



PUBLIC RELEASE MEMORANDUM

Date: February 8, 2021

Subject: **Fatal Officer-Involved Incident**

Involved Officers: Sergeant Rick Aguiar,
Pomona Police Department

Officer Edgar Rodriguez,
Pomona Police Department

Officer Manuel Rodriguez,
Pomona Police Department

Involved Subject: Matthew Blake Dixon (DOB 08/08/1985)
Subject's Residence: Chino Hills, CA

Incident Date: July 5, 2020

Case Agent: Detective Tramayne Phillips
San Bernardino County Sheriff's Department

Agency Report #: 602000111

DA STAR #: 2020-53938

TABLE OF CONTENTS

PREAMBLE 3

FACTUAL SUMMARY..... 3

STATEMENTS BY LAW ENFORCEMENT..... 6

 Sergeant Rick Aguiar..... 6

 Officer Edgar Rodriguez..... 7

 Officer Manny Rodriguez..... 9

 Additional Law Enforcement Statements..... 10

 CVFD Personnel 10

 SBCSD Criminalists..... 10

STATEMENTS BY CIVILIAN WITNESSES 11

 Jack in the Box Witnesses..... 11

 Pomona Driver..... 11

 Chino Driver..... 11

 Semi-truck Driver..... 12

INCIDENT AUDIO/VIDEO 12

 Dispatch Recordings 12

 Body Worn Camera Recordings..... 13

 Mobile Audio Video Recordings 16

 Surveillance Video Recordings 18

INCIDENT SCENE INVESTIGATION 19

DECEDENT 20

 Autopsy Protocol..... 20

 Family 21

 Criminal History..... 21

APPLICABLE LEGAL PRINCIPLES 21

ANALYSIS 27

CONCLUSION 33

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 3

PREAMBLE

The summary of this fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The case agent for this submission was SBCSD Detective Tramayne Phillips.

The submission reviewed included the following: reports of law enforcement witnesses, reports summarizing interviews of involved law enforcement and civilian witnesses, transcripts of interviews of involved law enforcement, police dispatch audio recordings, officer dashcam and body-worn camera recordings, civilian surveillance camera video recordings, reports summarizing video recordings, audio recordings of law enforcement and civilian interviews, law enforcement photographs, a three-dimensional scan of the crime scene and scientific investigation reports.

FACTUAL SUMMARY

On July 5, 2020, at approximately 6:18 p.m., Pomona Police Department (PPD) Sergeant Rick Aguiar, Officer Edgar Rodriguez and Officer Manuel Rodriguez fired their department-issued firearms at 34-year-old Matthew Blake Dixon in the City of Chino. Mr. Dixon suffered multiple gunshot wounds as a result and died at the scene. No law enforcement officers sustained physical injury.

The series of events that culminated in this lethal force encounter began with a call to police made approximately 15 minutes prior. At approximately 6:03 p.m., an employee at Jack In The Box at 2775 S. Reservoir Street in Pomona contacted PPD's non-emergency line to report a man with a gun outside the restaurant. Multiple civilians waiting for service in the drive-thru witnessed a man with a gun in his hand. The armed man appeared to be involved in a confrontation with an unidentified Hispanic man on foot in the restaurant parking lot. One patron described the armed man with the gun as a "Caucasian, skinny guy" who pointed his gun at the Hispanic man.

While PPD dispatch was on the line with the caller from Jack In The Box, PPD dispatch also received a 9-1-1 call from Witness #1. Witness #1 relayed that as he was driving down Reservoir Street, a man stopped him in the middle of the road and pointed a gun at him. PPD dispatch determined that Witness #1 was in the vicinity of the Jack In The Box and the incidents were likely related. Witness #1 was so alarmed by the armed man pointing a gun at him that Witness #1 crashed his car into bushes on the side of the road. The armed man watched Witness #1 crash and watched as Witness #1 got on his phone.

At 6:06 p.m., PPD dispatch alerted their police units that a man had pointed a gun and caused the reporting party to get into a traffic collision. PPD dispatch informed officers that the subject was a white male of thin build, with a grey shirt, black hat and jeans. Officer Manuel Rodriguez and his trainee—Officer Matthew Mendoza, who were in a two-man marked PPD unit, were the first

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 4

to deploy to the call. Sergeant Aguiar and Officer Edgar Rodriguez, each in their own marked PPD units, self-deployed to the call a few minutes later but were the first to arrive at Witness #1's location. Witness #1 told Sergeant Aguiar and Officer Edgar Rodriguez, and PPD dispatch reported that the suspect went running southbound on Reservoir Street.

At approximately 6:12 p.m., multiple 9-1-1 calls were also being received by Chino Police Department (CPD) dispatch.¹ Civilians reported that a white male was pointing a gun at people going through the intersection of Reservoir Street and Riverside Drive, less than a half mile south of the Jack In The Box and Witness #1's location. Witness #2, who later identified Mr. Dixon in a photo lineup, told CPD officers that Mr. Dixon pointed a gun at her as she was waiting to turn onto Riverside Drive from Reservoir Street. Witness #2 told officers that Mr. Dixon was about 30 feet away when he first pointed his gun at her. Witness #2 explained that Mr. Dixon then approached her car on the driver-side. Mr. Dixon appeared to be saying something to Witness #2, while continuing to point the gun at her. Witness #2 stated that she feared getting shot and was attempting to flee when Mr. Dixon got to within six feet of her window. Witness #2 was able to turn her car to the right and accelerate westward onto Riverside Drive. Witness #2 stated that she heard something hit the driver-side of her car as she fled; another motorist told officers that they saw Mr. Dixon hit Witness #2's car with his gun.

Sometime shortly after Witness #2 drove away from the intersection of Reservoir Street and Riverside Drive, Sergeant Aguiar and Officer Edgar Rodriguez approached the intersection. Both Sergeant Aguiar and Officer Edgar Rodriguez saw Mr. Dixon in the middle of the intersection with a gun in his right hand. The scene appeared to both Sergeant Aguiar and Officer Edgar Rodriguez to be a carjacking of a civilian in a pickup truck, in-progress. Officer Edgar Rodriguez saw Mr. Dixon grab at the pickup truck's driver's door. Both officers stopped their units and got out. Sergeant Aguiar yelled twice at Mr. Dixon—"Hey, put it down!" In response, Mr. Dixon looked in the direction of the officers and ran westbound on Riverside Street, away from the intersection.

Both Sergeant Aguiar and Officer Edgar Rodriguez saw Mr. Dixon run towards the business complex on the northwest corner Reservoir Street and Riverside Drive, and pursued Mr. Dixon there. Sergeant Aguiar and Officer Edgar Rodriguez parked their units at the business complex and continued their pursuit on foot. With Sergeant Aguiar and Officer Edgar Rodriguez on his heels, Mr. Dixon ran between buildings and made intermittent attempts to hide in bushes and behind a dumpster. While evading the officers, Mr. Dixon lost a boot, dropped his hat, and ultimately crawled under a red semi-truck and trailer parked at the loading dock at 12840 Reservoir Street. Less than two minutes after Mr. Dixon hid under the semi-truck trailer, Sergeant Aguiar and Officer Edgar Rodriguez walked by the semi-truck trailer. Mr. Dixon went undetected as the officers passed. At about that time, Officers Mendoza and Manuel Rodriguez arrived in the loading dock area and also began searching for Mr. Dixon on foot. Mr. Dixon remained under the trailer.

¹ These events encompassed an area straddling the border between the cities of Pomona and Chino.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 5

At 6:17 p.m., about a minute after Officers Mendoza and Manuel Rodriguez arrived, Officer Manuel Rodriguez saw Mr. Dixon peek out from under the south side of the semi-truck trailer, behind the rear-end tires. Officer Manuel Rodriguez ordered Mr. Dixon to show his hands, twice, then announced over the police radio, "Hey, I got him over here I think, underneath this semi." Meanwhile, Mr. Dixon had crawled out from under the north side of the semi-truck trailer and began walking in the direction opposite of Officers Mendoza and Manuel Rodriguez. At the same time, Sergeant Aguiar and Officer Edgar Rodriguez, who upon hearing Officer Manuel Rodriguez's radio broadcast had begun running from north of the dock area and towards the semi-truck.

At 6:18 p.m., as Sergeant Aguiar and Officer Edgar Rodriguez came into view of the north side of the semi-truck trailer and saw Mr. Dixon. Mr. Dixon raised his gun in a two-handed grip and pointed it at the officers. Officer Edgar Rodriguez said, "Aye, wait!" Almost simultaneously, Sergeant Aguiar and Officer Edgar Rodriguez raised their weapons at Mr. Dixon and fired from a distance of approximately 50 feet. Mr. Dixon began to move away from the officers and Sergeant Aguiar and Officer Edgar Rodriguez moved-in closer. Upon hearing the eruption of gunfire, Officers Mendoza and Manuel Rodriguez ran around the front of the red semi-truck and stood in-line with Sergeant Aguiar and Officer Edgar Rodriguez. With a momentary pause in the cadence of gunfire, Sergeant Aguiar and Officers Edgar and Manuel Rodriguez shouted orders to Mr. Dixon to drop his gun. It appearing that Mr. Dixon was continuing to reach for his weapon and/or point his weapon towards the officers, Sergeant Aguiar and Officer Manuel Rodriguez fired additional gunshots at Mr. Dixon, causing Mr. Dixon to fall onto his left side.

All gunfire took place within a timespan of about 14 seconds.

