



## PUBLIC RELEASE MEMORANDUM

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**DATE:** November 9, 2023

**SUBJECT:** Fatal Officer Involved Shooting

**Involved Officers:** Officer David Mellon  
California Highway Patrol, Barstow

Officer Jared Ramm  
Nevada Highway Patrol,

Deputy Anthony Buscemi  
San Bernardino County Sheriff's Department,

**Involved Subject:** Madison Carroll Adams (DOB 07/02/1992)  
**Subject's Residence:** Tehachapi, CA

**Date of Incident:** January 8, 2020  
**Incident location:** 71808 Baker Blvd., Baker, CA

**Case Agent:** Detective Michael Gardea  
San Bernardino County Sheriff's Department

**Agency Report #:** DR# 082000033/ H# 2020-001  
**DA STAR #:** 2020-51908

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## PREAMBLE

The summary of this fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The case agent for this submission was SBCSD Detective Michael Gardea.

The submission reviewed included the following: reports of law enforcement witnesses, police dispatch audio recordings, body-worn camera (BWC) video recordings, mobile video/audio recordings (MVAR), audio recordings of law enforcement, law enforcement photographs, and law enforcement scientific investigation reports.

## FACTUAL SUMMARY<sup>1</sup>

On January 8, 2020, at approximately 6:05 p.m. San Bernardino County Sheriff's Deputy (SBCSD) Anthony Buscemi, California Highway Patrol (CHP) Officer David Mellon, and Nevada Highway Patrol (NHP) Officer Jared Ramm each fired their duty weapons at Madison Adams while in the northbound lanes of Interstate Freeway 15 ("I-15") in the unincorporated area of Nipton, approximately two miles south of the Nevada state line.

The officer-involved shooting occurred after police conducted a high-risk traffic stop of the vehicle Adams was operating. On January 8, 2020, at approximately 4:43 p.m. a BOLO (be on the lookout) was received by SBCSD dispatch from CHP for suspect Madison Adams. Madison Adams was suspected of murdering and partially dismembering his mother in Tehachapi, Kern County. CHP Bakersfield station was actively tracking the GPS location of Adams' cellular phone. Adams was believed to be driving a silver Nissan Rogue with California license plate number 8ANA712. He was believed to be armed and dangerous. There was a known outstanding 9mm handgun missing from the scene of the murder<sup>2</sup>. The victim, [REDACTED], had a 9mm gunshot wound to the head.

At approximately 5:53 p.m., CHP Officer Mellon advised that, while traveling southbound on I-15, he saw the Rogue on the northbound lanes of I-15, just south of the Nevada state line. The Rogue was stationary on the northbound I-15, parked on the paved shoulder. Officer Mellon made a U-turn and positioned himself approximately ¾ mile south of the Rogue. Deputy Buscemi and CHP Officer Robert Murphy met at Officer Mellon's location. They maintained visual observation of the Rogue and waited for assistance from San Bernardino County Sheriff's Department Specialized Enforcement Division (SED) and air support. CHP officers conducted a traffic break on northbound I-15 at Nipton Road. Trooper Jared Ramm and Sergeant Shawn Eckert of the Nevada Highway Patrol also met at Officer Mellon's location.

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<sup>1</sup> Herein is a summary only. Incident-involved officers were employed by the San Bernardino County Sheriff's Department (SBCSD), California Highway Patrol (CHP), and Nevada Highway Patrol (NHP). Las Vegas Metro Police Department (LVMPD) also responded to the scene, but no LVMPD officers were involved in the shooting. All investigating officers were employed by SBCSD.

<sup>2</sup> The missing 9mm handgun was registered to [REDACTED], Madison Adams father, who was deceased and was a former California Department of Corrections and Rehabilitation (CDCR) officer. [REDACTED] was also a CDCR employee.

The Rogue appeared to begin moving slowly northbound on the shoulder. The officers decided to conduct a high-risk traffic stop. Officers<sup>3</sup> Mellon, Murphy, Ramm, Eckert and Buscemi drove their patrol units at a slow rate of speed, spanning the entirety of northbound I-15 lanes. CHP Sergeant Paxton and Officer Guirguis approached in a CHP patrol unit operated by Sergeant Paxton behind Officer Murphy's unit on the paved shoulder.

The officers stopped approximately 60 yards south of the Rogue, which was now stationary. The patrol units illuminated the area with their spotlights. Officer Kent of LVMPD approached the scene from the south just as the other officers stopped their units and began exiting their vehicles to prepare for the felony stop. Officer Kent parked his marked unit on the east side of the line of patrol units in the dirt median, facing diagonal in a northeast direction. Officers exited their patrol units, retrieved their rifles, and took positions of cover behind available patrol units.

Multiple officers observed Adams outside of the vehicle near the driver's side door. The driver's side front door of the vehicle was ajar. Adams looked in the direction of the officers and began walking towards the driver's side door of the Rogue. He appeared to be getting in or reaching into the vehicle. He was described by officers over the radio as half out of the vehicle. Officer Murphy gave multiple verbal commands using his patrol vehicle's public address (PA) system. He gave verbal commands, including "Do not re-enter the vehicle" and "Put your hands up." Adams disregarded the verbal commands. Adams fired at officers. He then entered the vehicle at the driver's side door and closed the vehicle door. Multiple officers heard a single gunshot round in flight and yelled, "Shots fired!" One officer believes he saw the round strike the ground in front of them and heard it ricochet towards his position. Another officer believes he heard two rounds from the direction of the suspect. Deputy Buscemi, Officer Mellon, and Trooper Ramm returned fire with their respective department issued rifles. Other officers had their rifles drawn or were in the process of doing so, but did not fire because they sought better cover or did not have an adequate sight line. No officers were injured during the exchange of gunfire. After gunfire ceased, officers maintained their positions of cover and observed the vehicle. The suspect's condition was unknown. Officers waited for air support and a ballistics shield before making a tactical approach of the Rogue. On contact the approach team discovered Adams, deceased, in the driver's seat of the vehicle with a firearm in his right hand.

Adams sustained multiple fatal gunshot wounds, including one self-inflicted fatal wound to the head and multiple collectively fatal gunshot wounds to his back. He was pronounced dead at the scene. Adams was armed with a loaded Glock-19 semi-automatic firearm at the time of the officer-involved shooting.

