



PUBLIC RELEASE MEMORANDUM

DATE: December 17, 2024

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Officer Steven Rodriguez
Corporal Andrew Buesa
Barstow Police Department

Involved Subject: Victor Richard Carevic (Deceased)
Date of Birth: August 4, 1979

Date of Incident: August 15, 2021

Incident location: 957 Armory Road
Barstow, CA 92311

DA STAR #: 2024-20206

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Robert Ripley

Report Number#: DR# 602100157
H# 2021-103

PREAMBLE

This was a fatal officer involved shooting by two officers from the Barstow Police Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary was based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 602100157.

FACTUAL SUMMARY¹

On Saturday, August 14, 2021, Involved Party 1 and her boyfriend, Victor Richard Carevic left the State of Arizona driving a white 2010 Chrysler 300 sedan. The couple drove toward Barstow that day to return a dog to Mr. Carevic's ex-girlfriend. On Sunday, August 15, 2021, they stopped in Amboy, California to shoot BB guns and a .22 caliber pistol Mr. Carevic carried with him. They were unable to shoot the .22 caliber pistol because it malfunctioned and would not fire. Mr. Carevic told Involved Party 1 the handgun was missing a spring required to engage the slide mechanism.

Approximately twenty minutes after stopping in Amboy, the couple continued their drive toward Barstow. The sedan they drove ran out of gas in a residential neighborhood just off Armory Road in Barstow. Involved Party 1 agreed to stay with the vehicle while Mr. Carevic left on foot to get gas. At approximately 0715 hours on August 15, 2021, Witness 1 received a call from his elderly father who lived on Mirage Drive, near the scene of this fatal encounter.

Witness 1's father told him that a suspicious vehicle was parked in the middle of his cul-de-sac in front of his residence with all the doors and the trunk open. Witness 1 drove to the location and contacted Involved Party 1 sitting in the passenger seat of the Chrysler 300. Involved Party 1 told Witness 1 the car was out of gas and her boyfriend went to get more. Witness 1's wife, Witness 2 called the Barstow Police Department to report the suspicious vehicle.

At approximately 0746 hours Officer Steven Rodriguez responded to the 1000 Block of Mirage Drive in a marked police vehicle and observed the Chrysler 300 parked in the middle of the street. He contacted Involved Party 1 in the vehicle and observed no other persons in the area. Involved Party 1 had a large dog with her attached to a leash laying on the ground next to the car. Involved Party 1 told Officer Rodriguez she was traveling from Arizona with her boyfriend when the car ran out of gas. She said she could not provide the name of her boyfriend, and only referred to him as "Richard."

¹ These facts are taken from the police reports, audio, video, transcripts, and other reports submitted by the San Bernardino County Sheriff's Department.

Officer Rodriguez then reported the license plate number of the vehicle to dispatch. The vehicle connected with the plate number was not reported stolen. Officer Rodriguez then noticed that the Vehicle Identification Number (VIN) of the Chrysler 300 did not match the VIN of the vehicle associated with the affixed license plate. Officer Rodriguez concluded the Chrysler 300 was “cold plated,” meaning the license plate from a non-stolen vehicle was placed on a potentially stolen vehicle. When the VIN from Involved Party 1’s vehicle was provided to dispatch, Officer Rodriguez learned the car was reported stolen out of Arizona. Involved Party 1 was then placed under arrest for Penal Code § 496d(a), possession of a stolen vehicle.

Corporal Andrew Buesa arrived on scene a short time later and processed the vehicle for impound. He completed a California Highway Patrol Form 180 and had the vehicle towed away to an impound yard for further investigation. A subsequent search of the sedan revealed numerous items of evidence, including a BB handgun, an AR-15 style BB rifle, and numerous ammunition boxes of various calibers. Officers also located a California license plate in the backseat belonging to a 2009 Toyota registered to a person in Beaumont, California.

Witness 1 and Witness 2 watched Officer Rodriguez and Corporal Buesa conduct their investigation and tow of the vehicle. At approximately 1000 hours on August 15, 2021, Witness 2 left her house to go to the Stater Bros. grocery store on Armory Road. She drove to her father-in-law’s house on Mirage Drive to get a list of groceries from him. As she waited outside his home, she noticed a man (later identified as Victor Carevic) wearing grey shorts and no shirt pushing a shopping cart in the area where the Chrysler 300 was originally parked. Mr. Carevic was yelling out, “[Involved Party 1! Involved Party 1!]” Witness 2 believed Mr. Carevic was Involved Party 1’s boyfriend who left the area to get gas. Mr. Carevic approached Witness 2 and asked if she had seen Involved Party 1 or the vehicle she was in. Witness 2 told him she had seen neither and told him he was at the wrong address. He responded that it was the correct address. Witness 2 walked away and called Barstow Police to report her encounter. She also called Witness 1 to tell him about the situation.

Witness 1 then drove to the area to watch Mr. Carevic until police could arrive. Witness 1 described the man as a White male adult, wearing shorts with no shirt on. Witness 1 said that during his observation, Mr. Carevic was pushing a shopping cart with various items in it. At approximately 1108 hours Officer Rodriguez arrived in the area and parked his patrol vehicle on Candlelight Street², just west of Mr. Carevic. Officer Rodriguez activated his department-issued Axon bodycam, which captured his encounter with Mr. Carevic. He then approached Mr. Carevic.

Officer Rodriguez asked Mr. Carevic what he was doing. He responded that he was looking for his car. Officer Rodriguez asked for identification, and Mr. Carevic responded his identification was in the car he was in earlier. Officer Rodriguez said he searched the car earlier, did not find any identification, and that Mr. Carevic should come talk to him at his patrol vehicle. Mr. Carevic agreed, then appeared to put distance between himself and Officer Rodriguez by putting the shopping cart between the two. Mr. Carevic continued to

² Candlelight Street runs east/west and intersects Monterey Avenue at its eastern terminus.

act “fidgety” and repeatedly pulled at something in his pants pocket. Officer Rodriguez then pulled his firearm and told Mr. Carevic to stop reaching and to talk at the patrol vehicle. Officer Rodriguez told Mr. Carevic the car he was in earlier was stolen, and that he was a suspect in that incident.

Mr. Carevic appeared to comply for a moment, so Officer Rodriguez holstered his firearm. Mr. Carevic almost immediately began to walk away while pulling the shopping cart and asked if he was being detained. Officer Rodriguez replied, “Yes. Now you’re being detained.” Mr. Carevic then aggressively pushed his shopping cart toward Officer Rodriguez and ran eastbound on Candlelight Street towards Monterey Avenue. Officer Rodriguez gave chase and radioed dispatch to inform them he had a suspect running northbound on Monterey Avenue toward Armory Road. Officer Rodriguez gave Mr. Carevic numerous commands to stop running and to stop reaching into his pocket. Seconds after the chase began, Mr. Carevic reached into his pocket and pulled out a small, black, semi-automatic handgun.

