



PUBLIC RELEASE MEMORANDUM

Subject: Fatal Officer-Involved Incident

Involved Officers: Corporal Jonathan Keil
San Bernardino Police Department

Officer Carlos Castillo
San Bernardino Police Department

Involved Subject/DOB: Nicolas Segura
08/27/1993

Subject's Residence: The 2000 block of West Adams Street
San Bernardino, CA

Incident Date: November 27, 2020
Incident Time: 11:38 p.m.

Case Agent/Agency: Detective William R. Flesher
San Bernardino Police Department

Agency Report #: 2020-00129483

DA STAR #: 2021-00-54911

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PREAMBLE

This was a fatal officer-involved shooting by officers from the San Bernardino Police Department. The shooting was investigated by the San Bernardino Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, video, and audio recordings submitted by the San Bernardino Police Department.

FACTUAL SUMMARY

Nicholas Segura had been violent with family members in the past, but he had been doing well since his release from jail in 2019 when his parents, Witness #2 and Witness #3, allowed him to move back home. However, in the days leading up to November 27, 2020, Segura's behavior became increasingly erratic. Segura had not eaten or slept for three days. Witness #2 and Witness #3 suspected Segura had begun using methamphetamine again. Segura talked to himself and threw things around the living room at all hours of the night. On November 27, 2020, Segura began yelling profanities and barking like a dog. That evening, Witness #2 spoke to Segura about his behavior, and although Segura apologized, his conduct did not change. At about 11:15 p.m., Witness #2 confronted Segura again. Segura apologized and then walked into the kitchen. When Segura walked into the kitchen, Witness #2 heard Segura say, "I want to stab somebody." When Segura walked out of the kitchen, Witness #3 saw Segura holding an 8" kitchen knife above his head, pointing at Witness #3.

Frightened, Witness #3 ran into her bedroom and barricaded herself inside the room with her three grandchildren, her son, Witness #1, and her husband, Witness #2. From the bedroom, at about 11:26 p.m., their 9-year-old grandson called 911. Taking the phone, Witness #2 told the 911 operator their son was high on drugs and was trying to stab the family with a knife. Witness #2 told the operator his son was Hispanic and was an adult but did not provide his name. In response to the 911 call, San Bernardino Police Department officers Corporal Jonathan Keil and Officer Carlos Castillo headed to the Segura residence at the 2000 block of West Adams Street. While en route, Corporal Keil requested dispatch have a supervisor also respond to the scene with a less-lethal beanbag shotgun. Over the police radio, San Bernardino Police Sergeant Luna advised she would head to the location. As the officers made their way to the Segura home, Witness #2 called 911 a second time. Witness #2 told the operator he had just called 911 to have the police sent to his house as soon as possible because his son was on "crystal meth and he has a knife, and he is trying to stab anybody in the family." Witness #2 told the operator that he, his wife, and three grandsons were locked in a back bedroom and that his son with the knife was in the hallway, or possibly the living room, or one of the other rooms in the house.

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Corporal Keil was the first officer to arrive at the scene. Corporal Keil got out of his patrol unit and approached the residence on foot. The front of the home was well-lit and was surrounded by a chain-link fence. An unsecured rolling chain-link gate, approximately four feet high, stretched across the driveway entrance to the property. Everything seemed quiet, and there were no signs of a disturbance. At approximately 11:37 p.m., Corporal Keil asked dispatch to call the reporting party to ask him to meet Corporal Keil out front so he could speak with him. Officer Castillo arrived shortly thereafter. Corporal Keil and Officer Castillo discussed the circumstances of the call and how they would handle things if they made contact with Segura. While discussing tactics and waiting for Sergeant Luna to arrive with the less-lethal bean bag shotgun, Officer Castillo saw the front door to the residence open. A Hispanic male adult stepped out of the house and walked toward the gate at the front of the driveway.

As the male neared the gate, Corporal Keil and Officer Castillo walked up to meet with him. Corporal Keil said, "Hi, how are you?" Getting no response, Corporal Keil asked, "What's going on, man?" Still getting no response, Corporal Keil asked, "Can you come here?" The male, later identified as Nicolas Segura, immediately replied, "Yeah, fuck that." When Corporal Keil told Segura, "Come here," Segura repeated, "Yeah, fuck that." At this moment, Officer Castillo saw Segura had a large knife in his right hand. Officer Castillo alerted Corporal Keil of this. Both officers quickly drew their duty pistols, illuminating Segura with the flashlights attached to their firearms. Both officers told Segura to drop the knife, but Segura refused. The officers repeated their commands, telling Segura again to drop the knife. Still refusing to drop the knife, Segura began walking backward, facing the officers, as he moved back toward the residence.

Fearing for the safety of the family barricaded inside the residence, Corporal Keil slid open the driveway gate, and both officers walked onto the driveway toward Segura. Corporal Keil told Officer Castillo, "Do not let him get back into the house." The officers repeated their commands to Segura to drop the knife. In response, Segura yelled, "Fuck it, shoot me, homie!" As the officers got closer to Segura, Segura bladed his body, turning his left side toward Corporal Keil. Segura raised the knife above his head and quickly swung the knife as he took a step toward Corporal Keil. Both officers abruptly stopped, backed away, and yelled, "Drop the knife!" Segura refused to drop the knife and yelled back at the officers, telling them to shoot him. The officers repeated their commands, but Segura's response remained the same: He refused to drop the knife and yelled at the officers, "Shoot me!" After Segura yelled, "Shoot me!" for the sixth time, Corporal Keil told Segura to get on the ground. Segura said nothing in response and stood looking at the officers while holding the knife clenched tightly in his right fist. Corporal Keil repeated the command to Segura to get on the ground, but when Segura still refused to comply, Officer Castillo deployed his Taser at Segura. The Taser darts struck Segura's flannel coat, and Segura turned away from the officers. Segura glanced back at the officers and ran toward the home's front door. Both officers chased after Segura, trying to keep him from getting inside the house, when suddenly, Segura changed course and ran straight toward Corporal Keil with the knife in his hand. Both Corporal Keil and Officer Castillo fired at

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Segura as he ran toward Corporal Keil. Segura fell to the ground. Corporal Keil and Officer Castillo took Segura into custody and began administering medical aid. Segura was transported to the hospital but succumbed to his injuries at approximately 6:43 a.m. the following day.

STATEMENTS BY POLICE OFFICERS¹

All San Bernardino Police Department officers who responded to the scene on November 27, 2020, wore readily identifiable police uniforms. Their uniforms consisted of black cargo pants, black boots, black long-sleeved polo shirts with San Bernardino Police Department patches on both sleeves, San Bernardino Police Department badges embroidered on the shirt's left chest, and their names embroidered on the shirt's right chest. The officers wore cameras which were positioned near the center of their chests.

On November 28, 2020, at approximately 6:50 a.m., **Corporal Jonathan Keil** was interviewed by Detective W.R. Flesher of the San Bernardino Police Department.

Corporal Keil was employed as a police officer for the San Bernardino Police Department. Corporal Keil's duty belt was equipped with his handgun, a Taser, police radio, and handcuffs. Corporal Keil's handgun was a 9 mm Glock 17 and held 17 rounds in the magazine and one round in the chamber. Corporal Keil's body-worn camera was activated during the incident.

On November 27, 2020, Corporal Keil was on duty and was assigned to patrol. Corporal Keil drove a distinctively marked San Bernardino Police Department patrol unit. Corporal Keil had just cleared a call near Highland Avenue and Mount Vernon Avenue when he monitored two units being dispatched to a call for service at a residence located at **** Adams Street regarding a domestic disturbance involving weapons. Corpora Keil was unsure of the exact time but believed it was around midnight.² Over the radio, dispatch broadcasted that the caller, who claimed to be the suspect's father, reported his son, a 25-year-old Hispanic male, was under the influence of methamphetamine, was armed with a knife, was very agitated, and tried to stab family members inside the house. Corporal Keil told dispatch he would respond to the call and provided his current location.

Corporal Keil read the CAD³ entry while he drove to the residence and requested dispatch have a supervisor also respond to the scene with a less-lethal bean bag shotgun. Corporal Keil heard Sergeant Luna broadcast she would be responding. Corporal Keil saw there had been two prior calls for service to the address, one of which was regarding a restraining order. Corporal Keil did not know the details of the prior calls. As he drove to the scene, Corporal Keil heard an update to the call from dispatch that a second reporting

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

² Officers were dispatched to the Segura residence at approximately 11:26 p.m.

³ Computer Aided Dispatch.

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party called to advise he, his wife, and three children had locked themselves in a bedroom, and the suspect was still inside the house.

Corporal Keil was the first officer to arrive on scene. Corporal Keil got out of his patrol unit and approached the residence on foot. The front of the home was well-lighted by a front porch light and a security light. Everything was quiet and there were no signs of a disturbance. Corporal Keil broadcasted he was standing by near the front of the residence. Corporal Keil asked dispatch to call the reporting party to ask him to meet Corporal Keil out front so he could speak with him. Officer Carlos Castillo arrived on scene. Officer Castillo got out of his patrol unit and met Corporal Keil in the roadway. Corporal Keil pointed out the house in question to Officer Castillo. Officer Castillo told Corporal Keil there was an update to the call and that the reporting party was locked in the back bedroom with the suspect still inside the residence.

