



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: January 16, 2026

SUBJECT: Officer Involved Shooting (Non-Fatal)

Officers: Deputy Abner Barajas
San Bernardino County Sheriff's Department

Involved Subject: Moses Rodriguez (Injured)
Date of Birth **/**/**

Date of Incident: December 21, 2023

Incident location: **** Block of North Fillmore Avenue
Rialto, CA

DA STAR #: 2024-27594

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Brandon Becker

Report Number #: DR# 602300106 / H# 2023-138

PREAMBLE

This was a non-fatal officer involved shooting by an off-duty deputy from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary was based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino County Sheriff's Department, DR# 602300106 / H# 2023-138.

RELATED CASE

Because of this incident, the San Bernardino County Sheriff's Department, Specialized Investigations Division, submitted a case to the San Bernardino County District Attorney's Office to review for potential criminal charges against Moses Rodriguez. On December 27, 2023, criminal charges were filed against Rodriguez in San Bernardino County District Attorney Case # 2023-00-0059314 / San Bernardino County Superior Court Case # FWV23004442. On August 13, 2024, a jury found Rodriguez guilty as to Count 1, a violation of Penal Code Section 245(a)(1) Assault with a Deadly Weapon, guilty as to Count 2, a violation of Penal Code Section 484(a) Petty Theft, and guilty as to Count 3, a violation of Penal Code Section 594(b)(2)(A) Vandalism. On August 14, 2024, a jury found the allegation that Rodriguez had suffered a prior conviction for a serious or violent felony to be true. On September 12, 2024, Rodriguez was sentenced to eight years in state prison.

FACTUAL SUMMARY

On December 21, 2023, at around 9:14 in the evening, Deputy Abner Barajas¹ went outside to investigate a repetitive tapping noise coming from outside of his home on the **** block of North Fillmore Avenue in the City of Rialto. Deputy Barajas was off-duty at the time. Deputy Barajas retrieved his firearm and holster from his safe and made his way to the front of the residence. Deputy Barajas narrowed the noise to his RV. Deputy Barajas noticed a Honda Civic, with its brake lights on, parked in front of his vehicle. This was not a vehicle Deputy Barajas normally saw in the neighborhood.

Deputy Barajas got down on his stomach to look underneath the RV. Deputy Barajas had a flashlight attachment on his firearm. He turned the light on and pointed it underneath the RV. Deputy Barajas saw a Hispanic male, later identified as Moses Rodriguez, with his hands up. Deputy Barajas asked Rodriguez, "What are you doing?" Rodriguez brought his right hand down at which time Deputy Barajas saw Rodriguez was holding a battery powered Dewalt reciprocating saw. Rodriguez tried to strike Deputy Barajas with the saw.

Deputy Barajas stood up and backed away from Rodriguez. Deputy Barajas told Rodriguez not to come out and he was calling the cops. At this time, Deputy Barajas believed the Honda Civic may be a getaway vehicle. Deputy Barajas moved away from the RV to avoid blocking Rodriguez's path to the Honda Civic. Rodriguez came out from underneath the RV and stood up. Rodriguez was holding a catalytic converter in his left hand and the saw in his right hand.

Initially, it appeared that Rodriguez was going to move towards the Honda Civic. However, Rodriguez then turned his attention to Deputy Barajas and started to advance in Deputy Barajas's direction. Witness #1, a neighbor across the street from Deputy Barajas's

¹ On the date of the incident under review, Deputy Barajas was employed as a deputy with the San Bernardino County Sheriff's Department.

residence, witnessed Rodriguez start to move toward Deputy Barajas. Deputy Barajas's father-in-law, Witness #2, also saw Rodriguez move toward Deputy Barajas. Deputy Barajas told Rodriguez, "Stop. Stop." Rodriguez did not comply with Deputy Barajas's commands.

