



## PUBLIC INFORMATION RELEASE MEMORANDUM

**DATE:** March 20, 2023

**SUBJECT:** Officer Involved Shooting (Non-Fatal)

**Officer:** Deputy Trever Strand  
San Bernardino County Sheriff's Department

**Involved Subject:** Minor Suspect (Injured)  
Date of Birth \*\*/\*\*/\*\*

**Date of Incident:** July 8, 2021

**Incident location:** \*\*\*\*\* Hillview St.  
Highland, CA

**DA STAR #:** 2021-52070

**Investigating Agency:** San Bernardino County Sheriff's Department

**Case Agent:** Detective Amy Bilbao

**Report Number#:** DR# 132102732 / H# 2021-089

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### TABLE OF CONTENTS

PREAMBLE.....	3
FACTUAL SUMMARY .....	3
STATEMENTS BY POLICE OFFICERS.....	4
Deputy Trever Strand.....	4

Sergeant Daniel Popa .....	7
Deputy Bogdan Nastase .....	9
Deputy Jacob Fisk .....	12
Deputy Daniel Jessup .....	14
Deputy Thun Houn .....	16
Deputy Joshua Gile .....	17
Deputy Charles Abney .....	18
Deputy Eric Bradshaw .....	20
Deputy Alondra Valdez .....	22
<b>STATEMENTS BY CIVILIAN WITNESSES .....</b>	<b>23</b>
Witness #1 .....	23
Witness #2 .....	25
Witness #3 .....	26
Witness #4 .....	26
Witness #5 .....	26
Witness #6 .....	26
Witness #7 .....	28
Witness #8 .....	29
Witness #9 .....	30
Witness #10 .....	31
Minor Suspect .....	32
Witness #11 .....	32
<b>INCIDENT VIDEO AND AUDIO .....</b>	<b>33</b>
Video Recording and Belt Recordings .....	33
<b>INVOLVED SUBJECT .....</b>	<b>37</b>
Injuries .....	37
Criminal History .....	37
<b>DE-ESCALATION .....</b>	<b>37</b>
<b>APPLICABLE LEGAL PRINCIPLES .....</b>	<b>38</b>
<b>ANALYSIS .....</b>	<b>45</b>
<b>CONCLUSION .....</b>	<b>46</b>

## **PREAMBLE**

This was a non-fatal officer involved shooting by a deputy from the San Bernardino County Sheriff's 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, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 132102732 and H# 2021-089.

## **FACTUAL SUMMARY**

On July 8, 2021, at around 6:34 in the evening, deputies from the San Bernardino County Sheriff's Department Central Station began an investigation into a LoJack notification of a stolen black Lexus sedan. An automated license plate reader notified the deputies that the stolen vehicle was at the intersection of Sterling Avenue and 9<sup>th</sup> Street in the City of Highland. The San Bernardino County Sheriff's Department aviation helicopter, 40-King-3, assisted with the investigation and was able to locate the stolen Lexus at an apartment complex located at \*\*\*\*\* Hillview Street. There was a Chevrolet Impala parked next to the Lexus.

Sergeant Daniel Popa and Deputies Trever Strand, Jacob Fisk, Thun Houn, and Bogdan Nastase, from the San Bernardino County Sheriff's Department Highland Patrol Station, responded to the location and stopped their patrol vehicles on Hillview Street near Baseline Street. The apartment complex where the stolen Lexus was located was a known high crime area. Sergeant Popa wanted to wait for the stolen Lexus to leave that location and then the deputies would conduct a high-risk traffic stop. 40-King-3 observed multiple subjects around the stolen vehicle. 40-King-3 observed one subject moving in and out of the driver seat of the stolen Lexus. 40-King-3 provided a description of that suspect, later identified as Minor Suspect, to the deputies on the ground. 40-King-3 advised the deputies that there were multiple Black male subjects congregating around the Lexus and Impala.

As the deputies waited in their patrol units, additional vehicles drove past the deputies and continued into the parking lot of the apartment complex. 40-King-3 observed Minor Suspect and the other individuals speak with the occupants of those vehicles. Concerned that Minor Suspect may have been told of the deputies' location, Sergeant Popa decided the deputies would roll in. Sergeant Popa, Deputy Strand, Deputy Fisk, Deputy Houn, and Deputy Nastase drove into the cul-de-sac and parked at the entrance of the parking lot. The deputies were in uniform and driving marked patrol vehicles which identified them as law enforcement officers with the San Bernardino County Sheriff's Department.

The deputies exited their patrol vehicles and started giving verbal commands to the group of approximately six individuals that were standing near the stolen Lexus. The

deputies ordered the subjects to put their hands up and get on the ground. Most of the group complied with the deputies' commands. Minor Suspect placed his hands partially up in the air. Minor Suspect was holding a cell phone in one hand and a pair of sunglasses in the other hand.

Minor Suspect placed his cell phone and sunglasses on the rear of the Lexus and started to walk away from the deputies. Deputy Strand walked in between the Lexus and the Impala and moved towards Minor Suspect. Deputy Strand gave Minor Suspect verbal commands to get on the ground and put his hands up. Minor Suspect did not comply with Deputy Strand's commands and continued to walk away. Deputy Strand noticed Sergeant Popa had a subject, later identified as Witness #10, detained at the rear of the stolen Lexus. Minor Suspect started to move into an adjacent lot behind where Sergeant Popa had detained Witness #10.

Deputy Strand observed Minor Suspect reach into the waistband of his pants with his right hand. Deputy Strand believed Minor Suspect was possibly reaching for a weapon. Deputy Strand became concerned that Minor Suspect may produce a gun and shoot Deputy Strand and/or Sergeant Popa. Deputy Strand knew Sergeant Popa was in a vulnerable position given Sergeant Popa's back was to Minor Suspect and Sergeant Popa's focus was on Witness #10. Deputy Strand ran toward Minor Suspect and tried to grab Minor Suspect's arm. Deputy Strand wanted to prevent Minor Suspect from producing a weapon. Minor Suspect continued to reach into the waistband of his pants and ignore Deputy Strand's verbal commands. Deputy Strand feared for his life and feared for the lives of his partners. Deputy Strand fired one round from his duty weapon which struck Minor Suspect in the arm.

After the shooting, Minor Suspect fell to the ground. Minor Suspect was handcuffed. Medical aid was requested to respond to the scene. Minor Suspect was transported to the hospital for medical treatment. Minor Suspect suffered a gunshot wound to the left arm.

Minor Suspect was not armed. A handgun was located during a search of Witness #10's person. The weapon was a Glock .40 caliber semi-automatic handgun.

### **STATEMENTS BY POLICE OFFICERS**

On July 22, 2021, at approximately 3:09 in the afternoon, **Deputy Trever Strand** was interviewed by Detective Amy Bilbao and Detective Brett Chandler.<sup>1</sup>

On July 8, 2021, Deputy Trever Strand, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Highland Patrol Station. Deputy Strand was

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<sup>1</sup> Deputy Strand reviewed audio and video recordings from the incident under review prior to being interviewed by Detective Bilbao and Detective Chandler.

wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. Deputy Strand was at the station when he heard a sergeant from the Central Station air that he received a LoJack hit for a stolen vehicle on a late 90's model Lexus. Deputy Strand then received an email notification that it hit an automated license plate reader in the City of Highland. Deputy Strand got into his patrol vehicle and went to search for the stolen vehicle.

40-King, the San Bernardino County Sheriff's Department helicopter, broadcasted over the radio that they had located the stolen vehicle at the end of a cul-de-sac on Hillview Street, north of Baseline Street. Deputy Strand was the first unit to arrive on scene and decided to stage. Deputy Strand parked his patrol vehicle on the north curb of Baseline Street and waited for additional units. Sergeant Daniel Popa parked behind Deputy Strand's patrol vehicle.

Deputy Strand messaged Sergeant Popa on the computer in his vehicle and asked what the plan was. Deputy Strand knew Hillview Street was in a very violent neighborhood and deputies do not like to go in there if they did not have to. Deputy Strand was aware of five separate shootings, a homicide, assault with a deadly weapon, and domestic disputes that have taken place in the Hillview Street area. Initially the deputies were going to wait for the Lexus to go mobile and leave the area since 40-King<sup>2</sup> was stating that there were numerous subjects going in and out of the vehicle. However, during that time, vehicles were passing the deputies' vehicles and pulling into Hillview Street. 40-King indicated those vehicles were parking next to the Lexus and it appeared that the occupants knew the individuals standing around the Lexus. Sergeant Popa decided the deputies would go in.

Deputy Strand drove down Hillview Street and parked near the end of the cul-de-sac. Deputy Strand exited his patrol vehicle and observed ten subjects standing around the stolen vehicle and the other vehicles parked adjacent to it. Deputy Strand saw an individual, later identified as Minor Suspect, standing in the open driver's door jamb area, directly next to the driver's seat of the stolen vehicle. Minor Suspect matched the description of the driver of the stolen vehicle that was previously provided by the aviation deputies.

Deputy Strand pointed his duty weapon at Minor Suspect and started giving Minor Suspect verbal commands to put his hands up. Initially Minor Suspect complied and put his arms up to about shoulder height. As the deputies got closer to the group, Sergeant Popa stopped a male subject who looked like he was about to run from the scene. Sergeant Popa detained the individual against the trunk of the stolen vehicle. Deputy Strand noticed Minor Suspect was looking around the area like he was trying to find an escape route. At that time, Minor Suspect started to walk away from the vehicle and towards Sergeant Popa.

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<sup>2</sup> Deputy Strand referred to the San Bernardino County Sheriff's Department law enforcement helicopter that was present during the incident under review as 40-King in his interview. The complete call sign for the helicopter was 40-King-3.

Deputy Strand followed Minor Suspect as he tried to leave the scene. Deputy Strand started telling Minor Suspect to get on the ground as well as put his hands up. Deputy Strand observed Minor Suspect put his right hand inside the waistband of his pants. Deputy Strand feared Minor Suspect was reaching for a concealed weapon. Minor Suspect started walking east behind Sergeant Popa whose back was facing towards Minor Suspect. Deputy Strand was afraid Minor Suspect was going to harm him or Sergeant Popa. Deputy Strand ran towards Minor Suspect.

Minor Suspect bladed his stance away from Deputy Strand, concealing his waistband as Minor Suspect continued to reach inside his pants. Deputy Strand estimated he was five to seven feet away from Minor Suspect at that time. At some point, Deputy Strand observed Minor Suspect had his whole arm, all the way up to his elbow, inside of his pants. Deputy Strand believed Minor Suspect was looking for a weapon. Deputy Strand ran towards Minor Suspect and grabbed his left arm. Deputy Strand did not want Minor Suspect to be able to use his left arm to retrieve the weapon. Minor Suspect pushed off Deputy Strand and bladed his stance, again concealing his waistband from Deputy Strand's view. It appeared to Deputy Strand that Minor Suspect was continuing to look for an object inside of his pants. Deputy Strand tried to grab Minor Suspect by the collar of his shirt, but Minor Suspect was pulling away from him.

Next, Deputy Strand saw Minor Suspect start to remove his arm slightly from his pants. Deputy Strand believed Minor Suspect was going to produce a weapon with the intent to harm him or Sergeant Popa. Deputy Strand fired a single round from his handgun at Minor Suspect. Deputy Strand estimated he was one to two feet away from Minor Suspect at that time. Deputy Strand also estimated it was three to five seconds from the time he grabbed Minor Suspect's arm to when he discharged his weapon.

As soon as Deputy Strand fired his weapon, Minor Suspect fell to the ground. Deputy Strand believed Minor Suspect was dead because he fell in "a lifeless manner." Deputy Strand gave Minor Suspect verbal commands to put his hands behind his back, but Minor Suspect did not acknowledge the commands or make any effort to comply with them. Deputy Strand estimated from the time he parked his vehicle near the end of the cul-de-sac until the time of the lethal force encounter was approximately twenty-five seconds.

Deputy Strand holstered his duty weapon and started handcuffing Minor Suspect. Minor Suspect started moving and Deputy Strand noticed blood running down from Minor Suspect's left bicep area. After Minor Suspect was handcuffed, Deputy Strand used his pocketknife to cut Minor Suspect's shirt and expose any potential injuries. Deputy Strand saw what appeared to be a gunshot wound near Minor Suspect's left shoulder. Deputy Strand obtained a tourniquet from Sergeant Popa and then applied the tourniquet high up on Minor Suspect's left arm, above the gunshot wound. Minor Suspect started repeatedly yelling, "Why did you shoot me?" Minor Suspect then stated he could not breathe. Minor Suspect appeared alert, so Deputy Strand assisted Minor Suspect to his feet. Deputy Strand escorted Minor Suspect to Sergeant Popa's patrol vehicle and placed him in the back seat.

