



PUBLIC RELEASE MEMORANDUM

Date: November 1, 2022

Subject: Fatal Officer-Involved Incident

Involved Officers: Deputy Joshua Gile,
San Bernardino County Sheriff's Department

Sergeant Jonathan Woods,
San Bernardino County Sheriff's Department

Involved Subject: Bernie Garcia Rascon (DOB 07/07/1991)
Subject's Residence: Anaheim, CA

Incident Date: December 15, 2019

Case Agent: Sergeant Jonathan Plummer
San Bernardino Police Department

Agency Report #: 19-00155519

DA STAR #: 2020-100822OS

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PREAMBLE

The summary of this fatal incident is drawn from a submission of materials initially prepared by the San Bernardino Police Department (SBPD) and supplemented by the San Bernardino County District Attorney's Office, Bureau of Investigation (SBCDA-BOI). The case agent for this submission was SBPD Detective Jonathan Plummer,¹ with substantial further investigation completed by SBCDA-BOI Senior Investigators Adam Cortinas and Hector Vidal.

The total submission reviewed included the following: reports of law enforcement witnesses, transcripts of interviews and belt recordings of involved law enforcement, police dispatch audio recordings, audio and video recordings of the officer-involved shooting, forensic compilation audio and video of the precipitating traffic pursuit and resulting officer-involved shooting, other audio recordings of law enforcement and civilian witness interviews, civilian video recordings, law enforcement photographs and law enforcement scientific investigation reports.

FACTUAL SUMMARY

On December 15, 2019, at approximately 11:50 p.m., SBCSD Sergeant Jonathan Woods and Deputy Joshua Gile each fired their duty weapons at 28-year-old Bernie Garcia Rascon in the city of San Bernardino. Mr. Rascon sustained multiple gunshot wounds and was transported to a local hospital, where he was later pronounced deceased. No law enforcement officer was injured during this incident.

The lethal-force encounter occurred after Mr. Rascon led Sergeant Woods, Deputy Gile and two other sheriff's deputies, all four of whom were in separate marked SBCSD patrol units, on a nine-minute vehicle pursuit.

The pursuit of Mr. Rascon began at approximately 11:41 p.m. Just prior to that time, Deputy Gile advised his dispatch operator that he was behind a stolen 2001 Nissan Frontier pickup truck in Muscoy. After confirming the license plate of the stolen vehicle and coordinating with his shift partner—Deputy Jason Desario, Deputy Gile initiated a traffic stop of the truck. Mr. Rascon, the only occupant of the truck, looked back at Deputy Gile and sped away. Deputy Gile alerted dispatch to Mr. Rascon's failure to yield and Deputies Gile and Desario immediately gave chase with activated patrol unit emergency lights and sirens.

At the outset, Deputy Gile watched Mr. Rascon run three red lights before traveling onto the Interstate 215 (hereinafter "I-215") freeway and fleeing northbound. Deputy Gile was in the primary position behind Mr. Rascon and Deputy Desario followed from behind Deputy Gile. It quickly became apparent to both pursuing deputies that Mr. Rascon was willing to drive recklessly in order to evade them. Almost as soon as Mr. Rascon moved onto the freeway, Deputy Gile saw Mr. Rascon swerve toward a disabled vehicle in the emergency shoulder, where

¹ Since the time of the original submission, Detective Plummer was promoted to the rank of SBPD Sergeant.

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a motorist was changing a tire. It appeared to Deputy Gile that Mr. Rascon was trying to hit the disabled vehicle, getting to within a couple feet of it. At some point after proceeding northbound on the I-215 freeway, Sergeant Woods joined the pursuit of Mr. Rascon. Deputy Alejandro Maldonado-Flores drove the last unit to join in the pursuit and was positioned behind Sergeant Woods.

As the pursuit continued northbound on the I-215 freeway, Mr. Rascon fled at approximate speeds of 70 to 80 mph and was seen swerving between lanes. Mr. Rascon also began to “break check” Deputy Gile, which Deputy Gile explained was a sudden braking maneuver meant to cause the pursuing vehicles to crash. Deputy Gile stated that Mr. Rascon even brake-checked a semi-truck trailer. Deputy Gile explained that at that point in his career he had been involved in more than 50 traffic pursuits and Mr. Rascon was the first non-yielding driver that attempted to run a semi-truck trailer into him. Deputy Gile believed that Mr. Rascon meant to hurt deputies in doing so and alerted his partners via radio that Mr. Rascon was “brake-checking” him.

At 11:46 p.m., Mr. Rascon led deputies through the Devore Road I-215 freeway offramp. Mr. Rascon was so hasty in maneuvering through the freeway exit that Mr. Rascon appeared to almost lose control of the truck and narrowly missed colliding with another motorist. Instead of stopping at that point, Mr. Rascon recovered control of the truck and resumed his flight from four pursuing patrol units going southbound on the I-215. While fleeing towards San Bernardino, Mr. Rascon swerved from lane to lane and attempted to outrun deputies at increased speeds in excess of 100 mph.

At 11:50 p.m., as the pursuit approached University Parkway, Mr. Rascon again began to lead the pursuit off the I-215. Meanwhile, a SBCSD Aviation Unit helicopter (*40-King*) had arrived overhead and was getting into a position to resume radio announcements relative to Mr. Rascon’s traffic movements. Deputies watched as Mr. Rascon swerved into oncoming traffic and forced a west-bound (right) turn onto University Parkway. Mr. Rascon attempted to negotiate the turn at too high of a speed but slowed momentarily to avoid a collision. Then, Deputy Larry Scott aboard *40-King* broadcasted “PIT that guy.” Within approximately six seconds of that broadcast, Deputy Gile applied a pursuit intervention technique (“PIT”) maneuver using his patrol unit’s right front fender to collide with the left rear fender of the fleeing truck. The truck spun 180-degrees counterclockwise, stalled, rolled backwards over the west sidewalk at University Parkway near a Mobil gas station, and came to rest atop a curbed landscaped island at the Mobil gas station.

Deputy Gile was the first to stop his patrol unit after the pursuit ended. Deputy Gile parked his patrol unit in the northernmost driveway of the Mobil gas station from University Parkway. At about the same time, Deputy Desario positioned his patrol unit ahead of Deputy Gile’s unit and within five feet of the front of the truck. Both Deputies Desario and Gile’s patrol units faced the front end of the truck. Deputy Desario got out of his patrol unit immediately, drew his service weapon, took a position roughly one to two feet from the right front fender of the truck, and began ordering Mr. Rascon to put his hands up. Deputy Gile approached the truck on the driver’s side, initially with a window punch and taser in his hands, and also began giving Mr. Rascon

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orders to show his hands. Sergeant Woods, meanwhile, had stopped his patrol unit behind (north of) Deputy Gile's unit and began running forward with his duty weapon drawn. Deputy Maldonado-Flores drove past all three stopped patrol units before parking his own unit just ahead Deputy Desario's unit on University Parkway and on the passenger side (south) of the truck.

As Deputies Desario and Gile gave Mr. Rascon verbal commands it appeared to them that Mr. Rascon was able to start-up the truck but that the truck was unable to move. Mr. Rascon began actively manipulating the truck's gear shifter on the steering wheel column in order to maneuver the vehicle free. Then suddenly, the truck made a forward jumping motion. Deputy Desario thought that Mr. Rascon was going to run him over. In an attempt to get out of the way, Deputy Desario began to move behind (north of) Deputy Gile and stumbled as he did so. The truck's wheels screeched as they spun out. Smoke billowed from beneath the truck. The truck's engine revved so loudly the deputies believed it was "redlining." Deputy Gile dropped his window punch, holstered his taser, and drew his firearm. In that moment, Deputy Gile believed Mr. Rascon might strike and kill Deputy Desario and himself with the truck, so Deputy Gile immediately began firing at the truck's front driver's side tire. Sergeant Woods also began firing at Mr. Rascon just as Mr. Rascon was able to gain traction and move the truck in reverse. Overall, approximately 16 seconds passed from the time that Deputy Gile applied the PIT maneuver on the truck to the time that gunfire began. Gunfire sounded for approximately six seconds from the first to last shot.

Mr. Rascon's truck was still moving forward immediately after gunfire ceased. By the time Deputy Desario saw Mr. Rascon again, the deputy saw Mr. Rascon had been shot. Sergeant Woods and Deputies Gile and Desario holstered their weapons. From the passenger side of the truck, Deputy Maldonado-Flores did not immediately see that Mr. Rascon had been shot; he was the last to both draw and holster his weapon. Deputy Gile reached for the truck's driver's door, opened the door, and pulled Mr. Rascon out and to the ground. Deputy Desario shifted the truck into park and pulled the keys out of the ignition. At approximately 11:51 p.m., Sergeant Woods announced that shots had been fired and requested medical aid. Deputies applied medical aid to Mr. Rascon until paramedics arrived at approximately 11:58 p.m. Mr. Rascon was transported from the scene to a hospital in San Bernardino, where he was pronounced deceased at 12:17 a.m. on December 16, 2019.

