

**REPORT ON THE NON-FATAL SHOOTING OF
SANTINO LEGAN
ON JULY 28, 2019**



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I. PREAMBLE

The summary of this incident was written after a review of materials prepared and submitted by the Gilroy Police Department, Federal Bureau of Investigation, Santa Clara County Sheriff's Office, San Jose Police Department, Morgan Hill Police Department, Salinas Police Department, and Santa Clara County District Attorney's Bureau of Investigation. The submissions included: reports of the responding police officers; reports summarizing interviews of the involved officers and civilian witnesses; recordings of interviews; interview transcripts; body-worn camera footage; photographs and autopsy reports. This review is being conducted pursuant to the Officer-Involved Incident Guidelines adopted by the Santa Clara County Police Chief's Association on October 12, 2017.

II. SUMMARY OF FACTS

The scope of this report is limited to the issue of the use of force by police in response to the Gilroy Garlic Festival mass shooting committed by Santino Legan on Sunday, July 28, 2019.

The criminal investigation is being conducted by the Gilroy Police Department and the FBI as a possible act of domestic terrorism.

A. SYNOPSIS

On July 28, 2019, Santino Legan entered the Gilroy Garlic Festival through a locked access gate armed with a loaded AK-47 assault rifle. After making his way to an inflatable slide play structure centrally located among several vendor booths and picnic tables, he opened fire on the surrounding visitors who were enjoying the late afternoon festival activities. In all, Legan fired at least 36 rounds of ammunition and hit 20 men, women and children. Three died.

Once Legan began shooting, Gilroy Police Department Detective Eric Cryar and Officers Robert Basuino and Hugh Del Moral rushed to the area. When they arrived, Legan turned his gun on them. The three officers returned fire, striking Legan multiple times. Wounded by the Gilroy police officers, Legan put the muzzle of his assault rifle to the roof of his mouth and pulled the trigger, taking his own life. See attached Appendix A for a diagram showing the movements of Legan, the positions of the responding officers and deceased victims' locations.

B. BACKGROUND ON THE GILROY GARLIC FESTIVAL

The Gilroy Garlic Festival is an annual event held at Christmas Hill Park in the City of Gilroy, California. The festival's website describes it as follows: "The Gilroy Garlic Festival started in 1979 and is now known across the globe as the world's greatest summer food fair, with three full days of great garlicky food, live entertainment, and family fun." On Sunday, July 28, 2019, the festival was scheduled to close at 7:00 p.m.

C. SANTINO LEGAN ENTERS THE FESTIVAL GROUNDS

On July 28, 2019, Santino Legan parked his silver Honda Accord overlooking Uvas Creek on Uvas Creed Road at Laurel Drive in Gilroy, California.



Legan's Honda Accord was found parked on Uvas Creek Road

After parking, Legan descended into the Uvas Creek riverbed carrying an assault rifle and large bolt cutters, as well as a bag and backpack containing multiple loaded magazines of assault rifle ammunition. Following the tree-lined creek just over two miles southeast of his car, Legan crossed over to a dirt path that borders the eastern edge of Christmas Hill Park. The path is separated from the festival grounds by a chain-link fence. He followed the path southeast until he reached a closed fence secured with a zip tie.



Estimated path Legan traveled to reach the locked festival gate

Legan arrived at approximately 6:30 p.m. when the festival vendors were getting ready to close for the day. Legan used the bolt cutters to open the gate, bypassing festival security. Before entering, Legan dropped his backpack, bag, and two rifle magazines on the dirt path a short distance away.



Access gate that Legan opened with bolt cutters

When he entered the festival, Legan was wearing green and tan colored clothing and a bulletproof vest. He was armed with his AK-47-style assault rifle and had multiple loaded high-capacity magazines, including two that were taped together to allow for faster reload. Legan also had a “drum” style magazine capable of holding 75 rounds of ammunition.



The rifle Legan used to shoot 20 festivalgoers



Loaded drum magazine with 75 round capacity



Taped high capacity magazines

Upon entry, Legan walked past a long line of portable toilets and into an open area of the festival near a centrally located inflatable slide being enjoyed by children and adults. The image below shows the relative locations of the inflatable slide, eastern portable toilets and the gate Legan used to enter the park.



