



PUBLIC RELEASE MEMORANDUM

Date: January 13, 2026

Subject: Fatal Deputy-Involved Incident

Involved Peace Officer: Deputy Michelle Bush
San Bernardino County Sheriff's Department

Involved Subject/DOB: Nikolas McPheter (DOB 1/24/1995)
Subject's Residence: Canyon Lake, CA

Incident Date: September 3, 2022
Incident Time: 3:31 p.m.

Case Agent/Agency: Sergeant Shawn Thurman
San Bernardino County Sheriff's Department

Agency Report #: 602200107/212200816
H#2022-113

DA STAR #: 2024-20209

PREAMBLE

The summary of this fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The original case agent for this submission was SBCSD Detective Shawn Thurman.¹

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, civilian surveillance video recordings, law enforcement audio recordings, law enforcement photographs, a taser usage log report, law enforcement scientific investigation reports, and medical records.

FACTUAL SUMMARY²

On September 3, 2022, at approximately 3:31 p.m., SBCSD Deputy Michelle Bush shot 27-year-old Nikolas William McPheter on South L Street, between Broadway Street and Highland Avenue, under the Interstate 40 Freeway ("I-40") overpass in the city of Needles. At the time he was shot, Mr. McPheter was armed with a semi-automatic pistol. Mr. McPheter sustained multiple gunshot wounds (GSWs) and died at the scene. Deputy Bush sustained non-life-threatening injuries during this incident.

Deputy Bush was on duty and assigned to patrol areas of Needles on the day of the shooting. At approximately 3:14 p.m., Deputy Bush initiated a traffic stop of a burgundy Scion TC for an observed vehicle code violation. Mr. McPheter was driving the Scion TC and his girlfriend—[REDACTED] ("Witness 1") was in the front seat passenger. Mr. McPheter pulled over to the west curb of South L Street under the I-40 overpass. Deputy Bush got out of her marked SBCSD patrol unit, walked up to the driver's window, and explained the reason for the stop. Meanwhile, Sergeant Caronna arrived at the scene and stood-by to keep watch while Deputy Bush conducted her investigation. Mr. McPheter and Witness 1 told Deputy Bush that they had just purchased the Scion TC. However, Deputy Bush discovered that the vehicle title did not include either Mr. McPheter or Witness 1's name. Upon further investigation, Deputy Bush received additional information that Witness 1 was the protected party of two restraining orders against Mr. McPheter.

After discovering the restraining orders, Deputy Bush asked Mr. McPheter to step out of the car and sit down on the concrete slope of the overpass foundation, away from the Scion TC. Mr. McPheter was very cooperative at this point. Deputy Bush then discussed the restraining orders with Witness 1. Witness 1 admitted there were two restraining orders but did not specify that one of the restraining orders was a domestic violence restraining order ("DVRO") that prohibited Mr. McPheter from having contact with Witness 1. Deputy Bush conferred with Sergeant Caronna about the terms of the DVRO and determined that SBCSD policy required the deputy to arrest Mr. McPheter.

After conferring with Sergeant Caronna, Deputy Bush approached Mr. McPheter where he sat, stood him up and informed him that he was under arrest. Deputy Bush was in the process of pulling Mr. McPheter's hands behind his back when Mr. McPheter became rigid and attempted to run away. Sergeant Caronna

¹ After submitting this case for review, Detective Thurman was promoted to the rank of Sergeant.

²The 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 County Sheriff's Department (SBCSD) at the time of their involvement.

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quickly swooped in and tackled Mr. McPheter. Deputy Bush, Sergeant Caronna, and Mr. McPheter fell down onto the concrete slope and a struggle followed.

Mr. McPheter refused to allow Sergeant Caronna and Deputy Bush to take him into custody. Deputy Bush and Mr. McPheter exchanged blows. Mr. McPheter also struck Sergeant Caronna in the head. At one point, Mr. McPheter had Sergeant Caronna in a headlock. Deputy Bush and Witness 1 screamed at Mr. McPheter to let the sergeant go. Neither the sergeant nor the deputy's efforts stopped Mr. McPheter from fighting. In the chaos, Sergeant Caronna's duty weapon fell out of the sergeant's belt holster and to the ground. As the fight continued, Sergeant Caronna was unable to get his feet back under him and took hold of Mr. McPheter's genitals as a pain compliance technique. When that didn't work, Deputy Bush applied her taser to Mr. McPheter's back. As she did so, Mr. McPheter struck the taser out of Deputy Bush's hands. Then, Mr. McPheter picked up Sergeant Caronna's pistol from where it lay on the ground. Deputy Bush immediately placed her hands over Mr. McPheter's hands. During the struggle over the gun, Mr. McPheter pointed the gun at Deputy Bush's chest. When Sergeant Caronna saw Mr. McPheter pointing the gun, the sergeant stopped grabbing onto Mr. McPheter and also grabbed over Mr. McPheter's hands to keep Mr. McPheter from shooting either him or Deputy Bush. Deputy Bush managed to free her right hand, drew her own duty weapon and fired a shot at Mr. McPheter's head. Mr. McPheter was struck but did not relent. With a "pissed off" look on his face, Mr. McPheter reached toward Deputy Bush like he might either grab Deputy Bush's gun or strike her again. Deputy Bush fired a second shot at Mr. McPheter's head that immediately caused Mr. McPheter to fold faced down to the ground.

Moments after Deputy Bush and Sergeant Caronna got up from the ground, Deputy Bush announced via radio that shots had been fired. Meanwhile, Sergeant Caronna came to realize for the first time that the gun Mr. McPheter had was the sergeant's own duty weapon. Deputy Bush and Sergeant Caronna then saw that Mr. McPheter was still clutching the sergeant's pistol magazine in his left hand, while the sergeant's gun actually lay near to Mr. McPheter's head. Sergeant Caronna picked up and re-holstered his gun. Deputy Bush's taser remained on the ground, about two feet from Mr. McPheter's right shoulder.

The first assisting unit arrived at the scene within a minute of shots being fired. Approximately six minutes after shots were fired, paramedics pronounced Mr. McPheter deceased.

After an examination of the scene and the collection of evidence, it was confirmed that Deputy Bush fired two times. Deputy Bush and Sergeant Caronna's duty weapons were collected and examined by a SBCSD Scientific Investigations Division (SID) criminalist. No damage, modification or malfunction was noted in either weapon.

STATEMENTS BY LAW ENFORCEMENT WITNESSES³

Deputy Michelle Bush gave a voluntary statement to SBCSD Detectives Robert Ripley and Thurman on September 12, 2022, in the presence of Deputy Bush's attorney, approximately nine days after the shooting. At the time of the interview, Deputy Bush had served as a sheriff's deputy for approximately four years, with two of those as a patrol deputy in Needles. She had no other law enforcement or military experience. There was no information in the submission regarding whether Deputy Bush was previously involved in

³ Herein is a summary only. All 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. McPheter by name are made here for ease of narrative.

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other lethal force encounters. Deputy Bush described herself as standing approximately five feet and six inches tall and weighing approximately 135 pounds.

During the shooting incident, Deputy Bush wore a SBCSD Class A short-sleeved tan buttoned-down shirt with agency patches on both outer shoulders. A yellow metal SBCSD star badge was affixed to the upper left chest area of the deputy's shirt and the American flag and a nameplate were on the right upper chest. A hand-held-type radio receiver was affixed to the middle upper chest area. Deputy Bush wore olive pants and a *Sam Browne* belt. Deputy Bush's duty weapon was holstered on her right hip. Deputy Bush's taser holster was empty on her left hip. Deputy Bush also wore black boots.

Prior to making her statement, Deputy Bush reviewed audio belt recordings of the incident.⁴ (See Submitted Media, Belt Recordings, *infra*.) The following is a summary of relevant information disclosed by Deputy Bush at the time of her interview:

Deputy Bush was working in a patrol capacity in Needles when she got behind a burgundy Scion TC. Deputy Bush noticed that the rear license plate was obstructed by a tinted cover, in violation of the vehicle code. Deputy Bush alerted dispatch that she would be conducting a traffic stop in the area of L Street and West Broadway. Deputy Bush activated the overhead forward-facing lights of her marked SBCSD patrol unit while behind the Scion TC. Mr. McPheter pulled over along the west curb of L Street, under the eastbound I-40 overpass. Deputy Bush parked approximately six to eight feet behind the Scion TC, got out, and approached the open driver's side window. Deputy Bush stated she identified herself and informed Mr. McPheter of the reason for the traffic stop. Deputy Bush then discovered that neither Mr. McPheter nor Witness 1 had current registration information for the Scion TC. Instead, they had a "pink slip" from Nevada, which was incomplete and included neither Mr. McPheter's nor Witness 1's name.

