



PUBLIC RELEASE MEMORANDUM

DATE: November 5, 2024

Subject: Fatal Officer-Involved Incident

Involved Officers: CHP Sergeant Howard (shooting officer)

Involved Subject: Raymond J.R. Loftin (Deceased)
Date of Birth: August 16, 1984

Incident Date: June 23, 2021

Incident Time: 01:20 Hours

Case Agent/Agency: Detective Edward Hernandez
San Bernardino County Sheriff's Department

Agency Report #: DR# 602100131

DA STAR #: 2022-25587

PREAMBLE

This memorandum summarizes an investigation of a fatal shooting by Sergeant Howard from the California Highway Patrol. The San Bernardino County Sheriff's Department conducted the investigation and submitted investigative reports, audio and video recordings, and photographs for review. The independent analysis and conclusion of this memorandum was based on a thorough review of all submitted material from the Sheriff's Department.

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FACTUAL SUMMARY

On Tuesday, June 22, 2021, at approximately 10:30 pm, a 2008 Peterbilt flatbed truck was stolen from CMC Rebar West (hereinafter, "CMC") in the City of San Bernardino. The vehicle, a white 10-wheel, Bobtail semi-truck, weighed over 19,000 pounds and was approximately 40 feet long. The truck was valued at approximately \$100,000.00. A CMC employee saw the truck in the company's parking lot driven without lights turned on. The employee watched the truck crash through a chain link fence into a flood control wash. CMC personnel reported the vehicle theft to the San Bernardino Police Department. The stolen truck was equipped with a GPS device and cameras allowing CMC personnel to track the vehicle to the City of Colton. The location information was reported to the San Bernardino Police Department. Requests for assistance went out to Colton Police Department and Sheriff's Aviation helicopter 40-King-1 (hereinafter, "40-King").

Colton Police Sergeant Greg Castillo responded to the area where tracking placed the stolen vehicle. Around 11:45 pm, Sergeant Castillo saw a truck matching the stolen vehicle's description at a gas station located on S. Iowa Avenue in Colton. He watched the truck leave the gas station's parking lot and proceed north on Iowa Avenue, near the 215 Freeway and then merge into the northbound lanes of La Cadena Avenue. Sergeant Castillo followed the vehicle as it made its way to Barton Road where it turned right and drove east. After going over the 215 Freeway overpass, the truck moved into the left turning lane as if to enter the northbound on-ramp. Instead of turning left, the driver, later identified as Raymond Loftin, made a hard right turn, entered the 215 Freeway off-ramp and proceeded south in northbound lanes. Up to that moment, Sergeant Castillo had not made any attempt to stop the vehicle through direct commands or by activating his patrol vehicle's overhead lights or siren. Sergeant Castillo did not follow Loftin into the wrong lanes of traffic but tracked it from side roads.

Loftin drove south in the wrong lanes of traffic for an about one quarter mile. He then made a U-turn on the freeway and began driving north in the correct lanes of the 215 Freeway. Colton police pursued the stolen truck after the vehicle turned around. Responding to the request for assistance, Sheriff's helicopter 40-King also located the stolen vehicle and started tracking the stolen truck from the air.

Loftin drove until reaching the 10 Freeway, where he transitioned onto its eastbound lanes. He exited at Waterman Avenue where he crossed Redlands Boulevard and drove south on Club Center Drive. The vehicle made a left turn at Caroline Street and proceeded east, sometimes in the opposite travel lanes. Reaching Waterman Avenue, Loftin drove through a red light as he made a left turn to proceed north. Loftin next drove through a red light at the intersection of Waterman Avenue and Redlands Boulevard. The truck proceeded north until reaching Hospitality Lane where Loftin made a right turn. He then drove east on Hospitality Lane until making another right turn onto the 10 Freeway's westbound offramp, driving in the wrong direction again.

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Loftin travelled wrong way east on the 10 Freeway for almost five and a half miles. Reaching the 210 Freeway, Loftin transitioned into that freeway's eastbound lanes going west. Loftin drove in the wrong direction until reaching a closure at 5th Street. At that point, Loftin turned the stolen truck around and proceeded to drive east in the 210 Freeway's eastbound lanes. He rammed a column while executing the U-turn.

Loftin continued to drive east on the freeway until reaching San Bernardino Avenue. After exiting, Loftin immediately reentered the freeway going west in the westbound lanes. Loftin drove in correct traffic lanes until reaching Baseline Avenue. At that exit, Loftin got off the freeway only to reenter the eastbound offramp, proceeding west against traffic.

Loftin drove west in the wrong lanes for approximately 10 miles. When he was near Riverside Drive, Loftin executed another U-turn and proceeded east. The U-turn was executed prior to Loftin reaching a nearby traffic break set by the Californian Highway Patrol (hereinafter, "CHP") officers near Ayala Drive.

Loftin drove east for approximately 10 miles until he reached Baseline Avenue. There, Loftin again exited the freeway only to immediately reenter the westbound offramp in the wrong direction. When he entered the freeway, Loftin hit a k-rail and broke a water line at the top of the offramp. Loftin also encountered several vehicles using the offramp as he reentered the freeway; each taking evasive action to avoid head-on collisions.

Loftin drove east for approximately four miles until reaching the 10 Freeway. The wrong way driving continued as Loftin transitioned west on the 10 Freeway in eastbound lanes. Loftin drove west on the 10 Freeway for approximately 13 miles until reaching the CHP roadblock at approximately 1:00 am on June 23, 2021. When the pursuit concluded at the roadblock located near Sierra Avenue, the chase had gone on for approximately one hour and had covered over 50 miles. Law enforcement personnel from the Colton Police Department, the San Bernardino Sheriff's Department, and the CHP were involved in the pursuit that took place over a great distance.

Until the pursuit reached the CHP roadblock at Sierra Avenue, broadcasted reports repeatedly described dangerous and sustained wrong way driving by Loftin. His driving behavior resulted in multiple near miss traffic collisions that included vehicles run off the road to avoid head-on crashes with the vehicle. The reports further indicated the truck was driven up to 70 mph in the wrong direction within various lanes of traffic. Loftin's driving continued although ground units decided to no longer pursue him. While freeway exits allowed him to safely disengage, he by-passed those multiple opportunities to exit and end the chase.

While the pursuit was ongoing, Sergeant Daniel Howard and other officers from CHP's Rancho Cucamonga station were informed of the chase involving the stolen big rig truck was coming into their area. The pursuit was moving west on the 210 Freeway from the San Bernardino area but in eastbound lanes. The officers responded by first deploying to the 210 Freeway, but later, based on updates as to the pursuit, moved to the 10

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Freeway. They eventually deployed in the eastbound lanes of the freeway, just past Sierra Avenue.

Sergeant Howard and his men created a roadblock to stop the truck. They parked four police units across the lanes of traffic at 45-degree angles and activated their red and blue emergency lights. Approximately one quarter mile west, civilian vehicles were stopped due to the roadblock.

Sergeant Daniel Howard, along with CHP officers Jesus Garcia, Sergio Vasquez, Gabriel Mendez, Mark Garcia, and Nicholas Mercado were present on scene. They took cover just south of the 10 Freeway, over a guardrail and among some trees. Sergeant Howard and some of the other officers armed themselves with AR-15 rifles. Sergeant Howard instructed the group that if it became necessary to use deadly force, only he would discharge his weapon.

Soon after the roadblock was set, the truck approached from the east while in the number 4 lane¹ and shoulder area. As it got closer, the truck moved toward the inner lanes. At that point, Sergeant Howard believed the truck was going through the roadblock and stepped over the guardrail into the shoulder. The truck next began a serpentine turn by first veering hard right but quickly transitioning to a sweeping left turn. According to Witness #1, the passenger in the vehicle, Loftin was attempting to execute a three-point turn. Thus, the truck continued turning until reaching the number 4 lane where it momentarily stopped. The truck quickly began backing up, reversing back into the inner lanes.

As the driver attempted to turn around, Sergeant Howard reacted by approaching the vehicle from the freeway's shoulder and then stepping into traffic lanes. He was armed with his AR-15 rifle. As the truck backed up, Sergeant Howard discharged his weapon, firing 20 rounds. Sergeant Howard fired his weapon believing the truck was no longer going to execute the U-turn but was moving toward him. His belief was based on light from the truck's headlights, originally passing from the left of his body to the right, had changed direction. The lighting initially signaled the truck was doing the U-turn and moving away. When the light moved in the opposite direction, from his right to left, Sergeant Howard believed the driver had changed directions was returning toward him and placing him and his men in immediate danger. The rounds fired by Sergeant Howard struck Loftin and the truck. No rounds struck the passenger. Although life saving measures were performed on him, Loftin was pronounced deceased at the scene.

¹ Traffic lanes are numbered beginning with the lane closest from the center.

STATEMENTS BY POLICE OFFICERS²

Sergeant Daniel Howard

On June 29, 2021, Detectives Edward Hernandez and Adrian Bustamante of the San Bernardino County Sheriff's Department interviewed Sergeant Daniel Howard as to his involvement in an officer shooting incident that occurred on June 23, 2021, at approximately 1:00 a.m. The incident took place on the 10 Freeway east of Sierra Avenue in the City of Fontana.

At the time of the incident, Sergeant Howard had been employed by CHP for 12 years. He began his shift in the evening of June 22, 2021, at the Rancho Cucamonga station. While on duty, Sergeant Howard wore a CHP approved tan, short-sleeve uniform. He used a black gun belt that carried his duty firearm along with three fully loaded 20-round magazines. Sergeant Howard did not utilize an audio belt recorder or a body camera that evening.

Sergeant Howard learned of an ongoing vehicle pursuit from CHP dispatch. The pursuit involved a stolen big rig truck in the San Bernardino area heading toward Rancho Cucamonga. The truck was on the 210 Freeway in eastbound lanes traveling west.

Sergeant Howard initially pulled logs and listened to updates to locate the pursuit's location. Afterwards, he and Officer Nicholas Mercado went into the field to deal with the pursuit. They proceeded to the 210 Freeway, deployed at the westbound Sierra Avenue on-ramp and waited for the big rig to arrive.³ As he monitored the pursuit, Sergeant Howard considered solutions to stop the stolen truck including shutting down ramps, setting roadblocks and using spike strips. Sergeant Howard even considered the need to drive head-on with the truck.

Prior to reaching his area, the big rig vehicle made a U-turn on the freeway and headed east back to San Bernardino. The driver reversed course prior to reaching the traffic break set up by officers from his station. Sergeant Howard and Officer Mercado remained in the area to monitor the pursuit. After driving in correct lanes, the driver exited and reentered the freeway and resumed wrong way driving. The driver's actions resulted in near miss, head-on collisions with other oncoming vehicles. One vehicle was forced off the road while causing a second vehicle to drive up an embankment. Sergeant Howard also learned that San Bernardino CHP discontinued the active pursuit in order to de-escalate the situation. According to Sergeant Howard, withdrawing had the opposite effect because the dangerous wrong way driving did not end, the evading continued, and the truck's speed increased.

² Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

³ Anticipating the big rig would pass a traffic break set up in the eastbound lanes, Sergeant Howard positioned his vehicle to track the pursuit from the correct freeway lanes.

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Sergeant Howard and the other Rancho Cucamonga officers, relocated to the 10 Freeway after the pursuit had transitioned back to the 10 Freeway in Redlands. Sergeant Howard returned Officer Mercado to their station to obtain an additional patrol unit. He anticipated needing additional vehicles to block the roadway. Sergeant Howard also did not want Officer Mercado in his patrol unit if there was a need to go head-on with the big rig. He also spoke with Officer Gabriel Mendez and instructed him as to plans to conduct a traffic break and create a roadblock.

