



PUBLIC RELEASE MEMORANDUM

Date: September 7, 2022

Subject: Officer-Involved Shooting (Fatal)

Involved Officers: Deputy Angel Mata
San Bernardino County Sheriff's Department
Victorville Sheriff's Station

Officer Joshua Franco
Victor Valley College Police Department

Deputy Rudy Castillo
San Bernardino County Sheriff's Department
Victorville Sheriff's Station

Involved Subject/DOB: Betty Lou Francois, 07/23/1929

Subject's Residence: Spring Valley Lake, California

Incident Date: January 9, 2021

Incident Time: 9:38 a.m.

Case Agent/Agency: Detective Scott Abernathy
San Bernardino County Sheriff's Department

Agency Report #: DR# 172100288
H# 2021-007

DA STAR #: 2021-00-0047942

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PREAMBLE

This was a fatal officer-involved shooting by deputies of the San Bernardino County Sheriff's Department and an officer of the Victor Valley College Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, and audio/video recordings submitted by the San Bernardino County Sheriff's Department, DR #172100288 and H #2021-007.

FACTUAL SUMMARY

On January 9, 2021, at approximately 9:38 a.m., Victor Valley College Police Department Officer Joshua Franco and Victorville Sheriff's Station Deputy Angel Mata responded to a residence on the 1700 block of Sunburst Road in Victorville in the Spring Valley Lake area regarding an alleged burglary in progress reported by the homeowner. The homeowner reported unknown subjects were breaking into her residence. The homeowner was uncooperative with dispatch and said, "Just get here!" before hanging up. Dispatch attempted to call the homeowner back and received no response. Upon calling back a second time, the homeowner answered and said she had her shotgun ready before hanging up again. The homeowner was later identified as Betty Lou Francois.

At approximately 9:45 a.m., Victor Valley College Police Department Officer Joshua Franco arrived at the incident location in his marked patrol vehicle and approached the front door of the residence. As Officer Franco approached the front door, he activated his body-worn camera and informed Francois of his presence by telling her he was with the police department. The front door was open, and he could see her through a closed screen door. He noticed she was holding what appeared to be a shotgun in her right hand. Francois was verbally aggressive with Officer Franco and refused his requests for her to put the shotgun away. Officer Franco retreated a few yards away from the front door on to a rock lawn area in front of the home and continued to tell Francois he was the police and to put the shotgun away. Francois informed Officer Franco the shotgun was loaded, and she would point it at him if he did not return to her location at the front door. Francois told Officer Franco, "I'm not poi [sic], poin [sic], pointing it, but I will if you don't get your ass over here." For his safety, Officer Franco retreated east and stepped over a perimeter block retaining wall to an elevated grassy area in the front yard of the next-door neighbor's home. The front porch area of Francois' home was still in view from his position. Officer Franco did not request backup because by the time he reached the neighbor's driveway, Deputy Mata arrived on scene.

Several minutes after Officer Franco arrived, Victorville Sheriff's Station Deputy Angel Mata arrived at the incident location in his patrol vehicle with his overhead lights on, but

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no siren. His patrol vehicle was parked to the east of the incident location but was visible from the front porch. When Deputy Mata arrived, he observed Officer Franco retreating from the front door. He heard Officer Franco telling an elderly lady at the residence to put down the shotgun and identifying himself as the police. At this point, Francois has stepped out on to her front porch from behind the screen door and was holding a shotgun in her right hand, pointed at the ground. Deputy Mata faced Francois and told her to put the shotgun down and identified himself as a sheriff's deputy. He told her they were there to help her, but she had to put the shotgun down first. Officer Franco also ordered her to put the shotgun down. Francois remained skeptical, questioning if Officer Franco and Deputy Mata were really law enforcement officers, at one point shouting, "I don't know . . . who the hell you are!"

Both officers continued to tell Francois to put the shotgun down, but she refused to do so. Officer Franco pointed his handgun over the small block retaining wall toward Francois. Deputy Mata drew his handgun from his position in front of the home and pointed it at Francois because she was not complying with their commands to put her shotgun down. Deputy Mata continued to tell Francois, "I'm asking you to put the shotgun down. We're the San Bernardino County Sheriff's Department. We're the police. We're here to help you. We need you to put the shotgun down." Francois replied to Deputy Mata's command, "Eat shit." At that moment, sirens could be heard in the background from other responding units. Francois told them, "Here comes the police." Deputy Mata continued to tell Francois they were the police and to put her shotgun down. Francois would not put the shotgun down. Instead, she looked in their directions and said, "Get 'em! Come on! Come on! Cops!" Deputy Mata called for a less lethal device over his radio and then ordered Francois again to put the shotgun down. Francois raised the shotgun with the barrel pointed toward Deputy Mata who was about ten to fifteen yards away from her. Officer Franco shouted at her, "Put the shotgun down! Put the shotgun down! Put the shotgun down please!" Deputy Mata and Officer Franco fired multiple shots in Francois' direction. She fell on her front porch and dropped the shotgun to the left of her location. She began shouting in pain and telling the officers they had shot her.

Right before Francois raised the shotgun and pointed it at Deputy Mata, Victorville Sheriff's Station Deputy Rudy Castillo arrived at the location in his marked patrol vehicle with his lights and siren on. He observed Deputy Mata's vehicle parked at an angle to the easterly neighbor's house behind Officer Franco's patrol vehicle. He also observed Deputy Mata standing in front of Francois' home with his gun drawn near a tree in the front yard. He believed Deputy Mata was about ten to fifteen yards away from her. Since his windows were rolled up, he could not hear what Deputy Mata was telling Francois. Just before Deputy Castillo got out of his vehicle, he heard Deputy Mata broadcast over the radio for a less lethal device. He then got out of the vehicle to retrieve the less lethal device when the shooting started. He did not have time to retrieve the less lethal device from the back of his car. Deputy Castillo then ran up to Deputy Mata who, along with Officer Franco, approached Francois who had fallen on the front porch.

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Victorville Sheriff's Station Deputy Devon Steuerwald arrived at the incident location in a marked patrol vehicle. As he ran up to the front porch, Deputy Castillo told him to retrieve a medical kit for Francois. He had observed Francois with gunshot wounds to her abdomen, right rib cage, and left wrist. He also observed a shotgun on the front porch approximately three feet away from Francois. Initial medical aid was provided by deputies until the fire department and paramedics arrived. Francois was transported initially to a hospital in Victorville before being taken to another hospital in Colton. She was treated for her injuries and was never cognizant enough to make any statements regarding the incident to medical staff. A few days later, on January 11, 2021, Francois succumbed to her injuries.

STATEMENTS BY POLICE OFFICERS¹

Deputy Angel Mata

On January 26, 2021, at approximately 9:47 a.m. **Deputy Angel Mata** was interviewed by San Bernardino County Sheriff's Detectives Scott Abernathy and Max Kunzman in a conference room at the Specialized Investigation Division. Deputy Mata was on duty on January 9, 2021, working the AM-2 shift from seven in the morning until seven in the evening. He was wearing a tan polo shirt with San Bernardino County Sheriff's Department patches on the shoulders and an American Flag patch on the right breast with his name A. MATA embroidered beneath the flag. He was armed with a department-issued Glock 21 .45 caliber handgun as his service pistol that he wore on his belt in a holster. Deputy Mata was not equipped with a body-worn camera and his patrol unit did not have a mounted camera. He was wearing a belt recorder and activated it upon his arrival at the incident location. He also wore a Sam Brown belt with his holstered firearm, Taser, pepper spray, and handcuffs.