Deputy Bush returned to her patrol unit to gather more information about Mr. McPheter. As Deputy Bush did so, Sergeant Caronna arrived at the scene and kept watch. During her investigation, Deputy Bush found that Witness 1 was the protected party of both a "no negative contact" order and a DVRO. Mr. McPheter was the named restrained party in both orders. As such, Deputy Bush returned to the driver's door of the Scion TC and asked Mr. McPheter to step out. Deputy Bush explained that she took Mr. McPheter out of the car so that she could talk to Witness 1 about the restraining orders. Once out of the car, Deputy Bush patted down Mr. McPheter for weapons, found Mr. McPheter had none, then led Mr. McPheter to sit on the concrete slope. Deputy Bush described Mr. McPheter as being "very cooperative" up to this point.

Deputy Bush then returned to the Scion TC to speak with Witness 1. Witness 1 told Deputy Bush that there was a "no negative contact" order. After consulting with Sergeant Caronna, Deputy Bush went back to her patrol unit to look at the restraining orders again. Deputy Bush confirmed that there was also a DVRO that prohibited Mr. McPheter from having contact with Witness 1, and that SBCSD policy required her to arrest Mr. McPheter for violating that order. After consulting with Sergeant Caronna a second time about the restraining orders, Deputy Bush approached Mr. McPheter to arrest him.

⁴ The submission indicates that Deputy Bush was provided "the audio recordings" to review prior to her interview, but it was not specified which audio recordings she reviewed. Presumably, Deputy Bush reviewed her belt recording as well as that recorded by Sergeant Caronna, as these were the only audio recordings that captured Deputy Bush's contact with Mr. McPheter. (See Submitted Media, *infra*.)

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Deputy Bush walked over to where Mr. McPheter was sitting, asked Mr. McPheter to stand up, turn around, and put his hands behind his back. Then, Deputy Bush informed Mr. McPheter that he was under arrest. Mr. McPheter asked Deputy Bush if she was "taking him in." Deputy Bush was able to pull Mr. McPheter's right wrist behind his back as she confirmed she was indeed taking Mr. McPheter into custody. Deputy Bush recalled that before she was able to pull Mr. McPheter's left wrist behind his back that Mr. McPheter's body immediately became rigid. Then, Mr. McPheter began to pull (north) away from Deputy Bush. Deputy Bush recalled that Sergeant Caronna then grabbed Mr. McPheter on the left side, and all three of them fell onto the concrete slope and a scuffle ensued. Deputy Bush was able to announce over the radio, "415 with one," which she explained meant that she and Sergeant Caronna were fighting with Mr. McPheter. Deputy Bush recalled that Mr. McPheter was able to break away from both Deputy Bush and Sergeant Caronna's grip and "pounce" away from the concrete slope. Deputy Bush stated that she was still able to grab at Mr. McPheter's leg and began pulling at Mr. McPheter's shorts. Mr. McPheter's shorts started to come down and Mr. McPheter kicked Deputy Bush, causing her to let go.

Mr. McPheter broke free from Deputy Bush and took a few steps north on L Street when Deputy Bush saw Sergeant Caronna grab and turn Mr. McPheter around. As Deputy Bush got up to assist Sergeant Caronna in his grapple with Mr. McPheter, she saw Mr. McPheter pull at Sergeant Caronna's firearm holster. Deputy Bush then saw and heard Sergeant Caronna's gun fall to the ground. Deputy Bush did not call any attention to the gun. After the gun fell to the ground, Deputy Bush recalled that Sergeant Caronna took hold of Mr. McPheter's genitals. Thereafter, Deputy Bush described Mr. McPheter as attacking and holding on to Sergeant Caronna on the ground. Deputy Bush also recalled hitting Mr. McPheter on the left side of his face a couple of times to try to get Mr. McPheter to let the sergeant go. Deputy Bush stated that Mr. McPheter acted like he didn't even feel her strikes. Then, Deputy Bush tased Mr. McPheter in the back. As she did so, Mr. McPheter knocked the taser out of Deputy Bush's hand with his right hand and lunged with both arms outstretched in front of him for Sergeant Caronna's gun on the ground.

Mr. McPheter was able to get both of his hands on Sergeant Caronna's gun and pull it in towards his own torso. Deputy Bush reflexively placed both of her hands over Mr. McPheter's hands and felt Mr. McPheter trying to grip and point the sergeant's gun at her. Deputy Bush stated that Mr. McPheter pointed Sergeant Caronna's gun at her chest during the struggle. Deputy Bush described feeling Mr. McPheter's hands slipping on the gun and that Mr. McPheter was trying to put his finger on the gun trigger. Deputy Bush said that Mr. McPheter tried to point the gun towards Sergeant Caronna also. Deputy Bush told investigators that Sergeant Caronna was also holding down the firearm in Mr. McPheter's hands. As they continued to grapple over the gun on the ground, Deputy Bush was able to get on her knees, force the gun downwards, and move the sergeant's gun slide back and forth. Deputy Bush explained that in doing so, she was trying to render the gun inoperable. Deputy Bush described feeling in that moment that either she or Sergeant Caronna were going to get shot and die.

Next, Deputy Bush took her right hand off Mr. McPheter's hands, drew her firearm and pulled it into her right armpit. As Deputy Bush did so, Deputy Bush heard Sergeant Caronna yell, "shoot him in the fucking head." Deputy Bush saw that since Sergeant Caronna and Mr. McPheter were so entangled, there was no place else she could shoot. Deputy Bush fired one round at Mr. McPheter's head from approximately one to two feet that appeared to hit the side of Mr. McPheter's face. In response, Deputy Bush saw Mr. McPheter look at her with a "pissed off look on his face."

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Mr. McPheter continued to be combative, made no attempt to surrender, and was still fighting for control of the sergeant's gun. Mr. McPheter then reached out towards Deputy Bush like he was also trying to grab her gun or to hit her. This is when Deputy Bush fired a second time, several seconds after the first gunshot. Deputy Bush then saw Mr. McPheter move back and fall faced down onto the sidewalk.

Deputy Bush stated that the next thing she did was to announce "shots fired" over the radio. Deputy Bush stated that Sergeant Caronna called for medical aid and went to pick up his gun from the ground. This was the first time that Deputy Bush saw there was no gun in Mr. McPheter's hand. Instead, Deputy Bush saw that that Mr. McPheter had Sergeant Caronna's gun magazine in his hand.

Approximately nine hours after the shooting incident, Deputy Bush was photographed by SBCSD Detective Jonathan Cavender with the assistance of a SBCSD forensic technician. Detective Cavender found that Deputy Bush's left pant knee was torn. Detective Cavender also observed Deputy Bush had abrasions to her left elbow, right ring finger, right middle finger, right index finger, inside the right inner forearm and on the back of the right elbow. Deputy Cavender also noticed that Deputy Bush had abrasions on both of her knees. Medical records included in the submission revealed that Deputy Bush sustained a right knee bone contusion during the incident.

After being photographed, Deputy Bush surrendered her firearm to Detective Cavender. Detective Cavender found Deputy Bush's firearm to contain one round in the firing chamber and 15 rounds in its inserted magazine. Deputy Bush also had two spare magazines on her duty belt, which included 17 cartridges in each. Every cartridge possessed by Deputy Bush at the time bore the headstamp, "WIN 9mm LUGER+P." Two fired cartridge casings (FCC's) bearing the identical headstamp were recovered from the scene of the shooting. Deputy Bush's firearm was submitted to a SBCSD criminalist for examination and testing. The criminalist described Deputy Bush's duty weapon as a Glock model 17Gen4, 9mm Luger caliber semi-automatic pistol. The criminalist found that Deputy Bush's firearm had no modifications or defects, and that it fired without malfunction.