Corporal Keil told Officer Castillo they would wait for Sergeant Luna to arrive. Corporal Keil and Officer Castillo discussed how they would handle the call if they made contact with the subject. Based on the seriousness of the situation, Officer Castillo was to have less-lethal coverage with the Taser, Corporal Keil would have lethal coverage with his duty pistol, and that once Sergeant Luna arrived, she would have less-lethal coverage with the less-lethal beanbag shotgun. While discussing tactics and waiting for Sergeant Luna to arrive, Officer Castillo advised that the residence's front door was opening. Corporal Keil saw a Hispanic male adult wearing a black and white jacket with a grey hood exit the house. The male (later identified as Nicholas Segura) walked with a dog by his side toward the front vehicle gate where Corporal Keil and Officer Castillo were standing. The front vehicle gate was about four feet high and was partially closed but about a foot from being fully secured. Segura walked along the east side of a white minivan, which was parked facing northbound in the driveway just south of the front door to the residence. As Segura approached the gate, Corporal Keil walked up to the gate and casually asked, "What's going on? Will you step out and talk to me?" Corporal Keil estimated the distance between himself and Segura was no more than eight feet.

Suddenly, Segura stopped, looked directly at Corporal Keil, and yelled, "Fuck that." Corporal Keil had no doubt Segura could see that he and Officer Castillo were police officers because the front security light illuminated them. Corporal Keil could clearly see Segura and no part of his body was obscured by the vehicle gate.⁴ Segura's movements were rigid, he was breathing heavily, and his voice was very loud when he spoke. Based on his training and experience, Corporal Keil believed Segura was under the influence of drugs or alcohol. Corporal Keil continued to try to "draw Segura out," and Officer Castillo told Corporal Keil, "Hey, he has a knife." Corporal Keil then saw Segura had a large silver kitchen knife in his right hand. Corporal Keil pulled his duty pistol and illuminated Segura with the flashlight attached to his firearm. Corporal Keil and Officer Castillo gave several commands to Segura to drop the knife and to get on the ground.

⁴ Crime scene investigation revealed the vehicle gate was chain-link.

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Segura started retreating, walking backward toward the house while facing the officers with the knife in his hand. Corporal Keil was concerned Segura would attempt to get back inside the house with the knife and hold the family hostage or stab them. Corporal Keil opened the gate and, along with Officer Castillo, began approaching Segura. Corporal Keil continually gave Segura commands to drop the knife. Segura walked backward along the passenger side of the white van and stopped near the front passenger door. Corporal Keil approached and stopped near the rear passenger side of the van. Officer Castillo stood a couple of feet to the right of Corporal Keil. Segura took a bladed stance, raised the knife to his shoulder level, and quickly lunged one step toward the officers. As he did so, Segura yelled, "Fuck you, mother fuckers." Segura then retreated backward. Corporal Keil continued telling Segura to drop the knife, but Segura refused and just continued yelling at the officers. Corporal Keil ordered Segura to "get on the ground" but got no reaction from him. Segura continued to yell at the officers. Segura yelled, "Fuck you! Just shoot me! Just shoot me!" Segura continued yelling at the officers, telling them to shoot him and to kill him.

Officer Castillo was still standing a couple of feet to the right of Corporal Keil. In his peripheral vision, Corporal Keil saw Officer Castillo take a step forward and discharge his Taser. Corporal Keil heard the popping noise of the Taser. Both Taser darts made contact with Segura's chest area, but because Segura was wearing a heavy Pendleton-style jacket, Corporal Keil was not sure if the darts made contact with Segura's chest or his jacket. Segura fell backward toward the front wheel well on the passenger side van but was still standing. Segura began rotating his body around toward the house. Corporal Keil could hear the Taser cycling, but as the Taser came to the end of its cycle, it didn't appear to be fully effective, and Segura took off running around the front of the van toward the front door to the house. Segura still had the knife in his right hand. Corporal Keil was concerned Segura would retreat into the residence where the family members were hiding and was concerned for their safety. Corporal Keil circled around the back of the van to the driver's side. As Corporal Keil came around the back of the van, he saw Segura sprinting around the front of the van and coming toward him. Segura still had the knife in his right hand by his right side and was about six to seven feet away from Corporal Keil. Fearing Segura was going to stab him, Corporal Keil stopped at the van's driver's side rear bumper and shot his firearm at Segura. Corporal Keil heard Officer Castillo discharging his firearm at the same time. Corporal Keil believed he fired approximately five rounds.⁵ Corporal Keil did not know how many times Officer Castillo fired.

When Corporal Keil fired at Segura, Segura fell back against the garage door into a seated position, rolling away from Corporal Keil. As soon as Segura fell back against the garage door, Corporal Keil stopped firing. There were several chairs and miscellaneous items stacked along the garage door. Corporal Keil could not see Segura's hands or the front of his body as he faced north toward the house. Corporal Keil maintained his position and ordered Segura to drop the knife. Officer Castillo went around the front of the van

⁵ Detective Fleisher inspected Corporal Keil's handgun and found one cartridge in the chamber and 13 cartridges in the magazine.

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and told Corporal Keil he couldn't see the knife because of how Segura was positioned. Corporal Keil continued ordering Segura to drop the knife, and Segura told him he didn't have the knife anymore or that it was gone. Officer Castillo approached Segura and pulled him onto his stomach. Corporal Keil holstered his firearm, approached Segura, and placed him into handcuffs. Corporal Keil immediately notified dispatch that shots had been fired and requested medical aid for Segura. Corporal Keil conducted a quick pat-down search on Segura, looking for the knife and assessing his injuries. Because of Segura's clothing, Corporal Segura could not see where the injuries were located but did see blood on his shirt.

Officer Castillo also looked for the knife and found it directly to the left of where Castillo was seated. The knife was underneath a chair approximately a foot from Castillo. The area where Castillo fell was a tight space because the van was parked about ten feet away from the garage door. Because they were in a tight space and Castillo was still close to the knife, Corporal Keil told Officer Castillo they needed to move Segura to the front of the driveway so that medical aid could be administered. Officer Castillo and another officer who had arrived moved Castillo out to the front of the driveway.

Corporal Keil was concerned for the family members inside the house so he approached the front door to check on them. There, he was met by an older Hispanic male who opened the door. Corporal Keil asked him if he was okay, and the male told him he was not injured. Corporal Keil asked about the other residents and where they were located. The male directed him inside. As soon as Corporal Keil entered, another male popped his head out of a bedroom down the hall on the southwestern side of the residence. The second male told Corporal Keil they were all inside the bedroom. Corporal Keil asked the older Hispanic male to join him as he checked on everyone's safety in the bedroom. Once inside the bedroom, Corporal Keil saw the second male, a female, and three young children were located in the bedroom and were not injured.

On November 28, 2020, at approximately 7:55 a.m., **Officer Carlos Castillo, Jr.** was interviewed by Detective W.R. Flesher of the San Bernardino Police Department.

Officer Castillo was employed as a police officer for the San Bernardino Police Department. On November 27, 2020, Officer Castillo was on duty and was assigned to patrol. Officer Castillo drove a distinctively marked San Bernardino Police Department patrol unit. Officer Castillo's duty belt was equipped with his handgun, a Taser, his radio, and handcuffs. Officer Castillo's handgun was a 9 mm Glock 17 and held 17 rounds in the magazine and one round in the chamber. Officer Castillo's body-worn camera was activated during the incident.

Officer Castillo was patrolling in the Highland Avenue and Elks Drive area between 11:30 p.m. and 12:00 p.m. when he monitored a radio broadcast of a call for service regarding a "415⁶ with weapons." The information broadcasted was that a Hispanic male, who was

⁶ California Penal Code section 415, Disturbing the Peace.

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under the influence of a controlled substance,⁷ was attempting to stab family members with a knife. The location of the call was a house on West Adams Street in San Bernardino. Officer Castillo was the second officer to arrive on scene. Corporal Keil was standing just east of the property. The location was a single-story residence with an attached garage surrounded by a chain-link fence. The residence was on the north side of Adams Street and faced south. The attached garage faced west. A bright floodlight that illuminated the entire front yard was attached to the garage. A white van was parked on the northwestern side of the driveway, closest to the garage. The van faced north toward the front door of the residence.

Officer Castillo met with Corporal Keil on the street in front of the residence to formulate a plan for how they would handle the call. They decided Corporal Keil would have lethal coverage and Officer Castillo would have less-lethal coverage with the Taser. Corporal Keil told Officer Castillo that Sergeant Luna was en route to the scene with the less-lethal beanbag shotgun.

Officer Castillo heard the residence's front door open while he and Corporal Keil were formulating their plan. Officer Castillo looked toward the front of the home and saw a Hispanic male exit the front door and begin walking toward the chain-link fence at the front of the yard. Officer Castillo did not know if the male was the reporting party or the suspect because they had no description of the suspect's clothing or the suspect's name. Officer Castillo and Corporal Keil walked toward the male (later identified as Segura). Segura walked along the passenger side of the white van as he approached the officers. Corporal Keil asked Segura to walk over to their location so he could speak with them. Segura stopped suddenly and yelled, "Fuck no!" At that moment, Officer Castillo saw Segura had a kitchen knife with a five to eight-inch steel blade in his right hand. Segura held the knife with a firm grip down at his side.

