



## PUBLIC RELEASE MEMORANDUM

**Subject:** Fatal Officer-Involved Shooting

**Involved Officer:** Officer Andrew Ornelas  
California Highway Patrol

**Involved Subject/DOB:** Charles Sesma  
03/04/1976

**Subject's Residence:** Murrieta, California

**Incident Date:** August 6, 2020

**Incident Time:** 4:23 p.m.

**Case Agent/Agency:** Detective Patrick Woolweaver  
Ontario Police Department

**Agency Report #:** 200800297

**DA STAR #:** 2020-00-53917

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**TABLE OF CONTENTS**

**PREAMBLE.....3**

**FACTUAL SUMMARY .....3**

**STATEMENTS BY POLICE OFFICERS .....5**

    Officer Anthony Cichella .....5

    Officer Jason Steen .....7

    Officer Jason Nichols.....9

    Officer Andrew Ornelas ..... 11

**STATEMENTS BY CIVILIAN WITNESSES ..... 14**

    Witness #1 ..... 14

    Witness #2..... 15

    Witness #3 and Witness #4 ..... 15

    Witness #5..... 16

    Witness #6..... 16

    Ontario Fire Witness #7 ..... 17

**INCIDENT AUDIO AND VIDEO ..... 18**

    911 Calls..... 18

    Dispatch Recording ..... 19

    CHP Mobile Video and Audio Camera Recordings .....22

**INCIDENT SCENE INVESTIGATION.....27**

**DECEDENT .....29**

    Autopsy.....29

    Toxicology .....30

    Criminal History .....30

**APPLICABLE LEGAL PRINCIPLES .....33**

**ANALYSIS.....38**

**CONCLUSION.....42**

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 3

**PREAMBLE**

This was a fatal officer-involved shooting by an officer from the California Highway Patrol. The shooting was investigated by the Ontario Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the Ontario Police Department.

**FACTUAL SUMMARY**

On August 6, 2020, at approximately 4:05 p.m., Witness #1 called 911 to report her car had been rear-ended by a truck on the eastbound I-10 freeway near the Haven Avenue exit in the city of Ontario. Witness #1 reported she was not injured, that the truck had possibly crashed into another vehicle, and that she and other involved parties had pulled to the right shoulder of the freeway. California Highway Patrol (CHP) Officers Andrew Ornelas and Jason Nichols were assigned to respond to the call at approximately 4:07 p.m. While the officers drove to the scene of the motor vehicle collision, four more 911 calls were received by CHP dispatch reporting additional collisions that had occurred in the same location, each involving a white Chevrolet Silverado truck. The collisions were reportedly caused by the driver of the white Chevrolet Silverado who had struck a vehicle and then continued driving, crashing into several other vehicles. The Chevrolet Silverado ultimately crashed through a fence and came to rest in a field adjacent to the I-10 freeway near the Mercedes Benz dealership east of Haven Avenue. Multiple callers reported that after crashing through the fence and into the field, the driver of the Chevrolet Silverado had fled on foot. One caller reported, it "looks like he's trying to get away through the Mercedes Benz car dealer." Another witness called to report what he believed was a "drunk driver" on the eastbound I-10 freeway right before Milliken and that the driver, who was in a white Chevrolet Silverado, had "hit two vehicles already." The witness gave the 911 operator live updates, saying the driver appeared to be trying to kill himself by breaking his neck, and then finally, that the driver of the white Chevrolet Silverado had run on foot to a hotel next to the field where the driver stopped and sat down beneath a tree in the hotel parking lot. The driver of the white Chevrolet Silverado was later identified as Charles Sesma. The 911 callers described Sesma variously as a Hispanic male adult, with short hair and facial hair, wearing brown pants and a tan/dirty shirt, and as a white male in his 40's, wearing a white t-shirt and gray or green track pants.

As the additional 911 calls came in, CHP Officers Jason Steen and Anthony Cichella were assigned to assist. Officer Ornelas drove to the last reported location given by the 911 callers: the hotel next to the empty field by the Mercedes Benz dealership. That hotel was the Embassy Suites, located at 3663 East Guasti Road. At approximately 4:15 p.m., Officer Ornelas got to the Embassy Suites parking lot, but was unable to locate Sesma. Officer Ornelas continued driving in the area, looking for Sesma. Officer Nichols and Officer Steen arrived in the area at about the same time, also looking for Sesma. Officer Nichols was the first to spot Sesma, who wore brown pants and a white shirt, as described by one of the callers. Officer Nichols reported Sesma's location over the radio, telling the

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 4

other officers Sesma was near the Costco parking lot and was hopping a fence to the railroad tracks. Officer Nichols gave the other officers Sesma's description and then advised Sesma was "on the tracks," and was heading toward Airport Road and the "fly away park and ride by the airport." Officers Ornelas and Steen headed that direction, driving to the Park 'N Fly Ontario Airport parking lot, located at 3555 East Airport Drive, where they spotted Sesma walking near the railroad tracks located adjacent to the Park 'N Fly lot. A chain link fence topped with barbed wire separated the officers from Sesma.

Officers Ornelas and Steen stopped their marked CHP patrol units, stepped out of their vehicles, and began telling Sesma to come to them. Sesma looked at the officers but did not comply. Sesma then picked up a pipe and swung it near his waist. The pipe was rusted metal, approximately 10  $\frac{3}{4}$ " long, 1  $\frac{3}{4}$ " in diameter, one of the ends was sharp and jagged, and the pipe weighed 5.8 lbs. The officers began giving Sesma orders to drop the pipe. Sesma did not drop the pipe and began walking away from the officers. Officers Ornelas and Steen told Sesma to stop walking away, drop the pipe, and come their direction. As they continued ordering Sesma to stop, Sesma continued to walk away, heading westbound on the south side of the train tracks toward the railway overcrossing bridge above Haven Avenue. Officer Steen remained in the Park 'N Fly lot to keep an eye on Sesma while Officer Ornelas got into his vehicle and drove toward Haven Avenue to stop Sesma there. At approximately 4:22 p.m., Officer Ornelas stopped on Haven Avenue below the railway overcrossing bridge. Once there, Officer Ornelas did not see Sesma. Officer Ornelas got out of his unit and began walking up the embankment on the east side of Haven Avenue to climb up to the railway overcrossing bridge. As Ornelas was approaching the top of the bridge, Officers Nichols and Cichella arrived and stopped their patrol units near Officer Ornelas's patrol unit.

When Officer Ornelas reached the top of the bridge, he looked east and did not see Sesma. After hearing one of his partners advise over the radio that Sesma was behind Officer Ornelas, to the west, Officer Ornelas turned and saw Sesma sitting down on the railway bridge. When Officer Ornelas keyed up his radio and reported he had located the subject, Sesma turned and looked at Officer Ornelas. Sesma quickly got up, raised the metal pipe above his head, and began running full speed toward Officer Ornelas. Ornelas drew his handgun and gave Sesma orders to stop, but Sesma continued running toward Officer Ornelas. Officer Ornelas fired his handgun at Sesma. Sesma fell, but then quickly got back up, still holding the pipe, and began to run toward Officer Ornelas again. Officer Ornelas fired two additional rounds at Sesma and Sesma again fell. Officer Ornelas, aided by Officers Nichols, Cichella, and Steen who had just made their way up to the bridge, approached Sesma, ordering him to stay down on the ground. Sesma was placed into handcuffs and the officers began administering first aid. At approximately 4:32, paramedics arrived and took over Sesma's care. Sesma was transported to Pomona Valley Hospital at approximately 4:47 p.m., however, at approximately 5:01 p.m., Sesma succumbed to his injuries.

**PUBLIC RELEASE MEMORANDUM**

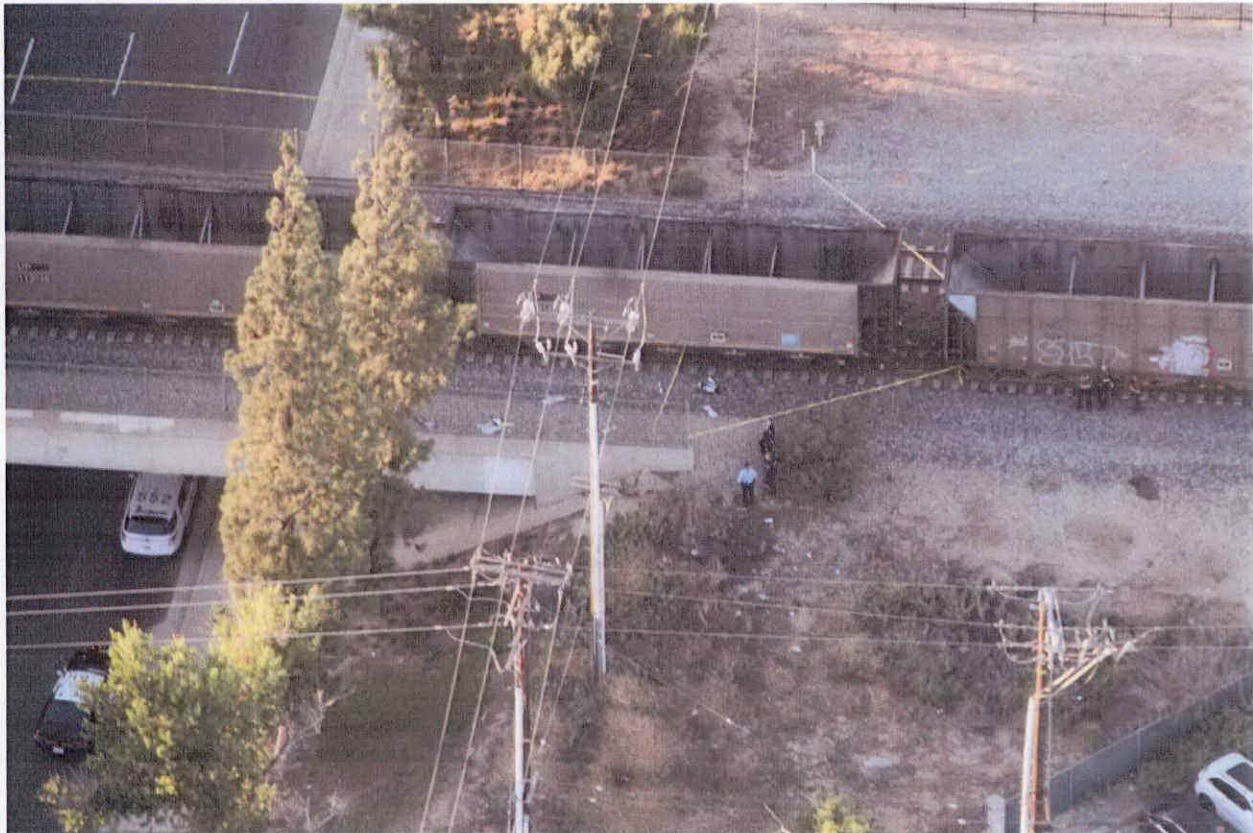
**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 5

The officer-involved shooting occurred on the east side of a railway bridge overpass above Haven Avenue. See below for a photograph of the scene.



**STATEMENTS BY POLICE OFFICERS<sup>1</sup>**

On August 7, 2020, at approximately 2:14 a.m. **Officer Anthony Cichella** was interviewed by Detectives Aaron Tedesco and Gary Naranjo of the Ontario Police Department.

On August 6, 2020, Officer Cichella was on duty as a police officer with the California Highway Patrol (CHP). Officer Cichella was assigned to the Rancho Cucamonga CHP Office and was working on patrol with his police service dog. Officer Cichella was driving a marked CHP patrol vehicle and was wearing his navy-blue CHP utility uniform which consisted of BDU pants, a long-sleeved uniform shirt with CHP patches on the left and right sleeves and his name and CHP badge on the chest. Officer Cichella's vehicle had a mobile video and audio recorder and it was activated during the incident.

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

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 6

Officer Cichella was monitoring radio traffic when<sup>2</sup> he heard units dispatched to a hit-and-run motor vehicle collision in the area of Haven Avenue and the I-10 freeway in Ontario. Officer Cichella heard the hit-and run suspect had fled from his vehicle on foot in the area of "Milliken to Haven Avenue." Officer Cichella told dispatch he would assist on the hit-and-run call and exited the westbound I-10 freeway at Haven Avenue. As he continued to monitor the radio traffic, Officer Cichella heard that a witness had reported seeing the hit-and-run suspect sitting down in front of a hotel. As he drove to the reported location, Officer Cichella heard over the radio that the witness had lost sight of the suspect. As Officer Cichella was driving westbound on the I-10 freeway, just past Milliken and approaching Haven Avenue, he heard over the radio that other officers observed the suspect as he fled on foot near the railroad tracks south of Guasti Road. As Officer Cichella exited at Haven Avenue, he heard an officer report over the radio that the suspect<sup>3</sup> had picked up a metal object and was walking along the railroad tracks.

