



## **PUBLIC INFORMATION RELEASE MEMORANDUM**

**DATE:** April 19, 2022

**SUBJECT:** Officer Involved Shooting (Fatal)

**Officers:** Deputy Bill Savage  
San Bernardino County Sheriff's Department

Deputy Kyle Smit  
San Bernardino County Sheriff's Department

**Involved Subject:** David Ontiveros Urrea (Deceased)  
Date of Birth 12/24/69  
Joshua Tree, CA

**Date of Incident:** May 10, 2020

**Incident location:** Base of a hill in an open desert area  
Approximately one mile east of Cascade Road and 4<sup>th</sup>  
Street South  
Joshua Tree, CA

**DA STAR #:** 2021-34535

**Investigating Agency:** San Bernardino County Sheriff's Department

**Case Agent:** Detective Narcie Sousa

**Report Number#:** DR # 602000081 / H # 2020-041

**TABLE OF CONTENTS**

**PREAMBLE.....3**

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

**STATEMENTS BY POLICE OFFICERS.....4**

    Deputy Bill Savage... .....4

    Deputy Kyle Smit .....6

    Deputy Cody Korkotsakis.....8

    Detective Brian Olvera .....10

    Corporal Ryan Pepler.....10

**STATEMENTS BY CIVILIAN WITNESSES .....12**

    Witness #3 .....12

    Witness #2 .....13

**INCIDENT AUDIO.....14**

    Belt Recordings.....14

**WEAPON .....16**

**DECEDENT .....16**

    Autopsy.....16

    Toxicology.....18

    Criminal History.....18

**DE-ESCALATION .....19**

**APPLICABLE LEGAL PRINCIPLES.....19**

**ANALYSIS.....26**

**CONCLUSION .....27**

## PREAMBLE

This was a fatal officer involved shooting by deputies 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, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 602000081.

## FACTUAL SUMMARY

On May 10, 2020, at around 1:02 in the afternoon, San Bernardino County Sheriff's Department Dispatch received a report of two subjects stabbed at the Valero Gas station located at \*\*\*\*\* Twentynine Palms Highway in the City of Joshua Tree. One subject, Witness #1, suffered a stab wound to the chest. The second subject, Witness #2, suffered a stab wound to the leg. Witness #1 was transported to the hospital by another civilian. Witness #1 was pronounced deceased at the hospital. The suspect fled the scene in a vehicle with a female passenger before deputies arrived at the scene.

Deputy Bill Savage, from the San Bernardino County Sheriff's Department, arrived at the gas station to assist with the investigation. Deputy Savage reviewed video surveillance and was able to obtain a license plate for the suspect's vehicle. Deputy Kyle Smit, from the San Bernardino County Sheriff's Department, also responded to the gas station to assist in the investigation. Deputy Smit ran the license plate number from the suspect vehicle and learned the car was registered to David Urrea. Deputy Savage compared Urrea's California driver's license photograph to the video surveillance and determined Urrea was the subject who stabbed both Witness #1 and Witness #2. Deputy Savage learned Urrea, was required to register his residential address with the Morongo Basin Station.<sup>1</sup> When Urrea last registered his address, Urrea indicated he lived near the Sunfair Dry Lake Bed in the City of Joshua Tree.

40 King Three, the law enforcement helicopter from the San Bernardino County Sheriff's Department Aviation Division, responded and conducted a search for Urrea's vehicle in the area near the Sunfair Dry Lake Bed. At approximately 3:42 in the afternoon, 40 King Three advised dispatch they located Urrea's vehicle east of the Sunfair Dry Lake Bed. 40 King Three directed Deputy Smit and Deputy Savage how to reach Urrea's location. 40 King Three advised the deputies on the ground that Urrea was seated in the driver's seat of the vehicle and there was a female, later identified as Witness #3, seated in the passenger seat of the vehicle. Urrea and Witness #3 were asleep at the time. When Witness #3 told Urrea about the helicopter, Urrea told Witness #3 he was not going back to jail and he did not care if deputies killed him. 40 King Three identified itself as "Sheriff's Department" and ordered Urrea and Witness #3 to get on the ground.

---

<sup>1</sup> Urrea was required to register with law enforcement as a sex offender pursuant to Penal Code Section 290.

When Deputy Smit and Deputy Savage arrived at the location, they saw Urrea's vehicle parked near the base of a hill. Urrea and Witness #3 were no longer seated inside the vehicle; they were now standing outside of the vehicle. Deputy Smit stopped his patrol vehicle approximately two car lengths behind Urrea's vehicle. Deputy Savage stopped his patrol vehicle behind Deputy Smit's unit. Deputy Smit and Deputy Savage exited their patrol vehicles and immediately started giving verbal commands to Urrea and Witness #3. The deputies ordered Urrea to show his hands and to get on the ground. Witness #3 complied with deputies and got down on the ground. Urrea, however, failed to comply with the deputies and ran around to the front of the vehicle.

Urrea was moving up and down in front of the vehicle and Deputy Smit and Deputy Savage were unable to clearly see Urrea's hands. The deputies continued to order Urrea to show his hands. Deputy Smit ordered Urrea to come out from around the vehicle and to get on the ground. Urrea refused to comply with the deputies' commands. When Urrea finally moved around from the front of the vehicle, Deputy Smit saw Urrea pull his right hand from his rear waistband and put it up over his head. Urrea charged towards Deputy Smit and Deputy Savage with his right hand raised up in the air.

Deputy Smit and Deputy Savage were unsure what Urrea was holding in his right hand. However, based on how Urrea was holding the object over his head at a 45-degree angle as well as the fact the knife used in the stabbing was not recovered at the gas station, Deputy Smit and Deputy Savage believed Urrea was holding a knife. When Urrea was approximately thirty feet away, Deputy Smit and Deputy Savage fired their weapons at Urrea striking him multiple times.

After the lethal force encounter, Deputy Smit and Deputy Savage requested medical aid to respond to the scene. Deputy Smit and Deputy Savage checked Urrea for signs of life but were unable to detect a pulse. San Bernardino County Fire Department personnel arrived at the scene but did not render medical aid due to Urrea's obvious signs of death. Urrea was pronounced deceased at the scene.

