



## PUBLIC RELEASE MEMORANDUM

**DATE:** February 15, 2024

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

**Officer:** Corporal Nicholas Parcher  
Rialto Police Department

**Involved Subject:** Christopher Brian Gutierrez (Deceased)  
Date of Birth 5/26/1975  
Rialto, CA

**Date of Incident:** February 14, 2020

**Incident location:** \*\*\* Home Street  
Rialto, CA

**DA STAR #:** 2021-112

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

**Case Agent:** Detective Michelle Del Rio

**Report Number#:** DR # 602000039 / H # 2020-012

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**PREAMBLE**

This was a fatal officer involved shooting by an officer from the Rialto Police Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, video, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 602000039.

**FACTUAL SUMMARY**

Christopher Gutierrez lived with his mother and sister, Witness #1, at Gutierrez' mother's residence located at \*\*\* Home Street ("the residence") in Rialto, California.<sup>1</sup> The residence is a single-story, single-family residence with tan stucco situated on the north side of Home Street. The front door faced south and there was an attached garage on the east side of the residence with a door. There was a rectangular window to the east of the front door that faced the front yard. The front door opened to a hallway. The kitchen was immediately west of the front door and had a window that faced the front yard. The sitting room was located east of the front door and abutted Gutierrez's room. The living room was located north of the house, with Witness #1's room and the master bedroom to the east.

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<sup>1</sup> Witness #1 and Gutierrez share the same last name. For the sake of clarity, Gutierrez will be referred to as "Gutierrez", and \*\*\*\* will be referred to as "Witness #1."

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On February 14, 2020, Delgado was out of town visiting family in Arizona, leaving Witness #1 and Gutierrez at the residence. Witness #1 went to work and returned home to make dinner just before 8:00 p.m. She briefly left the residence at 9:30 p.m. and returned at 10 p.m.

At approximately 11:29 p.m., Rialto Police Department officers received a call for service at 186 East Home Street in the city of Rialto. The call concerned a mentally unstable subject who was possibly armed with a hammer or a gun. Corporal Nicholas Parcher, Officer Dezeray Covarrubias, Officer Angel Gutierrez, Officer Cole Rekte, and Officer Michael Martinez responded to the call for service.

The officers decided to meet at Stater Bros. prior to going to the residence. Dispatch had patched Corporal Parcher through to the reporting party, Witness #1. Corporal Parcher heard an argument and what he thought was a female yelling, though he was unable to speak to anyone on the line.

Because of what Corporal Parcher heard, the officers became concerned about the individuals in the residence and drove to the residence with urgency. They went to the house next door first to observe the residence. The house and the residence were separated by a four-foot-tall wall. From his vantage point at the wall, Corporal Parcher saw a woman walk past the front window of the kitchen of the residence. He whistled but was unable to get her attention.

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Officers Rekte and Martinez approached the open garage door with the intent to clear the garage before the officers attempted contact with the residents inside the house. Corporal Parcher, Officer Covarrubias and Officer Gutierrez, who was armed with the less-lethal 40-millimeter launcher, approached the front door from the east.

At that point, a light turned off in the window to the east of the house. The front door opened and a male, later identified as Christopher Gutierrez, stuck his head out of the door. Corporal Parcher instructed Gutierrez to come outside and to show his hands, but Gutierrez said, "No" and withdrew into the house. Corporal Parcher approached the front door. Gutierrez re-emerged from the front door and removed a knife from his pocket. He held the knife in his right hand and began to take steps in Corporal Parcher's direction. After he had taken several steps, he transferred the knife to his left hand.

Gutierrez advanced on Corporal Parcher and asked, "What do you want?" He continued to hold the knife while walking rapidly toward Corporal Parcher. Corporal Parcher began to back up and eventually felt himself closing in on the four-foot-tall wall that separated the residence from the neighbor's house. He fired his handgun at Gutierrez. Officer Gutierrez fired the less-lethal 40-millimeter launcher.

After the shots were fired, Corporal Parcher and Officer Martinez requested for the fire department to respond and began administering medical aid to Gutierrez.

Gutierrez was transported to Arrowhead Regional Medical Center by ambulance. He was pronounced dead at ARMC at 12:24 a.m. on February 15, 2020. On February 20, Dr. Diana Geli, a forensic pathologist employed by the San Bernardino County Coroner, performed an autopsy on Christopher Gutierrez. Dr. Geli noted multiple gunshot wounds on Gutierrez's torso and determined they were the cause of death.

There was a steak knife at the scene, lying on a garden hose west of the front porch. There was a claw hammer in a bathroom sink on the ground floor of the house.

