

HALL OF JUSTICE  
330 WEST BROADWAY  
SAN DIEGO, CA 92101  
(619) 531-4040  
SanDiegoDA.com

OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO

**DAVID P. GREENBERG**  
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN  
DISTRICT ATTORNEY

February 2, 2021

Chief of Police David Nisleit  
San Diego Police Department  
1401 Broadway  
San Diego, CA 92101

**Re: Fatal shooting of Mr. Ronnie Kong on May 29, 2020 by San Diego Police Officers  
Campbell, Luth and Maraschiello; SDPD Case No. 20-028123; DA Special Operations  
Case No. 20-071PS; Deputy District Attorney assigned: David Grapilon**

Dear Chief Nisleit:

We have reviewed the reports and other materials compiled by the San Diego Police Department's Investigations Division, Homicide Team 1, concerning the circumstances leading to the fatal shooting of Mr. Ronnie Kong by Officers Andrew Campbell, Christopher Luth and Tony Maraschiello. A District Attorney Investigator responded to the scene and was briefed by your detectives. This case was submitted to the District Attorney's Office for review on September 15, 2020.

***Summary***

On May 29, 2020 a 911 caller reported hearing gun shots and seeing a man on the ground. Responding officers provided first aid and determined the victim had at least five gunshot wounds to his torso. The victim, 62-year-old, Juan Gudino Lopez, was pronounced deceased at 4:30 p.m. A witness told officers his neighbor, "Ronnie" was involved in the shooting and provided additional information about what he had witnessed. Officers set a perimeter around the location and call outs were made, but there was no response from inside Kong's apartment. As SWAT was getting into position, Kong came out from his second-floor apartment. SWAT officers attempted to negotiate with him, but he retreated into his apartment. Kong came back out of his apartment. While on the stairs, Kong produced a semi-automatic handgun from his waistband and raised it towards the officers. Officers Campbell, Luth and Maraschiello opened fire on Kong. Officers approached and carried him down to paramedics, who provided first aid. Kong was pronounced deceased at 5:51p.m. The shooting was captured on the officers' body worn cameras.

***Persons Involved***

Ronnie Kong was a 32-year-old resident of San Diego. Officer Campbell has been employed by the San Diego Police Department for seven years, is a member of SWAT and assigned to its Primary Response Team (PRT). He was in his full SWAT uniform on the date of the incident. Officer Luth has been employed by the San Diego Police Department for 15 1/2 years, is a canine officer and was in full police uniform. Officer Maraschiello has been employed by the San Diego Police Department for six and a half years, is a member of the SWAT Team and assigned to its PRT. He was in his full SWAT uniform on the date of the incident.

***Statement of Civilian Witness One (CW1)*** CW1 provided officers with information which led him to suspect Kong of the murder. CW1 said earlier that afternoon he thought he heard a pop sound and went outside. CW1 heard a commotion on the other side of the fence and then heard a gunshot. CW1 looked through the cracks in the fence and noticed someone, wearing grey pants lying on the ground. CW1 saw someone standing who was wearing a shirt CW1 had seen earlier that day around noon. CW1 recognized the black and purple vertically lined shirt worn by his neighbor, Ronnie Kong. The victim wearing grey pants yelled out, "No, no." CW1 heard a second gunshot and panicked. CW1 said it happened very fast and CW1 assumed someone had been shot. CW1 ran back into his living room and yelled for someone to call 911. CW1 assumed Kong ran back to his apartment about the same time because CW1 heard someone jump the fence onto the property nearby and heard Kong's door slam.

CW1 had never seen Kong with a gun but knew Kong's mother was afraid of him and stayed outside the apartment. Kong and his mother had an incident three days prior to the shooting. CW1 thought there had been some gunshots. CW1 heard Kong was schizophrenic. Kong could be heard banging in the apartment and moving furniture.