A folding knife, approximately eight inches in length, was located at the scene, approximately twenty-one feet north of Deputy Smit's patrol vehicle. The blade of the knife, approximately three and a half inches in length, was curved and sharp on one side. The knife was locked in the open position. The knife was silver colored with a brown wooden grip attached to it.

### **STATEMENTS BY POLICE OFFICERS**

On May 14, 2020, at approximately 10:16 in the morning, **Deputy Bill Savage** was interviewed by Detective Scott Abernathy and Detective Narcie Sousa.<sup>2</sup>

---

<sup>2</sup> Deputy Savage reviewed his belt recording prior to being interviewed by Detective Abernathy and Detective Sousa.

On May 14, 2020, Deputy Bill Savage, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Morongo Basin Station. Deputy Savage was wearing a San Bernardino County Sheriff's Department "Class D" uniform and driving a marked patrol vehicle. On that date, at around 1:04 in the afternoon, Deputy Savage was dispatched to a call in Joshua Tree regarding an unknown problem at the Valero gas station located at \*\*\*\*\* Twentynine Palms Highway in the City of Joshua Tree. While en route to the location, information came out that it was a stabbing by an unknown person and there were two victims. Deputy Savage learned one victim had been stabbed in the leg and the second victim, who had been stabbed in the chest, was being transported to the hospital. Soon after, Deputy Savage learned the victim who had been transported to the hospital died.

When Deputy Savage arrived at the location, he saw a male subject with a stab wound to the knee and blood running down his leg. Deputy Savage immediately started interviewing witnesses. Deputy Savage also contacted the manager of the gas station who gave Deputy Savage access to view the video surveillance. Deputy Savage was able to view the entire incident which showed a male suspect, later identified as David Urrea, stab two male victims. Deputy Savage was able to stop the video and obtain a suspect description. Deputy Savage took a photograph of Urrea and sent it out to the other deputies who were assisting with the call. After the scene was cleared, Deputy Savage left and handled two more calls for service.

Deputy Savage heard his partner, Deputy Kyle Smit, over the radio indicate he was told by a bystander that Urrea's vehicle was seen driving down a road approximately ten minutes prior to Deputy Smit arriving there. Deputy Savage went back on the call to assist Deputy Smit. Deputy Savage met Deputy Smit at Sunflower and Broadway and waited for 40 King Three to arrive. Once 40 King Three arrived on scene, Deputy Savage and Deputy Smit continued driving east. 40 King Three advised both deputies that they located Urrea's vehicle. 40 King Three confirmed that there was a male and female inside the vehicle. 40 King Three guided the deputies to the vehicle's location. When Deputy Savage and Deputy Smit were close enough to see the vehicle at the bottom of a hill, both deputies stopped and exited their patrol vehicles. Deputy Savage noticed Urrea and a female, later identified as Witness #3, were outside of the vehicle. Urrea was standing in front of the vehicle and Witness #3 was standing near the trunk on the passenger side of the vehicle. Deputy Savage noted Urrea matched the suspect he saw in the gas station video footage stabbing two people with a knife. Deputy Savage started giving Urrea verbal commands. Deputy Savage also heard 40 King Three giving Urrea commands to comply with the deputies.

Urrea ran in front of his vehicle. Deputy Savage ran behind his patrol vehicle to get a better angle. Urrea kept moving around, bouncing up and then ducking down behind his vehicle. Deputy Savage could not see Urrea's hands. Deputy Savage ordered Urrea to show his hands. Deputy Savage lost sight of Urrea as Urrea ran to the left side of his vehicle. Deputy Savage moved back towards where Deputy Smit was standing. Deputy Savage saw Urrea run towards Deputy Smit. Urrea was running at a full sprint in a straight line directly towards Deputy Smit. Deputy Savage saw Urrea had his right

hand up in the air. Urrea's hand was in a ball like he was holding something. Deputy Savage could not see what was in Urrea's right hand. Deputy Savage knew the knife used in the stabbing was still outstanding. Deputy Savage gave Urrea approximately three to four verbal commands to get on the ground.

Urrea did not comply with Deputy Savage's verbal commands and continued running towards Deputy Smit. Deputy Savage knew one of the stabbing victims had died and Deputy Savage believed Urrea was going to stab and kill Deputy Smit. Deputy Savage heard Deputy Smit fire a round. Urrea kept running towards Deputy Smit. Deputy Savage then fired approximately five to six rounds at Urrea. Urrea fell to the ground. Deputy Savage estimated Urrea was twenty to twenty-five feet away from him at the time of the shooting. Deputy Savage estimated Urrea was fifteen to twenty feet right in front of Deputy Smit at the time of the shooting. Deputy Savage saw Witness #3 was laying on the ground. The deputies went up to Urrea and made sure he no longer had anything in his hands or any weapon on his person. Deputy Smit turned Urrea over and handcuffed him. Deputy Savage then went over to Witness #3 and handcuffed her. Deputy Savage and Deputy Smit checked and made sure there were no other individuals inside of Urrea's vehicle. Deputy Savage then placed Witness #3 in the back of his patrol vehicle.

Deputy Savage and Deputy Smit returned to where Urrea was on the ground. Deputy Savage noticed Urrea was bleeding and not breathing. Deputy Smit checked Urrea for a pulse and signs of life. Deputy Smit was unable to detect a pulse and told Deputy Savage Urrea was not breathing. Deputy Savage also checked Urrea for signs of life and was unable to detect a pulse. After the shooting, medical aid was requested for Urrea. A knife was located on the ground within arm's reach of Urrea. The knife had a brown handle and an approximately four-inch blade.

On May 14, 2020, at approximately 11:38 in the morning, **Deputy Kyle Smit** was interviewed by Detective Scott Abernathy and Detective Narcie Sousa.<sup>3</sup>

On May 10, 2020, Deputy Kyle Smit, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Morongo Basin Station. Deputy Smit was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, at around 1:00 in the afternoon, Deputy Smit was dispatched to a fight in progress at a Valero gas station in Joshua Tree. Deputy Smit learned the fight turned into a stabbing. Other deputies arrived at the scene prior to Deputy Smit and obtained information about a possible suspect including a license plate number for the suspect's vehicle. Deputy Smit ran the license plate information and was able to identify the suspect as David Urrea.

