



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: September 1, 2022

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Officer Paul Beltran
Fontana Police Department

Officer Michael Bernath
Fontana Police Department

Officer Andrew Hackett
Fontana Police Department

Involved Subject: Fernando Brian Chavira (Deceased)
Date of Birth 05/13/92
Fontana, CA

Date of Incident: October 23, 2020

Incident location: Interstate 10 Eastbound at Tippecanoe Ave.
Fontana, CA

DA STAR #: 2021-45688

Investigating Agency: California Highway Patrol
Inland Division

Case Agent: Investigator Kasey Banuelos

Report Number#: F250-801-20

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PREAMBLE

This was a fatal officer involved shooting by officers from the Fontana Police Department. The shooting was investigated by the California Highway Patrol. This factual summary is based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the California Highway Patrol, DR# F250-801-20.

FACTUAL SUMMARY

Police officers assigned to the Fontana Police Department gang unit were attempting to locate Fernando Chavira, a known documented member of the South Fontana criminal street gang. Chavira had an active no bail warrant for his arrest. During their investigation, the officers reviewed Chavira's criminal history and obtained information about what type of vehicle Chavira may be driving as well as which motels Chavira would frequent.

On October 23, 2020, Corporal Edward Stewart was near the Comfort Inn motel in the City of Colton when he observed a silver Kia enter the parking lot. This vehicle matched the description of the type of vehicle Chavira's girlfriend drove. Corporal Stewart put his observation out over the radio. Officer Paul Beltran and Officer Andrew Hackett and Officer Michael Bernath and Officer Joshua Nassar drove to the location. When the Kia exited the motel parking lot, Corporal Stewart advised the other officers he was able to see that the driver was a Hispanic male.

Officer Beltran and Officer Hackett attempted to conduct a traffic stop of the Kia. The Kia failed to yield, and a vehicle pursuit ensued. Officer Beltran and Officer Hackett and Officer Bernath and Officer Nassar had their emergency lights and sirens activated on their patrol vehicles. Chavira drove a high rate of speed on the city streets before entering the eastbound 10 Interstate at Mt. Vernon. Sergeant Kyle Slusser and Corporal Stewart followed the two patrol vehicles as the pursuit continued onto the freeway.

When the Kia entered the freeway, the vehicle drove over traffic cones that had been set up for ongoing construction. Officer Hackett noticed the Kia started experiencing mechanical issues. The speed of the Kia started to slow dramatically and eventually came to a stop. The patrol vehicles stopped behind the Kia. Chavira immediately exited the driver seat of the vehicle and started to run. As he was running, Chavira turned and fired a gun in the direction of Officer Beltran, Officer Hackett, Officer Bernath and Officer Nassar.

Officer Beltran, Officer Bernath, and Officer Hackett feared for their lives, the lives of their partners, and the civilians on the freeway. The officers drew their weapons and returned fire. Chavira was struck multiple times by gunfire and fell to the ground.

After the lethal force encounter, officers saw Chavira was injured and requested medical aid to respond. Officers rendered aid to Chavira until Loma Linda Fire Department personnel arrived at the location. Chavira was pronounced deceased at the scene.

A handgun was located at the scene. The weapon was a Heckler & Koch semiautomatic pistol, model P7 M8, 9 mm Luger caliber, with ammunition magazine.

STATEMENTS BY POLICE OFFICERS

Officer Paul Beltran declined to be interviewed by an investigator with the California Highway Patrol. Officer Beltran did submit a written statement to the California Highway Patrol regarding the incident under review.

On October 23, 2020, Officer Beltran, from the Fontana Police Department, was assigned to the gang unit. On that date, Officer Beltran was wearing plain clothes along with a raid vest with the word "POLICE" displayed on the front and the words "POLICE GANG UNIT" on the back. Officer Beltran was driving a marked black and white patrol vehicle and was partnered with Officer Andrew Hackett.

On that date, Officer Beltran was attempting to locate a subject by the name of Fernando Chavira. Chavira had a no bail warrant for a parole violation. Officer Beltran knew Chavira was a known documented member of the criminal street gang South Fontana. Officer Beltran knew members of the gang have been responsible for committing multiple violent crimes including but not limited to assaults with firearms, assaults on police officers, carjacking, robbery, and homicide. Officer Beltran was also familiar with a case where a Fontana Police Department officer was shot in the neck by a South Fontana gang member.

Officer Beltran had prior knowledge of Chavira's background. Officer Beltran knew Chavira had a prior arrest in 2011 for assault on an undercover police officer; that arrest resulted in an officer involved shooting. Officer Beltran was also aware that Chavira had recently been arrested after he led officers from Colton Police Department on a pursuit. During that arrest, Chavira was found to be in possession of a firearm and methamphetamine. Officer Beltran believed there was a strong possibility Chavira would be armed again given Chavira's gang membership and Chavira's violent criminal history.

On October 23, 2020, at around 11:00 in the evening, Corporal Edward Stewart was conducting surveillance at the Comfort Inn Motel in the City of Colton. Officers had information that Chavira was possibly going to be at this location. While on surveillance, Corporal Stewart advised he observed a silver Kia Optima, driven by a male subject, pull into the location. It was believed Chavira was driving the vehicle. After a few short moments, Corporal Stewart broadcasted over the radio that Chavira

was driving toward the motel exit. At that time, Officer Beltran began to drive his patrol vehicle toward the exit.

When Officer Beltran reached the exit of the motel, he saw the silver Kia traveling southbound on Sperry at a high rate of speed. On Valley Blvd., west of Sperry, Officer Beltran was able to catch up and get behind the Kia. Chavira then made an abrupt right turn into a gas station located on northwest side of the intersection at Valley Blvd. and Mt. Vernon Ave. As Chavira made the turn, Officer Beltran noticed the Kia had front window tint. Officer Beltran activated the emergency lights on his patrol vehicle to conduct a traffic stop of the Kia for speeding and the window tint. Chavira failed to yield and continued to drive through the gas station and accelerated onto Mt. Vernon Ave.

Officer Beltran believed Chavira was trying to flee from the officers and activated the sirens on his patrol vehicle. Chavira failed to pull over and a vehicle pursuit ensued. Chavira reached the eastbound I-10 on ramp which was blocked with "ROAD CLOSED" signs. Officer Beltran observed Chavira run over a traffic cone that was in the roadway. After he struck the cone, Chavira's vehicle started to smoke, and fluid began to leak from the hood of his vehicle. The fluid began to cover the window of Officer Beltran's patrol vehicle. Officer Beltran was able to clean the windshield of his patrol vehicle. Officer Beltran then activated his body worn camera.

Chavira continued to drive east on the freeway. Officer Beltran noticed Chavira's vehicle began to slow down due to what Officer Beltran believed was mechanical issues with his car. As they neared the Tippecanoe exit, Chavira began to pull over to the right shoulder of the freeway. Officer Beltran saw the driver door of Chavira's vehicle begin to open. Officer Beltran began to unbuckle his seatbelt so he could chase after Chavira if Chavira fled on foot.

Chavira immediately exited his vehicle after it came to a complete stop. Officer Beltran estimated Chavira was eight to ten feet away from him. Officer Beltran saw Chavira holding a black pistol in his hand. Officer Beltran stated that as Chavira stood up from the vehicle, Chavira faced Officer Beltran's driver seat and directly pointed the firearm at Officer Beltran. Officer Beltran immediately ducked down in fear that he would be killed by Chavira's gunfire. Officer Beltran opened the door of his vehicle to get out. Officer Beltran feared that if he did not exit the vehicle, Chavira would advance toward Officer Beltran's side of the vehicle and kill both Officer Beltran and Officer Hackett. As he ducked down and exited the patrol vehicle, Officer Beltran tried to maintain a visual of Chavira. Officer Beltran observed a muzzle flash coming from Chavira's weapon. Officer Beltran now believed Chavira was actively trying to kill him and his partners. Officer Beltran reached for his firearm so he could protect himself and his partners.

