



PUBLIC RELEASE MEMORANDUM

DATE: August 15, 2024

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Deputy Michael Martinez
Hesperia Police Department

Involved Subject: Anthony Nunez (Deceased)
Date of Birth: **/**/****

Date of Incident: March 29, 2022

Incident location: Front yard of **** Ninth Avenue, Hesperia, CA

DA STAR #: 2023-00-0030164

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Jonathan Ramstad

Report Number#: DR #: 192202324

PREAMBLE

The summary of this fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD).

The submission reviewed includes the following: reports summarizing interviews of civilian witnesses; reports summarizing interviews of the involved law enforcement officers and civilian witnesses; law enforcement belt-recordings, a law enforcement video recording; law enforcement photographs; scientific investigation reports; and medical records. The investigating case agent for this submission was Detective Jonathan Ramstad.

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FACTUAL SUMMARY

On March 29, 2022, at approximately 1:03p.m., Deputy¹ Michael Martinez fired his duty-pistol three times at Anthony² Nunez. All three rounds struck Anthony. Anthony died as a result of his injuries from being shot by Deputy Martinez.

The shooting of Anthony occurred following a dispatch call of a domestic disturbance at **** Ninth Avenue in the City of Hesperia. Deputies Jonathan Campos and Michael Martinez responded to that location and arrived within seconds of each other at approximately 11:32a.m. Campos and Martinez walked up the driveway and made contact with the Reporting Party (RP) Witness #2 and the alleged victim Witness #1 through their open bedroom window. Witness #1 informed the deputies that Anthony had been up for several days and was acting crazy. After a brief conversation with Witness #1, Campos and Martinez contacted Anthony at the front door of the residence. Anthony stood at the end of a hallway inside the residence and held a 7'4" long metal chain with a handle at the end. Campos and Martinez spent the next approximately hour and a half attempting to get Anthony to drop the chain and exit the residence to speak with them. During that hour and a half, several other deputies arrived at the scene. Anthony's moods ranged from crying, to calm, to shouting in anger. Anthony spoke about how he was going to be the future President of the United States and how he was a "king." Anthony's moods, topics of discussion, and the information that Anthony had been awake for several days, led Campos and Martinez to believe that Anthony was under the influence of a controlled substance. Anthony did put the chain down several times during their conversation, but would keep the chain wrapped around his foot. Anthony refused to come outside during that time.

At approximately 1:02p.m., Anthony finally exited the residence. At that time, Anthony began to swing the chain overhead like a lasso. Initially, Anthony moved south in the front yard away from deputies, but soon reversed course and began swinging the chain in deputy's direction. As Anthony began moving towards deputies, Deputy Jeremy Deberg shot Anthony four times with a less-lethal multi-launcher. These shots had no effect. Deputy Campos then attempted to use his Taser on Anthony. This also had no effect. Deputy Sabrina Cervantes attempted to utilize a less-lethal beanbag shotgun on Anthony. This also had no effect. As Anthony approached deputies, less than a car length away, Deputy Martinez fired three rounds from his duty-weapon, striking Anthony with all three. Deputies immediately began providing medical attention to Anthony, followed by San Bernardino County Fire personnel. Despite these efforts, Anthony died as a result of his injuries.

STATEMENTS BY POLICE OFFICERS³

¹ All law enforcement personnel referenced in this report were employed by SBCSD.

² Anthony Nunez is hereinafter referred to by his first name in order to avoid confusion with other witnesses who were interviewed or present who bear the same last name.

³ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

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Deputy Michael Martinez was interviewed by Detective Page of the SBCSD on April 20, 2022. Also present during the interview was Detective Carty of the SBCSD and Deputy Martinez's attorney, Steven Alvarado.

On March 29, 2022, Deputy Martinez had been employed by the SBCSD for eight and a half years. He wore black boots, green police standard pants, and short-sleeve uniform with a Sheriff's star on the left chest and a Sheriff's patch on each shoulder. Over the short-sleeve uniform shirt, Martinez wore a green Sheriff's Department issued jacket with a star on the left chest and Sheriff's Department patches on the left and right shoulders. Martinez had call-sign 19-Paul-21 and drove Hesperia Police department unit 19-9. Martinez was equipped with a Sam Browne duty-belt, which held a belt-recorder, pepper spray, keys, a Glock 21, .45 caliber duty-weapon, a Rapid Containment Baton (RCB), a flashlight, two additional magazines, and a holster for his radio.

On March 29, 2022, at approximately 11:26a.m., Deputy Martinez responded to an assault call that occurred at **** Ninth Avenue in the City of Hesperia. Dispatch informed Martinez that a male was assaulting his brother and that there were possibly guns inside the residence. Dispatch further informed Martinez that the assailant was possibly under the influence and had not slept. Upon arrival at **** Ninth Avenue, Martinez parked on the north side of the residence facing south. Deputy Campos arrived on scene at the same time as Martinez. Campos parked on the south side of the residence facing north towards Martinez's vehicle. Campos and Martinez then exited their patrol cars and approached the residence up the driveway. During the approach, Martinez observed a Hispanic Male Adult (HMA) inside the residence on the north side. Martinez made contact with this HMA through the window and asked if he was okay. The HMA responded that his brother was up all night and acting crazy.

Deputies Campos and Martinez then went to the front door and knocked. Martinez heard something hit the front door. Martinez waited a few minutes before knocking again. During that time, Campos heard a male talking to himself. Martinez then knocked again. After the second round of knocking, Martinez heard a chain strike the door from inside the residence, but still no one answered the door. Martinez then went back to speak with the HMA he contacted upon arrival and asked the HMA to unlock the front door. During this time, Campos stood by the front door. After a short period of time, the HMA opened the front door. The HMA was later identified as Witness #1. Upon opening the door, Witness #1 returned to the north side of the residence down a hallway.

Once Witness #1 disappeared into the back of the house, Deputies Campos and Martinez made contact with Anthony Nunez. Anthony was wearing black jeans and no shirt and was holding a metal chain in his right hand. A wooden piece was attached to the chain and was clenched in Anthony's right hand. The chain was wrapped several times around Anthony's fist. Martinez immediately told Anthony to drop the chain. Anthony responded, "fuck you guys, fuck you guys. You're not coming in here. I'm not going to jail."

Upon initial contact with Anthony, the distance between the deputies and Anthony was four to six feet. When Deputy Martinez noticed the chain, he moved back to six to eight feet from Anthony. Anthony was in a fighting stance with his left foot forward and his right foot back, with the chain

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raised to his shoulder. Martinez gave Anthony commands to put the chain down. Anthony did not comply. Instead, Anthony began speaking about how he is the king, that the deputies needed to follow his orders, that he was going to be the president. As Anthony made these statements, Martinez observed symptoms that Anthony was under the influence, including rapid speech, paranoia, and sweating.

Around this time, Deputy Campos pulled out his Taser, which appeared to agitate Anthony. Deputy Martinez kept his hands free of any objects. Martinez then informed Anthony that if Anthony put the chain down, Campos would re-holster his Taser. Campos re-holstered his Taser and Anthony put the chain down. However, Anthony placed the chain on top of his right foot, not on the floor. Martinez noticed the chain was approximately 10 feet long. Martinez continued to try to get Anthony to come outside and advised the next available unit to arm themselves with a less-lethal beanbag.

During this conversation, Anthony was alternating between being very angry and agitated to crying. Deputies Campos and Martinez would take turns trying to de-escalate the situation. Shortly thereafter, Sergeant Lafever arrived on scene. As Lafever attempted to speak with Anthony, Anthony became extremely angry and began cursing at Lafever and threatening him. Anthony then picked up the chain again. Campos and Martinez again tried to get Anthony to put down the chain as they have Lafever step away from Anthony.

Deputy Martinez then heard over the radio that a SED/SWAT team, was en route to the location and that medical personnel were being staged nearby. Martinez continued his de-escalation efforts trying to get Anthony to put the chain down and come outside. At that time, Martinez was worried about Witness #1 and his wife inside the home. Martinez then heard over his radio that there were children in the house as well. Martinez became concerned that the situation with Anthony could become a hostage situation.

Sergeant Lafever then requested over the radio that Deputy Martinez attempt to remove the screen on a window to allow some individuals inside the house to exit through the window. When Martinez moved out of Anthony's view towards the window, Anthony became extremely agitated. Martinez moved away from the window, returning his focus to Anthony. In his peripheral vision Martinez saw a juvenile take the screen off the window as Martinez continued trying to calm Anthony down. Martinez then saw two females exit the window and broadcasted over the radio that there was no one left inside the house.

While Deputy Martinez continued to give Anthony commands to put down the chain and come outside to talk, Anthony became paranoid, saying that he thought people were inside the house, such as Sergeant Lafever. Lafever was not inside the house at that time. Martinez then heard over the radio that evacuation was beginning on neighboring houses. Martinez continued to try to get Anthony to put down the chain and come outside. Anthony responded indicating that someone was going to have to kill him to get him outside. Anthony then demanded Deputy Campos and Martinez's firearms. When Martinez declined, Anthony stated he was "gonna fuck everybody up and people were going to go in boxes."

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Anthony then began to pray and Deputy Martinez raised his left hand as if to pray with Anthony. Anthony then asked for his family. The family had all been removed from the house at this point. When Deputies Campos and Martinez informed Anthony that his family was no longer in the house, Anthony became angry and raised the chain to about shoulder height. Martinez noticed the chain was long and had concern for his and Campos's safety at this point. Campos pulled out his Taser and held it in the low-ready position. Anthony stated, "fuck you guys. I'm fucking coming out." Anthony had a look of determination on his face. Campos and Martinez stepped back and Martinez pulled out his Taser, holding it in the low-ready position. Anthony continued cursing at Campos and Martinez as Deputy Cervantes was telling Anthony to put down the chain and get on the ground.

Anthony then came outside and was walking with a purpose toward the south side of the front yard. Anthony then began to swing the chain above his head in a circular motion in a "cowboy roping style." Deputy Martinez estimated the chain to be 10 to 15 feet long. At this point, Martinez was standing behind a vehicle in the front yard of **** Ninth Avenue facing Anthony. To his left stood Deputy Cervantes. To her left stood Deputy Deberg. To his left stood Deputy Campos. Deputy Martinez could see that Cervantes had a less-lethal shotgun and Deberg had a 40 millimeter less-lethal multi-launcher. Upon noticing that both Cervantes and Deberg were armed with less-lethal options, Martinez holstered his Taser and pulled out his duty-weapon. All the deputies gave Anthony commands to drop the chain and Anthony responded by saying, "fuck you, fuck you guys."

Deputy Cervantes then attempted to fire the less lethal shotgun at Anthony. Deputy Martinez did not see any shots. Deputy Deberg then announced he was shooting the 40 millimeter and proceeded to fire two to three rounds, which struck Anthony in the abdomen, but appeared to have no effect. Deputy Cervantes then fired two rounds with the less-lethal shotgun at Anthony. Both struck Anthony, but had no effect on him. Anthony continued moving towards deputies. Deputy Campos then deployed his Taser at Anthony, which also had no effect.

Anthony continued moving towards deputies and as he does so, he swings the chain at deputies, striking a car near where they were standing. Deputy Martinez continued to give Anthony commands to drop the chain. Anthony continued to advance. Anthony then moved between two vehicles in the front yard and continued towards the deputies. Anthony moved as if he were going to swing the chain at deputies again. In fear that Anthony was going to harm Martinez or his partners, Martinez fired his duty weapon three times at Anthony. After each of the first two shots, Anthony continued moving towards the deputies. Upon firing the third shot, Anthony fell to the ground but was still moving. During each of the three shots, Anthony was approximately five to six feet away from Martinez. Martinez then instructed Anthony to stop moving and moved the chain away from Anthony. Deputy Campos and Sergeant Lafever rendered aid to Anthony. Fire crews responded three to four minutes later to continue providing Anthony with medical aid. Martinez was escorted by Detective Grimm to a vehicle to head back to Hesperia Police Station where he went upstairs into a conference room to await further instruction.

