



## PUBLIC RELEASE MEMORANDUM

**DATE:** September 14, 2021

**Subject:** **Non-Fatal Officer-Involved Incident**

**Involved Officers:** Officer Javier Pulido  
Rialto Police Department

Officer Mike Martinez  
Rialto Police Department

Officer Otto Mendez  
Rialto Police Department

Officer Ryan Bradic  
Rialto Police Department

**Involved Subject/DOB:** Sione Otuafi (DOB: 04/08/1983)  
**Subject's Residence:** Fontana, CA

**Incident Date:** September 27, 2009  
**Incident Time:** 6:44 p.m.

**Case Agent/Agency:** Detective Trevis Newport  
San Bernardino County Sheriff's Department

**Agency Report #:** 600900142

**DA STAR #:** 2020-16059.

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**PREAMBLE**

The summary of this non-fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD).

The submission reviewed includes the following: reports summarizing interviews of civilian witnesses; reports summarizing interviews of the involved law enforcement officers and civilian witnesses; law enforcement photographs; scientific investigation reports; and medical records. The investigating case agent for this submission was Detective Trevis Newport

**FACTUAL SUMMARY**

On September 27, 2009, shortly after 6:44p.m., Officer<sup>1</sup> Javier Pulido, Officer Mike Martinez, Officer Otto Mendez, and Officer Ryan Bradic fired their duty pistols at Sione Otuafi. Otuafi was injured as a result. Otuafi survived his injuries.

The shooting of Mr. Otuafi occurred as a result of a dispatch call of a man with a knife in the area of Maple Avenue and Foothill Boulevard in the City of Fontana. Shortly thereafter, the call was upgraded to a man with a gun. Officers Pulido and Breen were consequently dispatched to that location. Upon their arrival, Pulido and Breen were directed to the back of a residence. As they walked around the northeast corner of the residence, the officers observed a male subject (later identified as Sione Otuafi) crouched with a knife between his teeth. Otuafi also had a shotgun pointed directly at Pulido. Pulido backed around the corner and informed dispatch and Officer Breen that Otuafi had a gun. Pulido then heard rustling and observed Otuafi jumping a wall between the residence and the adjacent apartment complex.

Around that time, Officer Mike Martinez arrived at the scene. He parked on Maple Avenue and immediately observed Mr. Otuafi holding a shotgun while jumping a wall between two gated entrances to the apartment complex. Otuafi then ran across Maple Avenue directly at Officer Martinez. At that time, Otuafi was pointing the shotgun directly at Martinez and moving in Martinez's direction. Martinez responded by firing 2 to 3 shots with his duty pistol at Otuafi. Otuafi did not appear to be struck by any of the bullets and continued running toward the northwest corner of Maple Avenue and Barbee Street and also towards Martinez. Otuafi continued to aim the shotgun at Martinez as he moved. Martinez fired 3 to 4 more shots at Otuafi. Again, Otuafi showed no signs of being struck by any of the bullets. Martinez took cover behind the driver's door of his patrol vehicle. Otuafi ran around the trunk of Martinez's patrol car, still aiming the shotgun at Officer Martinez. Otuafi fired the shotgun 1 time. Martinez felt a stinging on his right thigh.

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<sup>1</sup> Each person designated "Officer" in this report is a member of the Rialto Police Department; those designated "Deputy" or "Detective" are employed by SBCSD

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Martinez then observed Mr. Otuafi continue running to the residence on the northwest corner of Maple Avenue and Barbee Street. Otuafi entered then exited the garage. He then walked south down the driveway and again pointed the shotgun in Martinez's direction. Otuafi then changed his aim to the south of Martinez at Officer Javier Pulido and Officer Ryan Bradic. Pulido and Bradic had returned from the backyard where they first contacted Otuafi and were now taking cover behind a vehicle on Maple Avenue, south of Martinez's location. Otuafi fired 2 times at Pulido and Bradic. As Otuafi fired the second shot, Martinez fired one additional round from his pistol at Otuafi.

In response to being shot at by Mr. Otuafi, Officer Pulido fired his handgun 2 times at Otuafi. Likewise, Officer Bradic fired his handgun 2 times at Otuafi.

Shortly after the shooting started Officer Otto Mendez arrived on scene. He parked his patrol vehicle on Maple Avenue west of Officers Pulido and Bradic. When Officer Otto Mendez observed Otuafi firing in the direction of Officers Pulido and Bradic, he fired 1 time at Otuafi.

Otuafi then stepped back around the west side of the SUV in his driveway and raised his arms in the air. Otuafi threw the gun onto Barbee Street and surrendered to police without further incident.

During the shooting, Officer Martinez suffered 2 gunshot wounds to his right thigh and 1 gunshot wound to his left shin. Otuafi suffered 1 gunshot wound to his left heel.

Otuafi was treated at the scene, transported to Arrowhead Regional Medical Center for medical treatment, and arrested for attempted murder.

### **STATEMENTS BY POLICE OFFICERS<sup>2</sup>**

**Officer Javier Pulido** was interviewed by Detective Warrick of the San Bernardino County Sheriff's Department on September 27, 2009. Also present during the interview was Pulido's attorney Mark Johnson.

On September 27, 2009, Officer Pulido had been employed by the Rialto Police Department for approximately 2 years. He wore black pants, a black polo shirt with Rialto Police Department patches on both shoulders and a metal badge on his chest. Pulido drove marked Rialto Police Department patrol unit #R622.

On September 27, 2009, Officer Pulido was in a briefing at the Rialto Police Department, when a radio call announced a man with a knife. Officer Breen was dispatched at that time with his K-9 unit. Shortly thereafter, the call was upgraded to a man with a gun. Pulido left the briefing and responded to the location. When on his way to the location, dispatch referenced additional people contacting dispatch that a subject had a gun and was walking back and forth between a house and black truck.

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

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Officer Pulido and Officer Breen arrived at the scene near the 400 block of North Maple Avenue and parked facing north along the east curb. Initially Pulido did not see anyone but did see a black truck parked on Maple Avenue facing north. Breen watched the north side of the residence as Pulido approached from the south. There, Pulido contacted a female who indicated the person Pulido was looking for was in the back. Pulido informed Breen the subject was in the back and the two walked together to the back on the residence along the south side.

Officer Pulido walked to the east side of the residence where he contacted a male adult locked behind a screen door. The male adult informed Pulido and Officer Breen of the last location he saw the man with the gun, which was to the north of their location. Dispatch then advised someone was trying to open a door at the location where Pulido and Breen were.

Officers Pulido and Breen then walked around the northeast corner of the house and observed a male adult (later identified as Sione Otuafi) crouched down with a knife between his teeth. The knife had a fixed blade, serrated edge and was approximately 6 inches in total length. Otuafi was wearing a dark bandana on his head, sunglasses and a black shirt. Otuafi was holding a shotgun and pointing it directly at Pulido. The end of the barrel of the shotgun had a stainless steel or shiny appearance.

Officer Pulido backed around the northeast corner of the residence and informed Officer Breen that Mr. Otuafi had a gun. Pulido informed dispatch Otuafi was armed with a gun and requested assistance of the Fontana Police Department and a helicopter. Pulido then heard leaves rustling and informed Breen that Otuafi was jumping a wall. Breen notified dispatch that Otuafi was going into the apartment complex located on the other side of the wall where Otuafi had jumped.

Shortly thereafter, Officer Pulido heard two shots fired; both sounded like a shotgun. Pulido advised dispatch that Mr. Otuafi was shooting. Pulido heard Officer Martinez advise via radio that Otuafi was shooting at him. Pulido asked Martinez where Martinez was located. Martinez indicated he was in front of the residence and that Otuafi was running across the street. Pulido asked Martinez if Otuafi was running toward a yellow house and Martinez stated Otuafi was.

Officer Pulido ran back to Maple Avenue and saw Officer Martinez standing next to Martinez's patrol car. Martinez was pointing his handgun towards a yellow house on the northwest corner of Maple Avenue and Barbee Street. Pulido knelt-down beside the right front quarter panel of a silver sedan which was parked facing north along the east curb of Maple Avenue. As Pulido knelt down, Officer Bradic knelt down beside him. Pulido then got on his radio and requested responding units cover the west side of the corner of Maple Avenue and Barbee Street.