Officer Cichella headed south on Haven Avenue, made a U-turn at Airport Drive, and stopped on northbound Haven Avenue south of the railway overpass. As he did so, Officer Cichella heard over the radio that Sesma was sitting down at the railroad tracks. Officer Cichella got out of his patrol unit and opened the rear door to attach his leash to his police service dog (K9) in case the dog was needed to apprehend Sesma. As Officer Cichella was hooking up the leash to his K9, he heard officers yelling, "Don't move! Drop it! Don't move!" Officer Cichella was standing next to his patrol unit in the northbound lanes of Haven Avenue, on the south side of and below the railway overpass. As he was getting his K9 from the rear of the patrol unit, Officer Cichella looked up to his right and saw Sesma running eastbound on the railway overpass, just to the south of the train that was stopped there. Sesma appeared to have an object in his right hand, approximately at chest level, and was running at "full-speed" in an easterly direction toward Officer Ornelas and Officer Steen. While Sesma was running, Officer Cichella heard the officers order Sesma to stop and to drop the object. Upon seeing this, Officer Cichella was immediately in fear for the officers but was in no position to help them from his location. Officer Cichella then heard approximately four gunshots and saw Sesma fall out of view. Officer Cichella immediately began to put his K9 back into the patrol unit when he heard the officers yelling at Sesma to stay down and to drop the weapon. Officer Cichella then heard approximately two more gunshots. Because he was putting his K9 back into the patrol unit, Officer Cichella did not see anything when the second volley of rounds were fired.

Officer Cichella did not know if one or both officers had fired their weapons. Officer Cichella's view of the officers was obscured by trees, but Officer Cichella estimated the

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<sup>2</sup> Officer Cichella was not asked for the time at which he heard the radio traffic regarding the hit-and-run, but the initial 911 call was received by dispatch at 4:04 p.m. and at 4:07 p.m., Officer Cichella was assigned to back up Officer Ornelas on the call.

<sup>3</sup> Subsequent investigation revealed the "hit-and-run suspect" was identified as Charles Sesma. During the interviews of each of the CHP Officers, none were asked to identify the "hit-and-run suspect," and therefore each referred to Sesma as either the "hit-and-run suspect," "hit and run subject," or as the "suspect/subject" during their interviews. For ease of reference, Sesma will be referred to by name, even though the officers did not use his name during their interviews.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 7

distance between Sesma and the nearest officer was no more than 30 feet at the time of the shooting. At the time of the shooting, Officer Cichella was down on the street below the railway overpass and estimated he was approximately 300 feet away from Sesma at the time of the shooting.

Once he secured his K9 in the unit, Officer Cichella ran up the embankment. Sesma was moving around and Officer Cichella handcuffed Sesma to the front because he did not want to roll him over onto his stomach due to his injuries. Other CHP officers arrived with an "EMT bag" and Officer Cichella assisted in rendering medical aid to Sesma. While rendering medical aid to Sesma, Sesma continued moving around and tried to turn onto his side as if he was trying to roll over onto his stomach. The officers had to hold onto Sesma's legs to keep him still so they could render aid.

Officer Cichella saw the object Sesma had been carrying on the ground approximately four feet northwest of Sesma. Officer Cichella said the object was a metal pipe that was approximately twelve to eighteen inches long and approximately two inches thick. Officer Cichella said the pipe had at least one end that appeared to have been broken and was "serrated," "like a knife, kinda, I mean sharp." Officer Cichella believed the metal pipe could have caused serious injury or death to the officers. Officer Cichella did not see any other items on the ground, other than a lot of rocks.

On August 7, 2020, at approximately 3:23 a.m. **Officer Jason Steen** was interviewed by Detectives Brennan Devey and Gary Naranjo of the Ontario Police Department.

On August 6, 2020, Officer Steen was on duty as a police officer with the CHP. Officer Steen was assigned to the Rancho Cucamonga CHP Office and was working on patrol in the Rancho Cucamonga area. Officer Steen was driving a marked CHP patrol vehicle and was wearing his navy-blue CHP utility uniform which consisted of BDU pants, a long-sleeved uniform shirt with CHP patches on the left and right sleeves and his name and CHP badge on the chest. Officer Steen's vehicle had a mobile video and audio recorder and it was activated during the incident.

At approximately 4:00 p.m., Officer Steen heard a call go out over the radio regarding a hit-and-run on the I-10 freeway in Ontario. Officer Steen headed southbound on the I-15 freeway at Summit Avenue and began heading to the reported location. It was reported that one of the drivers involved in the hit-and-run had crashed through a fence and had taken off on foot. The witness to the hit-and-run had reported that the hit-and-run suspect<sup>4</sup> (Sesma) was sitting under a tree at the Embassy Suites on Guasti Road. Subsequent to that, Sesma was reported to have left the Embassy Suites location and that he was walking toward the Mercedes dealership near the I-10 freeway and East Guasti Road. Officer Steen took the I-15 freeway to the I-10 and exited the freeway at Haven Avenue. When Officer Steen got to Guasti Avenue near the Embassy Suites, he heard CHP Officer

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<sup>4</sup> See footnote 3.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 8

Nichols say over the radio that he had located Sesma at the Costco parking lot<sup>5</sup> near the train tracks. Officer Steen heard Officer Nichols say the suspect was going through the train tracks and was heading to the south side of the tracks.

Officer Steen continued heading south on Haven Avenue and then turned left on East Airport Drive. Officer Steen turned into the park and ride lot located on East Airport Drive, south of the train tracks and just east of Haven Avenue. Officer Steen headed to the far east side of the park and ride lot and scanned the scene. Behind him, Officer Steen saw CHP Officer Ornelas heading the opposite way on the other side of the lot. Officer Steen saw there was a train stopped on the nearby tracks and then he saw Sesma walking near the train. From Officer Steen's location in the park and ride lot, Sesma was on the other side of a chain link fence. The chain link fence had barbed wire on the top. Sesma matched the description of the hit-and-run suspect. Over the radio, Officer Steen told Officer Ornelas that he had located Sesma.

Officer Steen and Officer Ornelas got out of their patrol units and began giving Sesma commands to come their direction. Sesma immediately reached down and grabbed something off the ground. Officer Steen saw that the object Sesma picked up was a steel pipe. The pipe was approximately one and half to two feet long, about two inches in diameter. One end of the pipe appeared to have been broken and had an extremely jagged edge. Sesma swung the pipe two times down by his side at his waist level. Knowing the pipe could be used as a weapon, Officer Steen and Officer Ornelas began ordering Sesma to drop the pipe. Officer Steen believed the pipe could cause serious injury and incapacitation. Sesma continued holding the pipe and just looked at Officer Steen and Officer Ornelas. Sesma's behavior was extremely unusual to Officer Steen. Based on Officer Steen's training and 17 years of experience, most people pay attention and cooperate with law enforcement. While Officer Steen did not smell the odor of alcohol on Sesma, his behavior led Officer Steen to believe Sesma was possibly impaired, possibly by drugs or narcotics, or that Sesma had "mental problems as well." Sesma began walking westbound, away from the officers and parallel to the train. Officer Steen and Officer Ornelas told Sesma to stop and drop the pipe and told him they just wanted to talk to him. Because of the barbed wire fence in between Sesma and the officers, they were not able to hop over it to follow Sesma. After radioing that Sesma had picked up a pipe, Officer Ornelas told Officer Steen to keep a visual on Sesma and said he was going to try to drive around the fence. Officer Ornelas got into his patrol unit and began driving away to get around the fence.

Meanwhile, Officer Steen hopped up onto a nearby block wall to keep an eye on Sesma. Sesma continued walking westbound along the train. Sesma then sat down on top of the bridge right above Haven Avenue. Officer Steen reported this over the radio. When Sesma sat down, Officer Steen could not see if Sesma still held onto the pipe because the railing obscured Officer Steen's view. Officer Steen saw Officer Ornelas walking up the hill toward Sesma's location. Officer Steen didn't want Officer Ornelas to approach

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<sup>5</sup> The Costco is located on Guasti Road.



**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 9

Sesma alone, so Officer Steen hopped down from the block wall and began making his way up the embankment to the train tracks so that he could join him. Officer Steen was trying to catch up to Officer Ornelas. Officer Steen could not see Sesma and believed he was still sitting down on the bridge over Haven Avenue. Officer Steen saw Officer Ornelas reach the top of the embankment near the railroad tracks and then heard Officer Ornelas yell out something. When Officer Ornelas yelled, it was apparent to Officer Steen that Officer Ornelas was yelling out commands and was in distress. Officer Steen could not tell what Officer Ornelas said, but he heard gunfire immediately thereafter. Officer Steen heard at least four gunshots. Officer Steen was immediately in fear for Officer Ornelas' life. Officer Steen rushed up the embankment toward Officer Ornelas, scanning the scene. Officer Steen did not know where the gunshots were coming from and was concerned Officer Ornelas was taking gunfire.

Once Officer Steen got up the embankment to Officer Ornelas, he saw Sesma was lying down on the ground. Sesma used his arms to push himself up and tried to get up but failed to do so. Officer Steen covered Sesma with his gun and Officer Ornelas did a tactical reload. Officer Steen saw Sesma had blood on him and gunshot wounds to one of his arms. Officer Steen could not remember which arm had the gunshot wounds. Officer Steen immediately radioed that shots had been fired and requested medical aid. Officer Steen asked Officer Ornelas where the pipe was because he didn't want to approach Sesma if he still had the pipe. Officer Ornelas said he believed the pipe was underneath Sesma. Fellow CHP Officers Nichols and Cichella came up the embankment to the scene and together they formulated a plan to approach Sesma. Officer Cichella handcuffed Sesma to the front and the other officers began administering first aid to Sesma. Officers Nichols and Ornelas, assisted by CHP Officer Vella, placed a halo seal on Sesma's chest and a tourniquet on Sesma's arm.

On August 7, 2020, at approximately 4:59 a.m. **Officer Jason Nichols** was interviewed by Detectives Kyle Mena and Patrick Woolweaver of the Ontario Police Department.

On August 6, 2020, Officer Nichols was on duty as a police officer with the CHP. Officer Nichols was assigned to the Rancho Cucamonga CHP Office and was working on patrol. Officer Nichols was driving a marked CHP vehicle and was wearing his navy-blue CHP utility uniform which consisted of BDU pants, a short sleeved uniform shirt with CHP patches on the left and right sleeves and his name and CHP badge on the chest. Officer Nichols' patrol unit did not have a mobile video and audio recorder.

Officer Nichols was monitoring radio traffic when he heard a call go out regarding a hit-and-run, that one of the parties to the hit-and-run had driven through a fence and had run from the scene on foot. Officer Nichols answered the hit-and-run call and began driving to the location from the westbound I-10 freeway near Cherry Avenue. While en route, Officer Nichols monitored radio traffic. Officer Nichols exited the freeway at Haven Avenue and heard his partner, Officer Ornelas, say over the police radio that he was at the Embassy Suites Hotel located on east of Haven Avenue on Guasti Road where one

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 10

of the witnesses had said the hit-and-run suspect<sup>6</sup> (Sesma) was located. Officer Ornelas said he was unable to locate Sesma. Officer Ornelas asked Officer Nichols to check the Springhill Hotel, which is in the same parking lot, just west of the Embassy Suites. Officer Nichols "canvassed" the parking lot area and was unable to locate Sesma. As Officer Nichols was about to exit the parking lot area, he heard Officer Ornelas say over the radio that he was going to check the Costco, which was directly across from and south of the hotel near Guasti and Haven.