### STATEMENTS BY POLICE OFFICERS

**Deputy Buscemi** gave a voluntary interview to SBCSD Detectives Michael Gardea and Tramayne Phillips on January 22, 2020, 14 days after the shooting incident and in the presence of an SBCSD representative.

Prior to the below-summarized interview and shortly after the incident, Deputy Buscemi was photographed in the uniform he wore at the time of the incident and his duty weapons were

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<sup>3</sup> The term "officers" is sometimes used to collectively refer to officers, deputies, and troopers.

collected. Deputy Buscemi carried a department issued Glock 21 .45 caliber handgun and a department issued Sturm Ruger & Co. Mini-14 .223 caliber semiautomatic rifle with a 20-round capacity magazine. The rifle was used in the shooting incident. Deputy Buscemi stated that he was able to review audio and/or video of the incident prior to the interview.

The following is a summary of relevant information disclosed by Deputy Buscemi:

At the time of the shooting, Deputy Buscemi was 57 years old and had been an SBCSD deputy for 25 years, the first two of which he was a reserve officer.

On the night of the incident, Deputy Buscemi drove a one-man, marked patrol unit. Deputy Buscemi was wearing a Class A Sheriff's uniform which consisted of green pants, tan shirt with SBCSD patches, and black boots. Over the Class A uniform, he wore a Sheriff's jacket with SBCSD patches.

Prior to the shooting incident, Deputy Buscemi received BOLO information for the Rogue. He learned that the subject, Madison Adams, who was believed to be driving the vehicle was suspected in the murder of his mother and he was believed to be armed and dangerous. Deputy Buscemi stated that the information was coming from Baker PD and CHP dispatch. He learned that the suspect was being actively tracked by GPS and a ping of his phone was received near Baker. Deputy Buscemi went to the Shell gas station with a CHP officer to conduct an area search for the vehicle. They did not locate it.

Deputy Buscemi later received updated information that the phone pinged in the area of Valley Wells rest stop near Nipton Road. He received information that CHP shot at the suspect's vehicle on the shoulder of I-15. He later learned that CHP Officer Mellon reported that he "overshot" the suspect's vehicle on I-15, meaning Officer Mellon saw the vehicle on the northbound lanes of I-15 as he drove in the southbound lanes past its location. Officer Mellon turned around, driving through the median, and took a position just south of Nipton Road. Deputy Buscemi met up with him and they maintained a visual of the vehicle.

Deputy Buscemi stated that they could see the vehicle on the shoulder with its hazards on but could see no movement in the vehicle. The conditions were dark with no street lighting. Deputy Buscemi did not know if the subject was in the vehicle, out of the vehicle, or lying in wait in the desert waiting to ambush them if they approached. Officer Murphy and two other NHP units arrived at their location.

After approximately 10 minutes of observing the vehicle, it appeared that the vehicle began moving slowly north. Officer Murphy had binoculars which he used to observe the vehicle. He confirmed that the vehicle appeared to be doing a slow roll forward. Deputy Buscemi was concerned that Adams, who was suspected of killing someone and believed to be armed, was headed towards a populated area. Officers decided to engage the suspect by conducting a high-risk traffic stop. The officers drove their respective patrol units north on I-15 towards the suspect vehicle, spanning the width of I-15 lanes and shoulders. Deputy Buscemi estimated that they stopped approximately 75-80 yards south of the

Rogue. Deputy Buscemi had his rifle drawn and took a cover position on the passenger side of Officer Murphy's CHP unit.

Officers turned on their spotlights to illuminate the Rogue and observed the subject, later positively identified as Madison Adams, standing outside of the Rogue, which was now stopped on the shoulder. Deputy Buscemi stated that Officer Murphy began giving verbal commands to Adams, such as "Show your hands" and "Don't move." Adams did not comply. Instead, he walked towards the driver's side door of the Rogue. Deputy Buscemi stated that Officer Murphy gave verbal commands to Mr. Adams to not get in the car. Mr. Adams was next to the car door or in the car when Deputy Buscemi heard gunfire. He believes he heard two shots. Deputy Buscemi and Officer Murphy both yelled "Shots fired!" Deputy Buscemi feared for his safety and the safety of the other officers. He believed Adams was going to kill them. Deputy Buscemi and other officers returned fire. Deputy Buscemi aimed at the driver's side of the vehicle. He fired 20 shots, which was one full magazine. Deputy Buscemi went to his unit to obtain another magazine. Officer Murphy took Deputy Buscemi's position at the door of Murphy's unit while Deputy Buscemi reloaded. Deputy Buscemi reloaded but did not fire additional shots because it appeared the threat had ceased.

Deputy Buscemi stated that there were no other force options available. The suspect was shooting at them and there was no cover or concealment other than the patrol vehicles. After gunfire was exchanged, officers were unsure of Adams' condition. They maintained their positions using patrol vehicles for cover and waited for assistance. Officers requested air support, SWAT support, and a ballistics shield. Air support arrived and informed officers that it appeared Adams was not moving, was slumped over, and blood was visible on his forehead. Sergeant Frank Hardin arrived with a ballistics shield and an approach team comprising of CHP Officer Kelsey Parsons, SBCSD Deputy Dave Johnson, and NHP officers. Buscemi remained in a position of cover on Officer Murphy's vehicle to provide cover for the approach team. Once they were close to the Rogue, he yelled "Muzzle down!" and lowered his rifle.

Based upon Deputy Buscemi's interview, the examination of his duty weapon and the collection of evidence at the scene, it is approximated that Deputy Buscemi fired 20 rounds at Adams during the shooting incident.

**Trooper Jared Ramm** gave a voluntary interview to SBCSD Detectives Michael Gardea and Oscar Godoy on January 23, 2020, 15 days after the shooting incident and in the presence of a Nevada Association of Public Safety Officers representative.

Prior to the below-summarized interview and shortly after the incident, Trooper Ramm was photographed in the uniform he wore at the time of the incident and his duty weapons were collected. Trooper Ramm carried a department issued Sig Sauer handgun and a department issued Smith & Wesson M&P 15 .223 caliber semiautomatic rifle with a 30-round capacity magazine. The rifle was used in the shooting incident. Trooper Ramm stated that he was able to review video from his patrol unit camera and his BWC prior to the interview.