Aerial view of the shooting area with relevant locations inset

D. THE SHOOTING AND DEATH OF LEGAN

After making his way to the inflatable slide, Legan fired his assault rifle once into the ground. Witnesses said it appeared the gun malfunctioned after the first shot. Legan struggled with the weapon for 15 to 20 seconds before removing the magazine and inserting a new one.

After reloading, Legan took aim at 13-year-old Keyla S., who was with her parents under the white shade tent just east of the inflatable slide. He shot Keyla through the back with a single rifle round, killing her. Keyla's parents stayed by her side as Gilroy Police Officer Andrew Viale, who arrived soon after, stood guard over them with his service weapon aimed at the inflatable slide behind which Legan was concealed.

Around the time Keyla was hit, Detective Cryar and Officers Basuino and Del Moral were patrolling on foot about 150 yards south of the slide in preparation of the festival closing for the day. Detective Cryar, a military veteran with five years of service in Iraq, Afghanistan, and Pakistan, immediately recognized the unique sound of Legan's rifle and began sprinting north. Officers Basuino and Del Moral followed, passing fleeing citizens on their way to the source of the gunfire.

After killing Keyla in the white shade tent, Legan began shooting at targets in a roughly counterclockwise fashion. As he did so, Legan killed 25-year-old Trevor I., who was with his girlfriend at a festival booth just south of Keyla. Trevor was shot once through the chest. He was later lifted into a white pickup truck by his girlfriend and several bystanders, including off-duty San Jose Police Officer Anthony Kilmer, and driven to a makeshift first-aid and triage station. Unfortunately, the heroic efforts of medical personnel and festivalgoers could not save him.

Shortly before the three Gilroy Police Department officers arrived at the inflatable slide, Legan completed his deadly sweep of the area, firing into the portable toilets east of him with his rifle. A grandmother, mother, and her child had taken cover behind the toilets when the shooting began. The mother and grandmother were both hit by Legan but survived. The mother's six-year old boy, Stephen R., was killed by a rifle shot through the back.

When Detective Cryar and Officers Basuino and Del Moral arrived, Legan was standing close to the bottom, southernmost corner, of the inflatable slide. The three officers initially had difficulty identifying Legan as a threat because his clothing, tactical vest, and assault rifle made it unclear if he was a suspect or law enforcement officer. Legan momentarily paused his attack, turned his rifle at Detective Cryar, took aim and fired. Legan missed and Detective Cryar took cover behind a barrel. Officers Basuino and Del Moral took cover near some vendor tents on the opposite side of the clearing from Cryar. All three officers returned fire shooting at Legan.

Legan was hit multiple times in the chest, back, legs and hands, causing him to drop to a knee. Wounded, Legan moved north along the eastern edge of the slide, put the muzzle of the rifle to the roof of his mouth and pulled the trigger. He died of a single gunshot wound to his head.

Unsure if Legan was dead or alive, the three responding officers waited for backup. The three involved officers, as well as others armed with assault rifles, slowly approached Legan's body. As Legan's body was turned over, body-worn camera footage showed him cradling his rifle with the muzzle near his head. Officers quickly secured the weapon and placed Legan in handcuffs.

In all, Santino Legan fired at least 36 rounds, hitting 20 different victims: nine men, seven women, and four children.

E. ACCOMPLICES AND MOTIVE

Shortly after the shooting, festivalgoers and social media reported a possible “second shooter” or accomplice. That specific issue is beyond the scope of this report, which is to determine if the involved officers were justified in using deadly force against Santino Legan. That said, after reviewing the evidence, the District Attorney’s Office agrees with Gilroy Police Chief Scot Smithee, who reported to the media on July 30, 2019, that in his opinion, “There was not a second person involved.” The chaos created by Legan’s gunfire likely caused several witnesses to mistakenly identify fleeing bystanders as accomplices to the shooting. All three officers who fired at Legan were consistent in their statements that there was only one shooter involved in the attack.

As for Mr. Legan’s motives and ideology, that question is better addressed to the FBI and Gilroy Police Department once their criminal investigation is complete.

III. EVIDENCE

Below is a summary of the evidence collected that is relevant to the findings of this report.

A. LEGAN'S ENTRY INTO THE GARLIC FESTIVAL

As described above, Legan made entry through a locked access road gate using bolt cutters after hiking approximately two miles southeast along Uvas Creek.

