



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: December 13, 2022

SUBJECT: Officer Involved Shooting (Fatal)

Officer: Sergeant Derek Bishop
Chino Police Department

Involved Subject: Li Xi Wang (Deceased)
Date of Birth 12/18/69
Fontana, CA

Date of Incident: July 3, 2019

Incident location: **** Rockrose Street
Chino, CA

DA STAR #: 2019-62805

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Max Kunzman

Report Number#: DR # 601900060 / H # 2019-52

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PREAMBLE

This was a fatal officer involved shooting by an officer of Chino Police Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 601900060 and H# 2019-52.

FACTUAL SUMMARY

On July 3, 2019, Sergeant Derek Bishop was assigned to the Chino Police Department Special Enforcement Team (SET). Members of SET attended an operational plan briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street in the City of Chino. A search warrant had been obtained for the residence. At the briefing, Sergeant Bishop was advised that there was one subject with no known criminal history and one vehicle associated to the Rockrose Street address. However, the officers were unable to confirm that the subject or the vehicle were connected to the residence. Sergeant Bishop also learned that Southern California Edison had indicated there could be a bypass and theft of electricity occurring at the residence which would be an indicator of an illegal marijuana cultivation operation.¹

After the briefing, members of SET gathered their equipment and made their way to **** Rockrose Street. Sergeant Bishop was wearing a black long sleeve shirt, vest, black pants, and boots. Sergeant Bishop's shirt had the word "Police" in white and silver block lettering along both sleeves, a badge over one side of the chest, and Chino Police Department patches on the shoulders. Sergeant Bishop's vest also had the word "Police" in white and silver letters on it. SET made their way to the front of the residence. Officer Franklin Ike gave knock and notice announcements. Officer Ike identified the officers as Chino Police Department, advised the occupants of the residence they had a search warrant, and told the occupants to come out with their hands up. Officer Ike also warned the occupants that if they did not come out with their hands up, force may be used against them. After waiting and receiving no response from anyone inside, Sergeant Bishop gave the order for Officer Ike to breach the front door.

After the front door of the residence was forced open, Officer Stephen Acosta saw an adult female, later identified as Witness #1, standing in the living room area with her hands up. Witness #1 responded to commands from officers to exit the residence and

¹ Marijuana plants, several thousand dollars in U.S. currency, and evidence of theft of utilities were located during the investigation.

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was escorted out to the front yard by Officer Ike and Probation Officer Teresa Barragan. Sergeant Bishop, Officer Ike, and Probation Officer Barragan asked Witness #1 whether there were any other individuals inside the residence. Witness #1 did not appear to speak English well and did not answer questions. Sergeant Bishop returned to the other officers who were waiting near a staircase while Corporal Margarito Jacquez gave additional commands, both in English and Spanish, for any occupants to come out with their hands up and warned that force may be used against them.

Sergeant Bishop, Officer Acosta, and Officer Anthony Semenza proceeded to search the rooms on the first floor of the residence. Once the officers completed their search of the garage area, the officers made their way back toward the staircase near the front door. Officer Semenza walked out of the garage first, followed by Sergeant Bishop; Officer Acosta trailed behind Sergeant Bishop. Corporal Jacquez and Officer David Thompson were positioned on the staircase covering the second floor of the residence. When Officer Semenza neared the staircase, he turned to his left and stepped up onto the staircase. As Sergeant Bishop neared the staircase, he saw a subject, later identified as Li Xi Wang, standing behind the opened front door.

Sergeant Bishop started to raise his duty weapon up and point it toward Wang. At approximately the same time, Sergeant Bishop told Wang, "Let me see your hands dude!" Sergeant Bishop said as soon as he gave Wang the command, Wang turned and looked directly at him "with this glare on his face." Sergeant Bishop said he saw Wang's right arm and shoulder go up. Sergeant Bishop believed Wang was reaching towards his waistband or hip and felt Wang's arm motion was consistent with the same motion a person would make when drawing a weapon from a holster. Sergeant Bishop said he feared for his life and the lives of his partners. Within less than a second of giving Wang the command, Sergeant Bishop fired one round at Wang. Sergeant Bishop yelled, "Oh shit!"

After the gunshot, Wang fell to the ground. Wang sustained a gunshot wound to the left side of his face. Sergeant Bishop put out "shots fired" over the radio and requested Chino Valley Fire Department personnel respond to the scene and stage. Wang was searched and found to be unarmed. Officer Semenza handcuffed Wang and moved him outside to the front porch. Sergeant Bishop and Officer Semenza started to render medical aid to Wang until fire department personnel arrived and took over. Wang was subsequently transported to a hospital for treatment. Wang succumbed to his injuries and was pronounced deceased on July 10, 2019.

On July 15, 2019, Wang's autopsy was conducted at the Los Angeles County Coroner's Office by Forensic Pathologist Witness #2. Witness #2 noted a gunshot entry wound to Wang's left cheek. Witness #2 determined the cause of death was a gunshot wound to the head.

STATEMENTS BY POLICE OFFICERS

On July 8, 2019, at approximately 9:13 in the morning, **Corporal Margarito Jacquez** was interviewed by Detective Max Kunzman and Detective Narcie Sousa.²

Corporal Jacquez, from the Chino Police Department, was assigned to the Special Enforcement Team (SET). On July 3, 2019, at approximately 3:00 in the afternoon, Corporal Margarito Jacquez attended a briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street in the City of Chino. A confidential citizen informant had sent a letter regarding concerns that the occupants of the Rockrose Street residence were illegally growing marijuana. The confidential citizen informant provided a license plate number for a vehicle associated with the residence. A search warrant had been obtained for the residence.

At the briefing, Officer David Thompson, who was assigned as the co-case agent, indicated he was unsure who lived at the residence. The license plate number came back to a vehicle registered to a person by the name of Witness #1. However, Officer Thompson was unable to find any association between the residence and Witness #1. The goal of the search warrant was to safely enter the residence and detain any subjects located inside. If the officers contacted anyone, SET would attempt to obtain any information related to officer safety in order to safely secure the residence. After the residence was secured, SET would process the scene for an illegal marijuana cultivation.

When SET arrived at the location, they parked three to four houses west of **** Rockrose Street. Corporal Jacquez was wearing a black long sleeve shirt, black load bearing vest, black pants, and boots. The shirt had the word "Police" in bold block white lettering on each sleeve and Chino Police Department patches on each shoulder. Corporal Jacquez' vest had the word "Police" in bold block silver lettering on the front and the back. Corporal Jacquez and the rest of team lined up in the positions they were given during the briefing. Sergeant Derek Bishop gave the order to "initiate" toward the residence and the officers moved forward. As the team neared the front of the residence, Corporal Jacquez and the other police officers took positions near the porch. Officer Franklin Ike gave knock and notice by striking a handheld ram on the exterior wall and gave verbal announcements on three separate occasions. Approximately thirty seconds passed and there was no response from any occupants inside the residence.

Sergeant Bishop gave Officer Ike the order to breach the front door. Officer Ike struck the front door one time, which caused the door to swing inward. Corporal Jacquez saw an adult Asian female, later identified as Witness #1, standing two to three feet inside the residence. Witness #1 immediately put her hands in the air and followed law enforcement commands to exit the residence. Corporal Jacquez grabbed Witness #1's body and passed her off to another officer behind him. Corporal Jacquez and Officer Stephen Acosta entered the residence.

² Corporal Jacquez reviewed his body worn camera video recording prior to his interview with Detective Kunzman and Detective Gibilterra.

Corporal Jacquez heard Sergeant Bishop and San Bernardino County Probation Department Probation Officer Teresa Barragan attempt to gather information from Witness #1 about any additional occupants in the residence. Based on the questions being asked and Sergeant Bishop's and Probation Officer Barragan's tone of voice, it did not appear to Corporal Jacquez that Witness #1 was being cooperative. Sergeant Bishop advised the team that he believed there may be another person inside the residence but was unable to confirm it with Witness #1. Corporal Jacquez made announcements in English and Spanish for anyone inside the residence to come out with their hands up.

Sergeant Bishop, Corporal Jacquez, and Officer Anthony Semenza walked through the first floor of the residence to search for additional subjects. Corporal Jacquez and Officer Thompson eventually moved to the top of the first landing of the staircase. Corporal Jacquez saw several rooms with plants and identified it as a marijuana cultivation. Corporal Jacquez believed he heard someone move but did not know where the sound came from.

