



PUBLIC RELEASE MEMORANDUM

Subject: **Non-Fatal Officer-Involved Incident**

Involved Officer: Sergeant Andrew Saibene
San Bernardino Police Department

Involved Subject/DOB: Daniel Felix (DOB 4/19/1975)
Subject's Residence: San Bernardino, CA

Incident Date: January 13, 2023
Incident Time: 4:45 p.m.

Case Agent/Agency: Sergeant Jose Alvarez
San Bernardino Police Department

Agency Report #: 2023-4725

DA STAR #: 2024-27619

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PREAMBLE

The summary of this non-fatal incident is drawn from a submission of materials prepared by the San Bernardino Police Department (SBPD). The original case agent for this submission was SBPD Detective Jose Alvarez.¹

The submission reviewed included the following: reports of law enforcement witnesses, law enforcement audio recordings of law enforcement witnesses, law enforcement video recordings of civilian witness interviews, law enforcement body worn camera (BWC) video recordings, dispatch audio recordings, law enforcement photographs, law enforcement scientific investigation reports, and civilian surveillance video recordings.

FACTUAL SUMMARY²

On January 13, 2023, at approximately 4:45 p.m., SBPD Corporal Andrew Saibene³ shot 47-year-old Daniel Felix at an abandoned property at [REDACTED] in the city of San Bernardino. At the time, Mr. Felix was armed with a loaded 9mm semi-automatic pistol. Mr. Felix sustained multiple gunshot wounds (GSWs), received medical treatment, and survived his injuries. No other people were reported to be injured as a result of this incident.

On the afternoon of the shooting, SBPD Officer Freddy Luna was investigating a local violent street gang with the assistance of SBPD Sergeant Imran Ahmed and Corporal Saibene. The three officers were wearing SBPD uniforms but were in an unmarked black SBPD Chevy Tahoe when they arrived at the scene—a known hangout of the gang. The officers expected that no one would be present because the property was deemed uninhabitable (“red-tagged”); the rear lot had become a dumping ground for vehicles and other debris. Instead, the officers found that there were people loitering in the rear lot. Through an opened gate to the lot, Corporal Saibene saw Mr. Felix and [REDACTED] (“Witness 1”) standing near the hood of an abandoned Honda sedan. Two minors—R.M. (“Witness 2”) and A.Q. (“Witness 3”) were sitting inside the Honda, in the front passenger and driver’s seat, respectively. Corporal Saibene was the first to announce, “Police!” After he did so, Corporal Saibene saw Witness 1 turn and run away. Mr. Felix also turned to walk away, but before he did so, Corporal Saibene saw Mr. Felix grab the front of his waistband. Then, Corporal Saibene saw Mr. Felix’s right elbow bend towards the sky and turn his head back to make eye-contact with the corporal. Mr. Felix’s physical movements convinced Corporal Saibene that Mr. Felix had drawn a firearm from his waistband. As such, Corporal Saibene drew his own firearm and began chasing after Mr. Felix, with Officer Luna and Sergeant Ahmed trailing behind the corporal. Then, the corporal’s suspicions were confirmed when Officer Luna shouted, “Gun!

¹ After submitting this case for review, Detective Alvarez 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 Police Department (SBPD) at the time of their involvement.

³ Since this incident, Corporal Saibene was promoted to the rank of Sergeant.

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Gun! Gun!” and the corporal saw Mr. Felix held a gun in his right hand. Corporal Saibene ordered Mr. Felix several times to put the gun down, but Mr. Felix began to run east into the lot, along the south side of a travel trailer that was also abandoned there.

As Corporal Saibene drew closer to Mr. Felix, he saw Mr. Felix crouch down, look, and turn his body toward the corporal, and begin to raise his gun hand. Corporal Saibene fired his duty weapon at Mr. Felix from an approximate distance of 10 to 15 feet, without any obstructions between them. Corporal Saibene later told the investigator that he believed that he needed to shoot at Mr. Felix, before Mr. Felix could shoot and kill him. A total of approximately nine seconds passed between the time that Corporal Saibene first stepped out of the Tahoe and the time Mr. Felix was shot.

Mr. Felix fell to the ground in front of stairs to an open doorway to the abandoned travel trailer and shortly thereafter saw that Mr. Felix’s handgun was on the ground nearby. Corporal Saibene maintained lethal coverage of the opened doorway until the travel trailer could be secured. Officer Luna assisted in detaining Witness 1, 2, and 3, while Sergeant Ahmed handcuffed Mr. Felix where he fell and began to assess Mr. Felix’s injuries. Mr. Felix received medical aid at the scene promptly after the shooting took place. After he was transported from the scene to a local hospital, Mr. Felix was found to have suffered GSWs to the abdomen, right thigh, outer wrist, and lower back.

After an examination of the scene and the collection of evidence, it is estimated that Corporal Saibene fired four to six times at Mr. Felix during the lethal force encounter. Corporal Saibene’s duty weapon was examined by a San Bernardino County Sheriff’s Department, Scientific Investigations Division (SID) criminalist, who found no damage, modification, or malfunction in Corporal Saibene’s weapon. Mr. Felix’s firearm was collected from the scene and identified as an all-black P80 9mm semi-automatic pistol loaded with 17 live rounds. Mr. Felix’s firearm was also test-fired and found to be in good working order, though it did not appear that Mr. Felix fired his weapon during the incident.

STATEMENTS BY LAW ENFORCEMENT WITNESSES⁴

Corporal Andrew Saibene gave a voluntary statement to SBPD Detective Alvarez on January 14, 2023, in the presence of Corporal Saibene’s attorney, approximately eight hours after the shooting occurred. At the time of the interview, Corporal Saibene was 32 years old and had served San Bernardino as a police officer for approximately seven and a half years. He was a member of SBPD’s Special Weapons and Tactics (SWAT) Team and Multiple Enforcement Team (MET). Corporal Saibene had no other law enforcement or military experience. Corporal Saibene described himself as standing approximately five feet and 11 inches tall and weighing approximately 190 pounds. This was Corporal Saibene’s third lethal force encounter.

⁴ 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. Felix by name are made here for ease of narrative.

