



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: November 26, 2024

SUBJECT: Officer Involved Death

Officer: Officer Jesse James
Montclair Police Department

Officer Sean Mackey
Montclair Police Department

Officer Natalia Magana
Montclair Police Department

Officer Allison Stevens
Montclair Police Department

Involved Subjects: Antonio Ibanez (Deceased)
Date of Birth **/**/**
Montclair, CA

Date of Incident: March 5, 2023

Incident location: **** Mission Blvd., Space **
Montclair, CA

DA STAR #: 2024-13231

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Ian Gosswiller

Report Number#: DR # 602300024 / H # 2023-030

PREAMBLE

This was an officer involved death investigated by the San Bernardino County Sheriff's Department. This factual summary is based on a thorough review of all the investigative reports, photographs, video recordings, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR # 602300024 / H # 2023-030.

FACTUAL SUMMARY

On March 5, 2023, at around 12:45 in the morning, Witness #1¹ called 9-1-1 to report a subject, later identified as Antonio Ibanez, may be under the influence of a controlled substance and vandalized her vehicle with a crowbar. Officer Allison Stevens and Officer Jesse James, from the Montclair Police Department responded to the call for service at **** Mission Boulevard, Space **, in the City of Montclair. Both officers were wearing Montclair Police Department uniforms and driving marked patrol vehicles.

When Officer Stevens arrived at the location, she spoke with Witness #1 through the use of a Spanish to English translation service. Officer Stevens determined Ibanez was renting a room from Witness #1 and was inside the residence. As Officer Stevens spoke with Witness #1, Ibanez came and stood near the front door. Officer Stevens and Officer James asked Ibanez to come outside and speak to them about what happened but Ibanez refused. Officer Stevens was able to obtain Ibanez's name and date of birth and conducted a records check through Montclair Police Department Dispatch. Dispatch advised Officer Stevens and Officer James that Ibanez had a no bail felony warrant for a drug offense. Officers requested Dispatch confirm the warrant. Dispatch determined the warrant matched a person with an alias associated with Ibanez and advised the officers the warrant was confirmed. Dispatch did not match the warrant to Ibanez's true name.²

Witness #1 gave the officers consent to enter the residence to speak to Ibanez. Officer Stevens, Officer James, Officer Sean Mackey, and Officer Natalia Magana all entered the residence. Officer Stevens and Officer James were the first officers to enter the home and make their way to Ibanez's bedroom. Officer James knocked on the bedroom door and opened it. Ibanez was seated on the bed. Officer James asked Ibanez to come and talk to them about what happened. Ibanez refused and told Officer Stevens and Officer James they could not come into his bedroom. Given the ongoing investigation into whether Ibanez committed an assault with a crowbar and/or threatened Witness #1, serious concern Ibanez may retrieve another weapon, and the

¹ Witness #1 shared the same last name as another witness. Therefore, she will be referred to by her first name in this memorandum.

² It was later discovered this information was incorrect. Ibanez did not have an active no bail felony warrant for his arrest.

information they had that Ibanez had a no bail felony warrant, Officer Stevens and Officer James entered Ibanez's bedroom and grabbed his arms to handcuff him.

Ibanez immediately tensed up and pulled his arms away from Officer Stevens and Officer James. Officer James told Ibanez not to pull away. Ibanez stood up and started pushing the officers off. Officer James tried to elbow Ibanez in the face. Ibanez pushed off the bed and moved his body backwards causing Officer James to fall. Ibanez turned and faced Officer James. Officer James tried to punch Ibanez in the face but missed. Ibanez turned away and started running towards the bedroom door.

Officer Magana and Officer Mackey heard a fight as they made their way inside the residence. When Officer Mackey reached the bedroom door, he saw Ibanez running directly at him. Officer Mackey believed Ibanez was about to assault him and struck Ibanez once in the face with a closed fist. Ibanez took a few steps backwards and fell into the closet with Officer James. Ibanez then got up and again ran towards Officer Mackey. Concerned that Ibanez was going to do anything to escape, Officer Mackey got out his baton and struck Ibanez in the right thigh. Ibanez fell to the ground and then tried to go out the bedroom window.

Officer James pulled out his Taser. Officer James did not want to deploy the Taser inside the bedroom because of the close quarters. Officer James did not want to tase another officer nor did he want to have a bad placement on Ibanez or miss completely. Therefore, Officer James decided to take the cartridge off of the Taser. Officer James tased Ibanez on his right side. During the first drive stun, Ibanez was actively fighting and trying to get out of the window. Six seconds later, Officer James initiated a second drive stun. After that, the officers were able to pull Ibanez inside and get him to the ground. Ibanez was on his back and still kicking, pulling his arms away, and actively resisting. Officer James tased Ibanez an additional two more times. Officer James indicated Ibanez said, "Okay, okay" after the third cycle but was continuing to resist.

During the fourth cycle, Officer James inadvertently tased Ibanez in the left chest area. Officer James was not aiming for Ibanez's chest and immediately pulled the Taser off of Ibanez and placed the Taser on the left side of Ibanez's body. According to Officer James, Ibanez was flailing around the entire time which caused the Taser to move around. As a result, the Taser would lift up from Ibanez's body and Officer James was unable to get a full five second cycle deployed. After the fourth cycle, Ibanez started to comply with the officers. Ibanez stopped kicking and throwing his arms around. Officer James holstered his Taser and the officers placed Ibanez in handcuffs. Ibanez complained he could not breathe.

Both Officer Mackey and Officer Stevens requested medical aid when they saw Ibanez bleeding from the nose. After Ibanez was handcuffed, the officers stood Ibanez up and walked him out of the house through the front door. The officers sat Ibanez down on the front steps. Ibanez was yelling and moaning. Ibanez complained he could not breathe and asked for water. Officer Mackey was able to get a bottle of water from the

residents and gave Ibanez some water to drink. The water did not appear to help Ibanez calm down. Ibanez still appeared agitated.

As the officers waited for the Montclair Fire Department personnel to arrive, Officer Magana expressed concern Ibanez was not breathing. Initially, Officer James told Officer Magana that Ibanez was okay and he could see Ibanez was breathing. Officers then noticed Ibanez appeared to take one last breath and his head tilted back. Sergeant Michael Pena, who arrived after the physical altercation in the bedroom, told the officers to unhandcuff Ibanez, place him in the recovery position³, and check for a pulse.

