



PUBLIC RELEASE MEMORANDUM

Date: December 17, 2019

Subject: **Non-Fatal Officer-Involved Incident**

Involved Officers: Officer Paul Carranza, San Bernardino Police Department
Officer Jeramy Klopping, San Bernardino Police Department

Involved Subject: Jorge Adan Pelayo, Jr. (DOB 07/24/1999)
Subject's Residence: San Bernardino

Incident Date: March 15, 2018

Case Agent: Detective Joshua Cunningham
San Bernardino Police Department

Agency Report #: 2018-0032603

DA STAR #: 2019-11571

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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 the responding police officers; reports summarizing interviews of the involved officers and civilian witnesses; audio and video recordings of interviews; transcripts of the shooting officers' statements; law enforcement video and photographs; body-worn camera video recordings; 911-call and police radio communication recordings; scientific investigation reports; and medical records. A transcript of a preliminary hearing taken in the case of *People v. Jorge Adan Pelayo*, San Bernardino County Superior Court, case no. FSB18001101 was also considered in this review.

FACTUAL SUMMARY

On March 15, 2018, at approximately 9:49 p.m., Officer Jeramy Klopping and Officer Paul Carranza shot at Jorge Adan Pelayo, Jr. (hereinafter "Jorge Pelayo") in front of the residence on L Street, in the City of San Bernardino (hereinafter "RP Residence"). Jorge Pelayo was 18 years old at the time. He survived his injuries.

The series of events culminating in the March 15th shooting began 30 minutes earlier and less than a mile away. At approximately 9:19 p.m., Witness #1 called 9-1-1 for assistance at a residence on Virginia Street, in San Bernardino. Witness #1 complained that Witness #2's boyfriend—"Junior Pelayo," crashed his Mitsubishi through a wrought iron fence, damaging the fence and a corner of her apartment building. After the crash, Jorge Pelayo got out of his car and began arguing with Witness #1's daughter—Witness #2. Witness #2 told Jorge Pelayo to leave. Jorge Pelayo pulled his car out of the driveway, but returned. Witness #1 and Witness #2 locked Jorge Pelayo out of the apartment and would not let him in. Witness #2 again told him to leave. Jorge Pelayo kicked another car in the driveway, then left "all crazy," driving fast and causing a scene. Witness #1 and Witness #2 reported that the Mitsubishi belonged to Jorge Pelayo and that he was intoxicated.

A short time later and southwest of the Virginia Street residence, Witness #3, Witness #4 and Witness #4 were outside of the RP Residence, when a near-collision caught their attention. They saw Jorge Pelayo drive his Mitsubishi almost head-on into a large black car (similar to a Tahoe or GMC 4x4). Because of cars parked along both curbs of L Street at that location, there was not enough room for two-way traffic. Jorge Pelayo had to reverse his car to give the large car room to pass.

After allowing the large car to pass, Jorge Pelayo quickly accelerated and careened into the front left fender of a 2018 Toyota Corolla that was parked facing south along the west curb directly in

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front of the RP Residence. Jorge Pelayo stopped the Mitsubishi next to the Toyota, but facing the opposite direction.

Witness #3 immediately went inside to alert Witness #9. Witness #4 went inside to alert Witness #6. Witness #5 went directly to the Mitsubishi to talk to Jorge Pelayo through the open driver's window. Witness #5 asked Jorge Pelayo if he was ok. Due to the impact of the crash, Jorge Pelayo had been jostled towards the passenger seat. Jorge Pelayo wriggled out of the passenger door. Witness #5 reached-in through the driver's window to put the car in "park," turn it off and took the key. By that time, Witness #6 was also outside and also talking to Jorge Pelayo. Witnesses #4, #5 and #6 each saw Jorge Pelayo "huff" a can of electronic duster. It appeared to them that Jorge Pelayo was high. Witness #6 also believed that Jorge Pelayo smelled of alcohol and was drunk.

Witness #5 told Jorge Pelayo that he couldn't leave and would have to wait for the police. In response, Jorge Pelayo pulled out a black handgun and showed it to them. This scared Witness #5 and caused Witness #5 to throw the car keys onto the driver's seat of the Mitsubishi and go into the RP Residence. Witness #4 was watching from the garden gate and also saw Jorge Pelayo pull the gun out of his hoodie. Witness #4 was terrified by the gun, so Witness #4 too went inside the RP Residence and told the people there that Jorge Pelayo had a gun.

Witness #7 called 9-1-1 for help; it was approximately 9:43 p.m. Witness #7 explained to the operator that someone had crashed into Witness #9's car, had a gun and was "super drunk." Witness #7 described the man as having a grey car, being Hispanic, 20-21 years old, wearing a black jacket, black long curly hair and a beard.

At 9:45 p.m., Officers Klopping and Carranza heard the radio announcement regarding a man with a gun on L Street. They were approximately a mile away and dispatched themselves to respond. Both officers were in a San Bernardino Police Department marked patrol unit, being driven by Officer Carranza. The officers were advised that a Hispanic male adult in his early 20's, who had been drinking, was showing his gun to people and had been involved in a traffic collision with the reporting party's car. The subject was described by dispatch as having long curly hair, a beard, a black jacket or sweater and jeans, and having a black handgun. The officers were also advised that the subject was in a grey vehicle facing northbound and that the reporting party's husband was outside talking to him.

Before the officers arrived, Witness #6 urged Jorge Pelayo to put the gun away because the cops were coming. Jorge Pelayo did not comply, but instead began asking for his keys. Witness #6 then noticed the car key on the driver's seat. In a ruse, Witness #6 told Jorge Pelayo that he must have dropped the key. He urged Jorge Pelayo to look on the ground while Witness #6 would "look" in the car. As soon as Jorge Pelayo began to scan the ground, Witness #6 grabbed the key and went inside the RP Residence with it.

Within two minutes of bringing the keys inside, Jorge Pelayo came banging at the door with the gun in his hand. All the residents were inside. Witness #6 answered the door. Jorge Pelayo

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waved Witness #6 out of the RP Residence with the gun while asking for help to find his keys. Witness #6 followed him back to the Mitsubishi to get Jorge Pelayo away from the RP Residence. Witness #6 was afraid that Jorge Pelayo might realize that they had his keys and felt threatened for other persons, who had been moved to the back bedroom of the RP Residence. Witness #8, followed Witness #6 outside but remained close to the RP Residence. Witness #5 watched from the porch near the doorway.

At approximately 9:49 p.m., the officers approached the RP Residence in their patrol unit with overhead flashing red lights on. Officer Carranza positioned the patrol unit directly behind the Mitsubishi. He stopped to the south of the residence and approximately 36' from the back bumper of the Mitsubishi. The headlights of the patrol unit illuminated the Mitsubishi and the area around it. The officers could see Witness #6, who was in the street, east of the passenger door of the Mitsubishi. Witness #8, was on the sidewalk, southwest of the rear of the Mitsubishi and in front of the garden gate of the residence. Both front doors of the Mitsubishi were ajar, and Jorge Pelayo was inside. Witness #6 told Jorge Pelayo that the cops were there.

Officer Klopping and Officer Carranza exited their patrol unit with their guns drawn. Officer Klopping began shouting verbal commands. He told everyone to put their hands up and get on the ground in a loud voice. The officers' gun-mounted tactical lights illuminated both Witness #8 and Witness #6. The officers could also see people moving inside of the RP Residence at the RP Residence, as the front door was open. Witness #6 immediately moved to the ground onto his belly with his arms extended out in front of him. Witness #8 didn't respond as quickly, but both of Witness #'s hands were visible. Both officers gave Witness #8 loud and repeated commands to get on the ground.

Just as Witness #8 was finally getting to the ground, and approximately 10 seconds after the officers first began shouting verbal commands, Jorge Pelayo stepped out of the driver's door of the Mitsubishi. Neither officer noticed Jorge Pelayo prior to that. Jorge Pelayo walked towards the officers. Officer Klopping saw that Jorge Pelayo had a spray can in his left hand, which he dropped as he veered to the sidewalk and away from the officers. Jorge Pelayo's right hand was not visible to either officer as he walked in front of them. From where Witness #5 was standing, Witness #5 noticed that Jorge Pelayo had both of his hands in his pockets. Witness #5 knew that Jorge Pelayo had the gun on him. Witness #5 got on the ground in the doorway.

Jorge Pelayo continued onto the west sidewalk and with his right hand, appeared to drop another can. Jorge Pelayo then put his left hand up and re-concealed his right hand in front of him, away from the officers' view. After Jorge Pelayo turned north and away from the officers, Officer Carranza was behind him, but offset to the east and standing in the street, about 12-15 feet away. Officer Klopping was standing in the street, east of Officer Carranza and southeast of Jorge Pelayo. The Toyota and Mitsubishi were between Officer Klopping and Jorge Pelayo.

From the time Jorge Pelayo appears, the officers ordered him not to move, to get on the ground and put his hands up. Jorge Pelayo does not comply, let alone stop or look in the officers' direction. Jorge Pelayo took a few more steps northbound and away from the officers, then lifted

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his shirt, turned slightly and pulled a gun from his waistband area. Almost simultaneously, each officer fired his gun three times. Jorge Pelayo fell to the ground and slumped onto his arms in the driveway of the RP Residence.

Jorge Pelayo was shot approximately 22 seconds after the officers arrived on scene. Officer Carranza announced, "shots fired" approximately five seconds after his last shot. Dispatch recorded the announcement at 9:49 p.m.

The officers maintained their distance from Jorge Pelayo as he lay on the ground, until they were able to see his hands and the gun. A gunmetal grey Ruger P85 nine-millimeter semiautomatic handgun was recovered from the driveway at the RP Residence, approximately five feet from where Jorge Pelayo fell.

After the shooting and to secure the scene, a total of six adults and four children were removed from inside the main residence at the RP Residence, including Witnesses #3, #4, #5, #7 and #9. Witness #6 and Witness #8 were already outside.

Six fired cartridge casings (FCC) were found at the scene. Three were recovered in the area in front of the Toyota, toward the west curb. Three more were recovered east of the Mitsubishi, and toward the east curb of L Street, near the RP Residence. Two bullet strikes were noted near the top of the driver's side doors of the Toyota.

Jorge Pelayo's grey hooded sweatshirt was collected from the ground and to the front of another residence near to the RP Residence, where Jorge Pelayo was triaged prior to being transported to Arrowhead Regional Medical Center (ARMC). His black shoes, socks and shorts were collected from ARMC.

Two FCC's were recovered from inside the Mitsubishi. These two casings were determined by the San Bernardino County Sheriff's Department, Scientific Investigations Division, to have been previously fired from the recovered Ruger P85 handgun. Jorge Pelayo's gun was determined to be operational. Upon examination, it fired without malfunction and exhibited no modification or defect. However, at the time of collection, the Ruger P85 handgun was not loaded. Two bindles of heroin and an unopened 24 oz. can of malt liquor were found inside the Mitsubishi.

