



PUBLIC RELEASE MEMORANDUM

DATE: March 31, 2020

SUBJECT: Non-Fatal Officer-Involved Incident

Officers Involved: Officer Shaun Sandoval, San Bernardino Police Department
Officer Imran Ahmed, San Bernardino Police Department
Deputy Joseph Perea, San Bernardino County Sheriffs Department

Injured: Shurell Henry (DOB 05/11/1969)
Residence: San Bernardino

Incident Date: April 11, 2019
Time: 8:31 a.m.
Location: 4100 Block North Sepulveda, San Bernardino

Case Agent: Detective Joshua Cunningham
San Bernardino Police Department

Investigation No.: 2019-45015

DA STAR No.: 2019-33481

TABLE OF CONTENTS

PREAMBLE 3

FACTUAL SUMMARY..... 3

STATEMENTS BY POLICE OFFICERS5

 Officer Shaun Sandoval5

 Sergeant Scott Murray8

 Deputy Joseph Perea9

 Detective Imran Ahmed11

 Detective Joshua Cunningham12

STATEMENTS BY CIVILIAN WITNESSES.....12

 Jane Doe12

 Witness #114

 Witness #214

 Other Civilians14

INCIDENT AUDIO AND VIDEO14

 911 Call14

 Body-Worn Camera Video.....15

CRIME SCENE INVESTIGATION21

 Detective Erik Campos.....21

 Detective Jose Castro22

INJURED PARTY22

 Injuries.....22

 Criminal History.....22

 Injured Party’s Statement23

APPLICABLE LEGAL PRINCIPLES24

ANALYSIS28

CONCLUSION34

PREAMBLE

The summary of this non-fatal incident is drawn from a submission of reports and audio and video recordings prepared by the San Bernardino Police Department. The investigating case agent for this submission was Detective Joshua Cunningham.

The submission reviewed includes the following: reports of responding police officers; reports summarizing interviews of the involved officers and civilian witnesses; audio and video recordings of interviews; a transcript of Officer Shaun Sandoval's statement; law enforcement video and photographs; civilian cell phone and surveillance video, body-worn camera video recordings; 9-1-1 and police radio communication recordings; medical records and scientific investigation reports.

FACTUAL SUMMARY

On April 11, 2019, Officer Shaun Sandoval of the San Bernardino Police Department (SBPD) fired his taser twice and his .40-caliber pistol four times at Shurell Henry, at a location in the 4100 block of North Sepulveda Avenue, in the City of San Bernardino. During the same incident, Deputy Joseph Perea of the San Bernardino County Sheriff's Department (SBCSD) fired five bean bag shotgun rounds and SBPD Detective Imran Ahmed applied five taser cycles to Mr. Henry. Mr. Henry was injured as a result of this incident. Mr. Henry survived his injuries.

This use of force incident was the culmination of events set into motion by a 9-1-1 call for help. At approximately 7:59 a.m., Jane Doe called 9-1-1 and told the dispatch operator that Shurell Henry pointed a knife and screwdriver at her and threatened to kill her. Ms. Doe believed that Mr. Henry was under the influence of methamphetamine. Ms. Doe reported that Mr. Henry was partially blind and was holding a cane and machete.

Sergeant Scott Murray, Officer Dennis Han and Officer Sandoval¹ arrived at Ms. Doe's door while she was still on the phone with the dispatch operator. Ms. Doe told Mr. Henry that the police were there and to open the door. Within earshot of the officers, Ms. Doe told Mr. Henry that he should not open the door with the machete or knife. The officers could not see inside the apartment at the time, nor did Mr. Henry open the door. With Ms. Doe's permission, Sergeant Murray forced the door open and he and Officer Sandoval stepped inside. It was approximately 8:23 a.m.

The incident location was a one-bedroom and one-bathroom apartment, with the sole entry door on the south wall at the southwest corner of the living room. There was a kitchen on the east side of the apartment and a doorway in the northeast corner of the living room. The northeast doorway led to the bedroom and bathroom. The living room was estimated to be about 12' long and 10' wide.

¹SBPD was the primary responding agency to this incident. Other than Deputy Perea, all responding officers to this incident were SBPD officers.

When Sergeant Murray and Officer Sandoval entered the incident location and stepped into the living room, the officers saw Mr. Henry also standing in the living room. Mr. Henry appeared to be more than six feet tall and 250-300 pounds. Ms. Doe, who was 62 years old and approximately 350 pounds, laid in a hospital bed pushed up against the west wall, near the front door. Officer Sandoval immediately ordered Mr. Henry to put his hands up. Mr. Henry complied. Mr. Henry had a brown stick in his left hand and a folding cane in his right hand.

Mr. Henry had a brief exchange of words with the officers and appeared to be listening to what the officers were saying. Then suddenly, Mr. Henry turned and began to step away from the officers. Sergeant Murray stepped further into the living room, reached for Mr. Henry and ordered him not to move away. Mr. Henry then raised his arms as if to run or strike at Sergeant Murray. In response, Officer Sandoval fired his taser at Mr. Henry. Mr. Henry was able to duck behind the northeast doorway and avoided getting hit by Officer Sandoval's taser darts. The officers did not pursue Mr. Henry. Instead, Sergeant Murray and Officer Sandoval backed out to the front threshold and drew their handguns.

From the front doorway, Sergeant Murray and Officer Sandoval gave Mr. Henry multiple commands to come out with his hands up. Next, Sergeant Murray and Officer Sandoval saw that Mr. Henry had armed himself with a 27" machete. During a constant exchange of words with Mr. Henry, both officers ordered him to "drop the knife." Meanwhile, Mr. Henry kept moving in and out of the northeast doorway. At one point, Mr. Henry told the officers that they were not the police. Both officers and Ms. Doe made efforts to tell Mr. Henry that he *was* indeed dealing with the police.

At approximately 8:30 a.m., Officer Sandoval again fired his taser at Mr. Henry. Like the first, the second taser shot was ineffective at disabling Mr. Henry.

Less than 30 seconds after the second taser shot, Mr. Henry came out of the doorway with a large speaker box in his hands, while also holding the machete in his left hand. The speaker was about 27" tall and about a foot wide, appearing to be made of wood and metal. The officers immediately ordered Mr. Henry to put down the items. Mr. Henry stepped back out of view at first, then quickly reemerged with the speaker and machete over his head. Mr. Henry threw the items towards the officers. Almost simultaneously, Officer Sandoval fired his duty weapon at Mr. Henry four times, in rapid succession. Mr. Henry retreated into the northeast doorway and stated, "Call the police, [Jane]."

The standoff continued for an additional ten minutes. During most of that time, Sergeant Murray and Officer Sandoval continued giving Mr. Henry orders, all of which he ignored. Mr. Henry proceeded to throw varied items at the officers and Ms. Doe. Ms. Doe also began to hyperventilate, which caused the officers concern that Ms. Doe required immediate medical attention. Meanwhile, additional officers trickled to the apartment doorway to assist and relieve Sergeant Murray and Officer Sandoval. The increased police presence at the apartment did not deter Mr. Henry.

Mr. Henry continued in his defiant course of conduct with the new officers at the scene. One of those officers was SBCSD Deputy Perea. Deputy Perea, was armed with a less-lethal 12-gauge

shotgun that fired bean bag rounds. Deputy Perea and other officers gave Mr. Henry a multitude of commands and warnings. Mr. Henry ignored the warnings and commands; he threw items at and wildly swung his cane at the officers. At approximately 8:38 a.m., Deputy Perea fired a bean bag round at Mr. Henry. Mr. Henry was hit in the upper torso, but it caused Mr. Henry neither to fall, nor surrender. Instead, Mr. Henry sought to escape out of the bathroom window on the north side of the apartment. When Officers Charles Dai and John Phillips, who were covering the north side of the apartment from the outside, immediately issued commands that Mr. Henry show his hands, Mr. Henry abandoned his escape attempt and again faced the officers inside the incident location.

At approximately 8:40 a.m., Deputy Perea fired four more bean bag rounds at Mr. Henry. Those also had no apparent effect on Mr. Henry. By this time, the relief officers including Detective Imran Ahmed had formed a human wall inside the apartment, between Ms. Doe and Mr. Henry. Mr. Henry was again waving his cane at the officers and got within five to eight feet of the officers. Detective Ahmed fired his taser at Mr. Henry, which hit Mr. Henry in the upper chest and stomach. In response, Mr. Henry dropped to the ground and rolled onto his stomach. The team of officers seized the opportunity to advance on Mr. Henry.

Despite being stunned by Detective Ahmed's first taser shot and falling to the ground, Mr. Henry did not immediately surrender to the officers. Mr. Henry continued to flail and grab at glass shards beneath him. Deputy Perea tried to restrain Mr. Henry's legs; something that he had difficulty doing because Mr. Henry was unusually strong. Two officers, including Detective Ahmed, each put a foot on Mr. Henry's upper back. Mr. Henry also continued to ignore the officers' orders and resisted giving up at least one of his hands. Detective Ahmed applied four more taser cycles to Mr. Henry to gain his full compliance.

The team of relief officers were able to get Mr. Henry cuffed at 8:42 a.m. Once Mr. Henry was cuffed, he falsely told his arresting officers that his name was "Anthony." Mr. Henry was transported for medical treatment at Loma Linda University Medical Center (LLUMC), where it was determined that Mr. Henry suffered a gunshot wounds to his chest and abdomen.

STATEMENTS BY POLICE OFFICERS²

Officer Shaun Sandoval gave the case agent a voluntary interview in the presence of his attorney at approximately 3:57 p.m., on April 11, 2019, about seven and a half hours after the shooting occurred. Officer Sandoval acknowledged that prior to giving his statement to Detective Cunningham, that he did review the video his body-worn camera (BWC) captured of the incident. Officer Sandoval confirmed that at the time of the interview, he was wearing the same department-issued SBPD uniform that he wore at the time of the shooting incident. This uniform consisted of black slacks and a black collared shirt with SBPD patches on both arms and a SBPD star on the left breast.

² Herein is a summary only. All reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or Shurell Henry by name are made here for ease of reference.

This is the substance of Officer Sandoval's statement to Detective Cunningham:

Officer Sandoval's shift on April 11, 2019, began at 7:00 a.m. Shortly after 8:00 a.m., he was dispatched to the incident location response to call by a bedridden woman, whose out-of-control roommate was under the influence of narcotics and threatening her with a machete.

