



PUBLIC RELEASE MEMORANDUM

Date: November 8, 2023

Subject: Non-Fatal Officer-Involved Incident

Involved Officers: Deputy Roger Alfaro
San Bernardino County Sheriff's Department

Involved Subject/DOB: David Joseph Silva
10/10/1988

Subject's Residence: None, Transient

Incident Date: July 28, 2021

Incident Time: 8:46 p.m.

Case Agent/Agency: Detective Gerard Laing
San Bernardino County Sheriff's Department

Agency Report #: DR# 152101536
H# 2021-098

DA STAR #: 2021-34543

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PREAMBLE

This was a non-fatal officer-involved shooting by Deputy Roger Alfaro 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, and audio recordings submitted by the San Bernardino County Sheriff's Department.

FACTUAL SUMMARY

On Wednesday, July 28, 2021, at approximately 8:46 p.m., Deputy Roger Alfaro with the San Bernardino County Sheriff's Department observed a four-door black 2002 Chevrolet Silverado with an obstructed rear license plate, at the intersection of Redlands Boulevard and Ohio Street in the City of Loma Linda. Deputy Alfaro attempted to stop the driver, later identified as David Joseph Silva.

Silva did not yield, but instead accelerated away from Deputy Alfaro's marked unit. Deputy Alfaro pursued Silva's vehicle with his forward-facing red lights and sirens activated. The pursuit went from Loma Linda into the City of San Bernardino where at Hospitality Lane and Waterman Avenue, two unknown and unidentified passengers exited the vehicle with their hands up. Once outside the vehicle the driver Silva reinitiated the pursuit, and continued to speed away from Deputy Alfaro. Deputy Alfaro pursued Silva in the vehicle without contacting the other occupants who had exited the vehicle.¹

The pursuit continued down Waterman and Silva entered the parking lot to Azusa Pacific University where he spun out and hit a curb. Silva's vehicle was not disabled but continued through the parking lot and entered Waterman again and the I-10 freeway. Once on the freeway Silva drove more than 100 miles per hour on the I-10 freeway. At this point, despite communication, only Deputy Alfaro was in pursuit. Silva drove erratically and civilian drivers were forced to take evasive actions. The pursuit traveled to the intersection of North Sperry Drive and East Fairway Drive in the City of Colton. In this intersection Silva lost control of the vehicle and spun out to face Deputy Alfaro's patrol vehicle that pursued Silva.

Once out of the patrol vehicle Deputy Alfaro had his gun drawn and stayed close by his driver's side door to use as cover. Deputy Alfaro was facing Silva head on. Deputy Alfaro saw Silva's headlights and Silva drove towards Alfaro. Alfaro expended 11 rounds from his duty weapon striking Silva's vehicle along the driver's side as it came forward and veered right. Silva's vehicle stopped only after it struck an Edison power pole adjacent to the intersection. The entire pursuit was estimated at 3.4 total miles.

¹ Deputy S. Bateman (G7653) assisted and later went back to the area where the two other people had exited the vehicle to conduct an area search for those persons. Deputy Bateman was unable to locate any persons matching the descriptions provided.

After the crash, Deputy Alfaro approached the Silverado as he gave commands for the driver to exit. Silva exited the vehicle injured, having sustained a single gunshot wound to his right ankle. Silva was assessed at the scene by paramedics and transported to Arrowhead Regional Medical Center where he was treated.

According to medical personnel, the fired bullet entered the back of Silva's ankle, fractured his tibia, fibula, and multiple other bones in his ankle before the bullet stopped near the top of his foot. Silva was admitted and underwent surgery to remove the bullet fragments and repair the damage to his ankle.

During a search of Silva's person at the scene Deputy Armon Zolfaghari located a plastic baggie of methamphetamine. Analysis by Criminalist Jason McCauley confirmed that the white crystalline substance was methamphetamine and weighed 10.68 grams. During a search of Silva's vehicle, Deputy Johnathan Holt located a Polymer 80 9mm handgun on the rear passenger floorboard. Records check of the vehicle that Silva was driving showed that it had been reported stolen out of the City of San Bernardino on April 28, 2021. Records check of Silva revealed that he was an active PRCS probation² out of Riverside County.

