



PUBLIC RELEASE MEMORANDUM

Date: September 17, 2025

Involved Peace Officers: San Bernardino Police Officer Chad Holgate
San Bernardino Police Officer Tony Lopez

Involved Subject: Warren Dewitt Merriman (DOB 10/29/1981)
Subject's Residence: San Bernardino, CA

Incident Date: December 28, 2022

Case Agent: Detective Kimberly Hernandez
San Bernardino Police Department

Agency Report #: 22-141499

DA STAR #: 2024-15404

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PREAMBLE

The summary of this fatal incident is drawn from a submission of materials prepared by the San Bernardino Police Department (SBPD). The original case agent for this submission was SBPD Detective Kimberly Hernandez.

The submission reviewed included the following: reports of law enforcement witnesses, law enforcement dispatch audio recordings, audio recordings of civilian and law enforcement witness interviews, video recordings of civilian interviews, law enforcement audio recordings, law enforcement photographs, law enforcement scientific investigation reports, and medical records.

FACTUAL SUMMARY¹

On December 28, 2022, at approximately 7:46 a.m., SBPD Officers Chad Holgate and Tony Lopez shot 41-year-old Warren Dewitt Merriman in the driveway of his home at [REDACTED] ("Incident Residence"), in the city of San Bernardino. At the time he was shot, Mr. Merriman was himself armed with an 11-inch Buck brand hunting-style metal knife. Mr. Merriman sustained multiple gunshot wounds (GSWs), received first aid at the scene, and was transported to a local hospital, where he later died. No other persons were reported to be injured because of this incident.

The officer-involved shooting was the culmination of a series of events set into motion by several 9-1-1 calls placed by [REDACTED] (RP) beginning at 7:35 a.m., approximately an hour before the shooting occurred. RP reported that she and members of her household were being assaulted by Mr. Merriman, that Mr. Merriman had just injected himself with methamphetamine, and that Mr. Merriman had a "big knife." RP was screaming so hysterically during these calls that the dispatch operator had difficulty understanding what exactly RP was reporting. In addition to Officers Holgate and Lopez, SBPD Officers Brandon Rollings, Samuel Courduff, and Jose Madrid, responded to the Incident Residence. Prior to their arrival, these officers were alerted to Mr. Merriman's name and physical description, and that Mr. Merriman told RP to tell the police to bring the SWAT team. RP relayed Mr. Merriman's additional statements that the police would not be taking Mr. Merriman and Mr. Merriman said that he would be dying that day. Officers were also informed that Mr. Merriman was arrested recently for public disturbances and being under the influence of narcotics.

In the moments immediately prior to officers' arrival at the Incident Residence, Mr. Merriman continued to argue with RP, [REDACTED] ("Witness 1"), and [REDACTED] ("Witness 2") outside of the Incident Residence. RP had attempted to use pepper spray and Witness 1 used a hammer to defend against Mr. Merriman. RP had also enlisted the help of [REDACTED] ("Neighbor"), who lived in the home immediately to the east of the Incident Residence. However,

¹ The factual conclusions included here are based upon the totality of the circumstances evidenced by the submission. All incident-involved law enforcement officers were serving in the capacity of peace officers of the San Bernardino Police Department (SBPD) at the time of their involvement.

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within seconds of Neighbor coming outside, Mr. Merriman ran back into the Incident Residence through the front door.

Officer Rollings was the first to arrive at the Incident Residence, just as Mr. Merriman ran inside. RP stood in the driveway and warned Officer Rollings, "He's got a knife!" Officer Rollings announced, "San Bernardino Police Department," at the front door and encountered Mr. Merriman inside. Mr. Merriman was still holding his knife. Officer Rollings ordered Mr. Merriman to drop the knife, but Mr. Merriman ignored Officer Rollings and continued out the back door. Officer Rollings followed Mr. Merriman, and by that time, Officers Courduff and Madrid had also arrived and trailed behind Officer Rollings.

While Officers Rollings, Courduff and Madrid were inside the Incident Residence, Officers Holgate and Lopez arrived at the scene and stopped in the driveway. Moments later, Officers Holgate and Lopez saw Mr. Merriman approaching them with a knife in his hand. Mr. Merriman stopped approximately 25 feet north of Officers Holgate and Lopez as the officers raised their duty weapons at Mr. Merriman and demanded that he drop his knife. Then, Officer Rollings appeared around the northeast corner of the Incident Residence, behind (north of) Mr. Merriman. Mr. Merriman turned his head towards Officer Rollings, who was then joined by Officers Courduff and Madrid. Officers Rollings, Courduff, Madrid, Holgate and Lopez recognized that with Mr. Merriman positioned between them, there was a crossfire risk for all of them. Officers Holgate and Lopez attempted to wave Officers Rollings, Courduff, and Madrid away, while ordering Mr. Merriman to drop his knife. Then, Mr. Merriman turned his gaze back (south) towards Officers Holgate and Lopez, and took quick strides in an aggressive manner, while holding his knife in a downward stabbing motion towards them. Mr. Merriman said nothing while doing so, but it appeared to Officers Holgate and Lopez that Mr. Merriman would imminently stab or kill them, or RP, who stood next to Officer Holgate. Officers Holgate and Lopez fired at Mr. Merriman from a distance of approximately 15 feet. Mr. Merriman was struck multiple times and fell to the ground.

In the aftermath of the gunfire, the officers continued to give Mr. Merriman orders to drop his knife, until Officer Holgate approached Mr. Merriman where he lay, and took the knife out of Mr. Merriman's hand. Officers Rollings, Courduff and Madrid then handcuffed Mr. Merriman, assessed Mr. Merriman's injuries, and began to apply first aid. Paramedics arrived approximately five minutes after Mr. Merriman was shot.

After an examination of the scene and the collection of evidence, it was determined that Officer Holgate fired three times and Officer Lopez fired six times at Mr. Merriman. The weapons Officers Holgate and Lopez used were collected and examined by a San Bernardino County Sheriff's Department (SBCSD), Scientific Investigations Division (SID) criminalist; no damage or malfunction was noted in either weapon.

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STATEMENTS BY LAW ENFORCEMENT OFFICERS²

Officer Chad Holgate gave a voluntary statement to Detective Hernandez in the presence of his attorney, two days after the shooting. At the time of the interview, Officer Holgate was 40 years old and had been a law enforcement officer for approximately four years. There was no information in the submission regarding whether Officer Holgate was involved in any prior lethal force encounters.

During the shooting incident, Officer Holgate wore a SBPD issued uniform including a black short-sleeved polo-style shirt with SBPD patches on both of its outer shoulders. The shirt also included a cloth SBPD badge on the left breast, and the name "C. Holgate" in white block letters on the right chest. Officer Holgate wore a body-worn camera (BWC) device over his shirt and in the area of his sternum. Officer Holgate also wore black utility pants and black boots. Officer Holgate wore a duty belt with a pistol holstered on his right hip.

Prior to making his statement, Officer Holgate reviewed his recorded BWC video footage of the incident. (See Submitted Media, Law Enforcement Video, *infra*.) The following is a summary of relevant information disclosed by Officer Holgate at the time of his interview:

Officers Holgate and Lopez were on patrol elsewhere in San Bernardino when dispatch relayed RP's request for officers. RP reported that Mr. Merriman was assaulting RP and another household member, that Mr. Merriman was under the influence of narcotics, and that Mr. Merriman had a knife on his hip. Mr. Merriman was also reported to have said police should bring the SWAT team. Officer Holgate told the case agent that RP's SWAT comment meant to him that Mr. Merriman wanted someone to fight and expected violence. Officer Holgate relayed all the information from the call to Officer Lopez. After conferring with Officer Lopez, Officer Holgate advised dispatch that their unit would respond. Officers Holgate and Lopez were in a SBPD-marked patrol unit. Officer Holgate was the front passenger.

