



PUBLIC RELEASE MEMORANDUM

DATE: May 4, 2021

Subject: Non-Fatal Officer-Involved Incident

Involved Officers: Officer Mark Aguirre
Rialto Police Department

Involved Subject/DOB: Christian I.

Subject's Residence: Rialto, California

Incident Date: March 2, 2020
Incident Time: 6:12 p.m.

Case Agent/Agency: Detective Narcie Sousa
San Bernardino County Sheriff's Department

Agency Report #: DR# 602000046
H# 2020-019

DA STAR #: 2020-00-23516

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PREAMBLE

This was a non-fatal officer involved use of force by a police officer from the Rialto Police Department. The use of force resulted in injury to Christian I. and was investigated by the San Bernardino County Sheriff's Department. This memorandum is based on a thorough review of all the investigative reports, photographs, medical records, surveillance video recordings, and video recordings from Rialto Police officers body-worn cameras submitted by the San Bernardino County Sheriff's Department, DR# 602000046 and H# 2020-019.

FACTUAL SUMMARY

On Monday, March 2, 2020, at approximately 6:12 p.m., officers from the Rialto Police Department responded to a report of an armed attempted carjacking¹ near North Spruce Avenue and West Victoria Street in the city of Rialto. While officers were en route to the location, dispatch advised them additional victims had called in to report they were victims of attempted carjackings in the same area. The suspect was described as a male Hispanic wearing dark clothing, riding a yellow bicycle, and was reported to be armed with a handgun which he used in his attempts to steal the victims' cars.

Rialto police officers located a suspect matching this description riding a yellow bicycle southbound on North Spruce Avenue near the area reported in the calls. Upon seeing the suspect, Officer Aguirre activated his patrol unit's emergency lights and forward facing solid red light in an attempt to stop him. The suspect refused to stop and quickly pedaled his bicycle away from Officer Aguirre who followed approximately 20-30 feet behind. Additional marked patrol units joined Officer Aguirre in pursuit of the suspect. These additional patrol units also activated their emergency lights and sounded their sirens.

The suspect rode his bicycle through an intersection against a red light and then headed into a residential neighborhood. Officers continued pursuing the suspect with their emergency lights and sirens activated. Officer Aguirre began flashing the suspect with his patrol car's spotlight, but the suspect still refused to stop. As the suspect turned onto North Idyllwild Avenue, Officer Aguirre saw the suspect had a handgun in his right hand. The suspect was holding the gun down by his right side. Officer Aguirre cautiously drove closer to the suspect, getting to within 10-20 feet of him. As he did so, Officer Aguirre saw the suspect had moved his right hand up to his waist area. Officer Aguirre could no longer see the gun but could see the suspect was moving his right arm near his waist area as if he was moving his gun around. Officer Aguirre then saw the suspect's right elbow lifting

¹ (a) "Carjacking" is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence, or from the person or immediate presence of a passenger of the motor vehicle, against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear.

[Cal Pen Code § 215](#)

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upward. As the suspect did this, he quickly turned his head back towards Officer Aguirre. Officer Aguirre grew concerned the suspect was looking back so that he would know where to shoot at him. The suspect looked back a second time as he continued quickly riding away from Officer Aguirre. Fearing the suspect was preparing to shoot the gun at him or the other pursuing officers, Officer Aguirre accelerated his patrol unit and struck the back tire of the suspect's bicycle, in an attempt to stop the suspect and end the threat. When Officer Aguirre struck the back tire of the suspect's bicycle, the suspect fell and accidentally fired his gun, shooting himself in the leg. A handgun was found lying on the pavement approximately 12 feet away from the suspect. The suspect was taken into custody without further incident.

STATEMENTS BY POLICE OFFICERS²

All Rialto Police Department Officers who responded to the scene on March 2, 2020, wore readily identifiable police uniforms consisting of black pants, long sleeved polo shirts, load bearing vests with Rialto Police Department badges and their names on the chest, police patches on each shoulder, and the word "Police" in bold block lettering on the back. All officers also carried the following tactical gear: Body worn camera, lapel microphone on the chest, a police radio, magazines holding ammunition, oleoresin pepper spray, a baton, a taser, and handcuffs. The officers' duty weapons were Glock 22 handguns. No officers fired their guns in this incident. All officers drove marked Rialto Police Department Ford Interceptor Sport Utility Vehicles.

On March 2, 2020, at approximately 11:18 p.m. **Officer Nicholas Besheer** was interviewed by Detectives Narcie Sousa and Bruce Southworth of the San Bernardino County Sheriff's Department.

On March 2, 2020, Officer Besheer was on duty as a police officer with the Rialto Police Department. At approximately 6:12 p.m., Officer Besheer was putting gas in his patrol vehicle when he heard Rialto Police Department dispatch broadcast an attempted carjacking with the suspect using a gun. The attempted carjacking had occurred near North Spruce Avenue and a cross-street³ north of Foothill Boulevard in the city of Rialto. Officer Besheer began driving toward this location. Dispatch advised the suspect was a male Hispanic wearing dark clothing and riding a yellow bicycle.

While driving to the location, Officer Besheer and the other responding officers coordinated with each other in order to set up a perimeter around the area to locate the suspect. Over the police radio, Officer Besheer heard Rialto Police Officer Poole ask dispatch to confirm the suspect description. Dispatch confirmed the suspect's description and said the suspect was riding a yellow bicycle. Officer Poole then advised over the radio that he had located the suspect and the suspect was riding a yellow bicycle southbound on North Spruce Avenue, crossing Foothill Boulevard. Officer Besheer was

² Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

³ Officer Besheer could not remember the name of this street when interviewed by detectives.

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driving west on Foothill and saw the suspect, later identified as Christian I., riding a yellow bicycle southbound on North Spruce Avenue and crossing Foothill Boulevard.

Officer Besheer saw Rialto Police Officer Aguirre in his patrol unit following Christian I. Officer Besheer turned south on North Spruce Avenue and got behind Officer Aguirre. Officer Besheer saw Christian I. turn east on Lorraine Place. Officer Aguirre slowed down and stopped his patrol vehicle as if he had lost sight of Christian I. Over the police radio, Officer Besheer said, "Left on Lorraine, left on Lorraine." Officer Aguirre turned left on Lorraine and Officer Besheer followed him. Both Officer Aguirre and Officer Besheer had activated their patrol units' lights and sirens as they followed Christian I., but Christian I. refused to stop. Rialto Police Department Officer Keetle followed behind Officer Besheer in his patrol unit during their pursuit of Christian I. Officer Besheer estimated he was driving at approximately 20-25 miles per hour.

During their pursuit of Christian I., dispatch broadcast that several additional victims had called in to report the same suspect had pointed a gun at them and had attempted to carjack them. Christian I. continued riding away from the officers and turned south on North Idyllwild avenue. Officer Besheer saw Christian I. was pedaling hard to get away from the officers.

After travelling about 150 yards on North Idyllwild Avenue,⁴ Officer Besheer heard a gunshot. Officer Besheer believed Christian I. had shot his gun at Officer Aguirre. When he heard the gunshot, Officer Besheer peeled off to the right of Officer Aguirre's patrol unit. Officer Besheer saw Christian I.'s bicycle falling toward the right. Officer Besheer then saw Christian I. off his bicycle, sliding across the roadway toward a black sedan which was parked along the east curb. Officer Besheer did not see what had caused Christian I. to come off his bicycle.

As Officer Besheer got out of his vehicle, he saw Christian I. getting up to his knees and putting his hands in the air. Officer Besheer heard an officer, he believed it was Officer Aguirre, giving Christian I. commands to, "Get on the ground." Officer Besheer quickly approached Christian I. to control his movements. Officer Besheer pushed Christian I. down to the ground on his stomach. Christian I. had his right hand under his upper body, near his midsection. Officer Besheer never saw a gun in Christian I.'s hand at any point during the incident, however, based on the reports the suspect had a gun, Officer Besheer feared Christian I. had a gun in his hand. Officer Besheer pulled Christian I.'s hand from underneath him and knelt on his back to control his movements. Officer Keetle, who had also approached, handcuffed Christian I.

⁴ After Officer Besheer turned onto North Idyllwild and was heading south, he could no longer see Christian I. because Officer Aguirre's patrol unit blocked his view.

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Officer Besheer saw blood coming from Christian I.'s face and believed he had major facial trauma.⁵ Officer Besheer placed Christian I. on his side and supported his head to prevent blood from going down his throat and to maintain his airway. Officer Besheer immediately asked dispatch to have Rialto Fire Department respond to the scene. Officer Besheer quickly checked for additional injuries to Christian I.'s body and did not find any. Christian I. had trouble speaking due to his facial injuries. Officer Besheer asked him questions and Christian I. appeared to be answering the questions appropriately. Christian I. told Officer Besheer his name was Christian, he was 15-years old, and he accidentally shot himself. Officer Besheer waited approximately four to five minutes with Christian I., supporting his head to prevent further injury until the fire department arrived. While waiting, Christian I. changed his story and said he didn't shoot himself and his face hit the ground, causing the injuries. Christian I. said he did accidentally shoot his gun, though.

While waiting with Christian I., Officer Besheer heard one of the police officers say they had found a gun. Officer Besheer looked and saw a gun on the ground near the black sedan where he detained Christian I. Officer Besheer estimated the gun was approximately one-half car's length away⁶ from Christian I. Officer Besheer attempted to look for a fired cartridge casing at the scene but did not find one. Officer Besheer described the lighting at the scene on North Idyllwild as dark with not many streetlights. The only lights at the scene were those from the police cars' headlights and emergency lights.

On March 3, 2020, at approximately 12:28 a.m. **Officer Alexander Keetle** was interviewed by Detectives Narcie Sousa and Bruce Southworth of the San Bernardino County Sheriff's Department.

On March 2, 2020, Officer Keetle was on duty as a police officer with the Rialto Police Department.⁷ At approximately 6:10 p.m., Officer Keetle was at the Rialto bus yard located on Rialto and Cactus Avenue, putting gas into his patrol unit. Officer Keetle heard Rialto Police Department Dispatch broadcast an attempted carjacking near Spruce Avenue in Rialto. Dispatch advised that the attempted carjacking suspect was armed with a handgun and was riding a yellow bicycle.⁸ Officer Keetle responded to the call and began driving to the location given. Officer Keetle estimated it took him about 30 seconds to arrive at Spruce Avenue and Foothill Boulevard.

