



## PUBLIC RELEASE MEMORANDUM

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Subject: Non-Fatal Lethal Force Encounter

Involved Officers: Sergeant Ralph Ballew  
Rialto Police Department

Involved Subject/DOB: Jose Ramirez  
09/28/1990

Subject's Residence: Rialto

Incident Date/Time: April 10, 2022, 9:09 a.m.

Incident Location: Cedar Avenue and Buxton Drive, Rialto

Case Agent/Agency: Detective Marcus Young  
San Bernardino Sheriff's Department

Agency Report Number: DR# 602200048  
H# 2022-040

DA STAR Number: 2024-00-9257

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**PREAMBLE**

This was a lethal force encounter by an officer from the Rialto Police Department. The San Bernardino County Sheriff's Department investigated the lethal force encounter. This factual summary is based on a thorough review of all the investigative reports, photographs, video, and audio recordings submitted by the San Bernardino County Sheriff's Department.

**FACTUAL SUMMARY**

On Sunday, April 10, 2022, at 7:45 a.m., Witness #1, a minor, called 911 after her 31-year-old brother, Jose Ramirez, pushed her in the bathroom, causing her to fall and strike her head against the bathtub. It wasn't the first time he had hurt her. The victim told the 911 operator that Ramirez had a gun, was known to keep a gun on him or in his bedroom, had threatened her at one point with a gun, and he was known to use drugs.

Rialto Police Department (RPD) Sergeant Ralph Ballew was in his office at the RPD station when Witness #1's call came in. Sergeant Ballew was familiar with Jose Ramirez and had previously responded to calls for service at the Ramirez family home on West Bohnert Avenue in Rialto. Sergeant Ballew listened to the radio traffic as the call progressed. Officer Floyd Blue was dispatched to the residence, with Officer Jose Guevara assigned to assist.

While the officers drove to the Bohnert Avenue residence, RPD Dispatch broadcasted that Ramirez had several firearms registered to him and that Ramirez had prior arrests for Penal Code section 69, Resisting a Peace Officer By Use of Force or Violence, and Penal Code section 148(a)(1), Resisting, Delaying, or Obstructing a Peace Officer.

Officers Blue and Guevara arrived at the Bohnert Avenue residence at 8:02 a.m. The officers drove marked patrol units and were in full uniform. Officers Blue and Guevara were met at the front door by Witness #1 and her mother. While the officers spoke with them, they heard a loud boom from the southwest portion of the residence. Unsure if a gunshot or a firework caused the boom, the officers broadcasted this information over the radio and requested a sergeant to respond to the location to assist. Sergeant Ballew, in full police uniform and driving a marked police unit, headed to the Bohnert Avenue home.

Meanwhile, unbeknownst to the officers, Ramirez fled the home on foot, wearing body armor and armed with a handgun and a rifle. A neighbor saw Ramirez, who was openly carrying the rifle, jump over her fence. She took a picture of Ramirez with the rifle and approached officers at the Ramirez home to tell them what she had seen. The neighbor showed the officers the picture of Ramirez fleeing the scene while carrying a rifle. This photograph was then shared with all officers still at the residence and those responding to assist, including Sergeant Ballew. Upon seeing the image of Ramirez with the rifle, Sergeant Ballew contacted the San Bernardino County Sheriff's Department to request

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their airship, 40-King, to assist in locating Ramirez. Sergeant Ballew provided the 40-King deputies with Ramirez's description and advised that Ramirez was armed with a long gun.

Because Ramirez was alleged to have committed a crime and had fled the scene carrying a rifle, RPD officers began setting up a perimeter in the neighborhood surrounding the Ramirez home to contain and locate him. As the officers set up the perimeter, Ramirez's mother told officers who were still at the house that Ramirez usually carried a handgun and that she searched his bedroom and was unable to find his handgun. Jacqueline warned the officers that when she told Ramirez she had called the police, he replied, "Good. We can have a party." This additional information was broadcast to all the involved officers.

At approximately 9:07 a.m., 40-King deputies spotted Ramirez running on Bohnert Avenue, west of the Ramirez family residence. 40-King broadcasted Ramirez's location and advised that Ramirez had his hands in his pockets. Sergeant Ballew broadcasted that he was on Bohnert, and 40-King provided additional information, advising that Ramirez was running on the north side of the street, approaching Cedar Avenue. Sergeant Ballew asked dispatch for a Code 33, emergency radio broadcasts only. 40-King broadcasted, "Just be advised, his hands are still in his pockets, and I can't see what he's holding."

Sergeant Ballew spotted Ramirez running westbound on Bohnert Avenue. Ramirez was wearing the same clothing as shown in the photograph taken by the neighbor but did not appear to have the rifle. Sergeant Ballew did not know where the rifle was, but he knew that officers had not recovered the rifle or the missing handgun. Sergeant Ballew activated his patrol unit's solid red front and overhead emergency lights and followed several yards behind Ramirez. Sergeant Ballew used his public address (PA) system to speak to Ramirez. Sergeant Ballew told Ramirez multiple times to stop running, to show his hands, and to get down on the ground. Ramirez looked back at Sergeant Ballew's patrol unit but ignored his commands. Sergeant Ballew noticed that while Ramirez ran, he kept his right hand in his right-side pants pocket and turned his body to the left, concealing the right side of his body from Sergeant Ballew. Believing Ramirez was armed with a gun, Sergeant Ballew followed behind Ramirez at a safe distance.

Ramirez then headed north on Cedar Avenue. Ramirez briefly stopped and turned toward Sergeant Ballew's patrol unit, still concealing the right side of his body from Sergeant Ballew's view. Sergeant Ballew prepared to exit his unit, but Ramirez turned around and continued jogging northbound on Cedar Avenue. Sergeant Ballew continued following Ramirez in his patrol unit. Officer Guevara joined in the pursuit, following behind Sergeant Ballew. With two marked patrol units trailing him, Ramirez continued jogging northbound on Cedar Avenue. Sergeant Ballew repeated commands over his PA system, this time addressing Ramirez by his first name and telling him to stop running and to show his hands. Ramirez ignored Sergeant Ballew's commands.