A week prior, CW1 called the police on Kong because Kong allegedly flashed a gun at a 19-year old man. CW1 previously called the police after Kong threw rocks at CW1 while CW1 was cleaning up the front yard. CW1 and Kong physically fought. CW1 had trouble sleeping after CW1 heard about the gun incident. CW1 told his family to be careful. CW1 once stopped Kong from hitting Kong's mother. Kong was bald headed on the day of the shooting, but he had hair the day before.

***Statement of Civilian Witness Two (CW2)***

CW2 admitted to being intoxicated during the interview. CW2 said he was watching videos in his residence when he heard one gunshot and then approximately three more. He went outside and CW1 asked him to call 911 regarding "a dead body on the floor." CW2 called 911 and reported the murder. CW2 said he knew the victim, who had been working there for the last couple of weeks. The other construction workers left the scene before the police arrived. After the police arrived CW2 heard a dog barking and a few minutes later he heard gunshots. CW2 assumed the suspect, Kong, was shot, but did not see it.

***Statement of Civilian Witness Three (CW3)***

CW3 is the mother of Kong. CW3 primarily speaks Cambodian. CW3 did not witness the alleged murder next door or the officer involved shooting. CW3 said her son Ronnie didn't like all the noise the workers were making at the complex. CW3 knew her son had a gun, but she didn't know who gave it to him. Kong had previously threatened CW3 with it. Someone called her and told her Kong had jumped the fence and shot someone. She knew her son had been shot, but she didn't know where he was. She was told the Medical Examiner had him and they would call her. She said Kong wanted to commit suicide and wanted the police to do it. CW3 said Kong would cut himself and talked about jumping off a bridge.

***Statement of Law Enforcement Officer One (LE1)***

LE1 responded to a radio call of an assault with a deadly weapon where someone had been shot. The victim had been transported to the hospital and the suspect was likely inside an apartment next to where the victim had been shot. When LE1 arrived on scene, he received a briefing. The SWAT team was called out. LE1 checked the perimeter spots and helped position Officers Campbell and

Maraschiello in some apartments under construction to the south. They had a good view of the stairwell and front door to Kong's apartment. LE1 heard officers say Kong was peeking out the window.

Kong came out of the residence and onto the stairs. LE1 had a rifle and took a kneeling position. Kong stood on top of the stairs and then he took a couple steps down. LE1 could see Kong's hands, which didn't have anything in them at that point. Kong yelled something, but LE1 couldn't make it out. The canine officer gave Kong commands to come down and to put his hands up, but Kong didn't comply. Kong walked back to the apartment and out of view.

About a minute or so later he returned to the stairwell and was in view. Kong would not come all the way down the stairs. Kong had his right hand back towards his waistband and was facing south with his left side towards them. LE1 saw Kong's right hand go towards his waistband and then heard six or seven shots. LE1 saw the gun fall underneath Kong from his right side. LE1 couldn't see if it was in his right hand or not. LE1 said he didn't have a shot at that point because Kong was falling down. LE1 heard a shot from Officer Luth, who was behind or to the side of him. Kong went down to the ground and was moving slightly. Other SWAT officers arrived. They decided to move up towards Kong and move him off the stairs and into custody.

***Statement of Law Enforcement Officer Two (LE2)***

LE2 heard an assault with a deadly weapon call and that the suspect was possibly inside a residence. SWAT was activated after a witness confirmed they heard footsteps where Kong was supposed to be after a call out was made. LE2 noticed there was a good view of Kong's front door and landing from the vacant building to the south. He placed Officers Campbell and Maraschiello in those positions. As LE2 was making notes for the SWAT Lieutenant, he heard Kong was coming out.