Sergeant Howard continued to monitor the pursuit. The reports were repeated updates of continued wrong way driving, near head-on collisions and the driver bypassing opportunities to leave the freeway. Sergeant Howard knew the situation had gotten very bad when 40-King advised that an aerial use of force might be necessary to stop the truck. Another report indicted the truck had blown past a Sheriff's unit traffic break on the 10 Freeway.

Sergeant Howard met with his fellow officers in the eastbound lanes of the 10 Freeway at Sierra Avenue. Upon arrival, Sergeant Howard observed three patrol units parked sideways across the freeway's eastbound lanes. One vehicle blocked the number one lane, while the others blocked lanes 3 and 4 lanes and the outer shoulder. Sergeant Howard parked his vehicle across the number 2 lane. The emergency red and blue lights on all the patrol vehicles were illuminated and flashing to make the roadblock visible to the big rig's driver.

Numerous civilian vehicles were stopped west of the roadblock. Sergeant Howard does not remember how far back those vehicles were from the roadblock. Since all officers from his station were on scene, none could do traffic control. Thus, the civilians were in danger if the truck passed the roadblock.

After the roadblock was set, Sergeant Howard discussed plans to handle the oncoming truck with the officers on scene, namely, CHP Officers Gabriel Mendez, Sergio Vasquez, Mark Garcia, Jesus Garcia and Nicolas Mercado. Sergeant Howard, who had armed himself with a department issued Sig Sauer M400 Rifle from his vehicle, instructed that only he would fire his weapon if needed. He further instructed his officers that they should only use their weapons to protect themselves. Sergeant Howard put the restrictions in place for the following reasons: 1) to control the number of rounds going downrange and decrease the chances of harming each other or anybody else; 2) based on his military training and experience, he was proficient with the style of weapon; 3) he did not know the skillset of his fellow officers as to their use of the rifles; and 4) as the supervisor, he did not want to place a burden on his officers to determine whether they should discharge their weapons.

Instead of remaining in their patrol vehicles, Sergeant Howard moved with his men to the south edge of the freeway over the guardrail. They took cover among trees growing along the freeway. Sergeant Howard believed the driver could ram their vehicles resulting in his men being hurt or killed. Facing east, Sergeant Howard set himself against the left

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side of a tree. Officer Gabriel Mendez took a position on the other side of the same tree while the others situated themselves in different places behind him.

Sergeant Howard began searching for the vehicle while, at the same time, listened to the broadcasts describing the pursuit. In general, the information reconfirmed that the big rig the was still moving west toward his location while in the wrong lanes of traffic. After about 10 minutes, Sergeant Howard located the approaching truck by seeing a beam of light pointing downward from 40-King's spotlight; 40-King also announced that the truck was 200 yards away. The vehicle quickly came into focus and was much closer than expected. The truck was in the far-right lane area, traveling at approximately 50 mph in his direction. As it came closer, the truck started curving towards the number 1 lane and center median of the freeway. At that point, Sergeant Howard believed the truck was not going to stop or turnaround, but instead go through the roadblock into the civilian vehicles stopped down the freeway. Sergeant Howard realized that by the truck's move toward the center, it was moving farther away from his position. He would consequently lose a 45-degree angle on the truck's windshield that was needed to accurately fire his weapon.

Sergeant Howard next stepped over the guardrail and began moving east first in the south shoulder toward the truck and next into traffic lanes. Without asking, he knew his fellow officers followed him onto the roadway but did not know their exact locations. The sergeant was mindful of where he was, keeping his distance from the direct threat of the truck. He did not want to place himself in the truck's path and instead wanted to be in the safest position possible while maintaining the 45-degree angle on the truck. Sergeant Howard also believed that by walking out, the driver would see his uniformed presence with his rifle and stop. Since it was dark, the driver would not be able to see if he stayed on the shoulder.

While walking out, the truck began a sweeping left turn from the number 1 lane, that appeared to be part of U-turn. Sergeant Howard began yelling "stop, stop, stop, stop, stop." At the same time, he saw light from the truck's headlights crossed from the left side of his body to his right side. The truck seemed to slow, and Sergeant Howard thought the truck was going to stop.

But the truck neither stopped nor continued with the U-turn. Instead, Sergeant Howard observed light from the truck's headlights suddenly pass back from his right side to the left of his body. He believed the truck was coming back at them after the driver decided not to continue the U-turn. He believed the change in direction was a threat to him and his men. He thought the driver was going to go through their patrol vehicles and into the vehicles behind their roadblock and kill someone.

Reacting to the change in direction, Sergeant Howard pointed his rifle at the cab where he believed the driver was located. He could not see anybody in the cab because it was dark and the glare from the truck's headlights. Sergeant Howard began shooting approximately 15 feet away from the truck, pointing at both the driver's side windshield and side window, expelling all 20 rounds. As his magazine was going empty, Sergeant

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Howard saw someone sitting in the passenger seat that he had not seen prior to shooting. However, he was not sure if that person was the driver who might have moved over to avoid getting shot.

After he finished shooting, Sergeant Howard realized the truck was no longer coming toward him. He threw his rifle to the ground and drew his pistol on the passenger in case of a threat from the cab. He noticed a patrol vehicle, a Ford Explorer, drive past him and pull directly behind the big. The truck coasted into the Explorer and stopped. Two other patrol vehicles drove to the front of the big rig and blocked the truck from the front. Sergeant Howard did not instruct or otherwise direct his men and was not sure if any of them had discharged their weapons.

The officers surrounded the truck's cab. The driver's side door was opened, and Sergeant Howard saw the driver unresponsive, laying face down toward the center of the bench seat. The passenger was sitting in front passenger area. At that point, Sergeant Howard was still unsure if the threat was continuing. After the passenger was pulled out of the cab, Sergeant Howard ordered the officers to bring the driver out and start life-saving measures.

Sergeant Howard started thinking about his duties and responsibilities as the supervisor, whether his men or other persons had been injured and how to secure the area. Later, personnel from Fontana Police Department and the San Bernardino Sheriff's Department came on scene to help secure the area. Sergeant Howard also updated dispatch as to the situation and apprised his chain of command as well.

Sergeant Howard described the situation as fast moving where he had little options. Letting the stolen truck travel through Rancho Cucamonga, however, was not an option for him. The driver would have killed someone if he allowed that to happen. There was a reported disabled vehicle in the area as well as a construction zone where workers were present. The stolen truck posed a danger to those present: motorists, construction workers, himself, officers, and anybody in the vicinity. The roadblock was set to stop the big rig in a peaceful manner. If the roadblock did not work, Sergeant Howard believed any further action by him would only be reactions to the driver's behavior.

Sergeant Howard believed the truck's driver engaged in extremely dangerous behavior that threatened the safety of the public. The prolonged evading, continual on and off again freeway behavior, and purposeful wrong way driving were not accidental, but intentional and deliberate acts that would eventually end in a violent collision. Any crash with a large size truck driving in the wrong direction would certainly end in a crash causing great damage and death to someone.

Less lethal means to stop the pursuit and end the dangerous driving were not available according to Sergeant Howard. Using a shotgun would have no effect on the big rig. A spike strip was previously used but the truck kept going. Running head-on into the big rig would have jeopardized his safety or that of his men. The driver did not stop for patrol

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units following him on the freeway or when paralleling the vehicle from the correct side of traffic. After the units pulled back, the driver was given an opportunity to turn around, get off the freeway, redirect himself or surrender. Finally, a Sheriff's Deputy ran a traffic break on the 10 Freeway, but the truck drove past it while going the wrong way. Sergeant Howard believed all reasonable means and techniques to stop the vehicle were utilized before force was used.

Officer Nicholas Mercado

On June 29, 2021, Detectives Edward Hernandez and Adrian Bustamante of the San Bernardino County Sheriff's Department interviewed Officer Nicholas Mercado as to an officer shooting incident that occurred on June 23, 2021, at approximately 1:00 a.m. The incident took place on the 10 Freeway east of Sierra Avenue in the City of Fontana.

At the time of the incident, Officer Mercado had been employed by CHP for 3 years and 6 months and was stationed in Rancho Cucamonga. On June 22, 2021, Officer Mercado began working the graveyard shift at 9:00 pm. He wore a CHP approved tan uniform with CHP patches on both shoulders with his badge on his left chest. Officer Mercado also wore a gun belt that carried, among other items, his duty firearm along with four magazines. Officer Mercado was not wearing an audio belt recorder nor a body camera that evening. His patrol unit contained a vehicle dash camera.

Between 11:50 PM and midnight, Officer Mercado was at the Rancho Cucamonga station when a radio broadcast described a wrong way pursuit involving San Bernardino CHP and a stolen big rig. The pursuit was on the 210 Freeway heading toward the Rancho Cucamonga area. As a result, Officer Mercado and Sergeant Howard drove to the 210 Freeway in a shared patrol unit and stopped at Sierra Avenue. A traffic break had been set farther down the freeway in the eastbound lanes. However, the big rig made a U-turn before arriving at the traffic break. Officer Mercado and Sergeant Howard remained in the area for a time. When dispatch reported that the big rig was again in the wrong lanes of traffic going east, they anticipated the truck would return to their area on the 10 Freeway and eventually relocated to the freeway at Sierra Avenue.

Officer Mercado retrieved a separate patrol unit before meeting at the 10 Freeway. Upon his arrival, other officers from his station had formed a roadblock in the eastbound lanes just past Sierra Avenue. Officer Mercado parked his patrol unit across lane 4 and the shoulder area and activated his emergency lights. Because of the roadblock, from 150 to 200 vehicles had backed up on the freeway, about one quarter mile away.

All officers took cover just south of the freeway over a guardrail in a dirt area with trees. Officer Mercado armed himself with an AR-15 rifle. Sergeant Howard specifically instructed the officers that if deadly force was needed, he, Sergeant Howard, would be the one to shoot. As they waited for the truck to approach, 40-King provided updates as to the pursuit's progress. The truck travelled between speeds of 50 mph and 75 mph and had passed exits where it could have left the freeway.

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Officer Mercado first saw the big rig when it was 600 to 700 feet away from his location. The truck was partially in the right shoulder and the number 4 lane. It was coming toward them at 40 to 50 mph. Officer Mercado heard a grinding sound that came from the truck being driven on its tire rim. No patrol vehicles followed the truck at that time.

As the truck approached, the vehicle began an "S" style maneuver. From the slow lane, the truck veered north toward the number 1 lane. The truck next turned south, heading back to the number 4 lane, where the officers were standing. The truck's headlights were directly aimed at them.

Officer Mercado recalled shots were fired when the vehicle turned toward them. He was still south of the guardrail, looking at the truck. He saw Sergeant Howard moving toward the truck and, at that point, lowered his own rifle because Sergeant Howard was in his field of vision. Just before he heard shots, Officer Mercado considered pulling the trigger on his weapon because the truck was getting close. He did not discharge his weapon because Sergeant Howard was in front of him.

After the shots were fired, the vehicle reversed. Officer Mercado entered his police unit and drove up to the truck. Other officers were already there and giving commands to the passenger inside the truck. The passenger was taken out and secured. Medical aid was provided to the driver after he was removed from the cab.

Officer Mercado knew the wrong way driving was dangerous to other motorists. There is no regard for public safety in those cases. Officer Mercado had been to previous traffic collisions that resulted in death or major injury to innocent drivers. As a result, officers try to stop wrong way driving as quickly as possible.

Several options were unsuccessfully deployed to stop the truck: traffic breaks, a spike strip, and their roadblock. If lethal force was not used, Officer Mercado believed he and his fellow officer could have been runover, the truck would have run head-on into motorists after going through their patrol units, or the truck would have done another U-turn seeking another opportunity to go wrong way again. The driver had multiple opportunities to end pursuit peacefully but did not take them.