After an examination of the scene and the collection of evidence, it was determined that a combined total of 14 shots were fired by Sergeant Woods and Deputy Gile. Deputies Desario and Maldonado did not fire their weapons. The weapons used by Sergeant Woods and Deputy Gile were collected and examined by a SBCSD Scientific Investigations Division (SID) criminalist. No malfunction or material defect was noted in the shooting officers' weapons.

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STATEMENTS BY LAW ENFORCEMENT OFFICERS²

Deputy Joshua Gile gave a voluntary interview to SBCDA-BOI Senior Investigators Cortinas and Todd Grimm on January 25, 2021, almost 13 months after the shooting incident and in the presence of Deputy Gile's attorney. Deputy Gile reviewed audio and video recordings of the subject incident prior to his interview. The following is a summary of additional relevant information disclosed by Deputy Gile:

At the time of the incident, Deputy Gile was 42 years old and had served as a SBCSD deputy for more than eight years.

At the beginning of his shift on December 15, 2019, Deputy Gile was patrolling Muscody in a one-man marked SBCSD patrol unit when he happened upon a stolen car he described as a silver Nissan pickup truck with an extended cab. Deputy Gile confirmed the license plate of the stolen truck and asked his shift partner—Deputy Desario, who was operating another marked patrol unit in the area, to assist in a traffic stop of the truck. After Deputy Desario positioned his unit behind Deputy Gile's unit, Deputy Gile announced via dispatch radio that he would be making a traffic stop. Deputy Gile activated his unit overhead lights and siren to initiate the traffic stop. Deputy Gile described Mr. Rascon—the driver of the stolen car, to have looked back at Deputy Gile and, "Stepped on the gas." Mr. Rascon did not yield to the deputies' attempted traffic stop and a traffic pursuit ensued.

At the beginning of the pursuit, Deputy Gile saw Mr. Rascon run three red lights before getting into the northbound lanes of the I-215 Freeway. Once on the freeway, Deputy Gile recalled that Mr. Rascon appeared to swerve into the emergency lane like he was trying to hit someone that happened to be changing a tire there. Deputy Gile recalled that the person changing the tire had to pin himself up against the disabled car as Mr. Rascon drove by as Mr. Rascon got to within a couple of feet of the disabled car. As the pursuit continued, Deputy Gile believed that Mr. Rascon was "brake checking him," which meant that Mr. Rascon would slam on his brakes trying to cause the deputies behind Mr. Rascon to crash. Deputy Gile also saw Mr. Rascon brake-check a "big rig" (semi-trailer truck) in an effort to get the semi-trailer truck to hit a patrol unit or cause a vehicle pile-up. Deputy Gile stated that despite having been involved in more 50 traffic pursuits previously, he had never had someone try to run a semi-truck trailer into him as Mr. Rascon had. It appeared to Deputy Gile that Mr. Rascon was not just trying to flee deputies, Mr. Rascon was also trying to *hurt* deputies in the process of doing so.

Deputy Gile described Mr. Rascon exiting the northbound lanes of the I-215 freeway at Devore Road and immediately maneuvering to re-enter the freeway going southbound.

² Herein is a summary only. All incident-involved law enforcement personnel were on-duty SBCSD employees at the time of their involvement. All reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or Bernie Rascon by name are made here for ease of reference.

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As Mr. Rascon resumed his flight southbound, Deputy Gile said that Mr. Rascon brake-checked another semi-trailer truck. Soon thereafter, Mr. Rascon fled from units at speeds in excess of 100 mph. Thereafter, Mr. Rascon exited the southbound lanes of I-215 freeway at University Parkway in San Bernardino. Deputy Gile recalled that Mr. Rascon drove so fast that the pickup truck swerved into oncoming traffic as Mr. Rascon negotiated a right turn onto University Parkway. It appeared to Deputy Gile that Mr. Rascon slammed on the brakes to avoid a head-on collision as he did so. As Mr. Rascon continued on University Parkway at a reduced speed (less than 35 mph), Deputy Gile recalled applying a "PIT" maneuver to the truck. As a result, the truck spun, stalled, and rolled backwards towards a Mobil Gas Station before coming to rest on a grassy embankment.

Deputies Gile and Desario both parked their respective units on University Parkway and approached Mr. Rascon, who was the only person in the stolen truck. Initially, Deputy Gile approached with a window punch and taser in his hands. As the deputies got closer, Deputy Gile heard Mr. Rascon restart the truck. The truck's wheels started spinning. Deputy Gile saw Mr. Rascon manipulated the truck's gear shift back and forth. The truck appeared to be stuck. Then, Deputy Gile saw the truck begin to lurch forward as Deputy Desario stumbled in front of it. Deputy Gile believed that Deputy Desario was going to get hit and killed by the truck, which was only five feet away from Deputy Desario. Deputy Gile described Mr. Rascon as being unable to get the truck to gain traction. Deputy Gile also saw two people behind the truck. Deputy Gile explained, "The [truck] motor was screaming. The tires are screaming. [Mr. Rascon] was just trying to get it to catch one way or another. He's either gonna hit [Deputy Desario] and uh, kill [Deputy Desario] or he's gonna run over the people behind him and kill them...it didn't seem like [Mr. Rascon] cared what direction he was going. He just wanted that thing moving." From approximately 10 feet away, Deputy Gile holstered his taser, drew his side-arm, and began firing into the left front tire of the truck. Then, the truck started to move backward. Mr. Rascon put the truck in "Drive" once more when Deputy Gile saw Mr. Rascon get shot in the head. After Deputy Gile saw Mr. Rascon get shot in the head, Deputy Gile holstered his gun, reached into the still-moving truck to shift it into park, and pulled Mr. Rascon out. Sometime thereafter, Deputy Gile recalled administering CPR to Mr. Rascon until another deputy arrived to relieve him.

Deputy Gile's interview, the examination of Deputy Gile's duty weapon, and the collection of evidence at the scene, together support a conclusion that Deputy Gile fired his duty weapon nine times during the subject incident.

Sergeant Jonathan Woods gave a voluntary interview to SBCDA-BOI Senior Investigators Cortinas and Grimm on January 25, 2021, almost 13 months after the shooting incident and in the presence of Sergeant Woods's attorney. Sergeant Woods acknowledged that he reviewed audio and video recordings of the subject incident prior to his interview. The following is a summary of additional relevant information disclosed by Sergeant Woods:

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At the time of the incident, Sergeant Woods was 44 years old and had served as a SBCSD peace officer for more than 16 years. Prior to joining SBCSD, Sergeant Woods served as a peace officer with the San Bernardino Community College District Police.

Sergeant Woods stated that on the night of the incident, he was on duty in Muscoy when he heard Deputy Gile announce over the radio that Deputy Gile was behind a stolen truck. Sergeant Woods learned from subsequent radio traffic that Deputies Gile and Desario attempted to conduct a traffic stop of the truck's driver (Mr. Rascon), but that the truck fled from deputies. After coordinating with Deputies Gile and Desario, Sergeant Woods was able to join the pursuit as the third patrol unit behind Mr. Rascon, while it proceeded northbound on the I-215 freeway.

After Sergeant Woods joined the pursuit, Mr. Rascon exited the northbound lanes of the I-215 freeway at Devore Road and got back on the same freeway going southbound. Sergeant Woods stayed in the pursuit and saw that Mr. Rascon accelerated to 95 to 100 mph. Sergeant Woods didn't see Mr. Rascon exit the northbound lanes of the freeway, but heard over the radio that Mr. Rascon took the University Parkway exit, after which *40-King* directed Deputy Gile to "PIT" the truck.

By the time that Sergeant Woods arrived where the pursuit ended, Deputies Gile and Desario were already parked. Sergeant Woods believed that he would be conducting a felony traffic stop, so he got out of his unit and drew his weapon. Initially, Sergeant Woods took cover behind the passenger side of Deputy Gile's patrol unit. From there, the sergeant saw that Mr. Rascon was trying to move the truck. Mr. Rascon was revving the truck engine and the truck tires were screeching. Sergeant Woods stated that he saw the truck move forward and reverse a few times and it appeared that Mr. Rascon was "Trying to rock the vehicle free, like it was stuck." At the time, Sergeant Woods saw people and cars were in the gas station area, approximately 40 feet behind the truck. Sergeant Woods believed that if Mr. Rascon was able to gain traction in reverse, that "It would've probably taken [Mr. Rascon] one second or less to mow those people down and kill them." Sergeant Woods also realized that if Mr. Rascon gained traction forward, that Deputy Gile's unit could also be struck. As such, Sergeant Woods moved from behind Deputy Gile's unit to an open position 10 to 15 feet from the truck driver's side door and began to shout commands at Mr. Rascon.

