



## PUBLIC RELEASE MEMORANDUM

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**Date:** April 17, 2026

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

**Involved Officer:** Officer Jesus Guevara  
Rialto Police Department

**Involved Subject/DOB:** Gunther Tellez  
**Subject's Residence:** San Bernardino, CA

**Incident Date:** December 5, 2022  
**Incident Time:** 4:28 p.m.

**Case Agent/Agency:** Sergeant Candelario Sahagun  
San Bernardino County Sheriff's Department

**Agency Report #:** 602200136  
H#2022-158

**DA STAR #:** 2024-27601

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**PREAMBLE**

The summary of this non-fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The original case agent for this submission was SBCSD Detective Candelario Sahagun.<sup>1</sup>

The submission reviewed included the following: reports of law enforcement witnesses, law enforcement dispatch audio recordings, audio recordings of civilian and law enforcement witness interviews, law enforcement surveillance video recordings, law enforcement compilation videos, law enforcement audio recordings, law enforcement photographs, and law enforcement scientific investigation reports.

**FACTUAL SUMMARY<sup>2</sup>**

On December 5, 2022, at approximately 4:28 p.m., Rialto Police Department (RPD) Officer Jesus Guevara shot 37-year-old Gunther Tellez in a secured parking lot area of the RPD station at 128 North Willow Avenue in the city of Rialto. At the time he was shot, Mr. Tellez was armed with a black paintball gun with a likeness to an AR-15 rifle. Mr. Tellez 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 incident, Officer Guevara was returning to the RPD station in a marked black and white RPD patrol unit to meet another RPD employee—[REDACTED] ("Witness 1"). Witness 1 was already standing in the parking lot, waiting for Officer Guevara's arrival. Officer Guevara accessed the station parking lot via a driveway on West Rialto Avenue. Officer Guevara opened the parking lot gate with his employee access fob, drove north, and past the opened gate. Officer Guevara continued north into the lot and noticed a black Dodge Charger followed behind him before the gate closed; Mr. Tellez was driving the Dodge Charger. As soon as Officer Guevara spotted Witness 1, he stopped his patrol unit. Mr. Tellez stopped his car with some distance behind Officer Guevara's patrol unit and got out with what appeared to be a black rifle in his hands. Officer Guevara did not recognize Mr. Tellez. Witness 1 approached Officer Guevara's front passenger window. Both Officer Guevara and Witness 1 did not immediately find anything unusual about the presence of Mr. Tellez's sedan in the police lot because they knew RPD station detectives to drive a similar vehicle. Officer Guevara asked Witness 1 if she knew who drove the black Charger but Witness 1 did not recognize him. The next thing that Officer Guevara and Witness 1 knew, Mr. Tellez stood outside Officer Guevara's driver's window with the rifle pointed towards Officer Guevara's head. Officer Guevara sat stunned in the driver's seat of his patrol unit but immediately leaned backwards when he saw Mr. Tellez pull the trigger of his

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<sup>1</sup> After submitting this case for review, Detective Sahagun was promoted to the rank of Sergeant.

<sup>2</sup>The 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 Rialto Police Department (RPD) at the time of their involvement.

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rifle. No gunshot followed. Officer Guevara believed that Mr. Tellez's rifle malfunctioned. Officer Guevara then saw Mr. Tellez run away (southwesterly) from his patrol unit. In one swift movement, Officer Guevara got out of his patrol unit, faced south towards where Mr. Tellez ran and drew his duty weapon. Just as Officer Guevara did so, Mr. Tellez turned to face Officer Guevara and pointed his rifle a second time at Officer Guevara. Witness 1 was in the process of running away and back into the station building when she heard what she described as a "spray" of gunfire. Also running into the station building at the same time as Witness 1 was a contracted custody officer— [REDACTED] ("Witness 2"). Witness 2 was also in the lot when Officer Guevara entered it and up to that point had watched the incident unfold.

Officer Guevara fired two separate volleys at Mr. Tellez before Mr. Tellez fell to the ground and dropped his rifle. After Mr. Tellez fell, it appeared to Officer Guevara that not only was the rifle still within Mr. Tellez's reach and that he might be trying to re-arm himself with it, but also that Mr. Tellez appeared to be reaching for his waistband, where the officer believed Mr. Tellez might draw a secondary weapon from. Officer Guevara's gunfire stopped before Mr. Tellez stopped moving. Less than five seconds after Officer Guevara's final gunshot, other officers appeared in the parking lot and assisted in disarming Mr. Tellez and placing Mr. Tellez in handcuffs. The entire incident, from the time Mr. Tellez entered the parking lot, to the time Mr. Tellez was taken into custody, was approximately a minute.

After an examination of the scene and the collection of evidence, it was discovered that Mr. Tellez's rifle was an all-black paintball gun without any compressed gas tank or paintball reservoir attached. It is estimated that Officer Guevara fired 13 to 14 times in total during the incident. Officer Guevara's duty weapon was collected and examined by a SBCSD Scientific Investigations Division (SID) criminalist. No damage, modification, or malfunction was noted in Officer Guevara's weapon.

Mr. Tellez received medical aid at the scene promptly, as Rialto Fire Department (RFD) medical personnel responded from a RFD station across the street from where the shooting took place. Mr. Tellez was transported from the scene by ambulance to a local hospital, where he was found to have suffered GSWs to the left axilla, right shoulder, and right pelvic areas. Mr. Tellez's injuries were described by a physician as being non-life-threatening.

**STATEMENTS BY LAW ENFORCEMENT WITNESSES<sup>3</sup>**

**Officer Jesus Guevara** gave a voluntary statement to SBCSD Detectives Sahagun and Marcus Young on December 13, 2022, in the presence of Officer Guevara's attorney, approximately eight days after the shooting occurred. At the time of the interview, Officer Guevara was 25 years old and had served Rialto as a police officer for approximately three years. Prior to that, Officer

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<sup>3</sup> 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. Tellez by name are made here for ease of narrative.

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Guevara served as an RPD police explorer for one and a half years. He had no other law enforcement or military experience. This was Officer Guevara's first lethal force encounter.

During the shooting incident, Officer Guevara wore a black soft body armored tactical vest with his last name and "POLICE" written in large white block letters on the right front chest, and an RPD cloth badge on the left front chest. "POLICE" was written in large white block letters across the span of the upper back of the vest. Under the vest, Officer Guevara wore a short-sleeved black polo shirt with RPD agency patches on both outer shoulders. Officer Guevara also wore black pants. Officer Guevara wore a drop-down firearm holster on his right thigh. Officer Guevara also wore black boots. Officer Guevara described himself as standing approximately six feet tall and weighing approximately 180 pounds.

Prior to making his statement, Officer Guevara reviewed video footage of the incident.<sup>4</sup> The following is a summary of relevant information disclosed by Officer Guevara at the time of his interview:

On the afternoon of the incident, Officer Guevara was on duty and driving an RPD marked patrol unit. Officer Guevara drove his patrol unit into a secured RPD parking lot area through a gate he opened with a fob issued to him. As Officer Guevara drove through the opened gate, he noticed a black Dodge charger trail behind and into the parking lot area. Officer Guevara was at the station to meet Witness 1, who was already waiting in the parking lot. Officer Guevara stopped his patrol unit abruptly when he noticed Witness 1. Officer Guevara saw that the black Dodge behind him had also stopped. Officer Guevara believed that the driver of the black Dodge must be a detective or other officer on special assignment since the black Dodge was typical of what a detective or other officer on special assignment would drive. Officer Guevara saw that Mr. Tellez got out of his car with what appeared to be an AR-15 rifle. Officer Guevara still believed that Mr. Tellez might be a station detective, but Officer Guevara diverted his attention to Witness 1, who by that time was standing outside his opened passenger window. Officer Guevara asked, "who the fuck is that?" Witness 1 told Officer Guevara that she did not know.