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Prior to making his statement, Corporal Saibene reviewed recorded video footage of the incident.⁵ The following is a summary of relevant information disclosed by Corporal Saibene at the time of his interview:

Corporal Saibene told investigators that he was the front passenger in an unmarked patrol unit along with Sergeant Ahmed and Officer Luna. The team of officers went to a known street gang hangout at [REDACTED] in San Bernardino to collect additional intelligence about the gang. When the team arrived, they were surprised to find people there as the property had been red-tagged. Corporal Saibene stated that they began to investigate the area “for trespassing.” As soon as Sergeant Ahmed stopped the unmarked unit, Corporal Saibene stepped out and announced, “Police.” Corporal Saibene entered the property, moved past a chain-linked fence and saw two men—Witness 1, who went running, and Mr. Felix, who grabbed the front of his waistband, turned around, and began walking away. Corporal Saibene recalled yelling at Mr. Felix to stop, and at Witness 1 to not run. Mr. Felix then started to run. Corporal Saibene yelled again for the men to stop running, when Corporal Saibene saw Mr. Felix’s right elbow raise up toward the sky. Corporal Saibene stated that Mr. Felix also looked back at the corporal and made eye-contact with him. Based upon Mr. Felix’s physical movements, Corporal Saibene believed that Mr. Felix was retrieving a firearm. As such, Corporal Saibene drew his firearm and began chasing Mr. Felix.

As the chase ensued, Corporal Saibene heard Officer Luna shout, “gun,” and Corporal Saibene saw Mr. Felix had a black handgun in his right hand as Mr. Felix continued to try to run away. Corporal Saibene stated that Mr. Felix held his gun in a “low ready” position, towards the right side of his body, outside his right leg. Corporal Saibene yelled “several times” at Mr. Felix to drop the gun, but Mr. Felix did not comply. Corporal Saibene stated the following:

I could still see [Mr. Felix] was armed with the black handgun, and at that point, he was attempting to get cover and concealment, and turning his body towards me, and I felt that he was going to try and shoot me. So, I fired approximately three to four rounds at him.

At the time he fired, Corporal Saibene estimated that he was 10 to 15 feet away from Mr. Felix, without any cover or concealment for himself. Corporal Saibene recalled that Mr. Felix was crouching down and looking at the corporal, turning his body toward the corporal, with his right hand coming up as if Mr. Felix was “addressing [Corporal Saibene] as a threat to shoot.” Corporal Saibene stated that he believed that he needed to shoot at Mr. Felix, before Mr. Felix could shoot and kill him. In retrospect, Corporal Saibene explained that Mr. Felix could have taken a different route to evade officers, but instead Mr. Felix specifically chose to go towards the corner of the travel trailer, which caused the

⁵ The submission indicated that Corporal Saibene reviewed “audio-video” footage of the shooting incident, but it was not specified what footage he reviewed. The video footage submitted by the case agent that included the shooting incident are summarized, *infra*. (See Submitted Media, *infra*.)

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corporal to believe that Mr. Felix was trying to gain cover or concealment for himself, so that he could try to kill the corporal or his partners.

After the gunfire, Corporal Saibene described Mr. Felix as falling to the ground in front of the steps to the opened doorway of the travel trailer. Corporal Saibene did not see initially where Mr. Felix's gun went after Mr. Felix fell. Corporal Saibene explained that the ground in the area where the shooting occurred was littered with debris and weeds. Corporal Saibene stated that Sergeant Ahmed then began to give Mr. Felix commands as Officer Luna pursued Witness 1. Corporal Saibene stood over Mr. Felix and watched Sergeant Ahmed handcuff Mr. Felix and assess his injuries.

After Mr. Felix was handcuffed, Corporal Saibene and Sergeant Ahmed entered the open travel trailer to make sure no one was hiding inside. Then, Corporal Saibene assisted in detaining Witnesses 2 and 3.

Approximately a half-hour after the shooting incident, Corporal Saibene was photographed by a SBPD forensic technician. The photos showed that Corporal Saibene wore a short-sleeved bright green polo shirt with SBPD agency patches and a double chevron on both outer shoulders. Across the front, the polo shirt had a "San Bernardino County Movement Against Street Hoodlums SMASH" patch on the right chest over "SAIBENE" in yellow block letters, and a SBPD cloth badge on the left chest over the word "SMASH" in yellow block letters. Across the expanse of the upper back of the polo shirt was the word, "POLICE" in extra-large yellow block letters. The corporal's BWC device was worn between his stomach and his sternum, in the middle area of his torso. Corporal Saibene also wore black pants. Corporal Saibene wore a drop-down firearm holster on his right thigh. Corporal Saibene also wore black boots.

Approximately nine and a half hours after the shooting, Detective Alvarez collected Corporal Saibene's duty weapon. Detective Alvarez found that Corporal Saibene's firearm contained one cartridge in the chamber and 11 cartridges in the inserted magazine. Corporal Saibene's firearm and cartridges were submitted to a SID criminalist for examination and testing. The criminalist described Corporal Saibene's duty weapon as a Sig Sauer model P320, 9mm Luger caliber semiautomatic pistol. The criminalist found that Corporal Saibene's firearm had no modifications or defects, and that it fired without malfunction. The criminalist described Corporal Saibene's cartridges as being consistent with Winchester Ranger 9mm Luger caliber ammunition with a 147 grain, jacketed hollow point bullet. Four fired cartridge casings (FCCs) bearing the headstamp "WIN 9MM LUGER" were recovered from the scene of the shooting. The headstamp on the recovered FCCs were identical to the headstamp of the live rounds collected from Corporal Saibene's duty weapon. Based upon the submission in total, it appears that Corporal Saibene fired his pistol approximately four to six times at Mr. Felix.⁶

⁶ Corporal Saibene was uncertain whether his inserted magazine was loaded with 16 or 17 rounds prior to the shooting. If Corporal Saibene's magazine was loaded with 16 rounds, plus one in the firing chamber, the 12 remaining total rounds in his duty weapon after the incident would indicate that Corporal Saibene fired five rounds during the incident. However, if Corporal Saibene had 17 rounds in his loaded magazine prior to the shooting, plus one in the chamber,

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Additional law enforcement witnesses who were present at the time of the officer-involved shooting or in the immediate aftermath were interviewed and/or prepared reports regarding their observations and/or involvement.