Deputy Smit was advised there were two stabbing victims. One victim had a non-life-threatening stab wound to the leg. The second victim had been taken to the hospital

---

<sup>3</sup> Deputy Smit reviewed his belt recording prior to being interviewed by Detective Abernathy and Detective Sousa.

with a stab wound to the chest and was later pronounced deceased. After stabbing the two victims, Urrea fled the scene in a vehicle. The knife Urrea used in the stabbing was not recovered at the scene. During the investigation, it was determined Urrea may be located at the Joshua Tree Camping Dry Lake Bed area near the intersection of Sunfair and Highway 62. While he conducted an area check and waited for helicopter air assistance to arrive, Deputy Smit contacted a civilian who was camping on Sunflower and Sunfair. The civilian told Deputy Smit she saw Urrea's vehicle in the area, within the last ten minutes, traveling at a high rate of speed eastbound on Sunflower.

Deputy Smit and Deputy Savage met at the intersection of Sunflower and Sunfair. Deputy Smit and Deputy Savage discussed if they found Urrea they would take him into custody pending further investigation by detectives from the Homicide division. The deputies waited for 40 King Three to arrive in the area. Once 40 King Three advised the deputies where they located both Urrea and his vehicle, Deputy Smit and Deputy Savage decided to respond to the area and attempt to arrest Urrea. 40 King Three provided Deputy Smit and Deputy Savage directions to where Urrea was located. Deputy Smit and Deputy Savage drove south on Copper Mountain and eventually were told when they made the next left turn, they would be right behind Urrea's vehicle. As he was driving, Deputy Smit could hear 40 King Three giving announcements to Urrea to get on the ground and not go anywhere.

Deputy Smit pulled up and stopped his patrol vehicle about two car lengths behind Urrea's vehicle. Deputy Savage stopped his patrol vehicle behind Deputy Smit. As soon as Deputy Smit pulled up, Deputy Smit saw Urrea near the rear of his vehicle wearing a blue collared shirt that matched what Deputy Smit had observed Urrea wearing in the surveillance video from the gas station. Deputy Smit saw a female, later identified as Witness #3, standing near the back corner of Urrea's vehicle. As soon as Witness #3 saw the deputies, she immediately went to the ground and placed her hands behind her back. When Urrea saw Deputy Smit, Urrea ran from the rear of his vehicle to the front of the vehicle. Deputy Smit saw Urrea take his right hand and put it behind his back in his waistband. Urrea then flipped off 40 King Three and Deputy Smit with his other hand.

Deputy Smit exited his vehicle immediately and started giving Urrea verbal commands, Deputy Smit ordered Urrea to show his hands and to come out from in front of the vehicle. Urrea kept ducking down behind the front of his vehicle where Deputy Smit could not see him, so Deputy Smit also ordered Urrea to come out from under the vehicle. Urrea failed to comply with any of Deputy Smit's verbal commands. Deputy Smit could not see what Urrea was doing with his right hand since Urrea still had it behind his back. When Urrea finally came around from the front of the vehicle, Deputy Smit saw Urrea pull his right hand from his rear waistband and put it up over his head.

Deputy Smit saw that Urrea had pulled an object with his right hand but was unsure what exactly the object was. However, based on how Urrea was holding the object over his head at a 45-degree angle, Deputy Smit believed Urrea was holding a knife. Urrea ran from the front to the rear of his vehicle. Deputy Smit gave Urrea multiple commands

to "Get on the ground." Urrea took a step and then sprinted towards Deputy Smit. Urrea's right hand was still up over his head, holding what Deputy Smit believed was a knife. Deputy Smit continued to give Urrea commands to get on the ground. Urrea got within forty feet of Deputy Smit and then stumbled and fell to the ground.

Deputy Smit thought Urrea would give up after he fell to the ground but Urrea did not. Deputy Smit yelled multiple times for Urrea to get on the ground. Urrea did not comply with those commands. Instead, Urrea got back up on his feet and proceeded to sprint towards Deputy Smit. At that point, Deputy Smit knew Urrea was not going to stop. Deputy Smit knew Urrea had already killed one person with a knife and assaulted another person. Deputy Smit felt afraid and believed Urrea was now also going to kill him. Deputy Smit fired his weapon. Deputy Smit believed he fired eight rounds but stated he found out later that he had in fact fired eleven rounds at Urrea. After the shooting, Urrea fell to the ground. Deputy Smit estimated Urrea was thirty feet away from him at the time of the shooting. Deputy Smit also estimated it was fifteen to twenty seconds from the time he arrived on scene to when the lethal force encounter occurred.

Deputy Smit moved to get a better view of Urrea who was laying on the ground. Deputy Smit knew Deputy Savage was to his right, approximately six to seven feet behind him and that Deputy Savage had also fired his weapon at Urrea. Deputy Smit and Deputy Savage approached Urrea and gave him commands to get on his stomach and put his hands behind his back. Urrea was laying on the ground but did not make any attempt to comply with the deputies' commands. Deputy Smit asked Deputy Savage to cover him while he flipped Urrea over on his stomach and handcuffed him.

Once Urrea was handcuffed, Deputy Savage approached Witness #3 and took her into custody. Deputy Smit asked 40 King Three to watch Urrea while the deputies cleared Urrea's vehicle and secured Witness #3 in Deputy Savage's patrol vehicle. Once that was done, Deputy Smit returned to Urrea and checked Urrea's body for signs of life. Deputy Smit also requested medical aid respond to the scene to attend to Urrea. A folding knife, approximately six to seven inches long, with a four-inch blade was found five to ten feet away from Urrea.

On May 12, 2020, at approximately 9:59 in the morning, **Deputy Cody Korkotsakis** was interviewed by Detective Arturo Alvarado and Detective Max Kunzman.

On May 10, 2020, Deputy Cody Korkotsakis, from the San Bernardino County Sheriff's Department, was assigned to the Emergency Operations Division, Aviation Detail, as a flight officer. Deputy Korkotsakis was assigned to Desert Patrol at the Apple Valley Airport. On that date, Deputy Korkotsakis was wearing his San Bernardino County Sheriff's Department Aviation Flight Suit. Between 3:00 and 4:00 in the afternoon, Sheriff's Dispatch requested Deputy Korkotsakis, and his partner, Corporal Ryan Pepler, assist with an area check for a homicide suspect, later identified as David Urrea, in Joshua Tree.



