



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: September 26, 2025

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Officer Samuel Abbott
San Bernardino Police Department

Officer Carlos Castillo
San Bernardino Police Department

Sergeant Jeremy Klopping
San Bernardino Police Department

Corporal Erik Martin
San Bernardino Police Department

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

Date of Incident: June 25, 2022

Incident location: *** S. Mt. Vernon Avenue
San Bernardino, CA

DA STAR #: 2024-26000

Investigating Agency: San Bernardino Police Department

Case Agent: Detective Darren Sims

Report Number #: DR# 22-70319

PREAMBLE

This was a fatal officer involved shooting by officers from the San Bernardino Police Department. The shooting was investigated by the San Bernardino Police Department. This factual summary was based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino Police Department, DR# 22-70319.

FACTUAL SUMMARY

On June 25, 2022, Officer Justin Ramos, from the San Bernardino Police Department, responded to a 9-1-1 call for service regarding a domestic violence incident. When Officer Ramos contacted the victim, Witness #1, he saw Witness #1 was covered in blood, had a bruised eye, and swelling around her eyes and nose. Witness #1 appeared distraught about what occurred. Witness #1 told Officer Ramos that her boyfriend, later identified as Gilbert Gomez, assaulted her. After the physical assault, Witness #1 said Gomez brandished a brown and tan handgun, threatened her, and pointed the handgun at her left temple. Gomez held Witness #1 against her will in Witness #1's house. Witness #1 said she was only able to leave the residence when her stepdad's girlfriend came and knocked on the door.

Officer Ramos obtained a photograph of Gomez and showed it to Witness #1. Witness #1 positively identified Gomez as the person who assaulted and threatened her. Witness #1 advised Officer Ramos that Gomez liked to hang out around the intersection of Mill Street and Mount Vernon Avenue, near the El Super parking lot. Witness #1 stated Gomez drove a white Volkswagen Jetta and provided the vehicle information. Witness #1 also told Officer Ramos that Gomez was a gang member. Witness #1 was interviewed again the next morning by Detective Dominick Martinez. Witness #1 advised Detective Martinez that during the domestic violence incident, Gomez told Witness #1, "You know how this is going to end. I'm not going down. I'm not going to jail. I'll be dead first. The cops will have to kill me."

Officer Ramos conducted an area check and located Gomez's vehicle at the El Super Market parking lot at **** W. Mill Street. Officer Ramos requested assistance from other officers with contacting Gomez. Sergeant Jeremy Klopping, Corporal Erik Martin, Officer Samuel Abbott, Officer Michael McCray, and Officer Carlos Castillo responded to assist. All responding officers were wearing uniforms that identified them as law enforcement officers with San Bernardino Police Department.

Prior to going to the El Super Market parking lot, the officers met at a nearby school parking lot to formulate a plan as to how they would approach Gomez. While they were at the school parking lot, Officer Abbott briefed the other officers on the details of the domestic violence incident that occurred with Witness #1. The officers were advised that Gomez

had physically assaulted Witness #1, falsely imprisoned her, and threatened Witness #1 with a handgun. The officers were also informed Gomez was a gang member and probably armed with a semi-automatic pistol with a high capacity magazine.

After the officers met, they drove to the El Super Market parking lot in three marked patrol vehicles. Sergeant Klopping and Officer Abbott were together in the first vehicle. Corporal Martin was in the second vehicle. Officer McCray and Officer Castillo were in the third vehicle. When the officers arrived at the El Super Market parking lot, they approached Gomez's vehicle. Sergeant Klopping's patrol vehicle stopped directly in front of Gomez's vehicle. Corporal Martin's patrol vehicle was positioned near the passenger side of Gomez's vehicle. Officer McCray's patrol vehicle stopped, facing Gomez's vehicle, near the rear passenger side of Sergeant Klopping's patrol unit.

As soon as Sergeant Klopping put his vehicle in park, he heard two gunshots coming from his right. Sergeant Klopping was unsure whether Gomez was shooting or it was Officer Abbott. When Sergeant Klopping exited the vehicle, he saw what he believed was a gunshot coming from Gomez's windshield. Gomez appeared to be shooting at the officers. Sergeant Klopping was afraid when he saw the bullets coming towards him and the other officers. Sergeant Klopping fired seven rounds from his duty weapon at Gomez's windshield. Sergeant Klopping advised dispatch that shots were fired and requested medical aid stage.

Officer Abbott noticed the windshield of Gomez's vehicle was covered with a reflective shade and the driver's door window was partially open. Officer Abbott saw Gomez sitting in the driver's seat and moving around inside the vehicle. Officer Abbott observed Gomez raise a pistol, point it at him, and fire. Almost immediately after that, Officer Abbott saw a single muzzle flash and smoke coming from the barrel of Gomez's weapon. Officer Abbott believed Gomez was trying to kill him. Officer Abbott fired nine rounds from his rifle at Gomez.

When Corporal Martin placed his vehicle in park, he saw Gomez in the driver's seat of the suspect vehicle. Gomez had his hands out in front of him, pointing a gun at Sergeant Klopping and Officer Abbott. Corporal Martin believed Gomez was going to shoot at Sergeant Klopping and Officer Abbott. Corporal Martin fired eleven rounds from his duty weapon at Gomez. Corporal Martin stopped shooting when he saw Gomez lean back in his seat.

