessive force is at issue, liability requires the trier of fact to balance the nature and quality of the intrusion on the individual's Fourth Amendment interests (i.e., extent and severity of injury inflicted) against the governmental interests at stake. (*Martin v. Heideman* (6th Cir. 1997) 106 F.3d 1308, 1311–1312.) Thus, appellants imply bifurcation prevented them from offering proof of the extent and severity of the injury inflicted upon Williams. But appellants offer no record citations to support what they imply.

Appellants urge that the trial court's "order bifurcating this case resulted in refusal by other courts to accept the assignment, citing the pre-trial rulings[.]" There are two problems with this argument. Number one, the minute order cited by appellants merely states that "[a]t the direction of the Supervising Civil

Court Judge . . . , this matter is returned to Department 1, Room 534." It does not establish the premise of the argument. Number two, appellants did not cite any case law suggesting that an abuse of discretion should be found if, in fact, the bifurcation ruling caused other trial court's to not "accept the assignment."

Next, appellants suggest that bifurcation wreaked havoc with their case for the following reasons.

Bifurcation, they posit, left them "with no choice but to assent to [respondents'] presentation of [Williams's] history of drug use, criminal history, and aggression at the liability phase without the ability to dispute or rebut. [Appellants] were . . . limited to bringing testimony from [Williams's] family . . . , preventing introduction of evidence pertinent to damages issue[s]." Additionally, they aver that they had "to re-argue each ruling previously made by the [trial court] regarding a character witness . . . since [respondents] wished to reiterate those issues and re-engage in further discussions with the [trial court], reminding [the trial court] [that] the officer that used force did not know [Williams's] condition." Appellants claim that the trial court "rationed . . . [appellants,] permitting one of the [appellants] to briefly talk about [Williams's] history and where he worked."

As a corollary, appellants claim: "Given the discombobulation created by the [trial court's] order to bifurcate this case and the limitations brought upon thereafter, [appellants] had to tip toe around presentation of evidence to be able to put on a case without constant objections and subsequent destructive rulings building bias and prejudice toward [appellants]. [Appellants] had to argue extensively to have the [trial court] allow a witness to testify at the liability phase of this

case as to [Williams's] character due to the voluminous damaging character evidence introduced by [respondents] as part of their liability theory. [Respondents] were allowed to discuss [Williams's] alleged meth addiction, prior domestic violence and threat to his ex-girlfriend, prior convictions and bad character, yet [appellants] had absolutely no way of rehabilitating or communicating to the jury of who [Williams] actually was."

These related arguments are insufficiently developed to show that bifurcation prejudiced appellants' ability to prove liability or damages. More importantly, these arguments fail to establish that bifurcation was an abuse of discretion at the time the trial court ruled. The problems named by appellants are only named through hindsight, something that trial court could not consult when ruling.

III. Lewinski.

Appellants contend that the trial court abused its discretion by giving them insufficient time to cross-examine Lewinski. (*Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 411 [the extent of cross-examination with respect to an appropriate subject of inquiry is within a trial court's discretion].) Alternatively, they contend the trial court abused its discretion by not allowing them to conduct an Evidence Code section 402 hearing outside the presence of the jury. (*People v. Slocum* (1975) 52 Cal.App.3d 867, 888 [a trial court's ruling on a party's request for an Evidence Code section 402 hearing reviewed for an abuse of discretion"].)

Upon review, we conclude the appellants fail to demonstrate an abuse of discretion.

A. *Relevant Proceedings*.

The morning of February 4, 2016, the trial court informed the parties that an alternate juror had a flat tire and would be delayed getting to court.

Respondents' counsel offered to stipulate to proceeding without the alternate juror. Appellants' counsel objected. In response, respondents' counsel indicated that "it's critical that we put on our out of town experts . . . today. The delay would impact our ability to do so." Further, he stated, "I have a police officer witness . . . I need to put . . . on this morning. He's a short witness. But . . . I think we'll lose the ability to put on the defense case if we don't commence this morning. I'm losing two out of town experts. And the police officer witness is unavailable tomorrow. I would request that we proceed."