Kong came out onto the upper part of the stairs and didn't have anything in his hands. They gave Kong instructions and he stayed there. LE2 could not hear what Kong was saying because the police dog was barking loudly. Kong went inside, but quickly came back outside. Kong went down a couple of stairs and officers continued to give him orders. LE2 could not understand what Kong was saying. Kong reached into his pocket or waistband and it looked like he was trying to get something out. LE2 heard "gun," and approximately five to six shots were fired. Kong fell to the ground. LE1 was kneeling and LE2 was just above him, along with LE5 and Luth. Officer Luth fired his handgun. Kong was shot and dropped the gun under his legs. Kong's hands were on top of his body and he wasn't moving. LE2 put together a plan to take Kong into custody. As they moved closer to Kong, they could see a wound to his head and he appeared deceased. They moved Kong off the stairs.

***Statement of Law Enforcement Officer Three (LE3)***

LE3 is a SWAT officer. LE3 relieved one of the patrol officers who had a rifle. Officer Luth took over the voice commands directing Kong to come down the stairs unarmed with his hands up. Kong walked up and down the stairs several times. After about 30 seconds to a minute, Kong started making motions towards his waistline with his right hand, but LE3 could not see a firearm. It appeared that Kong was trying to bait the officers. Kong had his right hand firmly on his waistband on the right side and moved back up towards the door again. He came back down a couple of stairs and drew a black semi-automatic handgun from the front of his pants. Kong flailed it in several directions for 10 to 15 seconds. Kong then stepped back up the stairs with it and came back down. Officers opened fire. LE3

thought possibly a dozen shots were fired. LE3 said Kong was trying to get the officers to expose themselves because they were in a fairly secure position with two shields in front of them. If they had been any closer they would have placed themselves in danger. SWAT removed Kong from the staircase and took him back to their initial position.

***Statement of Law Enforcement Officer Four (LE4)***

LE4 provided a similar statement to other officers about Kong's behavior and movements. He said Luth called Kong by his name, told him to come down the stairs, and said they didn't want to hurt him.

***Statement of Law Enforcement Officer Five (LE5)***

LE5 heard a radio call of shots fired with a possible victim down. Officers brought the victim who had been shot to the rear alley. They were doing chest compressions on him until medics transported him. At first, the officers didn't know which apartment complex the suspect was in. There was a premise history letter on the dispatch file for an armed and dangerous suspect who lived in an apartment. Officers were able to verify that Ronnie Kong was the suspect. A witness told them Kong was a neighbor and he lived in the pink apartment. The witness saw Kong jump into that yard. They established a perimeter and made announcements. Witnesses could hear movement in Kong's apartment. The officers received no response from the announcements. They asked for SWAT. Announcements continued while they waited for SWAT to respond.

Kong partially opened the blinds, then opened them fully, as well as the window. Kong motioned for the officers to come to him. LE5 took over giving the announcements and was trying to coax Kong out. Kong came out to the stairs. LE5 could not see the front door from his position and Kong just appeared on the stairs. Kong was going up and down the stairs. LE5 told him to show his hands, to calm down, and that no one wanted to hurt him. LE5 tried this for several minutes. Kong waved for LE5 to come to him, but LE5 did not. Kong went back up the stairs and out of sight for a minute and then came back down.

Officer Luth took over giving the announcements. Kong dove his right hand into his waistband as if he was drawing them in to shoot him. Kong initially didn't pull anything out and just had his hand in his waistband. Kong then pulled a gun out and LE5 yelled, "Gun, gun, gun." Kong started moving the gun with his hand and he was shot. Officer Luth shot four or five rounds over LE5. LE5 heard the other officers fire. LE5 believed a total of about ten shots were fired. After the shooting, LE5 yelled, "Hold." Officers approached and saw the gun was under Kong.

***Statement of Officer Campbell***

Campbell was working Northern patrol when he heard there was a shooting in Mid-City. Campbell switched his radio to Mid-City's frequency to listen and heard the suspect was same person who fired rounds in a prior incident. It appeared to Campbell the officers on scene were familiar with him. Kong was believed to be armed with a handgun. If it wasn't on him it was stored in the attic. Campbell heard the victim in the shooting had died. A perimeter had been established and they were going to attempt to do a contained call-out. If that didn't work, they would call SWAT. They determined Kong was in the apartment, as residents could hear him pacing back and forth. Campbell met with Officer Maraschiello so his partner could take Campbell's trainee. They put SWAT gear on and drove to the scene.