As the officers checked Ibanez for a pulse, Montclair Fire Department personnel arrived at the scene and started to render aid to Ibanez. Paramedics started cardiopulmonary resuscitation. They then placed Ibanez into the back of an ambulance and transported him to the hospital. Hospital staff pronounced Ibanez brain dead on March 8, 2023.

Witness #2, Forensic Pathologist for the San Bernardino County Sheriff's Department Coroner Division, conducted the autopsy of Antonio Ibanez on March 21, 2023. Witness #2 noted Ibanez was arrested with the use of electrical conducted weapon. Witness #2 determined the cause of death was anoxic encephalopathy⁴ due to cardiac arrhythmia due to methamphetamine intoxication. The manner of death was determined to be an accident.

STATEMENTS BY POLICE OFFICERS

On March 29, 2023, **Officer Allison Stevens**⁵ was interviewed by Detective Michelle Del Rio and Detective Owenn Domon.

On March 5, 2023, Officer Allison Stevens, from the Montclair Police Department, was assigned to patrol. Officer Stevens was wearing a Montclair Police Department uniform and driving a marked patrol vehicle. On that date, Officer Stevens responded to a call for service at a residence located at **** Mission Boulevard in the City of Montclair. The call for service was regarding a subject, later identified as Antonio Ibanez, attempting to hit the reporting party's vehicle with a crowbar. The call indicated the reporting party was in the vehicle with her children and she was afraid to get out of the vehicle. There was also a note on the dispatch call that at some point Ibanez told the reporting party

³ The recovery position is commonly used to keep a person safe while the person is experiencing a medical emergency.

⁴ This is a brain injury where no oxygen reaches the brain. "What are Anoxic and Hypoxic Brain Injuries?" *WebMD*, www.webmd.com/brain/anoxic-hypoxic-brain-injuries.

⁵ Officer Stevens reviewed the recording from her belt recorder and the dispatch audio recording prior to being interviewed by Detective Del Rio and Detective Domon.

she was going to pay. Officer Jesse James responded to the location as Officer Stevens' backing unit.

When Officer Stevens arrived at the location, she did not see the reporting party. Officer Stevens had been to the location on a prior call for service. Officer Stevens spoke to the reporting party, Witness #1, at the front door. Since Witness #1 was Spanish speaking, Officer Stevens used a third-party translation service. Witness #1 told Officer Stevens that Ibanez was in the bedroom. Witness #1 told Officer Stevens that Ibanez had been hitting her car windows while she was inside the vehicle and expressed that she was afraid of Ibanez. Officer James did not see any damage to Witness #1's vehicle.

Dispatch advised Officer Stevens that Ibanez had a felony, no bail warrant. Officer Stevens asked Dispatch to confirm the warrant. Ibanez walked up to the door as Officer Stevens was talking to Witness #1. Officer Stevens asked Witness #1 if Ibanez was the person who tried to open her car door. Witness #1 said yes. While Officer Stevens and Officer James were waiting for Dispatch to confirm that warrant, the officers asked Ibanez to come outside and talk to them but Ibanez refused to come out. Ibanez provided Officer Stevens his first and last name as well as his date of birth. Dispatch confirmed the date of birth on the felony warrant matched the date of birth provided by Ibanez.

Officer Stevens spoke again to Witness #1 and asked if she would give the officers consent to enter the residence to speak with Ibanez. Witness #1 said yes. Dispatch advised they had confirmed the warrant.⁶ Officer Stevens and Officer James entered the residence and approached Ibanez's bedroom. Officer Stevens knocked on the bedroom door. Ibanez would not go outside to speak with the officers. Officer Stevens and Officer James entered the bedroom and approached Ibanez who was sitting on the bed. There were dogs in the bedroom.

Officer Stevens tried to grab Ibanez's right arm and place it behind his back. Officer James was on the left side of Ibanez as they tried to detain Ibanez. Ibanez tensed up his right arm, making it difficult for Officer Stevens to handcuff him. Ibanez started screaming, quickly stood up, and tried to go towards the doorway. Officer Stevens tried to update Dispatch and requested back up. At that point, Officer Mackey had entered the bedroom. As Ibanez rushed toward the bedroom door, Officer Stevens saw Officer Mackey's arm come up and Ibanez stumble backwards and ended up on the floor. Officer Stevens believed Officer Mackey had made a connection with a fist strike to Ibanez's face.

Officer James and Ibanez struggled. Both Officer James and Officer Mackey gave Ibanez verbal commands. Officer Stevens saw Officer Mackey had his baton in his hand. Officer Stevens did not recall where Officer Magana was during the incident.

⁶ This information was incorrect. Ibanez did not have an active, no bail, felony warrant.

Ibanez tried to climb out of the window. Officer Stevens grabbed Ibanez's shirt and tried to pull him back into the bedroom. Officer Stevens heard Officer James attempt to drive stun Ibanez with his Taser device. As Officer Stevens attempted to gain control of Ibanez's right arm, she could feel the intermittent cycles of the Taser tingling in her hand. During this time, Ibanez continued to tighten his arms. Officer Stevens told Ibanez to stop resisting.

Officer Stevens was eventually able to get Ibanez's right arm behind his back and start applying handcuffs. Officer Mackey was able to get Ibanez's other arm behind Ibanez's back and Officer Stevens finished handcuffing Ibanez. The officers stood Ibanez up to move him out of the bedroom. Officer Stevens saw Ibanez had blood on his face and heard Ibanez saying that he could not breathe. Officer Stevens requested Fire Department personnel respond to the location. Officer Stevens estimated the entire fight lasted two minutes.

Officers walked Ibanez outside and sat him down on the steps leading up to the house. Ibanez continued to say he could not breathe. Ibanez was speaking clearly and Officer Stevens could see he was breathing when he made those statements. Ibanez asked for water. Officer Mackey got some water from the family inside the residence and poured it into Ibanez's mouth. The officers waited for the Fire Department personnel to arrive.

While they waited for the Fire Department personnel, Officer Stevens stated Ibanez threw himself down the stairs and ended up on the pavement. Ibanez was on the pavement, trying to roll over onto his stomach. The officers tried to get Ibanez into the recovery position but Ibanez would not stay in that position. When Officer Chris Rivera arrived at the scene, he assisted getting Ibanez back seated in an upright position on the pavement. Officer Stevens and Officer Magana stood behind Ibanez to keep Ibanez in an upright position. Ibanez was still breathing.

