



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: August 13, 2024

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Officer Isaac Spiegel
Redlands Police Department

Involved Subject: Robert Juarez (Deceased)
Date of Birth **/**/**

Date of Incident: January 1, 2023

Incident location: *** Joni Lane
Redlands, CA

DA STAR #: 2024-9304

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Owenn Domon

Report Number#: DR# 602300001

PREAMBLE

This was a fatal officer involved shooting by an officer from the Redlands Police Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary was based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino Police Department, DR# 602300001.

FACTUAL SUMMARY

On the morning of January 1, 2023, Robert Juarez called 9-1-1 and told dispatch he was going to hurt his girlfriend, Witness #1, if officers did not respond to his residence located at *** Joni Lane in the City of Redlands. Juarez had been drinking and arguing with Witness #1. Officer Isaac Spiegel, Officer Tyler Simonsen, Officer Yessenia Blevens, and Officer Tyler Frisch, from the Redlands Police Department, responded to the call for service. The police officers were in uniform and driving marked patrol vehicles.

Officer Spiegel parked his patrol vehicle on Joni Lane near the residence. Officer Simonsen, Officer Blevens, and Officer Frisch parked their patrol vehicles on Colton Avenue and walked north toward the residence. Given the early morning hour of the call, it was dark outside. There was some streetlight and it was also raining.

Officer Spiegel saw Juarez standing in the middle of the cul-de-sac holding a large kitchen knife. Officer Spiegel drew his firearm and started giving Juarez verbal commands to drop the knife. Officer Simonsen and Officer Blevens, both had their weapons drawn, and ordered Juarez to drop the knife. Officer Blevens had experience in crisis negotiation and took over the primary role of communicating with Juarez. Officer Blevens repeatedly told Juarez the officers were there to help him. Officer Blevens put away her firearm in the hopes of developing a rapport with Juarez. She tried to find out what exactly was going on with Juarez. Juarez would not provide any information to Officer Blevens. Juarez stood in the middle of the street, twirling the knife in his hand, and looking back and forth between Officer Blevens and Officer Spiegel.

Juarez appeared agitated and was uncooperative with the officers. Juarez started to take small steps toward Officer Spiegel. Juarez continued to twirl the knife in his right hand. Officer Spiegel told Juarez to stop stepping towards him. Juarez repeatedly told Officer Spiegel to shoot him. Juarez told Officer Spiegel to shoot him or he would throw the knife at him. Officer Spiegel told Juarez he did not want to shoot him. Officer Spiegel and Officer Blevens continued to try to get Juarez to drop the knife. Juarez's mother, Witness #4, who was present at the scene also told Juarez to drop the knife. Juarez, however, refused to drop the knife.

At one point, Juarez looked at Officer Blevens and said, "Sorry Yessenia." Officer Blevens continued to try to talk to Juarez but less than a minute later, Juarez took a quick step back with his right foot and leaned backward. At this time, the officers had been speaking to Juarez for approximately six minutes. Juarez was about seven yards away from Officer Spiegel. It appeared that Juarez was going to throw the knife at Officer Spiegel. Officer Spiegel feared for his life and fired one round at Juarez.

After the shooting, Corporal Liu formulated a plan for the officers to approach Juarez and disarm him. Officer Blevens attempted to render medical aid to Juarez. Medical personnel arrived and pronounced Juarez deceased at the scene.

A kitchen knife was lying on the ground, southeast of Juarez's body, near the east curb line of Joni Lane. The handle of the knife had a wood grain appearance and the blade of the knife was silver in color. The handle of the knife was approximately four inches in length. The blade of the knife was approximately eight inches in length.

STATEMENTS BY POLICE OFFICERS

On February 7, 2023, **Officer Isaac Spiegel** was interviewed by Detective Ian Gosswiller and Detective Owenn Domon.¹

On January 1, 2023, **Officer Isaac Spiegel**, from the Redland Police Department was assigned to patrol. Officer Spiegel was wearing a "Class A" Redlands Police Department uniform and driving a marked patrol vehicle. Officer Spiegel and Officer Tyler Simonsen were dispatched to a domestic violence call where the male reporting party was requesting help because he was going to hurt somebody. The location was a residence located on Joni Lane in the City of Redlands. Officer Spiegel and Officer Tyler Simonsen responded to the location. Officer Spiegel arrived from the north and Officer Simonsen arrived from the south.

As Officer Spiegel exited his patrol vehicle, he noticed Officer Simonsen shined his light on a male, later identified as Robert Juarez. There was also a streetlight illuminating the area. Officer Spiegel saw Juarez was carrying a large knife in his right hand. The knife appeared to be a long kitchen knife with an eleven inch blade. Officer Spiegel estimated Juarez was fifteen to twenty yards away from him. Officer Spiegel pulled out his firearm and started giving Juarez verbal commands to drop the knife. Juarez was in the middle of the street, twirling the knife in his hand, and starting to move in Officer Spiegel's direction. Officer Spiegel described Juarez as having a blank stare on his face.