On January 9, 2021, prior to the call, Deputy Mata was patrolling the Bear Valley, beat 3 area in his marked patrol vehicle and was on a traffic stop north of Desert Valley Hospital when the first call came out over the radio. He was clearing a previous call, adding his end notes, when he heard the call. Deputy Rudy Castillo initially took the call along with his sergeant. Dispatch had received a call from a reporting party stating her dogs and cats were acting strange and she believed someone was breaking into her home. Deputy Mata added himself to the call and, as he was driving to the location, he noticed Victor Valley College Officer Joshua Franco added himself to the call.² He read the dispatch notes and learned the reporting party had said law enforcement better get to her home fast and she had a shotgun. Deputy Mata did not think much of the call since it was common to receive these types of calls from agitated homeowners. Dispatch was trying

¹ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

² According to Deputy Mata, it was not unusual for Victor Valley College Police Department to respond to their calls since the police station is not far from Spring Valley Lake. VVCPD can respond faster to those calls than the sheriff's department since they are in that location.

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to call the homeowner back but was unable to reach her. When Deputy Mata reached the incident location on Sunburst Road, he saw the Victor Valley College patrol vehicle parked near the residence with its lights on. Deputy Mata had not turned on his lights or siren, but he was not certain if he had them on when he drove to the location and turned them off when he reached the residence.

Deputy Mata parked his patrol vehicle in front of a neighbor's house, not directly in front of the residence, and saw Victor Valley College Police Department Officer Franco retreating from the front door. He then saw an older lady on the front porch (later identified as Francois) holding something in her hand. There was no covering on the front porch. Deputy Mata hopped a step in the front yard and could hear Officer Franco telling Francois to put the shotgun down. As Deputy Mata moved closer, he saw Francois holding a black and brown shotgun in her right hand, pointing it toward the ground. Francois refused to put the shotgun down. Deputy Mata began to wonder why Francois was not putting the shotgun down since she had called the police and they were the police.

At this point, he was not sure if Officer Franco had his gun out, but he thought Francois might not have recognized him as a police officer since Officer Franco was wearing a black uniform and the San Bernardino County Sheriff's deputies wear tan and green uniforms. Deputy Mata believed she might recognize his uniform so he walked where Francois could see him in her front yard and told her loudly, "I'm with the San Bernardino County Sheriff's Department. I'm the police. I'm here to help. Please put down the shotgun." Francois refused to put down the shotgun and cursed at him. Deputy Mata was standing in front of the residence and was a few feet from the front curb. At this moment, Deputy Mata was not sure what was happening and began to feel unsafe, uneasy, and worried. He could not understand why Francois would not put down the shotgun. Deputy Mata unholstered his firearm, pointed it at her using both hands, and started to give her more commands, "We are with the County of San Bernardino Sheriff's Department. We are the police. I am here to help you. Put down the shotgun. Put down the shotgun." Despite the repeated commands from Deputy Mata and Officer Franco, Francois refused to put down the shotgun.³

At this point, Deputy Mata believed he needed to find cover. There was a tree in the front yard, but it was not thick enough to conceal him and the patrol car was too far away. He walked closer to the tree and continued to give Francois orders to drop the shotgun. He then contacted dispatch and asked for the next unit to arrive to bring a less lethal device.⁴ His plan was to wait for more units to arrive and use less lethal to subdue Francois. He

³ During Deputy Mata's interview, Detective Abernathy asked, as he (Deputy Mata) was pointing his firearm at Francois, whether she knew he would use deadly force if she did not comply with his commands to put down the shotgun. Deputy Mata believed as he pointed the firearm at her that she knew he would use deadly force if she did not comply with his commands. He also noted there was no additional information from dispatch so the use of lethal force would be primary and less lethal would be secondary.

⁴ Deputy Mata did not use less lethal upon arrival because the call was for a burglary, and he did not know if anyone was breaking into the home or was already inside the home. In addition, he did not expect Francois would refuse his orders to put the shotgun down.

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did not see at what point Officer Franco unholstered his weapon, only that he saw hand movements from Officer Franco's position.⁵ Deputy Mata's handgun was still pointed at Francois as he moved toward the tree. As he got closer to the tree, he heard sirens from other approaching units. Francois pointed at him and Officer Franco with her left hand and said, "There is two of you. I can see, I can see you, you." Deputy Mata was still giving her orders and had made eye contact with her, but Francois refused to comply. Francois told Deputy Mata once the sirens sounded that the police were here. Deputy Mata told her, "Yes, we are the police. We're the police."

Francois grabbed the front of the shotgun and pointed it at Deputy Mata, raising the barrel up from the ground and leveling it at him. Deputy Mata stated in the interview:

"I felt like, like that's it, like, I'm, I'm not going home today. Um, I'm not going to see my kids, like my heart dropped, just thinking about it makes my heart drop, and I can still feel how I felt that day having the barrel of the gun pointed at me and knowing that my kids aren't going to see me. I'm never going to come home. And when I saw that, I knew like I was like, I had to shoot her."

When Francois pointed the shotgun at Deputy Mata, he squeezed the trigger, sighted her, and shot three quick rounds before stopping to reassess. By then, Francois had fallen to the ground. He was not certain if Officer Franco had fired as well but had heard additional gunshots. Deputy Mata called in shots fired to dispatch and then walked over to Francois' location on the porch along with Deputy Castillo (who had arrived at the location as the firing began) and saw the shotgun to the right of her.⁶ Francois was slumped over to the right of the front door with blood on her upper chest.

Deputy Mata did not utilize less lethal force as he was too far away to utilize a Taser, pepper spray, or a baton. In addition, he did not feel safe retreating and not having cover. As he was on the porch, another Victor Valley Sheriff's deputy arrived. Deputy Mata yelled at him to bring the AMR kit and bandages. He and Deputy Castillo could see two big dogs through the screen door and did not want to enter the house in case the dogs ran out. They remained on the front door and asked Francois (who was still conscious) whether there was anyone else inside the home. Francois told them there was another dog and there was no one else inside the home. Deputy Mata called for animal control to take care of the dogs. AMR arrived on the scene along with additional deputies. Deputy Mata, along with Deputy Castillo, backed off from the front door as AMR began working on Francois.

⁵ Deputy Mata stated he was more concentrated on Francois and the shotgun instead of Officer Franco. He knew Officer Franco had moved off to the left of his position on to the neighbor's property and did not hear if Officer Franco had put out any broadcasts during the incident.

⁶ Deputy Mata was unable to determine how long it took from the time he stepped out of his patrol vehicle until the time the shooting occurred. He simply noted, "it all happened really fast", but ultimately estimated maybe one to two minutes.

