



PUBLIC RELEASE MEMORANDUM

DATE: March 29, 2021

Subject: Fatal Officer-Involved Shooting

Involved Officers: Officer Joshua Fergot
San Bernardino Police Department

Officer Kevin Ramirez
San Bernardino Police Department

Involved Subject/DOB: Anthony Armenta
07/02/1998

Subject's Residence: San Bernardino, California

Incident Date: June 13, 2020
Incident Time: 8:29 p.m.

Case Agent/Agency: Detective Tony Silva
San Bernardino Police Department

Agency Report #: 2020-60812

DA STAR #: 2020-00-40944

TABLE OF CONTENTS

PREAMBLE	2
FACTUAL SUMMARY	2
STATEMENTS BY POLICE OFFICERS.....	4
Officer Joshua Fergot.....	4
Officer Kevin Ramirez	5
STATEMENTS BY CIVILIAN WITNESSES.....	8
Witness #1	8
Witness #2	8

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 2

Witness #3 9

Witness #4 10

INCIDENT AUDIO AND VIDEO 11

 911 Call 11

 Dispatch Recordings 12

 Body-Worn Camera 13

 Surveillance Video 20

INCIDENT SCENE INVESTIGATION 21

INJURED PARTY/DECEDENT 22

 Autopsy 23

 Toxicology 24

 Criminal History 24

APPLICABLE LEGAL PRINCIPLES 25

ANALYSIS 30

CONCLUSION 35

PREAMBLE

This was a fatal officer-involved shooting by officers from the San Bernardino Police Department. The shooting was investigated by the San Bernardino Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings from area surveillance video cameras, San Bernardino Police Department officers’ body-worn cameras, and civilian video, submitted by the San Bernardino Police Department.

FACTUAL SUMMARY

On June 13, 2020 at approximately 8:26 p.m., San Bernardino Police Department Officers Joshua Fergot and Kevin Ramirez were dispatched to the Exxon gas station located at the 2000 block of North Del Rosa Avenue in the city of San Bernardino, pursuant to a 911 call regarding a man with a gun.

The 911 caller advised dispatch there was a man waving around a black handgun outside the Exxon gas station. The man waving around the gun was described as either white or Hispanic, in his 20’s, wearing a burgundy sweater and dark blue pants. The 911 caller was female. During the 911 call, the dispatch operator heard a male voice in the

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 3

background say they did not know if the gun was real. This information was provided to the responding officers. As Officers Fergot and Ramirez arrived on scene at 8:29 p.m., the 911 caller advised dispatch the male was digging in a trash can at the gas station and that he still had the gun in his hand. This updated information was provided to Officers Fergot and Ramirez. The 911 caller then told dispatch the officers had arrived, and they had the right person.

When Officers Fergot and Ramirez pulled into the gas station, they saw a male wearing a burgundy sweater and dark pants digging in a trash can. That male was later identified as Anthony Armenta. Officer Fergot stopped his patrol unit approximately 42 feet from Armenta, stepped out and stood next to his unit behind the open driver's door. Officer Fergot told Armenta to show him his hands. In response to this command, Armenta turned to face Officer Fergot. Armenta had what appeared to be a small black semiautomatic handgun in his left hand. Officer Ramirez, who had gotten out of his patrol unit and begun approaching Armenta on foot also saw what he believed to be a small black semiautomatic handgun in Armenta's left hand. Officer Ramirez stopped and stood approximately 30 feet away from Armenta. When Officer Fergot and Officer Ramirez saw the gun in Armenta's left hand, they immediately began giving him orders to "drop the gun."

While the officers held Armenta at gunpoint and continued giving Armenta commands to drop the gun, Armenta replied, "I can't do that." Armenta also told the officers, "I'm the police." Officer Fergot gave 14 separate commands to Armenta and Officer Ramirez gave 13 separate commands to Armenta over the course of approximately 1 ½ minutes, but Armenta refused to drop the gun. After saying he was the police, Armenta quickly took a shooting stance, and with both hands gripping his gun, pointed it at Officer Fergot. Officer Fergot and Officer Ramirez fired their handguns at Armenta. Armenta was struck and fell to the ground. When Armenta fell to the ground, he dropped the gun. Armenta reached for the gun and Officers Fergot and Ramirez told him several times not to reach for the gun. Armenta then moved his body closer to the gun, laid his upper body over the top of the gun, and tucked his arms beneath his body. Officers Fergot and Ramirez held their positions, keeping an eye on Armenta as additional San Bernardino Police Department officers arrived on scene to assist. Officers Fergot and Ramirez, aided by Officers Koch and Martin, then approached Armenta. Armenta was placed into handcuffs and medical aid was cleared to come in and render aid. The gun Armenta had used was found to be a replica handgun.

At 8:46 p.m., Armenta was transported to Loma Linda University Medical Center for emergency medical treatment. At 9:44 in the evening, Armenta succumbed to his injuries and was pronounced deceased.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 4

STATEMENTS BY POLICE OFFICERS¹

On June 14, 2020, at approximately 2:42 a.m., **Officer Joshua Fergot** was interviewed by Detective A. Silva of the San Bernardino Police Department.

Officer Fergot was a police officer with the San Bernardino Police Department and was assigned to patrol on June 13, 2020. He was wearing a San Bernardino Police Department class "C" uniform which consisted of a short sleeved black polo shirt displaying his name, a San Bernardino Police Department cloth badge, San Bernardino Police Department patches on both sleeves, and black uniform pants. Officer Fergot's duty belt held his department issued 9 mm Glock 17 handgun in a holster and other tactical gear. Officer Fergot also wore a body camera and it was activated during his contact with Armenta. Officer Fergot's call sign was Charlie 15.

On this date, at approximately 8:26 p.m., Officer Fergot was at a call for service in the area of North Park Avenue and Date Street with Officer Kevin Ramirez. The reporting party in the call was unable to be located. Officer Fergot was clearing the call when he heard a "man with a gun" call come out over the radio. Dispatch warned Officers Fergot and Ramirez they were close to the reported location of the man with the gun, which was just around the corner from their location. The man with a gun was reported to be at the Exxon gas station located at the 2000 block of North Del Rosa Avenue. Officer Fergot was familiar with the area and knew it to be very unsafe because there have been multiple homicides, shootings, sexual assaults, robberies, and "man with a gun" calls in the area. Officer Fergot had responded to a shooting in the area within the last couple of weeks. Officer Fergot asked dispatch to send them the call and to provide him with the suspect's description. Officer Fergot drove slowly to the reported location in order to allow dispatch time to send him the call and for him to obtain all the circumstances. Officer Fergot asked dispatch to confirm the suspect's description and learned the suspect was described as a white male adult wearing a maroon² sweater and holding a handgun. Officer Fergot learned the suspect was digging through a trash can at the Exxon gas station. As Officer Fergot approached the gas station, he saw a male matching the suspect description digging through a trash can. The gas station was well lit and had very bright lights, "as bright as daylight."

Once on scene, Officer Fergot drove into the south driveway, the one closest to Del Rosa Avenue, and positioned his patrol unit northbound, facing the male suspect. Officer Ramirez also arrived on scene and pulled into the south side driveway closest to North Park Avenue, parking his vehicle approximately 150-200 feet away from Officer Fergot's vehicle. Officer Ramirez got out of his vehicle and walked closer to the suspect and was then approximately 50 feet northwest of Officer Fergot. The male suspect had his back to Officer Fergot as he dug into the trash can next to the fuel pumps with his right hand.

¹ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

² The 911 caller said the suspect was wearing a "burgundy" sweater; the CAD history listed the color as, "MAR."

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 5

On both sides of the fuel pumps, there were vehicles facing north, and there were civilians inside the vehicles.

As Officer Fergot exited his vehicle, he told the suspect (later identified as Anthony Armenta) to show him his hands. Officer Fergot was approximately 50 feet³ from Armenta. Officer Fergot believed Armenta heard him because he said it loudly and when he told Armenta to show him his hands, Armenta dug into the trash can one more time and then turned to face Officer Fergot. When Armenta turned to face Officer Fergot, Officer Fergot saw Armenta had a small black semi-automatic handgun in his left hand. The handgun looked like a pocket gun⁴ or subcompact gun the size of Armenta's hand. Armenta then turned back and released the pressure in his palm and let the gun swivel on his fingertip, holding it by the trigger guard.

