P U B L I C R E L E A S E M E M O R A N D U M

Date:	September 11, 2026
Subject:	**Non-Fatal Deputy-Involved Incident**
Involved Peace Officer:	Deputy Nicholas Yates San Bernardino County Sheriff's Department
Involved Subject/DOB: **Subject's Residence:**	Misty West (DOB 6/21/1989) Grand Terrace, CA
Incident Date: **Incident Time:**	February 15, 2023 10:37 a.m.
Case Agent/Agency:	Detective Rudy Castillo San Bernardino County Sheriff's Department
Agency Report #:	122300128/H#2023-024
DA STAR #:	2024-28903

PREAMBLE

The summary of this non-fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The original case agent for this submission was SBCSD Detective Andrew Montbriand.[1]

The submission reviewed included the following: reports of law enforcement witnesses, law enforcement audio recordings of law enforcement witnesses, law enforcement video recordings of civilian witness interviews, law enforcement audio belt recordings, 9-1-1 emergency phone calls and dispatch audio recordings, law enforcement photographs, law enforcement scientific investigation reports, medical records, and civilian surveillance video recordings.

FACTUAL SUMMARY[2]

On February 15, 2023, at approximately 10:37 a.m., SBCSD Deputy Nicholas Yates shot 34-year-old Misty West at a residence on the 21000 block of West Grand Terrace Road in the city of Grand Terrace. At the time, Ms. West was armed with a loaded pistol. Ms. West sustained multiple gunshot wounds (GSWs), received medical treatment, and survived her injuries. No other people were reported to be injured as a result of this shooting incident.

The series of events culminating with the shooting began at 10:27 a.m., when 50-year-old [redacted] (Witness 1) called 9-1-1 to report she had just been hit on the head with a bat by her housemate—Ms. West. Witness 1 asked that deputies respond but went silent immediately after telling the operator that she was going to pass out. Deputy Yates was on duty and within a short distance of the incident scene when he was dispatched to respond; he arrived at the scene at approximately 10:33 a.m. After Deputy Yates received no answer at the front door, Deputy Yates was advised that despite multiple efforts, calls to Witness 1 went to voicemail. As Deputy Yates stood in front of the incident residence, he heard what sounded like arguing coming from inside. Deputy Yates walked to the rear of the house and fearing that Witness 1 was being actively assaulted, he entered the residence through a back door. Deputy Yates announced, "Sherrif's Department," as he walked through the house, but received no response. Deputy Yates ultimately found Witness 1 in her room, sitting dazed on the floor, appearing to go in and out of consciousness. Witness 1 told Deputy Yates that Ms. West hit her on the head with a bat, that Ms. West still had the bat, and that Ms. West was in the basement. Witness 1 then pointed Deputy Yates toward the basement door that could only be reached by going back outside through the rear of the house.

[1] At the time this memorandum was prepared, Detective Rudy Castillo was assigned as the matter's case agent.
[2]The factual conclusions included here are based upon the totality of the circumstances, evidenced by the submission. All incident-involved and investigating law enforcement officers were serving in the capacity of peace officers of the San Bernardino County Sheriff's Department (SBCSD) at the time of their involvement or investigation.

Witness 1 sat at the back door while she watched Deputy Yates open the basement door and announce, "Sheriff's Department." Deputy Yates saw Ms. West standing about eight or nine feet down the basement stairwell. [redacted] (Witness 2)—Ms. West's 45-year-old boyfriend, stood one step down from Ms. West. Ms. West and Witness 2 faced each other, with Ms. West's right-side profile and Witness 2's left-side profile facing the deputy. Ms. West had a pistol in her right hand that appeared to be pointed in Witness 2's direction. Deputy Yates drew his gun from his duty belt, pointed it at Ms. West, and immediately began ordering Ms. West to drop her gun. Witness 2 jumped away from the basement stairs to the basement. After repeated orders, Deputy Yates warned Ms. West that he would shoot her. In response, Ms. West chambered a round into her gun and turned it towards Deputy Yates. Deputy Yates fired four times at Ms. West's upper torso. Ms. West fired one time at Deputy Yates. Deputy Yates was not struck, but Ms. West was. Ms. West fell from the stairs to the basement floor below. Ms. West's gun also fell down into the basement.

A total of nine seconds passed between the time Deputy Yates announced himself at the basement door to the time the deputy shot at Ms. West.

After announcing, "Shots fired," Deputy Yates descended into the basement to move Ms. West's gun out of her reach and to make sure that Witness 2 did not reach for Ms. West's gun, either. As Deputy Yates ordered Ms. West not to reach for her gun, Witness 2 also begged Ms. West not to reach. In the emotional aftermath, Witness 2 asked Ms. West why she would do this to him. Ms. West responded, "Suicide by cop, baby." Deputy Yates asked Witness 2 to get out of the basement and Witness 2 did so without incident. Deputy Yates followed behind Witness 2 and waited outside the basement door for deputy assistance and medical aid to arrive.

About six minutes after the exchange of gunfire, Deputy Joshwan Cobbs arrived at the scene and assisted Deputy Yates in detaining Witness 2, securing Ms. West's firearm, and administering first aid to Ms. West. Five minutes after Deputy Cobbs' arrival, he and others assisted in carrying Ms. West out of the basement for transport to a local hospital. Ms. West ultimately received medical treatment for GSWs to the right arm, right armpit, chest, and back.

Based upon the case agent's submission, it is estimated that Deputy Yates fired four times at Ms. West and Ms. West fired once at Deputy Yates during the lethal force encounter. Four fired cartridge casings (FCC) with identical headstamps to the live rounds collected from Deputy Yates's duty weapon were collected from the scene. Deputy Yates's duty weapon was collected and examined by a San Bernardino County Sheriff's Department, Scientific Investigations Division (SID) criminalist, who found that the deputy's gun fired without malfunction. Ms. West's firearm was collected from the scene and identified by Detective Candelario Sahagun as a 32-caliber handgun with a FCC jammed in the ejection port.

STATEMENTS BY LAW ENFORCEMENT WITNESSES[3]

Deputy Nicholas Yates gave a voluntary statement to Detectives Montbriand and Daniel Berumen on June 9, 2023, in the presence of Deputy Yates's attorney, more than four months after the shooting occurred. At the time of the interview, Deputy Yates was 28-years-old and served as a SBCSD deputy for approximately seven and a half years. Deputy Yates described himself as standing approximately five feet and 10 inches tall and weighing approximately 220 pounds. The subject incident was Deputy Yates's second lethal force encounter.