They arrived and met with LE2, who handed him a shield. LE2 took him and Maraschiello to a perimeter position. Campbell relieved an officer in a room where he could see the front door, two windows from Kong's apartment and a stairwell leading down to the alley. Campbell was told the earlier shooting took place directly outside the door where he was located. He looked out the window and saw at least two pistol-caliber cartridge casings on the ground. He tried to take the screen out, but it was making too much noise, so he cut the screen. He re-established a kneeling position behind his shield, used it as a weapon support, and had an unobstructed view of the front door, the stairwell leading to the front door, and the two windows.

He saw Kong go to the window, open the blinds, then open the window and start yelling something. Campbell could not understand what Kong was saying. Eventually, Kong closed the window and shut the blinds, but then reopened the blinds. Campbell could see Kong moving towards the door. Kong walked out from his apartment and seemed very distracted. Kong's attention was in front of him where Campbell believed the react team was waiting with a canine. Kong kept looking and walked down the stairs. He was hunched over trying to look down to see them and kept reaching at his right side. Campbell told the react team and other units that he could not see a gun at that time. Kong yelled at the react officers and it sounded like he was telling them to come to him. Kong was making some sort of a waving motion towards them. The react officers continued to make their call outs and announcements to show his hands and to walk down to them. Kong walked back up towards the door. He got within the threshold, came back out, and started to walk down a couple of steps. Kong again reached to his right side and started screaming.

Campbell stayed focused on Kong's hands. Kong pulled out a black semi-automatic pistol and started to make a movement towards the react team. Campbell feared for the safety of the react officers and to prevent Kong from shooting them, he shot twice. Kong continued to move, so Campbell fired one more time. Campbell felt he had no other options at that point but to shoot. Kong stopped moving. Campbell could see both of Kong's hands but couldn't see the gun until Campbell stood up. Campbell then saw the gun under Kong's legs. Campbell broadcast that to the officers. Campbell heard Maraschiello state over the radio that he had fired. Campbell also aired that he had shot and requested medics. The react team retrieved Kong and administered first aid.

### ***Statement of Officer Luth***

Luth responded to the scene. Luth understood that shots had been fired causing injury. There was some discussion about the premise history of the address in question. The person involved was considered to be armed and dangerous and had access to firearms. Luth arrived and saw an officer doing chest compressions on the victim. The officers provided cover for those who were providing aid. Luth coordinated a rescue on the victim and had the officers providing aid pull the victim out into the alley where the ambulance would meet them. When Luth and the other officers went to clear the apartment complex, he saw several cartridge casings he believed were .45 caliber. Luth also saw a live round, a projectile, and a small pool of blood. Luth worked on establishing a perimeter around Kong's building. An elderly couple were evacuated from the scene and their home was cleared.

A lieutenant arrived on scene and developed contingency plans. They learned the victim had died. The lieutenant started making calls and announcements with a bullhorn to Kong. Kong did not respond. They tried to call Kong, but the calls went straight to voicemail. Officers maintained their positions and SWAT responded to the scene. LE5 and his canine assumed the primary canine position. Luth

assisted him. SWAT officers arrived and replaced patrol officers. They were still in the process of switching out officers when Kong suddenly pulled the window blinds all the way up and opened the window. Kong looked out at them. Luth could see Kong from his waist up. LE5 began giving him commands, but Kong closed the window and lowered the blinds. They could no longer see him. Shortly thereafter Kong moved the blinds and was looking out the window again. LE5 continued with his canine warnings, directing Kong to come out or he would be bitten by a police dog, but Kong refused.