Corporal Jacquez heard Officer Semenza say, "Coming back to you Jacqs." Corporal Jacquez knew the team had finished searching the first floor of the residence. Corporal Jacquez remained focused on the second floor when he heard someone step on the stairs behind him. Corporal Jacquez heard Sergeant Bishop say, "Let me see your hands," followed by one gunshot. Corporal Jacquez looked back to see what happened. Corporal Jacquez saw an adult male, later identified as Li Xi Wang, on the ground bleeding. Corporal Jacquez advised dispatch there was a shooting and one subject was down.

Corporal Jacquez joined Officer Thompson at the top of the stairs and yelled to the team at the bottom of the stairs. Corporal Jacquez kept his focus on the second floor as he spoke to the team. Corporal Jacquez suggested someone handcuff Wang and render medical aid. Once Officer Semenza and Officer Acosta joined Corporal Jacquez and Officer Thompson, the four officers finished searching the second floor and the backyard for additional subjects; no additional subjects were located. Corporal Jacquez was transported back to Chino Police Department.

On July 4, 2019, at approximately 12:14 in the morning, **Officer Franklin Ike** was interviewed by Detective Walter Peraza and Sergeant Angelo Gibilterra.³

Officer Franklin Ike, from the Chino Police Department, was assigned to SET as a gang investigator. On July 3, 2019, Officer Ike attended a briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street in the City of Chino. A search warrant had been obtained for the residence. Officer Ike indicated the goal of the search warrant was to safely enter the residence and detain any subjects located

³ Officer Ike reviewed his body worn camera video recording prior to his interview with Detective Walter Peraza and Sergeant Angelo Gibilterra.

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inside. If there were any subjects contacted, the officers would attempt to obtain officer safety information to safely secure the residence. After the residence was secured, SET would process the scene for an illegal marijuana cultivation.

After the search warrant operational plan briefing concluded, the members of SET followed each other to **** Rockrose Street. Officer Ike was wearing a black long sleeve shirt, black load bearing vest, black pants, and boots. Officer Ike's shirt had the word "Police" in bold block white lettering on each sleeve and Chino Police Department patches on each shoulder. Officer Ike's vest had the word "Police" in bold block silver lettering on the front and back, cloth badge on the left side, and his name on the right side. Officer Ike and the other officers positioned themselves in their respective line-up positions.

SET approached the front door of the residence. Once everyone was in position, Officer Ike made verbal announcements while knocking on the wall located east of the front door. Officer Ike made three announcements. First, Officer Ike said, "Chino Police Department. We have a search warrant. Come out with your hands up." Officer Ike then made two additional announcements stating, "This is Chino Police Department. Come out with your hands up or force may be used against you. We have a search warrant." After the last knock and announcement, Sergeant Derek Bishop gave the order to breach the front door.

Officer Ike rammed the front door with the breach tool to dislodge it from the door jam. The door did not swing all the way open and it felt like the door hit something or someone behind the door as Officer Ike retreated. Officer Ike saw an Asian female, later identified as Witness #1, being ordered out of the house. Officer Ike believed the front door failed to open all the way because it struck Witness #1. Officer Ike and San Bernardino County Probation Department Probation Officer Teresa Barragan escorted Witness #1 to the front yard. Officer Ike estimated they were approximately ten feet from the front door as the rest of SET entered the residence.

Officer Ike heard Corporal Margarito Jacquez, near the front door, giving announcements in English and Spanish asking if anyone else was inside the residence. Officer Ike asked Witness #1 whether she understood English. Witness #1 shook her head indicating she did not understand but Officer Ike believed Witness #1 understood English because she acknowledged Officer Ike when he asked Witness #1 if she understood English. Officer Ike asked Witness #1 several times whether there was anyone else inside the residence. Officer Ike believed Witness #1 was being deceptive; Witness #1 was looking down and hesitating to speak. Officer Ike explained to Witness #1 that the officers did not want anyone hurt and for the safety of everyone asked again whether anyone was inside the residence. Witness #1 continued to look away from Officer Ike and refused to speak. Eventually, Witness #1 shook her head side to side, indicating there was no one else inside the residence.

Officer Ike and Probation Officer Barragan placed Witness #1 in a seated position on the sidewalk on the north/west side of the residence. After a couple of minutes, they then moved Witness #1 to the sidewalk on the east side of the residence to avoid any

possible crossfire as officers inside were clearing the residence. Witness #1 appeared to experience a medical issue and started flailing on the ground. Officer Ike requested Chino Fire Department to respond and stage on Connifer Street, east of the residence. Approximately one minute passed and Witness #1 appeared to compose herself and sat up.

A couple of minutes later, Officer Ike heard a loud bang inside the residence which Officer Ike immediately recognized was a gunshot. Officer Ike was unsure what occurred inside the residence. Seconds before he heard the gunshot, Officer Ike overheard an unknown officer, by the front door, ordering someone to let him see their hands. Officer Ike was unsure whether he heard the unknown officer over a radio transmission or inside of the residence. Officer Ike estimated he was approximately 60 to 70 feet away from the front door of the residence when he heard the gunshot. Officer Ike and Probation Officer Barragan immediately moved Witness #1 further east of the residence to gain cover and to keep Witness #1 safe.

On July 4, 2019, at approximately 1:22 in the morning, **Probation Officer Teresa Barragan** was interviewed by Detective Walter Peraza and Sergeant Angelo Gibilterra.⁴

On July 3, 2019, Probation Officer Teresa Barragan, from the San Bernardino County Probation Department, was assigned to the Chino Police Department SET. On that date Probation Officer Barragan attended a briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street in the City of Chino. A search warrant had been obtained for the residence. The goal of the search warrant was to safely enter the residence and obtain any subjects inside. After the residence was rendered safe, the scene would be processed and any evidence for an illegal marijuana cultivation would be collected.

After the briefing concluded, the members of SET followed each other to **** Rockrose Street. Probation Officer Barragan was wearing a black long sleeve shirt, black load bearing vest, black pants, and boots. Probation Officer Barragan's shirt had the word "Probation" in bold block white lettering on each sleeve and San Bernardino County Probation Department patches on each shoulder. Probation Officer Barragan's vest had the word "Probation" in bold block yellow lettering on the back.

SET approached the front door of the residence. Officer Franklin Ike made knock and notice announcements. Officer Ike made several loud and clear announcements that Chino Police Department was there to serve a search warrant while at the same time using his breaching tool to hit the wall next to the front door to gain anyone's attention inside. Sergeant Derek Bishop gave Officer Ike the order to breach the front door. Officer Ike used the breaching tool to dislodge the front door from the door jam.

⁴ Probation Officer Teresa Barragan did not have her digital recorder activated on the date of the incident under review. Probation Officer Barragan reviewed the body worn camera video recording of Officer Franklin Ike prior to her interview with Detective Peraza and Sergeant Gibilterra.

Probation Officer Barragan heard other officers giving orders for someone to come out with their hands up. Probation Officer Barragan saw an adult Asian female, later identified as Witness #1, being escorted out of the residence. Probation Officer Barragan escorted Witness #1 to the front of the garage of the residence and handcuffed Witness #1. Probation Officer Barragan and Officer Ike asked Witness #1 if she spoke or understood English. Witness #1 did not answer and kept shaking her head from side to side, indicating she did not. Probation Officer Barragan asked Witness #1 several times if anyone else was inside the residence, but Witness #1 did not respond.

Officer David Thompson advised Probation Officer Barragan over the radio to move to the east of the residence to avoid possible crossfire. Officer Ike and Probation Officer Barragan escorted Witness #1 to the sidewalk on the east side of the residence. Probation Officer Barragan continued to ask Witness #1 whether anyone else was inside the house, but Witness #1 did not respond. Witness #1 appeared to experience some medical issue and Officer Ike requested Chino Fire Department to stage nearby.

Probation Officer Barragan was uncertain when but at some point, Witness #1 indicated there was one more person inside the residence. Witness #1 used a finger as she pointed to the residence indicating one more. Probation Officer Barragan asked Witness #1 if there was one more person inside the residence; Witness #1 nodded her head up and down, indicating there was. Probation Officer Barragan recalled Sergeant Bishop standing next to them when Witness #1 indicated there was one more person inside the residence. Probation Officer Barragan informed Officer Ike that Witness #1 indicated there was another person inside the house.

