



PUBLIC RELEASE MEMORANDUM

DATE: March 31, 2026

SUBJECT: Officer Involved Shooting (Non-Fatal)

Officers: Officer Miguel Huerta
Officer Eric Rivera
Montclair Police Department

Involved Subject: Anthony Jacks, DOB: 01/13/1992

Date of Incident: September 12, 2018

Incident location: Central Avenue and I-10 Freeway
Montclair, CA

DA STAR #: 2025-52945

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Gerad Laing

Report Number #: DR# 601800131 / H# 2018-091

PREAMBLE

This was a non-fatal officer involved shooting by Officer Miguel Huerta and Officer Eric Rivera from the Montclair Police 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# 601800131 / H# 2018-091.

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

FACTUAL SUMMARY

On Wednesday, September 12, 2018, at approximately 5:44 a.m., officers from the Montclair Police Department responded to the area of Central Avenue and Interstate 10 (I-10), in the city of Montclair, to an individual throwing rocks at vehicles. Multiple reporting parties called 9-1-1 to report that a subject was throwing objects at cars.

Officer Miguel Huerta was the first officer to arrive on scene at approximately 5:46 a.m. and witnessed the suspect, later identified as Anthony Jacks, throw a rock at the front windshield of a Chevy Cobalt. Officer Huerta parked his marked patrol vehicle at the southeast corner of Central Avenue at the entrance to the eastbound I-10 on-ramp.

Jacks turned his attention towards Officer Huerta and his patrol vehicle, and threw a large rock, which struck and cracked the windshield of the patrol vehicle. Jacks made a motion with his hand towards Officer Huerta and simulated as if he was armed with a handgun. Officer Huerta exited his patrol vehicle and gave Jacks orders to "Let me see your fucking hands." Jacks refused the commands, turned, and ran northeast toward the I-10 eastbound on-ramp. Officer Huerta gave chase after Jacks. Jacks stopped and retrieved a large rock, from the dirt shoulder of the on-ramp and turned towards Officer Huerta with the rock in his right hand and lifted the rock to shoulder height. Officer Huerta told Jacks, "Don't do it," four times. Officer Huerta walked backwards to create distance and Jacks approached Officer Huerta with the large rock still in Jacks' hand. Officer Huerta feared Jacks would kill or injure him by throwing the rock and discharged his duty weapon three times.

Following the shots, Jacks fell to the ground and dropped the rock. Jacks immediately stood up again and ran east along the south side of the eastbound I-10 on-ramp. Once again, Officer Huerta gave chase to Jacks. Jacks approached the Chevy Cobalt parked on the side of the on-ramp and attempted to gain access through the passenger door. After his attempt was unsuccessful, Jacks continued east along a parked semi-truck. Jacks ran around the semi-truck then proceeded west on the on-ramp.

Officer Eric Rivera arrived at the scene of the incident as a backing officer after hearing Officer Huerta's dispatch of "shots fired." Officer Rivera drove his marked patrol vehicle east on the eastbound on-ramp of I-10. Jacks ran west on the I-10 on-ramp towards Officer Rivera's vehicle. Officer Rivera stopped his vehicle as Jacks sprinted and lunged at the driver's side windshield. Jacks jumped onto the hood of Officer Rivera's and Officer Rivera discharged his firearm once.

Jacks rolled off Officer Rivera's patrol vehicle. Officers Huerta and Rivera gained control of Jacks and placed him into handcuffs. Officers Huerta and Rivera rendered medical aid to Jacks. Evidence at the scene showed that a total of nine vehicles were pulled over to the side with damage, to include the two Montclair patrol vehicles. Jacks survived his injuries and was sentenced to seven years in state prison for this incident as well as another incident he had a warrant on.

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

STATEMENTS BY POLICE OFFICERS

On September 14, 2018, **Officer Miguel Huerta**¹ was interviewed by Detective James Williams and Detective Nicholas Clark of the San Bernardino County Sheriff's Department.

On September 12, 2018, Officer Huerta was employed by the Montclair Police Department; he was on duty and assigned to patrol. The day of the incident, Officer Huerta drove a marked police patrol vehicle and wore a readily identifiable Police Department approved Class C uniform. Officer Huerta carried a Glock 17, 9-millimeter caliber semi-automatic handgun equipped with a tactical light as his duty weapon. Officer Huerta's duty weapon was loaded with 17 rounds plus one in the chamber.

