



PUBLIC RELEASE MEMORANDUM

Date: December 20, 2021

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

Involved Officer: Deputy Cesar Montes,
San Bernardino County Sheriff's Department

Involved Subject: Armando Juarez (DOB 11/27/1979)
Subject's Residence: Los Angeles, CA

Incident Date: September 20, 2020

Case Agents: Sergeant Simon DeMuri
Detective Justin Carty
San Bernardino County Sheriff's Department

Agency Report #: 072002721/602000171

DA STAR #: 2021-15858

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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 case agent for this submission was SBCSD Sergeant Simon DeMuri.¹

The submission reviewed included the following: reports of law enforcement witnesses, a transcript of the interview of the shooting deputy, dispatch audio recordings, audio recordings of law enforcement and civilian witness interviews, law enforcement photographs, medical records and law enforcement scientific investigation reports.

FACTUAL SUMMARY

On September 20, 2020, at approximately 10:34 p.m., SBCSD Deputy Cesar Montes fired his duty pistol at 40-year-old Armando Juarez in front of a residence in Lucerne Valley. Mr. Juarez sustained non-life-threatening injuries and was treated at Loma Linda University Medical Center (LLUMC). No law enforcement officer sustained physical injury during the encounter.

The officer-involved shooting was the culmination of a series of events set into motion about 10 minutes prior. At approximately 10:24 p.m., SBCSD deputies were dispatched to a single-family residence on the 32000 block of Spinel Road in Lucerne Valley in response to a 9-1-1 call initiated by [REDACTED] ("Victim"). Victim told the dispatcher that her boyfriend—Armando Juarez, had threatened to shoot and kill her. Victim also reported that Mr. Juarez was trying to kidnap her and steal her car. Victim specified that Mr. Juarez had a handgun. Victim also told the dispatcher that Mr. Juarez had already kidnapped her earlier in the day but that she managed to escape him and return to her home. At the time she called for help, Victim stated she was hiding in her bathroom. Victim's three roommates, including an elderly couple, were asleep inside the home. Victim reported that Mr. Juarez was outside of her house and armed with a gun and a switchblade knife. At one point during the emergency call, Victim left her hiding place and told the dispatcher that she believed Mr. Juarez had left. Shortly thereafter, Victim reported hearing Mr. Juarez to the front of her house once more. Victim believed that Mr. Juarez was revving her car engine and banging on her window. Then, Victim told the dispatcher that Mr. Juarez was trying to get in through the front door. Less than two minutes after that, Victim told the dispatcher that she could see "a cop" had arrived and was engaging Mr. Juarez.

Deputy Montes had arrived at the scene in a marked SBCSD patrol unit, wearing a department-issued uniform with SBCSD insignia. Multiple units were dispatched to the scene, but Deputy Montes was the first unit to arrive. While driving to the location of the call, Deputy Montes was advised that the disturbance involved a boyfriend (Mr. Juarez) who had threatened a girlfriend

¹ This case was originally submitted for review to the San Bernardino District Attorney's Office by (then) Detective DeMuri. Subsequently, Detective DeMuri was promoted to sergeant and transferred. Upon Sergeant DeMuri's promotion and transfer, this case was assigned to SBCSD Detective Justin Carty.

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(Victim) with a handgun. In general, Deputy Montes appreciated that domestic violence calls tended to be dangerous for responding law enforcement. In addition, Deputy Montes was advised that there had been several such disturbances at that location. The dispatcher also alerted deputies that Mr. Juarez still had the gun with him and may have also had a switchblade knife. In addition, Mr. Juarez was identified as being wanted for a violation of felony supervised release and felony receipt of stolen property. Although Deputy Montes heard initially that Mr. Juarez left the scene, shortly before Deputy Montes arrived, he received an update that Mr. Juarez had returned.

Upon arriving at the scene, Deputy Montes saw Victim's car in front of the house with its running lights on. The house sat elevated from the street and was primarily accessed by an abutted downward-sloping concrete driveway. Deputy Montes activated his overhead light bar floodlights and emergency lights. From the street, Deputy Montes saw Mr. Juarez was not in Victim's car, but instead sitting on an all-terrain motorcycle or "quad" with his hands on the handlebar and facing downwards (towards the deputy). The quad Mr. Juarez sat on was positioned to the rear of Victim's car. Deputy Montes parked his patrol unit in the street, blocking the driveway.

Deputy Montes stepped out of his unit, took a few steps up the concrete driveway. The deputy drew his handgun and turned on the attached tactical light. Deputy Montes saw that Mr. Juarez was bald, shirtless and wearing extremely baggy jeans. Deputy Montes immediately recognized the large and bold tattoos on Mr. Juarez's body as gang tattoos causing the deputy to believe Mr. Juarez may be associated with a dangerous criminal street gang.

Deputy Montes ordered Mr. Juarez to get off the quad, twice. Five seconds after the second command, Mr. Juarez reluctantly complied. Simultaneously, it appeared to Deputy Montes that Mr. Juarez was asking what he had done. Then, Deputy Montes saw that Mr. Juarez immediately grabbed his waistband with his left hand and reached his right hand into his pocket. Deputy Montes stated that Mr. Juarez's pants were so baggy that Mr. Juarez's entire right forearm was concealed when Mr. Juarez reached into his pant pocket. Deputy Montes maintained his own position and ordered Mr. Juarez not to reach for his waistband, not to put his hand in his pocket and to get on the ground. Mr. Juarez ignored Deputy Montes and continued to dig into his pocket. Deputy Montes then asked Mr. Juarez what was in his pocket. In response, Mr. Juarez kept digging in his pocket, turned away from Deputy Montes and began to walk west toward a less illuminated area. Deputy Montes was drawn to move further up the concrete driveway to maintain visual of Mr. Juarez. As Deputy Montes moved, Mr. Juarez abruptly pivoted to his right and the deputy saw Mr. Juarez's right elbow flare out to the side. From a distance of approximately 15-25 yards, it appeared to Deputy Montes that Mr. Juarez was pulling something out of his pocket. In that moment, Deputy Montes believed that Mr. Juarez was pulling out a firearm and was reaching back to point it at and shoot the deputy. In response, Deputy Montes fired at Mr. Juarez. Mr. Juarez was struck and fell to the ground. Deputy Montes took cover and radioed, "Shots fired. I got one down." No other law enforcement was present at the time shots were fired.

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As Mr. Juarez lay on the ground, Deputy Montes warned Mr. Juarez that he would shoot again if Mr. Juarez reached for anything. Deputy Montes then approached and handcuffed Mr. Juarez. Deputy Montes searched Mr. Montes for weapons and rolled Mr. Juarez onto his side and into a "rescue position." A black cell phone was on the ground within Mr. Juarez's reach. Within ten minutes, additional deputies and an ambulance arrived. Mr. Juarez received medical treatment at the scene and was transported to the hospital. Mr. Juarez was discharged from LLUMC approximately 13 and a half hours later.

After an examination of the scene and the collection of evidence, a total of four fired cartridge casings (FCC's) were recovered that were attributable to the semi-automatic pistol fired by Deputy Montes. The weapon used by Deputy Montes was collected and examined by a SBCSD Scientific Investigations Division (SID) Criminalist. No damage or malfunction was noted in the deputy's weapon. No other weapons were discovered at the scene.