The following is a summary of relevant information disclosed by Trooper Ramm:

At the time of the shooting, Trooper Ramm was 26 years old and had been a Nevada Highway Patrol trooper for three years. Prior to his employment as a trooper, Ramm was a military police officer in the Marine Corps for five years.

On the night of the incident, Trooper Ramm drove a one-man unit. He was wearing a Nevada Highway patrol Class "C" uniform, which consisted of dark grey cargo pants and a dark grey top with identifiable Nevada Department of Public Safety patches.

On January 8, 2020, Trooper Ramm and NHP Sergeant Eckert responded to a request for assistance from CHP to clear a vehicle that was the subject of a BOLO and to be on the lookout for pedestrians on the highway that might match the description of suspect, Madison Adams. Trooper Ramm observed the suspect vehicle approximately 2 miles south of state line. He saw CHP units south of the vehicle location, crossed the median and met up with the officers already on scene. Trooper Ramm stated that they were set up approximately  $\frac{3}{4}$  mile south of the Rogue. Approximately 30 seconds after his arrival, officers began their approach of the vehicle. Trooper Ramm, along with the other officers, drove their units slowly north on I-15 towards the suspect vehicle. He estimated that they stopped approximately 50 yards from the Rogue.

The suspect was outside of the vehicle. Officers turned on their floodlights. After parking his vehicle, Trooper Ramm racked a round in his rifle and prepared to conduct a felony stop. Trooper Ramm heard CHP officers giving Mr. Adams commands over the PA system. Trooper Ramm stated that there was a break in the commands, then CHP gave more commands to the suspect. The suspect began entering the vehicle and closing the door. At the same time, Trooper Ramm heard a single gunshot come from the direction of the suspect vehicle towards officers. He heard officers yelling "Shots fired!" Trooper Ramm feared for his life and the life of other officers. Trooper Ramm turned the safety on his rifle off, aimed at the back passenger area of the vehicle and fired four rounds.

Trooper Ramm did not know if the suspect was still alive or not. They could not approach because there was not enough coverage for officer safety. Air support eventually arrived, made low flyovers, and reported that Mr. Adams was slumped over the wheel and bloody.

Based upon Trooper Ramm's interview, the examination of his department issued rifle and the collection of evidence at the scene, it is approximated that the officer fired 4 rounds at Mr. Adams during the shooting incident.

**Officer David Mellon** gave a voluntary interview to SBCSD Detectives Oscar Godoy and Michael Gardea on January 23, 2020, 15 days after the shooting incident and in the presence of a CHP representative.

Prior to the below-summarized interview and shortly after the incident, Officer Mellon was photographed in the uniform he wore at the time of the incident and his duty weapons were collected. Officer Mellon carried a department issued Smith & Wesson M&P .40 caliber semiautomatic handgun and a department issued Sig Sauer M400 .223 caliber semiautomatic

rifle with a 20-round capacity magazine. The rifle was used in the shooting incident. Officer Mellon stated that he was able to review audio and video of the incident prior to the interview.

The following is a summary of relevant information disclosed by Officer Mellon:

At the time of the shooting, Officer Mellon was 37 years old and had been a CHP officer for 2 years and 10 months. Prior to his employment as an officer, Mellon was an Army infantryman for three years.

On the night of the incident, Officer Mellon drove a one-man unit. He was wearing a CHP cold weather winter uniform with CHP patches on both shoulders.

On January 8, 2020, at approximately 4:40 p.m. Officer Mellon received information regarding a BOLO for the Rogue and the suspect Madison Adams, who was the suspect in a murder of a CDCR officer<sup>4</sup>. He was considered armed and dangerous. Information was provided that there was a firearm missing from the location of the murder. At some point prior to the contact, Officer Mellon learned that the suspect had dismembered his mother, who was the murder victim. The broadcast information reported that Adams' cell phone was pinging in the Baker area.

Officer Mellon proceeded from the Mountain Pass area to the Baker area to assist in locating the vehicle. Another ping was received showing a location north of Valley Wells rest area. Officer Mellon then went northbound on the I-15. Officer Mellon observed a vehicle stopped on the shoulder of northbound I-15 approximately 2 miles north of Yates Well Rd. He confirmed the vehicle was a match and relayed to dispatch that he located the vehicle. Officer Mellon requested air support. He turned around, headed northbound on I-15 and took a position south of the vehicle on the northbound I-15, parked on the right shoulder with a visual of the Rogue. Officer Mellon called for a traffic break on northbound I-15 to minimize the danger to the public. He perceived a high danger to the public based on the information he had.

Officer Mellon waited for additional units because conditions were dark and he did not know the suspect's location. He feared that Adams may be lying in wait in the desert to ambush officers. Officer Mellon only knew that extreme caution was necessary due to the information regarding the suspect murdering and dismembering his mother. Additional officers arrived within a few minutes. Officer Murphy and Deputy Buscemi were first to arrive, followed by two NHP troopers.

While officers waited for air support, they witnessed the vehicle moving slowly northbound. They were concerned that Adams was headed toward a heavily populated area; there were three casinos and a truck stop northbound. They feared for the safety of the public and decided to make contact immediately.

The officers entered their units and approached the vehicle slowly. Upon approach, they saw that the Rogue was stopped and the suspect was outside of his vehicle near the

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<sup>4</sup> The information initially came out that the victim, [REDACTED] was a CDCR officer. She was a CDCR employee and her late husband, to whom the firearm was registered, was a CDCR officer.

driver-side door. The suspect was moving around outside of his vehicle near the driver's door, walking north to south. Officer Mellon estimates that officers stopped their units approximately 30-50 yards from the Rogue. Officer Mellon exited his unit with his rifle and took cover behind the driver's door of his unit. He determined due to the range and information regarding the suspect, his rifle was the most appropriate weapon for the situation. Office Mellon's unit was the unit on the far right, on the shoulder of I-15. Officer Mellon used his spotlight to illuminate the area.