While en route to the Incident Residence, Officer Holgate continued to receive information via dispatch, including that Mr. Merriman was a middle-aged Hispanic male, wearing a black shirt and blue jeans. Officer Holgate also heard that Mr. Merriman was contacted recently by officers for resisting arrest. Just before arriving at the scene, Officer Holgate heard Officer Rollings announce that Mr. Merriman was running back into the house.

As Officers Holgate and Lopez arrived at the Incident Residence, Officer Holgate saw three other SBPD officers run to the front door. Officer Holgate activated his BWC device, got out of his unit, ran towards the driveway, and was also going to run towards the front door. However, Officer Holgate encountered RP in the driveway and advised her to get back. Then, Officer Holgate saw Mr. Merriman, who matched the description given to him

²All investigative reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or Mr. Merriman by name are made here for ease of narrative.

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previously, coming towards him in the driveway at a “very quick, determined pace.” Officer Holgate recalled trying to hold RP back as he saw that Mr. Merriman clutched a knife in his right fist. Officer Holgate estimated that Mr. Merriman’s knife had a six-to-seven-inch blade. Officer Holgate said Mr. Merriman was holding the knife “like a weapon” and in a “downward stabbing motion.” In response, Officer Holgate raised his firearm at Mr. Merriman. Officer Holgate also recalled telling Mr. Merriman to drop his knife.

While pointing his firearm at Mr. Merriman, Officer Holgate noticed Officer Rollings and another officer come around the back of the house, into the driveway, and behind Mr. Merriman. Officer Holgate raised a hand and told the other officers, “Crossfire.” Officer Holgate explained that the other officers were in danger of being shot. Mr. Merriman stopped his advance at about a midway distance down the driveway and looked back (north) at the officers behind him and then (south) at Officers Holgate and Lopez, as well as RP. It appeared to Officer Holgate that Mr. Merriman was looking back and forth, “like he was making decisions” on which officers to approach. Next, it appeared to Officer Holgate that Mr. Merriman made “a very conscious and very deliberate decision” to walk towards Officers Holgate and Lopez, and RP. Officer Holgate stated that in doing so, Mr. Merriman swung his arms big and took big lunging steps towards Officer Holgate. Officer Holgate told Det. Hernandez that Mr. Merriman had a “very determined and very aggressive look on his face,” and that Mr. Merriman looked angry with his chest out, and arms rigid with a flexed grip. Officer Holgate stated he believed that he or RP were going to get stabbed. Officer Holgate said for Mr. Merriman to come at him or RP, at that pace, with that body posture, could only mean that Mr. Merriman meant to kill or hurt them. As such, Officer Holgate fired his duty weapon at Mr. Merriman. Officer Holgate also heard Officer Lopez’s gunfire. At the time, Mr. Merriman was approximately 15 feet away, and Officer Holgate was also continuing to hold RP back. Officer Holgate stopped firing when he noticed Mr. Merriman falling to the ground. Officer Holgate then announced via dispatch that shots had been fired and requested medical aid.

Next, Officer Holgate saw Mr. Merriman lay in a fetal position on his left side, while keeping hold of his knife. When Mr. Merriman dropped his knife, Officer Holgate holstered his gun, approached Mr. Merriman where he lay, and picked up Mr. Merriman’s knife so that officers could begin rendering medical aid to Mr. Merriman. Officer Holgate then placed Mr. Merriman’s knife inside his patrol unit for safety and safekeeping. Officer Holgate explained that after Mr. Merriman was shot, RP was screaming and hysterical, and that Witness 1 and people across the street were also screaming and angry.

In retrospect, Officer Holgate stated that he believed it was necessary to shoot Mr. Merriman and knew no other way to stop Mr. Merriman. Officer Holgate stated that Mr. Merriman had other paths to take in this instance, i.e., Mr. Merriman could have gone back into his home. Officer Holgate observed that Mr. Merriman chose to go straight towards Officer Holgate, instead.

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After leaving the scene, Officer Holgate surrendered his duty weapon to investigators for examination and function testing. Officer Holgate's weapon was found to contain 20 rounds in its attached magazine and one round in its firing chamber. A SBCSD SID Criminalist examined Officer Holgate's weapon and described it as a Glock model 17Gen5, 9 mm Luger caliber semiautomatic pistol with no apparent defects. After test-firing Officer Holgate's duty weapon, the criminalist found that it fired without malfunction. SBPD Det. Hernandez determined, based upon Officer Holgate's statement and her investigation in total, that Officer Holgate's weapon was missing three rounds.

Officer Tony Lopez gave a voluntary statement to Detective Hernandez in the presence of his attorney, two days after the shooting. At the time of the interview, Officer Lopez was 38 years old and had been a law enforcement officer for approximately seven years. There was no information in the submission regarding whether Officer Lopez was involved in any prior lethal force encounters.

During the shooting incident, Officer Lopez wore a SBPD issued uniform including a black long-sleeved polo-style shirt with SBPD patches on both of its outer shoulders. The shirt also included a cloth SBPD badge on the left breast, and the name "T. Lopez" in white block letters on the right chest. Officer Lopez wore a BWC device over his shirt and in the area of his sternum. Officer Lopez also wore black utility pants, black boots, and a black baseball cap with the word, "POLICE" in white block letters across the front panel. Officer Lopez wore a duty belt with a pistol holstered on his right hip.

Prior to making his statement, Officer Lopez reviewed his recorded BWC video footage of the incident. (See Submitted Media, Law Enforcement Video, *infra*.) The following is a summary of relevant information disclosed by Officer Lopez at the time of his interview:

Officer Lopez recalled driving to Incident Residence and learning that Mr. Merriman had a knife, was assaulting a female family member, had injected himself with methamphetamine, and warned that the police should send a SWAT team. Officer Lopez said he drove his SBPD unit towards the scene and was the fourth in a stack of four units responding with their lights and sirens activated. As Officer Lopez neared the Incident Residence, he heard Officer Rollings say over the radio, "He's going back into the house," then saw Officer Rollings and three other officers run inside. Officer Lopez said that he and Officer Holgate were outside when they saw Mr. Merriman standing in a window, inside. Shortly thereafter, Officer Lopez saw Mr. Merriman again, but this time he was outside and running towards him and Officer Holgate. Officer Lopez noticed that Mr. Merriman had a chrome knife in his hand. Officer Lopez described the knife as a 12-inch hunting-style knife, with its blade slightly curved upwards and a handle that kept your hand from sliding forward.

Officer Lopez stated that he knew the officers that went inside of the house would be coming around the corner [behind and north of Mr. Merriman]. When they did, Officer

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Lopez tried to wave the officers back. Officer Lopez saw that Mr. Merriman slowed down and was looking to see which way he was going to run. Then, Officer Lopez saw Mr. Merriman take large deliberate steps (south) towards Officer Lopez, Officer Holgate and RP, with the knife in his right hand. Officer Lopez described Mr. Merriman as holding his knife raised as high as his neck and shoulder. Officer Lopez stated that he and Officer Holgate gave Mr. Merriman commands to drop his knife, but that Mr. Merriman would not listen. Officer Lopez stated, "This guy looked at us and made a decision to come forward towards us with that knife."