STATEMENTS BY LAW ENFORCEMENT OFFICERS²

Deputy Cesar Montes gave a voluntary interview to Detectives Malcom Page and James Tebbetts, on October 12, 2020, approximately 22 days after the officer-involved shooting.

At the time of the shooting incident, Deputy Montes was 35 years old and had been a sheriff's deputy for almost four years. Deputy Montes wore a SBCSD Class-A Uniform, including green pants and a tan short-sleeved shirt with SBCSD patches on both shoulders, a metal SBCSD star badge on the left chest, and an American flag and nameplate on his right chest. Deputy Montes's duty weapon was a Glock 34, 9mm caliber semi-automatic pistol that he had previously loaded with 17 total rounds.

On the evening of September 20, 2020, Deputy Montes was on duty and assigned to patrol areas of Lucerne Valley beginning at 5:00 p.m. During his shift, Deputy Montes recalled hearing broadcast over the radio that a woman had reported her boyfriend pointed a gun at her, threatened her, took her car keys and was taking her car. Deputy David Waters was dispatched as the primary responding unit to the call and Deputy Montes affirmed he would be the secondary or "backing" unit. After conferring with Deputy Waters, it was determined that Deputy Montes would be the first to arrive at the scene due to their locations relative to the call location.

Prior to arriving at the scene, Deputy Montes received information that the reporting party (Victim) provided the suspect's name (Mr. Juarez) and date of birth. Victim also told the dispatch operator that Mr. Juarez was armed with a gun and switchblade knife. Dispatch provided Deputy Montes with Mr. Juarez's driver's license, physical description, and a list of Mr. Juarez's past crimes. Deputy Montes received information that Mr. Juarez was wanted for a

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

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violation of his post-release community supervision terms and felony receipt of stolen property. Dispatch alerted Deputy Montes that the reporting party was hiding in the bathroom and that Mr. Juarez was at the property. Deputy Montes recognized based upon his training and experience that calls involving domestic violence are more dangerous to deputies because the emotions of the involved parties are "amped up."

Deputy Montes initially intended to assess the scene from afar before making any contact with Mr. Juarez. However, when Deputy Montes arrived at the scene, he noticed the residence sat elevated from the street and he could not approach or assess without being detected by Mr. Juarez. In addition, Deputy Montes felt an exigency arise upon learning that Mr. Juarez had returned to the location, had been "on the run" for a couple years from his felony warrants, and might be so desperate to avoid arrest that once Mr. Juarez saw the deputy arrive, that Mr. Juarez may harm Victim and her roommates or take them hostage in retaliation for Victim calling the police.

As Deputy Montes got out of his patrol unit, Mr. Juarez was sitting on an ATV approximately 20 yards away, facing down the residence driveway at the deputy. Deputy Montes saw that Mr. Juarez had a shaved head, no shirt and tattoos consistent with gang membership in or affiliation with a dangerous criminal street gang. Victim's car was in front of the residence with its running lights on. Deputy Montes parked his unit in the street in front of the driveway to keep Mr. Juarez from fleeing and turned on his patrol unit flood lights. Deputy Montes got out of his patrol unit, drew his side arm and turned on his firearm tactical light. Deputy Montes ordered Mr. Juarez to get off the quad. Deputy Montes believed Mr. Juarez to be asking in response, "Why?" and "What did I do?" Deputy Montes repeated the order and after a five second delay, Mr. Juarez got off the ATV and faced Deputy Montes.

Immediately after dismounting the ATV, Deputy Montes saw Mr. Juarez simultaneously grab the left waistband of his baggy jeans with his left hand and dive into his right front pant pocket with his right hand. Mr. Juarez's pants were so big that his entire right forearm was concealed when he reached into his front pocket. Deputy Montes reflexively ordered Mr. Juarez not to reach for his waistband and not to reach into his pocket. Deputy Montes also ordered Mr. Juarez to get on the ground. Mr. Juarez ignored all of those commands. Deputy Montes stated that he was afraid that Mr. Juarez was concealing a firearm in his pocket and was reaching for it. Deputy Montes asked Mr. Juarez what he had in his pocket. Mr. Juarez ignored Deputy Montes's question, turned his back to Deputy Montes and began walking towards the darker areas and bushes in the yard while continuing to dig into his right pocket. Deputy Montes believed that Mr. Juarez had no other reason to reach in his pocket other than to draw his own gun and point it at the deputy.

To maintain his view of Mr. Juarez, Deputy Montes walked further up the driveway, without cover. As Deputy Montes started moving, he saw Mr. Juarez make a "very quick and deliberate motion" towards the deputy. Mr. Juarez pivoted his right shoulder and upper-body and his right hand began to come out of his pocket. Deputy Montes described Mr. Juarez's right elbow as flaring out to the side. Deputy Montes explained that in that moment, he believed that Mr. Juarez was finally able to gain control of the firearm in his pocket and was reaching back to pull it out

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and shoot Deputy Montes with it. Then, from approximately 15-25 yards, based upon all of his observations and information provided by dispatch, Deputy Montes “made a split-second decision” to fire his handgun at Mr. Juarez. Deputy Montes believed that it would only take Mr. Juarez a second and a half to shoot him and “wasn’t willing to take that gamble to find out what was coming out of his pocket.” Deputy Montes believed he fired three times at Mr. Juarez.

Deputy Montes stated that he stopped firing as soon as he saw Mr. Juarez was bleeding and fell to the ground. Deputy Montes moved forward for cover and alerted dispatch that shots had been fired. Deputy Montes stated that Mr. Juarez thereafter complied with commands and the deputy was able to approach, handcuff Mr. Juarez and roll Mr. Juarez into a “rescue” position. Deputy Montes searched Mr. Juarez for weapons and determined Mr. Juarez was unarmed. Deputy Montes did see that there was a black cell phone within Mr. Juarez’s reach. Within five minutes, another SBSO marked unit and an ambulance arrived at the scene to render medical aid to Mr. Juarez. Deputy Montes stated that he was not physically injured during the incident.

Other SBCSD Personnel submitted narrative reports regarding their presence at the scene of the shooting incident. Deputy Jeremiah Vanbrimmer arrived in a marked SBCSD unit approximately 10 minutes after the shooting occurred; Deputy Vanbrimmer was the first deputy to arrive at the scene after Deputy Montes. Upon his arrival, Deputy Vanbrimmer saw Mr. Juarez on the ground, holding his right arm near his right side as Deputy Montes stood over him. San Bernardino County Fire Department (SBCFD) paramedics arrived at about the same time and began to render aid to Mr. Juarez. Deputy David Waters was the primary unit dispatched as a result of Victim’s call, but he arrived at the scene approximately 12 minutes after the shooting occurred. By the time Deputy Waters arrived, Mr. Juarez was already inside an SBCFD ambulance and getting ready for transport.

SBCSD Criminalists were tasked with examining evidence. The weapon fired by Deputy Montes during the lethal force encounter was collected and found to be Glock semi-automatic pistol, model 34 Gen4, 9mm Luger caliber. Deputy Montes’s pistol was test-fired and determined to be functioning normally.