Officer Pulido saw a light brown or gray SUV parked in the driveway of the 18000 block of Barbee Street. Pulido saw Mr. Otuafi come out towards the street from behind the SUV. Otuafi was facing east towards officers and fired one round from the shotgun towards Pulido. Pulido, in fear for his life and the lives of the other officers, fired his handgun at Otuafi one time. Pulido believes that Officer Bradic also fired one round from his handgun. Pulido yelled at Otuafi to drop the

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shotgun numerous times. Pulido and Otuafi were looking at each other. Pulido had no doubt that Otuafi knew Pulido and the other officers were in fact police officers. Otuafi returned to the southwest side of the SUV, aimed the shotgun towards Pulido and fired again. Pulido shot another single round at Otuafi.

Mr. Otuafi stepped back around the west side of the SUV and raised his arms in the air, holding the shotgun in his hands. Officer Pulido told the other officers that Otuafi appeared to be surrendering and not to shoot. Pulido told Otuafi to drop the gun and Otuafi threw the gun onto Barbee Street. Otuafi was then taken into custody without incident.

**Officer Justin Breen** was interviewed by Detective Radeleff of the San Bernardino County Sheriff's Department.

At the time of the incident, Officer Breen had been employed as a Rialto Police Department officer for 2.5 years. He was working the graveyard patrol shift as a canine officer from 6:00 p.m. until 4:00 a.m. On that date, he was driving a marked Rialto Police Department vehicle equipped with emergency lights and siren.

On September 27, 2009, at approximately 6:44 p.m., Officer Breen was in a briefing at the Rialto Police Department. Around that time, a call came in regarding a man with a knife or stick in the area of the 400 block of North Maple Avenue. Breen responded from the briefing to that location, followed by Officer Pulido.

Upon arrival at this residence, Officer Breen contacted a female to the front of the home. The female advised that there was a subject (later identified as Sione Otuafi) trying to break into the residence from the backyard. The female advised that Otuafi was armed with a gun and had already fired one round. The female further advised that she believed that Otuafi could not fire again. Breen took this to mean Otuafi was armed with an older single shot shotgun.

Officer Breen and Officer Pulido next entered into the backyard of a residence on the 400 block of North Maple Avenue. As they rounded the corner into the backyard, Breen heard a rustling noise in the bushes. Officer Pulido then yelled "gun, gun, gun." Breen looked and saw Mr. Otuafi squatting in the bush pointing a shotgun directly at Breen and Officer Pulido. At that time, Breen was in fear for his life and the life of Officer Pulido.

Officer Breen released his canine towards Mr. Otuafi and Breen and Officer Pulido began to back away from Otuafi. At that time, Breen heard more rustling in the bushes, followed by 5-6 gunshots from an adjacent backyard. Breen advised dispatch that Otuafi had jumped the wall into the neighboring yard, had fired shots, and requested assistance of additional units and the Sheriff's helicopter. As this was happening, Breen heard the female he had contacted upon his initial arrival at the house shouting, "don't shoot him, don't shoot him."

Officer Breen returned to the front of the residence where he observed Officer Martinez's patrol vehicle parked in a southeast direction in the middle of Maple Avenue. Breen asked Martinez

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where Mr. Otuafi had gone. Martinez relayed that Otuafi had run into the house on the northwest corner of Maple Avenue and Barbee Street. Breen began walking towards Martinez when he observed Otuafi standing between an SUV and another vehicle in front of a residence on Barbee street. Breen observed Otuafi pointing a gun at Breen and Breen immediately took cover with Officers Pulido and Bradic behind a silver Lexus. At this time, Breen estimated that Otuafi was approximately 75-80 yards away.

Officer Pulido told Officer Breen to go get the AR-15 rifle from Breen's vehicle. Breen believed his patrol vehicle was too far away to retrieve the rifle with ongoing gunfire from Mr. Otuafi. Officers Pulido and Bradic took cover near the front of the Lexus and began to return fire in a slow methodical manner. Breen believed Pulido and Bradic were being deliberate with their shots in order to ensure they struck Otuafi. Breen then heard 2 much louder gun shots being returned at the officers.

At this time, Mr. Otuafi came out from behind the SUV with his hands above his head. Otuafi was ordered to get down on the ground. At that time, Officer Breen observed the shotgun Otuafi was firing laying in the street in front of a residence on Barbee Street.

As Officer Breen approached the SUV parked in the driveway, which Mr. Otuafi had been hiding behind, he observed a female and baby inside the SUV. Both were unharmed.

**Officer Ryan Bradic** was interviewed by Detective Warrick of the San Bernardino County Sheriff's Department on September 28, 2009. Also present during the interview was Bradic's attorney Mark Johnson.

At the time of the incident, Officer Bradic had been employed as a Rialto Police Department officer for 3 years. He wore a black polo shirt with Rialto Police Department patches on both shoulders, a metal badge on his chest, and a hat that read "POLICE" on the front. Bradic drove marked Rialto Police Department patrol vehicle #902.

On September 27, 2009, Officer Bradic was in a briefing at the Rialto Police Department. At that time a call of a disturbance was announced over the police radio. According to the reporting party, an ice cream truck was being hit with a stick and the subject would not let the driver of the truck leave that location. Officer Breen left to respond to the call. One to two minutes later the call was upgraded to a man with a gun. Officers Pulido and Martinez indicated they were en route to the location, which dispatch stated was on Maple Avenue.

Officer Bradic then heard Officer Pulido advise over the radio that the subject had a gun. Officer Breen advised via radio that the subject went over a wall into an apartment complex. Bradic left the station and headed towards the area of the man with a gun call. As Bradic approached Foothill Boulevard and Spruce Street, Officer Martinez advised over the radio that gunshots had been fired. Approximately 30 seconds later, Bradic arrived and saw Martinez's car parked facing south on Maple Avenue near Barbee Street. Martinez was crouched behind the driver's door of the car.

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Officer Bradic parked on the east side of Maple Avenue, exited his patrol car, and walked north. Bradic observed vehicles in the driveway on the northwest corner of Barbee Street and Maple Avenue. A subject (later identified as Sione Otuafi) was in between two vehicles on a lower portion of the driveway near Barbee Street.

Officer Bradic met Officer Pulido, who was crouched behind a silver vehicle on the east side of Maple Avenue. Bradic believed Officer Breen was behind him. At that time, Mr. Otuafi came out from behind a dark colored GMC Envoy and fired 1 time at Officers Bradic and Pulido. Bradic could hear the shotgun pellets skipping on the ground and hitting the vehicle he was behind. At that time, Bradic was in fear Otuafi was trying to kill him and the other officers. In response, Bradic fired two times in a controlled manner. Otuafi went back behind the Envoy and then shortly thereafter returned and fired another shot in the direction of Bradic and Pulido. Bradic yelled at Otuafi to come out. Otuafi did not comply. Instead, Otuafi fired another shot in the direction of Bradic and Pulido. Bradic returned fire, aiming 2 shots at Otuafi. Pulido fired 1 time at Otuafi.

Otuafi walked out into the middle of the street and tossed the shotgun two or three feet away. Otuafi was then taken into custody without incident.

**Officer Otto Mendez** was interviewed by Detective Warrick of the San Bernardino County Sheriff's Department on September 28, 2009. Also present during the interview was Mendez's attorney Mark Johnson.

At the time of the incident, Officer Mendez had been a Rialto Police Department officer for 2 weeks. He was on a field training officer program. His field training officer was Officer Fred Poching. Mendez was wearing a short sleeve button up shirt with Rialto Police patches on his shoulders and a metal badge on his chest. Mendez drove marked Rialto Police Department patrol vehicle #R617 or R609.

At approximately 6:40p.m. on September 27, 2009, Officer Mendez was in a briefing at the Rialto Police Department when a call came in over the radio of a man with a knife. Two officers were dispatched to the call. After briefing, Mendez and Officer Poching drove towards the call. While en route, Mendez heard via police radio that shots had been fired. Mendez turned on the lights and sirens in his patrol vehicle and continued driving to Maple Avenue. When Mendez arrived, he parked on Maple Avenue, got out of the car, and stood behind a south facing Honda Accord parked directly in front of his vehicle.

Officer Mendez then heard a gunshot and saw a suspect (later identified as Sione Otuafi) walking backwards towards a car parked on the north side of Barbee Street. Otuafi was pointing the gun at officers to the east. Mendez was in fear for his life and the lives of the other officers and fired one shot at Otuafi. Mendez did not hear any additional shots due to a car alarm going off in the Honda Accord.