While driving to the incident location, Officer Sandoval requested that a supervisor respond with "less-lethal." On arrival at the scene, Sergeant Murray was already present. Officer Han arrived shortly thereafter. Prior to approaching the apartment, all three officers agreed that Sergeant Murray would provide lethal cover, Officer Sandoval would provide taser cover, and Officer Han would go "hands-on" to arrest the subject.

The officers went to the door and Officer Sandoval heard a female inside tell someone in the apartment to "open the door" and "put the knife down." Officer Sandoval could not see anything from the outside, looking inside at this point. But it was clear that the female could not get up to open the door. Sergeant Murray then "popped" the screen door open, and he and Officer Sandoval went inside.

Immediately after entering, Officer Sandoval and Sergeant Murray stayed in the threshold. The apartment was cluttered, and Officer Sandoval could see Ms. Doe's hospital bed pushed up against the wall. Officer Sandoval also saw "Henry," who was going back and forth in the doorway area to the sole bedroom. Officer Sandoval described Mr. Henry as being "larger than him"—6'2", approximately 250-300 lbs. Mr. Henry had a "tent pole" in his hands, but not a machete. Officer Sandoval explained that they didn't rush to grab Mr. Henry. Instead, they were trying to make verbal contact with him. Officer Sandoval stated that he didn't see Mr. Henry do anything threatening with the tent pole.

Officer Sandoval recalled that Sergeant Murray asked Mr. Henry to show his hands, but that Mr. Henry was non-compliant. Officer Sandoval explained that he used his taser to try to subdue Mr. Henry and keep him from going in the back room and grabbing the machete. However, Officer Sandoval did not believe that the first taser shot actually made contact with Mr. Henry. Officer Sandoval saw one of the taser leads in Mr. Henry's shirt; both leads need to make contact to be effective. Officer Sandoval did not believe that his second taser shot made contact, either. During this time, Officer Sandoval said that he was also giving Mr. Henry commands to put his hands up and come out, but that Mr. Henry was agitated and non-compliant.

Officer Sandoval believed per his training, that when faced with someone with an edged weapon at a distance of less than 21 feet (which he perceived his situation to be), that there was a chance he could be stabbed before he could draw his weapon. He also believed that he needed to be concerned with the position of Ms. Doe, who was bedridden and unable to retreat, and that he couldn't give up that ground without compromising her safety .

Officer Sandoval perceived Mr. Henry to be behaving erratically. He asked Mr. Henry to focus on the officers' voices, to which he recalled Mr. Henry said, "I am focused." This is why Officer Sandoval believed that Mr. Henry understood what the officers were asking him to do. Officer Sandoval was aware that Mr. Henry stated "I'm gonna die anyways." He also believed that Mr. Henry could see them, because he was looking in the officers' direction, the officers were uniformed, the officers' police radios could be heard and there was no delay in Mr. Henry's responses to them. After other discussion, Officer Sandoval stated that he believed Mr. Henry was under the influence of drugs versus experiencing a mental crisis.

Officer Sandoval stated he was concerned about not being able to get Ms. Doe out of the apartment, and not being able to back out of there as a result. At one point, Sergeant Murray told Officer Sandoval that Mr. Henry had the machete in his right hand. Next, Officer Sandoval saw Mr. Henry holding a speaker. Officer Sandoval stated that he believed the speaker to be made of wood, and that if he was hit by it, it would have injured or incapacitated him and/or Sergeant Murray of Ms. Doe. At the same time, Mr. Henry also had the machete. Officer Sandoval told Mr. Henry to "drop it." Then, Officer Sandoval saw that Mr. Henry raised the speaker, like he was going to throw it. Officer Sandoval believed that he fired his weapon at Mr. Henry "about 3-4 times." Mr. Henry retreated back into the bedroom immediately after the shots were fired.

At the moment he fired his weapon, Officer Sandoval stated that he believed that Mr. Henry was going to throw the speaker as a distraction and throw the machete, or attack him, Sergeant Murray or the reporting party with the machete. Officer Sandoval stated his belief that if he were to try to knock away the speaker, that Mr. Henry would be "right on me or...coming towards Sergeant Murray."

Mr. Henry continued to throw items even after Officer Sandoval fired his pistol at him. Officer Sandoval stated that he and Sergeant Murray continued talking to Mr. Henry to get him to comply. Officer Sandoval recalled that Mr. Henry threw a DVD player or gaming console at them, a standard-sized dining room chair, another speaker and boxes. Officer Sandoval stated that something else did hit him, and another item did hit the reporting party. Officer Sandoval explained that he did not fire again even though those items were thrown, however, because he didn't feel threatened by those, and also because Mr. Henry did not have the machete in his hand when he threw them. Though, Officer Sandoval recalled that Ms. Doe did begin to hyperventilate or have an anxiety attack. He stated that Ms. Doe's eyes began to bulge out, her skin tone was changing, and she was struggling to breath air and calm herself. Sergeant Murray immediately requested fire and medical assistance.

Officer Sandoval stated that he knew that additional officers were coming. When the SWAT team arrived, Officer Sandoval stated that he let them take the lead and backed himself out of the doorway. Specifically, Officer Sandoval recalled additional officers moved forward into the doorway as he stood outside.

At the conclusion of Officer Sandoval's interview, Det. Cunningham confirmed that Officer Sandoval's Glock 22 Generation 4, .40-caliber handgun contained 13 bullets, whereas it normally contained 17.

Sergeant Scott Murray gave Detective Donald Sawyer a voluntary interview without the presence of an attorney, at approximately 2:35 p.m., on April 11, 2019, about six hours after the shooting occurred. It is uncertain whether Sergeant Murray reviewed footage of his BWC prior to giving his statement. The recorded interview did not include reference to any BWC footage taken by Sergeant Murray's device.

This is the substance of Sergeant Murray's statement to Detective Sawyer:

Sergeant Murray joined the call to 4120 Sepulveda because the responding units needed "less lethal." Sergeant Murray arrived on scene at the same time as Officer Sandoval. Officer Han arrived shortly thereafter. They formed a contact plan based on the call involving "close quarters"; Officer Sandoval would have a taser, Officer Han would go "hands-on" and he would have lethal cover.

As Sergeant Murray approached the door, he heard a female (Ms. Doe) say, "Hey the police are here." Sergeant Murray popped open the closed and locked security screen door after he heard something about Mr. Henry holding a machete. Sergeant Murray could not see what was happening in the apartment at the time. When he entered the apartment, it appeared to Sergeant Murray that Ms. Doe was bedridden. At first, it appeared to Sergeant Murray that Mr. Henry was going to be cooperative. Mr. Henry had a folded cane and was starting to put it on the ground. So, Sergeant Murray attempted to try to detain Mr. Henry, but Mr. Henry pulled back, "ponied up" or raised his arms as if to run or strike. In response, Officer Sandoval fired his taser at Mr. Henry from over the sergeant's left side.

Sergeant Murray believed that the first taser deployment was ineffective. Sergeant Murray stated that they didn't want to chase Mr. Henry into the back room because they didn't know what else Mr. Henry had, nor did they want to find themselves in closer quarters with Mr. Henry. Sergeant Murray further explained that by staying at the door, the officers could also defend Ms. Doe if Mr. Henry became a danger to her as well. Sergeant Murray explained that they were trying to be courteous by giving commands like "please come out with your hands up" and "I promise we're not going to hurt you if you come out with your hands up." They gave repeated commands, but Mr. Henry was saying that he didn't believe that they were the police and wouldn't surrender.

Sergeant Murray showed Mr. Henry the police patches on his uniform and was telling Mr. Henry that they were the police. Initially, Mr. Henry was acknowledging the officers as if he understood that they were the police. Sergeant Murray observed that as soon as he tried to go "hands-on," that Mr. Henry changed his approach.

The officers tried to gain Mr. Henry's compliance by making repeated verbal orders. Instead of complying, Mr. Henry was going in and out of the bedroom and presenting with different items. At one point, Officer Sandoval deployed his taser a second time. Sergeant Murray believed that taser deployment was ineffective.

Then, Sergeant Murray recalled that Mr. Henry came out with a speaker and a knife. The speaker appeared large enough to cover Mr. Henry's upper body. Sergeant Murray ordered Mr. Henry to "drop it." Mr. Henry went back in the bedroom with it, but came back out and threw it at them. That's when Officer Sandoval fired at Mr. Henry. Sergeant Murray was standing side-by-side with Officer Sandoval at the time, and recalled 3 or 4 shots. Sergeant Murray stated that he saw Mr. Henry hold the speaker over his head, and the speaker looked to be about 18" wide, 12" deep and 36" tall. Sergeant Murray believed that if the speaker had hit them that it would cause injury.

During their interaction, Sergeant Murray stated that Mr. Henry offered to go outside if the officers went outside. Sergeant Murray explained that they weren't in a position to do that because they were concerned about Ms. Doe. Ms. Doe couldn't be moved outside of the apartment because the bed wouldn't fit out the door. Sergeant Murray requested more units and was looking for rifles and additional less-lethal units until they could figure out how to extract Ms. Doe.

Sergeant Murray approximated that he and Officer Sandoval were at the door for 10-15 minutes, trying to get Mr. Henry to come out. When additional officers, plus a Sheriff's Deputy arrived, Sergeant Murray took himself and Officer Sandoval out. The backing officers were at the door and they were all trying to formulate a plan to get Ms. Doe out, especially because she seemed to be having what sounded like an asthma attack.

Sergeant Murray heard the Sheriff's Deputy fire 3-4 less-lethal bean bag rounds. Sergeant Murray also heard the backing officers giving commands like "show me your hands" and "give us your hands." Sergeant Murray saw Mr. Henry get tased by Detective Ahmed and fall to the ground. Mr. Henry was taken into custody thereafter, but Sergeant Murray didn't hear or see additional taser deployments during that time.

San Bernardino Sheriff's Deputy Joseph Perea gave Detective Cunningham a voluntary interview without the presence of an attorney, at approximately 12:03 p.m., on April 11, 2019, about three and a half hours after the shooting occurred. Deputy Perea stated that he has worked as a Sheriff's Deputy in San Bernardino for approximately 23 years. At the time of the incident, Deputy Perea wore a drab and olive department-issued uniform bearing SBCSD insignia. It was the same uniform he wore at the time of his interview with Detective Cunningham. Deputy Perea arrived at the incident location at approximately 8:33 a.m.