Sergeant Nickolas Caronna gave a voluntary statement to Detectives Ripley and Thurman on September 12, 2022, in the presence of Sergeant Caronna's attorney, approximately nine days after the shooting. At the time of the interview, Sergeant Caronna had served as a SBCSD deputy for approximately 15 years, with more than 10 of those years assigned to the Needles station. Sergeant Caronna also served in the military. There was no information in the submission regarding whether Sergeant Caronna was previously involved in other lethal force encounters. Sergeant Caronna described himself as standing approximately five feet and nine inches and weighing approximately 175 pounds. By comparison, Sergeant Caronna estimated that Mr. McPheter was also five feet and nine inches tall and weighed 150 pounds.

Prior to making his statement, Sergeant Caronna reviewed audio and video recordings of the incident.⁵ The following is a summary of relevant information disclosed by Sergeant Caronna at the time of his interview:

⁵ The submission indicates that Sergeant Caronna was provided with audio and video recordings prior to his interview, but what exactly he reviewed was not specified. Presumably, Sergeant Caronna reviewed his and Deputy Bush's audio belt recordings, as these were the only recordings that captured the incident, as well as the civilian video recordings. (See Submitted Media, *infra*.)

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On the day of the shooting incident, Sergeant Caronna was assigned as the North River Incident Commander in Needles. Sergeant Caronna heard Deputy Bush's radio traffic that she was going to be conducting a traffic stop on L Street and West Broadway. Since the sergeant was nearby, he decided to assist Deputy Bush, whom he had worked with for the past two years. Less than 30 seconds later, when Sergeant Caronna arrived at the scene, he parked his marked patrol unit—a 2020 Jeep Wrangler, behind Deputy Bush's patrol unit. At the time, Sergeant Caronna recalled Deputy Bush was talking to Mr. McPheter as he sat in the Scion TC. Sergeant Caronna stood behind the Scion TC on the west sidewalk, approximately five to six feet from the passenger side of the Scion TC and acted as Deputy Bush's "cover officer." Sergeant Caronna explained that traffic stops are inherently dangerous because the deputy doesn't know who or what they will encounter, i.e., if the people inside the car are "wanted" or armed. As such, Sergeant Caronna opined that it was a good idea to have multiple units on a traffic stop.⁶

Sergeant Caronna's description of the beginning of the traffic stop was generally consistent with what Deputy Bush described. While Mr. McPheter sat on the concrete slope, Sergeant Caronna recalled going to the driver's side door of Deputy Bush's patrol unit and discussing the discovered restraining orders with Deputy Bush. After Deputy Bush told Sergeant Caronna that she was going to arrest Mr. McPheter, the sergeant watched Deputy Bush stand Mr. McPheter up and begin to pull Mr. McPheter's hands behind his back. When Mr. McPheter started to lean away from Deputy Bush, Sergeant Caronna stated that he ran and tackled Mr. McPheter at the upper torso like a football tackle and they fell onto the concrete slope. Sergeant Caronna described Mr. McPheter as being hot and sweaty, and the sergeant slid downwards as Mr. McPheter got up. Sergeant Caronna stated he could not get his feet under him and held Mr. McPheter around the waist and upper thigh. Sergeant Caronna stated that Mr. McPheter was face-to-face with Deputy Bush and "actively fighting" with her, so the sergeant reached up and grabbed Mr. McPheter's testicles to try to make Mr. McPheter stop hitting Deputy Bush and to gain Mr. McPheter's compliance. Sergeant Caronna stated that grabbing Mr. McPheter's testicles had no effect on Mr. McPheter, however, and that Mr. McPheter began to hit the sergeant, too. Sergeant Caronna recalled Mr. McPheter hitting him at least twice in the left temple with either an elbow or fist. Sergeant Caronna believed Mr. McPheter may have been under the influence of drugs because Mr. McPheter did not exhibit a "normal" reaction to pain.

In the midst of the melee, Sergeant Caronna asked Deputy Bush to tase Mr. McPheter, which she did. Sergeant Caronna saw that getting tased had no effect in gaining Mr. McPheter's compliance and their fight continued. Sergeant Caronna told investigators that he had his head in Mr. McPheter's stomach and was trying to put Mr. McPheter in a "wrestling cradle," but when he brought his head up the sergeant noticed that Mr. McPheter had his arms outstretched and was holding a gun. At the time, Sergeant Caronna did not know that Mr. McPheter was holding *the sergeant's* gun. Sergeant Caronna immediately abandoned his effort to cradle Mr. McPheter and threw both of his hands around Mr. McPheter's hands. Sergeant Caronna described Deputy Bush standing in front of her patrol unit at this point and that Mr. McPheter appeared to be moving the gun towards her. Sergeant Caronna pushed the magazine release button to release the gun's magazine and also attempted to fire the round in the firing chamber so that the gun would have no more bullets. Despite being on top of Mr. McPheter, however, Sergeant Caronna couldn't wrestle

⁶ Sergeant Caronna stated that Deputy Alec Gonzales also arrived to assist at the traffic stop within 20 to 30 seconds of the sergeant's arrival at the scene. However, since the sergeant was already watching and everyone appeared to be compliant, Deputy Gonzales left without speaking to anyone at the scene.

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the gun out of Mr. McPheter's hands. Sergeant Caronna believed he was fighting for his life and that Mr. McPheter was going to shoot him or Deputy Bush. As such, Sergeant Caronna told Deputy Bush to shoot Mr. McPheter in the head. Sergeant Caronna explained that there was no other place Deputy Bush could shoot at Mr. McPheter without shooting through the sergeant. Sergeant Caronna stated that Deputy Bush's first gunshot had no effect on Mr. McPheter; Mr. McPheter still had a grip on the gun. However, after Deputy Bush fired a second time, the sergeant said Mr. McPheter immediately went limp onto his knees but into almost a "downward dog position" with his head down.

After the gunfire, Sergeant Caronna got up and saw that Mr. McPheter had a GSW to the head and held a gun magazine in his left hand. Sergeant Caronna reached back towards his firearm holster and discovered it was empty. Sergeant Caronna immediately realized that the gun Mr. McPheter had during the scuffle was the sergeant's gun. Sergeant Caronna saw his gun laying on the ground, about a foot and a half from Mr. McPheter's head. Sergeant Caronna picked up his gun and re-holstered it. Sergeant Caronna denied ever feeling Mr. McPheter reach for his gun during their fight.

Sergeant Caronna explained that he did not attempt any life-saving measures on Mr. McPheter because it appeared obvious to the sergeant that Mr. McPheter was dead. Sergeant Caronna called for medical assistance and stated that paramedics arrived within two and a half to four minutes.

In retrospect, Sergeant Caronna stated that if Deputy Bush hadn't shot Mr. McPheter, that he believed Mr. McPheter would have continued to try to shoot him and Deputy Bush. Sergeant Caronna opined that lethal force was needed to stop Mr. McPheter.

Approximately nine hours after the shooting incident, Sergeant Caronna was photographed by Detective Cavender with the assistance of a SBCSD forensic technician. Detective Cavender found that Sergeant Caronna had abrasions on both of his hands, above his left eye, on both elbows, and on both knees. The sergeant's duty weapon was holstered on his right hip. Based upon the sergeant's statement, no rounds were fired from Sergeant Caronna's gun during the incident. Sergeant Caronna surrendered his duty weapon to Detective Cavender for examination and analysis by a SBCSD criminalist. Upon examination, Sergeant Caronna's gun was found to contain one round in the firing chamber. The criminalist described Sergeant Caronna's duty weapon as a Glock model 21Gen4, 9mm Luger caliber semi-automatic pistol. The criminalist determined that the sergeant's pistol had no modifications or defects and fired without malfunction.

STATEMENTS BY CIVILIAN WITNESSES⁷

Witness 1 was the only civilian witness to the shooting incident. Witness 1 gave a voluntary statement to Detectives Ripley and Thurman at the Needles Sheriff's Station, approximately seven hours after the incident took place.

⁷ All reports of civilian statements made were reviewed, though not all are summarized here. No civilian witness became aware of or used any involved officer's name. All specific references to Sergeant Caronna or Deputy Bush are made here for ease of narrative.