After Officer McCray stopped and exited his patrol vehicle, Officer Castillo asked Officer McCray to move their patrol unit closer to Gomez's vehicle. Officer McCray got back inside his patrol vehicle. As the patrol vehicle started moving slowly towards Gomez's vehicle, Officer McCray heard gunfire. Officer McCray was focused on repositioning his patrol vehicle and did not fire his weapon.

Initially, when Officer McCray stopped his patrol vehicle, Officer Castillo noticed the windshield of Gomez's vehicle was covered with a reflective shade. Officer Castillo also saw the driver's door window was rolled halfway down. Officer Castillo was able to see

the top of Gomez's head. Officer Castillo opened the passenger door and heard gunfire. Officer Castillo saw the barrel of a brown semi-automatic pistol protruding from the driver's door window of Gomez's vehicle. Officer Castillo believed Gomez was shooting at him and the other officers. Officer Castillo fired five rounds from his rifle at Gomez. Officer Castillo advised dispatch there were shots fired and requested medical aid for Gomez.

A Palomar-80, 9mm semi-automatic firearm, with no serial number, was recovered from defendant's hand. The gun had been loaded with live cartridges in the magazine and one live cartridge in the chamber of the firearm.

Gomez was transported to the hospital. On June 26, 2022, at 3:24 in the morning, Gomez was pronounced deceased by Witness #2.

STATEMENTS BY POLICE OFFICERS

On June 26, 2022, **Sergeant Jeremy Klopping** was interviewed by Detective Darren Sims.

On June 25, 2022, **Sergeant Jeremy Klopping**, from the San Bernardino Police Department was a patrol sergeant assigned as a supervisor for shift four, the graveyard shift. Sergeant Klopping was in uniform and driving a marked patrol vehicle. On that date, Officer Samuel Abbott briefed Sergeant Klopping about a domestic violence investigation he was conducting that involved an assault with a deadly weapon and a firearm. Officer Abbott told Sergeant Klopping he was at the intersection of Mill Street and K Street and advised the suspect of his investigation was in the parking lot near Mill Street and Mount Vernon Avenue. Sergeant Klopping was also contacted by Corporal Jason Sumrel who indicated he was writing up a Ramey warrant for the suspect in Officer Abbott's investigation. Corporal Sumrel advised Sergeant Klopping that Officer Justin Ramos was in the parking lot at Mill Street and Mt. Vernon Avenue and had the suspect vehicle in view. However, it was unclear whether the suspect, later identified as Gilbert Gomez, was inside the vehicle.

Sergeant Klopping drove to the location. Sergeant Klopping wanted to see where the suspect vehicle was parked and view the layout of the parking lot. Sergeant Klopping saw the suspect vehicle, a white four door Volkswagen with tinted windows, facing northeast. Sergeant Klopping observed there were no other vehicles parked around it. He observed this was a public area with other vehicles in the parking lot and people walking around to the different businesses. Sergeant Klopping was unable to see inside the vehicle and could not determine whether Gomez was inside the car.

Sergeant Klopping met with Officer Abbott, Officer Castillo, Officer McCray, and Corporal Erick Martin. Sergeant Klopping discussed why they were going to contact Gomez. Sergeant Klopping briefed the officers about the violent nature of the domestic violence incident, Gomez's criminal history including a prior arrest for assault with a deadly weapon,

and the outstanding warrant Gomez had for a restraining order violation. Sergeant Kloppling communicated the operation plan as to how he wanted the officers to approach the situation.

Sergeant Kloppling would lead the way in his patrol vehicle. Officer Abbott, with his patrol rifle, would sit in Sergeant Kloppling's front passenger seat. Sergeant Kloppling intended to go nose to nose with the suspect vehicle. Officer McCray would follow in his patrol vehicle with Officer Castillo seated, with his rifle, in the front passenger seat. Officer McCray would position his vehicle to the north of Sergeant Kloppling, facing the suspect vehicle. Corporal Martin would drive the rear vehicle. Corporal Martin would position his patrol vehicle north of Officer McCray, near the driver side of the suspect vehicle. Sergeant Kloppling wanted Officer Abbott and Officer Castillo to focus on Gomez.

At the scene, Sergeant Kloppling confirmed Gomez was seated in the driver's seat of the suspect vehicle. Sergeant Kloppling had his firearm out and brought his patrol vehicle to a stop. As soon as Sergeant Kloppling placed his vehicle in park, he heard two gunshots coming from his right. Sergeant Kloppling was unsure who was shooting. After he exited his patrol vehicle, Sergeant Kloppling saw what he believed to be a gunshot coming from Gomez's windshield in his direction. Sergeant Kloppling believed Gomez was shooting at the officers. Sergeant Kloppling saw a second round come from Gomez's vehicle. Sergeant Kloppling noticed the glass from Gomez's windshield was coming out toward the officers instead of going in toward Gomez.

Sergeant Kloppling never saw Gomez's gun. Nevertheless, Sergeant Kloppling was scared when he saw the shooting was directed at him and the other officers. Sergeant Kloppling heard the passenger side of his patrol vehicle crumple. He saw Officer McCray's vehicle slowly pull forward and hit the suspect vehicle. Sergeant Kloppling thought Officer McCray was shot because he did not have control of his car. Corporal Martin pulled his patrol vehicle along the passenger side of the suspect vehicle. Sergeant Kloppling indicated he fired approximately four rounds into the suspect vehicle's windshield.¹ Sergeant Kloppling stopped shooting and saw no additional shots coming from Gomez's vehicle. Sergeant Kloppling checked on the officers at the scene and determined they were all okay. After the shooting, Corporal Martin and Officer McCray repositioned their patrol vehicles to any crossfire.

