



# Office of the District Attorney Stanislaus County

**Birgit Fladager**  
District Attorney

**Assistant District Attorney**  
Jeffrey M. Laugero

**Chief Deputies**  
Marlisa Ferreira  
Wendell Emerson  
Michael D. Houston  
Mark Zahner

**Bureau of Investigation**  
Chief Terry L. Seese

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## **PRESS RELEASE**

### **For Immediate Release**

Date: April 29, 2022  
Re: No Criminal Charges Filed in  
Officer-Involved Shooting

### **For More Information Contact:**

John Goold, Public Information Liaison  
Phone: (209) 525-6909

**Modesto, California** - Stanislaus County District Attorney Birgit Fladager announced today that, after a thorough review of all the relevant evidence gathered during the investigation of the officer-involved shooting that occurred on May 18, 2021, no charges will be filed against the deputy.

A copy of the letter provided to the Stanislaus County Sheriff's Department is attached to this press release.

# # #

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April 27, 2022

Sheriff Jeff Dirkse  
Stanislaus County Sheriff's Office  
250 E. Hackett Rd.  
Modesto, CA 95358

Re: Death of Xander Gage Mann

Dear Sheriff Dirkse:

This office has completed our review of the investigation into the death of Xander Gage Mann which occurred on May 18, 2021 in the City of Modesto and within the Sheriff's jurisdiction. It is reported that Mann died as the result of gunshot wounds. Our investigation has determined that Mann was shot by a deputy sheriff who used force at the end of a vehicle pursuit during which Mann was driving/fleeing from peace officers. The actions of the involved sheriff's deputy do not rise to the level of criminal conduct that would warrant the filing of criminal charges. We explain our decision below and are required to address changes in the law that impact our discretionary processes. We now view this matter as closed.

### **FACTS**

On 5/18/21 at approximately 0150, hours Deputy Alex Tovar and his Field Training Officer (FTO) Deputy Brandon Stanley were on routine patrol and pulled out of an AM/PM gas station onto Carpenter Road (near Woodland Avenue) in Modesto. Dep. Tovar noticed a blue-grey vehicle travelling southbound on Carpenter in the number one lane without headlights on in violation of 24252(a) CVC. Dep. Tovar pulled his marked patrol car behind the blue-grey car, an early 90's four-door Ford Escort. FTO Stanley directed Dep. Tovar to stop the vehicle.

Dep. Tovar activated his patrol car's "code three lights" [emergency red lights] and the car yielded. He informed Dispatch that he was out with a suspicious vehicle. Dispatch was notified of the license plate number 8BKK593 and the description of the vehicle. Before approaching the Escort, Dep. Tovar activated his Axon body camera (BWC). Five individuals were inside the car. Dep. Tovar asked the driver to roll his window down. The driver was later identified as Xander Gage Mann. Mann partially complied by rolling his window down halfway.

Dep. Tovar asked Mann to turn the vehicle's engine off. Mann did not comply; instead, he just faced forward without making eye contact. Dep. Tovar again asked Mann to turn the vehicle off and Mann still did not comply. Mann continued to face forward and then began to manipulate something towards the steering wheel. Mann then drove off. [Tovar and Stanley were both dressed

in full Sheriff's Department uniforms and were driving a fully marked police vehicle with solid red forward-facing lights.]

There were four passengers in the car with Mann. The passengers, based on the given DOB's, were under 18 at the time of the incident. All of the passengers were later interviewed and gave varying statements and/or cooperated to varying degrees. Several of the passengers indicated that Mann made statements that he did not want to get into more trouble or "be sent out of state" because he was already under a court wardship of some kind. Several of them told Mann to stop or pull over but Mann refused and yelled for them to shut up.