Officer Rodriguez’s Axon bodycam captured the following image:



Approximately one second after pulling the gun from his pocket, Mr. Carevic turned and pointed the firearm at Officer Rodriguez. Bodycam captured the following image:



Officer Rodriguez quickly stepped to his left to get out of any line of fire and unholstered his firearm. As he did so, he tripped and fell to the ground on his left side. The force of the fall briefly cut the video feed from his bodycam, but the audio still functioned. While lying on the ground Officer Rodriguez fired multiple .40 caliber rounds at Mr. Carevic, who kept running toward Armory Road.³ Officer Rodriguez then immediately stood up and broadcast “Shots fired!” over the radio. After a few seconds, the video feed returned to his bodycam.

³ Crime Scene Investigators located 12 .40 “Win 40 S&W” fired cartridge casings (“FCCs”) on Monterey Avenue and seven bullet strikes on the block wall running north to south along the east curbline of Monterey Avenue. Officer Rodriguez’s bodycam audio captured 12 gunshots during his initial volley. Investigators also located two blood droplets on the southeast curb of Armory Road and Monterey Avenue, indicating that Mr. Carevic may have been struck by gunfire there.

Officer Andrew Buesa was assigned as a backing officer to Officer Rodriguez on the call to Monterey Avenue at 1108 hours. Corporal Buesa left the police station immediately to drive to the area. While in route he heard Officer Rodriguez broadcast the suspect was running from Monterey Avenue towards Armory Road. Corporal Buesa activated his overhead lights and siren and drove toward the area. Approximately one minute later he turned eastbound on Armory Road and saw Mr. Carevic running northbound on Monterey Avenue toward the Stater Bros. shopping center. At that moment Corporal Buesa was unaware Mr. Carevic was armed or that shots had been fired. He watched Mr. Carevic run underneath an awning covering several small businesses in the shopping center to the west. As he got closer to the driveway entrance to the shopping center, he then heard that Mr. Carevic was armed.

Officer Rodriguez continued his foot pursuit of Mr. Carevic across Armory Road and approached the line of small businesses covered by the awning. As he arrived at a rock planter that separated the sidewalk on Armory Road from the sidewalk in front of the strip mall, Mr. Carevic continued to run northbound holding his pistol. At this moment, Corporal Buesa entered the parking lot of the shopping center and pulled his car parallel to where Mr. Carevic was running. He observed Mr. Carevic run toward the door at the Metro PCS store in the strip mall. The door was locked, so Mr. Carevic turned to look at Corporal Buesa. While exiting his marked patrol vehicle, Corporal Buesa saw Mr. Carevic point a small, black, semi-automatic handgun at him.⁴

Officer Rodriguez's bodycam captured the following image:



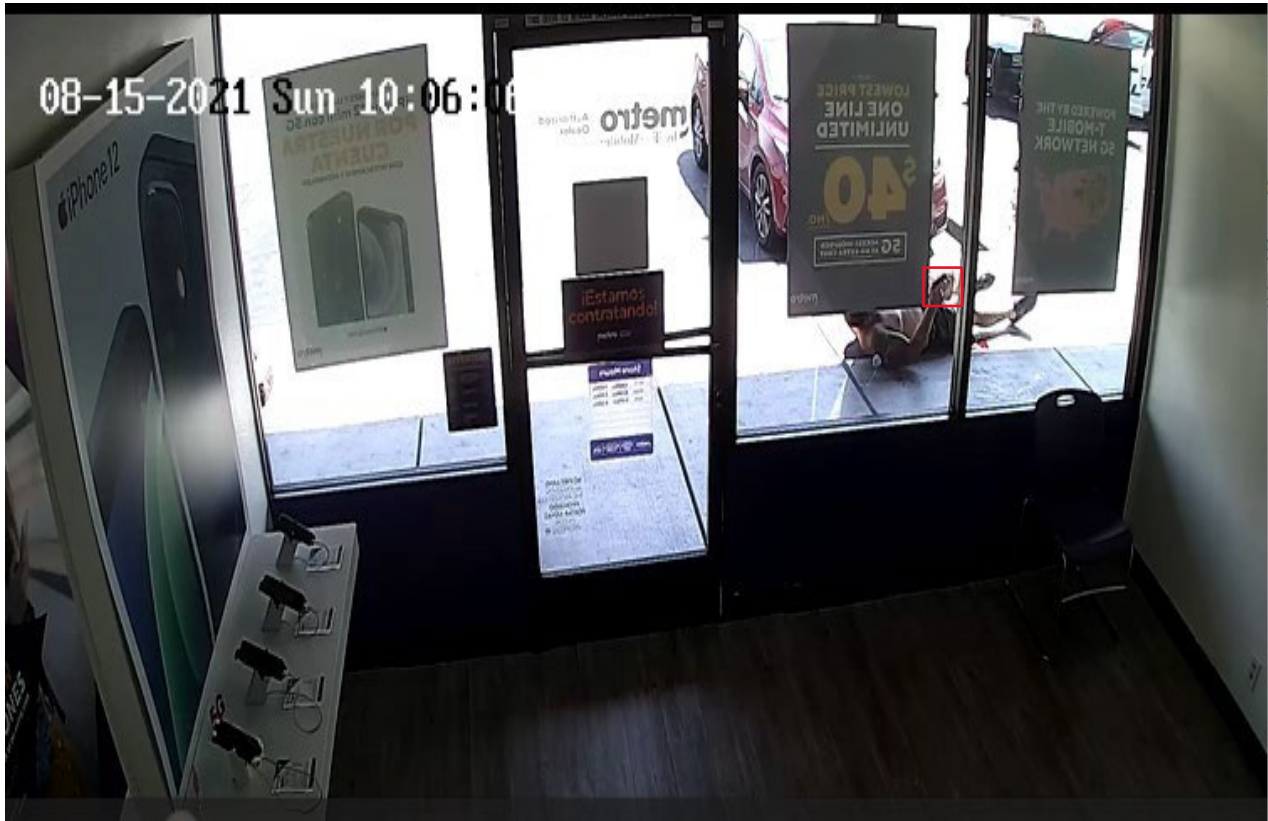
⁴ Corporal Buesa's department-issued Axon bodycam was not activated until after Mr. Carevic was incapacitated. For further details, see his summarized statement below.

Mr. Carevic is visible in the red box above. His arm is extended to his right, in the direction of Corporal Buesa's patrol vehicle, visible directly to the right.

Approximately one to two seconds later, Officer Rodriguez stopped running, took a bladed shooting stance, and fired two more rounds at Mr. Carevic from his position on the north curblineline of Armory Road.⁵ Mr. Carevic then fell to the ground in front of the Metro PCS store. Corporal Buesa watched Mr. Carevic fall to the ground.

