



PUBLIC RELEASE MEMORANDUM

DATE: October 5, 2026

SUBJECT: Officer Involved Shooting (Fatal)

Officers: Deputy Wyatt Eisenbrey
Deputy Brandon Clancy
San Bernardino Sheriff's Department

Involved Subject: Ryan Gainer (Deceased)
Date of Birth 11/09/08

Date of Incident: March 9, 2024

Incident location: 13000 Block of Iroquois Road
Apple Valley, CA

DA STAR Number: 2024-52644

Investigating Agency: San Bernardino County Sheriff's Department

Case Agent: Detective Shawn Thurman

Report Number: DR# 602400019

PREAMBLE

This was a fatal officer involved shooting by two deputies from the San Bernardino County Sheriff's Department. The shooting was investigated by the San Bernardino County Sheriff's Department. This factual summary was based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the San Bernardino Sheriff's Department, DR# 602400019, 182401148.

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FACTUAL SUMMARY

On the evening of March 9, 2024, Witness One called 9-1-1 and told dispatch that Ryan Gainer,¹ was physically assaulting his sister, Witness Two. Witness One reported that Ryan broke the window inside the front door, had a piece of glass to his neck, and was threatening to kill himself. Witness One told dispatch Ryan suffered from depression and bipolar disorder. A second occupant at the home also called 9-1-1. He stated his name was Witness Three, he was a cousin, and he was hiding in a closet because Ryan just assaulted three people and broke the front door with a shovel, later determined to be a wooden handled steel stirrup shaped hula-hoe. Witness Three reported that Ryan was in the front room with Ryan's dad, Witness Four. Witness Three hung up with 9-1-1 when he heard the Deputy had arrived. At 4:48 p.m. the call for service was initially listed as a "domestic disturbance" but was later changed to a "psychological evaluation" at 4:51 p.m. on the mobile data computer, but was not verbalized by the dispatcher over the radio.

Radio traffic consisted of the original 9-1-1 call being summarized over the air as a "415 domestic," and a "242 on the sister,"² the subject had glass to his neck, and broke a window. Dispatch advised over the airways that the subject was still inside with glass in his hand, and he was now talking to his father in the foyer. Dispatch then verbally announced, a second 9-1-1 call was received from a reporting party inside the home that the male subject had just broken the front door with a shovel.

Deputy Wyatt Eisenbrey responded to the call for service with Deputy Clancy as backup. Both were enroute to the residence located at 13000 Block of Iroquois Road, Apple Valley. Deputy Eisenbrey was the first on scene and arrived at 4:54 p.m.; he was wearing a Sheriff uniform and is 5-feet, 10-inches and weighs 150 pounds. Deputy Eisenbrey parked his marked police car east of the residence. Deputy Clancy arrived on scene 31 seconds later, also in uniform and in a marked patrol car that he parked directly in front of the residence. It was still daylight, but the sun was starting to set behind the residence.

Deputy Eisenbrey walked towards the residence. The front door was open, the glass window of the front door was broken, and shattered glass covered the entryway. Deputy Eisenbrey identified himself as a Deputy and Witness Four invited Eisenbrey inside. As Deputy Eisenbrey announced himself, Deputy Clancy arrived, parked, and exited his vehicle and began to approach the residence. As Deputy Eisenbrey started to step inside the residence, Ryan appeared from the west end of the residence. There was a small hallway between Ryan and the front door where Deputy Eisenbrey still stood. Ryan was armed with a steel stirrup-shaped hula-hoe with a 4-foot, 10-inch wooden handle, and a 10-inch black metal frying pan.

Ryan held the hula-hoe with two hands by the wooden handle with the stirrup-shaped, flat, sharpened metal portion over his head in a striking position. Ryan also grasped in his

¹ Many parties share the same last name; therefore, first names will be used throughout the report.

² 415 and 242 are references to the California Penal Code. "415 domestic" is understood to be a verbal or physical fight between family members. While Penal Code section 242 is a battery.