At around the time that the last gunshot was fired (by Officer Manuel Rodriguez), Officer Ferdinand Salgado arrived in his marked PPD unit and radioed "shots fired." Officer Shreef Erfan arrived in his marked PPD unit within seconds of Officer Salgado. Officers Salgado and Erfan joined the shooting officers and Officer Mendoza, as they lined-up approximately 20 feet from where Mr. Dixon lay wounded. The officers still perceived Mr. Dixon to be breathing and moving, and shouted commands that Mr. Dixon show his hands. Mr. Dixon did not respond either audibly or with any further provoking movement.

At approximately 6:22 p.m., Sergeant Aguiar and Officers Edgar and Manuel Rodriguez, and Officers Mendoza, Salgado and Erfan approached Mr. Dixon. Mr. Dixon was handcuffed. Officer Salgado retrieved Mr. Dixon's weapon out from under Mr. Dixon's left hip and discovered that Mr. Dixon's weapon was a pellet gun. Chino Valley Fire Department personnel pronounced Mr. Dixon deceased at the scene at 6:34 p.m.

After an examination of the scene and the shooting officers' weapons, it was determined that Sergeant Aguiar fired his Colt AR-15 A2, .223 semi-automatic rifle at least eight times, Officer Edgar Rodriguez fired his Glock 21, .45 caliber semi-automatic pistol 14 times, and Officer Manuel Rodriguez fired his Springfield Armory 1911, .45 caliber semi-automatic pistol three times. Mr. Dixon's pellet gun did not contain pellets, nor were any pellets located among Mr.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 6

Dixon's property.

A San Bernardino County Sheriff's Department forensic pathologist determined after an autopsy that Mr. Dixon's death was due to multiple gunshot wounds, notably to the right side of the head, the mid-left back, lower left flank, mid-left flank, upper right abdomen, and the left upper hamstring. The forensic pathologist opined that the gunshots to Mr. Dixon's head and back would have caused death in seconds.

STATEMENTS BY LAW ENFORCEMENT OFFICERS²

Sergeant Rick Aguiar gave a voluntary statement to SBCSD Detectives Phillips and Michael Gardea, in the presence of Officer Aguiar's attorney and a police officer association representative, on July 9, 2020, approximately three and a half days after the shooting incident. Sergeant Aguiar was permitted to review footage of the incident from Officer Edgar Rodriguez's body-worn camera prior to his interview.

At the time of the shooting incident, Sergeant Aguiar had been a California peace officer for a total of 19 and a half years, having served the last 18 years at PPD. Sergeant Aguiar drove a marked PPD patrol unit during his response to this incident. He wore black pants and a department-issued long-sleeved patrol uniform that bore PPD patches on both shoulders, as well as a PPD badge on his left chest area. The word "POLICE" appeared in large white block lettering across the back of his shirt. During the shooting, Sergeant Aguiar carried a department-issued Colt AR-15 A2 rifle that the sergeant previously loaded with 28 rounds and another semi-automatic firearm that was not fired. This was Sergeant Aguiar's fourth officer-involved shooting.

Additional relevant portions of Sergeant Aguiar's statement can be summarized as follows:

Sergeant Aguiar recalled that he was approximately one mile away from the scene when dispatch aired the "man with a gun" call. Sergeant Aguiar received information about the incident at Jack In The Box, as well as the victim who crashed in the bushes. The victim who crashed into the bushes told the sergeant that the suspect left the scene running southbound.

As Sergeant Aguiar continued southbound in pursuit of the suspect, the sergeant happened upon a white male in the road (Mr. Dixon) wearing a black hat and grey shirt, who was walking from the driver's side of a truck with a gun in his hand. The sergeant believed that he had just witnessed a carjacking in progress, and that Mr. Dixon was now

² Herein is a summary only. All shooting and witness officers are from Pomona Police Department. All investigating officers are from the San Bernardino County Sheriff's Department. All reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or Matthew Dixon by name are made here for ease of reference.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 7

running westbound across Reservoir Street into the industrial complex at Reservoir Street and Riverside Drive.

In pursuit of Mr. Dixon at the industrial complex, Sergeant Aguiar saw Officer Edgar Rodriguez in his unit in front of him. Sergeant Aguiar parked, grabbed his rifle and started searching the area with Officer Edgar Rodriguez. The sergeant believed that Mr. Dixon was luring the officers into an ambush by dropping items for the officers to follow, such as a boot, headphones and a black hat.

After Officer Manuel Rodriguez arrived, Sergeant Aguiar heard Officer Manuel Rodriguez announce, "I got him over here." The sergeant recalled he ran towards Officer Manuel Rodriguez when out of the corner of his eye, the sergeant saw the suspect come out from between a wall and a trash compactor, with a black Glock-style gun pointed at the officers. The sergeant saw Mr. Dixon's fingers "manipulating the gun." Sergeant Aguiar also recognized that Mr. Dixon was standing in a "shooter's stance" with the gun raised to eye-level. Sergeant Aguiar stated that he and Officer Edgar Rodriguez were out in the open and believed that they were going to get killed. Sergeant Aguiar stated he fired a couple of rounds at a distance of approximately 50 feet, but Mr. Dixon didn't fall down. Instead, Mr. Dixon spun around with the gun still in his hand and tried to look back at the officers. Sergeant Aguiar stated that he continued to fire until Mr. Dixon fell down.

Sergeant Aguiar stated that he gave Mr. Dixon commands to drop his gun several times, which Mr. Dixon did not comply with. After the gunfire ceased, Sergeant Aguiar stated that the officers formed a plan to take Mr. Dixon into custody, rendered Mr. Dixon's weapon safe and called in the fire department to provide medical aid.

Officer Edgar Rodriguez gave a voluntary statement to SBCSD Detectives Phillips and Gardea, in the presence of Officer Edgar Rodriguez's attorney and a police officer association representative, on July 9, 2020, approximately three and a half days after the shooting incident. Officer Edgar Rodriguez was permitted to review footage of the incident from his body-worn camera prior to his interview.

At the time of the shooting incident, Officer Edgar Rodriguez had been a California peace officer for a total of five years. He served the prior four years at PPD. Officer Edgar Rodriguez wore black pants and a black PPD-issued short-sleeved patrol polo shirt, displaying a PPD badge on his left chest area and PPD patches on both shoulders. The word "POLICE" appeared in large white block lettering across the back of his shirt. Officer Edgar Rodriguez drove a marked black and white PPD patrol unit. During the incident, Officer Edgar Rodriguez carried a department-issued Glock 21, .45 caliber semi-automatic pistol, that he previously loaded with 14 rounds.

Additional relevant portions of Officer Edgar Rodriguez's statement can be summarized as follows:

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 8

Officer Edgar Rodriguez's workday began at 4 p.m. on the day of the shooting. During his shift, the officer heard a "man with gun" call. Officer Edgar Rodriguez wanted to respond to the call so he assigned himself to it. Officer Edgar Rodriguez understood that the call involved a suspect who pointed a gun at someone and caused a traffic collision. While driving to the call location, Officer Edgar Rodriguez saw who he believed to be the frantic victim of the reported traffic collision, flagging officers down and pointing southbound.

Officer Edgar Rodriguez continued southbound in his marked PPD unit and saw Mr. Dixon in the road at Reservoir Street and Riverside Drive. Mr. Dixon appeared to be "carjacking another individual in the intersection while holding a firearm." Officer Edgar Rodriguez believed that Mr. Dixon tried to open the door to a dark-colored pickup truck at the intersection with his left hand, while holding a black semi-automatic firearm in his right. Officer Edgar Rodriguez stopped his unit next to Sergeant Aguiar's patrol unit at a distance of approximately 25-20 yards and got out. Mr. Dixon walked towards the officers, at first, but abruptly turned away. Mr. Dixon then ran westbound across Reservoir Street and into the adjacent business complex.

While pursuing Mr. Dixon into the business complex on foot, Officer Edgar Rodriguez unholstered his handgun. The officer saw Mr. Dixon's boot and hat on the ground and believed that Mr. Dixon may be "laying down breadcrumbs" for he and Sergeant Aguiar to follow, while Mr. Dixon "lay in wait" to ambush them.

Officer Edgar Rodriguez recalled sprinting after hearing Officer Manuel Rodriguez announce via radio that the suspect was underneath the "big rig." Officer Edgar Rodriguez then recalled that Mr. Dixon raised his gun with his left hand. The officer believed that Mr. Dixon was going to shoot at and possibly kill him and Sergeant Aguiar. Officer Edgar Rodriguez explained that he and Sergeant Aguiar had very little cover or concealment at this point and that Mr. Dixon "pretty much had the drop" on the officers. Officer Edgar Rodriguez fired his weapon and saw Mr. Dixon begin to turn away. Officer Edgar Rodriguez stated that he fired a second volley of shots as he saw Mr. Dixon flee. Mr. Dixon was pointing his weapon back at the officers. After taking fire, Mr. Dixon braced himself on a cinderblock wall and appeared to be reaching for his weapon still when Officer Edgar Rodriguez noticed his own weapon had "slide-locked." By the time Officer Edgar Rodriguez reloaded his weapon, two additional shots had rung out and Mr. Dixon fell to his left side onto the ground.

Officer Edgar Rodriguez did not fire any additional rounds after he reloaded his weapon but believed that Mr. Dixon was still moving after gunfire ceased and continued to give commands for Mr. Dixon to stop. Once Mr. Dixon stopped moving, officers approached and took Mr. Dixon into custody. This was Officer Edgar Rodriguez's first officer-involved shooting.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 9

Officer Manuel Rodriguez gave a voluntary statement to SBCSD Detectives Gardea and Michelle Del Rio, in the presence of Officer Manuel Rodriguez's attorney and a police officer association representative, on July 9, 2020, approximately three and a half days after the shooting incident. Officer Manuel Rodriguez was permitted to review footage of the incident from his body-worn camera prior to his interview.