Deputy Korkotsakis and Corporal Pepler responded from Victorville and arrived in the area approximately twenty-five to thirty minutes later. During the flight, Deputy Korkotsakis received several text messages that included images of the suspect vehicle, a silver Chevrolet Malibu, and still images of Urrea that came from some type of video surveillance. During the flight, Deputy Korkotsakis communicated with deputies over the radio to obtain more information related to the homicide investigation. Deputy Korkotsakis learned that Urrea possibly lived in a remote area near the intersection of highway 62 and Sunfair Road in Joshua Tree.

Within about ten minutes of arriving in the area, Deputy Korkotsakis located a vehicle parked at the base of Copper Mountain that matched the images deputies sent him of the suspect vehicle. When they flew closer, Deputy Korkotsakis used the helicopter's camera system to get a better view of the vehicle and the occupants. Deputy Korkotsakis matched the license plate to the license plate number provided by deputies. Deputy Korkotsakis observed Urrea seated in the front passenger seat and a female, later identified as Witness #3, seated in the front driver seat. Deputy Korkotsakis broadcasted his observations over the radio to the deputies on the ground.

Due to the remote area where Urrea's vehicle was seen, Deputy Korkotsakis broadcasted directions to the responding deputies. When the deputies were about five minutes away, Deputy Korkotsakis used the helicopter's public address (PA) speaker to provide verbal commands to Urrea. Deputy Korkotsakis announced, "Sheriff's Helicopter. Move away from the vehicle. Get on the ground. Prone yourself out. Don't move." Deputy Korkotsakis said during this time, Urrea stood outside his vehicle and flipped the helicopter off. Deputy Korkotsakis took this to mean, "f\*\*k you." Deputy Korkotsakis gave Urrea these commands about three times. Urrea did not comply with Deputy Korkotsakis' commands.

When Deputy Smit neared their location, Deputy Korkotsakis had him wait for Deputy Savage who was still approximately a half mile north of Deputy Smit's location. Once Deputy Savage arrived at Deputy Smit's location, the two deputies continued to drive to Urrea's location. Deputy Smit parked his patrol vehicle, facing east and canted slightly north, on the same dirt extension as Urrea's vehicle. Deputy Savage parked his patrol vehicle west of Deputy Smit's vehicle. Deputy Smit opened his driver side door and stood in the doorway with his gun drawn and pointed toward Urrea.

Urrea was standing near the trunk of the Malibu. Urrea ran east and crouched in front of the Malibu. Deputy Korkotsakis focused the helicopter's camera on Urrea. Urrea put his hands in his front waistband and removed a shiny object that Deputy Korkotsakis believed was a knife. Urrea raised the knife to about head height, with the blade pointed up, and started to sprint toward Deputy Smit. Urrea abruptly stopped just past the Malibu's trunk. Urrea paused for a moment before sprinting toward the deputies.

When Urrea was within fifteen feet of Deputy Smit, Deputy Korkotsakis saw Deputy Smit shoot his pistol multiple times. Deputy Korkotsakis knew Deputy Smit had fired his weapon because he saw the bullet shell casings eject from the pistol. Urrea fell to the

ground and came to rest on his back. Immediately after the shooting, Deputy Korkotsakis broadcasted over the radio, "Shots fired." Deputy Korkotsakis remembered hearing someone over the radio request medical assistance respond to the scene but was unsure who made the request.

Deputy Smit and Deputy Savage remained at their locations for approximately one minute before they approached Urrea. Deputy Korkotsakis saw the deputies roll Urrea to his stomach and handcuff his hands to the rear. After Urrea was handcuffed, the deputies approached Witness #3 who was west of the Malibu's trunk. Witness #3 was on her hands and knees, faced down. Deputy Korkotsakis was unsure whether Witness #3 was at that location at the time of the shooting. Deputy Smit and Deputy Savage then walked Witness #3 back to one of the patrol vehicles and placed her in the back seat. Deputy Korkotsakis and Corporal Peppler remained in an orbit around the incident location and updated responding personnel and emergency medical personnel. Once they received clearance from the ground supervisor, Deputy Korkotsakis and Corporal Peppler returned to Apple Valley.

On May 12, 2020, at approximately 10:00 in the morning, **Corporal Ryan Peppler** was interviewed by Detective Scott Abernathy and Detective Bruce Southworth.

On May 10, 2020, Corporal Ryan Peppler, from the San Bernardino County Sheriff's Department, was assigned Desert Aviation at the Apple Valley Airport as a helicopter pilot. On that date Corporal Peppler was wearing his San Bernardino County Sheriff's Department issued green long-sleeved flight suit. At approximately 3:14 in the afternoon, Sheriff's Dispatch requested aviation's assistance in conducting an area check for a homicide suspect in the area of Sunfair Dry Lake Bed in the City of Joshua Tree. Deputy Cody Korkotsakis was the flight officer and Corporal Peppler's partner on that day.

While Corporal Peppler and Deputy Korkotsakis were en route to the location, Deputy Smit provided additional information about the suspect, David Urrea. Deputy Smit advised Urrea was living out of his vehicle. Deputy Smit also sent Deputy Korkotsakis photographs of both Urrea and his vehicle. Corporal Peppler estimated it took forty minutes to arrive in the area. Corporal Peppler observed a four-door silver sedan near the base of a hill. The vehicle was on a slight grade facing southeast. As Corporal Peppler flew 40 King Three near the vehicle, Deputy Korkotsakis utilized the helicopter's camera system and confirmed Urrea's license plate. Corporal Peppler did not see anyone outside of the vehicle.

As they orbited the vehicle, Corporal Peppler observed a blanket move that covered the front passenger window. Deputy Korkotsakis confirmed the vehicle was occupied by two subjects. Urrea exited the front passenger seat of the vehicle and walked around to the driver side of the vehicle. Urrea opened the driver's side door and sat in the driver's seat. A female, later identified as Witness #3, approached the driver's side of the vehicle. Corporal Peppler was unsure where Witness #3 came from. Urrea and

Witness #3 appeared to be talking to each other while the front driver's side door remained open.