Prior to making his statement, Deputy Yates reviewed video footage of his arrival at the scene and an audio recording of the shooting incident that he captured with his belt audio recorder. (See Submitted Media, Civilian Surveillance Video and Belt Audio Recording, *infra*.) The following is a summary of relevant information disclosed by Deputy Yates at the time of his interview:

> On the morning of the shooting incident Deputy Yates heard SBCSD dispatch alert deputies that a female (Witness 1) was hit on the head with a baseball bat. Deputy Yates advised dispatch that he would respond to the scene as he was only a three-minute drive away. During the drive, dispatch told Deputy Yates that Witness 1 said she felt like she was going to pass out, then Witness 1's call disconnected. Dispatch also alerted Deputy Yates that they were unable to get Witness 1 back on the phone despite their repeated attempts. When the deputy arrived at the scene and no one answered his knock at the front door, Deputy Yates believed that Witness 1 might be unconscious from the assault. Deputy Yates walked to the rear of the house, where he heard what sounded like fighting or arguing happening inside. Deputy Yates believed that Witness 1 might still be getting assaulted. Deputy Yates entered the house through a rear door and announced, "Sheriff!" Deputy Yates received no reply as he continued through the interior of the house toward the sound of arguing behind a closed door. Deputy Yates knocked on the door, then opened it. Inside, Deputy Yates saw Witness 1 sitting alone on the floor, dazed, and appearing to go in and out of consciousness. Witness 1 appeared to Deputy Yates to have been hit on the head. Witness 1 told Deputy Yates that Ms. West assaulted her with a bat and that Ms. West was in the basement below Witness 1's room. Witness 1 told Deputy Yates that Ms. West still had the bat and showed the deputy how to get to the basement.
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> As Deputy Yates approached the closed basement door, he heard what sounded like scuffling or fighting coming from inside. Again, Deputy Yates believed that someone might be getting assaulted, so the deputy opened the basement door and announced, "Sheriff's Department." Upon opening the door, Deputy Yates saw that Ms. West was standing approximately eight to nine feet down the basement stairwell with her right-side profile facing the deputy. Ms. West was standing across from Witness 2, who was standing further down into the basement with his left-side profile facing the deputy. Deputy Yates saw that Ms. West had a handgun in her right hand. Deputy Yates immediately drew his

[3] Herein is a summary only. All reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or Ms. West by name are made here for ease of narrative.

duty weapon, pointed it at Ms. West, and ordered her to put the gun down. Ms. West ignored Deputy Yates's order. Deputy Yates recalled ordering Ms. West to put her gun down approximately four to five times and warned Ms. West that he would shoot her if she did not put down the gun. Then, Deputy Yates saw Ms. West "chambered" (prepared to fire) her handgun by pulling the top slide back and causing a bullet to push forward into the firing chamber. Ms. West pointed the gun at Witness 2 at the time, but appeared to turn toward Deputy Yates, and pointed her handgun at the deputy. Deputy Yates fired four times at Ms. West's upper torso, causing Ms. West to fall down. As Ms. West was falling, Deputy Yates heard a "pop." At the time, Deputy Yates was unsure whether Ms. West shot at him. Deputy Yates told investigators that he believed Ms. West appeared to be trying to kill him or Witness 2.

After Ms. West fell to the basement floor, Deputy Yates saw that Ms. West's gun had also tumbled down into the basement. Deputy Yates said that initially, Ms. West was still reaching for her gun. Deputy Yates commanded Ms. West not to reach for her gun and after repeating the order approximately three times, Ms. West stopped reaching. By that time, Deputy Yates saw that Witness 2 had also moved from the stairwell to the interior of the basement and was "freaking out," and telling Ms. West that he loved her. Deputy Yates was concerned that Witness 2 might try to grab Ms. West's gun. Deputy Yates continued to hold both Ms. West and Witness 2 at gunpoint until the deputy could go down into the basement to kick Ms. West's gun out of reach. While Deputy Yates was in the basement, he heard Ms. West say, "suicide by cop, baby." Deputy Yates then patted Witness 2 down for weapons and after finding none, ordered Witness 2 to go out of the basement. Witness 2 complied. Then, Deputy Yates retreated out of the basement, too, called for medical resources, and waited for assistance to arrive.

In retrospect, Deputy Yates told investigators that he believed that Ms. West would have shot and killed him or Witness 2, or both of them, had Deputy Yates not shot at Ms. West.

More than four hours after the shooting incident, Deputy Yates was photographed by a SBCSD crime scene specialist. The photos showed that Deputy Yates wore a SBCSD Class A uniform, which consisted of a tan long-sleeved button up shirt, with olive-colored pants and black duty boots. SBCSD agency patches were affixed to both outer shoulders of the shirt. An American flag patch was affixed above the right shirt pocket, above a metal nameplate. Deputy Yates wore a metal SBCSD deputy sheriff badge above the left shirt pocket, and a hand-sized lapel microphone was affixed to the center of the shirt. Deputy Yates wore a *Sam Browne* duty belt with his duty weapon holstered upon his right hip. Detective Becker collected Deputy Yates's duty weapon. Detective Becker reported that Deputy Yates's duty weapon contained a magazine with 19 rounds. The detective also recovered one round from the firing chamber.

Deputy Yates's firearm and cartridges were submitted to a SID criminalist for examination and testing. The criminalist described Deputy Yates's duty weapon as a Glock model 17 Gen5, 9mm LUGER caliber semiautomatic pistol and a Glock brand ammunition magazine. The cartridges recovered from the weapon were found to be consistent with Winchester Ranger, 9mm LUGER

+P ammunition with 124 grain, jacketed, hollow-point bullets. The criminalist reported that Deputy Yates's firearm was equipped with a Holosun brand open reflex sight and was modified with a Taran Tactical Innovations brand flared magazine well that increased the magazine capacity to 21 cartridges. The criminalist found that Deputy Yates's weapon appeared to test fire without malfunction or defect. Four FCCs bearing the headstamp "WIN 9mm LUGER +P" were recovered from the scene of the shooting. The headstamp on the recovered FCCs were identical to the headstamp of the live rounds collected from Deputy Yates's duty weapon. Based upon the submission in total, it appears that Deputy Yates fired his pistol approximately four times at Ms. West.[4]

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

Deputy Joshwan Cobbs was the first deputy to arrive at the scene approximately five minutes after the shooting occurred. Deputy Cobbs saw Deputy Yates's patrol unit in front of the residence, took a trauma (first aid) kit from inside Deputy Yates's patrol unit, and ran around to the rear of the residence with it. At the rear of the residence, Deputy Cobbs saw that Deputy Yates was holding Ms. West at gunpoint from the basement doorway. Witness 2 was laying on his stomach on the ground a few feet away from Deputy Yates. Deputy Cobbs handcuffed Witness 2 and searched Witness 2 for weapons. After finding no weapons on Witness 2, Deputies Cobbs and Yates went back down into the basement, where Deputy Cobbs found Ms. West was laying on her left side. Both deputies gave Ms. West commands to show her hands and not move. Deputy Cobbs said that Ms. West's gun was "secured," but did not explain how or by whom it was secured. As Deputy Cobbs checked Ms. West for additional weapons, other deputies arrived and preliminary medical aid was given to Ms. West. Thereafter, Deputy Cobbs said he and others assisted in carrying Ms. West out of the basement to a gurney outside, in preparation for transport to the hospital.