Officer Lopez described letting Mr. Merriman get closer because the officers in the background were still standing there. Officer Lopez changed his position so that the backdrop [to his gunfire] would be a brick wall instead. Officer Lopez believed he shot two or three times, and stopped firing when Mr. Merriman fell to the ground. It appeared to Officer Lopez that Mr. Merriman was trying to stab or kill him, Officer Holgate or RP. Officer Lopez gave Mr. Merriman additional commands to drop his knife after Mr. Merriman fell to the ground. Again, Mr. Merriman did not comply. Then, Officer Holgate saw the knife had dropped to the ground underneath Mr. Merriman. Officer Lopez kept his gun pointed at Mr. Merriman until Officer Holgate retrieved Mr. Merriman's knife. As the other officers then began to attend to Mr. Merriman, Officer Lopez recalled having to hold back RP. Officer Lopez stated that he also detained Witness 1, who was screaming at people across the street. Officer Lopez stated that he was trying to de-escalate and calm down the chaotic scene in doing so.

Officer Lopez, in retrospect and considering the totality of the circumstances, stated that he felt it was necessary to shoot Mr. Merriman. Officer Lopez stated, "[Mr. Merriman] was trying to kill or hurt somebody and that he had made his choice to do that. So we had to take action to stop it."

After leaving the scene, Officer Lopez surrendered his duty weapon to investigators for examination and function testing. Officer Lopez's weapon was found to contain 11 rounds in its attached magazine and one round in its firing chamber. The same criminalist that examined Officer Holgate's weapon also examined Officer Lopez's weapon. The criminalist described Officer Lopez's duty weapon as a Glock model 34Gen5, 9 mm Luger caliber semiautomatic pistol with no apparent defects. After test-firing Officer Lopez's duty weapon, the criminalist found that it fired without malfunction. Based upon Officer Lopez's statement and the case agent's investigation in total, it was determined that Officer Lopez's weapon was missing six rounds.

Additional Law Enforcement Personnel were interviewed and/or prepared reports regarding their involvement in the investigation of the shooting of Mr. Merriman. The following was revealed by those interviews, reports, and the case agent's submission in total:

Three SBPD officers witnessed the shooting of Mr. Merriman: Officers Rollings, Courduff and Madrid ("Witness Officers"). The Witness Officers' statements were generally consistent with each other, as well as with the statements of Officers Holgate and Lopez.

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Each of the Witness Officers arrived at the scene in a marked black and white SBPD vehicle and wore department-issued uniforms with conspicuous SBPD cloth badges and patches. Each of the Witness Officers recalled hearing the information from dispatch that Mr. Merriman was armed with a knife, had just injected himself with methamphetamine, and was warning officers to bring the SWAT team. Officer Rollings was the first to arrive at the scene, trailed by Officer Courduff, then Officer Madrid. Officers Holgate and Lopez arrived behind Officer Madrid.

Officer Rollings had been to the Incident Residence on prior calls made by RP regarding Mr. Merriman fighting with family members and had arrested Mr. Merriman the day before for running away from officers. Officer Rollings relayed his prior experience with Mr. Merriman over the radio and prior to arriving at the scene. When Officer Rollings arrived at the scene, he immediately saw and recognized Mr. Merriman running into the Incident Residence. Officer Rollings explained that in his prior experience, there were children in the Incident Residence and Officer Rollings was concerned that might also be the case that day. Before Officer Rollings went through the front door, Officers Courduff and Madrid saw Mr. Merriman at a south-facing window; they saw Mr. Merriman holding a knife in his hand. Officer Rollings already went through the front door of the Incident Residence before Officer Courduff could warn Officer Rollings. Inside, Officer Rollings saw Mr. Merriman had a knife and ordered Mr. Merriman to drop it. There appeared to be no other people in the house at the time. Mr. Merriman looked at Officer Rollings then ran towards the back door of the house. Officer Rollings pursued him. Officers Courduff and Madrid trailed into the house, behind Officer Rollings.

By the time the Witness Officers got to the back of the house and moved around the northeast corner of the house, each saw that Mr. Merriman stood holding his knife between them (to the north) and Officers Holgate and Lopez (to the south). The Witness Officers also saw that Officers Holgate and Lopez had their firearms out and pointed towards Mr. Merriman. The Witness Officers immediately recognized that they were in an unsafe “crossfire” situation. Officer Courduff explained that from the Witness Officers’ position, it was unsafe to fire at Mr. Merriman because there were other civilians behind Officers Holgate and Lopez. Before moving to safety—backwards behind the northeast corner of the Incident Residence, Officer Rollings saw Mr. Merriman step towards Officers Holgate and Lopez with the knife still in his hand. This is when the Witness Officers saw and/or heard Officers Holgate and Lopez shoot at Mr. Merriman.

After the gunfire, the Witness Officers saw Mr. Merriman had fallen to the ground. The Witness Officers approached Mr. Merriman where he lay and gave Mr. Merriman commands to drop his knife. After Mr. Merriman’s knife was taken away, Officers Courduff and Madrid handcuffed Mr. Merriman, and the Witness Officers began administering first aid to Mr. Merriman.

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STATEMENTS BY CIVILIAN WITNESSES³

Reporting Party (RP). SBPD Officer Dai and Sergeant Sherry Vasilis spoke to RP in front of the Incident Residence less than 20 minutes after Mr. Merriman was shot. RP told Officer Dai that Mr. Merriman had been arguing with Witness 2 all night long prior, then at 6:30 a.m., on the day of the shooting, Mr. Merriman started fighting with RP. When Mr. Merriman started also fighting with Witness 1, RP stated that she tried to break up the fight. RP stated that Mr. Merriman hit her and Witness 1 before Mr. Merriman pulled out his knife. Both RP and Witness 1 were arguing with Mr. Merriman while Mr. Merriman had the knife in his hand. RP stated that this is when she called for the police.

RP told Sergeant Vasilis that she pepper sprayed Mr. Merriman before the police arrived but that the pepper spray had no effect on Mr. Merriman. RP told Sergeant Vasilis,

I know what he's done. I know how he came at the police officer. I know he pulled the knife out. The cop told him to stop. He wouldn't stop. So, they shot him. Plain and simple. He was told to stop and he didn't.

RP later told a SBCSD Coroner Division Investigator that Mr. Merriman was known to use methamphetamine for years and was seen injecting methamphetamine on the day of the incident, before the shooting took place. RP denied that Mr. Merriman had any suicidal ideation or made any prior suicide attempts.

Witness 1. Witness 1 told investigators that Mr. Merriman took an axe to his and Witness 2's bedrooms and was tearing apart the Incident Residence. Witness 1 said Mr. Merriman was consistently using drugs and experiencing psychosis for the past four months. On the morning of the shooting, Witness 1 said that he armed himself with the hammer found in the driveway, to defend himself against Mr. Merriman.

Witness 2. SBPD Officer Bogh spoke to Witness 2 at the Incident Residence. Witness 2 told Officer Bogh that earlier that day, Mr. Merriman was using drugs and "acting crazy." Witness 2 said that when officers arrived, Mr. Merriman ran into the Incident Residence, and the officers chased after him. After Mr. Merriman came back out of the house again, Witness 2 said that Mr. Merriman ran towards the officers with a knife, and the officers shot Mr. Merriman. Witness 2 said, "Officers did what they had to do."