Officer Gabriel Mendez and Officer Mark Garcia

Both Officer Gabriel Mendez and Officer Mark Garcia were interviewed as to an officer shooting incident that occurred on June 23, 2021, at approximately 1:00 a.m. The incident took place on the 10 Freeway east of Sierra Avenue in the City of Fontana.

The officers rode together in the same patrol unit on the night of the incident. Each officer was interviewed separately in interviews by Detectives Edward Hernandez and Adrian Bustamante of the San Bernardino County Sheriff's Department. The interviews are summarized together as much of the information they provided is substantially the same.

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At the time of the incident, Officer Mendez had been employed by the California Highway Patrol since April of 2010. Officer Mark Garcia began employment with the California Highway Patrol on June 26, 2017. Both officers were stationed at the CHP office located in Rancho Cucamonga and began working their shift at 9:00 pm on June 22, 2021. Both wore CHP approved uniforms. As partners, Officer Mark Garcia and Officer Mendez rode together a marked Ford Explorer driven by Officer Mark Garcia. The patrol unit contained a vehicle dash camera.

Officer Mendez and his partner Officer Mark Garcia were helping a motorist in Ontario when they first learned of the vehicle pursuit. A stolen big rig traveling west was heading into their jurisdiction while in eastbound lanes. Acting on the information, the officers proceeded to the 210 Freeway. They monitored the pursuit's progress and discussed ways to stop the wrong way pursuit before motorists were killed or injured. The officers decided to create a traffic break to force the big rig into the shoulder, where a placed spike strip would disable the big rig's tires.

The officers stopped eastbound traffic on the 210 Freeway and parked east of Alder Avenue. They positioned their patrol vehicle, so it was straddling the HOV and number 1 lane and activated the vehicle's emergency lights. A spike strip was also set in the right shoulder. The big rig approached their traffic break, but executed a U-turn near Riverside Street, approximately a quarter mile away. Officer Mendez observed the truck move toward the center lanes and then make a sweeping left turn that completely turned the vehicle around. The truck returned east in the eastbound lanes. CHP units from San Bernardino, with activated blue and red emergency lights and sirens, followed in pursuit.

After releasing the traffic break, the officers learned from the broadcasts that the stolen truck had again exited the freeway and reentered in the wrong direction. The driver drove wrong way until reaching the 10 Freeway, going west in the eastbound lanes. Reports also indicated that motorists in eastbound lanes were being driven off the road into embankments and other vehicles were veering out of the truck's way to avoid near miss collisions.

The officers next proceeded to the 10 Freeway, meeting Officers Sergio Vasquez and Jesus Garcia⁴ at the eastbound Citrus Avenue onramp. Sergeant Howard had instructed them to stop traffic and form a roadblock to stop the fleeing big rig. In their two patrol vehicles, the officers entered onto the 10 Freeway and began slowing vehicles travelling east until stopping just east of Sierra Avenue. Officer Mark Garcia estimates between 100 and 200 cars were initially stopped approximately 300 feet from their position.

The officers positioned their patrol vehicles in the middle lanes of the freeway forming a roadblock. Sergeant Howard and Officer Mercado arrived in separate units soon after the initially roadblock was set. Sergeant Howard's vehicle was then positioned in the

⁴ The officers were driving together in a shared patrol unit.

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number 1 lane while Officer Mercado's unit was placed in lane number 4. All four vehicles were parked with their red and blue emergency lights activated.

Based on directions from Sergeant Howard, the officers on scene took cover over a guardrail in a dirt area with trees, south of freeway. The sergeant also announced that if the driver did not stop for the roadblock, and if a lethal threat presented itself, he, Sergeant Howard, would be the one to discharge his weapon. Afterwards, the officers took positions among the trees and waited for the big rig to arrive. Officer Mendez took a position about five feet behind and to the right of Sergeant Howard. One update indicated a separate roadblock had been set at Cedar Avenue, but the truck drove around it and continued driving west in the eastbound lanes. Officer Mendez recalled an announcement that the truck was moving at approximately 50 mph.

Officer Mendez spotted the approaching truck about a minute after the last broadcast. The truck, illuminated by 40-King, was approaching their location from the number 4 lane, at approximately 40-50 mph. When it was 200 feet away, the truck began moving toward the center divider. Officer Mendez lost sight of the vehicle and, consequently, he walked toward the guardrail, stepping over it. Sergeant Howard was already over the guardrail 10 feet away in the shoulder.

Officer Mendez next observed the vehicle turn left toward Sergeant Howard. He heard Sergeant Howard yell "stop the truck, stop, stop, stop." Sergeant Howard was 50 feet away from the truck directly in front of the vehicle's windshield. About 5 to 10 seconds after the commands, Officer Mendez heard about eight rounds rapidly fired. At the time the shots were fired, the truck was moving forward in southwesterly direction. Officer Mendez did not discharge his own weapon. After the shots, Officer Mendez indicates the truck started moving backwards. Officer Mendez saw his partner, Officer Mark Garcia, drive their patrol vehicle toward the big rig stopping behind the truck. The rear end of the truck backed into the patrol unit's driver side.

Officer Mark Garcia also saw the headlights of the truck when it was about a quarter mile away. The truck, traveling in the wrong direction in the eastbound lanes, was moving at approximately 40 mph in both the number 4 lane and south shoulder of the freeway. Officer Mark Garcia watched the truck turn toward the center of the freeway when it was about 200 feet away from his location. He thought the turn could be part of a U-turn. He saw Sergeant Howard step over the guardrail and move toward the truck. Officer Mark Garcia spontaneously ran to his unit losing sight of both Sergeant Howard and the big rig. He intended to drive his patrol vehicle into the truck to either prevent Sergeant Howard from being runover or block the vehicle from behind in case it continued the U-turn and needed to reverse course. Officer Mark Garcia heard ten to fifteen shots fired in rapid succession as he was entering his unit. Looking east, he saw the front of the big rig facing northwest but moving in reverse. He then drove his unit toward the truck stopping behind the big rig, boxing it in and preventing a three-point turn. The rear of the truck then collided into the patrol vehicle contacting the patrol vehicle's driver side door.

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After the shooting ended, both Officer Mendez and Sergeant Howard ran toward the truck. Officer Mark Garcia exited his vehicle and likewise approached the truck's cab. Other officers approached and surrounded the cab.

The driver, Loftin, was in the cab slumped over in the driver's seat while the passenger, Witness #1, sat inside the cab with his hands up. Witness #1 was first removed from the truck. Afterwards, Loftin was removed and placed on the ground. Lifesaving measures were administered to Loftin by various officers on scene.

Both officers recognized the driver of the stolen big rig was engaged in dangerous behavior that placed themselves, other officers, and motorists in danger. They wanted to stop the truck before anyone was injured or killed. Both officers recognized that less lethal options were not available to stop the truck. Using their Ford Explorer as a ram or in a PIT (pursuit intervention technique) maneuver would be ineffective against a large and heavy truck. Officer Mendez believes that if lethal force was not used, Loftin would have continued driving wrong way on the freeway, as he did previously, and would ultimately crash into another person resulting in death.

Officer Sergio Vasquez and Officer Jesus Garcia

Both Officer Sergio Vasquez and Officer Jesus Garcia were interviewed as to the officer shooting incident that occurred on June 23, 2021, at approximately 1:00 a.m. The incident took place on the 10 Freeway east of Sierra Avenue in the City of Fontana. The officers were partners riding in the same patrol unit on the night of the incident.

Both officers were interviewed in separate interviews by Detectives Edward Hernandez and Adrian Bustamante of the San Bernardino County Sheriff's Department. The interviews are summarized together as much of the information they provided is substantially the same. At the time of the incident, Officer Vasquez had been employed by the CHP since February 2, 2009. Officer Jesus Garcia began employment with the California Highway Patrol in April 2008. Both officers were assigned to the CHP station located in Rancho Cucamonga and began their shift at 9:00 pm on June 22, 2021. Both wore CHP approved uniforms. Officer Jesus Garcia wore a body camera on the night of the incident.

Officer Vasquez and Officer Jesus Garcia rode together in the same patrol vehicle, a marked Dodge Charger. The vehicle was driven by Officer Vasquez. The patrol unit was equipped with a vehicle dash camera.

At approximately 11:35 pm on June 22, 2021, the officers received information of an ongoing pursuit of a stolen vehicle. A big rig truck was traveling west on the 210 Freeway from San Bernardino in eastbound lanes. Each officer was immediately concerned that a large and heavy, multi-axle truck driven the wrong way on the freeway would cause mass injuries or death to oncoming motorists.

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Officers Jesus Garcia and Vasquez proceeded to the 210 Freeway and initiated a traffic break in the eastbound lanes of the 210 Freeway at Cherry Avenue. They learned fellow officers Mark Garcia and Gabriel Mendez had set a traffic break east of the 15 Freeway and wanted to create a second break in case the fleeing truck drove past the first break. However, the stolen truck made a U-turn and was returning east in the correct lanes of traffic. The officers consequently released the traffic break and met with Sergeant Howard and Officer Mercado at the westbound Sierra Avenue onramp. They monitored the radio updates as to the pursuit.

The officers learned the big rig was again being driven wrong way by traveling east in the westbound lanes of the 210 Freeway. While there was a report of a "good spike" the pursuit did not stop and had transitioned west on the 10 Freeway, but in the wrong traffic lanes. Several near miss collisions between the big rig and other motorists were also reported. Some vehicles veered away from the big rig, while other motorists drove up embankments to avoid contact. Officer Vasquez was surprised that no motorists had yet been killed or injured given the high speed and erratic driving described in the updates.

The officers drove to the 10 Freeway at Citrus Avenue where they met Officers Mendez and Mark Garcia. The officers initiated a roadblock by driving east onto the freeway and slowing vehicles heading toward the big rig. The two patrol vehicles eventually stopped traffic east of Sierra Avenue and created a roadblock. The traffic, consisting of several hundred cars, was stopped approximately a half mile west of the roadblock.

The two patrol units were placed in the center two lanes of the freeway alongside each other. Sergeant Howard and Officer Mercado extended the roadblock after they arrived by positioning their units in number 1 and 4 lanes, respectively. All four vehicles parked with their red and blue emergency lights activated.

Based on Sergeant Howard's directions, the officers took cover behind eucalyptus trees in a dirt area south of the freeway. Sergeant Howard and two other officers were in front with the remaining officers standing behind them. Sergeant Howard, armed with an AR-15 rifle, stood behind a tree. Sergeant Howard instructed that he would be the one to discharge his weapon at the driver if the truck did not stop for the roadblock and if a lethal threat presented itself.

Officer Vasquez saw the stolen big rig for the first time about 10 minutes after the roadblock was set. He observed a large white vehicle traveling west in the freeway's eastbound lanes. The big rig was in the number 4 lane coming towards them at approximately 50 mph. Officer Vasquez believed the truck was heading for the officers who were standing south of the guardrail. At one point, Sergeant Howard discharged his weapon when the truck was advancing toward them. Officer Vasquez recalls Sergeant Howard was still south of the guardrail when he commenced shooting. Sergeant Howard then advanced forward over the guardrail, followed by Officer Mendez. After the shooting, the truck began to move in reverse. Officer Mark Garcia then drove his patrol vehicle to

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the rear of the truck and stopping it. Similarly, Officer Vasquez entered his vehicle and drove toward the truck, stopping approximately 25 feet from the truck's front end.