Officer Stevens noticed Ibanez's breathing started to become shallow. She told Ibanez to keep his head up and paramedics were on the way. Ibanez's head started to nod off. Officer Magana checked Ibanez's neck for a pulse and was unable to find one. Sergeant Pena asked if Ibanez was breathing. Officer Stevens advised she could see the rise and fall of Ibanez's chest but that they were unable to find a pulse. Sergeant Pena asked again whether Ibanez was breathing. Multiple officers started to speak to Ibanez. At that point, Ibanez was unresponsive.

Officer Stevens could hear Ibanez occasionally gasp. Officer Stevens started to unhandcuff Ibanez so the officers could lay him down flat. Officers continued to check Ibanez for a pulse. At that time, Montclair Fire Department personnel arrived at the scene and started to render medical aid to Ibanez. They then loaded Ibanez into an ambulance and transported him to the hospital.

On March 20, 2023, **Officer Jesse James**⁷ was interviewed by Detective Michelle Del Rio and Detective Ian Gosswiller.

On March 5, 2023, Officer Jesse James, from the Montclair Police Department, was a Field Training Officer assigned to patrol. Officer James was wearing a Montclair Police Department uniform and driving a marked patrol vehicle. On that date, Officer James responded to a call for service at a residence located at **** Mission Boulevard in the City of Montclair. The call was in reference to a subject, later identified as Antonio Ibanez, attempted to vandalize the reporting party's vehicle with a crowbar. Ibanez also made a threat to the reporting party that said, "You're going to pay." As Officer James drove to the location, he learned the reporting party advised Ibanez may be under the influence of a controlled substance.

When Officer James arrived at the location, he observed Officer Stevens was already present and speaking with the reporting party. After she spoke to the reporting party, Officer Stevens tried to get a statement from Ibanez. Officer James asked Officer Stevens what the reporting party said about the crowbar. Officer Stevens indicated she had not specifically asked the reporting party about the crowbar. Officer Stevens tried to get Ibanez to come outside to talk to the officers. Ibanez said he did not want to be arrested and declined to go outside. Ibanez did provide Officer Stevens his name and date of birth. When Officer James attempted to get Ibanez to come outside, Ibanez got skittish and stepped further back into the mobile home. Officer James believed Ibanez was showing some signs of being under the influence of methamphetamine.

Officer Stevens spoke again to the reporting party and asked her for consent to enter the residence to speak with Ibanez. The reporting party gave her consent. Prior to entering the residence, Officer Stevens asked Dispatch to confirm Ibanez had a felony warrant. Dispatch confirmed over the radio that Ibanez had a no bail, felony warrant for a drug offense.⁸ Officer Stevens requested an additional unit respond to the location given the information about Ibanez's felony warrant and the ongoing investigation into whether he committed a criminal threat and/or an assault with a deadly weapon. Officer Mackey advised over the radio that he was responding.

Officer James was concerned Ibanez may be going to get more weapons. Officer James felt it was better for everyone for the officers to go inside and speak to Ibanez. The reporting party and her daughter were still inside the residence. If the officers entered the residence, they would be able to keep an eye on Ibanez and make sure he was not getting additional weapons. Officer James and Officer Stevens entered the residence and walked to Ibanez's bedroom.

⁷ Officer James reviewed the recording from his belt recorder and the audio recording from Officer Stevens' belt recorder prior to being interviewed by Detective Del Rio and Detective Gosswiller.

⁸ This information was incorrect. Ibanez did not have an active, no bail, felony warrant.

Officer James pushed the bedroom door open. Ibanez was sitting on the bed with his phone in his hand. The bedroom was small, dark, and cluttered. There were two small dogs inside the bedroom. The officers asked Ibanez to come out and talk with them. Ibanez said he did not want to be arrested and did not want to come out and talk with the officers. Officer James was concerned that Ibanez may retrieve a weapon and decided the officer should enter the bedroom.

Officer James grabbed Ibanez's right arm and Officer Stevens grabbed Ibanez's left arm. Officer James estimated Ibanez was 6 feet tall and weighed approximately 200 pounds. Officer James indicated he was 5 feet 9 inches tall and weighed 175 pounds. Officer James estimated Officer Stevens was 5 feet 6 inches tall and weighed 145 to 150 pounds. Ibanez immediately tensed up and pulled his arms forward. Officer James said, "Don't pull away." Ibanez again started tensing his arms forward trying to break the officers' grip from his arms. Officer James continued to tell Ibanez, "Do not pull away." Ibanez then stood up, turned around towards the bed, and started trying to push the officers off.

Officer James did not know if Ibanez had weapons underneath the bed covers or to the side of the bed. Officer James elbowed Ibanez in the face with his left elbow to try and gain Ibanez's compliance. Ibanez pushed off the bed, moved backwards, and caused Officer James to fall back into a dresser. Ibanez turned to face Officer James. Officer James believed Ibanez was going to attack him since Ibanez was not making any effort to move toward the bedroom door. Officer James tried to punch Ibanez in the face with his fist. However, Officer James slipped, lost his balance, and missed striking Ibanez's face. At that point, Ibanez turned away from Officer James and started running for the door. Officer James saw Officer Mackey walk through the door and punch Ibanez in the face.

After he was struck, Ibanez lost his balance and fell back into the bedroom. Ibanez moved towards the bed. Officer James put his arm around Ibanez's chest and tried to pull Ibanez to the ground. Ibanez stood up and broke Officer James' grip. Ibanez pushed Officer James towards the west side of the room. Officer Mackey hit Ibanez with his baton. Ibanez fell into Officer James, causing Officer James to fall into the bedroom closet. Ibanez was briefly on top of Officer James. Ibanez then quickly got up and started moving toward the window on the south side of the bedroom.

Ibanez was able to open the window and push off the screen. As Ibanez tried to get out through the window, Officer Mackey and Officer James tried to pull Ibanez back inside and stop Ibanez from escaping. Officer James was concerned that were Ibanez to get outside he could potentially assault other individuals in the mobile home park. Officer James started punching Ibanez in the right side of his body in the ribs and back area. Ibanez was kicking his legs and continued to try getting out through the window.