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STATEMENTS BY POLICE OFFICERS¹

Officer Paul Carranza gave the case agent a voluntary interview in the presence of his attorney at approximately 3:52 a.m., on March 16, 2018, about six hours after the shooting occurred. Officer Carranza explained that he forgot to turn on his body worn camera (BWC) prior to the shooting incident, but that he did turn it on as soon as he noticed it was not recording. He did not review his own BWC video. However, prior to giving his statement to Detective Cunningham, Officer Carranza did review the footage taken by Officer Klopping's BWC that *did* include the incident. Officer Carranza had never contacted any of the involved civilians prior to this incident. At the time of his interview, Officer Carranza was wearing the San Bernardino Police Department long-sleeved uniform that he wore at the time of the shooting incident.

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

Officer Carranza has been a police officer for almost 3 months. He was still in training and the shooting occurred on the last day of his six-week "Phase 2" training under his field training officer—Officer Klopping. He had no other prior law enforcement experience. He enlisted as a Marine in 2007 and completed two tours of duty—one in Iraq and another in Afghanistan.

On the night of the incident, Officer Carranza was driving the department's standard black and white marked Crown Victoria. Officer Klopping was his passenger. His shift that evening began at 4:00 p.m. and was to conclude at 2:00 a.m.

At the time dispatch first put on the radio that there was a man with a gun at the RP Residence, Officer Carranza was on the north end [of San Bernardino] and driving towards the police station to turn in evidence from another call. Officer Carranza approximated that he and Officer Klopping were about a mile away. While they weren't originally dispatched, Officer Klopping got on the radio and they self-dispatched to the location. Officer Carranza focused on where he was driving, while Officer Klopping followed the radio traffic. The location was within Officer Carranza's "beat." While trying to get to 1147 N. L Street, Officer Carranza knew there was a subject displaying a gun and that the subject's silver car was facing north. Officer Carranza also learned that the subject pulled a gun from his waistband and the reporting party saw it. But Officer Carranza also knew that the subject was not pointing the gun at anyone.

Upon arriving on scene, Officer Carranza pulled behind the subject's car, about 50 feet back. He then turned on his overhead emergency lights and rolled the patrol unit closer to

¹ All referenced officers described here were on duty for the San Bernardino Police Department. Herein is a summary only. All reports submitted were reviewed, but not all are referenced here. Those that are included here are listed in the order they appeared at the crime scene. No police officer became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or Jorge Adan Pelayo, Jr. (Jorge Pelayo) by name are made here for ease of reference.

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the car before he stopped. The headlights of the patrol unit were on and illuminating the scene. Officer Carranza believed that Officer Klopping turned on the spotlight on his side. It was dark. There was a streetlight just north and possibly one just south of their location. There was light in the residence and Officer Carranza could see people moving inside.

The officers had planned to make a felony stop prior to arriving. Once they arrived on scene, Officer Carranza saw two Hispanic male adults standing outside of the silver car, one was on the east of the car (passenger side), one was near the west sidewalk (of N. L Street). Officer Carranza held "Suspect #2"—the man on the sidewalk (Witness #8) at gunpoint. The officer had the tactical light of his duty weapon on. Officer Carranza noticed that the man outside of the passenger side of the car (Witness #6) immediately got on the ground. Officer Carranza described Witness #6 as "Klopping's guy," a Hispanic male adult, that was heavier and wasn't wearing a jacket.

The man that Officer Carranza was concentrating on (Witness #8) was wearing a blue shirt, stood at approximately 5'8" or 5'9", and didn't immediately comply with orders. Both Officer Carranza and Officer Klopping were giving repeated commands for everyone to get on the ground. Mr. Duarte walked back towards the RP Residence, instead. And even though Witness #8 looked at Officer Carranza as soon as he got out of the patrol unit, Witness #8 didn't verbally acknowledge the officer's commands. Officer Carranza was concerned that Witness #8 was not listening to him. But at this point, Officer Carranza did not believe that Witness #8 was a threat because he could see both of Witness #8's hands.

Just then, Officer Carranza saw a "third subject" (Jorge Pelayo) come out from the driver's side of the silver car. He remembered hearing someone from the RP Residence saying something to the effect of "he's the one with the gun." Officer Carranza described Jorge Pelayo as a Hispanic male adult, with an average build. He recalled that Jorge Pelayo got out of the car and immediately walked west towards the sidewalk, then veered north. Officer Carranza's attention was then drawn to him because, in addition to ignoring commands, Officer Carranza could not see Jorge Pelayo's hands. It appeared to Officer Carranza that Jorge Pelayo had his hands in front of him as he walked away.

In then next moment, it appeared to Officer Carranza that Jorge Pelayo pulled up his shirt with his left hand and turned slightly to the right. As Jorge Pelayo turned, Officer Carranza saw Jorge Pelayo pull a firearm out of his waistband using his right hand. Officer Carranza explained that he was able to see the butt of Jorge Pelayo's gun because he was behind Jorge Pelayo, offset to the right (east) of him.

Officer Carranza stated that he believed Jorge Pelayo was turning to shoot Officer Klopping and to shoot at him. At the time, Office Carranza perceived Officer Klopping to be closer to Jorge Pelayo than he was. Officer Carranza stated that he heard Officer Klopping fire three rounds and that he fired three rounds as well. At the time he fired,

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Officer Carranza was south of Jorge Pelayo, at a distance of approximately 20-30 feet. Officer Carranza stated that he fired in a northerly direction. Officer Carranza estimated Jorge Pelayo to be in the driveway of the RP Residence, about five feet from the Toyota parked on the west curb.

After the officers fired their weapons, Officer Klopping “covered” Jorge Pelayo. Officer Carranza returned his attention to Witness #8, who was on the ground. Officer Carranza saw people in the RP Residence doorway moving around and ordered them to stop moving. Officer Carranza had one woman sit on the steps. Officer Carranza also provided cover of the individuals at the RP Residence. Officer Briseno arrived. Officer Carranza recalled Officer Klopping telling him and Officer Briseno to start pulling people out of the RP Residence. Officer Carranza stated that the RP Residence still had to be “cleared” and that this was why Sergeant Zink and another officer moved Jorge Pelayo across the street.

After additional officers arrived and the scene was secured, Sergeant Zink transported Officers Carranza and Klopping to the police station.

At the conclusion of Officer Carranza’s interview, Detective Cunningham confirmed that the officer’s 4th Generation department-issued Glock 19, nine-millimeter weapon contained 14 bullets, whereas it normally contained 17.

Officer Jeramy Klopping gave the case agent a voluntary interview in the presence of his attorney at approximately 5:32 a.m., on March 16, 2018, almost 8 hours after the shooting occurred. Officer Klopping acknowledged that prior to giving his statement to Detective Cunningham, that he did review the video his BWC captured of the shooting incident. Officer Klopping confirmed that at the time of the shooting incident, that he wore a department-issued jacket, uniform and baseball cap.

This is the substance of Officer Klopping’s statement to Detective Cunningham:

Officer Klopping had been a police officer for 14 ½ years, including 9 months with the Riverside Police Department between March, 2016, and January, 2017. The rest of his time as a police officer had been in service to the San Bernardino Police Department, where he started in September, 2003. At the time of the incident, Officer Klopping was assigned as a Field Training Officer in the Southwest Patrol Division. On the day of the shooting, Officer Carranza had been his trainee for 6 weeks. He worked “shift 3”—which begins at 4:00 p.m. and ends at 2:00 a.m.

That evening, Officer Klopping sat in the front passenger seat of the marked patrol unit being driven by Officer Carranza. When the call to the RP Residence was broadcasted, Officer Klopping recalled being in the Northeast District and headed towards the station. He self-dispatched their unit to the “man-gun call” in their beat.

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While the officers were en route to the RP Residence, dispatch advised that there was a subject out front with a gun, who had been involved in a traffic collision and he was out waving a gun. The subject was described as a Hispanic male adult. Dispatch advised the suspect's car was grey. Officer Klopping asked dispatch to confirm the direction the subject car was facing and was told it was facing "north." He specifically instructed Officer Carranza to approach the "suspect vehicle" from behind and also facing north for a tactical advantage.

Upon arriving at the scene, Officer Klopping saw two cars. It appeared to him that the suspect's car hit a parked car and was facing northbound in a southbound traffic lane. He saw a heavysset Hispanic male adult near the right rear bumper of the suspect's car (Witness #6), and another Hispanic male adult on the sidewalk next to the parked car's bumper (Witness #8). It was dark, but the patrol unit's headlights were on and illuminated the area directly in front of it. He also used the tactical light on his gun to illuminate the area.

Officer Klopping got out of the patrol unit and immediately gave commands. He did not recall Officer Carranza giving commands. He saw Witness #6 get down immediately. But Witness #8 started to walk away. Then a third Hispanic male adult he refers to as "the suspect" (Jorge Pelayo) came out of the driver's seat of the grey car. Officer Klopping did not see Jorge Pelayo, until he got out of the grey car. Jorge Pelayo then walked towards the officers then dropped a paint spray can, walked across the (front of the Toyota) then walked (north) up the sidewalk.

Officer Klopping described Jorge Pelayo as a Hispanic male, with a light-colored shirt, and five feet and eight or nine inches tall. As soon as Jorge Pelayo appeared, he looked right at Officer Klopping with a "blank stare."² Officer Klopping stood about five feet east of the front bumper of his patrol unit when Jorge Pelayo appeared, and began to give Jorge Pelayo commands. Jorge Pelayo ignored the officer's commands. Officer Klopping's attention bounced between all three "subjects" because he didn't know who had the gun at that point. It appeared to Officer Klopping that Officer Carranza was in line with Jorge Pelayo, but Officer Carranza stood on the west side of the patrol car.

As Officer Klopping continued to watch Jorge Pelayo, he saw that Jorge Pelayo's hands were at his waistline. It looked to Officer Klopping like Jorge Pelayo was pulling something out from underneath his shirt or belt as Jorge Pelayo walked north along the sidewalk. Officer Klopping continued to give commands. Officer Klopping saw Jorge Pelayo start to lift his left arm and saw the butt of a gun in Jorge Pelayo's left hand. Officer Klopping estimated that he was 10-15 feet from the patrol car when he first saw

² During his testimony at the preliminary hearing, Officer Klopping testified that he believed that Jorge Pelayo was "in an altered state of consciousness" based upon this stare. (Transcript of the Preliminary Hearing held on June 4-5, 2018, in *People v. Jorge Adan Pelayo*, San Bernardino County Superior Court, case no. FSB18001101)(hereinafter "Preliminary Hearing Transcript")

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Jorge Pelayo's handgun, but there were two cars between them.³ Officer Klopping described Jorge Pelayo's gun to be raised to about shoulder-height. Jorge Pelayo was facing in a northwest direction and starting to turn south when Officer Klopping fired his gun at him. Officer Klopping believed that Jorge Pelayo was turning to shoot his trainee—Officer Carranza, who was south of Jorge Pelayo.

At the time Officer Klopping fired, Jorge Pelayo was two to three feet west of the car on the curb, near to its northernmost door. Officer Klopping approximated that Jorge Pelayo was 20-25 feet northwest of him. Officer Klopping stood 10 feet southeast of the car on the curb, and shot in a northwest direction.