Approximately five and a half hours after the shooting occurred, **SBPD Officer Freddy Luna** was interviewed by Detective Alvarez, in the presence of Officer Luna's attorney. Officer Luna affirmed that he recorded video footage of the incident with his BWC.⁷ (See Submitted Media, Body Worn Camera Video, *supra*.) Officer Luna told investigators that on the afternoon of the shooting he was on duty and wearing his SBPD uniform. Officer Luna had been a law enforcement officer for approximately five years. Officer Luna stated that the area where the shooting occurred was a known hang-out of a criminal street gang he was investigating for multiple murders for the last six months. As such, Officer Luna said that going to this location put him on "high alert." Officer Luna stated that when he, Sergeant Ahmed, and Corporal Saibene arrived at the scene, that he noticed a pickup truck there. Officer Luna knew that the location was vacant and that no one was supposed to be there. Officer Luna said that he sat in the rear passenger seat behind Corporal Saibene, and that he and Corporal Saibene got out of their car at the same time, when Corporal Saibene suddenly yelled, "Police," and started to run into the property. Officer Luna followed Corporal Saibene and that's when Officer Luna saw Mr. Felix running (away) toward the eastern end of the travel trailer with a black semi-automatic handgun in his right hand. Officer Luna yelled, "Gun, gun, gun," then heard Corporal Saibene yell, "Police, stop running!" Officer Luna recalled that gunfire rang out immediately after that. Officer Luna explained that although he drew his own duty weapon when he saw Mr. Felix had a handgun, that Corporal Saibene shot at Mr. Felix first. Officer Luna did not ultimately fire his duty weapon. After the gunfire, Officer Luna diverted his attention toward Witness 1, who was also running away. Officer Luna chased after and ultimately detained Witness 1. At some point after that, Officer Luna provided the tourniquet applied to Mr. Felix at the scene and assisted in assessing Mr. Felix's physical condition until medical professionals arrived.

More than six and a half hours after the shooting occurred, **SBPD Sergeant Imran Ahmed** was interviewed by Detective Alvarez, in the presence of Sergeant Ahmed's attorney. At the time, Sergeant Ahmed had been a law enforcement officer for more than 17 years and was assigned to both SBPD MET and SWAT team. On the afternoon of the shooting, Sergeant Ahmed drove an unmarked black SBPD Chevy Tahoe to the incident site to assist Officer Luna in gathering information for Officer Luna's gang investigation. Sergeant Ahmed believed that the gang that Officer Luna was investigating was responsible for homicides, car jackings, and firearm possession. Sergeant Ahmed explained that there was an "inherent danger and officer safety issues" going into an area occupied by an extremely violent criminal street gang. Sergeant Ahmed

the number of remaining rounds would indicate that Corporal Saibene fired six rounds during the incident. This latter scenario is also consistent with community surveillance video footage discussed *infra*.

⁷ Officer Luna admitted that he reviewed "audio video" recordings of the incident prior to the interview, but he was not asked to specify *which* recording he reviewed; the submission did not so indicate.

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affirmed that he recorded video footage of the incident with his BWC.⁸ (See Submitted Media, Body Worn Camera Video, *supra*.) When Sergeant Ahmed arrived at the scene he saw a Honda by a trailer and people loitering by it, including Mr. Felix. Sergeant Ahmed said that Mr. Felix looked at the officers in their conspicuous green polo-style shirts and grabbed the front of his waistband with his right hand. Sergeant Ahmed explained that it was common for people to immediately touch the area where they are keeping a firearm when they see law enforcement, and when Mr. Felix did so, it indicated to the sergeant that Mr. Felix was possibly armed. Sergeant Ahmed said he alerted dispatch of his team's location and saw Corporal Saibene run towards Mr. Felix. Sergeant Ahmed said that he heard Corporal Saibene announce, "Police," and say loud and clearly, "don't run," "let me see your hands," and "stop reaching." Sergeant Ahmed noticed Mr. Felix looking back at the sergeant and corporal as Mr. Felix ran away holding the front of his waistband. Sergeant Ahmed stated that he lost sight of Corporal Saibene and Mr. Felix by the time the sound of gunshots rang out. The sergeant had unholstered his duty weapon but did not fire it.

When Sergeant Ahmed caught up to where Corporal Saibene was, Mr. Felix was already lying on the ground and bleeding from the leg. The sergeant also noticed Mr. Felix's gun "in close proximity." Sergeant Ahmed handcuffed Mr. Felix and patted Mr. Felix down for additional weapons. Sergeant Ahmed was going to use Mr. Felix's belt as a tourniquet, but Sergeant Ahmed discovered that Mr. Felix's belt buckle housed a "dagger-type knife" and the belt itself would not come off. Sergeant Ahmed instead received a tourniquet from Officer Luna and put it on Mr. Felix. All the while, Sergeant Ahmed was afraid there may be other armed subjects inside the adjacent travel trailer and recognized that Mr. Felix's location in front of the opened doorway to the travel trailer put officers at a "tactical disadvantage." After Officer Luna took control of Witnesses 1, 2 and 3, the sergeant and Corporal Saibene went inside the travel trailer to make sure there was no one hiding inside. Sergeant Ahmed explained that once the travel trailer was cleared that the scene would be deemed "secure," and officers could more fully address Mr. Felix's medical needs.

Sergeant Ahmed described the encounter as a stressful situation in which officers' lives were endangered. Sergeant Ahmed stated that Mr. Felix "chose his actions," and "had plenty of time to comply and surrender." Sergeant Ahmed stated that the presence of officers in their "very identifiable police uniforms," the officers' use of verbal commands, alerting Mr. Felix that officers knew he had a gun, and giving chase, were each de-escalation tactics that failed to elicit any expression of compliance or surrender from Mr. Felix.

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⁸ Sergeant Ahmed admitted that he reviewed "audio video" recordings of the incident prior to the interview, but he was not asked to specify *which* recording he reviewed; the submission did not so indicate.

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STATEMENTS BY CIVILIAN WITNESSES⁹

Witness 1 gave a voluntary statement to SBPD Detective William Flesher at the SBPD station approximately six and a half hours after the shooting took place. Witness 1 told Detective Flesher that he was “homeless,” but that when it rained he lived in the travel trailer at the incident scene. Witness 1 said that he met Mr. Felix a couple of months prior and was an “acquaintance” of his whom he knew as “D.” Witness 1 said that he was at the scene with Witness 2 and Witness 3, when Mr. Felix arrived. Witness 1 denied knowing why Mr. Felix was at the incident scene. Prior to the time shots were fired, Witness 1 recalled that Mr. Felix said, “Cops,” then he and Mr. Felix, “took off.” Witness 1 denied hearing or seeing any officers prior to the time Mr. Felix said, “Cops.” After the gunfire, Witness 1 said that an officer put a gun in his face, so Witness 1 stopped and went to the ground. Witness 1 denied seeing Mr. Felix with a gun.

