



PUBLIC INFORMATION RELEASE MEMORANDUM

DATE: January 30, 2026

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Deputy Jacob Delano
San Bernardino County Sheriff's Department

Involved Subject: Ezekiel Love (Deceased)
Date of Birth **/**/**Ra

Date of Incident: October 24, 2022

Incident location: Arlington St. and Henderson St.
Adelanto City, CA

DA STAR #: 2024-28924

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Justin Carty

Report Number #: DR# 242202529 / H# 2022-138

PREAMBLE

This was a fatal officer involved shooting by a deputy from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary is 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# 242202529 and H# 2022-138.

FACTUAL SUMMARY

On October 24, 2022, at around 8:20 in the morning, Witness #1¹ called 9-1-1 for help. Witness #1 reported his son, Ezekiel Love, was kicking the door, refusing to leave his residence, and was threatening to become violent. Witness #1 advised the dispatcher that Love threatened to become violent with deputies. Deputy Jacob Delano, from the San Bernardino County Sheriff's Department Victor Valley Station, decided to assist the other deputies who were responding to the call for service. Deputy Delano was in uniform and driving a marked patrol vehicle identifying him as a law enforcement officer.

As he drove to the location, Deputy Delano reviewed the additional information that Dispatch was providing on the call. Dispatch advised a male was heard yelling in the background and the reporting party was currently inside the location. The description given of Love was a Black male adult, approximately six foot four inches tall and 360 to 380 pounds. It was unknown whether Love had any weapons. Deputy Delano learned Love had a prior arrest for unlawfully possessing a firearm.

When Deputy Delano arrived at the scene, he saw his partners, Deputy Jesus Valadez, Deputy Larry Torres, and his trainee Deputy Alexiss Salazar, talking to Witness #1 at the front door. Deputy Delano briefly spoke with Deputy Torres. Love had left the location on foot, walking westbound from the house. Deputy Delano decided to conduct an area check for Love while the other deputies spoke to Witness #1. As Deputy Delano was driving near the intersection of Arlington Street and Henderson Street, he saw Love.

Deputy Delano stopped his patrol vehicle in the middle of the street. Deputy Delano indicated Love appeared agitated at his presence. Deputy Delano put out his location over the radio and advised he was going to contact Love. As Deputy Delano finished broadcasting, Love started shooting at Deputy Delano. Deputy Delano feared for his life. Love fired several more shots at Deputy Delano. Deputy Delano exited his patrol vehicle and ran to the back of it for cover.

Deputy Delano could see and hear Love still shooting at him. Deputy Delano drew his firearm and shot back at Love. Deputy Delano fired thirteen rounds at Love. As Love shot at Deputy Delano, he moved westbound on the south curb of Arlington Street. During the shooting, Love was struck by gunfire. Love fell to the ground and stopped moving. Deputy Delano gave Love verbal commands but there was no response from Love. Deputy Delano requested medical aid for Love.

Additional deputies arrived at Deputy Delano's location. Deputies approached Love. Love was unresponsive. Deputies started to render medical aid to Love. When medical personnel arrived at the scene, they transported Love to the hospital. After the lethal force

¹ Witness #1 shares the same last name as Ezekiel Love and therefore will be referred to as Witness #1 throughout the rest of the memorandum.

encounter, Deputy Delano saw several bullet holes in his patrol vehicle and the driver side window was shot out.

Witness #2 pronounced Love deceased at 9:30 a.m.

A Taurus 9mm semi-automatic handgun, model G3C, with an unknown brand of 9mm ammunition magazine inside was recovered at the scene.

STATEMENTS BY POLICE OFFICERS

On November 4, 2022, **Deputy Jacob Delano**² was interviewed by Detective Justin Carty and Detective Jonathan Ramstad.

On October 24, 2022, **Deputy Jacob Delano**, from the San Bernardino County Sheriff's Department Victor Valley Station, was assigned to patrol. Deputy Delano was in uniform and driving a marked patrol vehicle. Deputy Delano heard dispatch airing supplemental information to a call for service. Dispatch advised a male, later identified as Ezekiel Love, was yelling in the background threatening to become violent, and the reporting party, Love's father, was currently inside the location. Deputy Delano decided to respond and assist his other two partners who had been assigned to handle the call for service.