Several hours after the incident, a sample of Mr. Juarez’s blood was retrieved and submitted to BioTox Laboratories for examination. The blood sample was analyzed and found to contain 210 ng/mL of methamphetamine and 11 ng/mL of amphetamine. Mr. Juarez’s blood also contained .107 percent weight/volume of ethyl alcohol.

STATEMENTS BY CIVILIAN WITNESSES³

Civilians who lived at or near the scene were interviewed by SBCSD personnel on the night of the shooting. Although all of Victim’s roommates were at home at the time of the shooting, they

³ Multiple civilian witnesses were interviewed pursuant to the submitted investigation. Every civilian statement and recorded statement submitted was reviewed in totality. However, only selected parts of those statements are included here. Mr. Juarez’s name is included in this summary for ease of reference only.

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were all in their respective bedrooms. Only one of the roommates heard the gunfire. After hearing the gunfire, this roommate came out of his room and saw the "cop lights" in the front yard. This roommate also stated that one could tell by looking at Mr. Juarez, that Mr. Juarez was a "gang-banger or gang-banger affiliated." All of Victim's roommates had seen Mr. Juarez at their home previously.

Other than Victim, no eyewitnesses specifically of Deputy Montes's arrival at the scene, confrontation with Mr. Juarez or the shooting event were identified.⁴

Victim was interviewed by Detectives DeMuri and Page at the Lucerne Valley SBCSD station about four and a half hours after the shooting occurred. Victim identified Mr. Juarez as her boyfriend of approximately four to five months, who stayed at her residence occasionally. Victim described her boyfriend as a "gangster" or "tough guy," who would get violent over little things. Victim told detectives that this was the third time that Mr. Juarez had threatened to kill her. A month prior and twice in the same week, Mr. Juarez threatened to kill her, her roommates and her dog. On each of those occasions, Victim called the police and reported to the responding officer that she was physically assaulted. However, each time, Mr. Juarez left before the police arrived.

Victim told detectives that on the morning before the shooting, Mr. Juarez became angry with her while they were out getting food. Victim stated that she and Mr. Juarez argued and returned to her home, where Mr. Juarez proceeded to point a gun at her chest and face while saying, "I will, don't play me...I will use it." Victim stated that she was about six to eight feet away from Mr. Juarez when he did this, but that Mr. Juarez did not pull the trigger. Instead, Mr. Juarez told Victim to go with him to pick something up at a friend's house. Victim refused and told Mr. Juarez to take her car and go without her. Victim finally relented and started to gather her phone and purse when Mr. Juarez told her, "You're not going to need that where you're going" and refused to allow her to bring personal items. Mr. Juarez kept the gun in his hand and then put it on his right hip. Victim got into her car's passenger seat and Mr. Juarez drove them to his friend's house. After they arrived, Mr. Juarez told Victim not to move and that he would be right back. Yet, as soon as Mr. Juarez went into the house, Victim got out of her car and hid in the truck bed of a truck in the driveway. When Mr. Juarez returned and couldn't find Victim, he left in Victim's car.

Victim fell asleep while she hid. When she woke up several hours later, Victim came across someone who gave her a ride home. Upon returning home at 5:00 p.m. or 5:30 p.m., Victim saw neither Mr. Juarez nor her car were there. Victim immediately changed the locks on the front door and her bedroom door because she knew Mr. Juarez had her house keys. Victim then texted Mr. Juarez and told him that if he did not return her car by midnight, that she would call the police. In response, Mr. Juarez told Victim that he would damage her car.

⁴ Deputy Waters contacted a civilian witness who claimed that he, his wife and cousins were outside of their residence and "watched the whole thing." However, no subsequent investigation was completed as to what exactly the civilians saw.

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Victim approximated that Mr. Juarez returned to her home with her car at 10:30 p.m. Victim stated that Mr. Juarez began banging hard on the front door and bedroom window (which was to the front of the house). Victim stated that she knew Mr. Juarez had his gun and did not go outside. She heard Mr. Juarez say, "We're all dying tonight." Victim believed that Mr. Juarez would shoot her and her roommates. Victim became frightened. She believed that Mr. Juarez might try to shoot at her through her bedroom window. Victim hid in the bathroom to call the police. Soon thereafter, Victim believed that Mr. Juarez had left. Then, she heard Mr. Juarez return, driving fast and revving her car engine.

Victim described Mr. Juarez's gun as a "ghost gun." Victim stated that Mr. Juarez put the gun together two weeks prior to the incident while at her house and that it was a "real gun" capable of shooting bullets. Victim stated that since he got the gun, Mr. Juarez always had the gun in his pocket or inside his belt or pants.

Victim stated that she saw the police arrive within 10 minutes of calling 9-1-1 and that she saw the red and blue lights of the responding officer. Victim went to the living room window and heard Mr. Juarez and the officer yelling. Victim recalled hearing Mr. Juarez say, "[Victim], why did you call the cops?" "Come out." "Why would you do this to me?" "Why?" Mr. Juarez was near his quad but moved away from it and towards her car when she heard three or four gunshots ring out. Victim could not see either Mr. Juarez or the police officer when shots were fired. But she did hear Mr. Juarez say, "why did you shoot me?" and "[Victim], I'm sorry."

Victim recalled that Mr. Juarez drank two or three little bottles of alcohol on the day of the shooting and smoked heroin the night before. Victim was aware that Mr. Juarez had been arrested and been to prison before. Victim stated that Mr. Juarez was "not okay" with police, has had bad experiences and "tries to avoid contact with [police]."

INCIDENT AUDIO/VIDEO⁵

Dispatch Recordings. The case agent's submission included audio files containing dispatch radio broadcasts and the reporting party's 9-1-1 call for service. It is unknown whether the dispatch recordings submitted reflect real time. Additionally, the actual timing of the recordings is also not apparent from the recordings themselves, except to make approximations based upon the audio content. There is some indication of timing when the audio recordings are considered alongside the dispatch logs prepared by SBCSD, which notes approximate timestamps for radio communications delayed only by the time to receive and record the information. With those limitations in mind, the following is a summary of the relevant submitted recordings:

9-1-1 Call. SBCSD dispatcher received the emergency call as a transfer at approximately 10:24 p.m., on September 20, 2020. The recording is approximately 10

⁵ All submitted audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are summarized here.

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minutes and 35 seconds long [10:35]

Victim: [26] *Hi, yes, I was just calling about um, Huero. Huero, he's my boyfriend. Who, he's been threatening to kill me with his gun that he's got and he's stealing my car right now. And he's threatening...he wants me to come outside and he's going to kidnap me and take me. He's just being an idiot..he's threatening...*

Dispatch: [43] *What's your address?*

Victim stated the residence address and proceeded to identify herself by name, as well as Mr. Juarez by nickname and first and last name.