The next thing that Officer Guevara recalled was that Mr. Tellez stood approximately six inches to a foot outside his driver's side window, holding his rifle to Officer Guevara's head. Officer Guevara saw that Mr. Tellez held his rifle tucked into his shoulder like he was ready to fire it. Officer Guevara believed he was about to get shot in the head. Officer Guevara jerked his head backward to try to get some cover. Officer Guevara stated that he did not draw and fire his handgun while he was seated in the patrol car because he was in shock and still trying to process what was happening. Officer Guevara watched Mr. Tellez pull the trigger of the rifle, and when nothing happened, Mr. Tellez looked down at his weapon. Officer Guevara believed that Mr. Tellez's rifle was jammed. However, Mr. Tellez ran in a southwesterly direction, away from Officer Guevara's car doorway. Officer

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<sup>4</sup> The submission indicated that Officer Guevara reviewed RPD station surveillance video, Officer Cole Retke's BWC and dash-cam video, and listened to the dispatch audio recording generated during the shooting incident. (See Submitted Media, *infra*.)

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Guevara recognized the moment as a chance to get out of his patrol car. As Officer Guevara got out, he drew his duty weapon and pointed it at Mr. Tellez. Mr. Tellez turned back around to face Officer Guevara and pointed his rifle at Officer Guevara. There were no obstructions between them. From a distance of approximately 10 to 15 feet, Officer Guevara fired what he believed was a volley of three rounds, followed by a second volley of three rounds before Mr. Tellez fell to the ground and dropped his rifle.

During the pause in his gunfire, Officer Guevara saw that Mr. Tellez was on the ground but still moving. When it appeared that Mr. Tellez was trying to get up to grab his rifle, which was within Mr. Tellez's reach, Officer Guevara fired a third volley of gunfire. Officer Guevara's last shot came when Mr. Tellez appeared to be reaching for his waistband, where Officer Guevara believed Mr. Tellez may be accessing a secondary firearm. Officer Guevara was previously trained that an assailant with one firearm was likely to have a second firearm. After Officer Guevara's final volley, additional officers began to pour outside from the station building with their guns drawn.

Although Officer Guevara didn't recall Mr. Tellez or himself saying anything to each other during the incident, Officer Guevara stated that the additional officers who came out of the station building gave Mr. Tellez commands like, "let me see your hands," and "put your hands up." Mr. Tellez appeared to be compliant at that point. Officer Guevara stated that he did not assist in detaining Mr. Tellez. Instead, Officer Guevara exchanged his pistol magazine with a new one, to be ready for any additional suspects or further gun battle. Officer Guevara stated that he did not realize there was only one suspect until other officers confirmed it with Mr. Tellez.

After Mr. Tellez was taken into custody, Officer Guevara recalled asking an RPD lieutenant to check whether Officer Guevara had been shot. Officer Guevara stated that Mr. Tellez had a rifle with gunpower that could have penetrated the officer's vest. Officer Guevara believed he might not feel if he had been shot due to the surge of adrenaline he felt. After being checked over, Officer Guevara was told he was ok. Officer Guevara also asked others to check if Witness 1 had been shot.

Officer Guevara was specifically asked whether he believed that Mr. Tellez's rifle was "actually a real firearm." Officer Guevara stated that he "absolutely, 100%" believed Mr. Tellez had a real firearm, with "no doubt in [his] mind." Officer Guevara explained that Mr. Tellez's rifle had no orange tip, was all black and appeared to have an adjustable stock, similar to Officer Guevara's own rifle.

Approximately four hours after the shooting incident, Officer Guevara was photographed by SBCSD Detective Sahagun with the assistance of a SBCSD forensic technician. Detective Sahagun found that Officer Guevara was carrying a semi-automatic handgun outfitted with a tactical light. There was one live round in the handgun's firing chamber, plus 15 more rounds in the handgun's inserted magazine. Detective Sahagun found that Officer Guevara also had two spare magazines on his vest. One of the spare magazines contained 14 rounds and the other contained 15 rounds.

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All the rounds Officer Guevara carried bore a headstamp of “WIN 40 S&W.” Detective Sahagun also found that Officer Guevara carried a Smith & Wesson Airweight 38 special caliber revolver in a pocket holster within Officer Guevara’s left front pant pocket. Officer Guevara’s revolver contained five rounds. Officer Guevara did not draw or fire his revolver during the shooting incident.

Thirteen fired cartridge casings (FCC’s) bearing the headstamp “WIN 40 S&W” were recovered from the scene of the shooting. Officer Guevara’s firearm was submitted to a SBCSD criminalist for examination and testing. The criminalist described Officer Guevara’s duty weapon as a Glock, model 22 Gen 4, 40 S&W caliber semi-automatic pistol. The criminalist found that Officer Guevara’s firearm had no modifications or defects, and that it fired without malfunction. Based upon the submission in total, it appears that Officer Guevara fired his Glock approximately 13 to 14 times at Mr. Tellez.<sup>5</sup>

**Additional law enforcement witnesses** who were present at the time of the lethal force encounter or in the immediate aftermath were interviewed and/or prepared reports regarding their observations and/or involvement.

Approximately six hours after the shooting occurred, **RPD Officer Cole Retke** was interviewed by Detectives Young and Sahagun. Officer Retke recorded video footage of the incident with his BWC and with the dashcam of his patrol unit.<sup>6</sup> (See Submitted Media, Body Worn Camera Video and Dashcam Video, *supra*.) Officer Retke told investigators that he was on duty, wearing his RPD uniform, and was just returning to the station back parking lot when he heard gunfire. Officer Retke did not *see* where the gunfire was coming from. Officer Retke accessed the parking lot using the fob assigned to him and when the parking lot gate opened, he saw Mr. Tellez on the ground with an AR-style rifle directly below him. Officer Retke drove his marked patrol unit past the gate, got out, drew his duty weapon, and moved forward to the rear of Mr. Tellez’s car. At the time, Officer Retke assumed that Mr. Tellez’s car was a police vehicle, as he knew RPD to have Dodge Chargers like Mr. Tellez’s car. Officer Retke estimated that Mr. Tellez was on the ground approximately 10 feet west of Mr. Tellez’s car. Officer Retke recalled giving Mr. Tellez orders not to move and to show his hands. While Officer Retke was still taking cover behind Mr. Tellez’s car, other officers came outside from the station building. Officer Retke was among the first group of officers to approach Mr. Tellez where he lay on the ground. Officer Retke stated that while Mr. Tellez was on his back, he did not see Mr. Tellez making any reaching movements towards his firearm. While Mr. Tellez was taken into custody, Officer Retke was tasked with checking Mr. Tellez’s car for additional subjects. Officer Retke found that the Charger was still running but was

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<sup>5</sup> Although only 13 FCC’s were recovered from the scene, Officer Guevara was uncertain whether his inserted magazine had 15 rounds prior to the incident. If Officer Guevara’s weapon was loaded with 15 rounds in the magazine, plus one in the chamber, the remaining rounds in the inserted magazine and the firing chamber after the incident would indicate that Officer Guevara fired 14 rounds during the incident. In that case, one FCC was unaccounted for. However, it was just as likely that Officer Guevara started off with 14 rounds, as was the case with one of his extra magazines. The recovered FCC count was consistent with the latter scenario, which would support a conclusion that Officer Guevara fired 13 rounds during the incident.

<sup>6</sup> Officer Retke declined to review either of those recordings prior to giving his statement.

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shifted into “park.” After finding there were no other suspects in the car, Officer Retke assisted other officers with rendering first aid to Mr. Tellez. RFD personnel arrived to take over care of Mr. Tellez shortly thereafter and Officer Retke was assigned to ride in the ambulance with Mr. Tellez. While at the rear of the ambulance, Officer Retke recalled hearing the paramedics ask Mr. Tellez if this was a suicide attempt. Officer Retke heard Mr. Tellez say, “something along the effect of ‘yes.’”