Officer Mellon recalls Officer Murphy commanding the subject over his PA system not to get back into his vehicle, but the suspect did not comply. He was unsure if this command was given before the subject re-entered the vehicle or after. At the same time, the suspect fired a round at officers and entered his vehicle. The sequence of events happened very quickly, within the span of a few seconds. Officer Mellon heard "Shots fired!" and heard return fire coming from his left. Officer Mellon also returned fire. He determined that the suspect was firing at officers to his left. He feared for the safety of himself and the other officers and engaged the suspect. Officer Mellon believes he fired approximately 5-10 rounds in three seconds at the direction of the threat.

Officer Mellon remained in cover and observed the Rogue. Officer Mellon observed the hazards and brake lights turning off and on. Officers were unsure of the suspect's condition or threat level and waited for support. There was no cover or concealment available to officers other than their units, making it unsafe to approach. Officer Mellon did a tactical reload, loading a fresh magazine in the rifle, maintained cover, and waited for air support, SWAT, or at least a ballistics shield to clear the vehicle. A clear team was eventually formed to approach the vehicle using a patrol vehicle for cover after air support did some fly-bys. Officer Mellon was not part of the clearing team.

Based upon Officer Mellon's interview, the examination of his department issued rifle and the collection of evidence at the scene, it is approximated that the officer fired 10 rounds at Mr. Adams during the shooting incident.

**Additional Law Enforcement Personnel** were interviewed regarding their involvement in locating the vehicle and contacting the suspect. All law enforcement who participated did so while on duty, in department-issued uniform and while operating a marked law enforcement vehicle. All units were advised of the BOLO of the vehicle and the associated suspect information, including that he was suspected of murder and mayhem and was believed to be armed and dangerous.

**NHP Sergeant Shawn Eckert** responded to the California side of I-15 to assist in the location of a murder suspect. He responded with Trooper Ramm; each was in their own patrol unit. Sergeant Eckert saw the suspect vehicle parked on the northbound side of the I-15 as he traveled southbound. He then observed a CHP unit near Yates Wells Rd south of the Rogue. Both Sergeant Eckert and Trooper Ramm went through the median and met with CHP and SBCSD officers that were already there observing the vehicle. Sergeant Eckert's unit was in the #1 lane and Trooper Ramm's unit was in the #2 lane of northbound I-15. Traffic on northbound I-15 was stopped. The patrol units began a slow roll towards the subject vehicle. Approximately 50 yards from the vehicle, they stopped

and illuminated the area with the spotlights on their units. Sergeant Eckert observed the suspect kneeling down by the front of his vehicle. As soon as Adams was illuminated, he moved towards the driver's door of the Rogue. The suspect appeared to be reaching in or getting in the vehicle. An officer to Sergeant Eckert's east was giving verbal commands. Sergeant Eckert got out of his vehicle. As Sergeant Eckert reached into his vehicle for his rifle and began to take a shooting position, he heard a single gunshot and a characteristic whizzing sound, which he perceived to be a bullet flying past him. Sergeant Eckert is familiar with the sound of a bullet in flight. He immediately ducked down next to the driver's door and yelled "Shots fired!" He moved to the rear of his unit for better cover but did not have a good sightline. Other officers were returning fire. Sergeant Eckert moved back towards his driver's side door. By that time gunfire had stopped.

**CHP Sergeant Daniel Paxton** responded to the area of Yates Wells Road where Officers Murphy and Mellon had staged to observe the Rogue, which was parked on the shoulder of the northbound I-15. Officer Guirguis was in the unit with Sergeant Paxton. Officers were observing the vehicle and waiting for air support. Sergeant Paxton learned that Las Vegas Metro PD would not allow their airship to cross the state line and San Bernardino County air support was busy on a search and rescue. After two NHP units arrived, it was determined that there were sufficient units to approach. Officer Mellon's unit was to Sergeant Paxton's right on the dirt shoulder and Officer Murphy's unit was in front of him. Sergeant Paxton's unit was on the paved shoulder. NHP units were in the #1 and #2 lanes of I-15 north and a CHP unit was behind the NHP unit in the #1 lane. A Las Vegas Metro PD unit also arrived and was in the center divider, to the left of the NHP unit in the #1 lane. Officers approached to conduct a high-risk traffic stop. Sergeant Paxton exited his vehicle with his department issued AR-15 and took cover at the right rear quarter panel area of Officer Murphy's unit. Officer Murphy gave verbal commands to the suspect. The suspect was out of the vehicle and standing near the driver's door. The suspect reached into the vehicle and looked at officers. Officer Murphy told him not to enter the vehicle. Adams did not comply with any of Officer Murphy's commands. Sergeant Paxton observed a spark approximately 20-30 feet in front of Officer Murphy's unit, which he perceived to be a bullet hitting the ground and skipping. He saw the spark and heard a "zzzt" sound to his left, which he perceived was the sound of a bullet going by him. The bullet came from the suspect's direction. Officer Murphy to his left shouted "Shots fired!" and moved to the back of the vehicle next to Sergeant Paxton. Both stood up trying to find a sightline. Sergeant Paxton did not fire because he could not acquire a target. The driver's door of the suspect vehicle was now closed and Sergeant Paxton could not see the suspect.

**CHP Officer Marcus Guirguis** responded to the staging area approximately  $\frac{3}{4}$  mile south of the Rogue on northbound I-15. While waiting for additional units it was believed that the suspect vehicle began moving north on I-15. Officers approached in a line of vehicles. Officer Guirguis was with Sergeant Paxton behind other units. Officer Guirguis heard commands being given to the suspect to step away from the vehicle, get out of the vehicle, and to put his hands up. Guirguis retrieved his rifle from the unit and as he moved towards the patrol unit in front of him to take up a position, he heard a gunshot. He also heard what he thought was the round striking something near him. He took cover.

He did not raise his rifle because there were officers in front of him. Other officers returned fire.

**LVMPD Officer Raymond Kent** responded to the staging location south of the suspect vehicle on northbound I-15 to assist officers. He was positioned on the left side at the end of the line of patrol vehicles. He participated in the approach and when he stopped his unit, he illuminated the suspect vehicle with the floodlight on his unit. As he exited his unit, Officer Kent observed the suspect moving to get into the Rogue. He saw the suspects movements in his peripheral vision as he was retrieving his rifle. He heard a gunshot and ran to the back of his vehicle for cover. As he ran for cover, he saw other officers return fire. He saw the suspect get fully in the Rogue and pull the door closed.