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At some point prior to Anthony exiting the residence, Anthony made direct threats towards Deputies Campos and Martinez. Anthony said he would “fucking kill [them]” and that he would “fuck [them] up.” Martinez believed those threats to be credible.

In the 48 hours prior to the lethal force encounter (LFE) at issue, Deputy Martinez had slept 12-to-16 hours.

Deputy Jonathan Campos was interviewed by Detective Ramstad of the SBCSD on April 19, 2022. Also present during the interview was Detective Malcolm Page and Deputy Campos’s attorney, Steven Alvarado.

On March 29, 2022, Deputy Campos had been employed by the SBCSD since September of 2017. He wore a Class “A” uniform which consisted of a tan short-sleeve button-down shirt, green pants, and black boots. On the tan shirt, Campos had Sheriff’s Department patches on both shoulders and a gold-colored Sheriff’s Department badge pinned above his left breast pocket. Over the tan shirt, Campos wore a green jacket which had SBCSD patches on both shoulders and a cloth yellow badge on his left chest. Campos had call-sign 19-Paul-24 and drove a marked patrol unit. Campos was equipped with a Sam Browne duty-belt, which held three spare magazines, handcuffs, belt recorder, a Glock 21, .45 caliber duty-weapon, keys, radio, RCB, X2 Taser, and oleoresin capicum (OC) spray.

On March 29, 2022, at about 11:25a.m., Deputy Campos heard a call come out over the radio of a domestic disturbance in the City of Hesperia. The RP advised that her brother-in-law had assaulted her husband. Deputy Martinez responded to the call, as did Campos. Campos responded from the area of Ranchero and Seventh Avenue in the City of Hesperia. While en route to the call, dispatch advised that there were possible weapons registered to the homeowner and that the suspect had been awake for several days. The fact that the suspect had been up for several days indicated to Campos that the suspect was possibly under the influence. The suspect was later identified as Anthony Nunez.

Deputy Campos arrived at the call location first, followed shortly by Deputy Martinez. The two deputies exited their respective patrol vehicles at the same time and proceeded to walk up the driveway together. As they approached the house, Campos observed the RP, Witness #2, and her husband, Witness #1, inside the house. Campos engaged them in a brief conversation where he was informed that Anthony was inside the house and holding a chain. They further informed Campos to be careful and that the front door was unlocked.

Deputies Campos and Martinez then approached the front door. Campos knocked on the front door and announced, “Sheriff’s Department.” While waiting for someone to answer the door, Campos heard someone inside screaming to themselves. Campos knocked on the front door again. He checked the doorknob, but the door was locked. Campos asked Martinez if Martinez would see if the RP or Witness #1 would unlock the front door. Martinez expressed some apprehension about leaving Campos alone, but eventually agreed. Martinez went to speak with Witness #1 and after a short period of time, Witness #1 unlocked the front door. At that time, Campos stood to the left side of the front door and Martinez stood to the right side.

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As soon as Witness #1 opened the front door, Deputy Campos observed Anthony. Anthony had no shirt on and wore black pants. Anthony further had a seven to eight foot-long metal chain with thick two-inch links. The chain had a handle at the end and was wrapped two or three times around Anthony's hand. Anthony immediately became agitated and told the deputies not to come near him or he would harm them. Campos observed Witness #1 retreat into the house and speak to Anthony, telling Anthony to drop the chain and listen to the deputies. Anthony and Witness #1 began to argue and Campos intervened, telling Witness #1 to go back to his room with his wife and lock the door. Campos and Deputy Martinez then began their de-escalation efforts with Anthony.

Deputy Campos repeatedly told Anthony to put the chain down. When Anthony did not put the chain down, Campos withdrew his Taser and held it in the low-ready position. Campos informed Anthony that if Anthony put the chain down, Campos would re-holster his Taser. Anthony did not immediately comply and appeared very upset. Campos and Deputy Martinez then took turns trying to calm Anthony down. Anthony then talked about running for president and his plans for fixing the county. Eventually, Anthony laid the chain down on his right foot. When Anthony did so, Campos re-holstered his Taser. Campos and Martinez then continued taking turns trying to calm Anthony down. As the conversation progressed, Campos spoke over the radio, telling the next responding units to arm themselves with a less-lethal option. Around that time, Deputies Deberg and Cervantes arrived at the scene.

Deputies Deberg and Cervantes positioned themselves between two vehicles that were parked parallel to one another in the front yard. The vehicles faced the front door of the residence. For a brief time, Anthony became calm, but something sparked his anger and Anthony picked up the chain. Once he had the chain in his hands, Anthony "whiplashed it" and took a fighting stance. Deputy Martinez and Deputy Campos traded positions in front of the door, with Martinez on the left side of the door and Campos on the right. Campos described Anthony's behavior as manic. He would get very high and very low. Campos then observed that Sergeant Lafever had arrived on scene and was talking to the RP Witness #2 and Witness #1. Either Campos or Martinez asked Anthony if Anthony would like to talk to their watch commander – Lafever. At that time, Campos engaged Lafever in conversation.

Deputy Campos relayed to Sergeant Lafever that Anthony would not drop the chain and that even if he did, he would keep it on his leg. He further explained that he was worried if anyone went inside that Anthony would take off into the back room and there was the possibility of guns in the residence.

After briefing Sergeant Lafever, Deputy Campos and Lafever went to the front door and Lafever attempted to de-escalate the situation. Campos described the initial interaction as going well, but something again set-off Anthony and Anthony began to call Lafever names. At that time, Lafever decided to back off and allow Campos and Deputy Martinez to continue their efforts.

Deputies Campos and Martinez again took turns conversing with Anthony. During this trading off, Sergeant Lafever determined there were kids inside the house. Lafever had helped Witness

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#1 and Witness #2 climb out the window and next turned his attention to getting the kids out of the residence. Lafever asked Martinez over the radio if Martinez could take the window screen off the bedroom to the left of where Martinez was standing, in order to allow the children to exit the residence. When Martinez attempted to do so, Anthony lost sight of Martinez and became enraged. Anthony grabbed the chain again and began to whiplash it. Martinez backed off any attempt to remove the window screen and he and Campos focused their complete attention on Anthony.

Sergeant Lafever continued his communication over the radio, advising of his attempts to get the children out of the home. Lafever and a partner walked around the back of the house and were able to assist the juveniles in exiting the house.

While Sergeant Lafever focused on the children in the home, Deputies Campos and Martinez continued their focus on Anthony. Campos described Anthony as dropping the chain approximately two more times. Each time Anthony would rest the chain on his foot. Campos and Martinez would attempt to get closer to Anthony, which would agitate him and he would pick up the chain from his foot. Campos then tried a different tactic. He attempted to get Anthony to come outside and sit on his patio chair. Campos sat down in the chair for four to five minutes in an attempt to humanize himself to Anthony. It appeared for a time that Anthony was calming down; however, Anthony's behavior soon elevated again when Campos interrupted Anthony's speech about how he was going to fix the country.

Anthony then left the living room and appeared to look out the window and noticed additional Sheriff's vehicles outside. Anthony began to scream and look for his family members. Anthony appeared to realize that his family members had been evacuated from the home. When Anthony expressed his extreme anger at his family being evacuated, Deputy Campos pretended to ask for Anthony's family to be brought back over the radio. Campos informed Anthony that he could not bring Anthony's family back, but suggested that he take Anthony to Anthony's family. Anthony appeared to assent and told Campos to go wait by a tree in the front yard. Campos continued talking to Anthony. Anthony began giving his presidential speech again and invited Campos and Deputy Martinez to join him in prayer. Anthony also asked for deputies to hand over their weapons and duty belts. Anthony stated that he was not going to go peacefully and he was going to fight to the death.

Deputy Campos heard Sergeant Lafever request SED over the radio and therefore knew they were on their way to the location. Campos assumed that once SED arrived, SED would formulate a plan and Campos's portion of the negotiation would be over.

For reasons Deputy Campos could not recall, Anthony finally agreed to come outside. At that time, Campos took five steps back while Deputy Martinez maintained his position. Martinez then suggested they both back up so that Anthony could come outside. Campos hoped that Anthony would come outside and drop the chain. Anthony did not drop the chain. Instead, Anthony came out swinging the chain overhead like a propeller. Anthony slammed the front door and the screen door behind him. Campos and Martinez backpedaled between the vehicles parked facing the front door.

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Deputies Campos, Martinez, Deberg, and Cervantes all gave Anthony commands to drop the chain. Anthony did not drop the chain. Anthony sprinted toward the middle of the front yard while continuing to swing the chain like a lasso overhead. Campos stood 20 to 25 feet away from Anthony and continued to give Anthony commands to drop the chain. Anthony looked at the deputies as though he was picking which one to assault first.

At that point, Deputy Cervantes decided to deploy her beanbag shotgun. Cervantes yelled, "beanbag, beanbag," but had a malfunction and no beanbags were fired. Deputy Deberg then stepped up and yelled, "40 mil, 40 mil," before firing his 40 millimeter four times. Each round struck Anthony, but had no effect. Anthony continued to swing the chain overhead and looked at deputies as if to say, "that's all you got?"

Anthony then turned to look at Deputy Campos who was closest to Anthony. Campos had his Taser drawn and fired his first Taser round, which was ineffective. It appeared to Campos as if one of the Taser darts connected with Anthony's pants, but due to the 17-foot distance between Campos and Anthony, it was unclear if both darts connected. Campos backpedaled and lost his footing. Campos then re-holstered his Taser and pulled out his duty-weapon.

Anthony ran full speed towards the front patio and curved between the two cars parked in front of the house facing the front door. Deputy Cervantes opened fire with the beanbag shotgun. Deputy Campos observed at least one beanbag strike Anthony. The beanbag had no effect – Anthony continued to run full speed at Deputy Martinez. Martinez then opened fire with his duty-weapon firing three rounds. Anthony fell to the ground between the two vehicles. Martinez kicked the chain away from Anthony, while Campos handcuffed Anthony. Campos then began providing Anthony with medical care. After one and a half to two minutes, paramedics arrived and began life-saving measures. Detectives Schroeder and Grimm took Campos and Martinez into their unit and back to Hesperia Station.

Deputy Sabrina Cervantes was interviewed by Detective Page of the SBCSD on April 19, 2022. Also present during the interview was Detective Jonathan Ramstad and Deputy Cervantes's attorney, Steven Alvarado.

On March 29, 2022, Deputy Cervantes had been employed by the SBCSD for two years. She wore a SBCSD Class "A" uniform, which consisted of a tan, long-sleeve, button-down shirt, green pants, and black boots. On the tan shirt, Cervantes had Sheriff's Department patches on both shoulders, and a gold-colored Sheriff's Department badge pinned above her left breast pocket. Cervantes had call-sign 19-Paul-25 and drove a marked patrol unit. Cervantes was equipped with a Sam Browne duty-belt, which held a belt recorder, pepper spray, a Glock 17, 9mm duty-weapon, handcuffs, radio, RCB, and spare magazines.