Rodriguez raised the saw up toward Deputy Barajas. Deputy Barajas saw Rodriguez's body weight drop down and his knees bend. Deputy Barajas believed Rodriguez was going to run at him. Deputy Barajas told Rodriguez, "Stop or I'm going to shoot." Rodriguez lunged at Deputy Barajas with the saw. Deputy Barajas feared for his life and started shooting. Deputy Barajas fired four rounds from his weapon at Rodriguez. Deputy Barajas saw the vehicle lights on the Honda Civic turn on and the vehicle drove northbound. Rodriguez took off running and Deputy Barajas lost sight of him. Deputy Barajas's wife came out of the residence and said she was on the phone with dispatch. Deputy Barajas got on the phone and explained what had just occurred.

Officers from Rialto Police Department arrived at the location. At around 9:32 in the evening, police officers from Rialto Police Department located and detained Rodriguez in the backyard of a residence on North Fillmore Avenue. Officers observed Rodriguez had at least one gunshot wound and requested paramedics. Rialto Fire Department personnel arrived at that location to render aid to Rodriguez. Rodriguez was transported to the hospital for medical treatment.

A battery powered Dewalt reciprocating saw with a red blade was recovered at the scene, in the street near the RV.

STATEMENTS BY POLICE OFFICERS

On December 26, 2023, **Deputy Abner Barajas** was interviewed by Detective Candelario Sahagun and Detective Brandon Becker.

On December 21, 2023, **Deputy Abner Barajas** was living at a residence on the **** block of North Fillmore Avenue in the City of Rialto. Deputy Barajas worked for the San Bernardino County Sheriff's Department. Deputy Barajas was not working at the time of the incident under review. On that date, during the evening hours, Deputy Barajas's wife heard a strange noise coming from the front yard. Deputy Barajas went outside to check it out. Prior to leaving the house, Deputy Barajas retrieved his personal firearm and holster from his safe. Deputy Barajas was not in uniform when he went outside. Deputy Barajas was wearing sandals with socks, shorts, and a shirt.

Once he was outside, Deputy Barajas heard the noise one more time. Deputy Barajas described the noise as a "clicking" or "repetitive tapping." Deputy Barajas made his way to the front of the house. The noise appeared to be coming from the RV. Deputy Barajas saw a Honda Civic, with its brake lights on, parked in front of his vehicle on the other side of the street. This was not a vehicle Deputy Barajas normally saw in the neighborhood.

Deputy Barajas got down on his stomach and looked underneath the RV. It was dark and he was unable to see anything. Deputy Barajas unholstered his firearm which had a flashlight attachment to it. Deputy Barajas put the weapon under the RV and turned on the flashlight. Deputy Barajas saw a Hispanic male adult, later identified as Moses Rodriguez, underneath the vehicle. Rodriguez had his hands up in the air and was holding something in his hands. Deputy Barajas asked Rodriguez, "What are you doing?"

Rodriguez brought his right hand down and kept his left hand up. At that time, Deputy Barajas observed Rodriguez had an electric saw with him. Deputy Barajas described the saw as yellow in color and approximately fifteen inches in length. Rodriguez powered the saw as he swiped it back and forth at Deputy Barajas. Deputy Barajas estimated he was five feet away from Rodriguez. Deputy Barajas backed away from Rodriguez and stood back up. Deputy Barajas asked Rodriguez, "What are you doing?" Rodriguez did not respond.

Deputy Barajas told Rodriguez, "Stop, don't come out. I'm calling the cops." Deputy Barajas took several steps back to ensure he did not block Rodriguez's path to the Honda Civic, which Deputy Barajas believed was a getaway vehicle. Deputy Barajas continued to tell Rodriguez to, "Stop, stop, don't get out." When Rodriguez got out from underneath the RV, Deputy Barajas saw Rodriguez was holding a large metal canister² in his left hand and the power saw in his right hand. Rodriguez looked around and when he saw the Honda Civic, Rodriguez made a motion as if he was going to move towards the vehicle. Rodriguez then turned his attention to Deputy Barajas.