Kong again came back to the window. Kong once again opened the blinds and the window all the way but then closed them and disappeared out of view. The commands continued and they worked on de-escalation tactics. Luth said they told Kong to come out and if he followed orders he would not get hurt. Kong came out the front door. Luth couldn't see the front door from his location and could only see the top of the stairs. Kong came into view and walked very slowly and methodically about halfway down the staircase and then faced them directly. Luth took over and started giving commands for Kong to come down, give up, and keep his hands where they could see them. Kong said something to them about coming to him and motioned for them to come to him. Luth told him they were not coming to him, and that Kong had to come to them. Kong did not respond to LE5's commands and walked back up the stairs. Kong went out of sight briefly and then came back down the staircase. Kong was substantially more animated at that point. Kong again faced them. His movements were very quick and at one point, Kong reached with both of his hands towards his waistband and bent forward at the waist. Kong started jerking at his waistband. The officers started to yell to keep his hands away from his waistband and keep them where they could see them.

Kong again went back up the staircase, but Luth could still see part of his foot or shoe at the top of the staircase. Luth knew Kong did not go back into the apartment. Someone said Kong was baiting them. Luth believed that Kong was trying to get them to shoot him. Kong came back down the staircase again and stopped in the same spot. Kong was calm. Luth said he saw Kong's right hand move towards the right side of his body and come up with a black firearm. Kong started to raise it towards them. Luth knew Kong was going to shoot them. Luth fired his weapon four or five times until Kong fell backwards facing up on the staircase. SWAT officers moved forward and saw that Kong had a bullet wound to the front left side of his head.

Luth believed Kong was an extremely dangerous person based on the information from the premise history file. Luth said Kong was armed and violent. Luth believed that Kong was going to shoot him or the other officers there with him, which caused him to fire. Luth said he was 30 to 35 yards from Kong. It was daylight and clear when he fired.

#### ***Statement of Officer Maraschiello***

Maraschiello heard a radio call involving a shooting. Maraschiello is part of the SWAT team and learned a man had been shot once in the chest and once in the side. Paramedics and officers tried to revive the shooting victim, but he died. Maraschiello learned the suspect was Ronnie Kong. Maraschiello looked up his criminal history through a computer records check. Maraschiello learned Kong had prior charges for resisting arrest. There was a premise alert on the residence for a pending criminal threats case. Maraschiello learned Kong had allegedly brandished a weapon towards his mother and fired rounds inside the house. Maraschiello knew Kong had access to a deadly weapon and was last seen jumping the fence with a handgun.

Maraschiello arrived on scene with Campbell. They met with LE2 and were assigned to a small residence that was under construction. Maraschiello heard several officers making attempts to call Kong out via bullhorn. They were also trying to call Kong's cell phone and establish a rapport with him. All were unsuccessful. They gave him the opportunity to surrender. A perimeter was established, and they were in the process of switching out some of the patrol officers with SWAT personnel.

Maraschiello was by himself in the house and there was a window which had a vantage point of the front and left side of Kong's residence. Maraschiello placed his shield in the window for cover and concealment. He could see the front door and side of the residence without any obstructions. Maraschiello said he was close to Kong's residence and knew Kong had access to a deadly weapon, having just shot and killed a man. He heard other officers over the radio report Kong had closed a blind on a window or something similar, so Maraschiello knew someone was inside.

A short time later, Kong opened the front door and walked out. Maraschiello saw Kong was wearing a baggy shirt and baggy pants. Maraschiello said Kong looked very angry and his eyes "bulged out of his head." Kong was looking intently at officers' positions and Maraschiello felt Kong was going to do something to harm them. Kong made furtive movements with his right hand and was instigating a response. Campbell broadcast over the radio that Kong was reaching into his right pants pocket or waistband, which Maraschiello could also see. Kong went back into the residence once or twice but came back outside. Kong walked down four or five steps and reached into his right front pants pocket or the waistband of his pants.

Maraschiello thought Kong was counting the officer's positions and calculating who he was going to shoot or harm first and was trying to work up the courage to do so. Maraschiello knew there were a lot of officers and bystanders outside, with some trying to film the incident with their cell phones. Maraschiello was concerned that Kong had so many targets standing by and they were readily available for him to shoot.