Officer Fergot and Officer Ramirez both began ordering Armenta to drop the gun. Armenta made eye contact with Officer Fergot. As the gun dangled from Armenta's left finger, Officer Fergot ordered Armenta to drop the gun and to put the gun down. Officer Fergot believed he told Armenta approximately 10⁵ times to drop the gun or to put it down, but Armenta refused to comply. Armenta replied to Officer Fergot and said, "I can't do that." Officer Fergot continued telling Armenta to drop the gun and Armenta replied, "I am the police." Armenta then very quickly turned and took a shooting stance, squaring off his shoulders toward Officer Fergot, while thrusting both arms out in front of his body, and pointed the gun directly at Officer Fergot. Fearing for his life, and other civilians who were behind him, Officer Fergot shot Armenta. Officer Fergot believed he shot his duty weapon five times.⁶

Armenta collapsed to the ground after being shot but continued moving around on the ground. Armenta began reaching for the gun he had dropped and Officer Fergot ordered him to move away from the gun. Armenta did not grab ahold of the gun, but instead laid his chest on top of the gun. Armenta's hands were beneath his body, near his waist, where the officers could not see them. Officer Fergot continued holding lethal coverage on Armenta while he and Officer Ramirez waited for other officers to arrive in order to approach Armenta. When Officers Martin and Koch arrived, Officers Fergot, Ramirez, Martin, and Koch approached Armenta and placed him into handcuffs. Once Armenta was detained, they cleared medical to come into the scene. The fire department pulled in and immediately started treating Armenta.

On June 14, 2020, at approximately 4:12 a.m., **Officer Kevin Ramirez** was interviewed by Detective A. Silva of the San Bernardino Police Department.

³ Crime scene investigation revealed the distance was approximately 42 feet.

⁴A pocket pistol is any small, pocket-sized [semi-automatic pistol](#) (or less commonly [derringers](#), or small [revolvers](#)), suitable for [concealed carry](#) in either a coat, jacket or trouser pocket.¹ (Wikipedia.)

⁵ Body-cam footage revealed Officer Fergot told Armenta to drop the gun 14 times.

⁶ A count of the bullets remaining Officer Fergot's gun confirmed he fired it five times.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 6

On June 13, 2020, Officer Ramirez was working as a police officer with the San Bernardino Police Department. He was wearing a San Bernardino Police Department class "C" uniform which consisted of a short sleeved black polo shirt displaying his name, a San Bernardino Police Department cloth badge, San Bernardino Police Department patches on both sleeves, and uniform pants. Officer Ramirez's duty belt held his department issued 9 mm Glock 17 handgun in a holster and other tactical gear. Officer Ramirez also wore a body camera and it was activated during his contact with Armenta.

Officer Ramirez was assigned to patrol in the northeast area of the city on June 13, 2020. Officer Ramirez had worked in this specific area of the city for about one year. Being familiar with this area, Officer Ramirez knew there were often calls for service regarding transients, shootings, narcotics activity, and robberies. On this date, Officer Ramirez was at a call for service at the 2000 block of Park Avenue for a report of fraud. Just as he was about finished with that call, Officer Ramirez heard dispatch broadcast a man with a gun call in the area of Del Rosa Avenue and Date Street, at the Exxon gas station, which was just 100 feet away. The suspect in the man with a gun call was described as a white male wearing a burgundy or maroon colored sweater, to the front of the gas station, and waving a gun around at people. Officer Ramirez was close to that location and so he told dispatch to clear him and his partner, Officer Fergot, from the fraud call and to show them as being out at the location of the man with a gun call. Officer Ramirez followed behind Officer Fergot's patrol vehicle as they drove to the Exxon gas station. While he drove east on Date Street to the location, Officer Ramirez was given an update from dispatch that the male was now digging through a trash can at the gas station with the gun in his hand.

Upon arriving at the Exxon gas station, Officer Ramirez could clearly see the male with the burgundy colored sweater standing next to a trash can with something in his left hand. Officer Ramirez immediately turned into the first driveway on the south side of the gas station, stopping his patrol unit in a northeast direction, facing the male who was later identified as Anthony Armenta. Officer Fergot turned into the second driveway on the south side of the gas station, approaching Armenta in his patrol unit from the southeast end of the parking lot, approximately 80 feet away from Armenta. At the gas station, the lighting was very bright. Officer Ramirez looked closely at Armenta's left hand and saw Armenta was holding what appeared to a black semi-automatic handgun. Officer Ramirez was concerned Armenta could shoot someone, or grab someone and take them hostage, or that Armenta could shoot in his or his partner's direction. Because Armenta had a gun, Officer Ramirez got out of his patrol unit with his gun drawn and began giving Armenta orders to put the gun down. Officer Fergot also confirmed with Officer Ramirez that he also saw Armenta had a gun.

Officer Ramirez walked closer to Armenta while trying to find cover, which he found behind some concrete trash cans located just south of the gas station building. Officer Ramirez and Officer Fergot both continued ordering Armenta to put the gun down. As they gave Armenta commands, Officer Ramirez and Officer Fergot communicated with each other about watching their cross-fire and their backdrops. Officer Ramirez noticed

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 7

his backdrop, should he have to fire, was not clear because there was a vehicle by one of the gas pumps, so he moved over slightly to a safer position, so his backdrop was the freeway overpass, where no one was behind his line of sight.

Officer Fergot's patrol unit was facing north toward Armenta. Officer Fergot was "outside of the driver's door" of his vehicle.⁷ Officer Ramirez told Armenta, "You don't want to do this." Armenta did not seem to care to follow their commands. Armenta was moving his hands around erratically, causing Officer Ramirez to be in fear for his safety and for his partner's safety because Armenta had a gun in his left hand. Officer Ramirez and Officer Fergot continued ordering Armenta to drop the gun but Armenta refused to comply, causing the situation to escalate. Officer Ramirez believed he gave 10-12 commands to drop the gun over the course of 30-40 seconds.⁸ Officer Ramirez's commands were loud and clear, and he stood approximately 20-30 feet⁹ away from Armenta. Officer Ramirez could see Armenta was holding what appeared to be a semi-automatic black handgun with a three inch barrel; Armenta's fingers were clearly wrapped around the grip of the gun, but from where he stood, Officer Ramirez could not see where Armenta's left index finger was positioned on the gun.

As the officers continued ordering Armenta to drop the gun, Armenta told them, "I can't do that," and "I'm the police." Armenta then extended his arms to the front of his body, gripping the gun with both hands as if he was going to shoot the gun, and pointed it directly at Officer Fergot. Thinking Armenta was going to shoot Officer Fergot and fearing for Officer Fergot's life, Officer Ramirez fired his duty weapon at Armenta. Officer Ramirez believed he fired two to three¹⁰ rounds at Armenta.

After falling to the ground, Armenta continued to reach for his gun, which had fallen onto the ground nearby. Officer Ramirez and Officer Fergot continued giving commands to Armenta, telling him not to reach for the gun. Armenta moved his body over the top of the gun and tucked his hands underneath his body. Because Armenta was on top of the gun and they could not see his hands, Officers Ramirez and Fergot waited to approach Armenta until other responding units arrived to assist shortly thereafter, within a minute. Officer Ramirez asked Officer Fergot "if he was good" to make sure he had not been shot by Armenta.

When Officers Koch and Martin arrived, they approached Armenta while Officer Ramirez kept lethal coverage on him. Armenta was then handcuffed, and Officer Ramirez told dispatch the fire department was clear to come in to render aid to Armenta. Officer Martin

⁷ Officer Fergot's body-camera footage revealed Officer Fergot was behind his open driver's door, but was standing erect, with his head above the door moments before the officer-involved shooting.

⁸ Officer Ramirez's body-camera video footage revealed Officer Ramirez gave 14 separate commands, over the course of one minute, 38 seconds.

⁹ Crime scene investigation revealed the distance from Officer Ramirez to Armenta was approximately 30' at the time of the officer-involved shooting.

¹⁰ A count of the bullets remaining in Officer Ramirez's gun revealed he fired 10 rounds.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 8

conducted a safety search of Armenta and found what appeared to be a “weapon” underneath Armenta.¹¹

STATEMENTS BY CIVILIAN WITNESSES¹²

On June 14, 2020, at approximately 12:53 a.m., **Witness #1** was interviewed by Detective A. Silva of the San Bernardino Police Department.

On June 13, 2020, Witness #1 was at the Exxon gas station located at the 2000 block of North Del Rosa Avenue when the officer-involved shooting occurred. Witness #1 had pulled into the Exxon gas station in his dark blue Hyundai Sonata and had picked that particular station because it was well lit. As Witness #1 was pumping gas (he believed it was at pump #4 or #7¹³), he looked over to see a woman next to him drive off quickly. It was then that he noticed a male digging through a trash can. Witness #1 avoided eye contact with this male. The male had a “weird energy,” “something was off about him,” and the male had a bunch of trash in his right hand. Witness #1 started feeling uncomfortable and was thinking about leaving when he saw a San Bernardino Police Department officer pull in. Another police vehicle, an SUV, pulled in after the first one. The police vehicles had their “police lights” on when they pulled into the gas station.

Witness #1 saw two police officers step out of their vehicles, followed by another two officers. The officers had their guns out and were shouting, “Put down your gun.” Witness #1 focused his attention back on the male who had been digging in the trash and saw a small black or dark grey pistol with a thin barrel in his left hand. Upon seeing the gun in the male’s hand, Witness #1 ducked down near the rear driver’s side of his vehicle, near the wheel to protect himself. Witness #1 heard the officers continue to tell the male, “Put down your gun,” 10 to 15 times for almost a minute. Witness #1 couldn’t tell if the male was saying anything to the officers, but he could tell the male was “a little bit off in some way.”