### SUBMITTED MEDIA<sup>5</sup>

**Dispatch Recordings.** The case agent's submission included audio files appearing to be recordings of dispatch radio broadcasts from SBCSD, CHP, and NHP. The following is a summary of relevant portions of dispatch recordings.

#### **SBCSD**

At 4:43 p.m. Sheriff's Dispatch received a BOLO notification from CHP regarding suspect Madison Adams, the suspect in the murder and partial dismemberment of his mother [REDACTED] in Kern County. He was considered armed and dangerous and was believed to be driving a Nissan Rogue with California license plate number 8ANA712. Bakersfield PD was actively tracking the GPS location of his cell phone.

At approximately 5:53 p.m., CHP Officer Mellon advised he observed the Rogue on the northbound I-15 freeway. He positioned himself ¾ mile south of the vehicle location and maintained visual observation.

At approximately 6:02 p.m., the vehicle was believed to be moving and occupied. Officers decide to creep up on the vehicle with all of their lights blacked out and conduct a felony stop.

At approximately 6:05 p.m. Deputy Buscemi notified dispatch that shots were fired. CHP and NHP relayed to SBCSD that the suspect fired at officers, officers returned fire, and the suspect was now back in the vehicle.

#### **CHP**

At approximately 4:40 p.m. a BOLO was issued for a Nissan Rogue, California license plate 8ANA712 driven by Madison Adams (DOB 7/2/92), as suspect in the murder of a CDC officer. He should be considered armed and dangerous.

At approximately 5:33 p.m., dispatch stated that the victim was found with a 9mm gunshot wound to the head and her arms, legs, and breasts cut off.

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<sup>5</sup> All submitted photographs and audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are mentioned here.

At approximately 5:34 p.m., Officer Mellon advised that he had overshot the vehicle on I-15. He located it on the right shoulder of northbound lanes and requested a traffic break.

At 6:03 p.m., officers approached the suspect vehicle. The subject was observed half in and half out of the vehicle.

At 6:04 p.m. a shots fired call went out. The suspect fired the first round.

#### **NHP**

At approximately 5:33 p.m., dispatch provided information that homicide suspect Adams was driving a silver 2017 Nissan Rogue with tinted windows and California license plate 8ANA712.

At approximately 5:47 p.m., CHP advised that they were out with the vehicle on the shoulder approximately 2 miles south of state line. It was unknown if the vehicle was occupied. CHP requested NHP units to assist in locating pedestrians matching the suspect description at state line.

At approximately 6:02 p.m., Trooper Ramm advised NHP units were approaching with CHP units. CHP believed the vehicle was moving.

At approximately 6:04 p.m., CHP advised that a felony stop was in progress.

At approximately 6:05 p.m., Sergeant Eckert advised NHP dispatch that shots were fired. CHP also advised shots fired.

At approximately 6:07 p.m., Sergeant Eckert advised that the suspect shot at officers from his vehicle and that CHP and NHP officers returned fire.

**Mobile Video/Audio Recordings.** The case agent's submission included CHP MVAR device recordings collected by some of the involved CHP patrol units. The submitted MVAR recordings were neither date-stamped nor timestamped, but appear to include real-time footage. The identity of the officer whose MVAR device collected each submitted MVAR video was assumed based upon the digital title of the submitted video. Objects in the video that are in the distance are grainy and the conditions are dark. The following is a summary of relevant portions of the submitted MVAR video:

**Officer Murphy.** Six MVAR video files were attributed to Officer Murphy; however several videos show the same sequence of events. In one video, at the one hour seven minute and 23 second mark (1:07:23) of the recording, Officer Murphy's patrol unit begins to creep up on the suspect vehicle. Officer Murphy is the lead car approaching the vehicle. At (1:09:43) Officer Murphy stops his unit and begins giving commands over the PA system. Officer Murphy commands "Do not re-enter the vehicle. Come out with your hands up." At (1:10:12) officers advise that the subject is half-out of the vehicle. At (1:10:22) an officer, who appears to be Officer Murphy, yells, "Shots fired! Shots fired!" At (1:10:26) officers return fire. When officers return fire, rapid movement is seen at the suspect vehicle which appears to be a figure entering the vehicle and closing the door.

**Officer Mellon.** Five MVAR video files were attributed to Officer Mellon; however several videos show the same sequence of events. In one video, Officer Mellon's unit is travelling on the dirt shoulder of the highway. It comes to a stop well behind a vehicle parked on the paved shoulder with its hazards flashing. The video is very grainy. Sound is not available on the video until the (1:03) mark. Dispatch is heard confirming that the suspect is "half out of the vehicle." At (1:19) several officers yell, "Shots fired!" and multiple officers return fire. When officers return fire, movement is seen near the vehicle which appears to be the vehicle driver's door closing rapidly.

**Body Worn Camera Video Recording.** The recordings made by NHP Trooper Ramm and Sergeant Eckert and LVMPD Officer Kent were submitted by the case agent. The BWCs captured portions of the incident. However, the BWC footage cannot recreate what the wearing officer perceived by his combined senses. The resulting footage was therefore subject to the limitations of the camera mechanism and placement of the camera. Additionally, the submitted video footage included audio only after the 29 second mark. With these parameters in mind and in the context of all other material submitted, the following is a summary of portions of BWC video footage.

**NHP Trooper Ramm.** Trooper Ramm's BWC video footage included an opening timestamp of January 9, 2020, at 2:00:30 Zulu or Universal Coordinated Time. The corresponding local time was 6:00:30 p.m.

At 6:02:23 p.m. Trooper Ramm notified dispatch that he was with CHP and they were approaching the suspect vehicle. The conditions in the vehicle were dark and Trooper Ramm approached with headlights off. Dispatch stated over the radio that the vehicle was possibly occupied. At 6:04:05 p.m. Trooper Ramm parked his unit, turned on his spotlight and exited his vehicle. At the same time dispatch traffic stated the suspect was out of the vehicle. Another officer could be heard giving commands to the suspect to not re-enter the vehicle and to put his hands up. Trooper Ramm took a position of cover with his rifle in the "v" formed by his open driver door and the patrol unit. The suspect vehicle is not visible. The view is blocked by the spotlight of the patrol unit. At 6:04:34 p.m. another officer is seen positioned on the passenger side of Trooper Ramm's unit with his rifle aimed towards the suspect vehicle. At 6:04:45 p.m. a single gunshot is heard coming from the distance. Multiple officers yell "Shots fired!" At 6:04:51 p.m. multiple officers begin returning fire. Around 6:05:11 p.m. gunfire ceases.