Kong pulled out a black and silver or black and gray semi-automatic pistol from the same spot on his pants pocket or waistband that he had been reaching into. Kong tensed up and it appeared he was trying to work up the courage while he looked around the area. Maraschiello felt Kong kept keying in on Campbell's position. Maraschiello waited a few seconds and when Kong leaned over the railing with a "tense" movement, it looked to him that Kong was going to come up and present the pistol towards Campbell and any of the officers at the front. Kong was about ten yards away and Maraschiello wasn't going to let Kong harm any of the officers or bystanders. Maraschiello raised his rifle and aimed center mass to ensure there wouldn't be any errant rounds traveling north. Maraschiello fired until Kong dropped the gun and there was no immediate threat to anyone. Maraschiello broadcast he had shot and the subject needed medical attention for gunshot wounds. The SWAT officers went up to Kong to render aid.

### ***Investigation***

The scene was secured, photographed, and investigated by San Diego Police Department detectives. All reports, audio-recorded witness interviews, medical reports, photographic evidence, and body worn camera video were reviewed. These items provided evidence corroborating the officers' statements. Officers Campbell, Luth and Maraschiello's body worn cameras were activated and captured the events leading up to and including the shooting.

Campbell was armed with his department-issued Daniel Defense Model DDM4, 5.56 (Multi)/223 Remington caliber centerfire rifle. A total of three .223 Remington caliber cartridge casings were collected at the scene in proximity to where Campbell had been positioned. Campbell's rifle and magazines had a total of 109 of the 112 loaded cartridges. Campbell's unused magazines each contained 28 cartridges, though maximum capacity was 30. A criminalist determined Campbell fired three cartridges.

Luth was armed with his department-issued Glock Model 17 Gen 4, 9 mm Luger caliber semi-automatic pistol. A total of five 9 mm Luger caliber cartridge casings were collected at the scene in proximity to where Luth had been standing. Luth's pistol and magazine had a total of 64 of the 69 loaded cartridges. A criminalist determined Luth fired five cartridges.

Maraschiello was armed with his department-issued Daniel Defense Model DDM4, 5.56 (Multi)/223 Remington caliber centerfire rifle. A total of nine .223 Remington caliber cartridge casings were collected at the scene in proximity to where Maraschiello had been positioned. Maraschiello's rifle and magazines contained a total of 107 of the 116 loaded cartridges. A criminalist determined that a maximum of ten cartridges could have been fired from his rifle if the magazine had been loaded to capacity. The unused magazines each contained 29 cartridges and were not loaded to the maximum capacity of 30. Nine casings from his rifle were recovered at the scene, which is consistent with Maraschiello firing nine cartridges.

Kong was armed with a black and silver colored Rock Island Armory "45 Auto" Colt M1911A1 TYPE model handgun. There was a loaded firearm magazine seated in the handgun and one cartridge seated in the chamber of the handgun. The black "MEC-GAR" Cal .45" firearm magazine contained seven cartridges. He was also armed with a black and silver knife with a 4 ½ -inch fixed blade with apparent blood stains and black tape adhered to it.

During the post-shooting investigation by SDPD, a criminalist from the Firearms Unit determined Kong's Colt handgun fired the seven cartridge casings recovered at the homicide scene in the murder of victim Juan Gudino Lopez. A criminalist from SDPD's Forensic Biology Unit determined Kong's DNA was on the Colt handgun and on four of the seven cartridges in the magazine inside the weapon when he was shot by officers. There is no evidence that Kong fired his weapon at the officers.

An autopsy of Kong determined he had sustained gunshot wounds to his head, torso, arms and legs. The cause of death was multiple gunshot wounds and the manner of death was homicide. Several bullets were removed from the body. Two calibers were consistent with bullets fired by the police. However, a .45 caliber bullet was removed from Kong's right knee. Kong had a bandage on his right thigh that neither police, paramedics nor hospital staff had placed. It appeared that Kong, at some point prior to the incident with police, had shot himself in the right thigh, based on the downward wound trajectory, causing the large wound in his right thigh and right knee, which was where the .45 caliber projectile had been located. Toxicological analysis of Kong's blood revealed the presence of methamphetamine and amphetamine.