On March 29, 2022, Deputy Cervantes was on patrol at Main Street and Ninth Avenue in the City of Hesperia. She heard over her radio that Deputies Campos and Martinez had responded to a domestic disturbance call. Consequently, Cervantes decided to respond to another call. As Cervantes responded to that call, she heard Martinez say over the radio that the suspect was

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refusing to come out of their residence and had an unknown object in their hand. An unidentified person issued a code 33 on Cervantes, Campos, and Martinez's radio channel, meaning no other radio calls were to go through that channel. This caused Cervantes to back out of the call she had been responding to and instead respond to Campos and Martinez's location.

Deputy Cervantes overheard Deputy Martinez indicate over the radio that the next unit on scene should arm themselves with a less-lethal option. As Cervantes was the next responding deputy, she responded that she would arm herself with the less-lethal option. Cervantes grabbed the less-lethal beanbag shotgun from the trunk of her patrol car, loaded four rounds of beanbags, and approached the residence where Martinez and Campos were already speaking to what appeared to Cervantes to be the suspect; however, she was unable to see the suspect at that time. Martinez gestured to Cervantes to stay back. This indicated to Cervantes that Martinez did not want the suspect to know that Cervantes was there on scene.

Shortly after Deputy Cervantes arrived on scene, Deputy Deberg arrived. Deberg was armed with a 40 millimeter less-lethal multi-launder. Next, Deputy Zane and Sergeant Lefever arrived. Cervantes positioned herself behind a wall where she could overhear the conversation between Deputy Campos, Deputy Martinez, and Anthony Nunez, the suspect. At that time, Cervantes was unaware who else was inside the residence until she saw Lefever talking to Witness #1, who was inside the residence. Lefever was trying to get Witness #1 to exit through the window, which he eventually did with a female and a juvenile. Cervantes heard the female tell Lefever that she had two daughters still inside the residence.

While Sergeant Lefever was speaking with Witness #1 and the female, Deputy Cervantes overheard Witness #1 indicate that his brother was the suspect and was under the influence of an unknown substance. Witness #1 further related that Anthony had not slept for three days and Anthony had assaulted him inside the house by choking him and pushing him against a wall where he hit his head.

Detective Schroeder and Sergeant Avila then arrived on scene. Schroeder and Avila attempted to formulate a plan to get two additional individuals out of the house to a safe area. Deputy Cervantes accompanied Schroeder and Avila to the rear of the house, where Schroeder was able to cut a lock to a gate and get the two individuals from the house into the backyard to safety.

Deputy Cervantes then returned to the front yard where she took a position behind one of the vehicles in the front yard and next to Deputy Deberg. At that time, Cervantes was concerned about potential crossfire because Deputies Campos and Martinez were in between Deberg, Cervantes, and Anthony.

As Deputy Cervantes stood next to Deputy Deberg, she saw the bottom of a chain be thrown towards Deputies Campos and Martinez. Cervantes saw Anthony at this point. She believed that Campos and Martinez took out their Tasers. She believed this because Anthony indicated he would only put the chain down if Campos and Martinez put their Tasers away. Campos then told Anthony that he would sit down and Anthony should come out and talk. This proved ineffective at getting Anthony out of the house. While Campos and Martinez continued their de-escalation efforts

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deputies were calling out over the radio for the Specialized Enforcement Division (SED) and the gang unit to come to the location and set up a perimeter, along with medical personnel should they be necessary.

Eventually, Anthony came out of the house. Deputy Cervantes observed that Anthony was bald and wearing no shirt. She further observed that Anthony had jeans on and tattoos. Anthony had a metal-linked chain wrapped around his left arm. Anthony waved the chain around as if he were going to use it as a weapon against deputies. Anthony then turned and shut the screen door behind him. He then began to walk away from deputies as they ordered him to stop walking. Anthony then turned back towards deputies and began swinging the chain around his body towards Cervantes and her partners. One of the deputies then indicated less-lethal munitions should be utilized. As Cervantes attempted to utilize her beanbag shotgun, the shotgun jammed. Cervantes attempted to clear the jam. Prior to attempting to fire the less-lethal shotgun, Cervantes yelled, "less lethal, less lethal."

As Deputy Cervantes attempted to clear the jam, she heard Deputy Deberg say, "less lethal, less lethal," and fire the 40 millimeter multi-launcher at Anthony an unknown number of times. Next, Cervantes heard Deputy Campos deploy his Taser at Anthony. Both proved ineffective. Cervantes was able to clear the jam in her shotgun and fired one beanbag round at Anthony. The beanbag struck Anthony in the chest and had no effect. Anthony began to run towards the deputies as he switched from swinging the chain overhead to using it like a whip. Anthony was swinging the chain as if he were going to hit deputies with it. Cervantes heard two shots and heard someone call out, "shots fired, shots fired." Cervantes thought the shots were fired from the 40 millimeter. A few seconds later, Anthony fell to the ground. Cervantes estimated that Anthony got within three to four feet of her and Deputy Martinez when shots were fired. Deputies immediately began medical treatment on Anthony. Medical aid then arrived and began performing life-saving measures and Sheriff's supervision removed Cervantes from the scene.

At some point during these events, it was broadcast over the radio that there was potentially a firearm located within Anthony's residence. Witness #1 called his mom to ask her about the firearm. The mom informed Witness #1 that the firearm had been moved from the residence out to a truck in the front yard because of the way that Anthony had been acting that morning.

Deputy Jeremy Deberg was interviewed by Detective Justin Carty of the SBCSD on April 28, 2022. Also present during this interview were Detective Malcolm Page and counsel for Deputy Deberg, Steven Alvarado.

On March 29, 2022, Deputy Deberg had been employed by the SBCSD for 15 years. He wore a Class "A" uniform, which consisted of a tan short-sleeve button-down shirt, green pants, and black boots. On the tan shirt, Deberg had Sheriff's Department patches on both shoulders and a gold-colored Sheriff's Department badge pinned above his left breast pocket. Deberg had call-sign 19-Paul-22 and drove marked patrol unit 19-15. Deberg was equipped with a Sam Browne duty-belt, which held OC spray, a Glock 17, 9mm duty-weapon, handcuffs, radio, RCB, X2 Taser, and three spare magazines.

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On March 29, 2022, Deputy Deberg was on a separate call heading back to the Hesperia Sheriff's Station, when one of his partners broadcast over the radio that they were out with a subject armed with a chain at **** Ninth Avenue. Deberg responded to that call from a couple miles away. Upon arriving at the scene, Deberg parked behind Sergeant Lafever's patrol unit on the west side of Ninth Avenue north of **** Ninth Avenue. Upon exiting his patrol vehicle, Deberg asked Lafever if he should grab the 40 millimeter multi-launcher. Lafever indicated yes. Deberg grabbed the 40 millimeter, loaded four rounds into the launcher, and slung the weapon over his shoulder. Deberg observed Deputies Campos and Martinez speaking with a male subject, later identified as Anthony Nunez, inside the residence, who was armed with a chain. Campos and Martinez attempted to negotiate with Anthony and get him to drop the chain. Deberg described Anthony as agitated and uncooperative.

Deputy Deberg positioned himself to the north of the front door behind the eastern wall of the residence or behind a red sedan parked near the front of the residence. Deberg transitioned between those two locations throughout this encounter. As deputies Campos and Martinez spoke with Anthony, they were able to, at one point, convince him to drop the chain; however, he would not step away from the chain and after a short time, picked the chain back up.

To the north of the front door were two windows to a bedroom. The bedroom contained civilians. Sergeant Lafever and Deputy Zane convinced those civilians to come out through the window to evacuate the residence. Shortly after their evacuation, Deputy Deberg learned there were two females, one a young juvenile, inside a bedroom directly south of the front door. Deberg and the other deputies utilized one of the civilians who was evacuated from the northern bedroom to call the older of the two females still inside the residence. Through that line of communication, deputies were able to tell the older of the two females to remove the screen off the southern bedroom window and then go south in the front yard, then towards the rear of the residence. An unknown deputy went around the back of the residence to collect the two females once they exited the southern bedroom and took the females around to the north of the residence so as not to cross line of sight with the front door, where Anthony was located.

Towards the end of Deputies Campos and Martinez's speaking with Anthony, Deputy Deberg heard Anthony say that he was going to fight to the death and make deputies kill him. Deberg periodically broadcast over the radio updates on what was going on between Campos, Martinez, and Anthony.

A short time after Anthony indicated deputies would have to kill him, Anthony exited the front door and kicked the security screen shut. Anthony held a silver chain, like a "medium duty dog leash chain," when he exited the residence that was approximately eight feet long. When Anthony exited the residence, Deputy Deberg stood to the rear of the red sedan near the front door of the residence. Anthony went south in the front yard, then east towards Ninth Avenue. The front yard is surrounded by an approximately six-foot-high chain link fence. Perhaps realizing that he could not exit the yard without hopping the fence, Anthony turned around and stood in the middle of the front yard.

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At that time, Anthony was swinging the chain above his head with enough force that it made a howling noise as it moved through the air. Deputies yelled at Anthony for him to drop the chain. Behind Anthony, to the south, stood a resident of nearby home who was being evacuated. Deputy Cervantes attempted to deploy her less-lethal shotgun, but it did not deploy. Deputy Deberg yelled “backdrop, backdrop,” in order to make Cervantes aware that there was a civilian in the line of fire behind the suspect. The civilian behind Anthony got into her vehicle and drove west behind her house out of sight. As Anthony was still not complying with deputies demands to drop the chain, Deberg deployed one round of 40 millimeter less lethal. Deberg utilized his sight and aimed at Anthony’s stomach area. The round struck Anthony in the stomach, but appeared ineffective – Anthony continued to swing the chain overhead. Prior to deploying the 40 millimeter less lethal, Deberg shouted “40, 40” to let his partners and the suspect know he would be firing a less-lethal munition. Deberg deployed a second 40 millimeter round, which also struck Anthony in the stomach and was also ineffective.

Anthony continued swinging the chain overhead in a circular motion while facing deputies. Anthony then appeared to begin walking, closing the distance between himself and deputies. Deputy Deberg deployed a third 40 millimeter round at Anthony, which again struck Anthony in the abdomen and again appeared ineffective. Anthony continued walking north towards deputies. Deberg deployed a fourth 40 millimeter round at Anthony, which struck Anthony on the left side of his abdomen. This round was also ineffective.

Anthony then began walking briskly northwest towards the front door of the residence, closing distance on deputies. Anthony continued swinging the chain above his head. Deputy Deberg heard the less-lethal beanbag shotgun be deployed. Deberg does not recall where the beanbag struck Anthony, just that it did strike Anthony. Anthony then began running north towards deputies while swinging the chain above his head. Anthony charged between the two cars parked in the front yard directly at deputies. Deputy Martinez fired his duty-weapon approximately three times, striking Anthony, who fell to the ground on his back between the vehicles. Deputy Campos handcuffed and secured Anthony. Deberg requested medical aid for Anthony, which arrived quickly thereafter.

Deputy Deberg and other deputies then cleared the residence of additional potential victims or suspects. Deberg went to his patrol unit and grabbed his department issued digital camera. Deberg began to take photos of the suspect and scene.

At the time of the LFE, Deputy Cervantes stood to Deputy Deberg’s right and Deputies Campos and Martinez were to his left.

Sergeant Corey Lafever was interviewed by Detective Jon Cavender of the SBCSD on April 20, 2022. Also present during the interview were Detective Malcolm Page and counsel for Sergeant Lafever, Steven Alvarado.

On March 29, 2022, Sergeant Lafever had been employed by the SBCSD for 18 years. Lafever was the Watch Commander and on-call hostage negotiator for SED. Lafever wore a Class “A” uniform and a Sam Browne duty-belt. Lafever’s belt-recorder was affixed to his Sam Browne and

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was activated during this LFE. Lafever had call-sign 19-Sam-8 and drove marked patrol unit 19-Sam-1.