Probation Officer Barragan asked Witness #1 if she spoke Mandarin and Witness #1 nodded her head up and down, indicating she did. Probation Officer Barragan heard a gunshot come from within the residence. Probation Officer Barragan was unsure at what point she heard the gunshot and did not know whether the gunshot occurred before or after Witness #1 had indicated there was one more person inside of the residence. Probation Officer Barragan and Officer Ike immediately got Witness #1 out of the way and moved to gain cover.

On July 4, 2019, at approximately 1:12 in the morning, **Officer David Thompson** was interviewed by Detective Max Kunzman and Detective Narcie Sousa.⁵

Officer David Thompson, from the Chino Police Department, was assigned to SET. On July 3, 2019, Officer Thompson attended an operational briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street in the City of Chino. A search warrant had been obtained for the residence. Officer Thompson had located an individual associated to the address on Rockrose Street, but the most recent information was from 2015. The individual had no local contacts with law enforcement,

⁵ Officer Thompson reviewed his body worn camera video recording prior to his interview with Detective Kunzman and Detective Sousa.

warrants, or criminal history. There was a vehicle associated to the address which was registered to Witness #1. Officer Thompson was unable to find any additional information on Witness #1. At the briefing Officer Thompson provided the other members of SET the known information related to illegal marijuana grow. Officer Thompson also made the formation of SET personnel and assigned them specific tasks.

After the briefing, the members of SET drove their vehicles to **** Rockrose Street. Officer Thompson was wearing a black long sleeve shirt, black load bearing vest, black pants, and boots. Officer Thompson's shirt had the word "Police" in bold block white lettering on each sleeve and printed Chino Police Department patches on each shoulder. Officer Thompson's vest had the word "Police" in bold block white and silver lettering on the front and the back. SET approached the front entrance of the residence. Officer Franklin Ike gave three loud separate knock and notice announcements. Officer Ike identified the officers as members of the Chino Police Department, advised they had a search warrant, and gave a use of force warning. Sergeant Derek Bishop gave Officer Ike the order to breach the front door. Officer Ike then struck the front door once with the battering ram.

After the front door swung open, Officer Thompson heard Sergeant Bishop say he saw someone inside. Officer Stephen Acosta ordered a female subject, later identified as Witness #1, to exit the house. Witness #1 complied and was sent back to Officer Anthony Semenza and San Bernardino County Probation Department Probation Officer Teresa Barragan. Officer Thompson stood near the threshold of the door and heard Corporal Margarito Jacquez give additional announcements, similar to those given by Officer Ike to any individuals who remained inside the residence.

Officer Thompson and Corporal Jacquez moved up to a landing near the top of the staircase while other officers searched the first floor of the residence. Officer Thompson was facing north, and Corporal Jacquez was facing south. While on the landing, Officer Thompson heard a loud bang that he immediately recognized to be a gunshot. Officer Thompson could not recall hearing anything or anyone before or immediately following the gunshot. Officer Thompson turned east, toward the entryway, and grabbed Officer Semenza to get him out of what Officer Thompson believed was a threat in that area. Once Officer Thompson realized Sergeant Bishop, Officer Semenza, and Officer Acosta were not injured, Officer Thompson turned north and covered his assigned area. Officer Thompson and Corporal Jacquez waited on the landing while medical aid was summoned for a male subject, later identified as Li Xi Wang. Officer Thompson estimated Wang was approximately five feet from Officer Semenza and approximately six to seven feet from Sergeant Bishop and Officer Acosta.

On July 8, 2019, at approximately 9:47 in the morning, **Officer Anthony Semenza** was interviewed by Detective Max Kunzman and Detective Narcie Sousa.⁶

⁶ Officer Semenza reviewed his body worn camera video recording prior to his interview with Detective Kunzman and Detective Sousa.

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Officer Anthony Semenza, from the Chino Police Department, was assigned to SET. On July 3, 2019, Officer Semenza attended a briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street in the City of Chino. During the briefing, Officer Semenza learned additional information about the residence and subjects associated with the residence. After the briefing, Officer Semenza and the other members of SET drove to the residence on Rockrose Street.

Officer Semenza was wearing a black long sleeve shirt, black load bearing vest, black pants, ballistic helmet, and boots. Officer Semenza's shirt had the word "Police" in bold block white lettering on each sleeve and printed Chino Police Department patches on each shoulder. Officer Semenza's vest had the word "Police" in bold block white and silver lettering on the front and back. Officer Semenza's vest had the word "Police" in bold block white and silver lettering on the front and back.

Officer Semenza and the other members of SET approached the front door of the residence and took positions near the porch. Officer Franklin Ike gave three separate knock and notice announcements. Officer Ike used the handheld ram to knock on the exterior stucco wall while he identified the officers as Chino Police Department and advised any occupants inside the residence that the officers had a search warrant. Sergeant Derek Bishop gave Officer Ike the order to breach the front door. Officer Ike used the handheld ram and forced the front door open with one strike. When the door opened, Officer Semenza immediately saw an adult Asian female, later identified as Witness #1, inside. Witness #1 complied with officers' commands to exit the residence. Officer Semenza grabbed Witness #1 and walked her back to San Bernardino County Probation Department Probation Officer Teresa Barragan. Officer Semenza returned to the front of the residence.

SET personnel entered the house and took up positions in the entryway. Officer Semenza was behind Officer Derek Thompson waiting for instructions from Sergeant Bishop. Officer Semenza heard Corporal Margarito Jacquez making announcements, similar to those given by Officer Ike, both in English and Spanish. Corporal Jacquez also gave a use of force warning advising any occupants inside the residence to follow commands or force could be used against them.

Officer Semenza, Officer Stephen Acosta, and Sergeant Bishop searched the first floor of the residence. During their search, Officer Thompson and Corporal Jacquez moved toward the top of the staircase. Once the lower living area search was completed, Officer Semenza walked from the garage toward the front entryway to join Officer Thompson and Corporal Jacquez. Officer Semenza heard Sergeant Bishop and Officer Acosta announce themselves as they walked behind Officer Semenza.

As Officer Semenza walked into the entryway, he was focused on Officer Thompson and Corporal Jacquez who were standing on the staircase. Officer Semenza turned toward the staircase and took approximately two steps when he heard Sergeant Bishop's voice. Officer Semenza did not have an independent recollection of what Sergeant Bishop said. However, after Officer Semenza reviewed his body camera video recording, Officer Semenza knew Sergeant Bishop said, "Let me see your hands." Following Sergeant Bishop's command, Officer Semenza heard a loud noise he

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described as consistent with two 2x4's smacking together. Officer Semenza believed the sounds came from behind him and to the right.

Officer Semenza missed a step and went down on the stairs. Officer Semenza spun to the left and faced the entryway. Officer Semenza saw a male subject, later identified as Li Xi Wang, propped up against the front door. Wang suffered an apparent gunshot wound to the face. Officer Semenza pointed his handgun at Wang. After Officer Semenza saw the injury to Wang's face, Officer Semenza realized the loud noise he heard earlier was a gunshot. After several seconds, Officer Semenza approached Wang and handcuffed Wang's wrists to the rear. Officer Semenza helped Sergeant Bishop move Wang outside so they could render medical aid.

On July 3, 2019, at approximately 10:55 in the evening, **Officer Stephen Acosta**, was interviewed by Detective Max Kunzman and Detective Narcie Sousa.⁷

Officer Stephen Acosta, from the Chino Police Department, was assigned to Special Weapons and Tactics team (SWAT) and SET. On July 3, 2019, Officer Acosta attended a briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street. A search warrant had been obtained for the residence. Officer Acosta learned there were potentially two occupants and one vehicle associated to the residence. After the briefing, the members of SET drove to the residential area surrounding the residence on Rockrose Street.

On that date, Officer Acosta was wearing a black long sleeve shirt, black load bearing vest, black pants, and boots. Officer Acosta's shirt had the word "Police" in bold block white lettering on each sleeve and Chino Police Department patches on each shoulder. Officer Acosta's vest had the word "Police" in bold block silver lettering on the front and back. Once all the members of SET were in formation, they approached the front of the residence on foot.