Silva was interviewed by Detectives and after waiving Miranda, told police that he was homeless and on active probation out of Riverside County. Silva believed that the Silverado vehicle he was driving was stolen. Silva did not remember how fast he was driving but just that he wanted to get away from police that attempted to stop him; he said he did not want to stop or go to jail. Silva remembered putting the vehicle in reverse and seeing the lights of the deputy's vehicle. Silva remembered trying to manipulate the gears of the Silverado into first gear when he heard gunshots. Silva did not hear any commands given by law enforcement, and believed he was only reversing at a speed of one to two miles per hour. Silva heard the shots from the deputy but did not remember crashing into the electrical pole.

Silva admitted that the methamphetamine found in his pocket was his but denied knowledge of the semi-automatic handgun in the backseat. Silva admitted however that he had handled the gun in the past and his DNA would likely be found on the gun if tested.

STATEMENTS BY POLICE OFFICERS³

On August 4, 2021, at approximately 1:17 p.m., **Deputy Roger Alfaro** was interviewed by Detective Gerard Laing and Detective Malcolm Page of the San Bernardino County Sheriff's Department.

² Post Release Community Supervision (PRCS) is a form of supervision provided to an offender who has been released from a California Department of Corrections and Rehabilitation (CDCR) institution to the jurisdiction of a county agency, pursuant to the Post Release Community Supervision Act of 2011.

³ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

Deputy Alfaro was employed by the San Bernardino County Sheriff's Department as a deputy sheriff. On July 28, 2021, Deputy Alfaro was on duty, assigned to patrol out of the Central Station. Deputy Alfaro drove a marked Sheriff's Department Ford Explorer patrol vehicle and his call sign was 15X2. Deputy Alfaro wore a readily identifiable Sheriff's Department approved Sheriff's Class C uniform which consisted of a tan long sleeved shirt with two Sheriff's patches on each shoulder and a name plate with "R. Alfaro" affixed. Alfaro was wearing his badge, with an American flag underneath and a hat with the Sheriff's logo on it in gold lettering. Deputy Alfaro also wore his duty belt which was equipped with the following department issued tactical gear: pepper spray, taser, Rapid Containment Baton, handcuffs, a Glock 21 .45 caliber handgun, and a belt-recorder.

Deputy Alfaro was working Traffic in the City of Loma Linda on July 28, 2021. Alfaro observed the suspect vehicle at the Redlands Boulevard and Richardson Street intersection. Alfaro noted several vehicle code violations, and positioned himself behind the vehicle and activated his forward-facing red emergency lights to effectuate a traffic stop. The driver, later identified as Silva, appeared to initially comply, and pulled alongside Redlands Boulevard and Ohio Street facing west.

Alfaro had taken off his seatbelt and was preparing to exit his vehicle when he observed the front passenger door open. Alfaro gave a command over the PA system for the occupants of the vehicle to stay inside. The passenger side door opened a second time and a Hispanic male in his early 20s and a Hispanic female both exit the vehicle with their hands up. As Alfaro is reacting to the occupants of the vehicle exit, the driver takes off from the location in the vehicle at a high rate of speed. Alfaro followed the vehicle and estimated the speed at between 80-90 miles per hour based on it pulling away from his posted speed of 60 miles per hour.

Alfaro followed the vehicle with his emergency lights and siren activated, and saw the suspect vehicle break suddenly and also rear end another vehicle. Alfaro continued following the vehicle down Redlands Boulevard and traveled "at least 100 miles per hour" and was having trouble keeping up. Alfaro saw Silva drive between the number two and number one lanes causing debris to fly over the roadway as they approached Waterman Avenue.

The vehicle continued at a high rate of speed and navigated the turn, with Alfaro following, onto westbound Hospitality Lane, running a red light. Silva hit his brakes hard and did a 180 degree turn and then became eastbound on Hospitality. Silva cut through a parking lot, over concrete dividers and the curb, towards the I-10 freeway.