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right hand a metal frying pan, held against the wooden handle of the hula-hoe. Ryan's left hand grasped the hula-hoe towards the bottom of the wooden handle. When Ryan appeared he was approximately 12 feet from Deputy Eisenbrey.



Ryan charged at Deputy Eisenbrey while the weapon was still held over Ryan's head in a striking position. Deputy Eisenbrey yelled, "get back, get back or you're going to get shot." As Deputy Eisenbrey gave commands, Deputy Eisenbrey retreated from the front doorway, walking backwards, as he drew his duty weapon. Deputy Clancy heard these commands and drew his duty weapon and pointed it in the direction of Deputy Eisenbrey and Ryan. Ryan disobeyed Deputy Eisenbrey's orders and continued advancing towards Deputy Eisenbrey. Ryan closed the distance between him and Deputy Eisenbrey. Deputy Eisenbrey turned away from Ryan and began to run east into the front yard; Ryan was still in pursuit of Deputy Eisenbrey. Deputy Eisenbrey was in fear for his life and fired one round at Ryan. Simultaneously, Deputy Clancy feared for Deputy Eisenbrey's life and fired two rounds at Ryan.

After the shooting, four occupants ran out of the house and toward deputies. Deputies Eisenbrey and Clancy gave multiple commands to the occupants to "get back" so they could render medical aid, but those commands were ignored. Deputy Clancy requested medical aid over his radio; once Deputy Gregory Guzman arrived moments later, he and Deputy Clancy administered medical aid to Ryan while Deputy Eisenbrey stood between the deputies and the occupants. Medical personnel arrived and transported Ryan to Providence Saint Mary's Hospital in Apple Valley.

The hula-hoe was lying at an angle over Ryan's right shin. The handle was wooden and 4-feet, 10-inches long, the top portion of the tool was stirrup-shaped and made of

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sharpened black metal. There was a 10-inch black frying pan lying just to the right of Ryan's right hand.

STATEMENTS BY POLICE OFFICERS

On March 19, 2024, **Deputy Wyatt Eisenbrey** was interviewed by Detective Shawn Thurman and Detective Vanayes Quezada³.

On March 9, 2024, **Deputy Wyatt Eisenbrey** of the San Bernardino County Sheriff's Department was assigned to uniformed patrol. He was wearing a Sheriff's Department "Class A" uniform and driving a marked patrol vehicle. He had a Glock 34 firearm and believed he loaded it with 17 rounds in the magazine plus one in the chamber of the firearm⁴. Deputy Eisenbrey self-assigned this call because he was in the area. While enroute to the residence, the information he received from dispatch described a male subject actively assaulting family members inside the home. The male had glass in his hand, and the residents were fearful. Deputy Eisenbrey learned the subject was talking to his father in the foyer of the home and was under the belief the subject's father was "starting to deescalate him." Deputy Eisenbrey had no prior knowledge or prior experience with the subject or address. He was not made aware via radio of any potential mental health issues the subject may have been experiencing, and he did not see any updates on his mobile data computer.

Upon arrival, Deputy Eisenbrey was advised by dispatch, the subject had broken "the glass" with a shovel. As Deputy Eisenbrey approached the residence, he saw Deputy Clancy pulling up to the residence but did not see Deputy Clancy get out of his vehicle. Once Deputy Eisenbrey reached the porch of the residence, he noticed broken glass "everywhere." Deputy Eisenbrey announced himself as a Deputy Sheriff and heard a male say, "we're in here, come on in." Deputy Eisenbrey asked, "Hey, where's he at?" referring to the subject later identified as Ryan Gainer. Once Deputy Eisenbrey entered the residence and was just inside the entryway, Deputy Eisenbrey heard, "Hey! Watch out, watch out, he has a stick." Deputy Eisenbrey saw Ryan quickly come around the corner with a five- to six-foot stick with a sharp metal object on the end. Ryan held it with two hands, over his head in a striking motion. Deputy Eisenbrey did not see any other weapons under Ryan's control. Ryan was less than 10 feet from Deputy Eisenbrey who described the look on Ryan's face as "anger and evil." Deputy Eisenbrey estimated the time between him arriving at the doorway to the time he first observed Ryan was two to three seconds.