On July 21, 2021, at approximately 3:12 in the afternoon, **Sergeant Daniel Popa** was interviewed by Detective Nicolas Craig and Detective Amy Bilbao.<sup>3</sup>

On July 8, 2021, Sergeant Daniel Popa, from the San Bernardino County Sheriff's Department, was assigned as a watch commander at the Highland Patrol Station. On that date, Sergeant Popa was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, at around 6:48 in the evening, Sergeant Popa received a phone call from a sergeant assigned to the Central Station about a "LoJack hit" from a stolen vehicle in the area of Waterman Avenue and Third Street in the City of San Bernardino. The stolen vehicle was a black Lexus sedan. At around 6:55 in the evening, San Bernardino County Sheriff's Department Dispatch broadcasted an automated license plate reader notification for the same stolen vehicle at the intersection of 9<sup>th</sup> Street and Sterling Avenue in the City of Highland. Sergeant Popa left the Highland Station to search for the stolen Lexus.

At approximately 7:00 in the evening, Deputy Eric Bradshaw, the tactical flight officer on 40-King<sup>4</sup>, broadcasted the stolen Lexus was on Hillview Street in the City of Highland. Deputy Bradshaw advised the Lexus was backed into a parking stall in a parking lot at the end of the cul-de-sac with several subjects around it. Sergeant Popa knew Hillview Street was an area with gang violence, guns, and stolen vehicles. To avoid a possible ambush, Sergeant Popa decided the safest way to take the suspect into custody and recover the stolen vehicle was to wait until the suspect drove the Lexus out of the cul-de-sac.

At around 7:02 in the evening, Sergeant Popa parked his patrol vehicle on the north side of Baseline Street, approximately one hundred feet east of Hillview Street. Sergeant Popa parked behind Deputy Trever Strand's patrol vehicle. Sergeant Popa told 40-King to "keep a wide orbit" over the stolen vehicle to maintain the element of surprise. Deputy Bradshaw broadcasted a description of the suspect, Minor Suspect, who was seated in the driver's seat of the Lexus. Deputies Daniel Jessup, Jacob Fisk, Thun Houn, and Bogdan Nastase broadcasted they were enroute to assist Sergeant Popa and Deputy Strand with the stolen Lexus investigation.

Sergeant Popa saw two additional patrol vehicles park behind his unit on Baseline Street, but Sergeant Popa was unsure who was in those patrol vehicles. Deputy Strand sent Sergeant Popa a message regarding the proposed plan to recover the stolen Lexus and take the suspect into custody. Sergeant Popa called Deputy Strand and said he intended to wait for the stolen Lexus to "go mobile" and then conduct a felony traffic stop. The stolen Lexus was parked in an area known for gang violence and subjects who were not friendly to law enforcement. Sergeant Popa was also worried the

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<sup>3</sup> Sergeant Popa reviewed audio and video recordings from the incident under review prior to being interviewed by Detective Bilbao and Detective Craig.

<sup>4</sup> Sergeant Popa referred to the San Bernardino County Sheriff's Department law enforcement helicopter that was present during the incident under review as 40-King in his interview. The complete call sign for the helicopter was 40-King-3.

deputies would be at a tactical disadvantage due having only one way in and one way out of the cul-de-sac. Sergeant Popa advised Deputies Fisk, Houn, Nastase, and Jessup they were going to wait for the Lexus to go mobile.

While the deputies were staged, Deputy Bradshaw continued to provide updated information on the subjects in the parking lot, Minor Suspect, and the stolen Lexus. Deputy Bradshaw advised the subjects in the parking lot were talking and appeared to know one another. Deputy Bradshaw indicated two vehicles pulled into the parking lot with the stolen Lexus. Deputy Jessup advised the vehicles passed by their marked sheriff's vehicles on Baseline Street. Sergeant Popa believed the two vehicles which drove past their location on Baseline Street probably alerted Minor Suspect and the other subjects to the deputies' presence.

Sergeant Popa became concerned Minor Suspect and the other subjects in the parking lot would either flee the location on foot, arm themselves with weapons, or prepare to ambush the deputies. At around 7:05 in the evening, Sergeant Popa broadcasted over the radio for the deputies to go in. Sergeant Popa and Deputies Strand, Fisk, Houn, and Jessup drove north on Hillview Street. The deputies parked their vehicles at the end of the cul-de-sac, west of the parking lot where the stolen Lexus was parked. When Sergeant Popa exited his patrol vehicle, he heard deputies say, "Put your hands up" and "Get on the ground."

Sergeant Popa saw Minor Suspect standing outside of the open driver's side door of the stolen Lexus. Sergeant Popa saw another individual, later identified as Witness #10, walk south from the passenger side of the Lexus to the duplex building south of the parking lot. Witness #10 ignored deputies' commands to get on the ground. Sergeant Popa walked from his patrol vehicle through a dirt lot, south of the parking lot, to detain Witness #10. Sergeant Popa pointed his duty weapon at Witness #10 and ordered him to lay on the ground. Witness #10 raised his hands and walked back to the passenger side of the Lexus but did not lay on the ground.

Sergeant Popa stood behind Witness #10, facing west, at the rear quarter panel of the Lexus. Sergeant Popa held Witness #10's hands behind his back. Sergeant Popa searched Witness #10 for weapons. Approximately three seconds later, Sergeant Popa saw Minor Suspect walk south from the driver side of the stolen Lexus. Sergeant Popa indicated as Minor Suspect walked south past the rear quarter panel of the Lexus, Minor Suspect reached his entire right hand, up to his wrist, into the front of his waistband. Sergeant Popa believed Minor Suspect was reaching in his waistband to retrieve a handgun. Sergeant Popa said the waistband is a common place for people to store handguns.

Sergeant Popa saw Deputy Strand following behind Minor Suspect as Minor Suspect walked into the dirt lot and turned east. Sergeant Popa turned his head and looked over his shoulder. Sergeant Popa saw Minor Suspect walk east behind him as Sergeant Popa was preparing to handcuff Witness #10. Sergeant Popa feared for the safety of his deputies because Minor Suspect reached into his waistband as Deputy Strand



attempted to detain him. Sergeant Popa believed the only reason a person would reach into their waistband when they are contacted by law enforcement would be to retrieve a handgun.

Sergeant Popa saw Deputy Fisk and Deputy Houn on the north side of the parking lot with their duty weapons pointed at other subjects in the parking lot. Sergeant Popa indicated the other subject around the stolen Lexus were on the ground and appeared to comply with orders by Deputy Fisk and Deputy Houn. Sergeant Popa looked slightly southeast of his location at the rear quarter panel of the Lexus and saw Minor Suspect and Deputy Strand in a dirt lot. Deputy Strand held his duty handgun in his right hand and had the weapon pointed at Minor Suspect's upper body. Deputy Strand gripped one of Minor Suspect's arms with his left hand. Minor Suspect was attempting to pull away from Deputy Strand. Sergeant Popa estimated Minor Suspect and Deputy Strand were three feet apart. Sergeant Popa estimated he was approximately ten feet northwest of Minor Suspect and Deputy Strand's location.

Minor Suspect turned west and faced Deputy Strand. Deputy Strand still had a hold of Minor Suspect's arm. Sergeant Popa indicated Minor Suspect reached his entire right hand into the front of his waistband a second time as Minor Suspect faced Deputy Strand. Approximately three seconds later, Sergeant Popa heard a single gunshot. Sergeant Popa did not see who fired the handgun. When Sergeant Popa looked east over his left shoulder and saw Minor Suspect laying on the ground. Minor Suspect was yelling but Sergeant Popa was unsure what Minor Suspect was saying. Deputy Strand and Deputy Nastase pointed their duty weapons at Minor Suspect. Sergeant Popa placed Witness #10 in handcuffs and located a handgun tucked into Witness #10's waistband. Sergeant Popa yelled "gun" to alert the other deputies he had located a handgun. It was common for multiple people in a group to carry handguns and Sergeant Popa wanted to make sure the other deputies conducted thorough searches for additional handguns.

Sergeant Popa removed the weapon from Witness #10's waistband and passed custody of Witness #10 over to another deputy at the scene. Approximately thirty seconds after the lethal force encounter, Sergeant Popa requested medical aid to respond to the scene. Sergeant Popa saw Deputy Strand and Deputy Nastase apply a tourniquet to one of Minor Suspect's arms. Sergeant Popa secured Witness #10's handgun in his patrol vehicle. Sergeant Popa requested additional deputies from the Central Station respond to the scene.

On July 20, 2021, **Deputy Bogdan Nastase** was interviewed by Detective Brett Chandler and Detective Nicolas Craig.<sup>5</sup>

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<sup>5</sup> Deputy Nastase reviewed audio and video recordings from the incident under review prior to being interviewed by Detective Chandler and Detective Craig.

On July 8, 2021, Deputy Bogdan Nastase, from the San Bernardino County Sheriff's Department, was assigned to the Highland Patrol Station. On that date, Deputy Nastase volunteered to work overtime to conduct street racing focused patrol. At around 7:00 in the evening, Deputy Nastase was inside the station getting dressed and ready for his shift. Deputy Nastase wore a San Bernardino County Sheriff's Department uniform and drove a marked patrol vehicle. Deputy Nastase heard a radio broadcast from an unknown deputy advising there was a LoJack warning regarding a stolen vehicle on Waterman Avenue in the City of San Bernardino. The radio broadcast indicated the stolen vehicle was a dark colored Lexus sedan with silver trim.

As Deputy Nastase continued to get his gear ready for his shift, he heard a radio update which indicated the stolen vehicle was now near 9<sup>th</sup> Street and Sterling Avenue in the City of Highland. Deputy Nastase realized the stolen vehicle was traveling toward his location. Deputy Nastase went outside to his patrol vehicle and began to log into the vehicle's computer. When Deputy Nastase turned on his patrol unit, his LoJack device indicated the stolen vehicle was north of the Highland Sheriff's Station. Deputy Nastase heard 40-King<sup>6</sup>, a Sheriff's Department aviation helicopter, advise they had located the stolen vehicle at the end of Hillview Street.

When Deputy Nastase was assigned to the Highland Patrol Station, he learned Hillview Street and Elm Street were two of the most violent neighborhoods in the City of Highland. Deputy Nastase knew Hillview Street was a high violent and weapons related crime area. Deputy Nastase heard Sergeant Popa broadcast over the radio that he was parked on Baseline Street, east of Hillview Street, waiting for the stolen vehicle's driver to leave the apartment complex so he could conduct a traffic stop of the vehicle. 40-King advised there was a group of approximately six to ten Black male adults and one Black female congregating around the stolen Lexus at an apartment building at the end of the cul-de-sac.

At around 7:10 in the evening, Deputy Nastase heard Sergeant Popa broadcast vehicles had passed him on Baseline Street and approached the group of males near the stolen vehicle. Sergeant Popa advised the deputies were going to drive in and contact the group of individuals congregating near the stolen vehicle. Deputy Nastase knew the situation could be dangerous if the individuals were armed. Deputy Nastase knew this was a high crime area and believed Sergeant Popa would need his assistance. Deputy Nastase drove west on Baseline Street and saw three sheriff's patrol vehicles drive west on Baseline Street and turn north on Hillview Street. Deputy Nastase followed the three marked patrol vehicles to the end of Hillview Street.

Deputy Nastase heard 40-King broadcast a Black male subject, wearing a dark colored shirt and dark jogging pants, exited the driver's seat of the Lexus. Deputy Nastase was the fourth vehicle in the line of patrol vehicles. The first vehicle parked at the end of the

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<sup>6</sup> Deputy Nastase referred to the San Bernardino County Sheriff's Department law enforcement helicopter that was present during the incident under review as 40-King in his interview. The complete call sign for the helicopter was 40-King-3.

cul-de-sac. Deputy Nastase parked on the east side of Hillview Street, exited his vehicle, and turned east towards the apartment complex. Deputy Nastase walked east over the sidewalk on Hillview Street. Deputy Nastase unholstered his handgun and held it at his chest in a low ready position. Deputy Nastase was concerned the subjects who were in possession of the stolen vehicle may be in the process of committing additional crimes which could create a dangerous situation if they were contacted by law enforcement.

Deputy Nastase walked east toward a dark colored sedan that he believed to be the stolen vehicle. He saw a group of approximately four to six Black male adults near the driver's side area of a silver lowrider Chevrolet Impala. Deputy Nastase ordered the subjects near the Impala to stop and get down on the ground. All the male subjects near the Impala appeared to cooperate and began to lay on the ground. Deputy Nastase saw a subject, later identified as Minor Suspect, on the passenger side of the Impala. Minor Suspect matched the description 40-King gave earlier of the driver of the stolen vehicle. Minor Suspect was standing near the driver's side of the sedan which Deputy Nastase knew matched the description of the stolen vehicle.

Another subject, later identified as Witness #10, was standing near the trunk of the stolen Lexus. Minor Suspect walked south away from the stolen vehicle. Minor Suspect turned his back to Deputy Nastase and walked toward the east. Deputy Nastase saw Deputy Strand walking next to Minor Suspect. Deputy Nastase moved around the stolen vehicle and ran to the east. Minor Suspect slowly ran to the east. Deputy Nastase moved faster to try to keep track of Minor Suspect.