This is the substance of Deputy Perea's interview:

Deputy Perea was not dispatched to respond to the incident; he self-deployed. While en route, SBCSD dispatch informed Deputy Perea that the incident was “man with machete” call.

On arrival, Deputy Perea believed that the responding SBPD officers had “enough lethal” so he grabbed his less-lethal bean bag shotgun. At the time, Deputy Perea did not see any SBPD officers with a bean bag shotgun. When Deputy Perea got to the front door, he saw that one of the officers had his weapon out. There were two officers in front of the apartment, and both were wearing Class-A uniforms with patches on their shoulders. Deputy Perea heard the officers say “don’t throw it” or “don’t do it.” Deputy Perea saw the two officers in front get pulled back. The subject inside had thrown heavy objects and glass across the room. Deputy Perea stated that he then went inside the apartment with SWAT officers. Deputy Perea stated that the officers were trying to come up with a game plan, because Ms. Doe was in the path of where things were being thrown.

While inside the apartment, Deputy Perea noticed Ms. Doe bedridden near the door. Deputy Perea also saw Mr. Henry go in and out of a hallway. Deputy Perea saw Mr. Henry come out with large pieces of broken glass mirror and also had a long white and red blindman’s walking stick in his left hand. Mr. Henry was swinging the stick at the officers and holding the glass at his side. Deputy Perea estimated that there was approximately 10-15 feet between Mr. Henry and the officers. Deputy Perea yelled, “bean bag.” He heard another officer yell, “less lethal.”

Deputy Perea stated that he shot Mr. Henry [with the bean bag shotgun], and Mr. Henry went back into the hallway. Deputy Perea couldn’t tell what effect the bean bag had on Mr. Henry but that he did hit Mr. Henry at center mass. After that shot, Mr. Henry still held the broken glass mirror and stick. Deputy Perea stated that he bean-bagged Mr. Henry three additional times at the lower left torso, but none of those seemed to have any inhibiting impact. Deputy Perea stated that his last bean bag deployment was made as officers moved further into the apartment. In total, Deputy Perea stated he bean-bagged Mr. Henry five times. Deputy Perea recalled that Mr. Henry was tased after that, and Mr. Henry fell to the ground. Yet, that tase did not completely immobilize Mr. Henry.

Deputy Perea recalled that there were two or three police officers in the living room with him, when he entered. Deputy Perea stated that Mr. Henry was tased while in the hallway and on the ground. Deputy Perea described Mr. Henry, as “huge,” “not complying” and “still wanting to fight.” It appeared to Deputy Perea that Mr. Henry maybe had taken narcotics or suffered from mental illness, or a combination of those two because Mr. Henry was “stronger than normal.” Mr. Henry had broken glass mirror beneath him. Mr. Henry had his hands beneath him. Deputy Perea stated that he restrained Mr. Henry’s legs, but had a hard time doing so.

Deputy Perea saw the speaker that was thrown, but it had been thrown prior to the time he was inside the apartment. He described it as a “huge” brown and black, house stereo speaker. Deputy Perea stated that he was surprised that the officers didn’t fire at Mr. Henry and that they showed “restraint.” Deputy Perea found out later that someone fired

a handgun at Mr. Henry. Despite that, it was Deputy Perea's opinion that the officers used great restraint and was impressed with how they handled this incident.

Detective Imran Ahmed gave Detective Donald Sawyer a voluntary interview without the presence of an attorney, at approximately 12:16 p.m., on April 11, 2019, about three hours and 45 minutes after the shooting occurred. Detective Ahmed arrived at the incident location at approximately 8:34 a.m. At the time of the incident, Detective Ahmed wore a black San Bernardino Police Department polo shirt under a department-issued throw-over vest. The vest had the word "POLICE" written on the back and front, with a cloth badge on the chest. He also wore his police badge on his waist belt, and khaki slacks.

This is the substance of Detective Ahmed's statement:

Detective Ahmed responded to the incident from the station, after he heard officers request "10-3." Detective Ahmed understood that the situation involved a possible subject under the influence of methamphetamine, who was armed with a machete and threatening someone inside an apartment. Detective Ahmed monitored the call while he was en route and heard Sergeant Murray request that tactical units respond. Detective Ahmed was aware that Mr. Henry was throwing things at officers and that a female was stuck on a bed inside the incident location.

After Detective Ahmed arrived, he spoke to Sergeant Murray. Detective Ahmed confirmed that a machete was present, the female was stuck and that shots had already been fired. Detective Ahmed did hear officers give commands and he got to the front because he had tactical experience and a weapon. While in front, Detective Ahmed saw Ms. Doe in a medical-type bed, and saw Mr. Henry come out of a dark hallway. Detective Ahmed understood that Mr. Henry had threatened to kill Ms. Doe. The tactical plan at that point was to treat this as a hostage situation, make entry and act like a "meat shield." Detective Ahmed explained that he, Sergeant Shank and Detective Flowers went in, and would be the first line of defense. Detective Ahmed stated that Mr. Henry threw a chair at them. Then, the deputy shouted, "less lethal" and fired a bean bag at Mr. Henry. Detective Ahmed did not know if Mr. Henry was hit; Mr. Henry retreated into the hallway.

Mr. Henry continued to throw "random things" and was holding a folded metal rod; he was not holding a machete. Detective Ahmed stated that the items Mr. Henry threw, including a plastic stool, did not cause injury. But Mr. Henry was flailing the rod around like he was trying to hit officers with it. Detective Ahmed slung his rifle because both of his partners had their rifles out. So, Detective Ahmed grabbed his taser.

Detective Ahmed stated that he gave verbal warnings that his taser was going to go off. He fired his taser and hit Mr. Henry in his upper chest and stomach. Mr. Henry fell back to the ground and rolled onto his stomach. Detective Ahmed and the other officers immediately advanced on Mr. Henry. Detective Ahmed stated that he stepped on Mr. Henry's upper back to hold him in place, but Mr. Henry started flailing again. In

response, Detective Ahmed stated that he “hit” Mr. Henry with another (taser) cycle. Detective Ahmed explained that Mr. Henry was laying on broken glass or mirror and it looked like Mr. Henry was reaching for the shards. Detective Ahmed told his partners about the glass. Detective Ahmed kept his foot on Mr. Henry and saw Detective Flowers try to cuff Mr. Henry. Detective Ahmed stated that they tried to talk to Mr. Henry, but Mr. Henry ignored them. Detective Ahmed delivered a “contact tase” to Mr. Henry’s upper back to assist Detective Flowers in getting Mr. Henry cuffed.

Detective Joshua Cunningham arrived on scene at approximately 9:20 a.m. and was designated as the primary case agent by Sergeant Michele Mahan. Detective Cunningham’s reports include an investigation summary, narratives regarding his interviews of Deputy Perea and Officers Sandoval and Han, a narrative regarding the taser use histories of Officer Sandoval and Detective Ahmed’s taser devices, function testing of Officer Sandoval’s duty pistol, his review of cell phone video, his review of surveillance video from the incident location, his examination of Mr. Henry’s clothing, and a narrative regarding records of Mr. Henry’s medical treatment at LLUMC.

Detective Cunningham collected the taser devices of both Officer Sandoval and Detective Ahmed. Both devices were identified as Taser model “Taser X26” devices. Detective Cunningham requested usage reports for both devices. Officer Sandoval’s device had only been activated twice between March 1, 2019 and April 16, 2019, and both on the date of the subject incident, at approximately 8:23 a.m., and at 8:30 a.m. For the same date range, Detective Ahmed also activated his taser on the date of the subject incident, but did so six times as follows: 8:40 a.m., three times; 8:41 a.m., twice; and 10:09 a.m. Detective Ahmed told Detective Cunningham that the sixth activation was a “spark test.”

Detective Cunningham collected and identified Officer Sandoval’s duty weapon as a Glock 22, Gen4, .40 caliber semi-automatic pistol. The weapon contained 13 bullets at the time it was examined. The weapon was examined by Jane Whitworth, Criminalist II of the SBCSD Scientific Investigations Division, who determined that the weapon fired without malfunction, modification or defect.

In his review of Mr. Henry’s clothing, Detective Cunningham determined that there were five small defects in a t-shirt that were consistent with taser dart strikes.

STATEMENTS BY CIVILIAN WITNESSES³

Jane Doe, was interviewed first by Officer Dennis Han, then again by Detective Michael Seims. Both interviews took place after Mr. Henry had been transported away from the scene, but at the same location and on the same morning as the use of force incident. At the time,

³ All reports of civilian statements made were reviewed, though not all are summarized here. Any reference to Shurell Henry by name here is made for ease of reference only. Unless otherwise noted, no witness referred to Mr. Henry by name.

Ms. Doe was 62 years old. Ms. Doe appeared to Detective Seims to be approximately 350 pounds, alert and conscious. Ms. Doe told Detective Seims that she suffered from numerous and recent significant medical conditions that have rendered her bedridden and unable to walk. Ms. Doe stated that she took over 120 medications. After the incident, Ms. Doe declined medical transport for evaluation.

Ms. Doe told Officer Han that around four or five o'clock that morning, that Mr. Henry was yelling and screaming, and harassing her to wake up. She saw Mr. Henry get a knife from the kitchen, open and slam the front door, and come towards her with the knife. Mr. Henry told Ms. Doe, "I hate you. I'm going to kill you." Mr. Henry pointed the knife at Ms. Doe from a distance of about four or five feet when he said he was going to kill her.

Ms. Doe also reported that Mr. Henry ran into the bedroom and said someone was trying to get into the apartment through a window. Mr. Henry also told her that someone was under the bathroom sink. Mr. Henry kept running back and forth within the apartment. Then, Mr. Henry came out of the bedroom with her machete. She had been hiding it from him. Mr. Henry swung the machete, but also hid it under his shirt, in the couch and put it in his pants. Ms. Doe told Detective Seims that the machete was made of plastic and wasn't going to hurt anyone, but that the kitchen knife Mr. Henry had was real, with ridges, that you might use to cut a roast with.