³ Deputy Eisenbrey reviewed his body worn camera recording, his "partner[s]" that was on the scene," audio of dispatch, and "all of [his] traffic," prior to being interviewed by Detectives Thurman and Quezada.

⁴ In Deputy Eisenbrey's interview on March 19, 2024, he told detectives he "believed" he loaded his gun with 17 rounds in the magazine and one in the chamber; however, the evidence does not support he loaded a round in the chamber. When Deputy Eisenbrey's firearm was processed, there were 16 bullets: one in the chamber and 15 in the magazine. Both deputies' bodycam, the audio from a nearby home security camera, both deputies' statements and the fired cartridge casings found at the scene support that there were only 3 shots fired in total (one from Deputy Eisenbrey and two from Deputy Clancy).

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Deputy Eisenbrey ordered Ryan to “get back, get back” or he was “going to get shot.” Deputy Eisenbrey retreated to create distance between them and to give Ryan an opportunity to comply with the commands. Ryan continued to advance towards Deputy Eisenbrey as Deputy Eisenbrey ran out of the residence. Ryan closed the six- or seven-foot gap between himself and Deputy Eisenbrey to only about one foot. Ryan still had “that evil look on his face,” and began to bring the weapon down in a striking motion. Deputy Eisenbrey believed Ryan was going to hit him with the object and kill him. Deputy Eisenbrey feared for his life at that moment.

Deputy Eisenbrey, while still running away from Ryan, fired his duty weapon one time towards Ryan “to stop the threat.” However, Ryan continued advancing on Deputy Eisenbrey. Deputy Eisenbrey heard two other gunshots and ran even faster “because [he] wanted to get out of the way.” Deputy Eisenbrey never saw Deputy Clancy exit his vehicle or fire the two gunshots. When Deputy Eisenbrey turned around, he saw Ryan on the ground, the hula-hoe lay against his leg and a frying pan was to the right of his body. Deputy Eisenbrey also saw Deputy Clancy for the first time, and he was approximately 20 to 25 feet east of Deputy Eisenbrey and Ryan.

Immediately following the shooting, three occupants ran out of the house and screamed at deputies. Deputy Eisenbrey wanted to render medical aid but needed the occupants to move back for officer safety concerns and to secure the scene. Within one minute a third deputy arrived and medical aid was rendered to Ryan. Fire and paramedics arrived and took over medical aid.

On March 19, 2024, **Deputy Brandon Clancy** was interviewed by Detective Vanayes Quezada and Detective Shawn Thurman.⁵

On March 9, 2024, **Deputy Brandon Clancy** of the San Bernardino County Sheriff's Department was assigned to uniformed patrol. He was wearing a Sheriff's Department “Class A” uniform and driving a marked patrol vehicle. Deputy Clancy's duty weapon was a Glock 17 with a full magazine and another round in the chamber of the firearm.

Deputy Clancy heard Deputy Eisenbrey enroute to a “domestic” call in the area Deputy Clancy was driving through. Deputy Clancy responded to the call as an officer safety precaution, and to assist in deescalating the situation. Deputy Clancy believed dispatch broadcasted, the subject suffered from a mental health disorder,⁶ and saw the call for service change to a “5150” on his mobile data computer.⁷

As Deputy Clancy arrived at the residence and parked his patrol vehicle, he saw Deputy Eisenbrey approach the front door. Deputy Clancy exited the vehicle and heard a

⁵ Deputy Clancy reviewed his body worn camera recording prior to being interviewed by Detectives Thurman and Quezada.