Officer Nichols was near the entrance to the Costco parking lot, so he pulled into it. As he entered the Costco parking lot, Officer Nichols saw in the southwest corner of the Costco parking lot a suspect matching the description as given in the call. The suspect (Sesma) appeared to be a white male, wearing brown pants and a dirty white shirt, with "curly shaggy hair." Over the radio, Officer Nichols advised his fellow officers of this. Officer Nichols saw Sesma climb over the metal perimeter fence on the south side of Costco and enter the railroad property near the railroad tracks. Sesma worked his way up to the railroad tracks and then walked underneath one of the stationary rail cars, where Officer Nichols could no longer see him. To Officer Nichols, this was not normal behavior. Officer Nichols reported his observations over the radio. Officer Nichols then turned around and began driving to the park and ride parking lot because that was where he believed Sesma was heading.<sup>7</sup> Officer Nichols drove to the "flyaway" or park and ride parking lot, which was located off of Airport Drive, east of Haven Avenue. Officer Nichols heard Officer Ornelas say over the radio traffic that Sesma was on the railroad tracks. Officer Ornelas asked Officer Nichols to intercept Sesma at Haven Avenue. Officer Nichols exited to Airport Drive East and then stopped north on Haven Avenue near the railway overpass that crosses over Haven Avenue. Officer Nichols believed Officer Ornelas was about a minute ahead of him. Officer Nichols got out of his patrol unit and saw Sesma walking toward the area of the train trestle and bridge. Sesma hopped the fence along the train tracks. Sesma had an object in his hand that looked like a "long rusty dagger type of knife," with a blade that was over 6 inches long. When Officer Nichols saw Sesma in the Costco parking lot, he saw that Sesma's hands were free because he used both of his hands to hop the fence.

Suddenly, Sesma started running full speed with what he believed was a knife in his hand toward Officer Ornelas who was up on the embankment behind some trees. Officer Nichols' view of Officer Ornelas was obscured by trees, but Officer Nichols could hear Officer Ornelas yelling commands. Officer Nichols believed Officer Ornelas' life was in "imminent danger" because a "vest would not stop a blunt sharp object like that. That can be a fatal injury depending on where they get stuck." Officer Nichols pulled his pistol and pointed it at Sesma, but immediately recognized he had a hazard in the backdrop behind Sesma and that if he fired and missed, the round would ricochet off the rail cars. Officer

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<sup>6</sup> See footnote 3.

<sup>7</sup> A couple of months prior, Officer Nichols and his fellow officers had been involved in apprehending another hit-and-run suspect who had fled on foot to the "flyaway" parking lot. Because his partners knew of the prior incident, Officer Nichols told them the suspect was heading to "the area of our last foot-bail."

## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

June 3, 2021

Page 11

Nichols believed Officer Ornelas yelled, "Drop! Stop!" or "Drop it! or "Don't do this! Stop!" Officer Ornelas' commands were "very stern, very alerted," and Officer Nichols believed Officer Ornelas was "cool, calm," and that he "articulated exactly what he wanted from the guy." But, Sesma did not stop and just continued advancing on Officer Ornelas. Immediately after hearing Officer Ornelas yell the commands, Officer Nichols heard a volley of shots fired and then he saw Sesma fall. There was a brief pause, followed by a few more shots. At the time that he heard the first volley of gunfire, Sesma had gotten to within 20 feet of Officer Ornelas. Officer Nichols estimated he heard at least four or five rounds fired. Officer Nichols put out over the radio that shots were fired and officer needs assistance.

Officer Cichella had arrived at the scene shortly after Officer Nichols. Officer Nichols and Officer Cichella both headed up the hill and when they got to the top near the train tracks, Officer Nichols saw Officer Steen and Officer Ornelas. Officer Ornelas was facing eastbound toward Sesma with his gun drawn. Sesma was down on the ground. Officer Nichols requested medical aid respond to the scene. Officer Nichols assisted Officer Cichella with handcuffing Sesma to the front to make him safe. Sesma was still moving and was alive. Officer Nichols requested officers down on the ground below to bring an EMT kit. Officer Nichols and other officers immediately started rendering aid to Sesma. Officer Nichols placed a dressing over the injuries to Sesma's right eye and mouth. Sesma became physically combative and Officer Nichols tried to calm him and reassure him that help was on the way. Sesma tried to roll over and got almost onto his side so Officer Vella and Officer Nichols got him back onto his back. After that, Officer Nichols held onto Sesma's legs to hold him still so Officer Ornelas could place a tourniquet on Sesma's right arm, and a chest seal the upper portion of Sesma's chest. A couple minutes later, medics arrived and took over care of Sesma.

While rendering aid to Sesma, Officer Nichols saw the weapon that Sesma had held in hand a couple feet east of Sesma's location close to the rails. Officer Nichols saw that it was a rusty pipe, not a knife. Officer Nichols estimated the pipe was approximately six inches long and two inches in diameter. One end of the pipe had a smooth edge and the other end was jagged. Officer Nichols believed the pipe was possibly from a chain link fence post.

On August 8, 2020, at approximately 11:01 a.m. **Officer Andrew Ornelas** was interviewed by Detectives Patrick Woolweaver and Gary Naranjo of the Ontario Police Department.

On August 6, 2020, Officer Ornelas was on duty as a police officer with the CHP. Officer Ornelas was assigned to the Rancho Cucamonga CHP Office and was working on patrol. Officer Ornelas was driving a marked CHP Ford Explorer equipped with emergency lights and siren. Officer Ornelas was wearing his navy-blue CHP utility uniform which consisted of BDU pants, a long-sleeved uniform shirt with CHP patches on the left and right sleeves and his name and CHP badge on the chest. Officer Ornelas' duty belt held the following

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 12

tactical gear: handcuffs, duty weapon, a rapid containment baton, radio, a taser, and ammo pouches. Officer Ornelas's duty weapon was a .40 caliber Military and Police handgun and it held a total of 16 rounds. Officer Ornelas' vehicle had a mobile video and audio recorder and it was activated during the incident.

At approximately 4:07 p.m., Officer Ornelas was dispatched to a traffic collision involving property damage on the I-10 freeway, near the Haven Avenue exit in Ontario. All parties were reported to be present and standing by for a police report on the right shoulder. While Officer Ornelas was en route to the call, he received updated information that the traffic collision was upgraded to a hit-and-run collision with three parties total. Two of the parties were standing by with a pickup truck that had been abandoned by the party who took off on foot. It was reported that the pickup truck had crashed through a fence, ending up in a field. One of the parties had a visual of the hit-and-run subject near the Embassy Suites parking lot sitting by a tree. The hit-and-run subject's description was given.<sup>8</sup> Officer Ornelas realized that he was no longer dealing with what could be a simple collision but was instead dealing with a crime with someone actively fleeing. Officer Ornelas knew there were a variety of reasons why someone would flee the scene of an accident, whether it be because the party did not have a driver's license or insurance, or because the party was scared, or because the party was impaired.

Because there was a subject<sup>9</sup> (Sesma) who was actively fleeing and Sesma's location was known, Officer Ornelas decided he would drive to Sesma's location. The Embassy Suites parking lot was located just south of the I-10 freeway off Haven Avenue. Officer Ornelas told dispatch he was responding to Sesma's location. When Officer Ornelas got to the Embassy Suites parking lot, he drove around the lot looking for Sesma but was unable to find him. There were no trees in the parking lot where a person could be sitting, but there were trees in a nearby field, so Officer Ornelas got out of his patrol unit and looked in the field. Officer Ornelas did not see anyone in the field, so he asked dispatch to ask the witness if he or she still had a visual on Sesma. Dispatch did so and told Officer Ornelas the witness had looked away and when the witness looked back, Sesma was gone, and the witness did not know which direction Sesma had gone. Officer Ornelas drove around the Embassy Suites parking lot again but still could not locate Sesma. Over the radio, Officer Nichols told Officer Ornelas he was responding to Officer Ornelas' location. Officer Ornelas asked Officer Nichols to check the Springhill Suites, which was the hotel next to the Embassy Suites.

Officer Ornelas then drove back onto the street. Officer Ornelas was not certain of the name of the street, but he believed it was Guasti. Officer Ornelas headed east and drove to where the street dead-ends at the Mercedes Benz dealership and the Costco parking lot. Officer Ornelas drove around that area looking for Sesma without success. Officer Nichols advised over the radio that he checked the Springhill Suites and was unable to

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<sup>8</sup> At the time of the interview, Officer Ornelas could not recall the exact description of the hit-and-run subjects' clothing but did recall that the subject was described as a white or Hispanic male adult.

<sup>9</sup> See footnote 3.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 13

locate Sesma. As Officer Ornelas was preparing to turn into the Mercedes Benz dealership, Officer Nichols announced over the radio that he "had eyes on" Sesma at the Costco parking lot. Sesma was fleeing in a southern direction. Officer Ornelas drove west towards Haven Avenue. Over the radio, Officer Nichols advised that Sesma was fleeing towards the park and ride lot just south of the I-10 freeway. Officer Ornelas proceeded south on Haven and then left on Airport Drive, which was where the park and ride lot was located. Officer Ornelas pulled into the park and ride lot. His partner, Officer Steen, pulled into the park and ride lot ahead of Officer Ornelas. Officer Steen drove to the east side of the lot and Officer Ornelas drove to the west side. Officer Steen announced over the radio that he could see the hit-and-run subject, Sesma. Officer Ornelas turned and saw Sesma who matched the description of the hit-and-run subject. In addition, Sesma's clothing was slightly dirty, which "made sense" to Officer Ornelas because the hit-and-run subject had likely fled through a field, jumped a fence, or crossed over bushes while fleeing the scene in order to get to his current location, and would have gotten dirty in the process.

Sesma was walking west on or near the railroad tracks. There was a tall chain link fence with barbed wire between Sesma and the officers. Officer Ornelas and Officer Steen got out of their patrol units and told Sesma to stop. Officer Ornelas did not know how they would get to Sesma because there was a barbed wire chain link fence between Sesma and the officers. Officer Ornelas knew he would not be able to ask Sesma to jump over the chain link fence. Officer Ornelas and Officer Steen repeated their commands to Sesma to stop walking. Sesma bent forward and picked up an object. From Officer Ornelas' vantage point, approximately 30 to 40 yards away the object looked like a "long pipe." The pipe was approximately 10 to 16 inches long, was rusty, and had one end that looked like it had been cut by a saw and the other end looked extremely jagged, like it had been "snapped." To Officer Ornelas, the pipe looked like something out of "a horror movie." Officer Ornelas did not know what Sesma's intentions were, but this heightened Officer Ornelas' senses. Officers Ornelas and Officer Steen told Sesma, "Don't pick it up," but Sesma picked up the pipe anyway. Sesma did not say anything. Officer Ornelas and Officer Steen then began giving commands to Sesma to, "Drop it." and to "Stop walking." Sesma did not follow their commands and continued holding the pipe. Sesma walked west. This too heightened Officer Ornelas concern, but was not enough to indicate to Officer Ornelas that Sesma was going to be aggressive.

Over the radio, Officer Ornelas told dispatch where Sesma was heading and that Sesma had a pipe. Officer Ornelas told Officer Steen to stay where he was and to keep an eye on Sesma while he went around to the west so that they would have a "semi-perimeter" around Sesma. Officer Ornelas also radioed Officer Nichols, who was still responding to the scene, and told him to wait on Haven at the railroad tracks because Sesma was walking that direction. This would ensure they would have Sesma surrounded. Officer Ornelas circled around and began heading to Haven Avenue. Officer Ornelas believed Officer Steen advised over the radio that Sesma was underneath the railway overcrossing or near Haven Avenue. Officer Ornelas thought Officer Steen was saying Sesma was down on the street.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 14

When Officer Ornelas got to Haven Avenue, he expected to see Sesma on the street, thinking Sesma had possibly walked down the embankment to the street below the railroad tracks, but he did not see Sesma. Officer Ornelas looked up at the railway overcrossing and did not see Sesma, so he got out of his patrol unit and walked up the embankment to the railroad tracks. Officer Ornelas' goal was to locate Sesma and to then maintain a perimeter around Sesma, keeping an eye on Sesma until the other officers arrived and then together, they could apprehend Sesma. The embankment to the bridge ran in an easterly direction, so when Officer Ornelas walked up it, he was facing east. As he walked up the embankment, Officer Ornelas saw Officer Steen in the northwest corner of the park and ride lot. When Officer Ornelas got to the top of the embankment, he looked east and did not see Sesma. Officer Ornelas could no longer see Officer Steen. One of his partners, either Officer Steen or Officer Nichols, told Officer Ornelas over the radio that Sesma was behind him. Officer Ornelas looked west behind him and saw Sesma, approximately 40-50 feet away, sitting down on south side of the railroad tracks on the railway bridge directly over Haven Avenue. Haven Avenue runs north and south and the railway bridge overcrossing runs east and west over Haven Avenue. Sesma was not looking at Officer Ornelas. Over the radio, Officer Ornelas advised that Sesma was sitting down. Sesma heard Officer Ornelas and looked directly at him. Sesma stood up in an "aggressive manner," like he was intending to come toward Officer Ornelas. When Sesma stood up, Officer Ornelas thought Sesma was holding a "long rusty knife." As soon as Sesma got up, he raised the weapon directly over his head, "almost like a stabbing motion or a position getting ready to stab me," and then Sesma started running toward Officer Ornelas.