Officer Abbott and Officer Castillo ordered Gomez to put his hands out of the window. Gomez did not comply with those verbal commands. Officer Castillo indicated to the other officers it appeared that Gomez was shot, bleeding from the head, and moving inside of the vehicle. Sergeant Kloppling requested medical aid stage and put out "shots fired" over the radio. Sergeant Kloppling then coordinated a plan for officers to approach the suspect vehicle. Additional officers arrived at the scene and approached the suspect vehicle. Sergeant Kloppling heard Gomez was still in possession of a handgun. The gun was recovered and placed on top of the vehicle. Officers removed Gomez from the suspect

¹ It was determined that Sergeant Kloppling fired a total of seven rounds.

vehicle through the front passenger door. Fire department personnel arrived at the scene and administered medical aid to Gomez.

On June 26, 2022, **Corporal Erick Martin** was interviewed by Detective Tiffany Montez.

On June 25, 2022, **Corporal Erick Martin**, from the San Bernardino Police Department was assigned to patrol, working shift four. Corporal Martin was in uniform and driving a marked patrol vehicle. On that date, Corporal Martin was at the police station working on reports when he heard Officer Abbott, over the radio, request assistance with a domestic violence call. Officer Abbott requested assisting officers meet him at Mill Street and K Street.

When Corporal Martin arrived at the location, Officer Abbott advised him a domestic violence victim had been beaten up which resulted in some serious injuries. Officer Abbott said Officer Ramos was watching the suspect vehicle which was in the southwest corner of the parking lot, in the area of Mill Street and Mt. Vernon Avenue. Officer Abbott told Corporal Martin that the suspect, later identified as Gilbert Gomez, was a gang member and believed to be in possession of a gun with an extended magazine. The suspect vehicle had tinted windows so it was unknown whether Gomez was inside the car.

Sergeant Klopping, Officer Castillo, and Officer McCray arrived at the location. Sergeant Klopping formulated a plan on how they were going to approach the suspect vehicle. The officers then drove to the parking lot where the suspect vehicle was parked. Sergeant Klopping parked directly in front of the suspect vehicle so he could see into the front windshield. Corporal Martin positioned his vehicle near the passenger side of the suspect vehicle. Officer Castillo stopped his vehicle near the driver side of the suspect vehicle. Sergeant Klopping's plan was to have all three sides of the suspect vehicle covered, leaving the back empty.

As soon as Corporal Martin parked his vehicle, he saw Gomez sitting in the driver's seat. Gomez had his hands out in front of him, pointing a gun at Sergeant Klopping and Officer Abbott. Corporal Martin believed Gomez was going to fire at Sergeant Klopping and Officer Abbott. Corporal Martin fired approximately five to seven rounds from his handgun.² Corporal Martin noticed other officers were also shooting. Corporal Martin stopped shooting when he saw Gomez lean back in his seat. Corporal Martin no longer believed Gomez was a threat. Corporal Martin saw there was a potential crossfire issue with Officer Castillo and Officer McCray. Corporal Martin ran behind the suspect vehicle to get to Officer Castillo's patrol vehicle.

Corporal Martin heard officers giving Gomez commands to show them his hands but there was no response from Gomez. Corporal Martin did not give any verbal commands because there were already other officers giving Gomez commands. Corporal Martin could

² It was determined Corporal Martin fired a total of eleven rounds.

not see Gomez from his position but heard Officer Castillo or Officer McCray advise Gomez was still moving.

Other officers arrived at the scene and approached Gomez's vehicle. Corporal Martin saw an officer remove a firearm from inside the vehicle. The officers then pulled Gomez from the vehicle. Gomez was placed near Corporal Martin's patrol vehicle. Medical personnel arrived at the scene and rendered aid to Gomez.

On June 26, 2022, **Officer Samuel Abbott** was interviewed by Detective William Flesher.

On June 25, 2022, **Officer Samuel Abbott**, from the San Bernardino Police Department, was assigned to patrol, shift four. Officer Abbott was in uniform and driving a marked patrol vehicle. On that date, Officer Abbott received a request to assist Officer Ramos with a domestic violence investigation. Officer Abbott learned the suspect, later identified as Gilbert Gomez, was wanted for domestic violence, false imprisonment, and assault with a deadly weapon. Officer Ramos had located the suspect's vehicle in the parking lot near the El Super Market. Officer Abbott contacted Officer Ramos who advised him that Gomez was armed with a semi-automatic pistol with a high-capacity ammunition magazine. Officer Ramos told Officer Abbott he was maintaining surveillance on the suspect vehicle and wanted Officer Abbott's assistance with contacting and arresting Gomez.

Officer Abbott requested additional units and a sergeant to assist with contacting Gomez. Officer Abbott met with Sergeant Klopping, Corporal Martin, Officer Castillo, and Officer McCray in a school parking lot north of Mill Street. Officer Abbott asked Officer Ramos to take a photograph of the suspect vehicle and forward it to him. Officer Abbott also pulled up a photograph of Gomez from Cal-Photos. The photographs were shared with the other officers. A plan was formulated as to how they would contact and arrest Gomez. The officers then made their way to the parking lot at Mill Street and Mount Vernon Avenue.