⁶ Based on a thorough review of the audio, dispatch did not air any information regarding the subject's mental health.

⁷ A review of the Computer Aided Dispatch (CAD), shows at 16:51:29 the call for service was changed from a 415D[omestic], to a “5150 Response” and cites “Ryan has depression, [] bipolar.”

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commotion from inside the residence. Next, he heard Deputy Eisenbrey say, “get back or you’re going to get shot.” Immediately upon hearing that, Deputy Eisenbrey entered Deputy Clancy’s field of vision and was running away from Ryan while Ryan was holding a “6-foot hula-hoe” with two hands on the wooden handle and the metal portion raised above his head. The hula-hoe was the only weapon observed by Deputy Clancy in Ryan’s hands. Deputy Clancy saw Ryan close the distance with Deputy Eisenbrey.

Approximately “four-to-six feet” separated Ryan from Deputy Eisenbrey. Deputy Clancy saw the weapon coming down towards Deputy Eisenbrey. As Deputy Clancy pulled out his duty weapon and took aim, Deputy Eisenbrey fired one shot toward Ryan, but it did not stop Ryan’s pursuit. In fear for Deputy Eisenbrey’s life, Deputy Clancy fired his weapon twice in quick succession. Ryan fell to the ground and dropped the hula-hoe.

Immediately following the shooting, the occupants of Ryan’s residence rushed screaming towards Ryan and the Deputies. Since the scene was not secured, both deputies waited for additional deputies to respond before rendering medical aid to Ryan. Once Deputy Guzman arrived at the scene moments later, medical aid began.

STATEMENTS BY CIVILIAN WITNESSES

On March 9, 2024, **Witness One**, was interviewed by Detective Shawn Thurman at the Apple Valley Sheriff’s Station.⁸ Witness One was uncooperative for much of the interview and wanted to leave the police station, however the detectives were able to get limited information.

Witness One was Ryan’s foster mother since he was a toddler. Witness One described Ryan as being 6-feet, 1-inch tall, and weighing 150 pounds.⁹ He was 15 years old and was diagnosed with high functioning autism.

On March 9, 2024, Witness One¹⁰ called 9-1-1 because Ryan was upset and threatened to hit his sister, Witness Two, with his fist. Ryan “was placed outside” and proceeded to shatter the glass in the front door. Ryan obtained a piece of the broken glass and threatened to harm himself. Witness One wanted the police to respond to take Ryan into custody and conduct a psychiatric evaluation.

⁸ The interview was audio recorded but the quality is very poor. This summary is largely based on Detective Shawn Thurman’s police report.

⁹ The coroner’s report listed Ryan as 5-feet, 10-inches and 175 pounds.

¹⁰ According to the 9-1-1 audio, the reporting party claims her name is Potential Witness Five (Ryan’s eldest sister). However, the voice in the audio matches Witness One, Witness One admits to calling 9-1-1 in this interview, and Witness Two reported to Detective Roth that Potential Witness Five was not home during the incident. Potential Witness Five was never interviewed despite attempted contact by Detective Roth.

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Witness One was inside the house and heard approximately five gunshots.¹¹ Witness One, who uses a wheelchair, crawled out of her house when she heard Witness Two, Witness Four, and Witness Three yell, "Why did you shoot him?" Witness Three returned her to her wheelchair and brought her towards Ryan, who was lying on the ground. Deputies told Witness One she would have to move but she refused. During the interview Witness One had a medical emergency and medical personnel responded. Witness One refused medical treatment and demanded to leave the station.

On March 9, 2024, **Witness Two**, was interviewed by Detective Michael Roth at the Apple Valley Sheriff's Station.

Witness Two is Ryan's older sister and lived at the 13000 Block of Iroquois Road residence with Ryan, their eldest sister, Potential Witness Five, their parents, Witness One and Witness Four, and their cousin, Witness Three. At the time of the incident, all occupants were home except Potential Witness Five.

