



## PUBLIC RELEASE MEMORANDUM

**DATE:** November 4, 2024

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

**Officers:** Officer K. L.  
Ontario Police Department

**Involved Subject:** Casey Cashen  
Date of Birth 11/13/1985

**Date of Incident:** December 20, 2021

**Incident location:** XXX North Vineyard Avenue  
Ontario, CA

**DA STAR #:** 2024-3437

**Investigating Agency:** Ontario Police Department

**Case Agent:** Detective Nick Lefler

**Report Number#:** DR# 211200808

### PREAMBLE

This was a fatal officer involved shooting by an officer from the Ontario Police Department. The shooting was investigated by the Ontario Police Department. This factual summary was based on a thorough review of all the investigative reports, photographs, body worn camera recordings, audio recordings, and video recordings submitted by the Ontario Police Department, DR# 211200808.

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**FACTUAL SUMMARY**

On December 20, 2021, at approximately 4:53 p.m., Incident location employee Witness #1 received a "911" call from room number XXX. Pursuant to hotel policy, Witness #1 went to room number XXX.<sup>1</sup> When Witness #1 arrived at the room, she observed that the window screen to the sliding glass window facing the walkway was off, and the window was open. Witness #1 heard a person inside the room screaming "I'm bleeding to death." Witness #1 looked inside the room and observed Casey Cashen holding Victim #1 around the neck while both were on the floor. Witness #1 heard Mr. Cashen make reference to a possible shooting and called 911.

Unknown to Witness #1, Mr. Cashen and Victim #1 had been involved in a physical fight for approximately twenty minutes. During the fight, Mr. Cashen refused to let Victim #1 leave and barricaded the door by placing a hotel chair between the door and a nearby dresser. While involved in the physical fight, Mr. Cashen stabbed Victim #1 multiple times causing superficial stab wounds.

In addition to a 911 call made by Witness #1, Mr. Cashen also called 911 after Witness #1 had responded to the hotel room. While there is a large amount of crying, yelling, and multiple voices on the call making it difficult to decipher, Mr. Cashen can be heard asking to speak with Sergeant Newland with the Ontario Police Department. During the call, Mr. Cashen can be heard saying "someone is going to get shot because I'm not going to be taken alive to get raped and someone has got to pay off her debt." Later in the call, Mr. Cashen says "someone's going to be shot!"

Ontario Police Department Officer K. L., Sergeant Jeff Wright, Corporal Andrew VanDuyne, Officer John Syfacunda, and Officer Andrew Gaxiola were subsequently dispatched to the incident location in reference to a possible shooting.<sup>2</sup> While officers were responding, dispatchers informed responding officers that a reporting party had said there was someone locked in a hotel room and that a woman had possibly been shot in the face. Dispatch further advised that the reporting party had not heard any shots fired. In addition to the above, dispatchers further advised responding deputies that the first reporting party indicated that she feared the woman was being held hostage, that she observed blood in the hotel room, and that she observed the male holding the female in a chokehold on the floor.

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<sup>1</sup> The incident location is a three-story hotel located on the east side of Vineyard Avenue south of the Interstate 10 freeway. Room XXX was located on the south side of the hotel on the first floor. There was a hallway along the side of the rooms which was slightly elevated from ground level with a wall and plants dividing the hallway from the parking lot. Room XXX's doorway wall had a sliding glass window that faced the parking lot. The window was just right of the door. The room was registered to Victim #1.

<sup>2</sup> Officer K. L. was the only officer to use force against Mr. Cashen.

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In the meantime, dispatch received the second 911 call from Mr. Cashen. Dispatchers relayed to responding officers that a woman had possibly been raped and that this reporting party was screaming.

Officer K. L. arrived at the scene approximately five and a half minutes after being dispatched. Officer K. L. was met in the hotel parking lot by hotel employees who provided him with a key, directed him to the room, and told him Victim #1 was possibly being choked. Prior to going to Room XXX, Officer K. L. relayed over the radio that “apparently someone is getting choked in the room.”

Officer K. L. walked up to the open window and observed Mr. Cashen holding Victim #1 around the neck. Officer K. L. gave commands to Mr. Cashen directing him to let go of Victim #1. Mr. Cashen refused to let Victim #1 go. Mr. Cashen had a knife near his right hand, which he picked up. In response to Mr. Cashen arming himself, Officer K. L. retrieved his duty weapon and pointed it at Mr. Cashen. Officer K. L. relayed over the radio: “He has a knife—one at gunpoint.” Mr. Cashen held Victim #1 in a position between himself and Officer K. L.