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Officer Joshua Franco

On January 19, 2021, at approximately 9:10 a.m. **Officer Joshua Franco** was interviewed by San Bernardino County Sheriff's Department Detectives Scott Abernathy and Bruce Southworth in a conference room at the Specialized Investigation Division. Officer Franco was on duty on January 9, 2021, working the dayshift from 6 a.m. until 2 p.m. He was wearing a blue uniform with a black jacket with Victor Valley College Police Department patches on the shoulders and an American flag patch on the right breast. He was armed with a department-issued Glock 22 .40 caliber handgun as his service pistol that he wore on his belt in a holster. Officer Franco was equipped with a body-worn camera on his chest that he activated at the time of the incident when he approached Francois' front door. He did not have a belt recorder on him on the date of the incident. His vehicle had a mounted video recorder, but it was not activated. He also wore a Sam Brown belt with his holstered firearm, pepper spray, and handcuffs.

On January 9, 2021, prior to the call, Officer Franco was monitoring Victorville's police channel, the sheriff's radio channel, at the Victor Valley College police station. He heard a call go out regarding an active burglary in progress in the Spring Valley Lake area. Since he was close to that location (an estimated few minutes away), he responded to the call and drove to the residence.⁷ Prior to arriving, he heard many updates on dispatch that there was something urgent going on at the home and law enforcement needed to respond immediately. When he arrived at the location on Sunburst Road, he did not see anything in front of the house. He parked his patrol vehicle to the west of the property, not directly in front, with only his red and blue emergency lights on. He was not certain if, from that vantage point, someone could see his patrol vehicle from the front porch. Officer Franco approached the front door and announced himself several times. He rang the doorbell and Francois opened the front door.

Officer Franco could see her through the mesh screen door since he was standing only a few feet away. He noted she was visibly upset when he saw her through the screen door. He began telling her he was from the police department when he noticed she was holding a shotgun. Francois told him she was holding a shotgun and was verbally aggressive in her tone of voice. He immediately moved away from the front door to the left of the front of the house and told her again he was the police and she needed to put the shotgun away. A few minutes later, Deputy Mata arrived on the scene and walked to the front of the house. Officer Franco believed Francois would recognize the sheriff's deputy uniform since Spring Valley Lake was in the county area and Deputy Mata would be able to "de-escalate" the situation.⁸ However, Francois refused to put the shotgun down and became verbally abusive, saying at one point for the officers to "eat shit".

⁷ Officer Franco reiterated his department usually responds to high priority calls within the sheriff's areas. Since he was in the area and closer than responding deputies, he decided to take the call since it sounded urgent. In addition, Victor Valley College Police Department does not have its own dispatch on Saturdays, so he was in contact with sheriff's dispatch.

⁸ Officer Franco also wanted to let Deputy Mata talk to Francois since she would presumably recognize his uniform and be more familiar with him so he moved away from the front of the house in hopes any confusion would be "laid

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Officer Franco believed Francois could hear them since she was responding to their requests. For officer safety purposes, Officer Franco decided to move for better cover behind a neighboring cinder block wall where he was still able to see Francois on her front porch with the shotgun. He stood on the neighbor's driveway to the east of Francois' property and drew his service weapon. He believed Deputy Mata had already drawn his weapon when he drew his. Even at this position, Officer Franco believed he and Deputy Mata were well within deadly range of her shotgun. Francois continued to refuse all commands from Deputy Mata to put down her shotgun.⁹ Officer Franco continued to plead with Francois to lower her shotgun, telling her, "We don't want to hurt you. Please drop the shotgun." Deputy Mata and Officer Franco continued to tell her to put down her shotgun, both using raised voices, loud enough for Francois to hear them, but she did not lower her shotgun despite their commands. He noted Deputy Mata was updating dispatch during the incident. Within moments, Francois raised her shotgun in her right hand and pointed it at Deputy Mata.¹⁰ Officer Franco stated in his interview:

"...[Y]ou know at that point um ah yeah, she, she raised her shotgun, I could tell she was carrying it on her right hand, she raised her shotgun in a shooting stance towards the deputy and that choice, at that point um started um, we had no other choice, you know, and I didn't want to take or make that choice, but we had to fire at the, at the lady um to stop the threat and you know I, I was fearful that she was going to um you know shoot and kill a deputy and ah we had to like you know make that decision, and, um, it was, it was a very hard decision.

...Um, so like that moment like kind of seemed like kind of like surreal in my opinion um you know it was just like just kind of shocked at what was going on cause she is not even like you know a suspect or nothing. She is the person who called us, you know, and she called for law enforcement and we were there and it was just like to me it kind of felt like surreal like ah I was just very like, it was, it was kind of frightening um you know, this is like, cause it was a very bad situation, you know when anyone has a gun um and them um, um so at that moment like I thought ah um ah it was really like shocking, and I was just kind of like afraid that she would try to shoot us, and, um, like kill us."

Officer Franco fired his service weapon four times at Francois from his position on the neighbor's driveway. His intent when firing was to stop the threat Francois posed when she aimed her shotgun at Deputy Mata. Officer Franco believed if had not fired his

to rest" and she would put away her shotgun. Officer Franco considered Francois could be confused with his uniform which did not match the San Bernardino County Sheriff's Department uniform.

⁹ Officer Franco admitted he was more focused on Francois on the front porch with her shotgun than on Deputy Mata because he was fearful she would raise her weapon and try to kill them. He said he glanced over at him a few times during the incident and did not know exactly where Deputy Mata had parked his patrol vehicle. He also did not know if Deputy Mata had activated his lights and siren.

¹⁰ Officer Franco was unable to determine how long the incident took place from his arrival to the shooting. He believed it was only a couple of minutes.

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weapon there was a strong chance Francois would have shot and possibly killed Deputy Mata. After he and Deputy Mata fired at Francois, she lowered her shotgun and started to yell in pain. Once Officer Franco determined it was safe to approach her position, he walked up to the porch to make sure Francois could not reach the shotgun and potentially to render aid. Medical assistance arrived within minutes. Officer Franco put pressure on Francois' wounds, trying to stop the bleeding. At the time of the shooting, Officer Franco did not believe there were any less lethal force options available based upon his training and experience, nor could he leave the residence after Francois appeared on the porch with the shotgun.

Deputy Rudy Castillo

On January 26, 2021, at approximately 8:29 a.m. **Deputy Rudy Castillo** was interviewed by San Bernardino County Sheriff's Department Detectives Scott Abernathy and Max Kunzman in a conference room at the Specialized Investigation Division. According to Deputy Castillo, he was on duty on January 9, 2021, working the AM-2 shift from 7 a.m. until 7 p.m. He was wearing a tan polo shirt with San Bernardino County Sheriff's Department patches on the shoulders and an American Flag patch on the right breast with his name J. CASTILLO embroidered beneath the flag. He was armed with a department-issued Glock 21 .45 caliber handgun as his service pistol that he wore on his belt in a holster. Deputy Castillo was not equipped with a body-worn camera and his patrol unit did not have a mounted camera. He was wearing a belt recorder and activated it upon his arrival at the incident location. He also wore a Sam Brown belt with his holstered firearm, Taser, pepper spray, RCB radio, tourniquet, and handcuffs.