Officer Beltran looked up and saw Chavira running toward a black vehicle that was in the number three or number four lane of the freeway west of him. Officer Beltran believed Chavira was running toward the direction of officers in a flanking position. Officer Beltran was afraid Chavira was trying to get into a position behind the black vehicle where Chavira would be able to easily kill him or his partners. As Chavira was

running, Officer Beltran saw Chavira raise his gun and point it toward his direction. To stop the assault and protect himself, Officer Beltran fired approximately three to four rounds from his duty weapon at Chavira.

Chavira continued to run west where Officer Beltran observed numerous vehicles on the freeway occupied with civilians. It appeared to Officer Beltran that Chavira was desperate to get away. Officer Beltran was afraid that Chavira may try to carjack someone to try and flee the scene. As he chased after Chavira, Officer Beltran heard approximately two gunshots. Officer Beltran believed Chavira was again firing at officers and trying to kill them. Officer Beltran was unsure whether anyone had been struck by the gunfire.

When Officer Beltran reached the other side of the vehicle, Officer Beltran observed Chavira falling toward the ground onto his back. Officer Beltran saw Officer Michael Bernath near Chavira. Officer Beltran believed Chavira was still armed with a firearm and therefore a threat to his partners. At that time, the only lighting was from the civilian vehicles west of the officers. The lighting casted shadows on Chavira's body but Officer Beltran could clearly see Chavira's arms moving around. Given Chavira's body position and arm movements, Officer Beltran feared Chavira could quickly shoot and kill the officers. Officer Beltran again pointed his duty weapon at Chavira and fired approximately four to five rounds at Chavira. At the end of that volley of gunfire, Officer Beltran stopped shooting, reassessed, and saw Chavira was no longer moving around.

Officer Beltran was unsure whether Chavira was still armed. Officer Beltran continued to advance toward Chavira with his duty weapon pointed at Chavira. Officer Beltran started yelling commands for Chavira to show his hands. When Officer Beltran got closer to Chavira, Officer Beltran did not see any firearm in Chavira's hands. Officers then approached Chavira, rolled him over, and placed Chavira in handcuffs. It was determined that Chavira had been shot so Chavira was rolled back over and cardiopulmonary resuscitation (CPR) was started. Officer Beltran assisted with chest compressions until medical personnel arrived.

Officer Michael Bernath declined to be interviewed by an investigator with the California Highway Patrol. Officer Bernath did submit a written statement to the California Highway Patrol regarding the incident under review.

On October 23, 2020, Officer Bernath, from the Fontana Police Department, was assigned to the gang unit. On that date, Officer Bernath was wearing plain clothes and a vest. The vest had the word "POLICE" displayed on the front and back of the vest as well as a cloth Fontana Police Department badge visible on the front. Officer Bernath was driving a marked black and white patrol vehicle. Officer Bernath was partnered with Officer Joshua Nassar.

On that date, officers from Fontana Police Department were attempting to locate Chavira who had an active no bail warrant for a probation violation. Officer Bernath had

conducted research on Chavira and was aware Chavira had been convicted of assault with a deadly weapon. During that incident, Chavira assaulted a Fontana Police Department officer with a knife which resulted in an officer involved shooting. Officer Bernath was also aware that Chavira had recently been arrested after a vehicle pursuit with Colton Police Department; at the conclusion of the pursuit, Chavira was found in possession of a methamphetamine and a firearm.

Officer Bernath knew Chavira was a documented active member of the South Fontana criminal street gang. Based on his training and experience, Officer Bernath knew members of the South Fontana criminal street gang are violent and often armed. Officer Bernath was also aware that members of the South Fontana criminal street gang have been responsible for several crimes including assaults, robberies, attempted homicide on a peace officer, and homicide. Officer Bernath recalled in the recent past, a South Fontana gang member shot a Fontana Police Department officer in the neck, attempting to evade arrest.

On October 23, 2020, at around 11:00 in the evening, Corporal Edward Stewart broadcasted that a male, later identified as Chavira, driving a silver Kia Optima had entered the parking lot of the Comfort Inn located in the City of Colton. A short time later, Corporal Stewart broadcasted that Chavira was leaving the parking lot in the same vehicle. Officer Paul Beltran and Officer Andrew Hackett attempted to conduct a traffic stop of the Kia as it pulled into a 7-11, located at the intersection of Mt. Vernon Ave. and Valley Blvd. in the City of Colton. Officer Bernath pulled into the parking lot as the officers were attempting to conduct the traffic stop. Officer Bernath saw Chavira fail to yield and a vehicle pursuit ensued.

Officer Bernath activated the overhead lights and siren on his patrol vehicle and joined the pursuit as the second unit. Chavira led officers to the I-10 East freeway on-ramp at Mt. Vernon Ave. The onramp was marked with several barriers indicating it was closed. Chavira struck multiple cones as he merged onto the I-10 freeway. As Chavira continued fleeing officers on the freeway, it appeared Chavira's vehicle was having mechanical issues.

After Chavira struck the cones, the Kia began to slow down. As the Kia was slowing, Officer Bernath observed the driver door open. Officer Bernath knew from experience that when suspects open their door, they are often preparing to foot bail from the vehicle. Officer Bernath positioned his patrol vehicle behind the Kia and directly next to the passenger side of Officer Beltran's patrol vehicle. The Kia came to an abrupt stop and Chavira exited the driver seat.

Officer Bernath stopped his patrol vehicle approximately five feet from the rear of the Kia. Officer Bernath observed Chavira had a black handgun in his hand. Chavira pointed the firearm in the direction of Officer Beltran's patrol vehicle. Officer Bernath feared Chavira was going to kill his partners who were still inside their vehicle and reacting to the abrupt stop Chavira made. Officer Bernath exited his patrol vehicle and removed his duty weapon. Officer Bernath watched as Chavira began running in a

north western direction towards the center median which was dividing the east and west bound lanes of travel. As Chavira was running, Officer Bernath saw Chavira was pointing the firearm directly into the door of Officer Beltran's vehicle while Officer Beltran and Officer Hackett were both still inside.

Officer Bernath ran to the rear of Officer Beltran's vehicle in order to use the vehicle for cover. As Officer Bernath neared the rear of the vehicle, he observed Chavira running towards the driver side of a civilian's black SUV. The SUV was just north of Officer Beltran's vehicle. Officer Bernath ran towards the rear of the SUV, in order to use it as cover and obtain a position of advantage. Officer Bernath lost sight of Chavira who was on the opposite side of the vehicle. At that time, Officer Bernath heard multiple gunshots and immediately feared officers had been shot at by Chavira.

Officer Bernath was standing at the rear of the SUV when he observed Chavira emerge from the driver's side. Chavira ran westbound towards several vehicles occupied by civilians that were stopped on the freeway. When Officer Bernath did not see his partners giving chase after Chavira, Officer Bernath believed they had been shot. As Chavira was running, Officer Bernath saw that Chavira was still armed with a firearm. Officer Bernath feared Chavira would harm one or more of the civilians.

As Chavira was running, Chavira looked directly at Officer Bernath and then started to turn towards Officer Bernath. As Chavira was turning, he raised his firearm in the direction of Officer Bernath. At that time, Officer Bernath did not know where his partners were at. Officer Bernath was afraid Chavira was going to shoot and kill him or another officer in order to escape and avoid arrest. Officer Bernath stated he feared for his life, the lives of his partners, and the lives of the civilians who were stopped to the rear of the traffic stop. Officer Bernath observed a concrete center divider directly behind Chavira. Officer Bernath did not see any vehicles or pedestrians behind Chavira. Officer Bernath fired approximately two rounds from his firearm at Chavira's chest. Officer Bernath then observed Chavira fall onto his back and the firearm fall from Chavira's hand.

