



PUBLIC RELEASE MEMORANDUM

DATE: March 15, 2021

SUBJECT: Officer Involved Shooting (Fatal)

Officer: Deputy Kyle Schuler
San Bernardino Sheriff's Department

Involved Subject: Darrel Allen (Deceased)
Date of Birth 06/22/1987
Redlands, CA

Date of Incident: July 10, 2019

Incident location: Bartlett Ave & Poinciana Rd
Adelanto City, CA 92301

DA STAR #: 2020-00-4027

Investigating Agency: San Bernardino Sheriff's Department
Case Agent: Detective K. McCurdy
DR #: 241901674

PREAMBLE

This was a fatal officer involved shooting by a police officer from the San Bernardino Sheriff's Department. The shooting was investigated by the San Bernardino Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, and audio recordings submitted by the San Bernardino Sheriff's Department, DR# 241901674.

PRINCIPAL INVOLVED PARTIES

Darrel James Allen, DOB: 06/22/1987, of Redlands, California was killed during the incident under review.

Deputy Kyle Schuler of the San Bernardino Sheriff's Department was the deputy sheriff involved in the shooting of Darrel James Allen.

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SCENE

This incident occurred on July 10, 2019, at around 11:10 am. Location of occurrence was Bartlett Avenue and Poinciana Road in the City of Adelanto, California.

BACKGROUND INFORMATION

Darrel James Allen has a prior criminal history that includes convictions of offenses listed below:

2007, 242 of the Penal Code, Battery, Orange County Case number 06NM08016, a misdemeanor.

2007, 148.9(A) of the Penal Code, False ID to Specific Peace Officers, Orange County Case number 06NM10084, a misdemeanor.

2009, 2800.1(A) of the Penal Code, Evading Peace Officer, Orange County Case number 09NM04108, a misdemeanor.

2010, 664/211 of the Penal Code, Attempted Second Degree Robbery, Orange County Case number 09NF2732, a felony.

2012, 12021(A)(1) & 186.22(A) of the Penal Code, Felon/Etc. Possess Firearm & Participate in Crim Street Gang, Orange County Case number 10NF2795, a felony.

FACTUAL SUMMARY

On Wednesday, July 10, 2019, at 11:11 a.m., the San Bernardino County Sheriff's Department received a call from a female victim. The victim said she had been hit, choked, and pushed by her boyfriend, Darrel Allen. The victim said Allen had left the location on foot, and he was wearing a white t-shirt and red and white pants.

Deputy Kyle Schuler and Deputy Jared Rodgers were dispatched to the location, which was in the 18000 block of Poinciana Road in the city of Adelanto. Deputy Schuler arrived at about 11:17 a.m. and Deputy Rodgers arrived about 11:25 a.m.

After contacting the victim, Deputies Schuler and Rodgers began checking the area for Allen. Deputy Schuler, who was in his full "Class A" San Bernardino County Sheriff's Deputy's uniform, walked to a nearby apartment building also located in the 18000 block of Poinciana Road. Deputy Schuler approached the south side of the building and checked for any unsecured doors where Allen may have gone.

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Deputy Schuler saw two green doors on the first floor of the apartment complex near a staircase. Deputy Schuler tried to open the door, by pulling on the door handle. He felt someone holding the door handle from inside, preventing the door from being opened.

Deputy Schuler took a step back and the door swung open. Deputy Schuler was then face-to-face with Allen, who was less than two feet away. Allen moved towards Deputy Schuler while he pointed a 4-inch long serrated knife directly at Deputy Schuler.

Deputy Schuler backed up as Allen advanced toward him. After moving about three to four feet backwards, Deputy Schuler drew his firearm, pointed it, and according to Deputy Schuler's recollection, he fired approximately four shots at Allen. Allen continued advancing in an angry and aggressive manner with the knife still raised and pointed at Deputy Schuler, despite the rounds fired at him. As Allen moved toward Deputy Schuler, Deputy Schuler fired about four more rounds at Allen, according to Deputy Schuler's recollection. Allen fell to the ground. Deputy Schuler did not fire any more rounds at Allen.

Deputy Schuler used his radio to notify the dispatchers and other deputies he had just been involved in a shooting, and he requested medical personnel be sent to the location. Later, Detective McCurdy recovered and analyzed the magazine that was inside Deputy Schuler's firearm at the time of the shooting. There were seven live rounds still inside the magazine which meant Deputy Schuler fired eleven of the eighteen rounds inside his magazine during the shooting.

Deputy Rodger immediately arrived at Deputy Schuler's location. He saw Allen on the ground with the knife near his body. Deputy Rodgers tossed the knife away from Allen, and began life saving measures on Allen. Allen was treated at the scene by emergency medical and fire personnel. He was transported to Victor Valley Global Medical Center in the city of Victorville for treatment. Allen succumbed to his injuries and was pronounced deceased.

WITNESSES AND CORROBORATION

On July 15, 2019, at approximately 1:33 in the afternoon, **Deputy Kyle Schuler** was interviewed by Detective Kevin McCurdy.

Deputy Schuler is a deputy sheriff assigned to the San Bernardino County Sheriff's Department, Victor Valley Station. On July 10, 2019, Deputy Schuler came on duty assigned to uniformed patrol at approximately 7:00 a.m. Deputy Schuler was wearing his full "Class A" uniform coupled with a duty belt that included pepper spray, an RCB baton, and a Glock 17 9-millimeter semi-automatic firearm.

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At 11:00 a.m. on July 10, 2019, Deputy Schuler responded to a report of a domestic disturbance at an apartment complex on Poinciana Road in the City of Adelanto. Deputy Schuler arrived on scene at approximately 11:17 a.m. and contacted Victim.

Victim told Deputy Schuler she had been choked and thrown to the ground by her boyfriend, later identified as Allen. Deputy Schuler conducted an area check for Allen with no results. Deputy Schuler then returned to Victim and obtained a formal statement from her regarding the domestic disturbance call.