B. FIREARM EVIDENCE

1. LEGAN FIREARM EVIDENCE

When found, Legan was cradling his loaded assault rifle in his arms with the barrel pointing toward his head, consistent with the medical examiner's determination that he died from a self-inflicted gunshot wound. Within feet of Legan was a loaded drum magazine that could hold up to 75 rounds of ammunition. Two high-capacity magazines taped together were also located near his body. He also had two magazines of ammunition tucked into his tactical vest.

An examination of Legan's bulletproof vest showed that two shots hit him in the abdomen but were ineffective, failing to penetrate it.



Legan's bulletproof vest, showing two ineffective bullet strikes to the torso

Crime scene investigators collected a total of 36 spent 7.62x39mm assault rifle shell casings from the area around Legan, indicating that he fired at least that many rounds during the

attack. Below is an unfired 7.62x39mm round of ammunition collected from the crime scene that measures just over two inches in length:



Unfired 7.62x39mm cartridge collected as evidence

On the backpack and bag that Legan left on the dirt path were two loaded rifle magazines taped together and several shotgun shells. A search of Legan's Honda Accord turned up a military-style metal ammunition box in the passenger compartment and a pump-action shotgun in the trunk.

2. GILROY POLICE FIREARM EVIDENCE

Detective Cryar was armed with a .40-caliber Glock 22 semiautomatic handgun. Officers Basuino and Del Moral were armed with .45-caliber Glock 21 semiautomatic handguns. Their relative positions during the shooting are indicated in Appendix A. Detective Cryar's position was determined based on the location of 11 recovered .40 caliber spent shell casings. Officers Basuino and Del Moral's positions were determined based on the location of seven recovered .45 caliber spent shell casings.

C. MEDICAL EXAMINER EVIDENCE

The Santa Clara County Medical Examiner's Office conducted autopsies of Legan and the deceased gunshot victims.

1. AUTOPSY OF SANTINO LEGAN

Although Legan suffered non-fatal gunshot wounds to his back, legs and hands, the forensic pathologist who performed the autopsy determined that he died of a single self-inflicted gunshot wound to the head. As discussed above, the examination identified two defects in the abdomen area of Legan's bulletproof vest indicating bullet strikes that did not penetrate the armor. A toxicology examination did not detect any controlled substances.

2. AUTOPSIES OF DECEASED VICTIMS

Keyla S., Stephen R., and Trevor I. each died of single gunshot wounds to the torso.

D. BODY-WORN CAMERAS

The officers who shot Legan either were not wearing body-worn cameras or did not activate them, as discussed in their statements below. The body-worn cameras of 34 other police officers were reviewed in preparation of this report. None of the officers' body-worn cameras captured events leading up to or during the shooting. The recordings only contain footage of officers transporting or providing first aid to victims, securing the area, searching for additional perpetrators, collecting evidence, and interviewing witnesses.

IV. WITNESS STATEMENTS

Over 30 victim and witness interviews were reviewed in preparation of this report. Their statements indicate Santino Legan used an assault rifle to shoot festivalgoers, and then he turned his weapon on the Gilroy police officers. The three involved officers were sequestered after the incident and interviewed separately. In accordance with the Officer Involved Incident protocol, the interviews of the shooting officers were conducted by detectives from the District Attorney's Bureau of Investigation and Morgan Hill Police Department¹.

A. DETECTIVE ERIC CRYAR

Detective Eric Cryar has been employed by the Gilroy Police Department for over seven years. At the time of the shooting, he was assigned to roving security patrol at the festival. He has extensive tactical firearms experience. He was the lead range master at the California Department of Justice in Southern California for approximately nine years. Moreover, he served in the military for 12 years. He was deployed to conflict zones in Iraq, Afghanistan, and Pakistan for five of those years.

Although he was wearing a body-worn camera, Detective Cryar did not activate it for two reasons: 1) the urgency of the situation; and 2) he was not in the habit of doing so as a detective. At the time of the shooting, he was armed with a Glock 22 .40-caliber semiautomatic handgun and dressed in clothing that clearly identified him as a police officer. Detective Cryar was wearing a baseball cap with the Gilroy Police Department logo on it and a tactical vest with a badge and the word "Police" emblazoned in yellow on both the front and back.

¹ Given the magnitude of the homicide investigation, the sheer number of victims and the possibility of unidentified accomplices, Gilroy Police Department requested the assistance of Morgan Hill Police Department to assist in the Officer Involved Incident Investigation.