Corporal Buesa approached Mr. Carevic on foot with his firearm out. As Mr. Carevic lay on the ground, Corporal Buesa noticed Mr. Carevic reaching for the gun next to his body and told him not to reach for it. Mr. Carevic grabbed the gun, then propped himself up while holding the gun in his right hand. He started to make a motion toward Corporal Buesa with the gun, so Corporal Buesa fired one round at Mr. Carevic.⁶

Surveillance footage from Metro PCS captured the following image shortly before Corporal Buesa fired at Mr. Carevic:⁷



⁵ Crime Scene Investigators located 2 .40 "Win 40 S&W" FCCs on the north curblineline of Armory Road near the driveway entrance to the shopping center.

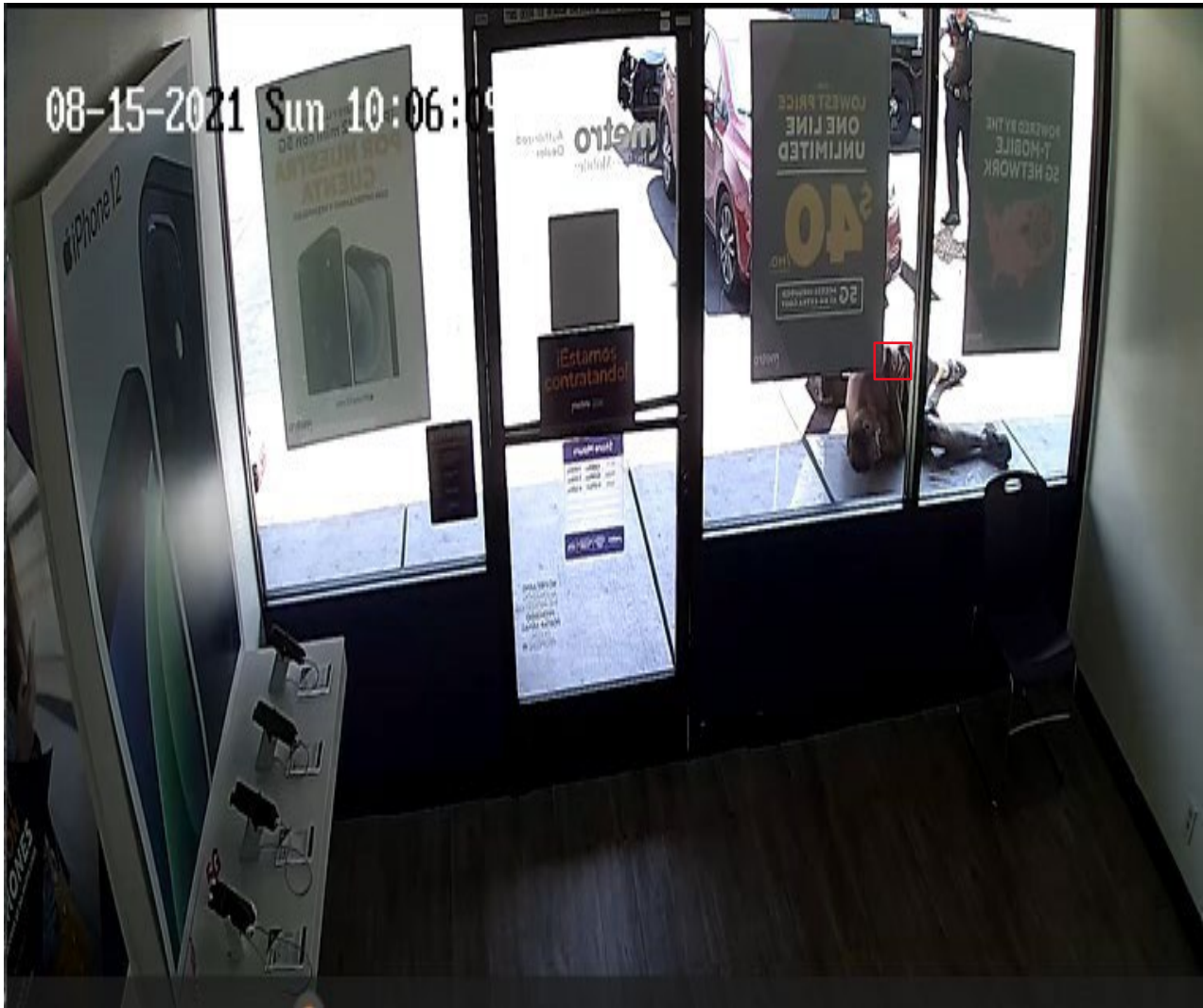
⁶ Crime Scene Investigators located 1 .40 "Win 40 S&W" FCC in the parking lot in front of the Smoke Mart store, the general area where Corporal Buesa fired one round.

⁷ The timestamp of this video is approximately one hour and six minutes behind the actual time.

Mr. Carevic's handgun is visible in his right hand inside the red square. It appears to be pointed in the direction of Corporal Buesa and/or Officer Rodriguez, who was positioned down the sidewalk out of frame to the right in front of the Quick Liquor store.

Officer Rodriguez then fired one final round toward Mr. Carevic almost simultaneously to Corporal Buesa, from his position in front of the Quick Liquor store.⁸ Shortly before Corporal Buesa and Officer Rodriguez fired, Officer Rodriguez yelled, "Drop the fucking gun! Drop the gun!"

Surveillance footage from Metro PCS captured the following image shortly after Mr. Carevic was shot a final time by both Corporal Buesa and Officer Rodriguez:



Mr. Carevic's handgun is visible in the red square still in his right hand as Corporal Buesa approached with his handgun drawn.

⁸ Crime Scene Investigators located 1 .40 "Win 40 S&W" FCC in the parking lot in front of the Quick Liquor store, the general area where Officer Rodriguez fired his final round.

Officer Rodriguez and Corporal Buesa continued to approach Mr. Carevic with their guns drawn and noticed he finally dropped the gun, which was a few inches from his right hand on the ground. He tried to reach for the gun but seemed incapacitated. Corporal Buesa then quickly approached Mr. Carevic and kicked the gun away from him toward the Metro PCS door. Both officers saw that Mr. Carevic was bleeding profusely and was not responsive.

Officer Rodriguez immediately called for a medical aid response. Corporal Buesa retrieved a medical kit from his patrol vehicle and attempted to place hemostatic gauze on Mr. Carevic's wounds, while Officer Rodriguez began chest compressions for several minutes until paramedics arrived.

Paramedics arrived on scene approximately five minutes later and attempted life-saving measures on Mr. Carevic but could not register a pulse. He was pronounced deceased at 1124 hours after a paramedic consulted with a doctor from Loma Linda University Medical Center.

STATEMENTS BY POLICE OFFICERS

On August 30, 2021, Detectives Robert Ripley and Gerania Navarro of the San Bernardino County Sheriff's Department interviewed **Officer Steven Rodriguez**. He stated the following:⁹

On August 15, 2021, **Officer Steven Rodriguez** worked for the Barstow Police Department and was assigned to patrol. He wore a "Class C" uniform with Barstow Police Department patches, and a stitched, cloth badge identifying him as a police officer. He wore a standard police duty belt and carried a Glock 22 .40 caliber pistol loaded with "Win 40 S&W" cartridges. He drove a marked, black and white, Barstow Police vehicle on the date of this incident.