As Deputy Delano drove to the location, he reviewed and listened to the supplementals that were being put out by the reporting party. Dispatch advised Ezekiel was a Black male adult, six foot four inches, 360 to 380 pounds, wearing a blue sweater and jeans. Dispatch also advised Love was kicking the door and refusing to leave the location. Deputy Delano reviewed Love's criminal history and saw that he had a prior arrest for unlawfully possessing a firearm. Deputy Delano saw on his computer screen that his partners were three to four minutes ahead of him.

Prior to Deputy Delano's arrival at the location, he read on the computer in his patrol vehicle that Love was walking away from the residence. It was unknown whether Love had any weapons. It was reported that Love was threatening to become violent with deputies. When he arrived at the location, Deputy Delano saw his partners, Deputy Jesus Valadez, Deputy Larry Torres and his trainee Deputy Alexiss Salazar. They appeared to be speaking with the reporting party at the front door of the residence. Deputy Delano got out of his patrol vehicle and spoke to Deputy Torres. Deputy Torres said Love was last seen walking westbound from the house. Deputy Delano decided to conduct an area check for Love and got back into his patrol vehicle.

² Deputy Delano was equipped with a belt recorder that was recording during the incident under review. Deputy Delano reviewed his belt recording, the dispatch recording, and video recording from a nearby residence.

Deputy Delano saw Love at the intersection of Arlington Street and Henderson Street. Love was approximately 20 to 25 yards away. Deputy Delano stopped his patrol vehicle in the middle of the intersection at Arlington Street and Henderson Street. Deputy Delano put out his location over the radio and advised that he would be with one who matched the description. Love appeared agitated at Deputy Delano's presence. As Deputy Delano finished broadcasting, Love started shooting at him. Deputy Delano heard the first shot right after he looked down and put his patrol vehicle into park. He heard several more shots right after that first shot. Deputy Delano immediately feared for his life.

Deputy Delano exited his patrol vehicle and ran to the back of it for cover. Deputy Delano was scared for his life and the lives of people who may be inside the houses behind him. Deputy Delano drew his firearm and shot back at Love. Love continued to shoot at Deputy Delano. Deputy Delano fired thirteen rounds at Love. As Love was shooting, he started moving westbound on the south curb of Arlington Street, away from Deputy Delano. After the shooting, Love fell to the ground and stopped moving. Deputy Delano gave verbal commands for Love to put his hands up or his arms out. There was no response from Love.

Deputy Delano advised dispatch shots were fired, one subject was down, and requested medical aid. Additional deputies arrived on scene. Deputies approached Love and started to render medical aid. Medical personnel arrived and transported Love to the hospital. Deputy Delano looked at his patrol car and saw the driver window was shot out and there were several bullet holes. Deputy Delano estimated from the time he saw Love to the time the lethal force encounter was over was 25 to 30 seconds.

STATEMENTS BY CIVILIAN WITNESSES

On October 24, 2022, **Witness #1** was interviewed by Detective Jonathan Ramstad and Detective Justin Carty.

Witness #1 is the father of Ezekiel Love. Witness #1 said Love did not have any mental health issues or any diagnosed disabilities. Witness #1 indicated Love had not lived at the residence since December 2000. On October 24, 2022, Witness #1's daughter brought Love over to his house. Witness #1's wife and Love were talking when it turned into an argument. Witness #1's wife asked Love to leave. Love went outside but stayed on the front porch.

Witness #1 went to speak with Love. Witness #1 talked to him through a closed door. Witness #1 asked Love to leave multiple times but Love refused. Love threatened to kill Witness #1. Love also warned Witness #1 that if Witness #1 called the police, Love "will have it out with the police." Witness #1 did not see Love with a weapon. Love continued to threaten him and kick the front door. During the argument, Witness #1 worried about his safety and retrieved his gun from his bedroom. Witness #1 was unsure what Love would do to him and called 9-1-1.

Witness #1 told Love to leave the residence. Love told Witness #1, "You just killed your son, you just killed your son dumbass!" As deputies arrived at the location, Witness #1 saw Love across the street as he walked away. Witness #1 spoke to deputies at the front door. Witness #1 heard gunshots a short time later.

INCIDENT VIDEO AND AUDIO

RESIDENCE VIDEO CAMERA RECORDING. There was video camera recording of the incident taken from the residence of Witness #3 at ***** Henderson Street. Scott was inside his residence at the time of the lethal force encounter and did not witness the incident under review. The recording showed a portion of the lethal force encounter.