On March 29, 2022, at approximately 11:25a.m., dispatch advised that there was a domestic disturbance call at **** Ninth Avenue in the City of Hesperia. Dispatch further advised that the suspect, later identified as Anthony Nunez, had assaulted his brother Witness #1. While deputies were en route to the location, the RP Witness #2 relayed that there was a firearm inside the residence and that Anthony was under the influence of an unknown narcotic and had not slept for many days. Hesperia Station Deputies Campos and Martinez were dispatched to investigate the call for service at **** Ninth Avenue. Upon their arrival at that location, they broadcasted that Anthony held an unknown object in his hand.

At approximately 11:36a.m., Sergeant Lafever responded from Hesperia Station to assist Deputies Campos and Martinez. He did so based on the priority of the call and Anthony's possession of a possible weapon. While en route to the incident location, Lafever heard over the radio that Anthony was armed with a chain. Lafever was unaware of whether Anthony had access to the firearm reported at the residence.

Upon arrival, Sergeant Lafever parked north of **** Ninth Avenue behind a marked patrol vehicle. Almost simultaneously with Lafever, Deputy Deberg arrived on scene and parked behind Lafever. Deputy Martinez requested the next available unit bring a less-lethal shotgun. Deputy Cervantes, who arrived shortly before Lafever, armed herself with the less-lethal shotgun. Deberg armed himself with a 40 millimeter less lethal multi-launcher. Deputies Campos and Martinez advised over the radio that the suspect still had the chain and was refusing to drop it.

Sergeant Lafever and Deputies Deberg and Cervantes walked south towards **** Ninth Avenue and entered the front yard of the residence. Lafever, Deberg, and Cervantes, stood near the northeast corner of the residence. Lafever instructed Deberg and Cervantes to remain out of sight to avoid further agitating Anthony. Through an east-facing window, north of the front door, Lafever observed Witness #1, Witness #2, and a small child inside a bedroom. Lafever spoke to Witness #1 through the open bedroom window to try to determine if a crime had occurred. During that time, Deputies Campos and Martinez continued speaking with Anthony, trying to develop a rapport with him. Anthony continually ignored Campos and Martinez's commands to drop the chain.

While Sergeant Lafever was at the window with Witness #1 and Witness #2, Witness #1 claimed to have been assaulted and choked by Anthony. During the assault, Anthony pushed Witness #1, causing Witness #1 to strike his head. Witness #2 informed Anthony that law enforcement was being called. Anthony responded by whipping the chain up and down. Lafever did not observe any injuries to Witness #1. Witness #1 relayed that Anthony was possibly under the influence of an unknown narcotic and had not slept in several days.

At approximately 11:42a.m., Deputy Zane arrived at the incident location. Sergeant Lafever and Zane developed a plan to evacuate Witness #1, Witness #2, and the small child from the residence. Prior to the evacuation, Witness #1 and Witness #2 advised that their daughter Witness #3 and an

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additional child Witness #7, were inside of a south bedroom. Witness #2 utilized her cellphone to communicate with Witness #3. Witness #3 stated that she and Witness #7 were trapped in that bedroom. Lafever immediately began to develop a plan to evacuate Witness #3 and Witness #7 from the residence. Witness #1 and Witness #2 confirmed that there was a firearm in a locked south bedroom, but the firearm's exact location inside the bedroom was unknown.

As Deputies Campos and Martinez spoke with Anthony at the front door, Campos walked north to Sergeant Lafever's position and provided an update of the negotiations with Nunez. Campos further provided a layout of the residence. Campos and Lafever briefly discussed a possible entry into the residence through the window Witness #1 and Witness #2 spoke through; however, it was quickly determined that this would pose a danger to the remaining persons inside the residence and could push Anthony south inside the residence towards the firearm. Campos then returned to the front door and continued speaking with Anthony.

As Sergeant Lafever stood approximately 20 to 25 feet north of Deputies Campos and Martinez's position, Campos and Martinez advised Anthony that Lafever was on scene. Lafever walked south and introduced himself to Anthony. Anthony spoke rapidly and incoherently and displayed signs and symptoms consistent with being under the influence. Anthony spoke about being the President of the United States and being related to the Pope. Lafever observed a metal chain coiled at Anthony's feet. He saw that the chain was metal, had a light-colored handle at the end, and estimated the chain to be six to eight feet in length. Lafever asked Anthony to step away from the chain to speak with deputies, but Anthony refused to exit the residence. During the conversation between Anthony and Sergeant Lafever, Anthony told Lafever, Campos and Martinez to remove their bulletproof vests so they would be "vulnerable" to injury. Lafever, Campos, and Martinez gave Anthony multiple commands to step out of the residence and away from the chain, but Anthony refused. After three to five minutes, Anthony became upset with Lafever and told Lafever to leave. To de-escalate the situation, Lafever agreed and left to allow Campos and Martinez to continue their negotiations.

Sergeant Lafever returned to the window where Witness #1 and Witness #2 were located and assisted their safe evacuation with the minor child who was in the room with them. Lafever walked them north away from the scene. Lafever directed Deputies Cervantes and Deberg to remain north of Deputies Campos and Martinez out of sight of the front door, to avoid further aggravating Anthony.

At approximately 12:15p.m., Detective Schroeder arrived on scene. Sergeant Lafever requested Schroeder evacuate Witness #3 and Witness #7 from the south bedroom of the residence. Lafever and Schroeder had Witness #2 contact Witness #3 to ask Witness #3 to exit the residence through the bedroom window. Witness #3 informed Witness #2 that Witness #3 was unable to remove the window screen. Lafever and Schroeder developed a plan to rescue Witness #3 and Witness #7 from the south bedroom. Schroeder and Deputy Zane were to approach the residence from the north, cut the lock to the north gate and enter through the backyard to retrieve Witness #3 and Witness #7. Schroeder and Zane were successfully able to evacuate Witness #3 and Witness #7 from the south bedroom by executing that plan.

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Sergeant Lafever then established a Command Post (CP) 100 to 200 yards north of **** Ninth Avenue where he had Witness #1, Witness #2, Witness #3, Witness #7, and the minor child wait. Lafever then contacted Lieutenant Smith from SED and updated Smith on the situation at the residence. Smith advised that SED personnel would respond to the location, but did not provide a timetable for when that would occur. Lafever called Detective Munoz in an attempt to get another on-call negotiator to respond to the scene as Lafever's prior efforts had been unsuccessful. Detective Munoz indicated that he or another negotiator would respond.

Sergeant Lafever conducted a follow-up interview with Witness #1 near Lafever's patrol car. Lafever had Witness #1 draw the interior layout of the incident location on the hood of his patrol vehicle. Lafever believed knowing the layout of the house would assist SED upon their arrival. Witness #1 then related that Anthony had choked him and threatened to strike him with the chain. After the threat, Anthony had whipped the chain in an up and down motion in Witness #1's direction. Witness #1 received a phone call from his mother, Witness #4. Witness #4 informed Witness #1 that she had moved the firearm from the residence the day prior. The firearm was now in a gray pickup truck in the driveway. Lafever broadcasted the new information about the firearm over the radio.

Sergeant Lafever contacted Hesperia Gang Team Supervisor Corporal Raynolds over the phone. Lafever requested Raynolds have a member of Raynolds's team write a search warrant for **** Ninth Avenue and an arrest warrant for Anthony for a violation of Penal Code section 245, subdivision (a). Lafever requested Raynolds have additional members of his team assist with perimeter containment and evacuations. Lafever blocked intersections of Sultana Street and Ninth Avenue to the north and Muscatel Street and Ninth Avenue to the south. Lafever requested San Bernardino County Fire stage at the CP. Once the CP was established and the intersections were blocked off, incoming law enforcement established a perimeter around **** Ninth Avenue and began evacuations of nearby residences. In the meantime, Anthony remained uncooperative with Deputies Campos and Martinez. Anthony put the chain down and picked it up several times. Anthony further threatened to kill Campos and Martinez and Lafever believed Anthony was possibly going to commit "suicide by cop."

As Sergeant Lafever prepared for SED arrival, Deputies Campos and Martinez advised over the radio that Anthony had exited the residence. Lafever began to walk south on Ninth Avenue towards the incident location. When he reached 75 to 100 yards of **** Ninth Avenue, Lafever observed Anthony exit the residence and walk southeast towards Ninth Avenue. Campos and Martinez broadcasted that Anthony was outside the residence and had swung the chain at them. Lafever worried that Anthony would escape the front yard of **** Ninth Avenue and become a danger to nearby residents. Evacuations of all nearby residences had not yet finished.

Sergeant Lafever broadcast over the radio to Deputy Deberg to deploy the 40 millimeter less-lethal multi-launcher as Deberg was already deploying the munition. Lafever ran towards the incident location and heard four 40 millimeter less-lethal multi-launcher deployments. Over the radio, Lafever heard deputies indicate that the 40 millimeter less-lethal multi-launcher, less-lethal beanbag shotgun, and Taser had all been deployed. All of these less-lethal options were ineffective and Anthony continued to move toward deputies while swinging the chain. From approximately

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20 yards away, Lafever saw Anthony swing the chain and yell unknown words at deputies. Deputies gave verbal commands for Anthony to drop the chain, which Anthony ignored. Anthony moved west in the front yard towards the residence near a gray sedan and red sedan. Anthony moved at a "brisk walk" and continued to swing the chain at deputies.

When Anthony reached the front of the sedans, Sergeant Lafever observed Deputy Martinez's handgun pointed at Anthony. Deputy Cervantes pointed the less-lethal beanbag at Anthony and Deputy Campos had his Taser pointed at Anthony. As Lafever approached Anthony and the deputies, Lafever stood behind the red sedan with his duty-weapon pointed at Anthony. Cervantes yelled, "less lethal, less lethal" and deployed the beanbag shotgun at Anthony. The beanbag struck Anthony, but Anthony continued approaching deputies while swinging the chain overhead. Martinez fired three to four gunshots at Anthony as Anthony was five to seven feet away from Martinez. Lafever advised that he did not fire his duty-weapon because the red sedan was in his field of fire and he did not have a clear sight picture. Immediately after the gunshots, Anthony fell to the ground between the two sedans.

Lafever pointed his handgun at Anthony as Campos approached Anthony. Campos slid the chain away from Anthony with his foot, handcuffed Anthony to the rear, and began rendering medical aid. Lafever broadcasted to Sheriff's Dispatch for medical aid to respond. San Bernardino County Fire personnel arrived within two to three minutes. Fire Department personnel pulled Anthony east from in between the sedans to render medical aid. At approximately 1:24p.m., Fire personnel pronounced Anthony deceased.

Sergeant Lafever received a public safety statement from Deputy Martinez. After receiving the public safety statement, Deputies Campos, Martinez, Cervantes, and Deberg were transported to the Hesperia Station to await arrival of Homicide Investigators.

Corporal Cole Raynolds was interviewed by Detective Jon Cavender of the SBCSD on April 19, 2022. Also present during the interview were Detective Justin Carty and counsel for Corporal Raynolds, Steven Alvarado.

On March 29, 2022, Corporal Raynolds had been employed by the SBCSD for 14 years. He wore plain clothes consisting of a green and black hat, gray long-sleeve shirt, blue jeans, and brown "Wolverine" boots. Raynolds further wore a green "Blankenship" ballistic vest, which had a cloth yellow badge on the left chest and a cloth patch that read "Sheriff" in yellow writing on the right chest. The back of the ballistic vest read, "Sheriff" in yellow writing. Raynolds had call-sign 19-Gerorge-60 and drove an unmarked Gray Dodge Charger. Raynolds was equipped with a belt recorder, notebook, Axon X2 Taser, OC spray, two spare magazines, radio, RCB, flashlight, and handcuffs.