**STATEMENTS BY POLICE OFFICERS<sup>2</sup>**

Corporal Nicholas Parcher<sup>3</sup> and Officer Angel Gutierrez wore "Class C" uniforms, consisting of black long-sleeve shirts, black pants, and black leather Danner duty boots. Rialto Police Department ("RPD") patches were affixed to both shoulders of their shirts.

<sup>2</sup> This is a summary only. All reports submitted were reviewed, but not all are referenced in this section. All witness officers' statements were generally consistent.

<sup>3</sup> Corporal Parcher has *Brady*. In 2014 he wrote an arrest report in which he stated he and his partner were flagged down by an anonymous citizen who informed them of two suspects stripping a stolen car in a nearby location. Prior to the preliminary hearing, then-Officer Parcher told the assigned prosecutor that this was false, and that he wrote that in order to conceal the fact that the information that led to the arrest came from a confidential informant. He believed that he was properly protecting the confidential informant in this way.

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On Corporal Parcher's shirt, there were corporal-chevron patches underneath the RPD patches.

Each officer wore loadbearing vests over his shirt. Their first initial and last name were stitched in white thread over the right breast. A RPD cloth badge was affixed on the left breast and on the right miscellaneous patch. The word "POLICE" was written in reflective letters on the right breast and on the top center of the back of the vests.

Corporal Parcher wore a black nylon duty belt, which held the following equipment: (1) a black nylon keeper; (2) a black Safariland level III retention holster which contained a Glock 22 .40 caliber firearm, serial number VBY919, with a Streamlight tactical light with serial number 22744 affixed to it; (3) a black nylon handcuff case; (4) a black nylon keeper; (5) a black nylon loop keeper with clip; (6) a black Taser holster which held a department-issued Taser, serial number 11002 X3 X12001YRX; (7) a black nylon Taser cartridge pouch; (8) another black nylon keeper; and (9) a metal keyring clip.

Corporal Parcher's loadbearing tactical vest contained the following: (1) a black AXON Body III body-worn camera; (2) a black earpiece microphone; (3) a black multitool in pouch; (4) an empty pouch; (5) a Glock 27 .40 caliber firearm, serial number RBR845, along with United States currency and miscellaneous items; (6) one rapid containment baton; (7) two handcuff pouches; (8) an AR-15 magazine; (9) a department issued handheld radio; (10) a double magazine pouch; and (11) a flashlight.

All officers who responded to the scene wore AXON body cameras.

On February 18, 2020, at approximately 11:54 a.m., Detective Michael Gardea and Detective Michelle Del Rio interviewed **Corporal Nicholas Parcher**.<sup>4</sup>

Corporal Parcher was employed by the Rialto Police Department for approximately 9 years at the time of the interview.

On February 14, 2020, Corporal Parcher was on duty. At approximately 11:30 p.m., he was headed to the Rialto police station to complete some reports when he received a call from dispatch about a mentally disturbed subject causing a disturbance at 186 East Home Street. The call indicated that the subject was named Gutierrez and that he was possibly armed with a knife or a gun.

Prior to arriving at 186 East Home Street, Corporal Parcher and several other responding officers<sup>5</sup> decided to meet in the parking lot of the Stater Brothers a street south of the residence. The purpose of the meeting was to form a plan to approach the house. During the meeting, dispatch advised officers that there was an "open line" with

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<sup>4</sup> Corporal Parcher reviewed his body worn camera footage prior to being interviewed by Detective Gardea and Detective Del Rio.

<sup>5</sup> In total there were five officers at the Stater Bros. meeting: Corporal Parcher, Officer Michael Martinez, Officer Cole Rekte, Officer Angel Gutierrez, and Officer Dezeray Covarrubias.

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Witness #1, Gutierrez's sister, and the reporting party. Corporal Parcher requested that dispatch send the call to his department-issued cell phone. Corporal Parcher, Witness #1, and dispatch ended up in a three-way call that lasted about a minute. During the call, Corporal Parcher heard arguing, and then a scream, possibly from a female. Corporal Parcher was not able to communicate with Witness #1. Due to what Corporal Parcher heard during that call, the lack of communication from the reporting party, and that there was a possibly armed subject at the residence, he decided that the officers were to respond right away to the residence.

When Corporal Parcher arrived at the residence, he approached from the west and took up position behind a four-foot wall that divided the residence from its neighbor. From this vantage point, he was able to see the front yard and exterior of the residence. He observed an open pedestrian door leading to a blacked-out garage, several windows along the front of the house, and the front door which also had a glass window. Approximately 30 seconds after he began observing the residence, he saw what he believed to be a female individual pass by one of the windows. He whistled in an attempt to get the female's attention and called for her to exit the residence, but she did not respond.

