



## **PUBLIC INFORMATION RELEASE MEMORANDUM**

**DATE:** July 22, 2025

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

**Officers:** Deputy Eugene Juarez  
San Bernardino County Sheriff's Department

**Involved Subject:** Cole Bierma (Injured)  
Date of Birth \*\*/\*\*/\*\*

**Date of Incident:** May 27, 2022

**Incident location:** 5th Street and Pecan Avenue  
Yucaipa, CA

**DA STAR #:** 2024-27576

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

**Case Agent:** Detective Francisco Demara

**Report Number #:** DR# 142201719 / H# 2022-059

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### **PREAMBLE**

This was a non-fatal officer involved shooting by a deputy 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 Police Department, DR# 142201719 / H# 2022-059.

## **FACTUAL SUMMARY**

On May 27, 2022, Deputy Eugene Juarez, from the San Bernardino County Sheriff's Department, responded to a call for service regarding a battery at \*\*\*\*\* 5th Street in the City of Yucaipa. A neighbor had observed Cole Bierma assault his father, Witness #1<sup>1</sup>, and called 9-1-1. While enroute, Deputy Juarez heard a second call for service regarding an adult male, carrying a knife with a three to four inch blade, walking east on Yucaipa Boulevard. Deputy Juarez believed the two calls could be related. As Deputy Juarez drove south on 5th Street, south of Yucaipa Boulevard, he saw Bierma walking. Bierma appeared to match the description of the man walking with a knife.

Deputy Juarez had driven past Bierma so he stopped and put his patrol car in reverse, and backed his patrol vehicle along the curb line. Deputy Juarez stopped along the curb, in front of where Bierma was standing, and got out of his patrol vehicle. Deputy Juarez was at the rear quarter panel on the driver side of the vehicle when he contacted Bierma. Bierma told Deputy Juarez, "Better pull out your gun." Deputy Juarez saw Bierma, holding a large knife, quickly walking toward him. Deputy Juarez asked Bierma, "What's going on?" Bierma repeated, "Better pull your gun out." Deputy Juarez started backing up and pulled out his handgun.

Civilian witnesses saw Bierma advancing quickly toward Deputy Juarez. Deputy Juarez knew he would need both hands on his weapon if he fired at Bierma. Deputy Juarez broadcasted "14-Paul-21, shots fired, shots fired." Deputy Juarez dropped the microphone for his radio and put both hands on his firearm. Deputy Juarez identified himself as "Sheriff's Department" and ordered Bierma to put the knife down. Bierma refused to comply with Deputy Juarez's verbal commands and continued to move closer to Deputy Juarez. Deputy Juarez feared he was about to be stabbed and fired three rounds at Bierma.

After the shooting, Deputy Juarez and Bierma fell to the ground. Deputy Juarez got up and went over and checked on Bierma. Bierma had been struck by the gunfire and was on the ground moaning. Deputy Juarez requested medical aid for Bierma. Personnel from Cal-Fire Department and American Medical Response arrived at the scene and rendered aid to Bierma. Bierma was transported by ambulance to the hospital. Bierma suffered gunshot wounds to his abdomen, left buttock, and right forearm.

A switchblade style folding knife was located in the gutter along the west side of the roadway. The blade of the knife was open and in a fixed position. The knife measured 9.5 inches long.

On April 22, 2024, Bierma was interviewed by detectives about the incident. Bierma said in May 2022 he was struggling with drug addiction and wanted to end his life by "suicide

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<sup>1</sup> Witness #1 shares the same last name as Cole Bierma and therefore will be referred to as Witness #1 throughout the rest of the memorandum.

by cop.” Bierma planned to charge at a deputy with a knife and hoped the deputy would shoot him in the head. When Bierma saw Deputy Juarez, he thought this was his opportunity to end his life. Bierma said he removed a knife from his pocket and pointed the blade at Deputy Juarez. Bierma said his goal was to die. Bierma felt lucky to be alive and was sorry for what he put Deputy Juarez through that day.

### **STATEMENTS BY POLICE OFFICERS**

On June 7, 2022, **Deputy Eugene Juarez** was interviewed by Detective Brett Chandler and Detective Mauricio Rivas.<sup>2</sup>

On May 27, 2022, **Deputy Eugene Juarez**, from the San Bernardino County Sheriff's Department was assigned to patrol at the Yucaipa station. Deputy Juarez was wearing a San Bernardino County Sheriff's Department Class “A” uniform and driving a marked patrol vehicle. On that date, at around 1:30 in the afternoon, Deputy Juarez was dispatched to a battery call where a father was being assaulted by his adult son. Deputy Juarez responded to the call when a couple minutes later a second call for service came out, over the radio, of a man with a knife walking in the area of Yucaipa Boulevard and 5th Street. When Deputy Juarez drove on 5th Street he saw a subject, later identified as Cole Bierma, standing on the side of the road. Bierma was wearing dark shorts and no shirt. Deputy Juarez noticed Bierma matched the description of the man with a knife.

