



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: October 31, 2022

SUBJECT: Officer Involved Shooting (Non-Fatal)

Officer: Deputy Christopher Alfred
San Bernardino County Sheriff's Department

Involved Subject: Steffon Todd Barber (Injured)
Date of Birth 02/12/86
Adelanto, CA

Date of Incident: April 27, 2021

Incident location: ***** White Avenue
Adelanto, CA

DA STAR #: 2021-52064

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Edward Hernandez

Report Number#: DR# 242100897 / H# 2021-053

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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 is based on a thorough review of all the investigative reports, photographs, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 242100897 / H# 2021-053.

RELATED CASE

As a result of this incident, the San Bernardino County Sheriff's Department, Victor Valley Sheriff Station, submitted a case to the San Bernardino County District Attorney's Office to review for potential criminal charges against Steffon Todd Barber. Criminal charges were filed against Barber in San Bernardino County Superior Court case number FVI21001312. There were two counts alleged in the felony criminal complaint. Count 1 of the criminal complaint alleged a violation of Penal Code Section 664/187(a) Attempted Murder of a Peace Officer. Count 2 of the criminal complaint alleged a violation of Penal Code Section 245(c) Assault Upon a Peace Officer.

FACTUAL SUMMARY

On the evening of April 27, 2021, Witness #1 and his wife, Witness #2 returned home in separate vehicles to their home located at ***** White Avenue in the City of Adelanto. When Witness #1 tried to back his vehicle into the driveway, his tenant, Steffon Barber, stood in the driveway and blocked Witness #1 from parking in the rear of the property. Barber and his wife, Witness #3, lived in the rear residence located at ***** White Avenue. Witness #1 partially rolled down his window to speak to Barber. Barber asked Witness #1 several times if he had zip ties. When Witness #1 said he might have some inside his house, but it would take several minutes to check, Barber struck Witness #1's vehicle with his hands. Barber told Witness #1 he could not wait and asked Witness #1 to give him a ride to some nearby apartments. Barber became angry when Witness #1 said he was unable to give him a ride. Barber hit Witness #1's car again and told Witness #1 to let him into the vehicle. When Witness #1 would not unlock the vehicle doors, Barber walked back toward Barber's front yard.

When Witness #2 attempted to back her vehicle into the driveway, Barber walked up and attempted to open the locked front passenger door of Witness #2's vehicle. Witness #2 continued to reverse into the backyard which allowed Witness #1 to open the rear driver's side door and get into Witness #2's backseat. Barber then tried to reach into the driver's window of Witness #2's vehicle, but Barber did not realize the window was rolled up. Barber repeatedly told Witness #2 to let him inside the vehicle because he needed to go somewhere. Barber slapped Witness #2's vehicle multiple times and attempted to open the passenger side doors. Witness #2 continued down the

driveway until Barber stopped following them. Witness #2 then drove her vehicle west on to White Avenue and parked several houses away to call 9-1-1. Witness #1 and Witness #2 believed Barber's body language and behavior were threatening.

At approximately 11:19 in the evening, Deputy Christopher Alfred from the San Bernardino County Sheriff's Department arrived at the location. Deputy Alfred was in uniform and driving a marked patrol vehicle. Deputy Alfred briefly spoke with Witness #1 about what had occurred. Witness #1 told Deputy Alfred about Barber's strange behavior and said that he and his wife were frightened of Barber. Witness #1 also warned Deputy Alfred that although he never saw a gun, Witness #1 believed Barber was armed.

Deputy Alfred started to walk south onto the driveway of the residence so he could speak with Barber. The narrow driveway was approximately 96 feet long. The east side of the driveway was enclosed with wrought iron and chain link fencing, which varied in height from five to six feet. There were no openings along the fence line. The west side of the driveway was enclosed by a chain link fence, a residence wall, and a wooden fence, approximately five feet high, with one gate opening.

As Deputy Alfred walked toward Barber, he gave verbal commands for Barber to show his hands and walk toward him. Barber was uncooperative and would not comply with Deputy Alfred's commands. Deputy Alfred ordered Barber not to go to his vehicle, a 2003 black Chevrolet Trailblazer, and told Barber to walk towards him. Barber refused to comply and reached inside the vehicle. At that time, Deputy Alfred drew his duty weapon and held it at a low ready position. Barber then got into the driver's seat of the vehicle. Deputy Alfred was standing approximately eight to ten feet north of Barber's vehicle. Deputy Alfred was located behind Barber's vehicle. Barber revved the engine, put the vehicle in reverse, and accelerated rapidly towards Deputy Alfred.

Due to the narrowness of the driveway and the surrounding fencing, Deputy Alfred did not believe he had any avenue of escape. As the vehicle accelerated toward him, Deputy Alfred feared for his life. Deputy Alfred raised his duty weapon from a low ready position and fired six rounds at Barber's vehicle. Barber was struck by gunfire and the vehicle came to a stop. After the lethal force encounter, Deputy Alfred requested medical aid respond to the location.

Barber was transported to the hospital. Barber underwent surgery. Barber sustained a gunshot wound to the top of his head.

The 2003 Chevrolet Trailblazer which was driven by Barber at the time of the lethal force encounter was towed to the San Bernardino County Weights and Measures vehicle scale. It was determined that the weight of the Trailblazer, minus the solo occupant, was 4,980 pounds. With the added weight of Barber, the Trailblazer weighed approximately 5,040 pounds.

