



PUBLIC INFORMATION RELEASE MEMORANDUM

Date: June 29, 2026

Subject: Officer Involved Shooting (Fatal)

Involved Officers: Detective Scott Abernathy
San Bernardino County Sheriff's Department

Involved Subject/DOB: Eric Gabriel Sandoval (Deceased)
//****

Incident Date and Time: June 27, 2019, 03:12 a.m.

Incident Location: Warren Vista Ave, Yucca Valley, CA

Case Agent/Agency: Detective Floyd Stone
San Bernardino County Sheriff's Department

Agency Report #: DR# 091900959
H# 2019-051

DA STAR #: 2020-50734

PREAMBLE

This was a fatal officer involved shooting by a detective 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, videos, and audio recordings submitted by the San Bernardino County Sheriff's Department, DR# 091900959.

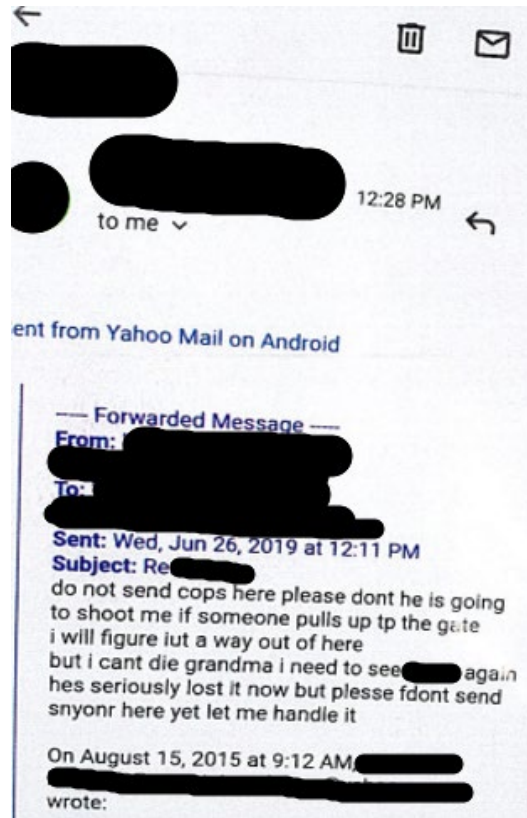
FACTUAL SUMMARY¹

The incident occurred on June 27, 2019, at around 3:12 a.m. The location was **** Warren Vista Avenue, in Yucca Valley; the residence Eric Sandoval rented at the time of the incident. An exterior chain link perimeter fence surrounded the property. The location was equipped with surveillance video both inside and outside the home.



On June 26, 2019, at approximately 12:42 p.m. Witness #1 arrived at the San Bernardino County Sheriff's Department – Morongo Station to show deputies an email that her daughter, Witness #2 had sent to her grandmother, Witness #3. The email was dated June 26, 2019, at 12:11 p.m. The email stated that Eric Sandoval held Witness #2 hostage by gunpoint and not to call the police because Sandoval would kill her. (See email on next page). Witness #1 informed deputies Sandoval and Witness #2 were in a dating relationship and lived together as boyfriend and girlfriend. Witness #2 and Sandoval were at **** Warren Vista in Yucca Valley. There was a restraining order in place with Witness #2 as the restrained person and Sandoval as the protected person.

¹ This factual summary covers the timeframe from June 26, 2019, at approximately 12:00 p.m. leading to the incident under review which happened on June 27, 2019, after 3:00 a.m.



Detectives from the Morongo Sheriff's Station assumed the investigation and found that Sandoval was prohibited from owning firearms, but still had firearms registered to him. Detective Henry advised that Sandoval had several firearms registered under his name including: a Glock model 26, an unknown .22 caliber rifle, a CZ 9 mm pistol, and a Makarov 9 mm pistol. Sergeant Mascetti sent this information along with DMV records of Sandoval and Witness #2 to responding personnel.

At approximately 1:04 p.m. deputies responded to the Sandoval residence. Deputies confirmed that Witness #2's vehicle, a white Toyota, and Sandoval's vehicle were at the residence. Detectives attempted to contact Witness #2 on her cell phone but were only able to reach her voicemail. Law enforcement authored an emergency PING for both Witness #2 and Sandoval's cell phones.²

Due to the circumstances and threat assessment, Sheriff's Department Specialized Enforcement Division (SED) was notified and responded to assist. SED established a temporary command post located approximately 1.2 miles from Sandoval's residence. SED established an Immediate Response Team (IRT). The IRT's purpose was to rapidly respond to the residence in case of an emergency. Two containment teams were created. Each containment team consisted of two people positioned on the east and west sides of

² During the incident, an emergency PING showed Witness #2 had made a call earlier in the morning from the area of Sandoval's residence. Sandoval's cell phone showed he was still at his residence. After the incident, a black cell phone was located south of the dirt driveway. The cellphone's screen was cracked and did not appear operational.

the residence. The purpose of the containment teams was to keep visual observations of the residence from afar.

When IRT and containment teams were in position outside of the perimeter fence to Sandoval's residence, Sergeant Mascetti contacted Sandoval on his phone. The goal of the phone call was to attempt to establish the validity of the information in the call, have Sandoval leave the residence peacefully, surrender, and/or release Witness #2 peacefully. Through phone calls and video phone (FaceTime) conversations with Sandoval and Witness #2, Sergeant Mascetti was able to confirm Sandoval was armed with a gun, and Witness #2 was not free to leave.

Sergeant Mascetti called Sandoval at approximately 4:00 p.m. Sandoval answered the phone and Sergeant Mascetti introduced himself as a Sergeant with the Sheriff's Department. Sandoval immediately hung up. Sergeant Mascetti again called Sandoval's phone and spoke with Witness #2. She began to cry and said she did not want to get hurt. She hung up. Sergeant Mascetti called her back on Sandoval's phone. Witness #2 told Sergeant Mascetti not to bring police cars near the front of the house. Witness #2 needed to speak with her mother and was afraid Sandoval would do "something stupid." Witness #2 said "it's going to be bad," if police cars drive in front of the house.

During the phone calls with Witness #2, Witness #2 told Sergeant Mascetti she was involved in an argument with Sandoval and that Sandoval did not like when police came to his house, as Sandoval had issues with police officers in the past. Sergeant Mascetti asked Witness #2 to put the phone on speakerphone so he could speak with them both. Sergeant Mascetti told both subjects he wanted them to come outside of the residence so they could conduct a welfare check and ensure they were safe. Sandoval said, "that's not going to happen."