Ms. Doe stated that she called 9-1-1 three times, because Mr. Henry kept on coming towards her. Mr. Henry was also pulling out knives and forks from the kitchen and calling her names. Ms. Doe believed that Mr. Henry had used methamphetamine. She told Detective Seims that she could tell that Mr. Henry had got a hold of some methamphetamine because his eyes were big, his mouth was open and his chest was heaving. She described Mr. Henry as being "in a rampage." Ms. Doe also told Detective Seims that Mr. Henry might have had about six, 32 or 40 ounce Miller High Life beers the night before. She thought that he had too much beer. Ms. Doe stated that Mr. Henry also spat at her face and hit her with his hand.

Ms. Doe told Detective Seims that she has lived with Mr. Henry for over 19 years, seven of which were spent at the incident location. They were in a dating relationship, but Ms. Doe stated that this ended when Mr. Henry started beating up on her. Ms. Doe stated that Mr. Henry is *documented* as totally and partially blind.

During the incident, Ms. Doe recalled that the police stayed at the door. Ms. Doe stated that Mr. Henry was swinging the machete, had the blind cane folded up in his hand, as well as a plunger stick. Ms. Doe stated that she begged Mr. Henry to put the machete down, but that he wouldn't listen and would keep on coming out with it. Ms. Doe stated that the police were "very cool" with Mr. Henry, even though he threw two chairs, a radio and a game machine at them. Also, one of the boxes that Mr. Henry threw, hit her in the head. Ms. Doe stated that Mr. Henry looked like he was being violent toward the police and that he threw things that could have hurt them.

Ms. Doe told Detective Seims the following:

[Mr. Henry] wasn't in no danger. The police didn't have him in danger. He was being more dangerous to the police and me. [...] They really tried to get him to calm down. And

honest to God they tried to compromise with him. And for the way he was acting, I'm surprised that they took that much time to try to keep him, and he had a knife, machete in his hand. Most police would have just let him have it.

Ms. Doe told Detective Seims that Mr. Henry was trying to "play crazy." She did not believe that Mr. Henry did not know he was dealing with the police. Ms. Doe said that the officers announced themselves 15-20 times, and that she also told Mr. Henry that they were the police. Ms. Doe told Detective Seims, "I'd like to call the police the bad guy. Today they weren't the bad guy. They tried the best they could and it didn't work. You could tell [Mr. Henry] was out of his mind."

Witness #1 was interviewed by Detective Antonio Silva on the day of the incident. Witness #1 is Mr. Henry's in-home service provider, who has helped to clean after and take Mr. Henry to doctor appointments for approximately four years. Witness #1 described Mr. Henry as being partially blind.

Witness #2 was interviewed by Officer Anthony DeCecio on the day of the incident. Witness #2 is a relative of Ms. Doe and also lives approximately 25 feet from the door of the incident location. Witness #2 heard the gunshots and bean bag shotgun shots, and was able to differentiate between the two. Witness #2 also heard officers say "put the knife down." Witness #2 said that she also yelled "They gon' kill you Poonie, put the knife down"—explaining that Shurell Henry, who she calls "Poonie," can't see and would recognize her voice and not police voices. Witness #2 stated that Ms. Doe and Mr. Henry have been together for more than 18 years and are always arguing.

After shots were heard, Witness #2 did record the incident. Nothing captured by Witness #2 was inconsistent with the BWC footage discussed below.

Other Civilians who reside in the apartments of the same complex as the incident location were interviewed by Detective Silva and Officer DeCecio. A general consensus of those who witnessed the incident (either by sight or sound) were able to identify the responding officers as police officers and heard the sound of gunshots. Several witnesses did hear officers give commands like "put down the machete," "come out," and "drop it."

INCIDENT AUDIO AND VIDEO

9-1-1 CALL. At approximately 7:59 a.m., on April 11, 2019, Ms. Doe called 9-1-1, asking that officers respond to the incident location. Ms. Doe told the operator that her "roommate" Shurell Henry pointed a knife and a screwdriver at her, saying "I'm going to kill you", "I hate you" and "I can't stand you." Ms. Doe told the operator multiple times that she was scared, and believed that Mr. Henry was under the influence of methamphetamine. She told the operator that Mr. Henry was legally blind but that he could "see a little bit out the corner of his eyes."

As the call continued, Ms. Doe told the operator, "he got a real big knife now", "he got a machete." She told the operator that the machete was in Mr. Henry's hand.

At one point during the call, after the operator asked “where is he now?” In response, a male voice could be heard saying, “I’m right here ma’am. I don’t know what’s wrong with her. I didn’t do nothing to her.” Ms. Doe confirmed with the operator that the call was on “speaker” as it was the only way she knew how to use the phone. Ms. Doe told the operator “I’m afraid because he’s hurt me before.”

Ms. Doe was still connected with the operator when the officers arrived. Ms. Doe told the operator, “they’re here.” Ms. Doe was also heard saying, “Open the door, Poonie” and “I’m on the phone with 9-1-1.” Ms. Doe also said, “Poonie come open the door, the police are here.” The male voice can be heard saying in response, “[Jane], why did you have to call?” Ms. Doe continued, “You need to put that machete down. Do not open the door with the machete or that knife.” Before the call ended, the operator told Ms. Doe that she was going to hang up so that Ms. Doe could speak to the officers.

BODY-WORN CAMERA VIDEO. BWC video footage was recorded by nine officers responding to this incident. BWCs appear to have been worn at the chest plate. The resulting footage is subject to the limitations of the camera mechanism and the views resulting from being worn on the officers’ chests. With those limitations in mind, concurrent footage taken by the BWC’s of Sergeant Murray and Officer Sandoval captured what occurred while they were inside the incident location. The use of less-lethal force applied by Deputy Perea and Detective Ahmed was only partially captured; their use of force is audible in multiple BWC recordings, but not visible.

The BWC footage recorded by Sergeant Murray and Officer Sandoval begins before the officers present themselves at the doorway of the incident location. An inaccurate time stamp appears on all submitted BWC recordings. For example, Officer Sandoval’s video shows a start time of April 11, 2019 at 3:21 p.m. Whereas, based upon all other reports in the submission, it appears that the accurate time reflected should be April 11, 2019 at 08:21 a.m. Sergeant Murray’s BWC footage also shows a seven hour advanced timestamp that is generally in sync with that reflected in Officer Sandoval’s BWC footage. Taking these parameters into account, the time of day included in the summaries below are only an approximation of the time of recording.

This is a summary of events captured by both *Officer Sandoval and Sergeant Murray’s BWC*:

At 8:22 a.m., on approach to the apartment, Sergeant Murray asks Officers Han and Sandoval if Mr. Henry is blind. In response, Officer Sandoval states, “No, sounds like the R-P is part blind.”

The officers arrive at a closed metal security screen door, and Ms. Doe can be heard saying “I’m on the phone with 9-1-1, Poonie come open the door the police are here.” Ms. Doe can be heard telling Mr. Henry not to open the door with the knife or machete. This causes Sergeant Murray to immediately ask where Mr. Henry is. Ms. Doe then gives Sergeant Murray permission to open the security screen door by force. At 8:23 a.m., with a two-handed tug, Sergeant Murray opens the door and walks into the threshold. Officer

Sandoval is immediately behind him, and to the sergeant's left inside the doorway. Officer Han remains outside the doorway but looking in.

As soon as the officers step inside the incident location, Officer Sandoval says, "Let's see your hands." Mr. Henry puts his hands up and says, "Huh, I 'aint got nothing." But Mr. Henry has a folding cane in his left hand and a brown stick in his right hand. Ms. Doe is laying within feet of the officers and Mr. Henry. Sergeant Murray says, "Sir, sir drop that stuff on the ground for me." Mr. Henry points the objects towards the ground and begins to bend at the knees. Sergeant Murray asks again, "drop that stuff on the ground for me." Officer Sandoval also chimes, "Drop it on the ground." Mr. Henry drops the stick and sits on a low table near the doorway. A taser laser can be seen bouncing about Mr. Henry's upper body; Officer Sandoval has his taser pointed out.

Sergeant Murray asks Mr. Henry to stand up and Mr. Henry complies. But Mr. Henry still has his folding cane in his hand. Mr. Henry states, "Huh, I don't have nothin." Sergeant Murray says, "Drop that." Even though he's not presently holding a machete, Mr. Henry begins to explain, "That's her machete." Sergeant Murray says again, "Drop it on the ground." Mr. Henry begins to say, "This my blind..." motions downwards, bends over, then pops up and says, "please..."

Sergeant Murray's left hand is open and in front of him when he says "Sir, do me a favor. We're not going to hurt you." Mr. Henry, still standing upright, looks back and forth at both of the officers then turns away from them. Sergeant Murray begins to say again, "we're not going to hurt you" when Mr. Henry starts to step away from the officers and toward the back room.

Sergeant Murray says, "no, no, no, don't go back there." Mr. Henry turns back toward Sergeant Murray. The sergeant appears to attempt to grab at Mr. Henry with his left hand and there's some physical contact that is not captured as Sergeant Murray is not squarely facing Mr. Henry. Officer Sandoval then rushes from behind Sergeant Murray and brings his right hand over the sergeant's left shoulder, sets his taser laser on Mr. Henry's torso and fires the taser. At 8:24 a.m., a taser pop and cycle can be heard, while Officer Sandoval states, "taser, taser, taser."

Mr. Henry ducks back into a dark doorway of the northeast corner of the living room, and Sergeant Murray and Officer Sandoval retreat back towards the southwest doorway they entered. Both officers have guns pointed out at the northeast doorway, now. Sergeant Murray yells, "Sir, I need you to come out now! Sir do not come out with the knife." Officer Sandoval follows with "Come out! Put your hands up! Put your hands up." Neither officer's BWC recording shows what is happening in the dark doorway, but Sergeant Murray states "Sir, do not come out with the knife. No!" Officer Sandoval demands twice more, "Put your hands up!" Sergeant Murray repeats, "Sir. Sir, drop the knife, please." Approximately 20 seconds have passed since the taser deployment; Sergeant Murray tells Officer Sandoval to request a "10-3" and again asks Mr. Henry, "Sir, do me a favor, drop the knife." Officer Sandoval radio's the 10-3, and also barks "Drop the knife. Put your hands up! Put your hands up, sir!"

The officers continue to command Mr. Henry to drop his weapon, without success. The officers also confirm with Ms. Doe that she is bedridden and unable to get up. Mr. Henry lingers in the bedroom doorway as the officers continue to try to coax Mr. Henry to come out. Then, Mr. Henry begins to deny that the officers are the police, at all. Mr. Henry states, "Naw, y'all 'aint the police." It is 8:25 a.m.