Officer Castillo alerted Corporal Keil to the fact that Segura had a knife and pulled his handgun from his belt, putting Segura at gunpoint. Officer Castillo yelled for Segura to drop the knife, as did Corporal Keil. Segura retreated toward the center of the driveway near the white van. Corporal Keil told Officer Castillo they could not allow Segura to go back inside the house. Corporal Keil and Officer Castillo both continued ordering Segura to drop the knife and to get on the ground. The commands were repeated several times, but Segura refused to comply. With his right hand, Segura raised the knife to his shoulder level and started yelling, "Shoot me, kill me!" Segura faced the officers while he repeatedly yelled at them to shoot and kill him.

Segura took one step toward them and made a lunging motion as if he was going to stab them with the knife. Officer Castillo held his Taser in his right hand and his pistol in his left hand, which was his dominant hand. Officer Castillo deployed the Taser at Segura, striking him with both darts in the chest area. The Taser seemed to have no effect Segura. Segura continued to hold onto the knife, spun around, and ran west in front of the van.

⁷ During his interview, Officer Castillo could not recall whether it was reported as methamphetamine or cocaine.

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Segura appeared to be going to the front door of the residence. Officer Castillo believed Segura was running toward the front door of the house to get back inside, but then Segura turned and ran toward the garage. Meanwhile, Corporal Keil had run west behind the back of the van to try to cut Segura off to prevent Segura from getting back inside the residence. Officer Castillo was on the passenger side of the van, between the front passenger door and the hood, when he saw Segura going toward Corporal Keil with the knife still in his hand. Segura held the knife with the blade facing out of his fist in an upright position. Segura was only five to eight feet away from Corporal Keil and was closing the distance quickly. Officer Castillo believed Segura was going to stab and kill Corporal Keil. Fearing for Corporal Keil's life, Officer Castillo fired his pistol at Segura. Officer Castillo thought he shot four or five rounds⁸ in a westbound direction at Segura. Segura fell back against the garage door with his back propped up against it. Officer Castillo could not see Segura's hands, so he did not know if Segura still had the knife. Officer Castillo moved a chair that was blocking his view of Segura and saw Segura no longer had the knife in his hands. Officer Castillo ordered Segura to get down onto his stomach, but Segura did not comply. Officer Castillo forced Segura onto his stomach and Corporal Keil placed Segura into handcuffs. Immediately after that, they started rendering aid to Segura.

Additional officers arrived on scene, including Officer Becerra who helped Officer Castillo carry Segura out to the street so medics could more easily access Segura when they arrived. Officer Castillo stayed with Segura until medical aid arrived. Corporal Keil checked the residence to ensure no one was injured.

STATEMENTS BY CIVILIAN WITNESSES⁹

On November 28, 2020, at approximately 12:50 a.m., **Witness #1** was interviewed by Detective W.R. Fleisher of the San Bernardino Police Department.

Witness #1 lived at the 2000 block of West Adams Street in San Bernardino with his parents, Witness #2 and Witness #3, his nine-year-old nephew, his 25-year-old brother, and his 27-year-old Brother, Nicolas Segura.

His brother, Nicolas Segura, had been living in the home for a little over a year. Before that, Segura was "homeless." Segura was a heavy user of crystal methamphetamine and cocaine. Segura would "mainline" methamphetamine and snort cocaine. Segura's drug use worsened over the past two to three months when he started using drugs daily. Witness #1 knew the last time Segura used methamphetamine was Thursday night, the evening before the officer-involved shooting. Witness #1 explained that he knew Segura was using because he could smell the methamphetamine inside the bathroom where Segura typically used it.

⁸Detective Fleisher inspected Officer Castillo's handgun and found one cartridge in the chamber and 13 cartridges in the magazine.

⁹ All reports of civilian statements made were reviewed, though not all are summarized here.

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Witness #1 would stay out of Segura's way when Segura used drugs because he would usually "come after" him when he was under the influence. Segura had previously threatened Witness #1 with a hammer and knives. In the past, Segura had stabbed Witness #1 in the arm, the shoulders, and the ribs on three different occasions. Only one of the stabbings was reported. When Segura was under the influence, he was extremely violent toward others. When Segura was sober, he was respectful and not confrontational. When Segura used drugs, he would think people were talking about him or laughing at him. Witness #1 had previously seen Segura talking to himself, having a heated conversation with someone who was not there, and answering questions from someone who was not there.

Segura was obsessed with knives and was a "cutter." Segura had scars on his arms from cutting himself. In July 2020, Segura had cut his wrists in an attempt to kill himself. Whenever Segura was drunk, he would get depressed. In the past, Segura had made several comments about committing "suicide by cop." Most recently, a couple of months earlier, Segura said, "I'm gonna do some shit, so they call the cops, and when the cops show up, I'm going to have a knife in my hand, and I'm not going to drop it when they tell me to." Witness #1 believed Segura had attempted to do this one time before but that the police "got him with a Taser, and he ended up dropping the knife." Witness #1 believed this had happened earlier in the year before June 2020. On that occasion, his parents had called the police, and Segura told them he "wanted the cops to shoot him and kill him." During one of their recent conversations, Segura told Witness #1 he would do anything it took for the police to kill him.

Earlier in the day on November 27, 2020, Segura was very restless and loud. Their father told Segura to be quiet because others were trying to rest. This upset Segura. Witness #1 was in his bedroom with the door secured because Segura had been using methamphetamine the evening before and had not slept. Witness #1 wore his headphones most of the day, so he did not hear everything that had occurred, but Witness #1 did hear Segura in the living room, and it sounded like he was upset. Witness #1 heard items being thrown around the room. To Witness #1, it sounded like Segura was removing things from the closet as if he was looking for something. Segura was screaming as if he was arguing with someone. Witness #1 heard Segura yell, "I'm going to stab that bitch! They better call the police!" Witness #1 did not know to whom Nicolas was referring but assumed it was their mother because Segura had threatened to kill her in the past when she called the police on him for violating a restraining order. Witness #1 stayed in the bedroom because he was afraid Segura would try to fight him. Witness #1 never saw Segura with a knife that day.

On the night of November 27, 2020, Witness #1 overheard his mother and father talking in the other bedroom. Witness #1 heard his mother yell, "He has a knife!" Witness #1 then heard banging noises on the door. Witness #1 also heard his father comment, "Been known to break down doors," which Witness #1 believed was in reference to Segura.

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Witness #1's nine-year-old nephew and his father called the police because of Segura's violent behavior and his threats to stab family members. Witness #1 heard gunfire a short time later and was told the police had shot Segura.

On November 28, 2020, at approximately 4:00 a.m., **Witness #2** was interviewed by Detective W.R. Fleisher of the San Bernardino Police Department.

Witness #2 lived at the 2000 block of West Adams Street in San Bernardino with his wife, Witness #3; his 29-year-old son, Witness #1; his 25-year-old son, and his nine-year-old grandson. Witness #2's 27-year-old son, Nicolas Segura, was staying in the home on Adams Street while he was working. After Segura stopped working, he started hanging out with his friend, Witness #4. Segura knew Witness #2 did not like his friend, Witness #4. Witness #4 was a "West Side Verdugo" gang member. Segura told Witness #2 he belonged to "Verdugo" and would also claim "White Fence" out of Los Angeles and had tattoos from "LA."

Segura still had his clothing at the Adams Street house. Segura would sleep in the living room or his brother's car when he stayed at the home. Segura had been staying at the house for the past two months. Witness #2 was trying to help Segura by allowing him to stay. Segura was nice toward others and got along with everyone when he was not on drugs. But, when Segura used drugs, he was the opposite: Segura was argumentative, combative, aggressive, confrontational, and very disrespectful. Segura also had a problem with alcohol. When Segura drank alcohol, he would pick fights, even with his brothers. Segura had stabbed his brother, Witness #1, a couple of years earlier, but Witness #1 did not want to press charges.

Segura was supposed to have started a new job on Monday, November 23, 2020, but failed to show up for the job. When Segura received a paycheck on Friday, November 20, 2020, he went out with his friends and started doing drugs. Witness #2 explained that anytime Segura got a paycheck, he would leave the house for days and start using drugs. Segura did not show up at the house until Monday, the day he was supposed to have started his new job. Witness #2 could tell Segura had been using drugs and told Segura he believed he was using drugs again. Segura denied the allegations and claimed he had a hangover. Witness #2 told Segura he could tell when he was using drugs by how he acted. Witness #2 told Segura that if he caught him one more time, he would get a restraining order against him, and it would not be the same as when his mother had one against him. Witness #2 told Segura his mother never enforced the restraining order, but he would enforce it and have him arrested. Witness #2 explained to Detective Fleisher that Witness #3 had been unwilling to enforce the restraining order in the past when Segura had violated it because he was her son. Witness #2 disagreed with her decision in this regard and believed she should have enforced it. Segura never actually hit Witness #3, but he would act like he was going to hit her. Segura also threatened to beat up, stab, and kill Witness #3 in the past. Witness #2 told Witness #3 that one day, Segura would hit and injure her if she did not call the police as she should. According to Witness #2,

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they allowed Segura to stay with them now because the previous restraining order had expired. Segura told Witness #2 he had a warrant for his arrest for not showing up for a meeting with his probation officer. Segura had previously been arrested for stabbing someone.

Segura had been using drugs for "a while" and had not been mentally stable because of his drug use. Sometimes Segura would start laughing and barking like a dog when he was on drugs. Witness #2 had talked to Segura about his drug use, and Segura told Witness #2 that when he's on drugs, even though he knows they are not talking about him, he feels like they are laughing at him, and it "pisses me off and that's when I go, you know, that's when I start doing stupid shit." Witness #2 told Segura if he knew how the drugs affected him, then he needed to go to "rehab center."