At approximately 0748 hours on August 15, 2021, he was dispatched to an address near Armory Road in Barstow for a report of a suspicious vehicle parked in a cul-de-sac. When he arrived, he saw a white Chrysler 300 sedan parked in the middle of the street. As he approached the car, he noticed a female sitting in the front passenger seat (later identified as Involved Party 1) with a dog. He radioed dispatch the license plate number of the vehicle and it returned clear.

Officer Rodriguez then engaged in a conversation with Involved Party 1 and asked her what she was doing there. She said she and her boyfriend were driving to Barstow from Arizona when the car ran out of gas. She said her boyfriend just left to get gas for the car. At one point, Involved Party 1 said she was actually in the area to get gas herself, but this did not make sense to Officer Rodriguez because there was no gas station in the immediate area. He then called in the Chrysler's VIN to dispatch. Dispatch reported the vehicle stolen out of Arizona. At this point Officer Rodriguez concluded the vehicle was "cold plated" and

⁹ This is a summary of the recorded interview. It contains all details relevant to this discussion. For a full recounting of the statement, refer to the audio and verbatim transcript.

asked for backing officers. A short time later two officers from Barstow Police arrived, including Corporal Andrew Buesa.

When the backing officers arrived, Officer Rodriguez informed Involved Party 1 the car was stolen, and that she was under arrest for possession of stolen property. He then conducted a cursory search of the car and located BB guns and live firearm ammunition inside. Corporal Buesa then had the car towed and Officer Rodriguez prepared to transport Involved Party 1 to jail for booking. Before leaving, Witness 1 approached Officer Rodriguez and told him that he thought the male who was with Involved Party 1 left the location about one hour prior. This prompted Officer Rodriguez to question Involved Party 1 about the identity of her boyfriend.

Involved Party 1 stated her boyfriend's name was "Richard," but would not provide any further information. When asked where he may have gone, she would only respond, "To get gas." She said he was wearing grey shorts and was riding a scooter. Other Barstow Police officers conducted an area check to see if anyone matching that description was nearby but were unable to locate anyone. Officer Rodriguez then processed Involved Party 1 at the police department and continued with his shift. Involved Party 1 never mentioned that her boyfriend was carrying a firearm.

Sometime later dispatch advised Officer Rodriguez the original reporting party from the suspicious vehicle call called back and said a male was back in the area wearing grey shorts with no shirt and was pushing a shopping cart around with a scooter inside. Officer Rodriguez then drove back to the area and observed Mr. Carevic walking eastbound on Candlelight Street toward Monterey Avenue. Officer Rodriguez exited his patrol vehicle and asked Mr. Carevic where he was going. Mr. Carevic replied that he was looking for his car and pointed to the area where the stolen Chrysler 300 was parked earlier. Officer Rodriguez asked for identification, and Mr. Carevic looked through his pockets momentarily, then stated, "It was in the car."

Officer Rodriguez asked if Mr. Carevic would come over to his patrol vehicle to talk, but Mr. Carevic became "fidgety" and kept pulling at his pants. It appeared Mr. Carevic was trying to create distance between himself and Officer Rodriguez by placing his shopping cart between the two. This made Officer Rodriguez believe that Mr. Carevic may try to run or fight with him. Officer Rodriguez retrieved his firearm, pointed it at Mr. Carevic and told him he was detained. Mr. Carevic told him he would not comply, but then momentarily calmed down, so Officer Rodriguez put his gun away.

Officer Rodriguez then told Mr. Carevic to put his hands behind his back. Mr. Carevic asked if he was being detained and was told, "Yes, you're being detained." Mr. Carevic then pushed his shopping cart toward Officer Rodriguez and began to run eastbound on Candlelight Street towards Monterey Avenue. Officer Rodriguez immediately informed dispatch of the situation and his location.

As the foot pursuit continued northbound on Monterey Avenue, Officer Rodriguez gave Mr. Carevic numerous commands to stop running. He noticed that Mr. Carevic kept reaching

into his pocket and Officer Rodriguez told him to stop reaching. At one point, Officer Rodriguez noticed that Mr. Carevic pulled a black, semi-automatic handgun from his right front pocket. This prompted Officer Rodriguez to pull his firearm again. Officer Rodriguez then saw Mr. Carevic turn and point the gun at him. He believed that Mr. Carevic may have fired at him.¹⁰ In this moment Officer Rodriguez believed Mr. Carevic was trying to kill him and was in fear for his life. He believed he would die if he did not fire at Mr. Carevic.

As Officer Rodriguez moved to get out of any line of fire, he tripped, but managed to fire two shots toward Mr. Carevic before falling. Officer Rodriguez fell on his left side, but was able to prop himself up, regain his target and fire more rounds at Mr. Carevic. He could not recall exactly how many rounds he fired. Officer Rodriguez believed he had to continue his pursuit because he was afraid for the lives of the citizens in the shopping center where Mr. Carevic was running with his firearm.

Officer Rodriguez then noticed that Mr. Carevic was still running toward Armory Road. He got up, and called out on the radio that shots were fired and the person he was chasing was armed. As Officer Rodriguez came up to Armory Road, Mr. Carevic was running along a strip mall in the Stater Bros. shopping center. As Officer Rodriguez approached the intersection of Armory Road and Monterey Avenue, he heard Corporal Buesa's patrol sirens. He saw Corporal Buesa pull into the shopping center parallel to where Mr. Carevic was running. He then observed Mr. Carevic point his gun toward Corporal Buesa. At this point Officer Rodriguez feared for the life of Corporal Buesa and the lives of any citizens who might be in the area. Officer Rodriguez then fired two more shots at Mr. Carevic and saw him fall to the ground.

Officer Rodriguez continued to approach Mr. Carevic and yelled at him to drop the gun. As Corporal Buesa approached Mr. Carevic from the parking lot, Officer Rodriguez could see that Mr. Carevic still held his firearm in his right hand. He then heard Corporal Buesa fire a shot. Officer Rodriguez saw Mr. Carevic roll toward Corporal Buesa with the gun in his hand, so he fired another shot. The gun then fell out of Mr. Carevic's hand. Mr. Carevic continued to grab for the firearm until Corporal Buesa kicked the firearm away.

When Officer Rodriguez recognized that Mr. Carevic was incapacitated, he called for medical aid, and did chest compressions until the arrival of paramedics.

On August 30, 2021, Detectives Robert Ripley and Gerania Navarro of the San Bernardino County Sheriff's Department interviewed **Corporal Andrew Buesa**. He stated the following:¹¹

On August 15, 2021, **Corporal Andrew Buesa** worked for the Barstow Police Department and was assigned to patrol. He wore a "Class B" uniform with Barstow Police Department patches, metal pin on rank indicating his status as a police corporal, and a metal badge

¹⁰ Investigators did not find any .22 caliber FCCs near the scene of the initial LFE, or near the scene of the final LFE.

