

# MIKE BUMCROT CONSULTING

## REPORT OF INVESTIGATION

**DATE:** October 6, 2020

**SUBJECT:** Officer Involved Shooting Death of Arthur Levario Jr., which occurred on July 20, 2018 at 1946 hours

**CASE:** Riverside Police Department File #P18-135608

**LOCATION:** Arlington Avenue and California Avenue, Riverside

On September 30, 2020, I was asked by Frank Hauptmann, Consultant to the Community Police Review Commission, to review the circumstances surrounding the Officer Involved Shooting Death of Arthur Levario Jr. by Riverside Police Department Officer Jared O'Farrell. I was also asked to provide my expert opinion in a written report on the manner in which the case was investigated by the Riverside Police Department. I received police reports, photographs, audio and video recordings, and other documents contained in the presentation by Riverside Police Department to the Riverside Community Police Review Commission. I also reviewed legal and medical issues. To assist me in understanding the police reports, I had previously responded to the location. Photographs taken by lab technicians on the date of the incident were helpful and I referred to them many times during this review.

This incident began as a vehicle pursuit, in Hemet, by members of the Hemet Police Department. The pursuit entered the county area of Riverside County and members of the Riverside Sheriff's Department and California Highway Patrol, joined in. When the pursuit entered the City of Riverside, Riverside Police Department took over and assumed responsibility. All other agencies either dropped out completely or trailed



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behind. After my review of the entire incident, it is my expert opinion that Officer O'Farrell acted in lawful self-defense, defense of other police officers on scene, and numerous members of the public when he fired his duty rifle at Mr. Levario. See Conclusion Section.

The following analysis is based on reports prepared by the Riverside Police Department, Hemet Police Department, Riverside Sheriff's Department, statements of Officer O'Farrell and witness officers, as well as statements from civilian witnesses.

## FACTUAL ANALYSIS

In the late evening hours of July 13, 2018, Hemet Police Department received a call of shots fired at a redacted address in Hemet. Officers learned that a vehicle had driven by the location and fired numerous gunshots in to the residence. Subsequent investigation revealed that a nearby security camera had captured the incident on video and the vehicle license plate was visible. Hemet police began looking for the suspect vehicle, which was described as a silver Chrysler Sebring convertible. Detective A. Paez, using the Automated License Plate Reader System, received numerous hits on locations the vehicle had been known to frequent. On July 20, 2018, Detective Paez and his partner, Sergeant M. Mouat, were driving through the city in their unmarked detective unit, when they observed the described vehicle with two occupants. The Chrysler drove into a driveway of a residence and the passenger jumped out and ran into the house carrying beer. The detectives walked up to the Chrysler and found Arthur Levario Jr. seated in the driver's seat. Detective Paez attempted to converse with Mr. Levario, who promptly backed his vehicle out of the driveway and sped away. The detectives gave chase and announced on the Hemet police radio that they were in pursuit of a 246 PC, (shooting at an inhabited dwelling).

Several Hemet Police Department officers joined the pursuit and Officer A. Varela said that he saw Mr. Levario put both hands out of his window and dust blew from his hands. Near the intersection of Florida Avenue and N. California Avenue, Sergeant Mouat reported over the police radio that the driver fired 2-3 gunshots in their direction and was throwing unknown objects from the vehicle. The vehicle pursuit continued and as the Chrysler left surface streets to enter the northbound 215 freeway, a Riverside



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Sheriff's K-9 deputy joined in. The pursuit continued at speeds in excess of 100 MPH as Mr. Levario drove recklessly on the shoulder. At Van Buren Bl., the suspect vehicle exited the freeway. Riverside Sheriff's Deputy D. Thomas, who was parked in his marked police car on the off ramp, reported that Mr. Levario fired 5-6 gunshots at him. Deputy Thomas joined the pursuit but discovered that there were sufficient police cars giving chase so he turned around and returned to the off ramp to look for evidence of shots being fired at him. Riverside Sheriff Sergeant S. Morovich was blocking intersections when he saw Mr. Levario drive past him at a high rate of speed, point a handgun at him, and fire 2-3 gunshots in his direction.

The pursuit continued into the City of Riverside at which time the Riverside Police Department took over the chase and all other agencies either dropped out to return to their area or trail behind the pursuit. Mr. Levario continued driving recklessly at speeds up to 100 mph and sometimes would drive into oncoming traffic, in the wrong lane. Several intersections were blocked with police vehicles and a plan was devised to deploy spike strips but Mr. Levario was driving too fast and erratically for officers to get in a safe position.

When the pursuit entered the City of Riverside, Mr. Levario drove a circuitous route that covered 18 miles in 15 minutes. He eventually was proceeding westbound on Arlington Avenue and, as he approached Streeter Avenue, he drove west in the eastbound lanes, into oncoming traffic. Mr. Levario crashed into several civilian vehicles and could not proceed farther. Officer O'Farrell was driving his marked police vehicle north on California Avenue and began to turn east on Arlington Avenue when he observed Mr. Levario veer his vehicle towards the police vehicle. Fearing for his safety, Officer O'Farrell fired a shot from his duty rifle through his own windshield towards Mr. Levario, who ducked down in his seat and swerved towards the stopped civilian vehicles.