Officer Jesus Garcia recalled seeing the big rig approaching his position at approximately 50 mph. He identified the truck from its headlights and the light coming from the Sheriff's helicopter. Initially, the big rig was in the number 4 eastbound lane. Describing it as a "serpentine" motion, Officer Jesus Garcia then saw the truck move north toward the center divider but then turn south toward his location and stopping approximately 200 feet from him. The big rig then began to move back. When the "serpentine" motion began, Sergeant Howard stepped over the guardrail and rushed toward the big rig. Officer Jesus Garcia followed in support. At that point, he saw headlights and the truck appeared to be coming forward. Moreover, in Officer Jesus Garcia's view, the turn was either an attempt to drive the big rig at them or an attempt to turn around. Reacting to the big rig, Sergeant Howard discharged his weapon. Officer Jesus Garcia heard 10-15 rapid shots. After the shots stopped, Officer Jesus Garcia watched the big rig move in reverse. A patrol vehicle drove in front of him, stopped behind the truck. The big rig stopped moving after the two vehicles collided.

After the vehicle stopped moving, all officers on scene approached the big rig. The passenger sitting inside the cab was taken out and secured. The driver was also taken out of the truck. Medical aid was administered to the driver until paramedics later pronounced his death.

Both officers indicate that the use of lethal force was necessary. The driver had no regard for the safety of others and his wrong way driving was eventually going to kill or injure another person. Given the length of time and the wrong way driving, the officers were surprised that a collision had not occurred prior to the truck reaching the roadblock. Based on experience, both officers knew that a large truck driving in the wrong direction and refusing to stop would only end badly. The officers believed the driver would continue wrong way driving and needed to be stopped.

Corporal Ryan Peppler and Deputy Tommy Dickey

On January 20, 2022, Detective Edward Hernandez of the San Bernardino County Sheriff's Department interviewed Corporal Ryan Peppler as to an officer involved shooting incident that occurred on June 23, 2021. Deputy Tommy Dickey was later interviewed by Detective Hernandez on January 24, 2022, as to the same incident. The incident took place around 1:00 AM, on the 10 Freeway east of Sierra Avenue in the City of Fontana.

Both Corporal Peppler and Deputy Dickey were assigned to the Aviation Division of the San Bernardino County Sheriff's Department at the time of the incident. Corporal Peppler piloted a marked Sheriff's helicopter designated as 40-King-1 (40-King). Deputy Tommy Dickey was flying in the helicopter as the Tactical Flight Officer.

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Late in the evening of June 22, 2021, the crew of 40-King received a request for assistance to locate a flatbed semi-truck reported stolen out of San Bernardino. The crew was later advised that Colton Police were in pursuit of the truck. Deputy Dickey recalls the semi-truck was on the 215 Freeway going south in the northbound lanes when they first saw vehicle. The vehicle traveled approximately 100 yards before making a U-turn on the freeway and proceed north in the northbound lanes.

The crew of 40-King monitored and broadcasted updates about the pursuit for approximately one hour. The pursuit path took them through different areas including San Bernardino, Muscoy, Highland, and Redlands at speeds up to 75 mph. The driver was consistently exiting and reentering the freeways, driving mostly in the wrong lanes of the freeways. The driver would also make large sweeping U-turns when he came upon police units. The crew also witnessed several near miss collisions between the truck and other motorists. One vehicle avoided contact by veering off the road and into a grassy area.

40-King attempted to de-escalate the pursuit through use of their public address system. Several times the crew would fly at lower altitudes and direct commands at the driver to stop driving. In addition, they would use their spotlight to get the driver's attention. The driver did not react to the commands.

When the pursuit was returning to the 10 Freeway, 40-King offered San Bernardino CHP the use of lethal force. The crew repeatedly witnessed the truck approach other vehicles head-on at high speeds. Drivers had to take evasive action to avoid colliding with "a big rolling missile." Given the pursuit's length of time and the increasing danger to other motorists, the crew believed lethal force was necessary to stop the driver. CHP did not respond to the offer and aerial use of force was not deployed. The crew of 40-King then continued to illuminate the stolen truck so that motorists could see it and avoid colliding with the dangerous wrong way driver.

40-King monitored the truck up to when the shooting incident occurred on the 10 Freeway. Rancho Cucamonga CHP set up a roadblock consisting of 4 to 6 vehicles. They were parked across lanes at 45-degree angles with their red and blue lights turned on. Behind the roadblock, a traffic jam of cars was stopped.

The truck drove up to the roadblock at approximately 55 mph. No patrol vehicles were in pursuit. As it got closer to the roadblock, it began to slow. According to Deputy Dickey, the truck began a multipoint U-Turn. The vehicle stopped and then reversed. He also observed a CHP unit drive to the back of the truck preventing it from backing up.

Neither Corporal Pepler or Deputy Dickey saw who discharged their weapon. At one point, officers on the ground started running toward the truck. Two subjects were taken out of the truck.

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Sergeant Greg Castillo

On June 22, 2021, Sergeant Greg Castillo was on patrol in a marked unit in the City of Colton. At 11:44 pm, he observed a white flat-bed truck at a gas station located on Iowa Avenue and the 215 Freeway that matched the description of a vehicle stolen out of San Bernardino. Sergeant Castillo observed the truck exit the gas station and proceed north on Iowa Avenue. Following the vehicle, Sergeant Castillo confirmed it was the stolen truck. He continued to follow the vehicle as it transitioned north to La Cadena Drive, and then turn right on Barton Road and travel east. Before activating the overhead lights of his patrol unit, Sergeant Castillo observed the vehicle accelerate to 50 mph. Reaching the Barton Road overpass, the vehicle moved into the left turning lane that feeds the 215 Freeway's northbound onramp. However, the truck made a hard right turn, entered the north bound off ramp, and began driving south in the northbound lanes of the freeway.

Based on the unsafe condition, Sergeant Castillo did not follow the stolen vehicle. Sergeant Castillo instead attempted to track the truck from side roads. Sheriff's helicopter 40-King, joining the search for the stolen truck, located the truck on the freeway and advised it had turned around and was proceeding north in the correct lanes of traffic. Sergeant Castillo consequently entered the northbound 215 Freeway and observed the stolen truck transition to the 10 Freeway eastbound and next exit the freeway at the Redlands Boulevard/Waterman Avenue. At that point, Sergeant Castillo caught up with the truck as it waited at a red light.

The driver of the truck drove south on Club Center Drive, accelerating through the red light reaching a high rate of speed. Sergeant Castillo activated his siren and his overhead lights and began pursuing the vehicle. The driver drove until reaching Caroline Street where it turned left. As it then proceeded east on Caroline Street, Sergeant Castillo observed the truck travel in opposing traffic lanes until reaching Waterman Avenue. At that intersection, the driver, disregarding a red light, made a left turn unto Waterman Avenue and proceed north. Continuing to evade, Sergeant Castillo watched the driver approach the intersection of Waterman and Redlands Boulevard. Without slowing down, the driver of the stolen truck drove through a red light the without regard for the safety of other drivers in their vehicles. The truck continued north, going below the 10 Freeway underpass until reaching Hospitality Lane where it made a right turn and proceed east. The driver proceeded onto the 10 Freeway by making a right turn onto the offramp. The truck proceeded east in westbound lanes. Sergeant Castillo and other Colton units discontinued involvement with the pursuit at that time.

Deputy R. Hernandez

On June 23, 2021, Deputy Hernandez and his partner Deputy Valdez were dispatched to assist a pursuit of a white semi-truck traveling west in the eastbound lanes of the 10 Freeway. The deputies drove to the Sierra Ave overpass and parked in the south emergency lane of the eastbound lanes of the 10 Freeway, near the Sierra Avenue on-ramp.

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Upon arrival, Deputy Hernandez observed a barricade of CHP patrol vehicles covering the eastbound lanes of traffic. Afterwards, he saw a white semi-truck approaching the barricade traveling westbound in the 10 Freeway's eastbound lanes of traffic. He watched as the semi-truck, just before driving into the barricade, turn south toward a CHP unit. The truck reversed toward the center median. Afterwards, Deputy Hernandez heard multiple shots being fired. Consequently, the deputies drove toward the barricade and exited their vehicle. Deputy Hernandez went to the truck's driver side door and watched CHP officers remove the unresponsive driver. He later saw that the passenger had been removed and handcuffed.

Deputy Justin Musella

On June 23, 2021, Deputy Musella was the assigned watch commander at the Fontana Sheriff's Department station. He was advised of a stolen vehicle pursuit involving a large white Peterbilt truck driving into oncoming traffic of the freeways and moving through several jurisdictions. Deputy Musella began monitoring the pursuit and confirmed the driver continuously drove the large vehicle at unsafe speeds in the wrong direction of traffic nearly hitting other vehicles. Although there were many on-ramps that could be used to exit the freeways, the driver did not use those exits to end the dangerous driving. Thus, the driver was intentionally driving into oncoming traffic and was a threat to public safety. According to Deputy Musella, if not stopped, the driver's dangerous actions would ultimately result in death or great injury to innocent citizens or law enforcement officers.

After requested to assist with the pursuit, Deputy Musella directed deputies from his station to create traffic breaks that would stop eastbound traffic on the 10 Freeway near Pepper and Cedar Avenues in Fontana. Deputy Musella then went to the Cedar Avenue overpass. He saw the truck approach his location at 50 mph to 60 mph. He observed that the truck's left front tire was disabled by a spike strip but had no effect upon the vehicle's operation. Instead, the driver continued driving west in the stolen truck in the wrong traffic lanes. Deputy Musella proceeded to Sierra Avenue in Fontana. Dispatch indicated the truck had slowed as it approached a traffic break and, later, shots were fired. Entering the freeway from the eastbound Sierra Avenue on-ramp, Deputy Musella entered onto the scene of the shooting event after it had taken place. He then proceeded to assist in securing the area.

Deputy D. Popa

On June 22, 2021, Deputy Popa was the assigned watch commander at the Highland Sheriff's Department station. After receiving information of a wrong way vehicle pursuit involving a flatbed semi-truck driving on the 210 Freeway, Deputy Popa responded to the area of Baseline Street and the 210 Freeway intending to set a spike strip. Within seconds of arrival, Deputy Popa observed the truck exit the west-bound lanes of the 210 Freeway and turn left onto westbound Baseline Street. Afterwards, the truck immediately

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turned right and entered the eastbound offramp of the 210 freeway. Deputy Popa watched the truck travel west in the wrong lanes of traffic. Deputy Popa then left the area.

A short time later, Deputy Popa received information that the pursuit was returning to the area. The truck was traveling east in the correct eastbound lanes of traffic. Returning to Baseline Street and the 210 Freeway, Deputy Popa positioned himself at the top of the eastbound off-ramp. The truck exited the freeway at Baseline Street and Deputy Popa deployed a spike strip across the off-ramp. The driver however, avoided hitting the device. Deputy Popa then observed the truck turn left onto eastbound Baseline Street. The truck then passed over the freeway and made a right turn entering the westbound offramp of the 210 Freeway. The truck continued traveling east in in the westbound lanes of traffic.

Deputy A. Tarankow

On June 23, 2021, Deputy Tarankow was on duty and assigned to uniform patrol for the City of Grand Terrace. Based on Sheriff's radio broadcasts, Deputy Tarankow knew a stolen vehicle pursuit involving a white truck was in progress. The truck was eastbound in the westbound lanes of the 210 Freeway. It had almost collided with oncoming traffic and had crashed into guard rails. Additional information indicated the pursuit had transitioned to the 10 Freeway and the truck was moving westbound in the wrong traffic lanes.