Appellants' counsel indicated his belief that they could get through the expert witnesses if they started at 1:30 p.m. Respondents' counsel replied, "If we limit these defense experts to the salient points the defense needs to make and not expand it into other areas, I think we could still accomplish that if we got started at 1:30."

Appellants' counsel pointed out that they were at risk of losing another juror due to a hardship request. Respondents' counsel again urged the trial court to excuse the missing alternate juror. The trial court stated, "I'm worried about losing—because we have a damage phase, possible damage phase. I'm worried about losing jurors."

At approximately 11:30 a.m., witness testimony resumed. One of respondents' experts, Reitz, was on the stand for cross-examination. After a lunch break, the parties reconvened at 1:30 p.m. Scott took the stand again for further direct

examination and cross-examination. Respondents then called Vidal.

After Vidal testified, the trial court took a recess. Out of the presence of the jury, appellants' counsel requested an Evidence Code section 402 hearing regarding Lewinski. Respondents' counsel informed the trial court that Lewinski "is the witness we were talking about that we're going to lose after today. I need to get him on and off the stand." When appellants' counsel indicated a desire to "take [Lewinski] on voir dire," the trial court stated, "We'll bring him in. You can take him on voir dire as to qualifications. Then . . . [I] assume you're going to say he's not—whatever it is, I'll look at it and rule on it." Appellants' counsel replied, "That's fine, your Honor." The trial court indicated that voir dire would be in front of the jury. In response, appellants' counsel said, "We were thinking [of] doing it outside the presence" of the jury. The trial court said the jury could be excused if that became necessary. At that point, appellants' counsel stated, "Your Honor, we'll reserve our [Evidence Code section] 402 then. We'll allow them to start. We don't intend to do voir dire in front of the jury. This is the first time I've heard of voir dire [of] a witness in front of the jury." The trial court indicated that voir dire of an expert witness is often done before jurors to save time.

Lewinski was called by respondents.

During cross-examination, appellants' counsel inquired into Lewinski's income, credentials, his testimony in previous cases, and the limitations that other judges placed on his testimony in those previous cases.

At one point, the trial court asked if appellants' counsel had any more questions. He said yes. Asked how many, appellants'

counsel said, "Depends on his answers." The trial court asked for an estimate as to how long it would take appellants' counsel to finish. He said it would take 15 to 20 minutes. The trial court stated, "Let's give it another seven minutes and that's it."

Appellants' counsel began asking Lewinski questions about the shooting of Williams. After a series of questions, the trial court gave appellants' counsel a two-minute warning. Soon after, the trial court terminated cross-examination and excused Lewinski. Appellants' counsel objected and moved for a mistrial, noting that respondents' counsel questioned Lewinski for 55 minutes despite the time constraints. Continuing on, appellants' counsel stated, "And when I was 20 minutes into my cross-examination, the [trial court] would not allow—at 4:17 the [the trial court] asked me if I'm finished, stopped my cross-examination basically in 35 minutes. This violates my client's right to cross-examination." Later, appellants' counsel stated that the two witnesses who preceded Lewinski went until 2:45 p.m., and that Lewinski did not take the stand until 3:00 p.m." According to appellants' counsel, he had transcripts from prior cases he was going to use for impeachment. The trial court replied, "You've done that. You went into prior cases." Further, it indicated that appellants' counsel had ample time, and stated, "We had a jury waiting. We had a time problem with this witness. You went over in detail. You kept going over. You did a number of irrelevant questions." The trial court denied the motion for mistrial.

B. *Analysis: Time Limit on Cross-Examination.*

Appellants point out that they had a right to cross-examine Lewinski. The law supports this position.

A "party has a due process right to cross-examine and confront witnesses." (*Prime Gas, Inc. v. City of Sacramento* (2010) 184 Cal.App.4th 697, 710.) "The chief purpose of cross-examination is to assist the trier of fact in determining the weight to be given to testimony elicited on direct examination. This purpose is accomplished through testing the credibility, knowledge and recollection of the witness." (*Payette v. Sterle* (1962) 202 Cal.App.2d 372, 375.)

Evidence Code section 721, subdivision (a) provides that an expert may be cross-examined "to the same extent as any other witness," and may be fully cross-examined as to "(1) his or her qualifications, (2) the subject to which his or her expert testimony relates, and (3) the matter upon which his or her opinion is based and the reasons for his or her opinion."