STATEMENTS BY CIVILIAN WITNESSES[5]

Witness 1 gave a voluntary statement to Detectives Becker and Berumen approximately six hours after the shooting took place. Witness 1 told the detectives that she lived in the northwest corner bedroom of the incident residence since January 23, 2023. Witness 1 said she shared the residence with her best friend of 10 years. Witness 1 stated that Ms. West also lived at the residence, but Ms. West stayed in the basement. Witness 1 explained that she first met Ms. West at a party in late December, 2022, approximately seven weeks prior to the incident. Witness 1 said that she did not have any prior "issues" with Ms. West.

[4] Although the criminalist noted the capacity of Deputy Yates's weapon magazine was 21 cartridges, Detective Becker stated that it was in fact 23 cartridges. The latter is consistent with the balance of the submission, including Deputy Yates's statement, the recovery of 20 total cartridges from Deputy Yates's duty weapon after the shooting, the belt recording of the shooting, and the discovery of four FCCs at the scene.

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

Witness 1 said that on the morning of the shooting, she heard a knock on her bedroom door. Before Witness 1 could open the door, Ms. West kicked the door open. Witness 1 explained that Ms. West was not acting like herself. Witness 1 described Ms. West as screaming angrily with veins pulsating on her forehead. Witness 1 tried to calm Ms. West, but this enraged Ms. West further. Ms. West got close to Witness 1's face and head-butted Witness 1 in the forehead as hard as Ms. West might "hit a grown man." Then, Witness 1 said that Ms. West stepped back and took a one-armed swing at Witness 1's head with an aluminum baseball bat. Witness 1 said that Ms. West struck her on the right side of her head, causing Witness 1 to see stars and fall to her knees. Witness 1 told investigators that she had never been hit so hard in her life. Witness 1 was shocked that Ms. West struck her because she was bigger than Ms. West; Witness 1 said that she stood six feet and two inches tall. Witness 1 stated that she took hold of her cell phone and tried to call her best friend. In response, Ms. West asked Witness 1 who she was trying to call. Ms. West said, "You better be trying to call Jesus." Then, Ms. West attempted to strike Witness 1 a second time with the bat. This time, Witness 1 grabbed the bat to deflect the strike. Ms. West yanked the bat back from Witness 1, told Witness 1 to wait right there, and left the room. Witness 1 believed that Ms. West went back to the basement.

After the assault, Witness 1 said she could hear Ms. West and Witness 2 talking in the basement. Witness 1 told the detectives that with Ms. West's statements, she believed Ms. West was going to come back and shoot her. Witness 1 explained that when she first met Ms. West, Ms. West had a small black gun with pink glitter on it. Witness 1 called 9-1-1 and recalled someone telling her that help was on the way. Witness 1 stated that she passed out in the meantime because when she regained consciousness, a uniformed deputy (Deputy Yates) was already opening her bedroom door. Witness 1 was relieved to see Deputy Yates. Witness 1 got up and pointed Deputy Yates toward the basement door. Before the deputy approached the basement door, he asked Witness 1 to sit down. Then, after Deputy Yates opened the basement door, Witness 1 heard the deputy scream at Ms. West to put her gun down or that he was going to shoot her. Witness 1 recalled the deputy telling Ms. West to put her gun down three times. Then, Witness 1 heard gunfire and fled back into the house. Witness 1 could not discern whether the gunfire was from the deputy or Ms. West.

Witness 1 stated that she suffered a concussion as a result of being struck by Ms. West, and at the time of the interview Witness 1 described the throbbing pain to the right side of her face and jaw as hurting at a level 10 of 10.

Witness 2 gave a voluntary statement to Detectives Becker and Berumen approximately eight hours after the shooting occurred. Witness 2 told the detectives that he and Ms. West were each other's "soulmate," and that they have been dating on and off for the last five years. Witness 2 said that his father owned the incident residence and that Ms. West moved into the basement approximately a month to a month and a half ago. Witness 2 described the basement as being a 100-square-foot room with no bathroom and said that Ms. West had to go upstairs into the main residence to use the bathroom. Witness 2 told the detectives that everyone in the house smoked methamphetamine and marijuana, and that in the nighttime they are up all night, "tweaking."

Witness 2 said that Ms. West was previously diagnosed with bi-polar disorder and "self-medicated" with methamphetamine every day. Witness 2 admitted that he and Ms. West had last smoked methamphetamine together the night before.

On the morning of the incident, Witness 2 stated that after he had breakfast with Ms. West at around 9 a.m., that Ms. West went upstairs where Witness 1 lived. Witness 2 said that he could hear Ms. West and Witness 1 "stomping and hootin' and hollering" and what sounded like door slamming for about five minutes. Witness 2 explained that Ms. West had delusions about Witness 2 cheating on her and that the confrontation Ms. West had with Witness 1 was regarding him engaging in "something sexual" with Witness 1. Witness 2 denied seeing Ms. West leave or return to the basement with a baseball bat. After Ms. West came back down to the basement, Witness 2 said that he tried to explain to Ms. West that he wanted nothing to do with other women, but Ms. West turned her anger toward him. Witness 2 knew that Ms. West had a gun and the bullets for the gun, but denied seeing Ms. West look for the gun after she fought with Witness 1. Witness 2 said that he and Ms. West were going back up the basement stairs when Deputy Yates appeared in the basement doorway. Witness 2 said the deputy announced he was a sheriff's deputy and was "unmistakably identifiable" because of his uniform. Witness 2 heard Deputy Yates say, "Hey, put the gun down, put the gun down." Witness 2 denied seeing Ms. West holding a gun at that time. Yet, Witness 2 said he jumped out of the "line of fire," and also told Ms. West to put the gun down. Witness 2 said he tried to defuse the situation by telling the deputy that Ms. West was "just trying to get attention." Witness 2 said he knew that Ms. West, "was going to suicide-by cop," because Ms. West had threatened to do so repeatedly, and did so most recently during the week prior. Witness 2 stated that he heard Deputy Yates fire approximately six to eight times, and that in the middle of the deputy's volley, that Ms. West fired one shot that maybe jammed. Witness 2 said that Deputy Yates "gave ample commands" for Ms. West to comply with, but that Ms. West was indeed trying to get shot. Witness 2 told the detectives that he grew up around guns, knew that Ms. West's gun was old and prone to jamming. Witness 2 explained that Ms. West knew that all she needed to do to get shot was to point a gun at a police officer.