Minor Suspect turned to face towards Deputy Nastase and Deputy Strand. Minor Suspect put his right hand in the center of his body. Minor Suspect then pushed his right hand inside the center of his waistband, near his groin. Deputy Nastase pointed his handgun at Minor Suspect and yelled something like, "No, no, stop!" Deputy Nastase knew subjects often kept firearms in their waistbands to conceal them and allow for easy access. Deputy Nastase was afraid Minor Suspect was going to produce a firearm from inside his pants, which is why he ordered Minor Suspect to stop. Deputy Nastase feared Minor Suspect was going to pull a firearm and shoot or kill him or someone else.

Deputy Strand walked ahead of Deputy Nastase toward Minor Suspect. Deputy Nastase saw Minor Suspect pull his right hand out of his pants. Minor Suspect was not holding a firearm. Deputy Nastase ordered Minor Suspect to get down on the ground, but Minor Suspect would not comply. As he walked backwards toward the east, Minor Suspect faced Deputy Strand and Deputy Nastase.

Deputy Strand walked toward Minor Suspect and grabbed Minor Suspect's left bicep. Minor Suspect pulled his left arm away from Deputy Strand's grasp and again moved his right hand toward the center of his body. Minor Suspect then quickly forced his right hand inside the center of his waistband all the way to his wrist.

Deputy Nastase was afraid Minor Suspect was going to remove a firearm from his pants. Deputy Nastase could not think of any other reason why Minor Suspect would continue reaching into his waistband when he was being contacted by deputies. Deputy Nastase yelled something like, "Stop, you're gonna get shot!" Deputy Nastase hoped to dissuade Minor Suspect from pulling a handgun from his pants. Minor Suspect was approximately five feet east of Deputy Nastase. Deputy Nastase feared he was going to be shot by Minor Suspect.

Deputy Nastase intended to use his duty weapon to shoot Minor Suspect to save his own life. Before Deputy Nastase could fire his weapon, he saw Deputy Strand pull Minor Suspect's left bicep again. Minor Suspect pulled away from Deputy Strand again and turned his right side away from Deputy Strand. Deputy Strand and Minor Suspect moved so Deputy Strand now stood in between Deputy Nastase and Minor Suspect. Deputy Nastase realized he could not fire his weapon without shooting Deputy Strand.

Deputy Strand used his left hand to push Minor Suspect's body away. Minor Suspect's right hand was inside his waistband in the center of his body. Deputy Strand and Minor Suspect were approximately five to ten feet from Deputy Nastase. Deputy Nastase estimated Minor Suspect was approximately two feet from Deputy Strand.

Deputy Nastase heard one gunshot. Deputy Nastase's view of Deputy Strand's right hand and firearm were obstructed by Deputy Strand's upper body. After the gunshot, Deputy Nastase saw Minor Suspect immediately fall to the ground. Based upon Deputy Strand's body position and Minor Suspect's position, Deputy Nastase believed Deputy Strand fired one gunshot at Minor Suspect. Deputy Nastase saw blood on Minor Suspect's left bicep. Deputy Nastase estimated it was two seconds from when he first saw Minor Suspect to when Deputy Strand fired his weapon. Deputy Nastase estimated it was fifteen seconds from the time he exited his patrol vehicle to when the gunshot occurred.

Deputy Nastase saw Deputy Strand reach down and handcuff Minor Suspect. Deputy Nastase did not believe Minor Suspect still posed a threat. Deputy Nastase heard someone on the radio request medical aid. Deputy Nastase then focused his attention on the stolen vehicle.

On July 13, 2021, at approximately 10:04 in the morning, **Deputy Jacob Fisk** was interviewed by Detective Amy Bilbao and Detective Nicolas Craig.<sup>7</sup>

On July 8, 2021, Deputy Jacob Fisk, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Highland Patrol Station. On that date, at around 6:30 in the evening, Deputy Fisk was at the station with his Field Training Officer, Deputy Thun Houn. Deputy Fisk and Deputy Houn were working on reports

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<sup>7</sup>Deputy Fisk reviewed audio and video recordings from the incident under review prior to being interviewed by Detective Bilbao and Detective Craig.

when Deputy Fisk heard over the radio of a LoJack signal regarding a stolen car near Waterman Avenue and Third Street in the City of San Bernardino. The stolen vehicle was a dark colored Lexus sedan. The vehicle was traveling towards Highland. Deputy Fisk and Deputy Houn were in uniform and driving a marked patrol vehicle on that date. Deputy Fisk and Deputy Houn got into their patrol vehicle and went to look for the vehicle.

After approximately five to ten minutes of searching for the stolen vehicle, Deputy Fisk heard radio broadcasts from 40-King<sup>8</sup>, a Sheriff's Department aviation helicopter, that they had located the stolen vehicle at \*\*\*\*\* Hillview Street. 40-King advised there was a group of Black males and one female around the stolen vehicle in front of an apartment complex. Sergeant Popa advised Deputy Fisk and Deputy Houn to meet at a staging area on Baseline Street, east of Hillview Street. Deputy Fisk and Deputy Houn met up with Sergeant Popa and Deputy Strand.

Deputy Fisk knew the only way to exit the apartment complex on Hillview Street was to approach Baseline Street where the deputies were staged. Deputy Fisk was aware there had been multiple shootings as well as a murder at the apartment complex where the stolen vehicle was parked. After approximately five minutes, vehicles started to pass the parked patrol vehicles and drive toward the parking lot on Hillview Street. Deputy Fisk believed the people were going to warn the suspect about the deputies in the area. Sergeant Popa told Deputies Strand, Fisk, and Houn to follow him and drive up to the stolen vehicle's location.

Sergeant Popa stopped his patrol vehicle near the parking lot of the apartment complex. Deputy Strand parked east of Sergeant Popa. Deputy Fisk parked his patrol vehicle west of Sergeant Popa. Deputy Fisk exited his patrol vehicle and walked toward a silver lowrider Impala. Deputy Fisk removed his handgun from his holster and pointed the weapon at a group of approximately five to six Black male adults who were near the Impala. Deputy Fisk believed these were the same group of individuals 40-King said were congregated near the stolen vehicle. Deputy Fisk told the group of males to stop, put their hands up, and get on the ground. Everyone in the group appeared cooperative. As Deputy Fisk continued to walk towards the silver Impala, he saw the stolen Lexus parked west of the Impala. Deputy Fisk saw Minor Suspect standing at the rear of the driver's side of the stolen Lexus. Minor Suspect was wearing a dark t-shirt and dark jogging pants.

Minor Suspect looked toward Deputy Fisk and quickly walked backwards away from the deputy. Deputy Fisk thought Minor Suspect was going to run toward the east and attempt to flee the scene. Deputy Fisk saw Deputy Nastase and Deputy Strand walk toward Minor Suspect south of the stolen vehicle. Minor Suspect backed away from Deputy Strand and reached for the right side of his pants waistband with his right hand.

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<sup>8</sup> Deputy Fisk referred to the San Bernardino County Sheriff's Department law enforcement helicopter that was present during the incident under review as 40-King in his interview. The complete call sign for the helicopter was 40-King-3.

Deputy Fisk knew people often concealed firearms in their waistbands so they could be retrieved quickly.

Deputy Fisk heard someone order Minor Suspect to put his hands in the air. Minor Suspect continued to back away from Deputy Strand. Minor Suspect momentarily moved his right hand away from his waistband and up toward his chest. Deputy Fisk walked to the east, north of the stolen Lexus, and pointed his handgun toward Minor Suspect. Deputy Fisk was afraid Minor Suspect was going to retrieve a handgun from his waistband and shoot someone.

Deputy Fisk saw Deputy Strand walk up to Minor Suspect. Deputy Strand held his handgun in his right hand. Deputy Strand grabbed Minor Suspect's left bicep. Minor Suspect jerked his left arm away from Deputy Strand's grasp. Deputy Fisk saw Minor Suspect reach his right hand toward the right side of his pants waistband, above his right pocket. Based on Minor Suspect's body movement and Minor Suspect's movement of his right hand, Deputy Fisk believed Minor Suspect reached for a gun. Deputy Fisk planned to shoot Minor Suspect to stop him from producing a firearm from his waistband and killing Deputy Strand or anyone else.

Deputy Strand struggled to hold Minor Suspect's left arm as they turned their bodies. Minor Suspect moved so he was in between Deputy Fisk and Deputy Strand. Deputy Fisk believed if he fired his weapon, he would have shot Deputy Strand. As Deputy Strand and Minor Suspect struggled, Deputy Fisk was only able to see Deputy Strand's left shoulder and back. Deputy Fisk believed Deputy Strand held his handgun in his right hand and pointed it at Minor Suspect's chest while he grabbed for Minor Suspect with his left hand. Deputy Fisk heard one gunshot. Deputy Fisk saw Deputy Strand move his right arm consistent with the recoil from firing a handgun. Minor Suspect immediately fell to the ground.

Deputy Fisk broadcasted over the radio shots were fired. Deputy Fisk estimated he was twenty to thirty feet north of Deputy Strand and Minor Suspect when the shooting occurred. Deputy Fisk indicated it was daytime and his view was unobstructed. Deputy Fisk indicated the incident occurred in less than thirty seconds. Deputy Fisk estimated it was five to ten seconds from the time he exited his patrol vehicle to when Deputy Strand fired his weapon. A few moments later, Deputy Fisk heard someone over the radio request medical aid respond to the scene. Deputy Strand and Deputy Nastase grabbed Minor Suspect and pulled his arms behind his back. Deputy Fisk did not see which deputy handcuffed Minor Suspect. Medical personnel arrived approximately three to five minutes after the shooting and treated Minor Suspect.

On July 22, 2021, at approximately 1:08 in the afternoon, **Deputy Daniel Jessup** was interviewed by Detective Brett Chandler and Detective Nicolas Craig.<sup>9</sup>

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<sup>9</sup> Deputy Jessup reviewed audio and video recordings from the incident under review prior to being interviewed by Detective Chandler and Detective Craig.

On July 8, 2021, Deputy Daniel Jessup, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Highland Patrol Station. Deputy Jessup was wearing a San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, at around 7:00 in the evening, Deputy Jessup heard 40-King<sup>10</sup>, a Sheriff's Department aviation helicopter, broadcast over the radio that they located a stolen vehicle at the end of Hillview Street. Deputy Jessup has responded to Hillview Street regarding shootings and weapons crimes and was aware this was a high crime area. 40-King advised the stolen vehicle, a black Lexus sedan was backed into the apartment complex, and there was a large group of Black male adults congregated around the stolen vehicle. 40-King also provided a description of the suspect who entered and exited out of the driver's seat of the vehicle.

Deputy Jessup heard Sergeant Popa, over the radio, advise he was parked on Baseline Street, east of Hillview Street. Sergeant Popa was waiting for the suspect to drive the stolen vehicle so he could conduct a high-risk traffic stop. Deputy Jessup got into his patrol vehicle and drove west of Hillview Street on Baseline Street. As he was driving, Deputy Jessup saw three patrol vehicles parked east of Hillview Street. Deputy Jessup parked his patrol vehicle in a parking lot west of Hillview Street.

Deputy Jessup heard an unknown deputy broadcast about vehicles that had driven by the patrol vehicles on Baseline Street and parked next to the stolen Lexus. Sergeant Popa told the deputies over the radio that their location was likely known by the suspects. Sergeant Popa told the deputies to drive up and approach the subjects near the stolen vehicle instead of waiting to conduct a high-risk traffic stop. Deputy Jessup drove east on Baseline Street, behind four other patrol vehicles, and parked at the end of Hillview Street. Deputy Jessup exited his patrol vehicle and unholstered his handgun. Deputy Jessup walked toward the grass area north of the apartment building. Deputy Jessup saw a group of Black male adults on the driver's side of a silver lowrider Impala.

Deputy Jessup heard commands being given for the subjects to get on the ground. The subjects near the Impala complied and laid on the ground. Deputy Jessup waited a few seconds to see if anybody was going to flee the area as the deputies approached. Deputy Jessup walked east and saw Minor Suspect walk away from the driver's side door of the stolen Lexus. Minor Suspect matched the suspect description given by 40-King. Deputy Jessup heard deputies yelling for everyone to "get on the ground."

Minor Suspect walked south away from the stolen vehicle. Deputy Jessup saw Deputy Strand walk behind Minor Suspect. Sergeant Popa stood behind a Black male adult near the rear passenger side of the Lexus. Deputy Strand and Minor Suspect walked east toward a wall. Deputy Jessup estimated Deputy Strand and Minor Suspect were

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<sup>10</sup> Deputy Jessup referred to the San Bernardino County Sheriff's Department law enforcement helicopter that was present during the incident under review as 40-King throughout his interview. The complete call sign for the helicopter was 40-King-3.

sixty to seventy feet east of him. Deputy Strand was approximately two feet west of Minor Suspect.