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A tall block wall surrounded homes on either side of Cedar Avenue, providing some measure of safety to the residents. However, the intersection of Cedar Avenue and Buxton Drive offered easy access to the neighboring homes. When Ramirez reached this intersection, Sergeant Ballew feared for the safety of the unsuspecting residents. When Ramirez entered the middle of the intersection, he pulled his right hand upward as if pulling out from his pocket what Sergeant Ballew believed to be a handgun. Sergeant Ballew saw that the suspected gun appeared to get hung up on something, preventing Ramirez from getting it out of his pocket. Sergeant Ballew thought, "This guy's going to try to kill me." Sergeant Ballew realized he did not have enough time to safely stop his patrol unit and deploy any other method to defend himself, so as Ramirez tried to pull the gun from his pocket, Sergeant Ballew accelerated his vehicle toward Ramirez. The front driver's side of Sergeant Ballew's unit struck Ramirez, knocking him to the ground. Sergeant Ballew immediately stopped his vehicle, got out, and ran to Ramirez, who lay face down on the ground just to the left of the unit. Sergeant Ballew placed his hand on Ramirez's back and realized Ramirez was wearing body armor. Officer Guevara ran toward the scene and helped Sergeant Ballew pull Ramirez's arms behind his back. As the officers tried to place Ramirez into handcuffs, he jerked up and became rigid. Ramirez attempted to reach for his right front pocket and fought with the officers as they put him in handcuffs. Sergeant Ballew requested medical aid but asked them to stage nearby until they searched Ramirez and ensured it was safe for medics.



Ramirez persisted in attempting to access his right front pocket despite being handcuffed. The officers struggled with Ramirez, and a gun magazine fell from one of Ramirez's pockets before Sergeant Ballew successfully retrieved a loaded .22 caliber semi-automatic handgun from Ramirez's right front pants pocket. Continuing their search, the officers cut Ramirez's clothing and body armor, removing it from his body. A box of rifle ammunition and a fired rifle cartridge casing were discovered within Ramirez's clothing; a knife was found in a pocket of Ramirez's flak jacket. The rifle that Ramirez had previously possessed was not in his possession but was later found discarded in the yard of a nearby residence. Ramirez was transported to the hospital, where he was treated for his injuries.

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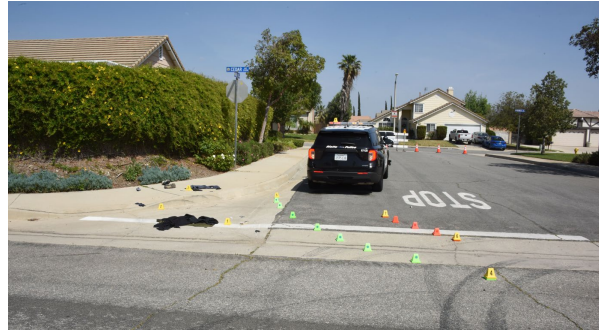
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**STATEMENTS BY POLICE OFFICERS<sup>1</sup>**

On April 13, 2022, at approximately 2:18 p.m., **Sergeant Ralph Ballew** was interviewed by Detectives Marcus Young and Christopher Crosswhite of the San Bernardino County Sheriff's Department.

Sergeant Ballew was employed as a police sergeant by the Rialto Police Department. On April 10, 2022, Sergeant Ballew was on duty, assigned as a field supervisor to the patrol division. Sergeant Ballew wore a standard Rialto Police Department uniform and a body-worn camera on his duty belt, positioned at his waist, which was activated during the incident under review. Sergeant Ballew reviewed the body-worn camera video prior to his interview.

That morning at about 8:00 a.m., Sergeant Ballew was in the sergeant's office at the police station when the call for service came in.<sup>2</sup> Sergeant Ballew listened to the call for service, which initially came in as a 911 hang-up call. Sergeant Ballew listened as the call progressed and learned that it was in regard to a minor who had been assaulted at a home at [redacted] West Bohnert in the city of Rialto by Jose Ramirez. Sergeant Ballew recognized the address as one he had previously responded to for assaults that Ramirez had committed against family members. Sergeant Ballew also knew other officers had previously responded to the house and had been involved in physical altercations with Ramirez. Sergeant Ballew was familiar with Ramirez and knew that Ramirez typically ran from the police and used the "same flight pattern." Sergeant Ballew broadcasted this information over the air to the officers. Sergeant Ballew heard his officers arrive on scene. At some point, Sergeant Ballew heard Officer Blue state he heard a loud bang, which he believed was a shotgun blast, come from inside the residence. Upon hearing this, Sergeant Ballew decided he needed to drive to the residence to assist. Officers at the scene also requested Sergeant Ballew respond to the location.

Sergeant Ballew drove a marked Rialto Police Department Ford Explorer patrol unit, equipped with lights, sirens, and a public address (PA) system. Sergeant Ballew learned that Ramirez had fled the location and it seemed he was using the path, or at least partly

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

<sup>2</sup> Sergeant Ballew did not remember the exact time, but according to the call history, the initial 911 call was received at 7:45 a.m.

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the same path, that he had previously used. Sergeant Ballew drove to an area where he had known Ramirez to have run in the past and began checking the streets there. Not finding Ramirez, Sergeant Ballew headed to the home. While driving to the residence, Sergeant Ballew learned that Ramirez had assaulted his minor sister and that he was known to carry weapons. A records check revealed that Ramirez owned multiple firearms and had multiple arrests for resisting and assaulting police officers and driving under influence.

When Sergeant Ballew arrived at the residence, he was approached by Officer Williams who said a neighbor had taken a picture of Ramirez running through her backyard carrying a black hunting style rifle. Ramirez had assaulted a minor, armed himself with a rifle, and had fled the scene. Officer Williams showed Sergeant Ballew the photograph and sent out a copy via cell phone to everyone on the team so they could see what Ramirez looked like as they searched for him. When Sergeant Ballew saw that Ramirez had armed himself with a rifle and fled, Sergeant Ballew feared for himself, his partners, and the community. Ramirez posed a significant threat to the public, the police, and anyone who may cross his path if he was not stopped.

Officer Guevara had requested an area check be performed in the immediate surrounding neighborhoods. Sergeant Ballew would take a position in the area of Ayala and Cheshire, to hold as a perimeter. Due to a shortage in police personnel, Sergeant Ballew took it upon himself to go further south onto Casmalia. There were only three police officers on the scene and Sergeant Ballew wanted a bigger perimeter in the event that Ramirez had broken their initial containment. While sitting at the perimeter in his patrol unit, Officer Blue advised that according to Ramirez's mother, Ramirez had a handgun that she searched for but was missing from the house and was most likely on Ramirez's person. Sergeant Ballew also learned that Ramirez made a comment to his mother, "Good, we'll party," when he was told the police were coming. This worried Sergeant Ballew because he took it to mean that Ramirez was not afraid about the police responding, did not want to be taken into custody, and would "put up some sort of resistance."