Officer Ornelas drew his handgun and yelled at Sesma to stop, but Sesma continued sprinting toward him. As Sesma got closer, Officer Ornelas saw the object Sesma had in his hand was the rusty metal pipe he had picked up moments earlier. As Sesma ran, he lowered the pipe as he increased the speed of his run. Officer Ornelas did not know the distance between Sesma and himself, but Sesma was quickly closing in on him. Sesma was running at a "full sprint" toward Officer Ornelas in an "aggressive manner" with the weapon in his hand. Officer Ornelas yelled out commands to Sesma to "stop" and to "drop it." Sesma did not stop or drop the weapon and instead continued sprinting toward Officer Ornelas. Officer Ornelas was terrified and in fear for his life as Sesma continued charging at him with the pipe: "It was almost like he was right on me. I could see the rust on it. I could see the size of it, and I could see the jagged edges on the one end of the pipe," and knew it "could definitely kill" him. Sesma was less than 20-25 feet away and was quickly closing in Officer Ornelas. Officer Ornelas fired his handgun at Sesma to stop him. Officer Ornelas believed he fired four or five times.<sup>10</sup> Officer Ornelas fired his gun to stop the threat Sesma posed to his life.

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<sup>10</sup> Officer Ornelas did know the exact number of times he fired his gun. Crime scene investigators recovered 6 fired cartridge casings from the scene, indicating at least six shots were fired. Officer Ornelas tactically reloaded his gun, discarding a magazine at the scene. Crime scene investigators recovered Officer Ornelas' magazine, and it was found to contain 8 bullets. The magazine's capacity was 15, meaning 7 rounds were fired from the magazine.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

#### **STAR No.**

June 3, 2021

Page 15

When he fired his gun at Sesma, Officer Ornelas was not able to retreat or reposition for cover because the loose rocks provided unstable footing and if he were to step backwards, he could easily fall. Officer Ornelas knew that if he "missed or if the rounds don't stop him, I am exposed. I didn't reposition because I was concerned for the rock, the rocks that were underneath my feet. And I knew that if I was to move, I must be stepping in a backwards direction. I was too concerned that I would...fall backwards." When Officer Ornelas fired his gun, Sesma went down but then immediately got back up in an "aggressive manner, directly at me, like it was almost like a track start type get up." Officer Ornelas thought he had missed Sesma and that Sesma had only gone down to avoid being shot. Officer Ornelas was terrified because Sesma was still coming at him. Officer Ornelas fired two or three more rounds at Sesma to stop him. Sesma fell to the ground less than 15 feet away from Officer Ornelas. Officer Ornelas believed he would have been killed if he had not fired his gun.

When Sesma fell to the ground the second time, Officer Ornelas yelled at him to stay down. Officer Ornelas did a tactical reload, ejecting his gun's magazine and reloading it, because he didn't know if Sesma was going to get back up again. Officer Ornelas believed the metal pipe was underneath Sesma's body. Officer Ornelas heard an officer coming up behind him and looked to see Officer Steen was behind him and to his right. Officer Ornelas thought Officer Steen was behind him during the shooting and initially thought Officer Steen had fired his handgun at Sesma as well. Officer Nichols was half-way up the embankment, making his way up to them. Sesma was still moving. Officer Ornelas, Officer Nichols, and Officer Steen approached Sesma. Officer Ornelas believed someone turned Sesma over onto his back so that Officer Nichols could handcuff Sesma's arms in front of his body. Sesma was moved, but not significantly and Officer Ornelas believed Sesma was just turned over onto his back, but he was not certain. The officers then all began administering first aid to Sesma. Officer Ornelas saw blood on the front of Sesma's shirt. Someone handed Officer Ornelas scissors and he cut open Sesma's shirt with them. Officer Ornelas saw that Sesma had two bullet wounds to his chest. Officer Ornelas placed a HALO<sup>11</sup> chest seal, which he got from their trauma bag, over both wounds on Sesma's chest. Officer Ornelas also saw Sesma had two bullet wounds to one of his arms, so he placed a tourniquet on Sesma's arm. Officer Nichols assisted by holding Sesma's arms because Sesma was trying to reach for Officer Ornelas. Officer Ornelas saw the pipe Sesma had been holding was on the ground close to Sesma's body. When the fire department arrived, they took over Sesma's care.

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Officer Ornelas' gun also held one round in the chamber, so when fully loaded, the gun and magazine held 16 rounds total. Based upon this, it appears eight rounds were fired.

<sup>11</sup> Officer Ornelas was an emergency medical technician before becoming a peace officer. Officer Ornelas explained that when someone has a bullet wound within their chest, air can be introduced into the chest cavity, causing a lung to collapse. The HALO chest seal is designed to prevent air from entering the chest cavity.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 16

**STATEMENTS BY CIVILIAN WITNESSES<sup>12</sup>**

On August 6, 2020, at approximately 6:18 p.m., **Witness #1** was interviewed by Officer Benjamin Myers of the Ontario Police Department.

Witness #1 said she had been driving her gray Toyota XD eastbound in the second lane from the right (#5 lane) in stop-and-go traffic. Witness #1 was driving at approximately 15-miles per hour. Witness #1 heard honking coming from behind her and she looked in her review mirror. Witness #1 saw a lifted white truck travelling at a high rate of speed coming toward her vehicle. The truck appeared to be coming at an angle from the #6 lane and it collided with the rear end of her vehicle. Witness #1's vehicle was pushed into a semi-truck trailer in the #4 lane. Witness #1 pulled her vehicle to the shoulder and called the police. Witness #1 did not know how many occupants were in the truck and she could not give a description of the driver.

On August 6, 2020, at approximately 6:00 p.m., **Witness #2** was interviewed by Officer Antonio Galban of the Ontario Police Department.

Witness #2 was travelling eastbound in her brown Chevrolet Equinox at approximately 25 miles per hour in the exit lane. Witness #2 noticed a white lifted truck travelling at a high rate of speed, approaching directly behind her. Witness #2 believed the truck was going to rear end her because it was not slowing down. In order to avoid a traffic collision, Witness #2 pulled over to the right shoulder. The truck still crashed into her vehicle, causing damage to the rear bumper. The truck then continued eastbound and collided with the vehicle directly in front of Witness #2. That vehicle was a gray Toyota Scion and it suffered significant rear end damage. After the truck crashed into the Toyota Scion, it continued driving eastbound on the freeway without stopping. Both Witness #2 and the driver of the Toyota Scion pulled over to the right and called 911 to report the accident. Witness #2 was unable to describe the driver of the pickup truck.

On August 6, 2020, **Witness #3 and Witness #4** were interviewed by Detective Richard Ballard of the Ontario Police Department.

Witness #3 was driving his vehicle with his wife, Witness #4, in the front passenger seat. Witness #3 was driving on the I-10 freeway in the slow lane. Witness #3 saw three vehicles parked on the right shoulder. The first vehicle was a small dark colored vehicle, the second was a larger vehicle of unknown color. The third vehicle was a white pickup truck with its hood up. All three vehicles were damaged and appeared to have been involved in a recent traffic collision. Neither Witness #3 nor Witness #4 witnessed the collision. As Witness #3 continued driving eastbound, he saw the white pickup truck driving eastbound on the right shoulder with the hood still up. The pickup truck tried to merge into the lane Witness #3 was travelling in and collided with Witness #3's right rear bumper. The pickup truck then moved back to the right shoulder and drove faster, passing

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



**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 17

by Witness #3's vehicle. The pickup truck tried to merge back into Witness #3's lane a second time and collided with Witness #3's right front bumper. The driver of the pickup truck quickly drove away. Witness #3 believed the pickup truck collided with another vehicle after his.

The pickup truck then made a right onto the Haven Avenue onramp. The pickup truck collided with a chain link fence and drove into an open field, where it stopped. Witness #3 called 911. The driver of the pickup truck exited from the driver's door and ran in a southeast direction. The driver was the only occupant of the pickup truck. The driver was a male Hispanic in his 30's with a thin build, wearing an unknown color t-shirt and an unknown color of pants. Witness #3 never saw the driver's face and did not see the clothing he was wearing because he was concentrating on the pickup truck's license plate number so he could give it to police dispatch. Witness #4 said the driver of the pickup truck was a male and she believed he was wearing a gray shirt. Witness #4 never saw the driver's face. Witness #4 had pain to her neck and back as a result of the collision and was taken to the hospital by ambulance. Once she was cleared at the hospital, Witness #4 was transported back to the scene of the collision by the CHP.

On August 6, 2020, **Witness #5** was interviewed by Detective Richard Ballard of the Ontario Police Department.

Witness #5 was driving eastbound on the I-10 freeway approaching the Haven Avenue exit. Witness #5 saw three vehicles parked on the side of the freeway. One of the vehicles was a white pickup truck. Witness #5 was driving in the slow lane and she attempted to move to the left lane but was struck from behind. Witness #5 did not see who crashed into her. After the collision, Witness #5 saw the white pickup truck to the right of her driving on the right shoulder of the freeway. The driver of the pickup truck drove on the onramp of Haven Avenue and drove straight into a chain link fence. To Witness #5, it appeared the driver intentionally struck the fence. Witness #5 parked on the shoulder of the freeway. The driver of the pickup truck drove into an open field and stopped. The driver exited from the driver's door; he was the only occupant of the pickup truck. The driver stood by his truck for about a minute and then he sat down, and then laid down on his back in the open field for approximately 30 seconds. He then stood up and ran in a southeast direction towards a tree line where he sat down for an unknown amount of time. Witness #5 was not sure when the pickup driver left the tree line area. Witness #5 described the pickup driver as a male Hispanic with short hair and facial hair, wearing brown pants and tan or dirty shirt.

On August 6, 2020, **Witness #6** was interviewed by Detective Darren Williams of the Ontario Police Department.

Witness #6 was Charles Sesma's brother. Detective Williams told Witness #6 of Charles Sesma's death. Witness #6 was shocked and said Sesma was a heavy drinker and he had been taken on a 5150 hold in the past. During the interview, Witness #6's girlfriend,

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 18

Witness #8, said Sesma had really been struggling lately. Witness #6 told Witness #8 not to say anything else. Witness #6 said Sesma would occasionally stay with him at his home, but that he would also stay with his sister, Witness #9, at her home. Witness #6 said that Sesma would also stay in a trailer he had that was parked on some property his parents owned in the area of Washington and Ivy in the city of Murrieta. Witness #6 confirmed that Sesma drove a white Chevrolet pickup truck. During the interview, Sesma's sister, Witness #9, arrived. Witness #9 said Sesma had been on hard times recently and that he would bounce around from house to house between family members.

On August 6, 2020, at approximately 5:05 p.m., **Witness #7** was interviewed by Gary Naranjo of the Ontario Police Department.

Witness #7 was employed as a fire captain for the Ontario Fire Department. Witness #7 and his crew were dispatched to a traumatic injury, possible shooting at the scene of the officer-involved shooting on the railway bridge overcrossing above Haven Avenue in the city of Ontario. When they arrived, they parked their fire truck on Haven Avenue under the railway bridge overcrossing next to a CHP unit.

Witness #7 saw a CHP officer pointing up toward the east embankment, south of the bridge. Witness #7 asked a CHP officer what happened and was told there had been an officer-involved shooting. Witness #7 and his crew went up to the top of the embankment and found four CHP officers standing at the top and three CHP officers providing medical aid to the shooting victim. One of the officers advised that the subject had been shot three times and had wounds to his chest, face, and arms and was being combative. Witness #7 saw one of the officers was holding the subject down as he was moving around.<sup>13</sup> The subject was handcuffed to the front of his body and was lying on his right lateral side. The CHP relinquished medical treatment over to the firefighters and they continued medical care until the subject was transported via ambulance to Pomona Valley Hospital. Witness #7 saw the subject had been shot two times in the chest, once in the face, and had a "glancing" wound to his right arm.

**INCIDENT AUDIO AND VIDEO**

**911 CALLS**

Five separate 911 calls were made by witnesses reporting the motor vehicle collisions involving Sesma's white Chevrolet Silverado truck.<sup>14</sup>

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<sup>13</sup> The Ontario Fire Department Prehospital Care Report noted that the patient was "found lying supine alert being uncooperative with handcuffs on. Pt with two GSWs to the right side of the chest, one to right bicep, right forearm, right flank, and to the right side of his face from the lip to eyebrow."