**RPD Captain Anthony Vega** was interviewed approximately six hours after the shooting incident by SBCSD Detectives Arturo Alvarado and Andrew Montbriand.<sup>7</sup> Captain Vega was working as the station commander at the time of the incident. Captain Vega recalled hearing “shots fired” in the west parking lot announced over the radio. Captain Vega then heard a volley of five to 10 rapidly-fired rounds; the sound caused the captain to jump to his feet. Captain Vega ran out the west door of the station to the area where the shooting occurred. Captain Vega thought he was going to get shot when he came out of the station. Captain Vega believed he was the first person to get outside but saw Officer Guevara to his right with his gun aimed in Mr. Tellez’s direction. At the time, Mr. Tellez was laying on the ground. Captain Vega estimated that Mr. Tellez lay 60 to 80 feet away from Officer Guevara’s driver’s door. Then, as Captain Vega started to walk towards Mr. Tellez, Captain Vega saw that there was a rifle similar to an AR-15 rifle, approximately eight to 10 feet away from where Mr. Tellez lay. When Captain Vega reached Mr. Tellez, Captain Vega holstered his weapon, handcuffed Mr. Tellez behind his back, and began to assess Mr. Tellez’s GSW’s. While Mr. Tellez was being assessed, Captain Vega was concerned that there may be other shooters on the property, but Mr. Tellez said he was alone. Captain Vega directed a check of the entire immediate area, including station buildings, to check for any additional suspects and ordered a headcount of all employees to make sure there were no other wounded.

Captain Vega stated that Mr. Tellez was trespassing in the parking lot where the shooting occurred. The captain explained that the parking lot was a secure police facility that required fob access. Captain Vega also explained that the station does have four black Dodge Chargers, and that it would be “very easy” for someone to think that Mr. Tellez’s car was a police vehicle at first glance. Additionally, Captain Vega stated that Mr. Tellez’s rifle, “absolutely looked authentic to [him] and [was] something that was fully capable of mass casualty.” Captain Vega opined that if someone had pointed Mr. Tellez’s rifle at him, that he would be in fear for his life and believe it to be an authentic loaded firearm.

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<sup>7</sup> Prior to his interview, Captain Vega reviewed station surveillance video and radio transmission recordings related to the incident.

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**STATEMENTS BY CIVILIAN WITNESSES**<sup>8</sup>

**Witness 1** was a civilian RPD employee at the time of the incident. Witness 1 gave a voluntary statement to Detectives Sahagun and Young at the RPD station in the presence of Witness 1's attorney, approximately two days after the shooting took place.<sup>9</sup>

Witness 1 arranged to meet Officer Guevara in the RPD station parking lot at approximately 4:26 p.m., on the afternoon of the shooting. When Officer Guevara entered the parking lot, Witness 1 saw Mr. Tellez's car follow Officer Guevara's patrol unit in through the RPD lot gate. As Officer Guevara's patrol unit came to a stop, Witness 1 walked toward Officer Guevara's passenger side door. Witness 1 did not pay special attention to Mr. Tellez's car because Witness 1 believed the Charger was an RPD unmarked "undercover" unit. Before Witness 1 reached Officer Guevara's window, Witness 1 heard Mr. Tellez say, "Hey!" Witness 1 turned her head to look toward Mr. Tellez, who was outside of his car. At first glance, Witness 1 thought Mr. Tellez was an RPD officer. Witness 1 also stated that Mr. Tellez stopped his car in a position that was not unusual for RPD officers; another reason Mr. Tellez's presence did not raise any red flags for Witness 1. However, as soon as Witness 1 reached Officer Guevara's front passenger window, Witness 1 heard Officer Guevara say, "Who the fuck is that?" Witness 1 told Officer Guevara she didn't know. Witness 1 lost sight of Mr. Tellez momentarily. Then, Mr. Tellez reappeared standing outside Officer Guevara's driver's door with a rifle pointed in her direction and at Officer Guevara's head. Initially, Witness 1 thought, "this isn't funny if its one of my guys playing a joke." Witness 1 had been an RPD employee for 27 years by that time, but as soon as she noticed that Mr. Tellez was *not* an RPD officer, Witness 1 became terrified that she and Officer Guevara would be shot and killed. Witness 1 recalled Mr. Tellez saying something like Mr. Tellez didn't expect Officer Guevara to be ready for him. Witness 1 told investigators that she saw Officer Guevara draw his duty weapon as he sat in his patrol unit, but that she backed away from Officer Guevara's passenger door, turned around, and ran towards the station. Witness 1 said that she did not turn back to see what happened to Officer Guevara and that she heard gunfire before she reached the station door. Witness 1 could not discern whether the gunfire she heard was from one or two weapons. Witness 1 explained that the gunfire sounded like a random spray of gunfire. As soon as Witness 1 made it back inside the station, Witness 1 recalled telling others in the hallway that the gunshots were in the parking lot and that the shooter was still there. As other officers went outside, Witness 1 retreated further inside the station and took cover.

Approximately four to five minutes after she went inside, Witness 1 returned to the parking lot where the shooting took place to find her cell phone. Witness 1 found her phone a few steps outside the station door. Witness 1 stated that she did not see anything when she went back outside nor did she want to see what was happening as she thought for sure that she would be told Officer Guevara

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<sup>8</sup> All reports of civilian statements made were reviewed, though not all are summarized here. No civilian witness, with the exception of Mr. Tellez's relatives, knew, became aware of or used Mr. Tellez's name. All specific references to Mr. Tellez are made here for ease of narrative.

<sup>9</sup> Witness 1 did review station surveillance video of the incident prior to and during the interview. Witness 1 was unable to identify Mr. Tellez in a photo lineup subsequent to her interview.

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had been killed. Witness 1 told investigators that she believed that Mr. Tellez might have hesitated in shooting towards Witness 1 as Witness 1 stood at Officer Guevara's patrol unit because Witness 1 was in civilian clothing and Mr. Tellez "was looking for a cop to kill."

**Witness 2** was a civilian RPD agent at the time of the incident. Witness 2 gave a voluntary statement to Detectives Alvarado and Montbriand at the RPD station three and a half hours after the shooting occurred.<sup>10</sup>

On the day of the shooting, Witness 2 stated that he was employed by a security services company and had been providing custody officer services at RPD for almost a year. Witness 2 explained that his duties included accompanying arrested individuals to county jail or the hospital. At the time Officer Guevara drove into the RPD parking lot before the shooting took place, Witness 2 was sitting in his assigned work van in the same parking lot. Witness 2 watched Officer Guevara get followed into the lot but explained he, "didn't think anything of it because [RPD] detectives sometimes drive chargers." However, Witness 2 stated he next saw Mr. Tellez stop his car about 25 feet behind Officer Guevara's patrol unit, come out of the driver's side of his car, and walk toward Officer Guevara's driver's side door with an AR-15-style rifle. Witness 2 estimated that his van was within 15 feet of Mr. Tellez's car and within 15 to 20 feet of Officer Guevara's patrol unit.

As Mr. Tellez got halfway to Officer Guevara's window, Witness 2 saw Mr. Tellez bring his rifle up from a "low-ready" to a "high alert" position.<sup>11</sup> Witness 2 immediately opened his van door, got out, and tried to alert Officer Guevara through his radio. At the time, Witness 2 estimated that Mr. Tellez was about five to seven feet away from Officer Guevara's driver's side door and saw Mr. Tellez pointing his rifle toward Officer Guevara's car. Witness 2 could not see Officer Guevara from where he was watching, but Witness 2 did see Witness 1 running back towards the main station door. Witness 2 ran around his van, toward Witness 1, and heard the sound of three to six gunshots. Witness 2 told investigators he radioed, "shots fired west lot." Witness 2 stated that he did not know whose gunfire he heard. When Witness 2 got inside with Witness 1, Witness 2 relayed to the officers inside that there was a Hispanic male in the lot with an AR-15 rifle.