Officer James pulled out his Taser. Officer James did not want to deploy the Taser inside the bedroom because of the close quarters. Officer James did not want to tase another officer nor did he want to have a bad placement on Ibanez or miss completely.

Therefore, Officer James decided to take the cartridge off of the Taser. Officer James tased Ibanez on his right side. During the first drive stun, Ibanez was actively fighting and trying to get out of the window. Six seconds later, Officer James initiated a second drive stun. After that, the officers were able to pull Ibanez inside and get him to the ground. Ibanez was on his back and still kicking, pulling his arms away, and actively resisting. Officer James tased Ibanez an additional two more times. Officer James indicated Ibanez said, "Okay, okay" after the third cycle but continued to resist. During the fourth cycle, Officer James inadvertently tased Ibanez in the left chest area. Officer James was not aiming for Ibanez's chest and immediately pulled the Taser off of Ibanez. Officer James then placed the Taser back on the left side of Ibanez's body. Officer James indicated because Ibanez was flailing around the entire time, causing the Taser to move around. The Taser would lift up from Ibanez's body and Officer James was unable to get a fully five second cycle deployed. After the fourth cycle, Ibanez started to comply with the officers. Ibanez stopped kicking and throwing his arms around. Officer James holstered his Taser and the officers placed Ibanez in handcuffs. Officer Mackey requested medical aid for Ibanez.

Ibanez started saying he could not breathe. The officers stood Ibanez up, walked him out of the house, and sat Ibanez down on the steps. Ibanez continued to say he could not breathe. Officer Mackey got a bottle of water from the residents and helped Ibanez take a drink. Ibanez was still showing objective signs of being under the influence. Ibanez was yelling, moaning, and bouncing around on his butt trying to roll around on the ground. Ibanez would roll on to his stomach while stating he could not breathe. Officer James told Ibanez to get off his stomach and that he would breathe better if he sat up and relaxed. After thirty seconds to one minute, Officer Magana and Officer Stevens used their legs to help keep Ibanez seated upright so Ibanez could breathe better. Ibanez started to calm down.

At some point, Ibanez closed his eyes. Officer James asked Ibanez if he was okay. Officer James took photographs of Ibanez's injuries. After he took the photographs, Officer Magana expressed concern that Ibanez was not breathing. Officer James could tell Ibanez was still breathing and told Officer Magana that Ibanez was okay. Right after Officer James spoke, Ibanez took another breath and tilted his head back. At that time, Ibanez no longer appeared to be breathing.

Sergeant Pena told the officers to uncuff Ibanez, put him in a recovery position, and check for a pulse. The officers were unable to locate a pulse. Montclair Fire Department personnel arrived at the scene and started to render aid to Ibanez. They loaded Ibanez into an ambulance and transported him to the hospital.

On March 29, 2023, **Officer Natalia Magana**⁹, was interviewed by Detective Owenn Domon and Detective Ian Gosswiller.

On March 5, 2023, Officer Magana, from the Montclair Police Department, was assigned to patrol. On that date, Officer Magana was wearing a Montclair Police Department uniform and driving a marked patrol vehicle. Officer Magana was assigned to patrol. Her partner on that date was her field training officer, Officer Mackey. Officer Magana and Officer Mackey were working on some reports when she heard a call come out over the radio. The reporting party advised the dispatch center that she was in her vehicle with her daughters and her roommate was attempting to vandalize her car with a crowbar. The reporting party indicated she was afraid of the roommate.

Officer Magana heard Officer Stevens and Officer James were en route to the location. The reporting party identified the suspect as Antonio Ibanez. Officer Magana heard Dispatch advise over the radio that Ibanez had a potential felony warrant for his arrest. One of the officers asked Dispatch to confirm the warrant as they spoke to the reporting party. Officer Magana continued to listen to the radio traffic. One of the officers indicated the reporting party had given consent for the officers to enter the residence and they were waiting for the warrant to be confirmed. Officer Magana and Officer Mackey decided to start heading to the location to assist.

When they arrived at the location, Officer Magana parked her patrol vehicle. Officer Magana and Officer Mackey exited the patrol vehicle and started walking towards the residence. Officer Magana could hear a fight occurring inside the residence. She heard grunting, yelling, and things smashing in the background. Officer Magana and Officer Mackey ran into the residence.

Officer Magana saw Officer James fighting with Ibanez. Ibanez started moving towards the bedroom door. Officer Magana thought Ibanez was trying to flee. Ibanez was looking straight at Officer Mackey. Officer Magana thought Ibanez was going to attack Officer Mackey. Officer Mackey performed one strike to Ibanez's face. Ibanez took two steps back, turned around and started fighting with Officer James again.

Ibanez was not listening to any of the officers' verbal commands. Officer Mackey and Officer James were telling Ibanez to get on the ground and to stop fighting. Officer Magana also heard Officer Stevens giving verbal commands to Ibanez. Officer Mackey grabbed his baton and struck Ibanez once in the legs. The baton strike was ineffective and Ibanez continued to fight with the officers.

Next, Ibanez punched out the screen in the bedroom window and tried to jump out. Officer James and Officer Mackey were hanging on to Ibanez and trying to pull Ibanez back inside. Officer James and Officer Mackey were telling Ibanez to stop fighting.

⁹ Officer Magana reviewed the recording from her belt recorder and the recording from Officer Mackey's belt recorder prior to being interviewed by Detective Domon and Detective Gosswiller.

Officer James tried to tase Ibanez. Officer Magana heard the clacking from the taser multiple times which indicated there was no contact with Ibanez's body. Officer Magana grabbed one of Ibanez's legs. Officer Stevens was also trying to get Ibanez back inside the bedroom. At one point, Officer Magana felt Ibanez's body fall to the floor.

The officers gave Ibanez commands to give them his hands. Ibanez would not comply and continued to fight. Ibanez was taller and bigger than the officers in the bedroom. Officer Magana heard Ibanez grunting and screaming. Ibanez was not making any sense. Eventually the officers were able to get Ibanez handcuffed. They stood Ibanez up and walked Ibanez out of the residence through the front door. The officers sat Ibanez down on the front steps.

Ibanez was moving side to side and banging his head on the side railing of the steps. The officers told Ibanez to calm down and to relax. Ibanez was yelling he could not breathe. Officer Mackey told Ibanez he would breathe better if he stopped flailing around and relaxed. Ibanez asked for water. Officer Mackey asked one of the residents for water. Ibanez was still moving around, acting erratic, and yelling. Officer Mackey attempted to give Ibanez some water to drink. Officer Mackey requested paramedics respond to the scene.