Neighbor. SBPD Corporal Nelson spoke to Neighbor at his residence about an hour after the shooting incident. Neighbor told Corporal Nelson that RP came to Neighbor's door earlier that morning and told Neighbor that Mr. Merriman was trying to attack Witness 1 with a knife. When Neighbor came outside, Neighbor saw Mr. Merriman, RP, Witness 1, and Witness 2, also outside.

³ Multiple civilian witnesses were interviewed pursuant to the submitted investigation. Every civilian statement submitted was reviewed in totality. However, only selected statements and selected parts of those statements are included here. Names are included in this summary for ease of reference only.

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Shortly thereafter, police cars arrived. Neighbor then watched Mr. Merriman run into the Incident Residence, come out the back of the house, and run towards the front of the house again, with something in his hand. Neighbor said he wasn't sure what Mr. Merriman had in his hand but heard officers give Mr. Merriman multiple commands to put his knife down. Neighbor said that Mr. Merriman advanced [towards the officers] anyway. Neighbor said Mr. Merriman advanced approximately 10 to 12 feet towards the officers before the officers opened fire upon Mr. Merriman. Neighbor approximated that Mr. Merriman was no more than 15 feet away from the officers when the officers fired at Mr. Merriman.

SUBMITTED MEDIA⁴

Dispatch Recordings. The case agent's submission included audio recordings of 9-1-1 calls and radio transmissions between SBPD dispatch operators and officers. The following is a summary of material events that occurred on December 28, 2022, evidenced by these recordings and a dispatch log provided by the case agent:

- 7:35 a.m. RP called 9-1-1 but there was too much screaming for the dispatch operator to determine what assistance was needed. In the chaos, RP could be heard saying, "he just hit him again" and "he hit him five times already." The call disconnected without additional information.
- 7:38 a.m. Officers were dispatched to respond to the Incident Residence. The dispatch log included information that officers contacted Mr. Merriman the day prior at the same residence.
- 7:39 a.m. RP called 9-1-1 a second time and reported that Mr. Merriman "just gave himself a methamphetamine injection." RP provided Mr. Merriman's name and ethnic description. RP also said Mr. Merriman was wearing a black shirt and jeans. RP told the dispatch operator that Mr. Merriman was "tearing up the whole house," had struck RP in the head, and struck Witness 1 and Witness 2, as well. RP relayed that Mr. Merriman said, "Bring the SWAT team because he's not going. You guys are not taking him" and "He's dying today." RP told the dispatch operator that Mr. Merriman had a "big knife" on the right side of his belt. This call cut off amid additional unintelligible screaming and yelling by multiple voices.
- 7:40 a.m. Dispatch relayed the sum of RP's second 9-1-1 call to officers. Officers Rollings and Madrid separately alerted dispatch that each was on his way to the scene.

⁴ All submitted photographs and audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are mentioned here. All referenced video footage was reviewed at slowed speeds.

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- 7:41 a.m. Officer Courduff alerted dispatch that he was on his way to the scene. Officer Courduff asked over the radio what prior incidents were reported for the Incident Residence. Officer Rollings responded over the radio that Mr. Merriman was arrested last week for “415” [public disturbance] and had “a lot of 415’s and 11550’s [under the influence of narcotics] over the last month.”
- 7:42 a.m. Officer Holgate advised dispatch that he and Officer Lopez were on their way to the scene.
- 7:44 a.m. RP called 9-1-1 for a third time and told the dispatch operator that Mr. Merriman “just pulled the knife on [her]” and that Mr. Merriman had a hammer. The dispatch operator told RP to get everyone out of the house. RP confirmed that they were all outside of the house.
- 7:45 a.m. Officer Rollings radioed, “He’s running back into the house.” Officers Courduff, Madrid, and Holgate advised dispatch that they arrived at the scene.
- 7:46 a.m. Officer Rollings announced over the radio that Mr. Merriman was going out of the back of the house. Then, Officer Madrid radioed, “Shots fired. Shots fired.” Officer Madrid continued, “Suspect down. Officers are ok. I repeat, officers are ok.” Within seconds, Officer Holgate also announced over the radio, “Shots fired. Start med-aid.”
- 7:47 a.m. Officer Rollings alerted dispatch that the scene was safe for medical personnel to enter.

Law Enforcement Video. The submission included BWC footage recorded by the two shooting officers and the Witness Officers.⁵ The BWC footage was generally consistent with statements provided by each of those officers. The entire shooting was captured by the shooting officers’ BWC devices, and a portion of the shooting was captured by each of the Witness Officers’ BWC devices. The case agent also provided a quadruple-view compilation of BWC footage recorded by Officers Holgate, Lopez, Madrid, and Rollings. The compilation video appeared to show each officer’s footage in separate quadrants, time-synced to demonstrate what events were occurring simultaneously. The following is a summary of portions of the submitted BWC footage:⁶

⁵ At the time the incident was recorded, Officers Holgate and Lopez, and the Witness Officers wore their BWC devices in the area of their sternum. The resulting footage was limited to the recording environment that existed close to each officer’s BWC device at the time, place and manner in which the BWC device was worn. For example, often times, the recording officer’s hands obstructed the view of the recording device. The BWC footage, while informative, cannot recreate what the wearing officer perceived by his combined senses.

⁶ All BWC recordings included visual date and time stamping for the events recorded. For clarity, the times noted in this summary reflect the timestamp indicated in the recording being referenced. Additionally, the first 29 seconds of each of the shooting officer and witness officer BWC recordings did not include audio.

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At 7:45 a.m., before getting out of his unit, Officer Rollings radioed, “he’s running back into the house.” Ten seconds later, Officer Rollings stepped out of his stopped patrol unit and moved quickly past RP and Neighbor, who were standing to the east of the Incident Residence driveway. As Officer Rollings ran past, RP yelled, “he has a knife!”

By the time Officer Rollings was on the front porch, Officer Courduff was also at the scene and in front of the Incident Residence. Mr. Merriman looked at Officer Courduff from inside the southwest window and could be seen with a knife in his hand. It was still 7:45 a.m., when Officer Courduff stood on the sidewalk in front of the Incident Residence. Officer Courduff drew his firearm, pointed it at Mr. Merriman and said, “Hey, show me your fucking hands.” As if in response, Mr. Merriman moved away from the window and disappeared behind the drapes. Officer Courduff yelled toward Officer Rollings, “Rollings watch out! Rollings back out!”

On the porch, Officer Rollings had his gun drawn, kicked at the front door, and announced, “San Bernardino Police Department!” Then, Mr. Merriman appeared in front of Officer Rollings and seemed to look in Officer Rollings’ direction. Mr. Merriman still had his knife in his right hand. Officer Rollings yelled, “Hey! Drop the knife! Drop the knife!” But Mr. Merriman turned his back to Officer Rollings, scuttled to the back door, and out of view of Officer Rollings’ BWC device. Officer Rollings radioed, “He’s going out the back,” before hurrying after Mr. Merriman. As Officers Courduff and Madrid ran towards the front porch of the Incident Residence, Officers Holgate and Lopez arrived at the scene. Officers Courduff and Madrid followed behind Officer Rollings.