Deputy Tarankow proceeded to the eastbound 10 Freeway at Pepper Avenue in the City of Colton. He initiated a traffic break, then stopped his patrol unit a quarter mile from the onramp, parking between lanes 2 to 4. Deputy Tarankow activated the unit's red and blue emergency lights, the spotlight, and overhead lights. He then moved to the middle shoulder armed with his rifle. The truck arrived at his location driving approximately 60 mph in the number 5 lane and the shoulder, almost colliding with his patrol unit. The driver did not stop and continued driving west against the eastbound traffic.

STATEMENTS BY CIVILIAN WITNESSES⁵

Witness #1

On June 23, 2021, Detectives Edward Hernandez and Adrian Bustamante of the San Bernardino County Sheriff's Department interviewed Witness #1 at the Rancho Cucamonga Sheriff's station. At the time of the interview, Witness #1 had been arrested for possession of a stolen vehicle. Witness #1 agreed to speak with the detectives after he was informed of his Miranda rights. Witness #1 initially confirmed that he rode as a passenger in the stolen truck driven by Raymond Loftin, his half-brother.

Witness #1 initially lied to the detectives as to his contact with Loftin and the vehicle. Witness #1 said Loftin came to his house between 6:00 and 6:30 p.m. on June 22, 2021.

⁵ All reports of civilian statements made were reviewed, though not all are summarized here.

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Loftin told Witness #1 the white Peterbilt truck was provided by his new employer for his position as a mobile mechanic. The pair drove around in the truck for several hours and ate at a backyard food vendor. Witness #1 also said he and Loftin smoked methamphetamine while in the truck but was unsure how much they smoked. After eating, Witness #1 and Loftin drove around toward Riverside. The pursuit then started.

Witness #1 and Loftin went to a gas station on La Cadena Road. As they left, a police vehicle drove behind them without activating its lights. Loftin got scared and drove onto the freeway offramp at Barton Road. The police, according to Witness #1, activated their lights but did not follow them onto the freeway. Loftin knew he was going the wrong way but did so to avoid the police. Loftin also admitted the truck was stolen and said he was "sorry." Witness #1 said he told Loftin to stop but Loftin refused because he did not want to go to jail.

The pursuit took place on several freeways and went on for about an hour. When driving the wrong way, Loftin stayed in the shoulder and drove between 30 and 40 mph. Cars would just drive past them at normal speeds of 60 miles per hour; some cars did flash high beams at them. About 30 minutes before the chase ended, Loftin called his mom. He told her about the pursuit and apologized.

Loftin and Witness #1 knew the police were chasing them based on all the red and blue police lights behind them. Witness #1 also knew a police helicopter was also chasing based on the constant spotlight shining on the truck. Witness #1 acknowledged that the police did not follow them when the truck was being driven the wrong way, only the helicopter.

Witness #1 described how the pursuit ended when he and Loftin encountered the roadblock set up on the 10 Freeway. Witness #1 said the roadblock consisted of four police units with red and blue activated lights. At that time, he did not see any police officers. When they approached the roadblock, Loftin told Witness #1 that he was going to turn around and they would make it through this. Witness #1 said Loftin attempted a three-point turn, but only made it to two. After stopping the truck about 40 feet away from the roadblock, Loftin started moving in reverse at approximately 5 mph, but quickly accelerate. As they backed up, however, the police started shooting. At least 10 shots were rapidly fired.

After the shooting ended, Witness #1 heard commands to get his hands up. He was taken out of the truck and handcuffed. He was not shot. Witness #1 was later taken away in a patrol car.

The detectives eventually told Witness #1 of a video showing he and Loftin taking the truck from the owner's parking lot. Witness #1 admitted they took the truck just to joyride. They made a mistake that turned out bad. Prior to taking the truck, they were hanging out and were high. Witness #1 further explained that Loftin did not want to stop the pursuit

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because he had a record and would end up doing a lot of time. Loftin believed he was wanted because he did not show up to court the day before.

Statements by CMC Rebar West Employees

Detectives from the San Bernardino County Sheriff's Department interviewed employees Richard Lines, Gustavo Covarrubias, Alex Vargas, and Jose Orozco of CMC Rebar West (hereinafter, "CMC"), the business that owned the stolen truck involved in the shooting event. Their statements were collectively summarized for purposes of this review.

On June 22, 2021, Jose Orozco was on-duty at CMC, located at 5425 Industrial Parkway, San Bernardino. He noticed a company truck moving slowly in the parking lot without its lights on. He watched the truck back up, but then move forward, crashing through a chain linked fence, and driving away.

Richard Lines reported the crime to the San Bernardino Police Department. He described the vehicle as a white, 10-wheel, 2008 Peterbilt Bobtail flatbed semi-truck. The truck's license plate number was 99346J1. Transportation Manager Alex Vargas was also notified of the theft. He obtained GPS information that tracked the company's stolen truck to the Colton area. The GPS information was reported and eventually provided to the Colton Police Department.

PURSUIT PATH

The pursuit of the stolen big rig began on June 22, 2021, at approximately 11:45 pm. From Barton Road, Loftin drove south onto the northbound lanes of the 215 Freeway. After driving for an about one quarter mile, Loftin made a U-turn on the freeway and began driving north. Loftin drove until reaching the 10 Freeway, where the truck transitioned into the eastbound lanes. Loftin then exited the freeway at Waterman Avenue and drove south on Club Center Drive. The vehicle made a left turn at Caroline Street. Loftin next made a left turn onto Waterman Avenue. Loftin proceeded north going through the intersection of Waterman Avenue and Redlands Boulevard. The truck reached Hospitality Lane where Loftin made a right turn. He drove east until making another right turn onto the 10 Freeway, entering wrong way through use of the offramp.

Loftin drove east in the wrong lanes for almost five and a half miles until reaching the 210 Freeway.⁶ Loftin continued west after transitioning to the eastbound lanes of the 210 Freeway. Loftin drove approximately two and a half miles in the wrong direction until reaching a closure at 5th Street. Loftin turned the truck around and proceeded to drive approximately two and one-quarter miles east until reaching San Bernardino Avenue. There, Loftin exited but immediately reentered the 210 Freeway going west in westbound lanes.

⁶ The number of miles driven were determined from the police reports or using Google Earth.

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Loftin drove in the correct lanes of traffic for just over three miles until he reached Baseline Avenue. After leaving the freeway, Loftin, immediately reentered the freeway by turning onto the off-ramp and drove west in eastbound lanes.

Loftin drove wrong way for approximately 10 miles until reaching Riverside Avenue. Loftin executed a freeway U-turn and proceed east in the eastbound lanes of traffic.

Loftin drove in the correct eastbound lanes of traffic for about 10 miles. Upon reaching Baseline Avenue, Loftin exited the freeway. He immediately reentered the 210 Freeway in the wrong direction, driving east in the westbound lanes of traffic. Loftin drove east for approximately four miles until transitioning wrong way onto the eastbound lanes of 10 Freeway. Loftin drove west on the 10 Freeway for approximately 13 miles in the wrong direction until reaching the location of the shooting incident near Sierra Avenue.

INCIDENT AUDIO AND VIDEO

911 CALLS. Two 911 emergency calls by motorists were recorded and included in the CHP dispatch audio tapes. The calls begin at minute 75 and minute 77, respectively, of the dispatch tape.

Call 1: Anthony Ricola, a gas truck driver, reported he was on the eastbound 10 Freeway exiting Mt. View Avenue. The reporting party was in the number 4 lane and had to move out of lane to avoid a head-on accident.

Call 2: Unidentified driver reported a white "tow truck" was driving west in the wrong way on the 10 Freeway near Tippecanoe Ave in the Loma Linda area. The reporting party indicated "When I saw that truck coming at me – Wow!"

DISPATCH RECORDING.

CHP DISPATCH:

Start	Colton Police Dispatch reports truck theft to CHP dispatch; describes a stolen big rig on 215 Freeway going northbound in the southbound lanes near Barton Road. Peterbilt semi with a flatbed attached. Vehicle made a U-turn.
1:30	Northbound on 215 Freeway, approaching Washington, weaving in and out of traffic, going 75 mph.
4:00	40 King: Following stolen truck, initially going south in northbound lanes of 215 Freeway but made a U-turn; going north on 15 Freeway.
5:45	40K: Truck transitioning from 215 north to 10 East.
7:05	40K: Exiting Waterman, continuing south at a high rate of speed on Club Center Drive; Colton Police in pursuit.
8:32	40K: Vehicle entering 10 Freeway, going east in the westbound lanes of freeway. No officer pursuit.

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10:40	40K: Stolen vehicle almost hit a vehicle while going east in westbound lanes. Just east of Mt. View.
11:00	40K: Stolen vehicle almost hit another vehicle while going wrong way, stolen vehicle was traveling 60 mph and swerving.
12:43	40K: Big rig transitioning from the 10 Freeway to the 210 Freeway. The vehicle continued to drive the wrong way using the eastbound lanes of traffic while traveling west. The vehicle was driven at 70 mph in the number 2 traffic lane. Dispatch: Freeway closure at 5 th Street
14:20	40K: Still wrong way at speed of 75 mph.
15:00	40K: The driver backs up the truck, making a U-turn and rams a k-rail.
16:30	40K: Vehicle exits San Bernardino Avenue, reenters the freeway using the westbound on-ramp.
18:30	Dispatch: SB CHP pursuing Peterbilt, currently westbound 210 approaching Santa Ana River; in correct lanes.
20:00	40K: Vehicle approaching 5 th Street from the number 2 lane; vehicle traveling at 65 mph in moderate traffic.
21:30	40K: Vehicle exits at Baseline, reenters the freeway wrong way, going west in the eastbound lanes. Vehicle ran a vehicle off the road; in the number 1 lane at 60 mph.
24:50	40K: Vehicle continuing west in eastbound lanes at 45 mph, passing an officer in the shoulder; near Central Avenue.
26:20	40K: Vehicle continuing west in the eastbound lanes; Almost hit a car from the shoulder, back in the number 2 lane.
26:44	40K: Vehicle continuing 210 west in eastbound lanes; stolen truck moving between the shoulder and the number 2 lane; cars are swerving and missing.
28:27	40K: Truck continues wrong way driving, west of Del Rosa, swerving at another vehicle that moved to avoid a near miss.
32:45	40K: Stolen truck continues wrong way driving straddling the number 3 lane and shoulder, causing other vehicles to swerve to get out of its way.
39:06	40K: Ran another vehicle off the roadway while continuing to go west in the eastbound lanes near the 215 interchange.
43:00	40K: Another near miss, west of Macy, while west in eastbound lanes.
46:15	Dispatch: Vehicle at Riverside Ave on 210; trying to do a U-turn on the freeway.
47:15	40K: Vehicle turned around on the freeway, near the traffic break at 210 and Riverside. Going east in the eastbound lanes.
1:00:15	40K: Vehicle exits Baseline Avenue; through a redlight, proceeding eastbound on Baseline. Vehicle reentering the 210 Freeway wrong way going east in the westbound lanes. Vehicle hit a k-rail and busted a waterline while reentering the 210 Freeway. Moderate traffic coming in the opposite direction.

