



PUBLIC RELEASE MEMORANDUM

Date: January 18, 2024

Subject: Fatal Officer-Involved Incident

Involved Officers: Officer Andrew Carey
Ontario Police Department

Officer Garrett Gibson
Ontario Police Department

Officer Jorge Palacio
Ontario Police Department

Involved Subject/DOB: Miguel Angel Rodriguez
08/08/1994

Subject's Residence: Montclair

Incident Date/Time: May 27, 2022, 7:47 p.m.

Case Agent/Agency: Detective Michelle Del Rio
San Bernardino Sheriff's Department

Agency Report Number: DR# 602200066
H# 2022-060

DA STAR Number: 2023-00-37225

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PREAMBLE

This was a fatal officer-involved shooting by officers from the Ontario Police Department. The San Bernardino County Sheriff's Department investigated the shooting. 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.

FACTUAL SUMMARY

In the early evening of May 27, 2022, patrol officers with the Ontario Police Department attempted to conduct a traffic stop on Miguel Rodriguez for driving without a front license plate. It was 7:37 p.m., before sunset. Rodriguez was driving, along with his front seat passenger, near the intersection of Mission Boulevard and Magnolia Street in the city of Ontario. Instead of pulling over, Rodriguez led the officers on a vehicle pursuit. Driving recklessly through the streets of Ontario, Montclair, and Pomona, Rodriguez briefly lost the officers when he sped through a residential neighborhood. With a description of Rodriguez's vehicle, additional Ontario Police Department patrol officers, including K-9 Officer Andrew Carey, Officer Garret Gibson, and Officer Jorge Palacio, arrived in the neighborhood to assist in the search for Rodriguez. The department's airship, Unit A-10, made its way to help in the search.

Officer Gibson was driving southbound on Kadota Avenue when he spotted Rodriguez's car traveling northbound on the same street. Officer Gibson broadcasted the information to his partners. After passing each other on the roadway, Officer Gibson made a U-turn, and Rodriguez took off at a high rate of speed. Officer Gibson activated his patrol unit's lights and sirens, attempting to stop Rodriguez, but Rodriguez refused to stop. Rodriguez sped out of the neighborhood, back onto city streets, running stop signs and red lights along the way. With Officer Gibson still pursuing him, Rodriguez raced back into the same neighborhood and onto Kadota Avenue. Now heading southbound on Kadota Avenue, Rodriguez sped toward the intersection of Kadota Avenue and 9th Street as the department's Air Unit A-10 arrived overhead. Officer Gibson followed behind, broadcasting the location to his partners. Hoping to cut off the vehicle pursuit, Officer Carey drove westbound on 9th Street toward Kadota Avenue. As Officer Carey approached the intersection, so did Rodriguez and unsuspecting civilian vehicle. Speeding southbound on Kadota Avenue, Rodriguez ran the stop sign at the intersection and crashed into the civilian motorist.

The violent crash disabled both vehicles. Officer Gibson and Officer Carey stopped their patrol units near the scene. Rodriguez got out of his car. Officer Gibson yelled commands for Rodriguez to put his hands up. Rodriguez briefly turned to face the officers before turning and running away. Rodriguez ran southbound on the sidewalk along Kadota Avenue. Officer Carey and his K-9 Rikkert gave chase, running after Rodriguez. As Air Unit A-10 broadcasted the foot pursuit, Officer Gibson ran to Rodriguez's crashed vehicle to ensure the passenger did not pose a threat to the officers before joining the chase.

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Meanwhile, Officer Palacio stopped his patrol unit several yards south of the crash on Kadota Avenue. Hoping to intercept Rodriguez, Officer Palacio got out and ran northbound in the street.

While running away from Officer Carey and Rikkert, Rodriguez pulled a 9mm semi-automatic pistol from his shirt, turning his head multiple times to look behind him. Seeing this, Officer Carey yelled at Rodriguez to drop the gun. Rodriguez continued running with the pistol in his hand, repeatedly looking behind him as Officer Carey and Rikkert closed the gap. Having been given the apprehension command, Rikkert outpaced Officer Carey and quickly closed in on Rodriguez. Officer Carey yelled at Rodriguez again to drop the gun, but Rodriguez did not comply. Rikkert ran past Rodriguez and turned to apprehend him from the front, by biting onto Rodriguez's left arm. At that moment, Rodriguez spun around and pointed the loaded 9mm semi-automatic pistol at Officer Carey. Officer Carey fired several rounds from his duty pistol at Rodriguez.

As Officer Carey fired at Rodriguez, still running toward the scene were both Officer Gibson and Officer Palacio. From the south, Officer Palacio heard the gunfire, but could not see his partner or Rodriguez. From the north, Officer Gibson also could not see Officer Carey or Rodriguez; his view was blocked by a parked truck. Rodriguez fell to the ground, dropping his pistol in the process, and Officer Carey stopped firing. Undeterred, however, Rodriguez scrambled toward the fallen handgun and reached out to grab it. At that moment, Officers Gibson and Palacio reached the scene, and seeing Rodriguez going for the pistol, Officer Gibson yelled at Rodriguez, "Hands up! Don't you grab it!" As Officer Gibson started to shout a second command, "Don't you—" Rodriguez grabbed the pistol from the ground and pointed it at Officers Carey and Gibson. Officers Carey, Gibson, and Palacio fired their handguns at Rodriguez, stopping him. The officers approached Rodriguez, took him into custody, and immediately began life saving efforts. Additional officers arrived and assisted, taking over chest compressions until fire department medics arrived on scene. The medics declared Rodriguez deceased at approximately 7:58 p.m.

STATEMENTS BY POLICE OFFICERS¹

On June 2, 2022, at approximately 10:26 a.m., **Corporal Emily Hall** was interviewed by Detective Owenn Domon of the San Bernardino County Sheriff's Department.

Corporal Hall was employed as a police officer by the Ontario Police Department (OPD). On May 27, 2022, at approximately 7:30 p.m., Corporal Hall was with her partner, Officer Gabriela Villalvazo, in a marked OPD patrol unit. Corporal Hall was seated in the front passenger seat while Officer Villalvazo drove. The officers traveled east on Phillips Street and stopped at a red light at Mountain Avenue. Corporal Hall saw a silver sedan with a black front bumper and no front license plate across the intersection facing west. The sedan was occupied by two Hispanic males, later identified as Miguel Rodriguez (driver) and Luis Martinez-Witness #1. When the light turned green, Rodriguez drove west on

¹ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

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Phillips Street, passing Corporal Hall and Officer Villalvazoo. Officer Villalvazoo made a U-turn behind Rodriguez's car to initiate a traffic stop for a violation of Vehicle Code section 5200, no front license plate.

Corporal Hall noticed the silver sedan accelerated and believed Rodriguez was trying to flee. Rodriguez approached the intersection of Phillips Street and Magnolia Avenue, which was a four-way stop. Rodriguez slowed but did not stop and headed north on Magnolia Avenue. Officer Villalvazo accelerated to catch up to Rodriguez, broadcasting over the radio the traffic stop, and license plate number of the silver sedan. Officer Villalvazo activated the overhead emergency lights to perform the traffic stop. Rodriguez continued to accelerate, entered the intersection of Magnolia Avenue and Mission Boulevard, and made a westbound turn on Mission Boulevard. Officer Villalvazo activated the emergency siren, but Rodriguez did not stop, and a vehicle pursuit was initiated. Officer Villalvazo broadcasted the location, direction, and speeds of the pursuit over the radio.² The vehicle pursuit continued west on Mission Boulevard. Rodriguez ran the red light at Monte Vista Avenue and Mission Boulevard, nearly colliding with another motorist. Rodriguez turned northbound on Monte Vista Avenue and ran another red light, making a westbound turn on Earnhardt Way. Earnhardt Way turned into Greenwood Avenue. Rodriguez ran a red light at Greenwood Avenue and State Street and headed west, traveling approximately 50 miles per hour on State Street, and then abruptly slowed before making a southbound turn into a business complex.

Rodriguez drove through the business parking lot at about 50 miles per hour before proceeding back onto Mission Boulevard and heading west. Rodriguez turned southbound on Carriage Street into a residential neighborhood with curving roads. Rodriguez drove approximately 50 to 60 miles per hour through the residential neighborhood, where the officers briefly lost sight of him due to the rate of speed and the curving roads. The officers located Rodriguez's car traveling south on Stagecoach Avenue. Rodriguez ran the stop sign at Stagecoach and Howard Street, proceeded west on Howard Street, ran the stop sign at Howard Street and Ramona Avenue, proceeded south on Ramona Avenue, ran a stop sign at Ramona Avenue and Grand Avenue, and headed west on Grand Avenue. Corporal Hall and Officer Villalvazoo lost sight of Rodriguez's car once it turned west on Grand Avenue.

Corporal Hall and Officer Villalvazoo headed west on Grand Avenue, shutting off their unit's lights and sirens. They notified dispatch that they had lost sight of the vehicle and performed an area check. Corporal Hall asked dispatch for the address listed for the suspect vehicle's registration and learned it was less than half a mile from where they lost sight of the car. The officers headed toward the address provided by dispatch. About two minutes after they lost sight of Rodriguez's car, Officer Garret Gibson broadcasted over the radio that he had located the suspect vehicle. Officer Gibson advised that the vehicle

² Both Corporal Hall and Officer Villalvazoo, as Victor 9, broadcasted information regarding the pursuit. See Dispatch Summary for further details.

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ran a red light at Mission Boulevard and Pipeline Avenue. Corporal Hall and Officer Villalvazoo activated their lights and sirens and headed toward Officer Gibson.

Flying overhead, the OPD airship Unit Air-10 broadcasted the location and direction of the vehicle pursuit. Air-10 broadcasted that the suspect vehicle traveled south on Kadota Avenue and collided with a vehicle at the intersection of Kadota Avenue and 9th Street. Corporal Hall and Officer Villalvazoo headed toward that location, turning westbound on Howard Street when Air-10 broadcasted that the driver (Rodriguez) ran from the vehicle and removed a handgun from his waistband. A few seconds later, Corporal Hall heard a broadcast from Sergeant Johnson of "shots fired." Corporal Hall and Officer Villalvazoo were about one block away from the scene and could see OPD units there with their overhead emergency lights activated but did not see the officer-involved shooting.