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Witness 1 explained that she had been in a relationship with Mr. McPheter since August, 2017. Witness 1 told investigators that she and Mr. McPheter had just bought the Scion TC for \$1000. Witness 1 and Mr. McPheter were driving to Florida from Canyon Lake and arrived in Needles the day before to visit with a friend. Witness 1 stated that both she and Mr. McPheter knew they were being pulled over by law enforcement. Witness 1's description of the beginning of the traffic stop was consistent with what Deputy Bush and Sergeant Caronna described above. Witness 1 stated that Deputy Bush was "really nice" and explained to them that the license plate cover on their car was illegal. Witness 1 told Deputy Bush that they hadn't yet registered their car and handed over what paperwork they had to Deputy Bush. Deputy Bush then returned to her patrol unit and Witness 1 recalled discussing with Mr. McPheter that Mr. McPheter did not want to go back to jail.

After Deputy Bush returned, Witness 1 recalled that Mr. McPheter got patted down. Witness 1 approximated that Mr. McPheter was sat 15 feet to the rear of the Scion TC, on the concrete slope, where Witness 1 could see him through her side passenger mirror. Witness 1 rolled down the Scion TC passenger-side window when Deputy Bush next approached her to talk about the restraining orders. At the time of her interview, Witness 1 admitted to the detectives that she had both a "no negative contact" and "no contact" restraining order against Mr. McPheter. Witness 1 explained that she had engaged in some "mutual combat" with Mr. McPheter in the past and that when Mr. McPheter was on drugs, "he was a monster." Witness 1 stated that when Mr. McPheter was on drugs, he would get physically and verbally aggressive, combative, unreasonable, and would not listen. However, Witness 1 stated that Mr. McPheter last used drugs a month ago. Witness 1 also mentioned that Mr. McPheter *had* gotten into fights with police before.

Witness 1 stated that after Deputy Bush talked to her about the restraining orders, that Deputy Bush went to where Mr. McPheter was sitting and told him to put his hands behind his back. Witness 1 stated that she then heard footsteps, looked in her side mirror and saw that Mr. McPheter, "took off running." Witness 1 then saw Deputy Bush tackle Mr. McPheter and a scuffle ensued. Witness 1 stated that at first only Deputy Bush and Mr. McPheter scuffled, then Sergeant Caronna became involved, and all three were "rolling in a ball" like a "Wile E. Coyote" cartoon.

Witness 1 watched through her side mirror and began to scream at Mr. McPheter to "stop." Witness 1 recalled hearing Deputy Bush say, "stop resisting." Witness 1 also said that Mr. McPheter had Sergeant Caronna in a headlock or had his hands around the sergeant's head. Mr. McPheter complained, "Babe, he's got me by the balls." Witness 1 screamed at Mr. McPheter to let go of Sergeant Caronna and for the sergeant to let go of Mr. McPheter. Witness 1 heard Deputy Bush say, "I'm going to tase you," and this is when Witness 1 started to watch the incident with her torso leaning outside of the passenger window and looking towards the scuffle. Witness 1 said that Mr. McPheter responded to Deputy Bush by saying, "Do it then." Witness 1 also heard Sergeant Caronna tell Deputy Bush to tase Mr. McPheter. Witness 1 told detectives that Mr. McPheter wasn't afraid of Deputy Bush's taser because he was previously tased by a bigger taser. Still, Witness 1 also heard Mr. McPheter say, "No, don't tase me." Witness 1 then saw Deputy Bush tase Mr. McPheter in the back and it appeared that Deputy Bush was on top of Mr. McPheter as she did so. Witness 1 believed she saw Mr. McPheter convulse from being tased. Witness 1 stated that Mr. McPheter stopped fighting after he was tased. Witness 1 heard Mr. McPheter say numerous times, "I'm not moving," and was waiving his hands in the air. Witness 1 said she also heard Mr. McPheter say, "Ok, I'm going to stop resisting." At the time, Witness 1 saw that Sergeant Caronna was kneeling on the ground, holding Mr. McPheter around his leg and body, and the sergeant briefly reached for his gun or unfastened his gun holster without pulling the gun out. Witness 1 stated that Sergeant Caronna appeared to be tired, out of breath, and wasn't even trying to get out of Mr. McPheter's grasp.

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After Deputy Bush tased Mr. McPheter, Witness 1 said that Mr. McPheter got back up again and looked like he was going to run again but couldn't. Then, Witness 1 saw Deputy Bush pull her gun out. At that point, Witness 1 recalled Deputy Bush was standing and facing Mr. McPheter. Witness 1 said that Mr. McPheter had his hands in the air but crouched down toward Deputy Bush. Deputy Bush fired her gun at Mr. McPheter and Mr. McPheter turned to look at Witness 1; Witness 1 said Mr. McPheter looked scared. Witness 1 said that after Deputy Bush fired a second time, Mr. McPheter fell.

Detectives asked Witness 1 if during the fight, Mr. McPheter either tried to grab or hold any deputy's gun. Witness 1 repeatedly denied seeing Mr. McPheter do either. Witness 1 emphasized that Mr. McPheter had an easy opportunity during the fight to take Sergeant Caronna's gun but did not do so. Witness 1 also denied hearing Mr. McPheter say anything about a gun or shooting anyone.

Witness 1 estimated that about five to 10 seconds after the gunfire, Deputy Bush took Witness 1 out of the Scion TC, placed her in handcuffs, and walked Witness 1 past Mr. McPheter as he lay bleeding faced down on the ground. Witness 1 stated that she did not see anything in Mr. McPheter's hands at the time, nor did she see any taser or gun magazine on the ground. Deputy Bush handed Witness 1 over to another deputy who sat Witness 1 in a patrol vehicle behind the Sergeant's Jeep. Witness 1 stated that she could see where Mr. McPheter lay for approximately 20 minutes and that it did not appear that anyone moved Mr. McPheter during that time.

SUBMITTED MEDIA⁸

DISPATCH RECORDING. The case agent's submission included audio recordings of radio transmissions between SBCSD dispatch operators and deputies. The following is a summary of material events that occurred on September 3, 2022, evidenced by these recordings and a dispatch log provided by the case agent:

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|-----------|--|
| 3:14 p.m. | Deputy Bush alerted dispatch that she would be making a traffic stop at L Street and Broadway, for an obstructed license plate on a burgundy Scion TC. |
| 3:17 p.m. | Deputy Bush provided the Scion TC's temporary plate number to dispatch. Approximately eight minutes later, dispatch alerted Deputy Bush that the Scion TC's registration was expired and the last known owner was from Whittier. |
| 3:24 p.m. | Deputy Bush sent a computer inquiry for information about Mr. McPheter from her patrol unit. Less than two minutes later, Deputy Bush was advised that Mr. McPheter was a restrained person subject to a protective order. |
| 3:30 p.m. | Deputy Bush alerted dispatch by radio that she was involved in a fight. The dispatch operator immediately declared an emergency on the channel and requested units to respond to L and Broadway. |
| 3:31 p.m. | Deputy Bush aired, "shots fired." Within 13 seconds of Deputy Bush's |

⁸ 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 audio recordings and video footage were reviewed at slowed speeds.

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announcement, Sergeant Caronna requested medical assistance at the scene.

3:32 p.m. Deputy Gonzales arrived at the scene.⁹

3:37 p.m. Deputy Bush announced to dispatch that medical assistance had arrived at the scene. Then, Deputy Gonzales announced that the fire department had also arrived. Approximately a minute after Deputy Bush alerted dispatch to the presence of paramedics at the scene, Deputy Bush confirmed Mr. McPheter was pronounced deceased at 3:37 p.m.

BELT RECORDING.¹⁰ Both Sergeant Caronna and Deputy Bush wore audio recording devices on their duty belts which were activated for a portion of their contact with Mr. McPheter. Sergeant Caronna's belt recording was approximately 10 minutes and 24 seconds long. Deputy Bush's recording was approximately eight minutes and seven seconds long. However, only Deputy Caronna's device captured audio footage of the shooting. Deputy Bush explained during her interview that although she began recording her interaction with Mr. McPheter, she paused her recording while she spoke with Sergeant Caronna and forgot to re-engage her recording device before the fight broke out. She re-engaged her recording device after the shooting had already occurred.