Sergeant Ballew coordinated with 40-King, the San Bernardino County Sheriff's Department helicopter, to have them respond to assist. Sergeant Ballew broadcasted Ramirez's description to 40-King: a Hispanic male, long hair in a bun, wearing a black sweatshirt with white lettering on the back, carrying a long gun, and armed with a handgun. Shortly after 40-King arrived overhead, they pointed out a subject who matched the description and advised that he was running westbound on Bohnert Avenue, about a block west of the incident location. Sergeant Ballew broke from his perimeter position and headed to Bohnert Avenue.

Less than 30 seconds later, Sergeant Ballew arrived at Bohnert Avenue where he saw Ramirez. Ramirez matched the description given and was wearing the same clothing but did not appear to have a long gun. Sergeant Ballew did not know where the long gun was and knew that neither the long gun nor the handgun had been recovered by any of the

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officers. Sergeant Ballew trailed Ramirez and used his PA system to address Ramirez. Sergeant Ballew told Ramirez to stop running and to get down on the ground. Sergeant Ballew's patrol unit's solid forward-facing red light and his auxiliary lights were activated. Sergeant Ballew had his window rolled down and heard his PA announcements to Ramirez. Sergeant Ballew was about four car lengths behind Ramirez. Ramirez looked back in Sergeant Ballew's direction but continued to run, ignoring his commands to stop and get down on the ground. Ramirez immediately cut a hard corner north on Cedar Avenue from Bohnert Avenue.

Ramirez ran with his left arm swinging back and forth but kept his right hand tucked in his right front pocket. Based on experience, Sergeant Ballew knew that when someone ran like that, it was because they were carrying something that they were choosing not to discard. This, coupled with the fact that his mother said his handgun was missing, heightened Sergeant Ballew's concern. Fearing Ramirez had the handgun in his right front pocket, Sergeant Ballew made a wide turn onto Cedar Avenue so that he would have a better view of Ramirez to ensure Ramirez was not lying in wait for him when he turned the corner. Ramirez stopped, turned his body to the left, blading it sideways toward Sergeant Ballew's patrol unit, concealing the right side of his body. Believing Ramirez was either going to surrender or engage him in a gunfight, Sergeant Ballew reached for his door handle to get out of his unit. Sergeant Ballew wanted to be out of the vehicle if either event occurred, but Ramirez then ran north on Cedar Avenue.

Sergeant Ballew continued to trail behind Ramirez, following him at a safe distance because he believed Ramirez was armed. Sergeant Ballew used the PA system a second time, addressing Ramirez by name and asking him to stop running. Sergeant Ballew used a ruse, telling Ramirez they would deploy a canine if he did not stop running. Ramirez continued running, so Sergeant Ballew again addressed Ramirez by name and told him again to stop running and to place himself on the ground. Ramirez refused to stop. Ramirez kept his right hand tucked into his right front pocket and looked back at Sergeant Ballew multiple times. Sergeant Ballew believed Ramirez was assessing him and was potentially luring him into some sort of gunfight. Sergeant Ballew broadcasted to dispatch that Ramirez was still running, refusing to comply, and noted in particular that Ramirez was "really heavily invested in his right front pocket." At one point, Ramirez discarded something from his pocket, but still continued running with his right hand secreted in his right front pocket. This led Sergeant Ballew to believe that Ramirez had every opportunity to discard his weapon but chose not to.

Sergeant Ballew noticed that Officer Guevara was trailing behind him in his patrol unit. Sergeant Ballew initially was not too concerned about where Ramirez was running because, though Cedar Avenue ran through a residential neighborhood, there were large brick walls on either side of the roadway, and it was a long straight shot before the next block allowing access to the neighborhood. Sergeant Ballew was familiar with the area and because it was a Sunday morning, Sergeant Ballew knew it was typical to see families out and about, heading to church. Ramirez continued running north on the sidewalk along

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Cedar Avenue, he stepped off the curb when he reached Buxton Drive and entered the intersection. Sergeant Ballew thought Ramirez would either enter the neighborhood there or would attempt to kill Sergeant Ballew, Officer Guevara, or any of the civilians in the neighborhood who had no idea he was on his way there.

When Ramirez reached the middle of the road, he pulled his right hand upward, as if pulling out from his pocket what Sergeant Ballew believed to be a gun, but it looked like the gun got stuck on something.<sup>3</sup> Sergeant Ballew believed Ramirez was going to try to engage him by shooting at him and thought, "this guy's going to try to kill me." Sergeant Ballew did not have sufficient reactionary time to exit his vehicle or to deploy any other method to defend himself, so he accelerated his vehicle, maneuvering it slightly to the right and then veered left toward Ramirez in order to strike him from the side to disable him. Sergeant Ballew's intent was to stop the threat posed by Ramirez while minimizing serious injury to Ramirez but recognized that striking Ramirez with his patrol unit constituted deadly force. The left front portion of the patrol unit's push bar struck the right side of Ramirez near his waist. Sergeant Ballew estimated he was pacing Ramirez at about 10 miles per hour but did not know how fast he was travelling when he struck him with his patrol unit.<sup>4</sup> Sergeant Ballew watched Ramirez fall to the driver's side of his vehicle. Sergeant Ballew immediately braked, exited his unit, and ran over to Ramirez. Ramirez was lying on the ground, head facing in a southern direction, half on the sidewalk, half off the sidewalk. Ramirez's hands were secreted underneath his chest area. Sergeant Ballew had his duty weapon in his right hand and placed his left hand on Ramirez's back, telling him not to move or he would shoot him. That was when Sergeant Ballew found that Ramirez was wearing body armor.

Officer Guevara arrived and took control of Ramirez's right arm. Sergeant Ballew immediately holstered his handgun and took control of Ramirez's left arm. Ramirez appeared to be momentarily unconscious because they were able to easily pull his arms behind his back. As they attempted to place Ramirez in handcuffs, he immediately jerked up, started moaning, became rigid and tense, and reached for his right front pocket. Ramirez continued to fight and tried to kick Sergeant Ballew in the face. Sergeant Ballew and Officer Guevara had to overcome Ramirez's resistance to place him into handcuffs. Sergeant Ballew immediately requested medical aid and had them stage nearby until they finished searching Ramirez and ensured it was safe for the medics to respond. Ramirez had a small amount of blood coming from his nose and swelling starting to occur around his left eye.