Silva entered the westbound Interstate 10 freeway and quickly reached speed estimated at 100 miles per hour. Alfaro requested via radio for CHP to assist, and Silva cut across multiple lanes of traffic and began to swerve before Silva exited the freeway on Mount Vernon Avenue.

As Silva exited the freeway, he ran through a stop sign at the end of the off ramp and turned right to travel northbound on Sperry Drive. Alfaro slowed down to negotiate the same turn and estimated he was fifteen to twenty car lengths behind Silva. Silva crossed over the center divider and continued northbound on Sperry Drive. Alfaro saw an uninvolved motorist's headlights approaching in the opposite direction that had to move out of the way of Silva's vehicle to avoid a collision.

Alfaro described that he was about to cancel the pursuit because of the danger Alfaro perceived to himself and this public and said that it was "just too much." Silva made a final turn with Alfaro approximately 15-20 car lengths behind him and Alfaro saw smoke and debris from what he assumed was a crash. Silva attempted to negotiate this final turn but was unable to maintain control of his vehicle. Silva lost control and spun out in the intersection. Silva was almost completely turned around and now faced Deputy Alfaro who also stopped in the intersection.

Alfaro saw "smoke and debris," from the crash and remembers stopping his patrol vehicle and taking his seatbelt off. Alfaro pulled his firearm out and exited his vehicle, he tried to stay close to his driver's side door for cover.

Alfaro saw the headlights from Silva's Silverado vehicle come toward him, and Alfaro opened fire on the vehicle. Silva's vehicle drove forward and to the right as Alfaro expended 11 shots hitting the right side of Silva's vehicle as it drove towards and past Alfaro's left side. Alfaro saw the Silverado crash into the Edison pole and ordered Silva to exit the vehicle.

Alfaro immediately called for medical attention and attempted to place a tourniquet on Silva's leg. Alfaro was relieved from rendering medical aid to Silva by other law enforcement personnel that responded to Alfaro's shots fired call on the radio.

On Friday, October 1, 2021, at approximately 10:15 a.m., **Sergeant Michael Mason** was interviewed by Detective Justin Carty and Detective Gerard Laing of the San Bernardino County Sheriff's Department.

Sergeant Mason was employed by the San Bernardino County Sheriff's Department as a sergeant. On July 28, 2021, Sergeant Mason was on duty as the Watch Commander for the PM-1 shift at the Central Patrol Station.

Sergeant Mason was inside the Watch Commander's Office at the Central Station when at approximately 2046 hours he heard Deputy Roger Alfaro broadcast over the radio that Alfaro had attempted to stop the suspect vehicle, and it had failed to yield. While Sergeant Mason listened to the radio, he heard Alfaro relate that two unknown people had exited the vehicle and that Alfaro was actively pursuing the vehicle.

Sergeant Mason listened to the pursuit and then radioed to Alfaro to cancel the pursuit. By the time that Sergeant Mason had ordered Alfaro to stand down, Silva had already spun out and Alfaro had already exited his vehicle to stop Silva.

STATEMENTS BY CIVILIAN WITNESSES⁴

On July 30, 2021, at approximately 10:53 a.m., **David Silva** was interviewed by Detective Jon Cavender and Detective Gerard Laing of the San Bernardino County Sheriff's Department. Silva was advised of his Miranda rights and waived those rights and agreed to speak with investigators.

Silva told detectives that at the time of the incident that he was homeless and on active probation out of Riverside County for a previous evading charge. Silva was in possession of the vehicle he was driving for approximately five days prior; he received the vehicle for no money in the City of Corona and believed that it was stolen. Silva denied knowing who the male and female passengers were that exited the vehicle during the traffic stop that Deputy Alfaro initiated.

Silva saw the red and white lights associated with Deputy Alfaro and his attempted traffic stop, and knew it was a police officer trying to stop him, but Silva said he did not want to go to jail and did not pull over. Silva did not remember how fast he drove during the pursuit, just that he wanted to get away. Silva drove over curbs and through a large parking lot to get away and estimated his speed at approximately 70 miles per hour.