After Chavira fell to the ground, Officer Bernath observed Chavira was still moving and had his arms in the air. Officers gave verbal commands and approached Chavira and handcuffed him. Officer Bernath observed multiple gunshot wounds to Chavira and officers then began conducting life saving measures. Officer Hackett immediately began CPR as Officer Bernath put pressure on Chavira's wounds. Medical personnel arrived at the scene and took over rendering aid to Chavira.

Officer Andrew Hackett declined to be interviewed by an investigator with the California Highway Patrol. Officer Hackett did submit a written statement to the California Highway Patrol regarding the incident under review.

On October 23, 2020, Officer Hackett, from the Fontana Police Department, was assigned to the gang unit. On that date, Officer Hackett was wearing plain clothes and

a tactical vest. The word "POLICE" was clearly displayed on the front and the back of the vest. Officer Hackett was partnered with Officer Paul Beltran and they were riding in a marked black and white patrol vehicle. Officer Beltran was driving the patrol vehicle and Officer Hackett was seated in the front passenger seat.

On October 23, 2020, at around 11:00 in the evening, Officer Hackett was in the area of the Comfort Inn located in the City of Colton. Officer Hackett and the other officers were attempting to locate Chavira. Chavira was wanted for an active felony no bail warrant for a probation violation. Officer Hackett knew Chavira was a documented and active member of the South Fontana criminal street gang. Officer Hackett was aware that the members of the South Fontana criminal street gang were responsible for violent crimes such as assaults, robberies, attempted murder, attempted murder of a police officer, and homicide. Officer Hackett knew that in the recent past, a South Fontana gang member attempted to murder a police officer with the Fontana Police Department by shooting him in the neck during a traffic enforcement stop. Officer Hackett had personally contacted and arrested South Fontana gang members in the past who were found to be in illegal possession of firearms.

Prior to the investigation, Officer Hackett researched Chavira's criminal history. Officer Hackett learned Chavira was convicted of Assault with a Deadly Weapon in 2011. During that incident, Chavira assaulted an undercover police officer with a knife. In August 2020, Chavira led Colton Police Department on a vehicle pursuit where he ultimately crashed his vehicle on the 215 freeway. During that incident, Chavira was found to be in possession of a loaded handgun and methamphetamine. Officer Hackett was aware Chavira had multiple arrests for theft and narcotic related offenses. Based on his training and experience, Officer Hackett knew that people who are in possession of firearms and under the influence of methamphetamine have a serious lapse in judgment and will often act erratically. Based on Chavira's active gang membership and recent criminal activity, Officer Hackett believed Chavira could be armed with a firearm.

Officers developed information that Chavira was at the Comfort Inn and driving a gray Kia Optima. On October 23, 2020, Corporal Stewart was conducting surveillance at the Comfort Inn when he observed the Kia enter the motel parking lot. Corporal Stewart broadcasted over the radio that a male was driving the Kia and the vehicle left the parking lot, traveling southbound on Sperry Dr. Officer Beltran began driving southbound on Sperry Dr. to look for the Kia.

When Officer Hackett and Officer Beltran were driving on Valley Blvd., Officer Hackett observed the Kia traveling westbound on Valley Blvd. towards Mt. Vernon Ave. at a high rate of speed. Officer Beltran positioned their patrol vehicle behind the Kia. The Kia made an abrupt northbound turn into the parking lot of a 7-11 located on Mt. Vernon Ave. As the Kia made the turn, Officer Hackett saw the front window tint was extremely dark. Officer Beltran activated the overhead emergency lights to the patrol vehicle and attempted to conduct a traffic stop. The Kia failed to yield and immediately accelerated and exited onto Mt. Vernon Ave.

The Kia traveled through the intersection at Valley Blvd. and continued south on Mt. Vernon Ave. The Kia then entered the eastbound IS-10 freeway. Officer Hackett observed that the freeway on-ramp was closed and there were several barricades and cones preventing vehicles from entering the freeway on-ramp. The Kia drove over several traffic cones as it entered the on-ramp. Officer Hackett immediately saw an unknown liquid being spewed from the Kia which he believed was the result of damage caused by the traffic cones. The Kia continued to travel eastbound on the IS-10 freeway, but Officer Hackett noticed the vehicle was gradually losing speed. The Kia slowed down dramatically once it passed the Tippecanoe Ave. off-ramp. The Kia then came to an abrupt stop in the middle of the freeway.

Officer Beltran stopped their patrol vehicle approximately one foot behind and offset to the Kia. Officer Hackett had a clear unobstructed view of the driver door. As the Kia stopped, Officer Hackett saw the driver door open and Chavira exit the driver's seat. As soon as Chavira exited the Kia, he turned and faced Officer Beltran and Officer Hackett's patrol vehicle. Officer Hackett saw Chavira was holding a handgun in one of his hands.

Chavira raised the handgun and pointed it at Officer Beltran and Officer Hackett. Officer Hackett believed both he and Officer Beltran were about to be shot and killed. Officer Hackett briefly ducked his head to conceal his body as best he could. As he ducked his head, Officer Hackett continued to look at Chavira. Chavira continued pointing the handgun at Officer Hackett and Officer Beltran as Chavira began running northbound towards the center median of the freeway. Officer Hackett braced himself to be shot and killed.

Officer Hackett knew he needed to try and exit the patrol vehicle as quickly as possible if he wanted to survive. Officer Hackett exited the vehicle and began to run westbound towards the rear of his patrol vehicle. Officer Hackett wanted to gain some type of cover and concealment so Chavira could not shoot him. As Officer Hackett ran westbound, he heard several gunshots. Officer Hackett did not see Officer Beltran. Officer Hackett immediately feared Chavira had shot and possibly killed Officer Beltran.

Officer Hackett continued to run westbound around his patrol vehicle. Officer Hackett shouted several times that Chavira had a gun to warn his responding partners. As soon as Officer Hackett ran past the rear of his patrol vehicle, he saw another police vehicle stopped north of his. Officer Hackett observed Officer Bernath running northbound past the police vehicle. Officer Hackett heard several people shouting. Officer Hackett was unsure where Chavira was or whether he was actively firing at officers.

Officer Hackett began to run northbound towards the second police vehicle. As Officer Hackett was running, he observed Chavira running westbound near the north shoulder of the freeway. Chavira was heading directly towards a stopped civilian vehicle. Officer Hackett observed several stopped civilian vehicles to the west of the officers. Officer Hackett believed Chavira was willing to attempt to escape by any means. Officer Hackett feared Chavira would attempt a carjacking and a civilian could be killed in the

process. Officer Hackett observed Chavira abruptly turn around, raise his firearm, and point the weapon at Officer Hackett and Officer Bernath. Officer Hackett believed Chavira was going to kill them both. Officer Hackett raised his duty weapon and pointed it at Chavira. As he raised his weapon, Officer Hackett heard a gunshot. Officer Hackett believed Chavira shot at the two officers and started shooting at Chavira.

Chavira fell to the ground as Officer Hackett was shooting. Chavira fell to his right side and had both of his arms raised up near his torso towards Officer Hackett. It was nighttime and extremely dark near the ground. Officer Hackett never saw Chavira's weapon leave his hand. Based on his training and experience, Officer Hackett knew a subject lying on the ground, armed with a handgun, would still pose a threat to the officers. Chavira continued to move while on the ground. Officer Hackett believed Chavira still had the handgun pointed out towards Officer Hackett. Officer Hackett was afraid Chavira would continue to shoot and kill him. Officer Hackett continued to fire at Chavira as Chavira simultaneously turned over on his back.