**NHP Sergeant Eckert.** Sergeant Eckert's BWC video footage included an opening timestamp of January 9, 2020, at 2:00:22 Zulu or Universal Coordinated Time. The corresponding local time was 6:00:22 p.m.

At 6:01:36 p.m. Sergeant Eckert notified dispatch they were out with CHP and would be approaching the vehicle, which was approximately  $\frac{3}{4}$  mile ahead. Sergeant Eckert instructed Trooper Ramm to turn his lights off. At 6:02:20 p.m., dispatch notified NHP troopers that SBCSD did not want them to approach but wanted a perimeter set up. NHP responded negative; that they were with CHP and CHP was already approaching. At 6:04:06 p.m., Sergeant Eckert notified dispatch that there was a suspect outside of the vehicle. Commands can be heard being given by other officers. At 6:04:31 p.m., Sergeant

Eckert illuminated the area with his spotlight and took a position in the "v" formed by his open driver's side door. The suspect vehicle is partially visible in the video and is partially blocked by the frame of the patrol unit door. The driver's side of the suspect vehicle and the location of the suspect are blocked from view by the door frame. At 6:04:41 p.m. a single gunshot can clearly be heard from the direction of the suspect vehicle. Sergeant Eckert immediately reacts by ducking down and yelling, in a surprised tone, "Oh! Shots fired! Shots fired!" At 6:04:44 p.m. return fire is heard coming from the location of other officers at the scene. At around 6:05:05 p.m. gunfire ceases.

**LVMPD Officer Kent.** Officer Kent's BWC video footage included an opening timestamp of January 9, 2020, at 1:52:20 Zulu or Universal Coordinated Time. The corresponding local time was 5:52:20 p.m.

At 6:02:54 p.m. dispatch advised that CHP advises the vehicle may be moving. Officer Kent drove through the median and turned onto northbound lanes. CHP, NHP, and SBCSD units were already traveling north approaching the suspect vehicle. At 6:03:55 p.m. Officer Kent notified dispatch he was out with CHP. He stopped his vehicle behind the other patrol units, which were spanning the northbound I-15 lanes and shoulder. At 6:04:08 p.m. the doors of several units in front of Officer Kent open and officers take cover positions. Officer Kent moves his unit to the left of the line of patrol units and in the median. He parked at a diagonal facing northeast towards the suspect vehicle. The driver door of the suspect vehicle was open. At 6:04:33 p.m., Officer Kent exited his unit. He then reached into his unit to retrieve his rifle. At 6:04:41 p.m. yelling in the distance is heard. Officer Kent's BWC was picking up significant noise from southbound traffic and accompanying wind. His BWC was facing the interior of his unit. At 6:04:43 p.m. the suspect vehicle is in view again and the driver's door is now closed. At 6:04:44 p.m. gunfire is heard nearby. At the time of the gunfire, the BWC was again facing the interior of Officer Kent's unit. Officer Kent moves from his driver's side door towards the rear of his unit and to the passenger side. Gunfire ceases at 6:05:02 p.m.

### INCIDENT SCENE INVESTIGATION

The incident scene investigation was managed by Detective Michael Gardea, with the assistance of SBCSD SID crime scene specialists. The shooting occurred in the northbound lanes of the I-15 freeway, approximately 2.15 miles south of the California/Nevada border and was marked at the following GPS location at the southwest boundary of the scene: 35°34'40.0" north, 115°24'14.0" west. The southwest boundary was marked by a CHP Dodge Charger patrol vehicle assigned to CHP Officer Diana Grijalva, who was part of the approach team but was not present at the time of the shooting. There were two marked lanes at that location. There was a dirt median to the west of marked lanes, a paved shoulder to the east of the marked lanes abutting the #2 lane, and a dirt shoulder to the east of the paved shoulder.

The Rogue operated by Mr. Adams with California license plate 8ANA712 was located on the paved shoulder of northbound I-15 lanes facing north. A marked SBCSD Ford Expedition patrol vehicle assigned to Sergeant Franklin Hardin was parked to the southeast of the Rogue, in the #2 lane facing northeast with the front passenger side tire over the east fog line of the northbound lanes.

Approximately one foot seven inches north of Sergeant Hardin's Expedition front, driver's-side tire was a Glock-19, 9mm semiautomatic handgun with serial #PLD621. The placement is consistent with officer statements regarding making the gun "safe" after the approach team made a tactical approach of the Rogue and discovered the Glock in the right hand of Mr. Adams and resting on his lap. The Glock was loaded with 10, 9mm bullets inside of a 15-round, high-capacity magazine. An additional bullet was in the chamber. Suspected blood stains were present on the slide, grip, barrel, and magazine of the Glock. Dark-colored strands of hair were located on the Glock's barrel.

Suspect Adams was recovered from the scene, seated in the front driver's seat of the Rogue facing north. His head was tilted forward and to the right, resting on his right shoulder. His hands were in his lap with his left-hand positioned with his palm down and his fingers positioned in a fist. His right hand was palm down with his three fingers positioned in a loose fist and his index finger and thumb extended, which was consistent with officer statements that the handgun was in Adams' right hand. His left foot was flat on the floorboard and his right leg was positioned behind his left foot with the right side of his foot laying on the floorboard. Two severed human breasts were visible loosely wrapped in a red hand towel on the front passenger floorboard of the Rogue.

During an authorized search of the Rogue<sup>6</sup>, amongst other personal property, was an opened bottle of New Amsterdam Vodka was located in the front driver door panel; it was empty with a capacity of 375ml. A bullet trajectory analysis completed by a SBCSD SID crime scene specialist included approximately 30 separate bullet trajectories in the vehicle and multiple fired bullet fragments (FBF), the majority of the strikes and FBF's had an overall trajectory of back to front with entry holes in the rear bumper, rear hatch, and rear windshield of the Rogue.