Silva drove north on Sperry Road and believed that he was about to get away from Deputy Alfaro but made a left turn at a high rate of speed and lost control of his vehicle. Silva's vehicle began to fishtail, and he slid sideways and then came to a stop. Silva put the vehicle in reverse to maneuver around another car that was nearby and estimated that he reversed at approximately 1 to 2 miles per hour. As Silva reversed, he saw Deputy Alfaro's patrol vehicle lights along the driver's side of Silva's vehicle.

Silva had his window down but he did not hear any commands given to him by Deputy Alfaro. Silva attempted to put the vehicle back into gear and Silva heard multiple gunshots. Silva immediately ducked down towards the floorboard and believes that his vehicle got stuck in neutral as he attempted to switch from reverse to first gear. Silva felt a bullet hit his right ankle and heard the commands from Deputy Alfaro on how to exit the vehicle.

Silva complied and was handcuffed. Silva next remembers feeling pain and receiving medical assistance on his leg. Silva was searched and admitted that methamphetamine found on him was his own and that he had been using the drug over the preceding few days to stay awake. Silva denied knowledge of the gun that was found inside the vehicle, though he admitted he had handled it in the past. Silva did not remember hitting the utility pole at the end of the pursuit and did not remember being involved in the crash. Silva said he was not trying to hurt the deputy, but just get away.

On August 12, 2021, at approximately 11:15 a.m., **Witness #1** was interviewed by Detective Jon Cavender of the San Bernardino County Sheriff's Department.

⁴ All reports of civilian statements made were reviewed, though not all are summarized here.

Witness #1 lived in the apartments on the southeast corner of Sperry Drive and Fairway Drive in the City of Colton, and where the incident ended. On July 28, 2021, at approximately 8:55 p.m. Witness #1 left her residence and walked toward her parked car in the lot facing north. Witness #1 retrieved items from her car and then turned to walk back towards her apartment. Witness #1 heard faint sirens in the distance as they approached her location. Witness #1 entered her apartment and closed the door.

Shortly thereafter Witness #1 heard the screech of tires, a crash, and the emergency vehicle sirens close by. She heard approximately twelve rapid succession gunshots which she initially believed to be fireworks. She then heard deputies give commands for the suspect to exit the vehicle, "show me your hands," and "get on the ground."

Witness #1 looked outside through her front door and observed multiple Sheriff's Department vehicles and saw the Silverado crashed into the Edison electrical pole. Witness #1 saw Silva on the ground being treated by Colton Fire personnel. Witness #1 recorded the events with her personal cell phone and later sent the video to Sheriff's investigators.

Witness #2 provided a statement to Laing shortly after the officer-involved shooting. Witness #2 was interviewed on the date of the incident at approximately 8:50 p.m. and told the investigator that she was inside her nearby condominium and heard multiple gunshots in rapid succession and then a loud boom. She exited her residence and observed several police vehicles and a disabled truck that had collided with an Edison pole. Witness #2 saw the suspect exit the vehicle and be detained by police, and then went back inside her residence.

Laing also interviewed **Witness #3** on July 29, 2021, at approximately 2:41 a.m. who was on scene and rendered aide to Silva. Witness #3 observed a single gunshot wound to Silva's right ankle. Silva was awake, complained of pain, and Witness #3 further observed a tourniquet on Silva's right leg above his knee. During the initial assessment of Silva Witness #3 and other personnel heard the Edison electrical pole cracking, and a deputy picked up Silva and moved him out of the way of the pole, should it fall. Witness #3 was present when the ambulance arrived, and Silva was loaded up to be transported.

Further neighborhood contacts were made by Detectives Simon DeMuri and Malcolm Page of the San Bernardino County Sheriff's Department. Several other citizens were interviewed who were unable to provide any detailed information as they were not witnesses to the incident.