After Chavira started to turn on his back, Officer Hackett had a better view of Chavira's hands. Officer Hackett saw that Chavira was no longer holding the handgun. Since Chavira no longer posed a threat to the officers, Officer Hackett stopped firing. Officer Hackett estimated he fired two to three shots, but later learned he fired several more times. After the shooting, Officer Hackett approached Chavira and confirmed Chavira no longer had a weapon in his hand. Officer Hackett and Officer Beltran rolled Chavira over onto his stomach and handcuffed Chavira behind his back. When they rolled Chavira back over onto his back, Officer Hackett saw Chavira suffered several gunshot wounds. Officer Hackett and Officer Beltran immediately began to render medical aid. Officer Hackett began to perform compressions on Chavira and Officer Bernath applied pressure to Chavira's wounds. CPR was conducted on Chavira for several minutes until medical personnel arrived on the scene.

On October 24, 2020, at approximately 5:30 in the morning, **Officer Joshua Nassar** was interviewed by Investigator Kasey Banuelos and Investigator Jeff Strout.

On October 23, 2020, Officer Joshua Nassar, from the Fontana Police Department, was assigned to the gang unit. On that date, Officer Nassar was wearing civilian clothes with an outer police vest. The word "POLICE" was displayed on the front and the back of the vest. There was also a cloth badge on the front of the vest. Officer Nassar was partnered with Officer Bernath and they were riding in a marked black and white patrol vehicle. Officer Bernath was driving the patrol vehicle and Officer Nassar was seated in the front passenger seat.

On October 23, 2020, there was an ongoing investigation trying to locate Chavira, a South Fontana gang member, who had a no bail warrant for his arrest. Officer Nassar was familiar with Chavira from a prior contact during a traffic stop. Officer Nassar was also aware that Chavira had recently been involved in a vehicle pursuit with Colton Police Department and a firearm had been recovered. During the ongoing investigation

trying to locate Chavira, officers learned Chavira may be driving a Kia Optima and that he was living in San Bernardino.

On October 23, 2020, Corporal Stewart observed Chavira's vehicle at a Comfort Inn motel, in the City of Colton, and advised over the radio that he saw the Kia with Chavira possibly inside of it. A patrol vehicle, occupied by Officer Beltran and Officer Hackett, attempted to conduct a traffic stop of the vehicle when it left the motel, but Chavira failed to yield. A vehicle pursuit ensued, and Chavira entered the 10 freeway on the Mt. Vernon on ramp. Officer Nassar and Officer Bernath were the backing unit.

Some of the lanes where Chavira entered the freeway were closed off for construction with cones. Officer Nassar believed Chavira damaged his vehicle when he drove through the cones. Officer Nassar saw fluids shooting out from the Kia and it appeared a wheel was damaged. Chavira's vehicle slowed down and eventually stopped on the freeway. Officer Beltran and Officer Hackett stopped their patrol vehicle behind Chavira's vehicle. Officer Nassar estimated Officer Beltran and Officer Hackett were ten to fifteen yards behind Chavira's vehicle. Officer Bernath and Officer Nassar stopped their patrol vehicle behind and to the right of Officer Beltran and Officer Hackett's patrol vehicle.

Officer Nassar saw Chavira immediately exit the driver seat of his vehicle with a black handgun in his hand. Chavira turned and started shooting at Officer Beltran and Officer Hackett's patrol vehicle. Officer Nassar heard Officer Beltran and Officer Hackett return fire. Officer Nassar saw Chavira shoot once but recalled hearing at least two shots from Chavira. At the same time as Chavira was shooting, Officer Nassar was retrieving his firearm and trying to get cover. Officer Nassar ran trying to follow behind Chavira who had started running westbound in the eastbound lanes on the freeway. As Officer Nassar made his way back around, he saw Chavira falling to the ground. The officers then started rendering medical aid to Chavira. Officer Nassar checked on the motorists on the road to make sure nobody else was hit. The motorists were okay. After that, Officer Nassar stood by the weapon that Chavira had used which was on the ground.

On October 24, 2020, at approximately 6:09 in the morning, **Corporal Edward Stewart** was interviewed by Investigator Jeff Strout and Investigator Kasey Banuelos.

On October 23, 2020, Corporal Edward Stewart, from the Fontana Police Department, was assigned to the gang unit. On that date, Corporal Stewart was wearing civilian clothes and a tac-raid vest. The vest had a cloth badge and the word "POLICE" was displayed on the front and the back of the vest. Corporal Stewart was driving an undercover police unit and did not have a partner that day.

Corporal Stewart and other officers from the gang unit were attempting to locate Chavira, a well known documented South Fontana gang member who was wanted for a no bail warrant. Corporal Stewart was familiar with Chavira based on prior contacts he had with Chavira. Corporal Stewart believed Chavira could be armed with a firearm

based on two recent incidents Chavira had with law enforcement as well as Corporal Stewart's knowledge that members of the South Fontana gang were well armed at that time. During the first incident, which occurred approximately one month earlier, a Fontana Police Department patrol officer was in pursuit of a vehicle believed to be driven by Chavira. During the pursuit, two guns were thrown from the vehicle and Chavira got away. Approximately two weeks later, during the second incident, Colton Police Department was in pursuit of a vehicle driven by Chavira. The pursuit ended in a crash after which Chavira was arrested and found to be in possession of a gun.

On October 23, 2020, Corporal Stewart was conducting surveillance near the Comfort Inn motel in the City of Colton. Corporal Stewart saw a silver Kia pull into the motel parking lot. Corporal Stewart was aware that Chavira's girlfriend drove a silver Kia. When the Kia left the motel parking lot, Corporal Stewart was able to see it was being driven by a Hispanic male. Corporal Stewart advised over the radio that he saw a silver Kia pull into the motel and that Chavira was possibly driving the vehicle. After the Kia left the motel, Corporal Stewart started to follow the vehicle at a distance. Corporal Stewart let a marked patrol vehicle, which he believed was being driven by Sergeant Kyle Slusser, get out in front of him.¹ Chavira pulled into a gas station located at the northeast corner of Mt. Vernon Ave. and Valley Blvd. When Chavira noticed the patrol vehicle following him, Chavira drove out the other side of the gas station. At some point, Corporal Stewart recalled seeing Sergeant Slusser activate the lights and siren on his patrol vehicle. Chavira failed to yield, and a pursuit ensued.

Chavira turned south on Mt. Vernon Ave. from the gas station. Two additional patrol vehicles joined Sergeant Slusser in pursuit of Chavira. One patrol unit was occupied by Officer Hackett and Officer Beltran. The second patrol unit was occupied by Officer Bernath and Officer Nassar. Both of those patrol vehicles had their lights and siren activated. Corporal Stewart drove behind the three patrol vehicles. The vehicle pursuit continued south past Valley Blvd. Chavira's Kia then entered the eastbound 10 freeway from Mt. Vernon Ave. Chavira's vehicle struck a cone when it entered the freeway and then sped up. Corporal Stewart knew there were three police units ahead of him and that Chavira was a gang member who was possibly armed, therefore, Corporal Stewart maintained some distance between his undercover vehicle and the Kia. Corporal Stewart indicated he did not see anything from that point to the termination of the pursuit.

As Corporal Stewart followed in his undercover vehicle, he could hear radio traffic from the other officers as to what was occurring. Corporal Stewart heard Officer Hackett indicate the Kia was having some engine problems. Chavira's vehicle slowed dramatically once it drove past Waterman Ave. As Corporal Stewart got closer, he noticed the vehicles on the freeway behind the police pursuit were slowing down, allowing Corporal Stewart to get close to the patrol vehicles. Corporal Stewart saw the Kia come to a stop. Two of the marked patrol vehicles stopped behind the Kia.