<sup>14</sup> Crime scene investigation revealed the truck involved in the hit-and-run collisions was found abandoned in the field as reported by witnesses. That truck was registered to Charles Sesma.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 19

The first 911 call was placed by Witness #1. She told the 911 operator she was calling to report an accident on the eastbound I-10 freeway right before the Haven Avenue exit. She reported the accident occurred in the number five or "slow lane." She explained that she was hit by a white truck. She pulled over to the right shoulder and believed the truck was still behind her but said she was unsure if the white truck behind her was the same one that hit her. She also told the operator that she couldn't tell if other vehicles were hit.

The second 911 call was placed by a male, Witness #10. He did not provide his last name. He told the 911 operator he was calling to report what looked to be a "drunk driver" on the eastbound I-10 freeway right before Milliken. He reported the white Chevrolet Silverado hit two vehicles "already." During the call, Witness #10 told the 911 operator the truck crashed through a fence and ended up in the large field next to the Mercedes Benz dealership. Witness #10 said the truck hit a Prius and a Honda and a "third car that was behind it on the right shoulder." Witness #10 then excitedly said, "He just fucking killed himself!" The operator asked him what he said, and Witness #10 replied, "He just killed himself." Witness #10 then said, "He's trying to hurt himself," "He's trying to break his neck!" Witness #10 then reported the male was walking in the "middle of the field." Witness #10 described him as a white male in his 40's, wearing a white t-shirt and gray or green pants, and then specified green Adidas track pants. Witness #10 then told the operator the male was running toward the Mercedes dealership and said, "There's a hotel. He's left his truck," and was "running on foot." Witness #10 then said the male was "just sitting down right now by a tree." Witness #10 explained, "right outside of the Mercedes dealership, there's a parking lot for the hotel. He's right there."

The third 911 call was placed by Witness #11. She called to report there was a truck on the I-10 freeway going east between Haven and Milliken that "just keeps going and hitting cars and just keeps going." Witness #11 reported the license plate number was 32466F1.<sup>15</sup> Witness #11 then said, "And he's still going. He's already hit four cars." Witness #11 said the driver was in a white Chevy truck and "he just ran off the freeway and some people are stopping and calling the cops now." She then reported that "the people are chasing after him now."

The fourth 911 call was placed by Witness #12 who reported she had just seen a white, four door, Chevy Silverado "hit three people and he kept on going and then he hit--" Witness #12 was unable to finish the sentence because she was interrupted by the operator who asked for the location of the collision. Witness #12 said the location was the eastbound I-10 freeway by Haven and Milliken. Witness #12 explained, "He pulled off into the field by the car dealer." Witness #12 then said the driver "hit the sign right off the freeway" and "he hit three vehicles," and was "driving with his hood up."

The fifth 911 call was placed by Witness #13. He did not provide his last name. He told the 911 operator there was a car accident on the I-10 freeway right before the Milliken

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<sup>15</sup> In the audio recording of Witness #11's 911 call, it sounds like she said the license plate number was 32466F1, but it is possible she said 32466S1. Dispatch reported the number as 32466S1 to the responding officers.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 20

exit. Witness #13 said he was not involved in the accident and that he just saw it happen. He then said it "looks like the vehicle that hit one of the vehicles was trying to get away." The 911 operator asked if that vehicle was a white Chevrolet Silverado and Witness #13 replied, "Yes." The operator then asked, "Okay, that's the vehicle that left?" Witness #13 replied in the affirmative. Witness #13 was unable to provide a license plate number. Witness #13 then said, "Looks like he's trying to get away through the Mercedes Benz car dealer, the empty field that's right behind it or right in front of it." The 911 operator asked if the truck had exited Milliken and Witness #13 told her, "No, he didn't exit Milliken. He jumped the fence with his truck. So, he's in the actual field, the empty field right before the car lot and the other cars are trying to chase him down too. There's one, two, there's a brown Honda, a white car, a small SUV type, that he hit. There's three vehicles involved, plus the truck, and another truck."

**DISPATCH RECORDING**

The dispatch recording includes radio communications between the dispatch operator and CHP Officers Ornelas, Nichols, Steen, Cichella, and Hernandez each identified by their call signs. The recording begins with the dispatcher announcing a 20002<sup>16</sup> eastbound 10, west of Haven. Officer Ornelas answers the call. The pertinent portions are as follows:

Dispatch: 103, it's gonna be a suspect vehicle, white Chevrolet Silverado,32466S1. Now it looks like the driver's taking foot bail.

Ornelas: 103, copy from eastbound at Euclid.

Dispatch: 10-4, Hispanic male adult, brown pants, brown shirt.

Ornelas: 103, I'm gonna start to the suspect vehicle first.

Nichols: 101, en route to assist

Dispatch: 101, 103, now the witness is advising the party's off the freeway, running towards the Embassy Suites. Hispanic male adult, brown pants, brown shirt.

Ornelas: 103, 10-9 (repeat) that.

Dispatch: 103, Hispanic male adult is the suspect vehicle left his vehicle on the freeway, he's running towards the Embassy Suites, brown pants, brown shirt. Involved party advising eastbound 10, west of Milliken.

Ornelas: 103, copy.

Dispatch: 103, all the victim vehicles are going to be on the right shoulder, should be about three. And 103, 101, the suspect's sitting down by a tree in the parking lot of the hotel, next to the dealership.

Ornelas: 103, copy from Vineyard.

Nichols: Roll that way.

Steen: 152, en route, southbound from Summit.

Nichols: 101, do we have started OPD (Ontario Police Department), see if they can grab him?

<sup>16</sup> Vehicle Code section for "hit-and-run."

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 21

Dispatch: 101, already did. And 103, 101, I have a victim on landline, he still has visual of that suspect, he's still sitting by the hotel.

Nichols: 101, (unintelligible) with that 20 (location) again. It's on the eastbound side?

Dispatch: That's affirm. It was eastbound 10, involved party said west of Milliken.

Nichols: He's at the Embassy Suites off the freeway? Did he hop the fence?

Dispatch: That's affirmative.

Dispatch: 101, 103, involved party advising the suspect vehicle drove, crashed through a fence and the suspect vehicle is off the freeway now, through the fence, that's how he got to the Embassy Suites.

Ornelas: 103, where was that suspect last seen?

Dispatch: 103, sitting at the, in the parking lot by the Embassy Suites.

Nichols: Hey Andrew, are you gonna get into that hotel parking lot? I can go to the main line.

Ornelas: Yeah, if you can, I'm exiting Haven now. It looks like the parties are going to be just west of Haven.

Nichols: Ok, 10-4. I'll 98 (meet) with them, I'm uh passing Milliken now.

Dispatch: 103, 101, 152, victim is, does not see the suspect anymore. She's off landline.

Ornelas: 103, copy, exiting Haven.

Dispatch: 103 exiting Haven.

Nichols: 101, same traffic from westbound.

Dispatch: 101, exiting Haven from westbound.

Ornelas: (Unintelligible) I'm in the Embassy parking lot, I have a visual of the TC. I passed the other vehicles that were west of Haven. I'm not sure if those are the same parties, if they are involved or not.

Nichols: Hey, Andrew, do you want me to 98 (meet) you there? I'm on Haven off. How does he look?

Ornelas: I'm UTL (unable to locate) so far, so I'm not sure if you want to come here to look or if you want to contact them to get them off.

Nichols: I copy. I'll go ahead and come up there with you and canvas the area.

Ornelas: 103, can we get that party back on landline to ask what direction the subject was last seen?

Dispatch: She last saw him sitting down by the Embassy Suites and the last time she looked, he was gone.

Ornelas: Copy. And what was he wearing?

Dispatch: Hispanic male adult, brown pants and brown shirt.

Ornelas: Copy

The officers then discussed looking for the hit-and-run suspect in the Springhill Suites parking lot, the Mercedes dealership, and finally the Costco parking lot.

Nichols: You guys, come to the Costco parking lot, he's getting ready to hop the tracks. He's hopping the fence over the tracks. Somebody go southbound Haven. Ah, he's on the tracks now, he just hopped the fence.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 22

Ornelas: Copy.

Nichols: Ah, do you know where that park and ride is? Where we had that foot-bail a couple months ago? I think he's gonna try to hop in there.

Steen: 10-4. I'm gonna be on Airport, just east of Haven.

Nichols: Ok, anyway, he's going underneath the trains, ah, just south of Costco. Uh, he's going to be going towards, I think, Airport Road. Uh, Hispanic looking white male, scruffy hair, dirty white shirt, dirty uh, brown pants, approximately 6-foot, medium muscular build. Start OPD to the park and, the fly away park and ride by the airport if you can.

Dispatch: 10-4, suspect going under the trains just south of Costco, uh dirty white shirt, 6 feet, medium muscular build. Requesting OPD to the fly away park and ride.

Cichella: Inland King 1, I'm about to be exiting Haven.

Dispatch: King 1 is almost 97. 101, did you need clearance?

Steen: There he is, Ornelas, walking along the train.

Ornelas: I got him.

Nichols: Is he on the tracks?

Ornelas: No, he's walking on the south side of the train.

Nichols: Alright, in the area. You guys want me to post up inside the park and ride?

Unknown: Yeah.

Nichols: Ok, I'm pulling into the park and ride.

Ornelas: Go to Haven on the tracks, just west of our location. Stand by there, he's going to walk to you.

Nichols: 10-4

Ornelas: 103, party's on the tracks, walking westbound towards Haven on the tracks, he picked up a metal object, he's now carrying that in his hands.

Steen: 152, now he's sitting on the bridge, the, of the railroad, right above Haven. If the guys go up the embankment on the west side of Haven underneath the bridge, they can get a hold of him.

Dispatch: 152, 10-4, the party's sitting on the—

Steen: Right above you.

Dispatch: 152, the party's sitting on the bridge above Haven, access west side of Haven.

Steen: Just sitting down guys right now.

Hernandez: 123, David 2

Dispatch: David 2

Hernandez: 97, we are going to be west of Haven, by the bridge. He's running, he's running.

Dispatch: David 2, 10-4, west of--

Steen: (Unintelligible) shots fired, shots fired (two loud bangs were heard in the background.<sup>17</sup>)

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<sup>17</sup> Based upon review of dash-cam video, Officer Ornelas had fired five shots. Upon hearing the gunshots, Officer Steen called in "shots fired" over the radio. While he was calling in the shots fired, two additional gunshots rang out. The first five gunshots were not recorded over the police radio.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 23

Nichols:       Shots fired, Guasti Haven.

**CHP INCIDENT DETAIL REPORT**

The CHP Incident Detail Report contains the details, date, and times of each call for service and the radio transmissions between the dispatch operator and responding officers. The report begins with the initial 911 call for service at 4:04 p.m. The report mirrors the dispatch recording, but includes additional details regarding the call, including witness reports of additional hit and run vehicle collisions and the location of the involved parties. Pertinent details and times are as follows:

4:07 p.m.       "SEVERAL VEHS CHASING AFTER SUSP VEH."  
4:07 p.m.       "RP ADV SUSP TRIED TO HURT HIMSELF BY BREAKING HIS NECK."  
4:10 p.m.       "VICT STILL HAS VIS OF SUSP / STILL SITTING BY HOTEL."  
4:13 p.m.       "VICT DOESN'T SEE THE SUSP ANYMORE."  
4:19 p.m.       "PER CH2 COSCTO PLOT / SUSP HOPPING FENCE TO RR TRACKS."  
4:22 p.m.       "PTY IS WALKING ON THE TRACKS WB TOWARDS HAVEN /  
                  CARRYING METAL OBJECT NOW."  
4:23 p.m.       "SUSP SITTING ON BRIDGE / ABOVE HAVEN / ACC WEST SIDE OF  
                  HAVEN."  
4:23 p.m.       "SHOTS FIRED"

**CHP DASH-CAMERA RECORDINGS<sup>18</sup>**

**Officer Steen's Dash-Camera Recording**

The camera began recording when Officer Steen was driving his patrol unit in the area, looking for Sesma. Radio traffic could be heard between the officers and dispatch.

Officer Steen drove into the Park 'N Fly lot. The parking lot was mostly empty, except for a few rows of cars parked at the far north end, next to the fence line. Just north of the fence a train was stopped on the tracks. Officer Steen drove into and around the parking lot. Officer Ornelas's patrol unit passed in front of Officer Steen's unit. Officer Steen followed Officer Ornelas's unit and both officers quickly accelerated toward the northwest corner of the parking lot. Officer Ornelas was heard over the radio saying, "I got him." Over the radio, Officer Nichols asked, "Is he on the tracks?" Officer Ornelas replied, "No, he's walking on the south side of the train."