Witness #1 then heard 10 to 15 gunshots but could not see who was shooting because he was ducking down for cover. Witness #1 thought the male was shooting wildly and believed he was in a fire fight. He waited until the officers began moving in before standing up. It was then that an officer directed him to move onto the sidewalk, which he did. As more officers arrived, Witness #1 walked back to his car. An ambulance arrived and the suspect was placed on a stretcher. To Witness #1, the male appeared to be breathing.

On June 14, 2020, at approximately 1:48 a.m., **Witness #2** was interviewed by Detective A. Silva of the San Bernardino Police Department.

¹¹ The weapon was found to be a replica firearm, missing the orange tip typically found on replica firearms.

¹² All reports of civilian statements made were reviewed, though not all are summarized here.

¹³ Crime scene investigation revealed he was at pump #7.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 9

On June 13, 2020, Witness #2 was taking care of the store and working as a cashier at the Exxon gas station located at the 2000 block of North Del Rosa Avenue for her uncle who is the owner. On this date, just before 7:00 p.m., there was a male subject standing in the gas station's car wash preventing customers from using the car wash. Witness #2 believed the male was homeless. The male was wearing a red jacket, a t-shirt, and pants. The male was touching everything in the car wash and was arguing with the customers. Witness #2 had seen this male before, approximately three to four times over the past month and has had problems with him in the past. Eventually, one customer complained to her about the male. Witness #2 looked at the video surveillance and saw the male had what appeared to be a gun, but she was unsure at that time if it was a gun.

The male walked over to the vacuum area of the car wash and Witness #2 went outside and told him to leave or she would call the police. As she confronted the male, she saw he had a small black gun in his hand and so she immediately ran back inside the store because the store was "bullet proof." Witness #2 did not know for certain if the gun was real because it looked like it could have been a toy. However, Witness #2 was afraid the male was going to shoot her. Witness #2 locked the door to the store, called her uncle, and requested security respond to the gas station because of the armed male. Witness #2 did not call the police because in the past they have just had Exxon's security ask unwanted persons to leave.

A police officer¹⁴ arrived at the gas station thirty to forty minutes later and confronted the male who was by a trash can. The male was digging in the trash can but still had the gun in his left hand. Witness #2 heard the officer telling the male, "Put the gun down, put the gun down!" The officer said this loudly and several times, but the male did not listen. While this was occurring, Witness #2 noticed there was a customer at pump #7. The male suspect did not listen to the officer and eventually he smiled and pointed the gun at the officer. The male suspect was then shot, and Witness #2 saw him down on the ground. Witness #2 believed she heard two or three gunshots. The male was lying on the ground, moving around. Additional police officers arrived and moved up to the suspect. Witness #2 saw an officer checking the male suspect's pockets and removing his property. Witness #2 also saw the officers making sure the male was still breathing. An ambulance arrived and medical aid was performed on the male.

On July 22, 2020, at approximately 2:45 in the afternoon, **Witness #3** was interviewed by Detective A. Reyna of the San Bernardino Police Department.

Witness #3 was at the Exxon gas station located at the 2000 block of North Del Rosa Avenue on June 13, 2020. Witness #3 was in her car, a blue 2016 Nissan Sentra at the gas station with her friend. Witness #3 was at the fuel pump island closest to the store and her vehicle was facing in a southbound direction. Witness #3 was pumping gas into her car when she saw a male walking from the area of the apartment complexes on Date Street.

¹⁴ Witness #2 only saw one police officer.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 10

The male approached the trash can at the fuel pumps next to her and was approximately four feet away from her. The male began looking through a trash can with his right hand while holding what appeared to be a fake gun in his left hand. The male was holding the gun up with his left hand and was holding it by the top. The gun looked like it was a toy gun that was missing both the top piece of the gun and the orange tip from the barrel. The male was not pointing the gun at anyone. The male appeared to be Hispanic, approximately 20-23 years old, 5'7" tall, with a dirty appearance, and semi-long hair. Witness #3 believed the male was "drugged" and was "spacing out."

The male pulled a brown paper bag out of the trash can and Witness #3 thought he was probably hungry and looking for food. Witness #3 was going to give the male some food she had just purchased when she saw three police officers arrive. One police car entered the west driveway from Date Street and parked at an angle about 20 to 30 feet away from the male. A second police vehicle entered the east driveway from Date Street and parked in front of and to the left of her. Witness #3 panicked when she saw the police cars coming in, so she began pulling away.¹⁵ Witness #3 could hear the police officers giving the male numerous commands to drop his weapon. Witness #3 heard the officers yelling at the male to put the gun down 10 to 15 times and she could hear them clearly even though her windows were closed. The male was not listening to the officers. Witness #3 saw a third police car enter the parking lot through the Del Rosa Avenue driveway.

As Witness #3 was pulling out of the parking lot, she heard approximately 10 gunshots. Witness #3 did not see the officers shooting but all of the gunshots sounded similar. Witness #3 looked in her rear view mirror and saw the male collapsing to the ground onto the left side of his body. Witness #3 could tell the gun the male had was not real because she was close to him, but that the officers were farther away from the male so they may have believed the gun to be real.

Witness #3 drove away and stopped at the 99 Cent store south of the gas station. Witness #3's friend told her they should drive back and provide a statement to the police officers. Witness #3 drove back and parked her car on Date Street, near the Exxon gas station where she spoke to a female police officer and provided her information so a detective could contact her for an interview.

On July 23, 2020, at approximately 3:40 p.m., **Witness #4** was interviewed by Detective A. Reyna of the San Bernardino Police Department.

On June 13, 2020, at about 1:00 p.m., Witness #4 was working as a cashier at the Circle K located at the 2000 block of North Del Rosa Avenue when she saw a male subject digging through the trash bin in front of the business. The male was holding a flashlight with his right hand and was digging through the trash can with his other hand. The flashlight was about 8" long with a switch in the back. Witness #4 could not recall what color the flashlight was. Witness #4 told the male to stop digging through the trash and

¹⁵ Witness #3's car is not seen in either Officer Fergot or Officer Ramirez's body-worn camera videos.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 11

he complied. Witness #4 then went back inside the business and did not see the male leave. Witness #4 remembered seeing the same male digging through the trash there once or twice before that date.

Later that day, at about 7:00 p.m., Witness #4 was inside the business when she heard someone screaming outside. Witness #4 went outside and saw three¹⁶ officers at the Exxon gas station pointing their firearms at the male she had seen earlier at her business. The officers were about 15' away from the male and were telling him to put the gun down. Witness #4 could hear the officers from where she stood. The officers told him several times to put the gun down. The male had his hands at his sides and appeared to be confused because he was looking around and not following the officers directions. Witness #4 thought the male was "playing dumb," as if he didn't hear the officers. The officers gave approximately 15 commands. Witness #4 then heard gunshots being fired and saw the male immediately fall to the ground. Witness #4 did not see the officers shooting their guns and only heard approximately five gunshots. Witness #4 then went inside the business and notified her manager.

The following day, a reporter from Facebook, possibly named Susan, arrived at the Circle K and questioned Witness #4 about the shooting. Witness #4 told the reporter she had seen the male earlier that day digging through the trash can at the Circle K with a flashlight.

INCIDENT AUDIO AND VIDEO

911 CALL

On June 13, 2020, at 8:26 p.m., a female later identified as Witness #5, called 911 and told the dispatch operator the following, "I'm on Del Rosa and Date at the Exxon gas station. Somebody has a gun and he's waving it outside and the lady is scared that's working in there."

Witness #5 described the male with the gun as follows: "He's like crazy. I don't know if he's white and he's dirty or if he's Mexican." Witness #5 said the male was approximately 20 years old, wearing a burgundy sweater, and dark pants, either dark blue or black. Witness #5 described the gun as a black handgun.

The dispatcher asked Witness #5 where the male suspect was and what he was doing and Witness #5 said he was walking around the gas station in the parking lot, by the entrance to the car wash. The dispatcher asked if the suspect had the gun in his hand and Witness #5 said he did. When asked if the suspect was around anyone else, Witness #5 said he was not. Witness #5 then advised the suspect was talking to himself, walking around, and playing with the gun. Witness #5 said the suspect was holding the gun "in

¹⁶ A review of surveillance video and the officers' body-worn camera videos shows there were only two officers present before the officer-involved shooting.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 12

the air, doing stupid little shit.” A male voice was then heard in the background saying, “We don’t know if it’s fake.” Witness #5 then said, “Whether it’s fake or not, his bitch ass don’t need to be doing that.”

In response to this, the dispatcher said, “You’re saying it’s fake?” Witness #5 replied, “No, we don’t know. We don’t know if it’s fake.” Witness #5 then advised, “Now he’s digging in the trash can,” and “There’s two police right here on the corner.” The dispatcher asked, “Is he still holding the gun?” Witness #5 replied, “Yeah.” The dispatcher asked the female for her name and the caller said it was Witness #5.¹⁷ Witness #5 then said, “Okay, the police got ‘em baby.” The dispatcher asked, “Do they have the right guy?” Witness #5 replied, “Yeah, they got him.” The call then ended.