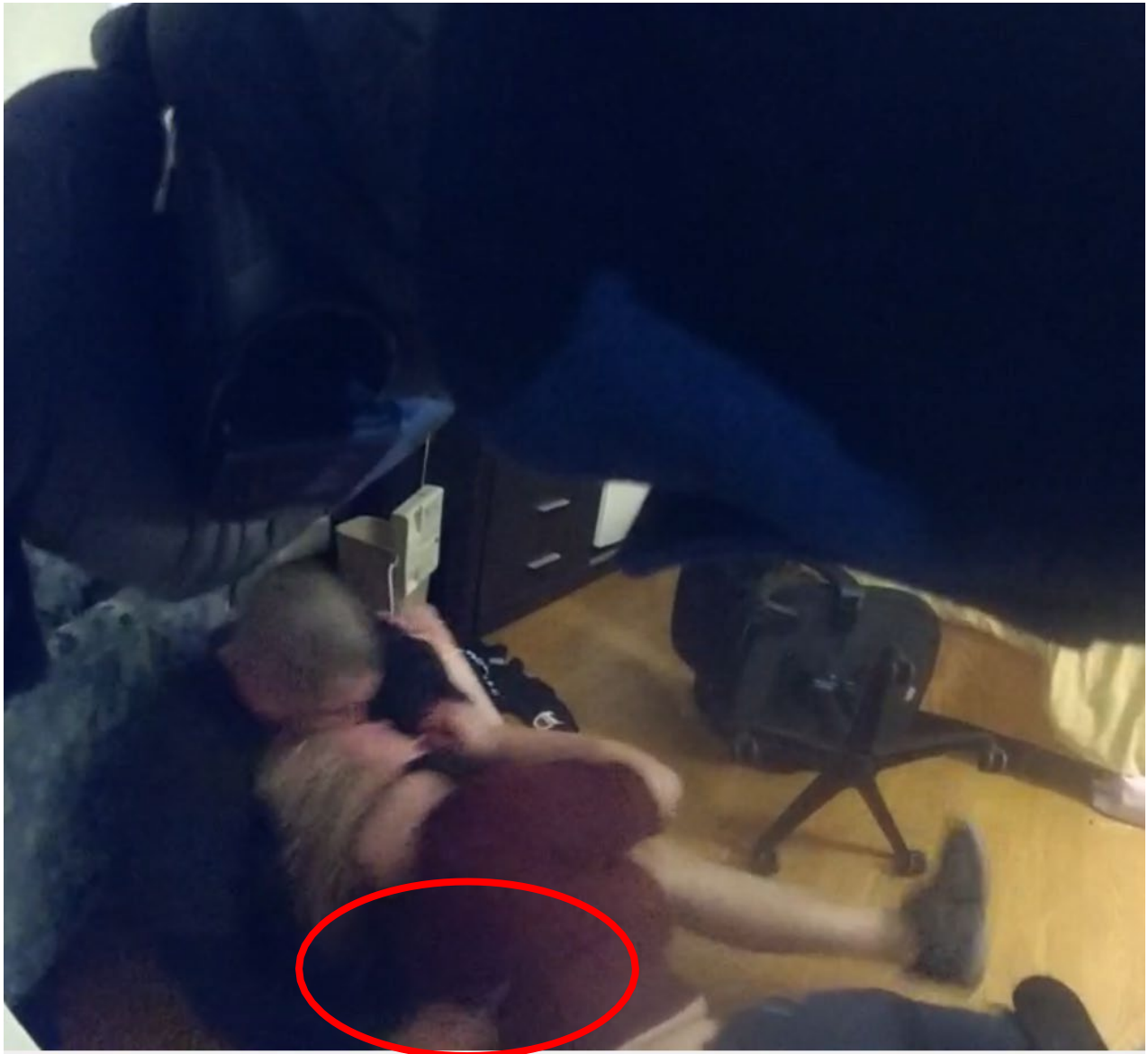
Officer K. L. attempted to negotiate with Mr. Cashen for approximately two minutes and thirty-nine seconds. Negotiations ended when Mr. Cashen began stabbing Victim #1. While somewhat blurry, the screenshot below is taken from timestamp 17:03:31 from Officer K. L.’s bodycam. The screenshot shows Mr. Cashen with the knife in his right hand as he was attempting to plunge it into Victim #1’s back. Officer K. L. fired his weapon immediately after Mr. Cashen attempted to stab Victim #1:

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Officer K. L. fired eleven rounds from his duty weapon in response to Mr. Cashen's actions during an approximately three second time period. Mr. Cashen was struck by eight rounds. Mr. Cashen was pronounced deceased at the scene.

While processing the scene, investigators located a folding knife with a black handle in the immediate vicinity of Mr. Cashen behind the hotel room door. The blade was extended and was approximately three inches long. A photograph of the knife recovered at the scene is immediately below:

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There was suspected blood on the knife blade. Eleven 9-millimeter fired cartridge casings were also located near Victim #1 and within the hotel room. Inside of a dresser drawer within the hotel room, investigators located approximately 20 grams of suspected fentanyl with packaging.

Victim #1 was transported to San Antonio Regional Hospital for treatment of her injuries. Victim #1 had numerous injuries on her body. She had a contusion on her forehead, a cut on her tongue, bleeding from her left ear that she believed was the result of a stab wound to her ear canal, an apparent stab wound on her right upper arm, scratches and light cuts on her right forearm which appeared to have been caused by a knife, a bruise on her right forearm, an incision on her right thumb, an incision on her right pinky, an incision on her neck under her chin, scratches on her neck which appeared to have been caused by a knife, a bruise on her left forearm, a light incision on the outside of her left hand, a broken nail on her left middle finger, scratches on her left forearm, an apparent puncture/stab wound on her right upper thigh, and an apparent stab wound to her right shin.

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**STATEMENTS BY POLICE OFFICERS**

Officer K. L. was interviewed on December 27, 2021, by Detective Nicholas Lefler. Officer K. L. informed investigators that, as of the date of the incident, he had been a sworn peace officer in the State of California for approximately seven years. On the day of the incident, Officer K. L. stated he was wearing a department issued uniform, which included his body worn camera. He was also equipped with a taser, mace, flashlight, SAP in his left pocket, and his department issued firearm. As part of his duties, Officer K. L. carried a department issued Glock 17 9-millimeter firearm. Officer K. L. was also wearing a radio earpiece in his left ear.

With respect to the incident, Officer K. L. stated he was dispatched to a call for service at the Incident location in reference to either a female or male that was shot. He stated dispatch made reference to a possible rape as well. Officer K. L. stated that when he arrived at the location, he contacted several individuals in front of room XXX. At least one of them was wearing a shirt with the logo for the hotel. He obtained a key to the room from one of the individuals. One of the females in the group stated: "They're in there. He's choking her."

As Officer K. L. walked toward the hotel room, he observed the screen was off of the sliding-glass window. Officer K. L. approached the window and stated that he was thinking: "If he's choking her, they're probably going to be on the bed. She's going to be on the bed and he's going to be on top of her." He thought this would present the opportunity to use his Taser to minimize the threat. Officer K. L. stated he reached toward his left side where he carried his Taser as reassurance that the device was there. Officer K. L. stated he ran through other scenarios in his head in which the Taser would not be a reasonable option, such as if the individuals were located out of range toward the back of the hotel room.