Deputy Juarez stopped his patrol vehicle. Deputy Juarez backed up his patrol vehicle along the curb line of 5th Street. Deputy Juarez parked and exited his vehicle in front of where Bierma was standing. Deputy Juarez contacted Bierma as Deputy Juarez reached the driver side, rear quarter panel, of the patrol unit. Bierma was approximately six to eight feet away from the patrol vehicle. Deputy Juarez heard Bierma say, “Better pull your gun out.” Deputy Juarez noticed Bierma had a knife in his right hand and was moving toward Deputy Juarez. Bierma held the knife about chest high with the blade pointed out toward Deputy Juarez. Deputy Juarez pulled out his handgun and started backing up.

Bierma started moving quickly toward Deputy Juarez. Deputy Juarez described Bierma's movement as between a fast walk and a slow jog. Bierma was still holding the knife in his right hand. Deputy Juarez feared for his life and thought Bierma was going to kill him. Deputy Juarez believed he was going to have to shoot Bierma because Bierma was getting too close. Deputy Juarez put out “shots fired” over the radio, dropped the microphone for his radio, and put both hands on his gun. Deputy Juarez estimated Bierma was five feet away from him when he called out “shots fired.” Deputy Juarez froze. Bierma followed to the right of Deputy Juarez, almost trying to flank Deputy Juarez. Deputy Juarez did not fire his weapon at that time. Deputy Juarez continued to back up to the front bumper of his patrol vehicle. Deputy Juarez told Bierma, “Drop the knife.” Again, Bierma walked quickly

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<sup>2</sup> Deputy Juarez reviewed his belt recording, photographs, and dispatch recordings prior to being interviewed by Detective Chandler and Detective Rivas.

toward Deputy Juarez. Bierma still held the knife in his hand. At this time, Deputy Juarez fired three shots at Bierma. Deputy Juarez tripped and fell backwards as he was backing away from Bierma.

Deputy Juarez estimated Bierma was four feet away from him when he fired his weapon. Deputy Juarez estimated from the time he exited his patrol vehicle to the time he fired his weapon was thirty seconds. After the shooting, Deputy Juarez got back up on his feet. Deputy Juarez saw Bierma on the ground, laying on his left side and holding himself. Deputy Juarez put out "shots fired" over the radio and requested medical aid for Bierma. Deputy Bradley Heard arrived at the scene and had Bierma turn over from his back to his stomach. Deputy Juarez saw the knife laying on the ground next to Bierma. Fire Department personnel arrived at the scene a minute or two later.

### **STATEMENTS BY CIVILIAN WITNESSES**

On May 28, 2022, **Witness #1** was interviewed by Detective Cory Drost and Detective Mauricio Rivas.

Witness #1 is the father of Cole Bierma. In May 2022, Witness #1 lived at a residence located at \*\*\*\*\* 5th Street along with Bierma and his wife, Witness #2<sup>3</sup>. Witness #1 said Bierma was dealing with drug addiction and his addiction made him suicidal. Witness #1 indicated he was aware of four prior suicide attempts by Bierma in the past. On May 27, 2022, Witness #1 and Witness #2 were having problems with Bierma. On that date, Witness #1 told Bierma he needed to move out. Witness #1 told Bierma to pack his stuff and that he would meet Bierma out on the curb with Bierma's medications. After Witness #1 gave Bierma his medications, Bierma took off down the street.

Approximately one hour later, Bierma returned to the residence and told Witness #1 he needed his wallet. Witness #1 let Bierma retrieve a couple of wallets out of his bedroom and then told Bierma he needed to leave. Witness #1 walked Bierma outside to the street. Witness #1 said Bierma had a glass of water in his hand and appeared agitated. When they were outside, Bierma threw the water in Witness #1's face. Witness #1 indicated Bierma and he pushed one another a couple of times. Bierma also threatened to break the windows in the house. Witness #1 went back inside the house and sat down. Suddenly, Witness #1 heard a crash through the window. Witness #1 believed Bierma threw something through the window.

Witness #1 went back outside and saw Bierma walking down the street. A couple of minutes later, Witness #1 heard a knock on his door. When Witness #1 opened the door, there was a female deputy, later identified as Deputy Stephanie Olvera, standing there.