Corporal Parcher decided to approach the residence to determine if somebody was in danger. He directed Officer Rekte to get a ballistic shield<sup>6</sup> and to approach the open pedestrian door to the garage with Officer Martinez in order to clear it.

Corporal Parcher saw a light turn off inside the window to the east of the front door. At this point, the two officers were approaching the outside of the garage in order to look inside to clear the garage. He then heard Officer Covarrubias state that "he" was coming to the front door. From his position west of the front door, Corporal Parcher saw a shadow behind the front door. The door opened and a male, later identified as Gutierrez, poked his head out and looked at the officers.

Corporal Parcher told Gutierrez to exit the residence and to show his hands. Gutierrez re-entered the house and said, "No." Corporal Parcher began to move closer to the front door in an attempt to see where Gutierrez was going and what he was doing. As he moved closer, Gutierrez re-emerged from the doorway. Corporal Parcher backed up several steps and directed Gutierrez to exit the residence.

Gutierrez stood at the entrance and said, "What?" He removed a knife from his right sweatshirt pocket. Corporal Parcher characterized it as a kitchen or steak knife. Gutierrez held the knife so that the blade was facing up, toward the sky. He then moved the knife to his left hand. When he did so, he moved the knife so that the blade faced down, toward the ground.

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<sup>6</sup> A ballistic shield is a black collapsible bi-fold shield that measures approximately 3 ½ feet tall and 3 feet wide. The word "POLICE" is written on the front in white lettering and there is a handle on the back. The purpose of the ballistic shield is to possibly stop a rifle round should the officer be fired upon.

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Gutierrez said to Corporal Parcher, "What do you want?" He then raised the blade toward his shoulder and advanced rapidly toward Corporal Parcher. Corporal Parcher backed up. There was a brick wall behind him, the house to his left, and his partner to his right. Gutierrez kept advancing on Corporal Parcher with the knife in his left hand. Corporal Parcher believed that he was running out of room and that he would soon be trapped and unable to get away from Gutierrez. He also perceived that Gutierrez was going to attack him from the way Gutierrez was moving the knife, which he described as a "stabbing type" motion. Corporal Parcher shot several times.

Gutierrez fell to the ground. Officers immediately began rendering medical aid.

On February 20, 2020, at approximately 9:05 p.m., **Officer Angel Gutierrez** was interviewed by Detective Michael Gardea and Detective Michelle Del Rio.<sup>7</sup>

Officer Angel Gutierrez was employed by the Rialto Police Department for approximately 3.5 years at the time of the interview.

On February 14, 2020, Officer Gutierrez was driving southbound on Riverside Avenue, north of Baseline, when he heard dispatch place a call about a subject possibly having a gun and a hammer. Officer Gutierrez self-assigned himself the call and met at the Stater Brothers located on Baseline and Riverside pursuant to another responding officer's request. Officer Gutierrez informed the group of officers that he had a 40-millimeter less-lethal projectile gun as well as a ballistic shield in his vehicle. The five officers began formulating a plan. Officer Gutierrez began building the ballistic shield.

The meeting was cut short because of dispatch advising the officers that there appeared to be an argument occurring at the location. Officer Gutierrez estimated that the officers spoke for about two minutes before dispatch advised them of the distress they heard on the open line.

The five officers got in their vehicles and headed to the residence on Home Street. They parked their cars approximately three houses west of the location. When they exited their vehicles, Officer Gutierrez grabbed the 40-millimeter less-lethal gun and Officer Cole Rekte grabbed the ballistic shield and helmet. All five officers approached the residence.

Officer Gutierrez saw a closed garage with an open pedestrian door. The plan was for Officer Rekte and Officer Martinez to clear the garage, while Corporal Parcher, Officer Covarrubias, and Officer Gutierrez approached the front door to investigate. Corporal Parcher noticed that there was a female at the door and attempted to get her attention by calling out. The light inside the house went off.

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<sup>7</sup> Officer Michael Martinez reviewed his belt recording prior to being interviewed by Detective Abernathy and Sergeant Thies.



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Shortly after the light went off, a female came to the door, opened the door, and looked at the officers with "a blank stare." She then walked back into the house. Officer Gutierrez could not remember if the female left the door open or not. After that, a male (later identified as Gutierrez) came to the door and looked at the officers. Officer Gutierrez heard officers giving Gutierrez commands. Gutierrez walked back inside the house.