INCIDENT AUDIO AND VIDEO

DISPATCH RECORDING

The dispatch recording begins with a discussion about a minor car accident, followed by silence. At the one minute and forty-eight second mark Deputy Alfaro radios dispatch to run a plate. There is no response from dispatch, and at the two minute and ten second mark Deputy Alfaro tells dispatch that he is involved in a “FTY.”⁵ Dispatch affirms and Alfaro says that they are westbound on Redlands Boulevard and Anderson Street with light traffic and speeds at 80 miles per hour.

Deputy Alfaro asks dispatch to start helicopter 40 King to assist. Another male voice copies that request and asks dispatch to advise Redlands. Alfaro tries to catch up to the vehicle to get the license plate.

The pursuit continued northbound on Waterman Avenue with light traffic, and Alfaro reported that the suspect is “swerving all over the road.” Alfaro calls out that the pursuit continues westbound on Hospitality Lane at 70 miles per hour, and Silva “blows” through the red light at Commerce Center. The vehicle pulled away and Alfaro actively tried to catch up as they passed Hunts Lane, speeds are estimated at 90 mph with no traffic.

Alfaro reported that the suspect vehicle has spun out. Dispatch advised that Alfaro is “cutting out.” Alfaro and Dispatch talk over each other. Alfaro advised that the driver has spun out and then cut through a parking lot and “hops” over a curb. Alfaro asked about an ETA for 40 King. Alfaro advised that the driver is getting on the 10-west freeway and asks dispatch to advise CHP. Dispatch asks whether to advise CHP or ask them to take over, and another male voice, later identified as the Sergeant says, “advise them for now.”

The pursuit continued along westbound 10 freeway approaching Mount Vernon Avenue, speeds are at 100 miles per hour. The driver exited Mount Vernon Avenue and is running vehicles off the road, heading northbound on Sperry Drive. The Sergeant advises Alfaro to “22 the pursuit.”⁶ Dispatch repeats the directive to “22 the pursuit.” There is approximately 7 seconds of silence and Alfaro says, “shots fired shots fired.” Dispatch repeats that shots have been fired. The Sergeant asked for an update of Alfaro’s “20.”⁷ Alfaro says the driver was trying to run him over. The Sergeant and dispatch again ask for Alfaro’s location. The Sergeant and dispatch discussed the location. At this point other deputies are on scene to assist and an unidentified Deputy

⁵ “FTY” is an abbreviation for Failure to Yield.

⁶ “22” in this context means to cancel.

⁷ “20” refers to location.

(male) voice⁸ relayed that the driver is getting out of the vehicle, and also says “clearing the vehicle,” and “taking one into custody.”

Sergeant says to “maintain the 33⁹.” Dispatch gives the Sergeant the address again. 15 Paul 11 says the vehicle is clear. Dispatch checks that the Sergeant has the address and put it out over the radio again. The Sergeant asked where the shots were fired at. Twice. An unidentified Deputy (male) voice says that the shots were fired in the intersection. The Sergeant asked for dispatch to notify Homicide, dispatch copies. 15 Paul 11 applying a tourniquet to the right leg, some muffled yelling/moaning in the background. At 2056 hours the tourniquet was applied.

40 King is asked to expedite meds, and dispatch responds that they are rolling Code 3. Fire arrives. An unidentified Deputy (male) voice explained the location of the male and female passengers that were dropped off just before the pursuit and gives the location. An unidentified Deputy (male) gives dispatch the name and dob of Silva. Dispatch asked for a unit to respond to the location where the passengers were previously dropped off. Dispatch asked 40 King to go to that location to try and see if the passengers that were dropped off are still near that location. 40 King asked the Sergeant if they need anything else before 40 King goes to Redlands Boulevard and Ohio Street to look for the passengers. Sergeant asks other units if they are nearby that Redlands Boulevard and Ohio Street area.

Dispatch advised that Silva has a no bail warrant out of Riverside County. There is discussion amongst multiple people about contacting each other via phone. 40 King arrived at the location where the passengers exited the vehicle. An unidentified Deputy (male) voice asks dispatch to show him en route on a location change to headquarters. 40 King is unable to see the passengers in the location where they exited the vehicle. There is sparking from the wires on the utility pole and dispatch is to contact Edison. 40 King signs off and is thanked for their assist. Unidentified Deputy (male) voice says that they will leave the scene to go to Arrowhead. Unidentified Deputy (male) voice relays info to dispatch on a handgun that is in plain view of the back of the suspect vehicle. Colton Fire is 98¹⁰. Another unidentified Deputy arrives at the location where the passengers were last scene and advises that he also does not see anyone matching the description.