While en route to the location, dispatch advised the officers that additional calls were coming in with additional victims of armed carjacking attempts by the same suspect. Officer Keetle drove north on Cactus Avenue and turned west on Foothill Boulevard.

⁵ Prior to becoming a police officer, Officer Besheer worked as a paramedic from 2012-2016.

⁶ Crime scene investigation revealed the distance was approximately 12 feet.

⁷ Officer Keetle wore an Axon body-worn camera on this date; however, when he activated it, he saw the battery was nearly dead. Because of this, his body-worn camera did not record the incident.

⁸ Officer Keetle could not recall the description of the suspect's clothing at the time of his interview.

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While driving, Officer Keetle heard another officer⁹ over the police radio ask dispatch to confirm the color of the bicycle the suspect was reported to be riding. This same officer then advised over the radio that he had located the suspect at Spruce Avenue and Foothill Boulevard.

As Officer Keetle turned north on Spruce Avenue from Foothill Boulevard, he observed the suspect riding his bicycle southbound on Spruce Avenue. The suspect was wearing all black clothing and was pedaling fast. Officer Keetle saw two patrol vehicles ahead of him, also driving north on Spruce Avenue. One of the patrol vehicles was later identified as being driven by Officer Aguirre. Officer Keetle did not know which officer was driving the second patrol car behind Officer Aguirre. Officer Aguirre's patrol unit's emergency lights were activated. Officer Keetle could hear police sirens were also activated but did not know from which vehicle they came. Officer Aguirre made a U-turn to follow the suspect southbound on his bicycle. The second unknown patrol officer and Officer Keetle then made U-turns and followed Officer Aguirre. Officer Keetle activated his emergency lights and sirens as he made the U-turn. Officer Aguirre¹⁰ got stuck behind another car after making his U-turn, but the unknown patrol officer and Officer Keetle were able to continue south on Spruce following the suspect. The suspect continued to ride his bicycle south on Spruce Avenue and pedaled through the red light at the intersection of Spruce Avenue and Foothill Boulevard. The suspect was standing up on his pedals and pedaling hard as if to get away from the officers. As Officer Keetle approached this intersection, a patrol vehicle, driven by Rialto Police Officer Besheer, came from the west on Foothill Boulevard and turned south on Spruce Avenue in front of Officer Keetle.

Officer Keetle continued through the intersection at Foothill Boulevard and Spruce Avenue behind Officer Besheer. The officers continued south on Spruce until they got to Lorraine Place. Officer Keetle heard one of the officers tell them over the police radio to turn left (east) on Lorraine Place. They all turned left on Lorraine Place and then turned right (south) onto Idyllwild Avenue. Officer Keetle did not see the suspect turn south on North Idyllwild Avenue. Officer Keetle estimated his speed while driving on North Idyllwild Avenue was approximately 20 to 25 miles per hour.

As Officer Keetle continued driving south on North Idyllwild Avenue, behind Officer Besheer, he heard a pop which sounded like a gunshot but did not know from where it had come. Officer Keetle and all the other officers stopped their vehicles.¹¹ Officer Keetle saw smoke coming across the roadway and realized someone had shot a gun. Officer Keetle could not recall whether the gunshot occurred before or after he stopped his patrol unit. As he got out of his vehicle, he smelled gunpowder.

⁹ Officer Keetle was not sure who this officer was but believed it was Officer Poole.

¹⁰ Body-worn camera and surveillance videos show Officer Aguirre was the first patrol car in the pursuit behind Christian I. at the time of the use of force. Officer Keetle's interview did not clarify how it was that Officer Aguirre regained the number one position after being held up by another car after making a U-turn.

¹¹ Officer Aguirre stopped his vehicle on the east side of the street, Officer Besheer stopped on the west side of the street, and Officer Keetle stopped behind Officer Besheer.

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Officer Keetle saw the suspect, later identified as Christian I., lying on his stomach on the east side of the roadway, near a parked black sedan. Christian I.'s head was facing north; his bicycle was lying in the street. Officer Keetle did not see how Christian I. had come off his bicycle. Officer Keetle followed Officer Besheer as he ran over to Christian I. Christian I.'s right hand was underneath his body. Officer Keetle was concerned Christian I. might have a gun in his right hand because dispatch had reported the suspect had a gun. Officer Keetle and Officer Besheer grabbed Christian I.'s right hand from underneath his body, put his arms behind his back, and handcuffed him.

Officer Keetle saw a laceration to Christian I.'s chin and mouth and believed the injury may have been caused by a gunshot because of how his chin was torn open. Officer Keetle advised dispatch to have medical aid respond to the scene. Officer Keetle asked Christian I. if he had shot himself and Christian I. responded, "Yes." Christian I. later said he had not shot himself.

Officer Aguirre walked up to Christian I. and said, "Why were you shooting?" Officer Aguirre appeared to be upset so Officer Keetle asked him to step away.¹² Officer Besheer rendered medical aid to Christian I. until the fire department arrived about five minutes later.

While Officer Besheer tended to Christian I., Officer Keetle took photographs of the scene. One of the Rialto Police Department officers found a silver¹³ Taurus semi-automatic handgun along the east curb line, near the black sedan, approximately six to seven feet north of Christian I. Officer Keetle did not know which officer found the gun.

Officer Keetle described the lighting at the scene on Idyllwild Avenue as dark with not many streetlights. The only lights at the scene were from the police vehicle headlights and emergency lights.

On March 10, 2020, at approximately 10:15 a.m. **Officer Mark Aguirre** was interviewed by Detectives Narcie Sousa and Bruce Southworth of the San Bernardino County Sheriff's Department.

On March 2, 2020, Officer Aguirre was on duty as a police officer with the Rialto Police Department. At approximately 6:10 p.m., Officer Aguirre was filling up his patrol vehicle at the gas pumps located at Rialto and Lilac when he heard a call come out over the radio of an attempted carjacking with the use of a gun. The location of the attempted carjacking was Spruce and Victoria. Officer Aguirre started heading that direction to respond to the call. The suspect description was a Hispanic male adult approximately 18-20 years old, wearing dark colored clothing, riding a yellow bicycle. Dispatch had also advised the

¹² None of the body-worn camera videos recorded Officer Keetle asking Officer Aguirre to step away; however, Officer Aguirre did walk away after asking Christian I. why he was shooting. See bodycam summary for details.

¹³ Photographs from the scene show the handgun had a black frame and a silver slide.

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suspect used a silver handgun to attempt the carjacking. At this time of day, it was just starting to get dark outside.

While en route to the location given in the call, dispatch updated the officers that the same suspect was attempting to commit another armed carjacking in the same area. Dispatch also advised the suspect had a tattoo on his face and he was heading southbound on Beachwood. Officer Aguirre knew the suspect was close to his location at this point. When Officer Aguirre turned northbound on Spruce from Foothill Boulevard,¹⁴ he saw a young Hispanic male, 18-20 years old, wearing dark colored clothing, riding a yellow bicycle. The male suspect, later identified as Christian I., was riding his bicycle southbound on Spruce. Northbound Spruce leads to a residential area, so Officer Aguirre knew Christian I. was coming from a residential area. Believing this was the attempted carjacking suspect, Officer Aguirre made a U-turn on Spruce and turned on his emergency lights to follow him.

Shortly after making the U-turn, Officer Aguirre came to an intersection with a red light, so he had to wait to clear the light before he could continue following Christian I. This caused him to lose sight of Christian I. Officer Aguirre did not know if Christian I. was hiding from him. Because the call had indicated the suspect had used a gun, Officer Aguirre was concerned Christian I. might have been hiding from him and would shoot at him. As Officer Aguirre drove past a liquor store, he saw someone near a dumpster. Fearing it was Christian I., Officer Aguirre pulled out his gun. Just as he pulled out his gun, Officer Aguirre heard a fellow police officer announce over the radio that the suspect turned left on Lorraine. Officer Aguirre realized the person near the dumpster was not Christian I.

Lorraine was the very next street; Officer Aguirre turned left onto Lorraine. As he made the turn, Officer Aguirre saw Christian I. riding his bicycle east on Lorraine. Officer Aguirre was approximately 20-30 feet behind Christian I. and had his emergency lights and his forward-facing red light on. Another police unit was behind Officer Aguirre's vehicle and it had its lights and siren activated. Christian I. was pedaling away very quickly and didn't look back at the officers. Officer Aguirre believed Christian I. was trying to get away. Officer Aguirre drove to get closer to Christian I., but he did not want to approach too quickly because he feared Christian I. had a gun. Officer Aguirre used his spotlight to flash Christian I. while he was driving behind him, but Christian I. kept on going.

Christian I. made a right turn and headed south on Idyllwild. This was in a residential area. When Christian I. turned onto Idyllwild, Officer Aguirre saw a gun in Christian I.'s right hand. Christian I. was holding the gun down to his right side. Upon seeing the gun, Officer Aguirre was scared because he did not know if Christian I. would "start using the gun on him" in order to get away. Officer Aguirre was afraid Christian I. was going to shoot him, his partner, or an innocent bystander in the neighborhood. Officer Aguirre

¹⁴ Officer Aguirre estimated it took him two minutes to get to this location from the gas pumps.

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knew Christian I. was dangerous because he had a gun and had just committed two felonies with the gun.

Officer Aguirre drove closer to Christian I., getting to within 10-20 feet behind him. Officer Aguirre activated his siren. Christian I. looked back at Officer Aguirre quickly and Officer Aguirre saw he was holding his right hand near his waistband area. Officer Aguirre could no longer see the gun, but it looked like Christian I. was “messing with his gun” and was “bringing it up.” Officer Aguirre could see Christian I.’s was raising his right elbow in an upward direction from his hip. Christian I. looked back at Officer Aguirre a second time and Officer Aguirre thought Christian I. was going to bring up the gun and reach back to shoot him or his partners. Because Officer Aguirre’s focus was on Christian I. and his hands, Officer Aguirre did not know if there were any innocent bystanders nearby who could be in danger if Christian I. started shooting. Officer Aguirre knew he needed to stop Christian I. right away before he could shoot anyone. Officer Aguirre accelerated “just a little bit, just to hit the bike” on the back tire to stop Christian I. As soon as he struck the back tire on the bicycle, he took his foot off the accelerator and stepped on the brake pedal. Officer Aguirre did not know how fast he was driving when he struck the bicycle, but it was “not very fast.” The airbags in Officer Aguirre’s vehicle did not deploy. Officer Aguirre’s goal was to get Christian I. off of the bicycle and place him under arrest.