Mann led the deputies on a dangerous pursuit lasting long enough for other agencies to join in. At one point, Mann drove into a circular two-way drive of a gated community with the gate closed while pursued by patrol cars. One patrol car driven by a sheriff's deputy tried to cut Mann off by blocking the exit path and Mann drove at the patrol car narrowly missing it at the last second. FTO Deputy Gerardo Zazueta would later say he watched this unfold and was scared for the deputy's life because he could've been seriously injured or killed if Mann had crashed into him. FTO Zazueta had been in previous pursuits and had received training in the danger of pursuit collisions. The units broadcast that Mann had committed a "245 on cops" [assault with a deadly weapon] and was driving into oncoming traffic. Based on Mann's dangerous driving, a Modesto police unit was authorized to attempt a PIT [pursuit immobilization technique] maneuver. MPD Officer Jeffery Harmon attempted the PIT, but it was unsuccessful. Mann avoided the PIT and continued to drive dangerously. Based on the dangerousness of the pursuit, an MPD supervisor advised all MPD units to terminate their pursuit of the Escort.

As Mann continued to try and escape, additional Sheriff's units joined in the chase. FTO Zazueta requested permission to try a second PIT. Sgt. Darwin Hatfield, who was the closest on-scene supervisor, granted permission if the policy conditions were met. As Mann turned westbound onto Finch Road, FTO Zazueta PIT'd the car. The PIT caused the Escort to spin out and turn facing the wrong direction in the roadway. The deputies were now facing the car. FTO Stanley activated his passenger side spotlight to illuminate the inside of the Escort. FTO Stanley reported that he observed a female in the front passenger seat, a male in the back passenger seat, and 2 females beside the male in the back seat. These four subjects were holding their hands up. FTO Stanley said Mann appeared to be smiling as if he were having fun. Mann started to put his hands up to cover his face, put the car into reverse and backed up at a high rate of speed.

As the vehicle accelerated to higher speeds, it appeared that Mann was losing control of the vehicle and the vehicle slowed down. Once the vehicle slowed down, he appeared to be able to regain control of the vehicle. Once Mann got control of the vehicle, the vehicle accelerated again. With the higher speeds, Mann once again appeared to be losing control of the vehicle and began to slow again. As the vehicle slowed enough, Mann appeared to regain control once again. As Mann regained control, the vehicle accelerated again. However, Mann eventually lost control of the vehicle and the Escort turned south and struck the south curb line of Finch Rd. The vehicle was now facing in a northerly direction. The pursuit had covered approximately 15 miles in 21 minutes. Once the vehicle stopped, deputies began to surround the vehicle with their patrol cars.

The deputies described an attempt to "triangulate" their patrol cars to prevent Mann from driving off again. The front of a patrol car would be pointed at the front of the Escort and an attempt made to get the cars close together to prevent the Escort from moving. Sgt. Hatfield described it as this:

I was attempting to place the front bumper of my vehicle into the front bumper of the suspect vehicle, to stop any further movement. As I was maneuver (sic) into this position, I saw FTO Zazueta in front of me. His vehicle was facing in a southbound direction. I saw FTO Zazueta exit his vehicle, standing just outside of his door.

I then saw the suspect vehicle began to move forward and was accelerating at a high rate of speed, approaching my vehicle. I stopped my vehicle and braced myself, as I believed the suspect vehicle was going to collide with my vehicle. I did not feel any impact with suspect vehicle and my vehicle, but I later found a black scuff mark on the front bumper of my patrol car, which I hadn't seen earlier in my shift when I conducted a pre-shift inspection of my patrol car.

Dep. Zazueta also gave a statement, confirming the same basic facts as Sgt. Hatfield. Dep. Zazueta's statement provided the following:

After he heard the gears shift and the engine revving the suspect drove toward him and his partner. Deputy Zazueta was standing outside of his vehicle while the vehicle drove in his direction. Deputy Zazueta thought the driver was going to hit him.