After the shooting, Officer Klopping couldn't hear his radio. He recalled seeing Jorge Pelayo going down after his third shot was fired. That is when he pushed forward (north) past the Mitsubishi and saw Jorge Pelayo down on the ground.

Officer Klopping then requested medical aid. At the time he believed he still had three suspects and kept giving commands as the safest route until more officers arrived. He explained that he maintained his position because Jorge Pelayo was still moving. Officer Klopping couldn't see Jorge Pelayo's left hand and thought he fell on top of the gun. After Jorge Pelayo was handcuffed Officer Klopping moved forward and saw the gun in the driveway west of Jorge Pelayo.⁴

Next, Officer Klopping stated that the RP Residence still had to be "secured" due to possible safety concerns. They still needed to contact numerous other subjects in the RP Residence. Officer Klopping believed the best thing for Jorge Pelayo was to remove him from the scene to get him to the hospital as soon as possible.

At the conclusion of Officer Klopping's interview, Detective Cunningham confirmed that the officer's Sig Sauer P226, nine-millimeter weapon contained 13 bullets, whereas it normally contained 16.

Officer Samantha Briseno arrived on scene at approximately 9:49 p.m. in response to the "man with a gun" call for service at the RP Residence. She reported receiving dispatch information describing a Hispanic male adult in his early 20's, showing a black gun, with long curly hair, a beard, black jacket, sweater and jeans. The subject was in a gray car, and that the reporting party's husband took the car keys away from him. The text of the call also relayed that the subject was at the reporting party's door with the gun in his hand, and that the reporting party's husband was trying to talk to him. Officer Briseno did not report seeing any of the shooting. She assisted with an area canvass and interviewed two civilians who heard the gunshots but did not see anything.

³ Officer Klopping testified that he was approximately 15-20 feet away from Mr. Pelayo at the time he saw Mr. Pelayo reach for his weapon. (*Preliminary Hearing Transcript*)

⁴ Officer Klopping testified that after the shooting, he saw Jorge Pelayo's gun was five feet west of Jorge Pelayo, in the driveway of the residence at 1142 N. L Street. (*Preliminary Hearing Transcript*)

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Officer Sergio Alvarez arrived on scene at approximately 9:51 p.m. and saw that both Officers Carranza and Klopping had their guns drawn and pointed toward the front of the RP Residence. He saw the suspect (Jorge Pelayo) on the ground, with his left arm underneath him. He placed Jorge Pelayo in handcuffs and patted him down for weapons. Officer Alvarez and Sergeant Zink moved Jorge Pelayo eastbound to the curb line in front of a residence near to the RP residence on L Street, so that the fire department could render aid to him there. Officer Alvarez accompanied the transport to Arrowhead Regional Medical Center (ARMC). Officer Alvarez observed a gunshot wound to Jorge Pelayo's back, just below his neck, another to his left thigh, a third to the lower abdomen above the penis and a fourth to the lower left abdomen. Officer Alvarez remained in the operating room while medical staff tended to Jorge Pelayo.

Officer Chris Emon arrived on scene at approximately 9:52 p.m. and witnessed the suspect (Jorge Pelayo) being held at gunpoint by Officer Klopping, while on the ground. He also saw Jorge Pelayo get handcuffed by another officer and saw the handgun on the ground approximately 5 feet from Jorge Pelayo. He assisted other officers in clearing the RP Residence, as well as the back yard and out-buildings.

Officer Christopher Shipley arrived on scene at approximately 9:53 p.m. and assisted with clearing the RP Residence. Officer Shipley then canvassed the area. He spoke to residents on L Street, but they had been sleeping. One may have heard gunshots. At approximately 3:58 a.m., on March 16, Officer Shipley went to ARMC and collected the California Identification Card of Jorge Pelayo, Jr. Officer Shipley confirmed the suspect's identity by this card and his tattoos.

Officer Ronald Whitmer arrived on scene at approximately 9:53 p.m. and assisted with clearing the RP Residence. He also checked the residences to the north of there, for bullet strikes but found none.

Officer Marc Alvarez arrived on scene at approximately 9:55 p.m. and assisted with attending to the suspect (Jorge Pelayo) while he was still on L Street. Thereafter, Officer Alvarez maintained the crime scene log.

Officer Justin Burgher arrived on scene at approximately 9:55 p.m. and provided scene security to the south of the RP Residence. He also assisted in clearing the west side of the RP Residence and the rear yard.

Officer Nathaniel Guzman arrived on scene at approximately 9:56 p.m. and assisted with clearing the RP Residence. The officer also took statements from Witness #10 and Witness #11 (see below).

Officer Ana Munoz arrived on scene at approximately 9:56 p.m. and assisted with clearing the RP Residence. Then, she checked the residences across the street and south of there for any bullet strikes; she found none. She spoke to residents who heard yelling and five gun shots but saw nothing.

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Officer John Dimola arrived on scene at approximately 9:57 p.m. and rendered first aid to Daniel Doe (Jorge Pelayo) while on L Street until paramedics arrived. He assisted paramedics in bandaging Jorge Pelayo and placing him into the ambulance for transport.

Officer Alec Rios arrived on scene at approximately 10:00 p.m. and stood by with residents cleared out of the RP Residence. Officer Rios also canvassed the area for casings and helped to transport the residents to the police station and back.

Officer Tina Martinez arrived on scene at approximately 10:05 p.m. and stood by with detainees from the RP Residence, three of whom she interviewed. Her interviewees were between the ages of four and eight and saw nothing. Officer Martinez also provided north and south perimeter security.

Detective Edward Flores arrived on scene at approximately 10:39 p.m. and was assigned to interview witnesses at the San Bernardino Police Department station. Detective Flores interviewed Witness #8, and Witness #3 (see below).

Detective Nick Oldendorf arrived on scene at approximately 11:03 p.m. and was assigned to complete a crime scene diagram (see below).

Detective Joshua Cunningham arrived on scene at approximately 11:03 p.m. and was designated as the primary case agent by Sergeant Emil Kokesh. Detective Cunningham's reports include an investigation summary, narratives regarding his interviews of Witnesses #4, #6 and #9 and San Bernardino County Probation Officer Lopez, his investigation and search regarding the Mitsubishi Lancer, a narrative regarding function testing of Officer Klopping and Carranza's weapons, his investigation regarding Jorge Pelayo's Ruger P85 9mm semiautomatic weapon, a search warrant he completed for a cell phone retrieved from Jorge Pelayo's person, and the search warrant and return he completed for Jorge Pelayo's ARMC records.

The substance of the statements of Witnesses #4, #6 and #9 can be found below.

Based upon papers found inside of the Mitsubishi, Detective Cunningham determined that Jorge Pelayo bought the Mitsubishi at the scene on February 28, 2018, from Valley Wide Towing. Detective Cunningham also found two nine-millimeter FCC's. One FCC was found on the driver's side floorboard, under the driver's seat. Another was located in the center console, in the center drink holder. Detective Cunningham also located two small bindles of a substance he believed to be heroin, in the center console.

The Ruger P85 handgun was found to be registered to Witness #13, of San Clemente, California. In his follow-up investigation, Detective Cunningham discovered that Witness #13 was deceased. Witness #13's son told Detective Cunningham that Witness #13's gun had not been sold or given away prior to Witness #13's death.

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Detective Cunningham submitted the Ruger P85 handgun for function testing and comparison of the cartridge casings located in the Mitsubishi. The criminalist analyzing the Ruger P85 determined that the weapon had been identified in another criminal investigation. Detective Cunningham determined that the earlier matter was investigated by the San Bernardino Police Department in August, 2016. Detective Cunningham found that the earlier investigation involved the negligent discharge of the firearm by a black male suspect, 30-35 years old, 6'0" – 6'2" and approximately 200-210 lbs. Based on the suspect's description in that matter, Detective Cunningham determined Jorge Pelayo was not involved there.

Detective Donald Sawyer arrived on scene at approximately 11:07 p.m. and was assigned to interview witnesses at the San Bernardino Police Department station. Detective Sawyer interviewed Witnesses #5, #7, #10 and #14 (see below).

Detective Marco Granado arrived on scene at approximately 11:07 p.m. and was assigned to complete the crime scene investigation by Sergeant Kokesh (see below). Detective Granado also interviewed Jorge Pelayo's self-described girlfriend—Witness #2, at the scene (see below).

Officer Robert Richards, arrived on scene at approximately 5:36 a.m. on March 16. He interviewed Witnesses #1 and #2 at a residence on Virginia Street, prior to his arrival at the crime scene (see below). Based upon the statements of Witnesses #1 and #2, Officer Richards determined that Jorge Pelayo made a wide left-turn into the driveway at the Virginia Street residence and collided with the fence and property there. This happened prior to the incident in front of the RP Residence.

Criminalist A, a criminalist of the San Bernardino County Sheriff's Department, Scientific Investigations Division, determined that the bindles located in the Mitsubishi contained .95 grams and 1.03 grams of heroin.

Criminalist B, a criminalist of the San Bernardino County Sheriff's Department, Scientific Investigations Division, determined that Officer Klopping's Sig Sauer pistol and Officer Carranza's Glock pistol both fired without malfunction, defect or modification.

Criminalist C, a criminalist of the San Bernardino County Sheriff's Department, Scientific Investigations Division, determined that Jorge Pelayo's Ruger P85 fired without malfunction, defect or modification. Criminalist C also completed a microscopic analysis to determine that the two FCC's found in the Mitsubishi had been fired from the Ruger P85. Finally, Criminalist C identified another criminal matter where the Ruger P85 was used and investigated.

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STATEMENTS BY CIVILIAN WITNESSES⁵

Witness #10, was interviewed twice. First, he spoke to Officer Guzman at the scene at approximately 10:17 p.m. He spoke to Detective Sawyer almost three hours later. Witness #10 told both officers essentially that he was living in the back house at the RP Residence with Witness #12. He explained that at the time of the incident he heard the shots only.

Witness #11 told Officer Guzman at the scene, at approximately 10:30 p.m. that she lived at 1171 N. L Street. At the time of the incident, she recalled hearing a loud crash then saw the involved cars to the front of her home. She said she was inside, but heard two people arguing. Later, she heard three to four gunshots. She denied seeing who was arguing or who was shooting.

Witness #8 was interviewed by Detective Flores at approximately 12:47 a.m., on March 16, at the San Bernardino Police Department station. He told the detective that he was 52 years old. Witness #8 was with Witness #9, sleeping, when Witness #3 alerted them that someone had crashed into Witness #9's car. Witness #8 went outside and saw a young man wearing a grey or black hoodie and grey pants, who was maybe 21 or 22, that was "white" and "Mexican" and spoke English.

Witness #8 stated that he saw (Jorge Pelayo) had a pistol and demonstrated that Jorge Pelayo held it in his right waistband area. Witness #8 also stated that he saw Jorge Pelayo inhale a spray into his face and that he had two spray cans. Witness #8 told Detective Flores that the man knocked hard on the RP Residence door saying "Open the door! Open the door!" Jorge Pelayo was also asking if anyone had seen his keys. Witness #8 believed that the man was looking for the keys to escape. Witness #8 said Witness #9 told him not to go outside and Witness #8 was by the door when the shots happened. Witness #8 saw the police, but denied seeing the police shoot Jorge Pelayo. Witness #8 heard four gunshots but was watching Witness #9's car at the time shots were fired.