Officer Gutierrez had the 40-millimeter less-lethal pointed at the front door. Gutierrez returned to the doorway and exited. Gutierrez advanced toward Corporal Parcher. Officer Gutierrez saw that Gutierrez had a knife in his hand. Other officers called out that Gutierrez had a knife. To Officer Gutierrez, Gutierrez looked to be within five feet of Corporal Parcher. Officer Gutierrez estimated that it would have taken Gutierrez one stride to fully cover the distance between Gutierrez and Corporal Parcher. Officer Gutierrez fired his less-lethal launcher twice as Corporal Parcher fired his firearm.

Gutierrez fell to the ground. Officers began rendering medical aid.

**STATEMENTS BY CIVILIAN WITNESSES<sup>8</sup>**

On February 15, 2020, at around 6:47 a.m., **Witness #1** was interviewed by Detective David Lara and Detective Michelle Del Rio.

Witness #1 told detectives that the residence at \*\*\* Home Street belonged to her mother. Witness #1 lived at the residence with her mother and her brother, Gutierrez. Witness #1's other brother was a deputy sheriff for the Riverside County Sheriff's Department. Witness #1's father was an executive officer for the San Bernardino County Sheriff's Department.

Witness #1 said that she had difficulty remembering what happened on February 14, 2020, because she had consumed hard liquor and had blacked out. Witness #1 said that whenever she drank alcohol, she did so with the intention of blacking out. For the previous month, she had drunk every Friday and blacked out. For the previous 10 years, she blacked out about once every three months. Her alcohol consumption had increased lately because of her unhappiness with life. She also mixed her psychiatric medications with alcohol.

Witness #1 said she last saw Gutierrez on Wednesday, February 12, during the day. Witness #1 said that Gutierrez had been previously diagnosed with bipolar disorder and schizophrenia by the United States Veterans' Affairs ("VA") about 10 years ago. Witness #1 said that Gutierrez was in the Army and after he left, he began to hallucinate. Witness #1 said that VA staff had committed Gutierrez for an evaluation before, but that Patsy had signed him out of the hospital in accordance with Gutierrez's wishes. Gutierrez was prescribed medications. Gutierrez's symptoms worsened. The

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<sup>8</sup> All civilian witness statements regarding the shooting were reviewed. Not all those statements will be included in the summary of statements by civilian witnesses.

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Gutierrez family tried to commit Gutierrez to the hospital, but Gutierrez ran away. Witness #1 said that about 15 years ago, one of Gutierrez's friends called Rialto police because Gutierrez threatened to kill himself.<sup>9</sup>

Witness #1 said that she did not like Gutierrez because Gutierrez verbally and physically abused her. Witness #1 said that Gutierrez had physically assaulted her twice in the past and that she had called Rialto police in response to both incidents. Witness #1 said that Gutierrez was not arrested in either incident. Witness #1 said that his mother enabled Gutierrez's behavior and allowed Gutierrez to continue drinking alcohol while telling Witness #1 to stop drinking alcohol. Witness #1's relationship with Gutierrez had deteriorated to the point where she and Gutierrez ignored each other even when they were both sober.

Witness #1 knew that Gutierrez had a knife in his room. Witness #1 said that about four years ago, Gutierrez had brandished a knife at her stepfather. Witness #1 described the knife as a switchblade.

Witness #1 said that she disliked Gutierrez so much that every time she drank alcohol, she would call the police on Gutierrez. Witness #1 said that she did this to force Gutierrez to get help for his mental disorders. Witness #1 estimated that Rialto police had responded to the residence at least 10 times.

Witness #1 said that about 2:30 p.m. on February 14, she got off work as a behavior interventionist for the Montclair and Ontario school districts and proceeded to the Huntington Learning Center in Rancho Cucamonga, where she worked as a tutor. After her tutoring job ended at 5:30 p.m., Witness #1 went to her Alcoholics Anonymous meeting from 5:30 to 6:30 p.m.

After the Alcoholics Anonymous meeting ended, Witness #1 went home and cooked dinner. At approximately 8:00 p.m., Witness #1 took a shower and began drinking whiskey. She told investigators that she consumed 350 mL of a Black Label bottle of whiskey and blacked out. Before she blacked out, she heard music playing from Gutierrez's bedroom. She assumed that Gutierrez was drinking alcohol as well. She did not know how much Gutierrez drank daily.

At approximately 9:30 p.m., Witness #1 left the residence and walked to Stater Brothers to get more hard liquor. She purchased a bottle of tequila. She called her cousin, Witness #2, and asked Witness #2 for a ride back to the residence.

Witness #1 said that she did not remember calling 911 the night of the incident and only learned that she had called 911 from Rialto police. She did not remember Gutierrez doing anything that would have caused her to call 911. She did not remember Gutierrez in possession of any kind of weapon. She recalled waking up in the living room at the

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<sup>9</sup> It should be noted that Tara's statements about Gutierrez's army service, mental disorder diagnoses, and alcoholism have not been independently corroborated.