Officer Yessenia Blevens arrived at the location and also started giving Juarez verbal commands to drop the knife. Officer Spiegel had Officer Blevens take the lead in speaking with Juarez since she had experience with crisis negotiations. Juarez told Officer Spiegel he was going to throw the knife at him. Juarez also told Officer Spiegel to shoot him. Juarez appeared intoxicated. Officer Spiegel believed it was possible for Juarez to kill him with the knife. Officer Spiegel told Juarez to talk to Officer Blevens. Officer Tyler Frisch arrived after Officer Blevens and went over where she and Officer Simonsen were standing.

Officer Blevens tried to talk to Juarez and get him to drop the knife. Juarez refused to drop the knife. Juarez remained standing in the middle of the street and twirling the knife in his hand. Officer Spiegel described the twirling motion as similar to how "drummers

¹ Officer Spiegel reviewed his body worn camera recording and his partners' body worn camera recordings prior to being interviewed by Detective Gosswiller and Detective Domon.

twirl their drumsticks.” Although Officer Blevens was talking to Juarez, Juarez’s attention continued to be focused on Officer Spiegel.

At this point, Officer Spiegel estimated Juarez was seven to ten yards away from him. Juarez told Officer Spiegel multiple times he was going to throw the knife and he wanted Officer Spiegel to shoot him. Officer Spiegel saw Juarez take a step back and lean backwards. Officer Spiegel described Juarez’s motion as similar to a person throwing a shotput. Officer Spiegel was unable to see Juarez’s right hand anymore. Officer Spiegel believed Juarez was going to throw the knife at him and kill him. Officer Spiegel fired his duty weapon once at Juarez. Officer Spiegel estimated from the moment he arrived on scene to the time he fired his weapon was six to seven minutes.

After the shooting, Juarez dropped to the ground. Juarez ended up on his back and was still holding the knife in his right hand. Corporal Jameson Liu was on scene at that time and formulated a plan as to how the officers would approach Juarez. Officer Spiegel stayed where he was standing. Medical personnel arrived and pronounced Juarez deceased.

On May 9, 2023, **Officer Yessenia Blevens**, was interviewed by Detective Dylan Gosswiller and Detective Ian Gosswiller.²

On January 1, 2023, Officer Yessenia Blevens, from the Redlands Police Department was assigned to patrol. Officer Blevens was wearing a “Class C” Redlands Police Department uniform and driving a marked patrol vehicle. Officer Blevens responded to a call for service at a residence located on Joni Lane. A male subject called 9-1-1 and said he wanted the police to respond or he was going to hurt his girlfriend. A female was heard in the background saying they had been drinking. Officer Blevens parked her patrol vehicle behind Officer Simonsen’s patrol vehicle. When she exited her vehicle, she saw Officer Simonsen had his gun drawn and was telling a subject, later identified as Robert Juarez, to drop the knife.

Officer Blevens unholstered her duty weapon and started talking to Juarez. Officer Blevens had training in crisis negotiation so she told Officer Simonsen she would do the negotiating. Officer Blevens heard Officer Spiegel a couple feet away but was unable to determine where exactly he was. Officer Spiegel was giving Juarez commands to drop the knife. Although it was dark outside, there was a light pole and the tac light from her duty weapon and the tac light from Officer Simonsen’s duty weapon illuminating Juarez.

Officer Blevens noticed Officer Frisch had arrived and was standing on the left hand side of her. She observed Officer Frisch was holding a rifle. Officer Blevens decided to put her handgun away and told Juarez she just wanted to talk. Officer Blevens estimated

² Officer Blevens reviewed her body worn camera recording and Officer Spiegel’s body worn camera recording prior to being interviewed by Detective Dylan Gosswiller and Detective Ian Gosswiller.

Juarez was twenty five feet away from her. Officer Blevens tried to build a rapport with Juarez. Juarez told the officers, "Fuck you." Officer Blevens also heard Juarez say he wanted the officers to shoot him. When she heard that, Officer Blevens knew it was a potential suicide situation. Officer Blevens heard Officer Spiegel tell Juarez, "I don't want to hurt you. I don't want to shoot you." Officer Blevens told Juarez, "Hey, we don't want to hurt you. Let's just talk. Let's talk."

Officer Blevens continued to try to talk to Juarez for a few minutes. Juarez was gesturing with the knife towards Officer Spiegel. Juarez kept looking in Officer Spiegel's direction and taking small steps toward him. At one point, Officer Blevens heard Juarez say, "Sorry Yessenia." Officer Blevens knew when Juarez apologized that he was getting ready to do that one thing the officers would perceive as a threat. Shortly after he apologized, Officer Blevens saw Juarez take a lunge, a step back with his leg. Based on Juarez's quick motion, it appeared to Officer Blevens that Juarez was either going to throw the knife at Officer Spiegel or Juarez was going to run with the knife toward Officer Spiegel. At that time, Officer Spiegel shot Juarez. Officer Blevens saw Juarez's head was pushed back so she knew it was a head shot. Juarez then fell straight to the ground.