Witness #2 went to work early in the day on November 27, 2020 and did not see Segura until he got home from work. When Witness #2 got home from work at about 3:30 p.m., he visited with his daughter, Witness #3, and his three grandchildren. Witness #2 and his daughter went to get something to eat and returned home around 6:00 p.m. After they ate, Witness #2 told his wife he was tired and was going to the bedroom to rest. When he entered the bedroom, he heard Segura mumbling; then, at approximately 6:30 p.m., Witness #2 heard Segura making loud noises. Segura was talking more loudly, but it was hard to understand what Segura was saying. Segura started laughing and started acting like he was arguing with somebody. Segura was cussing out loud, "fuck you, fuck that." Segura was barking like a dog and making sounds like a "cat attacking." Witness #2's wife and grandchildren were in the living room. Witness #2's daughter, Witness #5, had dropped off the grandchildren about an hour earlier. When Witness #5 dropped off the grandchildren, she went into Segura's room to say hello, and Segura told her, "Get the fuck out of the room. I'm not in the mood."

At about 11:00 p.m., Witness #2 went into the living room and told his wife to put the grandchildren to sleep in the other room because of how Segura was acting. Witness #2 walked into Segura's room and told him that he would have to go outside if he did not stop acting like that. Segura responded, "Okay, Pops. I'm sorry." Witness #2 went back into his room. Segura started getting louder, so Witness #2 confronted him again at about 11:15 p.m. Witness #2 told Segura, "I'm tired, and I'm trying to get some sleep." Segura again apologized and walked into the kitchen. Witness #2 heard Segura say, "I want to stab somebody." Witness #2 heard his wife say, "He has a knife." Witness #2 again told his wife and the grandchildren to get into the bedroom. Witness #2 picked up his infant grandchild and his granddaughter and took them into the bedroom with Witness #3 and their nine-year old grandson, Witness #6. Witness #3 told Witness #2 she was afraid of Segura and believed he would try to harm her. Witness #2 locked the bedroom door, and Witness #6 called 911. Witness #2 took the phone away from Witness #6 and started talking with the 911 operator. Witness #2 told the operator his son was on crystal meth, was acting violently, had a knife, and said he wanted to stab "anybody." Witness #2 did

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not actually see Segura with a knife, but he could hear him stabbing something on the wall or the cabinets in the kitchen.

Witness #2 knew Segura did not like Witness #3¹⁰ and heard Segura making threats. Witness #2 did not know if Segura was threatening Witness #3, but he heard him yelling, "I want to stab this bitch. I'm gonna kill this bitch. There is no way I'm putting up with this shit. I'm trying to act all cool, and they're laughing at me." Witness #2 explained that no one was laughing. Segura said, "I'm gonna stab somebody right now." That is when Witness #2 heard Segura stabbing something with a knife or hitting something in the kitchen. Witness #2 did not see Segura with a knife, but his wife, Witness #3, did.

When Segura went outside, Witness #3 told Witness #2 to go out and to lock the door so Segura could not get back into the house. Witness #2 told his family to stay in the room while he went out of the bedroom. Right when he was walking out of the bedroom, Witness #2 got a phone call from the police telling him there was an officer outside. Witness #2 locked the door so Segura could not get back inside. Witness #2 heard the officers yelling at Segura to drop the knife. Witness #2 heard Segura saying, "Go ahead, fucking shoot me." Segura was "fighting" with the police. Witness #2's older son, Witness #1, came out of the bedroom and looked out the window. Witness #2 believed the officers "Tased" Segura because he heard the "popping sound from the Taser gun." Witness #1 then said, "They're shooting him!" Witness #2 heard gunshots but didn't see anything.

On November 28, 2020, **Witness #3** was interviewed¹¹ by Detective Lariz of the San Bernardino Police Department.

Witness #3 lived at the 2000 block of West Adams Street in San Bernardino with her husband, Witness #2, their three sons, and their adopted grandson, Witness #6 (age 9). Visiting for the weekend beginning November 27, 2020, were Witness #3's other grandchildren, Witness #7 (age 3) and Witness #8 (age 2).

Witness #3 has had problems with her son, Nicolas Segura, since he was in high school. Segura had gotten into trouble with the police when he was in high school, and since that time, he had been arrested too many times to count. As a child, Segura had been diagnosed with ADHD and had taken medication for this disorder.

In 2015, Witness #3 obtained a restraining order against Segura after he terrorized the residence. Segura constantly broke into the home, vandalized property, and stole property and vehicles. Because of Segura's conduct, there were multiple holes and damaged items inside the house. Witness #3 is afraid of Segura, and whenever he becomes irate, she will walk away, lock herself in her room, or drive away from the

¹⁰ Segura had previously told Witness #2 he did not like Witness #3. Witness #2 told Segura that if he didn't like his mother, he needed to move out of the house. Witness #2 told Segura they did not want him there and that Segura knew why they didn't want him there.

¹¹ The interview was conducted in Spanish.

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location with Witness #6. Segura had been arrested several times for violations of the restraining order.

Segura was violent and had been violent with family members in the past. Segura had been arrested for stabbing her oldest son, Witness #1, during an altercation. Additionally, in the past, Witness #3's grandson, Witness #6, had told her Segura had choked him. Witness #3 was also aware of another incident when Segura stabbed someone during a street fight.

In 2019, Segura got out of jail and moved back home. At the time, Witness #3 believed the restraining order had expired since it was only good for four years.¹² Witness #3 allowed Segura to sleep on the couch and to stay at the residence since he had nowhere else to go. Segura had been doing better but still had his moments. Witness #3 knew her son used methamphetamine. Witness #3 found narcotics, marijuana, and a crystal-like substance she believed to be methamphetamine in the house. Witness #3 believed the drugs belonged to Segura. Witness #3 threw away the drugs and did not call the police.

Over the previous three days, Segura had not eaten or slept. Segura had been talking to himself and was heard throwing things around the living room at all hours of the night. Segura would close his eyes but would not sleep. Instead, Segura would talk to himself and answer himself. Witness #3 typically has her husband, Witness #2, deal with Segura because she is afraid to do so.

On November 27, 2020, Segura was acting erratically, talking to himself and throwing things in the house. Segura had not allowed the family to sleep for the past three days, and Witness #3 wanted him out of the house. Witness #2 spoke to Segura and convinced him to leave the house. Witness #3 saw Segura gathering his things. Witness #3 walked to her bedroom to lie down. While walking to her bedroom, she saw Segura walking out of the kitchen with an eight-inch kitchen knife. Segura held the knife in his right hand above his head with his elbow bent pointing the knife toward her. Segura had a "crazy" look on his face, like he was going to hurt someone. Frightened by this, Witness #3 ran into her room and barricaded herself there. Witness #3 explained that she does not have many kitchen knives because Segura takes them all and believed the knife, he had in his hand was probably one of the last knives remaining in the kitchen.

While in the bedroom, Witness #3 heard banging on the walls and objects being thrown about the house. Witness #3 also heard Segura talking and yelling.¹³ Witness #3 then heard what she believed to be gunshots. Witness #3 ran out of the bedroom to see what had happened but was stopped by her husband, who told her it was the police and that

¹² While that restraining order had expired, an active criminal protective order was in force against Segura. That protective order was granted on February 14, 2020, pursuant to San Bernardino County Case number FSB19003506. Under the order, Witness #3 was the protected person and Nicholas Segura was the restrained person.

¹³ Because Witness #3 does not speak English, she did not know what Segura said.

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they did not hurt Segura. Witness #2 held Witness #3 back and did not allow her to go outside to see what had happened.

INCIDENT AUDIO AND VIDEO

FIRST 911 CALL

The recording began with a CHP transfer of a call from **** Adams Street. Witness #2 told the operator they were having a problem with one of their sons. Witness #2 told the operator his son, who was high on drugs, was trying to stab the family with a knife. Witness #2 advised his son was Hispanic, 25 years old, and was wearing an unknown color shirt. The operator asked Witness #2 where his son was currently, and Witness #2 replied that he was inside the house. Witness #2 further explained that he and the family were also inside the house.

The operator asked if his son had threatened anybody with the knife or if he was "just holding it." Witness #2 told the operator his son was holding the knife, and he had threatened to stab the family. Witness #2 told the operator his son was "on drugs" and, when asked what kind of drugs, Witness #2 replied, "crystal meth." Witness #2 reported his son "was staying at the house" but explained he was trying to get a restraining order, that they previously had one, but it had expired.

The operator asked for the caller's name, and Witness #2 gave her his name. When asked how many people were at the house, Witness #2 told the operator, "three of my grandsons, my wife, my older son, and myself." The operator told Witness #2 they would get officers there as soon as possible and that if anything changed, please call them back. Witness #2 then said, "You don't know how long? Because he's going crazy right now." The operator told Witness #2 she could not say precisely how long it would be but promised it would be as quickly as possible.

SECOND 911 CALL

During the second 911 call, Witness #2 told the operator his name and explained his grandson had just called 911 to have the police sent to their house at **** Adams Street as soon as possible. The operator asked Witness #2, "Okay, what is going on now?" Witness #2 answered, "Well, my son is on crystal meth., and he has a knife, and he is trying to stab anybody in the family." The operator asked Witness #2, "Okay, where is he right now?" Witness #2 replied his son was there at the house. Witness #2 told the operator his grandsons, his wife, and he were locked in a back bedroom and that his son, who had the knife, was in the hallway, the living room, or one of the rooms. The operator told Witness #2 they had units on the way, to stay in the room, and that if anything further happened or if his son tried to "break the door down," to call her back right away.