On March 29, 2022, at approximately 12:00p.m., Corporal Raynolds was contacted via telephone by Sergeant Lafever. Lafever advised that patrol deputies were dispatched to **** Ninth Avenue in Hesperia for a domestic violence call for service. The suspect, Anthony Nunez, had assaulted his brother, Witness #1. A firearm was suspected of being inside the residence or a vehicle. Lafever requested a member of the gang team to author a search warrant for **** Ninth Avenue

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and an arrest warrant for Anthony. Lafever requested additional deputies to assist with forming a perimeter around the residence. Raynolds assigned a deputy to prepare the warrants and other deputies to form a perimeter around **** Ninth Avenue. Raynolds then positioned himself three to four houses south of the incident location on the southwest perimeter. After approximately 10 to 15 minutes an unknown deputy relieved Raynolds, who was then asked by Lafever to assist with evacuations of the houses within the perimeter south of the incident location. Raynolds completed the evacuations.

After completing the evacuations, Corporal Raynolds observed Anthony standing in the doorway of **** Ninth Avenue. While Anthony was in the front yard, he held a long metal link chain, approximately six to eight feet long, with a handle at the end of the chain. Multiple deputies gave Anthony commands to drop the chain, but Anthony refused. Anthony continued to hold the chain and swung the chain towards deputies.

Corporal Raynolds jogged north until he was 20 to 25 feet south of the driveway of **** Ninth Avenue. Anthony stood 20 to 30 feet from deputies and swung the chain in a whip-like motion towards deputies. Raynolds observed an unknown deputy fire one round from his 40 millimeter. The projectile struck Anthony in the torso and proved ineffective. Anthony appeared agitated, jumped up and down, and yelled unknown words at deputies as he held the chain. Raynolds then yelled, "less lethal" over the radio. A second 40 millimeter projectile was fired at Anthony, again striking him in the torso, and again proving ineffective. Deputies continually yelled at Anthony to drop the chain. Anthony remained 20 to 30 feet from deputies swinging the chain like a whip. Raynolds heard deputies yell, "less lethal" and an unknown deputy discharged a less-lethal beanbag shotgun. Raynolds was unsure if the beanbag struck Anthony. Within a few seconds of the less-lethal beanbag deployment, Raynolds observed an unknown deputy fire a Taser. Raynolds heard the Taser cycling, but did not observe any change in Anthony's demeanor.

Corporal Raynolds identified two sedans parked in front of **** Ninth Avenue facing west. He observed Anthony standing south of the sedans and Anthony began to walk quickly toward the front of the sedans. Anthony continued to swing the chain in a whip-like motion towards deputies, striking one of the sedans in the process. Deputies continued to give Anthony commands to drop the chain. Anthony continued moving towards deputies while swinging the chain. At that time, Deputy Martinez fired an unknown number of gunshots at Anthony. Immediately after the shots were fired, Anthony fell to the ground.

As other deputies approached Anthony, Corporal Raynolds assembled a team to search the interior of **** Ninth Avenue. A search was conducted and no occupants or potential evidence were located. As Raynolds exited the residence, he observed San Bernardino County Fire personnel rendering medical aid to Anthony. Sergeant Lafever assigned Raynolds to protect Fired Cartridge Casings (FCC's) on the ground near Anthony. Raynolds was eventually relieved by an unknown deputy whereupon he drove Deputy Zane to Hesperia Police Station to await arrival of homicide investigators.

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Deputy Derek Zane was interviewed by SBCSD Detective Justin Carty on May 20, 2022. Also present during the interview were Detective Malcolm Page and counsel for Deputy Zane, attorney Steven Alvarado.

On March 29, 2022, Deputy Zane had been employed by the SBCSD for 21 years. He wore a long-sleeve Class "A" uniform and a black Sam Browne duty-belt. Zane had call-sign 19-Paul-23 and drove a marked patrol unit.

At approximately 11:30a.m., Deputy Zane heard a call broadcast over the radio regarding a domestic disturbance on **** Ninth Avenue in the City of Hesperia. At approximately 11:40a.m., Zane responded to that location to assist Deputies Campos and Martinez, who were already on scene.

Deputy Zane observed Sergeant Lafever standing in the driveway of the location. He observed Deputies Deberg and Cervantes behind a red car parked facing the front door. Deberg had a 40 millimeter and Cervantes had a less-lethal beanbag shotgun. Deputies Campos and Martinez were at the front door of the residence, speaking with a male, later identified as Anthony Nunez, who was inside the residence. Anthony yelled at deputies and told them to leave him alone. Zane spoke with Lafever, who determined that they should evacuate the other occupants of the residence. Zane moved along the north side of the residence, where he assisted Witness #1, Witness #2, and a small child with evacuating the residence. At that time, Witness #1 informed Zane and Lafever that earlier in the day, Anthony threatened to choke Witness #1 and threatened to hit Witness #1 with the metal chain. Witness #2 informed Zane and Lafever that Anthony had been awake for several days and was under the influence of a controlled substance. Once Witness #2, Witness #1, and the small child were removed from the residence, Zane took them to his patrol vehicle, where they were able to sit.

Deputy Zane then returned to the incident location where he contacted Sergeant Lafever. Lafever informed Zane that the next priority was to get the two remaining subjects out of the house. Witness #3 and Witness #7 were in a bedroom on the south side of the residence, south of where Anthony stood. Zane approached the residence and walked along the north side. Deputies Campos and Martinez continued their negotiations with Anthony while Deputies Deberg and Cervantes maintained their position with less-lethal coverage behind the red sedan parked facing the front door. Zane held his duty-weapon in his hands in the low-ready position. Anthony yelled at Campos and Martinez that he was going to hurt and shoot them. Anthony would be calm one minute and the next he would threaten deputies. Campos grabbed a chair from the front of the residence and took a seat as part of his de-escalation efforts. Anthony began to hit the door inside the residence with the metal chain.

Meanwhile, Sergeant Lafever had developed a plan to get Witness #3 and Witness #7 out of the residence. At one point, one of the females popped open the window screen, which caused Deputy Martinez to look in that direction. This enraged Anthony. Martinez was able to re-focus Anthony's attention on him. This allowed Witness #3 and Witness #7 to exit the house through the window. As Deputy Zane remained on the north side of the residence, he again heard Anthony threaten to kill Deputies Campos and Martinez.

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Deputy Zane continued maintaining lethal cover for Deputies Campos and Martinez. Zane overheard SED and Sheriff's Aviation were en route to assist on the call.

Zane then heard Anthony indicate he was going to exit the front door. Zane observed Deputies Campos and Martinez back away from the front door. As this occurred, Deputies Deberg and Cervantes raised their less-lethal weapons from low-ready to aim at Anthony. When Anthony exited the residence he sounded very agitated and there was something making a loud noise. Anthony stood on the front porch holding an approximately six to eight-foot metal chain with a large wooden handle in his right hand. Anthony swung the chain in a whipping motion overhead. Campos and Martinez stood approximately eight to ten feet away from Anthony. Campos and Martinez continued to back away from Anthony while ordering Anthony to drop the chain.

Deputies Deberg and Cervantes re-positioned themselves south of the red and gray sedans parked in the front yard. Deputy Zane moved southeast through the yard to prevent Anthony from fleeing the residence. As Zane moved behind a large bush in the front yard, he heard an unknown deputy yell, "less lethal," and heard what he believed to be a less-lethal beanbag shotgun being fired. Anthony swung the chain aggressively overhead as he approached the deputies. Zane then heard three rounds being fired from a less-lethal weapon and possibly a Taser deployment. Zane observed the third less lethal shotgun round fired and saw it strike Anthony on the left side of his body. Anthony had no reaction and continued swinging the chain.

Anthony walked toward the front of the gray and red sedans. Deputies continued to give Anthony commands to drop the chain. Anthony ignored all commands and quickly approached Deputy Martinez. Martinez fired three rounds from his duty-weapon. Anthony fell to the ground and Deputy Campos approached Anthony and handcuffed him. The fire department was requested and responded to the location. Deputy Zane then participated in a safety sweep of **** Ninth Avenue with four other deputies. When Zane exited the residence, he saw fire department personnel performing CPR on Anthony. Zane was then transported to the Hesperia Police Station where he awaited the arrival of homicide investigators.

Detective Jason Schroeder was interviewed by Detective Ramstad of the SBCSD on April 20, 2022. Also present during the interview was Detective Malcolm Page and counsel for Detective Schroeder, Steven Alvarado.

On March 29, 2022, Detective Schroeder was assigned to the detective bureau at the Hesperia Police Station. He wore a long-sleeve dress shirt and tie, black slacks, and black shoes. Schroeder had his San Bernardino County Sheriff's Department badge affixed to his belt, along with his department issued handgun. Schroeder was further equipped with a belt-recorder inside his front left breast pocket. His call-sign was 19-D-2 and he rode with Detective Grimm in Grimm's unmarked Chevrolet Impala.

As Detectives Grimm and Schroeder were on their way to lunch, Schroeder heard deputies request additional resources on a domestic violence call at **** Ninth Avenue, in the City of Hesperia. The detectives assisted on the domestic violence call because of the request for additional

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resources, which made Schroeder believe it was becoming a critical incident. Approximately 10 minutes after they began driving, the detectives arrived at the incident location. They parked three houses north of the incident location and advised dispatch of their arrival. At that time, Schroeder contacted Sergeant Lafever in the driveway of **** Ninth Avenue.

Detective Schroeder observed a gray Dodge Charger and a red Honda Civic parked at a 45-degree angle, south of the driveway, facing southwest towards the residence. Deputies Campos and Martinez stood to the front of the residence, east of the front door. Campos stood on the southside of the front porch and Martinez stood on the northside. Deputies Zane and Cervantes stood north of the front door, along the east wall of the residence.

While talking with Sergeant Lafever, Lafever pointed out Witness #3 and Witness #7 who were standing south of the front door along the east wall of the residence. Lafever wanted Detective Schroeder to escort Witness #3 and Witness #7 to safety. Schroeder spoke to Witness #1, who stated that Schroeder could access the backyard through a chain-link fence on the north side of the residence. Schroeder and Lafever formulated a plan to walk around the back of the residence to escort Witness #3 and Witness #7 to safety. Schroeder learned that the chain-link fence on the south side of the residence was locked, so he retrieved bolt cutters from Lafever's patrol vehicle. Schroeder took Deputy Cervantes with him through the backyard to provide less-lethal coverage. While in the backyard of the residence, Schroeder observed a covered patio and glass sliding backdoor. Schroeder saw Anthony standing at the front door and Anthony appeared to be speaking with Campos and Martinez.

Detective Schroeder advised Deputy Cervantes to stand behind the north wall so Anthony would not see her if he turned around. Schroeder then walked quickly past the glass sliding door and maintained a low position under the back windows. Anthony did not appear to notice Schroeder. Schroeder was able to make it to Witness #3 and Witness #7 without being spotted. He escorted Witness #3 and Witness #7 to safety on the northside of the residence. Schroeder then had Witness #3 and Witness #7 move to the roadway of Ninth Avenue, where they met with Witness #1. Schroeder released Witness #3 and Witness #7 to Witness #1. Meanwhile, Sergeant Lafever spoke with Witness #1 and obtained information about Anthony and the layout of the residence. Sergeant Avila then approached Schroeder and informed Schroeder to stay away from **** Ninth Avenue since Schroeder was not wearing his ballistic vest. Schroeder was instructed by Lafever to evacuate a nearby residence, which he did, one house north of the incident location.