Corporal Pepler orbited the vehicle while Deputy Korkotsakis gave Urrea multiple PA announcements not to leave the area and to get on the ground. Urrea exited the vehicle and "flipped off" the helicopter multiple times before sitting back in the driver's seat. Approximately ten minutes later, Deputy Smit arrived in the area. Deputy Korkotsakis instructed Deputy Smit to stop north of the location, behind a hill, until a second patrol vehicle arrived. Once Deputy Savage arrived, both deputies approached Urrea's location. Deputy Korkotsakis gave another PA announcement to Urrea that deputies were on their way and to give up. Urrea exited his vehicle and flipped off the helicopter again.

Deputy Smit parked his patrol vehicle approximately two car lengths behind Urrea's vehicle. Deputy Savage parked his patrol vehicle approximately a half a car length behind Deputy Smit's unit and slightly offset to the right. Deputy Smit exited his vehicle and used his driver side door for cover. Corporal Pepler did not observe Deputy Savage's position during the incident.

Urrea gave Witness #3 a hug then ran toward the front of his vehicle and crouched down. Urrea reached with both hands and pulled an unknown object out of his waistband. Deputy Smit was still near the driver side door of his patrol vehicle and had Urrea at gunpoint. Urrea stood up from the vehicle and ran toward the deputies in a full sprint. Urrea had his arms extended above his head. Corporal Pepler observed an unknown object in Urrea's right hand. Urrea ran approximately one car length to one car length and a half towards the deputies and then stopped for a second. Urrea dropped his arms. Corporal Pepler was unsure what caused Urrea to stop. Urrea then sprinted toward the deputies a second time with his arms extended above his head.

Urrea neared the front bumper of Deputy Smit's patrol vehicle when he was shot. Corporal Pepler observed Urrea fall to the ground and saw dirt fly in the air behind Urrea. As Urrea was running, Deputy Smit moved north out from behind his driver's door. Corporal Pepler estimated Urrea was fifteen feet away from the deputies when the shooting occurred. After the shooting, Corporal Pepler heard one of the deputies broadcasted, "Shots fired."

Deputy Smit and Deputy Savage approached Urrea and rolled him onto his stomach. The deputies handcuffed Urrea to the rear. One of the deputies then contacted Witness #3 and placed her into the back of one of the patrol vehicles. The other deputy cleared Urrea's vehicle for any additional subjects. After the scene was secure, the deputies returned to Urrea. Corporal Pepler did not observe what the deputies were doing or whether medical aid was provided. Deputy Smit and Deputy Savage stayed with Urrea until additional deputies arrived, approximately ten minutes later. Corporal Pepler estimated medical personnel arrived at the scene twenty minutes after the shooting.

### STATEMENTS BY CIVILIAN WITNESSES<sup>4</sup>

On May 10, 2020, at around 8:42 in the evening, **Witness #3** was interviewed by Detective Narcie Sousa and Detective Witness #3.

Witness #3 recently moved to Morongo with David Urrea. Witness #3 and Urrea were in a dating relationship. On May 10, 2020, Witness #3 and Urrea had stopped at the Valero gas station in Joshua Tree to get ice and beer. After they purchased several items, Witness #3 and Urrea left the gas station convenience store. Witness #3 was walking in front of Urrea towards their vehicle when she heard Urrea arguing with someone behind her. Witness #3 turned around and saw a red car parked at the gas pumps. The front passenger, later identified as Witness #2, exited the red car and was arguing with Urrea in the parking lot. Witness #3 told Urrea to leave it alone and continued walking to their vehicle.

The driver of the red car, later identified as Witness #1, exited the vehicle and approached Urrea. Urrea told both Witness #2 and Witness #1 to leave him alone. Witness #1 told Witness #2 to knock Urrea out and put him to sleep. Witness #3 yelled to them that she was going to call the police. Witness #2 attempted to punch Urrea with his right fist. Urrea ducked the punch but slipped and fell to the ground. According to Witness #3, Witness #1 jumped toward Urrea from behind. Witness #2 obtained a yellow wet floor sign from inside the store and swung it at Urrea. Witness #3 ran back to the car to get her cell phone. When she exited the vehicle, Urrea, Witness #2, and Witness #1 were inside the store.

When Witness #3 ran back to the store, the entrance was crowded with several people. Witness #3 could only see Urrea on the floor. Urrea jumped up from the floor and ran outside. Urrea, later told Witness #3, that the subjects were kicking him while he was on the ground. Witness #3 saw Witness #1 run from the store behind them. Witness #1 was holding his stomach and said he was stabbed. Witness #1 got into his vehicle and left the gas station. Witness #3 and Urrea got into their vehicle and drove away.

During the car ride, Witness #3 felt scared. She had never seen any violence like that before and she wanted to go home. Urrea told Witness #3 he did not want to do what he did, and he did not want to go back to jail. Witness #3 asked Urrea if he stabbed someone. Urrea did not answer the question and kept saying he did not want to go back to jail.

After Urrea and Witness #3 arrived at the campsite they had been staying at, they remained in the car smoking cigarettes and drinking beer. Witness #3 and Urrea fell asleep in the vehicle. Witness #3 woke up when she heard a helicopter overhead. Witness #3 told Urrea the helicopter was there. Urrea responded, "I don't give a f\*\*k."

---

<sup>4</sup> All civilian witness statements regarding the stabbing that took place at the gas station were reviewed. Not all those statements will be included in the summary of statements by civilian witnesses.

Urrea told Witness #3 he was not going back to jail and he did not care if the deputies killed him.

Several deputies arrived a short time later. Urrea told Witness #3 he was going to run from deputies but Witness #3 refused to run with him. Witness #3 exited the vehicle and laid on the ground behind the vehicle, as she was instructed to do by deputies. Urrea also exited the vehicle but Witness #3 did not see where Urrea went. Witness #3 laid on the ground, face down, with her head toward the deputies.