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DISPATCH RECORDING/CALL HISTORY

All radio transmissions made by San Bernardino Police Department Dispatch and the officers responding to the scene were recorded. In conjunction with the dispatch recording, the call history was also reviewed. The following is a summary of the general timeline of events.¹⁴

11:26:46 p.m. Call created in response to the first 911 call. The dispatch operator advised the call was regarding a "415¹⁵ weapons at **** Adams Street." The dispatcher further advised the suspect: "Hispanic male, 25 years old, unknown clothing, 11550¹⁶ on crystal meth., and threatening to stab his family members, he is armed with a knife."

11:27:49 p.m. Narrative added: "RP's on HMA, 25 years old, unknown clothing, is inside the residence, threatening to stab anyone that gets in his way."

11:27:58 p.m. Male 11550 on crystal meth.

11:29:00 p.m. RP advising the male is "extremely 415."

11:29:09 p.m. Unit 3E13 dispatched.

11:39:07 p.m. Unit 3E17 dispatched.

11:29:13 p.m. Male inside the house with RP's wife, other son, and three grandchildren.

11:29:18 p.m. RP calling from outside the residence.

11:29:22 p.m. Unit 3E13 en route.

11:29:30 p.m. Male armed with a knife.

11:29:38 p.m. Call location changed from **** Adams Street to **** W Adams Street.

11:29:40 p.m. Unit 3E17 en route

11:31:22 p.m. Now have uncle Witness #2, is locked in the back room with the rest of the family.

11:37:11 p.m. Call back the reporting party and have him meet to the front of the residence with officers.

11:38:00 p.m. On call back, original reporting party advising he is inside their bedroom. The male is in the living room and walking up and down the hall.

11:38:09 p.m. Male wearing checkered sweater.

11:38:19 p.m. Unit K91, 10-3¹⁷ emergency.

11:38:49 p.m. Shots fired, start medical aid.

11:39:21 p.m. Shots fired, officers are ok, suspect is in custody.

11:40:37 p.m. Will be clearing the residence for the rest of the family; the suspect is to the front of the residence.

¹⁴ The entire dispatch recording was reviewed; however, the summary herein will only include the events leading up to and shortly after the incident under review.

¹⁵ Penal Code section 415, disturbing the peace.

¹⁶ Health and Safety Code section 11550, under the influence of a controlled substance.

¹⁷ Emergency radio traffic only.

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BODY-WORN CAMERA RECORDINGS¹⁸

Corporal Keil

At the beginning of the recording, Corporal Keil was on foot on West Adams Street. It was dark outside, but surrounding streetlights and residential lights were sufficient that Corporal Keil's shadow could be seen on the pavement as he walked eastbound on West Adams Street. As Corporal Keil approached **** West Adams Street, he turned north toward the residence. The front yard of the property was surrounded by a chain-link fence, which included a rolling chain-link gate spanning the length of the driveway. The rolling gate was nearly closed but several inches away from being completely shut. Both the front yard and the residence's driveway were well-lit by a bright floodlight affixed to the home's attached garage and a light above the front entryway. The garage door faced east; the front of the house faced south. Several vehicles were parked in the driveway, including a white van, a white truck, and two small red passenger cars.¹⁹ The van faced north toward the residence's front door. The driver's side of the van was parallel to the garage door. A shadow was cast onto the driveway by the van, obscuring the view along the van's passenger side.

Corporal Keil briefly stopped on the street in front of the property and faced the residence. Corporal Keil then continued walking eastbound on West Adams Street and stopped beside a car parked beside the north curb, slightly southeast of the **** West Adams Street property. Corporal Keil stood beside the driver's side of the parked vehicle and faced toward the residence. The car partially obstructed the camera's view of the front driveway, but the home was still in view. Corporal Keil raised his right hand toward his face and spoke into his radio, "Do we know where our original RP is supposed to be?" Several seconds elapsed, and Corporal Keil spoke into his radio again, asking, "Can we try to give the original RP a call and see if he can 87²⁰ with me in the front, please?" The body-worn camera captured images of the surrounding neighborhood as Corporal Keil turned his body and walked toward the rear of the parked vehicle. Corporal Keil stood near the rear driver's side of the parked car, facing northwest toward the residence. A dog in the yard of the next-door neighbor's home approached the front gate of that property. The dog began barking,²¹ looking toward Corporal Keil and then looking east toward the sound of an approaching vehicle.

¹⁸ The officers herein were equipped with Axon body-worn cameras. The camera system turns on when the operator activates the camera. When the camera is activated, the previous 30 seconds of video are included but without any audio. The body-worn camera videos were reviewed in their entirety. The summaries of the videos will only cover the events from the beginning through the point immediately after the incident under review.

¹⁹ Detailed information concerning vehicle positions is included in the Incident Scene Investigation summary below.

²⁰ Meet with the officer.

²¹ The dog continued barking sporadically, which at times interfered with the audio, making some of the words spoken by the officers and Segura inaudible.

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As Corporal Keil turned to face east, Officer Castillo came into view, walking away from his marked patrol unit. Officer Castillo's patrol unit was parked facing westbound on West Adams Street. As Officer Castillo approached Corporal Keil, Corporal Keil told Officer Castillo he had not heard or seen anything. Corporal Keil pointed toward the residence and said, "It's this house here." Officer Castillo told Corporal Keil the call had just been updated with information that the uncle was still inside the house. Corporal Keil and Officer Castillo discussed the updated information. Officer Castillo began putting on blue medical gloves. When Corporal Keil turned to face west, the camera captured images of the shadows of both officers reflected on the street. Corporal Keil told Officer Castillo, "If we make contact with the guy, I'll have you on Taser, I'll be lethal, and then whenever the sarge gets here, he²² can be less-lethal." Officer Castillo also mentioned less-lethal coverage and said, "Okay." At this point in the video, 2 minutes and 12 seconds had elapsed. Four seconds later, as Corporal Keil and Officer Castillo stood in the roadway facing northwest toward the **** West Adams Street property, the front door to the residence opened, and the camera briefly captured a view of someone (later identified as Segura) walking out of the front door. Both officers commented on this and began walking toward the residence.

For ease of reference and to provide a sense of the speed in which the events transpired in the moments leading up to the officer-involved shooting, timestamps, as reflected on the media player, are included.

1:15 Corporal Keil asked dispatch, "Can we try to give the original RP a call and see if he can 87 with me in the front, please?"

2:18 Both officers approached the driveway to the residence and stopped several feet south of the driveway's rolling gate. Segura walked south on the driveway toward the front of the property, along the driver's side of the white van.

2:23 Corporal Keil said in a friendly tone, "Hi. How are you?" Segura continued walking south, approaching the front gate and the officers. A large dog walked beside Segura.

2:26 Corporal Keil said, "What's going on, man?" Segura continued approaching the front gate, briefly stepping to his right and onto the grass in the front yard and said, "Officer."

2:28 Corporal Keil asked, "Can you come here?" Segura immediately replied in a loud and angry tone, "Yeah, fuck that." As Segura faced the officers, he swung his arms at his sides and a large knife could be seen in Segura's right hand. Segura stepped back onto the driveway, moving closer to the front gate and the officers. Corporal Keil said, "Come here." Segura repeated, "Yeah, fuck that." Corporal Keil again said, "Come here."

²² In the body-camera video recording, Officer Castillo referred to the sergeant as "he." The sergeant who ultimately responded to the scene was female.

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2:30 Officer Castillo said, "Oh, he has a knife. He has a knife in his hand."

2:32 Corporal Keil quickly raised both arms to the front of his body and pointed his handgun at Segura. Corporal Keil ordered Segura to, "Drop the knife." Corporal Keil's order was loud, clear, and concise. The flashlight attached to Corporal Keil's handgun illuminated Segura

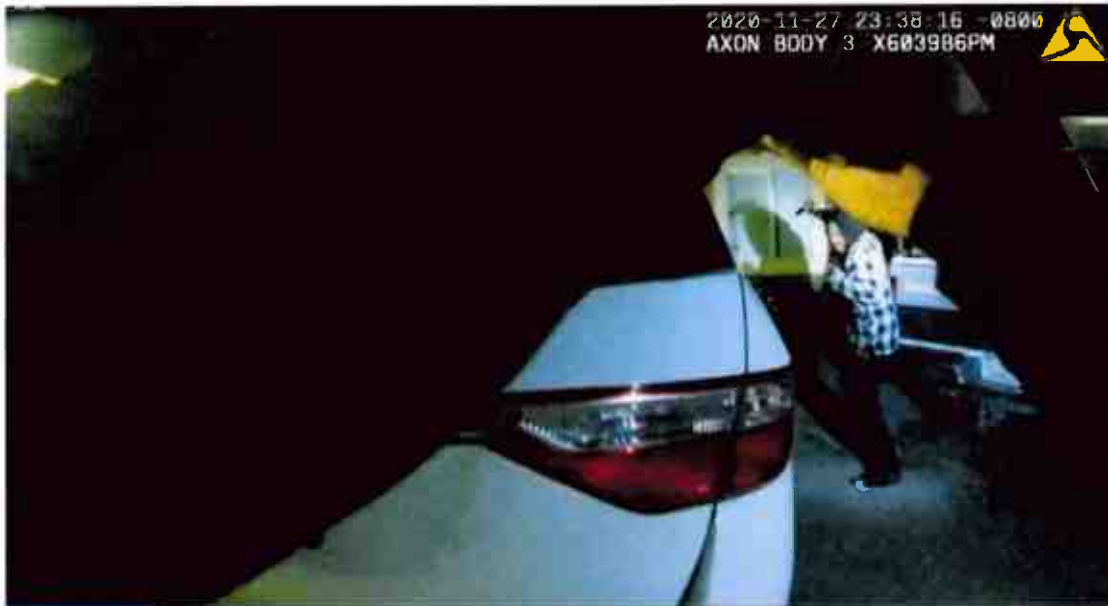
2:33 Segura began stepping backwards, away from the officers, and said, "This is fucking bullshit, man." Still facing the officers, Segura retreated to the middle of the driveway as Officer Castillo ordered him to drop the knife. Simultaneously, Corporal Keil moved closer to the gate and spoke into his radio, "K91, can you give us a 10-3,²³ we have contact with him and he's armed with a knife." Officer Castillo ordered, "Drop it." Segura continued walking backwards, beside the rear passenger side of the van, moving closer to the residence.