Despite being in handcuffs, Ramirez maneuvered his body and hands, still trying to reach for his right front pocket. Officer Guevara had to use a control hold to keep Ramirez's

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<sup>3</sup> Sergeant Ballew was not asked, nor did he say whether Ramirez turned to face him while he tried to pull the gun from his pocket; however, Sergeant Ballew did say that Ramirez turned to look toward him multiple times while he ran.

<sup>4</sup> Investigators used a BOSCH Crash Data Retrieval Tool to retrieve any crash data recorded from the lethal force encounter. There was no crash data provided in the report obtained from Sergeant Ballew's patrol unit; it appears the force of the impact was insufficient to trigger an event.



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hands away from his front pocket. Officer Guevara pulled Ramirez's arms backward and placed his legs over Ramirez's back to create a barrier while Sergeant Ballew held down both of Ramirez's legs. Officer Aguirre arrived, and Sergeant Ballew requested they put a leg restraint onto Ramirez to hobble him and keep him from thrashing.

During the struggle, a gun magazine fell out of Ramirez's right front pocket. Sergeant Ballew patted down Ramirez and felt a handgun in his right front pocket. Sergeant Ballew pulled a loaded black .22 caliber semi-automatic handgun from Ramirez's right pant pocket and discarded it to the side to get it as far away from Ramirez as he could. The officers cut off Ramirez's flak jacket and retrieved a large knife from one of the interior pockets. Sergeant Ballew discarded the knife as well as a box of .223 ammunition. Ramirez was wearing multiple layers of clothing, and because they had found multiple weapons secreted in his clothing, the officers cut it all off to ensure that he was not armed with anymore weapons. While cutting off Ramirez's clothing, a fired rifle cartridge casing fell from his clothing, leading Sergeant Ballew to believe it was from the shot that the initial responding officers had heard at the residence. Sergeant Ballew believed the only reason Ramirez did not get a chance to fire at him was because his weapon was stuck in multiple layers of clothing, which allowed Sergeant Ballew time to strike him with his vehicle to stop him.

Once Ramirez was searched, Sergeant Ballew had the medics come into the scene to treat Ramirez for his injuries. Ramirez asked the officers what was going on and said he didn't have any firearms and there was nothing in his hands. Ramirez then said, "I don't have a firearm anymore," or something to that effect. Sergeant Ballew asked Ramirez where the long gun was. Sergeant Ballew was concerned a child would find the rifle discarded in the residential neighborhood. Ramirez told Sergeant Ballew he didn't know what he was talking about. 40-King was overhead and Sergeant Ballew heard them direct another officer to the area of Cedar and Bohnert where Ramirez had discarded something in a bush. Sergeant Ballew was not sure what Ramirez had discarded but later learned it was more ammunition.

Sergeant Ballew then coordinated with Lieutenant Quarker, who informed him that the San Bernardino County Sheriff's Department was responding to assist in the search for the rifle that was still outstanding. Sergeant Ballew then took pictures of Officer Guevara to show his uniform state and Officer Guevara took pictures of Sergeant Ballew and the injuries he received to his legs during the struggle with Ramirez. Shortly after that, Sergeant Ballew was driven to the police station. Sergeant Ballew's patrol unit remained in place at the scene for the investigation.

On April 13, 2022, at approximately 11:45 a.m., **Officer Jesus Guevara** was interviewed by Detectives Marcus Young and David Carpenter of the San Bernardino County Sheriff's Department.

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Officer Guevara was employed as a police officer by the Rialto Police Department. Officer Guevara was on duty in uniform, assigned patrol in a marked police vehicle on April 10, 2022. At approximately 7:50 a.m., Officer Guevara was dispatched to assist Officer Blue with a welfare check at [redacted] West Bohnert Avenue. As Officer Guevara drove to the call for service, he heard dispatch broadcast over the radio that the suspect, Ramirez, had firearms registered to him, that he had prior arrests for Penal Code section 69, Resisting a Peace Officer By Use of Force or Violence, and Penal Code section 148 (a)(1), Delaying, Resisting, or Obstructing a Peace Officer. Based on this information, Officer Guevara knew Ramirez had been violent toward police officers in the past.

Officer Guevara and Officer Blue arrived at the West Bohnert address at about 8:03 a.m. Officers Guevara and Blue met with the victim,<sup>5</sup> a female juvenile, and her mother outside the residence. The victim told the officers that her brother, Ramirez, pushed her in the bathroom and caused her to fall against the bathtub. The victim sustained a bump to the back of her head. Officer Guevara believed Ramirez was inside the residence and looked through the windows. Ramirez's mother told the officers that Ramirez had guns and that he carried a handgun "all the time." Ramirez's mother also told the officers that Ramirez said if the police were called, he was ready for a "party." Officer Guevara believed that the statement meant that Ramirez was ready to engage the officers with a firearm and kill them.

After speaking with the victim and her mother, Officer Guevara believed Ramirez had committed felony child abuse. Joined by a third Rialto Police Department officer, Officer Williams, the officers entered the home to attempt to contact Ramirez. As Officers Williams and Blue checked inside the residence, looking for Ramirez, Officer Guevara went back outside. A minute or two later, Officer Guevara heard a loud "boom." It was louder than the sound of a handgun being fired, so officer Guevara thought it was a firework. Officer Guevara believed the sound originated southwest of the residence. Officer Williams ran out of the residence and asked Officer Guevara what the noise was. Officer Guevara told Officer Williams he believed it was a firework. Officer Williams went back inside the residence. Over the radio, Officer Blue broadcasted the information regarding the loud boom.

Officer Guevara requested a sergeant respond to the location. Officer Guevara believed it would be best if a supervisor was there because of the loud noise that they heard and the circumstances of the case. Officers Williams and Blue checked the residence and found that Ramirez was not inside. Officer Guevara assisted the officers in searching the backyard to look for Ramirez and found he was not there either.

A perimeter was set up around the area to locate Ramirez. Officer Williams left the residence to help with the perimeter. Sergeant Ralph Ballew arrived at the residence to assist. Officer Guevara stayed with Officer Blue at the residence until medics arrived to assist the juvenile victim. While the officers waited for the medics, a neighbor approached

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<sup>5</sup> Officer Guevara could not recall the victim's name during his interview.