When the officers approached Juarez, Officer Blevens saw Juarez was still holding the knife in his right hand. The knife had a black handle with an approximate twelve inch blade. The sharp end of the knife was pointed outward. Officer Blevens started to render medical aid. Officer Blevens stopped rendering aid when it became obvious to her that Juarez suffered a fatal shot to the head.

At the time Juarez was shot, Officer Blevens was unarmed. Officer Blevens indicated if Officer Spiegel had not fired his weapon, she would have drawn her weapon and shot Juarez. Officer Blevens believed Officer Spiegel would have been seriously hurt if he had not shot Juarez. It was clear to Officer Blevens that Juarez intended to hurt Officer Spiegel.

On February 7, 2023, **Officer Tyler Simonsen**, was interviewed by Detective Ian Gosswiller and Detective Owenn Domon.³

On January 1, 2023, Officer Tyler Simonsen, from the Redlands Police Department was assigned to patrol. Officer Simonsen was wearing a "Class C" Redlands Police Department uniform and driving a marked patrol vehicle. On that date, Officer Simonsen responded to a call for service at a residence located on Joni Lane. When Officer Simonsen arrived at the location he saw a subject, later identified as Robert Juarez, standing in his driveway.

³Officer Simonsen reviewed his body worn camera recording and the body worn camera recordings of the other officers present during the incident under review prior to being interviewed by Detective Ian Gosswiller and Detective Owenn Domon.

Officer Simonsen put his flashlight on Juarez and saw Juarez was carrying a weapon in his hand. Officer Simonsen pulled out his firearm, pointed it towards Juarez, and ordered Juarez to drop the knife. The weapon was a large kitchen knife with an approximate twelve inch blade. Officer Simonsen pulled out his firearm because he believed Juarez intended to harm the officers. Officer Simonsen could hear Officer Spiegel giving Juarez commands to drop the knife. He also heard Officer Spiegel telling Juarez, "Let us help you." Officer Simonsen gave Juarez multiple commands to drop the knife. Juarez kept looking at Officer Spiegel. Juarez said "Shoot me" a couple of times.

Officer Blevens arrived at the location and took the primary role in negotiating with Juarez. Officer Frisch arrived at the location and took a position near Officer Simonsen and Officer Blevens. Juarez appeared agitated and was flipping the knife around. Officer Frisch arrived and took a position near Officer Blevens and Officer Simonsen. Officer Simonsen told Juarez they could help him.

Officer Simonsen heard Juarez say, "I'm sorry Yessenia." Juarez then turned away from Officer Simonsen, Officer Blevens, and Officer Frisch. Juarez kept his attention focused on Officer Spiegel. Juarez flipped the knife around a few times. Juarez then took what looked like a position to run forward and attack Officer Spiegel. Juarez leaned back and put weight on his back foot. Juarez was still holding the knife in his right hand. Juarez brought the knife backwards with his body. Juarez was looking towards Officer Spiegel. Officer Simonsen described Juarez's movement as similar to what a person would do in preparing to run, to lunge, or to throw something.

Officer Simonsen believed Juarez was going to lunge forward or run towards Officer Spiegel. At that moment, Officer Simonsen heard a gunshot and Juarez immediately fell to the ground. Officer Simonsen noticed Juarez suffered a gunshot wound to the head. Medical personnel were requested to respond. Officer Simonsen did not shoot when he saw Juarez lean back because he was not exactly sure where Officer Spiegel was standing and he was waiting for Juarez to lunge forward. In Officer Simonsen's mind, his threshold for firing his weapon was Juarez taking a step forward. Officer Simonsen estimated it was eight to nine minutes from the time he arrived to when the shooting took place. Officer Simonsen stated Juarez gave no indication he was going to comply with the officers' verbal commands.

On May 9, 2023, **Officer Tyler Frisch**, was interviewed by Detective Ian Gosswiller and Detective Dylan Gosswiller.⁴

On January 1, 2023, Officer Tyler Frisch, from the Redlands Police Department was assigned to patrol. Officer Frisch was wearing a "Class C" Redlands Police Department uniform and driving a marked patrol vehicle. On that date, Officer Frisch responded to a

⁴Officer Frisch reviewed his body worn camera recording as well as the body worn camera recordings of Officer Spiegel and Officer Blevens prior to being interviewed by Detective Dylan Gosswiller and Detective Ian Gosswiller.

call for service at a residence located on Joni Lane. When Officer Frisch got to the location, he grabbed his rifle as he exited his patrol vehicle. Officer Frisch saw Officer Simonsen and Officer Blevens together at the end of the cul-de-sac. Officer Spiegel was little more northeast of them near someone's driveway. Officer Frisch saw a subject, later identified as Robert Juarez, standing in the middle of the street.