While shouting commands, Sergeant Woods saw that Deputy Gile was positioned to the sergeant's left. Sergeant Woods told Mr. Rascon to put his hands up and stop the car. Sergeant Woods also heard Deputy Gile give commands. Sergeant Woods stated that Mr. Rascon never complied with the commands given nor did Mr. Rascon otherwise indicate that he would comply. Then, as Deputy Desario approached Deputy Gile and Sergeant Woods's position, Sergeant Woods saw Deputy Desario stumble near the front of the truck. It appeared to the sergeant that Deputy Desario would be killed if Mr. Rascon was able to free the truck. Sergeant Woods stated that oleoresin capsicum spray or a taser would not have been effective at that moment because Mr. Rascon's windows were rolled

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up and the truck was a “4500-pound missile coming towards them.” Suddenly, Sergeant Woods saw that the truck moved in reverse. Sergeant Woods explained that he decided to use lethal force because he believed that Mr. Rascon was going to kill someone outside of the gas station store (behind the truck) or a deputy (in front of the truck). Sergeant Woods stated he fired at Mr. Rascon as he watched Mr. Rascon manipulate the truck’s gear shifter. Sergeant Woods also recalled hearing Deputy Gile fire his weapon. Sergeant Woods stated that he fired five times at Mr. Rascon. Sergeant Woods recalled seeing his last round strike and kill Mr. Rascon.

After firing his final shot, Sergeant Woods holstered his weapon, requested medical aid, and began managing the scene. Sergeant Woods recalled that Deputies Gile and Byrne provided Mr. Rascon with medical aid until the paramedics arrived. Thereafter, Sergeant Woods stated that he removed himself and Deputy Gile from the scene, as soon as possible.

Sergeant Woods’s interview, the examination of the sergeant’s duty weapon, and the collection of evidence at the scene, together support a conclusion that Sergeant Woods shot five times at Mr. Rascon.

Deputy Jason Desario gave a voluntary interview to SBCDA-BOI Senior Investigators Cortinas and Grimm on January 26, 2021, almost 13 months after the shooting incident and in the presence of Deputy Desario’s attorney. Deputy Desario acknowledged that he reviewed audio and video recordings of the subject incident prior to his interview. Deputy Desario witnessed the shooting incident but did not fire his duty weapon during the incident. The following is a summary of additional relevant information disclosed by Deputy Desario:

Deputy Desario’s law enforcement career began in January, 2019, when he was hired as a SBCSD deputy.

Deputy Desario stated that on the night of the shooting incident, he saw his shift partner—Deputy Gile, initiate a traffic stop of a stolen truck in the area of Blake and State Streets in Muscoy. At the time Deputy Gile initiated the traffic stop, Deputy Desario was operating a marked SBCSD patrol unit positioned behind Deputy Gile’s patrol unit. Then, the truck fled from Deputy Gile and both Deputies Gile and Desario pursued the truck (Mr. Rascon) with their patrol unit emergency lights and sirens activated. As the second patrol unit in pursuit, Deputy Desario broadcasted Mr. Rascon’s location and speed over the radio. Deputy Desario stated that Mr. Rascon, “Was driving really recklessly and doing whatever he could to try to get away.” Deputy Desario saw Mr. Rascon run stop signs and red lights, swerve in and out of traffic, cut-off other motorists, and drive at high rates of speed. Deputy Desario also saw Mr. Rascon get close to colliding with an occupied parked car.

Deputy Desario stated that after Mr. Rascon led deputies onto the freeway, Mr. Rascon got close to hitting a car and was “brake-checking” Deputy Gile. Deputy Desario

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explained that “brake-checking” is “When someone in front of you slams on their brakes, ...hoping you crash.” Deputy Desario believed that Mr. Rascon was doing this to cause the deputies to crash. Deputy Desario recalled that when Mr. Rascon exited the freeway on University Parkway, Mr. Rascon was going so fast that the truck swerved into oncoming traffic. Mr. Rascon then continued south on University Parkway, when Deputy Gile performed a PIT maneuver on the truck. Deputy Desario recalled that the truck spun 180 degrees and rolled backwards into a gas station at the northwest corner of Hallmark and University Parkways. Deputy Desario stated that at the time, there were multiple cars at the gas station pumps and people were walking around. Deputy Desario stated that he stopped his patrol unit in almost a “head on” position with the truck, as close as he could. Deputy Desario then got out, approached the passenger side of the truck (outside of cover), and pointed his gun at Mr. Rascon. Deputy Desario recalled giving Mr. Rascon commands to put his hands up but Mr. Rascon ignored those commands.

Deputy Desario recalled that as he stood towards the passenger side of the truck, he saw Mr. Rascon fidgeting with the truck’s gear shifter. At first, Deputy Desario believed that the truck had stalled. However, Deputy Desario heard the truck engine revving and saw Mr. Rascon was trying to get the car moving. Deputy Desario estimated that he was within one to two feet from the right front fender of the truck and Deputy Gile was to his right side. At that moment, Deputy Desario believed that the truck was going to run him or Deputy Gile over. Deputy Desario recalled running behind Deputy Gile to get out of the way. Suddenly, Deputy Desario saw the truck jolt or jump forward. As Deputy Desario moved behind Deputy Gile, Deputy Desario stumbled and Deputy Gile began shooting at the truck’s tire. Then, Deputy Desario saw the truck move in reverse. Deputy Desario believed that Mr. Rascon could have run into and killed the people behind the truck. The next time Deputy Desario looked at Mr. Rascon, it appeared to Deputy Desario that Mr. Rascon had been shot.

After gunfire ceased, Deputies Desario and Gile approached the driver’s side door. Deputy Gile pulled Mr. Rascon out while Deputy Desario shifted the car into “park” and removed the keys from the truck’s ignition. Later, Deputy Desario assisted Deputies Gile and Byrne in providing medical attention to Mr. Rascon at the scene.

Deputy Alejandro Maldonado-Flores gave a voluntary interview to SBCDA-BOI Senior Investigators Cortinas and Vidal on February 12, 2021, almost 14 months after the shooting incident and in the presence of Deputy Maldonado-Flores’s attorney. Deputy Maldonado-Flores acknowledged that he reviewed audio and video recordings of the subject incident prior to his interview. Deputy Maldonado-Flores witnessed the shooting incident but did not fire his duty weapon during the incident. The following is a summary of additional relevant information disclosed by Deputy Maldonado-Flores:

Deputy Maldonado-Flores’s law enforcement career began in April, 2015, when he was hired as a SBCSD deputy.

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Deputy Maldonado-Flores stated that on the night of the shooting incident, he heard the radio traffic involving Deputy Gile's traffic stop of Mr. Rascon. Deputy Maldonado-Flores later followed the pursuit from approximately 500 yards behind the three pursuing units [Deputies Gile and Desario and Sergeant Woods]. Deputy Maldonado-Flores saw Mr. Rascon exit the freeway at University Parkway, almost lose control of the truck, and overshoot into oncoming traffic. Then, Deputy Maldonado-Flores also saw Deputy Gile execute a PIT maneuver on the truck. Afterwards, Deputy Maldonado-Flores saw Sergeant Woods and Deputy Gile get out of their units and approach the driver's side of the truck. Deputy Maldonado-Flores had driven south of the truck and approached the passenger side of the truck, on foot. Deputy Maldonado-Flores saw that the truck was moving backward and forward. It appeared to Deputy Maldonado-Flores that Deputies Gile and Desario, Sergeant Woods and patrons of the gas station were all in danger of being run over by Mr. Rascon.

When Deputy Maldonado-Flores was within seven to ten feet of the truck, shooting began. Deputy Maldonado-Flores had his duty weapon out at the time he approached but did not fire because he believed he could potentially strike his partners if he did. Deputy Maldonado-Flores recalled that the truck was in motion at the time shots were being fired. After gunfire ceased, Deputy Maldonado-Flores recalled hearing Sergeant Woods request for medical aid.

Deputy Larry Scott gave a voluntary interview to SBCDA-BOI Senior Investigators Grimm and Vidal on March 8, 2021, almost 15 months after the shooting incident. Deputy Scott did not review any audio or video recordings of the subject incident prior to his interview. The following is a summary of additional relevant information disclosed by Deputy Scott:

Deputy Scott served as a SBCSD deputy since June, 1999. At the time of the shooting incident, Deputy Scott was assigned to SBCSD's aviation division, and was aboard *40-King*—an Air Bus H125 helicopter, in the role of tactical flight officer (TFO). SBCSD Corporal Eddie Leon—*40-King's* pilot, was Deputy Scott's partner. Deputy Scott explained that the TFO was, "The eyes above the scene" who was responsible for communicating via radio what could be seen from the air to units on the ground. In the case of a traffic pursuit, as in this incident, Deputy Scott explained that he announced the location of the pursuit and the speed of the fleeing vehicle.