It was still 7:45 a.m. when Officers Courduff and Madrid trailed Officer Rollings through the Incident Residence. As Officer Rollings popped out the back door, Officer Courduff again tried to warn Officer Rollings, “Rollings watch out!” Meanwhile, to the front of the house, Officer Holgate stepped out of his patrol unit, followed by Officer Lopez; both moved toward the residence driveway. At first, Officer Holgate called Witness 1—who was also walking towards the front door, to come back towards him. Officer Lopez stood on the west side of the driveway and Officer Holgate stood northwest of him (to Officer Lopez’s right). As Witness 1 restrained a medium-sized dog on the front porch, Officer Holgate’s BWC device captured Mr. Merriman coming (south) towards Officer Holgate with a knife in his hand. Then, both Officers Holgate and Lopez pointed their guns (north) toward Mr. Merriman and ordered Mr. Merriman to drop his knife.

At 7:46 a.m., Officer Rollings came out the back door, continued to his right, went around the northeast corner of the house and faced (south) down the driveway, where Mr. Merriman stood. Officer Rollings’ BWC footage showed Officers Holgate and Lopez near the mouth of the driveway, immediately south of where Mr. Merriman was standing. Officer Rollings yelled, “Hey!” and Mr. Merriman looked in Officer Rollings’ direction momentarily. Then, Mr. Merriman returned his gaze towards Officers Holgate and Lopez. Mr. Merriman still had his knife in his right hand as Officer Rollings yelled, “Aye,

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crossfire!” Officer Courduff also began to yell, “Crossfire, crossfire, crossfire,” and began to wave at Officers Holgate and Lopez with his right hand. Officer Holgate also said, “crossfire” and appeared to point north towards the Witness Officers. Then, BWC footage showed Mr. Merriman take approximately four steps (south) towards Officers Holgate and Lopez. It was still 7:46 a.m., Officers Holgate and Lopez ordered Mr. Merriman to drop his knife a total eight times before the sound of nine gunshots in an uninterrupted volley rang out over the course of about two seconds.

Officers Holgate and Lopez’s BWC footage showed that during the gunfire, Mr. Merriman advanced toward the shooting officers and RP. Mr. Merriman clutched his knife to his chest, hunched forward, and fell to the ground onto his back before rolling over towards his left side on the east side of the driveway, next to the chain link fence that separated the incident scene from Neighbor’s driveway. Also, during the gunfire, Officer Lopez’s BWC footage showed that RP stood immediately to the right of Officer Holgate. Per their BWC footage, the Witness Officers appeared to retreat behind the northeast corner of the Incident Residence before the gunfire stopped. Officer Lopez’s BWC footage showed Neighbor and Witness 2 appearing to watch the shooting from Neighbor’s driveway.

Approximately five seconds is all that passed between the time Officers Holgate and Lopez first addressed Mr. Merriman in the driveway and when the first gunshot was heard.

A second after the gunfire stopped, Officer Madrid radioed, “shots fired, shots fired.” The Witness Officers then quickly moved south down the driveway and towards where Mr. Merriman lay on the ground. Meanwhile, Officers Holgate and Lopez resumed giving Mr. Merriman orders to drop his knife. Officer Madrid announced over the radio, “Suspect is down. Officers are ok,” as Officer Rollings also gave Mr. Merriman commands to drop his knife. BWC footage showed RP moved towards Mr. Merriman within seconds of Mr. Merriman falling to the ground; Officer Holgate reached across his body with his left hand to keep RP back while keeping the firearm in his right hand pointed at Mr. Merriman on the ground. Officer Holgate ordered RP to “get back,” multiple times. RP then walked behind Officer Holgate and Officer Holgate radioed, “Shots fired” and requested medical aid. RP then made a second attempt to get close to Mr. Merriman and Officer Lopez shooed RP back towards the street, where RP began to scream hysterically.

In the aftermath of the gunfire, multiple BWC devices showed multiple officers give commands to Mr. Merriman to include “do not move,” “put your arms out,” and “drop the knife.” About 23 seconds after the gunfire, Officer Holgate attempted to alert the Witness Officers that Mr. Merriman’s knife was falling out of Mr. Merriman’s hand. About 12 seconds later, as other officers assisted in holding RP and Witness 1 back, Officer Holgate moved forward to where Mr. Merriman lay, bent down, and picked up Mr. Merriman’s knife. Officer Holgate then took the knife and placed it on the front passenger floorboard of his patrol unit.

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At 7:47 a.m., after Officer Holgate took Mr. Merriman's knife away, the Witness Officers handcuffed Mr. Merriman, assessed Mr. Merriman's injuries, and administered first aid. Ambulance paramedics arrived at the scene at 7:51 a.m. At 7:52 a.m., Mr. Merriman was uncuffed. By 7:53 a.m., Mr. Merriman was placed on a gurney. Minutes thereafter, Mr. Merriman was loaded into the ambulance and taken away from the scene.

INCIDENT SCENE INVESTIGATION

The incident scene investigation was managed by Detective Brandon Keith, with the assistance of a SBPD forensic technician. Detective Keith noted that the morning of the shooting was cool and dry, with almost no wind. The incident occurred during daytime hours and the incident scene was well lit.

The incident scene was a residence driveway on the north side of the 100 block of East Fourth Street, between North Sierra Way and Sepulveda Avenue, in the City of San Bernardino. The Incident Residence was described as a single-story, single-family residence with a stucco exterior and concrete front porch. The front facade of the Incident Residence faced south. The residence driveway extended almost the entire east perimeter of the property. There were also two detached rear units north of the Incident Residence, one of which was occupied at the time of the shooting.



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Officers Holgate and Lopez's patrol unit was parked across the westbound traffic lanes of East Fourth Street, in front of and facing the Incident Residence in a northeast direction. Officer Rollings' marked patrol unit was parked across the westbound #2 lane, in front of the Incident Residence, and facing down the residence driveway, also in a northeasterly direction.

The investigation revealed that Mr. Merriman's bedroom was the southwest bedroom, where Detective Keith identified a methamphetamine glass pipe and a 36-inch Husky brand axe. The interior of the Incident Residence was discovered in disarray, with holes and gashes in the interior walls.

Eight FCCs were recovered from the scene, in total. Five of those FCCs were found grouped north of Officer Rollings' patrol unit, near the southern end of the driveway. Three FCCs were found further south and east, closer to the mouth of the driveway. A small cannister of pepper spray was also recovered from the driveway. A metal ball peen hammer with a 12-inch handle was recovered nearby, from Neighbor's front yard.

Mr. Merriman's knife was recovered from Officer Holgate's patrol unit. The knife was a Buck brand metal knife, with a silver blade, and a black and silver handle. The knife's handle was approximately four and a half inches long, with a protruding hand guard, and a two-finger molded grip. The metal knife blade was approximately five and a half inches long.



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CRIMINAL HISTORY & AUTOPSY

Mr. Merriman was previously convicted of making criminal threats, a felony, in 2016, for which he completed jail time and a term of probation. The investigation revealed that Mr. Merriman's death was pronounced by a physician at a San Bernardino hospital on December 28, 2022, at 8:18 a.m. Mr. Merriman was 41 years old at the time of his death.