Witness #3 heard Urrea cussing at the deputies. Witness #3 heard deputies tell Urrea to get on the ground and to put something down. Witness #3 looked in Urrea's direction and saw him holding a knife in his right hand over his head. Urrea cussed at the deputies and told them he was not going back to prison. Witness #3 heard three gunshots and saw Urrea fall to the ground. Deputies rolled Urrea over and handcuffed him. Witness #3 was escorted to the back seat of a patrol vehicle.

Witness #3 said Urrea did not normally carry a knife with him. Witness #3 explained they had two knives they used for cooking purposes. Witness #3 described one of those knives as a folding knife with a brown wooden handle. The knife Witness #3 saw Urrea holding over his head appeared to be the same knife. The knives were normally kept in the car. Witness #3 did not see Urrea retrieve the knife.

On May 10, 2020, at around 9:48 in the evening, **Witness #2** was interviewed by Detective Tony Romero and Detective Joshua Guerry.

Witness #2 and Witness #1 were friends. On May 10, 2020, at around 12:50 in the afternoon, Witness #1 and Witness #2 were seated inside Witness #1's vehicle which was parked at the Valero gas station located at \*\*\*\*\* Twentynine Palms Highway in Joshua Tree. They were getting ready to leave when a male, later identified as David Urrea, arrived at the location in a "funny looking" vehicle. Urrea stared at Witness #2 and raised his hands. Urrea went inside the gas station convenience store and exited a short time later. When Urrea came out of the store, he looked again at Witness #2 and raised his hands. Witness #2 had never seen Urrea before but did recall seeing Urrea's vehicle in the Joshua Tree area.

Urrea walked straight to Witness #1's vehicle. Witness #2 "squared up" on Urrea and asked Urrea, "You trying to get some or something?" Urrea told Witness #2, "I just came out of jail. I did 15 years and I'm not going back. I'll kill you kid." Urrea told Witness #2 to get out of the vehicle. Witness #2 was afraid he was about to be assaulted and exited the vehicle. Witness #1 exited the vehicle at the same time as Witness #2. Urrea and Witness #2 began fighting. Urrea kept reaching back towards his right waistband area. Urrea told Witness #2 he had a knife. Witness #2, however, did not believe Urrea had a knife on his person because Urrea did not pull a knife out.

Witness #2 was scared and walked toward the Valero storefront as Urrea walked toward his vehicle. Witness #2 saw Urrea retrieve a knife from his vehicle. Witness #2 looked for a weapon inside the store and grabbed a yellow "Wet Floor" sign. Witness #2 saw Urrea arguing with Witness #1. Witness #2 walked up and swung the sign at Urrea. Urrea avoided being struck by the sign. Urrea turned around and began swinging the knife in Witness #2's direction. Urrea chased Witness #2 into the Valero storefront. Witness #2 walked to the back of the store. Witness #2 looked toward the front of the store and saw Witness #1 punch Urrea in the back of the head. Witness #1 and Urrea fell and the two continued to fight while they were on the ground. Witness #2 ran over to help Witness #1 and punched Urrea.

As Witness #2, Witness #1, and Urrea were fighting, Urrea stabbed Witness #2 in the right calf. Several employees in the store attempted to calm Urrea down. After Witness #2 was stabbed, Witness #2 walked to the Subway counter, which was inside the Valero storefront, and asked the employees for help. An unidentified employee gave Witness #2 some paper towels which Witness #2 used to apply pressure to his wound. Witness #1 and Urrea stopped fighting. Witness #1 stood up and said, "He got me in the heart." Witness #1 ran out of the store bleeding.

Witness #2 was bleeding from his stab wound. Witness #2 walked to the front of the store and saw Urrea run to his vehicle. Urrea's vehicle would not start. Witness #2 heard Urrea say, "Yea, I stabbed you. What the f\*\*ks up?" Urrea was eventually able to get his vehicle to start and fled the location. Witness #2 saw Witness #1 seated in the passenger seat of his vehicle. There was another male in the driver seat who then drove Witness #1 to the hospital.

### **INCIDENT AUDIO**

**BELT RECORDINGS.** All belt recordings submitted were reviewed in their entirety. The summaries of the belt recordings will begin from the point deputies were driving to the Sunfair Dry Lake Bed area and end at the point immediately following the lethal force encounter.

#### **Deputy Kyle Smit**

Deputy Smit was wearing a belt recorder during the incident under review. The recording was approximately nine minutes twenty-six seconds in length.

Radio traffic could be heard in the background. A deputy could be heard giving directions. 40 King Three advised over the radio Witness #3 was in the passenger seat of the vehicle. 40 King Three advised they had a positive identification Urrea and that he had just got out of the vehicle. 40 King Three stated Urrea and Witness #3 were told to stay where they were and not to go anywhere. 40 King Three advised it looked like

Urrea was going to get in the passenger seat of the vehicle and may attempt to leave the area. A deputy could be heard over radio telling Deputy Smit that Urrea still has the knife on him. 40 King Three advised Urrea was now seated in the driver's seat and may be getting ready to leave. Radio traffic could be heard from 40 King Three continuing to direct deputies to Urrea's location. Deputy Savage is heard telling Deputy Smit he was right behind Deputy Smit. 40 King is heard telling Deputy Smit to wait and let Deputy Savage catch up to Deputy Smit.

40 King Three is heard in the background making PA announcements, "Sheriff's Department. Get on the ground. Get on the ground." Deputy Smit could be heard giving multiple verbal commands. Deputy Smit yelled, "Let me see your hands. Let me see your hands. Get out from under the vehicle. Get out from under the vehicle. Get around. Get on the ground. Get on the ground. Let me see your hands. Get on the ground." Multiple gunshots were heard. Deputy Smit put out over the radio "shots fired" four times. Deputy Smit continued to give verbal commands. Deputy Smit yelled, "Put your hands behind your back. Get on the ground. Get on the ground. Lay on your stomach. Lay on your stomach. Do not move your hands. Flip over on your stomach. Flip over on your stomach." Witness #3's voice can be heard in the background. Deputy Smit and Deputy Savage both could be heard yelling, "Don't move." Deputy Smit could be heard telling someone to get Witness #3 in custody. Urrea could be heard talking and asking for help. Deputy Smit tells Urrea he needs to get Urrea medical help. Witness #3 could be heard crying in the background.