¹¹ This is a summary of the recorded interview. It contains all details relevant to this discussion. For a full recounting of the statement, refer to the audio and verbatim transcript.

identifying him as a police officer. He wore a standard police duty belt and carried a Sig Sauer 229 .40 caliber pistol loaded with "Win 40 S&W" cartridges. He drove a marked, black and white, Barstow Police vehicle on the date of this incident.

On August 15, 2021, Corporal Buesa was assigned as a backing officer to a call on the 1000 Block of Mirage Drive at approximately 0800 hours. Officer Rodriguez was the primary officer on the call. When he arrived, other officers were checking on a vehicle and had a female detained (later identified as Involved Party 1). Corporal Buesa was assigned to assist with a search, impound and tow of the vehicle, which he later learned was reported stolen. Corporal Buesa located trash, miscellaneous items, and a large amount of ammunition in the vehicle while conducting an inventory for impound and tow. He did not recall seeing any BB guns.

He learned that the seized vehicle was "cold plated" and that a male was with the car at some point in the morning and was still at large in the area. Corporal Buesa followed the tow truck to the impound yard and removed the rear license plate because the plate did not belong to the vehicle.

Sometime later in the morning dispatch informed Corporal Buesa that a male potentially associated with the earlier vehicle call, was back at the scene and yelling out the name of a female. Officer Rodriguez responded to the call, and broadcast on the radio that he contacted a male near Monterey Avenue. When he heard this call, Corporal Buesa was at the Barstow Police Station approximately one mile away. He then left the station to assist Officer Rodriguez.

When he got closer to Armory Road, he heard Officer Rodriguez call out over the radio that someone was running from him. Corporal Buesa activated his overhead lights and sirens and turned eastbound on Armory Road because he knew the suspect was running toward that street's intersection with Monterey Avenue. As he approached the Stater Bros. shopping center on Armory Road, he spotted a male, Mr. Carevic, running across the street. Corporal Buesa noticed that Mr. Carevic wore grey shorts and did not have a shirt on. According to Corporal Buesa, the man may have been limping and appeared, "out of gas" from running. He did not immediately notice any weapons in Mr. Carevic's hands.

As Corporal Buesa turned left into the Stater Bros. parking lot he heard "weapon," or that Mr. Carevic had a weapon, but could not recall if that was on his computer in his car, or from a radio dispatch. He was unaware that Officer Rodriguez was involved in a shooting. He pulled his patrol vehicle parallel to a strip mall to the south of the Stater Bros. market and noticed Mr. Carevic running along a sidewalk in front of several small businesses to Corporal Buesa's left.

Corporal Buesa saw Mr. Carevic "yank" on a business door, but it did not open because it was locked. Mr. Carevic then turned toward Corporal Buesa, who was seated in his patrol car. Mr. Carevic pointed a small, black handgun at him with his right hand. At this moment Corporal Buesa believed he was going to get shot and that Mr. Carevic would kill him. He said, "I thought, you know, this is it, I'm going to get shot." He then opened his car door. As

he opened his car door, he saw Mr. Carevic fall to the ground and assumed that Officer Rodriguez fired shots.

When Corporal Buesa exited his car, he could see Mr. Carevic on the ground. He approached Mr. Carevic with his handgun drawn. He then saw Mr. Carevic grab for a gun that was on the ground next to his body. Corporal Buesa told Mr. Carevic to drop the gun at least two times, but Mr. Carevic propped his body up with the gun in his hand and began to make a movement with the gun toward him. Corporal Buesa feared for his life, so he fired one shot at Mr. Carevic. Immediately after Corporal Buesa fired, he heard another shot but was not sure if it was Officer Rodriguez or Mr. Carevic who fired.

After hearing the second shot Mr. Carevic fell backwards on the ground. Corporal Buesa then noticed that Mr. Carevic was not moving as much as before, and noticed the gun he held was a couple of inches from his hand, but that he could no longer reach it. Corporal Buesa approached Mr. Carevic and kicked the gun away towards one of the businesses directly west of the incident.

Corporal Buesa then retrieved a medical kit from his patrol vehicle and began to apply pressure to Mr. Carevic's wounds. Officer Rodriguez began chest compressions. Corporal Buesa and Officer Rodriguez continued to provide medical aid until paramedics arrived and eventually pronounced Mr. Carevic deceased.

Corporal Buesa's Axon bodycam was not activated upon his initial contact with Mr. Carevic or when he fired at him. Corporal Buesa believed that when he activated his lights and sirens, his camera automatically turned on. That feature of his camera did not function that day for an unknown reason. He believed he turned his camera on after kicking the gun away from Mr. Carevic when he noticed it was not activated.

STATEMENTS BY CIVILIAN WITNESSES

Investigators interviewed several civilian witnesses. To the extent they provided relevant information, their statements are summarized above in the "FACTUAL SUMMARY" section of this memo.

INCIDENT VIDEO

AXON BODYCAMERA VIDEO RECORDINGS. Officer Rodriguez and Corporal Buesa wore body cameras during this incident. Officer Rodriguez's camera was activated during this incident. Corporal Buesa's camera was activated after the incident terminated and it did not contain any relevant information regarding this analysis. Thus, his camera footage is not summarized below.

Officer Rodriguez

Officer Rodriguez's camera footage of this incident is approximately eleven minutes long.¹² The camera's time stamp is accurate and displays Pacific Daylight Time. The audio portion of the video does not begin until approximately 00:00:30 on the media player bar, as is standard for Axon cameras.

At time stamp 11:08:36¹³ Officer Rodriguez exited his patrol vehicle. Visible in front of him was Mr. Carevic who wore grey shorts and no shirt. He was pushing a shopping cart with a large scooter in the front compartment and various other items. Officer Rodriguez then approached Mr. Carevic and had a conversation for approximately 22 seconds that was not captured by audio.

At time stamp 11:09:01 the camera audio activated. Mr. Carevic had his left hand in his left shorts pocket. A few seconds later, Officer Rodriguez informed Mr. Carevic that it was illegal to possess a shopping cart on a street. At timestamp 11:09:14 Officer Rodriguez asked Mr. Carevic to come over to his patrol car. Mr. Carevic responded, "Sure." At time stamp 11:09:31 Officer Rodriguez informed dispatch that he was out with a subject on Monterey Avenue.

Mr. Carevic then asked Officer Rodriguez about Involved Party 1 and his dog. Officer Rodriguez told Mr. Carevic he talked to her and that they could discuss it further at his patrol vehicle. Mr. Carevic began to walk toward the curblin but away from the rear of the patrol vehicle. He then stopped to drink from a cup he had in the shopping cart. Mr. Carevic then put his hands down around his short pockets. Officer Rodriguez stated, "You're being very sketchy bro, put your hands behind your back," and drew his firearm and pointed it at Mr. Carevic.