Deputy Zazueta's door was opened, and he did not have any other exit. He left the door open. His handgun was already drawn from his holster and pointing at the vehicle to conduct a "High Risk Stop". Deputy Zazueta did not remember anyone giving the driver commands. He said the other patrol vehicle was to the left of his and he could not give a measurement as to how close the patrol vehicles were, but said they were "really close." Deputy Zazueta did not remember seeing a gap between the suspect vehicle and his vehicle as it drove between the two patrol vehicles.

Deputy Zazueta felt like there was no room at all and he believed he was going to hit him or Deputy Stanley. He pointed his handgun at the driver and discharged his firearm once they started driving forward at a high rate of speed and believed he shot approximately three times. He thought there was no room for the suspect vehicle to go between the patrol vehicles. Deputy Zazueta was thinking, "I'm gonna fucking die" when he saw the vehicle accelerating forward.

Mann was struck twice by the gunfire, lost control of the Escort and impacted a nearby railroad fixture. Two of the passengers suffered injuries from the impact and were taken to the hospital. The scene was preserved and pursuant to the county major incident protocol an investigation was commenced.

The investigation was hampered by the lack of useable BWC footage. The radio traffic, conversations and sounds were captured, but the placement of the cameras on the pursuing officers' and deputies' clothing limited the video line-of-sight to below the dashboard. Additionally, FTO Zazueta forgot to activate his BWC so it did not record the event. The importance/relevance of the available physical evidence was further lessened due to the fact that Mann was not stationary when the shooting occurred, and his vehicle traveled some distance forcing the patrol cars to also move.

Two shell casings were recovered<sup>1</sup> indicating that FTO Zazueta fired at least two rounds and maybe not three. However, a magazine count showed that 14 rounds were still possessed, and the gun held up to 17, meaning that 3 shots may have been fired. The audio from the BWC did not provide enough clarity to conclusively say that FTO Zazueta fire two or three rounds. Witnesses report both two and three shots being fired.

There was one bullet impact site in the “A” pillar<sup>2</sup> on the driver’s side [the metal support for the roof that rises up from the engine compartment hood between the front windshield and the driver’s door]. The driver’s door window was shattered at some point so it cannot be determined where the second/third shot(s) entered the car, if at all, but it is likely that it was near the “found” impact site in the A pillar and the logical conclusion is that the round entered through the driver’s door window. This conclusion comes from the fact that Mann suffered two separate wounds (with two entrance/two exit wounds) and two projectiles were recovered from inside the car<sup>3</sup>. It is entirely possible that FTO Zazueta fired two rounds, with one round striking the A pillar, fragmenting but leaving enough mass to strike Mann causing an entry and exit wound. The jacketing from the first round was recovered in the door frame, while the second round struck the window and then hit Mann continuing to the passenger side of the car where it was recovered. It is possible that a third round was fired and missed the car but the bullet and casing were not found.

Factually, all that we can tell from the bullet trajectories is that FTO Zazueta was not standing directly in front of the car when he first fired; he was most likely off-set a small distance and turned to fire the second round as the car started to pass him. Based on the gunshots heard on the BWC video/audio, the time between the two shots is indistinguishable for unaided human perception – meaning it happened so fast to appear to have been one act.

Additional facts to note but that offer little assistance – 1) the location of the wounds to Mann were listed as follows in the autopsy report:

“A. Perforating gunshot wound to left temple

1. Injuries to skull, brain, and eyes

2. Exit wound above right eyebrow

B. Perforating gunshot wound to left back of the head

1. Injuries to skull and brain

2. Exit wound on lateral right forehead”

If the Escort had not been moving, and Mann had not been seen to be turning his head around by various witnesses, more could be learned from the bullet paths, but that is not the case. We conclusively know where one bullet struck the “A” pillar, can reasonably assume the second (or maybe third) bullet entered the driver’s side window since no other window was broken or open and no defect or bullet strikes were located on the inside of the car. We also know where the two projectiles were recovered from but not how they got there. Anything more would be pure speculation.