BELT RECORDING¹¹

Deputy Alfaro

⁸ Other Deputies that arrived on scene were Deputy Trevor Strand, Deputy Anthony Alcalá, Deputy Alaciél Alvarado, Deputy Hector Couret, Deputy Jonathan Barmer, and Deputy Richard Legere.

⁹ “33” in this context means to have emergency units continue to standby.

¹⁰ “98” in this context is an advisement that their assignment is complete.

¹¹ The belt recordings were reviewed in their entirety. The summary will cover the events from the beginning of the recording through the point immediately after the incident under review. All belt recordings were reviewed, though not all are summarized here.

Alfaro said “15X2 clear a plate? followed by “[s]tay in the vehicle.” In the background is a car revving and sirens. Alfaro said, “Westbound Redlands Boulevard and Anderson,” and he told dispatch that he was attempting to catch up to the car to get a license plate. Alfaro called out that the pursuit was northbound on Waterman with light traffic, and then eastbound on Commerce Center with speeds approximated at 90 miles per hour and no traffic reported.

Alfaro said that the driver spun out and repeats that the driver spun out and was pulling into the Azusa Pacific University parking lot. Sirens are heard in the background making some of the audio inaudible. Alfaro is heard to advise CHP, and that the driver is getting off on Mount Vernon Avenue and going northbound on Sperry Drive at 3 minutes and 56 seconds.

At 4 minutes and seven seconds gunshots are heard. Four minutes and fifteen seconds more gunshots are heard, and Alfaro said, “shots fired, shots fired.” Background noise is loud making some of the audio inaudible and Alfaro said, “please start paramedics.” Alfaro gave commands to the driver to “exit the vehicle,” and gives his location as across from the Windcrest Apartments.

Alfaro said for the driver to exit the vehicle and toss the keys out. Silva is heard in the background and said, “what what.” Sirens in the background as Alfaro gave more commands for the driver to exit. Silva said that he can’t walk, and Alfaro told him to lay down and that Alfaro would come to help Silva.

SURVEILLANCE VIDEO

Surveillance video from the Comfort Inn and Suites located at 450 North Sperry Drive in Colton was reviewed. The camera was mounted to the northwest corner of the building facing southwest and covered the west parking lot of the hotel. On July 28, 2021, it was determined that the time stamp on the video was 36 minutes slower than the actual time depicted.

At 20:50:36 (time stamp on video: 20:14:36) a black Chevy Silverado driven by Silva is seen in the upper part of the surveillance travelling north on North Sperry Drive and goes out of the cameras view approximately two seconds later. Approximately six seconds later, at 20:50:42 Alfaro’s marked Sheriff patrol vehicle enters the camera view following Silva’s vehicle traveling north also on North Sperry Drive. Alfaro’s goes out of camera view three seconds later, at 20:50:45.

INCIDENT SCENE INVESTIGATION AND VEHICLE PROCESSING

San Bernardino County Sheriff’s Detective John Cavender conducted the scene investigation on July 28, 2021, at approximately 10:50 p.m. Evidence was marked with placards and measurements were obtained.

The scene was located in the intersection of Sperry Drive and Fairview Drive in the City of Colton. Surrounding the intersection were multiple multi-level apartment and motel buildings. Within the intersection was a Sheriff's Patrol Utility Vehicle that faced northwest on the southwest side of the intersection. The Sheriff's vehicle had an open driver's side door and had its red and blue flashing lights activated. There were several fired cartridge cases east, west, and south of the Sheriff's vehicle, that were marked by placards.

At rest, the Silverado vehicle driven by Silva faced southwest and collided with an Edison power pole which was located on the south curb-line of Fairway Drive. The Edison pole was broken at the location of impact from the Silverado, and bullet holes were found on the driver's side and front windshield of that vehicle.