Deputy Strand held his duty weapon in his right hand as he walked toward Minor Suspect. Deputy Strand reached out with his left hand and grabbed Minor Suspect's left bicep. Minor Suspect reached his right hand towards the center of his body near his waistband. Minor Suspect quickly put his right hand inside of his pants. Deputy Jessup knew, based on his experience, that criminals often kept handguns in their pants so they could be easily accessed and concealed. Deputy Jessup could think of no other reason why Minor Suspect would reach his hand inside his pants near the waistband. Deputy Jessup feared Minor Suspect would pull out a gun and shoot Deputy Strand or one of the other individuals at the location.

Deputy Jessup ran east so he could get closer to Deputy Strand and Minor Suspect. Deputy Jessup believed he may have to shoot Minor Suspect to prevent Minor Suspect from producing the gun and shooting someone. Deputy Jessup feared he would hit Deputy Strand if he fired his handgun from approximately sixty to seventy feet away. Deputy Jessup heard Deputy Strand order Minor Suspect to get on the ground. Minor Suspect did not comply. As Deputy Jessup ran east, he saw Minor Suspect pull his left arm from Deputy Strand's grasp. Minor Suspect pushed his right hand all the way into the groin area of his pants. Minor Suspect's right hand was completely concealed.

As Deputy Jessup ran east, he ran approximately fifteen to twenty feet west of Deputy Strand and Minor Suspect. Minor Suspect was facing Deputy Strand. Deputy Strand tried again to grab Minor Suspect's left bicep. Deputy Strand had his handgun pointed at Minor Suspect's upper body. Deputy Jessup heard one gunshot. Deputy Jessup saw a muzzle flash from Deputy Strand's handgun. Minor Suspect immediately fell to the ground on his right side. Deputy Jessup saw Deputy Strand reach down and take hold of both of Minor Suspect's arms. Deputy Strand handcuffed Minor Suspect with both hands behind his back. Deputy Jessup estimated the entire incident, from the time he exited his patrol vehicle until the gunshot, was twenty seconds.

Deputy Strand removed a tourniquet from Sergeant Popa's duty belt and placed it on Minor Suspect's left bicep. Minor Suspect yelled, "Why did you shoot me?" and stated he did not have a gun. Deputy Jessup saw blood on Minor Suspect's left bicep but did not see a wound. Deputy Strand stood Minor Suspect up and escorted him toward the patrol vehicles on Hillview Street.

On July 8, 2021, **Deputy Thun Houn**, from the San Bernardino County Sheriff's Department, was assigned as a Patrol Field Training Officer to the Highland Patrol Station.<sup>11</sup> Deputy Houn was wearing a San Bernardino County Sheriff's Department "Class A" uniform and his trainee, Deputy Fisk, was driving them in a marked patrol

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<sup>11</sup> The summary of Deputy Houn's actions on the incident date is based upon the supplemental police report he prepared as part of the investigation.



vehicle. On that date, at around 6:48 in the evening, Deputy Houn heard a sergeant from the Central Station broadcast over the radio he received a LoJack hit on a stolen vehicle. The vehicle was described as a 1988 black Lexus with a sunroof, chrome wheels and gold trim on the back bumper. Deputy Houn and Deputy Fisk began conducting a check of the area for the stolen vehicle.

At around 7:00 in the evening, 40-King-3, the Sheriff's aviation helicopter, advised they located the stolen vehicle at \*\*\*\*\* Hillview Street. 40-King-3 further advised there were several male subjects and one female subject standing near the vehicle. Deputy Fisk drove them towards the location. Deputy Houn saw additional patrol vehicles staged. The patrol vehicles started driving toward the location of the stolen vehicle which 40-King-3 indicated was parked at the end of the cul-de-sac on Hillview Street.

Deputy Fisk parked their patrol vehicle approximately twenty feet away from the entrance to the parking lot. Deputy Houn exited his patrol vehicle and saw several male subjects standing on the south side of the parking lot near a gold Chevy 64 Impala and a black Chevy Impala. Deputy Houn drew his duty weapon and walked towards the subjects. Deputy Houn saw the stolen Lexus parked on the east side of the gold 64 Impala. Deputy Houn raised his handgun and pointed it towards four subjects that were standing near the vehicles.

Deputy Houn ordered all the subjects to place their hands up and then lay on the ground. Three of the four subjects complied and laid on the ground. One subject was in a wheelchair and unable to lay on the pavement. Deputy Houn looked southeast of his location and saw Deputy Strand walk towards Minor Suspect, who was standing behind the black Lexus. It appeared to Deputy Houn that there was some sort of struggle as both Deputy Strand and Minor Suspect were making quick movements eastward.

Deputy Strand and Minor Suspect moved out of Deputy Houn's line of sight. Deputy Houn's attention was focused on the subjects that were laying on the ground. Deputy Houn then heard a loud "pop." Deputy Fisk then advised "shots fired" over the radio. There was an immediate request made for medical aid to respond to the scene.

On July 8, 2021, **Deputy Joshua Gile**, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Central Patrol Station.<sup>12</sup> Deputy Gile was in uniform and driving a marked patrol vehicle. On that date, at around 6:48 in the evening, sheriff's deputies from the Central Patrol Station and the Highland Patrol Station received a LoJack notification of a stolen vehicle. The stolen vehicle was a 1998 black Lexus.

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<sup>12</sup> The summary of Deputy Gile's actions on the incident date is based upon the supplemental police report he prepared as part of the investigation.

At around 7:00 in the evening, 40-King<sup>13</sup>, the Sheriff's aviation helicopter, advised they located the stolen vehicle near \*\*\*\*\* Hillview Street. Deputies responded to the location. There was a large group of individuals congregating around the stolen vehicle. A lethal force encounter occurred at the location. Deputy Gile arrived at the scene at around 7:18 in the evening. CalFire paramedics and American Medical Response personnel arrived at the scene and determined the suspect, Minor Suspect, would need further medical evaluation and treatment.

Deputy Gile rode in the back of the ambulance with Minor Suspect. Deputy Gile feared Minor Suspect could succumb to his injuries and decided to speak with Minor Suspect to obtain a dying declaration. Minor Suspect explained that he arrived at the address on Hillview Street with other vehicles to produce a music video. Minor Suspect said they were producing a video for the street rapper Witness #3.

Minor Suspect told Deputy Gile multiple deputies arrived on scene with their guns drawn. Minor Suspect said he reached down to the ground to get his cellular phone<sup>14</sup> to record the deputies and a deputy involved shooting occurred. Minor Suspect indicated the deputies were in uniform and he knew they were law enforcement officers because they arrived in clearly marked patrol vehicles. Minor Suspect told Deputy Gile the deputies gave verbal commands. Minor Suspect heard the deputies order him to put his hands up, to "stop" and to "stop moving" multiple times. Minor Suspect did not comply with the deputies' verbal commands. Minor Suspect reached for his phone to record the deputies because everyone else there were recording. Minor Suspect said he continued to reach for his black phone, even when a deputy was holding his arm and telling him to stop.

On July 21, 2021, at approximately 9:09 in the morning, **Deputy Charles Abney** was interviewed by Detective Amy Bilbao and Detective Brett Chandler.

On July 8, 2021, Deputy Charles Abney, from the San Bernardino County Sheriff's Department, was assigned to the Emergency Operations Division Aviation Unit. Deputy Abney was assigned as the pilot for 40-King-3, the Sheriff's aviation patrol helicopter. Deputy Eric Bradshaw was the tactical flight officer and recorded the lethal force encounter on the helicopter's camera. Deputy Abney sat in the front right seat and Deputy Bradshaw sat in the front left seat. Deputy Alondra Valdez sat in the rear of the helicopter for a fly-along as part of her field training program.

On July 8, 2021, Sheriff's Dispatch broadcasted the San Bernardino Police Department was working a LoJack alert for a stolen vehicle in the area of 3<sup>rd</sup> Street between

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<sup>13</sup> Deputy Gile referred to the San Bernardino County Sheriff's Department law enforcement helicopter that was present during the incident under review as 40-King in his supplemental police report. The complete call sign for the helicopter was 40-King-3.

<sup>14</sup> Video recording from 40-King-3 showed Minor Suspect placed his cell phone on the back of the stolen Lexus and walked away from the scene. Minor Suspect placed the phone down on the vehicle prior to the time deputies saw Minor Suspect reaching into the waistband of his pants.

Waterman Avenue and Del Rosa Avenue. Dispatch requested 40-King-3 assist San Bernardino Police Department in locating the stolen vehicle. The stolen vehicle was described as a black Lexus sedan. Deputy Abney and Deputy Bradshaw received the LoJack alert in the helicopter and began tracking its location.

Deputy Abney followed the LoJack signal from San Bernardino to the northeast. Deputy Abney and Deputy Bradshaw located the Lexus in a parking lot at \*\*\*\*\* Hillview Street. The parking lot was on the north side of the apartment complex. The Lexus was backed into a parking spot and there were approximately six to eight Black male adults in the parking lot around the stolen vehicle. Deputy Bradshaw turned on the camera system in the helicopter and recorded the incident. Deputy Bradshaw broadcasted over the radio to patrol deputies where they located the Lexus.

Deputy Abney flew the helicopter in a counterclockwise orbit at an altitude of approximately two thousand feet and a mile and a half away from the Lexus. The patrol deputies were staged and indicated over the radio they intended to wait for the stolen vehicle to leave the parking lot. Patrol deputies would then attempt a high-risk traffic stop. Deputy Abney did not hear any tactical plan the deputies may have discussed. The patrol deputies staged for approximately five to six minutes before they broadcasted over the radio that they were going to approach the vehicle. Deputy Abney did not know why the deputies changed their initial plan. Deputy Abney and Deputy Bradshaw identified a Black male adult wearing a dark shirt and dark pants as the probable driver of the Lexus. Deputy Abney and Deputy Bradshaw believed the subject, later identified as Minor Suspect, was the driver of the stolen vehicle because he appeared to be the main subject going in and out of the Lexus's driver seat. Minor Suspect was seated in the driver's seat of the Lexus as the deputies approached north on Hillview Street.

Deputy Abney dropped the helicopter's altitude to approximately five hundred feet as the deputies neared the Lexus. The deputies parked their patrol vehicles at the end of the cul-de-sac and approached on foot. Deputy Abney saw Minor Suspect with his hands raised. Deputy Abney saw an unknown object in Minor Suspect's left hand. Deputy Abney believed the object may possibly be a firearm. Minor Suspect walked down the driver's side toward the rear of the vehicle. Minor Suspect saw the deputies and briskly walked east away from the deputies.

Deputy Strand approached Minor Suspect from the west. Deputy Abney believed Deputy Strand gave Minor Suspect some type of verbal order. Minor Suspect initially had his hands in the air and Deputy Strand had his handgun at pointed at Minor Suspect. Deputy Abney saw Minor Suspect lift his shirt with his left hand and place his right hand into his front waistband near his groin area. Deputy Bradshaw broadcasted to the deputies that Minor Suspect reached into his waistband. Based on his experience, Deputy Abney believed Minor Suspect had a firearm in his waistband and was going to shoot Deputy Strand. Deputy Abney estimated Deputy Strand was three to six feet from Minor Suspect when Minor Suspect reached into this waistband.

Minor Suspect walked to a grass area east of the Lexus. Deputy Strand grabbed Minor Suspect's left arm. Minor Suspect pulled away from Deputy Strand's grasp. Minor Suspect turned his back toward Deputy Strand and took two steps away from the deputy. Deputy Strand followed Minor Suspect and again attempted to grab Minor Suspect's arm. Minor Suspect turned over his right shoulder and faced Deputy Strand. Deputy Abney saw Minor Suspect reach again into his waistband. Deputy Abney estimated Deputy Strand was one to two feet away from Minor Suspect at this time. Deputy Strand reached toward Minor Suspect with his left arm and Minor Suspect fell to the ground. Deputy Abney saw a black object in Deputy Strand's hand. Deputy Abney believed Deputy Strand used his Taser on Minor Suspect. Deputy Bradshaw told Deputy Abney Minor Suspect was shot and not tased.

Deputy Abney estimated five seconds elapsed from the moment Minor Suspect first placed his hand into his pants to the second time Minor Suspect placed his hand into his pants. Deputy Abney estimated Deputy Strand shot Minor Suspect within one to three seconds of Minor Suspect placing his hand into his pants the second time. Deputy Abney did not believe Deputy Strand had time to try to de-escalate the situation because the incident occurred rapidly. Deputy Abney believed if Minor Suspect had a firearm in his waistband, Minor Suspect would have shot and killed Deputy Strand or another deputy. Deputy Abney did not feel there was any other force option that would have been appropriate for the situation.

On July 16, 2021, at approximately 1:30 in the afternoon, **Deputy Eric Bradshaw** was interviewed by Detective Amy Bilbao and Detective Brett Chandler.

On July 8, 2021, Deputy Eric Bradshaw, from the San Bernardino County Sheriff's Department, was assigned to the Emergency Operations Division Aviation Unit. On that date, Deputy Bradshaw was assigned as the tactical flight officer along with Deputy Abney who was the pilot for 40-King-3. Deputy Bradshaw utilized the helicopter's camera system to record the lethal force encounter.