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Officer Blue and showed him a picture of Ramirez. Officer Blue showed the picture to Officer Guevara. Officer Guevara did not know when or where the picture was taken. The picture showed Ramirez holding a black, long hunting style rifle. Ramirez had a thin build, light complexion, wore a black sweater and wore his hair in a ponytail bun. The victim was shown the picture and she positively identified Ramirez as the person in the picture. Officer Guevara requested the San Bernardino County Sheriff's Department patrol airship (40-King) to respond to assist in the search. The fire department arrived and transported the victim to the hospital.

40-King arrived about 30 to 45 minutes later and located Ramirez running west on Bohnert Avenue. 40-King broadcasted Ramirez's location as he ran north on Cedar Avenue from Bohnert. Knowing the location was close to the residence. Officer Guevara immediately went to his patrol unit and grabbed his patrol rifle. Officer Guevara chambered a cartridge to make his patrol rifle ready. Officer Guevara believed Ramirez was still armed with the rifle and was concerned by the statement Ramirez had made to his mother about being ready to "party" when the police arrived.

Officer Guevara drove west on Bohnert Avenue from the residence. Sergeant Ballew drove past Officer Guevara's patrol unit and turned north on Cedar Avenue. Officer Guevara drove behind Sergeant Ballew and saw Ramirez running north on Cedar Avenue on the east side of the street. Officer Guevara heard Sergeant Ballew broadcast commands over his PA system to Ramirez but could not recall what Sergeant Ballew said. Officer Guevara heard 40-King broadcast that Ramirez's hands were in his pockets. Officer Guevara saw Ramirez's hands in his pockets as he ran north on Cedar Avenue. Ramirez continued running and turned around multiple times toward Sergeant Ballew and Officer Guevara's patrol vehicles with his hands in his pockets. Because of this, Officer Guevara placed his rifle on top of his computer so he could more quickly access it if he needed to react to Ramirez pulling a gun and shooting at the officers.

Ramirez was near a residential neighborhood, approaching West Buxton Drive, which led directly toward houses. Officer Guevara did not want Ramirez to enter the neighborhood and hurt someone. It was morning, and Officer Guevara believed people would be outside. Officer Guevara saw Ramirez run north into the roadway on West Buxton Drive. Sergeant Ballew made a wide turn and quickly turned his patrol unit toward Ramirez. Officer Guevara could not tell if Sergeant Ballew's patrol unit hit Ramirez. Officer Guevara drove toward the northeast corner of West Buxton Drive and Cedar Avenue. Officer Guevara wanted to get out of his patrol vehicle quickly in case they needed to "engage" Ramirez if he fired at them.

Sergeant Ballew drove his vehicle forward, and Officer Guevara saw Ramirez on the ground. Officer Guevara knew at this point that Sergeant Ballew had struck Ramirez with his patrol unit. Ramirez's hands were beneath his body. Officer Guevara pulled his handgun, pointed it at Ramirez, and ordered him to "let me see your hands" and "don't

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fucking move.” Officer Guevara chose this language because he wanted Ramirez to know he was serious.

Officer Guevara holstered his gun and grabbed one of Ramirez’s hands. Officer Guevara placed his knee on Ramirez’s back and saw blood near Ramirez’s nose and mouth and a scrape near his ribs. Ramirez asked why he was being arrested. Officer Guevara placed Ramirez’s hand behind his back while Sergeant Ballew placed Ramirez’s other hand behind his back. Officer Guevara put handcuffs on Ramirez’s wrists. Officer Guevara saw that Ramirez was wearing body armor beneath his sweater. Ramirez resisted the officers by pulling his hands away and moving his body. Officer Guevara maintained control by pulling Ramirez’s hands away from his body, but Ramirez continued to resist, pulling his hands toward his pocket. Officer Guevara could not recall which pocket Ramirez reached for, but Ramirez “crumbled” his body by raising his legs toward his upper torso and tried to get his hands closer to his pocket. Officer Guevara believed Ramirez was still armed and saw a shiny object near Ramirez’s stomach area. An unknown officer removed a hobble ankle restraint device from Officer Guevara’s boot and placed it onto Ramirez.

Officer Guevara saw that the shiny object that he had seen in Ramirez’s waistband was the buckle to Ramirez’s body armor. Sergeant Ballew told Officer Guevara, “This guy still has the gun.” After several more minutes of struggling with Ramirez, the officers were able to recover a black semi-automatic handgun from Ramirez’s pocket. Officer Guevara believed the pocket from which Sergeant Ballew removed Ramirez’s handgun was the same one Ramirez had been trying to reach. Ramirez had protective rifle scope caps around his neck. Believing Ramirez had additional firearms, the officers removed Ramirez’s clothing and body armor with scissors. No other firearms were located, but they did find a fired cartridge casing which Officer Guevara believed was from a rifle. Officer Guevara believed 40-King requested medical aid to respond to the scene after Sergeant Ballew struck Ramirez with the patrol unit. When the fire department arrived, Officer Guevara told the medics that Ramirez had been struck by the patrol unit and to be careful with where they stepped. Ramirez was transported to the hospital. Officer Guevara heard over his radio that the rifle Ramirez had been in possession of was recovered but was unsure from where it was recovered or by whom.<sup>6</sup>

**INCIDENT AUDIO AND VIDEO<sup>7</sup>**

**Dispatch Recording and Call History**

The dispatch recording captured the radio transmissions of the officers and the Rialto Police Department dispatcher. The initial officer on scene, Officer Blue, advised he was

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<sup>6</sup> According to investigative reports, Officer Blue found the rifle discarded near the front fence at a residence on West Craig Street, a distance of only 0.2 from the Ramirez home on Bohnert Avenue.

<sup>7</sup> All audio and video recordings submitted were reviewed, though not all are summarized herein. All recordings were reviewed in their entirety. The summaries cover the events from the point immediately before the contact with Ramirez and immediately after the incident under review. Times noted are those reflected in the media player bar.

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at the residence for a “well check” after the 911 hang-up call. Officer Blue advised the 911 hang-up call was an accident. Shortly thereafter, officers were dispatched to the residence a second time when the victim, a 17-year-old female juvenile, called to report her brother, Ramirez, had pushed her, causing her to fall and hit her head on the bathroom tub. The juvenile victim was crying and scared. She advised that Ramirez had a gun, was known to keep a gun on him or in his bedroom, had threatened her at one point with a gun, and he was known to use drugs.