Witness #9 was interviewed by Detective Cunningham at the San Bernardino Police Department station at approximately 12:48 a.m., on March 16. Witness #9 told the detective she was asleep when she was awakened by Witness #3 who said, "Mom, they crashed your car." Witness #9 did not hear the crash. Witness #9 went to the door and saw "this guy" (Jorge Pelayo) looking at Witness #9's car. Witness #9 described Jorge Pelayo as a Hispanic man in his 20's, like 5'5" or 5'6", approximately 150-160 lbs. He was wearing a dark jacket. Witness #9 saw Jorge Pelayo was "smelling" a dusting can and looked like he was on drugs. Witness #9 said Witness #6 told her Jorge Pelayo was carrying a gun. So, she told everybody to go inside and locked the door. Witness #6 took the keys to the man's car and brought it into the RP Residence. Jorge Pelayo came to the RP Residence and was knocking; Witness #9 heard him say "I need my keys. I want my keys."

⁵ All reports of civilian statements made were reviewed, though not all are summarized here. Those listed here are included in the order they gave their statements. Any reference to Jorge Pelayo by name here is made for ease of reference only. Unless otherwise noted, no witness referred to Jorge Pelayo by name.

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Witness #9 was afraid because of the mention of the gun, but she never saw it. Witness #9 told Witness #7 to call the cops. When the “the guy who crashed the car” came to the door, her boyfriend Witness #8 unlocked the door and went back outside with Witness #6. Witness #8 stood in the front yard, next to the walkway gate. Then, Witness #9 heard the cops come; Witness #9 heard their voices. Witness #9 also saw the police car, which had flashing lights. Witness #9 told Detective Cunningham that the officers were in police uniform and she could tell that they were officers. Witness #9 saw that the officers asked Witness #8 to put his hands up and to lay down.

Witness #9 stated that she didn’t see Jorge Pelayo with any weapons and doesn’t know why the officers shot him. Jorge Pelayo was on the sidewalk on the driveway with his back toward the police when he was shot. Witness #9 heard four gunshots. She saw Jorge Pelayo fall on the sidewalk in the driveway. The cops then told people in the RP Residence to put their hands up and go outside. Witness #9 later saw Jorge Pelayo laying across the street but didn’t know how he got there.

Witness #12 spoke to Detective Flores with the aid of a Spanish-language interpreter—Officer Joaquin Larios, at the San Bernardino Police Department station at approximately 1:30 a.m. on March 16. Witness #12 lived in the small back house of the RP Residence, with Witness #10. Witness #12 was asleep at the time of the incident, but he heard the gunshots. Witness #12 thought it was fireworks.

Witness #14 spoke to Detective Sawyer at the San Bernardino Police Department station at approximately 1:36 a.m. on March 16. Witness #14 was living in the RP Residence at the time of the incident. Witness #14 was in the kitchen when he heard the car crash. Witness #14 did not go outside. But Witness #14 did hear someone “bang” on the door. Witness #14 was aware that the police were outside at some point, giving commands. Witness #14 heard the commands. Witness #14 also heard three to four gunshots. Witness #14 recalled officers coming to get them out of the RP Residence.

Witness #3 spoke to Detective Flores at the San Bernardino Police Department station at approximately 1:44 a.m. on March 16. Witness #3 was 20 years old and lived at the RP Residence. Witness #3 explained that she was with Witnesses #4 and #5, outside of the RP Residence. That’s when Witness #3 saw a black Tahoe and a little car about to hit each other in the street. The little car had to reverse so the big truck could leave. The driver of the little car (Jorge Pelayo) “flipped” off the driver of the big truck as they crossed paths. Witness #3 could see Jorge Pelayo because his window was down. Jorge Pelayo looked drunk to Witness #3. It also looked to her like Jorge Pelayo was going to hit Witness #9’s car, and then he did. Witness #3 immediately went to wake up Witness #9. That’s when Witness #3 noticed Witness #6 go outside. Watching from the RP Residence, Witness #3 said she saw Jorge Pelayo get out on the passenger side of his car. Witness #3 described Jorge Pelayo as being Mexican, about 20 or 21, and wearing a black hoodie. Witness #6 told her that Jorge Pelayo was waving around a gun and to go inside. Witness #3 told everybody to get inside and the present minors into her room.

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Witness #6 told Witness #3 that he found the keys and told Witness #3 to hide them. Witness #3 took the keys from Witness #6 and handed them to Detective Flores during this interview. At some point, Witness #3 said she heard Jorge Pelayo knock at the door and she heard her family talking to him. Witness #3 was able to see the front door from the doorway of the back-bedroom.

Witness #3 stated that she heard sirens before the gunshots. Witness #3 also heard officers yell "get down." Witness #3 saw a white officer in uniform shoot approximately four times. Witness #3 saw the officer yelling and firing. But Witness #3 did not see what caused the officer to shoot. The kids got scared and Witness #3 went back into the room with them. She didn't see Jorge Pelayo with a gun, but Witness #5 was saying that Jorge Pelayo was waving the gun around and that they should stay inside. Witness #3 was afraid that they might get hurt.

Witness #6 spoke to Detective Cunningham at the San Bernardino Police Department station, at approximately 1:49 a.m. on March 16. Witness #6 was a heavy-set man with dark hair and a mustache/goatee. He was 34 years old at the time, wearing dark pants and a dark "Pokémon" t-shirt. At the time, Witness #6 had lived at the residence at the RP Residence for approximately 3-4 months.

Witness #6 stated that he was "smoking some blunts" in the backyard when he heard Witness #3 say, "Oh man, they hit my mom's car." Concerned that someone had just hit *his* red Honda that was parked out front and that he just purchased, Witness #6 jumped outside in his boxers, and without putting on any shoes. Witness #6 was going to fight (Jorge Pelayo), believing he might be the person who had hit another car on the same street earlier in the day.

When Witness #6 got outside, Witness #5 was already out there. Witness #6 saw the driver (Jorge Pelayo) come out of the passenger side. Witness #6 described Jorge Pelayo as a light-skinned Latino, who "smelled good" and had "colored eyes." Witness #6 also stated that Jorge Pelayo smelled like alcohol. Witness #6 described him as being 5'9", 180-200 lbs., wearing a grey hoodie and dark grey pants. Witness #6 stated the Jorge Pelayo "wasn't all there," demonstrating that Jorge Pelayo was swaying in circles and waving his arms.

As Witness #6 spoke to Jorge Pelayo, he noticed that Jorge Pelayo hid his hands inside his front hoodie pocket. Jorge Pelayo said, "Man, I gotta' go" and pulled out a gun. Witness #6 demonstrated that Jorge Pelayo did so with his right hand. Witness #6 told Jorge Pelayo that he should put the gun away because the cops were coming. Witness #6 explained that Jorge Pelayo was "non-chalant" and acted as if he didn't care about the police coming. Witness #6 said that at one point Jorge Pelayo walked away but didn't get far before coming right back, even after Witness #6 told him that walking away was his "best bet."

Witness #6 stated that Jorge Pelayo wasn't being aggressive with the gun, but instead was "scared" and looking for his car key. However, the fact that Jorge Pelayo was "strapped and on duster" also scared Witness #6. As neighbors came outside after the crash, Witness #6 told them to back up because Jorge Pelayo was "strapped." When Witness #6 saw the key on the driver's

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seat of the Mitsubishi he began to “B-S” Jorge Pelayo and told him to look under the car, while Witness #6 looked inside. When Jorge Pelayo complied, Witness #6 grabbed the key and took it to the RP Residence. Witness #6 quickly handed it off to a girl in the RP Residence and went back to the car, as Jorge Pelayo continued to search. This is when Witness #6 said he saw Jorge Pelayo “dusting” and even handed him a can as if to offer him “a hit.” Witness #6 took the can and put it on top of the car. Jorge Pelayo then grabbed another can from the inside of his car and “started hitting that shit again.” Witness #6 told Detective Cunningham that Jorge Pelayo was “huffing” as he walked around.

Witness #6 told the detective that he went back to the RP Residence and left Jorge Pelayo searching outside. Then, Jorge Pelayo came up to the RP Residence door and used the gun to knock. Witness #6 said the man was holding the gun with both of his hands, and “waved” him outside with it. Witness #6 felt threatened for his kids. Witness #6 was also afraid that Jorge Pelayo would know that he had the keys and was “going to go off.” So, Witness #6 went outside with Jorge Pelayo. Witness #8, who Witness #6 described as “the old Mexican guy,” also came outside, but only to the yard gate. While outside again, Jorge Pelayo put the gun back in his pocket. Witness #6 noticed that Jorge Pelayo was getting more nervous and kept putting his hand in his pocket, where the gun was.

Witness #6 stated that he saw the first police car roll down the street from 11th Street, with its lights out and he was relieved. Witness #6 said he “told the guy (Jorge Pelayo) that the cops were there.” At the time, Jorge Pelayo was back in the driver’s seat of the Mitsubishi.

Next, Witness #6 saw two officers, one of whom came out giving commands. Witness #6 stated that he got right to the ground, near the back of the passenger side of the Mitsubishi. Then Witness #6 said he saw Jorge Pelayo’s feet move from outside the driver’s seat. Witness #6 told the officer, “he’s the one with the gun.” Witness #6 said he could hear both officers giving commands to get on the ground and put his hands up. Witness #6 did not hear Jorge Pelayo say anything to the officers. Then, Witness #6 heard four gunshots. Witness #6 did not see the shooting from where he was laying on the ground.

Witness #5 spoke to Detective Sawyer at the San Bernardino Police Department station at approximately 2:06 a.m. on March 16. Witness #5 stated that the RP Residence was Witness #9’s and that he had been staying there for a couple days.

Witness #5 explained that he was at the side of the RP Residence when he heard tires screech and a car honk. Then he saw two cars almost collide head-on. Witness #5 stated that “the guy they shot” (Jorge Pelayo) backed up. Witness #5 believed Jorge Pelayo was “on something.” Next, he saw “the kid” let the other guy go by, then Jorge Pelayo tried to take off and slammed into his aunt’s car. On impact, Witness #5 saw the driver fly into the passenger seat. Witness #5 ran to the car, looked through the driver’s window and said, “hey dude are you ok?” Witness #5 said that he saw fear in Jorge Pelayo’s face and saw “he was gone.”

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Witness #5 shifted the car into “park,” turned the car off and grabbed the keys. Then he went around to the passenger seat and opened the door. Jorge Pelayo got out and said something about his insurance. Witness #5 told him, “you gotta’ wait for the cops. You can’t drive your car like that.” That’s when Jorge Pelayo pulled out the gun. Witness #5 heard Witness #6 tell Jorge Pelayo that the cops were coming and to get rid of his gun. Witness #5 told the detective that he and Witness #6 were trying to talk to the driver, “but he was in another world” and “wasn’t responding” to what they were saying to him.