Officers Mendez and Poching approached Barbee Street. At that time, Mr. Otuafi was taken into custody without further incident.



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**Officer Mike Martinez** was interviewed by Detective Warrick of the San Bernardino County Sheriff's Department on September 28, 2009. Also present during the interview was Martinez's attorney Mark Johnson.

At the time of the incident, Officer Martinez had been a Rialto Police Department officer for approximately 3 years. He was in uniform, consisting of a blue shirt with Rialto Police Department patches on both sleeves and a metal badge on his chest. Martinez drove marked Rialto Police Department patrol vehicle #R904.

While in a briefing at the Rialto Police Department, Officer Martinez heard a man with a gun call over the police radio. According to the reporting party, the subject was assaulting an ice cream truck driver. Shortly thereafter, dispatch upgraded the call to a man with a gun. Martinez left the briefing with other officers to respond to the location of the call.

When Officer Martinez arrived at the location, he observed that two other Rialto Police Department officers were already present at the scene. He then heard Pulido indicate over the radio he had observed a subject (later identified as Sione Otuafi) with a gun ran into an apartment complex. Martinez parked his vehicle facing south on Maple Avenue.

Upon parking at the incident location, Officer Martinez observed Mr. Otuafi jump the wall between the two car entrances on the west side of the apartment complex on the east side of Maple Avenue. Martinez observed Otuafi to be carrying a black shotgun.

As Mr. Otuafi ran west across Maple Avenue, he ran directly towards Officer Martinez. Martinez took cover behind the driver's door of his patrol vehicle. Due to Otuafi running towards him with a shotgun at waist level pointed at Martinez, Martinez removed his gun from his holster and fired 2 or 3 bullets at Otuafi. Otuafi did not appear to be hit by any of the shots and continued running towards Martinez.

While running towards Officer Martinez, Mr. Otuafi continually pointed the shotgun at Martinez. Martinez then fired 3 or 4 more shots at Otuafi. Martinez took cover behind the driver's door of his patrol vehicle and Otuafi ran around the trunk of Martinez's patrol vehicle, temporarily out of sight. At that time, Otuafi was approximately 4 feet away from the trunk of Martinez's vehicle. Martinez next saw Otuafi slide his hand down the length of the shotgun and Martinez, believing he would be shot, slid into the driver's seat of the patrol car. Otuafi fired 1 time and Martinez felt a stinging on his right thigh.

Officer Martinez got back out of the patrol car and took cover behind the trunk. Martinez observed Mr. Otuafi run towards a residence on the northwest corner of Maple Avenue and Barbee Street and into the garage. Otuafi exited the garage and walked south down the driveway, stopping near a parked vehicle for approximately 10 to 15 seconds while pointing the shotgun in Martinez's direction. Otuafi walked back up the driveway and out of sight.

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Mr. Otuafi then again walked south down the driveway along the east side of the vehicle parked in the driveway. Otuafi stopped at the sidewalk and aimed at officers south of Officer Martinez. Otuafi fired two times. In between the two shots, Martinez heard what sounded like Otuafi racking or cycling the shotgun. As Otuafi fired the second shot, Martinez fired one time at Otuafi. Otuafi stepped back, north of the sidewalk, waited a couple of minutes and then threw the shotgun into the street.

Mr. Otuafi then walked into the middle of the street and was taken into custody without further incident.

From the officer involved shooting, Martinez suffered 2 gunshot wounds to his right thigh and 1 to the left shin.

**Officer Monique Billups** was interviewed by Detective Radeleff of the San Bernardino County Sheriff's Department.

At the time of the incident, Officer Billups had been employed as a Rialto Police Department officer for 6 years. She was working the graveyard patrol shift from 6:00 p.m. until 6:30 a.m. the following day. Billups drove marked Rialto Police Department vehicle #R211.

On September 27, 2009, at approximately 6:44 p.m., Billups was in a briefing at the Rialto Police Department. At that time, Billups heard a call of a suspect with a knife air over the radio. Officers Breen and Pulido responded to the location from the briefing. Shortly thereafter, Officer Breen asked for additional units to respond to his location. Officer Billups was leaving the station at that time in her marked vehicle. She activated her overhead lights and siren to respond to Officer Breen's location on Maple Avenue. While Officer Billups drove to that location, she heard Officer Pulido say over the radio, "gun, gun, he has a gun." Just prior to Billups' arrival at the scene, she heard Officer Martinez say over the radio, "has gun, just shot me, and I..." Officer Billups understood this to mean that Officer Martinez had been shot.

Officer Billups parked her car on the east curb line of Maple Avenue facing north, directly behind a silver Lexus. Billups opened the driver's door and heard gunshots being fired from the west of her location. Billups looked and could see the suspect (later identified as Sione Otuafi) pointing what appeared to be a rifle at Billups.

Officer Billups quickly exited her vehicle and took a position behind the silver Lexus. At this time, Billups observed Officer Martinez standing to the rear driver's door of his vehicle, which was parked in the middle of Maple Avenue facing southwest. She then observed Officers Pulido, Bradic, Breen, and Cunningham run behind Officer Martinez's vehicle with Martinez. Billups saw Bradic fire at Mr. Otuafi from behind Officer Martinez's vehicle.

Officer Billups then observed Mr. Otuafi step out from behind the driver's side of an SUV parked in the driveway of a residence on the northwest corner of Barbee Street and Maple Avenue. Otuafi took the rifle and fired 3 or 4 times at Billups and the officers at Martinez's vehicle. At that time,

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Billups believed she was going to be shot. A short time later, Otuafi stepped out from behind the SUV with his hands in the air. Otuafi was taken into custody without further incident.

After Mr. Otuafi was taken into custody, Officer Billups observed a female and two small children inside the SUV Otuafi hid behind during the incident. Neither the female nor the children were injured.

**Officer Fred Poching** was interviewed by Detective Radeleff of the San Bernardino County Sheriff's Department.

At the time of the incident, Officer Poching had been a Rialto Police Department officer for approximately 17 years. On September 27, 2009, Poching was assigned to work the graveyard shift from 6:00 p.m. until 4:00 a.m. the following day. Poching drove marked Rialto Police Department patrol car #R607, equipped with emergency lights and siren. Officer Otto Mendez was Poching's trainee and was accompanying Poching on this shift.

On September 27, 2009, at approximately 6:44 p.m., Officer Poching was attending a briefing at the Rialto Police Department when a call came over the radio of a man causing a disturbance in the area of Maple Avenue north of Foothill Boulevard. While Poching and Officer Mendez were checking their vehicle, they decided to head towards the 6:44p.m. call. While they were travelling to that location, a second call came over the radio announcing, "he's got a gun." Poching directed Mendez to drive to the location and activate the emergency lights and siren. Poching further directed Mendez to turn northbound on Maple Avenue from Foothill Boulevard. Mendez parked the vehicle along the southbound lane of Maple Avenue just south of Barbee Street. As Poching exited his vehicle, he heard 5-6 gunshots coming from an unknown direction. He observed several Rialto Police Department officers crouched down behind a patrol unit parked on Maple Avenue, south of Barbee Street.

Officers Poching and Mendez took cover behind a dark-colored vehicle in front of their patrol vehicle facing south. Poching attempted to determine where the gunshots were coming from. Poching then heard Officer Mendez fire one shot. Poching asked Mendez what Mendez was firing at, as Poching had not yet determined where the suspect was located. Mendez pointed northwest towards the northwest corner of Barbee Street and Maple Avenue. At that time, Poching observed a suspect (later identified as Sione Otuafi) walking along the driver's side of a SUV parked in the driveway of the residence on the northwest corner of Barbee Street and Maple Avenue.

Officer Poching then saw Mr. Otuafi lift what he believed to be a rifle to his shoulder and point the rifle at Poching. Poching observed Otuafi fire the rifle in his direction one time. Poching believed Otuafi was shooting at him and that he was going to be shot. Otuafi was approximately 100-150 feet away at that time. Poching and Officer Mendez moved to the east side of Maple Avenue where they took cover behind a car alongside Officer Billups.

Officer Poching was not able to see Mr. Otuafi being taken into custody but believed that was the next thing that occurred. Poching and Officer Mendez took cover behind a black colored SUV

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parked in the street in front of the residence. Poching saw an unknown male (later identified as Witness #1) in a white t-shirt also being taken into custody.