DISPATCH RECORDINGS

Note- Charlie 15 was Officer Fergot; Charlie 23 was Officer Ramirez.

Dispatch: Units, we are holding on a man with a gun call. It’s Date and Del Rosa. Special attention Charlie 15 and 23.

Charlie 15: You can clear us, GOA, and show us 97 on that. Can you read me the circs again please?

Dispatch: It’s going to be at the Exxon, a white male in his 20’s, maroon sweater and dark blue pants, armed with a black handgun and he’s talking to himself, walking around the Exxon and he has a gun in his hand. There is a male in the background saying that he thinks it’s possibly a fake gun.

Dispatch: The male is now digging in a trash can, still with the gun in his hand. Maroon sweater, dark blue pants.

Dispatch: Charlie 15 (unintelligible) advised you are out with the correct male and then disconnected.

Charlie 15: Shots fired. Shots fired.

Dispatch: Copy, shots fired.

Dispatch: Charlie 15.

Dispatch: Charlie 15.

Charlie 23: We’re Code 4. We have one down.

Dispatch: Copy, we’re starting med aid.

Charlie 63 and 62: Going 97.

Dispatch: Copy. 62 and 63, I copy.

¹⁷ It should be noted, the dispatch operator called Witness #5 back shortly after the officer-involved shooting occurred and asked her if she would talk to the police. Witness #5 said she did not want to talk to the police at the scene because there were too many people there but agreed to talk to the police later over the phone. When Detective Reyna called Witness #5, a female answered the phone, said, “Wrong number,” and then hung up. Detective Reyna called the number a second time and the female told him he had the wrong number. The female explained that she had let Witness #5 use her phone to call 911 and she had been with her on the night of the officer-involved shooting. The female caller was unwilling to provide her name to Detective Reyna. She was also unwilling to give the detective Witness #5’s phone number and said neither she nor Witness #5 wanted any “part in it.”

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 13

Unintelligible transmission.

Dispatch: Copy. Subject is still laying on the gun.

The remainder of the dispatch recordings consist of communication regarding medical aid and additional officers responding to the scene.

BODY-WORN CAMERA¹⁸

Officer Fergot's Body-Worn Camera

Officer Fergot's body-worn camera video shows him driving his patrol unit and pulling into the driveway of Exxon gas station. It was dark outside, but the gas station was brightly lit. Officer Fergot stopped his patrol unit and got out with his gun drawn. Officer Fergot stood next to his patrol unit, behind the open driver's door and pointed his gun at Armenta. Armenta was wearing a burgundy/maroon colored sweatshirt and dark gray or black pants. Officer Fergot's arms could be seen extending to the front, both hands grasping his gun, rising above the level of the body-worn camera which was worn on Officer Fergot's torso. The reflection of Officer Fergot's patrol unit's emergency red and blue lights reflected on the surrounding area.

Armenta was standing in front of a concrete trash can which was next to the gas pump closest to the Exxon store. Armenta turned to face Officer Fergot and raised both hands above his head, but then swung them down and continued waving his arms around while Officer Fergot raised his gun and pointed it at Armenta.¹⁹ While Armenta waved both arms around, he held a small dark object that clearly looked like a small black handgun in his left hand. Armenta flung around his left hand, waving the gun around from side to side and up and down. Armenta's body was facing in a southeast direction, but his head was turned to the right, looking at Officer Fergot who was south of Armenta.

Behind Armenta were two vehicles, an SUV and a truck, on either side of the gas pumps, front ends pointing north. To the east of Armenta, Witness #1 stood beside his vehicle pumping gas. Witness #1's vehicle was pointing south. Armenta continued waving his arms around; Witness #1 ducked behind his car. When the audio began at the 30th second, Officer Fergot was heard loudly saying, "Drop it." Armenta continued waving his

¹⁸The officers herein were equipped with Axon Body-Worn cameras. The camera system turns on when the operator activates the camera. When the camera is activated, the previous 30 seconds of video are included but without any audio. The body worn camera recordings were reviewed in their entirety. The summaries of the body worn camera recordings will only cover the events from the beginning of the recordings through the point immediately after the incident under review. All body-worn camera videos were reviewed though not all are summarized here.

¹⁹ At this point in the video, it appears Armenta is reacting to Officer Fergot. Armenta's body language (Armenta turned and looked at Officer Fergot and began swinging his arms around while continuing to look at Officer Fergot) indicates Officer Fergot is speaking to Armenta. However, because there is no audio at this point, anything Officer Fergot may have said to Armenta was not recorded.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 14

arms around while holding the gun. Armenta continued standing with his body angled southeast and his head turned to his right, looking at Officer Fergot. Armenta placed both of his arms down at his sides and put both hands in front of his body, near his waist. Armenta remained in this position while Officer Fergot continued giving commands. Multiple commands were given by Officer Fergot. Officer Ramirez is not visible at this point in the video, but some of his commands can also be heard. From this point until just before the officer-involved shooting, each officer's commands were as follows:

Officer Fergot

Drop the gun right now, dude.
Drop it right now.
Drop it!
Drop it!
Drop the gun right now!
Drop the gun!
Drop the gun!
Drop the gun!
Drop the gun!
Sir, drop the gun.
Drop the gun, sir.

Officer Ramirez

Drop it!

Drop it!

Drop the gun!
You have to do it, man.
Drop the gun!
Drop the gun!
Drop the gun!
Don't do it. Drop the gun!
Drop the gun!

Radio traffic was then heard asking Charlie 15 if he was out with the male. Officer Fergot began moving away from his patrol unit and backwards while again telling Armenta, "Drop the gun!" While Officer Fergot moved, still behind his patrol unit's open driver's door, the window frame on the door partially blocked the camera view of Armenta. Officer Fergot then very excitedly repeated, "Drop the gun!" as Armenta raised what looked like his right arm²⁰ and pointed it at Officer Fergot. Multiple gunshots began ringing out at this moment. At the very top of the video, the bottom of Officer Fergot's hands holding onto his gun could be seen as Officer Fergot shot his handgun.

Armenta immediately fell to the ground, yelling, and all gunfire stopped. Armenta initially fell in a seated position on the ground with his upper body against the concrete trash can, facing Officer Fergot. Armenta then laid down, turned onto his left side and began moving his body around quickly on the ground. Officer Fergot pointed his gun through the crease between his patrol unit and driver's side door at Armenta while announcing over the radio, "Charlie 15, shots fired, shots fired."

Officer Fergot then quickly stepped out from behind his driver's door. Officer Fergot pointed his gun at Armenta as he began walking toward him. Armenta continued moving around quickly on the ground, lifting his upper body up from the ground, with his back

²⁰ Because of the window frame, Armenta was partially blocked from view. Due to Officer Fergot's movement, the video was slightly blurred. This made it difficult to determine which arm Armenta pointed at Officer Fergot.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 15

toward Officer Fergot. Officer Fergot yelled and his voice caught as he said, "Drop the gu—" Then, Officer Ramirez yelled, "Drop the gun!" which was quickly followed by Officer Fergot yelling, "Drop the gun! Drop the gun!" Armenta then sat up and turned to his right, turning his head toward Officer Fergot. Officer Fergot yelled, "Hey, put your hands up!" Officer Fergot yelled and screamed, "Put your hands up!" three more times in rapid succession. Officer Ramirez also yelled, "Put your hands up!" multiple times, often overlapping with Officer Fergot's commands.

Armenta continued sitting up, leaning the left side of his body against the concrete trash can, looked down at the ground and then back at Officer Fergot while the officers were telling him to put his hands up. Officer Ramirez asked Officer Fergot a question, but it is unclear what his question was. Officer Fergot answered, "Yeah," as Armenta turned his upper body left, reached out and put his left hand on top of a dark object on the ground. Officer Fergot quickly yelled, "Hey, he's reaching for—move away from the gun! Move away from the gun!" Armenta pulled his left hand back toward his waist, leaving the dark object on the ground. Armenta turned toward Officer Fergot but continued leaning his body toward the object on the ground. Officer Fergot yelled, "Move away from the gun! Move away from the gun!" Armenta looked at Officer Fergot and continued moving his upper body around while reaching toward the dark object and then pulling his hand back toward his body repeatedly. Officer Fergot yelled, "Move away from the gun! Move away from the gun!" As Armenta reached for the dark object again, Officer Fergot yelled, "Don't touch the gun!" While Officer Fergot was yelling, "Don't touch the gun," witness Unnava was seen rising up from behind the driver's side of his car which was still parked at the pump located just east of Armenta. Witness #1 was crouching down as he rose up and moved farther east. Officer Fergot yelled at Witness #1, "Go, get out, go, go!" Witness #1 quickly ran away, still crouching down, as he headed east toward Del Rosa Avenue.