With his gun drawn, Officer Rodriguez gave Mr. Carevic multiple commands to turn around. Officer Rodriguez then told Mr. Carevic the car he was in earlier was stolen. Mr. Carevic stated, "I didn't do anything," and remained behind his shopping cart, which was positioned between himself and Officer Rodriguez.

Officer Rodriguez gave Mr. Carevic multiple commands to "stop" and "turn around." At timestamp 11:10:03, Officer Rodriguez's firearm disappeared from camera view. Mr. Carevic then pulled his shopping cart from the front and turned eastbound toward Monterey Avenue. Officer Rodriguez informed Mr. Carevic he was being detained.

At timestamp 11:10:06 Mr. Carevic abruptly pushed his shopping cart toward Officer Rodriguez and ran toward Monterey Avenue to the east. Mr. Carevic quickly turned northbound on Monterey Avenue and ran toward Armory Road. Officer Rodriguez

¹² This summary will discuss the events that occurred during the lethal force encounter, and any events captured after the event, to the extent those events are relevant to any subsequent analysis.

¹³ All further references to a time stamp indicate the time of day as indicated by the camera, and not the time stamp of the media player.

broadcast over the radio that he was chasing a subject northbound on Monterey Avenue. At timestamp 11:10:28 Officer Rodriguez yelled at Mr. Carevic, "Stop dude!" Officer Rodriguez gave Mr. Carevic three more commands to stop.

At time stamp 11:10:34 Officer Rodriguez stated, "Stop reaching in your pockets!" Mr. Carevic continued to run northbound on Monterey Avenue on a sidewalk next to a block wall running north to south. He held a small, black handgun in his right hand. At timestamp 11:10:35 Mr. Carevic turned toward Officer Rodriguez, and placed both hands out in front of him, and pointed the handgun at Officer Rodriguez.

At timestamp 11:10:36 Officer Rodriguez fell on the ground on his left side. His right arm was extended out in front of him pointing his firearm at Mr. Carevic, who appeared to be running northbound on the same sidewalk next to the block wall. Between timestamp 11:10:36 and 11:10:44 the video feed of the camera cut off, but audio captured Officer Rodriguez fire 12 shots from his firearm. He immediately stood up, and ran northbound, and informed dispatch that shots were fired.

At timestamp 11:10:59 the sirens from Corporal Buesa's patrol vehicle were audible and then the vehicle came into frame driving eastbound on Armory Road. Officer Rodriguez pointed with his right arm, holding his firearm toward the Stater Bros. shopping center. He yelled at Corporal Buesa, "Right there! Right there! Right there! He's armed!" It is not clear whether Corporal Buesa's windows were down.

At timestamp 11:11:09 Officer Rodriguez stood on the north curblineline of Armory Road facing the strip mall on the west side of the Stater Bros. parking lot. Corporal Buesa's patrol vehicle was in the parking lot moving northbound behind a sign. Mr. Carevic was visible in the frame directly in front of Officer Rodriguez and he appeared to pull on a door to a business. At time stamp 11:11:08 Mr. Carevic appeared to point his gun in the direction of Corporal Buesa's vehicle directly to his right. At time stamp 11:11:10-11:11:11, Officer Rodriguez fired two shots at Mr. Carevic, who fell to the ground.

At timestamp 11:11:18 Officer Rodriguez stated, "Drop the fucking gun! Drop the gun!" while Corporal Buesa pointed his firearm at Mr. Carevic from his position in the parking lot between Mr. Carevic and his patrol vehicle. At time stamp 11:11:22 Corporal Buesa fired one shot at Mr. Carevic. At timestamp 11:11:23 Officer Rodriguez fired one final round at Mr. Carevic and stated, "Drop it!" At timestamp 11:11:31 Mr. Carevic moved around on the ground and Officer Rodriguez stated, "Drop the fucking gun!" Corporal Buesa stood to Mr. Carevic's left and pointed his gun at him.

At timestamp 11:11:35 Corporal Buesa stated, "Don't touch the gun!" while moving toward Mr. Carevic. At timestamp 11:11:38 Mr. Carevic laid on the ground with his right arm extended parallel to his shoulder. His firearm was visible just to the right of his hand. Corporal Buesa then kicked the gun toward a business directly to the right and away from Mr. Carevic. At timestamp 11:11:44 Officer Rodriguez reported to dispatch that Mr. Carevic was down, but still moving and to send medical aid.

Corporal Buesa asked Officer Rodriguez if Mr. Carevic fired at him first at timestamp 11:12:20. Officer Rodriguez said, "Yeah." At timestamp 11:12:58 Officer Rodriguez and Corporal Buesa began to administer medical aid to Mr. Carevic. Paramedics and fire personnel arrived at timestamp 11:17:08 and took over medical care for Mr. Carevic. The video terminated at timestamp 11:19:38.

WEAPON

San Bernardino County Sheriff's investigators located a black, Phoenix Arms .22 caliber, semi-automatic pistol, serial number 4329262, next to the Metro PCS store, directly to Mr. Carevic's right-hand side. Upon inspection, the pistol showed extensive damage to the slide and barrel. The barrel was detached from the lower receiver and slide. The slide was only partially attached to the lower receiver. The barrel contained one live round of .22 caliber ammunition in the chamber. A magazine was inserted into the magazine well and contained five live .22 caliber cartridges. The registration history of the firearm is unknown.

DECEDENT

AUTOPSY. Dr. Dennis Rhee, Forensic Pathologist for the Coroner Division of The San Bernardino County Sheriff's Department, conducted the autopsy of Victor Richard Carevic on August 24, 2021. Dr. Rhee determined the cause of death was multiple gunshot wounds and that death occurred within minutes. He determined the manner of death was homicide.

Gunshot Wound of the Abdomen:

Dr. Rhee located a gunshot entrance wound of the right lateral abdomen. He did not locate a corresponding exit wound. The bullet perforated the right abdominal wall, fractured the ninth right rib, perforated the liver, diaphragm, and the right lung. Dr. Rhee located a mushroomed, jacketed bullet in right pleural cavity. The direction of the wound was front to back, upward, and right to left. This wound was fatal.

Gunshot Wound of the Right Thigh:

Dr. Rhee located a gunshot entrance wound of the posterior right thigh, with a corresponding exit wound on the lateral posterior right thigh. The bullet perforated the right thigh, underlying musculature and severed a branch of the right femoral artery. The direction of the wound was back to front, downward, and right to left. This wound was fatal.

Gunshot Wound of the Left Forearm:

Dr. Rhee located a gunshot entrance wound of the posterior left forearm, with a corresponding exit wound on the anterior left forearm. The bullet perforated the underlying

musculature and fractured the left radius. The direction of the wound was upward and left to right with no significant deviation frontward or backward. This wound was non-fatal.