Sergeant Mascetti could hear Sandoval tell Witness #2 the deputies were going to arrest them. Sergeant Mascetti told them they just wanted to make sure they were safe and asked that the victim and the baby be allowed to leave the residence. Sandoval said there was no baby in the house. Sergeant Mascetti asked Witness #2 if she was still on speakerphone and she said no. He asked Witness #2 if Sandoval was holding a gun to her head and she said yes. Sergeant Mascetti encouraged her to walk out of the house, but Witness #2 said she could not. Witness #2 said they were watching video surveillance and could see the patrol officers. She said she would be "dead" if she tried to leave. She also said if they came inside, Sandoval would shoot her.

Sergeant Mascetti initiated an "all call" to other SED operators and requested department hostage negotiators. In total, forty-one SED operators responded to the location, and a permanent command post was established in place of the temporary in the same location. A total of five crisis negotiators responded. Sergeant Nick Tollefson was the primary negotiator.

While they awaited negotiators, Sandoval told Sergeant Mascetti he had surveillance cameras around the entire property, and if they came within 20 feet of the house they would be "mopping up blood in here; both of ours."

Sergeant Mascetti spoke with Witness #2 and attempted to figure out where they were located inside the house. By asking yes/no questions, Witness #2 told Sergeant Mascetti that Sandoval was dressed in a black shirt, blue jeans, boots, and armed with a loaded black handgun, which he carried with him. Sergeant Mascetti asked Witness #2 to attempt to run from the residence if and when she had an opportunity to do so.

Sergeant Nick Tollefson, a crisis negotiator, assumed negotiations and contacted Sandoval on his cell phone while driving to the location. During negotiations with Sergeant Tollefson, Sandoval would provide proof (FaceTime video) that Witness #2 was still alive. During the video call Sergeant Tollefson observed Sandoval was armed with a handgun and what room of the house Sandoval and Witness #2 were located in. Sergeant Tollefson and the negotiation team passed all pertinent information they obtained to Lieutenant Visosky and the command post personnel for distribution to SED operators.

During negotiations with Sergeant Tollefson, Sandoval refused to surrender or release Witness #2. Sandoval cautioned if law enforcement entered his property, he would kill Witness #2 and himself. Sergeant Tollefson and Lieutenant Visosky both believed Sandoval was serious and posed a serious threat. SED also learned that Sandoval had multiple security cameras and motion sensors on his property. Sandoval mentioned the cameras and confirmed their presence by telling Sergeant Tollefson where SED operators were positioned. Realizing they were in danger of being shot by Sandoval, Sergeant Mascetti advised them to utilize cover and concealment as much as possible. Sergeant Mascetti advised additional perimeter personnel that they would likely be seen by Sandoval if they did not utilize extreme caution when taking and maintaining positions. However, around the majority of the property there was no adequate cover, only concealment by means of desert bushes.

During negotiations, SED positioned an armored rescue vehicle Bear (ARVB) with the IRT team, north of the location and an armored rescue vehicle BearCat (ARVBC) with the entry team south of the location. The teams were positioned in case the situation escalated into a hostage rescue and rapid response was needed. SED tried to place their vehicles and teams out of sight from Sandoval and his security camera system.

During negotiations, negotiators would take ten-minute breaks that served as a time for Sandoval to think about his opportunities, and for negotiators to discuss strategies. After approximately ten minutes, the negotiator would recontact Sandoval and continue their discussion. A pattern was established, and Sandoval would answer the phone after each break. Sandoval made commitments to negotiators during conversations. One commitment was to re-establish contact with the negotiators after a scheduled break. Sandoval kept his commitment every time. Additionally, before every break, Sandoval would wake Witness #2 to show a sign of life. The commitments kept were a sign the negotiations were effective.

While negotiations were ongoing, Detectives spoke to Sandoval's estranged wife Witness #4 at the command post. Sandoval conducted a video phone call and showed Witness #2 was asleep in bed, while Sandoval held a handgun resting on his chest. Sandoval explained he bought the components for the handgun but had built it himself. He said he had three magazines all loaded with 9mm hollow points. During the video call, Sergeant Tollefson captured a still framed photograph of the background. From the photographs Witness #4 was able to describe where Sandoval and Witness #2 were inside the house. This information was relayed to Lieutenant Visosky for additional tactical planning.

While speaking to Sergeant Tollefson, Sandoval told him he was nervous to surrender due to legal issues. Sandoval described a confrontation he had with Witness #2 inside the house where he struck Witness #2. Sandoval feared he would be charged criminally for striking her. He also worried he would be charged for marijuana cultivation. Sergeant Tollefson told Sandoval marijuana cultivation was minor, but Sandoval did not believe him. They arranged a third-party intervention with Sandoval and conducted a three-way call. Sandoval spoke to an attorney that told him the same information the negotiators told him: marijuana was not a big deal, and Sandoval made matters worse with his current actions. Sandoval continued to refuse to release Witness #2, despite the call with an attorney.

The negotiation team discovered Sandoval was talking to other people during the breaks. This concerned the negotiation team because negotiators were no longer in control of the information transmitted. The negotiations team learned Sandoval was speaking to his sister-in-law, Witness #5.³ At approximately 11:25 p.m., negotiators spoke to Witness #5 on the phone. They confirmed Witness #5 tried to convince Sandoval to give up and exit the house with his hands up.

Due to Witness #5's close relationship with Sandoval, they attempted another third-party intervention. Witness #5 called Sandoval on a three-way phone call. Witness #5 and Sandoval talked about how Sandoval was feeling. She explained to Sandoval that she and Sandoval's brother wanted him around to have a relationship with him. Despite this, Sandoval would not release Witness #2. After the phone call ended, Witness #5 told the negotiations team that Sandoval sounded like he was possibly coming down from drugs.

Sergeant Tollefson continued negotiations with Sandoval for a span of approximately nine hours before he was relieved by Detective Joseph Catalano, who took over negotiations. During a call, Sandoval heard Sergeant Tollefson speaking to Detective Catalano in the background; Sandoval asked to talk to Detective Catalano directly, so Detective Catalano took over as the primary negotiator.

On Thursday, June 27, 2019, at approximately 3:00 a.m., Sandoval missed a scheduled contact with the negotiation team. Sandoval had kept his commitments until that point. Sergeant Corey La Fever immediately informed Lieutenant Visosky of the change as they

³ Witness #5 had become a mother figure to Sandoval and had been in his life since he was eleven years old.

could no longer confirm Witness #2's safety. Sergeant La Fever contacted Witness #5 again and asked her to try contacting Sandoval. Witness #5 attempted contact, but Sandoval did not answer.

Due to Sandoval's lack of contact, and failure to reestablish communication, Lieutenant Visosky ordered the tactical units closer to the residence. The ARVB moved to the north driveway and the ARVCB moved to the south driveway, closer positions at the front gates of the residence. The tactical units remained outside the perimeter fence. This was due to Sandoval's threat that if SED came onto his property, Sandoval would kill himself and Witness #2. The armored vehicles stayed outside the fence line, so as to not push Sandoval into doing something more violent, but close enough that they could quickly implement their rescue plan.

