



PUBLIC RELEASE MEMORANDUM

DATE: April 27, 2020

SUBJECT: Officer Involved Shooting (Non-Fatal)

Officers: Deputy Alex Millan
San Bernardino County Sheriff's Department

Involved Subjects: Daryll Joel Speer
Date of Birth 05/15/1995
Twentynine Palms, CA

Date of Incident: January 8, 2018

Incident location: Flood Control Channel, South of Highway 62 and
Trojan Way
Yucca Valley, CA

DA STAR #: 2019-34000

Investigating Agency: San Bernardino County Sheriff's Department

DR#: 231800053

H#: 2018-004

PREAMBLE

This was a non-fatal officer involved shooting by a deputy from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 231800053 and H# 2018-004.

PRINCIPAL INVOLVED PARTIES

Daryll Joel Speer, DOB: 05/15/1995, of Twentynine Palms, California was injured during the incident under review.

Deputy Alex Millan of the San Bernardino County Sheriff's Department was the officer involved in the shooting of Daryll Joel Speer.

SCENE

This incident occurred on January 8, 2018, at around 7:50 in the morning. Location of occurrence was a flood control channel located south of Highway 62 and Trojan Way in Yucca Valley, California.

BACKGROUND INFORMATION

Daryll Joel Speer has a prior criminal history that includes the following convictions:

2014, 23152 (e) of the Vehicle Code, Driving Under the Influence of a Drug. San Bernardino County case number TMV1400293, a misdemeanor.

2015, 21310 of the Penal Code, Carrying a Dirk or Dagger, San Bernardino County Case Number FMB1500074, a felony.

2017, 4573 of the Penal Code, Bringing a Controlled Substance Into a Jail. San Bernardino County case number FMB1500481, a felony.

2017, 11364 of the Health and Safety Code, Possession of a Smoking Device, 4462.5 of the Vehicle Code, a misdemeanor, and Presenting False Evidence of Vehicle Registration, a misdemeanor. San Bernardino County Case number MMB17000616.

2017, 496d of the Penal Code, Receiving Stolen Motor Vehicle. San Bernardino County case number FMB17000378, a felony.

2017, 182 (a)(1) of the Penal Code, Conspiracy to Commit a Crime. San Bernardino County case number FMB17000471, a felony.

2017, 182 (a)(1) of the Penal Code, Conspiracy to Commit a Crime. San Bernardino County case number FMB17000473, a felony.

FACTUAL SUMMARY

On Monday, January 8, 2018, at approximately 7:30 in the morning, deputies from the Morongo Basin Station of the San Bernardino County Sheriff's Department responded to of a 911 call concerning two suspicious persons running through multiple residential backyards in Yucca Valley. The location of the occurrence was an unknown address on Amador, with the closest address being on Onaga Trail and the closest intersection being Onaga Trail and Grand Avenue in Yucca Valley. The 911 caller stated the two individuals, a Hispanic male adult and a Hispanic female adult, were wearing all black clothing and that one of them was carrying an object wrapped in a tan blanket. The 911 caller said that the object looked like it could be a 12 gauge.

San Bernardino County Sheriff's Deputy Millan and Deputy Galindo, who were partners in one patrol car, responded to the call. Two minutes later, while the deputies were en route to the location, a second 911 call came in regarding two suspicious individuals in the area of Amador and Navajo Trail. This 911 caller said that the individuals were climbing a fence at a vacant residence and that they had something wrapped in a tan blanket. The caller then told dispatch that the two subjects were breaking into a black vehicle, possibly a BMW, on Grand Avenue.

Dispatch advised the responding deputies that the male suspect was holding something wrapped in a tan blanket. Dispatch did not tell the deputies that the 911 caller said the object wrapped in the tan blanket looked like it could be a .12 gauge. Dispatch advised that the subjects were wearing all black clothing and that they were seen breaking into a black BMW. Dispatch told the deputies that the suspects were last seen running eastbound on Amador, jumping through different yards and that the suspects were being followed by a Gray Honda.

When Deputy Millan and Deputy Galindo arrived on Amador, they conducted an area check. They did not find a black BMW in this area and reported this to dispatch at 7:53 a.m. However, the deputies were met in this area by Witness #1, who told them the subjects were seen breaking into a black Audi on Grand Avenue. Witness #1 told Deputy Millan and Deputy Galindo that he was the one who had called 911. Witness #1 explained that after he called 911, he had gotten into his Honda and had begun driving around the area in an attempt to locate the suspects. Witness #1 told the deputies he had seen the two subjects breaking into the black vehicle at 7798 Grand Avenue. Witness #1 clarified to the deputies that the vehicle was not a BMW but was actually an Audi. Witness #1 told the deputies that he had tried following the suspects but that they had gone down to the wash where he had lost sight of them.

Deputy Millan and Deputy Galindo then drove to the Grand Avenue address given to them by Witness #1. On their way, the deputies stopped in the area where Witness #1 had said he lost sight of the two subjects to see if they could locate them. The deputies did not see anyone in that location. When Deputy Millan and Deputy Galindo arrived at the Grand Avenue address, they saw the Audi. The deputies saw that items appeared to have been taken out of the glovebox. They contacted the homeowner who told them that the subjects had gone through the glovebox, but that it didn't appear anything had been stolen. The deputies told the homeowner they would be looking for the individuals who had gotten into his car. They advised him to call them back out if he discovered anything was missing from his vehicle.

Deputy Millan and Deputy Galindo then headed to the wash/flood control channel near Trojan Lane and Highway 62. Once there, they immediately saw two subjects walking down in the wash. When the deputies got out of the patrol vehicle, they saw that the subjects were a male and a female and that the male was carrying a long object wrapped in a tan blanket. The male subject was later identified as Daryll Speer; the female subject was later identified as Witness #8.

Deputy Millan saw Speer look up at him from the down in wash. Speer then turned away and began walking quickly in the other direction, away from the deputies. When Speer turned around, the tan blanket he was holding slid down from the top of the item it had been covering, revealing the muzzle of a rifle.¹ Deputy Millan saw the muzzle of a rifle. Deputy Galindo saw the buttstock and the muzzle of the gun.

Both Deputy Millan and Deputy Galindo immediately drew their weapons and began ordering Speer to drop the gun and to get on the ground. Speer did not comply and instead continued walking away. Deputy Millan told Deputy Galindo to run back to the patrol unit to get the Mini-14 rifle. Deputy Galindo backed up, making sure Speer wasn't going to point the gun at them, and then turned and ran back to the patrol unit.

Deputy Millan continued to order Speer to put the gun down. As Deputy Galindo ran back to the patrol car, Speer began walking up the embankment of the wash on the opposite side, away from Deputy Millan. Deputy Millan noticed that Speer had changed how he was carrying the gun and that he was now holding it like an individual would while shooting a rifle. Speer then looked back and began turning his body and his gun in the direction of Deputy Galindo. Deputy Millan fired his duty weapon, striking Speer once. Speer fell and rolled down the embankment. The gun Speer had been holding fell to the ground near the top of the embankment; it was a Remington, Model 870 Wingmaster 20 gauge shotgun. The shotgun was loaded with five Winchester 20 gauge rounds, one of which was in the chamber. The safety was off.

While Deputy Galindo was at the patrol unit grabbing the Mini-14, he heard the shots being fired. Deputy Galindo ran back toward Deputy Millan. Deputy Galindo saw Speer

¹ Deputy Millan and Deputy Galindo believed the weapon was a rifle, it was in fact, a shotgun.

sliding down the embankment. Deputy Millan was still holding Speer at gunpoint. Medical aid was called. Deputy Galindo and Deputy Millan went down the embankment where they handcuffed Speer. Deputy Galindo searched Speer and found shotgun shells and a knife in Speer's pockets. Witness #8, who was still nearby, was also handcuffed. Medical aid was rendered to Speer and he was transported to the hospital for treatment.

WITNESSES AND CORROBORATION

On January 8, 2018, at approximately 12:25 in the afternoon, **Witness #1** was interviewed by Detective Brendan Motley and Detective M. Warrick of the of the San Bernardino County Sheriff's Department.

Earlier that day, Witness #1 was at his friend, Witness #2's residence on Navajo Trail in Yucca Valley, for Bible study. At approximately 7:30 a.m., Witness #1 was inside the residence when he saw a bald Hispanic male adult with a thin mustache, wearing a black hooded sweatshirt and black pants, walking in Witness #2's driveway. The male subject was carrying a long object wrapped in a tan blanket. Witness #1 believed the object looked like a .12 gauge or sawed-off shotgun because of the shape and size. It appeared that the male subject was trying to hide whatever was wrapped in the tan blanket. The male subject walked between Witness #1's vehicle and Witness #2's vehicle and looked in the Honda, Witness #1's vehicle. As soon as he did this, Witness #1 stood up and made eye contact with the subject through a window of the residence. The subject looked right at Witness #1. The subject then began to walk away. Witness #1 also saw a Hispanic female adult wearing a black hooded sweatshirt with the hood over her head standing at the base of the driveway. Witness #1 said his friend asked the subjects, "What are you guys doing?" Witness #1 said the male subject looked back, but the female did not.

The male and female subjects walked east, across Amador Avenue and toward the back yards of other homes. Witness #1 believed their actions were suspicious and called law enforcement. Witness #1 then got into his blue Honda Accord and followed the subjects. Witness #1 lost view of the subjects, so he drove north on Amador and waited on Onaga Trail because he believed the subjects might walk on a path between the residences to Onaga. After a short time, Witness #1 still did not see the subjects, so he drove south on Grand Avenue and continued looking for them.

Witness #1 saw the subjects inside a black Audi sedan parked in the driveway at the 7000 block of Grand. The female subject was in the front passenger side of the vehicle, her legs were out of the vehicle and she was rummaging through it. The male subject was in the back seat rifling through stuff. Witness #1 believed the subjects saw him as he drove by, so he made a U-turn. Witness #1 saw the subjects get out of the Audi and then go into the back yard of the residence there. Witness #1 got out of his car and knocked on the front door of the residence. When the door was answered, he told the

residents about the subjects who had just been inside their car and informed them that they had gone into their back yard, leaving their side gate open. The female asked Witness #1 if the male subject was carrying a tan blanket and Witness #1 told her that he was. The female then told Witness #1 that the same subjects had been standing in front of her residence last night.

Witness #1 then headed back to Witness #2's residence. Near Witness #2's residence, Witness #1 encountered a female who told him she had called 911 because she saw subjects in the area. Witness #1 then continued to drive around the area looking for the subjects. Witness #1 saw a Sheriff's vehicle. Witness #1 told the deputies in the vehicle what he had seen and gave the deputies the address where the subjects had been inside the Audi on Grand Avenue.

Witness #1 believed he would be able to identify the male subject but said he didn't think he could identify the female subject because she had the hood of her sweatshirt over her head and her face was hidden by it. Witness #1 was unable to identify the male subject in a six-pack photo line-up.

On January 8, 2018, at approximately 5:39 in the afternoon, **Witness #3** was interviewed by Detective Arturo Alvarado, of the San Bernardino County Sheriff's Department.