**Officer James Dobbs** was interviewed by Detective Radeleff of the San Bernardino County Sheriff's Department.

At the time of the officer involved shooting, Officer Dobbs had been a Rialto Police Department officer for 2 years. Prior, Officer Dobbs worked as a California Highway Patrol Officer for 1.5 years. On September 27, 2009, Dobbs was assigned to work graveyard shift from 6:00 p.m. until 6:30 a.m the following day. Dobbs drove marked Rialto Police Department patrol vehicle #R901, equipped with emergency lights and siren.

On September 27, 2009, at approximately 6:44p.m., Dobbs was in a briefing at the Rialto Police Department when a radio call came in of a man with a knife at Maple Avenue, north of Foothill Boulevard. Officers Breen and Pulido responded from the briefing. Shortly thereafter, they requested additional units respond.

While Dobbs was en route to the location, he heard Officer Pulido call out over the radio, "gun, gun, gun," and that the suspect had jumped over a wall. Dobbs activated his overhead lights and siren and drove to the incident location. While driving, Dobbs heard an officer announce over the radio that gunshots had been fired. Dobbs could hear what sounded like gunshots over the radio.

When Dobbs arrived, he parked along the eastern curb line of Maple Avenue, south of the 400 block of North Maple. Dobbs opened the driver's side door of his patrol vehicle and heard approximately 2-3 gunshots north of his location. Dobbs ran to Officer Poching and Mendez's vehicle parked north of his vehicle facing northwest. Dobbs took a position next to Officers Poching and Mendez behind the driver's side door. At that time, the suspect (later identified as Sione Otuafi) was behind a gold SUV approximately 50 feet away to the northwest. Dobbs observed Otuafi popping his head out from behind the vehicle. Shortly thereafter, Dobbs observed Otuafi walk out from behind the SUV with his hands in the air. Otuafi was then taken into custody. At that time Dobbs did not observe any injuries to Otuafi.

### **STATEMENTS BY CIVILIAN WITNESSES<sup>3</sup>**

**Witness #1** was interviewed by Detective Radeleff of the San Bernardino County Sheriff's Department on September 28, 2009.

Witness #1 relayed that he is the father of Sione Otuafi, the subject observed shooting at law enforcement. He stated that Otuafi is normally very nice and loving; however, when Otuafi uses controlled substances his disposition changes significantly. Within the week preceding the officer involved shoot, Otuafi was taken to the hospital after becoming unresponsive from a drug

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<sup>3</sup> All reports of civilian statements made were reviewed, though not all are summarized here.

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overdose. Medical tests at the hospital revealed opiates, muscle relaxers, and marijuana in Otuafi's system.

On September 27, 2009, Witness #1 went to traffic school early in the morning until approximately 5:00 p.m. At that time, Witness #1 went to a bowling alley on Palmetto Street in the City of Fontana. Witness #1, his wife, and Mr. Otuafi were involved in a bowling league that started at 5:00 p.m. that day. Witness #1 met his wife and Otuafi at the bowling alley. Nobody wanted Otuafi on the team anymore due to his drug use and poor behavior that resulted from the drug use.

Upon Witness #1's arrival at the bowling alley, he was confronted by his wife about Mr. Otuafi's behavior. Witness #1's wife indicated that Otuafi had been drinking since early in the morning and had scared "everyone" because he had placed a shotgun in the back of her car. Witness #1's wife was unaware of the firearm until they arrived at the bowling alley.

Mr. Otuafi then removed the shotgun from the car and began to argue with Witness #1. Witness #1's wife was scared and began to cry. Otuafi told Witness #1 that he was trying to protect their family. Witness #1 responded that nobody was trying to hurt their family and that Otuafi was scaring the family. Witness #1 indicated he was going to call the police. Otuafi stated he did not care about the police and that Witness #1 should call them. Otuafi then became visibly upset and took the shotgun to Otuafi's sister's vehicle and returned to the residence at the 18000 block of Barbee Street in Fontana, California.

Witness #1 returned to that location with his wife and daughter. When he arrived, he found Mr. Otuafi sitting in the garage holding the same gun from the bowling alley. Witness #1's wife wanted to avoid problems between Witness #1 and Otuafi, so she told Witness #1 to leave the location. Witness #1 did not want to leave because he feared for the safety of his family due to Otuafi's behavior. Otuafi then walked out onto Maple Avenue and began yelling at cars as they passed the location. He continued walking to a neighbor's house located at the 400 block of North Maple Avenue where he spent approximately 30 minutes.

After 30 minutes, Mr. Otuafi returned to the 18000 block of Barbee and began to argue with Witness #1 again. During the argument, Otuafi pulled out an 8-inch knife and threatened to stab Witness #1. Fearful of being stabbed, Witness #1 grabbed a "two by four" from the back of his truck saying he was going to break Otuafi's arm or leg to stop Otuafi's threatening behavior. Otuafi left and ran back to the 400 block of North Maple Avenue.

Mr. Otuafi returned within a few minutes with the shotgun and began loading the gun as he walked towards Witness #1's residence on Barbee Street. Witness #1 got into his vehicle and left the location at the insistence of his wife and children. As Witness #1 left the location Otuafi aimed the shotgun at Witness #1. Witness #1 in fact left the location, but only for a short period. Witness #1 realized that he did not want to leave his family at his residence with Otuafi walking towards the home with a loaded gun. When Witness #1 returned home, he observed two "police cars" parked along the eastern curb line of Maple Avenue, south of the 400 block of Maple Avenue.

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Witness #1 stood on Barbee Avenue just west of his residence when he saw Mr. Otuafi running from the direction of the 400 block of North Maple Avenue, with the shotgun in his hand. Witness #1 saw a marked Rialto Police Department patrol unit park on Maple Avenue near Barbee Street. Witness #1 saw Otuafi run around the back of the patrol unit and then fire 1 round from the shotgun at the patrol unit. The police officer standing at the driver's side of the patrol unit returned fire. Otuafi ran into the garage of Witness #1's residence as additional officers arrived. Otuafi stood in the driveway of the residence behind an SUV parked in the driveway. As he did so, Otuafi aimed his shotgun at the police officers on Maple Avenue. Otuafi then held the shotgun over the SUV and fired 2 additional rounds at the officers. Witness #1 yelled at Otuafi to drop the shotgun and put his hands up.

Eventually, Mr. Otuafi looked at Witness #1, held the shotgun over his head, and threw the gun out onto Barbee Street. Otuafi walked out from behind the SUV with his hands over his head towards police officers. Otuafi was then taken into custody.

Witness #1 was unsure where Mr. Otuafi obtained the shotgun. Within the last week, an unknown male had come to Otuafi and Witness #1's residence and met in the garage with Otuafi. Immediately after this meeting, Witness #1 saw the gun for the first time.

**Witness #2** was interviewed by Detective Newport of the San Bernardino County Sheriff's Department on September 28, 2009.

Witness #2 is Otuafi's mother. On September 27, 2009, she resided on Barbee Street on the northwest corner of Barbee Street and Maple Avenue. Otuafi lives with her at that residence. Witness #2 related that Otuafi had been acting differently for the past few weeks. Otuafi had been acting mean, had a mean look on his face, and had been experiencing mood swings. Witness #2 believed Otuafi had been using drugs, specifically methamphetamine. While Otuafi was in prison, he was diagnosed with paranoid schizophrenia and used to take medications for this condition. Otuafi had been off this medication for the past two years.

On September 27, 2009, at approximately 5:00 p.m., Witness #2 went with Mr. Otuafi and other family members to a bowling alley in Fontana. Witness #1 arrived a short time later. Witness #2, Otuafi, and Witness #1 decided to go home because Otuafi was too drunk to bowl. Otuafi and Witness #1 began to argue because Otuafi did not want to go home.

Upon arriving back at their Barbee residence, sometime after 6:00 p.m. Mr. Otuafi went into the garage where he lived. Witness #2 believed that Otuafi drank more beer in the garage. Witness #2 and Witness #1 were sitting on the porch when Otuafi came outside with a shotgun in his pants. Otuafi then went back into the garage.

A short time later, Mr. Otuafi came back out of the garage and began yelling at cars on Maple Avenue. Witness #1 told Otuafi he was going to call the police. Otuafi got angry and went back into the garage.