As the officers waited for the paramedics to arrive, Ibanez was flailing around on the steps. Ibanez fell down on his butt and ended up on his stomach. One of the officers told Ibanez he would have a hard time breathing if he was on his stomach and told Ibanez to sit up. The officers got Ibanez seated upright. Officer Magana and Officer Stevens positioned themselves behind Ibanez's back so that Ibanez would sit up straight.

The officers continued to wait for Montclair Fire Department personnel to arrive at the scene. Officer Magana noticed Ibanez was starting to calm down. Ibanez's breathing appeared to be slowing down. Officer Magana thought Ibanez was coming off all of his adrenaline. Ibanez was bleeding from his nose. Officer James took photographs of Ibanez's injury. Officer Magana then noticed Ibanez's breathing had changed "to like a gulp, kind of like a fish in water." Ibanez's head started to bob back and moved side to side. Officer Magana looked at Ibanez's chest but was unable to see whether Ibanez's chest was moving.

Officer James asked Officer Magana if Ibanez was breathing. Officer Magana checked Ibanez's neck for a pulse. She felt a very fast pulse but was unsure whether it was her pulse or Ibanez's pulse. Officer James indicated he saw Ibanez breathing. Ibanez's head then stopped moving. The officers start checking Ibanez. At the time the officers realized Ibanez was not breathing, paramedics had arrived and were walking towards the officers. The paramedics took over and started to render medical aid to Ibanez.

On March 20, 2023, **Officer Sean Mackey**¹⁰ was interviewed by Detective Michelle Del Rio and Detective Ian Gosswiller.

On March 3, 2023, Officer Sean Mackey, from the Montclair Police Department, was a Field Training Officer assigned to patrol. Officer Mackey was wearing a Montclair Police Department uniform and riding in a marked patrol vehicle. His partner was his trainee, Officer Natalia Magana. On that date, Officer Mackey and Officer Magana were working on reports when he heard Officer James and Officer Stevens were dispatched to a call for service at a residence located at **** Mission Boulevard in the City of Montclair. The reporting party indicated she was seated in her vehicle with her daughter when her roommate, later identified as Antonio Ibanez, threatened her with a crowbar and tried to open the car door.

After Officer Stevens and Officer James arrived at the scene, Officer Stevens spoke to the reporting party. Dispatch ran Ibanez's identifying information and advised he had a felony arrest warrant. Dispatch confirmed the felony arrest warrant was active. Officer Stevens advised Ibanez was uncooperative and went back inside the residence. Officer Mackey decided to respond to the location to help Officer Stevens and Officer James.

Officer Mackey and Officer Magana arrived at the location within three to four minutes. Officer Magana parked their patrol vehicle away from the residence. Officer Stevens broadcasted over the radio that the reporting party gave consent for the officers to enter the residence. As Officer Mackey and Officer Magana were approaching the residence, Officer Mackey heard what sounded like a fight going on inside the residence. Officer Mackey ran inside the residence to help his partners.

When Officer Mackey stepped in the doorway of Ibanez's bedroom, he saw Ibanez running toward him. Officer Mackey estimated Ibanez was 6 feet 2 inches tall and weighed 230 pounds and bigger than him in stature. Officer Mackey was 5 feet 10 inches tall and weighed 200 pounds. Officer Mackey saw Officer James behind Ibanez. Officer James was trying to grab Ibanez around the shoulders. Officer James was smaller in stature and unable to maintain control of Ibanez.

Officer Mackey knew Officer Stevens was inside the house but did not see Officer Stevens in the bedroom. Given that the officers had already indicated Ibanez was confrontational as well as the fact he was trying to escape Officer James, Officer Mackey did not know if Ibanez may have already assaulted Officer Stevens. Officer Mackey believed Ibanez was going to do whatever was necessary to escape. Officer Mackey feared Ibanez was going to either run into him or Ibanez would physically assault him. Officer Mackey delivered one closed fist strike to Ibanez's left cheek.

¹⁰ Officer Mackey reviewed the recording from his belt recorder prior to being interviewed by Detective Del Rio and Detective Gosswiller.

After Ibanez was struck in the face, he took four to five steps backwards. Ibanez and Officer James fell into a closet. Ibanez immediately got back up and ran back toward Officer Mackey again. Officer Mackey continued to believe Ibanez would run through him or physically assault Officer Mackey. Officer Mackey took his baton and struck Ibanez in the right quad area causing Ibanez to fall to the ground.

At this point, Ibanez ran to the bedroom window and tried to get out. Ibanez pushed the window screen off the frame. Officer Mackey saw Ibanez fall as Ibanez's upper torso was leaning against the windowsill. Officer Mackey tried to pull Ibanez's hand from the window. Officer Mackey gave Ibanez verbal commands to get on the ground but Ibanez failed to comply.

Officer James removed the cartridge from his Taser and tried to drive stun Ibanez in the right rib area. Ibanez, however, was moving around and it did not appear Officer James was able to drive stun Ibanez for a full cycle. Officer Magana and Officer Stevens were eventually able to pull Ibanez by his legs off the windowsill. Ibanez fell to the floor and immediately rolled over onto his back. Officer Mackey grabbed Ibanez's right arm and tried to pull it behind Ibanez's back. Ibanez was kicking his legs and moving around. Officer James tried to drive stun Ibanez a second time in the left side of Ibanez's ribs. Officer Mackey was unsure whether Officer James was able to get a full cycle of contact on Ibanez's body but Ibanez did calm down and stopped moving around. The officers were able to roll Ibanez over and handcuff him.

Officer Mackey noticed Ibanez was bleeding from the nose. Officer Mackey requested Montclair Fire Department personnel respond for medical treatment. Officers stood Ibanez up and took him outside to the front of the residence. Once outside, the officers sat Ibanez down on the steps that led to the front door of the residence. Ibanez slid off the steps and rolled around on the ground and started kicking his legs. Ibanez requested water which Officer Mackey obtained for him. Officer Mackey gave Ibanez a sip of water.