Following an investigation by a SBCSD Coroner Division investigator, an autopsy of Mr. Merriman's remains was conducted by a SBCSD Coroner Division forensic pathologist on December 29, 2022. The forensic pathologist identified Mr. Merriman as a Hispanic adult male, appearing 41 years old, approximately 70" long, and weighing 178 pounds. The forensic pathologist identified five projectiles in Mr. Merriman's body via radiograph: four in the torso, and one in the right thigh. The forensic pathologist identified eight separate GSWs: three to the chest, one in the left thigh, one in the right buttock, one in the right lower leg, one in the left forearm, and one on the left hand.

The forensic pathologist indicated to Detective Hernandez that two of the GSWs to Mr. Merriman's chest were fatal. Each of the fatal GSWs had a front to back trajectory. The forensic pathologist specified that Mr. Merriman's death occurred within minutes due to the chest GSWs. The forensic pathologist was able to retrieve projectiles associated with the fatal shots and did note that the fatal shots perforated essential organs and fractured ribs. In contrast to the fatal GSWs, the GSWs to Mr. Merriman's right buttock and left hand were found by the forensic pathologist to have a "slightly back to front" trajectory. The forensic pathologist also found that the GSW to Mr. Merriman's left forearm had a "back to front" trajectory. The forensic pathologist explained to Detective Hernandez that the bullets that entered Mr. Merriman's left arm and hand, re-entered at the chest.

Femoral blood samples retrieved by the forensic pathologist during the autopsy were collected, analyzed, and found to contain 45 ng/mL of amphetamine and 1200 ng/mL of methamphetamine.

APPLICABLE LEGAL PRINCIPLES

A peace officer who responds to an emergency call and is faced with threat of harm while fulfilling his duties, need not retreat and maintains his right to self-defense. (Calif. Penal C. §§197, 835a.)⁷ A peace officer is not deemed the aggressor in this instance. (Penal C. §835a(d).) A peace officer may use objectively reasonable force to effect an arrest, to prevent escape or to overcome resistance. (Penal C. §835a(b).) An arrestee or detainee may be kept in a peace 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.) An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know

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

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that he is being arrested. (Penal C. §834a.) The force used by the peace 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.)

PENAL CODE SECTION 196. Peace officers may use *deadly* force in the course of their duties, under circumstances not available to members of the general public. Penal Code section 196 states that homicide by a peace officer is justifiable when it results from a use of force that “is in compliance with Section 835a.” Section 835a(c)(1) specifies a peace officer *is justified in using deadly force* when he reasonably believes based upon the totality of the circumstances, that it is necessary to “defend against an imminent threat of death or serious bodily injury to the officer or another.” 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).)

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 section 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 for an officer to use lethal force under section 835a(c)(1), as stated *supra*. Although these principles did not appear in section 835a until 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 law enforcement officer has probable cause to believe that the suspect he is attempting to apprehend has “threatened infliction of serious physical harm” to the officer, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner, supra*, 471 U.S. at 11-12.) California courts have held that

⁸ Assem. Bill No. 392 (2018-2019 Reg. Sess.) was approved by the Governor on August 19, 2019. [Hereinafter “AB-392”] The statutory modifications included in AB-392 took effect on January 1, 2020.

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when a law enforcement officer's actions are reasonable under the Fourth Amendment of our national Constitution, that state statutory requirements may also be 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 case law that demonstrates *how* to undertake the analysis of what a reasonable use of force under the totality of the circumstances is. (See *Reasonableness* discussion, *infra*.) As such, California's pre-2020 case law is still relevant here.

In addition, the legislature included generalized findings and declarations at subsection (a) of section 835a that are instructive. 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;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).)

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

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).

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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 in determining 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* (9th Cir. 1994) 39 F. 3d 912, 915.)

Imminence more recently defined in the context of police use of lethal force 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).)

In addition, peace officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 348.) When apprehending a violent suspect, peace officers need not even choose the “most reasonable” action or the one that would likely cause the least amount of harm. (*Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 632.) The court in *Scott* explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. ... Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.

(*Scott, supra*, 39 F.3d at 915.)

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 during 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 [peace officers] are often forced to make split-second judgments—in circumstances

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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 [peace officer’s] actions are ‘objectively reasonable’ considering 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 under which the force was applied. A person’s right to self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.)

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 shooting officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) Imminent harm is such a primary factor that even when all other *Graham* factors weigh against a peace officer’s use of force, a court may *still* find that the use of force was reasonable where the peace officer faced imminent harm. (*Estate of Strickland v. Nevada County* (9th Cir. 2023) 69 F.4th 614, cert. denied Jan. 8, 2024, No. 23-410, __ U.S. __ [144 S.Ct. 559, 217 L.Ed.2d 297].) Imminent harm can be found where a peace officer confronts an armed suspect in close proximity whose actions indicate an *intent* to attack. (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.) Aggressing a police officer with a knife, large or small, can justify an officer’s use of lethal force against the aggressor. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 345 [large knife], *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695 [steak knife].) 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.)

Lastly, the use of force policies and training of a shooting officer’s law enforcement agency *may* also be considered as a factor to determine whether the shooting officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1. See fn. 9, *supra*.)

Another key guiding principle when undertaking this analysis is that courts do not engage in *Monday morning quarterbacking* and nor shall we. Our state appellate court has warned,

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

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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.) 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.)

ANALYSIS

This memorandum examines the use of deadly force by SBPD Officers Chad Holgate and Tony Lopez on December 28, 2022, upon Warren Merriman. As indicated above, there are legal bases that must be met before the right to self-defense ripens and the use of lethal force is justified. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent’s submission.

A use of force must be “reasonable” to be deemed lawful. Whether the shooting officer was justified in using lethal force involves a two-part analysis: (1) did he subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was his belief in the need to protect himself or another from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective beliefs of Officers Holgate and Lopez are included here based primarily upon the statements each made during his interview. (See Summary of Officers Holgate and Lopez statements, Statements by Law Enforcement Officers, *supra*.)

Prior to responding to the Incident Residence, Officers Holgate and Lopez were informed that RP and members of her household were being assaulted by Mr. Merriman, that Mr. Merriman was armed with a knife, and had just injected himself with methamphetamine. Mr. Merriman’s physical description and assertion that the police should bring the SWAT team was also relayed to Officers Holgate and Lopez. Officer Holgate took Mr. Merriman’s SWAT comment to mean that Mr. Merriman wanted to fight and was ready for violence. Officer Lopez drove their patrol unit to the scene, with emergency lights and sirens activated, behind three other SBPD patrol units. As Officers Holgate and Lopez arrived at the Incident Residence, they heard Officer Rollings announce that Mr. Merriman was running back into the house.

Once at the scene, Officers Holgate and Lopez got out of their patrol unit and were also going to run into the house when they encountered Mr. Merriman in the residence driveway. Officers Holgate and Lopez saw that Mr. Merriman was holding a knife in his hand. Officers Holgate and

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Lopez ordered Mr. Merriman to drop his knife. Officer Holgate estimated that Mr. Merriman's knife bore a six-to-seven-inch blade. Officer Lopez estimated Mr. Merriman's knife measured a foot in total. As Officers Holgate and Lopez confronted Mr. Merriman, both officers also noticed the Witness Officers appear *behind* Mr. Merriman. Officers Holgate and Lopez attempted to alert the Witness Officers of the crossfire risk.