Officer Blue and Officer Guevara were dispatched to the residence in response to the second 911 call at 7:45 a.m. and arrived at 8:02 a.m. Dispatch broadcasted to responding officers that Ramirez had prior arrests for Penal Code 69 (Resisting a Peace Officer By Use or Force or Violence), Penal Code 148 (Delaying, Resisting or Obstructing a Peace Officer), and Vehicle Code section 23152 (Driving Under the Influence). Dispatch broadcasted that Ramirez had multiple firearms registered to him.

Officer Blue advised they were attempting to make contact with Ramirez via an interior door to the garage and asked for a Code 33 (emergency radio traffic only). Officer Blue advised they heard a loud boom, possibly a firework or shotgun blast, from the room. Officer Blue asked Sergeant Ballew to “copy the call” when he “got a chance.” Sergeant Ballew advised he was en route to the residence.

Officer Blue advised that the garage and attached room were clear and it looked like Ramirez went out the back door from the garage. Sergeant Ballew radioed that Ramirez was known to run out the back of the residence over to Craig Street, then south on Driftwood onto Ayala. Officer Blue replied that this is what they believe Ramirez did and advised that they heard the door slam, and the only way out was through the rear door. Officer Blue asked Officer Guevara to come into the house and advised they were going to search the back yard. Sergeant Ballew asked Officer Blue to give Ramirez’s description when he got a chance. Dispatch advised that Ramirez was a Hispanic male last seen wearing navy blue or black shorts. Officers at the scene further advised that Ramirez also had a dark shirt, a thin build, a light complexion, and long hair in a bun. At 8:31 a.m., Officer Blue advised the backyard was clear and the Code 33 could be lifted. Sergeant Ballew advised he was almost there and would check westbound Craig and the surrounding area. 40-King broadcasted they would respond once they cleared another call.

At 8:36 a.m., it was reported that a neighbor approached officers at the scene and told them she saw someone jump her fence with a rifle in his hand. The witness sent a picture of the person with the rifle to Officer Williams, who had arrived at the residence to assist. The family identified the subject in the picture as Ramirez. Officer Williams distributed the photograph to the officers via their department issued cell phones and broadcasted the description of Rodriguez as a Hispanic male adult wearing a black hoodie, dark colored pants, black hair in a bun, carrying what looked like a long rifle in his hands. The officers began setting up a perimeter to contain Ramirez. Officers broadcasted that the victim

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advised that when she told Ramirez she was going to call the police he told her, "Good, we can have a party." Further communication was made regarding the availability of 40-King. Officers asked if Ramirez had access to a car and were told that his mother had taken away his access to the vehicles. The mother advised that they had no way to lock the back doors of the home to prevent Ramirez from accessing the residence.

Officer Blue requested dispatch have fire respond to assess the victim's injuries. Officer Blue broadcasted to units on the perimeter that Ramirez's mom advised that he always carries a handgun on him and that she just checked his room to search for the handgun but was unable to find it. Officers asked if Ramirez had access to a cell phone and could call someone to pick him up. Officer Blue broadcasted that according to the mother, Ramirez's cell phone was no longer working. Officer Blue then advised that the victim was being transported to the hospital for treatment of a possible concussion.

40-King asked dispatch for the incident address and dispatch provided it. Dispatch further advised that the suspect, Ramirez was last seen armed with a handgun and rifle. Dispatch provided Ramirez's description to 40-King. Sergeant Ballew communicated further details to 40-King regarding Ramirez's last known location and added to the description given by dispatch that Ramirez was last seen jumping southbound onto Craig, that he had a goatee and long hair in a bun and was wearing a black sweater with white lettering on the back, and a "round" was heard being discharged from inside the residence before Ramirez fled. 40-King advised it was on scene overhead. 40-King asked for the approximate time that Ramirez was seen jumping the fence. Officers advised it was approximately 30 minutes prior.

40-King broadcasted that they had a subject running westbound wearing a black jacket with white letters and gray pants, approaching Bohnert Avenue, west of the incident location. 40-King advised that they believed it was the suspect and his hands were in his pockets. Sergeant Ballew advised he was on scene at Bohnert Avenue. 40-King advised the suspect was on the north side of the street approaching Cedar Avenue. Sergeant Ballew asked dispatch for a Code 33. 40-King cautioned, "Just be advised, his hands are still in his pockets, and I can't see what he's holding." 40-King then broadcasted, "Northbound on Cedar." Sergeant Ballew advised, "Announcements made. He's continuing to run." 40-King, "Hands are still in his pockets. He threw something between the two palm trees right where that unit is." 40-King advised the suspect was still running northbound on Cedar, east side of the street near Wildflower. Sergeant Ballew broadcasted, "He's still got his hands buried in his pockets, he's reaching for the right side and refusing commands to stop and show his hands." 40-King requested dispatch roll meds and advised that the officers were detaining the suspect north of Wildflower.

40-King asked a patrol unit that was just arriving on the scene to check the bushes where they had seen Ramirez discard something. Sergeant Ballew requested dispatch have Rialto Fire Department respond and advised that Ramirez was wearing body armor. Ramirez could be heard yelling in the background. Sergeant Ballew broadcasted that a

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firearm was recovered from Ramirez, who had been reaching for it, and that Ramirez was still fighting with officers.

**Body-Worn Camera Video<sup>8</sup>**

Sergeant Ballew's Body-Worn Camera

16:07:02- Sergeant Ballew's camera began recording. Sergeant Ballew drove his patrol unit north on Ayala Drive near the intersection of Casmalia Street.

16:07:34- Sergeant Ballew broadcasted over the radio, "Sam 14, I'm going 97<sup>9</sup> on Bohnert now."

16:07:39- Sheriff's aviation broadcasted over the radio, "The street coming up to Cedar."

16:07:41- Sergeant Ballew turned west on Bohnert Avenue.

16:07:46- Sergeant Ballew broadcasted, "Code 33."

16:07:51- Sheriff's aviation broadcasted, "Just be advised, hands are still in his pockets. I can't see what he's holding."

16:07:56- Sergeant Ballew broadcasted over his public address (PA) system, "You running, stop! Get down on the ground. You, running, stop!" Ramirez came into camera view, running west on the north sidewalk along Bohnert Avenue.