Deputy Bush's recording began during her discussion of a protective order with Mr. McPheter. Mr. McPheter told Deputy Bush that the restraining order was in place because of a "misunderstanding," but admitted that it was a "no negative contact" order. Mr. McPheter deferred to Witness 1 when Deputy Bush asked Mr. McPheter whether the order was active. Deputy Bush next discussed the restraining orders with Witness 1. Witness 1 told Deputy Bush that there were two restraining orders, but that the court was supposed to take one of those out.

The audio recordings then captured Deputy Bush conferring with Sergeant Caronna about the restraining orders.¹¹ Per Sergeant Caronna's recording, Sergeant Caronna appeared to point out that the DVRO restricted Mr. McPheter from having any contact with Witness 1, to which Deputy Bush stated, "Alright, well that answers that question." Within approximately 12 seconds of making that statement, it appeared that Deputy Bush attempted to take Mr. McPheter into custody. The case agent described the ensuing shuffling noises that occurred immediately thereafter as being consistent with a fight occurring. Next, Deputy Bush said, "415 with one," and two seconds after that, Mr. McPheter could be heard saying, "You better let go of my mother-fucking nuts or I'm going to fuck you up, dude." Deputy Bush could then be heard saying, "Let fucking go." Mr. McPheter called to Witness 1, "Babe, get them fucking off of me." Witness 1 responded, "Babe sit down." Mr. McPheter continued, "Babe, get them off of me," and "Babe, he's got my nuts." Witness 1 pleaded, "Babe, stop! Stop!"

⁹ The case agent did not submit any report by Deputy Gonzales or about Deputy Gonzales' response to the incident scene.

¹⁰ At the time the incident was recorded, Sergeant Caronna and Deputy Bush wore their audio recording devices on their duty belts. The resulting audio recordings were limited to the recording environment that existed close to their recording device at the time, place, and manner in which each device was worn. For example, the audio recordings were interrupted by traffic noises and involved muffled noises during the scuffle. The belt recording, while informative, cannot recreate what the Sergeant Caronna or Deputy Bush perceived by their combined senses.

¹¹ An audible break at the five minute and 13 second mark in Deputy Bush's recording appeared to include the point when Deputy Bush paused her recording device prior to attempting to arrest Mr. McPheter and re-engaging after the shooting occurred.

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Then, the following exchange occurred:

Sergeant Caronna: Get up, get up, get up, get up and tase him.

Mr. McPheter: Tase me? Please, don't tase me, please.

Sergeant Caronna: Get down.

Mr. McPheter: Don't tase me.

Sergeant Caronna: Get down.

Mr. McPheter: Let go of my balls first, please.

Sergeant Caronna: No. Tase him.

Mr. McPheter: I'm done fighting.

Deputy Bush: I will tase you, fucking sit down.

Mr. McPheter: I'm not fighting no more dude.

Sergeant Caronna: Yeah, you are.

Deputy Bush: Yeah, you are.

Sergeant Caronna: Fucking tase him.

Mr. McPheter: The gun is back there.

The case agent described the sound that occurred next as the sound of a taser deployment. The deployment appeared to last approximately 3 seconds.¹² The case agent described Mr. McPheter as making a grunting sound, like someone who felt some effect of the taser deployment. Next, Deputy Bush said, "No!"

The following exchange then could be heard:

Mr. McPheter: I'll fucking shoot you dude.

Witness 1: Nick stop.

Mr. McPheter: *[Inaudible mumbling]* I'm not going to shoot nobody. I'll let it go. I'm not going to shoot nobody.

Witness 1: Let the fuck go, Nick!

¹² A taser usage report submitted by the case agent indicated a taser activation for a 3-second cycle on the day of the shooting incident at 3:36 p.m.

Sergeant Caronna: Shoot him. Shoot him in the head!

Immediately thereafter, the sound of a single gunshot could be heard. A second gunshot followed, three seconds later. Approximately 13 seconds after the second shot, Deputy Bush announced, "Shots fired."

The total elapsed time from the beginning of the scuffle to the first gunshot was approximately 64 seconds.

CIVILIAN VIDEO. Home surveillance video was provided by a community member. The surveillance video was recorded from a home on South L Street, which appeared to capture the traffic stop of Mr. McPheter and the incidents which followed. The video footage was in color but included no audio. The video images of the incident are discernable when considered in context of the entire submission, but not independently so. The primary focus of the surveillance was the area outside of the residence that was approximately 100 yards away from where the shooting occurred. The shooting incident occurred in the background. The camera faced south towards the I-40 overpass from South L Street.

The case agent's analysis of the civilian surveillance video was generally consistent with the statements of Sergeant Caronna and Deputy Bush. Deputy Bush attempted to place Mr. McPheter under arrest at approximately 3:30 p.m.¹³ About 17 seconds later, Sergeant Caronna, Deputy Bush, and Mr. McPheter were noted to have fallen on the ground at the base of the concrete incline, west of the patrol vehicles and on the sidewalk. Sergeant Caronna and Deputy Bush appeared to stand up again approximately a minute and seven seconds after Deputy Bush attempted to arrest Mr. McPheter. Mr. McPheter, presumably shot, remained on the ground.

INCIDENT SCENE INVESTIGATION

The incident scene investigation was managed by Deputy Vanayes Quezada,¹⁴ with the assistance of an SBCSD crime scene specialist.

The incident scene was described as the asphalt roadway of South L Street, south of West Broadway Street and north of Highland Avenue, underneath the I-40 overpass in Needles. This area of South L Street was described as a north/south, two-lane roadway, with one lane of travel in each direction separated by a double yellow line. A four-foot wide, seven-inch tall concrete curb extended on the outer east and west sides of the roadway. The 31-degree sloped concrete foundation of the I-40 overpass extended from the outer edge of each curb to the underside of I-40, overhead.

The Scion TC was parked facing south on the west roadway edge of South L Street. Both driver and passenger windows were rolled down, and the car was approximately 16 feet south of where Mr. McPheter lay. Deputy Bush's marked SBCSD patrol unit was approximately 18 feet behind (north of) the rear bumper of the Scion TC. Sergeant Caronna's marked SBCSD patrol unit was approximately 10 feet behind (north

¹³ The civilian surveillance video included visual date and time stamping for the events recorded. However, the party who provided the video reported that the time included in the video was approximately five to six minutes "off" the actual time recorded. Such a correction is consistent with the timing of events included in the rest of the case submission.

¹⁴ Deputy Vanayes Quezada was promoted to the rank of Detective after his investigation.

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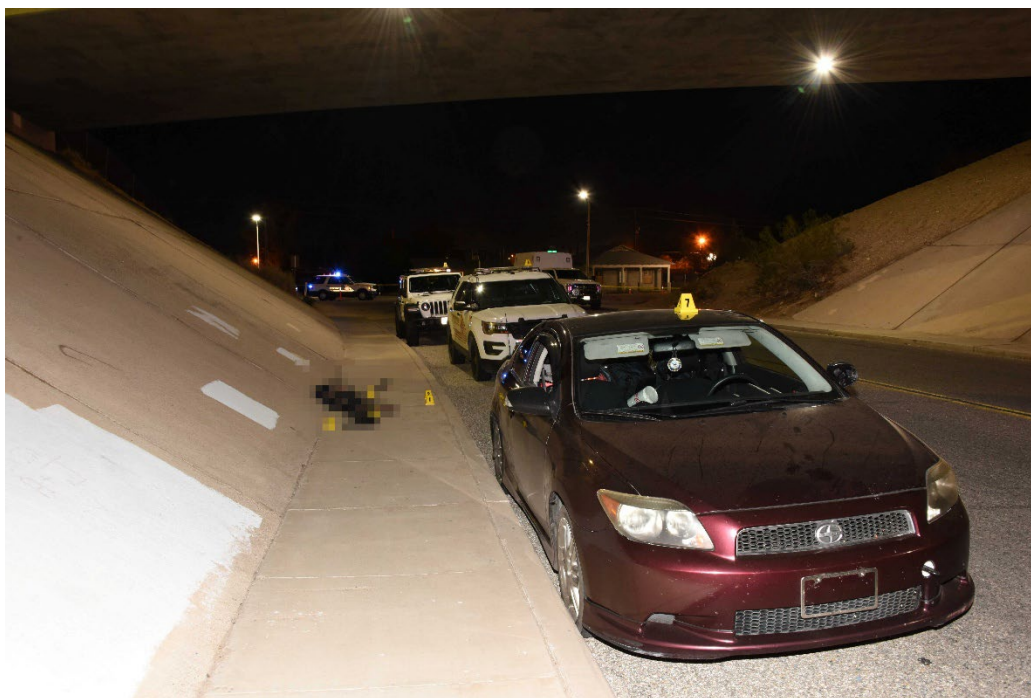
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of) the rear bumper of Deputy Bush's patrol unit. Deputy Quezada discovered both patrol units faced south, with their emergency light bar lights activated, and the ignitions in the "on" position.



