



## **P U B L I C   R E L E A S E   M E M O R A N D U M**

**DATE:** May 6, 2025

**SUBJECT:** Officer Involved Shooting (Fatal)

**Officers:** Deputy Chris Haas  
San Bernardino County Sheriff's Department

Corporal Bela Lukacs  
San Bernardino County Sheriff's Department

Corporal Eugene Mondragon  
San Bernardino County Sheriff's Department

Deputy Jim Musgrave  
San Bernardino County Sheriff's Department

Deputy Joshua Stone  
San Bernardino County Sheriff's Department

**Involved Subject:** Byron Hayes (Deceased)  
Date of Birth \*\*/\*\*/\*\*

**Date of Incident:** August 11, 2022

**Incident location:** \*\*\*\*\* Westway Lane  
Victorville, CA

**DA STAR #:** 2024-9284

**Investigating Agency:** San Bernardino County Sheriff's Department

**Case Agent:** Detective Michelle Del Rio

**Report Number #:** DR# 172209341 / H# 2022-100

## **PREAMBLE**

This was a fatal officer involved shooting by deputies from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary was based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 172209341 / H# 2022-100.

## **FACTUAL SUMMARY**

On August 11, 2022, Detective Eugene Mondragon, from the San Bernardino County Sheriff's Department, notified Sergeant Michael Sandlin that he received a phone call from Los Angeles Police Department (LAPD) Gangs and Narcotics Division Detective Brian Whetsel. Detective Whetsel was requesting assistance from San Bernardino County Sheriff's Department Specialized Enforcement Division (SED) to conduct a surround and call out of a murder suspect in the City of Victorville. The suspect was identified as Byron Hayes. Hayes was at a residence located at \*\*\*\*\* Westway Lane. Detective Whetsel advised Hayes had a prior criminal history for murder, shooting, robbery, and burglary. Detective Whetsel also noted the weapon used in the Los Angeles County murder was still outstanding.

Sergeant Sandlin and members of SED prepared an operational plan and conducted a briefing at the SED High Desert Office in Victorville. LAPD investigators provided Sergeant Sandlin with an arrest warrant for Hayes. SED personnel headed to the Westway Lane residence. When they arrived at the location, LAPD advised SED that Hayes had approached a parked unmarked LAPD vehicle occupied by LAPD investigators as they conducted surveillance. When the LAPD investigators identified themselves, Hayes ran back inside and barricaded himself inside of the residence.

Deputy Jeff Henry parked the SED Bearcat partially in the driveway of the residence. He activated the overhead emergency lights and siren. Deputy Henry immediately started making Public Address (PA) announcements over the speaker to any occupants inside the house. The PA announcements informed anyone in the house that they were law enforcement officers with the San Bernardino County Sheriff's Department, they had a search warrant for the residence, and instructed the occupants to exit through the front door with nothing in their hands.

Hayes appeared in an upstairs bedroom window. He was agitated. Hayes asked multiple times what the warrant was for but SED would not tell him. Hayes was also upset about the LAPD officers positioned at the rear of the residence. Hayes warned SED that he was "loaded and ready to go," if anyone tried to enter the residence through the back door. Hayes would move back and forth from the front of the residence to the back of the residence.

SED attempted to negotiate with Hayes. At one point, Hayes indicated he would peacefully surrender and exit the residence. Hayes never followed through with that surrender. Instead, Hayes started drinking from a large bottle of alcohol. Hayes became intoxicated and his demeanor was erratic. Hayes would go back and forth between somewhat cooperative to agitated and upset. Hayes called his brother on his cell phone and spoke to him. During that conversation, Hayes made statements that caused SED to believe Hayes may be suicidal.

SED continued to negotiate with Hayes and try to get Hayes to surrender peacefully. Hayes refused to comply with SED's verbal commands to exit the front of the house, unarmed, with his hands in the air. SED brought in a negotiator, Deputy Clarence Harris to talk to Hayes. Deputy Harris' presence upset Hayes and he yelled for Deputy Harris to shut up. As Hayes stood in the upstairs bedroom window in front of the house, Hayes pulled out a black semi-automatic handgun. Hayes racked the gun, placed it up to his head, and told SED he would shoot himself. Hayes demanded a hamburger from In-N-Out. Deputy Harris said he would work on getting the food but asked Hayes to first put the gun down. Hayes refused.

Hayes started to count down from five. As he counted down, Hayes pulled the trigger but nothing happened. Hayes then suddenly pointed the gun out the window at SED deputies. Fearing for their lives and the lives of their partners, Detective Eugene Mondragon, Detective Bela Lukacs, Deputy Jim Musgrave, Deputy Joshua Stone, and Deputy Chris Haas fired their weapons multiple times at Hayes. After the shooting, SED personnel lost sight of Hayes and he stopped communicating.

Concerned Hayes had been struck by gunfire and needed medical attention, SED personnel entered the home. Once they cleared the first floor of the residence for officer safety, they moved to the second floor. They found Hayes, unconscious, laying on the floor in the front bedroom. A black "SPHINX" 9 mm pistol was located in the room on the floor near Hayes' body. Hayes had obvious gunshot wounds to his body. SED personnel immediately started to administer medical aid.

Victorville City Fire Department and American Medical Response paramedics were requested. After they arrived, they took over rendering aid to Hayes. Hayes was transported by ambulance to the hospital. At 7:17 in the evening, Hayes was pronounced deceased by Witness #1.

### **STATEMENTS BY POLICE OFFICERS**

On August 24, 2022, **Detective Eugene Mondragon** was interviewed by Detective Owenn Domon and Detective Ian Gosswiller.<sup>1</sup>

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<sup>1</sup> Detective Mondragon reviewed his belt recording prior to being interviewed by Detective Domon and Detective Gosswiller.

On August 11, 2022, **Detective Eugene Mondragon**, from the San Bernardino County Sheriff's Department was assigned to SED. Detective Mondragon was wearing a green operation Crye uniform. Detective Mondragon was contacted by Detective Brian Whetsel, from the Los Angeles Police Department. Detective Whetsel advised Detective Mondragon that his agency was going to be in Victorville attempting to contact a suspect, later identified as Byron Hayes, who was wanted for murder. Detective Whetsel asked for help if Hayes barricaded himself in the house. Detective Whetsel wanted the San Bernardino County Sheriff's Department to respond to the location and conduct a surround and call out.

On August 11, 2022, Detective Whetsel contacted Detective Mondragon throughout the day with updates. Detective Whetsel asked Detective Mondragon to conduct a surround and call out later that evening at a residence located at \*\*\*\*\* Westway Lane, in the City of Victorville. Detective Whetsel obtained a search warrant and confirmed Hayes was inside the residence. Detective Mondragon and his team reviewed the search warrant and LAPD's tactical operational plan. Detective Mondragon learned Hayes had a prior criminal history for murder, shooting, robbery, and burglary. Detective Whetsel advised the murder weapon from the most recent killing Hayes was wanted for was still outstanding. Hayes was considered armed and dangerous at that time.

Deputy Cristina Olivas prepared the SED operational plan. Detective Mondragon and his team then deployed to the location in the Bearcat. Deputy Henry drove the Bearcat and Detective Mondragon, Deputy Olivas, and Deputy Musgrave were passengers. Deputy Stone, Sergeant Sandlin, Detective Corral, Detective Haas, and Detective Lukacs each took separate vehicles to the location. Prior to going to the residence, Detective Mondragon, Deputy Olivas, and Deputy Musgrave met with LAPD at a nearby school for a briefing. Again, Detective Whetsel advised Detective Mondragon that the murder weapon was still outstanding and Hayes was considered armed and dangerous. Detective Mondragon told Detective Whetsel that they were going to go into their surround and call out and requested LAPD units assist.

As Detective Mondragon responded to the location, Detective Whetsel advised Hayes had left the house. It was unclear whether LAPD had taken Hayes into custody. As Detective Mondragon neared the location, he saw neighbors out in the street pointing the deputies toward the actual house. Detective Mondragon saw one of the LAPD officers towards the rear of the house was actually yelling at somebody. Detective Mondragon learned the LAPD officers had contact with Hayes at the back of the house. Detective Mondragon continued with their plan to conduct a surround and call out. Deputy Jeffrey Henry pulled the Bearcat into the driveway of the residence, blocking the vehicle that was parked at the house. Detective Mondragon saw several LAPD officers positioned around the house.

Detective Mondragon instructed Deputy Henry to conduct the PA announcements from the Bearcat. Deputy Henry started making announcements over the speaker moments after they arrived at the location. The PA announcements informed anyone in the house that they were law enforcement officers, they had a search warrant for the residence, and instructed the occupants to exit through the front door with nothing in their hands. Deputy Henry also activated the sirens and the blue and red flashing lights on the Bearcat. Deputy

Henry stopped making PA announcements when officers were trying to speak with Hayes. At that time, Detective Mondragon instructed Deputy Olivas to launch the unmanned aerial vehicle (UAV) into the air so they could monitor the perimeter of the house with the thermal camera.

Detective Mondragon exited the Bearcat and took a position behind a Ford utility vehicle parked in the driveway. Hayes showed himself at the middle window on the second floor of the house. Hayes was yelling at the deputies and asking why they were there. Detective Mondragon advised Hayes that they had a search warrant for the location as well as an arrest warrant for him. Hayes asked what the arrest warrant was for but Detective Mondragon would not tell him. Detective Mondragon did not want to argue with Hayes and escalate the situation. Detective Mondragon wanted Hayes to come out unarmed and end things safely. Hayes was argumentative and refused to come out. Hayes continued to ask what the warrant was for.