On January 9, 2021, prior to the call, Deputy Castillo was on his way to another call. A broadcast came over the radio stating Victor Valley was asking for assistance for a call in Spring Valley Lake where an elderly lady was reporting someone was breaking into her home. Since Deputy Castillo was a rover unit,¹¹ he announced he would be enroute to the call. While driving, he heard a Victor Valley College Police unit was also answering the call. Dispatch reported the lady was going to arm herself with a shotgun and believed someone was trying to enter her residence. Deputy Castillo was still enroute to the location when he heard over the radio from the Victor Valley police officer that the reporting party was outside her residence with a shotgun. He recognized Deputy Mata's voice over the radio stating, "One at gunpoint." Deputy Castillo turned on his lights and sirens and proceeded to the location.

When he arrived, he saw Deputy Mata's patrol vehicle parked in front of a neighbor's house and then he saw the Victor Valley College police officer (Officer Franco) standing behind a little wall on the east side of the residence in a neighbor's driveway. The Victor Valley police officer in a blue uniform had his handgun fully extended, pointing at Francois on the porch. He later recalled seeing the Victor Valley College patrol vehicle parked west

¹¹ A rover unit is not assigned to a specific beat. Deputy Castillo's duties were to help wherever he could while on duty.

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of the residence. Deputy Castillo saw Francois in a blue nightgown type dress standing on her porch. He then saw Deputy Mata standing behind a tree about ten to fifteen yards away from Francois wearing a Class D uniform. Deputy Mata had his gun pointed at Francois and Deputy Castillo noticed Francois was holding a shotgun down by her side in her right hand. He was about to grab his shotgun, but then heard Deputy Mata request the incoming unit to grab less lethal. Deputy Castillo was about forty-five yards away from Francois. As soon as Deputy Castillo got out of his patrol vehicle, he saw Francois raise the shotgun and then heard shooting, around four to six shots. From his vantage point, Deputy Castillo could see Francois raise the shotgun to about hip level and he believed she was about to shoot. Deputy Castillo explained in his interview:

“Yeah, I thought she was either going to shoot um Mata, one of us and from where I was standing I felt like I was right, I was just right in the middle like no coverage, so like oh man I hope there is no slug in that thing and I hope it doesn’t come this way.”

Once he heard the shots, Deputy Castillo activated his belt recorder. He was unable to hear any conversations going on between Francois and Deputy Mata since he was inside his vehicle. He went toward the shooting but noticed Francois had already fallen on her porch. Francois had fallen on the right side of the porch and the shotgun was on the left side of the porch if one were facing the house. Francois was crying out and saying, “I’m shot” and “You shot me”, several times. Deputy Castillo placed himself between Francois and the shotgun and noticed she appeared to be in a lot of pain. He and Deputy Mata were going to clear the house since they did not know if anyone was inside, but there was a large dog at the screen door. Francois confirmed there was no one else in the home, but Deputy Castillo wanted to wait for animal control to handle the dog situation. Two Victor Valley deputies came up quickly with trauma kits from the patrol units. A few minutes later, the fire department arrived, followed by AMR, and they began treating Francois’ injuries. Once Francois was removed from the scene, Deputy Castillo left the location.

STATEMENTS BY CIVILIAN WITNESSES¹²

Witness #1

On January 9, 2021, at approximately 3:44 p.m. Witness #1 was interviewed by Detective Bruce Southworth at her residence. Witness #1 knew Francois for approximately five years. She delivered food to Francois and would look after her since Francois lived alone. Earlier that morning, Witness #1 called Francois. Francois was screaming on the telephone that men were trying to get in her house, and she was armed with a shotgun. Witness #1 asked Francois if she called 911. Francois told her she had not called 911 and then hung up the phone.

¹² All reports of civilian statements made were reviewed, though not all are summarized here.

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Witness #1 later drove to Francois' home and did not see anyone outside. She contacted Francois at the front door and did not see Francois with any weapons. Francois again told Witness #1 men were trying to get in her house and she had called 911. Francois asked Witness #1 if she wanted to come inside, but when Witness #1 told her she had a cold Francois replied, "Get the hell out of here!" and slammed the door. Witness #1 left the location and returned to her home.

Witness #1 added Francois was legally blind but did not know of any other medical ailments. Witness #1 said Francois appeared "disoriented" at times, becoming confused over events. According to Witness #1, Francois talked about her shotgun in the past, but Witness #1 never saw it. Witness #1 said Francois should have anticipated an officer showing up at her residence after calling 911.

Witness #2

On January 9, 2021, at approximately 3:04 p.m. Witness #2 was interviewed by Detective Arturo Alvarado at his residence. Witness #2 lived with his wife and their two adult sons across the street from Francois. He had never met Francois personally but had seen her at her residence where he occasionally greeted her. Witness #2 knew she lived alone at her residence.

That morning, his wife, returned to the residence and he expected to meet her in the garage. His wife told him to come out of the garage and see what was happening across the street. Witness #2 walked out of his garage and saw two San Bernardino County Sheriff's Department patrol vehicles parked east of Francois' residence. Both vehicles had their red and blue emergency lights on. One vehicle was parked at an angle facing a neighboring driveway. He then saw a Victor Valley College Police vehicle parked west of Francois' driveway. He could not recall if the emergency lights were on for that vehicle. Witness #2 saw two deputy sheriffs and a college police officer walk west from their vehicles on to Francois' front yard. He knew they were police officers because of the uniforms they wore and the marked police vehicles they drove. Witness #2 stated he focused his attention on the law enforcement officers. He saw the deputies unholster their handguns and yell, "Drop the shotgun!" At this point, Witness #2 became concerned and told his wife to go inside the house. He heard the deputies yell, "Put the shotgun on the ground! Drop the shotgun, ma'am!" Witness #2 shouted to the deputies, "She is blind", but he admitted he did not shout too loudly because he did not want to interrupt the deputies in their duty. He heard an officer say, "I am the police." Witness #2 heard Francois say something to the deputies, but he wasn't sure what it was.

Witness #2 focused his attention on the deputy standing next to a tree in Francois' front yard. He could not see the other officer's location, but believed they were next to first deputy by the tree. After approximately 30 seconds of deputies instructing Francois to drop the gun, Witness #2 heard a deputy yell out, "Drop the gun! Drop the gun!" followed

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by rapid fire gunshots. He saw gunfire from the deputy next to the tree (later identified as Deputy Mata) as well as smoke and recoil. Townsend believed Deputy Mata fired four to five times and thought he heard a second gun fire around two times, but he was not certain. He did not know if the other officers fired their guns. Witness #2 explained his focus was on Deputy Mata and not the others. He believed Deputy Mata stepped to the right of the tree and fired three shots, possibly taking a step forward before firing a fourth shot. He could not tell the exact location of any of the officers due to his angle nor could he make out distances. After the shooting, Witness #2 heard Francois moaning in pain, but could not make out any words.

Witness #2 and his wife walked into the residence and did not see the deputies approach Francois' residence after the shooting. He called 911, told them of the shooting, and requested an ambulance. He was told paramedics were on the way and to remain inside his residence. Looking through a window, he saw additional deputies arrive and the paramedics walk up to Francois' residence.

Witness #3

On January 9, 2021, at approximately 4:42 p.m. Witness #3 was interviewed by Detective Arturo Alvarado and District Attorney Investigator Stephen Showalter at her residence. She lived at the residence with her husband and their two adult sons across the street from Francois. Witness #3 and her husband moved into the residence in September 2010 and knew her neighbor, Francois. She did not know Francois by name, but had seen her a few times over the years, usually using a walker. Witness #3 met Francois three years ago, speaking to her briefly, but Witness #3 said she never saw Francois with a weapon.