As soon as he stepped on the brakes, he saw Christian I. go down in front of his patrol unit’s front bumper and then he heard a gunshot. Officer Aguirre lost sight of Christian I. and thought he was shooting at him and trying to kill him. Officer Aguirre put his car in park and got out with his gun in his hand. Officer Aguirre saw Christian I. lying in front of him on the east side of the street but did not see his hands. Officer Aguirre yelled at him, “Let me see your hands!” Christian I. slowly showed him his hands and Officer Aguirre saw Christian I. was no longer holding a gun. Another police officer approached Christian I. and handcuffed him. Officer Aguirre saw Christian I.’s gun on the east side of the street, lying on the ground approximately five feet away from Christian I.

Officer Aguirre walked over to Christian I. and asked him why he was shooting at him. Officer Aguirre then walked to the front of his patrol unit to see if the bullet from the gunshot had gone into his front bumper but did not find one. Officer Aguirre was then taken to the Rialto Police Station by Officer Babino.

On March 3, 2020, **Kevin Balleweg**, a Sergeant with the Rialto Police Department, prepared a report concerning the incident involving Christian I. on March 2, 2020.

Sergeant Balleweg was the patrol shift supervisor on March 2, 2020. At 6:12 p.m., Sergeant Balleweg heard the call from dispatch concerning an attempted carjacking near Spruce and Victoria. The suspect was described as a Hispanic male adult with a tattoo on his eye, wearing dark clothing, riding a yellow bicycle, and carrying a silver handgun. Dispatch advised the suspect was last seen northbound on Spruce and then eastbound on Morgan.

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As officers started for the scene, the Sheriff's helicopter was requested. Dispatch began providing information about additional carjacking attempts in the same area. With this additional information, dispatch advised the suspect was last seen heading southbound on Beechwood and then left on Grove. A short time later, Sergeant Balleweg heard an officer announce they had seen the suspect at Foothill and Spruce, then eastbound on Lorraine, and then southbound on Idyllwild.

As Sergeant Balleweg was driving to the location, he heard an officer announce a gunshot had been fired and a male had been hit in the face. Sergeant Balleweg arrived at the scene, the roadway in front of a residence located on the 200 block of North Idyllwild, moments later. The suspect, later identified as Christian I., was lying in the street near a black car which was parked on the east curb. Christian I. was handcuffed behind his back and a bicycle with a mangled wheel was in the street nearby. "Two or three" police vehicles were stopped in the roadway, facing southbound, just north of Christian I. Officer Besheer was providing aid to Christian I. and Officer Keetle was asking him about any other wounds that weren't readily apparent. Christian I. had a major wound to his face and there was a pool of blood and some teeth on the street near him. Sergeant Balleweg saw Christian I. had a tattoo on his face near his eye.

Corporal Breen advised Sergeant Balleweg that they had found a gun. Corporal Breen drew his attention to a semi-automatic Taurus pistol lying in the street just north of the black car where Christian I. was located. Officer Cardenas was assigned to watch over the firearm. Corporal Breen, Officer Keetle, and Officer Aguirre advised Sergeant Balleweg of what had occurred.

Sergeant Balleweg spoke with Christian I., but his facial injury made it difficult to understand him. Sergeant Balleweg asked Christian I. if he had shot himself and Christian I. replied, "On accident." Sergeant Balleweg asked which direction he had shot, but Christian I. did not know. Sergeant Balleweg obtained Christian I.'s first name but could not understand him when he tried to give his last name. Christian I. said he lived down the street.

Officer Arroyo took gunshot residue samples from Christian I.'s hands, secured the samples in his vehicle, and then responded to the hospital with Christian I. Officer Brambila checked the welfare of nearby residents to make sure none had been shot by the stray bullet fired by Christian I. Officer Brambila obtained two surveillance videos, one from 285 North Idyllwild which had captured a portion of the incident with Christian I. and a second from 286 North Idyllwild which had captured the incident.

On March 3, 2020, **Justin Breen**, a corporal with the Rialto Police Department, prepared a report concerning the incident involving Christian I. on March 2, 2020.

On March 2, 2020, Corporal Breen was on duty and was assigned to the patrol division as a field training officer to a trainee, Officer K. Cardenas. Officer Cardenas was driving

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the patrol car with Corporal Breen riding as passenger when at approximately 6:13 p.m., there was a priority call for service reference an attempted armed carjacking in the area of Spruce Avenue and Victoria Avenue in the city of Rialto.

Corporal Breen instructed Officer Cardenas to respond to the call for service. While responding to the area, dispatch updated the call and stated they were receiving calls from additional victims in the same area. The call stated witnesses reported the suspect was riding a bicycle with a gun in his hand.

As they arrived to the location, Corporal Breen heard Officer Poole advise he saw the suspect riding south on Spruce Avenue at Foothill Boulevard. Corporal Breen saw several police units driving with lights and sirens south on Spruce Avenue in pursuit of the suspect bicyclist. Corporal Breen and Officer Cardenas followed and were the fourth patrol car back behind the suspect. They continued pursuing the suspect east onto Lorraine Place and then south onto Idyllwild Avenue. Corporal Breen saw the patrol units in front of them stop and then saw Officers Keetle, Besheer, and Aguirre running up to the front of their vehicles.

When Corporal Breen and Officer Cardenas got closer, Corporal Breen could see the suspect down on the ground near a black car in front of the 200 block of North Idyllwild Avenue. Corporal Breen saw the suspect had suffered facial trauma and was in the process of being detained by Officers Besheer and Keetle. Officer Aguirre walked away from the suspect back to his patrol car which still had its siren sounding. Officer Aguirre appeared traumatized and scared, so Corporal Breen quickly approached him to find out what had happened. Corporal Breen heard Officers Keetle and Besheer talking about a gunshot and were unsure of who had shot.

Corporal Breen asked Officer Aguirre if he had shot the suspect and he said he had not. Officer Aguirre explained the suspect had a gun in his hand and he had hit the suspect with his car. Officer Keetle announced over the radio that shots had been fired and Corporal Breen called for paramedics to respond to the scene. After making sure Officer Aguirre was okay, Corporal Breen began directing officers. Corporal Breen saw a Taurus handgun lying near the east curb in front of the 200 block of North Idyllwild Avenue and told Officer Cardenas to secure the firearm by standing over it.

When Sergeant Balleweg arrived on scene, Corporal Breen briefed him on the incident. Corporal Breen had Officer Babineaux transport Officer Aguirre to the Rialto Police Station. Corporal Breen then relieved Officer Cardenas and secured the firearm by standing watch over it until relieved by the San Bernardino County Sheriff's Department detectives.

On March 2, 2020, **Rialto Police Officer Rocky Johnson** prepared a report concerning the incident involving Christian I. on March 2, 2020.

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On March 2, 2020, Officer Johnson was on duty and assigned to patrol in the city of Rialto. At approximately 6:16 p.m., Officer Johnson was dispatched to the area of Spruce Avenue and West Victoria Street in reference to an attempted armed carjacking. While driving to the location, Officer Johnson received information from dispatch that the male suspect was riding a yellow bicycle and was attempting to carjack multiple individuals. Dispatch also updated officers that multiple victims had called to report additional attempted carjackings by the same suspect. The suspect's route of travel was also reported.

Officer Johnson arrived at the location of Spruce Avenue and West Victoria Street at approximately 6:20 p.m. The location was a residential neighborhood. When he arrived, Officer Johnson spoke with citizens who said they were the ones who had called the police. The citizens told Officer Johnson the suspect had gone north on Spruce Avenue and then west on West Morgan Street. Because the suspect was reported to have had a gun, Officer Johnson did not get the citizens' information, and instead immediately went to the area the suspect was last seen. Officer Johnson continued west on West Morgan Street and then south on Beechwood Avenue. While heading south on Beechwood, Officer Johnson heard the suspect had been located by officers heading south on Spruce Avenue.

As Officer Johnson arrived at Spruce Avenue and Foothill Boulevard, he saw four marked patrol units attempting to stop the suspect on his bicycle. The suspect refused to stop and continued south on Spruce Avenue. The suspect then turned east on Lorraine Place and then south on North Idyllwild. Officer Johnson paralleled the pursuit by continuing south on Spruce. Officer Johnson saw the suspect and the pursuing patrol cars as they passed West Third Street, at which point he heard what sounded like a gunshot. The pursuit came to an end just past Third Street on North Idyllwild. Officer Johnson drove to this location and saw the bicycle was yellow and black. Officer Johnson saw the bicycle's rear tire was bent and the bicycle was lying on the ground. The suspect was lying on the ground just southeast of the bicycle, handcuffed to the rear, bleeding from his mouth, and yelling that he needed help. Officer Johnson saw a silver and black Taurus handgun on the ground just northeast of the suspect.

On March 3, 2020, **Rialto Police Officer Felix Arroyo** prepared a report concerning the incident involving Christian I. on March 2, 2020.

On March 2, 2020, Officer Arroyo was working uniformed patrol for the Rialto Police Department. At approximately 6:20 p.m., Officer Arroyo was dispatched to the area of Spruce Avenue and Third Street to assist in a carjacking investigation where the suspect had possibly fired a gun.

Upon arrival, Sergeant Balleweg instructed Officer Arroyo to obtain a gunshot residue sample from the suspect's right and left hand. Officer Arroyo opened the sealed gunshot

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residue kit and collected samples from the suspect's hands while the suspect was being treated by Rialto Fire Department paramedics at the scene.