It appeared to Detective Mondragon that Hayes was intoxicated. Hayes started drinking out of a bottle of alcohol while they were there. According to Detective Mondragon, Hayes' demeanor "would go up and down." Hayes would get aggravated at times but then calm down. Hayes warned that if the LAPD officers came in through the back door slider, they were going to shoot it out. Detective Mondragon told Hayes he did not want that to happen. Detective Mondragon communicated what Hayes said to the LAPD officers and advised he was going to have Hayes try to exit through the front door. Detective Mondragon told Hayes to follow his commands to come out the front so they could end things safely.

Hayes indicated multiple times he would come out and surrender. Hayes would then make excuses not to come out of the residence. Detective Mondragon told Hayes several times that he would not be harmed and they wanted to end it safely. Detective Mondragon asked Hayes to listen to his commands and come out through the front door. Hayes continued to drink from his bottle of alcohol. When Hayes finished drinking from the bottle of alcohol, Hayes still would not come out of the house.

At one point during the incident, Hayes knocked the screen off of the second story window near which he was standing. Detective Mondragon could clearly see Hayes in the window. Hayes made a FaceTime call with his brother. Detective Mondragon gave Hayes time to speak with his brother hoping it would calm Hayes down. During that call, Detective Mondragon heard Hayes tell his brother to cremate him and pour his remains in the ocean. This alarmed Detective Mondragon. It sounded like Hayes was saying his goodbyes and getting ready to die. Detective Mondragon estimated he had spoken to Hayes for thirty minutes.

A negotiator, Deputy Clarence Harris, arrived at the scene. Hayes became upset and started yelling when Deputy Harris tried to speak with him. Detective Mondragon wanted to de-escalate the situation, stepped in, and tried to focus Hayes' attention back to him. Shortly thereafter, Hayes appeared to take a knee in front of the window and produced what appeared to be a black semi-automatic handgun. Detective Mondragon knew it was a real handgun when Hayes moved the slide back and forth. Detective Mondragon

estimated Deputy Harris was talking to Hayes five minutes before Hayes pulled out the firearm. Initially, Hayes was holding the gun up to his head with his left hand. Hayes had told the officers earlier that he had a nine-millimeter handgun and another type of rifle. Hayes also told Detective Mondragon that if LAPD officers came into the house through the back slider door, Hayes was going to use those weapons to shoot it out with those officers.

Hayes began asking Deputy Harris for food from In-N-Out. Deputy Harris said he would see what he could do about Hayes' request. Hayes laughed and pointed the gun at his own head. Hayes said, "I've always wanted to do this." Hayes repeated his request for In-N-Out. Hayes then started to count down from 10. Deputy Harris tried to get Hayes to tell him what Hayes wanted to order. Hayes continued his count down. Detective Mondragon believed Hayes was going to shoot himself or start shooting at officers. When Hayes got to three, he spoke slowly and took a pause, said two and took another pause, and then said one. Hayes then took the gun away from his head and pointed it directly at Detective Mondragon who was positioned behind an LAPD vehicle.

Detective Mondragon believed Hayes was going to shoot and kill him. Detective Mondragon estimated he was twenty yards away from Hayes. Detective Mondragon fired five rounds from his rifle at Hayes in approximately one second. Hayes went down but Detective Mondragon was unsure whether it was because Hayes had been struck by gunfire or because Hayes was taking cover. Detective Mondragon stopped shooting and reassessed the situation. Detective Mondragon heard other gunfire when he was shooting at Hayes.

After the shooting stopped, deputies tried to determine whether Hayes was still moving around. Deputy Olivas unsuccessfully tried to move the unmanned aerial vehicle (UAV) into a position where they could see into the bedroom. Sergeant Sandlin took several deputies to the front door but the door was locked and they were unable to gain access to the house. Detective Mondragon and other deputies went to the back of the house to try and make entry. Once the back slider door was open, Detective Lukacs deployed the robot so they could clear the residence. The deputies entered the residence and made their way to the second floor.

Hayes was located on the floor in the room where Detective Mondragon had last seen Hayes. Detective Mondragon observed Hayes had several gunshots to his face and both of his arms. Hayes was still breathing. Detective Mondragon and Detective Michael Corral rendered medical aid to Hayes. Detective Mondragon tried to reassure Hayes that he was going to be okay and they were going to get him to the hospital. Fire Department personnel entered the house and took over medical care for Hayes. Detective Mondragon then exited the residence.

On September 1, 2022, **Detective Bela Lukacs** was interviewed by Detective Owenn Domon and Detective Ian Gosswiller.<sup>2</sup>

On August 11, 2022, **Detective Bela Lukacs**, from the San Bernardino County Sheriff's Department was assigned to SED with the arson bomb unit. Detective Lukacs was wearing a green SWAT uniform. Detective Corral asked Detective Lukacs whether he would be able to assist with a search warrant in Victorville. Detective Lukacs said he could and headed to the High Desert office.

When Detective Lukacs arrived at the office, he received a summary of what the case was about. Detective Lukacs learned LAPD was doing surveillance on a homicide suspect, later identified as Byron Hayes, in the City of Victorville. Detective Lukacs was advised Hayes had a criminal history that included arrests for violent offenses. Detective Lukacs learned the homicide involved the use of a firearm and LAPD considered Hayes armed and dangerous. Detective Lukacs and the rest of his team met LAPD officers at a nearby school before continuing to the residence where Hayes was located. The residence was located on Westway Lane. They discussed the plan to do a surround and call out. Detective Lukacs' job was to operate the robot. The robot is often used as a reconnaissance intel gathering tool. Everyone then left the school and headed to the Westway Lane location.

As Detective Lukacs neared the location, a LAPD officer flagged him down and said they had contact with Hayes but he ran back inside the house. The Bearcat pulled up to the front of the house and the lights and siren were activated. Detective Lukacs heard PA announcements being made. The PA announcements said they were with the San Bernardino County Sheriff's Department and they had a search warrant for the house. The occupants were asked to exit the house with nothing in their hands. Detective Lukacs parked his truck and started to get the robot together. Detective Lukacs drove the robot to behind the Bearcat and parked it out of view. Detective Lukacs took a position near a black vehicle which was parked and angled facing towards the house. Detective Lukacs saw Hayes come to the second floor. Deputies tried to speak to Hayes. Detective Lukacs did not try to speak to Hayes.

Detective Lukacs saw Hayes drinking some type of alcohol from a bottle. Hayes was also talking to someone on his phone. Detective Lukacs became concerned Hayes may shoot himself with a gun or use a gun towards officers. Based on what Hayes was saying, Detective Lukacs believed Hayes was either going to shoot himself with a gun or use a gun towards the officers. Eventually Hayes started communicating more with Detective Mondragon. At some point, one of their negotiators, Deputy Harris, showed up at the scene. When Deputy Harris tried to speak to Hayes, Hayes appeared to get irritated. Hayes continued to speak mostly with Detective Mondragon and Deputy Haas. At one point, Hayes agreed to come out in five minutes and after he finished his drink. Shortly after that, Hayes almost fell out of the window and the screen popped off.

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<sup>2</sup> Detective Lukacs reviewed his belt recording prior to being interviewed by Detective Domon and Detective Gosswiller.

After the screen came off, Detective Lukacs had a clear view of Hayes. Detective Lukacs noticed Hayes kept looking down to his left side. There were LAPD officers positioned in the backyard of the residence. Hayes was getting irritated because he said he could hear them coming up the stairs. Hayes indicated it would end badly if the LAPD officers came up the stairs. It appeared to Detective Lukacs that things deteriorated rapidly after Hayes got on the phone. Hayes sounded like he was getting angry and demeanor was changing. Hayes was getting more aggressive with his movements.

Detective Lukacs noticed Hayes continued to look down to the left. At some point, Hayes grabbed a handgun and put it to his head. The gun appeared to be a black semi-automatic pistol. Hayes' demeanor was erratic. Hayes was holding the gun up to his head. Hayes made a demand for In-N-Out. Detective Lukacs was watching Hayes closely in the window. Hayes started to count down from the number five. Hayes was counting slowly and hesitated when he reached two. Detective Lukacs then saw Hayes take the pistol and quickly point it out down towards the deputies outside. Detective Lukacs thought Hayes was going to fire a shot at Detective Mondragon. Detective Mondragon was approximately five feet away from Detective Lukacs. Detective Lukacs estimated it took Hayes a fraction of a second to move the gun from his head to point it out towards the deputies.

Detective Lukacs did not recall hearing any shot from Hayes or seeing Hayes' gunfire. Detective Lukacs heard other shots. Detective Lukacs believed Hayes was a threat to the officers. Detective Lukacs fired two rounds from his handgun at Hayes. Detective Lukacs saw Hayes fall to the ground to his left. Hayes went out of view. Detective Lukacs estimated from the time he arrived at the location to the time when shots were fired was thirty minutes. Detective Lukacs also estimated the deputies had been talking to Hayes for ten minutes prior to the shooting.