Officer Acosta and the rest of SET took up positions near the porch. Officer Franklin Ike gave knock and notice announcements by striking a handheld ram on the exterior stucco wall. Officer Acosta identified the officers as Chino Police Department and advised any occupants inside the residence that the officers had a search warrant. Officer Acosta estimated thirty seconds passed with no response from anyone inside the residence. Sergeant Derek Bishop gave Officer Ike the order to breach the front door.

Officer Ike struck the front door with the handheld ram. The door swung inward momentarily but closed quickly. Officer Acosta pushed the door open with his hand and immediately saw an adult Asian female, later identified as Witness #1, standing in the living room area. Witness #1 responded to officers' verbal commands for her to come out of the house. Officer Acosta did not see anyone else in the immediate area. Officer

⁷ Officer Acosta reviewed his body worn camera video recording prior to his interview with Detective Kunzman and Detective Sousa.

Acosta and Corporal Margarito Jacquez entered the residence and took a position near the staircase. Officer Acosta immediately smelled fresh marijuana.

Officer Acosta heard Sergeant Bishop advise Witness #1 would not say whether there were any additional people inside the residence. Based on Officer Acosta's experience and Witness #1's statements, Officer Acosta believed there was someone else in the house. Officer David Thompson entered the house and took over Officer Acosta's position near the staircase. Officer Acosta helped Sergeant Bishop and Officer Anthony Semenza search the first floor of the residence and the garage.

Officer Semenza led Sergeant Bishop and Officer Acosta back to the front entryway. Sergeant Bishop and the staircase obstructed Officer Acosta's view in front of him. When Officer Acosta entered the front living room, he heard Sergeant Bishop say something about a suspect. Officer Acosta could not recall what specifically Sergeant Bishop said. A split second later, Officer Acosta heard one gunshot. Officer Acosta looked up and saw a male subject, later identified as Li Xi Wang, had suffered a gunshot wound to the left cheek. Wang fell to the floor and laid on his right side.

Sergeant Bishop gave an order for Wang to be handcuffed. Officer Semenza handcuffed Wang and conducted a quick pat down search. Officer Acosta recalled Sergeant Bishop speaking about rendering medical aid to Wang but could not recall what specifically was said. Officer Acosta said the officers agreed to move Wang out of the residence so he could be properly treated by the Chino Fire Department. Officer Acosta recalled Officer Semenza carrying Wang out to the front. Officer Acosta then assisted Corporal Jacquez and Officer Thompson with searching the second floor of the residence for additional subjects.

On July 11, 2019, at approximately 8:19 in the morning, **Sergeant Derek Bishop** was interviewed by Detective Max Kunzman and Detective Narcie Sousa.⁸

Sergeant Derek Bishop, from the Chino Police Department, was assigned to SET. On July 3, 2019, Sergeant Bishop attended a briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street in the City of Chino. A search warrant had been obtained for the residence. At the briefing, Sergeant Bishop learned that after a search of various databases, there was one subject with no known criminal history and one vehicle associated to the address on Rockrose Street. However, the officers were unable to corroborate that the subject or vehicle were connected to the house. Sergeant Bishop also learned that Southern California Edison had indicated there could be a bypass and theft of electricity occurring at the residence.

Sergeant Bishop estimated he has been involved in the serving of a search warrant more than one hundred times. The search warrants involved a variety of different types of investigations. During those search warrants that involved specifically narcotics

⁸ Sergeant Bishop reviewed his body camera video recording prior to his interview with Detective Kunzman and Detective Sousa.

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investigations, Sergeant Bishop said officers have located narcotics, baggies, scales, and weapons. The weapons have ranged from firearms, rifles, knives, and samurai swords.

After the briefing, Sergeant Bishop and the other members of SET drove to the area and parked west of **** Rockrose Street. Sergeant Bishop was wearing a black long sleeve shirt, a police vest, black pants, and boots. Sergeant Bishop's shirt had the word "Police" in bold block white and silver lettering on each sleeve and Chino Police Department patches on each shoulder. Sergeant Bishop's vest also had the word "Police" in bold block silver lettering on the front and back. SET approached the front of the Rockrose residence.

Officer Franklin Ike gave knock and notice announcements to the occupants inside the residence. Officer Ike struck the side of the house to make clear someone was at the front door. Sergeant Bishop recalled hearing "Police Department. Search warrant." Sergeant Bishop also recalled Officer Ike gave a use of force warning. Sergeant Bishop said the officers waited for a response and when they received none, Sergeant Bishop gave Officer Ike the order to breach the front door. Officer Ike struck the front door once with a ram and the door flew open.

Sergeant Bishop immediately saw a female with green gloves, later identified as Witness #1, standing just inside the front door. Officers started giving Witness #1 commands to exit the residence. Witness #1 complied with the commands and walked out of the residence. Sergeant Bishop handed Witness #1 off to San Bernardino County Probation Department Probation Officer Teresa Barragan and Officer Ike. Witness #1 was handcuffed and the officers then moved Witness #1 out of the way.

Sergeant Bishop overheard Probation Officer Barragan and Officer Ike talking to Witness #1. Initially, it did not sound to Sergeant Bishop that Witness #1 was being cooperative in answering any questions. Sergeant Bishop told Corporal Margarito Jacquez and Officer Stephen Acosta to move to a safe spot. Sergeant Bishop then went back to where Probation Officer Barragan and Officer Ike were standing with Witness #1. Officer Ike was trying to find out from Witness #1 whether there was anyone else inside the residence. Sergeant Bishop heard Officer Ike telling Witness #1 they wanted this to go safely and they did not want anyone to get hurt.

Sergeant Bishop tried asking Witness #1 whether there was anyone else inside the residence. Witness #1 would not answer Sergeant Bishop's questions. Sergeant Bishop said Witness #1 would just look down and shake her head no. Sergeant Bishop also told Witness #1 that the officers wanted things to go safely and did not want anyone to get hurt. Witness #1 was not forthcoming, so Sergeant Bishop decided to return to the residence to back up the other officers. Sergeant Bishop advised the other members of SET inside the residence that Witness #1 was not being forthcoming and told the other officers to be mindful. Once inside the residence, additional announcements were made in English and Spanish identifying the officers as Chino Police Department, advising the officers had a search warrant, and warning any occupants that force could be used against them if they did not comply.

Sergeant Bishop, Officer Semenza, and Officer Acosta went to clear the first floor of the residence while Corporal Jacquez and Officer David Thompson held their position on the staircase. In the garage, Sergeant Bishop recalled seeing a white mini SUV that had immature marijuana plants inside. The officers exited the garage and started to head towards the front door. Officer Semenza was walking in front of Sergeant Bishop. Officer Acosta was walking behind Sergeant Bishop. The officers made their way toward the staircase.

At the staircase, Sergeant Bishop saw Officer Semenza step up and turn his body so Officer Semenza's back was now facing the front door. As Sergeant Bishop started to come around, he saw a male subject, later identified as Li Xi Wang, hiding in a small area behind the front door. Sergeant Bishop described where Wang was hiding as a "very small tight area." Sergeant Bishop could see Wang's left hand which had a green glove on it. Wang's left hand was down in front of Wang's left hip. Wang's face was turned away from Sergeant Bishop facing the hinges of the door. Sergeant Bishop could see Wang's left side as Sergeant Bishop came around toward the staircase.

It appeared to Sergeant Bishop that Wang was "trying to wedge himself into the corner." As soon as Sergeant Bishop saw Wang, Sergeant Bishop started to draw his firearm. Sergeant Bishop's firearm had been in a low ready position. Sergeant Bishop explained that "when we take people into custody or contact somebody, we're at usually a lower ready to where you can see what's going on above your firearm so your firearm is not up in your face and you can't see things." Sergeant Bishop started to give Wang a command, "Let me see your hands dude." According to Sergeant Bishop, as soon as he started to give the command, Wang turned and looked directly at Sergeant Bishop with "this glare on his face." Sergeant Bishop immediately saw Wang's right shoulder and arm go up. Sergeant Bishop believed Wang was reaching towards his waistband or his hip. Sergeant Bishop described Wang's arm motion as the same motion a person would use to draw a weapon, when the person is drawing from a holster. Sergeant Bishop believed Wang was arming himself.