Witness 2 gave a voluntary statement to SBPD Detective Darren Sims at the SBPD station approximately six hours after the shooting occurred. Witness 2 said he walked to the scene with his girlfriend (Witness 3) to visit her uncle (Witness 1), approximately 30 minutes prior to officers arriving at the scene. Witness 2 was sitting in the passenger seat of a Honda parked there, whilst Witness 3 sat in the driver’s seat. Witness 1 was outside of the Honda when Witness 2 heard a “cop” say, “Get on the ground, get on the ground.” Witness 2 said that he saw Witness 1 running but did not see Mr. Felix. When officers ran by, Witness 2 did see that the officers were in uniform. Witness 2 denied knowing Mr. Felix and ever seeing a gun at the scene.

Witness 3 gave a voluntary statement to Detective Sims at the SBPD station approximately five hours after the shooting occurred. Witness 3 said that she went to the scene with Witness 2 at about 2:00 p.m., to check on her uncle (Witness 1). Witness 3 was sitting in the driver’s seat of the Honda when she heard Mr. Felix say, “Oh, it’s the cops.” At the time, Witness 1 and Mr. Felix stood near the front of the Honda. Witness 3 said Mr. Felix and Witness 1 then either walked or ran away. Witness 3 said Witness 2 started looking around, when an officer yelled, “Stop.” Witness 3 said she recognized the officers’ green SMASH uniform shirts when they ran past the Honda. Witness 3 said she saw Mr. Felix pull a gun out from his waistband, heard the officers say, “Put it down,” and then heard about four gunshots.

SUBMITTED MEDIA¹⁰

DISPATCH RECORDING. The case agent’s submission included audio recordings of radio transmissions between SBPD dispatch operators and SBPD officers. The following is a summary

⁹ All reports of civilian statements made were reviewed, though not all are summarized here. No witness became aware of or used Mr. Felix’s name. All specific references to Mr. Felix are made here for ease of narrative.

¹⁰ 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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of material events that occurred on December 5, 2022, evidenced by these recordings and a dispatch log provided by the case agent:¹¹

The submitted incident dispatch recordings began at approximately 4:46 p.m., with Sergeant Ahmed alerting dispatch that a subject was “running.” Approximately ten seconds later, Corporal Saibene aired, “Shots fired. Shots fired.” Ten seconds after “shots fired” aired, Sergeant Ahmed advised dispatch that all officers were ok and that four subjects were being held at gunpoint. Less than a minute later, at 4:47 p.m., Sergeant Ahmed announced, “We recovered the gun. The suspect is in custody. We have numerous people at gunpoint. We still need to clear this trailer.” At 4:49 p.m., Sergeant Ahmed alerted dispatch that a tourniquet had been applied to Mr. Felix, and that he and Corporal Saibene would be entering the travel trailer.

The dispatch recordings indicated that backing officers had some difficulty locating the incident scene. Sergeant Ahmed clarified their location and asked for air support in directing officers to the scene. Helicopter personnel indicated that backing units were arriving at the scene at approximately 4:51 p.m. Medical personnel were noted to be arriving at the scene at approximately 4:56 p.m.

BODY WORN CAMERA VIDEO. Although multiple BWC video segments were included in the submission, none of those included the sound of events occurring immediately before and during the shooting. Corporal Saibene’s BWC video footage captured events before, during, and after the shooting took place but was almost entirely silent. The following is a summary of material events included in the submitted BWC videos:¹²

Corporal Saibene’s BWC footage began at approximately 4:46 p.m., and was 10 minutes and six seconds long. In the opening frames, the corporal was already at the scene and appeared to be running east, past the driver’s side of the Honda, with his gun in his right hand as he ran. Mr. Felix was not initially within view. Witness 1 appeared to be walking away from the area in front of the Honda and moved south while looking back towards Corporal Saibene. Within a second, and as Corporal Saibene moved further east, the corporal brought up his left hand and held his duty weapon with both hands in front of him. Then, Mr. Felix came into view of the BWC device: Mr. Felix faced Corporal Saibene in a staggered stance on the south side of the travel trailer with his right hand low near his right thigh and his left hand in front of him. Due to Mr. Felix’s dark clothing—a dark blue sweatshirt and indigo jeans, the video did not clearly show any dark-colored object in either of Mr. Felix’s hands. Almost immediately after Mr. Felix came into view, Mr. Felix clutched his midsection with both of his arms, bent forward at the waist, then rolled towards Corporal Saibene and onto his back on to the ground. Mr. Felix then rolled onto his right

¹¹ The noted time and duration of time included in this summary is based upon the recording’s companion call log and the runtime of the submitted audio, respectively.

¹² All the submitted BWC footage was both date and timestamped. The noted duration of time included in this summary is based upon the timestamping included in the referenced video.

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side and lay in front of the opened doorway and stairs leading to the interior of the travel trailer. Corporal Saibene moved around Mr. Felix, to stand east of Mr. Felix's feet and faced the west, while also holding Mr. Felix at gunpoint. From this vantage point, Corporal Saibene's BWC device captured Officer Luna and Sergeant Ahmed trotting past the Honda before suddenly redirecting their attention south. About 20 seconds after Mr. Felix fell to the ground, Sergeant Ahmed appeared again within Corporal Saibene's BWC device's field of view and was holding Mr. Felix at gunpoint. Simultaneously, Witnesses 2 and 3 emerged from the Honda, with their hands outstretched over their heads. At 4:47 p.m., Corporal Saibene appeared to point towards the area where Mr. Felix's handgun was ultimately recovered.