At approximately 8:26 a.m., Officer Sandoval radios that the subject is armed with a machete, but is still not complying. Ms. Doe does tell Mr. Henry that the officers have guns and will shoot. At one point, Ms. Doe states, "Please. Poonie, you don't want to lose your life." To which, Mr. Henry responds, "I'm gonna lose my life anyway."

At approximately 8:27 a.m., the following exchange occurs:

Murray: Henry, we can't leave right now, man. I just need you to come to the door with your hands up and drop the machete, please.
Doe: Please, Poonie, listen to 'em.
Murray: Sir, do me a favor. I need you to come to the door with your hands up.
Doe: Poonie, come on, the police are gonna help you.
Henry: No, they not.
Doe: Well then, you gonna get shot if you don't get your ass out here!
Henry: Shit, you trying to get me, get me hurt.
Doe: You better talk to the police, you're safer coming out.

Within seconds, Mr. Henry comes out with his hands up, while still holding his cane in his right hand and says "Go ahead. Kill me." Sergeant Murray immediately responds, "No, no, no. We don't want to kill you. We don't want to kill you." Meanwhile, Officer Sandoval again has his taser laser trained upon Mr. Henry. Mr. Henry appears to see the laser and darts back into the darkness of the doorway.

At approximately 8:28 a.m., Sergeant Murray states,

Henry, I'm Sergeant Murray with the police department. I promise you we're the police. I need you to just comply with us and come on out. We're not going to hurt you. We're going to take you to the doctor and get you some help.

To which, Mr. Henry responds, "I don't need no damned help. What's wrong with y'all." After some additional chatter, Mr. Henry offers, "step outside, then I'll come outside." Then the following exchange occurs:

Murray: I can't leave you outside because I don't want you to hurt her.
Henry: I'm not 'gon hurt her, though.
Murray: I can't step outside though, sir.
Henry: But you not, you not gonna...

Murray: Absolutely, I promise on my life that I will not hurt you if you come out with your hands up.
Doe: They promise. Poonie, they promise.
Murray: Henry, I promise.
Doe: Please come out. Please come out, Poonie, pretty please.
Murray: Henry.
Henry: No.
Murray: I promise.
Henry: You 'aint the police.
Murray: Why don't you think I'm the police. Look at my arm badge. Look at my arm badge. Take a look.
Henry: Nope.
Han: Come on, Henry.
Murray: Why don't you think we're the police, Henry?
Henry: Ah! See, I told you, you weren't the police!
Murray: What makes you think we're not the police?
Henry: You just not.
Murray: I promise you we are.
Henry: No, you not.
Murray: But I can't go outside right now. I need you to just come to me.

At 8:29 a.m., Sergeant Murray tells Officer Sandoval, "He's still got it in his right hand." Mr. Henry continues to refuse to come out and insists that the officers step outside first. Sergeant Murray tells Mr. Henry, "Sir, I can't come outside because I'm worried about her." In response, Mr. Henry says, "Don't worry, don't worry about her." Sergeant Murray retorts, "I do have to worry about her, sir."

At 8:30 a.m., Mr. Henry comes out of the doorway clutching his folded cane in his left hand and against his midsection. Officer Sandoval deploys his taser a second time. A taser pop and cycle are heard. Mr. Henry says, "ow!" and retreats again in the back room.

At 8:31 a.m., Mr. Henry comes out of the back doorway with a large wooden speaker being held in both of his hands, and a machete is visible in his left hand. The speaker extends in length from the middle of Mr. Henry's face to his lower torso and appears to be approximately a foot wide. Immediately, Sergeant Murray says, "No, no no." Officer Sandoval orders, "Put it down. Put it down, Henry!" Mr. Henry steps backward, and Sergeant Murray says to him, "Henry, I need you to come out with your hands up, buddy, please." In reply, Mr. Henry says, "Nope, y'all already done shot me once. Sergeant Murray tells him, "Its just a taser dart, sir. Its not going to hurt you." Mr. Henry then comes out of the doorway again. Just as Officer Sandoval is ordering "Put it down, Henry..." Mr. Henry raises the speaker over his head, while holding the machete in his left hand, and throws both items at the officers. Officer Sandoval fires his duty weapon at Mr. Henry, four times. Mr. Henry retreats again into the back doorway, and states, "Call the police, [Jane]." Sergeant Murray alerts dispatch that shots have been fired.

Mr. Henry continues to throw items at the officers as they continue speaking to and giving orders to Mr. Henry, including a wooden dining chair. At approximately 8:34 a.m., Sergeant Murray requests the assistance of tactical units by radio. Officer Sandoval continues to tell Mr. Henry to put his knife down and come out.

At 8:35 a.m., Mr. Henry comes out of the doorway with another speaker in his hands, together with his folded cane and a hand-held lantern in his left hand. Although Mr. Henry does not throw the speaker, he does throw another item that hits Ms. Doe. Sergeant Murray tells Mr. Henry, "you got to stop hurting her" and "you hit her with that."

At 8:36 a.m., Ms. Doe then begins to breathe audibly and Sergeant Murray radios that "major medical issues" may be occurring; he demands a shield and rifle are needed "ASAP." At 8:37 a.m., Officer Sandoval announces "He's got glass. He's got glass in his hands." Officer Sandoval orders "Henry, drop it. Drop the glass." Sergeant Murray tells Mr. Henry, "Drop it. Henry, drop it. We're the police." Then, Sergeant Murray backs out of the doorway, and Detective Flowers takes his place, armed with a rifle. Officer Sandoval tells Detective Flowers, "He's breaking glass. He's probably going to toss glass at us. He's breaking up the glass." Officer Sandoval states, "Stop throwing glass at us, Henry" then backs out of the doorway. Deputy Perea takes Officer Sandoval's place in the doorway with a bean bag shotgun.

Detective Flowers continues to give Mr. Henry orders like, "don't throw anything" and "drop everything."

At 8:38 a.m., Deputy Perea states in a loud voice, "Get down on the ground, less lethal, less lethal, get down on the ground. Get down on the ground. Do it now." Officer Sandoval repeats for the officers in the doorway that Mr. Henry is armed with a machete, that Ms. Doe is bedridden, and that Mr. Henry has been throwing out glass. Sergeant Murray then engages the additional responding officers about needing to extract Ms. Doe. Next, Deputy Perea again states in a loud voice, "Come out partner. Hey, we want you to cooperate with us. Please step out. We don't want to hit you with this. Just come out."

In less than a minute, Deputy Perea yells, "bean bag" twice and a shot is heard. Deputy Perea then states, "Come out partner. We need you to come on out with your hands up. Do it now." Deputy Perea then tells the other officers, "he took a bean bag to the center chest."

Deputy Perea, Detective Flowers, Sergeant Shanks, Detectives Barba and Ahmed are all stacked in the doorway with weapons pointed inside. Sergeant Murray and Officer Sandoval are both behind the stack, such that their BWC footage is capturing sound but does not capture images of what is going on inside. At 8:39 a.m., Detective Ahmed asks, "Is he armed still?" To which Officer Sandoval states, "machete" and Sergeant Murray states "He's got a machete, he's got a machete back there." Mr. Henry then yells, "Call the police, somebody!" Deputy Perea retorts "we are the police, partner. We don't want to hit you with this bean bag. If you could just come out." Sergeant Shanks orders, "put your hands up. Put your hands up."

The officers then pull out a fan and a chair from the living room floor and toss them into the outside courtyard. The officers continue giving orders, and push into the apartment. At 8:40 a.m., Deputy Perea fires three bean bag shots, and follows with “bean bag, bean bag, less lethal, less lethal.” Officer Sandoval asks, “Is he down?” Sergeant Murray states, “All less lethal, less lethal. Stand by.” Sergeant Shanks is heard saying “stay down, man.”

Less than 20 seconds from the last bean bag deployment, Deputy Perea states, “bean bag, bean bag, less lethal, less lethal” and fires a fifth bean bag shot. Mr. Henry is seen standing. A taser pop and cycle can be heard during this time. Deputy Perea orders, “get on the ground, do it now.” Mr. Henry can be heard shrieking. Detective Ahmed says, “taser” six times in succession. Sergeant Murray states, “kick it again.” Deputy Perea states, “he’s on the ground, he’s on the ground.”

The following is heard, but it cannot be determined who is saying what:

- “Clear the room, clear the room behind us.”
- “Put your hands behind your back.”
- “Give me your hand.”
- “Watch the glass, watch the glass!”
- “Let me see your hand dude.”
- “Sir, we’re going to tase you again, stop resisting.”
- “Let’s see your other hand buddy, other hand. Put your other hand behind your back.”

Sergeant Murray walks back outside as other officers get Mr. Henry under control. Officer Sandoval stays with *Ms. Doe*.

The ***BWC video taken by Sergeant Jason King*** audibly records the application of less-lethal force by Deputy Perea and Detective Ahmed. Since Sergeant King was positioned behind the team of officers who take Mr. Henry into custody, there is comparatively less video imagery of the use of less-lethal force by Deputy Perea and Detective Ahmed. The relevant portions of Sergeant King’s BWC footage can be summarized as follows:

At approximately 8:41 a.m., Mr. Henry was warned, “Alright sir, you’re going to get tased again, stop resisting.” Multiple voices can be heard asking multiple times for Mr. Henry’s “other hand.” One person states more specifically, “give us your hand or you’re going to get tased again.” After which someone is heard saying, “give me a contact,” which is then followed by the sound of a taser cycle.

Seconds after the taser cycle, multiple commands are given stating, “give us your hand.” An officer then states, “There’s a piece of glass in his hand.” In response, another voice states, “I know.” In response, someone states, “he’s getting tased again” and “sir drop

your glass,” multiple times. Another taser cycle can be heard at 8:42 a.m. Within 12 seconds thereafter, someone states “he’s cuffed.”

Mr. Henry was asked two times, what his name was. He can be heard saying, “Anthony.” The officers then proceed to give Mr. Henry instruction by addressing him as “Anthony.” Mr. Henry responds to “Anthony” and complies with the officers’ orders.