At the time of the shooting incident, Officer Manuel Rodriguez had been a California peace officer for a total of seven years. He served the prior four years at PPD. Officer Manuel Rodriguez wore black pants and a black PPD-issued long-sleeved patrol polo shirt, displaying a PPD badge on his left chest area and PPD patches on both shoulders. The word "POLICE" appeared in large white block lettering across the back of his shirt. During the incident, Officer Manuel Rodriguez carried a department-issued Springfield Armory 1911, .45 caliber semi-automatic pistol, that he previously loaded with 11 rounds. Officer Manuel Rodriguez carried a second loaded firearm on his person during the incident, but did not fire that weapon.

On the day of the incident, Officer Manuel Rodriguez served as field training officer to Officer Matthew Mendoza—a trainee officer, and the two officers traveled together in a two-man marked black and white PPD patrol unit. Officer Mendoza drove and Officer Manuel Rodriguez rode in the front passenger seat. Additional relevant portions of Officer Manuel Rodriguez's statement can be summarized as follows:

Officer Manuel Rodriguez's workday began at 4 p.m. When the call involving a man with a gun or brandishing a gun came out, Officer Manuel Rodriguez stated that he and Officer Mendoza were the first unit to deploy on the call. While making their way to the location, Officer Manuel Rodriguez heard other officers describe the suspect as a white male, wearing a dark shirt and a black hat. The officer also recalled hearing that the suspect caused a person to crash his vehicle by pointing a gun at him. Officer Manuel Rodriguez also recalled hearing Sergeant Aguiar announce that he saw the suspect with a gun in his hand.

After arriving on scene, Sergeant Aguiar asked Officer Manuel Rodriguez to search the area of the trash compactor. While doing so and coming around the semi-truck parked next to the trash compactor, Officer Manuel Rodriguez stated that he saw a set of hands come out from underneath the semi-truck; it was a white man with a dark-colored t-shirt. Officer Manuel Rodriguez ordered the man to come out. When the man under the trailer failed to comply, Officers Manuel Rodriguez and Mendoza moved around the trailer to try to find him. Officer Manuel Rodriguez stated that this is when he heard the sound of two weapons of different caliber being fired. He interpreted this sound to mean that it was the suspect shooting at the police because he thought that both Sergeant Aguiar and Officer Edgar Rodriguez were both carrying rifles.

Officer Manuel Rodriguez ran towards the sound of the gunfire and saw Sergeant Aguiar and Officer Edgar Rodriguez firing upon the suspect. This is when Officer Manuel Rodriguez stated that he gave the suspect a command to show his hands or to drop the

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 10

gun and “saw the suspect lunge towards the gun, which was on the floor.” In response, Officer Manuel Rodriguez fired his weapon at Mr. Dixon three times. Officer Aguiar stated that he thought that Mr. Dixon was going to pick up his gun and try to kill the officers, and fired his weapon to protect himself or his partners in what he believed to be a threat of serious bodily injury or death.

This was Officer Manuel Rodriguez’s first officer-involved shooting.

Additional PPD Personnel who responded to the scene were asked to detail their participation in this officer-involved shooting event. Officer Mendoza was the only other officer present at the scene at the time shots were fired, who did *not* fire his weapon. Officer Mendoza’s account of the incident was generally consistent with the statements of the shooting officers. Officer Mendoza stated that he was not in a position to see Mr. Dixon when Officer Manuel Rodriguez first noticed Mr. Dixon under the trailer. Officer Mendoza further explained that he did not fire his weapon because by the time he got Mr. Dixon into his line of sight, Mr. Dixon had fallen over and was no longer a threat.

Officer Ferdinand Salgado and Officer Shreef Erfan were the fifth and sixth officers to arrive at the scene, respectively, and arrived *after* gunfire ceased. In an interview, Officer Salgado explained that he retrieved Mr. Dixon’s gun near his waistband, and discovered that it was an Airsoft gun that looked like a semi-automatic handgun. Officer Erfan was not interviewed but separately reported observing that Mr. Dixon had suffered major head trauma and was neither breathing nor conscious at the time he approached. Officer Erfan saw that there was scattered brain matter on the wall and ground. After Mr. Dixon was handcuffed, Officer Erfan confirmed that Mr. Dixon was pulseless.

Sergeant Edgard Padilla arrived at the scene after Officer Erfan and before Mr. Dixon was handcuffed. Sergeant Padilla instructed Officer Salgado to place Mr. Dixon’s weapon down on the ground at the scene. Sergeant Padilla also instructed Sergeant Aguiar to place his AR-15 rifle in the rear seat of Sergeant Padilla’s unit, and watched Sergeant Aguiar clear a round from the chamber of the rifle and take it out. However, Sergeant Padilla did not see what Sergeant Aguiar did with that unchambered round.

CVFD personnel were allowed into the scene after Mr. Dixon was handcuffed, primarily to pronounce Mr. Dixon’s death. A CVFD Firefighter Paramedic described Mr. Dixon’s condition as an “obvious death” due to the exposed brain matter. Mr. Dixon’s death was formally pronounced at 6:34 p.m.

SBCSD Criminalists were tasked with examining GSR tests applied to Mr. Dixon and the weapons fired by the shooting officers during the lethal force encounter. One GSR particle was noted on Mr. Dixon’s right hand, and none on Mr. Dixon’s left hand. All of the weapons fired during the incident were test-fired and determined to be functioning normally.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 11

STATEMENTS BY CIVILIAN WITNESSES³

There were no civilian witnesses to the officer-involved shooting at 6:18 p.m., only civilian witnesses to Mr. Dixon's conduct from approximately 6:00 p.m. to 6:12 p.m., just prior.

Jack In The Box Witnesses. At approximately 6:00 p.m., multiple patrons at the Jack In The Box at 2775 S. Reservoir Street in Pomona saw a Caucasian man of thin build (Mr. Dixon) with a black gun in-hand near the drive-thru area. It appeared to restaurant patrons that the man with the gun was arguing with a Hispanic man in the parking lot. One patron saw Mr. Dixon raise and point his gun at the Hispanic man. Another patron heard the Hispanic man say, "You going to shoot me?" to Mr. Dixon. At least one patron let a restaurant employee know that there was a man with a gun outside that may be moving towards the entrance. In response, a male employee asked all the female cashiers to hide in the back office, while the restaurant manager called the police. Ultimately, none of the employees saw the man with the gun. The patrons in the drive-through last noticed Mr. Dixon in the roadway and did not remain at the scene.

Pomona Driver. Witness #1 was 18 years old at the time and driving southbound in the number one lane on Reservoir Street when he noticed a man in the center divider (Mr. Dixon). Mr. Dixon appeared to be crossing the road in front of him, but suddenly stopped in the center of the number two lane. Mr. Dixon then turned towards Witness #1 and pointed a gun at Witness #1. This caused Witness #1 to duck down and whip his steering wheel to veer away from Mr. Dixon and across lanes to his right. Witness #1 crashed his car into landscape brush on the west curb of Reservoir Street. Witness #1's car became disabled there in the bushes. Witness #1 immediately got out of his car and hid behind it, believing that Mr. Dixon would pursue and shoot him. Instead, Witness #1 said that Mr. Dixon watched as Witness #1 got on the phone, waived his gun in the air and walked away. Witness #1 relayed that his first call to 9-1-1 was made at 6:04 p.m. Within five minutes, Witness #1 recalled two cop cars pull up and ask what the suspect looked like and what direction he went. Witness #1 stated that in total there were up to 10 police units who were in the area, along with a police helicopter, a California Highway Patrolman and Chino policemen.

Chino Driver. Multiple calls were made to 9-1-1 at approximately 6:12 p.m. and thereafter, reporting that there was a white male pointing a gun at drivers at Reservoir Street and Riverside Drive. Witness #2 was in the number one turning lane on Reservoir Street, preparing to transition to Riverside Drive when she saw Mr. Dixon in the intersection. Witness #2 turned to the right to flee. Witness #2 believed that Mr. Dixon came to about six feet of her car, when she heard something hard hit her car on the driver's side. Another driver in the intersection who saw Mr. Dixon point his gun at Witness #2, said that Mr. Dixon hit Witness #2's car with his gun as Witness #2 turned away. A CPD officer who examined Witness #2's car on the day of the incident saw a black scuff mark outside Witness #2's driver-side window.

³ Multiple civilian witnesses made calls to police dispatch and/or were interviewed pursuant to the submitted investigation. Every civilian statement and recorded statement submitted was reviewed in totality. However, only selected parts of those statements are included here.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 12

Semi-truck Driver. The officer-involved shooting occurred next to a semi-truck parked at the trailer loading docks of the warehouse located at 12840 Reservoir Street in Chino. The truck's driver was inside the sleeper area of the truck cab at the time the shooting occurred. The truck's driver was sleeping but awoke to the sound of what he believed to be fireworks. The truck driver looked outside and noticed the uniformed police officers and a marked police unit. The truck driver never saw Mr. Dixon nor did he hear the police. At all times during the incident, noise from the outside was muffled because all the truck cab windows were closed and the truck engine was running.

INCIDENT AUDIO/VIDEO⁴

Dispatch Recordings. The case agent's submission included separate recordings of multiple 9-1-1 calls and CPD and PPD radio dispatch broadcasts during the subject incident. The actual timing of these recordings is not apparent from the recordings themselves. There is some indication of timing when the audio recordings are considered alongside dispatch logs prepared by CPD and PPD, which note approximate timestamps for radio communications delayed only by the time to receive and input the information.