Sergeant Ahmed's BWC footage also began at approximately 4:46 p.m., and was 13 minutes and 10 seconds long, the first 30 seconds of which did not include an audio track. The sergeant's footage began as he was stepping out of the driver's seat and shutting the driver's door of the Tahoe. Then, Sergeant Ahmed moved across the front of the Tahoe, faced east toward Officer Luna, who was ahead of him with his right hand on top of his holstered firearm. Corporal Saibene was already moving quickly past the Honda, toward the west end of the travel trailer, and out of view. As Officer Luna continued east past the Honda, he drew his duty weapon. By the time that Corporal Saibene came into view again, Mr. Felix was laying on his right side on the ground and the corporal was holding him at gunpoint. Officer Luna appeared to initially move toward Corporal Saibene and Mr. Felix when the corporal pointed toward the south, and both Officer Luna and Sergeant Ahmed moved in that direction. As they did so, Witness 1 came into view of Sergeant Ahmed's BWC device; both the officer and sergeant appeared to point their duty weapons at Witness 1. As soon as Witness 1 began to put his hands up, Sergeant Ahmed turned his camera back north towards Corporal Saibene and Mr. Felix.

At 4:47 p.m., as Sergeant Ahmed stood close to Mr. Felix, the sergeant relayed location information to dispatch via hand-held radio.¹³ Sergeant Ahmed proceeded to handcuff Mr. Felix's wrists behind his back. Before the sergeant could finish handcuffing Mr. Felix, Corporal Saibene can be heard saying, "I got the gun behind us," followed by, "Watch that fucking door." As soon as the sergeant completed handcuffing Mr. Felix and took a breath, he radioed that the gun was recovered, the suspect was in custody, that multiple people were being held at gunpoint, and that the trailer needed to be cleared. Next, the sergeant asked Mr. Felix where he was injured and began to lift Mr. Felix's clothing to look for wounds. The BWC footage showed Mr. Felix was bleeding from the upper right leg. Sergeant Ahmed asked Corporal Saibene if he had a tourniquet. When the corporal said he did not, the sergeant appeared to attempt to take off Mr. Felix's belt. The sergeant asked Mr. Felix if he had any other weapons on him. Mr. Felix said, "No." Then, within a second or two, Sergeant Ahmed found that Mr. Felix's belt buckle concealed a knife, which the sergeant threw to the side. Sergeant Ahmed received a tourniquet from Officer Luna and applied that to Mr. Felix's right leg. At 4:49 p.m., Sergeant Ahmed and Corporal Saibene

¹³ Sergeant Ahmed's BWC video footage was silent up to this point.

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entered the travel trailer and found no other people inside. After the sergeant came out of the trailer, he continued to coordinate with dispatch and air support to get additional officers to the scene, and attempted to address Mr. Felix's injuries for a second time before Officer Luna assumed first aid care of Mr. Felix. At approximately 4:51 p.m., additional officers began arriving at the scene.

At 4:54 p.m., Sergeant Ahmed's BWC footage showed the sergeant and Officer Luna carried Mr. Felix out of the scene, to a nearby parked patrol unit, where Mr. Felix was then loaded into the back seat and driven out to the main road. At approximately 4:56 p.m., Sergeant Ahmed pulled Mr. Felix back out of the patrol unit and sat him up next to it. Less than a minute later, a fire truck rolled into view of the sergeant's BWC device. When transferring care to fire personnel, fire personnel asked if Mr. Felix had been patted down. In response, an unidentified male voice indicated, "Yeah, he had a gun on him. He threw it." At 4:58 p.m., Sergeant Ahmed assisted in placing Mr. Felix on a medical gurney and walked away. Less than a minute later, Sergeant Ahmed alerted dispatch that Mr. Felix was on his way to the hospital.

Officer Luna's BWC footage also began at approximately 4:46 p.m., and was 12 minutes and 39 seconds long, the first 30 seconds of which did not include an audio track. Although it appeared the officer's BWC footage began before officers got out of their unit at the scene, Officer Luna's BWC footage still did not capture any audio of the shooting itself. With the exception of being taken from Officer Luna's vantage point, the video's content was consistent with Sergeant Ahmed and Corporal Saibene's footage summarized above. At 4:47 p.m., Officer Luna detained Witness 1 and handcuffed him while Sergeant Ahmed handcuffed Mr. Felix. Thereafter, Witness 1 continuously peppered Officer Luna with statements and questions while the officer detained Witness 1. At approximately 4:49 p.m., Witness 1 said, "You shot him for nothing." To this Officer Luna responded, "For nothing? He took a gun out on officers."

CIVILIAN SURVEILLANCE VIDEO. The submission included date and time-stamped residential surveillance video footage from a north-facing residence on Walnut Street, south of the incident scene. The following is a summary of material events evidenced by the submitted surveillance video:¹⁴

Seconds before 4:45 p.m., a black Chevy Tahoe appeared to be traveling westbound on Walnut Street, before turning right (north) up towards [REDACTED] Street and the scene of the shooting. Approximately 24 seconds later, the sound of six gunshots could be heard.

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¹⁴ The noted time included in this summary is based upon the timestamping included in the referenced video.

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INCIDENT SCENE INVESTIGATION

The incident scene investigation was managed by SBPD Detective Kimberly Hernandez, who was assisted by SBPD Officer Jared Heim and a SBPD forensic specialist. Below is a drone-collected aerial photo of the northwest corner of the property that includes the approximate locations of corresponding placarded evidence, prepared by Officer Heim:¹⁵



The incident took place in the fenced-in rear lot of an abandoned building at [REDACTED] in the city of San Bernardino. [REDACTED] Street was an east/west dirt road that was north of and parallel to Walnut Street, west of Mount Vernon Avenue. There were railroad tracks on the west side of the property, that ran north/south. Detective Hernandez found that the rear lot of the property was filled with dumped trash and debris, including abandoned and picked apart vehicles. Detective Hernandez identified the abandoned vehicles as a blue 2004 Honda [placard no. 2] and a 2007 Fleetwood Gearbox travel trailer [placard no. 13]. Mr. Felix’s blue 2001 GMC Sierra pickup truck was also at the scene, parked west of the west fenceline to the property, closest to the railroad tracks. The black Chevy Tahoe [placard no. 1] that Sergeant Ahmed drove to the scene was parked southeast of Mr. Felix’s truck, between the truck bed of Mr. Felix’s truck and the west fenceline.

Four FCCs [placard nos. 3 through 6] were identified at the scene and are noted towards the bottom

¹⁵ Officer Heim also submitted a report including scene reference-point anchored measurements. The distances included here are based upon Officer Heim’s measurements.