¹ Corporal Stewart would later indicate in his interview that he was ultimately unsure who was in the first patrol vehicle that was following behind Chavira.

Corporal Stewart pulled his undercover vehicle over off to the shoulder. He thought if Chavira foot bailed from the Kia he may run off to the side of the freeway. By the time Corporal Stewart pulled up even to the rear of the Kia, Corporal Stewart saw Chavira exit the Kia and start running westbound back towards the officers. Corporal Stewart thought Chavira may try to cross traffic and go across the freeway so Corporal Stewart drove around the front thinking he could cut Chavira off before Chavira got to the opposite westbound lanes. By that time, Corporal Stewart heard gunfire. Corporal Stewart estimated he heard between ten and fifteen gunshots. Corporal Stewart did not see much more than shadows since he was looking at all the headlights.

Corporal Stewart parked his patrol vehicle and got out. Corporal Stewart could see Chavira was down and the shooting had stopped. Corporal Stewart ran over to Chavira. Corporal Stewart saw Chavira's gun had been moved away from Chavira, but Corporal Stewart was unsure how the weapon got moved. Officers handcuffed Chavira to the back. Corporal Stewart and the other officers checked to see if the civilians in the vehicles behind them were okay. Officers then started to provide medical aid to Chavira.

On October 24, 2020, at approximately 7:03 in the morning, **Sergeant Kyle Slusser** was interviewed by Investigator Jeff Strout and Investigator Kasey Banuelos.

On October 23, 2020, Sergeant Kyle Slusser, from the Fontana Police Department, was a sergeant assigned to the gang unit. On that date, Sergeant Slusser was wearing a Fontana Police Department uniform that consisted of a green pullover, polo shirt, and black pants. The polo shirt had a police badge on the front chest area, a "SMASH" unit emblem on the side, the word "POLICE" in large white lettering on the back, and "Fontana PD" patches on each shoulder. Sergeant Slusser was driving a marked black and white police vehicle and did not have a partner that day.

On October 23, 2020, officers with the gang unit had been attempting to locate Chavira, a well-known gang member, who had a no-bail warrant. Some of the officers were familiar with Chavira based on prior contacts. The officers researched Chavira's criminal history. The officers believed Chavira could be armed with a gun based on two recent law enforcement contacts. The first incident, approximately two months prior, involved a vehicle pursuit where Chavira was a passenger. During the pursuit multiple guns were thrown out the window. During the second incident, approximately one week after the vehicle pursuit, Colton Police Department arrested Chavira and he was found in possession of a gun. During their investigation, Fontana officers had obtained information about which motels Chavira frequented and information that Chavira may be driving his girlfriend's vehicle.

Sergeant Slusser heard officers over the radio indicate they believed they had located Chavira driving a Kia sedan. The officers put out that they were in the area of Valley and Mt. Vernon. The officers indicated they were pulling into a parking lot. When Sergeant Slusser turned south onto Mt. Vernon, he heard the officers put out over the

radio that they were going to be in pursuit. At that time, Sergeant Slusser saw the Kia pull out of the gas station and turn south on Mt. Vernon. Sergeant Slusser saw Officer Beltran and Officer Hackett's patrol vehicle behind the Kia. The overhead lights on Officer Beltran and Officer Hackett's patrol vehicle were activated. There was a second patrol vehicle behind Officer Beltran and Officer Hackett. The second patrol vehicle, occupied by Officer Nassar and Officer Bernath, also had its overhead lights activated. Sergeant Slusser was not too far away and was able to quickly catch up to the pursuit. Sergeant Slusser was the third police vehicle behind Chavira's Kia sedan.

Sergeant Slusser followed the pursuit as it went over the overpass of the 10 freeway. Sergeant Slusser had the overhead lights and siren activated on his patrol vehicle. There were cones blocking the on-ramp to the 10 freeway. Although the on-ramp was closed, Chavira drove through the cones and onto the east 10 freeway. The officers continued to follow Chavira onto the freeway. Officer Hackett put out over the radio that Chavira blew a tire immediately.

Chavira continued to drive east on the 10 freeway, past the 215 freeway. Officer Hackett said over the radio he thought Chavira was having some mechanical issues. As the pursuit continued, Chavira's speeds quickly started to decrease. Sergeant Slusser got on the radio and requested an airship and a canine. Within seconds of making those requests, Sergeant Slusser saw Chavira out of his vehicle. Chavira had a gun in his hand and was running back westbound in the eastbound lanes. Sergeant Slusser heard someone yelling, "gun, gun, gun." As Chavira passed Officer Hackett and Officer Beltran's patrol vehicle, Sergeant Slusser saw Chavira fire one round in the direction of their vehicle. It appeared to Sergeant Slusser that Chavira was pointing the gun right at the driver of the patrol vehicle. However, Sergeant Slusser was unsure whether it was Officer Hackett or Officer Beltran seated in the driver seat of the vehicle.

Sergeant Slusser was coming to a stop when he now saw Chavira facing him. Chavira was running toward Sergeant Slusser. Chavira looked in Sergeant Slusser's direction. Chavira had his gun up and pointed toward Sergeant Slusser. Sergeant Slusser believed Chavira fired one another round at him. Sergeant Slusser reacted by ducking down behind the engine block. When Sergeant Slusser came back up he heard gunfire. Sergeant Slusser was unsure how many rounds he heard. Sergeant Slusser drew his weapon but as he was about to engage Chavira, Officer Bernath moved right in front of his muzzle and Sergeant Slusser was unable to fire his weapon. At that time, the other officers engaged again, and Chavira fell to the ground. After Chavira was on the ground, Sergeant Slusser did not see a gun in Chavira's right hand. Sergeant Slusser yelled to the other officers something to the effect of, "That's enough." The officers approached Chavira and handcuffed him. Officers then started to render medical aid to Chavira. Chavira's gun was located on the ground, behind Sergeant Slusser's patrol unit, approximately twelve to fifteen feet away from Chavira. Sergeant Slusser was unsure how the gun ended up in that location.

STATEMENTS BY CIVILIAN WITNESSES

On November 18, 2020, at around 2:47 in the afternoon, **Witness #1** was interviewed by Investigator Kasey Banuelos and Investigator Jeff Strout.

Witness #1 was Fernando Chavira's girlfriend. Witness #1 indicated she had been dating Chavira for approximately four months. The two lived together at her mother's house. Witness #1 indicated she was unemployed, and Chavira was doing side jobs for money. Witness #1 was the registered owner of the Kia sedan Chavira was driving during the incident under review. Witness #1 indicated Chavira had never driven her vehicle before that day. Witness #1 had been aware that officers from Fontana Police Department were looking for Chavira.

On October 23, 2020, during the morning, Witness #1 was stopped by Fontana Police Department on Del Rosa Avenue and the 210 freeway. Witness #1 was arrested and taken to Fontana Police Department where she was cited for driving with a suspended license. The officers gave Witness #1's brother possession of her vehicle. Witness #1's brother took the vehicle home and that was when Chavira took the Kia. Witness #1 was adamant she had not given Chavira permission to drive her vehicle.

Witness #1 knew Chavira had recently been arrested by Colton Police Department. Witness #1 said Chavira had prior "run-ins" with Fontana Police Department officers and Chavira was very scared of them. According to Witness #1, Chavira said whenever the Fontana Police Department got him it would be bad. Witness #1 indicated Chavira may have gone to the Comfort Inn motel to meet another woman. Witness #1 also stated she knew Chavira was using "meth."

On October 24, 2020, at approximately 3:10 in the morning, **Witness #2** was interviewed by Investigator Alfredo Chen.