Select notable communications are summarized as follows:

PPD's dispatch log indicates that at approximately 6:03 p.m., employees of the Jack In The Box reported a thin man with a grey shirt standing by a car with a gun. About two minutes later, at 6:05 p.m., Witness #1 called 9-1-1, stating, "I was driving down the street, and a guy stopped me in the middle of the road and pointed a gun at me, and I just whipped my car into the grass."

Witness #1 told the operator, "it was 100% a gun" and "he pointed it full on at me, watched me crash and then just walked away." Witness #1 described his assailant as a Caucasian male wearing a black hat, grey shirt and jeans. PPD's dispatch operator relayed Mr. Dixon's description to all units. PPD's dispatch log indicates that Sergeant Aguiar and Officer Edgar Rodriguez arrived at Witness #1's location at 6:12 p.m.

While Sergeant Aguiar and Edgar Rodriguez were either en route or at Witness #1's location, multiple calls were being received by CPD dispatch involving a man with a gun in the intersection of Reservoir Street and Riverside Drive. The first of those callers reported seeing a white male in his 20's, standing in the middle of the intersection, wearing a black hat, black shirt and jeans, and pointing a black handgun at all the drivers. The second caller—Witness #2, reported similarly that a white man with a dark cap, gray shirt and jeans, ran towards her and pointed a gun at her. Witness #2 was audibly upset and hysterically crying during this call. Witness #2 reported that her assailant was

⁴ All submitted audio and video recordings were reviewed but only selected items are summarized here.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 13

probably on Reservoir Street. Both callers reported hearing and/or seeing police cars approach.

Body Worn Camera (BWC) Video Recordings. The case agent's submission included video recordings from cameras worn by PPD officers at mid-sternum. In addition to the names given to these video files as submitted, the identities of the officer from whom the footage was received can be inferred from the video content. The BWC recordings do indicate the time being recorded. BWC recordings from Officers Edgar and Manuel Rodriguez, Officers Mendoza, Salgado and Erfan, and Sergeant Padilla were submitted.⁵ Each recording was reviewed in light of the interview given by the person to whom the recording is attributed. The submitted BWC recordings were generally consistent with the wearing-officer's interview. The timing of events noted in the dispatch recordings and companion logs appear to be consistent with the timestamps indicated by these BWC recordings, within a margin of a minute.

The following is a summary of select notable events captured by the BWC recordings submitted and considered in context of all other submitted audio and video recordings:

Officer Edgar Rodriguez's BWC recording began at 6:13 p.m.; he was on foot with his weapon drawn and held out with both hands, but low in front of him. Police sirens can be heard. Sergeant Aguiar can be seen with a rifle in his hands and walking ahead of Officer Edgar Rodriguez. The officers walked in an easterly direction across the front of the business at 3340 Riverside Drive and continued north along the east side of the same building. Officer Edgar Rodriguez repeatedly cautioned the sergeant about the bushes in the area, alerting the sergeant that the suspect had tried to hide in them.

At approximately 6:14 p.m., as the officers rounded the northeast corner of the business building at 3340 Riverside Drive, Officer Edgar Rodriguez and Sergeant Aguiar see and announced via radio that they located a boot. They continued in a westerly direction along the north side of the building and about 30 seconds later, they also found a hat. As Sergeant Aguiar and Officer Edgar Rodriguez continued into the loading dock area behind 12840 Reservoir Street, a red semi-truck and trailer was parked and the truck's engine noise was audible. When Officer Edgar Rodriguez turned toward the semi-truck, the visible area beneath the rear trailer appeared to be clear.

At approximately 6:16 p.m., Officer Edgar Rodriguez walked across the front of the red semi-truck and looked down the north side of the truck's trailer before continuing towards the north fence-line of the open lot in between warehouse loading docks.

At 6:17 p.m., as Sergeant Aguiar and Officer Edgar Rodriguez moved north and away from the red semi-truck, Officers Mendoza and Manuel Rodriguez arrived at the scene. Officers Mendoza and Manuel Rodriguez made verbal contact with Sergeant Aguiar and

⁵ Unlike all other submitted BWC recordings, which are continuous, Sergeant Padilla's BWC footage was submitted in three separate clips that appear to have been recorded at separate times during his presence at the scene.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 14

Officer Edgar Rodriguez at a distance, across the open lot. Officer Edgar Rodriguez told Officer Manuel Rodriguez that the suspect was about his height, then continued to broadcast via radio, "Pomona, just for further, he's about 5'10", maybe about 210-220."

Meanwhile, Officers Mendoza and Manuel Rodriguez moved towards the red semi-truck to check it. Officer Manuel Rodriguez told Officer Mendoza that he was having a hard time hearing as he walked across the front of the red semi-truck and looked down the south side of the truck's trailer. Within two seconds, Officer Manuel Rodriguez suddenly raised his weapon in a two-handed grip in front of him and yelled, "Let me see your fucking hands, dude." Mr. Dixon is not visible in the BWC footage at this point. Officer Mendoza's BWC footage indicated that Officer Mendoza stood behind and to the right of Officer Manuel Rodriguez.

Both Officer Mendoza and Officer Manuel Rodriguez proceeded to walk towards the rear tires of the trailer. Mr. Dixon was still not visible. Within five seconds of ordering Mr. Dixon to show his hands, Officer Manuel Rodriguez announced via radio, "Hey, I got him over here I think, underneath this semi." Officers Mendoza and Manuel Rodriguez walked further towards the back of the trailer.

At 6:18 p.m., upon hearing Officer Manuel Rodriguez's broadcast of Mr. Dixon's location, Officer Edgar Rodriguez's BWC footage showed that both he and Sergeant Aguiar ran from the northwest corner of the building at 12840 Reservoir Street, in a southwest-southeast arc towards the red-semi truck. Sergeant Aguiar was positioned to Officer Edgar Rodriguez's left side. After approximately eight seconds and coming into view of the loading dock bay, Officer Edgar Rodriguez's BWC footage showed Mr. Dixon in a shooter's stance, with both of his hands out and in front of him, at what appeared to be eye-level. Officer Edgar Rodriguez said, "Aye, wait!" and dipped into a shooting stance. Meanwhile, the BWC of Officers Mendoza and Manuel Rodriguez showed that they were on the south of the trailer, puzzled as to where Mr. Dixon had gone. Gunfire erupted within approximately 10 seconds of Officer Manuel Rodriguez's broadcast of Mr. Dixon's location.

As shooting began, Officer Edgar Rodriguez's BWC footage showed Mr. Dixon appear to turn to his right and move away from the officers' gunfire, into a narrow space between a cinder block wall and an industrial trash compactor. During gunfire, the view of Officer Edgar Rodriguez's BWC camera was mostly obstructed by the officer's own arms and hands in front of him. The sun at the officers' backs projected the officers' shadows on the ground in front of them, depicting the officers in a shooting stance.

About five seconds after shooting began, Officer Edgar Rodriguez's BWC footage showed that his weapon was slide-locked and no longer firing. There was a momentary pause in fire and Sergeant Aguiar can be heard saying, "Drop it! Drop it!" Officer Edgar Rodriguez also yells, "Drop the gun!" Within a second or two, the BWC footage of both Officers Mendoza and Officer Manuel Rodriguez's BWC showed that Officer Mendoza

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 15

and Officer Manuel Rodriguez ran from the back of the south side of the red semi-truck trailer, across the front of the semi-truck hood and to the right of Sergeant Aguiar and Officer Edgar Rodriguez. Mr. Dixon can be seen in a seated position with his back against the block wall. Officer Edgar Rodriguez dislodged his empty handgun magazine and reloaded it. Sergeant Aguiar yelled, "Drop the fucking gun!" Officer Manuel Rodriguez echoed, "Drop the fucking gun!" Officer Edgar Rodriguez yelled, "Drop the gun!" simultaneously to Officer Mendoza yelling, "Drop it! Drop it!" Sergeant Aguiar fired his final round and Mr. Dixon fell over to his left side before Officer Mendoza was finished saying "Drop it" the second time. Within a second of Sergeant Aguiar's final rifle round and as Mr. Dixon fell over, Officer Manuel Rodriguez fired three rounds in rapid succession. All gunfire was heard within a 14 second window of time.

Within three seconds of Officer Manuel Rodriguez's final shot fired, Officer Edgar Rodriguez announced via radio, "998, suspect's down." Just as that announcement was made, Officer Salgado arrived and approached the scene. Officer Erfan arrived within seconds of Officer Salgado.

At approximately 6:19 p.m., Sergeant Aguiar commanded Mr. Dixon to show his hands. Officer Edgar Rodriguez announced via radio that Mr. Dixon still had his gun and was still moving. At approximately 6:20 p.m., Officer Edgar Rodriguez commanded Mr. Dixon to stop moving. While Mr. Dixon's movements cannot be seen at this point in the BWC footage, Officer Manuel Rodriguez is subsequently heard affirming Mr. Dixon's breathing and right hand movement.

At 6:21 p.m., the officers at the scene continued to form their plan of approach towards Mr. Dixon, though Officer Edgar Rodriguez repeatedly expressed the need to secure Mr. Dixon's weapon. Sergeant Padilla's BWC footage showed that he arrived at the scene at approximately this time, but remained at his unit and to the rear of the shooting officers and Officers Mendoza, Salgado and Erfan.