The autopsy also revealed that Mann had metabolites of cocaine in his system, but not at levels that would explain his irrational choices. Mann’s criminal history (if any) could shed some light

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<sup>1</sup> Casings #1 and #2 were collected as evidence items DH3 & DH4. A third casing was never found.

<sup>2</sup> This was documented as Placard #10A.

<sup>3</sup> One small bullet / jacketing fragment was located in the door frame near the bullet strike of the Ford Escort depicted in Placard #10A; the item was marked as evidence item DH14. A second projectile was located on the passenger side rear floorboard under a floor mat which was under the front passenger seat; the item was marked as evidence item DS1.

on his conduct but since any such juvenile records would be confidential, they cannot be used in these circumstances. We are left with Mann's statements to his passengers that he believed if he stopped he would get in some kind of trouble.

## LAW

Prior to the enactment of AB 392 (which amended Penal Code sections 196 and 835a), this shooting would have been judged simply from the subjective belief of the officer at the moment of the shooting. The U.S. Supreme Court has repeatedly directed that we not second-guess the officer when reviewing such split-second decisions. However, that is exactly what AB 392 forces us to do.

Here is the language of Penal Code §835a (applicable language is in italics):

*"(a) The Legislature finds and declares all of the following:*

*(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.*

*(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. 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.*

*(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.*

*(4) That the 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, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.*

*(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.*

*(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.*

*(c)(1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:*

*(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.*

*(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a*

peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(2) 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 pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

*(d) A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other deescalation tactics.*

*(e) For purposes of this section, the following definitions shall apply:*

*(1) "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.*

*(2) 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. 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.*

*(3) "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."*  
Pen. Code, § 835a

There are three main components of AB 392 and seven sub-parts: (1) Was the shooting **Necessary** [meaning was there (a) an **Imminent** threat to the officer, or a third party (b) did the suspect have the **Ability** to harm the officer/third party, (c) did the suspect have the **Opportunity** to harm the officer/third party, (d) did the suspect have the **Apparent Intent** to commit an (e) **Immediate vs a Future Harm**], (2) when the **Totality of Circumstances** are viewed [including reviewing (f) **Pre-shooting tactical decisions and conduct** and (g) **Other Available and Feasible Resources and Techniques**], and (3) was the act **Reasonable** to another officer with similar training and experience.

In this case, Mann escalated the situation from a simple traffic ticket to a felony pursuit. His driving at the patrol car near the gated driveway resulted in the deputies/officers raising the crime level to a "245" and increased the seriousness of their response. Mann's actions would require a YES answer to items (b) and (c); he had the ability and the opportunity to use the car as a weapon and did.

The deputies tried to end the pursuit with a PIT maneuver as did the MPD officers. This tactic was measured and approved pursuant to two separate law enforcement agencies' policies in real time. Had Mann stopped, it would have been successful. After FTO Zazueta PIT'd Mann, Mann drove off in reverse endangering the passengers in his car as well as anyone near the street. When Mann lost control of the car and hit the curb the deputies conducted a "high-risk" traffic stop. The training that FTO Zazueta had received dictated that he draw his gun. The passengers in the car understood the seriousness/danger of the situation and all but Mann raised their hands to surrender. The only tactical choice made by FTO Zazueta at that point was to get out of his patrol car – that was his

duty, to make an arrest at that moment. Therefore, it must be concluded that FTO Zazueta successfully complied with (f) and (g).

The last questions required to be answered by AB 392 boil down to the moment that Mann drove the car at the gap between the two patrol cars. How to view that moment in time is where AB 392 substantially shifts the review of an officer's conduct. The only published case to look at the change in the law is Koussaya v. City of Stockton (2020) 54 Cal.App.5th 909. That case started by saying:

"At the time of the events at issue in this case, Penal Code section 835a provided that a peace officer who has reasonable cause to make an arrest "may use reasonable force to effect the arrest, to prevent escape[,] or to overcome resistance," and "need not retreat or desist from his [or her] efforts by reason of the resistance or threatened resistance of the person being arrested." [citation omitted.]¶ Effective January 1, 2020, this section was amended ..."[as cited above in this report.]