There was an argument earlier in the day regarding chores and Ryan left the residence. When Ryan returned, Witness Four attempted to calm Ryan down, but instead Ryan became more upset. Ryan approached Witness Two and grabbed her arms. Witness Four removed Ryan and pushed him outside the residence and locked the door, which upset Ryan. Witness One told Witness Two to go into a room and lock the door. Witness Two did not come out of the room until she saw that the Deputy arrived outside. Once she came out, she saw the Deputies shoot Ryan and was in shock.

On March 10, 2024, **Witness Three**, was interviewed by Detectives Shawn Thurman and Michael Roth.

Witness Three heard Ryan, Witness Four, and Witness One arguing. Ryan punched Witness Two in the head twice and Witness Three stepped between the two and may have also been struck in the head by Ryan. As Ryan continued to swing his fist at Witness Three, both Witness Three and Witness Four escorted Ryan out of the house and locked him out. Ryan obtained a hula-hoe and broke the glass window inside the front door. Once the window broke, Ryan put his arm through the door and unlocked the door from the inside doorknob. Ryan grabbed a four-inch piece of glass and held it to his wrist. Witness One ordered Witness Three and Witness Two to go to Witness Two's room. The two did so and Witness Three called 9-1-1.

15 seconds after Deputies arrived, Witness Three heard Witness Four and Witness One yell, "Don't shoot, don't shoot," followed by three gunshots in rapid succession. Witness Three did not hear Deputies give any verbal commands. Witness Three ran out of the residence and saw Ryan on the ground.

¹¹ The Deputies' body worn camera footage, fired cartridge casings, Deputy statements, and statements from neighbors' support only 3 shots being fired.

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INCIDENT VIDEO

AXON BODY WORN CAMERA. Deputies Eisenbrey and Clancy were equipped with body worn cameras on the date of the incident under review. The body worn cameras were activated and recording at the time of the lethal force encounter. There is a 30 second audio activation delay on all Axon body worn cameras. All body camera video recordings were reviewed in their entirety.

Deputy Eisenbrey¹²

At the start of the video, Deputy Eisenbrey exited his patrol vehicle which was parked just North of the residence and walked west toward the house. It took 28 seconds for Deputy Eisenbrey to reach the front door of the residence; the door was open and there was shattered glass on the porch and inside the foyer. One second later, the sound begins on the video, and Witness Four is heard saying, “come on in.” Deputy Eisenbrey is still on the porch but took three steps closer to the door, and he immediately asked, “Where is he at?” before entering the home. A split second later, Witness Four responded in an excited voice, “look out, he [sic] got a stick in his hand.”



Before “...a stick” was heard, Ryan appeared coming around the corner into the hallway that led to the front door. Ryan had a long wooden handled object with a dark metal loop piece on top. Ryan’s left hand was at the base of the handle and near his torso, his right hand was about two-thirds up the handle with the black metal piece approximately two

¹² The summary of the body camera video recording will only cover from the start of the recording through the lethal force encounter.

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feet above Ryan's head. Also, in Ryan's right hand was a black metal frying pan. Ryan charged at Deputy Eisenbrey while the hula-hoe was raised over his head. Deputy Eisenbrey simultaneously walked backwards, drew his gun and yelled, "Hey, get back, get back, you're gonna get shot!" Ryan did not stop charging toward the Deputy, who was continuing to retreat backwards. Ryan started to run faster, which forced Deputy Eisenbrey to turn his body to face forward and run away from Ryan.

Deputy Eisenbrey's body worn camera was facing toward the direction he was running but three shots can be heard on the audio. The video captured Deputy Eisenbrey's shadow as the shots were heard, and it showed he turned his head back toward Ryan, had his arm raised and pointed back at Ryan. Then Deputy Eisenbrey turned around to face Ryan while putting both his hands on his pistol grip and aiming towards Ryan. Ryan's body was on the ground, and his head was lifted, pointed towards the residence, and away from Deputy Eisenbrey. Deputy Clancy was on scene approximately 20 feet away from Ryan, with his firearm in his hand. When Deputy Clancy was first seen in the frame his firearm was raised but he then pointed it toward the ground and appeared to speak into his police radio.