On January 8, 2018, Witness #3 was living at a residence on Navajo Trail in Yucca Valley. On this date, at approximately 7:30 a.m., Witness #3 was sitting on her patio in a chair smoking a cigarette. Witness #3's dogs began barking and this drew her attention to a vacant residence directly east of her home. The vacant residence was on Amador.

Witness #3 saw two adult males climb over the property's south fence into the backyard. One subject wore a dark colored hoodie and jeans. The second, taller subject wore a black hat, dark hoodie, and jeans. The taller subject carried an object in his right hand. The object was approximately two to three feet long and was wrapped in a brown blanket or towel. The subject carried the object with one hand. Witness #3 knew that someone had recently purchased the home at this location and knew that the two subjects she saw there were not the new homeowners. Witness #3 told the subjects they didn't belong there and to leave the property. One of the subjects replied, "Yeah, we are leaving." Witness #3 was not wearing her eyeglasses and would not be able to identify the subjects if shown a photograph.

A subject driving a Honda, later identified as Witness #1, stopped and spoke to Witness #3. Witness #1 told Witness #3 that the subjects had come from her property. Witness #1 told Witness #3 he believed one of the subjects had a gun. Witness #1 told Witness #3 he saw the subjects break into a car parked on Grand Street. Witness #3 called law enforcement and reported the subjects.

On January 8, 2018, at approximately 1:33 in the afternoon, **Witness #4** was interviewed by Deputy Clayton Brandt of the San Bernardino County Sheriff's Department.

Witness #4 lives at a residence on Grand Avenue in Yucca Valley. Witness #4 did not speak English very well but was able to tell Deputy Brandt that his daughter, Witness #5, told him this morning that the neighbor stopped by and said somebody was rummaging through his car.

Witness #4 went out to his car and found miscellaneous items misplaced. There were items from the glove box on the seat. Nothing was found to be missing, so Witness #4 put all the items back. Witness #4 had parked his car the night prior, but he left the vehicle unlocked with the window down. Witness #4 did not desire prosecution since nothing was missing or damaged.

On January 8, 2018, at approximately 1:33 in the afternoon, **Witness #5** was interviewed by Deputy Clayton Brandt of the San Bernardino County Sheriff's Department.

Witness #5 lives at a residence on Grand Avenue in Yucca Valley with her father, Witness #4. Around 6:00 a.m., on January 8, 2019, her dogs woke her up. When she looked outside, she noticed a male and a female in her driveway.

At around 8:00 a.m., an unknown neighbor came by and told her there was a male and a female in her father's car earlier that morning.

Later in the day, at approximately 4:23 in the afternoon, Witness #5 was contacted by Detective Michael Cleary of the San Bernardino County Sheriff's Department regarding the possible identification of Daryll Speer and his girlfriend, Witness #8.

Detective Michael Cleary contacted Witness #5 at her residence. Detective Cleary read Witness #5 the photographic line-up admonition form. Witness #5 said she understood the admonition and signed the form. Detective Cleary showed Witness #5 the first 6-pack photographic line-up containing a photograph of Witness #8. Witness #5 was not able to identify Witness #8. Detective Cleary then showed Witness #5 the second 6-pack photographic line-up which contained a photograph of Daryll Speer. Witness #5 was unable to identify Daryll Speer.

On January 8, 2018, at approximately 8:30 in the morning, **Witness #6** was interviewed by Detective E. Popa of the San Bernardino County Sheriff's Department.

On January 8, 2018, Witness #6 was living in a tent approximately 100 yards east from the location of the officer involved shooting. Witness #7 was living in the tent with him.

Witness #6 said he and Witness #7 were just waking up when they heard someone yelling, "Put the gun down," approximately three or four times. Witness #6 said he then heard what he described as five pops. Witness #6 heard two pops, a slight pause, and then three more pops.

Witness #6 said he and Witness #7 were inside the tent and that the tent was zipped up. They did not come out of the tent until we contacted them. Witness #6 did not see anything or anyone. Witness #6 did not hear anything before the commands were given to put the gun down.

On January 8, 2018, at approximately 8:30 in the morning, **Witness #7** was interviewed by Deputy Jaime Maestas of the San Bernardino County Sheriff's Department.

On January 8, 2018, Witness #7 was living in a tent approximately 100 yards east from the location of the officer involved shooting. Witness #6 was living in the tent with her.

Witness #7 said she has lived in the tent behind Big Lots market since she lost her residence. Her two children live with a friend in Yucca Valley and every morning she wakes up and gets ready so she can pick up her children and take them to school. This morning, as she was waking up, she heard a loud male voice yell, "Put the gun down!" She then heard a female voice yelling but could not understand what was being said. Witness #7 heard the male voice yell again, "Put the gun down!" Witness #7 said she then heard what sounded like three to four shots and then it became quiet. Witness #7 said the next thing she heard was the sound of sirens. Witness #7 could not see and did not see the incident from where her tent was located.

On January 8, 2018, in the afternoon, **Witness #9**, was interviewed by Deputy Clayton Brandt of the San Bernardino County Sheriff's Department.

Witness #9 lives at a residence on Grand Avenue in Yucca Valley. Witness #9 was up until 3:00 a.m., that morning reading a book. She left her home at approximately 8:30 a.m. and did not notice anything suspicious or unusual. Her side gate, located on the north side of her residence, was found open. None of her property was found to be missing or damaged.

On January 8, 2018, in the afternoon, **Witness #10**, was interviewed by Deputy Clayton Brandt of the San Bernardino County Sheriff's Department.

Witness #10 lives at a residence on Lisa Circle in Yucca Valley. Witness #10 gets up early every morning. When he gets up, he goes outside and smokes. That morning, between 3:30 and 4:00, Witness #10 saw a male and a female walking down the road near his home. The male was screaming at the top of his lungs in the middle of the

street. The male was walking in the middle of the street "like he was on drugs or something." Witness #10 said the male was approximately 5'8" and he was "yelling like crazy" and was pretty loud. Witness #10 said the male was yelling at the female. Witness #10 said a female was walking behind him. When Deputy Brandt asked Witness #10 to describe what the individuals were wearing, Witness #10 said, "a hoodie."

On January 10, 2018, at approximately 12:00 in the afternoon, **Witness #11**, was interviewed by Detective E. Popa of the San Bernardino County Sheriff's Department.

Witness #11 lives at a residence on Balsa Avenue in Yucca Valley. Witness #11 is Daryll Speer's mother. Witness #11 does not live with her son and explained that she did not know where her son was living. Since his release from jail in December, Speer used his grandmother's address in Twentynine Palms as his probation address, however, he was not living there. Witness #11 told Speer that he could not live with his grandmother because she would take him immediately to drug court.

Witness #11 believed Speer had been staying with his girlfriend, Witness #8. Witness #11 thought that Witness #8 did not have a residence and believed that Speer and Witness #8 are "couch surfing" wherever they can stay. Witness #11 knows that Speer is a heavy drug user and that he is on the run from the police. Speer uses methamphetamine but Witness #11 does not know if he uses any other type of drugs. According to Witness #11, Speer has anger issues.

Witness #11 last spoke to Speer the night before he was shot. She communicated with him over Facebook Messenger. Witness #11 asked him how he was doing, and he told her he was done with Witness #8. Speer would tell her that he was done with Witness #8 each time they would talk, but then he would write on Facebook how much he loves Witness #8. Witness #11 said that when Speer got out of jail, he went to find Witness #8. Speer did not report to Probation, so a warrant for his arrest was issued. Speer has lived with Witness #8 on and off for one to one and a half years. The whole time Speer has lived with Witness #8, they have been using drugs. Witness #8 is a lot older than Speer and she has five kids that she's not living with. Witness #11 believes Witness #8 fakes seizures.

Witness #11 had been trying to stay in touch with Speer and was trying to get him to fix his problem with Probation. Witness #11 told Speer that if she went to talk to his probation officer, that they would probably just sanction him. Witness #11 asked Speer if he would try the drug court program and he said, "Mom, I don't think I can do it." Witness #11 said she then asked him why he made the agreement for drug court if he didn't plan on doing the program. Speer told her he did it "to get out."

Witness #11 said that she was really questioning her son's mental health. Witness #11 explained that her son had lost his former girlfriend. Witness #11 said that his former girlfriend was drunk at a Halloween party and that Speer was taking her home. Witness

#11 said that they stopped and were standing on the side of the road arguing when his former girlfriend was hit by a car and killed. Witness #11 said one minute his former girlfriend was there and the next she was gone. Witness #11 explained that it happened so close that it could have been Speer who was hit. Witness #11 said that some people tried to shoot Speer after his former girlfriend was killed.

About a year and a half ago, Witness #11 called the police for a "mental health arrest" of Speer. Three police units came, and they took Speer away. Witness #11 explained that she called because Speer had said he'd rather die and that he didn't care about anything. Witness #11 was afraid of what he would do. Witness #11 said that she didn't know if he would hurt himself but that she didn't think he would care if someone else would hurt him. Witness #11 believed that if Speer was suicidal, he probably would have "done something by now."

On January 10, 2018, at approximately 12:30 in the afternoon, **Sergeant Peter Bockman** was interviewed by Detective Michael Cleary of the San Bernardino County Sheriff's Department.

Sergeant Bockman is the Supervising Probation Officer for the San Bernardino County Probation Department in the Morongo Basin. Sergeant Bockman indicated that Speer is on probation for drug related charges. In March 2015, Speer listed 5999 Bailey Avenue, Twentynine Palms as his probation address. As of January 8, 2018, Speer had never been contacted at the Bailey address. On December 9, 2017, a home check was conducted at the Bailey address by Probation Officer Sexton. Officer Sexton contacted Speer's grandmother during the home check. Speer's grandmother told Officer Sexton that Speer did not live at that location and she did not know Speer was out of jail.

On January 8, 2018, at approximately 8:30 in the morning, **Witness #8** was interviewed by Deputy Armando Cantu of the San Bernardino County Sheriff's Department. Witness #8 was also interviewed later the same day by San Bernardino County Sheriff's Detectives Michael Warrick and Brendan Motley at approximately 1:45 in the afternoon.

Deputy Cantu contacted Witness #8 at the scene of the shooting in the area of Trojan Lane and Highway 62.

Witness #8 said that earlier in the day, she was with her boyfriend, Daryll Speer, who she referred to as "Solo." Witness #8 said that they went to get a gun from a kid, whose name she did not know. The gun used to belong to Speer. The kid told Speer that he would not give the gun back until he used the gun to "get a cop." He told Speer that he had used the gun earlier that morning to shoot at a police officer on a bike near Joshua Lane. The kid said that he wanted to commit "suicide by cop." Witness #8 said that Speer "ran up and got the gun from the kid" and they left. The kid then told Speer to tell the police that the gun was his grandfather's and that his prints were on it.

Witness #8 said that when they left, someone followed them. Witness #8 said they jumped fences to get away from this person who was following them. Witness #8 explained that Speer did not want to get in trouble for having a gun. Speer was recently released from jail, was on probation, and was on the run because he did not report for drug court. Witness #8 said they later arrived at the wash and were sitting there for about an hour before the deputies arrived.