On May 31, 2022, at approximately 3:25 p.m., **Officer Andrew Carey** was interviewed by Detectives Michelle Del Rio and Bryan Sprague of the San Bernardino County Sheriff's Department.

Officer Carey was employed as a police officer by the Ontario Police Department (OPD). On May 27, 2022, Officer Carey was on duty with his K-9 partner, Rikkert. As a K-9 officer, Officer Carey's duties were to conduct proactive patrol, assist with calls for service, and back his law enforcement partners. Officer Carey drove a marked OPD black and white patrol unit, #1884. Officer Carey's call sign was K95.

Officer Carey wore a distinctively marked navy-blue OPD uniform with OPD patches on each shoulder, a police badge on the left chest, and his nameplate on the right chest. Over his uniform shirt, Officer Carey wore a department-issued vest. The front of Officer Carey's vest had an OPD badge and his name; the back of his vest had the word "Police." Officer Carey also wore his duty belt equipped with the following department-issued tactical gear: A 9mm Glock 17 handgun loaded with one round in the chamber and 17 rounds in the magazine, three additional magazines loaded with 17 rounds, a Taser, handcuffs, a baton, dog leashes, and a pouch for dog toys. Officer Carey's body-worn camera was activated during the incident.

At approximately 7:37 p.m.,³ Officer Carey was stopped at a red light in his patrol unit near Mountain Avenue and Holt Boulevard when he heard Officer Emily Hall and her trainee broadcast a traffic stop at Mission Boulevard and Magnolia Avenue. Officer Carey knew the location where the officers had tried to do the traffic stop was a high-crime area with a recent gang-related shooting. Officer Carey was less than a half mile away and drove south on Mountain Avenue to back the officers on the traffic stop. As Officer Carey headed to the location, he heard over the radio that the car was failing to yield and that a pursuit had been initiated. Officer Carey activated his unit's lights and sirens and drove Code Three to catch up to the vehicle pursuit. Officer Carey explained it is not uncommon

³ Times noted are from OPD Computer Aided Dispatch record.

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for K-9 officers to initiate or engage in a vehicle pursuit because they have their K-9 available to use as a less-lethal option.

Over the radio, Officer Carey listened to the officers calling out the pursuit, which continued westbound on Mission Boulevard past side streets located in Pomona. Listening to the officer calling out the pursuit, it was clear to Officer Carey that the suspect was engaging in felony evading by driving with a willful and wanton disregard for public safety. The suspect ran red lights and stop signs and drove "all over the road." Another officer in a marked patrol unit, also driving Code Three, was in front of Officer Carey. Officer Carey was not sure which officer it was. Officer Carey headed south on a minor street, trying to locate the pursuit. Officer Carey then turned east on a residential street⁴ and heard Officer Hall call out that the vehicle she was pursuing had gone west on the same street. As Officer Carey drove eastbound, he notified Officer Hall over the radio that the vehicle had not passed him and must have gone either north or south on another unknown residential street. The pursuing officers had lost sight of the vehicle. Officer Carey estimated the pursuit lasted four and a half to five minutes before the officers lost sight of the vehicle. Officer Carey heard another officer, whose name he could not recall, describe the vehicle over the radio as a Mazda sedan⁵ with a distinctively black front bumper. The officer provided the license plate number. Officer Carey conducted a record's check on the plate and obtained the registered owner's address. Officer Carey put the address into his GPS and saw that the residential address was less than half a mile from his location.

Having lost the vehicle, the OPD officers began conducting area checks. An airship was en route to assist the ground officers but had yet to arrive. Less than a minute after the officers lost sight of the suspect vehicle, and as Officer Carey began driving to the registered owner's address, he heard Officer Garrett Gibson say over the radio that he was behind a vehicle matching the suspect's description off Mission Boulevard. At the same time, Officer Carey heard the OPD helicopter had arrived overhead. Officer Gibson announced that he had tried to initiate a traffic stop, but the vehicle failed to yield again. To Officer Carey, the suspect's refusal to stop a second time "showed his level of dedication," and Officer Carey believed the suspect would not stop and submit to law enforcement.

Officer Carey knew the suspect vehicle was traveling southbound on Kadota Avenue but was unfamiliar with where Kadota Avenue was in relation to him. Officer Carey took a minor street, driving west on 9th Street perpendicular to the suspect's direction of travel to "cut off that vehicle pursuit to hopefully either take a secondary or third position in that pursuit." As Officer Carey drove westbound on 9th Street, approximately 100 yards before

⁴ Officer Carey could not recall the name of the street.

⁵ Officer Carey did not say what color the car was. Dispatch recordings reveal that Officer Hall described the suspect vehicle as a silver 4-door Mitsubishi sedan with a black front bumper and no front license plate. Immediately thereafter, the dispatch operator broadcasted that the license plate was to a Mazda. See Dispatch Summary for further details.

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Kadota Avenue, he saw a vehicle that matched the suspect vehicle description traveling southbound on Kadota Avenue. The suspect ran the stop sign at a high speed and crashed into a vehicle driving through the intersection of Kadota Avenue and 9th Street. Officer Carey estimated the suspect vehicle had been driving 50 miles per hour. After the collision, the suspect vehicle traveled slowly southeast before stopping on Kadota Avenue. The car that was struck by the suspect vehicle came to rest at the intersection of Kadota Avenue and 9th Street, with the person inside slumped over the wheel motionless. Officer Carey believed the innocent civilian would need medical assistance. Several other OPD vehicles arrived and stopped in the intersection.

Officer Carey drove along the south curb line of 9th Street and stopped his unit approximately 20 feet away from the suspect vehicle. At this point, "everything kind of slowed down for" Officer Carey. Based on the suspect's failure to yield on two separate occasions, his driving with disregard for public safety, and causing a traffic collision that appeared to have resulted in great bodily injury, Officer Carey believed that deploying his canine would be the safest and most effective less-lethal option available to the officers to either overcome the suspect's resistance should he remain in the car or prevent his escape should he attempt to flee. As Officer Carey put his unit into park, he saw the suspect (later identified as Miguel Angel Rodriguez) open the driver's door, get out, and then take off, running southbound away from the officers. Rodriguez quickly glanced at Officer Carey's direction before he took off running. Officer Carey realized that Rodriguez was "not going to give up whatsoever" when Rodriguez ran from the car after having caused what appeared to be great bodily injury to an innocent bystander.

Officer Carey unlocked his unit's rear doors and opened his K-9 partner's door. Rikkert got out of the unit and ran with Officer Carey to apprehend Rodriguez. As they neared the suspect's vehicle, Officer Carey saw there was a passenger inside the car. Rikkert was approaching the suspect's vehicle, so Officer Carey gave him a "here" command for the dog to return to Officer Carey's side. Rikkert ran in front of Officer Carey as they chased Rodriguez, who ran southbound along the east sidewalk of Kadota Avenue. Officer Carey believed he was the only officer chasing Rodriguez on foot but hoped other officers would join him. Officer Carey briefly lost sight of Rodriguez behind a vehicle but saw Rikkert running up ahead. Being familiar with his dog's mannerisms, Officer Carey knew that "wherever his nose goes is exactly where he's looking." Based upon this, Officer Carey knew that as Rikkert continued running after Rodriguez, Rikkert was looking directly at Rodriguez. Officer Carey gave Rikkert an apprehension command. Officer Carey continued running behind his dog, who was about 10 yards ahead, knowing that the dog "is going hopefully to apprehend the suspect" and stop him so the officers could take him into custody.

When Officer Carey was approximately 35-40 yards away from Rodriguez, he saw Rodriguez pull a semiautomatic handgun out from an unknown portion of his body as he continued running away. Officer Carey did not warn Rodriguez that the dog would bite him because he wanted an element of surprise to use the dog as a distraction tool for the

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officers. Officer Carey pulled out his department-issued handgun from his holster and gave Rodriguez two commands to drop the gun. Rodriguez did not drop the gun and continued running with it in his left hand. Rikkert caught up to Rodriguez, jumped, and “apprehended [Rodriguez] in his right arm” while Rodriguez held the firearm in his left hand.⁶

Officer Carey continued running, closing the gap between him and Rodriguez, and tried to take cover behind a nearby parked vehicle when Rodriguez turned his body toward Officer Carey and pointed the gun at him. Officer Carey was about 10 yards away from Rodriguez. Officer Carey saw the gun in Rodriguez’s left hand, and as soon Rodriguez turned and pointed the gun at him, Officer Carey knew he was in imminent danger. Officer Carey’s life flashed before his eyes, and he feared he would never see his family again. Officer Carey fired at Rodriguez, aiming for his center mass. Officer Carey heard a gunshot, which he believed came from Rodriguez’s gun, before he fired at Rodriguez. Officer Carey estimated he fired five rounds, all in rapid succession. Rodriguez fell onto his buttocks and then onto his side alongside a parked vehicle. When Rodriguez fell, so did his gun. Rodriguez’s gun landed on the ground and was still within Rodriguez’s immediate reach. Rikkert continued “apprehending” Rodriguez in his arm. At this time, Officer Carey saw in his peripheral vision that two additional OPD officers, Officers Garrett Gibson and Jorge Palacio, were coming up alongside him. Officer Gibson was to the left of Officer Carey, and Officer Palacio was to the right of Officer Carey behind two parked cars.