Officer Frisch saw Juarez was holding a large kitchen knife in his right hand. Officer Frisch positioned himself near Officer Simonsen and Officer Blevens. Officer Frisch aimed his rifle at Juarez's chest. Officer Frisch estimated Juarez was fifteen to twenty yards away from him. There was enough ambient lighting for Officer Frisch to see what was going on.

After Officer Frisch joined Officer Blevens and Officer Simonsen, Officer Blevens put her firearm away. Officer Blevens then took over negotiating with Juarez. Officer Frisch and Officer Simonsen provided lethal coverage. Officer Blevens tried talking to Juarez. She told Juarez they wanted to help him and that he needed to drop the knife. Officer Frisch noticed Juarez appeared to focus more on Officer Spiegel than he did the other officers. As Officer Blevens was negotiating with Juarez, Officer Frisch heard Juarez say, "I'm sorry, Yessenia."

Officer Frisch saw Juarez make an aggressive movement. Juarez threw his hands down and reared back. Officer Frisch believed Juarez was going to charge at Officer Spiegel. Juarez was moving forward toward Officer Spiegel. At that time, Officer Spiegel shot Juarez. Juarez stood for a second and then collapsed to the ground. Officer Frisch estimated Officer Spiegel was fifteen to twenty yards away from Juarez at the time of the shooting. A plan was formulated on how to approach Juarez. Officer Blevens then started to render medical aid to Juarez. Corporal Liu stopped Officer Blevens when it became obvious Juarez had suffered a gunshot wound to the head and was deceased.

Officer Frisch described the knife Juarez was holding as a kitchen knife with an approximate eight to nine inch blade. Juarez did not show any signs he intended to comply with the officers' verbal commands. Officer Frisch believed Juarez was targeting Officer Spiegel. Officer Frisch believed Juarez was going to run with the knife at Officer Spiegel and kill him. Officer Frisch said he would have shot Juarez if Officer Spiegel had not fired his weapon.

STATEMENTS BY CIVILIAN WITNESSES

On January 1, 2023, **Witness #1**, was interviewed by Detective Michelle Del Rio and Detective Bryan Sprague.

Witness #1 was in a dating relationship with the suspect, later identified as Robert Juarez. Witness #1 and Juarez were living at the home located at *** Joni Lane in the City of Redlands. Witness #1's father also resided at the home.⁵

On December 31, 2022, at around 10:00 in the evening, Witness #2⁶, Juarez's brother, and his friend Witness #3 arrived at the residence on Joni Lane to celebrate New Year's Eve. Juarez drank six "tall can" Bud Lights, six 12-ounce Bud Lights, and a shot of Jack Daniels. On January 1, 2023, at around 1:30 in the morning, Witness #2 and Witness #3 left the residence. Juarez went to the bedroom he shared with Witness #1 to prepare to go to sleep. Witness #1 said Juarez "drank too much" and was having trouble standing. Witness #1 helped Juarez change clothes.

Witness #1 indicated Juarez drank alcohol more often after Juarez's grandmother died in August 2022. Juarez's grandmother had been his primary caregiver for a period of his childhood and he was distraught over her death. Witness #1 said she had never seen Juarez as intoxicated as he was on January 1, 2023. Witness #1 also advised Juarez learned a week earlier that his cousin was on life support and expected to die.

On January 1, 2023, at around 2:00 in the morning, Juarez got up out of bed, walked to the bathroom and vomited several times. When Juarez returned, he said he did not want to be here anymore and "fuck everybody." Witness #1 was worried Juarez was angry with her and she believed Juarez wanted to die. Juarez has previously said he "did not want to be here anymore," he "hated life," and he had thoughts of suicide. Witness #1 indicated Juarez attempted suicide in 2021.

At around 3:00 in the morning, Witness #1 called Juarez's mother, Witness #4, and told her Juarez was intoxicated and angry. Witness #4 spoke to Juarez and tried to calm him down. While Juarez argued with Witness #4 over the phone, Juarez grabbed Witness #1's ankle to pull her off the bed. Witness #1 told Juarez not to touch her. Witness #1 said Juarez was "aggressive." During the phone call with Witness #4, Juarez told Witness #1 to call the police before he did something to hurt her. Witness #1 did not want Juarez to go to jail. Juarez demanded Witness #1 call the police to their residence or he would call them himself.

Witness #1 said Juarez called 9-1-1 and spoke with a Redlands Police Department dispatch operator on speaker phone while he was inside their bedroom. Juarez told the dispatch operator they needed to respond to their residence before he hurt Witness #1. Juarez walked out into the living room. Witness #1 followed Juarez and yelled at the dispatch operator that Juarez had been drinking. Juarez pushed Witness #1 in the chest and she went back inside the bedroom.