As Officer K. L. approached the window, he stated he did not hear any noise coming from inside the room. He made a quick glance into the room at which point he confirmed that the individuals were not on the bed and not toward the back of the room. In his peripheral vision, he observed the two on the ground near the door and the sofa pushed up against the door. He observed Mr. Cashen with his arm around Victim #1's neck. Officer K. L. stated he observed Mr. Cashen squeezing his fist into a ball and it "looked like he was constricting his hand tightly around her neck." According to Officer K. L., "[t]he woman's face was red, and her eyes looked like they were going to pop out of her head."

Officer K. L. stated he proceeded to give Mr. Cashen commands to let Victim #1 go. Officer K. L. stated Mr. Cashen looked at Officer K. L. and said, "shoot me." Officer K. L. stated he replied: "I don't want to shoot you." Officer K. L. observed the knife in Mr. Cashen's right hand. At this point,

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Officer K. L. stated he heard a voice in his head say "shoot, shoot." Instead, he stated he paused and assessed the situation. Because the knife was pointed down toward Mr. Cashen's feet, and Mr. Cashen was not actively displaying the knife, Officer K. L. believed he might be able to de-escalate the situation. Officer K. L. continued to give commands to drop the knife. Officer K. L. stated Mr. Cashen "just looked at [him]." Officer K. L. could see the whites of Mr. Cashen's eyes and could observe that Mr. Cashen was under the influence of a controlled substance.

Through prior trainings, Officer K. L. had learned that situations like this are often cries for help, which is why he did not immediately shoot Mr. Cashen. Officer K. L. realized that his aggressive commands were not working to de-escalate the situation, so he tried talking to Mr. Cashen in a friendlier tone. Officer K. L. stated he talked to Mr. Cashen about options available for him and getting through the situation. He stated this approach seemed to be registering with Mr. Cashen. He stated a look of desperation came over Mr. Cashen and Mr. Cashen started crying. Mr. Cashen put the knife down even though he still had a very firm grip around Victim #1's neck. As Officer K. L. began to ask Victim #1 if she could breathe, Mr. Cashen began making statements, such as, "I don't want to get raped. Not until the debt is paid." Mr. Cashen quickly picked the knife back up and Officer K. L. continued to give commands to drop it.

As Mr. Cashen picked the knife up, Officer K. L. feared again that Mr. Cashen was going to stab Victim #1. Officer K. L. estimated he told Mr. Cashen to drop the knife between 10 and 20 times. Officer K. L. stated he had not given up on de-escalation at that point and thought he could convince Mr. Cashen to drop it again.

As Officer K. L. continued to try to de-escalate, Mr. Cashen grabbed Victim #1 even tighter around the neck and tucked his head lower and at an angle as though he was whispering something to Victim #1. Mr. Cashen clenched his fist tightly and began to cry. Officer K. L. believed Mr. Cashen was saying his last goodbyes to Victim #1. Mr. Cashen then quickly moved his head back, reached his right arm back loading up to stab Victim #1, and began lunging toward her with the right hand. At this point, Officer K. L. discharged his firearm. As he discharged his weapon, Mr. Cashen continued his attack on Victim #1. Eventually, Mr. Cashen fell backward and on his side, which allowed Officer K. L. to reassess the situation.

After Mr. Cashen fell to the side, Officer K. L. gave Victim #1 commands to crawl away from Mr. Cashen. Officer K. L. reloaded his weapon by putting a fresh magazine into the magazine well. Officer K. L. entered through the open window. Instead of holding Mr. Cashen at gun point, Officer K. L. attempted to render aid to Mr. Cashen. Officer K. L. also handcuffed Mr. Cashen.

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At the time of the shooting, Officer K. L., Sergeant Jeff Wright, Corporal Andrew VanDuyne, Officer John Syfacunda and Officer Andrew Gaxiola were present on scene. Officer K. L. was the only officer with direct line of sight with Mr. Cashen due to Officer K. L.'s presence at the open hotel room window. Officer K. L. was also the only officer involved in the lethal force encounter.

**STATEMENTS BY CIVILIAN WITNESSES**

**Victim #1**

Ontario Police Department Officer Palmer and Detective Mena interviewed Victim #1. Victim #1 told investigators she was Mr. Cashen's girlfriend and that the two had been in a dating relationship for approximately two years prior to the incident. Approximately two days prior to the officer involved shooting, Mr. Cashen was released from a United States Department of Veteran's Affairs mental health facility. Mr. Cashen had been self-admitted at the facility after he had been acting strangely. Mr. Cashen continued to act strangely after being released. Victim #1 described Mr. Cashen as hearing and seeing things that were not there. According to Victim #1, Mr. Cashen had been diagnosed as having manic bipolar disorder. She also believed he was schizophrenic and possibly suffered from post-traumatic stress disorder. Victim #1 indicated that Mr. Cashen was supposed to be taking psychiatric medication. He rarely took his medication as prescribed, however. According to Victim #1, Mr. Cashen had not slept and had not taken his medication in the two-day time period between being released from the facility and having contact with law enforcement.

On the day of the incident, Victim #1 reported that both herself and Mr. Cashen had used methamphetamine and fentanyl. This was also the first time that Mr. Cashen had been violent toward Victim #1. At around 3:45 p.m. to 4:00 p.m. that day, Mr. Cashen began acting paranoid and accusing Victim #1 of betraying him. Mr. Cashen began making statements about Victim #1 setting him up and about being raped and tortured. Mr. Cashen proceeded to barricade the door to their hotel room using a chair, desk, and dresser.

Eventually, Mr. Cashen took out a knife and began threatening Victim #1 with it. Mr. Cashen was making statements that someone would have to shoot Mr. Cashen or Victim #1 would have to die. Victim #1 asked Mr. Cashen if he was going to hold her hostage. Mr. Cashen told her he was and that she better start telling him the truth. Victim #1 tried to leave, but Mr. Cashen began to physically fight with her. Mr. Cashen placed her in a choke hold and would not let her go. The fight continued for approximately 20 minutes until law enforcement arrived. Victim #1 believed she received numerous stab wounds during the fight with Mr. Cashen. Victim #1 said she was being choked to the point of nearly going unconscious. During one of the choking incidents, Victim #1 lost control of her body and urinated in her pants.