On September 12, 2018, at approximately 0540 hours, Officer Huerta was contacted by a bystander during an unrelated traffic stop regarding a male subject (later identified as Jacks) throwing rocks at passing cars. Officer Huerta planned to finish his citation with the unrelated driver but then heard the call for service on the radio. He decided to cancel the citation and warn the unrelated driver and instead respond to the call for service. The male throwing rocks seemed to Officer Huerta to be "a more serious situation," than previously thought. Officer Huerta was only one block south of the call for service, and when he arrived, he found Jacks pacing in the corner of the I-10 on ramp at Central Avenue.

Upon arrival, Officer Huerta saw Jacks throw a rock at the windshield of a vehicle, "like throwing a baseball." Jacks then turned to Officer Huerta and threw a rock at the windshield of Officer Huerta's patrol vehicle. Again, it was thrown like a baseball, and it cracked Officer Huerta's patrol vehicle driver's side windshield.



¹ Officer Huerta was not equipped with a body worn camera but did review his audio and the video from his patrol vehicle prior to his interview.

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

Officer Huerta turned on his red and blue emergency lights and got out of his vehicle and told Jacks to show Officer Huerta his hands. Jacks put both hands behind him, near his back waistband and then thrust his right arm in front of him and simulated a firearm. Officer Huerta could see that Jacks did not have a firearm and was simulating that he had a gun. Officer Huerta had Jacks at gunpoint. Jacks put his arm down, turned away from Officer Huerta and began to walk away toward the on ramp. Officer Huerta holstered his duty weapon and followed Jacks at a run. As Officer Huerta pursued ten to fifteen feet and Jacks stopped, turned to face Officer Huerta, and Jacks picked up a large rock with two hands. Officer Huerta described the size as between a softball and a football.



Officer Huerta unholstered his duty weapon, repeatedly issuing the command “Don’t do it,” to Jacks. Jacks took four to five steps towards Officer Huerta with his arm raised and holding the large rock, “as if he was gonna throw it to me or advance and use it as a blunt weapon.” Jacks walked toward Officer Huerta and covered approximately ten feet, while Officer Huerta retreated about four to five feet in an attempt to keep Jacks from advancing on him too quickly. Jacks continued to approach and did not respond to Officer Huerta’s commands. Officer Huerta estimated that Jacks was ten feet away and continued to advance. Officer Huerta attempted to create more distance and to use a nearby light pole as cover. Officer Huerta shot Jacks three times and Jacks fell to the ground. Officer Huerta called out on the radio, “shots fired.” Jacks got up and started running away from Officer Huerta.

Officer Huerta holstered his weapons and gave chase on foot. Jacks ran around a stopped vehicle that was a victim of Jacks’ vandalism, parked along the side of the on ramp, and ran around a semi-truck that was also parked alongside the on ramp. Officer Huerta

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2025-52945

chased Jacks around the parked semi-truck and called out Jacks' description over the radio. Jacks ran westbound toward Central Avenue and Officer Huerta saw a responding Montclair Police patrol vehicle driving on the on-ramp (later identified as a patrol vehicle being driven by Officer Rivera). Officer Huerta saw Jacks run toward Officer Rivera's patrol vehicle and saw Jacks jump on top of the hood. Officer Huerta heard a gunshot and saw Jacks roll over the passenger side of the patrol vehicle.

Immediately following, Officer Huerta handcuffed Jacks to prevent any further incident, and along with Officer Rivera, began to render medical aid. While treating Jacks prior to medics arriving, Jacks asked the officer to "shoot [him] again."

On September 14, 2018, **Officer Eric Rivera**² was interviewed by Detective Gerad Laing and Detective James Williams of the San Bernardino County Sheriff's Department.

On September 12, 2018, Officer Rivera was employed by the Montclair Police Department and on duty, assigned to patrol. The day of the incident, Officer Rivera drove a marked police patrol vehicle and wore a readily identifiable Police Department approved Class B uniform. Officer Rivera carried a Glock 17, 9-millimeter caliber semi-automatic handgun equipped with a tactical light as his duty weapon. Officer Rivera's duty weapon was loaded with 17 rounds plus one in the chamber.

On September 12, 2018, Officer Rivera finished up a traffic stop around the area of Benson Avenue and the I-10 in the city of Ontario when he heard a call for service about a person throwing objects at passing motor vehicles. Officer Rivera was on heightened alert and considered the worst-case scenario of a rock being thrown at a car causing serious injuries. Despite two officers en route, Officer Rivera considered it a "priority one" call and headed to the incident location to assist. While Officer Rivera responded to the call, he heard multiple 911 calls come in through dispatch and believed that calls were "flooding in." Additionally, Officer Rivera stated that he heard Officer Huerta say "shots fired," over the radio.