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<sup>18</sup> The CHP patrol units were equipped with Watch Guard mobile video and audio cameras. The officers were not equipped with body-cameras. The patrol unit cameras were mounted inside the units near the center of the windshield. Audio began approximately 60 seconds into the video. The video recordings all began while the officers were in their patrol units looking for Sesma. All video recordings were reviewed in their entirety. The summaries of the videos will only cover the events from the beginning through the point immediately after the incident under review. All videos were reviewed though not all are summarized here.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 24

Officer Steen's patrol unit stopped near the northwest corner of the parking lot, facing west.<sup>19</sup> Several vehicles were parked in parking spaces on either side of Officer Steen's unit. Off to the right of Officer Steen's unit, the train could be seen several feet away. Officer Ornelas' patrol unit stopped several feet away from Officer Steen's patrol unit, pointing north toward the train. Officer Ornelas got out of his patrol unit and walked toward the north end of the parking lot. Officer Steen was captured in the video as he walked to the front of his patrol unit and stood near the driver's side hood. Officer Steen looked in the direction of the train. As the officers focused their attention north toward the train, someone was heard saying, "Stop. Stop." It is unclear who this was because the words were muffled substantially since the camera was recording from inside the patrol unit.

Over the radio, Officer Nichols was heard asking, "You guys want me to post up inside the park and ride?" Officer Steen reached toward his lapel mic and responded over the radio, "Yes, come to the park and ride, he just (unintelligible) a wide metal pipe right now." Officer Steen walked past the front of his patrol unit toward the north fence and the train. Officer Ornelas also walked closer to the north fence and then abruptly turned and walked back to his patrol unit. Officer Steen then turned abruptly and then ran to his patrol unit. Over the radio, Officer Ornelas said, "(Unintelligible) if you copy too, go to Haven. Go to Haven, on the tracks, just west of our location. Stand by there, he's gonna walk to you." Officer Ornelas got into this patrol unit and drove away, out of camera view. Officer Steen quickly walked to the northwest corner of the parking lot, where he climbed up a few feet onto a short block wall and stood next to a tall block pilaster<sup>20</sup> located just south of the train tracks. Officer Steen looked westward over the pilaster and down the length of the train.

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<sup>19</sup> When Officer Steen's patrol unit faced west, the clarity of the video was reduced by the reflection of the dashboard onto the windshield, through which the camera recorded. In addition to this, the sun reflected off nearby parked cars, further reducing the clarity of the images captured.

<sup>20</sup> It should be noted, due to the quality of the video and distance from the camera to the subject matter, (approximately 68 feet), it was difficult to see the short block wall in the video; however, crime scene photographs reveal this fact.



**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 25



(Photograph of the scene at the Park 'N Fly lot showing the block wall and the train.)

Over the radio, Officer Ornelas advised, "Party's on the tracks, walking westbound towards Haven, on the tracks. He picked up a metal object, he's now carrying that in his hands. The dispatch operator repeated this transmission.

Officer Steen continued standing in the same location, leaning his upper body and straining as if to better see, looking westward down the length of the train. Officer Steen advised over the radio, "Now he's sitting on the bridge of the railroad, right above Haven. If the guys go up the embankment on the west side of Haven, they can get ahold of him." Sirens were heard in the distance. Officer Steen said, "He's right above you." When Officer Steen broadcasted this, the dispatcher was attempting to broadcast something as well, but it was unclear what was said. The dispatcher then repeated Officer Steen's transmission that Sesma was sitting on the bridge. Over the radio, Officer Steen said, "He's just sitting down now, guys, right now at the edge of the train." Police sirens continued to be heard in the distance.

Several seconds passed, and then a person wearing all dark clothing was captured on video, next to the train. This person appeared to come up from somewhere below.<sup>21</sup> This person then walked east along the south side of the train and then out of camera view. Officer Steen began climbing over the block wall. The person in all dark clothing then came back into camera view from the east, briefly walked west along the south side of

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<sup>21</sup> Based on officer interviews, photographs, and evidence found at the scene, this person was likely Officer Ornelas and the camera captured view of him once he got up to the railway overcrossing via the embankment from Haven Avenue. However, due to the quality of the video, the identity of the person cannot be ascertained from the video alone.

## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

June 3, 2021

Page 26

the train, and then stopped. Officer Steen jumped down from the wall onto the north side and began running northeast. A third person,<sup>22</sup> in lighter colored clothing was then seen running east along the south side of the train toward the person in dark clothing, and five or six<sup>23</sup> gunshots, in quick succession, were heard. As the gunshots were heard, the person in lighter colored clothing fell to the ground and out of camera view. Immediately after the gunshots, Officer Steen ran toward the train and announced over the radio, "Shots fired, shots fired, shots fired." As Officer Steen announced that shots had been fired, two more gunshots were heard.<sup>24</sup> Officer Steen repeated, "Shots fired, Guasti and Haven." No more gunshots were heard.

#### Officer Ornelas' Dash-Camera Recording

The camera began recording while Officer Ornelas was driving his patrol unit in the area, looking for Sesma. Radio traffic could be heard between the officers and dispatch.

Officer Ornelas was heard saying, "103, I'm 97 at the park and ride."<sup>25</sup> Officer Ornelas pulled into the Park 'N Fly parking lot. Officer Ornelas drove in and around the lot, eventually driving toward the northwest corner of the parking lot. As Officer Ornelas was driving toward the northwest corner of the parking lot, over the radio an unidentified male was heard over the radio saying, "There he is Ornelas, walking along the train."<sup>26</sup> Officer Ornelas replied, "I got him." Over the radio, Officer Nichols asked, "Is he on the tracks?" Officer Ornelas answered, "No, he's walking on the south side of the train." Officer Ornelas turned his vehicle to the right, facing north and stopped. A train was stopped on the tracks adjacent to the parking lot. A chain link fence topped with barbed divided the parking lot and the train. The parking lot elevation was several feet<sup>27</sup> lower than the elevation of the train.

As Officer Ornelas stopped his patrol unit, Sesma<sup>28</sup> was seen walking westbound beside the stopped train. Sesma was wearing a white t-shirt and brown or green pants. Officer Ornelas said, "Hey!" Sesma stopped walking and turned his head and body in the direction of Officer Ornelas. Officer Ornelas then said, "Get over here." Officer Steen could be heard giving commands in the distance, but it is not clear what he said. Sesma bent forward and reached his right hand down to the ground, picked something up, and

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<sup>22</sup> Based on the evidence, including video from Officer Nichols patrol unit, it appears this third person was Sesma; however, due to the quality of the video, it is not possible to see this third person's face.

<sup>23</sup> Due to radio traffic, it is difficult to determine the exact number.

<sup>24</sup> Just before these two gunshots were heard, a person in dark clothing was seen running east toward the location of the first person in dark clothing. It is possible this was Officer Steen, running toward Officer Ornelas' location. It should be noted that as this person ran east, this momentarily blocked the camera view of the location where the person in lighter colored clothing had fallen.

<sup>25</sup> This radio transmission was not captured by dispatch nor was it recorded into the dispatch log.

<sup>26</sup> This radio transmission was not heard in Officer Steen's video.

<sup>27</sup> Investigation revealed the parking lot elevation was approximately 6.5 feet lower than the ground beneath the train.

<sup>28</sup> Due to the distance and video quality, it was difficult to see Sesma's face; however, based upon other evidence, including photographs of Sesma and the scene, it is apparent that this was Sesma.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 27

then stood back up, still facing Officer Ornelas. Officer Ornelas said, "Don't touch it. Don't you pick that up." Officer Ornelas walked in front of his patrol unit and toward Sesma. Sesma began walking toward Officer Ornelas, taking several steps. As Sesma was walking toward Officer Ornelas, Officer Ornelas said, "Come here." Sesma looked at Officer Ornelas. Over the radio, Officer Nichols was heard asking, "You guys want me to post up inside the park and ride?" Sesma then changed direction and began walking westbound beside the train. Officer Ornelas said something over the radio, but another radio transmission occurred simultaneously, so it is unclear what Officer Ornelas said.

Sesma continued walking westbound along the train. Officer Ornelas walked west, out of camera view, but was heard saying, "Stop walking." Sesma continued walking westbound and then out of camera view. Officer Ornelas said, "Nichols, if you copy too, go to Haven. Go to Haven on the tracks, just west of our location. Stand by there. He's going to walk to you." Officer Ornelas was then heard yelling, "Keep your eyes here. I'm going to go around."

Officer Ornelas backed up his patrol unit and as he did so, the camera panned left and Sesma was seen still walking westbound beside the train. Officer Ornelas then began driving forward as he made his way out of the parking lot. As he drove, Officer Ornelas said, "103, party's on the tracks, walking westbound towards Haven on the tracks. He picked up a metal object, he's carrying it in his hands." The dispatcher was heard repeating Officer Ornelas' transmission. Officer Ornelas drove out of the parking lot and turned right onto East Airport Drive, activating his patrol unit's sirens. Officer Ornelas drove quickly west on E. Airport Drive, then turned right on Haven Avenue and headed north. Over the radio, Officer Steen reported that Sesma was sitting on the bridge over the railway. Officer Ornelas continued driving north on Haven Avenue then pulled to the east curb just south of the railway overcrossing bridge where he stopped and parked his patrol unit facing north. In the video, the lower portion of the south side of the railway bridge could be seen. On top of the railway bridge a train was stopped on the tracks. Beneath the railway bridge, a semi-truck was parked next to the east curb, several feet in front of Officer Ornelas' vehicle. When Officer Ornelas stopped his patrol unit next to the curb, Officer Steen was heard saying over the radio, "He's right above you." The dispatcher was heard repeating Officer Steen's transmission about Sesma's location.

Officer Ornelas quickly walked in front of his patrol unit, onto the east curb, and headed east toward the embankment. As he did so, Officer Steen said, "He's just sitting down now," but his transmission was interrupted by other radio traffic and loud sirens. As Officer Ornelas walked eastward up the embankment and out of camera view, additional sirens were heard. From this point forward, Officer Ornelas could not be seen due to the position of the camera on the patrol car below the embankment. Several seconds later, Officer Nichols quickly walked past the front of Officer Ornelas' patrol unit and onto the east sidewalk. Officer Nichols stopped and pointed his right hand up toward the embankment. Officer Nichols quickly turned and faced toward the bridge. Over the radio, an unidentified male voice said, "He's standing right here." Officer Ornelas yelled, "Don't move!" At the

## PUBLIC RELEASE MEMORANDUM

### Officer Involved Shooting

STAR No.

June 3, 2021

Page 28

same time, Sesma came into camera view as he ran eastward<sup>29</sup> on the bridge next to the train. Only the upper half of Sesma's body could be seen; the lower half of his body was blocked from view by the concrete bridge edge. Still on the sidewalk, Officer Nichols extended his left arm up, pointing it at the bridge. Sesma continued running eastward and Officer Ornelas continued yelling, "Don't move! Don't move!" Officer Nichols quickly lowered his left arm, pulled his handgun from his duty belt, and pointed it up at Sesma. Sesma continued running eastward and Officer Ornelas was heard yelling, "Drop it! Drop it! Drop it!" Five<sup>30</sup> gunshots were heard in quick succession. Sesma fell forward onto the ground and was blocked from view by the concrete bridge edge.

Multiple officers were heard saying, "Shots fired, shots fired!" Officer Cichella was seen running in front of Officer Ornelas' patrol unit, onto the curb and then up the embankment. At the same time, what appeared to be the back of Sesma's white shirt came back into camera view, coming up from the ground and moving eastward again<sup>31</sup> before two more gunshots were heard. What appeared to be the back of Sesma's shirt then fell downward and out of camera view. Officer Ornelas yelled, "Get on the ground! Don't move! Don't move!" Officers were heard over the radio broadcasting that shots had been fired.

Officer Nichols walked up the embankment and out of camera view. Officer Steen could be heard yelling, "Stay down," and "Don't move!" He repeated these commands. Radio traffic was heard. No additional gunshots were heard.

#### Officer Cichella's Dash-Camera Recording<sup>32</sup>

Officer Cichella's patrol unit headed south on Haven Avenue and then made a U-turn and headed north on Haven Avenue. As Officer Cichella's vehicle approached the railway overcrossing, officer Ornelas' patrol unit was seen stopped next to east curb on Haven Avenue, facing north. Officer Ornelas' patrol unit's emergency lights were activated. In front of Officer Ornelas' vehicle, a semi-truck was stopped next to the east curb beneath the railway bridge. Officer Cichella's patrol unit passed to the left of Officer Ornelas' unit and stopped. In front of Officer Cichella's patrol unit, the railway bridge and the lower half of a train stopped on the tracks could be seen.

Approximately 18 seconds after Officer Cichella's patrol unit came to stop, Sesma was captured on video as he ran eastward across the bridge and then out of view of the camera. Gunshots were then heard, faintly in the background.