Immediately after the shooting, as Deputy Eisenbrey turned back toward Ryan, a male and female are seen exiting the residence. Female screams are heard and a male yells, "don't shoot him. Please don't shoot him." Two more occupants exit the residence. Deputy Eisenbrey gave several commands to the four individuals to return to the residence, but the residents did not comply with those commands. Deputy Guzman arrived on scene 33 seconds later and started medical aid as the occupants are heard screaming at deputies while Deputy Eisenbrey is still attempting to get them to move back.

A black frying pan is seen two feet to the right of Ryan's right hand, and the hula-hoe was on top of his right shin. The time between Deputy Eisenbrey reaching the front door to the time Ryan was seen on the ground after the Deputies fired their weapons was 13 seconds.

Deputy Clancy

Deputy Clancy is seen driving in his patrol car to the residence. He parked his vehicle in front of the residence and exited when Deputy Eisenbrey is heard, but not seen, saying, "Sheriff's department." Deputy Clancy shut his car door and started to approach the residence, and approximately 5 seconds later a muffled voice could be faintly heard. Deputy Eisenbrey is heard yelling over the faint voice, "Hey! Get back, get back, you're gonna get shot." Deputy Eisenbrey appeared in the frame running away from Ryan who was chasing him while holding the hula-hoe over his head. Deputy Clancy raised his firearm and pointed it in the direction of Deputy Eisenbrey and Ryan.

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Deputy Eisenbrey can be seen from this vantage point as turning his arm and head toward Ryan, while running away, and firing his firearm in Ryan's direction. Almost simultaneously, Deputy Clancy's firearm can also be seen firing two shots towards Ryan. A total of three gunshots can be heard. After the two Deputies fired the three shots, Ryan fell to the ground and Deputy Eisenbrey continued to run forward several steps. Once Ryan was on the ground, Deputy Clancy immediately lowered his firearm. Deputy Eisenbrey was approximately 20 feet ahead of Ryan as he turned around to face Ryan. Deputy Clancy announced over the radio, "shots fired." The time between Deputy Eisenbrey announcing, "Sheriff's department" and Ryan on the ground was 13 seconds.

WEAPONS

A wooden-handled stirrup hula-hoe was lying on top of Ryan's right shin. The hula-hoe was 4-feet, 10-inches in length. There was a sharp black metal stirrup blade attached to the wooden pole. There was also a black metal pan approximately 10-inches in diameter, with a plastic handle located directly to the right of Ryan's right hand.

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DECEDENT

AUTOPSY. Dr. Jolie Rodriguez, Forensic Pathologist for the Coroner Division of the Riverside County Coroner's Division, conducted the autopsy of Ryan Gainer on March 11, 2024. Dr. Rodriguez determined the cause of death was multiple gunshot wounds.

Gunshot Wounds:

An entry wound was noted on the right side of the back, approximately 53 centimeters from the top of the head and 14 centimeters to the right of the posterior midline. It consisted of a 1.0-centimeter circular defect. An exit wound was noted on the left side of the chest at the anterior axillary line, approximately 37 centimeters below the top of the head and 19 centimeters to the left of the anterior midline. This wound consisted of a slit-like 1.5 by 0.5-centimeter defect. The direction of the wound path was back to front, right to left, and upward.

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An entry wound was noted on the left hip, approximately 77 centimeters below the top of the head and 16 centimeters to the left of the anterior midline. The wound is a 1.3 by 1.0-centimeter oval defect. A projectile was retrieved from the subcutaneous tissue of the left buttock, approximately 79 centimeters below the top of the head and 9 centimeters to the left of the posterior midline. The direction of the wound path was front to back, left to right, and downward.