Victim told Deputy Schuler that Allen came to Victim's apartment and accused her of cheating on him. Allen then choked Victim and bear hugged her. Victim was able to get away from Allen but then Allen grabbed Victim by the hair and threw her to the ground. Victim had redness to her neck consistent with being choked and told Deputy Schuler this was not the first time Allen had physically assaulted her. While interviewing Victim, Deputy Jared Rodgers arrived on scene to assist Deputy Schuler. Before leaving the incident location, Deputy Schuler requested Deputy Rodgers assist him in conducting a final area check for Allen before they left the scene due to concern for the Victim's safety if Allen were to return to the residence.

Deputy Schuler and Deputy Rodgers walked from the incident location of the domestic disturbance to an apartment complex across the street. Deputy Rodgers went around the apartment building (northwest) while Deputy Schuler approached the south side of the apartment building. Deputy Schuler approached a staircase with two doors underneath it. Deputy Schuler observed the door farthest to the west (left) and noticed it did not appear to be fully closed. Deputy Schuler grabbed the door handle and attempted to open it. As he pushed in, he noticed slight resistance as if there was something behind the door preventing it from opening all the way.

Deputy Schuler reached down and put the hood¹ down on his holster but did not unholster the firearm. Deputy Schuler then attempted to activate his belt recorder. However, before Deputy Schuler could do that, the door swung open inwards and Allen was standing in the doorway approximately 1-2 feet away from Deputy Schuler. Allen had both hands up near his face with a large serrated kitchen knife in his left hand and his right hand balled in a fist. The tip of the blade of the knife was pointed at Deputy Schuler in a jabbing position. Allen had his mouth open and appeared to be gritting his teeth with an angry/aggressive look on his face.

Deputy Schuler backpedaled and Allen quickly advanced towards Deputy Schuler. Deputy Schuler reached for his firearm and fired what he believed was approximately four rounds from the hip while Allen advanced towards him. Deputy Schuler did not believe that the initial shots he fired had any effect on Allen as he

¹ A hood is a retention mechanism on a holster to keep the firearm securely in the holster.

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continued to advance towards Deputy Schuler with the knife up and pointed at him. Deputy Schuler was able to continue to raise the firearm, extend his arms and deliver approximately four more rounds.

Allen then fell to the ground and landed on his back. Deputy Schuler immediately stopped firing and radioed dispatch "shots fired" and requested immediate medical assistance. Deputy Rodgers responded to the area a few seconds later with his firearm drawn but did not fire his weapon. Deputy Rodgers threw the knife Allen had away from Allen and administered first aid to Allen. Deputy Schuler kept his firearm out in the low ready position and performed crowd control until additional units, fire, and paramedics arrived on scene.

Deputy Schuler estimated approximately five seconds passed between the time he fired his weapon at Allen to the time he stopped firing his weapon at Allen. While Deputy Schuler was able to create a little space (approximately 3 to 4 feet) when he backpedaled and first fired, Allen continued to advance towards him with the knife until he was shot and fell to the ground.

On July 10, 2019, at approximately 7:05 in the evening, **Deputy Craig Vanden-Bossche** was interviewed by Detective Gerry Moreno.

Deputy Craig Vanden-Bossche is a deputy sheriff assigned to the San Bernardino County Sheriff's Department, Adelanto Station. On Wednesday, July 10, 2019, Vanden-Bossche began his shift at 11:00 a.m. At an unknown time, Vanden-Bossche heard over Deputy Kyle Schuler conducted a name inquiry for a "Darrel Allen" over the air. Dispatch broadcasted Allen had an active unknown in-county warrant for his arrest.

An unknown time later, Deputy Schuler broadcasted, "shots fired, shots fired" over the radio, along with the location of Bartlett Avenue and Poinciana Road. According to the call history, Deputy Schuler broadcasted shots fired at 11:42 a.m. Immediately after Vanden-Bossche heard "shots fired," an unknown deputy asked for medical aid to respond. Vanden-Bossche responded to the location alone in about two minutes.

Vanden-Bossche saw a large crowd of between 25-30 subjects east of an apartment building located at 18000 block of Poinciana Road. Deputy Schuler stood between Allen, Deputy Rodgers, and the crowd. Allen was on the ground while Deputy Rodgers knelt next him. The crowd appeared angry and upset.

Deputy Schuler held his department-issued firearm at a low ready position with the barrel pointed at the ground. Deputy Rodgers attempted life saving measures on Allen. Deputy Rodgers had applied an Israeli bandage around Allen's upper torso area.

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Deputy Rodgers also applied a tourniquet to Allen's left upper arm, around his deltoid area.

Deputy Rodgers told Vanden-Bossche he did not feel a pulse and began cardiopulmonary resuscitation (CPR) on Allen. Deputy Rodgers asked Vanden-Bossche to retrieve a trauma kit from his patrol vehicle which Deputy Vanden-Bossche did. Upon return, Deputy Rodgers applied combat gauze to Allen while Deputy Vanden-Bossche applied a chest seal to Allen's chest.

Deputy Vanden-Bossche observed a metal kitchen steak knife with serrated edges and a black handle to the northwest of Deputy Rodgers, on the gravel, south of a bush. Deputy David Moore arrived on scene to assist and applied a chest seal to Allen's chest. A short time later, American Medical Response (AMR) arrived. Deputy Rodgers began an additional round of CPR on Allen.

Deputies Vanden-Bossche, Moore, and Rodgers, and AMR paramedics placed Allen onto a gurney and into an ambulance. Allen was then transported to Victor Valley Global Medical Center.

On July 10, 2019, at approximately 5:00 p.m., **Deputy Jared Rodgers**, was interviewed by Detective Gerry Moreno.

Deputy Rodgers was on uniformed patrol on July 10, 2019, wearing his "Class A" uniform. Deputy Rodgers responded to an apartment complex on Poinciana Road in Adelanto regarding a 415-domestic call. Deputy Rodgers arrived on scene and contacted Deputy Schuler, who asked Deputy Rodgers to assist with an area search for Allen.