Officers Holgate and Lopez appreciated that Mr. Merriman stopped advancing toward them and appeared to be deciding whether to approach the Witness Officers or them. Officers Holgate and Lopez then saw that Mr. Merriman had chosen to come after them: Mr. Merriman took big lunging steps towards Officers Holgate and Lopez, while holding his large knife up at shoulder level with a downward stabbing-motion, like he intended to stab or kill the officers or RP. Officer Holgate described Mr. Merriman as having a "very determined and very aggressive look on his face," during his approach and that Mr. Merriman looked angry, with his chest out, and his arms rigid. Both Officers Holgate and Lopez stated that they fired at Mr. Merriman to stop Mr. Merriman from killing them, or RP. The shooting officers both stated that they stopped firing when Mr. Merriman fell to the ground. After they stopped shooting, Officers Holgate and Lopez continued to give Mr. Merriman orders to drop his knife, until Officer Holgate took Mr. Merriman's knife out of his reach.

The stated account of Officers Holgate and Lopez of the circumstances at play *prior* to and culminating with their use of lethal force is consistent with the submission. Furthermore, the submission supports each officer's conclusion that Mr. Merriman was armed with a knife and appeared to be preparing to stab or kill them, or RP, who initiated the call for service to begin with. The evidenced nature of Mr. Merriman's weapon and the manner of his approach support a finding that Mr. Merriman had the apparent ability, intent, and opportunity to inflict the lethal harm articulated by both Officers Holgate and Lopez. Based upon the foregoing, it is reasonable to conclude that Officers Holgate and Lopez bore an honest and subjective belief that they, and/or RP, were under threat of imminent deadly harm or bodily injury at the time they used lethal force.

Reasonable Belief of Imminent Need to Protect. The use of lethal force is authorized by Penal Code section 835a(c)(1) when a peace officer has a "reasonable" belief of an imminent threat of death to a person. A definition of "reasonable" is not included within section 835a. Instead, the analytical framework for determining what is "reasonable" is included in *Graham* and its progeny. This analysis also overlaps with the second component to a defense of others claim: a finding that the involved shooting officer had an objectively reasonable belief of the need to use deadly force to protect another from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. Here, Mr. Merriman had reportedly assaulted RP, Witness 1, and Witness 2, prior to the arrival of officers, in violation of Penal Code sections 242 [battery] and 273.5 [infliction of injury upon a cohabitant/dating partner]. Mr. Merriman was also under the influence of methamphetamine, in violation of Health and Safety code section 11550. These crimes could be classified as felonies or misdemeanors. An argument could be made that Mr. Merriman's conduct was more akin to a felony, since the level of violence that Mr. Merriman used that morning appeared to be significant and directed at several people.

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Additionally, the use of pepper spray and even a hammer was not enough to stop or deter Mr. Merriman from attacking members of his household. Also, Mr. Merriman may not have used his large knife to stab members of his household, but he did maintain possession of the knife and RP, at least, was intimidated by it. Mr. Merriman further taunted RP by demanding that the police bring its SWAT team.

Similarly, the presence of law enforcement did nothing to persuade Mr. Merriman to surrender or disarm himself. Officers Holgate and Lopez, who were in distinctively marked law enforcement uniforms, pointing guns at Mr. Merriman and calling for Mr. Merriman to drop his knife should reasonably have indicated to Mr. Merriman that officers were attempting to stop, detain, and/or arrest him. Despite the presence of law enforcement, Mr. Merriman actively aggressed Officers Holgate and Lopez with a knife large enough to kill the officers. It is reasonable to believe that when an armed subject aggressively approaches officers who are openly poised to open fire in return, that the aggressor means to meet that lethal threat and inflict lethal harm. Officers Holgate and Lopez had no duty to retreat in response to Mr. Merriman's advance. Mr. Merriman could be deemed to violate Penal Code section 245, subdivision (c) [assault with force likely to cause great bodily injury to pursuing law enforcement]. Assault on a peace officer with a deadly weapon or instrument is a "serious" felony per Penal Code section 1192.7, subdivision (c). As such, the severity of the crimes Mr. Merriman may have committed and was engaged in immediately prior to Officers Holgate and Lopez's use of lethal force weighs in favor of a finding that such force was reasonable.

Resistance is another essential consideration in a *Graham* analysis. Officers Holgate and Lopez were authorized to use reasonable force to effectuate Mr. Merriman's detention and arrest based first upon the information relayed by RP. Mr. Merriman had a duty to refrain from using any force or weapon to resist detention or arrest. As discussed above, Mr. Merriman was aware or should have been aware that his detention by a peace officer was imminent. Officer Courduff was the first officer to point his firearm at Mr. Merriman as Mr. Merriman stood in his bedroom window with his knife in hand, and looking out at patrol units arriving at the scene. Then, Officer Rollings announced "San Bernardino Police Department" at the front door of the Incident Residence. After doing so, Mr. Merriman came in brief contact with Officer Rollings inside the Incident Residence, where Officer Rollings ordered Mr. Merriman to drop his knife, also at gunpoint. Mr. Merriman ignored Officer Rollings' commands and continued outside to the driveway, where Officers Holgate and Lopez encountered him. Officers Holgate and Lopez, too, attempted to gain Mr. Merriman's compliance by ordering Mr. Merriman to drop his knife. Although Mr. Merriman stopped, he was caught in the middle of the Witness Officers to the north, and Officers Holgate and Lopez to the south. At that point, no officer made any movement closer to Mr. Merriman. Mr. Merriman could have communicated with the officers and/or chosen to maintain that distance from the officers to reconsider his armed approach; he did neither. At that critical moment, Mr. Merriman was simply being asked to disarm himself. Mr. Merriman could have disarmed himself many different times from the first 9-1-1 call, to making his stand on the driveway. It can only be concluded that Mr. Merriman intended to remain armed because he intended to use his knife.

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Furthermore, Mr. Merriman made clear that he did not want to be detained, first by telling RP that the police would not be taking him, next by running away from officers, and finally by aggressing the officers with a large knife. Mr. Merriman was not a stranger to law enforcement contact and was reasonably aware of what behavior was expected of him in the face of detention. Mr. Merriman demonstrated passive resistance by not surrendering or responding to the officers' commands. Even at the point where he appeared to be deciding which officers to approach, Mr. Merriman could have chosen to drop his knife where he stood and run west towards the front door of the Incident Residence. Instead, Mr. Merriman engaged in active resistance when he stepped briskly in an assaultive manner towards Officers Holgate and Lopez and RP with a knife-in-hand. Self-armament in the face of detention by an armed police officer is an extreme level of resistance. As such, the submission in total supports a finding that Mr. Merriman was engaged in active resistance at the time Officers Holgate and Lopez used lethal force. In the calculus of what was "reasonable" under *Graham*, Mr. Merriman's active resistance can be weighed in favor of the conclusion that Officers Holgate and Lopez's use of force was reasonable.