An entry wound was noted on the top left upper arm, approximately 32 centimeters proximal to the left wrist. It consisted of a 1.5 by 1.3-centimeter oval defect. An exit wound was noted at the medial aspect of the left upper arm, approximately 40 centimeters proximal to the left wrist. It consisted of a 2.5 by 1.7-centimeter defect. The direction of the wound path could not be noted.

TOXICOLOGY. Blood, bile, urine, gastric contents, brain, liver, and vitreous fluid samples were collected from Ryan Gainer on March 11, 2024.

Toxicology results for blood sample were listed as follows:

- Fluoxetine – 0.008 mg/L
- Norfluoxetine – 0.169 mg/L
- Benzodiazepines – Detected
- Nordiazepam – less than 0.005 mg/L
- Hydroxyrisperidone – 1.2 ng/mL

Toxicology results for urine sample were listed as follows:

- Ethyl alcohol – 0.010 (W/V)
- Fluoxetine – 0.006 mg/L
- Norfluoxetine – 0.109 mg/L
- Hydroxyrisperidone – 49 ng/mL
- Amphetamines – Detected
- Betaphenethylamine – Detected

CRIMINAL HISTORY. Subject was a juvenile.

DE-ESCALATION

From the time Deputy Eisenbrey arrived at the opened door of the residence, to the time he saw Ryan running towards him with a hula-hoe held in a striking position, was less than three seconds. The time between Deputy Eisenbrey first seeing Ryan, to the lethal force encounter was approximately 13 seconds. Deputy Eisenbrey was the first deputy on scene, and the only deputy to approach the residence. Deputy Clancy arrived as Deputy Eisenbrey was announcing, "Sheriff's department," but had only exited his police vehicle and was only a few feet away from said vehicle. Both deputies were wearing San

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Bernardino County Sheriff's Department uniforms identifying them as law enforcement officers.

Deputy Eisenbrey gave a verbal command to Ryan to stop; specifically, "Hey, get back, get back, you're gonna get shot." As Deputy Eisenbrey gave the command to Ryan, Deputy Eisenbrey retreated by walking backwards to give Ryan time to comply. Ryan did not stop advancing upon Deputy Eisenbrey, nor did he drop or lower either the frying pan or the hula-hoe.

Deputy Eisenbrey tried to de-escalate with his words and by physically retreating backwards, first by walking backwards, then by running away from Ryan at full speed. Despite these best attempts by Deputy Eisenbrey to verbally deescalate the situation, and create time and space for Ryan to comply, Ryan continued a full attack on Deputy Eisenbrey while armed with a frying pan and the hula-hoe.

APPLICABLE LEGAL PRINCIPLES

A peace officer who responds to an emergency call and is faced with threat of harm while fulfilling his duties, need not retreat and maintains his right to self-defense. (California Penal Code §§197, 835a.)¹³ 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.) 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.) 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) 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 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

¹³ All references to code sections here pertain to the California Penal Code.

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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 to “defend against an imminent threat of death or serious bodily injury to the officer or another.” (Penal C. §835a(c)(1).)

Discharge of a firearm is “deadly force.” (Penal C. §835a(e)(1).) A threat of death or serious 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).) The “[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).)

PENAL CODE SECTION 197. California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code §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 case law, 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 under section 835a(c)(1), as stated *supra*. Although these principles did not appear in section 835a until 2020,¹⁴ the courts have been defining the constitutional parameters of use of deadly force for many years.

¹⁴ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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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 case law, developed upon the former iteration of section 196, is still instructive.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal C. §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis, but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness

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and consistency with agency policies;¹⁵

- (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 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

¹⁵ 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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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 alternatives 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.

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.)