SCENE DESCRIPTION

***** and ***** White Avenue share a driveway on the east side of the property which is approximately ninety-six feet in length. The driveway was approximately fifteen feet and 7 inches in width and narrowed to approximately twelve feet and seven inches from north to south. Given the width, only one vehicle would be able to travel on the driveway at a time. The property was enclosed by a combination of wrought iron and chain-link fencing. The only opening was a narrow driveway on the northeast side of the property.

On the east side of the property, from north to south, was a wrought iron fence which was approximately thirty-one feet and three inches in length and five feet tall. The wrought iron fence connected to a chain-link fence which was approximately sixty-four feet and six inches in length and six feet and four inches tall. The chain-link fence connected to a white vinyl fence on the south property line from east to west.

The west side of the driveway was enclosed by a chain-link fence, the residential wall of ***** White Avenue, and a wooden fence, which traveled north to south. The chain-link fence was approximately twenty-nine feet and seven inches in length and three feet and five inches tall. The chain-link fence connected to the northeast corner of ***** White Avenue. There was an opening from the southeast corner of ***** White Avenue, which measured approximately fifteen feet and five inches in length from north south. This opening provided vehicle and pedestrian access into the rear of ***** White Avenue. On the south side of the opening, was a wooden fence, approximately twenty-one feet and two inches in length and six feet tall, from north to south. The wood fence continued east to west and measured approximately forty-nine feet and nine inches in length and six feet tall. This portion of the wood fence separated ***** and ***** White Avenue. The wood fence continued south to north and was approximately thirty-eight feet and eight inches in length and six feet tall. The fence ended at the southeast corner of ***** White Avenue.

STATEMENTS BY POLICE OFFICERS

On May 10, 2021, at approximately 11:00 in the morning, **Deputy Christopher Alfred** was interviewed by Detective Edward Hernandez and Detective Gerania Navarro.¹

On April 27, 2021, Deputy Christopher Alfred, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victor Valley Station. Deputy Alfred was wearing a long-sleeved San Bernardino County Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. On that date, Deputy Alfred was in the parking lot at the police station when he heard a call come out of a disturbed subject. Deputy Alfred was the closest deputy to the location and decided to respond. As he made his

¹ Deputy Alfred reviewed his belt recording prior to being interviewed by Detective Hernandez and Detective Navarro.

way to the location, dispatch advised Deputy Alfred that the reporting party called about a tenant or neighbor whose vehicle was blocking the reporting party's driveway and there was a verbal altercation going on. Dispatch told Deputy Alfred that the reporting party would be waiting outside in their vehicle.

When Deputy Alfred arrived at the location, the reporting party flashed their high beams at Deputy Alfred. Deputy Alfred drove toward them and verified they were the people who called law enforcement. Deputy Alfred was familiar with the address and the area. Deputy Alfred had been to the location approximately two hours earlier.² Before Deputy Alfred spoke to the reporting party, he looked down the driveway and saw a subject, later identified as Steffon Barber, standing near a Chevy Trailblazer. Deputy Alfred exited his patrol vehicle and walked across the street to speak with the reporting party, Witness #1.

Witness #1 told Deputy Alfred he had a disagreement with his tenant, later identified as Barber, and Witness #1 was trying to get into his residence, but the driveway was blocked. Witness #1 stated he was in fear for his safety and he believed Barber had a gun. Deputy Alfred asked Witness #1 to explain why he thought Barber was armed. Witness #1 said he had not seen a gun and was unable to point to anything specific. Witness #1 believed Barber's behavior was strange and described an incident that occurred the day before where Barber hit Witness #1's vehicle with his hand which forced Witness #1 and his wife to lock themselves inside the vehicle. Witness #1 also said Barber asked when law enforcement had last been in the area. Witness #1 appeared frightened as he spoke with Deputy Alfred.

Deputy Alfred made his way down the driveway to speak with Barber. The lighting in the area was poor. Deputy Alfred had his flashlight in his left hand so he could illuminate himself. Deputy Alfred asked Barber to come over and speak to him. Barber immediately started yelling profanities at Deputy Alfred. The driver side door of Barber's vehicle was open. Barber was standing in the pocket area of the driver's seat and the driver's side door. Deputy Alfred also noticed the trunk hitch to the SUV was open, the taillights were illuminated, and the vehicle was idling.

Deputy Alfred continued to talk to Barber but Barber would not respond. Barber also refused to walk towards Deputy Alfred. Deputy Alfred was unable to see Barber's hands. Given the information provided by Witness #1, Deputy Alfred started asking to see Barber's hands. Deputy Alfred told Barber, "You know what sir, let me see your hands and step away from the vehicle." Barber responded something to the effect of "fuck you." Barber ignored Deputy Alfred's command and quickly reached into the driver's seat of the vehicle. Deputy Alfred was unable to see inside the vehicle and was concerned Barber was reaching for a weapon.

Deputy Alfred was still unable to see Barber's hands and relayed that information to the dispatcher. Deputy Alfred advised that Barber was not complying verbally. Deputy

² The earlier call was in reference to people arguing. When Deputy Alfred went to the location, he did not hear anything nor see any signs of a fight, so he closed the call out.