Deputy Schuler and Deputy Rodgers walked to an apartment building across the street from the incident location of the domestic call. Deputy Rodgers headed north between the first two apartment buildings while Deputy Schuler headed west. At some point, Deputy Rodgers lost visual of Deputy Schuler. While searching for Allen, Deputy Rodgers heard approximately eight to ten gunshots in quick cadence coming from the opposite side of the apartment building he and Deputy Schuler were searching.

Deputy Rodgers ran to the location of the gunshots and heard Deputy Schuler put out a "shots fired" call to dispatch. Deputy Rodgers saw Deputy Schuler with his service firearm drawn. Deputy Rodgers then saw Allen lying on his back on the ground. Deputy Schuler was giving Allen commands to "drop the knife" and "don't reach for it (knife)." Deputy Rodgers observed a 3 to 4-inch serrated kitchen knife with a black handle near Allen's right shoulder.

Deputy Rodgers grabbed the knife and tossed it away from Allen and started to render first aid to Allen. Deputy Rodgers continued to render aid until fire personnel and

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paramedics arrived on scene. Although Deputy Rodgers did remove his firearm when he initially heard the eight to ten gunshots, he re-holstered his service weapon after moving the knife away from Allen. At no time did Deputy Rodgers ever discharge his firearm during this incident.

On July 10, 2019, at approximately 6:58 p.m., **Deputy David Moore**, was interviewed by Detective E. Dyberg.

Deputy Moore is a sheriff's deputy with the San Bernardino County Sheriff's Department assigned to the Adelanto Station. On July 10, 2019, Deputy Moore heard dispatch broadcast a report of a domestic disturbance in the area of Poinciana Road. The suspect involved had fled the location. After clearing a tow, Deputy Moore drove towards the call. Upon arrival, Deputies Schuler and Rodgers conducted an area check for the suspect. Deputy Moore preempted from the call at that time.

An unknown time later, Deputy Moore heard Schuler broadcast over the radio. Schuler had a panicked voice say something like "subject uncooperative, shots fired, and the suspect had a knife coming towards us." Deputy Moore immediately responded to Schuler's location. While in route, Deputy Moore heard Schuler broadcast a request for medical aid, crowd control, and trauma kits.

Upon arrival, Deputy Moore observed Deputies Schuler, Rodgers, Vonden-Bossche, and Sgt. Daniel Rodriguez already on scene. Deputy Rodgers was performing CPR on Allen. Deputy Schuler had his gun drawn and was performing crowd control. Allen had a chest seal on a wound and a tourniquet applied to his upper left arm. Deputy Moore observed a knife to the left of Allen's body, northwest of his head. American Medical Response (AMR) arrived and transported Allen to the hospital.

On September 3, 2019, at approximately 6:50 in the evening, **Victim** was interviewed by Detective Eric Ogaz and Detective N. Craig. Victim was not interviewed on July 10, 2019 as she relocated immediately to Long Beach for safety reasons.

Victim knew Allen for approximately 12 years. Allen and Victim have a child together. In 2017, Victim indicated she was physically assaulted by Allen. In July 2019, Allen was living across the street from Victim in an apartment complex located at the 18000 block of Poinciana Road.

On July 10, 2019, at approximately 10:00 a.m., Allen and Victim were together in Victim's apartment located on the 18000 block of Poinciana Road in Adelanto. Victim and Allen argued, and Allen physically assaulted her. Allen choked her, pulled her hair, bearhugged her and threw her to the ground. Victim subsequently called the police. Allen told Victim not to call the police. After Victim called the police, Allen left Victim's apartment. Allen opened the damaged front door of Victim's apartment with a knife that

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was usually kept at the front door and used for opening the door. While Victim did not see Allen leave with the knife, she never saw the knife again.

A San Bernardino County Sheriff's Deputy arrived on scene and spoke with Victim about the physical assault. Victim told the deputy the direction Allen left in. The deputy gave Victim his business card and instructed Victim to call him if Allen returned.

Victim stated she watched from the front doorway of her apartment (less than 100 yards away and directly across the street from where the lethal force encounter occurred) as two deputies began searching the apartment building located across the street from her. Victim stated she saw Allen walk away from a first-floor washroom wearing just sweatpants and no shirt. Victim said the two deputies saw Allen, but the deputies did not give Allen any commands. Victim stated she saw Allen put his hands in the air while unarmed and walk backwards towards the two deputies. Victim stated she saw one deputy shoot Allen in the back three times and Allen immediately fell backwards to the ground². Victim heard the deputies yell, "Don't move. Don't move," before a deputy fired several shots at Allen's chest.

On September 3, 2019, at approximately 3:37 in the afternoon, **Witness #1**, was interviewed by Detective E. Ogaz.

On the morning of July 10, 2019, Witness #1 received a phone call from his father, Witness #2. Witness #2 said Allen struck Witness #1's sister, Victim. Witness #1 and his brother, Witness #3, drove to Witness #2's residence to check on Victim.

Upon arrival, Witness #1 observed deputies in front of Witness #2's residence. An unknown deputy told Witness #1 he was going to search the area for Allen. Witness #1 observed deputies walk to an apartment building across the street. Witness #1 heard an unknown deputy by the apartment building of the complex yell, "He has a knife." Witness #1 saw a deputy standing in front of Allen and one deputy in an area behind Allen. Allen ran toward the deputy who was in front of him and Witness #1 then heard 3-4 gunshots from two separate deputies³.

Immediately prior to the shooting, Witness #1 observed that Allen was approximately 3 feet away from the deputy standing directly in front of Allen. Witness #1 indicated that Allen "leaped" and ran toward the deputy or in the direction of the deputy that was standing in front of him before the shooting.

² The statement provided by Victim that she saw one deputy shoot Allen in the back three times is inconsistent with the autopsy performed by a Forensic Pathologist. Victim's statement is also inconsistent with the statements by deputies and it is inconsistent with statements from other witnesses.