Sergeant Bishop described the glare on Wang's face as "a distinct look of somebody before they're gonna take action." Sergeant Bishop believed it was a desperate look. Sergeant Bishop feared he would never see his family again. Sergeant Bishop observed that Officer Semenza was only feet away from Wang and Officer Semenza's back was toward Wang. Sergeant Bishop feared Officer Semenza would never see his family again. Sergeant Bishop feared for both his own life and the life of his partner. Sergeant Bishop believed Wang was trying to kill the officers, so Sergeant Bishop fired one round from his duty weapon. Wang was struck just below his cheek on the left side of his face.

Sergeant Bishop said he never saw Wang's right hand even when Sergeant Bishop fired the weapon. After Sergeant Bishop discharged his weapon, Wang hit the front door which caused the door to start to close. Wang ultimately came to rest on his side down on the floor. Sergeant Bishop still could not see Wang's hand and commanded Wang to "let me see your hands." Wang did not move and did not respond to Sergeant

Bishop's command. Sergeant Bishop told Officer Semenza to handcuff Wang and search Wang for weapons.

Sergeant Bishop said Wang's right arm movement started towards the end of Sergeant Bishop's initial command. Sergeant Bishop believed his command is what prompted Wang to look at Sergeant Bishop and make eye contact. Sergeant Bishop did not believe he finished giving his command when Wang immediately made the right arm movement. Sergeant Bishop estimated he was less than ten feet from Wang when he fired his weapon. Sergeant Bishop felt everything happened so fast that he had no choice but to fire his weapon. Sergeant Bishop thought Wang was going to attack and try to kill the officers. Sergeant Bishop believed firing his duty weapon was the only way to save his life and the lives of his partners.

Sergeant Bishop heard Corporal Jacquez put out "shots fired" over the radio. Sergeant Bishop also got on the radio and said, "Shots fired. One subject down. Officers Code Four." Sergeant Bishop requested Chino Valley Fire Department respond to provide medical treatment to Wang. Given that the second story of the residence had not yet been cleared, Officer Acosta and Sergeant Bishop carried Wang to the front porch area just outside the house so the officers could start to render medical aid to Wang. Chino Valley Fire Department personnel arrived at the scene and took over rendering medical aid to Wang.

STATEMENTS BY CIVILIAN WITNESSES

On July 3, 2019, at approximately 9:47 in the evening, **Witness #1** was interviewed by Detective Walter Peraza and Deputy Victoria Peterson.⁹

Witness #1 she was living in New York but had been traveling to California since 2014. Witness #1 first came to California because she started dating Li Xi Wang. On the afternoon of July 3, 2019, Witness #1 arrived with Wang at the residence at **** Rockrose Street in the City of Chino. Witness #1 said it was the second time she had gone to the residence with Wang. Wang told Witness #1 to accompany him because he needed to do maintenance work at the residence.

While inside the residence, Wang washed plastic containers with a water hose. Witness #1 helped Wang by holding a light. Witness #1 and Wang were upstairs in a room when Witness #1 heard a loud bang at the front door. Witness #1 and Wang were unsure whether someone was knocking at the front door. Witness #1 thought it could have been a car accident outside. Witness #1 and Wang heard more loud banging sounds

⁹ Witness #1 spoke very little English. Deputy Victoria Peterson spoke Mandarin and translated during the interview. Prior to the interview, Deputy Peterson allowed Witness #1 to listen to a recording of a Miranda warning in Mandarin. Witness #1 indicated in Mandarin she understood her rights and she was willing to speak to Deputy Peterson and Detective Peraza.

and Wang told Witness #1 to go see what was going on. As Witness #1 was running down the stairs, she heard someone yelling “Police” outside of the residence. Witness #1 could not decipher what else was being said.

Witness #1 was going to open the front door, but someone forced open the door before Witness #1 was able to get to it. Witness #1 was not struck by the door. Witness #1 immediately recognized it was the police outside based on what the officers were wearing. Witness #1 said she understood when the officers were identifying themselves. Witness #1 was unsure whether Wang had followed her downstairs. Witness #1 said there was a possibility that Wang was inside by the front door, but she lost focus when she saw the police officers and weapons pointed at her. Witness #1 was ordered out of the residence and was handcuffed when she came out. Witness #1 said she was very scared and did not understand the officers because of anxiety and due to her limited English.

A female officer escorted Witness #1 to the front of the residence. Witness #1 said she wanted to speak but was unable because she was trying to compose herself. The officers escorted Witness #1 to the front of a neighbor’s house and had her sit on the sidewalk. After a couple minutes, Witness #1 calmed down and understood a female officer was asking if anyone else was inside the residence. Witness #1 rolled over on her side and pointed with her finger toward the residence indicating there was one more person inside. Witness #1 was unsure at what point she told the female officer there was one person inside the residence. Witness #1 never heard a gunshot but did see officers carrying Wang out of the residence.

INCIDENT AUDIO AND VIDEO

AXON BODY CAMERA VIDEO RECORDINGS. All body camera video recordings submitted were reviewed in their entirety.¹⁰ The body camera video recording summaries are of those officers who were inside the residence at the time of the incident under review. The body camera video recording summaries only cover the period of time from the beginning of each recording through the occurrence of the lethal force encounter.

Sergeant Derek Bishop

Sergeant Bishop had a body worn camera activated and recording during the incident under review. The recording was approximately 17 minutes and 07 seconds in length.¹¹ The video showed SET serving a search warrant at **** Rockrose Street. Officer Ike

¹⁰There was a thirty second delay between when the video recording started and when the audio could be heard on all the body worn camera video recordings submitted.

¹¹Times listed in the body camera video recording summaries are approximations based on the media player used and are not intended to reflect the actual time of occurrence.

could be heard giving knock and notice announcements. Sergeant Bishop gave Officer Ike the order to breach the front door. The officers took Witness #1 out of the residence and handed her off to Probation Officer Barragan. The other officers entered the residence and gave additional announcements to any occupants inside the residence. Sergeant Bishop, Officer Ike, and Probation Officer Barragan attempted to find out from Witness #1 whether there were additional occupants inside the residence. Witness #1 does not answer Sergeant Bishop's questions.

Sergeant Bishop and the other officers made their way through different rooms on the first floor of the residence. At 9 minutes and 46 seconds, Sergeant Bishop exited the garage and walked back into the interior of the residence. Sergeant Bishop was walking behind Officer Semenza back out toward the front of the residence. At 9 minutes and 59 seconds, Officer Semenza turned to his left toward the staircase. Sergeant Bishop was following behind Officer Semenza, positioned slightly offset to Officer Semenza's right. Li Xi Wang could be seen standing behind the open front door of the residence. The left side of Wang's body was facing Sergeant Bishop. Wang was wearing a short sleeve white shirt and dark colored pants.

At 10 minutes and 00 seconds, Sergeant Bishop said, "I'm gonna... Let me see your hands dude." Sergeant Bishop raised his duty weapon with his right hand. As Sergeant Bishop's left hand came up to grip his firearm, Sergeant Bishop fired one shot. At 10 minutes and 1 second, Sergeant Bishop said, "Oh shit!" At 10 minutes and 2 seconds, Sergeant Bishop said, "Fuck." At 10 minutes and 3 seconds, Sergeant Bishop said, "Fuck. Let me see your hands." At 10 minutes and 4 seconds, Sergeant Bishop said, "Let me see your hands." Wang's body collapsed to the floor. Wang had blood coming from the left side of his face. Wang was wearing green gloves on both hands. At 10 minutes and 20 seconds, Sergeant Bishop said, "I couldn't see his hands dude." At 10 minutes and 22 seconds, Sergeant Bishop said, "Pulled his hand up." At 10 minutes and 24 seconds, Sergeant Bishop said, "Ok, let's uh... Let's get him cuffed." At 10 minutes and 29 seconds, Sergeant Bishop said, "Let's go ahead and get him cuffed." At 10 minutes and 44 seconds, Sergeant Bishop said, "Hey, pat him down again. I didn't see his hands." At 10 minutes and 52 seconds, Sergeant Bishop put out over the radio, "We have shots fired, subject down. Officers are Code 4. Can you have CFD roll in."