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A friend of the family went into the garage and saw Mr. Otuafi sniffing from a gas can. A short time later Otuafi was going "crazy" in the street. Otuafi pulled the gun from his pants and pointed it in the air. Otuafi ran to Witness #4's residence and was there for a long time. Witness #2 did not call the police because Witness #1 was going to rush Otuafi, hold him down and take the gun away from him.

Mr. Otuafi was standing north of Witness #4's residence on Maple Avenue when police officers went into the backyard of Witness #4's residence with guns drawn. Witness #2 had no problem distinguishing between police officers from civilians due to their uniforms and marked patrol cars.

Mr. Otuafi was walking around the south perimeter of Witness #4's residence when she saw two police officers with their guns drawn. Witness #4 could not see Otuafi but could see the police officers. Witness #2 then heard a loud "boom" and heard a police officer say, "blast him."

At that time Witness #2 screamed and went to the south side of her residence and police officers told her to go inside Witness #4's house. Witness #2 went inside Witness #4's house when she heard another loud "boom." Witness #2 believed it was Mr. Otuafi's gun making the "boom." Witness #2 heard several "smaller" gunshots and believed those were from officers returning fire.

Witness #2 believed she heard 3 or 4 gunshots coming from Mr. Otuafi's gun. Witness #2 did not see Mr. Otuafi surrender to law enforcement because she was inside Witness #4's residence.

**Witness #3** was interviewed by Detective Radeleff of the San Bernardino County Sheriff's Department on September 28, 2009.

Mr. Otuafi is Witness #3's uncle. Witness #3 describe Otuafi as normally being very nice, but scary on other occasions. Witness #3 believes Otuafi uses drugs and becomes scary when he is using.

On September 27, 2009, at approximately 5:00p.m. Witness #3 was at a bowling alley with her grandmother and Mr. Otuafi. Her grandfather, Siaso Otuafi arrived at the bowling alley and began to argue with Otuafi. Otuafi became upset and left the location with his sister Witness #10 back to their residence on Barbee Street. Thereafter, the rest of the family returned to the Barbee address and Witness #1 and Otuafi continued their argument. During the argument, Otuafi walked into the middle of Maple Avenue and yelled at cars as they drove by the location.

Mr. Otuafi continued to be upset and argued with Witness #1 throughout the afternoon. Witness #1 said he was going to call the police and Otuafi replied, "I would like to see you call the cops."

Mr. Otuafi then walked down to a friend's house located at the 400 block of North Maple Avenue. A short time later, Otuafi came out of the friend's house and began hitting and kicking an ice cream truck that was passing by. Otuafi's family apologized to the driver and the driver drove away.

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Mr. Otuafi next came back to Witness #1's residence and argued with Witness #1, threatening to hit him. Witness #1 walked over to his truck as if to leave. Otuafi yelled at Witness #1 to "run, run." As Witness #1 was leaving the residence, Otuafi went back to his friend's house located at the 400 block of North Maple Avenue. Witness #3 observed Otuafi return with a gun from his friend's. Otuafi was messing with the gun as if he were loading it. As Witness #1 left the location, Otuafi lifted the gun and fired one round at Witness #1.

Mr. Otuafi then went back to the 400 block of North Maple, at which time police arrived at the location. Several of Otuafi's family members went to attempt to speak with law enforcement so Otuafi would not be hurt. Witness #3 believed that Otuafi was hiding in the backyard and jumped the fence to return to the Barbee address when he heard law enforcement arrive at the location. At some point Witness #3, her aunt, and her cousin entered an SUV parked near the Barbee address. Around that time, Otuafi stood in the driveway and began to fire at law enforcement, who returned fire. Witness #3 never saw Otuafi shoot, she inferred that he was shooting based on the direction of the gunshots she heard. Witness #3 never heard anyone other than Otuafi fire a shotgun during the shooting.

**Witness #4** was interviewed by Detective Newport of the San Bernardino County Sheriff's Department on September 27, 2009.

On September 27, 2009, while Witness #4 was in the kitchen area of her residence, Witness #4's daughter informed her that their neighbor (later identified as Sione Otuafi) was outside their residence with a gun. Otuafi was standing on the front porch of the residence with a beer in his hand and with a rifle leaning against a metal fence. Otuafi told Witness #4 the gun was for protection. Witness #4 believed the gun was not real until she saw Otuafi "flip down the front of the gun." When Witness #4 saw the gun was real, she asked Otuafi to leave her residence.

After a short conversation with her brother-in-law, Witness #4 walked outside and noticed Mr. Otuafi was gone. She then walked around the south portion of her residence and saw a black rifle leaning against her dining room ledge. Witness #4 walked around to the front of the residence and saw Otuafi in the street arguing with his father. Witness #4 contemplated attempting to hide the rifle, but Otuafi began running back towards Witness #4's residence. As Otuafi grabbed the rifle, Witness #4 told Otuafi, "stop and think about what you're doing." Otuafi replied, "I'm not going to hurt my family." Witness #4 then ran around and locked the doors to her home and called her sister Witness #11<sup>4</sup>. Witness #11 called 911. Witness #4 also called 911 after speaking with Witness #11..

While Witness #4 was on the phone with 911, she observed police officers with their guns drawn walking through her backyard. While the officers walked through the backyard, Mr. Otuafi began knocking on a rear door to the residence. Witness #4 then heard a police officer yelling for someone to drop a gun as he identified himself as Rialto Police. Witness #4 then heard what she believed to be police officers saying, "We're going to blast you."

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<sup>4</sup> Witness #11 was identified by their first name only and was not interviewed as part of this investigation.



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From inside the residence Witness #4 heard a number of gunshots. Witness #4 did not see any of the gunshots. During the incident, Witness #4 heard officers yelling, "freeze, we're going to shoot you." At another point Witness #4 heard officer's saying, "he's got a gun."

Witness #4 described being scared when she noticed the gun was real because she did not know what Mr. Otuafi was capable of.

**Witness #5** was interviewed by Detective Newport of the San Bernardino County Sheriff's Department on September 28, 2009.

On September 27, 2009, Witness #5 was at the residence located at the 400 block of North Maple Avenue. Witness #5 knew Mr. Otuafi from seeing Otuafi at the residence on North Maple Avenue. Witness #5 noticed a recent behavioral change in Otuafi – Otuafi was normally outgoing, but had become depressed, calm, and quiet of the past 2 to 3 weeks.

At 1:00 or 2:00 p.m. on September 27, 2009, Witness #5 was at his girlfriend's residence (Brianna Salazar) at the 400 block of North Maple Avenue. At or around that time, Witness #4 came into the room where Witness #5 was located and claimed Witness #5 should stay in the bedroom because Mr. Otuafi was outside with a gun. Witness #5 looked out the rear bedroom window and observed two officers in the backyard of the residence. He knew they were police officers because of their uniforms and the fact that they had a police dog with them. While the officers were in the backyard Witness #5 saw Otuafi jump the north wall of the residence into an apartment complex next door. Witness #5 heard someone say, "drop the gun or we'll shoot you." When Otuafi jumped over the wall, he held the shotgun on top of the wall. Otuafi kept hold of the shotgun the entire time jumping the wall.

Witness #5 believed that the police officer who did not have the police dog reached his arm over the wall and fired his gun 3 times without looking. At that time, Witness #5 could not see Mr. Otuafi and could not see whether there were officers on the other side of the wall. After the 3 shots were fired, the officers ran around towards the front of the residence on Maple Avenue. Witness #5 and "Danny" then went to the front porch of the residence so they could see what was happening.

Witness #5 saw several police officers on Maple Avenue with rifles and handguns drawn. Witness #5 saw Mr. Otuafi loading a shotgun on the south side of a yellow corner house located across the street and northwest of where Witness #5 was located. Witness #5 believed this house was Otuafi's residence.

Mr. Otuafi fired once toward officers from behind and SUV which was parked on the south portion of the yellow residence. Witness #5 believed the SUV was a GMC Envoy. Witness #5 saw police officers returning fire at Otuafi. At one point, Otuafi went into the residence and retrieved a bag, which Witness #5 believed was full of ammunition. Witness #5 believed this because he saw Otuafi pull what looked like ammunition from the bag.

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Mr. Otuafi and police officers then continued to exchange gunfire. Every time Otuafi “racked” the shotgun, Witness #5 ducked back inside the residence and would hear a blast from Otuafi’s gun. Witness #5 believed that Otuafi was shooting at the officers because each time Otuafi “racked” the shotgun, he would aim towards the officers. Witness #5 did not see Otuafi shooting at any particular officer, rather he appeared to Witness #5 to be shooting at all the officers at the location. Witness #5 described Otuafi’s shotgun as being much louder than the guns of the officers.