As Detective Schroeder finished that evacuation, he walked back towards **** Ninth Avenue. As he moved closer, he heard loud yelling coming from the front yard at that location. He then heard an unknown deputy yell, "less lethal, less lethal," and heard what he believed to be a shot from a less-lethal weapons system. Schroeder walked to the driveway of the incident location and saw Anthony walk quickly southeast from the front door towards Deputy Campos. Campos walked backward as Anthony walked towards him. Anthony held a metal chain in his right hand that was approximately eight feet long. Anthony's hand was above his head as he swung the chain in a downward motion towards Campos. The chain struck the ground in front of Campos. Schroeder then heard an additional five to six rounds of less-lethal munitions deployed from unknown

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deputies. The less-lethal munitions appeared to have no effect on Anthony as Anthony never displayed and pain compliance or acknowledgement after they were fired.

Schroeder walked up the driveway to the west to obtain cover behind a parked vehicle. Schroeder saw Deputies Martinez and Cervantes standing between the gray Charger and red Civic that were parked just east of the front door. Cervantes had the less-lethal shotgun pointed at Anthony and Martinez held his department-issued handgun. Cervantes and Martinez moved toward the rear trunk of the Civic as Anthony approached them. Cervantes fired one round from the less-lethal shotgun, which had no effect on Anthony other than to focus Anthony's attention on her. Anthony walked quickly towards Cervantes as he swung the metal chain downward towards Cervantes. Due to having an obstructed view from behind a vehicle, Detective Schroeder believed Anthony had hit Cervantes.

Deputy Cervantes fired another less-lethal round at Anthony, which also had no effect. Anthony brought his arm up above his head and quickly swung the metal chain down toward Cervantes and Deputy Martinez. As Anthony did so, Martinez fired three rounds from his handgun in rapid succession. Anthony fell to the ground. Without delay, Deputy Campos handcuffed Anthony and began providing medical care. San Bernardino County Fire personnel arrived within minutes of being requested. Detective Schroeder kept deputies and medical personnel away from the FCC's. After securing the scene, Schroeder walked to speak with Witness #1.

Detective Schroeder informed Witness #1 that Anthony had passed away. Witness #1 no longer wanted to speak with law enforcement. Schroeder was relieved and told to go back to Hesperia Station, which he did.

Detective Sergeant J. Avila drafted a two-page report detailing his involvement in the events preceding this OIS. Avila's belt-recorder was activated during his participation in these events.

On March 29, 2022, at 12:15p.m., then Detective Sergeant Avila responded to **** Ninth Avenue, in the City of Hesperia, for a reported domestic disturbance – two brothers fighting. Avila arrived on scene 45 minutes after other responding deputies. Upon Avila's arrival, he donned a Sheriff's raid vest, which had the word Sheriff on the back and a cloth badge on the left chest area. Avila assisted with perimeter containment in the alleyway northwest of the incident location. While Avila maintained the perimeter, other deputies broadcast over the radio that the suspect, later identified as Anthony Nunez, was dropping and picking up a metal chain. Shortly thereafter, Deputy Todd Moreno arrived at the location and took over the perimeter containment.

Detective Sergeant Avila then began to assist Detective Cole Raynolds with evacuation of nearby residences. At that time, other deputies stated over the radio that Anthony had exited the residence armed with a chain. Avila was positioned four residences north of the incident location at that time. Avila looked to the front yard of the incident location and saw the top of Anthony's head, along with Anthony's right hand swinging the chain over his head. Anthony moved from the front of the residence toward the south end of the front yard and continued swinging the chain overhead as he faced deputies.

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Detective Sergeant Avila then approached the incident location. Avila's view of Anthony was obscured by a patrol car and a bush as Anthony proceeded north through the front yard. Avila heard deputies order Anthony to get on the ground. Detective Reynolds then indicated that the Taser deployment was not effective. Avila then began to close the distance between himself and the suspect. At that time, Avila heard what he thought were two or three less-lethal rounds from a shotgun followed by what he thought were two rounds fired from a handgun.

As Detective Sergeant Avila moved towards the driveway of the incident location, he saw Anthony laying on the ground between two vehicles. Avila requested medical aid for Anthony. Avila assisted in conducting a safety sweep of the incident location.

STATEMENTS BY CIVILIAN WITNESSES⁴

Witness #1 was interviewed by Detective Ramstad of the SBCSD on March 29, 2022.

Witness #1 relayed that he was Anthony Nunez's brother and lived with Anthony at **** Ninth Avenue, in the City of Hesperia. Anthony took no medications, had no diagnosed mental illness, and had no medical problems. However, Anthony was known to Witness #1 to be a frequent user of methamphetamine who would typically stay awake for two to three days at a time when using. When Anthony used methamphetamine, he would often tell everyone in the house that he was "God" and that "the world was ending."

Witness #1 and Anthony lived at **** Ninth Avenue with the rest of their family, consisting of their mother Witness #4, their brother Witness #5, Witness #1's stepdaughters Witness #3 and Witness #6, Witness #1's daughter Witness #7, Witness #1's son Witness #8, and Witness #1's wife Witness #2.

On March 29, 2022, at approximately 8:00a.m., Anthony knocked on Witness #1's bedroom door and woke Witness #1 up. Anthony told Witness #1 that he was "God" and that he saw angels flying around the house. Witness #1 attempted to shut his bedroom door, but Anthony would not let the door close. Witness #1 pretended to call the police and informed Anthony of this, which caused Anthony to allow Witness #1 to shut and lock his bedroom door. Witness #1 then called his wife Witness #2 who was not at the residence and told her that Anthony was hallucinating and to call before coming inside the house so he could escort her in.

Shortly after the phone call to Ms. Witness #2, Witness #2 called Witness #1 and told him that she was in front of the house. Witness #1 went outside and followed Witness #2 into the residence. At this time, Witness #1 believed Anthony was inside Anthony's bedroom. When Witness #2 and Witness #1 walked through the front door of the residence, Anthony exited his room with a metal chain in his hand and yelled, "who the fuck is it?" Witness #1 responded that it was him and Witness #2. Witness #1 and Witness #2 ignored Anthony and proceeded to their bedroom.

⁴ All reports of civilian statements made were reviewed, though not all are summarized here.

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Anthony then approached Witness #1 from behind and pushed Witness #1 into the wall. Witness #1 turned to face Anthony and Anthony swung the chain, striking the ground.

Witness #1 was going to push Anthony, but before he could do so, Ms. Witness #2 got in between them. Witness #2 said she would call the police and Witness #2 and Witness #1 walked to their bedroom and closed the door. Witness #2 called 911, while Witness #1 informed Anthony that they were calling the police. While Witness #2 was on the phone with dispatch, two uniformed deputies arrived at the residence. Two separate police vehicles were parked in front of the residence.

As the deputies approached the front of the residence, Witness #1 spoke to them through his open bedroom window. Witness #1 informed the deputies that Anthony was under the influence and was armed with a chain. Witness #1 directed the deputies to enter the residence through the front door, which he thought was unlocked. A deputy came to Witness #1's window and asked if Witness #1 could open the front door. As Witness #1 walked towards the front door, he walked past Anthony, who was holding the chain in his dominant right hand. Witness #1 described the chain as a metal-linked chain that was three to four feet long. Witness #1 was able to open the front door for deputies and then retreated into the hallway to allow deputies to speak with Anthony.

The deputies told Anthony they wanted to speak with him and asked him to come outside. Anthony indicated he did not want to exit the house and would talk to the deputies from where he stood inside. The deputies asked Anthony to come outside more than five times. Deputies also asked Anthony multiple times to put the chain down. Witness #1 could not see what was going on at this point, but believes the deputies had their Tasers in their hands because Anthony agreed to put the chain down if deputies put their Tasers away. Anthony then put the chain down, but draped it over his right foot in the crease of his ankle. One of the deputies asked Anthony why Anthony kept the chain draped over his foot. Anthony responded by saying that it was because the deputies did not put their Tasers away. One of the deputies told Anthony that they would put their Tasers back in their holsters if Anthony kicked the chain away. A deputy told Anthony that all the deputy wanted was to speak with Anthony. Anthony responded, telling the deputy that he, Anthony, was God and the end of the world was imminent.

From the hallway, Witness #1 told Anthony three to four times to kick the chain away, but Anthony did not listen. Another deputy arrived at the front door and told Witness #1 to go back to his bedroom. Witness #1 complied and met with Ms. Witness #2 and his son Witness #8 in the bedroom. At that time, Witness #1 saw four or five deputies at his front door.

As the deputies continued negotiating with Anthony at the front door, another deputy came to Witness #1's window and told him to remove the window screen and exit through the window. Witness #1 agreed and climbed through the open window with Ms. Witness #2 and his son Witness #8. Witness #1 observed deputies standing 10 to 15 feet away from Anthony acting calmly. Witness #1, Witness #2, and Witness #8 stood outside their bedroom window for approximately five minutes until they were instructed to move toward the patrol vehicles. Witness #1 informed a deputy that Witness #3 and Witness #7 were still in the house. The deputy had Witness #2 call Witness #3 and Witness #7 and inform them to crawl out the window of the room they were in.

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Once Witness #3 and Witness #7 crawled out the window, they were escorted to where Witness #1 was located.

After 30 minutes to one hour, Witness #1 heard several “pops.” Witness #1 did not know if the “pops” were gunshots or beanbag rounds.

Witness #1 believes that Anthony does not trust police because during one of his arrests, a deputy was injured and Anthony was arrested.

Witness #2 was interviewed by Detective Page of the SBCSD on March 29, 2022.

In 2015, Ms. Witness #2 and Witness #1 started a dating relationship. Approximately six months later they were married. At that time, her daughters Witness #3 and Witness #6 moved into **** Ninth Avenue with Witness #1.

Ms. Witness #2 and Anthony Nunez were cordial until Witness #2 suspected Anthony of using narcotics in 2018. When Anthony was under the influence, his demeanor changed and he would frequently stay awake for days at a time, speak to himself, scream profanities, and turn on every light in the residence. Each time Anthony used narcotics, he would state he was “God” and the “world was going to end.” Anthony’s pupils would be dilated when he used narcotics. Witness #2 suspected Anthony used methamphetamine, but never saw him use it. Witness #1 threatening to call 911 on Anthony when Anthony was using narcotics usually calmed Anthony down.

On March 29, 2022, Ms. Witness #2 left **** Ninth Avenue around 9:30a.m. for a doctor’s appointment. At approximately 11:00a.m., Witness #2 received a call from Witness #1 explaining that Anthony was “acting up.” Witness #1 requested that Witness #2 call him before she came home so he could escort her from the front door to their bedroom. This had happened on three prior occasions when Anthony used narcotics and was acting up. At approximately 11:15a.m., Witness #2 arrived home and Witness #1 met her at the front door. As Witness #1 escorted Witness #2 to their bedroom, Anthony appeared behind Witness #1 and proclaimed he was “God.” Witness #1 interrupted and said, “no, you’re a demon” and asked Anthony to leave them alone. Witness #1 then continued with Witness #2 towards their bedroom.

As Ms. Witness #2 and Witness #1 walked towards their bedroom, Anthony whipped a chain into the air near Witness #1. The chain forcefully slapped the tile floor. As Anthony slapped the tile floor with the chain, he said, “I’m God.” Anthony swung an approximately three-foot-long section of chain against the floor, but did not try to strike Witness #2 or Witness #1 at that time. Witness #1 reiterated to Anthony to leave them alone. Anthony then pushed Witness #1 in the back, causing Witness #1 to fall forward into the refrigerator. Witness #1 nearly fell, but was able to catch himself.