Rodriguez raised his hands to the side, yelled, and started advancing toward Deputy Barajas. Deputy Barajas told Rodriguez, "Stop. Stop." Deputy Barajas saw Rodriguez's body weight drop and his knees bend. Rodriguez was approximately five feet away from Deputy Barajas. Rodriguez raised the saw up towards Deputy Barajas. Deputy Barajas estimated the saw was approximately three feet from his face. Deputy Barajas told Rodriguez, "Stop or I'm going to shoot." Deputy Barajas said Rodriguez lunged at him with the saw. The saw was turned on at the time. Fearing for his life, Deputy Barajas backpedaled and fired at Rodriguez. Deputy Barajas fired a total of four rounds at Rodriguez. Deputy Barajas noticed the Honda Civic started moving northbound. When Deputy Barajas turned his attention back to Rodriguez, Rodriguez appeared to check himself to see if he had been struck by the gunfire. Rodriguez then took off running.

Deputy Barajas shined the flashlight on his firearm at Rodriguez as he ran away. Rodriguez was no longer carrying the power saw or the catalytic converter. Deputy Barajas turned to his right and saw the Honda Civic was already down the street. Deputy Barajas turned his attention back to Rodriguez. Deputy Barajas lost sight of Rodriguez when Rodriguez turned the corner on the street. Deputy Barajas's wife came out of the residence. She had called 9-1-1 and was talking to dispatch. Deputy Barajas got on the phone and explained what happened during the incident. Police officers from Rialto Police Department eventually arrived at the scene.

² The large metal canister was the catalytic converter from the RV.

STATEMENTS BY CIVILIAN WITNESSES

On December 22, 2023, **Witness #1** was interviewed by Detective Brandon Becker.

On December 21, 2023, **Witness #1** was living at a residence located on the **** block of North Fillmore Avenue in the City of Rialto. Witness #1 has lived at the location for approximately eleven years. At around 8:30 in the evening, Witness #1 was in her bedroom. There was a window that faced west, toward the roadway of North Fillmore Avenue. Witness #1 was in her bed watching television when she heard a noise from outside. It sounded like metal was being cut. Witness #1 knew the neighbors across the street worked on projects and initially ignored the noise. When the volume of the noise gradually became louder, Witness #1 looked out her window toward the roadway.

Witness #1 saw a dark colored Honda Civic parked on the east side of the roadway. She was unsure how many people were inside the vehicle. Witness #1 saw her neighbor, Deputy Barajas, after he walked out of his residence. Deputy Barajas looked underneath a black Lexus that was parked on the roadway.³ Witness #1 saw an unknown male, later identified as Moses Rodriguez, underneath the black Lexus. Witness #1 believed Rodriguez was attempting to steal vehicle parts.

Witness #1 heard Deputy Barajas ask Rodriguez, "What are you doing here?" and "What's going on?" Rodriguez came out from underneath the Lexus and stood up. Deputy Barajas and Rodriguez stood within a couple of feet of one another, near the driver's door of the Lexus. Witness #1 saw Deputy Barajas was holding a flashlight in his hand. Witness #1 did not see anything in Rodriguez's hands. However, she believed it was possible Rodriguez was holding tools he used to take vehicle parts off the black Lexus.

Witness #1 heard Deputy Barajas tell Rodriguez he was calling the cops and "Don't go anywhere." Witness #1 indicated Rodriguez moved back and forth to "dodge" or "go around" Deputy Barajas in a southern direction. Witness #1 thought it was "weird" that Rodriguez wanted to go south on North Fillmore Avenue when the Honda Civic, which she believed was related to Rodriguez, was parked to the north of Rodriguez. Rodriguez tried to go around Deputy Barajas. Deputy Barajas did not move. Deputy Barajas warned Rodriguez, "I'm gonna shoot." Witness #1 did not see Deputy Barajas with a gun. Next, Deputy Barajas extended his arms away from his body and Witness #1 heard three gunshots.