Officer Abbott rode with Sergeant Klopping in his patrol vehicle. Corporal Martin was behind them in his patrol vehicle. Officer Castillo and Officer McCray followed behind Corporal Martin in their patrol vehicle. Sergeant Klopping positioned his patrol vehicle facing the suspect vehicle. Officer Castillo and Officer McCray pulled along the passenger side of Sergeant Klopping's vehicle. Corporal Martin drove around to the passenger side of the suspect vehicle and stopped facing the same direction as Gomez.

After Sergeant Klopping stopped, Officer Abbott noticed there was limited visibility inside the suspect vehicle due to there being tinted windows and a reflective shade covering the windshield. The driver's door window of the suspect vehicle was partially open. Officer Abbott saw a light skinned Hispanic male seated in the driver's seat which matched the photograph of Gomez. Officer Abbott partially exited the passenger side of the patrol vehicle with his duty rifle. Officer Abbott pointed the rifle at Gomez from between the A-Pillar and the passenger door, which he used as cover. Officer Abbott was aware Gomez may be armed with a pistol. Officer Abbott told Gomez, "Show me your hands. Police. Show me your hands."

Officer Abbott indicated Gomez looked up in the direction of Officer Abbott. Officer Abbott saw Gomez moving around in the vehicle. Gomez raised a pistol and pointed it at Officer Abbott through the opening of the driver's door window and fired. Right after Gomez shot at him, Officer Abbott observed a single muzzle flash and smoke coming from the barrel of Gomez's gun. Officer Abbott thought Gomez tried to kill him. Officer Abbott opened fire with his duty rifle from in between the A-Pillar and the front passenger doorframe of Sergeant Kloppong's patrol vehicle. Officer Abbott estimated he fired seven to eight times at Gomez.³

Officer Abbott's rifle jammed after which he transitioned to his duty pistol. Officer Abbott observed Gomez drop down inside the vehicle and out of Officer Abbott's line of sight. Officer Abbott could not see Gomez and did not fire his handgun. Officer Abbott gave verbal commands to Gomez but there was no response. Officer McCray's patrol unit slowly moved forward, almost striking Officer Abbott. Officer McCray's patrol vehicle struck the passenger door of Sergeant Kloppong's vehicle and then crashed into the driver side of the suspect vehicle.

Other officers arrived at the scene to assist. Those officers approached the suspect vehicle and removed Gomez from the car. Officer Abbott noted an unknown officer recovered a light brown colored semi-automatic pistol from inside the front passenger compartment and placed it on the roof of the vehicle. Medical aid was requested by one of the supervisors. After Gomez was removed from the vehicle, Officer Abbott re-holstered his duty weapon and stood by while Gomez was being treated.

On June 26, 2022, **Officer Carlos Castillo**, was interviewed by Detective William Flesher.

On June 25, 2022, **Officer Carlos Castillo**, from the San Bernardino Police Department, was a Field Training Officer assigned to patrol, shift four. Officer Castillo was in uniform and riding in a marked patrol vehicle driven by his trainee, Officer McCray. On that date, they received a call from Officer Abbott requesting assistance contacting a suspect, later identified as Gilbert Gomez, who was wanted for an assault with a firearm.

Officer Castillo and Officer McCray drove to a school parking lot north of Mill Street. They met with Officer Abbott, Sergeant Kloppong, and Corporal Martin. Officer Castillo was briefed on the circumstances of the call and Sergeant Kloppong's plan for how they were going to contact Gomez. Officer Castillo was told Officer Ramos located the suspect vehicle in the parking lot of the El Super Market at Mill Street and Mount Vernon Avenue. Officer Castillo learned Gomez was wanted for domestic violence, assault with a firearm, and false imprisonment. Officer Castillo was told Gomez was armed with a handgun, a documented gang member, and had a prior arrest for assault. The officers then proceeded to the suspect vehicle location.

³ It was determined Officer Abbott fired a total of nine rounds.

When they arrived at the location, Officer McCray stopped their patrol vehicle too far back from Sergeant Klopping's patrol vehicle. Officer Castillo told Officer McCray to reposition their unit closer to the suspect vehicle. Officer Castillo saw the driver's door window was rolled halfway down and the windshield was blocked from the inside by a shade. Officer Castillo saw the top of a person's head who was seated in the driver's seat. As they got closer to the suspect vehicle, Officer Castillo opened the passenger door of the patrol vehicle. Officer Castillo heard gunfire and observed the barrel of a brown semi-automatic pistol protruding from the opening in the driver's door window. Officer Castillo did not recall seeing any muzzle flash or smoke coming from the barrel of the pistol. Officer Castillo also did not recall hearing any commands or yelling prior to the gunfire.

Officer Castillo believed Gomez was shooting at him and the other officers. Officer Castillo fired his rifle towards Gomez. Officer Castillo estimated he fired nine to ten times towards Gomez.⁴ Officer Castillo stopped firing and reassessed the scene. Officer Castillo started giving verbal commands for Gomez to show his hands and to exit the vehicle. There was no response from Gomez. Officer Castillo advised dispatch that shots were fired and requested medical aid respond.