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As the assault continued, Mr. Cashen called the front desk of the hotel and stated that there was a woman who was bleeding to death. Shortly after, Victim #1 stated someone from the front desk looked in through the open window and Victim #1 asked her to call 911. Mr. Cashen then used the room phone to call 911 as the hotel employee also called 911 from her cellphone.

Once law enforcement arrived, Mr. Cashen began communicating with officers. Victim #1 believed Mr. Cashen was going to use the knife to kill her. Victim #1 could hear the officers giving Mr. Cashen commands, and heard the officer say that the officer did not want to hurt Mr. Cashen. Immediately prior to the gunshots, Victim #1 felt Mr. Cashen squeeze her neck. After the shooting, Victim #1 was directed by the officer to move away from Mr. Cashen, and she remembered that the officers had to enter the room through the window because the door was barricaded. As a result of the assault by Mr. Cashen, Victim #1 sustained several sharp force injuries to her neck, ear, chest, thigh, shin, right arm, and hands.

**Witness #1**

Detective Ryan Holmes interviewed Witness #1 on December 23, 2021, via telephone. Witness #1 explained that she was the manager on duty on the night of the shooting and had been alerted that someone in the room called 911. Witness #1 went to the room with another manager and maintenance employee as is customary since 911 calls are accidentally made when customers try to call out of the room using the room's landline phone.

Witness #1 said she and her manager went to the room where they found the window open and could see a female and male sitting on the floor. Witness #1 said when she first looked in the window, she could see that the male was sitting on the floor facing the window and it appeared he was holding the females head up as she was laying on the floor in front of him on her side. Witness #1 described the male as hugging the female from the side. Witness #1 said it appeared the female was hurt, and the male was helping her. Witness #1 said she stepped away from the window for a minute or so then returned to the room and recontacted the male and female through the window.

The second time she came to the window she heard the female screaming for help and Witness #1 realized the male was holding the female down. She described the male holding the female down as the male's left arm across the neck of the female and his right arm across her chest. Witness #1 heard the female scream for help and saying she was going to bleed to death. Witness #1 did not see any blood coming from Victim #1 but did see blood on the floor in front of Victim #1's face.

Witness #1 did not see any weapon or knife in the room or near the male. Witness #1 added that as she spoke to the male, he did not appear to be ok, he appeared to be on drugs of some sort. Witness #1 said the male was saying things like, "She's gonna

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pay, she needs to pay;" Witness #1 could not recall any other specific phrases the male said.

After this encounter with both the male and female, Witness #1 and the other manager backed away from room XXX and into the parking lot where they proceeded to call 911. Witness #1 said police and fire arrived minutes later and she watched as an officer walked to the window and began speaking with the subjects inside. Witness #1 said she could not hear the conversation with the subjects and the officer but did hear the officer say, "don't do this, you don't need to do this, don't make me do this". Witness #1 said she and her other manager left because she did not want to be a part of what was going on. Twineham and her manager walked back to the front office. She did not hear any gunshots and wasn't aware of what transpired until later.

**INCIDENT VIDEO**

**BODY WORN CAMERA FOOTAGE.** Officer K. L. and the other responding officers 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. Based on the positioning of Mr. Cashen and Victim #1 in the hotel room, only Officer K. L.'s body worn camera captured the lethal force encounter. All body worn video recordings were reviewed in their entirety.

Officer K. L.'s body worn camera recording begins with Officer K. L. driving his patrol vehicle. The recording begins at 16:59:26, and the first 30 seconds of the video do not include sound. The video records these 30 seconds before the officer activates the recording. This portion of the video is referred to as "buffering."

During the buffering portion of the video, Officer K. L. appears to be driving northbound on Vineyard Avenue passing a sign for the Doubletree Hotel on in the righthand side of the screen. He then continues northbound through the intersection of Vineyard Avenue and Convention Center Way.

At 16:59:52, Officer K. L. makes a right hand turn into the parking lot of the Incident location. At 16:59:55, he activates his body worn camera, at which point the sound begins. As he drives into the parking lot, an Ontario Fire Department Medic Engine can be seen stopped in the parking lot, Officer K. L. proceeds past the fire truck on the south side of the parking lot, where he ultimately parks his police vehicle, and gets out of the vehicle at 17:00:09.

Officer K. L. walks eastbound through the Incident location parking lot toward a group of bystanders. He is told by one of the people in the group that "they're both on the floor." At 17:00:26, one of the bystanders provides Officer K. L. an access keycard for the room. After being provided the keycard, Officer K. L. walks northeast through the parking lot and up a short flight of stairs leading to the first-floor walkway. While walking, Officer K. L. makes a radio transmission over the

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police radio, stating: "5-1, they're advising they're still on the floor. I got a key, and apparently someone's getting choked in the room."

As Officer K. L. turns eastbound to proceed down the walkway to the room, a window screen can be seen leaning up against the exterior wall of the building outside of room XXX. As he arrives at the window of room XXX at 17:00:52, a white curtain can be seen blocking the view into the room, however the window is open. Crying can be heard from inside the room through the open window.

Officer K. L. reaches into the room with his left hand to pull the curtain open. After moving the curtain, Officer K. L. addresses the occupants of the room before they appear in the view of the camera, asking "What's going on, man?" Crying can be heard coming from Victim #1 as Officer K. L. continues speaking. Officer K. L. orders Mr. Cashen to let Victim #1 go. There is a brief exchange between Officer K. L. and Mr. Cashen during which time Mr. Cashen tells Officer K. L. to "shoot me" two times.

At 17:01:04, Officer K. L. turns, and his body worn camera captures the first image of Victim #1 and Cashen. Mr. Cashen can be seen laying on the floor just inside the room, only a few feet away from where Officer K. L. was standing. Mr. Cashen was laying down on the floor with his head and shoulders propped up against a blue sofa style chair which was wedged between a desk and the hotel room door. This chair appears to be placed in its location as a barricade to prevent the door from being opened. Victim #1 is laying face up on Cashen's lap. Her head and shoulders are against his torso, and Mr. Cashen has his left arm wrapped around Victim #1's neck.