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residence and speaking to a Rialto police officer. She did not remember seeing Gutierrez the entire evening.

Witness #1 said that she might have heard a gunshot during the incident from Gutierrez's room. She assumed that Gutierrez had a gun, but she had never seen him with a gun. Witness #1 said that she "probably" allowed her imagination to run wild. Witness #1 said that her recollection of what happened the night of the incident was affected by her excessive consumption of alcohol. Witness #1 blamed herself for the situation and said that there must have been a good reason why she called 911, but she could not remember why.

On February 26, 2020, at approximately 3:43 p.m., **Witness #2** was interviewed by Detective Michelle Del Rio.

Witness #2 was Witness #1 and Gutierrez's cousin. She lived in Rialto and visited Patsy and Witness #1 often. She grew up with Witness #1 and Gutierrez but was closer to Witness #1. Witness #2 described Gutierrez as quiet and reserved. Witness #2 said that since Gutierrez was discharged from the military, he was not the same "funny and outgoing" Gutierrez and kept to himself. Witness #2 knew that Witness #1 and Gutierrez were both alcoholics.

On February 14, 2020, at approximately 8:49 p.m., Witness #2 received two calls from Witness #1. Witness #2 was hanging out with friends and did not want Witness #1 to bother her. Witness #2 said that when Witness #1 was intoxicated, she usually called Witness #2 repeatedly. Witness #1 continued to call Witness #2 throughout the evening, but Witness #2 did not answer her calls.

At approximately 9:56 p.m., Witness #2 picked up Witness #1's call. Witness #1 asked Witness #2 for a ride home from Mike's Liquor. Witness #2 and her friend Tish went to go pick Witness #1 up from Mike's Liquor, which was located in the same shopping center as Stater Brothers. Witness #2 stayed on the phone with Witness #1 until she got to the shopping center, which was at approximately 10:00 p.m. Witness #2 saw Witness #1 attempt to get into another car and immediately drove over to Witness #1. Witness #1 was extremely intoxicated and held a black plastic bag with a bottle inside.

Witness #2 and Tish drove Witness #1 to the residence. Witness #2 walked Witness #1 inside the residence and made sure Witness #1 locked the door and turned off the lights. Witness #2 left the residence. At approximately 10:47 p.m., Witness #2 received another call from Witness #1. Witness #2 did not want to deal with Witness #1 as Witness #1 was intoxicated, so she did not pick up the phone call.

Witness #2 said that Witness #1 became violent when intoxicated and then turned around and played the victim. Witness #2 said that Witness #1 had called 911 while intoxicated and made false accusations against Gutierrez. Witness #2 said that when officers arrived, it was usually Witness #1 who got arrested for public intoxication.

Witness #2 believed that Witness #1 hated Gutierrez because Gutierrez stayed in his bedroom while intoxicated and did not bother anyone. Witness #2 said that Witness #1 often provoked and fought with Gutierrez for no reason.

On February 25, Witness #1 called Witness #2 to wish her a happy birthday. Witness #1 said that she had blacked out and did not remember what had occurred the night of the incident. Witness #1 did not give any more details about the night of the incident. Witness #2 said it was the only time Witness #2 had spoken to Witness #1 since the night of the incident.

### **INCIDENT VIDEO**

**BODY WORN CAMERA.** All body worn camera footage submitted was reviewed in their entirety.<sup>10</sup> The summary of Corporal Parcher's body worn camera footage will begin at the point he was en route to the incident location and end at the point following the medical aid rendered as a result of the lethal force encounter.

All five listed officers were wearing body-worn cameras; however, only Corporal Parcher's, Officer Martinez's, and Officer Covarrubias' captured the encounter between Corporal Parcher and Gutierrez in its entirety.

#### **Corporal Nicholas Parcher**

Corporal Parcher was wearing a body worn camera during the incident under review. The recording was eleven minutes fifty-three seconds in length.

The footage begins with Corporal Parcher driving his patrol car to the Home Street residence. He parks, exits his car, and approaches the residence. He stands by the next-door neighbor's fence and shines his flashlight at the residence. Shortly after, he whistles loudly and says, "Come outside!" There is no audible response. He tells the other officers, "I saw a woman walk past the front door." He says he received no response, so he directs the other officers what to do: they are going to approach the house; Officers Rekte and Martinez will clear the garage; and the other officers will give them cover.

The officers move toward the house. Officers Rekte and Martinez are by the open pedestrian door of the garage. Corporal Parcher faces the front door. He calls, "Come to the door! Come out with your hands up!"