⁵ Witness #1's father was hospitalized on the date of the incident under review and not present for the lethal force encounter.

⁶ There are multiple people who share the same last name of *****. Therefore, the witnesses will be referred to by their first name in the memorandum.

At an unknown time, Witness #1 said she heard the front door to their residence open. Witness #1 believed Juarez was still on the phone with the 9-1-1 dispatch operator. A couple of minutes later, Witness #1 heard people shouting at Juarez to put the knife down. Witness #1 ran to the front door and saw two uniformed Redlands Police Department officers running toward their residence. Witness #1 saw Juarez standing in the roadway of Joni Lane. She saw Juarez was holding a kitchen knife in his right hand.

Witness #1 and officers from the Redlands Police Department yelled at Juarez to put the knife down. The police officers told Juarez they would help him. Juarez refused to drop the knife and did not speak with the officers. Witness #1 said Juarez had a "blank face" that she has never seen before. Juarez looked back at the two officers south of him and then looked north. Witness #1 believed there may have been another officer north of Juarez. Witness #1 saw a third Redlands Police Department officer approach from East Colton Avenue. One of the police officers told Witness #1 to close the front door. Witness #1 shut the front door and went to a bedroom on the northwest side of the residence to look out the window.

Witness #1 looked out the window at Juarez. The police officers ordered Juarez to drop the knife but Juarez continued to hold the knife with the blade pointed downward at his side. Witness #1 did not hear Juarez communicate with the police officers. Juarez looked back and forth between the police officers around him. Witness #1 estimated she watched Juarez for a few minutes before she heard a single gunshot. Juarez fell backward to the ground after the gunshot. Witness #1 immediately fell to the floor in the bedroom and started crying.

On January 1, 2023, **Witness #4**, was interviewed by Detective Michelle Del Rio and Detective Bryan Sprague.

Witness #4 was Robert Juarez's mother. On that date, at around 3:30 in the morning, Witness #4 received a phone call from Witness #1, Juarez's girlfriend. Witness #1 and Juarez had been arguing. Witness #4 spoke to Juarez over the phone. Juarez told Witness #4 he would call the police so he could be arrested. Witness #4 heard Juarez make a phone call to law enforcement from another phone. Witness #4 quickly got dressed and drove to Juarez's residence.

As she approached the location, Witness #4 saw a patrol vehicle parked along the east curb line of Cambridge Avenue. Witness #4 stopped and spoke to Officer Spiegel. Witness #4 told Officer Spiegel that Juarez called 9-1-1, was intoxicated, and was not making sense. Witness #4 followed Officer Spiegel as he drove onto Joni Lane toward Juarez's residence. Witness #4 parked her car, got out and stood in front of the vehicle. Witness #4 saw Juarez standing in the roadway in front of his residence and police officers walking toward him. Witness #4 was approximately two house lengths away from Juarez and could not see whether he had any weapons in his hands.

Witness #4 heard a female officer ask Juarez to put the knife down. Witness #4 yelled for Juarez to put the knife down. She was unsure whether Juarez heard her shout because he continued to stand still in the roadway. Witness #4 estimated the female officer spoke to Juarez for five minutes. Witness #4 suddenly heard two to three gunshots in rapid succession and believed Juarez had been shot with a non-lethal weapon. Juarez fell onto the ground backward and did not move.

INCIDENT VIDEO

LENSLOCK VIDEO RECORDINGS. Officer Spiegel, Officer Blevens, Officer Simonsen, and Officer Frisch were equipped with body worn cameras on the date of the incident under review. The body worn cameras were activated and recording at the time of the lethal force encounter. All body camera video recordings were reviewed in their entirety. LensLock body cameras have a standard thirty second delay before audio can be heard.

Officer Spiegel⁷

At the start of the video, Officer Spiegel was seen seated in the driver's seat of his patrol vehicle. Officer Spiegel exited his patrol vehicle. Officer Spiegel told Juarez, "Hey drop whatever is in your hand. Drop the knife." An additional male voice was heard speaking in the background. Officer Spiegel walked south on Joni Lane toward Juarez who stood in the roadway of Joni Lane. Officer Spiegel could be heard removing his firearm from his holster. Officer Spiegel told Juarez, "Drop the knife."

Officer Spiegel broadcasted over the radio, "He has a knife in his hand, 33." Officer Simonsen could be heard saying, "Spiegel, watch your crossfire." Juarez was looking back and forth between Officer Spiegel and Officer Simonsen. Officer Spiegel moved to the east sidewalk and pointed his firearm at Juarez. Officer Spiegel told Juarez, "Drop the knife. Come on man, let us help you, please." Officer Spiegel said, "Your mom is right down the street bro, just relax."