Dispatch: [1:16] *Ok. So, he's threatening you with a gun?*

Victim: [1:21] *Yeah.*

Dispatch: [1:23] *What kind of gun? Was it a handgun or a long gun?*

Victim: [1:25] *It's a handgun.*

Dispatch: [1:26] *When was that?*

Victim: [1:28] *Uh, just a little while...just right now. He's in my yard, parking. He has my keys. He grabbed my...he stole my keys to my car. And he's been driving around in the neighborhood like just driving like a maniac and making all kinds of crazy ruckus and threatening and wants me to come outside. He took me earlier today and I got out, I escaped. I got away. I came home and he's since then has my car.*

Dispatch: [1:53] *What's his birthday?*

Victim: [1:54] *Its uh 11-27, um, 70, wait, 11-27-79.*

Dispatch: [2:03] *And he's outside currently?*

Victim: [2:05] *Yes.*

Victim: [2:08] *In your vehicle?*

Victim: [2:09] *In my vehicle, yes. It's a Ford Mustang, an 0-8 Ford*

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Mustang.

Dispatch: [2:13] *What color?*

Victim: [2:14] *Its blue. Baby blue.*

Dispatch: [2:17] *Has he been drinking?*

Victim: [2:14] *Yes. I believe he has. Yes.*

Dispatch: [2:24] *Does he do any drugs?*

Victim: [2:25] *I don't know, I don't think so.*

Dispatch: [2:28] *Where's the gun?*

Victim: [2:29] *He has it on him.*

Dispatch: [2:32] *Is the vehicle with him?*

Victim: [2:34] *Yes, uh huh.*

Dispatch: [2:38] *Who else is in the house with you?*

Victim does name three roommates who were described as being asleep.

Dispatch: [2:58] *Ok.*

Victim: [3:16] *I hear him revving up my motor and just like, I don't know, banging stuff out there, I don't know why he's...oh my God.*

Dispatch: [3:25] *The deputies are going to be on their way...*

Victim: [3:28] *Ok.*

Dispatch: [3:29] *Does he have any other weapons on him if you know?*

Victim: [3:31] *Um, just like a knife, I think. He's got like a, like a switch blade type of knife, type of thing. And that's all I know.*

Dispatch: [3:46] *Doors and windows are locked?*

Victim: [3:48] *Yes, uh huh. yeah.*

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Dispatch: [3:53] *Does he live there with you?*

Victim: [3:54] *Um, no, he does not.*

Dispatch: [3:56] *Ok.*

Victim: [3:57] *He doesn't live here.*

Dispatch: [3:59] *But he was over there tonight?*

Victim: [4:01] *Yeah, well since earlier today, back and forth, like just off and on. Like just, uh...he's very violent.*

Dispatch: [4:19] *But it's your vehicle, right? The blue Ford.*

Victim: [4:21] *Yes, it's registered in my name, uh-huh.*

Dispatch: [4:30] *Ok. Alright. I'll stay on the phone with you if you like until the deputies get there for your safety. Keep me updated, if he's leaving in your vehicle again or if he's still there [unintelligible]*

Victim: [4:44] *Ok, I'm going to go look because I'm in the bathroom. Because I'm hiding in the bathroom. Let me go check. Hold on one second. Ohhh. I think he's... The car is not here but, let me see. I see his...He also drives a quad. I see that outside.*

Dispatch: [5:17] *Ok.*

Victim: [5:20] *Mmmm..I don't know what he did with my car, he's...*

Dispatch: [5:26] *You have the doors and windows locked?*

Victim: [5:29] *Yeah, my doors and windows are locked. And...he...looks like he pulled his quad um, outside. Like he drives a quad normally and it was here in my yard. It was in my backyard and he went out, he went back there and got it. It's in my front yard now. But my car is gone. I don't see him right now.*

Dispatch: [5:49] *Ok, so the vehicle is gone?*

Victim: [5:51] *Yeah.*

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Dispatch: [5:53] *And the quad is sitting in your yard.*

Victim: [5:55] *It's in the front yard, parked, yeah. Its his vehicle or his, uh, transportation.*

Dispatch: [6:01] *Ok. So you think he may have left in your vehicle?*

Victim: [6:11] *Yeah, I don't see it outside at all.*

Victim: [6:15] *Do you know the plate?*

Victim: [6:17] *Ummmm, possibly yes I do...I have it right here, um, I, let me see. It is...it is...my pink slip right here, let me see. Ok it is 6-X. I hear him revving my engine right now..X. Oh my God-S. Oh my God.*

Victim proceeded to give a full license plate number and told the dispatch operator, "*He just hit my window right now...banging on my window.*" After confirming the spelling of her last name, the dispatch operator also confirmed that Victim just heard the Victim's car's engine.

Victim: [7:29] *Yeah, I just heard it pull up right now in my front yard and I heard a big old bang on my window.*

Dispatch: [7:33] *Ok. Was it your vehicle or your quad engine?*

Victim: [7:44] *No, it was my vehicle.*

Dispatch: [8:05] *They're on their way, just keep me updated.*

Victim: [8:12] *Oh my God, he's trying to get in through the front door.*

Dispatch: [8:17] *Do you know what kind of gun it was that he had?*

Victim: [8:20] *It was a, like a 9 mm, more like a 40 caliber or something like that.*

Dispatch: [8:30] *Is it like a revolver?*

Victim: [8:32] *No, it's like a pistol.*

The dispatch operator tried to ascertain the caliber of the gun, but Victim was not sure.

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Dispatch: [8:54] *Do you know if its registered to him or do you know?*

Victim: [8:57] *No, I don't think it is. I doubt it.*

Victim: [9:23] [engine audible] *I hear his motor. His quad just started up right now.*

Dispatch: [9:27] *Ok.*

Victim: [9:29] *He's revving it up real loud.*

Dispatch: [9:36] *Alright, so you think he's leaving on his quad now?*

Victim: [9:39] *Yeah.*

Dispatch: [9:40] *Ok.*

Victim: [9:41] *I'm thinking. He's not wearing a shirt. It's like he's not wearing a shirt at all. [indistinct talking audible]*

Dispatch: [9:52] *Ok so no shirt, has he got shorts or pants on?*

Victim: [9:54] *Oh there's a cop. There's a cop. There's a cop. Yes. Oh God, I see the cops. Oh shit. Oh fuck.*

Dispatch: [10:04] *You see the deputy? Is he engaging him?*

Victim: [10:06] *Yes.*

Dispatch: [10:07] *Ok*

Victim: [10:08] *Yes, he's here. Oh my God. [siren and indistinct yelling audible] Oh fuck.*

The sound of gunfire is heard at [10:14], to which Victim exclaimed, "*Oh shit, oh shit*" and began to cry.

Dispatch: [10:16] *What happened?*

Victim: [10:18] *I heard gunshots. I heard gunshots out there. What? I heard gunshots. He's shooting the cops. The cops are here.*

Dispatch: [10:29] *Ok, I'm going to let you go. Stay inside until the deputies come.*

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Victim: [10:32] *Ok, ok, ok, thank you.*

Dispatch: [10:34] *Ok.*

Dispatch Radio Broadcast. The initial broadcast on Victim's 9-1-1 call aired at 10:27 p.m. The dispatcher alerted units of a "415" disturbance between a boyfriend and girlfriend, where the girlfriend reported her boyfriend threatened her with a handgun and grabbed the keys to her vehicle. The boyfriend was reported to be outside, in a blue Mustang. Next, the dispatcher relayed that there have been several calls for service to the location for other disturbances.

