

Menlo Park Police Department
Internal Affairs Investigation #1426

**OFFICER INVOLVED SHOOTING
INVESTIGATION**

INVOLVED OFFICERS

Sergeant Jaime Romero
Officer Scott Mackdanz
Officer Nicholas Douglas

INVESTIGATING OFFICER

Sergeant William A. Dixon

DECEASED SUBJECT

Jerry Lee Matheny

SYNOPSIS

Menlo Park Police Sergeant Romero, Officer Scott Mackdanz, and Officer Nicholas Douglas were dispatched or responded to a reported suspicious person in the area of 64 Willow Road in the City of Menlo Park. The self-identified reporting party (RP) stated that she just observed a subject who matched the description of a person known within her office as potentially coming into area businesses and stealing purses. The RP provided a specific description of the suspicious person she had just observed. The RP stated the subject had "peeked" into her office, waved, and then exited. Before disconnecting the RP provided a license plate number of a white Ford Taurus associated with the subject and told the dispatcher that the subject had driven away.

Officer Douglas locates the described Ford Taurus unoccupied in the driveway of a nearby business. Officer Mackdanz arrives at the same time as both he and Officer Douglas observe a subject matching the specific description provided by the reporting party. Officer Douglas attempts to contact the subject and he flees on foot northbound through the parking lot. Sergeant Romero arrives and stops his vehicle directly in the path of the fleeing subject.

The subject continues to flee and while doing so produces a semi-automatic firearm which he had concealed on his person. Officer Douglas who was closest to the fleeing subject discharged his Taser with no effect. All three officers recall a round being discharged and fired their duty weapons at the armed subject.

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Officer Mackdanz had tripped along the southern most edge of the roadway and fired at the subject from a prone position. Upon hearing the firearm discharge, Officer Douglas dove to the roadway pavement for safety and also fired on the armed suspect from a prone position. Sergeant Romero fired his department issued semi-automatic from a standing position adjacent to his car with no additional cover.

The subject was pronounced deceased by attending medical personnel shortly after the active incident concluded.

All three officers observed that the fleeing subject had armed himself and felt their lives and the lives of their fellow officers were in jeopardy.

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INVESTIGATION

On November 11, 2014 at approximately 1240 hours, I heard Sergeant Jaime Romero broadcast over the Menlo Park Police Department main radio channel that there had just been an officer involved shooting with one subject down.

At the time I heard the radio traffic, I was off duty and was traveling eastbound on Santa Cruz Avenue in my department vehicle. Immediately following the initial broadcast of the officer involved shooting, Sergeant Romero requested medics and stated that the involved officers were "Code Four."

Moments later, I also heard Sergeant Romero make a radio request that dispatch advise me what had occurred. I acknowledged Sergeant Romero's request over the radio and indicated that I was enroute. Sergeant Romero broadcasted, "We've got a loaded firearm. He fired at us. We've got him down." While traveling to location of the incident, I contacted Chief Jonsen and advised him of the preliminary information I had heard.

On my arrival at the scene, I observed Sergeant Romero standing near his patrol SUV which was parked in the single westbound lane of Willow Road. Officer Nicholas Douglas was seated on the left side of the concrete portion of the driveway of 68 Willow Road. There were several members of the Menlo Park Fire Protection District standing near Officer Douglas. Officer Scott Mackdanz was walking in the roadway towards Sergeant Romero's vehicle with a roll of crime scene tape in his hand.

A male subject was laying on the ground in the single eastbound lane of Willow Road.

I approached Sergeant Romero and learned that the subject lying in the roadway was believed to be the sole involved subject. Sergeant Romero briefly explained to me that the subject had fled on foot from Officers Mackdanz and Douglas directly towards him. Sergeant Romero believed that Officer Mackdanz, Officer Douglas, and he had all fired their department issued firearms at the subject. I asked Sergeant Romero where the subject's handgun was and he pointed to a nearby sign pole. Sergeant Romero also told me that he had moved the subject from his original position of rest in an attempt to locate the handgun.

I asked Sergeant Romero if the event had been captured on his department issued Vievu body camera. Sergeant Romero told me that he had not activated the camera until immediately after the threat presented by the suspect had been eliminated. Sergeant Romero further explained that he believed that Officer Douglas had also not activated his camera and that Officer Mackdanz's camera had been previously turned in for repair and he had not been issued a replacement.