Upon arrival to the general area, Officer Rivera saw multiple cars pulled over to the side of the road and Officer Rivera looked for Officer Huerta or others that may be injured. Officer Rivera described the scene as "chaotic" and with multiple people pulled over to the side of the road, still in their cars, and looked to Officer Rivera to help. The civilians looked "distressed." Officer Rivera observed a black car with a "bashed windshield" and a "semi" stopped on the on-ramp of the freeway, indicating that he was in the right location. The "bashed windshield" indicated to Officer Rivera that this "was not just a pebble being thrown or something small it was significant."

Officer Rivera drove up the on-ramp when Jacks was observed "in a full sprint running" towards Officer Rivera's patrol vehicle with blood on the upper left side of his body, on his

² Officer Rivera was not equipped with a body worn camera but did review his video from his patrol vehicle prior to his interview. Patrol vehicle video started automatically when the officer engaged his lights and sirens.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2025-52945

arm, and one of his legs. Jacks appeared to have something in his right hand, leaving Officer Rivera unsure if he was holding a gun, rock, or knife. Because Officer Rivera had just arrived to the scene when Jacks ran at his patrol vehicle, Officer Rivera did not know whether Jacks had a weapon, knife, his own gun, or had possibly disarmed Officer Huerta. Officer Rivera saw Jacks' hand was balled into a fist right before he jumped on the hood of Officer Rivera's patrol vehicle. Officer Rivera feared for both his safety and the safety of the citizens located behind his vehicle. Officer Rivera had driven past multiple motorists and feared that if Jacks got past Officer Rivera, he could harm those civilians. As Jacks charged the patrol vehicle, Officer Rivera put his patrol vehicle in park, retrieved his duty weapon from his seated position, and discharged his duty weapon once.



Immediately following, Jacks hit the windshield of Officer Rivera's patrol vehicle and rolled off the passenger side of the car. Officer Rivera observed Officer Huerta handcuff Jacks then the two began rendering medical aid to Jacks. While officers helped Jacks, he rambled and asked officers to "just shoot [him]."

STATEMENT BY CIVILIAN WITNESS

On September 12, 2018, Witness One was interviewed by Detective James Tebbetts at the Montclair Police Department. Witness One drove a black Nissan sedan and stopped at a red light at the intersection of Central Avenue and the I-10 Interstate Freeway on/off-

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

ramps. Witness One was in the number one southbound lane of Central Avenue. Witness One saw Jacks (unknown to Witness One at the time) pick up multiple rocks and throw them at cars. Jacks approached Witness One's vehicle and came within ten feet of Witness One's vehicle while Witness One was still waiting for the light to change.

The first rock that Jacks threw at Witness One's vehicle hit the top of the car near the driver's side windshield. Jacks advanced closer to Witness One and the second rock that Jacks threw hit Witness One's driver's side windshield above the windshield wiper. Jacks advanced closer to Witness One and placed Jacks' right hand on top of Witness One's hood and threw another rock at Witness One. The third rock hit Witness One's hood below the windshield wiper. Both Witness One and his passenger covered their faces to protect them in case the windshield broke.



Jacks stepped back and Witness One was able to drive around Jacks to get away. As Witness One drove away, he saw Montclair Police respond to the scene. Witness One followed the marked patrol vehicle and flagged down Officer Huerta to tell him about Jacks. Witness One saw Officer Huerta stop his patrol vehicle and get out to approach Jacks. Witness One saw Officer Huerta had his hand on his gun which was still holstered. Jacks was yelling "gibberish," but Witness One could not hear or understand what Jacks was saying to Officer Huerta. Witness One was approximately 30 feet away.

Witness One saw Jacks take a few steps away from Officer Huerta and bend down to pick up a large rock. Jacks turned toward Officer Huerta and raised the large rock above his head. Witness One estimated that Jacks was within ten feet of Officer Huerta. Jacks drew his arm back as if Jacks planned to throw the rock at Officer Huerta. Officer Huerta removed his gun from its holster and pointed the gun at Jacks. Witness One was unable to hear if Officer Huerta gave Jacks any commands because of the distance. Jacks rotated

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

his arm in a throwing motion toward Officer Huerta, and Officer Huerta fired, what Witness One believed to be, two to three shots. Brage estimated the time between when Officer Huerta got out of his patrol vehicle and the shots fired was approximately fifteen seconds.

Jacks fell onto his behind and then immediately jumped up and ran east on the eastbound I-10 on-ramp. Jacks ran around the front of semi-truck while Officer Huerta followed behind Jacks. Witness One saw Jacks reemerge and jump on top of Officer Rivera's patrol vehicle that had just arrived and abruptly stopped on the on ramp. Witness One did not hear a gunshot from Officer Rivera. Witness One saw medical aid given to Jacks.