Detectives reviewed prior BWC footage of a contact with Kong that occurred several years prior to confirm whether he spoke and understood English. During that contact, Kong spoke clear, intelligible



English, and was able to have a conversation with the officer at that time. During that interaction, Kong provided his personal information and responded to all the officer's questions.

### *Video Evidence*

A review of Campbell's Body Worn Camera (BWC) began with Campbell in his SWAT assignment position. Campbell was in a building that was part of an apartment complex located near the shooting scene. Campbell shifted over to the window to the left and tried to take the screen out but ended up cutting it. He re-established a kneeling position behind his shield. Campbell's BWC is positioned so it only showed his hands and a portion of the rifle and window. Campbell broadcast on the radio that he saw Kong at the window in the apartment. A dog can be heard barking and officers were making announcements. Campbell broadcast to officers that Kong wanted them to come to him. Campbell confirmed over the radio he had a good visual of Kong. The announcements continued. Campbell broadcast that Kong kept reaching into his right pocket, but he couldn't see a gun. The officers making the announcements raised their voices and could be heard telling Kong to stay away from his waistband and show them his hands. Campbell fired two rounds and a third round a second later. Campbell broadcast that he fired shots. Shortly after that, a supervisor is heard checking on him and Maraschiello.

Campbell said he had a visual of both of Kong's hands. He broadcast he could see both of Kong's hands and said there were no guns in his hands. Campbell broadcast it looked like the gun might have fallen. Campbell commented in a low voice to himself, "I just killed somebody." Campbell stood up at his position and broadcast on the radio the gun was on the stairs, underneath Kong's legs and both of Kong's hands were on his lap. Members of the SWAT team walked up the stairs to Kong. Campbell asked Maraschiello if he was alright. The SWAT team removed Kong from the stairs and Campbell covered the door as they pulled back. Campbell was relieved by another SWAT team member. He left the shield in place and told the officer to watch his casings as he exited the room. He checked on Maraschiello and then went to find an officer to relieve him. A SWAT officer asked him if there was any possibility that any rounds went into an apartment low or high and if any rounds went down range and Campbell replied, "No," explained the trajectory, and deactivated his BWC.

A review of Luth's BWC showed him arriving on scene. Luth initially walked up to the scene without his canine but went back and retrieved him from the car. He entered a gate where officers were doing CPR on the victim. Luth told the officers to move the victim out to the alley unless he was deceased and asked several officers to clear the buildings. Luth assumed a position on the east side. Luth directed an officer to get a bean bag shotgun for less lethal coverage on the east side perimeter. A lieutenant told Luth they were trying to get in touch with Kong's mother to get a phone number for him. They went through the contingency options on their response if Kong came out of the apartment. Numerous announcements were made, but there was no response from Kong. SWAT was activated. LE5 took over for Luth as the canine on the east perimeter. Luth put his canine back in the car.

SWAT arrived on scene. Luth cleared a locked room inside a residence near Kong's apartment with LE1 and LE3. Kong suddenly appeared in a window of his apartment. LE5 started making announcements for Kong to surrender. Kong came outside and was told to walk out to them with his hands up. LE5 told him they were not coming to him and they did not want to hurt anybody. Luth took over giving the commands. Kong walked back out of view. Luth was positioned over the left shoulder of LE5, in the second row of officers facing Kong.

Luth told Kong to keep his hands out of his waistband or he would be shot. Several officers said Kong had a gun. The sound of several shots being fired is heard. Luth is seen on his BWC drawing his weapon and Kong appeared to be down on the steps at that point. Luth fired his handgun several times. Several officers told everyone to hold when the shooting stopped. LE5 asked for his 30-foot leash out of his bag and Luth retrieved it for him. Luth gave the leash to LE5 and they planned to use the canine to pull Kong down off the stairs, away from the handgun. The officers discussed making sure their BWCs were on before they moved forward. As the team approached Kong, Luth said Kong had a gunshot wound to the head. The team carried Kong off the steps and brought him back to where they were just positioned.