In retrospect, Witness 2 said that he was trying to process and react to what was happening. Witness 2 stated that he thought it was "very weird" and "unexpected" when he first saw Mr. Tellez. Witness 2 said there was not much he could do in that situation because he did not have a ballistic vest on, nor did he have a gun or pepper spray. Witness 2 stated that after shots rang out that he wanted to get out of Mr. Tellez's line of fire, get to Witness 1, and then get inside. On the other hand, Witness 2 also wondered if it was a prank or even that it might be a paintball situation because RPD officers "play pranks on each other all the time." Ultimately, Witness 2 stated he believed Mr. Tellez had a firearm, that he was scared, and believed that the lives of Officer Guevara and Witness 1 were endangered.

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<sup>10</sup> Witness 2 acknowledged watching video footage of the incident prior to his interview.

<sup>11</sup> Witness 2 explained that he was previously a U.S. Coast Guard firearms instructor and marksmanship coach, and that the "high alert" position signified, "that [Mr. Tellez] was going to shoot somebody or something."

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**Family members** who resided with Mr. Tellez were contacted on the night of the shooting by investigators. Family members denied that Mr. Tellez exhibited any suicidal ideation, but did state that Mr. Tellez was acting “crazier” recently. Family members told investigators that Mr. Tellez recently admitted to being a marijuana addict and on the day of the shooting was supposed to be going to a clinic for help with his addiction. Family members also told investigators that they had a paintball gun in their residence that looked like a black rifle, but that no one could locate it. Family members also shared a group text chat that included them and Mr. Tellez, where at 3:44 p.m. on the day of the shooting, Mr. Tellez asked them to “come get the car” at a pinned location—the RPD station. Two days after the shooting, one of Mr. Tellez’s family members re-contacted investigators and shared that Mr. Tellez had left a note that was written by Mr. Tellez the night before the shooting. The note stated the following:

To my kids  
you guys can  
do anything you pup [SIC] your mind  
to [name omitted]  
I Gunther Elizalde T  
I leave car to you. P.S.  
I always [SIC]  
will love you  
[smiley face]  
learn how to cook  
for your self [SIC] and  
clean don’t stay  
with Tin make  
the same mistake

**SUBMITTED MEDIA**<sup>12</sup>

**DISPATCH RECORDING.** The case agent’s submission included audio recordings of radio transmissions between RPD dispatch operators and RPD officers. The following is a summary of material events that occurred on December 5, 2022, evidenced by these recordings and a dispatch log provided by the case agent:<sup>13</sup>

At approximately 4:29 p.m., Officer Retke announced, “Shots fired. West [unintelligible].” Although the dispatcher was immediately able to confirm Officer Retke’s radio traffic there was no further intelligible radio traffic from Officer Retke. For the next minute, the dispatcher attempted to ascertain Officer Retke’s location. Then, the dispatcher announced

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<sup>12</sup> 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.

<sup>13</sup> 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.

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Officer Retke was at the RPD station, in the “unit lot” and “it looks like we have one down.” At approximately 4:30 p.m., someone asked for the nearby intersection of Willow Avenue and Rialto Avenue to be shut down and for RFD to respond. Approximately six minutes after Officer Retke announced, “Shots fired,” Captain Vega radioed, “We were able to take the shooter into custody. There is no information of a second shooter,” and, “We have the suspect being transported [to the hospital] now.”

There was no audible radio traffic on the dispatch recording included in the submission from Officer Guevara or Witness 2.

**BODY WORN CAMERA VIDEO.** Although multiple BWC video segments were included in the submission, none of them captured any footage of events that took place immediately before or during the shooting. All BWC videos submitted included footage recorded *after* the shooting was complete. The following is a summary of material events included in various noted BWC videos:<sup>14</sup>

Officer Guevara’s post-shooting BWC footage was approximately three and a half minutes long and began as other officers arrived in the parking lot to take Mr. Tellez into custody. Officer Guevara could be seen holding his gun with his left hand, but did not appear to approach Mr. Tellez. Instead, Officer Guevara exchanged the magazine in his duty weapon. The video showed Officer Guevara’s hands were trembling and that Officer Guevara appeared to be breathing heavily. Someone was then heard asking, “Is there anyone else outstanding?” Officer Guevara responded, “No, that’s the only guy.” Less than 30 seconds later, Officer Guevara asked another officer to check him over. A minute and a half after that, after Captain Vega asked if any of “our people” are hurt, Officer Guevara asked that Witness 1 get checked.

Corporal Nicolas Parcher’s BWC video was approximately one minute and 48 seconds long. Corporal Parcher appeared to be assisting in providing first aid to Mr. Tellez at the scene. After Captain Vega asked if any RPD personnel were hurt, Mr. Tellez was seen mouthing or whispering that he (Mr. Tellez) couldn’t hurt anyone because the rifle was not real.

Officer Retke’s BWC video was approximately 17 minutes and 19 seconds long, and began with Officer Retke checking Mr. Tellez’s car. After checking Mr. Tellez’s car, Officer Retke assisted with rendering first aid to Mr. Tellez. While assisting with Mr. Tellez’s first aid, Officer Retke’s device captured Mr. Tellez telling Captain Vega that “he didn’t shoot anybody.” Mr. Tellez also told Captain Vega that his name was, “Omar.”

Lieutenant James Mills’s BWC was approximately five minutes and 51 seconds long. Lieutenant Mills BWC footage also showed Mr. Tellez initially telling officers that his

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<sup>14</sup> The noted duration of time included in this summary is based upon the timestamping included in the referenced video.

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name was “Omar.” Approximately five minutes after that, Mr. Tellez told paramedics in the ambulance that his name was, “Gunther Elizalde.”

**DASHCAM VIDEO.** A camera mounted inside the front windshield of Officer Retke’s patrol unit captured part of the shooting incident.<sup>15</sup> The dashcam video was date and time stamped. The following is a summary of the material events captured by Officer Retke’s dashcam device:<sup>16</sup>

At approximately 4:28 p.m., Officer Retke was driving eastbound on West Rialto Avenue, towards the RPD station. As Officer Retke turned left into the RPD parking lot driveway, the lot gate appeared to be in the process of closing. Through the gate, Witness 2 could be seen fleeing from the driver’s side of his van and Mr. Tellez’s car could be seen parked ahead in the lot with the driver’s door wide open. Officer Retke’s patrol unit appeared to cause the gate to stop closing, but before Officer Retke’s unit moved through the reopening gate, Mr. Tellez could be seen lying faced-down on the ground. The audio portion of the dashcam video began once Officer Retke’s patrol unit moved past the gate; the first 29 seconds included video footage without audio.

Officer Retke opened his car door to get out less than three seconds after stopping his unit behind Mr. Tellez’s car. Suddenly, Mr. Tellez propped up his upper body by pushing up on his left hand and right forearm. Mr. Tellez appeared to look in Officer Retke’s direction as he did so. Then two successive gunshots rang out. Mr. Tellez appeared to flinch and curl into a fetal-like position in response, then Mr. Tellez flopped onto his right side. A third gunshot was audible as Mr. Tellez unfurled, with his left hand on his left side and his right arm in front of him. Mr. Tellez moved his left hand toward his front waistband when the fourth and last gunshot rang out. Mr. Tellez’s movements were sudden and jerky. All four gunshots were audible over a period of approximately three seconds. Only as the last gunshot was heard did Officer Retke appear to move forward toward the rear of Mr. Tellez’s car, with his own gun drawn and pointed toward Mr. Tellez.