Alfred drew his firearm and held it in a low ready position. Deputy Alfred estimated he was eight to ten feet away from Barber's vehicle at that time. Deputy Alfred used his flashlight to try and keep a visual on what Barber was doing. Deputy Alfred told Barber to step away from the vehicle and show his hands. Barber responded, "Fuck you. Show me your hands."

Barber turned towards the vehicle, got into the driver's seat, and shut the door. The white reverse lights on the vehicle illuminated and Deputy Alfred heard the tires attempt to gain traction on the hard-packed dirt. The engine revved and Barber's vehicle drove at Deputy Alfred in reverse at a high rate of speed. Deputy Alfred tried to put that information out over the radio while at the same raising his firearm up. Deputy Alfred dropped the flashlight he was holding and took a shooter stance. Deputy Alfred believed he was about to be run over and feared for his life. Deputy Alfred fired towards the back of the driver's seat as the vehicle moved towards him. Deputy Alfred estimated he fired five to six rounds from his duty weapon.³ Based on where he was positioned, Deputy Alfred did not believe he had an avenue of escape and would not have been able to outrun the vehicle.

After the lethal force encounter, Barber's vehicle came to a rest. Deputy Alfred slowly repositioned himself to the right of the vehicle and advised dispatch shots had been fired. Deputy Alfred requested medical personnel respond to the scene. Deputy Alfred gave Barber additional commands to show his hands. Deputy Alfred was looking for any signs of life, but he did not get any response from Barber.

Deputy Alfred heard a woman, later identified as Witness #3, south of his location. Witness #3 screamed and appeared distraught. Deputy Alfred was unsure whether Witness #3 was injured or had been shot so he asked her if she was hurt. Witness #3 did not indicate she was hurt so Deputy Alfred continued to give verbal commands to Barber. When Deputy Alfred's partners arrived, Deputy Alfred gave them a quick assessment of what just occurred and advised them of what issues they had to address. Deputy Alfred wanted to get Barber medical care.

The deputies forced their way through a picket fence in order to reach the front portion of Barber's vehicle. Barber was unresponsive. Barber's hands were tucked underneath his stomach and he was leaning towards the right of the vehicle on the center console. Deputy Alfred maintained his firearm in a low ready position since he was unable to see Barber's hands and did not know whether Barber was armed. Deputy Joseph Mora and Deputy Larry Torres advised Deputy Alfred they were going to go around and remove Barber from the driver's seat since the passenger door was stuck. The vehicle started to move and one of the deputies put the vehicle in park. Deputy Mora and Deputy Torres removed Barber, placed him onto the ground, and started to render medical aid. Deputy Alfred then removed himself from the scene.

³ Deputy Alfred fired a total of six rounds from his duty weapon.

On April 28, 2021, at approximately 6:40 in the morning, **Deputy Blake Coley** was interviewed by Detective Robert Ripley.⁴

On April 27, 2021, Deputy Blake Coley, from the San Bernardino County Sheriff's Department was assigned to patrol at the Victor Valley Station. Deputy Coley was wearing a San Bernardino County Sheriff's Department "Class A" uniform. Deputy Coley's Field Training Officer, Deputy Larry Torres, was driving their marked patrol vehicle. On that date, at around 9:00 in the evening, Deputy Coley and Deputy Torres responded to ***** White Avenue in the City of Adelanto. There was a call for service regarding two females arguing. Deputy Coley and Deputy Torres arrived at the location a few minutes later and met up with Deputy Alfred. Deputy Coley and Deputy Torres were unable to locate any signs of two females arguing and cleared the scene while Deputy Alfred completed the disposition of the call.

At approximately 11:20 that evening, Deputy Coley and Deputy Torres were parked in the area of Palmdale Avenue and U.S. Highway 395. Dispatch broadcasted a call of an unwanted subject at 120005 White Avenue. Deputy Coley recalled they had responded there earlier in their shift. The reporting party indicated a neighbor, later identified as Barber, would not let him park in the driveway of their residence and forcibly tried to enter his vehicle. Deputy Coley and Deputy Torres continued to monitor the radio for additional information.

Several minutes later, Deputy Alfred arrived at the location and broadcasted Barber was non-compliant. Deputy Coley and Deputy Torres responded to the scene to assist Deputy Alfred. Approximately twenty seconds later, Deputy Alfred broadcasted "shots fired." Deputy Torres notified dispatch they were enroute and activated his red and blue overhead emergency lights and siren. Deputy Alfred broadcasted Barber continued not to comply with commands and requested medical aid to the scene.

On April 28, 2021, at approximately 9:17 in the morning, **Deputy Larry Torres** was interviewed by Detective Edward Hernandez.⁵

On April 27, 2021, Deputy Larry Torres, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victor Valley Station. Deputy Torres was wearing a San Bernardino County Sheriff's Department "Class A" uniform. Deputy Torres and his trainee, Deputy Blake Coley, were driving in a marked patrol vehicle. On that date, at around 9:00 in the evening, Deputy Torres and Deputy Coley responded to ***** White Avenue in the City of Adelanto. There was a call for service regarding two females arguing. Deputy Torres and Deputy Coley arrived at the location a few minutes later and met up with Deputy Alfred. Deputy Torres and Deputy Coley could not locate

⁴ Deputy Coley's interview was reviewed in its entirety. The summary, however, will only cover through the point he decided to respond to the scene, after the lethal force encounter already occurred.