When the deputies arrived, Witness #8 heard them say, "Put the gun down." Speer asked the deputies if he could give Witness #8 a hug and a kiss and they told him, "No." Speer asked Witness #8 to give him a hug and a kiss before he put the gun down.

Witness #8 gave Speer a kiss and Speer said he would walk up the embankment and put the gun down before putting his hands up. Witness #8 said the gun was wrapped in a blanket and Speer was not pointing it at anyone. The deputies told Speer, "That's not good enough," and shot Speer in the back. Deputy Cantu asked Witness #8 who had made that statement and she responded by pointing at Deputy Galindo while saying he was the one who shot Speer. Witness #8 said she heard Deputy Millan say, "ugh" and then something about a beanbag, but she did not know exactly what it was. Witness #8 said she asked the deputies why they shot Speer and they told her Speer was told to put his hands up. Witness #8 said she understood that Speer had a gun and that he did not put it down when they told him to, but she believed Speer's back was turned when he was shot. Witness #8 had no injuries and needed no medical attention.

At approximately 1:45 p.m. Detectives Warrick and Motley interviewed Witness #8 in an interview room at the Morongo Basin Sheriff's Station.

Witness #8 said that she was Speer's girlfriend. Speer is also referred to by Witness #8 as "Solo." Witness #8 was in an "on again, off again" relationship with Speer. She was with Witness #8 when the officer involved shooting occurred. Witness #8 is currently homeless.

Witness #8 said that Speer was arrested in August of 2017 and that she was arrested in September 2017. While they were in jail, unknown subjects took property from the residence where Witness #8 and Speer had been living. A shotgun was one of the items that had been stolen from the residence. Witness #8 described the shotgun as brown wood with a black barrel. Witness #8 had received the shotgun from a male friend named Chris Sutherland who gave it to her for protection. Witness #8 generally kept the shotgun in her attic. Witness #8 later gave the shotgun to Speer under the condition that Speer would not make her regret the decision.

On Monday, January 8, 2018 at approximately 1:00 in the morning, Speer and Witness #8 met up and were hanging out at an unknown residence. Witness #8 said that she and Speer both smoked a joint and that Speer had smoked some meth. Witness #8 said the last time she smoked meth was eight days prior. According to Witness #8, Speer does not like to inject meth and will only do so if someone else will inject it for

him. Detective Motley asked Witness #8 if she had slept and Witness #8 replied, "I tried to, but..." Witness #8 and Speer were together for about four hours before Witness #8 walked away from the unknown residence. At an unknown time, after leaving the residence, Speer called Witness #8 on the phone. Speer told her he was going to retrieve the shotgun that had been taken from their residence while they were in jail.

Witness #8 and Speer met a "kid" on Joshua Lane near Palm Avenue to recover the shotgun. Witness #8 said the "kid's" name was possibly Jeremy or Corey. Witness #8 recalled that they got the shotgun shortly before the officer involved shooting but did not know what time it was. The kid told Witness #8 and Speer that he was trying to commit "suicide by cop" and he tried to "hit" a police officer on a motorcycle. Witness #8 told Speer to take the gun from the kid. Witness #8 obtained possession of the gun, which was initially in a soft black case. After Speer took the shotgun, Witness #8 ran through the desert, northwest from the intersection of Joshua Lane and Palm Avenue. Witness #8 dropped her backpack in the field as she was running. Witness #8 was running because she was nervous about the kid hitting a police officer with the shotgun. Witness #8 stopped running and Speer was laughing at her. Speer asked Witness #8 why she was running and said that the kid did not hit a police officer. Speer told Witness #8 there would be police all over the area if the kid had hit a police officer. Witness #8 said she called 911 because the kid was talking about shooting a police officer.²

Speer and Witness #8 jumped a fence and sat in the backyard of a vacant residence. Witness #8 identified the vacant house using Google Maps on Detective Motley's department cell phone. Using the street view on Google after the interview, Detective Motley located the address on the front of the residence, and it was on the 7000 block of Palm Avenue. During the interview, Witness #8 showed multiple areas where she and Speer had jumped fences but did not mention any other significant incidents in those locations. Witness #8 said they were going through yards so the police would not see Speer with a gun.

Witness #8 said that they had only been in possession of the shotgun for about 15-20 minutes, before a male in an Altima began following Speer and Witness #8. Speer was "running from drug court" and did not want to get caught with a gun. Witness #8 and Speer ran from the male in the Altima to hide the shotgun. Speer and Witness #8 jumped fences to get away from the male. Speer and Witness #8 located a black car on Grand Avenue that was unlocked. Speer was going to leave the shotgun in the car, but he "felt bad" because he saw evidence in the car that made him believe the owner of the car was a diabetic. Witness #8 saw the male who had been following them again while she was inside the black car.

² Per San Bernardino County Sheriff Dispatch Supervisor, Katie Hardin, there is no record of Witness #8 calling the Sheriff's or California Highway Patrol dispatch to report anything on January 8, 2018.

Speer walked away from the black car and removed the shotgun from the soft black case. Witness #8 heard something hit the ground and saw that it was shotgun shells for the gun. Witness #8 did not have any shotgun shells when the gun was stolen from her residence. Witness #8 did not notice what color the shotgun shells were. Speer dropped the case near the black car. Witness #8 was carrying a blanket and gave it to Speer to cover the shotgun. Speer and Witness #8 entered a nearby wash and walked north, away from the area.

While they were walking in the wash, Speer and Witness #8 saw police officers. When they saw the officers, they turned around and walked the other way. The officers had their guns out and they told Speer to put his gun down. Speer told the officers he wanted to give Witness #8 a hug and "say something" to her. Speer told the deputies he would not remove the gun from the blanket and would hold it above his head. The deputies told Speer, "I don't give a fuck what you wanna say, put the fucking gun down right now and put your face in the sand." Speer said he would put the gun up on the side of the wash. Speer began walking up the west berm of the wash to place the gun high up on the berm. Witness #8 was at the base of the wash below the west wash berm. Speer had the shotgun raised in the air above his head when he was shot at four times from behind. Witness #8 said that it looked like "they weren't aiming for him at first." Witness #8 saw one gunshot wound to Speer's right rear shoulder. Witness #8 was unable to estimate how far the deputies were from Speer during the incident. Witness #8 described where the other three bullets that did not hit Speer went. One bullet struck the west dirt embankment of the wash approximately one to two feet to the right of Speer's head as he was facing the west wash. Witness #8 heard the other two rounds hit the dirt but did not see where the rounds struck.

After being shot, Speer turned blue and he thought he had been shot with a bean bag. Witness #8 told Speer he had been shot with a real gun. Speer said he could not move his legs. As the deputies approached, Witness #8 asked the deputies who shot Speer. One deputy, who Witness #8 believed was "Hernandez or something," said he was the one who shot. Witness #8 asked what Speer was shot with and was told not to worry about it.

Witness #8 was told to put her face in the sand. When Witness #8 told the deputy that he shot Speer in the back, the deputy said he knew, but Speer should have put the gun down. One of the deputies handcuffed Speer and handcuffed Witness #8 while she was sitting on the ground. Paramedics arrived within minutes and told the deputies, "You need to take him out of the handcuffs now."

Witness #8 said that she recorded the shooting with her cell phone; however, San Bernardino County Sheriff's Detective Alvarado searched for a video on her cell phone and none was found.

After Detectives Warrick and Motley finished interviewing Witness #8, Detective Cleary and Crime Scene Specialist Kim Shapiro processed Witness #8 at the Morongo Basin Sheriff's Station at approximately 3:15 in the afternoon.

During processing, Shapiro took photographs of Witness #8 and collected a DNA reference sample. Witness #8's clothing consisted of a black hoodie sweatshirt and a grey pair of sweatpants.

While at the Morongo Basin Sheriff's Station, Shapiro received evidence from Detective Popa. This evidence consisted of a black "Ozark Trail" folding pocketknife. This pocketknife was given to Detective Popa by Deputy Jonathan Galindo who found the knife during his search of Speer immediately after the shooting. The knife was located in Speer's pants pocket.

After processing Witness #8, Detective Cleary drove Witness #8 around the areas where she and Speer had walked so that she could show him where she and Speer had left the gun case and where she had dropped her backpack. Witness #8 also agreed to show Detective Cleary Speer's path of travel prior to the officer involved shooting. During this drive, the gun case was located near the gutter on the west side of Grand Avenue, in front of a residence on the 7000 block of Grand Avenue. Along with the gun case, Detective Cleary also located an empty Winchester Super Target .20 gauge ammunition box and a foam cooler container for a bottle of Jägermeister. Witness #8 pointed out a black Audi that was parked in the driveway at a residence on the 7000 block of Grand Avenue and said it was the vehicle they had rummaged through earlier that day. Witness #8's backpack was located in an open desert area on the northwest corner of Cholla Avenue and Joshua Drive. Nothing of evidentiary value was found in the backpack.

On January 8, 2018, at approximately 8:30 in the morning, San Bernardino County Sheriff's Detective Michael Cleary and Crime Scene Specialist Kim Shapiro arrived at Desert Regional Medical Center in Palm Springs to contact and process **Daryll Joel Speer**.

Speer was found to be intubated and unconscious and was therefore unable to be interviewed. Shapiro took several photographs of Speer and the gunshot wound to his right shoulder.

While at the hospital, Shapiro received an evidence bag from San Bernardino County Sheriff's Deputy Campos. Inside the evidence bag was clothing that had been removed from Speer's body for purposes of medical treatment. Among the items of clothing were a black Arizona Jean Co. brand thermal shirt, size large, cut and bloody and a pair of blue Levi Strauss and Company jeans, also cut. Inside the pant's pocket of these jeans was a clear plastic wrapper with white grains and a corner piece of a plastic baggie with a white granular substance. These items in the baggies were sent to the San Bernardino County Sheriff's Crime Lab for analysis; one of them was analyzed and was found to contain methamphetamine. The net weight of the methamphetamine was .04 grams. Photographs of the clothing were also taken. The photographs show the Levi jeans were a very dark blue color.

On January 8, 2018, at approximately 3:45 in the afternoon, **San Bernardino Sheriff's Deputy Jonathan Galindo** was interviewed by Detective Michael Warrick and Detective Brandon Motley³ of the San Bernardino County Sheriff's Department.

Deputy Galindo was employed by the San Bernardino County Sheriff's Department as a deputy sheriff and was assigned to the Morongo Basin Sheriff's Station. He was on duty on January 8, 2018 and was wearing his standard Class A Deputy Sheriff uniform. The uniform consisted of a tan long sleeve shirt with San Bernardino County Sheriff's Department patches on both shoulders, an American flag on the right breast, with a gold metal name plate with J. Galindo on it just below the American flag, and a gold metal deputy sheriff badge on the right breast. Deputy Galindo also wore his Sam Brown duty belt. His duty belt held a triple magazine pouch containing three Glock 21 magazines, a Taser X2, a rapid containment baton, a HT radio, two handcuff pouches, a flashlight, a Glock 21 duty weapon, pepper spray and a belt recorder.