While the officers waited for the Fire Department to arrive, Ibanez started to calm down. Officers noticed Ibanez's breathing had slowed down and he had a blank look on his face. Officers had Ibanez resting in a seated position against the legs of Officer Magana and Officer Stevens. Officer Mackey estimated Fire Department personnel arrived six to seven minutes after they were requested to respond.

At Sergeant Pena's request, Officer Mackey walked away to escort Fire Department personnel to the scene. Officer Mackey explained to the Fire Department personnel what was going on and walked them toward Ibanez. When Officer Mackey returned to the scene, Ibanez was unhandcuffed and on his back. Officer Mackey saw an officer checking Ibanez for a pulse from his left wrist. The Fire Department personnel and paramedics took over and started to render medical aid to Ibanez. Ibanez was placed into an ambulance and transported to the hospital.

STATEMENTS BY CIVILIAN WITNESSES

On March 9, 2023, **Witness #1** was interviewed by Detective Michelle Del Rio.¹¹

On March 5, 2023, **Witness #1** was living with her family at a residence located at **** Mission Boulevard in the City of Montclair. **Witness #1** rented a room to Ibanez for the past seven to eight years. **Witness #1** met Ibanez approximately eight years ago through a mutual friend. Ibanez was a recovering narcotic user. **Witness #1** was also aware that Ibanez had mental health problems because he heard voices and saw things that were not there. **Witness #1** indicated Montclair Police Department officers have previously responded to her residence because Ibanez was under the influence of narcotics and behaved erratically.

On March 5, 2023, **Witness #1** arrived home from work with two of her daughters and her two grandchildren. **Witness #1** parked her vehicle in front of the residence and saw Ibanez walk toward her vehicle. Ibanez knocked on the front driver's side window and told **Witness #1** to open the car door. **Witness #1** refused. Due to his erratic behavior, **Witness #1** knew Ibanez was under the influence of a controlled substance. Ibanez was wearing a sweatshirt with a front pocket. **Witness #1** thought Ibanez was carrying something in his sweatshirt pocket. **Witness #1** became afraid and called 9-1-1 for help. When Ibanez pulled his hand out of his sweatshirt pocket, **Witness #1** saw Ibanez was holding a work light tool, approximately eight inches in length. Ibanez saw **Witness #1** on the cell phone, walked away, and entered the residence. **Witness #1**, her daughters, and grandchildren exited the vehicle and walked into the residence.

Approximately twenty minutes later, **Witness #1** heard knocking on her bedroom door. Her daughter told her that Montclair Police Department officers were at the front door. **Witness #1** spoke to Officer Stevens at the front door of the residence. **Witness #1** recognized Officer Stevens from previous calls at her residence. **Witness #1** and Officer Stevens used a third-party translation service to communicate. **Witness #1** advised Officer Stevens she had gone to the Fontana Courthouse earlier in the day and was given an eviction notice to serve Ibanez. **Witness #1** requested Officer Stevens serve Ibanez with the three-day eviction notice.

Ibanez walked to the front door as **Witness #1** spoke with Officer Stevens. **Witness #1** returned to her bedroom as Officer Stevens continued speaking with Ibanez. Minutes later, Ibanez went to **Witness #1**'s bedroom and told her Officer Stevens wanted to speak to **Witness #1** again. **Witness #1** went to the front door and Ibanez returned to his bedroom. Officer Stevens asked **Witness #1** for permission to enter the residence to further speak with Ibanez. **Witness #1** gave the Montclair Police Department officers consent to enter her residence.

¹¹The interview was conducted in Spanish and later translated to English.

Witness #1 followed Officer Stevens and Officer James as they walked to Ibanez's bedroom. Officer Stevens knocked on Ibanez's bedroom door. Ibanez responded but Witness #1 did not understand what he said. Officer Stevens opened the bedroom door. Ibanez told Officer Stevens in English and Spanish not to enter his bedroom. The officers entered the bedroom and attempted to grab Ibanez's arms. Ibanez said, "No, please, no" in Spanish as he fell backward onto the bed. A few seconds later, two additional Montclair Police Department officers entered Ibanez's bedroom. Witness #1 then saw additional Montclair Police Department officers enter the bedroom. Witness #1 estimated there were a total of eight officers in the bedroom with Ibanez.

Witness #1 was standing in the hallway at the doorway of the residence bathroom. The bathroom was located across from Ibanez's bedroom. Ibanez was on the bed when Witness #1 saw an officer strike Ibanez on the right rib area with a long black stick. Witness #1 said the officer swung the long black stick like a baseball bat. Witness #1 did not know why the officer struck Ibanez. At some point, Ibanez turned over on the bed and was face down. Witness #1 heard the sound of a taser and Ibanez shout in Spanish, "Oh God, oh God, please, please." Witness #1 said she heard the crackling sound of the taser three times.

Witness #1 then walked away to the living room because she could no longer watch the officers assault Ibanez. From the living room, Witness #1 heard Ibanez yell, "Please, please my god, don't hit me anymore!" Seconds later, two officers escorted Ibanez outside through the front door. Ibanez was handcuffed and sat on the second step near the front door. Ibanez was bleeding from his face. An officer asked Witness #1 for a bottle of water for Ibanez. Witness #1 gave the officer a bottle of water and went back inside the residence. Witness #1 heard an officer say, "Antonio, Antonio," but Ibanez did not respond. Witness #1 looked outside and saw Ibanez lying on the ground on the front steps. Witness #1 estimated Montclair Fire Department personnel and an ambulance arrived thirty minutes after Ibanez was handcuffed and seated outside.

On March 9, 2023, **Witness #3**¹²¹³ was interviewed by Detective Ian Gosswiller.

On March 5, 2023, Witness #3 was living with her mother, Witness #1, and other family members at a residence located at **** Mission Boulevard in the City of Montclair. Ibanez rented a room from Witness #1. That morning, Witness #1 and Witness #3 arrived home. Witness #1 was parking her vehicle in front of the house when Witness #3 saw Ibanez jump out from the south side of the residence. Ibanez walked up to Witness #1's window. Ibanez was holding a tool and aggressively tried to open Witness #1's door. Witness #3 did not know what type of tool Ibanez was holding. Ibanez was unable to get the door open because Witness #1 had the doors locked. Witness #1 had

¹² Witness #3 shared the same last name as another witness. Therefore, she will be referred to by her first name throughout the memorandum.

¹³ Witness #3 was fifteen years old at the time of the interview.