Just before midnight on the night of the incident, Deputy Scott was alerted to a traffic pursuit occurring in Muscoy. By the time Deputy Scott caught sight of the ground pursuit of Mr. Rascon approximately eight minutes later, the truck was moving northbound on the I-215. Deputy Scott said that the truck maneuvered off the freeway at Devore and back onto the I-215 going southbound. Deputy Scott recalled seeing the truck move very erratically and dangerously. Deputy Scott explained that the truck was swerving around other vehicles, passing on the wrong side, driving on the shoulder and going faster than other vehicles at approximately 80 to 100 mph. It appeared to Deputy Scott that Mr. Rascon, "was definitely motivated not to get caught."

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Deputy Scott recalled that the truck exited the southbound freeway lanes at University Parkway in San Bernardino. Deputy Scott stated that the truck almost crashed into another car while making the turn onto University Parkway. The truck fish-tailed and the driver appeared to Deputy Scott to be “Having some control issues.” At the time, *40-King’s* “night sun” spotlight was on the truck. Deputy Scott recalled he was talking to his pilot at the time that the truck turned onto University Parkway and Deputy Scott said, “PIT that guy.” Deputy Scott learned that his statement was inadvertently broadcasted when he said it, as almost immediately after he said it, a pursuing patrol unit applied a PIT maneuver to the truck. Deputy Scott saw the patrol unit hit the truck’s left rear side with the patrol unit’s right front fender, after which the truck spun counterclockwise and ended up on a grassy knoll facing a deputy’s car.

From approximately 500 feet up in the air and while orbiting in a counterclockwise pattern, Deputy Scott said he next saw the deputies’ car doors open. Deputy Scott did not recall how many doors opened, how many deputies were on the scene, or whether there were any civilians in the area. At the time, Deputy Scott was focused on Mr. Rascon and the truck. Deputy Scott looked at the truck through *40-King’s* night vision camera and saw only Mr. Rascon was inside. Then, Deputy Scott saw the wheels of the truck spin at a high rate of speed in reverse and it appeared to Deputy Scott that Mr. Rascon was trying to move the truck off of the grass. Next, Deputy Scott saw the front windshield of the truck explode as if gunfire had come out of the truck. Deputy Scott also saw the deputies on the ground had begun shooting at the truck. Afterwards, Deputy Scott saw deputies pull Mr. Rascon out of the truck, place Mr. Rascon on his back, and begin CPR. Deputy Scott recalled hearing a unit on the ground air, “Shots fired” and call for medical aid at approximately 11:52 p.m. Deputy Scott approximated that paramedics arrived seven minutes later.

Additional Law Enforcement Witnesses were interviewed and/or prepared reports regarding their involvement in the investigation of this shooting incident. SBCSD Corporal Edward Leon was the pilot of *40-King* on the night of the shooting incident. Corporal Leon explained that he made left-hand orbits over the scene so that the observer—Deputy Scott, had a better visual of the incident. Yet, Corporal Leon did recall seeing the subject car move in reverse and toward deputies prior to the time shots were fired. Still, Corporal Leon’s focus was to make sure he was flying safely and could only see “bits and pieces” of what was happening on the ground.

Paramedics from the San Bernardino County Fire Department and American Medical Response responded to the scene, where they assessed and/or provided Mr. Rascon with medical care. Mr. Rascon was subsequently transported by ambulance to a hospital in San Bernardino. Mr. Rascon was declared deceased immediately upon his arrival at the hospital.

A SBPD forensic technician photographed Sergeant Woods and Deputy Gile approximately one and a half hours after the incident. Sergeant Woods wore a department-issued olive windbreaker jacket with SBCSD patches and sergeant’s chevron insignia affixed to both outer shoulders. An

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embroidered SBCSD cloth badge was on the jacket's left breast. A United States flag above "J. WOODS" in yellow block letters was on the jacket's right chest. Sergeant Woods also wore a tan buttoned-down shirt, olive pants and black boots. Sergeant Woods wore a *Sam Browne* belt with his firearm holstered on his right hip.

Deputy Gile wore a department-issued tan buttoned-down short-sleeved shirt with SBCSD patches on both outer shoulders. The shirt also included FTO insignia on top of the right shoulder, near the right collar, a yellow metal SBCSD badge on the left chest, and an American flag and a nameplate on the right chest. Deputy Gile wore olive pants and black boots. Deputy Gile also wore a *Sam Browne* belt with his firearm holstered on his right hip.

Detective Plummer collected the firearms of Sergeant Woods and Deputy Gile. Detective Plummer found that Sergeant Woods's firearm contained nine live rounds. Detective Plummer found that Deputy Gile's firearm contained eight live rounds. The involved firearms were submitted to a SID criminalist for examination. The criminalist found that Deputy Gile's firearm was a Glock model 17 Gen4, 9mm caliber semi-automatic pistol. The rounds contained in Deputy Gile's firearm were each stamped, "WIN 9mm LUGER+P." The criminalist found a small defect in Deputy Gile's firearm but determined that the weapon fired without malfunction. The criminalist found no defect in Sergeant Woods's firearm; it too fired without malfunction. The criminalist described Sergeant Wood's firearm as a Glock, model 21 Gen4, .45 auto caliber semi-automatic pistol. The rounds contained in Sergeant Wood's firearm were each stamped, "WINCHESTER 45 AUTO."

SBCDA-BOI Senior Investigator Cortinas completed an analysis of the submitted materials and determined that Mr. Rascon led deputies on an approximately nine-minute pursuit. After a PIT maneuver was applied, the truck came to rest in a grassy curbed area on the eastern side of the Mobil Gas Station at 3909 Hallmark Parkway in San Bernardino. Sometime after coming to rest, Mr. Rascon was able to re-start the truck and attempted to continue to evade deputies. Senior Investigator Cortinas determined that Mr. Rascon attempted to dislodge the stolen truck at "full throttle" (as indicated by screeching and the appearance of smoke billowing from the left tire and wheel well) in a direction directly aligned with Mobil Gas Station's south fueling island, pump number one. Senior Investigator Cortinas estimated that the closest vehicle present (at pump number one) at the time of the incident was approximately 100 feet away. Senior Investigator Cortinas estimated that at speeds of 20 to 35 mph, that Mr. Rascon would have been able to back into the car at pump number one in 1.9 to 3.4 seconds. Senior Investigator Cortinas noted some tire friction marks at the scene, approximately 80 feet from the gas station's convenience store. Based upon his calculations, Senior Investigator Cortinas opined that Mr. Rascon would have been able to back into the convenience store in 1.5 to 2.7 seconds at speeds of 20 to 35 mph.

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STATEMENTS BY CIVILIAN WITNESSES³

Civilians who were present at the Mobil Gas Station store or nearby businesses were interviewed on the evening of the incident by SBPD officers. Additional witnesses from the gas station store and nearby businesses were interviewed by Senior Investigator Cortinas in October, 2020. Although witnesses reported hearing a commotion and/or gunshots outside, none of the civilians interviewed disclosed to SBPD personnel or Senior Investigator Cortinas that they saw the officer-involved shooting or any material pre-shooting events that occurred at the Mobil Gas Station.

SUBMITTED MEDIA⁴

Dispatch Audio Recordings. Audio recordings from SBCSD and SBPD dispatch radio broadcasts were included in the case agent's submission. SBPD dispatch radio broadcasts pertained to post-incident events, only. The submitted SBCSD dispatch recordings included audio footage pertaining to the pursuit of Mr. Rascon. The SBCSD dispatch recordings were not audibly timestamped. However, the incident dispatch log prepared by SBCSD did include timestamps for events corresponding to the dispatch radio broadcasts. The following is a summary of SBCSD dispatch activity presumably heard by the involved SBCSD personnel:

At approximately 11:40 p.m., Deputy Gile alerted dispatch that he was behind a stolen vehicle later described as a silver Nissan Frontier truck. Deputy Desario got into position behind Deputy Gile to assist with a traffic stop of the truck's driver (Mr. Rascon). Sergeant Woods and Deputy Maldonado-Flores also radioed that they would assist with the traffic stop. By approximately 11:41 p.m., Deputy Gile had announced that he would activate his emergency lights to signal Mr. Rascon to pull over. Shortly thereafter, Deputy Gile announced Mr. Rascon's failure to yield.

Deputy Gile was in the primary position behind Mr. Rascon. Deputy Desario announced Mr. Rascon's location and speed via radio. Deputies Gile and Desario followed Mr. Rascon onto the northbound lanes of the I-215 Freeway. Deputy Gile announced that there was one person in the truck and described Mr. Rascon as driving on the freeway shoulder and swerving in the roadway at approximately 80 mph. At 11:45 p.m, Deputy Gile also radioed, "be leery guys he keeps brake checking me." At 11:46 p.m., Deputy Desario announced that Mr. Rascon was getting off the freeway at the Devore Road exit, where Mr. Rascon almost lost control of the truck and got into a traffic collision. Within seconds of that communication, however, Deputy Desario indicated that Mr. Rascon was again proceeding on the I-215 freeway and was now moving southbound.