16:08:00- Sergeant Ballew's body-worn camera was obstructed by the patrol unit's dashboard and Ramirez was no longer in camera view.

16:08:02- Sheriff's aviation broadcasted, "Northbound on Cedar."

16:08:05- Sergeant Ballew turned north onto Cedar Avenue.

16:08:06- Ramirez came back into camera view as he ran north of Cedar Avenue on the east sidewalk. Ramirez's hands appeared to be in his pockets near his waist. Block walls separated homes from the roadway along either side of Cedar Avenue.

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<sup>8</sup> The officers were equipped with Axon body-worn cameras. The camera system turns on when the operator activates the camera. When activated, the previous 30 seconds of video are included, but without any audio. The body-worn camera video recordings from all involved officers were reviewed in their entirety. Not all body-worn videos are summarized herein. The summaries cover the pertinent events from the point immediately before the contact with Ramirez and immediately after the incident under review. Times noted are from the media player bar.

<sup>9</sup> On scene.

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16:08:14- Sergeant Ballew broadcasted over his PA system, "You, Jose, stop, let me see your hands! Let me see your hands! Jose, stop running! We are going to release the dog if you do not stop running." Sergeant Ballew drove at a slow pace, several yards behind Ramirez as Ramirez jogged. (Officer Guevara drove behind Sergeant Ballew's patrol unit. Officer Guevara's body-worn camera video showed that Sergeant Ballew's patrol unit's emergency overhead lights were activated.)

16:08:22- Sheriff's aviation broadcasted over the radio, "Threw something. Between the two palm trees right where that unit is."

16:08:51- Still running, Ramirez looked back over his shoulder toward Sergeant Ballew. Ramirez wore a loose-fitting black sweatshirt with white letters on the back, dark grey sweatpants, and wore his long hair in a bun.

16:08:54- Sergeant Ballew broadcasted over his radio, "Sam 14, he's still got his hands buried in his pockets. Reaching to his right side. Refusing commands to stop and show his hands."

16:09:14- Sergeant Ballew's body-worn camera was obstructed by the patrol unit's dashboard. Sergeant Ballew accelerated his patrol vehicle.

16:09:15- Ramirez came back into camera view as he ran north on the east side of Cedar Avenue at the intersection of Buxton Drive. Ramirez's left hand was in his front sweatshirt pocket. Ramirez's right hand was obstructed from view by his upper body. Sergeant Ballew turned his patrol unit northeast toward Ramirez.



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16:09:16- The front driver's side of Sergeant Ballew's patrol vehicle collided with Ramirez as he ran near the northeast corner of Cedar Avenue and Buxton Drive.



16:09:20- Sergeant Ballew immediately stopped his vehicle, got out, and moved toward Ramirez. Sergeant Ballew said, "Let me see your hands! Let me see your fucking hands! Don't move! Don't move! Don't move! I will shoot you." Ramirez lay motionless, face down, with his hands beneath him. Ramirez was face-down on the ground, motionless with his lower body on the sidewalk on the northeast corner of Cedar Avenue and Buxton Drive. Sergeant Ballew had his handgun pointed at Ramirez as he approached him. Officer Guevara came into camera view as he arrived on foot to assist, followed shortly after by Officer Blue.

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The remainder of the video shows the officers struggling with Ramirez as he fought against their efforts to place him into handcuffs and search him for weapons. Sergeant Ballew, Officer Guevara, and Officer Blue restrained Ramirez, who even after being placed into handcuffs, turned his body and curled his legs toward his upper body in an effort to access his right waistband/pocket area. Officer Guevara had to place Ramirez in a control hold and a leg restraint was placed onto Ramirez. Ramirez wore body armor (a bullet proof vest) beneath his sweatshirt. During the search, the officers found a loaded handgun in Ramirez’s right front pocket, ammunition secreted within Ramirez’s clothing, and a knife inside the body armor.

**WEAPONS**

A loaded black Phoenix Arms, Model HP22A, .22LR caliber semi-automatic handgun was found in Ramirez’s right front pants pocket. The handgun magazine was loaded with 10, .22LR unfired cartridges. The handgun was registered to Ramirez and was purchased by him on June 18, 2020.



One box of Norma Whitetail 6.5 Creedmore cartridges containing 14 unfired rifle cartridges and one unfired 9mm cartridge were found within Ramirez’s clothing.



An olive drab green military style ballistic vest was cut and removed from Ramirez’s body. A rifle scope cover was removed from Ramirez’s neck and shoulder area. Officer Blue located Ramirez’s rifle near the front fence of a home located at 1186 W Craig Street shortly after Ramirez’s arrest.

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A black Smith and Wesson folding knife was removed from an interior pocket of the flak jacket worn by Ramirez.



**DE-ESCALATION**

Every attempt made by officers to stop Ramirez and to de-escalate the situation was met with Ramirez's refusal. From the moment officers responded to the residence until the end, Ramirez resisted.

After Ramirez fled the residence, the officers set up a perimeter to contain and locate him. Upon finding Ramirez, Sergeant Ballew activated his patrol unit's forward-facing solid red light and overhead emergency lights to stop Ramirez. Ramirez continued running away. Sergeant Ballew followed Ramirez at a safe distance. Over his PA system, Sergeant Ballew ordered Ramirez to stop running, to show his hands, and to get down on the ground. Ramirez ignored Sergeant Ballew's commands. Sergeant Ballew repeated his commands to Ramirez multiple times, addressing Ramirez by his first name. Still, Ramirez refused to cooperate. Instead, Ramirez tried to enter a residential neighborhood and pull a loaded handgun from his pocket while knowing Sergeant Ballew and Officer Guevara were close behind him. At no time did Ramirez give any indication he would surrender and cooperate with the officers.

**INJURED PARTY**

Ramirez was treated by Dr. [redacted] at [redacted] hospital. A CT scan from head to pelvis was conducted. Ramirez was found to have sustained a left superior orbital



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*Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

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

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

(Penal Code §835a(c)(1).)

Discharge of a firearm is “deadly force.” (Penal Code §835a(e)(1).) The “[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal Code §835a(e)(3).)

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

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<sup>11</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

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

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

- (1) That the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) That use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) That use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;<sup>12</sup>
- (4) That the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) That those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a

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

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greater instance of fatal encounters with law enforcement, therefore.

(Penal Code §835a(a).)

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

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

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

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

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

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

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of

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future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal Code §835a(e)(2).)