Gunshot Wound of the Left Thigh:

Dr. Rhee located a gunshot entrance wound of the posterior left thigh, without a corresponding exit wound. The bullet perforated the underlying musculature. Dr. Rhee located a mushroomed, jacketed bullet in the tissue of the right thigh. The direction of the wound was back to front, upward and left to right. This wound was non-fatal.

Ricochet Gunshot Wounds of the Left Ankle:

Dr. Rhee located two irregular defects of the left ankle consistent with gunshot ricochet wounds. He recovered a small, copper-jacketed fragment from the tissue below the smaller wound. The direction of the wounds could not be determined. These wounds were non-fatal.

TOXICOLOGY. Femoral blood samples were collected during the autopsy and submitted for testing.

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

- Amphetamine - 41 ng/mL
- Methamphetamine – 470 ng/mL

CRIMINAL HISTORY¹⁴

2000, Health and Safety Code § 11378, Possession for Sale of a Controlled Substance. San Bernardino County court case number FVI011613, a felony.

2000, Penal Code § 12025(a), Possession of a Firearm in Vehicle. San Bernardino County court case number FVI010148, a misdemeanor.

2003, Penal Code § 11377(a), Possession of a Controlled Substance. San Bernardino County court case number FVI016380, a felony.

2005, Penal Code § 487(a), Grand Theft. Orange County court case number 05CF1638, a felony.

2007, Penal Code § 496(a), Receiving Stolen Property. San Bernardino County court case number FVI700183, a felony.

¹⁴ Only the decedent's significant criminal history is summarized here. It only includes criminal convictions. For a full recount of his history, please see his Record of Arrest and Prosecutions (RAP sheet) from California and his RAP sheets from the states of Texas and Arizona contained in the case file.

2009, Vehicle Code § 2800.2, Evading a Peace Officer with Willful Disregard. San Bernardino County court case number FVI900396, a felony.

2009, Penal Code § 148(a)(1), Resisting, Obstructing, or Delaying a Peace Officer. Orange County court case number 09NM04925, a misdemeanor.

2011, Penal Code § 245(a)(1), Assault by Means of Force Likely to Inflict Great Bodily Injury. San Bernardino County court case number FWV1100822, a felony.

2014, Penal Code § 243(c)(1), Battery upon Emergency Personnel. San Bernardino County court case number FVI1401061, a felony.

DE-ESCALATION

Upon initial contact with Officer Rodriguez, Mr. Carevic was uncooperative. He immediately began reaching into, and around his pockets when told not to do so. He did not comply with a request to speak with Officer Rodriguez at his patrol vehicle even after he agreed to do so. Mr. Carevic's erratic movements, coupled with Officer Rodriguez's fear that Mr. Carevic may have been preparing to flee and/or fight, caused Officer Rodriguez to retrieve his firearm in the early stages of the encounter. Nevertheless, when it appeared for a brief moment that Mr. Carevic would submit to a detention, Officer Rodriguez re-holstered his firearm in an attempt to de-escalate the tense situation. Rather than de-escalate the situation himself, Mr. Carevic took Officer Rodriguez's holstering of his firearm as an opportunity to escape, and he immediately began to run once Officer Rodriguez did so.

The elapsed time between Officer Rodriguez's initial contact with Mr. Carevic to the point that Mr. Carevic turned and pointed a firearm at him on Monterey Avenue, was approximately two minutes and three seconds. From the time that Officer Rodriguez re-holstered his firearm to the time Mr. Carevic retrieved his gun, Officer Rodriguez did not have his firearm out, or any other weapon. Furthermore, Officer Rodriguez gave Mr. Carevic several commands, and opportunities to stop running and submit to a detention. Mr. Carevic refused, and instead, escalated the situation by pulling a firearm and pointing it at a peace officer.

Thus, Officer Rodriguez attempted to de-escalate the situation with Mr. Carevic by re-holstering his firearm and asking Mr. Carevic to submit to a detention. Any further attempts to de-escalate after Mr. Carevic retrieved his firearm from his clothing would have been dangerous and futile. This is especially true given that Mr. Carevic continued to point, and/or attempt to point his firearm at officers after being shot.

Finally, when Corporal Buesa arrived at the scene of the final encounter, Mr. Carevic immediately pointed a gun at him. When he approached and told Mr. Carevic to stop reaching and to drop the gun, Mr. Carevic then turned his body and attempted to point his gun at Corporal Buesa again. Thus, in those quick seconds, Corporal Buesa was not

afforded an opportunity to de-escalate during his portion of this LFE. Any attempt on his part would have been dangerous and futile.

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).)¹⁵ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

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

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

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

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

¹⁵ All references to code sections here pertain to the California Penal Code.

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

While the appearance of these principals was new to section 835a in 2020,¹⁶ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra.*) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

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

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

- (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;

¹⁶ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;¹⁷
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

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

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;

¹⁷ Penal C. §835a(a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a(a)(3).

- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

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

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

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

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

(Penal C. §835a(e)(2).)

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

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—

in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

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

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

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer” standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)¹⁸ 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

¹⁸ 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.

consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

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

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

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

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 *1, 27-28.)

The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide “zone of protection” when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

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

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

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. “[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed.” (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham [v. Connor]* (1989) 490 U.S. [386], 395.) The *Graham* balancing

test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

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

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

ANALYSIS

Here, Officer Rodriguez had an honest and objectively reasonable belief that Mr. Carevic posed an imminent risk of great bodily injury or death to himself, Corporal Buesa, and the general public at large. Nonetheless, it is important to analyze separately, each instance in this matter where he discharged his firearm.

Turning first to the shots fired on Monterey Avenue, Officer Rodriguez was faced with a person he reasonably believed was in possession of a stolen vehicle, a felony, earlier in the day. Officer Rodriguez arrested Mr. Carevic’s girlfriend in the vehicle approximately three hours before their encounter. He was then given specific information that the male seen in the Chrysler 300 earlier in the day was back in the area. He was provided with a specific description of that person, namely that he was pushing a shopping cart and wore grey shorts with no shirt on. Officer Rodriguez then contacted that same person in the same area where the stolen Chrysler 300 was parked earlier in the day. During their initial conversation, Mr. Carevic confirmed that he was associated with the vehicle when he claimed his identification was in the car, and when he specifically asked about his girlfriend by name (Involved Party 1) and the dog she had with her. Thus, Officer Rodriguez had

sufficient probable cause to arrest Mr. Carevic. When that became true, Mr. Carevic had no legal right to resist a detention, and had no right to use force to resist any arrest (*Penal Code* § 834a.)