Witness #2 was driving east on the 10 freeway when he saw a couple flashing lights up on an overpass, a little bit away from him. Witness #2 then saw additional flashing lights and realized there was a silver car driving in front of the flashing lights. Witness #2 noticed that a police pursuit was going on. Witness #2 looked back behind him and saw another police vehicle approaching. The pursuit went a little further when Witness #2 saw the vehicles enter the freeway. Witness #2 saw the police vehicles drive over some traffic cones which were on the freeway.

The vehicles eventually came to a stop. Witness #2 saw a male, later identified as Fernando Chavira, jump out of the first vehicle and run, almost horizontally, to the westbound lanes toward a barricade. Witness #2 said it appeared that Chavira was going to try and hop over the barricade, but he never made it that far. The police officers had exited their patrol vehicles and fired their weapons at Chavira. After the shooting, Chavira fell to the ground. Witness #2 saw two officers approach Chavira and

make sure Chavira was no longer a threat. The officers then checked on the occupants of the other vehicles.

Witness #2 was unsure how many gunshots he heard during the incident. Witness #2 indicated he only saw Chavira for "a split second." Witness #2 said he could not see whether Chavira had a weapon in his hand during the incident. Witness #2 saw medical personnel arrive at the scene but did not pay attention to what they were doing. Witness #2 estimated the time from when he stopped his vehicle to when he saw Chavira go down was two to five seconds.

On October 24, 2020, at approximately 2:26 in the morning, **Witness #3** was interviewed by Investigator Alfredo Chen.

Witness #3 had left work and was driving eastbound on Interstate 10 when he saw police vehicles get on the freeway around Mt. Vernon Ave. Witness #3 noticed there were some cones and a closure at Mt. Vernon. It appeared to Witness #3 that the vehicles came through the closure and knocked a bunch of the cones over. Witness #3 saw a silver colored vehicle being pursued by three police vehicles. Witness #3 noticed the three police vehicles had their emergency lights activated. The vehicles were all traveling at a high rate of speed.

Traffic subsequently came to an abrupt stop. At that time, Witness #3 noticed there was also what he believed was an unmarked police vehicle. Witness #3 checked his rearview mirror because he was concerned that he was going to be rear-ended. When Witness #3 returned his attention forward, Witness #3 saw a Hispanic male, later identified as Fernando Chavira, running toward his vehicle. Witness #3 looked up and saw police officers, with their weapons drawn, facing his vehicle. It appeared to Witness #3 that Chavira turned to look at the officers. Witness #3 was afraid there was going to be a shootout and ducked over onto his passenger seat. Witness #3 then heard gunfire. Witness #3 was unsure how many gunshots he heard but estimated it was between eight and ten. Witness #3 waited for the shooting to stop and then sat back upright in his seat. Witness #3 saw Chavira was down on the ground bleeding. Witness #3 also saw two police officers rendering medical aid to Chavira. Witness #3 estimated an ambulance arrived five to ten minutes after that.

On October 24, 2020, at approximately 2:28 in the morning, **Witness #4** was interviewed by Investigator James Smith.

Witness #4 was traveling from Riverside on his way to Big Bear. Witness #4 was driving eastbound on Interstate 10 when he saw police vehicles traveling in front of him. The police vehicles had their lights and sirens activated. Witness #4 tried to slow down but there were other vehicles right behind him. Suddenly the police vehicles came to a stop. Witness #4 estimated he was 100 to 150 feet to the rear of the police vehicles.

There were no vehicles in between Witness #4's vehicle and the police vehicles. Witness #4 indicated his view was partially obstructed by the police vehicles.

Witness #4 saw a male subject, later identified as Fernando Chavira, running toward the center median. Chavira then started running toward Witness #4 and the other vehicles that were stopped behind the pursuit. Witness #4 saw Chavira pull out a gun, put it near his waist and "cock it." Witness #4 heard people yelling but could not make out what was being said. Witness #4 believed the weapon Chavira was holding was a Glock. Witness #4 estimated Chavira was six feet away from him at this time. Witness #4 heard gunfire right after Chavira cocked the weapon.

After the gunfire, Chavira dropped immediately to the ground. It appeared to Witness #4 that Chavira had been struck multiple times during the gunfire. Witness #4 was unsure where Chavira's weapon went. Witness #4 then saw police officers start taking turns rendering medical aid to Chavira and videotaped part of that with his cell phone. A police officer approached Witness #4 and asked if Witness #4 was hit.

On October 24, 2020, at approximately 2:28 in the morning, **Witness #5** was interviewed by Investigator James Smith.

Witness #5 was traveling eastbound on Interstate 10. Witness #5 saw police vehicle flashing lights coming up behind him. Witness #5 moved over two lanes and then saw that there was a vehicle in between his vehicle and the flashing lights. Witness #5 realized there was a police pursuit going on and the vehicle was not pulling over.

Witness #5 started to slow down. The police pursuit drove past Witness #5's vehicle. Witness #5 started to slow down some more. Within seconds of being passed, the police pursuit came to a stop. Witness #5 stopped his vehicle. The police vehicles were stopped in front of Witness #5's vehicle. Witness #5 saw the officers get out of their vehicles. Witness #5 also saw a male subject, later identified as Fernando Chavira, run out. Witness #5 heard gunshots. Witness #5 believed the gunshots came first from Chavira. Witness #5 next saw a group of police officers come around and open fire on Chavira.

After the gunfire, Witness #5 saw the officers surround Chavira's body. Chavira said one of the police officers got on top of Chavira and started performing chest compressions. Chavira estimated the police officer was performing chest compressions for five minutes. After the incident, Witness #5 moved his vehicle over to the right shoulder on the freeway.

On October 24, 2020, at approximately 2:28 in the morning, **Witness #6** was interviewed by Investigator Jeff Strout.

Witness #6 was traveling eastbound on Interstate 10 on his way to Beaumont. As Witness #6 was around Mt. Vernon, he noticed there were police vehicles with their lights on heading onto the freeway. It appeared to Witness #6 that the police vehicles were chasing a gray colored vehicle. Witness #6 said before the pursuit reached the 215 freeway interchange, it looked like the vehicles had gone over some traffic cones. As the police pursuit got closer to Tippecanoe, Witness #6 noticed everyone started slowing down.

When Witness #6 got to Tippecanoe, the vehicles had stopped. Witness #6 noticed a male subject, later identified as Fernando Chavira, moving towards another vehicle, a Jetta, which was stopped in lane number one on the freeway. Chavira appeared to be pointing toward the police officers that were stopped in that area. Witness #6 saw Chavira holding a gun. Witness #6 said the gun was probably the size of a Glock. Witness #6 believed Chavira was trying to shoot at the police officers. Witness #6 heard an exchange of gunfire. Witness #6 believed Chavira fired first at officers and then the officers returned fire. Witness #6 thought the driver in the Jetta was going to get killed. After the gunfire, Witness #6 saw Chavira down on the ground.

Witness #6 estimated the altercation lasted no more than seven to eight seconds. After the exchange of gunfire, Witness #6 saw a police officer approach Chavira and appear to handcuff him. Witness #6 later saw an ambulance arrive at the scene.

INCIDENT VIDEO

AXON BODY CAMERA VIDEO RECORDINGS. All body camera video recordings submitted were reviewed in their entirety. The body camera video recording summaries will only cover the period of time from the beginning of each recording through the occurrence of the lethal force encounter.

Officer Paul Beltran

Officer Beltran had his body worn camera activated and recording during the incident under review. The recording was approximately 7 minutes and 28 seconds in length.

The video recording shows the inside of the patrol vehicle. Officer Beltran's partner, Officer Hackett, could be heard speaking on the radio. Officer Hackett states, "Slowing down further. He's having mechanical issues." Officer Hackett could be heard saying, "Number 3. We are committed past Tippecanoe." Officer Hackett indicates Chavira's vehicle is traveling at 45 mph and swerving in and out of the number one and number two lanes. Officer Hackett advises dispatch that "his car is about to go BO." Additional radio traffic could be heard in the background, including a request for an airship.