³ Deputy Schuler stated that he fired his weapon multiple times at Allen. Deputy Rodgers, who was the only other deputy present at the time, did not discharge his weapon. Detective McCurdy, who recovered and analyzed the magazine, found no evidence that Deputy Rodgers fired his weapon.

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On July 11, 2019, at approximately 10:00 a.m., **Witness #4**, was interviewed by Detective E. Dyberg.

Witness #4's apartment was located south of the incident location. On July 10, 2019, Witness #4 was sitting in his parked vehicle in front of a location on 18000 Poinciana Road. At approximately 11:00 to 11:30 a.m., a marked sheriff's patrol vehicle arrived and parked approximately 250 feet away from Witness #4. The sheriff's deputy exited his patrol vehicle and spoke with a young lady Witness #4 did not know. The young lady pointed west across Poinciana Road toward a building. The deputy got in his patrol vehicle, drove around the neighborhood, then returned and spoke with the young lady again.

A second sheriff's patrol vehicle arrived on scene. The young lady pointed in the same direction to the apartment building across the street. The two sheriff's deputies crossed the street and headed towards the apartment building the young lady pointed at. One deputy went to the first-floor front door of the apartment the young lady pointed to and the second deputy walked around the apartment out of view.

Witness #4 saw the first deputy knock on a door that Witness #4 described as a laundry room. The laundry room door opened, and the deputy appeared to fall backward. The deputy was alone, and Witness #4 then heard three to four gunshots from a firearm in a fast cadence. After Witness #4 heard the gunshots, he heard the first deputy yell three to four times "Don't reach for the knife." Once Allen fell to the ground, the deputy did not fire any more rounds. After the shooting, Witness #4 saw the second deputy run around the building to assist the first deputy.

On September 3, 2019, at approximately 3:37 p.m., Detective E. Ogaz and Detective N. Craig interviewed **Witness #2**.

Witness #2 is Victim's father. Victim lived with Witness #2 at Witness #2's apartment located on the 18000 block of Poinciana Road in Adelanto. Victim was in a dating relationship and had a child with Allen. Witness #2 knew Allen to be a Crip gang member from Los Angeles. Witness #2 said that in the past, Allen had pulled a gun on Witness #2's son, Witness #3. Witness #2 said Allen has assaulted Victim approximately eight times in the past. Witness #2 believed Allen used drugs but did not know which one(s).

On July 10, 2019, while Witness #2 was at a Pick-A-Part in Victorville, Witness #2 got a call from a neighbor that Allen assaulted Victim. The neighbor told Witness #2 that Allen was at Witness #2's apartment at the 18000 block of Poinciana Road in Adelanto. Witness #2 immediately drove home to his apartment. Witness #2 did not tell Detective Ogaz and Detective Craig how long it took him to get from the Pick-A-Part in Victorville to his apartment in Adelanto. According to Google Maps, the distance between these two locations is 6.2 miles and takes approximately ten (10) minutes by

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vehicle. Witness #2 later learned that Victim had called 911 and reported the assault by Allen. Witness #2 said three deputies showed up, talked to Victim, and began to search for Allen.

Witness #2 looked directly across the street to the apartment complex where the lethal force encounter happened and saw two deputies walk around the south side of the apartment building. Witness #2 heard one deputy say, "Come out." Witness #2 then saw Allen walk away from a door or stairs of the first-floor apartment on the south side of the building. Allen looked "out of it" and walked with a knife in his hand.

The front door to Witness #2's apartment was broken, and his family used a knife to open the front door. On the day of the shooting, the knife which the family used to open the door was missing.

Witness #2 said Allen held the knife in his right hand at stomach height. Witness #2 heard the deputies yell, "Drop the knife" three times. The closest deputy was approximately ten (10) feet away from Allen. Allen did not drop the knife and continued walking east facing Witness #2's apartment with Allen's back facing the two deputies. After the third command from the deputy, the deputy closest to Allen fired approximately three shots at Allen. Witness #2 could not see the second deputy and did not know if the second deputy fired any shots.

Allen fell to the ground on his back with his head facing toward the two deputies. A deputy said, "Stop moving" two times. The same deputy who shot Allen the first time fired approximately ten (10) more shots at Allen. The deputies took approximately 120 seconds to approach Allen and begin cardiopulmonary resuscitation (CPR).

On September 3, 2019, at approximately 3:37 p.m., Detective E. Ogaz and Detective N. Craig interviewed **Witness #5**.

Witness #5 is Witness #2's brother and Victim's uncle. On July 10, 2019, Witness #5 received a call from Witness #2 asking for help regarding Allen having just assaulted Victim. Witness #5 went to the apartment between 9:50 a.m. and 10:00 a.m. Witness #5 saw a single deputy patrol vehicle on scene and believed deputies were across the street looking for Allen.

The deputies went directly across the street from Witness #2's apartment while Witness #5 sat in a chair in Witness #2's front yard watching the deputies. Witness #5 saw Allen walk east, coming from the southwest corner of the building. Allen was on the south side of the building. Witness #5 believed Allen was hiding near the southwest corner of the building somewhere.

Allen had a knife in his right hand and his hands were held level with his head. Witness #5 saw two deputies walk on the south side of the building. Witness #5 heard

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the deputies say "Drop the knife" three times. Allen did not drop the knife and continued walking south away from the deputies. Witness #5 then heard three gunshots in quick succession.

Witness #5 stated he saw Allen fall to the ground and heard deputies tell Allen, "Stop moving." Witness #5 stated he then heard six more quick gunshots after Allen was on the ground. Witness #5 heard a total of nine gunshots.

On July 11, 2019, at approximately 8:26 a.m., Detective G. Moreno interviewed **Witness #6.**

Witness #6's bottom level apartment is located on the west side of Poinciana Road north of where the lethal force encounter happened. On July 10, 2019, at approximately 11:00 a.m., Witness #6 exited her apartment to walk to her garage when she heard the green door leading to an empty laundry room close. Witness #6 believed someone was hiding inside.