⁵ Deputy Torres' interview was reviewed in its entirety. The summary, however, will only cover through the point he decided to respond to the scene, after the lethal force encounter already occurred.

any signs of two females arguing. Deputy Torres and Deputy Coley cleared from the call and Deputy Alfred completed the disposition.

At approximately 11:12 that evening, Deputy Torres and Deputy Coley were parked in the area of Palmdale Avenue and U.S. Highway 395. Dispatch broadcasted an unwanted subject at 12005 White Avenue. The reporting party indicated a neighbor, later identified as Barber, would not let him park in the driveway and forcibly tried to enter his vehicle. Deputy Torres and Deputy Coley monitored the radio transmissions concerning the call.

Several minutes later, Deputy Alfred arrived at the location and advised Barber was non-compliant. Deputy Torres and Deputy Coley responded to the location to assist Deputy Alfred. Approximately two minutes later, Deputy Alfred broadcasted "shots fired." Deputy Torres activated the red and blue overhead emergency lights and siren and continued to respond to the residence. Deputy Alfred broadcasted Barber continued not to comply with commands.

On April 28, 2021, at approximately 7:40 in the morning, **Deputy Joseph Mora** was interviewed by Detective Robert Ripley and Detective Edward Hernandez.⁶

On April 27, 2021, Deputy Joseph Mora, from the San Bernardino County Sheriff's Department, was assigned to patrol at the Victor Valley Station. Deputy Mora was wearing a San Bernardino County Sheriff's Department "Class A" uniform. Deputy Mora and his trainee, Deputy Kevin Russell, were driving in a marked patrol vehicle.

On that date, at approximately 11:12 in the evening, dispatch broadcasted a call of an unwanted subject at 12005 White Avenue. The reporting party indicated a neighbor, later identified as Barber, would not let her into her residence and forcibly tried to enter her vehicle. Deputy Mora and Deputy Russell were not dispatched to the call but monitored the radio transmissions. Several minutes later, Deputy Alfred arrived at the location and broadcasted Barber was non-compliant. Approximately two minutes later, Deputy Alfred broadcasted "shots fired." Deputy Mora activated the red and blue overhead emergency lights and siren and responded to the scene.

STATEMENTS BY CIVILIAN WITNESSES

On April 28, 2021, at approximately 4:25 in the morning, **Witness #3** was interviewed by Detective Robert Ripley and Detective Edward Hernandez.

Witness #3 suffers from severe Glaucoma and was completely blind in her left eye. She only has five percent vision in her right eye and described her sight as "tunnel vision."

⁶ Deputy Mora's interview was reviewed in its entirety. The summary, however, will only cover through the point he decided to respond to the scene, after the lethal force encounter already occurred.

Witness #3 was married to Steffon Barber for approximately one year and eight months. The couple were living together with their two young children at a residence located at ***** White Avenue in the City of Adelanto. Witness #3 and Barber were renting from the owner of the property, Witness #2, who lived in the northern residence on the property. Witness #3 and Barber owned one vehicle, a black 2003 Chevrolet Trailblazer.

On April 27, 2021, at approximately 11:00 in the evening, Witness #3 and Barber were at their residence. They were preparing to leave to go pick up their children from Witness #3's mother's house. Witness #3 was inside the laundry room. The laundry room had an exterior door, which faced east, and was open. According to Witness #3, police vehicles have "squeaky" brakes when breaking was applied. Witness #3 said she heard vehicle brakes squeak from the street and knew "cops" were in front of her residence. Witness #3 did not know how many patrol vehicles were in front of her residence.

Approximately two to three minutes later, Barber went outside and started their Trailblazer engine. The vehicle was parked in front of Witness #3's front door and faced south in the driveway. According to Witness #3, the Trailblazer needed to be revved when started so the engine would remain on. Witness #3 heard the Trailblazer start and the engine revved. Witness #3 was able to see the lighting from the vehicle's headlamps from the laundry room. Witness #3 said the Trailblazer's engine revved loud for approximately a few seconds at a time, during a one-minute period, which seemed unusual for Barber to do.

Witness #3 was standing inside the laundry room, approximately one foot away from the door frame, when she heard four to five gunshots. Witness #3 said she noticed their Trailblazer moved in reverse slowly. Witness #3 did not hear any conversation or any yelling prior to the gunshots. After the gunshots, Witness #3 heard someone yell, "Slow down." Witness #3 exited the laundry-room and noticed the Trailblazer moved backwards, approximately ten to twelve feet.

Witness #3 noticed a bright light shined on her face. She heard a male yell at her to place her hands down. Witness #3 was unable to see a uniform but knew it was a sheriff's deputy based on the commands to place her hands down. The deputy told Witness #3 to stay back from the vehicle. Witness #3 did not hear the Trailblazer's engine running. She also did not hear any glass break. Witness #3 heard a male say, "Get a pulse. Get a pulse. He was shot in the head." She also heard a male say, "What's your name, what's your name?"

Witness #3 did not know why the deputies were at her residence. Witness #3 had not called the police and she did not believe anyone else had called the police.

On April 28, 2021, at around 10:21 in the morning, **Witness #1** was interviewed by Detective Robert Ripley.