On July 8, 2021, at around 6:49 in the evening, Sheriff's Dispatch broadcasted a request for 40-King-3 to assist with a LoJack alert of a stolen vehicle in the area of 3<sup>rd</sup> Street and Waterman Avenue. The stolen vehicle was a black 1998 Lexus sedan with a sunroof, gold trim on the rear bumper, and chrome rims. 40-King-3 located the stolen Lexus backed into a parking space in the north parking lot of \*\*\*\*\* Hillview Street. Deputy Bradshaw was aware the apartment complex where the stolen vehicle was parked was a high crime area. Deputy Bradshaw broadcasted they found the Lexus to deputies from both Highland Patrol Station and Central Patrol Station. Deputy Bradshaw activated the helicopter's camera system and recorded the activity around the vehicle.

Deputy Bradshaw used the camera to zoom in and saw approximately four to five Black males near the Lexus. One of the males was in a wheelchair. Deputy Bradshaw saw a Black male wearing a blue t-shirt, black joggers with white stripes, and white shoes near

the driver's seat. The subject was later identified as Minor Suspect. Deputy Bradshaw broadcasted his observations to deputies on the ground. The patrol deputies were staged at Baseline Street and Hillview Street. The deputies planned to wait for the vehicle to drive away from the parking lot and then attempt a high-risk traffic stop.

Deputy Bradshaw watched through the helicopter camera as several vehicles passed by the deputies who were staged and drove into the parking lot of the apartment complex. The deputies on the ground believed the vehicles that passed by their location told the subjects in the parking lot of their presence. The deputies broadcasted their intent to approach the Lexus. Minor Suspect was in the driver's seat of the Lexus as the deputies approached.

Deputy Bradshaw maintained a view of Minor Suspect. Minor Suspect put his hands in the air and faced deputies as they approached him in the parking lot. Deputy Bradshaw saw Minor Suspect had items in both of his hands. Deputy Bradshaw believed Minor Suspect was holding sunglasses and a cellphone. Minor Suspect walked toward the rear of the stolen Lexus and placed the items he was holding on the rear window and trunk of the vehicle. Deputy Strand walked between the passenger side of a gold Chevrolet Impala and the driver's side of the Lexus toward Minor Suspect. Minor Suspect continued to walk around the rear of the Lexus, away from Deputy Strand.

Deputy Bradshaw saw Minor Suspect place his right hand inside his pants waistband as Deputy Strand neared him. Deputy Bradshaw broadcasted over the radio that Minor Suspect reached into his waistband. Deputy Bradshaw feared Minor Suspect was attempting to retrieve a firearm and would shoot Deputy Strand and the other deputies. Deputy Strand grabbed Minor Suspect's left arm with his left hand. As Minor Suspect tried to pull away from Deputy Strand, Minor Suspect kept his right hand in his waistband. Deputy Strand held his firearm in his right hand. Minor Suspect continued to reach into his waistband and struggle with Deputy Strand.

Deputy Bradshaw saw Minor Suspect fall to the ground as Deputy Strand held onto Minor Suspect's left arm. Deputy Bradshaw believed Deputy Strand discharged his firearm when Minor Suspect fell to the ground. Deputy Bradshaw indicated Minor Suspect's right hand was in his waistband past his wrist. Minor Suspect kept his hand in his waistband for approximately two seconds after Deputy Strand grabbed Minor Suspect's left arm. Deputy Bradshaw believed Minor Suspect was attempting to retrieve a concealed firearm from his waistband. According to Deputy Bradshaw, if he faced the same circumstances Deputy Strand was facing, Deputy Bradshaw would also have shot Minor Suspect.

Deputy Bradshaw broadcasted shots fired and continued to record the incident. The other deputies took control of the other subjects in the parking lot. Deputy Strand placed a tourniquet on Minor Suspect's upper left arm. Deputy Bradshaw broadcasted a request for medical aid to respond.

On July 16, 2021, at approximately 10:00 in the morning, **Deputy Alondra Valdez** was interviewed by Detective Nicolas Craig and Detective Amy Bilbao.

On April 26, 2021, Deputy Alondra Valdez, from the San Bernardino County Sheriff's Department, was assigned to the Field Training Program at the Fontana Patrol Station. On July 8, 2021, as part of her Field Training Program, Deputy Valdez was assigned as a "fly along" with the Sheriff's Department Emergency Operations Division Aviation Unit. Deputy Abney was the pilot and sat in the front right seat of the helicopter. Deputy Bradshaw was the tactical flight officer and sat in the front left seat. Deputy Valdez sat in the rear left seat. Deputy Valdez saw portions of the incident through the left window as the helicopter orbited over the scene. There were times when Deputy Valdez did not have a view of the scene.

On July 8, 2021, at approximately 6:30 in the evening, an unknown deputy from the San Bernardino County Sheriff's Department Central Station broadcasted a LoJack alert for an older black Lexus sedan in the area of Waterman Avenue and 3<sup>rd</sup> Street. Deputy Abney used a LoJack location system installed in 40-King-3 to search for the stolen Lexus. Approximately two minutes after the LoJack alert was broadcasted, Deputy Abney located the stolen Lexus in the parking lot of an apartment complex located at \*\*\*\*\* Hillview Street in the City of Highland.

Deputy Valdez saw all four doors of the Lexus were open. There were several other vehicles parked in the lot. Deputy Valdez saw approximately six individuals around the Lexus. Deputy Abney and Deputy Bradshaw identified Minor Suspect as the probable driver. Deputy Valdez believed Minor Suspect was the driver of the stolen vehicle because Minor Suspect appeared to be the main subject going in and out of the Lexus' driver seat as 40-King-3 monitored the vehicle. Deputy Valdez heard Deputy Bradshaw tell Deputy Abney he turned on the camera system and started to record the incident. Deputy Valdez was unable to see the screen from where she was seated in the rear of the helicopter. Deputy Bradshaw broadcasted over the radio to the patrol deputies on the ground the location of the Lexus and the activity of the subjects around the vehicle.

Deputies arrived on Hillview Street approximately ten minutes after Deputy Bradshaw broadcasted the location of the Lexus. Deputy Valdez did not see deputies stop prior to arriving on Hillview Street nor did she hear any tactical plan the deputies may have discussed. Deputy Valdez wore a headset to communicate with Deputy Bradshaw and Deputy Abney but was not able to hear the San Bernardino County Sheriff's Department frequency over the noise from the helicopter. The deputies parked their patrol vehicles on Hillview Street at the end of the cul-de-sac and walked into the parking lot to contact the subjects.

Deputy Valdez saw deputies walk toward the subjects in the parking lot. The deputies were all in uniform. Deputy Valdez believed the deputies gave the subjects verbal commands because most of the individuals raised their hands in the air. One subject, Witness #6 Witness #10, walked away from Sergeant Popa. Within seconds, Sergeant Popa detained Witness #10 at the rear passenger side of the Lexus. Minor Suspect

was standing outside the open driver's side door of the Lexus and held unknown items in his hands as he raised both of his hands up. Deputy Bradshaw told Deputy Valdez one of the items appeared to be sunglasses.

Minor Suspect walked south between the Lexus and an older Chevrolet Impala as Deputy Strand approached him from the north. Deputy Valdez said Minor Suspect's movements stood out to her because the other subject stood still with their hands up. Deputy Strand followed Minor Suspect between the Lexus and the Impala. Minor Suspect looked at Deputy Strand and continued to walk south to a dirt lot adjacent to the parking lot. Deputy Strand caught up with Minor Suspect in the dirt lot and grabbed Minor Suspect's arm. Deputy Valdez was unsure which arm Deputy Strand grabbed.

Minor Suspect faced north, and Deputy Strand stood behind Minor Suspect. Minor Suspect looked back at Deputy Strand and reached into the front of his waistband with both hands up to his wrists. Deputy Bradshaw broadcasted, "he's reaching" to the deputies on the ground. Deputy Valdez believed Minor Suspect reached into the front of his waistband to retrieve a handgun. Deputy Valdez indicated the waistband is a common place to store handguns for easy access. Deputy Strand pulled Minor Suspect toward him. Minor Suspect removed his hands from his waistband and "lowered his center of gravity" by squatting down. Minor Suspect pulled away from Deputy Strand and again reached into his waistband with both hands up to his wrists. Deputy Valdez saw a handgun in Deputy Strand's hand. Minor Suspect fell to the ground and Deputy Strand pointed his handgun at Minor Suspect. Deputy Valdez did not know whether Deputy Strand or anyone else fired a gun at this time.

Deputy Strand and Deputy Nastase contacted Minor Suspect on the ground. Deputy Valdez was unsure whether Minor Suspect had been struck by gunfire. Deputy Strand and Deputy Nastase took Minor Suspect into custody. Approximately thirty seconds after Minor Suspect fell to the ground, Deputy Valdez heard an unknown deputy request medical aid respond to the scene. Deputy Bradshaw got on the radio and confirmed shots were fired. Approximately five minutes later, medical aid arrived at Hillview Street. Two deputies walked Minor Suspect from the scene to the ambulance parked on Hillview Street.

### **STATEMENTS BY CIVILIAN WITNESSES**

On July 8, 2021, at around 7:43 in the evening, **Witness #1** was interviewed by Deputy Jacob Fisk.

Witness #1 lived in an apartment complex on Hillview Street. Strong entered Hillview Street from Baseline Street. Witness #1 saw patrol vehicles parked on Baseline Street, east of Hillview Street. When the patrol vehicles drove onto Hillview Street, Witness #1 passed them and pulled into the parking lot. Strong remained inside her vehicle.

When the deputies parked and exited their patrol vehicle, Witness #1 heard the deputies give verbal commands to a group of individuals to “get down.” Minor Suspect did not comply with the deputies’ commands. Minor Suspect backed away from the deputies and tried to run away. When Deputy Strand grabbed Minor Suspect by the arm, Witness #1 saw Minor Suspect pull his arm away. Witness #1 said Minor Suspect had one hand in his pants when Deputy Strand approached and grabbed Minor Suspect’s arm. Strong believed Minor Suspect had his hand in his pants to secure a weapon. Witness #1 thought Minor Suspect resisted because he was scared and did not want to be caught with a firearm.

Witness #1 heard one gunshot. Witness #1 called for medical aid when she saw that Minor Suspect had been shot. Witness #1 did not believe Deputy Strand was in the wrong and she believed Minor Suspect had a weapon. Witness #1 did not believe Deputy Strand wanted to kill Minor Suspect. Witness #1 thought Deputy Strand fired his weapon at Minor Suspect because he thought Minor Suspect had a weapon. Witness #1 thought Deputy Strand was scared because Minor Suspect may have had a weapon in his possession.

On July 8, 2021, at around 11:06 in the evening, **Witness #1** was interviewed a second time by Detective Nicolas Craig and Detective Brett Chandler.

On July 8, 2021, Witness #1 and Witness #2 drove on Baseline Street. Witness #2 drove the vehicle and Witness #1 sat in the front passenger seat. Witness #1 and Witness #2 turned north on Hillview Street from Baseline Street. Witness #1 and Witness #2 passed four or five sheriff’s patrol vehicles parked on Hillview Street near Baseline Street. The patrol vehicles were parked in a line and appeared to be waiting for something. The patrol vehicles followed Witness #1 and Witness #2 north on Hillview Street. Witness #1 and Witness #2 drove to the parking lot north of \*\*\*\* Hillview Street.

Witness #1 saw numerous people in the parking lot. The only person she recognized was a person by the name of Witness #7. Witness #7 and the other individuals were standing near a gold-colored Chevrolet Impala. Witness #1 and Witness #2 parked their vehicle in a parking spot in the northeast corner of the parking lot. Their vehicle faced north.

The windows of Witness #1’s vehicle were partially rolled down. As soon as they parked, Witness #1 heard sheriff’s deputies order the people in the parking lot to “get down.” The deputies were in uniform which clearly identified them as law enforcement. Witness #1 looked over her left shoulder and saw people near the Impala lay down on the ground. Witness #1 saw Minor Suspect walk away from Deputy Strand. Minor Suspect was approximately thirty or forty feet from Witness #1.

Minor Suspect appeared to see Deputy Strand approaching. According to Witness #1, Minor Suspect “panicked” when he saw Deputy Strand and attempted to run toward a



wall west of where Minor Suspect stood. Deputy Strand grabbed Minor Suspect's right elbow and prevented Minor Suspect from fleeing. Witness #1 heard Deputy Strand order Minor Suspect to "get down." Minor Suspect did not comply with Deputy Strand and continued to "resist" Deputy Strand. Minor Suspect pulled his right arm away from Deputy Strand. Minor Suspect "wrestled" with Deputy Strand as Deputy Strand tried to maintain his grasp on Minor Suspect's arm. Minor Suspect turned his body perpendicular to Deputy Strand and tried to run. Witness #1 saw Minor Suspect grab his waistband with his right hand near his groin. Deputy Strand was within an arm's length of Minor Suspect. Witness #1 heard Deputy Strand fire one round at Minor Suspect when Minor Suspect grabbed his waistband. After the gunshot, Minor Suspect fell to the ground.