Friction marks (tire impressions left on the pavement) were also identified by placard and associated with each of the two vehicles on scene. Placards 1 through 4 were identified as the beginnings of the left rear, right rear, left front, and right front of the Silverado vehicle, respectively.

Placards 5 through 10, 12 through 14, and 17 were all .45 caliber FCCs from Deputy Alfaro's duty weapon. Investigators used the east curb-line of Sperry Drive as reference point number 1 and the south curb-line of Fairway Drive as reference point 2. The following FCCs were documented:

Placard	Description	Reference Point Number One	Reference Point Number Two
5	45 Cal. FCC	27'0" west	9' 8" north
6	Two 45 Cal. FCC' s	34'1" west	1'7" north
7	45 Cal. FCC	37'4" west	1'1" south
8	45 Cal. FCC	37'4" west	1'2" north
9	45 Cal. FCC	40'1" west	At the curb-line
10	45 Cal. FCC	41'4" west	0'7" north
12	Two 45 Cal. FCC	38'10" west	40'6" north
13	45 Cal. FCC	37'3" west	37'9" north
14	45 Cal. FCC	44'3" west	43'11" north
17	45 Cal. FCC	50'1" west	49'9" north

Placard 15 is a Glock .45 caliber magazine. and placard 16 was a 45-caliber ammunition cartridge. Deputy Alfaro explained in his recorded interview that he performed a tactical reload during the incident, prior to Silva exiting the Silverado vehicle.

On August 4, 2021, at approximately 6:20 a.m. Detective Gerad Laing processed the Silverado vehicle that Silva drove during the incident. The following was documented:

1. Placard 1: Fired bullet entry hole, on the rear edge of the cab, near the driver's side door.

- a. Placard 1A was a fired bullet exit hole located on the interior of the “C” pillar of the rear driver’s side door.
- b. Placard 1B was a fired bullet strike on a speaker box, located on the floorboard of the driver’s side seat.
- c. Placard 1C was fired bullet fragments on the rear driver side floorboard between the speaker and the rear wall.
2. Placard 2: Bullet entry and exit hole in the driver’s side rear window just above the lower window frame.
3. Placard 3: Bullet entry hole located on the lower part of the driver’s side rear door, at the door trim.
 - a. Placard 3A was a bullet defect from the bullet identified in placard 3.
4. Placard 4: Bullet strike located on the forward edge of the driver’s side rear door.
 - a. Placard 4A was a bullet strike located on the rear door edge of the driver’s side door associated with the bullet in placard 4.
5. Placard 5: Bullet entry hole forward of the driver’s side door handle.
6. Placard 6: Bullet entry hole located on the lower part of the driver’s side door at the door trim.
 - a. Placard 6A was a fired bullet exit hole on the lower part of the interior of the driver’s side door.
7. Placard 7: Fire bullet located on upper part of the driver’s side door just below the window frame.
8. Placard 8: Fired bullet entry located on the driver’s side door toward the front edge.
9. Placard 9: Fired bullet strike located on the forward edge of the driver’s side door.
10. Placard 10: Fire bullet strike located on the left edge of the driver’s side mirror.
11. Placard 11: Fired bullet entry and exit on the driver’s side front windshield.
12. Placard 12: Fired bullet entry and exit on the passenger’s side front windshield.
13. Placard 13: Fired bullet entry and exit shot in the bottom left corner of the driver’s side front window.

INJURED PARTY

HOSPITAL RESPONSE

Detective Malcolm Page was assigned the initial hospital response scene and upon arrival documented that Silva was initially heavily sedated while in the Emergency Room. Silva’s right ankle was bandaged with a white bandage and during a bandage change performed by hospital staff Detective Page observed a gunshot wound to the back of Silva’s ankle.

According to medical staff at the hospital, the bullet appeared to have entered the back of Silva’s right ankle, fractured his tibia, fibula, and other bones in his ankle before it stopped toward the top of Silva’s foot. Surgery was required to repair Silva’s ankle.