SUSPECT STATEMENT

On September 16, 2018, Detectives Nicholas Clark and Gerad Laing interviewed Anthony Jacks at Pomona Valley Hospital. Jacks was previously diagnosed with delusional schizophrenia and bipolar disorder. Jack was prescribed medication for his mental health but declined to take the medication. Jacks described that he believed he was in a video game and "frequently saw trees wave at him" and had a difficult time understanding reality.

Jacks frequently used methamphetamine and on the day of this incident believed that he saw "gangster thugs" in the intersection. Jacks threw rocks at them and passing cars and hoped that a victim in a passing car would kill him. Jacks saw Officer Huerta approach him and thought Officer Huerta would arrest him. Jacks heard Officer Huerta say, "Stop what you're doing...stop." Jacks turned away from Officer Huerta and then made a quick turn motion and rapidly pulled his hand out of his waistband to simulate a firearm. Jacks wanted Officer Huerta to shoot him. When Officer Huerta did not shoot him, Jacks retrieved a large rock and wound up like he was going to throw it at Officer Huerta. Jacks heard Officer Huerta yell, "Stop, please fucking stop."

When Officer Huerta shot Jacks, and Jacks was still alive, he ran. When Jacks saw a second police vehicle (driven by Officer Rivera), Jacks jumped on the hood. Jacks wanted Officer Rivera to kill him. Jacks was apologetic and blamed his drug use and mental illness. Jacks "has a death wish."

INCIDENT AUDIO AND VIDEO

MVARS³.

Officer Huerta's Patrol Vehicle (Unit #30)⁴

The unit footage began with Officer Huerta issuing a warning to the suspect of a traffic stop. Officer Huerta returned to this vehicle and drove towards the location of the call for service. At approximately 58 seconds, Officer Huerta arrived at Central Avenue and the

³ MVARS stands for Mobile Video/Audio Recording System and can be thought of as a "dashcam."

⁴ The unit footage was reviewed in its entirety. The summary will cover the events from the beginning of the incident through the point immediately after the incident under review.

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2025-52945

eastbound I-10 on-ramp. Upon arrival, the suspect, Jacks, was seen throwing rocks at a passing dark-colored sedan, who was attempting to enter the on-ramp.

At approximately 1 minute, Jacks was seen throwing a rock at Officer Huerta's windshield. Officer Huerta contacted Jacks and issued the commands, "Let me see your fucking hands. Put your fucking hands up." Jacks responded by thrusting his right hand forward as if he had a firearm.

At approximately 1 minute and 7 seconds, Jacks walked eastbound towards the on-ramp, and Officer Huerta gave chase to him. At approximately 1 minute and 11 seconds, Jacks retrieved a large rock from the ground, turned towards Officer Huerta, and appeared as if he was preparing to throw it at him. Officer Huerta repeatedly told Jacks "Don't do it," referring to him throwing the rock, and discharged his duty weapon approximately four times.

At approximately 1 minute and 20 seconds, Jacks got up after being shot and ran eastbound on the on-ramp. Officer Huerta gave chase to Jacks, repeating commands for Jacks to "Stop," and "Get on the ground."

At approximately 1 minute and 45 seconds, another police vehicle arrived on scene, later identified as Officer Eric Rivera. Jacks was seen running towards the vehicle, one additional gunshot was heard, and Jacks was observed rolling off the passenger side of the vehicle onto the on-ramp.

Officer Rivera's Patrol Vehicle (Unit #26)

The unit footage began with Officer Rivera enroute to the location of the scene. At approximately 1 minute and 23 seconds, Officer Rivera arrived at the eastbound I-10 on-ramp. Officer Rivera drove eastbound on the on-ramp, Jacks ran towards his patrol vehicle and lunged towards the front windshield.

At approximately 1 minute and 28 seconds, a single gunshot is heard, Jacks collided with the windshield and rolled off the passenger side of the vehicle.

SUSPECT CRIMINAL HISTORY

At the time of this incident, Jacks had not previously suffered any convictions but did have an outstanding warrant in case FSB17000959. That case was adjudicated at the same time as the case that resulted from Jacks' actions in this case, filed under FWV18003584. Jacks was sentenced to a total of seven years in state prison.

FSB17000959, violation of P.C. 261.5(d), Sex with a Minor.

FWV18003584 (this incident), violation of 245(c), Assault with a Deadly Weapon upon a Peace Officer.

SUSPECT WEAPON



At placard 18, above is the rock that Jacks raised above his head to throw at Officer Huerta. There were several other large rocks found in the area that Jacks used to hit multiple cars with as well.