After the shooting, Detective Lukacs saw Sergeant Sandlin, Deputy Josh Stone, Deputy Musgrave, and Detective Corral coming up with a plan to make entry into the residence and locate Hayes. They knew Hayes was shot but they did not know whether Hayes was still alive. They unsuccessfully tried to breach the front door of the residence. They then made entry through the back slider door. Detective Lukacs used the robot to clear the first floor of the residence. When Detective Lukacs tried to move the robot up the stairs it flipped over and landed on its side. Detective Lukacs was unable to get the robot turned upright.

Detective Lukacs joined the other deputies to provide extra security as they entered the house. When they got to the first landing, deputies saw Hayes. He was breathing but unresponsive. The rest of the rooms upstairs were cleared by deputies. They then made their way back to the bedroom where Hayes was seen and started to render medical aid. Detective Lukacs could see Hayes had a gunshot wound to his head and a gunshot wound to his right arm. Detective Lukacs went back to the staircase landing and escorted paramedics from the fire department up to Hayes. Detective Lukacs then took the robot and exited the house.



On August 22, 2022, **Deputy Jim Musgrave** was interviewed by Detective Michelle Del Rio and Detective Owenn Domon.<sup>3</sup>

On August 11, 2022, **Deputy Jim Musgrave**, from the San Bernardino County Sheriff's Department, was assigned to SED. Deputy Musgrave was wearing a tactical green Crye Precision uniform. Detective Mondragon notified him and the rest of the team that LAPD was looking for a murder suspect, later identified as Byron Hayes, at a house on Westway Lane in the City of Victorville. LAPD wanted the San Bernardino County Sheriff's Department to assist them in serving a search warrant or a surround and call out to detain Hayes. Deputy Musgrave learned the firearm used in the murder was never recovered. He also was told Hayes had a violent criminal history, including a prior arrest for murder. Deputy Musgrave got into the Bearcat with some of the other deputies and Deputy Henry drove them to a park which was near the residence. Detective Mondragon met with LAPD officers. Once that was done, Deputy Musgrave and the rest of the team headed to the residence where Hayes was seen.

On the way to the residence, LAPD notified Detective Mondragon that Hayes was walking out of the residence. Detective Mondragon let Deputy Musgrave know LAPD was going to try to detain Hayes. Deputy Henry continued to drive them to the location. Deputy Musgrave did not hear any further update about LAPD's attempt to detain Hayes. As they neared the residence, Deputy Musgrave saw neighbors pointing towards a house. Deputy Henry parked the Bearcat and Deputy Musgrave got out of the vehicle. Deputy Musgrave took a position on the passenger side of the Bearcat, to the rear, where he had a view of the garage and upper part of the residence. Deputy Musgrave saw LAPD officers on the north side of the house. LAPD notified the deputies that Hayes had run back inside the house.

Deputy Henry started making PA announcements. Deputy Henry advised any occupants that there was a search warrant for the residence and told the occupants to exit unarmed through the front door. Deputy Musgrave saw someone looking through the blinds of the two windows above the garage. Hayes opened a window where Deputy Musgrave saw the blinds move. Hayes asked what the deputies were doing there. Detective Mondragon advised Hayes that he had a warrant for his arrest. Deputy Mondragon told Hayes he needed to come out the front door, unarmed, with his hands in the air. Hayes asked what the warrant was for but Detective Mondragon would not tell Hayes it was for murder. Hayes indicated he would comply and exit the residence.

At one point, Hayes said he could hear people coming to his back door. Hayes warned that if the people came in through the back door he was going to react. Hayes said he was "loaded." Deputy Musgrave thought Hayes could be referring to having a firearm. Hayes then walked to the rear of the house. Hayes came back to the window at the front of the house and continued to talk to Detective Mondragon. Deputy Musgrave saw Hayes drinking from a bottle of alcohol. Deputies continued to give Hayes verbal commands to

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<sup>3</sup> Deputy Musgrave reviewed his belt recording prior to being interviewed by Detective Del Rio and Detective Domon.

exit the house. Hayes said he would come out after he had a drink. After Hayes started drinking, Deputy Musgrave described Hayes' demeanor as going up and down between calm and aggravated. Deputy Musgrave said they tried to assure Hayes that nobody was attempting to enter the house.

At one point, Hayes spoke with his brother on his cell phone. During the phone call, Deputy Musgrave changed positions with Deputy Stone. Deputy Stone was behind Deputy Musgrave near Deputy Musgrave's right shoulder. Hayes was standing by the window. Hayes made statements about having something "loaded." Hayes continued to drink. Deputy Musgrave felt Hayes' behavior was becoming more erratic and aggressive. Deputy Harris, a negotiator, arrived on scene and tried to speak with Hayes. When Hayes immediately reacted negatively to Deputy Harris, Detective Mondragon started talking to Hayes. Hayes said he just wanted to drink and told Detective Mondragon he was still going to come out of the house.

Deputy Harris and Sergeant Sandlin tried to talk to Hayes but Hayes appeared extremely aggravated. Hayes told Deputy Harris he wanted In-N-Out. Deputy Harris tried talking to Hayes but Deputy Musgrave said Hayes was speaking over people, yelling, and cursing. Deputy Musgrave heard Hayes say something about having a loaded firearm and that Hayes was going to handle it if people tried to come in through the back door. Deputy Musgrave noticed Hayes kept looking down to his left side. Deputy Musgrave believed Hayes may be looking at his firearm.

As Hayes made the request for In-N-Out, Deputy Musgrave saw Hayes reach to his left and pull out a black semi-automatic firearm. Hayes put the gun up to his head. Deputy Harris tried to get Hayes to put the firearm down so they could talk about what he wanted. Hayes appeared to go down to his knees. Deputy Musgrave had a view of Hayes' upper torso, head, and firearm in the window. Hayes started to count down from five. When Hayes got to two, Deputy Musgrave saw Hayes bring the firearm down and do something to it. Hayes then immediately extended his arm and pointed the firearm out the window. Deputy Musgrave estimated Hayes was ten to fifteen yards away from him.

Deputy Musgrave believed Hayes was pointing the firearm towards the left side of the Bearcat. Deputy Musgrave thought Hayes had the gun pointed towards his partners, Detective Mondragon and Deputy Haas, and possibly Detective Corral. Deputy Musgrave believed Hayes was going to shoot and either injure or kill one of his partners. Deputy Musgrave fired two rounds from his rifle at Hayes. Deputy Musgrave estimated from the time that he arrived at the location to the time of the lethal force encounter was thirty to thirty five minutes. Deputy Musgrave heard other people shooting. Deputy Musgrave estimated he heard ten to twelve gunshots.

After he shot, Deputy Musgrave's firearm had a "failure to eject" and Deputy Musgrave no longer saw Hayes in the window. Deputy Musgrave cleared the malfunction of his firearm. Deputy Musgrave and some other officers unsuccessfully tried to breach the front door. They then went around to the rear of the house and entered through the back slider door.

Deputy Lukacs used a robot to clear the first floor of the residence. Deputy Musgrave and the other deputies then made their way to the second floor of the residence. They located Hayes in the bedroom where he had been standing. Hayes was laying on his back. Deputy Corral and Detective Mondragon started to provide medical aid to Hayes. Deputy Musgraves provided a tourniquet and then exited the residence.

On January 27, 2023, **Deputy Chris Haas** was interviewed by Detective Ian Gosswiller and Detective Owenn Domon.<sup>4</sup>

On August 11, 2022, **Deputy Chris Haas**, from the San Bernardino County Sheriff's Department was assigned to SED. Deputy Haas was assigned to the Victorville area and part of a Fugitive Task Force. Deputy Haas was wearing a green Crye operational uniform. Detective Mondragon had received a phone call from LAPD indicating they were trying to locate a homicide suspect who was possibly at a residence on Westway Lane in the City of Victorville. Later, LAPD notified Detective Mondragon that they had a signed search warrant for the residence. Detective Olivas wrote up an operations plan for the team. After they briefed their assignments, they drove to a park close to the residence on Westway Lane. They met with LAPD detectives and then drove to the Westway Lane location.

As Deputy Haas turned his vehicle onto Westway Lane, he saw several LAPD officers running around the house. Detective Mondragon told him that when LAPD tried to arrest Hayes, but Hayes ran back inside the house. Deputy Haas parked his truck, grabbed his rifle, and ran to a black SUV that was parked in the middle of the road. From that spot, Deputy Haas was able to see down the south side of the house. There were several LAPD officers in the backyard of the residence yelling up toward the second floor of the home. Deputy Haas heard Deputy Henry start making PA announcements. Deputy Henry advised the occupants that deputies had a search warrant for the house and told the occupants to exit the house, unarmed, with their hands up.

SED set up to the front of the house. There was a large window above the garage. After several minutes, Hayes came to that window and started yelling at the deputies. Hayes asked them what they were there for. Deputy Haas and Detective Mondragon told Hayes they had a search warrant for the residence and Hayes needed to come down and talk to them. Hayes demanded to know what the warrant was for. Deputy Haas and Detective Mondragon did not want to tell Hayes he was wanted for murder out of fear the situation would escalate. Deputy Haas and Detective Mondragon would only tell Hayes he had a warrant for his arrest and that they had a search warrant for the residence. Hayes indicated he would come down if they said what the warrant was for. When Deputy Haas and Detective Mondragon would not provide any additional information, Hayes refused to exit the house.

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<sup>4</sup> Deputy Haas reviewed his belt recording and LAPD body camera recordings prior to being interviewed by Detective Gosswiller and Detective Domon.