TOXICOLOGY

Investigators obtained a search warrant for Silva's blood. Bio-Tox Laboratories tested Silva's blood sample and reported that there was no alcohol in Silva's system, but there was methamphetamine:

TEST	RESULTS
AMPHETAMINES	DETECTED*
METHAMPHETAMINE, LC/MS/MS	337 ng/mL**
AMPHETAMINE, LC/MS/MS	34 ng/mL**

CRIMINAL HISTORY

David Joseph Silva has a criminal history that includes the following convictions:

2012, 14601.1(a) (times 2) of the Vehicle Code, Driving on a Suspended License, Orange County case number 12WM03381, and 12WM03517, both misdemeanors.

2013, 488 of the Penal Code, Petty Theft, Riverside County case number RIM1300701, a misdemeanor.

2013, 11377(a) of the Health and Safety Code, Possession of a Controlled Substance, Riverside County case number RIM1314431, a misdemeanor.

2014, 488 of the Penal Code, Petty Theft, Riverside County case number SWM1402518, a felony.

2016, 496(d) of the Penal Code, Possession of a Stolen Vehicle, San Bernardino County case number FSB1404171, a felony.

2018, 415 of the Penal Code, Disturbing the Peace, San Bernardino County case number FVI17010692, an infraction.

2020, 2800.2, of the Vehicle Code, Evading, San Bernardino County case number FSB19003311, a felony.

2020, 459 (second) of the Penal Code, Burglary, Riverside County case number RIF1801617, a felony.

Crimes Upon Peace Officers

Assault With a Deadly Weapon

California Penal Code section 245 (a)(1). Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars, or by both fine and imprisonment.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years. (Penal Code 245, summarized in pertinent part.)

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal Code §835a(b).)¹² Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal Code §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal Code §835a(d).)

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

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

¹² All references to code sections here pertain to the California Penal Code.

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code Section 196 states that homicide by a public officer is justifiable when it results from a use of force that “is in compliance with Section 835a.” Section 835a specifies a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

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

(Penal Code §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal Code §835a(e)(1).) The “[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal Code §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,¹³ 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 factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal Code §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal Code §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal Code §835a(c)(2).)

¹³ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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;¹⁴
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal Code §835a(a).)

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

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

¹⁴ Penal Code §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal Code §835a (a)(3).

- (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 newly defined in the context of use of force to effect an arrest, is similar:

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal Code §835a(e)(2).)

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

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20

vision of hindsight...The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

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

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

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer” standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)¹⁵ To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

The *Graham* court plainly stated that digestion of the “totality of the circumstances” is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, “reasonableness” cannot be precisely defined nor can the test be mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the “reasonableness” calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72 “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to

¹⁵ The legislative findings included in Penal Code section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldridge v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 *1, 27-28.)

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

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

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

ANALYSIS

To determine whether the force used against Silva was justified, we must look at the facts and circumstances that led up to the use of force. At the onset of the incident Deputy Alfaro attempted to enforce a traffic stop, and Silva responded by leaving the scene at a high rate of speed and leading Deputy Alfaro on a high-speed chase through neighboring streets as well as the freeway.

This pursuit spanned over 3 miles and endangered the lives of not only other motorists but also Deputy Alfaro. The pursuit ended when it did because Silva could not control his vehicle when he attempted a turn at a high rate and lost control of the vehicle and essentially spun out. This left him facing the pursuing, Deputy Alfaro. Although Silva does not remember the crash, he does remember trying to put the vehicle into gear in an effort to further evade law enforcement. It was objectively reasonable for Deputy Alfaro to believe Silva posed an immediate threat of serious bodily injury or death to Deputy Alfaro when Silva drove toward Alfaro's patrol vehicle.

Silva appeared to be desperate to get away from Deputy Alfaro given his actions throughout the pursuit. Deputy Alfaro's lawful pursuit of Silva only ended when Silva lost control of the vehicle and then drove forward towards Deputy Alfaro. Silva's action of driving forward, towards Alfaro, justified Alfaro's use of force.

CONCLUSION

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

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