Sergeant Romero also told me that his [REDACTED], was in his patrol vehicle doing a ride along at the time of the incident. In Sergeant Romero's presence, I briefly explained to [REDACTED] what would be occurring based upon the severity of the incident. I also explained to [REDACTED] that he would not be allowed to discuss the incident with Sergeant Romero until he had provided a statement to investigators. [REDACTED] indicated that he had understood what I had explained to him.

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Officer Douglas was transported to Stanford Hospital for an injury that he had sustained during the incident. I directed Officer Mackdanz to Sergeant Romero's vehicle. I verbally explained to Officer Mackdanz and Sergeant Romero that they were not to discuss the incident amongst each other. Both indicated that they had understood my instructions.

While Officer Sample and Officer Solis were on scene attempting to obtain witness information, I removed numbered evidence identification cards from within Sergeant Romero's vehicle. I walked through the scene and placed markers near all items that appeared to be of evidentiary value. I also took several preliminary photos of the scene in an effort to depict the placement of the suspect's vehicle in relation to the events that followed.

While walking through the area, I observed an extended RCB lying in the roadway to the right of the driveway of 68 Willow Road. I also observed the white metal wires associated with a deployed Taser cartridge near the same driveway. Additionally, I observed a small silver handgun was sitting at the base of a sign pole where Sergeant Romero had earlier indicated it was. There were several expended shell casings throughout the area in addition to one small live round. The live round's size was not consistent with the duty rounds that are issued to our officers or the other expended shell casings I had observed.

I purposely limited my initial involvement and conversations at the scene knowing that I would subsequently be responsible for the department's administrative investigation of the incident.

Shortly thereafter, other Menlo Park Police Department personnel arrived on scene and began to take over the duties of the initial investigation. At approximately 1338 hours, Chief Jonsen and Sergeant Kaufman arrived and took over command of the scene. I transported Officer Mackdanz, [REDACTED], and Sergeant Romero to the Menlo Park Police Department in my department vehicle. Upon our arrival at the station, I arranged for full body photographs of the officers to be taken to depict what they were wearing at the time of the event. I also took control of their department issued safety equipment, duty belt, and firearms. This equipment was placed into specifically labeled boxes and stored in my locked office for subsequent examination by San Mateo County District Attorney Investigators and Crime Laboratory personnel.

Officer Mackdanz was sequestered in the report writing room. Sergeant Romero and [REDACTED] were sequestered in the watch commander's office. All three were again admonished not to discuss the incident amongst themselves or with any other Menlo Park Police Department personnel.

I prepared a timeline of the entire incident using time stamped radio traffic (ATTACHMENT M), phone recordings (ATTACHMENTS L), time stamped information entered by Communications personnel, and Menlo Park Fire Protection District / San Mateo County Computer Aided Dispatch information. Refer to ATTACHMENT K for the complete timeline.

The interviews of all three involved officers and the civilian ride along were conducted by inspectors with the San Mateo County District Attorney's Office for the ensuing criminal

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investigation. I monitored all the interviews for information regarding the administrative investigation on behalf of the Menlo Park Police Department.

Based upon the policy of the attorneys for the Menlo Park Police Officers Association, Officers Mackdanz and Douglas declined to voluntarily provide a blood sample for subsequent further examination. I completed and served notices to both Officer Douglas and Officer Mackdanz that the department would order them to provide a blood sample pursuant to Menlo Park Police Department policy 310.7(a). The department was subsequently unable to find a suitable blood technician or medical facility that was willing to cooperate or take an involuntary blood draw.

I downloaded the Vievu body cameras for Sergeant Romero and Officer Douglas. Upon reviewing the data contained on each individual camera, I was able to confirm that their cameras had not been activated during the event. I also confirmed with Officer Mackdanz that he did not have a Vievu camera because the one assigned to him had been sent in for repair.

Officer Douglas had been previously trained with and issued a department owned Taser X26P. On November 11, he was carrying the department issued Taser X26P (Ser#X120005KH). Neither Sergeant Romero or Officer Mackdanz had been issued or were carrying a Taser during the incident. I subsequently requested and received a copy of the device history for Officer Douglas' issued Taser. I noted the report indicated a 2-second-long "trigger" event on November 11, 2014 at approximately 12:11:32. For an unknown reason, the device time stamp appears to be off by approximately 29 minutes. Refer to ATTACHMENT N for further.