Deputy Galindo was assigned to patrol and was in field training on January 8, 2018, working the 7:00 a.m. to 7:00 p.m. shift. He was driving a marked patrol unit with his Field Training Officer, Deputy Alex Millan, riding with him as his passenger. Deputy Galindo's call sign was 23 Paul 21 and his unit was number 23J1.

Deputy Galindo was hired as a deputy sheriff by the San Bernardino County Sheriff's Department on January 11, 2016. He was placed out on patrol in December 2017 and was assigned to the Morongo Basin Station. Deputy Galindo explained that he wasn't completely familiar with all the street names in town, but that he could drive to the locations as needed.

Deputy Galindo had a belt recorder and it was activated during the encounter with Speer. Deputy Galindo did not have a body worn camera. Deputy Galindo's patrol unit did not have a camera. Deputy Galindo took photographs with a camera handed to him by Deputy Millan immediately after the officer involved shooting. Deputy Galindo did not fire a weapon and he was not injured during the officer involved shooting.

On January 8, 2018, Deputy Galindo's first call was the one that led to the officer involved shooting. The call came in when Deputy Galindo was still at the station. The call was for a Hispanic male adult with a Hispanic female adult going into people's yards. Deputy Galindo and Deputy Millan left from the station. While en route to the location, dispatch advised that the reporting party had called and said the suspects were trying to break into a black BMW.

³ During the interview, Detectives Motley and Warrick utilized a Google Images search depicting a bird's eye view of the location of the officer involved shooting. This image was printed out onto paper and was used to aid in Deputy Galindo's description of the positions and locations of all parties involved. Deputy Galindo marked the locations of each party as well as the location of the parked patrol car.

When Deputy Galindo and Deputy Millan arrived on scene, they did an area check, but they could not find anyone outside, nor were they able to find a black BMW. A man, later identified as Witness #1, in a grey Honda pulled up to them and told the deputies he was the reporting party. Witness #1 described the subjects as wearing black shirts or a black sweater or grey sweater and said that the male was carrying a brown or tan blanket with something underneath it. Witness #1 told the deputies he tried following the two subjects, but they had gone down to the wash, heading northbound and he lost sight of them. Witness #1 then told the deputies that the vehicle that had been broken into was actually a black Audi, not a black BMW and explained that he had gotten confused about the make of the vehicle. He told them that the black Audi was located on the next street over, on Grand Avenue.

Deputy Galindo and Deputy Millan then started heading toward Grand. On their way there, they passed a bridge that goes underneath the wash, so they turned around and checked underneath it. They saw there was a tunnel underneath the bridge and so they checked it. They didn't see anyone there when checking both sides, however there were bushes so they couldn't see if anyone was hiding.

Deputy Galindo and Deputy Millan then continued on their way to Grand Avenue. Once there, they spoke to the owner of the black Audi, Witness #4 and his daughter, Witness #5. Witness #4 told them the windows to the Audi were already down, but there were items removed from the glovebox. Deputy Galindo saw that there were items spread out all over the car. Witness #4 said he didn't believe anything was missing. Witness #4 told the deputies he didn't see anyone in his vehicle, but that a neighbor had come by and told him he had seen two people breaking into his car. Deputy Galindo and Deputy Millan told the car owner they would be looking for the people who had gotten into his car. Deputy Galindo and Deputy Millan then got back into their patrol vehicle and drove away. Deputy Galindo and Deputy Millan spent no more than five minutes at the Grand Avenue address. Deputy Galindo said his priority at that time was to look for the suspects because they could have been breaking into someone else's car.

Deputy Millan told Deputy Galindo to drive over to the area by the Big Lots store. This was near the end of the wash where it ends at Highway 62. Deputy Galindo was not sure of the name of the street, but it was on the same street as the Big Lots store. From there, Deputy Galindo turned left at the alley and drove behind Big Lots toward the wash to look for the two subjects who Witness #1 had seen.

After driving around the alley behind Big Lots, Deputy Galindo stopped the patrol vehicle on Trojan Way, to the west of Big Lots. In this location, Trojan Way runs parallel to and is just east of the flood control channel. Trojan Way is a dead-end street. Deputy Galindo stopped the patrol car where Trojan Way ends. Deputy Galindo parked the vehicle with the front end facing north. The driver's side door was facing west, and the passenger side was facing east. Deputy Millan got out of the patrol vehicle first and was already out and around the car by the time Deputy Galindo got out of the vehicle. When Deputy Galindo got out of the patrol vehicle, he saw two subjects who matched the description given by Witness #1 down in the middle of the flood control channel.

Deputy Galindo believes he turned on his audio recorder when he was out of the patrol car.

Deputy Millan was approximately 20 feet ahead and to the south of Deputy Galindo because he had gotten out of the patrol car first. Deputy Millan was directly east of the subjects. Deputy Galindo was further north, closer to the patrol car. Deputy Galindo and Deputy Millan were at the top of the flood control channel, at a height of approximately 10 feet above the two subjects. Deputy Millan and Deputy Galindo were on the east side of the flood control channel. The subjects were approximately 20 to 30 feet away, down in the middle of the flood control channel and to the west of the deputies. Deputy Millan was closer to the subjects than Deputy Galindo was. The male subject, later identified as Speer, was carrying something wrapped in a tan blanket.

As Deputy Galindo began approaching the two subjects, Deputy Galindo saw the buttstock and a muzzle of the gun underneath the loosely wrapped tan blanket that Speer was carrying. Deputy Galindo believed Speer's gun was a rifle. Speer was holding it with his left hand and the gun was pointed upwards toward the sky. At the same moment that Deputy Galindo saw the gun, he heard Deputy Millan begin ordering Speer to put the gun down. Upon seeing Speer with a gun, Deputy Galindo immediately drew his duty weapon and began giving commands, telling Speer to drop the gun.

Speer was looking at them in a "weird way." Deputy Galindo said it was obvious that Speer heard their commands, but Speer did not drop the gun. Speer was pacing around holding the gun. Deputy Galindo and Deputy Millan continued giving multiple commands to Speer to put the gun down, but Speer still held onto the gun. Speer was facing them and was saying something, but Deputy Galindo was not sure what he was saying. Deputy Galindo believed Speer was trying to explain himself or something. Speer continued holding the gun with his left hand. He was holding the gun in front of his body at about mid-waist level. As the deputies continued telling Speer to drop the gun, the female subject, later identified as Witness #8, stepped away from Speer. She was standing approximately five feet to the right of Speer. Deputy Galindo said that she was "going crazy" and she was yelling at Speer to drop the gun.

Deputy Millan told Deputy Galindo to "go grab the Mini-14" out of the patrol unit. Deputy Galindo began walking backwards in the direction of the patrol unit so he could keep an eye on Speer and could make sure he wasn't going to point the gun at him or Deputy Millan. Once he got further back from Speer, Deputy Galindo turned and ran toward the patrol unit. As Deputy Galindo began turning to run back to the patrol car, he saw Speer begin turning to his left as if he was going to start heading up the berm on the west side of the wash. However, Speer was still standing at the bottom of the wash at this point.

When Deputy Galindo got to the patrol vehicle, he opened the driver's side door and grabbed the Mini-14. Deputy Galindo could hear Deputy Millan still ordering Speer to drop the gun. Deputy Galindo then began to load a round into the chamber of the Mini-

14, because it was not loaded. As he did so, he heard gun shots go off. Deputy Galindo heard two gunshots that were close together, then a slight pause, and then more shots. Deputy Galindo could not recall how many shots were fired. Deputy Galindo could not see the shooting from his vantage point. Deputy Galindo ran back to Deputy Millan. By the time Deputy Galindo pointed the Mini-14 at Speer, Speer was already sliding down the embankment of the wash. Deputy Galindo saw that the gun Speer had been holding was lying on the dirt, up high on the embankment, approximately 8 feet away from where Speer was sliding down. Witness #8 had not moved from where Deputy Galindo had previously seen her, but he believed she was kneeling down. Once Speer was at the bottom of the berm, Witness #8 went up to him and began kissing him.

Deputy Millan was still holding Speer at gunpoint. Deputy Galindo and Deputy Millan then went down the embankment and into the wash area, approaching Speer and Witness #8. The embankment of the wash was steep and had loose dirt, making it difficult to get down to them. Once there, they told Witness #8 to move away from Speer. They then placed Speer into handcuffs and conducted a search for more weapons. Witness #8 was also placed in handcuffs. While searching Speer, Deputy Galindo found multiple shotgun rounds and a knife. Deputy Galindo asked Speer why he didn't drop the gun and what was wrong with him. Speer said, "I know, I know," and said that he "messed up." Deputy Galindo also heard Witness #8 telling Speer he should have just dropped the gun. Witness #8 and Speer both thought that the deputies had shot Speer with a rubber bullet. Witness #8 kept asking the deputies if Speer was going to be okay. Speer kept saying he couldn't move.

Medical aid arrived shortly thereafter, and Deputy Galindo waived them down to Speer's location. Deputy Galindo removed the handcuffs from Speer so that medical aid could be rendered.

Deputy Millan gave his camera to Deputy Galindo and told him to start taking photographs. Deputy Galindo took pictures of the scene while medical aid was assisting Speer.

Deputy Galindo started putting up crime scene tape on the Big Lots parking lot and cut off Trojan Lane. Other deputies began arriving and they assisted in securing the scene. Deputy Galindo drove himself to the station. Deputy Millan was driven to the Morongo Basin Sheriff's station by detectives.

On January 8, 2018, at approximately 5:17 in the evening, **San Bernardino Sheriff's Deputy Alex Millan** was interviewed by Detective Michael Warrick and Detective Brandon Motley⁴ of the San Bernardino County Sheriff's Department.

⁴ During the interview, Detectives Motley and Warrick utilized three Google Images printouts, one depicting the area of the initial call on Amador, and two depicting a bird's eye view of the location of the officer involved shooting. The images were used to aid in Deputy Millan's interview regarding the initial

Deputy Millan was employed by the San Bernardino County Sheriff's Department as a deputy sheriff and was assigned to the Morongo Basin Sheriff's Station. He was on duty on January 8, 2018 and was wearing his standard Class A Deputy Sheriff uniform. The uniform consisted of a tan short sleeve shirt with San Bernardino County Sheriff's Department patches on both shoulders, an American flag on the right breast, with a gold metal name plate with A. Millan on it just below the American flag, and a gold metal deputy sheriff badge on the right breast. Deputy Millan also wore a Sheriff's Department hat and his Sam Brown duty belt. His duty belt held a triple magazine pouch containing three Glock 21 magazines, a Taser X2, a rapid containment baton, a HT radio, two handcuff pouches, a flashlight, a Glock 21 duty weapon, pepper spray, a tourniquet holder, and a belt recorder.

Deputy Millan had been employed as a deputy sheriff for three years and had previously been a police officer for the Palm Springs Police Department.

Deputy Millan was working the day shift from 7:00 a.m. to 7:00 p.m. and was assigned to work patrol as a field training officer with Deputy Galindo as his trainee. Deputy Millan did not wear a body worn camera. The patrol unit they were assigned to did not have a camera. Deputy Millan did not have his belt recorder activated at the time of his contact with Speer.