Witness #1 got out of her vehicle after she heard the gunshot. Deputy Strand handcuffed Minor Suspect with his hands to the rear. Deputy Strand stood Minor Suspect up and walked Minor Suspect to a patrol vehicle in the cul-de-sac. Deputy Strand applied a tourniquet on Minor Suspect's upper right arm. Witness #1 called 9-1-1 because she was unsure whether deputies had requested medical aid for Minor Suspect. Witness #1 estimated paramedics arrived at the scene within five minutes.

Witness #1 believed Minor Suspect had a gun concealed in his waistband. Witness #1 believed Minor Suspect was scared when he saw law enforcement arrive and wanted to hide his gun. Witness #1 did not see Minor Suspect with a gun but based on Minor Suspect's action, Witness #1 believed Minor Suspect had a gun in his waistband. Witness #1 explained she had family members in jail and her family members hid firearms in their waistbands. According to Witness #1, the shooting happened very fast. Witness #1 believed Deputy Strand was scared Minor Suspect may have had a gun in his waistband. According to Witness #1, if she was in Deputy Strand's position and faced with the same circumstances, she also would have shot Minor Suspect.

On July 8, 2021, at around 7:55 in the evening, **Witness #2** was interviewed by Deputy Jacob Fisk.

Witness #2 was driving the vehicle Witness #1 arrived in. Witness #2 and Witness #1 were returning to Hillview Street after eating dinner. Witness #2 saw patrol vehicles lined up on Baseline Street. Witness #2 parked his vehicle in the northeast corner of the parking lot and then remained inside his vehicle with Witness #1.

Witness #2 was not paying attention when the deputies arrived at the scene. Witness #2 was gathering up his belongings and listening to loud music. Witness #2 did not hear the verbal commands given by deputies. When Witness #2 did turn his attention toward the responding deputies, Witness #2 saw Minor Suspect backing away from the deputies. Witness #2 saw Deputy Strand holding Minor Suspect by one arm. Witness #2 did not see Minor Suspect reach for his waistband. Witness #2 heard one gunshot but did not see the shooting occur.

On July 8, 2021, at around 7:54 in the evening, **Witness #3** was interviewed by Deputy Alaciel Alvarado.

Witness #3 was seated in the driver's seat of his black Chevrolet Impala. The vehicle was parked, facing south, in the apartment complex parking lot. Witness #3 was eating when he saw Minor Suspect running away from law enforcement deputies. Witness #3 said everything happened so fast he could not remember details. Witness #3 heard one gunshot and saw Minor Suspect fall. Witness #3 did not see anything in Minor Suspect's hand. Witness #3 heard deputies tell Minor Suspect, "Stop!" Witness #3 said he did not remember anything else.

On July 8, 2021, **Witness #4** was interviewed by Detective Jeromy Snyder.

Witness #4 resided in an apartment complex on Hillview Street. Witness #4 was in the shower when she heard yelling and a gunshot. Witness #4 heard police yelling, "Get your hands up!" She then heard a gunshot. Witness #4 recalled clearly hearing the police give warnings to place hands up prior to hearing the gunshot. Witness #4 got out of the shower and ran out into her living room area to get her children. Witness #4 quickly looked out her window and saw deputies detaining several people. Witness #4 closed the blinds and did not pay attention to what else happened.

On July 8, 2021, **Witness #5**<sup>15</sup> was interviewed by Detective Jeromy Snyder.

Witness #5 resided in an apartment complex on Hillview Street. Witness #5 was inside her apartment when she heard police yell "Get your hands up" and then heard a gunshot. Witness #5 did not look outside and did not know what happened. After Witness #5 heard the gunshot, she went to her mother, Witness #4, and told her what she heard.

On July 9, 2021, **Witness #6**<sup>16</sup> was interviewed by Detective Brett Chandler and Detective Nicolas Craig.<sup>17</sup>

Witness #6 and Minor Suspect are brothers. Witness #6 was dating Witness #9. The two had a child together. Witness #6 and Witness #9 lived in Rialto with Witness #9's family. On July 8, 2021, Witness #6 and Witness #9 ran errands with their friend named "Bam." On that date, at around 6:00 in the evening, Bam drove Witness #6 and Witness

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<sup>15</sup> Witness #5 is a minor.

<sup>16</sup> Witness #6 and Minor Suspect share the same last name and therefore will be referred to as Witness #6 throughout the rest of the memo.

<sup>17</sup> Witness #6 was advised of his Miranda rights prior to being interviewed by Detective Chandler and Detective Craig. Witness #6 indicated he understood his rights and was willing to speak with the detectives.

#9 to \*\*\*\*\* Hillview Street. Bam left the location prior to the lethal force encounter occurred. Witness #6 and Witness #9 visited with their friend Witness #7.

Approximately thirty minutes before the lethal force encounter, Minor Suspect arrived at Witness #7's apartment. Minor Suspect drove a black Lexus sedan. Witness #6 did not know how Minor Suspect got the vehicle or who owned it. Minor Suspect arrived with Witness #10 and a friend named "Winky." Witness #6 asked Minor Suspect if the Lexus was stolen. Minor Suspect did not tell Witness #6 where the car came from but said it was not stolen. Minor Suspect told Witness #6 he would give him, Witness #9, and their child a ride back to Rialto. Witness #6 told Minor Suspect he wanted to clean Witness #7's car and then they would leave.

Witness #6 did not see anyone, including Witness #10 and Minor Suspect, with any firearms. Witness #6 did not know Minor Suspect to carry firearms. Witness #6 did not allow people to carry guns around him because he did not want to get in trouble. Witness #9 got into the back seat of Minor Suspect's vehicle with her child and waited for Witness #6. Witness #6 planned to start cleaning Witness #7's car when he saw a helicopter flying at a low altitude in circles above his location. Witness #6 could see the pilot in front of the helicopter pointing at him. Witness #6 did not understand why the pilot pointed at him because he had not done anything wrong. Minor Suspect sat in the front of the Lexus, which was parked next to Witness #7's silver Impala.

Witness #6 socialized with Witness #7 for approximately thirty minutes. Witness #6 was standing on the driver's side of the Impala with Witness #7, friends of Witness #7, Witness #10, Witness #3, and a few other Black male adults who Witness #6 did not know. Witness #6 saw San Bernardino County Sheriff's Department patrol vehicles drive up to the apartment complex. The deputies parked outside the apartment complex and exited their vehicles with their handguns pointed at Witness #6 and the group of individuals standing around the Impala. Witness #6 did not know where Minor Suspect was. Witness #6 was confused and surprised by the deputies contacting him. Witness #6 knew he had not done anything wrong.

Witness #6 immediately followed the deputies' instructions and laid face down on the ground. Witness #6 thought the deputies were calm and the situation was under control. Witness #6 did not see what happened with Minor Suspect because he was on the west side of the Impala, and it obstructed his view. As Witness #6 was on the ground, he heard a gunshot. Witness #6 was approximately four feet west of Witness #7. Witness #7 told Witness #6 that Minor Suspect was shot. Witness #6 was shocked and did not know what happened.

Witness #6 was handcuffed and placed in the back seat of a patrol vehicle. Witness #6 saw Minor Suspect walking with a deputy. Minor Suspect was handcuffed with his hands behind his back. Minor Suspect had blood on one of his arms. Witness #6 was unsure which arm was injured. Minor Suspect kept saying he could not breathe.

On July 8, 2021, at approximately 10:08 in the evening, **Witness #7** was interviewed by Detective Brett Chandler and Detective Nicolas Craig.

Witness #7 previously lived in the apartment complex located at \*\*\*\*\* Hillview Street. Witness #7 had recently moved to Bloomington with his girlfriend. Witness #7 was still listed on the lease for his apartment on Hillview Street even though he was no longer living there. Witness #7 was hoping to rent the apartment to someone after he cleaned it. Witness #7 arrived at the apartment complex in his 1964 silver "lowrider" Impala approximately one hour before the incident under review.

Witness #7 went inside his apartment to clean. Witness #7 planned to meet his nephew, Witness #3, and another person Witness #7 knew as "Voice 2 Hard" or "Voice" at the apartment complex. Witness #7, Witness #3, and Voice planned to meet and film a music video nearby. Witness #7 went back outside and sat next to his silver Impala. Witness #3 arrived in a black Impala sedan with a Black male named "G," who Witness #7 did not know. Voice arrived in a black sports utility vehicle. Witness #3 and Voice parked west of Witness #7's silver Impala.

When Witness #7 exited his apartment, he saw a dark Lexus sedan parked next to his Impala. Witness #7 had never seen the Lexus before. Witness #7 noticed a helicopter began circling above the area. Witness #6, an acquaintance of his, and Witness #6' girlfriend approached the Lexus. Witness #6 told Witness #7 that he, his girlfriend, and his child were going to get a ride to Rialto in the Lexus. Witness #6 was with a young Black male Witness #7 knew as "Tu" next to the Lexus. Witness #7 identified Minor Suspect as "Tu" from a recent booking photograph. Witness #7 did not see anyone in possession of any firearms.

Witness #7 estimated he was outside five to ten minutes when three or four patrol vehicles arrived on Hillview Street. Witness #7 did not focus on who was near the Lexus when the deputies arrived. Witness #7 was focused on organizing the music video with his group of friends. Approximately three to four deputies in uniforms ran up to Witness #7's area. The deputies told Witness #7 and his friends to put their hands in the air. Witness #7 and his friends complied with the deputies' commands.

The deputies told Witness #7 and his friends to lay down on the ground. Witness #7 could not lay on the ground because he was in a wheelchair but kept his hands above his head. Witness #7 had not done anything wrong, so he wanted to comply with the deputies' commands and continue with his business. Witness #7 heard multiple deputies command people to, "Put your hands up." As Witness #7 followed the deputies' commands, he heard a "tussle" on the lawn behind him. Witness #7 looked back over his right shoulder and saw two deputies on the lawn in front of Apartment 4. Minor Suspect walked away from Deputy Strand who tried to grab Minor Suspect's arm. Minor Suspect and Deputy Strand were both moving east.

Witness #7 said Minor Suspect "resisted" Deputy Strand's attempt to detain him. Witness #7 explained Minor Suspect pulled his arms away from Deputy Strand and tried

to walk away. Deputy Strand grabbed Minor Suspect's left arm with his left hand. Deputy Strand held his handgun in his right hand. Minor Suspect pulled his left hand from Deputy Strand and backed away quickly. Witness #7's vehicle prevented him from clearly seeing what was happening. Witness #7 did not want to cause a problem by not paying attention to the deputies who were speaking to him, so Witness #7 turned away from Deputy Strand and Minor Suspect. As Witness #7 looked forward, he heard a gunshot behind him. Witness #7 did not see who fired the gunshot.

The deputies in front of Witness #7 handcuffed everyone at the location. The deputies then moved everyone and placed them in the back of the patrol vehicles. Witness #7 was not placed in a patrol vehicle because he was in a wheelchair. Witness #7 commented that if he were in Deputy Strand's shoes, he would have reacted the same way. Witness #7 said he could understand why Deputy Strand would fear Minor Suspect jerking his hands away. Witness #7 said the deputies treated him and everyone else fairly, professionally, and reasonably.

On July 9, 2021, at approximately 2:33 in the morning, **Witness #8** was interviewed by Detective Jeromy Snyder and Detective Michelle Del Rio.

On July 8, 2021, at around 4:00 in the afternoon, Witness #8 was at his friend's apartment complex in the City of Colton. Witness #8 got a ride from an UBER driver to an apartment complex in the City of Highland. Witness #8's "play" cousin Witness #6 was going to record a music video with a rapper, Witness #3. Witness #8 was unsure as to the exact time he arrived at the apartment complex in Highland but estimated he was dropped off at the corner of Hillview Street and Wakefield Court around 5:00 in the evening.

Witness #8 noticed a helicopter circling in the area. Witness #6 and Minor Suspect were already in the parking lot of the apartment complex when Witness #8 arrived. Witness #8 considered Minor Suspect his "play" cousin as well. Witness #8 was at the location "chillin" with Witness #6, Minor Suspect, Witness #10, and another male in a wheelchair. About ten minutes after Witness #8 arrived at the parking lot, Witness #8 continued to see the helicopter in the sky above his location. The helicopter continued to circle the area at what Witness #8 believed was a low altitude. Witness #8 thought it was strange the helicopter was flying so low but assumed there might have been a high-speed chase in the area.

Witness #8 suddenly saw San Bernardino County Sheriff's Department patrol vehicles drive up to his location. Witness #8 heard several unknown deputies order everyone who stood next to Witness #8 to "Get on the ground. Get on the ground." Witness #8 immediately followed the deputy's instructions and laid face down on the ground. Witness #8 was near the front tire of a gold lowrider and his head faced toward the direction of the rear of the vehicle. Witness #8 estimated Minor Suspect was ten feet away from him when deputies arrived.