After collecting the samples, Officer Arroyo followed the ambulance as it transported the suspect to Arrowhead Regional Medical Center. While at the hospital, Officer Arroyo was given updates from the medical staff regarding the suspect's injuries. Officer Arroyo was told the suspect had sustained a large laceration from the bottom of his lip to his chin which was likely caused by hitting the pavement when he fell from his bicycle. The suspect also had a laceration to his left hand, road rash on his arms and hip area, and a single gunshot wound to his left thigh. While at Arrowhead Medical Center, Crime Scene Specialist K. Bright from the San Bernardino County Sheriff's Department collected the gunshot residue kit. Officer Arroyo stayed with the suspect until he was relieved by a custody officer at 4:30 a.m.

STATEMENTS BY CIVILIAN WITNESSES¹⁵

On March 2, 2020, at approximately 8:04 p.m. **Witness #1** was interviewed by Detective Narcie Sousa of the San Bernardino County Sheriff's Department.

Witness #1's residence was located on North Idyllwild Avenue, approximately four houses north of the location where the use of force against Christian I. had occurred. On March 2, 2020, at approximately 6:00 p.m., Witness #1 exited his shower and entered his bedroom in the southeast portion of his home. As Witness #1 was getting dressed, he heard several sets of sirens outside on North Idyllwild Avenue. Seconds later, Witness #1 heard two "pops." Witness #1 had experience with firearms and knew these "pops" were gunshots. Witness #1 did not hear any yelling, screaming, or verbal commands.

After several minutes, Witness #1 went outside and walked toward the sidewalk. Witness #1 saw several police vehicles parked in the street and noticed one police officer was putting up caution tape. Witness #1 looked south on North Idyllwild Avenue and saw a bicycle on the ground, near a police vehicle. Witness #1 did not know what happened to the bicycle and was not able to see what was happening down the street due to the bright police vehicle lights.

On March 3, 2020, at approximately 1:55 a.m. **Witness #2 and Witness #3** were interviewed by Detectives Narcie Sousa, Bruce Southworth, and Max Kunzman of the San Bernardino County Sheriff's Department.

Witness #2 and Witness #3¹⁶ lived at a residence on the 800 block of Lorraine Place in Rialto and are Christian I.'s parents. Witness #2 told detectives he had filed a runaway

¹⁵ All reports of civilian statements made were reviewed, though not all are summarized here.

¹⁶ Witness #2 and Witness #3 share the same last name and therefore each will be referred to by their first names throughout the rest of the memorandum.

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juvenile report with the Rialto Police Department the previous week because Christian I. had run away from the residence. Witness #2 told detectives Christian I. rode a black bicycle¹⁷ and had a tattoo of an "O" on his face and a tattoo of a "P" on his back, which was for the city of Pomona.

Christian I. had returned to the home on Sunday, March 1, 2020, but ran away again on Monday, March 2, 2020. Witness #2 said Christian I. was on probation in Los Angeles County for unknown crimes in Pomona. Witness #2 explained that he had tried to get help from the Probation Department, but he never received a call back from them.

Witness #2 said they moved the family from Pomona to Rialto because Christian I. was getting into trouble and had surrounded himself with the wrong people. Witness #2 said Christian I. had sent him a picture of a handgun on Snapchat on an unknown date. Witness #2 and Witness #3 shared a picture of the handgun¹⁸ with detectives.

On March 2, 2020, **Witness #4** was interviewed by Detective Anthony Glass of the Rialto Police Department.

On March 3, 2020, Witness #4 was helping her friend, Witness #5, drop off a van at an address on North Spruce Avenue. Witness #4 had agreed to follow Witness #5 so she could give him a ride after he dropped the van off at the location.

Witness #4 followed Witness #5 to the area of Victoria Street and Spruce Avenue. Witness #4 parked on the west side of the street, facing south on Spruce Avenue while Witness #5 parked his van on the east side of the street in front of a residence. Witness #4 was approximately 50-100 feet away from Witness #5. After Witness #5 got out of his van, Witness #4 noticed he was speaking with an unknown male who was on a dark colored, low profile bicycle. The male was Hispanic, approximately 16-18 years of age, and was wearing dark clothing.¹⁹ After speaking with the male, Witness #5 walked to the passenger side of her car.

Witness #4 then noticed the male on the bicycle was standing inches away from her car at her driver's side door. Witness #4 looked at the male and noticed he was holding a gray steel handgun in his right hand. The male suspect was waving his left hand persistently and impatiently as if telling her to get out of her vehicle. The suspect pointed the gun at her face and said something to her, but she could not hear what he was saying since her door was closed and her window was rolled shut. Witness #4 thought she was about to be shot through her window, so she stepped on the accelerator to her vehicle and sped away. Witness #4 drove south on Spruce to get away from the suspect. Witness #4 saw Witness #5 running north on Spruce Avenue while being chased by the suspect

¹⁷ Photographs from the scene show the bicycle was beige/pale yellow in color with a black seat, black handlebars, and black tires.

¹⁸ The handgun depicted in this photograph is not the same handgun found at the scene.

¹⁹ It is not known if Witness #4 later identified Christian I. as the suspect.

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on his bicycle. Witness #4 made a U-turn and started driving north on Spruce to try to help Witness #5.

Witness #4 saw Witness #5 was able to find safety in the rear yard of a neighboring residence. The suspect continued riding north on Spruce and made a west turn onto Morgan Street, where Witness #4 lost sight of him. Witness #4 then called the police.²⁰ Witness #4 was not sure what the suspect wanted but believed he wanted to rob her or take her car.

On March 4, 2020, at approximately 9:00 a.m., **Witness #5** was interviewed by Detective Anthony Glass of the Rialto Police Department

Witness #5 said Witness #4 agreed to help him drop off his van at an address on Spruce Avenue on March 2, 2020. After he parked his vehicle on the east side of the street, he got out to walk to Witness #4's car. While standing at Witness #4's passenger door, he noticed a Hispanic male on a bicycle. Witness #5 and the male exchanged hellos. Witness #5 then saw the male had a small silver gun and was telling Witness #4 to get out of her car. The male suspect repeated this several times in a forceful manner while pointing the gun at Witness #4's face. Witness #5 could see the gun in the suspect's right hand as he had a clear view of it over the top of Witness #4's car. Witness #5 did not see the suspect draw the gun, but when he saw the gun in his hand, he saw the suspect's finger was on the trigger. The suspect was standing not more than a foot away from Witness #4's door.

Witness #4 quickly drove away, heading south on Spruce Avenue. Witness #5 ran to a nearby neighbor's house and the suspect rode his bicycle north on Spruce Avenue. The suspect was still holding the gun in his hand while he was riding his bike, but he did not point it at Witness #5. The suspect then made a turn onto Morgan Street.

On March 9, 2020, Witness #5 was shown a photographic line-up and identified Christian I. as the possible suspect. Witness #5 said he was about 60% positive Christian I. was the suspect.

On March 2, 2020, **Witness #6** was interviewed by Corporal J. Pulido and Detective E. Macias of the Rialto Police Department.

On March 2, 2020 at approximately 5:55 p.m., Witness #6 was driving southbound on Spruce Avenue approaching his residence at the 700 block North Spruce Avenue in Rialto when he observed an unfamiliar male riding a bicycle in the middle of the street. The male was riding up and down the street, circling the neighborhood. Witness #6 described the male as Hispanic, 18-20 years old, 5'8", 170 pounds, black hair, no facial hair, with a tattoo on his left cheek, approximately one inch in diameter, of unknown design. The

²⁰ Dispatch history showed Witness #4 called the police at 6:12 p.m.

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male was wearing a dark colored windbreaker and had a standard sized semi-automatic handgun with a black handle and a silver barrel.

Witness #6 parked his vehicle in his driveway and noticed the male was back in front of Witness #6's residence. Witness #6 looked over at his girlfriend, who was sitting on the front passenger's seat and told her the male was acting suspicious and was looking at them. Witness #6 and his girlfriend then walked into the house. Witness #6 stood and watched the suspect for a few minutes. The suspect eventually rode his bicycle southbound on Spruce Avenue and pulled up alongside a red vehicle.

A few minutes later, Witness #6 opened the garage door from inside his residence and went outside to get an auxiliary cable from inside his vehicle in the driveway. When Witness #6 walked outside, he did not see the suspect. However, when Witness #6 opened the front passenger door to his vehicle, he saw the suspect stopped on his bicycle on the sidewalk approximately 20 feet away in front of Witness #6's driveway. The suspect stood up off his bicycle, pointed a handgun at Witness #6 and said, "Give me your car, bro." Witness #6 stood there for several seconds in shock believing what was happening wasn't real. Witness #6 said he was frozen and unable to move for several seconds. Witness #6 then ran back inside his house through the garage. Witness #6 was afraid the suspect was going to shoot him and follow him into his house. Witness #6 pushed the button to close his garage door, looked back, and saw the suspect was gone.

Witness #6 was shown a photographic line-up and identified Christian I. as the suspect.

On March 2, 2020, **Witness #7** was interviewed by Corporal J. Pulido and Detective K. Stephens of the Rialto Police Department.

Witness #7 lived at a residence on the 500 block of North Beechwood Avenue in Rialto. On March 2, 2020, at about 6:13 p.m., Witness #7 had just gotten home from work and was parked in his driveway sitting in the driver's seat of his Toyota Prius with the engine running. Witness #7 was talking on his cell phone for about a minute. Witness #7 looked to his left and saw a young man on a 10-speed bicycle near his driver's side door. At first, Witness #7 thought the young man was just going to ask him for some money. Witness #7 opened the door to his car and got out while the engine was still running. As he did so, Witness #7 noticed the young man had a gun in his right hand down at his side. The young man told Witness #7 to "Get out of the car." Witness #7 was in shock and asked the suspect if he was serious. The suspect answered, "Yeah, get out or I'll shoot you right now!" Witness #7 was scared. Witness #7 told the suspect the car was insured and told him he could take it. Witness #7 asked if he could just grab some of his belongings from the trunk of his vehicle before he stole it and the suspect let him. Witness #7 then opened his garage door. Once the garage door was opened, the suspect put his bicycle inside Witness #7's car.