### **Deputy Bill Savage**

Deputy Savage was wearing a belt recorder during the incident under review. The recording was approximately fourteen minutes four seconds in length.

Radio traffic could be heard in the background. Deputy Savage tells Deputy Smit he's got "eyes on" and "it's just east of us." Deputy Savage could be heard saying "dismount" and there is a sound of the vehicle door opening. Deputy Savage yelled, "Hey, get down. Get on the ground. Get on the ground. Get on the f\*\*cking ground." Multiple gunshots were heard. Deputy Savage could be heard yelling, "Get on the ground. Get on the ground." Deputy Smit could also be heard in the background yelling out verbal commands for a person to lay on their stomach. Witness #3's voice could be heard crying in the background.

Deputy Savage could be heard continuing to yell, "Get on the ground. Don't move your hands. Keep your hands still. Get on your stomach right now." Deputy Smit could be heard telling a person to flip over on their stomach. Deputy Savage and Deputy Smit could both be heard saying, "Don't move." Deputy Savage tells Deputy Smit, "Watch his hand. Watch his hand. Watch his hand."

Deputy Savage could be heard telling Witness #3 to put her hands behind her back. Witness #3 could be heard crying in the background. Deputy Savage and Deputy Smit

then could be heard clearing the vehicle. Deputy Savage tells Witness #3 to get up. Deputy Savage could be heard telling Deputy Smit he was taking Witness #3 to his vehicle. Deputy Savage tells Witness #3 to have a seat. Deputy Savage advises over the radio that he has Witness #3 detained in the back of his vehicle.

The deputies could be heard discussing getting gloves. Deputy Savage could be heard saying, "Check him for a pulse." Deputy Savage indicates Urrea is not breathing. Deputy Smit is heard saying, "No pulse." Deputy Savage could be heard advising over the radio that Urrea does not have a pulse.

### **WEAPON**

A folding knife, approximately eight inches in length, was located at the scene. The blade of the knife, approximately three and a half inches in length, was curved and sharp on one side. The knife was locked in the open position. The knife was silver colored with a brown wooden grip attached to it.

### **DECEDENT**

**AUTOPSY.** Witness #4, Forensic Pathologist for the Coroner-Public Administrator Division of the Riverside County Sheriff's Department, conducted the autopsy of David Urrea on May 12, 2020. Witness #4 determined the cause of death was multiple gunshot wounds.

#### **Gunshot Wound Number One<sup>5</sup>:**

Located on the right upper back, 16 inches below the top of the head and 5 inches right of the midline, was an entrance gunshot wound. The path of the projectile was back to front, right to left, and upward.

#### **Gunshot Wound Number Two:**

Located on the right upper back, 17 inches below the top of the head and 7 inches right of the midline, was an entrance gunshot wound. The exit wound was located 15 inches below the top of the head and 2 ¾ inches right of the midline. The path of the projectile was back to front, right to left, and upward.

---

<sup>5</sup> The numbering of the gunshot wounds is for reference only and not meant to indicate the order in which the gunshot wounds occurred.



**Gunshot Wound Number Three:**

Located on the right lower back, 26 inches below the top of the head and 2 inches right of the midline, was an entrance gunshot wound. The exit wound was located 19 inches below the top of the head and 7 inches right of the midline. The path of the projectile was back to front, left to right, and upward.

**Gunshot Wound Number Four:**

Located on the right lower back, 26 ½ inches below the top of the head and 2 inches right of the midline, was an entrance gunshot wound. The exit wound was located 22 inches below the top of the head, 7 ½ inches below the right axilla, and ½ inch posterior of the right mid-axillary line. The path of the projectile was back to front, right to left, and upward.

**Gunshot Wound Number Five:**

Located laterally, on the left lower back, 27 ½ inches below the top of the head and 5 inches left of the midline, was an entrance gunshot wound. The exit wound was located 27 ½ inches below the top of the head, 9 inches below the left axilla, and 1 inch anterior of the left mid-axillary line. The path of the projectile was back to front, right to left, and upward.

**Gunshot Wound Number Six:**

Located on the left lower back, 29 inches below the top of the head and 1 ½ inches left of the midline, was an entrance gunshot wound. The path of the projectile was back to front, right to left, and upward.

**Gunshot Wound Number Seven:**

Located on the right buttock, 37 inches below the top of the head and 2 ½ inches right of the midline, was an entrance gunshot wound. The path of the projectile was back to front, left to right, and upward.

**Gunshot Wound Number Eight:**

Located 9 inches above the left sole and slightly left of the midline, on the posterior aspect of the left lower leg, was an entrance gunshot wound. The path of the projectile was back to front, left to right, and upward.

**Gunshot Wound Number Nine:**

Located on the medial aspect of the right arm was a graze gunshot wound.

**TOXICOLOGY RESULTS.** Blood, urine, and vitreous samples were collected from Urrea during the autopsy.

Toxicology results for the **Blood** sample were listed as follows:

- Ethyl alcohol – 0.058% (W/V)
- Gabapentin - 9.2 mg/L
- Amphetamines – Detected
  - Methamphetamine – 1.380 mg/L
  - Amphetamine – 0.145 mg/L
  - Betaphenethylamine - Detected
- Brompheniramine – Detected

Toxicology results for the **Urine** sample were listed as follows:

- Ethyl Alcohol - Detected
- Acetone – 18.6 mg/dL
- Amphetamines – Detected
  - Methamphetamine – greater than 50.000 mg/L
  - Amphetamine – 4.360 mg/L
- Gabapentin – 1860.0 mg/L
- Cannabinoids – Detected
  - 11-Carboxy-Delta-9-THC – 0.006 mg/L
- Albuterol – Detected
- Brompheniramine – Detected
- Risperidone – None Detected
- 9-Hydroxyrisperidone – Detected

Toxicology results for the **Vitreous** sample were listed as follows:

- Ethyl alcohol – 0.042% (W/V)
- Amphetamines – Detected
  - Methamphetamine – 1.010 mg/L
- Amphetamine – 0.059 mg/L

**CRIMINAL HISTORY.** 1990, 594(a) of the Penal Code, Vandalism. Imperial County case number M71552E, a misdemeanor.

1990, 261(2) of the Penal Code, Rape by Force/Fear/ETC. Los Angeles County case number YA005313, a felony.