Based on information gathered, SED believed Sandoval and Witness #2 were in the master bedroom. SED used their vehicle lighting systems and illuminated the property in an attempt to re-establish phone contact with Sandoval, from outside the perimeter fence.

Detective Catalano attempted phone contact again, and Witness #2 answered. Witness #2 told Detective Catalano they were sleeping. Sandoval woke up while Witness #2 was on the phone. Sandoval took the phone and yelled at Detective Catalano. Sandoval was upset and felt the negotiators were not keeping up their end of the deal. Sandoval saw the tactical teams outside of his fence line and the lights from the vehicles in the cameras. Detective Catalano assured Sandoval the units were still outside the fence as he requested. The cell phone was on speakerphone, and they could hear Sandoval in the background. Sandoval appeared to be agitated, he told the negotiators, "Just come on the property and we'll end this," and "You guys might as well come on in, and let's get it over with." Sandoval said, "As soon as you hit that fence, this thing is loaded, hollow points, hydro shock, you know. Plus P rounds. One is going in her head and one is going in mine. So, come on." Sandoval told negotiators, "Those lights are going to get her shot now instead of later."

Sandoval fired one round from his handgun at the west interior wall of the master bedroom. Witness #2 pleaded with Sandoval to stop, and Sandoval told the negotiator to turn off the lights or he would shoot Witness #2 in the head. Detective Catalano tried to de-escalate the situation and get Sandoval to calm down. The negotiation team heard the gunshot over the phone. Detective Catalano tried talking to Sandoval as Witness #2 told negotiators Sandoval shot into the wall. As Sergeant La Fever relayed the information to Lieutenant Visosky, another gunshot was heard on the phone. No further communication took place over the phone and the phone disconnected.⁴

Negotiators and several SED operators positioned near the residence heard gunshots. Deputy Corral, assigned to a long rifle team, heard the gunshot and what he believed to

⁴ Investigators later reviewed video surveillance from a video camera that was positioned in the master bedroom during this time. Video footage showed Sandoval and Witness #2 on the bed in the master bedroom. Sandoval monitored the real-time video surveillance on a television positioned in front of the bed. Witness #2 was talking with a negotiator on speakerphone and Sandoval held a black handgun in his right hand.

be a female screaming. Deputy Corral broadcasted the information over the radio to other SED personnel. Detective Scott Abernathy heard Deputy Corral's radio transmission and thought Witness #2's life was in imminent danger, which would warrant immediate response and emergency rescue. Negotiators also heard a gunshot over the cellphone and notified SED over the radio. Fearing Sandoval shot Witness #2, Lieutenant Visosky gave an order over the radio to proceed with the pre-planned hostage rescue. Lieutenant Visosky's order was "Rescue, rescue, rescue!"

Recovered surveillance video from inside the master bedroom shows Sandoval and Witness #2 struggling. Sandoval pulled Witness #2 off the bed and onto the floor. Sandoval said, "Sorry baby," and then fired two rounds at the back of her head. Sandoval backed up a few feet away from Witness #2 and said, "she's dead. You guys did that." It was later determined Witness #2 was shot one time. Sandoval attempted to shoot Witness #2 again, but his handgun malfunctioned. Sandoval took another step away from Witness #2 and another shot was heard after which Sandoval immediately fell to the ground. Sandoval's body lay on the ground in the threshold of the doorway which led from the master bedroom to the kitchen.

Both ARVBC and the ARVB broke through the perimeter fence to initiate a rescue. Deputy Aaron Griffin, the designated breacher, breached the French doors into the master bedroom. Detective Scott Abernathy was first through the door to enter the master bedroom. He was followed by the rest of the IRT team. When Detective Abernathy entered the room, he quickly scanned the room, cleared the northeast corner, and proceeded toward Witness #2.

Detective Abernathy saw Witness #2 lying on the ground, bleeding and moaning in pain. After seeing Witness #2, Detective Abernathy saw Sandoval lying partially on his right side, approximately five to ten feet beyond Witness #2.

Detective Abernathy and Deputy McCarthy stepped past Witness #2 and created a barrier between her and Sandoval. Detective Abernathy yelled at Sandoval "Don't move, don't move." When Detective Abernathy got closer, he saw a handgun on the ground next to Sandoval's body. Detective Abernathy estimated the handgun was approximately three to six inches away from Sandoval's right arm, and parallel to Sandoval's waist. Detective Abernathy did not see any blood or obvious injuries on Sandoval. Detective Abernathy saw that Sandoval's eyes were glancing back and forth "all over the place," and that he had labored breathing.

Detective Abernathy saw a slight movement from Sandoval's right hand so he yelled at him "don't reach." Detective Abernathy focused on Sandoval's eyes to see what he was going to do next. Sandoval "made eye contact" with Detective Abernathy, he "looked over" at him and Sandoval moved his "right hand suddenly like moved towards the gun." Once Detective Abernathy saw the move towards the gun, Detective Abernathy discharged his weapon two times at Sandoval, striking him in the head. SED entry team checked Sandoval, but due to obvious signs of death, medical aid was not rendered.

SED personnel moved Witness #2 from the room and placed her on the concrete patio just outside the French doors. Witness #2 was bleeding from the head. Deputy Bustamante rendered lifesaving medical aid to Witness #2 until she was flown by helicopter to Desert Regional Medical Center in Palm Springs. Witness #2 sustained a gunshot wound to the back of her head, behind her right ear. She recovered from her injuries and was released from the hospital several weeks later.

STATEMENT BY POLICE OFFICER THAT USED FORCE

On July 1, 2019, Detective Michael Cleary interviewed Detective Scott Abernathy.

On June 26, 2019, Detective Abernathy received notification of a full SWAT call-out via email and text message. Detective Abernathy went to the command post in Yucca Valley where Sergeant Mascetti briefed Detective Abernathy, Sergeant Gaytan, and Deputy McCarthy regarding the events that had unfolded so far. Sergeant Mascetti told Detective Abernathy that Sandoval made a direct threat against Witness #2, and both subjects were inside of a house. Sandoval was armed with at least one handgun. Sergeant Mascetti told Detective Abernathy that he had asked Witness #2 via phone if she was able to escape, and Witness #2 believed she would be killed if she tried escaping. Sergeant Mascetti informed them that there were cameras all over the house and that units were unable to get close to the house without being seen by Sandoval. Sergeant Mascetti assigned Detective Abernathy and Deputy McCarthy to the Immediate Response Team (IRT) being run by Sergeant Robert Arrieta. Sergeant Mascetti provided Detective Abernathy with photographs of Sandoval and Witness #2.