³ Multiple civilian witnesses were interviewed pursuant to the submitted investigation. Every civilian statement and recorded statement submitted was reviewed in totality.

⁴ All submitted audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are summarized here.

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Within 30 seconds of returning onto the freeway, Deputy Desario radioed that Mr. Rascon was now traveling at approximately 95 to over 100 mph.

At 11:49 p.m., SBCSD's aviation unit radioed that it was on scene. At approximately the same time, ground units approached the area of the Palm Street exit and Deputy Desario noted that Mr. Rascon was still swerving from lane to lane. Deputy Desario announced that he could see *40-King* and asked *40-King* if they wanted to take over the pursuit announcements. Deputy Scott, who was aboard *40-King*, requested that Deputy Desario continue with announcements until *40-King* could get into position. At approximately 11:50 p.m., Deputy Desario announced that Mr. Rascon was exiting the freeway at University Parkway. Less than 20 seconds thereafter, Deputy Scott broadcasted, "PIT that guy." Thereafter, Deputy Scott announced that Mr. Rascon "was pitted" but was "still rolling." Fifteen seconds later—at 11:50 p.m., Deputy Scott relayed "They got the vehicle stopped." At 11:51 p.m., Sergeant Woods radioed, "Shots fired. Roll medical aid."

Within approximately a minute and a half of Sergeant Wood's announcement of shots fired, Deputy Gile announced that he would be starting CPR on Mr. Rascon. At 11:55 p.m., Deputy Desario indicated to dispatch that Mr. Rascon had suffered a gunshot wound to the head. Paramedics were noted to have arrived at the scene at approximately 11:58 p.m.

Belt Recorder (BR) Audio Recordings. Audio footage made by the BR devices of Deputies Desario, Gile and Maldonado-Flores were submitted for review. The identity of the deputy that made each submitted BR audio recording was determined by its content and assumed based upon the digital title of the submitted recordings. It must be noted that what was audible in each BR recording was impacted by the environment that existed in close proximity to the recording device, as well as the device's technical limitations. The submitted BR recordings appeared to have been made in real time on December 15, 2019. All three BR audio recordings included events that took place *after* the pursuit was underway. The shooting incident was recorded in the last minute to minute and a half, approximately, of all three submitted BR recordings.

The submitted BR audio footage supports a conclusion that Deputy Maldonado-Flores activated his BR device first in time. Deputy Gile activated his device approximately 53 seconds after Deputy Maldonado-Flores. Deputy Desario activated his BR device about six minutes and 19 seconds after Deputy Maldonado-Flores. In large part, what was audible in the submitted BR audio footage represents what could be heard from the inside of the recording deputy's patrol unit. During the pursuit, no emergency siren from Deputy Maldonado-Flores's patrol unit was audible. In contrast, the emergency sirens of Deputies Desario and Gile were audible on both Deputies Desario and Gile's BR recordings. The same radio announcements could be heard in each BR audio recording. The recordings indicate that Deputies Desario, Gile and Maldonado-Flores were each outside of their respective patrol units by the time the shooting incident occurred.

The following is a summary of notable events audible in the submitted BR audio recordings:

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During the pursuit, Deputy Desario appeared to make most of the radio announcements. After the pursuit entered the northbound lanes of the I-215 freeway, north of University Parkway, Deputy Gile announced that he believed the truck was occupied by only one person (Mr. Rascon). Deputy Maldonado-Flores does not make any radio announcements during the pursuit or the shooting incident. However, while in pursuit and proceeding northbound on the I-215 freeway, Deputy Maldonado-Flores was heard saying to himself, "Damn, Desario is going fast." A little more than two minutes thereafter, just as Sergeant Woods radioed "Maldonado, back off," emergency sirens were briefly and faintly audible from inside Deputy Maldonado-Flores's unit, suggesting that Deputy Maldonado-Flores drew near to the pursuit units operated by Deputies Desario and Gile and Sergeant Woods.

Deputy Desario noted over the radio that Mr. Rascon's speed fluctuated between 70 mph and 80 mph before reaching the Devore Road exit. As the pursuit drew closer to Devore Road, Deputy Gile radioed again to warn Deputy Desario that Mr. Rascon was "brake checking" Deputy Gile. After Mr. Rascon exited the freeway at Devore Road, Deputy Desario announced that Mr. Rascon almost lost control and got into a traffic collision before re-entering the I-215 freeway and proceeding southbound.

Deputies followed Mr. Rascon onto the southbound lanes of the I-215 and during this stretch of the pursuit, Deputy Desario noted that Mr. Rascon fled at a top speed in excess of 100 mph. As Mr. Rascon proceeded down the I-215 in the area of the Palm Avenue exit, Deputy Desario began communicating with Deputy Scott (aboard *40-King*) and advised Deputy Scott that the involved vehicle was a stolen single-cab Nissan Frontier truck. Approximately 22 seconds prior to exiting the freeway at University Parkway, Deputy Desario announced that Mr. Rascon was "swerving from lane to lane." Then, about 15 seconds after Deputy Desario confirmed that they were exiting at University Parkway, Deputy Scott broadcasted "PIT that guy." Within six seconds of Deputy Scott's broadcast, the sound of a collision could be heard on Deputy Gile's BR recording. Five seconds after that, Deputy Scott radioed that Mr. Rascon was "*PIT-ed*."

Within two to three seconds of Deputy Scott relaying that Mr. Rascon was "*PIT-ed*," it appeared that Deputies Desario and Gile both stopped their patrol units and got outside; all emergency sirens stopped blaring. As Deputy Gile moved and racked his duty weapon, Deputy Desario could be heard saying, "Put your hands up." Immediately thereafter Deputy Gile ordered, "Put 'em up. Put 'em up." Deputy Desario simultaneously ordered, "Put your hands up," two more times. Deputy Maldonado-Flores approached as Deputies Desario and Gile gave orders; Deputy Maldonado-Flores gave no orders. As Deputy Gile ordered a third time, "Put 'em up," the sound of spinning tires and/or an engine revving was audible and intensifying. With urgency, Deputy Desario ordered a fourth time, "Put your hands up!" Then, the sound of a single gunshot rang out, followed by a loud hissing noise. Additional gunfire continued simultaneously with the sound of spinning tires and/or engine revving. In total, gunfire continued for

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approximately six seconds and the hissing sound continued for approximately 37 seconds.

Immediately after the gunfire ceased, Deputy Maldonado-Flores was heard saying, "Crossfire. Watch crossfire. Crossfire. Watch crossfire." At approximately the same time as Deputy Maldonado-Flores attempted to give his partners that "crossfire" warning, Sergeant Woods radioed, "Shots fired." Both Sergeant Woods and Deputy Desario radioed for medical aid. Approximately 30 to 45 seconds after gunfire ended, Deputies Desario and Maldonado-Flores both returned to their patrol units and moved their patrol units to block traffic at the scene as directed by Sergeant Woods. After that, Sergeant Woods directed Deputy Gile to check Mr. Rascon for a pulse.

Civilian Surveillance Video Recordings. Video footage from multiple recording devices at the Mobil Gas Station were submitted for review. The submitted video footage was silent; no native audio track was included. The submitted video footage contained a date and timestamp of the events recorded. Of the 22 different civilian video clips, four captured portions of the shooting event. The balance of the submitted civilian video clips recorded were duplicative or immaterial events before or after the shooting event.

One recorded view of the incident marked "CH 1" appeared to be made from a position on the far east side of the gas station and facing south toward University Parkway in the background; parking stalls and a walkway were in the foreground. The stolen truck appeared to roll backwards into the video frame at approximately 11:50:09 p.m., followed by three SBCSD units with their emergency lights flashing. The same CH 1 view showed one white van parked at a gas station pump during the entire shooting incident. Paramedics arrived at the scene at 11:58:49 p.m.

Another view, albeit a very limited one, marked "CH 2" appeared to be made from a position also on the far east side of the gas station facing south/southwest toward University Parkway, with a car shampoo machine in the foreground and the gas station's northernmost driveway in the background. The stolen truck can be seen rolling into (and outside) the video frame at approximately 11:50:10 p.m., and Deputy Desario's unit stopped in the street (University Parkway) immediately south/southwest of the northernmost driveway to the gas station approximately five seconds later. Only the rear of Deputy Desario's stopped unit was visible in this view. Deputy Gile appeared to run by Deputy Desario's unit after Deputy Desario's unit stopped. At approximately 11:50:18 p.m., Sergeant Woods can be seen moving towards the rear of Deputy Desario's unit before also moving forward, presumably toward the stolen truck (which is out of frame).