Deputy Haas estimated he was twenty yards away from Hayes at the time they were communicating. At one point, Hayes got on his cell phone and was talking to his brother. Hayes started to get very animated. Deputy Haas noticed Hayes was getting emotional and would yell at times. Hayes was also drinking from a large bottle of alcohol. Hayes told deputies he had been drinking all day. Deputy Haas became concerned about the tenor of Hayes' conversation with his brother. It sounded as though Hayes was never going to see his brother again. It did not appear to Deputy Haas that Hayes was going to surrender to law enforcement officers. During the incident, Hayes appeared to push out the window screen, giving Deputy Haas a clearer view of Hayes. Deputy Haas noticed Hayes kept his left hand obscured from the deputies' view. Deputy Haas was concerned Hayes was hiding a weapon in his left hand.

At one point, Deputy Harris, the negotiator, arrived at the scene and tried to talk to Hayes. Hayes did not like Deputy Harris and cursed at him. Hayes went back to speaking with Detective Mondragon and Deputy Haas. Hayes started demanding In-N-Out. Hayes then reached down where his left hand had been and pulled up a black handgun. Hayes appeared to pull the slide on the gun as if he were loading it. Hayes then put the gun directly up to his own head. Deputy Haas heard Hayes make comments, "I'm going to try something different," and "My family is going to get paid."

Hayes started to count down. When Hayes got to two or one, it appeared to Deputy Haas that Hayes tried to pull the trigger but the gun did not go off. Hayes then pulled the gun away from his head, fiddled with the slide again, and put it back up to his head. Deputy Haas saw Hayes almost crack a smile. Hayes then immediately pointed the gun directly toward Deputy Haas. Deputy Haas felt he was looking right down the barrel of the gun. Deputy Haas believed his life was in danger and fired four rounds from his rifle at Hayes. Deputy Haas stopped firing when he no longer saw Hayes' gun pointed at him and Hayes went out of view. Deputy Haas no longer saw any movement. Deputy Haas heard other deputies at the scene shoot as well. Deputy Haas did not know how many other deputies had fired their weapons.

Sergeant Sandlin took some SED members to the front door to try to enter the residence. They were unsuccessful in their attempts to breach the house. They went around to the back of the house and entered through the rear slider door. Deputy Haas stayed at the front of the house and watched the upstairs window. Deputy Haas wanted to make sure Hayes did not pop up and try to shoot them. Sergeant Sandlin's team entered the home and located Hayes upstairs. They immediately started to render medical aid to Hayes who had visible gunshot wounds. When medical personnel arrived at the scene, Deputy Haas escorted them upstairs where they took over rendering medical aid to Hayes.

On August 25, 2022, **Deputy Josh Stone**, was interviewed by Detective Owenn Domon and Detective Michelle Del Rio.<sup>5</sup>

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<sup>5</sup> Deputy Stone reviewed his belt recording prior to being interviewed by Detective Domon and Detective Del Rio.

On August 11, 2022, **Deputy Josh Stone**, from the San Bernardino County Sheriff's Department was assigned to SED. Deputy Stone was wearing a green operation Crye uniform. On that date, Detective Mondragon notified Deputy Stone that LAPD was doing surveillance at a house in the City of Victorville for a suspect wanted for homicide. LAPD was going to try to take the suspect, later identified as Byron Hayes, into custody if he left the residence. LAPD was requesting assistance in doing a surround and call out if Hayes did not leave the residence. Later that day, Detective Mondragon notified Deputy Stone that Hayes had not come outside.

Deputy Olivas then put together a plan for how the team would conduct the surround and call out. Hayes was believed to be staying at his mother's residence on Westway Lane in the City of Victorville. Detective Mondragon advised the team that Hayes had an extensive criminal history with arrests for violent felonies, including a prior arrest for murder. Deputy Stone learned Hayes was wanted for the murder of a female victim in the Los Angeles area. Hayes was known to be armed and was a documented gang member.

After they verified LAPD had a signed search warrant, Deputy Stone and the rest of the team drove to a park that was near the Westway Lane residence. They briefly met with LAPD representatives and then headed to the residence. Deputy Stone was assigned the medical extract vehicle for the incident so he drove by himself to the Westway Lane location. When they arrived at the scene, Deputy Stone parked close to the Bearcat. He saw LAPD cars in the middle of the street and LAPD officers on the side of the house. Deputy Stone was confused because that was not part of the initial plan. Deputy Stone exited his van and positioned himself behind the Bearcat.

At one point, Hayes came to the front upstairs window and started talking to Detective Mondragon. Detective Mondragon identified them as being with the San Bernardino County Sheriff's Department and advised Hayes he had a warrant for his arrest. Detective Mondragon told Hayes to exit through the front door, unarmed, with his hands up so he could be taken into custody. Hayes kept asking what the warrant was for. Detective Mondragon would not tell him the specific charge. Instead, Detective Mondragon kept giving Hayes directions to come out of the house. Hayes became argumentative when Detective Mondragon would not explain what the warrant was for.

There were times when Hayes indicated he was going to come down. However, Hayes would never follow through and actually exit the house. Deputy Stone noticed Hayes would get agitated and sidetracked. Detective Mondragon continued to try to negotiate with Hayes. Hayes appeared particularly agitated about the LAPD officers who were in the backyard. Hayes thought they were going to try to come into the house. Detective Mondragon tried to assure Hayes that nobody was going to enter the house through the back door.

As negotiation with Hayes continued, Deputy Stone noticed Hayes was extremely intoxicated and very argumentative. Hayes made mention of having weapons, but there

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were no weapons visible to Deputy Stone. Hayes talked about having a nine millimeter and a rifle. Hayes kept telling the deputies if the guys came in through the back door, he was "loaded" and he was going to deal with them. Hayes kept messing with something next to him but the window blocked Deputy Stone from seeing what it was. Detective Mondragon continued to try to talk to Hayes. When Hayes would move to the back of the house, PA announcements were made from the Bearcat. When Hayes returned to the front of the house, they would stop the PA announcements so they could communicate clearly with Hayes.

As time went on, Hayes became more agitated. Deputy Stone saw Hayes drinking from a large bottle of liquor. Hayes told the deputies he was not going to come out of the house until he finished his bottle. Hayes also got on his cell phone and was Face Timing with his brother. At the end of the phone conversation, Hayes became agitated and started crying. Deputy Stone was unable to hear the entire conversation but it sounded like Hayes was saying goodbye.

Around this time, the negotiator, Deputy Harris, showed up at the scene and tried talking to Hayes. Hayes did not appear to like Deputy Harris and became more agitated. After Hayes finished his phone conversation, he said he wanted In-N-Out. Not long after, Hayes pulled out a gun and tried to rack it. Hayes then put the gun up to his head. Deputy Stone was positioned behind the rear passenger side of the Bearcat with Deputy Musgrave. Deputy Musgrave was standing with his rifle up. Deputy Stone decided to switch positions with Deputy Musgrave. Deputy Musgrave had been in the same position, holding his rifle, for approximately thirty minutes so Deputy Stone thought they should switch positions and get a fresh body in there.

Hayes started to count down from five. Deputy Stone got on his optic and tried to figure out what Hayes was going to do. When Hayes got to one, Deputy Stone saw Hayes move the gun from his head and point it straight out towards the deputies who were on the driver's side of the Bearcat. Deputy Stone was afraid Hayes was going to shoot the deputies. Deputy Stone fired one round from his rifle at Hayes. Deputy Stone estimated he was twenty to thirty yards away from Hayes. Deputy Stone also estimated from the time he arrived at the scene to when the shooting took place was thirty five to forty minutes. After Deputy Stone fired, Hayes went down and out of Deputy Stone's view. Deputy Stone did not know whether Hayes had been hit or whether Hayes was still armed.

Sergeant Sandlin took a team of deputies, including Deputy Stone, to the front door of the residence. They were unsuccessful in their attempts to enter the house. They then went to the back of the house and were able to enter through the back door slider. A robot was initially sent inside to start clearing the residence. Deputy Stone entered the residence after the robot was unable to make it upstairs to the second floor. When Deputy Stone got to the top of the stairs, he saw Hayes laying on the floor. Deputy Stone advised the rest of the team Hayes was still breathing when he saw Hayes' chest moving. Deputy Stone saw a firearm lying next to Hayes. Deputy Stone put his foot in between Hayes and the firearm while Detective Mondragon and Detective Corral rendered medical aid to Hayes. Deputy Stone stepped out of the room when fire department personnel entered the residence.

On September 2, 2022, **Detective Michael Corral** was interviewed by Detective Michelle Del Rio and Detective Ian Gosswiller.<sup>6</sup>

On August 11, 2022, **Detective Michael Corral**, from the San Bernardino County Sheriff's Department was assigned to SED. Detective Corral was wearing a tactical dress uniform. Detective Corral's team was notified by LAPD that they were in Victorville conducting surveillance of a house on Westway Lane. The residence was the last known location for a murder suspect, subsequently identified as Byron Hayes. LAPD requested assistance in serving a search warrant and an arrest warrant for Hayes.

Detective Corral was assigned as the medic for the operation. When Detective Corral arrived at the location, he parked his vehicle down the street from the residence to keep the roadway clear for any emergency vehicles that may need to get to the house. Detective Corral ran to the back of the Bearcat that Deputy Henry drove to the location. Detective Corral learned Hayes had contacted LAPD officers and then retreated back inside of the house. Deputy Henry started making PA announcements. After about five minutes, Deputy Henry observed Hayes in one of the upstairs windows.