The intended goals were to rescue the hostage, and make sure everyone made it out safely, including Sandoval. The intent was to de-escalate the situation to have a peaceful conclusion.

Several hours after arriving, Detective Abernathy heard over the radio from Lieutenant Viosky that Sandoval had pistol whipped Witness #2 and that she was injured. They did not know how injured she was. Throughout the entire time, negotiations had been ongoing amongst the negotiators, Sandoval, and Witness #2. At about 10:00 p.m. Detective Abernathy's team staged in the ARVB outside of the perimeter fence. Lieutenant Viosky made it clear that Sandoval did not want law enforcement to enter his property, and Sandoval said he would shoot Witness #2 and shoot himself if they got close. As a result, Detective Abernathy was very worried about Witness #2's safety.

Several more hours passed and around 3:00 a.m. the following day, on June 27, 2019, Lieutenant Viosky informed them that negotiations were deteriorating. Negotiators were unable to contact Sandoval and that was unusual. Lieutenant Viosky told IRT to move the ARVB up to the northeast corner of the house and make entry through the French doors if an emergency occurred.

Approximately ten minutes after Lieutenant Viosky moved Detective Abernathy and the IRT team, Deputy Corral, who was staged near the residence aired over the radio that he

heard a gunshot come from inside the house. Detective Abernathy and the IRT team waited 15 to 20 seconds for additional information because they knew that negotiators were on the phone and had additional information. Approximately twenty seconds after, there was information that a gunshot was heard, a female was screaming, and that an immediate response and emergency rescue was required.

As a result, Detective Abernathy believed there was a very high probability that the hostage's life was in even more danger than before. About 25 to 30 seconds after the original gunshot was aired over the radio, the driver took Detective Abernathy and the IRT team to the northeast corner of the house. The driver rammed through the perimeter gate and Detective Abernathy jumped out of the back of the ARVB and positioned himself several feet east of the French doors. As Detective Abernathy positioned himself next to the exterior of the residence, he heard two gunshots in rapid succession coming from inside the bedroom he was standing next to.⁵

Detective Abernathy was concerned that Sandoval had shot Witness #2. He thought it was unusual that Sandoval would only shoot Witness #2 one time, and he believed Sandoval was shooting at them through the wall because Sandoval could see their location through the cameras. Detective Abernathy knew he had to be either shooting at them or at Witness #2, because if Sandoval had committed suicide or shot himself, he would have only shot one time. Detective Abernathy believed, "You can't shoot yourself twice in the head, generally." Detective Abernathy also thought that due to the noise of the ARVB and SED just outside the door, Sandoval knew where they were coming from and there would be an immediate gunfight once they made entry. Detective Abernathy described the doorways as "bullet magnets."

There was also additional danger because of Sandoval's access to live video. The live video feed along with the noise created outside the door by SED would let Sandoval know SED was coming in through the French doors. Detective Abernathy believed Sandoval was going to have his gun pointed at the door and would start shooting as soon as he entered the master bedroom.

Despite the danger the team had urgency to get inside and rescue Witness #2. Detective Abernathy yelled for the breacher to breach the French doors. Deputy Aaron Griffin, the designated breacher, ran to the French doors and breached the door on the north side of the residence. Deputy Griffin jumped out of the way and Detective Scott Abernathy was first through the door to enter the master bedroom. He was followed by Deputy McCarthy and the rest of the IRT team. Due to fact that this was a hostage rescue, an additional team made entry to the back of the house. The second team used the ARVBC to breach a sliding glass door.

⁵ Detective Abernathy realized after watching the surveillance from inside the home, some of the sounds he was heard were likely Sandoval shooting himself and then the ARVBC crashing through the wall, but at the time it sounded like rapid succession of shots as he was not privy to the surveillance inside the home before making an entrance. Both Sandoval shooting himself and the ARVBC penetrating the door in the kitchen happened almost simultaneously.

Before entry inside the home, Detective Abernathy had set his Colt M4 rifle to semi-automatic. He was fearful that upon entry, if Sandoval had shot Witness #2, Detective Abernathy would have to shoot Sandoval. Detective Abernathy was also fearful Sandoval would use Witness #2 as a target and as a shield. For that purpose, he set his firearm to a semi-automatic setting, which would make it easier for him to take a more precise shot than fully automatic. The Colt M4 rifle was the gun he trained with when making entry into homes. No shields were used during entry because they could inhibit law enforcement's ability to take a shot, and they could not guarantee Witness #2 any more safety.

Detective Abernathy wanted to get into that room as soon as possible to rescue Witness #2. Detective Abernathy heard shots fired that were very loud, and believed the shots came from the bedroom. When Detective Abernathy made entry into the bedroom the bedroom lights were on. He visually cleared the northeast corner of the master bedroom. He returned his attention to the center of the room and saw Witness #2 curled up on the ground. Witness #2 moaned and rolled on the ground. It looked like she was shot as Detective Abernathy saw what he believed to be blood. Detective Abernathy knew something was wrong. Detective Abernathy believed Sandoval shot her. To Detective Abernathy that action meant that Sandoval had carried through with his threats. This indicated to Detective Abernathy that Sandoval would shoot again. Detective Abernathy moved towards Witness #2 and saw Sandoval was five to ten feet past Witness #2, down on the ground.

Detective Abernathy believed they would be unable to extract Witness #2 from the home because moving her may do more damage. This meant that Witness #2 would need to be treated in place and Detective Abernathy needed to focus on Sandoval immediately, as Sandoval presented a real threat. Detective Abernathy was concerned Sandoval would realize Witness #2 was not dead and try to shoot her again. Detective Abernathy approached Sandoval and thought, "we're walking towards the suspect, I'm just waiting to again get into a gunfight, to get shot at by this guy." As they approached, Detective Abernathy yelled at Sandoval not to move.

Detective Abernathy stepped in between Sandoval and Witness #2. Sandoval was lying on his right side, and his feet were closest to Detective Abernathy. Sandoval's head was away from Detective Abernathy. There was a gun right next to Sandoval's right hand approximately three to six inches away from his right hand. Sandoval had labored breathing. Detective Abernathy saw Sandoval's eyes glance back and forth all over the place. Detective Abernathy saw slight movement from his right hand and yelled at Sandoval "don't reach."

Detective Abernathy feared that if Sandoval were able to get the handgun, Sandoval would shoot SED personnel. Detective Abernathy considered his option to bend down and pick up Sandoval's gun, Sandoval was only inches away from the gun, whereas Detective Abernathy was feet away. This meant Sandoval would have been able to grab the handgun and shoot Detective Abernathy before Detective Abernathy could get to the handgun. Retrieving Sandoval's gun was not a safe option.