While Witness #5 was watching the events unfold, he was looking at the scene from the front of the residence on Maple Avenue. He recalled seeing 4 police officers firing from the street on Maple Avenue. The officers appeared to be shooting in Mr. Otuafi’s direction to the west and Otuafi was shooting in the officer’s direction toward the east.

Witness #5 next saw Mr. Otuafi throw the shotgun down and put his hands in the air. Otuafi said there were kids in the GMC Envoy. Several officers then ran towards Otuafi and put him in handcuffs. One officer walked a handcuffed Otuafi over to a patrol car. Witness #5 claims the officer was holding Otuafi by Otuafi’s hair. Witness #5 noted that Otuafi appeared to be pushing away from officers as he was walked to the patrol car. Witness #5 was not sure whether Otuafi was uncomfortable in the handcuffs or was trying to get away from officers.

At one point, while Mr. Otuafi and officers were in the street on Maple Avenue, Witness #5 believed he saw an officer deploy a taser at Otuafi. He believed this because he heard a “pop” noise come from a gun and noticed wires coming from the gun<sup>5</sup>. Otuafi was then placed in the backseat of a patrol car. An hour to and hour and a half later, an ambulance arrived and took Otuafi to the hospital.

**Witness #6** was interviewed by Detective Newport of the San Bernardino County Sheriff’s Department on September 28, 2009.

On September 27, 2009, Witness #6 lived in a rear detached bedroom at Witness #4’s residence with his wife and child. Witness #6 knew Otuafi because Otuafi was a friend of Witness #6’s family and they occasionally hung out. Witness #6 noticed that over the past two months, Otuafi had been drinking heavily.

At approximately 5:00 p.m. Mr. Otuafi came over to Witness #6’s residence on Maple Avenue. Witness #6’s brother-in-law Witness #12<sup>6</sup> told Witness #6 that Otuafi was at the residence and had a gun. Witness #12 told Witness #6 to go into the residence and lock the doors. Witness #6 did so. Witness #6 then looked out the south facing window of his residence and saw Otuafi holding a shotgun, shotgun shells, and a knife in his teeth. Otuafi attempted to gain entry into Witness #6’s residence, but was unable.

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<sup>5</sup> The use of a taser is not corroborated by any other witness.

<sup>6</sup> Witness #12 was identified by their first name only and was not interviewed as part of this investigation.

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Mr. Otuafi walked by Witness #6's bedroom door and said, "Hey, the cops are here." Witness #6 next saw two police officers in the backyard of the residence. He could tell they were police officers because they were wearing police uniforms and one of the officers had a dog.

Police officers told everyone in the vicinity to go inside. Witness #6 then heard officers on the north side of the residence saying, "don't move motherfucker or I'm gonna blast you." Witness #6 heard someone say blast 3 times.

At some point Witness #6 heard multiple gunshots from outside his residence. He did not describe seeing any of the gunshots.

**Witness #7** was interviewed by Detective Newport of the San Bernardino County Sheriff's Department on September 28, 2009.

Witness #7 is a cousin of Mr. Otuafi. On September 27, 2009, at approximately 5:30 to 6:00 p.m., Witness #7 went with Witness #10 from a bowling alley on Foothill Boulevard in Fontana to Witness #2's residence. At that time, Mr. Otuafi was in the garage smoking cigarettes and drinking beer. The rest of the family was outside in the front of the residence. Mr. Otuafi then came outside and began throwing rocks at a car. The car was waiting for an electric gate to open at the apartments located across the street on Maple Avenue.

Witness #7 went over to Mr. Otuafi to try to calm Mr. Otuafi down. She believed Mr. Otuafi was upset with his father Witness #1. Mr. Otuafi went back into the garage after Witness #7 calmed him down. A short time later, Witness #7 went back into the garage. At that time, she observed Mr. Otuafi opening the nozzle on a gas can and inhaling the fumes from said can. Witness #7 told Mr. Otuafi to stop inhaling the fumes; Mr. Otuafi complied.

Witness #7 then noticed that Mr. Otuafi had a rusty black shotgun on the table in the garage. Witness #7 did not know whether the gun was loaded. Witness #7 attempted to determine why Mr. Otuafi was so angry. Mr. Otuafi was not making sense and using vulgar language, indicating that he wanted to kill Witness #1.

Witness #7 next saw Mr. Otuafi slide the shotgun inside the front of his pants. Mr. Otuafi walked across the street on Maple Avenue to Witness #4's residence. Witness #7 continued to watch Mr. Otuafi from her position at the residence.

Shortly thereafter, Witness #7 saw an ice cream van coming down Maple Avenue toward Foothill Boulevard. At that time, Mr. Otuafi was in the street in front of the van. This caused the ice cream van to come to a stop. Mr. Otuafi argued with the driver of the van, kicked the van, and threw beer on the driver. Witness #7 believed she then saw Mr. Otuafi choking the driver of the van, but found out later from an unknown person at Witness #4's residence that he actually had a knife at the throat of the ice cream van driver. The ice cream truck then pulled away.

Witness #7 and other family members attempted to call Mr. Otuafi back to the residence. Witness

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#1 told Mr. Otuafi to go inside. Mr. Otuafi responded: "What up cuz? Who the fuck do you think you are? I run this place." Witness #7 saw Mr. Otuafi with a knife. Mr. Otuafi used the knife to try to stab Witness #1. Witness #1 ran back to the front of the garage of the residence and retrieved a 2"x 4" piece of wood. Mr. Otuafi then ran back to Witness #4's residence and returned to the front of his residence with a shotgun. At that time Mr. Otuafi went down to one knee and started loading the shotgun. Mr. Otuafi aimed the gun at Witness #1 and pulled the trigger, but the gun was jammed and did not fire. Witness #1 got into his truck. Mr. Otuafi then fired the shotgun at Witness #1 while Witness #1 was in the truck. Mr. Otuafi walked back across the street to Witness #4's residence and into the backyard.

A short time later, police officers arrived. Witness #7 recognized them as police officer based on their uniforms and police vehicles.

Witness #7's cousin Witness #10 then pulled up on a gold GMC Envoy with Witness #7's two daughters in the car. Witness #10 told Witness #7's kids to stay in the car. Witness #10 went to Witness #4's residence with Witness #2. Police officers told Witness #7 and Witness #2 to go inside Witness #4's residence. Witness #7 and Witness #2 did so. Within a minute, Witness #7 heard several gunshots. Witness #7 then saw police officers looking for Mr. Otuafi. Witness #7 saw Mr. Otuafi across the street at his residence. Mr. Otuafi was standing near the GMC Envoy with the shotgun in hand. Mr. Otuafi then began walking out into the street. Witness #7 began walking out into the street to help her kids. A female officer told Witness #7 to go back inside. Witness #7 told the officer about her kids in the Envoy. While walking back into Witness #4's residence, Witness #7 heard several more gunshots. At one point, Mr. Otuafi went back into the garage of his residence and came back out, shooting several more times.

Witness #7 was scared for Witness #1's safety based on the fact that Mr. Otuafi had shot at Witness #1. However, Witness #7 did not believe that Mr. Otuafi would kill Witness #1. Witness #7 recalled that several days before this incident, Witness #1 took Mr. Otuafi to get rid of the shotgun because Witness #1 did not want the gun in the house. A day later, Mr. Otuafi came back with the shotgun.

**Witness #8** was interviewed by Detective Radeleff of the San Bernardino County Sheriff's Department on September 28, 2009.

On September 27, 2009, at approximately 6:30 p.m. Witness #8 drove southbound on Maple Avenue with his girlfriend, Witness #9. At that time, he turned westbound on Barbee Street and observed Sione Otuafi kneeling on the south side of Barbee Avenue, west of Maple Avenue. Witness #8 saw Otuafi attempting to load what appeared to be a "Daisy-type style pellet gun." Witness #8 saw people outside near Otuafi, so he assumed the gun was fake – he believed that if the gun were real, the people he noted would have been panicking, which they were not.

**Witness #9** was interviewed by Detective Warrick of the San Bernardino County Sheriff's Department on September 28, 2009.