Witness #5 saw that the driver tried to leave twice and told Witness #6 they should let him go. Seeing the gun made Witness #5 panic, so he threw the keys into the car and went to the porch. Witness #5 told everyone to just stay inside and that “the car ain’t worth it.” Witness #5 saw that Jorge Pelayo had the gun in his pocket. It particularly concerned Witness #5 that Jorge Pelayo had his gun “on him” and that he didn’t grab it after the crash. The gun was dark faded black. Witness #5 also saw that Jorge Pelayo was doing air duster and “kept hitting it.”

Witness #5 told Detective Sawyer that Witness #6 was helping Jorge Pelayo look for his keys. Witness #6 got the keys and brought them inside. Witness #5 said that they were all inside when Jorge Pelayo came to the RP Residence to knock. Jorge Pelayo had his hand on his pocket and this made Witness #5 feel threatened. Witness #5 saw Witness #6 go outside, and Witness #5 walked back onto the porch.

Witness #5 did see the cop car pull up and immediately heard the officer say, “get on the ground!” Witness #5 stated that the officers were flashing their spotlights. Witness #5 was expecting the cops. Witness #5 stated that the officers were yelling the whole time. He saw Witness #6 get on the ground quickly. But “the guy he put both hands in his pockets.” Witness #5 saw the driver take two steps towards the cops, walk onto the sidewalk and proceed to walk away from them. Witness #5 saw that the driver was walking away when he was shot. He didn’t see the driver do anything before the shots were fired because Witness #5’s attention was on the cops. Witness #5 explained that he just got on the ground where he stood and couldn’t see anything. Witness #5 stated that he heard four gunshots and knew the whole time that the driver had a gun on him.

Witness #5 explained to Detective Sawyer that he didn’t see the driver get shot, but after the shots, he saw Jorge Pelayo shaking on the ground. Meanwhile, the officers stood in the same position and kept yelling things. Witness #5 recalled that Witness #9 was screaming and yelling in the RP Residence. After that, other officers appeared and Witness #5 stayed on the floor in the doorway.

Witness #7 spoke to Detective Sawyer at the San Bernardino Police Department station, at approximately 2:57 a.m., on March 16. At the time, Witness #7 had lived at the RP Residence for 3 months. Witness #7 was in her room when she heard a crash outside. At first, Witness #7 thought her car had been hit. So, Witness #7 went outside. While outside Witness #7 heard Witness #6 tell the driver, “Bro, you can’t leave.” Witness #7 asked “Witness #6 if everything was ok. Then, Witness #6 told her to go inside because the driver had a gun. That’s when she

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called 9-1-1. Witness #5 told her it was a black gun. Witness #7 described the driver (Jorge Pelayo) as Hispanic, looking “really young,” being approximately 19-21 years old, with a dark shirt and black hair.

Witness #7 recalled that Witness #6 got the keys from Jorge Pelayo’s car somehow. Then, Witness #6 came in the RP Residence with the keys under his shirt. When Witness #6 came back in, Witness #7 was standing in the kitchen near the front of the RP Residence. They closed and locked the door behind him. Witness #3 ended up with the keys. Witness #7 then explained that “the guy came banging on the door and waved Witness #6 out with the gun and told him to help him find the keys.” Witnesses #4, #5 and #6 were by the door when Jorge Pelayo came to the door. Witnesses #4 and #5 were between Witness #7 and the door when Jorge Pelayo came to the door. Dispatch told Witness #7 not to let him in the RP Residence. Witness #6 went out with Jorge Pelayo because the kids were in the RP Residence. Nobody closed the front door after that. The door was wide open and Witness #7 was standing in the doorway.

Witness #7 clarified that she didn’t see the gun. She only heard Witnesses #5 and #6 saying that Jorge Pelayo had the gun in his hand and was waving it.

When the officers arrived, Witness #7 stated that she was able to tell they were police officers. Witness #7 recalls that the officers had their lights on and announced themselves. They gave commands to get on the floor. Witness #7 admittedly was only focused on Witness #6; she was nervous Witness #6 was out there because Witness #6 tends to try to diffuse situations. Witness #8 was also outside.

Witness #7 stated that the officers were yelling when they arrived and “the guy (Jorge Pelayo) started walking away.” It appeared to Witness #7 that “he didn’t want to listen.” Witness #7 stated that the officers kept screaming, “get down.” Witness #7 said she saw Jorge Pelayo’s right hand go up, but Witness #7 looked away because there were coming out from the back bedroom. Witness #7 didn’t see if Jorge Pelayo had anything in his hand. Next, Witness #7 heard four or five gunshots. Witness #7 went to the floor out of panic. Then, Witness #7 jumped over Witness #4 and #5, who were also on the floor, to get on the porch. The officers told Witness #7 to sit on the stairs and later called her over to them.

Witness #4 spoke to Detective Cunningham at approximately 2:57 a.m. at the San Bernardino Police Department station on March 16. Witness #4 was 20 years old and lived at the RP Residence.

Witness #4 explained that in the evenings he was always outside on the porch, smoking, minding his own business, watching cars and people. On this night, Witness #4 stated that he was outside Witness #3 and #5. Witness #4 stated that when people park on both sides of the street, there’s no space for two-way traffic. Witness #4 described “the guy that had the weapon” (Jorge Pelayo) had a little car and was driving fast down the street. An approaching GMC or truck-like 4x4 tried to pass, but there wasn’t enough space. One of them had to wait on the side. Witness #4 said that the drivers exchanged words and that Jorge Pelayo flipped-off the guy with the truck. The little

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car pulled back. The guy in the GMC truck slow rolled by and they exchanged some words. Then, the GMC took off. Witness #4 stated that he thought that the drivers were going to get out and fight. “The guy in the little car just stepped on it after the truck passed,” and “then he crashed into [Witness #9’s] car.”

Witness #4 watched from the porch. Witness #4 described Jorge Pelayo as Hispanic or Latino, in his 20’s, and approximately 5’7” or 5’8” tall, wearing a grey shirt and shorts.

Witness #4 said that he was going to go closer but then he saw Jorge Pelayo pull a gun out of his hoodie. The gun looked to him to be a semi-automatic. Witness #4 went inside the RP Residence and told everyone about the gun. Especially, Witness #4 told Witness #6 because, “[Witness #6] can handle business.” Witness #6 went outside. Witness #5 was on the driver’s side of the small car, Witness #6 was on the passenger side. Witness #4 believed that the driver was looking towards the RP Residence as well as at the car that he hit. Witness #4 described to Detective Cunningham that the driver pulled out the gun, like he was displaying it. Witness #4 demonstrated that Jorge Pelayo pulled the gun out of his pocket with his right hand. But Witness #4 also explained how Jorge Pelayo fumbled the gun with both hands.

Witness #6 and Peter told Witness #4 that the driver was doing “air duster” and that they saw a lot of air dusters. Witness #4 believed that Jorge Pelayo looked like he was on drugs.

Witness #4 knew that Witness #6 did get the keys to Jorge Pelayo’s car. Then, Jorge Pelayo “knocked hard” on the door. Jorge Pelayo appeared to Witness #4 to be speaking in “gibberish” but was able to make out that he was asking for his keys. Witness #4 stayed in the RP Residence the whole time after he saw the gun. Witness #4 was afraid that Jorge Pelayo was getting closer to the RP Residence. It also scared Witness #4 that Jorge Pelayo kept pulling the gun out. He explained that “the only person that wasn’t terrified about the gun was [Witness #6].”

Witness #4 knew that Witness #7 called the police, but Witness #4 did not see when the police officers arrived. Witness #4 only recalled hearing the officers shout, “put your hands up.” The officers were already on the street when Witness #4 saw them. The officers were wearing uniforms. Witness #4 knew they were police officers because he heard them. The front door was open.

Witness #4 was inside the front door of the RP Residence when he saw and heard four gun shots from two pistols at the same time. The driver had “turned around” on the officer and was walking away. Witness #4 heard Jorge Pelayo scream in pain, but he wasn’t saying anything.

Witness #2 spoke to Detective Granado at the crime scene, but the timing of the interview is uncertain. Witness #2 identified the Mitsubishi as belonging to her boyfriend—Jorge Adan Pelayo. Witness #2 showed Detective Granado a picture of Jorge Pelayo’s California Driver’s License. Witness #2 had been dating Jorge Pelayo for almost a year, and he stayed with Witnesses #1 and #2. Witness #2 described Jorge Pelayo as having attitude problems. Witness #2 told Detective Granado that Jorge Pelayo went to the Virginia Street residence “sounding all

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drunk, acting all crazy” and that Witness #1 told him he had to go. Witnesses #1 and #2 locked him out of the Virginia Street residence; Jorge Pelayo wanted to be let in. Witness #2 explained that Jorge Pelayo “left all crazy” and “driving fast.” Witness #2 arrived at the crime scene because she heard cops pass by, and then saw his car there. Witness #2 was aware that Jorge Pelayo was at “Arrowhead” at the time of the interview.

Witness #2 also spoke to Officer Robert Richards at approximately 3:02 a.m., while at a residence on Virginia Street on March 16. Witness #2 told Officer Richards that she had an argument with Jorge Pelayo on the evening prior and that she broke up with him. Witness #2 believed Jorge Pelayo was returning to make up with her when she heard a “boom” and realized he must have hit something with his car there. Jorge Pelayo argued with Witness #2 again before leaving.

Witness #1 reported to Officer Robert Richards, that she was in the rear parking lot of her apartment complex with Witness #2, when Witness #2’s boyfriend—“Junior Pelayo,” drove through the rear gate and argued with Witness #2. Witness #1 noticed Jorge Pelayo’s car was damaged on the right front fender and saw that the fence on the west side of the property and at the corner of her building at the driveway were damaged. Witness #1 told Jorge Pelayo to leave. Witness #1 believed he was intoxicated. Jorge Pelayo left in his car, only to return momentarily and begin yelling for Witness #2 once more. He was again asked to leave. Jorge Pelayo left for a second time, but Witness #1 called 9-1-1.

INCIDENT AUDIO AND VIDEO

911 CALLS. [1st Call for Service] At approximately 9:19 p.m. Witness #1 called 9-1-1 for assistance at 734 W. Virginia Street, in San Bernardino. Witness #1 explained that she was also the apartment manager there and that her Witness #2’s ex-boyfriend “hit the house and fence then went to hit [her] other daughter’s car.” Witness #1 said his name was, “Junior Pelayo,” an 18-year old Hispanic man, driving a 4-door Mitsubishi, with a broken fender from the crash. Witness #1 explained that this just happened, and that no one in the house was injured. Witness #1 said that there was structural damage to the house fence and at the corner of the apartment.

[2nd Call for Service] At approximately 9:43 p.m., Witness #7 called 9-1-1 for assistance at the RP Residence, in San Bernardino. The call is approximately 7 minutes and 58 seconds long (7:58). The precise time of day being recorded is not indicated by the recording. As such, only elapsed times are indicated here.