The door opens and Gutierrez steps out past the threshold. Corporal Parcher tells him several times to come out and put his hands up. Gutierrez says, "What? No" and goes back inside the house. Corporal Parcher tells him to "come here" and to put his hands up. Gutierrez reappears at the front door, walks off the porch, and advances toward Corporal Parcher. Gutierrez walks quickly and directly at Corporal Parcher, taking

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<sup>10</sup> Summary of the body-worn camera footage will only cover from the start of the recording and end at the point immediately following the lethal force encounter.

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approximately five steps from the front door towards him. As he walks toward Corporal Parcher, he is holding an object in his left hand. Corporal Parcher says, "Hey! Put the gun down!" and shoots Gutierrez several times. When Corporal Parcher shoots, Gutierrez is approximately five to six feet in front of Corporal Parcher.

Corporal Parcher enters the house to retrieve a paper napkin and returns, placing it on one of Gutierrez's gunshot wounds. He checks Gutierrez's airway before he and Officer Martinez begin CPR, with Corporal Parcher pressing down on Gutierrez's chest.

"He's taking breaths!" Corporal Parcher says at one point. He keeps encouraging Gutierrez to breathe. Other officers then take over giving CPR.

**Officer Michael Martinez**

Officer Martinez was wearing a body worn camera during the incident under review. The recording was eighteen minutes and twenty-four seconds in length.

The footage begins with Officer Martinez on Home Street, south of the residence, observing the residence. He then heads toward the wall separating the residence from its next-door neighbor. He gets behind another officer<sup>11</sup> and directs him to hold the shield. Both officers move north toward the front door of the residence. They stop in front of the window to the east of the residence, putting them to the west of the open garage entry door. As they pass the garage entry door, Officer Martinez turns on his flashlight.

A light is on in the window to the east of the residence; it then turns off. "He's coming, he's coming out, he's coming out," Officer Martinez says, referring to Gutierrez. "Alright, hold it right there," he directs Officer Rekte, before he turns to his left and shines a flashlight inside the open garage, scanning the interior.

Corporal Parcher says, "Open the door. Come out with your hands up". Gutierrez is heard saying "What?" in response. Corporal Parcher repeats the command "Come out with your hands up" several more times, adding, "Hey, come here." Gutierrez says, "No." Officer Martinez is now facing the window to the east of the front door. He directs Officer Rekte to stop. Briefly, Corporal Parcher can be seen to Officer Martinez's northeast, standing by the front porch and shining his flashlight in the direction of the front door.

Someone says, "Knife, he's got a knife!" before Gutierrez is seen walking off the front porch to the east of Officer Martinez. Several shots are fired. As the officers move, Officer Martinez can be seen with a gun in his right hand.

"21, shots fired, 21, shots fired, one down," Officer Martinez says. "Get back! Get back!" he says, before his camera view moves up and he points his gun at Witness #1, who has come out onto the porch. Witness #1 then throws several pieces of wood onto the ground before going back into the house.

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<sup>11</sup> Although Officer Martinez does not address this officer by name, Officer Cole Rekte was holding the ballistic shield.

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An officer is heard calling for medical aid; another enters the house to secure it.

"Hey, stay with me," Officer Martinez says to Gutierrez. Officer Martinez opens Gutierrez's shirt. He tells Corporal Parcher that he only sees two gunshot entry wounds. Corporal Parcher asks to start CPR; Officer Martinez says he wants to do but he wants to "plug this hole first." Corporal Parcher leaves briefly and returns with a paper napkin, which he places on Gutierrez's body before both officers begin CPR.

**Officer Dezeray Covarrubias**

Officer Covarrubias was wearing a body worn camera during the incident under review. The recording was twenty-two minutes and forty-eight seconds in length.

The footage begins with Officer Covarrubias on Home Street, walking eastbound toward the residence. She joins Corporal Parcher and other officers at the four-foot-tall wall separating the residence from the next-door neighbor. There is discussion about how to approach the residence. Officer Covarrubias then follows Corporal Parcher as the officers make their way up the front yard of the residence.

Officer Covarrubias and Corporal Parcher stop approximately six to eight feet southwest of the front porch of the residence, with Corporal Parcher standing in front of Officer Covarrubias. "Light just turned off," Officer Covarrubias<sup>12</sup> says. Someone can be heard saying, "He's coming out."

"I got lethal," she says. She remains in position southeast of the front door as Corporal Parcher approaches the front porch and calls out, "Open the door." The door opens. "He's got something in his hands," Officer Covarrubias says as she raises her gun and aims it at Gutierrez, who appears at the threshold of the front door briefly before going back inside the house.