Earlier that morning, at 9:50 a.m., she was returning from shopping, driving east on Sunburst Road, and saw a Victor Valley School Police Department vehicle drive west on Sunburst Road toward Francois' residence with its red and blue emergency lights flashing. Witness #3 waited for the vehicle to pass before backing her vehicle in her driveway, facing south. The officer (later identified as Officer Franco) walked to Francois' front door wearing a dark uniform. Witness #3 knew he was an officer based on his uniform and vehicle, but she could not describe his uniform. She wondered why a school officer would want to talk to Francois. She opened her garage door and spoke to her husband. She then heard the police officer say, "Ma'am, lower your shotgun. Please put the shotgun down. Lower the shotgun down, we are the police. We are here to help you." Witness #3 saw a San Bernardino County Sheriff's Department patrol unit parked on the street in front of a blue house, which was east of Francois' residence. She could not recall if the vehicle's emergency lights were on.

Witness #3 called out to her husband to come out to the garage and see what was happening across the street. Witness #3 believed there were a total of three police officers: one Victor Valley Police Officer, one San Bernardino County Sheriff's Department Deputy, and one unknown police officer. The three officers faced the front of

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Francois' residence. The sheriff's deputy (later identified as Deputy Mata) stood next to a tree in the front yard. She was not sure where Officer Franco stood but saw the third officer run up and stand in the neighboring blue house's driveway.

Witness #3 noticed Deputy Mata's gun had been drawn and was pointed at Francois' residence as he gave commands. She was not certain if Officer Franco or the other officer had their guns out. She heard Deputy Mata say, "Ma'am, you need to lower your shotgun. We are the police." Witness #3 thought she heard Francois' voice but could not make out what she was saying. She could not see Francois from her vantage point in the garage, but believed Francois was standing by her front door. She heard Deputy Mata say, "No, we are the police. We are here to help you. Lower your shotgun." Her husband then instructed her to go inside the residence. She walked into the garage and looked through the back window of her SUV, staring at Francois' residence.

Witness #3 repeatedly heard Deputy Mata order Francois to lower her shotgun. Within 30 to 50 seconds after hearing the commands, she heard between four to six rapidly fired gunshots. She saw gunfire from Deputy Mata's handgun. She thought there was a slight pause between the second and third gunshot, but she was not certain. At that moment, Witness #3 admitted she "freaked out" and did not know if the other officers fired their weapons. She heard her husband yell out, "She is blind" while Deputy Mata fired his weapon but was not sure if the deputy heard her husband.

Witness #3 and her husband walked into their residence while the officers stood next to the tree. Her husband called 911 and reported the shooting. Witness #3 looked out her kitchen window and saw fire department personnel arrive approximately five minutes after the shooting along with additional deputies to help secure the scene with police tape. She was briefly interviewed by an unknown deputy and then a second deputy told Witness #3 that Francois had called in a "breaking and entering." She mentioned to the deputy her two adult sons were at home during the incident but were asleep and unaware of the shooting.

Witness #4

On January 9, 2021, at approximately 2:47 p.m. Witness #4 was interviewed over the telephone by Detective Scott Abernathy. She is Francois' stepdaughter who lives in Hawaii. Detective Abernathy advised Witness #4 that Francois was injured during a lethal force encounter with members of the San Bernardino County Sheriff's Department and the Victor Valley College Police Department. Witness #4 spoke to Francois on the phone on a regular basis. Francois lived at her residence for the past 20 years with her husband until he passed away in 2013. Francois did not have any biological children and Witness #4 was her closest relative. She mentioned Francois had not been diagnosed with dementia but displayed symptoms for the past several years. She could not recall any specific incidents, but noticed Francois suffered from memory loss along with poor vision and hearing. Witness #4 last spoke with Francois on January 8, 2021. There was nothing

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significant about their last conversation. On January 9, 2021, at an unknown time, Francois' friend, Witness #1, spoke with Witness #4 over the phone. Witness #1 told her Francois had called her and told her men were attempting to break into her residence through the front door. Witness #1 had told Francois to call 911. Police officers had responded to the residence and Francois was taken to the hospital.

On January 11, 2021, Detective Abernathy contacted Witness #4 to inform her Francois had died. Witness #4 recalled an incident when she visited Francois and saw a shotgun next to Francois' bed. She removed the ammunition from it and disposed of it.

INCIDENT AUDIO AND VIDEO RECORDINGS

SUMMARY OF 911 RECORDINGS

On January 9, 2021, at approximately 9:34 a.m. the San Bernardino County Sheriff's Department received a 911 call the homeowner at the 17000 block of Sunburst Court in the city of Victorville (later identified as Betty Lou Francois) that men were trying to break into her residence. The reporting party stated she was not sure who was trying to enter her home, but her dogs and cats were afraid. The reporting party further stated she was going to kill whoever was trying to enter and she had "something big". The reporting party was not cooperative and finally told the dispatcher, "Just get here" before hanging up. The call ended at 9:37 a.m.

At 9:40 a.m. Sheriff's dispatch attempted a call back to the residence, but the reporting party did not answer and the voice mailbox for the number was full.

At 9:44 a.m., the reporting party called 911 again and reported there were men outside her home trying to get in and her alarm went off. The reporting party then told dispatch to get law enforcement to her home immediately and she had her shotgun ready. The reporting party then hung up again.

At 9:50 a.m. Sheriff's dispatch attempted to call back the reporting party to inform her that law enforcement had arrived at her home, but there was no answer. The voice mailbox for the number was full.

VIDEO RECORDING

Victor Valley College Police Officer Joshua Franco was wearing a body-worn camera on the chest of his uniform. The video was retrieved by Detective Scott Abernathy from Victor Valley College Police Department Chief Leonard Knight.

From 00:00 to 00:08 Officer Franco captured the front porch from the front screen to the bedroom window. Officer Franco told Francois to put her gun away. Francois asked

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Officer Franco if he heard her alarm and shotgun. She told him to "get his ass out of here." She asked him if he was a cop to which Officer Franco responded he was a cop and to put the shotgun away. Officer Franco retreated from the porch to the front rocky landscape.

From 00:11 to 00:20 Francois faintly appeared through the screen door; the lower part of her body obstructed by the horizontal screen door beam. Francois told Officer Franco her shotgun was loaded, and she was going to turn her alarm off. She pointed and asked if there was a cop car out in front of her home. The camera turned and captured the front driveway before it turned back to the front door. Officer Franco told Francois there was a cop car out front. Francois left the entryway and went out of view saying she was going to turn the alarm off.

From 00:22 to 00:31 Officer Franco remained in the same general area. His body-worn camera scanned east from the front porch to the remaining residence to the east. He then retreated east, near the block retaining wall. Francois faintly reappeared in the body-worn camera's field of view and stood in the entryway. Officer Franco told Francois he wanted to help her and to put away her shotgun first. Francois told Officer Franco that she wanted to see him and to return to the front door.