Mr. McPheter's remains lay on the west edge of the west curb, between the front of Deputy Bush's patrol unit and the rear of the Scion TC. Mr. McPheter was wearing a black T-shirt, black basketball-type shorts with an elasticized waistband that was pulled under and exposed the buttocks. Mr. McPheter was also noted to be wearing black knee-high socks and one black shoe marked, "steel toe." Mr. McPheter's other shoe lay approximately two feet south of Mr. McPheter.

Deputy Quezada located two FCC's at the scene, approximately 19 inches apart, closer to the east edge of the west curb. Mr. McPheter's remains were faced-down on the west curb. The left shoulder touched the base of the concrete slope and the left arm was tucked underneath his abdomen. The left hand clutched the base of Sergeant Caronna's pistol magazine. Deputy Bush's taser was discovered with its two cartridges intact, on the ground approximately two feet north of Mr. McPheter's right shoulder.

Mr. McPheter's hands were swabbed for the presence of gunshot residue (GSR). A SBCSD criminalist determined that GSR particles were present on the right hand, but not the left hand. The criminalist's report stated that GSR particles can be deposited by touching a surface that has GSR on it, being in proximity of a discharging firearm, or handling a firearm. The investigation did reveal Mr. McPheter suffered a GSW to the right hand. (See Decedent, *infra*.)

Sergeant Caronna's duty weapon and the magazine retrieved from Mr. McPheter's left hand at the scene were swabbed for the presence of Mr. McPheter's DNA. A SBCSD criminalist determined that there was "very strong support" (3.8 septillion times more likely) that Mr. McPheter was a contributor of DNA from

the retrieved magazine and “strong support” (840,000 times more likely) that Mr. McPheter was a contributor of DNA from Sergeant Caronna’s duty weapon.

DECEDENT

AUTOPSY. Following an investigation by a SBCSD Coroner Division investigator, an autopsy of Mr. McPheter’s remains was conducted by a SBCSD Coroner Division forensic pathologist on September 6, 2022. The forensic pathologist identified Mr. McPheter’s remains as those of a White young adult male, approximately 67 inches long, and weighing 119 pounds. Mr. McPheter was reported to be 27 years old.

The forensic pathologist identified three separate GSWs: one GSW to the left forehead, another tangential GSW to the top of the head at midline, and a third to the palm of the right hand and right index finger. The forensic pathologist indicated to Detective Thurman that the GSW to Mr. McPheter’s left forehead was fatal. The forensic pathologist recovered a bullet jacket from the cerebellum and a bullet core from the right posterior cranial fossa. The forensic pathologist determined that both GSWs to the head had a front-to-back and left-to-right trajectory. The forensic pathologist specified that Mr. McPheter’s death occurred immediately as a result of the GSW to the forehead.

The forensic pathologist also identified the following “blunt force injuries” to Mr. McPheter’s body: abrasions to the forehead and face, contusion and abrasions to the area of the right eye, contusion to the area of the left eye, fractured jawbone, abrasions to the right side torso, and abrasions to the left buttock, right forearm, left elbow, both knees, and to the left leg.

TOXICOLOGY. Femoral blood samples collected by the forensic pathologist were found to contain, *inter alia*, a blood-alcohol concentration (BAC) 0.02 g/100 mL, 210 ng/mL amphetamine, and 1900 ng/mL methamphetamine.

CRIMINAL HISTORY. Mr. McPheter’s misdemeanor criminal history from 2019 and 2020 included convictions for drug possession, vandalism, domestic violence, and violation of a domestic violence restraining order. Mr. McPheter had no felony convictions.

APPLICABLE LEGAL PRINCIPLES

A peace officer conducting a traffic stop who is faced with a threat of harm while fulfilling her duties need not retreat and maintains her right to self-defense. (Calif. Penal C. §§197, 835a.)¹⁵ 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 that he is being arrested. (Penal C. §834a.) The force used by the peace officer to

¹⁵ All references to code sections here pertain to the California Penal Code.

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 she 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 2020,¹⁶ the courts have been defining the constitutional parameters of use of deadly force for decades.

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 when a law enforcement officer’s actions are reasonable under the Fourth Amendment of our national Constitution, 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

¹⁶ 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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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;¹⁷
- (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 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 her actual awareness of the risks posed against her 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

¹⁷ 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).

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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 a peace 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 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

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faced imminent harm. (*Estate of Strickland v. Nevada County* (9th Cir. 2023) 69 F.4th 614, cert. denied Jan. 8, 2024, No. 23-410, 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.) The threatened use of a gun is the sort of immediate threat contemplated by the United States Supreme Court, that justifies a peace officer's use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72.) If a subject draws or exhibits a firearm to resist or prevent arrest or detention by a peace officer, it is not required that the subject point the firearm at the peace officer, or even draw the weapon in a rude, angry or threatening manner for the subject's conduct to qualify as a serious felony being committed against that peace officer. (Pen. Code §§245(d), 417.8; *People v. Raviart* (2001) 93 Cal.App.4th 258, 266, *People v. Pruett* (1997) 57 Cal.App.4th 77, 88.) 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 peace 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. 17, *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 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.)

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 has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson, supra*, 630 F.3d at 825.) 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 falls short of this definition. (*Bryan v. MacPherson, supra*, 630 F.3d at 825; *Deorle v. Rutherford, supra*, 272 F.3d at 1279-80.)

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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

This memorandum examines the use of deadly force by SBCSD Deputy Michelle Bush on September 3, 2022, upon Nikolas McPheter. As indicated above, there are legal bases that must be met before the right to self-defense ripens and the use of lethal force by a peace officer 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 peace officer's use of force must be "reasonable" to be deemed lawful. Whether the shooting deputy was justified in using lethal force involves a two-part analysis: (1) did she subjectively and honestly believe she needed to protect herself or others from an apparent, imminent threat of death or great bodily injury; and (2) was her belief in the need to protect herself or another from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of Deputy Bush is included here based primarily upon the statement she made during her interview. (See Summary of Deputy Bush's statement, Statements by Law Enforcement Officers, *supra*.)

There was nothing unusual about Deputy Bush's contact with Mr. McPheter until Deputy Bush attempted to arrest him. Through her initial investigation, Deputy Bush found that Mr. McPheter was evasive when she asked about the restraining orders, but Mr. McPheter was otherwise very cooperative. After confirming that Mr. McPheter was subject to a stay-away condition of a DVRO and consulting repeatedly with Sergeant Caronna, Deputy Bush determined she was required to arrest Mr. McPheter for being in the company of Witness 1.

Once Deputy Bush informed Mr. McPheter that he was under arrest and was going to be taken into custody, Deputy Bush immediately sensed that Mr. McPheter was going to fight with her. Deputy Bush described Mr. McPheter's body as going rigid and pulling away from her grasp, when Sergeant Caronna tackled Mr. McPheter and all three of them fell down. Deputy Bush described being in a fight with Mr. McPheter thereafter and struggling to get Mr. McPheter under control. At one point during the fight, Deputy Bush saw that Mr. McPheter appeared to tug at Sergeant Caronna's gun holster and later saw Sergeant Caronna's gun fall to the ground. At the time, Deputy Bush didn't call attention to the gun on the ground. Next, Deputy Bush saw that Sergeant Caronna grabbed Mr. McPheter by the genitals, as a pain-compliance technique. Yet, Mr. McPheter kept attacking and grabbing Sergeant Caronna. Deputy Bush said she struck Mr. McPheter to the left

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side of his face multiple times to get Mr. McPheter to let go of Sergeant Caronna, but that also failed to get Mr. McPheter to stop fighting or surrender.