Officer O'Farrell began to exit his police unit and fired a second shot, which likely struck the driver's side upper seat cushion, below the headrest, passing through and striking the interior windshield on the passenger side. Mr. Levario neglected to put his vehicle in park or turn off the engine and struck several vehicles. Officer O'Farrell, accompanied by 2 other officers, approached Mr. Levario, using stopped civilian



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vehicles as cover. The officers repeatedly commanded Mr. Levario to show them his hands and he initially complied, saying, "OK, OK, I get it." Suddenly Mr. Levario turned towards the passenger side of his vehicle, concealing both hands. Knowing Mr. Levario was armed and had shot at pursuing officers, and fearing for the safety of civilians as well as police, Officer O'Farrell fired one more shot, striking Mr. Levario in the head, below the left ear. It should be noted that he is a collateral SWAT officer and is comfortable with his duty rifle. Commands were given to Mr. Levario, who was unresponsive, to place his hands up. A semi-automatic pistol was observed lying on the passenger seat, next to Mr. Levario's outstretched hand. For officer's safety, a less lethal beanbag round was deployed and Mr. Levario still didn't respond. K-9 Rocco was then deployed and when Mr. Levario did not react to the contact, SWAT officers approached the vehicle and placed the transmission in Park and the ignition was turned off. A responding medic was called up and pronounced Mr. Levario deceased.

## TIMELINE

19:30 Hemet Police Sgt. Mouat and Det. Paez conducting 246 PC follow-up  
19:32 Officers observed suspect vehicle  
19:34 Pursuit initiated  
19:37 Suspect fired 2 shots at pursuing officers  
19:40 Riverside Sheriff K-9 joins pursuit  
19:41 CHP dispatched a unit to assist  
19:50 Suspect exits Van Buren and fires at Dep. Thomas and Sgt. Morovich. Riverside Police is asked to take over pursuit  
19:50 CHP advises suspect driving into oncoming traffic  
19:51 CHP receives 911 call of Chrysler possible drunk driver  
19:52 Riverside K-9 and Air 1 join pursuit  
19:55 Riverside PD Sgt. Elliott and units take over pursuit  
20:09 Suspect exits residential area and driving towards oncoming traffic on Arlington  
20:09 First shot fired by Officer O'Farrell  
20:09 Second shot fired by Officer O'Farrell  
20:10 Third shot fired by Officer O'Farrell  
20:31 Armored vehicle arrives on scene



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20:45 Stimulation techniques initiated  
20:53 SWAT personnel approached suspect  
20:59 Suspect pronounced deceased by Fire Department medic

Mr. Levario's weapon was a .40 semi-automatic handgun that was loaded with 5 live rounds and there was a malfunction to the weapon with a live round and an expended casing in the chamber. It should be noted that members of the Riverside Sheriff's Department searched the Van Buren Avenue off ramp, where Deputy Thomas saw Mr. Levario shoot at him. Several bullet fragments as well as expended .40 casings were recovered.

At autopsy it was determined that Mr. Levario was shot once, in the left neck, which severed his spinal cord. It was also determined that he had amphetamines and methamphetamines in his system. A gunshot residue test on his hands revealed a positive result on both hands, which suggests Mr. Levario had recently shot a firearm or had been in the presence when a firearm was fired.

A search warrant was obtained for Mr. Levario's residence in Hemet and an amount of methamphetamines was found, along with scales, which suggests possible sales of illicit drugs. A friend of Mr. Levario told investigators that a week prior to the incident, Mr. Levario had a semi-automatic handgun in his possession, and the friend had to help him clear a "double feed", where a live round and expended casing become jammed in the chamber.

It was determined that Mr. Levario had an extensive criminal record that involved the use of firearms. In 1994, he was arrested for murder and convicted of Manslaughter. He was charged with several crimes while in prison and was released just one month prior to his death.



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## EXPERT QUALIFICATIONS

### Experience

1968-2018 Los Angeles Sheriff Department

### Deputy Sheriff/Detective

- 50+ years on Sheriff Department.
- 43+ years as a Detective.
- 38+ years assigned to Homicide Bureau, investigated several thousand murders and suspicious deaths, over 100 Officer Involved Shootings, and 10 murdered Police Officer cases.
- Taught “High Profile Murder Investigations”, “Crime Scene Management”, and “Officer Involved Shooting Investigations” for the Robert Presley Institute of Criminal Investigation, police academies, advanced training classes, supervisor training, college classes, homicide school, and in service training.
- Selected in 1995 as California Deputy Sheriff of the year by the California Organization of Police and Sheriffs (COPS) for the investigation, arrest, and conviction of a suspect for the murders of 2 local policemen.
- In my final Performance Evaluation, prior to my retirement in 2002, Command Staff evaluated my performance as outstanding and I received the following recognition: “... his protégées struggle to keep up with this legend of the Homicide Bureau. He truly is a master of his craft.”