At the time of the shooting, three CHP marked patrol units, one SBCSD marked patrol unit, two NHP marked patrol units, and one LVMPD marked patrol unit were present at the scene<sup>7</sup>. One marked CHP unit was Ford utility vehicle operated by Officer David Mellon and was located on the dirt shoulder on the east side of northbound I-15 lanes, facing north. A second marked CHP unit was a Dodge Charger operated by Officer Robert Murphy and was located on the paved shoulder abutting the #2 lane of northbound I-15, facing north. One NHP marked unit was a Ford utility vehicle operated by Trooper Ramm and was located in the I-15 northbound #2 lane, facing north. The second marked NHP unit was a Dodge Charger operated by Sergeant Eckert and was located in the I-15 northbound #1 lane, facing north. These four units were in an approximate straight line relative to each other spanning across northbound I-15. The SBCSD patrol unit was a Chevy Tahoe operated by Deputy Anthony Buscemi and was located just south of Trooper Ramm and Officer Murphy's units and was partially in the #2 lane and partially on the paved shoulder, facing north.

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<sup>6</sup> The vehicle search was conducted by the case agent at the SBCSD Crime Lab in San Bernardino, with the assistance of a SBCSD SID crime scene specialist from January 29, 2020 to February 12, 2020.

<sup>7</sup> Based upon witness statements and submitted video, a CHP unit operated by Sergeant Paxton and a LVMPD unit operated by Officer Kent were present at the time of the shooting but were not present at the scene walkthrough. Based on information submitted, Sergeant Paxton's unit was located on the paved shoulder south of Officer Murphy's unit and east of Deputy Buscemi's SBCSD unit. Officer Kent's unit was in the median west of Sergeant Eckert's NHP unit.

Thirty-five FCCs were recovered from the scene. A 9mm fired cartridge case (FCC) was recovered from the passenger seat of the Rogue. No other 9mm FCC's were recovered at the scene<sup>8</sup>. The remaining FCC's were generally located in three areas: In or near the driver's side area of Trooper Ramm's marked NHP unit; forward of the passenger side of Officer Murphy's marked CHP unit; in or near the driver's side door of CHP Officer Mellon's marked SUV. The location of the recovered FCC's appears to be consistent with the stated movement of the shooting officers; Trooper Ramm and Officer Mellon took positions of cover behind the driver's side door of their assigned units and Deputy Buscemi took a position of cover on the passenger side of Officer Murphy's assigned unit.

### DECEDENT

**Autopsy.** [REDACTED], Forensic Pathologist for the Coroner-Public Administrator Division of the Riverside County Sheriff's Department conducted the autopsy of Madison Adams on January 13, 2020. Mr. Adams was 27 years old at the time of his death. He was described as a white male, approximately 70" in height, weighing 141 pounds. [REDACTED] noted a self-inflicted gunshot wound of the head which entered at the right temporal area and exited at the left superior parietal area, with a path from right to left, front to back, and upward. The gunshot wound was fatal. [REDACTED] noted approximately eleven wounds in the decedent's back with a trajectory back to front and which entered the decedent's chest cavity and caused internal hemorrhaging. These were also collectively fatal.

There were multiple nonfatal entry wounds in the rear-right calf with trajectories back to front, one nonfatal wound to the rear of the decedent's left ear, and one nonfatal grazing wound to the left hamstring. There was a nonfatal FBF entry wound to the front of the decedent's upper right leg/hip area.

The cause of death was determined to be multiple gunshot/FBF wounds to the head and back. The manner of death was undetermined and occurred within seconds. That is, [REDACTED] could not ascertain whether the fatal self-inflicted gunshot wound occurred before or after the fatal gunshot wounds to the back.

**Toxicology.** Blood, urine, and vitreous samples were collected from the decedent during the autopsy. The blood sample measured .376% (W/V) ethyl alcohol. The urine sample measured .430% (W/V) ethyl alcohol. The vitreous sample measured .360% ethyl alcohol. The comprehensive drug panels did not detect the presence of drugs.

**Criminal History.** Adams was arrested for DUI in 2019 (Pen. Code, §§ 23152(a), 23152(b)) and had an outstanding warrant, which was issued on December 4, 2019, related to the charges. His driver's license was suspended or revoked per DMV records. At the time of the shooting, Adams was suspected of the murder and dismemberment of his mother.

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<sup>8</sup> Given the lighting, conditions, terrain, and subsequent activity by the approach team in the driver's side area of the Rogue, the absence of a second FCC is not definitive evidence as to whether Adams fired one or two shots. The submitted evidence, including audio recordings and forensic evidence, is consistent with officer statements that Adams fired at them while out of the vehicle. He then fired the self-inflicted gunshot while seated in the vehicle.

### 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>9</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.4<sup>th</sup> 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 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.*)

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<sup>9</sup> All references to code sections here pertain to the California Penal Code.

While these principals were added to section 835a in 2020,<sup>10</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. §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>11</sup>

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<sup>10</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

<sup>11</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

- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal 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:

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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).

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>12</sup> Rather, 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>12</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

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:

[U]nder *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, 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:

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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.

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

This memorandum examines the use of deadly force by Deputy Anthony Buscemi, Officer David Mellon, and Trooper Jared Ramm on January 8, 2020. As indicated above, there are legal bases that must be met before the right to self-defense ripens and a use of lethal force is justified. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent’s submission.

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

**Subjective Belief of Imminent Need to Protect.** The subjective belief of each shooting officer is stated here based upon each officer’s statement.

Officer Mellon, Deputy Buscemi, and Trooper Ramm were aware of the BOLO for the Rogue and that the vehicle discovered on the shoulder of the northbound I-15 matched the vehicle description, including the license plate. All three were aware that the subject believed to be driving the vehicle was the suspect in a murder in Kern County. They were also aware that the subject was believed to be armed and dangerous because there was an outstanding firearm from the murder scene.

Deputy Buscemi was concerned that Adams could be lying in wait in the desert to ambush officers if they approached the disabled vehicle. Deputy Buscemi observed the Rogue from a distance and waited for support due to the elevated safety concerns. When the vehicle appeared to move forward, Deputy Buscemi was concerned that the armed and dangerous suspect was heading towards the populated areas across the Nevada state line.