Another option was to transition to a less than lethal force option, like a taser or chemical agent. Due to Sandoval's proximity to his handgun, and his prior use of the gun against Witness #2, Detective Abernathy felt that this was not a safe option. There was a wall of deputies separating Sandoval from Witness #2. Detective Abernathy thought about what would happen if Sandoval picked up the gun, Sandoval would not have to aim; he could just shoot in almost any direction and he could hit someone.

One or two seconds passed, while Detective Abernathy tried to understand why Sandoval was lying on the ground. Detective Abernathy thought about whether or not Sandoval tried to kill himself and then thought "no," because Detective Abernathy heard two gunshots in rapid succession from outside the house. Detective Abernathy looked to his right and saw a shelf or cabinet that had fallen on the ground. He deduced it had fallen when the ARVCB collided with the house. Detective Abernathy did not see any injuries on Sandoval as he was laying down on his right side.

Detective Abernathy focused on Sandoval's eyes and tried to see what he was going to do next. Despite Sandoval's labored breathing, Sandoval made eye contact with Detective Abernathy. "Time really slowed down..." for Detective Abernathy "[Sandoval] looked over at me and his right hand suddenly like moved towards the gun and uh at that point I, I didn't wait to see what his hand ended up doing, I saw it move towards the gun and then I shifted my uh, my eye sight to my optic..." Detective Abernathy delivered two controlled gunshots from his rifle from about seven to eight feet away directed at Sandoval. When Detective Abernathy shot Sandoval, he was standing and had no visual obstructions preventing him from seeing Sandoval.

Detective Abernathy was fearful "100 percent" that Sandoval was going to kill him at that moment. Detective Abernathy believed if he did not fire his weapon, Sandoval would have shot anyone standing between himself and Witness #2. The intent when Detective Abernathy fired his shots was "to stop him from shooting at us." After shooting Sandoval, Detective Abernathy saw Sandoval was deceased and yelled out "suspect down."

SUMMARY OF INCIDENT - VIDEO AND AUDIO

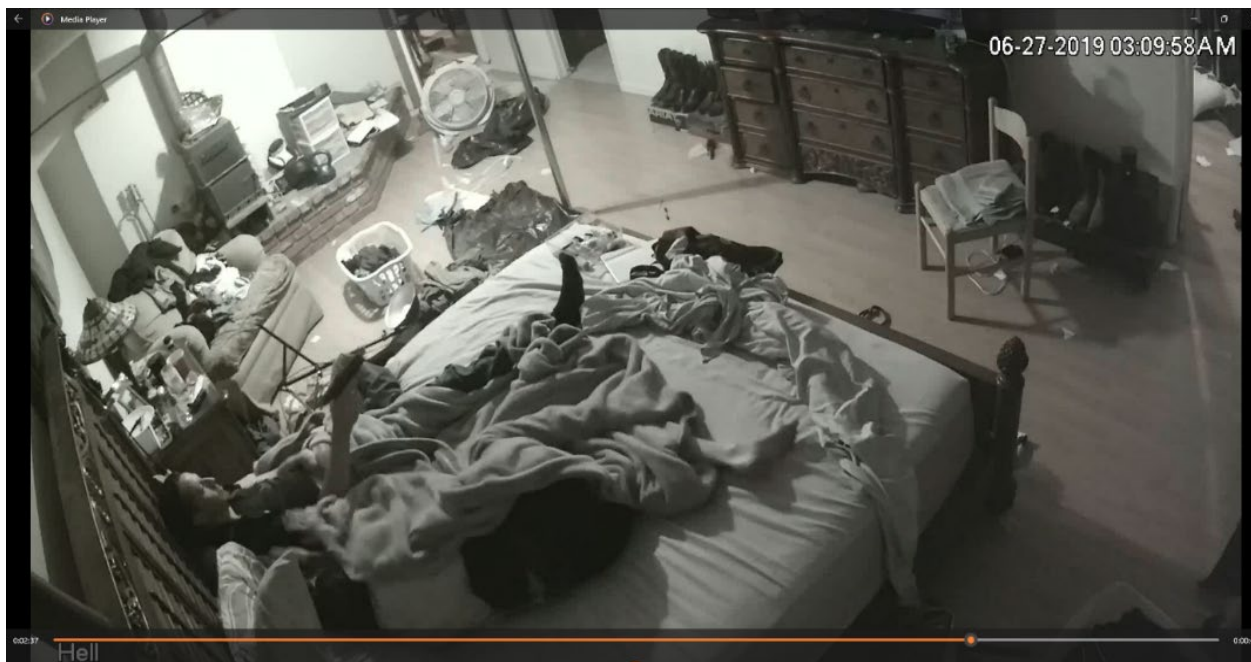
VIDEO SURVEILLANCE WITH AUDIO

Surveillance cameras were located in the exterior and interior of the home. The surveillance system was hard wired to a DVR hidden in the ceiling. The master bedroom where the incident occurred had an interior camera. The real-time surveillance video from the cameras was displayed on a large flat screen television in the bedroom. During the incident the television was on, and the surveillance videos displayed on the screen. The television was positioned so Sandoval could view the surveillance cameras while lying in bed.

The events leading to the lethal force encounter were captured on surveillance video through the interior master bedroom camera mounted at the ceiling of the bedroom.

In the video, Witness #2 can be seen lying under the blanket next to Sandoval, who is holding a gun in his hand tapping his finger continuously against its frame. You can hear the hostage negotiator on speaker talking to Witness #2 and Sandoval. The negotiator informs Sandoval that he is showing “a lot of restraint,” that he “already made it through yesterday, this is already tomorrow,” since the hostage situation began on the prior day. Sandoval responds, “I don’t care, I’m sick of hearing you guys.” Sandoval repeats “I’m sick of hearing you guys, you guys might as well come on in and get this over with.”

Sandoval tells the negotiator over the phone he is loaded with “hollow-points, hydroshock, +P rounds, indicating, “one is going in her head, one is going in mine.” Sandoval tells the negotiator to “stop calling.” Sandoval says, “it’s still going to happen at some point, might as well get it over with now.” Sandoval tells the negotiator that “their lights are going to get her shot sooner or later.” Ultimately, Sandoval sounds frustrated and fires one round at the wall in front of him. A screenshot from the surveillance shows Sandoval pointing the gun towards the wall with Witness #2 next to him under the covers.



Sandoval tells the negotiator to “stop looking through his windows.” Sandoval pulls the slide back to chamber a new round. An alarm inside the home starts to ring. Witness #2 is crying. Sandoval keeps repeating “I don’t give a f***, it’s going to happen one way or another.” The negotiator tries to get clarity from Sandoval as to where he shot, Sandoval says the wall. Sandoval says, “they’re here,” and immediately gets up from the bed. Witness #2 is screaming. Witness #2 tries to hold on to Sandoval and falls off the bed. Sandoval drags Witness #2 onto the floor at which point Sandoval shoots at Witness #2 twice, the time stamp on the video indicates 03:10:48 a.m. on June 27, 2019. You can hear the negotiator on the phone, Sandoval tells the negotiator, “She’s dead, you guys did that.” Sandoval makes his way toward one of the bedroom exits, you hear another shot fired and Sandoval falls to the ground. A cupboard next to him tilts over and the items

on it are seen falling. Witness #2 is holding her head and is visibly struggling. The glass of the French doors is broken by law enforcement at 03:11:06 a.m.