At 10:28 p.m., Deputy Waters was dispatched to the location and Deputy Montes immediately aired that he would be the backing deputy. The dispatcher proceeded to describe Mr. Juarez by name, age, possibly had been drinking and stated, "the gun is going to be located in the vehicle with him," and wanted for felony receipt of stolen property. Additionally, the dispatch operator advised that Mr. Juarez may be armed with a switchblade.

At 10:32 p.m., dispatch advised deputies that the reporting party heard her car engine rev-up and that Mr. Juarez was now in the yard. Although no radio traffic was aired, the call log indicated that Deputy Montes arrived at the scene at 10:34 p.m. Within approximately 30 seconds, the call log reflected that Victim saw the deputy had arrived. Ten seconds after that, the call log showed that shots had been fired. Then, at 10:35 p.m., Deputy Montes aired "11. Shots fired. I got one down." According to the call log, 23 seconds pass between the first notation of "shots fired" by the dispatcher, and the time Deputy Montes makes his "shots fired" announcement.

At 10:36 p.m., Deputy Montes radioed, "I got one in cuffs." At 10:40 p.m., Deputy Montes advised that the fire department was at the scene. The call log indicates that Mr. Juarez was being transported to the hospital at 10:52 p.m.

Belt Recordings. The submission included belt audio recordings from Deputies Vanbrimmer and Waters, both of whom arrived at the scene after Mr. Juarez had been taken into custody. Deputy Montes believed he initiated his belt recorder apparatus prior or during the incident but later discovered that the recording was only one second long due to a possible malfunction in the apparatus.

INCIDENT SCENE INVESTIGATION

The case agent managed the crime scene investigation with the assistance of a SBCSD Crime Scene Specialist. The shooting occurred in front of a one-story single-family residence in a rural residential area in the city of Lucerne Valley. The front door of the residence faced north from

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the middle of the north side of the residence. West of the front door, the living room window and Victim's bedroom window also faced north from the northwest quadrant of the home. The home had a two-car garage extended from the front of the northeast quadrant of the home. Two unrelated vehicles were parked facing the residence (south) side-by-side in front of the garage door. The home sat elevated approximately eight feet from the street. The garage could be accessed by a sloped concrete driveway from Spinal Road. The driveway had a north-south orientation. Spinal Road had an east-west orientation.

The shooting occurred in the dirt/gravel yard north of the northwest corner of the home and west of the concrete driveway. Victim's blue Mustang was parked in the front yard of the home, north of the Victim's bedroom window and faced south. The Mustang's driver's side door was open. Mr. Juarez's Yamaha ATV was parked immediately behind Victim's Mustang, near the Mustang's rear driver's side fender. The ATV faced the driveway at a northeast angle. Deputy Montes's marked SBCSD unit was parked on Spinal Road, parked at a slight southwest angle and blocked the driveway to the residence.

A blood spot marked with placard #3 was noted in the dirt/gravel yard, approximately three feet away from a black cellular phone. Placard #3 was approximately 85 feet from the front of Deputy Montes's patrol unit. For the purpose of this review, it is presumed that Mr. Juarez fell in the area of placard #3. Immediately surrounding this area was household debris of varying metal and wood composition, including tools, furniture, wood pallets, plywood, electronics and automobile parts. Bushes, trees and landscaping boulders also bounded the area north of placard #3.

It is further estimated based upon the location of placard #3, that Deputy Montes stood approximately 36.5 feet from Mr. Juarez when he fired his weapon. Deputy Montes's weapon and ammunition were collected and inventoried. Deputy Montes had a Glock, model 34 Gen4, 9mm Luger caliber semi-automatic pistol. The pistol contained one bullet in the chamber and 13 bullets in the loaded magazine, for a total of 14 bullets. Deputy Montes also had two spare magazines for his pistol, each of which contained 17 bullets. Four FCC that were marked identically as the remaining bullets in Deputy Montes's firearm were located at the scene, approximately 49 feet from placard #3.

Photographs taken of Mr. Juarez while he was receiving medical care at LLUMC showed he was bald, with "Sureno" tattooed in black on the left side of his head, above the ear. "Southerner" was tattooed in large black letters across the span of his chest, from his right to left shoulder. Mr. Juarez had other tattoos on his upper torso, up and down both of his arms and over most of his back. Mr. Juarez's jeans were collected and photographed. The label on the jeans indicated that they were 44 inches at the waist and 32 inches at the inseam.

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INJURED PARTY

Medical Treatment. Mr. Juarez was transported from the scene to St. Mary Medical Center in Apple Valley at approximately 10:52 p.m. Sometime thereafter it was determined that Mr. Juarez would be treated at LLUMC in Loma Linda, instead. During transport, Mr. Juarez was combative, not following commands and attempting to strike his medical providers. At LLUMC, Mr. Juarez was found to have sustained soft tissue damage due to a through and through gunshot wound that entered the left abdomen/hip area and exited the upper left buttock. Mr. Juarez's injuries did not require surgical intervention. Mr. Juarez was discharged on September 21, 2020 at 1:31 p.m. and booked into the West Valley Detention Center. Mr. Juarez's booking information included that he stood at five feet and seven inches tall. Air transport noted that Mr. Juarez weighted approximately 154 pounds.

Criminal History. Mr. Juarez's pre-incident criminal history includes six felony convictions since 1999, each of which he went to prison for numerous probation and parole violations. Two felony convictions were for receiving stolen property, one felony conviction was for escape from jail (without force) and three felonies were narcotics/narcotic sales related. A 2014 narcotics sales conviction was committed by Mr. Juarez while armed with a firearm. Mr. Juarez also had seven misdemeanor convictions, including two convictions for driving under the influence and one 2015 conviction for delaying or obstructing a peace officer.

On the basis of crimes committed against the reporting party on the day of the shooting incident, the San Bernardino County District Attorney's Office filed a felony case against Mr. Juarez in San Bernardino County Superior Court, case number FVI20002758. Mr. Juarez plead guilty to one felony count—a violation of Penal Code section 422(a) [criminal threats], on November 16, 2020. Based upon the plea agreement, Mr. Juarez was placed on felony probation for three years and served 57 days in jail.

Statement. Mr. Juarez gave a voluntary statement to Detectives Page and Laing on September 22, 2020. Mr. Juarez told detectives he had been dating Victim for about a year and had been staying with Victim on and off for about six months. He denied arguing with Victim on the day he got shot. Mr. Juarez denied having a gun at all that day.

Mr. Juarez told detectives that he was on his Yamaha quad and trying to start it when the cops arrived, and that Victim was inside the house. He said he got off the quad and tried to walk away from it when he heard "get your hands out of your pocket." Mr. Juarez also recalled the person saying, "try not to reach for nothing." Mr. Juarez told the officer he didn't have a weapon and stated that he had his hands up when the officer started shooting. Mr. Juarez stated that the person who shot at him arrived in a "marked car" but later denied knowing that the person who had arrived was a cop. Mr. Juarez stated that the person was too far and the lights too bright for him to see. When asked specifically if he knew whether the person was a cop, Mr. Juarez stated, "No, I didn't do nothing negative for it to be a cop."