The *BWC video taken by Officers Phillips and Dai* show that they were at the back (north side) of the incident location, at approximately 8:39 a.m., when Mr. Henry attempted to push out of the bathroom window. Officer Dai shouted “let me see your hands” three times.

CRIME SCENE INVESTIGATION

Detective Erik Campos reported the description of the crime scene at the incident location in San Bernardino. On April 11, 2019, the gated location consisted of several one-story and two-story apartment buildings with multiple units within each building. The incident location was located in a single-story building, north of an east-west running concrete walkway (the front walkway). The incident location had a black metal security screen door, a brown wood interior front door. There was a living room in the south, a kitchen/dining area to the east, and a master bedroom and bathroom to the north. The apartment was lit by natural light emitting from the windows and doors. One fired less-lethal 12-gauge cartridge was located on the front walkway.

Detective Campos located four .40 caliber fired cartridge casings (FCCs) in the doorway area, along with taser wires and three fired less-lethal 12-gauge cartridges, and a large wood Fisher brand three-way bass speaker.

Two bean bag rounds were located in the living room. An “Express” machete was found underneath a television stand along the south wall of the living room. Further examination of the 27” machete revealed that it has a 22” curved metal blade with a pointy tip and honed edge capable of cutting; the handle is 5” long.

Detective Campos found two additional bean bag rounds as he entered the master bedroom. He also found a taser cartridge and two taser darts with attached wiring near the entryway to the master bedroom. A fired bullet was recovered from the bedroom floor. Also, large pieces of broken glass mirror, a flat head screwdriver, and a metal folding blind guide cane were recovered from the bedroom hallway floor. A fired bullet fragment was recovered from behind the stove in the kitchen.

A second Fisher three-way bass speaker identical to the one in the living room was located on the bed in the bedroom.

Detective Campos found that the bathroom window screen was on the walkway to the north of the apartment.

Detective Campos determined that one bullet struck the east wall of the living room (that separates the kitchen from the living room), and three more struck the east side of a wooden armoire in the living room.

Detective Jose Castro, who prepared the crime scene diagram determined that the bullet strikes in the armoire and wall, and throughout their apparent path of travel, varied in height from 39" to 54" from the ground. Based upon the measurements taken by Detective Castro, the living room measured approximately 13' (east to west) by 11' (north to south). It is therefore approximated that the distance from the southwest corner near the front door to the northeast corner at the northeast doorway was 17'. No actual measurement was submitted by Detective Castro for the distance between the front door and the northeast bedroom doorway.

INJURED PARTY

INJURIES. The case agent retrieved and submitted records regarding Mr. Henry's medical treatment at LLUMC subsequent to the shooting incident. Mr. Henry received medical treatment for two separate gunshot wounds, one to the chest and another to the lower abdomen. Mr. Henry suffered a pelvic fracture secondary to the gunshot wound to the lower abdomen. Mr. Henry tested positive for amphetamine and benzodiazepine.

CRIMINAL HISTORY. Based upon the incident detailed here, this office did file a Felony Complaint styled *People v. Shurell Henry*, San Bernardino Superior Court, court case no. FSB19001396, on April 15, 2019, that stated one violation of Penal Code section 69 [obstructing/resisting an executive officer]. Mr. Henry plead guilty as charged in on April 24, 2019. He was sentenced to 365 days in jail, and placed on probation for 36 months.

Mr. Henry also bears the following felony convictions:

Case No. FSB1204930 San Bernardino Superior Ct.	Convicted on 11/09/12 of Pen. C. §273.5(a) [inflicting corporal injury upon spouse/cohabitant]. Sentenced to 2 years prison.
Case No. FSB900040 San Bernardino Superior Ct.	Convicted on 1/14/09 of Pen. C. §275.5(a)/273.5(e)(1) [inflicting corporal injury upon spouse/cohabitant w/prior]. Sentenced to 2 years prison.
Case No. FSB700365 San Bernardino Superior Ct.	Convicted on 3/01/07 of Pen. C. §273.5(a) [inflicting corporal injury upon spouse/cohabitant]. Sentenced to 270 days county jail, with 36-months probation. However, was re-sentenced to 2 years state prison due to a violation of probation (new crime stated in San Bernardino Superior Ct., case no. FSB900040, noted above)

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Case No. GA026537
Los Angeles Superior Ct.

Convicted on 12/26/95 of Health & Saf. C.§11351.5
[possession cocaine base for sale]. Sentenced to 120 days
jail and placed on 36-months probation.

Mr. Henry has also been convicted of multiple misdemeanor violations, including Penal C. §§ 594.3 [vandalizing a place of worship], 242 [battery], 415(3) [offensive words in public place], and 243(e)(1) [spousal battery].

INJURED PARTY'S STATEMENT. Detective Cunningham interviewed Mr. Henry the day after the shooting incident, while Mr. Henry was still receiving medical treatment at LLUMC. Mr. Henry told Detective Cunningham that he lived at the incident location and that Ms. Doe was his "girlfriend" of 19 years. Mr. Henry acknowledged that his nickname was, "Poonie" and told the detective that he's been legally blind since birth.

Mr. Henry told Detective Cunningham that he used methamphetamine and had been drinking the night before the incident. Mr. Henry told the detective that Ms. Doe gave the cleaning lady the machete, but Mr. Henry took it from the cleaning lady and hid it. He also told Detective Cunningham that he believed the cleaning lady was on the phone pretending to be the police. Mr. Henry explained that he was nervous about Ms. Doe having people come over to hurt him as she had her son "jump" him in 2010 or 2011. Mr. Henry also believed he heard a neighbor called "Jamaica" say, "Yeah, kill his ass. Hang his ass up." Mr. Henry admitted he was holding the machete, putting it up and getting it out.

Detective Cunningham then began to ask Mr. Henry about his interaction with the police. Mr. Henry told Detective Cunningham that he heard Ms. Doe say they were the police, and also heard the officers say that they were the police. But Mr. Henry said he didn't believe them because he couldn't see any badges and believed that the officers were "playing like police." Mr. Henry told Detective Cunningham that he didn't believe that the officers were policemen until he got shot.

Mr. Henry recalled holding the machete and throwing the speaker. Though Mr. Henry stated he "wasn't thinking about hurting the police" and dropped the machete. He believed that he got shot because he might have scared the officers. Mr. Henry did not recall throwing anything else at the officers, and claimed that he was "trying to get them to go outside."

Mr. Henry recalled being shot with a taser three times. Mr. Henry also recalled trying to go out the bathroom window, but believed that Ms. Doe had placed people there, too, who shouted threats at him in Spanish. Mr. Henry stated that he was scared during the incident and that Ms. Doe "had him so scared. I tried to get her to stop calling the police." Mr. Henry told Detective Cunningham that he would not have thrown anything and would have listened to the officers if he knew they were police officers.

When confronted, Mr. Henry denied threatening Ms. Doe's life, and denied standing over her with a knife or screwdriver. Mr. Henry told Detective Cunningham that Ms. Doe "lies a lot."

APPLICABLE LEGAL PRINCIPLES

To preface, the public “expects” a responding officer to investigate a reliable 9-1-1 call, as part of the officer’s proper exercise of his duties. (*People v. Brown* (2015) 61 Cal.4th 968, 981-982.) An officer may approach a person to investigate possibly criminal behavior even though there is no probable cause to make an arrest.” (*Terry v. Ohio* (1968) 392 U.S. 1, 22.) If a call for service is regarding an armed person, the police have sufficient cause or “reasonable suspicion” to determine whether a person is in fact armed there. (*People v. Lopez* (2004) 119 Cal.App.4th 132, 136-137.) Even if the detention occurs at gunpoint, it does not necessarily cause the contact to arise to the level of an “arrest,” and as such does not require probable cause. (*People v. Turner* (2013) 219 Cal.App. 4th 151, 164-170.) Such a detention is lawful where the reported conduct comes from a reliable source and the threat to the public outweighs the intrusion upon the detainee’s individual liberty. (*Id.*, see also *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, 915.)

A peace officer may use reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a)⁴ Should the arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense or to use reasonable force to effect that arrest. (*Id.*) An arrestee has a duty to refrain from using force or any weapon to resist lawful arrest, if he knows or should know that he is being arrested. (Penal C. §834a.)

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at sections §§ 196 and 197. The latter is pertinent in this case and is discussed below.

PENAL CODE SECTION 197. California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code §197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

The pertinent criminal jury instruction to this section is CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction, rooted in caselaw, states that a person acts in lawful self-defense or defense of another if :

- (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.)

⁴ All references to code sections here pertain to the California Penal Code, as they existed at the time of the incident. Significant modifications were made to sections 196 and 835a pursuant to Assembly Bill 392. (Assem. Bill No. 392 (2018-2019 Reg. Sess.) as Chaptered August 19, 2019.) However, those modifications do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

“Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) 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. “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, 915.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (*Id.*, see also 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.) The court in *Scott* explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment...Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.

(*Scott v. Henrich, supra*, 39 F.3d at 915.)

REASONABLENESS. Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer’s right to use force in the course of an arrest, stop or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment’s “reasonableness” standard. (*Graham v. Conner* (1989) 490 U.S. 386, 395.)

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of 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—about the amount of force that is necessary in a particular situation.

(*Id.* at 396-397, citations omitted.)

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. A person’s right of 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.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider 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.) When considered in the context of an officer-involved incident, this standard does not morph into a "reasonable police officer" standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.) To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

The *Graham* court plainly stated that digestion of the "totality of the circumstances" is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, "reasonableness" cannot be precisely defined nor can the test be mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the "reasonableness" calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the "most important" *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer's use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72 "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.") Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when "necessary to account for the totality of the circumstances in a given case." (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

When undertaking this analysis, courts do not engage in *Monday Morning Quarterbacking*, and nor shall we. Our state appellate court explains,

under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. 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.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.)

The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide "zone of protection" when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

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.'

(*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1109, citing *Graham v. Connor*, [*supra*] 490 U.S. 386, 396.)

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. "[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed." (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham v. Conner* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825[taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed "lethal force" the instrumentality must be force that "creates a substantial risk of death or serious bodily injury." (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject's mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 831; *Deorle v. Rutherford*, *supra*, 270 F.3d at 1283-84.)