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STATEMENTS

The written statements below were documented chronologically and are not verbatim. They are summaries of the detailed statements provided to the respective San Mateo County District Attorney Office Investigators during their interviews in the Menlo Park Police Department Interview Room.

██████████
The interview took place on November 11, 2014 at approximately 1535 hours. Present during the interview was San Mateo County District Attorney Inspector Steve Robinson, Menlo Park Police Detective Ron Venzon, and Menlo Park Police Detective David Apple.

██████████ is fifteen years old and is the 10th grade of high school. He is the son of Sergeant Jaime Romero. ██████████ has participated in approximately five previous ride alongs with Sergeant Romero. He is familiar with some of the police jargon used over the radio and historically when he has not understood what was said, he has asked his father for clarification. During the course of this ride along, ██████████ was seated in the front passenger seat.

On November 11, 2014, he and his father arrived at the police department at approximately 0530 hours. They were in briefing until approximately 0700 hours. Earlier in the shift they responded to a female that was under the influence of methamphetamines and then subsequently participated in the search of the woman's hotel room. They also had breakfast together. At the time of the initial broadcast call on Willow Road, he did not know where in Menlo Park they were responding from.

While enroute to the call at 68 Willow Road, ██████████ asked his father to clarify what they were going to. Sergeant Romero explained they were responding to a call of a man who was peeking into windows because he had stolen purses before. Based upon ██████████ previous experience during ride alongs he did not perceive what he had heard or what they were responding to as a serious event.

While responding he heard Officer Douglas broadcast over the police radio that he had found the suspect's vehicle. They were going to "loop around" to look at the vehicle when Officer Douglas called out over the radio that he was in foot pursuit.

As they arrived, ██████████ observed Matheny running with the two officers running after him. Sergeant Romero put the vehicle in park and told ██████████ "Stay here." Sergeant Romero exited the vehicle and forcefully told the Matheny to get down on the ground twice. At the same time, ██████████ observed Officers Douglas running with a Taser and Officer Mackdanz running with a baton. Officer Douglas and Mackdanz fell to the ground after running into each other. ██████████ subsequently saw the Taser and a baton on the ground.

██████████ described the Matheny as being in between the two pursuing officers and his father, Sergeant Romero. Matheny looked around as if he did not know what to do and reached around to his side and pulled out a gun. During the interview, ██████████ used his right hand to describe

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the movement he saw however he did not know if Matheny used his right or left hand. [REDACTED] stated that upon exiting the vehicle Sergeant Romero did not have his handgun drawn.

[REDACTED] stated he saw Matheny produce a handgun but he could not describe it. [REDACTED] heard Matheny "fire off a couple of shots" that were followed by gunfire from Sergeant Romero and the two other officers. [REDACTED] did not see how Matheny's hands were positioned or where shots fired by Matheny were directed. [REDACTED] only heard Matheny fire his handgun, he did not see it being fired. Additionally, [REDACTED] never heard Matheny say anything during the incident.

[REDACTED] stated Sergeant Romero fired at least one round from his handgun at Matheny.

During the event [REDACTED] focus was prominently on his father, Sergeant Romeo, once he heard the initial gun shots. He knew Officers Douglas and Mackdanz were on the ground after witnessing them fall but did not see them have their guns out or fire their weapons. [REDACTED] later saw Officers Mackdanz and Douglas holstering their firearms so he concluded they had their firearms out.

[REDACTED] described his view from within the interior of the parked vehicle as clear but obstructed by the "door divider" unless he leaned forward in the passenger seat.

After Matheny had been shot, [REDACTED] said he saw the gun slide away and come to rest in front of a driveway. He observed the officers check on Matheny and then look for the firearm. The location where they found the handgun was in front of the driveway.

At the conclusion of the interview, [REDACTED] used a Google Earth image to indicate where the suspect was upon their arrival (X) and where Sergeant Romero's vehicle was parked (rectangle).

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Sergeant Jaime Romero

The interview took place on November 11, 2014 at approximately 2020 hours. Present during the interview were San Mateo County District Attorney Inspector Kevin Raffaelli, Menlo Park Police Management Association Attorney Alison Berry Wilkinson, and Menlo Park Police Detective David Apple.