A third view marked "CH 8" also provided a limited view, but from yet another position at the gas station. "CH 8" appeared to be made from the area of the gas station pumps, which showed several pumps in the foreground. The view appeared to be east-facing, but the top corner of the frame included a distant view of the curbed landscaped island and the southernmost driveway from University Parkway into the gas station area. Several cars and people moved through the

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pump area of the gas station in the minutes prior to the arrival of Mr. Rascon and the pursuing deputies. The stolen truck rolled into the CH8 view at approximately 11:50:10 p.m. At that time, this view showed that there were two other civilian vehicles present in the pump area, including the white van noted above. There was at least one person inside the white van. No other civilians appeared in the view until after shooting ceased.

The fourth recorded view of the incident, also marked "CH 1," appeared to be made from a position in the middle of the gas station and facing south/southeast toward University Parkway. The immediate foreground from this view was of the access driveways from University Parkway into the gas station and the asphalt between the covered pump area of the gas station and the curbed landscaped island between the asphalt and the west sidewalk of University Parkway. Recording began at approximately 11:49:04 p.m., but was not continuous. SBCSD units suddenly appeared and deputies were outside of their units at 11:50:17 and the pickup truck was already stalled and facing east on the landscaped island without any immediately preceding footage showing when or how it got there. At 11:50:21 p.m., Deputy Gile was discernable standing in the open and north of the truck's left front tire. Sergeant Woods can be seen moving to Deputy Gile's right. As the truck began to arc backwards and away from Deputy Gile and Sergeant Woods in a north-westerly direction, smoke arose from area of the truck's wheels. Both Deputy Gile and Sergeant Woods appeared to be holding their hands in front of them consistent with a shooting stance, but what exactly was in their hands at the time was not discernable. At 11:50:26 p.m., the truck stopped moving backwards and began to roll forward. At that point, Sergeant Woods and Deputies Gile and Desario stood north of the driver's window and had begun holstering their weapons. Meanwhile, Deputy Maldonado-Flores stood with his duty weapon still drawn and standing off on the south (passenger) side of the truck. At 11:50:31 p.m., Deputy Gile opened the pickup truck driver's door handle and pulled Mr. Rascon out and to the ground. While Deputy Gile did so, it appeared that Deputy Desario got into the truck cab to stop the truck from moving. Deputies Desario and Gile then moved away from where Mr. Rascon was laid on the ground, while Sergeant Woods stood nearby. At 11:52:43 p.m., Deputy Gile returned to apply chest compressions to Mr. Rascon. No civilians were noted in this view immediately before, during, or immediately after the shooting incident.

Law Enforcement Prepared Overlay of BR Audio and Civilian Surveillance Video Recordings. Using accepted forensic techniques, an Examiner of the Orange County Regional Computer Forensics Laboratory Computer Analysis Response Team prepared multiple combinations of the belt recordings and civilian surveillance recordings. When played, the prepared recordings provided an audio context for the video and vice versa. The prepared recordings were consistent with the submitted media summaries separately detailed above. These prepared recordings did reveal that after the truck initially came to rest on the curbed landscaped island, deputies were immediately giving orders. While deputies gave multiple orders, Mr. Rascon was able to re-engage the truck and shift it into reverse (as indicated in the activated reverse lights of the truck). Immediately thereafter, the sound of wheels squealing ensued and the shooting occurred.

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INCIDENT SCENE INVESTIGATION

The incident scene investigation was managed by SBPD Detective William Flesher on the night of the incident. The shooting occurred at the Mobil Gas Station at 3909 North Hallmark Parkway in the city of San Bernardino, which sat at the corner of University Parkway and North Hallmark Parkway. At the time of the incident, there were four access points into the gas station. Two access points were from North Hallmark Parkway (to the west/southwest) and two were from University Parkway (to the east/northeast). The shooting occurred closest to the east/northeast access points.

The truck operated by Mr. Rascon was described as a silver 2001 Nissan Frontier Extended Cab pickup truck with California license plates. At the time of the scene investigation, the truck was facing east with its headlights on. Collision damage was noted on the left rear quarter panel, consistent with a PIT maneuver having been applied at that location. Deputy Gile's patrol unit also showed collision damage to the right front quarter panel and had a right front flat tire, consistent with having applied a PIT maneuver to the pickup truck. Both of the pickup truck's tires on the left side were flat. The front left tire contained two bullet strikes. There were multiple entry bullet strikes to the front of the driver's door and the driver's door window was shattered. The keys to the truck were discovered on the driver's seat.

Sergeant Woods and Deputy Gile's patrol units were discovered at the scene parked in the location they were in at the time of the shooting incident. Deputy Gile's patrol unit faced west in the northernmost driveway into the gas station from University Parkway. Sergeant Wood's patrol unit was parked on University Parkway, facing south/southwest and to the rear of Deputy Gile's patrol unit.

Two types of fired cartridge casings (FCC's) were recovered from the scene, in the area north of the truck. Generally speaking, .45 caliber FCC's were recovered north/northwest of the truck and 9mm caliber FCC's were recovered north/northeast of the truck. A total of nine 9mm caliber FCC's were recovered from the scene. One live 9mm caliber round was also recovered from the scene. A total of five .45 caliber FCC's were recovered from the scene.

DECEDENT

Autopsy. A Riverside County Sheriff's Department Chief Forensic Pathologist performed the autopsy of Mr. Rascon on December 17, 2019. The forensic pathologist found Mr. Rascon to be a Caucasian male, approximately five foot and nine inches tall, weighing 171 pounds.

In the forensic pathologist's Autopsy Protocol report, Mr. Rascon's cause of death was listed as "multiple gunshot wounds." Those wounds included the following: (1) entry gunshot wound to the left orbit with no associated exit, causing subtotal obliteration to the brainstem and cerebellum, across the right occipital pole and embedded within the soft tissues of the right neck; (2) entry gunshot wound to the left lateral neck, exiting the right back neck, causing subtotal

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obliteration of the right vertebral artery before exit; and (3) entry gunshot wound to the left mid-thigh, with no exit. The trajectory of each of the gunshot wounds detailed by the forensic pathologist included a left to right pathway. The forensic pathologist's notes indicated that Mr. Rascon's death would have occurred immediately upon sustaining these wounds.

Blood, urine and vitreous fluid that was obtained by the forensic pathologist was processed for toxicology and determined to contain measurable amounts of methamphetamine and amphetamine.

Criminal History. The case agent's submission included Mr. Rascon's criminal history, which included a first-degree burglary conviction in 2015, for which Mr. Rascon served two years in state prison. Mr. Rascon had two other felony convictions and eleven misdemeanor convictions between 2009 and 2019. Mr. Rascon was on misdemeanor probation at the time of the shooting incident.

APPLICABLE LEGAL PRINCIPLES

A traffic stop of a moving vehicle may be initiated if a peace officer can point to specific articulable facts considered in light of the totality of the circumstances that the driver may be involved in criminal activity. (*People v. Hernandez* (2008) 45 Cal.4th 295, 299.) Driving a stolen vehicle is a public offense that could qualify as a felony. (Veh. Code §10851, subd. (a).)⁵ When a detainee on a traffic stop gives chase and during a high-speed pursuit engages in hazardous maneuvers threatening the lives of others, police officers can be justified in using deadly force to end the chase. (*Plumhoff v. Rickard* (2014) 572 U.S. 765, 777. See also *Weaver v. State of California* (1998) 63 Cal.App.4th 188, 209.) The United States Supreme Court has further held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend has "threatened infliction of serious physical harm" to the officer, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.)

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. (Pen. Code §834a)⁶ 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. (*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.)

⁵ All references to code sections here pertain to California code sections.

⁶ Significant modifications were made to Penal Code sections 196 and 835a pursuant to Assembly Bill 392. (Assem. Bill No. 392 (2018-2019 Reg. Sess.) as Chaptered August 19, 2019.) However, those modifications became effective on January 1, 2020 and do not apply retroactively to the date of this incident (December 15, 2019).

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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 stated that homicide by a public officer was justifiable when overcoming actual resistance in the discharge of a legal duty, in arresting persons charged with a felony and who are fleeing from justice or resisting such arrest.

At the time of this incident, Penal Code, section 835a stated the following:

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

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

The pertinent criminal jury instruction to this section was CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction, rooted in caselaw, stated 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 (as revised August, 2012).) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that state statutory requirements may also be 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.)

IMMINENENCE. “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.

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(*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.)

In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 348.) The court in *Scott* explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment...Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.

(*Scott, supra*, 39 F.3d at 915.)

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

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

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

The "reasonableness" test requires an analysis of "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Id.* at 397, citations omitted.) What constitutes "reasonable" self-defense or defense of others is controlled by the circumstances. A person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.)