From 00:41 to 00:48 Officer Franco retreated east and stepped over the perimeter block retaining wall and stood on an elevated grassy area in the front yard of Francois' next-door neighbor. His body-worn camera faced the exterior east garage wall of Francois' neighbor. Francois left the entryway and went out of Officer Franco's camera view. Officer Franco ordered Francois to put the shotgun away while Francois ordered him to get back to her door. Officer Franco ordered her again to put the shotgun away, but Francois told him she would point the shotgun at him if he did not return to the front porch area.

From 00:53 to 01:12 Officer Franco remained at his location on the neighbor's property. Deputy Mata is heard giving verbal commands to Francois, but the camera did not capture his arrival. Francois appeared in camera's view as she stood on the front porch and faced Officer Franco. The east exterior porch wall obstructed Francois' right arm. Deputy Mata ordered Francois to put the shotgun down. Officer Franco also ordered Francois to put the shotgun down and told her they did not want to hurt her. Officer Franco ordered Francois to step away while Deputy Mata continued to order Francois to put the shotgun down. Francois asked them who they were. They replied they were law enforcement.

From 01:20 to 01:36 Francois looked at Officer Franco and Deputy Mata before telling them she did not know who they were. Officer Franco retreated east and stepped from the elevated grassy area to the concrete driveway. He then knelt and pointed his handgun at the block retaining wall toward Francois. Officer Franco and Deputy Mata ordered Francois to put the shotgun down. Deputy Mata clearly told Francois to put the shotgun down and identified himself as the San Bernardino County Sheriff's Department and the police.

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From 01:43 to 01:58 Officer Franco continued to point his handgun at the block retaining wall and remained in the same position. Officer Franco eventually stood up from his kneeling position as Francois raised her left arm in Officer Franco's direction. Deputy Mata once again ordered Francois to put the shotgun down. Francois clearly answered, "Eat shit". Deputy Mata once again ordered Francois to put the shotgun down and he received the same reply from Francois.

From 02:03 to 02:16 Officer Franco remained in the same position. Francois pointed in Officer Franco's position and then at Deputy Mata when sirens could be heard in the background. Deputy Mata continued to order Francois to put the shotgun down. Francois commented the police were coming. Deputy Mata told Francois he and Officer Franco were the police department. Francois stated there was one there and another over there. It was not clear who she was talking about. She stated, "Here they come," as sirens grew louder in the background.

From 02:18 to 02:27 Officer Franco remained in the same position with his handgun drawn and pointed at Francois. Francois raised her left arm and said, "Get 'em! Get 'em! Come on! Come on! Cops!" Deputy Mata continued to order Francois to put the shotgun down. Francois did not comply.

From 02:29 to 02:35 Francois raised the shotgun with the barrel pointed toward Deputy Mata. Officer Franco raised his handgun toward Francois, holding his handgun with two hands. Officer Franco shouted for Francois to put the shotgun down. Multiple gunshots were heard on video. Several bullet strikes were captured on the exterior of the residence as Francois fell to the ground.

From 02:35 to 02:42 Officer Franco remained in the same general area and continued to point his handgun in Francois' direction. Francois could be heard shouting from the front porch, "Ow! Oh fuck! Oh! Oh! You shot me!". Officer Franco stepped up to the elevated grassy area and remained pointing his handgun. He ordered Francois not to move. Deputy Mata ordered Francois to stay down.

From 02:45 to 03:06 Officer Franco slowly began to move southwest toward Francois; his body-worn camera captured Deputy Mata in full uniform with his gun pointed toward Francois walking south on the concrete walkway. Francois continued to ask for help while Deputy Mata ordered her not to reach for the shotgun.

From 03:11 to 03:29 Officer Franco remained in the general area of the porch before he walked east, away from the porch. His body-worn camera captured San Bernardino County Sheriff's Deputy Rudy Castillo as he stood east of Deputy Mata. Deputy Mata and Deputy Castillo remained at the front porch. Deputy Mata looked over his right shoulder in a northeast direction and asked an approaching deputy to grab a medical kit.

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From 03:35 to 04:28 Officer Franco walked north toward Sunburst Road and then turned around and headed south toward Deputy Mata and Deputy Castillo. Officer Franco remained in the rock landscaped front yard. San Bernardino County Sheriff's Deputy Devon Steuerwald dressed in full uniform appeared in Officer Franco's body-worn camera field of view. Franco continued to moan and said it hurt badly.

From 04:45 to 05:27 Officer Franco and the deputies remained in the front porch area. Deputy Mata asked Franco if anyone was in the home. Franco kept saying she was in pain and needed help. Deputy Steuerwald knelt next to Franco and told her to move her hand so he could assist her. Franco kept repeating to help her up. Deputy Steuerwald told her to stay where she was and not move.

From 05:38 to 06:37 Officer Franco and the deputies remained in the same general area of the porch. Deputy Steuerwald informed Franco he was going to put pressure on her wounds. He then asked her if there was anyone else in the home. Franco replied just her dogs and a cat were in the home. Deputy Steuerwald asked if her dogs bite, but Franco kept repeating she was hurting.

BELT RECORDING SUMMARIES¹³

Deputy Angel Mata

San Bernardino County Sheriff's Deputy Angel Mata was equipped with a belt recorder which was activated and recording during the incident under review. The recording was 11 minutes 54 seconds long and had a count-up timer that started at 00:00 and ended at 11:54.

The recording started with Deputy Mata broadcasting over his radio an elderly lady had a shotgun at the front door. Deputy Mata immediately ordered Franco to put the shotgun down. Officer Franco was heard in the background telling her to step away. Franco asked them who they were, and Officer Franco replied they are law enforcement. At 00:29 Deputy Mata again ordered Franco to put the shotgun down. Franco replied she does not know who they are. Deputy Mata ordered Franco to put the shotgun down and says he is from the San Bernardino County Sheriff's Department. Officer Franco also told her to put the shotgun down. At 00:36 Franco told them to "get their ass over here" and she will put down the shotgun. At 00:45 Deputy Mata continued to order Franco to put the shotgun down. He told her he is from the San Bernardino County Sheriff's Department, and he is the police. He told her he is there to help her. At 00:57 Deputy Mata ordered her to put the shotgun down and that he is there to help her. Franco told him to "eat shit". At 01:08 Deputy Mata dispatched that the reporting party is refusing to put the shotgun down. Sirens can be heard in the distance. At 01:21 Deputy Mata continued to tell Franco to put the shotgun down. He then broadcast that arriving units bring less

¹³ The belt recordings were reviewed in their entirety. The summaries of the belt recordings will only cover the events from the beginning of the recordings through the point immediately after the incident under review.

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lethal. Francois said here they come. She then said, "Get 'em! Get 'em! Come on! Come on! Cops!". At 01:36 Deputy Mata ordered Francois to put the shotgun down and then gunfire can be heard on the recording. Approximately nine shots are heard on the recording.