Witness #6 went to her garage and saw an unknown police officer inside talking to Witness #6's husband. The police officer, later identified as Deputy Schuler, indicated Witness #6's husband possibly matched a suspect he was searching for, but Deputy Schuler then left. Witness #6 returned to the inside of her apartment.

A short time later, Witness #6 returned to her garage to check on her husband. Witness #6 saw police officers speaking to Victim across the street from Witness #6. Witness #6 grabbed her mail and returned to her apartment. Witness #6 then saw police walking towards her apartment. At approximately 11:30 a.m., Witness #6 exited her apartment and stood at the southeast wall looking west. Witness #6 saw Allen exit the empty laundry room and Deputy Schuler told Allen to place his hands up and drop the knife.

Witness #6 described the knife as a metal kitchen butter knife but did not know how long it was. As soon as Allen placed his hands up, he was shot. Allen dropped the knife before he raised his hands in the air and Witness #6 heard the noise the knife made when it landed on the ground.

Additional Information

Dispatch (CAD) logs corroborate Deputy Moore's statement as they show Deputy Schuler broadcast "shots fired; suspect had a knife coming towards us" over the air at 11:42:29 a.m.

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On July 10, 2019, at approximately 9:00 p.m., Detective E. Dyberg located a Facebook account titled, "Waterboy Slip." The account belonged to Allen. On July 10, 2019, at 11:16 a.m., the last post to the account was "I love u all take care." Deputy Kyle Schuler arrived on scene at 11:17 a.m., approximately one minute after the post.

Detective McCurdy recovered and analyzed the magazine that was inside Deputy Schuler's firearm at the time of the shooting. There were seven live rounds still inside the magazine which meant Deputy Schuler fired eleven (11) of the eighteen (18) rounds inside his magazine during the shooting.

Detective McCurdy located ten (10) fired cartridge casings (FCC's) at the incident location where Deputy Schuler fired his weapon. Each casing was 9-millimeter and matched Deputy Schuler's remaining ammunition in the magazine used during the shooting as well as his backup magazines.

During Allen's autopsy, Detective Lara was given six (6) 9-millimeter bullets/bullet fragments recovered from various locations of Allen's body.

Weapon

A black-handled serrated kitchen knife with a 4-inch long blade was located on the ground in close proximity to Allen's person at the incident location immediately after the shooting.

De-escalation

Upon review, based on the evidence, it was clear that the incident under review unfolded within just seconds. As soon as Deputy Schuler pulled on the handle to the door that Allen was holding closed, Allen opened the door without any warning. At that moment, Allen, immediately advanced upon Deputy Schuler. Allen held a knife with his right hand and pointed the knife directly at Deputy Schuler while Allen had an aggressive look on his face. Deputy Schuler, who feared he would be immediately stabbed, did not have sufficient time to give Allen commands. Deputy Schuler described that when the door swung open, Allen was only one to two feet from him. Deputy Schuler tried to de-escalate the situation by moving backwards to create some space between them, but given the way that Allen advanced on him, it was virtually impossible for him to do so.⁴ In addition, there was a fence behind Deputy Schuler that would have impeded his ability to continue backpedaling. Deputy Schuler did not believe that he had sufficient time to use pepper spray and/or a Taser given how close Allen was to him.

Injuries

⁴ Witness #1, who is the brother of Victim, described that Allen ran towards the deputy directly in front of him. He provided further clarification by describing that Allen "leaped" at the deputy.

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Allen was transported to Victor Valley Global Medical Center in the City of Victorville for treatment. Allen succumbed to his injuries and was pronounced deceased at the medical center. During the autopsy, the Forensic Pathologist observed eleven (11) gunshot wounds to Allen, eight of the gunshot wounds were entry and three of the gunshot wounds were exit. Specifically, Allen sustained the following injuries: gunshot wound to right upper chest (entry wound), gunshot wound to left abdomen (entry wound), gunshot wound to left upper back (entry wound), gunshot wound to left shoulder (front entry wound and exited at the elbow), gunshot wound to left forearm (entry wound and exited the left forearm), gunshot wound to left wrist (entry wound and exited the soft tissue area), two separate gunshot wounds to left upper thigh (entry wound).

The autopsy results indicate there was only one gunshot wound on Allen's left upper back that was determined to be an entry wound.⁵ The other gunshot wounds entered the front of his body. The placement of these gunshot wounds is evidence that Allen was facing Deputy Schuler at the time of the shooting. If Allen was being shot in the front of his body, as the evidence suggests, it would be expected that Allen would attempt to turn away, thus explaining the gunshot wound to Allen's upper back and the entry wound to left upper back. In addition, some civilian witnesses indicated both Deputy Schuler and Deputy Rodgers shot Allen. It should be noted that the physical evidence, the autopsy examination, and the examination of the firearms, indicate there was no evidence to suggest Allen was shot by more than one deputy.

APPLICABLE LEGAL STANDARDS

Assault With A Deadly Weapon

Like other types of assault, the crime of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1) (section 245(a)(1)) requires only "the general intent to willfully commit an act the direct, natural and probable consequences of which if successfully completed would be the injury of another." (*People v. Rocha* (1971) 3 Cal.3d 893, 899; similarly, see *People v. Colantuono* (1994) 7 Cal.4th 206, 214.)

[W]e hold that assault does not require a specific intent to cause injury or a

⁵ According to research conducted by Force Science Institute, the average person will take .89 seconds to complete a 180-degree turn and approximately 1.23 seconds to fall to the ground after being shot. Their research also revealed that the average police officer completes one trigger pull every .06 seconds and that the average police officer will take .3521 seconds to stop shooting a firearm in response to stimuli indicating it is safe to do so. This lapse in time would allow an officer to fire approximately six additional rounds before a suspect has fallen to the ground after being shot. Force Science Institute research on reaction time demonstrated that on average a police officer will fire two additional rounds after making the decision to stop firing. Based on this research, Deputy Schuler would likely have fired two additional rounds after making the decision to stop shooting. It is reasonable to believe Allen would have turned away from Deputy Schuler in response to being shot and the Force Science Institute studies on reaction time demonstrate how the single gunshot wound to Allen's upper back could have occurred.