Detective Mondragon took over the main communication with Hayes. Detective Mondragon told Hayes they had a search warrant for the residence and an arrest warrant for him. Detective Mondragon told Hayes he needed to come out of the residence unarmed. Hayes was argumentative and asked what the warrant was for. Deputy Henry advised the team that Hayes had his phone in his right hand at one point and Hayes was keeping his left hand by his side. Detective Corral considered Hayes armed and dangerous. There was information from Hayes' mother that there was a gun in the house. LAPD also indicated the firearm used in the murder had not been recovered during the investigation.

Hayes was uncooperative and would not comply with commands for him to come out of the house unarmed. Hayes was concerned about LAPD officers trying to come in through the back of the house. At one point, Detective Corral heard Hayes say he would shoot the LAPD officers if they tried to break down his door. Sergeant Sandlin advised them that LAPD officers indicated Hayes had a semi-automatic weapon with him when he came out on the upstairs balcony.

Detective Mondragon continued to negotiate with Hayes. Detective Corral was unable to hear all of the communication between Detective Mondragon and Hayes. Hayes started drinking from a bottle of alcohol. Hayes became more belligerent. Hayes spoke to his brother on the phone. During this time, Hayes accidentally knocked out the window screen. Detective Mondragon was unable to hear Hayes' conversation with his brother but Hayes started to sound more agitated. Deputy Harris, the negotiator, arrived at the scene and tried to talk to Hayes. Hayes did not appear to like Deputy Harris. Therefore, Detective Mondragon continued to talk to Hayes and tried to get him to exit the house.

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<sup>6</sup> Detective Corral reviewed his belt recording prior to being interviewed by Detective Del Rio and Detective Gosswiller.

At one point, Hayes asked for In-N-Out. Deputy Harris tried to ask Hayes what he wanted. Detective Corral heard Deputy Henry say Hayes had pulled out a gun and put it up to his head. Detective Corral peeked over the right side of the Bearcat and saw Hayes had a gun in his left hand pointed at his head. Deputy Henry then advised Hayes just pulled the trigger. All of a sudden, Detective Corral heard gunfire. Detective Corral recalled hearing "a weird like pop" right before he heard shooting from the left side and right side of him. It was a short burst of gunfire. Detective Corral did not know if the "weird like pop" sound was a gunshot. Detective Corral never saw Hayes pull the trigger. Detective Corral also did not know how many rounds were fired from the left and right of him. After the shooting, Detective Corral looked around. No one on his team appeared injured. Detective Corral then asked Sergeant Sandlin to transition to a breach team.

On September 2, 2022, **Deputy Jeffrey Henry**, was interviewed by Detective Ian Gosswiller and Detective Owenn Domon.<sup>7</sup>

On August 11, 2022, **Deputy Jeffrey Henry**, from the San Bernardino County Sheriff's Department was assigned to SED. Deputy Henry was wearing a green tactical dress uniform. On that date Detective Mondragon advised Deputy Henry's team that LAPD was looking for a murder suspect, later identified as Byron Hayes, at a residence on Westway Lane in the City of Victorville. LAPD was requesting assistance in conducting a surround and call out to take Hayes into custody.

Deputy Henry was assigned to drive the Bearcat to the location. Detective Mondragon, Deputy Olivas, and Deputy Musgrave rode with Deputy Henry to the location. When they arrived at the location, Deputy Henry parked the Bearcat, behind a vehicle, in the driveway. He activated the overhead emergency lights and hit the siren on the Bearcat. Deputy Henry then started making PA announcements. Deputy Henry advised the occupants of the residence they had a search warrant and told them to exit the front of the residence, unarmed, with their hands in the air. A few minutes later, Deputy Henry saw Hayes, on the second story of the residence, in a bedroom window right above the garage. Hayes was approximately seven to ten yards away from Deputy Henry. Deputy Henry turned off the Bearcat and stopped giving PA announcements when it looked like Hayes was trying to communicate with deputies.

When Detective Mondragon was talking to Hayes, Hayes expressed concern about LAPD officers trying to come through the back slider door. Hayes said if LAPD came through his back slider door, he was going to start shooting at them and then he was going to come back to the front window and start shooting at the deputies. Based on Hayes' statements, Deputy Henry believed Hayes was armed and was concerned for the safety of his partners and people that may be in the surrounding houses. Hayes wanted to know what the search warrant and arrest warrant were for but they did not tell him the specifics. They did not want to aggravate Hayes so they only said it was for a death investigation.

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<sup>7</sup> Deputy Henry reviewed his belt recording prior to being interviewed.



Hayes was drinking from a bottle of alcohol. Hayes said he would come outside after he finished drinking the bottle. During this time, Hayes appeared to push the screen out of the window. Hayes appeared to be intoxicated. Hayes then called his brother on his cell phone. Hayes told deputies he would come outside after he talked to his brother. At points during the conversation, Hayes would get aggravated and start yelling. His demeanor got more aggressive. Deputy Henry noticed Hayes kept looking down to his left but could not see what specifically Hayes was looking at.

Deputy Harris, the negotiator, arrived at the scene and tried to talk to Hayes. Hayes told Deputy Harris to shut up and would not let Deputy Harris talk. Hayes went back to talking to Detective Mondragon. When Deputy Harris tried to talk to him, Hayes got angry and said, "I've always wanted to try this." Hayes then reached down to his left side and pulled up a black semi-automatic handgun. Deputy Henry said, "Hey, he has a gun, and he's racking it." After Hayes appeared to rack the gun, he dropped to his knees and put the gun up to his head with his left hand.

Hayes started demanding In-N-Out. Deputy Harris said he'd try to get it for him but asked Hayes to first put the gun down. Hayes made eye contact with Deputy Henry and asked if Deputy Henry wanted to see him do it. Deputy Henry shook his head "no." Deputy Henry did not want Hayes or anyone else to get hurt. As he was shaking his head, Deputy Henry saw Hayes' left index fingers squeeze the trigger and nothing happened. Deputy Henry said, "Hey, he squeezed the trigger, and nothing happened." Before Deputy Henry was able to complete his sentence, Hayes pushed the gun straight out directly in the direction of Detective Mondragon. Deputy Henry heard "a pop" which sounded like a gunshot to him.

Deputy Henry thought Hayes had shot at them. Deputy Henry then heard gunshots from the left and right of him. Deputy Henry estimated he heard six to eight rounds fired on his left and two to three rounds fired on his right. As he heard the gunfire, Deputy Henry saw Hayes turn to his right and fall out of view, underneath the window. Deputy Henry heard over the radio, "Shots fired." Deputy Henry estimated from the time he arrived on scene to when shots were fired was thirty minutes. Deputy Henry saw some blood spatter on the wall but did not see Hayes. Deputy Henry did not know whether Hayes had been struck by the gunfire or was just ducking because he was shot at. Deputy Henry got out of the Bearcat to provide coverage to Deputy Olivas who was using a UAV to try and get a look in the window.

On September 1, 2022, **Deputy Cristina Olivas**, was interviewed by Detective Michelle Del Rio and Detective Owenn Domon.<sup>8</sup>

On August 11, 2022, Deputy Cristina Olivas, from the San Bernardino County Sheriff's Department, was assigned to SED. Deputy Olivas was wearing a green operation Crye

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<sup>8</sup> Deputy Olivas reviewed her belt recording prior to being interviewed by Detective Del Rio and Detective Domon.

uniform. On that date, Detective Mondragon notified Deputy Olivas' team that LAPD was looking for a murder suspect, later identified as Byron Hayes, at a residence on Westway Lane in the City of Victorville. LAPD was requesting assistance conducting a surround and call out to take Hayes into custody.

Deputy Olivas rode in the Bearcat to the scene. Deputy Henry parked the Bearcat in the driveway in front of the residence. Initially there was some confusion as to whether LAPD had Hayes in custody. Deputy Olivas quickly learned Hayes had run back inside the house after he had contact with LAPD. Deputy Olivas exited the Bearcat and worked on getting the UAV up in the air. Hayes came to a window on the second floor of the residence and started talking to deputies. Detective Mondragon told Hayes that he had an arrest warrant for him. Hayes wanted to know what the warrant was for. Detective Mondragon spoke with Hayes but, Deputy Olivas did not hear what was said because she was focused on the drone. Hayes then went back inside the house.

Deputy Olivas used the UAV to circle around and check whether Hayes was going to try to exit the house. She saw Hayes come out of the second floor rear sliding door. Hayes spoke to officers who were positioned in the back of the residence and then went back inside. Hayes returned to the second floor window at the front of the house and continued talking to Detective Mondragon. Through the drone, Deputy Olivas was able to see Hayes had something in his left hand. Hayes was drinking from a bottle of alcohol. Hayes stumbled into the window and the screen came out.

Hayes spoke to someone on his cell phone. Deputy Olivas believed Hayes was talking to his brother. During the conversation, Hayes appeared to get agitated. Deputy Harris, the negotiator, arrived and tried to talk to Hayes. Hayes did not like Deputy Harris and told him "fuck off." Hayes wanted to talk to Detective Mondragon or Sergeant Sandlin. Hayes made a comment about his family was going to make a lot of money from this.