At 17:01:06 Officer K. L. draws his firearm using his right hand, pointing it in the direction of Mr. Cashen. While drawing his firearm, Officer K. L. can be heard yelling at Mr. Cashen: "Hey man, hey, don't fucking do it! Don't do it man! Hey! Drop the fucking knife!"

At this point in the video, Mr. Cashen's right hand is not visible to the body worn camera. Mr. Cashen's left arm is still wrapped around Victim #1's neck, and he is holding Victim #1 in position between him and Officer K. L.. Victim #1 is screaming during this time. Victim #1 also tells Officer K. L. not to shoot, and not to kill Mr. Cashen.

Officer K. L. advises police dispatch that he has Mr. Cashen at gunpoint, and Mr. Cashen is holding Victim #1 at knife point. Officer K. L. then warns Mr. Cashen to drop the knife or Officer K. L. would shoot him. Officer K. L. continues giving Mr. Cashen commands to drop the knife and let Victim #1 go. At 17:01:23, Officer K. L. tells Mr. Cashen twice that "I don't want to do this to you."

As this interaction is occurring the sound of approaching sirens from responding police units can be heard in the background of the body worn camera. Officer K. L. again updates police dispatch of the circumstances on scene via the police radio, that Mr. Cashen was not letting Victim #1 go.

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Mr. Cashen maintains control of Victim #1 with his left arm wrapped around her neck as Officer K. L. continues giving him commands and tries to start a dialogue with him. Officer K. L. says, "Hey, I will fucking shoot you man, I don't want to do this to you. Let her go! Go over there and lay down, bro. It ain't that big of a deal, it's not that big of a deal."

Mr. Cashen replies: "It is that big of a deal."

Officer K. L. quickly responds: "No man, we can figure this out, dude." Mr.

Cashen asks "yeah?"

Officer K. L. responds "We can figure this out, alright? Just relax, take a deep breath, alright? Do me a favor, bro, you gotta move away from that knife, G, please, I don't wanna do anything to you, we can get this shit figured out. You get what I'm saying?"

Mr. Cashen then tells Officer K. L.: "I don't want to be raped bro. Until the debt's paid."

Officer K. L. tells Mr. Cashen: "No, nobody's trying to rape you, bro."

Mr. Cashen grimaces and appears to be about to cry. Officer K. L. addresses him again, telling him: "Look at me, what's your name, bro?"

Victim #1 then tells Officer K. L., "Casey!" At the same time, Mr. Cashen tells Officer K. L., "Casey Cashen."

Officer K. L. then says, "Hey, do me a favor, are you doing okay, Daisy?" Officer K. L. appears to have mistaken Victim #1's response of "Casey" for "Daisy" and is checking on Victim #1's welfare. Officer K. L. further asks Victim #1, "Can you breathe? Are you alright?"

During this time, Mr. Cashen remains in the same position, controlling Victim #1's neck by keeping his left arm wrapped around it. Victim #1 responds to Officer K. L., however her response is inaudible, as she remains crying.

Officer K. L. keeps giving Mr. Cashen commands, saying "Hey dude, let go of, move away from her, alright?"

As Officer K. L. says this, Mr. Cashen tells Officer K. L., "I want to talk to David Newland."<sup>3</sup> After Mr. Cashen says this, Victim #1, Mr. Cashen, and Officer K. L. are all talking over each other, and it is difficult to discern who they are talking to and what they are saying. After this Officer K. L. again begins giving verbal commands to Cashen, "Don't reach for that knife, let her go bro."

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<sup>3</sup> David Newland is an Ontario Police Department sergeant. Investigators later learned that Mr. Cashen had contacts with Sergeant Newland in the past.

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Officer K. L. also repeatedly tells Mr. Cashen: "It's not that serious." Around this time, 17:02:33, Officer K. L. can be heard telling another officer, "He has it in his hands." After this, Officer K. L. again attempts to ask Mr. Cashen what his name is. Victim #1 tells Officer K. L.: "His name is Casey."

Officer K. L. again tells Mr. Cashen: "Casey, it's not that big of a deal, Casey." Mr. Cashen tells Officer K. L.: "It is though, bro."

Officer K. L. tells Mr. Cashen: "No, you need to drop that knife, Casey. I don't want to do this, bro. You need to let her go, you need to let her go, Casey." Victim #1 can be heard saying: "Please don't hurt him."

As Officer K. L. continues telling Mr. Cashen to "let her go," Mr. Cashen again requests to speak with Sergeant Newland, and Victim #1 echoes Mr. Cashen's request for Sergeant Newland.

Officer K. L. again tells Mr. Cashen to drop the knife so they can talk. Officer K. L. attempts to negotiate with Mr. Cashen, telling him: "We can talk if you drop that knife."

Mr. Cashen then grimaces his face, and yells something that sounds like "it never ends!" and "the blood is on their hands!" Mr. Cashen repeats this twice, the second time, he yells it, Mr. Cashen appears to be yelling this in the direction of the hotel room door, which is where responding officers had positioned themselves, in an attempt to access the room.

Officer K. L. can be heard again telling officers outside of the room that Mr. Cashen has the knife in his right hand. Officer K. L. then gives Mr. Cashen numerous commands to drop the knife, as Mr. Cashen moves his face toward Victim #1's head. Mr. Cashen's jaw appears to be moving as if he is whispering something to Victim #1. Officer K. L.'s body worn camera does not pick up any audio of what Mr. Cashen is telling Victim #1.

As Officer K. L. is ordering Mr. Cashen to "Drop the fucking knife!" at 17:03:31, Mr. Cashen begins rapidly moving his right fist with the knife toward Victim #1's back. At this time, Officer K. L.'s body worn camera captures the first image of the knife which is in Mr. Cashen's right fist. The blade of the knife can be seen pointing directly at Victim #1. Victim #1 is still lying in Mr. Cashen's lap, facing slightly to the left. Victim #1 is looking away from the knife and based on her positioning, would have been completely unable to defend herself from Mr. Cashen as he began attempting to stab her.