DE-ESCALATION

Officer Huerta responded to the call for service and upon arrival at the scene, the suspect threw a rock at his windshield. As he exited the vehicle, Officer Huerta issued the command "Let me see your fucking hands. Put your fucking hands up." Jacks proceeded to retrieve a large rock and approached Officer Huerta as if he was going to throw it at him. Officer Huerta issued commands to Jacks to "Don't do it," four times, but once again, Jacks did not comply and advanced towards Officer Huerta, who fired three rounds at Jacks. Even after Jacks was shot he continued to disregard verbal commands and continued to refuse to comply.

Officer Rivera arrived on scene to help with the call for service and within seconds, Jacks ran at his patrol vehicle and jumped on top of Officer Ribera's hood. There was no time for Officer Rivera to give any commands or deescalate the situation that Jacks created.

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).)⁵ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

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

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

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

- (1) to defend against an imminent threat of death or serious bodily injury to the officer or another, or
- (2) to apprehend a fleeing felon who threatened or caused death or serious bodily injury, if the officer also reasonably believes that the fleeing felon would cause further death or serious bodily injury unless immediately apprehended.

(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,

⁵ All references to code sections here pertain to the California Penal Code.

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

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 2020,⁶ 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

⁶ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

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;⁷
- (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

⁷ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a(a)(3).

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

- (3) he used no more force than was reasonably necessary to defend against that danger.

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

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

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

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

(Penal C. §835a(e)(2).)

REASONABLENESS. Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer’s right to use force in the course of an arrest, stop or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment’s “reasonableness” standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

(*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.)⁸ 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.)

⁸ 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.

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

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

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

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

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

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

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

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

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. "[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed." (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham [v. Connor]* (1989) 490 U.S. [386], 395.) The *Graham* balancing

PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

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

To determine whether the deadly force used against Jacks was justified, we must look at all the facts and circumstances that led up to the use of force. On September 12, 2018, officers were dispatched to the incident location regarding several parties reporting that a male subject on the corner of Central Avenue and I-10 was throwing rocks at passing cars and damaging them. Officer Huerta was the first officer to arrive on scene and observed Jacks throw a rock at a passing vehicle then turn and throw one at his patrol vehicle.

As he exited his vehicle, Officer Huerta issued commands for Jacks to show his hands, to which he did not comply. Jacks then retrieved a large rock between the size of a “softball and a football” and positioned himself in a manner that was indicative that he was going to attempt to injure Officer Huerta with the rock. Officer Huerta had an honest and objectively reasonable belief that Jacks posed an imminent threat of serious bodily injury to him. Officer Huerta fired to stop the immediate threat that Jacks posed.

Officer Huerta used deadly force to attempt to stop Jacks and the threat that Jacks posed to him. The force exhibited by Officer Huerta was in response to Jacks arming himself and

PUBLIC RELEASE MEMORANDUM

Officer Involved Shooting

STAR No. 2025-52945

positioning himself in preparation to throw the large rock at Officer Huerta and came after failed de-escalation attempts by Officer Huerta when Jacks was told to put the rock down. Officer Huerta had every reason to believe that Jacks would throw the large rock at Officer Huerta, based on his previous actions that Officer Huerta saw; Jacks throwing rocks at motorists which initiated the call for service, Jacks throwing a large rock at a passing motorist in front of Officer Huerta, and Jacks throwing a rock and vandalizing Officer Huerta's patrol vehicle upon arrival to the scene.

Likewise, as soon as Officer Rivera arrived, Jacks ran at and jumped on top of Officer Rivera's vehicle. Officer Rivera felt that his life was in danger despite the windshield that separated them. Officer Rivera had just arrived at a chaotic scene where multiple cars were damaged, and people were pulled over to the side of the road in distress. Officer Rivera knew that if he did not stop the threat of Jacks that Jacks may continue beyond his patrol vehicle and other civilians stopped at the scene may be at risk. Like Officer Huerta, Officer Rivera had mere seconds to neutralize the threat that Jacks posed to law enforcement and the public at the scene.

It was reasonable for Officers Huerta and Rivera to believe that Jacks would continue to use force against them or continue to use force against civilians at the scene. Under all those circumstances, and based upon a review of the evidence herein, it was objectively reasonable to believe that Jacks posed an immediate and serious threat to Officers Huerta, Officer Rivera, and other innocent bystanders' physical safety and thus their decision to use deadly force was justified.

CONCLUSION

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

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

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PUBLIC RELEASE MEMORANDUM
Officer Involved Shooting
STAR No. 2025-52945