After the shooting, Witness #1 saw Rodriguez fall to the ground for approximately one minute. Rodriguez then stood back up and ran past Deputy Barajas, south on North Fillmore Avenue. As Rodriguez ran south down the street, Witness #1 heard Deputy Barajas tell Rodriguez to stop and the cops were coming. Rodriguez ignored Deputy Barajas and continued running south. Witness #1 indicated Deputy Barajas had his firearm pointed at Rodriguez, but Deputy Barajas did not shoot. Witness #1 lost sight of Rodriguez

³ This was incorrect. Statements from witnesses as well as subsequent investigation showed the involved vehicle was a RV.

and did not see him again. Witness #1 did not believe Rodriguez attempted to hit Deputy Barajas during the incident but she was not sure.

Witness #1 advised it was dark outside with the only ambient light being from a porch light on a nearby residence and a streetlight. She said Deputy Barajas was wearing a green t-shirt and either shorts or pants. Witness #1 stated Rodriguez was wearing a black hooded sweatshirt and shorts. Witness #1 had an unobstructed view of the incident from her bedroom window.

On December 22, 2023, **Witness #2** was interviewed by Detective Michelle Del Rio and Detective Brandon Becker.⁴

On December 21, 2023, Witness #2 was living at a residence located on the **** block of North Fillmore Avenue in the City of Rialto. Witness #2 lived with his son and two daughters. Witness #2's daughter, Witness #3, was married to Deputy Barajas. On that date, at around 9:10 in the evening, Witness #2 came home from work. Witness #2 was in the process of backing his van into the driveway when he saw Deputy Barajas run from the north side of their residence toward the family's Recreational Vehicle (RV). The RV was parked on the roadway of North Fillmore Avenue. Deputy Barajas had a flashlight in his hand and looked underneath the RV. Witness #2 placed his vehicle in park and got out to help Deputy Barajas. Witness #3 has multiple animals that often run away from the residence. Witness #2 believed Deputy Barajas may be trying to look for one of those animals.

Witness #2 saw a small, dark colored vehicle, possibly a Honda Civic, parked across the street from the RV. Witness #2 did not know how many people were inside the Civic. Witness #2 saw an unknown Hispanic male, later identified as Moses Rodriguez, exit from underneath the RV.⁵ When Rodriguez stood up, Witness #2 saw Rodriguez was holding a catalytic converter in one hand and an electric reciprocating saw in the other hand. Witness #2 estimated Rodriguez was standing ten feet away from Deputy Barajas.

Witness #2 indicated Rodriguez took one to two steps toward Barajas. Witness #2 heard Deputy Barajas give verbal commands to Rodriguez to "Stop" and "Don't move." Rodriguez did not comply with Deputy Barajas's verbal commands. As Deputy Barajas gave commands, Witness #2 saw Deputy Barajas move three to four feet backward, away from Rodriguez. Rodriguez continued to move toward Deputy Barajas. Witness #2 said Rodriguez tried to "contact" Deputy Barajas with the reciprocating saw. Deputy Barajas moved backward, away from Rodriguez, and fired a gun. Witness #2 believed Deputy Barajas fired three rounds from his firearm. Witness #2 explained, Deputy Barajas moved

⁴ Witness #2 spoke Spanish at the start of the interview and Detective Del Rio translated what Witness #2 said to English. After Detective Del Rio translated the first time, Witness #2 spoke English for the remainder of the interview.

⁵ Witness #2 was shown a photographic line up. Witness #2 identified another individual as the person he saw beneath the RV. Subsequent investigation determined Rodriguez was the person Witness #2 saw exit from underneath the RV.

backward during the volley of fire. Witness #2 was unaware Deputy Barajas was armed. When the shooting started, Witness #2 saw the Honda Civic flee the scene.