At 01:44 Deputy Mata broadcast shots fired. Francois can be heard shouting in pain. At 01:52 Deputy Mata shouted for Francois to stay down while she continued to shout in pain and ask them to help her. At 02:09 Deputy Mata reported he was walking up to Francois. Francois continued to shout it hurts. At 02:24 Deputy Mata ordered Francois to stay down and then asked her if there is anyone else in the house. Deputy Mata asked for AMR and for someone to grab bandages. He then told her they are getting AMR to the location. At 02:58 Deputy Mata asked for AMR staging while Francois continued to ask deputies to help her up from the ground. At 03:11 Francois continued to ask for help off the ground while Deputy Mata told her to just stay on the ground. He told her AMR is coming. At 03:38 Deputy Mata broadcast they are going to try and render aid to Francois while she continued to groan in pain. At 03:50 Deputy Mata and Deputy Castillo discussed whether to open the front door since there is a dog there while Francois told them she hurt badly. At 03:58 Deputy Mata asked Francois if there was anyone else in the house. Francois tells them only her dogs. Deputy Mata ordered her to stay down. At 04:29 Deputy Mata is asking for animal control since there was a dog at the door. Francois continued to ask the deputies to help her off the ground. At 05:05 Deputy Steuerwald told Francois to stay where she is and not to move. Francois continued to shout she is hurting and to help her up.

At 05:25 Deputy Mata and Deputy Steuerwald asked Francois several times if there is anyone else inside the home. Francois eventually replied that no one else is in the home. She told them only her dogs and cat are inside. At 06:13 Francois continued to shout, and Deputy Mata asks if there is coverage on the side. Deputy Mata does not think it is a good idea to open the door and check the house because of the dog. At 06:49 Deputy Mata broadcast it is only the female with the shotgun at the location and to have AMR respond. At 07:45 an unknown firefighter told Francois they are trying to help her, and she needs to calm down. Sirens can be heard in the background. At 08:05 Deputy Mata broadcast to send animal control because of the dogs. Deputy Steuerwald continued to work on Francois and told her help is on the way. Francois continued to ask God to help her. From 09:00 to the end of the recording, Francois shouted in pain while deputies worked on her, giving her orders to move her hand and apply pressure to her wounds. Deputy Mata can be heard talking to another deputy that there may be another person in the house but cannot be sure. At 11:30 another deputy asked Francois if anyone else was inside the house. She says there is not. The firetruck can be heard parking in the distance. At 11:42 Deputy Mata is telling firefighters where Francois is injured. The recording ends with Francois shouting in pain.

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EVIDENCE RECOVERED AT THE SCENE

The scene was processed by San Bernardino County Sheriff's Department Crime Scene Specialist Chris Hermosillo and San Bernardino County Sheriff's Department Detectives Max Kunzman and Adrian Bustamante. The crime scene was a single-story, single-family residence located on the 17000 block of Sunburst Road in the city of Victorville. It is located within an area known as Spring Valley Lake. The scene was within a residential area, with an open and uninhabited field directly behind it. The residence was landscaped with arid rocks in the front yard, which was east of the residential driveway.

Fired cartridge casings with the head stamp "WIN 40 S&W" were located at the following locations: 1) in the residential driveway of the 17000 block of Sunburst Road south of the garage and just west of the front yard; 2) in the same residential driveway approximately 7 feet northwest of the first FCC; 3) in the same residential driveway, approximately 6 feet 11 inches southwest of the second FCC; and 4) in the same residential driveway approximately 4 feet 8 inches northeast from the third FCC. Fired cartridge casings with the head stamp "WINCHESTER 45 AUTO" were in the following locations: 1) in the arid rock landscaped area, south of the curb line, approximately 30 feet northwest of the fourth FCC in front of the residence at the 17000 block of Sunburst Road; 2) in the same arid rock landscaped area approximately 8 feet 2 inches southwest from the fifth FCC; 3) in the same arid rock landscaped area approximately 2 feet 1 inches southwest from the sixth FCC; 4) in the same arid rock landscaped area approximately 1 foot 3 inches southeast of the seventh FCC; 5) in the same arid rock landscaped area approximately 1 foot 2 inches southeast of the eighth FCC; 6) in the same arid rock landscaped area approximately 2 feet northeast of the ninth FCC. There was a strip of concrete curbing between the fifth and sixth FCC. The divider went from east to west in the arid rock landscaped area. A fired bullet rested on a host northwest of the front door of the residence approximately 24 feet 10 inches southwest of the fifth through tenth FCC.

A Remington 870 12-gauge pump-action shotgun rested on the front porch of 17000 block of Sunburst Road with the barrel pointed north. It was located east of the front door approximately 23 feet 10 inches southeast from the fired bullet. The shotgun's for-end was locked forward. A dried bloodstain on the ground was on the front porch of the residence west of the front door approximately 6 feet 2 inches west of the shotgun.

A bullet fragment was inside the residence underneath a table in the living room approximately 21 feet north of the southern interior living room wall and approximately 8 feet 8 inches west of the interior living room wall. The bullet fragment was collected by Deputy Hermosillo.

A fired bullet strike was on the exterior brick fascia below the front living room window. A fired bullet entry hole was in the exterior front living room window. A fired bullet exit hole was in the interior front living room window. A fired bullet entry hole struck the east-faced interior wall east of the front door. The fired bullet traveled in a southwest direction. The

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bullet was recovered at the base of the wall. There was a fired bullet strike on the exterior stucco west of the front living room window and a fired bullet entry hole to the exterior of the stucco east of the front door and west of first bullet strike on the exterior stucco. There was also a fired bullet entry hole in the front screen door in the top half of the screen door and two fired bullet entry holes in the bottom portion of the screen door.

The firearms, ammunition, and ammunition magazines used by Officer Franco and Deputy Mata were retained after this incident. Deputy Mata had a department-issued Glock 21 Gen 4 .45 caliber semi-automatic pistol with serial number STM556.¹⁴ Officer Franco had a department-issued Glock 22 Gen 4 .40 caliber semi-automatic pistol with serial number ZYS758. An HL Streamlight TLR-1 serial number 346145 was affixed to the Glock 22's lower frame.¹⁵

DECEDENT

Francois was pronounced dead at 6:15 a.m. on Monday, January 11, 2021, at a hospital.

POSTMORTEM EXAMINATION

A forensic pathologist from the San Bernardino County Sheriff's Department Coroner's Division, conducted the autopsy of Betty Francois on February 1, 2021, at approximately 9:00 a.m. the pathologist noted multiple gunshot wounds to Francois' body. The pathologist determined the cause of death was multiple gunshot wounds to the torso. The manner of death was homicide.

Gunshot Wound Number One¹⁶

An entry wound was noted on the upper inner quadrant of the right breast, located 17 inches below the top of the head and 3-1/4 inches to the right of the anterior midline. It was a centimeter round gunshot wound of entrance with no soot or gunpowder stippling. The direction of the wound path was front to back, left to right, and downwards. The exit wound was on the right lateral torso, located 21 inches below the top of the head and 8-1/4 inches to the right of the anterior midline. It was a 2.5-centimeter lacerated gunshot wound of exit. The fired bullet struck the rib cage but did not penetrate the chest cavity. It was not fatal.

Gunshot Wound Number Two

¹⁴ All of Deputy Mata's pistol ammunition was head stamped with "WINCHESTER 45 AUTO".

¹⁵ All of Officer Franco's pistol ammunition was head stamped with "WIN 40 S&W".

¹⁶ The numbering of gunshot wounds is not intended to indicate the order in which they occurred and are merely for reference.