What appellants fail to note is the counterveiling rule that "'[a] trial court has inherent as well as statutory discretion to control the proceedings to ensure the efficacious administration of justice. [Citations.]'" (*People v. Chenault* (2014) 227 Cal.App.4th 1503, 1514.) As provided by Evidence Code section 765, subdivision (a), a trial court "shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be[.]"

The preceding law dictates an analysis of the trial court's decision to impose a time constraint on appellants' cross-examination of Lewinski in light of appellants' rights and the surrounding circumstances.

Appellants argue that it "was highly prejudicial and an abuse of discretion by the [trial court] to disallow [appellants] to cross-examine a material . . . expert witness, especially given the

bifurcation of this case and the limitations placed on [appellants] to prove their case. For factors beyond the control of [appellants], yet in exclusive control of [respondents], expert Lewinski was not examined until later in the day. . . . [Appellants] needed to lay a sufficient factual foundation regarding his background before they were able to question and impeach him on his opinions and hypotheticals. [Appellants] were not given an opportunity to cross-examine this witness[.]"

It is hyperbole, of course, for appellants to argue that the trial court disallowed cross-examination. We construe this as an argument that the trial court imposed an improper time constraint of 35 minutes on appellants' cross-examination of Lewinski. The initial detriment to appellants' position is that they fail to analyze what the trial court should have done differently on the day in question, and why they did not have enough time for an efficient cross-examination. Rather, they advert to the bifurcation, unnamed limitations placed on their ability to prove their case, and their need to lay a foundation regarding Lewinski's background before questioning him and impeaching his opinions and hypotheticals. Yet they do not elaborate, as if spelling out their theory is not required. It is. "Issues do not have a life of their own: if they are not raised or supported by [substantive] argument or citation to authority, we consider the issues waived.' [Citations.]" (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.)

Undeniably, the trial court perceived that appellants' counsel had ample time for cross-examination, and believed that appellants' counsel took some of that time to ask irrelevant and repetitious questions. Appellants have done nothing in their appellants brief to debunk the trial court's view. More

importantly, appellants have not explained why it was an abuse of discretion for the trial court to limit cross-examination to 35 minutes given that Lewinski was an out-of-town expert who was only available on the day he was testifying, it was the end of the day, and appellants' counsel contributed to the shortening of time by objecting to proceeding with the trial in the absence of the alternate who was late to court. Thus, appellants fail to establish trial court error.

C. *Analysis: Evidence Code section 402.*

Appellants argue they were entitled to an Evidence Code section 402 hearing outside the presence of the jury. They fail to offer legal justification.

Evidence Code section 402, subdivision (b) provides that a trial court may hear and determine the question of the admissibility of evidence out of the presence or hearing of the jury. By the plain language of the statute, a hearing outside the presence of a jury is discretionary. Thus, it was not per se error for the trial court to require any hearing to be conducted in the jury's presence.

Appellants tacitly suggest that *People v. Bledsoe* (1984) 36 Cal.3d 236, 245, footnote 6 (*Bledsoe*), dictates a finding that the trial court erred as a matter of law by not allowing a hearing outside the presence of the jury.

This tacit suggestion is not borne out by the case. *Bledsoe* merely indicates that when proposed evidence is novel, it may be "preferable" to hold an Evidence Code section 402 hearing outside the presence of a jury. Here, there is no indication that Lewinski's proposed testimony was novel. Moreover, appellants fail to explain why the trial court was not justified in requiring any Evidence Code section 402 inquiry to be conducted before the

jury in light of the lateness in the day, and in light of Lewinski's impending departure from the state. In other words, appellants fail to demonstrate error.

IV. Denial of Appellants' New Trial Motion.

Appellants offer a series of arguments that they do not categorize into clear appellate claims. By the import of their language as well as either the citation or allusion to Code of Civil Procedure section 657, we presume they seek review of the denial of their new trial motion on the following grounds: defense counsel and the trial court were guilty of misconduct that deprived appellants of a fair trial; the trial court improperly refused to clarify the meaning of "immediate threat" in CACI No. 1305; the jury's verdict was "contrary to the law using the reasonableness standard analysis in determining whether [Officer Sainz] used excessive force against [Williams];" and the trial court erred when it refused to provide appellants an opportunity to cross-examine Lewinski.