Shortly after that, Deputy Olivas saw Hayes go to his left side, retrieve a black semi-automatic handgun and racked it. Deputy Olivas advised the other officers, "Hey, he has a gun." Hayes brought the gun up to his head with his left hand and said, "I've always wanted to do this." Hayes asked for In-N-Out. Deputy Harris tried to find out what Hayes wanted from In-N-Out. Hayes started to count down from five. Deputy Olivas did not see Hayes pull the trigger but heard Deputy Henry say Hayes pulled the trigger and nothing happened. Deputy Olivas was mainly focused on the drone. Deputy Olivas saw Hayes' hand come forward quickly. Hayes had the firearm pointed at Deputy Olivas' partners. Next, Deputy Olivas heard shots fired. Hayes went down and appeared to dive back into the bedroom.

Deputy Olivas lost sight of Hayes. Eventually, Deputy Olivas was able to maneuver the drone to get a visual of Hayes. Deputy Olivas advised Sergeant Sandlin she saw Hayes in the room but he was not moving. Deputy Olivas estimated she heard five to ten gunshots. Deputy Olivas also estimated from the time they arrived to the time the lethal force encounter occurred was forty five minutes.

On September 2, 2022, **Deputy Clarence Harris**, was interviewed by Detective Michelle Del Rio and Detective Owenn Domon.<sup>9</sup>

On August 11, 2022, Deputy Clarence Harris, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victorville station. Deputy Harris was wearing a standard "Class A" San Bernardino County Sheriff's Department uniform and driving a marked patrol vehicle. Deputy Harris was one of the crisis negotiators for SED. Deputy Harris responded to a residence on Westway Lane in the City of Victorville. SED was assisting LAPD who was looking for a murder suspect. Deputy Harris wanted to assist SED if they needed a negotiator.

When Deputy Harris arrived at the location, he parked his patrol vehicle and walked to the area in front of the residence. Deputy Harris met with Sergeant Sandlin, behind the Bearcat, and got a briefing about what had occurred. Deputy Harris saw the suspect, Byron Hayes, on a FaceTime call with a relative. When Hayes finished his call, Deputy Harris tried to talk to Hayes. Hayes told Deputy Harris to shut up and "fuck you." Hayes told Deputy Harris he did not want to talk to him at all. Hayes appeared to like Sergeant Sandlin, so Deputy Harris let Sergeant Sandlin continue to talk to Hayes.

During this time, Deputy Harris saw Hayes drinking alcohol from a bottle. At one point, Hayes started yelling and screaming. Hayes took his penis out and put it on the windowsill of the window where he was standing. Deputy Harris noticed there was no getting through to Hayes. Hayes was intoxicated. Deputy Harris was talking to a LAPD officer when he heard Hayes yelling and SED giving commands.

Deputy Harris turned around and saw Hayes in the windowsill. Hayes had a gun in his left hand pointed in the air. Deputy Harris took cover behind a black van. Hayes called out for the negotiator so Deputy Harris broke cover and moved to the rear driver side of the Bearcat. Hayes had the gun pointed at Hayes' head. Hayes demanded In-N-Out. Deputy Harris said he would try to work on Hayes' order. Hayes got upset and started talking about shooting himself in the head.

Hayes started counting down from five. When Hayes got to one, he pulled the trigger to the gun. Deputy Harris could hear when Hayes pulled the trigger. Deputy Harris could also hear when the firing pin hit the back portion of the gun because there was no round inside the gun. Deputy Harris was thrown off when he heard that and had expected the gun to go off. Hayes started laughing. Hayes then pointed the gun outward, directly at the deputies. Deputy Harris heard two shots from Hayes. Deputy Harris stepped behind the Bearcat and ducked down. SED deputies shot back at Hayes. Deputy Harris stayed behind the Bearcat. SED formulated a plan on how they were going to make entry into the residence.

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<sup>9</sup> Deputy Harris reviewed his belt recording prior to being interviewed by Detective Del Rio and Detective Domon.

On August 12, 2022, **Lieutenant Charles Baley**, was interviewed by Deputy Dylan Gossweiler and Detective Ian Gossweiler.

On August 11, 2022, **Lieutenant Charles Baley**, from the LAPD was assigned to the LAPD Gang and Narcotics Division. Lieutenant Baley oversaw a Federal Bureau of Investigations Fugitive Task Force. The Task Force was looking for a murder suspect by the name of Byron Hayes in the City of Victorville. Lieutenant Baley was wearing plain clothes with a black LAPD tactical vest and a ballistic helmet.

On that date, Lieutenant Baley went to the Westway Lane residence where Hayes had been located. SED was helping LAPD by conducting a surround and call out. When Lieutenant Baley arrived at the location, he saw the SED armored vehicle was parked in the driveway in front of the residence. SED was giving Hayes commands to come out of the house with his hands up. Lieutenant Baley heard an unknown deputy say Hayes held a gun to his head.

Lieutenant Baley took a position behind a white utility truck with a K9 in the backseat. Lieutenant Baley estimated he was 100 feet from where SED was positioned. At one point, Lieutenant Baley heard Hayes say he would kill himself if he was not brought In-N-Out. Approximately thirty five minutes after the surround and call out was initiated, Lieutenant Baley saw Hayes in a second story window of the residence. Hayes crouched down and lifted a black semi-automatic pistol and pointed it out the window. Lieutenant Baley heard a single pop, which he believed was a small-caliber gunshot from a handgun. Lieutenant Baley did not see a muzzle flash, but believed Hayes had shot at deputies.

Immediately after the first gunshot, Lieutenant Baley heard more than ten gunshots in rapid succession. The volley of gunshots sounded like they were from rifles. Lieutenant Baley estimated the gunshots lasted one to two seconds. It sounded to Lieutenant Baley like multiple rifles were fired at the same time. Lieutenant Baley saw what he believed were bullet strikes on the exterior wall below the windowsill. Lieutenant Baley believed Hayes would have continued to shoot at deputies if they did not shoot at Hayes. Lieutenant Baley did not see what happened after the shooting.

On August 12, 2022, **Detective Brian Whetsel**, was interviewed by Detective Bryan Sprague.

On August 11, 2022, **Detective Brian Whetsel**, from the LAPD was assigned to the LAPD Gang and Narcotics Division. Detective Whetsel was the supervisor of the LAPD's Gang and Narcotics Division FBI Fugitive Task Force. The Task Force was looking for a murder suspect by the name of Byron Hayes. Hayes was believed to be at a residence on Westway Lane in the City of Victorville. Detective Whetsel had notified Detective Mondragon that the Task Force would be in Victorville looking for Hayes and they would need assistance from SED if Hayes refused to leave the house.

On that date, at around 5:20 in the evening, Detective Whetsel met with SED personnel at a school parking lot near the Westway Lane residence. Detective Whetsel briefed SED about the circumstances of the investigation. After the briefing, they proceeded to the Westway Lane residence. Detective Whetsel called Detective Mondragon and advised him Hayes had exited the home but when LAPD investigators attempted to make an arrest, Hayes ran back inside the house. When they arrived at the location, Detective Whetsel stayed near the Bearcat. During the incident, Hayes appeared in the second story window that overlooked the driveway. Hayes would go back and forth from the front of the residence to the back of the residence, yelling at officers.

At one point during the incident, Detective Whetsel heard Hayes yell that he would kill himself if he was not given In-N-Out. SED personnel broadcast over the radio that Hayes had a handgun pointed at his head. Detective Whetsel looked and saw Hayes kneeling near the second story window. Hayes was holding a semi-automatic pistol to his head. While Detective Whetsel was behind the Bearcat, he heard a single, small caliber gunshot. Detective Whetsel was not looking at the second story window when the gunshot was fired. However, based on the sound he heard, Detective Whetsel believed the gunshot came from the residence. Detective Whetsel thought Hayes had shot at SED or LAPD investigators.

Within a second of that gunshot, Detective Whetsel heard multiple gunshots near the Bearcat. The gunshots were to his left and right. Detective Whetsel estimated he heard eight to ten gunshots during the volley. Detective Whetsel thought the gunfire sounded as if it came from a rifle. After the shooting stopped, Detective Whetsel looked toward the second story window. Detective Whetsel could not see Hayes but did see blood on the window frame.

### **STATEMENTS BY CIVILIAN WITNESSES**

On August 11, 2022, **Witness #2**, was interviewed by Detective Ian Gosswiller.

On August 11, 2022, **Witness #2**, was living at a residence on Westway Lane in the City of Victorville. On that date at around 3:30 in the afternoon, Witness #2 saw several police vehicles in the area. There was a tactical vehicle in the driveway of \*\*\*\*\* Westway Lane. Witness #2 saw multiple police officers. Witness #2 knew they were police officers because they were wearing helmets, black vests with the word "POLICE" on the back, and had handguns on their hips.

Witness #2 saw a male subject, later identified as Byron Hayes, leaning out a second story window at \*\*\*\*\* Westway Lane. Witness #2 heard Hayes say he was going to kill himself. Hayes was holding a gun in his hand and talking to law enforcement personnel who were in the driveway. Hayes laughed and joked and progressively got louder. Witness #2 heard Hayes start counting down from four to one. After Hayes said "one," Witness #2 heard a single gunshot. There was a slight pause, less than a second, followed by multiple

gunshots. The gunfire stopped almost immediately. It appeared to Witness #2 that Hayes had fired a round at law enforcement and they fired back. Witness #2 indicated it sounded like five separate guns were fired.