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<sup>3</sup> Witness #2 shares the same last name as Cole Bierma and therefore will be referred to as Witness #2 throughout the rest of the memorandum.

Deputy Olvera said she needed to verify an address. While they were talking, Witness #1 heard “boom, boom, pop.” Witness #1 believed that was when Bierma was shot. Deputy Olvera then ran down the street. When Deputy Olvera returned, Witness #1 said, “Was it Cole?” Deputy Olvera advised Witness #1 that Bierma was conscious and breathing. She told Witness #1 that Bierma had been shot in the leg, Bierma was being taken to the hospital, and that he was going to make it.

On May 28, 2022, **Witness #2** was interviewed by Detective Cory Drost and Detective Mauricio Rivas.

Witness #2 is the mother of Cole Bierma. In May 2022, Witness #2 lived at a residence located at \*\*\*\*\* 5th Street along with Bierma and her husband, Witness #1. On May 27, 2022, Witness #2 was not present at the house when the incident under review took place. Witness #1 texted Witness #2 and told her that Cole had been shot. Witness #2 provided some background information on Bierma. Witness #2 said Bierma has struggled with drugs for years and has made multiple attempts to commit suicide. Witness #2 indicated she was aware of five to six suicide attempts by Bierma in the past. Witness #2 also said Bierma heard voices and talked about suicide by cop in the past.

On May 27, 2022, **Witness #3** was interviewed by Detective Cory Drost and Detective Brett Chandler.

On May 27, 2022, Witness #3 was driving down 5th Street towards Yucaipa Boulevard when he saw a stopped patrol vehicle. He saw a second patrol vehicle stopping behind a young man with his shirt off. The young man was later identified as Cole Bierma. Witness #3 saw Bierma reach into his pocket and pull out something that looked like a weapon. Witness #3 said Bierma appeared agitated and focused on the patrol vehicle. Witness #3 estimated he was fifty feet away from Bierma. Witness #3 made a U-turn because he knew the situation was going to escalate and he saw the deputy, later identified as Deputy Juarez, was by himself. Witness #3 thought he could help by stopping traffic. Witness #3 stopped his vehicle diagonally in the lane and blocked traffic. Witness #3 indicated his vehicle was approximately twenty feet north of Deputy Juarez’s patrol vehicle.

As Deputy Juarez got out of his patrol vehicle, Witness #3 thought Bierma “flipped” a switch blade. By the time Witness #3 got out of his vehicle, Bierma was “lunging” at Deputy Juarez. Bierma had a knife in his hand; the blade of the knife was out. Witness #3 believed Bierma was going to stab Deputy Juarez. Deputy Juarez started backpedaling and yelling commands at Bierma. Witness #3 was not sure what specifically Deputy Juarez yelled at Bierma. Witness #3 saw Deputy Juarez pull out his gun and start firing. Witness #3 said Deputy Juarez fell backwards and Bierma also fell at the same time. Witness #3 heard at least two gunshots. Witness #3 estimated the incident happened within two seconds of Witness #3 getting out of his car. Witness #3 also estimated that Bierma was within arm’s reach of Deputy Juarez when Deputy Juarez discharged his firearm.

After the shooting, Deputy Juarez got back up and went to check on Bierma. Witness #3 heard Bierma moaning. Some bystanders started shouting. Witness #3 then asked Deputy Juarez if he needed medical attention. Deputy Juarez told Witness #3 to stand by so Witness #3 waited for the fire department to arrive. Witness #3 indicated he was approximately twenty feet away when he saw Deputy Juarez discharge his firearm. Witness #3 estimated from the time Deputy Juarez exited his patrol vehicle to when Deputy Juarez fired his weapon was less than ten seconds. Witness #3 believed Deputy Juarez would have been hurt if he did not fire his weapon.

On May 27, 2022, **Witness #4** was interviewed by Detective Cory Drost and Detective Brett Chandler.

On May 27, 2022, Witness #4 was driving east on Yucaipa Boulevard with his wife and three children. Witness #4 turned south onto 5th Street from Yucaipa Boulevard. Witness #4 was in the number one lane of 5th Street when he saw a San Bernardino County Sheriff's Department patrol vehicle behind him. Witness #4 saw a second San Bernardino County Sheriff's Department parked on the west curb line of 5th Street. Witness #4 said the vehicles were clearly identifiable as law enforcement vehicles with sheriff's decals and emergency light bars.