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<sup>29</sup> Review of Officer Steen's dash-camera video recording reveals that Sesma was running straight toward Officer Ornelas, however, in this video, Officer Ornelas could not be seen due to the camera's position.

<sup>30</sup> See footnote 25.

<sup>31</sup> At this moment, Officer Ornelas yelled something, but it is not clear what he yelled. The gunshots were heard at the tail end of whatever Officer Ornelas was yelling.

<sup>32</sup> There is a constant loud buzz, making anything spoken difficult to hear.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 29

### **INCIDENT SCENE INVESTIGATION**

#### **Empty Field**

A white Chevrolet Silverado truck, registered to Charles Sesma, was found in an empty field, just south of the I-10 freeway, located on the southeast corner of Haven Avenue and the I-10 freeway in the city of Ontario. West of the field was Haven Avenue, east of the field was the Mercedes Benz dealership located at 3787 E. Guasti Road. To the south of the field was the Embassy Suites located at 3663 E. Guasti Road.<sup>33</sup> North of the field were two vehicles parked on the shoulder of the eastbound I-10 freeway. The first vehicle was a white 2012 Toyota Prius registered to Witness #3. The Toyota had major traffic collision damage to the right front bumper and the right rear bumper. The second vehicle was a gold colored 2002 Honda Accord registered to Gonzalo Vargas. The Honda had moderate damage to the left rear quarter panel.

The north chain link fence of the open field was damaged. A portion of Sesma's truck's front bumper was sitting next to the damaged fence. There were tire impressions that led from the damaged fence to Sesma's truck. The truck's right front quarter panel had major damage and had dark colored transfer paint. The left front quarter panel had major damage. The front end of the truck had major damage and the engine appeared to be damaged. The truck was facing in a southeast direction. The driver's door and hood were both fully opened. A California license plate, number 32466S1, was affixed to the truck's back bumper

#### **Railway Overpass**

The officer-involved shooting occurred on a railway overpass above Haven Avenue. At the time of the shooting, the railway overpass ran in an east west direction. There were two railroad tracks which crossed the overpass. There was a train stopped on the south track in this area. Below the railway overpass, Haven Avenue ran in a north south direction with four northbound and four southbound lanes separated by a center median.

The railroad overpass was made of concrete, with concrete pillars supporting it in the center and at the east and west ends of Haven Avenue. The concrete underneath the overpass extended out just enough to allow one to walk up the graded slope on the concrete instead of the loose dirt beside it. This concrete path would put one directly next to the overpass and chain link fence that runs along the sides of the overpass. The support of the overpass extended into the slope of the embankment, creating a small pony wall at the top of the slope and along the top of the bridge. On top of the pony wall, there was a chain link fence which stood approximately 6' high. The chain link fence lined the north and south sides of the overpass. On the overpass, the ground consisted mostly of large loose gravel. The gravel rocks were approximately the size of a half a fist. The rocks were loose, which made for poor footing conditions. The loose gravel extended the

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<sup>33</sup> The distance from the Embassy Suites to the Park 'N Fly lot is .5 miles per Google maps.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 30

length and width of the overpass. The train tracks and the ground next to the border pony wall were elevated, creating a swale or shallow channel/ditch near the middle of the overpass landing. The overpass bridge fence and the stationary box cars on the train tracks created a corridor that ran the length of the bridge overpass.

The officer-involved shooting occurred on the south side of the railway overpass, near the top of the embankment near the easternmost portion of the bridge above Haven Avenue. Evidence found at the scene was marked with placards numbered 1-11, and was as follows:

- #1-6 Federal .40 S&W brass casings
- #7 Solid broken rusted pipe
- #8 Combat Action Tourniquet
- #9 Sesma's white t-shirt and medical supplies: gauze, chest seal
- #10 Sesma's shoes
- #11 Sesma's green Adidas sweatpants

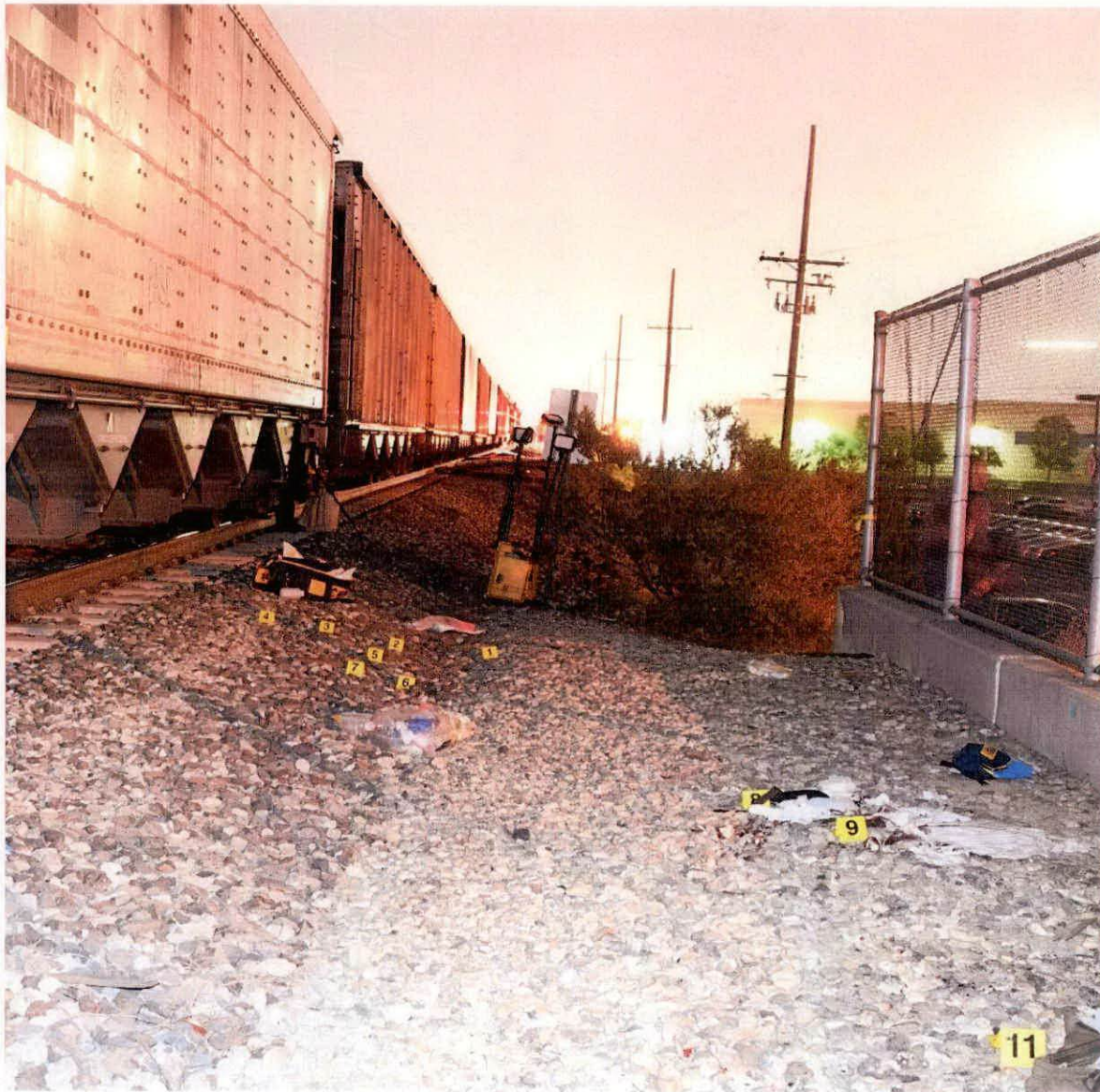
**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 31



**DECEDENT**

Charles Sesma was pronounced deceased by Witness #14 at approximately 5:01 p.m. at Pomona Valley Hospital Medical Center.

**AUTOPSY**

Witness #15, Deputy Medical Examiner for the County of Los Angeles Department of Medical Services-Coroner, conducted the autopsy of Charles Sesma on August 12, 2020.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 32

Witness #15 noted eight<sup>34</sup> gunshot wounds. Witness #15 determined the cause of death was multiple gunshot wounds.

- I. Gunshot wound #1, face
  - a. Tangential gunshot wound
  - b. Direction: Indeterminate
  - c. Range of fire: Indeterminate
  
- II. Gunshot wound #2, face
  - a. Tangential gunshot wound
  - b. Direction: Indeterminate
  - c. Range of fire: Indeterminate
  
- III. Gunshot wound #3, chest
  - a. Entry: Right upper chest
  - b. Recovery: Chest soft tissue
  - c. Exit: None
  - d. Direction: Front to back, left to right and downward
  - e. Range of fire: Indeterminate
  
- IV. Gunshot wound #4, chest
  - a. Entry: Right chest
  - b. Recovery: Right pleural cavity
  - c. Exit: None
  - d. Direction: Front to back, right to left and downward
  - e. Range of fire: Indeterminate
  
- V. Gunshot wound #5, right arm
  - a. Entry: Right arm
  - b. Exit: Right arm
  - c. Direction: Left to right and upward
  - d. Range of fire: Indeterminate
  
- VI. Gunshot wound #6, right arm
  - a. Entry: Posterior right arm
  - b. Exit: Anterior right arm
  - c. Direction: Back to front, right to left and upward
  - d. Range of fire: Indeterminate
  
- VII. Gunshot wound #7, right torso
  - a. Tangential gunshot wound
  - b. Direction: Indeterminate
  - c. Range of fire: Indeterminate

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<sup>34</sup> Gunshot wounds #5 and #6 had exit wounds that correlated with gunshot wound #7.



**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 33

- VIII. Gunshot wound #8, right left
- a. Entry: Anterior right leg
  - b. Recovery: Posterior right leg soft tissue
  - c. Exit: None
  - d. Direction: Front to back, left to right and downward
  - e. Range of fire: Indeterminate

**TOXICOLOGY**

Heart blood and femoral blood were collected from Sesma during the autopsy.

Toxicology results for the Heart Blood Sample were as follows: Presumptive positive for Marijuana 11-nor-Delta-9-Carboxy-THC.

**CRIMINAL HISTORY**

Charles Sesma has a criminal history that includes the following convictions:

1998, 23152 (a) of the Vehicle Code, Driving Under the Influence of Alcohol or Drugs, San Diego County case number T189998, a misdemeanor.

2019, 148 (a)(1) of the Penal Code, Resisting or Obstructing a Peace Officer, Riverside County case number SWM1705146, a misdemeanor.

**Crimes Upon Peace Officers**

**California Penal Code section 245(c)** (Summarized in pertinent part)

Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer, and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 34

**Assault With A Deadly Weapon**

**California Penal Code section 245(a)(1)**

Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

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

**[W]e hold that *assault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.***

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

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

Assault with a deadly weapon does not require that the defendant actually try to use the

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 35

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

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

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

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

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

(*Id.* at p. 1173.)

Here, defendant's loaded weapon and concealment behind the trailer gave him the means and the location to strike "immediately" at Sergeant Murdoch, as that term applies in the context of assault. Murdoch's evasive maneuver, which permitted him to approach defendant from behind, did not deprive defendant of the "present ability" required by section 240. Defendant insists that ... he never pointed his weapon in Murdoch's direction. That degree of immediacy is not necessary ... .

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 36

(*Id.* at pp. 1175-1176.)

Other case examples also illustrate when a defendant's behavior is sufficient to complete the crime of assault with a deadly weapon. In *People v. Nguyen* (2017) 12 Cal.App.5th 44, the appellate court upheld the defendant's conviction for aggravated assault on a police officer when he wielded a large knife and stepped toward the officer, rejecting the argument that being 10 to 15 feet away deprived the defendant of the present ability to inflict injury. In *People v. Escobar* (1992) 11 Cal.App.4th 502, the appellate court upheld a conviction when the victim heard the defendant cock a loaded firearm, even though the gun was concealed in a leather purse, and the defendant never pointed the weapon. In *People v. Orr* (1974) 43 Cal.App.3d 666, the defendant pointed a loaded rifle at the victim, backed him into a ditch, then fled. The defendant's conviction of assault with a deadly weapon was upheld. In *People v. Thompson* (1949) 93 Cal.App.2d 780, the defendant pointed a loaded pistol towards police officers and said he would not submit to arrest. Again, the conviction of assault with a deadly weapon was affirmed. (Similarly, see *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1326.)

**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. (Penal Code §835a(b).)<sup>35</sup> 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.)

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

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<sup>35</sup> All references to code sections here pertain to the California Penal Code.