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subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.

(*People v. Williams* (2001) 26 Cal.4th 779, 790; see also *People v. Golde* (2008) 163 Cal.App.4th 101, 108.) “This defines the mental state as a species of negligent conduct, a negligent assault. Where the negligent conduct involves the use of a deadly weapon ... the offense is assault with a deadly weapon.” (*People v. Wright* (2002) 100 Cal.App.4th 703, 706.)

As to the “deadly weapon” theory of Penal Code section 245(a)(1), some objects, such as dirks and blackjacks, are deadly weapons as a matter of law. (*In re D.T.* (2015) 237 Cal.App.4th 693, 698; *People v. Brown* (2012) 210 Cal.App.4th 1, 6.) But any object can be a deadly weapon when used in a manner capable of producing death or great bodily injury. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029; *People v. Brown, supra*, 210 Cal.App.4th at pp. 7, 11; *In re Brandon T.* (2011) 191 Cal.App.4th 1491, 1496.) In determining whether an object not inherently deadly becomes so, the trier of fact may look at the nature of the weapon, the manner of its use, and all other factors that are relevant to the issue. (*In re D.T., supra*, 237 Cal.App.4th at p. 699; *In re Jose R.* (1982) 137 Cal.App.3d 269, 276-276.) The question is essentially one for the trier of fact. (*Id.* at p. 277; cf. *People v. Page* (2004) 123 Cal.App.4th 1466, 1473 [sharp pencil held up to neck]; *People v. Henderson* (1999) 76 Cal.App.4th 453, 467-470 [pit bull can be a deadly weapon under Pen. Code, § 417.8]; *People v. Simons* (1996) 42 Cal.App.4th 1100, 1106-1108 [screwdriver can be a deadly weapon under Pen. Code, § 417.8]; but see *In re Brandon T., supra*, 191 Cal.App.4th at pp. 1496-1498 [small rounded butter knife not deadly weapon].)

Assault with a deadly weapon does not require that the defendant actually try to use the weapon on the victim’s person. The test is whether the defendant demonstrates the “present ability” to complete the attack. The present ability element is satisfied when a defendant has attained the means and location to strike immediately, which means that the defendant must have the ability to inflict injury on the present occasion although the defendant need not have the ability to inflict injury instantaneously. (*People v. Chance* (2008) 44 Cal.4th 1164.) “Numerous California cases establish that an assault may be committed even if the defendant is several steps away from actually inflicting injury, or if the victim is in a protected position so that injury would not be “immediate,” in the strictest sense of that term.” (*Id.* at p. 1168.)

As this court explained more than a century ago, “Holding up a fist in a menacing manner, drawing a sword, or bayonet, presenting a gun at a person who is within its range, have been held to constitute an assault. So, any other similar act, accompanied by such circumstances as denote an intention existing at the time, coupled with a present ability of using actual violence against the

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person of another, will be considered an assault.” [Citations.]

(*People v. Colantuono* (1994) 7 Cal.4th 206, 219.)

The defendant in *People v. Chance, supra*, 44 Cal.4th 1164 was held to have the “present ability” to inflict injury, as required for the crime of assault on police officer, even though there was no round in firing chamber of his gun and he did not point gun at officer. The defendant hid behind a trailer and pointed the loaded gun at a place where he believed Officer Murdoch would appear. The officer instead approached defendant from behind thwarting the defendant’s plan.

Defendant contends he lacked the present ability to inflict injury not only because he was aiming in the opposite direction from Murdoch, but also because Murdoch had him covered and would have shot him first. However, this argument cannot be squared with cases demonstrating that an assault may occur even when the infliction of injury is prevented by environmental conditions or by steps taken by victims to protect themselves.

(*Id.* at p. 1173.)

Here, Allen’s possession of a 4-inch steak knife while quickly advancing towards Deputy Schuler gave him the means and the opportunity to strike “immediately” at Deputy Schuler. Deputy Schuler’s evasive maneuver in backing away from Allen while giving Allen commands to drop the knife, did not prevent Allen from having the “present ability” to complete his assault of Deputy Schuler.

Other case examples also illustrate when a defendant’s behavior is sufficient to complete the crime of assault with a deadly weapon. In *People v. Escobar* (1992) 11 Cal.App.4th 502, the appellate court upheld a conviction when the victim heard the defendant cock a loaded firearm, even though the gun was concealed in a leather purse, and the defendant never pointed the weapon. In *People v. Orr* (1974) 43 Cal.App.3d 666, the defendant pointed a loaded rifle at the victim, backed him into a ditch, then fled. The defendant’s conviction of assault with a deadly weapon was upheld. In *People v. Thompson* (1949) 93 Cal.App.2d 780, the defendant pointed a loaded pistol towards police officers and said he would not submit to arrest. Again, the conviction of assault with a deadly weapon was affirmed. (Similarly, see *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1326.)

In *People v. Nguyen* (2017) 12 Cal.App.5th 44, the appellate court upheld the defendant’s conviction for aggravated assault on a police officer when he wielded a large knife and stepped toward the officer, rejecting the argument that being 10 to 15 feet away deprived the defendant of the present ability to inflict injury. In the instant case, unlike in *Nguyen*, Allen was never more than three to four feet away from Deputy

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Schuler (as opposed to ten to fifteen feet in *Nguyen*) from the time Deputy Schuler contacted Allen to the time Deputy Schuler discharged his firearm.

Laws of Arrest

California Penal Code section 834a

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.

California Penal Code section 835

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

California Penal Code section 835a

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

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Laws of Self-Defense

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: "Homicide is justifiable when committed by any person in any of the following cases: (1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person...(4)

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When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed,...or in lawfully keeping and preserving the peace.” Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be sufficient to prevent injury to the party about to be injured, or the prevent injury to someone else. (Pen. Code §693.)

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the person act out of that fear. (*People v. Clark* (1982) 130 Cal.App.3d 371, 377.) “He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures.” (*People v. Collins, supra*, 189 Cal.App.2d at p. 588.)