Love walked south on Henderson Street and across Arlington Street on the west curb line. Love was wearing a blue sweatshirt, jeans, and a red backpack. Love was carrying a dark colored bag. Love walked south and out of view of the camera. Deputy Delano drove his patrol vehicle south on Henderson Street toward Arlington Street. Deputy Delano stopped his patrol vehicle at the intersection of Henderson Street and Arlington Street. A tree blocked some of the view of Love. Love turned toward Deputy Delano's patrol vehicle and began to walk north toward Deputy Delano. Love moved toward Deputy Delano, with his right arm extended and fired multiple rounds. Deputy Delano exited his patrol vehicle and ran to the rear of his vehicle. Deputy Delano fired multiple rounds toward Love, who ran west on Arlington Street. Love's arm was extended toward Deputy Delano as he ran west on Arlington Street. Love fired additional rounds at Deputy Delano. Love ran west and fell to the ground on the south sidewalk of Arlington Street. Deputy Delano remained standing at the rear of his patrol vehicle. Additional deputies arrived on scene and approached Love.

BELT RECORDING. Deputy Delano had his belt recording activated during the incident under review. The audio recording was reviewed in its entirety. The summary will only cover from the start of the recording through the occurrence of the lethal force encounter.

Deputy Delano drove his patrol vehicle. The vehicle stopped and the door opened. Deputy Delano walked for a brief period. Deputy Delano then got back inside his patrol vehicle and started driving. Deputy Delano stopped his vehicle and got on the radio. Deputy Delano advised he would be out with Ezekiel. Gunshots were heard. Deputy Delano yelled, "Shots fired! Shots fired! Shots fired! Shots fired!" Additional gunshots were heard. Deputy Delano yelled, "Show me your hands!" Deputy Delano got on the radio and advised "Shots fired. One down. Henderson and Arlington." Deputy Delano then said, "Start meds." Deputy Delano yelled for an approaching vehicle to back up. Deputy Delano put out over the radio that he was not hit and the subject was down. Deputy Delano gave his location and advised several shots were fired. Additional deputies arrived at the scene.

DOORBELL CAMERA VIDEOS. Thirty doorbell camera videos from the residence at ***** Christopher Street were provided to law enforcement. All videos were reviewed in their entirety. The video labeled GVSQ7851 was approximately twenty seconds long. On the video Love was arguing with Witness #1. During the argument, Love told Witness #1, “Call the police and I’ll kill them too.”

GUNSHOT RESIDUE EXAMINATION

The right and left hand adhesive discs taken from Love were examined for gunshot residue particles by the San Bernardino County Sheriff’s Department Scientific Investigations Division. Seven characteristic gunshot residue particles³ were identified on the right hand adhesive disc. There were no gunshot residue particles identified on the left hand adhesive disc.

WEAPON

A Taurus 9mm semi-automatic handgun was located on the north sidewalk of Arlington Street.



³ Characteristic gunshot residue particles can be deposited on the hands by firing a firearm, being in close proximity of a discharging firearm, or by coming in contact with a surface that has gunshot residue on it, including handling a firearm or ammunition.

DECEDENT

AUTOPSY. Witness #4, Forensic Pathologist for the Coroner Division of the San Bernardino County Sheriff's Department, conducted the autopsy of Ezekiel Love on October 25, 2022. Witness #4 determined the cause of death was multiple gunshot wounds.

Number One - Gunshot Wound of the Right Arm and Back⁴:

A gunshot entrance wound was noted on the right arm, 23 cm below the top of the shoulder and 10 cm lateral of the anterior midline of the right upper extremity. There was no exit wound noted. The wound path was directed front to back and right to left.

Number Two – Gunshot Wound of the Abdomen and Chest:

A gunshot entrance wound was noted on the abdomen, 78 cm below the top of the head and 8.5 cm right of the anterior midline. There was no exit wound noted. The wound path was directed front to back, right to left, and upward.

Number Three – Gunshot Wound of the Chest and Neck:

A gunshot entrance wound was noted on the lateral left torso, 43 cm below the top of the head and 42 cm left of the anterior midline. There was no exit wound noted. The wound path was directed back to front, left to right, and upward.

Number Four – Tangential Gunshot Wound of the Left Middle Finger:

A tangential gunshot wound was noted on the left middle finger, centered 52 cm below the top of the elbow. The wound path was directed right to left, and downward.

Number Five – Graze Gunshot Wound of the Back:

A grazing gunshot wound was noted on the upper back, centered 17 cm below the top of the head and 7 cm right of the posterior midline. The direction of the wound path could not be determined.

Number Six – Gunshot Wound of the Back:

⁴ The numbering of the gunshot wounds is for reference only and not meant to indicate the order in which the gunshots occurred.