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On September 27, 2009, Witness #9 was driving with her boyfriend Witness #8 on McWethy Street towards Maple Avenue. Witness #9 observed a male subject between the sidewalk and a field holding a long black gun. The subject pointed the gun at the ground and appeared to be loading it. A female came out of the residence on the northwest corner of Maple Avenue and Barbee Street and yelled at the subject to come inside. Arango also noticed a number of other people outside near the residence. Some of the people were loading items into a white truck or SUV. Children were in car seats inside the SUV.

### **INCIDENT SCENE INVESTIGATION**

**Detective John Gaffney** reported a description of the incident scene. The scene was primarily contained from the north side of Foothill Boulevard and Maple Avenue in the City of Fontana. The scene extended north on Maple Avenue to the north side of Barbee Street. Barbee Street terminates into Maple Avenue. The only structures on Maple Avenue within the crime scene were on the east side and included a single-family residence at the 400 block of Maple and a 2-building apartment complex also at the 400 block of Maple. The 400 block of Maple Avenue is bordered by fields on two sides. The 2-building apartment complex on the 400 block of Maple Avenue had two driveways into the apartment complex, each secured by a 6-foot wrought-iron gate. The north gate was closed. The south gate was open about 4 feet. The scene extended to the 18000 block of Barbee Street to the west. This was the only residence on Barbee Street within the scene.

In the westbound lane in front of Sione Otuafi's driveway at the 18000 block of Barbee Street, was a pump-action shotgun. The gunstock had been cut off the shotgun and wrapped with black electrical tape. The end of the barrel of the shotgun was expanded and split. It was unclear whether the gun was damaged during this incident or the damage was pre-existing. About 10 feet west of the shotgun was a stainless-steel knife with black electrical tape wrapped around the handle.

Several vehicles relevant to the investigation were parked within the scene. The locations of those of note are as follows:

- Black Pontiac Fiero: southern-most vehicle on Maple Avenue opposite the southern driveway of the 400 block of Maple Avenue apartment complex.
- Silver Honda Accord: Dirt shoulder 10 feet north of the Pontiac Fiero.
- Rialto Police Car #R902: Parked with engine running in the northbound lane opposite the Silver Accord.
- Rialto Police Car #R907: Parked with engine running and emergency lights on facing northwest in the southbound lane of Maple Avenue.
- Rialto Police Car #211: 8 feet north of car #R902.
- Silver Lexus ES350: 6 feet north of car #R211.
- Rialto Police Car #R904: Across from north apartment driveway at the 400 block of Maple Avenue.
- Black Chevrolet Trail Blazer: In front of Sione Otuafi's residence at the 18000 block of Barbee Street.

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- Gold GMC Envoy: Parked in Sione Otuafi's driveway at the 18000 block of Barbee Street facing north.
- Dodge Ram 2500: Parked in Sione Otuafi's driveway west of the GMC Envoy facing northwest.

A number of fired cartridge casings (FCC's) were located at the scene at various locations. Their locations are as follows:

- (1) Across from the southern driveway at the 400 block of Maple Avenue, 10 feet north of a parked Pontiac Fiero.
- (7) On the east sidewalk of Maple Avenue immediately west of a silver Lexus ES350.
- (3) In the street opposite the north apartment driveway at the 400 block of Maple Avenue.
- (1) Near the middle of the street east of patrol car #R904.
- (1) 3-feet north of the previous FCC.

A number of shotgun shells and wads were located at the scene at various locations. Their locations are as follows:

- (1) wad near the middle of the street, east of patrol car #R904.
- (1) shot shell in the gutter in front of the 18000 block of Barbee Street.
- (1) wad 18 feet west of the previous shot shell.
- (1) shot shell in the chamber of Sione Otuafi's shotgun.
- (1) shot shell on the west side of the driveway at the 18000 block of Barbee Street.
- (1) shot shell in 3-tiered water fountain on the front porch at the 400 block of Maple Avenue.

Examination of Officer Martinez's duty weapon revealed that he fired seven rounds during the incident. Examination of Officer Javier Pulido's duty weapon revealed that he fired two rounds during the incident. Examination of Officer Mendez's duty weapon revealed that he fired one round during the incident. Examination of Officer Bradic's duty weapon revealed that he fired five rounds during the incident.

**INJURED PARTIES**

**INJURIES.** Officer Martinez suffered (3) gunshot wounds, (2) to his right thigh and (1) to his left shin. Sione Otuafi suffered a gunshot wound to his left rear heel. Otuafi further suffered a 1.5 inch circular abrasion to the upper portion of his left eye. Otuafi refused to make a statement to law enforcement about the incident.

**TOXICOLOGY.** Blood toxicology revealed the presence of cannabinoids in Sione Otuafi's system at the time of testing. Blood testing further revealed that Otuafi had a Blood Alcohol Concentration of .14% at the time of testing.

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**CRIMINAL HISTORY.** Sione Otuafi faced criminal charges as a result of his actions in this case. The criminal case was resolved prior to this officer involved shooting review.

Case No. FVA901605            Convicted on 10/13/2011 of 2 counts of Penal Code section 664/187(a) [attempted murder with firearm use] (felonies). Sione Otuafi found not guilty by reason of insanity as to those charges. Sentenced to maximum time of commitment in state hospital of 25 years to life.

Sione Otuafi has been convicted of the following:

Case No. FVA022173            Convicted on 09/30/2004 of Penal Code section 69 [obstructing/resisting and executive officer] (felony). Sentenced to 16 months in state prison.

Case No. MVA044832            Convicted on 09/30/2004 of Penal Code section 594 subdivision (b)(1) [vandalism] (misdemeanor). Sentenced to 30 days jail as terminal disposition.

Case No. SF012518A            Convicted on 12/21/2005 of Penal Code section 69 [resisting/obstructing an executive officer] (misdemeanor). Sentenced to 16 months state prison.

Case No. FSB703327            Convicted on 04/24/2008 of Penal Code section 243 subdivision (d) [battery causing serious bodily injury] (felony). Sentenced to 2 years state prison.

**APPLICABLE LEGAL PRINCIPLES**

A peace officer may use reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a)<sup>7</sup> Should the arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense or to use reasonable force to effect that arrest. (*Id.*)

An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22

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<sup>7</sup> All references to code sections here pertain to the California Penal Code, as they existed at the time of the incident. Significant modifications were made to sections 196 and 835a pursuant to Assembly Bill 392. (Assem. Bill No. 392 (2018-2019 Reg. Sess.) as Chaptered August 19, 2019.) However, those modifications became effective on January 1, 2020 and do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

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Cal.App.4<sup>th</sup> 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, citing *In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

**PENAL CODE SECTION 196.** Police officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Penal Code §196 states that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are charged with a felony and who are fleeing from justice or resisting said arrest. Application of the section is broader than on its face; formal written charges are not required. (*People v. Kilvington* (1894) 104 Cal. 86, 92.) 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.)

The relevant criminal jury instruction, as written by the Judicial Council of California, is set forth in CALCRIM 507 ("Justifiable Homicide: By Public Officer"). As it may be relevant in this case, a justifiable homicide by a peace officer requires finding a that the police officer acted as follows:

- (1) while arresting a person charged with a felony who was resisting arrest; while overcoming actual resistance to some legal process; or while performing any legal duty, and
- (2) the officer had probable cause to believe that the decedent posed a threat of death or great bodily injury either to the defendant or to others.

(CALCRIM 507)

No variation of the word "reasonable" appears in Penal Code §196, but the principle as applied necessarily requires that an officer's conduct be reasonable. A homicide is justifiable under Penal Code §196 when the circumstances reasonably created a fear of death or serious bodily harm to the officer or to another. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349.) This standard under Penal Code § 196 is consistent with the Supreme Court standard for reasonable force as stated in *Garner, supra*, 471 U.S. at 11-12. Whether police actions are reasonable under Penal Code section 196 depends on the facts and circumstances known to the peace officer at the time of the arrest. This rule applies even if subsequent investigation reveals the suspect was not guilty of the suspected felony. (*Kilvington, supra*, 104 Cal. at 93.) Similarly, when a police officer reasonably believes a suspect may be armed, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.) California courts have held that



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when a police officer's actions are reasonable under the Fourth Amendment, the requirements of Penal Code § 196 are satisfied. (*Martinez v. County of Los Angeles, supra*, at 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at \*25.)

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

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

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
- (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.)

**IMMINENENCE.** “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.4<sup>th</sup> 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.)

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

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

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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.) When considered 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.4<sup>th</sup> 1125, 1147.) To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

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

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (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.”) 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.)