Deputy Bush turned to her taser next. Deputy Bush drew her taser and tased Mr. McPheter on his back. In response, Mr. McPheter knocked the taser out of Deputy Bush's hands. Then, Mr. McPheter pounced on Sergeant Caronna's gun with both of his hands and pulled it towards him. Deputy Bush immediately placed her hands over Mr. McPheter's hands and they both struggled to control the gun. Deputy Bush stated that Sergeant Caronna also tried to keep Mr. McPheter from gaining control of the gun. Deputy Bush believed that Mr. McPheter was going to kill her or Sergeant Caronna. Deputy Bush said Mr. McPheter pointed the barrel of the gun at her chest and at Sergeant Caronna as they both fought to keep Mr. McPheter from shooting them. Deputy Bush recalled hearing Mr. McPheter say that he was not going to shoot them, but the deputy did not believe him because Mr. McPheter was still pointing the gun and trying to grab at the trigger.

Ultimately, Deputy Bush stated that she was able to get herself in a kneeling position to gain some leverage over Mr. McPheter. Deputy Bush drew her firearm with her right hand back to her right armpit while holding down Mr. McPheter's hands with her left hand. Sergeant Caronna was still entangled with Mr. McPheter when Deputy Bush heard Sergeant Caronna say, "shoot him in the fucking head." Deputy Bush fired one round at Mr. McPheter's head from approximately one to two feet that appeared to hit the side of Mr. McPheter's face. Deputy Bush saw Mr. McPheter look at her with a "pissed off look on his face." Mr. McPheter made no attempt to surrender and was still fighting for control of the sergeant's gun. Mr. McPheter reached out towards Deputy Bush like he was also trying to grab her gun or to hit her. This is when Deputy Bush fired her duty weapon a second time; it was several seconds after the first gunshot. Deputy Bush then saw Mr. McPheter move back and fall faced down onto the sidewalk.

Deputy Bush told investigators that the next thing she recalled doing was announcing "shots fired" over the radio. In retrospect, Deputy Bush stated that she knew she had to use lethal force to stop the threat of being killed by Mr. McPheter.

The stated account of Deputy Bush, together with the statement of Sergeant Caronna, of the circumstances at play *prior* to and culminating with Deputy Bush's use of lethal force is consistent with the submission. Furthermore, the submission supports Deputy Bush's conclusion that Mr. McPheter was armed with a gun and appeared to be preparing to kill her or Sergeant Caronna. Mr. McPheter had the apparent ability, intent, and opportunity to inflict the lethal harm articulated by both Deputy Bush and Sergeant Caronna. Based upon the foregoing, it is reasonable to conclude that Deputy Bush bore an honest and subjective belief that Deputy Bush and Sergeant Caronna were under threat of imminent deadly harm or bodily injury at the time Deputy Bush 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.

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As in *Graham*, we first consider the severity of the crime at issue. In the course of her traffic investigation, Deputy Bush discovered that Mr. McPheter was in violation of a DVRO—a misdemeanor. (Pen. C §273.6.) However, after being informed of his arrest, Mr. McPheter engaged in resistance by force or violence, in violation of Penal Code section 69—a felony. Mr. McPheter did not stop there, however. By striking and fighting with Sergeant Caronna and Deputy Bush, causing injury to them both, Mr. McPheter committed separate violations of Penal Code section 245(c) [assault of a peace officer in the course of his or her duties]—a “serious” strike felony pursuant to Penal Code section 1192.7(c), that carries a mandatory prison sentence. It could also be concluded that Mr. McPheter drew or exhibited a firearm (albeit Sergeant Caronna’s firearm) with the intent to prevent detention by a peace officer; this was a violation of Penal Code section 417.8, another “serious” strike felony.¹⁸ The assault upon Sergeant Caronna and Deputy Bush with a firearm would at a minimum be a violation of Penal Code section 245(d)(2), a “violent” felony strike pursuant to Penal Code section 667.5(c)(8). As such, the severity of the crimes Mr. McPheter may have committed and was engaged in immediately prior to Deputy Bush’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. To begin with, Deputy Bush and Sergeant Caronna were authorized to use reasonable force to effectuate Mr. McPheter’s detention and arrest based upon Deputy Bush’s investigation of Witness 1’s DVRO. Deputy Bush and Sergeant Caronna wore unmistakable SBCSD uniforms and arrived at the scene in SBCSD marked units. Witness 1 confirmed, and the initial cooperation by Mr. McPheter at the scene demonstrated, that Mr. McPheter knew he was being contacted by law enforcement. Mr. McPheter’s sudden reaction to being placed under arrest also indicated that Mr. McPheter knew he was being arrested; Deputy Bush told him as much. As a result, Mr. McPheter had a duty to refrain from using any force or weapon to resist detention or arrest by Deputy Bush and Sergeant Caronna. Yet, this is exactly what Mr. McPheter did while he fought with Deputy Bush and Sergeant Caronna.

The disagreement between what Mr. McPheter said and what he did happened several times. For example, the audible portions of the submitted belt recordings included Mr. McPheter threatening Sergeant Caronna (“You better let go of my mother-fucking nuts or I’m going to fuck you up, dude,” and “I’ll fucking shoot you dude.”) on one hand, and relenting (“I’m not fighting no more dude,” and “I’m not going to shoot nobody. I’ll let it go.”) on the other. Sergeant Caronna and Deputy Bush both immediately and audibly confronted Mr. McPheter’s statement that he wasn’t fighting. When physical restraint and strikes did nothing to physically reign in Mr. McPheter, Deputy Bush did warn Mr. McPheter that he would be tased. Mr. McPheter understood he faced being tased, as he asked not to be tased. Still, Mr. McPheter continued to fight with Deputy Bush and Sergeant Caronna. In addition, the audible screaming of Witness 1 captured by the belt recordings appeared solely directed toward Mr. McPheter and included asking Mr. McPheter to stop, sit down, and let go, even up to the moment before Mr. McPheter was shot. Witness 1 did tell investigators that before Mr. McPheter was taken out of the Scion TC, that Mr. McPheter told her he did not want to be taken into custody. Mr. McPheter’s violent response to being taken into custody demonstrated an intent to thwart or evade arrest at all cost. What began as a grapple, progressed to a fist-fight, and ultimately, because Mr. McPheter armed himself, devolved into a gunfight. These facts tend to corroborate the sergeant and deputy’s assessment that Mr. McPheter did not and would not stop fighting with the application of less-than-lethal force. Ultimately, Deputy Bush and Sergeant Caronna had no choice

¹⁸ Mr. McPheter’s conduct here moved well beyond the type of conduct proscribed by Penal Code, section 148(d) [intentionally taking or attempting to take a firearm from a peace officer], a misdemeanor, which includes the simple unholstering or touching of the officer’s gun and/or gun safety.

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but to accept what Mr. McPheter was physically doing versus what Mr. McPheter *said* he was doing or would do.