Witness #7 can be heard explaining to the dispatcher that “a guy crashed into my mom’s car and he has a gun and he’s super drunk and he’s trying to take off.” Witness #7 describes the man as Hispanic, maybe 20 or 21 years old, with a beard and “longish curlyish hair.” She explains that her husband went outside to talk to him. At (2:04) Witness #7 explains that the driver showed her husband the gun. At (2:46) Witness #7 says that “they got the keys out of the car.” At (4:46)

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Witness #7 tells the dispatcher, “he’s at my door now.” At **(5:12)** and at **(5:23)** Witness #7 says that the man is holding the gun in his hands. At **(5:39)** Witness #7 tells the dispatcher she believes that the police are flashing their lights at her husband. Yelling can be heard in the background. Witness #7 says, “He’s walking away from the cops, he’s not listening to them” at **(5:57)**. Three seconds later, shots are heard and Witness #7 and other female voices begin screaming. The dispatcher remains on the line until she confirms with Witness #7 that her husband is okay.

BODY WORN CAMERA VIDEO. Body Worn Camera (BWC) camera footage was recorded by Officer Klopping and Officer Carranza. The video recorded by Officer Klopping begins before the officers arrive on scene and while they are en route. The footage taken by Officer Klopping’s BWC is 29 minutes and 44 seconds (29:44) long. Officer Carranza’s video does not begin until *after* Jorge Pelayo was shot and is 27:41 long. Both videos indicate a time stamp that is approximately 7 hours ahead, i.e., where Officer Klopping’s video shows a start time of March 16, 2018 at 4:48 a.m., based upon all other reports in the submission, it appears that the accurate time reflected should be March 15, 2018 at 9:48 p.m. As such the time of day included here is an approximation.

This is a summary of events captured by *Officer Klopping’s BWC*:

[There is no audio until :23.] Officer Klopping is in the passenger seat. When the audio becomes discernable, the dispatch operator can be heard saying, “still on the line with the RP, saying that he’s at the door, he’s got the gun in his hand.”

The officers appear to arrive on location 33 seconds into the video, at approximately 9:49 a.m. Flashing red lights can be seen reflecting on nearby cars. No sirens are heard.

Officer Klopping opens the door to the patrol unit and is not outside yet when he starts yelling commands: “Aye, everybody put your hands up” and “on the ground.” Immediately, a man standing in the street with a grey t-shirt gets on the ground and puts his hands out in front of him (Witness #6). There’s also a man on the sidewalk with a light-colored shirt who turns away from the officers and starts to walk toward the RP Residence (Witness #8). At **(:33)** Officer Klopping shouts to them, “Aye, get on the ground, everybody.”

Witness #8 turns to face Officer Klopping. Jessie Duarte has his hands on his hips. At **(:39)** Officer Carranza can be heard yelling “Get on the ground, get on the ground.” Office Klopping also yells “You too sir, get on the ground.” Officer Carranza continues to yell, “Get on the ground!” Just then, at **(:43)** Witness #6 says, “I live here sir.” Meanwhile, Witness #8 is still standing with his hands on his hips and he’s facing Jorge Pelayo’s car.

At **(:43)** the officers’ tone of voice convey even more urgency than before. Witness #8 turns back toward the RP Residence again. An officer yells again, “On the ground!” And

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just then, Jorge Pelayo quickly gets out of his vehicle on the driver's side. Jorge Pelayo has a can in his left hand as he faces Officer Klopping. The video frame is blocked momentarily by Officer Klopping's arm, but when it opens again a spotlight shines on Jorge Pelayo, who is now standing on the sidewalk with his left hand up. The can he had in his left hand was now is in the street. Next, at **(:46)** Jorge Pelayo appears to pull something out of his right-side pocket with his right hand and drop it onto the sidewalk, while keeping his left hand up. Witness #8 looks at Jorge Pelayo, steps back and starts to get down. Officer Carranza shouts "Get on the fucking ground." Klopping yells, "Get on the fucking ground." Officer Klopping shouts "Aye, Don't Move, AYE" at **(:47)**. Momentarily, Jorge Pelayo's right hand also goes up at **(:48)**. But the frame is blocked again by Officer Klopping's arm, and what is happening cannot be seen, only heard. Officer Carranza yells "Get on the ground, now!" At **(:50)** Officer Carranza yells "I'm fucking talking to you, get on the ground now. Get on the ground." At **(:51)** Officer Klopping yells, "Aye, don't fucking move!"

The frame opens up once more at **(:53)** when Officer Klopping is saying, "AYE. Put your hands up!" Jorge Pelayo appears to have his left hand out to the side at shoulder height, with an open palm facing away from him. At **(:54)**, Officer Carranza yells "Let me see your fucking hands!" At **(:55)** Jorge Pelayo's right hand appears to come up at about shoulder level and shots are fired in rapid succession. At **(1:01)** Officer Carranza is heard calling out "shots fired." At this point, the video shows Jorge Pelayo in the driveway, moaning and moving. Officer Klopping is heard calling for medical aid at **(1:13)**. Officer Klopping reports "Officers are ok, subject is down" at **(1:34)**; it is approximately 9:50 a.m.

At **(2:47)** Officer Klopping is heard saying, "Show me your hands dude, put your hands out."

At **(4:30)** after Officer Klopping verbally acknowledges seeing the gun and shines a spotlight on it, another officer moves forward and Jorge Pelayo's hands are cuffed on the ground. The video then shows how the residents inside the RP Residence are ordered away from the inside of the RP Residence one at a time. The video also shows how officers entered the residence. Officer Klopping switches off the audio at **(18:23)** as he is being addressed by Sergeant Zink. The balance of the video shows officers at the scene without audio input.

Since the footage captured by Officer Carranza's BWC occurs after the shooting incident, it has less relevance to this review. However, Officer Carranza can be heard to say at approximately **(3:48)** in speaking to another person within the crime scene after the incident: "he pulled a gun out of his waistband we shot him." The unknown person follows up by asking, "he did?" Officer Carranza replied, "me and Jeramy did." At **(5:01)** after being asked what he did after everything, Officer Carranza said, "I called it out." At **(5:06)** Officer Carranza said, "That went to shit real quick dude."

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POLICE RADIO TRAFFIC. The submitted police radio traffic includes the 9-1-1 call placed by Witness #7 at 9:43 p.m. The substance of that call is indicated above. The remainder of the submitted police radio traffic is described below. No time or date is indicated within the audio, such that a listener could discern exactly at what time the events being recorded are taking place. The times indicated here are approximated based upon information submitted.

At 9:45 p.m., two units are dispatched to 1142 N. L on report of a man with gun, who is described as a “Hispanic Male Adult, early 20’s, HBD and showing his gun to people.” The gun is described as “black.” And the suspect is further described as “long curly hair, beard, black jacket, black sweater and jeans.” Officer Klopping (call sign “Three-Adam-Six”) alerts dispatch they are “en route” less than a minute thereafter. At 9:47 p.m., dispatch advises they are still on the land line with the “RP” and that the “husband and man-gun are just talking” and that the “husband did take the subject’s keys” and that he was “merely showing the husband the handgun.” Immediately after that, Officer Klopping is heard asking dispatch “what way are they facing?” At 9:48 p.m., dispatch announces “looks like they are facing northbound.” Officer Klopping immediately acknowledges that information by saying “copy.”

At 9:49 p.m., dispatch announces “still on line with the RP, sounds like subjects now walked to the front door, he’s got the gun in his hand at this point.” Officer Klopping then announces “10-3” on the channel and dispatch acknowledges it. Dispatch is heard stating “the husband is in the Pokémon shirt” and 11 seconds after that Officer Carranza is heard calling out “three-adam-six, shots fired, shots fired!” Fifteen seconds after Officer Carranza calls out “shots fired”, Officer Klopping is heard requesting “med-aid.” At 9:50 p.m., Officer Klopping announces “[three]-adam-six for CAD, officers are ok, subject is down.” At 9:54 p.m., moving the “gunshot victim” for aid is referenced, and the fire department is cleared to enter L Street from Baseline. The remainder of the police radio traffic is regarding the arrival of other officers, the fire department, delegation of officer duties and securing the crime scene.

CRIME SCENE INVESTIGATION

Detective Marco Granado reported the description of the crime scene. Detective Granado described the street in front of the RP Residence in San Bernardino as a north-south street with no roadway markings, fronting single-family homes. Detective Granado described overhead streetlights on the east curb at 1131 N. L Street and 1155 N. L Street. He observed the porch light at the RP Residence, that illuminated the porch and front yard.

A dark gray-colored 2015 Toyota Corolla with paper plates was parked on the west curb next to the the RP Residence, facing southbound. Facing northbound next to the Toyota was a 2005 Mitsubishi Lancer (California License Plate 5HCC237). The driver’s door and front passenger’s door of the Mitsubishi were ajar. The Mitsubishi had damage to its right front fender (believed to be from an older collision) and new collision damage to the left front part of the bumper and front quarter panel area.

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Detective Granado saw a 24-ounce can of Hurricane High Gravity Malt Liquor on the front passenger floorboard of the Mitsubishi. The detective also determined that there were likely bullet strikes from the officers' duty weapons to the Toyota's driver's door frame and above the left rear passenger door. No other bullet strikes were located at the scene. A white metal can of Dust and Lint Remover was located on L Street, in front of the Toyota/behind the Mitsubishi. A second can was located next to the Toyota, near the sidewalk.

Just south of the Mitsubishi was San Bernardino Police Department Patrol Unit Number 71. Detective Granado noted that the patrol unit had its overhead red lights illuminated and its amber flashing lights to the rear. The unit is a four-door black and white sedan with "San Bernardino Police" written on both sides. **Detective Nick Oldendorf** noted that the front of the bumper of the patrol unit was approximately 36' behind the Mitsubishi.

Detective Oldendorf located the Ruger firearm in the driveway of the RP Residence, at a distance of 298' south of the south curb line at Baseline, and 47' west of the east curb line of L Street. Detective Granado described the weapon as a dark gray gun metal-colored Ruger nine-millimeter semiautomatic weapon bearing Serial No. 301-44243. The gun slide was closed, and a magazine was fully inserted into the magazine well. Detective Granado determined the weapon did not contain any bullets.

Detective Oldendorf also noted two spots of blood in the same driveway that the gun was recovered from. Those were located approximately 301' and 303' south of the south curb at Baseline, and 34' and 36' west of the east curb line of L Street, respectively. By approximation, the blood spots were 3-5' south and 11-13' west of where the Ruger firearm was located.

Detective Granado described the location of three, nine-millimeter FCC east of the Mitsubishi, toward the east curb of L Street, in the front of the apron of the driveway at a residence on L Street. Three additional nine-millimeter FCC were located towards the west side of L Street, south of the Toyota and Mitsubishi. All six FCC had the headstamp "WIN 9MM LUGER."

Jorge Pelayo's grey hooded sweatshirt was collected from the ground to the front of a residence on L Street, where he received first aid prior to being transported to Arrowhead Regional Medical Center. A fired mushroomed hollow-point type bullet was also found in this area.