Sergeant Romero's statement was provided voluntarily and he was not advised of his Miranda rights or given a Lybarger Admonishment. Additionally, Sergeant Romero verbally indicated that he would be voluntarily willing to submit a blood sample.

Sergeant Romero has been a police officer for over twenty years. During his law enforcement career he has worked as a sworn police officer for the Broadmoor Police Department (2 years), Gilroy Police Department (5 years), East Palo Alto Police Department (5 years) and the Menlo Park Police Department. He has been with the Menlo Park Police Department for approximately 9 years the last seven and a half to eight years as a Sergeant. His current assignment is working dayshift patrol as a supervisor.

Sergeant Romero started his shift at 0600 hours on November 11 after getting approximately 6 ½ to 7 hours of sleep the previous evening. He had not recently taken any prescribed medication or illegal narcotics and does not drink alcoholic beverages. This shift was the fourth of his scheduled four shifts this week and he had not worked any overtime during this week. During the shift today he was wearing a full Menlo Park Police Department uniform and driving a fully marked black and white Menlo Park Police Department vehicle.

Sergeant Romero recounted hearing a suspicious person call dispatched to the officers working on his shift. He could not immediately recall the specific address of where the reporting party indicated the event occurred however he knew there had been some interaction between the reporting party and the suspicious person.

The reporting party stated that had a flyer detailing several thefts from area businesses where the suspect in those thefts appeared to match the description of the person they had interacted with moments before. The reporting party also provided a description and license plate number of a vehicle they believed to have associated with the suspicious person. The responding units were updated that using the vehicle information provided by the reporting party matched a AWS hit connecting the same vehicle to several recent commercial burglaries on the peninsula.

Sergeant Romero was traveling on Willow Road and began to respond to the suspicious person call from near the Belle Haven area of Menlo Park. It took approximately 2-3 minutes for him to arrive in the area of the suspicious person call. As he traveled through the intersection of Willow Road and Middlefield Road, he heard Officer Douglas broadcast on the radio that he had arrived on scene and located the associated vehicle unoccupied.

Sergeant Romero recalled Officer Douglas indicate they should be watching for the suspicious subject near a business called "garage" or "the garage." After just passing the area where the call had originated, Sergeant Romero turned his patrol vehicle around and began traveling eastbound on Willow Road. Sergeant Romero was stopped facing or driving slowly past the location when

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he heard "foot pursuit, foot pursuit" over the radio. He didn't feel comfortable with his position because his son was seated in the passenger seat now directly between him and the location where the fleeing subject may be coming from. Sergeant Romero quickly pulled forward and made a u turn so that his patrol vehicle was again traveling westbound in the westbound lane of Willow Road. He continued driving slowly on Willow Road as he observed a subject matching the description of the suspicious person running out from the business with Officer Douglas and Officer Mackdanz chasing him. Sergeant Romero placed his vehicle in park and exited while simultaneously yelling at the fleeing subject "Stop... get down... get down... stop!"

Approximately 15-20 yards away from Sergeant Romero's SUV, yet still running towards directly at him, Sergeant Romero observed the fleeing subject begin to reach towards his body. He could not discern if the subject was reaching for his pocket or his waistband, but the subject's right hand was going behind him. The fleeing subject altered his direction and now began running eastbound in the middle of Willow Road with Sergeant Romero paralleling him.

Sergeant Romero believed he was beginning to catch up to the fleeing subject and began to retrieve his baton to assist in taking him into custody. As they continued to run approximately 7-8 feet from one another, Sergeant Romero observed a silver or chrome handgun being held in the subject's right hand. Sergeant Romero believes he yelled "Gun... gun!" and observed the other officers fall to the ground. He heard what sounded like a gunshot and transitioned from attempting to retrieve his baton to immediately drawing his firearm. Sergeant Romero stated that upon drawing his firearm the subject still was armed, he had already observed the other officers fall to the ground and heard a gunshot so he fired one round. After firing one round, Sergeant Romero's handgun malfunctioned and he believed he fired another round. The suspect fell to the ground and Sergeant Romero heard several other gunshots.