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1:01:15	CHP S5: Follow with airship only; do not push driver; see if vehicle will get off on his own.
1:02:35	40K: Vehicle went into the number 2 lane, almost hitting two cars while going wrong way on the freeway.
1:04:30	40K: May need to use aerial lethal force on vehicle; traffic coming fast at the semi-truck, located in the number 2 and 3 lanes.
1:06:12	40K: Vehicles almost hit each other to avoid the driver.
1:06:50	40K: Another near miss. In the number 2 lane, still wrong way on the freeway.
1:07:33	CHP Unit: Spiked the vehicle south of San Bernardino Avenue; confirmed good spike.
1:07:57	40K: Vehicle getting on the 10 Freeway, west in the eastbound lanes.
1:08:40	40K: Vehicle had to go up to a berm to miss the stolen truck.
1:09:30- 1:34:00	40K: Updates of the vehicle's location as it travels east in the westbound lanes of the 10 Freeway. The vehicle was driven between reported speeds at various speeds from 60 mph to 40 mph, in different lanes of traffic, in heavy traffic.
1:26:30	40K: Fontana Sheriff Unit conducting traffic break at Pepper Avenue.
1:27:25	40K: Driver history is to do a giant U-turn at traffic stops.
1:28:00	40K: Driver approaching traffic break at Pepper Ave at 60 mph. Driver not slowing down or stopping, continues going past break west in eastbound lanes. Front driver side tire is completely gone and sparking.
1:33:45	40K: Driver 200 yards from the traffic break (at Sierra); still west in eastbound lanes of traffic at 55 mph.
1:34:00	40K: Driver moving to the center of the traffic break; looks like he is going to do a U-turn.
1:34:25	40K: Looks like units trying to block it in. Rammed a unit; Officer approached the truck.
1:35:00 - End	Various: Driver and passenger are out; one party down, working on driver; announced OIS occurred; request for medical aid; traffic directions and other reporting.
1:51:56	Sergeant Howard: Confirms shots were fired; driver is down; admits he was the shooter; believes no others shot.

AERIAL CAMERA: A camera attached to 40-King recorded parts of the wrong way pursuit. The camera video records an object only when directed by the operator. The camera records audio conversations between the crew members, dispatch, and radio traffic with other law enforcement units.

Relevant audio and video parts of the recording follows:

Time	Description
0:15	Video: Loftin drives the stolen truck west in the eastbound lanes of the 210 Freeway. The vehicle was in the number 4 lane and south shoulder.

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	Several vehicles traveling east moved into other lanes of the freeway to avoid collisions with the truck.
1:01	Audio: Truck in the wrong lanes of 210 Freeway.
3:54	Audio: Truck continuing west in the eastbound lanes of the 210 Freeway.
6:10	Audio: Loftin driving at high rates of speed. He passed at least four offramps and drove through three construction zones while driving wrong way on the freeway.
13:52	Audio: West in eastbound lanes, coming to Ayala.
15:07	Video: Loftin drove the stolen truck east in the eastbound lanes of the 210 Freeway. Loftin failed to yield to CHP patrol units pursuing him.
15:20	Audio: A traffic break had been set in the eastbound lanes of the 210 Freeway at Ayala. He turned around on the freeway and drove east in eastbound lanes. Police units in pursuit in the Muscoy area.
17:41	Audio: East in 210 eastbound lanes; crossing 215 Freeway interchange. Video: Loftin continued driving east in the eastbound lanes of the 210 Freeway. Continued fleeing from pursuing CHP patrol vehicles as he crossed the 215 Freeway.
20:43	"Just for info...CHP set up a brake at Ayala and the 210, and this guy did a U-Turn on the freeway and continued back."
21:22	Video: Loftin continued to evading CHP patrol units within a designated construction zone where heavy equipment and other vehicles were present.
25:21	Audio: "Looks like he's exiting Baseline; he's going eastbound Baseline from the 210. He's going to get on the wrong way. He's getting on the wrong way on the 210. He's going to be going eastbound in the westbound lanes of the 210, he's getting on at Baseline. He took out a bunch of k-rail forcing a car off the side of the road right now." Video: Loftin exits the 210 Freeway at Baseline Avenue. Loftin turns left at the street, driving east on the overpass. Loftin executes a right turn onto the westbound Baseline Avenue offramp. During the turn, Loftin strikes a k-rail located at the corner of the offramp and drags it into the roadway. Video: As Loftin proceeded in west in the wrong direction, he forces two cars to move to the right side of the road to avoid head-on collisions. A third car moves to its left to avoid similar contact.
27:30	Audio: "This guy is [in] multiple lanes of traffic forcing the vehicles all over the freeway here, taking on vehicles head on and things like that. Number one lane, he's still eastbound in the westbound lanes about 75 to 80 miles an hour." "We are passing Fifth (Street) now. He almost hit two cars right now."

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29:30	Audio: "Yeah, he's going through the construction zone, and just a head up guys, we might transition here in a minute for an aerial use of force. If we do go that route, we'll let you guys know. But this thing has been going for this long, it's just getting more and more dangerous for the innocent drivers out here."
33:21	Audio: "... this guy is a big rolling missile down the freeway. He's westbound 10 in the eastbound lanes now."
33:48	Audio: "This is the only way this guy is going to stop." [Discussing use of force]
35:43	Audio: "... no one is chasing this dude so, and he's still going in the opposite lanes of traffic."
35:53	Audio: "We have no units in pursuit of the vehicle but he's still continuing ... wrong way ... passing Mountain View."
36:28	Audio: "He's had multiple chances to get off the freeway, even with no units with lights on ... he's choosing to continue going in the wrong way against traffic. Traffic's pretty heavy, and we don't want to leave off this and not spotlight this guy because the speed of the oncoming cars, he going to end up killing somebody. [W]e're trying to do the right thing and keep the light on this guy hoping that he will get off the freeway or people will see him."
43:30	"He had another chance to get off the freeway at Mt. Vernon and he's continuing the wrong way on the 10."
44:25	Audio: "We are at 50 miles an hour westbound, eastbound lane of the 10 coming up to La Cadena right now."
45:40	Audio: "He had another opportunity to get off the freeway at Rancho and he's continuing on the 10, wrong way."
46:02	Audio: [As to a traffic break set up by SBSO patrol unit near Pepper]: 40-King: "Alright guys, we're coming towards you. So, what he's been doing when he sees you, he will do a big U-Turn so if you don't see that happening and he keeps coming your way ... just leave yourself an out." Patrol Unit: "I'm on the left shoulder, my car is in the middle." Patrol Unit: "Lights are on, he's coming right at me." 40-King: "The unit has all of its lights on, looks good from up here in the air. And it does not appear that he's going to stop. Looks like he's going to continue right past the deputy. So, watch yourself brother. He's passing the patrol car and he's continuing in the wrong lanes of traffic, almost hit a semi."
47:59	Audio: "... [A]t Pepper, there were vehicles having to back up off the offramp area to get away from this guy."
48:11	Audio: Patrol Sergeant: "Looks like he's putting out sparks from underneath ... it looks like it's going to come from the front left tire." 40-King: "Okay yeah, we thought we saw that too on orbit, cool, thanks for that info. I think you're right; it looks like that front driver tire is flat." Patrol Sergeant: "Yeah it looks like he's starting to lose tread."

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48:51	Audio: "He had another chance to get off the freeway at Riverside but he's staying on the 10 wrong way."
50:04	Audio: Patrol Sergeant: "It looks like the left front tire is completely gone."
50:33	Audio: "We will be approaching Cedar now."
52:58	Audio: "CHP is going to try and box him in. CHP is sitting up here on ..., which is out of the Rancho Division, and they are going to try and do some box in technique of some sort I think, if I heard them right."
53:43	Audio: "... they have it blocked all the way across the freeway."
54:27	Audio: "Just east of ... Sierra"
55:12	Audio: "These guys are running up on him. I don't know."
55:24	Audio: "Its 10, east of Cedar, the truck just rammed a CHP unit, and you got some CHP officers running up on the truck. And so far, the vehicle is stopping it looks like."
56:56	Video: The stolen truck is stopped across eastbound lanes of the 10 Freeway near Sierra Avenue. CHP officers and other law enforcement personnel are around the truck. The passenger on the ground with officers tending to him. Officers take Loftin out of the cab and begin medical aid. Audio: "Getting the driver out now." "Both driver and passenger out of the vehicle. Looks like they are rendering medical aid to the driver, ... start CPR."

BODY WORN CAMERA. Deputy Jesus Garcia activated his body worn camera on the night of the incident. The body worn camera generated 10 minutes and 2 seconds of video and audio footage. The relevant parts of his recording follow:

Time	Video and Audio Description
Start	CHP Officers stand among trees south of the 10 Freeway over the guardrail. Sergeant Howard, armed with a rifle, stands against the left side of a tree looking east. One officer stands to Sergeant Howard's right, using a tree for cover. Another officer stands slightly behind Sergeant Howard to the left. Other officers stand spread out behind Sergeant Howard several feet away from him. Four CHP units are parked across the eastbound lanes of the freeway with emergency lights on. The patrol vehicles in the number 1 and 2 lanes, Dodge Chargers, face northeast. The vehicle in the number 3 lane, a Ford Explorer, faces southeast. The vehicle straddling the number 4 lane and shoulder faces northeast.
3:34	Audio: 40-King announces the truck was 200 yards from the roadblock, moving at an estimated speed of 55 mph. Video: The truck traveling west in the center of the eastbound lanes. The truck makes a distinct northwest turn toward the center rail. Without

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	<p>stopping, the truck next changes directions turning southwest toward the south guardrail. The truck stops when the engine/hood reaches the number 4 lane with the truck's body covering other lanes of traffic.</p> <p>Sergeant Howard initially leaves the tree and steps over the south guardrail. When the truck curves south and stops, Sergeant Howard quickly walks east toward the truck while in the south freeway shoulder.</p> <p>After momentarily stopping, the truck reverses into the number 1 lane. Sergeant Howard follows first from the number 4 lane, moving into the number 3 lane. Multiple sounds of gunfire are recorded by the camera⁷ as well as a call of "shots fired, shots fired". A patrol car, the Ford Explorer, drives toward the truck.</p> <p>Audio: 40-King describes the truck moving toward the center of the traffic break at 55 mph and indicates the truck appears to be doing a U-turn. Dispatch repeats the instructions at the same time the first gunshots are recorded.</p>
4:18	<p>The truck is stopped. The front of the truck faces northwest in lanes number 1 and 2. Sergeant Howard and Officer Mendez take positions around the truck on driver's side of the truck. Officer Mendez later moves toward the passenger side of the truck. Witness #1 sits inside the cab on the passenger side with his hands in the air. Verbal commands of "see some hands" are repeatedly given.</p>
4:40	<p>The passenger window is broken, the door opened, and Witness #1 is taken out of the truck.</p>
5:12	<p>Loftin sits unresponsive, slumped over the bench seat.</p>
5:33	<p>Officers prepare to enter the cab through the door. Audio: "Do want to grab him out?" and "Sarge, do we leave him?" Audio: "No, let's get him out." An officer takes Loftin out of the truck. Officers immediately begin prepping Loftin for medical aid by removing his vest and pouch and cutting off his shirt.</p>
6:30	<p>Officers place bandages on Loftin's wounds and administer continuous chest compressions.</p>

DASHBOARD CAMERA VIDEOS: Dashboard camera videos from the CHP vehicles on scene at the time of the incident were reviewed. Summaries of the videos follow:

MVARS 1540337: The CHP vehicle driven by Officer Nicolas Mercado was equipped with a dashboard camera that was activated at the time of the June 23, 2021, shooting incident. The video recording is 27 minutes and 41 seconds in length.

⁷ Due to camera movement, glare from the truck's headlights, and a blocked view by a running officer, video of Sergeant Howard discharging his weapon was not captured.