SUBMITTED MEDIA[6]

DISPATCH RECORDING. The case agent's submission included audio recordings of 9-1-1 emergency calls and radio transmissions between SBCSD dispatch operators and responding personnel. The following is a summary of material events that occurred on February 15, 2023, evidenced by these recordings and a dispatch log provided by the case agent:[7]

> The submitted incident dispatch recordings began at approximately 10:27 a.m., when Witness 1 called 9-1-1 to report that her roommate, "Misty Rose," had hit her on the head

[6] All submitted photographs and audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are mentioned here. All referenced audio recordings and video footage were reviewed at slowed speeds.

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

with a baseball bat. Witness 1 could be heard saying, "I'm about to pass out," then the call went silent, and ended. The 9-1-1 operator attempted twice to call Witness 1 back in the next minute and a half, but each time was prompted to voicemail. Dispatch alerted deputies of the circumstances relayed by Witness 1 and their trouble in re-establishing contact with Witness 1.

By 10:31 a.m., Deputy Yates was dispatched to Witness 1's location. About two and a half minutes later, Deputy Yates announced to dispatch that he had arrived at the scene; it was approximately 10:33 a.m.

At 10:35 a.m., Deputy Yates announced to dispatch, "I'll be making entry. I got a 415 inside." Just more than two minutes later at 10:37 a.m., Deputy Yates announced, "shots fired."

BELT AUDIO RECORDING. Although multiple belt audio recorded segments were included in the submission, only Deputy Yates's belt audio recording included the sound of events occurring immediately before, during, and immediately after the shooting. Deputy Yates captured approximately 17 minutes of audio. The following is a summary of material events included in the submitted belt audio recordings:[8]

Deputy Yates's belt audio recording device appeared to have been activated before the deputy stepped out of his patrol unit at the scene. Less than a minute after activating his device, Deputy Yates could be heard pounding at the residence door. When no answer came, Deputy Yates asked dispatch to ask Witness 1 to step outside. Then, after the sound of some distant yelling, Deputy Yates could be heard announcing to dispatch, "I'll be making entry. I got a 415 inside." Twenty-three seconds later, Deputy Yates was heard saying, "Sheriff!" and "Sheriff's Department!" Deputy Yates then could be heard opening a door and asking, "What's going on? Who called?" Witness 1 could be heard breathing heavily. Witness 1 slowly said, "I did." Deputy Yates asked, "What happened?" Witness 1 explained, "Misty" had hit her on the head with a bat. On further questioning by Deputy Yates, Witness 1 said that Ms. West had the bat and could be found in the basement. Deputy Yates asked Witness 1 how he could get to the basement. It sounded like Witness 1 got up to point out the basement door to Deputy Yates. Deputy Yates asked Witness 1 to sit down.

Moments later, Ms. West could be heard asking, "Who is that?" Deputy Yates immediately answered, "Sheriff's Department! Put that gun down! Put the gun down! Drop the gun! Drop the gun! Put it down! I'm gonna shoot you. Put the gun down! Approximately eight seconds after giving Ms. West the first order to put her gun down, Deputy Yates could be heard firing four times. With a pause in gunfire, Deputy Yates again ordered, "Put the gun down!" and a single gunshot rang out. With his next breath, at 10:37 a.m., Deputy Yates

[8] The noted time and duration of time included in this summary is based upon the dispatch call log and the runtime of the submitted audio, respectively.

radioed, "12-21 shots fired!" Deputy Yates repeated, "Put the gun down," then began ordering Ms. West to not reach for the gun. Witness 2 could also be heard to say, "Don't reach!" and "Let it go!" Deputy Yates then advised dispatch that he had "one suspect down," that he was ok, that there was another person in the basement, and that Ms. West had dropped a gun. Witness 2 can then be heard saying, "I don't have a gun." Deputy Yates continued to say, "do not reach for that gun, do you understand?" Witness 2 responded, "My hands are up in the air, sir." As increased radio traffic became audible, Witness 2 and Ms. West appeared to be talking to each other. Deputy Yates continued to order Ms. West and Witness 2 not to move. At one point during their exchange, Witness 2 could be heard saying, "Why would you do this to me for, babe?" Ms. West responded, "Suicidal. Suicidal, baby. Suicide by cop, baby."

About a minute and a half after the gunfire stopped, Deputy Yates ordered Witness 2 to get out of the basement, and it appeared that Witness 2 complied. About 30 seconds after that, at approximately 10:39 a.m., Deputy Yates asked dispatch where his closest backing unit was. At 10:43 a.m., the first backing officer (Deputy Cobbs) announced he arrived at the scene and advised Deputy Yates he would be bringing a trauma kit. About 40 seconds after that, Deputy Yates could be heard asking Deputy Cobbs to handcuff Witness 2. Witness 2 could be heard saying that his girlfriend had been shot. Shortly thereafter, Ms. West could be heard saying, "Suicide by cop, suicide by cop motherfucker."

At approximately 10:44 a.m., it appeared that Deputy Yates and others went back down into the basement to secure Ms. West's handgun, handcuff Ms. West, and begin first aid. Four and a half minutes after that, it appeared that Deputy Yates and others assisted in carrying Ms. West out of the basement.

CIVILIAN SURVEILLANCE VIDEO.[9] The submission included date and time-stamped residential surveillance video footage without sound, from a west-facing residence on Grand Terrace Road, east of the incident scene. The submitted surveillance video captured the front of the incident residence, including the driveway along its south side. The relevant portion of the submitted surveillance video showed Deputy Yates arriving at 10:33 a.m., parking in front, and walking to the rear of the house via the driveway about a minute later. No other visible law enforcement activity was included in the submitted surveillance video until Deputy Cobbs arrived at 10:42 a.m. and appeared to go into the front passenger side of Deputy Yates's parked patrol unit. Deputy Cobbs then also walked to the rear of the incident residence and out of video view. Medical personnel appeared to arrive at the residence at 10:47 a.m., and by 10:50 a.m., they moved Ms. West away from the incident residence upon a gurney.