After Witness #1 collected himself, he turned and faced Anthony. Witness #1 again told Anthony to leave them alone. Anthony held the chain in his right hand. The chain was wrapped several times around Anthony’s right hand and a three-foot section of loose chain was extended downward towards the ground. Anthony then began to yell that he was God and would always be God.

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Witness #2 then stepped in between Anthony and Witness #1 and yelled at Anthony, "you are not going to push my husband." Anthony appeared to ignore Witness #2 and pushed Witness #1 in the chest one time. The push caused Witness #1 to fall backwards and strike his back on the wall of the living room. Witness #2 told Anthony she would call 911. Anthony yelled, "go ahead and call the cops. You're going to hell." Witness #2 called 911 and reported the assault by Anthony on Witness #1. Witness #2 told 911 that Anthony was armed with the chain, was possibly on narcotics, and was awake for several days. Witness #2 further relayed that there was a firearm inside the residence. Witness #1 and Witness #2 entered their bedroom and shut the door.

After approximately five minutes, two marked Sheriff's patrol vehicles parked in front of the residence. Two deputies, later identified as Deputy Jonathan Campos and Deputy Michael Martinez, approached the front door and spoke with Anthony. Ms. Witness #2 heard the deputies repeatedly tell Anthony that they were not there to hurt him and ask Anthony to drop the chain and come outside. Anthony refused to drop the chain. Witness #2 watched Campos and Martinez out her bedroom window. Witness #2 described the deputies as calm and not having weapons in their hands. Witness #1 left the bedroom for approximately two minutes to see what Anthony was doing. When Witness #1 returned, he indicated that Anthony had put the chain on his feet, but had refused to step away from it.

After approximately 10 minutes, an unknown deputy requested Ms. Witness #2, Witness #1 and their son Witness #8 evacuate the residence through their bedroom window. The three exited through the window. Upon exiting, Witness #2 saw five additional deputies. One deputy had a yellow rifle and another had a large black and red weapon. Witness #2 believed both of these weapons fired rubber bullets. Once outside, Witness #2, Witness #1 and Witness #8 remained near the northeast corner of their residence. A deputy asked if there was anyone else inside the residence. Witness #2 explained that Witness #3 and Witness #7 were in their room, south of the front door. Witness #2 then called Witness #3 and told her to evacuate through Witness #3's bedroom window with Witness #7.

As Ms. Witness #2 waited near the northeast corner of the residence, Deputies Campos and Martinez remained approximately six feet outside the front door. The deputies continued to speak with Anthony. They asked Anthony to leave the chain inside and step outside. Their demeanor was calm and they did not raise their voices.

Eventually, Witness #2, Witness #1, Witness #8, Witness #3, and Witness #7 were all escorted 50 yards north of **** Ninth Avenue towards Sultana Street and Ninth Avenue. After approximately one hour, Witness #2 heard several gunshots. After the gunshots, multiple fire department and law enforcement personnel ran towards Witness #2's residence. Witness #2 did not see deputies fire any weapons and was unaware what directly preceded shots being fired.

Witness #3 was interviewed by Detective Ramstad of the SBCSD on March 29, 2022.

Witness #3 lives at **** Ninth Avenue with her mother Witness #2, her stepfather Witness #1, her sisters Witness #6 and Witness #7, her brother Witness #8, Witness #1's mother Witness #4, and Witness #1's brothers Witness #5 and Anthony Nunez.

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Witness #3 believes Anthony started using methamphetamine approximately five years prior to the date of this LFE. Witness #3 is familiar with the effects of methamphetamine as she had seen people at school and work who used it. When Anthony used methamphetamine, he talked to himself, argued with everyone, and told everyone he spoke to God. Witness #3 noticed Anthony's behavior worsening over the past several years.

On March 28, 2022, Witness #3 and Ms. Witness #2 left **** Ninth Avenue to go to work at 4:00p.m. Both were scheduled to work until 4:30a.m. on March 29. After their work shift, the two drove home together. At approximately 5:20a.m., Witness #6 called Witness #2 and said she was scared because Anthony had banged on her door and told Witness #6 to open the door. Anthony further stated he would break down the door if Witness #6 would not open it. Witness #2 indicated to Witness #6 that Witness #2 was almost home and not to open the door. Witness #2 then called Witness #1 and informed him about Anthony's behavior. Witness #1 went to check on Anthony and discovered that Anthony was no longer outside of Witness #6's room.

At near 5:30a.m., Witness #3 and Ms. Witness #2 arrived home. At that time, Witness #3 noticed that all of the lights inside the house were on. Turning on all the lights in the house was common for Anthony when he used methamphetamine. Witness #3 went inside and dropped off food with Witness #1 before returning to her bedroom and falling asleep.

At 11:42a.m., Witness #3 woke up after receiving a phone call from Ms. Witness #2. Witness #2 informed Witness #3 that Witness #3 needed to get dressed. After the phone call, Witness #3 looked outside her window where she observed several Hesperia Sheriff's deputies. At 12:01p.m., Witness #3 received a second phone call from Witness #2. Witness #2 told Witness #3 to remove the window screen and exit out the window with Witness #7. As a deputy approached Witness #3's window, Witness #3 heard Anthony get mad and pick up what sounded to her like a chain. Witness #3 heard deputies tell Anthony to put the chain down twice. Witness #3 then removed the window screen and climbed out the window with Witness #7.

Once Witness #3 was outside her bedroom, she was met by one of the deputies. The deputy cut a lock on the fence on the south-side of the house, which led to the backyard. Witness #3 headed to the north side of the house as directed by the deputy where she was out of view of Anthony. Deputies then placed Witness #3, Witness #2, Witness #8, and Witness #7 inside a patrol car, where they were driven away from the residence to Ninth Avenue and Sultana Street. Witness #3 waited at this location with her family until being told by an unknown deputy that Anthony was shot.

INCIDENT AUDIO

BELT RECORDINGS. All belt recordings submitted were reviewed in their entirety, though not all are summarized here. The summaries of the belt recordings end at the point immediately following the LFE.

Deputy Michael Martinez

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Deputy Martinez was wearing a belt-recorder during the incident under review. The recording is approximately one hour thirty-four minutes.

Deputies Campos and Martinez are heard speaking with Witness #1. Witness #1 relays that Anthony shoved him and has been acting crazy all night. Anthony can be heard talking in the background though it is unclear if he is speaking to anyone or talking to himself. Martinez asks Witness #1 to unlock the front door, which Witness #1 does. The door opens and deputies ask Anthony to put the chain down. Anthony declines. Campos indicates he will put his Taser down if Anthony puts the chain down. The deputies repeatedly ask Anthony to put the chain down, which Anthony does not do. After a few minutes, Anthony appears to put the chain down. Campos asks Anthony why Anthony wrapped the chain around his foot. Anthony begins to speak about the devil and God. Martinez requests the next unit bring a less-lethal munition. Anthony indicates he just wants to tell his story and then he will come outside. Deputies negotiate with Anthony to take the chain off his foot. Anthony says he will walk away from the chain if deputies back up.

Anthony begins speaking about God and tells deputies to shut up and listen to him. Anthony and Deputy Martinez argue about whether Anthony is going to be taken to jail. Anthony then begins speaking about what he deems "God's story" and what is wrong with the world. Anthony tells Martinez that Martinez is going to hell. Anthony begins to tell his presidential story for several minutes. Anthony says he is a king and that deputies should not speak while he is speaking. Anthony then rants for several more minutes about a variety of topics. Deputy Martinez asks Anthony to come outside and Anthony declines. Deputies then let Anthony know that Sergeant Lafever is there and have him come speak with Anthony.

Sergeant Lafever attempts to get Anthony to step away from the chain and come outside. Anthony emphatically declines. Anthony then begins speaking about being the next President of the United States. Anthony then switches to talking about police officers. Lafever attempts several times to get Anthony outside. Lafever then appears to step away from the door. Deputy Campos tries to get Anthony to take a seat. Anthony tells Campos to take a seat. Campos says he is going to sit down in the chair. Anthony claims he has something to say and that deputies need to be quiet. Anthony says he will "fuck them up." Anthony then says he wants to smoke a cigarette and deputies try to get him a lighter. Anthony then begins speaking about what happened with his brother then switches topics to Anthony's plan to become President.

Deputy Martinez asks if there is anything they can do to get Anthony to come outside. Anthony responds, "nothing at all." Anthony appears to get more agitated and tells deputies to move back repeatedly. There is, what sounds like, a chain hitting the floor. Anthony then returns to his Presidential speech then on to speaking about God. Anthony gets aggravated and deputies ask him to put the chain down. A deputy says, "you pull your chain, I get my Taser." Deputies and Anthony negotiate over Anthony putting down his chain for the deputies to put their Tasers away. Anthony then appears to start praying to God. Deputies and Anthony say "Amen" when the prayer is finished. Dogs start barking in the background. A deputy indicates he is going to holster his Taser. Anthony then begins talking about government wastes of money. Anthony says that a

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deputy was going to try to get in his room. Anthony says the world is coming to an end and that he could make the world perfect.

Deputy Martinez introduces himself as "Mikey." Deputy Campos introduces himself as "John." Anthony begins speaking about politics again. Anthony begins talking loudly to Sergeant Lafever and calling him names. Anthony says they are going to be there all day. Anthony says he wants to give his candidate speech. Deputies say they will be quiet for 20 seconds to allow Anthony to collect his thoughts and then let Anthony give his speech. Anthony begins giving his presidential speech. Deputies try to negotiate coming closer. Anthony says that "fucks up" his speech. Anthony keeps talking and begins to cry. Deputies tell him to let it out. Anthony then gets angry again and says, "if they fucking lay a hand on me, I'm gonna fuck them up." Anthony continues talking about being the next and last President. Anthony tells deputies that the more people they call, that's when bodies start piling up and that that's not a threat, it's a promise. Anthony then has deputies recount what he has told them so far, which they do.

Anthony starts talking about what he is going to do once he's in office. Anthony begins to cry. Anthony goes back into his Presidential speech. In the middle of the speech, there is the sound of a chain as Anthony says, "well now I'm gonna fuck you motherfuckers up." Anthony says he heard a voice in his mom's room. A deputy indicates that Anthony has the chain in his hands. Anthony says he wants to talk with his family. Deputies inform Anthony that his family is outside with other deputies and is too far away to bring to Anthony. Anthony says he's about to "fuck motherfuckers up now." The sound of a chain is heard and shortly after deputies tell Anthony to stop clenching his fist. A deputy says Anthony is raising the chain above his head and repeatedly asks Anthony to put the chain down. Anthony indicates, "you're gonna end up fucking in a pine box." Anthony says he is going to kill deputies if they do not release his family. Anthony then loudly tells deputies to step back so he can step out of the residence.

There is the sound of a chain in the background. Anthony demands his family and then specifically his mom be brought back to the residence. A deputy says that Anthony has the chain in his hands again. The chain rattles in the background. Anthony tells deputies he's going to "fuck [them] up" and says "I'm going to kill you fucking bitches." Anthony goes on a profanity laced tirade. Anthony says, "I'm gonna fuck you up." The chain rattles in the background. Anthony says, "You release my fucking family. If I don't come out right now and when I go out there, I swear, I don't see them, all hell is breaking loose in this motherfucker." Deputies tell Anthony they are trying to get his family back. Anthony says what appears to be a prayer and then tells deputies they are going to hell. Anthony says he wants to talk to Corey. Anthony demands to be brought to his family. Deputies tell Anthony they can bring his family to him. Deputies ask Anthony to put the chain down. Anthony says, "cops are going to die today." Anthony indicates, "I'm going to force you to kill me because I'm not going to prison, bitches. I'm going to force you to kill me. I'm fighting to the death this time." Anthony demands his family immediately and tells deputies to try harder to get his family. Deputies try to get Anthony to put the chain down. A deputy says that if Anthony drops the chain, the deputy will take Anthony's hand. Anthony responds, "Fuck your hand. Your - I'm gonna fucking take your soul to hell." Deputies try to get Anthony to put the chain down. Anthony firmly declines.