After Deputy Barajas fired his gun, Rodriguez screamed and dropped both the reciprocating saw and catalytic converter. Rodriguez ran south from the scene. Witness #2 said Deputy Barajas remained at the scene and did not chase after Rodriguez. Witness #2 said he never heard Rodriguez say anything to Deputy Barajas during the incident. Witness #2 believed had Rodriguez complied with Deputy Barajas's verbal commands, the shooting would not have occurred. Witness #2 believed Rodriguez was trying to hurt Deputy Barajas when Rodriguez moved toward Deputy Barajas with the saw. Witness #2 said the incident occurred quickly. Witness #2 estimated it took approximately ten minutes from when he saw Deputy Barajas leave the residence to when Rodriguez ran from the scene.

On December 22, 2023, **Witness #4** was interviewed by Detective Candelario Sahagun and Detective Brandon Becker.

On December 21, 2023, **Witness #4** was the Attending Physician in the Intensive Care Unit (ICU) at Arrowhead Regional Medical Center in Colton. On that date, a male subject, later identified as Moses Rodriguez was brought into the ICU after he sustained multiple gunshot wounds. Witness #4 indicated Rodriguez suffered a total of five gunshot wounds. The gunshot wounds were to Rodriguez's right leg, left hip, left flank, right upper chest, and lower left portion of his back.

INCIDENT AUDIO AND VIDEO

JAIL CALL RECORDINGS. While in custody, Rodriguez made telephone calls to different individuals. All jail call recordings submitted were reviewed in their entirety. The recordings were obtained from West Valley Detention Center.

Rodriguez spoke with his mother multiple times on December 31, 2023. During those telephone calls Rodriguez spoke about the incident under review. Rodriguez said a male started flashing a light underneath the RV. Rodriguez got out from underneath the RV. Rodriguez said he was confused and ran toward the wrong vehicle. After Rodriguez ran to the wrong vehicle, he stopped, looked around, and was then shot. Rodriguez advised his mother that after he was shot, he ran around the vehicle and yelled he was sorry.

Rodriguez also spoke with a male that used the moniker "Filthy" on December 31, 2023. Filthy talked about the incident under review. Filthy appeared to have witnessed the lethal force encounter. Filthy told Rodriguez the only reason he left was because he thought Rodriguez was dead. Filthy asked Rodriguez, "Why did you run at him though?" Rodriguez said he thought that it was Filthy's car with the lights on. Rodriguez stated he was confused and ran to the wrong car.

SURVEILLANCE CAMERA VIDEOS. There were surveillance videos obtained from residences located on the **** block of North Fillmore Avenue. There was no sound on the videos. The videos were reviewed in their entirety.

Video File AROS2368

A van owned by Witness #2 was parked in front of the incident location. Deputy Barajas moved around the van with the tactical light on his firearm illuminated. While the light was illuminated, Rodriguez ran from the scene, going south on North Fillmore Avenue. Rodriguez continued running south out of the camera frame.

Video File FEQB6265

A Honda Civic drove north on North Fillmore Avenue. The Civic stopped in the roadway of North Fillmore Avenue. A person walked near the passenger side of the parked Civic. The Civic pulled forward and stopped along the east curb line of North Fillmore Avenue. The Civic was backing into a parking spot in front of a parked white Lexus Sports Utility Vehicle (SUV). Witness #2 drove into the camera frame in his van and stopped in front of the driveway of his residence. The Civic stopped in front of the white Lexus SUV. The light from Deputy Barajas's tactical light attached to his firearm was seen. Deputy Barajas rapidly retreated from the area near the RV, which was parked on the west side of North Fillmore Avenue. As Deputy Barajas retreated, he fired multiple rounds from his firearm. Deputy Barajas stopped firing. The Civic drove north on North Fillmore Avenue and out of the camera frame. Deputy Barajas continued to point his firearm at Rodriguez. Rodriguez ran south on the west sidewalk of North Fillmore Avenue. Rodriguez continued to run south and entered the roadway of North Fillmore Avenue. Rodriguez went out of view of the camera frame. Deputy Barajas stood in the middle of the roadway with his firearm and illuminated tactical flashlight pointed toward the direction Rodriguez fled. A patrol unit from Rialto Police Department was seen arriving at the location.