At 6:22 p.m., Officers Salgado led a single-line formation of officers behind a ballistic shield. Officer Salgado was followed by Officers Erfan and Mendoza. Sergeant Aguiar and Officer Manuel Rodriguez also moved forward toward Mr. Dixon, in tandem to Officer Mendoza's left. Officer Edgar Rodriguez trailed behind Officer Manuel Rodriguez. Officer Erfan announced, "Pomona Police Department, do not move. Do not reach for anything. Do not move!" No BWC footage appeared to capture any subsequent spontaneous or responsive movement by Mr. Dixon.

Mr. Dixon was handcuffed by 6:23 p.m., after which Officers Manuel and Edgar Rodriguez walked away from Mr. Dixon. Within a minute of Mr. Dixon being in custody, Officer Salgado retrieved Mr. Dixon's weapon and discovered it was an "Airsoft." Officer Erfan also checked Mr. Dixon for breath and pulse, and determined that the "major head trauma" Mr. Dixon exhibited could not be helped by chest compressions or CPR.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 16

Sergeant Padilla approached Mr. Dixon at approximately 6:25 p.m., after ordering that the fire department be allowed into the scene. Sergeant Padilla then checked Mr. Dixon for a pulse, found no pulse and determined also that CPR would not be administered due to the evident exposure of brain matter. At 6:32 p.m., Sergeant Padilla escorted two fire paramedics to Mr. Dixon's location. The fire paramedics pronounced Mr. Dixon's death at 6:34 p.m.

Mobile Audio Video (MAV) Recordings. The case agent's submission included video recordings from cameras mounted upon PPD police units. In addition to the names given to these video files as submitted, the identities of the police unit from which the footage was received can be inferred from the video content. The recordings do indicate the time being recorded. MAV recordings from units operated by Sergeant Aguiar and Officers Mendoza, Salgado and Erfan were submitted. Each recording was reviewed in light of the interview given by the person to whose unit the recording is attributed. The submitted MAV recordings were generally consistent with the interviews given by the involved officers. The timing of events noted in the dispatch recordings and companion logs appear to be consistent within a minute, with the timestamps indicated by these MAV recordings.

The following is a summary of select notable events captured by the MAV recordings submitted and considered in context of all other submitted audio and video recordings:

The MAV recordings of Sergeant Aguiar and Officers Mendoza and Erfan, all begin at approximately 6:11 p.m. At this time, all three units appeared to be responding to the "man with gun" call. Of the three units, Sergeant Aguiar was first to arrive at the intersection of Reservoir Street and Riverside Drive. MAV footage showed Mr. Dixon in the northbound lanes of Reservoir Street, coming around the left hood area to the driver-side door of a gray truck in a southbound turning lane. Sergeant Aguiar stopped his unit, got out and yelled, "Hey, put it down!" Mr. Dixon looked toward Sergeant Aguiar's unit and walked across the southbound lanes of Reservoir Street and towards the west curb with what appeared to be a gun in his right hand. Sergeant Aguiar yelled again, "Hey, put it down!" In response, Mr. Dixon ran westbound on Riverside Drive. Officer Edgar Rodriguez's marked PPD unit then abruptly cut to the front of Sergeant Aguiar's unit from the left side and both Sergeant Aguiar and Officer Edgar Rodriguez turned right onto Riverside Drive. Both units proceeded into the parking area at the northwest corner of Reservoir Street and Riverside Drive. Sergeant Aguiar's MAV footage captured both Sergeant Aguiar and Officer Edgar Rodriguez out of their units and moving on foot around the building at 3340 South Riverside Drive. However, the officers quickly moved out of frame.

Officer Erfan's unit was the next unit to pull into the driveway of 3340 South Riverside Drive, at approximately 6:16 p.m., with a partial view of the asphalt area west of the loading docks at 12840 Reservoir Street. Officer Erfan's MAV device captured Officer Edgar Rodriguez walking through that asphalt area and approximately 20 seconds later,

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 17

Officer Mendoza's unit moved past Officer Erfan's unit to the left. Officer Erfan then left the area and drove further west down Riverside Drive. Meanwhile, Officer Mendoza pulled his unit into the open area where Sergeant Aguiar and Officer Edgar Rodriguez were already walking ahead. Officer Mendoza parked and both he and Officer Manuel Rodriguez got out and began sweeping the area on foot, as well. Officers Mendoza and Manuel Rodriguez appear to check an area north west of their unit, while Sergeant Aguiar and Officer Edgar Rodriguez moved east and back towards the building at 12840 Reservoir Street.

At 6:17 p.m., about 30 seconds after getting out of their unit, Officers Mendoza and Manuel Rodriguez walked in a southwesterly direction. One of Officer Mendoza's MAV recordings showed the northwest corner of the building at 12840 Reservoir Street, and the front hood portion of the red semi-truck; the truck's trailer is off screen. Officers Mendoza and Manuel Rodriguez walked outside the view of this MAV camera, but the footage included audio of Officer Manuel Rodriguez's radio broadcast that he saw the suspect under the semi-truck at approximately 6:18 p.m. Elsewhere, Officer Erfan's MAV camera also captured Officer Manuel Rodriguez's broadcast locating the suspect, to which Officer Erfan immediately turned on his lights and sirens and drove back towards 12840 Reservoir Street.

After Officer Manuel Rodriguez's broadcast that he located the suspect, Officer Mendoza's MAV footage showed Sergeant Aguiar and Officer Edgar Rodriguez immediately run from the area north of 12840 Reservoir Street and towards the red semi-truck. Within about 10 seconds of Officer Manuel Rodriguez's radio broadcast, Sergeant Aguiar and Officer Edgar Rodriguez stopped running, shuffle stepped and pointed their weapons towards the area north of the red semi-truck and fired them. Mr. Dixon was not visible in Officer Mendoza's MAV footage. After multiple rounds fired, Sergeant Aguiar and Officer Edgar Rodriguez moved closer to the red semi-truck and appeared to turn their fire towards the building at 12840 Reservoir Drive. After Officer Edgar Rodriguez fired his last shot, and as Sergeant Aguiar fired his second to last shot, Officer Manuel Rodriguez and Officer Mendoza are seen running around the front of the red semi-truck. There is a five second pause in gunfire as all four officers moved closer together and further forward towards the area they are firing, before Sergeant Aguiar fires his final round and Officer Manuel Rodriguez fires three times.

Officer Mendoza's MAV recording next captured Officer Salgado approach in his unit to the shooting scene, as well as Officer Salgado's announcement of "shots fired" just after Officer Manuel Rodriguez fired his last round. Officer Salgado's MAV recording began as he approached the scene and the shooting officers and Officer Mendoza are in view immediately to the front. Officer Edgar Rodriguez announced that the suspect was down, and within 10 seconds, Officer Mendoza's MAV recording showed Officer Erfan's unit rapidly approach with lights and sirens. Officer Erfan parked his unit to the right of Officer Salgado's unit and in front of the front hood of the red semi-truck. Officer Erfan silenced his siren when he parked his unit, but kept his lights on. No MAV recording

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 18

captured any verbal commands given by the involved or witness officers.

Surveillance Video Recordings. The case agent submitted civilian surveillance video from the involved Jack In The Box and multiple businesses in the area comprising the business complex at the northwest corner of Reservoir Street and Riverside Drive, as well as the building located at 3260 Riverside Drive. Surveillance video from the red semi-truck was also submitted. In sum, these videos depict the movements of Mr. Dixon and the involved officers prior to and during the shooting and were considered in the context of all other submitted audio and video.

The earliest surveillance video footage from the involved Jack In The Box restaurant showed Mr. Dixon in the surrounding areas of the restaurant from approximately 5:43 p.m. At approximately 5:50 p.m., restaurant footage showed a confrontation (without sound) between Mr. Dixon and another man in the restaurant drive through area, during which a gun can be seen in Mr. Dixon's hand.

Video surveillance from a business at 3340 Riverside Drive showed an east-facing view of a parking lot abutting Reservoir Street, at the northwest corner of Reservoir Street and Riverside Drive. This video contained no timestamp. But, video surveillance from this business showed Mr. Dixon walking by with a gun in his right hand approximately two minutes before Sergeant Aguiar is shown stopping in his unit and heard yelling, "Hey, put it down!" two times. Officer Edgar Rodriguez's unit can be seen just east and forward of Sergeant Aguiar's unit. Mr. Dixon is not visible in the surveillance when Sergeant Aguiar makes his commands. The units then screech away, out of view. Within seconds of the police units moving away, this surveillance footage captured Mr. Dixon running by in a northerly direction along the east side of the building at 3340 Riverside Drive. About a minute and a half after Mr. Dixon ran by, Sergeant Aguiar and Officer Edgar Rodriguez walked by in a northerly direction. Sergeant Aguiar carried a rifle in his hands in front of him and walked ahead of Officer Edgar Rodriguez. Officer Edgar Rodriguez had his handgun in a two-handed grip in front of him, as he scanned forward.

Video surveillance from the business at 12840 Reservoir Drive captured footage at multiple views around that building, but without sound. At approximately 6:12 p.m., surveillance captured Mr. Dixon running westbound in the alley between the south side of 12840 Reservoir Drive and the north side of 3340 Riverside Drive. Mr. Dixon came out of his right boot as he entered the alley, then Mr. Dixon ran behind a dumpster in the alley and posted up behind it. Mr. Dixon remained there for about 45 seconds before continuing west.