2:38 Corporal Keil ordered, "Come here." Segura continued stepping backwards, moving closer to the residence. Corporal Keil stood directly in front of the rolling driveway gate, the gate slid eastward, Corporal Keil walked past the gate and onto the driveway, while saying, "Do not let him go back into the house." Segura, still retreating away from the officers, began turning to his right in the direction of the residence.

2:43 Corporal Keil walked toward Segura, pointing his handgun at Segura, illuminating Segura's body with a bright light. Corporal Keil ordered, "Drop the knife!" Segura stood near the front passenger side of the white van and faced toward Corporal Keil. Segura held his right arm down by his side.

2:45 Segura yelled, "Fuck it, shoot me, homie!" Both officers again ordered Segura to drop the knife. Segura held the knife clenched tightly in his fist, with the blade protruding outward from the pinky side of his hand. As Corporal Keil walked toward Segura, Segura bladed his body, turning his left side toward Corporal Keil. Segura quickly raised the knife above his head and swung it downward in a stabbing motion while taking a quick step with his left foot toward Corporal Keil. Corporal Keil's body-worn camera jerked as Corporal Keil stopped suddenly, backed away, and yelled, "Drop the knife!" Simultaneously, Officer Castillo yelled, "Drop the knife!"

²³ Emergency radio traffic only.



2:48 The officers repeated their commands to Segura to drop the knife, and Segura repeatedly yelled, "Shoot me!" Each time Corporal Keil ordered Segura to drop the knife, Segura replied by yelling, "Shoot me!" Segura stood near the front passenger side of the van, facing the officers as he yelled at them to shoot him. Segura held the knife to the front, near his waist. Each time Segura yelled, "Shoot me," he swung the knife downward from his waist to his right side with such force that his body abruptly jerked before moving his right hand back toward his waist.



2:56 After Segura yelled, "Shoot me" for the sixth time, Corporal Keil changed his command and, in a slow and deliberate manner, told Segura to, "Get on the ground."

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Segura said nothing in response to this directive. While holding the knife in his right hand, Segura stood near the front passenger side of the van and looked at Corporal Keil, who stood at the rear of the van, near the passenger side.

2:59 Corporal Keil again implored Segura to “get on the ground.” Red lights from the Taser illuminated portions of Segura’s flannel coat as Officer Castillo told Segura to drop the knife. Segura again yelled, “Fucking shoot me!”

3:01 Officer Castillo²⁴ deployed the Taser at Segura. Still holding the knife in his right hand, Segura turned his upper body to the right toward the van and away from the officers. The Taser darts appeared to strike Segura near the lower portion of his flannel coat. Corporal Keil immediately moved toward Segura. Segura continued turning to his right, away from the officers.

3:02 Segura bolted around the front of the van, to the west, toward the front door of the residence.

3:03 Corporal Keil retreated quickly, moving to the rear of the van. Corporal Keil then ran around the back of the van, from the passenger side to the driver’s side, in a westward direction.

3:04 As soon as Corporal Keil reached the rear driver’s side of the van, he raised his handgun with his left hand while reaching toward his handgun with his right hand, extending them both outward toward the front of the van. Segura, still running, headed south toward Corporal Keil.

²⁴ Corporal Keil’s body-worn camera did not capture images of Officer Castillo deploying the Taser; however, Officer Castillo’s body-worn camera did capture his Taser deployment.

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3:05 Corporal Keil fired his handgun at Segura. As soon as Corporal Keil began shooting, Segura started to turn to his right (west), away from Corporal Keil. Segura's left side and back faced Corporal Keil as Corporal Keil continued shooting his handgun. Corporal Keil was positioned near the van's driver's side rear quarter panel/bumper when he fired his pistol. Segura fell forward, striking the garage door, before falling onto the ground. Corporal Keil stopped shooting as Segura fell to the ground. Five loud gunshots, in quick succession, were heard when Corporal Keil fired.²⁵ Multiple pieces of patio furniture were stacked in front of the garage door, partially obstructing the view of Segura.

3:08 Corporal Keil moved closer to Segura, keeping him at gunpoint. Corporal Keil's outstretched arms momentarily blocked the view of Segura as he approached. Segura sat on the ground, facing east, with his back against the garage door. Corporal Keil faced Segura, pointed his handgun at Segura with his left arm, and with his right hand, reached for his radio mic, announcing, "K91, shots fired, start med aid."

Corporal Keil approached Segura while holding him at gunpoint. Segura remained seated on the ground with his back against the garage door and was breathing heavily. Patio chairs were positioned on the ground on both sides of Segura. Corporal Keil ordered Segura to "Drop the knife." Segura replied, "It fell."

Corporal Keil reached for Segura with his right hand while holding him at gunpoint with his left hand. Officer Castillo approached Segura and turned him onto his stomach. Both officers began attempting to pull Segura's arms behind his back to place him into

²⁵ Officer Castillo's gunfire was heard at the same time, making the total number of gunshots difficult to count accurately. Officer Castillo was not captured in Corporal Keil's body-worn camera video as he fired at Segura.

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handcuffs. Segura struggled against officers and yelled out as they tried to handcuff him. Both Officer Castillo and Corporal Keil worked together to handcuff Segura behind his back successfully. As they did so, sirens were heard in the distance.

Corporal Keil again announced "shots fired" on his police radio and advised, "All officers are Code 4. Suspect in custody." Officer Castillo quickly looked to his right toward the residence's front door and said, "Stay in the house." Corporal Keil reached down to Segura, turned him onto his right side, and asked, "Where's he hit?" Officer Castillo answered, "The shot might have got him in the back." Corporal Keil lifted Segura's flannel coat upward, revealing blood on Segura's lower left flank. Officer Castillo asked Corporal Keil, "Did you start med aid yet?" Corporal Keil answered in the affirmative. Sirens continued to be heard, growing louder as they approached the scene. Corporal Keil stayed with Segura while Officer Castillo began shining his flashlight on the ground while bending down and looking underneath the furniture stacked against the garage where Segura had fallen. Corporal Keil asked Officer Castillo to stay with Segura. Officer Castillo spoke as he turned back toward Segura and began assisting Corporal Keil with Segura who was moving around on the ground while moaning. It was unclear what Officer Castillo said. Corporal Keil asked, "Where's it at?" Officer Castillo replied, "Right here." Officer Castillo's flashlight briefly illuminated a knife lying on the ground beneath a nearby piece of patio furniture.



Taser wires and a Taser dart could be seen on the lower left portion of Segura's flannel coat. Corporal Keil told Officer Castillo he wanted to clear the inside of the residence when additional officers arrived on scene. Corporal Keil told Officer Castillo, "Let's get him up." Together, both officers assisted Segura into a sitting position. As they did so, two

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uniformed officers approached from the south. Corporal Keil told Officer Castillo and the additional officers, "Let's take him out to the front for med aid." Officer Castillo and one of the newly arrived officers carried Segura toward the driveway entrance. Corporal Keil told the other officer, "Come with me. We need to clear this house." Corporal Keil met with Witness #2 at the front door and asked him if everyone was okay. Witness #2 replied, "Yeah." Corporal Keil asked Witness #2 where the rest of the family was, and Witness #2 told him they were inside the house. Corporal Keil told Witness #2 he wanted to make sure they were all okay. Witness #2 stepped outside, and Corporal Keil entered the house.

Corporal Keil entered the home, announcing, "Police Department." At the end of a hallway, a male adult stepped out of a back bedroom, waived his arm to Corporal Keil, and said, "We're all in here." Corporal Keil walked toward the male and asked, "Is everyone okay in here?" The male answered, "Yeah, we're all okay." Corporal Keil approached the bedroom and asked, "Who's all in here?" The male answered, "My mom, my nephew." Corporal Keil followed the male into the bedroom, finding an adult female and three small children inside the room. With obvious concern in his voice, Corporal Keil asked, "Okay, are all of you guys okay?" The male answered, "Yeah."

Officer Castillo

The video began while Officer Castillo stood on West Adams Street with Corporal Keil slightly east of **** West Adams Street. Officer Castillo and Corporal Keil walked northwest on West Adams Street toward the West Adams Street residence. Officer Castillo walked behind and to the left of Corporal Keil. As Officer Castillo and Corporal Keil approached the residence, a dog was heard barking loudly, and Segura was captured on video walking along the driver's side of the van toward the front of the property. Corporal Keil said, "Hi, how are you?" Corporal Keil walked to the edge of the driveway, staying on the street. Officer Castillo walked behind and to the right of Corporal Keil. Corporal Keil held nothing in his hands. Segura walked toward the front driveway gate and the officers.