Immediacy is the "most important" *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. The circumstances at play leading up to Officers Holgate and Lopez's direct contact with Mr. Merriman must be considered. Here, it was relayed to officers prior to their arrival at the Incident Residence that Mr. Merriman was an armed assailant, who had just injected himself with methamphetamine. When officers arrived and encountered Mr. Merriman, still armed, there was no reason to believe that Mr. Merriman was any *less* dangerous than he was reported to be. Even though Officers Holgate and Lopez placed Mr. Merriman at gunpoint, Officers Holgate and Lopez were required by section 835a, subd. (c), to act only in defense of an imminent lethal threat—a reactive vs. proactive mandate. Officers Holgate and Lopez did not have the luxury of time and space to approach this incident with any leisure. A period of only five seconds passed in between the time Officers Holgate and Lopez addressed Mr. Merriman in the driveway and when the first shot was fired. Further, the close proximity between Mr. Merriman and the officers at the scene, in addition to the immediate presence of RP and other civilians, would necessarily call for a short reaction window for Officers Holgate and Lopez. What's more, Officers Holgate and Lopez were required to interpret Mr. Merriman's intent purely from Mr. Merriman's outward conduct as Mr. Merriman offered no reported verbal feedback during the entire encounter. Mr. Merriman rapidly approached Officers Holgate and Lopez in an aggressive manner while holding a large knife in a stabbing position, with a rigid hand and arm. Officers Holgate and Lopez also appeared to appreciate the imminent threat Mr. Merriman posed, at or around the same time, as both Officers Holgate and Lopez fired upon Mr. Merriman in what sounded like a singular and simultaneous volley of gunfire. In this tense, uncertain, and rapidly evolving encounter, it was only when Mr. Merriman advanced towards officers and RP in such a fashion that Officers Holgate and Lopez finally took action to defend their lives.

In sum, Mr. Merriman's apparent conduct demonstrated that Mr. Merriman had the present ability and opportunity to immediately cause death or serious bodily injury. Specifically, Officers Holgate and Lopez reasonably believed that lethal force was instantly required to avoid immediate death to themselves and RP, who flanked Officer Holgate. The law did not require Officers Holgate and

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Lopez to wait to use lethal force until Mr. Merriman actually stabbed someone; it required an imminent lethal threat. As the law is comparatively generous to law enforcement in cases where potential danger or other exigent circumstances are present, as was the case here, the submission in total provides no compelling basis to second-guess Officers Holgate and Lopez's identification of an imminent lethal threat posed by Mr. Merriman or their choice to use lethal force upon Mr. Merriman, therefore.

Based on the foregoing discussion, each of the primary *Graham* factors as applied support a finding that the use of lethal force by Officers Holgate and Lopez was reasonable. The "totality of the circumstances" discussed herein further supports a finding that Officers Holgate and Lopez reasonably believed they were defending against an imminent threat of death or serious bodily injury to themselves and others at the time each used lethal force. As such, we conclude that the use of lethal force by Officers Holgate and Lopez was also justified under Penal Code sections 196 and 197.

De-escalation. Section 835a(a) does require that lethal force be used only "when necessary to defend human life" and that safe and feasible de-escalation should be employed. Normally, the mere presence of multiple uniformed and armed law enforcement officers issuing orders can serve as a de-escalation technique. The submission supports a conclusion that Mr. Merriman knew RP was summoning the police and knew that the police had arrived at the Incident Residence. Mr. Merriman ran into the Incident Residence as the marked black and white patrol units with lights and sirens drew near. Officer Rollings announced, "San Bernardino Police Department" at the front doorway before giving Mr. Merriman orders to drop his knife. Officers Rollings, Courduff, Madrid, Holgate, and Lopez were all wearing department issued law enforcement uniforms and had their guns drawn as they encountered Mr. Merriman in the driveway. One faced with such a significant law enforcement response might reasonably find there is no likely escape and swiftly choose to surrender and comply when orders are given. Mr. Merriman did not. Mr. Merriman made no attempt to communicate either by words or action that he would surrender. Although the investigation revealed that an officer with a less-than-lethal shotgun was making his way to the scene, Mr. Merriman provoked lethal contact with Officers Holgate and Lopez. There was neither time to wait for the less-than-lethal shotgun to arrive at the scene, nor was there any indication that use of the same would have had any deterrent effect on Mr. Merriman's assaultive conduct. Mr. Merriman chose to aggress Officers Holgate and Lopez with a large knife within seconds of the officers contacting Mr. Merriman. Even if officers had a less-than-lethal option available at the ready, it would not have changed the lethal and immediate character of the threat that Mr. Merriman posed and Officers Holgate and Lopez appreciated, as discussed *supra*. In sum, by refusing to comply, showing resistance, and arming himself with a lethal weapon, Mr. Merriman dictated a circumstance where there was no further feasible, safe, or reasonable opportunity for Officers Holgate and Lopez to de-escalate the incident.

Other Statutory Considerations. The added considerations included in §835a(a) also support a conclusion that the use of deadly force by Officers Holgate and Lopez was lawful.¹⁰ First, the

¹⁰ This review is based on a totality of the circumstances from the perspective of a reasonable officer in the same situation. (Penal C. §§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether

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submission in total supports a conclusion that Officers Holgate and Lopez did not act excessively. Officers Holgate and Lopez fired at Mr. Merriman only after Mr. Merriman demonstrated a sustained unwillingness to comply with commands to disarm. Gunfire erupted during Mr. Merriman's assault on the officers and stopped as soon as Officers Holgate and Lopez saw that Mr. Merriman was on the ground. After the gunfire, Mr. Merriman appeared to be moving while on the ground and was still armed with his knife. As such, Mr. Merriman was still an armed threat. Officers Holgate and Lopez's duty weapons contained more live rounds immediately ready to be fired without additional loading. Instead, Officers Holgate and Lopez appreciated that Mr. Merriman no longer posed an *immediate* lethal threat to anyone. Officer Holgate was able to disarm Mr. Merriman less than a minute after the shooting so that medical aid could be rendered. In sum, the submitted evidence supports the conclusion that lethal force did not continue after Officers Holgate and Lopez appreciated that Mr. Merriman no longer posed an immediate lethal threat to them or others. As such, Officers Holgate and Lopez can be found to have well-appreciated the gravity and consequence of their use of lethal force in this instance, evidenced by the judicious way each employed lethal force.

The material submitted by the case agent did reveal that Mr. Merriman injected himself with methamphetamine just prior to the arrival of officers. Although those under the influence of narcotics *may* be impacted in their ability to understand and comply with peace officer commands as stated in §835a(a)(5), there was nothing in the submission that showed Mr. Merriman was prevented from understanding that he was being contacted by law enforcement or from complying with the commands that he was given. Here, Mr. Merriman appeared to take a moment to look directly at the armed officers prior to the shooting and can be deemed to have appreciated the officers' capability of shooting and killing him. However, any reasonable opportunity Officers Holgate and Lopez had to show deference to Mr. Merriman was supplanted when Mr. Merriman charged them with his large hunting-style knife. Per RP, Mr. Merriman said that officers would not be taking him, and that he would be dying that day. This reported statement and Mr. Merriman subsequent conduct is consistent with one who may be attempting to commit "suicide-by-cop." Lethal force cannot lawfully be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).) Mr. Merriman's choice to arm himself and wield his weapon as discussed above, however, demonstrated that Mr. Merriman was a danger to more than himself. All law enforcement and civilian witnesses consistently reported that Mr. Merriman aggressed Officers Holgate and Lopez. Whatever physical and mental impact narcotics consumption had on Mr. Merriman, he presented himself as an immediate lethal threat to Officers Holgate and Lopez and RP.

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agency use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any departmental use of force policy was violated.

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CONCLUSION

Under the facts, circumstances and applicable law in this matter, we conclude that the reasonable use of deadly force by SBPD Officers Chad Holgate and Tony Lopez was exercised in self-defense and in defense of others. Accordingly, no criminal liability attaches.

Submitted By:

San Bernardino County District Attorney's Office

303 West Third Street

San Bernardino, CA 92415

Dated: September 17, 2025