"Come out with your hands up," Corporal Parcher calls. Corporal Parcher walks toward the front porch and is approximately two feet from the front door. Gutierrez says, "What?" as he goes back inside the house. Corporal Parcher repeats his command. "No," Gutierrez responds from inside the house. Gutierrez then comes back to the front door and asks, "What do you want?" His right hand is obstructed from view, and he stops as Corporal Parcher repeats commands for him to put his hands up.

Gutierrez then walks onto the front porch, and his right hand is now in view. He is holding a long, flat object, which he transfers to his left hand as he walks purposefully toward Corporal Parcher.

"Stop! Stop!" Officer Covarrubias says as Gutierrez closes the distance between him and Corporal Parcher, who is now walking backward. Shots are fired. When the shots are fired, Gutierrez is approximately five feet from Corporal Parcher.

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<sup>12</sup> Officer Dezeray Covarrubias is the only female officer.

Gutierrez falls to the ground. Officer Covarrubias and other officers are heard saying, "Get back, get back," as Witness #1 exits the house and tosses several pieces of wood off the front porch onto the ground.

Corporal Parcher and two officers surround Gutierrez and one officer is heard directing Officer Rekte to drop the shield and to "make sure everyone is okay in the house." "Okay, let's go," Officer Covarrubias says as she and Officer Rekte enter the house. Witness #1 is seen standing in the hallway just feet from the front door. Officer Covarrubias asks Witness #1 for her name as she and Officer Rekte look through the house.

**WEAPONS**

A knife with a black handle and a silver blade was located at the scene, lying on the grass approximately four feet south and two feet west of the front door. The blade measured approximately five inches. The total length of the knife measured nine inches. The brand "J.A. Henckels International" was etched on the side of the knife.



In the interior of the residence, in a bathroom at the end of the east hallway, a hammer was located in the vanity sink.

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**AUTOPSY.** Dr. Diana Geli, Forensic Pathologist for the Coroner Division of the San Bernardino County Sheriff's Department, conducted the autopsy of Christopher Gutierrez on February 20, 2020. Dr. Geli determined the cause of death was multiple gunshot wounds.

**Gunshot Wound Number One<sup>13</sup>:**

Located on right side of the chest, above the right nipple, 14 ½ inches below the top of the head and 2 ¾ inches to the right of the anterior midline. The trajectory of this gunshot wound was front to back, slightly right to left, and slightly downwards. The path of the projectile was through the chest, rib cage, right lung, heart, and spine. The fired bullet from this gunshot wound was located and recovered from the upper back, within tissue.

**Gunshot Wound Number Two:**

Located to the right side of the chest, below the right nipple, 21 inches below the top of the head and 4 ½ inches to the right of the anterior midline. The trajectory of this gunshot wound was front of back, slightly right to left, and downwards. The projectile traveled through the chest, rib cage, liver, intestines, and right kidney. The fired bullet from this gunshot wound was located and recovered in the lower back, within tissue.

**Gunshot Wound Number Three:**

Located on the right upper back, 8 ½ inches below the top of the head and 9 ¾ inches to the right of the posterior midline. The trajectory of this gunshot was back to front, slightly right to left, and downwards. The path of the projectile was through the soft tissue of the back. The fired bullet from this gunshot was located and recovered from the right mid-back, within tissue.

**TOXICOLOGY RESULTS.** Blood, urine, and vitreous samples were collected from Gutierrez during the autopsy.<sup>14</sup>

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

- Ethanol – 107 mg/dL
- Blood alcohol concentration – 0.107%
- Psuedoephedrine: 10 ng/mL

**CRIMINAL HISTORY.** None.

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<sup>13</sup> The numbering of the gunshot wounds is for reference only and not meant to indicate the order in which the gunshot wounds occurred.

<sup>14</sup> The blood, urine, and vitreous samples were sent to NMS Labs, located in Horsham, PA, for analysis.



### DE-ESCALATION

Corporal Nicholas Parcher, Officer Michael Martinez, Officer Angel Gutierrez, Officer Cole Rekte, and Officer Dezeray Covarrubias responded to 186 East Home Street in Rialto about a call about a mentally unstable subject, Gutierrez, who was possibly armed with a knife or a gun.

Corporal Parcher attempted to de-escalate the situation by telling Gutierrez multiple times to exit the house with his hands up. The situation escalated when Gutierrez, having ignored Corporal Parcher's previous commands, exited the house and advanced quickly on the corporal with a knife in his left hand. Other officers told Corporal Parcher told Gutierrez to drop the gun prior to discharging his firearm. At no time did Gutierrez comply with any of the given commands.