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Segura and Officer Castillo both spoke simultaneously, but their words overlapped, making them unclear. Corporal Keil asked Segura, "Can you come here?" Segura replied, "Yeah, fuck that." Segura held a knife in his right hand. Corporal Keil said, "Come here," and Segura repeated, "Yeah, fuck that." Officer Castillo said, "Oh, he has a knife. He has a knife in his hand."

Both Corporal Keil and Officer Castillo pointed their handguns at Segura. The flashlights attached to their pistols illuminated Segura. Officer Castillo said, "Show me your hands." Segura began walking backward, away from the officers, and said, "This is fucking bullshit, man." While Corporal Keil contacted dispatch over his lapel mic, Officer Castillo said, "I got it." Officer Castillo ordered Segura to "Drop it." Segura continued stepping backward, moving closer to the van and the residence.

Corporal Keil said, "Come here." Segura continued stepping backward. Corporal Keil slid the rolling driveway gate open with his right hand and walked onto the driveway while saying, "Do not let him go back into the house." Officer Castillo followed Corporal Keil and said, "I've got the Taser." Both officers walked toward Segura while keeping him at gunpoint. Corporal Keil ordered Segura to drop the knife. Segura yelled, "Fuck it, shoot me, homie!" Both officers again ordered Segura to drop the knife.

Segura stood several feet away from the passenger side of the van, facing the officers. Corporal Keil walked toward Segura with both arms extended to the front of his body, holding lethal coverage on Segura. As Corporal Keil neared the back of the van, Segura bladed his body, turning his left side toward Corporal Keil. Segura suddenly raised the knife in his right hand above his head and swung it downward in a stabbing motion while taking a step toward Corporal Keil. Corporal Keil abruptly stopped and took a step backward, away from Segura. Officer Castillo also abruptly stopped and appeared to back away from Segura. As the officers retreated, they yelled, "Drop the knife!"

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Segura responded by yelling, "Shoot me!" Segura began moving closer to the passenger side of the van. The officers continued to order Segura to drop the knife, but each time, he responded by yelling, "Shoot me!" After Segura yelled, "Shoot me" for the sixth time, Corporal Keil told Segura to "Get on the ground." Now standing at the van's front passenger door, Segura ignored this command and remained standing. Segura held the knife in his right hand and looked at Corporal Keil. Both officers began moving toward Segura again. Corporal Keil walked to the rear quarter panel on the passenger side of the van and repeated, "Get on the ground." Segura remained standing, facing the officers while holding the knife in his right hand. Officer Castillo, positioned to the right of Corporal Keil, raised his right hand and pointed a Taser at Segura. Red lights from the Taser illuminated Segura's flannel coat. Officer Castillo maintained lethal coverage on Segura with his left hand, pointing his handgun at Segura. Officer Castillo ordered Segura to "Drop the knife," and Segura replied by yelling, "Shoot me!" Officer Castillo deployed the Taser at Castillo, striking the lower portion of Segura's flannel coat.

Segura turned his body toward the van and away from the officers. Segura began moving toward the front of the van. Segura quickly looked back toward the officers before bolting in a westward direction around the front of the van toward the house. Corporal Keil retreated backward and out of camera view. Officer Castillo dropped the Taser from his right hand and returned to holding his handgun with both hands. Officer Castillo chased after Segura while yelling, "Drop the knife! Drop the knife!" Castillo rounded the front of the van and headed south along the van's driver's side while Officer Castillo ran north toward the front of the van, chasing Segura. Officer Castillo reached the area near the van's front passenger door as Segura ran south along the van's driver's side. Officer Castillo began shooting at Segura over the windshield of the van. When Officer Castillo fired his first round, the camera's view of Segura was briefly obstructed by the van. However, Officer Castillo continued moving north toward the front of the van as he fired

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at Segura. When Officer Castillo neared the front of the van, he fired at Segura over the hood. As Officer Castillo fired over the hood, his body-worn camera captured images of Segura stopping and turning to his right (west) toward the garage door. When Segura turned west, his back faced Officer Castillo as he fired. Segura stumbled forward toward the garage door. When Officer Castillo fired, five loud gunshots were heard in quick succession.²⁶

Officer Castillo stopped firing when Segura stumbled and began to fall. As Segura stumbled, he continued turning to his right before collapsing against the garage door. Officer Castillo walked around the front of the van, approaching Segura while still keeping his firearm pointed at Segura. Corporal Keil was heard telling dispatch that shots had been fired. As Officer Castillo approached, Segura came into full view. Segura was partially down, but his upper body was propped up between two large patio chairs stacked against the garage door. The patio chairs blocked view of Segura's left arm and upper body, but it appeared his left shoulder rested against the garage door. Additional pieces of assorted patio furniture were stacked against the garage door on either side of Segura.

Corporal Keil ordered Segura to drop the knife, and Segura told him, "It fell." Officer Castillo moved a patio chair away from Segura. Segura's full body came into camera view. Segura sat on the ground with his back against the garage door. Officer Castillo turned Segura onto his stomach. Segura yelled and struggled. Corporal Keil assisted Officer Castillo, and together, they were able to place Segura into the prone position. Segura continued to struggle as both officers placed him into handcuffs.

INCIDENT SCENE INVESTIGATION

San Bernardino Police Detective M. Siems conducted the scene investigation, assisted by Forensic Specialist A. Quiroz and her trainee. Evidence found within the crime scene was labeled using photographic identification placards and photographed in place prior to being measured and collected as evidence. The crime scene was located within the front driveway of **** West Adams Street.

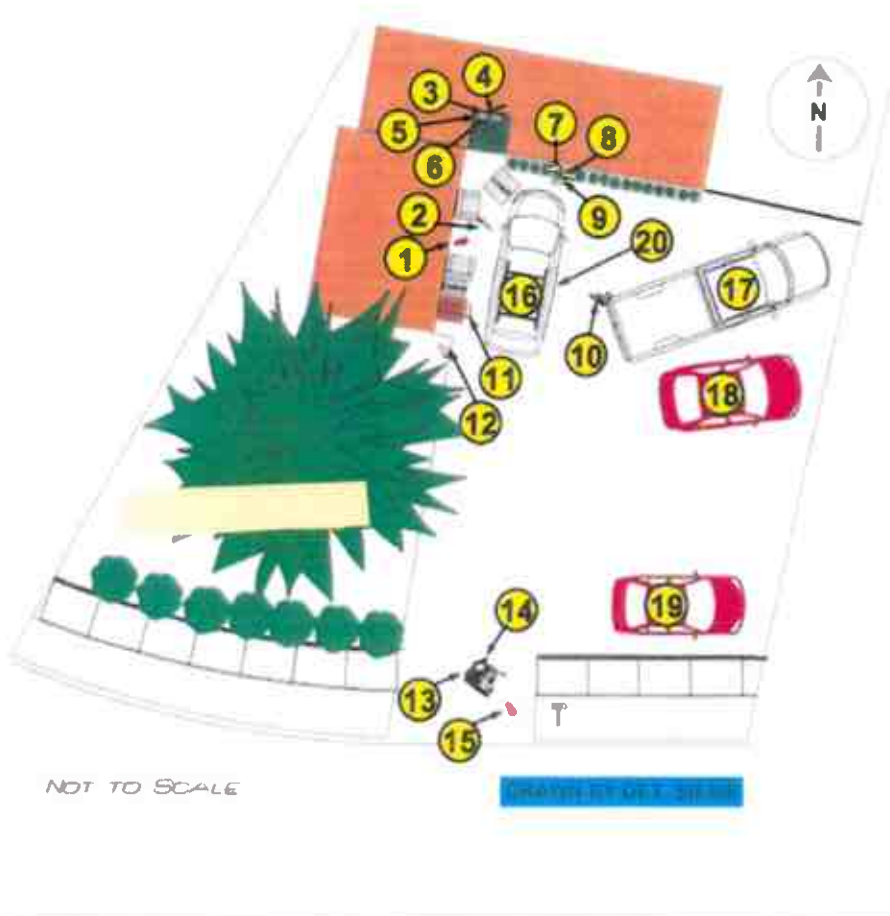
The residence at **** West Adams Street was located on the north side of the street and was a single-story three-bedroom residence which faced south. The attached two-car garage faced east, towards the driveway. In front of the garage door, and preventing vehicle access into the garage, was stacked and overturned outdoor patio furniture, a walk-in children's playhouse, and cluttered areas of potted plants, tools, recyclable cans, a small barbeque, and small household items.

The front south-facing windows, east of the front entry door, were bordered with 8" Styrofoam trim. Below these windows was a 2' wide flower bed, extending across the south facing side of the residence. There was a 4" raised concrete stoop in the front of the front entry, which was about 6'5" wide and about 5'5" deep. The front entry door was

²⁶Corporal Keil's gunfire was heard at the same time, making the total number of gunshots difficult to count accurately.

an apparent solid core wood door, which faced south. The front entry door opened inward and was hinged on the west side. In front of the entry door was a white metal screened security door, which opened outward and was hinged on the east side of the door.

The front yard of the residence was enclosed with a 4' high chain-link fence with a manual horizontal rolling vehicular gate extending across the concrete driveway, providing access to the property. On the driveway and inside of the front fenced perimeter of the property, were four separate vehicles consisting of a white Honda Odyssey, a gray and white Dodge Ram 1500 pickup truck, a red Scion IA, and a red Honda Civic.