At the time Legan began shooting, Detective Cryar, Officer Basuino and Officer Del Moral were patrolling the festival on foot about 150 yards to the south. Hearing the gunfire, they all ran north and then cut east along the south edge of the white shade tent. Upon arriving, Cryar was about to take a knee to fire but Legan turned directly at him and shot. Cryar took cover behind a nearby barrel and recalled firing around 12 shots at Legan. He recalled also firing three to four shots at Legan after he appeared to be down, as he did not know if the suspect was reloading or the gun had a malfunction. Cryar explained to investigators when asked why he engaged Legan with gunfire: “If we didn’t take the action that we took there could be a lot of dead people.”

Once Legan appeared down, Cryar and several other Gilroy Police Department officers slowly approached. Legan had clearly suffered a “catastrophic head wound,” so Cryar provided cover for other officers as Legan was placed in handcuffs. Once Legan was cuffed, Cryar assisted other officers in clearing the nearby vendor stalls and identifying other victims. Once the area was secured, Cryar was sequestered from the other involved officers.

B. OFFICER ROBERT BASUINO

Officer Basuino has been employed by the Gilroy Police Department for over 13 years. At the time of the shooting, he was assigned to REACT, the Regional Enforcement Allied Computer Team, a multi-agency high tech crime taskforce. Officers working at REACT do not wear body-worn cameras, so he did not have one while working at the festival on July 28, 2019. At the time of the shooting, he was armed with a Glock 21 .45-caliber semiautomatic handgun and dressed in clothing that clearly identified him as a police officer. Officer Basuino was wearing a baseball cap with the Gilroy Police logo on it and a tactical vest adorned with a badge and the word “Police” emblazoned in yellow on both the front and back.

At the time Legan began shooting, Officer Basuino, Detective Cryar, and Officer Del Moral were patrolling the festival on foot about 150 yards to the south. Hearing the gunfire, they all ran north and then cut east along the south edge of the white shade tent. Upon seeing Legan, Officer Basuino yelled to his fellow officers, “Is that a cop? Who is that? Who is that?”

At that moment, Legan turned around and fired his rifle at Detective Cryar. Officer Basuino saw Detective Cryar hit the ground and presumed he was dead. He took cover in a nearby vendor stall and heard handgun shots to his left. Regarding Legan, Officer Basuino said he fired two shots because, “There was no doubt in my mind he was trying to kill me.”

Once Legan appeared to be down, Officer Basuino, along with several other Gilroy Police Department officers, slowly converged on his body. Legan’s assault rifle was attached to his body by a strap that Officer Basuino cut with his utility knife so the weapon could be moved away from the shooter. Officer Basuino provided cover for other officers as Legan was placed in handcuffs. Once Legan was cuffed, Officer Basuino assisted in rendering first aid to gunshot victims and transporting them to the nearby makeshift triage station. Once the area was secured and victims were receiving medical treatment, he was sequestered from the other involved officers.

C. OFFICER HUGO DEL MORAL

Officer Del Moral has been employed by the Gilroy Police Department for 17 years. Although he was wearing a body-worn camera, he did not activate it due to the urgency of the situation. “When we saw everybody running, all I could think of was getting there and getting to the threat. I didn’t even think about my body cam.” At the time of the shooting, Officer Del Moral was dressed in a standard blue police patrol uniform with a badge, belt, and gun. He was armed with a Glock 21 .45-caliber semiautomatic handgun.

When the shooting began, Officer Del Moral, Detective Cryar, and Officer Basuino were patrolling the festival on foot about 150 yards to the south. Hearing the gunfire, they all ran north then cut east along the south edge of the white shade tent. Upon arrival, Legan turned around and fired his rifle toward the officers, at which time Officer Del Moral thought, "Okay. This guy's not law enforcement." Officer Del Moral recalled firing five or six shots at Legan before Legan went down.

Once Legan appeared to be down, Officer Del Moral, along with several other Gilroy Police Department officers, slowly approached. Officer Del Moral provided cover for other officers as Legan was placed in handcuffs. Once Legan was cuffed, Officer Del Moral assisted other officers in clearing the nearby vendor stalls and identifying other victims. Once the area was secured, Officer Del Moral was sequestered from the other involved officers.

V. LEGAL ANALYSIS

A. RELEVANT LEGAL PRINCIPLES

This review was conducted pursuant to the joint protocol between this office and all Santa Clara County law enforcement agencies, which calls upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force². This review does not examine issues such as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or possible civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on those matters.