At 6:13 p.m. Mr. Dixon moved through a hedge at the south west corner of 12840 Reservoir Drive, without a hat and with his weapon visible in his hand. Then, Mr. Dixon proceeded to walk toward the trailer attached to the red semi-truck, and crawled under the rear wheel axle, again with the gun visible in his (right) hand. At 6:14 p.m., about a minute after Mr. Dixon hid under the trailer, Sergeant Aguiar and Officer Edgar Rodriguez discovered Mr. Dixon's boot in the alley and proceeded past the red semi-truck trailer, not yet discovering Mr. Dixon there.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 19

Officer Mendoza and Officer Manuel Rodriguez can be seen arriving in their unit at approximately 6:16 p.m. At 6:17 p.m., surveillance shows Mr. Dixon crawling into view behind the south rear trailer wheels, with a gun on the ground in front of him. Mr. Dixon quickly grabbed his gun with his left hand and retreated back under the trailer. At the same time, it is apparent that Officer Manuel Rodriguez's attention was drawn towards the trailer as he brought his weapon out in front of him. Within a few seconds, Mr. Dixon emerged from behind the north rear trailer wheels with the gun still in his hand and walked westbound, towards the front of the trailer. Officer Mendoza and Officer Manuel Rodriguez were on the exact opposite side of the trailer and were likely unable to see Mr. Dixon's movement because there was a flap below the trailer spanning the space between the front and rear wheels on both sides of the trailer that may have obstructed their view. Within seconds of Mr. Dixon moving away from the trailer, surveillance captured Sergeant Aguiar and Officer Edgar Rodriguez running back towards the trailer.

Video surveillance from the building at 3260 Riverside Drive included events beginning with Sergeant Aguiar and Officer Edgar Rodriguez's first pass of the red semi-truck parked at the docks of 12840 Reservoir Drive at approximately 6:16 p.m. This video was taken from a distance and the depicted subjects are small and familiar only in context of all the other audio and video submitted. The captured events are consistent with those stated above. When Officer Edgar Rodriguez passed the front hood of the red semi-truck, he did not appear to inspect the under-carriage of the truck, nor did he inspect the area immediately around the trash compactor. This footage showed that as Officers Mendoza and Manuel Rodriguez moved east towards the rear of the south side of the truck trailer at 6:18 p.m., that Mr. Dixon emerged from under the north side of the trailer and walked westward. Sergeant Aguiar and Officer Edgar Rodriguez ran back towards the semi-truck, until they caught view of Mr. Dixon as he moved in front of the west face of the trash compactor. Then, Mr. Dixon moved away from the officers, into a small space between a cinder block wall and the north side of the trash compactor. As Officers Mendoza and Manuel Rodriguez joined Sergeant Aguiar and Officer Edgar Rodriguez, all moved forward towards Mr. Dixon.

Video surveillance from the red semi-truck depicts the area to the front hood, and is therefore limited in view but consistent with all the above video.

INCIDENT SCENE INVESTIGATION

The case agent managed the incident scene investigation with the assistance of two SBCSD Crime Scene Specialists. The officer-involved shooting occurred in the dock area at 12840 Reservoir Street. A total of 1,173 photographs of the incident scene, including ground level and aerial photographs and a three-dimensional scan of the immediate surrounding area. The marked PPD units of Sergeant Padilla and Officers Salgado and Erfan were parked immediately to the west of where the shooting occurred, and FCCs were discovered strewn around and under these units. Officer Mendoza's marked PPD unit had been moved from its position during the shooting incident, to the south driveway of 3340 Riverside Drive. The marked PPD units of Sergeant

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 20

Aguiar and Officer Edgar Rodriguez were parked south of 3340 Riverside Drive, where the officers had left their units prior to pursuing Mr. Dixon on foot.

Sergeant Padilla's PPD unit was parked to the west of the west face of the trash compactor and cinder block wall. Officer Salgado's PPD unit was parked, facing east, to the rear and south of Sergeant Padilla's PPD unit. Officer Erfan's PPD unit was parked slightly offset to the rear and south of Officer Salgado's unit, also facing east and the front hood of the red semi-truck.

Sergeant Aguiar's rifle was located in the rear seat of Sergeant Padilla's PPD unit. The case agent discovered 20 cartridges in the rifle's attached magazine head stamped with "WINCHESTER 223 REM." There was no cartridge in the rifle chamber. A total of eight .233 caliber FCC's were identified and recovered at the scene. One empty black Glock .45 caliber magazine and a total of 17 .45 caliber FCCs head stamped with "WINCHESTER 45 AUTO" were identified and recovered at the scene. Numerous fired bullet fragments were also identified and recovered. The FCC debris field consisted of the area between the red semi-truck cab and the PPD units of Officers Erfan and Salgado, and Sergeant Padilla. Fired bullet strikes were identified on the cinder block wall, the north and west faces of the trash compactor, the loading dock wall and roll-up dock door at 12840 Reservoir Street.

The case agent found Mr. Dixon's body at the scene with his hands handcuffed behind his back. The case agent identified a black UX 4.5mm caliber BB pistol, model XBG in the area near where Mr. Dixon lay; the BB pistol had no magazine but was noted to be in a ready-to-fire position. The BB pistol bore a warning label stating as follows: "Not a toy. Misuse or careless use may cause serious injury or death." An empty black BB pistol magazine was noted on the ground near Mr. Dixon's buttocks. Mr. Dixon's other tan work boot and baseball hat were located in the alley between the buildings at 12840 Reservoir Street and 3340 Riverside Drive.

A SBCSD Deputy Coroner Investigator conducted her investigation and retrieved Mr. Dixon's body from the scene on July 6, 2020. The Coroner Investigator noted that Mr. Dixon wore a gray t-shirt, blue jeans with a tan belt in the loops and a tan work boot on his left foot. Items found on Mr. Dixon's person did not include any weapons.

DECEDENT

AUTOPSY PROTOCOL. A SBCSD Forensic Pathologist performed the autopsy of Mr. Dixon on July 13, 2020, and found Mr. Dixon to be a 34 year-old White male, 5'10" tall, and weighing 159 pounds. The forensic pathologist identified six gunshot entry wounds as follows: the rear right side of the head, the lower left flank, the upper right abdomen, the left upper hamstring, the mid left back, and the inner left hamstring. The gunshot wound to the upper right abdomen was determined to have a front to back trajectory. The remaining five gunshot entry wounds were determined to have a back to front trajectory, including the two gunshots that the forensic pathologist determined to have been the fatal rounds. Specifically, one fatal round entered the rear of the right side of the head and exited at the top of the skull, and the other fatal

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 21

round entered the mid-left back, struck the spleen and heart and was recovered in the left side of the chest. The forensic pathologist opined that in light of his wounds, Mr. Dixon's death would have occurred within seconds.

DECEDENT'S FAMILY. The case agent interviewed Mr. Dixon's wife and parents as part of his investigation. Mr. Dixon's wife indicated that she last saw her husband at approximately 5:10 p.m. on the day of the shooting. Mr. Dixon's wife relayed that she and Mr. Dixon had been arguing over drug use and child custody. Mr. Dixon's wife told Mr. Dixon to move out, and as Mr. Dixon collected his things, she saw Mr. Dixon take his pellet gun. The day before, while Mr. Dixon was visiting with his children, he told his wife that it would be the last time he saw his kids. Mr. Dixon's wife and mother were both aware that Mr. Dixon had previous suicidal ideation. Mr. Dixon's family was aware that Mr. Dixon used methamphetamine and marijuana.

CRIMINAL HISTORY. The case agent's submission included Mr. Dixon's criminal history, which states three felony convictions from Tennessee for aggravated burglary, aggravated assault and possession of methamphetamine with intent to sell in 2004, 2007 and 2009, respectively. Mr. Dixon also appears to have been convicted of at least 13 misdemeanor offenses in Tennessee between 2004 and 2019.

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).)⁶ 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.)

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

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 22

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at §§196 and 197. 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 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 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 was new to section 835a in 2020,⁷ 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

⁷ 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 # 2020-53938

February 8, 2021

Page 23

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;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;⁸
- (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.

⁸ 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 # 2020-53938

February 8, 2021

Page 24

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;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required under section 835a(c)(1), as stated *supra*.

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

Imminence newly-defined in the context of use of force to effect 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,

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 25

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.) If the person's beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) 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.)⁹ 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.

⁹ 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 # 2020-53938

February 8, 2021

Page 26

(*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. 8, *supra*.)

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

under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*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.)

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 27

ANALYSIS

This report evaluates the use of deadly force by Pomona Police Department officers: Sergeant Rick Aguiar, Officer Edgar Rodriguez and Officer Manuel Rodriguez. As indicated above, there are legal bases that must be met before the use of deadly force can be justified. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances made apparent by the case agent's submission.

Attempted Detention or Arrest. Police were attempting to detain and/or arrest Mr. Dixon at the time he was shot. Police were called for emergency assistance approximately 15 minutes prior to the time of the shooting. From the initial dispatch to the time that the shooting occurred, multiple marked police units from multiple law enforcement agencies responded to the area of Reservoir Street and Riverside Drive in Chino. The BWC and MAV recordings submitted provide a small sample of PPD's coordinated attempts to locate Mr. Dixon as he menaced civilians.