Witness #3 call the police. Witness #3 dialed 9-1-1 and handed the cell phone to her mother. Witness #3 estimated they were in the vehicle six to eight minutes before they went inside the house.

Officers from Montclair Police Department arrived approximately five minutes after Witness #3 went inside the house. A female officer asked Witness #3 to ask Witness #1 if it was okay for officers to enter the residence to talk to Ibanez. Witness #1 said it was okay for the officers to go inside the residence. The officers told Ibanez they wanted to talk to him. Ibanez told the officers not to enter his room. Witness #3 estimated there were six to eight officers present. Witness #3 was in the kitchen and was unable to see what happened inside Ibanez's bedroom.

Witness #3 estimated the officers were inside of Ibanez's bedroom for eight minutes. Witness #3 heard officers shouting and furniture move. Witness #3 heard Ibanez say, "Please no," "Lord help me," and "No." Witness #3 heard officers say, "Get down," and "Calm down." Witness #3 also heard a taser being deployed on three separate occasions. Officers then walked Ibanez out of the residence and sat him down on the front steps. Witness #3 did not see any injuries on Ibanez. She heard Ibanez say, "I can't breathe." Witness #3 heard an officer ask Witness #1 for some water which was given to Ibanez. The next time Witness #3 looked outside, officers were providing medical aid to Ibanez. Witness #3 estimated fire department personnel arrived three minutes after Ibanez went outside.

HOSPITAL

Ibanez was transported to the hospital. Witness #4 declared Ibanez brain dead on March 8, 2023. Witness #5 took over Ibanez's care on March 8, 2023. Ibanez was on a ventilator. Witness #5 did a physical assessment of Ibanez. Ibanez's pupils were dilated, he had no response to painful stimuli, and an electroencephalogram showed no brain activity. Witness #5 diagnosed Ibanez as brain dead. Ibanez did not have any visible injuries.

INCIDENT AUDIO

BELT RECORDINGS. All belt recordings submitted were reviewed in their entirety.

DECEDENT

AUTOPSY. Witness #2, Forensic Pathologist for the San Bernardino County Sheriff's Department Coroner Division, conducted the autopsy of Antonio Ibanez on March 21,

2023. Witness #2 noted a significant condition was Ibanez was arrested with the use of an electrical conducted weapon. Witness #2 determined the cause of death was anoxic encephalopathy due to cardiac arrhythmia due to methamphetamine intoxication. The manner of death was determined to be an accident.

INJURIES.

There were no major (acute, life-threatening) injuries noted during the autopsy. There were minor (acute, non-life threatening) injuries noted. The minor injuries included: a contusion on the left side of the back, a cluster of healing abrasions over the right side of the back, a healing contusion and two healing abrasions on the right elbow, a healing linear abrasion on the right wrist, a healing abrasion on the right knee, a cluster of healing abrasions over the left knee, a healing abrasion on the left leg, and a subgaleal hemorrhage of the left parietal scalp.

TOXICOLOGY.

Toxicology results for the **Hospital Serum** were listed as follows:

- Methamphetamine, LC/MS/MS: 2,710 ng/mL
- Amphetamine, LC/MS/MS: 147 ng/mL

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

- Methamphetamine, LC/MS/MS: 887 ng/mL
- Amphetamine, LC/MS/MS: 72 ng/mL

Toxicology results for the **Vitreous Electrolytes** were listed as follows:

- Creatinine: 6 mg/dL
- Sodium: 132 mmol/L
- Potassium: 23.9 mmol/L
- Chloride: 110 mmol/L
- Urea nitrogen > 130 mg/dL

CRIMINAL HISTORY. 1999, 11550(a) of the Health and Safety Code, Use/Under the Influence of Controlled Substance, and 11377(a) of the Health and Safety Code, Possession of Controlled Substance. Los Angeles County Court case number 9JM0908301, a misdemeanor.

2000, 273.5(a) of the Penal Code, Infliction of Corporal Injury to Spouse/Cohabitant. Los Angeles County Court case number 0FC00013-01, a misdemeanor.

2000, 243(e)(1) of the Penal Code, Battery on Spouse/Ex Spouse/Date/ETC, and 602.5 of the Penal Code, Enter/ETC Non-commercial Dwelling. Los Angeles County Court case number 0FC0018901, a misdemeanor.

2000, 496(a) of the Penal Code, Receive/ETC Known Stolen Property. Los Angeles County Court case number 0RH0604501, a misdemeanor.

2001, 273.5(a) of the Penal Code, Infliction of Corporal Injury to Spouse/Cohabitant, and 236 of the Penal Code, False Imprisonment. Los Angeles County Court case number KA05173201, a felony.

2004, 245(a)(1) of the Penal Code, Force/Assault with a Deadly Weapon Not a Firearm: Great Bodily Injury Likely. Los Angeles County Court case number KA06595001.

2010, 459 of the Penal Code, Second Degree Burglary, and 496(a) of the Penal Code, Receive/ETC Known Stolen Property. Los Angeles County court case KA08803301.
2014, 245(a)(1) of the Penal Code, Assault with a Deadly Weapon: Not a Firearm. Los Angeles County Court case number KA10498801.

2015, 166(a)(9) of the Penal Code, Contempt: Try to Influence Sentence. Los Angeles County Court case number 5RI0274501, a misdemeanor.

DE-ESCALATION

During their initial contact with Ibanez, both Officer Stevens and Officer James asked Ibanez to come outside and speak to them about what had occurred between Ibanez and Witness #1. Ibanez refused to go outside and told the officers he did not want to talk to them. Officer James believed Ibanez showed signs of being under the influence of a controlled substance. Officer Stevens requested Ibanez go get Witness #1 so that the officers could talk further with her about what occurred. Ibanez walked away from the officers and went and told Witness #1 the officers were asking to speak with her again. Witness #1 returned to the front door and gave the officers consent to enter the residence to speak with Ibanez.

When Officer Stevens and Officer James went to Ibanez's bedroom, the door was closed. Officer James opened the door and saw Ibanez seated on the bed. Officer James attempted to de-escalate the situation by continuing to talk to Ibanez. Officer James asked Ibanez to come out and talk to the officers about what had occurred with Witness #1. Ibanez said he did not want to be arrested and he did not want to talk to the officers. Officer Stevens and Officer James entered the bedroom to arrest Ibanez. The officers had been incorrectly informed Ibanez had a no bail felony warrant. Given that information, Ibanez's erratic behavior, as well as the ongoing investigation in to whether Ibanez assaulted Witness #1 with a crowbar and/or threatened her, the officers felt they needed to detain Ibanez.