Additional officers arrived at the scene. Those officers approached the passenger side of the suspect vehicle. A brown semi-automatic pistol was removed from Gomez's hands and placed on the roof of the car. Gomez was then removed from the vehicle through the front passenger side door. Gomez was placed on the ground. Officers provided aid to Gomez until medical personnel arrived and took over.

On June 26, 2022, **Officer Michael McCray** was interviewed by Detective William Flesher.

On June 25, 2022, **Officer Michael McCray**, from the San Bernardino Police Department was assigned to patrol, shift four. Officer McCray was a trainee and partnered with his Field Training Officer, Officer Castillo. On that date Officer McCray was in uniform and driving a marked patrol vehicle. On that date, Officer Abbott requested assistance with contacting a domestic violence suspect, later identified as Gilbert Gomez.

Officer McCray and Officer Castillo met with Officer Abbott, Sergeant Klopping, and Corporal Martin at a school parking lot. Sergeant Klopping briefed the officers about the domestic violence investigation and how they were going to contact Gomez. Officer McCray viewed a photograph of Gomez and a photograph of the vehicle Gomez was driving. Officer McCray learned Gomez had severely battered the victim, falsely imprisoned her, and threatened the victim with a firearm earlier in the day. Officer McCray was advised the weapon was a brown or tan semi-automatic pistol with an extended ammunition magazine. Officer McCray was advised Officer Ramos had located the suspect vehicle parked in the El Super Market parking lot at Mount Vernon Avenue and Mill Street. After the briefing, the officers proceeded to the suspect vehicle location. Officer McCray drove his patrol vehicle and Officer Castillo was in the passenger seat.

⁴ It was determined Officer Castillo fired a total of five rounds.

Officer McCray stopped his vehicle, facing the suspect vehicle, near the rear passenger side of Sergeant Klopping's patrol unit. Officer McCray noticed the suspect vehicle's windshield was covered with a shade and the other windows were tinted, which made it difficult to see inside the vehicle. The driver's door window was open about halfway but Officer McCray did not see anyone inside. After he stopped, Officer McCray exited his patrol vehicle. Officer Castillo then asked Officer McCray to move their patrol vehicle closer to the suspect vehicle.

Officer McCray got back inside the patrol vehicle and started slowly driving forward. At that time, Officer McCray heard gunfire. Officer McCray was unable to place the patrol vehicle into park. His patrol vehicle continued moving forward, striking the open passenger door of Sergeant Klopping's patrol vehicle. Officer McCray's patrol unit eventually collided into the driver's side of the suspect vehicle. Officer McCray heard Officer Castillo give verbal commands for Gomez to show his hands and exit the vehicle. There was no response from Gomez.

Additional officers arrived at the scene to assist. Officer McCray repositioned himself. Officer McCray saw Gomez leaning back in the driver's seat with his head directed towards the passenger side of the vehicle. Gomez was not moving. The other officers approached the passenger side of the suspect vehicle. A pistol was recovered from Gomez and placed on the roof of the car. The pistol appeared brown in color with a high capacity ammunition magazine attached. The officers then removed Gomez from the vehicle and placed him on the ground. Officer McCray heard someone request medical aid over the radio. Officer McCray indicated he did not see Gomez armed with a pistol nor did he see a muzzle flash or smoke coming from the suspect vehicle.

STATEMENTS BY CIVILIAN WITNESSES

On June 26, 2022, **Edwin Ramirez** was interviewed by Detective Tiffany Montez.

On June 25, 2022, **Edwin Ramirez** was seated in the rear passenger seat of his friend's car. They were parked in front of a business to pick up a pizza. Ramirez got out of the vehicle to smoke a cigarette. Ramirez saw a San Bernardino Police Department SUV enter the parking lot from Mount Vernon Avenue. The SUV eventually stopped in front of a white sedan. The white sedan was facing in a northeast direction.

Ramirez saw one officer exit the driver's side door and a second officer exited the front passenger side door. The driver of the SUV exited and was standing next to the vehicle with the driver's side door open. The officer that exited the front passenger side of the SUV walked around to the rear of the vehicle towards the other officer. As the officers exited the SUV, Ramirez heard, "San Bernardino Police. Please step out of your vehicle. Show me your hands." Ramirez heard the police say this one time and then heard gunshots being fired. Ramirez was unsure who fired first and did not know whether the

subject in the white sedan had fired a weapon. Ramirez estimated he heard at least ten rounds fired.

On June 25, 2022, **Witness #3** was interviewed by Officer Michael Vuicich.

Witness #3 said she heard officers yell, "Let me see your hands" two times. Witness #3 heard five to seven gunshots, followed by officers yelling "Let me see your hands" two more times.

On June 25, 2022, **Witness #4** was interviewed by Officer Michael Vuicich.

Witness #4 said he heard officers yell, "Show me your hands" one time and then heard ten to fifteen gunshots.

On June 25, 2022, **Witness #5** was interviewed by Officer Cameron Seward.

Witness #5 said he was working when he heard cars pull into the parking lot. Witness #5 believed he heard the suspect shoot first and then the officers returned fire.

On June 25, 2022, **Witness #6** was interviewed by Officer Cameron Seward.