WEAPON

A battery powered Dewalt reciprocating saw with a red blade was recovered at the scene.



INJURED PARTY

TOXICOLOGY. Blood sample was collected from Moses Rodriguez on December 22, 2023.

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

- Amphetamines - Detected
- Methamphetamine – 621 ng/mL
- Amphetamine – 40 ng/mL

CRIMINAL HISTORY.

2016, 496d(a) of the Penal Code, Possession of Stolen Vehicle. San Bernardino County court case 16CR-020083, a felony.

2016, 496d(a) of the Penal Code, Possession of Stolen Vehicle. San Bernardino County court case 16CR-039095, a felony.

2019, 11377(a) of the Health and Safety Code, Possession of Controlled Substance, and 11364(a) of the Health and Safety Code, Possession of Unlawful Paraphernalia. San Bernardino County court case MSB18005015, a misdemeanor.

2018, 2800.2(a) of the Vehicle Code, Evading a Peace Officer with Willful or Wanton Disregard for Safety of Persons or Property. San Bernardino County court case FSB18001182, a felony.

2019, 10801 of the Vehicle Code, Own or Operate a Chop Shop. San Bernardino County court case FSB19002834, a felony.

2021, 10851(a) of the Vehicle Code, Driving or Taking Motor Vehicle Without Consent of Owner. San Bernardino County court case FWV20004030, a felony.

2021, 211 of the Penal Code, Second Degree Robbery. San Bernardino County court case FSB20004258, a felony.

2021, 2800.4 of the Vehicle Code, Evading a Peace Officer by Driving Vehicle in Direction of Opposing Traffic. San Bernardino Court case FSB21001268, a felony.

DE-ESCALATION

The incident under review unfolded quickly when Deputy Barajas saw Rodriguez underneath the RV. Deputy Barajas asked Rodriguez what he was doing and told Rodriguez, "Stop, don't come out. I'm calling the cops." Deputy Barajas made attempts to de-escalate the situation by giving Rodriguez several verbal commands. Deputy Barajas told Rodriguez, "Stop, stop, don't get out." Rodriguez failed to comply with Deputy Barajas's commands and got out from underneath the RV. Rodriguez was armed with a saw. Deputy Barajas warned Rodriguez, "Stop or I'm going to shoot." Rodriguez failed to comply with Deputy Barajas's command. Instead, Rodriguez lunged at Deputy Barajas with the saw.

It is important to note that Deputy Barajas's attempts to de-escalate the situation were not limited to verbal commands. Deputy Barajas also attempted to de-escalate the situation by backing away from Rodriguez and giving him space. Deputy Barajas believed the Honda Civic he saw was possibly a getaway vehicle. Deputy Barajas made sure to move away from Rodriguez and out of the path Rodriguez could travel to get to the Honda Civic. During the incident, Rodriguez never indicated he intended to comply with Deputy Barajas's commands nor did he run to the Honda Civic. Instead, Rodriguez moved toward Deputy Barajas and lunged at him with the saw.

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).)⁶ 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

⁶ All references to code sections here pertain to the California Penal Code.

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.

(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 2020,⁷ 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;
- (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

⁷ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

consistency with agency policies;⁸

- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

PENAL CODE SECTION 197. California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code §197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

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

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

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

⁸ 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).

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. (*Id.*)

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. (*Id.*) 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.)⁹ To be clear, the officer's conduct should be evaluated as "the conduct of a reasonable person functioning as a police officer in a stressful situation." (*Id.*)

The *Graham* court plainly stated that digestion of the "totality of the circumstances" is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, "reasonableness" cannot be precisely defined nor can the test be mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the "reasonableness" calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

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

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

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

under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to

⁹ 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.

replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 *1, 27-28.)