While inside the bedroom, Officer James attempted to grab Ibanez's right arm while Officer Stevens grabbed Ibanez's left arm. Officer James gave Ibanez verbal commands to de-escalate the situation. Officer James told Ibanez multiple times, "Don't move" and "Don't pull away." Ibanez refused to comply and attempted to flee the bedroom by running toward the door. Officer Mackey and Officer Magana were making their way into the bedroom. Fearing he was about to be assaulted, Officer Mackey struck Ibanez once in the face as Ibanez ran at him.

After Officer Mackey entered the bedroom, he also gave Ibanez verbal commands to de-escalate the situation. Officer Mackey told "Stop fighting" and "Get on the ground." Ibanez refused to comply and again ran at Officer Mackey. At this time, Officer Mackey struck Ibanez with his baton. Ibanez then attempted to flee through the bedroom window. Officer James, Officer Stevens, Officer Mackey, and Officer Magana grabbed Ibanez to prevent Ibanez from getting out of the window. Officer James told Ibanez, "Give me your hands" and "Stop resisting." Officer Mackey told Ibanez, "Give me your arm" and "Get on the fucking ground."

Ibanez was uncooperative and continued to resist. During this time, Officer James punched Ibanez in the right side of Ibanez's body. This use of physical force was ineffective and Officer James was unable to gain compliance from Ibanez. Ibanez continued to try to get out of the window. Officer James then used his Taser to drive stun Ibanez four separate times. After Officer James used the Taser to drive stun Ibanez the fourth time, Ibanez stopped kicking and actively fighting with the officers. The officers were then able to handcuff Ibanez and escort him outside.

APPLICABLE LEGAL PRINCIPLES

PENAL CODE SECTION 148(a)(1). Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

PENAL CODE SECTION 69(a). Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.

A peace officer may use reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a)¹⁴ Should the arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense or to use reasonable force to effect that arrest. (*Id.*) An arrestee has a duty to refrain from using force or any weapon to resist lawful arrest, if he knows or should know that he is being arrested. (Penal C. §834a.)

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. Conner* (1989) 490 U.S. 386, 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.) When considered 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.) To be clear, the officer's

¹⁴ All references to code sections here pertain to the California Penal Code, as they existed at the time of the incident. Significant modifications were made to sections 196 and 835a pursuant to Assembly Bill 392. (Assem. Bill No. 392 (2018-2019 Reg. Sess.) as Chaptered August 19, 2019.) However, those modifications do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

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.)

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. (*Reese v. Anderson* (5th Cir. 1991) 926 F.2d 494, 501; *Anderson v. Russell* (4th Cir. 2001) 247 F.3d 125, 129, 131.)

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. Conner]* (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.)

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, after completing an autopsy, Witness #2 determined the cause of death for Ibanez was Anoxic encephalopathy due to cardiac arrhythmia due to methamphetamine intoxication. In the autopsy protocol, Witness #2 indicated there were no major (acute, life-threatening) injuries on Ibanez and noted Ibanez was arrested with the use of an electrical conducted weapon. Witness #2 determined the manner of death was accident. The toxicology results for Ibanez's blood sample showed he had 887 ng/mL of methamphetamine in his system. The toxicology results for Ibanez's hospital serum sample showed Ibanez had 2,710 ng/mL of methamphetamine in his system.

When Officer Stevens and Officer James entered Ibanez's bedroom, there was an ongoing investigation into whether Ibanez had committed an assault and/or threatened Witness #1 when he tried to open the door to her vehicle. The initial call for service indicated Ibanez had been armed with a crowbar. Officer Steven and Officer James were reasonably concerned for the safety of Witness #1 and her family given that Ibanez also lived in the residence. Information that Ibanez may be under the influence appeared consistent with the erratic behavior Ibanez displayed earlier when he came to the front door. In addition, Officer Stevens and Officer James mistakenly believed Ibanez had a no bail, felony warrant for his arrest.

Officer Stevens and Officer James asked Ibanez to come outside to talk to them but Ibanez refused. Ibanez was uncooperative and physically resisted when the officers tried to grab Ibanez's arms. As a result, a physical altercation occurred between Ibanez and the officers. When Officer Mackey and Officer Magana arrived to assist, they could hear a fight taking place inside the residence. Ibanez would not comply with any verbal commands from officers to not move, to stop fighting, and to get on the ground. Instead, Ibanez fought with the officers and attempted to flee through both the bedroom door and later through the bedroom window. Ibanez had a distinct size advantage over the four officers in the bedroom. It was clear from Ibanez's actions he had no intention of complying with the officers' verbal commands. When Ibanez attempted to flee through the bedroom window, it took the efforts of all four officers to pull Ibanez back inside, subdue Ibanez, and place him into handcuffs.

Officer Stevens, Officer James, Officer Mackey, and Officer Magana all used their hands to try and detain Ibanez. In addition to that use of physical force, Officer James utilized his Taser and Officer Mackey utilized his baton during the physical altercation to try and gain compliance from Ibanez. The officers use of less lethal force was not unreasonable nor excessive given the circumstances they faced. Ibanez was uncooperative, physically resisting officers, and under the influence of a significant amount of methamphetamine. The officers initially acted out of concern for the safety of the individuals living at the residence. When Ibanez started to physically fight with the officers, the officers were then forced to protect themselves as well.

CONCLUSION

Based on the facts presented in the reports and the applicable law, the use of less lethal force by Officer James was not excessive and was a proper exercise of Officer James' right of self-defense and therefore his actions were legally justified.

Based on the facts presented in the reports and the applicable law, the use of less lethal force by Officer Mackey was not excessive and was a proper exercise of Officer Mackey's right of self-defense and therefore his actions were legally justified.

Based on the facts presented in the reports and the applicable law, the use of less lethal force by Officer Magana was not excessive and was a proper exercise of Officer Magana's right of self-defense and therefore her actions were legally justified.

Based on the facts presented in the reports and the applicable law, the use of less lethal force by Officer Stevens was not excessive and was a proper exercise of Officer Stevens' right of self-defense and therefore her actions were legally justified.

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