Witness #1 managed properties for his father-in-law. The property was on the south side of White Avenue and contained two separately addressed residences. Witness #1's house was located closest to White Avenue and there was a second rental property located to the south. The two residences have a shared driveway that ran north to south from White Avenue. The driveway ended into the front yard of the rear residence with a chain link gate that could be closed to prevent access. Witness #1's backyard was accessible from the driveway and that was where he and his wife parked their vehicles. There was no fence to prevent access to his backyard from his driveway. For the last year, the rear residence, located at ***** White Avenue, was occupied by Witness #3 and Barber.

On April 27, 2021, at around 11:15 in the evening, Witness #1 and his wife were returning to their residence. Witness #1 saw Barber at the south end of the driveway near Barber's Chevrolet Blazer. The vehicle's doors and rear hatch were opened. After Witness #1 parked his vehicle behind his residence, Barber walked toward him. Witness #1 was still seated in the driver's seat of his vehicle. Barber used his palm and smacked the front passenger window of Witness #1's vehicle several times. Witness #1 partially rolled down the window and spoke to Barber. Barber asked Witness #1 several times whether he had zip ties. Witness #1 said he may have zip ties inside the house, but he would need to check. Barber walked around to the front of Witness #1's vehicle and slapped the hood or fender several times. Barber told Witness #1 he could not wait.

Barber then approached Witness #1's driver door. Barber slapped the window and told Witness #1 to give him a ride to the nearby apartments. Witness #1 told Barber he was unable to give him a ride because Witness #1 could not leave his wife home alone. Barber became angry, hit Witness #1's vehicle, and told Witness #1 to let him in because he needed a ride. When Witness #1 refused to unlock the doors, Barber walked back toward his front yard.

Witness #1 saw his wife's vehicle driving in reverse down the driveway toward their backyard. Witness #1 exited his vehicle, locked the doors, and walked toward the driveway. Witness #1 stood in the driveway and pretended to guide Witness #2 toward the backyard. Barber was pacing up and down the driveway. Barber then walked over to Witness #2's vehicle and tried to open the front passenger door, but the door was locked. Witness #2 continued to reverse into the backyard which allowed Witness #1 to quickly open the driver side rear door and get into the backseat.

Barber attempted to reach inside Witness #2's driver door window, but he did not realize the window was rolled up. Barber repeatedly told Witness #2 to let him in because he needed to go somewhere. As Witness #2 and Witness #1 drove north down the driveway, Barber slapped the vehicle multiple times and told them to let him in as he tried to open the passenger side doors. Witness #2 continued down the driveway until

Barber stopped following them. Witness #2 drove west onto White Avenue and parked several houses away so they could call 9-1-1.

Witness #1 believed Barber had done something illegal and needed to get out of the area quickly. Witness #1 considered Barber's behavior and body language to be "threatening." Witness #1 believed Barber would "carjack" them if Barber got inside the vehicle. Witness #1 believed Barber lied about needing zip ties and was trying to get Witness #1 to get out of the vehicle.

Witness #2 called and spoke to a Sheriff's Department dispatcher. Witness #2 requested a deputy respond to the location. Witness #1 and Witness #2 switched seats in the vehicle and waited for a deputy to arrive. Approximately four minutes later, Deputy Alfred arrived in a marked patrol vehicle. Witness #1 spoke briefly with Deputy Alfred about the incident. Witness #1 warned Deputy Alfred to be careful because he believed Barber was armed. Deputy Alfred walked south down the driveway and out of Witness #1's view. Witness #1 rolled his window up and heard Deputy Alfred speak to someone. Witness #1 was unable to hear what was said. Several seconds later, Witness #1 heard approximately five to six gunshots in rapid succession. Witness #1 believed Barber shot the deputy, so he quickly drove down the street toward the driveway where Witness #1 had lost sight of Deputy Alfred. Several minutes later, additional deputies and emergency medical services personnel arrived.

On April 28, 2021, at approximately 10:19 in the morning, **Witness #2** was interviewed by Detective Edward Hernandez.

Witness #2 and her husband, Witness #1, resided at ***** White Avenue in the City of Adelanto. Witness #2 managed the property for her parents who owned the property. There was also a rental home located at ***** White Avenue. Witness #2 rented the rear home to Witness #3 and Barber. Witness #3 and Barber had been living at the location for approximately one year. Witness #2 said she had been having problems with Witness #3 and Barber over the last two months.

On April 27, 2021, at approximately 10:45 in the evening, Witness #2 and Witness #1 returned home from work in separate vehicles. They planned to arrive home at roughly the same time because Witness #2 was afraid of Barber. Witness #1 backed his vehicle south into the dirt driveway near its end. Witness #2 saw Barber approach and knock on the passenger side of Witness #1's vehicle. Witness #2 backed her vehicle into the driveway. Barber approached the passenger side of Witness #2's vehicle which caused her to stop. Barber knocked on the window and said, "Give me your car, take me to the apartments." Witness #2 told Barber she could not take him, and Barber asked, "Are you sure?" Barber attempted to open the passenger side doors, but they were locked.

Barber walked around the rear of Witness #2's vehicle and tried to open the driver's side doors which were also locked. This prevented Witness #2 from reversing her

vehicle. Witness #2 was scared. Witness #2 did not know Barber well enough for him to demand she give him a ride anywhere. Barber walked south away from Witness #2's vehicle. Barber climbed the chain link fence and seemed to be under the influence of drugs or alcoholic beverages. Witness #1 approached the passenger side of Witness #2's vehicle so she unlocked the doors and allowed him inside. Witness #1 sat in the front passenger seat.