It was noted that Witness 1 vehemently denied seeing Mr. McPheter reach for Sergeant Caronna's holster or seeing Mr. McPheter with a gun in his hands. Yet, Witness 1 also described the fight as "rolling in a ball" like a "Wile E. Coyote" cartoon—an undiscernible tumble of people. Specifically, the fight occurred on the ground at least 15 to 18 feet away from where Witness 1 was leaning outside of the passenger window, with three pairs of hands obscuring the gun. It is not surprising that Witness 1 could not see Mr. McPheter holding the gun under these circumstances. It is more curious that Witness 1 told investigators that Mr. McPheter had his hands in the air at the time he was shot. Sergeant Caronna's belt recording included Witness 1 screaming, "Let the fuck go, Nick!" approximately one second before Deputy Bush's first gunshot rang out. Moreover, the later discovery of Sergeant Caronna's gun magazine in Mr. McPheter's dominant hand,¹⁹ and the presence of Mr. McPheter's DNA on Sergeant Caronna's pistol also make it reasonable to conclude that Mr. McPheter did indeed grab Sergeant Caronna's gun off the ground. Self-armament in the face of detention by an armed law enforcement officer is an extreme level of resistance. As such, the submission in total supports the finding that Mr. McPheter was engaged in active and violent resistance at the time Deputy Bush used lethal force. In the calculus of what was "reasonable" under *Graham*, Mr. McPheter's resistance can be weighed in favor of the conclusion that Deputy Bush'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 to the lethal use of force must be considered. There was nothing unusual about the traffic stop, Deputy Bush's investigation, or Deputy Bush's decision to arrest Mr. McPheter for a DVRO violation. Mr. McPheter was a compliant detainee and did nothing out of the ordinary, that is until Deputy Bush attempted to arrest Mr. McPheter. An entire minute of scuffling followed Deputy Bush's attempt to arrest Mr. McPheter. During that time, Mr. McPheter fought Deputy Bush and Sergeant Caronna's attempts to bring Mr. McPheter under control. Mr. McPheter may have been similarly sized to Deputy Bush, but not Sergeant Caronna. Yet somehow, Mr. McPheter was able to stymie their *combined* efforts to arrest him. It surprised Deputy Bush and Sergeant Caronna that the use of head strikes, crushing his genitals, and the application of a taser did nothing to cause Mr. McPheter to surrender. These pain-compliance techniques instead appeared to cause Mr. McPheter to fight harder.

At the time Mr. McPheter took hold of Sergeant Caronna's gun, Deputy Bush did not have her duty weapon drawn. Sergeant Caronna did not unholster his gun during his fight with Mr. McPheter, either. It was Mr. McPheter who brought the gun to the fistfight. In fact, the sergeant had no idea that his gun had come out of its holster at all until after the shooting occurred. On the other hand, during the struggle, Deputy Bush saw Mr. McPheter's hand on the sergeant's gun holster. The sequence of events supported by the submission suggests that Mr. McPheter said, "The gun is back there," prior to the time he grabbed the sergeant's gun off the ground. These facts tend to show that Mr. McPheter knew the sergeant's gun had come away from its holster, knew where the sergeant's gun was, and that his reach for the sergeant's gun was for no other apparent reason than to shoot Deputy Bush and/or Sergeant Caronna with it. After making mention of the gun, Deputy Bush was heard crying out, "No!" Then, Mr. McPheter can be heard in the sergeant's belt recording saying, "I'll fucking shoot you dude." After Mr. McPheter took hold of Sergeant Caronna's gun, Mr. McPheter proceeded to force the muzzle toward Deputy Bush and Sergeant Caronna.

¹⁹ The paramedic who arrived at the scene and examined Mr. McPheter within six minutes of the shooting also noted the gun magazine in Mr. McPheter's left hand.

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Deputy Bush—the only other person with a gun at the time, was faced with the imminent choice to accept her and her partner’s death, or act to save their lives. This is the awful predicament required by section 835a, subd. (c): to act only in defense of an imminent lethal threat—a reactive vs. proactive mandate. Deputy Bush did not have the luxury of time and space to approach this incident with any leisure or further negotiation. Although Mr. McPheter can be heard on Sergeant Caronna’s belt recording saying, “I’m not going to shoot nobody” and “I’ll let it go,” the plain facts are these: Mr. McPheter fought with them both, threatened to shoot, and was still holding the gun. Indeed, the front-to-back trajectories noted by the forensic pathologist in both of Mr. McPheter’s GSW’s to the head also tend to support that Mr. McPheter faced Deputy Bush at the time he was shot. The GSW to Mr. McPheter’s right hand also tends to support Deputy Bush’s statement that Mr. McPheter was actively aggressing her as she fired her second shot. It was reasonable for Deputy Bush to believe that Mr. McPheter was poised to shoot and kill her or Sergeant Caronna. In this tense, uncertain, and rapidly evolving encounter, it was only when Mr. McPheter took hold of Sergeant Caronna’s gun that Deputy Bush finally took action to defend their lives.

In sum, Mr. McPheter’s apparent conduct demonstrated that he had the present ability and opportunity to immediately cause death or serious bodily injury. Specifically, Deputy Bush reasonably believed that lethal force was instantly required to avoid immediate death to herself and Sergeant Caronna. The law did not require Deputy Bush to wait to use lethal force until Mr. McPheter shot 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 Deputy Bush’s identification of an imminent lethal threat posed by Mr. McPheter or her choice to use lethal force upon Mr. McPheter.

Based on the foregoing discussion, each of the primary *Graham* factors as applied support a finding that the use of lethal force by Deputy Bush was reasonable. The “totality of the circumstances” discussed herein further supports a finding that Deputy Bush reasonably believed that she was defending against an imminent threat of death or serious bodily injury to herself and Sergeant Caronna at the time she used lethal force. As such, we conclude that the use of lethal force by Deputy Bush 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. As discussed above, Mr. McPheter knew Deputy Bush and Sergeant Caronna were attempting to arrest him. During the struggle that ensued, Mr. McPheter may have said with words that he was not fighting or would not shoot anyone, but those words rang hollow. Even Witness 1 seemed to think that Mr. McPheter physically overwhelmed Sergeant Caronna. Both Sergeant Caronna and Deputy Bush appeared after the incident to have the scuffs and scrapes consistent with being in a fight. Ultimately, Mr. McPheter chose to assault Deputy Bush and Sergeant Caronna with a gun. Mr. McPheter responded to non-lethal force (taser) by provoking lethal contact with Sergeant Caronna and Deputy Bush. Even if another less-than-lethal option was available at the ready, there was no indication that Mr. McPheter would have then been persuaded to stop his attack. In sum, by refusing to comply, actively resisting, and arming himself with a lethal weapon, Mr. McPheter dictated a circumstance where there was no further feasible, safe, or reasonable opportunity for Deputy Bush or Sergeant Caronna to de-escalate the incident.

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Other Statutory Considerations. The added considerations included in §835a(a) also support the conclusion that the use of deadly force by Deputy Bush was lawful.²⁰ First, the submission in total does not indicate that Deputy Bush acted excessively. Deputy Bush fired at Mr. McPheter only after Mr. McPheter demonstrated a sustained unwillingness to submit to arrest, first by striking them, then by arming himself with a gun, and ultimately pointing the gun at her and Sergeant Caronna. Even after Deputy Bush's first gunshot, Mr. McPheter continued to grip Sergeant Caronna's gun and appeared to strike at or reach for Deputy Bush's gun. Multiple applications of lethal force were required to get Mr. McPheter to stop his assault of Deputy Bush and Sergeant Caronna. Once Mr. McPheter no longer posed an *immediate* lethal threat, no additional force appeared to have been used. In sum, the submitted evidence supports the conclusion that lethal force did not continue after Deputy Bush appreciated that Mr. McPheter no longer posed an immediate lethal threat to her or Sergeant Caronna. As such, Deputy Bush can be found to have well-appreciated the gravity and consequence of her use of lethal force evidenced by the judicious way she dispensed lethal force.

The material submitted by the case agent revealed that Mr. McPheter's blood contained high levels of amphetamine and methamphetamine. 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 such was the case with Mr. McPheter. Here, Mr. McPheter demonstrated at the beginning of his contact with Deputy Bush that he understood commands; he initially complied with those. Mr. McPheter's later choice to fight Deputy Bush and Sergeant Caronna, and then arm himself as discussed above, however, demonstrated that Mr. McPheter was a danger to more than himself. In fact, Mr. McPheter's conduct during the incident was consistent with what Witness 1 described as her prior experience was when Mr. McPheter was under the influence of methamphetamine: Mr. McPheter was physically and verbally aggressive, combative, unreasonable, and would not listen. Whatever physical and mental impact narcotics consumption had on Mr. McPheter during this incident, neither can overcome that Mr. McPheter simultaneously posed an immediate and apparent lethal threat to Deputy Bush and Sergeant Caronna.

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²⁰ This review is based on a totality of the circumstances from the perspective of a reasonable deputy in the same situation. (Penal C. §§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether SBCSD 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 SBCSD Deputy Michelle Bush was exercised in self-defense and in defense of others. Accordingly, no criminal liability attaches.

Submitted By:

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Dated: January 13, 2026