Possible criminal charges against officers involved in a non-fatal shooting include attempted murder (Penal Code sections 187/664) and attempted manslaughter (Penal Code sections 192/664). To convict an officer of any of these charges, it would be necessary to prove beyond a reasonable doubt that no legal justification existed for the officer's actions. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383-384.) Several justifications may apply in any given case, and they are set forth in Penal Code sections 196 and 197. The justification pertinent to this case is the use of force in self-defense and defense of others, which is found in Penal Code section 197.

California law permits all persons to use reasonably necessary force to protect themselves from the imminent threat of death or great bodily injury. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others. The relevant criminal jury instruction, as written by the Judicial Council of California, is set forth in CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The

² This report evaluates this shooting under California use of force law that existed on July 28, 2019, prior to the effective date of AB 392 on January 1, 2020. However, the changes to the law enacted by AB 392 would not change the conclusions contained in this report.

instruction states that a person is not guilty of attempted murder or attempted manslaughter if he acts in lawful self-defense or defense of another when: 1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, and 2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. (CALCRIM 505.) In lawful self-defense or defense of another, a person may use no more force than is reasonably necessary to defend against the danger. (CALCRIM 505.)

A person may resort to the use of deadly force in self-defense or in defense of another where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) Additionally, “[i]mminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) In *Aris*, the trial court’s clarifying instruction to the jury on the subject was to that point and later cited with approval by the California Supreme Court: “[a]n imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.)

A person’s right to self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. In one case, a robber pointed a gun at his victim and a deputy sheriff was called to the scene of the robbery. Before the robber could get off a shot, the deputy fired his weapon, wounding the

robber. The appellate court remarked that “[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot.” (*People v. Reed* (1969) 270 Cal.App.2d 37, 45.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (CALCRIM 505.) In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 348.) When deciding whether a person’s beliefs were reasonable, a jury considers all the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.)

In the related context of civil cases alleging excessive force by police, the test of reasonableness of an officer’s use of deadly force is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner* (1989) 490 U.S. 386, 396.) It is also highly deferential to the police officer’s need to protect himself and others. The calculus of reasonableness must embody the 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.” (*Id.* at 396-397.)

B. THE OFFICERS ACTED IN LAWFUL SELF-DEFENSE AND DEFENSE OF OTHERS

This report evaluates the use of force in the shooting of Santino Legan on July 28, 2019. I have carefully examined the recorded statements, the reports of law enforcement officers who witnessed the shooting, the statements of civilian witnesses, and pertinent audio recordings of the incident, as well as the other materials described herein.

Determining whether Detective Cryar, Officer Basuino, and Officer Del Moral were legally justified in the use of a firearm under the principles of self-defense and defense of others involves a two-part analysis:

1. Did they subjectively and honestly believe they needed to protect themselves or others from an apparent, imminent threat of death or great bodily injury; and
2. Was their belief in the need to protect themselves or others from an apparent, imminent threat of death or great bodily injury objectively reasonable?

It is undisputed that Santino Legan entered the Gilroy Garlic Festival with the intent to kill and inflict mass casualties. He entered the park by breaking through a locked gate. He was armed with a high-powered assault rifle and carried multiple magazines of ammunition. He wore green and tan clothing with a tactical vest that was both bulletproof and held additional ammunition. Upon reaching the inflatable slide, he fired once, and his gun malfunctioned. After reloading his weapon, Legan unleashed a barrage of gunfire hitting 20 men, women, and children, killing three. Once Detective Cryar and Officers Basuino and Del Moral arrived,

Legan turned his gun on them and fired. At that moment, the officers had no other choice than to use deadly force to stop the threat Mr. Legan posed to themselves and other festivalgoers.

VI. CONCLUSION

Under the facts and applicable law in this matter, Detective Cryar, Officer Basuino and Officer Del Moral quite reasonably believed that they needed to use deadly force to protect innocent lives, and their own, from Santino Legan's violent rampage. Placing themselves, literally, in the line of fire to stop a mass murderer undoubtedly saved lives and prevented further bloodshed. In light of the grave circumstances of this case, their actions were unquestionably lawful and justified.

Dated: 3/10/20

Respectfully submitted,

ROBERT BAKER
Deputy District Attorney



JEFFREY F. ROSEN
District Attorney



Appendix A
 Gilroy Garlic Festival Shooting Diagram