“His stated goal is to be one of the best Homicide Detectives at the Bureau and he has certainly achieved that aspiration. He works tirelessly at his vocation, providing knowledge and insight to all of those who work with or around him. Many inexperienced investigators have approached me and expressed awe of his ability to sort through the myriad of details at a crime scene, isolate the



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ones worthy of consideration to the case at hand then discard those that obfuscate the issues.”

“In the opening paragraph I made mention that Detective Bumcrot has become a legend of the Homicide Bureau. This is not merely a complementary statement, it is a fact. His name has spread far and wide within the law enforcement and related communities. He is constantly called upon to lecture to a variety of groups about homicide related topics.”

Regarding Officer Involved Shootings, “He handles each case with the political delicacy, yet bulldog tenacity, that is necessary in these types of incidents. The crime scenes at events such as these are always chaotic, yet Detective Bumcrot’s controlled approach and authoritative demeanor has a calming effect on those present, allowing him to bring order to bear and providing a sense of security to those involved in the operation.”

“In conclusion, Detective Bumcrot is the epitome of what a homicide detective should be. He not only sets high standards for himself, he demands that all of those around him achieve success and carry on a tradition of excellence...”

- After retirement in 2002, I worked with LASD Homicide Bureau on a consulting contract to make recommendations regarding the investigation and prosecution of complex homicide cases; provided active support during large scale, complex, highly publicized cases; provided training in homicide and officer involved shooting investigations; and reviewed unsolved homicide cases. During these cold case reviews, I was responsible for reviewing over 4,000 unsolved homicide cases to determine which investigations had DNA or latent print evidence that, due to recent advanced technology, may assist in solving the case. This resulted in the closure of many cases, some several



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decades old. In 2014, I was tasked with writing the investigative guidelines for officer involved shootings for the LASD Homicide Bureau. In 2018, I retired completely from LASD Homicide Bureau.

## 2002-Present

- Currently on staff with the Police Policy Studies Council, which was established, to formulate innovative solutions to the most troubling and controversial problems that have continued to plague the law enforcement community. PPSC offers training and forensic level consultation.
- Currently working with Riverside Police Review Commission to investigate Officer Involved Deaths.
- Consulted with Police Agencies throughout the nation on Officer Involved Shootings investigations as well as homicide and suspicious deaths.
- Continuing to teach “Crime Scene Management”, “High Profile Murder Investigations”, and “Officer Involved Shooting Investigations” at homicide school, police academies and in-service training as a guest speaker.
- Alumni of the New York State Police International Homicide School.
- Active member of the California Homicide Investigators Association.
- Recipient of the LASD Medal of Distinguished Service.



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## INVESTIGATION AND REVIEW

The investigation into the Officer Involved Shooting Death of Arthur Levario Jr. was conducted by the Riverside Police Department, the Riverside County District Attorney's Office, and the Riverside County Medical Examiner's Office. I reviewed all of the reports and photographs submitted to the Community Police Review Commission and researched both legal and medical issues.

## LEGAL ANALYSIS

California law provides that the use of deadly force in self defense or the defense of others is justifiable if the person claiming the right of self defense or the defense of others honestly believes that he or others were in imminent danger of great bodily injury or death, and a reasonable person in the same circumstances would also deem it necessary to use deadly force in order to protect themselves or others from the deadly peril. 197 PC; CALCRIM 505; People v Humphrey (1996) 13 Cal. 4<sup>th</sup> 1073, 1082

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

The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving. Graham v Conner (1989) 490 U.S. 386,396-397

A police officer's attempt to terminate a high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. Scott v Harris (2007) 550 U.S.372



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Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v Collins (1961) 89 Cal.App.2d 575, 589

## CONCLUSION

The review of reports and the evidence examined in this case reveals that Arthur Levario Jr. was involved in a possible drive by shooting in Hemet, the attempted murder of multiple law enforcement officers, the use, and perhaps sales of narcotics, all while being armed with a .40 semi-automatic handgun, which is another felony, ex-felon with a gun. There is little doubt that the fact his weapon suffered a critical malfunction, saved lives. Only a month out of prison, Mr. Levario chose to return to his life of crime. When discovered, he fled from police, recklessly driving over 100 mph on surface streets and freeway, shooting at officers and, driving head on into oncoming traffic. When he was forced to stop, by plowing into innocent civilians, he could have surrendered but he chose to reach for his handgun in a last ditch effort to escape.

The actions of Arthur Levario Jr. in leading police in a dangerous pursuit and the fact he shot at multiple officers, and his attempt to arm himself at the termination of the pursuit, reasonably created a fear of death or bodily injury and once Officer O'Farrell perceived that Mr. Levario posed a lethal threat, his use of deadly force was justified.

I also find the investigation in this case was completed in a fair and impartial manner and met or exceeded POST standards of practice.



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