Officer Beltran could be seen putting the patrol vehicle in park and opening the driver door. Officer Beltran could be seen drawing his firearm as he exits the patrol vehicle. Chavira could be seen running westbound to the left of Officer Beltran's patrol vehicle. Officer Beltran aims his weapon and fires four times at Chavira. After Officer Beltran shoots at Chavira, Chavira is seen continuing to run westbound toward stopped traffic.

Officer Beltran could be seen running to the back of his patrol vehicle. Officer Beltran starts yelling, "Gun, gun, gun!" As Officer Beltran is nearing the rear of his patrol vehicle, other officers could be heard engaging Chavira with gunfire. Chavira could be seen on the ground, lying on his right side. Chavira's hands are not visible. Chavira is seen rolling on the ground from his right side, with his arms folded against his front, and onto his back. Sound of gunfire stops after Sergeant Slusser yells, "Enough, enough!" Officer Beltran assists rolling Chavira onto his stomach so Officer Hackett and Officer Bernath can handcuff Chavira.

Officer Andrew Hackett

Officer Hackett had his body worn camera activated and recording during the incident under review. The recording was approximately 9 minutes and 59 seconds in length.

The video recording shows the inside of the patrol vehicle. A computer screen can be seen on the recording. Officer Hackett can be heard speaking on the radio. Officer Hackett states, "Slowing down further. He's having some mechanical issues." Officer Hackett says, "Number 3. We are committed past Tippecanoe." Officer Hackett indicates Chavira's vehicle is traveling at 45 mph and swerving in and out of the number one and number two lanes. Officer Hackett advises dispatch that "his car is about to go BO." Additional radio traffic could be heard in the background, including a request for an airship.

Officer Hackett could be seen putting the hand-mic of the radio down and opening the passenger door. When the door opens, a voice could be heard yelling, "Gun!" Officer Hackett could also be heard yelling, "He's got a gun!" Officer Hackett exits the patrol car and runs toward the back of the vehicle. As Officer Hackett is running, gunfire could be heard.

Officer Hackett runs in a northerly direction, toward the center divider of eastbound Interstate 10. Officer Hackett could be seen running past the rear of another patrol vehicle. Officer Hackett could be seen raising his firearm. Chavira can be seen falling to the ground as Officer Hackett points and fires his weapon at Chavira. Officer Bernath could be seen on the video, running in front and to the right of Officer Hackett. Officer Bernath has his firearm drawn and appeared to be firing at Chavira. Chavira could be seen on the ground rolling from his right side, with his arms folded against his front, and onto his back. Sergeant Slusser could be seen on the video yelling, "Enough, enough!" After that, the sound of gunfire stops. Officer Hackett could be seen helping handcuff Chavira.

Sergeant Kyle Slusser

Sergeant Slusser had his body worn camera activated and recording during the incident under review. The recording is approximately 9 minutes and 59 seconds in length.

The video recording shows the inside of the patrol vehicle. There are patrol vehicles, with their emergency lights activated, seen traveling in front of Sergeant Slusser's patrol vehicle. In the background, Officer Hackett could be heard over the radio giving updates on the pursuit. Sergeant Slusser can be heard requesting a K9 unit and an airship.

Sergeant Slusser stop his patrol vehicle. As Sergeant Slusser is exiting the patrol vehicle, gunfire could be heard in the background. Sergeant Slusser could be seen running toward the rear of his patrol vehicle. As Sergeant Slusser nears the back of his patrol vehicle, he draws his firearm. Gunshots can still be heard in the background. Officer Beltran could be heard yelling, "Gun, gun, gun!" Sergeant Slusser raises his firearm toward Chavira who can be seen lying in the number one lane to the rear of where the patrol vehicles stopped. Officer Bernath, while in a shooting stance pointing at Chavira, crosses in front of Sergeant Slusser's weapon. Sergeant Slusser could be seen lowering his firearm. Gunfire could be heard in the background. Sergeant Slusser is heard yelling, "Aye, alright, enough, enough!"

Corporal Edward Stewart

Corporal Stewart had his body worn camera activated and recording during part of the incident under review. The recording started after the lethal force encounter occurred.

Officer Joshua Nassar

Officer Nassar had his body worn camera activated and recording during part of the incident under review. The recording started after the lethal force encounter occurred.

WEAPON

A loaded handgun was located at the scene. The weapon was a Heckler & Koch semiautomatic pistol, model P7 M8, 9 mm Luger caliber, with ammunition magazine. There was one bullet in the chamber and six bullets in the magazine. The weapon was examined, and test fired by the San Bernardino County Sheriff's Crime Lab. The pistol fired without malfunction.

A "Luger 9mm" fired cartridge casing was located at the scene. The recovered casing matched the rounds found in the chamber and magazine of the Heckler & Koch pistol.

DECEDENT

AUTOPSY. Witness #7, Pathologist for the San Bernardino County Sheriff's Department Coroner Division, conducted the autopsy of Fernando Chavira on November 3, 2020. Witness #7 determined the cause of death was multiple gunshot wounds.

Gunshot Wound Number One²:

Located at the right eye, 4 ¼ inches below the top of the head and 2 inches to the right of the anterior midline, was a 1.0 cm round entrance gunshot wound. The direction of the wound path was front to back, right to left, and upwards.

Gunshot Wound Number Two:

Located on the middle of the upper chest, 12 ¼ inches below the top of the head and ½ inch to the left of the anterior midline, was a 0.5 cm round entrance gunshot wound. Located on the lateral aspect of the left upper back, located 14 inches below the top of the head and 10 inches to the left of the posterior midline, was a 2.5 cm lacerated exit gunshot wound. The direction of the wound path was front to back, right to left, and downward.

Gunshot Wound Number Three:

Located on the medial aspect of the right lower chest, 19 5/8 inches below the top of the head and 1 ½ inches to the right of the anterior midline, was a 1.0 cm round entrance gunshot wound. Located on the lateral aspect of the right lower chest, 20 ¾ inches below the top of the head and 6 ½ inches to the right of the anterior midline, was a 3.6 cm lacerated exit gunshot wound. The direction of the wound path was front to back, left to right, and downward.

Gunshot Wound Number Four:

Located along the inferior aspect of the right nipple-areolar complex, 18 ¾ inches below the top of the head and 5 ¼ inches to the right of the anterior midline, was a 2.5 x 1.2 cm entrance gunshot wound. The direction of the wound path was front to back, right to left, and downward.

² 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 Five:

Located on the left upper chest, 16 inches below the top of the head and 3 ½ inches to the left of the anterior midline, was a 1.0 cm round entrance gunshot wound. The direction of the wound path was front to back, right to left, and upward.

Gunshot Wound Number Six:

Located on the medial aspect of the left lower chest, 20 inches below the top of the head and 2 inches to the left of the anterior midline, was a 2.7 x 2.0 cm entrance fragment gunshot wound. The direction of the wound path was right to left and slightly upwards with no significant front/back deviation.

Gunshot Wound Number Seven:

Located on the lateral aspect of the right upper quadrant of the abdomen, 26 inches below the top of the head and 5 inches to the right of the anterior midline, was a 0.8 cm round entrance gunshot wound. Located on the lateral aspect of the right lower back, 24 inches below the top of the head and 4 ¼ inches to the right of the posterior midline, was a 2.0 cm lacerated exit gunshot wound. The direction of the wound path was front to back, slightly right to left, and upward.