Koussaya, at page 932.

The Koussaya case is appropriate to cite here in reviewing the changes of AB 392 versus the law of reasonable force as applied to peace officers because it is controlling of our review; therefore, a lengthy quotation will be used here:

"Relevant portions of this amended section are declaratory of preexisting case law. Our Supreme Court "has long recognized that peace officers have a duty to act reasonably when using deadly force" and that "[t]he reasonableness of an officer's conduct is determined in light of the totality of circumstances," including "the tactical conduct and decisions leading up to the \*\* use of deadly force." (Hayes, supra, 57 Cal.4th at pp. 626, 629; see, e.g., Olin, supra, 24 Cal.3d at pp. 634, 637; Grudt, supra, 2 Cal.3d at pp. 585-588.)

For example, in Grudt, a wrongful death action, our Supreme Court held the trial court erred in removing negligence from the jury's consideration where two plainclothes police officers, who were patrolling a high-crime area in an unmarked car at night, attempted to pull over the hearing-impaired decedent, Grudt, without using the vehicle's red light or siren, followed by two other plainclothes officers in another unmarked car joining in pursuit until Grudt's car stopped at an intersection, at which point one of these officers "alighted from his vehicle[,] ... loaded his double-barreled shotgun as he approached Grudt's car," and "tapped loudly on the closed left front window ... with the muzzle of his shotgun." (Grudt, supra, 2 Cal.3d at p. 581.) This caused Grudt to panic and accelerate towards one of the other plainclothes officers, who was also out of the unmarked car with his gun drawn; Grudt was killed when both officers fired at his car, the latter officer in self-defense and the former in defense of his fellow officer. (Id. at pp. 581-582.) Viewing the evidence favorably to the plaintiff, Grudt's widow, the court concluded "the evidence ... raised a reasonable doubt whether [the officers who shot Grudt] acted in a manner consistent with their duty of due care when they originally decided to apprehend Grudt, when they approached his vehicle with drawn weapons, and when they shot him to death. '[The] actor's conduct must always be gauged in relation to all the other material circumstances surrounding it and if such other circumstances admit of a reasonable doubt as to whether such questioned conduct falls within or without the bounds of ordinary care then such doubt must be resolved as a matter of fact rather than of law.' [Citation.]" (Id. at p. 587.)



Elaborating on this point in *Hayes*, our Supreme Court explained “the shooting in *Grudt* appeared justified if examined in isolation, because the driver was accelerating his car toward one of the officers just before the shooting. Nevertheless, we concluded that the totality of the circumstances, including the preshooting conduct of the officers, might persuade a jury to find the shooting negligent. [Citation.] In other words, preshooting circumstances might show that an otherwise reasonable use of deadly force was in fact unreasonable.” (*Hayes*, supra, 57 Cal.4th at p. 629-630; see also *Olin*, supra, 24 Cal.3d at pp. 636-637 [substantial evidence supported finding that two arson investigators unreasonably used deadly force against a fleeing suspected arsonist, including evidence of preshooting conduct; jury could have found the investigators unreasonably identified the decedent, “the first man they saw” after seeing someone start a fire, unreasonably failed to warn him deadly force would be used, and unreasonably failed to attempt other means of apprehension].)

However, although an officer's preshooting conduct must be considered as part of the totality of circumstances surrounding the use of force, “ ‘[t]he “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.’ [Citation.]” (*Hayes*, supra, 57 Cal.4th at p. 632.) “The standard for evaluating the unreasonable use of force reflects deference to the split-second decisions of an officer and recognizes that, unlike private citizens, officers may use deadly force. An officer ‘ ‘ ‘may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance.’ ” [Citations.] ‘ ‘ ‘Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” ’ ’ ’ [Citation.]” (*Lopez*, supra, 196 Cal.App.4th at p. 685.) “ ‘ “We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” [Citation.]’ [Citation.] Placing the burden of proof on the plaintiff to establish that an officer's use of force was unreasonable ‘gives the police appropriate maneuvering room in which to make such judgments free from the need to justify every action in a court of law.’ [Citation.]” (*Brown*, supra, 171 Cal.App.4th at p. 528.)