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Mr. Juarez stated he was unable to describe the person who shot him or able to recall anything that happened after he got shot. When pressed specifically about having an “80% gun,” Mr. Juarez said that he had never had one, never purchased one and never assembled one.

Mr. Juarez admitted that he went to eat with Victim in the morning, but that he later took her car and left without her. When asked why Victim would call the police on him, Mr. Juarez said he did not know and guessed it was because he left in her car, without her. Mr. Juarez denied that Victim has ever called the cops on him. Mr. Juarez denied hitting Victim or threatening to kill her, ever.

When Mr. Juarez returned to the house with Victim’s car, he said that he made “regular knocks” three to four times and might have been calling Victim’s name. Mr. Juarez stated that he didn’t have his key to let himself in. Mr. Juarez denied being upset about not being let into the house or at all. Mr. Juarez maintained that he was just trying to get his bike.

Mr. Juarez told detectives that he knew there was a warrant for him from Los Angeles and was going to take off running because of the warrants. Yet, Mr. Juarez maintained that he did not know he was being contacted by the police. Mr. Juarez stated that the car that arrived had normal headlights and not “cop car lights.”

Before the interview ended, Mr. Juarez admitted to buying two 80% guns that were 9mm caliber semi-automatic pistols, but that he never assembled them and had already sold them.

APPLICABLE LEGAL PRINCIPLES

To preface, the public “expects” a responding officer to investigate a 9-1-1 call, as part of the officer’s proper exercise of his duties. (*People v. Brown* (2015) 61 Cal.4th 968, 981-982.) Distinct from their duties to investigate crime, police officers are also expected to serve a “community caretaking” function by providing emergency services or helping those in danger of harm. (*People v. Ray* (1999) 21 Cal.4th 464, 471-472.)

A peace officer may use objectively reasonable force to effect an arrest, to prevent escape or to overcome resistance. (Calif. Penal Code §835a(b)).⁶ 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 Penal Code section 835a (c) and the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (See *People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

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

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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(c)(1) 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 “defend against an imminent threat of death or serious bodily injury to the officer or another.” The “[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).)

A peace officer need not retreat or desist from efforts to arrest a resistant or fleeing arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense using objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

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.) The showing required under section 197 is principally equivalent to the showing required for a police officer to use lethal force under section 835a(c)(1), as stated above.

While the appearance of these principals was new to section 835a in 2020,⁷ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend has “threatened infliction of serious physical harm” to the officer, 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 state statutory requirements may also be satisfied. (*Martinez v. County of Los Angeles* (1996) 47

⁷ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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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 is still relevant.

In addition, the legislature included generalized findings and declarations at subsection (a) of Section 835a that are instructive. 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, lawfulness and consistency with agency policies;⁸
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

⁸ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

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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 more recently defined in the context of police use of lethal force is similar:

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

(Penal C. §835a(e)(2).)

In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 348.) The court in *Scott* explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment...Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.

(*Scott, 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 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.)

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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.)

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

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

The use of force policies and training of an involved officer’s agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 8, *supra*.)

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

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

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.)

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ANALYSIS

This report evaluates the use of deadly force by SBCSD Deputy Cesar Montes. As indicated above, there are legal bases that must be met before a use of force is justified and the right to self-defense ripens. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent's submission.

A use of force must be "reasonable" in order to be deemed lawful. When considered in the context of self-defense, determining whether Deputy Montes was justified in using lethal force requires a two-part analysis: (1) did Deputy Montes subjectively and honestly believe he needed to protect himself from an apparent imminent threat of death or great bodily injury; and (2) was the deputy's belief in the need to protect himself from an apparent imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of Deputy Montes is stated here based upon his statement.

Deputy Montes believed that he was responding to a domestic violence call. Based upon his training and experience, Deputy Montes recognized that such calls involved a heightened risk of physical altercation or gunfire towards responding deputies because the involved parties tended to be operating under emotionally charged circumstances. In this case, Deputy Montes was aware that the "boyfriend" subject had already threatened to shoot the "girlfriend," was expected to be armed with a gun and a switchblade and may be stealing the Victim's car. Deputy Montes also received information that the subject was a wanted felon on the lam since 2018. Deputy Montes recognized that he would be the first law enforcement unit to arrive and that he would be alone in that remote location. Deputy Montes was also aware that Victim and her roommates were inside the residence. The deputy believed that if Mr. Juarez was able to get into the residence, he might take Victim and her roommates hostage in retaliation of Victim calling the police.

Upon arriving at the Victim's residence, Deputy Montes saw Victim's car had its running lights on. Deputy Montes immediately activated his overhead flood and emergency lights, got out of his unit and drew his side arm. When Deputy Montes approached, he saw Mr. Juarez sitting on his ATV and the men faced each other. Deputy Montes saw that Mr. Juarez was bald, wearing exceedingly baggy jeans and had gang tattoos. Deputy Montes drew the conclusion that Mr. Juarez was either a gang member or gang affiliate of a dangerous criminal street gang. Deputy Montes ordered Mr. Juarez to get off from his ATV. Mr. Juarez refused, so Deputy Montes repeated the command. After additional delay and questioning the deputy, "Why?" Mr. Juarez stepped off the ATV. Deputy Montes ordered Mr. Juarez to get on the ground. Instead of going to the ground, Mr. Juarez reached into his right front pocket. The pocket was so deep, Mr. Juarez's entire right hand and forearm was concealed. Deputy Montes reflexively demanded Mr. Juarez stop reaching into the pocket and asked Mr. Juarez what he had in there. Mr. Juarez did

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not respond verbally. Instead, Mr. Juarez continued to reach in the pocket, turned his back to Deputy Montes and began to walk away from the deputy. Mr. Juarez walked towards the dark where Mr. Juarez could not be seen. Based upon this interaction and the information he had been provided by dispatch, Deputy Montes believed that the only thing that Mr. Juarez could be doing under the circumstances was that he was fishing for his firearm in his pocket.

Next, Deputy Montes saw Mr. Juarez make a quick and deliberate motion towards Deputy Montes with the right side of his body. Mr. Juarez's right shoulder and leg pivoted towards the deputy. Then, Deputy Montes saw Mr. Juarez's right elbow flare to the right side, as if Mr. Juarez had taken hold of a firearm and was coming out with it. Deputy Montes stated that he made a "split-second" decision to fire his weapon at Mr. Juarez, not willing "to take that gamble to find out what was coming out of (Mr. Juarez's) pocket." Deputy Montes explained that Mr. Juarez would have had too much time to shoot at and kill the deputy had the deputy waited to see Mr. Juarez's gun. Deputy Montes stated that he stopped firing as soon as he saw blood, and Mr. Juarez fall. Deputy Montes then issued additional orders to Mr. Juarez, which Mr. Juarez complied with. Deputy Montes approached Mr. Juarez, handcuffed him and searched him for weapons.