Officer Anthony Semenza

Officer Semenza had a body worn camera activated and recording during the incident under review. The recording was approximately 23 minutes and 49 seconds in length. The video showed SET serving a search warrant at **** Rockrose Street. At 9 minutes and 53 seconds, Officer Semenza was walking toward the staircase near the open front door. At the 9 minutes and 57 seconds, Li Xi Wang could be seen standing behind the open front door as Officer Semenza turned to go up the staircase. At 10 minutes, Sergeant Bishop could be heard saying, "Let me see your hands dude." At 10 minutes and 1 second, a gunshot was heard. The shooting of Li Xi Wang was not seen on Officer Semenza's body camera recording.

Officer Stephen Acosta

Officer Acosta had a body worn camera activated and recording during part of the incident under review. The recording was approximately 6 minutes and 14 seconds in length. The video showed SET serving a search warrant at **** Rockrose Street. At 6 minutes and 14 seconds the video cut off. Officer Acosta explained the body camera was unintentionally turned off when he transitioned from his rifle to his handgun. The shooting of Li Xi Wang was not seen on Officer Acosta's body camera recording.

Corporal Margarito Jacquez

Corporal Jacquez had a body worn camera activated and recording during the incident under review. The recording was approximately 23 minutes and 58 seconds in length. The video showed SET serving a search warrant at **** Rockrose Street. At 9 minutes and 56 seconds, Sergeant Bishop could be heard saying, "Let me see your hands dude." At 9 minutes and 57 seconds, a gunshot was heard. The shooting of Li Xi Wang was not seen on Corporal Jacquez' body camera recording.

Officer David Thompson

Officer Thompson had a body worn camera activated and recording during the incident under review. The recording was approximately 23 minutes and 33 seconds in length. The video showed SET serving a search warrant at **** Rockrose Street. At 10 minutes and 6 seconds, Sergeant Bishop could be heard saying, "Let me see your hands dude." At 10 minutes and 7 seconds, a gunshot was heard. The shooting of Li Xi Wang was not seen on Officer Thompson's body camera recording.

DECEDENT

AUTOPSY. Witness #2, Forensic Pathologist for the Los Angeles County Coroner's Office conducted the autopsy of Li Xi Wang on July 15, 2019. Witness #2 noted a gunshot wound to Wang's left cheek, an abrasion on Wang's right cheek, and an abrasion on Wang's left side of Wang's back during the external examination. Witness #2 determined the cause of death was a gunshot wound to the head and death was within days.

Gunshot Wound of Left Cheek:

There was an entrance gunshot wound located on the left cheek, approximately 5 inches from the top of the head and 1 3/4 inches left of the anterior midline. The

hemorrhagic wound track sequentially perforated skin, soft tissue, bone, dura, brain, dura, and bone. The path of the projectile was left to right, front to back, and upward.

TOXICOLOGY. Heart blood, femoral blood, bile, liver tissue, urine, stomach contents, and vitreous humor samples were collected from Wang during the autopsy.

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

Drug Screen

- ELISA-Immunoassay – Cocaine – Presumptive Positive
- ELISA-Immunoassay – Marijuana: 11-nor-Delta-9-Carboxy-THC – Presumptive Positive

Drug Screen/Confirmation

- Cannabinoids – LC/MS/MS – 11-nor-Delta-9-Carboxy-THC, Free – Not detected
- Cannabinoids – LC/MS/MS – Delta 9-Tetrahydrocannabinol (THC), Free – Not detected
- Cocaine – GC/MS – Benzoylecgonine – Not detected
- Cocaine – GC/MS – Cocaethylene – Not detected
- Cocaine – GC/MS – Cocaine – Not detected

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

Drug Screen/Confirmation

- Cocaine – GC/MS – Benzoylecgonine – Not detected
- Cocaine – GC/MS – Cocaethylene – Not detected
- Cocaine – GC/MS – Cocaine – Not detected

CRIMINAL HISTORY. Wang has no known criminal history.

DE-ESCALATION

During the incident under review there were several de-escalation attempts made by law enforcement officers. Officer Ike gave the knock and notice. Officer Ike knocked four times on the east wall of the residence and said, “Chino Police Department. We have a search warrant. Come out with your hands up.” There was no response from inside the residence. Officer Ike knocked four more times on the east wall of the

residence and said, "This is the Chino Police Department. Come out with your hands up or force may be used against you. We have a search warrant." There was no response from inside the residence. Officer Ike knocked four additional times on the east wall of the residence and said, "This is the Chino Police Department. Come out with your hands up or force may be used against you. We have a search warrant." There was still no response from inside the residence, so the officers forced the front door open and entered the residence.

After the officers entered the residence, Corporal Jacquez said, "Attention inside the house. This is the Chino Police Department. We have a search warrant. Come out with your hands up or force will be used against you." Corporal Jacquez waited and when there was no response, Corporal Jacquez said, "Attention inside this house. This is the Chino Police Department. We have a search warrant. Come out with your hands up or force will be used against you." Corporal Jacquez waited and when he received no response, Corporal Jacquez then made the same announcement in Spanish.

After the officers entered the residence, Witness #1 was detained and moved to the front yard of the residence. Officer Ike and Probation Officer Barragan spoke to Witness #1 and tried to get additional information from her about whether there were additional people inside the house. Officer Ike said to Witness #1, "Is there anybody else inside the house? We don't want to hurt anybody. Is there anybody else inside the house?" Probation Officer Barragan asked Witness #1, "Who's in the house? Anybody in the house? How many people?" Officer Ike then told Witness #1, "We don't want to hurt anybody okay. We don't want, just like you were caught off guard. Safely."

Sergeant Bishop also tried to obtain information from Witness #1 as to whether there were additional people inside the residence. After Sergeant Bishop tried to establish whether Witness #1 spoke English, Sergeant Bishop questioned Witness #1 about whether there were other individuals inside the residence. Sergeant Bishop said to Witness #1, "How many people inside? You understand. Don't play games. Who inside? How many people? Nobody. No more people? No more people inside? No. Yes? No? We're gonna contact. We're gonna, we're gonna find em. So, tell us now. So, we can call them out. So, nobody gets hurt. Huh, just tell me yes or no. More people? Inside? Ok."

After the officers completed a search of the first floor of the residence, they started to move towards the second floor. As Sergeant Bishop made his way towards the staircase, Sergeant Bishop saw Wang hiding behind the open front door of the residence, Sergeant Bishop gave one verbal command to Wang. Sergeant Bishop told Wang, "Let me see your hands dude."

APPLICABLE LEGAL PRINCIPLES

A peace officer may use reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a)¹² Should the arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense or to use reasonable force to effect that arrest. (*Id.*) An arrestee has a duty to refrain from using force or any weapon to resist lawful arrest, if he knows or should know that he is being arrested. (Penal C. §834a.)

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

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Penal Code §196 states that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are charged with a felony and who are fleeing from justice or resisting said arrest. Application of the section is broader than on its face; formal written charges are not required. (*People v. Kilvington* (1894) 104 Cal. 86, 92.) 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.)

The relevant criminal jury instruction, as written by the Judicial Council of California, is set forth in CALCRIM 507 (“Justifiable Homicide: By Public Officer”). As it may be relevant in this case, a justifiable homicide by a peace officer requires finding a that the police officer acted as follows:

- (1) while arresting a person charged with a felony who was resisting arrest; while overcoming actual resistance to some legal process; or while performing any legal duty, and
- (2) the officer had probable cause to believe that the decedent posed a threat of death or great bodily injury either to the defendant or to others.

(CALCRIM 507)

No variation of the word “reasonable” appears in Penal Code §196, but the principle as applied necessarily requires that an officer’s conduct be reasonable. A homicide is

¹² All references to code sections here pertain to the California Penal Code, as they existed at the time of the incident. Significant modifications were made to 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 do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

justifiable under Penal Code §196 when the circumstances reasonably created a fear of death or serious bodily harm to the officer or to another. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349.) This standard under Penal Code § 196 is consistent with the Supreme Court standard for reasonable force as stated in *Garner, supra*, 471 U.S. at 11-12. Whether police actions are reasonable under Penal Code section 196 depends on the facts and circumstances known to the peace officer at the time of the arrest. This rule applies even if subsequent investigation reveals the suspect was not guilty of the suspected felony. (*Kilvington, supra*, 104 Cal. at 93.) Similarly, when a police officer reasonably believes a suspect may be armed, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.) California courts have held that when a police officer's actions are reasonable under the Fourth Amendment, the requirements of Penal Code § 196 are satisfied. (*Martinez v. County of Los Angeles, supra*, at 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.)