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 37

**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,<sup>36</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend "has committed a crime involving the infliction or threatened infliction of serious physical harm" to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer's actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at \*25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

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 that the person to be arrested is aware of those facts. (Penal Code

<sup>36</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter "AB-392"]

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 38

§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 with consideration of gravity and consequence;<sup>37</sup>
- (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 section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

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<sup>37</sup> Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal Code §835a (a)(3).

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 39

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

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

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

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

Imminence newly defined in the context of use of force to effect an arrest, is similar:

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

(Penal 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

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 40

or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment's "reasonableness" standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

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

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

The "reasonableness" test requires an analysis of "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Id.* at 397, citations omitted.) What constitutes "reasonable" self-defense or defense of others is controlled by the circumstances. A person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) 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.)<sup>38</sup> 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.*)

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<sup>38</sup> The legislative findings included in Penal Code section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.



**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 41

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* (9<sup>th</sup> Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9<sup>th</sup> 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.**” Emphasis added.) 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.4<sup>th</sup> at 343, citing *Smith v. Freland* (6<sup>th</sup> 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* (9<sup>th</sup> 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.4<sup>th</sup> at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1<sup>st</sup> Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide “zone of protection” when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 42

as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.'

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

**ANALYSIS**

On August 6, 2020, officers with the California Highway Patrol attempted to contact Sesma regarding his involvement in several hit and run motor vehicle collisions. Sesma was uncooperative with officers and ultimately an officer-involved shooting occurred. In order to determine whether the use of deadly force against Sesma was justified, we must look at the facts and circumstances that led up to the use of force.

After crashing into three separate cars on the I-10 freeway, Sesma drove his truck through a fence and into a field beside the freeway. Sesma abandoned his truck and fled on foot. Several witnesses to the collisions saw Sesma run away from the field. The witnesses called 911 to report what they had seen. Officers Ornelas, Steen, Nichols, and Cichella responded to the location and began searching for Sesma. Aided by eye-witnesses in their search for Sesma, the officers were ultimately led to the Park 'N Fly Ontario Airport parking lot. Officers Ornelas and Steen were the first to get to the Park 'N Fly lot, arriving at approximately 4:22 p.m. Once there, Officers Ornelas and Steen saw Sesma on the railroad property directly north of the Park 'N Fly lot. Sesma was walking westward along the side of a train that was stopped on the tracks. The Park 'N Fly lot's north property line abuts the railroad property. A tall chain link fence topped with barbed wire separates the Park 'N Fly lot from the railroad property.

When they saw Sesma, Officers Ornelas and Steen correctly believed he was the hit and run suspect. Their belief was reasonable. Sesma matched the description of the hit and run suspect and he was found only a half-mile away from the scene of the collisions. In addition, Officers Ornelas and Steen found Sesma at the Park 'N Fly lot after one of their partners, Officer Nichols, saw Sesma heading that direction. Officer Nichols spotted Sesma across the street from the location where witnesses had last seen the hit and run suspect. There, Officer Nichols saw Sesma climb a perimeter fence onto railroad property where he walked underneath one of the stationary rail cars, and then headed in the direction of the Park 'N Fly lot. Given these facts, it was reasonable for Officers Ornelas and Steen to stop Sesma and to investigate further.

Attempting to contact Sesma, Officers Ornelas and Steen stopped their patrol units in the northwest corner of the parking lot, nearest to Sesma's location. It was approximately 4:22 p.m., and it was daylight outside. Officers Ornelas and Steen's patrol units were distinctively marked California Highway Patrol units and both units' overhead emergency lights were activated. Officers Ornelas and Steen, both in distinctively marked CHP

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 43

uniforms, got out of their patrol units and walked toward the chain link fence to get closer to Sesma so they could talk to him. Sesma was walking westbound beside the train tracks and the officers told Sesma to stop and to come over to them. Sesma stopped walking and turned to face the officers but did not walk over to them. Sesma looked at the officers but said nothing in response to them. Officers Ornelas and Steen continued telling Sesma to come over to them, but Sesma just stood and looked at the officers. Sesma then bent forward and reached for an object on the ground. As he did so, the officers said, "Don't pick it up." Sesma ignored their commands and picked up a rusty metal pipe from the ground. Sesma stood back up, faced the officers, and swung the pipe at waist level. The officers told Sesma to put it down and to come over to them. Sesma ignored these commands as well. However, Sesma remained standing in the same spot. As he stood there, Sesma continued looking at the officers without saying anything to them. Attempting to reassure Sesma so that he would walk over to them, Officer Steen told Sesma they just wanted to talk to him. Sesma took several steps toward the officers but then turned and walked away with the pipe in his hand. Sesma walked westward along the tracks, beside the stationary train, toward the railway overcrossing bridge above Haven Avenue. The officers could not follow Sesma on foot because the barbed wire fence blocked their path.

Officer Ornelas got into his patrol unit and headed toward Haven Avenue to try to reach Sesma there. Over the radio, Officer Ornelas reported that Sesma was on the tracks, walking westbound toward Haven Avenue and that Sesma had picked up a metal object and was carrying it in his hands. Officer Steen remained in the parking lot to keep an eye on Sesma. Officer Steen saw Sesma sit down next to the train on the railway bridge right above Haven Avenue. Officer Steen reported this over the radio to Officer Ornelas and other CHP officers who were en route to assist. Officer Ornelas stopped his patrol unit on Haven Avenue, below the railway bridge. Not seeing Sesma from Haven Avenue, Officer Ornelas walked eastward up the embankment to climb up to the railway bridge.

Under Penal Code section 835a(e)(3) 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.***" This requires an analysis of the conduct of both Officer Ornelas and Sesma.

When Officer Ornelas made the decision to walk up the embankment to the railway bridge, he knew other officers were en route and were nearly on scene. Officer Ornelas wanted to locate Sesma so he could keep an eye on him. With Officer Steen on one side and Officer Ornelas on the other, Officer Ornelas believed they could maintain a perimeter around Sesma until backup arrived, at which time, he and other officers would apprehend Sesma. This was a reasonable and sound tactic. It enabled the officers to create a perimeter around Sesma and to maintain visual observation of him, so they would not risk losing him. Additionally, it was a safe proposition, given that backup officers were nearly on scene. In fact, while Officer Ornelas walked from his patrol unit toward the embankment, the approaching officers' patrol unit sirens were clearly heard in the

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 44

recording from Officer Ornelas' unit camera. Clearly, Officer Ornelas knew how close they were to his location. In addition, Officer Ornelas' experience with Sesma up until that point, would not have led him to believe Sesma become violent. While it is true Sesma picked up a pipe and swung it at his waist when the officers first confronted him, he did not show aggression or anger toward them. In fact, Sesma said nothing and simply looked at the officers before casually walking away from them. Sesma didn't yell at the officers, he didn't run toward them, and he didn't run away from them. Sesma was uncooperative but his actions during Officers Ornelas' and Steen's initial contact were not violent or aggressive.

Officer Ornelas was alone as he walked up the embankment, but he could see Officer Steen in the northwest corner of the Park 'N Fly lot. Once Officer Ornelas reached the top of the embankment, however, he could no longer see Officer Steen. Nor did Officer Ornelas see Sesma. Over the radio, one of Officer Ornelas' partners told him Sesma was behind him. Officer Ornelas turned around, looked westward, and saw Sesma, approximately 40-50 feet away, sitting down on the bridge above Haven Avenue. Officer Ornelas began walking westward toward Sesma. Sesma was not looking at Officer Ornelas, but when Officer Ornelas reported Sesma's location over the radio, Sesma heard him. Sesma looked directly at Officer Ornelas and then stood up in an aggressive manner, raising the pipe above his head. This led Officer Ornelas to believe Sesma was going to come toward him.

When Sesma stood up, Officer Ornelas saw Sesma had an object in his hands. Officer Ornelas believed the object was a long rusty knife. As soon as Sesma stood up, he raised the weapon above his head "almost like a stabbing motion or a position getting ready to stab." With the weapon in his hand, Sesma started running straight toward Officer Ornelas. Officer Ornelas drew his handgun and yelled at Sesma, "Don't move! Don't move!" and then "drop it!" and to "stop!" Despite these commands, Sesma continued running toward him. As Sesma ran, he lowered the pipe down near his waist as he increased his speed, sprinting directly toward Officer Ornelas. As Sesma got closer, Officer Ornelas saw the object Sesma had in his hand was the rusty metal pipe he had seen him pick up moments earlier. The pipe was heavy, with a jagged end, and was capable of being used as a both a blunt force weapon and as a stabbing weapon, causing serious bodily injury or death.

Officer Ornelas tried to get Sesma to stop by yelling multiple commands, but Sesma ignored these commands and instead increased his speed as he charged at Officer Ornelas. Officer Ornelas was reasonably terrified and in fear for his life; he was in grave danger. Officer Ornelas saw the size of the pipe; he saw the jagged edge on the end of it, and he knew the pipe "could definitely kill" him. Sesma was closing in on Officer Ornelas and was only 20-25 feet away when Officer Ornelas fired his handgun at Sesma to stop him. Officer Ornelas fired five or six<sup>39</sup> rounds in quick succession and Sesma fell to the ground. Sesma then got back up, as if in a "track start," and began heading toward Officer

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<sup>39</sup> See footnote 25.

## **PUBLIC RELEASE MEMORANDUM**

### **Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 45

Ornelas again. Because of this, the threat to Officer Ornelas' life remained imminent. Officer Ornelas believed he had missed Sesma, that no rounds had struck him, and that Sesma had only gone to the ground to avoid being hit by gunfire. In fear for his life because Sesma was still coming toward him, Officer Ornelas fired two additional rounds from his handgun at Sesma to stop the continued threat Sesma posed to his life. Sesma fell back to the ground only 15 feet<sup>40</sup> from Officer Ornelas. Officer Ornelas yelled at Sesma to stay down and tactically reloaded his handgun because he didn't know if Sesma was going to get up again.

Officer Ornelas' belief that his life was in imminent danger was honest and was objectively reasonable. The threat Sesma posed to Officer Ornelas' life grew increasingly imminent with each step Sesma took as he sprinted toward him. In fact, Officer Ornelas' partner, Officer Nichols, saw Sesma running toward Officer Ornelas and he also believed Officer Ornelas' life was in imminent danger. Officer Nichols was standing below the bridge on Haven Avenue when he saw Sesma running full speed with what he believed was a knife in his hand toward Officer Ornelas. Officer Nichols heard Officer Ornelas yelling commands at Sesma to stop and to "drop it." Upon witnessing this, Officer Nichols instantly knew Officer Ornelas' life was in imminent danger. Fearing for Officer Ornelas' life, Officer Nichols drew his handgun to fire at Sesma, but when he pointed his gun at Sesma, he immediately realized he could not fire because the train just beyond Sesma created a hazard. Officer Nichols realized that if he shot and missed, the round would ricochet off the rail cars.

While Officer Ornelas had no duty to retreat, it is important to note that Officer Ornelas had nowhere to go; he was trapped on the railway bridge between the train on one side and a tall chain link fence on the other side. The danger to Officer Ornelas was even greater because he could not retreat or seek cover to either side. Sesma was armed with a heavy pipe that had a jagged end and was charging straight for him. Officer Ornelas' only possible mode of retreat would have been to step backwards and because the large, loose rocks on the ground created an unstable footing, any attempt to retreat backwards was patently unsafe. Officer Ornelas knew this and realized he could not retreat backwards because the risk of tripping and falling was too great. Officer Ornelas knew that if he fell, he would have been in even greater danger.

Sesma was armed with a weapon and his actions clearly indicated an intent to attack Officer Ornelas. Given the facts and circumstances confronting Officer Ornelas, it was objectively reasonable for him to believe Sesma posed an immediate threat of serious bodily injury or death. Thus, the decision by Officer Ornelas to use deadly force was justified.

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<sup>40</sup> Officer Ornelas' statement. Also, crime scene investigation revealed the following: Sesma's white t-shirt and medical supplies (Placard 9) were approximately 15.61 feet from one of the Federal .40 S&W brass casings (Placard 5), and approximately 18.18 feet from another Federal .40 S&W brass casing (Placard 1). The metal pipe Sesma carried (Placard 7) was found beside one of the Federal .40 S&W brass casings (Placard 6) and was approximately 13.19 feet from Sesma's white t-shirt and medical supplies (Placard 9).

**PUBLIC RELEASE MEMORANDUM**

**Officer Involved Shooting**

**STAR No.**

June 3, 2021

Page 46

**CONCLUSION**

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

**Submitted By:**

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**303 West Third Street**

**San Bernardino, CA 92415**