A gunshot entrance wound was noted on the lower back, 81 cm below the top of the head and 2 cm right of the posterior midline. There was no exit wound noted. The wound path was directed back to front and right to left.

Number Seven – Gunshot Wound of the Back and Abdomen:

A gunshot wound was noted on the lower back, 81 cm below the top of the head and 2 cm right of the posterior midline. There was no exit wound noted. The wound path was directed back to front and left to right.

TOXICOLOGY. Blood samples were collected from Ezekiel Love on October 25, 2022.

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

- Caffeine – Presumptive Positive
- Delta-9 Carboxy THC – 48 ng/mL
- Delta-9 THC – 1.7 ng/mL
- Amphetamine – 7.5 ng/mL
- Methamphetamine – 16 ng/mL

CRIMINAL HISTORY.

2021, 25850(a) of the Penal Code, Carry Loaded Firearm in Public Place. San Bernardino County Court case MWV21011873, a misdemeanor.

DE-ESCALATION

The time between when Deputy Delano started conducting an area check for Love and when Deputy Delano reported shots fired and one down was around two minutes. Love started shooting while Deputy Delano was still inside his patrol vehicle. It was critical for Deputy Delano to immediately respond to the threat. There was no time for Deputy Delano to attempt to de-escalate the situation.

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, 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

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

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 techniques if it is reasonable, safe and feasible to do so;

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

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

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).

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

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

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

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

(Penal C. §835a(e)(2).)

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

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

(*Id.* at 396-397, citations omitted.)

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without

regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (*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.)

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,

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.

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

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

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

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

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

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

Use of a Taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825 [Taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed “lethal force” the instrumentality must be force that “creates a substantial risk of death or serious bodily

injury.” (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a Taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson, supra*, 630 F.3d at 825; *Deorle v. Rutherford, supra*, 272 F.3d at 1279-80.) Similarly, the use of a trained police dog does not qualify as “deadly force” as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 165-169.)

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

ANALYSIS

In this case, Deputy Delano had an honest and objectively reasonable belief that Love posed an imminent risk of serious bodily injury or death. Witness #1 had called the police to report Love was refusing to leave his residence and threatening to become violent. As he drove to the location, Deputy Delano learned Love had a prior arrest for unlawfully possessing a firearm. It was unknown whether Love had any weapons but dispatch advised Witness #1 reported Love threatened to become violent with deputies. Deputy Delano also saw the physical description given for Love, approximately six foot four inches tall and 360 to 380 pounds.

When Deputy Delano arrived at the location, he briefly spoke to Deputy Torres. Love was no longer at the residence, so Deputy Delano decided to conduct an area check for Love. Deputy Delano saw Love near the intersection of Arlington Street and Henderson Street. He matched the physical description Witness #1 had provided to dispatch. Deputy Delano was in uniform and driving a marked patrol vehicle. Deputy Delano indicated Love appeared agitated when he saw Deputy Delano’s patrol vehicle. Deputy Delano stopped his patrol vehicle in the middle of the street and broadcasted on the radio that he would be contacting Love. As Deputy Delano finished broadcasting and looked down to put his vehicle into park, Love started shooting at him. Love was armed with a 9mm semi-automatic handgun. Deputy Delano estimated Love was twenty to twenty five yards away from him.

Deputy Delano reasonably feared for his physical safety. Given that he was in a residential area, Deputy Delano was also understandably afraid for the physical safety of any civilians

who may be in the homes behind his patrol vehicle. Deputy Delano estimated he heard two to three gunshots before he was able to exit his patrol vehicle. Deputy Delano ran to the rear of his vehicle for cover. Love continued shooting at Deputy Delano. Fearing for his life, Deputy Delano drew his firearm and shot back at Love. Deputy Delano fired thirteen rounds at Love. Love was moving westbound on the south curb of Arlington Street as he was shooting at Deputy Delano. Love fell to the ground and stopped moving.

Deputy Delano was faced with a life or death situation. Love was armed with a deadly weapon and shot multiple rounds at Deputy Delano. Deputy Delano estimated from the time he first saw Love to the time of the lethal force encounter was twenty five to thirty seconds. Deputy Delano's honest belief that Love was trying to kill him was objectively reasonable. Love's actions left Deputy Delano with no choice but to fire his duty weapon at Love. Any hesitation on the part of Deputy Delano could have resulted in his death. Given those circumstances, the decision by Deputy Delano to use deadly force was justified.

CONCLUSION

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

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