IRT comes in through the broken French doors in a single file line with Detective Abernathy at the front. Pictured above is a screenshot from the surveillance showing the victim, Witness #2, on the ground (yellow circle), Sandoval on the ground (red circle), and Detective Abernathy as the first to make entry (green circle). Detective Abernathy is the closest to Sandoval. Instructions are given, "Don't move, don't move." Two deputies drag Witness #2 from the bedroom to the exterior of the residence. Other deputies remain in a line behind Detective Abernathy. From this point visual of Sandoval is lost due to where the deputies are standing. (See image on next page). There is a lot of commotion heard from multiple deputies. Another gunshot is heard at 03:11:23 a.m. Detective Abernathy gives the notification of "suspect down" at 03:11:30 a.m.

///



BELT RECORDINGS

Detective Abernathy was equipped with a belt recorder that captured the audio leading up to the lethal force encounter. The relevant portions before and after the lethal force encounter are summarized below in a 2 minute and 46 second belt recording capturing the lethal force encounter.

In the belt recording, a clear command of “rescue, rescue, rescue” is given. Detective Abernathy confirms receipt of that command saying “copy, copy, copy.” A vehicle is heard stopping and doors are opened. More information comes in “more shots heard.” The command of “Breacher up!” is heard. Glass is heard shattering. Detective Abernathy gives the directions, “Don’t move, don’t move.” Detective Abernathy tells someone, “Hey, get her up,” in reference to Witness #2 who is lying on the floor. Instructions are given “don’t move, don’t reach.” Detective Abernathy clearly yells “Hey!” after two quick gunshots are heard back-to-back. Someone yells “we got the gun? Does he have the gun?” to which Detective Abernathy responds “Got it. Suspect is down.” Detective Abernathy notifies his team that the “suspect is down right here. They’re gonna have to get to him,” and he gives his team instructions to “Move this stuff. We got you covered. You’re gonna have to pull him out to you.” Sergeant Arrieta is heard saying “Let’s tape’em up gentlemen.” A deputy asks “did we shoot,” Detective Abernathy says, “Yes.” A deputy asks, “who is the shooter?” Abernathy responds, “I am.”

Other deputies were part of Detective Abernathy’s Immediate Response Team and entered the residence with him. Their respective belt recordings were reviewed and were consistent with Detective Abernathy’s belt recording and the video surveillance footage and audio.

STATEMENTS BY CIVILIAN WITNESSES⁶

Witness #4

Witness #4 was the suspect's estranged wife. Although not present at the scene, she was present at the Command Post set up by SED and provided negotiators with information while they were on the phone with Sandoval.

From Witness #4 they learned Sandoval was recently diagnosed with an unknown medical condition and he only had a couple of years to live. Sandoval previously spoke of suicide to her, but Witness #4 did not believe he would carry it out. She told negotiators, approximately one month before the incident, Sandoval was taken to a mental facility for evaluation. During the encounter, Sandoval's guns were confiscated and Witness #4 did not believe he had any other guns.

While she was there, Witness #4 also told the negotiator team that she had a voicemail that appeared to be a farewell message from Sandoval. Sandoval told Witness #4 he was not going to be around any longer and Witness #4 became concerned.

Witness #2

Despite being shot in the head by Sandoval, Witness #2 survived her injuries and was interviewed by Detective Floyd Stone on August 14, 2019.

Witness #2 was in an intimate dating relationship with Sandoval for approximately one and a half years. Witness #2 said Sandoval would get upset sometimes because he was bipolar, but he was prescribed medication he took regularly. Sandoval was married to Witness #4, but they were estranged. Witness #2 had a close relationship with Witness #4 and they spoke regularly. Witness #2 left Sandoval in December 2018. When Witness #2 moved out, it sent Sandoval over the edge. Sandoval filed for a restraining order against Witness #2 and posted about her family on the internet. Witness #2 believed Sandoval filed a restraining order because Witness #2 threatened to file one on Sandoval based on his behavior. Witness #2 believed Sandoval filed it in retaliation.

Witness #2 found out she was pregnant with Sandoval's child. She decided to have an abortion. The weeks after the abortion, Sandoval called Witness #2 repeatedly and apologized. Witness #2 left several items at Sandoval's residence when she moved out. Sandoval refused to give Witness #2 the items, hoping she would return.

Witness #2 almost cut all contact with Sandoval until her son developed an illness. Her son had medication left at Sandoval's house. She called Sandoval to ask for the medication. Sandoval informed her she would have to pick up the medication from the house. When Witness #2 arrived at Sandoval's house, he started crying about the abortion and again apologized.

⁶ All reports of civilian statements made were reviewed, though not all are summarized here.

After that visit, she did not move back to the residence with Sandoval, however started dating him again. They would meet at locations to see each other or would drive down the hill together.

One week before the incident in July, Sandoval texted Witness #4 that he was going to shoot himself. Witness #2 drove to Sandoval's house, and Witness #4 called the Sheriff's Department for a welfare check. When Witness #2 arrived at Sandoval's house he was gone. A deputy arrived at the residence and contacted Sandoval on Witness #2's phone. Sandoval told the deputy about his relationship with Witness #2 and Witness #4. The deputy told Sandoval he needed to deal with his relationship, gave Witness #2 her phone and left the location.

Witness #2 began to distance herself from Sandoval after he made threats of suicide. She wanted to end the relationship, but she did not want to send him over the edge. Sandoval would say things to Witness #2 that were hurtful and made her feel unstable. She did not want that in her life.

On the day of the incident, Witness #2 was at the Walmart in Yucca Valley purchasing an eyebrow pencil. As she was leaving, she saw Sandoval in the parking lot. Witness #2 told Sandoval he was not supposed to be there. She did not remember what happened after that. The next thing she remembered was waking up in Sandoval's bedroom at approximately 11:00 p.m. Witness #2 was upset because she did not want to be at Sandoval's house and did not know how she got there. Witness #2 could not remember approximately fourteen hours of the day. When she woke up, she did not feel normal. Based on Sandoval's mental state, she would not put it past him to drug her.

At some point during the day, Witness #2 emailed her family but did not remember how. Witness #2 got out of bed and saw Sandoval talking on the phone and he had a gun in his hand. Witness #2 asked Sandoval what he was doing. He said, "I told you, if you killed my baby, I'm going to kill you." Sandoval did not look normal; something was not right with him.