Gunshot Wound Number Eight:

Located on the distal aspect of the right lateral torso, 29 inches below the top of the head and 7 ¼ inches to the right of the anterior midline, was a 3.5 x 2.0 cm entrance gunshot wound. Located on the right lower back, 25 ½ inches below the top of the head and 6 inches to the right of the posterior midline, was a 1.5 cm lacerated exit gunshot wound. The direction of the wound path was front to back, right to left, and upward.

Gunshot Wound Number Nine:

Located on the left lower quadrant of the abdomen, 28 7/8 inches below the top of the head and 2 ½ inches to the left of the anterior midline, was a 0.8 cm round entrance gunshot wound. Located on the left flank, 23 ½ inches below the top of the head and 6 ½ inches to the left of the posterior midline, was a 1.6 cm lacerated exit gunshot wound. The direction of the wound path was front to back, right to left, and upward.

Gunshot Wound Number Ten:

Located on the left groin, 34 ½ inches below the top of the head and 1 ¾ inches to the left of the anterior midline, was a 1.0 cm round entrance gunshot wound. Located on the middle of the lower back, 28 ½ inches below the top of the head and ¾ inch to the left of the posterior midline, was a 1.6 cm lacerated exit gunshot wound. The direction of the wound path was front to back, slightly left to right, and upward.

Gunshot Wound Number Eleven:

Located on the anterior aspect of the right distal thigh, 22 inches above the bottom of the right heel, was a 2.0 x 1.0 cm entrance gunshot wound. The direction of the wound path was front to back and upward.

Gunshot Wound Number Twelve:

Located on the medial aspect of the left proximal arm, 5 ½ inches below the top of the left shoulder, was a 1.0 cm round entrance gunshot wound. Located on the lateral aspect of the left proximal arm, 3 ¼ inches below the top of the left shoulder, was a 2.1 cm lacerated exit gunshot wound. The direction of the wound path was right to left and upwards with no significant front/back deviation.

Gunshot Wound Number Thirteen:

Located on the lateral aspect of the left distal arm, 8 inches below the top of the left shoulder, was a 1.0 cm round entrance gunshot wound. Located on the posteromedial aspect of the left proximal arm, 5 ¼ inches below the top of the left shoulder, was a 3.0 cm lacerated exit gunshot wound. The direction of the wound path was front to back, left to right, and upward.

Gunshot Wound Number Fourteen:

Located on the anteromedial aspect of the left proximal thigh, 32 ½ inches above the bottom of the left heel, was a 1.6 x 0.5 cm graze gunshot wound. The direction of the wound path was indeterminate.

TOXICOLOGY RESULTS. Chest blood, vitreous fluid, and urine samples were collected from Chavira during the autopsy.

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

- Amphetamine – 270 ng/mL
- Methamphetamine – 2600 ng/mL

CRIMINAL HISTORY. 2011, 12031(a)(1) of the Penal Code, Carry Loaded Firearm in Public Place. San Bernardino County case number FVA1001824, a felony.

2011, 245(a)(1) of the Penal Code, Assault with Deadly Weapon. San Bernardino County case number FVA1100096, a felony.

2013, 11377(a) of the Health and Safety Code, Possession of Controlled Substance. San Bernardino County case number FVA130013, a felony.

2014, 11379(a) of the Health and Safety Code, Transportation of Controlled Substance. San Bernardino County case number FWV1402913, a felony.

2015, 10851(a) of the Vehicle Code, Unlawful Taking or Driving of a Motor Vehicle. San Bernardino County case number FSB1503073, a felony.

2018, 29800(a)(1) of the Penal Code, Felon in Possession of Firearm. Los Angeles County case number TA14689601, a felony.

DE-ESCALATION

Officers from Fontana Police Department were attempting to locate Chavira for an active no bail warrant for his arrest. When Corporal Stewart spotted Chavira driving a Kia into a motel parking lot Corporal Stewart advised the other officers over the radio of his observation. Officer Beltran and Officer Hackett attempted to conduct a traffic stop. Chavira, however, failed to yield, and a vehicle pursuit ensued. The emergency lights and siren were activated on the patrol vehicles driven by Officer Beltran and Officer Bernath.

When the pursuit came to a stop on the freeway, the police officers had no time to try to de-escalate the situation. There was no attempt by Chavira to give up and surrender to the officers. Instead, the situation escalated quickly. Within seconds of stopping, Chavira had exited his vehicle, pointed a gun at officers, and fired his weapon. There was no time for officers to give Chavira any verbal commands. Nor was there any time for the officers to consider the use of less lethal force options. The immediate use of lethal force by Chavira left the officers with no choice but to draw their weapons and return fire to stop the threat.

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

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code 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

³ All references to code sections here pertain to the California Penal Code.

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 2020,⁴ 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;

⁴ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;⁵
 - (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.

⁵ 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).

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

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

Imminence 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.)⁶ 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* (9th 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* (9th 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.*)

⁶ 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.

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

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

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

The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st 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.4th 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* (9th 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* (9th 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* (9th 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.4th 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* (9th 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, Officer Beltran, Officer Bernath, and Officer Hackett each had an honest and objectively reasonable belief Chavira posed an imminent risk of serious bodily injury or death. Chavira was a known South Fontana gang member with an active no bail warrant for his arrest. The officers were aware that members of the South Fontana criminal street gang were responsible for committing multiple violent offenses in the past, including attempted murder of a police officer, assault with firearms, carjacking, and robbery. Officer Beltran, Officer Bernath, and Officer Hackett were aware Chavira’s prior criminal history included a conviction in 2011 for an assault with a deadly weapon. That incident resulted in an officer involved shooting. The officers also knew in August 2020, Chavira led Colton Police Department on a vehicle pursuit where he ultimately crashed his vehicle on the 215 freeway. During that incident, Chavira was found to be in possession of a loaded handgun and methamphetamine. Given that information, it was reasonable for the officers to believe Chavira would be armed when they located him.

Officer Beltran and Officer Hackett were in a marked police vehicle when they attempted to conduct a traffic stop of Chavira’s Kia. Officer Bernath and Officer Nassar were also traveling in a marked police vehicle. When Chavira was spotted at the Comfort Inn motel, Officer Beltran and Officer Hackett attempted to conduct a traffic stop. During the traffic stop, Chavira failed to yield, and a vehicle pursuit ensued. The emergency lights and siren on both patrol vehicles were activated during the pursuit. Chavira’s attempt to outrun the police officers during the pursuit demonstrated a

complete disregard for the safety of the officers as well as the other civilians traveling on the road that evening.

When Chavira's vehicle finally stopped on the eastbound Interstate 10, as a result of mechanical issues, Chavira exited his vehicle and attempted to flee on foot. Chavira was armed with a handgun. Witness #4, who stopped his vehicle behind the pursuit, saw Chavira pull out a gun and rack the weapon. There was no indication from Chavira that he intended to surrender to the police officers. Within seconds of getting out of his vehicle, Chavira turned toward the officers and fired his gun at them. Chavira then continued to run toward civilian vehicles that had stopped on the freeway when the pursuit came to an end. The threat Chavira posed to the police officers was serious and immediate. Officer Beltran, Officer Bernath, and Officer Hackett honestly and reasonably feared for their lives and the lives of their partners. It was objectively reasonable for Officer Beltran, Officer Bernath, and Officer Hackett to believe Chavira intended to kill the officers to try and escape. Likewise, it was objectively reasonable for the officers to believe Chavira posed a serious and imminent threat to the civilians sitting in the vehicles stopped behind the patrol vehicles. It was not unreasonable for Officer Beltran, Officer Bernath, and Officer Hackett to believe Chavira may try to carjack one of the civilian's vehicles. Given those circumstances, the decision by Officer Beltran, Officer Bernath, and Officer Hackett to use deadly force was justified.

CONCLUSION

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

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

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

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