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[9] The events described here and captured by the surveillance video are discernable when considered in context of the entire submission, but not independently so.

INCIDENT SCENE INVESTIGATION

The incident scene investigation was managed by Detective Sahagun, with the assistance of a SBCSD crime scene specialist. The incident residence was described by Detective Sahagun as a single-story residence with a tan stucco and red brick exterior. The front door of the residence was east facing. Detective Sahagun identified Witness 1's bedroom as being in the northwest corner of the residence. There was a covered patio attached to the rear (west) of the residence. The back door was accessible through the laundry room and exited on the west side of the residence onto a brick landing attached to three steps to a concrete patio floor. The basement access door was also on the west side of the residence, north of the covered patio and laundry room access door.

Below is a photo of the basement door propped open with a cinder block; the visible placards note the position of FCCs. Detective Sahagun noted that there were four FCC's with identical headstamping ("WIN 9mm LUGER +P") on the patio floor, under the covered patio, and south of the basement door.



Below is the view from basement door down into the basement:

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Detective Sahagun also noted that there was an aluminum baseball bat at the bottom of the basement stairs (Placard 7). Suspected blood and bullet fragments were found on the basement floor where Ms. West fell (Placard 8), approximately 34 inches from the bat. Detective Sahagun discovered Ms. West's gun also on the basement floor (Placard 9); the gun slide was separated from the handgun frame. Detective Sahagun identified Ms. West's handgun as a Mauser-Werke A.G. Obendorf a.N. Model HSc. Kal. 7.65mm or 32-caliber handgun. The detective noted an FCC headstamped, "WIN 32 AUTO" lodged in the handgun's ejection port. The magazine inserted in Ms. West's gun was noted to be empty. Based on Detective Sahagun's measurements, Ms. West's gun was approximately 58 inches from Ms. West's blood.[10]

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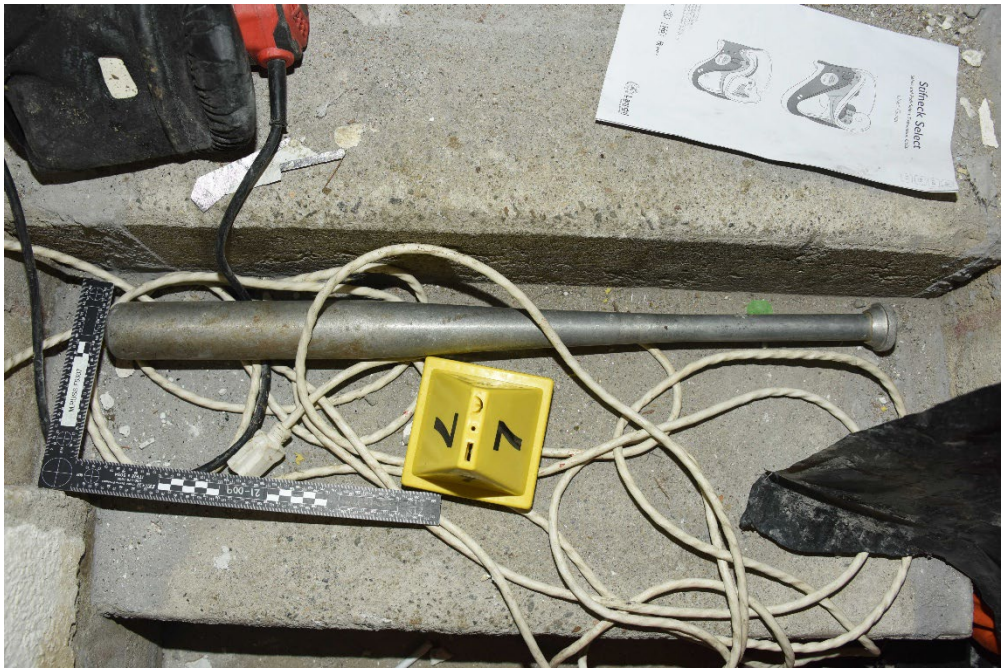
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[10] Per Deputy Yates's statement, the gun fell roughly two feet away from where Ms. West fell after shots were fired. Deputy Yates subsequently kicked the gun out of her and Witness 2's reach to the location it was discovered by Detective Sahagun.

The photo below shows the relative positioning of Placards 7 (bat), 8 (blood/bullet fragments) and 9 (gun), as discovered by Detective Sahagun.



The knob of the bat was marked with a "28" indicating its length of 28 inches.





INVOLVED SUBJECT

At the time of the shooting, Ms. West was 34-years-old. She was reportedly five feet and nine inches tall and weighed 195 pounds. Ms. West's prior criminal history included a felony conviction for assault with a deadly weapon (not a firearm) in violation of California Penal Code section 245(a)(1) in 2012, for which she served a term in state prison.[11] Ms. West had a separate misdemeanor battery conviction that same year.

Ms. West's hands were tested for gunshot residue (GSR) at the hospital, approximately four hours after the shooting occurred. The GSR sampling was submitted for forensic analysis. A SID criminalist did *not* discover GSR particles from either of Ms. West's hands. The criminalist explained that GSR particles can be deposited on the hands by firing a firearm, being in proximity of a discharging firearm, or by touching a surface that has GSR on it, including handling a firearm or ammunition. However, the criminalist also qualified that the absence of GSR did not negate the possibility of those instances still having occurred. The criminalist explained that a negative result could arise from circumstances such as washing or wiping, or other normal physical activity passing between contact with the firearm and the time the GSR sampling took place.

Investigators responded to the hospital the day after the shooting and found that Ms. West sustained two GSWs to the back of her right arm, one or two entry wounds to the right armpit or chest, and

[11] All references to code sections within this memorandum are references to the California Penal Code.

two exit wounds to her back. Medical records also revealed that Ms. West suffered a lacerated liver and a rib fracture secondary to her GSWs.

Five days after the shooting, while Ms. West was still recovering in the hospital, Detectives Montbriand and Sahagun took a voluntary statement from Ms. West. Ms. West expressed remorse for shooting at Deputy Yates. Ms. West explained that she got "scared," and shot at the deputy because he shot at her. Ms. West told detectives that she wanted to die. Ms. West admitted that she had been using methamphetamine and drinking alcohol. Ms. West stated that she had been up for a couple of days. Ms. West tried a new kind of methamphetamine that she received from Witness 1 and smoked it about an hour before Deputy Yates arrived. Ms. West had no recollection of assaulting Witness 1 or even being in Witness 1's room on the morning of the shooting. Ms. West told detectives that her plan was to use the one bullet in her gun on herself. At first, Ms. West denied that she wanted the deputy to kill her or that she planned to commit "suicide by cop." Ms. West said that she knew Deputy Yates was a "cop," and heard Witness 2 say it was the "cops." As she faced Deputy Yates, Ms. West said she heard the deputy's commands to show her hands and drop her gun. Ultimately, Ms. West admitted that she did point her gun at Deputy Yates. Ms. West said she did comply with the deputy's order's but did so *after* the shooting had occurred. Despite initially telling the detectives that she wasn't planning to commit "suicide by cop," Ms. West told the detectives that her intention at the time she shot at Deputy Yates was to get shot and die.