### 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>15</sup> Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

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

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

**PENAL CODE SECTION 196.** Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a use of force that "is in compliance with Section 835a." Section 835a specifies a **police**

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<sup>15</sup> All references to code sections here pertain to the California Penal Code.

***officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

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

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

While the appearance of these principals was new to section 835a in 2020,<sup>16</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

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<sup>16</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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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>17</sup>
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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<sup>17</sup> Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done "in order to ensure that officers use force consistent with law and agency policies." On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter "SB-230"), does explicitly state that "[a law enforcement agency's use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training." (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncoded, unlike the aforementioned portion of Penal C. §835a (a)(3).

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

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

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

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

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

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

A threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how

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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>18</sup> To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

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,

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<sup>18</sup> The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9<sup>th</sup> Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9<sup>th</sup> Cir. 1994) 858 F.Supp. 1064, 1071-72 “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

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

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

“...under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4<sup>th</sup> at 343, citing *Smith v. Freland* (6<sup>th</sup> Cir. 1992) 954 F.2d 343, 347.)

Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9<sup>th</sup> Cir. 1999) 1999 U.S. Dist. LEXIS 1414 \*1, 27-28.)

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

“...unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their

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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].)

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**ANALYSIS**

Prior to the incident, Corporal Parcher received a call about a subject who was possibly armed at the residence at Home Street. He met with several other officers at a nearby Stater Bros. to formulate a plan of approach. Shortly after that meeting began, he received information from dispatch that they had an open line with the reporting party, a female. He asked that he be patched through to a three-way call among him, dispatch, and the female reporting party. He could hear yelling in the background and was unable to speak with the female to ascertain her safety or the situation. He then heard a scream that he believed was from the female. Based on this, he believed it was in the best interest of the reporting party to leave Stater Bros. immediately and go to the Home Street residence.

When he and the other Rialto Police Department officers arrived at the residence, they congregated by the next-door neighbor's wall, where they were able to see into the front yard and observe the front exterior and garage of the residence.

Corporal Parcher saw an individual, who he believed to be female, at the kitchen window. He attempted to get her attention by whistling and talking loudly to her, but she did not seem to notice or respond.

Corporal Parcher directed two officers, Officers Cole Rekte and Michael Martinez, to clear the garage that was adjacent to the front door, which was dark and had an open pedestrian door. Corporal Parcher, Officer Dezeray Covarrubias, and Officer Angel Gutierrez, who was armed with the less-lethal 40-millimeter launcher, approached the house to provide Officers Rekte and Martinez cover. All officers were wearing uniforms clearly identifying them as police officers.

When Corporal Parcher was within the vicinity of the front door, he called loudly for anyone inside to come out with their hands out. The door opened and Gutierrez came out just past the threshold of the front door. Corporal Parcher directed Gutierrez to come out with his hands up multiple times. Gutierrez did not comply. Instead, he walked back inside the house. Corporal Parcher heard him say, "No."

At this point, Corporal Parcher knew that there was at least one other individual in the house: the female that he had seen by the kitchen window. He also knew that the reporting party was female. He last heard yelling and a scream from a female from the three-way call between himself, dispatch, and the reporting party. He did not know who else was in the house and he did not know if anyone, including Gutierrez, was armed.

Fearing a hostage situation, Corporal Parcher moved toward the front door in order to observe and gain more information about what and who was inside the house. Gutierrez re-appeared in the doorway and partially exited the house. Again, Corporal Parcher directed him to come out from the house with his hands up. Gutierrez stayed in the doorway and pulled a steak knife from his right pocket, transferring it from his right



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hand to his left hand with the blade pointed down. He then walked off the porch, advancing rapidly toward Corporal Parcher.

Corporal Parcher backed up several steps. However, he would soon be unable to back up any further because of the neighbor's wall behind him. He was unable to move to the left because the house blocked his movement. He was unable to move to his right because Officer Covarrubias was there.

There was no indication Gutierrez intended to comply with any further commands, as he had already disregarded officers' commands to exit the house with his hands up. It was also clear that Gutierrez understood the commands because he had responded "No" at least once to a command to exit the house with his hands up. Consequently, when Gutierrez walked rapidly toward Corporal Parcher, he had to act quickly in response to an imminent threat to his physical safety.

Therefore, the belief by Corporal Parcher that Gutierrez intended to seriously injure or kill him was both honest and objectively reasonable. Given those circumstances, the decision by Corporal Parcher to use deadly force was justified.

**CONCLUSION**

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

**Submitted By:**  
**San Bernardino County District Attorney's Office**  
**303 West Third Street**  
**San Bernardino, CA 92415**