As Witness #1 ran away, Armenta continued to reach toward the dark object on the ground next to him. Officer Ramirez yelled, "Don't reach for it, don't reach for it!" Each time an officer yelled at Armenta to not touch the gun or to not reach for it, Armenta pulled his hand away from the object. Armenta would then reach out for the object again. Armenta slowly laid his upper body down onto the ground, covering the dark object with his upper body. Officer Ramirez then said, "Get away from the gun." Armenta continued writhing his body on the ground while moaning.

The truck at the gas pump directly behind Armenta pulled forward, in a north direction, away from Armenta and left the gas station via the driveway on the east side, at Del Rosa Avenue. Officer Fergot then said, "He's still laying on top of the gun." The SUV at the gas pump behind Armenta then pulled away, heading northbound, then turned left, and drove behind the Exxon store. Officer Ramirez said, "Get away from it," as Armenta continued moving around on the ground. Sirens were then heard approaching the scene.

Officer Fergot then keyed up his mic and said, "All units responding, respond from the south of the Exxon." The sirens grew louder and then stopped. Officer Fergot said, "He's

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 16

laying (sic) on top of the gun still.” A voice was heard in the background and Officer Fergot said, “Let’s wait for him.” Additional voices were heard and Officer Fergot said, “We’re gonna have to. Let him glove up.” After a very brief pause, Officer Fergot said, “Yup, yup” and began walking toward Armenta, still pointing his gun at Armenta. An additional officer was seen, Officer Martin, as he approached Armenta on foot from a southeast direction. Armenta was still lying on the ground on his stomach with his hands tucked beneath his body, near his waist. Armenta was no longer moving. Officer Martin said he was going to “get on top of him” as he approached Armenta. Officer Fergot bent forward and Officer Martin began pulling Armenta’s hands out from under his body. An unidentified voice asked about the gun. Officer Fergot said, “It’s under him.” As Officer Fergot straightened back up, Officer Ramirez, Officer Martin, and Officer Koch were seen around Armenta as they placed Armenta into handcuffs. Officer Fergot said, “He pointed it right at me.” Medical aid arrived shortly thereafter.

It should be noted, the audio began at the 30th second and any commands given by Officer Fergot in that initial 30 seconds were not recorded. However, from the 30th second until the moment of the officer-involved shooting, Officer Fergot gave a total of 14 commands to Armenta. Officer Fergot’s commands were given over the course of one minute, 22 seconds. Also, early on in the encounter with Armenta, Officer Fergot also told Officer Ramirez to watch his cross-fire.

Officer Ramirez’s Body-Worn Camera²¹

When Officer Ramirez’s body-worn camera video began, Officer Ramirez was driving into the Exxon gas station driveway. It was dark outside, but the gas station was brightly lit. Officer Ramirez stopped his patrol unit, got out and began walking toward Armenta, who was standing next to a square concrete trash can at the gas pumps. Armenta was northeast of Officer Ramirez; Armenta was wearing a burgundy/maroon colored sweatshirt and dark colored pants. As Officer Ramirez approached Armenta, Officer Ramirez loudly said, “Hey, let me see your hands. Let me see your hands.” Officer Fergot’s patrol car, with its emergency lights activated, was positioned east of Officer Ramirez. Officer Fergot’s patrol car was several feet south of Armenta with the front end pointed at Armenta. Officer Fergot could not be seen in the video at this point. There were two unidentified civilians standing several feet behind Officer Fergot’s patrol car. While Officer Ramirez walked toward Armenta and told him to let him see his hands, Officer Ramirez’s gun was drawn and pointed toward Armenta. Officer Fergot was heard telling Armenta to put the gun down, repeatedly. As Officer Ramirez got closer to Armenta, Officer Fergot told Officer Ramirez, “He’s got it in his left hand, bro.” The two civilians behind Officer Fergot’s patrol unit walked away, heading toward Del Rosa Avenue, at this point. Armenta was facing away from Officer Ramirez. The right side of Armenta’s body faced toward Officer Fergot and Armenta’s head was turned to the right,

²¹ Officer Ramirez’s body-worn video captured much of the same images as Officer Fergot’s body-worn camera. However, since Officer Ramirez was in a different position than Officer Fergot, additional images and sounds were also captured.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 17

looking toward Officer Fergot's patrol car. Officer Fergot could be seen standing behind the open driver's door of his patrol car. Officer Ramirez began ordering Armenta to drop the gun. Officer Fergot's orders to drop the gun were also heard.

Officer Ramirez said, "Drop it. Drop the gun!" Officer Ramirez then moved west, closer to Armenta, and stood behind a group of large concrete trash cans located south of the Exxon store. Officer Fergot's commands to Armenta to drop the gun continued and could be heard clearly. Officer Fergot could be more clearly seen as he stood in the area between his open driver's door and the side of his patrol unit. Officer Fergot stood straight up, not hunkered down behind the door panel. As Officer Ramirez stood behind the concrete trash cans, he was closer to Armenta. Armenta remained standing in the same position but turned his head further to the right and looked over his shoulder at Officer Ramirez. Armenta's arms were at his sides. Officer Ramirez again ordered Armenta to, "Drop it!" Officer Fergot told Officer Ramirez, "Hey, watch your crossfire." Officer Ramirez said, "Alright," and moved slightly east away from the concrete trash cans. Officer Fergot's commands to drop the gun continued.

As Officer Ramirez moved away from the concrete trash cans, Armenta remained standing in the same position, but held both of his hands in front of and to the right of his upper thighs. Armenta began lifting and lowering his hands and lower arms slightly and quickly toward Officer Fergot. A small dark object²² could be seen in Armenta's hands. Officer Ramirez again said, "Drop the gun!" Officer Fergot continued ordering Armenta to drop the gun as well. Officer Ramirez then said, "Drop the gun! You have to do it, man. Drop the gun." Armenta remained standing in the same position and turned his head, looking back and forth at Officer Fergot and Officer Ramirez. Officer Fergot and Officer Ramirez both repeated, "Drop the gun" several more times. Armenta remained in the same position. Armenta continued turning his head, looking back and forth at Officer Ramirez and Officer Fergot.

Officer Ramirez then said, "Don't do it, man, don't do it. Drop the gun." Armenta held his position. Both officers continued telling Armenta to drop the gun. Officer Fergot began backing up, his head and upper body clearly visible above the crease formed by the patrol unit's open door and the car. Armenta then suddenly and quickly turned his upper body toward Officer Fergot while raising both of his arms, grasping them together and holding the dark object in both hands, and pointed the object directly at Officer Fergot. When Armenta did this, the profile of the dark object could be seen, revealing that the object appeared to be a small black gun. Multiple gunshots rang out in rapid succession as Officer Ramirez and Officer Fergot began shooting at Armenta. Armenta fell to the ground, into a sitting position, leaned the upper left side of his body against the west²³ side of trash can, and began yelling unintelligibly. As soon as Armenta fell, both officers stopped firing.

²² The small dark object in Armenta's hand is difficult to see at this point in this particular video due to the angle, distance, and lighting.

²³ The west side of the trash can faced Officer Ramirez.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 18

Officer Fergot could be heard saying, "Shots fired, shots fired," as he moved away from his patrol car and began moving toward Armenta. Officer Ramirez reached his left hand up and said something unintelligible. Both Officer Ramirez and Officer Fergot moved a few feet closer to Armenta but stopped and began ordering Armenta to drop the gun when Armenta laid down and began rolling around on the ground and then began attempting to sit back up. Armenta then sat up and leaned the left side of his upper body against the south side of the trash can.²⁴

Both Officer Ramirez and Officer Fergot began ordering Armenta to show his hands and to put his hands up. Both officers repeated these orders several times as Armenta sat with his left upper body against the trash can, moving his legs and arms around quickly. Officer Ramirez asked Officer Fergot, "You clear? You got a good view?" Officer Fergot answered in the affirmative and then said, "Hey, he's reaching for- move away from the gun! Move away from the gun!" Armenta was moving his upper body down closer to the ground and was reaching his right hand outward northeast of his body. Officer Ramirez said, "Move away! Come towards me, come towards me!" to Armenta. Officer Fergot yelled, "Don't touch the gun," and then yelled at Witness #1,²⁵ "Get out, go!" Witness #1 then ran away from the scene, toward Del Rosa Avenue, stopped at the edge of the gas station, turned toward Armenta's direction, and crouched down. Multiple cars were seen driving past the gas station as traffic moved on Del Rosa Avenue.

Both officers continued pointing their guns at Armenta while ordering him not to reach for the gun. The gun was on the ground next to Armenta, just northeast of him, and within arm's reach. Armenta continued moving around and reaching his arms out, then pulling them back towards his body. Armenta laid down on the ground, placing his upper body over the gun. Armenta continued moving his body around, while moaning loudly. Officer Ramirez spoke into his lapel mic and said, "Charlie 23, we're code 4. We have one down." Armenta then rolled over to his left side, facing Officer Fergot and Officer Ramirez said, "Get away from the gun!" Sirens were heard approaching the scene. Officer Ramirez said, "Hey you want to-" to Officer Fergot. Officer Fergot replied, but his answer was unintelligible. Armenta continued moving around on the ground and turned back onto his stomach. Officer Ramirez yelled, "Get away from it!" The sirens grew louder as the other units arrived to the scene.