Sergeant Romero described that the suspect had fallen in a prone position in the roadway. Officer Mackdanz and Douglas began to get up and he could tell that Officer Douglas had sustained some injury. Sergeant Romero approached the suspect with his firearm drawn and yelled, "Let me see your hands, let me see your hands!" The suspect was not moving very much, however his hands were underneath his torso. While still maintaining his drawn weapon on the suspect, Sergeant Romero verbally and physically described using his right hand to grab the suspect's waistband and moving the suspects body position to the point where he could see his hand no longer held the firearm. With active threat no longer present, Sergeant Romero holstered his firearm and began to look in the immediate vicinity for the suspect's firearm.

Sergeant Romero assessed the welfare of both Officer Douglas and Mackdanz. Sergeant Romero also broadcasted over the radio that an officer involved shooting had occurred, the suspect was down, and requested paramedics. A short time later, Sergeant Romero stated they found the suspect's firearm along a nearby driveway for the business they were in front of. A short distance away in the middle of the same driveway he observed a handgun magazine which did not appear to be the type carried by police officers.

Sergeant Romero specifically stated that as the event unfolded and he witnessed the suspect produce a handgun he was "scared for myself, I was scared for my officers, my son... and the community... I could not let this guy get away." Sergeant Romero stated he "absolutely"

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believed that his life, the lives of Officer Mackdanz and Douglas, and the life of his son were in danger once he saw the suspect produce the firearm. Sergeant Romero stated that he fired his handgun to "stop the threat and preserve life."

Sergeant Romero later further explained that he recalled seeing the muzzle of the suspect's handgun pointed directly at him which created no doubt in his mind. Upon firing his first shot, the suspect stopped running but was still standing upright. Sergeant Romero fired another round while he continued to run to remove himself out the potential line of fire of the suspect if he decided to fire back at him.

Inspector Rafaelli inquired further about the initial gunshot Sergeant Romero described hearing. Sergeant Romero indicated the sound was a "pop or crack." Given that the suspect was fleeing from them, disobeying their orders to stop, and had pointed the firearm directly in Sergeant Romero's direction he believed that the suspect had fired his gun. Sergeant Romero did not recall ever seeing a muzzle flash or smoke indicating that the suspect had fired his weapon.

Inspector Rafaelli subsequently provided Sergeant Romero with a Google Earth image of the area where the incident occurred and asked him to physically label specific locations where the events he described had taken place.

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Officer Scott Mackdanz

The interview took place on November 11, 2014 at approximately 1917 hours. Present during the interview were San Mateo County District Attorney Inspector Steve Robinson, Menlo Park Police Officers Association Attorney Jeffery Edwards, and Menlo Park Police Detective David Apple.

Officer Mackdanz' statement was provided voluntarily and he was not advised of his Miranda Rights or given a Lybarger Admonishment. Additionally, after speaking with his attorney, Officer Mackdanz indicated that he would not voluntarily submit a blood sample due to their law firm's policy.

Officer Mackdanz has been employed as a Police Officer with the Menlo Park Police Department for approximately 15 years. Prior to that he was employed as a Police Officer for two years with the San Jose Police Department and as a Correctional Deputy Sheriff with the Chelan County Sheriff's Department in the State of Washington for two years prior to that.

For the past month, Office Mackdanz has been assigned to dayshift patrol working from 0600 to 1800 hours on a rotating four on / four off schedule. Prior to starting this morning, he had slept six hours the previous evening. During his shift he was wearing a full Menlo Park Police Department uniform and operating an unmarked Menlo Park Police Department Crown Victoria. Additionally, Officer Mackdanz stated that he had not ingested any illicit narcotics recently and had consumed a couple of alcoholic beverages at approximately 2000 hours the previous evening. Officer Mackdanz did take medication as prescribed by his physician and those medications do impair his memory, ability to recall events, or operate a vehicle

Officer Mackdanz explained that initially he was not the Menlo Park Police officer assigned to the suspicious person call on Willow Road. At the time of the initial broadcast, Officer Mackdanz was at the Menlo Park Police Department main station report writing. Given the location of the call was close to where he was he began to respond to assist. As he drove out of the police department driveway he heard dispatch inform responding officers that the suspect vehicle had an AWS hit indicating that it was associated with a previous burglary. While traveling to the location, Officer Mackdanz heard Officer Douglas broadcast that he was with the described suspect vehicle however it was unoccupied.