Immediately after the gunfire stopped, Mr. Tellez continued to squirm on the ground, but slowly, with his hands moving to his pants and laying on his right side as Officer Retke shouted out, “Hey, don’t fucking move.” Mr. Tellez appeared to let out a groan and looked toward Officer Retke. Officer Retke moved across the front hood of his patrol unit to the rear of Mr. Tellez’s car and paused momentarily, as additional officers could be heard filing out of the station building ahead (north), and who also yelled, “don’t fucking move.” Officer Retke then approached Mr. Tellez on the ground with the other officers. About 15 seconds after the last shot was heard, Mr. Tellez rolled onto his back and appeared to put both of his open palms up and forward to signal surrender. As another officer turned Mr. Tellez back onto his stomach to place Mr. Tellez in handcuffs behind his back, Officer Retke kicked Mr. Tellez’s rifle out of Mr. Tellez’s reach.

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<sup>15</sup> Officer Guevara acknowledged that he reviewed Officer Retke’s dashcam video prior to his interview and explained that the dashcam video only captured the end of the shooting.

<sup>16</sup> The noted time included in this summary is based upon the timestamping included in the referenced video.

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The dashcam video also showed that RFD paramedics were at Mr. Tellez's side at 4:33 p.m., approximately five minutes after the shooting. Approximately two minutes after that, Mr. Tellez was lifted onto a gurney and moved away from the scene.

**SURVEILLANCE VIDEO.** The submission included date and time-stamped RPD station surveillance video footage from various vantage points around the RPD station that included video images of Mr. Tellez's car following Officer Guevara's patrol unit from North Willow Avenue (in front of the RPD station), to the parking lot entrance on West Rialto Avenue, and finally into the lot itself.<sup>17</sup> The submitted surveillance videos captured the shooting incident but included silent video images only; the submitted surveillance videos did not include accompanying audio at any point before, during, or after the shooting incident. A compilation video that appeared to include the station surveillance video from multiple vantage points of the same events in one continuous video was also included in the submission. The compilation video was also silent. The following is a summary of material events evidenced by the submitted surveillance video:<sup>18</sup>

On the day of the shooting, Witness 2 entered and parked his work van in the RPD lot by backing into a stall abutting the station building and facing west, at approximately 4:15 p.m.; Witness 2 remained inside the van. Witness 1 came out of the station building door which was north of where Witness 2's van was parked, at 4:26 p.m. and leaned up against the door, propping it open while she waited. Less than two minutes after Witness 1 came out of the station door, Officer Guevara arrived at the parking lot driveway. Officer Guevara's patrol unit faced north toward the closed parking lot gate, which was southwest of the front of Witness 2's van. As Officer Guevara's patrol unit started to move forward and through the opening gate, Mr. Tellez turned into the parking lot driveway at a car-length's distance behind Officer Guevara's patrol unit. At 4:28 p.m., less than 20 seconds after he arrived at the closed gate, Officer Guevara drove north past the front of Witness 2's van and past Witness 1 where she stood at the station door. Mr. Tellez trailed behind Officer Guevara's patrol unit and stopped abruptly just south of Witness 2's van. Officer Guevara's patrol car continued north, moved slightly past the station door, and stopped. Witness 1 was already walking towards Officer Guevara's passenger window before Officer Guevara's patrol unit stopped. The station door swung closed as soon as Witness 1 walked away from it.

As Witness 1 drew closer to Officer Guevara's passenger window, Mr. Tellez stepped out of the driver's side of his car and appeared to look toward Witness 1. While continuing to walk toward Officer Guevara's patrol unit, Witness 1 turned her head away from Officer

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<sup>17</sup> During his interview, Officer Guevara stated that he saw the driver of a dark sedan parked on the west curb of Willow Avenue, approximately a half block to a block away from the station, move from the driver's seat and appeared to get something from the trunk. The driver's arm movements made Officer Guevara believe that the driver was cocking some form of weapon. Officer Guevara described the driver as a Hispanic or White male. However, Officer Guevara couldn't be certain that the driver was Mr. Tellez.

<sup>18</sup> The noted time included in this summary is based upon the timestamping included in the referenced video.

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Guevara's patrol unit (northwest) and towards Mr. Tellez (southwest).<sup>19</sup> Mr. Tellez then appeared to duck back into the driver's seat area of his car and could be seen a moment later moving outside of his car, wearing a black t-shirt, black pants, white shoes, and a white baseball cap, carrying a black rifle in his right hand. Mr. Tellez appeared to run west and away from his car, then north—across the front of Witness 2's van, and north towards Officer Guevara's driver's door.

Upon closing in on Officer Guevara's patrol unit, Mr. Tellez could be seen raising his rifle with two hands, pulling the butt end of the rifle stock into his right shoulder,<sup>20</sup> and pointing the rifle muzzle towards Officer Guevara's patrol unit.<sup>21</sup> At that moment, Witness 1 appeared to be receiving a white bag from Officer Guevara. As Mr. Tellez moved out of view, Witness 1 stood next to Officer Guevara's front passenger door. Witness 2 opened his van driver's door, got out, and could be seen facing Officer Guevara's patrol unit, presumably watching through the van's front windshield. Then simultaneously, Witness 1 appeared to step backwards from Officer Guevara's passenger door and Mr. Tellez stepped back into view and could be seen running southwest (away) from the west side of Officer Guevara's patrol unit. Mr. Tellez ran with his back turned to Officer Guevara's patrol unit for approximately a car's length. Then suddenly, Mr. Tellez stopped running away and turned to face Officer Guevara's patrol unit once more. As he did so, Mr. Tellez raised his rifle into the "high alert" position with the rifle pointed towards the driver's side of Officer Guevara's patrol unit.<sup>22</sup> Witness 1 was still backing away from Officer Guevara's patrol unit and Witness 2 was still standing outside his van. Witness 1 and Witness 2 both appeared to be looking towards Mr. Tellez. Mr. Tellez shuffle-stepped to the south and continued to point his rifle towards Officer Guevara for two to three seconds, when Witness 1, Witness 2, and Mr. Tellez appeared to flinch and crouch down in unison. Next, Mr. Tellez turned away from Officer Guevara, fell to the ground onto his stomach, and let go of his rifle. The rifle slid on the asphalt in a southerly direction, approximately half a parking stall's width away from Mr. Tellez's head. Meanwhile, Witness 1 entered the station doorway running, followed by Witness 2. As Witness 2 entered the station and the station door closed behind him, Mr. Tellez placed his right hand toward the direction of the rifle and appeared to also lift his head to look at it. Then suddenly, Mr. Tellez pushed up his upper torso. Officer Guevara appeared to move north of his opened driver's door and fired at least two shots from that position. By this time, Officer Retke had already pulled through the parking lot gate and was outside of his patrol unit. Mr. Tellez next flopped his upper chest down to the ground, with his face looking toward Witness 2's van. Mr. Tellez then again suddenly moved, this time rolling onto his right side with his left arm, and then curled into a fetal position with his hands in front of him. Mr. Tellez's right

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<sup>19</sup> During her interview, Witness 1 explained that at this point of the video when she turned to look at Mr. Tellez, it was because Mr. Tellez yelled, "Hey," and caught her attention.

<sup>20</sup> This was consistent with the "high alert" position described by Witness 2.

<sup>21</sup> No submitted surveillance video captured the driver's side (west) of Officer Guevara's patrol unit. The submitted video of Officer Guevara's patrol unit faced west, so that when Mr. Tellez moved to the west of Officer Guevara's patrol unit, the view of Mr. Tellez was obscured by Officer Guevara's patrol unit.

<sup>22</sup> Officer Guevara was not visible at this point. (See fn.21, *supra*.)

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hand appeared to be reaching towards his waistband. However, as he did so, additional uniformed officers began approaching the scene from the station building. By the time Mr. Tellez threw his palms forward in surrender and rolled onto his back, there were eight officers approaching him, in addition to Officer Retke.