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center of the photo above. The estimated distance from the passenger side of the Tahoe to the FCC at placard number 4 was 62.6 feet or 20.9 yards. A zoomed-in aerial photo of placard numbers three through 13 is included below:



Probable blood from Mr. Felix [placard no. 9] was found between the trailer and the FCCs, in close proximity to Mr. Felix's other property: a cell phone [placard no. 8] and a baseball cap [placard no. 10]. Mr. Felix's gun [placard no. 11] was found on the ground near one of the trailer jacks and behind a large fan, approximately 11.9 feet away from Mr. Felix's blood. Mr. Felix's belt buckle knife [placard no. 12] was further east of Mr. Felix's property, where Sergeant Ahmed tossed it after discovering it. Officer Heim did note a bullet strike mark on a solar panel that was leaning up against the travel trailer, close to placard number 12. Mr. Felix's gun was approximately 7.4 feet from that bullet strike mark. Mr. Felix's knife and gun are pictured below:

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Detective Hernandez found Mr. Felix's firearm had an empty firing chamber, but its inserted

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magazine contained 17 live rounds of various brands of 9mm ammunition. The forensic specialist who collected the evidence at the scene was unable to obtain latent prints from Mr. Felix's cell phone, handgun, magazines, cartridges, or knife. DNA samples were collected from Mr. Felix's gun, ammunition, and knife. The SID criminalist who attempted analysis of those samples found that there could be "no interpretation [of the samples] due to limited information." Approximately five days after the shooting, SBPD Detective Dominick Martinez test-fired Mr. Felix's gun and found that it was in "good working order."

INVOLVED SUBJECT

MEDICAL EVALUATION. Mr. Felix received medical treatment at a local hospital after being transported away from the incident scene by ambulance. Detective Martinez responded to the hospital approximately six hours after the shooting. Detective Martinez found that Mr. Felix sustained GSWs to the abdomen, the lower back on the right side, the left outer wrist, and to the right inner and outer thigh.¹⁶

GUNSHOT RESIDUE. Mr. Felix's hands were tested for gunshot residue (GSR). A SID criminalist identified GSR particles from both of Mr. Felix's hands. The criminalist explained that GSR particles can be deposited on the hands by firing a firearm, being in proximity of a discharging firearm, or by touching a surface that has GSR on it, including handling a firearm or ammunition.

CRIMINAL HISTORY. Mr. Felix had a criminal history beginning in 1995 with a misdemeanor violation of California Penal Code section 246.3¹⁷ [willful discharge of a firearm in a negligent matter] and 12031(a) [carrying a loaded firearm in a public place]. Mr. Felix subsequently sustained felony convictions for violations of section 12021.1 [illegal possession of a concealed firearm] in 2006, section 245(a)(1) [assault with a deadly weapon not a firearm] and 12021(a)(1) [felon in possession of a firearm], both in 2009, and three separate violations of section 245(a)(4) [assault with a deadly weapon with force likely to cause great bodily injury] in 2014, 2016, and 2020. The 2016 assault was also committed in conjunction with a violation of section 29800(a)(1) [felon in possession of a firearm]. Mr. Felix served a term in state prison for his 2009, 2016, and 2020 convictions.

APPLICABLE LEGAL PRINCIPLES

An officer may approach a person to investigate possibly criminal behavior even though there is no probable cause to make an arrest. (*Terry v. Ohio* (1968) 72 Cal.App.3d 346.) An officer who is faced with a threat of harm while fulfilling his duties need not retreat and maintains his right to

¹⁶ No medical records were included in the submission and there was no indication that Detective Martinez received any assessment of Mr. Felix's gunshot wounds from a medical professional. Detective Martinez reported that Mr. Felix's two gunshot wounds to the outer thigh were "entry" wounds and the two gunshot wounds to the inner thigh were "exit," wounds without indication as to why he believed so.

¹⁷ All references to code sections pertain to the California Penal Code.

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self-defense. (Penal C. §§197, 835a.) A peace officer is not deemed the aggressor in this instance. (Penal C. §835a(d).) 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.) 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 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.) 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. (*Evans v City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) The force used by the peace officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

PENAL CODE SECTION 196. Peace officers may use *deadly* force in the course of their duties, under circumstances not available to members of the general public. Penal Code section 196 states that homicide by a peace officer is justifiable when it results from a use of force that “is in compliance with Section 835a.” Section 835a(c)(1) specifies a peace officer *is justified in using deadly force* when he reasonably believes based upon the totality of the circumstances, that it is necessary to “defend against an imminent threat of death or serious bodily injury to the officer or another.” The “[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).)

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

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

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

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

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Although these principles did not appear in section 835a until 2020,¹⁸ 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 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;¹⁹
- (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

¹⁸ 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.

¹⁹ Penal C. §835a(a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a(a)(3).

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- (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 an officer knows and his actual awareness of the risks posed against him are relevant in determining if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich* (9th Cir. 1994) 39 F. 3d 912, 915.)

Imminence more recently defined in the context of police use of lethal force is similar:

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

(Penal C. §835a(e)(2).)

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

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

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

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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 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. (Penal

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C. §§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. 19, *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.)

ANALYSIS

This memorandum examines the use of deadly force by SBPD Corporal Andrew Saibene on December 5, 2022, upon Daniel Felix. 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 officer was justified in using lethal force involves a two-part analysis: (1) did he subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was his belief in the need to protect himself or another from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of Corporal Saibene is

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included here based primarily upon the statement he made during his interview. (See Statements by Law Enforcement Witnesses, *supra*.) The following is a summary:

Upon arriving at the scene, Corporal Saibene was the first to call out to Mr. Felix and Witness 1, when the corporal announced, "Police." Corporal Saibene saw that Mr. Felix immediately grabbed the front of his waistband, turned around and began to move away; Witness 1 had already begun running away. Corporal Saibene recalled calling for Mr. Felix to stop, and for Witness 1 to stop running, when Mr. Felix also began to run. As Corporal Saibene pursued the fleeing men, the corporal saw Mr. Felix's right elbow raise up toward the sky. Mr. Felix also looked back at Corporal Saibene, making eye-contact with him. Corporal Saibene interpreted the sum of Mr. Felix's physical movements to mean Mr. Felix was drawing a firearm. In response, Corporal Saibene also drew his firearm. Shortly thereafter, Corporal Saibene heard Officer Luna shout, "Gun!" Corporal Saibene then saw that Mr. Felix had a black handgun in his right hand as Mr. Felix continued to run away. Corporal Saibene stated that Mr. Felix held his gun in a "low ready" position, towards the right side of his body, outside his right leg [with his right hand]. Corporal Saibene yelled for Mr. Felix to drop his gun, but Mr. Felix did not comply. Corporal Saibene explained that since Mr. Felix appeared to be trying to conceal himself as opposed to simply running away, that Mr. Felix was attempting to position himself to shoot at officers. Then, when Mr. Felix turned to face the corporal with his gun-toting hand rising, Corporal Saibene believed Mr. Felix was specifically going to shoot him. Corporal Saibene estimated that from 10 to 15 feet, without any cover or concealment for himself, the corporal fired three to four times at Mr. Felix. Mr. Felix then fell to the ground in front of Corporal Saibene, where the corporal initially lost sight of Mr. Felix's firearm. In retrospect, Corporal Saibene told the investigator that he believed Mr. Felix would have shot and killed the corporal, if the corporal didn't shoot first. Corporal Saibene continued to hold Mr. Felix at gunpoint until Sergeant Ahmed was able to handcuff Mr. Felix behind his back and the scene could be secured.

The stated account of Corporal Saibene of the circumstances at play *prior* to and culminating with Corporal Saibene's use of lethal force is consistent with the submission. Furthermore, the submission supports Corporal Saibene's conclusion that Mr. Felix was armed with a handgun and appeared poised to shoot and kill him. Mr. Felix had the apparent ability, intent, and opportunity to inflict the lethal harm articulated by Corporal Saibene. Based upon the foregoing, it is reasonable to conclude that Corporal Saibene bore an honest and subjective belief that Corporal Saibene was under threat of imminent deadly harm or bodily injury at the time Corporal Saibene 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 self-defense claim: a finding that the

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involved shooting officer had an objectively reasonable belief of the need to use deadly force to protect himself from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. Initially, Mr. Felix was trespassing on an abandoned property, a misdemeanor violation of Penal Code section 602. Mr. Felix's status as a felon also prohibited him from possessing a firearm; he was in violation of Penal Code section 29800(a)(1), a felony. It might also reasonably appear that Mr. Felix drew or exhibited a firearm with the intent to prevent detention by a peace officer; this would be a violation of Penal Code section 417.8, a "serious" strike felony pursuant to Penal Code section 1192.7(c), that would carry a mandatory prison sentence. Mr. Felix might also be found to have violated Penal Code section 245(c) [assault of a peace officer in the course of his duties]—another "serious" strike felony. The assault upon Corporal Saibene *with a firearm*, would be a violation of Penal Code section 245(d)(1) [assault of a peace officer in the course of his duties with a semi-automatic firearm], a "violent" felony strike pursuant to Penal Code section 667.5(c)(8). Neither section 245(d)(1), nor 417.8 required that Mr. Felix fire or even point his gun directly at any law enforcement officer. It was enough that Mr. Felix armed himself with an operable and loaded firearm and *could have* immediately used it against Corporal Saibene, Officer Luna, or Sergeant Ahmed. As such, the severity of crimes Mr. Felix appeared to be committing and was engaged in immediately prior to Corporal Saibene's use of lethal force being amongst California's most serious and violent felonies would weigh in favor of a finding that such force was reasonable.

Resistance is another essential consideration in a *Graham* analysis. The submission supports a finding that Mr. Felix *knew* that law enforcement had arrived. Not only were Sergeant Ahmed, Corporal Saibene, and Officer Luna wearing distinct SBPD SMASH unit uniforms, but Corporal Saibene also announced, "Police," on their arrival at the scene. Witness 3 also told the investigator that Mr. Felix *said* that the police were there before he took off running. Witness 1's flight, followed by Mr. Felix, would also suggest that neither man wished to be contacted by the police and heard, but intentionally disregarded, Corporal Saibene's orders to stop running. This low level of resistance, however, took on a more active and violent complexion when Mr. Felix drew his loaded firearm in anticipation of being contacted by the police. Corporal Saibene, Officer Luna, and Witness 3 saw the gun in Mr. Felix's hand before the shooting occurred. The discovery of GSR on Mr. Felix's hands was also consistent with a finding that Mr. Felix recently handled a firearm. Officer Luna alerted Corporal Saibene of the presence of the gun and drew his own weapon in anticipation of a firefight. Corporal Saibene ordered Mr. Felix to drop his gun multiple times. Witness 3 also heard officers order Mr. Felix to put his gun down. It is reasonable to conclude that not only did Mr. Felix know the police were present, but that the police were aware that Mr. Felix had a firearm. Despite being given an opportunity to disarm himself, Mr. Felix's response was not to drop the gun, but instead to turn to face the corporal. Self-armament with a loaded and operable semi-automatic firearm in the face of detainment by uniformed and armed peace officers is an extreme level of resistance. In the calculus of what was "reasonable" under *Graham*, Mr. Felix's apparent resistance can be weighed in favor of the conclusion that Corporal Saibene's use of force was reasonable.

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Immediacy is the “most important” *Graham* factor and the circumstances leading to the lethal use of force must be considered. 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. Corporal Saibene was a uniformed officer, attempting to contact men loitering in a known violent gang’s hangout. When the men scattered, Corporal Saibene went running into the unsecured area despite knowing that danger could be lurking ahead. Then, when Mr. Felix appeared to be drawing something from his waistband and turned to look at Corporal Saibene, the corporal reasonably feared that Mr. Felix had armed himself. That fear materialized as Officer Luna announced, “gun, gun, gun!” Corporal Saibene saw Mr. Felix had a pistol in his right hand. Although Mr. Felix could have run south and away from the travel trailer, as did Witness 1, Corporal Saibene believed that Mr. Felix chose to run toward the travel trailer to gain a tactical position to shoot at the officers from. Whereas the area where Witness 1 ran towards was an open patio. Corporal Saibene recalled that Mr. Felix was crouched near the travel trailer, had turned to face the corporal, and Mr. Felix’s gun-hand was rising. Since Mr. Felix appeared to ignore orders to drop his gun, it would be reasonable for Corporal Saibene to believe that Mr. Felix was facing off with the corporal to kill him. 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. In sum, Mr. Felix’s *apparent* conduct demonstrated that he had the present ability and opportunity to immediately cause death or serious bodily injury. Specifically, Corporal Saibene reasonably believed that lethal force was instantly required to avoid his immediate death. The law did not require Corporal Saibene to wait to use lethal force until Mr. Felix 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 Corporal Saibene’s identification of an imminent lethal threat posed by Mr. Felix or his choice to use lethal force upon Mr. Felix.