On his arrival, Officer Mackdanz was flagged down by a couple of people near the address who told him the person he was looking for was near the entryway on Willow Place. Officer Mackdanz drove his vehicle into the parking lot and parked behind Officer Douglas' patrol vehicle. Officer Douglas was standing outside the described unoccupied associated suspicious vehicle with his own patrol vehicle parked directly behind it.

Officer Mackdanz exited his vehicle and began to walk towards where Officer Douglas who was standing adjacent to the driver's door of the associated vehicle. Officer Mackdanz then observed a person walking out of a courtyard area of the associated business. The subject matched the description provided by dispatch he had earlier being broadcast as the suspicious person. Officer Mackdanz stated that he saw it was a white male with a pony tail. The subject was wearing a

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white colored top with pants that appeared to have items in the pockets although Officer Mackdanz could not recall their color. There were no items in the subject hands.

From where the subject exited the business and where Officer Mackdanz was standing, Officer Douglas was closer to the subject and the subject appeared to be walking towards Officer Douglas. Officer Mackdanz stated he verbally tried to let Officer Douglas know that someone was approaching him. Officer Douglas began to verbally engage with the subject however Officer Mackdanz could not discern what specifically was being said. Officer Mackdanz also made attempts to verbally engage with the subject when it appeared that Officer Douglas' attempt was not working.

The subject began to flee north through the parking lot just as he got close to Officer Douglas. The subject's path of flight began on the asphalt driveway and then transitioned to the concrete pathway in front of the business. Both Officer Douglas and Officer Mackdanz gave chase with Officer Douglas closer to the fleeing subject. The subject continued running closer to the building and Officer Mackdanz described seeing the subject moving towards his waistband or pocket with his right hand. Officer Mackdanz then saw the subject had armed himself with a chrome or silver pistol from his right front pocket.

When asked about his personal thought process upon seeing the subject had armed himself with a handgun Mackdanz stated, "Here is a situation where we had him sort of between the two of us... we're directing him to stop for us... but he took off running so already he is being resistive... but if he had a gun in his pocket, the only reason that I could see why he would pull it out was that he was going to shoot us. Otherwise, if he just wanted to get away... he would have just run away. So, as soon as I saw him produce the gun I figured he wanted to hurt us or kill us..."

Officer Mackdanz had drawn his collapsible baton at some point. He recalled chasing after the fleeing subject while attempting to transition from his baton to his firearm after seeing the subject had armed himself. Near the edge of the vegetation or at the curb of the roadway, Officer Mackdanz described tripping or losing his balance and falling to the asphalt of Willow Road. At nearly the same time he heard an officer yell, "gun!" While still on the ground, Officer Mackdanz heard a single gunshot, drew his own weapon, and fired at the armed subject. Officer Mackdanz stated he possibly fired four rounds at the armed suspect but he was unsure of the specific number. While lying on the roadway on the left side of his body approximately six feet away, Officer Mackdanz recalled firing twice and remaining focused on the armed subject. He potentially fired two additional times because the subject appeared to be getting up towards Officer Douglas. Officer Mackdanz only stopped firing when he assessed that the armed subject was no longer a threat.

Officer Mackdanz' attention was focused on the armed subject. He knew Sergeant Romero was ahead of him to the left and Officer Douglas was to his right but he did not see any of their movements or whether or not their firearms were drawn. The armed subject went to the ground yet still continued to move as if to try to continue to flee or determine another avenue of escape.

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Once Officer Mackdanz believed it was safe to do so, he approached the armed suspect to detain him and recover the firearm. Officer Mackdanz was able to determine that the subject no longer had the firearm in close proximity. Officer Mackdanz heard Sergeant Romero updating dispatch with what had occurred and requesting medics respond.

Officer Mackdanz subsequently saw the firearm near the sidewalk near a strip of grass adjacent to Willow Road. He did not know how it got to that location. He never touched or moved the handgun nor did he ever see anyone else touch or move it.

Sergeant Mackdanz subsequently saw the wires from Officer Douglas expended Taser cartridge however he never saw him deploy it. Additionally, he did not recall the Taser deploy. He stated he fired his handgun after hearing a single gunshot however he did not know the source of the initial gunshot nor could he discern what caliber weapon it had originated from.