Witness #4 saw a white male adult, later identified as Cole Bierma, wearing pants, shoes, and no shirt as he approached Avenue E. Bierma was standing on the sidewalk. Witness #4 drove past Bierma and looked in his rearview mirror. Witness #4 noticed the patrol vehicle behind him stopped near the west curb line near Bierma. Witness #4 saw a deputy, later identified as Deputy Juarez, exit the patrol vehicle to contact Bierma. Deputy Juarez was approximately fifteen feet away from Bierma. According to Witness #4, Bierma sprinted toward Deputy Juarez and ran in a circle around Deputy Juarez. Witness #4 estimated Bierma came within one foot of Deputy Juarez.

Witness #4 continued driving towards the intersection of Avenue E and 5th Street. Witness #4 stopped at the stop sign and looked in his rearview mirror again. Witness #4 saw Deputy Juarez kneeling on the ground. Witness #4 believed Deputy Juarez was detaining Bierma. Witness #4 drove through the intersection and continued south on 5th Street. A third San Bernardino County Sheriff's Department patrol vehicle, with its emergency lights and siren on, drove east on Avenue E and turned north onto 5th Street.

On April 22, 2024, **Cole Bierma** was interviewed by Detective Amy Bilbao and Detective Justin Applegate. The voluntary interview took place in Detective Bilbao's vehicle.

In May 2022, Cole Bierma lived with his parents at a residence located in Yucaipa. Bierma had a history of drug use and was addicted to heroin. Bierma indicated his drug use caused him to feel suicidal. Prior to the incident under review, Bierma had unsuccessfully attempted suicide four times. In May 2022, Bierma decided to end his life by "suicide by cop." Bierma planned to charge at a deputy with a knife and hoped the deputy would then

shoot him in the head. In the weeks leading up to the incident under review, Bierma was involved in multiple domestic disputes with his parents. During one such incident, Bierma's mother warned the responding deputies that Bierma intended to end his life by "suicide by cop."

On May 27, 2022, Bierma argued with his father. During the argument Bierma threw something through a window. Bierma's mother called 9-1-1. Bierma left the house and walked north on 5th Street. Bierma carried a knife in his pocket but indicated he did not have any plan to use the knife on himself or anyone else. Bierma removed a bottle of Xanax from his pocket and swallowed approximately ninety pills. Bierma saw a deputy, later identified as Deputy Juarez, park his patrol vehicle on 5th Street. Bierma knew Deputy Juarez was a deputy but was unable to recall any details about the uniform he was wearing.

Bierma believed Deputy Juarez intended to stop him for breaking his father's window. Bierma thought to himself, "Here's my opportunity." Bierma removed the knife from his pocket and pointed the blade of the knife at Deputy Juarez. Bierma could not recall whether he or Deputy Juarez spoke to one another during the incident. Bierma could not recall whether he ran towards Deputy Juarez with the knife, but he knew Deputy Juarez shot him three times. Bierma said his goal was to die, and he was upset Deputy Juarez did not shoot him in the head. Bierma stated he never intended to stab Deputy Juarez and he would have dropped the knife if Deputy Juarez had not shot him. Bierma said, "When someone runs at you with a knife, shoot him! I would have shot me." Bierma did not have any issues with law enforcement and was only looking for a way to end his life.

### **INCIDENT AUDIO**

**BELT RECORDINGS.** Deputy Juarez was equipped with a belt recording on the date of the incident. The belt recording was activated and recorded the incident under review. Deputy Juarez's belt recording was approximately twenty one minutes in length.<sup>4</sup> The belt recording was reviewed in its entirety.

### **Deputy Eugene Juarez**

A male voice, later identified as Cole Bierma, said, "Better pull your gun out." A vehicle door could be heard closing. Deputy Juarez asked, "What's going on?" Bierma repeated, "Better pull your gun out." Deputy Juarez broadcasted, "14-Paul-21." There was sound of scuffling. Bierma said, "Coming at you homeboy." Deputy Juarez broadcasted, "14-Paul-21, shots fired, shots fired." Deputy Juarez said, "Put it down, put it down. Sheriff's Department. Sheriff's Department." Bierma yelled. Three gunshots could be heard. A crash, consistent with Deputy Juarez falling to the ground was heard. Bierma groaned and

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<sup>4</sup> The summary of Deputy Juarez's belt recording will only cover from the start of the recording through the time of the lethal force encounter.

sirens could be heard in the background. Deputy Juarez broadcasted, "Shots fired, shots fired." An unknown male voice asked, "You okay?"

### **WEAPON**

A switchblade style folding knife was located in the gutter along the west side of the roadway. The blade of the knife was open and in a fixed position. The knife measured 9.5 inches long.



### **INJURIES**

Bierma was transported to the hospital for medical treatment. Bierma suffered gunshot wounds to his abdomen, left buttock, and right forearm.