Barber returned and stood in front of Witness #2's vehicle. Barber would not let Witness #2 drive north. Barber approached Witness #2's vehicle again and tried to open the passenger side doors, but they were locked. Witness #2 drove north, approximately forty feet, to the end of the driveway and stopped. Witness #2 and Witness #1 quickly exited the vehicle, switched positions, and locked the doors. Witness #1 drove west on White Avenue, made a U-turn, and parked on the south side of the street. Witness #2 called Sheriff's Dispatch and explained Barber would not let her and Witness #1 enter their driveway. Witness #2 said she and Witness #1 were afraid for their safety.

Approximately five minutes after Witness #2 spoke with Sheriff's Dispatch, a patrol vehicle arrived. The Sheriff's Department patrol vehicle stopped east of their location, on the north side of the street, and faced west. Deputy Alfred exited his patrol vehicle and walked toward Witness #2 and Witness #1. Deputy Alfred was in uniform and Witness #2 immediately recognized him as a Sheriff's deputy. Witness #2 and Witness #1 spoke with Deputy Alfred for approximately five minutes and explained Barber's behavior.

Deputy Alfred walked south on the driveway of Witness #2's residence. Deputy Alfred used a flashlight to illuminate the driveway. Witness #2 lost sight of Deputy Alfred behind the east wall of the residence. Witness #2 did not hear anything after she lost sight of Deputy Alfred. The windows to Witness #2's vehicle were up and the radio was off. Approximately two minutes later, Witness #2 heard approximately four gunshots in rapid succession. Witness #2 believed the gunshots came from the driveway Deputy Alfred was walking on. Witness #2 and Witness #1 were scared. Witness #2 was unsure whether Barber shot Deputy Alfred or Deputy Alfred shot Barber.

Witness #1 started their vehicle and drove north toward their neighbor's driveway. Witness #1 and Witness #2 exited their vehicle and stood with the neighbor near the front porch. Approximately five minutes later, additional Sheriff's Department patrol vehicles arrived at the location. Four or five deputies walked down Witness #2's driveway. A few minutes later, a white ambulance arrived on the street. Witness #2 saw paramedics from the ambulance roll a gurney down her driveway. Approximately ten minutes later, the paramedics rolled the gurney back to the ambulance. Witness #2 noticed Barber was laying on the gurney. The paramedics placed Barber into the ambulance and drove away.

On April 28, 2021, at approximately 2:30 in the afternoon, **Witness #4** was interviewed by Detective Gerania Navarro.

Witness #4 lived at a residence located on White Avenue in the City of Adelanto. Witness #4 lived directly across the street from Witness #2 and Witness #1. On April 25, 2021, at approximately 9:40 in the evening, Witness #4 called Witness #2 and told her that Barber was going crazy or was high on drugs because Barber tried to fight her boyfriend. Witness #4 said Barber reversed his black Trailblazer out of his driveway at a high rate of speed and almost struck Witness #4's chain link fence.

On April 27, 2021, at approximately 11:00 in the evening, Witness #2 called Witness #4 and said Barber did not let her get out of her car to go inside her home. Witness #2 was afraid of Barber's aggressive behavior and wanted to spend the night at Witness #4's mother's house. Witness #4 said she saw Barber bang on Witness #2's car with his hands and yell for Witness #2 to get out of her vehicle. Witness #4 was on the phone with Witness #2 and told her not to get out of the car. Witness #4 was afraid for Witness #2's safety.

Witness #4 had the keys ready for Witness #2 and was waiting in the front yard of her home when she saw law enforcement arrive. Deputy Alfred parked his patrol vehicle in front of her house and turned on the overhead red and blue emergency lights. When Deputy Alfred got out of his patrol vehicle, Witness #4 saw he was wearing a tan and green Sheriff's Department uniform. Witness #4 heard Deputy Alfred tell Barber to show his hands two or more times. Barber did not comply and yelled, "No." Witness #4 demonstrated how Barber's hands were moving around when Deputy Alfred was giving commands. Witness #4 motioned with her hands rummaging around her waistband and pants pockets.

Witness #4 yelled for her parents to get inside the house. Witness #4 felt something bad was going to happen because Barber was not listening to Deputy Alfred's commands. As Witness #4 followed her parents inside the house, she heard three to four gunshots. Witness #4 thought Barber and Deputy Alfred were shooting at each other. Witness #4 did not see anything else because she went to the back of the house so she would not get hit with any bullets.

On April 27, 2021, at approximately 11:50 in the evening, Deputy Andrew Collins was holding the east perimeter at the intersection of White Avenue and Adelanto Road. During this time, Deputy Collins spoke with **Witness #5**.

Witness #5 said he was in the parking lot of the apartments just east of the incident location. Witness #5 was working on his truck's transmission. Several hours before the lethal force encounter, Witness #5 heard a male and female at the incident location arguing. Later, when Witness #5 was getting ready to leave to take his girlfriend home, Witness #5 heard the male and female arguing again. A deputy, later identified as Deputy Alfred, arrived at the scene and ordered the male, later identified as Steffon

Barber, to show his hands. Witness #5 said Barber did not want to comply and cursed at Deputy Alfred.