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An entry wound was noted on the right lower chest, located 20-1/2 inches below the top of the head and 6 inches to the right of the anterior midline. It was a centimeter round gunshot wound of entrance with no soot or gunpowder stippling. The direction of the wound path was front to back, left to right, and slightly upwards. The exit wound was on the anterolateral aspect of the right lower chest, located 20 inches below the top of the head and 7 inches to the right of the anterior midline. It was a 4-centimeter lacerated gunshot wound of exit. The fired bullet perforated the skin. It was not fatal.

Gunshot Wound Number Three

An entry wound was noted just above the umbilicus, located 26 inches below the top of the head and 1/8 inch to the right of the anterior midline. It was a .7-centimeter round gunshot wound of entrance with no soot or gunpowder stippling. The direction of the wound path was front to back, left to right, and slightly upwards. There was no exit wound. A jacketed bullet was recovered from within the soft tissues of the right lower back, located 25 inches from below the top of the head and 5 inches to the right of the posterior midline. The fired bullet struck the left kidney and bowel and came to rest in the lower right back. It was fatal.

Gunshot Wound Number Four

On the postmedial aspect of the left wrist, located 18 inches below the top of the left shoulder, is a 4.5 by 1.8-centimeter gunshot wound with no soot or gunpowder stippling noted. The direction of the wound path could not be determined since the laceration was sutured. The fired bullet injured the skin and subcutaneous tissues of the left wrist and left ulna. It was not fatal.

TOXICOLOGY

Femoral and subclavian blood samples were collected from Betty Lou Francois during the autopsy. The examinations of the specimens did not reveal any positive findings of toxicological significance.

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APPLICABLE LEGAL PRINCIPLES

Laws of Arrest

California Penal Code section 834a

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

California Penal Code section 835

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

California Penal Code section 835a

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

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

Laws of Self-Defense

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

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the

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assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

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

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

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

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

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

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

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

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

USE OF DEADLY FORCE BY A PEACE OFFICER

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

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

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner, supra*, 490 U.S. at p. 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary. (*Id.* at p. 396-397.) The question is whether the officer's actions are "objectively reasonable" considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 397.)

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

Thus, under *Graham*, the high court advised we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. "We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." (*Smith v. Freland* (1992) 954 F.2d 343, 347.)

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Reasonableness: The Two Prongs

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

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

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

Imminence of Perceived Danger

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

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

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

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Retreat and Avoidance

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

Nature and Level of Force

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

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

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

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

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

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

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ANALYSIS

On January 9, 2021, at approximately 9:38 a.m., Victor Valley College Police Department Officer Joshua Franco and Victorville Sheriff's Station Deputy Angel Mata responded to the 17000 block of Sunburst Road in Victorville in the Spring Valley Lake area regarding an alleged burglary in progress reported by the homeowner. The homeowner, who was later identified as Betty Lou Francois, reported unknown subjects were breaking into her residence. Francois was uncooperative with dispatch and said, "Just get here!" before hanging up. Dispatch attempted to call Francois back and received no response. Upon calling back a second time, Francois answered and reported she had her shotgun ready before hanging up again.

The first to arrive on the scene was Officer Joshua Franco. He approached the front door and announced his presence as law enforcement. He rang the doorbell and knocked on the door. Francois opened the front door, but the screen door remained shut. Officer Franco noticed Francois was visibly upset, used an aggressive tone, and observed she was holding what appeared to be a shotgun. Officer Franco retreated from the front door while in fear of the shotgun and ordered her to put it down. In order to de-escalate the event, Officer Franco retreated from Francois' home to her next-door neighbor's property to the east and stood behind a low retaining wall where he had a visual of the front porch and Francois. Francois exited her home, holding a shotgun in her right hand, but it was pointed toward the ground. Officer Franco continued to identify himself as a law enforcement officer and ordered Francois to put the shotgun down.

Shortly after Officer Franco retreated to the neighbor's property, Deputy Angel Mata arrived on the scene. Officer Franco hoped Deputy Mata's presence would alleviate any perceived doubts as to the presence of law enforcement since he presumed Francois would be familiar with a sheriff's deputy as opposed to the uniform of the college police. Deputy Mata arrived at the location and walked to the front of the house where he saw Francois standing on the porch holding a shotgun in her right hand. Deputy Mata drew his weapon and immediately began ordering Francois to put the shotgun down. He also continued to tell Francois that they (he and Officer Franco) were law enforcement. He told her they were the police and were there to help her. Despite repeated commands to have Francois put the shotgun down, she refused to do so. Francois shouted at Deputy Mata and Officer Franco she did not know who they were. After repeated identifications as law enforcement and ordering her to put down the shotgun, Francois refused, at one point telling them to "eat shit". Francois addressed both Deputy Mata and Officer Franco and pointed in their directions, so she was aware of their presence at her property. When the sound of approaching units with sirens were heard in the background, Francois commented the police were on their way. Deputy Mata and Officer Franco continued to order Francois to put the shotgun down and informed her they were law enforcement.

Deputy Mata also requested arriving units to bring less lethal force. Deputy Rudy Castillo heard Deputy Mata's broadcast and when he arrived at the scene, he observed Deputy

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Mata pointing his service weapon at Francois who was standing on her front porch with a shotgun in her right hand. Deputy Castillo did not have time to grab less lethal from his vehicle because the shooting started right when he exited the vehicle. Deputy Mata and Officer Franco both had their guns drawn and pointed at Francois. Moments after Deputy Castillo arrived, Francois raised her shotgun to hip level and pointed it at Deputy Mata. Before Francois could fire her shotgun, both Deputy Mata and Officer Franco fired their service weapons, striking Francois in the stomach, chest, and left wrist. Francois fell to the porch, dropping her weapon, and was no longer a threat to law enforcement.

In this incident, Officer Franco and Deputy Mata were both confronted by Francois who was holding a deadly weapon, a shotgun, on her front porch. They responded to the residence, not to confront Francois, but to assist her in a potential first-degree burglary situation. Both Deputy Mata and Officer Franco could not understand why Francois was not complying with their commands to put the shotgun down, especially when they were there to help her. Despite repeated orders to put the shotgun down, their repeated identification as law enforcement who were there to help her, and both dressed in law enforcement uniforms and driving marked law enforcement vehicles, Francois refused all lawful orders to put down the shotgun. Both officers believed she was a threat because Francois was in a residential area with a shotgun in her hand. She had the ability to fire the shotgun at Deputy Mata, Officer Franco, and Deputy Castillo quickly and without warning. In addition, there were residences all along the street, including directly across the street from her.

Equally important, Francois refused to comply with any of the multiple commands from law enforcement officers to drop the shotgun. Less lethal force was not an option when Francois pointed the shotgun at Deputy Mata. Each officer had an honest and objectively reasonable belief that Francois posed a serious threat of serious bodily injury or death to themselves and to others when she pointed the shotgun at Deputy Mata. Deputy Mata and Officer Franco each believed Francois was going to use the shotgun on Deputy Mata since she refused to put it down and refused to acknowledge they were law enforcement officers. Once the shotgun was pointed at Deputy Mata, both officers, believing a deputy was about to be shot, had no other choice but to defend themselves and others from being killed or injured. Given those circumstances, it was not unreasonable for the officers to believe Francois posed an immediate threat of serious bodily injury or death. Thus, the decision by Deputy Mata and Officer Franco to use deadly force was justified.

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CONCLUSION

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

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