Officer Mellon called for a traffic break on northbound I-15 to minimize the danger to the public, which he perceived to be a high level of danger due to the information he had regarding the suspect. Officer Mellon also saw the vehicle begin to roll forward and was concerned that the suspect was now headed toward a heavily populated area with three casinos and a truck stop. He, along with the other officers that were staged observing the vehicle, feared for the safety of the public if Adams was to flee and responded by immediately initiating a high-risk traffic stop.

Due to the nature of the situation, including the distance of the patrol units from the Rogue during the high-risk traffic stop, the lack of cover other than the patrol units, the dark conditions, Adams’ suspected actions – that he had already taken a life with the use of a firearm - and the belief that he was still in possession of a firearm missing from the murder scene, led all officers to believe that the appropriate and necessary weapon for the circumstances was a rifle.

All three officers observed that the suspect was outside of the Rogue on the driver’s side. They all heard Officer Murphy give verbal commands to the suspect, including “Do not re-enter the vehicle” and “Come out with your hands up” and observed Adams’ failure to comply. Trooper Ramm observed the suspect appearing to enter the Rogue as commands were given. He heard a single gunshot come from the direction of the suspect and heard other officers yell “Shots fired!” Officer Mellon also observed the suspect enter the vehicle, either just before or after verbal commands were given, and at the same time heard a gunshot from the direction of the suspect and towards officers. Deputy Buscemi heard gunfire after the verbal commands were given by Officer Murphy and while the suspect was near the driver’s door. Deputy Buscemi believes he heard two gunshots from the direction of the suspect. The suspect then got fully in the Rogue and closed the door.

All three officers stated that they subjectively feared for their lives and the lives of the other officers when Adams fired. They returned fire in the direction of the suspect. All three officers had a subjective and honest belief that he needed to protect himself and others from the apparent and imminent threat posed by Adams.

**Reasonable Belief of Imminent Need to Protect.** Although Penal Code section 835a(c)(1) is the authority for an officer's use of lethal force, the analytical framework for determining what is "reasonable" is included in *Graham* and its progeny. This analysis also overlaps with the second component to a self-defense claim: a finding that each officer had an objectively reasonable belief of the need to use deadly force to protect himself from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. Adams was on the run after murdering and dismembering his mother in Tehachapi, Kern County. She suffered a 9mm gunshot wound to the head and was partially dismembered. A 9mm handgun registered to the home was known to be missing and Adams was believed to be in possession of it. The Rogue that was the subject of the BOLO was registered to Adams' mother and it was believed he fled the murder scene in the Rogue. Adams was believed to have committed an especially serious and violent felony.

Resistance is another essential consideration in a *Graham* analysis. In order to effectuate Mr. Adam's arrest or detention, officers were authorized to use reasonable force. Adams had a duty to refrain from using any force or weapon to resist arrest. Adams was aware or should have been aware that he was being pursued by law enforcement after committing murder. Further, when officers approached Adams, they did so in marked units and all wore clearly identifiable uniforms with their department patches. Officers gave verbal commands to Adams in an attempt to take him into custody peacefully. Adams was not compliant with the commands and appeared to be getting in or reaching into the Rogue.

Section 835a(a) advises that lethal force be used only "when necessary to defend human life" and that safe and feasible de-escalation should be employed. Officers did attempt to de-escalate the encounter by giving verbal commands over the PA system to Adams. Normally, the mere presence multiple law enforcement vehicles and the issuance of verbal commands can serve as a de-escalation technique. Adams, however, did not comply. Instead, he escalated the encounter and used deadly force against officers. Under the circumstances, it does not appear that any safe and feasible de-escalation techniques could reasonably be employed.

In sum, the submission supports a conclusion that Adams knew or should have known that officers intended to detain him and had a duty to refrain from using force or a weapon to resist. Adams demonstrated active resistance by ignoring verbal commands, moving to re-enter his vehicle, and, of course, in the choice to use the 9mm handgun to fire at officers. It appears Adams intended to engage in an armed confrontation with the officers. Self-armament with a loaded firearm in the face of detainment by uniformed and armed law enforcement contact is an extreme level of resistance. Multiple officers both heard and observed a gunshot fired towards them. Submitted audio/video clearly supports their perception. Deputy Buscemi, Officer Mellon, and Trooper Ramm were not obligated to retreat, nor did they forfeit the right to defend themselves or their fellow officers from the lethal threat posed by Adams.

Immediacy is the “most important” *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. Here, officers attempted to take Adams into custody peacefully during a high-risk traffic stop. Adams did not comply with any of the verbal commands given by Officer Murphy, instead he produced the 9mm handgun and fired at officers. Multiple officers heard the characteristic sound of a bullet in flight and yelled “Shots fired!” Sergeant Eckert immediately ducked for cover upon hearing the gunshot which he perceived to be flying past him. Sergeant Paxton observed what he believed to be a spark from the bullet hitting the pavement 20-30 feet in front of Officer Murphy’s patrol unit, which officers were using for cover.

The windows of the Rogue were tinted. After Adams fired at officers, he entered the Rogue and shut the door, officers could not see his movements, whether he had additional weapons, or whether he would flee. Adams had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to Officer Mellon, Deputy Buscemi, and Trooper Ramm, as well as Officers Murphy and Kent and Sergeant Eckert. Officer Mellon, Deputy Buscemi, and Trooper Ramm were forced to make a split-second decision to defend against the perceived imminent danger by using deadly force. Each officer reasonably believed that his action was instantly required to avoid immediate death or great bodily injury to themselves and others.

Based on the foregoing, the totality of the circumstances support a finding that the use of lethal force by Officer Mellon, Deputy Buscemi, and Trooper Ramm was reasonable. As such, the use of lethal force by Officer Mellon, Deputy Buscemi, and Trooper Ramm is also justifiable under Penal Code §197.

### CONCLUSION

Under the facts, circumstances and applicable law in this matter, the use of deadly force by Deputy Anthony Buscemi, Trooper Jared Ramm, and Officer David Mellon was exercised in self-defense and in a reasonable manner. Accordingly, no criminal liability based on each officer’s conduct attaches in this incident.

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