Almost simultaneously, as Mr. Cashen's fist and knife contact Victim #1 back, Officer K. L. begins discharging his firearm. The first round fired by Officer K. L. is discharged at 17:03:32. In quick succession, Mr. Cashen makes three rapid swings of his arm, stabbing at Victim #1 with the knife.

Mr. Cashen and Victim #1 begin rolling to their left, exposing more of Mr. Cashen's right side to Officer K. L. and the camera view. Mr. Cashen pulls his right arm back as Officer K. L. discharges four more rounds from his firearm. The timestamp on

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the video still reads 17:03:32. At this point in the video, Mr. Cashen is still grasping Victim #1 around the neck and head with his left arm. His right hand, still holding the knife pointed at Victim #1, is just behind Victim #1's head. Victim #1 remains in a position where she is unable to defend herself against Mr. Cashen's ongoing knife attack. Mr. Cashen begins to rotate his torso away from Officer K. L. in what appears to be an attempt to use Victim #1 as a shield. As he does this, his right arm thrusts the knife toward Victim #1's head/shoulder area.

Mr. Cashen continues rotating his body to the left away from Officer K. L. while Officer K. L. continues to fire his firearm. As he is being struck by gunfire, Mr. Cashen is unable to keep Victim #1 in his arms. At 17:03:34, Victim #1 is no longer in Mr. Cashen's arms, however she is still within reach of Mr. Cashen. Officer K. L. continues firing at Mr. Cashen. As he is struck by gunfire, his grip on Victim #1 loosens and she is able to start moving herself away from Mr. Cashen. The timestamp on the video is 17:03:35 when Officer K. L. stops firing at Mr. Cashen.

After Officer K. L. stops firing, Mr. Cashen continues to slowly roll to his left, with his empty left hand visible above his right shoulder. Mr. Cashen then remains motionless as Victim #1 sits up and begin moving away from him. Officer K. L. can be heard communicating with officers on scene "yeah, I'm good." He then immediately gives Victim #1 directions to move away from Mr. Cashen to the east side of the room. Victim #1 can be heard screaming as she crawls on her hands and knees to the southeast corner of the hotel room. Officer K. L. keeps Mr. Cashen at gunpoint.

Based on the video evidence, from the time Officer K. L. fired the first round in this incident, to the time he fired his last round was approximately three seconds. Officer K. L. fired 11 rounds. Mr. Cashen's feet and legs continue to move slightly, as Officer K. L. gives commands, "Don't move!" Officer K. L. can be heard communicating with the other officers on scene, telling them Mr. Cashen was face down on the ground, and that he did not know where the knife was at.

At this time, 17:03:53, Officers can be heard attempting to breach the hotel room door. Victim #1, while crying, can be heard saying, "the door is barricaded." As officers continue to try and force the door open, Victim #1 again tells Officer K. L. that the chair is in the way.

At 17:04:10, Officer K. L. can be heard coordinating a plan to have another officer hold Mr. Cashen at gunpoint so Officer K. L. can safely make entry into the room through the window. At 17:04:19, Officer K. L. enters the room through the window and immediately moves toward Mr. Cashen. After making contact with Mr. Cashen, Officer K. L. immediately begins securing Mr. Cashen in handcuffs. As he is doing so, other Officers can be heard entering the room through the window. At 17:04:34, Mr. Cashen is secured into handcuffs. Simultaneously, Officers can be heard formulating a plan to clear the rest of the room, while Officer K. L. begins to roll Mr. Cashen over to begin providing medical aid.

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At 17:05:08, Officer K. L. checks Mr. Cashen for a pulse, and at 17:05:22, he begins performing CPR on Mr. Cashen. He performs approximately 30 chest compressions and checks for a pulse. He then begins a second cycle of CPR. He checks for a pulse again and begins communicating with officers where Mr. Cashen appears to be hit, noting that Mr. Cashen has "some shallow breathing." Corporal VanDuyne can be heard telling Officer K. L., "We got it," taking over medical treatment for Mr. Cashen.

At 17:06:08, Officer K. L. walks out of the hotel room. He walks westbound down the breezeway with Sergeant Wright. As they walk westbound away from the room, Officer K. L. deactivates his body worn camera at 17:06:19.

**WEAPONS**

A black folding knife with a silver blade extended approximately three inches long was located in the immediate vicinity of Mr. Cashen behind the hotel room door. The knife had suspected blood on it when located by investigators.

**DECEDENT**

**AUTOPSY.** Dr. Diana Geli, Forensic Pathologist for the Coroner Division of the San Bernardino County Sheriff's Department, conducted the autopsy of Casey James Cashen on January 3, 2022. Dr. Geli determined the cause of death was multiple gunshot wounds.

**Gunshot Wound of the Head:**

An entry wound was noted on the right parietal scalp, located 1 inch below the top of the head and 2 inches to the right of the posterior midline. It consisted of a 0.8 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 0.4 cm at the 6 o'clock positions and lacerations extending from its superior margin. The direction of the wound path is back to front, right to left, and downward. The projectile fragmented. One fragment exits the body through a 5.1 cm lacerated defect in the left occipital scalp. The other fragment exits the body through a 1.5 cm lacerated defect in the left temporal scalp.

**Gunshot Wound of the Chest**

An entry wound was located on the lateral aspect of the right lower chest, located 18 inches below the top of the head and 9 inches to the right of the anterior midline, is a 1.7 x 1.0 cm gunshot wound of entrance with an up to 2.0 cm wide marginal abrasion extending from the inferior margin. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound. The direction of the wound path is front to back, right to left, and upwards. The bullet injured the skin and subcutaneous tissues of the chest, anterolateral aspect of the right fourth rib, upper lobe of the right lung, and the right lobe

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of the thyroid gland before terminating in the neck within the right side of the thyroid cartilage. A jacketed bullet was recovered from the neck.

#### **Graze Gunshot Wound of the Abdomen**

A gunshot entry wound was located on the lateral aspect of the right lower abdomen, located 27 inches below the top of the head and 9 inches to the right of the anterior midline, is a 3.0 x 1.8 cm graze gunshot wound. The bullet injures the skin of the abdomen. Dr. Geli was not able to determine a direction of travel for the projectile.