While at the Morongo Basin station, Deputy Millan and Deputy Galindo received a call from dispatch regarding suspicious subjects wearing all black clothing who were jumping over fences and possibly breaking into cars. Deputy Galindo told dispatch that he copied the call and that he and Deputy Millan would be en route.

Deputy Millan and Deputy Galindo responded to the area of Amador Avenue. Deputy Galindo was the driver. When they got to this area, the initial reporting party, Witness #1, flagged them down and told them that the two subjects, a male and a female wearing all black clothing, jumped over the wall of the houses on the east side of Amador. Witness #1 was driving a grey Honda. The call from dispatch had said that a grey Honda was following the two subjects. Witness #1 explained that he had gotten into his car and drove around to do an area check. Witness #1 said that he went over to Grand Avenue, east of Amador, and he saw the two subjects breaking into a black Audi. Witness #1 told the deputies that the subjects had gone down into the wash. The wash runs parallel between Grand and Amador and then crosses over to the north side of Onaga. Deputy Millan and Deputy Galindo went to the wash near the overpass where there is a tunnel. They checked the tunnel and did not see anyone there.

call for service and regarding the positions and locations of all parties involved at the scene of the officer involved shooting. Deputy Millan marked the locations of each party as well as the location of the parked patrol car.

Deputy Millan and Deputy Galindo then drove over to the area on Grand Avenue where they contacted the homeowner, Witness #4. Deputy Millan asked Witness #4 if he had seen anyone in all black clothing and he said that he had not. Witness #4 explained that someone had knocked on his door and told him that someone was breaking into his car. Deputy Millan asked Witness #4 to check to see if anything was missing from his Audi. Deputy Millan saw a window to the Audi was missing and Witness #4 told him that the window had already been like that. Witness #4 told Deputy Millan that everything had been pulled out of his glovebox, but that it didn't appear anything was missing. Witness #4 said he didn't want anything done about it. Deputy Millan told Witness #4 that they were going to do an area check and advised Witness #4 to call them back if he found anything was missing.

Deputy Millan and Deputy Galindo then went back to do an area check for the two subjects. Deputy Millan believed the two subjects were out doing vehicle burglaries or trying to break into houses because they were seen jumping into the backyards of residences. Because of this, Deputy Millan and Deputy Galindo needed to make contact with them and to search the area for stolen property. Deputy Millan told Deputy Galindo to drive down Onaga, to head eastbound, and then to make a northbound turn on Sage. Once on Sage, they entered the alleyway and drove behind Big Lots, heading westbound toward the wash and onto Trojan Way.

As soon as they drove up to Trojan Way, just southwest of Big Lots, Deputy Millan immediately saw two subjects walking northbound down in the wash area, west of the deputies. Deputy Millan could see the two subjects were a male and a female and that the male was carrying a long object that was covered in a tan blanket. The male held the object as if it was a stick or something long; he held it in the middle. Deputy Millan did not know what it was. (The two subjects were later identified as Daryll Speer and Witness #8.)

Deputy Galindo parked the patrol unit on Trojan Lane and Deputy Millan quickly got out. As Deputy Millan got out of the car, Speer looked up and immediately turned around, as if he was going to run away from the deputies. As soon as Speer turned around, the tan blanket he was holding slid down from the top of the object it was concealing, and Deputy Millan saw the muzzle of a rifle.

Deputy Millan and Deputy Galindo immediately began ordering Speer to stop and to drop the gun. Speer paused for a half second and then began to walk away quickly, now heading in a southerly direction. Deputy Millan started running parallel to the wash, in the same southerly direction Speer was headed. Deputy Millan had his gun out of its holster and was pointing it at Speer. Deputy Millan and Deputy Galindo continued ordering Speer to drop the gun. Speer did not comply with their orders and kept his back to the deputies. Speer was approximately 25 to 30 yards from Deputy Millan. Deputy Millan advised dispatch that he had a male with a gun.

Deputy Millan and Deputy Galindo ordered Speer to drop the gun multiple times. Deputy Millan had Speer at gunpoint. Deputy Millan heard Speer say something, but he

could not remember what he said. Speer had his back to the deputies. Speer continued walking south approximately another five feet and then stopped. Deputy Millan continued walking south along the top of the wash, trying to get to a position that was parallel to Speer down in the wash. The deputies continued ordering Speer to drop the gun. Speer did not drop the gun.

Deputy Millan told Deputy Galindo to run back to the patrol car to get the Mini-14 rifle. Deputy Millan knew that if Speer kept walking away, they would not be able to just retreat and let him walk away with a gun. Deputy Millan knew that they would have to follow him at a distance, but that if he started shooting at them, they would not be able to do anything with their handguns from a long distance. Deputy Millan believed Speer was trying to get away and that they would have to follow him until they got backup support and a perimeter or barricade was set up.

When Deputy Galindo ran to get the Mini-14, Speer started walking up the west side embankment of the wash, away from Deputy Millan. Millan was standing on the east side of the wash. Deputy Millan believed Speer was trying to get up to higher level because the deputies, being at the top of the wash, had a position of advantage over Speer. By walking up to the top of the embankment, Deputy Millan knew Speer would have a better vantage point and Deputy Millan had no coverage or concealment where he stood. Witness #8 stayed down in the wash.

As Speer began walking up the west side of the wash, he changed the way he was holding the gun and instead of holding it from the middle, he was now holding it with one hand at the top of the gun, supporting the barrel, and the other hand near where the trigger was, as one would hold a rifle or shotgun to shoot it. Speer held the gun at a 45 degree angle, with the butt end near Speer's right hip area. Speer had his right hand near the trigger of the rifle. Deputy Millan continued ordering Speer to drop the gun. Speer began looking back, over his right shoulder at Deputy Millan. Deputy Millan believed Speer was getting ready to shoot at them. Deputy Millan continued telling Speer to drop the gun.

Speer continued walking up the berm, which was "pretty steep," but he was forcing himself up there, getting about half-way up it. Speer then turned around a second time, turning his body to the right, toward the north. While Speer turned, Deputy Millan saw Speer now had the gun at a 90 degree angle. Speer had his gun pointed in the direction of the patrol unit, where Deputy Millan had sent Deputy Galindo to retrieve the Mini-14. Deputy Millan believed Speer was going to shoot at either Deputy Galindo or that Speer would continue turning to his right and would shoot Deputy Millan. Deputy Millan did not see exactly where Deputy Galindo was because he did not take his eyes off of Speer, but Deputy Millan knew Deputy Galindo was at the patrol unit. Deputy Millan believed Speer wanted to kill his partner or himself. Deputy Millan was scared because he did not want to die. Deputy Millan shot his duty weapon six times. When Deputy Millan fired his duty weapon, the distance between him and Speer was 30 to 40 yards. Deputy Millan saw Speer fall to the ground. Speer slid down the embankment

on his side and then rolled down to the bottom. The gun Speer had been holding stayed up on the hill. Deputy Millan called for medical aid.

Deputy Millan waited for Deputy Galindo to return so that they could both walk down the wash together. While walking down the into the wash, Deputy Millan and Deputy Galindo held Speer and Witness #8 at gunpoint because they did not know if Witness #8 had a weapon. Deputy Galindo then handcuffed Speer and searched him and then did the same to Witness #8. While searching Speer, Deputy Galindo found yellow shotgun shells in Speer's pockets and a knife in either Speer's waist band or one of Speer's pocket.

When Deputy Millan got a better look at Speer, he realized he had prior contacts with him. Deputy Millan did not realize that until he was closer to Speer. Deputy Millan could not remember if he had arrested Speer before. Deputy Millan also had prior contact with Witness #8 but did not recognize her until after "everything slowed down." Deputy Millan did not know if he had arrested Witness #8 in the past.

Deputy Cantu arrived on scene. The firetruck got there at about the same time. Deputy Cantu walked Witness #8 up to his patrol unit and put her inside.

Detective Motley asked Deputy Millan if he saw anything that was unprofessional or if any inappropriate language was used that would have contributed to or compromised their attempts to gain Speer's compliance. Deputy Millan responded by saying that he did not and that he personally did not cuss. Detective Motley asked Deputy Millan if there had been any communication issues or concerns. Deputy Millan said there was an issue with the new digital radios cutting off the first part of his radio transmissions. Detective Motley asked Deputy Millan if Witness #1 had told him Speer had a gun. Deputy Millan said he did not and that he did not know Speer had a gun until he saw it when the blanket slid down revealing it.

Detective Motley asked Deputy Millan what he thought would have happened if he had not shot Speer. Deputy Millan said that he believed that Speer would have been able to take a shot and that either he or his partner might not have gone home that day.

Summary of 911 Call Recordings

The recording of the first 911 call is one minute, 40 seconds in length. The call was made at 7:30 a.m. The call begins with the female dispatch operator saying, "911, what is your emergency?" The male caller then tells the dispatcher that there are two suspicious people walking around and they have something in a blanket. He says he doesn't know what is in the blanket but that it "looks like it could be like a .12 gauge." The caller explains that the two suspicious people came up into the driveway and when they saw the caller, they took off running. The caller further explains that he saw the two suspicious people go through another property and that he followed them until they went through the backyard of another property off of Amador.

The dispatcher asks him what his address is, and the caller says he is in the car right now, but that he was at his buddy's house for Bible study. The caller tells the dispatcher that the address where the two individuals hopped into the backyard was on the 7000 block Amador.

The dispatcher asks the caller how many there were, and the caller says there were two, "a guy and a girl all dressed in black." The caller explains that the male had something wrapped in a "tan wrap."

The dispatcher asks how old the two subjects looked to him, and he tells her "maybe 19, 20." When the dispatcher asks what race they were, the caller says Hispanic. The dispatcher asks for the caller's name and he tells her his name is Witness #1.

The 911 call concludes with the dispatcher telling Witness #1 that they will get a unit in the area.

The recording of the second 911 call is five minutes, 57 seconds in length. This call was made at 7:32 a.m. It begins with the dispatcher saying, "911, state your emergency, what is the address of your emergency?" The caller says that she just saw two teenage boys. The dispatcher asks her what the address is, and the caller says her address is on the 50000 block of Navajo Trail but that the teenage boys are across the street from her. The dispatcher asks the caller, "On Navajo?" The caller tells the dispatcher that they are on Amador.

The caller explains that the "two teenage boys climbed a fence with something wrapped in a tan blanket." When the dispatcher asks for the two subjects' race, the caller says they are white. The dispatcher asks for their approximate age and the caller is unsure but eventually says "they look like they were young, like 17."

The dispatcher asks if the two subjects went into a residence across from her on Amador, and the caller explains that the two subjects went into somebody's yard and that she knows that somebody just bought the house, but the two subjects were not the new owners. The dispatcher then asks the caller if it is a vacant house. The caller says that it is and explains they "have had a lot of break-ins over here recently." There is conversation between the dispatcher and the caller about what the two males were wearing, and the caller says they were both wearing sweatshirts and jeans, but that she does not remember what color.

The caller then says, "There's this guy in a...hold on. They're inside somebody's car on Grand right now." The dispatcher asks what kind of vehicle; the caller says it might have been a BMW. The caller says they broke into the vehicle and they were "both dressed in black, I guess." The dispatcher asks the caller if the two subjects were still there; the caller says, "No, they ran."