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

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

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, and;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger.

(CALCRIM 505.)

“Imminence is a critical component of both prongs 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* (9th Cir. 1994) 39 F. 3d 912, 915.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (*Id.*, see also CALCRIM 505.) 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* (1996) 47 Cal.App.4th 334, 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 v. Henrich, 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. Conner* (1989) 490 U.S. 386, 395.)

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

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

The "reasonableness" test requires an analysis of "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Id.* at 397, citations omitted.) What constitutes "reasonable" self-defense or defense of others is controlled by the circumstances. A person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person's beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) When considered 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.) 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.)

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. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.)

The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide “zone of protection” when the aggrieved conduct pertains to on-the-

spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

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

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

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

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

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].)

IMPERFECT SELF-DEFENSE OR IMPERFECT DEFENSE OF ANOTHER. A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed a person because he/she acted in imperfect self-defense or imperfect defense of another.

If the defendant acted in complete self-defense or defense of another, his action was lawful and he is not guilty of any crime. The difference between complete self-defense or defense of another and imperfect self-defense or imperfect defense of another depends on whether the defendant's belief in the need to use deadly force was reasonable.

The defendant acted in imperfect self-defense or imperfect defense of another if:

1. The defendant actually believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; AND
2. The defendant actually believed that the immediate use of deadly force was necessary to defend against the danger; BUT
3. At least one of those beliefs was unreasonable.¹³

A killing committed under these circumstances would be unjustified and unlawful, thereby subjecting the individual to criminal liability.

Penal Code Section 192. Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

- (a) Voluntary – upon a sudden quarrel or heat of passion.
- (b) Involuntary – in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.
- (c) Vehicular

Penal Code Section 245(a)(2). Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.

The relevant criminal jury instruction for Penal Code Section 245(a)(2), as written by the Judicial Council of California, is set forth in CALCRIM 875 (“Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury”).

To prove that the defendant is guilty of this crime, the People must prove that:

¹³ CALCRIM 571 (REVISED 2015) VOLUNTARY MANSLAUGHTER: IMPERFECT SELF-DEFENSE—LESSER INCLUDED OFFENSE; See also Penal code section 192(a); People v. Flannel, (1979) 25 Cal.3d. 668; People v. Randle (2005) 35 Cal.4th 987, overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172.

- (1) The defendant did an act with a firearm that by its nature would directly and probably result in the application of force to a person;
- (2) The defendant did that act willfully;
- (3) When the defendant acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone;
- (4) When the defendant acted, he had the present ability to apply force with a firearm to a person; and
- (5) The defendant did not act in self-defense or in defense of someone else.
someone else.

(CALCRIM 875.)

Penal Code Section 246.3(a). Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

The relevant criminal jury instruction for Penal Code Section 246.3, as written by the Judicial Council of California, is set forth in CALCRIM 970 (“Shooting Firearm or BB Device in Grossly Negligent Manner). To prove that the defendant is guilty of this crime, the People must prove that:

- (1) The defendant intentionally shot a firearm;
- (2) The defendant did the shooting with gross negligence;
- (3) The shooting could have resulted in the injury or death of a person; and
- (4) The defendant did not act in self-defense or in defense of someone else.

(CALCRIM 970.)

CALCRIM 970 further explains that gross negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when:

- (1) He acts in a reckless way that creates a high risk of death or great bodily injury.

AND

- (2) A reasonable person would have known that acting in that way would create such a risk.

ANALYSIS

On July 3, 2019, Sergeant Derek Bishop was assigned to the Chino Police Department Special Enforcement Team (SET). Members of SET attended an operational plan briefing regarding a possible illegal marijuana cultivation at a residence located at **** Rockrose Street in the City of Chino. A search warrant had been obtained for the residence. At the briefing, Sergeant Bishop advised that there was one subject with no known criminal history and one vehicle associated to the Rockrose Street address. However, the officers were unable to confirm that the subject or the vehicle were connected to the residence. Sergeant Bishop also learned that Southern California Edison had indicated there could be a bypass and theft of electricity occurring at the residence which would be an indicator of an illegal marijuana cultivation operation.

After the briefing, members of SET gathered their equipment and made their way to **** Rockrose Street. Sergeant Bishop was wearing a black long sleeve shirt, vest, black pants, and boots. Sergeant Bishop's shirt had the word "Police" in white and silver block lettering along both sleeves, a badge over one side of the chest, and Chino Police Department patches on the shoulders. Sergeant Bishop's vest also had the word "Police" in white and silver letters on it. SET made their way to the front of the residence. Officer Franklin Ike gave knock and notice announcements. Officer Ike identified the officers as Chino Police Department, advised the occupants of the residence they had a search warrant, and told the occupants to come out with their hands up. Officer Ike also warned the occupants that if they did not come out with their hands up, force may be used against them. After waiting and receiving no response from anyone inside, Sergeant Bishop gave the order for Officer Ike to breach the front door.

After the front door of the residence was forced open, Officer Stephen Acosta saw an adult female, later identified as Witness #1, standing in the living room area with her hands up. Witness #1 responded to commands from the officers to exit the residence and was escorted out to the front yard by Officer Ike and Probation Officer Teresa Barragan. Sergeant Bishop, Officer Ike, and Probation Officer Barragan asked Witness #1 whether there were any other individuals inside the residence. Witness #1 did not appear to speak English well and would not answer questions. Sergeant Bishop returned to the other officers who were waiting near a staircase while Corporal Margarito Jacquez gave additional commands, both in English and Spanish, for any occupants to come out with their hands up and warned that force may be used against them.

Sergeant Bishop, Officer Acosta, and Officer Anthony Semenza proceeded to search the rooms on the first floor of the residence. Once the officers completed their search of the garage area, the officers made their way back toward the staircase near the front door. Officer Semenza walked out of the garage first, followed by Sergeant Bishop; Officer Acosta trailed behind Sergeant Bishop. Corporal Jacquez and Officer David Thompson were positioned on the staircase covering the second floor of the residence. When Officer Semenza neared the staircase, he turned to his left and stepped up onto the staircase. As Sergeant Bishop neared the staircase, he saw a subject, later identified as Li Xi Wang, hidden behind the opened front door.

Sergeant Bishop started to raise his duty weapon up and point it toward Wang. At approximately the same time, Sergeant Bishop told Wang, "Let me see your hands dude." Sergeant Bishop said as soon as he gave Wang the command, Wang turned and looked directly at him "with this glare n his face." Sergeant Bishop said he saw Wang's right arm and shoulder go up. Sergeant Bishop believed Wang was reaching towards his waistband or hip and felt Wang's arm motion was consistent with the same motion a person would make when drawing a weapon from a holster. Sergeant Bishop said he feared for his life and the lives of his partners. Within less than a second of giving Wang the command, Sergeant Bishop fired one round at Wang. Sergeant Bishop immediately yelled, "Oh shit!"

After the gunshot, Wang fell to the ground. Wang sustained a gunshot wound to the left side of his face. Sergeant Bishop put out "shots fired" over the radio and requested Chino Valley Fire Department personnel respond to the scene and stage. Wang was searched and found to be unarmed. Officer Semenza handcuffed Wang and moved him outside to the front porch. Sergeant Bishop and Officer Semenza started to render medical aid to Wang until fire department personnel arrived and took over. Wang was subsequently transported to a hospital for treatment.

In this case, the analysis focuses on whether or not Wang posed an imminent threat of serious bodily injury or death to Sergeant Bishop or the other officers who were present. A substantial portion of Wang's physical actions which were described by Sergeant Bishop during his interview were not reflected in the video recording taken from Sergeant Bishop's body camera. Although the view provided by Sergeant Bishop's body camera were depended upon Sergeant Bishop's body movements and therefore, limited in scope, the recording itself showed it was the left side of Wang's body that was clearly visible to Sergeant Bishop. In contrast, the right side of Wang's body was furthest away from Sergeant Bishop's view, closest to the hinges of the door frame. When Wang first appeared on the video recording, Wang appeared to be standing, wedged in tight behind the opened front door. Sergeant Bishop's description of the critical movements by Wang leading up to the lethal force encounter was focused on Wang's right arm, right shoulder, and head.