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

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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* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldridge v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 \*1, 27-28.)

The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4<sup>th</sup> at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases, the Supreme Court will surround the police with a fairly wide “zone of protection” when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because ‘the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.’

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

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

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

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

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

### ANALYSIS

This report evaluates the use of force of Officers Mike Martinez, Javier Pulido, Otto Mendez, and Ryan Bradic on September 27, 2009 in Fontana. We draw our conclusions here based upon the legal principles cited above and a careful examination of the case agent's submission in this case.

**Attempted Contact/Arrest.** At the time of the shooting, Officers Pulido, Martinez, Mendez, and Bradic were responding to a call of a man with a knife, which was subsequently upgraded to a man with a gun. At the time of their arrival, Officers Pulido and Breen were not immediately able to determine the location of the suspect, Sione Otuafi. Shortly after Officers Pulido and Breen arrived on Maple Avenue, they determined that Otuafi may be located to the rear of a nearby residence. When they approached the rear of the residence, they found Otuafi crouched down with a knife between his teeth and holding a shotgun, which was pointed directly at Officer Pulido. It is clear at that point that Otuafi knew or should have known Officers Pulido and Breen were police officers. Both wore Rialto Police Department uniforms and badges and were identified as law enforcement by numerous other witnesses at the scene, along with Otuafi himself. Otuafi's actions further indicate he knew Officers Pulido and Breen were law enforcement as upon contact, Otuafi jumped a nearby wall as if to escape potential arrest or even further police contact. Shortly after jumping over the wall, Otuafi contacted Officer Martinez who was positioned behind the driver's door of his marked Rialto Police Department patrol car. This contact provides further evidence that Otuafi knew or should have known that law enforcement was attempting to contact him as Officer Martinez was positioned near a marked patrol car and was also wearing his Rialto Police Department uniform. At that time of the contact with Officer Martinez, Otuafi had already pointed a gun at Officer Pulido and was therefore subject to arrest.

An officer has authority to use reasonable force to effectuate an arrest. The framework for determining what is "reasonable" is included in *Graham, supra*, which in turn informs the elements of Penal Code §197. Whether the officers were justified in their use of a firearm under the principles of self-defense and defense of others per Penal Code §197 involves a two-part analysis: (1) did the officer subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was the officer's belief in the

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need to protect himself or others from an apparent, imminent threat of death or great bodily injury objectively reasonable.

**Subjective Belief of Imminent Need to Protect.** Officers Pulido, Martinez, Mendez, and Bradic each provided detailed accounts of their recollection of the events leading up to the use of their firearms. Their subjective beliefs hinged upon what each of the officers knew at the time – they were responding to a call of a man with a knife, which had been upgraded to a man with a gun call. Thus, each knew that Mr. Otuafi was armed with one or multiple deadly weapons, including a firearm. At the time Officer Pulido contacted Otuafi, Pulido was able to confirm Otuafi possessed a firearm, which was pointed directly at Pulido. During the attempted arrest of Otuafi, each of the officers described a fear that they were going to be shot by Otuafi. Officer Martinez was in fact shot by Otuafi shortly after they came into contact with one another. Officer Martinez broadcasted that he had been shot over the radio, which provided the rest of the officers on scene, including Officers Pulido, Mendez, and Bradic, that Otuafi was willing to use his firearm against law enforcement in a deadly manner.

In sum, each of the officers had a subjective and honest belief of an imminent need to protect themselves and other officers. Officers Pulido and Bradic had been shot at by Mr. Otuafi. Otuafi ran directly at Officer Martinez, while pointing a shotgun at him. Officer Mendez observed Otuafi shoot at Officers Pulido and Bradic. Each of these circumstances justified the officers had a subjective belief of the imminent need to protect themselves or other officers.

**Reasonable Belief of Imminent Need to Protect.** More than the stated belief of each involved officer; however, the submission contemplated in total supports a finding that Officers Pulido, Martinez, Mendez, and Bradic had an objectively reasonable belief of the need to use deadly force to protect themselves and each other.

This police response situation demonstrates the ever-evolving nature of a police call-out. Initially, the call was for a man with a knife, which was quickly upgraded to a man with a gun. This vague information objectively expressed the potential of life-threatening nature upon police arrival at the scene, without specificity that could enable a more tactical response from law enforcement upon their arrival.

At the time Martinez fired his gun, Mr. Otuafi had just jumped a wall and was running in Martinez's direction with a shotgun at waist level, pointed at Martinez. Only then did Officer Martinez fire 2 or 3 shots at Otuafi. As Otuafi continued to run towards Martinez, pointing the gun at Martinez, Martinez fired 3 or 4 more shots at Otuafi. Otuafi was undeterred and continued running along Maple Avenue. At that time, Otuafi opened fire on Martinez, striking Martinez in the right thigh. Otuafi then continued into an unsecured address on the northwest corner of Barbee Street and Maple Avenue and into the garage of that residence. At that time, it was unclear what Otuafi's intentions were or whether additional firearms or weapons were present at that location. Otuafi returned with the same shotgun and fired two times in the direction of officers south of Martinez. Martinez then returned fire, firing one shot in the direction of Otuafi. It was objectively reasonable for Martinez to fire his gun on the first two occasions. At that time, a suspect with

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unknown intentions was running at Martinez with a gun pointed at him for an extended period and while closing the distance between the two. A reasonable fear emerged the second Otuafi pointed the shotgun at Officer Martinez, thus justifying Martinez's use of his firearm on the first two occasions. On the third occasion Martinez had already been shot. He also observed Otuafi fire his shotgun at other officers. These circumstances presented a reasonable belief of the need to protect the officers to the south of Martinez's direction. Thus, Martinez reasonably believed there was an imminent need to protect his fellow officers.

Prior to Officer Pulido firing his firearm, he had already observed Mr. Otuafi crouched holding a shotgun pointed directly at him. He then observed Otuafi jump over a wall and heard two gunshots, which sounded like a shotgun. None of the officers were equipped with a shotgun. He then heard Officer Martinez announce over the radio that he was being shot at. Thus, Pulido had a reasonable belief that deadly force had been used against a fellow officer. When Pulido returned to the front of the residence, he took cover behind a vehicle. At that time, he again observed Otuafi point the shotgun in his direction and again this time open fire. At that time, fearing for his safety and the safety of the other officers, Officer Pulido fired one shot in the direction of Otuafi. Thus, only once Otuafi had fired at him did Pulido return fire. This presented a reasonable belief to Pulido that deadly force was necessary at the time Pulido fired at Otuafi.

At that time Officer Mendez used his firearm, he was responding to a scene where he had already heard over his radio that shots had been fired. Officer Mendez responded to the scene, activating his lights and sirens, evidencing he found urgency in his response time. Mendez took cover behind a Honda Accord and heard a gunshot fired by Mr. Otuafi. Mendez then reported observing Otuafi pointing his shotgun at other officers to his east and firing the gun. Mendez fired one round at Otuafi. Thus, at the time Officer Mendez fired, he had already heard that Otuafi was firing and had observed another shot being fired at fellow officers. These facts present a reasonable belief of the imminent need to protect himself and his fellow officers.

Officer Bradic also fired his weapon during this exchange. Approximately 30 seconds prior to his arrival at the scene, Bradic heard Officer Martinez announce over the radio that shots had been fired. Upon arrival at the scene, Bradic took cover with Officer Pulido behind a silver vehicle on the east side of Maple Avenue. At the time he fired, Officer Bradic was positioned directly behind Officer Pulido. At that time, Mr. Otuafi fired a shot in the direction of Officers Pulido and Bradic. Bradic heard the shotgun pellets skipping along the ground and hitting the vehicle he and Pulido were behind. In response, Bradic fired two times in a controlled manner at Otuafi. Once Otuafi fired a round in Officer Pulido's direction, Pulido clearly had a reasonable belief in the need to protect himself. Enhancing that need was the fact that Otuafi fired again in his direction. As a response, Bradic fired two more shots in self-defense. Not knowing whether Otuafi would continue firing, Pulido also had a reasonable belief in the need to protect his fellow officers when he fired his pistol on each occasion.

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**CONCLUSION**

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Officers Pulido, Martinez, Mendez, and Bradic was justifiable in self-defense and the defense of others. Accordingly, no criminal liability attaches in this case.

**San Bernardino County District Attorney's Office**

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