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. (§§197, 835a.) A peace officer is not deemed the aggressor in this instance. (§835a(d).) A peace officer may use objectively reasonable force to effect an arrest, to prevent escape or to overcome resistance. (§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 she knows or should know that she is being arrested. (§834a.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) The force used by the peace officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

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

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

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

(1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;

(2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and

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

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required for an officer to use lethal force under section 835a(c)(1), as stated *supra*. Although these principles did not appear in section 835a until 2020,[12] the courts have been defining the constitutional parameters of use of deadly force for decades.

In 1985, the United States Supreme Court held that when a law enforcement officer has probable cause to believe that the suspect he is attempting to apprehend has "threatened infliction of serious physical harm" to the officer, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner, supra,* 471 U.S. at 11-12.) California courts have held that when a law enforcement officer's actions are reasonable under the Fourth Amendment of our national Constitution, state statutory requirements may also be satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of case law that demonstrates *how* to undertake the analysis of what a reasonable use of force under the totality of the circumstances is. (See *Reasonableness* discussion, *infra*.) As such, California's pre-2020 case law is still relevant here.

There is one additional pertinent factor in section 835a that did not appear before 2020: deadly force cannot be used against a person who only poses a danger to themselves. (§835a(c)(2).)

In addition, the legislature included generalized findings and declarations at subsection (a) of

[12] Assem. Bill No. 392 (2018-2019 Reg. Sess.) was approved by the Governor on August 19, 2019. [Hereinafter "AB-392"] The statutory modifications included in AB-392 took effect on January 1, 2020.

section 835a that are instructive. These findings and declarations lend guidance to our analysis but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

> (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
>
> (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
>
> (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness, and consistency with agency policies;[13]
>
> (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.

(§835a(a).)

IMMINENENCE. "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 peace officer knows and his actual awareness of the risks posed against him are relevant in determining if a reasonable person would believe in the need to defend. (*Id*. at 1083.) In this regard, there is no duty to wait until an injury has been inflicted

[13] Penal code section 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 section 835a(a)(3).

to be sure that deadly force is indeed appropriate. (*Scott v. Henrich* (9th Cir. 1994) 39 F. 3d 912, 915.)

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

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

(§835a(e)(2).)

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

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

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

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

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

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

The "reasonableness" test requires an analysis of "whether the [peace officer's] actions are 'objectively reasonable' considering the facts and circumstances confronting them, without regard to their underlying intent or motivation." (*Id*. at 397, citations omitted.) What constitutes "reasonable" self-defense or defense of others is controlled by the circumstances under which the force was applied. A person's right to self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.)

The *Graham* court plainly stated that digestion of the "totality of the circumstances" is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra,* 490 U.S. at 396.) As such, "reasonableness" cannot be precisely defined, nor can the test be mechanically applied. (*Id*.) Still, *Graham* does grant the following factors to be considered in the "reasonableness" calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id*.)

Whether the suspect posed an immediate threat to the safety of the shooting officer or others has been touted as the "most important" *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) Imminent harm is such a primary factor that even when all other *Graham* factors weigh against a peace officer's use of force, a court may *still* find that the use of force was reasonable where the peace officer faced imminent harm. (*Estate of Strickland v. Nevada County* (9th Cir. 2023) 69 F.4th 614, cert. denied Jan. 8, 2024, No. 23-410, 144 S.Ct. 559, 217 L.Ed.2d 297.) Imminent harm can be found where a peace officer confronts an armed suspect in close proximity whose actions indicate an *intent* to attack. (*Mattos v. Agarano*, *supra*, 661 F.3d at 441-442.) The threatened use of a gun is the sort of immediate threat contemplated by the United States Supreme Court, that justifies a peace officer's use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72.) If a subject draws or exhibits a firearm to resist or prevent arrest or detention by a peace officer, it is not required that the subject point the firearm at the peace officer, or even draw the weapon in a rude, angry or threatening manner for the subject's conduct to qualify as a serious felony being committed against that peace officer. (Penal C. §§245(d), 417.8; *People v. Raviart* (2001) 93 Cal.App.4th 258, 266, *People v. Pruett* (1997) 57 Cal.App.4th 77, 88.)

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

Lastly, the use of force policies and training of a shooting peace officer's law enforcement agency *may* also be considered as a factor to determine whether the shooting officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1. See fn. 13, *supra.*)

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

> under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never

> allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez v. County of Los Angeles, supra,* 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.)

ANALYSIS

This memorandum examines the use of deadly force by SBCSD Deputy Nicholas Yates on February 15, 2023, upon Misty West. As indicated above, there are legal bases that must be met before the right to self-defense ripens and the use of lethal force by a peace officer is justified. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent's submission.

A peace officer's use of force must be "reasonable" to be deemed lawful. Whether the shooting officer was justified in using lethal force involves a two-part analysis: (1) did he subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was his belief in the need to protect himself or another from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of Deputy Yates is included here based primarily upon the statement he made during his interview. (See Statements by Law Enforcement Witnesses*, supra.*) The following is a summary:

> Before arriving at the incident scene, Deputy Yates was informed that Witness 1 had been hit on the head with a baseball bat by her roommate. Dispatch also relayed to Deputy Yates that Witness 1 said she felt like she was going to pass out and the call dropped. When Deputy Yates arrived at the scene and he received no answer at the door, dispatch told the deputy that their calls back to Witness 1 were routed to voicemail. Deputy Yates believed that Witness 1 had become unconscious, then heard what sounded like arguing coming from inside the residence. Deputy Yates went around to the rear of the house and decided to enter through the back door, fearing that Witness 1 was actively being assaulted. Deputy Yates found Witness 1 sitting on the floor of her bedroom, appearing dazed. Witness 1 told Deputy Yates that her roommate (Ms. West) hit her on the head with a bat and that Ms. West was in the basement below Witness 1's room. Witness 1 told Deputy Yates that Ms. West still had the bat and showed the deputy how to get to the basement.