Witness #2 noticed the room was a mess, there was a bong near the bed, and there was foil on the ground. Witness #2 asked Sandoval if he was using drugs. Sandoval said he stopped taking his medications a week prior. Sandoval told Witness #2 he wanted to be with the baby. Witness #2 noticed Sandoval had bruises on his arms and legs as if he was trying to inject drugs. Recently, Sandoval invited people to the house that were known drug users in the area. Witness #2 believed Sandoval stopped taking his medication and was currently using methamphetamine.

Witness #2 used methamphetamine in the past and knew how a person acted while on the drug. Sandoval acted erratic even when he was calm. Witness #2 could tell by Sandoval's body language that he was using drugs. Sandoval could not stop moving and twitching his hand. He had no self-control when on drugs. Sandoval paced around the room as he talked to the negotiator on the phone. Sandoval was on the phone with the negotiator nearly the entire duration of the incident.

Sandoval told Witness #2 he would kill her if the police came or if she tried to leave the house. He took her phone and her keys. Sandoval threw the items over the fence in the backyard. He told Witness #2 to get the items if she wanted them. She was afraid that if she retrieved them, he would shoot her.

She eventually was done with Sandoval and started gathering her property. Witness #2 placed some items in a basket and hid the basket in a closet. Sandoval found the items and took them to the other side of the house and hid them. Sandoval tried to keep Witness #2 from going into certain rooms of the house. Witness #2 believed she was going to die, so she started yelling at Sandoval and fighting back when he pushed her into a room. Witness #2 yelled and pushed Sandoval and Sandoval struck Witness #2 in the head with the handgun.

Witness #2 remembered Sandoval standing behind her while she was on her knees facing the door. Sandoval held Witness #2 by the hair. Sandoval told Witness #2, "this is how it was going to be." Sandoval shot Witness #2 in the back of the head one time. Witness #2 pretended to be dead, and Sandoval ran to the back of the house. SED entered the house and said, "the victim is down." Witness #2 told SED she was not dead and asked them to help her out of the house.

Witness #2 was shot in the back of the head, the bullet traveled through her neck and lodged in her left breast. The bullet missed her throat and aorta by a very small distance. She was in therapy twice a week to help deal with the trauma of the incident.

SUSPECT WEAPON

Eric Sandoval used a black Glock 19 9mm caliber handgun to shoot victim, Witness #2. The serial number BGGP382 was located on the slide of the firearm only. Special Agent Angie Kaighin from the Alcohol, Tobacco, and Firearms (ATF) Agency informed Detective Joshua Guerry that the slide and barrel assembly of the firearm was likely sold separately from the lower receiver. The slide and barrel assembly are not the true firearm. It was determined that the lower receiver of his firearm was a polymer frame with no serial number, making the firearm untraceable.

This confirmed the information that Sandoval told Sergeant Tollefson during negotiations. Sandoval told Sergeant Tollefson he had built a replica Glock from an 80% lower and had purchased a slide and/or barrel assembly, making a complete operational handgun. Sandoval advised Sergeant Tollefson that the gun was loaded and had a total of 3 magazines containing hollow-point ammunition. While Face-Timing Sandoval, Tollefson saw a black semi-automatic handgun laying on Sandoval's stomach.

The caliber of the gun is also consistent with the 9 mm larger jacket found in Eric Sandoval's cranial cavity during the autopsy.



DECEDENT

Sandoval was pronounced deceased at the scene on June 27, 2019, at approximately 3:12 a.m. Corporal James Diaz was present at the scene and had a paramedic certification. His assessment was upon seeing Sandoval, there were obvious signs of death. Due to the massive evacuation of his brain, there was no oxygen exchange taking place. As a result, Sandoval was not treated for his injuries at the scene. His death was instantaneous.

Witness #6, M.D., Forensic Pathologist for the Riverside County Sheriff's Department Coroner Division, conducted the autopsy of Eric Sandoval on June 28, 2019. Dr. Witness #6 noted the cause of death was gunshot wounds to the head. Specifically, there were two penetrating gunshot wounds of the head, one with stippling. The larger jacket measured approximately 9mm in diameter, consistent with a 9 mm bullet. The second jacket was smaller and consistent with a .223 bullet.

Entrance of Gunshot Wound #1:

Present on the right temple, approximately 7 centimeters below the top of the head and 14 centimeters to the right of the anterior midline, a 7 millimeter, round, regular defect with a peripheral ring of stippling, measuring approximately 1 centimeter wide in all directions.

Trajectory of Projectile:

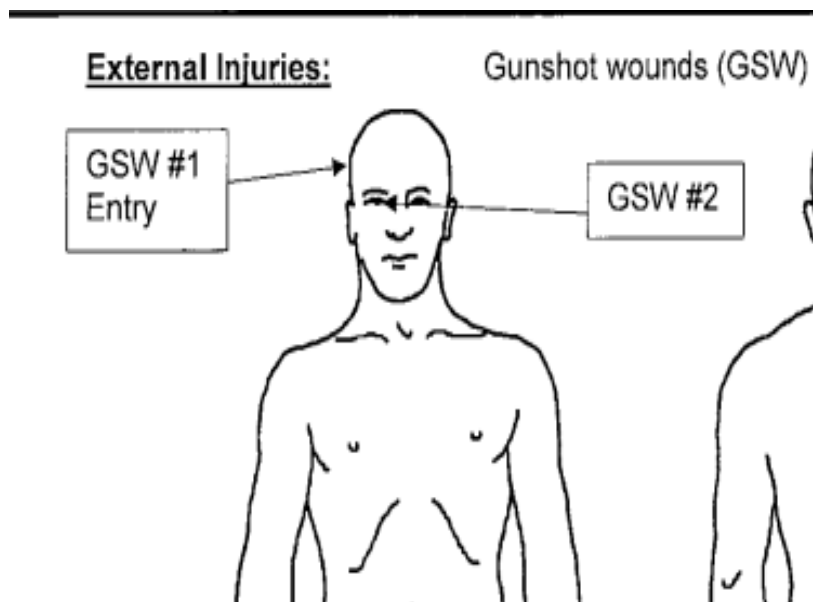
The direction of at least one of the projectiles, with the body in anatomic position, is right to left.

Entrance of Presumed Gunshot Wound #2:

Present over the right side of the face, including the right eye, right cheek, and the entire nose there is exposed, avulsed brain matter and multiple visible skull and facial fractures. The edges of the wound on the right side of the face have a stellate appearance, however no distinct entrance or exit-type defects can be identified.