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

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

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

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

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a "reasonable police officer" standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)<sup>13</sup> To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

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<sup>13</sup> The legislative findings included in Penal Code section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.



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

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72. “An officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

The use of force policies and training of an involved officer’s agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1. See fn. 3, *infra*.)

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

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

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

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“zone of protection” when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because ‘the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.’

(*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1109, citing *Graham v. Connor*, [*supra*] 490 U.S. 386, 396.)

**ANALYSIS**

Donning body armor, Ramirez armed himself with a loaded handgun, a rifle, a box of rifle ammunition, and a knife before fleeing the scene of a crime. Running through a residential neighborhood, Ramirez posed a significant threat to anyone who crossed his path. Recognizing the danger to the public, RPD officers set up a perimeter to contain and search for Ramirez to protect the public.

While it is true that Ramirez posed a danger to the public and the officers, the threat he posed only became imminent when Ramirez tried to pull the loaded .22 caliber handgun from his pocket. Though Sergeant Ballew did not see the handgun, he justifiably believed that Ramirez was trying to pull a gun from his pocket to use it against officers to get away. Sergeant Ballew’s belief was based upon several factors personally known to him or made known to him by others:

1. Sergeant Ballew was personally familiar with Ramirez;
2. Sergeant Ballew had previously responded to calls for service to Ramirez’s home for violence Ramirez perpetrated against his family members;
3. Other RPD officers who had previously responded to the Ramirez residence had been involved in physical altercations with Ramirez;
4. Ramirez had assaulted his juvenile sister, and she called the police for assistance;
5. Ramirez told his sister, “Good, we can have a party,” in response to learning she had called the police;
6. Ramirez had a history of running away from officers who were called to the home;
7. Ramirez had multiple firearms registered to him;
8. Shortly after arriving at the residence that morning, Officers Blue and Guevara heard a loud boom, possibly caused by a gunshot;
9. A neighbor photographed Ramirez jumping her fence and fleeing the scene while armed with a hunting-style rifle;

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10. According to Ramirez's mother and his sister, Ramirez was known to keep a gun on his person; and
11. According to Ramirez's mother, she searched Ramirez's bedroom for his handgun, but did not find it;
12. While following Ramirez, Sergeant Ballew saw that Ramirez kept his right hand secreted in his right front pants pocket; and
13. Ramirez looked back in Sergeant Ballew's direction but ignored his commands to stop running and to show his hands.

Based on Sergeant Ballew's training and experience, each of these factors led him to conclude that Ramirez was armed with a handgun and presented a danger to all who encountered him. The way Ramirez ran with his right hand tucked inside his pocket was consistent with the way people run while carrying "something they do not wish to discard," like a gun. Further, based on Ramirez's mother's warning that Ramirez usually carried a handgun and that his handgun was missing, Sergeant Ballew reasonably feared that Ramirez had the handgun in his right front pocket. Officer Guevara, who drove behind Sergeant Ballew as he followed Ramirez, also believed Ramirez had a gun and, like Sergeant Ballew, was concerned by the statement Ramirez had made about being ready to "party" when the police arrived.

With knowledge of these facts, Sergeant Ballew drove at a safe distance behind Ramirez. Sergeant Ballew gave Ramirez multiple commands over his PA system: to stop running, to show his hands, and to get down on the ground. Sergeant Ballew knew that his PA system was working because his window was rolled down, and he heard his commands broadcast over the PA. Ramirez was only four car lengths ahead of Sergeant Ballew, and Sergeant Ballew saw Ramirez look back at him multiple times. Ramirez ignored Sergeant Ballew's commands and refused to stop running, show his hands, or get down on the ground.

It was about 9:00 a.m. on a Sunday morning as Ramirez ran northbound on Cedar Avenue, adjacent to a residential neighborhood. Familiar with the neighborhood, Sergeant Ballew knew it was common to see residents outside their homes on a Sunday morning. The block walls on either side of Cedar Avenue provided some measure of comfort to Sergeant Ballew because the walls made it more difficult for Ramirez to access homes. Additionally, as long as Ramirez ran along Cedar Avenue, Sergeant Ballew could see what lay in Ramirez's path. However, when Ramirez entered the intersection of Cedar Avenue and Buxton Drive toward houses that were directly accessible from the street, that path became less clear.

Sergeant Ballew knew that the intersection afforded easy access to neighboring homes and that residents outside their homes would be unsuspecting targets. Sergeant Ballew recognized that the danger to the public increased when Ramirez reached the intersection leading to the houses. With his eyes fixed on Ramirez, Sergeant Ballew then saw Ramirez trying to pull what Sergeant Ballew reasonably believed was a handgun from his right

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front pocket. Ramirez's multiple layers of loose-fitting clothing hampered his efforts to pull the gun when the gun got stuck in his pocket. Immediately recognizing that Ramirez was trying to pull the gun, Sergeant Ballew drove his patrol unit toward Ramirez, striking him with his patrol unit as Ramirez tried to pull out the gun.

Officer Guevara shared Sergeant Ballew's concern about Ramirez entering the neighborhood at Cedar Avenue and Buxton Drive. While driving behind Sergeant Ballew, Officer Guevara had placed his rifle on top of his computer so he could more quickly access it if he needed to react to Ramirez pulling a gun and shooting at the officers. This preparation underscores his awareness of the potential danger. Positioned behind Sergeant Ballew and further away from Ramirez, Officer Guevara likely did not see Ramirez trying to pull the gun from his pocket. Officer Guevara did not see Sergeant Ballew's patrol unit strike Ramirez and only realized he had done so after Sergeant Ballew drove forward, and Officer Guevara saw Ramirez down on the ground.

Sergeant Ballew used deadly force when he struck Ramirez with his vehicle. Such a collision was likely to cause serious bodily injury or death. Knowing that he was he was using deadly force to stop Ramirez, Sergeant Ballew tried to minimize the risk of harm to Ramirez. Sergeant Ballew immediately stopped his vehicle when he saw that Ramirez had fallen to the ground and used no more force than was reasonably necessary. Sergeant Ballew believed his life, Officer Guevara's life, and the lives of nearby residents were in imminent danger when Ramirez tried to pull the gun from his pocket. Sergeant Ballew's belief was honest and objectively reasonable. Accordingly, Sergeant Ballew's use of deadly force was justified.

**CONCLUSION**

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

**Submitted By:**  
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