> As Deputy Yates approached the closed basement door, he heard what sounded like scuffling or fighting coming from inside. Fearing yet another person was being assaulted, Deputy Yates opened the basement door and announced, "Sheriff's Department." Upon opening the door, Deputy Yates saw that Ms. West was standing halfway down the stairway across from Witness 2, and that Ms. West was holding a pistol in her right hand. Deputy Yates immediately drew his duty weapon, pointed it at Ms. West, and ordered her to put the gun down. Ms. West ignored Deputy Yates's order, despite the deputy repeating it several times. Finally, Deputy Yates told Ms. West that he would shoot her. In response, Ms. West pulled the top slide of her gun back to push a round into the firing chamber and pointed the gun at Deputy Yates. Deputy Yates fired four times at Ms. West's upper torso. As Ms. West fell down to the basement floor behind her, Deputy Yates heard a "pop." At the time, Deputy Yates was unsure whether Ms. West shot at him. Deputy Yates told investigators that he believed Ms. West appeared to be trying to kill him or Witness 2.
>
> After the gunfire, Deputy Yates saw that Ms. West's gun also fell down to the basement floor. Deputy Yates said that Ms. West was still reaching for her gun, despite being injured. Deputy Yates commanded Ms. West to stop reaching. After repeating the order several times, Ms. West finally complied. Deputy Yates explained that at that time, Witness 2 had also moved to the basement floor. Deputy Yates saw that Witness 2 was "freaking out," and the deputy was concerned that Witness 2 might try to grab Ms. West's gun. Deputy Yates continued to hold both Ms. West and Witness 2 at gunpoint until the deputy could go down into the basement to kick Ms. West's gun out of both of their reach. Deputy Yates then patted Witness 2 down and ordered him out of the basement. Deputy Yates retreated out of the basement, too, called for medical resources, and waited for assistance to arrive.
>
> Deputy Yates told investigators that he believed that Ms. West would have shot and killed him or Witness 2, or both of them, had Deputy Yates not shot at Ms. West.

The stated account of Deputy Yates of the circumstances at play *prior* to and culminating with Deputy Yates's use of lethal force is consistent with the submission. Furthermore, the submission supports Deputy Yates's conclusion that Ms. West was armed with a loaded handgun. Ms. West had the apparent ability, intent, and opportunity to inflict the lethal harm articulated by Deputy Yates. Based upon the foregoing, it is reasonable to conclude that Deputy Yates bore an honest and subjective belief that Deputy Yates and Witness 2 were under threat of imminent deadly harm or bodily injury at the time Deputy Yates used lethal force.

Reasonable Belief of Imminent Need to Protect. The use of lethal force is authorized by section 835a(c)(1) when a peace officer has a "reasonable" belief of an imminent threat of death to a person. A definition of "reasonable" is not included within section 835a. Instead, the analytical framework for determining what is "reasonable" is included in *Graham* and its progeny. This analysis also overlaps with the second component to a self-defense claim: a finding that the involved shooting deputy had an objectively reasonable belief of the need to use deadly force to protect himself and/or another person from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. Here, Ms. West had reportedly struck Witness 1 in the head with a baseball bat so hard that it caused Witness 1 (who was six feet and two inches tall) to fall to her knees and lose consciousness. The assault of Witness 1 would be a violation of section 245(a)(1) [assault with a deadly weapon]. The loss of consciousness [great bodily injury] suffered by Witness 1 would enhance the penalty and the severity of the crime, from a "serious" strike felony pursuant to section 1192.7(c), to "violent" strike felony pursuant to section 667.5(c)(8). From the outset, Ms. West's possession of a firearm violated section 29800 [felon in possession of firearm], a felony. It might also reasonably appear that Ms. West drew or exhibited a firearm with the intent to prevent detention by a peace officer; this would be a violation of section 417.8, another "serious" strike felony. Ms. West might also be found to have violated section 245(c) [assault of a peace officer in the course of his duties]—a third "serious" strike felony. The assault upon Deputy Yates *with a firearm*, would be a violation of section 245(d)(1) [assault of a peace officer in the course of his duties with a semi-automatic firearm], a second "violent" felony strike. Neither section 245(d)(1), nor section 417.8 required Ms. West to fire or even point her gun directly at Deputy Yates. In this case, Ms. West *did* fire her weapon and may have violated section 664(e) [attempted murder of an officer in the course of his duties], another "violent" strike felony which carries a mandatory life sentence. As such, the severity of crimes Ms. West appeared to have committed and was engaged in immediately prior to Deputy Yates's use of lethal force being amongst California's most serious and violent felonies weigh in favor of a finding that such force was reasonable.

Resistance is another essential consideration in a *Graham* analysis. The submission supports a finding that Ms. West *knew* that law enforcement had arrived. Not only was Deputy Yates wearing a distinct SBCSD uniform including a yellow metal star sheriff's badge, he also announced "Sheriff" multiple times at the scene. Deputy Yates also ordered Ms. West to drop her gun multiple times. Witnesses 1 and 2 also heard Deputy Yates order Ms. West to put her gun down. It is reasonable to conclude that not only did Ms. West know that a sheriff's deputy was present, but that the deputy was aware that Ms. West had a firearm. Despite being given an opportunity to disarm herself, Ms. West's response was not to drop the gun, but instead to "chamber" one round and turn the pistol towards the deputy. During her statement to detectives, Ms. West admitted pointing her gun at Deputy Yates. Ms. West was reported to have suffered an entry GSW to the right armpit, which would be consistent with Ms. West raising the gun in her right hand upwards toward Deputy Yates standing at the basement door at the time she was shot. Self-armament with a loaded and operable firearm in the face of detainment by a uniformed and armed peace officer is an extreme level of resistance. In the calculus of what was "reasonable" under *Graham*, Ms. West's apparent resistance can be weighed in favor of the conclusion that Deputy Yates's use of force was reasonable.