Approximately 36 seconds passed between the time that Mr. Tellez first pointed his rifle towards Officer Guevara and the time Mr. Tellez surrendered. The following is a still video frame<sup>23</sup> from the surveillance video that showed Mr. Tellez pointing his rifle at Officer Guevara for the second time:



**INCIDENT SCENE INVESTIGATION**

The incident scene investigation was managed by Detective Daniel Berumen, with the assistance of two SBCSD crime scene specialists.

The incident took place upon RPD’s campus, which was noted to be located at the northwest corner of North Willow Avenue and West Rialto Avenue, in the city of Rialto. The parking lot where the shooting occurred was to the west of RPD’s primary station building. The vehicle entrance to the lot faced south, towards West Rialto Avenue, which was secured with a slated metal gate. Two prominent signs were posted at the gate that read in large block letters, “Do Not Enter Police Vehicles Only.”

Officer Guevara’s patrol unit was a black and white marked RPD unit, parked with a northeast cant in the parking lot, northwest of the rear station door. Both front windows of Officer Guevara’s

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<sup>23</sup> This still video frame was separately included in the case agent’s submission.

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patrol unit were noted to be fully rolled down. Thirteen FCC's were discovered clustered within an approximate 15.5 to 16.5-foot radius on the ground immediately west of Officer Guevara's patrol unit, off the driver's side door.

Detective Berumen described Mr. Tellez's sedan as a black Dodge Charger with a vanity plate. Detective Berumen found a large machete with an 18-inch metal blade on the floorboard behind the front passenger seat. Mr. Tellez's Charger was parked facing north, toward the rear of Officer Guevara's patrol unit, southwest of the front of Witness 2's van. Witness 2's van was parked perpendicular to Mr. Tellez's Charger, with its rear abutting the station building and faced east.

The white hat that Mr. Tellez was seen holding immediately prior to his surrender was recovered at a position northeast of where Mr. Tellez's rifle was found.<sup>24</sup> Mr. Tellez's rifle was described as a black "JT Tactical" AR-15 style paintball gun, discovered approximately 27 feet west of Mr. Tellez's car.<sup>25</sup> The rifle included no distinctive marking, i.e. no orange tip or bright-colored labels, had no carbon dioxide gas tank, and no paintball container attached as indicated in the below photograph:



**INVOLVED SUBJECT**

**MEDICAL EVALUATION.** First-response medical personnel arrived at the incident scene by RFD fire engine, ambulance, and foot. An RFD station was across the street from RPD's station, and several RFD personnel heard Officer Guevara's gunfire. Two RFD firefighter paramedics who

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<sup>24</sup> This was the position that Officer Retke kicked the rifle to *after* the shooting occurred as discussed *supra*. (See Submitted Media, Dashcam Video.)

<sup>25</sup> Officer Retke told investigators that he moved Mr. Tellez's car forward (north of the gate) approximately two to three feet from where it was parked during the shooting incident.

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provided Mr. Tellez medical assistance at the scene and rode in the ambulance with Mr. Tellez to the hospital stated that Mr. Tellez told them he wanted to die, and that he was attempting to hurt himself or get himself killed by going to the police station. Once at the hospital, Mr. Tellez told a physician he was going to shoot a police officer. Mr. Tellez was admitted for hospitalization and found to have suffered GSWs to the left axilla, right shoulder, and right pelvic areas. There was no information provided regarding the associated trajectories of Mr. Tellez's GSWs. Mr. Tellez was also found to have suffered a left clavicle fracture and a right hip fracture. Mr. Tellez's injuries were described by a physician as being non-life-threatening.

**TOXICOLOGY.** Blood drawn from Mr. Tellez at the hospital was sampled and analyzed for drug and blood-alcohol content. The samples revealed a zero percent blood-alcohol content and 3.7 ng/mL of Delta-9-THC (the primary psychoactive cannabinoid found in cannabis plants that makes people feel "high").

**CRIMINAL HISTORY.** Mr. Tellez was convicted of a violation of Penal Code section 32 [accessory after the fact], a felony, in 2009. Mr. Tellez was also convicted of driving under the influence of alcohol and brandishing a weapon (not a firearm), both misdemeanors, in 2013 and 2007, respectively.

**APPLICABLE LEGAL PRINCIPLES**

An officer who is ambushed and assaulted while on duty need not retreat and maintains his right to self-defense. (Calif. Penal C. §§197, 835a.)<sup>26</sup> A peace officer is not deemed the aggressor in this instance. (Penal C. §835a(d).) A peace officer may use objectively reasonable force to effect an arrest, to prevent escape or to overcome resistance. (Penal C. §835a(b).) An arrestee or detainee may be kept in a peace officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing*, *In re Tony C.* (1978) 21 Cal.3d 888, 895.) An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) The force used by the peace officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

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<sup>26</sup> All references to code sections here pertain to the California Penal Code.

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time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).)

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

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

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

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required for an officer to use lethal force under section 835a(c)(1), as stated *supra*. Although these principles did not appear in section 835a until 2020,<sup>27</sup> 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:

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<sup>27</sup> Assem. Bill No. 392 (2018-2019 Reg. Sess.) was approved by the Governor on August 19, 2019. [Hereinafter “AB-392”] The statutory modifications included in AB-392 took effect on January 1, 2020.

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- (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;<sup>28</sup>
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

**IMMINENCE.** “Imminence is a critical component” of self-defense. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, *imminent* threat of death or great bodily injury. “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows and her actual awareness of the risks posed against her are relevant in determining if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich* (9th Cir. 1994) 39 F. 3d 912, 915.)

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

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<sup>28</sup> 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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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.)

**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.)

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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. (Pen. Code §§245(d), 417.8; *People v. Raviart* (2001) 93 Cal.App.4th 258, 266, *People v. Pruett* (1997) 57 Cal.App.4th 77, 88.) Deadly force could be justified even where a suspect points a replica gun at an officer, if the officer has a reasonable belief that the replica is a real firearm. (*Strickland, supra*, 69 F.4th at 622.) An officer’s reasonable mistakes of fact or law can be deemed justified in a Fourth Amendment analysis. (*Heien v. North Carolina* (2014) 574 U.S. 54, 55.)

Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

Lastly, the use of force policies and training of a shooting peace officer’s law enforcement agency *may* also be considered as a factor to determine whether the shooting officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1. See fn. 17, *supra*.)

Another key guiding principle when undertaking this analysis is that courts do not engage in *Monday morning quarterbacking* and nor shall we. Our state appellate court has warned,

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

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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 RPD Officer Jesus Guevara on December 5, 2022, upon Gunther Tellez. 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 Officer Guevara is included here based primarily upon the statement he made during his interview. (See Statements by Law Enforcement Witnesses, *supra*.) The following is a summary:

Officer Guevara first noticed Mr. Tellez after he pulled forward into the RPD lot. Officer Guevara assumed that Mr. Tellez was a detective or some other RPD officer on special assignment, as Mr. Tellez drove a car that looked typical of such an officer. Officer Guevara saw Mr. Tellez get out of his car with what looked like an AR-15 and still believed that Mr. Tellez might be a station detective. Officer Guevara had returned to the RPD station to meet with Witness 1 and as soon as he saw Witness 1, Officer Guevara stopped his patrol unit. By the time that Witness 1 reached Officer Guevara’s opened front passenger window, Officer Guevara asked, “Who the fuck is that?” Witness 1, despite being a 27-year RPD employee, told Officer Guevara that she did not know.

Then, unexpectedly, Mr. Tellez appeared standing six inches to a foot outside Officer Guevara’s opened driver’s front window, holding his rifle to Officer Guevara’s head. Officer Guevara saw that Mr. Tellez had the rifle tucked into his shoulder like he was ready to fire it. Officer Guevara believed he would be imminently shot in the head. Officer

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Guevara remained seated and jerked his head backward for cover in a state of shock. Officer Guevara then watched Mr. Tellez pull the trigger of the rifle, but nothing happened. Officer Guevara saw Mr. Tellez look down at his weapon, then turn, and run away in a southwesterly direction. Officer Guevara believed that Mr. Tellez's rifle jammed. Officer Guevara seized the moment to open his unit door, draw his weapon, and get out to face Mr. Tellez. By the time that Officer Guevara did so, Mr. Tellez had also turned around to face the officer and pointed his rifle at Officer Guevara. From a distance of approximately 10 to 15 feet, without any obstructions between them, Officer Guevara fired what he believed was a volley of three rounds, followed by a second volley of three more rounds before Mr. Tellez fell to the ground and dropped his rifle.