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

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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.) 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.) “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.” (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72) Aggressing a police officer with a knife, large or small, can justify an officer’s use of lethal force against the aggressor. (*Martinez v. County of Los Angeles, supra*, 47 Cal. App. 4th at 345 [large knife], *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F. 3d 691, 695 [steak knife].) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

The use of force policies and training of an involved officer’s agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 10, *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.)

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) is as follows:

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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.)

ANALYSIS

In this case, Deputy Eisenbrey had an honest and objectively reasonable belief that Ryan posed an imminent risk of serious bodily injury or death. Prior to Deputy Eisenbrey's arrival, there were multiple calls to 9-1-1 from two separate occupants of the residence, detailing that Ryan assaulted family members, broke the window of the front door, had a "shovel," and had a piece of glass in his hand. Deputy Eisenbrey arrived at the scene wearing a Sheriff's department uniform identifying himself as a peace officer.

Once Deputy Eisenbrey arrived at the residence's front door, he announced himself, "Sheriff's department," and was invited inside by one of the occupants. On the heels of being invited in, a warning was yelled to the Deputy, "look out, he's got a... ." Before the warning was complete, Ryan was seen entering the short hallway leading to the front door and running towards Deputy Eisenbrey with a long hula-hoe held over his head in a striking position. Deputy Eisenbrey drew his firearm and gave a verbal command to Ryan to get back. Deputy Eisenbrey also retreated backwards to make space between himself and Ryan.

However, Ryan did not stop running towards Deputy Eisenbrey. Initially, Deputy Eisenbrey was walking backwards to retreat, but when Ryan did not stop, Deputy Eisenbrey then turned his body away from Ryan and began to run. With Ryan closing the distance between himself and Deputy Eisenbrey, Ryan then started to bring the hula-hoe down towards Deputy Eisenbrey. The distance between the two was so close that Ryan would have easily been able to strike Deputy Eisenbrey which would certainly have killed or caused serious injury to the Deputy. Ryan had a 10-inch frying pan in his right hand in addition to the hula-hoe. The hula-hoe handle was 4-feet, 10-inches long and made of wood, while the top portion of the tool was stirrup shaped and made of black sharpened metal.

While Ryan charged Deputy Eisenbrey, he had an angry or determined scowl on his face. Ryan's expression, coupled with his unwillingness to comply with Deputy Eisenbrey's commands, demonstrated an intent to harm Deputy Eisenbrey. Deputy Eisenbrey

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retreated but Ryan remained in pursuit. It was objectively reasonable that Deputy Eisenbrey thought Ryan was going to attack him with the hula-hoe if Deputy Eisenbrey did not shoot him. Given those circumstances, the decision by Deputy Eisenbrey to use deadly force was justified.

Deputy Clancy also had an honest and objectively reasonable belief that Ryan posed an imminent risk of serious bodily injury or death to Deputy Eisenbrey based on the same information in the 9-1-1 calls and what Deputy Clancy observed immediately upon arrival at the residence. Deputy Clancy arrived on scene wearing a Sheriff's Department uniform. He parked his marked patrol car directly in front of the residence and upon exiting his vehicle, heard Deputy Eisenbrey announce, "Sheriff's department," followed by a commotion inside the residence and Deputy Eisenbrey yelling, "get back, get back or you're going to get shot."

Deputy Clancy observed Ryan running after Deputy Eisenbrey in close proximity with a hula-hoe raised above his head in a striking motion. Deputy Clancy withdrew his firearm but did not have time to give any commands to Ryan before he observed Ryan's hands bringing the hula-hoe down towards Deputy Eisenbrey in a striking motion. From Deputy Clancy's view, it was objectively reasonable that Ryan was going to strike Deputy Eisenbrey with the hula-hoe and Deputy Clancy needed to intervene. Deputy Clancy's decision to use deadly force was also justified under these circumstances.

CONCLUSION

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

Furthermore, based on the same facts and applicable law, Deputy Clancy's use of lethal force was a proper exercise of his right of defense of others and therefore his actions were also legally justified.

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