Officer Spiegel walked on the sidewalk until he reached the driveway of *** Joni Lane. Officer Spiegel pointed his firearm at Juarez and told him to drop the knife. Juarez was illuminated by the tactical light on Officer Spiegel's firearm. Juarez looked in Officer Spiegel's direction. Juarez was holding a knife in his right hand. Officer Spiegel told Juarez to drop the knife. Officer Simonsen told Juarez, "Come on man. We can help you, I promise you." Officer Blevens was heard saying, "I'll negotiate, I'm a negotiator." Officer Simonsen said, "Come on man, we can help you." Officer Blevens said, "We are here to help you okay." Juarez turned to look back at Officer Spiegel. Juarez continued to hold the knife in his right hand.

⁷ The summary of the body camera video recording will only cover from the start of the recording through the lethal force encounter.

PUBLIC RELEASE MEMORANDUM

STAR No. 2024-9304

August 13, 2024

Officer Blevens asked Juarez, "Hey what's your name. We're here to help you." Juarez looked toward Officer Blevens and responded, "Fuck you guys!" Juarez looked at Officer Spiegel and said, "Just shoot me!" Officer Simonsen told Juarez, "No, we can help you." Officer Blevens again asked Juarez what his name was. Officer Simonsen told Juarez, "Don't do it man, don't do it man. Please let us help you." Officer Blevens asked, "What's your name?" Officer Spiegel said, "Robert."

Officer Blevens continued to negotiate with Juarez. Officer Blevens tried to get Juarez to talk to her and to drop the knife. Juarez looked towards his residence and said, "Shut the door." Officer Blevens told Juarez, "Robert let's talk." Again, Juarez said, "Shut the door." Officer Blevens asked Juarez what was going on and attempted to find out why Juarez was upset. Juarez repeated, "Shut the door." Officer Blevens could then be heard saying, "Shut the door, shut the door. He doesn't want any of you guys to see. He's trying to talk to us." Juarez could be seen moving erratically. Juarez quickly looked back and forth between Officer Blevens and Officer Spiegel. Juarez was pointing the knife toward the sky.

Officer Blevens told Juarez it was okay for him to drop the knife. Juarez could be seen spinning the knife in his right hand as he looked at Officer Spiegel. Juarez was facing Officer Spiegel. Juarez's right foot was back and his left foot was forward. Juarez's upper body was leaning forward toward Officer Spiegel. Officer Blevens continued with her efforts to communicate with Juarez and get him to drop the knife. Juarez could be seen pacing in the street, looking back and forth between Officer Blevens and Officer Spiegel. Juarez spun the knife in his right hand.

Officer Blevens said, "Robert, what's going on?" Officer Spiegel told Juarez, "Robert, talk to my partner." Juarez was looking at Officer Spiegel and said, "I see you." Juarez started walking toward Officer Spiegel. Officer Blevens said, "Robert, drop the knife." Officer Spiegel told Juarez, "Stop, stop stepping towards me Robert." Juarez laughed and spun the knife in his hand. Officer Blevens said, "It's okay. It's okay Robert. Robert." Officer Spiegel told Juarez, "Do not step closer Robert!" Officer Simonsen could be heard saying, "Robert, please man, we can help you." Officer Blevens said, "Robert, it's okay, drop the knife. It's okay. I know you're going through a lot."

Officer Spiegel could be heard saying, "Robert." Juarez responded, "Shoot me." Officer Spiegel told Juarez, "No, I don't want to do that." Juarez said, "Shoot me." Officer Blevens continued to try to talk to Juarez. Officer Blevens said, "Robert, Robert, just drop the knife. It's okay. Robert, it's okay, just drop the knife." An unknown female voice could be heard in the background saying, "Robert drop the knife." Officer Spiegel told Juarez, "See your mom's down the street. Drop the knife, Robert."

Juarez could be heard saying, "Shoot me." Officer Spiegel responded, "No. I don't want to shoot you." Juarez said, "Shoot me." Officer Spiegel told Juarez, "I don't want to shoot you. Drop the knife, Robert. Come on man. We will talk through this." Officer Blevens could be heard saying, "Robert, it's okay. It's alright. I know you're going through a lot. We're here to help you. You don't want to do this. We don't want to hurt you. Just talk to

me.” Juarez said, “Shoot me.” Officer Spiegel told Juarez, “I don’t want to shoot you.” Juarez said, “Shoot me.” Juarez walked toward Officer Spiegel and spun the knife in his right hand. Officer Spiegel walked backward away from Juarez.

Juarez could be seen looking at Officer Spiegel. Juarez said to Officer Spiegel, “Shoot me or I’m going to throw it.” Officer Spiegel told Juarez, “You better not throw it.” Officer Blevens said, “Robert, drop the knife.” An unknown female said, “Robert, please drop the knife.” Officer Blevens said, “Robert, please drop the knife. We are here to help you. It’s okay.” Juarez responded, “You can’t help me man.”