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<u>Time</u>	<u>Description</u>
3:53	The stolen truck, identified by a growing circle of flickering light, approaches the camera as the vehicle travels west in the eastbound number 4 lane.
6:31	The shape of the truck begins to form.
6:42	The truck moves from the number 4 lane into the number 3 lane. The truck's cab and windshield become visible and light from the truck's two headlights become distinguishable.
6:46	The truck makes a hard veer to the center of the freeway moving into the number 2 lane and then the number 1 lane of the freeway. The truck becomes fully visible including the rear flatbed. The front driver's side tire is still connected to the rim. ⁸
6:49	The truck begins a sweeping turn to its left from the number 1 lane. The front of the truck, moving southwest, crosses into the number 2 and 3 lanes.
6:52	<p>The truck comes to a bare standstill in the center of the number 4 lane facing southwest at an approximate 45-degree angle. The body of the truck crosses lanes 1, 2 and 3.</p> <p>The truck reverses northeast from the number 4 lane into the number 1 freeway lane, essentially following the same path just taken when moving forward. Sergeant Howard approaches from the south shoulder when the truck begins to backup. He runs northeast onto the number 4 lane toward the vehicle with his rifle at shoulder level and pointed at the truck. When the vehicle reaches the number 1 lane, smoke begins to emanate from Sergeant Howard's weapon indicating shots fired. Sergeant Howard discharged the weapon from the number 4 lane and as he moved into the number 3 lane.</p> <p>After the shooting began, Officer Mendez runs toward the truck from the south shoulder, following Sergeant Howard. Officer Mark Garcia drives his patrol vehicle from the number 3 lane toward the back of the truck. Contact between the patrol vehicle and the truck takes place in the number 4 lane. Officer Vasquez runs east toward the truck from the south shoulder.</p> <p>The truck appears to slow down and turn southeast after reaching the number 1 lane in reverse. The truck stops when the back of the truck contacts the patrol unit in the number 4 lane.</p>
7:11	The camera moves closer to the truck.

⁸ Police reports indicate the tire is no longer attached to the vehicle.

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7:21	CHP Officers, including Sergeant Howard, position themselves around the front of the stopped truck with weapons pointed at the cab. Witness #1 sits on the passenger side of the cab with hands in the air. Officers open the passenger door and pull Witness #1 out.
8:47	Officers pull Loftin out of the truck to the ground and examine him.
9:30	Officers start CPR on Loftin and administer other medical aid. Officers escort Witness #1 from the passenger side of the truck to the number 3 lane.

CIVILIAN VIDEO. The stolen truck was equipped with video cameras that recorded both the interior and forward exterior of the vehicle. The videos are summarized as follows:

1. **EWDW94198 and EWDW94204:** Loftin drives the stolen truck on an unidentified street with Witness #1 sitting as a passenger in the cab. Bandanas cover the faces of both individuals. Both individuals were identified by the clothes worn at the time of the shooting incident.
2. **SAN BERN 9532:** Loftin drives the stolen truck while Witness #1 sits as a passenger in the cab. Bandanas cover the faces of both individuals. Loftin drives the truck through the parking yard of CMC Rebar. He makes a right turn into a chain link fence, knocking it down as he drives through it.
3. **EWDW94211:** Loftin drives the stolen truck through the wash, Witness #1 sits as a passenger in the cab. Bandanas cover the faces of both individuals. Loftin intentionally turns the truck into a closed chain link gate, crashing through it into an unidentified street.

INCIDENT SCENE INVESTIGATION

The shooting incident occurred in the eastbound lanes of the 10 Freeway, approximately 1,652 feet east of the Sierra Avenue overpass in Fontana. At the involved location, the freeway consists of east and westbound lanes of the freeway divided by a center metal divider. Each side of the freeway consists of four travel lanes as well as asphalt shoulders lining the inner and outer lanes. South of the freeway, a metal guardrail divides the asphalt shoulder from a dirt area containing Eucalyptus trees. Six vehicles were on scene including four CHP patrol units, a SBCSD patrol unit and the stolen Peterbilt truck.

A CHP Dodge Charger patrol vehicle (Patrol Vehicle 1) was parked in the number one and two lanes of the freeway, facing northeast. The vehicle's front bumper was 29 feet south of the center divider. The vehicle was driven and parked by Sergeant Daniel Howard. A black flashlight was found southeast of the Dodge Charger approximately 13 feet away.

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Another patrol vehicle, a San Bernardino County Sheriff's Department Ford Explorer faced northeast in the number 4 eastbound lane of the freeway. The vehicle was located 81 feet southeast of the flashlight. Twenty fired cartridge casings were found on the ground near the Explorer. All were located on the passenger side of the Explorer in the number 4 eastbound lane. The casings were spread out behind, next to, and near the front of the Explorer.

A gouge line approximately 99 feet long was also located in the number 4 lane, eight feet in front of the Explorer. The gouge crossed all lanes of traffic and traveled in a slight northeast direction and then curved into a southeast direction ending at the truck's left wheel. The rim of the stolen truck created the gouge line after the vehicle drove in reverse.

A second CHP Dodge Charger patrol vehicle (Patrol Vehicle 2) was parked in the number two and three eastbound lanes facing northeast. Patrol Vehicle 2 was located about 50 feet northeast of the Sheriff's Explorer. The Sig Sauer M400 rifle used in the incident was inside the vehicle on the front right passenger floorboard. An ammunition magazine containing 20 .223 caliber cartridges sat on the front passenger seat. An expended ammunition magazine was found south of the Patrol Vehicle 2, about three feet away. Finally, the deceased driver's personal belongings were located on the Charger's hood.

Another CHP Dodge Charger patrol vehicle (Patrol Vehicle 3) was in the number one lane, approximately 28 feet northwest of Patrol Vehicle 2. A medical bag was located approximately nine feet away, southwest of Patrol Vehicle 3.

A white Peterbilt flatbed truck was approximately 6 feet away from Patrol Vehicle 3. The truck was approximately 40 feet long, eight feet and 6 inches wide and weighed approximately 19,100 lbs. The vehicle faced northwest and, as parked, crossed the number two, three, and four lanes of the freeway. The truck sustained visible bullet strikes to the front cab, as well as a shattered windshield. The rear window and the driver and passenger side windows were similarly shattered.

A deceased male, Raymond Loftin, was located southwest of the truck. He was about one foot away on the driver side of the truck. Loftin's body laid supine across the number two and three lanes of the freeway. Loftin was covered by a blanket. Gauze and dressing were covering wounds to different parts of his body.

On the northeast side of the truck, personal items of Witness #1 were in the number two lane. Witness #1's sweatshirt, phone, wallet, and other items were laying from four feet up to nine feet from away from the truck's passenger side door.

At the rear of the truck, the driver's side corner of the flat bed rested against a CHP Ford Explorer patrol vehicle (Patrol Vehicle 4) parked in a northeast direction within the number 4 lane. As a result of the contact between the vehicles, Patrol Vehicle 4 sustained a

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broken window located above the left rear quarter panel, a broken rear window and body damage to the left-side rear quarter panel.

A second gouge line caused by the truck's driver rim showed the vehicle's approach toward the shooting scene. The gouge line was approximately 404 feet long and began in the south shoulder of the freeway. The gouge line travelled in a gradual northwest direction into the eastbound number four lane. The gouge next curves dramatically northwest, toward the center of the freeway and then turns southwest toward the outside shoulder.

VEHICLE PROCESSING.

The stolen truck involved in the shooting event was a white 2008 Peterbilt bobtail truck with a license plate of 99346J1. The two-door truck weighed 19,110 lbs. and was approximately 40 feet long. The vehicle was owned by CMC Rebar West.

The driver's side front tire was missing while the outer lip of the driver's side front rim was grounded flat and had become even with the rim's center. Numerous bullet holes were located throughout the truck including in the grill, hood, fender, windshield and driver's side door. The windows on both the driver and passenger sides were shattered and missing most of its glass. The rear window was similarly shattered.

Bloodstains were located on truck's driver side exterior steps and gas tank. Bullet fragments were located within the truck's cabin as well as a homemade smoking pipe, a hat with the name "Garrett" written inside it, and various pairs of rubberized gloves. A dash camera was also found and seized.

INJURED PARTY/DECEDENT

AUTOPSY.

Dr. Timothy Jong M.D., a Forensic Pathologist from the San Bernardino County Coroner's Office conducted the autopsy of Raymond Loftin on July 6, 2021. After examining Mr. Loftin's body, Dr. Jong determined the primary cause of death were gunshot wounds to the head and torso. Dr Jong noted multiple gunshot wounds and associated injuries to Mr. Loftin's body.

Gunshot Wound to the Head: A gunshot entrance wound was located on the central forehead, 2-3/4 inches from the top of the head and 3/4 inch right of the anterior midline. The entrance wound was 5/16 x 1/4 inch ovoid defect. No soot or stippling was present. The projectile travelled front to back, slightly left to right, and downward, perforating the right-side frontal bone and right anterior and middle cranial fossae. A deformed yellow metal jacketed projectile and deformed gray metal fragments were recovered in soft tissue at the bottom of the head. There was no exit wound.

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Gunshot Wound to the Right Cheek: A graze gunshot wound was located on the right cheek, 16-3/4 inches from the top of the head and 2-1/2 inches right of the anterior midline. The wound is 1 inch in length and 1/8 to 5/16 inches in width. There was no soot or stippling.

Gunshot Wound to the Central Upper Abdomen: A gunshot entrance wound was located on the central upper abdomen, 22 inches from the top of the head and 1/4 inch right of the anterior midline. The entrance wound consisted of a 5/16 x 3/16-inch ovoid defect. No soot or stippling was present. The projectile's wound path was front to back, left to right and upward that perforated the skin, soft tissue, omentum, large bowel, liver, diaphragm, and part of the 8th rib. A deformed yellow metal jacketed projectile was recovered in the soft tissues of the right torso. Another deformed yellow metal jacketed (projectile) was recovered in the right lobe of the liver. There was no exit wound.

Gunshot Wound to the Left Elbow: A tangential gunshot wound was located on the left elbow, 12 and 3/4 inches from the top of the shoulder and 1/2 inch left of the posterior midline. The wound was 1 and 1/4 inch in length with a width up to 3/8 inch. No soot or stippling was present.

Gunshot Wound to the Right Thigh: A tangential gunshot wound was located on the posterior right thigh centered 36 inches from the top of the head and 4 and 1/2 inches right of the posterior midline. The wound was 1 and 3/4 inches in length and a width ranging from 1/16 to 3/16 inch. No soot or stippling was present.

Gunshot Wound to the Left Thigh: A graze gunshot wound was located on the posterolateral left thigh, centered 43 inches from the top of the head and 2 and 1/2 inches left of the posterior midlines. The wound was 1 inch in length while the width ranged from 1/4 to 1/2 inch. No soot or stippling was present.

Penetrating Wounds to Right Upper Chest: A 3 1/4 inches x 2 inches area of penetrating wounds were located on the right upper chest. The wounds were centered 10 1/2 inches from the top of the head and 6 inches right of the anterior midline. Defects range from 1/16 to 1/4 inch. No soot or stippling was present around the wounds. The objects traveled front to back and slightly upward, penetrating soft tissue. A small yellow metal jacketed fragment was recovered from the soft tissue beneath the wound area. Hemorrhage was present throughout the wound track. There was no exit wound.

Penetrating Wound of the Left Abdomen #1: A penetrating wound was located on the left lower quadrant of the abdomen. The wound was centered 27 and 3/8 inches from the top of the head and 2 3/4 inches left of the anterior midline. The ovoid defect measured 5/16 x 3/16 inch. No soot or stippling was present. The object travelled front to back; left to right and upward to downward directions could not be determined. The object lacerated the small bowel after penetrating the skin and soft tissue. Hemorrhage was

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present throughout the wound track. The object was not recovered. No exit wound was present.

Penetrating Wound of the Left Abdomen #2: A penetrating wound was located on the left lower quadrant of the abdomen. The wound was centered 29 $\frac{3}{4}$ inches from the top of the head and 1 $\frac{1}{2}$ inches left of the anterior midline. The wound measured $\frac{3}{4}$ x $\frac{1}{2}$ inch. No soot or stippling was present. The object's direction of travel could not be determined. The object likely penetrated the soft tissue of both lower quadrants of the small bowel after penetrating the skin and soft tissue. Hemorrhage was present throughout the wound track. The object was not recovered. No exit wound was present.