Once Mr. Carevic ran, he violated *Penal Code* § 148(a)(1), Resisting, Obstructing or Delaying a Peace Officer. It was Officer Rodriguez's duty to chase and arrest him (*Penal Code* § 835a(b).) During his initial contact, and the initial chase, Officer Rodriguez observed Mr. Carevic reaching into his pocket, an action he believed was an attempt to retrieve a weapon. Mere seconds after observing those actions, Officer Rodriguez observed a firearm in Mr. Carevic's hands. One second after that, Mr. Carevic turned and pointed a loaded firearm at Officer Rodriguez after being commanded numerous times to stop running and to stop reaching into his pocket. This act alone constituted at minimum, a violation of *Penal Code* § 245(d)(2), Assault with a Semi-Automatic Firearm on a Peace Officer, a violent felony under California Law. While it is most likely true that Mr. Carevic did not fire the weapon when he pointed it at Officer Rodriguez, it cannot be ruled out that he tried to fire it. As noted previously, a live round was found inside the chamber of his .22 caliber pistol after this encounter. Based on the evidence here, it is reasonable to conclude that Mr. Carevic tried to fire his weapon, but that its dilapidated condition prevented the gun from firing.

In any event, under the circumstances, it was reasonable for Officer Rodriguez to believe he was fired at given Mr. Carevic's behavior upon contact, his deliberate retrieval of his firearm, his stance, and the fact the firearm was pointed directly at him. One could reasonably infer that a person would not point a loaded firearm at a police officer at close range and not attempt to fire said weapon. Of note, Officer Rodriguez believed that when the gun was pointed at him, he was going to die if he did not fire his weapon. The law did not require him to wait and confirm whether bullets were flying in his direction before he decided to shoot, nor was he required to reflect upon the possibility that his attacker meant to scare him, nor was he required to evaluate whether the gun was loaded, or functional. It is also immaterial that Mr. Carevic immediately began running after Officer Rodriguez fell to the ground. Officer Rodriguez had no way to know whether Mr. Carevic's gun was non-functional, nor could he know whether Mr. Carevic continued to run to find concealment behind the end of the block wall that was mere feet from Officer Rodriguez's position. The law empowered him in that moment to exercise his right of self-defense to neutralize an imminent, violent threat facing him and to apprehend a violent, fleeing felon. Thus, the shots Officer Rodriguez fired toward Mr. Carevic, who was armed with a loaded firearm, were justified.

Officer Rodriguez's second volley of shots fired on the north curblin of Armory Road at Mr. Carevic were also lawful, given the facts and circumstances facing him. Mere seconds before, a person pointed a loaded gun at him at point blank range. Shortly after this encounter ended, Officer Rodriguez believed Mr. Carevic fired at him on Monterey Avenue. That same person was now running toward a populated civilian area still armed with a loaded firearm. Before shooting the second volley, Officer Rodriguez saw Mr. Carevic point his firearm at another police officer, Corporal Buesa, who was helpless inside his police vehicle. This claim is supported by Officer Rodriguez's bodycam, which captured Mr.

Carevic pointing his firearm in the direction of Corporal Buesa. Officer Rodriguez also witnessed Mr. Carevic attempt to enter a business with his gun.

Of note, Officer Rodriguez said that in the moments leading up to this second round of shots, he was scared Mr. Carevic was going to shoot Corporal Buesa. He was also worried about the public at large, specifically that Mr. Carevic might shoot someone in one of the businesses, or even take a hostage to aid his continued flight. Therefore, given the events just prior to this round of shots, and the fact Officer Rodriguez witnessed his partner officer in imminent danger of being shot, his decision to fire at Mr. Carevic while he was running along the strip mall sidewalk was justified.

Finally, after Mr. Carevic went to the ground, he still attempted to reach for his loaded firearm. He was given numerous commands to stop reaching for his gun, and then to drop his gun. Mr. Carevic did not comply. Rather, once he fell to the ground, he rearmed himself with his gun and pointed the gun in the direction of Corporal Buesa. Again, Officer Rodriguez harbored a reasonable belief that Mr. Carevic would shoot either Corporal Buesa or himself in that moment. Officer Rodriguez's final shot came approximately one second after Corporal Buesa fired at Mr. Carevic. Video evidence demonstrates that Mr. Carevic had his firearm lifted in a position to fire at the time.

That Mr. Carevic reasonably posed an imminent danger to both officers when Officer Rodriguez fired his final shot is clear from all the available evidence here. Surveillance footage demonstrates that when Officer Rodriguez fired his final shot, Mr. Carevic still had his loaded firearm in his hands, and momentarily held the firearm even after being shot for the final time. In fact, he appeared to be reaching for the gun after being fatally wounded and was only prevented from grabbing the gun a final time by his wounds, and Corporal Buesa, who kicked the gun away from him, facts corroborated by video evidence.

Corporal Buesa also had an honest and objectively reasonable belief that Mr. Carevic posed an imminent risk of great bodily injury or death to himself, and Officer Rodriguez. When Corporal Buesa began driving to the area of Officer Rodriguez's foot chase, he did not know that Mr. Carevic was armed, or that shots were fired. It was only when he pulled into the Stater Bros. shopping center that he learned Mr. Carevic was "armed."

When Corporal Buesa first saw Mr. Carevic, he did not immediately see a firearm in his hand. It was not until Mr. Carevic turned his attention away from the door he attempted to open that Corporal Buesa saw a firearm. He saw this firearm because it was pointed at him as he sat helplessly in his car. This too was a violation of Penal Code § 245(d)(2), Assault with a Semi-automatic Firearm on a Peace Officer, a violent felony under California Law. Corporal Buesa later stated he thought in that moment he would get shot and killed. Shortly after pointing the weapon at Corporal Buesa, Mr. Carevic was shot again by Officer Rodriguez who witnessed the assault.

When Mr. Carevic fell to the ground, Corporal Buesa had the opportunity to exit his vehicle with his firearm ready to engage Mr. Carevic should he still pose a danger. Corporal Buesa was almost instantly confronted with Mr. Carevic reaching for, and retrieving his gun, after

being commanded not to. Mr. Carevic then turned toward Corporal Buesa with the firearm in a position to potentially shoot him. Surveillance video corroborates this fact. Corporal Buesa, then, was faced with an imminent danger to his life.

Like Officer Rodriguez, Corporal Buesa was not required to wait and see if Mr. Carevic might fire his weapon or evaluate whether the weapon was functional. Corporal Buesa was faced with a person who had just been shot and would not give up his attempts to retrieve his firearm. He then actually retrieved the firearm and turned the gun toward Corporal Buesa, who had just been assaulted by that same firearm mere seconds earlier. Corporal Buesa stated he was fearful Mr. Carevic would shoot him, or his partner, Officer Rodriguez. This belief was objectively reasonable. Therefore, when Corporal Buesa fired at Mr. Carevic, he was legally justified.

CONCLUSIONS

Based on the facts presented in the reports, the other evidence contained in the case file and the applicable law, Officer Rodriguez's use of lethal force was a proper exercise of his right of self-defense and defense of others and was therefore, legally justified.

Based on the facts presented in the reports, the other evidence contained in the case file and the applicable law, Corporal Buesa's use of lethal force was a proper exercise of his right of self-defense and was therefore, legally justified.

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