Failure to pass-muster under *Graham* can deem the use of non-lethal force as "excessive" and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed "excessive" nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

ANALYSIS

This report evaluates the use of deadly force by Officer Shaun Sandoval upon Shurell Henry, on April 11, 2019. This report will also address the intermediate non-lethal force used by Officer Sandoval, Deputy Joseph Perea and Detective Imran Ahmed in the same use of force incident.

We have carefully examined the recorded statements, the reports of law enforcement officers, the statements of civilian witnesses, audio and video footage, as well as the other materials described herein.

USE OF LETHAL FORCE

Determining whether Officer Sandoval was legally justified in his use of a firearm under the principles of self-defense and defense of others per Penal Code §197 involves a two-part analysis: (1) did the officer subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was the officer's belief in the need to protect himself or others from an apparent, imminent threat of death or great bodily injury objectively reasonable. As discussed below, Officer Sandoval actually and reasonably believed that he needed to use deadly force to protect Ms. Doe, his partner and himself.

Subjective Belief of Imminent Need to Protect. Officer Sandoval's subjective belief is stated here based upon his statements and the audio and video footage of his conduct. First, prior to his arrival at the location, Officer Sandoval believed Mr. Henry threatened to kill Ms. Doe with a screwdriver and machete. Officer Sandoval also appreciated that Mr. Henry was both taller and heavier than he, had a weapon and was possibly in a drug-induced mania. As indicated in his BWC footage prior to entering the incident location, Officer Sandoval did not know that Mr. Henry was legally blind—he stated his belief that “the R-P” or *reporting party* (Ms. Doe) was partially blind. Also, during his interview, Officer Sandoval stated that he believed Mr. Henry *could* see the officers because the context of the contact suggested it. Specifically, Officer Sandoval stated that Mr. Henry looked directly at the uniformed officers, police radios could be heard during their contact and Mr. Henry responded to questions coherently and without delay.

From the time the officers entered the apartment, they tried to diffuse the situation and convince Mr. Henry to cooperate with them by using niceties and colloquialisms, and by giving him repeated orders. Over the course of approximately eight minutes (the time after entry and before gunshots were fired), the officers continually referred to Mr. Henry by name, or “sir” and “buddy.” The officers also repeatedly said “please,” “do me a favor” and “we’re trying to help you.” Yet, Mr. Henry still chose to ignore more than fifty orders given by the officers. Ms. Doe had also been pleading with Mr. Henry to comply with the officers during that time.

The officers also maintained a minimum of approximately 10 feet between them and Mr. Henry. While this served a dual purpose of their own safety and the safety of Ms. Doe, it also afforded Mr. Henry the luxury of free movement in his bedroom and bathroom. Instead of using that

space to calm himself, Mr. Henry took advantage of that freedom and used that space to select items to assault the officers and Ms. Doe with.

Disregarding the attempts of Ms. Doe, Officer Sandoval and Sergeant Murray to de-escalate the situation, Mr. Henry raised a large wooden speaker over his head while holding a 27" machete. In response, Officer Sandoval fired his duty pistol at Mr. Henry. Officer Sandoval stated that he believed that Mr. Henry was going to throw the speaker as a distraction or to try to hurt the officers or Ms. Doe and proceed to charge them with the machete. Again, the officers stood as little as 10 feet away from Mr. Henry. Ms. Doe lay, bedridden, approximately 12 feet from Mr. Henry. Officer Sandoval stated that he was unable to retreat from his position without compromising Ms. Doe's safety.

These facts in sum with those above tend to indicate that Officer Sandoval held an honest and subjective belief that Mr. Henry was armed with a machete, had the present ability and intent to kill, and was advancing on him, his partner and/or Ms. Doe.

Reasonable Belief of Imminent Need to Protect. More than the stated belief of Officer Sandoval, however, the submission contemplated in total also indicates that Officer Sandoval bore an objectively reasonable belief of the need to use deadly force to protect himself and/or another.

While it appears that the officers missed Ms. Doe's report that Mr. Henry was legally blind, nothing about the apparent circumstances suggests that Mr. Henry posed any *less* danger in light of that fact. For the duration of Mr. Henry's encounter with Officer Sandoval and Sergeant Murray, Mr. Henry never indicated he had a sight deficit either by saying so, nor did it become apparent by the way Mr. Henry interacted with the officers or Ms. Doe during the incident. Mr. Henry looked directly at the officers and threw items in their and Ms. Doe's direction. Ms. Doe was hit in the head with one item, and Officer Sandoval had occasion to bat away other items. Mr. Henry also appeared to be aware of the taser light positioned on his torso, and seemed to move away from it as he moved in and out of the northeast doorway. He was able evade Officer Sandoval's taser attempts at approximately 10-15 feet. Ms. Doe and Mr. Henry's caretaker—Witness #1, also describe Mr. Henry as *partially* blind. The facts do tend to support the conclusion that at a minimum, Mr. Henry could partially see what was happening during this incident and that his partial blindness did not make him appear any less dangerous to the officers or Ms. Doe.

Another issue to be considered is that Mr. Henry told Detective Cunningham that he believed that the officers were thugs called by Ms. Doe to assault him. Yet, Mr. Henry's conduct upon initially encountering the officers is not consistent with that belief. Even before the officers entered the apartment, Mr. Henry's actions were instead consistent with one who believed he was encountering the police: he responded to the dispatch operator asking for his location with, "I'm here ma'am" and asked Ms. Doe, "why did you have to call?" He admitted he tried to get Ms. Doe to stop calling the police. This indicates that Mr. Henry was following the conversation Ms. Doe was having with the dispatch operator via speaker phone—a call that lasted approximately 25 minutes, wherein Ms. Doe detailed the assault and threat made upon her, who made it, how he made it, that the police were on the way, and later that the police had arrived.

It is also telling that when the officers first entered the apartment, Mr. Henry displayed the universal sign of surrender—he put his hands up. Then, despite *not* being asked for the machete or having the machete in his hands at the time, Mr. Henry immediately deflected and told the officers twice that he didn't have anything and “that's *her* machete.” Initially, Mr. Henry did begin to comply with the officers' request that he get down and put the items in his hands down. As Sergeant Murray pointed out, Mr. Henry suddenly became uncompliant when he attempted to detain Mr. Henry.

Moreover, Ms. Doe pleaded with Mr. Henry to listen to the officers, as the officers gave their commands. Ms. Doe specifically referred to the officers as “the police” twice. Sergeant Murray told Mr. Henry that they were the police approximately ten times. Sergeant Murray also twice asked Mr. Henry to look at the badge on his arm. Twice, Sergeant Murray asked Mr. Henry, “What makes you think we're not the police?” Sergeant Murray also asked Mr. Henry, “What do I have to do to prove to you we're the police?” Officer Sandoval told Mr. Henry that they were the police, four times. Deputy Perea also told Mr. Henry they were the police. Every responding officer who came in contact with Mr. Henry during the incident wore a law enforcement uniform. As a result, every civilian witness who gave a statement recognized that the responding officers to the apartment were indeed the police.

Mr. Henry admitted knowing that he was dealing with the police *after* he was shot. Yet, the first thing that Mr. Henry said after he got shot by Officer Sandoval was “Call the police, [Jane].” Mr. Henry's conduct did not change after he was shot. Mr. Henry continued to throw items at the officers, disregard their commands and deny the officers' assertions that they were indeed the police. This is contrary to his statement that he would not have thrown items and would have listened to commands had he known he was dealing with the police.

Mr. Henry also attempted to evade through the bathroom window after he was shot. After Mr. Henry was cuffed, Mr. Henry continued in his effort to avoid apprehension and falsely told officers that his name was “Anthony.” These facts in sum tend to support Ms. Doe's assertion that Mr. Henry was trying to “play crazy,” as well as the overall conclusion that Mr. Henry knew he was dealing with the police and was taking extreme measures to avoid being detained by them.

Less than a minute after entering the apartment, the officers saw Mr. Henry with a 27” machete. Mr. Henry refused to put the machete down despite being given orders by two uniformed officers with their weapons pointed at him, demanding that he do so. Mr. Henry asked the officers to kill him, evidencing a desperate abandon and an awareness of the gravity of the situation, specifically that the officers had the present ability to kill him. The officers repeatedly stated that they did not intend to kill or hurt Mr. Henry, and that they were worried for Ms. Doe's safety. The officers begged Mr. Henry to come out, saying so more than 20 times. Officer Sandoval and Sergeant Murray, together, also ordered Mr. Henry to put his hands up approximately 23 times.

Even as Mr. Henry held the machete in his hands in close proximity to the officers and Ms. Doe and was obviously ignoring the officer commands, those factors alone did not cause Officer Sandoval to fire his duty pistol. Officer Sandoval used lethal force on Mr. Henry as Mr. Henry

threw a large speaker at the officers, *while holding the machete*. This act is tantamount to charging with the machete itself. Both Sergeant Murray and Officer Sandoval stated that Ms. Doe's immobility in close proximity to her armed assailant was a prime concern of theirs because retreat was not an available option. Ms. Doe also appreciated the danger she and the officers were in. Ms. Doe stated that Mr. Henry "was being more dangerous to the police and [her]" and that the things that Mr. Henry threw could have hurt the officers. Sergeant Murray also believed that if the speaker hit them, it would have caused injury. This is consistent with Officer Sandoval's belief that when Mr. Henry aggressed with the speaker and machete over his head, it looked like Mr. Henry meant to charge with the machete and that the officers and Ms. Doe were in imminent danger of a machete attack, therefore.

In the evaluation of the question of necessity at the time shots were fired, it must be noted that the courts have employed a standard that is highly deferential and viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The inquiry allows for the fact that split-second judgments are being made under tense, uncertain and rapidly-evolving circumstances.