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Witness #7 then went through the garage into his house where he quickly told his family he was just carjacked and to call the police. Witness #7's father-in-law, Witness #8, walked outside to confront the suspect. Witness #7 tried to talk him out of going outside but Witness #8 refused to listen. Witness #7 followed Witness #8 out into the garage and saw his Prius was still there in the driveway with the suspect sitting in the driver's seat with the driver's door open. Witness #7 quickly got in between the driver's door and the suspect and grabbed a hold of the top of the driver's door. Witness #7 saw the suspect was holding the gun in his right hand near his chest. Witness #7 thought the suspect was trying to point the gun at him, so he yelled, "Don't shoot!" Witness #7 then heard a pop.²¹ When he heard the gunshot, he thought he was dead. Immediately after shooting, the suspect accelerated in reverse, causing the open driver's door to hit Witness #7, knock him down, and then go over the top of him. Witness #7 was lying on his back, on the driveway, near his mailbox when the door went over him.²²

When the suspect backed out of the driveway, he made a wide U-turn, striking garbage cans and a mailbox across the street. A recyclable garbage container got wedged underneath the Prius. The Prius ended up in the driveway of 572 N. Beechwood Avenue, where it was left by the suspect. The suspect grabbed his bicycle from the car and rode it away southbound on Beechwood Avenue, then eastbound on Grove Street, out of sight.

Witness #7 described the suspect as a "young kid," male Hispanic, approximately 5'7" tall, 160 pounds, wearing dark clothing, and riding a dark colored bicycle. On March 9, 2020, Witness #7 was shown a photographic lineup. Witness #7 identified Christian I. and said it looked like the suspect, but he was not certain. Witness #7 said he was about 90% confident Christian I. was the suspect.

On March 2, 2020, **Witness #8** was interviewed by Corporal J. Pulido and Detective K. Stephens of the Rialto Police Department.

Witness #8 lived at a residence located on the 500 block of North Beechwood Avenue in Rialto. Witness #8 was inside his residence on March 2, 2020 when his son-in-law, Witness #7, ran inside and announced he had been carjacked and to call the police. Witness #7 said the carjacking had happened outside while he was parked in the driveway. Witness #8 decided to go outside to see if the suspect was still outside. Witness #8 ran out through the garage and saw Witness #7's vehicle parked on the driveway with the male suspect seated in the driver's seat with the driver's door open.

²¹ From the street, Detective Stephens recovered the shattered glass window from the Prius. The window tint held most of the glass together and Detective Stephens was able to identify a bullet hole in the corner of the window near the section that would have been closest to where the rear-view mirror would have been.

²² Witness #7 suffered a large contusion on his right forearm and some cuts and scratches. Witness #7 was treated at his residence by Rialto Fire Department paramedics and was then driven to Loma Linda University Medical Center for further treatment.

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Witness #7 then got in between Witness #8 and the suspect and grabbed onto the driver's door. Witness #8 reached over the open driver's door and tried to grab the suspect. Witness #8 looked inside the car and saw the suspect was holding a small handgun close to his chest, pointing it toward them. Witness #8 tried to grab Witness #7 with his right hand in order to pull him away. The suspect fired a single round from the gun and quickly reversed out of the driveway, dragging Witness #7 who was holding onto the driver's door.²³ Witness #7 was unable to hold on and lost his grip. Witness #7 was hit by the open car door and knocked to the ground.

As the suspect continued backing the Prius, the open car door struck a cinder block pillar on a mailbox. This caused the door to bend backwards and slowed the car down briefly. The suspect then accelerated more, enabling the car to continue rolling backwards. This caused the driver's door to go over the top of Witness #7 who was lying on his back on the driveway. The suspect continued backing out and then made a long swooping U-turn. Witness #8 ran over to Witness #7 who was on the ground. As he was trying to make sure Witness #7 was okay, Witness #8 looked over and saw the suspect had made such a wide U-turn, that he hit a large blue recycling garbage container which had been standing against the east curb line. The suspect then backed up over the curb, onto the grass, and hit a mailbox. The suspect continued backing in reverse and ended up in the driveway of a residence on the 500 block of North Beechwood Avenue, where he stopped. The suspect then got out of the car, opened the trunk, and pulled a bicycle out of the car.

At this point, Witness #10 Witness #7 (Witness #7's wife) had come outside of the residence and Witness #8 told her to help him get Witness #7 inside. They were able to get Witness #7 inside the garage where he could sit. Witness #8 saw the suspect get onto his bicycle and start riding away quickly, southbound on Beechwood Avenue. Witness #8 then got into his own vehicle and began driving after the suspect. Witness #8 drove southbound on Beachwood Avenue, east on Grove Street, and south on Spruce Avenue. At this point, Witness #8 could not see the suspect, but he did see a police unit driving in front of him. Witness #8 then drove east on Second Street and then north on Idyllwild Avenue. Once Witness #8 turned onto Idyllwild Avenue, he saw several police vehicles in the area. Witness #8 parked his car and walked over toward the scene. Witness #8 was able to see a subject on the ground and a bicycle next to him. From where Witness #8 was standing, it was difficult for him to get a good look to know for sure if it was the same suspect who had carjacked them but Witness #8 believed it was the same suspect.

Witness #8 described the suspect as a Hispanic male in his late 20's, medium build, with a light skin tone, wearing a black hooded sweatshirt. Witness #8 did not believe he would be able to identify the suspect if he saw him again.

²³ Corporal Pulido inspected Witness #7's vehicle and saw the driver's door window was shattered and the glass was lying on the street in front of the residence. Additionally, there was damage to the door itself as it was bent outward, which Corporal Pulido believed suggested damage caused by Witness #7 holding onto the door and being drug. Corporal Pulido found a spent 9mm shell casing, model WIN, on the passenger seat of Witness #7's car.

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On March 4, 2020, at approximately 1:35 p.m., **Christian I.** was interviewed by Detective K. Stephens of the Rialto Police Department.

Detective Stephens prepared a report regarding his interview with Christian I. While at Arrowhead Regional Medical Center, Detective Stephens was contacted by Witness #3, Christian I.'s mother. Witness #3 advised Detective Stephens that her son had a few questions he wanted to ask him. Detective Stephens spoke to Christian I. in his hospital room after reading him his Miranda rights and obtaining a waiver of his right to remain silent.²⁴

Christian I. asked Detective Stephens what charges he was facing. Detective Stephens advised him he was facing charges of "attempted homicide, four counts of assault with a deadly weapon, criminal threats, two counts of attempted carjacking, and one count of carjacking." Christian I. asked Detective Stephens if there was anything he could do to reduce the charges. Detective Stephens told Christian I. he would need to talk to his attorney about that. Christian I. then asked the detective how much time he was facing, and Detective Stephens again told him he would need to speak to his attorney about that. Detective Stephens did not ask Christian I. any questions.

INCIDENT AUDIO AND VIDEO

911 CALLS

Three separate phone calls were placed to 911 as follows:

6:12 p.m. Witness #4 called 911. Witness #4 said a "guy on a bicycle just pulled a gun on me and he wanted me to get out of the car." Witness #4 said she just sped off. Witness #4 advised she was at the corner of Spruce and Victoria in Rialto. Witness #4 described the suspect as young male Hispanic, approximately 18-19 years old, on a bicycle, wearing dark clothes. Witness #4 said the suspect was pointing a silver gun at her and was telling her to get out of the car. Witness #4 advised that the suspect was riding his bicycle in the neighborhood and went north on Spruce and made a left turn at Morgan. The dispatch operator told Witness #4 that officers were on their way and to stay on the phone with her until they arrive. Witness #4 advised she was in a red Hyundai and was at the corner of Spruce and Morgan. Witness #4 could then be heard loudly saying, "Left turn on Morgan, left turn on Morgan!" Witness #4 then said she had never had a gun pointed at her before and explained that she said to herself, "This could be the last day of my life." Once the police officer arrived, the call ended.

6:14 p.m. An unknown female called to report her brother, Witness #6, was outside at a residence located on the 700 block of North Spruce Avenue in Rialto and someone had passed by on a bike pointing a gun at him. When the dispatch operator asked her what

²⁴ Prior to speaking to Christian I., Detective Stephens activated his audio recorder; however, the volume on the recording is very low and only Detective Stephens' voice can be heard.

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color the gun was, the female did not know and had Witness #6 come to the phone. Witness #6 explained the suspect was a male Hispanic, riding a yellow bike, and that he had a tattoo on his right eye. Witness #6 then said, "I think there's this red car, too--" The dispatch operator interrupted Witness #6 and asked what direction the suspect went. Witness #6 said he went on Spruce and then turned on Morgan. Witness #6 told the dispatcher the suspect rode his bicycle around in circles and then rode up to him, pointed a gun at him, and said, "Give me your car." Witness #6 explained that he just ran inside after that. The dispatch operator confirmed Witness #6's address as the 700 block of North Spruce Avenue and then could be heard advising officers, "We might have a second victim." Radio traffic could then be heard, but the words were unintelligible due to static. The dispatch operator advised Witness #6 they had officers in the area and that they would meet him at his residence, whereupon the call ended.

6:16 p.m. Witness #10 called and said she needed emergency help because her husband had just been carjacked and had been run over by the suspect. Witness #10 gave the address as the 500 block of North Beechwood in Rialto. Witness #10 sounded very panic-stricken and excitedly said, "It happened right now! My husband was trying to get out!" Witness #10 pleaded with dispatch to "hurry, hurry, send somebody now!" The dispatch operator could then be heard saying, "I have another caller saying the 500 block of North Beechwood." Witness #10 said the suspect was a male Hispanic. The dispatcher asked Witness #10 if the suspect was there right now and Witness #10 replied, "He's taking off on the bike right now!" Witness #10 told the dispatcher the suspect was going south on Beechwood. The dispatcher could then be heard saying, "South on Beechwood." Witness #10 then told the dispatch operator the suspect had a gun and was going left on Grove on a "10 speed." Witness #10 could then be heard saying, "I see a cop. Go left, go left." Conversation was had about her husband's injuries. The call ended when the police arrived on scene.

DISPATCH RECORDING²⁵

The dispatch recording begins with the operator telling officers an attempted carjacking had just occurred at Spruce and Victoria. The suspect was described as a male Hispanic, 18-20 years old, wearing all dark clothing, northbound on a bike, and then he turned eastbound on the first street just north of Victoria. Several officers replied over the radio. One officer asked if they could get 40-King²⁶ up and another asked what the last suspect location was. The operator advised the suspect was last northbound on Spruce and then went eastbound on Morgan.