All of the information relayed to Deputy Montes prior to his arrival supports a conclusion that the deputy was encountering a fleeing, armed and wanted felon, with recent violent criminality and who was actively engaged in further criminal activity. Nothing occurred during Deputy Montes's pre-shooting contact with Mr. Juarez that suggested any of the information previously imparted was untrue. Quite the opposite, Mr. Juarez's appearance, non-compliance, pocket-reaching and sudden movement projected that Mr. Juarez was arming himself to shoot at Deputy Montes. Based upon the foregoing, it is reasonable to conclude that Deputy Montes bore an honest and subjective belief that he was under threat of imminent deadly harm or bodily injury at the time he used lethal force.

Reasonable Belief of Imminent Need to Protect. Although Penal Code section 835a(c)(1) is the authority for an officer's use of lethal force, the analytical framework for determining what is "reasonable" is included in *Graham* and its progeny. This analysis also overlaps with the second component to a self-defense claim: a finding that each officer had an objectively reasonable belief of the need to use deadly force to protect himself from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. This incident was set in motion by the reporting party (Victim) who believed her armed boyfriend was outside of her house trying to get inside to kidnap her or shoot her. Victim was so afraid that Mr. Juarez might shoot and kill her through her front bedroom window that she called 9-1-1 from an interior bathroom. Victim told the 9-1-1 operator that Mr. Juarez was threatening to kill her with his gun. Victim later told detectives additional detail about what Mr. Juarez had done earlier in the day and prior to the shooting that further corroborated Victim's stated belief that she was in danger of being killed. For example, Mr. Juarez pointed his gun at Victim that morning and told her specifically that he would use his gun. Mr. Juarez later made a veiled threat by telling Victim she

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didn't need her personal items where she was going. After Victim escaped Mr. Juarez that afternoon, the first thing she did upon returning home was to change the locks on her front door and room door. When Mr. Juarez returned to Victim's home, Victim called 9-1-1 and told dispatch that Mr. Juarez was banging on her window and trying to get in through the front door, threatening to kill her and telling her to come outside. Victim told detectives that as Mr. Juarez was banging on the door, Mr. Juarez said, "We're all dying tonight." Dispatch noted in the call log that Mr. Juarez had "just now" threatened Victim with a handgun, that Mr. Juarez had the gun in addition to a switchblade, and that there were three additional people in the house. Deputy Montes received the text on the call, in addition to the radio broadcasts. Deputy Montes was advised that there had been several disturbances at that location. Deputy Montes also had information that Mr. Juarez was a wanted felon who had been evading arrest since 2018. Based on all the information received by Deputy Montes, it would have been reasonable for the deputy to believe that Mr. Juarez at a minimum had committed the crimes of criminal threats (violation of Penal Code, section 422), attempted kidnapping (violation of Penal Code section 664/207), and might be actively engaged in unlawfully taking or driving Victim's car (violation of Vehicle Code, section 10851). Kidnapping and criminal threats are "serious" felonies per Penal Code section 1192.7(c). Deputy Montes had at least a reasonable articulable suspicion that these crimes were being committed with a firearm, which could push the crimes committed by Mr. Juarez into the class of felonies recognized as the most "violent" in California (Penal Code, section 667.5(c)). Moreover, based upon the initial interaction between Deputy Montes and Mr. Juarez, Deputy Montes had no reason to believe that Mr. Juarez would peaceably surrender as was required by law.

As such, it was reasonable for Deputy Montes to believe immediately prior to using lethal force that Mr. Juarez had already engaged in serious or violent felonious conduct that placed the reporting party at risk of injury and/or death, and that the deputy himself was also in danger of death or serious bodily injury.

Resistance is another essential consideration in a *Graham* analysis. In order to effectuate Mr. Juarez's arrest or detention, Deputy Montes was authorized to use reasonable force. The circumstances in total do show that Mr. Juarez, for his part, knew he was being contacted by law enforcement despite his attestations to the contrary. Immediately before Deputy Montes's arrival and per Victim, Mr. Juarez was banging on her door and window, yelling threats and "driving like a maniac" and causing a "all kinds of crazy ruckus" in the middle of the night. Mr. Juarez was not discrete and neither was Deputy Montes's approach. Deputy Montes arrived at the scene wearing a department-issued uniform, replete with metal badge and shoulder insignia, in a SBCSD-marked unit with emergency lights flashing. Mr. Juarez did acknowledge that Deputy Montes arrived in a "marked car," which made his refusal to specifically identify Deputy Montes as law enforcement officer curious. It is even more likely that Mr. Juarez did not try to go down the residence driveway because he recognized that Deputy Montes positioned his marked unit to block the driveway.

Mr. Juarez did admit hearing and understanding Deputy Montes's commands not to put his hands in his pocket. Mr. Juarez also stated he started to lift his hands. Such a command and Mr.

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Juarez's stated reaction only make sense if Mr. Juarez recognized Deputy Montes as a law enforcement officer. Similarly, Mr. Juarez admitted he was going to take off running because he knew he had warrants. Since Mr. Juarez could not get by Deputy Montes's patrol unit by car or ATV, the only available escape would have been by foot. Indeed, the compulsion to run as a result of criminal warrants is reasonable only if Mr. Juarez believed that a law enforcement officer was taking Mr. Juarez into custody for those warrants. Additionally, Victim did relay to detectives that after the deputy arrived, she heard Mr. Juarez yell "why did you call the cops, why would you do this to me?" From inside of the residence, which was necessarily *further* away from Deputy Montes and his marked unit than Mr. Juarez was, and before shots were fired, Victim still recognized that a law enforcement officer had arrived and was talking to Mr. Juarez. Finally, Mr. Juarez has had numerous police contacts prior to this incident, which mark Mr. Juarez's claim that he did not know he was being contacted by a law enforcement officer as disingenuous. As such, Deputy Montes had objectively reasonable grounds to believe that Mr. Juarez was aware the deputy was a peace officer who may use deadly force. Mr. Juarez's non-compliant behavior after Deputy Montes arrived, on its own, however, was passive in nature and not the type of active resistance contemplated by *Graham*.

Still, it was not Mr. Juarez's non-compliant behavior, alone, that triggered Deputy Montes's use of lethal force. Immediacy is the "most important" *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. Mr. Juarez's response to Deputy Montes's commands was to make a reaching movement, turn away from Deputy Montes's field of vision, walk towards darkness and make a sudden pivoting motion towards the deputy. Such movements, in the time, place and manner it was made, can reasonably be perceived to be an act of resistance on one hand, or an act of violence on the other. Either way, the act presented the deputy with an imminent situation requiring a split-second judgment. In addition, prior to firing his weapon, Deputy Montes found himself in a precarious position; he was exposed and without cover as Mr. Juarez pivoted towards him suddenly. Deputy Montes's candid statement that he "wasn't willing to take that gamble to find out what was coming out of (Mr. Juarez's) pocket," can be problematic when taken at face-value and without context. To do so would suggest Deputy Montes acted upon a fear of future harm, which is specifically excluded from what is considered, "imminent." Instead, *Graham* and Penal Code section 835a, requires an assessment based upon the totality of the circumstances.