The dispatcher asks the caller for her name, and she tells her it is Witness #3. The dispatcher asks Witness #3 if she still sees the two subjects; Witness #3 says, "No, I don't see them at all and says, "This is a car that's driving by." The dispatcher asks Witness #3 if she knows what direction they left; Witness #3 explains that she is not good at directions. After much back and forth about the directions, Witness #3 says that the two subjects are on foot on, Amador going towards Sage and that they are going through houses, through fences. Witness #3 tells the dispatcher that she believes they went down the wash and that there is a grey Honda following them. Witness #3 tells the dispatcher, "You don't even have to come to here, just go to Grand, up towards Grand and then meet the Honda." The dispatcher asks the caller for the cross street with Grand, but Witness #3 then says, "Um, I think if you come up Grand, you might be too late. They're running away from- they're running away from us."

The conversation between the dispatcher and the caller overlaps at this point. Witness #3 then says, "I hear the cops." The dispatcher says, "Okay." Witness #3 says, "But, they have something in their hand, the guy said, it seemed like it was wrapped up, so I think he stole it from somewhere." The dispatcher tells Witness #3 that she has the call entered and that she "did update the information as far as carrying something in a tan blanket." The dispatcher thanks Witness #3 and the call is ended.

Summary of Dispatch Logs

0732 hours- Patrol unit 23P21 (Deputy Millan and Deputy Galindo) were dispatched for a report of suspicious persons. A Hispanic male and a Hispanic female were seen wandering the neighborhood and walking through yards. The reporting party was at Bible study at an unknown address on Amador when "they came up to that door and saw/heard people turned and left." "Reporting party decided to follow them." The closest address was on Onaga Trail and the closest intersection was Onaga Trail and Grand Avenue.

0733 hours- Dispatch advised, "HMA/HFA bot apx 19-20YO, dressed all in black, male carrying something in a tan blanket."

0736 hours- Dispatch advised the subjects were seen breaking into a black BMW and the male was seen carrying something wrapped in a tan blanket.

0738 hours- Deputy Millan advised he copied the additional MDC information.

0759 hours- Deputy Millan advised the unit was, "Code 4."

0803 hours- Deputy Millan advised that deputies had one at gunpoint. A subject (later identified as Daryll Speer) was armed with a gun in a wash near Trojan Way, south of Twentynine Palms Highway. Deputy Millan said Speer was refusing to drop the gun.

0804 hours- Deputy Millan radioed, "Shots fired," and requested medical aid. Deputy Millan advised the location was Trojan Lane, past Twentynine Palms Highway.

0806 hours- Deputy Cantu requested lockdown of Yucca Valley High School.

0807 hours- Deputy Millan advised there were no outstanding subjects and cleared medical personnel into the scene.

0810 hours- Deputy Millan advised fire personnel arrived on scene.

0813 hours- "Code 33" (emergency radio traffic only) lifted.

0816 hours- Deputy Cantu lifted lockdown of Yucca Valley High School.

0818 hours- Deputy Cantu advised Speer was transported to Desert Regional Medical Center in Palm Springs.

0825 hours- Deputy Cantu confirmed Speer was the subject involved in the incident.

0844 hours- Deputy Cantu advised the female (Witness #8) was detained.

Summary of Belt Recording⁵

Deputy Galindo's belt recording is six minutes and 28 seconds in duration. On the recording, the voices of Deputy Galindo and Deputy Millan can be heard clearly. There are two other voices, one male and one female, that can be heard faintly in the beginning and then more clearly toward the end of the recording. One of those voices is Witness #8's and the other is that of Daryll Speer.

The recording starts out immediately with Deputy Millan yelling, "Get on the ground." This is quickly followed by Deputy Galindo yelling, "Hey, put the gun down." Witness #8 is heard in the background saying, "Hey look it, you know." Deputy Galindo repeats the command, "Put the gun down." Witness #8 then can be heard saying, "Look it, you know," followed by something unintelligible and then, "Give me a hug goodbye." Deputy Galindo yells, "Put the gun down now." Speer's voice can be heard, but it is unclear what he is saying. Both Deputy Galindo and Deputy Millan then repeat their commands, "Put the gun down." After four separate commands of, "Put the gun down," Speer can be heard again, but what he says is unintelligible. Deputy Millan can then be heard saying, "Grab the mini, grab the mini." Deputy Millan then repeats, "Grab the mini" a third time. Deputy Galindo can be heard saying, "23-21, one at gunpoint." Deputy Galindo says, "Has a gun." Deputy Milan can be heard continuing to yell, "Put the gun down."

⁵ The belt recording was reviewed in its entirety. The summary of this belt recording will only cover the events from the beginning of the recording through the point immediately after the incident under review."

Next, the sounds of quick footsteps are heard, and it sounds like Deputy Galindo is running. This sound continues for several seconds. Faint yelling can be heard in the background, as if off at a distance. Then, beeping sounds can be heard clearly. (According to Detective Motley, these sounds are from the patrol unit's long gun rack.) Deputy Galindo is breathing heavily. What sounds like a gun being racked, is then heard. Simultaneous to this, gunshots can be heard in the distance. There are a total of six gunshots heard in the distance.

What sounds like wind on the microphone of the belt recorder is the next thing that is heard. This is followed by Deputy Galindo saying, "Move!" Both Deputy Galindo and Deputy Millan are then heard yelling, "Let me see your hands!" Deputy Galindo then yells, "Move!" again. This is quickly followed by Deputy Millan yelling, "Ma'am, get out of the way," and Deputy Galindo also yelling, "Get out of the way!" Deputy Galindo then says, "Keep your hands up."

Witness #8 then says, "He took that gun from somebody just now." Deputy Galindo says, "Stop, hey." Deputy Galindo then says, "Lay on your face" and then repeats it. Deputy Millan then says, "Get your hands up." Witness #8 says, "You guys, he just took that gun from somebody running over there, so you better get him." Heavy breathing can be heard. Deputy Galindo responds by saying, "I'm gonna get 'em, ok." Deputy Millan then says, "Give me the mini." This is promptly followed by Witness #8 saying, "You can get him. I-I'm just telling you..." The remainder of her sentence is unintelligible.

Deputy Galindo then says, "Turn around, turn around." Speer can then be heard saying, "I can't move" twice. Witness #8 says, "You shot him. You shot him." Deputy Galindo says, "Let me see your hands." Speer then says, "I can't feel my (unintelligible). Multiple voices are all speaking at the same time, so it is unclear what is being said at this point. Witness #8 can be heard asking, "What did you guys shoot him with?" Deputy Galindo says, "Let me see your-" Speer asks, "What did you shoot me with? I can't breathe." Witness #8 says, "Can you tell me what you shot him with? Please?" Speer then says, "Baby I love you." Witness #8 then says, "Why did you?" followed by words that are unintelligible. Speer responds, "I told you baby." Witness #8 says something, but her words are not clear.

Deputy Galindo says, "Why wouldn't you put the gun down?" Speer replies by saying, "You paralyzed a good guy, dude." Witness #8 then excitedly says, "He's pale you guys, he's pale. Is he dying?" As she is saying this, Deputy Millan can be heard saying, "Search, search him out, dude." Heavy breathing can be heard. Witness #8 asks, "You guys, where did you shoot him at? Talk to me please. Is he gonna die?" Deputy Millan then says, "Keep your hands out where we can see them." Witness #8 then says, "Look it, you know me, stop please." Speer can be heard saying something, but his words can not be made out clearly. Speer then says, "Baby." Witness #8 says something, but it is unintelligible. Deputy Millan says, "Stay on the ground." Speer then says, "I can't feel my body. I can't feel my body, dude." Both Speer and Witness #8 are speaking at the

same time and it is unclear what they are saying. Witness #8 can be heard saying, "Look, look," followed by words that cannot be understood and then, "please, please, please."

Deputy Millan says, "We're getting help. On the way." Witness #8 asks, "What kind of what did you shoot him with? A bullet?" Speer asks, "Real gun?" Witness #8 says, "A real- was it real?" Speer asks, "Real (unintelligible), was it a real gun?" Deputy Millan then says, "We've got help coming." Speer then asks, "Was it real though? Honestly?" Witness #8 then says, "Tell me, you guys shot him in the back." Witness #8 asks, "Who shot him? He did?" Witness #8 then says, "You're turning white babe." Speer can be heard saying something, but it is not clear what is being said. Witness #8 says, "He doesn't have nothing else. He just took that gun from a guy running around with all these kids."

Deputy Galindo says, "Told you to put the gun down, dude." Speer responds by saying, "I know. I know." Witness #8 then says, "He just wanted" followed by words that are not clear. Deputy Galindo says, "You know? You knew?" Speer can be heard saying something, but his words are not intelligible. Witness #8 is also speaking at the same time, but her words are not intelligible. Deputy Galindo then says, "Turn around. Put your hands--" Deputy Galindo is interrupted by Witness #8 saying, "No, I'll put my hands up." Deputy Galindo says, "Put your hands behind your back." Witness #8 asks, "Why?" Deputy Galindo repeats, "Put your hands behind your back." Witness #8 responds excitedly, and it is unclear what she is saying, however the word "seizure" is heard. Deputy Galindo tells her again to put her hands behind her back. Speer says, "Please help me guys...stop please dude." Witness #8 asks, "He's not gonna die, right?" Speer again asks for help. Deputy Millan says, "We got paramedics coming." Deputy Millan repeats this and says it again.

High-Tech Investigation of Cell Phones

San Bernardino County Sheriff's Department, Hi-Tech Crime Detail, conducted a forensic examination of two cell phones. One of the phones was Speer's, the other was Witness #8's.

The Hi-Tech Crime Detail investigation of Witness #8's cell phone revealed no audio or video recordings of the officer involved shooting.

The investigation of Speer's cell phone revealed several Facebook Messenger text message conversations between Speer and other individuals for the time period of January 5, 2018 through January 7, 2018. These text messages involved conversations regarding possession of a shotgun, shotgun shells, drug activity, and other crimes. The investigation also revealed that images of a shotgun were sent from Speer's phone to three separate individuals. The shotgun depicted in the picture is identical to the shotgun that was recovered from Speer at the scene of the officer involved shooting.

The picture of the shotgun was sent on the following dates and times, and included the following messages:

January 7, 2018 at 12:32 p.m., "Thats all mee [sic]." "Its hard to carry aroujd but its with me [sic]."

January 7, 2018 at 4:31 p.m., "We can come up." "12 guage [sic]." "20."

January 7, 2018 at 4:33 p.m., "Let's run a muck tho. [sic]." "We can come up." "20."

The Hi-Tech investigation of Speer's Cell phone revealed that the image of the shotgun was created on Speer's cell phone on January 6, 2018 at 10:14 p.m. The shotgun appears to be sitting on top of a green felt pool table.

The Hi-Tech investigation also contained the phone's Google search history. Among the search history were searches on January 7, 2018 for Hoyt compound crossbows, Remington pump action model 870 shotguns, and "how to inject a vein."