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:

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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.) An officer may reasonably use deadly force when he confronts an armed suspect in close proximity whose actions indicate an *intent* to attack. (*Id.*) A car driven in a manner likely to produce death or great bodily injury can be deemed a deadly weapon. (*People v. Perez* (2018) 4 Cal.5th 1055, 1066.) Moreover, when a suspected felon leads law enforcement on a dangerous high-speed car chase at night and refuses to surrender after being surrounded by officers on foot, if the officers hear engine revving and the suspect continues to drive toward or amongst the officers, the officers may have probable cause to believe that the suspect poses an immediate threat of serious harm and it may not be unreasonable for the officers to use deadly force against that suspect. (*Monzon v. City of Murrieta* (9th Cir. 2020) 978 F.3d 1150, 1157-1161.) 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.)

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

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.) 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.)

ANALYSIS

This report evaluates the use of deadly force by SBCSD Deputy Joshua Gile and Sergeant Jonathan Woods. As indicated above, there were legal bases in place at the time of the incident that must be met before a use of force is justified and the right to self-defense ripens. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent’s submission.

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A use of force must be “reasonable” in order to be deemed lawful. When considered in the context of self-defense, whether Deputy Gile and Sergeant Woods were justified in employing lethal force involves a two-part analysis: (1) did each subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was his belief in the need to protect himself from an apparent imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of Deputy Gile and Sergeant Woods is stated here based upon each of their voluntary statements.

Deputy Gile was uniformed and in a marked SBCSD patrol unit when he signaled for Mr. Rascon to pull over. Deputy Gile activated his patrol unit overhead lights and siren. Deputy Gile stated that he saw Mr. Rascon look back at the deputy before Mr. Rascon, “stepped on the gas.” At first, Deputy Gile noted that Mr. Rascon ran at least three red lights to evade deputies. However, once Mr. Rascon got on the I-215 freeway, it appeared to Deputy Gile that Mr. Rascon was willing to take specific actions to provoke a collision in order to get away. Deputy Gile saw Mr. Rascon swerve into a disabled car on the freeway and saw a person there had to pin himself up against their car when Mr. Rascon passed. It appeared to Deputy Gile that Mr. Rascon got to within a couple of feet of that disabled vehicle and did so intentionally as the path of travel ahead was otherwise clear.

As the pursuit continued, Deputy Gile noted Mr. Rascon also began to “brake check.” Deputy Gile explained, “I believe [Mr. Rascon was] trying to make me crash or, one of my partners crash” by slamming on his brakes. Deputy Gile stated that Mr. Rascon brake-checked Deputy Gile at least three or four times, and also got in front of a “big rig,” “trying to get the big rig to hit one of [the deputies].” Deputy Gile stated that Mr. Rascon intentionally “brake checked” the semi-truck trailer because the freeway was again otherwise clear. As such, Deputy Gile believed that Mr. Rascon was in fact committing felony assault on deputies by using the semi-truck trailer “as a weapon.” Deputy Gile stated:

He escalated that pursuit, worse, worse than I’ve ever seen anybody do it. Never, never had anybody try [*sic*] and run a big rig off the road into me. I’ve never. He, he was gonna [*sic*] get away and it didn’t matter who, who he hurt or killed.

Deputy Gile also recalled Mr. Rascon exited the I-215 freeway at University Parkway so fast that when Mr. Rascon tried to turn right (south/southwest), Mr. Rascon swerved into oncoming traffic and had to slam on the brakes to avoid a head-on collision with another motorist. After Mr. Rascon recovered from that turn at a reduced speed, Deputy Gile saw and took an opportunity to apply a PIT maneuver to the truck. The PIT maneuver caused the truck to spin, stall and roll backwards into the gas station. Deputy Gile described parking his patrol unit approximately 10 feet to the front of where the truck stopped and running forward with a window punch and taser. Deputy Gile felt that he needed to get Mr. Rascon out of the truck and into custody before Mr. Rascon killed someone. As Deputy Gile approached toward the driver’s side of the truck, Deputy Gile ordered Mr. Rascon to show his hands. Deputy Gile also heard

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Deputy Desario give orders. Then, Deputy Gile heard the truck start and Deputy Gile saw Mr. Rascon manipulating the truck's gear shifter. Deputy Gile also heard Sergeant Woods giving commands to Mr. Rascon. Behind the truck, Deputy Gile saw vehicles and people at the gas station pumps. Deputy Gile was convinced that Mr. Rascon was not going to comply with orders and described Mr. Rascon as being unable to gain traction with the truck:

[Y]ou could hear the motor at its peak...the motor is screaming. The tires are screaming. [Mr. Rascon] is just trying to get it to catch one way or another. He's either gonna hit [Deputy Desario] and uh, kill him or he's gonna run over the people behind him and kill them. He didn't, it didn't seem like [Mr. Rascon] cared what direction he was going. He just wanted that thing moving.

Then, suddenly, Deputy Gile saw the truck lurch forward while Deputy Desario began to stumble toward the front of the truck. Based on the relative positions of the people at the gas station and the squealing truck, Deputy Gile estimated it would have taken only one to two seconds for Mr. Rascon to hit someone at the gas station or Deputy Desario. Deputy Gile believed that Mr. Rascon had no intent to surrender. Deputy Gile holstered his taser, drew his gun, and immediately started firing at the driver's side front tire of the truck. Deputy Gile stated that truck began to move in reverse as he fired. Deputy Gile recalled that just as Mr. Rascon began to move forward again, that he saw Sergeant Woods shoot Mr. Rascon in the head. After that, Deputy Gile stated he holstered his gun right away.

Sergeant Woods did not see the beginning of the pursuit of Mr. Rascon but he heard all of the radio traffic that aired when it did. Sergeant Woods joined the pursuit while it proceeded northbound on the I-215. At that time, it appeared to Sergeant Woods that Mr. Rascon made unnecessary lane changes as he fled, despite clear lanes of travel. Sergeant Woods opined that Mr. Rascon drove with "total disregard for public safety."

Sergeant Woods did not see Mr. Rascon exit the I-215 freeway at University Parkway. By the time he arrived at the scene, Deputies Gile and Desario were already outside of their units. Sergeant Woods parked his patrol unit behind Deputy Gile's unit and ran forward. Sergeant Woods stated that he drew his gun because he believed that they would be conducting a felony traffic stop. From behind Deputy Gile's unit, it appeared to Sergeant Woods that the truck was "hung up" on a tree stump or on the curb but Mr. Rascon was attempting to move the truck forward. Sergeant Woods heard the sound of the truck's engine revving as if it were "redlining" and the truck's tires were screeching. From his initial vantage point, Sergeant Woods believed that there were people and cars in his line of fire, so Sergeant Woods moved to the right (north) of Deputy Gile, to a position approximately 10 to 15 feet from the truck's driver's door and began giving commands that Mr. Rascon put his hands up and stop the car. Sergeant Woods heard Deputies Desario and Gile also shout commands to Mr. Rascon but Mr. Rascon's window was up. Sergeant Woods stated Mr. Rascon never complied with his commands nor did Mr. Rascon give any indication that he was going to comply. Additionally, Sergeant Woods believed that if the truck gained traction and moved forward that he and Deputies Desario and Gile could be struck and killed. Sergeant Woods described the truck as a "4500-pound missile coming

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towards us.” Sergeant Woods also believed that if truck moved in reverse, it would have taken one second or less for Mr. Rascon to mow down people he saw at the gas station about 40 feet away and kill them. It appeared to Sergeant Woods that Mr. Rascon was “gonna do everything he can or kill anybody he needs to, to get away.” Sergeant Woods saw Mr. Rascon continue to manipulate the truck’s gear shift, when Sergeant Woods saw Deputy Desario stumble near the truck. Sergeant Woods began firing at Mr. Rascon just as the truck began moving in reverse. Sergeant Woods recalled firing five times at Mr. Rascon, after which, the truck rolled forward. Afterwards, Sergeant Woods announced that shots had been fired and medical aid was needed.

The stated accounts of Deputy Gile and Sergeant Woods consistently include that they each perceived Mr. Rascon to be capable of immediately killing them or their partners prior to the time they fired their duty weapons. Moreover, both Deputy Gile and Sergeant Woods witnessed Mr. Rascon’s prior willingness to place the deputies and the public at risk of harm throughout the duration of the vehicle pursuit, further bolstering their belief that Mr. Rascon intended to inflict harm or death upon them. Based upon the foregoing, it is reasonable to conclude that Deputy Gile and Sergeant Woods each bore an honest and subjective belief that each man or another was under threat of imminent deadly harm or bodily injury at the time lethal force was used.