A party may seek a new trial based on an "[i]rregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial," "[i]nsufficiency of the evidence to justify the verdict . . . , or [a claim that] the verdict . . . is against law," and an "[e]rror in law, occurring at the trial and excepted to by the party making the application." (Code Civ. Proc., § 657, subds. (1) & (6)-(7).) When a new trial is denied, a reviewing court must consider "the entire record, including the evidence, so as to make an independent determination as to whether [any] error was prejudicial. [Citations.]" (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 872.)

As discussed below, there is no basis to reverse the trial court's denial of appellants' motion.

A. *Conduct of Defense Counsel*.

Misconduct of counsel qualifies as an irregularity that is grounds for a new trial. (*City of Los Angeles v. Decker, supra,* 18 Cal.3d at p. 870.) A new trial is justified if, absent the misconduct, it is reasonably probable the moving party would have obtained a more favorable outcome. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800, 802 (*Cassim*).)

According to appellants, respondents' counsel committed misconduct during cross-examination of K.W. and closing argument. They contend that his misconduct resulted in a miscarriage of justice.

1. Relevant Proceedings.

During the liability phase of the trial, appellants' counsel indicated he was going to call one of Williams's children. The trial court asked counsel for both sides to confer on the questions prior to the witness taking the stand "so we can just roll right along." Respondents' counsel objected to the witness because she did not observe the shooting, and because she was a "damages witness only." The trial court stated, "There has to be a little background" and indicated the witness could testify as to whether she had seen her father use drugs or alcohol.

Later there was a colloquy between counsel regarding the respondents' desire to introduce a recording of Williams in which he makes angry, violent statements 45 minutes before the shooting. Appellants' counsel objected to the evidence as hearsay, and the trial court said, "I ruled on this already." Respondents' counsel stated, "It's being offered for the state of

mind of [Williams]. And I agreed to a limiting instruction." The trial court agreed it went to state of mind.

Appellants' counsel insisted that respondents' counsel's theory was that Williams wanted to commit suicide by cop, and that he wanted to prove this theory by introducing evidence that Williams said "If I don't have you then there's no point in living" to his girlfriend, Gonzales, just prior to the shooting. Defense counsel explained to the trial court that Williams's statement to Gonzales was not on the recording, and that her statement would be introduced if and only if he called her to testify.

At that point, appellants' counsel then switched to arguing that the statement on the recording did not show Williams's state of mind. Also, he objected that respondents planned to introduce evidence of the violent statement through a police officer rather than through Gonzales. The trial court stated, "Let's wait and see. When it comes up[,] I'll rule on it. I'm not going to rule." Respondents' counsel informed the trial court it had ruled already. The trial court agreed, stating, "I've already ruled and said it would be all right. But I'll look at it when [appellants' counsel] make[s] the objection. I'll listen to it[.]"

Eventually, appellants called K.W., the 19-year-old daughter of Williams. She testified that she maybe saw Williams drink occasionally or socially, and she never saw him act aggressively or violently toward anybody. Also, she testified that Williams was not a drug addict, and that she had never seen him use drugs.

On cross-examination, defense counsel asked K.W. a series of questions, which resulted in sustained objections. The questions were these: "You saw your father when he was calling [Gonzales] threatening her?"; "Did you know that he held a

loaded gun to [Gonzales]?"; "You don't know whether [Gonzales] played an audio recording . . . ?"; "Have you seen a picture of the beer can your dad was holding before he confronted the police?"; and "When your dad [had a] drink what did he drink?"

Over objection, the trial court allowed the following two questions: "Have you reviewed [Gonzales's] statement to [the] Los Angeles [Police] Department taken shortly after your father was shot?"; and "You don't know what [Gonzales] told the police right after the shooting?"

During closing argument, defense counsel informed the jury that the question was whether it was reasonable for the officer to shoot. According to defense counsel, if "the gun in the pocket turned out to be a cell phone, that's not at issue." Defense counsel added, "I mentioned cell phone. Again, don't know but it's in his property. You'll see it in the coroner's report[]. [Williams] had a cell phone on him. We know he had alcohol. And his decision—"

Appellants' counsel interrupted and said, "Your Honor, this—cell phone—is on his person—" The trial court replied, "No. This jury listens to the evidence. They're the exclusive judges of the evidence."