Two San Bernardino Police Department patrol units approached the scene, heading west on Date Street, with their emergency lights and sirens activated. One of the units pulled up and stopped next to the passenger side of Officer Fergot's vehicle. The other unit could not be seen due to the angle of Officer Ramirez's body-worn camera which faced toward Armenta. As the patrol units stopped, Officer Ramirez said, "It's underneath him. Hey, he's under, he's underneath it- it's underneath him." The remainder of the video shows the officers (Officers Martin, Fergot, Ramirez, and Koch) approaching Armenta,

²⁴ The south side of the trash can faced Officer Fergot.

²⁵ As in Officer Fergot's body-worn camera video, Witness #1's vehicle was seen parked at the gas pump located east of Armenta.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 19

placing him into handcuffs, searching him, and then the fire department paramedics rendering medical aid to Armenta.

Prior to the officer-involved shooting, Officer Ramirez gave a total of 13 commands to Armenta. These commands were given over the course of one minute, 38 seconds.

Officer Martin's Body-Worn Camera

Officer Martin's body-worn camera video shows Officer Martin arriving at the Exxon gas station, getting out of his patrol unit, and approaching the scene on foot. Officers Fergot and Ramirez were standing several feet west of Armenta with their guns pointed at Armenta. Officer Martin communicated with Officers Ramirez, Fergot, and Koch and coordinated their approach to Armenta. Together, the officers then approached Armenta. As Officer Martin got closer to Armenta, he said, "I'm going to get on top of him, alright?" Armenta was lying face down, with his arms underneath his body, next to a trash can. Armenta was wearing a maroon colored sweatshirt and dark gray pants. Armenta was wearing one sandal; both of his feet appeared to be very dirty. Officer Martin removed Armenta's arms from underneath his body and two other officers assisted in Officer Martin as he placed Armenta's wrists into handcuffs. Upon placing Armenta into handcuffs, one officer²⁶ asked if the fire department was clear to come in. Another officer answered in the affirmative. People could be heard yelling unintelligibly in the distance.

Officer Martin then rolled Armenta over onto his right side and said, "Hey stay with us man" while patting Armenta on the shoulder. A small black replica handgun could be seen lying on the ground, just below Armenta's upper chest/neck area. Armenta was heard moaning. There was blood on Armenta's lower left leg. Sirens were heard in the background. Officer Martin then rolled Armenta over onto his back. As he did so, the small black replica handgun was more clearly seen on the ground; it was solid black with an orange trigger pull. The barrel of the small black replica handgun was broken off of the gun and was lying to the left of Armenta's body, next to the trash can. The barrel was black, the broken back section of the barrel was orange, and the muzzle area/tip of the barrel was black. Officer Martin then began searching Armenta's pockets and pulled out items, including a glass methamphetamine pipe. Officer Martin asked Armenta where he was hit and began looking for injuries while the sirens grew louder.

The remainder of the video shows Officer Martin staying next to Armenta until the paramedics arrived and began treating Armenta.

²⁶ At this point in the video, only the lower half of the officers' bodies could be seen, making identification impossible.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 20

SURVEILLANCE VIDEO

The following picture, captured from video recorded by one of Exxon gas station's surveillance cameras, shows Armenta pointing what appears to be a small black handgun, right before Officer Fergot and Officer Ramirez began firing at Armenta.



Armenta is pointing the gun south. Review of additional video shows Officer Fergot was standing south of Armenta, approximately 42 feet away. The blue car, seen in the background, was Witness #1's vehicle.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

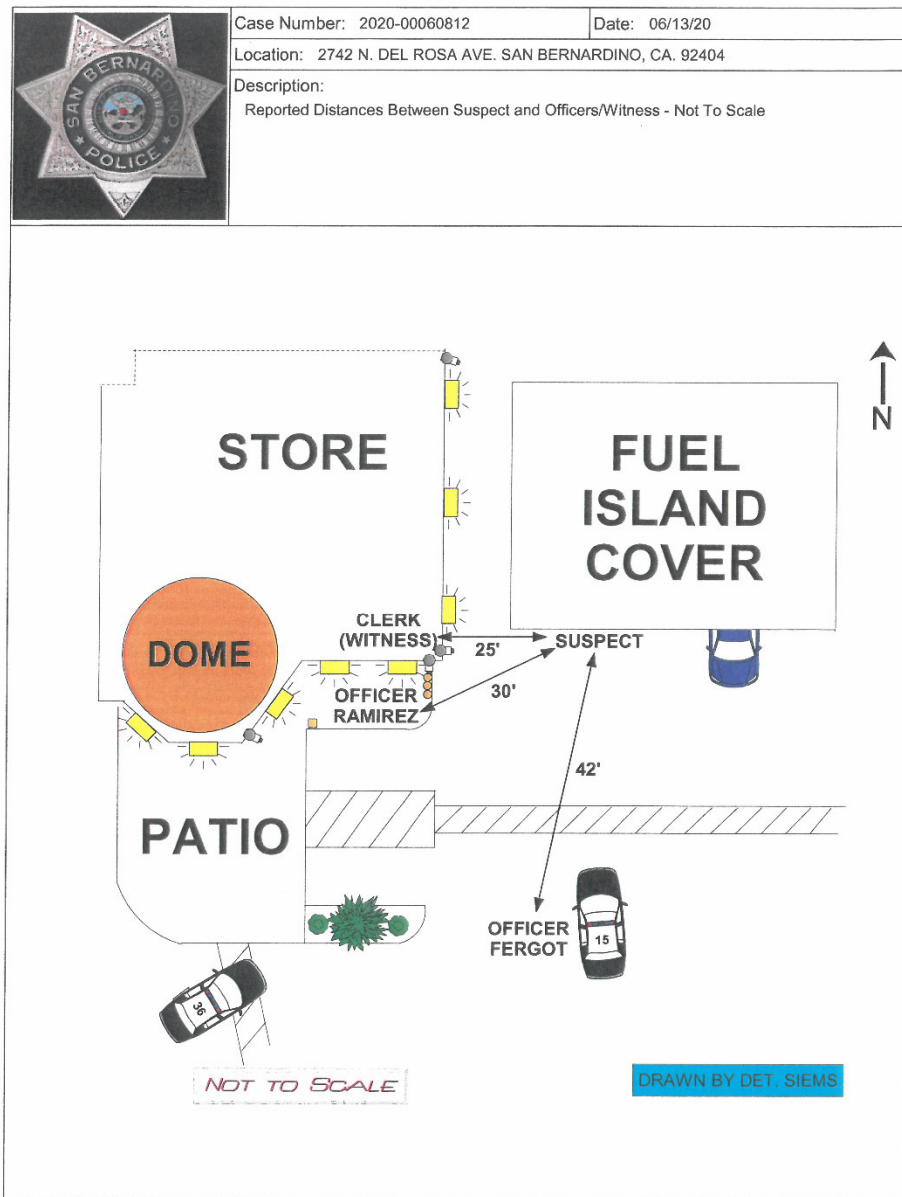
DA STAR # 2020-00-40944

March 29, 2021

Page 21

INCIDENT SCENE INVESTIGATION²⁷

Detective M. Siems of the San Bernardino Police Department completed several diagrams of the scene, noting the locations and distances of the officers, Armenta, and other items of evidentiary value. Below is one diagram.



Created using ScenePD. Licensed customer: SAN BERNARDINO PD

Page 9 of 9

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²⁷ The entire incident scene investigation report was reviewed though not all is discussed herein.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 22

Placards were placed at the locations of each item of evidence. There were 45 placards in total. Detective Siems used the north curb line of East Date Street as a reference point for the north/south measurements and the west curb line of North Del Rosa Avenue as a reference point for the east/west measurements.

Detective Siems noted the distance between the officers and Armenta at the time of the shooting as follows: Officer Fergot and Armenta were approximately 42 feet apart; Officer Ramirez and Armenta were approximately 30 feet apart. Several 9mm caliber fired cartridge casings were found in the immediate vicinity of where the officers stood at the time of the shooting.

Other items of note are as follows:

Placard 1- San Bernardino Police Department Unit 36 (Driven by Officer Ramirez)
Location of Left Front Tire: 39'01" north of the north curb line of East Date Street
117'06" west of the west curb line of North Del Rosa Avenue

Placard 2- San Bernardino Police Department Unit 15 (Driven by Officer Fergot)
Location of Left Front Tire: 48'09" north of the north curb line of East Date Street
57'00" west of the west curb line of North Del Rosa Avenue

Placard 24- Several items of clothing removed from Armenta by the paramedics. Items were a black shirt, a maroon sweatshirt, a blue sweatshirt, a white undershirt, and a red plastic bracelet.