Reasonable Belief of Imminent Need to Protect. At the time of the incident, the analytical framework for determining what was “reasonable” was solely included in *Graham* and its progeny. This analysis also overlapped with the second component to a self-defense claim: a finding that Sergeant Woods and Deputy Gile each had an objectively reasonable belief of the need to use deadly force to protect himself or another from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. What first drew attention to Mr. Rascon prior to the traffic pursuit was that Mr. Rascon was driving a vehicle that had been reported stolen, a relatively low-level felony pursuant to Vehicle Code section 10851. When Mr. Rascon fled from deputies prior to getting on the freeway, Deputy Gile saw Mr. Rascon run at least three red lights. Deputy Desario saw Mr. Rascon run red lights and stop signs. These initial moving violations placed the motoring public at risk of harm and could form the basis of a felony pursuant to Vehicle Code section 2800.2, subdivision (a) [felony evading]. Mr. Rascon’s dangerous conduct intensified thereafter when he swerved into a disabled vehicle (and the person outside of it), nearly collided with another motorist *both* times he navigated off the freeway, and drove into on-coming traffic at University Parkway. For those, Mr. Rascon could be found to be engaging in assaultive criminal conduct upon innocent civilian motorists in violation of Penal Code section 245, subdivision (a) [assault with a deadly weapon (vehicle)]. Moreover, as indicated by Deputy Gile, Mr. Rascon’s driving pattern on the I-215 freeway that included speeding in excess of 100 mph, brake-checking deputies and brake-checking semi-truck trailers to provoke a collision could be a basis for violation of Penal Code section 245, subdivision (c) [assault with force likely to cause great bodily injury to pursuing law enforcement].

Mr. Rascon’s ultimate and desperate effort to flee after Deputy Gile applied a PIT maneuver to the truck, included high revving, wheel spinning, and gear shifting of the truck in the immediate

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presence of law enforcement and civilians on foot. That additional dangerous conduct could amount to attempted murder per Penal Code sections 664/187. Senior Investigator Cortinas and Sergeant Woods both estimated that based upon the relative position of the truck and the people at the scene, that it would have taken mere seconds for civilians at the gas station to get hit. The sight of a jerking truck with smoke billowing from its tires, together with the sound of engine revving and wheel screeching highlighted a sudden and imminent danger to everyone in the immediate vicinity of the truck. Had Mr. Rascon managed to ram the truck forward at deputies, Deputies Desario (at two to five feet) and Deputy Gile (at 10 feet) might have been instantly struck. Assault on a peace officer is a “serious” felony per Penal Code section 1192.7, subdivision (c). Attempted murder is both a “serious” and a “violent” felony per Penal Code section 667.5, subdivision (c)(12). The most serious crimes potentially being committed by Mr. Rascon, therefore, took place immediately prior to the use of lethal force by Deputy Gile and Sergeant Woods. As such, it was reasonable for Deputy Gile and Sergeant Woods to believe immediately prior to using lethal force that Mr. Rascon was engaged in increasingly dangerous felonious conduct and was continuing to place the deputies and the public at imminent risk of serious injury and/or death.

Resistance is another essential consideration in a *Graham* analysis. In order to effectuate Mr. Rascon’s arrest or detention, officers were authorized to use reasonable force. Each of the pursuing deputies and Sergeant Woods wore a department-issued uniform replete with SBCSD insignia and operated marked SBCSD patrol units. Mr. Rascon’s initial flight from Deputy Gile’s signaling of a traffic stop, alone, can cause one to conclude that Mr. Rascon was aware that law enforcement sought to detain him. Additionally, Deputies Desario and Gile and Sergeant Woods, each utilized their patrol unit emergency lights and sirens during the pursuit. The submission supports a conclusion, therefore, that the deputies involved reasonably believed Mr. Rascon knew he was being pursued by law enforcement. Mr. Rascon, also, should have known based upon the extended and dangerous nature of his flight, in addition to his own prior background including multiple law enforcement contacts, that he was to be taken into custody and/or arrested. Mr. Rascon had a duty to refrain from using any force or weapon to resist arrest. Here, Mr. Rascon used the stolen truck as a weapon against the pursuing units by taking specific actions to, at best—keep the pursuing deputies at bay, or worse—to provoke the deputies into a collision. Driving the stolen truck in a reckless manner, in total disregard for public safety, however, was not the pinnacle of Mr. Rascon’s resistance; the extreme measure of revving the truck’s engine, spinning its wheels and manipulating the gear shifter in the immediate presence of law enforcement and civilians on foot was. Doing so was tantamount to playing Russian roulette with, as described by Sergeant Woods, a “4500-pound missile,” with the Sergeant, deputies and civilians present all being potential victims. The facts and evidence support a finding that Mr. Rascon was actively resisting with potential lethal consequence at the time Deputy Gile and Sergeant Woods used lethal force.

Immediacy is the “most important” *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. As stated above, Mr. Rascon’s apparent felonious conduct began as a theft crime that quickly evolved into an apparent and immediate threat to human life. Deputy Gile

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initiated contact with Mr. Rascon because Mr. Rascon appeared to be driving a stolen vehicle. Sergeant Woods was aware of Deputy Gile's efforts and could reasonably rely on the information that was transmitted via radio during the onset of the pursuit. Once Mr. Rascon fled from pursuing deputies and ran red lights and stop signs while doing so, Mr. Rascon engaged in potentially harmful felonious conduct. Not long after that, Mr. Rascon's conduct became assaultive in nature when he intentionally swerved the truck to within feet of a disabled vehicle, brake-checked deputies or semi-truck trailers, drove in excess of 100 mph and drove into on-coming traffic. Mr. Rascon made repeated efforts over the course of the roughly nine-minute traffic pursuit to force deputies to stop pursuing him, even if it meant causing the deputies or other motorists to crash. Twice, Mr. Rascon narrowly missed getting into traffic collisions himself due to the dangerous manner in which he fled from deputies.

Even after Deputy Gile managed to temporarily disable the stolen truck and Mr. Rascon found himself surrounded by armed law enforcement, Mr. Rascon *still* did not show any intent to surrender. Deputies Desario and Gile and Sergeant Woods were each out in the open, uniformed, giving commands with their weapons drawn, and clearly attempting to take Mr. Rascon into custody without further incident. Instead of allowing the truck to remain stalled and to accept that there was no place to go, Mr. Rascon chose to restart the truck's engine and apply the gas pedal so hard that deputies believed Mr. Rascon was "redlining" the engine. The truck's wheels spun, squealed, and smoke billowed from them. By all apparent indication, the truck could have accelerated in any direction and without notice, move in any direction. Mr. Rascon appeared not to care which way he went or who would be struck (law enforcement or civilian) so long as he was able to escape detention. Not only was Mr. Rascon's conduct especially dangerous and unpredictable, it was well within reason for law enforcement officers encountering such an individual to believe that Mr. Rascon intended to meet the lethal force presented by law enforcement with his own measure of lethal force.

Ultimately, it was reasonable for the involved deputies to believe that Sergeant Woods, Deputies Desario and Gile, and civilians at the gas station were each within seconds from being hit, when Mr. Rascon was finally able to get the truck to lurch forward. The sudden forward movement, together with Deputy Desario stumbling toward the front of the truck, caused Sergeant Woods and Deputy Gile to appreciate an immediate threat of death to Deputy Desario, at a minimum, because he was the closest to the truck, but also to themselves and the observed civilians at the gas station. Deputy Gile and Sergeant Woods were not obligated to retreat, nor did they forfeit the right to defend themselves from the lethal danger posed by Mr. Rascon. Moreover, the deputies contact with Mr. Rascon after the PIT maneuver transpired very quickly. Approximately seven or eight seconds pass from the time Deputies Gile and Desario get out of their units to the time gunfire first erupts. The presence of multiple law enforcement personnel and civilians on foot at varying distances and directions around a truck that is poised to shoot quickly in any direction, at any time, without any notice, reasonably gives rise to a highly volatile situation that would impact any reasonable police officer in the same situation. Deputy Gile and Sergeant Woods were afforded no other reasonable choice in that tense and rapidly-evolving situation but to act swiftly to defend against the perceived imminent danger to themselves and others. Mr. Rascon's conduct, in total, demonstrated that Mr. Rascon had the present ability, opportunity and

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apparent intent to immediately cause death or serious bodily injury to others. As such, the necessity of the use of deadly force by Deputy Gile and Sergeant Woods cannot be second-guessed. Deputy Gile and Sergeant Woods reasonably believed that their action was instantly required to avoid death or great bodily injury.

Based on the foregoing, each of the primary *Graham* factors as applied, support a finding that the uses of lethal force by Deputy Gile and Sergeant Woods were reasonable. Deputy Gile and Sergeant Woods had to act instantly to confront the danger posed by Mr. Rascon, which by all indication was an immediate threat to kill them. As such, the use of lethal force by Deputy Gile and Sergeant Woods is also justifiable under Penal Code section 197.

CONCLUSION

Under the facts, circumstances and applicable law in this matter, the use of deadly force by Deputy Gile and Sergeant Woods was exercised in self-defense and in a reasonable manner. Accordingly, no criminal liability based on Deputy Gile and Sergeant Woods' conduct attaches in this incident.

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
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Dated: November 1, 2022