The dispatch operator advised the victim would be in a red Hyundai. Officers could be heard communicating with the dispatch operator about making victim contact. One officer said he had made victim contact and they had directed him to Morgan.

²⁵ The dispatch recording was reviewed in its entirety. The summary of the dispatch recording will only cover the events from the beginning through the point immediately after the incident under review.

²⁶ Air support helicopter, San Bernardino County Sheriff's Department.

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The dispatch operator then advised officers that another victim had called advising that a gentlemen just pointed a gun at him as well. The dispatcher told the officers the victim said the suspect was a Hispanic male adult, wearing a black shirt, on a yellow bike, with a tattoo on his eye, and that the suspect was last seen northbound on Spruce. The dispatcher could then be heard saying, "Units, I have another update from another victim," and advised the victim was on the call right now and was advising the suspect was going southbound on Beechwood and then turned west on Grove.

Officers could be heard giving their locations and advising they were at Third and Idyllwild. The next transmission was an officer saying they had shots fired and that it "looked like he got hit in the face." The dispatcher copied this and asked if the shots were fired by the police. An officer then requested to have the medics respond to the scene. An officer advised dispatch that the suspect had shot himself. The location was given as the 200 block of North Idyllwild.

BODY-WORN CAMERA²⁷

Officer Aguirre

Officer Aguirre's body-worn camera video is seven minutes, 38 seconds in length. The video begins while Officer Aguirre was driving his patrol unit. It was nearly dark outside and the lights from businesses, residences, surrounding vehicles, and streetlights could be seen.

Officer Aguirre slowed his vehicle and paused before entering and turning left at an unknown intersection against a red light. While crossing the intersection, Officer Aguirre's patrol car's siren was activated, but was turned off after passing through the intersection. After making the turn, the patrol vehicle engine revved loudly as the speed of Officer Aguirre's car increased. As Officer Aguirre continued driving on a city street, he was looking around, as if he was looking for something or someone. At another unknown intersection, Officer Aguirre made a right-hand turn and then a U-Turn back through the intersection, against a red light with the patrol unit's emergency lights and siren activated. The siren was only activated as Officer Aguirre crossed through the intersection, but the car's emergency lights remained on from this point until the end of the video. Officer Aguirre looked to his left several times. Once through the intersection, Officer Aguirre slowed his patrol unit and lifted his right arm, briefly pointing his gun to the left. Officer Aguirre pulled his right arm back down and sounded his patrol car's alarm.

²⁷ The officers herein were equipped with Axon Body-Worn Cameras. The camera system turns on when the operator activates the camera. When the camera is activated, the previous 30 seconds of video are included but without any audio. The body-worn camera videos were viewed in their entirety. The summaries of the body-worn camera videos will only cover the events from the beginning through the point immediately after the incident under review.

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Officer Aguirre continued driving and looking to his left and right. Police sirens could be heard in the background, but it is not clear if the sirens were from Officer Aguirre's car or from those of another police vehicle. Officer Aguirre then turned left onto an unknown street and drove into a residential neighborhood. Officer Aguirre then turned right onto North Idyllwild and a cyclist in all dark clothing could be seen riding his bicycle on the east side of the street, in front of Officer Aguirre.²⁸ Officer Aguirre again sounded his patrol car's siren. Due to the darkness outside, it is difficult to see the cyclist until Officer Aguirre gets closer. As Officer Aguirre pulled closer to cyclist, the cyclist turned his head and looked back at Officer Aguirre. At this point, the cyclist could be identified as Christian I. Christian I. turned his head to the right and quickly looked back at Officer Aguirre's patrol car. A bright light from Officer Aguirre's patrol unit lit up Christian I.'s body. Christian I.'s right arm was to his side, his elbow was pointing outwards to the right, and his right hand was not visible as he held it to his front near his mid-section. Christian I.'s right arm moved upward and outward slightly as Officer Aguirre pulled closer. Christian I. looked back at Officer Aguirre a second time. As Officer Aguirre continued to get closer to Christian I., Christian I. began turning his head back to look at Officer Aguirre a third time and Officer Aguirre struck the back of Christian I.'s bicycle. Upon striking the bicycle, Officer Aguirre quickly stopped his patrol car. Upon impact, the sound of the collision could be heard as Christian I. was immediately thrown slightly upwards and then fell quickly down in front of the patrol unit. Upon pausing the video at the point when Christian I. was thrown slightly upwards in front of Officer Aguirre's vehicle, a gun can be seen in Christian I.'s right hand. Immediately after Christian I. fell, the sound of a gunshot was heard. Because Christian I. had fallen directly in front of Officer Aguirre's patrol unit, he could not be seen at the moment the gunshot was heard.

Officer Aguirre quickly opened his driver's side door and stepped out his patrol car while pointing his gun to the front of his vehicle. Officer Aguirre's patrol car siren was whining loudly. Officer Aguirre stood behind his open driver's side door while pointing his gun and yelling, "Shots fired!" and "Let me see your hands!" As Officer Aguirre stood and yelled, "Let me see your hands," Christian I. could be seen down on the east side of the street near a parked black vehicle. Christian I. was sitting on the ground, lifting his upper body up with his left hand, facing away from Officer Aguirre. A shiny object could be seen on the east side of the street, near the curb in front of the parked black sedan by which Christian I. was located. Officer Aguirre repeated, "Let me see your hands," several times. Christian I. slowly raised his hands, but then lowered them as another uniformed officer (Officer Besheer) ran toward Christian I. from his patrol car on the west side of the street. Officer Aguirre yelled, "Tackle his ass! He shot, he shot!" Officer Besheer reached Christian I. and immediately pushed him face down on the ground and began putting him into handcuffs. A second uniformed officer (Officer Keetle) ran toward Christian I. and assisted Officer Besheer in handcuffing Christian I. Additional uniformed officers ran toward the scene and Officer Aguirre told them, "He shot, he shot!" Officer Aguirre then approached the officers and Christian I. and asked, "What are you doing, bro? Why are

²⁸ On the video, it is difficult to estimate the distance between the cyclist and Officer Aguirre at this point, but it appears it was at least 20-30 feet.

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you shooting, bro?" Officer Aguirre then walked away. As Officer Aguirre walked away, he told another approaching officer, "He shot, he shot."

When Officer Aguirre turned away, the video showed two patrol units with headlights and emergency lights activated stopped on the west side of the street. Christian I.'s bicycle was lying in the middle of the street. Officer Aguirre's patrol unit with its headlights, emergency lights, forward facing red light, and spotlight all activated was stopped on the east side of the street. Officer Aguirre walked to his patrol unit, shined his flashlight on it, and approached the driver's side door. Officer Aguirre reached into his vehicle and turned off the siren. When Officer Aguirre turned back toward Christian I., a uniformed officer was seen standing near the spot where the shiny object was seen on the ground. Officer Aguirre walked over to this spot and shined his flashlight on the shiny object revealing that it was a handgun. The remainder of the video shows Christian I. being administered first aid at the scene as additional police units arrive.

Officer Cardenas

Two videos were submitted from Officer Cardenas's body-worn camera. The first video is 45 seconds long. It begins with Officer Cardenas driving his patrol unit. Officer Cardenas drove on a residential street and approached three police vehicles stopped in the roadway with their emergency lights activated.

Officer Cardenas stopped his patrol car, got out, and ran past Officer Aguirre's stopped patrol unit toward the scene where Christian I. was being handcuffed on the ground next to a parked black vehicle. Officer Aguirre could be heard yelling, "He shot, he shot!" As Officer Cardenas ran to the scene, a small shiny object could be seen lying on the street in front of the parked black vehicle.

Officer Cardenas stopped in front of the parked black vehicle. Officer Aguirre's vehicle siren was whining loudly and blocked out any other sounds. Officer Aguirre walked up to Christian I. and bent forward while the other patrol officers were handcuffing Christian I. Officer Aguirre was holding his gun in his right hand, down to his side. Officer Aguirre walked away and re-holstered his gun. Another uniformed officer approached the scene and then walked away.

Officer Cardenas turned to his right and Officer Aguirre could be seen walking back to his patrol unit. Officer Aguirre shined a flashlight on his unit and then opened the driver's door. Officer Aguirre reached into his car and turned off the siren. Officer Aguirre could then be heard saying, "No, no, no. He had the gun in his hand." The video ended at this point.

The second body-worn camera video is 23 minutes, 22 seconds long. It begins with Officer Cardenas standing near the curb on the east side of the street, to the front of the parked black vehicle. At this point, it was clear the shiny object on the ground in front of

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the parked vehicle was a handgun. Headlights from Officer Aguirre's patrol unit lit up the area where Officer Besheer and Officer Keetle stood near the parked sedan and Christian I. Christian I.'s bicycle was lying in the middle of the street. A marked patrol unit with its emergency lights activated and driver's door ajar was parked on the west side of the street.

Officer Cardenas turned to his right toward Officer Aguirre's patrol unit. Corporal Breen told Officer Cardenas to stand near the gun, to secure it, and not to pick it up. Officer Cardenas then went over and stood near the handgun. The remainder of the video showed Officer Cardenas standing near the handgun while other police vehicles and officers arrived on scene.

Corporal Breen

Corporal Breen's body-worn camera video is one minute, 24 seconds long.²⁹ The video begins when Corporal Breen was a passenger in Officer Cardenas's patrol vehicle. Corporal Breen told Officer Cardenas to hurry up several times as they approached the other parked marked units on the street. Officer Cardenas stopped his patrol unit as Corporal Breen told him to hurry up and "get up there." Corporal Breen opened the passenger door and got out of the patrol vehicle. Officer Aguirre's siren could be heard. Corporal Breen stood and faced the scene where officers were with Christian I. on the ground as he got on his radio and reported their location as Third and Idyllwild. Due to the loud siren, nothing else Corporal Breen said into his radio could be heard.