#### **Gunshot Wound of the Abdomen**

An entry gunshot wound was located on the lateral aspect of the right lower abdomen, located 28 inches below the top of the head and 9 inches to the right of the anterior midline, is a 1.0 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 0.2 cm at the 7 o'clock position. The bullet injures the skin and subcutaneous tissues of the abdomen, right kidney, and the posterior aspect of the right 11<sup>th</sup> rib exiting the body through the right mid back. On the right mid back, located 20 inches below the top of the head and 2 inches to the right of the posterior midline, is a 1.0 cm lacerated gunshot wound of exit with a 4.3 x 3.5 cm surrounding deep blue and purple ecchymosis. A projectile was not recovered. The direction of the wound path is front to back, right to left, and upwards.

#### **Gunshot Wound of the Hip**

There is an entry gunshot wound on the anterolateral aspect of the right hip, located 29 inches below the top of the head and 9 inches to the right of the anterior midline, is a 1.5 x 1.2 cm gunshot wound of entrance with an up to 1.4 cm wide marginal abrasion extending from its superior margin. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound. The bullet injures the skin and subcutaneous tissues of the right hip, right kidney, and the posterior aspect of the right 11<sup>th</sup> rib before terminating within the soft tissues of the mid back. A jacketed bullet was recovered from the mid back. The direction of the wound path is front to back, right to left, and upwards.

#### **Tangential Gunshot Wound of the Hip**

There was a gunshot wound on the lateral aspect of the right hip, located 31: 1/2 inches below the top of the head and 10 inches to the right of the anterior midline, is a 6.3 x 2.5 cm tangential gunshot wound with tears pointing in the superoanterior direction. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound. The bullet injures the skin and subcutaneous tissues of the right hip. No projectile was recovered. The direction of the wound path is back to front and upwards with no significant right/left deviation.

#### **Gunshot Wound of the Back**

There is a gunshot entry wound on the left upper back, located 10 inches below the top of the head and 2 inches to the left of the posterior midline, is a 0.8 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 1.5 cm at the 4 o'clock position. The bullet injures the skin and subcutaneous tissues of the upper back before exiting the body through the left shoulder. On the superior aspect of the left shoulder, located 8 inches below the top of the head and 6 inches to the left of the anterior midline, is



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a 2.5 cm lacerated gunshot wound of exit with a surrounding 8.0 x 8.0 cm pink ecchymosis. The direction of the wound path is back to front, right to left, and upwards.

#### **Gunshot Wound of the Right Upper Arm**

There was a gunshot entry wound on the lateral aspect of the right proximal arm, located 2 inches below the top of the right shoulder, is a 0.7 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 0.4 cm at the 5 o'clock position. The bullet injures the skin and subcutaneous tissues of the right arm, right humerus, and the right scapula before terminating within the soft tissues of the upper back. A jacketed bullet was recovered from the upper back. The direction of the wound path is front to back, right to left, and downwards.

#### **Gunshot Wound of the Right Mid Arm**

A gunshot entry wound was located on the lateral aspect of the right mid arm, located 8 inches below the top of the right shoulder, is a 0.7 cm round gunshot wound of entrance with an eccentric marginal abrasion measuring up to 0.5 cm at the 5 o'clock position and a surrounding 4.0 x 3.0 cm pink ecchymosis. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound. The bullet injures the skin and subcutaneous tissues of the right arm and the right scapula before terminating within the soft tissues of the right upper back. A jacketed bullet is recovered from the right upper back. The direction of the wound path is front to back, right to left, and upwards.

#### **Gunshot Wound of the Right Forearm**

There is an entry gunshot wound the medial aspect of the right distal forearm, located 22 inches below the top of the right shoulder, is a 0.7 cm round gunshot wound of entrance with lacerated edges and a surrounding 3.5 x 3.5 cm faint pink ecchymosis. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound. The bullet injures the skin and subcutaneous tissues of the right forearm and the right ulna. On the lateral aspect of the right distal forearm, located 20 inches below the top of the right shoulder, is a 2.5 cm lacerated gunshot wound of exit with a surrounding 7.0 x 6.0 cm pink ecchymosis. No projectile was recovered. The direction of the wound path was left to right and upwards with no significant front/back deviation.

#### **Graze Gunshot Wound of the Right Thigh**

There is a gunshot entry wound on the lateral aspect of the right thigh, located 29 inches above the bottom of the right heel, is a 3.5 x 0.5 cm graze gunshot wound. No soot or gunpowder stippling is noted on the skin surrounding the gunshot wound. The bullet injures the skin of the right thigh. Dr. Geli was not able to determine a direction of travel for the projectile.

#### **Additional Injuries**

The bridge of the nose has a 0.5 cm laceration with surrounding pink contusion. The posteromedial aspect of the right forearm has a 2.5 x 2.0 cm faint pink contusion. The superomedial aspect of the left elbow has a 2.0 x 2.0 cm pink contusion. The posteromedial aspect of the left proximal forearm has a 4.0 x 3.0 cm pink contusion. The posterior aspect of the left distal forearm has a 2.5 x 2.5 cm pink contusion. The superomedial aspect of the left knee has a 2.5 x 2.0 cm pink contusion. The inferomedial aspect of the left knee has a

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2.5 x 1.5 cm pink contusion. The inferolateral aspect of the left knee has a 2.0 x 1.0 cm pink contusion. The anterior aspect of the distal left lower leg has a 2.0 x 0.7 cm abrasion.

**TOXICOLOGY.** Femoral blood, chest blood, vitreous fluid, and urine samples were collected from Casey Cashen on January 3, 2022.

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

- Amphetamine – 25 ng/mL
- Methamphetamine – 750 ng/mL
- Fentanyl – 270 ng/mL
- Norfentanyl –30 ng/mL

**CRIMINAL HISTORY.**

2010, 11378 of the Health & Safety Code, Possession for Sales. Los Angeles County case number POMKA08889401, a felony.