Location: 87'11" north of the north curb line of East Date Street
60'04" west of the west curb line of North Del Rosa Avenue

Placard 21- Blood on concrete
Location: 85' north of the north curb line of East Date Street
62'05" west of the west curb line of North Del Rosa Avenue

Placard 25- Black plastic gun
Location: 72'10" north of the north curb line of East Date Street
92'00" west of the west curb line of North Del Rosa Avenue

Placard 45- Barrel of black plastic gun
Location: 89'00" north of the north curb line of East Date Street
61'00" west of the west curb line of North Del Rosa Avenue

Placard 19- Broken glass narcotic pipe
Location: 83'08" north of the north curb line of East Date Street
62'08" west of the west curb line of North Del Rosa Avenue

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 23

INJURED PARTY/DECEDENT

Armenta was transported to Loma Linda University Medical Center where he underwent emergency medical treatment before succumbing to his injuries. Detective K. Hernandez of the San Bernardino Police Department made contact with Deputy Coroner Investigator McCarthy of the San Bernardino County Sheriff's Department at Loma Linda University Medical Center. Deputy Coroner Investigator McCarthy conducted the investigation at the hospital. During the investigation, Investigator McCarthy searched Armenta's pants and found a small gray plastic badge in the right rear pocket. The badge had the words, "Special Police" printed across the top.

AUTOPSY

Witness #6, Forensic Pathologist for the Office of the San Bernardino County Sheriff-Coroner, conducted the autopsy of Anthony Armenta on June 26, 2020. Witness #6 noted four gunshot wounds to Mr. Armenta's body. Witness #6 determined the cause of death was gunshot wound of the abdomen.

Gunshot Wound of the Abdomen

The entry wound is in the right upper abdominal quadrant, 22 inches from the top of the head and 3 inches right of midline. It consists of a 3/8 inch circular defect. A marginal abrasion is concentric and measures 1/8 inch. No soot or stippling is present. The direction of the wound path is from front to back, right to left, and downward. There is no exit wound.

Gunshot Wound of the Right Arm

The entry wound is in the posterior right forearm, 14 inches from the top of the right shoulder and 2 inches lateral to a posterior vertical line through the right forearm. It consists of a 3/8 inch circular defect. No soot or stippling is present. The direction of the wound path is from back to front, right to left, and upward. The exit wound is on the medial surfaces of the right forearm skin, 13 1/2 inches from the top of the right shoulder and 2 1/2 inches medial to an anterior vertical line through the right arm. It consists of a 1/2 inch stellate shaped defect.

Gunshot Wound of the Left Leg

The entry is in the posterior left thigh, 21 inches from the bottom of the left heel and 2 inches medial to a posterior vertical line through the left leg. It consists of a 1 inch irregular shaped defect. A marginal abrasion is irregular and measures up to 1/8 inch. No soot or stippling is present. The direction of the wound path is from back to front, right to left, and upward. There is no exit wound.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 24

Gunshot Wound of the Left Calf

The entry wound is in the anterior left calf, 13 inches from the bottom of the left heel and 3 inches medial to an anterior vertical line through the left leg. It consists of a 3/8 inch circular defect. A marginal abrasion is irregular and measures up to 1/8 inch. No soot or stippling is present. The direction of the wound path is from front to back, left to right, and upward. The exit wound is in the medial left calf skin, 13 ½ inches from the bottom of the left heel and 4 inches medial to a vertical line through the left leg. It consists of a 1 inch irregular shaped defect.

TOXICOLOGY

Heart blood and vitreous, were collected from Armenta during the autopsy.

Toxicology results for the **Heart Blood** sample were listed as follows:

- Caffeine, Positive
- Cotinine,²⁸ Positive
- Amphetamine, 160 ng/mL
- Methamphetamine, 1500 ng/mL

CRIMINAL HISTORY

Anthony Armenta has a criminal history that includes the following convictions:

2018, 602.1(a) of the Penal Code, Intentional Interference With Business Establishment, and 415 (1) of the Penal Code, Disturbing the Peace by Fighting in Public, San Bernardino County case number MSB17011295, misdemeanors.

2019, 417.4 of the Penal Code, Drawing or Exhibiting Imitation Firearm in Threatening Manner, San Bernardino County case number MSB1903121, a misdemeanor.

2019, 602 (o) of the Penal Code, Refusing to Leave Property or Structure Belonging to Another and Not Open to the General Public, 148.9 (a) of the Penal Code, Falsely Representing Self as Another Person to a Peace Officer, 11364 of the Health and Safety Code, Possession of Drug Paraphernalia, and 647 (f) of the Penal Code, Under the Influence of Alcohol or Any Drug in Public, San Bernardino County case number MSB19015390, misdemeanors.

²⁸ Cotinine is an alkaloid found in tobacco and is also the predominant metabolite of nicotine.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 25

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)²⁹ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing, In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at §§196 and 197. Both of these code sections are pertinent to the analysis of the conduct involved in this review and are discussed below.

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a use of force that "is in compliance with Section 835a." Section 835a specifies a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

- (1) to defend against an imminent threat of death or serious bodily injury to the officer or another, or
- (2) to apprehend a fleeing felon who threatened or caused death or serious bodily injury, if the officer also reasonably believes that the fleeing felon would cause further death or serious bodily injury unless immediately apprehended,

(Penal C. §835a(c)(1).) Discharge of a firearm is "deadly force." (Penal C. §835a(e)(1).) The " [t]otality of the circumstances' means all facts known to the peace officer at the

²⁹ All references to code sections here pertain to the California Penal Code.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 26

time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,³⁰ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still relevant.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal C. §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;

³⁰ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 27

- (3) that use of force incidents should be evaluated thoroughly;³¹
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

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

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, and;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger.

(CALCRIM 505.)

“Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether

³¹ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 28

action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows, and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

Imminence newly-defined in the context of an arrest, is similar:

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal C. §835a(e)(2).)

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

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

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

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. **A person’s right of self-defense is the same whether the danger is real or merely apparent.** (*People v. Jackson* (1965) 233 Cal.App.2d 639. Emphasis added.) **If the person’s beliefs were reasonable, the danger does not need to have actually existed.** (CALCRIM 505. Emphasis added.) Yet, a person may use no more

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 29

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.) It was previously held that 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.)³² To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

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

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

The use of force policies and training of an involved officer's agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 3, *infra*.)

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

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

³² The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 30

We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 *1, 27-28.)

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

Officer Fergot and Officer Ramirez responded to the Exxon gas station in response to a 911 call reporting a man waving around a gun. Officer Fergot and Officer Ramirez were familiar with the area and knew this particular area of San Bernardino was unsafe due to the high crime rate, specifically due to recent crimes involving shootings and homicides.

Because the officers were already near the Exxon gas station, they were on scene very quickly, only three minutes after Witness #5 called 911 and while she was still on the phone with dispatch. As the officers arrived on scene, dispatch advised the officers that the male suspect was now digging in a trash can while holding the gun in his hand. Officer Fergot was the first to arrive and when he pulled into the gas station, he saw Armenta digging in a trashcan. Armenta matched the description of the male suspect. Officer

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 31

Fergot immediately got out of his patrol unit and told Armenta to show him his hands. In response, Armenta turned to face Officer Fergot. It was at this point that Officer Fergot saw the gun in Armenta's left hand, just as it was described in the 911 call. Officer Ramirez arrived right after Officer Fergot. Officer Ramirez also saw Armenta standing near a trashcan. Officer Ramirez saw that Armenta matched the suspect described in the call and that Armenta was holding something in his left hand. Officer Ramirez looked more closely at the object Armenta had in his left hand and saw that Armenta was holding what appeared to be a small black semiautomatic handgun. Officer Ramirez got out of his patrol unit and began approaching Armenta. As he did so, Officer Ramirez began ordering Armenta to show his hands.

Over the next minute and 38 seconds, both Officer Fergot and Officer Ramirez tried to get Armenta to drop the gun. Both officers attempted to deescalate the situation with their multiple commands and pleas to Armenta to drop the gun. Armenta refused to obey the officers. With each command, Armenta continued to hold onto his gun. Armenta told the officers he couldn't drop the gun and told them he was "the police." Armenta then suddenly and quickly raised his arm and pointed his gun directly at Officer Fergot. In fear for Officer Fergot's life, both Officer Fergot and Officer Ramirez fired their guns at Armenta.

The fact that Armenta quickly pointed his gun directly at Officer Fergot is clear. During their interviews, Officer Fergot and Officer Ramirez said Armenta quickly pointed his gun directly at Officer Fergot. Officer Fergot and Officer Ramirez's statements are corroborated by their body-worn camera videos and by video footage from the gas station's surveillance cameras. Had Armenta's gun been real, this no doubt would have presented a deadly threat or a threat of great bodily injury to Officer Fergot. However, because Armenta's gun was, in fact, not real, in order to determine whether the use of deadly force by Officer Fergot and Officer Ramirez was justified under Penal Code section 835a, we first need to determine whether or not it was objectively reasonable for Officer Fergot and Officer Ramirez to believe Armenta's gun was real. If it was objectively reasonable for each officer to believe Armenta's gun was real, it was also objectively reasonable for each officer to believe Armenta presented a deadly threat or a threat of great bodily injury to Officer Fergot when Armenta quickly pointed the gun at Officer Fergot.