Witness #6 was seated inside her vehicle when she heard cars accelerating and then come to a sudden stop. Witness #6 turned around and saw police vehicles. Witness #6 said the officers activated their overhead emergency light and ordered the driver of a white vehicle to exit with his hands up. Witness #6 indicated she heard the suspect immediately start shooting at the officers when they ordered the suspect out of the vehicle. Officers then returned fire. Witness #6 estimated she heard thirteen gunshots.

On June 25, 2022, **Witness #1** was interviewed by Detective Dominick Martinez. Witness #1 was Gilbert Gomez's girlfriend. On that date, Witness #1 was involved in a domestic violence incident with Gomez. Gomez beat Witness #1 and falsely imprisoned her in her home. Gomez threatened Witness #1 with a gun. During the incident, Witness #1 tried to convince Gomez to let her go but Gomez refused. Witness #1 advised Gomez said, "You know how this is going to end. I'm not going down. I'm not going to jail. I'll be dead first. The cops will have to kill me."

Witness #1 was eventually able to leave and the police were called. Witness #1 told Officer Ramos what occurred during the domestic violence incident. Witness #1 identified Gomez and provided a description of Gomez's vehicle. Witness #1 advised Officer Ramos that Gomez was a gang member and armed with a firearm. Witness #1 also told Officer Ramos

that Gomez frequently liked to hang out at the El Super Market parking lot near the intersection of Mill Street and Mount Vernon Avenue.

INCIDENT VIDEO

BODY CAMERA RECORDINGS. All body camera video recordings were reviewed in their entirety. The summaries will only cover from the start of the recordings through the occurrence of the lethal force encounter. There was a thirty second delay before audio was heard on the body camera video recordings.

Sergeant Klopping

Sergeant Klopping was driving a patrol vehicle. Sergeant Klopping was holding his handgun in his right hand as he drove the patrol vehicle. Officer Castillo was seated in the passenger seat. Sergeant Klopping stopped the patrol vehicle, opened his door, and exited the vehicle. Officer Castillo also opened his door and exited the patrol vehicle. A patrol vehicle, with its emergency lights activated, pulled up behind the suspect vehicle. A small white puff appeared to come from the driver's side of the suspect vehicle, near the driver's window. Sergeant Klopping pointed his handgun at the suspect vehicle and fired multiple times. Officer Castillo also exited the patrol vehicle. Officer Castillo pointed his rifle at the suspect vehicle and fired multiple times.

Corporal Martin

Corporal Martin was driving a patrol vehicle. Corporal Martin stopped and started to exit the patrol vehicle. Corporal Martin was holding his handgun in his right hand. Corporal Martin fired multiple times at the suspect vehicle. Corporal Martin fired the rounds through the driver's door window of his patrol vehicle. Corporal Martin's patrol vehicle was on the passenger side of the suspect vehicle.

Officer Abbott

Officer Abbott was riding in the front passenger seat of Sergeant Klopping's patrol vehicle. Officer Abbott was holding a rifle. Officer Abbott exited the patrol vehicle when it stopped. Officer Abbott yelled, "Let me see your hands. Police. Let me see your hands. Put your hands outside the door. Stick your hands." The sound of gunfire was heard. Officer Abbott fired multiple times at the suspect vehicle.

Officer Castillo

Officer Castillo was riding in the front passenger seat of the patrol vehicle. Officer McCray was driving. Officer Castillo was holding a rifle. The patrol vehicle slowed down. Officer Castillo said, "All the way up. All the way up." Officer Castillo exited the patrol vehicle. The sound of gunfire was heard. Officer Castillo fired multiple times with his rifle. Officer Castillo fired the rounds through the open front passenger window of the patrol vehicle. Officer Castillo said, "Adam Seven. Shots fired. Shots fired." The patrol vehicle continued to move forward and eventually stopped on the driver's side of the suspect vehicle.

PARKING LOT SECURITY VIDEOS. There were security videos provided which showed views of the parking lot from different angles. The security videos of the parking lot were in color. All videos were reviewed in their entirety. There was no sound on the parking lot security videos. The summaries will only cover from the beginning of the video through the occurrence of the lethal force encounter.

Camera 28 (T-Mobile Parking)

The video showed a portion of the parking lot where the El Super Market was located. The suspect vehicle parked in a parking space. Officer Ramos' patrol vehicle backed into a parking spot and appeared to have a view of the suspect vehicle. Officer Ramos remained at that location for approximately fourteen minutes. Officer Ramos' patrol vehicle then drove out of the parking space and out of view of the camera. The suspect vehicle remained parked in the same parking space.

Three San Bernardino Police Department patrol vehicles drove in the parking lot toward the suspect vehicle's location. One patrol vehicle appeared to pull toward the front of the suspect vehicle.⁵ The second patrol vehicle drove around the back of the suspect vehicle. The second patrol vehicle activated the emergency lights on its vehicle and pulled along the passenger side of the suspect vehicle. The driver's door of the second patrol vehicle opened. The third patrol appeared to stop behind the first patrol vehicle and activated its emergency lights. A small white puff appeared near the driver window of the suspect vehicle. Additional larger white puffs appeared right after the small white puff was visible on the video. The front passenger door of the third patrol vehicle appeared open. White puffs were visible on the passenger side of the suspect vehicle. The third patrol vehicle moved forward and came to a stop near the driver side of the suspect vehicle.