Placard #1: Area where Segura was shot and where a small amount of dried blood was located in front of the garage door.

Placard #2: Black and silver kitchen knife, located on the front concrete driveway in front of the garage door.

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Placard #10: Black and yellow Taser with a fired Taser cartridge, located on the concrete driveway and on the passenger side of the white Honda Odyssey.

Placard #11: Silver FCC located on the west side of the concrete driveway, and in front of a children's playhouse.

Placard #12: Silver FCC located in the grass on the west side of the concrete driveway.

Placard #13: Center area of a pile of Segura's clothing located on the south end of the concrete driveway, and on the concrete sidewalk in front of the residence at the 2000 block of West Adams Street.



(Contained with the pile of clothing marked by Placard #13 was the flannel coat worn by Segura. Note Taser dart lodged into the fabric. A second dart was lodged into the bottom left side hem of the flannel coat.)

Placard #14: Black Motorola cell phone located in the pile of Segura's clothing.

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Placard #15: Center area of a combination of a small semi-dried pool of suspected blood and suspected blood smears located on the front concrete driveway approach to the residence located at the 2000 block of West Adams Street.

Placard #20: Silver FCC located on the concrete driveway underneath the center area of the Honda Odyssey.

DECEDENT

Nicholas Segura was pronounced deceased by Witness #9 at ***** Medical Center on November 28, 2022 at approximately 6:43 a.m.

AUTOPSY

Witness #10, Forensic Pathologist, San Bernardino County Sheriff's Department, Coroner Division, conducted the autopsy of Nicholas Segura on December 2, 2020. Witness #10 noted four gunshot wounds. Witness #10 determined the cause of death was multiple gunshot wounds and death occurred within hours.

Gunshot Wounds²⁷

A. Gunshot Wound of the Right Lower Back

Entrance: On the right lower back, located 25 inches below the top of the head and 4 inches to the right of the posterior midline, is a 0.5 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 0.3 cm at the 5 o'clock position. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound.

Path: The bullet injures the skin and subcutaneous tissues of the right lower back, soft tissues surrounding the right kidney (status-post nephrectomy), mesentery, duodenum, pancreas, liver (status-post suture ligation), diaphragm, pericardial sac, lateral aspect of the right ventricular wall of the heart (status-post suture ligation), pericardial sac, and anterior aspect of the 5th left rib before terminating within the left chest.

Recovery: A jacketed bullet is recovered from within the soft tissues of the left chest, located 18-1/2 inches below the top of the head and 1/2 inches to the left of the anterior midline.

Direction: The direction of the wound path is back to front, right to left and upwards.

²⁷ The gunshot wounds are arbitrarily listed and do not reflect the chronological order in which the shots were fired.

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B. Gunshot Wound of the Lower Back

Entrance: On the middle of the lower back, located 29-1/4 inches below the top of the head and 3/4 inch to the right of the posterior midline, is a 0.5 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 1.2 cm at the 4 o'clock position. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound.

Path: The bullet injures the skin and subcutaneous tissues of the lower back and left ilium before terminating within the lateral left lower back.

Recovery: A jacketed bullet is recovered from within the soft tissues of the left back, located 24 inches below the top of the head and 7-1/2 inches to the left of the posterior midline.

Direction: The direction of the wound path is back to front, right to left, and upwards.

C. Gunshot Wound of the Left Lower Back

Entrance: On the left lower back, located 27 inches below the top of the head and 2-1/4 inches to the left of the posterior midline, is a 0.5 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 0.4 cm at the 4 o'clock position. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound.

Path: The bullet injures the skin and subcutaneous tissues of the left lower back, left colon (status-post resection), and mesentery before terminating within the left lateral abdomen.

Recovery: A jacketed bullet is recovered from within the soft tissues of the left abdomen, located 26-3/4 inches below the top of the head and 4-3/4 inches to the left of the anterior midline.

Direction: The direction of the wound path is back to front, right to left, and slightly upwards.

D. Gunshot Wound of the Left Thigh

Entrance: On the posterolateral aspect of the left proximal thigh, located 34-1/2 inches below the top of the head and 6 inches to the left of the posterior midline, is a 0.6 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 0.2 cm at the 10 o'clock position. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound.

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Path: The bullet injures the skin and subcutaneous tissues of the left thigh before exiting the body through a 1.7 cm lacerated defect in the inferomedial aspect of the right buttock before terminating within the posterolateral aspect of the right proximal thigh.

Recovery: A jacketed bullet is recovered from within the soft tissues of the right thigh.

Direction: The direction of the wound path is left to right with no significant front/back or upward/downward deviation.

TOXICOLOGY

On November 28, 2020 at approximately 12:35 a.m., ***** Medical Center obtained samples of Nicholas Segura's blood.

Toxicology results for the hospital blood sample were listed as follows:

- Amphetamine, 47 ng/mL
- Methamphetamine 850 ng/mL

CRIMINAL HISTORY

Nicholas Segura has a criminal history that includes the following convictions:

2014, 21310 of the Penal Code, Carrying a Concealed Dirk or Dagger, San Bernardino County case number FVA1400027, a felony.

2016, 496 d (a) of the Penal Code, Receiving Stolen Motor Vehicle, San Bernardino County case number 16CR-023293, a felony.

2017, 459.2 of the Penal Code, Second Degree Commercial Burglary, San Bernardino County case number FVI17001807

2018, 21310 of the Penal Code, Carrying a Concealed Dirk or Dagger, and 166 (a)(4) Disobeying a Court Order, San Bernardino County case number FSB18003829, misdemeanors.

2019, 69 of the Penal Code, Resisting an Executive Officer, San Bernardino County Case number, FSB19003506, a felony.

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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 Code §835a(b).) ²⁸ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal Code §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal Code §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 Code §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 sections 196 and 197. Both 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 Section 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 Code §835a(c)(1).)

²⁸ All references to code sections here pertain to the California Penal Code.

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Discharge of a firearm is “deadly force.” (Penal Code §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 Code §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,²⁹ 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 Code §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 Code §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal Code §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

²⁹ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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is reasonable, safe and feasible to do so;

- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;³⁰
- (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 Code §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 section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

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

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

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

³⁰ Penal Code §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 Code §835a (a)(3).

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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 newly 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 Code §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

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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.)³¹ 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*.)

³¹ The legislative findings included in Penal Code 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.

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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

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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.)

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

Corporal Keil and Officer Castillo first encountered Segura when he came outside and walked toward the officers. Corporal Keil greeted Segura by saying, “Hi, how are you?” Segura was immediately defiant, and within seconds, the officers realized Segura was armed with a large knife. Corporal Keil and Officer Castillo knew Segura had already threatened to stab family members with a knife; that was the reason they had been summoned to the residence. Attempting to diffuse the already tense situation, both officers began telling Segura to drop the knife. Segura began retreating toward the house, where Segura’s family members were still hiding.

Concerned for the safety of those family members, Corporal Keil and Officer Castillo stayed with Segura as he backed away from them and moved closer to the residence. The officers continued their attempts to de-escalate the situation by giving verbal commands while maintaining a safe distance from Segura. Corporal Keil and Officer Castillo gave clear, concise orders to Segura, telling him to drop the knife. Segura refused to drop the knife. Instead, Segura angrily yelled at the officers to shoot him. As the officers repeated their commands to drop the knife, Segura’s response remained the same. Segura refused to drop the knife and repeated his commands to the officers to shoot him. Realizing the orders to drop the knife were not achieving the desired goal, Corporal Keil told Segura to get on the ground. When Corporal Keil gave the new order to Segura, he changed his tone of voice and told Segura, in a calm, slow, and deliberate manner, to get on the ground. Segura refused to comply. Corporal Keil repeated his command calmly,

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slowly, and deliberately, but still, Segura refused to comply. With Segura's continued refusal to obey any orders, Officer Castillo tried again. Returning to the original command, Officer Castillo ordered Segura to drop the knife. Segura refused and again yelled, "Shoot me!" Officer Castillo then deployed the Taser in an effort to force Segura to comply with their orders.

Officer Castillo's effort to use less-lethal force with the Taser to de-escalate the situation was unsuccessful in gaining any compliance from Segura. Instead, the situation quickly escalated when Segura, still armed with a knife, bolted from the officers. Segura ran around the front of the van and headed toward the house's front door. When Segura did this, he presented a danger to the family hiding inside the home. Recognizing this danger, both officers gave chase. Attempting to prevent Segura's entry into the house, Corporal Keil ran around the back of the van to intercept Segura while Officer Castillo ran toward the front of the van. However, both officers were at a significant disadvantage because when Segura ran around the front of the van, Segura was momentarily hidden from the officers' view. So, it wasn't until Corporal Keil circled the back of the van to the driver's side that he saw Segura was coming straight toward him. Segura was still armed with the knife and was only six to seven feet away from Corporal Keil when Corporal Keil fired his pistol. Officer Castillo was on the van's passenger side when he saw Segura charging toward Corporal Keil while armed with a large knife. It was at this moment that Corporal Keil and Officer Castillo fired their pistols at Segura.

Both officers were forced to react quickly to prevent what was no doubt an imminent threat to Corporal Keil's life. Corporal Keil and Officer Castillo believed Segura intended to seriously injure or kill Corporal Keil. Their shared belief was both honest and objectively reasonable.

CONCLUSION

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

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