CAL CRIM 3470 (REVISED 2012)
RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER

Self-defense is a defense to the unlawful killing of a human being. A person is not guilty of that/those crimes if he/she used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully;
2. The person reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The person used no more force than was reasonably necessary to defend against that danger.

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When deciding whether a person's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

The person's belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A person is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

USE OF DEADLY FORCE BY A PEACE OFFICER

Authorization of the use of deadly force is analyzed under the Fourth Amendment's "objective reasonableness" standard. (*Graham v. Conner*, 490 US 386 (1989)).

In these decisions, the US Supreme Court explained "it is unreasonable for an officer to 'seize an unarmed, non-dangerous suspect by shooting him dead.... However, where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force.'" (*Tennessee v. Garner*, *supra*, 471 U.S. at p. 11.)

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner*, *supra*, 490 U.S. at p. 396.) It is also highly deferential to the police officer's need to protect himself and others. 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. (*Id.* at p. 396-397.) The question is whether the officer's actions are "objectively reasonable" considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 397.)

The US Supreme Court in *Graham* set forth factors that should be considered in determining reasonableness: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. (*Graham v. Connor*, *supra*, 490 U.S. at p. 396.) The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (*Tennessee v. Garner* (1985) 471 U.S. at p. 8-9. The most important of these factors is the threat posed by the suspect. (*Smith v. City of Hemet* (2005) 394 F.3d 689,702.)

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Thus, under *Graham*, the high court advised 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.” (*Smith v. Freland* (1992) 954 F.2d 343, 347.)

Reasonableness: The Two Prongs

Penal Code section 197, subdivision (3) requires that one who employs lethal force have a “reasonable ground to apprehend” a design to commit a felony or to do some great bodily injury. Further, Penal Code section 198 requires that such fear be “sufficient to excite the fears of a reasonable person.” This is clearly an objective standard. In shorthand, perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093.)

When specific conduct is examined under the analytical standard of reasonableness the concepts of apparent necessity and mistake are invariably, and necessarily, discussed, for they are part of the same equation. “Reasonableness,” after all, implies potential human fallibility. The law recognizes, as to self-defense, that what is being put to the test is human reaction to emotionally charged, highly stressful events, not mathematical axioms, scientifically provable and capable of exact duplication.

While the test, as mandated by section 198, is objective, reasonableness is determined from the point of view of a reasonable person in the position of one acting in self-defense. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) We must take into consideration all the facts and circumstances that might be expected to operate in the persons mind. (*Ibid.*) Reasonableness is judged by how the situation appeared to the *person claiming self-defense*, not the person who was injured or killed as a result.

Imminence of Perceived Danger

“Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey, supra*, 13 Cal.4th at p. 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. Reasonableness and immediacy of threat are intertwined. Self-defense is based on the reasonable appearance of imminent peril of death, or serious bodily injury to the party assailed. In *People v. Aris* the trial court clarified that imminent peril means that the peril must have existed, or appeared to the person to have existed, at the very time the shot was fired. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1188 disapproved on another ground

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in *People v. Humphrey* (1996) 13 Cal.4th 1073.) This was later cited with approval by the California Supreme Court: "An imminent peril is one that, from appearances, must be instantly dealt with." (*In re Christian S.* (1994) 7 Cal. 4th 768,783 quoting *People v. Aris, supra*, 215 Cal.App.3d at p. 1187.)

The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate.

Retreat and Avoidance

Under California law one who is faced with an assault that conveys death or great bodily injury may stand his ground and employ lethal force in self-defense. There is no duty to retreat even if safety could have been achieved by retreating. (CALCRIM No. 3470.) Indeed, in California the retreat rule has been expanded to encompass a reasonably perceived necessity to pursue an assailant to secure oneself from danger. (See *People v. Holt* (1944) 25 Cal.2d 59, 63; *People v. Collins* (1961) 189 Cal. App.2d 575, 588.)

Nature and Level of Force

The right of self-defense is limited to the use of such force as is reasonable under the circumstances. (See *People v. Gleghorn* (1987) 193 Cal.App.3d 196, 200; *People v. Minifie, supra*, 13 Cal.4th at p. 1065; *People v. Moody* (1943) 62 Cal.App.2d 18,22.)

Case law does not impose a duty to use less lethal options. "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." (*People v. Collins, supra*, 189 Cal.App.2d at p. 578.)

The rationale for vesting the police officer with such discretion was explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the *least* intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers,

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and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.

Scott v. Henrich (1994) 39 F.3d 912, 915.

In summary, an honest and objectively reasonable belief that lethal force is necessary to avoid what appears to be an imminent threat of death or great bodily injury will justify the use of deadly force. This is true even if the person acting in self-defense could have safely withdrawn or had available to him a less lethal means of defense.

ANALYSIS

On July 10, 2019, at 11:11 a.m., Deputies Kyle Schuler and Jared Rodgers from the San Bernardino Sheriff's Department were dispatched to a report of a domestic battery at an apartment complex located on the 18000 block of Poinciana Road in the City of Adelanto. The female reporting party, Victim, indicated she had been physically assaulted by Allen. Deputy Schuler responded to the location and contacted Victim, who had an injury consistent with being choked by Allen.

Deputy Schuler broadcast Allen's name and description over his radio. Deputy Schuler learned via dispatch that Allen had an active felony warrant for a parole violation for a felony weapons conviction.

Deputy Schuler subsequently performed an area check at an apartment complex across the street from where Allen assaulted Victim after being directed to that location by Victim. Victim told Deputy Schuler that Allen ran to this particular apartment complex after Allen assaulted Victim. Deputy Schuler approached two doors under the staircase on the first floor of the apartment complex. Deputy Schuler checked the door on the left to ensure it was secure. As he attempted to open the door, he felt a slight resistance in the door as if something on the other side was preventing it from being opened.