2010, 11550(a) of the Health & Safety Code, Under Influence of Controlled Substance. San Bernardino County Superior Court case number MWV1003792, a misdemeanor.

2014, 476 of the Penal Code, Making/Passing a Fictitious Check. San Bernardino County Superior Court case number FWV1403116, a felony.

2018, 11550(a) of the Health & Safety Code, Under Influence of Controlled Substance, and 11364, Possession of Drug Paraphernalia. San Bernardino County Superior Court case number MWV17023729, each a misdemeanor.

2018, 11550(a) of the Health & Safety Code, Under Influence of Controlled Substance. San Bernardino County Superior Court case number MWV17028452, a misdemeanor.

2018, 11364 of the Health & Safety Code, Possession of Unlawful Drug Paraphernalia. San Bernardino County Superior Court case number MWV17026077, a misdemeanor.

2018, 2800.2(a) of the Vehicle Code, Evading a Peace Officer, and 10851(a) of the Vehicle Code, Taking Vehicle Without Owner's Consent. San Bernardino County Superior Court case number FWV18001678, each a felony.

2018, 2800.2(a) of the Vehicle Code, Evading a Peace Officer. San Bernardino County Superior Court case number FWV18003589, a felony.

2019, 23152(f) of the Vehicle Code, Driving Under the Influence of a Narcotic/Drug. San Bernardino County Superior Court case Number MWV19014986.

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2019, 10851(a) of the Vehicle Code, Taking Vehicle Without Owner's Consent. San Bernardino County Superior Court case number FSB19002342, a felony.

2020, 148.9(a) of the Penal Code, Giving False Identification to Peace Officer. San Bernardino County Superior Court case number MWV20021563, a misdemeanor.

2020, 11377 of the Health & Safety Code, Possession of a Controlled Substance, and 11364, Possession of Unlawful Drug Paraphernalia. San Bernardino County Superior Court case number MWV20005848, each a misdemeanor.

**DE-ESCALATION**

From the time Officer K. L. first observed Mr. Cashen holding Victim #1 against her will at knife point to when the lethal force encounter occurred was approximately two minutes and thirty-nine seconds. Officer K. L. was the first officer on scene. Officer K. L. was wearing an Ontario Police Department issued uniform identifying himself as a law enforcement officer.

During his encounter with Mr. Cashen, Officer K. L. attempted to de-escalate the incident through multiple ways. Officer K. L. talked to Mr. Cashen through the open hotel room window. Officer K. L. gave Mr. Cashen multiple commands to drop the knife and then attempted to negotiate a peaceful end to the encounter.

In addition to attempting to negotiate a peaceful end to this encounter, Officer K. L. stated he considered using his taser. Based on Victim #1's positioning on top of Mr. Cashen between Officer K. L. and Mr. Cashen, Officer K. L. did not believe the taser would have been effective. Based on his training, he also knew that Mr. Cashen could still fight even if he were tased. For this reason, as well, pepper spray was not a reasonable option in Officer K. L.'s viewpoint. Mr. Cashen would have still been able to cause injury to Victim #1, potentially fight or stab officers, and capable of manipulating the knife to stab Victim #1. Once Mr. Cashen began to actively stab Victim #1 in front of Officer K. L., the officer had no further opportunities to attempt to de-escalate the situation or use less-lethal force options.

**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. (Pen. Code, § 835a(b).)<sup>4</sup> Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Pen. Code, §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Pen. Code, §835a(d).)

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<sup>4</sup> All references to code sections here pertain to the California Penal Code.

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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. (Pen. 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 at sections 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 section 196 states that homicide by a public officer is justifiable when it results from a use of force that "is in compliance with Section 835a." Section 835a specifies a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

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

(Pen. Code, § 835a(c)(1).) Discharge of a firearm is "deadly force." (Pen. 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." (Pen. Code, § 835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Pen. Code, § 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.*)

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While the appearance of these principals was new to section 835a in 2020,<sup>5</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code section 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. (Pen. 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. (Pen. Code, § 835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Pen. Code, § 835a(c)(2).)

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;

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<sup>5</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;<sup>6</sup>
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Pen. 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 §197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

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

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

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<sup>6</sup> Penal Code section 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).

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(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.

(Pen. Code, § 835a(e)(2).)

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

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

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

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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.)<sup>7</sup> To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

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

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

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<sup>7</sup> The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.



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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

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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 K. L. had an honest and objectively reasonable belief that Mr. Cashen posed an imminent risk of serious bodily injury or death to Victim #1. While responding to the scene, Officer K. L. had been provided information regarding a potential stabbing and possible rape at the location. Upon arrival and contacting hotel staff, Officer K. L. further learned that Mr. Cashen was holding Victim #1 against her will and possibly choking her.

When he responded to room XXX, he observed Mr. Cashen and Victim #1 on the ground with Mr. Cashen holding Victim #1 with his arm around her neck. Officer K. L. further observed Mr. Cashen with a knife in his right hand. Despite Mr. Cashen being armed, over the next two minutes and 39 seconds Officer K. L. repeatedly attempted to de-escalate the situation between Mr. Cashen and Victim #1. Officer K. L. repeatedly gave commands to Mr. Cashen to drop the knife. When those commands were not successful, Officer K. L. took a less aggressive approach to try to de-escalate the situation. When this approach appeared to be working, Officer K. L. continued to try and convince Mr. Cashen and to release Victim #1 from his grasp.

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Despite these efforts by Officer K. L., Mr. Cashen picked the knife back up and attempted to stab Victim #1 multiple times. A reasonable officer in the same situation would have likewise believed that Mr. Cashen had the present ability, opportunity, and intent to cause death or serious bodily injury to Victim #1 based on Mr. Cashen plunging the knife toward Victim #1's back. Officer K. L. did not shoot until Mr. Cashen began trying to stab Victim #1 and the fear became immediate and imminent. This threat required an immediate response to protect Victim #1's safety. Given these circumstances, Officer K. L. was justified in using lethal force to defend the life of Victim #1.

**CONCLUSION**

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

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