Officer Spiegel broadcasted over the radio, “He is threatening to throw it at me.” Officer Blevens continued to talk to Juarez. Officer Blevens told Juarez to drop the knife and everything will be okay. Officer Blevens reassured Juarez they did not want to hurt him and they were there to help. Officer Blevens told Juarez she put her firearm away and asked him what was going on and how she could help. Juarez continued to look back and forth between Officer Blevens and Officer Spiegel as he spun the knife in his hand.

Juarez looked at Officer Spiegel and said, “Shoot me.” Officer Spiegel responded, “No, talk to my partner.” Juarez stepped back with his right foot and leaned his upper body back. Juarez appeared to shift his weight back onto his right foot and wound up in a motion consistent with someone preparing to throw an object. Officer Spiegel fired his handgun one time toward Juarez. Juarez fell to the ground. Officers could be heard giving Juarez commands to drop the knife. Juarez had the knife in his right hand with the blade pointed toward the sky.

Officer Blevens, Officer Simonsen, and Officer Frisch

Officer Blevens, Officer Simonsen, and Officer Frisch were grouped together and their views of Juarez were from a similar angle. Their views were slightly different from that of Officer Spiegel who was standing alone during the incident under review.⁸

Officer Blevens told Juarez she put her firearm away. Officer Blevens told Juarez to talk to her. Officer Blevens told Juarez to drop the knife and assured him the officers did not want to hurt him. Officer Blevens tried to get Juarez to talk to her and repeatedly asked Juarez to drop the knife. Officer Blevens asked Juarez what was going on and asked how she could help. Juarez continued to look back and forth between Officer Blevens and Officer Spiegel.

Officer Blevens told Juarez her name was Yessenia. Juarez responded to Officer Blevens, “Sorry, Yessenia.” Officer Blevens asked Juarez to talk to her. Juarez looked

⁸ The body camera recordings of Officer Blevens, Officer Simonsen, and Officer Frisch were consistent with the summary of Officer Spiegel’s body camera recording. Therefore, only a brief summary of what Juarez was doing immediately prior to the lethal force encounter on those recordings will be summarized in this memorandum.

back and forth from Officer Blevens to Officer Spiegel. Officer Blevens told Juarez to drop the knife. Juarez looked at Officer Spiegel and spun the knife in his right hand. Officer Blevens continued to tell Juarez to drop the knife. She assured Juarez she wanted to help him. Juarez then took a quick step back with his right foot and leaned his upper body back. Juarez shifted his weight back onto his right foot and appeared to wind up in a movement consistent with someone preparing to throw an object. Officer Spiegel fired his handgun one time and Juarez fell to the ground.

WEAPONS

A kitchen knife was lying on the ground, southeast of Juarez's body, near the east curb line of Joni Lane. The handle of the knife had a wood grain appearance and the blade of the knife was silver in color. The handle of the knife was approximately four inches in length. The blade of the knife was approximately eight inches in length.

DECEDENT

AUTOPSY. Witness #5, Forensic Pathologist for the Coroner Division of The San Bernardino County Sheriff's Department, conducted the autopsy of Robert Juarez on January 4, 2023. Witness #5 determined the cause of death was gunshot wound of the head.

Gunshot Wound of the Head:

An entry wound was noted on the left parietal scalp, 3 inches from the top of the head and 3 inches left of mid line. It consisted of a $\frac{3}{8}$ inch circular defect. The direction of the wound path was from front to back, left to right, and slightly downward. There was no exit wound noted.

TOXICOLOGY. Femoral blood, heart blood, and vitreous fluid samples were collected from Robert Juarez on January 4, 2023.

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

- Ethanol – 178 mg/dL
- Blood Alcohol Concentration – 0.178 g/100mL
- Caffeine – presumptive positive
- Cotinine – presumptive positive

CRIMINAL HISTORY.

2010, 664/459 of the Penal Code, Attempt Second Degree Burglary. San Bernardino County court case number FSB1002820, a felony.

DE-ESCALATION

From the time Officer Spiegel saw Juarez holding a knife in his hand to when the lethal force encounter occurred was approximately six minutes. Officer Spiegel, Officer Simonsen, and Officer Blevens were the first officers on scene. The officers were wearing Redlands Police Department uniforms identifying them as law enforcement officers. There were multiple attempts by the officers to de-escalate the incident.

Officer Spiegel and Officer Simonsen gave multiple verbal commands to Juarez to drop the knife. Officer Blevens was experienced in crisis negotiation and took the primary role in communicating with Juarez. Officer Blevens tried to get Juarez to tell her what was wrong. She reassured Juarez the officers were there to help him and continued to try to get Juarez to drop the knife he was holding in his hand. During this time, Juarez would focus his attention on Officer Spiegel. Officer Spiegel maintained his distance from Juarez and tried to redirect Juarez's attention back to Officer Blevens.