Sergeant Bishop gave a detailed description of seeing Wang's right arm and right shoulder move as he gave Wang the command, "Let me see your hands dude." Although Sergeant Bishop said he never saw Wang's right hand, Sergeant Bishop stated Wang appeared to be reaching for his waistband or hip. Sergeant Bishop further described Wang's right shoulder and right arm movement as a motion similar to a motion a person would make when drawing a weapon from a holster. Wang's body was wedged behind the opened front door and the right side of Wang's body was furthest away from Sergeant Bishop's view. Approximately twenty seconds after the shooting, Sergeant Bishop could be heard on the body camera video recording saying, "I couldn't see his hands dude" and "Pulled his hand up." When reviewing Sergeant Bishop's body camera video, it is difficult to see if there is any physical movement on the part of Wang during the incident under review.

Sergeant Bishop also gave a detailed description of Wang turning his head and glaring directly at Sergeant Bishop. This motion was not captured on Sergeant Bishop's body

camera video recording. Sergeant Bishop's body camera was moving around during the incident and as a result, Wang's head went out of view at one point. Sergeant Bishop said Wang's head turn occurred as he was giving Wang the verbal command, "Let me see your hands dude." In the immediate aftermath of the shooting, Sergeant Bishop's body camera video recording showed Wang still standing before collapsing to the floor. Wang's head did not appear to be turned toward Sergeant Bishop's direction at the point of time immediately after the shooting. Wang suffered a gunshot wound to the left cheek. During the autopsy it was determined that the path of the projectile was left to right, front to back, and upward.

When Sergeant Bishop saw Wang hidden behind the opened front door, Sergeant Bishop said he feared for his life and feared for the lives of his partners. Sergeant Bishop was afraid that neither he nor Officer Semenza would see their families again if Wang was able to arm himself with a weapon. Sergeant Bishop's fear was based upon the "glare" Sergeant Bishop stated he observed Wang give him as well as Wang's right arm and right shoulder movement which Sergeant Bishop stated he observed. Sergeant Bishop concluded Wang's "glare" was "a distinct look of somebody before they are going to take action" and "a desperate look."

Sergeant Bishop explained that he was also afraid because Wang had made no effort to leave the residence in the estimated seven to eight minutes it took for officers to search the first floor of the residence. Important to note, that during the

seven to eight-minute period, Corporal Jacquez and Officer Thompson were positioned on the staircase, covering the second floor. The backs of both Corporal Jacquez and Officer Thompson were facing Wang. During this time period, Wang remained standing behind the front door of the residence. It does not appear that Wang made any attempt to flee the residence nor does it appear Wang made any attempt to come out from behind the opened front door and attack Corporal Jacquez or Officer Thompson.

If one were to only consider Sergeant Bishop's body camera video recording, the incident under review may initially appear to be an accidental or negligent discharge. The shooting occurred less than a second after Sergeant Bishop gave his verbal command to Wang. Also, Sergeant Bishop reacted after he shot Wang by saying, "Ohshit!" However, during Sergeant Bishop's interview he indicated the shooting was intentional and done in self-defense and defense of his partners.

When reviewing this incident for potential filing of any criminal charges, the Penal code section that is possibly relevant is Penal code section 192, voluntary manslaughter. Manslaughter is the unlawful killing of a human being without malice. If manslaughter is the only charged offense, the relevant jury instruction is CALCRIM 572. To prove a defendant guilty of voluntary manslaughter, the People must prove:

- (1) The defendant committed an act that caused the death of another person;
- (2) When the defendant acted, he unlawfully intended to kill someone; and

(3) He killed without lawful excuse or justification.

(CALCRIM 572.)

The question becomes whether a jury could conclude beyond a reasonable doubt that the shooting was a crime. Sergeant Bishop's belief that he and/or his partners were in imminent danger of being killed or suffering great bodily injury and he immediately needed to use deadly force to defend against that danger could be argued to be objectively unreasonable. It took approximately seven to eight minutes for the officers to clear the first floor of the residence during the service of the search warrant. All indications were that Wang was hidden behind the front door of the residence during this entire time period. There was no indication that Wang made any effort to flee the residence nor was there any indication that Wang made any effort to come out from behind the front door and attack any officer. At the time that Wang was shot, Wang did not appear to be actively resisting arrest or actively attempting to flee the residence.

The physical movements by Wang, as described by Sergeant Bishop, were not captured on Sergeant Bishop's body camera video recording. Sergeant Bishop could be heard on the body camera video recording, shortly after shooting Wang, saying, "I couldn't see his hands dude. Pulled his hand up." Sergeant Bishop never specified which hand he believed Wang pulled up and stated in his interview he never saw Wang's right hand. A jury could conclude, based upon how Wang was standing behind the front door, that Sergeant Bishop would not have a clear enough view to see Wang move his right arm and right shoulder in a motion similar to pulling a weapon from a holster and his perception was unreasonable. Although the view from Sergeant Bishop's body camera video would differ from what may be visible to Sergeant Bishop, a jury could conclude based upon the video recording that Wang had not moved prior to being shot by Sergeant Bishop. A jury could also determine that any arm and shoulder movement Sergeant Bishop believed he may have seen occurred after Sergeant Bishop told Wang, "Let me see your hands dude!" Given those circumstances, a jury could find Sergeant Bishop's belief that Wang posed an imminent threat of death or great bodily injury was unreasonable and Sergeant Bishop was not acting in self-defense or defense of another when he fired his weapon at Wang.

However, it is also reasonable for a jury to conclude that Sergeant Bishop's articulated basis for his decision to shoot was justified and that there is insufficient evidence to establish criminal liability on the part of Sergeant Bishop. When law enforcement was serving the search warrant, it involved a dangerous situation where there is known criminal activity. This search warrant was for marijuana grow and theft of utilities. Sergeant Bishop was giving the commands to the team for entering and searching. He was experienced with over 100 search warrant searches. His training taught him to always assume there are people present and

to assume that they have guns. Knock and notice was given with several commands. The notice also clearly identified that they were the police and that anyone inside needed to comply. A warning was given that if they did not comply, force could be used.

Immediately upon ramming the door open, a female was right in front of the door area. She was quickly removed. She did not resist and was safely taken outside. Sergeant Bishop repeatedly asked the female if more people were inside. The female was evasive and refused to answer but did shake her head slightly back and forth. The female later indicated that she clearly knew they were law enforcement when they shouted notice and when she saw them.

Wang was not cooperative with commands; it is clear that he did not want to be apprehended as he was not cooperative before or during the search. The suspect stayed in the hidden position for 7 to 9 minutes before being discovered. He did not flee out the door while officers were searching. His decision to stay hidden behind the door for such a lengthy time adds to the perceived risk from law enforcement's perspective and indicates his intent to "not give up" and possibly an intent to harm law enforcement to avoid being arrested for felony charges. The deception by the first occupant combined with the suspect hiding created a reasonable fear in Sergeant Bishop.

The bodycam does not show the complete view that Sergeant Bishop was able to see. Another detective's body blocked part of the view of Sergeant Bishop's bodycam. Sergeant Bishop had a better view than the view shown on his bodycam. Sergeant Bishop articulates how the suspect turned his head so that he was facing the Sergeant and he saw the suspect glare at him. The Sergeant described it as a distinct look of someone going to take action. The Sergeant then articulates that he saw the suspect's right shoulder and right arm go up. The suspect's left arm did not go up which indicates the suspect was still not cooperating. Sergeant Bishop believed the suspect was reaching for his waist or hip on his right side. The Sergeant described the movement as the same movement needed to draw a weapon. The Sergeant stated he believed the suspect was arming himself. Nevertheless, Bishop was never able to see his right hand.

The bodycam does not have the right angle to fully see the suspect's right shoulder and arm area. In watching the bodycam footage, the view of the bodycam does not show enough to know if there was movement of Wang's arm as described by Sergeant Bishop. It is clear that the video does not have the same vantage point as Sergeant Bishop's eyes would have and in fact at times, the bodycam view is blocked by movement of Sergeant Bishop and the officer in front of him. Given these facts and the applicable law, it cannot be proven beyond a reasonable doubt that a crime occurred.

CONCLUSION

Based on the facts presented in the reports and the applicable law, there is an evidentiary lack of justification for the use of deadly force, however, there is insufficient evidence to establish criminal liability on the part of Sergeant Bishop.

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