Medical Examinations

Speer was treated at Desert Regional Medical Center in Palm Springs. Dr. Frank Ercoli was the attending emergency room trauma doctor in charge of Speer's medical treatment. Speer arrived at the medical center at 8:41 a.m.

Dr. Ercoli was interviewed by Detective Michael Cleary of the San Bernardino County Sheriff's Department on January 8, 2018, at approximately 11:45 in the morning.

Dr. Ercoli stated that Speer was on a ventilator to keep him stable. Speer had a gunshot wound to the right scapula (shoulder blade). The bullet travelled medially and ended up at the 4th thoracic vertebra, where it was lodged in the spinal canal. Speer received injuries to his right lung and a severed spinal cord. Neurologically, Speer lost function of his body from the nipple line to his toes, which was consistent with an injury to his spinal cord.

Toxicology

Toxicology results from Desert Regional Medical Center show Speer's urine drug screen was positive for amphetamines, methamphetamines, and cannabinoids.

APPLICABLE LEGAL STANDARDS

Laws of Arrest

California Penal Code section 834a

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.

California Penal Code section 835

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

California Penal Code section 835a

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Laws of Self-Defense

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: "Homicide is justifiable when committed by any person in any of the following cases: (1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person...(4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed,...or in lawfully keeping and preserving the peace." Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be sufficient to prevent injury to the party about to be injured, or to prevent injury to someone else. (Pen. Code §693.)

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in

defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the person acted out of that fear. (*People v. Clark* (1982) 130 Cal.App.3d 371, 377.) "He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as to such actual necessity at such time and really had no occasion for the use of extreme measures." (*People v. Collins, supra*, 189 Cal.App.2d at p. 588.)

CAL CRIM 3470 (REVISED 2012) RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER

Self-defense is a defense to the unlawful killing of a human being. A person is not guilty of that/those crimes if he/she used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully;
2. The person reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The person used no more force than was reasonably necessary to defend against that danger.

When deciding whether a person's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

The person's belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A person is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until

the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

USE OF DEADLY FORCE BY A PEACE OFFICER

Authorization of the use of deadly force is analyzed under the Fourth Amendment's "objective reasonableness" standard. (*Brosseau v. Haugen* (2004) 543 U.S.194, 197.) This question is governed by the principles enunciated in *Tennessee v. Garner* (1985) 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386.

In these decisions, the US Supreme Court explained "it is unreasonable for an officer to 'seize an unarmed, non-dangerous subject by shooting him dead..... However, where the officer has probable cause to believe that the subject poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force.'" (*Tennessee v. Garner, supra*, 471 U.S. at p. 11.)

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner, supra*, 490 U.S. at p. 396.) It is also highly deferential to the police officer's need to protect himself and others. 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. (*Id.* at p. 396-397.) The question is whether the officer's actions are "objectively reasonable" considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 397.)

The US Supreme Court in *Graham* set forth factors that should be considered in determining reasonableness: (1) the severity of the crime at issue, (2) whether the subject poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. (*Graham v. Connor, supra*, 490 U.S. at p. 396.) The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (*Tennessee v. Garner* (1985) 471 U.S. at p. 8-9. The most important of these factors is the threat posed by the subject. (*Smith v. City of Hemet* (2005) 394 F.3d 689,702.)

Thus, under *Graham*, the high court advised 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." (*Smith v. Freland* (1992) 954 F.2d 343, 347.)

Reasonableness: The Two Prongs

Penal Code section 197, subdivision (3) requires that one who employs lethal force have a "reasonable ground to apprehend" a design to commit a felony or to do some great bodily injury. Further, Penal Code section 198 requires that such fear be "sufficient to excite the fears of a reasonable person." This is clearly an objective standard. In shorthand, perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093.)

When specific conduct is examined under the analytical standard of reasonableness the concepts of apparent necessity and mistake are invariably, and necessarily, discussed, for they are part of the same equation. "Reasonableness," after all, implies potential human fallibility. The law recognizes, as to self-defense, that what is being put to the test is human reaction to emotionally charged, highly stressful events, not mathematical axioms, scientifically provable and capable of exact duplication.

While the test, as mandated by section 198, is objective, reasonableness is determined from the point of view of a reasonable person in the position of one acting in self-defense. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) We must take into consideration all the facts and circumstances that might be expected to operate in the persons mind. (*Ibid.*) Reasonableness is judged by how the situation appeared to the *person claiming self-defense*, not the person who was injured or killed as a result.

Imminence of Perceived Danger

"Imminence is a critical component of both prongs of self-defense." (*People v. Humphrey, supra*, 13 Cal.4th at p. 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. Reasonableness and immediacy of threat are intertwined. Self-defense is based on the reasonable appearance of imminent peril of death, or serious bodily injury to the party assailed.

In *People v. Aris* the trial court clarified that imminent peril means that the peril must have existed, or appeared to the person to have existed, at the very time the shot was fired. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1188 disapproved on another ground in *People v. Humphrey* (1996) 13 Cal.4th 1073.) This was later cited with approval by the California Supreme Court: "An imminent peril is one that, from appearances, must be instantly dealt with." (*In re Christian S.* (1994) 7 Cal. 4th 768,783 quoting *People v. Aris, supra*, 215 Cal.App.3d at p. 1187.)

The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate.

Retreat and Avoidance

Under California law one who is faced with an assault that conveys death or great bodily injury may stand his ground and employ lethal force in self-defense. There is no duty to retreat even if safety could have been achieved by retreating. (CALCRIM No. 3470.) Indeed, in California the retreat rule has been expanded to encompass a reasonably perceived necessity to pursue an assailant to secure oneself from danger. (See *People v. Holt* (1944) 25 Cal.2d 59, 63; *People v. Collins* (1961) 189 Cal. App.2d 575, 588.)

Nature and Level of Force

The right of self-defense is limited to the use of such force as is reasonable under the circumstances. (See *People v. Gleghorn* (1987) 193 Cal.App.3d 196, 200; *People v. Minifie, supra*, 13 Cal.4th at p. 1065; *People v. Moody* (1943) 62 Cal.App.2d 18,22.)

Case law does not impose a duty to use less lethal options. "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." (*People v. Collins, supra*, 189 Cal.App.2d at p. 578.)

The rationale for vesting the police officer with such discretion was explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the *least* intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.

Scott v. Henrich (1994) 39 F.3d 912, 915.

In summary, an honest and objectively reasonable belief that lethal force is necessary to avoid what appears to be an imminent threat of death or great bodily injury will justify the use of deadly force. This is true even if the person acting in self-defense could have safely withdrawn or had available to him a less lethal means of defense.

ANALYSIS

On January 8, 2018, at approximately 7:30 in the morning, deputies from the San Bernardino County Sheriff's Department at the Morongo Basin Station responded to a 911 call concerning two suspicious persons who were seen wandering the neighborhood and walking through yards. The location of the occurrence was an unknown address on Amador, with the closest address being on Onaga Trail and the closest intersection being Onaga Trail and Grand Avenue in Yucca Valley. The two suspicious persons were described as a Hispanic male adult and a Hispanic female adult; both were wearing all black clothing. The 911 caller was Witness #1 and he estimated the ages of the two suspicious persons to be approximately 19 or 20 years old. Witness #1 stated that the male was carrying something wrapped in a tan blanket. Witness #1 said that the object wrapped in the tan blanket looked like it could be a .12 gauge, but this information was not relayed to the responding deputies.

Deputy Millan and Deputy Galindo responded to the 911 call. Deputy Galindo drove the patrol unit and Deputy Millan rode as passenger. Deputy Millan was Deputy Galindo's field training officer. As they were en route to the call, a second 911 call was received by Sheriff's Dispatch regarding two suspicious persons in the same area as stated in the first call. This 911 caller was Witness #3 and she described the two suspicious persons as two white teenage males, approximately 17 years old. This description was not relayed to the responding deputies. Witness #3 told Dispatch that the two subjects had climbed a fence with something wrapped in a tan blanket. Witness #3 said the two subjects were wearing sweatshirts and jeans but that she did not remember what color. Witness #3 then informed dispatch that the two subjects were seen breaking into a black BMW on Grand Avenue but that they ran from the location. Witness #3 told the dispatcher that the two subjects were on foot and that there was a grey Honda following the two subjects.

When Deputy Millan and Deputy Galindo arrived on Amador, they were not able to locate a black BMW. They reported this to dispatch at 7:53 a.m. While on Amador, the deputies were met by Witness #1. Witness #1 told them he was the one who had called 911 and that after he called 911, he got into his car and began driving around to find the subjects he had reported. Witness #1 told the deputies that he had seen two subjects breaking into a black Audi, not a BMW, on Grand Avenue. Witness #1 also told the deputies that he had tried to follow the subjects, but that they had gone down into the wash where he lost sight of them.

Deputy Millan and Deputy Galindo began driving to the Grand Avenue address given to them by Witness #1. On the way, the deputies stopped in the area where Witness #1 had said he lost sight of the two suspicious persons. In this area, the wash runs parallel between Grand and Amador and then crosses over to the north side of Onaga. Deputy Millan and Deputy Galindo went to the wash near the overpass where there is a tunnel. They checked the tunnel and did not see anyone there.

Deputy Millan and Deputy Galindo then drove to the address given to them by Witness #1 and spoke to the owner of the black Audi. Both deputies looked at the black Audi and saw that it appeared items had been removed from the glove box. The owner of the Audi, Witness #4, confirmed that items had been taken out of the glovebox. Witness #4 told the deputies that he didn't think anything had been taken. Deputy Millan told Witness #4 that they were going to attempt to locate the two subjects. Deputy Millan told Witness #4 that if he found there was anything missing from his car, to just call and they would come back out.

Deputies Millan and Galindo then drove to the wash/flood control channel near Trojan Lane and Highway 62. Deputy Galindo's priority at that time was to look for the subjects because they could have been breaking into someone else's car. Deputy Millan believed the two subjects were committing vehicle burglaries or trying to break into houses as they had been seen jumping into backyards. Their goal was to find the subjects and to search for stolen property. Neither deputy knew that the male subject they were looking for was carrying something that looked like it could have been a 12 gauge shotgun.

As soon as they drove up to Trojan Way, Deputy Millan saw two subjects who matched the description given by Witness #1. The two subjects were down in the wash and were walking northbound, west of the deputies. Deputy Millan saw the two subjects were a male and a female and that the male was carrying something long that was wrapped in a tan blanket. The two subjects were later identified as Daryll Speer and Witness #8.

As Deputy Millan got out of the patrol car, he saw Speer look up him and then immediately turn around and begin walking the other direction, southbound. Deputy Millan believed Speer was going to run away from them. As Speer turned, Deputy Millan and Deputy Galindo, both saw that the long object Speer had wrapped in the tan blanket was a long gun. The deputies believed it was a rifle.

Both Deputy Millan and Deputy Galindo immediately drew their handguns, pointed them at Speer, and began yelling at Speer to drop the gun. The deputies were standing at the top of the flood control channel on the east side. Speer and Witness #8 were down at the bottom of the flood control channel, approximately 10 feet below, and they were approximately 20 to 30 feet west of the deputies. At 8:03 a.m., Deputy Millan advised dispatch that they had a male with a gun. Deputy Millan and Deputy Galindo continued ordering Speer to drop the gun. As they did so, the deputies could hear Speer saying something, but neither deputy knew what he was saying. Speer continued to hold the gun. He was holding the gun in his left hand, in front of his body at mid-waist level. Witness #8 stepped away from Speer and she too was yelling at him.