On August 11, 2022, **Witness #3**, was interviewed by Deputy Dylan Gosswiller.

On August 11, 2022, **Witness #3**, was living at a residence on Westway Lane in the City of Victorville. On that date, at around 3:30 in the afternoon, Witness #3 pulled into her driveway. Witness #3 saw approximately 10 officers wearing tactical gear. There was an armored vehicle in the roadway in front of \*\*\*\*\* Westway Lane. Witness #3 saw a subject, later identified as Byron Hayes, standing in a second story window facing the officers. Hayes was yelling at the officers. Hayes said such things as, "You are going to ruin my life," "What are you doing to me," "I am not going to come out," and "I don't need to come out." Witness #3 heard officers tell Hayes to come out with his hands up and to come out unarmed. At around 3:45 in the afternoon, Witness #3 heard multiple gunshots in rapid succession.

### **INCIDENT VIDEO**

**LAPD BODY CAMERA RECORDINGS.** There were four LAPD body worn camera video recordings submitted. All body camera video recordings were reviewed in their entirety. The videos were reviewed in their entirety.<sup>10</sup>

#### **Officer Timothy Pecina<sup>11</sup>**

Officer Pecina was standing at the southwest corner of the backyard of the Westway Lane residence. Officer Pecina announced he had movement at the door. Officer Pecina told Officer Cox, who was at the southwest corner of the residence, that "He's coming out." Officer Pecina pointed his handgun toward the downstairs sliding glass door. Officer Pecina shouted, "Let me see your hands. Get your fuckin' hands up! Come out with your hands up." SED could be heard giving PA announcements. The announcements said, "Occupants of \*\*\*\*\* Westway Lane, Victorville. This is the San Bernardino County Sheriff's Department. We have a search warrant for the location. All occupants of the residence come through the front door, unarmed, with your hands in the air."

As Officer Pecina walked toward Officer Cox, Hayes exited the sliding door to the balcony at the back of the house. Officer Pecina and Officer Cox told Hayes to put his hands up.

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<sup>10</sup> Two of the body camera video recordings were of LAPD officers contacting Hayes' mother in her vehicle. The lethal force encounter was not captured on those recordings and will not be included in the summary.

<sup>11</sup> The video recording from Officer Pecina's body camera was approximately fifty minutes in length. The summary will cover Officer Pecina's contact with Hayes in the back yard.

Hayes put his hands above his head. Hayes held a bottle in his left hand. Officer Cox told Hayes he had a warrant for his arrest. Hayes asked what he was being arrested for. Officer Pecina told Hayes he was being arrested on a warrant. Officer Cox asked Hayes to go to the front of the residence. Hayes refused and said, "I'm not coming to the front door. You not gonna shoot me neither. I'm not gonna let you neither, and I have a semi-automatic, so we're gonna figure this out right now!" Hayes went back inside the house.

At a later point, Hayes walked back outside on the balcony. Officer Cox ordered Hayes to show his hands. Officer Cox told Hayes to go back to the front of the residence and communicate with the officers. Hayes went back inside the house but later returned to the rear balcony. Officer Cox told Hayes, "Go out the front door. I heard them tell you that." Hayes left and went back inside the residence.

Officer Cox told Officer Pecina to follow him north across the backyard of the residence. As Officer Cox and Officer Pecina reached the north side of the backyard, several gunshots were heard in rapid succession.

#### **Officer Sam Oh<sup>12</sup>**

In the background, Deputy Harris could be heard talking to Hayes. Deputy Harris told Hayes he was the negotiator. Officer Oh told Sergeant Sandlin that LAPD officers posted in the backyard of Hayes' residence would head north through the backyard and exit the property. Hayes could be heard in the background as he cursed at SED personnel.

Officer Oh and Detective Whetsel spoke with Deputy Harris. Hayes could be heard in the background communicating with SED. Hayes could be heard yelling. At one point, Detective Whetsel approached Detective Corral and asked for permission to have Officer Cox and Officer Pecina move north through the backyard and exit the property. Hayes yelled for the negotiator and could be heard in the background asking for a meal from In-N-Out. Hayes threatened to pull the trigger on himself. Deputy Harris said he would work on getting the burger for Hayes but asked Hayes to put the gun down. Hayes started to count down from five. A volley of gunshots were heard, followed by a vehicle alarm.

#### **INCIDENT AUDIO**

**BELT RECORDINGS.** There were ten San Bernardino County Sheriff's Department belt recordings submitted. All belt recordings were submitted in their entirety. The summary

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<sup>12</sup> The video recording from Officer Oh's body camera was approximately forty eight minutes in length. The summary will cover Hayes' actions in the front of the residence which were captured on the video.

will be based on Detective Mondragon's belt recording.<sup>13</sup> All other belt recordings were consistent with what was heard on Detective Mondragon's belt recording.

### **Detective Eugene Mondragon**

Detective Mondragon spoke to someone about the target being out on the street. Detective Mondragon said they were taking him down right now. He told another person to get everyone out of the street. A vehicle could be heard stopping. Detective Mondragon said, "Let's just set up." Someone advised that he's back in the house. Deputy Henry made multiple PA announcements. Siren could be heard in the background. Detective Mondragon advised the other deputies they're communicating with Hayes so stop the PA announcements.

A LAPD officer spoke to Detective Mondragon about what occurred prior to SED's arrival. Detective Mondragon told Deputy Henry to continue making PA announcements. Deputy Henry could be heard advising the occupants they were the San Bernardino County Sheriff's Department and they had a search warrant for the residence. Deputy Henry told the occupants to come out through the front door, unarmed, with their hands in the air.

Hayes came to the window and started talking to SED. Hayes asked what the warrant was for. Deputy Henry told Hayes that they had a search warrant for the location and ordered Hayes to come out through the front door, unarmed, with his hands in the air. Deputies told Hayes they had a warrant for his arrest and ordered him to exit the house. Hayes continued to ask what the warrant was for. Hayes said he would come down but wanted to know what the warrant was for. Hayes sounded upset and refused to come down because they would not tell him what the warrant was for. Detective Mondragon asked Hayes to come out so they could do things safely.

Hayes told Detective Mondragon if they came through the back door he would "react." Hayes warned Detective Mondragon he was "loaded." Hayes yelled at Detective Mondragon he could hear them at the back door. Hayes said he did not mind going to jail. Detective Mondragon said he walked away from the window. Deputy Henry started making more PA announcements.

Hayes could be heard yelling at SED. Detective Mondragon told Hayes to listen to his commands. Detective Mondragon told Hayes he knows he is coming out. Hayes could be heard yelling in the background. Detective Mondragon told Hayes they know he is going to come out of the front door. Hayes continued to talk to SED. Detective Mondragon reassured Hayes they were not coming through the back door. Detective Mondragon advised Hayes knocked out the screen by accident. Detective Mondragon continued to talk to Hayes. He told Hayes to make sure he listened to his commands. Detective

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<sup>13</sup> Detective Mondragon's belt recording was approximately one hour and four minutes in length. The summary will only cover from the start of the recording to the time of the lethal force encounter.



Mondragon could be heard talking on the phone. Hayes could be heard yelling and talking loudly in the background.

A deputy called out to Byron and said, "Hey, Byron. Byron, hey, I gave you your time. I gave you your time man. Are you good?" Hayes asked if he wanted him to get off the phone. The deputy said yes and thanked Hayes. Deputy Harris could be heard trying to talk to Hayes. He told Hayes he's one of the negotiators. Hayes was yelling in the background. Deputy Harris tried to tell Hayes nobody was coming in through the back. Hayes started cursing and yelling. Detective Mondragon told Hayes they were there to get Hayes out safely.

Hayes yelled he wanted In-N-Out. Hayes asked for the negotiator. Hayes told Deputy Harris he wanted a burger. Deputy Harris told him he would work on that but he needed Hayes to put the gun down. Hayes said he was going to pull the trigger on himself. Hayes started counting down from five. Multiple gunshots could be heard and then a vehicle alarm went off.

### **WEAPONS**

A black "SPHINX" 9mm pistol was located near Hayes. There was one misfed cartridge from the chamber of the pistol.

### **DECEDENT**

**AUTOPSY.** Witness #4, Forensic Pathologist for the Coroner Division of the San Bernardino County Sheriff's Department, conducted the autopsy of Byron Hayes on August 16, 2022. Witness #4 determined the cause of death was multiple gunshot wounds.

#### **Number One - Gunshot Wound of the Head<sup>14</sup>:**

A combined entrance-exit wound was noted on the right parietal scalp, 8.5 cm below the top of the head and 9 cm right of the posterior midline. The direction of the wound path was from front to back and upward.

#### **Number Two – Grazing Gunshot Wound of the Right Cheek:**

A grazing gunshot wound was noted on the right cheek, 15.5 cm below the top of the head and 6 cm right of the anterior midline. The direction of the wound path could not be definitively determined.

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<sup>14</sup> The numbering of the gunshot wounds is for reference only and not meant to indicate the order in which the gunshots occurred.

**Number Three – Grazing Gunshot Wound of the Right Cheek:**

A grazing gunshot wound was noted on the right cheek, 15 cm below the top of the head and 9 cm right of the anterior midline. The direction of the wound path could not be definitively determined.