Both Sergeant Aguiar and Officer Edgar Rodriguez received and perceived information about Mr. Dixon's criminal flight. The first contact the officers made was with Witness #1. Mr. Dixon pointed his weapon at Witness #1, who fled Mr. Dixon's presence in such a panic that it caused Witness #1 to lose control of his vehicle. Fortunately, Witness #1 did not sustain nor inflict injury in doing so. Neither negates the potential danger posed by Mr. Dixon's conduct in causing the collision. Within a minute of making contact with Witness #1 and less than a half mile away, Sergeant Aguiar and Officer Edgar Rodriguez saw what they believed to be an attempted carjacking in the road in front of them; Mr. Dixon had an apparent firearm in-hand. It appeared to Officer Edgar Rodriguez that Mr. Dixon was attempting to open a motorists' driver-door. Both officers got out of their units. Sergeant Aguiar commanded Mr. Dixon to drop his weapon. Both Sergeant Aguiar and Officer Edgar Rodriguez were in their police uniforms and operating marked PPD units when they faced Mr. Dixon in broad daylight, without obstruction. Mr. Dixon looked in the officers' direction and fled. Sergeant Aguiar and Officer Edgar Rodriguez immediately broadcasted the nature of their pursuit, such that Officer Manuel Rodriguez also became aware that Mr. Dixon was armed and evading officers. With these facts, the shooting officers had probable cause to believe that Mr. Dixon had brandished a weapon or attempted to carjack another motorist, in addition to the assault upon Witness #1 with a firearm.

In order to effectuate Mr. Dixon's arrest or detention, officers were authorized to use reasonable force. For Mr. Dixon's part, Mr. Dixon reasonably knew that officers were attempting to detain and/or arrest him. Mr. Dixon came face-to-face with uniformed police officers in marked police units prior to fleeing from them. Mr. Dixon had a duty to refrain from using *any* force or weapon to resist arrest. The officers were not obligated to retreat nor did they forfeit the right to defend themselves in light of Mr. Dixon's actual and/or threatened resistance. However, any justified use of force must be deemed to have been, "reasonable." The framework for determining what is "reasonable" is included in *Graham, supra*. Whether Sergeant Aguiar and the Officers Rodriguez were justified in their use of lethal force involves a two-part analysis: (1) did each officer subjectively and honestly believe he needed to protect himself or others from an apparent,

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 28

imminent threat of death or great bodily injury; and (2) was each officer's belief in the need to protect himself or others from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of each of the involved officers is stated here based upon the officer's statement and the audio and video footage of his conduct. All three shooting officers—Sergeant Aguiar, Officer Edgar Rodriguez and Officer Manuel Rodriguez, each became aware of the “man with a gun” call via PPD dispatch. Even before Sergeant Aguiar and Officer Edgar Rodriguez saw Mr. Dixon for themselves, each officer understood that they were in pursuit of White male with a thin build, grey shirt, black hat and jeans, who pointed a black gun at a motorist and consequently caused a traffic collision. Both Sergeant Aguiar and Officer Edgar Rodriguez perceived Mr. Dixon to be attempting to carjack a motorist when they saw him for the first time. Both Sergeant Aguiar and Officer Edgar Rodriguez saw for themselves that Mr. Dixon was armed. While Sergeant Aguiar and Officer Edgar Rodriguez pursued Mr. Dixon by foot, both officers recalled feeling like they were being coaxed into an ambush by Mr. Dixon. This stated joint belief tends to indicate that a reasonable officer would perceive the situation to involve a suspected armed felon seeking to gain a tactical advantage and was mal-intent in harming the uniformed officers who pursued him.

The second time that both Sergeant Aguiar and Officer Edgar Rodriguez saw Mr. Dixon, they saw that Mr. Dixon was pointing a gun and preparing to shoot at them. Specifically, Sergeant Aguiar stated “at the time, I thought I was [going to] die, myself or Officer Edgar Rodriguez or Officer Manny Rodriguez.” Officer Edgar Rodriguez stated, “I believed that he was [going to] shoot at myself and Sergeant Aguiar and potentially kill us.” Both Sergeant Aguiar and Officer Edgar Rodriguez stated that they saw Mr. Dixon turn away while they fired. Sergeant Aguiar and Officer Edgar Rodriguez stated that Mr. Dixon did not drop his weapon, but pointed it back towards the officers as if to shoot as he fled. As such, both Sergeant Aguiar and Officer Edgar Rodriguez continued to fire at Mr. Dixon. At the outset, Sergeant Aguiar and Officer Edgar Rodriguez began to fire their weapons almost simultaneously and supports an inference that both officers perceived the apparent threat posed by Mr. Dixon, at the same time. Sergeant Aguiar and Officer Edgar Rodriguez continued to fire after Mr. Dixon moved away from the west face of the trash compactor and into the space between the cinder block wall and the north side of the trash compactor. Again, it appears that both Sergeant Aguiar and Officer Edgar Rodriguez each perceived the continued apparent threat of Mr. Dixon shooting back at the officers while fleeing, at the same time.

Based on the contrasting sounds of gunfire that he heard, Officer Manuel Rodriguez believed that Mr. Dixon was shooting at his partners. Officer Edgar Rodriguez was in the midst of reloading his weapon when Officer Manuel Rodriguez appeared to his right. During a five second pause in gunfire, all officers present shouted commands to Mr. Dixon to drop his gun. Then, Officer Manuel Rodriguez saw Mr. Dixon make what he described as a “lunging motion towards the gun” that he felt Mr. Dixon would “pick up the gun and shoot at the police” and try to kill the officers. Officer Manuel Rodriguez stated that he fired his weapon in response, “to protect myself or my partners in what I believed is a threat of serious bodily injury or death.”

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 29

Officer Edgar Rodriguez also recalled that Mr. Dixon “still wanted to fight,” was “reaching for the firearm” and “not obeying commands.” Moreover, Sergeant Aguiar also fired his last shot at the approximate time that Officer Manuel Rodriguez fired his weapon, giving rise to an inference that Sergeant Aguiar and Officer Manuel Rodriguez both perceived the same threat at the same time. Based upon the foregoing, it is reasonable to conclude that Sergeant Aguiar and the Officers Rodriguez each bore an honest and subjective belief that they and their fellow officers were under threat of imminent deadly harm or bodily injury at the times they each used lethal force.

Reasonable Belief of Imminent Need to Protect. More than the stated belief of Sergeant Aguiar and the Officers Rodriguez, the totality of the submission supports a finding that each officer had an objectively reasonable belief of the need to use deadly force to protect himself or another.

The preliminary *Graham* factor considers of the severity of the crime at issue. It would have been reasonable for officers responding to the scene to believe that Witness #1 was the victim of more than a simple brandishing. Witness #1 reported in his emergency call that he believed a real gun was pointed at him in such a manner that he believed that he would be shot and killed. Witness #1’s sudden evasive maneuvers and resulting traffic collision was further indicative of Witness #1’s real fear. Dispatch alerted officers to the “man with a gun,” as well as the subsequent collision. Subsequently, Witness #1 told Sergeant Aguiar and Officer Edgar Rodriguez that he last saw his assailant go south—the very direction that the officers happened upon Mr. Dixon in the road. Mr. Dixon was seen by the officers less than a minute later, at a location less than a half mile from Witness #1’s traffic collision. Mr. Dixon matched the initial physical description of Witness #1’s assailant. These facts in sum afforded the officers probable cause to believe that Mr. Dixon assaulted Witness #1 with a firearm. In addition, that Mr. Dixon would attempt to take the vehicle of another motorist by force or fear and while armed, would afford the officers probable cause to believe that an attempted carjacking was also occurring. About seven minutes after seeing Mr. Dixon in the road, Mr. Dixon reappeared to Sergeant Aguiar and Officer Edgar Rodriguez. This time, Mr. Dixon stood in a shooter’s stance with his firearm out in front of him and pointed at Sergeant Aguiar and Officer Edgar Rodriguez, as if preparing to shoot. The officers reasonably believed that Mr. Dixon was at a minimum assaulting them with a firearm, or at worst attempting to kill them.

Officer Manuel Rodriguez was aware of Witness #1’s emergency call for service and that officers did also see Mr. Dixon with a gun, but he did not witness the attempted carjacking. Still, Officer Manuel Rodriguez did hear what he believed to be Mr. Dixon firing upon the officers and subsequently what he described as Mr. Dixon reaching for his weapon. Assault with a firearm, carjacking, assault upon a peace officer with a firearm and attempted murder of an officer are considered serious or violent felonies per California statute. Although investigation ultimately revealed Mr. Dixon’s weapon to be a pellet gun, *Graham* only contemplates what a reasonable person acting as a police officer would have believed at the time of this stressful situation, without the hindsight benefit of a complete investigation. The officers here had no reason to believe that Mr. Dixon’s weapon was anything less than a semi-automatic firearm

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 30

capable of firing bullets. As such, in the officers' deliberative process it would have been reasonable for them to consider that Mr. Dixon was engaged in a spree of serious and violent felonies.

Resistance is another essential consideration in a *Graham* analysis. The submission supports an overwhelming conclusion that Mr. Dixon knew he was being pursued by law enforcement. Witness #1 recalled that immediately after he crashed his car, that Mr. Dixon watched Witness #1 get on the phone. It would be reasonable to infer that Witness #1 would be perceived to call 9-1-1. Witness #1 recalled that up to ten police cars subsequently went by his location and that a police helicopter was also in the area. Even those who subsequently called 9-1-1 to report Mr. Dixon pointing his gun at motorists at Reservoir Street and Riverside Drive noted that police units were in the area. MAV and surveillance video showed that Mr. Dixon came face to face with Sergeant Aguiar and Officer Edgar Rodriguez in the open street, where the officers were uniformed and in marked PPD units. When Sergeant Aguiar commanded Mr. Dixon to drop his weapon. Both Sergeant Aguiar and Officer Edgar Rodriguez stepped out of their units. It can be inferred that Mr. Dixon saw the officers as he looked toward their units and ran. BWC and surveillance recordings taken during Mr. Dixon's flight are replete with the sounds of sirens. Moreover, while Mr. Dixon hid from officers under the semi-truck trailer, he was in a position to see Sergeant Aguiar and Officer Edgar Rodriguez as they moved past his hiding place. Lastly, surveillance did capture Mr. Dixon partially move out of hiding when he was spotted by Officer Manuel Rodriguez; indeed this is what appears to have caused Mr. Dixon to crawl out to the opposite (north) side of the trailer before the shooting occurred. Sergeant Aguiar and the Officers Rodriguez were each in readily identifiable police uniforms. Right until Mr. Dixon chose to face-off with officers, Mr. Dixon consistently fled at the sight of them. Under these circumstances, the involved officers had reason to believe that Mr. Dixon was not only aware that he was being pursued by the police, but also that the involved officers may use deadly force against him if he resisted. Without question, Mr. Dixon knew during his flight, that he was evading the police.