Immediacy is the "most important" *Graham* factor and the circumstances leading to the lethal use of force must be considered. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. Deputy Yates was a uniformed law enforcement officer, attempting to contact a known armed assailant after receiving a victim's direct indictment and observing the corroborating physical impact on the

victim. As Deputy Yates approached the basement door, he also heard what sounded like arguing coming from behind the door and feared yet another person was being victimized by Ms. West. Witness 2 did confirm with investigators that he was arguing with Ms. West prior to Deputy Yates's appearance. Deputy Yates opened the basement door and announced, "Sheriff's Department." Deputy Yates immediately saw that Ms. West was holding a pistol in her right hand; Ms. West's right profile faced Deputy Yates and Witness 2 stood across from Ms. West, in the direction that Ms. West's gun was pointing. Deputy Yates ordered Ms. West to drop her gun six times and warned Ms. West that he would shoot her. Deputy Yates's orders and warning fell upon deaf ears. Ms. West maintained her grip on her firearm. This alone would make it reasonable for Deputy Yates to believe that Ms. West intended to fire her pistol, to kill the deputy or Witness 2. This is the awful predicament required by section 835a(c): to act only in defense of an imminent lethal threat—a reactive vs. proactive mandate. Still, Deputy Yates did not fire for approximately eight seconds after his first order was ignored. Instead, Deputy Yates allowed Ms. West to take yet another step further in demonstrating an intent to kill: Deputy Yates watched Ms. West chamber a round in her gun to prepare to fire it and point the gun at him. The law did not require Deputy Yates to wait to use lethal force until Ms. West shot him; it required an imminent lethal threat. Deputy Yates's delay was an extreme effort to avoid shooting Ms. West. In sum, Ms. West's conduct demonstrated that she had the present ability and opportunity to immediately cause death or serious bodily injury to Deputy Yates and/or Witness 2. Specifically, Deputy Yates reasonably believed that lethal force was instantly required to avoid his immediate death to himself and Witness 2.

Based on the foregoing discussion, each of the primary *Graham* factors as applied support a finding that the use of lethal force by Deputy Yates was reasonable. The "totality of the circumstances" discussed herein further supports a finding that Deputy Yates reasonably believed that he was defending against an imminent threat of death or serious bodily injury at the time he used lethal force. As such, we conclude that the use of lethal force by Deputy Yates was also justified under sections 196 and 197.

De-escalation. Penal code section 835a(a) does require that lethal force be used only "when necessary to defend human life," and that safe and feasible de-escalation should be employed. Generally, the mere presence of uniformed and armed law enforcement can serve as a de-escalation tactic. The submission showed that Deputy Yates gave Ms. West sufficient time to see him and hear his orders. In addition, Deputy Yates did warn Ms. West that she would be shot. Based on Witness 2's statements and Ms. West's prior criminal history, it would be reasonable to believe that Ms. West knew what behaviors were expected of her once Deputy Yates appeared before her. Ms. West had time to drop her gun right where she stood. Instead of eliciting compliance from Ms. West, Deputy Yates's presence and commands caused Ms. West to turn her weapon towards the deputy. Ms. West showed no outwardly observable signs of compliance, surrender, or disarmament prior to the time she was shot. On the contrary, Ms. West raised her ready-to-fire gun and pointed it at Deputy Yates. As such, it was reasonable for Deputy Yates to believe that Ms. West intended to shoot the deputy. Even after Ms. West was shot and lay injured on the ground, she continued to reach for her gun. Deputy Yates had to give Ms. West continued orders not to reach for her gun. Only then, upon being shot, did Ms. West show any deference to Deputy Yates.

As such, there is no reason to believe *any* de-escalation method prior to the shooting would have achieved a different result here. There appeared to be no feasible, safe, or reasonable opportunity for Deputy Yates to de-escalate without putting his own life, or the life of Witness 2 in apparent danger.

Other Statutory Considerations. The added considerations included in section 835a(a) also support the conclusion that the use of deadly force by Deputy Yates was lawful.[14] First, the submission in total does not indicate that Deputy Yates acted excessively. Deputy Yates drew his duty weapon after it appeared to him that Ms. West was already armed. Once Ms. West fell to the ground, Deputy Yates still had 20 additional rounds in his duty weapon ready to be fired as Ms. West continued to reach for her gun. While there were in fact no more bullets in Ms. West's gun, there was no indication in the submission that suggest Deputy Yates knew that at the time. Deputy Yates was still concerned about the potential danger of Witness 2 and/or Ms. West retrieving Ms. West's gun after Ms. West fell. Still, Deputy Yates gave only verbal orders. Deputy West later went down into the basement, located Ms. West's gun, and kicked it out of Ms. West and Witness 2's reach. Even then, Ms. West's gun was not secured until after Deputy Cobbs arrived at the scene. Deputy Yates did not fire any additional rounds during that uncertain period between the time Ms. West dropped her gun and the time Deputy Cobbs arrived. In sum, the submitted evidence supports the conclusion that lethal force did not continue after Ms. West no longer posed an immediate lethal threat. As such, Deputy Yates can be found to have well-appreciated the gravity and consequence of his use of lethal force evidenced by the judicious way he dispensed lethal force.

The material submitted by the case agent revealed that Ms. West ingested methamphetamine prior to the shooting.[15] Although those under the influence of narcotics *may* be impacted in their ability to understand and comply with peace officer commands as stated in section 835a(a)(5), there was nothing in the submission that showed such was the case with Ms. West. As discussed, Ms. West knew a peace officer was present. Ms. West told investigators she heard Witness 2 say the "cops" were there immediately prior to the time the shooting occurred. Ms. West also told investigators that she knew she was facing a "cop," and pointed her gun at Deputy Yates intending for herself to get shot (by the deputy). Ms. West also understood that Deputy Yates wanted her to drop her gun. Deputy Yates gave Ms. West multiple orders to drop her gun and specifically told her that she would be shot. Both Witnesses 1 and 2 believed that Ms. West had ample opportunity to comply with the deputy's orders. Yet, Ms. West chose to point a gun with a chambered round at Deputy Yates and ultimately fired that gun. The submission in total supports a finding that Ms. West intended to provoke Deputy Yates to shoot her. After the shooting occurred, Ms. West explained the incident as "suicide by cop," and had repeatedly and recently discussed committing

[14] This review is based on a totality of the circumstances from the perspective of a reasonable officer in the same situation. (§§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether SBCSD use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any departmental use of force policy was violated.

[15] Ms. West admitted and Witness 2 confirmed that Ms. West had been smoking methamphetamine the night before and the morning of the shooting. Although the submission indicated that a sample of Ms. West's blood was collected and submitted for toxicological analysis, no reports were submitted as to the results of such an analysis.

suicide in this manner with Witness 2. Moreover, while though those who pose a danger *only to themselves* are protected against lethal force by a peach officer pursuant to §835a(c)(2), here Ms. West posed an immediate lethal threat to Deputy Yates and Witness 2. Whatever physical and mental impact narcotics consumption had on Ms. West during this incident, neither can overcome that Ms. West simultaneously posed an immediate lethal threat to Deputy Yates and Witness 2.

CONCLUSION

Under the facts, circumstances and applicable law in this matter, we conclude that the reasonable use of deadly force by SBCSD Deputy Nicholas Yates was exercised in self-defense and defense of another. Accordingly, no criminal liability attaches.

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
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Dated: September 11, 2026