To the best of their knowledge, officers were confronted with a large man—standing in excess of six feet and weighing in excess of 300 pounds, who was armed with a large bladed weapon, emboldened by his use of methamphetamine and possibly suicidal. Not only do the officers find themselves within striking distance of this man, but so is the woman who called the police to that location for help, in the first place, and she is bedridden and unmovable from her precarious position. The overall interaction between the officers and Mr. Henry transpires over the course of minutes versus seconds. Yet, Mr. Henry is no less unpredictable in his actions during this time. There was an entire north portion of the apartment that the officers had not seen. They purposefully did not pursue Mr. Henry there because it was unknown if Mr. Henry had any other weapons, nor did they want to be caught in even closer quarters with Mr. Henry than they already were. The officers' patience in this regard can be seen as an effort to de-escalate the situation. The officers also understood that Ms. Doe would be left vulnerable and defenseless should Mr. Henry incapacitate one or both of them. Moreover, the officers had no idea what Mr. Henry would present in the doorway with, next. Mr. Henry seemed to grab different weapons at different times. And when Mr. Henry presented, it was only momentarily. It was during one of these unexpected moments that Mr. Henry presented with the large speaker over his head, with the machete in-hand. So, while the overall interaction between the officers and Mr. Henry did take place over the course of minutes, the situation was still tense, uncertain, and rapidly-evolving. Officer Sandoval was faced with a split-second decision on how to defend himself, Sergeant Murray and Ms. Doe given the limited space and danger factors in play. As such, the necessity of the use of deadly force by the Officer Sandoval cannot be successfully second-guessed.

Consideration of the *Graham* factors would have the analysis arrive at the very same conclusion. Ms. Doe called for officers to help her at her location because she was afraid for her life; Mr. Henry had threatened to kill her and was armed with a screwdriver and machete. Terroristic threats and assault with a deadly weapon are serious crimes. Moreover, as discussed *supra*, Mr. Henry posed an apparent immediate threat of harm to the officers and Ms. Doe. The entire interaction between the officers and Mr. Henry was fraught with resistance to arrest, including

that he ignored commands, brandished a machete, and eventually threw a large item at the officers while doing so. Officer Sandoval's use of deadly force, therefore, should be deemed to be reasonable in contemplation of the totality of the circumstances.

Under the applicable law, the use of lethal-force by Officer Shaun Sandoval was justifiable under Penal Code §197 and was therefore lawful.

USE OF NON-LETHAL FORCE

The use of intermediate non-lethal force, such as a taser and bean bag shotgun, must satisfy *Graham* to be lawful. As discussed below, the use of intermediate non-lethal force by Officer Sandoval, Deputy Perea and Detective Ahmed against Shurell Henry was also justifiable.

Officer Sandoval fired his taser at Mr. Henry, twice. The first taser deployment happened less than 30 seconds after Officer Sandoval and Sergeant Murray entered the apartment and appears to have missed Mr. Henry. The second deployment, however, does appear to have made contact even though it did not disable Mr. Henry. Officer Sandoval deployed his taser (the second time) after interacting with Mr. Henry for more than six and a half minutes. Officer Sandoval knew that Mr. Henry was reported to have assaulted Ms. Doe. Mr. Henry was now before Officer Sandoval, armed with a machete and ignoring the officer commands to put it down. However, Mr. Henry ignored more than fifty commands from both Officer Sandoval and Sergeant Murray prior to Officer Sandoval's second taser deployment, including that he come out, put his hands up and drop his knife. Mr. Henry did not drop the machete before Officer Sandoval attempted to tase him the second time. It was reasonable for Officer Sandoval to attempt to control Mr. Henry, therefore. Ultimately, even though a taser dart may have made contact with Mr. Henry, it neither incapacitated him nor have any deterrent effect upon his subsequent conduct.

While it is true that Officer Sandoval did not specifically warn Mr. Henry that he would fire his taser, the first unsuccessful taser deployment might reasonably have served as a warning. Additionally, it is unlikely that any warning would have deterred Mr. Henry, anyway. Mr. Henry appeared to be well-aware that the officers had weapons trained upon him, as prior to the second taser deployment he did present himself to the officers saying, "Go ahead, kill me." Also, during the same time period, Ms. Doe similarly pleaded for Mr. Henry's compliance with the officers and she specifically told Mr. Henry that the officers had guns and would shoot. As such, a lack of warning does not make Officer's Sandoval's second taser deployment unreasonable. The totality of the circumstances surrounding Officer Sandoval's second taser deployment support a finding that it was justified and reasonable.

Deputy Perea fired five bean bag rounds at Mr. Henry during this use of force incident. The first shot occurred at approximately 8:38 a.m. Deputy Perea arrived on scene with his 12-gauge bean bag shotgun at approximately 8:37 a.m., six minutes after Officer Sandoval has fired his duty pistol at Mr. Henry. Deputy Perea understood that he was responding to a call involving a man with a machete. When he arrived on scene, Deputy Perea took Officer Sandoval's position inside the doorway to the incident location. Officer Sandoval did advise the relief officers in the doorway, including Deputy Perea, that Mr. Henry was breaking glass and was probably going to throw it at the officers. Deputy Perea stated that prior to stepping into the apartment that he was

also aware Mr. Henry was throwing heavy objects across the room, and that the relief SWAT officers were trying to come up with a plan to get Ms. Doe out.

After stepping into the apartment, Deputy Perea was subject to Mr. Henry's resistive conduct first-hand. Mr. Henry was going in and out of the northeast doorway with large pieces of broken glass mirror in one hand and swinging his walking stick at the officers with the other. The deputy was also attuned to the danger Ms. Doe was in due to her location and immobility. Mr. Henry was still ignoring commands, including Deputy Perea's own commands that Mr. Henry "come out" and "get down on the ground." As Deputy Perea took his position in between Ms. Doe and Mr. Henry inside the apartment and prior to firing his first bean bag round, Mr. Henry was given approximately 10 commands. Mr. Henry ignored all of those commands. Deputy Perea also announced that he had "less lethal" twice, and told Mr. Henry "we want you to cooperate" and "we don't want to hit you with this." Deputy Perea announced "bean bag," twice, immediately prior to firing his first shot at Mr. Henry.

It was also significant that after the first bean bag shot, both Sergeant Murray and Officer Sandoval told the relief officers that Mr. Henry was armed with a machete. Sergeant Murray suggested that Mr. Henry had the machete in the back room. Unbeknownst to all of the officers, however, Mr. Henry threw down the machete on the living room floor after Officer Sandoval fired his duty pistol at him. It was with this in mind that Deputy Perea fired his first bean bag round at Mr. Henry. Under these circumstances, Deputy Perea was also reasonable to try to control Mr. Henry's movements by firing his beanbag shotgun at Mr. Henry.

Collectively, the relief officers gave 15 more orders to Mr. Henry after the first bean bag shot, including that Mr. Henry come out, put his hands up, drop everything and back up. Deputy Perea warned Mr. Henry, "We don't want to hit you with this bean bag." As with Officer Sandoval and Sergeant Murray, Mr. Henry ignored every officer's command and warning. The second, third and fourth bean bag shots taken by Deputy Perea occur in a cluster mere seconds apart, approximately a minute and a half after the first bean bag shot. Deputy Perea continued to demand that Mr. Henry come out and put his hands up.

After the second, third and fourth bean bag shots, Deputy Perea announced "bean bag" and "less lethal." Sergeant Murray also twice announced, "less lethal." Deputy Perea announced "bean bag" and "less lethal," twice more after that. Deputy Perea fired his last (the fifth) bean bag round, six seconds after the fourth round. Mr. Henry did not cease his resistive effort nor did he begin to comply with commands. Deputy Perea stated that his bean bag shots hit Mr. Henry in the lower torso, yet none of those convinced Mr. Henry to comply. Based on the foregoing, Deputy Perea's bean bag shots appeared to have been taken as part of a plan to secure Ms. Doe's safety and control a defiant and dangerous Mr. Henry. Deputy Perea's second, third and fourth and fifth bean bag shots were reasonable, therefore.

Around the time of Deputy Perea's fifth bean bag shot at Mr. Henry, Detective Ahmed fired his taser at Mr. Henry for the first time. Prior to being inside the apartment, Detective Ahmed followed radio traffic that informed him that Mr. Henry might be armed with a machete and under the influence of methamphetamine, that Mr. Henry had threatened to kill Ms. Doe, and that Ms. Doe was bedridden. Detective Ahmed was also privy to Sergeant Murray's radio

broadcast that Ms. Doe was experiencing “major medical issues.” Detective Ahmed went inside the apartment as part of a plan to form a human shield for Ms. Doe. After entering the apartment, Detective Ahmed personally observed that Ms. Doe was having issues with her breathing, that Mr. Henry was not complying with commands, swinging his stick at officers and throwing items at them. Detective Ahmed stated that he gave verbal warnings that his taser was going to go off, then fired his taser. Under these circumstances, Detective Ahmed’s first taser deployment was reasonable.

After the first taser deployment, Mr. Henry immediately fell to the ground. Detective Ahmed audibly announced “taser” at least nine times after Mr. Henry fell. Mr. Henry did not stop resisting despite being stunned. Within the span of a minute or less, Detective Ahmed administered four additional, five second taser cycles to Mr. Henry. Officers struggled to get Mr. Henry handcuffed during this time. Mr. Henry was ordered to surrender his hands approximately eleven times. Mr. Henry was warned, “alright sir you’re going to get tased again, stop resisting” and “give us your hand or you’re going to get tased again.” One officer stated, “there’s a piece of glass in his hand” and another told Mr. Henry, “sir, drop your glass.” Detective Ahmed stated that he was stepping on Mr. Henry’s upper back to help hold him in place, but that Mr. Henry was reaching for broken glass shards underneath him. Deputy Perea, who was also trying to restrain Mr. Henry during that time stated that Mr. Henry was “still wanting to fight” and was “stronger than normal.” Detective Ahmed’s last taser cycle ended right before Mr. Henry was cuffed; no additional taser cycles were administered after that. As such, it is apparent that the application of Detective Ahmed’s taser cycles were necessary to gain Mr. Henry’s ultimate compliance in this incident.

In sum, approximately three minutes pass between Deputy Perea’s first bean bag shot and Detective Ahmed’s last taser cycle. Mr. Henry admitted that he knew he was dealing with the police during this time. Yet, as discussed above, Mr. Henry failed to heed the multitude of warnings and commands he was given. Moreover, Mr. Henry was actively resistant and attempted to flee during this time. Based upon the totality of the circumstances under which Deputy Perea and Detective Ahmed applied intermediate less-lethal force upon Mr. Henry, such applications were justifiable, reasonable, and therefore lawful.

CONCLUSION

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Officer Shaun Sandoval was justifiable in self-defense or the defense of others. Additionally, the use of intermediate less-lethal force by Officer Sandoval, Deputy Perea and Detective Ahmed were similarly justifiable based upon the totality of the circumstances. Accordingly, no criminal liability attaches in this case.

Submitted By:
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303 West Third Street
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March 31, 2020