Mr. Dixon's flight alone, however, was not the pinnacle of his resistance; the extreme measure of pointing an apparent firearm at armed officers was. Immediately prior to the shooting, every person that saw Mr. Dixon's handgun, law enforcement and civilian alike, believed that Mr. Dixon's handgun was a "real" gun. In addition to causing Witness #1 to get into a traffic collision, the sight of Mr. Dixon pointing his gun at people generated multiple emergency calls to 9-1-1. Minutes after Mr. Dixon pointed his gun at Witness #2, she was still hysterically crying in her car. Mr. Dixon's own wife had previously told Mr. Dixon's mother that Mr. Dixon's pellet gun looked like a "real gun." It is expected, therefore, that the shooting officers here would reasonably believe that Mr. Dixon's weapon was a firearm ready to and capable of firing bullets. As such, when Mr. Dixon pointed his weapon at officers, he engaged the officers in an extreme form of resistance.

Immediacy is the "most important" *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. As stated above, Sergeant Aguiar and Officer Edgar Rodriguez witnessed Mr. Dixon in possession of a firearm two separate times. Due to the appearance of the pellet gun

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 31

at issue here, the mere possession of the pellet gun gave rise to the reasonable belief that Mr. Dixon had the present ability to use a deadly weapon. Also, Mr. Dixon was reported to have watched Witness #1 crash his car, as an immediate consequence to having pointed his gun at Witness #1 in the first place. Mr. Dixon continued to point his weapon at other motorists who also fled the area with fright. Additional traffic collisions might reasonably have occurred thereafter. The causational impact of pointing a gun at motorists driving in their cars on a main thoroughfare could easily have been as grave as firing a bullet at a moving vehicle, even if indirectly so. Under the circumstances, the repeated pointing incidents demonstrate that Mr. Dixon intended to immediately cause death or serious bodily injury to others. But perhaps the most obvious expression of intent here occurred when Mr. Dixon pointed his gun *at the officers*. Pointing a gun at officers while standing in a shooter's stance, holding the gun in a two-handed grip and manipulating the trigger, in no uncertain terms, communicated Mr. Dixon's apparent intent to immediately shoot and kill the officers, even if Mr. Dixon had no present ability to fire bullets at the officers. Moreover, Mr. Dixon had a multitude of opportunities during his extended flight to discard or disassociate himself from the pellet gun. Instead, Mr. Dixon chose to continue to possess the pellet gun and wield it to intimidate and assault others. Mr. Dixon's conduct in total, as such, demonstrated that Mr. Dixon had the present ability, opportunity and apparent intent to immediately cause death or serious bodily injury to others.

Based on the foregoing, each of the primary *Graham* factors as applied, support a finding that the use of force by Sergeant Aguiar and the Officers Rodriguez was reasonable. The additional considerations mentioned in §835a(a) further support a conclusion that the use of deadly force by Sergeant Aguiar and the Officers Rodriguez was lawful.¹⁰ The officers' conduct discussed herein appears to have been judiciously exercised; deadly force was used by the officers only when it became blatantly apparent to them that they were in immediate in danger of being killed. Sergeant Aguiar and Officer Edgar Rodriguez did not fire upon Mr. Dixon when they first saw Mr. Dixon in the street with a gun in-hand, even though Mr. Dixon fled and did not immediately comply with Sergeant Aguiar's command to drop his weapon. Officer Manuel Rodriguez also did not fire upon Mr. Dixon when he first saw Mr. Dixon under the trailer, even though Officer Manuel Rodriguez had already been informed that Mr. Dixon was armed. Indeed, surveillance footage showed that Mr. Dixon had his weapon in front of him at the time Officer Manuel Rodriguez saw him. At the time Mr. Dixon presented himself to Sergeant Aguiar and Officer Edgar Rodriguez in a shooting stance, again with a gun visible in his hand, the officers were caught completely in the open with no immediate cover available. Similarly, when Officer Manuel Rodriguez saw Mr. Dixon prior to firing his weapon, Officer Manuel Rodriguez believed that Mr. Dixon had already fired at officers and was moving to pick up his weapon once more.

¹⁰ This review does not undertake additional examination of whether agency use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any use of force policies were violated. Additionally, the submitted materials do not indicate that Mr. Dixon suffered a mental disability at the time of the shooting incident, such that he was unable to understand and comply with commands. Rather, Mr. Dixon's conduct suggests that he was well aware that he was being pursued by law enforcement and intentionally pointed his gun at officers. The submission included information that Mr. Dixon bore some suicidal ideation prior to this incident. However, the balance of the submission shows that Mr. Dixon was a danger to more than himself at all times during the officers' pursuit of him, up to and including the time of the shooting itself.

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 32

As such, the shooting officers here faced an apparent threat of lethal force, with lethal force.

Although the pursuit of Mr. Dixon from the intersection at Reservoir Street and Riverside Drive, up until the time officers began shooting was approximately seven minutes, this does not mean that the officers had the benefit of extended deliberation time. To the contrary, only about 10 seconds pass from the time Officer Manuel Rodriguez radioed that he had located Mr. Dixon, to the time Sergeant Aguiar and Officer Edgar Rodriguez came face-to-face with Mr. Dixon. Additionally, Sergeant Aguiar and Officer Edgar Rodriguez were running towards Mr. Dixon's location and did not see Mr. Dixon until Mr. Dixon was already pointing his gun at the officers. All gunfire took place within a 14 second window of time. By pointing a gun at officers, Mr. Dixon dictated a circumstance where there was no feasible, safe or reasonable opportunity for the officers to de-escalate. No use of verbal commands or less-lethal defense can be expected to defend against such an imminent lethal threat. That imminent threat and an inability to de-escalate continued even after Mr. Dixon began to take fire because Mr. Dixon continued to point his weapon at the officers while attempting to flee. The decision-making here was made under tense, uncertain and rapidly-evolving circumstances. The forensic pathologists' findings are consistent with the officers' account of Mr. Dixon's movement while shots were being fired. One of six shots had a front to back trajectory while the balance had a back to front trajectory. The submission shows that there was a momentary pause in fire during which the shooting officers and Officer Mendoza issued commands that Mr. Dixon drop his weapon. Officer Edgar Rodriguez did not fire after the aforementioned pause, but under the circumstances already discussed, Sergeant Aguiar and Officer Manuel Rodriguez reasonably perceived that Mr. Dixon posed a further lethal threat before they fired weapons. It must also be considered that the officers required time to perceive the threat posed to them, to process that threat and then decide to respond with gunfire, even if only a fraction of a second. By the same token, time also passed between the perception of the end of the threat and the reaction of the officer to stop shooting. In total, it is reasonable to believe that Mr. Dixon moved through each action-reaction gap, which resulted in Mr. Dixon sustaining gunshot wounds with a back to front trajectory.

Section 835a(a) does advise that lethal force be used only "when necessary to defend human life." In the evaluation of the question of necessity at the time shots are fired, it must be noted that the courts have employed a standard that is highly deferential to the reasonable officer, 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. For example, the fact that Mr. Dixon's gun was not a semi-automatic firearm capable of firing bullets is precisely the kind of hindsight that cannot negate the reasonableness of the shooting officers' conduct here. No circumstance occurred during the pursuit of Mr. Dixon to convey that Mr. Dixon was not actually as armed and dangerous as the shooting officers believed. Mr. Dixon wielded his pellet weapon like a "real gun" and those whom Mr. Dixon pointed the pellet weapon at reacted as if their lives were in danger. The safety of the involved officers (and civilians alike) depended upon their assumption that the danger apparently posed by Mr. Dixon was exactly what they believed it to be. Similarly, that Mr. Dixon was out-manned, out-gunned and facing trained law enforcement also cannot change the analysis. These facts do not vitiate the

PUBLIC RELEASE MEMORANDUM

Fatal Officer-Involved Incident

DA STAR # 2020-53938

February 8, 2021

Page 33

danger perceived by Sergeant Aguiar and the Officers Rodriguez, under the circumstances in which they perceived it. As such, the shooting officers cannot be second-guessed.

Sergeant Aguiar and the Officers Rodriguez had to act instantly to confront the danger posed by Mr. Dixon, which was by all indication an immediate threat to kill the officers. Based on the foregoing, the use of lethal-force by Sergeant Aguiar and the Officers Rodriguez is deemed to have been reasonably made and is also justifiable under Penal Code §§196 and 197.

CONCLUSION

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Sergeant Rick Aguiar, Officer Edgar Rodriguez and Officer Manuel Rodriguez was justifiable in self-defense and the defense of others. Accordingly, no criminal liability based on the officer's conduct attaches in this incident.

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
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Dated: February 8, 2021