Exit of Gunshot Wounds:

No distinct entrance or exit-type defects were identified. There was no evidence of carbonaceous material, nor can a bony entrance or exit-type defect be identified. Examination of the cerebral parenchyma produced two jackets of different caliber. The larger jacket measured approximately 9mm in diameter, consistent with a 9mm bullet. The second jacket was smaller and consistent with a .223 bullet. Multiple small metal fragments were also retrieved. There was destruction of the right side of the cerebellum and multifocal cortical contusions and intracerebral hemorrhages. There are comminuted fractures of the face, maxilla, mandible, and base of skull.



TOXICOLOGY

Chest blood, vitreous, gastric, liver, bile, urine, and brain specimens were collected during the autopsy.

Toxicology results for the blood sample were listed as follows:

Amphetamines	Detected
• Methamphetamine	0.928 mg/L

- Amphetamine 0.169 mg/L

Toxicology results for the urine sample were listed as follows:

Amphetamines	Detected
• Methamphetamine	Greater than 50.000 mg/L
• Amphetamine	15.700 mg/L
Benzodiazepines	Detected
• Alprazolam	0.055 mg/L
• Alpha-hydroxyalprazolam	0.213 mg/L
Diphenhydramine	0.046 mg/L
Fentanyl	0.0001 mg/L (0.1 ng/mL)
Norfentanyl	0.0015 mg/L (1.5 ng/mL)
Pseudoephedrine/Ephedrine	Detected
Albuterol	Detected
Phenylpropanolamine	Detected
Methcathinone	Detected/Positive
Cannabinoids	Detected
• 11-carboxy-delta-9-THC	0.006 mg/L

Toxicology results for the vitreous sample were listed as follows:

Amphetamines	Detected
• Methamphetamine	0.830 mg/L
• Amphetamine	0.092 mg/L

CRIMINAL HISTORY

Eric Sandoval had no criminal history. Sandoval was the restrained party in two California court restraining orders. One issued in December 2017 protecting a female named Witness #7 issued in Placer County Superior Court case number **-*****, and another protecting Witness #4, his estranged wife, issued in April 2019 in San Bernardino County Superior Court – Joshua Tree case number FAMMS*****. Both restraining orders were valid at the time of the incident. Sandoval was a protected party in a restraining order filed against Witness #2 issued in February 2019 in San Bernardino County Superior Court Case FAMMS*****, set to expire February 2020.

DE-ESCALATION

The Sheriff's Department tried to de-escalate the situation with Sandoval by involving crisis negotiators in an effort to get Sandoval and Witness #2 out of the home. When this failed, they maintained communication with Sandoval via phone. They also tried a three-way call with Sandoval and an attorney to try to ease his concerns regarding criminal liability. Investigators also had Sandoval speak to Witness #5, his sister-in-law to try to convince him to give up voluntarily. The team respected Sandoval's request for law

enforcement to remain outside of the perimeter fence during the over nine hours of negotiation. It was not until Sandoval fired shots that the entry team made efforts to go past the perimeter fence. Likewise, Detective Abernathy gave multiple verbal commands to Sandoval to no avail.

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).)⁷ 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.

⁷ All references to code sections here pertain to the California Penal Code.

(Penal C. §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal C. §835a(e)(1).) The “ [t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,⁸ 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:

⁸ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

- (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;⁹
- (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;

⁹ 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).

- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

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

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.)¹⁰ 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

¹⁰ 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.

taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano*, *supra*, 661 F.3d at 441-442.)

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

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

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

The determination as to whether there was justification for an officer’s use of deadly force is factually driven and requires an analysis of the facts and circumstances leading up to the use of force.

On June 26, 2019, Detective Abernathy received a call-out for a hostage situation in Yucca Valley, California. He went to the mobile command post located 1.2 miles from the incident location and was briefed by Sergeant Mascetti regarding the circumstances of the call. Ultimately, Detective Abernathy was assigned to the IRT team, which was inside the Armored Rescue Vehicle Bear (ARVB). He was there should an emergency arise. If entry became necessary, Detective Abernathy was to enter the residence first based on the entry plan.

The information known to Detective Abernathy was that a hostage situation had been reported to the Morongo Basin Sheriff’s Department at approximately noon. The suspect was armed with a firearm and was preventing the victim from leaving the home. Detective Abernathy was provided with information that the crisis negotiators saw the suspect with a handgun and that Witness #2 was being held hostage. Communications broke down at

approximately 3:00 a.m. the following day on June 27, 2019. This was after approximately eleven hours of negotiation between Sandoval and the negotiators. All relevant information obtained by the negotiators during this time was relayed to the entire team.

Detective Abernathy knew that the suspect had threatened or harmed others in the past. Just before entering the home, Detective Abernathy had received information that shots were fired and a female screamed. Immediately upon entry into the master bedroom, Detective Abernathy saw Witness #2 lying on the ground moaning in pain. He believed he saw what appeared to be blood. Detective Abernathy reasonably believed that Sandoval had shot Witness #2. Because Witness #2 had just been shot, Detective Abernathy had an honest and objectively reasonable belief that Sandoval posed an imminent risk of serious bodily injury or death to Witness #2, to himself, and to his entry team.

Detective Abernathy was aware Sandoval had already shot at the wall, and at Witness #2, indicating to Detective Abernathy Sandoval's readiness to shoot. Detective Abernathy feared for Witness #2's life as he walked past her. The goal remained, "rescue the hostage number one, priority two was to make sure that we all made it out safely and also the suspect ideally..."

When Detective Abernathy saw Sandoval lying on the ground and saw the firearm so close to his body, Detective Abernathy knew his options were limited based on safety concerns. He could not transition to less lethal options because he, "wanted to separate that firearm from the suspect prior to transitioning to a less lethal option." Detective Abernathy "yelled at him don't reach that first time after I saw him reach," for the gun. However, the second time, Sandoval made eye contact with Detective Abernathy, he looked over at Detective Abernathy and Sandoval moved his right hand suddenly towards the gun. It was at that point that Detective Abernathy had to take action to prevent further shots being fired by Sandoval.

During the incident under review, Sandoval posed an imminent threat to Witness #2 as he constantly threatened her and in fact shot her in the head. He posed an imminent threat to Detective Abernathy when he reached for the gun twice while laying on the ground. Detective Abernathy was standing only a few feet away, and the gun was three to six inches from Sandoval's hand. Detective Abernathy did not have the opportunity to resort to a less lethal option based upon Sandoval's actions. Had Sandoval been able to get to the firearm, Detective Abernathy and the entire entry team were vulnerable to being shot.

Sandoval posed an immediate threat of serious bodily injury or death to Detective Scott Abernathy and members of the SED team. It was reasonable for Detective Abernathy to believe the immediate use of deadly force was necessary and the only option to protect himself, Witness #2, and the SED team. When Detective Abernathy fired his duty weapon twice at Sandoval, he used force that was reasonably necessary to defend against the danger.

CONCLUSION

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

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