Camera 27 (Wing Stop Parking)

A tree blocked most of the view of the suspect vehicle on this video. Three San Bernardino Police Department patrol vehicles drove in the parking lot toward the suspect vehicle's location. The first patrol vehicle pulled up to the front of the suspect vehicle. The driver door and front passenger door of the first patrol vehicle opened as it approached the

⁵ A tree blocked the camera view of the patrol vehicle.

suspect vehicle. The second patrol vehicle drove around the back of the suspect vehicle. The second patrol vehicle activated its emergency lights and stopped along the passenger side of the suspect vehicle. The third patrol vehicle pulled up behind the first patrol vehicle and activated its overhead lights. The driver door of the second patrol vehicle opened. The front passenger door of the third patrol vehicle opened. Several white puffs were visible near the suspect vehicle and first patrol vehicle. The third patrol vehicle moved forward and came to a stop near the suspect vehicle.

Camera 17 (El Super Parking)

The suspect vehicle was parked in a parking spot. Three San Bernardino Police Department patrol vehicles drove in the parking lot toward the suspect vehicle's location. The first patrol vehicle pulled up to the front of the suspect vehicle. A light pole and tree partially blocked the view of the first patrol vehicle. The second patrol vehicle drove around the back of the suspect vehicle. The second patrol vehicle activated its emergency lights and stopped on the passenger side of the suspect vehicle. The view of the suspect vehicle was then blocked by the second patrol vehicle. A small white puff was visible on the video followed by several more white puffs. The third patrol vehicle moved forward closer to the suspect vehicle and came to a stop.

WEAPONS

A Palomar-80, 9mm semi-automatic firearm, with no serial number, was recovered from defendant's hand. The gun had been loaded with live cartridges in the magazine and one live cartridge in the chamber of the firearm.



DECEDENT

AUTOPSY. Witness #7, Chief Forensic Pathologist for the Coroner Division of the San Bernardino County Sheriff's Department, conducted the autopsy of Gilbert Gomez on July 1, 2022. Witness #7 determined the cause of death was gunshot wounds of the head and chest.

Number One - Gunshot Wound of the Head⁶:

A gunshot entrance wound was noted on the right parietal scalp, 3 inches from the top of the head and 3 inches right of midline. There was no exit wound noted. The direction of the wound path was from back to front, right to left, and downward.

Number Two – Gunshot Wound of the Chest:

A gunshot entrance wound was noted on the right upper back, superior, 10 inches from the top of the head and 3.5 inches right of midline. There was no exit wound noted. The direction of the wound path was from back to front, right to left, and downward.

Number Three – Gunshot Wound of the Back:

A gunshot entrance wound was noted on the right upper back, inferior, 12 inches from the top of the head and 4 inches right of midline. There was no exit wound noted. The direction of the wound path was from back to front, right to left, and downward.

Number Four – Gunshot Wound of the Right Shoulder:

A gunshot entrance wound was noted on the right shoulder, inferior, 2 inches from the top of the right shoulder and 9.5 inches right of midline. An exit wound was noted on the right shoulder, superior, 0 inches from the top of the right shoulder and 9 inches right of midline. The direction of the wound path was from front to back, right to left, and upward.

Number Five – Gunshot Wound of the Right Arm:

A gunshot entrance wound was noted on the posterior forearm, 17 inches from the top of the right shoulder and midline to posterior vertical line through the right arm. An exit wound was noted on the anterior right forearm skin, 14 inches from the top of the right shoulder

⁶ The numbering of the gunshot wounds is for reference only and not meant to indicate the order in which the gunshots occurred.

and 1 inch lateral to the anterior vertical line through the right arm. The direction of the wound path was from back to front, right to left, and upward.

TOXICOLOGY. Chest blood and vitreous samples were collected from Gilbert Gomez on July 1, 2022.

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

- Codeine – 11 ng/mL
- Morphine – 120 ng/mL
- 6-Monoacetylmorphine – 15 ng/mL
- Buprenorphine – 0.80 ng/mL
- Norbuprenorphine – 3.2 ng/mL

CRIMINAL HISTORY.

2014, 11377(a) of the Health and Safety Code, Possession of a Controlled Substance. San Bernardino County Court case FSB1403274, a felony.

2014, 246.3 of the Penal Code, Willful Discharge of Firearm with Gross Negligence. San Bernardino County Court case FSB1301678, a felony.

2014, 245(a)(4) of the Penal Code, Assault By Force Likely to Produce Great Bodily Injury. San Bernardino County court case FSB17002992, a felony.

DE-ESCALATION

The time between when the officers from San Bernardino Police Department pulled up to the suspect vehicle to the time of the lethal force encounter was extremely brief, approximately less than one minute. The officers were aware that Gomez was a suspect in a serious domestic violence attack which involved the victim being assaulted, falsely imprisoned, and threatened with a firearm. The officers were also aware that Gomez was a gang member and was likely armed with a semi-automatic pistol with a high capacity ammunition magazine. When the officers approached the suspect vehicle with their patrol vehicles, Officer Abbott attempted to give Gomez verbal commands to show his hands. Gomez did not comply. Gomez immediately fired his weapon at the officers. The officers had no time to make any other attempts to de-escalate the situation and take Gomez into custody peacefully.

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
- (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.

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

(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 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;

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

- (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.

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;

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

- (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.*)

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

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.