We finally note that “ ‘[a]s long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the “most reasonable” action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect, in order to avoid liability ....’ [Citation.]” (*Hayes*, supra, 57 Cal.4th at p. 632.) “Law enforcement personnel have a degree of discretion as to how they choose to address a particular situation. Summary judgment is appropriate when the trial court determines that, viewing the facts most favorably to the plaintiff, no reasonable juror could find [the use of force was unreasonable].” (*Ibid.*)”

*Koussaya v. City of Stockton* (2020) 54 Cal.App.5th 909, 934–936

Both the Grundt and Brown cases pre-date AB 392 but are cited by Koussaya to explain what the new law means. Such an interpretation means we are bound to still consider the holdings of those cases. The Grundt case dealt with officers shooting the driver of a pickup driving towards one of the officers. That court felt that if the facts were as established by the police the shooting would be justified; however, the issue was whether the plaintiff could show negligence on the officers' part because they were in unmarked cars and in plain clothes when they approached the decedent's truck with a shotgun. In the instant case, Mann was on notice the deputies were attempting to enforce the law. They were in uniform, in marked cars, used red lights and sirens and the passengers in his car raised their hands to surrender. Mann failed to yield and drove towards the gap between the two patrol cars.

The Brown case dealt with the dangers of a reckless driver trying to flee in a car. That court said:

"Where potential danger, emergency conditions, or other exigent circumstances exist, " "[t]he Supreme Court's definition of reasonableness is ... "comparatively generous to the police..." "[Citation.]" (Munoz, supra, 120 Cal.App.4th at p. 1103.) " "In effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases..." [Citation.]" (Ibid.) A police officer's use of deadly force is reasonable if " "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." [Citations.] [Citation.]" (Ibid.) " "Thus, "an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." "[Citation.]" (Ibid.)

Ojeda's actions clearly indicated his intent to harm the officers. In response to a strong show of force by officers in raid gear who ordered Ojeda to get out of his vehicle, Ojeda instead drove his vehicle up onto the sidewalk adjacent to the strip mall, "gunned" the engine, and drove directly toward Ransweiler and Baldwin. After Ransweiler dove out of the way, he saw Baldwin fall to the ground while still in front of Ojeda's vehicle. Ransweiler's fear that Ojeda would run over Baldwin was reasonable given these circumstances.

Once Ojeda took this extreme action in response to police orders to surrender, Ransweiler acted reasonably in shooting at him, to attempt to stop Ojeda from harming Baldwin or a third party, or escaping. Ransweiler's use of force was not excessive or unreasonably dangerous relative to the danger Ojeda's actions posed. Ransweiler shot at Ojeda five times, from a relatively close distance."

Brown v. Ransweiler (2009) 171 Cal.App.4th 516, 528–529

Once again in the instant case, FTO Zazueta was attempting to make a felony arrest and/or stop an on-going dangerous pursuit when he was confronted with Mann driving the Escort directly at him. The gap between the patrol cars was narrow enough that Mann apparently hit Sgt. Hatfield's patrol car (as evidenced by the bumper scuff mark). Sgt. Hatfield believed he was going to be hit and braced for impact inside of his car. FTO Zazueta did not have any protection from the approaching car, except for his open door.

FTO Zazueta was in the same situation that confronted the two officers in the Brown case; he was facing an imminent threat to himself and the other deputies [yes to **(a)**], by a driver who had already tried to hit one patrol car and had the apparent intent to use his car as a weapon again [yes to **(d)**], and if action was not immediately taken harm would have occurred [yes to **(e)**]. When viewing the totality of the circumstances, all of the sub-parts add up to an answer of yes – it was necessary [yes to **(1)** and **(2)**] for FTO Zazueta to use deadly force.