Corporal Breen approached the scene on foot. Yelling could be heard in the background. Christian I.'s bicycle was seen lying in the middle of the street as uniformed officers handcuffed Christian I. on the ground nearby. As Corporal Breen reached the scene, Officer Aguirre walked away and could be heard saying, "He shot, he shot." Corporal Breen turned and followed Officer Aguirre as he walked to his patrol unit and turned off the siren. Corporal Breen asked Officer Aguirre, "Hey, he shot himself, or you?" Officer Aguirre replied, "No, no, no. He had the gun in his hand." Corporal Breen then asked, "Did you shoot him?" Officer Aguirre said, "No, I didn't shoot at him. I hit him with my car. He had the gun in his hand. I told him to stop, I hit the sirens, but he wouldn't." Officer Aguirre then turned and faced toward Christian I. and the two officers standing nearby, and told Corporal Breen, "I heard a pop. He had a gun in his hand, and I heard a pop."

Corporal Breen then turned to Officer Cardenas and told him to secure the gun which was lying on the ground and to not pick it up. Corporal Breen then began walking closer to Christian I. and got on his police radio again. Corporal Breen asked for medical aid to respond to the scene. Corporal Breen then directed other officers to set up the crime scene. Corporal Breen advised another uniformed officer about the gun Officer Cardenas was securing. The tape ended at this point.

²⁹ There is no 30-second time delay for audio in this video.

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Officer Besheer³⁰

Officer Besheer's body-worn camera video is 11 minutes, three seconds long. The video begins with Officer Besheer standing over Christian I. who was lying on the ground with his hands cuffed behind his back. Christian I. was on his right side with his head lifted and was right next to a parked black vehicle. There was blood on the ground beneath Christian I.'s face. Sirens could be heard in the background. Christian I. was yelling and moaning in obvious distress. Corporal Breen could be heard in the background talking about setting up crime scene tape. Several officers could be heard saying they heard a gunshot fired. Officer Besheer turned to his right and Officer Keetle could be seen. Three marked police units with their emergency lights activated were parked just south of the scene. Additional uniformed officers stood in between these marked police cars and the scene.

Officer Besheer turned back toward Christian I. Surrounding police officers were heard talking at the same time, making it difficult to determine what was said. However, in the talking, the fact that a gun was found is heard. Officer Besheer bent down and Christian I. could be seen lying on his stomach and groaning in pain. Officer Aguirre's patrol car's headlights lit up the scene and Christian I. Officer Besheer turned Christian I. back onto his side and Christian I. said, "I can't." After being turned, the injury to his face could be seen clearly. Corporal Breen could be heard saying, "Check him for injuries." Officer Besheer and Officer Keetle both turned Christian I. further toward his back as they looked for other injuries.

Officer Besheer asked Christian I. if he shot himself. Christian I. replied, "On accident." Officer Besheer placed his hand underneath Christian I.'s head and supported it. The injury to Christian I.'s face was bleeding profusely. Officer Besheer asked, "You shot yourself on accident?" Christian I. mumbled something unintelligible but then said, "I accidentally shot." The tattoo on Christian I.'s face could be seen clearly. The tattoo was an oval. Inside the oval were a tattooed small circle near the top and a half circle near the bottom of the oval. The tattoo appeared to be a depiction of the front-facing view of a gun's muzzle.

Officers Besheer and Keetle continued trying to locate additional injuries to Christian I.'s body. Officer Besheer unzipped Christian I.'s black jacket and revealed a white t-shirt underneath. Another unseen officer asked Christian I. if he knew where the gunshot went. Christian I. said that he did not know. The officer then asked him what his name was, and Christian I. said his name was Christian. When asked for his last name, Christian I. replied, but due to the injury to his lip and face, it was not possible for the officer to understand the answer and the question was repeated, again without the officer understanding the answer. The officer told Christian I. he knew it was hard and explained they were trying to keep the blood from going down his throat. The officer then asked him where he lived and Christian I. said, "Down the street." The remainder of the video shows

³⁰ There is no 30-second time delay for audio in this video.

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the officers tending to Christian I. until the paramedics arrived and began administering first aid.

SURVEILLANCE VIDEO

The 200 block of North Idyllwild Avenue Residence #1

Surveillance video was obtained from the residence at the 200 block of North Idyllwild Avenue, located on the east side of the street. Christian I. was struck by Officer Aguirre's patrol unit directly in front of this residence. There is no audio. The video primarily focuses on the driveway and front yard of the residence; however, the roadway is depicted in the upper right-hand corner of the screen.

At the beginning of the video, the lights of an on-coming vehicle could be seen reflecting on the ground. Very quickly thereafter, a person could be seen sliding across the roadway after being struck by a vehicle. Due to the distance, the darkness, and the quality of the camera, it is not possible to see the person's face. However, due to the fact that this video was made at the scene at the time Christian I. was hit by Officer Aguirre's patrol unit, we know the person was Christian I.

Christian I. slid across the pavement and ended up out of view behind a dark vehicle which was parked along the curb in front of the North Idyllwild residence. Sparks from a small object could also be seen as it slid across the roadway in the same angle and direction as Christian I. This object stopped sliding and emitting sparks on the street near the curb in front of the parked car.³¹

A bicycle also slid across the pavement before it stopped in the middle of the road. Officer Aguirre's patrol vehicle stopped in the roadway; its headlights and emergency lights were activated. A second patrol unit with its emergency lights activated then stopped in the street, an officer alighted from the vehicle, and then ran toward the dark vehicle which was parked next to the curb. A third patrol unit with its emergency lights activated parked in the street and a second officer ran after the first.

Two more officers could be seen as they arrived on foot. One officer stopped near the curb where the small object slid and emitted sparks. This officer remained standing in this location. Several officers continued to arrive from the north and south. One officer approached the curb and bent down, appearing to look at the object on the ground by which the one officer stood. Several additional officers approached this spot, shined flashlights on the ground, and also looked at the object.

The 200 Block of North Idyllwild Avenue Residence #2

³¹ Photographs and body-worn camera from the scene show a handgun was found in this location, however, due to the video quality and the camera's distance, the small object seen sliding across the roadway and emitting sparks cannot be identified as a handgun in this surveillance video.

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Ring doorbell video was obtained from the residence at the 200 block of North Idyllwild Avenue located on the west side of street, directly across from where Christian I. was struck by Officer Aguirre's patrol unit.

The video primarily shows the front yard and a portion of the driveway of the home at the 200 block of North Idyllwild Avenue. However, in the distance, the house across the street could be seen. Also depicted in the video is the black vehicle, by which Christian I. fell. The black vehicle was parked at the curb directly in front of the 200 block of North Idyllwild Avenue residence.

When the video begins, Officer Aguirre's patrol car's siren was heard just before his car came into camera view. Officer Aguirre's patrol car's headlights and emergency lights were activated as he pursued Christian I. riding a bicycle. Two additional police vehicles, with emergency lights activated, followed behind Officer Aguirre. Officer Aguirre's patrol unit sped up and struck Christian I.'s bicycle from behind. Officer Aguirre's vehicle stopped abruptly upon striking Christian I.'s bicycle. Christian I. fell off his bicycle, tumbled onto the roadway, and slid several feet before coming to a rest beside the black vehicle which was parked next to the curb at the residence located on the 200 block of North Idyllwild.

Christian I. sat up as the two additional patrol vehicles came to a stop nearby, on the west side of the street. Loud sirens could be heard as the patrol vehicles approached and stopped. Officers could be heard repeatedly yelling, "Let me see your hands!" Christian I. lifted his hands above his head and then quickly lowered them as Officer Besheer ran toward him. Officer Besheer could be seen placing Christian I. onto his stomach and handcuffing him to the rear. Officer Keetle assisted Officer Besheer. Officer Aguirre could be heard yelling, "He shot, he shot!" Several police vehicles and officers could be seen as they arrived on scene quickly thereafter to assist.

INCIDENT SCENE INVESTIGATION

San Bernardino County Sheriff's Detective S. Abernathy conducted a crime scene investigation on North Idyllwild Avenue in front of the residence located on the 200 block of North Idyllwild Avenue with the assistance of Sheriff's Crime Scene Specialist II Shira Mathis on Monday, March 2, 2020.

North Idyllwild Avenue was a two-way north-south street located in a residential neighborhood. Vehicles were parked along the east and west curbs. Concrete sidewalks paralleled the roadway on each side. A black Hyundai Kona was parked on the east curb, facing north, in front of the 200 block of North Idyllwild Avenue residence. Black jean pants, two teeth, a bloodstain, and coins were several inches west of the Hyundai Kona. The pant legs on the black jeans were cut vertically. The bloodstain spanned approximately one foot in diameter. A black cellular phone and black power bank,

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attached to the phone with a cord, were approximately one-foot northwest of the bloodstain.

A Taurus G2C semi-automatic pistol was approximately two feet north of the Hyundai Kona's front bumper and approximately 12 feet northeast of the cellular phone and power bank. The gun's frame was black, and the slide was silver. This pistol's caliber was 9mm. One black ammunition magazine was inserted into the magazine well, and the slide was forward on the frame. Detective Abernathy ejected the magazine and found it was loaded with nine live cartridges. Detective Abernathy locked the slide back and located a fired cartridge casing inside the chamber. The cartridge casing was head-stamped with "WIN 9MM LUGER."

A beige Black Label bicycle was approximately 12 feet northwest of the handgun. The bicycle faced southwest, and the rear wheel was bent. Officer Aguirre's patrol car was parked facing south on the east side of North Idyllwild Avenue, and was approximately eight feet north of the bicycle. Officer Besheer's patrol car was approximately 15 feet west of Officer Aguirre's patrol car, parked facing south in front of a residence on the 200 block of North Idyllwild Avenue. Officer Keetle's patrol car was parked facing south on the west side of the street and was approximately nine feet north of Officer Besheer's vehicle. Each of the patrol cars' red and blue emergency lights were activated but were later turned off so as to not interfere with the Sheriff's Department camera equipment.

A black mark was in the street, parallel with North Idyllwild Avenue and was consistent with the appearance of a bicycle tread mark. The tread mark was approximately one inch wide and 10 feet in length. It's opacity gradually diminished from north to south. The north end of the tread mark was approximately 26 feet northeast of Officer Keetle's patrol car and 31 feet north of Officer Aguirre's patrol car.