Both Officers Fergot and Ramirez described the gun Armenta was holding as a small, black semiautomatic handgun. Indeed, a review of both the body-camera videos and the gas station surveillance videos reveal this description was accurate. Both Officer Fergot and Officer Ramirez believed the small black handgun that Armenta held in his left hand was real. That the officers believed Armenta's gun was real is clearly evinced by the fact that both officers immediately began ordering Armenta to drop the gun. In addition, Officer Fergot remained behind the relative safety of his patrol unit's open door and pointed his duty weapon at Armenta. Officer Ramirez sought out cover behind three concrete trashcans and pointed his gun at Armenta.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 32

Further guidance into the reasonableness of the officers' belief that Armenta had a real gun can be had by consideration of what other eye-witnesses at the scene believed and also by a review of the videos recorded at the scene.

Witness #5, the one who called 911, believed Armenta's gun was real. Her belief is what led her to call 911 to report it. While there was a male voice heard in the background during the 911 call saying they were not sure if the gun was fake, Witness #5's concern for the safety of the public remained. Specifically, when the dispatcher asked Witness #5, "You're saying it's fake?" Witness #5 replied, "No, we don't know. We don't know if it's fake." In addition, the concern in Witness #5's voice was readily apparent during the 911 call as she spoke to the dispatcher. Witness #5 remained on the phone with dispatch until the police arrived at the location and then told the dispatcher, "Okay, the police got 'em baby." When Witness #5 spoke this last sentence, the relief in her voice was audible.

Not only did the 911 caller believe Armenta's gun was real, Witness #2, the gas station clerk, also believed the gun was real. While it is true, after the officer involved shooting, Witness #2 told Detective Silva she was not sure whether Armenta's gun was real, her actions that night reveal she was terrified: upon confronting Armenta and seeing the gun in his hand, she ran back into the store because it was "bullet proof." Once inside the safety of the store, Witness #2 locked the doors so that Armenta could not get inside. Witness #2 also called her uncle, the gas station owner, for help. In addition, during the 911 call, Witness #5 told dispatch, "the lady is scared that's working in there." Witness #5 saw Witness #2 was scared, further showing Witness #2 believed the gun was real.

Witness #1 also believed Armenta's gun was real and Witness #1 was much closer to Armenta than either of the officers because he was pumping gas at the adjacent gas pump. Witness #1 told Detective Silva that when he saw the gun in Armenta's hand, he ducked down behind his car, near the rear wheel to protect himself. Officer Fergot's body-camera video confirms this fact. Witness #1 also told Detective Silva that during the officer-involved shooting, Witness #1 believed Armenta was "shooting wildly" and believed he was in the midst of a "fire fight." And, once the shooting stopped and the officers were telling Armenta not to reach for the gun, Witness #1 was seen fearfully peeking from behind his car while looking at Officer Fergot, and then running away from the scene still crouching down in fear when Officer Fergot told him to, "Go, get out, go, go!" Witness #1 was not running and hiding from Officer Fergot because when he crouched down near the sidewalk, he was still very much in view of Officer Fergot, as shown by Officer Fergot's body-worn camera video. It is clear Witness #1 was hiding from Armenta.

While we do not know how far away Witness #5 was from Armenta when she saw him with the gun, we do know both Witness #2 and Witness #1 were closer to Armenta than either Officer Fergot or Officer Ramirez. Officer Fergot was approximately 42 feet from Armenta when he saw the gun; Officer Ramirez was approximately 30 feet from Armenta. From this distance, there is no way either officer could tell that Armenta's gun was a

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 33

replica. Three separate witnesses believed Armenta's gun was real, and two of those witnesses had a better opportunity to see the gun because they were closer to Armenta. In addition to what the witnesses believed, as seen in each officers' body-worn camera video recordings and the surveillance video, the gun Armenta held in his hand looked just as the officers described, like a small, black semiautomatic handgun. It did not look like a plastic replica. In addition, when the gun was recovered from the scene, it was discovered that the end of the barrel did not have an orange tip and that only the trigger was orange. The manner in which Armenta held the gun made it impossible for the officers to see the trigger. Given all these facts, it was objectively reasonable for Officer Fergot and Officer Ramirez to believe Armenta's gun was real.

Not only was it *objectively reasonable* for Officer Fergot and Officer Ramirez to believe Armenta's gun was real, both Officer Fergot and Officer Ramirez *honestly* believed Armenta's gun was real. This is shown by the fact that both officers kept their distance from Armenta and by the fact that both officers sought cover from the bullets that could have been fired from Armenta's gun. In addition, both officers repeated their orders to Armenta, telling him to drop the gun several times. Over the course of one minute and 38 seconds, both officers continued to tell Armenta to drop the gun. Both officers gave Armenta several commands in their attempts to get him to drop the gun. Officer Fergot gave 14 commands; Officer Ramirez gave 13. Their commands were clear, loud, and specific. Both officers specifically referred to the gun when they tried to convince Armenta to "drop the gun."

Further, one only needs to listen to the audio from Officer Fergot's body-camera video recording to hear the fear in Officer Fergot's voice as he excitedly screamed, "Drop the gun," as Armenta raised his arm and pointed his gun directly at Officer Fergot. This fear was palpable in the sound of Officer Fergot's voice as he screamed. Even after the officer-involved shooting and while Armenta was down on the ground, Officer Fergot's fear remained as Armenta began reaching for the gun. Officer Fergot yelled, "Drop the gu-" with his voice catching, and continued to repeatedly say, "Drop the gun," even though Armenta had dropped the gun when he fell. Officer Fergot repeated this order to drop the gun four times before yelling at Armenta to put his hands up. As Armenta continued to reach for the gun, Officer Fergot frantically screamed, "Put your hands up! Put your hands up! Put hands up!"

The same is true of Officer Ramirez. Like Officer Fergot, Officer Ramirez also ordered Armenta to drop the gun even after Armenta had fallen and already dropped the gun. Officer Ramirez then began ordering Armenta to move away from the gun and not to touch the gun. Officer Ramirez pleaded with Armenta, saying, "Move away! Come towards me, come towards me!"

Officer Fergot and Officer Ramirez waited to approach Armenta until they had other officers there to assist them. While it is true that after Armenta was down, Officer Ramirez stepped closer to Armenta and Officer Fergot stepped out from behind his patrol unit's door, neither officer approached Armenta to secure him until they had backup. This was

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 34

because the gun Armenta had just pointed at Officer Fergot was still within his arms' reach and Armenta continued to reach for the gun. The officers knew they needed backup and they could hear their backup was nearby as the sound of the responding units' sirens grew louder. All of these factors reveal the honest belief held by Officer Fergot and Officer Ramirez that Armenta's gun was real. As such, both Officer Fergot and Officer Ramirez had an honest and objectively reasonable belief that when Armenta pointed his gun at Officer Fergot, Armenta presented an imminent threat of death or serious bodily injury to Officer Fergot, and therefore, they honestly and reasonably believed they had to use deadly force to defend against this threat.

As stated in Penal Code §196, a homicide is justifiable when it results from a use of force that "is in compliance with Section 835a." Section 835a specifies a police officer is justified in using deadly force when he reasonably believes based upon the totality of the circumstances, that it is necessary, "To defend against an imminent threat of death or serious bodily injury to the officer or another." Further, under Penal Code section 197, all persons are permitted to use deadly force to protect themselves from the imminent threat of death or great bodily injury.

The fact that Armenta refused to drop the gun after the officers continually told him to do so, certainly presented a threat to all those in the immediate vicinity of Armenta. However, it was not until Armenta suddenly and quickly raised his arm and pointed his gun directly at Officer Fergot that the threat became imminent. It was at this moment that both Officer Fergot and Officer Ramirez fired their guns. The officers did not use deadly force until the threat posed by Armenta became imminent. When Armenta fell to the ground, both officers stopped firing their duty weapons. Even after Armenta fell to the ground and continued to reach for his gun, the officers showed restraint by not firing at him. Officer Fergot and Officer Ramirez exercised the use of deadly force "judiciously and with respect for human rights and dignity," only firing upon Armenta when he posed an imminent threat.

The totality of the circumstances, as discussed above, shows both Officer Fergot and Officer Ramirez had an objectively reasonable belief in the need to use deadly force in order to protect Officer Fergot's life.

Further, case law reveals 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 and given the fact that Officer Fergot and Officer Ramirez reasonably believed the gun Armenta pointed directly at Officer Fergot was real, the necessity of their use of deadly force cannot be successfully second-guessed.

Under the applicable law, Officer Fergot and Officer Ramirez's shooting of Armenta was justifiable under Penal Code sections 196 and 197 and were therefore lawful.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 35

CONCLUSION

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

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

Submitted By:
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Date: December 9, 2020



PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-00-40944

March 29, 2021

Page 36

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