Defense counsel continued on, saying Williams had a Motorola cell phone. Next, Defense counsel said, "But the long and the short of it is we don't know whether he was trying to get into a situation where he was pulling his phone to fake the officers out. We don't know."

2. Analysis.

Appellants claim that the questions on cross-examination qualify as misconduct, but appellants do not articulate why in a cognizable fashion. Our supposition is that they contend defense

counsel violated the trial court's ruling limiting K.W.'s testimony to Williams's drug or alcohol use, and to some background information. (*Hawk v. Superior Court* (1974) 42 Cal.App.3d 108, 126 [an attorney must yield to the ruling of the trial court]; *County of Contra Costa v. Nulty* (1965) 237 Cal.App.2d 593, 599 [it is misconduct for an attorney to evade a trial court's order].) We find no misconduct.

Because K.W. said she saw Williams maybe drink occasionally or socially, it was logical for defense counsel to ask K.W. what Williams drank, and if she saw a picture of the beer he was holding before he confronted the police. This line of questioning was permitted under Evidence Code section 1101, subdivision (c) to impeach K.W.'s credibility regarding Williams's lack of abuse of alcohol. Notably, the trial court never limited defense counsel's ability to impeach K.W. And even if cross-examination questions were misconduct, they did not deprive appellants of a fair trial. The jury heard evidence that alcohol as well as MDA and MDMA was in Williams's system on the night of the shooting. Thus, the questions did not imply anything that was not revealed by the evidence, i.e., they did not imply Williams was abusing and/or misusing substances when there was no evidence to the contrary.

As to the questions about Gonzales, we note that appellants' counsel asked K.W. if she had ever seen Williams act aggressively or violently. At that point, respondents' counsel was permitted to elicit character evidence to impeach K.W. (Evid. Code, § 1101, subd. (c).) The questions about Gonzales were in that vein. Moreover, the trial court did not limit impeachment evidence, so respondent's counsel's questions were not misconduct. If the cross-examination questions were misconduct,

they did not deprive appellants of a fair trial because the jury heard evidence of Williams's erratic and aggressive behavior on the night of the shooting.

Next, appellants contend respondents' counsel committed misconduct by referring to a mobile phone in closing argument. (*Cassim*, *supra*, 33 Cal.4th at p. 802 [during closing argument, it is misconduct for counsel to urge facts not justified by the record, or to suggest the jury may resort to speculation].) But respondents' counsel did not urge the jury to conclude that Williams reached for his cell phone just prior to the shooting, so he did not urge facts not justified by the record. Also, he admitted that it was unknown whether Williams was reaching for his cell phone. At most, respondents' counsel implicitly asked the jury to speculate on that point. Assuming without deciding that respondents' counsel committed misconduct, it is not reasonably probable that the absence of any such misconduct would have changed the outcome. The evidence favorable to the respondents—the testimony of Officer Sainz, Officer Rothemich and Jason—either established or supported an inference that Williams reached into his pocket or toward his waistband just prior to the shooting. That was sufficient to justify Officer Sainz's subsequent decision to shoot.

B. *Trial Court Conduct*.

Appellants charge the trial court with misconduct throughout the proceedings below. As we discuss, appellants fail to sufficiently develop their arguments.

First, appellants contend their "objections during opening and closing argument were followed by inappropriate comments and assertions, which were . . . prejudicial." Though appellants provide multiple record citations to support the foregoing

statement, they do not set forth their objections or articulate the "inappropriate comments and assertions" in their appellate brief. We decline to guess what comments and assertions appellants wish for us to consider. "One cannot simply say the court erred, and leave it up to the appellate court to figure out why. [Citation.]" (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.)

Second, appellants maintain that their "counsel was not given enough time for his closing rebuttal due to [the trial court's] inaccurate time keeping[.]" They maintain that they were unable to rebut, dispute, or cure unspecified comments, questions and answers. This argument is vague due to appellants' failure to analyze specific facts. We need not consider the argument because it is not sufficiently developed for us to understand. "It is not our responsibility to develop an appellant's argument." (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11.)