Gunshot residue samples were obtained from Christian I.'s right and left hands by Rialto Police Officer F. Arroyo. The samples were collected onto adhesive discs from the gunshot residue kit and given to Sheriff's Crime Scene Investigations Specialist K. Bright. The San Bernardino County Sheriff's Department Scientific Investigations Division conducted the examination of the samples. Their findings were as follows: "Eight (8) characteristic gunshot residue particles were identified on the right-hand adhesive disc," and "Eight (8) characteristic gunshot residue particles were identified on the left-hand adhesive disc."

INJURED PARTY

Christian I. was treated at Arrowhead Regional Medical Center on March 2, 2020. His injuries consisted of blunt force trauma to the anterior face, nasal bone fractures, anterior maxillary spine and maxilla fracture, displaced anterior teeth, anterior lower mandible fracture, and a gunshot wound to the left thigh.

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TOXICOLOGY

Hospital lab test records dated March 2, 2020, show a positive marijuana (THC) urine screen for Christian I.

Subsequent lab tests of Christian I.'s blood, performed by Bio-Tox Laboratories, revealed no controlled substances.

JUVENILE ADJUDICATION HISTORY

2020, 21810 of the Penal Code, Possession of Composite or Wooden Knuckles, a felony; 594 (a), Vandalism, a misdemeanor, and 148 (a)(1), Resist, Delay, or Obstruct a Police Officer, a misdemeanor. San Bernardino County.

2020, 29610 of the Penal Code, Minor Illegally in Possession of a Concealed Weapon, a felony; 32310 (c) of the Penal Code, Possession of a Large Capacity Magazine, a misdemeanor; 25400 of the Penal Code, Carrying a Concealed Firearm, a misdemeanor. San Bernardino County.

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 Code §835a(b).) ³² Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal Code §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal Code §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 Code §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.)

³² All references to code sections here pertain to the California Penal Code.

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

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

(Penal Code §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal Code §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 Code §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,³³ 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 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, then 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 Code §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe the person to be arrested is aware of those facts. (Penal Code

³³ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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§835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal Code §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;³⁴
- (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 Code §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.

³⁴ Penal Code §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 Code §835a (a)(3).

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

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

(CALCRIM 505.)

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

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

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

(Penal Code §835a(e)(2).)

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

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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.)³⁵ 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

³⁵ 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.

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

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

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

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

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

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

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

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

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

ANALYSIS

Just after sundown, on March 2, 2020, Rialto Police Officers were dispatched to the area of North Spruce Avenue and Victoria Street in the city of Rialto after a victim reported an armed attempted carjacking at that location. Rialto Police Officers Aguirre, Besheer, and Keetle were all located nearby, filling their patrol vehicles with gas,³⁶ and all three responded to the call. While en route to the location, the officers received updates from dispatch advising them additional victims were calling in to report additional armed

³⁶ Per Google maps, the intersection of Rialto and Lilac Avenue (Officer Aguirre’s location at time of initial dispatch) was 1.2 miles from North Spruce Avenue and Victoria Street.

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attempted carjackings in the same area.³⁷ Dispatch informed responding officers the suspect was described as a male Hispanic, wearing all dark clothing, and riding a yellow bicycle. The suspect was also reported to be armed with a handgun.

Within two minutes of being dispatched, the officers spotted Christian I. riding a yellow bicycle southbound on North Spruce Avenue at Foothill Boulevard.³⁸ Christian I. matched the suspect description perfectly and he was found in close proximity to the location of the first reported attempting carjacking. Officers began pursuing Christian I. with emergency lights and sirens after their attempts to stop him failed. Officer Aguirre was the first officer behind Christian I.

Christian I. continued quickly pedaling away from Officer Aguirre. Christian I. crossed an intersection against a red light. At one point during the pursuit, Officer Aguirre lost sight of Christian I. Officer Aguirre thought Christian I. was hiding from him. Based upon the dispatched call, Officer Aguirre feared Christian I. was armed with a handgun. As Officer Aguirre drove past a liquor store, he saw a dumpster with a person standing nearby. Not knowing where Christian I. was, Officer Aguirre feared that person was Christian I. and that he was going to shoot Officer Aguirre as he drove by him. Officer Aguirre pulled his gun from his holster, preparing to defend himself.

Fortunately, Christian I. was not the person near the dumpster. As Officer Aguirre was pulling his gun, he heard other officers reporting that they had spotted Christian I. turning left on Lorraine. Lorraine was the very next street and Officer Aguirre turned left and saw Christian I. riding his bicycle east on Lorraine. Christian I. was about 20-30 feet in front of Officer Aguirre and was pedaling away quickly as if to get away. Officer Aguirre had his patrol unit's emergency lights and his forward facing solid red light activated; another patrol unit was behind Officer Aguirre with its emergency lights and sirens activated as well. Officer Aguirre sped up and cautiously moved closer to Christian I., fearing Christian I. was armed as reported. Officer Aguirre began flashing his spotlight on Christian I., but Christian I. kept on going. Christian I. knew or reasonably should have known the officers, in marked police units, with their emergency lights and sirens activated, were attempting to stop him, but instead of stopping, he fled.

When Christian I. turned onto North Idyllwild Avenue, Officer Aguirre saw that Christian I. had a gun in his right hand and was holding it down at his side. This confirmed Officer Aguirre's fears that Christian I. was armed with a handgun, as reported in the 911 calls and further solidified his belief that he was pursuing the right person, the suspect from the attempted carjacking calls. Upon seeing Christian I. with the gun, Officer Aguirre was instantly more afraid as he realized the gravity of the situation. Christian I. had committed

³⁷ Per Google maps, the locations of the attempted carjackings against Witness #4 and Witness #6 occurred within 180 feet of each other. The carjacking against Witness #7 was .2 miles away from the attempted carjackings of Witness #4 and Witness #6.

³⁸ Per Google maps, the distance from North Spruce and Victoria Street, where the first reported attempted carjacking occurred, and the intersection of North Spruce and Foothill Boulevard, where the officers first spotted Christian I. was .4 miles.

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several felonies and was attempting to evade arrest by fleeing from the officers. Officer Aguirre's concern that Christian I. would shoot at him to get away was well founded and was reasonable. Officer Aguirre was not only afraid for his own safety, but that of the other pursuing officers and innocent bystanders in the neighborhood. This area on North Idyllwild is a residential neighborhood. Officer Aguirre was not able to see if there were any citizens out and about because of his laser focus on Christian I., but Officer Aguirre was familiar with the neighborhood and knew at that time of day, many people would likely be outside their homes. Officer Aguirre believed Christian I. was dangerous because he was armed with a handgun and had just committed two felonies with that gun. This belief was clearly reasonable. Officer Aguirre's fear for himself and others was not only reasonable but was well founded.

As Officer Aguirre drove closer to Christian I. and got to within 10-20 feet of him, he sounded his patrol car's siren. Christian I. quickly looked back at Officer Aguirre but continued pedaling away. Officer Aguirre could no longer see the gun in Christian I.'s hand because Christian I. was holding his right hand to the front of his body near his waistband. To Officer Aguirre, it looked like Christian I. was "messing with his gun" and was "bringing it up" because Christian I.'s elbow was lifting in an upward direction from his hip. When Christian I. looked back at Officer Aguirre a second time, Officer Aguirre believed Christian I. was going to reach back and start shooting at him or his partners. Again, this fear was reasonable and the threat at this moment was imminent. Officer Aguirre knew he had to stop Christian I. at that moment. Officer Aguirre sped up his patrol car in order to strike the back tire of Christian I.'s bicycle to get him off of his bicycle and end the threat. As soon as Officer Aguirre hit the bicycle, he stepped on his brakes in order to stop quickly. When Christian I. fell from his bicycle, going down in front the patrol car, Christian I. shot his gun. Christian I. admitted he shot the gun "on accident" and the positive gunshot residue tests confirm the admission that he shot. With this admission, it is clear Christian I. had the gun in his hand when he was struck. In addition, Officer Aguirre's body-cam video reveals Christian I. had the gun in his right hand when he was struck. Officer Aguirre's fear that Christian I. was preparing to shoot at him was reasonable.

In light of the foregoing facts, Officer Aguirre's belief that he had to defend against an imminent threat of death or serious bodily injury to himself or another was reasonable. In addition, Christian I. was a fleeing felon who had threatened death or serious bodily injury to the attempted carjacking victims. This is precisely why Officer Aguirre was attempting to apprehend Christian I. Officer Aguirre's belief that Christian I. would cause death or serious bodily injury unless immediately apprehended was objectively reasonable. Christian I. made no attempt to comply with the officers' attempts to stop him. Instead, Christian I.'s actions in fleeing while holding a gun in his right hand, raising his right elbow upward and looking back at Officer Aguirre only showed he was intent on getting away by any means possible, including by firing his gun at Officer Aguirre. Christian I. was "messing with his gun" with his right hand: the same hand Officer Aguirre had seconds earlier seen holding the gun. Christian I. held his right hand in front of his body, where

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Officer Aguirre could not see it, but Officer Aguirre knew the gun was there because he had just seen it seconds earlier. Christian I. raised his right elbow up from his hip and looked back at Officer Aguirre not once, but twice, and was beginning to look back a third time before being struck. Based on Christian I.'s actions, it was reasonable for Officer Aguirre to believe Christian I. was looking back so he would know where to aim his gun and was preparing to shoot at Officer Aguirre. Christian I.'s actions demonstrated the imminence of the threat and therefore, the critical need to act quickly. Officer Aguirre was within 10-20 feet of Christian I. and was an easy target. Additional officers were behind Officer Aguirre and were unable to see Christian I.'s actions, but Officer Aguirre could clearly see them. Christian I.'s actions would have given any reasonable officer the belief that Christian I. had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. This was precisely Officer Aguirre's belief.

It was reasonable for Officer Aguirre to believe Christian I. posed an immediate threat of serious bodily injury or death. Officer Aguirre reacted to the imminent threat posed by Christian I. by hitting his bicycle on the back tire. The force used by Officer Aguirre in so doing was deadly force but was necessary to end the threat. The decision by Officer Aguirre to use deadly force was justified.

CONCLUSION

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

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