During the pause in his gunfire, Officer Guevara saw that Mr. Tellez was on the ground but still moving within an arm's reach of his rifle. When it appeared that Mr. Tellez was trying to get up to grab his rifle, Officer Guevara fired a third volley of gunfire. Officer Guevara stated that he fired his last shot when Mr. Tellez appeared to be reaching for his waistband for a secondary firearm. Although Officer Guevara did not see a second firearm, Officer Guevara was previously trained that an assailant with one firearm was likely to have a second firearm.

At or around the time that the gunfire ceased, Officer Guevara saw that additional officers began to respond to the parking lot with their guns drawn. The responding officers gave Mr. Tellez commands like, "let me see your hands," and "put your hands up." Mr. Tellez appeared to be compliant at this point and Officer Guevara did not assist in detaining Mr. Tellez. Instead, Officer Guevara exchanged his pistol magazine with a new one, to be ready for any additional suspects or further gunbattle. Officer Guevara stated that he did not realize there was only one suspect until other officers confirmed it with Mr. Tellez.

Officer Guevara was so convinced that Mr. Tellez had a genuine firearm with the capacity to penetrate his ballistic vest, that in the immediate aftermath of the incident Officer Guevara asked another officer to check him for GSWs. Officer Guevara believed he might have been shot but did not feel it because of the rush of adrenaline he felt.

The stated account of Officer Guevara of the circumstances at play *prior* to and culminating with Officer Guevara's use of lethal force is consistent with the submission. Furthermore, the submission supports Officer Guevara's conclusion that Mr. Tellez was armed with a rifle and appeared poised to shoot and kill him. Officer Guevara was so convinced that Mr. Tellez was armed with a genuine rifle that Officer Guevara thought that he might have been shot but could not feel it. Mr. Tellez had the *apparent* ability, intent, and opportunity to inflict the lethal harm articulated by Officer Guevara. Based upon the foregoing, it is reasonable to conclude that Officer Guevara bore an honest and subjective belief that Officer Guevara was under threat of imminent deadly harm or bodily injury at the time Officer Guevara 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

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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 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. Tellez was trespassing on police property, likely a misdemeanor violation of Penal Code section 602. Mr. Tellez might also be found to have violated Penal Code sections 417.4 [brandishing an imitation firearm in a threatening manner] or 20170 [openly displaying an imitation firearm in public]; these are also misdemeanors. Of course, what would have appeared to have occurred, was that Mr. Tellez violated Penal Code section 245(c) [assault of a peace officer in the course of his duties]—a “serious” strike felony pursuant to Penal Code section 1192.7(c), that would carry a mandatory prison sentence. It might also reasonably appear that Mr. Tellez drew or exhibited a genuine firearm with the intent to prevent detention by a peace officer; this would be a violation of Penal Code section 417.8, another “serious” strike felony. The assault upon Officer Guevara with a firearm, *if* Mr. Tellez did in fact have a genuine firearm, would at a minimum be a violation of Penal Code section 245(d)(2) [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). As such, the severity of crimes Mr. Tellez *appeared* to be committing and was engaged in immediately prior to Officer Guevara’s use of lethal force would weigh in favor of a finding that such force was reasonable. While the Fourth Amendment foundation of a *Graham* analysis might support consideration of the crimes that reasonably appear to be occurring at the time the lethal force was used, no known case has specifically applied such a *Graham* analysis. Regardless, the misdemeanor crimes committed by Mr. Tellez at the time, though not amongst California’s most violent crimes, still reasonably invoked Officer Guevara’s lethal use of force as discussed, *infra*.

Resistance is another essential consideration in a *Graham* analysis. By design, Mr. Tellez elected to confront Officer Guevara at such a time and place that would normally afford the officer with a sense of relative safety. Mr. Tellez selected a position next to the RPD station that was close enough to the parking lot gate so that he would have an opportunity to get behind that unit and follow it inside. This suggests that Mr. Tellez already spent time watching other officers enter through the gate to assess how much time he would have to tailgate an unsuspecting officer. To further his plan, Mr. Tellez had his rifle and an 18” machete—two very conspicuous and intimidating weapons. Mr. Tellez’s choice to ambush Officer Guevara with a rifle pointed at his head as he sat there in his patrol unit was meant to instantly place the officer on the defensive and draw a lethal response. It appeared from the submission that Mr. Tellez did fall to the ground and drop his rifle before Officer Guevara stopped firing at Mr. Tellez. Although Mr. Tellez may not have had his weapon in-hand and pointed towards Officer Guevara when Officer Guevara fired his final rounds, it did not appear that Mr. Tellez was surrendering either. Mr. Tellez’s sudden movements as he lay on the ground conveyed that the threat Mr. Tellez initially posed was continuing. The submission showed that Mr. Tellez appeared to reach for the rifle he already pointed twice at Officer Guevara and/or was attempting to draw another weapon from his waistband. Officer Guevara was not required to wait for Mr. Tellez to re-arm himself or fire in the

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officer's direction. Moreover, nothing in the submission indicated that Mr. Tellez made any verbal offers of surrender after he fell. Mr. Tellez signaled surrender only as nine armed officers descended towards him. The submission in total supports the finding that Mr. Tellez aggressed Officer Guevara and appeared to be engaged in active and violent resistance during the entire lethal force encounter. In the calculus of what was "reasonable" under *Graham*, Mr. Tellez's apparent resistance can be weighed in favor of the conclusion that Officer Guevara's use of force was reasonable.

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. Officer Guevara was a uniformed officer, driving a marked police vehicle, and was in what would normally be a secure area of a police facility. No one who saw Mr. Tellez enter the police lot in his black Charger, including Officer Guevara, believed that Mr. Tellez was not supposed to be there. By all accounts, Mr. Tellez's car looked like a police vehicle that stopped in a position where police personnel might typically stop. Even when Witness 1 and Witness 2 saw Mr. Tellez come out of his car with his rifle, they each rationalized that this might still be an officer either playing a game or a bad joke. Officer Guevara, too, still believed Mr. Tellez was an RPD officer but asked Witness 1 if she knew who Mr. Tellez was. It had to finally be alarming that Witness 1, an RPD employee of almost three decades, did not recognize Mr. Tellez. Before Officer Guevara could do anything about it, however, Officer Guevara faced a rifle barrel pointed at his head like a sitting duck in his patrol unit and watched Mr. Tellez pull the trigger. It would be reasonable for Officer Guevara to believe that Mr. Tellez had just tried 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. As soon as Officer Guevara could get out of his unit, draw his weapon and face Mr. Tellez, Mr. Tellez once more appeared to take aim at Officer Guevara with his rifle. Officer Guevara estimated that Mr. Tellez was approximately 10 to 15 feet away and they faced each other without obstructions between them. Mr. Tellez held his all-black rifle in the "high alert" position and was taking direct aim at Officer Guevara. Under these circumstances, nothing short of clairvoyance would have alerted Officer Guevara that the rifle in Mr. Tellez's hands was not a firearm capable of killing the officer. Officer Guevara did not have the luxury of time and space to approach this incident with any leisure or further negotiation, and none was had.