Penetrating Wounds of the Abdomen: Penetrating injuries were located in an 8 $\frac{1}{2}$ x 4-inch area from the mid right abdomen to the left lower quadrant of the abdomen. The injuries centered 27 $\frac{1}{4}$ inches from the top of the head and 2 $\frac{1}{2}$ inches left of the anterior midline. A deformed gray metal fragment was recovered in the abdomen's right side soft tissues. The objects traveled front to back; left to right and upward to downward directions could not be determined. Hemorrhage was present throughout the wound track. No soot or stippling was present. No exit wound was present.

Abrasions and Other Injuries: Various abrasions, contusions, incisions, and other injuries to Loftin's head, torso, upper extremities, and lower extremities were noted during the examination.

TOXICOLOGY. Blood, Vitreous Fluid, Urine and Liver Tissue were collected from Raymond Loftin during the autopsy on July 6, 2021. The toxicology results revealed the detection of the following: 1) Ethanol - 11 mg/dL; 2) Blood Alcohol Concentration (BAC) - 0.011 g/100mL; 3) Amphetamine - 76 ng/mL; 4) Methamphetamine - 450 ng/mL; and 5) Delta-9 THC - Positive.

CRIMINAL HISTORY. Raymond Loftin was previously convicted in the following matters:

1. MSB069554: Penal Code § 242 - Battery (Misdemeanor); Date of Conviction: August 14, 2003
2. MSB081648: H&S Code § 11377(a)-Possession of a Controlled Substance (Misdemeanor); Date of Conviction: January 18, 2005.
3. SWM1107981: Penal Code § 466-Possession of Burglary Tools (Misdemeanor); Date of Conviction: October 24, 2011.
4. FVI11303150: PC § 487(a)-Grand Theft (Felony); Date of Conviction: June 23, 2015
5. 16CR064195: PC § 496D(a)-Possession of Stolen Vehicle (Felony); Date of Conviction: January 26, 2017.
6. MSB18005826: Health and Safety Code § 11364(a)-Possession of Unlawful Paraphernalia; (Misdemeanor); Date of Conviction: June 12, 2018.
7. FSB19002630: Penal Code § 496(a) - Receiving Stolen Property (Felony); Date of Conviction - August 13, 2019.

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8. MSB1901XXXX: Penal Code § 496(a) – Receiving Stolen Property (Misdemeanor); Date of Conviction – August 13, 2019.
9. 19CF2891: Penal Code § 459/460(b)-Second Degree Burglary (Felony); Date of Conviction - August 25, 2020.
10. 20NM05672: H&S Code § 11377(a)-Possession of a Controlled Substance (Misdemeanor); Health and Safety Code § 11364(a)-Possession of Unlawful Paraphernalia (Misdemeanor); Vehicle Code § 14601-Driving While License Suspended (Misdemeanor); Date of Conviction - August 25, 2020.

DE-ESCALATION

Various attempts were made to de-escalate the dangerous pursuit up until the shooting incident.

Initially, law enforcement personnel followed the driver in patrol vehicles with activated emergency lights. They trailed behind the truck as it travelled in correct lanes and drove parallel to it when the truck was driven the wrong way. After Loftin failed to yield to visible law enforcement, ground units stopped actively pursuing the truck hoping the driver would calm down and self-correct. Neither of these techniques were successful.

Traffic breaks and a spike strip were also utilized but failed to stop Loftin. A CHP unit set a traffic break with a spike strip on the 210 Freeway. Loftin avoided the break altogether by doing a U-turn on the freeway. Another traffic break was set on the 10 Freeway where Deputy Tarankow positioned his patrol unit in the middle of the eastbound lanes. Loftin passed the break almost hitting the unit in the process. The truck hit a spike strip prior to returning to the 10 Freeway. It seemingly did not have an effect as Loftin drove at high speeds for at least 13 miles after contact.

The crew of 40-King likewise tried to de-escalate the pursuit. The helicopter followed the truck through the entire chase, shinning its spotlight on the truck. That attention did not cause Loftin to stop. The crew also flew at lower altitudes and gave verbal commands using their public address system for Loftin to stop. Loftin did not acknowledge or react to the commands.

Sergeant Howard tried to de-escalate the pursuit. He directed that a roadblock of CHP vehicles be formed to stop the pursuit. While the truck did not continue its wrong way driving, the roadblock did not stop the pursuit. Sergeant Howard also made himself visible hoping his uniformed presence would make Loftin stop. As he did so, Sergeant Howard gave commands for Loftin to stop. Loftin just drove away in reverse to resume the pursuit.

Sergeant Howard considered ramming the truck as a less-lethal option to stop the chase. However, the stolen vehicle was so large that the option would not be successful. Such an option would result in injury or death to himself or his officers and damage to their patrol vehicles.

APPLICABLE LEGAL PRINCIPLES

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

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

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

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

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

(Penal C. §835a(c)(1).) Discharge of a firearm is "deadly force." (Penal C. §835a(e)(1).) The "[t]otality of the circumstances" means all facts known to the peace officer at the time,

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

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including the conduct of the officer and the subject leading up to the use of deadly force.”
(Penal C. §835a(e)(3).)

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

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

While the codified standards for use of deadly force during 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;

¹⁰ 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;¹¹
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

The pertinent criminal jury instruction to this section is CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction 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.

¹¹ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), states 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 newly defined in the context of use of force to effect an arrest, is similar:

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

(Penal C. §835a(e)(2).)

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

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

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

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

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

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

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

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

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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 police officer deference 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.)

VEHICLE PURSUITS. "Use of deadly force to stop a recklessly speeding vehicle during a car chase is ... ordinarily reasonable under the Fourth Amendment." (*Villanueva v California* (9th Cir 2021) 986 F.3d 1158, 1170.) An officer may use deadly force "only if the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." (*Id.* at 1169.) A threat exists when a suspect's driving places the lives of pedestrians or motorists at risk by leading officers on a high-speed chase. (*Orn v. City of Tacoma* (9th Cir 2020) 949 F.3d 1167, 1176-1177.) "But to warrant the use of deadly force, a motorist's prior interactions with police must have demonstrated that he either was willing to injure an officer that got in the way of escape or was willing to persist in extremely reckless behavior that threatened the lives of all those around." (*Ibid.* (internal quotations and citations omitted); See *Plumhoff v.*

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Rickard (2014) 572 U.S. 765 (police acted reasonably after the driver engaged in a five 5-minute, high-speed chase even when the vehicle momentarily stopped.)

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

Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson, supra*, 630 F.3d at 825 [taser]; *Deorle v. Rutherford, supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists even though 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, Sergeant Howard had both an honest and objectively reasonable belief that Loftin posed an imminent risk of serious bodily injury or death to himself, his fellow officers and to the public at large.

Prior to the actual shooting, a vehicle pursuit began after police located a stolen semi-truck in the City of Colton. Loftin evaded law enforcement personnel officials for over an hour in a stolen truck weighing over 19,000 lbs. Law enforcement personnel from different agencies chased or tracked the stolen vehicle on city streets, the 215 Freeway, 10 Freeway, and the 210 Freeway that covered over 50 miles and reaching speeds up to 70 mph.

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For much of the pursuit, Loftin engaged in a dangerous pattern of driving on freeways in the wrong direction, turning around because of police presence or, in one case, a construction project. Essentially, Loftin would drive in the correct lanes of traffic only because he was forced to do so. He drove in correct traffic lanes until, at his choosing, he would exit a freeway only to immediately re-enter the same freeway wrong-way and drive into oncoming traffic. By purposefully choosing to drive in the wrong direction against traffic, Loftin forced on-coming vehicles to swerve or otherwise move out of his way to avoid head-on collisions. All the while, whether he was driving in correct lanes of traffic or not, Loftin would not yield to visible police units that were in the air or on the ground. Ground units backing away from the chase similarly had no effect upon Loftin's behavior. He also disregarded or avoided traffic breaks set up by law enforcement personnel. As he drove, Loftin simply ignored freeway exits that presented multitudes of opportunity to either simply stop or discontinue his wrong-way driving.

Sergeant Howard heard radio traffic describing Loftin's outrageous driving prior to encountering the stolen truck. He believed the driver's conduct threatened public safety and needed to be stopped. Sergeant Howard also knew he had limited options to safely end the pursuit and decided to set a roadblock using patrol units from his station.

When the large truck finally came into view, it was still in the wrong lanes of traffic and approaching the roadblock at a high rate of speed. It moved from the number 4 lane into the center lanes and toward the center median. Sergeant Howard reasonably thought Loftin was going through the roadblock and would collide into the civilian traffic stopped farther down the freeway. He then stepped out from his cover to maintain his shooting angle as the truck continued forward. As a form of de-escalation, he also wanted to show his uniformed presence with a rifle thinking the driver would stop driving.

When the truck did a sweeping turn to its left, Sergeant Howard next believed Loftin was making a U-turn. He yelled commands to stop. Light from the truck's headlamps crossed from the left side of his body to his right side. The truck slowed and came to a near standstill and Sergeant Howard momentarily thought the driver was complying and the pursuit would end. The truck however did not complete the U-Turn but instead started backing up. As a result, Sergeant Howard observed light from the truck's headlights now pass from the right of his body to the left. He believed the driver had decided to again go through the roadblock and, in the process, was coming back at him and his men. Officer Jesus Garcia, who followed Sergeant Howard into the lanes, also saw the headlights which made the truck appear to be moving forward. In his view, Officer Jesus Garcia thought the turn could have been an attempt to drive at them. Similarly, Officer Mercado indicated the vehicles lights were directly aimed at them. At one point, he too was going to discharge his weapon but did not because Sergeant Howard was in front of him. Under the circumstances, Sergeant Howard discharged his weapon with an honest and objectively reasonable belief the driver's maneuvering posed an immediate safety threat to himself and his men.

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Sergeant Howard's actions were also objectively reasonable given the threat to public safety under highly charged and quickly changing circumstances. First, Loftin refused to yield over the course of the pursuit and at the roadblock. Second, Loftin drove unpredictably while in a large, heavy truck. He avoided a police traffic break in one instance but drove past a different break in another instance. Similarly, Loftin would drive in correct lanes of traffic and, when he chose, drove in wrong lanes of traffic. That unpredictable driving was present at the roadblock. Third, Loftin drove the truck without regard for the public's safety. Finally, the "serpentine" turn immediately before the roadblock gave Sergeant Howard only seconds to determine whether Loftin was stopping, driving through the roadblock, or making a U-turn.

Under these circumstances, it is objectively reasonable that an officer would think Loftin, by failing to stop, was either proceeding toward the officer to go through the roadblock or was attempting to escape. In either event, Loftin was trying to prolong the pursuit. His immediate history of dangerous driving placed the public at risk, not just Sergeant Howard or his men. Civilian vehicles stopped on the freeway behind the roadblock were threatened if Loftin proceeded through the patrol vehicles. Even if Loftin was only turning around to escape, he clearly wanted to flee and prolong the dangerous pursuit. Based on his immediate history, Loftin would have again driven in the wrong direction. Whether moving forward or turning around, Loftin posed a deadly threat to the public as well as Sergeant Howard and the officers who were on scene.

CONCLUSION

Based on the facts presented in the reports and the applicable law, the use of lethal force by Sergeant Howard was a proper exercise of his right to self-defense and defense of others. Sergeant Howard was legally justified in his action and no criminal liability attaches in this case.

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