During the interview, Officer Mackdanz utilized a Google Map image of the immediate area to indicate where he had been flagged down while responding (x), where the suspect vehicle was parked (o), and where he and Officer Douglas had parked their police vehicles (arrows).

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Officer Nick Douglas

The interview took place on November 11, 2014 at approximately 1813 hours. Present during the interview were San Mateo County District Attorney Inspector Rich Maher, Menlo Park Police Officers Association Attorney Jay Mark, and Menlo Park Police Detective David Apple.

San Mateo County District Attorney Investigator Maher began by confirming that Officer Douglas' presence at the interview was voluntary. Officer Douglas was not advised of his Miranda Rights or given a Lybarger Admonishment. Officer Douglas was asked to voluntarily submit to a blood draw. On behalf of Officer Douglas, his attorney stated they would decline because it was against the policy of his law office.

Officer Douglas has been employed by the Menlo Park Police Department as a Police Officer since March 2006. He is currently assigned to dayshift patrol and works from 0600 to 1800 on a rotating schedule. On November 11, 2014 he was assigned to the geographical area of the city known as "Beat Three."

On November 11, 2014, he woke up to prepare for work at 0415 hours after receiving approximately 7 hours of sleep. He did not consume any alcoholic beverages or prescription medication within the previous 24 hour period. He arrived at the Menlo Park Police Department at approximately 0545 hours.

Upon starting his shift at 0600 hours, he was in a full Menlo Park Police uniform with a full duty belt operating a fully marked Menlo Park Police Department police vehicle. He went to briefing, answered a call or two, and worked on some outstanding reports.

When the initial suspicious person call was broadcasted he responded from the police department. He described learning that a white male with a pony tail had been contacted inside a commercial business which an employee deemed as suspicious. The subject was reported to have been associated with a white Ford Taurus. The reporting party had relayed they were in possession of a flyer that had been disseminated to other employees indicating that a similar looking subject had possibly been responsible for other previous commercial burglaries. Officer Douglas stated that based upon his prior patrol experience he had done some follow up for a similar commercial burglary that had previously occurred on Sand Hill Road. The MO appeared consistent with the call he had just been dispatched to on Willow Road.

Officer Douglas arrived at the location on Willow Road by entering off of Willow Place. He had a "hurried and brief conversation" with a male and female subject nearby who reiterated that white Ford Taurus and a male were involved and had recently left their parking lot. Officer Douglas made a u-turn in the cul-de-sac and entered the rear driveway of 68 Willow Road. As he rounded the curve of the parking lot driveway, he saw the described white Ford Taurus parked unoccupied adjacent to the west red curb. He noticed that the windows of the Taurus were rolled down which led him to believe the subject was still in the area. He broadcasted over the radio that he had located the Ford Taurus and it was unoccupied.

He approached the Taurus and briefly looked within the interior and began scanning the area as other Menlo Park Police units arrived in the area. He heard the engine of Officer Mackdanz'

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patrol car rev as he entered the parking lot and then saw a male with a pony tail walk out and smile at him. The subject stated something to effect of "oh, that's my car." As the subject briskly walked towards Officer Douglas' patrol vehicle, Officer Douglas recognized him from somewhere. Officer Douglas told the subject "put your hands on the car" as the subject walked by Officer Douglas' patrol vehicle. Officer Douglas began to walk toward the subject. As they approached one another, the subject stated, "fuck you" and began fleeing on foot towards Willow Road.

Officer Douglas recalls broadcasting that he was in foot pursuit and believed that Officer Mackdanz was behind him to the left. Officer Douglas saw Sergeant Romero's vehicle pass eastbound on Willow Road in front of them, make a u-turn and then stop. The suspect continued running and cut through the vegetation in front of the business continuing on into the roadway of Willow Road. The subject put his hand in his right pocket and began running eastbound on Willow Road towards Middlefield Road. His movements suggested to Officer Douglas that the subject was trying to change direction knowing that they were closing in on him in a triangular fashion.

As Officer Douglas passed the northbound driveway of 68 Willow Road and as he was running after the fleeing subject, he took out his Taser. In the street, Officer Douglas fired his Taser at the fleeing subject. Officer Douglas stated that he believed only one of the darts had contact and he physically indicated the right hand side of his torso. Simultaneously, while standing in the street the subject removed a white metal firearm from what Officer Douglas believed was his right pants pocket.