**Number Four – Grazing Gunshot Wound of the Right Ear:**

A grazing gunshot wound was noted on the right ear, 13.5 cm below the top of the head and 17 cm right of the anterior midline. The direction of the wound path could not be definitively determined.

**Number Five – Tangential Gunshot Wound of the Lower Jaw:**

A tangential gunshot wound was noted on the lower right jaw, 20 cm below the top of the head and 3.5 cm right of the posterior midline. The direction of the wound path was front to back.

**Numbers Six and Seven – Entrance Gunshot Wounds of the Right Forearm:**

A gunshot entrance wound was noted on the right forearm. An anterior medial wound was noted 6 cm below the top of the elbow and 4 cm medial of the anterior midline of the right upper extremity.

A gunshot entrance wound was noted on the right forearm. An anterior wound was noted 9.5 cm below the top of the elbow and at the anterior midline of the right upper extremity.

**Numbers Eight and Nine – Exit Gunshot Wounds of the Right Forearm:**

A posterior wound was centered 12 cm below the top of the elbow and at the posterior midline of the right upper extremity. The direction of the wound path was front to back.

A posterior medial wound was centered 8 cm below the top of the elbow and 4 cm medial of the posterior midline of the right upper extremity. The direction of the wound path was front to back.

**Number Ten – Gunshot Wound of the Right Hand:**

A gunshot entrance wound was noted on the right hand, 29 cm below the top of the elbow and 6 cm medial of the posterior midline of the right upper extremity. Two exit wounds were noted on the dorsum of the right hand. The direction of the wound path was left to right.

**Number Eleven – Tangential Gunshot Wound of the Left Arm:**

A tangential gunshot wound was noted on the anterior left arm, 28 cm below the top of the shoulder and 5.5 cm lateral of the anterior midline of the left upper extremity. The direction of the wound path was right to left and upward.

**Number Twelve – Gunshot Wound of the Left Forearm:**

A gunshot entrance wound was noted on the distal left forearm, 12 cm below the top of the elbow and 1 cm medial of the anterior midline of the left upper extremity. The direction of the wound path was right to left and upward.

**TOXICOLOGY.** Femoral blood sample was collected from Byron Hayes on August 16, 2022.

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

- Ethanol – 169 mg/dL
- Blood Alcohol Concentration – 0.169 g/100mL
- Caffeine – presumptive positive

**CRIMINAL HISTORY.**

2003, 211 of the Penal Code, Second Degree Robbery. Orange County Court case number DL016685-01.

2016, NM Stat §30-02-03 (B), Involuntary Manslaughter. Albuquerque, New Mexico.

**DE-ESCALATION**

From the time SED arrived at the location to the time of the lethal force encounter was approximately thirty seven minutes. SED was aware that Hayes was wanted for murder, the firearm used in the murder was still outstanding, and that Hayes had a violent criminal history. With the goal of taking Hayes safely into custody, SED and LAPD made efforts to de-escalate the situation during this time frame. They took time to communicate with Hayes and did not rush into the residence to make an arrest.

Deputy Henry parked the Bearcat in the driveway of the residence. Deputy Henry immediately started making PA announcements. Deputy Henry said, "Occupants of 12687 Westway Lane, Victorville. This is the San Bernardino County Sheriff's Department. We have a search warrant for the location. All occupants of the residence come through the

front door, unarmed, with your hands in the air.” Hayes did not comply with the PA announcements.

Initially, Hayes was communicating with both SED and LAPD. Hayes would go back and forth from the front of the house to back of the house. SED and LAPD both made efforts to get Hayes to exit the residence. When Hayes was in the back of the house, LAPD officers told Hayes he had a warrant for his arrest. LAPD also told Hayes to follow SED’s commands and exit the house. When Hayes was in front of the house, SED repeatedly told Hayes he had a warrant for his arrest and he needed to exit the house through the front door, unarmed, with his hands in the air. Hayes warned SED he was armed and if officers tried to come through the back door he would shoot them. SED repeatedly reassured Hayes nobody would enter the residence through the back and they wanted things to end safely.

During the incident, Hayes was given time to finish drinking a bottle of alcohol. Hayes was also given time to speak to his brother on the phone. In a continued effort to de-escalate the situation, SED made the decision to bring in one of their crisis negotiators. Deputy Harris tried to talk to Hayes. Deputy Harris wanted to get Hayes to exit the residence and surrender. Deputy Harris appeared to agitate Hayes. Hayes became upset and told Deputy Harris to shut up. When Hayes appeared more inclined to talk to Sergeant Sandlin, Deputy Harris took a different approach to the negotiations. Deputy Harris decided to assist Sergeant Sandlin with his efforts to get Hayes to surrender. Hayes, however, would not cooperate with law enforcement officers and started yelling and screaming. At one point, Hayes even took out his penis and put it on the windowsill. It appeared to Deputy Harris they were not going to be able to get through to Hayes and explored the possibility of getting Hayes’ mother to come talk to Hayes.

During the incident, Hayes pulled out a gun and put it up to his head. Hayes threatened to shoot himself and demanded In-N-Out. Deputy Harris told Harris he would work on getting the food but told Hayes he first needed to put the gun down. Hayes would not listen to Deputy Harris and started to count down from five. It did not appear Hayes intended to comply with SED’s commands to exit the house, unarmed, with his hands in the air.

### **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).)<sup>15</sup> 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).)

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<sup>15</sup> All references to code sections here pertain to the California Penal Code.

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

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

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

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

(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,<sup>16</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In

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

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

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

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (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;<sup>17</sup>

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<sup>17</sup> 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

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

(Penal C. §835a(a).)

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

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

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

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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).

imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

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

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

(Penal C. §835a(e)(2).)

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

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

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

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



When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a "reasonable police officer" standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)<sup>18</sup> To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

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

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

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

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<sup>18</sup> 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.

facing a possible assailant than to someone analyzing the question at leisure.

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

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

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

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

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

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

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

### **ANALYSIS**

In this case, Detective Mondragon, Detective Lukacs, Deputy Musgrave, Deputy Stone, and Deputy Haas each had an honest and objectively reasonable belief that Hayes posed an imminent risk of serious bodily injury or death to them. They responded to the Westway Lane residence to assist LAPD and conduct a surround and call out. Hayes was barricaded inside the house. SED was advised by LAPD that Hayes was wanted for a murder in Los Angeles County, the murder weapon used in the crime was still outstanding, and Hayes had a violent criminal history.

Detective Mondragon, Detective Lukacs, Deputy Musgrave, Deputy Stone, and Deputy Haas were all in uniforms which identified them as law enforcement officers. Deputy Henry made PA announcements that identified them as being from the San Bernardino County Sheriff's Department. Deputy Henry advised the occupants of the residence to exit the house through the front door, unarmed, with their hands in the air. Hayes failed to comply with any of the PA announcements. During the incident, Hayes was intoxicated and his behavior was erratic. At one point, Hayes made a FaceTime call to his brother. During their phone conversation, Hayes appeared upset and told his brother "goodbye." SED became concerned Hayes was suicidal. Throughout the incident, Hayes refused to comply with verbal commands from both SED and LAPD to exit the house unarmed. Instead, Hayes threatened to shoot any officers who tried to enter the house through the back slider door.

During the incident, Hayes brandished a firearm, racked it, and put it up to his head. Detective Mondragon, Detective Lukacs, Deputy Musgrave, Deputy Stone, and Deputy Haas now had confirmation that Hayes was in fact armed. The deputies honestly and reasonably believed they were in danger when Hayes demanded In-N-Out and started to count down from five. Hayes appeared more agitated and was upset with SED. There had been ongoing efforts to negotiate with Hayes for approximately thirty minutes. Those negotiation efforts were unsuccessful and Hayes still had not peacefully surrendered.

As Hayes counted down, Deputy Henry saw Hayes pull the trigger but the gun did not go off. Deputy Harris heard Hayes pull the trigger but was surprised when the gun did not fire. Before Deputy Henry was able to warn the other deputies of Hayes's actions, Hayes immediately pointed the gun out the window directly at the SED deputies. Detective Mondragon, Detective Lukacs, Deputy Musgrave, Deputy Stone, and Deputy Haas honestly and reasonably believed Hayes was going to shoot them. Hayes posed an imminent threat to their physical safety. The risk of serious bodily injury or death was significant.

Detective Mondragon and Deputy Haas were approximately twenty yards from Hayes. Detective Lukacs was approximately four to five feet away from Detective Mondragon. Deputy Musgrave was approximately ten to fifteen yards from Hayes. Deputy Stone was approximately twenty to thirty yards from Hayes. Fearing for their lives as well as the lives of their partners, Detective Mondragon, Detective Lukacs, Deputy Musgrave, Deputy Stone, and Deputy Haas were given no choice but to fire their weapons. Given those circumstances, the decision by Detective Mondragon, Detective Lukacs, Deputy Musgrave, Deputy Stone, and Deputy Haas to use deadly force was justified.

### **CONCLUSION**

Based on the facts presented in the reports and the applicable law, Deputy Chris Haas' use of lethal force was a proper exercise of his right of self-defense and defense of others and therefore his actions were legally justified.

Based on the facts presented in the reports and the applicable law, Detective Bela Lukacs' use of lethal force was a proper exercise of his right of self-defense and defense of others and therefore his actions were legally justified.

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

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

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

**Submitted By:**  
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