1998, 484(a) of the Penal Code, Petty Theft. Los Angeles County case 8CM05282-01, a misdemeanor.

1999, 484(a) of the Penal Code, Petty Theft. Los Angeles County case number TA05249401, a misdemeanor.

2000, 459 of the Penal Code, Second Degree Burglary. Los Angeles County case number TA054221, a felony.

2000, 290(A)(1)(C) Fail to Register as Sex Offender. Los Angeles County case number BA191143, a felony.

2003, 211 of the Penal Code, Second Degree Robbery. Los Angeles County case number TA06742401, a felony.

### **DE-ESCALATION**

40 King Three, Deputy Savage, and Deputy Smit responded to the Sunfair Dry Lake Bed area to search for Urrea. The deputies were aware Urrea was an armed murder suspect. When 40 King Three located Urrea's vehicle, PA announcements were given from the air to de-escalate the situation. Deputy Korkotsakis identified the helicopter as "Sheriff's Department." Deputy Korkotsakis also gave Urrea and Witness #3 multiple commands to not leave the area and to get on the ground.

Once Deputy Savage and Deputy Smit arrived at the location, they also attempted to de-escalate the situation by giving verbal commands while maintaining a safe distance from Urrea. Deputy Smit yelled, "Let me see your hands. Let me see your hands. Get out from under the vehicle. Get out from under the vehicle. Get around. Get on the ground. Get on the ground. Let me see your hands. Get on the ground." Deputy Savage yelled, "Hey, get down. Get on the ground. Get on the ground. Get on the f\*\*cking ground." The situation escalated quickly. Urrea, armed with a knife, charged at Deputy Smit and Deputy Savage. There was no attempt by Urrea to comply with any of the deputies' orders.

### **APPLICABLE LEGAL PRINCIPLES**

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)<sup>6</sup> Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C.

---

<sup>6</sup> All references to code sections here pertain to the California Penal Code.

§835a(d.) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4<sup>th</sup> 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing*, *In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

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

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

(Penal C. §835a(c)(1).) Discharge of a firearm is "deadly force." (Penal C. §835a(e)(1).) The " [t]otality of the circumstances' means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." (Penal C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,<sup>7</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at \*25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal C. §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis, but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and

---

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

consistency with agency policies;<sup>8</sup>

- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

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

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

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

---

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

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

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

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

(Penal C. §835a(e)(2).)

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

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

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

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without

regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer” standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)<sup>9</sup> To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

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

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9<sup>th</sup> Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9<sup>th</sup> Cir. 1994) 858 F.Supp. 1064, 1071-72 “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

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

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

---

<sup>9</sup> The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.



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

(*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4<sup>th</sup> at 343, citing *Smith v. Freland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9<sup>th</sup> Cir. 1999) 1999 U.S. Dist. LEXIS 1414 \*1, 27-28.)

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

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

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

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

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

*MacPherson, supra*, 630 F.3d at 825; *Deorle v. Rutherford, supra*, 272 F.3d at 1279-80.) Similarly, the use of a trained police dog does not qualify as “deadly force” as it too has fallen short of the lethal force definition set forth in *Smith. (Thompson v. County of Los Angeles* (2006) 142 Cal.App.4<sup>th</sup> 154, 165-169.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject’s mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson, supra*, 630 F.3d at 831; *Deorle v. Rutherford, supra*, 270 F.3d at 1283-84.) Failure to pass-muster under *Graham* can deem the use of non-lethal force as “excessive” and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed “excessive” nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9<sup>th</sup> Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

### ANALYSIS

In this case, Deputy Smit and Deputy Savage each had an honest and objectively reasonable belief Urrea posed an imminent risk of serious bodily injury or death. Both Deputy Smit and Deputy Savage were involved in the initial call for service regarding a stabbing that took place at the Valero gas station in the City of Joshua Tree. During the initial investigation deputies learned Urrea had stabbed two victims and fled the scene. One victim had been stabbed in the leg. The second victim had been stabbed in the chest and transported to the hospital where he later died. The deputies were also aware the knife Urrea used during the stabbings was not recovered at the gas station.

40 King Three located Urrea’s vehicle parked in the Sunfair Dry Lake Bed area. The vehicle was parked at the bottom of a hill. 40 King Three advised Deputy Smit and Deputy Savage that Urrea was seated in the driver seat and that Witness #3 was seated in the passenger seat of the vehicle. 40 King Three advised Deputy Smit and Deputy Savage that Urrea may attempt to flee the area in his vehicle.

Deputy Smit and Deputy Savage were both wearing uniforms clearly identifying them as deputies with the San Bernardino County Sheriff’s Department. In addition, Deputy Smit and Deputy Savage were both driving marked patrol vehicles identifying them as law enforcement. When Deputy Smit and Deputy Savage arrived at the location, they saw Urrea’s vehicle. Urrea and Witness #3 were no longer seated in the vehicle. Deputy Smit and Deputy Savage knew Urrea was a murder suspect who was likely armed with a knife. The deputies immediately began giving Urrea verbal commands for Urrea to show his hands and to get on the ground. Urrea refused to comply with the deputies’ commands. Instead, Urrea charged directly toward Deputy Smit. Urrea’s

right hand was raised up in the air. It appeared to both Deputy Smit and Deputy Savage that Urrea was armed with a knife.

There was no indication Urrea intended to comply with deputies' commands to stop and get on the ground. Consequently, when Urrea charged at the deputies, Deputy Smit and Deputy Savage were forced to act quickly to stop what was an imminent threat to their physical safety. Deputy Smit and Deputy Savage knew Urrea had already clearly demonstrated his willingness to seriously injure and kill by stabbing two individuals at the Valero gas station. The knife Urrea used to attack the two victims had not been recovered at the scene. Therefore, the belief by Deputy Smit and Deputy Savage that Urrea intended to seriously injure or kill the deputies was both honest and objectively reasonable. Given those circumstances, the decision by Deputy Smit and Deputy Savage to use deadly force was justified.

### **CONCLUSION**

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

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

**Submitted By:**  
**San Bernardino County District Attorney's Office**  
**303 West Third Street**  
**San Bernardino, CA 92415**