Deputy Alfred told Barber not to go back into the vehicle. Witness #5 said Barber immediately went into the driver's seat of the vehicle and put it into reverse. According to Witness #5, "he put it into reverse and just like stomps on it. So, he's burning rubber in the dirt and that's when I heard shots fired." Witness #5 indicated he left the location following the gunshots.

INCIDENT AUDIO

BELT RECORDING. All belt recordings submitted were reviewed in their entirety. The belt recording summary will only cover the period of time from the beginning of each recording through the occurrence of the lethal force encounter.

Deputy Christopher Alfred

Deputy Alfred had his belt recorder activated and recording during the incident under review. The recording was approximately 13 minutes and 18 seconds in length.

Deputy Alfred could be heard speaking with Witness #1. Witness #1 tells Deputy Alfred he called about his neighbor, Barber. Witness #1 tells Deputy Alfred that Barber was threatening Witness #1 and his wife and that Barber was slamming his hands on their car. Deputy Alfred asks where Barber lives. Witness #1 indicates where Barber lives and tells Deputy Alfred that Barber is in and out of jail. Witness #1 could be heard telling Deputy Alfred that he was afraid Barber "might have a gun or something." Deputy Alfred asks Witness #1 why he thought Barber had a gun. Witness #1 tells Deputy Alfred he did not see a gun but that he just had a feeling. Witness #1 explains Barber was acting "really, really, really, really strange" the day before. Witness #1 says Barber kept asking if Witness #1 had seen any police cars come this way. Deputy Alfred asks Witness #1 if Barber said he was armed. Witness #1 responds, "No, no, but I mean, he reached for his pocket a second ago when he was hammering the car, because we wouldn't give him a ride." Deputy Alfred tells Witness #1 he is going to go talk to Barber. Witness #1 tells Deputy Alfred, "We're real scared."

Deputy Alfred could be heard telling Barber, "Hey bud, come out here." Barber says, "I'm right here." Deputy Alfred tells Barber, "Come over here, let me see your hands." Barber says, "Your hands." Deputy Alfred, again, tells Barber, "Let me see your hands." Barber responds, "Your fucking hands." Deputy Alfred says, "Let me see your hands." Barber responds, "Man, do like this, back the fuck up." At this point, Deputy Alfred could be heard telling dispatch, "I have one not complying verbally." Barber could be heard saying, "Your tension man." Deputy Alfred tells Barber, "Don't go to that fucking

car, get your ass over here.” Deputy Alfred says, “24-Paul-11, he’s getting in the car, he trying to back up!” A vehicle could be heard accelerating loudly and a loss of tire traction was heard from the dirt driveway. Six gunshots are then heard in rapid succession. Deputy Alfred says, “24-Paul-11, shots fired, shots fired!” Witness #3 says, “No, no, what the fuck?” Deputy Alfred yells, “Show me your fucking hands now!” Witness #3 says, “Stop shooting! What’s the problem!” Deputy Alfred is then heard saying, “24-Paul-11, 24-Paul, 24-Paul-11, shots fired, he tried to reverse the vehicle behind me. Can you start meds?” Sirens are heard in the background.

INVOLVED VEHICLE

2003 Chevrolet Trailblazer which was driven by Barber at the time of the lethal force encounter was towed to the San Bernardino County Weights and Measures vehicle scale. It was determined that the weight of the Trailblazer, minus the solo occupant, was 4,980 pounds. With the added weight of Barber, the Trailblazer weighed approximately 5,040 pounds.

INVOLVED SUBJECT

INJURIES. Steffon Barber was transported to a hospital for treatment for a gunshot wound to the head. Doctor indicated Barber sustained an open skull fracture to the posterior top portion of his head.

TOXICOLOGY RESULTS. Blood sample was collected from Barber.

Toxicology results for the blood sample were listed as follows:

- Amphetamines – Detected
 - Methamphetamine, LC/MS/MS – 187 ng/mL
 - Amphetamine, LC/MS/MS – 37 ng/mL
- Benzodiazepines – Detected
 - Midazolam, LC/MS/MS – 29 ng/mL

CRIMINAL HISTORY. 2005, 487(c) of the Penal Code, Grand Theft from Person. Los Angeles County case number VA088187-01, a felony.

2006, 69 of the Penal Code, Obstruct/Resist Executive Officer. 148(a)(1) of the Penal Code, Obstruct/ETC Public Officer/ETC. Kern County case number BM695272A, a misdemeanor.

2006, 23152(a) of the Vehicle Code, Driving Under the Influence Alcohol/Drugs. 12500(a) of the Vehicle Code, Driving without License. Kern County case number BM697314A, a misdemeanor.

2006, 422 of the Penal Code, Threaten Crime with Intent to Terrorize. 69 of the Penal Code, Obstruct/Resist Executive Officer. Kern County case number BM698442A, a misdemeanor.

2009, 243(a) of the Penal Code, Battery On Person. Kern County case number BM745716A, a misdemeanor.

2010, 666 of the Penal Code, Petty Theft with Prior Jail. Kern County case number BF129487A, a felony.

2012, 11377(a) of the Health and Safety Code, Possession of Controlled Substance. Kern County case number BF144385A, a misdemeanor.

2017, 415(a) of the Penal Code, Fight/Noise/Offensive Words. San Bernardino County case number MVI17008225, a misdemeanor.

2017, 273a(a) of the Penal Code, Child Cruelty: Possible Injury/Death. San Bernardino County case number FVI17003346, a felony.