### **CRIMINAL HISTORY.**

2004, 23152(b) of the Vehicle Code, Driving with a Blood Alcohol of 0.08 Percent or Higher. San Bernardino County Court case number TRE035870, a misdemeanor.

2006, 23152(b) of the Vehicle Code, Driving with a Blood Alcohol of 0.08 Percent or Higher. San Bernardino County Court case number TRE039343, a misdemeanor.



2011, 487(d)(2) of the Penal Code, Grand Theft: Firearm. San Bernardino County Court case number FSB1205225, a felony.

2013, 496(a) of the Penal Code, Receiving Known Stolen Property. San Bernardino County court case number FSB1202025, a felony.

2013, 484(a) of the Penal Code, Petty Theft. San Bernardino County court case number G128902CB, a misdemeanor.

2015, 487(a) of the Penal Code, Grand Theft: Money/Labor/Property. San Bernardino County court case number FSB1504027, a felony.

2017, 20002(a) of the Vehicle Code, Hit and Run: Property Damage and 23152(e) of the Vehicle Code, Driving Under the Influence of any Drug. Riverside County Court case number BAM1702580, misdemeanors.

### **DE-ESCALATION**

Deputy Juarez heard a call for service regarding an adult male walking on the street holding a knife. Deputy Juarez contacted Bierma when he saw Bierma matched the suspect description. Deputy Juarez was in uniform and driving a marked patrol vehicle. Within seconds of exiting his patrol vehicle, Bierma advanced quickly toward Deputy Juarez. Bierma was armed with a knife and told Deputy Juarez he better get his gun out.

Deputy Juarez made efforts to de-escalate by backing up to create space between himself and Bierma. Deputy Juarez also gave verbal commands for Bierma to put the knife down. Bierma refused to comply with Deputy Juarez's verbal commands to drop the weapon and continued to advance toward Deputy Juarez. At the rate that Bierma closed the distance between the two of them, there was no time for Deputy Juarez to consider the use of less lethal options. The situation escalated rapidly, which severely limited Deputy Juarez's ability to make continued efforts at de-escalation.

### **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>5</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>5</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>6</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In

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<sup>6</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>7</sup>

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<sup>7</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>8</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 facing a possible assailant than to someone analyzing the question at leisure.

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<sup>8</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.

(*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, Deputy Juarez had an honest and objectively reasonable belief that Bierma posed an imminent risk of serious bodily injury or death. Deputy Juarez responded to a call for service regarding a battery. While enroute to the location, Deputy Juarez heard a second call for service regarding a man with a knife walking eastbound on Yucaipa Boulevard. Deputy Juarez reasonably thought the two calls could be related given the vicinity of the two locations. When Deputy Juarez saw Bierma, he noticed Bierma appeared to match the suspect description of the man with a knife.

Deputy Juarez was in uniform and driving a marked patrol vehicle, clearly identifying him as a deputy with the San Bernardino County Sheriff's Department. Deputy Juarez parked and exited his patrol vehicle to speak with Bierma. Bierma immediately started walking quickly toward Deputy Juarez. Bierma was armed with a switchblade knife. The blade of the knife was out and in a fixed position. Bierma had the knife pointed at Deputy Juarez. Bierma told Deputy Juarez, "Better get your gun out." At that point, the only reasonable conclusion for Deputy Juarez to make was that Bierma intended to seriously injure or kill him.

Deputy Juarez backed up and attempted to create space between himself and Bierma. Bierma, however, continued to walk quickly towards Deputy Juarez and close the distance between them. Deputy Juarez ordered Bierma to put down the knife but Bierma refused to comply with his verbal commands. Deputy Juarez knew Bierma was getting too close to him with the knife. Deputy Juarez's honest belief that Bierma was going to stab him was objectively reasonable. Witness #3, who witnessed the incident under review, also believed Bierma was going to stab Deputy Juarez. Witness #3 believed Deputy Juarez would have been hurt had he not fired his weapon.

Bierma was interviewed almost one year and eleven months after the incident. Bierma said in May 2022 he wanted to try to end his life by "suicide by cop." Bierma planned to charge at a deputy with a knife and hoped the deputy would shoot him in the head. When Bierma saw Deputy Juarez, he thought this was his opportunity to end his life. He removed



the knife from his pocket and pointed the blade at Deputy Juarez. At the time Deputy Juarez fired his weapon, Bierma was approximately four feet away from him. Faced with an individual, armed with a deadly weapon advancing quickly towards him, Deputy Juarez only had a matter of seconds to decide whether to use lethal force or risk being injured or killed. Bierma, himself, said, "I would've shot me." Given those circumstances, the decision by Deputy Juarez to use deadly force was justified.

### **CONCLUSION**

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

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