Upon consideration of the totality of the circumstances, the information imparted to Deputy Montes about Mr. Juarez's past and current criminality and that Mr. Juarez was expected to be armed with a handgun, it would be unreasonable to require Deputy Montes to wait to see *what* Mr. Juarez was actually pulling out. As discussed above, Deputy Montes's presence at the scene was obvious. The fact that Deputy Montes was the *only* deputy present, however, was equally clear. Mr. Juarez had no better opportunity to evade, resist being taken into custody or to assault Deputy Montes. The character of Mr. Juarez's body movement reasonably suggested to Deputy Montes that Mr. Juarez was indeed pulling out a firearm to shoot the deputy. Under the circumstances, it was reasonable for Deputy Montes to believe that Mr. Juarez had no other reason to reach into his pocket than to draw his own gun. The exceedingly baggy nature of Mr.

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Juarez's size 44 jeans on a person standing five foot seven and weighing 154 pounds would certainly yield a pocket large enough to conceal a handgun and precisely where Victim had reported that Mr. Juarez was known to regularly keep his firearm. Mr. Juarez had the tattooed appearance of a gang member or gang affiliate. Deputy Montes appeared to Mr. Juarez in full SBCSD uniform with his duty weapon drawn and pointed in Mr. Juarez's direction. One who would aggress a uniformed police officer while being held at gunpoint must be perceived to be especially unpredictable and dangerous. When taken with all the other facts at play, it was reasonable for Deputy Montes to believe that Mr. Juarez intended to inflict violence upon Deputy Montes. Additionally, the nature of Mr. Juarez's injury with a front entry at the lower left abdomen and exit and the buttock would also support a reasonable conclusion that Mr. Juarez turned completely toward Deputy Montes by the time Deputy Montes fired his weapon. Deputy Montes had reason to believe, therefore, that Mr. Juarez possessed the present ability, opportunity and apparent intent to shoot him. Victim, too, was so resolute in her belief that Mr. Juarez had the ability, opportunity and intent to kill that immediately after she heard gunshots outside, she exclaimed, "He's shooting the cops." As such, the facts do not support a conclusion that Deputy Montes acted out of fear alone. Rather, the facts support a conclusion that Deputy Montes fired his weapon based upon a reasonably perceived imminent threat to his life.

Hindsight. In the evaluation of the question of necessity at the time shots were fired, it must be noted that the courts have employed a standard that is highly deferential and viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The inquiry allows for the fact that split-second judgments are being made under tense, uncertain and rapidly evolving circumstances. For example, the fact that no gun was located at the scene or on Mr. Juarez's person is precisely the kind of hindsight that cannot negate the reasonableness of the Deputy Montes's conduct here. The discovery of a cell phone within feet of Mr. Juarez as he lay on the ground suggests that Mr. Juarez may have been reaching for his cell phone. However, no circumstance occurred before or during the deputy's contact with Mr. Juarez to convey that Mr. Juarez was not actually armed and dangerous, as Deputy Montes believed. Moreover, Mr. Juarez did not respond to Deputy Montes as a person who intended to be compliant or surrender. Quite the opposite, Mr. Juarez's physical movements also suggested that he was armed and drawing on the officer. The safety of Deputy Montes depended upon his assumption that the danger was exactly what they believed it was, especially since the deputy did not have any cover or concealment, nor the assistance of any other officers at the time. What is "reasonable" to an officer in Deputy Montes's situation, in the moment that Mr. Juarez makes his sudden movement towards the deputy is necessarily different than what one analyzing the question at leisure may find. Deputy Montes was pressed to make a split-second judgement based upon the information that was available to him. As such, based upon the totality of the circumstance, the necessity of the use of deadly force by Deputy Montes cannot be successfully second-guessed. Deputy Montes reasonably believed that his action was instantly required to avoid death or great bodily injury.

Based on the foregoing, the primary *Graham* factors as applied support a finding that the use of lethal force by Deputy Montes was reasonable. Deputy Montes had to act instantly to confront the perceived danger posed by Mr. Juarez, which by all indication was an immediate threat to kill

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the deputy. As such, the use of lethal force by Deputy Montes is also justifiable under Penal Code §197.

Pre-Shooting De-escalation. Section 835a(a) does advise that lethal force be used only “when necessary to defend human life” and that safe and feasible de-escalation should be employed. Normally, the mere presence of armed and uniformed law enforcement signaling an attempt to detain and/or arrest can serve as a de-escalation technique. One faced with such a response might reasonably find there is no likely escape and choose to surrender. Mr. Juarez, however, did not. Mr. Juarez gave no explicit or implicit indication that he sought to peaceably comply or surrender. Even after Mr. Juarez had been shot and was receiving medical care, Mr. Juarez continued to be combative. Beyond Deputy Montes’s uniformed presence and the use of emergency lights, Deputy Montes used verbal commands to de-escalate the situation. Deputy Montes explained that he was too far from Mr. Juarez to employ any less-lethal munitions. Even at gunpoint, Mr. Juarez outwardly refused to comply with Deputy Montes’s commands. It cannot be deduced therefore, that any less-lethal force would yield Mr. Juarez’s compliance. It bears mention that Mr. Juarez had a measurable amount of ethyl alcohol, as well as amphetamine and methamphetamine in his blood. This is consistent with Mr. Juarez’s admission of recent use of heroin and alcohol. Even if it might be inferred that Mr. Juarez’s decision-making was impacted by his drug and alcohol use, Mr. Juarez’s physical conduct towards Deputy Montes was all that could be instantly appreciated. Ultimately, Mr. Juarez’s choice to disregard commands and specifically do that which he was told not to, was a perilous one. Mr. Juarez’s non-compliance, together with his sudden movement placed Deputy Montes in a position here he was forced to react to an apparent lethal threat. Simply put, Mr. Juarez’s actions dictated a circumstance where there was no further feasible, safe or reasonable opportunity for Deputy Montes to de-escalate.

Other Statutory Considerations. The additional considerations mentioned in §835a(a) further support a conclusion that the uses of deadly force by Deputy Montes was lawful.⁹ First, there is no indication that Deputy Montes acted excessively. Deputy Montes’s conduct discussed herein appears to have been judiciously exercised. Deadly force was not employed as a knee-jerk reaction. Deputy Montes affirmatively tried to de-escalate the situation by offering verbal commands to Mr. Juarez. Additionally, Deputy Montes did not immediately fire upon Mr. Juarez as Mr. Juarez initially reached into his pocket. Deputy Montes fired only after Mr. Juarez began to walk away into obscurity and made a sudden body movement that suggested he was pulling out a firearm. Thereafter, although Deputy Montes presently had 13 additional rounds to fire in his handgun, Deputy Montes stopped firing his weapon as soon as Mr. Juarez was bloodied and fell to the ground. As such, Deputy Montes can be found to have well-appreciated the gravity and consequence of his use of lethal force evidenced by the judicious way he employed it.

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⁹ This review is based on a totality of the circumstances from the perspective of a reasonable officer in the same situation. (Penal C. §§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether agency use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any use of force policy was violated.

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CONCLUSION

Under the facts, circumstances and applicable law in this matter, the use of deadly force by Deputy Cesar Montes was exercised in self-defense and in a reasonable manner. Accordingly, no criminal liability based on each deputy's conduct attaches in this incident.

Submitted By:

San Bernardino County District Attorney's Office

303 West Third Street

San Bernardino, CA 92415

Dated: December 20, 2021