In this case, as a matter of law, the Brown case tells us that the use of force was objectively reasonable [yes to (3)]. The use of force by FTO Zazueta was within policy, was within his training and has not been shown to have been unreasonable making said use “objectively reasonable.” Even if we were to ignore the current law established by Koussaya and attempt to second guess the split-second decision made by FTO Zazueta, we would have to ignore human behavior dynamics to even attempt to reach a different result.

It is a given that it takes time to process information before you can react to it, or as researchers have opined about police use of force dynamics:

The process of perceiving the suspect’s movement, interpreting the action, deciding on a response, and executing the response for the officer generally took longer than it took the suspect to execute the action of shooting, even though the officer already had his gun aimed at the suspect. Although our sample size is not large, our results are consistent with previous research and our general understanding of the reaction process (Brebner & Welford, 1980; Grossman & Christensen, 2004; Honig & Lewinski, 2008; Luce; 1986; Welchman et al., 2010). Completing all of the steps necessary to interpret a situation, select, and then execute a response simply tends to take longer than it takes to execute an already decided-upon action.

Reasonableness and Reaction Time - December 2011, Police Quarterly 14(4). J. Pete Blair and Joycelyn Pollock, Texas State University

When applied to the situation confronting FTO Zazueta, the deputy was at a time disadvantage since Mann had already decided to drive towards the gap between the patrol cars where Zazueta was standing. Although no measurements were taken since the vehicles were moved, the distance from the Escort to FTO Zazueta was not great. The closing distance left Zazueta little time to process the fact that the car was driving towards him. It is not surprising that the first shot hit the car at an angle (“A” pillar to the driver’s seat where Mann was located) and Zazueta’s training would have kept his site picture on the driver as the car moved forward and impacted Sgt. Hatfield’s car.

A hyper-technical application of AB 392 might imply that since the shooting was to the front side of the car [and the car did not run over FTO Zazueta] the shooting was not “necessary.” That analysis would only come from a clear violation of the law using the “20/20 vision of hindsight” prohibited by Hayes and Koussaya. Such a technical interpretation would be rejected by any reasonable jury, assuming a judge would allow such a case to go to trial. More importantly, the California District Attorneys Association Uniform Crime Charging Standards Manual<sup>4</sup> directs that criminal charges shall not be brought unless the prosecutor, based on a complete investigation and thorough consideration of all the evidence, is satisfied the evidence shows the accused is guilty of the crime to be charged. Additionally, the charging standards direct there must be legally sufficient admissible evidence to prove each element of the crime. At the time of charging, the admissible evidence must be of such convincing force that it would warrant conviction of the crime by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, foreseeable defenses that could be raised by the evidence.

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<sup>4</sup> "The time and effort that must go into a prosecutor's filing decision is apparent from the Uniform Crime Charging Standards (1974) California District Attorneys Association, page 13: "The primary responsibility of a prosecutor in charging is to determine whether or not there is sufficient evidence to convict the accused of the particular crime in question and to authorize the filing of appropriate charges."  
Youngblood v. Gates (1988) 200 Cal.App.3d 1302, 1346

In the instant case, it would be impossible to overcome a claim of reasonable belief in the need for self-defense by FTO Zazueta.

### CONCLUSION

Our investigation has determined that Xander Mann was shot by Sheriff FTO Deputy Zazueta who used force at the end of a vehicle pursuit during which Mann was driving/fleeing from peace officers. Although the apparent changes in the law brought about by the enactment of AB 392 are still being resolved by the courts, Dep. Zazueta's conduct under any interpretation of the law does not rise to the level of criminal conduct that would warrant the filing of criminal charges.

Very truly yours,

BIRGIT FLADAGER  
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cc: Dep. Gerardo Zazueta