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Anthony demands deputies to back up so he can go outside. Deputies ask Anthony to put the chain down before coming outside. Deputies tell Anthony they will step farther back if Anthony wants them to. The chain rattles loudly. A deputy orders Anthony to drop the chain. Anthony says, "I'm dying today." Multiple deputies order Anthony to drop the chain. Anthony says, "I'm gonna force you to fucking kill me." Multiple deputies order Anthony to drop the chain. A deputy yells, "less lethal, less lethal." There is a clicking noise. An unknown deputy says to "watch the backdrop." A deputy yells, "40-40" which is followed by a popping noise. A deputy yells, "40-40," which is again followed by a popping noise. Deputies order Anthony to get on the ground. A deputy yells, "40-40." Deputies order Anthony to get on the ground. There is a popping noise. Someone yells "Taser, Taser," and there is a charging noise. Someone yells, "get away!" Anthony is ordered to get on the ground. Someone yells, "less lethal." There is a loud popping noise. Three gunshots are fired in rapid succession. Deputies tell Anthony not to move.

INCIDENT SCENE INVESTIGATION

Detective Justin Carty reported a description of the incident scene. The crime scene was located at **** Ninth Avenue in the City of Hesperia. Areas of particular significance to the LFE included the front yard of the residence at **** Ninth Avenue and the front hallway of that same residence. Various photographs were taken of the crime scene, along with a FARO Focus, 3DX Laser Map.

Several vehicles relevant to the investigation were parked within the scene. The locations of those of note are as follows:

- San Bernardino Sheriff's Ford Explorer, Unit #16366: parked west of Ninth Avenue, on the west dirt shoulder, north of the asphalt driveway of **** Ninth Avenue facing south. (Placard 1⁵)
- San Bernardino Sheriff's Ford Explorer, Unit #16321: parked south of Placard 1, west of Ninth Avenue, south of the asphalt driveway of **** Ninth Avenue facing north. (Placard 2)
- Red Honda Civic, License 5CVT324: parked in the front yard of **** Ninth Avenue, south of the asphalt driveway, facing southwest towards the front door of the residence. (Placard 9)
- Gray Dodge Charger, License 6MBV971: parked in the front yard of **** Ninth Avenue, south of Placard 9, facing southwest towards the front of the residence. (Placard 11)
- Green Ford F150, License 4X04481: parked on the side yard of **** Ninth Avenue, north of the asphalt driveway, on the north side of the residence. Located behind the driver's seat of the F150 was a black Glock 19 semi-automatic handgun.

Three FCC's were located at the scene. Their locations are as follows:

- One in the dirt front yard of **** Ninth Avenue, north of the rear bumper of the Red Honda Civic. (Placard 3)

⁵ Not all relevant evidence has an evidence placard. Where such a placard exists, it is referenced herein.

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- One in the dirt front yard of **** Ninth Avenue, east of the rear bumper of the Red Honda Civic. (Placard 4)
- One in the dirt front yard of **** Ninth Avenue, south of Placard 4. (Placard 5)

The body of Anthony Nunez was located at the scene. Anthony Nunez's body's location is as follows:

- South of Placard 5, Anthony Nunez lay supine with his arms handcuffed behind his back. Multiple medical apparatuses were affixed to Anthony Nunez's body. Anthony had multiple contusions to the left side of his chest, along with several gunshot wounds⁶. A pool of blood surrounded Anthony Nunez's upper body.

One metal chain was located at the scene. The chain's location is as follows:

- One 7'4" metal chain consisting of metal links and a plastic handle affixed to one end, located 4' south of the body of Anthony Nunez, Placard 6. (Placard 7)

Four "eXact iMPact" 40 millimeter less-lethal projectiles were located at the scene at various locations. Their locations are as follows:

- One under the Red Honda Civic. (Within Placard 9)
- One south of the Gray Dodge Charger. (Placard 12)
- One east of Placard 12 along the fence-line. (Placard 13)
- One south of Placard 14 along the fence-line. (Placard 14)

One drag-stabilized beanbag and one fired drag-stabilized beanbag shell were located at the scene. Their locations are as follows:

- One bean bag, southeast portion of the front yard⁷.
- One fired bean bag shell, one foot north of the metal chain. (Within Placard 7)

One set of Taser wires were located at the scene. Their location is as follows:

- One set of Taser wires, under the rear passenger side bumper of the Gray Dodge Charger located at Placard 11. (Placard 8)

Several blood stains or suspect blood stains were located at the scene. Their locations are as follows:

- Two suspected pools of blood on the ground between the Red Honda Civic and Gray Dodge Charger near the driver's door of the Civic and the front passenger door of the Charger. (Placard 10)
- Suspected blood stains on the front and rear passenger doors of the Gray Dodge Charger approximately one foot below the front passenger door handle. (Placard 10)

⁶ The exact locations of Anthony Nunez's gunshot wounds are discussed in greater detail in the next section of this report.

⁷ Page 21 of the Crime Scene report indicates that this beanbag was located in the backyard. As the rest of the evidence was located in the front yard, this appears to be in error.

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DECEDENT

INJURIES. Anthony Nunez suffered injuries from gunshot wounds to his lower abdomen, right lateral torso, and right arm. The gunshot wound to Anthony's lower abdomen was found to be non-fatal. The gunshot wound to Anthony's right lateral torso resulted in the fired bullet entering the lung, liver and spinal cord. This gunshot wound was found to be fatal. The gunshot to Anthony's right arm continued into his right chest cavity, perforating his aorta and right lung and was determined to be fatal.

TOXICOLOGY. Blood toxicology revealed the presence of cotinine presumptively positive in Anthony Nunez's blood. Blood toxicology further revealed the presence of Delta-9 THC, Amphetamine, and Methamphetamine. The Methamphetamine concentration was found to be 980 ng/mL.

CRIMINAL HISTORY. Anthony Nunez has been convicted of the following:

Case No. FVI17003034	Convicted on 08/20/2018 of Penal Code section 69 with an allegation under Penal Code section 12022.7, subdivision (a) [obstructing/ resisting and executive officer with great bodily injury] (felony). Sentenced to probation and 180 days in county jail.
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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).) ⁸ 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

⁸ All references to code sections here pertain to the California Penal Code.

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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,

(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 2020,⁹ 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.

⁹ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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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;
- (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;¹⁰
- (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

¹⁰ 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 uncoded, unlike the aforementioned portion of Penal C. §835a (a)(3).

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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;
- (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

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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.)¹¹ 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

¹¹ The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

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

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 Witness #4* (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

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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 [beanbag].) 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

This report evaluates the use of force of Deputy Michael Martinez on March 29, 2022, in the City of Hesperia. We draw our conclusions here based upon the legal principles cited above and a careful examination of the case agent’s submission in this case.

Attempted Contact/Arrest. At the time of the shooting, Deputies Campos and Martinez were responding to a domestic disturbance call. The RP indicated that Anthony was hitting Witness #1. While speaking with Witness #1, Campos and Martinez learned that Anthony had choked Witness

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#1 and pushed Witness #1, causing Witness #1's head to strike a wall. When the deputies attempted to contact Anthony, Anthony was armed with a chain, which he refused to put down. The deputies announced they were members of the "Sheriff's Department" through the front door prior to their contact with Anthony. Once the front door opened, Anthony would have been able to see that both deputies were dressed in conspicuous SBCSD uniforms, which had SBCSD patches on both shoulders and Sheriff's Badges affixed to the left breast area. The deputies were further wearing duty-belts, which contained all the hallmarks of peace officers – handcuffs, duty-weapons, RCB's, OC spray, radios, belt-recorders, and spare magazines. Moreover, the deputies arrived in marked patrol cars, which bore SBCSD logos, lights on top, and carried the words "Hesperia" and "Police" on the sides. Given the totality of these circumstances, Deputies Campos and Martinez had probable cause to effectuate the arrest of Anthony for a violation of Penal Code section 242, battery, based on Anthony having choked Witness #1 and pushed Witness #1 into a wall. Further, based on the information gathered by Sergeant Lafever, the SBCSD had collective probable cause to believe a violation of Penal Code section 245, subdivision (a)(1), assault with a deadly weapon, had occurred based on Anthony's attempt to strike Witness #1 with a chain.

An officer has authority to use reasonable force to effectuate an arrest. The framework for determining what is "reasonable" is included in *Graham, supra*, which in turn informs the elements of Penal Code §197. Whether the officers were justified in their use of a firearm under the principles of self-defense and defense of others per Penal Code §197 involves a two-part analysis: (1) did the officer subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was the officer's belief in the need to protect himself or others from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. Deputy Martinez provided a detailed account of his recollection of the events leading up to the use of his firearm. His subjective beliefs hinge upon what the deputy knew at the time – he was responding to a domestic disturbance where the alleged victim was pushed into a wall. Martinez had additional information shortly after his arrival that there was a firearm somewhere inside the residence that Anthony may have had access to. Martinez then engaged Anthony in negotiations/attempted de-escalation for an hour and a half while Anthony's mood fluctuated wildly. Anthony repeatedly refused requests to drop the chain and come outside. Anthony also made various threats to Martinez and other deputies who were present. When Anthony finally came outside, he had demonstrated his unpredictability and inability to control his emotions.

Once outside, Deputy Martinez observed Anthony swing the chain in an aggressive manner over his head and at deputies. After taking several steps away from deputies, Anthony then began moving in their direction while continuing to aggressively swing the chain. Martinez observed three separate less lethal options be deployed against Anthony – 40 millimeter less-lethal multi-launcher, a less lethal beanbag shotgun, and a Taser. All were ineffective. Anthony continued to progress towards Martinez while swinging the chain aggressively and got within a car's length of Martinez before Martinez fired his duty weapon. At that time, Martinez observed a clear and imminent threat of great bodily injury or death to his partners and himself. Thus, Martinez had a subjectively reasonable belief of the imminent need to protect himself and his partners.

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Reasonable Belief of Imminent Need to Protect. More than the stated belief of Deputy Martinez; however, the submission contemplated in total supports a finding that Martinez had an objectively reasonable belief of the need to use deadly force to protect himself and his partners.

This police response situation demonstrates the ever-evolving nature of a police call-out. Initially, the call was for an ongoing assault physical assault. Then, it was broadcast that there were firearms potentially available to the suspect.

At the time that Deputy Martinez fired his gun, Anthony was within a car's length of deputies with a weapon, a metal chain, that was 7'4" long. Immediately prior to firing his duty-weapon, Martinez had observed deputies exhaust their less-lethal options that were feasible for a man with a weapon with such reach. Anthony had repeatedly threatened deputies who were on scene and made statements to the effect of deputies were going to have to kill him before he would be arrested. Deputies had the opportunity to view Anthony's unpredictable behavior for over an hour and a half at the time of the LFE. Anthony repeatedly and vehemently refused lawful commands, orders, and requests to disarm himself and come outside. In sum, based on these facts, Deputy Martinez had an objectively reasonable belief of the need to fire his duty-weapon to protect himself and his fellow law enforcement officers.

CONCLUSION

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Deputy Martinez was justifiable in self-defense and the defense of others. Accordingly, no criminal liability attaches in this case.

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