As Witness #8 was on the ground, he heard a gunshot. Witness #8 did not know where the gunshot came from. Witness #8 then heard Minor Suspect scream, "They shot me, they shot me, they shot me!" Witness #8 looked at the deputy that ordered Witness #8 to the ground and told the deputy not to shoot him. Witness #8 said the deputy told Witness #8 he would not shoot him. Witness #8's attention was focused on the deputy that ordered him to the ground. The only verbal commands Witness #8 heard were the commands to get on the ground.

From his location, Witness #8 was able to see Minor Suspect on the ground. Minor Suspect said he could not breathe and could not feel his arm because he was shot. Witness #8 saw blood on Minor Suspect's left arm and asked deputies to call an ambulance for Minor Suspect. Witness #8 was handcuffed by an unknown deputy and placed in the back seat of a patrol vehicle.

On July 9, 2021, at approximately 12:50 in the morning, **Witness #9** was interviewed by Detective Nicolas Craig and Detective Brett Chandler.<sup>18</sup>

Witness #9 lived in the City of Rialto with her mother, her daughter, and her fiancé Witness #6. On July 8, 2021, at approximately 4:00 in the afternoon, "Bam" dropped Witness #9 and Witness #6 off at the apartment complex located at \*\*\*\*\* Hillview Street in the City of Highland. Witness #9 had family who lived in the apartment complex, and she knew several of the other residents. Witness #9, Witness #6, and her daughter went to Witness #7's apartment and visited with him while she waited for Minor Suspect to give her a ride back to her mother's house in Rialto.

At approximately 6:00 in the evening, Minor Suspect, Witness #10, and another male arrived at the apartment complex. Minor Suspect went inside of Witness #7's apartment while Witness #10 and the other male waited outside in the parking lot. Witness #9 was already inside the apartment and did not see how Minor Suspect, Witness #10, and the other male arrived. Witness #9 noticed there was a sheriff's department helicopter circling overhead when Minor Suspect, Witness #10, and the other male arrived at the location. Witness #9 wondered if the helicopter was looking for Minor Suspect because he previously was in trouble with law enforcement. Witness #9 indicated the helicopter circled for approximately five minutes before Minor Suspect arrived.

When Witness #9 walked outside, she saw several other subjects standing near a black Lexus in the apartment complex parking lot. The people in the parking lot were waiting for Witness #3 to start recording a music video. The door to the Lexus was open. Witness #9 walked to the vehicle and sat in the rear passenger side of the Lexus because she was hot and pregnant. Witness #9's daughter sat next to her in the rear middle seat. Witness #9 did not know who owned the vehicle. Minor Suspect sat in the

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<sup>18</sup> Witness #9 was advised of her Miranda rights prior to being interviewed by Detective Craig and Detective Chandler. Witness #9 indicated she understood her rights and was willing to speak with the detectives.

driver's seat of the Lexus and spoke to Witness #9. Witness #9 assumed Minor Suspect drove the Lexus to the apartment complex since he sat in the driver's seat and was supposed to give her a ride back home.

Witness #9 saw four to six sheriff's department patrol vehicles park in the cul-de-sac west of the parking lot. Deputies exited the patrol vehicles, with their guns drawn, and ordered everyone in the parking lot to "get on the ground." Minor Suspect exited the driver's seat as the deputies arrived. Witness #9 looked over her right shoulder and saw Minor Suspect was standing in a dirt area east of the Lexus as the deputies approached. Witness #9 heard deputies order Minor Suspect to get on the ground. Minor Suspect did not comply with the deputies' orders and walked away.

A deputy came to the rear passenger door and pulled Witness #9 out of the vehicle. The deputy faced Witness #9 against the Lexus and began to handcuff her. Minor Suspect was behind Witness #9, and she could not see what Minor Suspect was doing. Witness #9 heard a single gunshot behind her. Witness #9 looked back and saw Minor Suspect fall to the ground. A deputy then handcuffed Minor Suspect. Witness #9 estimated the gunshot occurred forty-five seconds after Minor Suspect exited the Lexus.

Witness #9 saw a deputy remove a gun from Witness #10. Witness #9 did not see where Witness #10 had the gun. Witness #9 did not know Witness #10 was in possession of a gun. Witness #9 did not see Minor Suspect reach into his pants because she was facing the opposite direction when the lethal force encounter occurred. Witness #9 was told by other people at the scene that Minor Suspect reached into his waistband just before the incident took place. Witness #9 believed if Minor Suspect reached into his waistband, it was the reason the deputy shot Minor Suspect.

On July 9, 2021, at approximately 3:39 in the morning, **Witness #10** was interviewed by Detective Nicolas Craig and Detective Brett Chandler.<sup>19</sup>

Witness #10 and Minor Suspect were close friends. Witness #10 called Minor Suspect his brother, but they were not related. On July 8, 2021, Minor Suspect picked Witness #10 up from Witness #10's residence in the City of Colton. Witness #10 and Minor Suspect went to an apartment complex in the City of Highland where they were going to film a music video for the artist Witness #3. Minor Suspect drove a black Lexus to pick up Witness #10. Witness #10 had never seen Minor Suspect in the Lexus before. Minor Suspect, however, had the keys to the Lexus, which led Witness #10 to believe the vehicle was not stolen.

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<sup>19</sup> Witness #10 was advised of his Miranda rights prior to being interviewed by Detective Craig and Detective Chandler. Witness #10 indicated he understood his rights and was willing to speak with the detectives.

Minor Suspect drove them from Colton to the apartment complex located at \*\*\*\*\* Hillview Street in Highland. There was a sheriff's department helicopter circling overhead when they arrived at the apartment complex. Witness #10 believed the helicopter was looking for someone but did not believe it was him or Minor Suspect. Witness #10 and Minor Suspect waited with several other people in the apartment complex parking lot for the music video recording to begin.

Approximately thirty minutes after Witness #10 and Minor Suspect arrived at the apartment complex, Witness #10 walked on a dirt patch behind the Lexus. Witness #10 heard someone yell to "stop" and "get on the ground." Witness #10 did not hear any other orders from the deputies. Witness #10 looked around and saw several deputies approaching him and the other people in the parking lot from the west. One of the deputies grabbed Witness #10 and held him against the rear passenger side of the Lexus. The deputy searched and handcuffed Witness #10. Minor Suspect was behind Witness #10 at that time.

Witness #10 heard a "pop" behind him. Witness #10 turned around and saw Minor Suspect fall to the ground. Two deputies stood near Minor Suspect who was approximately six to seven feet east of Witness #10. Minor Suspect told Witness #10 the deputies shot him. Witness #10 did not see what happened when Minor Suspect was shot because his head was against the trunk of the Lexus. Witness #10 told Minor Suspect to relax as the deputies searched and handcuffed Minor Suspect. One deputy placed a tourniquet on Minor Suspect's upper arm. The deputies then walked Minor Suspect to a patrol vehicle parked in the cul-de-sac. Medical aid arrived approximately four to five minutes after Minor Suspect was placed into the patrol vehicle.

The deputy who searched Witness #10 found a loaded black handgun in Witness #10's left front pants pocket. Witness #10 did not own a holster and usually kept his gun in his pocket. Witness #10 kept his gun concealed in his pocket because he was eighteen years old and not supposed to have a gun. Witness #10 said he did not know if Minor Suspect usually had a gun or not.

On July 9, 2021, at approximately 5:43 in the morning, Detective Michelle Del Rio went to the hospital to interview **Minor Suspect**. Detective Del Rio contacted a Supervising Juvenile Public Defender via telephone. The attorney "expressly invoked" Minor Suspect's rights on behalf of Minor Suspect. No interview was conducted.

On July 9, 2021, at approximately 8:28 in the morning, **Witness #11** was interviewed by Detective Brett Chandler.

Witness #11 is a paramedic with American Medical Response. On July 8, 2021, at approximately 7:00 in the evening, Witness #11 began his shift. Witness #11 was teamed with Emergency Medical Technician Witness #12. At around 7:12 in the evening, Witness #11 and Witness #12 received a radio dispatch call for a victim with a



gunshot wound. AMR's dispatch advised the patient was involved in an officer involved shooting. The patient was identified as Minor Suspect.

Witness #11 and Witness #12 responded to \*\*\*\*\* Hillview Street in the City of Highland. Witness #11 and Witness #12 arrived at around 7:20 in the evening. Additional sheriff's patrol vehicles arrived on scene around the same time as Witness #11 and Witness #12. Witness #11 and Witness #12 parked their ambulance approximately ten feet from Minor Suspect. Minor Suspect was sitting on the ground with his hands handcuffed behind his back. A tourniquet was applied to Minor Suspect's upper left bicep.

Paramedics from Cal Fire Station 541 were medically evaluating Minor Suspect. One of the Cal Fire paramedics told Witness #11 that Minor Suspect received a single through and through gunshot wound to his left arm. Witness #11 was unable to see the gunshot wound due to the placement of the tourniquet. Witness #11 assessed Minor Suspect's arm and asked one of the deputies to handcuff Minor Suspect's arm to a gurney for transport.

Minor Suspect lost consciousness and quickly regained consciousness. Minor Suspect was transported to the hospital for advanced medical treatment. Minor Suspect was alert and spoke with Witness #11 and Deputy Gile on the way to the hospital. Minor Suspect was agitated. Witness #11 did not hear what Minor Suspect and Deputy Gile spoke about because he was focused on Minor Suspect's medical treatment.

At approximately 7:47 in the evening, personnel from the hospital took over Minor Suspect's medical care. As Witness #11 left the hospital, he saw an x-ray technician holding an x-ray of Minor Suspect. Minor Suspect's gunshot wound was not a through and through gunshot wound. The fired bullet entered Minor Suspect's left arm and traveled up his bicep and into his chest cavity.

## **INCIDENT VIDEO AND AUDIO**

**VIDEO RECORDING AND BELT RECORDINGS.** All belt recordings and video recordings submitted were reviewed in their entirety. What follows below are summaries of these recordings. The summaries of these recordings will only cover the period of time from the beginning of each recording through the occurrence of the lethal force encounter.

### **Deputy Trever Strand<sup>20</sup>**

Deputy Strand had his belt recorder activated and recording during the incident under review. The recording was approximately 6 minutes and 24 seconds in length.

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<sup>20</sup> Three separate files were submitted for Deputy Strand's belt recording. The summary will only be of the file that included the lethal force encounter.

At the start of the recording you hear a dispatcher broadcasting "code 33" for the channel. Deputy Strand appears to be inside his patrol vehicle. The sound of the engine running can be heard in the background. Deputy Bradshaw can be heard broadcasting the driver of the stolen vehicle exited from the driver's seat. Deputy Bradshaw can be heard advising he was video recording from 40-King-3. Sergeant Popa can be heard trying to confirm over the radio with 40-King-3 that someone was inside the driver's seat of the stolen vehicle, but he did not receive a response. Sergeant Popa can then be heard telling the deputies to start their approach to the stolen vehicle. Deputy Bradshaw can be heard broadcasting for deputies to slow down and to use the apartment buildings as cover for their approach.

Next, you hear sounds consistent with Deputy Strand parking and exiting his patrol vehicle. Deputy Strand can be heard saying, "Hands up. Everybody put their hands up. Get on the ground. Get on the ground. Get on the ground. Blue shirt get on the ground. Right now, listen to me, get on the f\*\*king ground." Deputy Nastase can be heard in the background saying, "Get on the ground." Deputy Strand could be heard saying, "Put your hands up. Don't f\*\*king." Next, you hear the sound of one gunshot and then Deputy Strand saying, "Let me see your f\*\*king hands. Let me see your f\*\*king hands."

### **SERGEANT POPA**

Sergeant Popa had his belt recorder activated and recording during the incident under review. The recording was approximately 7 minutes and 29 seconds in length.

Sergeant Popa appears to be inside his patrol vehicle. You can hear radio traffic in the background of the recording. Sergeant Popa can be heard asking, "Confirming you have someone in the driver seat?" Sergeant Popa is heard telling the other deputies over the radio to roll in. Deputy Bradshaw can be heard broadcasting in the background as to the location of the individuals near the stolen vehicle. Sergeant Popa can be heard exiting his patrol vehicle.

Sergeant Popa can be heard giving verbal commands for people to stop and get on the ground. Sergeant Popa can be heard yelling, "Hey stop. Stop. Get on the ground. Everybody on the ground. On the ground right now. Get on the ground. Get on the ground. Get your hands up. Get your hands up." Other deputies can also be heard in the background giving verbal commands. A woman can be heard yelling, "Please don't shoot my brother. Please don't shoot him. Don't shoot him." Next, you hear one gunshot and then a woman screaming. A baby can be heard crying in the background. A helicopter can be heard flying over the scene. Minor Suspect can be heard yelling that he cannot breathe. Next, you hear Sergeant Popa yelling, "He's got a gun. He's got a gun. I got a gun."<sup>21</sup>

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<sup>21</sup> Sergeant Popa located a handgun on Witness #10 who he had detained during the incident under review.