The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide "zone of protection" when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.'

(*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1109, citing *Graham v. Connor*, [*supra*] 490 U.S. 386, 396.)

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. "[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed." (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham v. Connor* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

Use of a Taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825 [Taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed "lethal force" the instrumentality must be force that "creates a substantial risk of death or serious bodily injury." (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a Taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.) Similarly, the use of a

trained police dog does not qualify as “deadly force” as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 165-169.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject’s mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 831; *Deorle v. Rutherford*, *supra*, 270 F.3d at 1283-84.) Failure to pass-muster under *Graham* can deem the use of non-lethal force as “excessive” and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed “excessive” nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 Taser cycles where such was needed to gain physical control of him].)

ANALYSIS

In this case, Deputy Barajas had an honest and objectively reasonable belief that Rodriguez posed an imminent risk of serious bodily injury or death. When Deputy Barajas got on his stomach and looked underneath the RV, he saw Rodriguez. It was late at night and there should not have been anyone underneath the RV. Rodriguez used a battery powered reciprocating saw to remove the catalytic converter from the RV. Deputy Barajas told Rodriguez not to come out and he was calling the police. Rodriguez refused to comply and instead tried to hit Deputy Barajas with the saw.

Concerned for his physical safety, Deputy Barajas backed away from Rodriguez. Rodriguez came out from underneath the RV and stood up. Deputy Barajas moved to a position where he would not block Rodriguez’s path to the Honda Civic, which Deputy Barajas believed was a possible getaway vehicle. Rodriguez appeared to look in the direction of the Honda Civic but then turned back and focused his attention on Deputy Barajas. Rodriguez was holding the saw and a catalytic converter in his hands. Rodriguez raised his hands, yelled, and started advancing toward Deputy Barajas. From her window, Witness #1 said she did not see anything in Rodriguez’s hands but said it was possible Rodriguez had tools in his hands. Deputy Barajas told Rodriguez, “Stop. Stop.” Witness #2 heard Deputy Barajas tell Rodriguez “Stop. Don’t move.”

Rodriguez raised the saw up toward Deputy Barajas. Deputy Barajas then saw Rodriguez’s body weight drop and his knees bend. Deputy Barajas reasonably believed Rodriguez was going to start running towards him. Deputy Barajas advised Rodriguez, “Stop or I’m going to shoot.” Witness #1 heard Deputy Barajas warn Rodriguez he was going to shoot but she did not see a gun. Rodriguez moved toward Deputy Barajas quickly and lunged at Deputy Barajas with the saw. Witness #2 saw Rodriguez move forward and try to strike Rodriguez with the saw. Witness #1 stated she saw Rodriguez try to go around

Deputy Barajas. At the time Rodriguez lunged at Deputy Barajas, Rodriguez had the saw turned on.

Up to that point, Rodriguez had failed to comply with any of Deputy Barajas's verbal commands. Combine that with the size of the saw and the fact Rodriguez made no effort to run to the Honda Civic, it was objectively reasonable for Deputy Barajas to believe Rodriguez intended to seriously injure or kill him in order to escape. Also important to note, Rodriguez continued to move toward Deputy Barajas even though Deputy Barajas warned Rodriguez he would shoot him. Rodriguez quickly started to close the distance between himself and Deputy Barajas. Fearing for his life, Deputy Barajas backpedaled and started shooting at Rodriguez.

Deputy Barajas fired a total of four rounds from his weapon. After the shooting, Rodriguez ran from the scene. The Honda Civic also left the scene. Deputy Barajas estimated Rodriguez was less than five feet away when Rodriguez lunged at him with the saw. Deputy Barajas estimated Rodriguez was three feet away when he stopped shooting. Rodriguez was clearly armed with a deadly weapon and his demeanor was aggressive. Given those circumstances, Deputy Barajas's decision to use lethal force was justified.

CONCLUSION

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

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