Deputy Schuler put the hood down on his firearm and attempted to activate his audio belt recorder. Before he was able to activate his belt recorder, the door swung inward and Deputy Schuler observed Allen immediately in the doorway. Allen matched the physical description given to Deputy Schuler by Victim. Deputy Schuler was wearing a San Bernardino Sheriff Department uniform when he contacted Allen.

Allen had a knife gripped in his hand with the tip of the blade pointed towards Deputy Schuler. Allen's arms were both bent 90 degrees at his elbows and in a semi-fighting stance. Allen was gritting his teeth and appeared to have an angry/aggressive

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expression on his face. Deputy Schuler immediately backpedaled as Allen advanced towards him. After having backpedaled three to four feet, Deputy Schuler drew his service firearm while still backpedaling and fired approximately four shots from the hip approximately three to four feet away from Allen. Allen appeared unphased by the shots as he continued advancing towards Deputy Schuler with the knife still raised and pointed at Deputy Schuler despite the rounds fired at him.⁶ Deputy Schuler continued to backpedal with Allen still advancing toward him and fired approximately four more rounds at Allen.⁷ Deputy Schuler immediately stopped firing after Allen fell to the ground and radioed dispatch for medical assistance.⁸

In this case, Deputy Schuler had an honest and objectively reasonable belief that Allen posed an imminent threat of serious bodily injury or death. Deputy Schuler had been searching for a suspect involved in a domestic violence assault. Allen, who had held the door closed when Deputy Schuler tried to open it, swung the door open and was directly in front of Deputy Schuler, within one to two feet. Deputy Schuler had reached down to activate his belt recorder but was actually never able to because the door swung open. Allen had a large serrated kitchen knife in his left hand that was pointed directly at Deputy Schuler.⁹ Several witnesses interviewed after the shooting corroborated this by indicating they saw a knife in Allen's hand. It was reasonable for Deputy Schuler to believe Allen would use the knife against him in order to evade detainment and/or arrest for having just physically assaulted Victim.

Deputy Schuler tried to put some distance between himself and Allen immediately after the door swung open. However, Allen advanced towards Deputy Schuler in a very aggressive manner with the knife raised and pointed out at Deputy Schuler. Deputy Schuler was quickly backpedaling towards a four-foot-tall wooden fence which would have placed him at a disadvantage. Had Deputy Schuler backpedaled up against the fence, Deputy Schuler would have been forced to turn his back on Allen (exposing himself to serious bodily harm and/or death) to jump over the fence or attempt to retreat in another direction. Based upon the totality of the circumstances, Deputy Schuler had a reasonable belief that he faced imminent harm of being severely injured and/or killed by Allen. Deputy Schuler's belief of imminent harm was not only subjectively reasonable but also objectively reasonable.

Allen went to an extreme measure of pointing the knife at the deputy and Allen chose to quickly advance on Deputy Schuler. Even while Deputy Schuler backpedaled to get some distance from Allen, Allen continued in his extreme measures by continuing

⁶ In Deputy Schuler's interview, he stated that Allen never stopped and continued to press the entire time until he fell.

⁷ Deputy Schuler stated that all shots were fired while Deputy Schuler was back pedaling.

⁸ The distance that Allen had advanced from the doorway to the location where Allen fell was 14.9'.

⁹ Victim had stated that when Allen left after assaulting her, Allen opened the damaged front door of the apartment by using a knife that was usually kept at the front door and was used for the purpose of opening the door. Victim noted that although she did not see Allen leave with the knife, she did not see the knife again after Allen used it and left.

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to advance on Deputy Schuler. Allen's advancing was aggressive and purposeful. By pointing the knife at Deputy Schuler and quickly advancing toward Deputy Schuler, Allen dictated a circumstance where there was no feasible, safe or reasonable opportunity for the deputy to de-escalate or get to a position of safety. The decision to fire was made under tense, uncertain and rapidly evolving circumstances.

Immediacy is the "most important" *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. As stated above the threat of Allen was so imminent that Deputy Schuler had no other feasible option. It is expected that Deputy Schuler would have reasonably believed that Allen's advancing with a knife in an aggressive manner required that Deputy Schuler act instantly to avoid death or great bodily injury.¹⁰

The circumstances tend to indicate a "suicide by cop" plan chosen by Allen. One minute prior to Deputy Schuler arriving on scene, a Facebook post was made by Allen stating, "I love u all take care." The "suicide by cop" plan continued when Deputy Schuler located Allen. Allen chose to hold the knife in an aggressive manner and immediately advance on Deputy Schuler. Deputy Schuler indicated that Allen began advancing on the him after the deputy had only taken two strides backwards. In total Deputy Schuler took strides backwards for a total of approximately 15.9 feet while at the same time, Allen took strides forward (toward Deputy Schuler) for a total travel of 14.9 feet from the threshold of the door. This extensive distance covered by Allen shows the aggressiveness of his conduct. In fact, Deputy Schuler had backed close to the fence which was 21.7 feet from the threshold of the doorway. After the shooting, Deputy Schuler's magazine was found 20.8 feet from the threshold of the doorway. That indicates that Deputy Schuler backed up to within a foot of the fence. As Allen was facing toward the deputy, Allen would easily have been able to see the fence behind Deputy Schuler. In Allen's purposeful pursuit of the deputy, he almost completely backed the deputy into the fence which would have created an even more dangerous situation for Deputy Schuler had the deputy not acted so quickly.

Deputy Schuler had to act instantly to confront the danger posed by Allen, which was by all indications an immediate threat to kill the deputy. Based on the foregoing, the use of lethal force by Deputy Schuler is deemed to have been reasonably made and is also justifiable under Penal Code §§ 196 and 197.

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Deputy Schuler was justifiable in self-defense. Accordingly, no criminal liability based on the deputy's conduct attaches in this incident.

¹⁰ Deputy Schuler stated in his interview that he was scared and as Deputy Schuler was back pedaling, he thought for sure Allen was going to stab him.

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CONCLUSION

Based on the facts presented in the reports and the applicable law, Deputy Schuler's use of lethal force was a proper exercise of Deputy Schuler's right of self-defense and therefore his actions were legally justified.

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