During the incident under review, Juarez told the officers to shoot him. Juarez spun the knife in his hand and refused to drop it. Juarez continued to take steps towards Officer Spiegel. Juarez told Officer Spiegel he was going to throw the knife at him. Officer Spiegel warned Juarez to stop moving towards him. Juarez told Officer Spiegel to shoot him. Officer Spiegel responded by telling Juarez he did not want to shoot him. Officer Spiegel told Juarez his mother was down the street and told him to drop the knife. Juarez was uncooperative and continued to tell Officer Spiegel to shoot him. Officer Spiegel tried to de-escalate by maintaining his distance from Juarez and repeatedly telling Juarez he did not want to shoot him.

The officers' attempts to de-escalate also included discussions of less-lethal force options. Officer Blevens and Officer Simonsen discussed whether to use a Taser. Given that the weather was windy and raining, Officer Simonsen ultimately decided the Taser was not a viable option. There was also a risk that if the Taser did not work, Juarez could become more violent. Officer Simonsen then decided to wait, giving the officers additional time to de-escalate. Officer Simonsen also had made a request for another unit to bring a rifle and possibly a 40 mm less-lethal launcher to the scene.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)⁹ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

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

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

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

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

⁹ All references to code sections here pertain to the California Penal Code.

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

While the appearance of these principals was new to section 835a in 2020,¹⁰ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra.*) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

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

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis, but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;¹¹
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

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

¹¹ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

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

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

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

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

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

(Penal C. §835a(e)(2).)

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

The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

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

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

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a "reasonable police officer" standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)¹² To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

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

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the "most important" *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of

¹² The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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 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.)

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. “[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed.” (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham v. Connor* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

Use of a Taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825[Taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed “lethal force” the instrumentality must be force that “creates a substantial risk of death or serious bodily injury.” (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a Taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.) Similarly, the use of a trained police dog does not qualify as “deadly force” as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 165-169.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject’s mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 831; *Deorle v. Rutherford*, *supra*, 270 F.3d at 1283-84.) Failure to pass-muster under *Graham* can deem the use of non-lethal force as “excessive” and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed “excessive” nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 Taser cycles where such was needed to gain physical control of him].)

ANALYSIS

In this case, Officer Spiegel had an honest and objectively reasonable belief that Juarez posed an imminent risk of serious bodily injury or death. Juarez had called 9-1-1 and advised he would hurt his girlfriend if law enforcement officers did not respond to his residence. Officer Spiegel was wearing a law enforcement uniform identifying him as a police officer with the Redlands Police Department and responded to the location in a marked patrol vehicle. When Officer Spiegel arrived at the location, he saw Juarez standing in the middle of the street holding a large kitchen knife in his right hand.

Officer Spiegel drew his firearm and ordered Juarez to drop the knife. Officer Spiegel gave several verbal commands to Juarez to drop the weapon. Officer Simonsen and Officer Blevens also told Juarez multiple times to drop the knife. Officer Spiegel and Officer Simonsen told Juarez they wanted to help him. Due to her experience in crisis negotiation, Officer Blevens took over the primary role of communicating with Juarez. Officer Blevens repeatedly asked Juarez to drop the knife and reassured Juarez the officers were there to help him. Juarez, however, was uncooperative and refused to drop the knife.

During the incident Juarez started to take small steps towards Officer Spiegel. As Juarez moved in Officer Spiegel's direction, Juarez twirled the knife in his hand. Juarez looked at Officer Spiegel and said, "I see you." Juarez told Officer Spiegel multiple times to shoot him. Officer Spiegel backed away and told Juarez he did not want to shoot him. Juarez then warned Officer Spiegel, "Shoot me or I'm going to throw it." Officer Spiegel told Juarez the officers could help him but Juarez responded, "You can't help me man."

The knife Juarez was holding had a blade that was approximately eight inches in length. Juarez would certainly have been able to seriously injure or kill Officer Spiegel with a knife of that size. During the incident under review, Juarez's demeanor was agitated and uncooperative. Juarez made no effort to comply with the officers' multiple verbal commands to drop the knife. Juarez's mother was present during the incident and also yelled for Juarez to drop the knife. Her pleas were unsuccessful.

Officer Blevens indicated Juarez told her, "Sorry Yessenia." Juarez then made a sudden step back with his right foot and leaned backward. It was objectively reasonable that Officer Spiegel thought Juarez was going to throw the knife at him. Juarez had already told Officer Spiegel he was going to throw the knife at him if he did not shoot him. Given those repeated threats, Officer Spiegel honestly and reasonably thought Juarez intended to carry out his threat when he took the quick step back with his right foot. It appeared to Officer Spiegel that Juarez was trying to position himself to have leverage to throw the knife. From the view of Officer Blevens, Officer Simonsen, and Officer Frisch, it appeared Juarez was preparing to attack Officer Spiegel. Given those circumstances, the decision by Officer Spiegel to use deadly force was justified.

CONCLUSION

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

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