Officer Douglas visually demonstrated the movements he saw the subject make by physically pulling his arm from his right side and raising his arm up and out in 45-degree angle. Officer Douglas verbally described the movements he observed immediately following the subject arming himself as he "pulls it out... swings it towards Sergeant Romero's position... and then he was starting to swing back this way... as I recall, I believe a shot may have been fired... he may have fired a shot and he is spinning my way. I don't have time to get my gun out. I have a Taser in my hand. I dived for the ground for a number of reasons..." Officer Douglas further recounted that he dove to the ground because, "I was in fear of my life. I thought this was it. I am either going to get shot by other police officers or the suspect."

Officer Douglas recalled hearing other shots being fired. He did not recall how he unholstered his firearm but he described being on the ground, laying on his right side, and firing more than one round at the armed suspect in response to him believing the suspect fired a round in the direction of Sergeant Romero.

Officer Douglas stated he was unsure of the suspect's actions or whether the armed subject was still standing when Officer Douglas fired to address the threat.

Officer Douglas stated he sustained an injury to his knee when he dove to the ground. He did not render aid to the suspect because of his injury and the chaos of the scene. Officer Douglas later stated, "It was very quick, very fast, very dangerous, and I was in fear of my life."

OPINIONS & CONCLUSIONS

The following Menlo Park Police Department policies are applicable to the officer's actions;

Section 300 – Use of Force

Subsection 300.2 - Policy

"It is the policy of this department that officer shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control."

Subsection 300.3 – Deadly Force Applications

"(a) Any officer may use deadly force to protect themselves or other from what they reasonably believe would be an immediate threat of death or serious bodily injury."

Section 304 – Shooting Policy

Subsection 304.1.1 - Policy

"It is the policy of this department to resort to the use of a firearm under law, when it appears reasonably necessary and generally;

(a) An officer may use deadly force to protect him or herself or others from what they reasonably believe would be an immediate threat of death or serious bodily injury."

This investigation revealed the following;

While in the commission of a felony, Jerry Lee Matheny was armed with a concealed loaded handgun. Upon being contacted by police, Matheny fled on foot from two police officers (Mackdanz & Douglas) in full uniform and towards another police sergeant (Romero) in full uniform. While fleeing and within close proximity to the police officers, Matheny removed and displayed the loaded handgun. Sergeant Romero, Officer Mackdanz, and Officer Douglas each unequivocally stated that upon seeing the firearm they were in fear for their own lives as well as the lives of their fellow officers.

Based upon the facts revealed during the investigation, statements provided by uninvolved third parties, statements provided by the involved officers, and the physical evidence recovered at the scene of the incident it is my opinion that Sergeant Romero, Officer Mackdanz, and Officer Douglas' use of deadly force was objectively reasonable given the totality of the circumstances.

Sergeant Romero, Officer Mackdanz, and Officer Douglas' actions during the incident on November 11, 2014 were within policy.

Menlo Park Police Department
Internal Affairs Investigation #1426

ATTACHMENTS

- A) Sergeant Romero's Administrative Leave Notice
- B) Officer Mackdanz' Administrative Leave Notice
- C) Officer Douglas' Administrative Leave Notice
- D) SMCDA Bureau of Investigation Case #CR14-1111-01
- E) Menlo Park Police Department Case #14-3507
- F) Sergeant Romero's Blood Results
- G) Officer Mackdanz' Compelled Blood Draw Notice
- H) Officer Douglas' Compelled Blood Draw Notice
- I) SMCDA Coroner's Office Pathology Report Case #14-01683
SMCDA Coroner's Office Report of Investigation Case #14-01683
SMCDA Coroner's Office Verdict of Coroner
- J) SMCDA District Attorney's Office Investigation Disposition Letter
- K) Incident Chronology from RIMS/ CAD / Radio Timestamps
- L) Transcript of Initial Suspicious Person Call for Service from 64 Willow Place
- M) Transcript of Primary Police Radio Channel
- N) Officer Round Count
- O) Taser Test & Activation Report
- P) Menlo Park Police Department – Policy 300 Use of Force