Furthermore, the apparent lethal threat Mr. Tellez posed continued to be emergent, even after Mr. Tellez fell to the ground. The submission showed that by the time Officer Guevara engaged in his last volley of rounds, that Mr. Tellez was on the ground and his rifle was out of his hands. However, both Officers Guevara and Retke told investigators that Mr. Tellez's rifle still appeared to be within Mr. Tellez's reach. Officer Guevara explained that Mr. Tellez appeared to him to be reaching for the rifle and later his waistband, where the officer had been trained an armed assailant might place a secondary weapon. Surveillance video showed that Mr. Tellez's right hand popped out and Mr. Tellez raised his head to look in the direction of his rifle moments before Mr. Tellez suddenly propped up onto his torso. Officer Guevara's final volley was audible upon Mr. Tellez's sudden movement and gunfire continued while Mr. Tellez reached towards his waistband. It was reasonable to believe, under the circumstances, that Mr. Tellez was still attempting to engage in a

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gun battle. Officer Retke did appear at the scene while Mr. Tellez was on the ground and before Officer Guevara finished firing at Mr. Tellez. Officer Retke explained to investigators that he didn't see where the gunfire he heard was coming from, whether it was from Officer Guevara or Mr. Tellez. Officer Guevara's final four rounds were fired as Officer Retke was getting out of his patrol unit. It is not surprising, therefore, that Officer Retke did not observe what movements Mr. Tellez made that triggered Officer Guevara's final rounds of gunfire. Mr. Tellez's continued squirming and reaching continued without additional gunfire for approximately 14 seconds, until Mr. Tellez first signaled surrender by putting his open palms forward.

In sum, Mr. Tellez's *apparent* conduct demonstrated that he had the present ability and opportunity to immediately cause death or serious bodily injury. Specifically, Officer Guevara reasonably believed that Mr. Tellez had tried to kill him and that lethal force was instantly required to avoid immediate death. The law did not require Officer Guevara to wait to use lethal force until Mr. Tellez 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 Officer Guevara's identification of an imminent lethal threat posed by Mr. Tellez or his choice to use lethal force upon Mr. Tellez.

**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 Officer Guevara's encounter with Mr. Tellez. As discussed above, it was discovered after the shooting that Mr. Tellez had a paintball gun and not a rifle capable of firing bullets. Although paintball guns are not required to bear an orange-tip or other markings distinguishing it from a genuine firearm,<sup>29</sup> even trained law enforcement personnel mistook the Mr. Tellez's rifle for an authentic AR-15 rifle. By Mr. Tellez's design, the removal of the paintball rifle's gas cannister and paintball receptacle further masked the innocuous nature of Mr. Tellez's weapon. The investigation revealed no reason for Officer Guevara to know that Mr. Tellez was pointing a paintball gun at him and not a rifle. The misidentification of the paintball gun adds tragedy to this situation but does nothing to render Officer Guevara's use of force objectively unreasonable. The way Mr. Tellez presented his rifle by placing it in a "high alert" position and pointing it at Officer Guevara also made it reasonable for Officer Guevara to believe that he was being ambushed and would imminently be shot. Clearly, based on Mr. Tellez's statements to his family and to the paramedics treating him, Mr. Tellez intentionally pursued and provoked Officer Guevara into shooting him. In sum, the later discovery of the inability of Mr. Tellez's paintball gun to kill Officer Guevara that day does not diminish the imminent danger perceived by Officer Guevara prior to the time he used lethal force upon Mr. Tellez.

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<sup>29</sup> Federal law requires toy, look-alike, and imitation firearms having the appearance, shape, and/or configuration of a firearm to have prominent color markings, such as an orange tip, but paintball guns are excepted from this requirement. (15 C.F.R. §272.1(b) (2022).)

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Based on the foregoing discussion, each of the primary *Graham* factors as applied support a finding that the use of lethal force by Officer Guevara was reasonable. The “totality of the circumstances” discussed herein further supports a finding that Officer Guevara 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 Officer Guevara 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. While it appeared that Officer Guevara did not give Mr. Tellez any orders to drop his weapon, by the time that Officer Guevara would have had an opportunity to do so, it was reasonable for Officer Guevara to believe that Mr. Tellez had already tried to shoot him. Moreover, seconds thereafter, Mr. Tellez pointed his rifle at Officer Guevara a *second* time for at least two to three seconds. Finally, even after Mr. Tellez fell and dropped his rifle, it was reasonable for Officer Guevara to believe that Mr. Tellez would continue to try to shoot Officer Guevara until Mr. Tellez succeeded. Up until the time Mr. Tellez surrendered, Mr. Tellez afforded Officer Guevara no opportunity to de-escalate the lethal encounter nor did he indicate that he would be amenable to de-escalation. Up until Mr. Tellez was taken into custody, it appeared to Officer Guevara that Mr. Tellez’s rifle was still within his reach and/or Mr. Tellez was reaching for a secondary firearm in his waistband. As such, there was no feasible, safe or reasonable opportunity for Officer Guevara to de-escalate without putting his own life in apparent danger.

**Other Statutory Considerations.** The added considerations included in §835a(a) also support the conclusion that the use of deadly force by Officer Guevara was lawful.<sup>30</sup> First, the submission in total does not indicate that Officer Guevara acted excessively. Mr. Tellez initiated contact with Officer Guevara by pointing his rifle at the officer. Officer Guevara fired at Mr. Tellez only after Mr. Tellez appeared to be pointing a rifle at Officer Guevara a second time. Although it appears that Officer Guevara fired additional shots at Mr. Tellez after Mr. Tellez had fallen to the ground, Officer Guevara articulated that Officer Guevara fired when Mr. Tellez appeared to be reaching for either the rifle and/or his waistband. Based upon his training and the circumstances included in the submission in total, it was reasonable for Officer Guevara to believe that Mr. Tellez continued to be a threat. Officer Guevara still had two rounds in his duty weapon ready to be fired as Mr. Tellez continued to squirm on the ground, sometimes reaching toward his pelvis, before Mr. Tellez indicated surrender and additional law enforcement personnel took Mr. Tellez into custody. During this time and until another officer checked him, Officer Guevara believed he and Witness 1 might have been shot. Officer Guevara displayed restraint in not continuing to fire and no additional force appeared to have been used. In sum, the submitted evidence supports the conclusion that lethal force did not continue after Officer Guevara reasonably appreciated that Mr. Tellez no longer posed an immediate lethal threat. As such, Officer Guevara can be found to have

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<sup>30</sup> 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 RPD use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any departmental use of force policy was violated.

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well-appreciated the gravity and consequence of his use of lethal force evidenced by the judicious way he dispensed lethal force.

The material submitted by the case agent revealed that Mr. Tellez’s blood analysis was consistent with recent marijuana use. Penal code section 835(a)(a)(5) does include that those under the influence of narcotics *may* be impacted in their ability to understand and comply with peace officer commands. However, there was no indication here that Mr. Tellez was issued commands at any time before he ambushed Officer Guevara. Interestingly, *after* Mr. Tellez was taken into custody and while first aid was being administered, Mr. Tellez appeared to be lucid, responding to some questions appropriately and somewhat evasively when he indicated his name was “Omar.”<sup>31</sup> As discussed, it is apparent that Mr. Tellez understood what Officer Guevara’s response would be and intended for Officer Guevara to shoot him.<sup>32</sup> Any reasonable opportunity Officer Guevara had to show Mr. Tellez deference due to his present mental condition was supplanted when Mr. Tellez posed an immediate apparent threat of lethal harm to Officer Guevara’s life. As such, Mr. Tellez’s conduct created a situation where he posed a danger to more than himself. Whatever physical and mental impact narcotics consumption had on Mr. Tellez during this incident, neither can overcome that Mr. Tellez simultaneously posed an immediate and apparent lethal threat to Officer Guevara.

**CONCLUSION**

Under the facts, circumstances and applicable law in this matter, we conclude that the reasonable use of deadly force by RPD Officer Jesus Guevara 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: April 17, 2026**



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<sup>31</sup> Mr. Tellez did tell paramedics later that his name was “Gunther.”

<sup>32</sup> Deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)