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, Officer Abbott, Officer Castillo, Sergeant Klopping, and Corporal Martin each had an honest and objectively reasonable belief that Gomez posed an imminent risk of serious bodily injury or death to themselves and each other. Earlier in the day, Gomez had been involved in a domestic violence incident that resulted in serious injuries to the victim. Officer Ramos located the suspect vehicle and requested assistance with contacting Gomez. The officers responded to the parking lot at **** W. Mill Street in three separate patrol vehicles to assist Officer Ramos.

On the date of the incident under review, Officer Abbott, Officer Castillo, Sergeant Klopping, and Corporal Martin were all in uniforms which identified them as law enforcement officers with San Bernardino Police Department. In addition, the officers were driving marked patrol vehicles. Prior to their arrival at the parking lot, the officers were briefed about the circumstances of the domestic violence call. They were told Gomez assaulted the victim, falsely imprisoned her, and threatened the victim with a firearm. The

officers were also advised Gomez was a gang member and likely still armed with a handgun that had an extended magazine.

Sergeant Klopping and Officer Abbott pulled up to the front of Gomez's vehicle. There was a reflective shade covering the windshield and the driver's window was partially open. After Sergeant Klopping placed his patrol vehicle in park, he heard two gunshots coming from his right. Sergeant Klopping was unsure whether it was Officer Abbott or Gomez shooting. Sergeant Klopping exited his patrol vehicle and saw what appeared to be a gunshot coming from Gomez's vehicle. Sergeant Klopping was scared when he saw a bullet coming at him and the other officers. Sergeant Klopping had an honest and objectively reasonable belief Gomez was trying to kill the officers. Sergeant Klopping feared for his life and the life of his partners and fired seven rounds at Gomez. Sergeant Klopping stopped shooting when he saw no additional gunshots were coming from Gomez's vehicle.

From Officer Abbott's vantage point, he saw Gomez moving around in the car. Officer Abbott gave Gomez verbal commands. Officer Abbott observed Gomez raise a pistol, point it through the opening of the driver's door window, and fire at Officer Abbott. Officer Abbott saw a single muzzle flash and smoke coming from the barrel of Gomez's pistol. Officer Abbott believed Gomez was trying to kill him. Officer Abbott reasonably feared for his life and the lives of his partners and fired nine rounds at Gomez.

Corporal Martin stopped his patrol vehicle near the passenger side of Gomez's vehicle. Corporal Martin saw Gomez with his hands out in front of him, pointing a gun at Sergeant Klopping and Officer Abbott. Corporal Martin had an honest and objectively reasonable belief Gomez was going to shoot Sergeant Klopping and Officer Abbott. Corporal Martin fired eleven rounds at Gomez. Corporal Martin stopped shooting when he saw Gomez lean back in the driver's seat. Corporal Martin no longer believed Gomez was a threat.

When Officer McCray and Officer Castillo's patrol vehicle pulled up near the passenger side of Sergeant Klopping's patrol unit, Officer Castillo saw the windshield was covered with a shade. Officer Castillo also noticed the driver's door window of Gomez's vehicle was rolled halfway down. Officer Castillo saw the top of Gomez's head through the window opening. When Officer Castillo opened the passenger door of the patrol vehicle, he heard gunfire and observed the barrel of a brown semi-automatic pistol protruding from the opening in the driver's door window of Gomez's vehicle. Officer Castillo reasonably believed Gomez was shooting at him and the other officers. Officer Castillo fired five rounds at Gomez. Officer Castillo stopped shooting and reassessed the scene. Officer Castillo gave Gomez commands to show his hands and exit the vehicle but Gomez did not respond.

Civilians who witnessed parts of the incident under review indicated the officers attempted to give verbal commands to Gomez. Witness #6 was seated in her car at the time of the incident. She saw the emergency lights activated on the patrol vehicles. Witness #6 heard officers order Gomez to exit the vehicle with his hands up. Witness #6 indicated Gomez immediately started shooting at officers when they ordered him out of the vehicle. At that point, officers returned fire. Witness #6's account was similar to that of Ramirez. Ramirez

said he heard, "San Bernardino Police. Please step out of your vehicle. Show me your hands." Ramirez then heard approximately ten rounds fired. The other two civilian witnesses, Witness #3 and Witness #4, stated they heard the officers order Gomez to show his hands and then heard gunfire. Witness #5 did not hear any verbal commands. However, Salazer believed he heard Gomez shoot first and then the officers returned fire.

Also important to note is what Witness #1 revealed about Gomez's mental state when she was interviewed by Detective Martinez. Witness #1 said that during the domestic violence assault, Gomez told her, "You know how this is going to end. I'm not going down. I'm not going to jail. I'll be dead first. The cops will have to kill me." When Gomez fired at the officers, he provoked the law enforcement response he described to Witness #1. Fearing for their lives as well as the lives of their partners, Officer Abbott, Officer Castillo, Sergeant Kloppong, and Corporal Martin were given no choice but to fire their weapons at Gomez. Given those circumstances, the decision by Officer Abbott, Officer Castillo, Sergeant Kloppong, and Corporal Martin to use deadly force was justified.

CONCLUSION

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

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

Based on the facts presented in the reports and the applicable law, Corporal Erik Martin's use of lethal force was a proper exercise of his right of defense of others and therefore his actions were legally justified.

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

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
San Bernardino, CA 92415