Officer Carey had switched from his handgun to his police radio to announce shots had been fired when he saw Rodriguez lunge toward the gun, which had fallen onto the ground next to him. Officer Carey heard Officer Gibson command to Rodriguez to put his hands up and “don’t grab it.” Officer Carey thought, “This dude really wants to kill me. He’s doing everything possible, from running or evading arrest, to running to fighting a police dog that’s apprehending him, to pointing a gun at me. He had already been shot, and then he’s on the ground, he reaches for the gun again. And the things that are going through my mind are just this level of dedication of not wanting to submit to arrest, and he wanted to kill us.”⁷ Officer Carey took his hand off the radio and put it back onto his handgun as Rodriguez grabbed the gun. Rodriguez sat upright and pointed the gun at the officers. Fearing for his own life and his partners’ lives, Officer Carey fired at Rodriguez again. Officer Carey believed he fired six rounds in the second volley in rapid succession. Rodriguez continued trying to manipulate the gun to re-engage the officers, moving the gun from his left hand to his right. Officer Carey did not know why Rodriguez wasn’t going down and almost considered looking at his gun because he wondered if the gun was working. Officer Carey fired three additional rounds at Rodriguez to stop him. Officer

⁶ Only after reviewing the incident video did Officer Carey learn that Rikkert had apprehended Rodriguez in his left bicep area and not his right arm. Officer Carey correctly observed that Rodriguez carried the gun in his left hand.

⁷ At this point during his interview, the distress in Officer Carey’s voice was audible as he related his fear during the incident to the detectives.

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Carey stopped firing when Rodriguez fell onto his back and was no longer a threat. Officer Carey estimated he was 10 yards from Rodriguez when he fired at him.

Officer Carey holstered his firearm and directed his partners to provide lethal coverage to safely approach Rodriguez to remove the dog and render aid to Rodriguez. Officer Carey saw Rodriguez lying on his back with the firearm on the ground in front of him. Officer Carey intended to give Rikkert an "out" command while using an electronic controller to communicate with the dog to let him know that he needed to let release his bit. Based on Rikkert's extremely high drive at that point, Officer Carey realized this was ineffective. Officer Carey reached down, placed his hands around Rikkert's harness and collar, and "took him off physically from the bite." Officer Carey walked away as he radioed for an ambulance to come to the scene. Additional officers arrived on the scene. Officer Carey saw two unidentified officers performing CPR on Rodriguez.

Officer Carey walked Rikkert back to his police unit and put him inside. Officer Carey approached the suspect's vehicle and met with officers contacting the passenger. At that time, Officer Carey realized he had not done a tactical reload, exchanging one magazine for another with additional rounds. Officer Carey conducted a tactical reload and placed the empty magazine he removed from his gun into his back left pocket. Officer Carey assisted the other officers who took the passenger into custody. Officer Carey returned to where the officers were performing CPR before returning to his unit to check on his canine to ensure he had not been shot. Officer Carey studied Rikkert and found that he had suffered a graze wound to his lower back right leg. Officer Carey wrapped Rikkert's leg with gauze and coordinated with another canine officer to come to the scene to take Rikkert to the veterinary hospital for medical treatment.

On June 2, 2022, at approximately 10:51 a.m., **Officer Garrett Gibson** was interviewed by Detectives Bryan Sprague and Daniel Berumen of the San Bernardino County Sheriff's Department.

Officer Gibson was employed as a police officer by the Ontario Police Department (OPD). On May 27, 2022, Officer Gibson was on duty, assigned to patrol, and drove a marked black and white OPD Ford Explorer equipped with emergency lights and sirens. Officer Gibson's call sign was Paul 244. Officer Gibson did not recall the number of the unit he drove on May 27, 2022.

Officer Gibson wore a distinctively marked navy-blue OPD uniform with OPD patches on each shoulder, a police badge on the left chest, and his nameplate on the right chest. Officer Gibson's duty belt was equipped with the following department-issued gear: A 9mm Glock 17 handgun loaded with one round in the chamber and 17 rounds in the magazine; three additional magazines loaded with 17 rounds; a Taser, handcuffs, a baton, police radio, and a tourniquet. Officer Gibson's body-worn camera was activated during the incident.

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Officer Gibson was patrolling the area of Holt Boulevard and Grove Avenue in the city of Ontario when he heard OPD Corporal Emily Hall, and her trainee (Officer Villalvazoo) call out a traffic stop over the radio. The officers attempted to initiate a traffic stop on a vehicle at Mission Boulevard and Magnolia Avenue in the city of Ontario, the vehicle fled, and a pursuit began. Officer Gibson asked dispatch to assign him to the call to back the officers and attempted to catch up to the pursuit to assist the officers. Officer Gibson's stress level increased slightly, and he wondered why the driver was fleeing. Was the driver under the influence? Did the driver have something to hide?

Officer Gibson heard an officer whose name he could not recall, say over the radio that the vehicle stop was for reckless driving as well as possible driving under the influence. While en route to catch up to the pursuit, Officer Gibson heard the officers broadcast that the vehicle was running red lights and stop signs and driving at an excessive rate of speed. Officer Gibson was concerned the driver was going to hurt someone by driving recklessly and running red lights and stop signs. To Officer Gibson, this amounted to felony evading. As the pursuit continued, Officer Gibson heard the officers broadcast they were chasing the car westbound, headed toward the Montclair and Pomona area. When Officer Gibson got to the area of Mission Boulevard and Central Avenue, he heard that the officers had lost the vehicle and no longer had visual of it. The initiating officers put out the license plate number and a description of the vehicle. The suspect vehicle was initially reported to be a silver Mitsubishi with a black front bumper, but dispatch announced over the radio that the license plate came back to a Mazda, not a Mitsubishi. Officer Gibson knew at that point that he was looking for either a silver Mazda with a black front bumper or a silver Mitsubishi with a black front bumper.

Dispatch put out the address from the license plate. Officer Gibson "Googled" the address, which was in Pomona, and saw he was only a about a mile and a half away from the address. Knowing it was common for people to head to their home during vehicle pursuits, Officer Gibson began to proceed toward the address provided by dispatch to try to locate the vehicle. Officer Gibson was by himself with no other officers around him. His stress level was up slightly, not knowing when another police officer might join him. Officer Gibson was unfamiliar with the area and wondered, "Does this, you know, does this person know this area? Are they trying to lure me into some sort of, you know, trap and ambush of some sort."

Officer Gibson drove southbound on Kadota Avenue when he saw a silver four-door Mazda with a black front bumper driving northbound on Kadota Avenue. Officer Gibson and the driver of the Mazda (later identified as Rodriguez) passed right by each other. As soon as Officer Gibson made a U-turn to catch up to Rodriguez's vehicle, Rodriguez took off at a high rate of speed. Officer Gibson activated his lights and sirens and tried to catch up with the Mazda.

The Mazda got to Mission Boulevard and turned right, heading eastbound on Mission. Officer Gibson followed, turning right on Mission Boulevard, and headed east. Officer

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Gibson saw the Mazda about an eighth to a quarter mile ahead of him. The Mazda swerved around a few cars that were stopped at the red light of an intersection and drove through the intersection against the red light. The Mazda then quickly made a U-turn and began heading westbound back toward Officer Gibson.

Officer Gibson made a U-turn and followed behind the Mazda, heading westbound on Mission Avenue. Officer Gibson estimated he and the Mazda travelled at 50 to 55 miles per hour at this point. The Mazda then made a left turn and headed southbound on Kadota Avenue, into a residential neighborhood. At the same time, Officer Gibson heard the OPD helicopter overhead. The air unit officer radioed that he would call out the pursuit from that point, meaning, that he would broadcast the street names, whether the suspect was running red lights and stop signs, etc., over the radio from that point forward. About a half mile later, the Mazda was approaching the intersection at 9th Street, which was a four-way stop. As the Mazda approached the intersection, Officer Gibson heard the air unit say to watch for cross-traffic, which meant there were other vehicles coming to that intersection. Just as the air unit said to watch for cross-traffic, Officer Gibson saw the Mazda run the stop sign and collide into a silver sedan that was heading westbound on 9th Street. The Mazda came to a rest facing southbound, disabled along the east curb line of Kadota Avenue beside a church.

Officer Gibson stopped his car facing southbound beside a telephone pole on the southeast corner, near the church, about 20 to 30 feet from the Mazda. As Officer Gibson began to get out of his car, he saw Officer Carey approaching westbound on 9th in his police car. Officer Gibson jumped out of his car, pulled his handgun from his holster, and commanded Rodriguez to put his hands up. Rodriguez got out from the driver's door of the Mazda, faced northbound, and looked directly at Officer Gibson's police unit before turning and running around the open driver's door and then southbound on Kadota Avenue. At the same time, Officer Carey had pulled up in his patrol unit to the left of Officer Gibson. Officer Carey deployed his police dog after Rodriguez. Officer Carey, his K9, and Rodriguez ran southbound. Officer Gibson ran up to the Mazda because there was a passenger inside, and he wanted to make sure the passenger did not have a weapon to shoot Officer Carey in the back as Officer Carey ran after Rodriguez. Officer Gibson ordered the passenger to show his hands, and he complied. As soon as another officer got to the Mazda, Officer Gibson told the officer to stay with the Mazda.

Officer Gibson ran southbound after Officer Carey, the K-9, and Rodriguez. A parked yellow pickup truck to the south blocked Officer Gibson's view of Officer Carey, the K-9, and Rodriguez. Officer Gibson had to run south, past the yellow pickup truck, before he could see them. Officer Gibson, still running, saw Officer Carey about 30 to 40 feet away, standing beside a red sedan near the front engine. Rodriguez was on the east sidewalk of Kadota to the left of a vehicle parked behind the red sedan. Rodriguez was sitting on his behind, facing northbound with what appeared to be the K-9 latched onto his left arm. As Officer Gibson neared Officer Carey, he heard Officer Carey "or someone" yell, "Gun, gun, gun!" Rodriguez was "crawling or reaching for the gun that was on the ground" to

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Rodriguez's left. The gun was a semiautomatic handgun with a black handle and a silver slide.

Officer Gibson yelled at Rodriguez, "Don't grab it, don't pick it up, hands up." Rodriguez grabbed the gun, spun to his right, and pointed the gun at Officer Gibson and Officer Carey. Fearing Rodriguez was about to shoot him or Officer Carey, Officer Gibson fired three to six rounds rapidly from his handgun at Rodriguez's chest and torso area. Officer Gibson moved around a parked red vehicle to gain coverage as he fired and saw Officer Palacio to the right of the red car. As Officer Gibson moved around the red car for cover, he told Rodriguez to put his hands up, but Rodriguez, still seated upright, did not comply. Rodriguez was still facing northbound toward Officer Carey. Officer Gibson could not see Rodriguez's gun, and Rodriguez was not complying with commands to show his hands. Fearing that Rodriguez would still shoot Officer Carey, Officer Gibson fired an additional round at Rodriguez's chest and torso area. Officer Gibson believed his final round did not strike Rodriguez. Officer Gibson did not hear his gunfire, nor anyone else's gunshots, when he fired at Rodriguez and did not know whether Officer Carey or Officer Palacio had also fired their guns.

Officer Gibson saw Rodriguez lying on his back with the gun on the ground between his legs, near his ankles. With the gun no longer in Rodriguez's hands, Officer Carey told Officer Gibson and Officer Palacio to come back around to him to provide lethal coverage so they could approach Rodriguez and get Officer Carey's K9 to release his bite from Rodriguez's arm. The officers approached Rodriguez, giving him commands not to move. Officer Gibson grabbed Rodriguez's left arm with his left hand, and as soon as Officer Carey was able to retrieve his dog, Officer Gibson rolled Rodriguez over. Together, Officer Gibson and Officer Palacio handcuffed Rodriguez behind his back. Officer Gibson then rolled Rodriguez onto his back and immediately began CPR.

On May 31, 2022, at approximately 12:09 p.m., **Officer Jorge Palacio** was interviewed by Detectives Bryan Sprague and Michelle Del Rio of the San Bernardino County Sheriff's Department.

Officer Palacio was employed as a police officer by the Ontario Police Department (OPD). On May 27, 2022, Officer Palacio was on duty, assigned to patrol in a marked OPD patrol unit. Officer Palacio's call sign was Paul 352. Officer Palacio did not recall the unit number he drove on May 27, 2022.

Officer Palacio wore a distinctively marked navy-blue OPD uniform with OPD patches on each shoulder, a police badge on the left chest, and his nameplate on the right chest. Officer Palacio's duty belt was equipped with the following department-issued gear: A 9mm Glock 17 handgun loaded with one round in the chamber and 17 rounds in the magazine, three additional magazines loaded with 17 rounds, a Taser, handcuffs, baton, police radio, pepper spray, and a tourniquet. Officer Palacio's body-worn camera was affixed to his duty belt and was activated during the incident.

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At about 7:30 p.m., Officer Palacio left the Ontario Police Department station and headed to patrol his sector in the west side of the city. Officer Palacio was near Philadelphia Street and Grove Avenue when he heard Victor 9 (Corporal Hall and Officer Villalvazoo) call out a traffic stop at Magnolia Avenue and Mission Boulevard. A few seconds later, Officer Palacio heard Victor 9 say the vehicle was “taking off on them,” which Officer Palacio took to mean the suspect was fleeing from the officers. Officer Palacio asked dispatch to assign him to the call and headed toward Victor 9’s direction. Officer Palacio drove westbound on Philadelphia Street with his patrol unit’s lights and sirens activated, monitoring the pursuit over his police radio. Officer Palacio heard Victor 9 say that the suspect was driving through red lights and stop signs at a high rate of speed. Officer Palacio turned northbound on Benson Avenue to Mission Boulevard and headed west. Victor 9 broadcasted that the suspect vehicle was swerving over the road at a high rate of speed, continuing to run through stop signs and stop lights. Officer Palacio continued making his way toward the pursuit when he heard Victor 9 broadcast that they had lost the vehicle.

Victor 9 had put out the suspect vehicle’s license plate and vehicle description. Officer Palacio turned off his patrol unit’s lights and sirens and pulled over because he knew he was in the area where Victor 9 had lost the suspect vehicle. Officer Palacio thought that if he pulled over, he might see the suspect car pull out in front of him or run a stop sign. Dispatch provided the return for the address for the suspect vehicle’s license plate at a residence on Wesley Avenue. Officer Palacio realized he was very close to the address on Wesley Avenue, so he began driving that way. When Officer Palacio turned northbound on Wesley Avenue, he saw Officer Burnett driving southbound toward him. Victor 9 was behind Officer Palacio, also heading northbound on Wesley Avenue. As they neared the address provided by dispatch, none of them saw the suspect vehicle.

Officer Palacio stopped to talk to a family he saw walking in the neighborhood and asked them if they had seen a car drive past the location “really fast or anything like that?” A lady in the group said she had seen a car go by “‘really fast that way,’ and she pointed northbound on the street.” At the same time, Officer Palacio heard Officer Gibson say over the radio that he had found the suspect car at Mission Boulevard and Pipeline Avenue. Officer Palacio got back into his car and headed to intercept the pursuit. When Officer Palacio approached Kadota Avenue, he heard Officer Gibson broadcast that he was behind the suspect vehicle traveling southbound on Kadota Avenue. As Officer Palacio turned right on Kadota Avenue to head north, he heard over the air, “T/C Kadota and 9th.” Officer Palacio knew other officers were heading southbound on Kadota Avenue while he was heading northbound. Over the radio, Officer Palacio heard that the suspect (later identified as Rodriguez) had taken off on foot from the crash.

Officer Palacio was driving northbound on Kadota Avenue when he saw Rodriguez running southbound on the east sidewalk of Kadota Avenue with OPD officers chasing him on foot. Officer Palacio saw that one of the officers was Officer Carey but did not

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know who the second officer was until he got closer to them. Officer Palacio stopped his unit and heard his partners yelling commands at Rodriguez. Officer Palacio turned off his unit's sirens to ensure they did not interfere with Rodriguez's ability to hear his partners' commands. As Officer Palacio got out of his car, he heard the air unit overhead say something to the effect, "He's holding a gun, or he has a gun in his hand." Upon hearing this, Officer Palacio thought, "After everything, the totality of the circumstances...this guy had more than a hundred times to give up, to, to give up to police and he didn't. So those actions and hearing that from the air unit made me think this, this guy is gonna kill myself or kill one of my partners with that firearm." Officer Palacio heard Officer Carey give Rodriguez multiple commands to drop the gun. Officer Carey's commands were loud and clear. Officer Palacio was further south of Officer Carey than Rodriguez was, so he knew Rodriguez could have heard Officer Carey's commands.

Officer Palacio unholstered his handgun and started to run northbound in the street toward the foot pursuit when he heard the first gunshot. Officer Palacio realized that while he wasn't in his partners' direct backdrop, he was close enough to their backdrop that he knew it was "a little dangerous." Officer Palacio ran diagonally to his left in a northwest direction and heard more gunshots. Officer Palacio believed his partners were in a gunfight with Rodriguez and that his "partners were fighting for their life" when he heard the gunshots.⁸ Officer Palacio had seen them running after Rodriguez, who he knew had a gun, had just crashed into an innocent victim, and had led police on several high-speed pursuits. Officer Palacio ran as fast as he could to help his partners.

There was a "lull in the gunfight," and Officer Palacio did not hear any gunshots for "a couple of seconds maybe, it was quick." Two vehicles were parked facing northbound on the east side of the curb. Rodriguez was sitting on the ground near the front right tire of the second vehicle further south of Officer Palacio. Officer Palacio got to the area of the first parked vehicle's gas tank, where he stopped running. Officer Palacio was northwest of Rodriguez, on the other side of the parked vehicle, but could see Rodriguez clearly between the two parked cars. Officer Palacio estimated he was three to five yards away from Rodriguez. It was still daylight; Officer Palacio could see clearly. Officer Palacio saw a little bit of blood on Rodriguez's arm and could tell that he was injured by how he moved. Officer Palacio knew Rodriguez had been hit but "was repositioning the gun to re-engage" the officers.

As soon as Officer Palacio stopped running, he saw Rodriguez grab a black⁹ semiautomatic handgun from his waistband area. Rodriguez "moved it in motion," pointing the gun at Officer Palacio as he did so, and then at his partners. Officer Palacio described, "I think he was going toward my partner, that's why I was in the middle of it." Rodriguez pointed the gun at Officer Palacio "for just a split second," and then at Officers Carey and Gibson. Officer Palacio had "a little bit of concealment, cover, between the vehicles," but

⁸ At this point in the interview recording, the distress in Officer Palacio's voice was audible. Officer Palacio paused, evidently unable to speak, and cleared his throat and nose. A short break was had before resuming the interview.

⁹ Officer Palacio recalled seeing some color on the handgun as well but did not recall what the other color was.

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his partners did not. Officer Palacio thought his partners were going “to die because of the proximity of how close we were.” Fearing that Rodriguez was going to shoot him and believing his partners had already been shot or were about to be shot, Officer Palacio fired approximately four rounds at Rodriguez’s upper torso. It happened so fast, and the threat was so immediate that Officer Palacio had no time to say “put the gun down” or “don’t shoot” before he fired at Rodriguez.

Officer Palacio saw Rodriguez was lying on his back with his head facing south and his feet facing north. Rodriguez was still moving, so Officer Palacio gave Rodriguez commands not to reach for the gun. Officer Palacio and his partners then advanced toward Rodriguez. Officer Carey’s K-9 had apprehended Rodriguez’s left arm. Officer Palacio and Officer Gibson provided lethal coverage while Officer Carey removed the dog. Then, Officer Palacio and Officer Gibson handcuffed Rodriguez. Officer Palacio immediately began administering CPR to Rodriguez. After some time, another officer took over CPR. They were in a residential neighborhood with houses all around, so Officer Palacio went to two houses that were nearest the officers’ immediate backdrop to make sure the residents inside were accounted for and were uninjured. Finding the residents were okay, and no one was hurt, Officer Palacio then began putting up caution tape around the scene. The fire department arrived and took over Rodriguez’s care.

STATEMENTS BY CIVILIAN WITNESSES¹⁰

On May 28, 2022, at approximately 2:08 a.m., **Witness #1** was interviewed by Detectives Bryan Sprague and Daniel Berumen of the San Bernardino County Sheriff’s Department.

On Friday, May 27, 2022, at approximately 7:10 p.m., Witness #1 was at a “water store” near Clark Avenue and East Holt Avenue in Pomona, where he saw a person he knew as “Ham.” Witness #1 did not know “Ham’s” real name or his phone number. Detective Sprague showed Witness #1 a California DMV picture of Miguel Rodriguez, and Witness #1 identified Rodriguez as “Ham.”

Witness #1 had previously visited Rodriguez’s family residence at an unknown address south of Kadota Avenue and 9th Street. When Witness #1 saw Rodriguez at the water store, he asked him for a ride. Rodriguez was supposed to drive Witness #1 to a location in Pomona, where Witness #1 resided underneath a bridge. Witness #1 got into the passenger seat of Rodriguez’s car and placed his brown backpack on the floorboard. Witness #1 was a methamphetamine user, and although he had smoked methamphetamine in the past with Rodriguez, he did not suspect Rodriguez was under the influence of any controlled substances when he got into his car. Rodriguez drove an unknown model, four-door gray sedan with tinted windows, east toward Witness #1’s destination.

¹⁰ All reports of civilian statements made were reviewed, though not all are summarized here.

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While heading east on Phillips Boulevard, Witness #1 saw an OPD patrol vehicle driving west on the same street. Rodriguez told Witness #1 that he “better have his seatbelt on.” Shortly after, an OPD patrol unit drove behind them, and Rodriguez sped up. Rodriguez told Witness #1, “I am not stopping. I’m gonna go.” Initially, Witness #1 did not know what was happening. Witness #1 saw the OPD unit had its emergency red and blue lights activated. Rodriguez did not tell Witness #1 why he fled from the police. Witness #1 believed Rodriguez “wanted to die or something,” but could not explain to detectives why he felt that. Witness #1 reported that Rodriguez was amiable before the vehicle pursuit and believed some unknown thoughts were going through Rodriguez’s mind.

Witness #1 asked Rodriguez to let him out of the car, but Rodriguez would not stop. Rodriguez gave Witness #1 his cell phone and asked him to make a phone call for him. Rodriguez did not specify who exactly he was trying to reach. Witness #1 was unable to make the phone call, so Rodriguez took the phone back and called an unidentified male. Rodriguez told the male he was being chased. Rodriguez told the male that there were two police vehicles in front of him and another one behind him. During the phone call, Rodriguez panicked and dropped the phone when he saw two additional police vehicles. The phone fell between the seats, and they could not retrieve it.

Witness #1 believed that Rodriguez had evaded officers for a short time, and then the officers reinitiated the pursuit. Rodriguez drove west on Mission Boulevard and made a left turn (south) on Kadota Avenue as the police pursued them. They approached the intersection of Kadota Avenue and 9th Street. Another car stopped at the intersection and proceeded into the intersection. Witness #1 thought Rodriguez was going to crash into the car. Witness #1 believed that Rodriguez initially tried to stop for the stop sign but then “just went for it.” Witness #1 thought the brakes didn’t work because Rodriguez was driving too fast. Witness #1 was concerned and told Rodriguez, “No, no, no, don’t hit the car!” Rodriguez was unable to avoid hitting the car. Witness #1 could not see how many occupants were in the car as they slammed into it.

Witness #1 estimated the pursuit lasted seven to eight minutes. After the collision, Rodriguez exited the car, and Witness #1 believed Rodriguez would flee. Witness #1 told Rodriguez to “Wait, wait,” but he did not listen and took off running south, away from the car. Witness #1 waited in the car, putting his hands above his head as OPD officers held him at gunpoint. Witness #1 heard an officer yell that he (Rodriguez) had a gun. Witness #1 heard multiple gunshots rapidly fired south of the car. Witness #1 was unable to see what happened. Witness #1 got out of the car as directed by the officers and was placed into handcuffs. Witness #1 did not know why Rodriguez fled from the officers and did not know that Rodriguez had a gun.

INCIDENT AUDIO AND VIDEO¹¹

¹¹ All audio and video recordings submitted were reviewed, though not all are summarized herein. All recordings were reviewed in their entirety. The summaries cover the events from the point immediately before the contact with Rodriguez and immediately after the incident under review. Times noted are those reflected in the media player bar.

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Dispatch Recording

Both Officer Villalvazoo and Corporal Hall broadcasted information over the police radio with their shared call sign of Victor 9 (V9). The recording began with Corporal Hall broadcasted the traffic stop at Magnolia Avenue and Mission Boulevard in Ontario on license plate "7YMC***."

00:17 to 00:45 The dispatcher confirmed V9's radio traffic and requested P351 (OPD Officer Villanueva) to back up V9 on the traffic stop. P351 broadcasted he was en route. V9 broadcasted they traveled westbound on Mission. Police sirens were heard in the background for the duration of the pursuit. The dispatcher broadcasted Code 777¹² for V9 "westbound Mission from Magnolia."

00:45 V9 broadcasted they traveled 70 miles per hour.

00:59 V9 broadcasted they still traveled westbound on Mission from Benson in the number two lane.

01:04 Sergeant Johnson (S1) broadcasted he was en route.

01:19 V9 broadcasted the suspect vehicle was occupied with two passengers, and the vehicle swerved in and out of lanes.

01:21 V9 broadcasted they continued westbound Mission, past Central at 76 miles per hour.

01:37 S1 asked V9 what the vehicle was wanted for. V9 broadcasted the suspect vehicle was wanted for reckless driving and not stopping at the red-signal light.

01:53 An unidentified male voice broadcasted that it "sounded like it was DUI reckless."

01:57 V9 confirmed the suspect was wanted for reckless driving, that they continued to pursue the vehicle westbound on Earnhardt Way and the suspect vehicle "blew" the red-signal light.

02:23 V9 broadcasted they were westbound State from Greenwood. The suspect ran the red light at State and Greenwood and went southbound through the parking lot at 4749 State Street.

03:32 S1 asked what the vehicle traffic conditions were. V9 stated there was no traffic and that they were in a residential area south of Buckskin from Rawhide. S1 asked if V9 was west of Benson, and V9 confirmed they were.

¹² Clear the air for emergency traffic.

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03:53 V9 broadcasted they were eastbound on Main in a residential area with no vehicle or pedestrian traffic and the suspect vehicle traveled about 60 miles per hour.

04:07 V9 broadcasted they were south of Stagecoach from Main, the suspect vehicle "blew" the stop sign at Stagecoach and Howard and continued westbound on Howard.

04:32 V9 asked dispatch if there was a return on the suspect vehicle.

04:42 V9 broadcasted they were southbound on Ramona from Howard and the suspect vehicle "blew" the stop sign.

05:04 V9 broadcasted they were west of Grand from Howard and the suspect vehicle "blew" the stop sign.

05:11 S1 asked what the traffic conditions were and V9 advised the traffic was still light.

05:24 V9 broadcasted they lost sight of the suspect vehicle which was last seen heading westbound.

05:28 An unidentified male voice broadcasted, "Hey, Emily, there were no cars that came past me, so he must have gone southbound [unintelligible]." The male asked for the vehicle description. V9 replied that the vehicle was a silver four-door Mitsubishi with a black front bumper and no front license plate and was occupied by two white males.

05:58 V9 broadcasted they lost sight of the suspect vehicle when they turned westbound on Grand from Howard. V9 was going to conduct an area check for the vehicle.

06:07 Air-10 broadcasted they were en route.

06:21 The dispatcher broadcasted the plate was to an "08 Mazda in Pomona."

06:28 V9 asked for the address in Pomona and said her partner was advising the driver was a black male wearing a mask and the passenger was a white male.

06:38 The dispatcher advised the address in Pomona was 1**** Wesley, Apartment *.

06:42 to 06:56 No radio traffic.

06:56 Air-10 broadcasted that the registered address was only two minutes away, or half a mile from V9's location.

07:20 to 08:15 No radio traffic.

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08:32 Officer Gibson (P244) broadcasted there was a silver Mazda northbound Roswell, east on Mission. Officer Gibson advised the Mazda had a black front bumper and said he was trying to catch up to it.

08:48 P244 broadcasted "he just blew the red at Pipeline."

08:57 P244 broadcasted, "He just made a U-turn, we're going to be going westbound Mission now."

09:10 P244 broadcasted the Mazda was southbound on Kadota.

09:15 Air-10 broadcasted the Mazda was southbound Kadota from Mission.

09:28 Air-10 broadcasted the Mazda approached Ninth Street and was involved in a traffic collision on Kadota and 9th Street. Air-10 requested dispatch to "start fire" (fire department).

09:38 to 09:46 Air-10 broadcasted, "the driver is out, running southbound. Looks like a male, long hair, black shirt, black pants, he's reaching into his shirt."

09:47 to 09:51 Air-10 broadcasted, "He pulled something out of his shirt, guys, I'm not sure what's in his left hand. I think it might be a gun."

09:54 The dispatcher repeated Air-10's broadcast, saying, "Southbound, object in his hand, unknown."

09:58 S1 broadcasted, "Shots fired, shots fired."

Ontario Police Department Airship Video¹³

00:00 The video recording began immediately after the traffic collision at the intersection of Kadota Avenue and East 9th Street. The suspect vehicle, identified by investigators as a gray 2008 Mazda 3, rolled forward in a southeast direction at a slow speed before stopping several feet south of the intersection. The other involved vehicle remained stopped in the intersection. Officer Gibson's patrol unit headed south on Kadota Avenue with its emergency lights activated and came to a stop at the northeast corner of the intersection. Officer Carey's patrol unit headed west on 9th Street with its emergency lights activated and stopped on the south side of 9th Street, several feet east of the intersection. Two additional OPD patrol units arrived at the intersection with emergency lights activated.

¹³ The video contained no audible dialogue or radio traffic.

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00:05 The driver's door of the Mazda opened. Rodriguez exited from the driver's door and momentarily faced north toward Officer Gibson. Officer Gibson stood outside his patrol unit behind the open driver's door with his hands extended to the front, pointing what appears to be a handgun toward Rodriguez. Officer Carey opened his driver's door.



00:07 Rodriguez turned and ran south on the sidewalk on the east side of Kadota Avenue along the fence line of an adjacent church property. Officer Carey and his K-9 exited the patrol unit and gave chase. The airship camera view zoomed in more closely on Rodriguez.



00:11 While still running south, Rodriguez retrieved an item, later determined to be a handgun, from inside his clothing in the region of his upper torso and turned his head, quickly looking behind him. As the camera view zoomed in more closely on Rodriguez,

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Officer Carey and his K-9 were lost from the camera view. Rodriguez repeatedly turned to look back behind him several times as he continued to run south.



00:13 Still running, Rodriguez transitioned the handgun from his right hand to his left, turning his head to look behind him multiple times.

00:14 Officer Carey's K-9, Rikkert, came into camera view chasing after Rodriguez and closing in on him. Rodriguez held the handgun in his left hand as he ran.



00:17 Rikkert passed to the left of Rodriguez before turning to apprehend Rodriguez from the front.

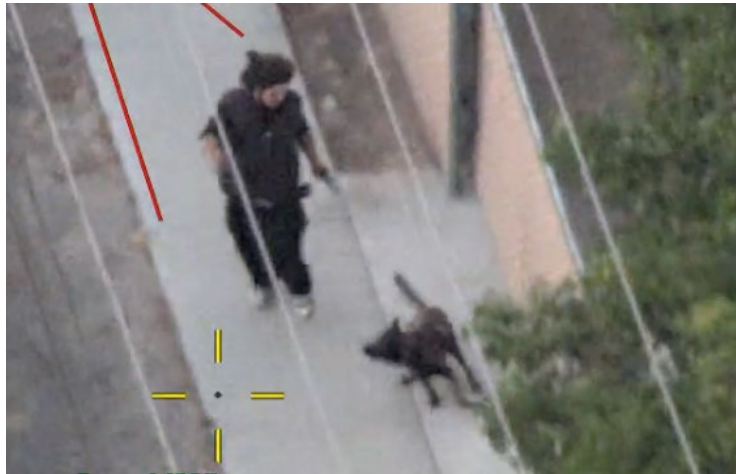
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00:19 As Rikkert attempted to apprehend Rodriguez by biting onto his left arm, Rodriguez ran in a southwest direction, off the sidewalk, and onto the asphalt shoulder of Kadota Avenue. Rodriguez held the gun in his left hand and struggled against the canine.



00:20 Officer Carey came into camera view as he stopped on the sidewalk facing south toward Rodriguez. At the same time, Rodriguez spun around and faced Officer Carey. With both hands, Rodriguez pointed the handgun at Officer Carey.

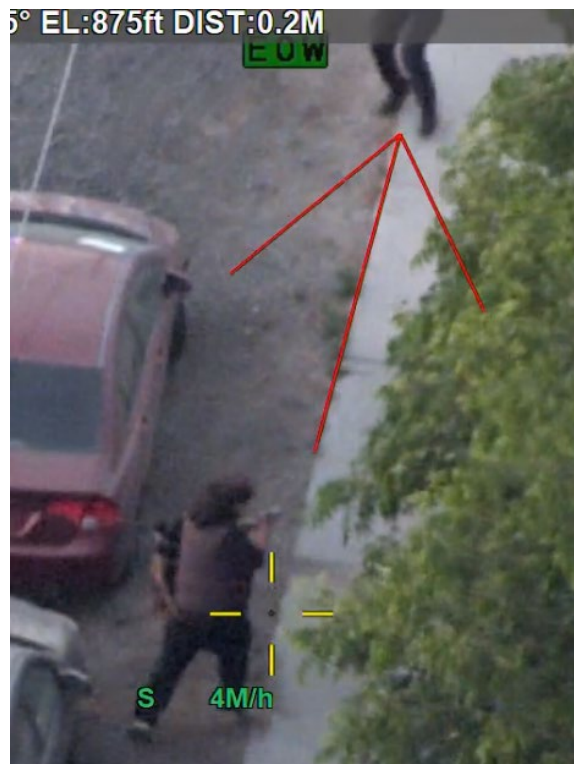
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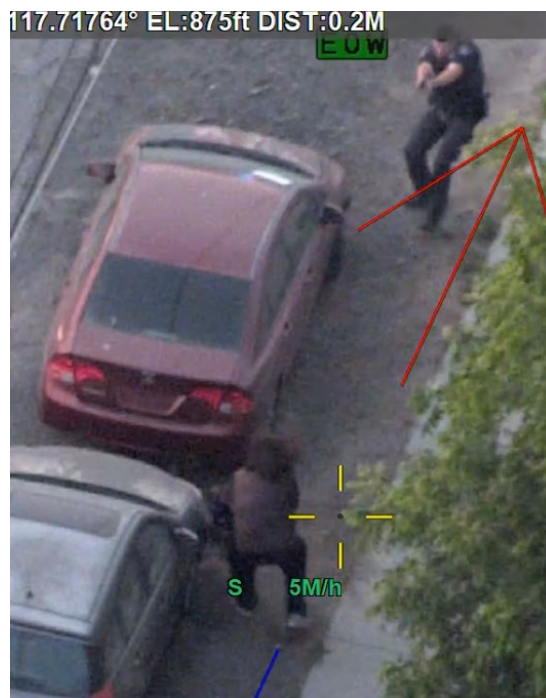
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00:21 With both hands, Officer Carey fired his handgun at Rodriguez multiple times.



00:22 Rodriguez fell to the ground on his buttocks and then onto his right side near a parked silver sedan, dropping the handgun. The handgun fell onto the sidewalk, sliding

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eastward away from Rodriguez. Still down, Rodriguez immediately scrambled toward the fallen handgun.



00:23 Rodriguez quickly reached for the gun with his left hand while the canine continued apprehending Rodriguez, biting onto his left arm. Officer Carey was blocked from camera view by trees as the air unit circled above.



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00:24 As the air unit continued to orbit above the scene, trees blocked the camera view of Rodriguez, Rikkert, and Officer Carey.

00:25 As the air unit's camera zoomed out, Officer Palacio came into view. Officer Palacio ran east across Kadota Avenue toward the scene and stopped several feet west of a red sedan parked along the roadway edge. Officer Palacio pointed his handgun with both hands toward the area where Rodriguez was last seen by the camera.



00:26 As the air unit circled above, the trees momentarily blocked most of the scene from camera view.

00:29 An OPD officer, later identified as Officer Gibson, stood near Officer Palacio. Due to the helicopter orbit and the large tree, Officer Carey and Rodriguez were obstructed from the camera's view.

00:36 After the orbit, the camera captured Rodriguez in a supine position on the ground. Officer Carey stood at the engine block of the red sedan while Officers Gibson and Palacio stood near the passenger side of the red car. All officers pointed their handguns at Rodriguez.

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00:45 Officers Palacio and Gibson moved to Officer Carey’s location. The three officers approached Rodriguez. The view of the scene was obstructed by trees as the air unit circled above.

The remainder of the video shows the officers rolling Rodriguez onto his stomach, handcuffing him behind his back, and then performing CPR as additional officers arrived at the scene.

Body-Worn Camera Video¹⁴

Officer Carey’s Body Worn Camera

Officer Carey’s video recording began while he was driving his patrol vehicle to the scene.

00:21 to 00:24 Officer Carey got out of his unit and opened the rear driver’s side door, getting his K-9 partner, Rikkert, out of the vehicle. Officer Carey ran south from his patrol unit.

00:25 Rodriguez ran south on the east sidewalk of Kadota Avenue, several yards ahead of Officer Carey.

00:26 Officer Carey ran past the suspect vehicle which had come to a rest in the roadway after the motor vehicle collision.

00:28 Rikkert ran south, passing Officer Carey.

¹⁴ The officers were equipped with Axon body-worn cameras. The camera system turns on when the operator activates the camera. When activated, the previous 30 seconds of video are included, but without any audio. The body-worn camera video recordings from all involved officers were reviewed in their entirety. Not all body-worn videos are summarized herein. The summaries cover the events from the point immediately before the contact with Rodriguez and immediately after the incident under review. Times noted are from the media player bar.

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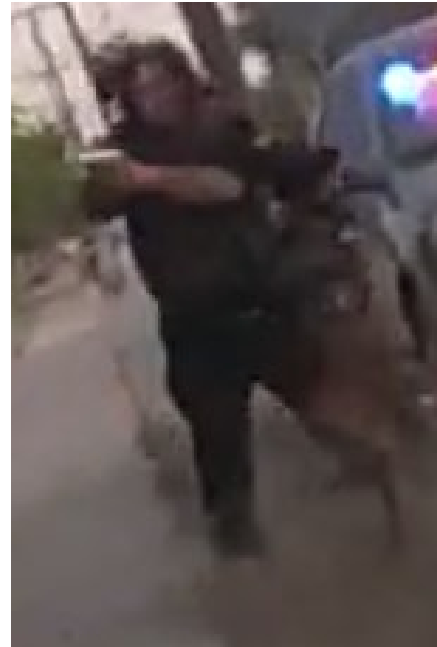
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00:33 While pursuing Rodriguez on foot, Officer Carey raised his handgun to his chest area with his right hand and brought his left hand up to support the handgun, using a two-handed grip to point the gun at Rodriguez. Officer Carey yelled, "Drop the gun!"

00:34 to 37 Officer Carey yelled, "Drop the gun" a second time. Rikkert jumped into the air, biting onto Rodriguez's upper left arm. Rodriguez quickly spun around and faced Officer Carey. Rodriguez pointed his handgun at Officer Carey with a two-handed grip. Officer Carey fired seven rounds in rapid succession at Rodriguez.



00:37 to 00:39 Rodriguez began falling to the ground just west of the sidewalk, initially falling against a parked silver sedan, still holding the handgun in his left hand.

00:38 The sound of gunshots stopped as Rodriguez fell onto his buttocks and dropped the handgun. Rodriguez's handgun flew from his left hand onto the sidewalk, east of Rodriguez. Rodriguez yelled out in pain and immediately scrambled on the ground, crawling toward the fallen handgun. Officer Carey took his left hand off his gun and reached toward his body. Officer Carey kept his gun pointed at Rodriguez with his right hand. No gunshots were fired.

00:39 to 00:40 As Rodriguez crawled toward the handgun, he reached toward the handgun with his left hand. Rikkert continued biting onto Rodriguez left arm.

00:40 to 00:41 Rodriguez picked up the handgun. Officer Carey brought his left hand back to his handgun as Officer Gibson (who approached to the left of Officer Carey) yelled, "Hands up! Don't you grab it!"

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00:41 to 00:47 Officer Gibson then yelled, “Don’t you--” as Rodriguez sat up, faced both officers, and with his left hand, pointed the handgun at them. At the 42 second mark, Officer Carey and Officer Gibson fired multiple rounds¹⁵ at Rodriguez. As their gunfire rang out, additional gunfire from Officer Palacio could also be heard, although Officer Palacio was not captured on video here. While the officers fired, Rodriguez remained seated, holding the handgun, and repeatedly pointed it toward the officers. At the 00:44 second mark, Officer Gibson was lost from camera view as he backed away from the scene.



00:46 to 00:47 Rodriguez fell onto his back and yelled out in pain while Rikkert bit onto his upper left arm. The passenger side rear view mirror of a red Honda Civic parked on the east roadway edge of Kadota Avenue blocked the camera view of the lower half of Rodriguez’s body. Officer Palacio briefly came into camera view at the rear passenger side of the red Honda. Officer Palacio pointed his gun eastward toward Rodriguez. The final gunshot missed Rodriguez, striking the dirt two to three feet east of Rodriguez. All sounds of gunfire stopped at the 00:47 second mark.

00:49 to 00:52 Officer Carey took his left hand off his gun and reached toward his body again and said, “Stand by. Shots fired. Dog’s on a bite.”

00:55 to 01:02 Officer Carey lowered his handgun and began walking toward Rodriguez. Officer Carey said, “Hey, move up.” Officer Carey directed Officers Palacio and Gibson to provide him with “lethal coverage for the dog.”

¹⁵ Because the gunfire was simultaneous, the precise number of rounds fired by each officer cannot be ascertained in by listening to the audio herein. See summaries of the officers’ interviews for additional details.

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01:02 All three officers began approaching Rodriguez. A handgun was located on the ground between Rodriguez's lower legs. Rikkert held his bite onto Rodriguez's upper left arm. The officers told Rodriguez, "Don't move."

01:06 Officer Carey reached down to Rikkert and grabbed his collar to remove Rikkert from Rodriguez. The officers handcuffed Rodriguez and immediately starting chest compressions.

Officer Gibson's Body-Worn Camera

Officer Gibson's video recording began while he drove his patrol vehicle. At the 00:34 second mark, Officer Gibson broadcasted on his unit radio, "Southbound Kadota." At the 00:41 second mark, Officer Gibson activated his siren.

00:59 Officer Gibson stopped his patrol vehicle, got out, and stood behind his open driver's door. Officer Gibson yelled, "Hands up! Hands up motherfucker! Hands up!" Officer Gibson pointed his handgun at Rodriguez. Rodriguez was at the open driver's door of the gray 2008 Mazda 3. Rodriguez briefly faced Officer Gibson. Rodriguez's left hand was not visible.

01:03 Rodriguez turned and ran away from Officer Gibson. Rodriguez ran south on the east sidewalk of Kadota Avenue.

01:06 to 1:09 Officer Gibson moved away from his patrol unit and began heading south on foot, with his handgun in his right hand. Officer Carey and Rikkert came into camera view as they ran south past Officer Gibson. Officer Gibson yelled, "Clear the car! Clear the car! Hands in the air! Get him! Stay here!" Officer Gibson stopped at the Mazda with an unidentified male OPD officer to the west. There was traffic collision damage on the front and along the driver's side of the Mazda. The driver's side windows had dark window tint and the driver's door was partially open. Through the partially lowered driver's window, a male passenger could be seen inside with his hands raised above his head.

01:10 to 01:17 Officer Gibson ran south behind Officer Carey and Rikkert toward Rodriguez.

00:17 Seven rapidly fired gunshots were heard as Officer Gibson ran toward Officer Carey, Rikkert and Rodriguez. Because Officer Gibson's body-worn camera bounded up and down as he ran, the video does not clearly show who fired the gunshots.¹⁶

01:19 to 01:20 Officer Carey stood partially behind the front passenger side of a red Honda Civic parked on the east side of Kadota Avenue. Officer Carey pointed his handgun toward Rodriguez who fell to the ground. Officer Palacio ran north on the west

¹⁶ Video from Officer Carey's body-worn camera reveals that Officer Carey is the officer who fired the initial seven gunshots.

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side of Kadota Avenue. Officer Gibson continued to approach Rodriguez and Officer Carey. Rodriguez fell to the ground and quickly crawled toward the handgun, yelling out in pain as Rikkert attempted to apprehend him. Rodriguez reached for the handgun.

01:21 to 01:23 Officer Gibson, stood slightly northwest of Officer Carey, and yelled, "Hands up! Don't you grab it! Don't you—" as Rodriguez sat up with the handgun in his left hand and pointed it toward Officer Carey and Officer Gibson. Officer Palacio was briefly captured in the camera view running east toward the scene.



01:23 to 01:29 Officer Gibson, Officer Carey and Officer Palacio fired their handguns at Rodriguez. As the three officers fired, approximately 17 gunshots were heard. The video does not clearly depict how many times each officer shot. As Officer Carey and Officer Palacio fired, Officer Gibson quickly lowered his handgun and moved to the passenger side of the red Honda, near Officer Palacio. Officer Palacio was positioned several feet west of the Honda. Officer Palacio fired slightly south and eastward toward Rodriguez. The camera view of Rodriguez was obstructed by the two parked cars. Officer Gibson yelled, "Hands up!"

01:29 to 01:36 Officer Gibson and Officer Palacio continued pointing their handguns in a southeast direction toward the area where Rodriguez was last seen in the camera view. Officer Gibson briefly reached his left hand toward his chest but continued pointing his handgun in a southeast direction.

01:36 Officer Palacio said, "Stop reaching for the gun, man. Don't reach for the gun."

01:39 to 01:45 Officer Gibson moved back toward Officer Carey, who was still positioned at the front passenger side of the Honda. All three officers approached Rodriguez who was lying on his back. The handgun Rodriguez had pointed at the officers was on the ground between Rodriguez's ankles. The remainder of video shows Officer Carey

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removing Rikkert from Rodriguez. Officer Gibson handcuffing Rodriguez to the rear, and Officer Palacio immediately starting chest compressions.



Officer Palacio's Body-Worn Camera¹⁷

00:00 to 00:26 Officer Palacio's video recording began while he drove his patrol unit toward the scene. Officer Palacio stopped, put his vehicle into park, and exited.

00:26 to 00:30 Officer Palacio ran north on Kadota Avenue from his patrol unit. As Officer Palacio ran, his body-worn camera bounded up and down, making the images difficult to see. Officer Palacio held his handgun in his right hand. Rodriguez yelled out in pain. Officer Carey and Officer Gibson were positioned near the front passenger side of the red Honda Civic parked on the east side of Kadota Avenue. Officer Carey and Officer Gibson pointed their handguns southward.

00:30 to 00:33 Officer Palacio ran eastward toward the rear of the parked Honda.

00:33 to 00:38 As Officer Palacio reached the driver's side rear of the Honda, gunfire erupted. Approximately 17 gunshots were heard. Officer Palacio's body-worn camera did not capture any images of the officers or Rodriguez during the gunfire. Seven fired cartridge casings fell to the ground in view of Officer Palacio's camera. Officer Palacio's patrol unit, with emergency lights activated, was parked on the east side of Kadota Avenue, south of the scene.

00:38 to 00:49 Officer Palacio remained at the rear passenger side of the Honda. Officer Palacio said, "Stop reaching for the gun, man. Don't reach for the gun, don't reach for the gun."

00:49 to 00:53 Officer Palacio quickly walked backwards along the driver's side of the Honda and rounded the front of the Honda, moving toward Officers Carey and Gibson

¹⁷ Officer Palacio's body-worn camera was mounted to his duty belt at waist level.

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who stood at the Honda's front passenger side. Officer Carey said, "Lethal coverage, move up."

00:53 to 01:20 Officers Palacio, Carey, and Gibson approached Rodriguez. Rodriguez was on his back next to the passenger side of a gray sedan parked behind the red Honda. A handgun was on the ground between Rodriguez's ankles. Officer Carey removed Rikkert from his bite on Rodriguez's upper left arm.

01:20 A uniformed OPD officer approached the scene from Kadota Avenue and with his right foot, slid the handgun away from Rodriguez approximately three feet north.¹⁸

WEAPON

A loaded black and blue "self-made" 9mm semi-automatic handgun with a silver Smith & Wesson slide with a black inserted ammunition magazine was located at the scene. The handgun's grip was wrapped in duct tape. The handgun bore no serial number. The 10-round capacity ammunition magazine, "PMAG 10 GL 9 CAGE 1LX50," which was locked into the handgun grip, contained nine cartridges.

DE-ESCALATION

Officer Carey and Officer Gibson had mere seconds to respond to the deadly threat presented by Rodriguez, leaving them little to no time to attempt to de-escalate. In the seconds before Rodriguez pointed the gun at the officers, both Officer Carey and Officer Gibson gave multiple commands to Rodriguez. Officer Palacio, who ran toward the scene during the active gunfire, had no chance to attempt de-escalation.

Immediately after Rodriguez crashed into another motorist, Officer Gibson got out of his marked OPD vehicle and ordered Rodriguez to put his hands up. Officer Gibson was about 20 to 30 feet from Rodriguez. Rodriguez looked at Officer Gibson and then turned and ran away. Officer Carey was the first to give chase. Officer Carey deployed his K-9 Rikkert as a less-lethal option to stop Rodriguez. Twice during the foot pursuit, Officer Carey yelled at Rodriguez, ordering him to "Drop the gun." Officer Carey was in full uniform, clearly identifying him as a police officer. While he ran behind Rodriguez, Rodriguez turned his head multiple times, presumably to look back at Officer Carey.

Officer Gibson joined the foot pursuit after briefly stopping at the suspect vehicle to ensure the passenger did not shoot Officer Carey in the back while he chased Rodriguez. Officer Gibson trailed behind Officer Carey by several yards. Officer Carey and Rikkert were closing in on Rodriguez, and when Officer Carey was within 10 yards of Rodriguez, Rodriguez spun around and pointed the handgun at him. Within only 20 seconds of giving chase, Officer Carey was faced with the deadly threat.

¹⁸ Sergeant Johnson told detectives during his interview that he used his right foot to slide the handgun away from Rodriguez.

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By the time Officer Gibson was close enough to see what had happened, Rodriguez was down on the ground. Officer Gibson saw Rodriguez crawling and reaching for the gun that had fallen nearby onto the sidewalk. Officer Gibson yelled at Rodriguez, "Hands up! Don't you grab it! Don't you--." Ignoring Officer Gibson's commands, Rodriguez picked up the gun and pointed it at Officer Carey and Officer Gibson.

At no time did Rodriguez give any indication he would surrender and cooperate with the officers. From the moment Officers Hall and Villalvazoo attempted their traffic stop on Rodriguez until the end, Rodriguez resisted. Every attempt made by officers to stop Rodriguez and to de-escalate the situation was met with resistance and violence.

DECEDENT

Miguel Rodriguez was pronounced deceased at approximately 7:58 p.m., by Firefighter Paramedic Witness #2.

AUTOPSY

Witness #3, M.D., Chief Forensic Pathologist for the San Bernardino County Sheriff's Department Coroner Division, conducted the autopsy of Miguel Rodriguez on June 2, 2022. Witness #3 determined the cause of death was multiple gunshot wounds and that death occurred within minutes.

TOXICOLOGY

Chest blood and vitreous were collected during the autopsy. Additional testing on chest blood (EDTA¹⁹) was requested.

Toxicology results for the chest blood samples were listed as follows:

- Ethanol 27 mg/dL
- Blood Alcohol Concentration 0.027 g/100 mL
- Amphetamine 630 ng/mL
- Methamphetamine 5900 ng/mL
- Delta-9 Carboxy TCH 13 ng/mL
- Delta-9 TCH 1.9 ng/mL

- Ethanol 30 mg/dL
- Blood Alcohol Concentration 0.030 g/100 mL
- Amphetamine 660 ng/mL

¹⁹ Ethylenediamine tetraacetic acid (EDTA) is an anticoagulant commonly added to collection tubes either to maintain blood in the fluid state for hematological testing or to obtain suitable plasma for coagulation and clinical chemistry analyses. NIH, National Library of Medicine.

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- Methamphetamine 5900 ng/mL
- Delta-9 Carboxy TCH 10 ng/mL
- Delta-9 TCH 1.5 ng/mL

CRIMINAL HISTORY

Miguel Rodriguez has a criminal history that includes the following convictions:

2013, 245(a)(4) of the Penal Code, Assault with a Deadly Weapon with Force Likely to Cause Great Bodily Injury, San Bernardino County case number FWV1304123, a felony.
2014, 596(b)(1) of the Penal Code, Vandalism, San Bernardino County case number MWV1401230, a misdemeanor.

2016, 245(a)(1) of the Penal Code, Assault with a Deadly Weapon (Motor Vehicle), San Bernardino County case number 16CR034810, a felony.

2018, 2800.2 of the Vehicle Code, Evading a Peace Officer with Disregard for Safety, a felony, 69 of the Penal Code, Obstruct or Resist an Executive Officer with Threat or Violence, a felony, and 11377 of the Health and Safety Code, Possession of a Controlled Substance, a misdemeanor, Los Angeles County case number POMKA11891001.

2020, 12500(a) of the Vehicle Code, Driving without a license, San Bernardino County case number MWV20011419, an infraction.

2020, 148(a)(1) of the Penal Code, Obstruct or Resist a Public Officer, San Bernardino County case number FWV20002486, a misdemeanor.

2020, 245(a)(1) of the Penal Code, Assault with a Deadly Weapon, San Bernardino County case number FWV20002537, a felony.

OTHER CRIMES

Assault With a Deadly Weapon

California Penal Code section 245 (d)

- (1) Any person who commits an assault with a firearm upon the person of a peace officer, and who knows or reasonably should know that the victim is a peace officer or engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

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- (2) Any person who commits an assault upon the person of a peace officer with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, when the peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine 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 the person arrested has committed a public offense. (Calif. Penal Code §835a(b).)²⁰ 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.

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

²⁰ All references to code sections here pertain to the California Penal Code.

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- (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 principles is new to section 835a in 2020,²¹ 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, 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 case law 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 case law pertaining to the 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).)

While the codified standards for the use of deadly force in the course of arrest are set forth in subsections (b) through (d) of Section 835a, the legislature also included findings and declarations in subsection (a). These findings and declarations lend guidance to our

²¹ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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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;²²
- (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:

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;

²² 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).

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- (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 is 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 the 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-

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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 consider 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.)²³ 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, and whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

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

²³ 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.

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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. (*Baldrige 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

That Rodriguez posed an imminent and deadly threat to the officers herein is without question. Rodriguez pointed a loaded 9mm handgun at pursuing officers, not just once,

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but repeatedly. Even after being struck by Officer Carey's initial rounds and dropping his pistol, Rodriguez persisted in his efforts to shoot at the officers. Rodriguez scrambled toward his fallen handgun, picked it up, and again pointed it at the officers.

Officer Carey fired his initial rounds at Rodriguez from a distance of only 10 yards when, during the foot pursuit, Rodriguez suddenly spun around and pointed the gun at him. Fortunately for Officer Carey, he was prepared and able to defend his life. Seconds earlier, Officer Carey had seen Rodriguez pull the handgun from his clothing as he ran away from him. Officer Carey yelled at Rodriguez twice to drop the gun, but Rodriguez refused. Instead, Rodriguez ran with the handgun in his left hand and repeatedly turned his head to look behind him as Officer Carey and his police K-9 chased him.

Officer Carey did not give up the foot pursuit even though Rodriguez had armed himself with a lethal weapon, for Rodriguez posed a significant threat to the public. Rodriguez had shown he was willing to do whatever it took to escape law enforcement. Rodriguez had already recklessly evaded police officers, leading them on multiple vehicle pursuits. Officers Carey, Gibson, and Palacios were well aware of Rodriguez's reckless driving because they monitored the radio traffic as they headed to assist the pursuing officers. Then, Rodriguez crashed into an unsuspecting motorist during the final vehicle pursuit. The crash was so severe that it disabled both vehicles. Both Officer Carey and Officer Gibson saw the collision and the immediate aftermath of that collision. Officer Palacio heard about the car wreck over his police radio. Then, as Rodriguez ran away from the crash scene, he pulled a loaded firearm. The flight officer in the OPD Air Unit warned the officers on the ground that Rodriguez had pulled an object, believed to be a gun, from his shirt.

Officer Carey honestly and reasonably believed his life was in imminent danger when Rodriguez spun around and pointed the gun at him. Officer Carey heard a gunshot and thought Rodriguez had shot at him. While it is unknown whether Rodriguez fired a round before Officer Carey shot, it is clear that Rodriguez grasped his handgun with both hands and pointed the gun directly at Officer Carey. The Air Unit and Officer Carey's body-worn videos make this obvious. Whether Rodriguez was able to fire a round or not before Officer Carey shot his duty weapon, the threat Rodriguez presented was no less deadly.

As Officer Carey fired at Rodriguez, both Officers Gibson and Palacio were still running to catch up to Rodriguez. Neither officer saw who had fired the gunshots. Officer Palacio knew Rodriguez had a gun because only seconds earlier, he heard Officer Carey yelling at Rodriguez to drop the gun. So, when the gunfire erupted, Officer Palacio believed his partners were in a gunfight. When Rodriguez fell to the ground and dropped his firearm, Officer Carey stopped firing. Believing Rodriguez no longer posed an immediate threat to his life, Officer Carey transitioned from his gun to his radio to report that shots had been fired. At that moment, Officer Gibson and Officer Palacio reached the scene. Officer Gibson was beside Officer Carey on the sidewalk just 10 yards from Rodriguez. Officer

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Carey was three to five yards away in the street but could see Rodriguez on the ground between two parked cars.

With all three officers only yards away, Rodriguez crawled toward the fallen handgun. As Rodriguez lunged for the gun, Officer Gibson yelled, “Hands up! Don’t you grab it! Don’t you—!” Rodriguez ignored the commands, doing the opposite of what he had been ordered. Rodriguez picked up the gun with his left hand, sat up, turned to face the officers, and pointed it at them. Recognizing the deadly threat, Officer Carey, Officer Gibson, and Officer Palacio shot at Rodriguez. Even while they fired multiple rounds at him, Rodriguez remained seated, facing the officers, holding the handgun, and repeatedly pointed it at them. Rodriguez was tenacious in his efforts to shoot the officers and refused to give up. The deadly threat he presented to the officers only ended when Rodriguez fell onto his back, with the handgun on the ground between his ankles, and his efforts to regain possession of it stopped.

When Officer Carey, Officer Gibson, and Officer Palacio fired at Rodriguez, they believed their own lives and each other’s lives were in immediate danger. Their belief was honest and objectively reasonable.

CONCLUSION

Based on the facts presented in the reports and the applicable law, Officer Andrew Carey’s use of deadly force was a proper exercise of Officer Carey’s right of self-defense and defense of others, and therefore, his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Officer Garret Gibson’s use of deadly force was a proper exercise of Officer Gibson’s right of self-defense and defense of others, and therefore, his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Officer Jorge Palacio’s use of deadly force was a proper exercise of Officer Palacio’s right of self-defense and defense of others, and therefore, his actions were legally justified.

Submitted By:
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303 West Third Street
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