### **Deputy Thun Houn**

Deputy Houn had his belt recorder activated and recording during the incident under review. The recording was approximately 14 minutes and 52 seconds in length.

Deputy Houn appears to be inside his patrol vehicle. Radio traffic can be heard in the background. Sergeant Popa can be heard trying to confirm there is someone in the driver seat of the stolen vehicle. You can hear Sergeant Popa telling the other deputies over the radio to roll in. Deputy Houn can be heard exiting his patrol vehicle. You can hear deputies start yelling verbal commands. Deputy Houn is yelling, "Get on the ground. Get on the ground. Everybody get on the ground. Stay on the ground. Stay on the ground." Next, you hear one gunshot and then a woman screaming. A male can be heard yelling at deputies. You can hear deputies continuing to give verbal commands. Deputy Houn can be heard yelling, "Stay on the ground. Stay on the ground." A helicopter is heard flying in the background of the recording.

### **Deputy Daniel Jessup**

Deputy Jessup had his belt recorder activated and recording during the incident under review. The recording was approximately 15 minutes and 55 seconds in length.

Deputy Jessup appears to be inside his patrol vehicle. Deputy Bradshaw can be heard broadcasting in the background as to the location of the individuals near the stolen vehicle. You can hear Deputy Jessup exiting his patrol vehicle. A helicopter can be heard flying in the background of the recording. Deputies can be heard in the background giving verbal commands for subjects to get on the ground. Next, you hear one gunshot and a woman screaming. Deputies can be heard continuing to yell verbal commands. You can hear a deputy yelling for a subject to show his hands. You can also hear a deputy broadcasting "Shots fired."

### **Deputy Bogdan Nastase**

Deputy Nastase had his belt recorder activated and recording during the incident under review. The recording was approximately 34 minutes and 44 seconds in length.

You can hear Deputy Nastase yelling for someone to get on the ground. Deputy Nastase is yelling, "Get on the ground. Get on the ground. Get on the ground. You're going to get shot." Next, you can hear one gunshot and a woman screaming. A deputy can be heard yelling for a subject to show their hands. Then you can hear a deputy broadcasting "shots fired." You can also hear a helicopter flying in the background.

### **40-King-3**

40-King-3 had its video camera activated and recording during the incident under review. The video recording was approximately 18 minutes and 15 seconds in length. The helicopter was circling over the location. As a result, there were times when trees and buildings blocked the helicopter's camera view.

Radio traffic can be heard in the background. You see the stolen Lexus parked next to a Chevrolet Impala. Initially you can see four Black male subjects around the two vehicles. Deputy Bradshaw can be heard broadcasting a description of the suspected driver of the stolen Lexus, who was later identified as Minor Suspect. A fifth Black male subject is seen walking up to the vehicles. Deputy Bradshaw can be heard broadcasting additional information about the location of the subjects and the vehicles. Deputy Bradshaw advises the deputies on the ground that the parking lot is at the end of a cul-de-sac with only one way in and one way out.

Two dark colored vehicles, a sedan and a sport utility vehicle, can be seen pulling into the parking lot and parking near the Impala and Lexus. The Black male adults can be seen speaking with the occupant in the dark colored sedan. Deputy Bradshaw can be heard advising it appears the individuals know one another. The deputies can be heard discussing whether it was known which street the vehicles came from. 40-King-3 advises the vehicles came from Baseline and drove past the deputies who were parked on their way into the parking lot. A red colored vehicle can be seen pulling into the parking lot and parking. The deputies can be heard discussing whether to roll in. You see the driver of the red vehicle walking up to the other subjects congregating around the Impala and the Lexus.

Sergeant Popa can be heard over the radio telling the other deputies to roll in. You can see four patrol vehicles following a black colored vehicle to the parking lot. Next, you see the four patrol vehicles stop and park at the entrance to the parking lot. Deputies can be seen approaching the group of Black male subjects. Minor Suspect can be seen standing next to the open driver side door of the Lexus. Minor Suspect appears to be holding a cell phone in his left hand and a pair of sunglasses in his right hand. Minor Suspect is holding both of his hands up about shoulder height.

You can see deputies with their guns drawn. Two subjects can be seen laying on the ground with their hands stretched out. One subject can be seen on his knees with his hands up. One subject can be seen sitting in a wheelchair with his hands held up. Minor Suspect can be seen placing the cell phone and sunglasses on the back of the Lexus and walking away from the Lexus. Sergeant Popa can be seen detaining Witness #10 at the rear passenger side of the Lexus.

Next, Deputy Strand can be seen walking in between the Impala and the Lexus toward Minor Suspect. Minor Suspect appears to be reaching into the waistband of his pants with his right hand. Deputy Strand has his duty weapon in his right hand. Deputy Strand can be seen running toward Minor Suspect and grabbing for Minor Suspect with

his left hand. Deputy Nastase can be seen with his duty weapon drawn and pointing towards Minor Suspect. Minor Suspect can be seen reaching a second time toward the waistband of his pants with his right hand. You hear Deputy Bradshaw broadcasting over the radio that Minor Suspect is reaching for his waistband. Deputy Strand appears to fire his weapon at Minor Suspect. You can see Minor Suspect falling to the ground. Deputy Strand can be seen pointing his duty weapon at Minor Suspect while Minor Suspect was on the ground. Deputy Strand can be seen handcuffing Minor Suspect.

### **INVOLVED SUBJECT**

**INJURIES.** Minor Suspect was transported to a hospital for medical treatment. Minor Suspect suffered a gunshot wound to the left arm. The fired bullet entered Minor Suspect's left arm and traveled up his bicep and into his chest cavity.

### **CRIMINAL HISTORY.**

2020, 211 of the Penal Code, Robbery. San Bernardino County case number J279820, a felony.

### **DE-ESCALATION**

Deputies from the San Bernardino County Sheriff's Department were attempting to locate a stolen Lexus. Deputies located the stolen vehicle in a parking lot at an apartment complex. The deputies drove to the apartment complex in marked patrol vehicles. The deputies were all in uniform. When the deputies approached the group of individuals who were congregating around the stolen vehicle, they gave verbal commands for the subjects to put their hands up and to get on the ground.

Deputy Strand approached Minor Suspect with his gun drawn and ordered him to put his hands up. Initially Minor Suspect appeared to comply and put his arms up about shoulder height. Deputy Strand then noticed Minor Suspect started to walk away from the stolen vehicle toward Sergeant Popa. Deputy Strand also gave verbal commands for Minor Suspect to get on the ground. At the time, Sergeant Popa had an individual detained against the trunk of the Lexus. Deputy Strand followed Minor Suspect. Deputy Strand saw Minor Suspect place his right hand inside the waistband of his pants. Deputy Strand feared Minor Suspect was reaching for a concealed weapon and was going to harm him or Sergeant Popa. Deputy Strand ran toward Minor Suspect and grabbed his arm. Deputy Strand wanted to prevent Minor Suspect from using that arm to retrieve a weapon.

The incident under review escalated quickly. From the time Deputy Strand opened his patrol car door to when he fired his weapon at Minor Suspect was approximately thirty seconds. Deputy Strand attempted to de-escalate the situation by giving Minor Suspect verbal commands. However, after Minor Suspect started to walk away from the stolen vehicle, there was no indication Minor Suspect intended to cooperate with the deputies. Instead, Minor Suspect reached inside the waistband of his pants, a place Deputy Strand knew suspects often carried concealed weapons. Deputy Strand made one final attempt to de-escalate the situation by physically grabbing for Minor Suspect's arm. Deputy Strand wanted to prevent Minor Suspect from producing a weapon from his pants. Ultimately, Minor Suspect's movement of reaching into his pants combined with his failure to comply with Deputy Strand's verbal commands left Deputy Strand believing he had no choice but to fire his weapon.

### **APPLICABLE LEGAL PRINCIPLES**

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)<sup>22</sup> Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing*, *In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

**PENAL CODE SECTION 196.** Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a

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<sup>22</sup> All references to code sections here pertain to the California Penal Code.

use of force that “is in compliance with Section 835a.” Section 835a specifies a **police officer is justified in using deadly force** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

- (1) to defend against an imminent threat of death or serious bodily injury to the officer or another, or
- (2) to apprehend a fleeing felon who threatened or caused death or serious bodily injury, if the officer also reasonably believes that the fleeing felon would cause further death or serious bodily injury unless immediately apprehended,

(Penal C. §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal C. §835a(e)(1).) The “ [t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,<sup>23</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at \*25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra.*) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal C.

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<sup>23</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

§835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis, but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;<sup>24</sup>
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

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<sup>24</sup> Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).



(Penal C. §835a(a).)

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

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

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

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

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

Imminence more recently defined in the context of use of force to effect an arrest, is similar:

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the

peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal C. §835a(e)(2).)

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

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

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

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

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer” standard. (*People v. Mehserle* (2012) 206 Cal.App.4<sup>th</sup> 1125, 1147.)<sup>25</sup> 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.*)

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<sup>25</sup> The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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* (9<sup>th</sup> 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* (9<sup>th</sup> Cir. 1994) 858 F.Supp. 1064, 1071-72 “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

The use of force policies and training of an involved officer’s agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 3, *infra*.)

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.4<sup>th</sup> at 343, citing *Smith v. Freland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9<sup>th</sup> Cir. 1999) 1999 U.S. Dist. LEXIS 1414 \*1, 27-28.) The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4<sup>th</sup> at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1<sup>st</sup> 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.4<sup>th</sup> 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* (9<sup>th</sup> 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* (9<sup>th</sup> 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* (9<sup>th</sup> Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.) Similarly, the use of a trained police dog does not qualify as “deadly force” as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4<sup>th</sup> 154, 165-169.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject’s mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 831; *Deorle v. Rutherford*, *supra*, 270 F.3d at 1283-84.)

Failure to pass-muster under *Graham* can deem the use of non-lethal force as “excessive” and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed “excessive” nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9<sup>th</sup> Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

## ANALYSIS

In this case, Deputy Strand had an honest and objectively reasonable belief Minor Suspect posed an imminent risk of serious bodily injury or death. Deputy Strand and the other deputies who pulled up to the location on Hillview Street were in uniform and driving marked patrol vehicles. Deputy Strand was aware Hillview Street was a violent neighborhood and a high crime area. He knew there had been prior shootings, weapon offenses, domestic violence incidents, and a homicide in that neighborhood.

Minor Suspect was a suspect in a stolen vehicle investigation. When they approached, Deputy Strand and the other deputies encountered multiple subjects congregating near the stolen Lexus. The deputies gave verbal commands for the individuals to put their hands up and to get on the ground. Most of the group complied with the deputies' verbal commands. Although Minor Suspect initially put his hands partially up, Minor Suspect failed to comply with the deputies' orders and started to walk away from the scene. Deputy Strand became concerned as Minor Suspect appeared to be walking toward Sergeant Popa who was focused on detaining Witness #10.

Deputy Strand followed Minor Suspect as he walked toward a dirt field. Minor Suspect placed his hand inside his waistband causing Deputy Strand to reasonably fear Minor Suspect was armed. Deputy Strand knew based on his experience that suspects often carried concealed weapons in their pants. Deputy Strand was concerned that Sergeant Popa's back was to Minor Suspect and Sergeant Popa's attention was focused on dealing with Witness #10. Given Minor Suspect's unwillingness to comply with Deputy Strand's verbal commands to put his hands up as well as Minor Suspect's repeated efforts to reach into the waistband of his pants, it was objectively reasonable for Deputy Strand to believe Minor Suspect was reaching for a weapon to use against Deputy Strand and/or Sergeant Popa.

Civilians who witnessed parts of the incident under review also indicated Minor Suspect was uncooperative with law enforcement officers. Witness #1 stated she heard deputies give verbal commands to "get down" but Minor Suspect did not comply with those commands. Instead, Minor Suspect backed away and appeared to try to run from the scene. Witness #1 saw Minor Suspect had one hand inside his pants and believed Minor Suspect was trying to retrieve a weapon. Witness #1 believed Minor Suspect had a gun in his waistband. Witness #3 heard deputies tell Minor Suspect to "stop" but Minor Suspect did not comply. Witness #3 saw Minor Suspect run away from the deputies. Witness #7 heard deputies give verbal commands to "put your hands up." Witness #7 saw Minor Suspect try to walk away from the deputies. Witness #7 also saw Minor Suspect pull his arms away as Deputy Strand tried to grab Minor Suspect. Witness #9 saw deputies with their guns drawn order everyone to get on the ground. Witness #9 stated Minor Suspect failed to comply with the deputies' commands and walked away from the scene.

Deputy Strand and Sergeant Popa were both standing within a few feet of Minor Suspect. Were Minor Suspect to produce a weapon from his pants, the threat to the physical safety of both deputies would have been immediate. Given those circumstances, Deputy Strand had an honest and objectively reasonable belief Minor Suspect posed an imminent risk of serious bodily injury or death to one or more of the deputies. Therefore, the decision by Deputy Strand to use deadly force was justified.

### **CONCLUSION**

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

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