Deputy Millan and Deputy Galindo continued ordering Speer to drop the gun. Speer did not comply with their orders. Speer had his back to the deputies. Deputy Millan walked south and tried to get to a position that was parallel to Speer. The deputies continued ordering Speer to drop the gun.

Deputy Millan believed Speer was going to try to get away and he knew that they could not just let him walk off and into the community with a gun. Deputy Millan told Deputy Galindo to run back to the patrol unit to grab the Mini-14 rifle. Deputy Millan believed they would have to follow Speer at a distance until they had backup support. Deputy Millan was thinking they would have to set up a perimeter or a barricade. Deputy Millan knew that if Speer turned and started shooting at them, they would be at a disadvantage because they only had handguns while Speer had a long gun.

When Deputy Galindo ran back to the patrol unit, Deputy Millan saw Speer begin walking up the west side embankment of the wash. Deputy Millan was standing on the east side embankment. Deputy Millan knew that as Speer walked up the other embankment, that Speer would have a better vantage point once he got up to the top. Where Deputy Millan stood, he had no coverage to protect himself should Speer begin firing at him. Deputy Millan noticed that as Speer began walking up the other embankment, that Speer was no longer holding the gun with one hand. Speer was now holding the gun as one would when shooting it. Speer held the gun at a 45 degree angle, with the butt end near his hip. Speer's right hand was near the trigger. Deputy Millan continued ordering Speer to drop the gun, but he did not do so.

Speer began to look back over his right shoulder at Deputy Millan. Speer continued making his way up the steep embankment. Speer turned around a second time, this time turning his body to the right in a northerly direction. Deputy Millan saw that Speer now held the gun in a 90 degree angle, pointed in the direction of the patrol unit. Deputy Millan could not see Deputy Galindo at the patrol unit, but he knew that he had just sent Deputy Galindo back there to grab the Mini-14. Deputy Millan believed Speer was going to shoot Deputy Galindo or that Speer would continue turning and would shoot Deputy Millan. Believing Speer was going to kill his partner or Deputy Millan, Deputy Millan fired his duty weapon at Speer. Deputy Millan fired it six times. When Speer was struck, he fell and then rolled down the embankment. Deputy Millan radioed that shots had been fired and requested medical aid. The time of this radio transmission was 8:04 a.m., just one minute after Deputy Millan's had reported they had one at gunpoint.

Deputy Galindo heard the gunshots being fired while he was at the patrol unit getting the Mini-14. Deputy Galindo quickly returned to Deputy Millan. Together, they approached Speer and Witness #8 with their guns drawn and pointed at Speer.

As soon as the deputies reached Speer, Witness #8 began telling them that Speer had just taken the gun from someone. While the deputies were yelling "Let me see your hands," and telling her to get out of their way as they tried to secure Speer, Witness #8 told them, "You guys, he just took that gun from somebody running over there, so you better get him." Deputy Galindo responded by saying he was going to get him. Deputy Millan then told Deputy Galindo to give him the Mini-14. Witness #8 quickly responds and says, "You can get him." All of this can be heard on the belt recording. It is unclear if Deputy Galindo took off in search of the person Witness #8 told them about, but it sounds as if he did. However, neither deputy was asked specifically about this.

When the deputies searched Speer, they found shotgun shells and a knife in his pockets. Speer's gun was found to be a shotgun loaded with five live rounds; one was in the chamber. The shotgun's safety switch was off.

The distance between Deputy Millan and the fallen shotgun that Speer had held was 90 feet. At this distance, Speer was at a tactical advantage because he had a long-gun and Deputy Millan only had a handgun.

Deputy Millan and Deputy Galindo had ordered Speer eight different times to put down his gun. There was no unprofessional language or cussing used, only simple, clear and concise commands to, "Put the gun down." After each command, time was given to allow Speer to comply. When he did not comply, the commands were repeated.

Witness #8 claimed during her interview with detectives that Speer told the deputies he wanted to give Witness #8 a hug and "say something" to her. Both deputies heard Speer speaking, but neither deputy could understand and recall what he had said. Witness #8 claimed that Speer told the deputies he would not remove the gun from the blanket and that he would hold it above his head. Witness #8 claimed that the deputies responded by saying, "I don't give a fuck what you wanna say, put the fucking gun down right now and put your face in the sand." However, Witness #8's claims are not born out by review of the belt recording. While it is not clear what Speer was saying, it is quite clear that the deputies did not respond by saying what Witness #8 claimed they said.

Because Deputy Millan and Deputy Galindo had no information that Speer had a gun prior to their contact with him, it is fair to say that both were caught off guard when they saw Speer was carrying a long gun. Both deputies responded appropriately by immediately drawing their weapons and ordering Speer to put the gun down. When Speer ignored their commands and began walking away, it was reasonable for the deputies to think he was going to try to get away. The reasonable next step for the deputies to take was to arm themselves with a rifle and to follow Speer. Speer presented a threat to the community as a whole at this point. The deputies could not let Speer just walk away.

When Speer changed course and began walking up the embankment across from Deputy Millan, it was reasonable to believe Speer was trying to gain a tactical advantage by doing so. Deputy Millan recognized this and knew that he would have no coverage or concealment from Speer once Speer reached the top of the embankment on the other side. As long as Speer was down in the wash, Deputy Millan was afforded some concealment, albeit not much, by the embankment. Deputy Millan saw that Speer was no longer holding the shotgun by one hand but was holding it as one would if he were going to shoot it. Speer was holding the gun at a 45 degree angle. This raised the threat level considerably and confirmed Deputy Millan's belief that Speer was trying to gain a tactical advantage in order to shoot the deputies.

When Speer turned and looked over his right shoulder at Deputy Millan the first time, it was reasonable to believe Speer was doing so in order to know where to shoot. This should have increased Deputy Millan's fear that he was going to be a target. Then, when Speer turned to his right again toward the patrol unit and pointed his shotgun at a 90 degree angle in the direction of the patrol unit, it was reasonable for Deputy Millan to believe Speer was going to shoot. The threat was imminent. Deputy Millan could see the patrol unit from where he stood, and he knew that he had just sent Deputy Galindo to the patrol unit to retrieve the Mini-14. Deputy Millan's belief that Speer was going to shoot Deputy Galindo was honest and objectively reasonable. While Deputy Millan did not see exactly where Deputy Galindo was at that precise moment, it was reasonable for him to believe that Deputy Galindo was at the patrol car. In fact, that is precisely where Deputy Galindo was when Speer turned and pointed the shotgun that direction. Deputy Galindo was afforded minimal protection from Speer by the embankment and could have taken cover behind the patrol car if Speer started shooting. But because Deputy Millan could not see Deputy Galindo, he was not certain Deputy Galindo was watching for Speer to turn his gun on him. Deputy Millan believed he had to protect Deputy Galindo's life when he fired at Speer.

Deputy Millan's fear that Speer would continue turning to his right and would fire at Deputy Millan was also honest and objectively reasonable. If Speer was going to shoot Deputy Galindo, then it would be logical to assume that he would also shoot at Deputy Millan. Deputy Millan saw Speer holding the gun as if to shoot it. Deputy Millan saw Speer turning his entire body to the right. Deputy Millan saw that Speer was no longer pointing the gun at a 45 degree angle and that he was pointing it at a 90 degree angle. It was reasonable to believe Speer intended to shoot the shotgun. Deputy Millan's belief that both his partner's and his own life were in imminent danger was honest and objectively reasonable. Had Deputy Millan not fired at Speer, it is likely Speer would have been able to successfully shoot both deputies. Speer's gun was loaded with five rounds, a round was in the chamber, and the safety was off.

Speer's rapidly evolving actions over the course of the deputies' contact with him did not allow for attempts at de-escalation. The deputies only had time to respond to the threat Speer posed. The contact between the deputies and Speer was brief. When the deputies initially saw Speer, they saw that Speer was holding a gun as soon as Speer turned around. Only one minute elapsed from the time Deputy Millan announced they had one at gunpoint until the time he announced shots had been fired. In that one minute, the deputies ordered Speer to drop the gun eight separate times. In that one minute, Speer began walking away to the south, and then he changed course and began walking west up the embankment before turning north and pointing the shotgun in the direction of the patrol unit and Deputy Galindo. When Speer began walking away, the deputies had to change tactics and prepare to follow him. This caused Deputy Millan to send Deputy Galindo away and back to the patrol car to get the rifle so that they would be safer while they followed him and waited for backup to arrive. When Speer changed course by walking up the embankment, Deputy Millan had to change tactics again as he realized the situation had changed and that Speer was not just going to walk away but was now getting ready to shoot the deputies.

Witness #8 was the only other eyewitness to this officer involved shooting. Witness #8 told detectives that Speer had his hands up in the air, holding the shotgun above his head at the time he was shot. However, given the steepness of the embankment, it would have been difficult, if not impossible, for Speer to walk up the embankment with both of his hands above his head. Additionally, immediately after Speer was shot, Witness #8 told the deputies upon their approach that they needed to go after the person Speer had just taken the gun from. Witness #8 told the deputies, "You guys, he just took that gun from somebody running over there, so you better go get him." This was simply not true. A picture of the shotgun was on Speer's cell phone and had been on his phone since January 6, 2018, two days beforehand. Witness #8's statements to the deputies immediately after the shooting were not true. Given this fact, Witness #8's subsequent statements to the detectives should be viewed with skepticism.

Speer was struck in his right shoulder blade. The bullet travelled from there to his spinal column. As Dr. Ercoli stated, the "bullet travelled medially and ended up at the 4th thoracic vertebra, where it was lodged in the spinal canal." This wound pattern is consistent with Deputy Millan's statement that Speer was turning to his right. Had Speer simply been walking away with his back turned to the deputy as Witness #8 claimed, then the bullet's direction of travel would likely have been substantially different. The bullet's direction of travel is consistent with Deputy Millan's statement that Speer was turning his body to the right.

Deputy Millan was honestly and reasonably in fear for his life and for the life of his partner, Deputy Galindo, when Speer began turning and pointing the gun toward the patrol unit. Deputy Galindo was at the patrol unit and Deputy Millan knew this because he had sent him there. Speer had shown Deputy Millan that he was not willing to comply with any of his commands. Despite repeated commands to put the gun down, Speer did not put the shotgun down, and instead changed the way he was holding the shotgun, going from holding it in one hand to holding it in two hands as if to shoot it. Speer also walked up the embankment opposite from Deputy Millan and gained a tactical advantage by doing so. Then, Speer turned and pointed the shotgun toward the patrol unit, where Deputy Galindo had just returned. Given these facts and circumstances, it was objectively reasonable for Deputy Millan to believe Speer posed an imminent threat of serious bodily injury or death. Thus, the decision by Deputy Millan to use deadly force was justified.

CONCLUSION

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

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Date: April 27, 2020