Third, appellants state: "On numerous occasions [the trial court] disallowed [appellants'] counsel to obtain an answer, even when there was no objection by opposing counsel[.] [T]he [trial court] itself interjected and made comments to counsel to move [on], comments that prejudiced the jury's view of [appellants]. The [trial court's] comments included but were not limited to, 'that's his answer, counsel', 'he answered your question', 'he answered that already, counsel. And it speaks for itself', 'no. no. That was his answer', 'we went through this yesterday. [You] [a]sk[ed] the question yesterday, counsel, [and] there was an answer. He answered the question yesterday, sir', 'he's answered this counsel, previously', 'this is the same testimony we had yesterday . . . we went into [this]', 'no that's his answer. That's his answer. Go on to another question', 'that's the second time.

Okay. [G]o ahead.'" Appellants fail to cite case law relevant to the issue, or to provide any context for the quoted language. There is no basis for us to conclude that the trial court abused its "inherent power to control litigation" before it. (*In re Reno* (2012) 55 Cal.4th 428, 522.)

Fourth, appellants complain that the trial court "would allow narratives on questions requested to be answered in the form of a 'Yes or No' or would order [appellants'] counsel to address already established foundational issues." Once again, appellants fail to provide us context for their complaint, making this argument too vague for us to determine if the trial court abused its power.

Fifth, per appellants, the trial court "also made [its] own objections and rulings without clarifications, preventing [appellants] to rephrase or restructure [*sic*] the questions or would sustain objections over admitted evidence [*sic*]." This bald statement, devoid of specific facts regarding rulings, comments and context, deprives us of the minimum discussion necessary to consider whether the trial court engaged in improper conduct.

Sixth, appellants assert that the trial court "was extremely disrespectful towards [appellants'] counsel when he needed to explain why a witness should or should not be allowed to answer a question over defense counsel's objections or when a response was requested to be stricken." Absent a discussion of specific conduct by the trial court, this argument is too vague for us to analyze.

C. *Meaning of Immediate Threat In CACI No. 1305.*

Appellants arguments regarding the trial court's refusal to clarify CACI No. 1305 are insufficiently developed to compel reversal.

According to appellants, "the trial court's refusal to [answer the] question posed by the jury [regarding the meaning of immediate threat] amounts to an error in law warranting a new trial." In other words, appellants contend that there is a per se rule: If a jury requests clarification of a jury instruction, and a trial court refused to provide, reversal is mandatory. For this proposition, they cite *Mazzotta v. Los Angeles R. Corp.* (1944) 25 Cal.2d 165, 170 (*Mazzotta*). But *Mazzotta* does not support this contention because it did not involve a request for clarification of a jury instruction. Rather, as pertinent here, it stands for the pedestrian proposition that "a new trial may be granted upon the ground that the jury was erroneously instructed upon matters of law," and that a trial court is given wide discretion when ruling. (*Id.* at p. 169.)

Next, by citing law generally regarding incorrect and erroneous jury instructions, appellants seem to suggest that CACI No. 1305 is an incorrect or erroneous instruction. We reject this suggestion because appellants have not provided any law or argument establishing that the United States Supreme Court has overruled the law in *Graham*, *supra*, 490 U.S. at p. 396 providing that a finder of fact can consider whether the victim of a shooting posed an immediate threat to law enforcement personnel just prior to the shooting.

Reading between the lines, appellants' implied contention is that the words "immediate threat" are ambiguous, and therefore the trial court was required to give a clarification. This implied argument is waived because it was not developed. (*Tan v. California Fed. Sav. & Loan Assn.* (1983) 140 Cal.App.3d 800, 811.) In particular, appellants provide no argument or law establishing that "immediate threat" is ambiguous, and no law or

argument regarding a trial court's obligation to give a clarification if there was any ambiguity.

D. *Excessive Force; Lewinski.*

As previously discussed, the law and facts support the jury findings regarding use of force, and appellants have failed to demonstrate prejudicial error with respect to their cross-examination of Lewinski. It therefore stands to reason that the rulings with respect to these issues do not require the granting of a new trial.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT