



PUBLIC RELEASE MEMORANDUM

Date: July 24, 2024

Subject: Non-Fatal Officer-Involved Shooting

Involved Officers: Officer Nick Koahou
Redlands Police Department

Involved Subject/DOB: Justin Cody Harper
03/12/1998

Subject's Residence: Banning

Incident Date/Time: September 9, 2021, 1:35 p.m.

Incident Location: San Bernardino Avenue, Redlands

Case Agent/Agency: Detective Tony Romero
San Bernardino Sheriff's Department

Agency Report Number: DR# 602100177
H# 2021-111

DA STAR Number: 2023-00-59046

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PREAMBLE

This was a non-fatal officer-involved shooting by an officer from the Redlands 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 afternoon of September 9, 2021, Justin Harper was driving a stolen Toyota Tundra near Citrus Plaza and Lugonia Avenue in the city of Redlands when an Automated License Plate Reader (ALPR) camera system recorded the truck's license plate. Meanwhile, less than two miles east at Lugonia Avenue and Church Street, Redlands Police Officer Nick Koahou was on patrol in his marked Redlands Police Department SUV. Redlands Police Dispatch alerted patrol officers to the vehicle's location, broadcasting the ALPR hit over the air and reported the truck was heading eastbound on Lugonia. In response, Officer Koahou headed west on Lugonia Avenue from Church Street where he spotted the stolen truck heading eastbound on Lugonia Avenue.

As the truck passed by, Officer Koahou verified it matched the description provided by dispatch. When the truck was 150 to 200 feet away, Officer Koahou executed a 'soft turn around,' a calculated maneuver to get behind the truck and keep Harper from seeing that he was coming after him. Officer Koahou broadcasted he was behind the stolen truck and advised he was not in pursuit. Officer Koahou's goal was to keep an eye on the truck while he waited for additional officers, including the San Bernardino County Sheriff's Department helicopter, to assist. A few cars were in between Officer Koahou and Harper, but Officer Koahou believed Harper saw his patrol unit because Harper immediately pushed through traffic that was stopped for the red light at Lugonia Avenue and Church Street and drove through the intersection against the red light. Harper headed north on Church Street and Officer Koahou briefly lost sight of him while he waited for the light to turn green.

Once through the intersection, Officer Koahou headed north on Church Street and saw Harper was a little more than a quarter mile ahead, driving well above the posted speed limit. Still some distance behind Harper, Officer Koahou watched as Harper sped through multiple intersections blatantly disregarding stop signs. When Harper headed east on San Bernardino Avenue, Officer Koahou noticed smoke was coming from the truck. Officer Koahou immediately deduced that the truck must have either lost a tire or suffered a flat. Harper then turned onto Joanne Street, into a residential neighborhood, and Officer Koahou briefly lost sight of the truck. When Officer Koahou turned onto Joanne Street, he saw the truck, with its doors open, partially pulled into and halted in a driveway on Joanne Street.

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Officer Koahou saw Harper sprinting at full speed from the driver's side of the truck and a blonde female fleeing from the passenger side. Officer Koahou remained in his patrol unit, driving it to follow Harper, and keeping an eye on him while waiting for additional officers to arrive. Harper ran around the neighborhood, jumping fences from backyard to backyard, trying to evade capture. When Harper got to a residence with a tall fence, Officer Koahou thought Harper couldn't climb over it. Believing Harper was contained, Officer Koahou got out of his patrol unit to approach Harper on foot. Harper looked at Officer Koahou, turned back to the fence, tore down fence panels, and squeezed through the gap. When Officer Koahou got to the fence, he looked over but did not see Harper.

Shortly thereafter, Officer Koahou saw Harper running in a northeast direction toward San Bernardino Avenue. Officer Koahou yelled at Harper to stop running. Harper looked at Officer Koahou but kept running. Officer Koahou got back into his patrol unit and drove north on Joanne Street to San Bernardino Avenue, where he was flagged down by a man waving his arms frantically. The man stood beside a truck stopped on San Bernardino Avenue, near the cul-de-sac of Nathan Court. The man pointed toward Nathan Court. Because Nathan Court was a cul-de-sac, there was no direct ingress or egress between Nathan Court and San Bernardino Avenue. Officer Koahou drove across San Bernardino Avenue and stopped on San Bernardino Avenue at the north curb line, near the cul-de-sac.

Officer Koahou looked to where the man pointed and saw a black Honda about a 100 feet away. The Honda faced south and was reversing backward slowly with its tires screeching loudly. Officer Koahou believed the Honda's emergency brake was engaged, preventing the car from backing at full speed. Officer Koahou saw Harper was in the driver's seat of the Honda and two men were on either side, one at the driver's door and one in the front passenger seat fighting with Harper. The men had Harper in a headlock, and Officer Koahou realized that Harper was carjacking the vehicle from the two men. Officer Koahou got out of his patrol unit and ran toward them. As Officer Koahou ran toward the Honda, it started driving forward toward him. The Honda's still engaged emergency brake kept the Honda from going full speed. Officer Koahou made sure he wasn't in the Honda's line of travel, pulled his handgun, and pointed it at Harper. Harper, inside the car frantically pushing buttons to disengage the emergency brake, stopped the car. Officer Koahou yelled at the two men to back away and told them he was going to shoot Harper. The two men obeyed Officer Koahou and moved away from Harper. Both men headed toward the front driver's side of the Honda and stood nearby.

The Honda was still stopped when Officer Koahou reached the open driver's door. Officer Koahou pointed his gun at Harper, told him to get out of the car, and to get down face down on the ground. Harper ignored Officer Koahou and remained in the car. Officer Koahou repeated his commands, but Harper remained in the driver's seat, screaming and yelling unintelligibly. Officer Koahou deployed his Taser at Harper, striking him in the chest. In response, Harper yelled out in pain, let go of the steering wheel, and brought his arms to his chest. Believing the Taser was effective, Officer Koahou holstered his

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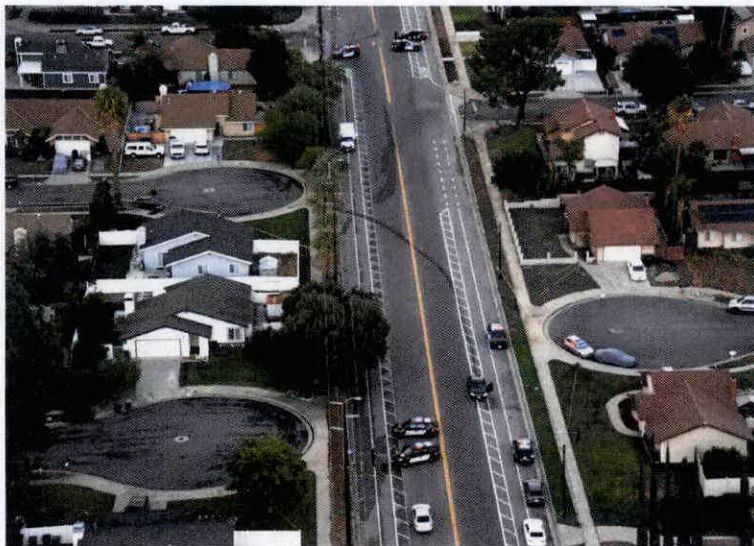
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handgun and leaned into the car to grab onto Harper to pull him out. As Officer Koahou leaned inside, he saw Harper reach for the gear shift. Officer Koahou yelled at Harper, "Don't do it," just as Harper began to grab onto it and shift it into drive. Officer Koahou reached for the gear shift, trying to keep Harper from putting it into drive and repeated his commands, telling Harper, "Don't do it, don't do it, I'll shoot you!"

Officer Koahou's upper body was inside the car, and his feet were on the ground as Harper put the car in drive and began driving forward. The Honda drove forward slowly at first because the emergency brake was still engaged, but when Harper suddenly disengaged the emergency brake, the car picked up speed. Officer Koahou felt the car lurch forward and tried to pull back from the vehicle, but Harper grabbed onto Officer Koahou's left arm. Officer Koahou pulled back, trying to break free. Officer Koahou skipped forward with the car and felt himself going off balance as the Honda picked up speed. Fearing he was going to fall and get dragged under the car and realizing the men in front of the car were also in grave danger, Officer Koahou pulled his handgun and fired two rounds in quick succession at Harper. The driver's door slammed into Officer Koahou, but he was able to catch himself without falling. Both men who were near the front of the car narrowly escaped injury; one moved away just as the car started speeding forward, the other forced to run and jump out of the way, nearly being struck by the car.

Harper raced the Honda southbound on Nathan Court toward the end of the cul-de-sac, striking the curb at the end before launching over it and heading westbound on San Bernardino Avenue. The Honda came to a rest, facing west in the eastbound lanes. Harper got out of the Honda and fell to the ground, having sustained a gunshot to his left leg and two fingers on his left hand. Officers took Harper into custody and administered first aid until medical aid arrived and transported Harper to the hospital for treatment of his injuries.



Aerial View of the scene.

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STATEMENTS BY POLICE OFFICERS¹

On September 26, 2021, at approximately 9:14 a.m., **Officer Nick Koahou** was interviewed by Detectives Tony Romero and David Carpenter of the San Bernardino County Sheriff's Department.

Officer Koahou was employed as a police officer by the Redlands Police Department (RPD). On September 9, 2021, Officer Koahou was on duty, assigned to patrol. Officer Koahou drove a distinctively marked black and white RPD patrol unit equipped with emergency lights and sirens. Officer Koahou's call sign was Paul-23 and his patrol unit number was 547. Officer Koahou wore a distinctively marked RPD uniform consisting of a black polo shirt and black pants. RPD patches adorned each shoulder of Officer Koahou's uniform shirt. Officer Koahou wore a tactical vest over his uniform shirt. Officer Koahou's name and a cloth RPD badge were affixed to the front of his tactical vest; his name and the word, "POLICE" adorned the back. Officer Koahou's duty belt and drop-down holster were equipped with the following department-issued tactical gear: digital belt-recorder, Glock 22, .40 caliber semi-automatic handgun loaded with one round in the chamber and 15 rounds in the magazine, three additional magazines loaded with 15 rounds, Taser, handcuffs, baton, and oleoresin pepper spray. Officer Koahou's belt-recorder was activated during the incident. Officer Koahou reviewed video and audio recordings of the incident prior to the interview. During his interview, Officer Koahou viewed a cell phone video and described the events depicted in the video to the interviewing detectives.

At approximately 1:30 p.m., Officer Koahou had just cleared a call at Lugonia and Church on the east side of the city of Redlands when he heard RPD dispatch broadcast an ALPR (Automated License Plate Reader) hit over the radio. Officer Koahou described the ALPR as a camera system that picks up stolen or wanted vehicles. The vehicle, a gray Toyota Tacoma² with no tailgate, was picked up by the camera system near Citrus Plaza and Lugonia Avenue. Dispatch aired the license plate number and reported the truck was heading eastbound on Lugonia. Officer Koahou was about two miles east of the location of the ALPR hit. Officer Koahou made a westbound turn on Lugonia and was no more than 500 yards west of Church Street when he saw a truck matching the description given in the ALPR hit driving eastbound on Lugonia. As the truck passed by Officer Koahou, he saw it was missing a tailgate and that the last three digits on the license plate matched the number provided by dispatch. When the truck was about 150 to 200 feet away, Officer Koahou made "a real soft turn around, not a hard one" because he didn't want the driver to see him "flip around like [he] was coming after him." The truck was traveling eastbound in the number two lane. A couple of cars were in between Officer Koahou and the truck, but Officer Koahou believed the driver saw his patrol unit. Officer Koahou confirmed the

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

² The truck model was a Tundra, though Officer Koahou stated it was a Tacoma when describing the ALPR hit. During the remainder of his interview, Officer Koahou referred to it as a truck or car.

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license plate on the truck was a match and then told dispatch over the air that he was behind the stolen vehicle at Lugonia and Church.

With eastbound traffic stopped for the red light at the intersection of Lugonia and Church, the truck started pushing through the gaps between the stopped vehicles. The truck moved into the number one lane, then into the left turn lane, and then drove through the intersection against the red light. The truck headed northbound on Church from Lugonia. At this point, Officer Koahou believed the truck's driver knew he was driving a stolen vehicle and had seen Officer Koahou, and the driver intended to get away. Officer Koahou did not see the truck strike any stopped vehicles as it pushed through traffic.

Officer Koahou lost sight of the truck for four to five seconds while he waited to get through the intersection, but the traffic light turned green almost instantly. Officer Koahou drove northbound on Church from Lugonia. The truck was at the intersection of Church and Pennsylvania, a little more than a quarter mile ahead of Officer Koahou. The truck was driving well over the posted speed limit of 35 miles per hour as it went through the intersection at Church and Pennsylvania without slowing or stopping at the stop sign. Officer Koahou aired to dispatch that he was not in pursuit of the stolen truck but that he was keeping an eye on it until they could get the San Bernardino County Sheriff's helicopter and more police units there to assist. Officer Koahou provided updates over the air as he followed the truck.

Still speeding, the truck turned eastbound onto San Bernardino Avenue from Church. As the truck traveled east on San Bernardino Avenue, Officer Koahou noticed there was a good amount of smoke coming from the truck and thought maybe it had a flat tire or had lost a tire and was driving on a rim, causing the smoke. From San Bernardino Avenue, the truck turned right onto Joanne Street into a residential neighborhood. Officer Koahou was about five seconds behind and lost sight of the truck when it turned onto Joanne Street.

When Officer Koahou reached Joanne Street, he saw the truck had partially pulled into and stopped in a driveway on Joanne Street near Kimberly Avenue. The truck's doors were open, and Officer Koahou saw a white male (later identified as Justin Harper) running as fast as he could from the driver's side.³ Harper was about five feet, eight inches tall, and wore a white tank top and blue jeans. Officer Koahou did not see anything in Harper's hands. Officer Koahou saw a blonde-haired female running from the truck's passenger side, running to keep up with Harper. The female wore a black top and blue jeans.

Harper rounded the corner on Kimberly Avenue. Officer Koahou drove his patrol unit around to the corner of Kimberly Avenue, west of Harper and the female, to stop them. Harper turned and jumped into the backyard of a house. Upon seeing Harper jump into a

³ Surveillance video footage from a nearby residence showed Harper and his female companion ran from the truck while the truck slowly rolled forward into the driveway.

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back yard, Officer Koahou intended to corral Harper to contain him there. Officer Koahou knew there were only a few yards that Harper could jump into there, and believed Harper would try to make his way back to San Bernardino Avenue, the main thoroughfare.⁴



Google map image of scene with Officer Koahou's notations.

Officer Koahou drove to Stony Court, turned around, and returned to Joanne Street. Officer Koahou drove to the corner of Joanne Street and San Bernardino Avenue to see if Harper would be running north. Officer Koahou did not see Harper, so he drove back around the corner, where he saw Harper run out of a backyard and cross Stony Court to Kimberly Avenue. Harper got to a house on Kimberly Avenue with a white wood-paneled fence. Harper tried to jump over the fence. Officer Koahou thought Harper could not jump the fence, so he stopped his patrol car, got out, and ran toward Harper to catch him.

⁴ To provide a clearer picture of the incident's location, it's important to note that there are only three homes on either side of Joanne Street between San Bernardino Avenue and Kimberly Avenue, as indicated on the attached Google map image with Officer Koahou's markings.

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Harper looked at Officer Koahou, pulled down two fence panels, and squeezed his body through the gap he had made in the fence. Officer Koahou got to the fence, looked over, and did not see Harper. Believing Harper was going to try to head back east, Officer Koahou looked in that direction and saw Harper, no longer in the backyard, running in a northeast direction toward San Bernardino Avenue. Officer Koahou yelled at Harper to stop running. Harper looked over at Officer Koahou but continued running.

Officer Koahou returned to his patrol unit and drove north on Joanne Street to San Bernardino Avenue. While waiting for cross traffic on San Bernardino Avenue, Officer Koahou saw a man in an orange shirt across the street standing near a truck that was stopped on San Bernardino Avenue, near the cul-de-sac of Nathan Court. The man was waving his arms frantically to flag down Officer Koahou. The man pointed toward the cul-de-sac. Officer Koahou drove across San Bernardino Avenue and stopped his patrol unit on San Bernardino Avenue near the cul-de-sac.⁵

Officer Koahou saw a black Honda, a Civic or an Accord, backing up in the cul-de-sac about 100 feet away. The front of the Honda faced south. The Honda wasn't going very fast, but the tires were loudly screeching. Officer Koahou thought something was preventing the Honda from going full speed, like maybe the emergency brake was engaged. Two men were on either side of the Honda, one outside the car beside the front driver's door and one in the front passenger seat, fighting with Harper, who was in the driver's seat of the Honda. The men had Harper in a headlock. Realizing that Harper was carjacking the two individuals, Officer Koahou got out of his patrol car and started running toward them. Officer Koahou couldn't drive to Nathan Court from San Bernardino Avenue because of a curb and trees between the two streets. As Officer Koahou ran toward the Honda, it started moving forward, coming toward Officer Koahou. Officer Koahou made sure he was not in the direct line of the Honda's direction of travel, withdrew his pistol, and pointed it toward Harper in case Harper drove the car at him. Officer Koahou yelled at the men to get out of the way and told them he was going to shoot him (Harper). Officer Koahou knew that shooting through glass can cause bullets to ricochet and did not want the men to get hit if he had to fire his pistol at Harper.

The Honda, with its driver's door open, stopped moving. The two men moved away from the car. Officer Koahou had his gun pointed at Harper and began giving him commands to "get out, get on your stomach, do it now." Harper remained in the driver's seat, screaming and yelling unintelligibly. Officer Koahou pulled his Taser from the pouch in the front of his tactical vest and began re-holstering his pistol. Officer Koahou was at the driver's door of the Honda, about six to seven feet away from Harper. Harper's upper body was turned toward Officer Koahou. Harper refused to get out of the car despite Officer Koahou's repeated commands. Officer Koahou deployed the Taser at Harper. The Taser probes struck Harper directly in the chest. Harper screamed and brought his arms to his chest with his hands balled into fists.

⁵ The southern end of Nathan Court is directly adjacent to San Bernardino Avenue but there is no direct ingress or egress between the two streets.

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Believing the Taser was effective, Officer Koahou finished holstering his pistol and leaned into the car to grab Harper with his left hand to pull him from the vehicle. Harper turned his body away from Officer Koahou, grabbed the gear shift in the center console, and began to put it into drive. Based on his training and experience, Officer Koahou believed Harper was under the influence of a stimulant or PCP because he was screaming and was able to fight through the Taser. Officer Koahou yelled at Harper, "Don't do it."

Officer Koahou did not want to dive all the way into the Honda to stop Harper because that would put him at risk of being kidnapped and not being in control of the car. Officer Koahou also knew he could not step away and let someone who was actively committing a violent felony flee because of the danger to the public. Officer Koahou reached for the gear shift with his left hand to keep Harper from putting it into drive. Officer Koahou's upper body was inside the car as he leaned inside to grab the gear shift. Officer Koahou continued giving Harper commands, telling him, "Don't, don't, don't, I'll shoot you," as Harper began pulling the gear shift down into drive.

Officer Koahou felt the car lurch forward. Officer Koahou tried to pull back from the vehicle but could not because Harper grabbed his left arm. Officer Koahou did not know whether Harper just "grabbed" his arm or "pulled" on his arm, but Officer Koahou could not break free. Officer Koahou heard the Honda's engine rev as Harper pushed the accelerator to the floor. The Honda accelerated forward quickly. Officer Koahou had to skip forward with the car and felt himself starting to go off balance. The Honda continued driving forward, and Officer Koahou thought he was going to fall, get sucked under the car, and that his head would get run over by the rear tires. Officer Koahou was in fear for his life. At the same time, Officer Koahou was afraid for the two men who had been fighting with Harper because he knew they had moved to the front of the Honda. Officer Koahou could not see them from his position in the car, but based on their last location, Officer Koahou was afraid Harper would run them down to get away.

While trying to yank his left arm away, Officer Koahou grabbed his handgun from his leg holster with his right hand. Harper's body weight had shifted to the left and was partially out of the opened door as Officer Koahou tried to yank his arm away from Harper. As Officer Koahou began to fall, he fired two shots in rapid succession toward the left side of Harper's body between his upper thigh and nipple area. Officer Koahou did not have time to look down his gun's sights and instead fired almost from the hip with a one-handed grip. Officer Koahou estimated he was within three feet of Harper when he fired the rounds and that the Honda had traveled more than 30 feet before he fired. Officer Koahou was able to catch himself and did not fall to the ground. Officer Koahou did not fire additional rounds as the Honda sped away from him. The driver's door slammed into him as the car pulled away, knocking his baton to the ground. The Honda headed southbound on Nathan Court toward the end of the cul-de-sac. The Honda was travelling at about 25 to 30 miles per hour when it struck the curb. The Honda was going fast enough that it "launched itself over the curb," and onto San Bernardino Avenue. The Honda headed westbound on San Bernardino Avenue.

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Officer Koahou holstered his handgun and ran toward his patrol unit while he broadcasted, "shots fired." Officer Koahou got into his unit and saw the Honda had stopped on the south side of San Bernardino Avenue, about 250 feet west of his location. Officer Koahou drove to the Honda just as a "wall of police cars" and the helicopter approached. Harper fell out of the car and onto his backside on the ground. Harper screamed and yelled, "I'm shot, I'm shot!"

Officer Koahou got out and ran toward Harper, telling him to get onto his stomach. Officer Koahou placed Harper into handcuffs without searching him as additional officers arrived to assist. A portion of a finger on Harper's left hand appeared to be missing from being shot, and Harper was bleeding at his left thigh. Officer Koahou stepped back and noticed his baton was missing. Officer Koahou saw his baton lying in the street, and his Taser was inside the Honda near the open driver's door. While officers tended to Harper, Officer Koahou provided a public safety statement and was taken from the scene.

On September 9, 2021, at approximately 9:41 p.m., **Deputy Chief Travis Martinez** was interviewed by Detectives Tony Romero and David Carpenter of the San Bernardino County Sheriff's Department.

Deputy Chief Martinez was employed as a deputy chief in charge of operations at Redlands Police Department. Deputy Chief Martinez was on duty on September 9, 2021, driving an unmarked Redlands Police Department unit equipped with emergency lights and sirens.

At approximately 1:30 p.m., Deputy Chief Martinez heard broadcasts over his unit's police radio that led him to believe an officer might be getting involved in a foot pursuit near San Bernardino Avenue. At the time, Deputy Chief Martinez did not know the name of the officer making the broadcasts but could tell from the tone of his voice and his short broadcasts that something was happening, and he believed he needed to head to the location to back the officer. With lights and sirens activated, Deputy Chief Martinez drove Code 3 eastbound on Colton Avenue toward San Bernadino Avenue. Deputy Chief Martinez heard a cross-street of Joanne Street broadcast as he neared Orange Street. Deputy Chief Martinez heard radio broadcasts that the suspect was hiding in a backyard off Kimberly Avenue and then heard that the suspect was running northbound across San Bernardino Avenue.

When Deputy Chief Martinez got to Church Street, he turned off his sirens so the suspect would not hear his police vehicle arriving. Deputy Chief Martinez expected to see police vehicles there but did not see any. Deputy Chief Martinez saw a white work truck facing eastbound in the westbound lane of San Bernardino Avenue near the end of the cul-de-sac of Nathan Court. Deputy Chief Martinez saw two or three people at the work truck and assumed they were somehow involved because the truck was stopped on the wrong side of the roadway. Deputy Chief Martinez pulled up to them, and they pointed him

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northbound to Nathan Court. Deputy Chief Martinez looked down Nathan Court and saw a black car in the middle of the road with civilians around it.

Deputy Chief Martinez headed to Nathan Court by driving eastbound on San Bernardino Avenue, northbound on Occidental Drive, westbound on Doyle Avenue, and southbound on Nathan Court. Just as he turned onto Nathan Court, Deputy Chief Martinez saw the black car start slowly rolling forward in a southwest direction and heard two to three gunshots fired in quick succession. The black car was about 40 yards away and faced southbound with the driver's door open. It wasn't until he heard the gunshots that Deputy Chief Martinez realized there was an officer (later identified as Deputy Koahou) off to the driver's side of the car. Deputy Chief Martinez estimated Officer Koahou was six to eight feet from the vehicle.

Deputy Chief Martinez initially did not know who had fired the gunshots, whether it was Officer Koahou or the suspect in the car, but when he saw the officer had a gun in his hand, he realized it was the officer who had fired. Everything happened very quickly as he was turning onto Nathan Court. Deputy Chief Martinez did not see anything jeopardizing Officer Koahou's safety because Officer Koahou was off to the side of the car, though Officer Koahou had no cover or concealment. Deputy Chief Martinez did not see the civilians he had previously seen standing around the black car. Deputy Chief Martinez believed it was possible the civilians were in front of the vehicle and that he had been unable to see them from his vantage point, 40 yards north of the scene.

As soon as the gunshots rang out, the car took off at a high rate of speed, southbound down Nathan Court. The car hit the curb at the end of the cul-de-sac at about 30 to 40 miles per hour, jumped the curb, and then headed out onto San Bernardino Avenue. The car traveled westbound on San Bernardino Avenue. It did not appear that Officer Koahou had been hit, so Deputy Chief Martinez followed the black car, driving through a residential driveway on the east side of Nathan Court, over the grass and dirt, and onto San Bernardino Avenue. The black car drove westbound into the eastbound lanes, slowed, and stopped on San Bernardino Avenue. The black car's driver's door opened, and the suspect (later identified as Harper) got out and fell onto the ground. Deputy Chief Martinez patted Harper down for officer safety and saw Harper's fingertip was bleeding. Harper told him he had been shot in the leg. Deputy Chief Martinez saw blood on Harper's leg but could not recall which leg was bleeding. Deputy Chief Martinez saw Officer Koahou approaching, running from the street as additional officers also arrived on scene.

Deputy Chief Martinez radioed for medical aid to respond to the scene as officers began administering first aid to Harper. Deputy Chief Martinez directed Sergeant Povero to obtain a public safety statement from Officer Koahou and to escort him from the scene.

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STATEMENTS BY CIVILIAN WITNESSES⁶

On September 9, 2021, at approximately 5:20 p.m., **Witness #1** was interviewed by Detective Chris Crosswhite of the San Bernardino County Sheriff's Department.

Witness #1 and his brother, Witness #3, owned a civil engineering business, and were in their work truck in Redlands on September 9, 2021. They were stopped on San Bernardino Avenue facing west at Church Street when Witness #1 saw a gray Toyota truck (later determined to be driven by Harper) traveling north on Church Street. As Harper drove toward him, Witness #1 looked at Harper's face and made eye contact with him. Witness #1 watched as Harper ran the stop sign at the intersection of San Bernardino Avenue and Church Street to go eastbound on San Bernardino Avenue. Witness #1 estimated Harper took the turn at about 45 miles per hour. Witness #1 believed Harper was going to crash into his work truck. Harper lost control of his vehicle during the turn, drove over the curb, and clipped the rear end of Witness #1's work truck with the driver's side rear of his truck.

Witness #1 looked in his rear-view mirror and saw that Harper was fleeing from the collision. One of the Toyota's truck tires was "wobbling really bad." Witness #1 did not see any police cars in the area and prepared to make a U-turn to follow the truck, telling his brother, "We need to follow him" because of the hit and run. Witness #1 then saw a marked Redlands Police Department SUV driving north on Church Street. The police unit did not have its lights or sirens activated, but based on how fast the police vehicle was moving, Witness #1 believed the officer was following the truck. The officer turned east on San Bernardino Avenue, activating the patrol unit's overhead lights, and followed the Toyota. Witness #1 did not hear any sirens, but his windows were rolled up, and the radio played loudly.

Witness #1 completed the U-turn and drove east on San Bernardino Avenue. Witness #1 saw the Toyota suddenly turn south on Joanne Street into a residential neighborhood. The police unit followed the Toyota. Witness #1 turned south on Robyn Street, two streets west of Joanne Street, in case Harper tried to backtrack west. Witness #1 turned east onto Kimberly Avenue and immediately saw Harper on foot, running westbound on Kimberly Avenue. When Witness #1's truck got closer to Harper, Harper waved down Witness #1 and his brother.⁷ Witness #1 stopped the truck and rolled down his window. Harper told Witness #1, "Give me a ride!" Witness #1 replied, "Pound sand!" Witness #1 believed Harper didn't recognize him as the person he had struck until Witness #1 told him to pound sand. Just then, the police SUV turned west onto Kimberly Avenue, and as soon as Harper saw it, he ran north toward the backyard of a residence on Kimberly Avenue. Harper kicked out several wooden boards on the fence and entered the

⁶ All reports of civilian statements made were reviewed, though not all are summarized here.

⁷ A video camera from a nearby residential surveillance camera recorded this brief interaction between Harper and Witness #1.

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backyard. The Redlands Police Officer (Koahou) got out of his patrol unit and yelled at Harper to stop running. Harper ignored the officer and ran further into the property.

Witness #1 drove west on Kimberly Avenue, turned north on Robyn Street, and east on San Bernardino Avenue, where he saw Harper running northeast across San Bernardino Avenue from Stony Court. Witness #1 did not see the officer who had been chasing Harper. Witness #1 planned to let Harper go because he could tell Harper "Was really on one."

After running across the street, Harper ran across the front yard and to the front door of a home at [REDACTED] Nathan Court. Witness #1 looked around for the officer but still did not see him. Witness #1 stopped his truck on San Bernardino Avenue and watched Harper. Harper left the front door and walked to the driveway, where he opened the driver's door of a black Honda parked there. Harper got into the driver's seat. A young male adult (later identified as Witness #2) came out of the garage at [REDACTED] Nathan Court and yelled out to Harper, "Get out of the car! That's my aunt's car!" Witness #2 ran to the Honda and grabbed onto the door that was still half open. As soon as Witness #2 grabbed the door, Harper put the car in reverse and began backing the car down the driveway, dragging Witness #2 along with it.⁸

Witness #1 jumped out of his truck and ran to help Witness #2. As Witness #1 ran to help, he could see the Honda's emergency brake was still on because the front wheels were spinning and pushing the car backward, but the back wheels were locked and not rolling. Because of this, the Honda did not accelerate very quickly. Harper backed the Honda out of the driveway and into the street, dragging Witness #2, who was still holding onto the door. Harper slammed the car door into Witness #2, trying to get him to let go of the door. Upon being struck with the door, Witness #2 stumbled backward. Harper slammed the driver's door and locked the car. The Honda stopped in the street, and Witness #2 grabbed the driver's door handle. Witness #1 ran to the front passenger door to open it, but it was locked.

Harper put the car in drive and tried to accelerate forward, but the emergency brake was still engaged, preventing the vehicle from accelerating quickly. Witness #1 watched as Harper frantically pushed buttons inside the car and tried to release the emergency brake. While pressing buttons, Harper unlocked the car doors. Witness #1 pulled the front passenger door open and leaned into the car.⁹ Witness #1 struck Harper in the head three times because Harper was being violent with Witness #2 who was still at the driver's door trying to keep Harper from taking the car.

⁸ This was captured on Ring doorbell camera. See video recording summary for further details.

⁹ Witness #4, a neighbor who was in his front yard at the time of the carjacking assisted Witness #1 and Witness #2. Witness #4 opened the rear passenger side door of the Honda to assist in removing Harper from the car. Witness #4's statements were largely consistent with the statements given by Witness #1, Witness #2, and Officer Koahou.

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Witness #1 sat in the front passenger seat with his legs dangling outside. Witness #1 wrapped his arms around Harper and told him to shut off the car. Harper tried to drive forward while struggling against Witness #1 but Witness #1 held onto him. Witness #1's legs were dragging on the ground as Harper slowly drove the car forward. Harper elbowed Witness #1 but Witness #1 held onto him. Witness #1's brother, Witness #3, called 911 and stood nearby to flag down the police. Witness #3 flagged down Officer Koahou and pointed to where Witness #1 struggled with Harper. Officer Koahou ran toward them and told Witness #1 to let go of Harper. Witness #1 let go of Harper and got out of the car. Witness #1 ran to the front driver's side near the front bumper and stood beside Witness #3. Harper began trying to drive the car forward. The emergency brake was still activated.

Officer Koahou ordered Harper to shut off the car, but Harper refused to comply. Officer Koahou stood in front of the open driver's door, drew his Taser, and told Harper, "Shut the car off, or I'm going to tase you." Harper refused to comply. Officer Koahou deployed his Taser at Harper. The Taser caused Harper to shake and to stop driving forward. Harper yelled, "Okay, okay," leading Witness #1 to believe Harper was done resisting.

Officer Koahou put his Taser away and reached into the car to grab Harper. Harper immediately stepped on the car's accelerator and began driving forward again. Witness #1 believed Harper was intentionally trying to crash into him and his brother to escape. Officer Koahou was leaning into the car when Harper started driving the vehicle forward. Officer Koahou drew his firearm and told Harper, "Stop, stop, or I'm going to shoot." Harper refused to stop and continued accelerating forward. Harper disengaged the emergency brake, and the car "shot off like a rocket." Officer Koahou stepped back and fired his handgun at Harper. Witness #1 heard two gunshots in rapid succession. Witness #1 saw the window on the driver's door break, but window tint kept the window from shattering into pieces on the ground.¹⁰ When Officer Koahou shot Harper, Harper swerved the car to the right, narrowly missing Officer Koahou, Witness #1, and Witness #3.

Because the Honda's driver's door was open when Harper disengaged the emergency brake, Witness #1 believed that had Officer Koahou not fired his gun at Harper, the open door would have struck Witness #1, Witness #3, Officer Koahou, or Witness #2, dragging them under the fleeing vehicle and killing or gravely injuring them.¹¹ When the Honda sped forward and the officer shot at Harper, Witness #1 and Witness #3 stood in front of the Honda on the driver's side. Witness #2 stood a couple of feet behind Witness #3. Witness #1 believed Harper would have done anything he could to evade capture, including harming members of the public and law enforcement. Harper did not turn the steering wheel or change the car's direction of travel until Officer Koahou shot him.

¹⁰ Crime scene photographs reveal the driver's window was not broken but the rear driver's side passenger window was. See Gunshot Trajectory Summary for further details.

¹¹ Witness #3 also told detectives he believed the Honda would have struck the officer, Witness #1, and himself had the officer not fired his gun. Witness #3 further stated it was possible the Honda did in fact strike the officer, but he wasn't sure.

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Harper drove in a southwest direction, toward the end of the cul-de-sac on Nathan Court. When the Honda got to the end of the cul-de-sac, it hit the curb, launched through the air, about four feet above the ground, and onto San Bernardino Avenue. The Honda continued a short distance before coming to a stop. Witness #1 saw what he believed to be an unmarked police SUV driving east on San Bernardino Avenue. Witness #1 believed Harper's vehicle was forced to stop because of the unmarked police unit. Witness #1 saw Harper get out of the Honda and try to run, but Harper fell to the ground. Witness #1 believed Harper must have been shot in the leg because of this.

On September 9, 2021, at approximately 8:26 p.m., **Witness #2** was interviewed by Detectives Tony Romero and David Carpenter of the San Bernardino County Sheriff's Department.

Witness #2's statement to detectives was generally consistent with Witness #1's. Witness #2 was detailing his aunt's Honda Accord and had just stepped into his garage when Harper approached the Honda parked in the driveway. Witness #2 had left the car running so the air conditioner would keep the interior cool. Harper's heavy breathing as he ran toward the Honda drew Witness #2's attention. Witness #2 ran to the Honda, and Harper told him to "Get the hell out of here." Harper got into the Honda's driver's seat. Witness #2 realized Harper was trying to steal the car. Witness #2 tried to stop Harper by grabbing the open driver's door as Harper tried to shut it. Witness #2 fought to keep the car door open as Harper struggled to shut it. Harper abruptly pushed the door open, slamming it against Witness #2 and knocking him away from the car. Harper then shut the driver's door and locked it. Witness #2 grabbed the driver's door handle as Harper backed the Honda out of the driveway. The Honda's emergency brake was on, preventing the car from going full speed. The tires squealed as Harper backed the car out of the driveway and onto Nathan Court.

Two men who Witness #2 did not know approached from the southern end of Nathan Court. They told Harper to back up and be careful, telling him, "The guy's a maniac, don't get yourself killed," and the "cops are on their way." One of the men was on the phone with 911 while the other man, in a brown shirt (Witness #1), tried to help Witness #2 stop Harper. Witness #2 still held onto the driver's door handle. Harper stopped the car on Nathan Court, facing southbound, and began pushing buttons inside the vehicle to deactivate the emergency brake. While pressing buttons inside the car, Harper unlocked it. Witness #2 opened the driver's door, and Witness #1 opened the front passenger door. Witness #1 struck Harper several times and grabbed ahold of him. Witness #2 believed Harper was under the influence of a controlled substance based on the way he acted.

Witness #2 saw Officer Koahou run toward them. Officer Koahou identified himself as Redlands Police and told Witness #2, "I got this. Backup." Witness #2 stepped away from the Honda.¹² Officer Koahou pulled his black and yellow Taser when he reached the

¹² Cell phone video of the incident showed Witness #2 was standing near or on the sidewalk on the east side of Nathan Court at the time of the officer-involved shooting.

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Honda. Officer Koahou told Harper to put his hands up and not to move. Officer Koahou grabbed Harper's arms and tried to pull him out of the car, but Harper resisted, not letting go of the steering wheel. Officer Koahou told Harper, "Sir, I'm going to tase you if you keep resisting." Harper was revving the engine, trying to reverse the car. Officer Koahou tased Harper. Harper went "unconscious," which Witness #2 described as Harper letting go of the steering wheel and not having much strength. Harper then leaned toward the gear shift, which was still in reverse, grabbed it, and tried to shift it into drive. Officer Koahou was still leaning into the car, trying to pull Harper out, when Harper put the car into drive and began driving forward. Witness #2 estimated the vehicle was initially traveling five miles per hour. Officer Koahou's right hand was on Harper's chest, and his left hand was on the top of the door as the car picked up speed. Suddenly, Harper pushed the button for the emergency brake, which released it and "floored the gas pedal." Harper's hands were on the steering wheel. As the car picked up speed, Officer Koahou grabbed his gun and fired one round at Harper. Officer Koahou's point of aim was at the driver's door or Harper's lower torso. Witness #2 believed Officer Koahou was only six inches from the car and his left hand was on the driver's door when he fired. As the Honda sped forward, the driver's door slammed shut. Witness #2 stood about five feet away from the vehicle and did not see anyone in front of the car at the time of the shooting.¹³

INCIDENT AUDIO AND VIDEO

OFFICER KOAHOU'S BELT RECORDINGS¹⁴

Officer Koahou's belt recorder was activated while he was driving his patrol car. Officer Koahou broadcasted to dispatch that he was behind the "GTA" at Church and Lugonia. Officer Koahou and the dispatch operator communicated over the radio. For several minutes, Officer Koahou broadcasted updates regarding the truck's direction of travel, the evasive actions taken by the driver, and that the driver and passenger abandoned the truck and fled on foot. At minute 03:05, Officer Koahou broadcasted, "Yeah, alright, he's running uh eastbound now towards San Bernardino." Officer Koahou said loudly, "Hey dude, just stop running." Officer Koahou spoke with a calm, albeit frustrated, tone of voice when he ordered Harper to stop running.

At minute 04:23, Officer Koahou broadcasted with a sense of urgency, "Hey, he's trying to 215¹⁵ a car. He's trying to 215 a car." Multiple voices could be heard in the background, yelling, their voices overlapping each other. Officer Koahou's tone of voice changed to

¹³ Cell phone video of the incident showed two adult males stood near the driver's side front of the Honda at the time of the officer-involved shooting. See the cell phone video summary for further details.

¹⁴ Belt recordings from all officers were reviewed, though not all are summarized here. The summaries cover the events from the point immediately before the contact with Harper and immediately after the incident under review. Times noted are from the media player bar.

¹⁵ California Penal Code section 215(a) "Carjacking" is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence [...] against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear.

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one of obvious distress. Officer Koahou then yelled, "Move out of the way, I'm gonna shoot him, move, move, move, move (unintelligible phrase) guys, move back I'm gonna shoot him, move back, I'm gonna shoot him. Face down."

04:37 Officer Koahou ordered, his voice calmer and more measured, "Get out, face down, face down, dude. Get out or I'm gonna shoot you. I'm gonna shoot you right now." Harper yelled unintelligibly in the background.

04:43 Officer Koahou commanded, "Get out and face down, get out and face down, get out and face down now, get out and face down now."

04:50 A popping noise as the Taser was deployed sounded, followed by Harper yelling out in pain.

04:52 Officer Koahou yelled, "Don't do it, don't do it, I'll shoot you, stop, stop!"

04:54 Two gunshots rang out, followed by the sound of screeching tires and a female screaming in the distance.

05:03 Officer Koahou, breathing heavily and rapidly, broadcasted, "23, shots fired." A siren sounded in the background.

05:18 Officer Koahou, still breathing heavily and rapidly, entered his patrol unit and began driving, the engine revving loudly.

05:24 Multiple police sirens sounded in the background as Officer Koahou stopped his patrol unit, exited, and approached Harper who yelled out in pain.

05:38 Officer Koahou ordered, "Hands behind your back, hands behind your back."

05:41 Harper yelled, "He shot my leg, he shot my leg."

Additional officers arrived on scene and their voices were captured on the belt-recording. At 06:04, Officer Koahou told another officer, "Yeah, it happened over here. Two shots. He's 215'ing a car." "I tased him trying to get it, get him out, and he started to take off and started to pull me." At 06:25, Officer Koahou said, "Because I had him and he was holding onto me."

VIDEO RECORDINGS¹⁶

The video from Witness #2's Ring doorbell camera, mounted near the home's front entry, showed the black Honda Accord parked in the driveway. The video was only 30 seconds long and did not capture the officer-involved shooting. However, it did capture the events immediately preceding the officer-involved shooting and gives context to what Officer Koahou observed as he arrived on scene.

The camera faced east toward Nathan Court. San Bernardino Avenue could be seen to the right of the camera view. Harper quickly walked onto the front entry patio with his head turned to the right, looking toward the black Honda Accord parked in the driveway. Harper ran toward the Honda.

¹⁶ Multiple video recordings were obtained from nearby residential camera systems. All videos were reviewed in their entirety, though not all are summarized here.

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Harper reached the Honda and opened the driver's door. At the same time, Witness #1 and Witness #3's work truck drove east in the westbound lanes of San Bernardino Avenue and stopped at the north curb line of San Bernardino Avenue.



Harper got into the Honda's driver's seat and shut the door as Witness #2, wearing a white shirt and dark pants, came into camera view approaching the car from the north. Loud yelling and screeching tires sounded as Harper began backing the Honda out of the driveway. Witness #2, holding on to the driver's door handle, quickly ran beside the car as it backed out of the driveway. Witness #1 ran from his work truck toward Nathan Court. Witness #1 wore a brown shirt. As the Honda backed onto Nathan Court, Witness #1 ran

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toward the Honda. Witness #2 continued holding onto the driver's door handle. The tires screeched loudly as Harper reversed the car further on Nathan Court. The tires continued squealing loudly for the duration of the video each time Harper drove the car, either in reverse or forward.



Witness #3, wearing a bright orange shirt and holding a phone to his right ear, ran from the work truck at San Bernardino Avenue toward Witness #1 and Witness #2. Witness #1 and Witness #2 held onto the Honda's driver's side door handles.

Harper drove the Honda forward, back onto the driveway while Witness #2 and Witness #1 ran beside the car, both appearing to hold onto the driver's door handle. Multiple overlapping voices yelled unintelligibly as the two men held onto the Honda. Harper reversed the car back out of the driveway and onto Nathan Court just before the video ended.

Cellular Phone Video

This video was recorded from a residence located on Stony Court, south of San Bernardino Avenue and southwest of the scene. This video captured the officer-involved shooting. The camera faced north, toward Nathan Court. A female could be heard speaking, then yelling, and eventually screaming during the video. Police sirens sounded loudly in the background throughout. Times noted are from the media player bar.

When the video began, the Honda faced south and was positioned on Nathan Court. Witness #1 (brown shirt) stood beside the passenger side of the Honda. Witness #2 stood

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several feet away, southeast of the Honda, near the east curb line of Nathan Court. An unidentified male (white shirt) and Officer Koahou (full-black uniform) stood at the driver's side of the Honda. Witness #1 walked from the passenger side to the front of the Honda and the unidentified male in the white shirt walked away from the driver's side, toward the sidewalk on the east side of Nathan Court. Officer Koahou remained beside the driver's door, facing the car. Additional unidentified individuals stood nearby beside the east curb line of Nathan Court.



Video snip showing full perspective.



Video snip zoomed in for view.

0:00:10 Witness #1 walked in front of the Honda. Unintelligible yelling could be heard in the distance. Officer Koahou took a couple steps backward, away from the car. A popping sound, followed by Harper yelling out in pain, could be heard as Officer Koahou fired his Taser into the driver's side compartment of the Honda.



Timestamp 0:00:10

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0:00:11 Officer Koahou stepped back to the Honda's open driver's door and leaned forward, toward the driver's seat.



Timestamp 0:00:12

0:00:12 to 0:00:13 Officer Koahou leaned down toward the driver's seat and then into the car. The Honda's engine began revving loudly, and the car started slowly driving forward. The unidentified male in the white shirt stood near the driver's side front as Witness #1 walked toward the front driver's side of the Honda.

0:00:13 to 0:00:15 The engine still revving loudly, the Honda suddenly began driving forward very quickly. Officer Koahou's upper body was still leaning into the driver's compartment. Witness #1, now positioned in front of the Honda, near the driver's side, turned and started to run, jumping away from the car as it headed toward him. Officer Koahou, still leaning into the driver's compartment, quickly stepped in line with the trajectory of the car as it raced forward quickly. Two gunshots, fired in quick succession were heard and Officer Koahou disappeared from camera view behind the Honda as it continued rapidly accelerating forward. Witness #1 narrowly escaped being struck by the Honda as it raced forward.

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Timestamp 0:00:14



Timestamp 0:00:14, magnification zoomed.

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0:00:16 The video angle shifted away from the scene as the female screamed and ran away from where she had been filming. No further video was obtained of the scene.

CRIME SCENE INVESTIGATION AND GUNSHOT TRAJECTORY

San Bernardino County Sheriff's Crime Scene Specialist Witness #5 processed the crime scenes, located on Joanne Street,¹⁷ Nathan Court, and San Bernardino Avenue. At the crime scene on Nathan Court, tire marks were found on the driveway of the residence at [REDACTED] Nathan Court. The marks began approximately midway up the driveway to the end of the driveway at the roadway edge. Tire marks were located on the roadway in the approximate middle of Nathan Court. Marks began near the residence located at [REDACTED] Nathan Court and extended south toward the end of the cul-de-sac.

A fired cartridge case (FCC) was found on the east side of Nathan Court, near the east curb line. A second FCC was found on the roadway in the approximate middle of Nathan Court, southwest of the first FCC. Both FCCs were head stamped, "WIN 40 S&W."

Tire marks and gouges were found in the south curb line at the end of the cul-de-sac of Nathan Court. Additional tire marks were located southwest of the roadway of San Bernardino Avenue. The marks extended across the westbound lane of San Bernardino Avenue and curved west on the eastbound lane. The marks continued to where the black 2019 Honda Accord was located.

¹⁷ The reported stolen Toyota Tundra was located on Joanne Street, parked facing southwest, partially on the southbound side of the roadway and the driveway of a residence on Joanne Street. The Toyota had collision damage to the left rear quarter panel and light housing and the right front tire was destroyed.

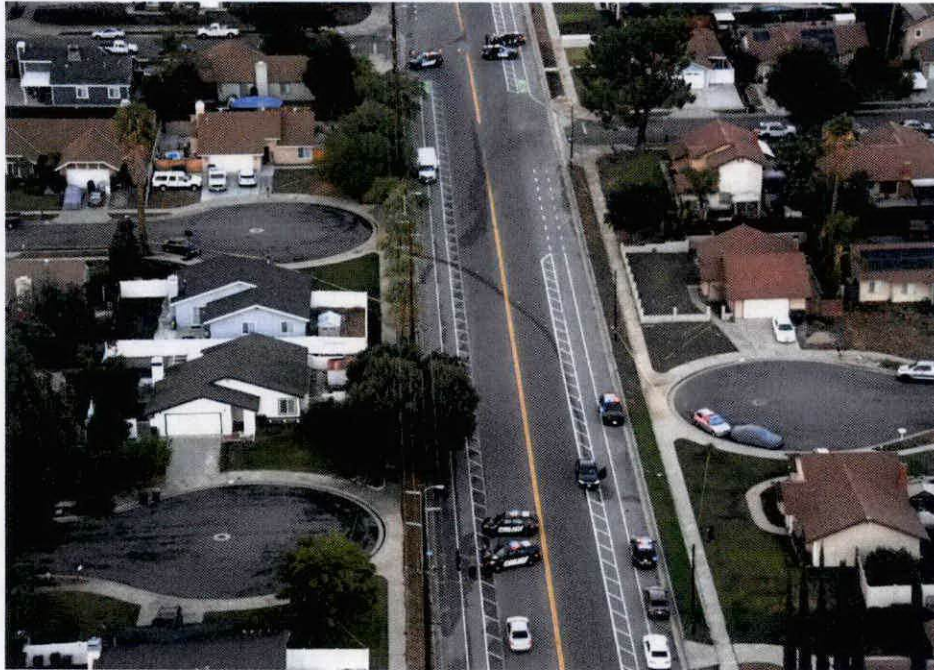
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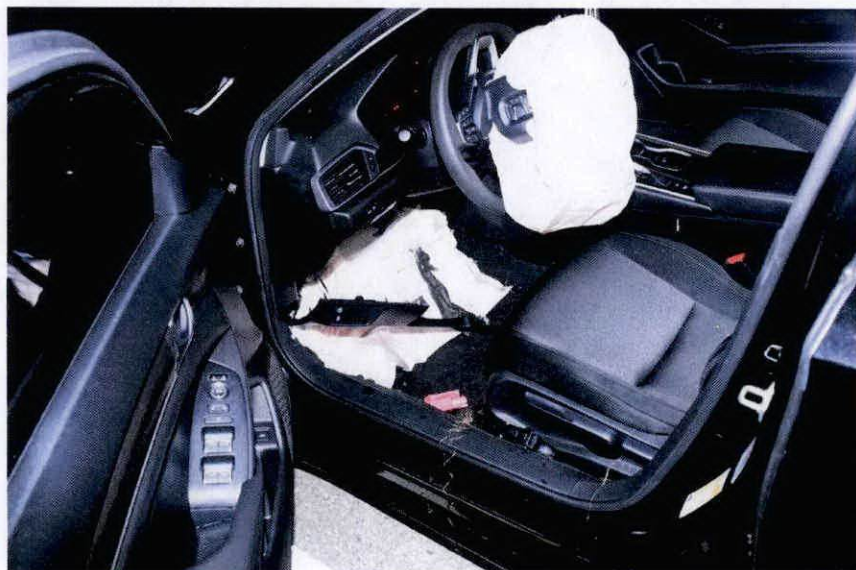
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Aerial photograph showing scene from Nathan Court to San Bernardino Avenue, edited to increase brightness and exposure.

A black 2019 Honda Accord was found parked facing west in the middle of the roadway on the eastbound side of San Bernardino Avenue. The left front door was open, and the vehicle was still running. Both the left front and left rear tires were flat, the right rear door window was missing, and the left front air bags had been deployed. A Taser was located in the area between the left front seat and the left front door, the wires and darts were still attached. One dart was located in the left side of the center console.



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A fired bullet entry hole (Placard A1) was located in the forward edge of the left rear exterior window frame and weather stripping/molding of the black Honda Accord, just above the window base. A fired bullet exit hole (Placard A2) was located in the forward edge of the left rear interior window frame and weather stripping/molding, right and forward of Placard A1. A fired bullet entry hole (Placard A3) was located in the exterior B pillar of the Honda, on the rear side, right and forward of Placard A2.



The fired bullet holes in the vehicle were marked and when possible, were linked together with sequential lettering to indicate trajectory paths. For the fired bullet holes identified, the following trajectory paths were determined:

Placards A1—A3: These placards marked a bullet path that entered the exterior left rear window frame and exited the interior left window frame. The bullet then entered the exterior B pillar of the vehicle. This bullet moved in a path that was from left to right and back to front. The bullet path described as Placards A1 – A3, placed the shooter near or around the left rear side of the vehicle.

INJURED PARTY

Dr. Dustin Smith, the attending emergency medical physician at the hospital, treated Justin Harper when he arrived. Upon arrival, Harper had an injury to his left thigh and his left hand. The injury to the left thigh was consistent with the emergency medical services' history of a gunshot wound. Harper arrived with a tourniquet on his left leg. Harper was conscious and speaking, though not fully cooperative. X-rays and CT scans were conducted. Harper was found to have a displaced fracture of the distal femur of the left leg. Multiple metal fragments were seen in the radiological images and there was a hematoma to the muscle surrounding the leg injury. There was no obvious arterial

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damage to left leg. Harper also had a soft tissue defect of the ring and little finger on the left hand. Harper underwent surgery to repair the fracture to his left leg.

TOXICOLOGY

Blood samples were obtained from Harper and submitted to Bio-Tox Laboratories. The toxicology results for the blood samples were listed as follows:

- Ethyl Alcohol 0.000%
- Methamphetamine 179 ng/mL
- Amphetamine 26 ng/mL
- Delta-9 Carboxy TCH 13 ng/mL
- Delta-9 TCH 1.9 ng/mL

CRIMINAL HISTORY

Justin Harper has a criminal history that includes the following convictions:

2016, 11550 (a) of the Health and Safety Code, Under the Influence of a Controlled Substance, Riverside County case number BAM1602248, a misdemeanor.

2016, 10851(a) of the Vehicle Code, Vehicle Theft, Riverside County case number BAF1601524, a felony.

2016, 10851(a) of the Vehicle Code, Vehicle Theft, Riverside County case number BAF1601525, a felony.

2016, 11364 of the Health and Safety Code, Possession of Controlled Substance Paraphernalia, Riverside County case number BAM1604121, a misdemeanor.

2016, 11364 of the Health and Safety Code, Possession of Controlled Substance Paraphernalia, Riverside County case number BAM1603480, a misdemeanor.

2016, 11377 of the Health and Safety Code, Possession of a Controlled Substance, Riverside County case number BAM[REDACTED]831, a misdemeanor.

2017, 11364 of the Health and Safety Code, Possession of Controlled Substance Paraphernalia, Riverside County case number BAM[REDACTED]331, a misdemeanor.

2017, 11364 of the Health and Safety Code, Possession of Controlled Substance Paraphernalia, Riverside County case number BAM1702106, a misdemeanor.

2018, 21310 of the Penal Code, Carrying a Concealed Dirk or Dagger, San Bernardino County case number FSB18001007.

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2018, 496d of the Penal Code, Receiving Stolen Motor Vehicle, San Bernardino County case number FSB18001374, a misdemeanor.

2018, 459.5 of the Penal Code, Shoplifting, San Bernadino County case number MSB17012118, a misdemeanor.

2019, 488 of the Penal Code, Petty Theft, Riverside County case number BAM1902569, a misdemeanor.

2019, 488 of the Penal Code, Petty Theft, Riverside County case number BAM1903858, a misdemeanor.

2019, 666.5(a) of the Penal Code, Vehicle Theft with Prior Vehicle Theft Conviction, 2800.2 of the Vehicle Code, Evading a Peace Officer with Disregard for Public Safety, Riverside County case number BAF1900897, felonies.

2019, 496d(a) of the Penal Code, Receiving Stolen Motor Vehicle, Riverside County case number BAF1900722, a felony.

2019, 11377 (a) of the Health and Safety Code, Possession of a Controlled Substance, Riverside County case number BAM1903567.

CRIMINAL CHARGES ARISING FROM HARPER'S CONDUCT HEREIN

Harper was charged in San Bernardino County Superior Court, in case number FSB21003500, with the following charges:

1. Carjacking, Penal Code section 215(a), a felony;
2. Assault with a Deadly Weapon, to wit a Motor Vehicle, Penal Code section 245(a)(1), a felony;
3. Possession of a Firearm by a Felon, Penal Code section 298009(a)(1), a felony¹⁸;
4. Driving or Taking a Vehicle Without Consent, Vehicle Code Section 10851(a), (Toyota truck), a felony;
5. Driving or Taking a Vehicle Without Consent, (Honda Accord), Vehicle Code Section 10851(a), a felony;
6. Hit and Run Driving Resulting in Property Damage, Vehicle Code section 20002(a), a misdemeanor; and
7. Assault Upon a Peace Officer, Penal Code Section 245(c), a felony.

On June 20, 2022, Harper plead no contest and was sentenced to prison for the following charges:

¹⁸ Investigators found an unloaded, double break-barrel CZ-USA .20-gauge shotgun inside the stolen Toyota Tundra.

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1. Carjacking, Penal Code section 215(a), a felony;
2. Felon in Possession of a Firearm, a felony;
3. Driving or Taking a Vehicle Without Consent, Vehicle Code Section 10851(a), (Toyota truck), a felony;
4. Driving or Taking a Vehicle Without Consent, (Honda Accord), Vehicle Code Section 10851(a), a felony; and
5. Hit and Run Driving Resulting in Property Damage, Vehicle Code section 20002(a), a misdemeanor.

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).)¹⁹ 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:

¹⁹ 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 2020,²⁰ 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

²⁰ 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;²¹
- (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;

²¹ 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.)²² 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.”)

²² 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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Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.) The use of force policies and training of an involved officer’s agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1. See fn. 3, *infra*.)

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

Under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis, even if subsequent investigation reveals the suspect was unarmed. (*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.)

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ANALYSIS

Officer Koahou began following behind Harper, who was driving a stolen truck, at 1:31 p.m. Little did Officer Koahou know, but less than five minutes later, he would be forced to defend not only his own life but also the lives of innocent civilians who were in imminent peril due to Harper's deadly actions. When determining whether there was justification for an officer's use of lethal force, an analysis of the facts and circumstances leading up to the use of force is imperative.

When dispatch broadcasted the ALPR hit on the stolen Toyota Tundra, Officer Koahou realized he was near its location. Moments later, Officer Koahou spotted Harper driving the stolen truck eastbound on Lugonia, exactly where dispatch had indicated it would be. Officer Koahou was cautious in his approach, not wanting to alert Harper to his presence. Instead of abruptly turning and getting right behind Harper, Officer Koahou made a strategic soft U-turn to follow Harper. Several cars were between Officer Koahou's patrol unit and Harper, but Harper still spotted Officer Koahou. Harper immediately began taking evasive actions, pushing his way through traffic and recklessly driving through an intersection against the red light.

Officer Koahou followed Harper without engaging in a high-speed pursuit. Though Officer Koahou maintained a safe distance behind Harper, waiting for additional law enforcement support, he saw Harper driving well above the posted speed limit through intersections without stopping at the stop signs.

Unbeknownst to Officer Koahou, Harper crashed into another motorist while recklessly driving. Witness #1 and Witness #3 followed Harper after he fled the collision without stopping. That collision likely caused the stolen truck to become disabled with a flat tire. Officer Koahou saw the Toyota's truck tire smoking and correctly deduced that it had gone flat. Shortly after, Officer Koahou saw Harper running as fast as he could from the stolen truck. Officer Koahou remained in his patrol unit and, over the next several minutes, followed Harper as Harper sprinted and jumped into multiple backyards, desperately trying to evade capture. Officer Koahou told investigators that his goal was to follow Harper and keep an eye on him while he waited for backup. Indeed, the actions taken by Officer Koahou support this stated goal. Officer Koahou did not get out of his patrol car and immediately chase and tackle Harper to the ground. Officer Koahou only got out of his patrol unit when he believed Harper was stuck at a tall fence and could run no further. Harper showed utter desperation when he tore down fence panels and squeezed through the hole he created. And still, Officer Koahou showed restraint. Officer Koahou did not chase Harper through the backyard. Instead, Officer Koahou returned to his patrol unit and watched the area where he believed Harper would reappear. Officer Koahou made a calculated decision to wait and watch. That decision paid off because, as anticipated, Harper reappeared precisely where Officer Koahou expected. Officer Koahou then drove his unit to continue following Harper, still waiting for additional officers to arrive.

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Officer Koahou did everything in his power, short of just letting Harper go, to de-escalate the situation. It was only when Officer Koahou saw that Harper was committing a violent felony, carjacking, that Officer Koahou was forced to take immediate action. Carjacking, as the court so clearly pointed out in *People v. Antoine* (1996) 48 Cal.App.4th 489, "is a particularly serious crime that victimizes persons in vulnerable settings, and because of the nature of the taking, raises a serious potential for harm to the victim, the perpetrator and the public at large." (*Id.* at 495.) Indeed, when Harper carjacked the victims, he placed them both in extreme danger. As soon as Officer Koahou saw that Harper was engaged in a violent felony, Officer Koahou came to the victims' aid. Officer Koahou saw that Witness #2 and Witness #1, were in immediate peril and rushed to help them. Witness #2, frantically clinging to the car, was met with Harper's relentless attempts to escape, while Witness #1, inside the car, had Harper in a headlock. Harper, in a desperate bid to steal the vehicle from Witness #2, viciously fought against the victims, striking them both.

Officer Koahou sprinted toward the scene and told Witness #2 and Witness #1 to get back. Witness #2 and Witness #1 followed Officer Koahou's commands. Officer Koahou then commanded Harper to "get out, face down." Officer Koahou's commands were clear and concise, yet Harper refused to obey Officer Koahou's simple commands to get out of the car. Officer Koahou grabbed ahold of Harper and physically tried to pull him from the vehicle, but Harper held onto the steering wheel, refusing to get out. Officer Koahou repeated his orders multiple times and warned Harper that he would "shoot him." Harper still refused to follow Officer Koahou's commands.

Realizing that it would take more to force Harper to comply, Officer Koahou deployed his Taser. The Taser probes struck Harper in the chest. Harper yelled in pain and raised his arms to his chest, momentarily taking his hands from the steering wheel. Believing the Taser was effective and that he could safely remove Harper from the vehicle, Officer Koahou holstered his handgun, leaned into the car, and reached for Harper. Just as Officer Koahou did this, he saw Harper reach for the gear shift. Officer Koahou knew the carjacking victims were still in a perilous position in front of the car. Officer Koahou yelled at Harper, "Don't do it, don't do it, I'll shoot you, stop, stop!" Officer Koahou tried to grab the gear shift to keep Harper from putting the car into drive, but Harper had the position of advantage. Harper was in the driver's seat, in full control of the vehicle. Harper put the gear shift in drive.

Harper knew Officer Koahou was leaning into the car when he stepped on the accelerator and released the emergency brake. Harper knew or should have known the victims were near the front of car because he had just fought with them. Harper knew Officer Koahou would shoot him if he put the car into drive because Officer Koahou warned him. Harper did not care. Harper put the car into drive and sped forward with intentional or conscious disregard for the safety of Officer Koahou and the civilians in front of the car. Officer Koahou realized that he was in immediate danger as Harper held his arm and forced him to quickly skip beside the car to keep from falling. Officer Koahou was also keenly aware

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that the victims, who he had last seen near the front of the car, were in immediate peril. Witness #1 was directly in the line of Harper's direction of travel and barely missed being struck by Harper as he floored the gas and "shot off like a rocket." Everyone near the car, including Officer Koahou and the civilian victims to the front, was placed in imminent danger by Harper's inherently dangerous actions.

From the moment he first spotted Harper, until the violent carjacking, Officer Koahou tried his best to keep the situation from escalating to one that required the use of any force, let alone deadly force. Yet, despite Officer Koahou's best efforts, Harper escalated the situation at every turn. Then, Harper refused to obey multiple commands to stop and to get out of the car. Harper's actions during the entire encounter made it clear that he was willing to do whatever he could to get away, even resorting to deadly force in his attempt to flee.

Officer Koahou's belief that Harper posed an imminent threat to his life and the lives of the nearby civilians was honest and objectively reasonable. Given these facts and circumstances, any reasonable officer would have believed Harper posed an imminent threat. When Harper put the car into drive and stepped on the accelerator, it was clear to all that Harper had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer as well as the innocent bystanders. The threat Harper posed was imminent. Officer Koahou was forced to take immediate action to save his own life and the lives of those at the front of the car.

CONCLUSION

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

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