INJURED PARTY

INJURIES. Jorge Pelayo was received by ARMC at approximately 10:21 p.m. with multiple gunshot wounds to the back, abdomen and left leg. Specifically, he was noted to have gunshot wounds to the right neck, left shoulder blade, in the lower abdomen above the penis, at the left knee and left thigh. He had a torn right carotid artery, right internal jugular vein and right vertebral artery. He had a small bowel, rectal and two bladder injuries. He suffered a vertebral fracture. The noted injuries were secondary to sustained bullet wounds. Jorge Pelayo was

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admitted to the hospital and underwent surgery. No submitted medical record indicates whether Jorge Pelayo’s gunshot wounds were considered “entry” or “exit” wounds.

FIREARM EXAMINATION. Criminalist C, Criminalist II of the San Bernardino County Sheriff’s Department, Scientific Investigations Division, examined Jorge Pelayo’s gun. Criminalist C identified the weapon as a Ruger model P85, nine-millimeter Luger caliber, semiautomatic pistol, bearing serial number 301-44243. He concluded that the weapon fired without malfunction, and that the two FCC’s recovered from the Mitsubishi had been fired from the very same weapon. Criminalist C also determined that the weapon had been involved in another matter investigated by the San Bernardino Police Department in 2016 (2016-00089091). Detective Cunningham determined that the suspect described in that 2016 matter did not match Jorge Pelayo.

CRIMINAL HISTORY. Jorge Adan Pelayo, Jr., has no felony convictions. He is presently facing multiple felony counts related to incidents occurring at the RP Residence in San Bernardino, immediately prior to the officer-involved shooting.

(Pending Matter)

Case No. FSB18001101 The case includes the following charges:

- (1) Penal C. §207(a) [Kidnapping]
- (2) Penal C. §236 [False Imprisonment by Violence]
- (3) Penal C. §417(a)(2) [Exhibiting a Firearm]
- (4) Penal C. §417(c) [Exhibiting a Firearm in the Presence of an Officer]
- (5) Penal C. §69 [Resisting an Executive Officer]

(Pending Matter)

Case No. MSB18007493 The case includes one violation of Penal C. §148(a)(1) [Obstructing/Resisting a Public Officer], arising from an incident that occurred less than a week prior to the OIS, on February 9, 2018.

Case No. MSB17019403 Convicted on 2/13/18 of Veh. C. §12500(a) [Driving Without a License]*infraction. Sentenced to 5 days jail

Jorge Pelayo appears to have no other criminal convictions, other than as listed above.

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

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no probable cause to make an arrest.” (*Terry v. Ohio* (1968) 392 U.S. 1, 22.) Or more specific to the facts in this case, an officer called to a public place upon reports of a man with a gun has sufficient cause or “reasonable suspicion” to make an investigatory stop and 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)⁶ 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 relevant criminal jury instruction, as written by the Judicial Council of California, is set forth in CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The 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.)

Perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) 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. “Imminence is a critical

⁶ All references to code sections here pertain to the California Penal Code.

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component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) “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, supra* 39 F. 3d at 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, supra*, 39 F.3d at 915.)

REASONABLENESS. 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.⁷ (*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.)

⁷ California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment, the requirements of Penal Code § 196 are also satisfied. (*Martinez, supra*, 47 Cal.App.4th at 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) Penal Code § 196 states that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are “charged with a felony” and who are fleeing from justice or resisting such arrest. Application of the section is broader than on its face; formal written charges are not required. (*People v. Kilvington* (1894) 104 Cal. 86, 92. See also *Martinez, supra*, 47 Cal.App.4th 334 [section 196 applied to the conduct of officers responding to an intoxicated man armed with a knife in public].)

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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.) But, 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 reasonableness analysis contemplates the “totality of the circumstances” and therefore 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.*) Yet, *Graham* does highlight these specific 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 *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*. 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.

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(*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.)

ANALYSIS

This report evaluates the use of deadly force by Officer Jeramy Klopping and Officer Paul Carranza upon Jorge Adan Pelayo, Jr., on March 15, 2018, at approximately 9:49 p.m.

We have carefully examined the recorded statements, the reports of law enforcement officers who witnessed or investigated the officer-involved shooting, the statements of civilian witnesses, audio and video footage, as well as the other materials described herein.

Determining whether each officer was legally justified in his use of a firearm under the self-defense provisions of the California Penal Code involves an inquiry into whether the officers were reasonable in their belief that that someone was in imminent danger of death or great bodily injury and that the use of force was necessary to defend against that danger. A use of lethal force is justified where the following is true about the officer:

- 1) He reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; and

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- 2) He reasonably believed that the immediate use of deadly force was necessary to defend against that danger.

The following facts and circumstances support the conclusion that both Officer Klopping and Officer Carranza reasonably used lethal force due to an imminent need of self-defense or defense of others:

On the evening of the shooting incident, Jorge Adan Pelayo, Jr., was involved in two reported traffic collisions with sedentary objects and in a near-collision with a large moving vehicle, all within a one-mile radius. It is remarkable that Jorge Pelayo did not actually inflict physical injury upon the people he came into contact with that evening. Jorge Pelayo was aggressive and combative, and by all witness accounts was also either drunk or “high,” or both.⁸

In the first collision, Jorge Pelayo struck a wrought-iron fence and the corner of an apartment building by taking a wide turn into a driveway. There was notable damage to the car he purchased just 15 days prior. Jorge Pelayo’s primary course of action, however, was not to address the collision or the damaged property. Rather, it was to engage in an argument with Witness #2. This prompted the first 9-1-1 call for help by Witness #1. Although Witnesses #1 and #2 told Jorge Pelayo to leave, he did not do so until Witnesses #1 and #2 locked him outside.

About 30 minutes after leaving the residence at Virginia Street, Jorge Pelayo was seen driving northbound on N. L Street, when he came so close to colliding head-on with a much larger vehicle, that it caught the attention of residents standing outside. Jorge Pelayo “flipped off” the other male driver. Bystanders believed that the men might get into a fight. No fight actually ensued, but Jorge Pelayo’s continued aggression played out as he proceeded to accelerate out of control and careen into Witness #9’s brand new Toyota.

Witness #5 went to the driver’s window of the Mitsubishi immediately after the crash. Jorge Pelayo climbed out of the car through the passenger window and began to tell Witness #5 something about insurance. This would tend to indicate that Jorge Pelayo was aware he had caused damage there. In response, Witness #5 told Jorge Pelayo that he couldn’t leave and would have to wait for the police to arrive. This compelled Jorge Pelayo to pull a black handgun from his hoodie with his right hand. This scared everyone who saw it, including Witnesses #4, #5 and #6. Witnesses #4 and #5 both went inside. To *play it cool*, Witness #6 told Jorge Pelayo to put his gun away because the “cops” were coming. Witness #6 stated that Jorge Pelayo acted as if he didn’t care that the police were coming. Witness #6 articulated how volatile this situation was for everyone; it scared Witness #6 that Jorge Pelayo was both armed and impaired.

⁸ No record indicating analysis of Jorge Pelayo’s blood or otherwise for alcohol or drug use was submitted for review.

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While Witness #7 was calling 9-1-1 for help, Witness #6 remained outside with Jorge Pelayo. Unbeknownst to Jorge Pelayo, Witness #6 saw the keys on the driver's seat, took them and handed them off to Witness #3 inside the RP Residence. Within minutes of taking the keys inside, Witness #6 also went inside.

At approximately 9:48 p.m., Jorge Pelayo banged loudly on the front door of the RP Residence, with his gun in hand and demanded help to look for his keys. Witness #6 opened the door. Jorge Pelayo waved Witness #6 outside with the gun. Witness #6 followed Jorge Pelayo back to the Mitsubishi to get Jorge Pelayo away from the RP Residence. He was afraid that Jorge Pelayo would realize that they had his keys and felt threatened for the children inside.

Officers Carranza and Klopping arrived on scene in a marked patrol unit with its emergency lights flashing at approximately 9:49 p.m., just as dispatch broadcasted that the suspect was at the door and with gun in hand. Witness #6 saw the patrol unit and told Jorge Pelayo that the "cops" had arrived. The headlights of the patrol unit illuminated the Mitsubishi because it was stopped directly behind it.

The officers got out of their patrol unit with their guns drawn. The officers were uncertain who had the gun. Both officers were dressed in department-issued police uniforms. The officers could see both Witness #6 and Witness #8. Neither civilian matched the description of the suspect—a Hispanic male adult, 20-21 years old, who has been drinking, wearing a black jacket, with black long curly hair and a beard. Both officers used tactical lights on their duty weapons. Officer Klopping began shouting commands for everyone to get on the ground and put their hands up. Witness #6 immediately complied. Witness #8 did not immediately comply and drew repeated commands from both Officer Klopping and Officer Carranza. Every interviewed adult who was inside the the RP Residence at the time the police arrived, recognized the officers as policemen and could hear the officers give commands.

Even after Officers Carranza and Klopping began giving commands, Jorge Pelayo remained in his car, with the driver's side door open. During that time, Officer Klopping had specifically ordered everyone to put their hands up. Also during this time, both Officers Carranza and Klopping demanded that people get on the ground at least six times. After ten seconds of verbal commands, Jorge Pelayo finally stepped out of the driver's door of the Mitsubishi. Neither officer noticed Jorge Pelayo prior to that. Jorge Pelayo presented as the closest match to the given physical description of the man with the gun. Also, as Witness #6 lay on the ground, he began to tell the officers that Jorge Pelayo was the subject with the gun.

As Jorge Pelayo emerges from his car, he looked directly at Officer Klopping. Jorge Pelayo does not put his hands up, nor does he go to the ground. Rather, Jorge Pelayo initially walks (south) towards the officers. Jorge Pelayo dropped a can in the street and

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veered west to go around the car on the curb. Next, Jorge Pelayo walked directly in front of Officer Carranza and onto the west sidewalk. Jorge Pelayo now had his left hand up, but reached into his pocket with his right hand. He pulled a second can out of his pocket and drops it on the sidewalk. Immediately thereafter, Jorge Pelayo momentarily lifted his right hand but re-concealed it. Jorge Pelayo then proceeded to walk north and away from both officers.

As can be expected, Jorge Pelayo's movement drew the officers' attention. Officer Carranza ordered Jorge Pelayo to get on the ground four more times. Officer Klopping also ordered Jorge Pelayo to get on the ground. In addition, Officer Klopping orders Jorge Pelayo not to move, twice.

Jorge Pelayo ignored both officers and continued to move away from them. Jorge Pelayo does not stop or look in either officer's direction at any point, demonstrating his intent not to comply with the officers' verbal commands. Both officers then see Jorge Pelayo lift his shirt, turn slightly and pull a gun from his waistband area. Jorge Pelayo's right hand appeared to come up. Officer Klopping shouted, "put your hands up!" Officer Carranza followed, "let me see your fucking hands!" Both officers fire three shots at Jorge Pelayo. At this point, Officer Carranza was behind him, but offset slightly to the east and standing in the street, about 12-15 feet away. Officer Klopping was standing in the street, southeast of Jorge Pelayo, with the Toyota and Mitsubishi between them, approximately 15-20 feet away. Jorge Pelayo fell to the ground in the driveway of the RP Residence. His gun was noted to be approximately five feet from the area where Jorge Pelayo fell.