Hindsight. In the evaluation of the question of necessity at the time shots were fired, it must be noted that the courts have employed a standard that is highly deferential and viewed from the vantage point of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. This standard allows for the fact that split-second judgments are being made under tense, uncertain and rapidly evolving circumstances, much like those that existed during Corporal Saibene’s encounter with Mr. Felix. Here, less than nine seconds pass from the time that Corporal Saibene opened the door to step out of the SBPD Tahoe, to the time that shots appear to be fired at Mr. Felix. During this time, Corporal Saibene was in the process of each of the following: shouting, running into a known violent gang den in his conspicuous police uniform, watching Mr. Felix pull out a gun from his waistband, drawing his own weapon, giving orders for Mr. Felix to drop his gun. Corporal Saibene saw that Mr. Felix was heading for cover and was not dropping his gun. When Mr. Felix stopped running away, Corporal Saibene finally came face to face with Mr. Felix, who was beginning to raise his gun hand toward the corporal. A slow view of Corporal Saibene’s BWC footage confirmed that Mr. Felix had indeed turned to face the corporal, but it was not clear whether Mr. Felix still held his firearm in his right hand at the time that Mr. Felix was shot. It is entirely possible that Mr. Felix had thrown the gun where it was discovered under the travel

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trailer,²⁰ but there's no way to know if the gun was thrown before Mr. Felix faced Corporal Saibene or during the process of getting shot. Either way, Corporal Saibene did not have the luxury of time to dissect Mr. Felix's minute movements. The circumstances in total supported Corporal Saibene's reasonable conclusion that Mr. Felix was armed and the corporal was about to be shot. Ultimately, this review in hindsight cannot diminish the imminent danger that confronted Corporal Saibene prior to the time he used lethal force upon Mr. Felix.

Based on the foregoing discussion, each of the primary *Graham* factors as applied support a finding that the use of lethal force by Corporal Saibene was reasonable. The "totality of the circumstances" discussed herein further supports a finding that Corporal Saibene reasonably believed that he was defending against an imminent threat of death or serious bodily injury at the time he used lethal force. As such, we conclude that the use of lethal force by Corporal Saibene 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. Sergeant Ahmed explained that the officers' mere presence at the scene in their "very identifiable police uniforms," should have served as a de-escalation tactic, as those who wear it are known in the neighborhood for their gang enforcement efforts. The submission is also consistent with the officers' reports that Corporal Saibene announced, "Police," and gave orders to Mr. Felix both to stop running and to drop his weapon. Instead of eliciting compliance from Mr. Felix, the officers' presence and commands caused Mr. Felix to draw his handgun. Mr. Felix showed no outwardly observable signs of compliance, surrender, or disarmament prior to the time he was shot. As such, it was reasonable for Corporal Saibene to believe that Mr. Felix drew his weapon to shoot it. Moreover, it would be reasonable to believe that someone with as extensive a criminal record as Mr. Felix would know what behaviors were expected of him once officers appeared at the scene. Mr. Felix could have dropped his gun right where he stood and thrown his empty hands up. Even the minors at the scene knew to throw their hands up in the presence of officers. Instead, Mr. Felix drew his loaded pistol from his waistband, held it in his hand, and appeared to run to a position to shoot at officers. Even after Mr. Felix was shot, Mr. Felix told Sergeant Ahmed he had no other weapons moments before the sergeant discovered Mr. Felix's belt buckle was in fact a dagger. Mr. Felix was shot, lay injured on the ground, was still being held at gunpoint, and yet this was *still* not enough to gain Mr. Felix's complete compliance. As such, there is no reason to believe *any* de-escalation method would have achieved a different result here. There appeared to be no feasible, safe, or reasonable opportunity for Corporal Saibene to de-escalate without putting his own life, or the lives of Sergeant Ahmed and Officer Luna in apparent danger.

²⁰ Witness 3 told the investigator that Mr. Felix "tried to toss [the gun]" and Sergeant Ahmed's BWC footage captured someone saying that Mr. Felix threw his gun, but neither statement was clarified as to *when* the gun was tossed or thrown. Irrespective of those statements, the submitted BWC footage did show that there was a clear path from where Mr. Felix stood prior to the time he was shot to the area where Mr. Felix's gun was recovered. Based on Officer Heim's scene measurements, the distance from where the solar panel bullet strike was noted (and likely where Mr. Felix may have been standing at the time shots were fired) to where Mr. Felix's gun was recovered was approximately 7.4 feet.

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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 Corporal Saibene was lawful.²¹ First, the submission in total does not indicate that Corporal Saibene acted excessively. Corporal Saibene drew his duty weapon after it appeared to him that Mr. Felix had armed himself. Once Mr. Felix fell to the ground, Corporal Saibene still had 12 additional rounds in his duty weapon ready to be fired. Sergeant Ahmed and Corporal Saibene both identified that additional potential danger did exist after Mr. Felix fell, either because Corporal Saibene did not initially see where Mr. Felix's gun was located or that the officers stood immediately outside the opened doorway to the adjacent travel trailer where other unknown dangers might lurk. It was only once officers located Mr. Felix's gun, Mr. Felix was disarmed of all his weapons and handcuffed, and the adjacent travel trailer was found to be empty, that the officers could secure the scene. Yet, Corporal Saibene did not fire any additional rounds during that uncertain period. In sum, the submitted evidence supports the conclusion that lethal force did not continue after Corporal Saibene reasonably appreciated that Mr. Felix no longer posed an immediate lethal threat. As such, Corporal Saibene can be found to have well-appreciated the gravity and consequence of his use of lethal force evidenced by the judicious way he dispensed lethal force.

CONCLUSION

Under the facts, circumstances and applicable law in this matter, we conclude that the reasonable use of deadly force by SBPD Corporal Andrew Saibene was exercised in self-defense. Accordingly, no criminal liability attaches.

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
San Bernardino, CA 92415
Dated: May 14, 2026



²¹ This review is based on a totality of the circumstances from the perspective of a reasonable officer in the same situation. (Penal C. §§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether SBPD 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.