A review of Maraschiello's BWC began with Maraschiello and Campbell at their vehicle parked at an intersection near the shooting scene. They met with LE2. Maraschiello was in a building that was part of an apartment complex under construction just south of Kong's apartment. Maraschiello had his rifle and a shield, which he placed in the window at his position. Maraschiello's BWC is positioned so it only showed his hands and a portion of the rifle. At times it was dark, and nothing could be seen. The verbal commands of the officers to the east of Kong's apartment could be heard. They told Kong to let them see Kong's hands and to put his hands up. The police dog is heard barking. The sound of Maraschiello switching the rifle selector switch is heard. Maraschiello fired several rounds and then operated his rifle selector switch. Maraschiello broadcast on the radio that he fired shots. Maraschiello is heard requesting an ambulance. The supervisor asked if Maraschiello was okay. Maraschiello replied he was. The supervisor asked if Kong shot at him. Maraschiello replied that Kong pulled a gun. Maraschiello was relieved of his position by another SWAT officer. Maraschiello was asked how many rounds he fired. Maraschiello said perhaps seven or eight.

### ***Legal Standards of Criminal Liability***

The analysis of use of force and deadly force by peace officers in California has changed as a result of Legislative amendments to Penal Code section 835a, which became effective on January 1, 2020.

Penal Code section 835a(b) provides that "any peace officer who has reasonable cause to believe that a person they intend to arrest has committed a public offense, may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance."

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The law provides that "a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary:

- (A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person." Penal Code section 835a(c)(1)(A).

"A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not poses an imminent threat of death or serious bodily injury to the peace officer or to another person." Penal Code section 835a(c)(2).

The statute provides definitions for "deadly force," "imminent" and the "totality of circumstances" in Penal Code section 835a(e)(1) – (3).

““Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.” Penal Code section 835a(e)(1).

“A threat of death or serious bodily injury is “imminent” when based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.” Penal Code section 835a(e)(2).

“An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” Penal Code section 835a(e)(2).

““Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” Penal Code section 835a(e)(3).

“In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer.” Penal Code section 835a(2).

“[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” Penal Code section 835a(4).

“A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section “retreat” does not mean tactical repositioning or other de-escalation tactics.” Penal Code section 835a(d).

Penal Code section 196 was also amended. The statute provides that homicide is justified when committed by peace officers and those acting by their command in their aid and assistance when the homicide results from a peace officer’s use of force that is in compliance with Section 835a.

### ***Conclusion***

Mr. Kong was immediately identified to officers as a suspect in the homicide of Gudino Lopez by a witness. Officers made plans to use less lethal weapons and resources to take Kong into custody for the alleged murder. After multiple attempts to de-escalate the situation, Kong failed to comply. When officers saw Kong on the stairwell in front of his apartment, they gave him verbal commands to come to them and not to reach into his waistband. Kong refused to obey their orders. Instead, Kong produced a handgun and raised it towards the officers. This action posed an imminent threat of serious bodily injury and death to all in the immediate range of Kong’s firearm. Officers Campbell, Luth and

Chief David Nisleit  
February 2, 2021  
Page 12 of 12

Maraschiello fired their weapons, striking Kong multiple times and causing him to drop the loaded gun.

Based on the totality of the circumstances, all three officers believed Kong intended to shoot at them and the other officers on the scene. There was concern stated by one of the officers for civilians who were standing nearby as well. The officers' beliefs were reasonable and they bear no state criminal liability for their actions. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

Sincerely,



SUMMER STEPHAN  
District Attorney

SS:gm

cc: Captain Richard Freedman  
San Diego Police Department  
1401 Broadway  
San Diego, CA 92101