2018, 69 of the Penal Code, Obstruct/Resist Executive Officer. San Bernardino County case number FVI18000982, a felony.

2018, 69 of the Penal Code, Obstruct/Resist Executive Officer. San Bernardino County case number FVI18000983, a felony.

2021, 245(c) of the Penal Code, Assault with Deadly Weapon Not a Firearm: Peace Officer/Firefighter: Great Bodily Injury. San Bernardino County case FVI21001037, a felony.

DE-ESCALATION

Although Deputy Alfred was on scene for approximately three minutes and sixteen seconds before the lethal force encounter occurred, Deputy Alfred did not have a real opportunity to de-escalate the situation. Deputy Alfred first spoke to Witness #1 about what occurred with Barber. Afterwards, Deputy Alfred, who was in uniform, attempted to speak with Barber. Barber was uncooperative from the very first moment Deputy Alfred contacted him. Deputy Alfred told Barber multiple times to show his hands, but Barber refused to comply. When Deputy Alfred told Barber not to go to his car, Barber, again, refused to comply. There was no indication from Barber that he intended to comply with any of Deputy Alfred's commands. Instead, the situation escalated quickly.

Barber got into his Chevrolet Trailblazer, put the vehicle in reverse, revved the engine, and drove at a high rate of speed. Approximately twenty-eight seconds passed between Deputy Alfred first contacting Barber and when Deputy Alfred was forced to draw his weapon and fire at Barber's vehicle. Deputy Alfred had no time to consider the use of less lethal force options.

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).)⁷ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

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

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

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

- (1) to defend against an imminent threat of death or serious bodily injury to the officer or another, or

⁷ All references to code sections here pertain to the California Penal Code.

- (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 2020,⁸ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

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

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our

⁸ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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;⁹
- (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.

⁹ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

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

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

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

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

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

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear 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.)¹⁰ 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.*)

¹⁰ 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.

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

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

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

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

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa 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 Alfred had an honest and objectively reasonable belief Barber posed an imminent risk of serious bodily injury or death. Deputy Alfred was wearing a San Bernardino County Sheriff’s Department “Class A” uniform and driving a marked patrol vehicle on the date of the incident under review. When Deputy Alfred first arrived at the location, he spoke with Witness #1. Deputy Alfred said Witness #1 appeared frightened as he explained what happened with Barber. Witness #1 advised Deputy Alfred that Barber was threatening Witness #1 and his wife and Barber was slamming

his hands on their car. Witness #1 told Deputy Alfred that he thought Barber had a gun. Witness #1 explained to Deputy Alfred that although he never saw Barber with a gun, Barber reached for his pocket when he was slamming his hands on their vehicle. Witness #1 told Deputy Alfred that he and his wife were scared.

Deputy Alfred walked towards Barber and attempted to speak with him. Deputy Alfred told Barber to show his hands, but Barber refused to comply. Barber yelled at Deputy Alfred and said, "Man, do like this, back the fuck up." Deputy Alfred ordered Barber not to go to his car, but again Barber refused to comply with commands. Deputy Alfred saw Barber reaching inside his Trailblazer. Deputy Alfred was standing to the east of the driveway towards the chain-link fence so he could maintain his view of Barber. Deputy Alfred was approximately eight feet north of Barber's vehicle. Given what Witness #1 had described about his interaction with Barber, Deputy Alfred became concerned that Barber may be reaching for a weapon. After Barber refused to comply with Deputy Alfred's verbal commands, Barber got into the driver's seat of the Trailblazer. Barber put the vehicle into reverse and revved the engine. Barber then drove towards Deputy Alfred at a high rate of speed.

It was objectively reasonable for Deputy Alfred to believe Barber intended to run him over. Barber's Trailblazer weighed approximately 5,040 pounds and was traveling toward Deputy Alfred at a high rate of speed. Deputy Alfred only had seconds to react and there was no viable avenue of escape. The driveway where the lethal force encounter occurred was very narrow and mostly surrounded by fencing on both sides. There were no openings on the east side of the fence line where Deputy Alfred was standing, and Deputy Alfred had already moved beyond the opening on the west side which was now approximately two to three feet north of Deputy Alfred's position. Deputy Alfred was approximately eight to ten feet behind Barber's vehicle. In order to reach the opening on the west side, Deputy Alfred would have had to run across the driveway directly behind Barber's vehicle toward a picket fence. Deputy Alfred, however, did not believe the picket fence would sustain the impact from a vehicle and thus did not want to risk being struck by Barber's vehicle. Deputy Alfred also reasonably believed he would be unable to outrun Barber's vehicle if he attempted to escape by running north out of the driveway.

From the time Deputy Alfred first spoke to Barber to the time Deputy Alfred fired his weapon was approximately twenty-eight seconds. Approximately six seconds passed from the time Deputy Alfred told Barber not to get into his vehicle to when Deputy Alfred fired his weapon. From the time Deputy Alfred heard the engine on Barber's vehicle revving to when Deputy Alfred fired his weapon was approximately one to two seconds. This was a rapidly evolving incident that required quick decision making on the part of Deputy Alfred. If Deputy Alfred did not fire his weapon at Barber's vehicle, Deputy Alfred reasonably believed he would most assuredly be seriously injured or killed. Given those circumstances, the decision by Deputy Alfred to use deadly force was justified.

CONCLUSION

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

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