California law permits any person to use deadly force where there is a reasonable need to protect oneself or another person from an apparent and imminent threat of death or great bodily injury. As discussed below, each officer actually and reasonably believed that he needed to use deadly force to protect his partner.

SUBJECTIVE BELIEF OF IMMINENT NEED TO PROTECT. The officers arrive on scene in response to a 9-1-1 call for help. The contemporaneous information they received while en route to the location proved to be reliable. On arrival, the officers note the suspect's grey vehicle facing northbound on L Street. There were also men in the street and a visibly damaged vehicle parked on the west curb. These factors were just as indicated by dispatch. Thus, there was no reason to question the report of a man with a gun at that location. Further, dispatch had just advised that the suspect had his gun in his hand. Indeed, demanding that everyone get to the ground and show their hands would be consistent with an effort to determine if any of the visible people were armed.⁹

⁹ Officer Klopping testified that "based on the text of the call, there was a subject armed with a firearm. Having the subjects show me their hands, get on the ground is the safest way to deal with the situation." (*Preliminary Hearing Transcript*)

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Jorge Pelayo—an 18 year-old Hispanic man, with long curly hair, a beard and black clothing, was the person immediately before the officers who matched the physical description of the reported suspect. Officer Klopping believed that Jorge Pelayo was in an “altered state of consciousness” based upon the way he looked when he first comes out of the Mitsubishi. Indeed, both officers have been advised by dispatch that their subject has been drinking. Ultimately, Jorge Pelayo was also the only person on scene who would not and did not comply with the officers’ commands.

When the officers’ attention is drawn to Jorge Pelayo both officers maintain a distance. Officer Carranza approximated that he was 12’-15’ away from Jorge Pelayo when the officer first noticed him. Officer Klopping was closer to Jorge Pelayo than Officer Carranza was. Both officers saw Jorge Pelayo conceal his hands and demonstrate his intent to ignore their commands—factors that put the officers would reasonably alert the officers to a risk of harm. Non-compliance with uniformed officers alone may be unsettling given that the officers were being faced with a reportedly armed and impaired suspect. After the officers arrived and began giving commands, Jorge Pelayo remained in his car for about 10 seconds, with the driver’s side door open. During that time, Officer Klopping has ordered everyone to put their hands up. Also during this time, both Officers Carranza and Klopping have ordered everyone to get on the ground at least six times.

The officers were immediately audible upon their arrival, including during the time that Jorge Pelayo sat in the driver’s seat of his car before coming out. Witnesses in the RP Residence and on the street both heard the officers’ commands. The circumstances also suggest that Jorge Pelayo knew he was about to engage the police officers. Witness #6 told Jorge Pelayo that the police had arrived. Finally, when Jorge Pelayo emerges from his car, he looks directly at Officer Klopping, and crosses right in front of Officer Carranza. That Jorge Pelayo sheepishly put his left hand up when he is on the west sidewalk suggests at a minimum that he is cognizant of the officers.

Next, Jorge Pelayo reached into his right pocket to pull a concealed item out with his right hand. In a show of restraint, the officers simply continue with verbal commands in response. As Jorge Pelayo proceeded to walk north and away from both officers, Officer Carranza ordered Jorge Pelayo to get on the ground four more times. Officer Klopping also ordered Jorge Pelayo to get on the ground. In addition, Officer Klopping orders Jorge Pelayo not to move, twice. The last order given to Jorge Pelayo by Officer Klopping before the officer fired was, “put your hands up!” The last order given to Jorge Pelayo by Officer Carranza before he fired was, “let me see your fucking hands!” Twenty-two seconds pass from the time Officer Klopping first gives a command to the time shots are fired. Jorge Pelayo ignored the 15 commands given over the course of those 22 seconds. Every ignored command at every moment, was a forfeited opportunity to avoid lethal force.

Moreover, Officers Carranza and Klopping fire upon Jorge Pelayo only after their commands are ignored, Jorge Pelayo has reached into his pocket and when both officers see Jorge Pelayo turn slightly, with the butt of a gun in his hand. Officer Klopping said he fired his weapon because he

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believed Jorge Pelayo was going to shoot at Officer Carranza. Similarly, Officer Carranza said he fired his weapon because he believed Jorge Pelayo was going to shoot at both officers. That both officers fired their weapons almost simultaneously and immediately after they both issue commands demanding Jorge Pelayo show his hands, suggests that the officers perceived the same threat.

This review does recognize that while the officers agree that Jorge Pelayo reached for a weapon, both officers' account of the *manner* in which Jorge Pelayo did so, differ. Officer Carranza saw Jorge Pelayo pull up his shirt with his left hand, turn to the right and pull the gun out of his waistband with his right hand. Officer Klopping saw both of Jorge Pelayo's hands in his waistband. Officer Klopping believed that he saw a gun in Jorge Pelayo's left hand, raised to about shoulder-height, when Jorge Pelayo started to turn "south" (without indicating whether the rotation was either towards the right or left). When considered against Officer Klopping's BWC footage, it is possible that Officer Klopping was mistaken in his belief of *which hand* held the weapon immediately before shots were fired.¹⁰ This mistaken belief does not detract from the sum of the submission as a whole, however, that supports a conclusion that both officers perceived at the same time, that Jorge Pelayo held a gun at all.

Even after Jorge Pelayo falls to the ground, both officers continue to maintain their distance from him as Jorge Pelayo's hands are still not visible. Officers approach only after Officer Klopping sees the gun on the ground and outside of Jorge Pelayo's reach. These facts in sum with those above tend to indicate an honest and subjective belief that the officers were encountering a person armed with a gun who they reasonably believed intended to use it kill them.

REASONABLE BELIEF OF IMMINENT NEED TO PROTECT. More than perceived circumstances and the stated belief of each involved officer, however, the submission contemplated in total indicate a reasonable belief of the need to use deadly force to protect another. At first, Jorge Pelayo is an impaired and combative driver, who has demonstrated how dangerous he is to the people around him. He has caused two collisions with stationary objects and is involved in nearly a third collision. By taking Jorge Pelayo's keys, Witness #6 neutralizes the danger of Jorge Pelayo further menacing the community with his car. Next, when Jorge Pelayo reveals that he is armed with a handgun and is actively "dusting," he stokes fear of harm in the residents of the RP Residence. The residents call 9-1-1 for help and begin sequestering themselves and their children away from Jorge Pelayo.

Despite the warning and advisal of a police presence there by Witness #6, Jorge Pelayo kept his weapon on his person. Moreover, Jorge Pelayo deliberated in his car for approximately 11 seconds after Officer Klopping first began shouting commands at the scene. This was more than an ample opportunity for Jorge Pelayo to remove his weapon and leave it in the car, or get on the ground and surrender. The fact that Jorge Pelayo did none of those things reasonably indicate that Jorge Pelayo intended to engage the officers and to use his weapon in the process.

¹⁰ This review is sensitive to the fact that BWC footage may distort the appearance of the matters it records and that Officer Klopping had a different view than the BWC mechanism mounted upon his chest.

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Moreover, the *appearance* of an imminent threat posed to the officers is clear, regardless of Jorge Pelayo's actual knowledge and intent. The facts do beg the question: Why would Jorge Pelayo reach for an *unloaded* weapon in the presence of officers? It is possible that Jorge Pelayo was reaching for the gun to discard it. It is possible that Jorge Pelayo may have been dropping the items he was holding to prepare to run. By the same token, it is possible that Jorge Pelayo intended to point the weapon at the officers. He might have dropped his spray cans to have unfettered access to his gun. Also, that Jorge Pelayo seemed to put up his left hand and sheepishly put up the right hand could indicate a ploy by Jorge Pelayo to feign compliance, to delay any action by the officers until he could get a hand on his own weapon. Ultimately, it cannot be definitely known *why* Jorge Pelayo reached for his unloaded weapon. It cannot be known whether Jorge Pelayo knew the weapon wasn't loaded. The post-shooting examination of Jorge Pelayo's pistol and FCC's located in his car support a conclusion that the gun was previously loaded and fired within the last 15 days, and perhaps that Jorge Pelayo believed his gun was loaded at the time of the incident. Indeed, Jorge Pelayo wielded his handgun to intimidate the residents of 1142 N. L. Street, as if he believed the gun was loaded. As such, Jorge Pelayo presented an apparent imminent threat.

To reframe, this dire situation unfolded in a residential area at nighttime. There were numerous cars parked along the road, supporting a reasonable conclusion that there were many people nearby, though probably inside the residences there. Canvassing officers did interview several neighbors who did hear the commotion and the shots. The officers were advised by dispatch that the young suspect was both armed and had been drinking. All the witnesses who saw Jorge Pelayo's gun, saw it in Jorge Pelayo's hands. Jorge Pelayo intentionally used his gun to intimidate the witnesses. All the witnesses who saw Jorge Pelayo were particularly afraid of him *because* he had a gun. The fact that the gun was actually retrieved within feet¹¹ of where Jorge Pelayo fell support a conclusion, at a minimum, that Jorge Pelayo had the gun on his person at the time he was shot. Jorge Pelayo made a conscious decision to confront the officers, with his gun on his person. Had Jorge Pelayo fired at the officers, many innocents would be at the mercy of his potentially impaired hands. In addition to the civilians in the surrounding homes, Witnesses #6 and #8 were outside and within feet of the officers. As such, an appreciation of the facts from an objective standpoint leads to a similar conclusion that each officer reasonably believed that he needed to use deadly force to protect himself, his partner, Witnesses #6 and #8, and other civilians in close proximity.

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. With these principles in mind, that Jorge Pelayo's gun was *not* loaded is precisely a factor that is available only with the aforementioned 20/20 vision of

¹¹ A calculation of the distance between the gun and the blood spots in the driveway of 1142 N. L. Street, based on the reference points marked by Det. Oldendorf, is approximately 12-13 feet in a southwesterly direction. Therefore, Officer Klopping's estimation that the gun was about five feet from where Jorge Pelayo fell is within reason.

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hindsight and cannot be considered. To the best of their knowledge, officers were confronted with an armed, impaired and defiant young individual in a dense residential area at nighttime. If it was loaded, it would have taken mere seconds for Jorge Pelayo to fire a shot. Any shot taken at that particular time and place would have had the potential of being deadly. If the officers had a reason to believe that Jorge Pelayo's gun was *not* loaded, the analysis might be different. But as the matter stands, there was no way for the officers to know whether the Jorge Pelayo's gun was loaded. This was a dynamic and rapidly changing incident, involving many civilians in the immediate vicinity of a resistant and fleeing armed suspect. The officers had no choice but to act swiftly to defend against the perceived imminent danger to themselves and the civilians. As such, the necessity of the use of deadly force by the officers cannot be successfully second-guessed.

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

CONCLUSION

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Officer Jeramy Klopping and Officer Paul Carranza was justifiable in self-defense or the defense of others. Accordingly, no criminal liability attaches in this case.

Submitted By:
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303 West Third Street
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Dated: December 17, 2019

